

VOLUME I OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JUN 16 2017

Appeal from Greenville County

S.C. SUPREME COURT

Honorable R. Knox McMahon, Circuit Court Judge

WILLIAM ANTHONY BUTTS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001851

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

DESHAWN H. MITCHELL
Assistant Attorney General
P.O.Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 WILLIAM A. BUTTS,)
)
 DEFENDANT.)
 _____)

2011-GS-23-05149 - 05151

TRANSCRIPT OF RECORD

OCTOBER 17 - 19, 2011
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE ROBIN B. STILWELL

APPEARANCES:

ATTORNEYS FOR PLAINTIFF:

W. WALTER WILKINS, III, SOLICITOR
SLOAN P. ELLIS, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

SCOTT D. ROBINSON, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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1 (Whereupon State's exhibits 1 - 15B were marked for
2 identification)

3 **THE COURT:** Let's call to bar the case of State of
4 South Carolina versus William A. Butts, cases numbered 2011-
5 GS-23-5149, 5150, 5151. Gentlemen, have y'all had the
6 opportunity to review the indictments?

7 **MR. WILKINS:** Yes, Your Honor.

8 **MR. ROBINSON:** Yes, Your Honor.

9 **THE COURT:** Okay. Good enough. All right. Well, I
10 intend to read at least the salient portion, the
11 allegations. So we want to make sure there weren't any
12 objections to what was on the indictment. Are we ready to
13 pick our jury?

14 **MR. WILKINS:** The State's ready, Your Honor.

15 **MR. ROBINSON:** The Defense is ready.

16 **THE COURT:** All right. You can bring them in, please.

17 (Whereupon the jury panel entered the courtroom at
18 11:38 am)

19 **THE COURT:** All right. Hello again, everybody.

20 Welcome upstairs. We are about to start the case of the
21 State of South Carolina versus William Anthony Butts.

22 I'm going to ask you questions this morning, which bear
23 upon your qualifications or the suitability of you presiding
24 over jurors, excuse me, as jurors in this individual case.
25 You remember I asked you questions downstairs related to

1 your qualifications to generally serve as a juror. And
2 these questions will be focused on this particular case.

3 Now, I'll remind you, you continue under the oath that
4 you took downstairs to give honest answers to the questions
5 that are posed to you. Now when I get started -- before I
6 get started I need to read for you the allegations on the
7 indictments.

8 But before I read the allegations on the indictments I
9 want to say something to you very clearly. These are simply
10 allegations. Just because I am reading them to you does not
11 mean that you accept them as facts. This is a charging
12 document. And this is the document that the State, that the
13 Prosecutor prepares to charge the Defendant. And it's
14 required under the rules of our system.

15 Now, and I'll state to you again, just because I read
16 this to you doesn't mean that I am telling you that these
17 are the facts of this case. This is simply the allegations.

18 It's important to note before we ever get started that
19 in this court and, indeed, in every court of the United
20 States of America a defendant, a person is presumed innocent
21 until the State meets its burden of proving each and every
22 element of the offense beyond a reasonable doubt. I'll say
23 that again, a defendant is presumed innocent until the State
24 proves him guilty beyond a reasonable doubt.

25 Now, until such time as you make a determination after

1 you've heard all of the evidence and heard all of the law
2 bearing upon the evidence that the State has met its burden
3 of proof if you, in fact, decide that they do, then the
4 Defendant is presumed innocent and is entitled under our
5 Constitution to that presumption.

6 So as he sits here today in anticipation of us starting
7 this trial and all the way through the trial he maintains a
8 cloak of innocence. And he will retain that cloak of
9 innocence until the very end when you begin your
10 deliberations.

11 And then you will be charged with deciding whether or
12 not the State has met its burden of proof in this case.
13 I'll give you further definitions about the burden of proof
14 and reasonable doubt later on after we conclude the trial,
15 but for now I just want you to keep that in mind.

16 Ladies and gentlemen, this is the State of South
17 Carolina versus William Anthony Butts. And they are cases
18 numbered 2011-GS-23-5149. And in each indictment Mr. Butts
19 is charged with armed robbery and possession of a weapon
20 during the commission of a violent crime, three counts of
21 each.

22 And, ladies and gentlemen, in the first indictment,
23 2011-5151, the State would allege that Mr. Butts did in
24 Greenville County on or about November 5th, 2009, while
25 armed with a deadly weapon or while allegedly either by

1 action or words armed while using a representation of a
2 deadly weapon or any object present during the commission of
3 the robbery, would reasonably believe that he had a deadly
4 weapon, take by means of force or intimidation goods or
5 monies described as U.S. currency belonging to Citgo Corner
6 Mart from the person of William Flynn, an employee of the
7 Citgo. Also, they would allege that on the said date and
8 time, November 5th, 2009 that he did visibly display a
9 handgun during the commission of this crime.

10 Ladies and gentlemen, in indictment number 2011-5150
11 the State would allege that Mr. Butts did on October 30th,
12 2009 commit an armed robbery by taking goods or monies from
13 Citgo Corner Mart from the person of Victor Campbell, an
14 employee, and at that date and time also that he was -- he
15 displayed a handgun.

16 Ladies and gentlemen, in indictment 2011-5149 the State
17 would allege that on October 18th, 2009 that the Defendant
18 did commit an armed robbery in Greenville County by taking
19 goods or monies from Citgo Corner Mart in the presence of
20 William Flynn, an employee, and that he did display a
21 handgun during the commission of that crime.

22 Now, ladies and gentlemen, the reason I read all of
23 that to you is so that you can answer the next question that
24 I ask you from an informed viewpoint and intelligently. And
25 the question I would ask you is this; is there anyone among

1 you who has any prior knowledge, any opinion, or any
2 previous position regarding the alleged facts of this case?

3 (No response)

4 **THE COURT:** All right. Let the record reflect no
5 affirmative response.

6 Ladies and gentlemen, the Defendant in this case is Mr.
7 William Anthony Butts. I would ask you, is there anyone
8 among you who has a personal, professional or family
9 relationship with Mr. Butts?

10 (No response)

11 **THE COURT:** Ladies and gentlemen, Mr. Scott Robinson is
12 the attorney representing Mr. Butts in this case. I would
13 ask you is there anyone among you who has a personal,
14 professional or family relationship with Mr. Robinson?

15 (No response)

16 **THE COURT:** Ladies and gentlemen, this case is being
17 prosecuted by Mr. Walt Wilkins. And he is being assisted by
18 Mr. Sloan Ellis of the Thirteenth Circuit Solicitor's
19 Office. Is there anyone among you who has a personal or
20 professional relationship with Mr. Wilkins, Mr. Ellis or
21 anyone else who is employed by the Thirteenth Circuit
22 Solicitor's Office?

23 (No response)

24 **THE COURT:** All right. Let the record reflect no
25 affirmative response.

1 Ladies and gentlemen, I'm going to read for you a list
2 of potential witnesses in this case. Now I don't know if
3 this is all of the witnesses that I call or that I read out
4 who are going to be called to testify. I don't know if
5 there will be additional witnesses that just have to testify
6 because of the evidence that comes out into the record.
7 However, I'm going to read to you the prospective witnesses.

8 I have a list from each side, which means that I may
9 duplicate a little bit. And I apologize if I do. But I'm
10 going to ask you the same question that I've asked you
11 regarding the parties and the attorneys when I finish
12 reading you the list, that is, whether you know any of them.

13 And those are as follows; Sarah Reagan McCroskey, Mary
14 McCroskey, Chanel Porter, Dianna Butts, David Weiner, Wayne
15 Campbell, Keith Grounsell, Rasheed Butts, Jennifer Girard,
16 Doug Kelly, Barbara Dewitt, Walter G. Bowers, Rasheed Butts,
17 Wayne Campbell, Victor Campbell, Jason Cassel, Jason Cox,
18 Barbara Dewitt, William S. Flynn, Michael Fortner, Eric
19 Frazee, Tim Fuller, Jennifer Girard, Hal Harris, Sarah
20 Reagan McCroskey, Kyille Seward, Mary Katherine McCroskey
21 Spaulding, Dennis Tench, David Weiner.

22 Ladies and gentlemen, is there anyone among you who has
23 a personal, professional or family relationship with any of
24 those potential witnesses?

25 (No response)

1 **THE COURT:** All right. Let the record reflect no
2 affirmative response. All right, sir, your name and juror
3 number?

4 **MR. STROUD:** 168.

5 **THE COURT:** Okay.

6 **MR. STROUD:** Jason Cox and -- Jason Cox and Fuller. I
7 don't know unless I actually see them.

8 **THE COURT:** Okay.

9 **MR. STROUD:** They are very common names where I used to
10 live.

11 **THE COURT:** I understand. Okay. Well, let me ask you
12 this, let's say that they get on the stand and you know
13 them, they're just an acquaintance or you've seen them, or
14 you've met them before, do you think that you could still be
15 a fair and impartial juror in the trial of this case and
16 enter a verdict in accordance with the law as I give it to
17 you?

18 **MR. STROUD:** Definitely.

19 **THE COURT:** All right. Good. Thank you very much. I
20 appreciate that, sir. Okay.

21 Ladies and gentlemen, is there anyone among you who
22 served on the Grand Jury during which term these indictments
23 were handed down?

24 (No response)

25 **THE COURT:** Ladies and gentlemen, is there anyone among

1 you who is -- who has a close relative who is employed by
2 law enforcement?

3 (No response)

4 **THE COURT:** All right. Let the record reflect no
5 affirmative response.

6 Ladies and gentlemen, is there anyone among you who is
7 a member of or a contributor to an organization which
8 advocates for victims' rights or for the prosecution of
9 criminal offenses? And as an example I will give you MADD,
10 mothers against drunk driving, which advocates for the
11 prosecution of driving under the influence law, or SADD,
12 which is students against drunk driving, or any like
13 organization which advocates?

14 (No response)

15 **THE COURT:** All right. Let the record reflect no
16 affirmative response.

17 Gentlemen, any additional questions in voir dire?

18 **MR. WILKINS:** None from the State, Your Honor.

19 **MR. ROBINSON:** I have one, Your Honor, if I could
20 approach?

21 **THE COURT:** Yes, sir. Come on up.

22 (Whereupon a bench conference was held off the record
23 in the presence of the jurors, but out of their hearing)

24 **THE COURT:** Ladies and gentlemen, is there anyone among
25 you who has either been personally or has a close relative

1 who has been the victim of a violent crime? Okay. What I'd
2 ask you to do is all of you who raised your hand, just stand
3 up and then in order state your name and juror number, and
4 then tell me what your experience has been.

5 MS. DAVIS: 163, Kashenia Davis.

6 THE COURT: Yes, ma'am.

7 MS. DAVIS: My cousin was killed in a violent crime.

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

9 MS. DAVIS: I'd say about three or four years.

10 THE COURT: Do you think that given that fact that you
11 could still be fair and impartial in this case?

12 MS. DAVIS: Yes.

13 THE COURT: Okay. Thank you for telling me. I do
14 appreciate that.

15 Sir? And so that you know, the question I'm going to
16 ask each of you, and I'm going to pose it for each and every
17 one of you is given the experience that you have do you
18 still think that you could be fair and impartial and render
19 a verdict in accordance with the law as I'll give it to you
20 at the end of the case. So I'll condense that after you
21 tell me what -- tell me what you have to say, okay? Yes,
22 sir.

23 MR. GRAY: I'm juror number 48, Demico Gray.

24 THE COURT: Yes, sir.

25 MR. GRAY: My cousin was shot and killed in a violent

1 crime.

2 THE COURT: Okay. Who was, sir?

3 MR. GRAY: My cousin.

4 THE COURT: Okay. Given that do you think you could
5 still be fair?

6 MR. GRAY: Yes.

7 THE COURT: Okay. Thanks for telling me. I appreciate
8 it, sir. Yes, ma'am.

9 MS. DUCKETT: I'm juror number 39, Rebecca Duckett.
10 I'm the survivor of a violent crime.

11 THE COURT: Okay. Do you think you could be fair?

12 MS. DUCKETT: I thought I could til I came in, but I'm
13 not sure I can now.

14 THE COURT: Okay. Thanks for telling me. I appreciate
15 that. Just hold tight, okay? And if you're called, perhaps
16 the attorneys will make a strike for cause, okay? Yes,
17 ma'am.

18 MS. HORNBECK: Juror number 62, Trishka Hornbeck. I
19 had a cousin killed in a violent crime. It's been almost
20 twenty years now. And a friend a couple of years ago was
21 held at gunpoint in a bank robbery.

22 THE COURT: Okay. Do you think you could be fair?

23 MS. HORNBECK: I would try.

24 THE COURT: Okay.

25 MS. HORNBECK: I can't say any better, but I'd

1 certainly try.

2 THE COURT: Okay. Good. Thank you very much. I
3 appreciate you telling me. Yes, sir.

4 MR. STROUD: Heath Stroud. I'm juror 168.

5 THE COURT: Yes, sir.

6 MR. STROUD: A cousin was beaten and robbed.

7 THE COURT: Okay. Do you think you could be fair, sir?

8 MR. STROUD: I believe so.

9 THE COURT: Okay. Good enough. Thank you, sir. I do
10 appreciate it.

11 All right, gentlemen, any additional questions in voir
12 dire?

13 MR. ROBINSON: None from the Defense, Your Honor.

14 MR. WILKINS: No.

15 THE COURT: Okay. Good enough. All right, ladies and
16 gentlemen, we're going to proceed to the selection of a jury
17 in this case.

18 And what will happen is the Clerk of Court will call
19 your name. And when she calls your name -- I know you saw
20 the movie, and I'm going to go over it real quickly to
21 orient you to time and space so you don't forget.

22 But when she calls your name, if you'll take everything
23 you've got with you, pocketbook, backpack, whatever it may
24 be and come forward and just stand right in front of the
25 lectern and face the clock, okay? And the attorneys will

1 make their strikes, their peremptory challenges.

2 In this case the Defense is entitled to ten strikes.
3 The State is entitled to five. And what will happen is they
4 will in turn make their strikes.

5 So if you hear from both sides, please swear the juror
6 or please seat the juror, then you'll have been selected for
7 this trial, and you can have a seat in the jury box. If you
8 hear from -- if you hear from either side, please excuse the
9 juror from the trial of this case or please strike the
10 juror, then you can have a seat back down in the panel and
11 you will have been stricken from the trial of this case.

12 Please don't take any offense from -- about -- or from
13 whether you are stricken or whether you are placed in the
14 jury box. The attorneys have broad discretion in exercising
15 strikes. And you will probably never know why you have been
16 stricken.

17 I can tell you, I've presided over a lot of these cases
18 and most times I don't know, but it's their right. So don't
19 get too worked up about it. And don't try to get in the
20 head of a lawyer or you'll be as crazy as we are, okay? All
21 right. Ms. Troop.

22 **MADAME CLERK:** Juror number 90, Jason Meadors.

23 (Whereupon, Jason Meadors, a white male came forward)

24 **MADAME CLERK:** What says the State?

25 **MR. WILKINS:** Please present the juror.

1 MADAME CLERK: What says the Defendant?

2 MR. ROBINSON: Please seat the juror.

3 MADAME CLERK: Mr. Meadors, please have a seat in the
4 jury box. Juror 52, Cynthia Griner.

5 (Whereupon Cynthia Griner, a white female came forward)

6 MADAME CLERK: What says the State?

7 MR. WILKINS: Please present the juror.

8 MADAME CLERK: What says the Defendant?

9 MR. ROBINSON: Please seat the juror.

10 MADAME CLERK: Please have a seat in the jury box.
11 Juror 22, Catherine Bullock.

12 (Whereupon, Catherine Bullock, a white female came
13 forward)

14 MADAME CLERK: What says the State?

15 MR. WILKINS: Please present the juror.

16 MADAME CLERK: What says the Defendant?

17 MR. ROBINSON: Please seat the juror.

18 MADAME CLERK: Ma'am, please have a seat in the jury
19 box. Juror 61, Sue Hood.

20 (Whereupon, Sue Hood, a white female came forward)

21 MADAME CLERK: What says the State?

22 MR. WILKINS: Please excuse the juror.

23 MADAME CLERK: All right, Ms. Hood, you may be seated.

24 You have been excused from this case. Juror 28, Kathy
25 Campbell.

1 (Whereupon, Kathy Campbell, a white female came
2 forward)

3 MADAME CLERK: What says the State?

4 MR. WILKINS: Please present the juror.

5 MADAME CLERK: What says the Defendant?

6 MR. ROBINSON: Please excuse this juror.

7 MADAME CLERK: All right, Ms. Campbell, you may be
8 seated. You have been excused from this case. Juror 67,
9 Russell Jenerette.

