

STATE OF SOUTH CAROLINA

In The Court of Appeals

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

State,

Respondent

✓

Robert Max Watkins

Appellant

Appellate Case No. 2016-000966

Supplemental Record on Appeal

Robert Max Watkins 293803 @2A118

Perry Correctional Institution

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Pelzer SC. 29669

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STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENVILLE

STATE OF SOUTH CAROLINA

:

:

-vs-

:

TRANSCRIPT OF RECORD

:

ROBERT WATKINS

:

September 22-24, 2008

Greenville, South Carolina

B E F O R E:

HONORABLE LARRY R. PATTERSON, Judge.

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

LUCAS MARCHANT, ESQ.

Attorney for the Plaintiff

STEPHEN HENRY, ESQ.

Attorney for the Defendant (Standby)

MARY E. DIGIROLAMO

Court Reporter

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2 for identification.)

3 THE COURT: Okay. Mr. Henry, you're up.

4 MR. HENRY: I didn't know which seat to sit in,  
5 Judge.

6 THE COURT: You can sit wherever you want to. You  
7 can sit in the jury box if you want to.

8 MR. HENRY: I would like that. Never had that  
9 opportunity.

10 THE COURT: Okay. All right. All right. Bring Mr.  
11 Watkins in.

12 (Mr. Watkins entered the courtroom.)

13 THE COURT: Okay. We're ready on the case of the  
14 State and Robert Max Watkins. And it has been filed this  
15 morning with the Court two motions by Mr. Henry, the  
16 attorney for the -- for Mr. Watkins. He has filed a  
17 motion for Mr. Watkins indicating that Mr. Watkins wants  
18 to proceed pro se and -- under Foretta versus California.

19 The posture of this case is that the matter comes  
20 back for a new trial from the Supreme Court. And the --  
21 Mr. Watkins has been in the Greenville County jail now  
22 for some period of time. I don't know exactly how long.  
23 Do you have that information, Mr. Marchant?

24 MR. HENRY: February the 6th, Judge.

25 THE COURT: Since February the 6th of 2008. And I

1 just -- I just received the motion after we qualified the  
2 jury downstairs, so I was taken a little bit by surprise.  
3 Mr. Watkins was appointed the public defender, John  
4 Mauldin, to represent him. Mr. Mauldin had two or three  
5 meetings with Mr. Watkins and asked to be relieved. Both  
6 sides filed motions. And the Court granted Mr. Watkins'  
7 request to be relieved and the right to appear pro se.

8 And then we had the trial set, getting ready to go  
9 forward, and Mr. Watkins changed his mind and wanted  
10 appointed counsel. And the Court covered the Greenville  
11 roster and wanted to appoint Mr. Watkins competent  
12 counsel. And the Court appointed Mr. Henry, Steve Henry,  
13 to represent Mr. Watkins after considering the matter  
14 very seriously. And Mr. Henry is a very experienced  
15 criminal lawyer, having tried numerous criminal cases as  
16 well as death penalty cases and things of that nature.  
17 And Mr. Henry has been representing Mr. Watkins and has  
18 done a great deal of work on the case that the Court is  
19 familiar with and I hope Mr. Watkins is familiar with  
20 that. And the Court is aware of some of the  
21 investigation, not by ex parte communications, but by  
22 the -- some requests for funding. And that's how the  
23 Court is familiar with Mr. Henry's work.

24 But other than that Mr. Watkins has filed -- he's  
25 made a motion this morning to appear and represent

1       himself pro se. The Court is required to conduct a  
2       hearing in that matter. But Mr. Watkins, the -- first of  
3       all, the Court has got to hear from you as to whether or  
4       not you want to proceed in this courtroom, in front of a  
5       jury and the public, pro se in a very serious matter. So  
6       what do you have to say about that?

7               MR. WATKINS: Yes, sir. I ---

8               THE COURT: You got to stand up. You're going to  
9       have to do that during the court proceedings.

10              MR. WATKINS: Okay. Thank you. My apologies. Yes,  
11       sir. I would like to proceed pro se with standby  
12       counsel, because we have different objectives as far as  
13       my representation, as far as the methods that we're going  
14       to proceed, how we're going to cross-examine the  
15       witnesses and stuff like that, and how I want to present.  
16       I feel it's better that I cross-examine them because I  
17       think he's like held to a professional conduct or  
18       something, and he's limited to certain things he's  
19       allowed to do, where I'm not limited to certain things.  
20       And I believe he would better advise me from that point  
21       as standby counsel and I can get more evidence and  
22       things, more cross-examination on the witnesses on my  
23       behalf.

24              THE COURT: Mr. Watkins, you may be misguided on  
25       that. He's not limited by any ethical -- well, maybe

1 ethical standards to a certain extent in the courtroom,  
2 but you're limited by the rules of evidence and the rules  
3 of civil procedure. And you will not be able to ask  
4 anymore questions on cross-examination than Mr. Henry  
5 would. You will be bound by the rules of evidence. And  
6 if I rule against you I can't advise you, and then Mr.  
7 Henry may not be able to coach you anymore after that.  
8 And you can't have hybrid representation. You can't have  
9 two lawyers in the courtroom. Only one of you can be in  
10 charge and handle your case. And I don't know what you  
11 know about opening statements, and what you can say, and  
12 what you cannot say about what defenses are, and you have  
13 to understand that the Court cannot assist you in the  
14 trial. I will make rulings for the -- on this case,  
15 evidentiary rulings and procedural rulings, and you're  
16 not going to be able to get in any more than Mr. Henry  
17 can get in.

18 MR. WATKINS: I believe ---

19 THE COURT: I mean, I don't think you know the rules  
20 of evidence. You've written a lot of -- a lot of  
21 communications with the Court, and sometimes you've been  
22 maybe right and sometimes you may have been totally dead  
23 wrong. But now in this courtroom, this is your day in  
24 court before 12 jurors. And this is a very, very serious  
25 matter, Mr. Watkins. And if you're going to proceed pro

1 se, I'm not sure you know how to select a jury. I'm not  
2 sure you know how many strikes you're entitled to, and  
3 all that stuff, and why you should do certain things. I  
4 know you've done a lot of research and work on the law  
5 while you've been incarcerated.

6 But you can represent yourself. I'm going to have  
7 to conduct a hearing and ask you a lot of questions, but  
8 I've got to know -- the reasons you've given me right now  
9 as far as you getting more in and can do more than Mr.  
10 Henry can, it's just not an accurate statement. You  
11 cannot do that. You're going to be bound just like a  
12 lawyer in this courtroom. And I don't want you to think  
13 that you're going to be able to get anything else in that  
14 he can't get in.

15 MR. WATKINS: I understand, yes, sir.

16 THE COURT: Okay. Now, do you want to proceed pro  
17 se?

18 MR. WATKINS: Can I discuss it with my attorney?

19 THE COURT: Yeah, you can talk to him.

20 MR. WATKINS: Yes, sir, I'm going to do it pro se.

21 THE COURT: Okay. We're going to have to have a  
22 hearing. I'm going to release my jury panel until 1:30.  
23 And I'm going to conduct the hearing on the record. And  
24 then we'll start the trial hopefully at 1:30.

25 MR. HENRY: Judge, do you want to hear from me at

1 all on this issue, or are you ---

2 THE COURT: I'll be glad to hear from you. I just  
3 have got to make sure that Mr. Watkins understands the  
4 advantages and disadvantages.

5 MR. HENRY: Yes, sir.

6 THE COURT: And what concerns me is that he may not  
7 know the rules of evidence, the rules of procedure, and  
8 he may want to get stuff in the trial that's just totally  
9 not admissible. If I have to rule against him, I know  
10 he's read a lot of law since he's been in incarcerated.  
11 And that's admirable. But the Court just wants him to  
12 know that this is his trial and we're going to make sure  
13 that he has a fair trial. But I do not know what -- why  
14 he would think that he can do things that you could not  
15 do, Mr. Henry. That's what concerns me. But he's got a  
16 right to go forward with it. And once he starts he's  
17 going to have to handle it himself.

18 MR. HENRY: Yes, sir. I think his only concern, and  
19 he can correct me if I'm wrong, was that he wanted to be  
20 pro se all along. He got -- I think he kind of choked,  
21 for lack of a better term, the last time when you had  
22 that hearing before the trial, and he decided to ask for  
23 counsel at the last minute. This is not a request to ask  
24 for a continuance for this reason. You understand, he's  
25 not asking to put it off because of the pro se request.

1 He is asking that he not be pro se without standby  
2 counsel for the same reasons that you've given.

3 And I think that the way I read the cases and there  
4 is a very strong South Carolina case that deals with the  
5 same Foretta issue, is that he's got that right and the  
6 only other way -- the only way to deal with it is to find  
7 out if it's being voluntarily entered into and if he's  
8 intelligent enough to enter into that decision. And I  
9 think clearly from my working with him, he is.

10 Which I don't want to tell the judge, you've got to  
11 conduct your own hearing, but Robert has been writing me  
12 about three letters a week. Everything he's written to  
13 me, Judge, is about the strategy of the case. So he's  
14 been over this for not only the time he's been in jail  
15 since February, but for the seven years prior to that.  
16 So he's got a compelling interest in wanting to present  
17 his case. He knows that the rules have to be followed in  
18 the process.

19 THE COURT: Well, if -- if -- he's got to understand  
20 what he can do as far as examining witnesses, and  
21 questions he may be able to ask and may not be able to  
22 ask. And I'm aware of your abilities, and your  
23 understanding. And it -- what -- in fairness to Mr.  
24 Watkins, he's -- this is an armed robbery charge and I  
25 think it's 10 to 30 years. He understands all that?

1 MR. HENRY: He does very well.

2 THE COURT: And this is a very, very important case.  
3 And to the best of our ability we're going to conclude it  
4 this week because he's been waiting six or seven years to  
5 get this -- and the State has been waiting. There's two  
6 sides, the State and the defense. We've got to put it  
7 behind us eventually. And I don't think he's doing this  
8 for purposes of delay. And -- because we've been through  
9 this one time before and I couldn't let him do it for the  
10 purposes of delay. And I know you've had -- you have  
11 been working on this case along with other people, Mr.  
12 Henry, and you're prepared. And when I let -- he's going  
13 to have to proceed with all of his motions and everything  
14 when we start.

15 MR. HENRY: Yes, sir, I understand.

16 THE COURT: And jury selection.

17 MR. HENRY: Yes, sir. And if he has -- I'm not  
18 asking to leave, but if you grant his motion and you want  
19 me to stay as standby counsel I'm volunteering to do  
20 that. I mean, this does just change the set up, but I  
21 think that's what Robert is asking that I stay as standby  
22 counsel. Isn't that right, Robert?

23 MR. WATKINS: Yes.

24 MR. HENRY: And we have talked about some of the  
25 procedures already. Now, you know, you have objections

1 during trials and lawyers on both sides, some more than  
2 others. But I think that -- I want to make sure you  
3 understand that he feels very strongly ---

4 THE COURT: But we can't have both of you being a  
5 lawyer in this case.

6 MR. HENRY: I understand that. I'm not asking to be  
7 co-counsel but standby counsel.

8 THE COURT: And every time a question is asked, or  
9 every time he wants to ask a question, and if the other  
10 side objects and I sustain the objection, we can't be  
11 breaking every time for him to talk to you and ask the  
12 question.

13 MR. HENRY: I understand that.

14 THE COURT: It just can't proceed that way.

15 MR. HENRY: I understand. He understands that too.

16 THE COURT: And ---

17 MR. HENRY: But as the decisions have said, Judge,  
18 it's a right. It may not be what everyone wants, but he  
19 still has that option to ask for it.

20 THE COURT: Okay. All right. Mr. Watkins, you come  
21 up here. I want to put you under oath. We're going to  
22 have a hearing right now. If y'all want to stay you can  
23 stay. If you don't want to stay, people in the courtroom  
24 can leave.

25 THE CLERK: Sir, please place your left hand on the

1 Bible and raise your right hand.

2 ROBERT WATKINS

3 Having been first duly sworn, testified as follows:

4 THE CLERK: Please be seated. Please state your  
5 full name for the record.

6 MR. WATKINS: Robert Maxwell Watkins.

7 THE COURT: All right. Mr. Watkins, how old are  
8 you?

9 MR. WATKINS: Forty-three.

10 THE COURT: Okay. How much education do you have?

11 MR. WATKINS: I graduated.

12 THE COURT: Where did you go to school?

13 MR. WATKINS: Pinesburg High School.

14 THE COURT: Where?

15 MR. WATKINS: Pinesburg.

16 THE COURT: Where was that?

17 MR. WATKINS: In Maryland.

18 THE COURT: In Maryland. Okay. What kind of work  
19 did you do before you were incarcerated?

20 MR. WATKINS: Detail work and cut hair.

21 THE COURT: Okay. And have you ever been treated  
22 for the abuse of alcohol, drugs, or for any mental  
23 illnesses?

24 MR. WATKINS: I have been to Homesview for drug  
25 abuse.

1 THE COURT: Okay. Did you successfully complete  
2 that program?

3 MR. WATKINS: Yes, sir.

4 THE COURT: All right. You've been incarcerated  
5 now, and they're -- I know there are different things  
6 available in jails and in the prisons. Have you taken  
7 any medication, drugs, or alcohol in the last 24 hours?

8 MR. WATKINS: No, sir.

9 THE COURT: Okay. Do you know of anything that  
10 would affect your ability to understand the proceedings  
11 and what we're doing here today?

12 MR. WATKINS: No, sir.

13 THE COURT: Okay. Now, have you ever been examined  
14 by a doctor in regard to your competency to stand trial?

15 MR. WATKINS: No, sir.

16 THE COURT: Okay. And are you aware of any  
17 physical, emotional, or nervous problems, or anything  
18 that would keep you from understanding the proceedings in  
19 court?

20 MR. WATKINS: No, sir, I'm just diabetic, and my  
21 blood sugar sometimes may drop. That's it.

22 THE COURT: What did you take for diabetes?

23 MR. WATKINS: I do it by diet.

24 THE COURT: Just diet?

25 MR. WATKINS: Yeah.

1 THE COURT: Okay. All right. Have you ever had any  
2 training, formal training in the law?

3 MR. WATKINS: No, sir.

4 THE COURT: Okay. Now, you have been in court in  
5 criminal proceedings before, but now you have been in at  
6 least one trial which was your previous trial. Have you  
7 ever been involved in any criminal trials in circuit  
8 court other than that one trial?

9 MR. WATKINS: No, Your Honor.

10 THE COURT: Okay. Now, you understand that you're  
11 charged with -- where is the indictment? You understand  
12 that you're charged with armed robbery on December the  
13 19th of 2001, and you went through your first trial. And  
14 you're charged with committing armed robbery at the Chuck  
15 E Cheese here in Greenville on December the 19th of 2001,  
16 and count two is that you were charged with possession of  
17 a weapon in the commission of that crime.

18 MR. WATKINS: Yes, Your Honor.

19 THE COURT: Okay. Now, you understand that the  
20 minimum sentence is 10 years and the sentence -- the  
21 maximum sentence is 30 years. If you're convicted --  
22 it's a sentence without probation or parole. We normally  
23 refer to that as you would have to serve at least 85  
24 percent of the whatever sentence you get.

25 MR. WATKINS: Yes, Your Honor.

1 THE COURT: Okay. Do you know the elements of a  
2 crime for armed robbery?

3 MR. WATKINS: No, Your Honor.

4 THE COURT: That the State has to prove beyond a  
5 reasonable doubt?

6 MR. WATKINS: No, Your Honor.

7 THE COURT: All right. Okay. I just asked you if  
8 you're found guilty of this charge the Court is required  
9 to sentence you to at least 10 years and could impose a  
10 sentence at much as 30 years. Do you understand that?

11 MR. WATKINS: Yes, Your Honor.

12 THE COURT: And then if you are found guilty of the  
13 possession of a weapon during the commission of that  
14 crime that would -- could be an additional five years.

15 MR. WATKINS: Yes, Your Honor.

16 THE COURT: Okay. Now, if you -- you represent  
17 yourself; Mr. Watkins, and you must clearly understand  
18 this, you have a Constitutional right to represent  
19 yourself, but you're going to be on your own in this  
20 trial. You understand that?

21 MR. WATKINS: Yes, Your Honor.

22 THE COURT: I cannot tell you how you should try  
23 your case or advise you on how to try your case. You  
24 understand that?

25 MR. WATKINS: Yes, Your Honor.

1 THE COURT: Now, I don't think you're that familiar  
2 with the rules of evidence. You may not know what a  
3 leading question is. Or you may not know what questions  
4 you may or may not be able to ask, such as hearsay  
5 questions, things of that nature. Do you understand  
6 that?

7 MR. WATKINS: Yes, Your Honor.

8 THE COURT: Do you know what the hearsay rule is as  
9 far as the evidence goes?

10 MR. WATKINS: Yes, Your Honor.

11 THE COURT: Do you know what leading questions are?

12 MR. WATKINS: Yes, Your Honor.

13 THE COURT: Are you familiar with the rules of  
14 criminal procedure in South Carolina?

15 MR. WATKINS: No, sir.

16 THE COURT: All right. Some of those rules govern  
17 the way that criminal action is conducted in court. Are  
18 you familiar with what you may or may not be able to say  
19 in opening statements?

20 MR. WATKINS: No, Your Honor.

21 THE COURT: Do you think you can make an opening  
22 statement to this jury and stay within the rules of  
23 evidence in the -- and what's permissible?

24 MR. WATKINS: No, Your Honor, not in opening  
25 statement.

1 THE COURT: You what?

2 MR. WATKINS: No, Your Honor.

3 THE COURT: You know it could be embarrassing to --  
4 if you're outside the rules of evidence or rules of  
5 procedure, Mr. Watkins, and I have to sustain objections,  
6 and if you're standing up making your opening statement  
7 or closing argument, it's going to be very difficult for  
8 you to be taking breaks and going back and consulting  
9 with Mr. Henry. Do you understand that?

10 MR. WATKINS: Yes, Your Honor.

11 THE COURT: Okay. Now, certain motions may be or  
12 may not be able to be made before the trial, during the  
13 trial, and after the trial is over. You will be required  
14 to make the proper motions at the proper time sometime to  
15 preserve the record for appeal. And I know you're  
16 familiar with appeals and how important the record is and  
17 how important an attorney is. If you miss that and  
18 weren't able to do that, that could be detrimental to  
19 your case if you -- I don't know what the jury is going  
20 to find in this case. I don't even know what the  
21 evidence is going to be. But if you missed a motion at  
22 an appropriate time and you failed to preserve a record  
23 for an appeal, then you may lose your right to bring that  
24 issue up on appeal. Do you understand that?

25 MR. WATKINS: Yes, Your Honor.

1 THE COURT: Okay. Now, a serious issue may come up  
2 as to whether or not you will testify or whether you will  
3 not testify during the trial. In your testimony if you  
4 testify -- do you understand your Constitutional right to  
5 either testify or to remain silent?

6 MR. WATKINS: Yes, Your Honor.

7 THE COURT: We may reach a point where you have to  
8 make that decision and that's the most important decision  
9 sometimes that a criminal defendant has to make in a  
10 criminal trial, is whether to testify or not to testify.  
11 I don't know what the evidence is going to be or -- and  
12 what your decision should be in that regard, and I cannot  
13 advise you on that. And if you chose to testify then  
14 you're going to be on your own. You can't just say what  
15 you want to say. You're going to be limited to answering  
16 the questions. You can give direct examination, but  
17 you're going to have to give testimony that's within the  
18 rules of evidence. You just can't say whatever you want.  
19 You cannot present a theory that -- that's not admissible  
20 in evidence. And you need to understand that.

21 Do you understand the importance of whether you  
22 testify or not testify, and what you say or what you may  
23 not be able to say is very important?

24 Now, if you had an attorney like Mr. Henry he could  
25 ask the questions and get out all of your relevant

1 testimony in front of this jury, or you could consult  
2 with him on whether you should testify, and what evidence  
3 you've heard, and what your strategy and things of that  
4 nature should be. And even the presentation of evidence  
5 by a criminal defendant is very important in a criminal  
6 case.

7 Now, I don't know if you have any prior convictions  
8 or not but the State may be able to impeach you on prior  
9 convictions. Are you aware of that.

10 MR. WATKINS: Yes, Your Honor.

11 THE COURT: Okay. I don't know if you testified in  
12 your first trial or not. I really don't need to go over  
13 that with you. If you don't testify I would of course  
14 instruct the jury that that was your Constitutional right  
15 and they couldn't hold that against you. But, are you  
16 aware or do you know what possible defenses you may have  
17 in this case?

18 MR. WATKINS: No, Your Honor.

19 THE COURT: Do you intend to offer any possible --  
20 well, okay. I don't want to go into that too much with  
21 you, because you don't have to -- maybe the prosecution  
22 may not be entitled to know that. You must clearly  
23 understand, Mr. Watkins, that a lawyer could help you in  
24 essential things during this trial, including the rules  
25 of evidence, the rules of criminal procedure, and the

1 presentation of any defense that you may have. He could  
2 ensure that a proper record is made for the purposes of  
3 appeal for you, which you may not be able to do. I've  
4 got to make sure that you understand the advantages and  
5 the disadvantages of you representing yourself. That's  
6 the purpose of this record. That's the reason we're  
7 making this record.

8           And it would -- I'll just tell straight up in my  
9 opinion it would be far better for you if you were  
10 defended by a trained lawyer such as Mr. Henry, than you  
11 would be by yourself. And I say that because the trial  
12 of a criminal case is -- the trial of any case is one of  
13 the most difficult undertakings that any person can do,  
14 particularly a serious case like armed robbery and  
15 murder. I believe it's unwise for you to try to  
16 represent yourself.

17           I do not believe you're familiar enough with the  
18 law, the rules of evidence, the rules of procedure. I  
19 don't know if you're familiar with some of the work Mr.  
20 Henry has done. And I would strongly urge you not to try  
21 to represent yourself, because I don't believe you're  
22 that familiar with the court procedure. And I'm  
23 concerned with your opening statement. And if we reach  
24 the closing argument stage, I don't know if you would  
25 have brought out everything properly so that you could

1 cover the evidence and what's been presented and your  
2 legal position and what your defenses are, if any. Of  
3 course you don't have to prove yourself innocent. The  
4 State has got to prove you guilty beyond a reasonable  
5 doubt.

6 And in light of the penalties, the seriousness of  
7 these charges, and the difficulties that you'll face, is  
8 it your earnest and sincere desire, understanding the  
9 disadvantages and maybe any advantages that you see,  
10 understanding all of that, Mr. Watkins, is it your  
11 statement to the Court, clearly under oath here, that you  
12 want to represent yourself and give up your right to be  
13 represented by a competent lawyer such as Mr. Henry.

14 MR. WATKINS: No, I don't want to give him up.

15 THE COURT: What?

16 MR. WATKINS: No, I'll take him as a lawyer. My  
17 aunt said take him as a lawyer.

18 THE COURT: You're going to take him as your lawyer?

19 MR. WATKINS: My aunt said.

20 THE COURT: Okay. Go ahead and let Mr. Henry  
21 represent you. Okay.

22 MR. WATKINS: All right.

23 THE COURT: Okay. We will -- anything else you want  
24 to say, Mr. Henry?

25 MR. HENRY: Not on that issue, Judge.

1 THE COURT: Okay. We got some motions pending which  
2 you can handle now.

3 MR. HENRY: Yes, sir.

4 THE COURT: Okay. Now, I -- okay. Go ahead. You  
5 and Mr. -- Mr. Marchant talked to me about a witness.

6 MR. HENRY: Yes.

7 THE COURT: Mr. Marchant, anything -- you stood up.  
8 You going to say something or you going to let Mr. Henry  
9 say?

10 MR. MARCHANT: I was going to answer any questions  
11 you may have, Your Honor.

12 THE COURT: Okay. I asked Mr. Marchant to subpoena  
13 a witness and make that witness available so you -- and  
14 you could discuss whatever you needed to discuss with  
15 that witness, or do whatever we needed to do to make --  
16 making that witness available. I know you weren't  
17 available at some point, but we had Wednesday as a  
18 deadline. He said they had found this witness by  
19 Wednesday. I think we did some e-mails on that.

20 MR. HENRY: Yes, sir.

21 THE COURT: Okay. Go ahead.

22 MR. WATKINS: I talked to her just a few minutes  
23 ago. I don't think that's the only issue involved with  
24 the missing witness though.

25 THE COURT: Okay.

1           MR. HENRY: What concerned me, I went back and  
2 checked the record in this case, and what concerned me in  
3 addition to the witness being unavailable for seven years  
4 was why it happened and whether the police knew about it,  
5 which I think is a significant distinction. So I went  
6 back and looked at the record and I pulled out the 911  
7 tape from this case. And the caller was Jimmy Skelton.  
8 He was one of the managers at the restaurant. And his  
9 call, if you recall, or maybe you don't know this, but  
10 there were four witnesses who were employees at the  
11 restaurant who have been a part of this case from the  
12 beginning from 2001 when it happened.

13           And this last witness, this Ms. Reilly, just came  
14 into the picture last week. What concerned me was not  
15 only not having access to her and not be able to  
16 investigate her more, which I still think we should be  
17 able to do, but whether or not the police were aware that  
18 there were five witnesses and not four witnesses back in  
19 2001, or any time since then. The 911 tape clearly shows  
20 that Mr. Skelton says there are five of us here at the  
21 restaurant on the day of the robbery.

22           Now, certainly that would put the police on notice  
23 that we've got five witnesses who say they're there, we  
24 only have four we've interviewed, what happened to the  
25 fifth witness. There doesn't seem to be any

1 investigation, or concern about that witness being gone  
2 for seven years. Now, that's one issue. Did the police  
3 know? I think they did. I think there's evidence that  
4 they knew.

5 Secondly, you've got four other witnesses, all  
6 restaurant witnesses who knew. The evidence that we -- I  
7 found out today is that the fifth witness who was there  
8 for the robbery, saw the person that did the robbery, was  
9 sitting at the same table as the other four witnesses,  
10 ran and hid in a room before the police got there, with  
11 the knowledge and cooperation of the other four  
12 witnesses. I don't think making her available today for  
13 me to interview satisfies my need to investigate the rest  
14 of that issue, what the police knew and what these other  
15 witnesses knew.

16 I think there is Brady material in here for example.  
17 I want to know -- I want a chance to talk to these people  
18 to find out how they can hide a witness from the police  
19 if that's what happened for seven years. And if the  
20 police knew, which I think they did from the 911 call,  
21 why they didn't pursue this other witness who, when they  
22 investigated, was apparently sitting in the back room  
23 someplace. And they knew there were five people involved  
24 from that 911 call.

25 I don't think that making her available today for me

1 to interview, which I have done, is enough. And that's  
2 my motion. That's my supplemental motion for a  
3 continuance. I'm concerned about what happens to a  
4 witness who disappears for seven years, if the police  
5 knew and if certainly the other witnesses all knew  
6 according to this witness. And I've got the 911 tape if  
7 you want to hear it to confirm what Jimmy Skelton said,  
8 but he said there are five of us here.

9 THE COURT: Well, no, I believe you.

10 MR. HENRY: I brought it just in case I needed it  
11 for the record, if you needed to listen to it.

12 THE COURT: Mr. Marchant?

13 MR. MARCHANT: Your Honor, I -- I think we've gone  
14 over this about the 911 tape. I don't have a copy of it.  
15 I don't know what if in anything it says. I'm certainly  
16 not saying Mr. Henry is not correct in the fact that Mr.  
17 Skelton who placed the call may have said that there were  
18 five witnesses. I have spoken with each of my officers  
19 who are going to testify here today in the case. The  
20 lead officer is seated to my right, Will Bruce. He had  
21 no knowledge of a potential fifth witness, nor did any of  
22 the other officers until I contacted them myself last  
23 week when one of the other witnesses that was an employee  
24 at the restaurant that evening informed me that there was  
25 a fifth.

1           Now, I don't know whether or not they listened to  
2           the 911 tape that evening or if they listened to it at  
3           all. So in that respect, I guess you could agree that  
4           Mr. Henry's point is well taken that the police did have  
5           information of a fifth witness because that was made on  
6           the 911 tape. Again, I don't know if they reviewed the  
7           tape or not, but it's the State's position that that is  
8           not sufficient for a continuance. He can certainly  
9           question them about their investigation and the  
10          thoroughness of it. And as well the witness is here, is  
11          available.

12           I do not believe that there is any additional  
13          information that she can provide to law enforcement, to  
14          the defense, or to the Court that is contradictory to  
15          what we already know from the other employees. So to me  
16          it's not a Brady issue. It is a thoroughness of the  
17          investigation that can be brought up and be questioned,  
18          an -- as well as Mr. Henry can attack the credibility of  
19          the witnesses who failed to inform law enforcement when  
20          they arrived on the scene that there was a fifth employee  
21          that was present.

22           So I would ask that you deny the motion for a  
23          continuance based upon those reasons. I don't think  
24          there's anything that she has to say that's any different  
25          from what's already been heard the first go around, the

1 statements that have been given from the other employees.

2 So ---

3 MR. HENRY: Could I say something else, Judge?

4 THE COURT: Yeah.

5 MR. HENRY: Part of the problem with this issue,  
6 the -- missing the fifth witness is that if you deny the  
7 continuance request, you're really denying our chance to  
8 independently investigate what we now know has apparently  
9 happened. I don't think it's enough to let us I don't  
10 want to fly by the seat of my pants during trial (sic),  
11 but we have an investigator. We just found this  
12 information out. And I want to investigate all of the  
13 witnesses on this issue about what happened about this  
14 missing witness hiding -- apparently hiding from the  
15 police during this process. I don't think that we should  
16 be stuck with hearing it for the first time on the  
17 witness stand without doing our own investigation. I  
18 don't know if they're to be truthful or not, but I think  
19 I'm entitled to investigate that as I would have done had  
20 it been in the police report, for example, when the case  
21 first started. And that's the difference.

22 I do think it's Brady, but more importantly it's  
23 whether or not we're going to be caught short in our  
24 right to fully investigate the case and defend it. In  
25 some situations, I can't give you a case citation, but in

1 some situations like this Courts can even authorize  
2 depositions of witnesses. I mean, I'm sure it would be a  
3 concern to the Court that four witnesses hid a fifth  
4 witness from the police if that's what happened. It  
5 would be a concern to us for sure. I know there's going  
6 to be -- there's a reason for it but it does tend to  
7 throw a monkey wrench into a case.

8 Now, I don't think we should just be stuck hearing  
9 these people for the first time on the stand. I would  
10 like to talk to them about this issue in more detail,  
11 have some time to do it. That's the bottom line, if you  
12 would, of what I'm asking for.

13 MR. MARCHANT: But Your Honor, even if he has time  
14 there is no guarantee that they're even going to speak  
15 with them about this case. They're under no duty or  
16 obligation to speak with him.

17 MR. HENRY: They could be ordered to do that, and  
18 that concerns me if they already have an inclination not  
19 to. I don't know where that came from. I'm not blaming  
20 the solicitor's office, but I have every indication that  
21 the -- these people would, with the Court's  
22 encouragement, talk to defense counsel. This is an  
23 unusual circumstance. This is not your normal  
24 investigation. This is you've got four witnesses who  
25 have come forward, one's hiding in the closet somewhere

1 and pops up seven years later. And everybody is --  
2 everybody at the restaurant is in some form of conspiracy  
3 to keep this woman hidden from the police, maybe for her  
4 protection, whatever the reason is, but that puts us in a  
5 tough spot as far as investigating her and why they  
6 didn't disclose her to the police. You know, in some  
7 places that could be considered a crime itself.

8 THE COURT: Well ---

9 MR. MARCHANT: Your Honor, I would -- if he's -- if  
10 Your Honor is going to entertain this notion may I  
11 suggest that we just proffer some testimony from her  
12 outside the presence of the jury. Mr. Henry can get into  
13 whatever he wants outside of they jury's presence.

14 THE COURT: Okay. I'll take her testimony now, see  
15 what she's going to say.

16 MR. HENRY: I'm pretty sure I know what she's going  
17 to say.

18 THE COURT: My understanding, and I don't know what  
19 happened between y'all, but I saw y'all in the court one  
20 day and you had informed Mr. Henry about this individual  
21 when you found out about it, Mr. Marchant.

22 MR. MARCHANT: Yes, sir, it was within 45 minutes of  
23 my knowledge. We had a previous hearing scheduled before  
24 you about Mr. Watkins' wanting to proceed pro se. I  
25 believe the phone call I had was at three o'clock. It

1 was somewhere between 3:00 and 4:00 that we had this  
2 hearing scheduled with you on September the 11th. I gave  
3 Mr. Henry a letter that I had just received this  
4 information and that I was attempting to locate that  
5 witness.

6 THE COURT: Well, who informed you of that  
7 information?

8 MR. MARCHANT: It was another employee of Chuck E  
9 Cheese, Jeannie Pireda. She is here. She's going to  
10 testify.

11 THE COURT: She's going to testify?

12 MR. MARCHANT: Yes, Your Honor.

13 THE COURT: All right.

14 MR. HENRY: Judge, I don't think that's a solution  
15 to my question. I really don't. With all due respect,  
16 they're calling the shots here. I'm not claiming that  
17 the solicitor's office is hiding evidence. I think they  
18 were caught by this by surprise on September 11th when it  
19 came to their attention. But I think my client has a  
20 right to investigate the case as he sees it at that time.  
21 And now we have a totally different situation that we  
22 ought to have chance to check out. It may amount to  
23 nothing. It may turn out to be nothing, but I don't  
24 think it should be done in the courtroom. I think it  
25 should be -- I think the defense has the -- should have

1 the option of now taking the new information, conducting  
2 its own investigation, and giving us a little more time  
3 to do it than the day of trial. That's what I'm asking.  
4 I'm not asking -- I'm not blaming the solicitor.

5 THE COURT: I don't know what the prejudice may or  
6 may not be, Mr. Henry. We've been waiting on this trial  
7 for a long time. I don't want to push anything, but  
8 still we need to get the case behind us. And this came  
9 up and I don't know if it's going to be prejudicial or  
10 what it's going to be. I'm willing to hear what the lady  
11 has to say. If you object to us taking her testimony  
12 now, I guess -- I don't know if we can do that or not.

13 MR. HENRY: I don't ---

14 THE COURT: If we go forward with the trial I feel  
15 like, you know, maybe the witnesses are going to be able  
16 to testify as to what happened with this fifth person out  
17 there, and why she didn't testify, or why they didn't  
18 know about it.

19 MR. HENRY: I'm sure they will. I'm sure they're  
20 going -- I'm sure they will testify to that. But I  
21 just -- I'm asking for time to independently investigate  
22 this unusual circumstance before trial and not have to do  
23 it out here in the courtroom, which is again a little bit  
24 unusual.

25 THE COURT: Okay. This ---

1           MR. HENRY: I've already interviewed -- I've  
2 interviewed her this morning. The witness who -- the  
3 fifth witness who was hiding, I've interviewed her. I've  
4 interviewed her today. I don't see any point in putting  
5 her on the stand and do it again, and I don't think I  
6 should have to do my investigation in open court.

7           MR. MARCHANT: Well, Your Honor, they will -- the  
8 other witnesses who are here to testify, the employees  
9 that is, will be back at 1:30. With Your Honor's  
10 instruction earlier that the jury would return, I told  
11 them they could leave and come back for lunch. So  
12 they'll be here at 1:30. If the Court would make them  
13 available to him to answer any questions he may have, he  
14 can do it outside the presence of the jury and get  
15 started this afternoon.

16           THE COURT: All right. If -- if the -- all of the  
17 witnesses who were present and made the call about the  
18 armed robbery, the State says he would make them  
19 available on this issue to see what the -- why the  
20 witnesses wasn't -- this -- whoever it was was not made  
21 available, and the reasons, and if it's going to be  
22 prejudicial one way or the other, and the Court would be  
23 willing to continue the case. But if not, the Court  
24 won't just continue it for not a valid reason not knowing  
25 what the testimony is going to be. So the witnesses will

1 be made available if Mr. Henry wants to question them  
2 about this witness on -- outside the presence of the jury  
3 before the trial starts.

4 MR. MARCHANT: And let me make one clarification  
5 with that, Your Honor.

6 THE COURT: And that would be everybody that was  
7 present on the scene that had any knowledge about this.  
8 Yes, sir.

9 MR. MARCHANT: We have located at this time, there  
10 were three employees that testified in the first trial.  
11 Those are the only three employees that I've made contact  
12 with. There was a fourth employee who for whatever  
13 reason was not available for the first trial. And I have  
14 not located him for this trial either. So the ones  
15 that ---

16 THE COURT: Okay. Both sides, you and Mr. Henry,  
17 everybody, Mr. Watkins, knew about this other witness  
18 that you haven't -- you're telling me about right now?

19 MR. MARCHANT: Yes, sir, that was all in the  
20 incident report he gave, you know, a written statement  
21 that evening. But he's not here.

22 THE COURT: Is the person that made the 911 going to  
23 be here?

24 MR. MARCHANT: Yes, Your Honor.

25 THE COURT: Okay. All right. I'm going to deny the

1           continuance at this time and wait and see if Mr. Henry  
2           would like to question these individuals about this prior  
3           to the trial starting.

4           MR. HENRY: Yes, sir.

5           THE COURT: All right. Anything else, Mr. Henry?

6           MR. HENRY: I think with that motion being out  
7           there, we probably need to deal with that before we get  
8           into the other issues. I've got other motions pending,  
9           Judge, but if the continuance is going to be the -- if it  
10          is granted the other motions will be unnecessary at this  
11          time.

12          THE COURT: Okay.

13          MR. HENRY: So I would suggest we wait until 1:30,  
14          I'll interview these witnesses and go from there.

15          THE COURT: Okay.

16          MR. HENRY: If that suits the Court?

17          THE COURT: All right. I'll see you at 1:30.

18          MR. HENRY: Thanks, Judge.

19          THE COURT: Thank you.

20          (A short recess was taken, after which, the trial  
21          continued as follows:)

22          MR. MARCHANT: Your Honor, just for the witness'  
23          purposes, how long is -- are you going to give Mr. Henry,  
24          because Ms. Presnell is part of a suppression motion that  
25          he's got. I'm just trying to decide when to let her know

1 when to be back.

2 THE COURT: You have a suppression motion too?

3 MR. HENRY: Yes, sir.

4 THE COURT: I don't know what motions you've got. I  
5 really don't. I don't know how -- how long would it  
6 take? I just hate to keep the panel. I promised I  
7 wouldn't make them sit down there.

8 MR. MARCHANT: Sure.

9 THE COURT: I don't know if we can go ahead and  
10 select the jury and then have the motions or ---

11 MR. HENRY: That would be fine with us, I mean.

12 THE COURT: I'll -- I don't know them, you know, in  
13 certain situations from sitting down there. I think the  
14 trial is more important than worrying about it, but I  
15 hate to make them sit down there unless they have to.

16 MR. HENRY: If we pick them at 1:30 and ---

17 THE COURT: If I grant a continuance after that, it  
18 won't matter, they won't be sworn.

19 MR. HENRY: It won't matter. And then we've got a  
20 suppression hearing that probably will take 45 minutes  
21 too, or so. So if I interview them for an hour or less,  
22 that's -- you're already from 1:30 until 2:30, and then  
23 we have motion hearings, takes us to almost four o'clock  
24 or at least 3:30.

25 MR. MARCHANT: I'm sorry, Your Honor, I guess what

1 I'm asking is how long are you going to give Mr. Henry to  
2 talk to these witnesses?

3 THE COURT: We'll, he's going to examine them under  
4 oath in here I think.

5 MR. HENRY: I thought I would just interview them  
6 outside if I could do that.

7 THE COURT: Oh, you want to do that?

8 MR. HENRY: Yes, sir.

9 THE COURT: You don't want to talk to them in the  
10 courtroom?

11 MR. HENRY: No, sir.

12 THE COURT: It may be an important issue and it may  
13 not. I don't think anybody is going to know any more  
14 about it than the people who were there.

15 MR. HENRY: Absolutely. I understand. And that  
16 was -- without withdrawing my motion, I do understand,  
17 and I'm willing to adapt by talking to them outside if  
18 they'll talk to me.

19 THE COURT: Okay. How long do you think it will  
20 take?

21 MR. HENRY: I would think 30 to 45 minutes, probably  
22 enough.

23 THE COURT: All right. Two o'clock.

24 MR. MARCHANT: So we'll pick the jury at 2:00, or  
25 are we going to pick them and you're going to allow him

1 an opportunity to ---

2 THE COURT: Let's attempt to pick the jury at two  
3 o'clock.

4 MR. MARCHANT: Thank you, Your Honor.

5 MR. HENRY: So are the witnesses going to be  
6 available at 2:00 or 1:30?

7 THE COURT: 1:30.

8 MR. HENRY: So come back at 1:30, interview them and  
9 then we'll pick the jury at 2:00?

10 THE COURT: Yeah.

11 MR. HENRY: All right, sir. Thanks, Judge.

12 (A short recess was taken, after which, the trial  
13 continued as follows:)

14 THE COURT: All right. At this time, I believe Mr.  
15 Henry, having them here, but has had a chance to talk to  
16 the three witnesses that were allegedly present on the  
17 night on question, or whenever it was, at Chuck E Cheese  
18 and also the person who was not identified to -- as a  
19 witness, or at least neither side knew about it until  
20 September the 11th, I'm told. Mr. Henry?

21 MR. HENRY: All that's true, Judge.

22 THE COURT: Okay.

23 MR. HENRY: And without waiving my earlier argument  
24 that I still believe we need more time, I have  
25 interviewed all four of those people that you mentioned.

1 There were a couple things that came up that I wanted to  
2 bring to your attention however, that might help further  
3 support my earlier request. One is that there's a  
4 witness, now that we have all five we believe of the  
5 restaurant employee witnesses who were there for the  
6 robbery, one of the witnesses, Mr. McCoy, is not on the  
7 State's witness list. I learned from one of the  
8 witnesses I just interviewed where he might be. That's  
9 one thing.

10 Secondly, another witness told me that the  
11 information about the missing fifth witness was disclosed  
12 to the State prior to the first trial. That was news to  
13 me. And I'm sure it's news to Mr. Marchant. So if  
14 that's true, if the State prosecutor knew about the fifth  
15 witness and the information that I was given was that  
16 they were told, if someone asked you tell the truth, but  
17 otherwise don't worry about it, I think that -- that  
18 gives me another concern that there's been a fifth  
19 witness, if that's true, that there's been a fifth  
20 witness, this Krystyna Reilly, is her name, that's been  
21 known since 2002 which is when this case was tried on the  
22 first occasion. And it might be that that prosecutor or  
23 the prosecutor's investigator got the same information  
24 we've gotten now, had it back before October, 2002, and  
25 sat on it, did not transfer the information to the new

1 prosecutor in the case, who was a different prosecutor  
2 back then.

3 So this prosecutor would not have known that  
4 information to disclose to me until he found out when he  
5 interviewed the witnesses and getting ready for trial  
6 number two, and one of the witnesses told him about the  
7 missing witness. But I still think that suggests that  
8 the solicitor's office, not Mr. Marchant, but the  
9 solicitor's office who handled the case the first time  
10 knew about witness number five, the missing witness, as  
11 early as October, 2002, and didn't disclose it.

12 That's something I just learned during my  
13 interviews. Which further tells me that there may be  
14 other things that I'm going to find out if I'm allowed to  
15 investigate this further. And that's what I want to  
16 present to the Court in support of my earlier motion that  
17 I've called a supplemental motion for a continuance. I  
18 don't expect Mr. Marchant to reply. I'm not sure he has  
19 any knowledge of any of that. I would suggest he does  
20 not. He's been very forthcoming and he -- he's the one  
21 who told me about the witnesses in the first place, so he  
22 wouldn't. That would not be his style anyway. But this  
23 one witness who has -- is totally innocent in the process  
24 other than hiding the witness, told me that he had this  
25 interview prior to the trial number one with the

1 representative of the solicitor's office.

2 MR. MARCHANT: Your Honor, the only thing I can  
3 speak for is with respect to whether or not we had  
4 knowledge at that time was that the prosecutor who  
5 prepared and tried the first case was Judy Munson. When  
6 I found out the information that I turned over to Mr.  
7 Henry last Thursday, the 11th, excuse me two Thursdays  
8 ago, I immediately picked up the phone and called Ms.  
9 Munson and asked her if she remembered, knew, heard, had  
10 any information about this fifth witness. Her response  
11 to me was no.

12 Now, whether or not that comment was made -- well,  
13 obviously Mr. Henry has found out some information that  
14 that comment was made to someone in our office. Who that  
15 was made to you, I do not know, but I'm under at least a  
16 good faith belief that Ms. Munson did not have that  
17 information at the first trial. So I don't know who or  
18 if the comment was made other than the information that's  
19 just been provided at this point in time.

20 Now, that being the case, should that information  
21 had been disclosed to us at the time, and if it was  
22 withheld, I'm not saying it was, but if it was, we are  
23 now back on a retrial situation. So I fail to see where  
24 the harm is against the defendant in this case. The  
25 information is now known. It was made known prior to

1 trial. He's had an opportunity to discuss the  
2 information that the witness has, not only with that  
3 witness but the other witnesses as well. So I would  
4 still ask you to deny the motion for a continuance.

5 MR. HENRY: Could I say one thing about that, Judge?  
6 I mean, I appreciate the chance to talk to these  
7 witnesses, but once again, we're under a time constraint.  
8 And in the short period of time that I had this -- these  
9 conversations, I mean, very short, I found out at least  
10 from this one witness who has no reason to not tell the  
11 truth now about all of this, that it was disclosed to the  
12 prosecutor before, that's one factor. And that perhaps  
13 we can locate Matthew McCoy who would be the other person  
14 in the restaurant. I just think -- I'm not saying my  
15 investigation is better than anybody's investigation, but  
16 I'd like to have had a chance to do my own investigation  
17 to find out more information. I think I'm beginning to  
18 do that now, but I need more time to do it properly.

19 MR. MARCHANT: Your Honor, I appreciate the fact  
20 that he's got some new information here in the last week  
21 or so, but there was nothing preventing him from speaking  
22 with these witnesses about anything prior to today. So  
23 it's certainly a matter that he could have discussed with  
24 them and they may have made it known to him prior to  
25 making it known to me. So with respect to Mr. McCoy, as

1 well as the other witnesses, there has been nothing  
2 preventing him from taking up any conversation with them  
3 since he was appointed at our last hearing which has  
4 been ---

5 THE COURT: Well, y'all kind of leave me in the dark  
6 too, but as I see this situation there may have been five  
7 people at the Chuck E Cheese restaurant or whatever it  
8 is, on the night of the alleged robbery. And the State  
9 called three witnesses at the first trial.

10 MR. MARCHANT: Yes, Your Honor.

11 THE COURT: And you're calling the same three  
12 witnesses at this trial?

13 MR. MARCHANT: Yes, Your Honor.

14 THE COURT: Everyone knew about the fourth witness  
15 but no one knew about a possible fifth witness. And what  
16 she saw or may not have seen, I do not know at this time.  
17 But both sides have been able to talk to her. I know of  
18 nothing that requires -- that would require the State to  
19 call all five witnesses. And I believe the witnesses  
20 were known -- were made known as soon as Mr. Merchant  
21 discovered who they were.

22 And Mr. Henry does have an investigator as he said,  
23 and I'm not saying he should have found out, but this  
24 just may be -- it's not Mr. Henry's fault of course, he  
25 just out this information, but I do not -- I have no

1 reason to believe at this point that these other  
2 witnesses would have anything to say that would be  
3 different from the three witnesses that testified. It  
4 may be a different matter if these witnesses have  
5 anything that would exculpate Mr. Watkins.

6 But absent that, this case has been pending for so  
7 long, and it's not that I want to rush into any trials or  
8 anything, but we've all known and been trying to get this  
9 case tried for a long time now. It should be in the  
10 record as to all the dates that we had lawyers and what  
11 not. But at this particular point I'm just inclined to  
12 deny a -- the motion absent -- it's just speculative at  
13 this point whether it would be -- if there's anything  
14 that's going to be prejudicial to Mr. Watkins. So I  
15 would deny the motion.

16 Okay. Let's select -- I'm going to bring the jurors  
17 up. We're going to have 36 maybe, or 35. Do you know  
18 how many we got.

19 THE CLERK: Thirty-six.

20 THE COURT: Thirty-six. We may need some space in  
21 the courtroom. And of course this lady can stay because  
22 she's been here the whole time. She's with Mr. Watkins.  
23 Okay. You have a witness list?

24 THE CLERK: Yes, sir, I put it up on the bench. You  
25 should have one from both sides.

1 THE COURT: I'm sorry?

2 THE CLERK: You should have one from both sides.

3 THE COURT: Okay.

4 THE CLERK: And voir dire from the defense.

5 THE COURT: I got it. Yeah.

6 THE CLERK: This is the old list here. This is the  
7 new list.

8 MR. HENRY: Judge, I'm not sure if you want to do  
9 this now or later, I don't want to interrupt you, but Mr.  
10 Watkins says he would like to be arraigned at some point.  
11 He says he's not been arraigned. I don't know if that's  
12 a fact or not, but he's says he's not been arraigned on  
13 this indictment.

14 THE COURT: Okay. All right. Mr. Watkins, would  
15 you stand up, and I placed you under oath earlier today.  
16 You are under oath, okay?

17 MR. WATKINS: Yes, sir.

18 THE COURT: You are Robert Max Watkins?

19 MR. WATKINS: Yes, sir.

20 THE COURT: And Mr. Watkins, in this indictment you  
21 are charged within Greenville County, on the 19th day of  
22 December of 2001, while armed with a deadly weapon,  
23 either by action, words, or both, you -- or using a  
24 representation of a deadly weapon, or an object which a  
25 person presented during the commission of a robbery

1 reasonably believed to be a deadly weapon, that you used  
2 force, threats, or intimidation to take away the  
3 property, US currency, from Chuck E Cheese in violation  
4 of section 16-11-330 of the South Carolina code of laws.  
5 You're charged with army robbery. Do you understand that  
6 charge?

7 MR. WATKINS: Yes, sir.

8 THE COURT: Mr. Watkins, how do you plead to that  
9 charge?

10 MR. WATKINS: Not guilty.

11 THE COURT: And how do you want to be tried?

12 MR. WATKINS: A jury.

13 THE COURT: All right. Thank you very much.

14 MR. WATKINS: Your Honor, could I get a copy ---

15 THE COURT: Now, you're also charged with the  
16 possession of a weapon during the commission of a crime.  
17 They allege that during that -- on December the 19th,  
18 2002 (sic), you were in possession of a handgun during  
19 the commission of the crime. Do you understand that  
20 charge?

21 MR. WATKINS: Yes, sir.

22 THE COURT: And how do you plead to that charge?

23 MR. WATKINS: Not guilty.

24 THE COURT: And how do you wish to be tried on that  
25 charge?

1 MR. WATKINS: A jury.

2 THE COURT: Okay. Now, I've got the old indictment.  
3 You've got a copy of that. That's the one I have.

4 MR. WATKINS: Is it clock stamped by the clerk of  
5 court? Has it been filed with the clerk of court? It  
6 has to be filed or processed with clerk of court as a  
7 court of competent jurisdiction, under criminal procedure  
8 rule 3. It has to be filed and processed with the Court  
9 in order to get -- I guess it's personal jurisdiction.  
10 For the Court to have personal jurisdiction on me it has  
11 to be processed.

12 (A discussion was held off the record.)

13 THE COURT: It was reported out by the grand jury on  
14 February the 19th of 2002, and it was given a case number  
15 by the clerk of court, 2002-GS-23-C1063 at the February  
16 term. And it's -- the indictment I have was the same  
17 indictment you were tried on the first time you were  
18 tried.

19 MR. WATKINS: Yes, I mean, but object to the  
20 indictment because it was never filed. Can I hand this  
21 to the officer to hand to you about rule 3 where it says  
22 procedures supposed to be followed on indictment ---

23 THE COURT: It -- well, that's in a motion that your  
24 attorney would need to make.

25 MR. HENRY: Judge, I think the motion has been

1 previously made and ruled upon, if I'm not mistaken, when  
2 he was representing himself. What he's saying I think is  
3 that rule 3, criminal procedure rule 3 was not followed,  
4 it was not properly clocked in in the clerk's office and  
5 therefore he didn't -- you don't have jurisdiction over  
6 him individually, as a person. I did not file that  
7 motion, but I think it's already been heard and decided.

8 THE COURT: Okay. I'm not familiar with the clerk  
9 clocking in the indictments. They do give them a case  
10 number, an indictment number, and they open a file and  
11 it's reported to court administration and all the cases  
12 are -- come out on a list.

13 MR. WATKINS: Yes, sir, I have a copy of the  
14 procedures right there. It's at the bottom with the  
15 indictment.

16 THE COURT: Well, the procedure in Greenville is for  
17 the indictments to be prepared and the clerk -- they're  
18 given an indictment number and they are numbers assigned  
19 by the clerk of court. And the procedures require the  
20 clerk of court to keep the indictment. The indictments  
21 are presented to the judge, usually in open court. He  
22 accepts the presentments, puts it into the record, and  
23 the indictment are then delivered to the clerk of court,  
24 and the cases are called for trial by the solicitor.

25 Now, I don't know what the basis of your motion is,

1 but the procedure -- the case was given a number by the  
2 clerk of court. It was presented to the grand jury and  
3 filed, and since that time it's been kept in your case  
4 file. And I do not know what your objection is right  
5 now. I can't see where it violates any -- where it  
6 violates rule 3.

7 MR. WATKINS: When it's filed with the clerk of  
8 court it's clock stamped, time and date. I can show you  
9 where the -- how the clerk clock stamped the indictment I  
10 have. On the indictment I have ---

11 THE COURT: Well ---

12 MR. WATKINS: The clerk receives the indictment they  
13 then clock stamp it. He receives it to show that it's  
14 been filed.

15 MR. MARCHANT: Your Honor, I would just like to make  
16 clear, at this time I believe that you appointed Mr.  
17 Henry, I believe he's the one that's ---

18 THE COURT: I did. Mr. Henry should be making the  
19 motion, but he did this during the arraignment. And  
20 the -- rule 3 is the disposition of arrest warrants. It  
21 does not address indictments. And there is a -- the  
22 indictment was presented on February the 19th of 2002, by  
23 the grand jury of Greenville County, turned over to the  
24 clerk of court. And therefore I find that there has been  
25 no violation of rule 3, which addresses arrest warrants.

1 Okay.

2 Now, Mr. Watkins has been arraigned, and we're going  
3 to go forward with the jury selection. Okay. Bring the  
4 rest of them in.

5 (The jury panel entered the courtroom at 2:23 p.m.)

6 THE COURT: All right. Ladies and gentlemen, we're  
7 going to select a jury now in this case of the State of  
8 South Carolina and Robert Max Watkins. Mr. Watkins,  
9 would you stand up, please, and face the jury panel? Do  
10 any of you, ladies and gentlemen, know Mr. Robert Max  
11 Watkins, who is standing before you?

12 (No response from the jury panel.)

13 THE COURT: Okay. Thank you, Mr. Watkins. Ladies  
14 and gentlemen, first of all, I'm going to ask you if you  
15 know anything, if you've heard anything, or have you read  
16 anything, I don't know if anything has been written about  
17 it, but have you ever known anything, or heard anything  
18 about this case. The allegations are, and Mr. Watkins  
19 has pled not guilty to those charges, that's the reason  
20 you and I are here, and the charges are, and the  
21 allegations are armed robbery on December the 19th of  
22 2002, at Chuck E Cheese, I believe that was a restaurant  
23 located where?

24 MR. HENRY: 2001, Your Honor.

25 THE COURT: Where?

1 MR. MARCHANT: Two things, Your Honor. The year was  
2 2001.

3 THE COURT: What did I say?

4 MR. MARCHANT: 2002.

5 THE COURT: Oh, it was 2001, I'm sorry.

6 MR. MARCHANT: Chuck E Cheese is located on Congaree  
7 Road.

8 THE COURT: On Congaree Road. Have any of you,  
9 ladies and gentlemen, heard anything, and there's also a  
10 charge of possession of a deadly weapon, or handgun, I'm  
11 sorry, during the commission of that crime. Have any you  
12 heard anything about this case, or do you know anything  
13 about these allegations in regard to an alleged robbery  
14 at Chuck E Cheese on December the 19th of 2001? If you  
15 have heard anything or know anything about this case,  
16 would you please stand?

17 (No response from the jury panel.)

18 THE COURT: Okay. Now, ladies and gentlemen, do you  
19 or -- do you have any friends or relatives who work in  
20 law enforcement, or specifically with the Greenville City  
21 Police Department? If you have friends or relatives in  
22 law enforcement, would you please stand? Yes, ma'am,  
23 would you stand up, please? What is your name?

24 MS. MILLER: Patricia Miller.

25 THE COURT: Okay. Ms. Miller.

1 MS. MILLER: My sister works at the detention  
2 center.

3 THE COURT: At the detention center?

4 MS. MILLER: Yes.

5 THE COURT: The fact that your sister works at the  
6 detention center, and your relationship with her, and any  
7 conversations you have had, or anything of that nature,  
8 would that affect your ability to be fair and impartial  
9 in a criminal trial?

10 MS. MILLER: No.

11 THE COURT: Okay. Thank you. Yes, ma'am?

12 MS. ROWELL: My father was in law enforcement for 35  
13 years.

14 THE COURT: Your name?

15 MS. ROWELL: Lin Rowell.

16 THE COURT: Okay. And what type?

17 MS. ROWELL: He's retired.

18 THE COURT: He was what? He's retired, but who did  
19 he work for?

20 MS. ROWELL: The State of Alabama.

21 THE COURT: The State of Alabama. And was he city  
22 police, highway patrol, or what?

23 MS. ROWELL: He's done all of that.

24 THE COURT: He's what?

25 MS. ROWELL: He's done all of those.

1 THE COURT: He's done all of that.

2 MS. ROWELL: He's retired.

3 THE COURT: The fact that your father was a police  
4 officer for all those years, would that affect your  
5 ability to be fair and impartial in a criminal trial?

6 MS. ROWELL: No.

7 THE COURT: Could you be fair to the defendant, Mr.  
8 Watkins, and also fair to the State?

9 MS. ROWELL: Yes.

10 THE COURT: You would follow your oath and do that,  
11 and decide the case only on the evidence and testimony  
12 and the law that I went over with you?

13 MS. ROWELL: Yes.

14 THE COURT: Thank you. Okay. Have any of you,  
15 ladies and gentlemen, ever been a witness in a criminal  
16 trial, a jury trial I'll say that, not traffic court or  
17 anything, a stop for speeding, or anything, but if any of  
18 you have been witnesses in a criminal trial, in a jury  
19 trial, would you please stand?

20 (No response from the jury panel.)

21 THE COURT: Okay. Have you any of you ever been the  
22 victim of a crime involving a weapon? Yes, sir, your  
23 name, please?

24 MR. WALKER: My name is Gil Walker.

25 THE COURT: Okay.

1 MR. WALKER: And I was held up at gun point in a  
2 pharmacy.

3 THE COURT: In a pharmacy. How long ago, sir?

4 MR. WALKER: 1979.

5 THE COURT: 1979. The fact that you were involved  
6 in a situation like that in 1979, would that affect your  
7 ability to be a fair and impartial juror in a crime where  
8 there -- it's alleged, and as I said Mr. Watkins has pled  
9 not guilty, would that affect your ability to be fair and  
10 impartial in allegations that a handgun was used in a  
11 crime?

12 MR. WALKER: No, sir.

13 THE COURT: You could be fair to the defendant and  
14 fair to the State?

15 MR. WALKER: I could, yes, sir.

16 THE COURT: Thank you, sir. Do any of you have any  
17 friends or relatives who work in the 13th Circuit  
18 Solicitor's Office?

19 (No response from the jury panel.)

20 THE COURT: Or do you -- Mr. Henry is not in the  
21 public -- yes, ma'am, your name?

22 MS. CRUICE: My name is Esther Cruice.

23 THE COURT: Okay. And who did you know in the?

24 MS. CRUICE: I know Ms. Stolzenbach.

25 THE COURT: Okay. Okay. Y'all are close friends?

1 MS. CRUICE: I was her daughter's teacher.

2 THE COURT: You were ---

3 MS. CRUICE: I was her daughter's teacher.

4 THE COURT: Okay.

5 MS. CRUICE: At daycare.

6 THE COURT: Did you have any other relationship  
7 other than being the teacher of her daughter?

8 MS. CRUICE: No.

9 THE COURT: The fact that you were -- okay. You had  
10 other students at the time?

11 MS. CRUICE: I had 17 other students.

12 THE COURT: You had -- you had the same relationship  
13 with their parents that you had with her child?

14 MS. CRUICE: Right. Right. We never did anything  
15 outside of school.

16 THE COURT: Okay. The fact that she is here in this  
17 case and sitting at the solicitor's table, would that  
18 affect your ability to be fair and impartial?

19 MS. CRUICE: No.

20 THE COURT: Thank you very much.

21 MS. CRUICE: You're welcome.

22 THE COURT: Okay. I'd ask you if you have any  
23 friends or relatives who work for Mr. Mauldin, the public  
24 defender? Mr. Henry does not work for the public  
25 defender. He's a private lawyer. But if you have any

1 close personal friends or relatives who work in the  
2 public defender's office, I'd ask you to stand?

3 (No response from the jury panel.)

4 THE COURT: Okay. Now, the lawyers in this case are  
5 Mr. Henry, Steve Henry, and Mr. Marchant, Luther  
6 Marchant. If y'all would stand up. Do any of you folks  
7 know either one of these lawyers?

8 (No response from the jury panel.)

9 THE COURT: Okay. And I'm going to read to you a  
10 list of possible witnesses and it's a fairly lengthy  
11 list, and all these people may testify and they may not  
12 testify, but they're possible witnesses. I'm going to  
13 ask you if you know anyone's name that I read out, if  
14 you'll stand -- you're going to have to stand and tell  
15 us how you know these individuals. Okay. Dr. Thomas  
16 Alley -- I'll read the entire list first and if you  
17 recognize a name, please make a mental note of that.  
18 Patricia Owens; Elena Pelzer; Vickie Lattimore; Tammy  
19 Smith; W. C. Bruce of the Greenville Police Department;  
20 Dan Fuller with the Greenville Police Department; David  
21 Jones with the Greenville Police Department; John  
22 Thompson, Greenville Police; Ambrose Skardon,  
23 S-k-a-r-d-o-n, Greenville Police; John Thompson,  
24 Greenville Police, Jonathan Hamilton, Greenville Police,  
25 Marcus Scarabino, Jimmy Skelton; Jeannie -- how do you

1 pronounce that?

2 MR. MARCHANT: It's Pireda, Your Honor.

3 THE COURT: Pireda; Krystyna Lee Reilly. Do any of you  
4 of recognize any of those possible witness' names?

5 (No response from the jury panel.)

6 THE COURT: Okay. Ladies and gentlemen, each of  
7 you, if you're selected for this jury, will take an oath  
8 that you will be fair and impartial, be fair to the  
9 defendant and fair to the State, leave everything outside  
10 the courtroom, and you will decide this case only on the  
11 evidence and testimony you hear in the courtroom, and the  
12 law that applies that I'll go over with you, and you'll  
13 apply the facts that you can find to the law and write a  
14 verdict that speaks the truth. If for any reason you  
15 could not be a fair and impartial juror in this case,  
16 would you please stand?

17 (No response from the jury panel.)

18 THE COURT: Okay. Now, in a case such as this the  
19 defendant gets 10 preemptory challenges, and the State  
20 gets five. I believe the jury is qualified. Any other  
21 questions from the State?

22 MR. MARCHANT: None from the State, Your Honor.

23 MR. HENRY: No other questions, Your Honor. Thank  
24 you.

25 THE COURT: Okay, ladies and gentlemen, as your name

1 is called if you would just stand up in place,  
2 traditionally in the past we've had larger courtrooms  
3 we'd let you come stand down front, but if you'll just  
4 stand up in place, you will either be seated or excused.  
5 If you're seated, bring your personal items and come have  
6 a seat in the jury box. If you're excused, just have a  
7 seat and I'll release all of you at the same time. Okay.  
8 Yes, ma'am. Madam Clerk, we'll select the jury in this  
9 case.

10 THE CLERK: Thank you. Juror 78, Peggy Long.

11 THE COURT: Just stand right there.

12 THE CLERK: Just stand right there, ma'am. What  
13 says the State?

14 MR. MARCHANT: Please present the juror.

15 THE CLERK: What says the defendant?

16 MR. HENRY: Excuse the jury in this case, please.

17 THE CLERK: Ms. Long, you can be seated. You have  
18 been excused in this case. Juror 142, Aggela Tomlinson.  
19 What says the State?

20 MR. MARCHANT: Please present the juror.

21 THE CLERK: What says the defendant?

22 MR. HENRY: Seat the juror, please.

23 THE CLERK: Ms. Tomlinson, please come have a seat  
24 in the jury box. Juror number 150, N. G. Walker. What  
25 says the State?

1 MR. MARCHANT: Please present the juror.

2 THE CLERK: What says the defendant?

3 MR. HENRY: Excuse the juror, please.

4 THE COURT: Sir, you may be seated. You have been  
5 excused in this case. Juror 39, Patsy Fogle. What says  
6 the State?

7 MR. MARCHANT: Please present the juror.

8 THE CLERK: What says the defendant?

9 MR. HENRY: Excuse the juror, please.

10 THE CLERK: Ma'am, please be seated. You have been  
11 excused in this case. Juror 18, Leonard Byrne. What  
12 says the State?

13 MR. MARCHANT: Please present the juror.

14 THE CLERK: What says the defendant?

15 MR. HENRY: Excuse the juror in this case, please.

16 THE CLERK: Sir, please be seated. You have been  
17 excused from this case. Juror 45, Blanche Grayson. What  
18 says the State?

19 MR. MARCHANT: Please present the juror.

20 THE CLERK: What says the defendant?

21 MR. HENRY: Seat the juror, please.

22 THE CLERK: Ms. Grayson, please come have a seat in  
23 the jury box. 161, Nedra Yeargin. What says the State?

24 MR. MARCHANT: Please present the juror.

25 THE CLERK: What says the defendant?

1 MR. HENRY: Please seat the juror.

2 THE CLERK: Mr. Yeargin, please come have a seat in  
3 the jury box. Juror 166, Brenda Davenport. What says  
4 the State?

5 MR. MARCHANT: Please present the juror.

6 THE CLERK: What says the defendant?

7 MR. HENRY: Please seat the juror.

8 THE CLERK: Ma'am, please come have a seat in the  
9 jury box. Juror 72, Kyoung Kim. What says the State?

10 MR. MARCHANT: Please excuse the juror from the  
11 trial of this case.

12 THE CLERK: Ma'am, you have been excused in this  
13 case. Juror 158, Rachel Woods. What says the State?

14 MR. MARCHANT: Please present the juror.

15 THE CLERK: What says the defendant?

16 MR. HENRY: Please excuse the juror in this case.

17 THE CLERK: Ma'am, thank you. You have been -- you  
18 have been excused from this case. Juror 104, Sandra  
19 Nichols. What says the State?

20 MR. MARCHANT: Please present the juror.

21 THE CLERK: What says the defendant?

22 MR. HENRY: Please excuse the juror in this case.

23 THE CLERK: Ma'am, please be seated. You have been  
24 excused in this case. Juror 61, Michael Howard. What  
25 says the State?

1 MR. MARCHANT: Please excuse the juror from the  
2 trial of this case.

3 THE CLERK: All right, sir. You have been excused  
4 from this case. Juror number 107, Loretta Outten. What  
5 says the State?

6 MR. MARCHANT: Please present the juror.

7 THE CLERK: What says the defendant?

8 MR. HENRY: Please seat the juror.

9 THE CLERK: Ma'am, Ms. Outten, please have a seat in  
10 the jury box. Juror 156, Dedra Wilson. What says the  
11 State?

12 MR. MARCHANT: Please present the juror.

13 THE CLERK: What says the defendant?

14 MR. HENRY: Excuse the juror in this case.

15 THE CLERK: Ms. Wilson, be seated, please. You have  
16 been excused in this case. Juror 106, Doris Ogle. What  
17 says the State?

18 MR. MARCHANT: Please present the juror.

19 THE CLERK: What says the defendant?

20 MR. HENRY: Please excuse the juror.

21 THE CLERK: Ma'am, be seated, please. You have been  
22 excused from this case. Juror 167, Hugh Faulkner. What  
23 says the State?

24 MR. MARCHANT: Please present the juror.

25 THE CLERK: What says the defendant?

1 MR. HENRY: Please seat the juror.

2 THE CLERK: Sir, please come have a seat in the jury  
3 box. Juror 137, Shantell Sweeney. What says the State?

4 MR. MARCHANT: Please present the juror.

5 THE CLERK: What says the defendant?

6 MR. HENRY: Please seat the juror.

7 THE CLERK: Ms. Sweeney, please come have a seat in  
8 the jury box. Juror 84, Margaret Martin. What says the  
9 State?

10 MR. MARCHANT: Please present the juror.

11 THE CLERK: What says the defendant?

12 MR. HENRY: Please seat the juror.

13 THE CLERK: Ma'am, please have a seat in the jury  
14 box. Juror number 30, Esther Cruice. What says the  
15 State?

16 MR. MARCHANT: Please present the juror.

17 THE CLERK: What says the defendant?

18 MR. HENRY: Excuse the juror, please.

19 THE CLERK: All right, ma'am. You have been excused  
20 from this case.

21 THE COURT: That's nine, Mr. Henry.

22 MR. HENRY: Okay.

23 THE CLERK: Juror 15, Karen Burks. What says the  
24 State?

25 MR. MARCHANT: Please present the juror.

1 THE CLERK: What says the defendant?

2 MR. HENRY: Please seat the juror.

3 THE CLERK: Ma'am, please have come a seat in the  
4 jury box. Juror 33, Richard Davis. What says the State?

5 MR. MARCHANT: Please present the juror.

6 THE CLERK: What says the defendant?

7 MR. HENRY: Please seat the juror.

8 THE CLERK: Mr. Davis, please come have a seat in  
9 the jury box. Juror 34, Frederick Dendy. What says the  
10 State?

11 MR. MARCHANT: Please present the juror.

12 THE CLERK: What says the defendant?

13 MR. HENRY: Please seat the juror.

14 THE CLERK: Sir, please have a seat in the jury box.  
15 Juror 138, Esther Talbert. What says the state?

16 MR. MARCHANT: Please present the juror.

17 THE CLERK: What says the defendant?

18 MR. HENRY: Please excuse the juror in this case.

19 THE CLERK: Ms. Talbert, please be seated. You have  
20 been excused in this case. Juror 16, Lin Rowell. What  
21 says the State?

22 MR. MARCHANT: Please present the juror.

23 THE CLERK: What says the defendant?

24 MR. HENRY: Please seat the juror.

25 THE CLERK: Ma'am, please come have a seat in the

1 jury box.