10 (Whereupon, Russell Jenerette, a white male came
11 forward)

12 MADAME CLERK: What says the State?

13 MR. WILKINS: Please excuse the juror.

14 MADAME CLERK: All right, Mr. Jenerette, you may be
15 seated. You have been excused from this case. Juror 165,
16 Sandra Hayes.

17 (Whereupon, Sandra Hayes, a black female came forward)

18 MADAME CLERK: What says the State?

19 MR. WILKINS: Please present the juror.

20 MADAME CLERK: What says the Defendant?

21 MR. ROBINSON: Please seat this juror.

22 MADAME CLERK: Ma'am, please have a seat in the jury
23 box. Juror 102, Anne Ouimette.

24 (Whereupon, Anne Ouimette, a white female came forward)

25 MADAME CLERK: What says the State?

1 MR. WILKINS: Please present the juror.

2 MADAME CLERK: What says the Defendant?

3 MR. ROBINSON: Please excuse this juror.

4 MADAME CLERK: All right, Ms. Ouimette, you may be
5 seated. You have been excused from this case. Juror 163,
6 Kashenia Davis.

7 (Whereupon, Kashenia Davis, a black female came
8 forward)

9 MADAME CLERK: What says the State?

10 MR. WILKINS: Please present this juror.

11 MADAME CLERK: What says the Defendant?

12 MR. ROBINSON: Please excuse this juror. This is a
13 strike for cause, Your Honor.

14 THE COURT: Okay. I'm going to deny your strike for
15 cause.

16 MADAME CLERK: You may be seated, ma'am. You have been
17 excused from this case. Juror 27, Teresa Caldwell.

18 (Whereupon, Teresa Caldwell, a white female came
19 forward)

20 MADAME CLERK: What says the State?

21 MR. WILKINS: Please present the juror.

22 MADAME CLERK: What says the Defendant?

23 MR. ROBINSON: Please excuse this juror.

24 MADAME CLERK: Thank you, ma'am. You may be seated.
25 You have been excused. Juror 105, Christine Parker.

1 (Whereupon, Christine Parker, a white female came
2 forward)

3 MADAME CLERK: What says the State?

4 MR. WILKINS: Please present the juror.

5 MADAME CLERK: What says the Defendant?

6 MR. ROBINSON: Please seat this juror.

7 MADAME CLERK: Ms. Parker, please have a seat in the
8 jury box. Juror 37, Cary Dover.

9 (Whereupon, Cary Dover, a white male came forward)

10 MADAME CLERK: What says the State?

11 MR. WILKINS: Please present the juror.

12 MADAME CLERK: What says the Defendant?

13 MR. ROBINSON: Please excuse this juror.

14 MADAME CLERK: All right, Mr. Dover, you may be seated.
15 You have been excused from this case. Juror 84, Trent Lowe.

16 (Whereupon, Trent Lowe, a white male came forward)

17 MADAME CLERK: What says the State?

18 MR. WILKINS: Please present this juror.

19 MADAME CLERK: What says the Defendant?

20 MR. ROBINSON: Please seat this juror.

21 MADAME CLERK: Sir, please have a seat in the jury box.
22 Juror 65, Shafiqul Islam.

23 (Whereupon, Shafiqul Islam, other male came forward)

24 MADAME CLERK: What says the State?

25 MR. WILKINS: Please present the juror.

1 **MADAME CLERK:** What says the Defendant?

2 **MR. ROBINSON:** Please seat this juror.

3 **MADAME CLERK:** Sir, please have a seat in the jury box.

4 Juror 46, Erin Gordon.

5 (Whereupon, Erin Gordon, a white female came forward)

6 **MADAME CLERK:** What says the State?

7 **MR. WILKINS:** Please present the juror.

8 **MADAME CLERK:** What says the Defendant?

9 **MR. ROBINSON:** Please excuse this juror.

10 **MADAME CLERK:** All right, Ms. Gordon, you may be

11 seated. You have been excused from this case. Juror 39,

12 Rebecca Duckett.

13 (Whereupon, Rebecca Duckett, a white female came

14 forward)

15 **MADAME CLERK:** What says the State?

16 **MR. WILKINS:** Please present the juror.

17 **MADAME CLERK:** What says the Defendant?

18 **MR. ROBINSON:** Please excuse this juror. I'd exercise

19 one of my strikes for cause, Your Honor.

20 **THE COURT:** Yes, sir. And I'll grant that. We'll

21 strike Ms. Duckett for cause.

22 **MADAME CLERK:** You may be seated, ma'am. You've been

23 excused from this case. Juror 138, Michele Suarez.

24 (Whereupon, Michele Suarez, a white female came

25 forward)

1 MADAME CLERK: What says the State?

2 MR. WILKINS: Please present the juror.

3 MADAME CLERK: What says the Defendant?

4 MR. ROBINSON: Please present this juror.

5 MADAME CLERK: Ma'am, please be seated in the jury box.

6 Juror 130, Matthew Smith.

7 (Whereupon, Matthew Smith, a white male came forward)

8 MADAME CLERK: What says the State?

9 MR. WILKINS: Please excuse the juror.

10 MADAME CLERK: All right, Mr. Smith, you may be seated.

11 You have been excused from this case. Juror 69, Rebecca

12 Johnson.

13 (Whereupon, Rebecca Johnson, a white female came
14 forward)

15 MADAME CLERK: What says the State?

16 MR. WILKINS: Please present the juror.

17 MADAME CLERK: What says the Defendant?

18 MR. ROBINSON: Please excuse this juror.

19 MADAME CLERK: All right, ma'am, you may be seated.

20 You have been excused from this case. Juror 60, Marcella
21 Hollis.

22 (Whereupon, Marcella Hollis, a black female came
23 forward)

24 MADAME CLERK: What says the State?

25 MR. WILKINS: Please excuse the juror.

1 **MADAME CLERK:** All right, Ms. Hollis, you may be
2 excused. Be seated, please. Juror 106, Beverly Peeples.

3 (Whereupon, Beverly Peeples, a white female came
4 forward)

5 **MADAME CLERK:** What says the State?

6 **MR. WILKINS:** Please present the juror.

7 **MADAME CLERK:** What says the Defendant?

8 **MR. ROBINSON:** Please excuse this juror.

9 **MADAME CLERK:** All right, Ms. Peeples, you may be
10 seated. You have been excused from this case. Juror 9,
11 Michael Bacon.

12 (Whereupon, Michael Bacon, a white male came forward)

13 **MADAME CLERK:** What says the State?

14 **MR. WILKINS:** Please present the juror.

15 **MR. ROBINSON:** Please seat the juror.

16 **MADAME CLERK:** Thank you. Please have a seat in the
17 jury box. Juror 114, Charles Rogers.

18 (Whereupon, Charles Rogers, a white male came forward)

19 **MADAME CLERK:** What says the State?

20 **MR. WILKINS:** Please excuse the juror.

21 **MADAME CLERK:** All right, Mr. Rogers, you may be
22 excused from this case.

23 **THE COURT:** I believe that's five for the State.

24 **MR. WILKINS:** Yes, Your Honor.

25 **MADAME CLERK:** Juror 62, Trishka Hornbeck.

1 (Whereupon, Trishka Hornbeck, a white female came
2 forward)

3 MADAME CLERK: What says the State?

4 MR. WILKINS: Please seat the juror.

5 MADAME CLERK: What says the Defendant?

6 MR. ROBINSON: Please excuse this juror. And I would
7 exercise one of my strikes for cause, Your Honor.

8 THE COURT: Okay. I will grant that.

9 MR. ROBINSON: Thank you, Judge.

10 THE COURT: Yes, sir.

11 MADAME CLERK: You may be seated, ma'am. Juror 145,
12 Linda Teasdale.

13 (Whereupon, Linda Teasdale, a white female came
14 forward)

15 MADAME CLERK: What says the State?

16 MR. WILKINS: Please present the juror.

17 MADAME CLERK: What says the Defendant?

18 MR. ROBINSON: Please seat the juror.

19 MADAME CLERK: Ms. Teasdale, please have a seat in the
20 jury box. Juror 168, Heath Stroud.

21 (Whereupon, Heath Stroud, a white male came forward)

22 MADAME CLERK: What says the State?

23 MR. WILKINS: Please present the juror.

24 MADAME CLERK: What says the Defendant?

25 MR. ROBINSON: Please excuse this juror from the trial

1 of this case.

2 MADAME CLERK: All right, Mr. Stroud, please be seated.

3 You have been excused from this case. Juror 42, Samuel

4 Fullard.

5 (Whereupon, Samuel Fullard, a black male came forward)

6 MADAME CLERK: What says the State?

7 MR. WILKINS: Please present the juror.

8 MADAME CLERK: What says the Defendant?

9 MR. ROBINSON: Please seat the juror.

10 MADAME CLERK: Sir, please have a seat in the jury box.

11 Juror 11, Sylvia Bannister.

12 (Whereupon, Sylvia Bannister, a white female came

13 forward)

14 MADAME CLERK: What says the State?

15 MR. WILKINS: Please present the juror.

16 MADAME CLERK: What says the Defendant?

17 MR. ROBINSON: Please seat the juror.

18 MADAME CLERK: Ma'am, please have a seat in the jury

19 box.

20 THE COURT: All right, gentlemen, we'll pick two

21 alternates. Strikes are one and two.

22 MADAME CLERK: Juror 72, James Klus.

23 (Whereupon, James Klus, a white male came forward)

24 MADAME CLERK: What says the State?

25 MR. WILKINS: Please excuse the juror.

1 **MADAME CLERK:** All right, Mr. Klus, please be seated.
2 You have been excused from this case. Juror 164, Kimberly
3 Foerster.

4 (Whereupon, Kimberly Foerster, a white female came
5 forward)

6 **MADAME CLERK:** What says the State?

7 **MR. WILKINS:** Please present the juror.

8 **MADAME CLERK:** What says the Defendant?

9 **MR. ROBINSON:** Please seat the juror.

10 **MADAME CLERK:** Ma'am, please have a seat in the jury
11 box. Juror 109, Joshua Plemmons.

12 (Whereupon, Joshua Plemmons, other male came forward)

13 **MADAME CLERK:** What says the State?

14 **MR. WILKINS:** Please present the juror.

15 **MADAME CLERK:** What says the Defendant?

16 **MR. ROBINSON:** Please excuse this juror.

17 **MADAME CLERK:** All right, Mr. Plemmons, you may be
18 seated. You have been excused from this case. Juror 48,
19 Demico Gray.

20 (Whereupon, Demico Gray, a black male came forward)

21 **MADAME CLERK:** What says the State?

22 **MR. WILKINS:** Please present the juror.

23 **MADAME CLERK:** What says the Defendant?

24 **MR. ROBINSON:** Please excuse the juror.

25 **MADAME CLERK:** Mr. Gray, you may be seated. You have

1 been excused from this case. Juror 26, Judy Cagle.

2 (Whereupon, Judy Cagle, a white female came forward)

3 **MADAME CLERK:** What says the State?

4 **MR. WILKINS:** Please present the juror.

5 **MADAME CLERK:** What says the Defendant?

6 **MR. ROBINSON:** Please seat the juror.

7 **MADAME CLERK:** Ms. Cagle, please have a seat in the
8 jury box.

9 **THE COURT:** All right, gentlemen, any issues in the
10 matters of law to take up with respect to the qualification
11 and/or selection of this jury?

12 **MR. WILKINS:** None from the State, Your Honor.

13 **MR. ROBINSON:** None from the Defense, Your Honor.

14 **THE COURT:** Okay. Thank you. All right, ladies and
15 gentlemen, either congratulations or condolences are in
16 order depending on your predisposition.

17 But if you would, please, go back downstairs and check
18 in with Judy. I suspect that you probably will not be
19 called back to court until perhaps Wednesday. I don't know
20 that, but this is the only court going on. And you know
21 that I read the names of over twenty people, which means
22 that we'll be here for just a little bit. That is, we're
23 not finishing today, I don't suspect.

24 So go back, check in with Judy and you will
25 consistently call in after 1800 or six each evening, and she

1 will give you some direction as to when you can expect to be
2 back in court. So thanks. Appreciate it. And look forward
3 to seeing y'all again this week, perhaps.

4 (Whereupon remaining jury members exited courtroom at
5 12:12 pm)

6 **THE COURT:** All right, ladies and gentlemen, we're
7 going to go ahead and get started. And I'm going to give
8 you a very brief opening charge just to kind of give you
9 some idea of what your duty and what your role is here as
10 jurors in the case and also give you an idea of the
11 procedure and the process that we'll go over so as we
12 advance through this case you'll kind of have an idea of
13 what to expect next.

14 Let me restate one thing for you that I've already told
15 you today. And that is in this instance the Defendant is
16 presumed innocent until proven guilty beyond a reasonable
17 doubt. The State has the burden of proving each and every
18 element of the offenses beyond a reasonable doubt.

19 Now you will be charged with determining whether, in
20 fact, the State has met that burden of proof. And you're
21 going to determine that in your role as the judges of the
22 facts, the finders of the facts. You have sole and
23 exclusive responsibility and authority for determining what
24 the facts are in this case. And you'll determine what those
25 facts are by analyzing, by reviewing the evidence that is

1 presented in trial.

2 Now in this case you will see evidence presented. And
3 evidence can take very -- can take several different forms.
4 It can be a witness on the stand who raises his or her right
5 hand and testifies. It could be documents which are
6 presented into the record as exhibits. It could be audio
7 tapes. It could be video tapes. It could be actual,
8 tangible objects that are introduced into evidence.

9 But you'll receive all of that evidence in the trial.
10 And you'll take all of that evidence, and you'll analyze it
11 and review it. You'll decide what's believable, what's not
12 believable. You'll decide what's important and what's not
13 important. And you'll determine what the facts are in the
14 case.

15 Then what you will do is you will apply the law to
16 those facts that you have found. You will apply the law
17 that I give you 'cause at the end of the case I will charge
18 you on the law. And I'll tell you what the law is as it
19 relates or the law that's relevant to the evidence that was
20 presented in this case.

21 Now, I am the judge of the law. And understand that I
22 do not have any authority to tell you what the facts are. I
23 am not allowed under the law to even have an opinion as to
24 what the facts are.

25 So if you hear me during any point in this trial say

1 something to you which suggests to you that I have an
2 opinion about the facts or that I'm leaning one way or the
3 other, then just completely disregard it because I truly
4 have no bias, and I truly have no opinion about the facts.
5 I am the umpire, the referee. I'm calling balls and
6 strikes. That's all I'm doing.

7 You will see during the course of this trial that there
8 will be objections that are made and there are motions that
9 are made. And I have to rule on those objections. And I'm
10 going to rule necessarily for one side and against the
11 other. It's either going to be a sustained or an overrule.

12 And just because I rule in favor of one side and
13 against the other, don't think that that means I have a bias
14 'cause I truly do not. It is just a clinical decision based
15 on what I believe the law to be.

16 Also know that as we go through the course of this
17 trial, I don't know anymore about this case right now than
18 y'all do. I honestly don't. I read those indictments for
19 you. I read the salient portions of them for the first
20 time. And I haven't seen any of these witnesses testify. I
21 haven't seen any of the exhibits. And I haven't seen any of
22 the evidence that you're going to see.

23 So we're going to see it for the first time together.
24 So don't think that, again, that I have a bias or leaning
25 either way. All I'm concerned with is that each side is

1 given a fair trial. And that's my only concern.

2 And in doing so, also give y'all a fair trial because
3 y'all are going to invest a little bit of time into this
4 case. I don't know exactly how long. Maybe a couple of
5 days. And it's important for me to make sure it's fair not
6 only to the parties, but it's fair to you as well.