2 THE COURT: Okay. Let's go with one alternate. We  
3 may select another one.

4 THE CLERK: All right.

5 THE COURT: Two strikes for the defense, one for the  
6 State.

7 THE CLERK: Juror number 7, Adrienne Bender. What  
8 says the State?

9 MR. MARCHANT: Please excuse the juror from the  
10 trial of this case.

11 THE CLERK: Ma'am, you may be seated. You have been  
12 excused from this case. Juror 119, Daniel Salter. What  
13 says the State?

14 MR. MARCHANT: Please present the juror.

15 THE CLERK: What says the defendant?

16 MR. HENRY: Please excuse the juror.

17 THE CLERK: Sir, please be seated. You have been  
18 excused in this case. Juror 80, Jeffrey Lynn. What says  
19 the State?

20 MR. MARCHANT: Please present the juror.

21 THE CLERK: What says the defendant?

22 MR. HENRY: Please seat the juror.

23 THE CLERK: Mr. Lynn, please have a seat in the jury  
24 box.

25 THE COURT: Let's go ahead and take another

1 alternate.

2 THE CLERK: All right. Juror 27, Robert Coleman.  
3 What says the State?

4 MR. MARCHANT: Please present the juror.

5 THE CLERK: What says the defendant?

6 MR. HENRY: Please excuse the juror in this case.

7 THE CLERK: Sir, please be seated. You have been  
8 excused in this case. Juror 67, David Johns. What says  
9 the State?

10 MR. MARCHANT: Please present the juror.

11 THE CLERK: What says the defendant?

12 MR. HENRY: Seat the juror.

13 THE CLERK: Sir, please have a seat in the jury box.

14 THE COURT: All right. Any question about the  
15 selection of the jury, Mr. Marchant?

16 MR. MARCHANT: None from the State, Your Honor.

17 THE COURT: Mr. Henry?

18 MR. HENRY: None from the defense.

19 THE COURT: Okay. We have selected a jury for this  
20 case. Now, what about these other jurors, Madam Clerk,  
21 just call back after ---

22 THE CLERK: After 6:00, yes, sir.

23 THE COURT: Okay. I don't think Judge Pyle has -- I  
24 believe he's selected his jury, hasn't he?

25 THE CLERK: Yes, sir.

1           THE COURT: So you'll just be working in criminal  
2 court. Call back after six o'clock tonight and we'll  
3 leave a message. More than likely we're going to be in  
4 this trial for a day or two. So unless something -- call  
5 back in after six o'clock and we'll leave a message and  
6 maybe tell you to call back in after 6:00 tomorrow, or  
7 whatever. But we'll just leave a message for you. If  
8 you'll call that number back. It would really work well  
9 for us and help us move smoothly. I'm sorry -- this is  
10 an important case. It's important to the defendant.  
11 It's important to the State, and sometimes it takes a  
12 little while. So just call back and we'll work with you  
13 and hopefully you'll work with us. Okay. I hope to see  
14 you again later on in the week. Thank you so much.

15           (The jury panel exited the courtroom at 2:48 p.m.)

16           THE COURT: Could I speak to the lawyers about  
17 scheduling just for a minute, so that ---

18           (A bench conference was held.)

19           THE COURT: Okay. All right. Ladies and gentlemen,  
20 you are the jury now in the case of the State and Mr.  
21 Robert Max Watkins. It's very important, we trust juries  
22 to come and go. And you cannot discuss this case with  
23 anyone from this time until you begin your deliberations  
24 in the jury room. You cannot talk to each other about  
25 it. And there's very good reasons hopefully for the

1 rules we have in court. But as jurors you shouldn't  
2 start making up your mind about what the verdict should  
3 be, or discussing what the verdict should be, or anything  
4 about the facts or anything, until you've heard the  
5 entire case. And until -- after we hear the case I'll  
6 know what law applies and I'll go over that with you.  
7 But you, ladies and gentlemen, are the fact finders. You  
8 determine, if you can, what may or may not have happened  
9 on December the 19th of 2001.

10 All of us have different functions and  
11 responsibilities. It's the lawyers' responsibility, they  
12 ask the questions and get the answers to witnesses that  
13 you and I need to hear for you to find the facts and for  
14 me to know what law applies.

15 Now, after the case is over, many of you've been --  
16 there's a lot attorney things on TV and whatnot now, a  
17 lot of shows like that, even a lot of real trials. But  
18 try not to think about those. You're the fact finders  
19 for this particular case.

20 Now, after this case is over you can talk to anybody  
21 you want to about this case. You can write a book about  
22 it. I'm not saying you will. We -- I tell this to all  
23 juries, regardless of what the case is. But just please  
24 do not discuss it with anyone. Do not talk to each other  
25 about it. If you were to overhear someone in the hall,

1 coming in in the morning -- or you're probably not going  
2 to be coming in that way. If you hear anybody mention  
3 this case you tell me about it so I can find out what  
4 you've heard and we'll go over it with the lawyers.

5 But the jury system works well in South Carolina.  
6 And we have some legal issues that we're going to have to  
7 go over. And rather than sit y'all back there and let  
8 you sit for an hour, and then bring you back out, I'm  
9 going to let you go home, and we're going to work on  
10 until 4:00, 4:30 here. And then I'll bring you back in  
11 at nine o'clock and we'll be ready to start the case, and  
12 I hope move through it without any problems. So I'm  
13 going to ask y'all to be back at nine o'clock in the  
14 morning.

15 Now, our jury rooms are back here on the back  
16 hallway, and that's where you will be deliberating, where  
17 I'll probably feed you lunch every day that you're here,  
18 or the clerk will. They'll pay for the lunch. And we  
19 got rest rooms, only one in each jury room. But you can  
20 use the rest rooms in all -- in any jury rooms that's  
21 opens back there, not just the one. Do not discuss the  
22 case with anyone. Do not let anyone discuss it with you.  
23 Do not talk to your husband, your wives, your children,  
24 or your friends, or whoever. Do not discuss it with them  
25 until the case is over. Do not discuss it with a sole.

1 And I'll see you back here at nine o'clock and we'll be  
2 ready for opening statements. Okay. Thank you so much,  
3 ladies and gentlemen. I'll see you tomorrow morning.

4 Now, the alternate jurors, you are jurors just like  
5 the other jurors. We have to have 12 jurors in a  
6 criminal trial. If anything happens, if they was -- had  
7 an emergency in the family, their children got real sick,  
8 or their spouses got sick, or parents, or something like  
9 that, you may have to fill in. So you're a juror just  
10 like they are, until this case is over and we're sure  
11 that we don't need you. Okay. See y'all at nine o'clock  
12 in the morning.

13 (The jury exited the courtroom at 2:55 p.m.)

14 THE COURT: Okay. I meant to tell them -- she'll  
15 tell them how to get back out before they come in back,  
16 which jury room to go to?

17 THE BAILIFF: Yes, sir, we'll take care of that in  
18 the morning. She tells them where to come to.

19 THE COURT: Okay. All right, Mr. Henry.

20 MR. HENRY: All set? Just before we get to the  
21 suppression motion, Judge, I've got a couple other kind  
22 of clean up details. On June 10th I filed a motion to  
23 quash Mr. Watkins' indictment. You heard argument about  
24 that on July the 11th.

25 THE COURT: Okay.

1           MR. HENRY: I don't know what the ruling was. I'm  
2           assuming since we're here then it's been denied, but I  
3           haven't heard.

4           THE COURT: Okay. And I've considered that and  
5           looked into it. And now the indictment is a notice  
6           document, but it still he has to be indicted before he  
7           can be tried. And the present case, and I think the  
8           present law is that we don't know what witness went  
9           before the grand jury because what they do and their  
10          matters are secret proceedings in South Carolina. And I  
11          have seriously looked into the grand jury and -- and what  
12          happens in grand jury proceedings. In this particular  
13          case we don't know which witness or witnesses went before  
14          the grand jury in this particular case. They reported  
15          out a true bill. Mr. Watkins has been previously tried  
16          on this same indictment. And I'm going to deny the  
17          motion.

18          MR. HENRY: Yes, sir. We also made a motion in  
19          limine to suppress any identification, but I've been  
20          informed that there will be no identification in this  
21          case, no identification of the defendant. So I'm going  
22          to withdraw that based on that representation, with leave  
23          to file it again in the event that that turns out not to  
24          be the case.

25          THE COURT: Okay, Mr. Marchant.

1 MR. MARCHANT: If he's withdrawing the motion I'm  
2 assuming that's based partly on my information,  
3 communication to him.

4 MR. HENRY: It is.

5 MR. MARCHANT: It's my belief and understanding that  
6 there will be no positive identification of the defendant  
7 in court. There has been no out of court positive  
8 identification either. This is purely a circumstantial  
9 case.

10 THE COURT: Well, you're qualifying that with an  
11 adjective, positive identification.

12 MR. MARCHANT: Well ---

13 THE COURT: I'm not sure -- you know, you may not  
14 think I'm -- I don't know the facts and what surrounds  
15 this case, but you're telling me that there is no reason  
16 for us to have an identification hearing?

17 MR. MARCHANT: No, sir.

18 THE COURT: Okay.

19 MR. HENRY: That would be yes, sir?

20 MR. MARCHANT: Yes, sir.

21 MR. HENRY: I think.

22 MR. MARCHANT: We don't need a hearing.

23 THE COURT: Okay.

24 MR. HENRY: I would like to offer copies of the  
25 Brady requests I've made in this case. I'm not claiming

1 at this point there's been a Brady violation, but I would  
2 like to make it a court record for ---

3 THE COURT: Okay.

4 MR. HENRY: --- if it's important later on.

5 THE COURT: Okay. All right. Very good. Here you  
6 go, Mary.

7 MR. HENRY: I filed a motion in limine.  
8 concerning ---

9 THE COURT: Prior convictions.

10 MR. HENRY: --- prior convictions, but I don't think  
11 it's timely necessary at this point, but I can -- we can  
12 hear it now if you'd like.

13 THE COURT: Yeah, I think let's -- we need to go  
14 into it. Do you know and can you tell him at this point  
15 if you have prior convictions which you might impeach the  
16 defendant?

17 MR. MARCHANT: Your Honor, if the defendant does  
18 choose to testify, it is the State's intention to offer  
19 up prior convictions. He has a 1994 conviction for  
20 forgery, excuse me, two counts of forgery, as well as one  
21 count of receiving stolen goods. A conviction for --  
22 excuse me, Your Honor, let me back up. He has an arrest  
23 from 9/8 of '94 for forgery where the disposition is  
24 showing convicted. There is a second arrest and  
25 conviction on that same arrest date for a second count of

1       forgery. He has a ---

2               THE COURT: Where was that?

3               MR. MARCHANT: That is within Greenville County with  
4       the Greenville Police Department. It appears they were  
5       magistrate offenses where he received 30 days. I can  
6       certainly obtain certified copies when that time comes,  
7       Your Honor. I do not have them at this time. Then in  
8       1996 he has a conviction for receiving stolen goods where  
9       he received a 30 day sentence, as well as a second  
10      conviction on that date of forgery from 1996, which would  
11      be the State's position he has three convictions for  
12      forgery and one conviction for receiving stolen goods.  
13      Then on April the 4th of '96, here in Greenville County,  
14      he received a conviction for burglary, third degree,  
15      where he received five years suspended on five years of  
16      probation.

17              THE COURT: When was that?

18              MR. MARCHANT: 1996, April the 4th of 1996. Then in  
19      1997 he has an arrest here in Greenville County and a  
20      conviction date for burglary, second degree, non-violent,  
21      where he received five years suspended to two years,  
22      balance was suspended to probation to three years. That  
23      was October the 28th of '97.

24              Now, I believe Mr. Henry's motion references the  
25      fact that these convictions, that he doesn't -- that the

1 State would not be able to introduce these convictions  
2 because 10 years has passed under rule 609. It's the  
3 State's position that when this crime occurred in 2001,  
4 one, all of these offenses and convictions did occur  
5 within the previous 10 years of that offense date.  
6 Obviously we're here in 2008 retrying a 2001 offense. So  
7 if you were to simply look at the date of trial today, of  
8 course 10 years has passed. But it's the State's  
9 position that it was through no fault of our own that we  
10 are here today, so we would, one, ask that we be allowed  
11 to use those prior records for impeachment purposes.

12 Additionally, if His Honor would -- I would point  
13 His Honor to 609(A)(2), where it states that evidence of  
14 any witness that's been convicted of a crime shall be  
15 admitted if it involves dishonesty or false statement,  
16 regardless of punishment. So it's the State's position  
17 that the two forgeries from '94 fall under that category,  
18 as well as the receiving stolen goods, and the second --  
19 excuse me, the third forgery from 1996.

20 If His Honor doesn't agree with the argument that we  
21 are not here because of the State, or if you find that  
22 it's the State who has caused this case to be here seven  
23 years after the incident date, I would argue to His Honor  
24 that the conviction for the burglary third degree in  
25 1995, where he received a five year sentence suspended to

1 five years of probation, that would make the end of that  
2 punishment around the year 2000. Okay. And if we're  
3 here in 2008, the completion of that conviction, or the  
4 punishment that was served by the defendant would have  
5 been the year 2000 and therefore we are within the 10  
6 year period. And that would account for the burglary  
7 second degree as well where he received three years of  
8 probation in 1997.

9 So it's the State's positions that the two  
10 burglaries are well within the 10 year range, even today.  
11 And additionally it's the State's position that there --  
12 that we should be allowed to use them for impeachment  
13 purposes because we are not here in 2008 through any  
14 cause of delay, or fault of the State, that the offense  
15 occurred in 2001 and that every single offense that this  
16 defendant has or was convicted of was within a 10 year  
17 period in 2001 when this offense occurred. So we would  
18 ask that His Honor be -- allow us to use all six of those  
19 prior convictions to impeach the defendant should he  
20 testify. Thank you.

21 THE COURT: Mr. Henry.

22 MR. HENRY: Judge, I think 10 years is the key. I  
23 have not ran into a case that says there is an exception  
24 to the 10 year rule based on post conviction relief, new  
25 trial. I think the dates are pretty specific in the

1 rule. The date from the conviction is the date you begin  
2 to measure the 10 year period. And the time of the  
3 testimony is when you finish the 10 year period. I think  
4 that's the rule. So if you got a conviction in 1996 and  
5 you got a trial in 2008, you're passed the 10 year rule.

6 The other point of that is there is a way to extend  
7 the rule that's if -- that's only for the period of  
8 confinement, not the length of the sentence that he got  
9 on suspension, or probation for that matter. It's the  
10 confinement that counts under the rule. So I think under  
11 either interpretation there are no prior convictions that  
12 could be used against Mr. Watkins should he take the  
13 stand.

14 If he's got a conviction from 1998 passed today's  
15 date, then 10 years from today's date, or when he takes  
16 the stand, then that could be used to impeach him. But  
17 the rule I believe is designed to limit the impeachment  
18 of prior record. And the 10 year rule is a logical rule  
19 so that a person who decides to take the witness stand is  
20 not burdened by something that happened more than 10 year  
21 ago. And I think Mr. Watkins gets the benefit of that  
22 rule in this case, in 2008 for any convictions that  
23 happened prior to 1998, September. Obviously it's an  
24 important decision in this case because at some point in  
25 the trial you'll be asking him whether he wants to take

1 the stand or not, and that's why we wanted to have this  
2 presented before he did that.

3 MR. MARCHANT: Your Honor, I will -- I do not have  
4 the case with me, but if my memory serves there is case  
5 law, and I'll have it for His Honor in the morning if you  
6 would allow me time, there is case law that states that  
7 probation is the equivalent of confinement as far as the  
8 10 year period running. And again, we're not here  
9 through any fault of the solicitor's office. And it's my  
10 position that we would be prejudiced in the prior  
11 conviction should we not be allowed to use those prior  
12 convictions to impeach him.

13 MR. HENRY: We're also not here because of Mr.  
14 Watkins' fault either. And he's the one whose record is  
15 at issue, Judge. And again, the idea of the rule is to  
16 be a limited one. When can you impeach a witness'  
17 credibility on the witness stand? And the 10 year rule  
18 has worked for a long time.

19 THE COURT: All right. I'll give you a chance to  
20 look for that case, Mr. Marchant. I'm not sure that --  
21 but we'll see. But I don't -- I can't -- I was just  
22 reading the rule again, we all pretty much remember the  
23 rules, but we have to read them again when something  
24 comes up in court. I don't see how it distinguishes  
25 (A) (1) and (2). It just says under (B) it's a time

1 limit. So it -- the time limit looks to me like it  
2 applies to (A) (2) as well as it would to (A) (1). Do you  
3 see that, Mr. Marchant?

4 MR. MARCHANT: Yes, Your Honor.

5 THE COURT: It says evidence of a conviction under  
6 this rule. So it looks like we're stuck with the 10 year  
7 limit. Since -- I wanted to get this out in the open  
8 because I didn't know and -- but now we know what the  
9 convictions you have. And maybe they were used the first  
10 time. So the only thing that really remains is whether  
11 or not there is some authority if you were able to use  
12 them in the first trial should you be able to use them in  
13 this trial. If you want to present something on that  
14 I'll leave that door open too. And if you want to show  
15 me something that probation is the equivalent to  
16 confinement, I'll give you an opportunity to do that. I  
17 don't know if you'll be successful on those two. We'll  
18 see.

19 MR. HENRY: Could we also ask that they present the  
20 exact convictions so we know exactly what we're talking  
21 about, exact priors that they're saying are probation  
22 extended cases so we can look at those?

23 THE COURT: Okay. I understood that you just got  
24 one probation extended case and that's burglary?

25 MR. MARCHANT: No, Your Honor, I believe that from

1 the criminal history that there are two burglaries that  
2 would fall within that exception. One of them happened  
3 in '95 where he received five years of probation, which  
4 would bring us up to 2000. And a second one happened in  
5 the '97 where he got three years of probation, which  
6 would again put us at 2000.

7 THE COURT: Okay. So he didn't -- he did not take  
8 the witness stand in the first trial, so he wasn't  
9 impeached with anything?

10 MR. HENRY: Right.

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

12 MR. HENRY: Right.

13 THE COURT: All right. So I'll let y'all tell me  
14 about that tomorrow.

15 MR. MARCHANT: Thank you.

16 (Court's Exhibit Number 1 was marked and filed.)

17 THE COURT: Mr. Henry, all right, take your time.

18 MR. HENRY: Judge, normally, again -- normally this  
19 wouldn't come up until they offer the evidence. I did  
20 file a pretrial motion, however you want to handle it is  
21 fine with me. My normal way to handle it is to wait  
22 until the evidence is introduced. But there is a  
23 suppression issue in this case. I put it in writing just  
24 by way of notification to the Court and to the  
25 solicitor's office.

1 THE COURT: Yeah, I think that we've got time to  
2 take that testimony this afternoon. What is -- what is  
3 the evidence he wants to suppress, Mr. Marchant?

4 MR. MARCHANT: Your Honor, I'm assuming Mr. Henry is  
5 attempting to suppress the search warrant that was issued  
6 in this case.

7 MR. HENRY: Search of the apartment.

8 THE COURT: Okay.

9 MR. MARCHANT: The State would call Detective Will  
10 Bruce.

11 THE CLERK: Sir, if you'll please place your left  
12 hand on the Bible and raise your right hand.

13 WILL BRUCE

14 Having been first duly sworn, testified as follows:

15 THE CLERK: Thank you. Please be seated. Please  
16 state your full name for the record.

17 THE WITNESS: Wilbur C., the last name is Bruce,  
18 B-r-u-c-e.

19 DIRECT EXAMINATION

20 BY MR. MARCHANT:

21 Q Mr. Bruce, what is your present title with the city  
22 police?

23 A I'm with court security for the city municipal  
24 court.

25 Q Okay. How long have you been employed by the city?

1 A Now, a total, total law enforcement, this is my 24th  
2 year.

3 Q So if we go back seven years, you were employed --  
4 you've been employed by the city police department for 17  
5 years in the year 2001?

6 A Yes, sir.

7 Q Okay. In December of 2001, what were your duties  
8 with the city police?

9 A I worked in the CAPS division, crimes against  
10 persons. I was over the robbery division.

11 Q Okay. And referring to this incident on December  
12 the 19th of 2001, were you working that evening?

13 A I was called out to work that evening.

14 Q You were -- were you the on-call detective?

15 A Yes, sir.

16 Q Okay. And when you received this call, where did  
17 you go?

18 A After I received the call from Sergeant Jones, I  
19 went to the law enforcement center.

20 Q And why is it that you went to the law enforcement  
21 center as opposed to the incident location?

22 A I was told by that time they had been on scene, they  
23 would be leaving there and going to the -- take victims  
24 over to the law enforcement center as well as possible  
25 suspects.

1 Q Okay. Did you go to the Chuck E Cheese that  
2 evening?

3 A No, sir, I did not.

4 Q Or that morning?

5 A No, sir, I didn't.

6 Q Have you ever been to the Chuck E Cheese in  
7 reference to this case?

8 A Yes, sir.

9 Q Okay. All right. While you were at the law  
10 enforcement center that morning, did you make an  
11 application for a search warrant?

12 A Yes, sir, I did.

13 Q Show you what's been marked as State's Number 1 for  
14 identification only. Do you recognize that document?

15 A Yes, sir, I do.

16 Q How is it that you recognize that document?

17 A This document was secured by myself and also  
18 Detective Dan Fuller.

19 Q Okay. And where did you get the information --  
20 well, strike that. Did you prepare an affidavit to  
21 present to a magistrate?

22 A Yes, sir, I did.

23 Q And the information that's contained in that  
24 affidavit, where did you obtain that from?

25 A Obtained the information from the victims, as well

1 as the officers, as well as the partial information from  
2 interviews.

3 Q Okay. And at the time you are filling out this  
4 affidavit, tell me again, had you been to the Chuck E  
5 Cheese?

6 A No, sir, not prior to.

7 Q Okay. So the information you're receiving is from  
8 you said officers and witnesses?

9 A Yes, sir.

10 Q And what was the information that you had received  
11 such that you felt like a search warrant was in order?

12 A The information I received was that officers had  
13 arrived at the scene shortly after the search (sic) was  
14 given out for the vehicle, also a description as to the  
15 person. The information also noted certain denominations  
16 of money that was also supposed to have been taken.  
17 Based on the money the officers located, the description  
18 of the vehicle that was in close proximity of the  
19 incident, the color of the vehicle, as well as the  
20 physical description of the suspect that came in.

21 Q And with the information that's in your affidavit,  
22 was that all the information you had at the time?

23 A That was the information that was enough to use to  
24 get probable cause to be able to obtain the search  
25 warrant.

1 Q And then did you go to the magistrate to apply for  
2 the search warrant?

3 A Yes, sir, I did.

4 Q Do you recall what time that was?

5 A It was shortly -- when we arrived at the magistrate  
6 office that morning it should have been shortly after  
7 nine o'clock.

8 Q Okay. And when you went to that same magistrate,  
9 did you request any additional documents from her?

10 A Yes, we also got the search warrant as well as the  
11 arrest warrants at the same time.

12 Q Okay. So when you went to apply for the search  
13 warrant you also applied for an arrest warrant?

14 A Yes, sir.

15 Q And who did you apply for an arrest warrant on?

16 A On the defendant.

17 Q Okay. Was there anyone else?

18 A Also the co-defendant, Ms. Pelzer.

19 Q Okay. Now, when you went before the magistrate,  
20 were you sworn in?

21 A Yes, sir, I was.

22 Q Okay. And did she take any additional oral  
23 testimony from you regarding this search warrant?

24 A No, sir, just based on the information that I gave  
25 her.

1 Q Okay. And was this affidavit Notarized by anyone?

2 A Yes, sir, she also Notarized the signature on there.

3 Q Okay. And with the search warrant affidavit, did  
4 you also give a description of the property you were  
5 looking for?

6 A Yes, sir.

7 Q Okay. And what was that property you were seeking  
8 to retrieve?

9 A We listed it as any and all loose cash and rolled  
10 coins of quarters, dimes, nickels, any black or dark  
11 colored clothe, mask or similar items feasible for the  
12 use of a mask. We also noted that also any handguns,  
13 similar items that could be interpreted as a silver or  
14 grey small pistol. The coins was supposed to be  
15 approximately 11 hand rolled quarters, anything of that,  
16 11 dimes, six nickels, and some bank machine rolled also.

17 Q And where did you describe in your affidavit that  
18 this search was to take place?

19 A We gave the location which would be the apartment  
20 complex, \_\_\_\_\_, at \_\_\_\_\_,

21

22 Q And how was it that you came to the

23 ?

24 A That's the address that both defendants had given  
25 us.

1 Q Now, after you were -- after the search warrant was  
2 issued, did you go to the apartment?

3 A Yes, sir, I did.

4 Q Did you conduct a search?

5 A Yes, sir, I did.

6 Q And while conducting the search, did you or another  
7 officer fill out a return?

8 A Yes, sir.

9 Q Okay. And what time is the return dated at the top  
10 of the page, meaning what time did the search begin?

11 A We actually arrived at the particular apartment  
12 complex around 10:10 that morning.

13 Q Okay. And do you -- if you know, do you recall what  
14 time you physically returned the search warrant to the  
15 judge?

16 A As soon as we left -- as soon as we did the search  
17 warrant we left the apartment complex and went straight  
18 back to the judge's office.

19 Q Do you recall how long that took?

20 A Total time I imagine maybe an hour and a half.

21 Q Okay. Do you recall whether or not the defendant  
22 was served with the arrest warrant prior to the issuance  
23 of the search warrant, or after the issuance?

24 A I don't know if he was served prior to. We actually  
25 did the warrant. The warrant was left there at the time.

1 Q Okay. And make sure I'm clear. It's your testimony  
2 that the search warrant and arrest warrant were issued at  
3 the same time?

4 A Yes, sir, it was.

5 Q Okay. And who was with you when you conducted the  
6 search?

7 A Several -- several officers. Myself, Detective  
8 Ebeneer (phonetically), Detective Fuller. If I'm not  
9 mistaken Officer Johnson was there. And there also  
10 should have been one of the forensic technicians.

11 MR. MARCHANT: I have nothing further at this time,  
12 Your Honor. Please answer any questions Mr. Henry may  
13 have.

14 CROSS-EXAMINATION

15 BY MR. HENRY:

16 Q Good afternoon, Detective.

17 A How are you, sir?

18 Q The drafting and the signing of the search warrant,  
19 were they done by the same person?

20 A What do you mean?

21 Q In other words, did the same person write out the  
22 search warrant that signed it?

23 A Yes, sir, it was typed up.

24 Q Who typed it up?

25 A Detective Dan Fuller actually typed up the search

1 warrant.

2 Q Okay. So he typed it up and then you signed it?

3 A He typed it up. We was in the office together. He  
4 actually did the typing of it.

5 Q Okay. So Detective Fuller typed up the information  
6 on the search warrant, but you signed it as the one  
7 signing the affidavit?

8 A Yes, sir.

9 Q Is that right? All right. So the information --  
10 did the information then come to Detective Fuller, he put  
11 it on paper, and then you signed off on it, is that what  
12 happened?

13 A Yes, well, we both executed the warrant.

14 Q All right. So whose information was it, Detective  
15 Fuller's or yours?

16 A What do you mean the information?

17 Q In the search warrant?

18 A What we put on the search warrant?

19 Q Yeah.

20 A We both did the interviews.

21 Q All right. And the source of your information was  
22 from the victims, and by victims we're talking about four  
23 people at the restaurant, is that right?

24 A Yes, sir.

25 Q What about the fifth person at the restaurant, was

1 she interviewed?

2 A We had no knowledge of her. I didn't have any  
3 knowledge of a fifth person, sir.

4 Q Okay. You do now?

5 A Yes, sir.

6 Q As of a couple weeks ago, 10 days ago, last week?

7 A No, probably a couple days ago.

8 Q A couple days ago. All right. And that witness,  
9 the fifth witness was in the -- inside the restaurant but  
10 didn't reveal herself?

11 A Not to my knowledge.

12 Q Okay. Have you interviewed the other four about  
13 what happened with that missing witness?

14 A The first I heard of it was a couple days ago, sir.

15 Q So you haven't interviewed those four other people  
16 about that since then?

17 A I didn't know it at the time, sir.

18 Q Okay. So one of the sources of your information for  
19 the search warrant was the four victims in the  
20 restaurant?

21 A Yes, sir.

22 Q And they gave you statements?

23 A Yes, sir.

24 Q All right. Were those the interviews you were  
25 talking about?

1 A Yes, sir.

2 Q Okay. And you talked to other officers as well?

3 A Yes, sir.

4 Q Is that the total source of your information, the  
5 officers, and those four victims inside the restaurant  
6 that gave you statements?

7 A Also, the two defendants.

8 Q The two defendants. Okay. All right. So you put  
9 that altogether and you end up with a search warrant  
10 affidavit?

11 A Yes, sir.

12 Q And when you go to sign a search warrant affidavit  
13 with the magistrate, do you leave out some things, keep  
14 in some things, you just decide what to put in and what  
15 to leave out?

16 A We're just required to give probable cause to  
17 believe that the items being sought will be at the  
18 particular location.

19 Q Okay. Are you also supposed to give the magistrate  
20 probable cause as to why you think a crime has been  
21 committed?

22 A We explained to her that an armed robbery had taken  
23 place at Chuck E Cheese.

24 Q Okay. And also as to why you're searching that  
25 particular location, is that also part of it?

1 A Yes, sir. Yes, sir.

2 Q All right. Now, in this case you searched an  
3 apartment, I think it was \_\_\_\_\_?

4 A Yes, sir.

5 Q At the -- is it \_\_\_\_\_?

6 A \_\_\_\_\_.

7 Q All right. Now, if you're filling out a search  
8 warrant affidavit, any affidavit, search warrant, or  
9 warrant, arrest warrant affidavit, is it your obligation  
10 to give the magistrate true information? It is, isn't  
11 it?

12 A Yes, sir.

13 Q Okay. And as far as the true information in this  
14 case, do you tell the magistrate if there are things that  
15 are in conflict with that information? Let's say you get  
16 information from more than one source, one person says  
17 the person was bald, the other person says they had hair.  
18 Do you tell the magistrate both things, or do you just  
19 pick one or the other?

20 A I mean, you give all the information that you can.

21 Q All right. All the information that you have?

22 A Yes, sir.

23 Q Okay. Let's take for example in this case, if  
24 you've got the search warrant affidavit there in front of  
25 you to look at. You told the magistrate -- in fact, does

1 the judge have a copy?

2 MR. MARCHANT: I don't believe he does.

3 MR. HENRY: Do you mind if I hand him one?

4 MR. MARCHANT: I don't have one.

5 BY MR. HENRY:

6 Q I think I'll hand -- you've got yours, I think,  
7 Detective. I can give the judge this copy. In the  
8 search warrant affidavit, one of the facts that you gave  
9 Magistrate Jennifer Presnell, would be included in the  
10 bottom half of that where it says reasons for belief that  
11 the property sought is on the subject premises. Do you  
12 see where I'm reading from?

13 A Yes, sir.

14 Q Okay. Now, one of the facts you gave the magistrate  
15 was that the black male was wearing a large greenish-blue  
16 coat with a hood, right?

17 A Yes, sir.

18 Q Now, nowhere in the statements from the four victims  
19 is there any mention of a greenish coat, is there?

20 A There should be a statement in there saying a  
21 greenish blue.

22 Q Let me show you ---

23 A In my supplemental report, did you get that?

24 Q All right. Let me show you a copy of the statements  
25 given in your interviews to the four victims. You got

1 all these, Lucas? I'm going to hand a copy to the judge.  
2 I'm just talking about that one point for right now.  
3 This large greenish blue coat. Now, that information  
4 would have to have come, wouldn't it, from one of the  
5 victims who actually saw the robber?

6 A Yes, sir.

7 Q Okay. Now, I've handed you their four statements.  
8 If you would just tell me where that shows up in those  
9 four statements?

10 A I can barely read this.

11 Q Let me give you better copies. See if these are  
12 better. Are those better?

13 A Yeah, a little bit. They don't go into detail as  
14 far as the jacket. They just say he had dark clothes on  
15 with a hooded jacket.

16 Q Well, that's not quite true. The -- Mr. McCoy in  
17 his statement mentions no coat. Ms. Pireda mentions a  
18 dark, dark heavy jacket. Mr. Scarabino recommends --  
19 references dark clothes with a hooded jacket.

20 A That's what I'm speaking of.

21 Q And Mr. Skelton mentions a dark blue coat with a  
22 hood, but nobody mentions a large greenish blue coat, do  
23 they?

24 A That was the description they gave me.

25 Q So their description they gave you was different

1 from their statements, is what you're saying?

2 A They wrote their statements out, and after  
3 interviewing them this is the color they gave us.

4 Q Okay. So show me in your report where it says that  
5 somebody told -- who told you it was a dark -- a large  
6 greenish blue coat?

7 A It's in my supplemental statement.

8 Q Okay. All right. Are you saying it's in your  
9 written report you gave, the code five? Detective, is  
10 this your file?

11 A Yes.

12 Q And what I want you to do is find that reference and  
13 tell me who told you that?

14 A On the first page refers to everything, but I was  
15 conducting an interview. It's referred to as wearing a  
16 dark jacket.

17 Q I'm just looking for the part where it says a large  
18 greenish blue coat.

19 A I haven't gone through all of it.

20 Q If it wasn't said, that's fine, just let me know.

21 A Also on the second page, if you look at the second  
22 line, same as being a description of the clothing, was a  
23 black or dark blue jacket.

24 Q Okay. And that's consistent with what they said in  
25 their statement?

1 A Yes, sir.

2 Q Okay. But the greenish part, the large greenish  
3 blue coat isn't in there?

4 A That was the description that was given to me,  
5 that's why I put it down there also.

6 Q Okay. But it's also not in your report either?

7 A No, sir, I just told you they don't use the word  
8 greenish, but ---

9 Q No, you didn't tell me that. I'm asking you that.

10 A No, sir.

11 Q Does any place say greenish?

12 A No, sir, he referred to it -- it was referred to me  
13 as a dark blue, or possibly black coat, and someone else  
14 also told me it was possibly like a greenish colored  
15 blue.

16 Q Okay. All right. We'll move on. There was a coat  
17 found by another officer at the property, and that was  
18 before the search warrant was obtained, is that right?

19 A Yes, sir.

20 Q Okay. All right. We'll come back to that. But  
21 that wasn't a dark coat either, was it?

22 A Yes, sir, it also has some white on the sleeves, but  
23 it was a dark coat.

24 Q White on the sleeves, never mentioned by any  
25 witness?

1 A No, sir, but you asked me about the coat. It was a  
2 dark coat that had white on the sleeves.

3 Q Okay. And that's not mentioned in the search  
4 warrant either?

5 A No, sir.

6 Q Does this look like the coat that you -- that was  
7 found?

8 A I can't tell from there, sir, but it possibly could  
9 be.

10 Q That's fine. All right. Now, you also said in the  
11 search warrant affidavit that the robber fled on foot  
12 back toward \_\_\_\_\_ ?

13 A Yes, sir.

14 Q All right. Now, with respect to those four  
15 witnesses, nobody said what happened to him after he left  
16 the place, did they?

17 A No, sir. This was the officers that informed us  
18 that they were told.

19 Q So officers were told by whom?

20 A I was told by the officers that the subject fled  
21 toward \_\_\_\_\_. When they conducted  
22 their search, they found a vehicle matching the  
23 description, and the officers stated that the suspects  
24 went toward \_\_\_\_\_.

25 Q Okay. But you told the magistrate that the robber

1 fled on foot, first of all? You didn't have that  
2 information from the victims?

3 A When he left out of the building, he left ---

4 Q Well, he didn't drive his car inside the restaurant,  
5 that's true. But how about after he left the building,  
6 none of the witnesses knew what happened to him at all  
7 after he left the building, did they?

8 A No, sir, none other than they state that they saw  
9 the white Ford Taurus that they saw come inside the  
10 parking lot several days before. They also stated that  
11 that white Ford Taurus was seen before the incident took  
12 place. And when the officers stopped the vehicle, that  
13 vehicle was located in . . . . . The  
14 suspect had gotten out of the vehicle.

15 Q Okay. Well, does that suggest he left in a vehicle  
16 then, not on foot?

17 A Yes, sir, but he didn't drive out of the building.

18 Q True, true. So how he left and where he went, you  
19 did not get that information from the victims, because  
20 they didn't know?

21 A He did flee on foot out of the building. The  
22 officers stated that the suspect ran toward . . . . .

23 . . . . .

24 Q Okay. Nobody, no victim said he went toward  
25 those -- that apartment complex, correct?

1 A No, sir.

2 Q Okay. Not a single victim said he went toward the  
3 apartments, yet you said that in your affidavit to the  
4 magistrate that that's where he went?

5 A Was part of my investigation, that's what the  
6 officers informed me. So if the officers gave that  
7 information then, yes, sir, I thought that was pertinent  
8 to put in there..

9 Q After they stopped the car, right?

10 A As part of the investigation.

11 Q Okay. Well, I understand what as part of the  
12 investigation means, but you're saying that they stopped  
13 the car that had my client in it?

14 A Yes, sir.

15 Q They concluded that he was the guy, and then you put  
16 that in your search warrant affidavit?

17 A Yes, sir.

18 Q Okay. I see. All right. But the fled on foot  
19 part, you don't know that to be true?

20 A I assume, sir, when he left out the building he had  
21 to go somewhere. He had -- he couldn't drive out of the  
22 building, so he had to either walk or run.

23 Q Okay. And you don't know which direction he went?

24 A No, sir.

25 Q All right. Now, in your affidavit you told the

1       magistrate that my client was stopped driving the same  
2       white Taurant -- the same white Taurus that was seen at  
3       the back of the business. Now, that was an exaggeration,  
4       wasn't it?

5       A     No, sir.

6       Q     He was driving a white Taurus, and a white Taurus  
7       had been mentioned, but you didn't know that that was the  
8       same white Taurus? You had no confirmation of that, did  
9       you?

10      A     From the victims' statement where they stated this  
11      was the vehicle that matched the same description as the  
12      vehicle that was seen earlier.

13      Q     Meaning -- same description meaning a white Taurus?

14      A     A white Taurus, yes, sir.

15      Q     Among a lot of white Taurus'. In fact, those  
16      victims didn't even mention the fact that the Taurus that  
17      my client was in had a paper tag, did they?

18      A     No, sir, that came from the officer that saw the  
19      vehicle when he was inside the parking lot.

20      Q     These vehicles, the vehicle information you have  
21      from the victims did not match other than being a white  
22      Taurus, the vehicle you stopped that my client was in?  
23      Any other matches beside white Taurus?

24      A     No, sir, we just had a suspect in a white Taurus,  
25      which was seen after the incident shortly had taken

1 place.

2 Q In order to get the search warrant though, you told  
3 the magistrate it was the same car?

4 A Based on the information the victims told us, the  
5 car matched the similar description.

6 Q That's not -- not what the affidavit says, it  
7 says that ---

8 A As part of the interview, sir.

9 Q --- that same white Taurus, which was not true, was  
10 it?

11 A Yes, sir. That is the vehicle that was a white  
12 Taurus, that's similar to the same vehicle that was seen  
13 in the area.

14 Q Okay. And there's a difference between saying we  
15 found a white Taurus that was similar to the one  
16 described by the victim, as to saying the same white  
17 Taurus was found? That's an exaggeration at least, isn't  
18 it?

19 A No, sir.

20 Q All right. Now, you also told the magistrate you  
21 found denominations consistent with the robbery in the  
22 car, is that right?

23 A There was money, yes, sir, found in the car.

24 Q All right. Consistent in the sense of being the  
25 same money?

1 A The money that was taken out of the store. They  
2 gave a description of the money. That was also the money  
3 that was found in the search warrant.

4 Q Okay. We're talking about before the search now.  
5 We're talking about the search warrant affidavit. You  
6 don't have -- before the search was done, you don't have  
7 the money from the apartment yet, right? So you're  
8 trying -- you're talking about the affidavit for the  
9 search warrant, you're going to do the search of the  
10 apartment later?

11 A Yes, sir.

12 Q Okay. So you're talking about the denominations of  
13 money you found in the car that you stopped?

14 A Yes, sir.

15 Q And the money that you were told about by the  
16 managers at the restaurant, correct?

17 A Yes, sir.

18 Q And when you're talking about being -- the  
19 denominations being the same, what does that mean  
20 exactly? You found some ones, found some fives?

21 A Yes, sir.

22 Q That's the information you were giving the  
23 magistrate?

24 A Yes, sir.

25 Q All right. You also told the magistrate in the

1 affidavit you found a coat matching the robber's found on  
2 the apartment property. That's not true, is it?

3 A There was a dark colored coat, sir, that was located  
4 at the dumpster.

5 Q Okay. And in the affidavit you could have said, for  
6 example, we found a coat that was dark, and the victims'  
7 said there was a coat that was dark, but you didn't say  
8 that in the affidavit. You said a coat matching the  
9 description. Now, the coat you found was a light blue  
10 jacket with stripes on it, correct?

11 A That should be Navy.

12 Q Navy, okay, Navy.

13 A Yes, sir.

14 Q It's this one here. All right. Navy coat with  
15 white stripes never mentioned, never mentioned by any of  
16 the victims, correct?

17 A No, sir, not with stripes on it.

18 Q All right. So when you told the magistrate to get  
19 the search warrant, that you found a coat on the property  
20 at the apartments matching the robber's, that was not  
21 true, was it?

22 A It was a dark colored coat, sir.

23 Q You considered that matching, not similar but  
24 matching?

25 A A dark colored coat, yes, sir.

1 Q Okay. You didn't say we found a dark colored coat,  
2 you said we found a coat matching the robber's, and  
3 that's not true, was it?

4 A Yes, sir.

5 Q It was?

6 A In any opinion that was a dark colored coat.

7 Q Okay. All right. Now, some of the information  
8 about the case that you knew you did not include in the  
9 search warrant. For example, you had already talked to  
10 my client and he said he didn't do it?

11 A Yes, sir.

12 Q That's not in the search warrant affidavit?

13 A No, sir.

14 Q You didn't find any coins which was the 911 call  
15 told you to be on the lookout for coins. You didn't find  
16 any coins in the car, did you?

17 A No, sir, not in the car.

18 Q That was not in the affidavit?

19 A It should be in the affidavit.

20 Q In the search warrant affidavit?

21 A I think it was to be sought for.

22 Q No. What you base the affidavit -- your affidavit  
23 to get the search warrant, not what you're seeking.

24 A That's not in the statements?

25 Q The part you said we found some coins matching

1 the -- what was taken from ---

2 A In the victims' statements?

3 Q No, it's not in the search warrant affidavit,  
4 because you didn't find any coins in the car, did you?

5 A No, sir. The search warrant was for the apartment  
6 not for the car.

7 Q I understand that, but you have to provide probable  
8 cause to get the search warrant?

9 A I did.

10 Q Right? And you used -- well, that's what you said.  
11 But what you did though was you stopped my client in his  
12 car and you said here's all this money we found from the  
13 car were going to use that information to convince the  
14 magistrate to search the apartment, isn't that part of  
15 what you did?

16 A Yes, sir, that was some of the money.

17 Q All right. All right. Now, no coins involved at  
18 that point?

19 A No, sir, that's why it was mentioned inside the  
20 search warrant to be looked for.

21 Q Now, my client did not have a slender build, would  
22 you agree?

23 A Compared to me, yes, sir.

24 Q Okay. But so you think he's a slender built guy?

25 A Compared to me, yes, sir, back then he was.

1 Q How about compared to what the victims said?

2 A I don't think, sir.

3 Q All right. Okay. What about the restaurant video,  
4 was that part of the affidavit, in the information for  
5 the magistrate?

6 A No, sir.

7 Q How about the part where the officers took two of  
8 the victims and did a show up and neither one of them  
9 could identify my client, was that in the search warrant  
10 affidavit to the magistrate?

11 A No, sir.

12 Q Okay. So you left that part out?

13 A No, sir, all we have to do is establish probable  
14 cause, which means we have to give enough information to  
15 show that the incident and the items we're looking for is  
16 to be sought at a particular location.

17 Q I want to make sure I understand. So if you've got  
18 information that you think support your probable cause,  
19 you can stop at that point?

20 A No, sir.

21 Q No?

22 A No, sir.

23 Q That's not what you're saying?

24 A No, sir.

25 Q And you can leave out information that defeats

1 probable cause?

2 A No, sir.

3 Q Like they couldn't identify him?

4 A The person had on a mask, sir.

5 Q Okay.

6 A Said the physical description.

7 Q Well, why did you put him in a show up then?

8 A I didn't put somebody in a show up.

9 Q You meaning the police officers? I mean you can't  
10 have it both ways.

11 A I wasn't there, sir, but you're asking me to give  
12 testimony to something I wasn't privy to, didn't know  
13 about.

14 Q Well, you did know about the show up? You already  
15 said you knew about it. You just weren't there when it  
16 happened?

17 A Yeah, that's what I'm telling you.

18 Q Okay. But that information, shouldn't that go to  
19 the magistrate so the magistrate also knows there's some  
20 questions about whether or not this is probable cause or  
21 not? You should tell her that too?

22 A Yes, sir.

23 Q Okay. And you didn't in this case?

24 A No, sir, huh-uh.

25 MR. HENRY: Can I have just a second, Your Honor?

1 Thank you.

2 REDIRECT EXAMINATION

3 BY MR. MARCHANT:

4 Q Detective Bruce?

5 A Yes, sir.

6 Q Were you present when this show up happened?

7 A No, sir, I wasn't.

8 Q Okay. Did you have the information about the show  
9 up when you were applying for this search warrant?

10 A No, sir, I didn't.

11 Q Okay. Have you knowingly provided any false  
12 information in this search warrant that you presented to  
13 the magistrate in order to obtain ---

14 A No, sir, I did not.

15 Q Okay. Now, I think Mr. Henry has asked you a couple  
16 different ways of whether or not anybody had given you  
17 written information about a blue coat.

18 A Yes, sir.

19 Q When you were applying for this search warrant, did  
20 you have the witnesses' written statements?

21 A Yes, sir.

22 Q All right. Had you had an opportunity to speak with  
23 them at the jail as well?

24 A Yes, sir, at the law enforcement center.

25 Q Now, it's -- I think it's pretty clear none of them

1 wrote greenish blue jacket in their statement, and it  
2 does not appear to be written in your code five?

3 A No, sir.

4 Q Okay. Where did you get that information that you  
5 put into the search warrant?

6 A During the course of talking to the officers and the  
7 interviews, one of the descriptions given was a dark  
8 blue, or possibly maybe greenish blue, or dark maybe  
9 black jacket.

10 Q Okay. So do you know whether or not that  
11 information came from a witness to an officer to you, or  
12 directly to you from a witness?

13 A From the officer to me, sir.

14 Q Okay. Now, there's been some talk about this  
15 fleeing on foot towards . . . . . There  
16 was a lot of discussion about this white Ford Taurus and  
17 whether or not it's the same one or a similar one. But  
18 did you have information from anybody that they saw a  
19 white Ford Taurus leaving the scene of the Chuck E Cheese  
20 after the incident?

21 A The information I received from officers that they  
22 was given the -- the victims have given them a  
23 description of a white vehicle they saw hanging in the  
24 area. When the officers was conducting their  
25 surveillance of the area they observed a white vehicle

1 inside of

2 Q Okay. Maybe I'm not asking the question clearly.

3 That's -- did you have any information about a white Ford  
4 Taurus leaving the Chuck E Cheese restaurant?

5 A No, sir.

6 Q After the robbery?

7 A No, sir, we didn't.

8 Q Did any witness tell you, or did you get any  
9 information from anyone that after the robbery the Taurus  
10 was seen leaving the area?

11 A No, sir, not driving away.

12 Q Okay. Now, are you familiar with the area that  
13 we're talking about?

14 A Yes, sir.

15 Q Okay. What -- in the rear parking lot of the Chuck  
16 E Cheese, what backs up to the rear packing lot?

17 A

18 Q Do you know whether or not there is a drive, or a  
19 vehicle access from into the  
20 Chuck E Cheese parking lot?

21 A No, sir, there's not.

22 Q What was the description that you were given that  
23 you put in your affidavit about the physical  
24 characteristics of the defendant -- or the suspect excuse  
25 me?

1 A Again, they mentioned that dark colored coat,  
2 possibly bluish green. They gave the subject as looking  
3 neat, also slim build, and had on a mask, and they said  
4 it should have been a black male.

5 Q What was that last part?

6 A A black male.

7 Q And at the time when you applied for the search  
8 warrant, what was the description of the two people you  
9 had in custody?

10 A I had a black male, slender build. I also had a  
11 black female.

12 MR. MARCHANT: Okay. That's all the questions I  
13 have. Thank you.

14 MR. HENRY: Can I ask just a couple more, Judge?

15 THE COURT: Yes.

16 RE-CROSS-EXAMINATION

17 BY MR. HENRY:

18 Q You also filled out or signed the warrant affidavit  
19 for the arrest too, is that right?

20 A Yes, sir.

21 Q It's not a great copy but I think you can probably  
22 read it, unless you already have one there. Do you see  
23 that? Can you read that okay?

24 A Yeah.

25 Q In the arrest warrant what was the probable cause?

1 What were facts in that probable cause affidavit?

2 A Facts of the -- the warrant states that the suspect  
3 entered the incident location, describing the Chuck E  
4 Cheese with a handgun, and after a short time period the  
5 subject was located and was also arrested and everything  
6 with a handgun in his possession.

7 Q Okay. Can I see the other affidavit, Judge, just a  
8 second? As far as the other affidavit, the armed  
9 robbery, you also did that one as well?

10 A Okay. Yes, sir.

11 Q And what were the facts that you based that  
12 affidavit on, to charge Mr. Watkins?

13 A Due to the fact that Mr. Watkins was located a short  
14 period after the incident had taken place.

15 Q Okay.

16 A The armed robbery had taken place. He had -- was  
17 inside a vehicle that matched the description.

18 Q That's the vehicle, the white Taurus again?

19 A Yes, sir. As well as the money that was found  
20 inside the vehicle and everything, the denomination of  
21 money and everything matched the money that should have  
22 been taken.

23 Q Okay. That's the fives and the ones you talked  
24 about earlier?

25 A Yes, sir.

1 Q What else?

2 A Clothing being worn.

3 Q And the clothing being worn, can you read that part  
4 in a little more detail?

5 A Said the vehicle was seen near the dumpster where  
6 clothing matching the description of the vehicle also was  
7 seen at the incident location.

8 Q Okay. Now, again, I don't want to overdo this, but  
9 you knew about the clothing being found at the time of  
10 the search warrant affidavit and the arrest warrant  
11 affidavit, correct? You knew that some officer had found  
12 this jacket?

13 A A dark colored jacket, yes, sir.

14 Q Right. And the jacket was actually a navy blue  
15 jacket with stripes, correct?

16 A Yes, sir.

17 Q And the navy blue jacket with stripes had never been  
18 described by any victim, correct?

19 A Not stripes, just a dark colored jacket.

20 Q Okay. Had a navy blue jacket been described?

21 A Yes, sir. Well, a dark colored jacket.

22 Q But not a navy blue jacket?

23 A Dark color.

24 Q Okay. Let me make it clear. Had any victim  
25 described a navy blue jacket before the arrest warrant

1 and search warrant were signed?

2 A Dark colored jacket, blue or possibly black, could  
3 be considered blue or could be considered black.

4 Q Okay. Did anyone use the word navy?

5 A I don't know, sir. I remember it's a dark colored  
6 blue or black.

7 Q All right. Anyone use the word white stripes?

8 A No, sir, not at the time.

9 Q So you found a, you meaning the officers found in  
10 the dumpster, which is specifically mentioned in this  
11 warrant, right, the dumpster?

12 A Right.

13 Q You found a navy jacket with white stripes, correct?

14 A Yes, sir.

15 Q All right. And no witness described specifically  
16 that the robber wore a navy jacket with white stripes,  
17 correct?

18 A No, sir, not in detail, no, sir.

19 Q Not in any form or fashion did they say navy with  
20 white stripes, did they?

21 A No, sir, they just said dark colored jacket.

22 Q All right. And you used the matching coat argument  
23 to get an arrest warrant and a search warrant, correct?

24 A A coat matching the description, being dark colored,  
25 yes, sir.

1 Q Okay. Clothing -- defendant's vehicle was seen near  
2 a dumpster where clothing matching the description of the  
3 clothing worn by the robber was discovered. That's what  
4 you said?

5 A Yes, sir.

6 Q And that wasn't true, was it?

7 A Yes, sir.

8 Q You're still saying it's true?

9 A Yes, sir.

10 MR. HENRY: All right. Thank you. That's all I  
11 have.

12 MR. MARCHANT: I have no further questions. Ask  
13 that he be able to step down.

14 THE COURT: Yeah. All right. Thank you, Officer.

15 MR. MARCHANT: Judge, that's the information the  
16 State is going to put forward for the sufficiency of the  
17 application of the search warrant, that it was obtained  
18 under good pretense with evidence that Detective Bruce  
19 had at the time. He believed the information to be true  
20 and accurate.

21 There were a number of consistencies between what he  
22 was told at the time and what was retrieved on scene. It  
23 was a short period of time between the incident and the  
24 stop of the vehicle. The incident occurred approximately  
25 around 1:00 a.m., 12:50 to 1:00 a.m. The stop occurred

1 within 10 to 15 minutes after one o'clock. It was a  
2 description of a black male of similar height and weight,  
3 stopped in a white Ford Taurus. A jacket was found in a  
4 dumpster that was seen by officers, that the Taurus had  
5 recently driven up to.

6 There was no information at that time that any  
7 vehicle left the incident location, left Chuck E Cheese  
8 after the robbery. The back up  
9 directly to the Chuck E Cheese. There was a similar  
10 amount of loose cash in denominations that was taken out  
11 of the robbery.

12 Now, of course the search warrant was applied for  
13 around nine o'clock in the morning. The incident  
14 happened at approximately 1:00 a.m. It is a short period  
15 of time for officers to present information which he has  
16 testified to be true to a magistrate to apply for a  
17 search warrant in order to go and seek other evidence in  
18 the case that would connect the defendant to the robbery.  
19 He's operating under good faith with the information that  
20 he has, which is true and accurate at the time.

21 He has stated that he did not have an opportunity to  
22 speak with everyone that's been involved in the case, but  
23 he did speak with the witnesses about their statement as  
24 well as speaking with them personally. And the  
25 information that he provided the magistrate was in his

1 mind at the time true and accurate, which was why he  
2 applied for the search warrant and it was issued by  
3 Magistrate Jennifer Presnell. We would ask that you deny  
4 any motion to suppress the search warrant.

5 Not sure if Mr. Henry is going to put up testimony  
6 or not, but that is the State's basis and reasoning for  
7 the search warrant to be adequate to -- that the officer  
8 has complied with the law in presenting evidence that was  
9 true and accurate that he had at the time in order to  
10 apply for the search warrant.

11 MR. HENRY: I'd like to call the magistrate. I  
12 think she's here. Jennifer Presnell. Just briefly,  
13 Judge.

14 THE CLERK: Ma'am, if you'll please place your left  
15 hand on the Bible and raise your right hand.

16 JENNIFER PRESNELL

17 Having been first duly sworn, testified as follows:

18 THE CLERK: Thank you. Please be seated. Please  
19 state your name for the record?

20 THE WITNESS: Jennifer Presnell.

21 COURT REPORTER: Spell your last name, please.

22 THE WITNESS: P-r-e-s-n-e-l-l.

23 DIRECT EXAMINATION

24 BY MR. HENRY:

25 Q Were you the magistrate back when this search

1 warrant and arrest warrant were signed?

2 A Yes, administrative judge, but yes, sir.

3 Q Administrative judge. Okay. Administrative judge,  
4 sorry. Are you in that position now?

5 A No, I'm not.

6 Q Okay. Are you a magistrate or judge in Easley?

7 A Yes, I'm an associate judge in Easley.

8 Q Okay. All right. First of all, just in general,  
9 when you are asked to sign a search warrant or an arrest  
10 warrant, you base your decision on the truthful  
11 information given to by the officers, is that right?

12 A Yes, sir, that's correct.

13 Q Do you remember anything about this particular  
14 arrest warrant and search warrant, or not?

15 A Most of what I remember is based on reviewing the  
16 search and arrest warrant and my previous testimony.

17 Q Okay. Let me just show you those, make it easier.  
18 Here's the arrest warrant for armed robbery. Here's the  
19 search warrant affidavit. When you see in the search  
20 warrant affidavit -- I'm sorry, the arrest warrant  
21 affidavit, that they found clothing matching the  
22 description, what did you take that to mean?

23 A Exactly what it says.

24 Q Okay. That they found clothing that matched?

25 A Exactly.

1 Q You didn't know -- you didn't see pictures of the  
2 coats?

3 A No, I did not.

4 Q You were not shown affidavits or statements from  
5 witnesses?

6 A No.

7 Q You were just given information by the officer who  
8 sign the affidavit for the search warrant and arrest  
9 warrant?

10 A Yes.

11 Q Does it matter if they tell you the truth?

12 A Absolutely.

13 Q Could that change the decision you make as to  
14 whether to issue an arrest warrant or search warrant?

15 A Yes.

16 Q For example, if it turned out that the coat that  
17 they were telling you matched did not in fact match,  
18 would that make a difference to you?

19 A Yes.

20 Q If it turned out that the -- they left out important  
21 facts, would that make a difference too, could it?

22 A The facts that they stated in both the search  
23 warrant and arrest warrant are sufficient to establish  
24 probable cause.

25 Q If true?

1 A Yes.

2 Q If true. If not true then you would take those out  
3 and see if it still established probable cause anyway?

4 A If not true, if I knew they were not true, yes.

5 Q Okay. How about if you found out later they were  
6 not true?

7 A Well, if it's already issued there is nothing I can  
8 do.

9 Q It's too late at that point?

10 A Exactly.

11 Q So if they tell you something false at the time you  
12 base your decision on information, then the deed has been  
13 done basically at that point?

14 A Right.

15 Q Okay. You wouldn't do any independent  
16 investigation, you would take what the officers told you  
17 on face value?

18 A Yes.

19 MR. HENRY: Okay. Thank you. That's all I have.

20 CROSS-EXAMINATION

21 BY MR. MARCHANT:

22 Q Ms. Presnell, did you have any reason to believe  
23 when you issued this search warrant that Detective Bruce  
24 had given you false information?

25 A No, all arrest and search warrants are -- the

1       affiant swears that that's the truth.

2       Q     And ---

3       A     But no, I had no reason to believe any of it was  
4       false.

5       Q     And did you place him under oath prior to ---

6       A     Yes, he was under oath for both the arrest and  
7       search warrant.

8       Q     Okay. Would the fact that some information was  
9       known but was not present in the search warrant, such as  
10      there was a show up identification procedure of the  
11      defendant and there was a -- there was not a positive  
12      identification, would that cause you some concern?

13      A     When issuing a search or arrest warrant, all the  
14      facts have to be taken into consideration, so yes, that  
15      would be one thing I would consider, but I'd consider the  
16      total circumstances, all the facts presented to me.

17      Q     Okay. So the fact that -- in this case that  
18      information was not known to you, is that correct?

19      A     Right, it was not.

20      Q     If that information had been known to you with the  
21      facts presented, would you have still issued the search  
22      warrant?

23      A     Yes.

24      Q     Okay. Do you have any reason to believe to this  
25      date that Detective Bruce has been untruthful in any

1 manner with you, or in the court, or any proceedings?

2 MR. WATKINS: Objection, he's already asked that,  
3 been answered.

4 THE COURT: Restate the question.

5 BY MR. MARCHANT:

6 Q Do you have any reason to believe that Detective  
7 Bruce was untruthful with you with what you know now?

8 A No, I don't.

9 Q And when you're issuing a search warrant, is the  
10 information that's provided in the affidavit the only  
11 information that you have?

12 A No, if I have questions, if I don't feel that the  
13 affidavit is clear, or I don't feel that probable cause  
14 has been established, then of course I will ask for  
15 further information.

16 Q Do you recall whether or not you asked for further  
17 information in this case?

18 A I do not.

19 Q Would it be typical in a case for you to review  
20 witness' statements?

21 A Normally, no.

22 Q With the information you had from Detective Bruce  
23 that evening, you felt comfortable issuing the search  
24 warrant?

25 A Yes. Yes.

1 Q As well as the arrest warrants?

2 A Yes.

3 MR. MARCHANT: Thank you. I have no further  
4 questions.

5 MR. HENRY: Just one other thing, Judge, if I could?

6 THE COURT: Okay.

7 REDIRECT-EXAMINATION

8 BY MR. HENRY:

9 Q You're familiar with South Carolina code section  
10 17-13-141?

11 A Yes.

12 Q I think it came up the last time you went to court?

13 A Yes.

14 Q What does that say you're supposed to do with  
15 respect to that statute?

16 A It deals with record keeping associated with issuing  
17 search warrants, and it specifies that a log must be  
18 maintained of the date and time of issuance of the search  
19 warrant, the probable cause, the place to be searched,  
20 and also the items searched for, have to be maintained on  
21 that log.

22 Q Okay. I think the statute says date and time of the  
23 issuance, name and person who the warrant is issued, name  
24 of person whose property is being searched, reason for  
25 issuing, which is what we're talking about now,

1 description of the articles sought and the search date  
2 and time of return, et cetera. And that's a separate  
3 record from the search warrant itself, right?

4 A Yes.

5 Q And that was not -- was it filled out and just lost  
6 in this case, or never filled out, or do you know?

7 A And I did forget to log it in, but -- and so no, I  
8 did not log it in.

9 Q Okay. So that form under 17-13-141 might have more  
10 information or clarifying information about the reason  
11 the warrant was issued, but we don't have that  
12 information here?

13 A No, it would have not have any additional  
14 information. That comes straight from the search  
15 warrant.

16 Q So as far as we know the information you have is  
17 only in those two affidavits for the arrest warrant and  
18 the search warrant?

19 A Yes.

20 Q Okay. Nothing external, as far as you know?

21 A Nothing that I recall.

22 MR. HENRY: That's all I have.

23 MR. MARCHANT: I have no further questions, Your  
24 Honor.

25 THE COURT: All right.

1 MR. MARCHANT: Your Honor, I had her under subpoena  
2 for the trial of the case. I believe Mr. Henry had her  
3 under subpoena as well. I would ask that she be excused.  
4 I don't have any ---

5 MR. HENRY: I agree.

6 MR. MARCHANT: --- reason to think she would be  
7 called for the trial of the case. I'd ask that she be  
8 released.

9 MR. HENRY: I concur.

10 THE COURT: All right. You're excused. Thank you,  
11 ma'am.

12 MR. HENRY: Thank you. Judge, my argument is based  
13 on Frank versus Delaware. You probably know this  
14 already. I think that we have shown a significant amount  
15 of misstatements, either recklessly or intentionally.  
16 And Frank is 438 US 154. It's a 1978 case. There are a  
17 lot of decisions after Frank's dealing with the issue of  
18 search warrant and arrest warrant affidavits.

19 My argument is very, I think, straight forward.  
20 Search warrants in particular can be key moments in a  
21 criminal case where facts are either correctly stated,  
22 completely stated, or something else. This is one of  
23 those something else cases. I also have the report from  
24 the show up to confirm that we have an issue about  
25 whether a show up occurred or not, in which two of the

1 people, they weren't named, but two of the four  
2 restaurant employees were taken to where Robert Watkins  
3 had been held in his car, and given what I thought -- I  
4 think is a terribly illegal show up procedure, but they  
5 didn't pick him out. I think that should have been  
6 included under Franks as well.

7 But the key factors, the one key factor is this  
8 matching coat idea. This is totally off base. There was  
9 no matching coat. A navy blue striped coat was found in  
10 the dumpster by one of the city police officers. They  
11 used that to get a search warrant. That information is  
12 false. It's been false from the beginning. There was no  
13 matching coat, no description that matched a navy blue  
14 coat with stripes, but they said there was in order to  
15 get a search warrant affidavit and have it issued.  
16 That's Franks. And I've outlined the other misstatements  
17 in the warrant too. That's the clearest one but there  
18 are others are well.

19 They fudged this search warrant to get into that  
20 apartment and everything they seized as a result of that  
21 search must be suppressed at trial.

22 THE COURT: What about the fact that it was Ms.  
23 Pelzer's apartment and not Mr. Watkins?

24 MR. HENRY: Well, the fact that they went -- it was  
25 in her name instead, they both were living there.

1 THE COURT: It says in the warrant ---

2 MR. HENRY: It does.

3 THE COURT: It just says the address is listed for  
4 Elena Pelzer, so it was a search warrant for Ms. Pelzer's  
5 apartment.

6 MR. HENRY: Where they both lived. I -- they did  
7 use her name in the search warrant obviously.

8 THE COURT: It says it's the listed address. It's  
9 in the search warrant.

10 MR. HENRY: Yes, it's the address where they both  
11 stayed. I don't think you're raising a standing issue.  
12 I mean, he lived there too. I don't think that's an  
13 issue.

14 THE COURT: No, I don't know. Maybe I'm asking the  
15 question. I don't know if he lived there or not. I  
16 mean, I hadn't heard anything about that, but be that as  
17 it may, I'm also -- it says within minutes after the  
18 robbery he was stopped driving, it does say that same  
19 white Taurus. Apparently the witnesses or officer --  
20 someone had seen a white Taurus around Chuck E Cheese. I  
21 don't see any evidence from anyone that the white Taurus  
22 was there at the time, but he was stopped somewhere in a  
23 white Taurus, and I don't know where that is, or how they  
24 -- apparently they learned somewhere that he had just  
25 entered the . . . . . His -- the officer's

1 testimony is they interviewed the officers, and the  
2 defendant, and Ms. Pelzer.

3 MR. HENRY: Right.

4 THE COURT: So they talked not just to the -- I  
5 believe there are four statements.

6 MR. HENRY: There were four, yes, sir.

7 THE COURT: They talked to those plus ever how many  
8 officers that were there, and ---

9 MR. HENRY: We have Ms. Pelzer's statement too.  
10 Obviously my client denied being involved with the  
11 offense. I don't see how Ms. Pelzer's statement provided  
12 any additional help to them. The -- further on in the  
13 search warrant description they do say that my client was  
14 also a resident at that apartment, just so you know.  
15 That's in there as well. Ms. Pelzer's statement to the  
16 police was -- is arguably an alibi. So I think that goes  
17 in the other direction.

18 THE COURT: Okay. And they say they made an  
19 investigatory stop, I don't know how long that was  
20 afterwards but apparently the officers had to be the ones  
21 or maybe the defendants confirmed it. They were stopped  
22 attempting to conceal large amounts of loose cash in  
23 denominations consistent with the robbery.

24 MR. HENRY: Which would be pretty much all  
25 denominations, Judge. The stop was based on the white

1 Taurus in close in time. That's the stop of the vehicle.

2 THE COURT: Okay.

3 MR. HENRY: The investigative detention ended him in  
4 jail before he was arrested. He got served with the  
5 warrants while he was in detention. So it was a little  
6 more than investigatory. But that aside, even if the  
7 initial investigatory stop was legitimate, which we're  
8 not conceding, how do we get from that to a search  
9 warrant when you take out the false information that was  
10 provided to the magistrate, especially about the coat,  
11 which did not match any description in any of those four  
12 statements. Elena Pelzer's statement doesn't add  
13 anything into that. And my client's is a denial. Elena  
14 Pelzer provided an alibi. My client denied the offense.  
15 So we have four statements from the victims. In addition  
16 to the four statements from the victims, we have one  
17 other police officer who found a non-matching coat which  
18 they said was a matching coat. They said that in order  
19 to get a search warrant. I think that's a Franks  
20 violation.

21 MR. MARCHANT: Your Honor, I think he's making a  
22 stretch here. We have a dark blue jacket that was found  
23 in a dumpster that the white Taurus pulled up to after  
24 leaving the apartment. An officer goes and looks in the  
25 dumpster and sees a blue jacket with white stripes on it.

1 Now, I will agree with Mr. Henry that there's no mention  
2 in any witness' statement about white stripes on the  
3 jacket. But I don't think at this point in time even  
4 today that anyone has negatively identified that jacket  
5 as not being worn by the defendant. So we have  
6 information and belief that ---

7 THE COURT: How -- who saw the Taurus pull up to the  
8 dumpster?

9 MR. MARCHANT: Two officers. And they related that  
10 information to Detective Bruce when he was applying for  
11 the search warrant.

12 THE COURT: Where were these officers that observed  
13 the white Taurus after the robbery?

14 MR. MARCHANT: I'm sorry, ask that again, Your  
15 Honor.

16 THE COURT: Where were these officers located?

17 MR. MARCHANT: They were -- those two particular  
18 officers were located -- if I can pull out State's 2 I  
19 can give you a visual that maybe would allow ---

20 MR. HENRY: They went to the  
21 after the robbery.

22 THE COURT: After the robbery?

23 MR. HENRY: Yeah, after the robbery. Which is  
24 behind where Chuck E Cheese is.

25 THE COURT: How long after the robbery did they go

1 back there?

2 MR. MARCHANT: Within minutes, Your Honor. I  
3 believe their -- the stop occurred around 1:10 of the  
4 defendant's vehicle. And without putting words in the  
5 officers' mouths, they would have been at the complex  
6 when he was pulling out of his apartment building. The  
7 robbery was reported around 12:50 to 1:00 a.m., and the  
8 stop occurred around 1:10. So at the longest amount of  
9 time to occur between the robbery and the stop was 20  
10 minutes. I don't know that we have exact -- an exact  
11 time of how long it lasted. But that's at -- the  
12 greatest amount of time is 20 minutes.

13 And these two officers positioned themselves in the  
14 apartment complex around a perimeter and saw him pull out  
15 of the building, which was his building, and stop at a  
16 dumpster near the building. The passenger gets out --  
17 excuse me. A person in the vehicle gets out. I don't  
18 know that you would hear any testimony of whether or not  
19 it was the driver or the passenger, and threw something  
20 away in the dumpster. The officer goes over there, finds  
21 the jacket that he believes to be a matching jacket that  
22 was worn in the robbery. And I don't want us to get hung  
23 up on this blue jacket, Your Honor. The Magistrate ---

24 MR. HENRY: I don't blame him.

25 MR. MARCHANT: --- Presnell stated that she reviewed

1 it as a whole and took all of the facts into  
2 consideration. We have a similar jacket. We have a  
3 vehicle that's similar. We have denominations of money  
4 that was taken from the Chuck E Cheese. And there is no  
5 positive identification because the subject, whoever  
6 robbed the Chuck E Cheese, was wearing a mask. So there  
7 was no positive identification because his face was  
8 concealed. But it was a black male of medium to large  
9 build. They stopped the defendant driving a vehicle.  
10 And in fact, he gave the officer at the scene a name  
11 which the officer could not find because he did not have  
12 his driver's license. So there is just a plethora of  
13 facts that were consistent that it was more likely than  
14 not that he was involved in it, and therefore the  
15 detective asked for a search warrant to be issued.

16 MR. HENRY: And the slim -- I didn't mean to cut you  
17 off, Lucas.

18 MR. MARCHANT: And Detective Bruce has given you his  
19 testimony on the stand that he presented what he believed  
20 to be true and accurate information at the time. He  
21 doesn't have to present enough information to get beyond  
22 a reasonable doubt for a jury trial. And information was  
23 sufficient to issue the search warrant which the  
24 magistrate correctly did -- excuse me, the city reported.

25 THE COURT: Okay.

1           MR. HENRY: If true. If true. The part that we are  
2 kind of dodging around here is Franks versus Delaware is  
3 about -- is a requirement that officers present truthful  
4 information to magistrates. We went into this a lot in  
5 preliminary hearings too when an officer wants to say,  
6 okay, I actually had one stop me during the middle of  
7 prelim, I'm not going to answer any more questions, that  
8 establishes probable cause. Well, this is the officers  
9 talking. I realize there is that tendency not to present  
10 the favorable evidence on the defendant's side at a  
11 search warrant. I think they should. I think they  
12 should have told about the show up that failed. But just  
13 taking what they put down on black and white when they  
14 say, that same white Taurus, that's false. When they say  
15 a coat matching the robber's was found in the apartment  
16 property, that's false. That's what I'm talking about  
17 under Franks, if it's false it doesn't count.

18           THE COURT: What other motions do we have, other  
19 than this one?

20           MR. HENRY: I think that covers our motions, Judge.

21           THE COURT: Okay.

22           MR. HENRY: Yes, sir, except for the one that's  
23 pending on the prior record.

24           THE COURT: Okay. Let me look at this. I'll look  
25 at the Franks versus Delaware and I'll meet you back here

1 at 15 minutes until 9:00, or nine o'clock, whatever time  
2 y'all get here. Okay.

3 MR. HENRY: See you at nine.

4 THE COURT: Nine o'clock. Thank you.

5 MR. MARCHANT: Thank you, Your Honor.

6 MR. HENRY: Give me a choice I go with the later  
7 time.

8 THE COURT: Okay.

9 (Court adjourned for the evening.)

10 (The following proceedings were held on September  
11 23, 2008, as follows:)

12 THE COURT: Okay. The last matter we were dealing  
13 with is the -- the search warrant. And I have looked at  
14 Franks versus Delaware. And it was a case where there  
15 was some clothing identified clearly by possibly maybe a  
16 false statement, clearly, and the defense called the  
17 witnesses and they had testified in a hearing that they  
18 really didn't provide that information, and stated  
19 something to the contrary. In this particular case under  
20 the South Carolina law the Court has to consider the  
21 totality of the circumstances, the fact that it was drawn  
22 up -- these affidavits are not drawn by attorneys, and  
23 that it's -- it's pretty close to the event as it  
24 happens, and that there is some deference that must be  
25 given to the belief of the affiant at the time based on

1 the facts and information that he has available. The  
2 issue in this case is a dark coat. And for some reason  
3 the -- it was inserted in there that the coat was blueish  
4 green -- greenish blue, which could be a dark coat.

5 And a white Taurus was identified almost  
6 indisputably as being around the premises that were  
7 robbed. The white Taurus was relied on. It was seen a  
8 little bit after 1:00 in the morning, I understand, right  
9 after the robbery nearby. It was seen going to a  
10 dumpster where the coat, whatever color it was, maybe had  
11 some white stripes, but it may have been a dark coat.  
12 And the police officers, when they made an investigative  
13 stop, they found two individuals, one being a black male,  
14 and nobody identified the person except he was a black  
15 male at the scene of the crime, that they were trying to  
16 disclose cash and bills.

17 And that there were four witnesses who were talked  
18 to and the officers that investigated on the scene. The  
19 whit Taurus is a unique vehicle. Pulled over. And  
20 considering the affidavit made by the officer, there is  
21 not a substantial showing that a false statement was  
22 knowingly and intentionally made with reckless disregard  
23 for the truth, under Franks versus Delaware and its --  
24 the subsequent cases. So therefore I'm going to deny the  
25 suppression.

1 MR. HENRY: Yes, sir.

2 THE COURT: Okay. We're ready to proceed.

3 MR. MARCHANT: Your Honor, we had the other issue of  
4 the prior record. Do you want to visit that now or we  
5 can visit it later if we want to get started with the  
6 jury.

7 THE COURT: Well, we will -- you found some case law  
8 you want to give me?

9 MR. MARCHANT: Yes, Your Honor.

10 THE COURT: You can give it to me if you'll share it  
11 with Mr. Henry. Is this one -- how many cases?

12 MR. MARCHANT: It should be four cases, Your Honor.  
13 The first is US versus Cunningham, 83 Supreme Court 373.  
14 The second is State versus Scott, 484 SE 2nd 110. The  
15 third case is State versus Sarvis, 450 SE 2nd 606. And  
16 the last case is State Versus Muller, 460 SE 2nd 409.

17 THE COURT: Well, I'll give Mr. Henry a chance to  
18 look at these, and let's just defer ruling on that  
19 until ---

20 MR. MARCHANT: Yes, Your Honor.

21 THE COURT: Neither one of you would have to mention  
22 this in the opening statements.

23 MR. MARCHANT: No, sir. I would have no reason to.

24 MR. HENRY: No, sir.

25 THE COURT: All right with you?

1 MR. HENRY: That's fine.

2 THE COURT: Okay. All right. Y'all read to  
3 proceed?

4 MR. HENRY: Just about, Your Honor.

5 THE COURT: Okay.

6 MR. HENRY: Mr. Watkins wants to renew his request  
7 to proceed pro se. He informs me that he was -- he  
8 misunderstood part of what was said about the rules.  
9 He's prepared to follow the rules, understands them, and  
10 wants to once again be assigned pro se representation and  
11 he ask that I be allowed to be standby counsel. And I  
12 wanted you to be aware of that, and he's ready to proceed  
13 he tells me.

14 THE COURT: All right. Mr. Watkins, I hadn't -- I  
15 conducted a hearing yesterday and was almost finished  
16 explaining to you the disadvantages of  
17 self-representation. And the biggest thing, there was a  
18 conviction in the prior case, and I don't know if there  
19 will be a conviction in this case or not. You may be  
20 found not guilty. And you may be not guilty. I honestly  
21 do not know what the evidence and what this case is going  
22 to -- what it's going to be like. But as I explained to  
23 you yesterday, a criminal trial is one of the most  
24 serious things and the most difficult things for an  
25 individual to go through. And without competent counsel

1 representing you you're likely to over look something,  
2 make mistakes. You may not preserve the record for  
3 purposes of appeal.

4 Now, I have received a lot of correspondence from  
5 you, and I know you're familiar with the law. And I am  
6 positive that you feel like you can represent yourself.  
7 And I'm willing to go forward with that and let you  
8 represent yourself. But you have got to understand that  
9 I cannot help you, that this cannot be a hybrid trial.  
10 It can't be tried by you and Mr. Henry together. You  
11 cannot have two lawyers over here. And if I try this  
12 case you're going to be the lawyer and he's just going to  
13 advise you. And we're ready to start this trial. I'm  
14 going to swear the jury this morning. And this is the  
15 third time you have raised this pro se issue. And I want  
16 the appellate courts to know that. And if you do over  
17 look something and something happens you can't file an  
18 ineffective assistance of counsel. You can't file a PCR  
19 against yourself and things of that nature. Do you  
20 understand all that?

21 MR. WATKINS: Yes, sir.

22 THE COURT: And you want to represent yourself pro  
23 se?

24 MR. WATKINS: Yes, sir.

25 THE COURT: I'm not spending any more time on this

1 issue. He's going to represent himself pro se. And I  
2 don't want to be faced with this issue again. And I mean  
3 I -- this is really trying -- kind of trying the patience  
4 of the Court. But you have a Constitutional right to do  
5 that. Mr. Henry can be standby counsel and sit behind  
6 you, and you can represent yourself. Okay.

7 Mr. Henry, you can sit in the courtroom and ---

8 MR. HENRY: Can I sit next to him or not?

9 THE COURT: Well, that's just like you representing  
10 him if you're sitting next to him. And we just can't  
11 permit that.

12 MR. HENRY: Well, I was hoping I could ---

13 THE COURT: You can't be whispering in his ear.  
14 You're not going to be the trial lawyer.

15 MR. HENRY: I understand.

16 THE COURT: And let him get up and do the speaking.  
17 He's going to try the case himself. And if he's got  
18 serious questions then I'll let him consult with you.

19 MR. HENRY: All right, sir.

20 THE COURT: That's the way we're going to do it.

21 MR. HENRY: Tell me where you want me to be, I'll be  
22 glad to be there.

23 THE COURT: You can sit behind him, back there. He  
24 cannot sit there and talk to you. You can't have two  
25 lawyers, Mr. Watkins. Now, do you want to go pre se?

1 I'm fixing to bring this jury in, I'm not going to waste  
2 any more time. It's been six years.

3 MR. WATKINS: Yes, sir, can I confer with him for a  
4 minute?

5 MR. HENRY: As standby counsel can he -- he can ask  
6 me procedural questions, is what he said before.

7 THE COURT: That's right, procedural questions and  
8 that's it. Okay. If you get hung up on the admission of  
9 evidence and things like that, Mr. Watkins, it's just  
10 going to be to your detriment. And I'm positive that Mr.  
11 Henry is not going to overlook anything. He's already  
12 brought up a lot of stuff. But I'm ready to swear the  
13 jury.

14 MR. MARCHANT: Your Honor, could we just clear up  
15 one issue? Obviously we have been through a prior trial.  
16 I have instructed my witnesses not to mention the prior  
17 trial. I just want to be sure that Mr. Watkins knows not  
18 to mention the first trial. I don't want to have grounds  
19 for a mistrial from the State's side if he mentions his  
20 prior trial, prior conviction at any point in time. I  
21 just wanted that be made aware to him, Your Honor.

22 MR. WATKINS: Your Honor? Your Honor, I can use the  
23 prior like statements giving ---

24 THE COURT: I can't give you any advice. I'm sorry.  
25 I'm not going to give you any advice, Mr. Watkins.

1 You're on your own and you've got to understand that.

2 MR. WATKINS: No, I'm just asking ---

3 THE COURT: You put Mr. Henry behind you. And I'm  
4 not going to give you any advice on what you can do and  
5 what you cannot do. I'm just going to rule on the  
6 objections and what -- when things are brought up.

7 MR. WATKINS: Okay. Yes, sir.

8 THE COURT: Are you ready? We're going to do  
9 opening statements, and I'm going to swear the jury and  
10 the trial is going to start.

11 MR. WATKINS: Yes, sir.

12 THE COURT: Okay. Now, you want to be there and  
13 you -- and I'm going -- the findings and everything that  
14 I put on the record I have -- I have to have a hearing,  
15 and I did that. And I know there's still some issues out  
16 there. Bring the jury in. I'm going to instruct the  
17 jury right now that you're going to be representing  
18 yourself, Mr. Watkins. You understand that?

19 MR. WATKINS: Yes, sir.

20 (The jury entered the courtroom at 9:30 a.m.)

21 THE COURT: All right. Ladies and gentlemen of the  
22 jury, if you would stand at this time and raise your  
23 right hand, please, the clerk will give you the oath to  
24 try this case. And please respond by saying I will when  
25 you take the oath. Okay. Madam clerk.

1 (The jury was sworn to well and truly try this case  
2 at 9:31 a.m.)

3 THE CLERK: Thank you. Please be seated.

4 THE COURT: Okay. Ladies and gentlemen of the jury,  
5 we are about to begin a criminal trial between the State  
6 of South Carolina and Robert Max Watkins, who is sitting  
7 at counsel table.

8 Now, I informed you yesterday, and I introduced Mr.  
9 Henry as Mr. Watkins' lawyer. Mr. Watkins has chosen to  
10 exercise his Constitutional right and represent himself,  
11 and not be represented by Mr. Henry, who's in the  
12 courtroom here.

13 This case comes to us on this indictment which I  
14 hold in my hand that alleges armed robbery on December  
15 the 19th of 2001, and possession of a weapon during the  
16 commission of that crime.

17 Now, Mr. Watkins has pled not guilty to these  
18 charges. His plea of not guilty places the burden of  
19 proof upon the State of South Carolina to prove him  
20 guilty of any crime charged beyond a reasonable doubt. A  
21 defendant is presumed innocent until the State can  
22 present evidence that convinces you of guilt beyond a  
23 reasonable doubt. A defendant does not have to prove  
24 himself innocent.

25 Now, ladies and gentlemen, your role is to be the

1 finders of the facts, if you can find the facts, and to  
2 apply the facts to the law that I will go over with you  
3 at the conclusion of this case, and write a verdict that  
4 speaks the truth.

5 Now, as I told you yesterday, please keep an open  
6 mind until you've heard all the evidence and testimony  
7 and until I go over the law with you before you start  
8 saying this should be the verdict. I know you have to  
9 evaluate the case as we go along, but you can do that as  
10 jurors. But do not make up your mind, or do not discuss  
11 this case with anybody, not even with each other on  
12 breaks or during lunch, until the case is over and you  
13 begin your deliberations.

14 We'll begin the trial with opening statements, if  
15 the parties care to make an opening statement. After you  
16 hear the opening statements then you will hear the  
17 evidence and testimony from which you will determine the  
18 facts. After the evidence and testimony is in, the  
19 parties, the State and Mr. Watkins, can make their  
20 summations to you, or closing statements. After that  
21 then you will go back and deliberate -- I'll go over  
22 the law with you after that, and then you'll go back  
23 and deliberate until a reach you a unanimous verdict on  
24 the -- any charges.

25 Now, we'll begin this trial with opening statements.

1 First by the State, Mr. Marchant.

2 MR. MARCHANT: May it please the Court? Mr.  
3 Watkins?

4 Good morning, ladies and gentlemen of the jury. My  
5 name is Lucas Marchant. I'm the prosecutor for  
6 Greenville County. What you're going to hear today and  
7 throughout the course of this case are several different  
8 things. I would ask you to pay very close attention, not  
9 what myself or what Mr. Watkins says, but what comes from  
10 this chair right here, because you are to evaluate what  
11 comes out of that chair. That's the evidence that you'll  
12 have as well as any physical evidence, meaning documents  
13 or exhibits. You will be able to take that information  
14 as well as the hard information back into the jury room  
15 to make a determination of whether or not this man  
16 committed this armed robbery on December the 19th of  
17 2001.

18 I submit to you the picture before you is this.  
19 There are five members (sic) of the Chuck E Cheese  
20 restaurant on Congaree Road here in Greenville County.  
21 They were working late into the early morning hours  
22 cleaning up the restaurant for a visit from their  
23 supervising team the following day.

24 Again, I told you, there were five. You're going to  
25 hear testimony from four of them. Okay. There will be

1 testimony from three of those four that will tell you  
2 that they did not disclose the fifth witness to law  
3 enforcement that evening. And they will tell you why  
4 they did not do that. The fifth witness is here and she  
5 will tell you why she did what she did.

6 Now, it's your job to determine what they say on the  
7 stand and whether or not it's credible or not. Okay. I  
8 submit to you there's only two issues in this case, was  
9 there a robbery and did this man commit it.

10 Now, as His Honor told you, the burden rests solely  
11 on the State, and that burden is beyond a reasonable  
12 doubt. That is a high standard of proof. I welcome  
13 that. I will prove by the end of this trial the man  
14 sitting over there committed armed robbery of Chuck E  
15 Cheese. And at the end of the trial when I'm allowed to  
16 revisit you and give you my theory of the case, I will  
17 ask you to step back into the jury room and return a  
18 verdict of guilty, because that will be the verdict that  
19 speaks the truth.

20 Again, thank you for your time. This is a very  
21 important matter to both the State as well as the  
22 defendant. And I would ask to pay, again, specific  
23 attention to what comes from that stand. Thank you.

24 THE COURT: Mr. Watkins.

25 MR. WATKINS: Thank you, ladies and gentlemen, for

1 being here today. My name is Robert Watkins. I am the  
2 person accused of the crime. The opening statement I --  
3 the evidence will show that there was five victims in the  
4 business that was robbed, money was taken, the victims  
5 saw a small handgun. The evidence will show that coins  
6 and currency was taken, and the robber left the business,  
7 the place. The evidence will show it happened around one  
8 o'clock in morning. The evidence will show four victims  
9 gave a statement. One victim hid, and the evidence will  
10 show one victim hid in the business and didn't give a  
11 statement.

12 The evidence -- the State will have to prove beyond  
13 a reasonable doubt that I was the one that committed the  
14 robbery. The evidence will have to show this. The  
15 evidence will be based upon circumstantial evidence in  
16 which you -- the evidence will show there was no positive  
17 ID of me being the one that committed the robbery. There  
18 was no -- the evidence will show there was no forensic  
19 testing done to connect me with any of the evidence that  
20 the State intends to present in the trial. There was no  
21 DNA, no fingerprints.

22 I deny committing the crime. The evidence will show  
23 I deny committing the crime. The evidence will also show  
24 there will be nothing to connect me with the robbery or  
25 the robbery -- the person that committed the robbery in a

1 white Ford Taurus, to connect the white Ford Taurus to  
2 me. There be -- in other words, the State will have to  
3 prove that all of the evidence is consistent with one  
4 another. And the evidence will show that the evidence is  
5 not consistent with each other to find me guilty beyond a  
6 reasonable doubt. Thank you, ladies and gentlemen.

7 THE COURT: I need to put in the record that I did  
8 have a hearing, and I found affirmatively that it was  
9 implied that Mr. Watkins knowingly, intelligently and  
10 voluntarily waived his right to council and decided to  
11 proceed with himself. And I find that he did it  
12 knowingly, voluntarily and intelligently. I want to put  
13 that in the record. Okay.

14 MR. WATKINS: Thank you, ladies and gentlemen.

15 THE COURT: All right. We're ready to proceed, Mr.  
16 Marchant.

17 MR. MARCHANT: The State calls David Jones.

18 THE CLERK: Sir, if you'll please place your left  
19 hand on the Bible and raise your right hand.

20 DAVID JONES

21 Having been first duly sworn, testified as follows:

22 THE CLERK: Thank you. Please be seated. Please  
23 state your name for the record.

24 THE WITNESS: David E. Jones.

25 THE CLERK: Thank you.

DIRECT EXAMINATION

1  
2 BY MR. MARCHANT:

3 Q Mr. Jones, what is your occupation with the  
4 Greenville police department?

5 A I'm currently assigned downtown. I've been there  
6 for a year. I've been serving with the police department  
7 since 2000. Years before that I was on patrol and  
8 responding to routine calls for service, such as 911  
9 calls, alarm calls, traffic calls, that type of stuff.

10 Q Have you been to the criminal justice academy?

11 A Yes, sir.

12 Q What is the reason for any officer going to the  
13 criminal justice academy?

14 A So that we're actually certified by the State to be  
15 a police officer.

16 Q Are you allowed to be a police officer with the  
17 Greenville unit without having that certification?

18 A No, sir.

19 Q Were you working in December of 2001 with the  
20 Greenville City PD?

21 A Yes, sir.

22 Q Specifically were you working the night of 19th, or  
23 the morning of the 19th?

24 A Yes, sir.

25 Q What were your duties at that time?

1 A I was on routine patrol that night. Just ---

2 Q Okay. Please describe for the jury what routine  
3 patrol means?

4 A On the patrol division we generally take care of  
5 everything, especially on the night shift. We respond if  
6 you need 911 calls, alarm calls, traffic offenses, DUIs.  
7 Pretty much anything that you're ever going to have to  
8 call the police department for we cover that all night  
9 long, all shift.

10 Q And did you receive a call that evening in reference  
11 to what we're here about today?

12 A Yes, sir.

13 Q What information did you receive about this  
14 incident?

15 A Initially it came out as an armed robbery that had  
16 just occurred at the Chuck E Cheese on Congaree Road.

17 Q And were there any details given about suspect or  
18 anything of that nature?

19 A When I almost was on the scene they advised across  
20 the radio that we were looking for a black male wearing  
21 dark clothing, dark jacket, driving possibly a white Ford  
22 Taurus with I believe they even said had a paper tag at  
23 the time.

24 Q Okay. I'm going to show you what's been marked as  
25 State's Exhibit Number 2. Do you recognize this exhibit?

1 A Yes, sir.

2 Q And how is it you recognize this exhibit?

3 A This is an overhead picture of the area that got  
4 robbed and also the apartments directly behind the Chuck  
5 E. Cheese.

6 Q Is this a fair and accurate representation of that  
7 area?

8 A Yes.

9 MR. MARCHANT: The State would move Exhibit Number 2  
10 into evidence.

11 THE COURT: Okay. Without objection.

12 (State's Exhibit Number 2 was filed.)

13 MR. MARCHANT: Permission to publish?

14 THE COURT: Yes, sir.

15 MR. MARCHANT: Officer Jones, if you would step down  
16 for me.

17 THE COURT: Since you're not at the microphone,  
18 Officer, speak up so everybody in the courtroom can hear  
19 you.

20 THE WITNESS: Okay.

21 BY MR. MARCHANT:

22 Q Would you please point out for the jury where the  
23 Chuck E Cheese is located?

24 A It's located right here.

25 Q Okay. And do you know what those buildings behind

1 it represent?

2 A Yes, sir.

3 Q What is that?

4 A These would be the from here  
5 all the way to the back side here.

6 Q Okay. Would you please point out to the jury where  
7 the entrance for the is?

8 A It's got an entrance that comes in off of  
9 and then comes right here. It's the only entrance  
10 in and out of the apartments.

11 Q Okay. Now, when you say the only entrance, what do  
12 you mean?

13 A It's the only actual entrance for vehicles to come  
14 in and out.

15 Q Okay. Do you recall back in 2001 whether or not  
16 there was a fence in between the back of the Chuck E  
17 Cheese and the apartment complex?

18 A No, there is no fence.

19 Q Now, would you please tell the jury specifically  
20 where you responded to and parked your vehicle that  
21 evening?

22 A That evening I came in actually on the backside up  
23 to here. Instead of coming in front of the  
24 Chuck E Cheese, there's an actual back way to get here.  
25 I pulled in, stopped right here at the very front

1 entrance and waited for other units to respond. And when  
2 they arrived, actually got out of the car and walked up  
3 to the -- about right here in this corner.

4 Q Okay. Please explain to the jury what I'm handing  
5 to you?

6 A It's a stick note with my name on it.

7 Q Okay. Would you please place that where you parked  
8 your vehicle that evening? Okay. Now, as soon as you  
9 parked your vehicle, what did you do?

10 A I got out of my vehicle and actually walked over to  
11 where I could actually observe cars coming in and out,  
12 trying to see if anybody was out on foot, maybe if I saw  
13 the suspect, or any type of foot traffic or car traffic.

14 Q Okay. And do you recall specifically what time you  
15 arrived at the apartment complex?

16 A I want to say it was shortly right after the call  
17 came out. I mean, it was right after one o'clock, 1:03,  
18 1:04, something like that, and I arrived on scene  
19 probably a minute after the call came out.

20 Q Now, when you got out and started walking, what is  
21 it you're looking for?

22 A At the time they had said -- I mean, I'm looking for  
23 any possible person that might have been that suspect,  
24 any person that type of night, anybody running from the  
25 area, the car specifically we were looking for that

1 night, basically anything at one o'clock in the morning  
2 that might draw my attention to that.

3 Q Okay. If you want you can have a seat back there in  
4 the witness chair. Now, you mentioned that you would be  
5 looking for anything that would draw your attention. Did  
6 you see anybody in the period of time that you were  
7 outside of the vehicle that matched the description that  
8 was given to you?

9 A Shortly after that there were three cars that  
10 actually left as I was standing there. The first car I  
11 believe was a white female that worked for Channel 4  
12 news. The second car was a white male in a yellow taxi  
13 that left the apartments. And the third car was a white  
14 Ford Taurus that came through there that I was not  
15 actually able to stop, drove past me at that time.

16 Q Okay. So did you stop the first two cars?

17 A The first two I did not.

18 Q Okay. How is it that you know one of the vehicles  
19 was a News 4 vehicle?

20 A I believe it was actually marked. I think it was an  
21 SUV that was marked.

22 Q Okay. In your short time, after you've responded to  
23 the scene, you only saw three vehicles?

24 A Yes, sir..

25 Q Did you see anybody walking throughout the complex

1 that matched the description you were given?

2 A No.

3 Q As soon as you saw the third vehicle, which was a  
4 white Taurus, what did you do?

5 A I tried to get on the radio to let the other  
6 officers who were actually on the scene then know that  
7 there was a white Ford Taurus leaving the parking lot and  
8 was headed towards the entrance, that was trying to get  
9 out of the entrance onto .

10 Q Do you know whether or not that white Taurus was  
11 stopped?

12 A Yes.

13 Q Do you know who it was stopped by?

14 A It was stopped by at the time Corporal Thompson,  
15 which is Lieutenant Thompson.

16 Q Okay. Did you then go down to where he had the  
17 vehicle stopped?

18 A Yeah.

19 Q Why did you do that?

20 A Because of high risk that an armed robbery had just  
21 occurred and to assist, just for safety issues, to make  
22 sure.

23 Q To make sure I'm clear, you did or did not see who  
24 was in the vehicle when it passed you?

25 A I did not see at the time when it passed by me.

1 Q Okay. When you got down to the vehicle, what did  
2 you do?

3 A When I got to the vehicle basically helped the other  
4 officers over there in getting -- they had already got  
5 Mr. Watkins out of the car, and assisted them, basically  
6 just doing some of the paperwork. He was already out.  
7 The lady that was also in the car was actually placed in  
8 the back of my car for a time being to keep her separated  
9 away from him until we could figure with investigation  
10 what all was going on. Once other units arrived  
11 eventually she was transported along with him to the law  
12 enforcement center, and I actually stood by with the car  
13 to have the car towed and processed.

14 Q What's the purpose of separating suspects?

15 A Basically so that they can't get the story going  
16 together. Don't want them collaborating any type of  
17 story. We generally try to separate people and that way  
18 they can't get the same story going.

19 Q Now, did you have any conversation with the woman  
20 that you had placed in the rear of your vehicle?

21 A I did not.

22 Q Following that, and once the duty wrecker came and  
23 picked up the vehicle, did you have any other involvement  
24 in this case?

25 A No, sir.

1 MR. MARCHANT: I have no further questions. Please  
2 answer any questions Mr. Watkins may have.

3 CROSS-EXAMINATION

4 BY MR. WATKINS:

5 Q Excuse me one second. How you doing? Good  
6 afternoon, sir.

7 A Good afternoon.

8 Q I'd like to ask you a couple questions. Were  
9 there -- did you notice any tag numbers on the car? Were  
10 there any tag numbers given over dispatch in the 911 call  
11 that you received about this white Ford Taurus?

12 A I believe that they had said on the -- across the  
13 radio to us that it possibly had a paper tag. Didn't say  
14 it had a tag, it had some type of paper tag.

15 Q And this -- was this in reference to a car seen at  
16 Chuck E Cheese, or was this in reference to an officer  
17 seeing -- seeing the car in the parking lot?

18 A This was in reference to people on the scene who had  
19 said that previous nights before, before this had  
20 happened, two or three nights before about the same time  
21 at closing, they had seen that same vehicle -- or they  
22 had seen a white Ford Taurus with a paper tag circling  
23 the parking lot and didn't think anything about it at the  
24 time, but after this had happened they thought that this  
25 might be the same vehicle. This person may have gotten

1 into that vehicle.

2 Q Do you know which witness that were that said this?

3 A No, I do not.

4 Q Okay. Do you know whether or not there was any --  
5 this information provided in any of the witnesses'  
6 statement about a paper tag in reference to this car?

7 A I'm sorry.

8 Q The statements or -- that the witnesses gave, are  
9 you aware of there -- did any of them put any statements  
10 in their statements about a tag being on the car?

11 A I do not know.

12 Q Okay. On the night that you took a suspect out of  
13 your car, you found a five dollar bill, was it a five  
14 dollar bill?

15 A I believe so.

16 Q What happened to that five dollar bill?

17 A It was put with the other money in property and  
18 evidence to be returned to the store eventually.

19 Q Would you say that money was taken out my pocket?  
20 The five dollar bill that you got, that was taken from  
21 the back of your car, was it taken out of my pocket?

22 A No, not that I'm aware of.

23 Q So there's no connection between that five dollar  
24 bill and me?

25 A I don't know. But the back of my car was completely

1 clean. There was no money in the back seat of my car.  
2 When the lady that was in the car with you was placed  
3 into the back of my car, after we got her out of my car,  
4 I searched my car and there was a five dollar bill hidden  
5 underneath the seat.

6 Q All right. Did -- at any time did you go towards  
7 the white Ford Taurus? Did you have anything to do with  
8 the white Ford Taurus that I was stopped in?

9 A I stood by while the pictures were taken of the  
10 money that was in it and while it was processed --  
11 basically while they took the pictures earlier and then  
12 after they towed it, yeah.

13 Q Did you ever separate the money or count any of the  
14 money that was in the car?

15 A I don't remember if I actually did or not.

16 Q Well, I have a copy of your statement here. I'd  
17 like -- can I introduce this?

18 THE COURT: No.

19 MR. WATKINS: Well ---

20 THE COURT: You can't ask me questions, Mr. Watkins.  
21 You can just -- it's up to Mr. Marchant.

22 BY MR. WATKINS:

23 Q I'll -- the statement I want you to read right here  
24 where it says -- read this part of this statement right  
25 here.

1 A What part?

2 Q All of it right here. Start here.

3 A Okay. My report from that night says, after an  
4 amount of money was found in the car by Officer Thompson,  
5 the male and female were removed from the Taurus. The  
6 male was placed in Officer Thompson's car, while the  
7 female was placed in the back of mine. She was later  
8 taken out and placed in Officer Ellis' car so that both  
9 suspects could be taken to the detective division at the  
10 law enforcement center. While I stood by for the car to  
11 be towed the only thing that I heard the female subject  
12 say while I was writing the report was, I don't  
13 understand why I'm here, I'm not the one that did  
14 anything. After ID took pictures of the car and  
15 interior, including money laying on the seat, I separated  
16 and counted the money. There were 20 five dollars bills,  
17 and 150 dollar bills laying on the passenger front seat.  
18 Also in the car was a black Timlin hat, a black stocking  
19 cap, and two blue small talk about radios that were all  
20 taken to the detective division after Smith and Childs  
21 towed the vehicle away. After the female was removed  
22 from my car I found a five dollar bill showed up behind  
23 the rear seat that was not there before she was.

24 Q Okay. Thank you. Okay. Let me -- okay. Right  
25 here, do you know what this is right here?

1 A Yes, sir.

2 Q What would this be? Can you tell what this would  
3 be?

4 THE COURT: Wait just a second. Let me see what you  
5 got. Okay. Y'all step out just for one minute.

6 (The jury exited the courtroom at 9:55 a.m.)

7 THE COURT: I don't want anything to come in where I  
8 have to declare a mistrial. A mistrial is a drastic  
9 remedy. Now, Mr. Watkins, again, I don't want to be  
10 sending the jury in and out. You asked him what this  
11 was. He doesn't know what your questions are going to  
12 be. He could -- he could have easily responded and said  
13 this is my testimony in your first trial, and that would  
14 have let the jury know you've already been tried. And  
15 you know, they're going to wonder what that was and what  
16 we're doing here. We're not supposed to go into your  
17 first trial. This is supposed to be your trial here  
18 today. And it's questions like this that I was concerned  
19 about.

20 Now, you can use a prior statement to impeach him if  
21 he testifies under oath something contrary to what he  
22 said previously. And I'm just anticipating. I don't  
23 know what you -- but you asked what this was, and this is  
24 his testimony from the previous trial.

25 MR. WATKINS: I was going to try to get him to where

1 it showed ---

2 THE COURT: No, but you asked him what this was, and  
3 he's going to tell you that's my testimony from the  
4 previous trial. Then what we going to do about them  
5 knowing that you had already been tried?

6 MR. WATKINS: Yes, sir.

7 THE COURT: You go talk to Mr. Henry about that and  
8 then I'm going -- we can't be interrupting this for you  
9 to be talking to him.

10 MR. WATKINS: Okay. I understand.

11 (Mr. Watkins talked to Mr. Henry.)

12 THE COURT: If they're ready bring them back in.

13 (The jury entered the courtroom at 9:59 a.m.)

14 THE COURT: All right. Mr. Watkins, the bailiff  
15 has informed -- I mean, the jury has informed the  
16 bailiff that you need to talk louder, that they can't  
17 hear you.

18 MR. WATKINS: Okay. I'm sorry.

19 BY MR. WATKINS:

20 Q Officer Jones, this is a copy of the Greenville  
21 police report tow sheet. Can you tell me if this is  
22 correct where the -- right there about the units that  
23 y'all were in that night?

24 A Yeah, that's several people that were there.

25 Q I mean, the unit, the car that you was in, the

1 unit?

2 A Not the car number, that's our unit number. That's  
3 our actual unit number ourselves. We have actual  
4 separate numbers that's on the cars.

5 Q So is that your unit number?

6 A At the time it was, 208.

7 Q No, see where it says right here, it says Deputy  
8 Jones, 12-- 212?

9 A Yeah, that would be -- they were just reversed  
10 there.

11 Q Okay.

12 A Somebody else did that.

13 Q All right. Thank you. Okay. But you were not the  
14 officer that stopped me in the white Ford Taurus?

15 A No.

16 Q You did not request that digital images be taken of  
17 the car once it was stopped by forensic officer S. E.  
18 Pratt?

19 A No.

20 Q Okay. So this would be -- right here this is -- all  
21 right. Okay. So you did not request them digital  
22 imagery -- you did not request digital images of the car  
23 to be taken? You did not request images of this car to  
24 be taken by S. E. Pratt, and you wasn't the investigating  
25 officer on the scene?

1 A Not that I'm aware of, no.

2 MR. WATKINS: Okay. Thank you no more questions.

3 THE COURT: Mr. Marchant?

4 MR. MARCHANT: Just one, Your Honor.

5 REDIRECT-EXAMINATION

6 BY MR. MARCHANT:

7 Q Do you recall the name of the person that you had  
8 secured in your vehicle?

9 A Off the top of my head I do not, I'm sorry.

10 Q Do you recall of the sex of that person?

11 A It was a black female.

12 MR. MARCHANT: Thank you. No further questions.

13 Ask that this witness be excused.

14 THE COURT: Thank you, sir. Mr. Marchant?

15 MR. MARCHANT: The State calls Marcus Scarabino.

16 THE CLERK: Please pause at the end of the bench.

17 Please place your left hand on the Bible and please raise  
18 your right hand.

19 MARCUS SCARABINO

20 Having been first duly sworn, testified as follows:

21 THE CLERK: Thank you. Please be seated. Sir,  
22 please state your full name for the record and would you  
23 please spell your last name.

24 THE WITNESS: Marcus Scarabino, S-c-a-r-a-b-i-n-o.

25 THE CLERK: Thank you.

DIRECT EXAMINATION

1

2 BY MR. MARCHANT:

2

3

Q Good morning, Mr. Scarabino. Scarabino, excuse me.

4

Where are you employed?

5

A Chuck E Cheese, on Congaree Road.

6

Q Are you presently employed there?

7

A Yes.

8

Q Were you employed there in 2001?

9

A Yes.

10

Q In December of 2001?

11

A Yes.

12

Q What were your duties in December of 2001?

13

A My title was general manager.

14

Q And what are the general manager's responsibilities?

15

A It includes all of the operations of the store,

16

every aspect of everything we do. We oversee the entire

17

operation.

18

Q Do you have a supervisor or someone you report to at

19

the store?

20

A Absolutely. Chuck E Cheese is a company, so we have

21

a district manager, regional managers, on up.

22

Q Okay. And on December the 19th of 2001, were you

23

working that evening?

24

A Yes.

25

Q Okay. And what time would the store normally close

1 during the week?

2 A We normally close at 10 o'clock during the week, and  
3 eleven o'clock on Friday and Saturday nights.

4 Q So this being a -- December the 19th, a Tuesday,  
5 being 18th, this incident happened on -- right after  
6 midnight, the store would have closed at 10:00?

7 A Correct.

8 Q And did y'all have any special responsibilities that  
9 required to you stay late that evening?

10 A We were having a visit from some higher ups, and we  
11 were doing extra little cleaning things, touch up  
12 painting, just little things just to make things look  
13 really good for the visit.

14 Q Okay. How many people were with you during this  
15 cleaning?

16 A Just for the cleaning part, not counting people that  
17 would have been there, just for regular running of the  
18 store, there were five people.

19 Q Okay. Do you recall which five people were there  
20 with you?

21 A I'll try. Let's see. Jimmy, Jeannie, Matt, I'm  
22 missing a couple.

23 Q Would Krystyna Reilly been one of those people?

24 A Yes.

25 Q Okay. Now, did you assign each one of those people

1 specific duties that evening?

2 A Honestly, I don't remember, but that would be  
3 something I would do.

4 Q Now, do you recall how long y'all stayed after hours  
5 that night participating in cleaning?

6 A Quite a while. I don't remember the exact time, but  
7 we were there past one o'clock obviously.

8 Q Did you have any outside services that you brought  
9 in to assist in the cleaning?

10 A We had carpet cleaners that came in that night.

11 Q Okay. Is this a routine thing with the carpet  
12 cleaners?

13 A Typically we do carpet cleaning once a month. And  
14 in this type of situation we typically would contact our  
15 carpet cleaners and say, you know, we're having an  
16 inspection, could you maybe come on this night so it will  
17 look real good, you know, the day after, or you know a  
18 couple days after.

19 Q Okay. Do you recall how many carpet cleaners were  
20 there that evening?

21 A I really don't remember.

22 Q Do you recall what time they showed up to clean?

23 A I'm not sure when they started, no.

24 Q Okay. Do you recall when they left?

25 A They left sometime when we were eating. We had

1 stopped to take a break and were eating, and they left  
2 sometime during that time.

3 Q Okay. Show you what's been marked as State's Number  
4 3, ask if you recognize this document?

5 A This is a diagram of the ---

6 Q Wait, do you recognize it?

7 A Yes.

8 Q And how is it that you recognize that?

9 A Because it's -- I'm very familiar with it. It's  
10 Chuck E Cheese's -- the front of the house at Chuck E  
11 Cheese.

12 Q Okay. And is that accurate depiction of the layout  
13 of Chuck E Cheese in December, 2001?

14 A Yes, it is.

15 MR. MARCHANT: Okay. I would move State Number 3  
16 into evidence.

17 THE COURT: Okay. Let Mr. Watkins see it.

18 MR. MARCHANT: I showed it to him before I  
19 approached the witness.

20 THE COURT: Okay. Without objection, it's in  
21 evidence. It can be marked. Is it marked?

22 MR. MARCHANT: It's marked, Your Honor.

23 THE COURT: Okay.

24 (State's Exhibit Number 3 was filed.)

25 BY MR. MARCHANT:

1 Q Well, once the carpet cleaners left, you stated you  
2 were eating dinner?

3 A Yes.

4 Q Correct? And do you recall who went and got you  
5 diner?

6 A Jeannie and Krysti, I believe.

7 Q Do you recall what you were having?

8 A I believe we had Steak and Shake. There's not a lot  
9 of choices that late at night.

10 Q So now, once they got back with the dinner, did  
11 y'all sit down to eat together, or were you eating as you  
12 were cleaning?

13 A No, we sat down. We all stopped and sat down  
14 together.

15 Q Okay. Did you sit down at one table or different  
16 tables?

17 A I believe we sat down at one table with like a chair  
18 at the end so we could all fit, yes.

19 Q Okay. Do you recall which table you sat at?

20 A It would be the table that would have been facing  
21 this half of the wall.

22 Q Okay. Is that table depicted on that diagram?

23 A Yes.

24 Q Okay. I would ask that you make a mark next to that  
25 table that you were sitting at. Now, do you recall

1 specifically where you were sitting at that table?

2 A I don't know specifically other than I was towards  
3 the wall as opposed to my back being towards it. I was  
4 facing that direction. I don't know if I was on the end  
5 of the booth, or in the chair at the end, or ---

6 Q Okay. Well. If you're sitting at the end of the  
7 booth, what are you staring at ahead of you?

8 A Mostly the hallway, the hall area, across from that  
9 is the wall and beverage area.

10 Q Okay. And behind the wall, beverage area, what's in  
11 the room behind that?

12 A That goes into the kitchen.

13 Q Okay. So if you're -- is it fair to say you were  
14 staring at the kitchen?

15 A The wall, yeah.

16 Q Okay. To your right is that the front or the rear  
17 of the building?

18 A To my right would have been the front.

19 Q Okay. To the left would have been the back?

20 A Correct.

21 Q Okay. How many entrances are there in the rear of  
22 the building?

23 A In the front of the house there's one.

24 Q In the front of the store?

25 A No, no. Well, without going into the kitchen

1 there's one.

2 Q Okay. And where is that entrance located?

3 A In -- keep going straight down the hallway.

4 Q Okay. If you would make an X, on the mark, place an  
5 X on the document where the rear entrance to the building  
6 is. All right. Now, so there's an exit -- entrance/exit  
7 at the rear of the building. Is that available for  
8 public use?

9 A Not really. It's got an emergency bar on it, so I  
10 mean it could be utilized in case of an emergency to exit  
11 the building, but it's not an in and out door.

12 Q Is it a service door?

13 A It can be.

14 Q That evening, was there someone that had access to  
15 that door, other than the employees that were working  
16 with you?

17 A The carpet cleaners were using that door.

18 Q Now, do you recall when they left whether or not  
19 they shut the door?

20 A I do not.

21 Q Now, as you're sitting down to have dinner, what if  
22 anything did you notice was out of the ordinary?

23 A When we were sitting down to eat, you know, we were  
24 just relaxing, being very casual, because we had been  
25 kind of working hard, a lot of things we were doing were

1 scrubbing and cleaning, so it's nice to have a little  
2 break. So we were just kind of relaxing. And then  
3 somebody walked up the back hallway and was approaching  
4 us.

5 Q Do you recall -- or do you know where that person  
6 came from?

7 A I wouldn't know 100 percent, but they would have had  
8 to have come from either a rest room or that back door.

9 Q Okay. To your knowledge were the other doors locked  
10 that evening?

11 A Other doors, you're referring to the front doors?

12 Q The front door of the restaurant?

13 A I don't remember.

14 Q But it's your testimony this subject came from  
15 either the rest rooms or the back hallway?

16 A Right, from my left.

17 Q Okay. What if anything did you notice about this  
18 person that was walking in?

19 A That basically -- I mean, the first thing you notice  
20 is it just seems very out of place. You know, why is  
21 somebody else in the building. And then as the person  
22 gets closer you notice that it's not, you know, a joke or  
23 anything, that this person -- they were dressed and  
24 carrying a handgun, so I mean, you basically get, you  
25 know, the chills, you start to realize something is

1 wrong.

2 Q How soon -- or how far away were they when you  
3 realized this was not a joke?

4 A Maybe 10 feet.

5 Q And what if anything was said by that individual to  
6 let you know it was not a joke?

7 A I don't remember the exact wording.

8 Q Is there anything that would refresh your memory  
9 about what he may have said?

10 A I believe we have police statements from the night.

11 Q Okay.

12 A We were asked to write this stuff down.

13 Q Did you write this information down immediately  
14 after this event?

15 A Yes.

16 Q And was the information fresh in your mind?

17 A At that time.

18 Q Okay. I'd like to see if you recognize that?  
19 Review it and let me know when you've finished reviewing  
20 it.

21 A This is the statement I gave to the police officers  
22 that night.

23 Q Okay. After reviewing that is your memory  
24 refreshed? And what if anything did the person say to  
25 you?

1 A He asked us where the money was.

2 Q What was your response to him?

3 A Explained that it was in -- you know, it would be in  
4 the office in the safe.

5 Q Now, you stated he asked, why are you saying it's a  
6 he?

7 A Just from general build.

8 Q Okay. Please describe his build to the jury?

9 A You know, you're looking you notice a chest as  
10 opposed to, you know, more female like features.

11 Q Was there anything about the way he talked?

12 A His voice would be deeper than you would -- you  
13 know, than a female's would.

14 Q Okay. And how was this person dressed?

15 A I really don't remember. From the statement I wrote  
16 on that night, dark clothes, with a hooded jacket, with a  
17 ski mask.

18 Q Okay. When you say ski mask, can you explain to the  
19 jury what you mean by ski mask?

20 A An article of clothing that was covering your face  
21 with the exception of your eyes and mouth.

22 Q Okay. Do you recall what color it was?

23 A I wrote black.

24 Q Now, after he approached and talked about the money,  
25 where did y'all go?

1 A We went to the office.

2 Q Okay. And what's in the office?

3 A That's where the safe would be.

4 Q Okay. If you would write an S on this document  
5 depicting the location of the safe for me, please, sir.

6 Okay. Can you please describe for the jury approximately  
7 how large this office is?

8 A About the size where I'm at right now, just -- yeah,  
9 not much bigger.

10 Q Okay. Who has access to the office?

11 A The office door is always kept locked and there's --  
12 the key is for managers, so managers.

13 Q Who has access to the safe?

14 A The managers.

15 Q Okay. Do you recall how many managers were working  
16 that evening?

17 A At that time I believe myself and Jimmy would have  
18 been the manager.

19 Q Okay. And was Jimmy working with you this evening?

20 A Yes.

21 Q Okay. So he was there when this whole thing  
22 happened?

23 A Yes.

24 Q Okay. When you got back to the office, what did you  
25 do?

1 A We all kind of piled into the office and then just  
2 proceeded to give money to the person.

3 Q Now, where did the money come from that you were  
4 handing over to the robber?

5 A It was in a safe, and more specifically it was in  
6 the drawer. We call it a change drawer. We organize our  
7 money so that it's easily accessible. We have a specific  
8 drawer that we would take rolled -- rolled, banded money  
9 and put in certain patterns so that it's very organized.

10 Q Okay. Now, when you say bound money explain to me  
11 what you mean?

12 A Because we are somewhat of a vending business too,  
13 people are putting money in our bill changers, and so we  
14 have to pull that money out, and then we have to take  
15 that money. And what we do is recirculate it and then we  
16 will count it. In the example of like fives, we count 20  
17 fives, or \$100, and we'll wrap it with a strap that says  
18 100. We count 50 ones and wrap it with a strap that says  
19 50. And then typically we would take that money and put  
20 it in the safe so that we would then have fives and ones  
21 when we needed change. And we would replace that with  
22 larger bills, and we would do deposits and take the  
23 larger bills to the bank and we would keep our smaller  
24 bills that we've wrapped and bound in that drawer. Sort  
25 of organized.

1 Q Typically on any given occasion how much money is in  
2 the safe?

3 A Two thousand five hundred.

4 Q Okay. Is that the way you balance it at the end of  
5 every night?

6 A That's what we call the safe fund. And it should be  
7 always 2,500. It may be, you know, more ones or more  
8 fives, or more quarters, or more nickels, but it's really  
9 just an operating safe fund so it shouldn't ever change.

10 Q Do you have any occasion to keep petty cash of  
11 miscellaneous money in there aside from the 2500?

12 A We are not supposed to.

13 Q Now, when you were standing at this safe door, where  
14 was the subject?

15 A Behind me. I can't really remember if it was more  
16 like this way or more like this way, but I was -- the  
17 doors are pretty large and pretty heavy, and I was kind  
18 of edging in there enough to, you know, get stuff, and so  
19 I would have to turn to hand it.

20 Q Okay. And when you were handing him the money,  
21 where was he placing it?

22 A In a pocket, a pouch type thing.

23 Q In his clothing?

24 A Yes.

25 Q Okay. Did he have a bag, or a duffel bag, or

1 anything like that?

2 A No.

3 Q A bank bag?

4 A Not that I recall, no.

5 Q Okay. Now, what if anything did you notice about  
6 his hands when he was stuffing the money into his  
7 pockets?

8 A There was no like gloves, there was no covering.

9 Q Okay. And do you recall what color his hands were?

10 A They were black.

11 Q Did you give the police information about how tall  
12 you felt this robber was?

13 A I believe I wrote that in my statement.

14 Q Do you recall what it says?

15 A No. He appeared five ten.

16 Q How much did he appear to you to weigh?

17 A 180, 190.

18 Q Okay. Now, what opportunity did you have to see  
19 this gun that he was carrying?

20 A We saw -- you know, any time we were looking  
21 directly toward that area. It was visible most of the  
22 time. It was visible all the time.

23 Q Do you recall if he ever put the gun up when he was  
24 stuffing money in his pockets?

25 A I don't.

1 Q Now, do you recall what the gun looked like? Was it  
2 big or small?

3 A Small.

4 Q Was it light or dark?

5 A I would say metallic.

6 Q Okay. Show your statement one more time.

7 A I wrote that it was silvery and old looking.

8 Q Do you recall whether -- well, do you know the  
9 difference between a revolver and an automatic?

10 A Not really.

11 Q Okay.

12 A I know a revolver has a little western look to it.

13 Q Did it have a western like to it?

14 A No.

15 Q Okay. Now, you stated that there were five of you  
16 working that evening, is that correct?

17 A That's correct.

18 Q Jimmy Skelton, Jeannie Pireda, Matthew McCoy, and  
19 Krystyna Reilly and yourself?

20 A Yes.

21 Q Okay. Ones ---

22 MR. WATKINS: I object, Your Honor. He never stated  
23 that. He didn't recall -- he only named three. He gave  
24 the other witness' name.

25 THE COURT: Okay. I would sustain the objection as

1 to leading. You can ask him ---

2 MR. MARCHANT: Very good.

3 BY MR. MARCHANT:

4 Q The people that you had working there that evening,  
5 there were five of you, correct?

6 A Correct.

7 Q Okay. After this incident took place, if you know,  
8 who called 911?

9 A I don't remember.

10 Q Okay. Do you know if you called 911?

11 A I did not.

12 Q So you have no idea what was relayed to the 911  
13 operator?

14 A No.

15 Q Okay. The information that you provided in your  
16 statement, is it substantially the same as to what you  
17 gave to the officer that responded that evening, the  
18 officer that showed up at Chuck E Cheese?

19 A I'm not sure what you mean, honestly.

20 Q Okay. Did you tell the officer that showed up, did  
21 you tell them anything different than what's written in  
22 your statement?

23 A No.

24 Q Okay. Now, after the 911 call was made and the  
25 officer showed up at your restaurant, did you make

1 available to him everyone that was there that evening?

2 A No.

3 Q Okay. And who did you not make available to him?

4 A Krystyna Reilly.

5 Q And why is it that you did not make her available?

6 A She was in some type of trouble with running away  
7 from home type of thing.

8 Q And once this whole incident happened, how did she  
9 act if you remember?

10 A I don't remember.

11 Q Okay. And did you tell her to go somewhere or  
12 did -- answer that first.

13 A I really don't remember that.

14 Q Well, did the four of you, not including Krystyna,  
15 talk about what you were going to tell the police?

16 A In regards to her you mean?

17 Q Yes.

18 A I don't remember.

19 Q Okay. Had you ever made her known to law  
20 enforcement?

21 A I have not.

22 Q Did you give law enforcement an exact count of the  
23 money that was taken that evening?

24 A Yes, they did ask us to do that.

25 Q And do you recall how much money was taken?

1 A I don't. I believe it's in my statement. \$250 in  
2 ones, \$300 in fives, \$110 in quarters, \$55 in dimes, and  
3 about \$12 in nickels.

4 Q Okay. Let's talk about that change for a minute.  
5 How is it that you come in possession of quarters?

6 A Quarters come through out bill changers. People put  
7 them in our games. We have to pull them out of games and  
8 the bill changers, and then we just, like the ones and  
9 fives, have to roll them and put them in \$10 rolled  
10 wrappers.

11 Q You roll them yourselves?

12 A Yes.

13 Q Do you have an occasion to get bank rolled quarters?

14 A Yes.

15 Q Okay. When you roll them yourselves do you mark the  
16 date and time that they've been rolled and they belong to  
17 the Chuck E Cheese?

18 A No.

19 Q Is there any identifying marks you place on any of  
20 the change?

21 A No.

22 Q Okay. Do you place any identifying marks on the  
23 wrapped dollars bills?

24 A No.

25 MR. MARCHANT: Okay. I have no further questions.

1 Please answer any questions Mr. Watkins may have.

2 CROSS-EXAMINATION

3 BY MR. WATKINS:

4 Q How you doing, sir?

5 A Good.

6 Q My name is Robert Watkins. I have a copy of your  
7 statement here. Can you tell me which statement was  
8 given first?

9 A I don't know. I don't know if -- is there two  
10 statements or just -- I mean, I don't know.

11 Q You have one -- what's the age you got on this  
12 statement right here?

13 A Thirty-three.

14 Q And what's the age you got on this statement right  
15 here?

16 A Thirty-three.

17 Q No, right here.

18 A That's -- that's just poor penmanship.

19 Q Okay. Is this your signature?

20 A Yes, it is.

21 Q Both signatures on the statement?

22 A Yes.

23 Q Okay. Okay. Did you give these statements at  
24 the -- where did you give these statement at?

25 A At Chuck E Cheese.

1 Q Did you ever give a statement down at the police  
2 station?

3 A I don't remember.

4 Q You don't remember? Okay. You said -- let me see.  
5 Well, the person that committed the crime, would he be  
6 six feet tall?

7 A You know, I don't really remember honestly.

8 Q Okay. What did he weigh, 100- -- 220 pounds?

9 A No, I don't think he was that big.

10 Q How much do you think I weigh?

11 MR. MARCHANT: Your Honor, I'm going to object,  
12 relevance.

13 THE COURT: I would overrule the objection. How  
14 much do you think he weighs?

15 THE WITNESS: Probably at least 200.

16 BY MR. WATKINS:

17 Q Okay. How tall do you think I am?

18 A Five eleven. I'm not a very good judge of that,  
19 so ---

20 Q The jury can decide. All right. About what time  
21 did you give these statements to law enforcement?

22 A I'm not 100 percent sure, but it was, you know,  
23 between the time that the police arrived and then the  
24 time it was all wrapped up, which we were there quite a  
25 while into the night.

1 Q Okay. You gave the denominations of the money that  
2 you handed to the person that committed the robbery,  
3 which were come up to, if you add it up, to \$727. Can  
4 you explain why the difference to why you give the  
5 denominations to the -- that you say you handed the  
6 person, but said now \$182 was missing, but when you add  
7 it up the person -- the denominations only came up to  
8 \$727.

9 A Sure. There was so much money that was rolled in  
10 coinage. There was so much money that was actually  
11 banded in hundred or fifty strips. After that there's  
12 extra money it might be we didn't have 50 ones, we only  
13 had 40, or you know, anything like that. So we always  
14 have a stack of extra money that's -- it's not at the  
15 point where we would want to band it or whatnot. So  
16 there is other money there. That basically makes up the  
17 difference between what is ready to go for usable change  
18 and what is the difference for the 2500.

19 Q Okay. What I'm saying is you have an exact amount  
20 that you say was taken, and then you recall saying this  
21 is what you had handed him -- exactly what you handed  
22 him. But when you add it up ---

23 A Well, that's exactly what was handed in each of  
24 those denominations, but we also handed the extra money.

25 Q Extra money. Okay.

1 A It wouldn't be an exact amount because it wouldn't  
2 be wrapped and tagged, or anything. It would just be  
3 what's left over to make up the 2500 safe fund.

4 Q Okay. At the -- when you gave -- when you gave the  
5 statement -- right when the officer came and asked you  
6 for a statement, when did you count the money to know  
7 what was missing, before or after you gave the statement?

8 A I don't remember that.

9 Q You have to count the money before you give the  
10 officer the statement?

11 A I would have to count the safe and take the  
12 difference from 2500 to find out what was left in  
13 miscellaneous bills.

14 Q Before they asked you what was missing?

15 A Well, I would imagine they would. Again, I don't  
16 really remember, but I would imagine they would have to  
17 ask me what was missing, and I would be able to tell them  
18 the banded amounts just from memory, after which I would  
19 have to then subtract the difference of 2500 to come up  
20 with what was left.

21 Q Okay. When you were handing the person that  
22 committed the -- the crime, did you see the gun at the  
23 time that you were handing the person that money?

24 A I don't remember.

25 Q You're saying the person approached you, did you see

1 the side of the gun when the person was approaching you?

2 A No, it was being -- at that point it was being kind  
3 of held in the hand and kind of covered which just the  
4 nozzle.

5 Q So you never seen -- you can say -- you can't tell  
6 the jury whether or nor you seen the handle either then?

7 A I don't believe I did.

8 Q So the only thing you possibly could have seen was  
9 the edge of the barrel?

10 A The barrel, yes.

11 Q How many holes did this gun have in the barrel?

12 A I don't remember.

13 Q You don't remember. So how do you actually know it  
14 was a gun?

15 A You just do. I mean, it's -- you can ---

16 Q You assume?

17 A No, it's not that you assume. You -- you can tell.  
18 I mean ---

19 Q Well, can I ask -- can I just say you assume based  
20 upon the way the person was dressed that it was a gun?

21 A No, no, I was certain it was a gun.

22 Q And by what details -- I'm asking you by what  
23 details did you know it was a gun? Could it have been a  
24 pipe or ---

25 A I'm not a gun expert, but I have seen guns, and it

1 was a gun.

2 Q Okay. Were you ever taken down to -- when you went  
3 down to the police station, were you ever at any time  
4 shown a gun, or a mask, or a coat, or anything at the  
5 police station?

6 A I don't remember.

7 Q And you think you was intimidated by the person?

8 A Intimated, I mean, you're scared.

9 Q Did you ever see where that person went when he  
10 exited the building?

11 A No.

12 Q Did you ever tell law enforcement that he went  
13 towards the apartment complex behind there, or towards  
14 385, or that you seen him get in a white Ford Taurus?  
15 Did you ever tell the police any of that?

16 A No.

17 Q Did you ever see a white Ford Taurus that seemed  
18 suspicious prior to that crime being committed?

19 A Honestly, I don't remember the whole situation with  
20 that.

21 Q Well, this was mentioned before to you though,  
22 somewhere about a Taurus?

23 A I can't be 100 percent sure. I can't remember, you  
24 know.

25 Q Okay. Do you -- do you hand roll dimes or nickels?

1 A No.

2 Q So dimes and nickles was never been in the safe, or  
3 be a part of the evidence -- or stuff that you would hand  
4 the robber, that was hand rolled?

5 A Dimes and nickels would be in the safe, but they  
6 wouldn't be like the ones they hand roll. They would be  
7 bank type style.

8 Q Okay. So -- okay. So any dimes and nickles that's  
9 hand rolled would not be money that belonged to Chuck E  
10 Cheese?

11 A Well, banks hand roll stuff too. They just  
12 typically look a little neater.

13 Q No, I'm not asking you what banks do. I'm asking  
14 you, in Chuck E Cheese you say you don't have hand rolled  
15 your dimes and nickels. So if you handed the person that  
16 was supposed to have commit the robbery, there would be  
17 no hand rolled dimes and nickels that belonged to the  
18 Chuck E Cheese that the robber would have in his  
19 possession if he -- understand what I'm saying?

20 A No, I can just tell you that we do not hand roll our  
21 dimes. We do not hand roll our nickels.

22 Q Do you know approximately how many one dollar bills  
23 that you handed the person that committed the robbery?

24 A I wouldn't know exactly, because there's going to be  
25 an undetermined amount that would have been in the

1 miscellaneous.

2 Q Did you hand the person any miscellaneous money?

3 A Yes.

4 Q Do you know ---

5 A We emptied -- the change drawer, we emptied it  
6 straight across.

7 Q Okay. You say you have a safe -- safe deposit fund,  
8 25 -- was it 2500?

9 A Correct.

10 Q And where is that kept at?

11 A In the safe.

12 Q Is it like one bundle, or is it consistent of all  
13 the money in the safe?

14 A It's all the money in the safe.

15 Q Okay. And do you have like money that goes to the  
16 bank, a deposit that goes to the bank and stuff like  
17 that? Is that included in the safe deposit -- I mean in  
18 the safe fund?

19 A The safe fund, no.

20 Q Okay, sir. Where would the money that you handed  
21 the person, where would it come from out of the safe,  
22 what part of the safe was it?

23 A Top right hand.

24 Q Okay. All right. And looking at me right now can  
25 you say beyond a reasonable doubt identify me as the

1 person that committed this crime?

2 A I can't remember, you know, hardly anything.

3 It's -- it's been quite a long time.

4 Q I'm showing you the property and evidence sheet, the  
5 clothing that I was arrested in, that Greenville County  
6 detention center arrested me in. Can you tell me if this  
7 coat ---

8 MR. MARCHANT: Your Honor, I would object. He has  
9 no knowledge of this statement or what the statement --  
10 document represents, and he can't testify to its  
11 authenticity.

12 THE COURT: I would sustain the objection as to  
13 what's in that statement. That's not his statement.

14 BY MR. WATKINS:

15 Q Okay. It's not. Did the person that committed the  
16 robbery have on black -- black sweat pants, white tennis  
17 shoes, a yellow t-shirt, a yellow jacket with a yellow  
18 hat?

19 A No, there wasn't yellow, I mean. But again, this  
20 was a long time ago. I don't remember these things.

21 Q Well, let me show you what you said. In your  
22 statement it doesn't say anything about a yellow jacket,  
23 yellow shirt, black sweat pants, or white Nike tennis  
24 shoes?

25 A It says dark cloth with a hooded jacket, ski mask

1 that was black.

2 Q Okay. Could -- could -- let's say -- is it possible  
3 that the person could have had a scarf wrapped around  
4 here? You know, have you ever seen like on TV where they  
5 talk about gangs and stuff, how the gangs wear their  
6 scarfs around there. Is it possible it could have been a  
7 scarf and not a ski mask?

8 A It's been a long time.

9 Q So how do you know it was a mask if it's been a long  
10 time?

11 A I would say that if I wrote ski mask at that time  
12 when it was fresh in my memory, I would have been pretty  
13 capable of knowing it was a ski mask at that time.

14 Q Can you -- can you describe how the ski mask looked?

15 A A ski mask goes over your head, has holes for, you  
16 know, eyes and mouth.

17 Q So -- okay. That's the description of the ski mask  
18 that you say that person was wearing?

19 A No, that's a description of a ski mask.

20 Q Well, I'm asking you for a description of the ski  
21 mask you said the ---

22 A I can't remember specifics from that far, you know,  
23 in the past.

24 Q But if I showed you a ski mask, or a gun in  
25 reference to what you really couldn't identify that

1 night, it would more like suggest to you what -- really  
2 you didn't have an appearance to be -- you know, you  
3 didn't have an appearance to see what it is (sic). Would  
4 that suggest to you if I showed a gun, showed you a mask,  
5 now would say, well, okay, that looks like it? Would  
6 that be more reasonable?

7 A No. I would simply say that on that night we wrote  
8 statements of things that were clear in our mind. So if  
9 I wrote that it was a black ski mask I'm comfortable in  
10 saying that at that time I knew it was a black ski mask.

11 Q I ask ---

12 A Today I'm not going to remember.

13 MR. WATKINS: Okay. With the two eyes and the mouth  
14 cut out? Okay. That's all.

15 THE COURT: Okay.

16 MR. WATKINS: No further questions from him.

17 MR. MARCHANT: I don't have any further questions.  
18 Ask that the witness be excused.

19 THE COURT: All right. Thank you, sir. Any  
20 objection to him being excused, Mr. Watkins?

21 MR. WATKINS: No, sir.

22 THE COURT: All right. You may be excused or you  
23 can stay, whatever you want to do.

24 THE WITNESS: Okay.

25 THE COURT: It's up to you.

1 MR. MARCHANT: The State would call Jimmy Skelton.

2 THE CLERK: Mr. Skelton, please place your left hand  
3 on the Bible and raise your right hand.

4 JIMMY SKELTON

5 Having been first duly sworn, testified as follows:

6 THE CLERK: Thank you. Please be seated. Please  
7 state your full name for the record.

8 THE WITNESS: James Skelton.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MR. MARCHANT:

12 Q Good morning, Mr. Skelton. Back in 2001, were you  
13 employed with Chuck E Cheese?

14 A Yes, I was.

15 Q And what were your duties at that time?

16 A I was a manager.

17 Q Okay. Did you have the same managerial  
18 responsibilities as Mr. Scarabino?

19 A No, I did not. I actually worked for him.

20 Q So he was like your supervisor?

21 A Correct.

22 Q Okay. And basically what were your duties December  
23 of 2001?

24 A I was a manager, basically I was -- basically we ran  
25 shifts, you know, like we were over a group of

1 individuals that would be working during that time frame.

2 Q Okay. Do you recall the reason we're here tonight,  
3 were you working that evening?

4 A Yes.

5 Q Okay. And what were your responsibilities that  
6 evening?

7 A Well, that night I was the actual closing manager.  
8 And then following that I was staying with Marcus and the  
9 others to help clean.

10 Q Okay. And why is it that you were staying after  
11 closing time?

12 A We were anticipating a visit the following day and  
13 so we were just doing some specific detail cleaning,  
14 painting, cleaning floors, things like that.

15 Q Okay. And do you recall where you were stationed  
16 doing the cleaning that evening?

17 A I believe I was painting a -- I mean, we did several  
18 things, but I think one of the things that sticks out in  
19 my mind, I was painting a half wall by the front of the  
20 building under the windows.

21 Q Okay.

22 A It's like a wall under the window.

23 Q You said you were painting it not just cleaning it?

24 A Yeah, I believe we were painting it.

25 Q Okay. And is there a window or anything that's --

1 you were cleaning near?

2 A Pardon me?

3 Q I'm sorry.

4 A I wasn't cleaning windows.

5 Q Where you were painting, was there ---

6 A Yeah, the wall comes up, you know, I don't remember  
7 how high, but you know, only so high and the rest is  
8 windows going up to the -- towards the ceiling.

9 Q Okay. Let me show you what's been put into evidence  
10 as State's Number 3. Do you recognize this?

11 A Yes.

12 Q Okay. Would you please write your initials on here  
13 where it is you were cleaning -- excuse me, painting that  
14 evening?

15 A It was somewhere in this vicinity. I don't know --  
16 you know, it was -- your pen doesn't work.

17 Q Now, where you marked is that at the front of the  
18 building or the rear of the building?

19 A It's at the front.

20 Q Now, why you were doing this painting, did there --  
21 was there anything unusual that drew your attention  
22 outside?

23 A At some point during the night while I was over here  
24 in this area we had a white Ford Taurus pull through the  
25 front parking lot and slowed to pretty much a crawl. You

1       couldn't see anything, you know, in the windows or  
2       anything in the car, but drove through the parking lot.  
3       It looked kind of -- it wasn't out of the ordinary  
4       because we had a lot cars that would come through there,  
5       but just the way it slowed right in front of the large  
6       windows was kind of odd.

7       Q     Okay. Is this the first time you had seen a white  
8       Ford Taurus in the parking lot?

9       A     We had seen it once before previous, I don't  
10      remember when, that had drawn attention to itself just  
11      by -- I think that's why I drew such a conclusion when I  
12      saw it that night because we had seen the car driving  
13      through previously.

14      Q     Okay. Now, on any occasion that you saw this white  
15      Ford Taurus, could you tell, one, how many people were  
16      inside the vehicle?

17      A     No.

18      Q     Could you tell the sex of any individual in the  
19      vehicle?

20      A     No.

21      Q     Could you tell the race?

22      A     No.

23      Q     Okay. Now, how is the parking lot lit?

24      A     What do you mean, how is it lit?

25      Q     Well, do ---

1 A Is it lit, is that what you're asking?

2 Q Yes.

3 A Yes, it's got parking lot lights.

4 Q Okay.

5 A Not including the, you know, awning lights and the  
6 large sign on the front of the building that lights up.

7 Q So when this car drove through the front that  
8 evening, approximately how far was it from you as you're  
9 standing inside the building?

10 A I'm not sure, you know, distance wise. I'm not good  
11 with feet. But you know, there's the building, the  
12 sidewalk, and then the road. So I mean, you know, maybe  
13 from here to that banister, I'm not sure.

14 Q Now, after you saw this vehicle, did you inform  
15 anybody about that?

16 A I don't remember to be honest with you. I remember  
17 us talking about it, but I don't remember if it was that  
18 night or if it was on the previous occasion that we  
19 talked about it. I don't really remember.

20 Q Okay. After you finished your cleaning duties,  
21 painting duties, did you have an opportunity to sit down  
22 and eat that evening?

23 A Yeah, we were -- we never got to finish our stuff,  
24 but half way through we did sit down to eat, yes.

25 Q Okay. And did all of you sit at one table or were

1 you seated at different tables?

2 A Yeah, well, we sat, you know, at one table, with  
3 Marcus sitting in the chair on the end.

4 Q And which direction were you facing?

5 A In the booth I was sitting on the inside on the end,  
6 I'm not sure who was sitting to the left of me, and I was  
7 facing the back of the building towards the show room,  
8 what we call it, the rest rooms, anything towards the  
9 back of the building is what I was looking at.

10 Q Okay. When y'all were sitting down to eat, had the  
11 carpet cleaners already left?

12 A Yes.

13 Q Do you recall how long the carpet cleaners had been  
14 gone?

15 A It hadn't been long, maybe 10, 15 minutes, I'm not  
16 really sure of the exact time, but it had not been long  
17 at all.

18 Q Okay. Do you recall whether the carpet cleaners  
19 were male or female?

20 A I believe it was two males.

21 Q Do you recall whether they were white or black?

22 A I believe they were white.

23 Q Okay. Now, what brought your attention to the rear  
24 of the business as you were eating dinner?

25 A A gentleman, or at the time, you know, I didn't

1 really know who it was, came up the hallway because --  
2 you know, I actually thought it was a joke at first.

3 Q Why -- okay.

4 A Well, it was so instantaneous of the carpet cleaners  
5 leaving, you know, and it just -- it was -- I had never  
6 been -- seen somebody come up the hallway like that. So  
7 I just assumed it was somebody joking or someone just  
8 coming back from somewhere. I didn't know who it was at  
9 first, but I tried to laugh it off at first.

10 Q Okay. And what changed it from a joke to a serious  
11 nature?

12 A Well, I mean, we got more nervous, you know. I was  
13 telling them, I was like, guys, there's somebody coming  
14 up the hallway. And of course, you know, they first  
15 didn't believe me because I was laughing about it. But  
16 as the person got closer -- really once he got right up  
17 to the table and he pulled his hand out, you know, we,  
18 you know, kind of realized it wasn't a joke.