7 Now, the way we'll start in this case is we'll start
8 with brief opening arguments. Now, that is the opportunity
9 for the attorneys to stand up and introduce themselves and
10 introduce their theory of the case.

11 And know when they get up and they give you an argument
12 that that argument is not to be considered evidence.
13 Attorneys' arguments and attorneys' questions are not
14 evidence. That's simply advocacy. They are arguing to you
15 their respective positions and advocating for their
16 respective clients. So don't consider that evidence.

17 The State will argue, and that is make a brief opening
18 argument. And then the Defense will have the opportunity to
19 do the same. And after you've heard opening statements,
20 then we'll go into the introduction of evidence.

21 And then the State will have the opportunity to put
22 into the record its evidence, that is they usually begin
23 that by calling a witness to the stand and beginning to take
24 testimony. The State goes first because, as I've already
25 told you, they have the burden of proof. Therefore, they go

1 first.

2 Then after the State has asked questions of a witness
3 the Defense will have the opportunity to ask questions in
4 cross examination. Then once a witness has completed his or
5 her testimony, then we'll go to the next witness.

6 And once the State has put all of the witnesses on the
7 stand and put into the record all the evidence that it
8 intends to submit into the record, then the State will have,
9 or excuse me, the Defense will have the opportunity then to
10 put evidence in the record should he choose to.

11 If the Defense elects to put evidence into the record,
12 it'll be the same thing, that is, witnesses on the stand,
13 direct examination, cross examination. Then when -- the
14 Defense, when they have put into the record anything that
15 they choose to put into the record, then they will rest.

16 Under certain circumstances after the Defense rests the
17 State has the opportunity to put in reply testimony, if they
18 want to. It doesn't happen very often, but they do have the
19 opportunity to do that from time to time.

20 Then after all of the evidence has been put into the
21 record and you've heard from all the witnesses, then the
22 State will have, or excuse me, the attorneys will each have
23 the opportunity to make closing arguments to you. And
24 again, that's not evidence. What that is is the argument
25 from counsel advocating their position commenting on all of

1 the evidence that's already been put into the record and
2 advocating for their respective side.

3 Then after you've heard argument from counsel, then I
4 will give you a closing charge on the law. And the reason I
5 wait til the very end is because, just as I told you, I
6 haven't seen the evidence yet either. So I don't know what
7 law is applicable right now. And I won't know until I've
8 heard everything.

9 So after they argue I'll give you a closing charge on
10 the law. And then after I give you a closing charge on the
11 law I'll send you back to your jury room and you can begin
12 your deliberations.

13 Now, don't begin your deliberations until I tell you
14 to. And that will be all the way at the end of the trial.
15 And you'll get that message very, very clearly. And I'm
16 going to tell you every time you walk out of this courtroom.
17 Whether it's to take a break, or whether it's to go to
18 lunch, or whether it's to go home for the evening, I'm going
19 to tell you please don't discuss the case.

20 Don't discuss the case until I tell you to at the very
21 end of the case because it's not appropriate for you to
22 begin any deliberations or any discussions of any sort until
23 you've heard all of the case. In your own individual
24 experience and your common sense you know that it is not
25 appropriate to consider any matter, any important matter

1 until you have all of the information. And it's not
2 appropriate for you to hear half of the case, a quarter of
3 the case or any percentage of the case and begin your
4 deliberations.

5 And you need to wait until you've heard everything and
6 then you've received the charge on the law and then begin
7 your deliberations. So don't discuss the case, don't
8 discuss the facts, don't discuss it at all until I tell you
9 to.

10 Also, when you go home at night or when you go to
11 lunch, don't get on your smart phone or your computer and
12 start looking up, you know, articles in the media to see if
13 you can find something out about this case. I don't know
14 that you could, frankly, but if you go outside of this
15 courtroom and start seeking information, then you have
16 violated your oath and you will taint your deliberations
17 because the only thing that's appropriate is that which is
18 submitted pursuant to the rules and pursuant to the law in
19 this courtroom. So don't go out and seek other information.

20 And then, also, when you go home don't talk to anybody
21 about it. What's going to happen naturally is you're going
22 to get home and your spouse or your brother, your sister,
23 your kids, whoever, they're going to come to you and say,
24 hey, what happened? What are you listening to? Tell me
25 about it.

1 And you, under your oath, have to say I can't talk to
2 you about it now. I can't talk to you about it now. Now it
3 seems like it'd be innocent enough just to say, well, this
4 is the case, this is what happened, this is what I saw today
5 and this is what the witnesses said.

6 But the problem in you doing that is you understand
7 that when you begin to explain something you start to make a
8 qualitative determination as to what you heard, and what's
9 important and what message was conveyed to you by and
10 through that testimony. That's deliberation. Don't do it.

11 Just say I can't talk to you about it now. In a couple
12 of days we'll sit down, and I'll tell you everything you
13 want to know, and you can ask me questions and we'll talk
14 about it. But just don't do it yet, okay?

15 Now, we're going to take a break for lunch. And I will
16 -- when you come back what I'm going to do is I'm going to
17 ask you to take another oath to swear you in as jurors in
18 this specific trial. And what you'll swear to do in that
19 instance is to truly and verily try the case in accordance
20 with the law and the evidence and render a verdict. And
21 then you'll hear opening arguments from counsel.

22 Now, we're going to take a break for lunch. And I'm
23 going to take a longer break for lunch than I usually would
24 because I need to hear some arguments from counsel. I need
25 to take up some legal matters. And I don't want y'all to

1 just be sitting around waiting for us to conclude.

2 So what I'm going to do -- and I'll -- how many motions
3 do we have, gentlemen? How many motions do we have?

4 MR. ROBINSON: I think it's seven motions.

5 THE COURT: Seven?

6 MR. ROBINSON: Yes, sir.

7 THE COURT: Okay. All right. Then what we're going to
8 do is I'm going to take two hours for lunch, okay? And
9 we're probably going to be in here for an hour of that time,
10 but y'all won't be burdened with that, okay?

11 So please take -- come back at twenty-five minutes
12 after two. Excuse me, yeah, twenty-five minutes after two,
13 okay. Let's just make it 2:30.

14 And please be timely. Come back on time, not out of
15 consideration for me, but out of consideration for each
16 other because if one of you isn't here, then we have -- then
17 all thirteen of the rest of you have to wait for that one
18 person to make it back. So I'll see y'all back here at
19 2:30. I hope y'all have a great lunch.

20 (Whereupon the jury exited the courtroom at 12:24 pm)

21 THE COURT: Okay. All right. Mr. Robinson, you have
22 motions, sir?

23 MR. ROBINSON: May it please the Court.

24 (Whereupon witnesses were entering the courtroom)

25 MR. ROBINSON: Obviously -- and this is the perfect

1 place to do it. We'd make a -- we'd move to sequester any
2 witnesses in this case. That's the first thing, obviously.
3 I think that's pretty much -- to have a courtroom full of
4 people listening to each other and ---

5 THE COURT: I understand.

6 MR. ROBINSON: I think it's in the best interest ---

7 THE COURT: Okay. All right. Mr. Wilkins, any
8 objection to that, sir?

9 MR. WILKINS: I'm sorry. I have Investigator Campbell
10 and Weiner who were the -- both were investigators in the
11 case and, of course, our victims who were the clerks of the
12 robbery, they're allowed to stay in here if they want to.

13 THE COURT: Yes, sir. Okay. I'm going to grant the
14 motion for sequestration. The investigators are allowed to
15 stay in here. And the victim, as a matter of right under
16 the statute, has a right to stay in the courtroom as well.
17 So with the exception of those three persons the order of
18 sequestration is granted.

19 MR. WILKINS: Your Honor, I see some of Mr. Butts'
20 family and an alibi witness that is in the courtroom.

21 MR. ROBINSON: I have no issue with that.

22 THE COURT: Sure. It'll apply equally.

23 (Pause)

24 THE COURT: Okay. Mr. Robinson.

25 MR. ROBINSON: May it please the Court.

1 **THE COURT:** Yes, sir.

2 **MR. ROBINSON:** These are -- some of these -- these are
3 not the seven that I'm going to do in a second. But, Your
4 Honor, one thing that I am doing in criminal trials now in
5 terms of a motion in limine at the outset as far as the
6 detectives going into any ancillary or things that aren't
7 relevant to this case. My understanding is that Mr. Butts
8 has other charges not related to this case.

9 **THE COURT:** Yes, sir.

10 **MR. ROBINSON:** And I'd ask that the officers be
11 admonished and limited as far as any testimony that would go
12 into something that's not relevant to this case under rule
13 401, 402 and 403.

14 **THE COURT:** Okay. Mr. Wilkins, do you intend to elicit
15 any testimony regarding those matters?

16 **MR. WILKINS:** No, Your Honor.

17 **THE COURT:** Okay. If you would just have a discussion
18 with your clients before they get up here.

19 **MR. WILKINS:** We previously discussed it with them, and
20 I'll certainly remind them before they testify.

21 **THE COURT:** Okay. Good enough. Thank you. So in that
22 regard I'm granting your motion.

23 **MR. WILKINS:** Your Honor, in relation to that issue one
24 of our witnesses, Reagan McCroskey, will discuss --
25 proffering her evidence, her testimony. She will say that

1 she dropped the Defendant off at the Citgo on October 18th
2 with her knowledge that he was going to do a drug deal. And
3 she will talk about their marijuana use as well.

4 We think that it completes the entire story. It tells
5 why she was dropping him off at a certain location, which is
6 very -- which is, you know, twenty yards from where the
7 robbery took place at the exact time that it took place. So
8 she would testify to that as well. And that's -- we believe
9 that's related, but I wanted to bring it to the Court's
10 attention.

11 THE COURT: Okay. All right.

12 MR. ROBINSON: Your Honor, I'm just going to very
13 strongly object to that, obviously.

14 THE COURT: Let's take -- I tell you what, I'm not
15 going to rule in limine. When she is -- when she takes the
16 stand and she begins her testimony, let's take that back up
17 again. And let me consider it in context of all of the ---

18 MR. ROBINSON: Yes, sir.

19 THE COURT: --- evidence that's come out in the case,
20 okay? Right now my inclination is -- frankly, my knee-jerk
21 reaction to that is to say no, but it may be that through
22 the course of the trial that I change my mind in that
23 regard. And I'm just not prepared to make it yet, okay?
24 Mr. Robinson.

25 MR. ROBINSON: And, Your Honor, since the -- since the

1 prosecution is potentially looking at doing that in this
2 case, I think it -- I think that at this time it's
3 appropriate to make a motion to sever because he's talking
4 -- what Mr. Wilkins is saying, it's about one of the
5 robberies that occurred on October 18th.

6 And they're charging my client, as far as the trial
7 goes, with three different robberies on three different
8 dates. And I think they've got to show some sort of
9 similarity, course of conduct and so forth, things like
10 that.

11 And I think at this point, I think with this statement
12 regarding what she'd be testifying to, and although the
13 Court has not made a ruling on it, I think that goes to
14 whether or not the cases should be severed at this point.
15 And at this point, due to that statement, we'd make a motion
16 to sever these charges and let them go forward on just one
17 of these charges, which is, obviously, October 18th.

18 THE COURT: Okay. All right. You wish to be heard on
19 that?

20 MR. WILKINS: I would, Your Honor.

21 THE COURT: Okay. I'd be happy to hear it.

22 MR. WILKINS: Unless you're inclined to rule in my
23 favor, then I'll be quiet.

24 THE COURT: Well, let's hear what you got to say, you
25 might talk me out of it.

1 **MR. WILKINS:** Your Honor, we've looked at the law in
2 this case. And I think the standard is, one, it's certainly
3 up to Your Honor's discretion. But we need to show that
4 they're of the same general nature involving connected
5 transactions closely related in time, place and character.
6 So that's sort of the general landscape we're following
7 under.

8 In this particular case we have three robberies of the
9 exact same store. It's a Citgo located on Woodruff Road.
10 One robbery on October 18th of 2009, the next robbery on
11 October 30th of 2009 and a third robbery on November 5th of
12 2009. We're alleging it was the Defendant who conducted all
13 of those robberies.

14 Numerous witnesses that there's -- the victim in the
15 first and third robbery, October 18th, November 5th are the
16 exact same person. The October 30th robbery is another
17 clerk that was working at the Citgo. All of the robberies
18 have all of the same witnesses.

19 Reagan McCroskey will testify that she dropped the
20 Defendant off on October 18th. She will also identify his
21 voice in each of the three robberies as well as his
22 mannerisms. She will identify the type of clothes that he
23 was wearing. She will identify a gun that he owned that he
24 used in all three robberies. In the video tapes you can see
25 it's the exact same gun used. It's a black gun with a

1 silver stripe down the side of it.

2 And we also have her mother who will testify that she
3 gave clothes to law enforcement that is similar to the --
4 similarly used in all three robberies. We have blue jeans
5 in the last robbery that was taken from Kay McCroskey's
6 house 'cause he lived there on occasion. She washed them.
7 And we received those.

8 And we can identify that they were the Defendant's that
9 were used in the last robbery. We have a video tape of
10 November 3rd from the Citgo where the Defendant is going in
11 there and just buying a cigar. But he's wearing, we're
12 alleging, the same blue jeans that was used in the November
13 5th robbery. And you can see that they're very similar.

14 And, finally, we have a school resource officer,
15 investigator Tench, who will testify that he recognizes the
16 Defendant's voice in all three robberies as well as his
17 mannerisms and everything.

18 So if there's ever a case to try together, this is it.
19 They're so interconnected. Trying each one would be unfair
20 to the prosecution. It certainly wouldn't be a good use of
21 the Court's time in that I can try three armed robberies
22 with nine witnesses. And that's what I intend to call
23 today, nine witnesses, Your Honor, depending on, obviously,
24 how Your Honor rules. So they're certainly closely related
25 in time, place and character.

1 **THE COURT:** Okay. Good enough. I'm going to
2 respectfully deny that motion, Mr. Robinson. I think it is
3 a matter of discretion. And I don't think that there's
4 significant prejudice to the Defendant for trying all of
5 these cases together that would cause the Court to require
6 the State to try them independent of each other. I think
7 they are significantly related to one another that it's
8 appropriate to try them together.

9 And I also say that it seems to me that the motion was
10 made in anticipation of certain evidence coming in. And I
11 still haven't decided whether that evidence is coming in.
12 And like I said, my general predisposition is under rule 403
13 that just might be a little too prejudicial to come in. But
14 I don't know, I'll have to see it in context, okay? Next
15 motion.

16 **MR. ROBINSON:** The next motion, Your Honor, is the
17 motion to suppress the statement of Sarah Reagan McCroskey.
18 She was the Defendant's, I believe, fiancé. Your Honor, you
19 have the motion in front of the Court.

20 Your Honor, at the outset of this case -- this is a
21 2009 case. And Mr. Wilkins a second ago spoke about
22 identification and so forth, things like that. Well, this
23 particular witness, Sarah Reagan McCroskey, was actually
24 kind of on our side for a while.

25 And the motion is to this, Your Honor. We believe that

1 due to the actions of the State it made her testimony both
2 involuntary -- and this is the reason why, why it should be
3 suppressed. On a certain day, August 9th of 2011 this
4 witness -- and it was -- I'm pretty sure it was known to the
5 State that she was a very important witness for us in this
6 matter.

7 And the reason I know that is because Officer Wayne
8 Campbell back in 2009 tried to get, and we've got this
9 statement as well, Your Honor, tried to get the mother of
10 Ms. McCroskey to get her daughter to testify or get a
11 statement that would help the State. And she wouldn't do
12 it.

13 She gave a statement. Then she came back and gave in
14 her own writing a statement saying she had been threatened
15 with intimidation, with possibly her daughter's kids being
16 taken away or her being put in jail, kids being put in DSS
17 custody. And that's where it starts.

18 Then in August 9th of 2011 four persons went to the
19 home of Ms. McCroskey. Sarah McCroskey, a very important
20 witness for us, potential alibi witness for us, went there
21 with a statement, a pre-prepared statement prepared by the
22 State that said exactly what the State wanted her to testify
23 to in the State, a prepared statement.

24 The four of them went out there, Mr. Wilkins, Mr. Ellis
25 went there to her home. Now, I wasn't there, but the

1 officers went to the home. And then either before or
2 afterwards she was offered a proffer as far as testimony
3 goes.