19 Q And what did you notice in his hand?

20 A The barrel of a gun.

21 Q Okay. Do you recall what color the gun was?

22 A I don't.

23 Q Okay. Do you recall how this person was dressed?

24 A I remember it -- all I remember is the -- like a  
25 jacket type, maybe pull-over type, a hoodie type shirt,

1 type thing. And I remember what looked to me like maybe  
2 the hoodie may be pulled up over his head, and he had a  
3 mask covering parts of his face.

4 Q Okay. Do you recall what color pants or shoes he  
5 was wearing?

6 A I don't.

7 Q Do you recall what color coat, or pull-over he was  
8 wearing?

9 A I just remember it was dark colored. I think he had  
10 boots on, I'm not 100 percent sure, to remember, but I  
11 just remember it was dark clothing.

12 Q Okay. Now, let's jump ahead real quick. After this  
13 whole thing happened, did you call 911 or did someone  
14 else?

15 A Yes, I did.

16 Q Okay. And once law enforcement arrived, were you  
17 asked to write a statement?

18 A Yes.

19 Q And at the time you wrote this statement was it  
20 fresh in your mind?

21 A Yes.

22 Q Okay. I'm going to show you your statement. I'd  
23 ask you to review it and tell us from that what the  
24 description of his clothing was.

25 A A dark blue coat with a hood, a black mask over his

1 face, and a gun in the palm of his hand.

2 Q Now, from your memory, can you recall whether or not  
3 you could see his eyes?

4 A I believe this part of his face was opened up, but I  
5 don't remember looking into his eyes, no.

6 Q Okay. Could you tell whether or not it was a male  
7 or female?

8 A I could tell just by the way he talked, you know, it  
9 seemed obvious that he was a male.

10 Q Okay. Could you tell what the race of the  
11 individual was?

12 A I got a glimpse of his hands though I don't really  
13 remember. I do remember seeing his hands, but I don't  
14 remember identifying him, you know, by race by looking at  
15 his hands.

16 Q Okay. So your testimony is that you believe it to  
17 be a male but you're not able to say ---

18 A Correct.

19 Q --- whether or not what race they were?

20 A Correct.

21 Q Okay. Okay. Once the robber got to the table and  
22 you realized it wasn't a joke anymore, what happened?

23 A He asked us where the money was and he had us get up  
24 in a single file line and take us to the back of the --  
25 into the kitchen where the office was.

1 Q Okay. When you say us who are you talking about?

2 A It was me, Matt, Krysti, Jeannie and Marcus.

3 Q Okay. Now, when you say Krysti, who is ---

4 A Krystyna, sorry.

5 Q Okay. And do you recall in what order you were  
6 taken to the safe?

7 A I believe Marcus was first. I don't remember how  
8 long it was. I was in the back.

9 Q Okay. And as you were walking into the safe where  
10 was the robber?

11 A Behind me.

12 Q Okay. And what was making you go into the safe?  
13 Why didn't you just stop and ---

14 A He had a gun to the back of my head.

15 Q Okay. How do you know it was a gun?

16 A I didn't really feel it. He verbally said that  
17 something about don't do anything, I've got a gun to his  
18 head, or something like that. I don't really remember  
19 exactly what he said.

20 Q Okay. And in the office where the safe is, did you  
21 observe how much money was given over?

22 A No.

23 Q Okay. Did you go back and do a count after the  
24 fact?

25 A I don't remember how we came to the conclusion. I

1 remember giving my statement as to how much money was  
2 missing. I don't remember if I went to the safe and  
3 counted it to know what the difference was because I had  
4 closed that evening, but I don't exactly remember how I  
5 came to the exact amount.

6 Q Okay. Well, in your statement did you give law  
7 enforcement the denominations of what was taken?

8 A Yes, I did.

9 Q Do you recall those denominations?

10 A I do not.

11 Q Okay.

12 A Two hundred fifty in ones, 300 in fives, 110 in  
13 quarters, 55 in dimes, \$20 in nickels and some  
14 miscellaneous money.

15 Q And why did you write miscellaneous money? What  
16 does that mean?

17 A We have a change fund that we keep in the safe that  
18 could be anywhere from 20s, 10s, 5s, 1s, and I believe  
19 that was handed over. So you know an exact knowledge of  
20 how many 1s, 5s, 10s were there, there would be no way of  
21 knowing the exact amount of each denomination.

22 Q And after that money was turned over in the office,  
23 where did y'all proceed next?

24 A I'm -- after what now?

25 Q After the money was taken from the office, where did

1 y'all go?

2 A He took us back out to the main area where we were  
3 actually eating in.

4 Q Okay. And did he make any comments to y'all at that  
5 time?

6 A I believe he asked for the girls' purses and then he  
7 told us never mind that we worked too hard for our money,  
8 and then he left.

9 Q Which direction did he exit the building?

10 A Out the back door.

11 Q Okay.

12 A The emergency exit.

13 Q Once he left out the back, do you know whether he  
14 went straight, right, left?

15 A I have no idea.

16 Q Do you recall whether or not seeing the white Taurus  
17 after?

18 A After, no.

19 Q Okay. Now, there has been mention of Krysti?

20 A Um-hm.

21 Q And did you tell law enforcement that she was there  
22 that evening?

23 A I did not.

24 Q Okay. Do you recall whether or not in your 911 call  
25 you stated there were four or five of you?

1 A I believe I told the operator there were actually  
2 five of us.

3 Q Okay. And why did you not let law enforcement know  
4 that she was there that evening?

5 A Because Krysti, you know, I'm not 100 percent sure  
6 on the situation, but I know that she was custody of the  
7 State, whatever her situation was, and she was a runaway,  
8 and so she did not want the police to recognize her and  
9 take her back to, you know, custody of the State. So we  
10 hid her, or she hid.

11 Q Do you know where she hid?

12 A I believe she was in the back in what we call the  
13 Chuck E room. It's the back closet where the walk-around  
14 character is that the people go to get dressed up as  
15 Chuck E.

16 Q Okay. Now, after this incident occurred and you  
17 called 911, did you have an opportunity to get in a  
18 patrol vehicle and leave the Chuck E Cheese?

19 A Did I get in a police car?

20 Q Yes.

21 A No.

22 Q Okay. Were you ever shown anyone as a possible  
23 suspect for identification?

24 A I was not, no.

25 MR. MARCHANT: Okay. I have no further questions.

1 Please answer any questions Mr. Watkins may have.

2 CROSS-EXAMINATION

3 BY MR. WATKINS:

4 Q Okay. You testified that you did not assist in  
5 counting the money. You don't know what money was --  
6 that Marcus gave to the person that committed the  
7 robbery. So if he don't know what was taken, or you  
8 didn't count it, how did you know to put the exact amount  
9 that he puts on his statement?

10 A Well, I believe what I said was I don't remember if  
11 we went to the safe and counted to find out how much  
12 money was exactly missing. I don't remember how I came  
13 to the conclusion. I definitely wouldn't have just, you  
14 know, made up a bunch of numbers just to put.

15 Q You can't remember what night you counted -- you  
16 can't remember whether or not you counted money?

17 A It was seven years ago, I really don't -- you know,  
18 I don't remember how we come to the conclusion. I don't  
19 remember if I just knew, or if I went to the back and  
20 counted. I had to have gone back there and counted it in  
21 order to tell the police. I mean, there really wouldn't  
22 have been any other way for us to know the exact amount  
23 that was missing.

24 Q So in other words, you went and counted the money  
25 before you gave your statement? Before the police came

1 and arrived you were already counting the money?

2 A Yeah, I can't really remember how we came to that  
3 conclusion.

4 Q So this is evidence that's supposed to have been  
5 tampered with, and you're back there counting the money?

6 A I didn't tamper with any evidence.

7 Q Then how did you come up with the amount to be able  
8 to give the police in your statement the amount of money  
9 that was missing?

10 A I don't really remember.

11 Q By reference to Krystyna Pireda -- Krystyna Reilly?

12 A Um-hm.

13 Q You said that she -- in other words, she was a  
14 fugitive from the law?

15 A I don't know that she would have worded it that way.  
16 I don't really know to be honest with you. I mean, I  
17 don't know. I'm not familiar with the law in the  
18 situation that she was in.

19 Q So if she was to be able to give evidence, she would  
20 actually be concealing evidence, hiding evidence so she  
21 wouldn't be able to come forth? If the police was there  
22 doing an investigation and the crime is committed,  
23 wouldn't it be important for everybody to be there?

24 MR. MARCHANT: Your Honor, I'm just going to object  
25 to the form of the question. I'd ask that the witness

1 have an opportunity to answer the first question before  
2 he moves to the next.

3 THE COURT: All right. Ask him one question and let  
4 him answer it.

5 BY MR. WATKINS:

6 Q All right.

7 A Okay. Could you repeat the question? I'm sorry, I  
8 don't ---

9 Q Okay. Do you think it was important that she give a  
10 statement with officers as well as y'all give statements?

11 A Yes, I think that she probably should have.  
12 Considering her circumstances, you know, I guess it's  
13 just a ---

14 Q Did the officers ever ask was there any more  
15 witnesses here?

16 A No, I don't believe so.

17 Q All right. In reference to you saying the person  
18 came with a gun. Did you ever see the cocking mechanism  
19 of the gun?

20 A I'm sorry, the what?

21 Q The cocking mechanism, like, you know, you cock --  
22 like a western gun, they cock it back like this.

23 A No, I didn't see that, no.

24 Q Did you see the handle?

25 A I don't recall seeing it, no.

1 Q Did you ever see the side of the gun?

2 A He was holding it kind of like this and it fit  
3 perfectly in the palm of his hand, so ---

4 Q So you never ---

5 A The only thing I saw was the barrel and then felt it  
6 up against my head.

7 Q Okay. So was it -- could it have been a pipe?

8 A Well, I guess. Anything is possible. I mean, it  
9 sure didn't look like a pipe, but. ---

10 Q If you just seen the barrel, how many holes did it  
11 have in it?

12 A Just one.

13 Q One hole. Okay. In reference to the description  
14 you gave you're saying his face was covered. Could it  
15 have been a scarf across his face?

16 A It looked like something maybe that fit quite  
17 perfectly around the head, which is the reason why I said  
18 a ski mask. A scarf would have just maybe tangled, or  
19 just kind of tied -- you know, tied in there. So that's  
20 the reason why I felt like I was able to remember the  
21 difference.

22 Q Did you see the ski mask up in this part or was it a  
23 hat, or ---

24 A I believe the hoodie was up over the head, I  
25 believe.

1 Q Okay. You said it had a pouch on it, front of it?

2 A No, I don't remember a pouch.

3 Q Okay. Did you -- after the person committed the  
4 crime, did you ever tell the police you seen him get into  
5 a white Ford Taurus?

6 A Did I -- no, I didn't follow him out of the  
7 building.

8 Q So in reference to you saying you draw suspicion of  
9 the white Ford Taurus, when you seen the Ford Taurus, had  
10 a crime already been committed?

11 A What? No, I saw the Taurus beforehand. And then  
12 the 911 operator asked if we had seen any suspicious  
13 vehicles in the area lately, that's when I told her that  
14 we had seen a white Ford Taurus.

15 Q So this Taurus, did you get a look at the license  
16 plate?

17 A No, I did not. I don't remember.

18 Q Do you know if it was a two door or one door? I  
19 mean, two door or four door, excuse me?

20 A Four door, I believe it was.

21 Q Okay. Do you know if the windows were tinted or not  
22 tinted?

23 A I don't remember.

24 Q Did you get a look at the person that was inside the  
25 white Ford Taurus?

1 A I did not. You're talking about on the previous  
2 occasion, right?

3 Q Previous occasion?

4 A Yeah. No, I did not.

5 Q So you say you was never taken to the scene with  
6 another witness to identify -- to try to identify the  
7 suspect that they had in custody by a white Ford Taurus?

8 A I don't remember going out. I mean, I remember the  
9 police putting someone in a car and taking I think  
10 Jeannie out to look. I don't remember who it was. But I  
11 don't believe I went out there.

12 Q Okay. On the night -- let me see. Okay. Can  
13 you -- can you tell the jury today if you can say I was  
14 actually the one that committed that crime that night?  
15 Can you -- beyond a reasonable doubt can you tell the  
16 jury that I was the one that actually committed that  
17 crime?

18 A No.

19 Q Okay. Do I fit the height and the weight of the  
20 person that came in?

21 A Well, I don't really remember how much the person  
22 weighed seven years ago, but the height, build -- I mean,  
23 I just remember the person was taller than me.

24 Q Okay. Do you remember -- you got to see his eyes or  
25 anything, do you remember the color of his eyes?

1 A I don't really remember.

2 Q When you went down to the -- did you ever go down to  
3 the police department?

4 A Yes.

5 Q Did they ever show you a gun, or a mask, pictures of  
6 a gun, or a mask, or a chart or anything?

7 A They showed us pictures of different guns.

8 Q Did they show you a picture of small guns?

9 A Yes.

10 Q Did they show you pictures of any masks, or anything  
11 feasible that looked like a mask or anything?

12 A I don't remember seeing pictures of masks.

13 Q Did they show -- did they ever show you a jacket, a  
14 big blue jacket with white strips down the sleeves?

15 A I don't remember seeing one.

16 Q So at no point did you ever see the clothing, or  
17 tell the police that clothing -- that you seen clothing  
18 matching the description of the robber?

19 A I'm sorry. You're asking me do I remember what was  
20 on the person that ---

21 Q In other words, were any evidence, anything shown to  
22 you that the police could say, hey, this ---

23 A I don't recall being shown anything, no.

24 Q Okay. You never told the officers that the same  
25 Taurus that you seen driving around the business prior to

1 that when -- you say you never went the scene to see the  
2 Taurus that the person was stopped in?

3 A That's correct, I did not.

4 Q So you never would be the one to say that's the same  
5 car?

6 A No, I didn't go.

7 MR. WATKINS: Okay. All right. Thank you. No  
8 further questions.

9 THE WITNESS: Thank you.

10 MR. MARCHANT: Just one question.

11 REDIRECT-EXAMINATION

12 BY MR. MARCHANT:

13 Q When you were giving your statement, your written  
14 statement to the police that evening, were you seated at  
15 a table with everybody else or were y'all separated?

16 A No, they separated us.

17 MR. MARCHANT: Okay. Thank you. Ask that this  
18 witness be excused, Your Honor?

19 THE COURT: Any objection to him being excused, Mr.  
20 Watkins?

21 MR. WATKINS: No, sir.

22 THE COURT: Okay. You can stay or you can leave,  
23 Mr. Skelton, either way. Okay. We'll take a short  
24 recess at this time. Just relax. Do not discuss the  
25 case. And we'll resume in about 15 or 20 minutes. I'm

1 going to let y'all go ahead and order your lunch, okay,  
2 while you're out.

3 (The jury exited the courtroom at 11:08 p.m.)

4 THE COURT: Okay. We'll be in recess for 20  
5 minutes.

6 (A short recess was taken, after which, the trial  
7 continued as follows:)

8 THE COURT: Okay. You can bring the jury in.

9 (The jury entered the courtroom at 11:30 a.m.)

10 THE COURT: All right. Mr. Marchant.

11 MR. MARCHANT: May it please the Court? The State  
12 calls Krystyna Reilly.

13 THE CLERK: Ms. Reilly, if you'll please stop at the  
14 bench there. Please place your left hand on the Bible  
15 and raise your right hand.

16 KRYSTYNA REILLY

17 Having been first duly sworn, testified as follows:

18 THE CLERK: All right. Please be seated. Please  
19 state your full name for the record.

20 THE WITNESS: Krystyna Lee Reilly.

21 THE CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MR. MARCHANT:

24 Q Good morning, Ms. Reilly?

25 A Good morning.

1 Q Ms. Reilly, where are you living now? Don't give me  
2 your specific address, but are you in the area?

3 A Pickens County.

4 Q Now, back in 2001, were you living in Greenville or  
5 Pickens County?

6 A I believe Greenville County.

7 Q Okay. And when this incident happened in December  
8 of 2001, where were you living then?

9 A With my friend Caroline.

10 Q Okay. And prior to living with Caroline, where were  
11 you living?

12 A In a group home.

13 Q Okay. Where was that group home?

14 A Pendleton Street.

15 Q Is that here in Greenville?

16 A Greenville, Smith House.

17 Q Okay. Would you tell the jury why you were in a  
18 group home?

19 A When I was younger I was sexually abused by my  
20 step-father and I was removed from the home and my mom  
21 chose to be with my step-father and signed over rights on  
22 me and I was -- went to the State.

23 Q Okay. And how long had you stayed at this group  
24 home?

25 A I had been in several group homes.

1 Q Okay.

2 A Smith House, probably maybe like six to nine months.

3 Q Were you staying in the Smith House when you began  
4 your employment with Chuck E Cheese?

5 A Yes.

6 Q And when this incident happened, you said you were  
7 living with Caroline, is that right?

8 A Yes.

9 Q And who is she?

10 A A friend. She used to work at Chuck E Cheese also.

11 Q Okay. And do you recall how long you had been  
12 staying with her when this incident happened?

13 A Probably a couple months. I'm not really sure.

14 Q Do you recall whether or not anybody from this group  
15 home was looking for you?

16 A I'm not sure. I believe so, maybe not from the  
17 group home but from DSS maybe, but. ---

18 Q Do you know for sure or are you just assuming?

19 A Just assuming.

20 Q Okay. What were your duties with Chuck E Cheese?

21 A I was a cashier and I worked in the show room,  
22 birthday parties, game room. I could pretty much do  
23 everything, just an employee.

24 Q Okay. Did do any cooking?

25 A No, I don't believe so, but I think I was training

1 how to do it, but didn't do it.

2 Q Okay. Were you present when this incident happened?

3 A Yes.

4 Q Okay. Had you left earlier in the night to go get  
5 dinner?

6 A I believe so, that I went with Jeannie to get  
7 dinner.

8 Q What's Jeannie's last name?

9 A Pireda.

10 Q And do you recall where y'all went to get dinner?

11 A Steak N Shake.

12 Q Do you recall if you went anywhere else?

13 A I believe that's it.

14 Q Okay. When you left to go to get the dinner, do you  
15 remember what time it was?

16 A It was after we closed, so it had to be after 10:00.

17 Q Can you say whether it was 11:00, 12:00?

18 A I don't remember.

19 Q Okay. Now, when you got back with the food, what  
20 did y'all do?

21 A Sat down to eat.

22 Q And do you recall where you were sitting in this  
23 booth eating?

24 A Yeah, I believe I was -- I remember that I could see  
25 down the hall towards the back entrance towards the show

1 room.

2 Q Okay. And what if anything did you notice coming  
3 from the back entrance?

4 A A person walking towards us while we were eating.

5 Q Okay. Could you -- do you remember how the person  
6 was dressed.

7 A All I remember was like a mask over his -- you  
8 couldn't see his face. I believe you could see the eyes.

9 Q Do you recall whether or not they were wearing a  
10 jacket?

11 A I don't remember.

12 Q Do you recall how many people there were?

13 A Just one.

14 Q Do you recall anything they said to you or y'all  
15 when they got to the table?

16 A I don't remember.

17 Q Okay. Do you remember what happened at the table?  
18 Did y'all have an occasion to go somewhere else?

19 A Yes, we all had to stand in line and go through the  
20 kitchen to the office where the safe was.

21 Q Okay. Well, when you got to the office and the  
22 safe, did you see what happened between your manager  
23 Marcus and this robber?

24 A I don't remember.

25 Q Okay. Can you say with certainty if any money was

1 exchanged? Did you see it with your own eyes?

2 A I don't remember seeing it.

3 Q Okay. Now, after that happened, where did you go?

4 A After we left the office?

5 Q After you left the office?

6 A Back out to the -- where we was eating, to the game  
7 room.

8 Q And what if anything do you remember happening out  
9 there?

10 A I remember us walking back in a line, and I do  
11 believe the gun was to the back of my head when we were  
12 walking out.

13 Q Why do you think it was a gun?

14 A I remember -- when they approached us -- or the  
15 person approached us it looked like a gun and it felt  
16 like a gun to the back of my head.

17 Q Do you recall whether the person that night was male  
18 or female?

19 A I believe male.

20 Q Okay. Do you recall -- why is it that you believe  
21 they were male?

22 A I remember his -- the hands, seeing his hands and  
23 just -- I mean the features not of a woman.

24 Q Can recall how tall they were?

25 A No, I don't remember.

1 Q Okay. Do you recall how much they weighed?

2 A No.

3 Q Okay. Do you recall the race of the person?

4 A I believe black.

5 Q Why is it you believe black?

6 A Because of the hands.

7 Q Okay. Once you got back to the table was there  
8 anything that the robber said to y'all?

9 A I don't remember.

10 Q Okay. Did you ever have any contact with law  
11 enforcement that evening?

12 A No.

13 Q Okay. Why not?

14 A I was scared. I didn't want to go -- I went to the  
15 back and stayed in the dressing room. I didn't want to  
16 have to go back to the girls home.

17 Q And how long had you been gone from this home?

18 A Maybe a month or so. It hadn't been long because I  
19 left when I was 17.

20 Q Do you recall where the person -- or how the person  
21 exited the Chuck E Cheese?

22 A I don't remember.

23 Q Okay. Did law enforcement ever come into the back  
24 room where they were looking for you?

25 A No.

1 Q Have they ever talked to you about this case?

2 A Not until last week or ---

3 Q Do you recall how long you stayed inside the  
4 business before you left?

5 A I know it was a long time, but I can't even remember  
6 how I left that night, or anything. It really -- I mean,  
7 I was really scared, upset, crying. I was just thinking  
8 I was -- if someone was still in there that I was about  
9 to die. I didn't know.

10 Q Did your employers know that you had run away from  
11 this home?

12 A Yes, I believe so.

13 Q Okay. Did you make it known to them that evening?

14 A They had known before hand.

15 Q And who decided that you would go hide in this back  
16 room?

17 A I don't recall.

18 Q Do you recall if y'all kind of put your heads  
19 together or if you just went by yourself?

20 A No, I think it was more me.

21 MR. WATKINS: Your Honor, at this time I'd like to  
22 make an objection. I think he's leading the witness with  
23 nods of the head, like this, and like this right here to  
24 her testimony.

25 THE COURT: I was watching her, I didn't -- don't be

1 nodding if you are doing that. I didn't -- I was  
2 watching the witness, I'm sorry.

3 MR. MARCHANT: Thank you, Your Honor. I have no  
4 further questions. Please answer any questions Mr.  
5 Watkins may have.

6 CROSS-EXAMINATION

7 BY MR. WATKINS:

8 Q How you doing, Krystyna Reilly? How old were you  
9 when you were working at Chuck E Cheese?

10 A At the time I was 17.

11 Q Seventeen. And you left the home when you were 17?

12 A (Witness nodded here head.)

13 Q Okay. So you knew that the police -- did you not  
14 know that the police was looking for you when you was at  
15 Chuck E Cheese, when they came? In other words -- in  
16 other words, did you know that you was wanted at the  
17 time?

18 A No, I don't believe I was wanted by the police. I  
19 mean, no.

20 Q Well, why would you hide?

21 A I'm saying I didn't want to go back to the girls  
22 home.

23 Q So that would mean you was wanted, correct?

24 A I don't know.

25 Q Okay. You said that -- let me see, you were -- when

1 y'all sat back down to eat, do you know how many people  
2 were in the restaurant with you? When you came back how  
3 many people was in the restaurant when y'all sat down?

4 A Including me, five.

5 Q Five. Okay. Do you know the names of those  
6 witnesses?

7 A Jimmy, Marcus, Matt, me, Jeannie.

8 Q Okay. Do you know -- do you know any of them  
9 personally?

10 A I mean, we worked together.

11 Q Okay. That's the only time you have socialized with  
12 them? With Jeannie Pireda?

13 A With what?

14 Q Jeannie Pireda, that's only the time you know her,  
15 through Chuck E Cheese?

16 A I mean, while I was working there we were friends,  
17 yeah.

18 Q Okay. So the whole time the police was there you  
19 were hiding?

20 A After the incident I went back to the dressing room.

21 Q Did you know the police was there?

22 A I mean, I never seen the police or heard the police.

23 Q Then why were you hiding?

24 A Because I mean I knew they was going to call -- I  
25 knew they were going to come, but I never seen them or

1 heard them.

2 Q Okay.

3 A I mean, we just got robbed.

4 Q Did the person that committed the robbery have on a  
5 blue striped jacket?

6 A I can't remember.

7 Q Did -- you said you see that he had a mask on. Do  
8 you know if the mask had a hole in the mouth and the eyes  
9 out?

10 A I believe -- I believe the eyes were out. I'm not  
11 positive about the mouth.

12 Q Okay. Could it have been a scarf?

13 A I'm pretty sure it was a mask.

14 Q Now, prior to you coming here to testify today, did  
15 anybody tell you -- basically tell what you needed to say  
16 on the stand?

17 A No, just tell the truth.

18 MR. WATKINS: Tell the truth, okay. No further  
19 questions.

20 MR. MARCHANT: I have no further questions, Your  
21 Honor, ask that she be excused.

22 THE COURT: All right. Thank you ma'am. You may  
23 come down. Any objection to her being excused, Mr.  
24 Watkins?

25 MR. WATKINS: No, sir.

1 THE COURT: Okay. You can stay or you may leave.

2 Thank you.

3 THE WITNESS: Thank you.

4 MR. MARCHANT: State calls Jeannie Pireda.

5 THE CLERK: Ma'am, if you'll please place your left  
6 hand on the Bible and raise your right hand.

7 JEANNIE PIREDA

8 Having been first duly sworn, testified as follows:

9 THE CLERK: Thank you. Please be seated. Would you  
10 please state your full name for the record.

11 THE WITNESS: Jeannie M. Pireda.

12 THE CLERK: Thank you.

13 DIRECT EXAMINATION

14 BY MR. MARCHANT:

15 Q Good morning, Ms. Pireda. How are you?

16 A I'm good.

17 Q Where are you presently working?

18 A Chuck E Cheese.

19 Q Okay. And when did you begin your employment with  
20 Chuck E Cheese?

21 A January of 2001.

22 Q And where did your employment begin, which store?

23 A Greenville, South Carolina.

24 Q And are you presently in the Greenville store?

25 A No.

1 Q Okay. And what is your role with Chuck E Cheese at  
2 this time?

3 A I'm a manager.

4 Q Okay. Were you working the night of December 19th  
5 of 2001?

6 A Yes.

7 Q And at that time what was your role with Chuck E.  
8 Cheese?

9 A I was a birthday coordinator.

10 Q Okay. Tell me what a birthday coordinator does?

11 A Okay. There is four areas of the restaurant,  
12 kitchen, cash, game room and show room. The birthday  
13 coordinator oversees all the show room people and makes  
14 sure birthday parties go smoothly, calls and confirms  
15 birthday parties, all of that.

16 Q Okay. Did you have other duties about collecting  
17 tickets, tokens, money, or anything of that nature?

18 A I did game pool. We used to do it on Sunday nights  
19 and it would be after close. It would normally start  
20 around 11:00. It could take until 2:00, 3:00, 3:30, it  
21 just depends on how many people you have.

22 Q Okay. Now, if this happened during I believe a  
23 Tuesday or Wednesday, would you have been doing game pool  
24 that Sunday?

25 A That Sunday, yes.

1 Q Okay. Was there anything that was unusual, or  
2 brought your attention to outside the building that  
3 Sunday night you were working?

4 A Yes. The -- that Sunday we were doing game pool,  
5 and there was a white Ford Taurus that pulled into the  
6 parking lot, and it was creeping slowly. And I was young  
7 at the time and so of course I get scared when cars are  
8 coming into the parking lot after hours. And then -- so  
9 it slowly crept around the side of the building. And  
10 when you walked down our hall, how it used to be, there  
11 used to be a side room with like maybe five or six games,  
12 and there was a large window there. So I walked over  
13 there to the side room and I saw the white Ford Taurus.  
14 It was stopped beside our, -- one of the exit doors from  
15 the kitchen.

16 Q Okay. I would ask that you step down for a moment,  
17 please. And please show the jury on State's Number 2  
18 where you first -- or where you were when you were  
19 looking at this vehicle, which side of the building?

20 A Okay. When I first saw it I was right about in  
21 here, and there's large windows there and there. So ---

22 Q And so then once you saw it there, where did you go  
23 to view it again?

24 A Okay. Then once it pulled around to the side, your  
25 side room is about here, the windows are here, and your

1 back door is somewhere like right there. And so this was  
2 about where I was.

3 Q Okay. And this was on a Sunday?

4 A This was on Sunday, game pool.

5 Q Okay. Once you saw it on that side of the building,  
6 did you see it again that night?

7 A The only time I saw it, after, you know, like a  
8 minute -- it was about two minutes it started driving  
9 again. And then I saw it leave the parking lot.

10 Q Okay. Now, do you recall what time of the evening  
11 this was? You can have a seat.

12 A Okay. I'm not sure.

13 Q Were you able to determine how many people were  
14 inside the vehicle?

15 A No.

16 Q Okay. So did you make any phone calls to your  
17 manager or anything about this?

18 A I'm pretty sure that a manager was doing game pool  
19 with me because I would not have access to an alarm code  
20 as a birthday coordinator. So -- and it was Jimmy that  
21 used to do game pool with me. So ---

22 Q Okay. Can you say with certainty you notified  
23 somebody that evening about this vehicle?

24 A I can say that I'm -- oh, that I notified -- I  
25 talked to the people that were there at game pool. They

1 saw it too, but I'm not sure who was there.

2 Q All right. Going to the evening that this incident  
3 happened. Were you working that night?

4 A I wasn't working like the shift while we were open,  
5 but I came in after close. I don't remember if I was  
6 working before then, but I know for a fact I came in  
7 after close to work.

8 Q And why did you come in to work?

9 A Because we were cleaning for the guy, a big guy  
10 coming the next day.

11 Q Did you have an opportunity to leave that evening  
12 prior to this incident happening?

13 A What do you mean?

14 Q Once you came in to clean, did you ever leave and  
15 come back?

16 A Oh, yes, yes.

17 Q Before the robber came?

18 A I did.

19 Q And where did you go?

20 A I went to Steak N Shake, and I went to BiLo.

21 Q Who went with you?

22 A Krysti, or Krystyna Reilly.

23 Q Okay. Now, as you were leaving, did you notice  
24 anything unusual in the parking lot?

25 A Yes. When I -- when we left, there was a white Ford

1 Taurus in the parking lot, and it was ---

2 Q -- Okay.

3 A --- almost -- okay. I'm sorry.

4 Q I'm sorry. Would you please step down and show the  
5 jury where you saw the Taurus as you were leaving?

6 A It was -- let's see. It was about right in this  
7 area. So on the side.

8 Q Could you tell the jury which way it was pointed,  
9 meaning which way was its headlights were directed?

10 A I would be facing the car, the windshield, the front  
11 of it. So when I walked out I -- well, the front of it  
12 was facing, like the license plate was in the back.

13 Q So were you able to see the tag?

14 A When they drove out I just -- I couldn't see it well  
15 enough. I mean, I might have caught a glimpse.

16 Q All right. Could you tell at that time how many  
17 people were in the victim?

18 A Yes, there were two people.

19 Q Could you tell whether they were male or female?

20 A Yes, there was one male and there was a female.

21 Q Could you tell whether they were white or black?

22 A I could not. I only saw shadows.

23 Q Okay. So your testimony is that they were male and  
24 female from their silhouette?

25 A Yes, exactly.

1 Q Could you see their faces?

2 A No.

3 Q So are you certain that it was one male and one  
4 female?

5 A I'm 100 percent certain.

6 Q Okay. How long did it take you to go out and get  
7 food?

8 A It took about 20 minutes.

9 Q And how many people were left inside the Chuck E  
10 Cheese when you went to get food?

11 A Three.

12 Q And who were those people?

13 A Matt McCoy, Jimmy and Marcus.

14 Q And when you got back, what did y'all do?

15 A Krysti and I gathered everyone to sit at a booth  
16 together so we could eat. And Marcus pulled up a chair.

17 Q What happened after y'all began eating?

18 A Just like a minute after we started eating, I was  
19 facing the front entrance of the restaurant, so I didn't  
20 see him walking in, but after he said where's the money,  
21 I turned and then -- I guess everybody was in shock. I  
22 don't know if we didn't believe it. And then he said it  
23 more firm. And I saw the gun. I saw him, you know.

24 Q Okay. Why is it you say it was a him?

25 A Because the voice was definitely deep. It sounded

1 like a man's voice. The build was a man's silhouette.

2 So ---

3 Q Okay. What about his build was ---

4 A You know, I honestly can't tell about the build. I  
5 mean, I know he was around five 10, five 11. I'm not  
6 sure. I could see his hands. I could see his eyes and  
7 the skin around his eyes. So ---

8 Q Okay. Do you recall what type of clothing he was  
9 wearing that evening?

10 A Yes. He was wearing a dark, dark blue jacket. And  
11 he had the hood pulled over his head. Under the hood he  
12 had like a black, you know, the hat things, the -- and  
13 then he had something covering his -- this part of his  
14 face, the bottom part of his face, exposing his eyes of  
15 course. But it seemed like it was the same material now.  
16 I mean, the way it was pulled around I don't know if it  
17 was, you know, a mask or a scarf. I'm not sure. But it  
18 was the same material.

19 Q Okay. Did you give a statement to law enforcement  
20 that evening?

21 A Yes, I did.

22 Q And was everything fresh in your mind at that time?

23 A Yes.

24 Q Okay. Now, you don't recall -- am I correct you  
25 don't recall whether it was a scarf or a mask, is that

1 correct?

2 A Yes, I don't know.

3 Q Okay. Now, let you take a look at your statement  
4 and see if that refreshes your memory.

5 A Okay.

6 Q Do you know -- by reading that, does that refresh  
7 your memory of what you thought it was that evening?

8 A Yes.

9 Q And what did you write down in your statement that  
10 evening?

11 A That it was a black cotton hat, and then he had a  
12 black cotton type material, scarf, wrapped around that  
13 part.

14 Q Okay.

15 A Over part of his face. His mouth and nose.

16 Q Did you ever make mention that it was a ski mask?

17 A No.

18 Q Okay. Do you recall what the pants or boots looked  
19 like?

20 A The pants were dark black. They were wide. The  
21 boots I did not see very well. They were definitely  
22 boots. They were dark.

23 Q From everything you saw that night, could you tell  
24 whether the male was white or black?

25 A I could tell he was a black male.

1 Q And how could you tell it was a black male?

2 A Because you could see the skin around the eyes and  
3 you could see his hands.

4 Q Now, what did he instruct y'all to do?

5 A After, you know, he had -- he asks us for the money,  
6 and Marcus, you know, pointed and said it's in the safe.  
7 And he had us get up and then we went in a line. Marcus  
8 was in front. I was behind Marcus. I'm not sure of the  
9 order after that. And he had us go in through the  
10 kitchen to where the office was. And the kitchen he, I  
11 guess, got nervous, because there's a very large pizza  
12 knife that was right there, and he told us to put our  
13 hands up, don't touch anything.

14 Q Do you recall who opened the door to get into the  
15 kitchen?

16 A He actually opened the door.

17 Q Okay.

18 A But he didn't put his fingers on it. He only  
19 touched it with his knuckles.

20 Q Going into the kitchen, how does the door operate?  
21 Does it swing in or pull out?

22 A I don't remember, honestly.

23 Q Okay. Were you able to see what was going on with  
24 Marcus handing the robber the money?

25 A I was behind the robber, and all I could see was him

1 putting the money in the pouch type thing. I mean, he  
2 didn't have a bag. It was part of his jacket. So ---

3 Q Are you sure he was getting money?

4 A Yes, 100 percent.

5 Q Did you see it?

6 A Yes, I saw the money. I saw him taking it.

7 Q Do you have any idea of how much money was taken?

8 A Absolutely not.

9 Q Where did you go -- or where were you instructed to  
10 go once the transaction happened in the office?

11 A To go out of the office and go out of the kitchen  
12 back into the main hallway.

13 Q And what happened when you got back to the main  
14 hallway?

15 A Our purses were up on a ledge and he asked how much  
16 money was in our purse. And then he said, no, forget it,  
17 y'all work too hard for it. And then he took off towards  
18 the back emergency exit.

19 Q Did you physically see him leave the building?

20 A I didn't see him leave the building. I saw him  
21 going in that direction.

22 Q Is there any way to exit that building besides this  
23 emergency door you're speaking of?

24 A Not in the back, no.

25 Q What if anything did he say on his way out?

1 A He said we were stupid for leaving the back door  
2 open.

3 Q Now, when did you first see the gun that he had?

4 A When he first asked where's the money, I saw it in  
5 his hand.

6 Q Do you recall what it looked like?

7 A Yes. It was extremely small, fit in the palm of his  
8 hand. You could see the barrel. It was a very small  
9 gun. You could see the barrel. You could see the color  
10 of it. It was faded grayish, silverish, antique looking.

11 Q Could you tell whether or not it was an automatic or  
12 a revolver? Do you know the difference?

13 A I wouldn't say I know the difference. The only  
14 thing I know from an automatic is I thought you put the  
15 thing into it, you know.

16 Q Was -- was it that big?

17 A Oh, it definitely was not that big.

18 Q Once the person left, did you call law enforcement?

19 A No.

20 Q Well, at some point in time did law enforcement  
21 arrive?

22 A Yes.

23 Q Okay. Did you speak with the officer that arrived  
24 that evening?

25 A The only thing I remember him telling us right away

1 was to fill out, you know, exactly what happened while it  
2 was fresh in our mind.

3 Q And where were you positioned when you were filling  
4 out this information?

5 A We were all put at separate tables. I'm not sure  
6 which table I was at.

7 Q Did you know Ms. Reilly prior to this incident?

8 A Prior to the incident, yes, because we worked  
9 together.

10 Q Did you have any other interactions with her?

11 A We were friends and I guess we hung out a few times.

12 Q Did you know her situation?

13 A I just knew she came from a bad background and her  
14 situation was bad.

15 Q Did you tell her to hide?

16 A No, I don't remember saying that.

17 Q Do you remember how it came to be that she got into  
18 the back room, the Chuck E room?

19 A I'm not sure. I know where she was like in the back  
20 room, but I don't remember how it came to be, like if  
21 somebody told her to go back there, I don't know.

22 Q Did you know at that time that she had run away from  
23 the group home?

24 A Yes.

25 Q Now, once the officer arrived, did you have an

1 occasion to get in a patrol car and leave the Chuck E  
2 Cheese?

3 A Yes.

4 Q Okay. Where did you go?

5 A We were -- I was taken to the entrance of, I believe  
6 they're called , I don't know, to the  
7 apartments behind Chuck E Cheese, and right to the  
8 entrance where the white Ford Taurus was. And they  
9 shined a light on the guy and they asked if that was him.  
10 And I could not 100 percent identify him. I was -- I was  
11 like I think it's him but just going off of eyes and  
12 eyebrows, you can't identify someone, and you know.

13 Q Okay. Was the person that you were shown that  
14 evening, were they clothed the same as the person that  
15 had robbed the store?

16 A I don't remember.

17 Q Were they the same height?

18 A Same build, same height. That's why I said I think  
19 so, so ---

20 Q You cannot say with 100 percent certainty?

21 A No.

22 Q Okay. Now, let's talk about the parking lot of the  
23 Chuck E Cheese. How many entrances and exits are there  
24 into that parking lot?

25 A There's two.

1 Q Okay. Would you step down and point out those two,  
2 please?

3 A You can enter right there and right there as well,  
4 so ---

5 Q Now, it appears that there are two other buildings  
6 above it. Is there a way to get from the Chuck E Cheese  
7 parking lot to those buildings in a vehicle?

8 A No, you would have to drive over that big piece of  
9 cement curb thing.

10 Q Behind the Chuck E Cheese is the apartment complex?

11 A Yes.

12 Q Is there a way to get a vehicle from the back  
13 parking lot into that apartment complex?

14 A Not a vehicle, no.

15 Q Okay. Is there a way to get something else from the  
16 back parking lot?

17 A If you're traveling by foot you can easily go back  
18 here. I used to live in these apartments. So I used to  
19 cut through all the time.

20 Q Was there -- was there a fence?

21 A I can't remember.

22 Q Were you living in these apartments when this  
23 incident happened?

24 A No.

25 Q Were you ever taken down to the law enforcement

1 center and shown a diagram of guns?

2 A No, I don't -- no.

3 Q Do you recall what time you and Krystyna got back to  
4 the Chuck E Cheese?

5 A Ten minutes before 1:00.

6 Q Why is it that you recall that?

7 A Because I have a clock in the -- in my car, in the  
8 middle, and it was getting late. I was wondering how  
9 long we were going to be there cleaning and so I looked  
10 at the time.

11 Q From the time you got back to the time this incident  
12 took place, how long was that?

13 A A couple minutes, about 10 minutes, five minutes,  
14 I'm not sure.

15 Q When you returned with the food, do you recall  
16 seeing the white Taurus at that time?

17 A No.

18 Q I'm going to show you State's Number 21. It's not  
19 in evidence, but I'm going to ask you if you recognize  
20 what is strapped in this box?

21 A Yes, definitely.

22 Q Okay. When you say definitely, how is it that you  
23 recognize that item?

24 A I remember the gun like exactly. That's the thing I  
25 remember the most.

1 Q Okay. Are you saying that that's the same one?

2 A Yes, and that hat is the same exact material, it's a  
3 cheap cotton hat, or whatever.

4 MR. MARCHANT: I have no further questions. Please  
5 answer any questions Mr. Watkins may have.

6 CROSS-EXAMINATION

7 BY MR. WATKINS:

8 Q The night you seen the white Ford Taurus in the  
9 parking lot, how many people did you see in the car?

10 A Which night? On the Sunday?

11 Q Yeah.

12 A The previous night?

13 Q The night you said the car was parked right in front  
14 of here, facing this way and you came out?

15 A On the night of the robbery there were two people in  
16 the car.

17 Q Two people in the car. Can I have -- this is her  
18 statement. Can she read her own statement? I want you  
19 to read your own statement.

20 A Okay.

21 Q And read right here where you put ---

22 A Which one? Right here?

23 Q Yeah, all the way to the parked car.

24 A The car was a white Taurus. He always stayed  
25 towards the left side of the parking lot. Every time I

1 saw in the car, I guess I was writing too fast, it was  
2 only one person.

3 MR. MARCHANT: Your Honor, I would ask that she stop  
4 at that time. There is other information in that  
5 statement that I don't believe is admissible. If we need  
6 to take the jury out to talk about that I suggest we can  
7 do that. I don't know how far he's going.

8 THE COURT: Let me see that. I'll let y'all step  
9 out just for a minute. Let me go over this with the  
10 lawyers. Let me see what they have to say about it.

11 (The jury exited the courtroom at 12:09 p.m.)

12 THE COURT: I don't know. What is it, Mr. Marchant?

13 MR. MARCHANT: Your Honor, I'm not sure where he's  
14 going. I'm just concerned about the -- midway down where  
15 it says, I could probably say he's robbed maybe a couple  
16 gas stations but didn't have too much experience. Now,  
17 it would certainly help me if she put that information  
18 out there, but I think for the circumstances of this case  
19 I didn't want her getting into that.

20 MR. WATKINS: I think that's relevant to the jury  
21 hearing this, what she stated in her statement, because  
22 her whole statement based upon the police establishing  
23 probable cause to issue arrest warrants and things like  
24 that. It's part of their investigation. And it's part  
25 of the reason that I'm here today.

1 THE COURT: Well ---

2 MR. WATKINS: It -- it goes to the credibility of  
3 the witness' testimony.

4 THE COURT: Well, if he wants to ask her about it, I  
5 guess y'all are entitled to go into it, Mr. Marchant.

6 MR. MARCHANT: Very good. Thank you, Your Honor.

7 MR. WATKINS: Thank you, Your Honor.

8 THE COURT: Okay.

9 MR. MARCHANT: Your Honor, I would ask that the  
10 exhibit be marked since he's ---

11 THE COURT: So you're -- you're really not objecting  
12 to it?

13 MR. MARCHANT: No, sir, I just asked that it be  
14 marked so it will be clear in the record, and if he's  
15 going to cross her on it I'd ask that it be submitted  
16 into evidence.

17 THE COURT: Okay. Statements should be either used  
18 for impeachment purposes or if they're going to be  
19 introduced into evidence they need to be put in evidence.  
20 And the fact that she's testified from it means it is in  
21 evidence. So it needs to be marked, Mr. Watkins. Okay.

22 MR. WATKINS: I need it to cross-examine. Can I  
23 hand it over?

24 THE COURT: Give it to her and let her mark it and  
25 then you can have it back. I'm not sure at this time if

1 you're asking her questions to contradict something she's  
2 already testified to, or what your purpose is for -- in  
3 publishing from this statement, but ---

4 MR. WATKINS: Okay. It was -- that part was  
5 impeaching, because she said two witnesses in the car,  
6 but her statement was totally different from that. She  
7 said every time she seen the car it was one person in the  
8 car.

9 THE COURT: For impeachment purposes I'll just -- I  
10 wouldn't let it come into evidence then, I'd just let  
11 that statement to show that she said at that time it was  
12 one person. So are you going to go into the statement  
13 any more?

14 MR. WATKINS: Yes, sir, I'm going to use the  
15 statement.

16 THE COURT: Well, then it may have to be admissible.  
17 I don't know.

18 MR. WATKINS: I'm not going to use it. I'm just  
19 going to let her testify to what is in the statement.

20 THE COURT: You want her to read from the statement?  
21 Do you want to put the statement in evidence?

22 MR. WATKINS: No, I'll just ask her questions from  
23 it.

24 THE COURT: You can talk to Mr. Henry about that.  
25 That's a procedural question.

1 (Mr. Watkins talked to Mr. Henry.)

2 THE COURT: Ready?

3 MR. WATKINS: Okay.

4 THE COURT: Just mark it for identification.)

5 (Defendant's Exhibit Number 1 was marked for  
6 identification.)

7 (The jury entered the courtroom at 12:17 p.m.)

8 BY MR. WATKINS:

9 Q On the night -- on the night of the robbery, you  
10 said you seen the suspect have a gun. Did you see the  
11 side of the gun?

12 A I saw part of the side. I saw the barrel, but it's  
13 a very small gun that I saw, so ---

14 Q Did you see -- what did you see at the end of the  
15 barrel?

16 A What do you mean? I don't understand.

17 Q How many holes?

18 A One hole.

19 Q One hole. Positive that it had one hole?

20 A Yes, absolutely positive.

21 Q So if the state -- if you was to see a gun that had  
22 two holes, that wouldn't be the gun that you saw that  
23 night, if it had two holes in the barrel?

24 A Yeah, definitely not.

25 Q Okay. Okay. When you said the robber -- you were

1 going behind the robber, who else -- the robber was in  
2 front going through the door and everybody was behind  
3 him?

4 A I'm not sure. It's been a long time. I don't  
5 remember. I just remember him specifically holding the  
6 door and I remember Marcus in front of me when we went  
7 in. And I was behind Marcus. I don't know who was  
8 behind me, but I know the robber held the door.

9 Q So the robber was holding the door and let y'all  
10 go -- y'all go in, he was first?

11 A He wasn't first going into the kitchen. We all  
12 walked into the kitchen first. He was holding the door,  
13 so ---

14 Q So if he was holding the door then his prints should  
15 be on the door, right?

16 A No, because he touched it with his knuckles. He  
17 didn't -- he never put his fingers on the door.

18 Q Okay. Did you see what Marcus was handing the  
19 robber?

20 A I saw the money. I saw the guy having the money in  
21 his hand and stuffing it into the pouch.

22 Q Do you know whether or not Marcus handed the money  
23 or he got the money himself?

24 A I mean, just from the movements and stuff, I mean,  
25 the way Marcus was positioned, I couldn't really see

1 Marcus because the robber was in front of me, but, you  
2 know, I saw his arms moving, like he was. But I can't  
3 say I saw Marcus with the money.

4 Q Okay. Did you ever tell the police that the  
5 description of the robber had a dark blue, like puffy  
6 coat with blue stripes going down the sleeves?

7 A I said it was a dark, dark blue jacket.

8 Q Did it have white on -- stripes going down the  
9 sleeves?

10 A I don't remember.

11 Q You don't remember. Let me let you see your  
12 statement again.

13 A All I wrote was that he had on a dark, dark blue  
14 heavy jacket.

15 Q Nothing about white stripes?

16 A No, sir.

17 Q Did you ever tell the police officers that you seen  
18 the person that committed the robbery getting into a  
19 white Ford Taurus?

20 A No.

21 Q Could you in any way connect the white Ford Taurus  
22 you seen to the robbery?

23 A I mean, because I personally didn't see the person  
24 step into the vehicle, I mean, I -- I don't know. I  
25 can't, you know.

1 Q The night that you were taken to the scene that  
2 you identified, which was me that was out there, did you  
3 get -- was anybody with you in the car?

4 A I can't remember.

5 Q You don't remember. Do you remember exactly what  
6 you told the police officer that night when they asked  
7 you to identify me?

8 A I said I think it's him, but I said I wasn't 100  
9 percent certain.

10 Q What do you mean, 100 percent sure? Do mean you're  
11 sure it's him or it's not him?

12 A I mean, you know, they were asking you to identify  
13 (sic). I was going based off eyes, eye brows, the build.  
14 That's all I was going off. But of course I can't 100  
15 percent say.

16 Q So does my eyebrows -- eyes look like ---

17 A It's been seven years, I would have no clue.

18 Q How far away were you from me to say the eyebrows  
19 and the eyes from the distance of the police car to me?

20 A I'm not sure, but you know, eyebrows on a person is  
21 a big difference on each person, you know, so ---

22 Q So if the person have on a hat and hood, wouldn't  
23 that kind of shadow his face?

24 A It went down like right to his eyebrows, so -- but  
25 it didn't cover them.

1 Q Okay. How many -- you say you were about 10, 15, 20  
2 feet away from him, the individual?

3 A I don't remember.

4 Q Okay. So you never seen where the person went, so  
5 you never told the police officers that the suspect fled  
6 toward \_\_\_\_\_ or never ---

7 A No, I didn't say anything.

8 Q Did you ever -- the car that you seen leaving, at  
9 any time did you notice if it had a tag on the car, was  
10 it a paper tag or a regular tag?

11 A I'm not sure now. I don't know if I told them at  
12 the time like what kind of tag it was, because I did see  
13 the back of the car for only a brief second, but I can't  
14 remember honestly.

15 Q Do you know if was a two door or a four door?

16 A It's a Taurus, a four door, Taurus, white.

17 Q How do you know exactly it was a Taurus?

18 A Because my mom used to have a Taurus, but it was  
19 green.

20 Q Okay. Do you know what year this Taurus was?

21 A No.

22 Q Okay. Do you know if it's a newer model or older  
23 model?

24 A I -- I don't know, because I don't how many models  
25 they've come out with. I -- you know, I don't ---

1 Q That's good. Do you know whether or not the car  
2 that you seen that -- did you tell the officer the car  
3 you seen driving in the parking lot leaving that night  
4 was the same car you seen that I was next to that night?

5 A If ---

6 Q Did you tell the police, yeah, that's the same car?

7 A It was a white Ford Taurus.

8 Q No, I'm saying, did you positively identify and say,  
9 yeah, that's the car I seen earlier and on prior  
10 occasions to the same car I seen that night that you seen  
11 me standing next to?

12 A I don't remember.

13 Q Did you ever discuss about the guns with anybody to  
14 give you any knowledge of guns or anything?

15 A My brother has had gun magazines, that's why like  
16 when I described the gun I said was it was a one bullet  
17 shooter, because I've seen small guns like that. And in  
18 movies, you know, the girls used to have them in their  
19 purse in the old movies.

20 Q So -- but I understand you didn't see the handle and  
21 you didn't see -- how much of the side, did you see the  
22 barrel on the side or ---

23 A Yeah, you saw the barrel on the side. I didn't see  
24 the part where it cocked.

25 Q I mean, the cartridge, the cartridge?

1 A I don't remember, honestly.

2 Q So how was the individual holding the gun?

3 A What?

4 Q How was the individual holding the gun when he  
5 approached y'all?

6 A I don't remember, honestly. You know, I just know  
7 it was pointed at us so ---

8 Q I mean, you said seen the gun in the person's hand,  
9 you said you seen the side, you said you seen the barrel,  
10 so it's -- if you seen it, you know what position the gun  
11 was in and how you was holding the gun?

12 A But you have to understand, you know, we did go  
13 into the kitchen. He did change positions, you know, the  
14 way he turned his hand could have been different, you  
15 know.

16 Q Did you see the gun the whole time, during ---

17 A I saw it going into the kitchen. I saw it in the  
18 office. I don't remember when we came back out. But I  
19 saw it the whole time going into the office.

20 Q Do you ever remember him putting it to the -- any of  
21 the suspect's hair in the place?

22 A Honestly, I do not remember that at all. Like I  
23 don't think he did, honestly.

24 Q Okay. Did the person that committed the robbery,  
25 did he have on black sweat pants, white tennis shoes, a

1 yellow shirt, and a yellow jacket, and a yellow hat?

2 A No.

3 Q The person you seen that night, which was me, was I  
4 not wearing white tennis shoes, black pants, the yellow  
5 jacket and the yellow shirt?

6 A I can't remember. I know the clothes were  
7 different. I do remember that much.

8 Q And would you say how long it was after the robbery  
9 that you went to the scene to view this person?

10 A I'm not sure.

11 Q Would you say five minutes, 10 minutes, three  
12 minutes, two minutes?

13 A I don't remember. I'm sorry, it's been so many  
14 years.

15 Q All right. The person that you referred -- you're  
16 saying the person obviously has been in here before and  
17 you recognized me in your statement, who are you  
18 referring to?

19 A I know I'm not allowed to just assume stuff, but the  
20 person was obviously -- you know, they knew the  
21 surroundings, you know, they knew exactly where to go, I  
22 mean except for the -- with the exception of the office  
23 and the kitchen because that's the back of the house, but  
24 you know, like the person knew what they were doing.

25 Q Okay. So when you say that you remember someone

1 that meets that standard, so therefore you had a picture,  
2 is that standard me?

3 A I don't remember. I, you know, don't remember.

4 Q Okay. In your statement you said he robbed a couple  
5 of -- robbed a couple of gas stations. What do you mean  
6 by that?

7 A The reason I say that is because when we were in the  
8 office he was very calm, he knew exactly what happens in  
9 the event of a robbery. He said you -- he said call the  
10 police, file your reports, it's not your money, don't  
11 worry about it, you know, so ---

12 Q How do you know what a person do when he robs a gas  
13 station?

14 A I don't. I'm just saying like I shouldn't have  
15 assumed. I was young, but you know, how's somebody  
16 that's robbing for the first time going to know exactly  
17 what you do, that you call the police. I mean, I had no  
18 idea what goes on. So I don't know. I was wrong for  
19 saying that definitely.

20 Q At any time when you were at the police  
21 department, the exhibit that's been shown to you by the  
22 prosecutor, have you seen that exhibit down at the  
23 police station?

24 A I can't remember. I just know we were there for  
25 hours, but I don't know what happened there.

1 Q Can you be for like you say 100 percent sure that  
2 that is the -- what you saw in the exhibit what the  
3 person was wearing?

4 A The black hat?

5 Q Yeah, can you be for sure?

6 A Yeah, definitely. That was the exact one I was  
7 talking about. I mean, you know, they're cheap, they --  
8 everybody -- you can buy them anywhere.

9 Q Okay. Do you remember giving the statement that you  
10 didn't know that masks were made that way, you always  
11 thought masks was two holes and a mouth and until you  
12 seen that mask that's when you drew the conclusion, yeah,  
13 that might have been what it was?

14 A Yeah, the only type of mask I've ever seen was where  
15 it was cut out in the eyes and the mouth, but like I said  
16 when I did describe it it was made out of the same  
17 material. So I mean, I didn't know that they had  
18 different types of masks. I had no idea.

19 Q Okay. Do you remember giving a prior testimony that  
20 he had on a hat, a hat with pull over with a scarf, do  
21 you remember?

22 A Yeah, I did describe it as that, because like I  
23 said, I didn't know if there's different types of masks.  
24 I don't -- yeah, that's how I had to describe it.

25 Q So if I was to present two or three masks like that,

1 you would say that looks the exact one? If I presented  
2 two or three masks like to one you seen, you would say  
3 that looked like it? What I'm saying, you can't say 100  
4 percent sure that that is actually the mask that a person  
5 was wearing but it looks like it?

6 A I can say it's 100 percent made out of the same  
7 exact material.

8 Q How do you know this?

9 A How do I know? Because I definitely remember that.  
10 I remember the exact material, like you can tell, you  
11 know.

12 Q Do you know the material of the clothing that the  
13 person had on?

14 A No, I was paying attention to the hat because like  
15 those are cheap hats, you can get them at Wal-Mart.  
16 They're like -- you know.

17 MR. WATKINS: I want to show her ---

18 MR. MARCHANT: Your Honor, it's not a document we  
19 have in evidence. I'm not sure where he's going with  
20 this. She's given her description on several occasions,  
21 so I'm not sure. I'm not saying I object but I'm not  
22 really sure what the relevance is.

23 MR. MARCHANT: The sketch would be like the hood,  
24 and hat, and stuff.

25 THE COURT: If she drew it, you can ask her about

1 it. If she didn't draw it, you can't ask her about it.

2 BY MR. WATKINS:

3 Q Okay. Okay. And -- okay. You said he had a  
4 hood -- or it was a hat. What kind of hat was it?

5 A I -- the hat, not the jacket that I'm talking about  
6 where it's pulled over. I called it a hat because it was  
7 on his head. Like it was black and then he had a hood  
8 over that, so ---

9 Q So a mask, the hat and the hood?

10 A I don't know. Like, I just described what I saw.

11 Q All right. Let me show this and see what you say.

12 A Let's see. You're talking about where I said, when  
13 he approached the man had on a black winter hat, cheap  
14 cotton. I saw his eyes and eyebrows clearly. Under that  
15 he had like a cotton scarf wrapped around his mouth and  
16 nose. Do you want me to keep reading?

17 Q Where you say hat, just read where it says hat.

18 A Yeah, oh, okay. Sorry. He had on a dark, dark blue  
19 heavy jacket with -- with a hood over the other hat. So  
20 when I said the other hat I was talking about the black  
21 thing that he had his thing pulled over.

22 Q Okay. So you -- can you identify me as being the  
23 person that committed the robbery?

24 A No, I can't identify you.

25 MR. WATKINS: Thank you. No more questions.

REDIRECT-EXAMINATION

1  
2 BY MR. MARCHANT:

3 Q Ms. Pireda, the hat that we're talking about in that  
4 box, and your description of the hat in your statement,  
5 are you referring to like a baseball cap?

6 A No.

7 Q So when you're saying hat, what do you mean?

8 A Like those winter hats that, you know, they could  
9 pull all the way over your head, but you usually fold  
10 them up and they go over your ears and stuff.

11 Q Okay. So would it -- would the hat that you're  
12 describing and that you in wrote in your statement, did  
13 it have a bill on it?

14 A No.

15 MR. MARCHANT: Thank you. No further questions.  
16 Ask this witness be excused?

17 THE COURT: Thank you.

18 THE WITNESS: Okay.

19 MR. MARCHANT: The State would call Ambrose Skardon.

20 THE CLERK: Mr. Skardon, please place your left hand  
21 on the Bible and raise your right hand.

AMBROSE SKARDON

22 Having been first duly, testified as follows:

23 THE CLERK: Thank you. Please be seated. Please  
24 state your name for the record.  
25

1 THE WITNESS: Ambrose Hooper Skardon, III.

2 DIRECT EXAMINATION

3 BY MR. MARCHANT:

4 Q Mr. Skardon, what is your present assignment with  
5 the Greenville Police Department?

6 A I'm currently assigned to the detective division,  
7 vice and narcotics group.

8 Q How long have you been in vice and narcotics?

9 A I've been in vice now a little over two years.

10 Q Okay. Prior to vice and narcotics what were your  
11 duties?

12 A I served 13 years on the road as a road patrol  
13 officer. I was also a corporal which is a first line  
14 supervisor.

15 Q Back in December of 2001, what were your duties with  
16 the city?

17 A I was a corporal. I was assigned to delta beat,  
18 which is actually in west Greenville, and I heard the  
19 call come out of an armed robbery at the Chuck E Cheese.

20 Q Okay. And do you recall what time that call came  
21 out?

22 A It was a little after one o'clock in the morning.

23 Q And what exactly was the call that came out?

24 A It was an armed robbery which took place at the  
25 Chuck E Cheese. They had given a description of a male

1 wearing dark clothing. He had exited out the back of the  
2 store. There's an apartment complex close to that  
3 location, at which time I responded to set up a  
4 perimeter.

5 Q Okay. Where were you working that evening? What  
6 was your patrol assignment?

7 A My patrol assignment was delta beat which is  
8 Pendleton Road, Church Street area.

9 Q Okay. Is the area you were assigned to that night  
10 this area we're talking about?

11 A It's not close to this location. It's on the  
12 opposite side of town. I just got out of the detention  
13 center, and was close to it. I figured since I was close  
14 to this area I would go ahead and respond to help with  
15 perimeter.

16 Q When you say perimeter, what do you mean?

17 A What it is we try to sustain a perimeter, a boundary  
18 so to speak. Triangulate a certain area so we can watch  
19 certain roads, locations, make sure that if somebody was  
20 on foot or in a vehicle does not escape a certain area.

21 Q Where exactly did you respond to that night?

22 A I was on 385. I don't know if you're familiar with  
23 where the detention center is in Greenville, it's right  
24 off East North Street. It's what 385 turns into. And I  
25 came down 385 toward Haywood Road where the Chuck E

1 Cheese is located. They had previously done some  
2 construction. There was a dirt area right there where I  
3 pulled off so I could observe that particular apartment  
4 complex.

5 Q Okay. Would you please tell the jury what I'm  
6 handing you?

7 A It's a sticker that has my name on it, Skardon.

8 Q Would you please step down and place that sticker on  
9 the map, which is State's Number 2, of where you parked  
10 your vehicle that evening?

11 A I parked close to this area right here. I'm not  
12 exactly certain of the exact location, but somewhere in  
13 this location where I could observe down this area to  
14 make sure that nobody crossed the exit ramp of 385, and  
15 also this wooded area. I could see this drive which goes  
16 towards the exit of that apartment complex.

17 Q Why is it that you stopped off of the ramp as  
18 opposed to proceeding to the entrance of apartment  
19 complex?

20 A There was a lot of radio traffic going out at this  
21 time. Like I said we were trying to establish a  
22 perimeter. I had somewhat of an idea where certain  
23 officers were. I knew that there was nobody on the 385  
24 side. So I parked there so I could watch the exit ramp  
25 and also a good section of that apartment complex.

1 Q Well, in December of 2001, how was visibility?

2 A Visibility was very good. There was of course no  
3 leaves on the trees. The apartment complex was pretty  
4 well lit.

5 Q Did you have any other information besides the  
6 person that fled on foot that you were looking for?

7 A Yes, sir. The unit that responded to the Chuck E  
8 Cheese was giving us updated information. They also  
9 mentioned that there was a white in color Ford Taurus  
10 which had been seen earlier around that location. So the  
11 information we had we were looking for a white Ford  
12 Taurus and also a male subject with -- wearing dark  
13 clothing.

14 Q Did you have an occasion to see a white Ford Taurus  
15 that evening?

16 A I did. I saw a white Taurus backing up from one  
17 of the buildings within the complex, proceeded to head  
18 down -- would you like me to show you?

19 Q Please step down and show us.

20 A I was stationed here. And what I did when I parked  
21 my car I got out of my car so I could see a little bit  
22 better. We have a lot of stuff in our cars, cameras,  
23 cages and stuff like that. I came out of my vehicle and  
24 I stood somewhere in this area like I said before, so I  
25 could see all of this road way, this -- the road way

1 here, inside the apartment complex, as well as this  
2 drive. And while sitting here I saw a vehicle pull out  
3 of this building here, which was a white Ford Taurus and  
4 then proceeded to drive down, stopped around the area  
5 that looked like a dumpster area. At that time I was  
6 trying to get on the radio to tell units that I observed  
7 a white Ford Taurus and that it was headed toward the  
8 exit of the apartment complex.

9 Q Would you please tell the jury what I'm handing you  
10 now?

11 A It's a sticker saying building 700.

12 Q Would you please place that sticker on the building  
13 that you saw this white Ford Taurus leave?

14 A That one right there.

15 Q Okay. Please have a seat. Where did you see the  
16 Ford Taurus go once it left the building?

17 A It backed out of the building, at which time I could  
18 tell it had a paper tag on it. And then it proceeded to  
19 drive down the drive, from my top finger straight down  
20 (sic), and there's a dumpster area about I believe it's  
21 half way down that particular drive inside the complex,  
22 stopped. Someone got out of the vehicle, thrown some  
23 item into the dumpster and then proceeded to drive  
24 towards the exit of the apartment complex.

25 Q Do you recall whether or not the person that got out

1 was male or female?

2 A I couldn't tell from that distance.

3 Q Could you see what race they were?

4 A Not from that distance I could not.

5 Q Could you see -- could you tell us what side of the  
6 vehicle they got out from?

7 A I don't recall which side they got, if it was the  
8 driver or the passenger.

9 Q Were you able to see what was thrown into the  
10 dumpster?

11 A I could not but it did not appear to be a trash bag.

12 Q After this did you have an occasion to go to where  
13 the vehicle was stopped?

14 A I did. I was first ordered to respond to Chuck E  
15 Cheese. The unit on the scene there had requested a unit  
16 to come over there and pick up, I believe it was two  
17 employees from Chuck E Cheese, as far as to do a show up  
18 on the road way.

19 Q Is it your testimony that you picked up two  
20 employees?

21 A I picked up two -- two people from location. I  
22 believe they were employees, I'm not 100 percent sure,  
23 but they were two subjects from that location.

24 Q Do you recall whether they were male or female?

25 A One male, one female.

1 Q And where did you take them?

2 A To the entrance of the apartment complex which has  
3 previously been marked where I believe Corporal Jones put  
4 his sticker.

5 Q Okay. And you said you carried them to the location  
6 for an identification?

7 A Yes, sir. I put them in my patrol vehicle, drove  
8 them to the scene, at which time I specifically remember  
9 they were having a hard time seeing the subject through  
10 the cage. Our cages, they're split. Some of them are  
11 plexi-glass on one side and they'll have a wire like  
12 steel mesh on the other. And they were having trouble  
13 observing that subject so they stepped out of my car  
14 briefly to look at this particular individual.

15 Q Without saying what either one of those people said,  
16 did they or did not -- excuse me. Did they positively  
17 identify the person that y'all had stopped as the robber?

18 A They did not. They stated he had the same build but  
19 did not positively identify him due to the fact that the  
20 person that had robbed them had a face mask on.

21 Q Okay. And I'm going ask what time you received the  
22 call?

23 A I have in my report that I responded at 1:07 a.m.

24 MR. MARCHANT: I have no further questions. Please  
25 answer any questions Mr. Watkins may have.

CROSS-EXAMINATION

1  
2 BY MR. WATKINS:

3 Q All right. How you doing, sir?

4 A Good. How are you?

5 Q All right. When you arrived on the scene you  
6 arrived right here?

7 A Yes, sir.

8 Q You looked down there, did you see anyone go into  
9 apartment 708, or the 700 building, or come out the 700  
10 building and get into the white Ford Taurus?

11 A No, sir, what I did was I saw some brake lights and  
12 some reverse lights come on on the vehicle. When it  
13 backed out I observed that it was a white Ford Taurus.

14 Q So you never seen, quote, me, the suspect go into  
15 apartment -- I mean apartment 107 (sic) to be able to  
16 notify the officers that you seen the person go into the  
17 apartment?

18 A I never saw anybody come out or go in that apartment  
19 complex, as far as that building there no. I don't know  
20 where apartment 107 (sic) is.

21 Q Okay. Okay. About what time would you say it was  
22 when the car backed up away from the parking spot?

23 A I'd probably been there maybe a little over five  
24 minutes. It was a brief moment of time.

25 Q Did you see who actually made the stop on the white

1 Ford Taurus and arrest?

2 A I did not. I can't see from there who stopped the  
3 car.

4 Q Do you know who stopped the car?

5 A At the time it was Corporal Thompson advised over  
6 the radio that he had stopped.

7 Q So that's how you received the information?

8 A Correct. The car was stopped.

9 Q Okay. I left some papers. The two suspects that  
10 were driving the white Ford Taurus, do you know which  
11 person got out of the car and threw something away in the  
12 trash dumpster?

13 A I could not tell whether it was the passenger or the  
14 driver. No, I could not.

15 Q Did it appear to be a big blue coat with stripes, a  
16 ski coat?

17 A I couldn't tell what it was only that it wasn't a  
18 trash bag.

19 Q Was it big or small?

20 A I don't recall. I just know it wasn't a trash bag.

21 Q Okay. Could you tell a description of the people  
22 that was in the car?

23 A No, sir, I couldn't.

24 Q You drove -- you went to Chuck E Cheese. Did you --  
25 what did you do when you went to Chuck E Cheese?

1       A     I drove to Chuck E Cheese. The reporting officer  
2       over there instructed me that he wanted me to take two  
3       individuals down to where Corporal Jones and at that time  
4       Corporal Thompson was for a show up.

5       Q     Do you see those two individuals in the courtroom  
6       today?

7       A     Which two individuals are you talking about?

8       Q     The gentleman with the glasses on and the young lady  
9       sitting next to him?

10      A     Do I recall if that was the two people that I took  
11      there?

12      Q     The two witnesses ---

13      A     I don't recall who I took there.

14      Q     Do you know if it was a male or female?

15      A     I know it was a male and a female.

16      Q     Okay. So you do know. Did anyone tell you that  
17      they identified me as being the person that committed the  
18      crime?

19      A     No, they stated to me that the person they saw had  
20      the same build, but they did not ---

21      Q     They never said, that's him? Did they say ---

22      A     They did not say it was not him but he has the same  
23      build and I couldn't see because he had something  
24      covering his face.

25      Q     Okay. At the time, sir, you were on scene when the

1 arrests were made, do you know what the reason for the  
2 arrest -- why the reason for the arrest was made?

3 A I was not the arresting officer. I had no  
4 conversation with any other officer there at the time.

5 Q Did you ever inform any of the officers when you got  
6 back to the police station, when the officer doing their  
7 investigation, that the suspect was not positively  
8 identified?

9 A I stated -- I documented it in my report and ---

10 Q You did? Go ahead.

11 A I documented it in my report. The exact statement  
12 that I put in my report was, both witnesses stated that  
13 the black male had the same build but they were unable to  
14 identify him due to the fact that his face was covered at  
15 the time of the robbery.

16 Q And when you finished your report did you give it to  
17 the investigating officer that took over the whole  
18 investigation?

19 A The investigating officer gets all the copies of the  
20 reports.

21 Q Okay. So that's part of the procedure so he can  
22 complete his investigation. So he is to be made aware of  
23 all the positive facts and negative facts?

24 A He takes all the paperwork, supplemental statements,  
25 everything, compiles it and then that is based off of his

1 investigation.