4 Your Honor, the perception here is that this witness
5 was intimidated. I don't know what else to call it when a
6 sitting Solicitor and Assistant Solicitor and two
7 investigators went there, Officer Grosnell (phonetics), and,
8 I believe Officer Campbell went there. But this was
9 prearranged by Officer David Weiner of the Greenville County
10 Sheriff's Office.

11 And the problem that I have is that, first of all, this
12 is an important witness for us, extremely important witness
13 for us. This witness was not testifying to that before that
14 time.

15 And now in August after this prearranged meeting by
16 Officer Weiner -- and Officer Weiner is the same person, the
17 same officer that went out to another alibi witness of ours,
18 Chanel Porter, went out to her place of work at the Kangaroo
19 and basically said -- had a prepared statement again and
20 said, you know, listen, you don't have to sign this
21 statement. You don't have to talk to me, but if you don't
22 do this, not saying you have to, don't do this, you can get
23 arrested, get your kids taken away from you.

24 She called my office, talked to my investigator on the
25 phone saying she'd been threatened. In this case Ms.

1 McCroskey, Sarah McCroskey, we believed -- now we subpoenaed
2 the phone records from Greenville County Detention Center.
3 Now they have not produced them. We subpoenaed them either
4 the last week or the week before last. We don't have that.
5 But according to my client, and according to his family,
6 Sarah McCroskey was scared to death because she thought that
7 she'd go to jail, be arrested.

8 But, Your Honor, the issue here is this, the issue is
9 as I've explained is an even playing field, as defense
10 attorneys it's an even playing field that we need. We can't
11 go out with investigators and go and tell people what to
12 say. We can't do that. And I don't believe that the
13 prosecution should be permitted to do the same thing in this
14 matter.

15 But in this case, Your Honor, we're asking that this
16 statement be suppressed because we believe that based on the
17 circumstances of this, based on the fact that four of these
18 folks went out there, including the sitting Solicitor and
19 Assistant Solicitor, two investigators, it was arranged by
20 another investigator that had made the same kind of
21 statements to another alibi witness in this case, Ms. Chanel
22 Porter. We believe that her statement is clearly
23 involuntary.

24 And the State, they may come back saying, well, we were
25 only there for a little bit of time. We didn't see the

1 whole thing. Well, here's the issue though, not only did
2 they have a prepared statement -- why did they have to have
3 a prepared statement in this case? A prepared six page
4 statement that said exactly what they wanted her to say.

5 And on top of that, on top of that, which is really the
6 federal system, this Sarah McCroskey is not -- is not a
7 defendant, she's just a witness, our witness. She's given a
8 proffer in this case, a proffer that says you tell the truth
9 or whatever you're going to do and we won't prosecute you.

10 But that lends itself to the proposition that if she
11 doesn't tell the jury what the State wants her to tell her
12 [sic] because they've already had a prepared statement given
13 to her to sign, and the Court has seen a copy of her
14 statement. And I have a copy, I believe, up there.

15 Your Honor, if she doesn't say what they want her to
16 say in her prepared statement, then she's going to be --
17 she's going to be -- she's going to be taken up here and
18 charged with perjury or something. It makes it impossible
19 for me as a defense attorney -- how is it possible to argue
20 or present to a jury any sort of argument when I have a six
21 page statement in this matter that has been -- I don't know
22 how -- what happened on this meeting, but it's very, very
23 peculiar to say the least when you have a sitting Solicitor,
24 an Assistant Solicitor, two investigators and another
25 investigator arranging it, doing this.

1 So we believe or I believe, Mr. Butts believes that
2 this statement is involuntary, it was done under a
3 circumstance of intimidation, it was completely erroneous
4 and it should not be admitted or any of Ms. McCroskey's
5 statement in this case because I can't use her now. I can't
6 use her as my witness. They've destroyed that for me. And
7 as a result I do not believe either side should be permitted
8 to use her as a witness in this case. Thank you.

9 **THE COURT:** Okay. Thank you, sir.

10 **MR. WILKINS:** May it please the Court, Your Honor, just
11 real quick. There were a couple of inaccuracies in Mr.
12 Robinson's colloquy. There was never a prepared statement
13 taken out to Ms. McCroskey when she was met with in August.

14 She had two previous statements in '09, specifically
15 November 19th of 2009 and November 20th. She gave a
16 statement to Wayne Campbell and she gave a written statement
17 that she actually wrote out to Investigator Wayne Campbell
18 as well.

19 And so we knew what her testimony was there. There was
20 no prepared statement. There was a proffer arrangement.
21 She gave a full statement to David Weiner, Investigator
22 Wayne Campbell, Wayne Campbell that day.

23 Mr. Robinson keeps saying his witness. I'm not sure
24 what he means by that. Witnesses are not owned by anybody.
25 But it sounds like those are things for cross examination,

1 any inconsistencies in her statement that they can certainly
2 use.

3 And, Your Honor, I can speak as an officer of the
4 court, in my presence there were never any threats given to
5 Ms. McCroskey. She was offered a proffer.

6 She was explained that the investigation was ongoing
7 and that through her own words and our investigation that
8 she had removed a gun from her house and taken it to a third
9 party's house after Mr. Butts was arrested at his request
10 and that that could be considered accessory after the fact,
11 but that she was not charged today, that the investigation
12 -- she could be charged, but if she wants to cooperate we'll
13 give her a proffer, and we'll agree that she will not be
14 charged for any crime assuming she tells the truth and that
15 she wishes to cooperate.

16 That was the offer that was made by us to her in front
17 of her mother, in front of her grandmother at their house.
18 It was -- the initial meeting was fifteen minutes, probably.
19 And then after that she agreed to give a statement. And she
20 did to Investigator Campbell. It was then memorialized by
21 Investigator Campbell and Investigator Grounsell.

22 And they did -- met with her again. She read this
23 statement a second time, actually made some changes to it
24 and then signed the statement saying it was true and
25 accurate. And that was just -- was provided to Mr. Robinson

1 in an effort to get full disclosure to him.

2 He discussed some phone calls. Your Honor, we have
3 given him phone call, after phone call, after phone call.
4 On October 11th of this month he sent a subpoena over there
5 for certain phone calls. The subpoena was defective.

6 But in an effort not to -- not to litigate a defective
7 subpoena, we had a conversation with Mr. Robinson's
8 paralegal. And she says, thanks for handling my flub. I
9 apologize. And we went and got her every phone call that we
10 had available so that he could have that -- that evidence as
11 a matter of wanting to have a fair playing field.

12 And, finally, in regard to the alibi witness, Ms.
13 Chanel Porter, he presented her as an alibi witness.
14 Investigator Weiner and Grounsell went out to her at her --
15 in her business, she was working as a store clerk, and said
16 -- asked her questions about being an alibi, what do you
17 have to say to that? She said what she was going to say.

18 They then put it in a supplemental report and gave it
19 to Mr. Robinson. That was the last -- it was maybe eight to
20 ten minutes conversation. And that was the only time we've
21 ever talked to her.

22 So we would -- we would oppose of the categorization
23 that anything is involuntary. And keep in mind, Ms.
24 McCroskey's a witness. That's exactly what she is. She's
25 not a defendant. There's no Jackson v. Denno. She's not

1 being charged with anything.

2 And any offer that I've made not to prosecute her are
3 certainly impeachment evidence that Mr. Robinson has. And
4 he's welcome to impeach her with that. And we'll offer her
5 up if you want to hear from her about whether she felt
6 threatened or involuntary to the -- and I'm not even sure
7 what the legal standard is for a witness to be suppressed.

8 I'm not even sure -- I guess you have to find
9 prosecutorial misconduct. I've just never been in that
10 situation before where a witness -- somebody said that the
11 witness was so intimidated that they gave -- particular
12 witness toward the prosecution. I've heard of it on the
13 defense side, but I've never heard it for the prosecution.
14 And so we'll be happy to make them available if the Court
15 wants to hear it.

16 **THE COURT:** Okay. You want to respond?

17 **MR. ROBINSON:** I do, Your Honor. I'm -- the question
18 -- the question that I have for Mr. Wilkins is -- and the
19 question I have in general is if the person's not charged,
20 why would you offer them a proffer? And as the Court's
21 aware ---

22 **MR. WILKINS:** I can answer that question if you want me
23 to.

24 **MR. ROBINSON:** Well, it's -- I think it's highly,
25 highly unusual in a case where this person is an important

1 witness to offer a proffer to them because as I said before
2 -- and he just said it was an ongoing investigation. Now
3 why would you tell a witness that? The case is against Mr.
4 Butts. What ongoing investigation is there in this case?

5 And why did he have to -- why did he have to promise
6 her you're not going to -- you're not going to put her in
7 jail for something? Why did he have to -- what's the
8 purpose of that?

9 And also as far as -- Mr. Wilkins makes a point as far
10 as it being unusual for a defense attorney to do this.
11 Well, I've never been in a situation like this before, ever.
12 I've never had someone go to an important client's -- or an
13 important witness' house with two investigators and an
14 assistant to get a statement. I've never had that happen.
15 That's why it's so unusual in this case. But, Your Honor,
16 again, this is a cooperation agreement that basically turned
17 a good witness for me into a bad witness, basically, for me.

18 And also, Your Honor, if you could notice the date of
19 the statement that was done. It's August 9th. It wasn't
20 done weeks before or anything -- this is the same exact day.
21 This is the statement, the prepared statement they took to
22 there that day and had her -- had her do.

23 **THE COURT:** Okay. All right. Okay. I'm going to
24 respectfully deny your motion to suppress her testimony. I
25 don't find that the State has done anything inappropriate in

1 this regard.

2 Whether or not it was the subject of coercion, whether
3 it is to be believed and the credibility of what her
4 testimony is I think is ripe for cross examination. And the
5 issues that have been raised in anticipation of trial I
6 think will go to her credibility and not the admissibility
7 of her testimony.

8 I think that there is a reason under the rules that an
9 alibi witness must be disclosed to the State. And I believe
10 that reason is so that the State can further investigate
11 whether, in fact, they got it wrong. And I think it
12 contemplates that the State will then discuss it with them.

13 Now, whether there was intimidation or not, that might
14 be a subject for another day. I don't have enough -- I
15 don't have sufficient evidence in this hearing to determine
16 whether there was intimidation or not. But if there was I
17 think it still would go in most instances, in most
18 instances, except the most egregious, to its credibility and
19 its weight as opposed to the admissibility of the evidence.

20 And know this, just for purposes of the record, I'm
21 very sensitive to fundamental notions of fairness. I sit
22 before you as a former public defender who never prosecuted
23 a case. And I'm very sensitive to the resources that the
24 State has at its disposal as opposed to the limited
25 resources oftentimes that you have on the defense side.

1 But in this case the only thing that I really see that
2 is unusual is that a sitting Solicitor went and interviewed
3 a witness. I don't know when the last time that happened
4 was.

5 MR. ROBINSON: I can understand, Your Honor.

6 MR. WILKINS: I'm just a hard worker, Your Honor.

7 THE COURT: I understand. So I'm going to respectfully
8 deny your motion. Anything else?

9 MR. ROBINSON: I've got a few more motions, Your Honor.

10 THE COURT: Okay.

11 MR. ROBINSON: Your Honor, I think -- and I think I
12 mentioned this in chambers. I'd make a -- I'd move to
13 disqualify this Solicitor's Office from prosecuting this
14 case.

15 And the reason being -- unusual for a Prosecutor and
16 Assistant Solicitor to go out to at that point become
17 witnesses in the case. We have put both Mr. Wilkins and Mr.
18 Ellis as witnesses. We have put them on our witness list.

19 We believe -- I believe that it's inappropriate for
20 them to be prosecuting this case when they are going to be
21 witnesses, potentially, in this case. As a result I would
22 ask the Court to disqualify them from -- disqualify this
23 Office from prosecuting this case.

24 THE COURT: Okay. Mr. Wilkins, anything you'd like to
25 say, sir?

1 MR. WILKINS: I disagree.

2 THE COURT: Thank you. All right. I'm going to
3 respectfully deny that motion as well. In looking at the
4 statements it would appear that in the preamble to her
5 statement they state who was actually present at the time,
6 but doesn't appear that the Solicitor or Mr. Ellis actually
7 received and took the statement. Therefore, at this point
8 in time I'm not certain what the relevance of any proposed
9 testimony from Mr. Wilkins or Mr. Ellis would be.

10 Now, again, you know, I would reserve the right to be
11 proven wrong. And if at some time during the case you wish
12 to call them and argue that their testimony is somehow
13 relevant to the proceedings, then we'll take up the matter
14 at that time.

15 MR. ROBINSON: Your Honor, could I, you know, just to
16 save time, really, Mr. Wilkins has said, I mean, it's -- I
17 see in this statement that -- in this six page statement
18 that he and Mr. Ellis are in the preamble.

19 I mean, if he can stand up, I mean, if he can -- I can
20 proffer it, really. They can proffer that testimony that
21 they were not there for the majority of this statement
22 because I think what they -- what Mr. Wilkins said back in
23 chambers was that he was there for a few minutes and left
24 while the statement was being done. If that's -- if that's
25 true, then that would solve it.

1 **THE COURT:** Is that correct?

2 **MR. WILKINS:** And I'll be happy to proffer, Your Honor.
3 By way of background, we were there -- the reason we had the
4 proffer in that her previous two statements she talked about
5 going to a drug deal, using and smoking marijuana. And so
6 oftentimes when you talk to witnesses who are talking about
7 illegal activity, they're less inclined to talk to law
8 enforcement about something they may have done wrong for
9 fear of being charged.

10 And so the proffer is something that we offer, a
11 protection for them because we're not concerned about the
12 marijuana or the fictitious drug deal that she alleges in
13 her initial statement. We're prosecuting, investigating the
14 armed robbery.

15 And so that's the purpose of the proffer to give her
16 that protection. And the proffer is given to them. And
17 they can certainly use it any way they want to impeach.

18 Once the proffer was given and she wanted to give a
19 statement, I think she gave a little bit of the statement
20 and kind of asking questions about her previous statement is
21 really what we were asking her about. You said this, you
22 said this.

23 And then Investigator Campbell and Grounsell were the
24 ones who actually took down the entire statement. I wasn't
25 taking notes. Assistant Solicitor Ellis wasn't taking any

1 notes. We were there in an attempt to solidify a potential
2 proffer and a cooperation agreement. And then if she wanted
3 to conclude with giving us a statement, then they, of
4 course, were going to take the statement.

5 And I think our names are in there in the preamble
6 because we were there. And just for the record, Your Honor,
7 our names are in hundreds of supplementals being at certain
8 places when investigations are -- questions are being done.
9 Howard Steinberg's name is in there thousands of times
10 everywhere. So that's not unusual.

11 THE COURT: Okay. Just something said from the outset,
12 again, you can renew your motion if sometime during the
13 trial you can make an argument that their testimony would be
14 relevant in some evidentiary basis. But I think it is a
15 slippery slope to suggest that lawyers can't talk to
16 witnesses and ask them questions because that would handicap
17 all of us fairly significantly, I think.

18 And that's logically where it would end if you began
19 with the premise that an attorney who is going to prosecute
20 a case, whether it be a civil case or a criminal case,
21 couldn't discuss with prospective witnesses their testimony
22 without becoming witnesses themselves.

23 Now, obviously it can happen. I've seen it happen.
24 And it could happen in this case. That's why you have the
25 right to renew that motion at a later time in the trial if

1 the evidence in the case that they do have, relevant
2 testimony to submit into the record. Okay. Anything else?

3 MR. ROBINSON: Yes, Your Honor. We have a -- we have a
4 motion -- and I don't mean to belabor this thing ---

5 THE COURT: No, that's okay.

6 MR. ROBINSON: Your Honor, and I think that -- and this
7 has a motion to dismiss the indictments in this matter.
8 That's one of the -- and this has to do with the conduct by
9 the State. And it's not -- it's not a personal anything.
10 This is just what we do.

11 THE COURT: I understand.

12 MR. ROBINSON: It's business, all right? And I have a
13 tremendous amount of respect for both Mr. Ellis and Mr.
14 Wilkins, but I have to argue this on behalf of my client.

15 THE COURT: I understand.

16 MR. ROBINSON: I'm sure the Court's aware as being a
17 former public defender.

18 Your Honor, there's -- this is the first issue that I
19 would mention, how this came about with this important
20 witness, going out to her house with two investigators to
21 get a statement. And we don't know what the circumstances
22 to be. That's the first -- that's the first problem that's
23 problematic.

24 The second thing, Your Honor, is the action -- what
25 they were doing when they -- when we notified them about the

1 other alibi witness, which is Chanel Porter.

2 And I -- and I agree to a certain extent that you're
3 going to ask questions about your -- everyone has a right to
4 ask questions, but you normally don't go with a gun to
5 prepare a statement and tell that person if you don't do
6 this, if you don't do something -- and intimate that if you
7 don't do something you're going to go to jail and the kids
8 are going to be taken away. That's what's -- that's what's
9 different about this situation.

10 Everyone has a right, every attorney has a right to
11 examine and investigate their case. That's not what the
12 issue is. The issue here is what -- is it appropriate to
13 intimidate or to cajole a witness into making a
14 contradictory statement? That's what's different about this
15 case.

16 It's not a question of just an attorney going out,
17 talking to witnesses. That's not the issue here. The issue
18 is going out to an extremely relevant and important witness
19 and presenting this -- presenting intimidating statements
20 and making -- making -- it may not be something where he
21 said, well, I'm going to put you in jail. It's not -- there
22 are other ways to go about doing that. That's what's
23 different. This is not a normal investigation where you
24 have just an attorney going to talk to a witness.

25 But if I were to go to a witness and say if you don't

1 do this, I am going to put you up, put you in jail, take
2 your kids away, potentially, whatever it's going to be.
3 That's what's different. That's why it's distinguishable in
4 this case.

5 There are certain duties that we all have. And I think
6 that the State, when they went through the investigations as
7 far as with the investigation with Sarah McCroskey, with
8 Chanel Porter, as far as her actions go, as well as the
9 mother of Ms. McCroskey was also intimidated as well. They
10 wanted her to get her daughter to help them. And if she
11 didn't do that they were -- they were either going to take a
12 warrant on her, put her in jail or something. That's not
13 fair. That is not fair.

14 Every lawyer has a right to talk to witnesses to
15 investigate, but no lawyer has a right to threaten, to
16 intimidate and to cajole witnesses. I don't have the -- I
17 don't have the authority to -- I don't have -- under the
18 rules, I can't do that.

19 And if I have agents that do that, I'm just as
20 responsible as they are. And I -- I do not have -- my
21 investigators are warned that is not appropriate. They
22 know what the rules are.

23 And I'm asking Your Honor, based on the conduct in this
24 case with the witnesses in this matter, with all the
25 witnesses that we -- really, Chanel Porter, Sarah McCroskey,

1 those are two of our key witnesses in this matter. The
2 reason being, they're both either fiances or former fiances
3 or whatever.

4 And that's why we believe that because of the actions
5 of the State in this matter, the pattern that you have --
6 I'd call it a pattern conduct here by the State, that this
7 -- these three indictments should be dismissed in this case.
8 Thank you.

9 THE COURT: Thank you. You care to respond, Mr.
10 Wilkins?

11 MR. WILKINS: No, Your Honor. My previous responses
12 will do.

13 THE COURT: Okay. All right. I'll respectfully deny
14 the motion. And the reason primarily that I've denied your
15 motion, now, notwithstanding everything that I've already
16 put on the record regarding this issue is as we sit here
17 anticipating going to trial we don't have any evidence in
18 the record of intimidation or undue influence. There has
19 not been a single witness who has taken the stand and risen
20 his or her right hand and testified as to how they were
21 treated by the Solicitor's Office and the investigators.

22 So in anticipation of trial there's just not sufficient
23 evidence to warrant a dismissal of the indictments because I
24 don't see any evidence, I don't have any evidence of
25 inappropriate conduct or intimidation by the State in

1 eliciting these statements. All right. Other motions?

2 MR. ROBINSON: Your Honor, would the Court be amenable
3 to a hearing on this, with calling witnesses and so forth
4 ---

5 THE COURT: No, sir. What we're going to do, we're
6 going to do it in front of the jury ---

7 MR. ROBINSON: Yes, sir.

8 THE COURT: --- and you ask questions. Your questions
9 may go to credibility, but if it is significant and extreme
10 enough, then it may go to my reconsidering the motions that
11 you have made. But there's no reason to do it twice.

12 MR. ROBINSON: Yes, sir.

13 THE COURT: Because if I determine that it goes to the
14 'witness' credibility, no harm, the jury's heard it. If I
15 determine that there has been misconduct or intimidation,
16 then I will do one of two things, and that is either grant a
17 mistrial and dismiss an indictment or make a curative charge
18 to the jury at that time that they should strike all of that
19 testimony.

20 So either way, we can handle it. But what I don't want
21 to do is spend the day going over the testimony in
22 anticipation of the jury hearing it. It's inefficient and
23 it's unnecessary. All right. Next question.

24 MR. ROBINSON: Your Honor, this is -- and I -- if I'm
25 looking at this correctly. I have several motions. You may

1 want to -- for instance, on Officer Tench, his testimony has
2 not been put forward yet.

3 THE COURT: Yes, sir.

4 MR. ROBINSON: And I think what I've provided the Court
5 are emails that I received from Mr. Ellis regarding how he
6 knew Mr. Butts. You may want to -- as it is the lunch hour
7 at this point, ---

8 THE COURT: I'm not worried about lunch. I work for
9 you.

10 MR. ROBINSON: Okay. Your Honor, regarding Mr. Tench,
11 and this will be one of the motions. The motion, Your
12 Honor, is to -- is to -- it's a motion -- basically it's a
13 suppression motion that would not permit the introduction of
14 any evidence by Mr. Tench regarding Mr. Butts.

15 And here's the -- here's -- and the Court has there the
16 email that I received from Mr. Ellis. And the Court -- I've
17 also mentioned in paragraph one of my motion the reason why.
18 And it also talks in here about why he's not qualified. The
19 video that the Prosecution's going to present consists of
20 one that's sixty seconds, one that's ninety seconds and one
21 that's a hundred and twenty seconds.

22 Secondly, Your Honor, in the statement from Mr. Ellis
23 he speaks of Mr. Tench, who is now an investigator, I
24 believe, for the police department and with the Sheriff's
25 Office, that he was a school resource officer at Mauldin

1 High from 2007 to 2009. I believe that's correct.

2 THE COURT: Okay. And I've read your motion. Is
3 Officer Tench -- does he intend to testify strictly
4 regarding issue of identification?

5 MR. ROBINSON: That's it. That's what I'm trying to
6 suppress, Your Honor.

7 THE COURT: All right. And do you take exception to
8 the identification of your client in that video?

9 MR. ROBINSON: Absolutely. And if the Court would like
10 to see the video, it's pretty -- they're very short.

11 THE COURT: Okay.

12 MR. ROBINSON: It's hard to figure out -- if you look
13 at Mr. Ellis' statement, these videos are sixty seconds,
14 ninety seconds and, I believe, a hundred and twenty seconds.
15 It's pretty much -- it'd be almost impossible to determine
16 how someone walks.

17 This is a -- as the Court's aware as being a former
18 judge in Mauldin, Mauldin High School is approximately --
19 has approximately twenty-two hundred and sixty-one students
20 there. And I -- it would appear very improbable that this
21 individual in that period of time with all those students he
22 knows would be able to look at a small snippet of video and
23 say, oh, yeah, that's the guy and that's how he talks
24 because -- and I think he mentions in here, Mr. Ellis
25 mentioned in his thing about that this person -- I think he

1 says that this person says good man, and chill and chilling.

2 You've got to laugh -- unless he's a linguist or a --
3 some sort of person who's an expert in voice recognition and
4 wardrobes and so forth, I don't believe that he can give a
5 statement in this case regarding that.

6 **THE COURT:** Okay. Ultimately the determination of
7 whether an identification is admissible is its reliability.
8 And in many cases you have to have a -- an in camera hearing
9 pursuant to Biggers, Neil v. Biggers. My question is this,
10 when do you intend to call Officer Tench to the stand?

11 **MR. WILKINS:** He's our last witness, ---

12 **THE COURT:** He is?

13 **MR. WILKINS:** --- Your Honor. But we also intend to
14 ask Reagan McCroskey and her mother if they could identify
15 him as well. And I refer Your Honor to rule 901, which is
16 voice identification specifically refers to this -- this
17 particular issue and the case of State v. Smith and State v.
18 Porter, which basically says sometime a witness' testimony
19 of identification for a person having heard his voice has
20 been regarded as legitimate and competent evidence to
21 establish identity in criminal cases. So we've provided
22 Your Honor with those two cases.

23 On that in addition with rule 701 of general
24 appearances and understanding we feel that assuming a
25 foundation is laid, that they're familiar with this witness,

1 that it certainly would be admissible under those.

2 THE COURT: Okay. This is what we'll do on this one.

3 Again, I have to make certain determinations of the
4 reliability to determine whether, in fact, it's admissible.
5 So before you offer him, which I anticipate will be tomorrow
6 sometime, if I'm guessing correctly.

7 MR. WILKINS: If we keep going we have one witness, I
8 mean, a quick witness and then Reagan McCroskey's our third
9 witness?

10 THE COURT: Yeah, I'm not too worried about Reagan
11 McCroskey ---

12 MR. WILKINS: Yeah, okay.

13 THE COURT: --- right now because the issue is ---

14 MR. WILKINS: Oh, okay.

15 THE COURT: --- specifically with respect to Tench.

16 MR. WILKINS: Okay. That's our last ---

17 THE COURT: Before you call Officer Tench what we'll do
18 is you may renew your motion at that time, Mr. Robinson.
19 And we can have a brief Biggers hearing if necessary at that
20 point, okay? Next motion.

21 MR. ROBINSON: Your Honor, the next motion concerns the
22 jeans, Your Honor, as well as the -- there is a video tape
23 of one day that they had that they had Mr. Big -- Butts,
24 excuse me, I believe that they had Mr. Butts in that Citgo.
25 Now Mr. Butts lived across the street from the Citgo. So he

1 was there quite often.

2 But they're attempting -- they want to bring that into
3 this case. I believe, probably it's circumstantial evidence
4 in terms of that appears to be ---

5 THE COURT: Is it -- is it under rule 403 that it's
6 just unduly prejudicial?

7 MR. ROBINSON: That's the reason, Your Honor.

8 THE COURT: Okay. I'll consider that when they offer
9 it into the record.

10 MR. ROBINSON: Yes, Your Honor. And the ---

11 THE COURT: If they lay the appropriate foundation, I'm
12 not inclined to restrict them from introducing that
13 evidence.

14 MR. ROBINSON: Okay. And also, Your Honor, the ---

15 MR. WILKINS: Let me say that it's not prejudicial at
16 all. It's a video of Mr. Butts walking into the store and
17 buying a cigar ---

18 THE COURT: Well, it's prejudicial per se or you
19 wouldn't want to ---

20 MR. WILKINS: Well, Your Honor, ---

21 (Laughter)

22 THE COURT: But ---

23 MR. WILKINS: --- that's not fair.

24 THE COURT: It's fair. And it's altogether accurate as
25 well. Sit down. Go ahead.

1 **MR. ROBINSON:** Your Honor, the other -- and we're going
2 through these quickly, but there was a -- they're trying to
3 put forward -- when Mr. Wilkins, and Mr. Ellis and I went
4 down to the evidence room in Greenville County ---

5 **THE COURT:** Yes, sir.

6 **MR. ROBINSON:** --- they had a -- this is -- this one is
7 -- this one's very rare and unusual as far as trying to
8 introduce. This is -- this is -- now, understanding that
9 they mentioned this in an email September 2011, Ms.
10 McCroskey, mother, there was a van or vehicle that was in
11 her -- whatever it was. Now, Mr. Butts has been in jail
12 since 2009. And she found a black toboggan hat with two
13 holes cut into it. And I took a gander at it when I was
14 down at the jail.

15 But, Your Honor, it's been -- one, it's been two years.
16 He's been in jail the entire time. Two, this van did not
17 belong to Mr. Butts. We don't know who it belonged to.
18 Have no idea who it belonged to. And ---

19 **MR. WILKINS:** Ms. McCroskey.

20 **MR. ROBINSON:** It belonged to Ms. McCroskey. And they
21 have no -- they can't present proof that he's the only
22 person that had access to this particular van, that in 2009
23 -- for the past two years this van has been sitting. She
24 put -- she told them about this in 2011, two years after the
25 incident.

1 You know, it would strain me and, as I said, my
2 emotions. It strains the imagination wondering how many
3 people have had access to that van? It just -- unless they
4 can set a proper foundation for how this is going to be
5 connected in this matter after two years when it's not his
6 van and a lot of people have access to this van. It seems
7 very unlikely that this would be relevant to this matter.

8 **THE COURT:** Okay. Mr. Wilkins, anything you'd like to
9 say about that?

10 **MR. WILKINS:** Oh, just briefly. Your Honor, it's
11 entirely circumstantial. They volunteered that there was a
12 mask, that Ms. McCroskey volunteered to Investigator
13 Campbell there was a mask found in the van. They had it.
14 They provided it to us. It's their van.

15 Asked them if Mr. Butts had access to that van. They
16 said, yes, he rode in it on numerous occasions. He's been
17 in it. Asked if it was anyone in their family's. They said
18 it did not appear to be anyone in their family's and they
19 never have.

20 It's purely circumstantial. I mean, there's no way I
21 can say that's the mask Mr. Butts used, and I certainly
22 wouldn't argue that.

23 **THE COURT:** Was it -- did the mask appear in the video
24 as well?

25 **MR. WILKINS:** He's wearing a mask. And the clerks

1 would testify that he's wearing a mask that he has to pull
2 down and it stopped about his chin, Your Honor. And it
3 would be my argument you've got a toboggan with the eyes cut
4 out just like a regular hat you'd wear on your head, but
5 he's pulled it down. And ---

6 THE COURT: Okay.

7 MR. WILKINS: --- those are the eyes right there. So
8 that would be the circumstantial value.

9 THE COURT: All right. Well, I'm going to -- I'm going
10 to reserve the ruling on that in limine. If, again I would
11 say, if the State is able to lay the foundation and
12 demonstrate relevance, then I'm inclined to let -- to let
13 him let that in just like in the video tape.

14 And a lot of the arguments that you make, Mr. Robinson,
15 are good arguments, but I just think they go to probably the
16 weight of the evidence as opposed to the admissibility of
17 the evidence. If I were a juror, I'd be digging your game,
18 but I'm a judge.

19 MR. ROBINSON: The digging is good, Your Honor.

20 MR. WILKINS: What about me, Your Honor?

21 THE COURT: No.

22 MR. WILKINS: No?

23 (Laughter)

24 THE COURT: As I suggested to you, the State has all of
25 the resources. It's just ---

1 MR. WILKINS: I would love to show you my ---

2 THE COURT: --- pitching you softballs.

3 MR. WILKINS: --- resources, Your Honor.

4 THE COURT: Mr. Robinson on the other hand is working
5 very hard.

6 MR. WILKINS: That's right. I feel like I've got one
7 arm tied behind my back.

8 MR. ROBINSON: Me too, Your Honor. I've got two arms
9 behind my back.

10 Your Honor, I don't mean to be -- I have one more
11 motion.

12 THE COURT: Sure.

13 MR. ROBINSON: I'm sure you're not going to dig it, but
14 I have a motion.

15 (Laughter)

16 MR. ROBINSON: There was a black gun that they -- that
17 they're going to speak about. And this gun belonged to -- I
18 think they have something regarding the gun was supposedly
19 said to take the gun or something? I believe that the
20 person who this -- we're talking this gun, this person may
21 have pled guilty in family court to possession of a firearm
22 or something. I'm not sure who this gun belonged to.