2 Q Do you know who the overall investigating officer  
3 was?

4 A I -- no, I do not know who was the head.

5 MR. WATKINS: Okay. I have no more questions for  
6 this defendant (sic). Thank you, sir.

7 THE WITNESS: Thank you.

8 MR. MARCHANT: I have no further questions. Ask  
9 that this witness be excused?

10 THE COURT: Thank you, sir. Okay. We'll stop for  
11 lunch and hopefully your lunch will be here in just five  
12 or 10 minutes, if they're not here. Okay. Have a good  
13 lunch. Do not discuss the case. And we'll start back  
14 after lunch. Thank you.

15 (The jury exited the courtroom at 12:50 a.m.)

16 THE COURT: All right. We'll be in recess until  
17 2:15.

18 (A short recess was taken, after which, the trial  
19 continued as follows:)

20 (State's Exhibit Numbers 24 and 25 were marked for  
21 identification.)

22 THE COURT: Okay. Bring the jury in.

23 MR. MARCHANT: Your Honor, can we just take up one  
24 thing briefly?

25 THE COURT: Okay.

1 MR. MARCHANT: There are several pieces of evidence  
2 that are -- have already been marked that have been in  
3 custody and control of the Court since the first trial.  
4 So when I'm addressing the witness I just wanted to make  
5 sure there wasn't any confusion about where the evidence  
6 has been. I don't know how His Honor wants to handle  
7 that.

8 THE COURT: I don't know where it's been would  
9 really be an issue.

10 MR. MARCHANT: Well, if I'm asking if it's been in  
11 the custody and control of this particular officer he's  
12 going to have to say no.

13 THE COURT: Well, I guess he'd have to say  
14 truthfully it's been in the custody of the Court.

15 MR. MARCHANT: Okay.

16 MR. WATKINS: Your Honor, could I renew some motions  
17 know and ---

18 THE COURT: It's not the appropriate time.

19 MR. WATKINS: Not the appropriate time, okay.

20 THE COURT: Okay. Bring the jury in.

21 (The jury entered the courtroom at 2:29 p.m.)

22 THE COURT: All right. Mr. Marchant.

23 MR. MARCHANT: Please the Court? The State calls  
24 Lieutenant Thompson.

25 THE CLERK: Sir, please place your left hand on the

1 Bible and raise your right hand.

2 JOHN THOMPSON

3 Having been first duly sworn, testified as follows:

4 THE CLERK: Thank you. Please be seated. Please  
5 state your full name for the record.

6 THE WITNESS: John Albert Thompson.

7 DIRECT EXAMINATION

8 BY MR. MARCHANT:

9 Q Lieutenant Thompson, where are you employed?

10 A I'm employed with the Greenville City Police  
11 Department.

12 Q And today what are your duties?

13 A My job is I am the Lieutenant over uniformed patrol  
14 division, west side operations. I oversee three  
15 sergeants and about 20 officers that respond to the  
16 routine calls that citizens place, 911 calls, burglaries,  
17 robberies, wrecks, accidents, anything of that nature.

18 Q And how long in total have you been employed with  
19 the city?

20 A With the city, 11 and a half years.

21 Q Were you employed with them in 2001?

22 A Yes, I do.

23 Q In December of 2001, what were your duties?

24 A In 2001 I was a corporal with the police department  
25 and a field training officer. I routinely responded to

1 calls, always had someone riding with me in training.  
2 After officers completed the academy they come to a field  
3 training officer and train for approximately 18 weeks  
4 before they're out on their own to learn how we handle  
5 calls, and our policies and laws, and that was my  
6 position then.

7 Q Were you working the night of December the 19th of  
8 2001?

9 A I was.

10 Q Do you recall responding to this incident?

11 A I do.

12 Q Where were you prior to responding to this call?

13 A My beat which was called fox beat, it's the downtown  
14 area with the central business district. It was kind of  
15 the hub of the city, and I responded to other areas to  
16 back up other officers from that position. So I was more  
17 than likely downtown, exactly where I do not know.

18 Q In responding to this call where did you go?

19 A In responding to the call I came out of the downtown  
20 area straight down 385 to Haywood Road to the area of --  
21 where the call was from which was 253 Congaree Road,  
22 Chuck E Cheese, which is inside the Greenville city limit  
23 that we patrol.

24 Q Okay. Did you stop at the Chuck E Cheese initially?

25 A No, as we're arriving what we do is we're on the.

1 radio with each other communicating, setting up a  
2 perimeter, letting other officers know where you're going  
3 to be, they're letting you know where they're going to  
4 be. We try to get -- surround the area with as many  
5 officers as we can. I responded actually -- an initial  
6 officer responded to Chuck E Cheese. We do that so they  
7 can get out information, timely information that maybe we  
8 haven't received from dispatch. I responded to the area  
9 of the - : : : complex entrance and exit.

10 Q And what did you do upon your arrival at the  
11 entrance?

12 A When I pulled up there was another officer already  
13 there. I pulled up on the side of the road, angled my  
14 car so that my lights could be shining across the road  
15 through any vehicles that approached. And I exited my  
16 vehicle and stood by my vehicle.

17 Q Okay. Handing you a sticker with your name on it.  
18 Would you please step down and show the jury where you  
19 parked your vehicle that evening?

20 A I parked approximately just about right where this  
21 other vehicle was, on the side of the road.

22 Q Please take the stand. Once you parked your  
23 vehicle, did you stay in it or did you get out?

24 A I exited my vehicle.

25 Q And what was the purpose of that?

1 A So that I could be out and stop cars, see in  
2 vehicles as they went by. We had been given a  
3 description by dispatch that we were looking for a black  
4 male suspect driving a white Ford Taurus that had been  
5 seen in the area as a possible suspect vehicle. So  
6 that's what I was looking for.

7 Q Do you recall any vehicles coming out of the  
8 apartment complex?

9 A I recall a white Ford Taurus coming out of the  
10 apartment complex.

11 Q Okay. Do you recall if any others came in or out?

12 A I don't recall.

13 Q Did you stop the white Taurus?

14 A I did.

15 Q Why did you stop it?

16 A I stopped the vehicle because it fit the description  
17 that we were given of a possible suspect vehicle that was  
18 a suspicious vehicle seen in the area of Chuck E Cheese,  
19 and it also had a black male driver.

20 Q Ask you to step down one more time and ask you to  
21 place a sticker, tell jury what the sticker says and  
22 please place it where you stopped the vehicle?

23 A The sticker says vehicle stopped. I stopped the  
24 vehicle just right beside my vehicle, right here, on  
25

1 Q Did you stop the vehicle inside the apartment  
2 complex? Bless you. Or on the entrance road into the  
3 complex?

4 A No, sir, I was actually on the roadway. The  
5 apartment complex only has one entrance and exit, which  
6 is right here. Once they come out of the exit on the  
7 roadway, and I stopped it on that  
8 roadway.

9 Q All right. Please take the stand. What did you do  
10 when you approached the vehicle?

11 A When I approached the vehicle I asked the driver for  
12 his driver's license, at which time he told me he did not  
13 have one. So I began asking questions to get information  
14 to find out who was driving the vehicle. And he gave me  
15 the name of Robert Base and gave me a birth date .  
16 I then asked him how old he was. He said he was 37. I  
17 did some quick math and figured out that him saying was  
18 37 in '65 since 2001, that was a little off. That made  
19 my suspicions grow a little bit. So I asked him to --  
20 before we went back to my car to run his name and  
21 information to see if he had a valid driver's license, or  
22 dispatch and see if he had a valid driver's license, I  
23 asked him to step from the vehicle to pat him down for  
24 weapons, because I was looking for somebody with a gun  
25 because an armed robbery had just occurred, and there's a

1 chance that this could have been the suspect that had the  
2 gun, and I wanted to protect myself and all the other  
3 officers around me, and so I patted him down for weapons.

4 Q Did you notice whether or not there was anyone else  
5 in the vehicle?

6 A There was one other person in the vehicle. In the  
7 passenger seat there was a black female.

8 Q Do you recall her name?

9 A I do. I have it in my report. It was Elena Pelzer.

10 Q Tell me again what is the purpose of getting the  
11 defendant out of the vehicle that evening?

12 A I got him out of the vehicle to pat him down for  
13 weapons. Again, we were -- the call was an armed  
14 robbery, and the 911 operator received that information  
15 that the suspect that had robbed the Chuck E Cheese had a  
16 handgun, so before I went back to my vehicle to check his  
17 information, I was going to pat him down to make sure he  
18 did not have a gun on him.

19 Q Okay. Did you find a gun on the defendant?

20 A I did not.

21 Q What if anything did you notice when the defendant  
22 was stepping out of the vehicle?

23 A As the defendant stepped from vehicle he made a  
24 reaching motion into his pocket and threw something into  
25 the car. As I looked in the car I could tell it was

1 hands full of cash. I held him against the car, telling  
2 him not to reach back in his pocket, while I was watching  
3 the female telling her to keep her hands up. She was  
4 taking the cash from the inside of the car and putting it  
5 down in the pouch on the door, on the passenger side  
6 front door to conceal it.

7 Q Did you get the defendant in handcuffs?

8 A I did. I handcuffed him. I -- there were other  
9 officers in the area on foot. I hollered for some help,  
10 and they came over and responded. And one of them then  
11 took the passenger, Ms. Pelzer, into custody. And I  
12 secured the defendant in my patrol vehicle.

13 Q Okay. And did you run the name Robert Base through  
14 your records?

15 A I can't recall.

16 Q I'm going to hand you State's Exhibit Number 4 and  
17 Number 5. If you would please look at number 4 and tell  
18 me if you recognize that photograph?

19 A Yes, sir, this is the white Ford Taurus that I  
20 stopped there on the [redacted] in front of  
21 the apartment complex.

22 Q Now, did you take a picture of Taurus?

23 A No, sir, I didn't. We requested forensics to come  
24 out and they photograph all of our scenes.

25 Q Okay. But is that a fair and accurate depiction of

1 the position as well as the condition of the vehicle that  
2 evening?

3 A Yes, sir.

4 MR. MARCHANT: Okay. Move State's Number 4 into  
5 evidence.

6 MR. WATKINS: Let me see which one is number 4.

7 MR. MARCHANT: Is that without objection?

8 THE COURT: Without objection it's in evidence.

9 (State's Exhibit Number 4 was filed.)

10 THE COURT: Anything that's introduced in evidence,  
11 ladies and gentlemen, you can -- I'll send it back to the  
12 jury room and y'all will have it back there to look at if  
13 it's introduced and if it's -- so y'all can review all  
14 the evidence back in the jury room.

15 BY MR. MARCHANT:

16 Q Okay. Do you recognize State's Exhibit Number 5?

17 A Yes, sir, I do.

18 Q Okay. How is it that you recognize that exhibit?

19 A This is a picture of the interior of the car, the  
20 front seat, taken from the front passenger door, looking  
21 into the vehicle. On the passenger side front seat there  
22 is a large sum of cash.

23 Q Okay. And is the cash in the photograph, is that  
24 how you found it?

25 A No, actually found the cash in the front pocket of

1 the front driver's side -- I'm sorry, passenger side  
2 door. I removed it from there and put it in the front  
3 passenger side seat, which is seen in this picture. I  
4 was still looking for a gun, because remember I'm  
5 thinking there's an armed robbery, that somebody has a  
6 gun. I removed the cash from the pocket looking in the  
7 pocket to see if there was a gun, or any weapons in  
8 there.

9 Q Does this picture fairly and accurately depict the  
10 way you placed the money in the seat that evening?

11 A Yes, it does.

12 MR. MARCHANT: Move State's Number 5 into evidence.

13 MR. WATKINS: Without objection.

14 MR. MARCHANT: It's without objection, Your Honor.

15 THE COURT: Okay, without objection.

16 (State's Exhibit Number 5 was filed.)

17 BY MR. MARCHANT:

18 Q Now, did you do a physical count of the money that  
19 you found in the vehicle that evening?

20 A I did.

21 Q Do you have a record of -- well, do you remember  
22 what exactly you found?

23 A On my report I have the total of the money as \$328,  
24 but I did do a property and evidence sheet which is what  
25 we log in when we're going to put something into property

1 and evidence for safe keeping. I did do a sheet showing  
2 the break down of the bills and the total of the money.

3 Q Do you recall off the top of your head the break  
4 down of the money?

5 A No, I do not.

6 MR. MARCHANT: Mark this 26.

7 (State's Exhibit Number 26 was marked for  
8 identification.)

9 BY MR. MARCHANT:

10 Q Show you what's been marked as 26. If you would  
11 review this and tell me if you recognize the document?

12 A I do recognize it.

13 Q How is it that you recognize it?

14 A I recognize this as our case number of the case that  
15 we were working. And also it is filled out by me in my  
16 handwriting, and I have signed it with the money that has  
17 been recovered.

18 Q Okay. When you say the money that's been recovered  
19 and you've signed it, what does -- what does that mean?

20 A Whenever we recover money it's very imperative that  
21 we -- it's documented and it is put into evidence to be  
22 held until court, or until the detectives look at it and  
23 decide which way the case is going to go. I have marked  
24 this sheet that it's evidence from an armed robbery at  
25 Chuck E Cheese on 253 Congaree Road, and then I've broken

1 down the denominations of money that I recovered. And I  
2 have signed it and dated it, and put the time it was  
3 placed in evidence.

4 MR. MARCHANT: And what are the denominations of the  
5 money -- first we would move State's 26 into evidence.

6 THE COURT: Okay. Without objection, it's in  
7 evidence.

8 (State's Exhibit Number 26 was filed.)

9 THE WITNESS: The denominations of money is item A,  
10 is a quantity of 153 one dollars bills. Item B is 23  
11 five dollar bills. And item C is three 20 dollars bills.

12 BY MR. MARCHANT:

13 Q Do you know where that money was held once you  
14 turned it in?

15 A What we do to keep the money in evidence straight,  
16 especially cash money, we take it, we put it in a bag and  
17 heat seal it so that you could tell if it's been tampered  
18 with, anybody has removed anything from the pouch. We --  
19 inside the bag we put the case number, our initials, and  
20 the date, and then it's heat sealed all at the same time  
21 before the money goes into evidence.

22 Q I'm going to show you what's been marked as State's  
23 Exhibit 23A and 23B, and I would ask if you recognize  
24 those?

25 A Yes, I recognize them.

1 Q And how is it you recognize them?

2 A I recognize them as this is the way that we put  
3 money into property and evidence. This is inside the  
4 clear heat sealed bag. You can tell that there's blue  
5 writing inside the bag where initials, and then the date,  
6 and case number have been put.

7 Q Okay. Can you state with certainty that that's the  
8 money you recovered that evening?

9 A No, I cannot.

10 Q Okay. But is that the condition that you would seal  
11 evidence of this nature?

12 A Yes, this exact way.

13 Q Okay. Do you recall whether or not the vehicle you  
14 pulled over had a license tag?

15 A It had a paper tag on it.

16 Q Do you recall where the tag was from?

17 A Yes, sir, I documented that in my report. It had a  
18 white -- I'm sorry. It had a plastic paper tag on it  
19 (sic).

20 Q The person driving the vehicle that night, would you  
21 please describe him for us?

22 A Yes, sir, he was a black male. He was approximately  
23 5'11", 190 pounds.

24 Q Any identifying characteristics on him, tattoos?

25 A None that I recall.

1 Q Moles or anything? Well, do you recognize the  
2 person that you stopped that evening as being in the  
3 courtroom?

4 A Yeah, he's the defendant.

5 Q Would you please point him out for the Court?

6 A The defendant dressed in brown sitting at the desk  
7 beside you.

8 MR. MARCHANT: Please let the record reflect he's  
9 identified the defendant.

10 THE COURT: Okay.

11 BY MR. MARCHANT:

12 Q Following the stop of this vehicle, did you have any  
13 follow-up duties with investigating this alleged armed  
14 robbery?

15 A No.

16 Q Okay. And why not?

17 A What I did is I transported -- at the point where I  
18 had stopped a vehicle that matched the description of a  
19 suspicious vehicle in the area, the person driving the  
20 vehicle fit the description of the person that -- the  
21 suspect of the armed robbery itself, the amounts of cash  
22 in the vehicle, the area that the armed robbery happened,  
23 and where the vehicle was, in just such a short time, the  
24 totality of all those circumstances together I decided to  
25 place him under arrest for armed robbery and take him

1 into the detectives where they could follow up and  
2 interview him. And at that point I then turn over what I  
3 have to them and they follow up and do the interviews,  
4 get the warrants, and things of nature.

5 Q Did you transport the defendant to the law  
6 enforcement center that evening?

7 A I did.

8 Q Okay. And once you released him into the law  
9 enforcement center, did you have any other involvement in  
10 this case?

11 A No, none.

12 MR. MARCHANT: Okay. I have no further questions.  
13 Please answer any questions Mr. Watkins may have.

14 CROSS-EXAMINATION

15 BY MR. WATKINS:

16 Q How you doing, sir? You stated you was the officer  
17 that stopped the white Ford Taurus that night?

18 A Yes, sir, I stopped him.

19 Q And what was your reason for stopping the white Ford  
20 Taurus again?

21 A Because the white Ford Taurus was the suspect  
22 vehicle seen around the area. The -- the information  
23 relayed through dispatch to us was that it had been seen  
24 in the area and was suspicious in the area, and that's  
25 why I stopped it, and it had a black male driver.

1 Q Okay. When you stopped the black driver did he fit  
2 the description of the clothing description of the person  
3 that was described when the call came over the 911  
4 dispatch call?

5 A I don't recall the clothing description.

6 Q All right. You said I gave you the name Robert Base  
7 and that -- did you ever run that name in and come back  
8 from the dispatcher with any warrants or anything on --  
9 as the far as driver's license?

10 A I don't recall.

11 MR. WATKINS: Can you I -- the State give me that.

12 THE COURT: You can ask him if he can identify that.

13 BY MR. WATKINS:

14 Q Okay. Can you tell me what that is right here?

15 A It is a photocopy of a South Carolina -- appears to  
16 be a South Carolina driver's license.

17 Q What name is on it?

18 A The name on it is Robert Base.

19 Q Okay. Thank you. So at the time ---

20 MR. MARCHANT: Your Honor, I believe the exhibit  
21 should be marked and he's asked him about it. I would  
22 ask that it be moved into evidence.

23 MR. WATKINS: Okay, yeah.

24 THE COURT: Okay. Mark into evidence without  
25 objection.

1 MR. WATKINS: Exhibit Number 1 (sic).

2 (Defendant's Exhibit Number 2 was marked and filed.)

3 BY MR. WATKINS:

4 Q You said you arrested a second person in the car.

5 What was the probable cause for arresting her?

6 A I did not arrest the second person in the car.

7 Q You didn't arrest the second person?

8 A I just arrested you.

9 Q Okay. Were you on the scene when the two witnesses  
10 from Chuck E Cheese was brought down there to try to  
11 identify me?

12 A I would have had to have been, Mr. Watkins, but I do  
13 not recall that. I don't recall the show up.

14 Q Okay, sir.

15 A And I put anything in my report about it.

16 Q How long did you stay on the scene -- were you one  
17 of the officers that had my vehicle towed?

18 A I can't recall. I do not know if I was there.

19 Q Here's the tow report. That your name on it?

20 A Okay, yes, I'm one of the investigating officers  
21 listed, but it was actually towed by D. E. Jones, signed  
22 down here.

23 Q Okay. So you were there when the car was being  
24 towed?

25 A No, I can't -- I can't say I was.

1 Q Okay. So if I have the 911 dispatch report and it  
2 shows you left the scene at four o'clock in the morning,  
3 the scene of where you stopped me at, then wouldn't it  
4 put you the officer that drove me down to the Greenville  
5 County Detention Center?

6 A I was the one that drove you to the Greenville  
7 County Detention Center.

8 Q So you went -- you had to go back to the scene then?

9 A No.

10 Q Okay. Were you one of the officers that -- you was  
11 the officer that arrested me, what did you with my keys  
12 when you took my keys off of me? You arrested me, I had  
13 a cell phone and my keys on me. And I put my cell phone  
14 and keys in the car. You was the arresting officer, what  
15 happened to my keys?

16 A I have no idea. They probably stayed in the  
17 vehicle.

18 Q They stayed in the vehicle?

19 A So they could start the vehicle and tow it.

20 Q Okay. So you never that night went back to  
21 apartment 708 with other officers using keys to gain  
22 access to the apartment?

23 A I have never been to . . . 703 at 7 . . . 1

24

25 Q When you found the money in the car what are the

1 normal procedures, if you see money in the side of the  
2 car, are you supposed to touch that money, or are you  
3 supposed to call forensic if you think it's evidence of a  
4 crime?

5 A It is fine for me to touch the money, especially  
6 when there is fear that there's a weapon there. In other  
7 words, you don't want just anybody coming up and touching  
8 the weapon. You don't want somebody coming on the scene.  
9 When forensics comes on scene the scene is already  
10 secure. They come on scene to process the scene and take  
11 pictures and videos, and bag evidence, and take what we  
12 ask them to take. When they come on scene it's supposed  
13 to be secure. A forensic person that comes up and  
14 there's just money in the pouch on the door, not knowing  
15 there could be a gun and they reach down in there for the  
16 money, they can set the gun off. You know, they could  
17 accidentally shoot the gun. I wanted to make sure that  
18 vehicle was secure and there were no weapons in the  
19 vehicle because everything up to this point had added up,  
20 that I thought, you know, with the totality of the  
21 circumstances this was a good chance this was the armed  
22 robbery suspect and there's a good chance that gun is in  
23 that vehicle. So I had to remove the money to check that  
24 seat pocket in the door pocket.

25 Q So just -- so just based upon the money, you drew

1 the conclusion that I was the robber?

2 A No, sir, based on all the totality of the  
3 circumstances that I described, the area that we were in,  
4 close to the business where the armed robbery occurred,  
5 the black male suspect, the white suspicious Ford Taurus,  
6 the money in the vehicle, the way the money was thrown in  
7 the vehicle, the way it was being concealed in the door  
8 away from me, obviously not wanting me to see the money.  
9 All those things together, that's the totality of the  
10 circumstances. And all of those things led me to believe  
11 that.

12 Q Okay. So when you seen the white Ford Taurus and  
13 you was the arresting officer on the scene, when they  
14 brung the witnesses, you mean to tell me you didn't pay  
15 attention to what the witness was saying for  
16 identification to see if I was the person that committed  
17 the crime, to verify whether or not the vehicle was the  
18 vehicle that they seen prior to Chuck E Cheese's being  
19 robbed?

20 A No, there was prior testimony that it was Corporal  
21 Skardon that brought them over. I had no contact with  
22 any of those witnesses. The only contact I had was with  
23 you. And so, you know.

24 Q So when I was placed in the police car, where were  
25 you at when I was in the police car and you told me to

1 wait here, and where did you go then?

2 A I believe I went back up and then, you know, went  
3 through the car, moved the money that we're talking  
4 about, looked for the gun, saw other things in the  
5 vehicle that could have been evidence of a crime,  
6 walkie-talkies that are set on the same channel, two  
7 identical walkie-talkies set on the same channel, an  
8 envelope with the name Robert Max Watkins on it, which  
9 you know, led me to believe that I might not be dealing  
10 with the Robert Base, that I might be dealing with Robert  
11 Max Watkins. You know, I found a lot of things in the  
12 car that really made me consider even more circumstances.

13 Q So to check things, that's what computer things for  
14 so you can call in and you can verify this information  
15 and get a photo imagine to see who the person is, so you  
16 can verify this if you call the name in that I gave you  
17 and everything, you'll get a reply back, so you know if  
18 I'm telling you if I had a valid license and everything,  
19 if I'm telling you is true, all right, right, correct?

20 A If I do not have all those circumstances that I had  
21 and it would have been a normal traffic stop, and I would  
22 have gone up to the door and said, let me see your  
23 driver's license and they would have given me a driver's  
24 license, I would have gone back to my computer and run  
25 the name, yes.

1 Q Okay. Now, when I was taken from the car, I was  
2 asked to have a seat -- I was frisked and then I was  
3 asked to have a seat in the back of a police car?

4 A That's correct.

5 Q Now, when I was in the back of a police car I was  
6 not handcuffed or anything. An officer checked my car,  
7 the driver's seat, the immediate area, and then they went  
8 around the passenger side. And from my view the  
9 passenger was taken out of the car, was frisked, then I  
10 noticed officer come with money on the car and said,  
11 bingo, we got our man, and that's when I was arrested --  
12 taken from the car, handcuffed and arrested, my keys was  
13 taken from me. At that point I was arrested. Now, I'm  
14 going to ask you again, are you sure that when you said I  
15 was getting out of the car that I threw money on the seat  
16 and you handcuffed me and did all these things that you  
17 claim you did?

18 A I am 100 percent positive that when you stepped from  
19 the vehicle you reached in your pocket and pulled out a  
20 large sum of cash and threw it in the car, and you were  
21 handcuffed immediately, because I didn't know what you  
22 were reaching for.

23 Q Okay. So ---

24 A I've got to protect myself and the citizens and the  
25 other officers in that area. And you were immediately

1 handcuffed.

2 Q So it's a crime for -- if a person don't have his  
3 license, he may feel that because he feel like he might  
4 be arrested to give money to an individual that might  
5 have to come get him out? That's a crime, to put the  
6 money on the seat or hand it on an individual?

7 A What it does is it makes an officer's suspicions  
8 grow. I have done many traffic stops in my career over  
9 15 years as an officer, and in those traffic stops very  
10 rarely does anybody stick their hand in their pocket in a  
11 threatening manner while an officer is standing there  
12 telling you not to put your hands in your pockets. When  
13 they're doing that, you know, that is not a normal thing  
14 that a normal individual on that does. People know to  
15 keep their hands where the officer can see them. The  
16 officers always tell that as a routine thing. You know,  
17 it's a daily thing. So yes, you sticking your hands in  
18 your pockets, that was enough for me to go ahead and  
19 handcuff you, because that was not a normal thing that an  
20 individual that has been stopped by an officer in full  
21 uniform with a marked car sitting beside them would do.

22 Q So when you searched the car for a gun and you  
23 didn't find a gun, then you got evidence that I was not  
24 identified, why was I still arrested?

25 A Because of the totality of all those circumstances

1 that I have mentioned before. You know, everything was  
2 pointing towards you, that you were the suspect, and  
3 that's why you were arrested.

4 Q But I didn't have the clothing matching. So you're  
5 saying I'm a robbery suspect because I got out of the  
6 car, I don't have a driver's license, I get out of the  
7 car, put some money in the seat, I'm a robbery suspect.  
8 No gun. Nothing to match the description of the robber,  
9 anything saying robber, anything, but you assumed that  
10 because I'm a black man and the robbery happened by a  
11 black man, that I was the robber?

12 MR. MARCHANT: Your Honor, I think he's asked and  
13 answered this question a couple different ways. I don't  
14 know that he can answer it any other way than he's  
15 already done.

16 THE COURT: All right. You can testify later if  
17 you -- or maybe, if you want to. You don't have to. But  
18 just ask him one question at a time and give him a chance  
19 to answer.

20 MR. WATKINS: Okay.

21 THE COURT: So we'll understand.

22 BY MR. WATKINS:

23 Q Another officer that was on scene found a five  
24 dollar bill in the back seat of his car. When you patted  
25 me down, what did you take out of my pocket?

1 A That I know of, took some cash out of your pocket.

2 Q What's in your statement? Read your statement to  
3 what -- let me show you your statement. The first -- the  
4 second page where you say -- you say, the money that  
5 Watkins had thrown, right here.

6 A Okay. The money that Watkins had thrown in the car  
7 was all ones and fives. It was later counted and it was  
8 150 in ones, 100 in the fives. Watkins also had \$60 in  
9 20s. Ten dollars in fives and three dollars in ones in  
10 his pocket.

11 Q Okay. Now, I take you to, I recall the \$5 bill in  
12 Officer D. Jones car. I ask you to read your statement  
13 right here, your supplemental -- what's it called, your  
14 property report?

15 A Um-hm.

16 Q Can you read that. It's already been introduced  
17 into evidence. And say -- tell me how many five dollar  
18 bills you got out of my pocket?

19 A Five dollar bills, three in Watkins' pocket.

20 Q But in your statement it says you got two out of my  
21 pocket. So the other five had to come out of the back  
22 seat of the car?

23 A That would be correct.

24 Q So now, did you give -- under oath did you ever give  
25 previous testimony to this report right here that you

1 took three five dollar bills out of my pocket?

2 A I have to go by my report and my report says that I  
3 took \$10 in fives. There was a five found in another  
4 vehicle, and it was probably just added in with that on  
5 that property report.

6 Q Okay. I'm going to show you where under oath you  
7 made -- okay. Right here. With quantities of fives.  
8 That's where you were under oath.

9 THE COURT: Just read it and answer his question,  
10 yes or no.

11 MR. WATKINS: Okay.

12 THE WITNESS: Just read this, Your Honor?

13 THE COURT: Yeah, and then answer his question. You  
14 don't -- don't read it out loud.

15 THE WITNESS: Yes, sir. So I'm sorry, what was the  
16 question?

17 THE COURT: Now that he's read it, ask him a  
18 question.

19 BY MR. WATKINS:

20 Q Now, the question was, under oath did you testify  
21 that you found that three -- that three dollar bill that  
22 was in the back of the car out of pocket (sic).

23 A I did. I must have been reading right off the  
24 property and evidence sheet.

25 Q Okay. So in your statement you got -- you know, you

1 got only two out of my pocket. So ---

2 A That's correct. In my police report I said I  
3 removed two from your pocket. The one five dollar bill  
4 from the other vehicle must have been added into the --  
5 into that.

6 Q So is that proper police procedure to take evidence  
7 from somewhere else and add it to another evidence to  
8 somebody else -- to incriminate somebody else?

9 A It's all evidence of the same crime. Was it a  
10 clerical mistake that I didn't put in parenthesis that  
11 one of the five dollar bills was from the back seat of  
12 Officer's Jones car? It was a clerical. It was just  
13 miswriting.

14 Q It's important -- it's important because possibly it  
15 couldn't be evidence of what your -- of the crime or  
16 evidence of that certain situation right there? Could it  
17 be innocent money that you included with money that you  
18 considered money evidence of a crime? Can you say -- let  
19 you answer that question first.

20 A I'm sorry, I did not ---

21 Q Well, can you say for sure that that five dollars  
22 was the five dollars come out of my pocket, was thrown in  
23 with the five dollars in my pocket?

24 A I'm sorry, I'm still not following you.

25 Q In other words, if I had one evidence here and

1 evidence there, and I get evidence from here, and I know  
2 the evidence come there, can I say I got evidence from  
3 here and put it in here, and then come tell you, oh, I  
4 got it from here, knowing it don't belong there, it's  
5 over there?

6 A Okay. I think what you're asking me is can I -- can  
7 an officer take money from the back seat of a patrol car  
8 and then add it in with the money taken from a suspect.  
9 And if it's from the same crime, yes, because it's  
10 evidence of the same crime. The money is thought to be  
11 from the same -- suspected to be from the same place, the  
12 same crime, the same time, yes, it can be added all  
13 together.

14 Q Was I ever in the car that you got the five -- that  
15 the five dollar bill came out of?

16 A I think you remained solely in my vehicle.

17 Q So that's what I'm figuring out. How can you assume  
18 that this money, if you didn't see it come out of my  
19 pocket and get out of my pocket, it's money that belongs  
20 to me?

21 A Because the way you threw the money in the car, and  
22 the way the passenger was concealing the money, and there  
23 was no money in Jones' back seat -- Corporal Jones' back  
24 seat. We always check our back seats before and after we  
25 get anybody in and out of the car. He knew there was

1 nothing there. Somehow that money from inside the car  
2 that you threw in there, trying to conceal it from me, it  
3 got transported back to the vehicle. So common sense  
4 tells you that that money does go in with all the money  
5 that I recovered from the vehicle.

6 Q It wouldn't go with the defendant that you had in  
7 the car? Because you can't possibly -- you can't -- I  
8 mean, you can assume that, but you can't be 100 percent  
9 sure that that money is the money, because you have no  
10 connection from me to that car. And if that individual  
11 was in the car wouldn't it be fair to charge that  
12 individual with that money?

13 A Okay. What we use on something like this, is  
14 something called reasonable suspicion. And what that  
15 fact is what would a reasonable person believe, any  
16 person, what would a reasonable person believe. Did I  
17 have reasonable suspicion to believe that that five  
18 dollars that was in that other police vehicle belonged  
19 with all this other money, and should have been added  
20 back in and was stolen from the armed robbery at Chuck E  
21 Cheese, did I have reasonable suspicion? And yes, I did.

22 Q So the money that you say that I put on the seat and  
23 the money in my pocket, all that goes together, that's  
24 what you're saying?

25 A That's correct.

1 Q Okay. When you received the information over the  
2 dispatch about the white Ford Taurus, did it say anything  
3 about a paper tag, Budget Rent a Car tag?

4 A No, just to be on the look out for a white Ford  
5 Taurus which had been seen driving around the  
6 restaurant.

7 Q Okay. And is that -- is that the only white Ford  
8 Taurus in Greenville?

9 A That's the only one that I stopped that night.

10 Q Did any other vehicles come out of that complex that  
11 night?

12 A No other white Ford Taurus'.

13 Q Okay. So did you receive information that the  
14 robber fled in a white Ford Taurus?

15 A No, the information that I received is that the  
16 armed robber fled -- had fled the scene towards

17  
18 Q And who provided you that information?

19 A Dispatch.

20 Q Okay. So if dispatch gave you the information,  
21 somebody would have to call dispatch and tell dispatch  
22 this, or would it an officer over the radio (sic)? This  
23 is what I'm trying to figure out, because I know that  
24 nobody seen the black male get into a white Ford Taurus,  
25 or flee towards . . . So I'm trying

1 to figure out how did you get this information and how  
2 did dispatch -- who dispatch got this information from if  
3 none of the witnesses said this?

4 A It would either have to come over from dispatch or  
5 from officers who responded to the scene, to Chuck E  
6 Cheese, and then, you know, asked questions to find out  
7 any information that dispatch had and given out, and it  
8 came over the radio.

9 Q Okay. All right. Do you know what time you arrived  
10 on scene?

11 A I do not know exactly what time I arrived on scene.

12 MR. WATKINS: Okay. No further questions.

13 MR. MARCHANT: I don't have any further questions.

14 Ask that this witness be excused.

15 THE COURT: Okay. Thank you, sir.

16 THE WITNESS: Thank you, Your Honor.

17 MR. MARCHANT: Would call Detective Dan Fuller.

18 THE CLERK: Sir, please place your left hand on the  
19 Bible and raise your right hand.

20 DANIEL FULLER

21 Having been first duly sworn, testified as follows:

22 THE CLERK: Thank you. Please be seated. Please  
23 state your full name for the record.

24 THE WITNESS: Daniel C. Fuller, F-u-l-l-e-r.

25 THE CLERK: Thank you.

DIRECT EXAMINATION

1  
2 BY MR. MARCHANT:

3 Q I believe it's Sergeant Fuller now, is it not?

4 A Yes, sir.

5 Q And what are your duties as a Sergeant?

6 A I'm the first line supervisor for a platoon of  
7 officers. We work the west side. We're in the  
8 operations division, the uniformed officers in marked  
9 cars that you see when you have a need to make a police  
10 report.

11 Q What were your duties with the -- are you with the  
12 City Police Department?

13 A Yes, I am. Yes, sir.

14 Q What were your duties back in December of 2001?

15 A At that time I was a violent crime investigator,  
16 detective.

17 Q What does a violent crime investigator do?

18 A We follow up on reports that are made of robberies,  
19 rapes, shootings, stabbings, beatings, homicides, and we  
20 also are subject to call out on incidents that just  
21 occurred that need immediate follow up.

22 Q On December the 19th of 2001, were you on duty that  
23 night, or were you on call?

24 A I was on call. I was home in bed, got a phone call.

25 Q Do you recall what time you got a phone call?

1 A 1:30 a.m.

2 Q And in reference to that phone call, what did you  
3 do?

4 A I responded to the law enforcement center to meet  
5 with officers who had two suspects in custody from an  
6 armed robbery of Chuck E Cheese.

7 Q What other officer -- or strike that. Were you the  
8 only officer assigned to investigate this case?

9 A No, two of us.

10 Q Who was the other officer?

11 A My partner, Detective Wilbur Bruce.

12 Q And once you got back to the law enforcement center,  
13 what did y'all do?

14 A Pardon?

15 Q Once you got to the law enforcement center, spoke  
16 with Detective Bruce, what did y'all do?

17 A At the law enforcement center I met with two of the  
18 uniformed officers from the scene. And from those two  
19 officers Detective Bruce and I met and were updated as to  
20 what they had in hand at that point.

21 Q With the information that you were given, did you  
22 and Detective Bruce go and apply for a search warrant?

23 A A little later that morning, yes.

24 Q Okay. What did you do in between talking with your  
25 officers and talking with Detective Bruce, what did you

1 do?

2 A We also reviewed the written statements given by the  
3 Chuck E Cheese employees. We spoke to each of them to  
4 review what they had written, asked a few questions that  
5 may not have been asked by the officers on the scene,  
6 helped get as much information about the robbery as  
7 possible. We also interviewed the two person who were  
8 taken into custody. That was all prior to obtaining the  
9 warrant you were referring to.

10 Q Do you recall if any of the witnesses at the Chuck E  
11 Cheese restaurant gave you any information that was  
12 different than what they gave in the written statement?

13 A Yes.

14 Q Which witness gave you some different information?

15 A Two of the witnesses that were taken to the scene of  
16 the traffic stop with Corporal Thompson at the time, they  
17 had stated that they couldn't tell that this male was the  
18 robber, but they said that was the car that had been  
19 outside Chuck E Cheese a couple of occasions prior to the  
20 robbery.

21 Q And from speaking with them as well as speaking  
22 with, you said two suspects, who were the two suspects  
23 you had spoke with?

24 A They were Robert Watkins, the defendant, and a  
25 female who was in the car with him, her name was Elena

1 Pelzer.

2 Q And do you see Mr. Watkins here today?

3 A I do.

4 Q Would you point him out for the Court?

5 A He is the defendant representing himself.

6 Q Okay. Do you recognize the second person y'all had  
7 in custody that evening?

8 A She is in the courtroom, yes, sir.

9 Q Okay. Would you please point her out?

10 A She's in the white jacket, back of the courtroom.

11 Q Okay. After speaking with the suspects and the  
12 witnesses, did you then go and apply for a search  
13 warrant?

14 A Yes, we did.

15 Q And what is the procedure for applying for a search  
16 warrant?

17 A We type out an affidavit that is a sworn document  
18 that -- of information that we have in hand that we feel  
19 will justify a judge issuing us a warrant to go into  
20 someone's building, residence, their home, where we would  
21 seek to find evidence of a crime.

22 Q And did you take it before a judge and ask for the  
23 judge to sign it?

24 A Yes, we did.

25 Q And did the judge sign the search warrant?

1 A Yes, the judge did.

2 Q Do you recall what time in the morning you obtained  
3 the search warrant?

4 A We were in the judge's office about nine o'clock  
5 that morning, about eight and a half hours after I got  
6 called in. And we were in the judge's office obtaining  
7 arrest warrants for armed robbery against these two  
8 persons, and the search warrant, three documents that we  
9 were seeking to obtain.

10 Q Did the judge issue all three of those?

11 A Yes, sir, the judge did.

12 Q With the search warrant in hand, what did you then  
13 do?

14 A The arrest warrants were served on the two persons.  
15 They were placed into detention, and the officer who  
16 served those for us his name was Allen Johnson. He  
17 accompanied Detective Bruce and myself and one other  
18 detective to , , , ,  
19 where we intended to serve that search warrant.

20 Q Who was the other officer that went with you?

21 A Detective Ebeneer.

22 Q And do you know where Detective Ebeneer is today?

23 A She is employed by the FBI.

24 Q Do you know where Allen Johnson is today?

25 A He is in a K-9 school, still with the Greenville

1 Police Department.

2 Q How is it that you decided on apartment 708?

3 A During the interviews at the law enforcement center  
4 with Elena Pelzer and Robert Watkins, they both professed  
5 to reside in . . . , . . .

6 Q Do you recall what time you arrived at the  
7 apartment?

8 A Ten -- 10:10. It just after 10 o'clock in the  
9 morning, still on the 19th.

10 Q How did you make entry into the apartment that day?

11 A I used the key that I took from Robert Watkins at  
12 the law enforcement center.

13 Q And did the key operate the front door?

14 A It did.

15 Q Once you made entry into the apartment, where did  
16 you first go?

17 A There were four of us. And we would all take a zone  
18 of the apartment and attempt to look for items that we  
19 sought. Those items were specifically named in the  
20 search warrant that we were after. And if you found an  
21 item you would notify Detective Bruce or myself. We  
22 would log on paper what was found and where. And before  
23 we would touch it, manipulate it, we would have forensics  
24 document where it was found with a photograph before we  
25 would manipulate the items.

1 Q Okay. And what if -- well, where did you go? Which  
2 room, or bedroom, or den, or where did you first proceed  
3 once inside the apartment?

4 A This is a two bedroom apartment. When you enter  
5 it's the common living, dining, kitchen room. There was  
6 a bedroom on the left and a bedroom on the right. I went  
7 to the bedroom on the left as you enter.

8 Q Okay. And what if anything did you find in the  
9 bedroom?

10 A The first thing was a wallet laying on the floor in  
11 plain view. I wanted to determine whose wallet it was.  
12 That would help document who all lived in this apartment.

13 Q Did you open the wallet?

14 A Yes, I did.

15 Q And what if anything did you find inside the wallet?

16 A I found two South Carolina issued ID cards.

17 Q I'm going to show ---

18 MR. WATKINS: I object. I object to them.

19 THE COURT: Let me see them. Okay. Let me take  
20 this up with the parties and the lawyers, and I'll bring  
21 y'all back in in just a minute.

22 (The jury exited the courtroom at 3:20 p.m.)

23 THE COURT: Okay. What is the basis of your  
24 objection, Mr. Watkins?

25 MR. WATKINS: I object to it coming in on the basis

1 to the search warrant pursuant to the motion I filed upon  
2 Franks versus Delaware.

3 THE COURT: Okay. I have had heard all that and  
4 ruled, and you made the objection. I'll note it for the  
5 record. And I would overrule the motion based on the  
6 Franks versus Delaware and the search warrant. He's  
7 testified these are the two things and the -- I think you  
8 put in a photograph of the driver's license, but still  
9 that doesn't -- doesn't mean that the other document  
10 would come in. But his testimony is right now this is  
11 what he found at the scene. And the only objection is  
12 based on the search warrant, which I've already ruled on.  
13 But he has to make a contemporaneous objection I'm sure.  
14 So I'll note that objection for the record.

15 MR. WATKINS: Okay. I also want -- I want to add  
16 another objection to that, that property right there, the  
17 wallet, it's not listed on the search warrant as the  
18 property we seized or obtained. It's not even listed in  
19 the search warrant.

20 THE COURT: What is that? What property?

21 MR. WATKINS: The two IDs or the wallet. None of  
22 that is listed.

23 THE COURT: Okay.

24 MR. WATKINS: As the evidence to be sought.

25 THE COURT: I don't know what's on the search

1 warrant. Okay. What's the basis of your objection now,  
2 Mr. Watkins?

3 MR. WATKINS: Yes, sir. My objection is that --  
4 that items is not listed on the search warrant to be  
5 seized. Nor is the search warrant listed in my name to  
6 search my room or anything pertaining my property. It's  
7 not -- and I have an expectation of privacy in the  
8 apartment. I have my own separate room. But it's not  
9 authorized to search my property. It's authorized to  
10 search the property of Elena Pelzer in her -- and her  
11 things. And the officers knew of this and the prior  
12 evidence that was given to me about separation of room,  
13 that I had my own expectation of privacy, yet they issued  
14 a search warrant in her name but searched my premises and  
15 violated my privacy.

16 THE COURT: Mr. Marchant?

17 MR. MARCHANT: Your Honor, the search warrant states  
18 the address commonly known as [REDACTED],  
19 [REDACTED]. It says would be the  
20 listed address for Elena Pelzer. It doesn't limit the  
21 search to any one particular bedroom, or just the  
22 property of Ms. Pelzer. The officers went in. They had  
23 no idea whose room what was because no one was in the  
24 apartment. So therefore ---

25 MR. WATKINS: Your Honor? Your Honor, if you see

1 Officer Dan Fuller's report, he has information on the  
2 first page explaining to them that we have separate  
3 bedrooms. I have my bedroom and the co-defendant has her  
4 bedroom. The bottom of his report he states this. Also  
5 Officer Bruce states in his report that I have my  
6 separate bedroom. They knew this. An another officer  
7 even classified that it was a male -- a male bedroom, a  
8 female bedroom was in her in report. So they had  
9 evidence in the investigation report that it was separate  
10 rooms, but they put -- I don't know why they put -- if  
11 they're saying I committed a crime why they put the  
12 search warrant in Elena Pelzer's name.

13 THE COURT: Anything else, Mr. Marchant?

14 MR. MARCHANT: Your Honor, I believe the testimony  
15 hasn't come yet, is that there was no distinction between  
16 the rooms until they entered the apartment. So the fact  
17 the report would state that there were clothes thrown all  
18 about the room that was being searched initially, the  
19 other room -- there were no beds throughout the entire  
20 residence. And in fact in the other room there was just  
21 an area laid out on the floor for two people to sleep.  
22 And again, the description of the premises is .

23  
24 THE COURT: All right. I'll overrule Mr. Watkins'  
25 objection. The search warrant says it's the listed

1 address for Elena D. Pelzer. There is no reason for the  
2 Court to believe it's not the listed address, but it  
3 clearly designates . . . at . . .  
4 And there was information that they may have been living  
5 together. But it's a search warrant for . . .  
6 And based on Mr. Watkins' objection, I'll overrule the  
7 objection and admit the photographs of the item that you  
8 offered, Mr. Marchant. All right. Thank you.

9 MR. WATKINS: Thank you.

10 THE COURT: We'll take five minutes or 10 minutes  
11 and start back since it's almost 3:30. And I hate to  
12 just run them in and out. Have you got one or two more  
13 witnesses, or do you know?

14 MR. MARCHANT: I have three more, Your Honor.

15 THE COURT: Okay. We'll start back in about 10  
16 minutes. You can come down and stretch if you want to.

17 (A short recess was taken, after which, the trial  
18 continued as follows:)

19 (The jury entered the courtroom at 3:45 p.m.)

20 THE COURT: All right, Mr. Marchant.

21 MR. MARCHANT: Please the Court?

22 BY MR. MARCHANT:

23 Q Sergeant Fuller, I believe we were looking at  
24 State's Number 10. Do you recognize that photograph?

25 A Yes, sir.

1 Q Okay. How is it that you recognize that photograph?

2 A It was taken in the bedroom on the left as you  
3 entered apartment 708.

4 Q Is that the bedroom that you first went to?

5 A It is, yes, sir.

6 Q Is that a fair and accurate depiction of what you  
7 saw when you entered the bedroom that morning?

8 A Yes, sir.

9 MR. MARCHANT: Okay. Move State's number 10 into  
10 evidence.

11 THE COURT: All right. I'll note Mr. Watkins'  
12 objection. I'm going to admit it in evidence.

13 (State's Exhibit Number 10 was filed.)

14 BY MR. MARCHANT:

15 Q With respect to State's Number 12, do you recognize  
16 that photograph?

17 A Yes, sir.

18 Q Okay. What does that photograph depict?

19 A A picture of two the South Carolina issued IDs that  
20 were in the wallet in that room.

21 Q And is that a fair and accurate depiction of the way  
22 you found them that evening -- that morning?

23 A No, I found them in the wallet.

24 Q Okay.

25 A And I removed them from the wallet, placed them on

1 the carpet to be photographed.

2 Q Okay. And is that where you placed them on the  
3 carpet?

4 A Yes, sir.

5 Q And is that a fair and accurate representation of  
6 how you placed them on the carpet?

7 A Yes.

8 MR. MARCHANT: Move State's Number 12 into evidence.

9 MR. WATKINS: Objection.

10 THE COURT: Okay. I'll note his objection but I  
11 would admit it into evidence. Overrule the objection.

12 (State's Exhibit Number 12 was filed.)

13 BY MR. MARCHANT:

14 Q Now, I'm going to show you what's been marked as  
15 State's 6 and State's 7. Do you recognize those  
16 photographs?

17 A Yes, sir.

18 Q How is it that you recognize them?

19 A They are of the apartment complex where we executed  
20 this search warrant.

21 Q And do they accurately depict the way you found the  
22 apartment that morning?

23 A Yes, sir, they do.

24 MR. MARCHANT: Okay. The State would move 6 and 7  
25 into evidence.

1 MR. WATKINS: No objection.

2 THE COURT: Without objection.

3 (State's Exhibit Numbers 6 and 7 were filed.)

4 BY MR. MARCHANT:

5 Q Now, I'm going to show you what's been marked as  
6 State's Exhibit number 11. Do you recognize that  
7 photograph?

8 A Yes, sir.

9 Q And how is it you recognize it?

10 A That is another photograph of the bedroom on the  
11 left, inside the apartment.

12 Q Okay. Is that photograph -- was it taken before or  
13 after you took the identification out of the wallet?

14 A After I took the identification out and placed it on  
15 the carpet.

16 MR. MARCHANT: Move State's Number 11 into evidence.

17 MR. WATKINS: Objection.

18 THE COURT: All right. I would note his objection.  
19 Overrule the objection and permit it to come in.

20 (State's Exhibit Number 11 was filed.)

21 BY MR. MARCHANT:

22 Q Show you what has been marked as 13 and 14.

23 A I am familiar with these photographs.

24 Q And how are you familiar with them?

25 A These are photographs taken inside the closet of the

1 bedroom on the left of apartment 708.

2 Q Does that fairly and accurately depict what was  
3 found in the closet?

4 A It does.

5 MR. MARCHANT: Okay. Move State's 13 and 14 into  
6 evidence.

7 MR. WATKINS: Objection, my previous motion.

8 THE COURT: All right. I would overrule the  
9 objection and admit them into evidence.

10 COURT REPORTER: What number were those?

11 MR. MARCHANT: That was 13 and 14.

12 (State's Exhibit Number 13 and 14 were filed.)

13 BY MR. MARCHANT:

14 Q Also show you what's been marked as State's Exhibit  
15 Number 20. I'm sorry. Let me let Mr. Watkins see that  
16 first. Do you recognize this piece of evidence?

17 A Yes, sir, I do.

18 Q How is it you recognize it?

19 A It contains the two identification cards I had  
20 referred to moments earlier.

21 Q Okay. Are those the same two cards that you pulled  
22 out that were in State's Number 12?

23 A Yes, they are.

24 MR. MARCHANT: Move State's 20 into evidence.

25 MR. WATKINS: Objection.

1 THE COURT: Okay.

2 MR. WATKINS: Previous motion.

3 THE COURT: I'd overrule the objection and admit it  
4 into evidence.

5 (State's Exhibit Number 20 was filed.)

6 BY MR. MARCHANT:

7 Q Detective Fuller, once you located these pieces of  
8 evidence and they were photographed, what did you then do  
9 next?

10 A The various items were collected, depending upon the  
11 item as who collected it. Some items were collected by  
12 our forensics technician. Some items were collected by  
13 myself. Some were collected by Detective Bruce.

14 Q Okay. Do you recall who collected the wallet?

15 A I did.

16 Q Now, is there somebody that is keeping track of what  
17 evidence is collected to return that to the judge?

18 A Yes.

19 Q And what is the purpose of that?

20 A It's to make an accurate log of everything that is  
21 to be removed from that apartment. It is written on the  
22 search warrant. It is actually written twice. The  
23 original search warrant stayed in my possession, and I  
24 write on that search warrant everything that we took out  
25 of that apartment. I also had with me a copy of that

1 warrant, and I wrote on the copy the exact same thing.

2 And we left that copy inside the apartment when we left.

3 That's to provide a document of what we took out of that  
4 apartment to the resident of that apartment.

5 Q Now, once the search was completed and this evidence  
6 was documented, how did you leave the resident?

7 A We locked it.

8 Q Do you recall specifically who locked it?

9 A I did.

10 Q And how did you lock it?

11 A With the key that I had taken from Robert Watkins.

12 Q Show you what's been marked State's Number 25 and  
13 ask if you recognize that document?

14 A Yes, sir, I do.

15 Q And how is it that you recognize that?

16 A It's my signature as a witness on the bottom. It's  
17 my printing across the top.

18 Q And what does that document portray?

19 A This is a rights advisor form. It's a rights  
20 wavier. Any time we are going to discuss with someone  
21 who is accused, or is a suspect in crime, if we're going  
22 to discuss that crime with that individual we advise them  
23 of their Miranda rights prior to discussing that crime.  
24 And this document is a way to show that they are aware of  
25 what their rights are and that they do not have to talk

1 to me if they don't choose to, they don't have to talk to  
2 me without a lawyer present, they can have an attorney  
3 present. And while speaking to me they can stop talking  
4 to me at any time.

5 Q And who did you go over these rights with?

6 A Elena Pelzer.

7 Q And was her attorney present at the time that you  
8 were going over these rights?

9 A Not at the exact time I was going over them he was  
10 not present.

11 Q In between going over this document with her and her  
12 speaking with you, did he come and speak with her?

13 A Yes, he did.

14 Q Did she appear to understand what was going on?

15 A Yes, she did.

16 Q Okay. And when did you take -- excuse me. When did  
17 you go over these rights with Ms. Pelzer?

18 A This was on October 21, 2002.

19 Q And did you make her any promises in her agreeing  
20 with speaking you?

21 A No, I do not.

22 Q Did you threaten her in any way?

23 A No, sir.

24 Q Did she agree to speak with you?

25 A She did.

1 MR. MARCHANT: Okay. Move State's 25 into evidence.

2 MR. WATKINS: No objection.

3 (State's Exhibit Number 25 was filed.)

4 BY MR. MARCHANT:

5 Q Now, going back to the apartment. Did you search or  
6 did you visit any of the other rooms in the apartment  
7 besides the bedroom where this evidence that you  
8 collected came from?

9 A Yes, I did.

10 Q And what did you notice -- well, back up. In the  
11 bedroom where you found this evidence, was there a bed?

12 A No.

13 Q Okay. Was there a den, or a common area in the  
14 apartment?

15 A Yes, a living room area as you walk in.

16 Q Was there a bed in the common area?

17 A No, there was not.

18 Q Do you recall whether or not there was a television?

19 A I do not recall.

20 Q Do you recall whether or not there was a couch?

21 A I do not believe there was a couch.

22 Q In the other bedroom, was there a bed located in  
23 that bedroom?

24 A There was not a bed as we commonly picture a bed  
25 being. What there was was a set of sheets and blankets

1 laid on the floor in the rectangular fashion with pillows  
2 at the top as if it were a bed for two.

3 Q And how was that room arranged? Was it orderly?

4 A That bedroom on the right where the sheets and  
5 pillows were arranged, it was more orderly than the  
6 bedroom on the left.

7 Q How would you describe the bedroom on the left?

8 A Very haphazard. Items just tossed in there, strewn  
9 about, no organization.

10 Q Did you collect any other evidence from the  
11 apartment, other than what we've discussed?

12 A Yes.

13 Q And is that evidence with you today, or is it still  
14 in property?

15 A I have not seen it yet today.

16 MR. MARCHANT: Okay. I have no further questions.  
17 Answer any questions Mr. Watkins may have for you. Thank  
18 you.

19 CROSS-EXAMINATION

20 BY MR. WATKINS:

21 Q In your supplemental report you stated you drafted  
22 the search warrant?

23 A Yes, sir.

24 Q Did you draft the whole search warrant or just the  
25 affidavit?

1 A I drafted the entire search warrant.

2 Q The entire search warrant. So when the return  
3 inventory was made, were you the officer that made the  
4 return inventory that logged everything on it, made the  
5 return?

6 A I wrote down on the return all of the items that we  
7 seized from the apartment.

8 Q I'm showing you what's been -- when was the return  
9 made? What date was the return inventory made?

10 A The return was that day. Detective Bruce -- I  
11 believe Detective Bruce would have returned it that day  
12 to the judge. I did not return it to the judge.

13 Q So he's the one who returned it?

14 A Yes.

15 Q Okay. Now, did you swear off the search warrant?

16 A No, sir.

17 Q But you drafted it out, but you didn't swear it out?

18 A I drafted it out. After discussing the case with  
19 the other officers involved and with Detective Bruce, I  
20 typed it. I reviewed it with Detective Bruce for  
21 accuracy and any other input he would have. And  
22 Detective Bruce agreed with what we had put in it, and he  
23 presented it to the judge.

24 Q Okay. At any time did you have information during  
25 your interrogation, or your investigation that would

1 establish my whereabouts during the time the crime had  
2 been committed?

3 A I want to make sure I understand the question.

4 Q During your investigation you get a lot of officers'  
5 report, get everything together. At that time do you  
6 have a -- reports that show when the crime took place,  
7 and then you have like statements or evidence that shows  
8 that at the time this crime happened that I was  
9 elsewhere?

10 A I did not have information to place you somewhere  
11 else, no.

12 Q Okay. Do you know what time the crime had  
13 supposedly took place?

14 A I understand it took be approximately 1:00 a.m.

15 Q 1:00 a.m. Okay. Here's your statement right  
16 here -- I mean, your supplemental report.

17 A Okay.

18 Q Can you read this part right here?

19 MR. MARCHANT: Your Honor, can we get that marked so  
20 we can have a record of what we're talking about?

21 MR. WATKINS: Okay.

22 THE COURT: Okay. Mark this for identification. Do  
23 you need to see it?

24 MR. MARCHANT: No, sir, I just want the record to be  
25 clear.

1 THE COURT: Okay.

2 (Defendant's Exhibit Number 3 was marked for  
3 identification.)

4 THE COURT: What's your question? All right.

5 MR. WATKINS: Can you please read that to the jury?

6 THE COURT: You can read that and then let him ask  
7 you a question.

8 THE WITNESS: Okay.

9 THE COURT: Okay. What's your question?

10 BY MR. WATKINS:

11 Q Now, did you have in your possession evidence that  
12 at the time you said the crime occurred, one o'clock,  
13 that I was elsewhere?

14 A I had nothing to place you somewhere else.

15 Q So your supplemental report does not state that at  
16 one o'clock I was at home asleep?

17 A No, it says that you were not at home.

18 Q You probably need to read that again to understand  
19 it better.

20 A Okay.

21 Q When the individual woke up, at what time?

22 A She woke up at 1:00 a.m. and Robert was not home.

23 Excuse me. I'll continue. She -- I'll back up further.

24 Speaking with Elena Pelzer she says she went to sleep in  
25 her room around 11 p.m. She got up feeling hungry close

1 at what is known as 1:00 a.m. Robert was not home when  
2 she went to sleep, but he was in his room when she got  
3 up.

4 Q What time?

5 A Close to 1:00 a.m.

6 Q Thank you.

7 A Okay.

8 Q So you had evidence that at 1:00 a.m., close to 1:00  
9 a.m., I was at home?

10 A Close to 1:00 a.m.

11 Q And you knew the crime happened at one o'clock?

12 A Close to 1:00 a.m.

13 Q Okay. Was Elena Pelzer charged when she gave this  
14 information to you? At the time she gave this  
15 information to you was she charged yet?

16 A Formally, no.

17 Q Okay. So it wasn't until after she gave this  
18 information to you that she was charged with armed  
19 robbery?

20 A Correct.

21 Q Okay. Stating that I was elsewhere? Okay. Okay.  
22 See the exhibit there. The exhibits right here, Exhibit  
23 Number -- State's Exhibit Number 13 and State's Exhibit  
24 Number 14, let me show them to you. Were you actually  
25 the officer that discovered this evidence?

1 A No, I was not.

2 Q So you wasn't there when evidence was actually  
3 discovered, so you don't know if it was in this position,  
4 or whether or not clothing was over top of it, or  
5 anything like that?

6 A Yes, I do know.

7 Q Was clothing on top of it?

8 A Yes, it was.

9 Q Okay. This -- this wallet right here and this money  
10 right here, why was it placed on the floor next to the  
11 ID, the wallet taken down, and next to money that was on  
12 the floor that -- like it's evidence was being placed?

13 A We weren't placing evidence. This money was not --  
14 this money ---

15 Q That's the money from the top of the closet.

16 MR. MARCHANT: Your Honor ---

17 THE COURT: Wait, wait.

18 MR. MARCHANT: Can we just clarify what exhibit  
19 we're talking about. Is it a State's exhibit or is it a  
20 defendant's?

21 MR. WATKINS: Yes, I haven't entered this into  
22 exhibit -- in evidence yet. This is exhibit -- this  
23 would be -- I want to introduce this into evidence and  
24 then I'll finish examining him.

25 THE COURT: I think it's in evidence, wasn't it?

1 MR. WATKINS: No, this one -- this is State's  
2 evidence 14 and 13. They're the only ones that's in  
3 their ---

4 THE COURT: Well, whatever it is ---

5 MR. MARCHANT: Your Honor, could I take a look at it  
6 before ---

7 THE COURT: Okay.

8 MR. WATKINS: Ask that it be moved into evidence.

9 MR. MARCHANT: No objection. It needs to be marked.

10 THE COURT: Okay. Without objection. You need to  
11 let her mark it, Mr. Watkins.

12 MR. WATKINS: Okay.

13 (Defendant's Exhibit Number 4 was marked and  
14 filed.)

15 BY MR. WATKINS:

16 Q The photograph I just showed you, 4, is it law  
17 enforcement procedure, or forensic procedure to tamper  
18 with evidence before the forensic get there, and move it  
19 from one spot, or forensic to move it from one spot and  
20 then collect other evidence in different places and put  
21 it altogether and take pictures of it there?

22 A No, the money laying here is what was found in the  
23 closet. It was just placed here to be further  
24 photographed.

25 Q So basically you moved evidence around in the

1 apartment and photographed it where you wanted to, even  
2 though it wasn't found there?

3 A We documented it being on the closet shelf as where  
4 it was originally located. And then it was placed -- it  
5 was stacked up in the closet, hard to tell what all was  
6 there, so we placed it on the floor and spread it out to  
7 take a better photograph.

8 Q Okay. In conducting this search -- in conducting  
9 the search, how did you know specifically where to go at  
10 in the apartment to look for certain items you listed on  
11 your search warrant?

12 A We were seeking specific items, such as money, a  
13 firearm, a mask, and we would look in locations capable  
14 of concealing money, a firearm, or a mask.

15 Q In the search warrant that you had, did it authorize  
16 you to search the property of Robert Watkins?

17 A Yes, it did.

18 Q It did? Well, whose name was the search warrant  
19 issued in?

20 A The search warrant was not issued by name. They are  
21 issued by location that we're going to search.

22 Q So -- but to protect a person's expectation of  
23 privacy, or unreasonable search and seizures, when you go  
24 to search a place it has to be pertaining to an  
25 individual, you just don't go searching an apartment or a

1 place without having a reason dealing with an individual,  
2 because you're looking for evidence for a crime that  
3 deals with an individual?

4 A Yes, sir.

5 Q So when you're looking for this evidence you have to  
6 have probable cause why you believe a certain person  
7 harbored evidence whatever you're saying in their  
8 premises, and when you do that you have to establish  
9 probable cause for that individual. So who would have  
10 the probable cause you established to search apartment  
11 708? Who did you put the search warrant name in?

12 A Well, interviewing you and Elena Pelzer at the law  
13 enforcement center, you both professed to live at  
14 \_\_\_\_\_ of \_\_\_\_\_ . You both  
15 stated you just came from your \_\_\_\_\_  
16 \_\_\_\_\_ prior to being stopped by officers on the  
17 scene. We applied for a search warrant for that  
18 \_\_\_\_\_, \_\_\_\_\_. We were issued a search warrant by the  
19 judge. When we first arrived at \_\_\_\_\_,  
20 the first thing we did before going into the door, using  
21 the key that I had taken from Mr. Watkins, I went to the  
22 office and I asked them if they could show me any  
23 document that informed me who is the resident of  
24 \_\_\_\_\_. And the office management gave me a  
25 written document listing Robert Watkins and Elena Pelzer

1 as the occupants of 708.

2 Q Okay. Now, how many trips did you make to the  
3 apartment -- apartment complex rental office?

4 A One when I first got there, and when we left I went  
5 there to tell them that we were leaving.

6 Q So in order for you to get an occupancy verifying  
7 form before you go to the magistrate to verify who lives  
8 in that apartment, you have to go to the rental office  
9 first to get the information and then go to the  
10 magistrate with the information that who lives there.  
11 You cannot have -- go to the apartment with the search  
12 warrant already because you don't really know who lived  
13 there, and you want to now -- see what I'm saying. You  
14 don't have no proof that we lived there, because you  
15 don't have the occupancy verify form. So how would you  
16 know to search that apartment if the rental office -- if  
17 you haven't gotten the form yet, but you're getting the  
18 search warrant? See what I'm saying? But wasn't you  
19 telling the magistrate that you have no proof that we  
20 live there?

21 A I took a statement from you with Miranda at the law  
22 enforcement center, and you professed that be your home,  
23 and that you had came from there just before the police  
24 stopped you. That gave me reason to believe that was  
25 your residence. So that's where we got the search

1 warrant for your residence.

2 Q But why didn't you get it in my name?

3 MR. MARCHANT: Your Honor, I would just ask that he  
4 ask one question.

5 MR. WATKINS: Okay. I'm going to ---

6 THE COURT: Ask one question at a time. Okay.

7 BY MR. WATKINS:

8 Q So why wasn't the search warrant put in my name?

9 A Elena Pelzer had -- I believe her identification  
10 stated that apartment, yours didn't.

11 Q But you just said I confessed that I stayed there.  
12 So if you're saying I committed the crime, and you're  
13 searching for the stuff that you said I committed the  
14 crime with, then the search warrant should be in my name.  
15 If you put a search warrant in other individual's name  
16 and it's not listed to search their premises or their  
17 property, then wouldn't you be invading their privacy?

18 A No, sir.

19 Q So you're saying the police department can get a  
20 search warrant in somebody else's name not knowing  
21 actually whose apartment it is because -- are you aware  
22 that \_\_\_\_\_ is in Tony Operman's  
23 (phonetically) name that owns Gold's Gym? It's not  
24 even -- we're not even on the lease, are you aware of  
25 that?

1 A I'm aware that they gave me a document that listed  
2 you as the occupant with Elena Pelzer.

3 Q Okay. I have the document and I can -- and the  
4 document -- and someone put the document -- passed it off  
5 as a lease. It's not a lease. When you went to the  
6 rental office and they showed a lease, who name was on  
7 the lease?

8 A Perhaps you have a document you can show me?

9 MR. WATKINS: I have a copy, Your Honor, but it's in  
10 my papers in there. I didn't bring it all. It might be  
11 a part of the search warrant. Do you have a copy of the  
12 search warrant? No, it's not either. I got it in the  
13 room. The officer can bring my papers.

14 THE COURT: Well, all right. Y'all take a short  
15 recess and I'll let him get his document. Okay.

16 (The jury exited the courtroom at 4:16 p.m.)

17 THE COURT: Okay. All right. Everybody go ahead  
18 and take a break and then we'll just continue on until we  
19 finish the testimony today. We won't take another break.  
20 Okay. Take 10.

21 (A short recess was taken, after which, the trial  
22 continued as follows:)

23 THE COURT: Okay. Are you ready, Mr. Watkins?

24 MR. WATKINS: Yes, sir, Your Honor.

25 (The jury entered the courtroom at 4:27 p.m.)

1 THE COURT: All right, Mr. Watkins.

2 BY MR. WATKINS:

3 Q What I have here is a copy of the -- what appears to  
4 be -- this is a copy of the document rental occupancy  
5 form.

6 A Yes, sir.

7 Q Okay. Is that what was used to present to the  
8 magistrate?

9 A No, sir.

10 Q No?

11 A No, this was obtained from the office when we  
12 arrived there with the search warrant in hand. We were  
13 informing the office that we were going to search  
14 . . . . We had a key. I just wanted them to  
15 provide any documents to me that would show me who lives  
16 there.

17 Q Okay. So what information did you provide the  
18 magistrate to get a search warrant, as far as information  
19 was toward me and Elena Pelzer name?

20 A Well, your statement, you stated that this was your  
21 residence, . . . . You also stated to us that it  
22 was Elena Pelzer's apartment, obtained for her by someone  
23 else. So we were using substantially both of your  
24 information to establish it as both of your residence,  
25 and that's we what presented to the judge for the search

1 warrant.

2 Q So if -- if I say I lived at say somebody's house, I  
3 say I lived there, and I don't, and even if I did,  
4 wouldn't the person also that lived there have an  
5 expectation of privacy, besides me? In other words, if  
6 three people occupy an apartment, you got three rooms,  
7 and one of the occupants you're looking for a search  
8 warrant for, would the issuance a search warrant in that  
9 person's name give the authority to search the other two  
10 individual occupants of that apartment room?

11 A I want to make sure I answer your question. Let me  
12 know if I fail to do that here. Both you and Ms. Pelzer  
13 stated that you both lived there. You told me you lived  
14 there and that she did.

15 Q Excuse me. I just want to know, does it authorize  
16 that -- that's what I want to know, whether or not it  
17 authorize -- a search warrant authorizes, if it's in  
18 somebody's name, to search somebody else's property?

19 A In your hypothetical question that you're asking?

20 Q Yeah.

21 A Unrelated to this case? You're ---

22 Q Related to this case. Related to this case. Does  
23 the search warrant in Elena Pelzer's name authorize you  
24 to search bedroom number one that you know that's my  
25 bedroom?

1 A Yes. If you -- if this was a four bedroom  
2 apartment, and two other persons whom we don't know lived  
3 there also, based on what we had learned from you and  
4 Elena Pelzer, I'll search all four bedrooms.

5 Q Okay. But would the search warrant authorize that?

6 A Yes, it would.

7 Q Okay. Are familiar with South Carolina code of law  
8 17-13-140, particularly establishing persons and places  
9 property to be seized and searched (sic)?

10 A We had to establish probable cause to search that  
11 residence. Since it was your residence and you had just  
12 come from there, presented it to the judge for probable  
13 cause and she affirmed it.

14 Q The search warrant authorizes numerous of officers  
15 to conduct the search, or the officer the search warrant  
16 is issued to?

17 A Whomever we decide to take with us, yes, sir.

18 Q So -- and can officers that's not in that  
19 jurisdiction conduct the search as far as if you're on  
20 crimes against persons, and another officer is crimes  
21 against property, are they allowed to participate in the  
22 search?

23 A Yes, all four officers present were Greenville City  
24 police officers with the jurisdiction at that address.

25 Q Okay. I have here a copy showing that -- I received

1 a copy of the return from a computer printout September  
2 19, 2003, at the top. And it shows here the return was  
3 never made.