23 But, Your Honor, it doesn't look like the same gun that
24 was flashed at the -- on the videos. It's just a black gun.
25 There are plenty of black guns. Whether they can put the

1 two of these guns together, I mean, I know it's
2 circumstantial, but really it's highly prejudicial in this
3 matter. I think it's a 401, 402, ---

4 THE COURT: Okay.

5 MR. ROBINSON: --- 403 kind of objection at this point,
6 Your Honor.

7 THE COURT: Okay.

8 MR. ROBINSON: Suppression.

9 THE COURT: I'd be happy to hear from you on that.

10 MR. WILKINS: A gun was found at an individual named
11 Kyille Seward's house, named Ace. The testimony from Reagan
12 McCroskey will reveal that Mr. Butts carried a gun, she's
13 seen him with a gun. And on numerous occasions -- on the
14 night of that October 18th robbery she saw him put a gun in
15 his shoe when they went to bed that night.

16 She received a phone call. She was instructed to take
17 that gun to Kyille Seward's house, which, I believe, is Mr.
18 Butts' cousin. She then retrieved the gun from her bedroom
19 where it was kept. It's a gun, black gun with a silver
20 stripe. And it's a gun that is exactly similar to the one
21 in all three videos, a black gun with a silver stripe. And
22 you can -- you can see it.

23 She took it to Ace's house, drove it in the car with
24 another individual. Her mom witnessed her taking the gun.
25 Gave it to Kyille Seward.

1 And then a search warrant was obtained after talking
2 with Ms. McCroskey, Reagan McCroskey, back in '09 by
3 Investigator Fortner. Investigator Weiner went to Kyille
4 Seward's house pursuant to a search warrant. And Mr. Seward
5 took him to his room and lifted up the mattress, and they
6 retrieved a gun, black gun with a silver stripe down the
7 side of it. We would argue circumstantial -- that was Mr.
8 Butts' gun and it's exactly like the one used in the
9 robbery.

10 **THE COURT:** Okay.

11 **MR. WILKINS:** That's how it's going to be used.

12 **THE COURT:** All right. If that foundation is laid,
13 then my general inclination at the outset is to allow it.
14 He could argue that -- you can argue whether, in fact,
15 that's the gun or not and how likely it is that that's the
16 gun. But I think it's admissible if, of course, the
17 appropriate foundation was laid for it. Okay. Anything
18 else?

19 **MR. ROBINSON:** Would the Court like more?

20 (Laughter)

21 **MR. ROBINSON:** That's it, Your Honor.

22 **THE COURT:** Okay. Good enough.

23 **MR. ROBINSON:** Thank you.

24 **MR. WILKINS:** Your Honor, the State has one brief --
25 it's a Jackson v. Denno issue. I've done a lot of Jackson

1 v. Denno issues, but I've never done where it's -- of
2 course, you said it, it's also prejudicial if the State's
3 presenting it.

4 Mr. Butts was shown stills of the November 3rd video,
5 in which he's buying a cigar, wearing jeans that we believe
6 are similar or exact jeans used ---

7 THE COURT: That same Citgo ---

8 MR. WILKINS: Same Citgo, same exact -- he says that's
9 me. He admits that he's the one on the November 3rd video.
10 Now I've got many other people that will testify on that
11 November 3rd video, assuming it's introduced into evidence,
12 that that's William Anthony Butts on that video. But he
13 also admitted it as well to Investigator Campbell.

14 He was mirandized. He was at his school. He was
15 mirandized and shown stills of it. And he said, yeah,
16 that's me. And that's what -- that would be the -- it's not
17 really admission against interest -- I guess it sort of is
18 an admission against -- that would be the Jackson -- basis
19 of the Jackson v. Denno, making sure that statement was
20 voluntary.

21 THE COURT: Okay. All right. Mr. Robinson, if he
22 intends to introduce that statement, that's me, then you are
23 entitled to a Denno hearing to determine whether at a
24 threshold it was by a preponderance of the evidence
25 voluntarily made. Do you need to have that hearing, sir?

1 MR. ROBINSON: May I speak to my client one second?

2 THE COURT: Sure.

3 (Whereupon Mr. Robinson was speaking with Mr. Butts)

4 MR. ROBINSON: Your Honor, I spoke with my client.

5 There's no need for a Jackson v. Denno hearing. I think --

6 but I would make the same objection I raised before

7 regarding suppressing that based on prejudice in this case

8 'cause a lot of people went into that -- a lot of people

9 that may look exactly the same went into the same Citgo.

10 THE COURT: Okay.

11 MR. ROBINSON: And that's what -- it's really a

12 prejudice -- we don't need a Jackson v. Denno hearing

13 because he acknowledges that that is him on the video and

14 that's it.

15 THE COURT: Okay. All right. Good enough. When your

16 officer testifies, before he admits that statement, I want

17 to pause for a second. You can renew your motion, and I can

18 make a determination at that time that if by a preponderance

19 of the evidence, given the circumstances under which the

20 statement was made, whether it was voluntary, should be

21 admissible. Okay? All right. Good enough. Anything else?

22 MR. ROBINSON: No, sir.

23 MR. WILKINS: Nothing from the State, Your Honor.

24 THE COURT: Okay. Good enough. Then we'll come back

25 on the record at 2:30 and begin the trial. Y'all have a

1 good lunch.

2 (Whereupon court was in recess at 1:17 pm)

3 (Whereupon court resumed at 2:33 pm)

4 **THE COURT:** Take your seats, ladies and gentlemen.

5 Hope everyone had a good lunch. All right. Let me have --
6 before we pull the jury in, Mr. Wilkins, you said you
7 anticipate calling nine witnesses, is that correct?

8 **MR. WILKINS:** I have a -- yes, Your Honor. I have a
9 total of nine witnesses.

10 **THE COURT:** Okay. All right. And, Mr. Robinson, I
11 know you can't tell me exactly, but do you -- how many
12 witnesses do you intend calling, if any?

13 **MR. ROBINSON:** Probably if I had -- I'd probably say --
14 it's not going to be that whole witness -- maybe five or
15 six.

16 **THE COURT:** Five? Okay.

17 **MR. ROBINSON:** Depending on what happens ---

18 **THE COURT:** Yeah, I'm not holding it to you -- holding
19 you to it. I just wanted to tell the jury that we're
20 looking at, you know, somewhere between twelve and fifteen
21 witnesses in the case, which sounds to me to be pretty
22 accurate math.

23 So if I -- I'm kind of thinking that we'll go today,
24 take testimony all day tomorrow and try to get it to the
25 jury on Wednesday.

1 MR. WILKINS: I think that's definitely feasible.

2 THE COURT: All right. That's what I'm going to tell
3 them.

4 MR. ROBINSON: Your Honor?

5 THE COURT: Yes, sir.

6 MR. ROBINSON: I have one -- just one more thing ---

7 THE COURT: Sure.

8 MR. ROBINSON: --- to clarify just on our motions.

9 THE COURT: Yeah.

10 MR. ROBINSON: In the beginning of the motions that we
11 had we talked about or Solicitor Wilkins talked about Ms.
12 Sarah McCroskey. We made an objection to her testimony, but
13 they mentioned something about that she was there for a drug
14 deal or something like that.

15 I would like to proffer her testimony outside the
16 presence of the jury for the sole purpose of making sure
17 that anything about drugs -- I'm not going to open the door
18 on this drug stuff we're talking about, but she doesn't go
19 into some sort of extraneous prejudicial matter like that.

20 THE COURT: When are you going to call her?

21 MR. WILKINS: She's my fifth witness. We've got some
22 Citgo representatives and the victims, the clerks, ---

23 THE COURT: Okay.

24 MR. WILKINS: --- and then one quick -- witnesses for a
25 Rite Aid video tape. And then she's next. So ...

1 THE COURT: Okay.

2 MR. WILKINS: We may not even get to her today
3 depending on how quickly these go.

4 THE COURT: Let's take that up right before he calls
5 her as a witness, okay?

6 MR. ROBINSON: Yes, sir.

7 THE COURT: Okay. Anything else?

8 MR. WILKINS: Not from the State.

9 THE COURT: Mr. Marchant, do you ---

10 MR. MARCHANT: Can I interject, Your Honor?

11 THE COURT: --- have something? Well, ---

12 MR. MARCHANT: Just for a ---

13 THE COURT: You just want to be in this record? Is
14 that what ---

15 (Laughter)

16 MR. MARCHANT: I thought I might have to try the case.

17 THE COURT: I understand.

18 MR. MARCHANT: For Wednesday, just for planning
19 purposes.

20 THE COURT: Yes, sir.

21 MR. MARCHANT: The first trial on the docket is a hit
22 and run with death.

23 THE COURT: Yes, sir.

24 MR. MARCHANT: And the State is flying a witness, I
25 believe, from Florida, Your Honor. So ---

1 **THE COURT:** Okay.

2 **MR. MARCHANT:** --- just for the Court's planning
3 purposes. I realize -- I don't know how long this case is
4 going to take. Obviously, it takes precedent. But we
5 certainly would like to be able to get that one started on
6 Wednesday, if possible. We can cross that bridge when we
7 get there.

8 **THE COURT:** Yeah, yeah. Okay. I hear your message.
9 We'll try to pick a jury on that Wednesday, if we can.
10 Okay?

11 **MR. MARCHANT:** Thank you, Your Honor.

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

13 (Whereupon the jury entered the courtroom at 2:38 pm)

14 **THE COURT:** All right. Ladies and gentlemen, the first
15 thing we're going to do is I'm going to ask the Clerk of
16 Court to swear you in.

17 **MADAME CLERK:** Please stand and raise your right hand
18 for the oath. The proper response is I will. You shall
19 well and truly try the case 2011-GS-23-5149, 5150 and 5151,
20 the State versus William Anthony Butts, indicted for armed
21 robbery and possession of a weapon during the commission of
22 a violent crime and a true verdict rendered according to the
23 law and the evidence so help you God. I will?

24 **THE JURY:** I will.

25 **MADAME CLERK:** Thank you. Please be seated.

1 **THE COURT:** All right. Ladies and gentlemen, before we
2 get started I'm going to let you know what I know or at
3 least what I think I know. I got some ground truth from the
4 attorneys while we were gone to try to determine how long
5 this case might be and how many witnesses we would actually
6 be hearing from.

7 And right now it looks like there are going to be
8 collectively from both sides anywhere from twelve to fifteen
9 witnesses called in the case. So what I am thinking is that
10 we'll hear anywhere between four and five this afternoon and
11 then hopefully finish up with witnesses either tomorrow late
12 or Wednesday morning.

13 Now I don't know that for sure because I told you I
14 haven't heard any of these witnesses. So I don't know how
15 long they're going to take in testifying. But that's just a
16 very, very rough estimate, which means that I hope that I'm
17 going to be able to get the attorneys to argue and be able
18 to charge you on the law sometime on Wednesday and give it
19 to you on either Wednesday morning or Wednesday afternoon.
20 That could change. It could shorten drastically or it could
21 extend by a day. I don't know. But that's what I'm looking
22 at right now.

23 Now know this, we're going to take a break every hour
24 to an hour and a half, okay? And I'll take breaks based on
25 where we stand in the testimony. If we get to a -- just a

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1 logical stopping place with a witness, then we'll stop and
2 we'll take a break. But know at about every hour and
3 fifteen minutes I'm going to start looking at the clock and
4 kind of gauging where we stand.

5 Now if you -- if any of you need to take a break before
6 that time, then just get my attention or get the bailiffs'
7 attention and let us know, hey, I need to take a break
8 because you collectively are the most important fourteen
9 people in this courtroom.

10 And it's much, much more important that you be paying
11 attention to what's happening and taking everything in than
12 thinking, boy, I really need to take a break. I wish they
13 would get to the end of this because I'm not hearing
14 anything. So don't be shy about it.

15 And also when you take breaks, if you need anything
16 from the bailiff, you need a coke or anything of that sort,
17 something with caffeine or pack of nabs, just let her know
18 and she'll be happy to help you out in that regard. Okay.
19 All right. Mr. Wilkins.

20 MR. WILKINS: Your Honor, may it please the Court.

21 THE COURT: Yes, sir.

22 MR. WILKINS: Imagine being the clerk at a convenience
23 store working your daily shift and a masked man comes in
24 with a gun pointed at you and says, give me all the money.
25 I want it now.

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1 Imagine being a clerk in a convenience store and a
2 masked person comes in and tells you to get behind the
3 counter, give me the money while he racks the gun. Imagine
4 being a clerk in a convenience store and a masked person
5 comes in with their gun and says, I don't want to kill
6 nobody today. The State intends to prove that that's
7 exactly what happened and that's the Defendant, William
8 Anthony Butts, who did it.

9 Hi. I'm Walt Wilkins. I'm the Prosecutor in this
10 case. I'm here along with Sloan Ellis. He's my co-counsel.
11 And we're the Prosecutors. We represent the State in this
12 case here.

13 You can see around in this courtroom there's a lot of
14 people doing a lot of jobs. We're the Prosecutors. We're
15 the ones who present the evidence and we prove beyond a
16 reasonable doubt that Mr. Butts did, in fact, do what we
17 allege that he did.

18 The Defendant's sitting over here along with his
19 counsel. And, Mr. Robinson, he represents the Defendant.
20 And there's other folks in this courtroom. We have the
21 Clerk of Court. And she maintains the records and evidence.
22 And we have the stenographer. And she takes down everything
23 that's being said so it can be memorialized in a record.

24 We also have a judge. As he's told you -- you've heard
25 from the Judge a lot today. He's the referee. He sits a

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1 little bit higher than the rest of us. And that's certainly
2 by design. He's a very important person in this room. But
3 he's -- he rules on matters of law. He tells us whether
4 objections are overruled or sustained. He tells us what
5 kind of evidence we can and can't introduce. He tells us --
6 sort of lays out the playing field, the rules of the game.

7 But the most important people in this room today are
8 not me, not the Defense attorney and not the Judge, they're
9 you. The jury is the trier of fact. You decide what the
10 facts are in this case. That's your job.

11 And you took an oath just a little while ago. And
12 you're here sort of voluntarily and sort of against your
13 will to serve as a juror. And you will listen to testimony.
14 You'll listen to direct evidence. You'll listen to
15 circumstantial evidence. And you get to decide the ultimate
16 issue and you get to decide what the facts are in this case.

17 And this case is very important to everybody in this
18 courtroom. It's important to the State 'cause it's our day
19 to come and present our case. It's important to the
20 Defendant 'cause it's his day in court. And it's important
21 to our judicial system in a whole because you, ladies and
22 gentlemen, are the oil in the cog of the machine that keeps
23 the general -- keeps the criminal justice system going. So
24 I thank you for your service for being here.

25 Greenville County Grand Jury has indicted William

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1 Anthony Butts in this indictment right here. And the Judge
2 read to you the salient portions of the indictment and told
3 you that is not evidence. Those are merely allegations that
4 come from the prosecution.

5 The evidence is going to come from that witness stand
6 right there. It's going to come from testimony. It's going
7 to come from videos. It's going to come from a lot of
8 different areas. And y'all get to decide how important that
9 evidence is.

10 You get to decide if somebody's testimony is entirely
11 believable, you would believe a hundred percent of it. Or
12 you can decide that you only believe twenty percent of it.
13 But that's up for y'all to decide. Y'all get to weigh the
14 evidence.

15 And you're going to hear a lot of different types of
16 evidence that we as Prosecutors use to prove our case. For
17 example, we're going to use direct evidence. Well, direct
18 evidence is a witness that sees something, that hears
19 something directly. And they can testify as to it actually
20 happened. Yes, someone came in, someone robbed me at
21 gunpoint, they took money and they ran out. That's direct
22 evidence.

23 You're also going to hear circumstantial evidence. Now
24 circumstantial evidence can be just as powerful as direct
25 evidence. You can give just as much weight as direct

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1 evidence or you can give it just a little bit of weight.

2 But circumstantial evidence is, for example, somebody
3 walks through that door and they're wearing -- carrying an
4 umbrella, they're wet and they have a rain coat on. Now I
5 can't see if it's raining outside. I have no idea if it's
6 raining right now or if it's sunny. But if somebody walks
7 through that door carrying an umbrella that's soaking wet, I
8 can assume that they came from outside and that it's
9 raining. That's circumstantial evidence to lead me to a
10 certain conclusion. And you'll hear things about that.

11 This case falls down on one important concept for the
12 prosecution. This case is about identity. You're not going
13 to hear a lot of argument because we have video tapes that
14 you'll see that there was an armed robbery on three separate
15 occasions at a Citgo off of Woodruff Road. You're going to
16 see that.

17 But the question is, who did the armed robbery? And to
18 determine whether somebody did the armed robbery or they
19 didn't do the armed robbery, you have to look at all those
20 types of evidence because if they have a mask on and they
21 have gloves on, then it's difficult for the clerk to say
22 that's him. So you have to look at the other types of
23 evidence to decide whether we have met our burden.

24 Now, what we're alleging here is that on October 18th,
25 October 30th and November 5th of 2009 the Defendant, William

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1 Anthony Butts, walked into the same Citgo, one Citgo, on
2 Woodruff Road, pointed a gun at the clerk and robbed it.
3 You're going to hear from a -- from a cadre of witnesses.
4 You're going to hear -- you're going to see the videos. And
5 you're going to get to hear those through the Citgo
6 representative.

7 And you're going to hear from the clerks who were
8 there, who were robbed. You're going to hear from other
9 witnesses that know Mr. Butts that can -- that can
10 potentially point out that it's him in the video. You're
11 going to hear from investigators and about their
12 investigation that led them to the conclusion that it was
13 Mr. Butts who robbed the Citgo.

14 So you're going to hear the direct evidence. You're
15 going to hear the circumstantial evidence. And you're also
16 going to hear corroborating evidence.

17 Corroborating evidence is information that you hear
18 from witnesses, but it's corroborated by something else,
19 maybe by the video, maybe by a picture, maybe by other
20 testimony that corroborates. And that way if something's
21 corroborating you can give it more weight or you can give it
22 less weight. That's up to you.

23 Once you put all those things together and you hear all
24 the evidence in this case and you listen to all the
25 witnesses you're going to be able to come to just one

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1 conclusion. And that conclusion is that William Butts on
2 October 18th, on October 30th and November 5th walked into
3 the Citgo with a gun, robbed the Citgo and left. Thank you.

4 THE COURT: Mr. Robinson.

5 MR. ROBINSON: May it please the Court.

6 THE COURT: Yes, sir.

7 MR. ROBINSON: Mr. Wilkins, Mr. Ellis. You know, I
8 have a different suit on right now because I was going home
9 to run and I got this yogurt on my suit. So I had to
10 change. So it's not like I'm trying to fool you. It's the
11 same person, just different suit.

12 My name is Scott Robinson. I am the Defense attorney
13 on this case. And with me today is my assistant, Lisa.
14 She's going to be helping me today with this case on behalf
15 of Mr. Butts.

16 It is truly a pleasure and an honor to be before you
17 today. At the meeting this morning when the Judge greeted
18 you and so forth, he said some real significant things. And
19 one of those things is that the -- what you're doing here
20 today and in the next couple of days is one of the most
21 important duties that we have, and this is outside of war
22 time, and that is sitting as a member of the jury.

23 Now, Mr. Wilkins has stated to you that he represents
24 the State and that he is going to present certain
25 information through, I think he mentioned direct evidence,

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1 circumstantial evidence and, I believe, corroborative
2 evidence. - As a Defense attorney, I also represent the
3 State. I represent the people of the State in the sense
4 that everyone is presumed innocent when they come into a
5 court of law.

6 Now this is not a civil hearing such as a car accident,
7 a product liability suit. In that case it's on the
8 preponderance of evidence. That is something where the
9 evidence is maybe a little bit greater in one regard.
10 That's the preponderance of evidence. That's a lower
11 standard.

12 This is reasonable doubt. And what that means is that
13 the State must prove to you, to your satisfaction, all of
14 you, beyond a reasonable doubt that Mr. Butts is guilty of
15 these crimes. And they can't do it.

16 Now there's an old quotation that states that it's much
17 better to let one innocent, one -- eight guilty people go
18 free than one innocent person be put in jail or be found
19 guilty of something. In this matter -- and we're going to
20 establish that the case -- the State cannot establish the
21 case beyond a reasonable doubt.

22 Now I ask you when you look at the evidence in this
23 case and listen to the various witnesses and different
24 evidence and so forth that you look at -- look at everything
25 in terms of reasonable doubt. Has the State proven their

BARBARA DEWITT - DIRECT EXAMINATION BY MR. WILKINS

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1 case to you beyond a reasonable doubt?

2 Now that concept of beyond a reasonable doubt is
3 extremely confusing to people. The Judge is going to
4 explain it to you as the -- as the trier of the law, the
5 Judge of the law. But it's very confusing.

6 But in this case that's how you're going to be looking
7 at all the evidence in this case. Has the case -- has the
8 State proven their case beyond a reasonable doubt? Not just
9 one thing, but everything beyond a reasonable doubt.

10 We submit that they can't. We submit that William
11 Butts, who's sitting to my left, is innocent of these
12 charges. This is an important day in court for Mr. Butts
13 and his family 'cause this is his opportunity to establish
14 that he's innocent of these charges. Thank you.

15 **MR. WILKINS:** The State calls Barbara Dewitt.

16 **MADAME CLERK:** Ms. Dewitt, please come forward. Please
17 pause at the end of the bench, place your left hand on the
18 Bible and raise your right hand.

19 **Barbara Dewitt, being**
20 duly sworn testifies as follows:

21 **MADAME CLERK:** Thank you. Please be seated. Please
22 state your full name for the record.

23 **MS. DEWITT:** Barbara Dewitt.

24 **Direct Examination by Mr. Wilkins:**

25 Q. All right. Ms. Dewitt, make sure you speak up so the

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1 jury will be able to hear you. Thank you.

2 A. Okay.

3 Q. Ms. Dewitt, where are you employed?

4 A. Citgo Corner Mart, Piedmont Petroleum.

5 Q. Okay. And how long have you been employed at Citgo
6 Corner Mart?

7 A. Seven years.

8 Q. Okay. You said Piedmont Petroleum. Is that -- what is
9 that?

10 A. It's just -- it's the same thing as Corner Mart.

11 Q. Okay. And what are your duties for the Citgo Corner
12 Mart?

13 A. District supervisor. I have ten stores.

14 Q. Okay. And what do you do as a district supervisor?

15 A. Take care of payroll. I run the stores when the
16 manager's on vacation, handle the money, make deposits. I
17 go from Greenville all the way to Clinton and Newberry.

18 Q. And are you familiar with all the stores that you
19 manage?

20 A. Yes.

21 Q. You visited all those stores?

22 A. Yes.

23 Q. And have you worked in most of those stores?

24 A. Yes.

25 Q. Okay. And what about the video surveillance equipment

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1 that you have? Tell the jury about what kinds of video
2 surveillance equipment you have in all your stores.

3 A. We have what we call a DVR. And it has an overlay
4 system that shows you what's being rung up. It's a pretty
5 good system. And a lot of times I'll go in and burn CD's
6 for police if they need something. Whatever needs to be
7 done.

8 Q. And specifically a store on Woodruff Road, the Citgo
9 there, do you have a -- that DVR system located in that
10 store as well?

11 A. Yes.

12 Q. And October, November of 2009 did you have a recording
13 system in that particular store?

14 A. Yes.

15 Q. And how many cameras do you have in the store that
16 records?

17 A. In that particular store there's four or five.

18 Q. And what type of recording device -- what is the --
19 when a video camera's recording where does it record to?

20 A. It records to memory and saves it in the memory.

21 Q. On a computer?

22 A. Uh-huh (affirmative).

23 Q. Okay. And if you wanted to download a portion of that
24 video would you be able to do that?

25 A. Yes.

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1 Q. And how would you -- how would you burn that on to a CD
2 if somebody wanted to get a copy of a particular portion of
3 your video?

4 A. I find the times and the date that needs to be
5 recorded, and I enter them into the system. And I have the
6 start time and the end time. And then I load the CD in and
7 just tell it to burn, and it burns.

8 Q. I'm going to refer you to October 18th of 2009. Did
9 you have an occasion to burn a DVD for police officers then?

10 A. Yes.

11 Q. I'm going to show you what's marked as State's exhibit
12 1 and ask you if you recognize this?

13 A. Yes, that's my initials.

14 Q. Okay. Can you tell us what that is?

15 A. That's a Citgo Corner Mart, number 20 on Woodruff Road.

16 Q. Okay. And do you know what -- do you know what kind of
17 recording's on there?

18 A. It's just a video of our store.

19 Q. Okay. And have you viewed that video before?

20 A. Yes.

21 Q. And what's on that ---

22 MR. ROBINSON: Your Honor, I'm going to object to this
23 questioning. I think it needs more foundation in this case
24 as far as her -- as far as the tape and so forth.

25 THE COURT: Okay. I don't think he's moved to admit it

BARBARA DEWITT - DIRECT EXAMINATION BY MR. WILKINS

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- 1 yet. So I'm going to -- for right now I'm going to overrule
2 the objection. You may continue, sir.
- 3 Q. Have you -- have you viewed that video?
- 4 A. Yes.
- 5 Q. Okay. What's on that video?
- 6 A. It's just a video of the store and the cashier.
- 7 Q. Okay.
- 8 A. Waiting on customers.
- 9 Q. During what time?
- 10 A. It's on the 14th. I'm not sure what the time was on
11 it.
- 12 Q. No. What date did you review it?
- 13 A. Oh, on the 14th.
- 14 Q. Okay. And do you know what is on -- and you can take a
15 look at it if you'd like. Do you know what is this a
16 recording of?
- 17 A. Oh, this is a video of the store robbery.
- 18 Q. Okay. Can you tell us what date?
- 19 A. On the 18th.
- 20 Q. Of?
- 21 A. Of October.
- 22 Q. Of what year?
- 23 A. Of 2009.
- 24 Q. Okay. And on that -- and after you reviewed this video
25 -- is that a true and accurate recording of an armed robbery

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1 on October 18th, 2009?

2 A. Yes.

3 Q. All right. And is that a recording of your DVR system
4 in your Citgo on that Woodruff Road?

5 A. Yes.

6 MR. WILKINS: Your Honor, the State moves exhibit 1
7 into evidence.

8 THE COURT: Any objection, sir?

9 MR. ROBINSON: Objection, Your Honor, as to foundation
10 as far as whether the tape's in the same condition it was at
11 the time, who recorded it and so forth.

12 THE COURT: Okay. I'll respectfully overrule your
13 objection. And I'll admit it as State's exhibit number 1
14 over objection.

15 (Whereupon State's exhibit 1 was admitted into
16 evidence)

17 Q. Ms. Dewitt, I'm going to show you what's State's
18 exhibit 2 and ask you to identify this.

19 A. That's another store robbery.

20 Q. Okay. And is your initials on there?

21 A. Yes, it is.

22 Q. All right. And when did you review this video?

23 A. On the 14th of September.

24 Q. Okay. And what day do that -- was that video taken?

25 A. On October 30th.

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1 Q. Of what year?

2 A. Of 2009.

3 Q. All right. And when you reviewed it was it the same
4 condition in which it was when you burned it for police?

5 A. Yes.

6 Q. Okay.

7 MR. WILKINS: Your Honor, the State moves exhibit 2
8 into evidence.

9 THE COURT: Any objection, sir?

10 MR. ROBINSON: Same objection, Your Honor.

11 THE COURT: All right. I overrule the same and admit
12 it into evidence as State's exhibit number 2.

13 (Whereupon State's exhibit 2 was admitted into
14 evidence)

15 Q. And, Ms. Dewitt, I'm going to show you what's State's
16 exhibit 3 and ask you if you can identify this DVD?

17 A. Yes.

18 Q. All right. And have you reviewed this DVD?

19 A. Yes, I have.

20 Q. And what is on this DVD?

21 A. That one is a video of just the store layout and the
22 cashier.

23 Q. Okay. On what date?

24 A. On September -- oh, that was done on November 3rd. I
25 viewed it on 9/14/11.

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1 Q. Okay. And what -- what is on that video?

2 A. Just the store and the cashier waiting on customers.

3 Q. Okay. And what date -- what date is of your store?

4 A. The date of the store was November -- November 3rd,
5 2009.

6 Q. 2009. Okay. And is there a robbery on this video?

7 A. No.

8 Q. Okay. What's on this video?

9 A. Just the cashier.

10 Q. Okay.

11 MR. WILKINS: Your Honor, the State moves exhibit 3
12 into evidence.

13 THE COURT: Any objection, sir?

14 MR. ROBINSON: Objection to relevance, Your Honor.
15 It's not a robbery. It's not anything.

16 THE COURT: Okay. All right. I'll respectfully
17 overrule the objection and submit it as State's exhibit
18 number 3.

19 (Whereupon State's exhibit 3 was admitted into
20 evidence)

21 Q. And finally, Ms. Dewitt, I'll ask you to look at
22 State's exhibit 4 and ask you if you recognize that DVD?

23 A. Yes, it's my initials.

24 Q. Your initials are on there. And when did you review
25 that video?

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1 A. On 9/14/11.

2 Q. All right. And what's that a video of?

3 A. That's a video of the store robbery on November 5th,
4 2009.

5 Q. Okay. And is it in the same condition when you
6 reviewed it as when you burned it down for the police
7 officers?

8 A. Yes.

9 Q. Okay.

10 MR. WILKINS: Your Honor, the State moves exhibit 4
11 into evidence.

12 THE COURT: Objection, sir?

13 MR. ROBINSON: Same objection, Your Honor.

14 THE COURT: All right, sir. I'll overrule the same and
15 admit it as State's exhibit number 4.

16 (Whereupon State's exhibit 4 was admitted into
17 evidence)

18 Q. Now, Ms. Dewitt, will you tell us a little bit about
19 Citgo's accounting practices, how y'all reconcile your
20 drawers every day?

21 A. Each shift has paperwork that they have to do and
22 account for their money. And then at the end of the day the
23 manager totals all the shifts and he has his close-out that
24 has to match.

25 Q. And how many shifts do y'all have at Citgo?

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1 A. Three.

2 Q. Okay. And do you know the hours of those shifts?

3 A. Each store varies. That one, I think, runs six to two,
4 and two to ten and ten to six.

5 Q. I'm going to show you what's marked as State's exhibit
6 5 and ask you if you recognize this document?

7 A. Yes. That's our shift work.

8 Q. Can you explain to us what -- what this document is?

9 A. This is our daily paperwork to close out for each day.
10 Each shift does their paperwork. And then at the end of the
11 day the manager does his side and it all balances out.

12 Q. And do they -- do they reconcile the cash ---

13 A. Yes.

14 Q. --- cash in the store?

15 A. Um-hum (affirmative).

16 Q. All right. And on -- and can you tell us the date of
17 this document?

18 A. 10/17/2009.

19 Q. All right. And would that account for the -- what
20 shifts does that account for?

21 A. First, second and third.

22 Q. So would the third shift go into October 18th?

23 A. Yes. At midnight it turns into the 18th, but we label
24 our paperwork still the 17th.

25 Q. Okay. So on -- October 18th, October 17th, can you --

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1 can you show us where the reconciliation is on this piece of
2 paper?

3 A. This is the total for the whole day. And this is each
4 day how each shift came out at the bottom.

5 Q. Okay.

6 MR. WILKINS: Your Honor, State moves exhibit 5 into
7 evidence. It's a business record.

8 THE COURT: Objection, sir?

9 MR. ROBINSON: Objection, Your Honor. I also have a --
10 something outside the presence of the jury ---

11 THE COURT: All right. Come on up.

12 (Whereupon a bench conference was held off the record
13 in the presence of the jury, but out of their hearing)

14 THE COURT: All right. I note for the record Mr.
15 Robinson's objection. I believe that was for a lack of
16 foundation and relevance. And I've overruled the same and
17 will allow the exhibit as State's exhibit number 5, is that
18 right?

19 MR. WILKINS: 5, yes, Your Honor.

20 THE COURT: Okay.

21 (Whereupon State's exhibit 5 was admitted into
22 evidence)

23 Q. Ms. Dewitt, I forgot to ask you, is this record kept in
24 the ordinary course of business for Citgo?

25 A. Yes. All of our stores do that.

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1 Q. And they do it every day?

2 A. Yes. And then it's kept. It's turned into the office
3 and kept on file there.

4 Q. Okay. And I'm going to show you State's exhibit 6.
5 Can you tell us the date on this?

6 A. October 29, 2009.

7 Q. And would that account for October 30th as well?

8 A. That would account for the 28th that went into'-- well,
9 I mean, you're right, 30th. It started the 29th, but on
10 third shift it turned into the 30th.