4 A Okay. That's what it would indicate.

5 Q 17-13-140 says it's got to be returned within 10  
6 days, correct?

7 A Yes, sir.

8 Q So now I have another copy of -- now I have copy a  
9 return showing that it's been returned. Do you have a  
10 full copy of the search warrant and return up there, the  
11 whole search warrant? Okay. Now, you have one here  
12 that's returned, I think.

13 A Okay. I can explain that.

14 Q Okay.

15 A Would you like me to?

16 Q Yes, sir.

17 A Okay. When that search warrant is obtained, when  
18 it's originally typed, it's a four page document. The  
19 fourth page is called the return. That is what I write  
20 on that says I took these items, A, B, C, D from that  
21 apartment. I leave a handwritten copy of that inside the  
22 apartment. That handwritten copy left in the apartment  
23 would not be signed by a judge. We don't take a judge to  
24 the apartment with us. The one that I print off of my  
25 computer and hand write on and take back to the law

1 enforcement center, we hand that into our records  
2 division. And records keeps that in -- perpetually for  
3 when cases come to trial, like we have today. The  
4 original, a copy of that goes into records to be  
5 maintained for cases like today. The original, which  
6 there's only one, goes to the judge who issued that  
7 warrant. That was Judge Presnell. Her signature is on  
8 the bottom of it. Judge Presnell signs it when it's  
9 returned, in this case from Detective Bruce. And it is  
10 maintained in judicial offices separate from records.  
11 The copy you just showed me is that copy.

12 Q Okay. So let me show -- are you familiar with South  
13 Carolina 1976 code of laws, 17-13-141?

14 A Not off the top of my head, no. It's about records  
15 that are to be kept by the judiciary officers authorized  
16 to issue search warrants. And it talks about the  
17 penalties and parameters.

18 Q Okay. This does not comply with, if you take --  
19 would you be able to tell me when actually this search  
20 warrant right here was issued? Let's say -- well, first,  
21 would you be able to tell me when this search warrant --  
22 if you did comply with this right here as the magistrate  
23 is supposed to do, could you tell me when this search  
24 warrant was issued?

25 A Issued?

1 Q By law?

2 A It will be written on the warrant, yes, sir.

3 Q What I am getting at, if -- let's say if I was to  
4 conduct the search without a search warrant, come back  
5 later and fill in my search warrant, what would protect  
6 me from that happening?

7 A That would be an illegal search, to do a search  
8 without a warrant.

9 Q But once you get a search warrant made up after that  
10 individual, and you get the search warrant presented, you  
11 have to prove that it was done -- that the search warrant  
12 didn't exist. What stops an individual from being  
13 subjected to a search warrant issued after the search has  
14 been conducted, in reading this right here?

15 A I know in this case we obtained a search warrant  
16 from a judge, went to your apartment, conducted it, left  
17 a copy of the search warrant in your apartment, and never  
18 returned once we left that day. And the original was  
19 left back with Detective Bruce to return to the issuing  
20 judge. I know that much.

21 Q So if it's not -- if there's no record of the  
22 compliance with this right here then this search warrant  
23 can be written at any time?

24 A You're talking about a procedural situation that I  
25 do not have oversight on.

1 Q Okay. I just wanted to know if you could be able to  
2 tell when the search warrant, you know, be issued if you  
3 didn't comply with this statute right here?

4 A It would be written on the warrant when it's issued.

5 Q This is the room that was actually anybody -- do you  
6 know -- let me show you.

7 (Defendant's Exhibit Numbers 5 and 6 were marked for  
8 identification.)

9 BY MR. WATKINS:

10 Q Okay. I'm showing you what has been marked as  
11 Defense Exhibit Number 6 and Defense Exhibit Number 5.  
12 Do you know which room those are taken from, the room to  
13 the far left or to the right?

14 A This exhibit -- Defense Number 5 is the bedroom to  
15 the right. And Defense Number -- Exhibit Number 6 is  
16 also to the bedroom on the right.

17 Q So by looking at these exhibits, do you see anywhere  
18 where you can determine a sleeping quarters?

19 A Not in these two photographs, no.

20 Q Okay. So when you went there and you said like the  
21 sleeping quarters then -- had to be like switched, so  
22 that means it was messed up like that by -- after the  
23 search was already conducted (sic)?

24 A No, in these -- no, sir. In this photograph number  
25 6, you'll see a blanket and sheet that likely we messed

1 it up making sure there wasn't anything within the sheets  
2 and blankets and pillows.

3 Q So this room -- would you consider this room have  
4 female clothing in it? Did it have any male clothing in  
5 it?

6 A Predominately female clothing.

7 Q Did you find any evidence of a crime in this room?

8 A There was some coins in the closet in that room, I  
9 believe.

10 Q Did you collect those coins?

11 A Personally I did not, but they were collected, yes.

12 Q Were all the coins collected?

13 A I recall collecting all the change, rolled coins,  
14 loose coins.

15 MR. WATKINS: Okay. I want to enter exhibit 5 and 6  
16 into evidence.

17 MR. MARCHANT: No objection from the State, Your  
18 Honor.

19 THE COURT: Okay. Without objection.

20 (Defendant's Exhibit Numbers 5 and 6 were filed.)

21 (Defendant's Exhibit Number 7 was marked for  
22 identification.)

23 BY MR. WATKINS:

24 Q Showing you what is marked as Exhibit Number 7. Can  
25 you tell me what bedroom that is?

1 A This would be the bedroom on the right in the  
2 closet, I believe. And there's a couple other  
3 photographs that would help set this picture up to  
4 further confirm that, but that's what I believe that's  
5 of.

6 Q All right. Did you collect that jar of coins right  
7 there, pennies?

8 A I don't recall collecting that jar, no.

9 Q But -- okay. In the picture y'all collected pennies  
10 off the floor?

11 A There was some loose coins in the bedroom on the  
12 left that were collected, yes.

13 Q So you collected those coins, but you didn't collect  
14 these coins, but the search warrant said any and all  
15 evidence.

16 A That's true.

17 Q All coins. So why was this particular money right  
18 there, that particular money was taken and money wasn't  
19 taken?

20 A This glass jar on this closet shelf with pennies in  
21 it was not collected and would be an oversight.

22 MR. WATKINS: Okay. Exhibit number 7 into evidence.

23 MR. MARCHANT: No objection.

24 (Defendant's Exhibit Number 7 was filed.)

25 BY MR. WATKINS:

1 Q When you received information from the victims, and  
2 they gave you a description of the coat when you  
3 interviewed the victims, did they ever give you a  
4 description of a coat for identification purposes?

5 (Defendant's Exhibit Number 8 was marked for  
6 identification.)

7 BY MR. WATKINS:

8 Q Did they ever describe this coat right here? Have  
9 you ever seen this coat right here?

10 A This appears to be the coat that was seized that  
11 night as evidence in this investigation. It is a dark --  
12 the coat that we seized was a dark blue hooded jacket.

13 Q Do you believe that that coat matched the  
14 description of the coat worn by the robber?

15 A Substantially.

16 Q Was this coat -- do you think this coat was still  
17 evidence?

18 A I do.

19 Q Even when witnesses say it ain't the evidence?

20 A If a witness were say that, yes, sir.

21 Q Okay. So you're not aware of -- you're not aware of  
22 prior testimony being given that it wasn't the coat that  
23 matched the robbery -- the coat worn by the robber?

24 A I don't know that anyone has said they looked at the  
25 coat that we seized and said that's not it.

1 Q Okay. Did you ever show the coat to any of the  
2 witnesses?

3 A No, I did not.

4 Q Did you collect the coat?

5 A Personally, I did not.

6 Q When the coat was collected, was it put directly in  
7 property and evidence?

8 A By the officer -- no, that coat was given -- I don't  
9 remember if that officer put it in or if forensics got  
10 it. I don't recall.

11 Q At what point did you see that coat?

12 A It was sometime later, sometime later. Don't  
13 remember.

14 Q Sometime later. So in making a decision, if it's  
15 later, in making a decision, if you never seen the coat,  
16 how do you know the coat matched the description of the  
17 coat worn by the robber if you didn't see it at the time  
18 you was filling out your report and things?

19 A What I did was take the word of the witnesses who  
20 said it was a dark blue hooded coat, and the officer who  
21 found it who said it was a dark blue hooded coat, and I  
22 believed that's what it was.

23 Q Well, but I'm saying you never seen the coat, so you  
24 have comparison that it's the coat. You see what I'm  
25 saying? You didn't see the coat, so how are you going to

1 take words from somebody else if you never seen the coat  
2 to say, yeah, it matches? If they just telling you, they  
3 never -- you know, you can't make a decision whether it  
4 matched because you didn't see for yourself, well, let me  
5 see what the coat, let me see, but you never seen the  
6 coat, so why did you just assume that it matches?

7 A When they say it's a dark blue hooded coat, and the  
8 officer says it's a dark blue hooded coat, I believed  
9 that to that point, yes, sir.

10 Q So when you eventually seen the coat?

11 A Um-hm.

12 Q Did you still think, with all of that white, and  
13 white on it, did you still think it was the coat?

14 A Yes.

15 Q Okay. So if it could -- you could realize it could  
16 be a mistake now after you heard testimony from other  
17 people that the coat wasn't the coat worn by the robber,  
18 could you have made a mistake?

19 A I don't believe so in this particular case, knowing  
20 everything else that I know.

21 Q Did you -- do you know whether or not a forensic was  
22 done on the coat?

23 A It was not.

24 Q So if no one -- based upon the testimony, no one  
25 seen me throw the coat in the trash dumpster, and no

1 forensic was done on the coat, then how was the coat  
2 connected to me?

3 A An officer saw a person from your vehicle toss an  
4 item into that dumpster as you were leaving. You were  
5 stopped. You and Elena Pelzer were identified. It was  
6 one of you who seemed to have put this blue hooded coat  
7 in that dumpster just prior to being stopped by police.

8 Q But they didn't ever say it was the blue coat? They  
9 said they don't know what it was?

10 A The statements offered by the four witnesses, and my  
11 reviews of those statements with them at the law  
12 enforcement center, consistently there was a blue hooded  
13 coat worn by the robber.

14 Q Usually when a suspect is arrested and he has  
15 personal property on him, cell phone, keys, when you make  
16 arrest, what is done with his personal property?

17 A It's maintained as evidence, seized.

18 Q So how is a cell phone part of the evidence of a  
19 robbery?

20 A It could have been used to phone Chuck E Cheese. It  
21 could have been used to phone Elena Pelzer. It could  
22 have been used for a number of things to further tie you  
23 to the crime.

24 Q Did you investigate the phone? Did anything come  
25 back to tie me to the crime to the phone?

1 A We seized the phone with the possibility that we  
2 could pursue that avenue, but within the next several  
3 hours this case became so strong in evidence against you,  
4 pursuing the phone issue became a moot point.

5 Q So when you obtained my keys, which was 10 keys?

6 A Yes.

7 Q And that's my property, I didn't give you permission  
8 to use my keys to go search -- unlock the door, when you  
9 had 10 keys, how do you know which key was the key to  
10 that apartment?

11 A We tried one until it worked.

12 Q Okay. So you saying my keys was part of evidence of  
13 a robbery dealing with Chuck E Cheese?

14 A I had a strong feeling we were going to search your  
15 apartment, and I wanted your keys to go get it. Once we  
16 figured out we had probable cause to obtain a search  
17 warrant, your keys were seized as evidence where we would  
18 expect to find ---

19 Q Did you personally take my keys from me?

20 A Personally, no.

21 Q Okay. Where did you get my -- who did you get my  
22 keys from?

23 A Officers that brought me to the law enforcement  
24 center (sic). Typically when a person is placed under  
25 arrest their pockets are emptied and all those items are

1 sometimes put in a baggie, or placed in one location  
2 under that officer's control until they get to the  
3 detective division and they are given forward to the  
4 investigator. In this case with Robert Watkins those  
5 items were given to me. It was keys, cell phone, and a  
6 ball cap, I believe. And I took control of them to  
7 decide whether I would need them for evidence and -- or  
8 further this investigation.

9 Q Okay. At the time Elena Pelzer was arrested, she  
10 also had a key on her. If you did the search warrant in  
11 her name and she has her key in her possession at the  
12 time of the arrest, why wasn't her key used to open the  
13 apartment?

14 A I don't have an answer for that, sir.

15 Q Did -- at any time during investigation, did y'all  
16 go investigate any of the people at Chuck E Cheese  
17 background, or the people that -- try to investigate the  
18 people that was cleaning Chuck E Cheese up, whether or  
19 not they left the door unlocked and somebody they know  
20 could have committed the robbery, or did you -- prior to  
21 you doing your investigation, during your investigation  
22 did you do any investigation on that?

23 A I checked them for warrants to make sure none of  
24 them had outstanding warrants. I checked them to see if  
25 they had been victims with the Greenville Police

1 Department, or suspects with the Greenville Police  
2 Department in the past, make sure they don't have a  
3 history of making false reports to us.

4 Q What about the -- the cleaning crimes (sic) that  
5 left the door open, did you investigate them?

6 A No, I did not.

7 Q So you never tried to figure out if they had friends  
8 or anybody to come commit the robbery or anything, never  
9 attempted to investigate them?

10 A No, sir, we did not.

11 Q So from the beginning, the whole time, as being  
12 black man being stopped, I was the prime suspect through  
13 the whole investigation?

14 A There was substantial reason to investigate you  
15 thoroughly, and once we did that pretty thoroughly, and  
16 satisfied ourselves and judges that you were the suspect  
17 that did the robbery, we needed to go no further.

18 Q Okay. So if you obtained let's say evidence, a  
19 weapon or anything, pursuant to the search of my  
20 apartment, and whenever you obtained something that a  
21 witness said that it's not -- that's not it, she gives  
22 testimony, that's not it, would you still think I was the  
23 one that committed the robbery if the evidence that you  
24 used was not the evidence that was in the crime, and the  
25 witnesses verified this?

1 A Clarify the question you asked me about a firearm.

2 I want to make sure I understand your question.

3 Q If a description was given of a firearm.

4 A Okay.

5 Q And today a firearm say it's introduced and it  
6 doesn't match the description, what the witnesses said,  
7 and the witness said it does not match what I said how it  
8 matched, then it's not the gun that was used in this  
9 crime? That's what I want to know. When you interviewed  
10 the witnesses did you ever show them a picture, or show  
11 them the actual gun?

12 A We did not show those witnesses the gun that we  
13 recovered in your apartment, but based on the description  
14 that the witnesses gave us of the gun, the one found in  
15 your apartment was a pretty good match.

16 Q So the whole investigation is based upon what the  
17 police wanted to do instead of the actual evidence that  
18 was consistent with what the witnesses was -- the  
19 witnesses come here today and testified to?

20 A No, sir.

21 Q Well, the witness' testimony is not consistent with  
22 the police officers' testimony, and the witnesses is  
23 where you base your information about the crime comes  
24 from. So the evidence doesn't much what they're saying,  
25 it seems to me that the police department is pressing the

1 issue to build the case.

2 A I can outline for you the evidence that matches in  
3 your apartment to what we sought and what the witnesses  
4 said we would find.

5 Q Okay. So ---

6 A I can tell what that evidence is.

7 Q So if the witnesses say -- if -- let's say \$150 was  
8 obtained -- ones was obtained out of the apartment and  
9 \$153 was obtained out of the car in one dollar bills.  
10 The witnesses testified that only \$250 of one dollar  
11 bills was taken, so you have like 50 something odd  
12 dollars over the amount that they described down to the T  
13 saying this is what was taken. So how do you explain the  
14 excess of money that -- you see what I'm saying, over the  
15 amount that they say was taken in the robbery, and the  
16 inconsistency with the money as far as the hand rolled  
17 money, the nickels and dimes that's in the money? How do  
18 you explain that? And they say they don't roll, hand  
19 roll nickels and dimes, how do you explain that money  
20 being a part of the money?

21 A I explain it that Chuck E Cheese informed us that  
22 they had \$892 missing, 892. The money found on your  
23 person, the money -- plus the money that you were  
24 throwing in the car, plus the money found inside the  
25 apartment in bundled denominations of ones and fives that

1 Chuck E Cheese said we would find, all the money  
2 recovered totaled \$886, within six dollars of what Chuck  
3 E Cheese said was taken. They also told us we would find  
4 11 rolls of quarters in brown wrappers with orange  
5 stripes. In your apartment we found 11 rolls of factory  
6 rolled quarters in brown wrappers with orange stripes.  
7 The amount of rolls of dimes and nickels was slightly off  
8 what we found in your apartment, but was really close to  
9 what Chuck E Cheese said they were missing. That is what  
10 we found in your apartment.

11 Q So if I shown that there was only four rolls of  
12 factory quarters and the rest were hand rolled quarters,  
13 and you just said it was 11 rolls, then that wouldn't be  
14 the money consistent -- the money from Chuck E Cheese?  
15 If I could show you where you said it was 9- -- \$892?

16 A In the reporter ---

17 Q But I could show you the reports that the officers  
18 dealing with the evidence are inconsistent. You have  
19 this much you're saying you got out of the apartment and  
20 then when you write this report, this report, it's  
21 different. I have right here the estimate of the money  
22 that was taken in a property report right here where if  
23 you add the money up the way you're saying you're adding  
24 it, it's incorrect because they have 11 rolls of quarters  
25 as \$150. I just want to show you. Can you tell me how

1 many rolls of quarter they said was obtained?

2 A Eleven rolls of quarters.

3 Q At how much?

4 A Bad math.

5 Q How much?

6 A Valued at 150.

7 Q So in totaling all your money up, you're saying --  
8 you're bringing amount of money on reports to try to  
9 match the amount of money that was taken in the crime,  
10 but it's inconsistent with what was actually taken in the  
11 crime, but in your reports you're trying to come up with  
12 closest amount that you took out of my apartment.

13 A Your question, sir?

14 Q Okay. Okay, from the time you took -- what all  
15 evidence did you personally take out of the apartment?

16 A I took the wallet with the two South Carolina IDs.  
17 I took a .22 caliber bullet laying on the floor next to  
18 your wallet. I took a check writing machine commonly  
19 found with businesses used to stamp checks when they're  
20 paying their bills. I took a large framed BB air pistol  
21 out of your apartment.

22 Q Okay. When you took the evidence who did you give  
23 the evidence to?

24 A Placed it into property and evidence section.

25 Q Okay. Do you know who you gave it to you? Who

1 checked it in, the custodian?

2 A The evidence custodian at that time.

3 Q Okay.

4 A There were several technicians that worked in the  
5 property room, and they would sign for it from me and  
6 secure it in a locked area.

7 Q Okay.

8 A Very limited access to that area.

9 Q Okay. Did you receive any information from the  
10 witnesses that the person that committed the crime got  
11 into a white Ford Taurus?

12 A Try me again, sir?

13 Q Did you receive any information from the witnesses  
14 that when the robber left out of the business that he got  
15 into a white Ford Taurus?

16 A No, not that the robber got into a white Taurus to  
17 flee, no.

18 Q Did they ever identify the driver or the nationality  
19 of the person they seen in the white Ford Taurus?

20 A They told me that it was a black male in the white  
21 Ford Taurus that had been outside the business in that  
22 week prior to the robbery.

23 Q So prior the robbery. So in -- did they ever tell  
24 you it was the same white Ford Taurus that was seen at  
25 the business that I was stopped in?

1 A Yes, Jimmy Skelton and Jeannie Pireda told me that,  
2 and then they were shown to you and they looked at you in  
3 the car. They said it was the same car.

4 Q So you're now saying -- you're saying that it was  
5 Jimmy (sic) Pireda that came to the scene with Jimmy  
6 Skelton to review me?

7 A Jimmy Skelton and Jeannie Pireda.

8 Q Okay. We didn't know who the other person was.  
9 Nobody know. Okay. Did you ever meet my co-defendant at  
10 the -- anywhere after she gave this information to you  
11 and obtained another statement from her?

12 A I spoke to her on the night of the incident and then  
13 I spoke to her again some time later.

14 Q Okay. And did you ever offer her a plea agreement,  
15 or any type of pretrial intervention, any type of program  
16 to, less offense, to give a statement?

17 A No, sir, I did not.

18 Q Were you aware of if the solicitor did?

19 A I'm not aware of that, sir.

20 Q And did you cross -- when -- interrogate her and ask  
21 her any questions in reference to guns, or anything in  
22 the apartment, or anything incriminating towards me?

23 A It was not an interrogation. I was given a message  
24 that she wanted to talk to me, and so I had a  
25 conversation with her attorney prior to having a meeting

1 with her, and her attorney said, it's okay, he has spoke  
2 to her, I am welcome to talk to her. So I'm speaking  
3 with her. That was on -- on that date, October 21 of  
4 '02, I believe.

5 Q Okay.

6 A You showed me the ---

7 Q And you had your report where she gave you my  
8 whereabouts at one o'clock. Did you have another witness  
9 talk to you, Matthew McCoy? Do you remember him?

10 A From that night, yes.

11 Q Did he provide you a different time than Jeannie  
12 Pireda saying when the crime was committed?

13 A I don't think he gave a substantial different time  
14 that the robbery occurred. Is that what you're asking?

15 Q So -- did he ever say that the person that committed  
16 the crime came in at around 12:45?

17 A I don't recall him that. Maybe he did. That's what  
18 he wrote in his statement, yes, sir.

19 Q Okay. So you have two times that the person  
20 supposed to had came into Chuck E Cheese and commit the  
21 crime. You have one saying at 12:50, one o'clock. You  
22 have one saying 12:45. You have evidence that -- in your  
23 report that at one o'clock I was in my apartment. When  
24 you interviewed my co-defendant Elena Pelzer again after  
25 she has been charged, did she give you a statement of a

1 different time that I was with her?

2 A The time of the robbery even though Matthew McCoy  
3 states 12:45 in that statement ---

4 Q No, that's not what I asked you. I asked you about  
5 Elena Pelzer. Did she give you a different time? I'm  
6 not asking you about Jimmy McCoy now, I'm asking you  
7 about Elena Pelzer. When you talked to her the first  
8 time did she say something different after she was  
9 charged that was different from what she told you first  
10 time?

11 A Sir, you asked me about the times being different.  
12 There's multiple times of this robbery. What I'm trying  
13 to offer is that on your inquiry to me why that is ---

14 Q No, I just want to know if ---

15 MR. MARCHANT: Your Honor, I'd ask that the witness  
16 be allowed to answer the question.

17 THE COURT: I believe the question is what time did  
18 Elena Pelzer tell you the second time you talked to her  
19 that the robbery occurred?

20 THE WITNESS: I don't recall that second  
21 conversation that I had with her. It was in October of  
22 2002. She gave a statement and I don't recall the  
23 content of that right now.

24 BY MR. WATKINS:

25 Q Is this your signature right here at the bottom?

1 A Yes, sir.

2 Q And what time right there does it says that?

3 A It says, he came back around 12:45 without my  
4 food.

5 Q Okay. Thank you. All right. So now you have  
6 two times. You have two times the crime supposed to  
7 happen -- the person was supposed to come into Chuck E  
8 Cheese. You have two times, each time I have an alibi  
9 defense. So now the question is which time is going to  
10 be used. Criss-cross. Okay. Now, if you had this  
11 evidence and you knew that she gave a different statement  
12 from the statement before the first time, I'm trying to  
13 figure out why did she give you this statement. Can you  
14 explain why she said she wanted to talk to you?

15 A That was the first statement she gave us. She did  
16 not give us a statement the first time.

17 Q I'm talking about then when you interrogated her and  
18 the information she gave you that you included in your  
19 report. You knew about this time. You knew what time  
20 the crime had happened. So now you get -- you see that  
21 alibi, but you have another statement from another  
22 witness that's different from that can rebut that alibi.  
23 Now you need a different statement from Elena Pelzer to  
24 kill that other -- in case the other person testified,  
25 kill the alibi?

1       A     How I look at that is that the timing, the  
2       remembrance of time could be off by as little as 15  
3       minutes, which I think is what happened because the  
4       totality of everything else points directly at you. And  
5       if you give her credit ---

6       Q     No, that's not -- I don't want you to go into that.  
7       All right. Okay. So why was -- did you receive any  
8       information over dispatch from any of the witnesses about  
9       a female suspect being involved in the crime?

10      A     No, sir.

11      Q     So if you had information that she was at home and  
12      she wasn't involved in the crime, why was she charged?

13      A     For the same reason, if you sent me to go shoot that  
14      man over there and I come back and tell you I did it, and  
15      you helped me conceal that crime, you're as guilty as I  
16      am. And the evidence we uncovered that night during our  
17      investigation led us to believe she knew the robbery  
18      happened and that she helped try to conceal the crime,  
19      thus she was charged with armed robbery too.

20      Q     How did she end up with accessory after the fact?

21      A     I do not know the answer, sir.

22      Q     So armed robbery you have to be present. When you  
23      charge somebody with armed robbery what you're saying  
24      is -- what you're describing is accessory after the fact.  
25      What you charged her with was actual armed robbery.

1 A Probable cause existed to charge her with armed  
2 robbery. If the solicitor's office chose to prosecute  
3 her with a lesser offense of accessory ---

4 Q That's what I'm asking. Where is the probable  
5 cause if nobody described a female being involved in the  
6 crime?

7 A Well, we didn't know that she may have been in the  
8 white Taurus nearby waiting for you to run out and jump  
9 into it. We didn't know that for sure.

10 Q So this is a mere ---

11 A The feasibility ---

12 Q Okay. This is mere conclusion that you're drawing  
13 to incriminate a person? You don't have any facts to  
14 support it. You're just drawing conclusions. This is  
15 what we want to believe, this is how we're going to put  
16 it together. You have to have -- have to establish  
17 probable cause, you have to facts. You just can't make  
18 up stuff that don't exist behind facts and say this is  
19 probable cause, this is what happened, I'm going to use  
20 this as probable cause. It's got to be based upon  
21 facts ---

22 MR. MARCHANT: Your Honor, I would object.

23 THE COURT: I would -- I would sustain the objection  
24 as to this line of questioning.

25 MR. WATKINS: That's all I have for the witness.

1 THE COURT: All right.

2 REDIRECT-EXAMINATION

3 BY MR. MARCHANT:

4 Q Sergeant Fuller, do you have a document that shows  
5 who occupied that residence?

6 A Yes.

7 Q Could I please see the document?

8 MR. MARCHANT: Please mark that.

9 (State's Exhibit Number 27 was marked for  
10 identification.)

11 MR. WATKINS: I object on the search warrant issue.

12 THE COURT: I would overrule the objection and admit  
13 it into evidence.

14 (State's Exhibit Number 27 was filed.)

15 BY MR. MARCHANT:

16 Q Show you what's been marked as State's Exhibit  
17 Number 27. Do you recognize that Sergeant Fuller?

18 A Yes, I do.

19 Q How is it that you recognize it?

20 A Number one, it's a copy of the same document that  
21 Robert Watkins showed me just about half an hour ago when  
22 he was referring to this Mr. Operman. And nowhere on  
23 this document does it say Operman. It's generated by the  
24 apartment complex. And on the top, second from the top  
25 line, it says the tenants are, Robert Watkins, Elena

1 Pelzer.

2 Q Okay. Where did you obtain this document?

3 A From the manager, Robert Lutz (phonetically) of the

4

5 MR. MARCHANT: Move State's 27 into evidence.

6 THE COURT: It's in evidence. I'll note his

7 objection.

8 MR. MARCHANT: I have no further questions. Thank  
9 you, Sergeant Fuller.

10 THE COURT: Okay.

11 MR. WATKINS: Okay. Can I re-question him one?

12 THE COURT: Okay.

13 RE-CROSS-EXAMINATION

14 BY MR. WATKINS:

15 Q The exhibit they just introduced in evidence, it  
16 doesn't have -- when did you go back and get this stamped  
17 on here? The first one here doesn't have this is on  
18 there, and this is giving the implication that it's a  
19 rainbow -- Management Leasings. That's how I received it  
20 in the search warrant saying it's a lease. But it's just  
21 Rainbow -- it says Rainbow Management Company, Rainbow  
22 Rental. And it's not a lease but it was passed off as a  
23 lease with the search warrant. And this right here at  
24 the top right there, it's not the one you have just --  
25 the solicitor just introduced in evidence. So when was

1 this done?

2 A Mine is a copy that I just presented to the  
3 solicitor. And this is a copy. The original would be in  
4 the records, sir. And I do not know why that didn't copy  
5 through.

6 Q If you copied -- that's what I'm saying. You  
7 copied -- everything else is copied, why ain't this  
8 copied?

9 A I don't have the answer. It was sent through on a  
10 fax and apparently it didn't come through.

11 MR. WATKINS: I want to introduce this in evidence.

12 THE COURT: Okay. That's in evidence. Let her mark  
13 it.

14 MR. WATKINS: Okay.

15 (Defendant's Exhibit Number 9 was marked and filed.)

16 MR. WATKINS: Introduce Defendant's Exhibit Number 9  
17 into evidence.

18 THE COURT: Okay.

19 MR. WATKINS: I have no further questions.

20 THE COURT: Okay. You can come down.

21 MR. MARCHANT: Ask that the witness be excused.

22 THE COURT: Okay. You can either leave or stay.

23 MR. MARCHANT: The State calls Elena Pelzer.

24 THE CLERK: Ma'am, if you would please place your  
25 left hand on the Bible and raise your right hand.

1 ELENA PELZER

2 Having been first duly sworn, testified as follows:

3 THE CLERK: Thank you. Please be seated. Please  
4 state your full name for the record.

5 THE WITNESS: Elena Diane Pelzer.

6 DIRECT EXAMINATION

7 BY MR. MARCHANT:

8 Q Good afternoon, Ms. Pelzer.

9 A Hello.

10 Q Without giving us your address, where do you live?

11 A Atlanta, Georgia.

12 Q Okay. And back in 2001, where were you living?

13 A I think it's called (sic.)

14 Q Okay. Now, who were you living in  
15 with?

16 A Robert Watkins.

17 Q And what apartment were you living in?

18 A . . . .

19 Q How is it that it came that you had involvement with  
20 Mr. Watkins?

21 A I needed somewhere to go at the time and -- to take  
22 care of my niece and nephew and he was helping me out.

23 Q Well, where were you prior to meeting Mr. Watkins?

24 A . . . .

25 Q Okay. Is that here in Greenville?

1 A Yes, off Augusta Road.

2 Q And who were you staying with over there?

3 A My sister and my brother-in-law, her family.

4 Q And why is it you say you now needed a place to go?

5 A I was trying to get custody of my niece and nephew  
6 while my sister got locked up.

7 Q Why did you not just stay in the residence you were  
8 staying in at the time?

9 A I did not get along with my brother-in-law.

10 Q Okay. Where was Mr. Watkins living when you first  
11 met him?

12 A Behind my brother and sister with his girlfriend.

13 Q Okay. Do you know her name?

14 A Patricia, I don't know her last name.

15 Q When did you and Mr. Watkins get an apartment at

16 \_\_\_\_\_?

17 A Not too sure of the date exactly. It was towards  
18 the end of the year, like maybe September, October.

19 Q Can you will tell us if you remember how long you  
20 were living there prior to this incident happening?

21 A About a month or two.

22 Q Okay. Who was paying the bills for the apartment?

23 A Robert.

24 Q Who pays the power bill?

25 A Who was paying the power bill?

1 Q Yeah.

2 A I guess Robert.

3 Q Okay. Did you have a job at that time?

4 A No, sir, I didn't.

5 Q Did you have any income?

6 A No, I didn't.

7 Q Well, how did you eat?

8 A Robert Watkins.

9 Q Now, taking you to this incident date, you know what  
10 we're here for?

11 A Yes.

12 Q Were you charged with armed robbery in this case?

13 A Yes, I was.

14 Q Okay. Prior to any -- any guarantees or promises  
15 made to you, did you talk with Defective Fuller?

16 A No, promises. I talked to him.

17 Q Okay. Why is it that you decided to talk to him?

18 A Because I was innocent.

19 Q In speaking with him, did you speak to him the night  
20 this happened?

21 A Yes.

22 Q And what did you tell him the night this happened?

23 A Everything that I knew.

24 Q Well, what is it that you knew?

25 A That I was at the house. I sent him to get me

1 something to eat, came back four hours later.

2 Q Okay. Do you recall what time he left?

3 A Around nine something.

4 Q And do you recall approximately when he returned?

5 A It was 12, 1:00, around in there. It was in the  
6 end. I'm not too sure. I just know when I got stopped.

7 Q Okay. Let's talk about when say the end. What do  
8 you mean the end?

9 A Well, I tried to average out the time from us  
10 leaving the house and getting stopped, within say 1:10 on  
11 the clock. So I tried to average out the time. So maybe  
12 12:50, 12:00 around in there.

13 Q I'm not sure that I'm clear. Maybe I'm not asking  
14 the question good. From the time that he got back to the  
15 apartment to the time you got stopped, how long do you  
16 believe that to have been?

17 A No more than 20 minutes.

18 Q Okay. Are you certain that it was 20 minutes, could  
19 it have been 25?

20 A It could have been. I'm -- I just know ---

21 Q Could it have been 10 or 15?

22 A Could have been.

23 Q And you do recall what time you were stopped?

24 A Yes.

25 Q And what time was that?

1 A 1:10.

2 Q Now, when he left that evening where to your  
3 knowledge was he going?

4 A I sent him to Jack in the Box.

5 Q And what time was that?

6 A Like nine something, maybe like 9:30.

7 Q And when he returned did he have food for you?

8 A No, he didn't.

9 Q What conversation ensued between you and him when he  
10 returned?

11 A I argued with him about not having my food and told  
12 him give me the keys I'll go myself.

13 Q Did you have a driver's license?

14 A No, I didn't.

15 Q How were you dressed?

16 A I had on a hat -- well, at the time I had on just my  
17 pajama shirt. But I went in the room to put my hat and  
18 boots on. Took ---

19 Q You say you went in the room, which room are you  
20 referring to?

21 A The right side, my room.

22 Q Was there a bed in that room?

23 A No, there wasn't.

24 Q Why was there not a bed in that room?

25 A Rainbow took it. It was rented.

- 1 Q How long had that bed been gone?
- 2 A Could have been about a week.
- 3 Q Where were you sleeping if you didn't have a bed?
- 4 A On the pallet on the floor.
- 5 Q Was there a bed in the other room?
- 6 A No, there wasn't.
- 7 Q Was there one at any time?
- 8 A Not in the left side, but there was one in the
- 9 right.
- 10 Q And when you say left side, whose room was that?
- 11 A Robert's.
- 12 Q Well, I thought you said y'all moved into the
- 13 apartment together?
- 14 A I moved in first but he was there -- sometime he
- 15 wound up coming in, and that's where his stuff was, on
- 16 the left side.
- 17 Q Did he have a key to the apartment?
- 18 A Yes, he did.
- 19 Q Did you have a key to the apartment?
- 20 A Sometimes.
- 21 Q Do you know if anyone else had a key to the
- 22 apartment, besides management?
- 23 A No, not that I know of.
- 24 Q When you got stopped that evening were you seated in
- 25 the passenger?

1 A Yes, I was.

2 Q And what happened when Mr. Watkins threw the money  
3 into the car?

4 A I took some off the seat.

5 MR. WATKINS: Objection, Your Honor. Objection,  
6 he's -- leading question.

7 MR. MARCHANT: I'm sorry. I didn't hear the  
8 objection.

9 THE COURT: What was the objection?

10 MR. WATKINS: Objection, because he saying I threw  
11 money in the car. I'm saying she didn't say that.

12 THE COURT: Okay.

13 MR. WATKINS: He's asking questions what happened  
14 and he's telling her when I threw money in the car.

15 THE COURT: Repeat your question, Mr. Marchant.

16 BY MR. MARCHANT:

17 Q When you got stopped?

18 A Yeah.

19 Q Mr. Watkins was removed. What did you do once he  
20 threw the money down in the car?

21 A I picked up some of it and put it in the door.

22 Q Why did you do that?

23 A Because he was taking care of me, and -- I mean, if  
24 he's gone I got a life to go.

25 Q What do you mean if he's gone?

1 A Well, when he threw something -- he threw the money  
2 on the seat, I just took some of it because I had none.

3 Q Why did you think he was going to be gone?

4 A Because just the way the money looked, just didn't  
5 look like something you would just have folded in your  
6 pocket.

7 Q Do you know where he had been when he was gone that  
8 evening?

9 A No.

10 Q Do you know whether or not he robbed the Chuck E  
11 Cheese?

12 A At the time, no, I didn't.

13 Q Let's talk about this vehicle, this Ford Taurus. Do  
14 you recall how long?

15 A Could have had it about a month.

16 Q Do you know why he had it?

17 A His car was being fixed.

18 Q Did y'all have an opportunity to travel anywhere in  
19 that car?

20 A Yes.

21 Q And where did you go?

22 A To my mother's house in Georgia.

23 Q Okay. At any point in time did you ever see him  
24 with a gun?

25 A Yes.

1 Q When was that?

2 A There.

3 Q There, being where?

4 A In Georgia.

5 Q Okay. Show you what's marked State's Exhibit 21 for  
6 identification only. This is not in evidence. Do you  
7 recognize that as being Mr. Watkins'?

8 A Yes.

9 Q Is this the same one that he had that evening when  
10 you went to Georgia?

11 A Yes.

12 Q Did you tell the officers that y'all stopped at a  
13 dumpster that evening?

14 A Yes.

15 Q And what did you do at the dumpster?

16 A He had me throw some McDonald cups away.

17 Q Did you throw a jacket in the dumpster?

18 A No, sir.

19 Q Okay. From the time that he got home until the time  
20 you left?

21 A Okay.

22 Q Did you spend the entire time him with?

23 A No, I went out to the car first.

24 Q Okay. Do you recall how long it took for him to  
25 reach the vehicle?

1 A Maybe five minutes, not too long.

2 Q Do you recall how he was dressed when he got home  
3 that night?

4 A I don't remember how he was dressed.

5 Q Do you know whether or not he changed into different  
6 clothes?

7 A No, but I know what he had on when he came to the  
8 car.

9 Q What was he wearing when he got to the car?

10 A Yellow and black.

11 Q And how long was he inside before he came down to  
12 the vehicle?

13 A Maybe about five minutes.

14 Q Okay. And how were you dressed?

15 A I had on a hat, my pajama shirt and some boots.

16 Q There has been mention that you pled guilty to  
17 accessory after the fact, is that correct?

18 A Yes, sir.

19 Q Okay. Why did you plead guilty to accessory after  
20 the fact?

21 A Because my father had cancer, and if I didn't plead  
22 I would still be in jail when he passed.

23 Q Why were you jail -- why were you in jail in the  
24 first place?

25 A Because I violated the probation on this charge.

1 Q Now, did the -- or has the solicitor's office at any  
2 point in time offered you anything for your testimony?

3 A No, sir.

4 Q Did Detective Fuller or Detective Bruce ever offer  
5 you anything for your testimony?

6 A No, sir.

7 Q Have you been given any guarantee of what would  
8 happen with your case?

9 A No.

10 MR. MARCHANT: Court's indulgence, Your Honor.

11 BY MR. MARCHANT:

12 Q Did you have an opportunity to turn the property  
13 that was seized that night from you over to someone?

14 A Yes.

15 Q And who -- who did you turn that property over to?

16 A I turned my property over to my brother-in-law's  
17 friend.

18 Q And what was your brother's name?

19 A Bruce Harrison.

20 Q And do you know what his friend's name was?

21 A I don't remember. That was seven years ago.

22 Q Now, do you recall what time of the day that was  
23 when you turned the property over to him?

24 A Well, it was -- I filled out a sheet the very next  
25 day, but I don't know exactly when he picked it up.

1 Q When you say you filled out a sheet the next day,  
2 what do you mean?

3 A In order to turn over my property they made me fill  
4 out a property something sheet.

5 Q Do you mean -- when you say the say next day, are  
6 you talking about -- if you got stopped ---

7 A Well, later on that day because we got arrested in  
8 the middle of the night, so later on that day.

9 Q Okay. So the same day?

10 A Same day.

11 Q Just later ---

12 A Later on that day.

13 Q Show you what's been marked as State's Number 24.  
14 Do you recognize that?

15 A Um-hm.

16 Q Okay. Hold on one second. What are the items that  
17 you turned over to your brother-in-law's friend?

18 A My keys, a black hat, a black purse, and I guess  
19 that's lip gloss right there.

20 Q And you said this was late in the afternoon?

21 A Yes.

22 MR. MARCHANT: Move State's 24 into evidence.

23 THE COURT: Okay. Without objection.

24 (State's Exhibit Number 24 was filed.)

25 BY MR. MARCHANT:

1 Q Did you ever return to the apartment after you got  
2 arrested?

3 A No, sir.

4 Q Never been back?

5 A I didn't.

6 MR. MARCHANT: I have no further questions. Please  
7 answer any questions Mr. Watkins may have.

8 CROSS-EXAMINATION

9 BY MR. WATKINS:

10 Q So when you got arrested your keys and your property  
11 was put into property and -- your property and stuff,  
12 when you got arrested, you had your key on you? You had  
13 all your stuff on you, your lip chap and all that stuff,  
14 your pocketbook, when you got arrested?

15 A Yes.

16 Q And they put into the detention center property, but  
17 they didn't keep it as evidence?

18 A No.

19 Q But yet you was charged with armed robbery?

20 A Yes.

21 Q Were you aware -- let me see. Were you aware that  
22 that night when they showed me to the police officers  
23 that I wasn't identified by the victims?

24 A Was I aware of it?

25 Q Yeah, when they put me in front of the lights?

1 A No.

2 Q Okay. When -- when I -- when officer asked me --  
3 came to the door and asked me to step out of the car, did  
4 he immediately arrest me right then, or did he take me to  
5 the side and place me in the back seat of a police car,  
6 and then came around to your side, once he found the  
7 money, got you out of the car and then went and arrested  
8 me?

9 A I don't remember.

10 Q You don't remember? You don't remember if I was  
11 arrested -- if the officers ---

12 A You were took away. I know that much, but I don't  
13 know if you were arrested.

14 Q Okay. So -- but was I in handcuffs at the time when  
15 they took -- when I first got out of the car and they put  
16 me in the back seat of a car, while you were sitting in  
17 the car?

18 A No, I don't think so.

19 Q Okay. I didn't get arrested -- we didn't come to  
20 the probable arrest until they seen the money and that's  
21 when they arrested you because they said you was touching  
22 the money?

23 A Yes.

24 Q Okay. All right. You gave -- you talked to the  
25 defective prior to being charged. And then after you

1 were charged you give him a different statement. You  
2 gave him a different statement right here. When he  
3 was -- in your statement it says that you seen me with a  
4 gun in Atlanta and you told me give it to Marcus. Did  
5 you see me with the gun after that?

6 A No, because I told you to get rid of it.

7 Q Okay. So -- okay. Have you ever went to work with  
8 me in detailing cars?

9 A Yes.

10 Q Do you recall us going to the laundromat one time  
11 and I had a whole pouch full of quarters, nickels and  
12 dimes when we was washing clothes?

13 A Yes.

14 Q Do you ever recall going to the trunk of my car and  
15 the same pouches of quarters was stuffed in \$2 bills,  
16 single bills was there, and I gave you a couple of \$2  
17 bills that I used to collect, to go to O'Charley's that  
18 night, and then I joined you later on? Do you remember  
19 that?

20 A I don't remember.

21 Q You don't remember being at O'Charley's with the  
22 girl with the blonde hair and we was sitting there?

23 A I always went to O'Charley's.

24 Q So who gave you the money to go to O'Charley's?

25 A You did.

1 Q Okay. So what else did I do? Did I cut hair on the  
2 side?

3 A Yes.

4 Q Okay. So it wasn't unnatural for me to have money,  
5 small bills, change, anything, it's not out of the  
6 ordinary because of what I did?

7 A No.

8 Q Okay. So when you went to talk to the officer, did  
9 you go -- when you talked to the officer the second time  
10 to give your statement, did you voluntary, or did someone  
11 call you and tell you to go talk to them?

12 A I don't remember.

13 Q You don't remember. Did you think you was going to  
14 court that day?

15 A Yes.

16 Q You thought you was going to court?

17 A Yes.

18 Q And then you were taken in a room and your lawyer  
19 advised you, after talking with the officers, that it  
20 might be in your best interest to go in there and talk to  
21 them?

22 A I don't know if it was before or after, I don't ---

23 Q Okay. Well, was the solicitor in there, in that  
24 room with you when you was talking to the Officer Fuller?

25 A Was the solicitor in there?

1 Q A lady?

2 A No, I think it was just him in there.

3 Q So it wasn't the solicitor in there?

4 A (Witness shook her head.)

5 Q Okay. Did -- did they ever offer you pretrial  
6 intervention?

7 A Yes.

8 Q And you failed to appear for the pretrial  
9 intervention?

10 A Yes.

11 Q And what happened then?

12 A I had things going on in my life.

13 Q I mean, did they issue a warrant for your arrest?

14 A Yes.

15 Q Okay. And when you came -- when you got locked up  
16 and you went for -- what did they offer you after you got  
17 arrested? When they -- after you got arrested, what was  
18 the deal they offered you?

19 A After I got arrested?

20 Q Once you didn't show up for PTI, and they had a  
21 bench warrant, and you returned and they arrested you for  
22 the bench warrant, was the PTI still in effect?

23 A No. I violated it.

24 Q You violated it. So they took away your PTI and ---

25 A I had to go to court.

1 Q Had to go to court and what was offered to you then?

2 A I don't understand what you're saying.

3 Q Were you offered, say like a plea? Were you offered  
4 a plea, to plea out to like probation or something?

5 A No.

6 Q So what did you receive?

7 A What did I ---

8 Q Let me show you.

9 THE COURT: His question was, what happened to you  
10 when you went to court for violation of your PTI?

11 THE WITNESS: She dropped my felony to a  
12 misdemeanor.

13 THE COURT: I'm sorry?

14 THE WITNESS: She dropped my felony to a  
15 misdemeanor.

16 THE COURT: Does that answer the question?

17 MR. WATKINS: Um-hm.

18 BY MR. WATKINS:

19 Q And what was the sentence that you got for that?

20 A Five years probation.

21 Q Seven years suspended to five years probation?

22 A Yes.

23 Q Okay. Do you know the nature -- so you went from  
24 armed robbery all the way from accessory after the fact  
25 to a misdemeanor? And that was -- that was after you --

1       okay. I can't say that. So you was given a deal. Do  
2       you think that deal was based upon you giving them -- the  
3       deal was based upon you talking to this officer that they  
4       gave you that type of deal?

5       A     No.

6       Q     Why do you think they gave you that type of deal if  
7       you was charged with armed robbery and they had all this  
8       evidence against you, why do you think they dropped it  
9       down?

10      A     Because I was innocent from the start.

11      Q     So if you was innocent, how did you end up with  
12      probation?

13      A     I don't know.

14      Q     Okay. Prior to your moving into the apartment, how  
15      long -- where else did we stay at?

16      A     We didn't stay anywhere.

17      Q     You know, I stayed there sometimes too. How long --  
18      when we come back from Washington, we stayed -- did we  
19      not stay in a Motel 6?

20      A     It wasn't a Motel 6, but we stayed in a motel.

21      Q     Then I -- then we moved to ---

22      A     I ---

23      Q     We moved to where?

24      A     To the apartments.

25      Q     How many hotels did we stay in before then?

1 A Just the one.

2 Q We didn't stay in the one over by 1 -- off

3 -- 1 -- 1 when you got the job in ---

4 A That's the one.

5 Q So we didn't stay -- we didn't stay in the one down  
6 by ---, where your nephews came to go swimming down  
7 there?

8 A Two days.

9 Q I'm just trying to establish, so how long ago was  
10 that to the time until we got arrested? Was that over  
11 six months?

12 A No.

13 Q Are you sure?

14 A Yeah.

15 Q Okay. When you were -- at any point we was  
16 arrested, lack of communication, at any point did you get  
17 any animosity towards me, mad?

18 A Yes.

19 Q Why was that?

20 A Because I was at a place I should not have been.

21 Q So in other words you're blaming me?

22 A Yes.

23 Q Okay. Prior to that night, before we got arrested,  
24 did we go any other places, like Tony Operman house, any  
25 other places?

1 A Yes.

2 MR. WATKINS: Okay. No further questions for the  
3 witness. Oh, yes, one more.

4 BY MR. WATKINS:

5 Q Do you know the exact time that I came back without  
6 your food?

7 A Not down to the minute.

8 Q Would you say it was 12:50?

9 A Between there and 1:00. I just remember when I got  
10 stopped.

11 Q Okay. When I came back did I have on a black hooded  
12 jacket, a mask over my face, money bulging out of my  
13 pockets, and a pistol in my hand?

14 A No.

15 MR. WATKINS: Okay. No further questions.

16 MR. MARCHANT: No further questions, Your Honor.  
17 Ask that this witness be excused?

18 THE COURT: All right, ma'am. Any objection to her  
19 being excused, Mr. Watkins?

20 MR. WATKINS: No, sir.

21 THE COURT: All right. We're going -- I didn't mean  
22 to keep y'all late or -- and -- but this witness needed  
23 to get back to Atlanta so we finished with her. And I  
24 apologize. There was some folks down in the jury panel I  
25 said we wouldn't be past 5:30, but we are. And if y'all

1 would be back at nine o'clock in the morning we'll finish  
2 this case tomorrow. Okay. Do not discuss the case. I  
3 know you might be tempted to. And whoever you see  
4 tonight or -- would be tempted to ask you about it. Just  
5 tell them you can't talk to them. Don't tell them  
6 anything. And after it's over, as I told you before, you  
7 can talk to anybody you want to, or you don't have to  
8 talk to anybody. It's up to you. It's solely your  
9 decision. But do not discuss it tonight. And be back at  
10 9:00 in the morning and we'll pick up. I think we'll  
11 finish tomorrow. Okay. Have a good evening.

12 (The jury exited the courtroom at 5:42 p.m.)

13 THE COURT: All right. See y'all at nine o'clock in  
14 the morning. Thank you.

15 MR. MARCHANT: Your Honor, if we could just take a  
16 moment to make sure the evidence is all here. I may have  
17 picked some up and brought it back in the table.

18 COURT REPORTER: I'll do that.

19 THE COURT: Mary says she'll do that.

20 MR. MARCHANT: Okay. Make sure nothing got picked  
21 up in the shuffle.

22 (A discussion was held off the record.)

23 (Court adjourned for the evening.)

24 (The following proceedings were held on September  
25 24, 2008, as follows:)

1 THE COURT: We ready to continue?

2 MR. MARCHANT: The State is ready, Your Honor.

3 THE COURT: Mr. Watkins?

4 MR. WATKINS: Defense is ready.

5 THE COURT: Okay.

6 (The jury entered the courtroom at 9:14 a.m.)

7 THE COURT: All right. Mr. Marchant.

8 MR. MARCHANT: May it please the Court? The State  
9 calls Detective Will Bruce.

10 THE CLERK: Sir, please place your left hand on the  
11 Bible and raise your right hand.

12 WILBUR BRUCE

13 Having first duly sworn, testified as follows:

14 THE CLERK: All right. Thank you. Please be  
15 seated. Please state your full name for the record.

16 THE WITNESS: Wilbur, W-i-l-b-u-r, C. Bruce,  
17 B-r-u-c-e.

18 THE CLERK: Thank you.

19 DIRECT EXAMINATION

20 BY MR. MARCHANT:

21 Q Detective Bruce, where are you employed?

22 A Greenville City Police Department.

23 Q How long have you been employed with them?

24 A For the last -- total, this is my 24th year in law  
25 enforcement. I've been with Greenville going on, should

1 be 14 years.

2 Q And in 2001, what were your duties with the city  
3 police?

4 A I worked in the detective division, crimes against  
5 person, particularly robbery division.

6 Q Were you working the night of -- the morning of  
7 December the 19th?

8 A Yes, sir.

9 Q Okay. Where were you when you received the call on  
10 this case?

11 A I was at home when I first received -- I was  
12 contacted by Sergeant Lee Jones.

13 Q Where did you go once you received this call?

14 A After I was contacted by Sergeant Jones, I left and  
15 I went straight to the detective division, law  
16 enforcement center.

17 Q And what did you do once you got to the law  
18 enforcement center?

19 A After arriving at the law enforcement center, myself  
20 and Detective Fuller got with a couple of officers that  
21 came in. They briefed us on the situation, what they  
22 had. After that we did talk to and interview the  
23 witnesses as well as the defendants.

24 Q Okay. Following the interview with the witnesses  
25 and the defendants, with that information you had, what

1 did you do?

2 A After we received the information, we did go to the  
3 magistrate's office where we secured a search warrant as  
4 well as an arrest warrant.

5 Q Okay. What do you have to do in order to obtain a  
6 search warrant?

7 A In order to order to obtain a search warrant you've  
8 got to present information in to a judge to show probable  
9 cause to obtain the warrant. The warrant has to entail  
10 the particular place and location that you want to  
11 search, as well as the items that you're looking for.

12 Q Okay. And once this information is presented to the  
13 judge, who actually signs off on the search warrant  
14 giving you the authority to search?

15 A The judge that actually signs off on it.

16 Q What would happen if you didn't give the judge what  
17 you believe probable cause?

18 A If she didn't believe you gave probably cause, then  
19 they would not execute or give you a warrant.

20 Q Were you placed under oath when you were providing  
21 her with information?

22 A Yes, sir.

23 Q Do you recall what time that morning the warrant was  
24 issued to you?

25 A We got there that morning and the warrant was issued

1 shortly after 9:00...

2 Q After you obtained the warrant, where did you go?

3 A After obtaining the warrant we did go to the  
4 incident location where we were going to serve the  
5 warrant.

6 Q Okay, where was that?

7 A That should have been 245 Congaree Road. Well, it  
8 would be the apartments,

9

10 Q Where to your knowledge did this incident occur?

11 A At the Chuck E Cheese restaurant?

12 Q And where is the Chuck E Cheese?

13 A Right off Congaree Road.

14 Q And what county is Chuck E Cheese in?

15 A It's Greenville County, but city limits of  
16 Greenville.

17 Q Now, who else went to apartment 708 with you?

18 A The people who went to apartment 708 was myself,  
19 also Detective Dan Fuller, Detective Tonya Ebeneer, and  
20 also an officer named A. Johnson went with us.

21 Q What's the purpose of taking that many people with  
22 you? Why didn't you just go yourself?

23 A In addition there was a forensic technician officer  
24 that also went. The reason for taking that many people  
25 so you can make sure you do a proper search, you have

1 somebody to take time to scribe down items that you  
2 locate. And each person particularly takes a room and  
3 begins the search.

4 Q Okay. Well, when you got to the apartment, how was  
5 entry made?

6 A Entry was made with a key.

7 Q Okay. Do you know where that key came from?

8 A Yes, sir. Detective Fuller had obtained the key  
9 from the defendant, Mr. Watkins.

10 Q All right. When -- where was the first place you  
11 went when you made entry into the apartment?

12 A When you first go into the apartment, you have a  
13 common area. And after we were actually inside the  
14 common area, I went to the first bedroom, which would be  
15 on the left.

16 Q And did you as well as other officers search that  
17 apartment?

18 A Yes, sir.

19 Q Show you what's been marked as State's 15, 16 and  
20 17. I would ask you if you recognize those photographs?

21 A Yes, sir.

22 Q As well as number 18?

23 A Yes, sir.

24 Q And 19?

25 A Yes, sir, I do.

1 Q Okay. How is it that you recognize what's portrayed  
2 in those photographs?

3 A These are items that were actually located inside  
4 the room.

5 Q And who took custody of those items?

6 A I did.

7 Q Okay. Are those a fair and accurate depiction of  
8 the way you took custody of the items that day?

9 A Yes, sir.

10 MR. MARCHANT: Okay. We'd move State's 15, 16, 17,  
11 18 and 19 into evidence.

12 THE COURT: Okay. Any objection, Mr. Watkins?

13 MR. WATKINS: Yes, sir, objection to my previous  
14 motion.

15 THE COURT: Okay. I would overrule the objection  
16 and admit the photographs.

17 (State's Exhibit Numbers 15 through 19 were filed.)

18 BY MR. MARCHANT:

19 Q Would you please explain to the jury what is  
20 portrayed in photograph labeled State's 15?

21 A In photographs 15, inside the room when you first go  
22 in, you see there is going to be a stocking cap. And  
23 inside that stocking cap there was a small hand gun,  
24 appeared to be a derringer. On the top of that  
25 particular stocking cap, when you first went in, there

1 was two yellow jackets on top. As we were moving the  
2 jackets that's when I was observed the black stocking cap  
3 mask. When I started to pick it up that's when I felt it  
4 was kind of heavy. I looked inside. That's when I saw  
5 the front of the gun. Also in the room, still on Exhibit  
6 15, if you look there is clothes that were strewn about  
7 inside the room. You have a chair. And you have a  
8 ironing board and several items there. Exhibit number 16  
9 is the actual photograph that was taken of the gun. And  
10 you can actually see the front part of the gun, as well  
11 as you can the stocking cap mask. State's Exhibit 17, 17  
12 is the gun slid out of the mark to where it can actually  
13 be viewed. At that time you can observe the gun. You  
14 can tell that it is a derringer style handgun. And at  
15 that time you also can see laying on top of a stocking  
16 cap, a pull over mask, but you can see the eyes where  
17 they had been cut out for. And State's Exhibit Number  
18 18, you have two IDs that are present on the floor, as  
19 well as assorted moneys, and dimes, and ones, and  
20 rolled -- a roll a dimes on the floor. Also you will see  
21 a single what appears to be like a .22 bullet as well as  
22 some assorted change. And State's Exhibit 19 also, it's  
23 a different shot but be the same photograph.

24 Q Now, did you also do a search of the kitchen?

25 A Yes, sir, I did.

1 Q Showing you what's been marked as State's 8 and 9,  
2 and ask you if you're familiar with those pictures and  
3 how you're familiar?

4 A Yes, sir, I am. If you look at State's Exhibit 8, 8  
5 displays right as you go inside the kitchen. If you're  
6 facing where the stove is, there should be a top drawer,  
7 be on your right. As you pull open that top drawer you  
8 will see an assorted amount of coins that be inside the  
9 drawer. Also same in State's Exhibit 9, the coins, you  
10 see some of the coin wrappers, brown outside like orange  
11 writing on it, or some of the white machine wrote. And  
12 then you have some that are nickels that are hand rolled  
13 and you also have some dimes there also.

14 MR. MARCHANT: Move State's 8 and 9 into evidence.

15 THE COURT: Okay. I would note Mr. Watkins'  
16 objection and admit them into evidence.

17 MR. WATKINS: Yes, objection, Franks versus  
18 Delaware.

19 THE COURT: I would overrule the objection and admit  
20 them into evidence.

21 (State's Exhibit Numbers 8 and 9 were filed.)

22 BY MR. MARCHANT:

23 Q Now, when you collected and took custody of the  
24 dollars and the change that came out of the drawer and  
25 the bedroom, what did you do with them?

1 A After we collected those items they were tagged.  
2 They also was sealed up. They also was placed in proper  
3 custody.

4 Q Show you what's been marked as 22A and B. I would  
5 ask that you take a look at those and tell the Court if  
6 you're familiar with those?

7 A Yes, sir, I am.

8 Q How is it that you're familiar with that?

9 A As I spoke of, these items, after they had been all  
10 accounted for, placed inside a silver bag, what we  
11 normally do in that process we take the bag, the bag is  
12 still open, we'll initial our name, actually put the date  
13 in there, and then it will be properly sealed. And this  
14 would be the same picture of all the State's exhibit 22A  
15 as well as 22B (sic).

16 Q Is that a fair and accurate depiction of the money  
17 you recovered from the apartment that day?

18 A Yes, sir.

19 MR. MARCHANT: Move State's 22A and B into evidence.

20 MR. WATKINS: I object, Franks versus Delaware, my  
21 previous motion.

22 THE COURT: Okay. I note his objection and overrule  
23 the objection, and admit them into evidence.

24 (State's Exhibit Numbers 22A and 22B were filed.)

25 BY MR. MARCHANT:

1 Q I going to show you what's been marked as 23A and B.  
2 Lieutenant Thompson previously spoke about money he had  
3 collected out of the car. Do you recognize that?

4 A Yes, sir, I do.

5 Q And how is it you recognize that?

6 A As this is the money that was retrieved out of the  
7 white Ford Taurus being spoken of, previously testified  
8 to.

9 MR. WATKINS: I object to -- before the question he  
10 told him where the money come from, instead of him  
11 showing the picture and ask him do he know where the  
12 money come from. He told him this is the money coming  
13 from ---

14 THE COURT: I would sustain the objection.

15 MR. MARCHANT: Your Honor, Lieutenant Thompson has  
16 already testified to the money he collected out of the  
17 vehicle.

18 MR. WATKINS: But he wouldn't know -- you asked  
19 him ---

20 THE COURT: I would sustain it.

21 MR. MARCHANT: Very good, I'll rephrase.

22 BY MR. MARCHANT:

23 Q Do you know where this money came from?

24 A Yes, sir.

25 Q Where did it come from?

1 A It came from Lieutenant Thompson.

2 Q And do you know where that money is today?

3 A Yes, sir, this -- this money was also secured and  
4 also properly secured and everything, and located in  
5 property and evidence also.

6 Q Okay. Why is it that we have a photograph of the  
7 money and not the money itself?

8 A The money was photographs so that it could be  
9 returned back to the proper authorities that it came  
10 from.

11 MR. MARCHANT: Move State's 23A and -- A and B into  
12 evidence.

13 MR. WATKINS: Objection, Franks versus Delaware,  
14 previous motion.

15 THE COURT: I would overrule the objection and admit  
16 them into evidence.

17 (State's Exhibit Numbers 23A and 23B were filed.)

18 BY MR. MARCHANT:

19 Q Show you what's been marked as State's Number 21,  
20 and would ask if you recognize what's in 21 and how is it  
21 that you recognize it?

22 A Again, the stocking cap that was located, also area  
23 cut out for the eyes, and also the handgun, small  
24 stature, described as a small derringer.

25 Q Okay.

1 A These items also located in the first bedroom to the  
2 left.

3 Q How do you know those are the same items that were  
4 located in the bedroom?

5 A I'm the person that retrieved these items, and I  
6 remember these items from the same day.

7 MR. MARCHANT: Move State's 21 into evidence.

8 MR. WATKINS: Objection, previous motion, Franks  
9 versus Delaware.

10 THE COURT: All right. I would overrule the  
11 objection and admit them into evidence.

12 (State's Exhibit Number 21 was filed.)

13 MR. MARCHANT: I have no further questions. Please  
14 answer any questions Mr. Watkins may have.

15 CROSS-EXAMINATION

16 BY MR. WATKINS:

17 Q Ladies and gentlemen. Detective Bruce, did you ever  
18 go to the scene of the crime where the crime had actually  
19 took place when the officers was there at Chuck E Cheese,  
20 that place?

21 A Yes, but not that same night I didn't go there.

22 Q Okay. Did you ever -- okay. Did you find a coat in  
23 the dumpster?

24 A No, sir, I did not.

25 Q When you went to the scene when it was -- did you go

1 to the scene where it was found at?

2 A Not that night. I have been there though.

3 Q Before you sought an arrest warrant for me and Elena  
4 Pelzer for armed robbery, had you seen the coat found in  
5 the dumpster?

6 A No, sir. Not before I got the arrest warrant, no,  
7 sir.

8 Q Do you know at any time other that this coat was  
9 found, do you know of any one other than -- do you know  
10 that anything other than this coat was found in the  
11 dumpster? In other words, were any other items other  
12 than this coat found in the dumpster to your knowledge?

13 A No, sir.

14 Q Okay. So there was no pants found in the dumpster?

15 A No, sir.

16 Q Was there any black pull over jacket with a pouch on  
17 the front, or a hood over the head found in the dumpster?

18 A There was a dark colored jacket that was found in  
19 the dumpster.

20 Q I'm saying -- I'm describing one with a pouch on the  
21 front?

22 A No, sir.

23 Q Okay. Was there any black -- black or brown boots  
24 found in the dumpster?

25 A No, sir, no.

1 Q Was there a gun found in the dumpster?

2 A No, sir.

3 Q Was there a scarf or mask found in the dumpster?

4 A No, sir.

5 Q Okay. Other than the determ- -- denomination of the  
6 money at Chuck E Cheese, did you have the amount that was  
7 taken? Did you have -- did anybody give you the amount  
8 that was taken other than -- they gave you denominations,  
9 did they give you an amount that was taken?

10 A They gave us an assorted number of bills, like 5s,  
11 10s, 20s, such as that.

12 Q And how much was that, do you know?

13 A I can tell you the amount of money that we recovered  
14 from the search warrant.

15 Q No, I want to know what they told you, the  
16 witnesses?

17 A Okay. At that time, before we ---

18 Q Before you got ---

19 A They did not give us a total amount at that time.

20 Q Okay. In conducting the investigation, did you talk  
21 with all of the officers on the scene and review their  
22 reports?

23 A Yes, sir.

24 Q Did you talk with the forensic officer who collected  
25 the coat?

1 A No, sir, not that night. I wasn't there on the  
2 scene.

3 Q Did you have any information -- okay -- I asked  
4 that. Did you have any type of identification  
5 information to be able to say that this -- that the money  
6 that you located was the money taken from Chuck E Cheese?  
7 Did you have any kind of identification marks to say this  
8 is the money from Chuck E Cheese?

9 A There was no particular markings on the money at  
10 all, just the denomination style in which they said it  
11 was taken.

12 Q Did any of the victims or witnesses of Chuck E  
13 Cheese give you anything that you could identify the  
14 money, or anything? Did they give you anything like  
15 identifying the money, say, hey, this is -- that's the  
16 money? No one ever told you this was -- that was the  
17 money from Chuck E Cheese? If you got evidence and  
18 you're showing somebody and somebody say this is what was  
19 taken, and if you show it to them would anybody tell you,  
20 that's the money?

21 A No, sir, no one came to say that's the money.

22 Q Okay. The denominations of the money described in  
23 Marcus -- the denominations of money described by Jeannie  
24 Pireda, and Jimmy Skelton, Marcus Scarabino, and Jimmy  
25 Skelton, in their statements was that -- is that

1 denomination of the money you found in the white Ford  
2 Taurus, that was found in the white Ford Taurus? The  
3 denomination of the money that Marcus Scarabino described  
4 and Jimmy described in their statements, the  
5 denomination, would that denominations to that amount  
6 found inside the car (sic)?

7 A Partially, yes, sir.

8 Q No, was -- I'm not saying partially. I'm saying to  
9 be able to say that this is the denominations that was  
10 taken, I'm giving 200 of this, 300 of this, was that  
11 found in the white Ford Taurus?

12 A They wasn't giving us 200, 300, giving us 20s, 5s,  
13 1s, and that style, yes, it was.

14 Q No -- - in their reports it doesn't say at the  
15 bottom of their reports, \$300 in five dollar bills, 250  
16 in one dollar bills, 110 dollars in dimes, 55 ---

17 A Whose report are you speaking of?

18 Q Jimmy Skelton and Marcus Scarabino.

19 A Mr. Scarabino, he did give an amount, said \$20 in  
20 dimes, such as that, yes, sir.

21 Q Did -- what they have in that report, did you find  
22 that in the car, in the total amount that has been  
23 described (sic)?

24 A There was no coins found in the car.

25 Q No coins. No coins. So ---

1 A But they did state that they did have 1s. They did  
2 have some 20s and 5s also taken.

3 Q So that denomination basically would fit any  
4 denomination if you stop anybody in the car, they have  
5 1s, 5s, they have the denominations. So the  
6 denominations can match anybody's denominations of the  
7 money they have in their pockets?

8 MR. MARCHANT: Your Honor, I object, it's just  
9 argumentative.

10 THE COURT: You -- you have to ask him a question.

11 MR. WATKINS: Yes, sir.

12 BY MR. WATKINS:

13 Q I'm asking -- if -- if somebody -- if you was  
14 anybody, the majority of the people have 5s, 1s in their  
15 pocket. If you saying there were denominations of 5s,  
16 1s, 10s, like that?

17 A Not the assortment that would be matched to the  
18 bundles of money they had that was taken that particular  
19 evening and was thrown about in the car.

20 Q Okay.

21 A Not everybody would just have that in style, no,  
22 sir.

23 Q What I'm saying, does it match the denomination?  
24 You say it matched the denominations. When you say it  
25 matched you're talking about a system (sic). If I say

1 it's \$200 in 1s, then to match \$200 in 1s it would have  
2 be \$200 in 1a?

3 A Not dollar for dollar, no, sir, not matching in that  
4 way. But matching as far as describing the money, yes,  
5 when they said they had 20s, they had 5s, they had 1s  
6 that was taken, the money that actually thrown inside the  
7 car as you exited the car, that money, yes, sir, it does  
8 match along with the money that was also retrieved after  
9 search warrant.

10 Q Did you see me throw money in the car?

11 A I wasn't there, no, sir.

12 Q Okay. So you don't have no personal knowledge of  
13 the information that you included in your arrest warrant  
14 affidavits, or your search warrant affidavits?

15 A I have information that was given to me, but I  
16 also -- that actually saw you do it, is testimony to me,  
17 as well as the information I received from victims  
18 stating the type of money that they had, yes, sir.

19 Q Okay. So in your -- in this statement you said I  
20 placed the money on the seat. You never said that I  
21 attempted to hide any money, or conceal any money, but  
22 that's what you put in your reports?

23 A If you get out of the vehicle, it's -- it would be  
24 highly unlikely for anybody that I have known in 24 years  
25 of law enforcement, for someone to get out of a car and

1 to put their hands in their pockets, take the money out  
2 and throw it back into a car. To me that's kind --  
3 that's concealing. To me that's hiding. That's, to me,  
4 being elusive.

5 Q So that's conclusion, mere conclusions you make?

6 A That would be a fact.

7 Q No, that's conclusions. Facts mean you seen these  
8 facts. You didn't see, so these are conclusions you made  
9 that throwing money on the seat is trying to conceal the  
10 money. Concealing the money is trying to get officers to  
11 agree or hiding it somewhere and I explained the money  
12 that was put on the seat because I thought I was going to  
13 jail for not having a license, so she could get me out if  
14 I had to pay a fine. She testified she thought ---

15 MR. MARCHANT: Your Honor, object. He's testifying.

16 THE COURT: Okay. You got to ask him questions, Mr.  
17 Watkins. Sorry. You got to ask questions at this point.

18 BY MR. WATKINS:

19 Q Okay. Did you ever talk to -- did any other  
20 witness you ever tell -- did you ever show -- you said  
21 you never -- did you ever show the coat to the witnesses?

22 A No, sir.

23 Q Never showed the coat to the witnesses. Did you  
24 actually see the robber in the clothing that the robber  
25 was wearing? Did you personally see the robber, the

1 clothing that he was wearing?

2 A No, sir, I wasn't there when the robbery took place.

3 No, sir.

4 Q So you never took the coat and showed it to the  
5 victims, and the victims, you heard their testimony,  
6 never told you of the description of the coat that was  
7 found in the dumpster that they seen, yet you included in  
8 your affidavit this is the coat worn by the robber. So  
9 where did this information come from?

10 A The information came from the victims that the  
11 person -- perpetrator, the defendant had a dark colored  
12 coat on. That's where it came from.

13 Q No, but they never identified the coat to you to say  
14 the coat. This is a conclusion that you made that the  
15 coat matched the coat of the robber. They never told you  
16 this. They never said that coat -- you never took the  
17 coat to them to show them is this coat worn by the  
18 robber? You -- they gave you a description of the coat  
19 that didn't match, no white, no nothing, and you knew it  
20 had no white and didn't match, yet you drew your own  
21 conclusion, yeah, it matched. Did you not?

22 A I hadn't seen the coat, sir, at that time.

23 Q So how you going to say the coat matches the  
24 description of the robber?

25 A Because the information came from the officers on

1 the scene. They advised us that they located a coat, a  
2 coat by the dumpster and they said the coat did match.  
3 That is a dark colored coat that was located.

4 Q Okay. Now -- okay. As the chief investigating  
5 officer, is it part of your duty to go beyond to  
6 investigate evidence to the source? This is what I'm  
7 saying, if your officers told you this, wouldn't it be a  
8 proper investigation if you had the witnesses there to  
9 ask them the same thing, instead of just taking your  
10 officers that was on the scene of the crime because they  
11 have to -- we was arrested without an arrest warrant? So  
12 you have to establish probable cause for this?

13 A Yes, sir.

14 Q See what I'm saying, so the actions that you didn't  
15 see, nobody -- them officers told you, so you're relying  
16 on the officers, but you can go back to find out where  
17 their information come from when you had the witnesses  
18 there.

19 MR. MARCHANT: Your Honor, I object. I don't know  
20 what the question is.

21 THE COURT: Okay. I'm going to sustain the  
22 objection. You got to ask him clear questions so we can  
23 understand the question.

24 MR. WATKINS: Okay.

25 THE COURT: And he can understand it to answer it.

1 BY MR. WATKINS:

2 Q Did you -- did you get any information from the  
3 witnesses saying, yeah, that's the coat worn by the  
4 robber?

5 A I received information from the witnesses, as well  
6 as the officers, that a dark blue coat was located. The  
7 witnesses stated that the suspect had a either a dark  
8 coat or probably a blue or black. The officers called,  
9 stated they had a dark blue coat located in the dumpster.

10 Q So ---

11 A Based on that information ---

12 Q That was your conclusion that it matched?

13 A Based on their information.

14 Q I'm asking you, was that your conclusion that it  
15 matched?

16 A Yes, sir, based on their information.

17 Q Okay. You also stated -- let me see. You also  
18 stated that moments before the robbery a victim witnessed  
19 a black male in a white Ford Taurus at the back of the  
20 building surveilling them. Where did you get this  
21 information from?

22 A This information came from the officers. They  
23 conveyed -- and also from the witnesses. They conveyed  
24 that a suspect had been riding through the particular  
25 business driving a white Ford Taurus. Also during my

1 investigation I did Mirandize you at that time, and you  
2 yourself had told me when I asked you was it a  
3 possibility that they had you on video that you could  
4 also -- the vehicle you were in would be located in that  
5 video. And your statement to me, you told me out of your  
6 own mouth, you stated that you had once been there that  
7 particular evening. You couldn't give me a time. And I  
8 asked you what were you doing there. You said you were  
9 there to meet a suspect, you couldn't give us a name of,  
10 and you was going to do a drug deal there. That's what  
11 you told us. So that also places you there.

12 Q Okay. I don't remember telling you none of that,  
13 but ---

14 A It's inside my report.

15 Q All right. I know what your report -- your report  
16 says. Right here you said the witnesses said they seen a  
17 black male in a white Ford Taurus. You're saying the  
18 witnesses told you this. That's what it's saying in your  
19 affidavit.

20 A Yes, sir.

21 Q Did you hear the witnesses testify yesterday?

22 A Yes, sir.

23 Q Did you hear any witnesses say they seen a black  
24 male in a white Ford Taurus?

25 A The witnesses stated that they -- one witness said

1 they could not see the person inside the vehicle, but the  
2 person that came inside of the store was a black male.  
3 Also, the person that was located by the dumpster inside  
4 the vehicle also was ---

5 Q I'm -- I'm not ---

6 A --- a black male.

7 Q Sir, I'm not asking what conclusions you made. I'm  
8 asking you, did the witnesses tell you that they seen a  
9 black male in that white Ford Taurus?

10 A No, sir, not inside the Ford Taurus as you speak.

11 Q Well, that's what you put in your affidavit, in  
12 your -- and this is under oath.

13 A Yes, sir, because this is -- you take the totality  
14 of the circumstances that took place. And -- yes, sir.

15 Q In other words, you got to base it upon facts.  
16 You're saying the facts you're -- right here, you're  
17 saying the witnesses told you they seen a black male in a  
18 Ford Taurus. And when you relayed this message -- this  
19 information to the magistrate under oath, she's assuming  
20 that if you arrested me that I'm the black male and you  
21 put my white Ford Taurus on the scene, that it's me, but  
22 you're giving -- you're knowing that the witness never  
23 told you this, so you're in reckless disregard for the  
24 truth, including false information in your affidavit?

25 A No, sir, there was a black male suspect that was

1       seen inside of the store.

2       Q     What ---

3       A     Also, there was a black male suspect that was also  
4       located in a white Ford Taurus, which also a white Ford  
5       Taurus also was seen prior to, a couple days before and  
6       at that particular time.

7       Q     That's conclusions you're making. I'm asking about  
8       the part where you had said the victims witnessed.

9       A     Yes, sir.

10      Q     This is what you said.

11      A     That information came from them, yes, sir.

12      Q     And you just testified that no one told you there  
13      was a black male that they could identify anybody in the  
14      car, but that's what you put in your statement?

15      A     No, sir, I told you that one of the victims did  
16      state yesterday that they did not see nobody in the car.  
17      But the totality of the circumstances and everything, the  
18      information we received, yes, sir.

19      Q     You still -- I mean, you're saying totally what you  
20      received, and that's leading to the conclusion that you  
21      made that based upon -- that if they seen a white Ford  
22      Taurus it was a black male in that car. That's the  
23      conclusions you made. They say they didn't see who was  
24      in that car. You said that because they stopped me in  
25      the white Ford Taurus, a black male, so you wanted to put

1 me on the scene of the crime?

2 A No, sir.

3 Q So you -- based upon your conclusions, is it not  
4 true that you put in your statement that the victims said  
5 that?

6 A Yes, sir, just what it states.

7 Q Okay. Thank you. Okay. You said, okay, the robber  
8 fled on foot back toward . . . . . Where  
9 did you get this information from?

10 A That information came from the officers, also came  
11 from dispatch.

12 Q Now, did you -- the officers -- you knew the  
13 officers was not on the scene to see this. So did you  
14 pursue your investigation further, you had the witnesses  
15 there, did you ask any other witnesses did you see where  
16 this person went?

17 A Yes, sir, no one actually saw the direction the  
18 person went outside the store. Officers testified  
19 yesterday that they did canvas the area moments after the  
20 incident had taken place. If you remember after they  
21 stated that they canvassed the entire area and the only  
22 white Ford Taurus they saw, the only black male they  
23 saw ---

24 Q Excuse me, no, I'm don't -- I'm asking you -- I just  
25 want a short answer. It states, the robber fled out the

1 back toward . . . . You said the  
2 officers told you this. So ---

3 A Yes, sir.

4 Q --- what information from the officers would have to  
5 come from the witnesses. You heard the witnesses  
6 testify. You had a chance to interview the witnesses.  
7 And I'm asking you, prior to you putting this statement  
8 in your report, talk to the witnesses, did any of them  
9 tell you that the robber fled on foot towards  
10 . . . . ?

11 A No, sir, that information -- to answer your  
12 question, that information came from the officers. No,  
13 sir, the victims did not state that he ran toward

14  
15 Q So now if you know that the victims never said that,  
16 where did these officers get this information?

17 MR. MARCHANT: Your Honor, I object. I don't know  
18 that he can answer the question what another officer ---

19 THE COURT: I would sustain the objection. He  
20 can -- you should just ask questions that he has personal  
21 knowledge of.

22 MR. WATKINS: Yes, sir.

23 BY MR. WATKINS:

24 Q Okay. So information you included in your affidavit  
25 you really don't have any personal knowledge of?

1 A I wasn't there, sir.

2 Q So ---

3 A The information we obtained came from the officers,  
4 as well the victims that was there.

5 Q Is it possible for officers to make mistakes, or  
6 mislead, mis- -- is it possible the officers could  
7 mislead you to establish probable cause if they were the  
8 arresting officer and arrested me without probable cause?  
9 Would it be proper to mislead you on information for you  
10 to establish probable cause?

11 A No, sir.

12 Q But I'm showing you facts where you heard the  
13 witnesses testify, you heard -- you know all your facts  
14 had to come from the witnesses. You heard the officers  
15 testify and the witnesses statement don't corroborate  
16 what the officers was telling you.

17 A Yes, sir, it does corroborate. If you take the  
18 totality of the circumstances of everything that took  
19 place from beginning to end, yes, sir.

20 Q Your statement doesn't coincide with their  
21 statement, but is mere conclusions that the officers are  
22 making to establish probable cause. It's not consistent  
23 with what the witnesses -- information they're giving, so  
24 it's basically like reckless disregard for the truth.  
25 You have the truth here ---

1 A No, sir.

2 Q --- but you don't want it because it don't establish  
3 probable cause, so you create other probable cause, is  
4 that true?

5 A No, sir, that's not true at all.

6 Q Okay. What witnesses told you that I was stopped  
7 while driving the same white Ford Taurus that was seen at  
8 the back of the business?

9 A Say it again?

10 Q You put in your statement, Robert Max Base was  
11 stopped while driving the same white Ford Taurus that was  
12 seen at the back of the business.

13 A Ms. Pireda, when we was talking to her, she said  
14 that this vehicle that she saw, when they took her back  
15 to the apartment complex, is in fact the same vehicle  
16 that was seen that came through, the surveillance  
17 vehicle, the business the night before, as well as that  
18 same night. That's where that came from.

19 Q Did you hear her testimony yesterday under oath  
20 where she said, no, she never identified that vehicle?

21 A No, sir, she said she couldn't remember.

22 Q She said she didn't identify it, and then I asked  
23 her to read her statement about the one -- she said she  
24 seen two people and there was one, she said, 'oh, oh,  
25 that's what I couldn't remember.

1 A No, sir, in my report, we can refer back to it,  
2 that's where she told us that.

3 Q I'm saying but yesterday she testified that she  
4 identified that -- which I asked her, she know the one he  
5 had was a four door and something about how somebody got  
6 one or something like that. That's what she testified  
7 to.

8 A No, sir. She said she couldn't remember. She said  
9 it had been a long time, almost seven years. That's what  
10 she stated yesterday.

11 Q I don't remember. Okay. Did she give -- if she  
12 told you this, did she give you any identification marks  
13 that proved like tag, or -- I ask her if she seen any  
14 tags and stuff like -- seeing the tag number and things.  
15 Did she tell you there was a tag number on the car,  
16 anything like that to give you?

17 A No.

18 Q To show, that identified it?

19 A No, sir, she did not.

20 Q But right here, he's a resident of  
21 . He had just entered his apartment, and  
22 immediately left with his roommate Elena Pelzer. Where  
23 did that information come from?

24 A That information came from Officer Jones. He stated  
25 that he did observe the black male coming from the

1 apartment buildings, and then enter into the vehicle. At  
2 that point in time, as the vehicle started to leave,  
3 that's when Officer Thompson stopped you.

4 Q Okay. I have -- do you have copy of Officer Jones'  
5 D. E. Jones. If I recall right he testified that he come  
6 across the bank at : : front  
7 entrance. He never went toward the back. And :  
8 : : complex, if he's at the entrance -- can  
9 I use this chart?

10 THE COURT: Um-hm.

11 BY MR. WATKINS:

12 Q He said he was here. He went to the embankment  
13 right here, the trash dumpster about right here where he  
14 seen the trash dumpster. : : building is  
15 right around here. How can he possibly be right here and  
16 see somebody in the apartment complex way around here  
17 when you got all -- he's right up here?

18 A Because he stated yesterday, if you remember, he  
19 did go inside the complex. He didn't just stay right  
20 there.

21 Q He said he went in the complex and that was  
22 right ---

23 A He ---

24 Q He was right here and he seen the car back away, but  
25 he don't know what building it was.

1 A No.

2 Q He didn't see the person get out or into the Ford  
3 Taurus. That's what he testified to. So no one ever  
4 testified that they seen the individual come out of the  
5 apartment or go into the apartment.

6 A You were seen coming from the building as you just  
7 stated yourself. That's what I just told you.

8 Q Excuse me. But you stated in your -- you stated in  
9 your affidavit -- excuse me. Beg the Court's indulgence.  
10 Do you have a copy of the search warrant affidavit? I  
11 got one. Excuse me. I'm sorry. You stated that he had  
12 just entered his apartment and immediately left with his  
13 roommate Elena Pelzer. Which officer -- you said D.  
14 Jones told you this?

15 A You were seen coming from the building, going back  
16 to the vehicle.

17 Q But you said they seen me enter the apartment, to  
18 give the magistrate the opinion that if I was the one  
19 committed the robbery and I was in the apartment you  
20 would believe that the money or whatever would be in the  
21 apartment. So this is why you would tell the magistrate  
22 that someone seen me enter the apartment.

23 A No, sir, that's not all the information we have.  
24 You forget that your own -- you also -- we did Mirandize  
25 you, and during your interview you also stated that you

1 was in the apartment, that you came out. You also stated  
2 that you got in the vehicle yourself.

3 Q No, no, I give -- my statement doesn't say that that  
4 I gave you.

5 A No, sir, that's what you told us verbally.

6 Q No, I didn't tell you ---

7 A You verbally stated that.

8 Q I didn't tell you that verbally. I know what --  
9 what you said -- what you told me verbally. You told me  
10 give a statement and you would check it out, alibi.

11 A That's what you verbally told us.

12 Q And you used that to -- well, I can go into that  
13 when I waive my rights. So -- okay. You put the white  
14 Ford Taurus was surveilling but had just left before the  
15 robbery occurred. What do you mean by surveilling, the  
16 white Ford Taurus was surveilling?

17 A The victim stated they seen the vehicle come through  
18 the parking lot as though it was surveilling -- parked as  
19 though it was watching the building, as though they were  
20 trying to see what they were doing.

21 Q So basically that's mere conclusion in your  
22 statement you make, but surveilling what? I mean, in  
23 order for somebody to assume something is surveilling,  
24 you've got to think that something is getting ready to  
25 happen or has happened.

1 A The way they explained it they was assuming that  
2 something was unusual about it and they used  
3 surveillance.

4 Q Was a call to 911 made?

5 A After the robbery, yes, sir.

6 Q Okay. So -- so you would say that was mere  
7 conclusion you're making about the car being a --  
8 surveilling the place?

9 A That information was given to us by the victims.

10 Q So you're saying -- you never said it was a mere  
11 conclusionary statement?

12 A No, sir. Ms. Pireda also stated that she felt like  
13 when she saw the vehicle like it was surveilling the  
14 business.

15 Q I have here a copy of your sworn testimony you made.  
16 Can you read right here? Just tell me, was that not mere  
17 conclusionary statements you made?

18 A Where do you want me to read from?

19 Q I want you to read sign -- right here where it says  
20 about asking you questions and then goes and you said,  
21 yes, sir. Right here about surveilling -- car  
22 surveilling.

23 MR. MARCHANT: Your Honor, if he's asking questions  
24 about some prior hearing we had I would ask that he  
25 refresh his memory and then answer whatever question he

1 has as opposed to reading.

2 MR. WATKINS: That's what I asked him.

3 THE COURT: If you would just read that to yourself  
4 and then answer his question.

5 THE WITNESS: Yes, sir. Yes, sir, they did state  
6 that they felt like the car was surveilling the premises.

7 BY MR. WATKINS:

8 Q And what did you say, was it mere conclusionary  
9 statement that you then made?

10 A Based off the information, yes, sir. If you read  
11 right there you'll see exactly what it says.

12 Q Mere conclusionary statements that's what it says.

13 A Right there, sir, if you read that. Based off the  
14 victim's statement.

15 Q And then it says -- but these are conclusions that  
16 were made. Yes, sir. And it was conclusions you made.  
17 Yes, sir.

18 A Based off of this information, yes, sir. You can't  
19 leave out one without the other.

20 Q That's what I'm saying. But there's some mere  
21 conclusionary statements, that's what I'm trying to get  
22 you to say, it was mere conclusionary statements.

23 A You're trying to get me to say what was true, that's  
24 actually two different things. What you asked me to  
25 answer your question, yes, sir, based on the victim's

1 information, yes, sir, they did state that they felt like  
2 the business was being surveillanced.

3 Q And when you were asked is this mere conclusionary  
4 statements that they were making and you made, what was  
5 your response, what was your answer, yes or no?

6 A That would be yes, sir.

7 Q Okay. Thank you. Okay. Here's a copy of D. E.  
8 Jones' report. Can you show me anywhere where it says he  
9 viewed the person coming out of the apartment --  
10 apartment complex or going into the apartment complex,  
11 where he was at when he arrived on the scene?

12 A No, sir, he did not. His report he just referred to  
13 suspect run into the apartment complex, and after  
14 locating him inside the vehicle.

15 Q Okay. Nothing in this report about seeing anyone  
16 enter the apartment, come out of the apartment, any of  
17 that? And you heard his testimony, he never said that he  
18 seen any of that. The first time he seen the white Ford  
19 Taurus is when he stopped at the dumpster, is that  
20 correct?

21 A That was the first time. But yes, sir, he did  
22 explain to me that he did see the suspect coming -- going  
23 back toward the vehicle and everything. Coming back  
24 meaning coming from the building. Now, he didn't  
25 describe, say what apartment number, but he did say he

1 saw the suspect going toward it.

2 Q Said the suspect, he viewed the suspect -- he seen  
3 the suspect at the dumpster. The building is way here.

4 A Yes, sir.

5 Q So he couldn't see the car by that. He's up in  
6 here. And he's here. Which the news broadcast lady he  
7 seen and the yellow cab driver he testified to he seen,  
8 then he seen the white Ford Taurus coming by the  
9 dumpster.

10 A Yes, sir.

11 Q Okay. So did -- he never testified to anything or  
12 any statement that he seen anybody by the 700 block  
13 building or exit that building?

14 A I've been in that complex, sir. And where you're  
15 stating that you was standing right there, yes, sir,  
16 by -- near that dumpster, you can see up there near the  
17 apartment complex.

18 Q No, you can look here and tell you can't see there.  
19 The corner there you can't see that's -- the dumpster.  
20 He was up here. He was up around in this area. He said  
21 he was right here. He got out of his car and he parked  
22 and walked to the embankment right here. And he stopped  
23 the car coming out.

24 A Yes, sir.

25 Q If he's right here you can't see ---

1 MR. MARCHANT: Your Honor, I object, to asked and  
2 answered.

3 THE COURT: I'll sustain the objection to the  
4 question.

5 BY MR. WATKINS:

6 Q Okay. Did you hear Marcus Scarabino testify  
7 yesterday that they did not hand roll quarters, nickels  
8 or dimes? This money -- Chuck E Cheese doesn't hand roll  
9 quarters, nickels and dimes.

10 A Yes, sir, I did hear him say that.

11 Q When you conducted your search of my apartment, did  
12 you find any hand rolled nickels, quarters and dimes?

13 A Yes, sir.

14 Q So if they say it's not the property of Chuck E.  
15 Cheese, and he's saying it's not what they have, why are  
16 you collecting it?

17 A He didn't say it wasn't the property of Chuck E  
18 Cheese. He said they don't personally hand roll it. He  
19 said they do get money from the bank and sometimes it  
20 does come hand rolled and sometimes it comes machine  
21 rolled.

22 Q They have a machine, machine that hand rolls all of  
23 their quarters.

24 MR. MARCHANT: Your Honor, he's testifying.

25 THE COURT: You got to ask questions, Mr. Watkins.

1 You're limited to that right now.

2 BY MR. WATKINS:

3 Q Did you see any -- in State's Exhibit Number 9, do  
4 you see any hand rolled quarters and dimes and nickels?

5 A Yes, sir, I do.

6 Q Did you hear Elena Pelzer testify yesterday about  
7 the change and stuff that I had in possession?

8 A Yes, sir.

9 Q Okay. Did they mention anything about pennies being  
10 involved in the robbery?

11 A What do you mean?

12 Q Like pennies, pennies?

13 A I don't understand what you're asking here.

14 Q Like pennies, pennies, money, coins, pennies, was  
15 that a part of your investigation to obtain pennies that  
16 they say came from part of the robbery of Chuck E Cheese?

17 A Yes, sir, if it says pennies, then we would obtain  
18 pennies.

19 Q Okay. But is there anywhere where they say they was  
20 missing any pennies?

21 A Not to my recollection, sir.

22 Q So you're taking personal property that you know  
23 it's not evidence and including it with property that you  
24 consider evidence and it's being introduced into evidence  
25 in the trial today?

1 A We collected all the moneys that was located inside  
2 the drawer, sir. I don't remember per se pennies.

3 Q But you collected two pennies -- did you not collect  
4 two pennies and there was a jar of pennies -- let me see.  
5 I think -- okay. Here's State's Exhibit Number 19. Did  
6 you collect this money that was on the floor right here?

7 A Yes, sir.

8 Q Pennies and everything? Pennies was part of the  
9 crime too?

10 A All -- since all of it was together, yes, sir, we  
11 collected it.

12 Q Okay. All the exhibits over here? I'm showing  
13 you what's been as marked Defense Exhibit Number 7. Did  
14 you -- was that jar of pennies ever collected?

15 A Right here?

16 Q Um-hm.

17 A No, sir, it wasn't.

18 Q Were those pennies right there collected?

19 A No, sir, not to my knowledge, no, sir.

20 Q Do you know roughly how much in total coming out of  
21 the apartment was collected?

22 A Yes, sir. If I'm not mistaken total moneys there  
23 was -- I'm saying total money should have been \$558.07 we  
24 have written down here.

25 Q So was this money over all included with the \$328

1 that was taken out of my vehicle?

2 A I don't remember the total amount that was taken out  
3 of the vehicle right now.

4 Q Was all the money compiled together led you to  
5 believe that this was the money of the robbery in total,  
6 it was close to the amount they say, this is what led you  
7 to believe that it was the money from the robbery?

8 A If I'm not mistaken, sir, it should be off by a few  
9 dollars.

10 Q Okay. How much, like five dollars?

11 A A few dollars, five or six dollars if I'm not  
12 mistaken.

13 Q Okay. Tell me what you have written right here?  
14 Eleven rolls of quarters. Show the jury. This is -- I  
15 can't show it to you. Right here where you have written  
16 11 rolls of quarters?

17 A Yes, I see what you're saying. That's just a  
18 miscalculation.

19 Q But if you add all the money up, and the total of  
20 the money, and you give a calculation of the money, but  
21 you're \$40 off?

22 A I -- that's just a miscalculation and everything in  
23 quarters.

24 Q So now it's no longer five or six dollars off?

25 A No, sir, that was an error on my part as far as

1 calculation of quarters.

2 Q Okay. Can you tell me where you found the eight  
3 rolls of nickels? And what is the particular place in  
4 the apartment you found the eight rolls by this report?  
5 Can you tell exactly where you found each ---

6 A No, sir, on here it does not state -- it won't state  
7 where I found them on here.

8 Q Okay.

9 A The large stuff -- the large amount of coins that  
10 was located came out of the kitchen drawer.

11 Q Okay. I just wondered if you can be able to tell by  
12 that right there.

13 A No, sir, you can't tell by this. This just lists  
14 all the items we took out of the apartment. As far as  
15 said money. It don't list everything as far as location.  
16 As far as this roll of nickels came out of this draw, it  
17 doesn't state that on this form. That's a property and  
18 evidence sheet, is what that is.

19 Q Okay. That's a property and evidence sheet. So can  
20 you tell me, since you located all the money, where the  
21 10 assorted rolls of the quarters came from?

22 A Okay. The quarter rolls and everything, I'm saying  
23 came out of the kitchen drawer.

24 Q And -- are you sure?

25 A Yes, sir. The majority of the money that I remember

1 at this time, the quarters and such as that, should have  
2 came out of the kitchen drawer. I can't tell you where  
3 every -- every roll came from, which area, but I know if  
4 you look at the photo you'll see the quarter rolls should  
5 be in there. There was some money that was found inside  
6 the closet, should be the majority of the bills.

7 Q Can you -- were you the one that found the money in  
8 the closet?

9 A No, sir. I did not find all the money.

10 Q So other officers -- each officer was doing their  
11 own finding different evidence in the apartment?

12 A Yes, sir.

13 Q All right. Any officer here today to be able to  
14 testify where the money found? Other officers.

15 A Officer Johnson was also the other officer, sir.

16 Q Is he in here today?

17 A No, sir, he's not in here.

18 Q What about officer Tonya -- Tonya Ebeneer, is she  
19 here today?

20 A No, sir, she works with the FBI now, sir. She  
21 actually was the scribe that wrote everything down.

22 Q Okay. In dealing with evidence, are you supposed to  
23 dispose of the evidence before the case is adjudicated?  
24 If I needed the evidence, the tangible evidence, like you  
25 have the gun here.

1 A Yes, sir.

2 Q The tangible evidence for the jury to be able to  
3 look at the money, count it, see what's hand rolled, sort  
4 it out, look at it, how can they do that with pictures?  
5 What is the normal procedure when you have evidence to  
6 keep in the evidence room until a case is done away with?

7 A That money was agreed to be disbursed by the  
8 attorney at that time to the proper victims.

9 Q Is there a procedure where you can give money to a  
10 person in a fund or something and keep the actual  
11 evidence in property and evidence until the trial and you  
12 can give them other money and replace that money back?  
13 They have a fund or something where the officers take  
14 money -- if they believe it's money of a crime and the  
15 crime they give it back to the people, they want the  
16 money back, but the actual evidence they keep in  
17 evidence?

18 A Say your question again?

19 Q Is there a procedure ---

20 MR. MARCHANT: Your Honor, I object. May we  
21 approach.

22 THE COURT: I would sustain the objection. Okay.  
23 The testimony is they gave the money back to the victim.  
24 That's what he's testified to and that's what he did. So  
25 I sustain the objection to the question.

1 MR. WATKINS: All right. At this time, Your Honor,  
2 I need to ask you a question. Approach the bench and ask  
3 you.

4 THE COURT: You can talk -- discuss it with Mr.  
5 Henry it's a procedural question. Okay.

6 (Mr. Watkins talked to Mr. Henry.)

7 MR. WATKINS: Your Honor, I have a matter to take up  
8 outside the jury's presence.

9 THE COURT: Okay. Give y'all a short recess. I'm  
10 going to let y'all order lunch. They got a couple three  
11 places they normally order from. Y'all can choose  
12 whichever one you want. I don't like to dictate to y'all  
13 what you want to eat. But -- okay.

14 (The jury exited the courtroom at 10:15 a.m.)

15 THE COURT: All right, Mr. Watkins.

16 MR. WATKINS: Your Honor, I would like at this time  
17 put in a motion for a mistrial for destruction of  
18 evidence. They are not supposed to get rid of this  
19 evidence. It's very important for the jury to be able to  
20 see this evidence, to be able to count it, be able to --  
21 you know, see what's in the bag. You can't see it in the  
22 bag. They weren't supposed to dispose of that evidence.  
23 They destroyed the evidence. I can't -- and it's very  
24 important because my -- one of my defenses is that this  
25 is not -- this is my money. This is not the money of the

1 crime, and they need to be able to see where the  
2 witnesses -- they heard the witnesses testify. They need  
3 to be able to see this money is not hand rolled -- I  
4 mean, bank rolled. They need to know what is bank  
5 rolled, what is not bank rolled, if it's the actual  
6 amount of money the officers are saying they claim and  
7 put in their reports that I want to introduce evidence.  
8 They can't do that.

9 MR. MARCHANT: Your Honor, the money was returned to  
10 the victims after the guilty verdict in the first trial.  
11 I think -- that's why I objected initially because we're  
12 treading on light grounds here that if we get into why  
13 the money was returned they're going to have to know that  
14 he was found guilty and the money was returned after the  
15 guilty verdict. The officer would be able to testify  
16 that they were returned it after the case was disposed  
17 of. Now, obviously it's come back on appeal and that's  
18 why we're here now. But that's why the money was  
19 photographed. That's how it was introduced into evidence  
20 in the first trial. And he's already testified that  
21 that's the same money.

22 MR. WATKINS: The original evidence was introduced  
23 in the first trial. The particular ---

24 THE COURT: All right. I deny the motion for a  
25 mistrial. The pictures, he's testified that that's what

1 he found. And I'll overrule the motion for a mistrial.

2 MR. WATKINS: I object.

3 THE COURT: Now, the -- you need to discuss it with  
4 Mr. Henry, Mr. Watkins, it's not going to be an issue for  
5 the jury, we spent a lot of time on it, as to the  
6 validity of that search warrant. They're not going to  
7 determine whether they had probable cause or not. That  
8 is not a factual question for the jury. You can discuss  
9 it with Mr. Henry if you want to. I have never seen that  
10 submitted in South Carolina to a jury. That is a legal  
11 question as to whether or not he could -- the search  
12 warrant was appropriate. And ---

13 MR. WATKINS: I was trying to show ---

14 THE COURT: And Mr. Marchant is giving you a lot of  
15 leeway, and that's fine with me, but that's where we are.

16 MR. WATKINS: The information goes towards the  
17 credibility, his credibility as far as whether or not  
18 he's giving false statement and stuff like that. It goes  
19 to the credibility. So the search warrant is part of him  
20 giving testimony under oath whether or not that  
21 information is truthful.

22 THE COURT: Well, he testified it was based on  
23 information given to him by the police officers and the  
24 witnesses. And you have gone into his affidavit which he  
25 did sign and -- and you've covered that for impeachment

1 purposes, I agree with that. And if it was an affidavit  
2 signed by him you could question him about it. But --  
3 and it could come in for impeachment purposes. But as  
4 far as whether or not they had probable cause to get the  
5 search warrant and make the arrest is a question for the  
6 Court, and I have ruled on that.

7 MR. WATKINS: Okay. And I was -- in the prior trial  
8 I noticed that the proceeding that the motion was  
9 reserved and as the trial went on it was reserved under  
10 Frank versus Delaware and he -- my prior lawyer was --  
11 obtained information to show that it was false  
12 information. And then he said based upon all the facts  
13 entered in the record. Now, I renew my motion based upon  
14 this prior -- what's the name now that we have all the  
15 evidence and all of the facts, and renew the motion. Now  
16 that can support on appeal, now all the facts are in the  
17 record whether or not that hearing should be given if --  
18 you see what I'm saying, if it's been denied on a new  
19 trial.

20 THE COURT: I've heard all the evidence and I'm  
21 convinced more so now than I was before that they had  
22 probable cause.

23 MR. WATKINS: Okay. I just want to make sure I'm  
24 preserved for appeal -- appeal purposes.

25 THE COURT: Well, I'm not even going to comment on

1 the evidence outside the presence of the jury. But we'll  
2 be in recess until 10:30.

3 MR. WATKINS: Okay.

4 THE COURT: Okay.

5 (A discussion was held off the record.)

6 THE COURT: Okay. The officer asked me about  
7 reading the testimony from the prior trial. And I have  
8 told him not to say that it was from a prior trial, he  
9 can just -- it's just sworn testimony under oath, if  
10 y'all want to phrase it that way. Okay. All right.

11 (A short recess was taken, after which, the trial  
12 continued as follows:)

13 THE COURT: Okay.

14 (The jury entered the courtroom at 10:43 a.m.)

15 THE COURT: Okay. Mr. Watkins, you ready?

16 BY MR. WATKINS:

17 Q Detective Bruce, during your investigation did you  
18 try to investigate any other witnesses, like the  
19 employees or the personnel that left the back door open,  
20 the cleaning people, did you try to further your  
21 investigation?

22 A In what manner are you speaking?

23 Q In as far as Chuck E Cheese and they told you that a  
24 cleaning company came in, did you seek to investigate who  
25 the men were in the cleaning company, or why the door was

1 left open, who left the door open, possibly did they see  
2 anybody come in there, or anything? Did you investigate  
3 that matter?

4 A We checked into it as far as the -- talking to the  
5 victims. The victims stated there was a black male. We  
6 do know the employees was supposed be -- in the cleaning  
7 company was supposed to have been all white. As far as  
8 anything further, no, sir.

9 Q Okay. So if someone had been involved or they had  
10 been involved in it, you would not know because you never  
11 investigated them? Just because they was white doesn't  
12 mean they don't have black friends or Chinese friends, so  
13 wouldn't it be important to investigate them, especially  
14 if they left the back door open?

15 A We didn't have any lead that would implicate them in  
16 anything, no, sir.

17 Q But they were involved in leaving the book door  
18 open, they were part of the reason if -- if the person  
19 would come through, that's what the testimony was, the  
20 back door was left open. Wouldn't that be suspicious for  
21 them to leave the back door open?

22 A We didn't know for sure who actually left the back  
23 door open.

24 Q Did you try to obtain the information from the  
25 employee to find out who the company they had contracted

1 with in cleaning the place up?

2 A I can't remember the name of the company, but yes,  
3 we did ask those questions. But we don't know for sure  
4 who left the back door open. Given the circumstances  
5 that we had and the totality of the evidence which is an  
6 alarming amount of evidence we had against you, at that  
7 time we didn't see any evidence that anyone else there  
8 could possibly have done it.

9 Q The only thing at that time you had against me that  
10 I was stopped in a white Ford Taurus, you had \$328 and a  
11 coat that ain't have nothing to do with the crime. So  
12 how is that overwhelming evidence?

13 A The overwhelming evidence would be -- would have  
14 been that when the incident first took place the  
15 information that was given to dispatch, the information  
16 the officers received as a description of the vehicle  
17 that was seen prior to as well as the vehicle that was  
18 located prior after, the information also where you also  
19 were located in the vehicle matching that description of  
20 a white Ford Taurus, along with money that was located  
21 inside of a vehicle and the action of you actually  
22 throwing money back inside the car, and the information  
23 that we also talked to the officers and---

24 Q Okay. I don't -- that's enough. I just want you  
25 answer my question. You going into a whole -- everything

1 that took place that you didn't -- your whole  
2 investigation. I didn't ask you what your investigation  
3 was as far as the car and as far as all that. I asked  
4 you based upon ---

5 MR. MARCHANT: Your Honor, I'd object. He asked him  
6 what the overwhelming evidence he had against him, and  
7 he's explaining what the evidence was. Ask that he be  
8 allowed to answer the question.

9 MR. WATKINS: I asked him ---

10 THE COURT: Okay.

11 MR. WATKINS: I asked him ---

12 THE COURT: Let him answer the question, Mr.  
13 Watkins. Go ahead, Officer.

14 THE WITNESS: Thank you, Your Honor. Along with  
15 that information that we received, taking the totality of  
16 the information, along with the items we also located  
17 with the search warrant, the ski mask, also the hand gun,  
18 all that particular ---

19 MR. WATKINS: I object, Your Honor.

20 THE WITNESS: --- information we have, gave us no  
21 indication before, during, and after that the implication  
22 could be anyone else other than the person that was  
23 sought after, which would have been you.

24 BY MR. WATKINS:

25 Q What I'm saying, you didn't have the search warrant

1       then. You didn't have the evidence out of the apartment.  
2       I'm saying at the time when investigating on the scene,  
3       you got employees, you got the people that left the door  
4       open, the workers, you got an employee -- the employee  
5       that's hiding the witness, and so much going on in there,  
6       but the only -- the only thing you saw was a black male,  
7       a white Ford Taurus, \$328, and a coat was falsified and  
8       used as evidence to say I committed the crime. And from  
9       there you searched apartment and now you're saying this  
10      evidence. Okay. Let me ask you this, you heard  
11      testimony of the person the State used to say this --  
12      that was the gun used in the crime, but she -- did she  
13      not testify to that if the gun has two holes in the  
14      barrel that is not the gun that I seen that night? Did  
15      she say that?

16      A     I don't recollect her saying that, if it had two  
17      holes or not.

18      Q     She testified that the gun has two holes -- said --  
19      see only see one hole in the barrel. All the witnesses  
20      said one hole in the barrel, one witness said that it  
21      could have been a pipe, could be, he really don't know.

22      A     Yes, sir.

23      Q     Can you tell me, they got it bolted down, how many  
24      holes ---

25      A     It's supposed to be.

1 Q How many holes it has in it?

2 A There actually are only two holes in it, sir.

3 Q Okay. Thank you. So if the witness say the gun  
4 that she saw that night has one hole, and then she said  
5 that gun has two holes, that's not the gun, then how is  
6 this the gun that was used in the robbery?

7 MR. MARCHANT: Your Honor, I object. That's  
8 argumentative at this point.

9 THE COURT: Okay. It's an argumentative question.  
10 I would sustain the objection.

11 BY MR. WATKINS:

12 Q Do you know the exact amount of money that was  
13 obtained out of this drawer?

14 A Not right off hand, sir, no, sir.

15 Q You don't have it here so you can count it, so -- do  
16 you know the exact amount of money that's in this bag,  
17 this exhibit right here, 22?

18 A That would be the same amount that I told you  
19 earlier, \$558.70.

20 Q So wouldn't -- if somebody could count this money it  
21 wouldn't add up to that, would it?

22 A If you go by the clerical errors, sir, of the 11  
23 roll of quarters, yes, sir.

24 Q No, but I'm just, you're saying it's clerical error,  
25 but what you put down, what you counted it as \$150 in 11

1 rolls of quarters?

2 A Yes, sir, that's a mathematical error.

3 Q Okay. And they testified that was 11 rolls of  
4 factory rolled quarters?

5 A Yes, sir.

6 MR. MARCHANT: Your Honor, objection, it's a  
7 mischaracterization of the evidence, there was some  
8 testimony that was provided earlier.

9 THE COURT: Okay. State your question again, Mr.  
10 Watkins.

11 BY MR. WATKINS:

12 Q Okay. How many rolls of factory quarters do you see  
13 in there? With the brown -- they said it was originally  
14 an orange wrapper but they said it was brown wrapped.

15 A Okay. If you're looking at those, all -- but the  
16 money being inside of the drawer you can actually see  
17 four.

18 Q So that's not 10?

19 A No, sir, you can see four inside the drawer from  
20 that picture.

21 Q Can you tell me how much money is in Exhibit Number  
22 23?

23 A Not by just looking at it, sir. It's been sealed.  
24 I can't tell you that. I think Lieutenant Skardon, I  
25 think, can testify and tell you the dollar amount that he

1 had in there.

2 Q You said that you came in the apartment, and  
3 after -- you testified that State Exhibit Number 15 that  
4 you lifted up two yellow jackets?

5 A Yes, sir.

6 Q Okay. And you discovered that gun?

7 A Yes, sir.

8 Q Are you aware of which officer found the money in  
9 the top of the closet?

10 A Not right off hand, sir. Is that Officer Johnson's  
11 report?

12 Q Yes, sir.

13 A Okay.

14 Q I want you to read that and tell me anywhere in this  
15 report if he walked in the room did he say in the report  
16 about a gun being on the floor, or a jacket, anything  
17 being on the floor?

18 A No, sir, he didn't say anything about that.

19 Q Okay.

20 A But what's your question now?

21 Q I'm trying to figure out how the gun got there. If  
22 he's the officer going to -- in the place, he's giving a  
23 statement, he's getting money and searching the room, if  
24 he's the investigating officer going to the report, how  
25 is it that he gives a report, he doesn't say anything

1 about a gun, he says something about money in the top of  
2 closet that he found, how is it that ---

3 MR. MARCHANT: Your Honor, I'd object. He's asking  
4 questions about what another officer wrote in his report  
5 and asking this officer to explain why that officer wrote  
6 what he did.

7 MR. WATKINS: He's the investigating officer.  
8 He's ---

9 THE COURT: Well, I sustain the objection about what  
10 the other officer said. He can ask him what he did, or  
11 what he knows about the gun.

12 BY MR. WATKINS:

13 Q Okay. Do you have any knowledge of how the money  
14 from the top of the closet got down on the floor next to  
15 the other evidence that you collected, because you  
16 collected all the evidence? Do you have any way to know  
17 how it got from the top of the closet and also  
18 photographed in a different position on the floor along  
19 with some IDs that were taken out of my wallet in  
20 different areas of the apartment?

21 A Do you want me to answer the first question first  
22 about ---

23 Q Answer the first one, how did the money from the top  
24 of the ---

25 A Well, your first question you asked me, sir, about

1 the jackets and about the gun.

2 Q Okay.

3 A That would have been me. And if you read my report,  
4 I also put in my report where when I actually went into  
5 that room, this would have been the first room to your  
6 left, when I first walked in the room there was two  
7 yellow jackets there. After lifting the jackets, I gave  
8 you that statement earlier, that I saw a dark colored  
9 stocking cap, mask, with the area of the eyes was cut  
10 out. After first picking it up I felt something heavy in  
11 there. That's when the gun was first discovered. Now,  
12 to answer your second question about the money inside the  
13 closet. That money was located inside the closet. When  
14 we first went in the room after we located that, Officer  
15 Johnson went in the closet. I also went in the closet  
16 also. The money was located then. The money was taken  
17 out of the closet for forensics and everything so they  
18 could properly take photographs in the area so it could  
19 properly be photographed. It wasn't disturbed, or wasn't  
20 misused in any kind of way, other than just taking  
21 photographs for forensics.

22 Q So you're saying it was moved for forensics but --  
23 but it appears to me that forensic already took a picture  
24 of it up on top of the closet, so that wasn't the  
25 purpose. Showing the jury Defense Exhibit Number 14, the

1 one in the top of the closet. So that couldn't have been  
2 the purpose, but you saying that was the purpose so they  
3 can take pictures of it?

4 A Yes, sir. If you look at it from this particular  
5 view that you're showing, you can only see the side of  
6 it. And at no point in time can you actually see the  
7 very tip top of one of the five dollar bills. You can't  
8 see any of other moneys when you're standing like that.  
9 But when they collected the money they did lay the money  
10 out properly so they could photograph it.

11 Q So when you find evidence, the normal procedure is  
12 to do forensic testing?

13 A Yes, sir, that would be the forensics department.

14 Q So if you're touching the money and moving evidence,  
15 you can't do forensic testing?

16 A When forensics is doing an investigation they  
17 normally use gloves. So if there's anything that would  
18 be on there wouldn't be no fingerprints of ours.

19 Q Was forensic testing done on the money, or the gun,  
20 or anything?

21 A You would have to contact the forensic officers and  
22 ask them what procedures they used.

23 Q The gun that was found, what did you do with the gun  
24 after you collected it?

25 A That goes -- collected and placed in property and

1 evidence.

2 Q What time did you place it in property and evidence?

3 A I have a copy here, but I can't really see the time  
4 on this copy that well.

5 Q But you did place it in property and evidence,  
6 secure it in property and evidence?

7 A Yes, they would, also with the mask. It shows where  
8 it was also signed in by the person that was working in  
9 property and evidence that particular day.

10 Q Okay. So right here I have the property report, you  
11 did not collect the gun? You did not collect the gun nor  
12 did you put it in property and evidence?

13 A Yes, I collected the gun. The gun actually -- what  
14 you're speaking of was taken by the forensics. I  
15 collected it. You asked me that.

16 Q All right. You collected the gun. Who put it in  
17 property and evidence? You say yes, I put it in property  
18 and evidence, and it was collected, put in by the  
19 forensic technician. That's what you just said.

20 A Yes, sir. Also when we took the money and  
21 everything down there, the technician, I went there with  
22 him. That's what I'm speaking of. When everything was  
23 turned in, sir, we went down there together.

24 Q So you turned it into property and evidence?

25 A Yes, sir. We took it because -- we took the gun and

1 all of it. We took the cash and money. We took this  
2 evidence at the same time, turned it in to property and  
3 evidence.

4 Q Okay. Now, what day was the gun collected?

5 A On the 19th.

6 Q What day was it put in property and evidence?

7 A Shows here on the 19th.

8 Q I got the property and evidence sheet right here.  
9 Can you tell me what date you put it in property and  
10 evidence right here? That's the day it was collected.

11 A The date you're speaking of apparently shows also  
12 when property and evidence took it back out. I don't  
13 know if they did the investigation that day ---

14 Q No, I didn't ask you that. I asked you what date  
15 was it received by the technician, the custodian of  
16 property and evidence?

17 A Received on the 19th, when we first took it in.

18 Q It was collected on the 19th.

19 A Yes, sir, that's what I'm telling you.

20 Q All right.

21 A We went down there that day, we took everything down  
22 there, but it does show here another day and time  
23 received and everything on the 31st. It shows on the  
24 30th, 31st, and then October. It was taken out several  
25 different times.

1 Q Okay. So the gun was collected on the 19th from my  
2 apartment?

3 A Yes, sir.

4 Q But it wasn't turned into property and evidence  
5 until December the 30th, 11 days later?

6 A Apparently, sir, it was taken out, I guess to do  
7 testing or whatever they did with it. But we all went  
8 down there that day when we turned in everything.

9 Q I got the papers. But no forensic testing was ever  
10 done on the gun?

11 A I don't know, sir. You've got to ask them, sir.

12 Q I know. I know. Okay. I received the paper from  
13 Department of Public Safety, criminal record division  
14 saying everything was put in property and evidence, and  
15 none of it was forensic -- was tested. I don't have it  
16 here today. Okay. And then -- okay. On the 12/30 it  
17 was sealed. See, it was sealed. Okay. Who checked it  
18 out between 12/30 0500, or five o'clock in the morning?  
19 Who checked it out?

20 A What do you mean who checked it out?

21 Q Because it's resealed -- it's resealed twice. It's  
22 checked out on the 12/30/01, then it says it was sealed.  
23 No one shows they checked it out again, and then it was  
24 resealed on 12/31/01?

25 A That would be Mr. Eddie Hicks.

1 Q So you got two custodians receiving the evidence,  
2 but you have no one checking it out, signing for it out,  
3 but it's out because it had to be reup back in. So who  
4 was getting the evidence out of the evidence room? It  
5 isn't showing that, and they're not checking the --  
6 signing they checking it out.

7 A It just shows here, sir, for storage. It doesn't  
8 say that it was checked out for anything.

9 Q Okay. But when you check it out for the court ---

10 A Yes, sir.

11 Q Okay. But it tells you ---

12 A I don't know. You'll have to ask Mr. Hicks. I  
13 don't know. I know he works there.

14 Q But I'm just saying, it's evidence that's being  
15 checked out and nobody signing for it, it's evidence that  
16 it's been held in police possession for 11 days, don't  
17 have the document right now, but that no forensic testing  
18 or anything was done. You don't have anything to connect  
19 me with the gun forensically to say at the time that I  
20 had possession of that gun at the time and date the crime  
21 happened.

22 A I don't know what testing they did or didn't do.  
23 You have to talk to the officers that ---

24 Q So I'm just asking you, do you as officers -- as an  
25 officer in investigation part, if you've got evidence,

1 you bring your evidence forth, do you have anything even  
2 from the forensic officer showing forensic tests of me  
3 being the person that committed the crime inside the  
4 Chuck E Cheese, or that the money ---

5 MR. MARCHANT: Your Honor, I object. He's asked and  
6 answered this question several times already.

7 MR. WATKINS: I didn't ask about the forensic  
8 testing, is there any -- do you have any evidence, or  
9 fingerprints being on the money to match the people at  
10 Chuck E Cheese, or any other suspects, or anything?

11 THE COURT: Was there any forensic evidence that you  
12 know about?

13 THE WITNESS: Nothing I know of, Your Honor.

14 THE COURT: Okay. He doesn't know about any.

15 MR. WATKINS: I'd like to introduce this into  
16 evidence.

17 MR. MARCHANT: Can I see what it is?

18 MR. WATKINS: It's the property report that shows  
19 that the gun was ---

20 MR. MARCHANT: I would object. We need to approach,  
21 Your Honor.

22 THE COURT: Okay.

23 (A bench conference was held.)

24 THE COURT: He's consulting with Mr. Henry.

25 (Mr. Watkins talked to Mr. Henry.)

1 MR. WATKINS: Your Honor ---

2 (A bench conference was held.)

3 MR. WATKINS: Your Honor, I'm going -- I want to  
4 introduce this.

5 THE COURT: All right. I'm going to admit that in  
6 subject to what we discussed up here.

7 MR. WATKINS: Okay.

8 (Defendant's Exhibit Number 10 was marked and  
9 filed.)

10 BY MR. WATKINS:

11 Q When you issued the warrant for Elena Pelzer, did  
12 you have any information dealing with a female being  
13 involved in the crime?

14 A What do you mean, sir?

15 Q My co-defendant, did you have any information about  
16 her being involved in the crime that took place at Chuck  
17 E Cheese?

18 A No, sir.

19 Q So why was she charged with armed robbery?

20 A Due to the information that we received from the  
21 officer that she was also along with you, and that a  
22 robbery had taken place, the evidence and everything,  
23 that money was taken, so she was also charged also.

24 Q So no witness ever mentioned a female, two suspects,  
25 or anything, she's in the car, and she's charged with

1 armed robbery too?

2 A Yes, sir.

3 Q Did any -- did you receive any information that the  
4 suspect that committed the crime got into a white Ford  
5 Taurus? Is there any connection with the person that  
6 committed the crime of Chuck E Cheese and the white Ford  
7 Taurus that was seen in the parking lot? Did anybody  
8 give you any information that they seen the person that  
9 committed the crime get into the white Ford Taurus?

10 A This information we received about the white Ford  
11 Taurus was that it was seen prior to the incident.

12 Q No, I asked you, did anybody tell you, you receive  
13 any information from any of the four witnesses that the  
14 robber got into a white Ford Taurus? That a black male,  
15 the robber got into a white Ford Taurus?

16 A No, sir, we didn't get that information that the  
17 robber got into a white Ford Taurus, but we did receive  
18 information prior to ---

19 Q Okay.

20 A --- that a white Ford Taurus was seen surveilling  
21 the area.

22 Q So it was ---

23 A We received information also that that vehicle was  
24 seen days before.

25 Q Okay. Okay. I asked you, did the witnesses, not

1 prior to, when you were doing your investigation, did  
2 they ask you -- they can't tell you whether or not the  
3 robber went, prior to, if the robbery hasn't occurred yet  
4 (sic)? So you can't give me information prior to if the  
5 robbery hasn't occurred yet. I'm asking you when the  
6 robbery occurred did -- and the robber supposedly had  
7 left out of the place, did any of the witnesses say they  
8 seen the robber get into a white Ford Taurus?

9 A No, sir, not got into, not afterwards.

10 Q So between the white Ford Taurus seen prior to the  
11 robbery, nobody seen nobody in it, and prior to a black  
12 male exiting the -- committing the crime at Chuck E  
13 Cheese, nobody knowing where it's going, so who made --  
14 it's just conclusions that's been made. Who made the  
15 conclusion that that person, the black male committed the  
16 crime, had something to do with the white Ford Taurus?

17 A It would stand to reason that if you had the vehicle  
18 that was surrounding the area of a business and people  
19 felt though that was suspicious, and you had a black male  
20 suspect come in and rob the place, you give that  
21 information to dispatch and it's disseminated, moments  
22 after officers locate a vehicle that fits the same  
23 description, and the suspect inside that vehicle, and you  
24 have moneys inside the vehicle and everything, they can  
25 be moneys that come from a robbery, yes, sir; that would

1 be enough.

2 Q Okay. I'm trying to get a connection here. I'm  
3 trying to find out where the connection come in. You got  
4 a black male that committed a robbery. The witnesses  
5 never said to you they seen a black male get into a white  
6 Ford Taurus. You have a white Ford Taurus prior to the  
7 robbery and seen -- and nobody knows who was in that car.  
8 Okay. That car leaves.

9 MR. MARCHANT: Your Honor, I object.

10 THE COURT: I sustain the objection. That's not a  
11 question and ---

12 MR. WATKINS: I'm going to ask him.

13 THE COURT: I sustain the objection as to the form  
14 of the question.

15 BY MR. WATKINS:

16 Q Okay. No one told you a white -- a black male got  
17 in a white Ford Taurus?

18 THE COURT: He's answered that. We've heard -- the  
19 jury has heard that.

20 BY MR. WATKINS:

21 Q So was it mere conclusions based upon circumstances  
22 was made that there was a connection?

23 A With the totality of the circumstances, yes, sir.

24 Q So there was a conclusion made by whom?

25 A Based on the information given by the victims and

1 also by the officers, yes, sir.

2 Q I'm saying who made this conclusion?

3 A The victims and the officers based on their  
4 information.

5 Q No, they gave you the information. Based upon  
6 information who made the conclusion that ---

7 THE COURT: The conclusion for what, Mr. Watkins?

8 MR. WATKINS: The conclusion that the white Ford  
9 Taurus was involved in the crime, that I was involved in  
10 the crime because I was a black male, based upon \$323,  
11 and that's it.

12 THE WITNESS: Based on what you just stated, yes,  
13 sir.

14 BY MR. WATKINS:

15 Q Okay. So did anybody ever come to the scene and  
16 identify the money that was on the scene? Are you aware  
17 of that?

18 A No, sir, I'm not aware. I wasn't there.

19 Q Okay. So when the witnesses came to the scene and  
20 you talked to the officer and they provide their  
21 statement, or supplemental reports that no one could  
22 identify me as the person being the person who had  
23 committed the robbery. You heard the same description of  
24 my clothing that didn't match when they seen me and all  
25 that. They made mistakes and ---

1 MR. MARCHANT: Your Honor, I object.

2 THE COURT: I sustain the objection. That's  
3 argumentative. He's testified that everything that  
4 pretty much he knows, Mr. Watkins. But you can ask him a  
5 question.

6 MR. WATKINS: I was asking him did he hear this as  
7 far as this testimony -- as far as this testimony that  
8 said that, I was going to round off with the question.

9 THE COURT: What is your question?

10 MR. WATKINS: That there's nobody identified -- the  
11 fact that he heard the other day, how did he come to the  
12 conclusion that I was the suspect if there's people that  
13 said I wasn't the suspect?

14 MR. MARCHANT: And Your Honor ---

15 THE COURT: I would sustain the objection as to the  
16 form of question. The jury has heard the testimony from  
17 all the witnesses, and he's testified as to what he  
18 knows and why he did it. Now, if you can ask him a  
19 different -- and you were arrested apparently from what  
20 his testimony is and ---

21 MR. WATKINS: So -- where's his statement?

22 THE COURT: Okay.

23 BY MR. WATKINS:

24 Q Okay. When you moved the coat off this hat, this  
25 gun, what did you do with the yellow jackets?

1 A They was still inside the apartment.

2 Q Okay. All the clothing in exhibit number 15, I  
3 don't -- do you see a yellow jacket in there?

4 A You're facing the door, that's just a straight shot  
5 angle going straight into the apartment. That apartment  
6 goes all the way back toward the right also. But no,  
7 sir, in this photo you don't see it, but it's listed in  
8 my report.

9 Q Exhibit number 15, no yellow jacket. Tell me do you  
10 see a yellow jacket in exhibit number 13?

11 A No, sir. No yellow. I see some red but I don't  
12 know what that is.

13 Q Exhibit number 15, yellow jacket hanging up. Here's  
14 exhibit number 11. State's Exhibit Number 11, showing  
15 the whole floor area. Do you see a yellow jacket on the  
16 floor where you say you ---

17 A Still that's not the whole entire floor area as  
18 going from one apex to the opposite apex of the door, but  
19 no, sir.

20 Q All right. Well, I've got a picture where the whole  
21 room is going to be covered. Exhibit number 10, starting  
22 from the closet to the door, do you see that yellow  
23 jacket?

24 A This is a close up version of the same picture, but  
25 no, sir.

1 Q Showing more of the room?

2 A No, sir, it's the same picture, just a close up  
3 version of the pile of clothes that's on the floor.

4 Q Showing you exhibit number 10. This exhibit you're  
5 saying it's a closer up version. Here's another version  
6 close up. Exhibit number 11, showing the room.

7 MR. MARCHANT: Your Honor, he's making arguments to  
8 the jury, I'd object.

9 MR. WATKINS: I'm just showing the evidence.

10 THE COURT: Okay. You can -- you can do that at the  
11 conclusion of the case, Mr. Watkins.

12 BY MR. WATKINS:

13 Q During the interrogation, when you were  
14 interrogating me, you took a statement from me. Do you  
15 recall telling me that when I requested a lawyer that I  
16 wasn't under arrest yet?

17 A No, sir, I don't remember you even asking for an  
18 attorney.

19 Q Do you remember telling me that I was not arrested  
20 yet, there was no need for an attorney, I wasn't under  
21 arrest yet?

22 A No, sir, I don't remember ever telling you that.

23 Q Do you remember telling me give a statement of my  
24 whereabouts, and want to investigate it, and if  
25 everything checked out I was free to go?

1 A No, sir.

2 Q Okay. Did I give you a statement of my whereabouts?

3 A You wrote down a brief statement of what you told  
4 us, yes, sir.

5 Q Did you investigate it?

6 A The statement that you gave us was very short, very  
7 brief.

8 Q I don't want you to read it. I want you to tell me  
9 whether or not you investigated it.

10 A As far as to what? I mean, you really didn't ---

11 Q When you asked me to give a statement, you led me to  
12 believe that you was going to investigate it. I'm asking  
13 you, did you investigate -- when I first gave you a  
14 statement, did you investigate it to see if it was true  
15 or not?

16 A What part of it was true?

17 Q To my whereabouts. To where if the statement say I  
18 was with Patricia Owens and you said you was going to  
19 investigate it, did you ever talk to a Patricia Owens?

20 A No, sir, I didn't talk to a Patricia Owens, no, sir.

21 Q So you never investigated anything on my behalf?  
22 Everything you investigated was to build a case against  
23 me?

24 A What you do mean?

25 Q In -- when a person -- you have a person you

1 actually think was innocent or until proven guilty, or  
2 you investigate both angles, you just don't -- I'm  
3 assuming, do you investigate both angles? Do you think  
4 it was positive and also negative, do you see all angles?

5 A The angle that you gave us and what actually took  
6 place, the person that you was with, we didn't  
7 investigate, we talked to her, and she said you did come  
8 into the apartment.

9 Q She said what?

10 A That you did come into the apartment, and when she  
11 woke up you were there.

12 Q Okay. So that's what she told you?

13 A Yes, sir.

14 Q All right. I have -- well, hold on. I got his  
15 statement. I got his statement. Okay. Bear with me.  
16 Can you read right here, is what she told you that you  
17 put in your supplemental report, and tell me if it says  
18 that I was not there?

19 A What do you want me to read? What's your question?

20 Q Right there where Elena Pelzer where you --  
21 disclosed information that Elena Pelzer provided to you.

22 A I mean, where at specifically?

23 Q I'm asking you, you just said she said I came back,  
24 that I wasn't there, that's the reason you had this  
25 information like I wasn't at the apartment. But that

1 ain't the information she gave you.

2 A No, sir, that's not what I said. I said that when  
3 interviewing her and talking to her, she said when she  
4 woke up you was there in the apartment.

5 Q Okay. So if she said I was there in the apartment,  
6 and you knew the time that Jenna Pirelly (phonetically),  
7 said the crime happened, based upon her statement, which  
8 was what time?

9 A The incident was supposed to took place shortly  
10 before 1:00, or right at one o'clock in the morning.

11 Q So if I'm with Elena Pelzer, and no one says  
12 anything about a female committing a crime, where did she  
13 place me at the time the crime occurred?

14 A During the approximate time when the crime took  
15 place there would have been enough time for you to be  
16 able to leave and to get to that apartment and then come  
17 back out.

18 Q No, I asked you, what time did she -- did the person  
19 say the robber came into the place, and what time did she  
20 say I was at home?

21 A Ms. Pelzer stated between -- she said 12:50 and one  
22 o'clock. She said somewhere between that time frame.  
23 She said it could have been 20 minutes, it could have  
24 been 30 minutes. She stated that yesterday.

25 Q That's what she stated when I was showing that she

1 said in her statement after she was charged. Before she  
2 was charged what time ---

3 MR. MARCHANT: Your Honor, object to the form of the  
4 question.

5 THE COURT: I sustain the objection as to the  
6 question. Ms. Pelzer has testified.

7 MR. WATKINS: Okay. What ---

8 THE COURT: She testified under oath in front of the  
9 jury. You have to ask him questions in regard to her  
10 testimony.

11 BY MR. WATKINS:

12 Q Okay. I can ask him pertaining to the evidence.  
13 I'm asking him, pertaining to the evidence that you and  
14 Fuller received, at what time was I in the apartment?

15 A This is Detective Fuller's report.

16 Q And it says who named -- when they was interviewing  
17 her, were you present?

18 A Yes, sir.

19 Q Okay. So in his supplemental he was saying you and  
20 him was interviewing her, and that at one o'clock ---

21 MR. MARCHANT: Your Honor, I object.

22 THE COURT: I sustain the objection.

23 MR. MARCHANT: The question -- he's asking him to  
24 testify about ---

25 THE COURT: You can ask him what he knows ---

1 MR. MARCHANT: --- Detective Fuller's statement.

2 THE COURT: --- and not anything about Detective  
3 Fuller, or what his statements were. You can ask him  
4 about what he knows.

5 MR. WATKINS: Yeah, that's what I'm asking. He --  
6 see, he was ---

7 THE COURT: I sustain the objection, Mr. Watkins.  
8 Let's move along.

9 BY MR. WATKINS:

10 Q Did you know the same thing she told Detective  
11 Fuller, you were present so you knew the same thing?

12 A If you can tell me what you're speaking of, you can  
13 show me what you're talking about.

14 Q That's what I was trying to do. They sustained it.

15 A I don't know. Your question -- I don't know what  
16 your question is.

17 Q Right here. At the time -- did you hear her say  
18 this right here?

19 A I'm not sure what you're talking about. It's not  
20 speaking in the same context that you're talking about.

21 Q Yes, it is.

22 A Show me exactly what your saying. See if I can  
23 help you out. That's not -- if you read right there,  
24 it's not ---

25 THE COURT: Wait, wait. Y'all can't talk to each

1 other. The question was, did you hear her say that, just  
2 yes or no. Did you hear her say that, just answer that.

3 THE WITNESS: Yes, sir. Yes, sir.

4 BY MR. WATKINS:

5 Q Okay. So you're aware that at the time that the  
6 robbery was taking place that Elena Pelzer basically  
7 established an alibi, based upon that information?

8 A No, sir, I don't think so. She gave a time frame.  
9 And that's a wide time frame there, if you look at it.

10 Q Okay. So I'm trying -- okay. Are you aware of the  
11 deal that Elena Pelzer received?

12 A No, sir.

13 Q You're not? Okay. So you're not aware that she  
14 received -- or she was indicted for accessory after the  
15 fact?

16 A Later on I was, sir, but I wasn't privy to any of  
17 that information prior to that, or during that. That was  
18 the solicitor's office.

19 Q So you later realized it was dropped to a  
20 misdemeanor?

21 A Yes, sir, through the solicitor's office.

22 Q Okay. And -- but you initially charged her with  
23 armed robbery?

24 A Yes, sir.

25 Q And you had no information from the people at Chuck

1 E Cheese about a female being involved with the armed  
2 robbery? You had no evidence to actually connect her to  
3 the crime yet, ask you a question, you had no tangible  
4 evidence to connect her to the crime?

5 A As a co-defendant, yes, sir, we did.

6 Q As a co-defendant in ---

7 A An armed robbery had just taken place. The money  
8 taken in the robbery was located in the vehicle she was  
9 in. The person that we believe committed the robbery was  
10 also with her.

11 Q So the witnesses never said I committed the robbery.  
12 Well, did the witnesses ever say I committed the robbery?

13 A They didn't call you by name, no, sir.

14 Q Did they identify me as the robber?

15 A They gave a physical description of a person, sir,  
16 that matched your physical description.

17 Q No, they came to ---

18 A That was yesterday.

19 Q I'm asking you, did they come to the scene ---

20 MR. MARCHANT: Objection, that's argumentative.

21 THE COURT: Mr. Watkins, we've been over this.

22 MR. WATKINS: I changed -- I stopped ---

23 THE COURT: The jury has heard the testimony. Now,  
24 let's move on. You're being repetitive now.

25 MR. WATKINS: Okay. No further questions. No

1 further questions. Okay.

2 MR. MARCHANT: I have no other -- further questions  
3 for this officer. I'd ask that he step down, Your Honor.

4 THE COURT: All right. Officer, you can step down.

5 MR. MARCHANT: With that the State rests.

6 THE COURT: Okay.

7 MR. WATKINS: I have some motions.

8 THE COURT: All right. The -- that's all the  
9 evidence and testimony from the State. I'll give you a  
10 short recess and then we'll bring you back in. Okay.

11 (The jury exited the courtroom at 11:37 a.m.)

12 MR. WATKINS: Your Honor, I have some motions.

13 THE COURT: All right, sir.

14 MR. WATKINS: Judge, I would ask for a motion of a  
15 direct verdict on the grounds that the State failed to  
16 prove its case beyond a reasonable doubt, to prove that I  
17 was actually the one that committed the crime, to prove  
18 the elements in the indictment.

19 THE COURT: Okay. I'm going to deny the motion.  
20 There is direct evidence about how the robbery occurred.  
21 The mask, there's a mask in evidence. I don't weigh the  
22 evidence, but there is substantial circumstantial  
23 evidence that follows that, and there is -- I have to  
24 submit the case to the jury. I'm sorry. Thank you.  
25 Anything else?

1 MR. WATKINS: Yes, sir, I have a motion to -- renew  
2 all my motions under Frank versus Delaware, what the  
3 evidence in the motions (sic). Also, I guess I -- I  
4 don't know if it's the same, but a motion to dismiss the  
5 case due to the State failed to prove the indictment,  
6 also on the grounds that alibi was my defense and that in  
7 the indictment it doesn't officially state -- it states  
8 on or about, and that doesn't officially state the date  
9 and time which the crime occurred. There's a case  
10 dealing with that State versus Riley where they have to  
11 give me precise notice of the exact time the crime took  
12 place so I can prepare for the trial. They never exactly  
13 established the time or the date that the crime actually  
14 happened according to the indictment.

15 THE COURT: Okay. Looking at the indictment, and  
16 I'm familiar with the case law as far as putting someone  
17 on notice of the date and time. It says on or about the  
18 19th of December, 2001. And under the law, Mr. Watkins,  
19 that's sufficient to put you on notice as to when the  
20 crime allegedly occurred.

21 MR. WATKINS: Dealing with alibi? Because if I give  
22 my alibi on or about a date and they present different  
23 evidence then it's impossible for my alibi to sustain a  
24 defense based upon the wrong on or about. That's dealing  
25 with State versus Riley.

1 THE COURT: You've raised the defense of alibi, even  
2 with the alibi on or about is sufficient in this case.  
3 You're talking about -- we've heard all the evidence. We  
4 understand it. The time frame is somewhere maybe between  
5 12:30, 12:45. I'm not sure there's any exact time for  
6 anybody that looked at their watch, except for the  
7 testimony of Ms. Pelzer who said that she looked and  
8 knows the exact time they were stopped. And I believe it  
9 was 1:10. That's the only testimony I've heard from  
10 anyone who actually look at their watch. But they've  
11 alleged the robbery, and we've all heard the testimony of  
12 the approximate times. And that's just going to be a  
13 question of fact for the jury as to when. So I deny your  
14 motion.

15 MR. WATKINS: Okay. I have some charges for the  
16 jury. I think there's an inference charge to be charged  
17 with. I think it's with facts -- two facts -- facts can  
18 be -- fact -- based upon the facts and evidence that  
19 facts and evidence can prove toward guilt or toward  
20 innocence with the same facts, I'm entitled to a verdict  
21 of innocent. Let me see. I got it.

22 THE COURT: They have to prove beyond a reasonable  
23 doubt, and I'll explain to them what a reasonable doubt  
24 is, that you would be guilty of the crime charged, and I  
25 would charge them that.

1 MR. WATKINS: Can I get the hesitate to act charge?

2 THE COURT: I'm going to charge the hesitate to act.  
3 If they're firmly convinced that you -- if there's a real  
4 possibility that you didn't commit the crime I'm going to  
5 charge that. And -- okay.

6 THE COURT: How about with respect to circumstantial  
7 evidence the defendant is entitled to every inference in  
8 his favor that can be reasonably drawn from the evidence,  
9 and where two inferences can be drawn from the same facts  
10 one consistent with guilty and one consistent with  
11 innocence the defendant is entitled to the inference  
12 that's consistent with his innocence.

13 THE COURT: Well, I don't know. We might be getting  
14 the cart before the horse here by going over these  
15 instructions. But -- I don't know if you intend to call  
16 any witnesses or if you intend to testify. But I need to  
17 cover your right to testify, whether you want to testify  
18 or not.

19 MR. WATKINS: Yes, sir. I want also alibi  
20 instruction pursuant to, I think that's ---

21 THE COURT: Are you going to offer any evidence?

22 MR. WATKINS: Yes, sir. We have -- do you have the  
23 motion that he had, as far as my prior convictions? Are  
24 you going to address that?

25 THE COURT: Okay. It is the appropriate time to

1 address that.

2 MR. MARCHANT: Your Honor, I have presented you with  
3 three or four cases. Specifically referring to Jones v.  
4 Cunningham was a Supreme Court case which was a case that  
5 was on habeas corpus review. In that case the petitioner  
6 was incarcerated and was challenging his sentence. He  
7 was released and was on parole. At that time he was  
8 attempting to add the parole board in his petition of his  
9 case. The Supreme Court ruled that because he was on  
10 parole that is equivalent of being in custody and that  
11 therefore fell within the ability of him to add the  
12 parole board to his case. Okay.

13 We then move to State v. Scott which references  
14 Jones and Cunningham. Again, they dealt with this issue.  
15 State v. Scott, 40 4 SE 2nd 110, where specifically they  
16 stated an individual who was paroled in 1980 did not  
17 alter the fact that the sentence remained in effect until  
18 1986 because they were on parole therefore in custody  
19 which encompasses us in that 10 year time frame.

20 THE COURT: On the -- are we addressing the burglary  
21 charges now?

22 MR. MARCHANT: Well, Your Honor, I believe that the  
23 last burglary charge he had which he plead guilty to on a  
24 negotiated plea in front of Judge Floyd on 10/28/97, he  
25 was sentenced to five years provided on the service of

1 two years and probation for three years. The sentence  
2 became effective on 4/21/97. So if you just give him the  
3 benefit of even making parole on the same date that he  
4 was sentenced, and not taking into consideration ---

5 THE COURT: Wait, wait, 4/21/97?

6 MR. MARCHANT: Yes, sir.

7 THE COURT: He was convicted?

8 MR. MARCHANT: No, sir. You Honor, he pled guilty  
9 on 10/28/97.

10 THE COURT: 10/28/97?

11 MR. MARCHANT: He was given credit backdated to  
12 4/21/97.

13 THE COURT: Okay.

14 MR. MARCHANT: So if you will just ---

15 THE COURT: How much time did -- he was sentenced to  
16 two years?

17 MR. MARCHANT: He got five years provided upon the  
18 service of two years and then three years of probation.

19 THE COURT: Okay.

20 MR. MARCHANT: So he would have had to serve his two  
21 years and then come out on probation and parole. And my  
22 argument is that even if you go back to 4/21/97, and if  
23 he made parole on that date, I'm giving him the benefit  
24 of going six or seven months back from his actual plea  
25 date, if you add the three years of probation on top of

1 '97, that brings us to the year 2000. Here we are in  
2 2008, we're well within the 10 year period. That's  
3 giving him every benefit of the time period with respect  
4 to that sentence.

5 THE COURT: When was he released from confinement?

6 MR. MARCHANT: Your Honor, Department of Corrections  
7 doesn't provide those records after -- or they're not  
8 available to us after they're released. You're able to  
9 pull them up while they're incarcerated, but I don't have  
10 the specific date when he was released on this sentence.

11 THE COURT: All right. Mr. Watkins?

12 MR. WATKINS: Those cases he's dealing with  
13 basically deal with parole. And I was never on parole.  
14 Parole and probation are two different things in dealing  
15 with these cases. Consequently the Court interpreted  
16 rule 609 of South Carolina rules of evidence. How should  
17 the 10 year rule be interpreted for conviction that is  
18 more than 10 years old then term of probation is extended  
19 beyond the 10 year period. The State has offered four  
20 cases in support of the position of the 10 years  
21 extending until the term of probation has been completed.  
22 The case does not support the use of prior convictions to  
23 impeach my credibility if I take the stand.

24 The State versus -- Jones versus Cunningham (sic)  
25 case cited by the Supreme Court in 1963 was not a rule --

1 not a rule 609 decision. It was a habeas corpus action.  
2 This issue therefore was whether a parole prisoner was  
3 still in custody under the habeas corpus rule. This is  
4 not the same issue before the Court today.

5 State versus Sarvis and State versus Scott are both  
6 South Carolina Supreme Court cases -- Supreme Court  
7 appeal cases that deal with parole and means defendants  
8 not sentenced to probation. Parole is different from  
9 probation since a prison sentence has -- involved --  
10 since the parole is considered a continuing on the  
11 imprisonment.

12 Although State versus Muller is a rule 609 decision,  
13 does involve probation instead of parole, it was decided  
14 before South Carolina adopted rule 609. It is not an  
15 interpretation of rule 609. No cases have been presented  
16 by the State involving both rule 609 and a straight  
17 probation sentence. It is a straight -- it is a stretch  
18 to consider a straight probationary sentence confinement  
19 under rule 609. The Court should be careful in this  
20 situation since the effect on the cases is so great.

21 MR. MARCHANT: Your Honor ---

22 THE COURT: I understand that. The question is when  
23 was he released from confinement.

24 MR. MARCHANT: I got it.

25 THE COURT: We have to know that before I can rule.

1 MR. WATKINS: I have -- I was going to finish. I  
2 haven't finished.

3 THE COURT: I'm sorry?

4 MR. WATKINS: I was going to finish the -- my -- I  
5 have more to add to it.

6 THE COURT: Okay. Well, I understand your motion.  
7 And to be honest I don't disagree with you. It was  
8 parole and you're talking about probation.

9 MR. MARCHANT: Well, Your Honor, if we're talking  
10 about probation, I would point the Court of State versus  
11 Muller, which in the very last note, footnote eight,  
12 cites the Sarvis case. While it says the federal rules  
13 may provide guidance, the admissibility of conviction  
14 still remains within the discretion of the trial Court.  
15 In this Muller case, evidence of prior convictions was  
16 brought in when that witness was on probation, and they  
17 said it was not an abuse -- it not an abuse of discretion  
18 in admitting the evidence of a conviction where the  
19 witness was on probation and thus under supervision  
20 during the 10 year period preceding the trial. I would  
21 liken probation and parole, I would state to the Court  
22 that essentially that the Court is saying that it is  
23 custody. He does not have or did not have freedom of  
24 movement to do with what he liked. If he had the --  
25 wanted to leave the state he would have had to get

1 permission. He had to report on a weekly, monthly,  
2 bi-monthly basis, depending on how his probation was set  
3 up. So he's not a free man. He is in custody. It's  
4 just not behind bars. So I would ask the Court to allow  
5 us to use the 1997 burglary convict for impeachment  
6 purposes.

7 MR. WATKINS: Your Honor, the Court has discretion  
8 as to whether to omit the conviction under rule 609. The  
9 cases to allow the old conviction to be used to impeach  
10 my testimony would effectively prevent me from taking the  
11 stand in my own defense. The presence of the cases  
12 outweighs the State's need to impeach my credibility.

13 THE COURT: Okay. I believe that confinement means  
14 confinement. And when the people wrote the statute, I  
15 have looked at it and looked at it, and that number two  
16 talks about crimes of moral turpitude. It talks about  
17 the 10 years. But anyway, I don't see that you can  
18 separate B from paragraph one, but I don't know the date  
19 he was released on the two year sentence, whether it's  
20 within the 10 years or not. And until y'all find that  
21 out for me I can't rule.

22 MR. MARCHANT: Your Honor, my investigator is going  
23 to attempt to call the Department of Corrections and see  
24 if she can locate his release date.

25 THE COURT: If he was confined within the 10 year

1 period then you can use it for impeachment purposes. But  
2 if he was not confined within the 10 year period -- five  
3 years probation is all you can give anybody and ---

4 MR. MARCHANT: Your Honor, if he was given credit --  
5 if that's Your Honor's ruling, he has to be confined 10  
6 years from today's date, is that what I'm understanding?

7 THE COURT: Yep.

8 MR. MARCHANT: And he was given a five year sentence  
9 in April of '97. I ---

10 THE COURT: He had to serve two at least, but -- he  
11 had to serve two active years?

12 MR. MARCHANT: Correct. So I have no way of  
13 knowing ---

14 THE COURT: That would have made it '99 if he served  
15 every day.

16 MR. MARCHANT: If.

17 THE COURT: And that would put you within the -- so  
18 I don't know. You're going to have to let me know when  
19 he was released. But I can -- I'll give y'all a few  
20 minutes, 10, 15 minutes to do that.

21 MR. MARCHANT: Thank you, Your Honor.

22 THE COURT: I mean, but I can't rule until I know  
23 that.

24 MR. MARCHANT: Can we go ahead and go over his  
25 rights to testify, whether or not he -- voir dire him on

1 that?

2 THE COURT: Okay. Still, Mr. Watkins, and I feel  
3 certain that you probably have discussed this with Mr.  
4 Henry, who is your standby counsel and has been in the  
5 courtroom throughout the proceedings. Procedurally you  
6 were able to consult with him at times. I'm not sure it  
7 was in the record or whatnot, but at one time it was.  
8 But I can tell you just straight up that normally most  
9 everybody says the most important decision that you have  
10 to make in a criminal trial, and in this trial, is  
11 whether or not you testify under oath, like everyone  
12 else. You'll be sworn and testify. And then you would  
13 be subject to cross-examination by the State. And you  
14 would have to respond to their questions.

15 Now, you have a Constitutional right to testify.  
16 You have a Constitutional right to invoke your right not  
17 to testify. You do not have to testify.

18 If you chose not to testify I would instruct the  
19 jury that you do not have to testify, and that cannot be  
20 considered and must not be considered against you under  
21 any circumstances, or in any manner. The fact that you  
22 do not take the witness stand in your own behalf does not  
23 create any presumption against you. And I would instruct  
24 the jury that they could not let the fact that you did  
25 not testify, if you didn't, and I'm not indicating what

1       you should do, then that fact could not weigh in the  
2       slightest degree against the defendant, against you, if  
3       you exercised your Constitutional right not to testify,  
4       nor could they even discuss that in their deliberations  
5       in the jury room.

6               Under the Constitution of South Carolina and the  
7       United States it is your prerogative to testify or to  
8       remain silent. The burden of proof is always upon the  
9       State of South Carolina to establish your guilt by  
10      competent testimony beyond a reasonable doubt.

11              Now, I do not know whether or not they have a  
12      conviction they can use against you, but if you decided  
13      to testify and any evidence about a prior record that you  
14      may have was presented, or if you were asked about that,  
15      that is admitted for a limited purpose and a limited  
16      purpose only. And I would instruct the jury that they  
17      could not consider that, if you had a prior record, as  
18      any evidence of your guilt in this particular case. It's  
19      only admitted as it would bear on your credibility or  
20      believability. And if they concluded that you had a  
21      prior record it would be -- they could evaluate it on  
22      credibility or believability only, and for no other  
23      purpose.

24              They cannot and must not consider a prior record, if  
25      any, of your guilt in this particular case, if you had a

1 prior record and chose to testify. They could give that  
2 evidence whatever weight they wanted to on the issue of  
3 credibility or believability, but not on any evidence of  
4 guilt of armed robbery in this case.

5 Now, have you thought about this and discussed this  
6 fully with your standby counsel, Mr. Henry?

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

8 THE COURT: You have? All right. Have you made a  
9 decision as to whether you're going to exercise your  
10 Constitutional right to testify or your Constitutional  
11 right to remain silent?

12 MR. WATKINS: To testify.

13 THE COURT: You're going to testify? Okay. Very  
14 good.

15 MR. MARCHANT: Your Honor?

16 THE COURT: Yes, sir?

17 MR. MARCHANT: I realize we don't have the prior  
18 conviction matter resolved yet, but I would like to know  
19 how the Court is going to handle him testifying?

20 THE COURT: I'm going to let him stand up and  
21 testify. I mean, I -- we're going to put him under oath  
22 and let him testify. And then ---

23 MR. MARCHANT: I would just ask that he be  
24 instructed that he can only say, you know, what he knows.  
25 I don't -- don't just want to appear to interfere with

1 his direct examination of himself, I guess.

2 THE COURT: Okay.

3 MR. MARCHANT: I don't -- I appreciate he's got  
4 something to say. I just want to be sure we keep it to  
5 what he knows himself as opposed to getting into more of  
6 a closing argument.

7 THE COURT: All right. You can testify as to what  
8 you know yourself and what you know of your own  
9 knowledge. And at this particular time you cannot  
10 argue about what other witnesses may have concluded, and  
11 what -- he's got to make the appropriate objections, but  
12 you can't essentially make a closing argument now. You  
13 have to do that at the conclusion of the case. Any  
14 inferences that can be drawn from the evidence -- any  
15 reasonable inferences that can be drawn from the  
16 evidence, both sides can argue that to the jury. But you  
17 need to testify as to the facts that you know and --  
18 about on that night in question. And that's what we're  
19 going to do, Mr. Watkins. You understand that?

20 MR. MARCHANT: Your Honor, the information I've just  
21 received is that he was paroled on 7/5 of '98.

22 THE COURT: 7/5 of '98.

23 MR. MARCHANT: So having not had the delay in this  
24 case through no fault of the State, the last time we  
25 would have been clearly within the 10 years. So I would

1 ask that the Court take discretion and use its discretion  
2 and allow the State to impeach him with that prior  
3 record.

4 MR. WATKINS: Your Honor ---

5 THE COURT: Well -- okay.

6 MR. WATKINS: I would like to see the document that  
7 you got facts, something, showing that you -- the release  
8 date.

9 MR. MARCHANT: Your Honor, all I can do is offer my  
10 investigator and place her under oath that she made the  
11 phone call and that's the date she received, if that's  
12 what the Court wants.

13 THE COURT: Mr. Marchant ---

14 MR. MARCHANT: I have no document in hand so ---

15 THE COURT: Okay. Well, I'm not ---

16 MR. WATKINS: I object to that. I understand  
17 there's a document. I got documents when I was arrested.

18 THE COURT: Well, he -- I mean the 7/5/98 is not  
19 within the 10 year period. So I don't know what you're  
20 arguing about.

21 MR. WATKINS: Okay. Thank you.

22 THE COURT: But nobody knows anymore than you do as  
23 to when you were released from prison, if you were. I  
24 don't know anything about what your background is, Mr.  
25 Watkins. But I had the first dean of the law school made

1 a statement to us, and he talked procedure. He handled  
2 Brown versus Board of Education, Dean Figg. He was the  
3 circuit solicitor in Charleston County for a number of  
4 years. He told us if he could not convict the defendant  
5 of the crime for which he was charged he never tried to  
6 convict him on any other crimes either he committed. So  
7 he never used it.

8 So Mr. Marchant, you're just going to have to go  
9 forward with what you got on this particular offense.  
10 I'm not -- I think confinement clearly means confinement.  
11 I believe -- there's a difference between parole and  
12 probation in my opinion.

13 And just as a side matter, this particular issue was  
14 discussed widely on the web serve between the circuit  
15 judges this week. And I think if the Legislature had  
16 meant, or the judicial department had meant probation  
17 they would have put probation in there. So they said  
18 confinement. And the way I construe confinement means  
19 incarceration. Okay.

20 MR. MARCHANT: Thank you, Your Honor.

21 THE COURT: All right.

22 MR. WATKINS: Thank you, Your Honor.

23 THE COURT: So you're going to testify next, right?

24 MR. WATKINS: Yes, Your Honor.

25 THE COURT: And you fully understand that you will

1 be cross-examined by Mr. Marchant?

2 MR. WATKINS: Yes, Your Honor.

3 THE COURT: Okay. And you've fully discussed this  
4 procedural and important decision with your standby  
5 counsel?

6 MR. WATKINS: Yeah, I'm going to discuss it further,  
7 but we have went over it a little bit.

8 THE COURT: Okay. You talk to him some more. Mr.  
9 Henry, you come back and talk to him about that. That's  
10 an important decision.

11 MR. HENRY: Yes, sir.

12 THE COURT: And you've been here the whole trial and  
13 know what the evidence and testimony is.

14 MR. HENRY: I also know whose decision it is, Judge.

15 THE COURT: Huh?

16 MR. HENRY: I also know whose decision it is.

17 THE COURT: I know. It's his decision, that's for  
18 sure. It's your decision, Mr. -- you -- I meant to tell  
19 you that. You have to make this decision not Mr. Henry.  
20 Okay.

21 MR. HENRY: Thank you, Judge.

22 THE COURT: Okay. Let's take about -- let's start  
23 back about 10 after 12:00 or 15 after 12:00. He may have  
24 to go to the bathroom or something, and then we'll start  
25 back and try to get his testimony in before lunch. Okay.

1 MR. HENRY: Yes, sir.

2 (A short recess was taken, after which, the trial  
3 continued as follows:)

4 THE COURT: Okay. Oh, I'm sorry, hold the door just  
5 one second. On the document that we discussed at a bench  
6 conference, we will white out the word verdict that shows  
7 the evidence. And then we'll make a copy of it. And  
8 therefore it will show everything except that word and it  
9 won't be whited out, and that was what everybody agreed  
10 to. Okay?

11 MR. MARCHANT: Yes, Your Honor. I presume from that  
12 comment that we won't argue and charge until after lunch?

13 THE COURT: After lunch, right.

14 (A discussion was held off the record.)

15 (The jury entered the courtroom at 12:23 p.m.)

16 THE COURT: All right, Mr. Watkins.

17 THE CLERK: Mr. Watkins, please place your left hand  
18 on the Bible and raise your right hand.

19 ROBERT WATKINS

20 Having been first duly sworn, testified as follows:

21 THE COURT: All right. Mr. Watkins, you can testify  
22 to the jury under oath and then you will be subject to  
23 some questions by Mr. Marchant if he wants to ask you  
24 some questions.

25 MR. WATKINS: Okay. Thank you. On December the

1 18th that day I was with my girl all day. We went  
2 shopping and had a little -- went and visited Tony  
3 Operman and things like that. I did not commit that  
4 robbery at Chuck E Cheese. I don't know how they come to  
5 that conclusion, but based upon what they said, but I did  
6 not commit that robbery.

7 I worked for Auto Body Auto Crown on Poinsett  
8 Highway with my uncle Terry. The white Ford Taurus I was  
9 driving was a rental car that I received because my Park  
10 Avenue was being fixed because it had got hit on the  
11 side. My uncle works on cars as far as doing the auto  
12 body work. I detail the cars later. I have a lot of  
13 clients at Stax Omega. I had Eastern Cotton Company  
14 (sic) off Poinsett Highway. I had a couple people from I  
15 think it's Pendleton Building off of Broad Street. It's  
16 a big building down there. I had customers there. And  
17 we had -- we used to do Bruce's Auto Action. So I had  
18 jobs. I cut hair on the side. So I had money. I did  
19 little things like odd little things to make other money.  
20 So I don't understand how my money can be, you know,  
21 taken from me like that, and I'm trying to be here today  
22 to defend myself and prove my innocence.

23 Oh, I had -- my alibi that night, like they say that  
24 crime happened they never told me the time or nothing  
25 like that, so I was explaining to them where I was at

1 that day. So that's why I wanted to use my girlfriend as  
2 my alibi but they never gave me -- gave me the evidence  
3 to be able to prepare, you know, how I wanted to prepare  
4 my defense, everything was here for me, so it was  
5 complicated. So I'm just here today trying to prove my  
6 innocence. That's all I have to say.

7 THE COURT: All right, Mr. Marchant.

8 MR. MARCHANT: Court's indulgence? I have no  
9 questions, Your Honor. Thank you.

10 MR. WATKINS: May I say one more thing?

11 THE COURT: All right. Then he might have a  
12 question about that, but I'll let you say one more thing.

13 MR. WATKINS: Okay. I wanted to explain to you the  
14 gun that was at my apartment. That gun, my aunt son had  
15 it and she asked me get that gun from him. I got that  
16 gun from him. It was put in the apartment to keep it  
17 away from him so he wouldn't -- she was supposed to come  
18 and testify but she didn't show up today. And that's why  
19 the gun was in my possession. The money belongs to me.  
20 Thank you.

21 MR. MARCHANT: Nothing, Your Honor.

22 THE COURT: Thank you, Mr. Watkins, you can come  
23 down. Okay. Anything else? Mr. Watkins, you have  
24 anything else, any other witnesses or anything?

25 MR. WATKINS: I don't have any witnesses.

1 THE COURT: Okay.

2 MR. MARCHANT: Nothing further from the State, Your  
3 Honor.

4 THE COURT: All right. That's all the evidence and  
5 testimony. And that was a little bit faster than I  
6 anticipated. The next thing will be closing statements  
7 and then I'll go over the law before you go back and  
8 deliberate. We'll take our lunch break now. I need to  
9 go over the law and what I will charge as to the law with  
10 the lawyers and Mr. Watkins. And we will -- we will get  
11 started back in an hour or hour and 15 minutes. And  
12 y'all will have your sandwiches and everything during  
13 that time.

14 So the -- the 12 of you that were first picked, but  
15 the alternates are still jurors now because still  
16 something could happen. The others might not be there.  
17 But from the 12 of you, y'all have gotten to know each  
18 other a little bit, if y'all would select a foreperson.  
19 If you can't I'll appoint someone, but -- and usually I  
20 do that in short cases where you don't know each other  
21 that well. But y'all have had lunch today and you'll do  
22 it again. But if y'all can -- someone -- every person  
23 gets an equal vote, an equal voice, and equal input into  
24 the verdict, and -- but someone just kind of has to  
25 preside back there, and that's what the foreperson's role

1 is. But the verdict has to be unanimous as I'll tell you  
2 later on. But do not discuss the case now. But if the  
3 12 of you can decide on a foreperson, let me know. If  
4 you can't I'll be happy to pick someone. Okay. Y'all  
5 can step back. We'll take our lunch break. And most of  
6 the time Mr. Bond gets here a little early, so maybe he  
7 will today. Okay.

8 (The jury exited the courtroom at 12:29 p.m.)

9 THE COURT: Okay. In regard to the charges, we  
10 didn't completely get into those, and the -- as I  
11 understand the law, Mr. Henry can discuss it with Mr.  
12 Watkins, under State versus Grippon, the holding there  
13 was if there is a proper reasonable doubt instruction  
14 given, a jury need not be instructed that circumstantial  
15 evidence must be so strong as to exclude every reasonable  
16 hypothesis other than guilt. And the holding there was,  
17 we hold in Grippon that Grippon is the sole remaining  
18 charge to be utilized by the Courts of this state in  
19 instructing juries in cases relying in whole or in part  
20 on circumstantial evidence. We hold that the recommended  
21 language in Grippon is the sole and exclusive charge to  
22 be given in circumstantial evidence cases along with a  
23 proper reasonable doubt instruction.

24 I give the State charge on a doubt that would cause  
25 a reasonable person to hesitate to act. And I also give

1 the Supreme Court case written by Justice Ginsburg about  
2 if you're firmly convinced the defendant is guilty you  
3 have to find him guilty, and if there's a real  
4 possibility he's not guilty you must find him not guilty.  
5 I paraphrased that last part, but I read from the Supreme  
6 Court instructions on the State versus Grippon charge. I  
7 -- and I read that to say that that's the only charge on  
8 circumstantial evidence that I can give now. I'll be  
9 glad to hear from y'all on that.

10 MR. WATKINS: Is -- is there probably a way I can  
11 get that charge on State Versus Littlejohn,  
12 circumstantial evidence charge, sir?

13 THE COURT: State versus what?

14 MR. WATKINS: Littlejohn.

15 THE COURT: What is that, do you know?

16 MR. WATKINS: It's a circumstantial evidence charge.

17 THE COURT: The only one I can give on  
18 circumstantial evidence, which I was just ruling is State  
19 versus Grippon, which is that there are two types of  
20 evidence generally presented, either direct evidence and  
21 circumstantial evidence. Direct evidence is the  
22 testimony of a person who appears to have claims to have  
23 actual knowledge of the fact, such as an eye witness.  
24 And circumstantial evidence is proof of a chain of facts  
25 and circumstances indicating the existence of a fact.

1 The law makes absolutely no distinction between the  
2 weight or value to be given to either direct or  
3 circumstantial evidence, nor is a greater degree of  
4 certainty required of circumstantial evidence than of  
5 direct evidence. You should weigh all of the evidence in  
6 the case. After weighing all the evidence if you're not  
7 convinced of the guilt of the defendant beyond a  
8 reasonable doubt, you must find him not guilty. Under  
9 the law right now, Mr. Watkins, I'm confined to that  
10 charge. And that's all I can give them.

11 MR. WATKINS: Then one dealing with State versus  
12 Edwards that deals with circumstances must be proven --  
13 be consistent and be proven beyond a reasonable doubt?

14 THE COURT: The Court has instructed us not to do  
15 that now under State versus Grippon case and State versus  
16 Cherry. All right.

17 MR. WATKINS: Okay. Will you instruct the jury on  
18 what the elements are in the indictment, because they  
19 might not know actually what the element are, that they  
20 have to be proven in the indictment by the State, so they  
21 would have to be ---

22 THE COURT: I'm going to tell -- I'm going to  
23 charge them the elements of the crime of armed robbery.  
24 And the -- well, I'm going to send a separate verdict  
25 form back to the jury. I will charge them the elements

1 that they have to prove beyond a reasonable doubt, that  
2 you in Greenville County were armed with a deadly weapon  
3 on the night -- on or about the 19th of December, 2001,  
4 while armed with a deadly weapon. And -- well, I can  
5 give you the exact -- and just before I charge them if  
6 you want to I can give you the elements of armed robbery.  
7 I have to define robbery, which is taking someone --  
8 property of another and from -- with the intent to  
9 permanently deprive them of that property through force  
10 or intimidation. I'm paraphrasing that now. But I'm  
11 going to charge them the elements of armed robbery.

12 What else do you want me to do?

13 MR. WATKINS: And charge on alibi defense.

14 THE COURT: Okay. I will charge alibi defense.

15 Okay. Mr. Marchant?

16 MR. MARCHANT: The State has nothing to add, Your  
17 Honor.

18 THE COURT: Okay. Very good. And I will see y'all  
19 back in -- at 15 minutes until 2:00. Can y'all -- is  
20 that all right?

21 MR. MARCHANT: Fine with the State, Your Honor.

22 THE COURT: Okay. Can y'all handle everything? All  
23 right. We'll start back at quarter 'til 2:00.

24 Now, Mr. Watkins, you'll make the first argument to  
25 the jury. And then he gets to make the next argument.

1 Okay. And then I'll charge the jury. And then they'll  
2 go back and deliberate. I'm going to write out on a  
3 separate sheet of paper as to armed robbery we find the  
4 defendant guilty or we find the defendant not guilty, and  
5 as to possession of a weapon during the commission of  
6 violent crime either guilty or not guilty. All right.  
7 Thank you.

8 MR. WATKINS: All right.

9 (A short recess was taken, after which, the trial  
10 continued as follows:)

11 THE COURT: Mr. Faulkner -- got a note, Mr. Faulkner  
12 will be the foreperson. Better wait until he comes out.  
13 Let Mr. Henry look out it. I don't think that makes any  
14 difference. I think the verdict is what was the most  
15 important part of it.

16 (Mr. Watkins entered the courtroom.)

17 THE COURT: Okay. Yeah. Let Mr. Watkins see that  
18 document where we blanked out the verdict part. You can  
19 discuss it -- let Mr. Henry look at it too. We were  
20 showing it to him right before you walked in. They won't  
21 know what that is. Okay. Without objection the exhibit  
22 10 is -- we took the word verdict out and both sides  
23 agree it's okay. And neither side will make any  
24 reference to that during the closing arguments.

25 (Defendant's Exhibit Number 10 was remarked and

1 filed.)

2 (Court's Exhibit Numbers 2 and 3 were marked and  
3 filed.)

4 MR. MARCHANT: Yes, Your Honor.

5 THE COURT: Okay. All right. Mr. Watkins, you  
6 ready?

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

8 THE COURT: Okay. Mr. -- the jury sent me a note.  
9 The bailiff brought it in. The foreperson is Hugh  
10 Faulkner. And I don't -- I'm really not sure which one  
11 that is. They elected the foreman.

12 (The jury entered the courtroom at 1:50 p.m.)

13 THE COURT: All right, Mr. Watkins.

14 MR. WATKINS: Good afternoon, ladies and gentlemen  
15 of the jury. I appreciate your time and your patience  
16 with me. I want you to know this is my first time that  
17 I've gotten a chance to really be heard. And I  
18 appreciate your ears and your hearts that have listened  
19 to the evidence and can determine my guilt or innocence.  
20 My liberty is in your hands.

21 As you have heard from all the witnesses testify  
22 that they were eye witnesses to the armed robbery. The  
23 testimony only two pieces of evidence was shown to one  
24 witness, that was Jeannie Pireda. You heard the  
25 testimony that was -- that what was the State's

1 exhibit -- what was the State's Exhibit ---

2 COURT REPORTER: The gun is the box.

3 MR. WATKINS: --- State's Exhibit Number 21, you  
4 heard Jeannie Pireda testify State's Exhibit Number 21  
5 being that the gun the State introduced she assured it  
6 had -- was the gun. Then I asked her on  
7 cross-examination how is she sure, and she said it only  
8 had one hole in the barrel. Then I asked her how many  
9 holes does that gun -- that gun she saw -- she saw the  
10 robber with have in it and she said one. I asked her if  
11 she is 100 percent sure and she said yes. I asked her  
12 then if the gun has two holes in the barrel would that be  
13 the gun and she said no. The evidence will show that the  
14 gun that they introduced has two holes in the barrel. So  
15 based upon her testimony the gun wouldn't be the gun that  
16 she saw the robber use during the crime.

17 Okay. I cross-examined the State's witness Jimmy  
18 Skelton and Marcus Scarabino about the gun. They said --  
19 Jimmy Skelton testified that he really didn't know what  
20 it was. He said also it had one hole in the barrel. I  
21 asked him could he have been a pipe (sic). He said yes.  
22 Then he really didn't know. Marcus Scarabino couldn't  
23 hardly memorize anything (sic) so the gun -- that the gun  
24 has two holes in the barrel. What does that evidence of  
25 Jennifer Pireda's testimony say? It's not the gun.

1 I asked each witness could they identify me as the  
2 person who committed the robber at Chuck E Cheese. You  
3 heard them all say no. Is it funny how the State has all  
4 the -- all of this Chuck E Cheese money, so they say, but  
5 shows none of it to Marcus Scarabino who -- to see if he  
6 can identify the money being -- being taken from Chuck E  
7 Cheese? That's the evidence from Chuck E Cheese. If you  
8 got money that you -- the person said that he handed, and  
9 you have it in possession, why not present that money to  
10 him, since he's seen the money, to get him to identify  
11 the money? The evidence doesn't show the State did this.

12 The evidence of Chuck E Cheese doesn't make their  
13 own -- okay. The money at Chuck E Cheese doesn't match  
14 up with the money that they claim that they taken from my  
15 apartment dealing with the dimes, the nickels and the  
16 quarters that was hand rolled. You'll see that in the  
17 evidence. The evidence shows that. It doesn't match up.  
18 The evidence show there was hand rolled, nickels were  
19 hand rolled, and the dimes were hand rolled. Why wasn't  
20 that money shown to the witnesses?

21 Excuse me. I'm just nervous. Of course all the  
22 evidence points to me, it's my property. The State has  
23 to prove beyond a reasonable doubt that the money that  
24 was taken from apartment 708 belongs to Chuck E Cheese.  
25 They haven't done that. They never showed any of the



1 the evidence in, according to the law enforcement, states  
2 I cannot be a black man with \$382 in a white Ford Taurus  
3 at night. I can't put money on the seat when I'm asked  
4 to step out of the car. Does this show that law  
5 enforcement had probable cause to arrest me? Does the  
6 evidence show this?

7 Do the evidence show probable cause to arrest Elena  
8 Pelzer? Does the evidence show probable cause to arrest  
9 me? The evidence does not show I had -- the evidence  
10 does show I had a valid driver's license that you will  
11 see in evidence.

12 The evidence -- I had \$73 in my pocket. The  
13 evidence will show I had \$73 in my pocket. I also took a  
14 five dollar bill from somewhere else and added that money  
15 in my pocket and testified before -- that he received it  
16 out of my pocket and then later changed it up. The  
17 evidence show that he put the money -- got the money from  
18 somewhere else. It's falsified in his documents.

19 The witnesses at Chuck E Cheese testimony does not  
20 collaborate with the -- with what the law enforcement  
21 officers testified to. I -- in court it's called false  
22 testimony. But outside of court we know what false  
23 testimony is called under oath when you testify it's  
24 called -- and the trial judge will instruct on elements  
25 that State will have to prove beyond a reasonable doubt

1 to the charge -- the -- he will charge you on the  
2 elements that you have to prove beyond a reasonable  
3 doubt. He will charge you on circumstantial evidence.

4 He will also alibi defense (sic). The evidence  
5 shows that for some reason the State did not want to  
6 introduce a time in which the crime occurred, when the  
7 robber entered the building. Yet Jeannie Pireda  
8 testified and she returned that 12:50 with food, that's  
9 the State's own witness. Elena Pelzer testified alibi  
10 defense, that I was her at 12:00 a.m. at the same time  
11 the witness returned with the food said the person came  
12 in the place. But they don't want to determine --  
13 establish the time frame.

14 The evidence show that she was falsely charged with  
15 armed robbery. I believe the evidence defense -- I  
16 believe -- no defense -- I believe they -- how and why --  
17 I believe y'all understand why and how she was charged  
18 once she gave evidence of alibi. I'm sure today you all  
19 heard testimony from individuals that you thought are  
20 supposed to be honest. I know you see different.

21 This case is based on evidence and facts from  
22 witness -- it's not based on evidence and fact from the  
23 witness of the crime but law enforcement real  
24 conclusionary statements and the facts and false  
25 evidence.

1 I ask the jury could be first -- could it be fair to  
2 convict -- I ask the jury would it be fair for you to  
3 convict a man with his own property that the victims  
4 never identified as a part of the crime? The State says  
5 it is. Yet the State won't allow the witness to see the  
6 evidence -- evidence to identify it. And when the gun is  
7 showed to Jeannie Pireda it was stripped down into --  
8 strapped down into a box on its side so she couldn't see  
9 the two holes in the barrel. So when they showed the gun  
10 to her she could not see two holes in the barrel because  
11 it's strapped so tight down. You could only see the side  
12 of the gun.

13 Evidence shows that -- the evidence shows there is  
14 no connection between the robber and the white Ford  
15 Taurus. The evidence shows that everything incriminating  
16 was introduced into evidence by the law enforcement was  
17 not supported by the witnesses. So you have a case where  
18 the witnesses is not given you evidence to incriminate  
19 me, it's more like the law enforcement officers based  
20 upon their conclusion was trying to incriminate me even  
21 though the witnesses is saying no, that is not the  
22 evidence. You have evidence here. Show it to the  
23 witnesses so they can determine, show the jury, yeah,  
24 that's evidence.

25 You haven't got that conclusion today. You haven't

1       been -- I haven't been proven beyond a reasonable doubt  
2       that I was the one that committed the crime. I asked the  
3       witnesses. Nobody could identify me. I asked them a  
4       description of size. None of them could identify me.  
5       Everything you heard today comes from the law  
6       enforcement. Nothing to convict me coming from the  
7       witnesses and the actual victims of the robbery.

8               Thank you for your time and patience. I appreciate  
9       it.

10              THE COURT: Mr. Marchant.

11              MR. MARCHANT: May it please the Court, Mr. Watkins?

12              Ladies and gentlemen of the jury, Mr. Watkins would  
13       lead you to believe that this is some big conspiracy  
14       against him, that law enforcement has manipulated the  
15       facts and evidence in this case to prove him guilty, or  
16       to ask you to find him guilty of a crime which he says he  
17       didn't commit. If you believe him and evidence doesn't  
18       support it, I submit to you you got to turn him loose. I  
19       would ask you to turn him loose. That would be your  
20       duty.

21              Now, let's talk about what the evidence does show.  
22       I submit to you after you look at the evidence you will  
23       be firmly convinced beyond a reasonable doubt that he did  
24       commit this crime. And when I had my opening I told you  
25       I believed there were two issues in this case, did a

1 robbery occur. I submit that's been answered and hasn't  
2 been denied by the defense.

3 Now, the only question I say is left before you is  
4 did he do it. What do we have? We have employees of  
5 Chuck E Cheese who have testified that on the night, or  
6 morning of December the 19th of 2001, they were working  
7 and they were working special cleaning because they had  
8 some higher management coming in to do a visit the next  
9 day.

10 Two of those witnesses, Ms. Pireda and Mr. Skelton  
11 have told you they saw a white Ford Taurus that drew  
12 their attention outside. Ms. Pireda tells you she saw it  
13 that night. Mr. Skelton tells you he saw it. Ms. Pireda  
14 also told you she saw it three days prior. So it was  
15 fresh in their mind a couple of days before the robbery  
16 occurred. Mr. Watkins got on the stand in his testimony  
17 he told you he was in possession of a white Ford Taurus  
18 because his other vehicle was broken.

19 What happened that night? The carpet cleaners were  
20 there cleaning. There's testimony that the carpet  
21 cleaners were white. A man comes in the back door  
22 brandishing a gun. Walks up to the employees and says,  
23 where's the money. Okay. Has a robbery occurred?

24 He carries them back to the safe and takes money  
25 that does not belong to him without their permission. A

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1 approximate times. He'd ask you to believe that he was  
2 at home in building 700, which is only a couple hundred  
3 yards from the back door of the Chuck E Cheese.

4 He'd ask you to believe that he has an alibi. What  
5 information did he present to you on the stand? I work  
6 detailing cars. I cut hair on the side. I have been  
7 with my girl all day. I didn't rob it. And oh, by the  
8 way, the gun and the mask that y'all found, that's my  
9 uncle's. He wants you to get hung up on all the  
10 discrepancies which he's claiming.

11 And the money. You can look at the pictures when  
12 you get back there. Look at how the ones are bound.  
13 Look at the number of quarters. Listen to the testimony.  
14 What did Lieutenant Hamilton say he found in the vehicle  
15 that was stopped within at least -- excuse me, at the  
16 most 20 minutes after this robbery occurred, which Ms.  
17 Pelzer testified would have been 1:10? Lieutenant  
18 Hamilton said there was \$100 in fives. Okay. There's  
19 testimony from the apartment that there were \$200 in  
20 fives found. It's \$300 in five dollar bills. Mr.  
21 Scarabino and Mr. Skelton both testified \$300 in five  
22 dollars bills were removed from Chuck E Cheese.

23 How many rolls of quarters did Detective Bruce get  
24 out of the apartment? Eleven. How many were taken from  
25 the Chuck E Cheese? Eleven. Some were hand rolled.

1 Some were bank rolled. Was there any markings or  
2 identification whatsoever that Chuck E Cheese wrote on  
3 the money? They told you, no. They had no reason to  
4 mark it because it was used in house. Never turned it  
5 over to the bank. So is it reasonable to believe that  
6 that money came from the Chuck E Cheese? I submit to you  
7 it is.

8 He talks about couldn't have been him because he was  
9 somewhere else. Did he tell you on the stand where he  
10 was? No, he didn't. Ms. Pelzer told you he didn't come  
11 home for approximately four hours while he was supposed  
12 to be out getting her something to eat. A reasonable  
13 conclusion you can make is that he was at the Chuck E  
14 Cheese.

15 Now, whether or not his vehicle was used as the  
16 getaway car, and I submit to you the getaway car from the  
17 Chuck E Cheese parking lot we don't know because no  
18 witness saw where he went when he went out the back door.

19 I submit to you a reasonable conclusion you can draw  
20 is he went from the Chuck E Cheese to the apartment, went  
21 inside. Ms. Pelzer is fuming because it's 1:00 in the  
22 morning. He -- she ain't had dinner yet. He is the only  
23 source of income, food, rent, whatever for her. She is  
24 totally dependent upon him. She gets mad. She leaves.  
25 Goes and gets in the car. Where is he? He's still

1 inside. Conclusion you can draw from that is he changed  
2 clothes, took his gun, put it in the mask, took ---

3 MR. WATKINS: Your Honor, I object. I object to  
4 that because that's not in the evidence. That's  
5 conclusions he's making to introduce it into evidence.  
6 That's not in evidence.

7 THE COURT: I'd overrule the objection. Any  
8 reasonable inferences that may be drawn, if it's a  
9 reasonable inference you may argue it.

10 MR. MARCHANT: Takes the gun, puts it in the mask,  
11 put clothes on top of the gun, empties his pockets. Puts  
12 some of it in the kitchen. Puts the rest of it on -- in  
13 his closet in his bedroom on the shelf. He then leaves.  
14 Gets in the vehicle. And attempts to take her to get  
15 some dinner.

16 Now, the issue before you is whether or not the  
17 search was proper, whether or not the stop was proper  
18 (sic). The issue before you is did he rob the Chuck E  
19 Cheese, and did he use a hand gun while he did it.

20 Law enforcement was called and within minutes the  
21 place is surrounded. There's one way in, one way out.  
22 You heard Officer Jones testify he saw three cars. One's  
23 a cab. The other is a news vehicle. And then along  
24 comes Mr. Watkins.

25 Mr. Watkins gets stopped. What happens? Starts

1       throwing money down in the car. A reasonable conclusion  
2       that he was trying to hide it? I submit to you that it  
3       is. He's arrested. He gave a false name. Goes down to  
4       the station. He's talked with Detective Bruce and  
5       Detective Fuller. And you heard from the stand, he told  
6       Detective Bruce, yeah, maybe I was in the back parking  
7       lot doing a drug deal.

8               Ladies and gentlemen, I submit to you the evidence  
9       is overwhelming. I would ask you to go back into your  
10      jury room, and I would ask you to consider it seriously.  
11      But I submit that once you do deliberate and you take  
12      time to look at this evidence, there can be no question,  
13      and there can only be one unanimous verdict, and I submit  
14      to you that that verdict is guilty. And I would ask you  
15      to return it. Thank you.

16             THE COURT: Madam Bailiff, would you pull that back  
17      just a little bit?

18             Mr. Foreman, ladies and gentlemen, you've heard the  
19      evidence and testimony in the case, now it's my  
20      responsibility to go over the law with you and you'll go  
21      back and determine the facts that you can find and apply  
22      the facts to the law.

23             This case comes to us on this indictment which I  
24      hold in my hand. And the State of South Carolina charges  
25      Robert Max Watkins with armed robbery and possession of a

1        weapon during the commission of a violent crime.

2                Now, this indictment is simply the charges against  
3        Mr. Watkins. This is not evidence in the case. The fact  
4        that someone has been charged and arrested is not any  
5        evidence of their guilt and should not be considered as  
6        any evidence of guilt in the case. This is just simply  
7        the vehicle that brings the case to court, and eventually  
8        you will report your verdict on the back of this  
9        indictment and we'll file it as part of the court  
10       records.

11               Now, as I said, to these charges Mr. Watkins pleads  
12       not guilty. Ladies and gentlemen, the plea of not guilty  
13       by Mr. Watkins places the burden of proof upon the State  
14       of South Carolina to prove the defendant guilty beyond a  
15       reasonable doubt. A person charged with committing a  
16       criminal offense in South Carolina is never required to  
17       prove himself innocent.

18               Now, ladies and gentlemen of the jury, that is a  
19       cardinal and an important rule of law of evidence in a  
20       criminal trial. No matter what the seriousness of the  
21       charges are, the defendant is always presumed innocent of  
22       the crime for which he's indicted unless his guilt has  
23       been proven by evidence that satisfies you of guilt  
24       beyond a reasonable doubt.

25               Now, ladies and gentlemen, that's not a mere legal

1 theory or legal phrase, that is a substantial right which  
2 all of us are entitled to, and that is the presumption of  
3 innocence until you the jury hears evidence that  
4 satisfies of guilt beyond a reasonable doubt.

5 Now, as jurors in this case, you have certain  
6 functions and responsibilities that are totally different  
7 from mine. You -- I am prohibited by the Constitution  
8 from discussing the facts with you, and I would not do  
9 that. And I will tell you that I would not do anything  
10 to infringe upon your responsibility to determine the  
11 facts, and I wouldn't expect you to allow me to do that.  
12 You are the sole judges of the facts.

13 In that regard, if I have done anything during the  
14 course of this trial, if I have said anything, the tone  
15 of my voice or anything to indicate to you that I have a  
16 feeling about this case, either for the defendant or for  
17 the State, you disregard that. If I did anything I  
18 didn't mean to do that. You, ladies and gentlemen, are  
19 the sole judges of the facts of this case.

20 Just as you're the judges of the facts I have to  
21 make rulings on the law, and I have to explain to you the  
22 law when the case is over. You must accept the law as I  
23 give it to you, apply the facts that you can find to the  
24 law and write a verdict in this case that speaks the  
25 truth.

1           Now, it's your duty and yours alone to pass upon the  
2           credibility and the believability of any witness that  
3           takes this witness stand, or any testimony or portions of  
4           the testimony. You, ladies and gentlemen, pass upon the  
5           credibility, the believability of the witnesses, the  
6           testimony, and all the evidence.

7           Now, ladies and gentlemen, I know you would not do  
8           this lightly. These witnesses have testified in your  
9           presence under oath. You have observed the demeanor of  
10          the witnesses, their facial expressions. You can ask  
11          yourself, was there any reason for the witness to be  
12          biased or prejudiced? Was there other evidence in the  
13          case to make the testimony of that witness stronger or  
14          weaker.

15          Ladies and gentlemen, you can believe everything a  
16          witness tells you, or you could disbelieve everything a  
17          witness told you. You can believe part of what a witness  
18          told you, and disbelieve part of what a witness told you.  
19          You can believe one witness as against several, or  
20          several witnesses as against one. I mention those things  
21          to you to emphasize the weight you see fit to give to the  
22          credibility and the believability of the witnesses and  
23          all of the evidence in the case is your sole -- is for  
24          your sole determination.

25          Now, ladies and gentlemen, there are two types of

1 evidence which are generally presented during a trial.  
2 There is a direct evidence and circumstantial evidence.  
3 Direct evidence is the testimony of a person who asserts  
4 or claims to have actual knowledge of a fact, such as an  
5 eye witness. Circumstantial evidence is proof of a chain  
6 of facts and circumstances that indicates the existence  
7 of a fact.

8 The law makes absolutely no distinction between the  
9 weight to be given, or the value to be given to either  
10 direct or circumstantial evidence, nor is a greater  
11 degree of proof required of circumstantial evidence than  
12 direct evidence. You should weigh all the evidence in  
13 the case. After weighing all the evidence, if you are  
14 not convinced of the guilt of the defendant beyond a  
15 reasonable doubt, you must find him not guilty.

16 The State has the burden of proving each and every  
17 element of the crime beyond a reasonable doubt. Any  
18 reasonable doubt you have should be resolved in favor of  
19 the defendant. He is entitled to any reasonable doubt.  
20 A reasonable doubt may exist because of the evidence and  
21 testimony you have heard or the lack of evidence and  
22 testimony in the case. If you have a reasonable doubt as  
23 to the guilt of the defendant as to any charge, or any  
24 element of any charge, he would be entitled to that doubt  
25 and would be entitled to acquittal, or a verdict of not

1 guilty.

2 What is a reasonable doubt? A reasonable doubt is  
3 the kind of doubt that would cause a reasonable person to  
4 hesitate to act. Now, some of you may have served in  
5 civil court. And in the civil court you would be told  
6 that the burden of proof is by the greater weight of the  
7 evidence, or that a fact is more likely true than not  
8 true. In criminal cases the government's proof is more  
9 powerful than that. It's beyond a reasonable doubt.  
10 Proof beyond a reasonable doubt is proof that leaves you  
11 firmly convinced of the defendant's guilt.

12 Now, there are very few things in this world that we  
13 can know with absolute certainty and the -- in criminal  
14 cases the law does not require proof that overcomes every  
15 possible doubt. If based on your consideration of the  
16 evidence you are firmly convinced that the defendant is  
17 guilty of the crime charged, you must find him guilty. If  
18 on the other hand, you think there is a real possibility  
19 that he is not guilty, you must give him the benefit of  
20 the doubt and find him not guilty.

21 Now, ladies and gentlemen, in this case the  
22 defendant, Robert Max Watkins, is charged with armed  
23 robbery, which he has pled not guilty to. The  
24 allegations are that he, in Greenville County, on or  
25 about the 19th day of December of 2001, while armed with

1 a deadly weapon, either by action, or words, or both, and  
2 representing the use of that weapon, that he by force,  
3 threats, or intimidation took property that belonged to  
4 Chuck E Cheese in violation of the laws of this state,  
5 namely United States currency. They allege that was  
6 armed robbery. The State must prove each and every  
7 element that they've alleged beyond a reasonable doubt.

8 They have also charged that he was in possession of  
9 a weapon during the commission of a violent crime. And I  
10 will charge you that -- I'm not indicating anything that  
11 you should find, but I'll tell you that under our law  
12 armed robbery is a violent crime.

13 Now, in this case in order to prove this offense the  
14 State must prove beyond a reasonable doubt that the  
15 defendant took personal property from the person or  
16 presence of another person. Property is in the presence  
17 of a person if it is within that person's reach, his  
18 inspection, his or her observation or control, so that  
19 that person could, if not overcome with violence or  
20 prevented by fear, keep possession of that property.

21 The State must also prove beyond a reasonable doubt  
22 that the defendant carried the property away, intending  
23 to permanently deprive the owner of that property and  
24 keep the property for his own use.

25 Now, the taking and carrying away of the property

1 must have been done with violence, by putting the owner  
2 of the property in fear of violence, and that must be  
3 proven beyond a reasonable doubt.

4 Finally, the State must prove beyond a reasonable  
5 doubt that the defendant was armed with a deadly weapon  
6 during the robbery. A deadly weapon is any article,  
7 instrument, or substance which is likely to cause death  
8 or great bodily harm. Whether an instrument has been  
9 used as a deadly weapon depends on the facts and  
10 circumstances of each case. And you have to be -- you  
11 are the sole finders of facts and circumstances. Under  
12 our law examples of deadly weapons are a pistol, shotgun,  
13 knife, and things of that nature.

14 Now, you have to determine, ladies and gentlemen, if  
15 the State has proven beyond a reasonable doubt all the  
16 elements of that offense.

17 And in this particular case the defendant has raised  
18 the defense of alibi. In order to establish an alibi it  
19 must be shown that the defendant was at another specified  
20 place at that time. The crime was -- that he was  
21 somewhere else or elsewhere when a crime was committed,  
22 and it was therefore impossible for the defendant to have  
23 been at the scene of the crime.

24 Now, there is no burden on the defendant to prove an  
25 alibi. The burden is on the State to prove beyond a

1 reasonable doubt that the defendant was actually present  
2 at the scene, actually participated in it, and was not  
3 somewhere else. Alibi means elsewhere. In other words,  
4 the State has the burden of disproving the defendant's  
5 alibi defense.

6 Now, ladies and gentlemen, you should consider, and  
7 I have written out the verdict form, we the jury by  
8 unanimous consent find as to armed robbery the defendant  
9 either guilty or not guilty. If the State has proven  
10 each and every element of the crime of armed robbery,  
11 your verdict would be guilty. If the State has failed to  
12 prove any element of the crime of armed robbery, your  
13 verdict would be not guilty.

14 Now, you will then next consider the charge of  
15 possession of a weapon during the commission of a violent  
16 crime. I will charge you that the State must prove  
17 beyond a reasonable doubt that the defendant was in  
18 possession of a firearm, or visibly displayed what  
19 appeared to be a firearm during the commission of a  
20 violent crime. In order to find the defendant guilty of  
21 possession of a weapon during the commission of a violent  
22 crime, you must first find the defendant guilty of  
23 committing a violent crime.

24 Now, ladies and gentlemen of the jury, I would ask  
25 you to consider each verdict separately, and your verdict

1 as to each charge must be unanimous. All 12 of you have  
2 to agree.

3 I told you earlier, every person has an equal voice  
4 and equal input as to what the verdict should be, but  
5 someone must preside and that would be your  
6 responsibility, sir.

7 Now, when you go back to the jury room I'll go over  
8 my charge with the attorneys and Mr. Watkins. If you  
9 have anything else they want me to tell you about the  
10 law, or if I misstated something I'll bring you back out.  
11 If not I'll send word back with the bailiff that you can  
12 begin your deliberations. And I'll send all of the  
13 evidence that's been marked and introduced into evidence  
14 back for your consideration.

15 If y'all would step back to the jury room I'll go  
16 over my charges and send word when you can begin  
17 deliberations.

18 Ladies and gentlemen, if y'all have any questions  
19 about the law or anything of that nature, write it out,  
20 give it to the bailiff and she'll bring it back into the  
21 courtroom, or he will, whichever one is there, and  
22 present it to me and then I will respond to whatever  
23 inquiries that you may have. Okay. And everyone go  
24 back. If the two alternates would just wait outside for  
25 me. Okay.

1 (The jury exited the courtroom at 2:32 p.m.)

2 THE COURT: Okay. Any additions or ---

3 MR. MARCHANT: Nothing else from the State, Your  
4 Honor.

5 MR. WATKINS: Regarding your charge, Your Honor?

6 THE COURT: Yes, sir.

7 MR. WATKINS: No, Your Honor, I think that was the  
8 appropriate charge.

9 THE COURT: I'm sorry?

10 MR. WATKINS: I think that was the appropriate  
11 charge.

12 THE COURT: Okay. Thank you very much. All right.  
13 We'll be in recess until they reach a verdict.

14 MR. WATKINS: Your Honor, I don't have to file any  
15 motions now, renew any motions now do I?

16 THE COURT: Talk to Mr. Henry about that.

17 (Mr. Watkins talked to Mr. Henry.)

18 MR. WATKINS: Thank you, Your Honor.

19 THE COURT: Okay. I'll do a plea if you want. Mr.  
20 Marchant, I'm going to dismiss the alternates.

21 MR. MARCHANT: Yes, sir.

22 THE COURT: I don't know of any authority in South  
23 Carolina that if one of them were to drop out after  
24 deliberations if we could put the alternate back in, one  
25 of the alternates in. Some judges keep them. That's

1 not -- hasn't been my practice.

2 MR. MARCHANT: That's fine, Your Honor.

3 THE COURT: Okay. I'm going to let them go if they  
4 want to go. They may want to stay and hear the verdict.  
5 Okay. We'll be in recess until they reached a verdict.  
6 And then I'll take the guilty pleas. Let me speak to the  
7 alternates first.

8 (The jury began their deliberations at 2:35 p.m.)

9 THE COURT: Y'all have a seat. Okay. I have a  
10 handwritten communication from the jury which I'm  
11 required to publish in open court, dated 9/24/08. Is  
12 there a statement by Officer Bruce or the defendant which  
13 we can read from today's testimony regarding the  
14 defendant admitting, or the officer stating the defendant  
15 said he admitted he had been in the CEC parking lot on  
16 the night of the robbery. Hugh Faulkner, Jr., number  
17 167, the foreperson.

18 MR. MARCHANT: Your Honor ---

19 THE COURT: What does -- do you want to confer with  
20 Mr. Henry, Mr. Watkins? I'll consider this a procedural  
21 matter or a question of law, and he can consult with his  
22 standby counsel.

23 (Mr. Watkins talked to Mr. Henry.)

24 THE COURT: All right. Mr. Marchant, you want to go  
25 first?

1 MR. MARCHANT: Well, Your Honor, there is a -- the  
2 report is not in evidence. Obviously they don't have it  
3 back there to look at it. And Mr. Watkins' statement is  
4 not in evidence. So I think the answer to the question  
5 is there's not a document that they're able to view  
6 because it's not in evidence, but I would advise them or  
7 request that they know that they can come back and listen  
8 to the testimony if that what would clear up anything.

9 MR. WATKINS: Your Honor?

10 THE COURT: Yeah.

11 MR. WATKINS: Your Honor, I object to that. They  
12 asked for a statement ---

13 THE COURT: What now, sir? I'm sorry?

14 MR. WATKINS: Object to them about a tape. They  
15 asked for a statement.

16 THE COURT: Is there a statement which we can read.

17 MR. MARCHANT: Well, Your Honor, there is one, but I  
18 don't think they can read it.

19 THE COURT: Well, there's -- well, everything --  
20 they can consider that anything that's been introduced  
21 into evidence but no more evidence can be introduced, if  
22 any. I don't know. I mean, I just can't remember. We  
23 marked a lot of exhibits and I don't know what was marked  
24 and what wasn't marked. A lot of questions were asked  
25 about statements. I remember the verbal testimony by the

1 officer, but I have no idea where it came from. I have  
2 to respond, and either bring the jury in and respond or  
3 else I can send a note back by the agreement of the  
4 parties. We've done everything on the record in open  
5 court and -- how about -- and you talk to Mr. Henry.

6 The Court cannot comment on the existence or  
7 non-existence of evidence in answer to your question.  
8 You can only consider the evidence which has been  
9 introduced and the testimony which you have heard. That  
10 way I'm not telling -- they asked me is there a statement  
11 by either the officer or the defendant which they can  
12 read. I don't think I can tell them there is or is not a  
13 statement. I don't think I should -- I should -- in  
14 answer to their question if I bring them in here I cannot  
15 comment on whether there is evidence or not any evidence.

16 And the second part they have to decide this case  
17 based on the evidence and testimony that's been  
18 introduced into the record, evidence and testimony that's  
19 been introduced.

20 MR. MARCHANT: Your Honor, I ask that you go one  
21 further and, you know, if they have questions I would ask  
22 that you let them know that they have the ability to come  
23 back and listen to the testimony if that would be  
24 beneficial to their decision making process.

25 MR. WATKINS: Your Honor, I object to that. They

1 want to see a document, that's an affidavit or statement,  
2 that's probably sworn to. That saying that one doesn't  
3 exist and for allowing some officer to say something I  
4 didn't say would be very prejudicial to me.

5 THE COURT: Well, I can't decide -- he said you said  
6 it. You said you didn't say it. It's up to the jury  
7 whom they believe, you or the officer. That's a question  
8 for them, not for me. I don't know if it's in a written  
9 report or not. I haven't seen it. The officer says it's  
10 in a written report. I have no idea what's in a lot of  
11 those reports because I didn't read them. Talk it over  
12 with Mr. Henry and -- Mr. Watkins, talk it over with Mr.  
13 Henry and see. I'm a little bit hesitant about  
14 commenting on listening to the transcript because they  
15 haven't asked to do that.

16 MR. MARCHANT: Your Honor, that's my point. I don't  
17 know if they know they have that avenue.

18 (Mr. Watkins talked to Mr. Henry.)

19 THE COURT: Well, there's 12 of them that heard the  
20 testimony that you and I heard, so I believe --- what --  
21 did you discuss it with Mr. Henry?

22 MR. WATKINS: Yes. I object to any word testimony.

23 THE COURT: I'm sorry?

24 MR. WATKINS: I object to word testimony, any type  
25 of word testimony. And they specifically asked they

1 wanted a statement and they didn't say anything about  
2 word testimony. They have received the evidence that was  
3 already introduced so to give something outside of that  
4 would be very prejudicial.

5 THE COURT: Okay. Is there any objections to me  
6 writing a response saying that the Court cannot comment  
7 on the existence or non-existence of any evidence in  
8 answer to your question? He's asking is there a  
9 statement which they can read. So I better limit it to  
10 that and tell them that they have to decide the case  
11 based on the evidence and testimony that's been  
12 introduced.

13 MR. WATKINS: On the evidence, not the testimony.

14 THE COURT: I'm sorry?

15 MR. WATKINS: Yes, sir, on the evidence but not the  
16 testimony.

17 THE COURT: Well, the testimony is evidence.

18 MR. WATKINS: Okay. If you -- the first one you  
19 said you was going to -- let me refer to my lawyer again,  
20 my standby counsel.

21 MR. HENRY: Whatever.

22 THE COURT: Okay.

23 (Mr. Watkins talked to Mr. Henry.)

24 MR. WATKINS: Yes, sir. I agree in order to stop at  
25 the word evidence and doesn't add the word testimony in

1 it.

2 THE COURT: Okay. I can't do that. They got --  
3 they must -- they mentioned from today's testimony.  
4 Okay. I'm going to mark the -- we can't reach an  
5 agreement. I'll just have to do it. And I'm going to  
6 mark this into the record and tell them essentially what  
7 I've gone over with you. I'm going -- I'll bring them in  
8 here and do it. I don't know whether it helps or hurts  
9 for me to bring them in and answer their question or me  
10 to write it out. I would write out what I've gone over  
11 with you. If y'all will not agree for me to write it out  
12 then I'm going to bring them in, and I think I have to  
13 give them that answer that I just covered with you.

14 (Mr. Watkins talked to Mr. Henry.)

15 MR. WATKINS: It's okay if you write it. I have no  
16 objection if you write it or bring them in.

17 THE COURT: Okay. And how do feel about it?

18 MR. MARCHANT: Your Honor, I'm comfortable with you  
19 writing what you just stated. If you would just read it  
20 one time before you send it back to make sure we're all  
21 clear I would appreciate it.

22 THE COURT: Okay. Y'all can come up and look. Yeah  
23 come up and look at this. Here you go. Mary. Let them  
24 review it, Mary.

25 MR. MARCHANT: No objection from the State, Your

1 Honor.

2 MR. WATKINS: Your Honor, I object to this right  
3 here. Oh, I'm reading the wrong part. Excuse me. Let  
4 me read this part. Okay. I'm sorry, Your Honor. I  
5 apologize. I was reading the top part. Okay. Thank  
6 you.

7 (Another note was brought out from the jury.)

8 THE COURT: Okay. I have question, 9/24/08, two  
9 questions -- not two questions, two requests, I guess.  
10 Please provide a copy of the warrant to show, list the  
11 amount of money, ie, rolls of coins, dollars, five, tens,  
12 et cetera, found in the apartment. Please provide the CE  
13 Cheese inventory of money taken by the robber along with  
14 total amount, ie, number of rolls of nickels, dimes,  
15 quarters, and groups of bills. Hugh Faulkner, number  
16 167. Okay. There can't be any other evidence  
17 introduced. I say, you must decide the case on the  
18 evidence and testimony introduced. Pretty much what I've  
19 already to them.

20 MR. WATKINS: Yes, Your Honor. I have no problem,  
21 yes, sir.

22 THE COURT: No objection. And if you'll mark this  
23 we will return both of the questions back to them. Y'all  
24 read verbally from that, but they don't have the  
25 documents. That's the whole thing and I'm trying to

1 answer their questions as best I can. All right. We'll  
2 wait until we hear from them again. Mark this one, Mary.

3 (Court's Exhibit Numbers 4 and 5 were marked and  
4 filed.)

5 (A discussion was held off the record.)

6 (The jury continued their deliberations.)

7 (A short recess was taken, after which, the trial  
8 continued as follows:)

9 THE COURT: Okay. Keep your seat. They tell me  
10 that they've got a verdict.

11 THE BAILIFF: Yes, sir.

12 THE COURT: Okay. You can bring them in.

13 (The jury entered the courtroom at 6:03 p.m.)

14 THE COURT: Mr. Foreman, you've reached a verdict?

15 MR. FAULKNER: Yes, Your Honor, we have.

16 THE COURT: Okay. Would you give it to the bailiff,  
17 please? Thank you, sir.

18 (The bailiff handed the verdict form to the Court.)

19 THE COURT: Okay. Madam Clerk, would you publish  
20 the verdict, please?

21 THE CLERK: All right. Your Honor, this is case  
22 2002-GS-23-1063, the State of South Carolina versus  
23 Robert Max Watkins. On the charge of armed robbery, we  
24 the jury by unanimous decision consent -- consent find  
25 the defendant guilty. On the charge of possession of a

1        weapon during a violent crime, we the jury by unanimous  
2        consent find the defendant guilty. These are signed by  
3        Hugh Faulkner, our foreperson.

4                Ladies and gentlemen of the jury, if you agree these  
5        are the verdicts you reached in your deliberation room,  
6        would you please raise your right hand?

7                (All jurors raised their right hand.)

8        THE CLERK: Thank you.

9        THE COURT: Okay. Any question as to the form of  
10       the verdict?

11       MR. MARCHANT: None from the State, Your Honor.

12       THE COURT: Mr. Watkins, any question as to the form  
13       of the verdict?

14       MR. WATKINS: Yes, sir, I disagree with the verdict.

15       THE COURT: Okay. Any question about the form of  
16       the verdict? Just the form of the verdict.

17       MR. WATKINS: No questions.

18       THE COURT: Okay. Ladies and gentlemen, I  
19       appreciate your service this week. Since you served I'm  
20       not going to require y'all to come back. You've given us  
21       three days, so I will excuse you tonight. If you need a  
22       statement to show your employer that you were here, the  
23       clerk can provide that to you. Mary?

24       THE CLERK: Yes, sir.

25       THE COURT: You can?

1 THE CLERK: Yes, sir.

2 THE COURT: Okay. And a check will be -- you will  
3 get a check in the mail, that check in the mail thing,  
4 but you will get a check in the mail for your services.  
5 Now, the Court -- and no one has any -- we don't have any  
6 control. We don't set the amount y'all get paid for jury  
7 service. County Council does that. So whatever it is  
8 it's not going to be a lot, but you'll get a check for  
9 that, and your mileage. And I appreciate y'all  
10 performing jury service. And y'all are excused for the  
11 evening. Thank you so much.

12 (The jury exited the courtroom at 6:05 p.m.)

13 THE COURT: All right, Mr. Watkins.

14 MR. WATKINS: May I make my motions?

15 THE COURT: Yeah.

16 MR. WATKINS: At this time, Your Honor, I would like  
17 to make -- Your Honor, at this time I would like to plead  
18 double jeopardy. South Carolina, article 112, and the  
19 United States Constitution 514, to sentence me to any  
20 time -- to confine me in violation of South Carolina 1976  
21 code of laws 16-11-330 and 16-24-490 for armed robbery,  
22 possession of a weapon during a violent crime on  
23 indictment, OG-23-1063 (sic), would be subjecting me to  
24 the same offense I was convicted back in 2002, October  
25 2002, of the date the 25th, by the court of general

1 sessions, the Honorable Judge Victor C. Pyle, to be twice  
2 put in jeopardy of life, limb, and liberty.

3 THE COURT: Okay. Based on that motion your  
4 conviction was set aside and you were given a new trial.  
5 So I would deny that motion, double jeopardy.

6 MR. WATKINS: I object to you denying it.

7 THE CLERK: Thank you, sir.

8 MR. WATKINS: Your Honor, in reference to -- I want  
9 reference to the double jeopardy as far as the case law  
10 that I read. It deals with the criminal proceeding, when  
11 the criminal proceeding is adjudicated, as far as on  
12 direct appeal, they deal direct appeals, doesn't deal  
13 with after -- like on civil, civil procedures, when the  
14 case is overturned in civil it deals with criminal  
15 proceeding, it still continues so the first conviction is  
16 not considered a conviction if you get it reversed on  
17 direct appeal, because the appeal is the last criminal  
18 proceedings. But once you go to direct appeal and if  
19 they found a decision, that's a final judgment, and then  
20 by me being sentenced and serving time on there, then get  
21 my case overturned on civil proceedings, for a  
22 constitutional violation I don't think that applies to  
23 the criminal as far as a directed verdict, as far as  
24 double jeopardy don't apply.

25 THE COURT: Okay. I'm going to deny that motion for

1 double jeopardy. All right, Mr. ---

2 MR. WATKINS: I got one more.

3 THE COURT: All right.

4 MR. WATKINS: I got a motion for a direct verdict  
5 not withstanding the verdict of the jury on the grounds  
6 of evidence that was presented by the State did not prove  
7 its case beyond a reasonable doubt as far as sufficient  
8 evidence, insufficient evidence, or prove the elements  
9 in the indictment. These are written motions. I don't  
10 have -- do I have to file the written motions or can I  
11 make them in court?

12 THE COURT: Well, you really need to make them in  
13 open court.

14 MR. WATKINS: Okay. I make a motion for directed  
15 verdict not withstanding the verdict. Do I need to state  
16 the grounds?

17 THE COURT: You can, but I'll tell you procedurally  
18 the Court cannot grant a judgment not withstanding the  
19 verdict. The only recourse at this point that I can do  
20 is grant a new trial. In a criminal case I can't grant a  
21 judgment JNOV.

22 MR. WATKINS: Okay. Can you grant a direct verdict,  
23 or do I have to go to the Court of Appeals for a direct  
24 verdict? Can I get a new trial based on destruction of  
25 the evidence that the jury wouldn't be able to look at

1 all the evidence, like the money and stuff like that?

2 THE COURT: Okay. I would accept that motion and  
3 state that the clear testimony was -- and -- from the  
4 police that it had been given back to the victim, and  
5 that's the facts, and we'll just have to live with that.  
6 I don't know of any case in point on that right now at  
7 this particular point. The State hasn't pointed me out.  
8 But my feeling from -- is and my ruling would be that I  
9 would have to deny that motion for a new trial based on  
10 the fact that the money -- the money was returned to the  
11 victim.

12 MR. WATKINS: Okay. Can I notice my petition to  
13 appeal with the Court now?

14 THE COURT: You can do that after the sentencing.

15 MR. WATKINS: Okay.

16 THE COURT: Y'all want to come up for the  
17 sentencing? Okay. What -- anything else you want to  
18 tell me, other than just refresh me on his prior record?

19 MR. MARCHANT: Your Honor, if I could add a few  
20 things to the record. 1994, forgery times two; 1996,  
21 receiving stolen goods and forgery; 1996, burglary third;  
22 1997, burglary second.

23 Your Honor, this case was tried back in 2002. From  
24 speaking with the prosecutor at that time she dismissed a  
25 burglary charge as well as a forgery charge against Mr.

1       Watkins after the jury returned a verdict of guilty on  
2       this case. Just for your information. I do not know  
3       whether that factored into Judge Pyle's sentence which he  
4       did receive the maximum sentence. It's the State's  
5       position that was a fair sentence at the time and  
6       reasonable under the circumstances. We ask that that  
7       sentence be imposed. Thank you.

8           THE COURT: All right. Mr. Watkins, I'll hear from  
9       you before I sentence you. Anything you want to tell me  
10      in regard -- anything you want to say before I sentence  
11      you?

12           MR. WATKINS: Yes, Your Honor. I think a sentence  
13      of 30 years is real harsh being that I'm 43 years, be  
14      like a life sentence. And I ask that you show some  
15      mercy.

16           THE COURT: Okay. And you served how much time?

17           MR. WATKINS: Six years, Your Honor.

18           THE COURT: Okay. All right. The Court has heard  
19      all the evidence and testimony, and the jury heard the  
20      evidence and testimony. And what -- they made their  
21      findings of fact, and I heard -- and I have to sentence  
22      also based on what I heard in the case. And this -- this  
23      is a serious crime. And what bothers me is these people  
24      were -- two of them -- well, at least one of them and  
25      another one, one of them testified that the gun was

1 placed to her head. And it was a serious armed robbery.  
2 That's all I have to say about it, Mr. Watkins. I think  
3 you're a very intelligent man, and -- but you -- you  
4 don't have a good record. I'm only taking into  
5 consideration the -- what you were convicted of. I know  
6 nothing about anything that was dismissed. For -- and I  
7 understand the entire case.

8 For the armed robbery I'm going to sentence you to  
9 the State Department of Corrections for 25 years. And  
10 for the possession of a weapon during the commission of a  
11 violent crime I'm going to sentence you to five years  
12 consecutive to the 25 years. Thank you very much.

13 MR. MARCHANT: Thank you, Your Honor.

14 - - -END OF TRANSCRIPT OF RECORD- - -  
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## C E R T I F I C A T E

1  
2 I, the undersigned Mary E. DiGirolamo, Official  
3 Court Reporter for the Thirteenth Judicial Circuit of the  
4 State of South Carolina, do hereby certify that the  
5 foregoing is a true, accurate and complete Transcript of  
6 Record of all the proceedings had and evidence introduced  
7 in the trial of the captioned case, relative to appeal,  
8 in the Court of General Sessions for Greenville County,  
9 South Carolina, on the 22 through 24th days of September,  
10 2008.

11 I do further certify that I am neither of kin,  
12 counsel nor interest to any party hereto.

13  
14 April 24, 2009

15  
16 *Mary DiGirolamo*

17 Mary E. DiGirolamo

18 Official Court Reporter  
19  
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23  
24  
25

Robert Max Watkins 243803 Q2A118  
Perry Correctional Institution  
430 Oakclaw Rd  
Pelzer SC, 29669

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MAY 10 2017

SC Court of Appeals

South Carolina Court of  
Appeals. Jenny A. Kitchings,  
Clerk.

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MAY 12 2017

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