11 Q. And can you tell the jury what exhibit 6 is?

12 A. This is our shift work for that day. And it shows what
13 each shift was as they closed out on their shift and then
14 finally what they turned out for the whole day.

15 Q. And is this document kept in the ordinary course of
16 business for Citgo?

17 A. Yes.

18 MR. WILKINS: Your Honor, the State moves exhibit 6
19 into evidence.

20 THE COURT: Objection ---

21 MR. ROBINSON: Same objection, Your Honor.

22 THE COURT: All right, sir. Respectfully overruled.

23 It's admitted into evidence as State's exhibit number -- is
24 that 7 or 6?

25 MR. WILKINS: 6, Your Honor.

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1 **THE COURT:** 6. Okay.

2 (Whereupon State's exhibit 6 was admitted into
3 evidence)

4 Q. And, Ms. Dewitt, I'm going to refer you back to exhibit
5 5. I may not have asked you this. Can you tell us what the
6 reconciliation of cash was on October 17th and October 18th,
7 if there was a loss or a gain?

8 A. On October 17th was a hundred and fifty-three oh seven
9 (153.07) short. October 29th was two hundred and -- two
10 hundred and seventy-two and sixteen cents (272.16) short.

11 Q. And, finally, I'm going to ask you to look at State's
12 exhibit 7 and ask you to identify that for me, please.

13 A. That's our shift work for November 4th, goes into the
14 5th, it ends on the 5th.

15 Q. And is this a reconciliation of your -- of your cash
16 that day?

17 A. Our cash over/short, yes.

18 Q. And is this document kept in the ordinary course of
19 business?

20 A. Yes, it is.

21 **MR. WILKINS:** Your Honor, the State moves exhibit 7
22 into evidence.

23 **THE COURT:** Objection, sir?

24 **MR. ROBINSON:** Same objection, Your Honor.

25 **THE COURT:** Okay.

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1 Q. And ---

2 THE COURT: Respectfully overruled. The same is
3 admitted as State's exhibit number 7.

4 (Whereupon State's exhibit 7 was admitted into
5 evidence)

6 MR. WILKINS: Thank you, Your Honor.

7 Q. And can you tell the jury if there was a loss or a gain
8 on this November 4th and 5th date?

9 A. There was a loss of sixty-six dollars and fifteen cents
10 (\$66.15).

11 Q. And, Ms. Dewitt, you've reviewed all the DVD's that are
12 now admitted into evidence as State's exhibits 1, 2, 3 and
13 4, ---

14 A. Yes.

15 Q. --- is that correct?

16 A. Yes.

17 Q. I'm going to show you what's State's exhibit 8 and ask
18 you to take a look at -- and if you recognize these stills.

19 A. Yes, I do.

20 Q. And what are these?

21 A. The store robbery at Citgo 20 on Woodruff Road.

22 Q. Okay. And what are the dates? Do you recognize the
23 dates? If you don't, that's fine.

24 A. The 18th of October, 29th of October and November,
25 whatever it was.

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1 Q. And so these are the stills from the DVD's that you've
2 previously discussed?

3 A. Yes.

4 Q. Okay.

5 MR. WILKINS: Your Honor, the State moves exhibit 8
6 into evidence.

7 MR. ROBINSON: I'm going to object, Your Honor. If I
8 could approach?

9 THE COURT: Sure. Yeah.

10 (Whereupon a bench conference was held off the record
11 in the presence of the jury, but out of their hearing)

12 THE COURT: All right. I'm going to respectfully
13 overrule the objection and allow or admit into evidence
14 State's exhibit number 8, is that correct?

15 MR. WILKINS: Yes, Your Honor. The State moves exhibit
16 8 into evidence.

17 THE COURT: All right, sir.

18 (Whereupon State's exhibit 8 was admitted into
19 evidence)

20 Q. All right. Ms. Dewitt, I'm going to show you State's
21 exhibit 9 and ask you if you recognize these pictures?

22 A. Yes. That's Citgo Corner Mart 20 on Woodruff Road.
23 And I recognize my employee, William Flynn.

24 Q. And what about this side right there? Do you recognize
25 that picture as well?

BARBARA DEWITT - DIRECT EXAMINATION BY MR. WILKINS

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1 A. Yes, that's our store.

2 Q. That's your store there?

3 A. Um-hum (affirmative).

4 Q. And these were -- are these stills from the DVD that
5 you previously discussed in your testimony?

6 A. Yes.

7 MR. WILKINS: Your Honor, Government -- State moves
8 exhibit 9 into evidence.

9 THE COURT: Objection, sir?

10 MR. ROBINSON: I've got the same objection, Your Honor,
11 401, 402 and 403 objection to this.

12 THE COURT: All right, sir. I'm going to respectfully
13 overrule. And inasmuch as those are stills which appear and
14 are taken from the video tapes, they're already admitted
15 into evidence. I think it's appropriate. Therefore, I'll
16 allow it as State's exhibit number 9.

17 (Whereupon State's exhibit 9 was admitted into
18 evidence)

19 Q. Ms. Dewitt, I'm going to show you State's exhibit 10.

20 MR. WILKINS: I'll lay a little bit of foundation, Your
21 Honor. That's okay.

22 Q. Ms. Dewitt, are you familiar with the area where Citgo
23 on Woodruff Road is located?

24 A. Yes.

25 Q. And have you traveled in this general area?

BARBARA DEWITT - CROSS EXAMINATION BY MR. ROBINSON

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1 A. Pretty much every day.

2 Q. Every day? And are you familiar with the Citgo and the
3 roads surrounding it and the other identified locations on
4 this particular map?

5 A. Yes, I am.

6 MR. WILKINS: Your Honor, State moves exhibit 10 into
7 evidence.

8 THE COURT: Sir?

9 MR. ROBINSON: As I said before, no objection.

10 THE COURT: All right. Without objection the same is
11 moved into evidence as State's exhibit number 10.

12 (Whereupon State's exhibit 10 was admitted into
13 evidence)

14 Q. All right. Ms. Dewitt, please answer any questions
15 that Defense counsel may have for you.

16 A. Okay.

17 Q. Thank you.

18 **Cross Examination by Mr. Robinson:**

19 Q. Ma'am, is the -- is the person -- you're the district
20 manager, you said, is that correct?

21 A. Yes, I am.

22 Q. Back in 2009 you were also district manager, is that
23 right?

24 A. Yes.

25 Q. Now can you tell the jury what reasons -- isn't it true

BARBARA DEWITT - CROSS EXAMINATION BY MR. ROBINSON

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1 cashiers come up short during the day? Isn't that correct?

2 A. Sometimes they do.

3 Q. Sometimes they do? And this is a gas station, isn't
4 that right?

5 A. Yes.

6 Q. And sometimes there are drive-offs at gas stations, is
7 that right?

8 A. Not very often anymore because we don't turn the pumps
9 on.

10 Q. But in 2009 there are a lot of different -- there were
11 a variety of reasons why there would be a shortage, isn't
12 that correct?

13 A. There could be.

14 Q. Okay. In the terms of these particular incidents that
15 you are talking about with this tape, you weren't there, you
16 didn't see anything, did you?

17 A. I wasn't there at the time of the robbery, no.

18 Q. That's all I have. Thank you.

19 **THE COURT:** Any redirect, sir?

20 **MR. WILKINS:** No, sir, Your Honor.

21 **THE COURT:** All right. Thank you for being here,
22 ma'am.

23 A. Thank you.

24 **THE COURT:** I do appreciate it. You may call your next
25 witness.

1 MR. WILKINS: Your Honor, may she be excused?

2 THE COURT: Any objection, sir?

3 MR. ROBINSON: I have no objection, Your Honor.

4 THE COURT: All right.

5 MR. WILKINS: I think she mentioned she may want to
6 stay and watch the rest of the trial if that ---

7 THE COURT: I can't imagine anything more exciting.

8 (Laughter)

9 MR. ROBINSON: And, Your Honor, I have one matter I'd
10 like to take outside the presence of the jury just on one of
11 the objections, if I could.

12 THE COURT: Okay. Good enough. Good enough. All
13 right. Ladies and gentlemen, let's take a brief break.
14 Please don't discuss the case.

15 (Whereupon the jury exited the courtroom at 3:12 pm)

16 THE COURT: All right, sir, I'd be happy to hear from
17 you.

18 MR. ROBINSON: May it please the Court. Your Honor, at
19 the pretrial stage we had -- we had talked about the picture
20 of a different day when Mr. Butts was in the Citgo station.
21 We talked about that. And it's my recollection -- I thought
22 that the Court had sustained my objection on that as far as
23 for prejudice reasons.

24 And now I made the objection -- and I want to make sure
25 on the record because I'm trying to make sure I have a

1 record of this for the Court of -- for the Court. They've
2 put in -- what's in here is ---

3 THE COURT: Let me -- I'm going to stop you real quick,
4 okay?

5 MR. ROBINSON: Yes, sir.

6 THE COURT: Because in limine what I said was that I
7 wasn't going to rule on it, but I was inclined to allow it
8 if the appropriate foundation had been laid. Now I know you
9 stated on the record all the reasons why you objected to it
10 both to the video and then to the still pictures. So I'll
11 give you the opportunity to protect the record in that
12 regard if you want to, but I think we've flushed it out.

13 MR. ROBINSON: We have. The prejudice is the big thing
14 that I did not talk about in front of the jury because the
15 picture -- this is the first time we've seen -- in the
16 pretrial we didn't have this board of pictures. What the
17 Court has is a picture of that one day when Mr. Butts was in
18 the -- in the Citgo ---

19 THE COURT: Yes, sir.

20 MR. ROBINSON: --- that's not related to this. But it
21 looks like, if you look at that picture, looks like it must
22 be him in all these things. And it's extremely -- I don't
23 know if -- I think the prejudicial value far outweighs any
24 probative value in this case.

25 THE COURT: Okay. All right. Mr. Wilkins.

1 **MR. WILKINS:** Your Honor, just for the record, Mr.
2 Robinson was given all these stills. So he's had them way
3 in advance of the trial. They're just placed on a board in
4 a particular area.

5 The November 3rd video is him. And Mr. Robinson uses
6 the word prejudicial, I use it as good evidence. We're
7 trying to prove that the person in the November 3rd video is
8 the same person in the November 5th robbery, and there's a
9 lot of similarities. And so we put them on a piece of board
10 to demonstrate that to the jury.

11 **THE COURT:** I understand.

12 **MR. WILKINS:** That's what we've done. So, you know.

13 **THE COURT:** Okay. And I recognize the 403 objection.
14 And I think that it's both relevant and it has probative
15 value and that the prejudicial effect doesn't outweigh that
16 probative value under rule 403. I know that the reason for
17 it is both for identification and also to set the fact or
18 establish the fact that he had been in there before. So I
19 don't think that it's unduly prejudicial in any way, shape
20 or form.

21 And inasmuch as those still pictures -- and I don't
22 know if they've been turned over or not. The State makes
23 that representation. And I'll take them at their word in
24 that regard. But inasmuch as they are still representations
25 of what appears on the video, then I don't think that

1 they're prejudicial being presented to the jury in that form
2 inasmuch as they get it anyway.

3 Now, obviously, I recognize that you've objected to the
4 introduction of that video tape and the stills. So you're
5 protected on the record in that regard. Okay. All right.
6 Will you bring the jury in, please.

7 (Whereupon the jury entered the courtroom at 3:18 pm)

8 **THE COURT:** All right, ladies and gentlemen, we'll
9 start back. Just so you know, there aren't any secrets in
10 this courtroom. Sometimes we have to be very -- have to be
11 very exacting about what we argue about in front of you and
12 what we don't argue about in front of you because in order
13 for an attorney to make a point to the Court sometimes he
14 may have to say something to me that is not otherwise
15 admissible.

16 So sometimes just in order to make sure that nothing
17 comes out that's going to cause me to have to either give
18 you a curative instruction or to declare a mistrial,
19 sometimes it's just better to just ask y'all to leave so
20 that we can have a full conversation and a full argument on
21 a legal issue or an evidentiary issue. So that's what
22 happened. We were just having a full argument on a
23 evidentiary issue.

24 So sometimes if y'all leave for that purpose, that's
25 what we're doing, just so you know. So it doesn't change

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1 anything at this point. And, Mr. Wilkins, I believe that is
2 -- it's your case.

3 MR. WILKINS: Thank you, Your Honor. The State calls
4 William Flynn.

5 MADAME CLERK: Please pause at the end of the bench.
6 Place your left hand on the Bible and raise your right hand.
7 William Flynn, being duly
8 sworn testified as follows:

9 MADAME CLERK: Thank you. Please be seated. Please
10 state your full name for the record.

11 MR. FLYNN: William Flynn.

12 Direct Examination by Mr. Wilkins:

13 Q. Mr. Flynn, how old are you?

14 A. I'm twenty-two.

15 Q. Where did you go to school?

16 A. I went to Blue Ridge High School.

17 Q. And where are you currently employed?

18 A. I still work for Corner Mart. And I'm a store manager
19 now.

20 Q. Okay. And which store are you the manager of?

21 A. It's the one on State Park Road.

22 Q. When you say Corner Mart, ---

23 A. It's Piedmont Petroleum Company.

24 Q. Okay. And how long have you been working for Piedmont
25 Petroleum or Citgo?

WILLIAM FLYNN - DIRECT EXAMINATION BY MR. WILKINS

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1 A. Two years pretty much to the date.

2 Q. And were you working there on November and -- October,
3 November of 2009?

4 A. Yes, sir.

5 Q. And what were your duties back in 2009 in October and
6 November?

7 A. I was a clerk at the time.

8 Q. Okay. And what does a clerk do?

9 A. It just runs the register, cleans the store.

10 Q. Okay.

11 A. It's just shift duties.

12 Q. And in October of 2009 how long had you been working
13 for the Citgo?

14 A. I'd only been working for two weeks.

15 Q. Okay. And which Citgo were you working at?

16 A. I was working at number 20 on Woodruff Road, Five
17 Forks.

18 Q. And have you done anything previously?

19 A. No, same company.

20 Q. Same company?

21 A. Yeah.

22 Q. All right. And I'm referring you to October 18th,
23 2009. Were you working on that day?

24 A. Yes, sir.

25 Q. And what were you working as on that day?

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1 A. I was the third shift. It's from ten to six in the
2 morning.

3 Q. And do you remember that day?

4 A. Yes, I remember.

5 Q. Can you tell us what happened on that day?

6 A. On that day I was robbed.

7 Q. Okay. Can you -- about when were you robbed? Do you
8 remember?

9 A. It was about 3:30 in the morning.

10 Q. Okay. And can you tell this jury kind of what happened
11 when you were working there about 3:30 in the morning that
12 day?

13 A. About 3:30 in the morning somebody, you know, a robber
14 had came in. He turned his head to the right and pulled his
15 mask down, and he approached the counter and jumped the
16 counter on me.

17 At that time, you know, I told him, you know, I was
18 going to give him the money. I hit no sale. And as I was
19 giving him the money out of the register he reached
20 underneath me and grabbed the envelope which had forty
21 dollars. We kept drops at the time.

22 At the time we kept hundred dollar drops. Every time
23 we had a hundred dollars, we dropped it. Until the robbery
24 we started doing twenty dollar drops.

25 And after I gave him the money out of there he took the

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1 gun and hit the drawer and told me to open it. So I opened
2 the drawer and he seen nothing was underneath it and he
3 waved the gun at the safe. And when he did that I told him
4 I couldn't open it.

5 But I went ahead and took him to the next register, and
6 I gave him all the money out of it. And then as he was
7 leaving he said, good man, good man, contribute to the
8 street, ran out the door.

9 Q. And do you -- you remember what this person looked
10 like?

11 A. No, I couldn't tell you.

12 Q. What was he wearing?

13 A. He was wearing a mask.

14 Q. Okay. Any other clothes that you remember that he was
15 wearing?

16 A. I just remember the white -- the hoodie.

17 Q. Okay. Do you remember what color of pants he had on?

18 A. It was black pants. And he had on cloth gloves.

19 Q. And shoes, do you remember any shoes?

20 A. Shoes. It was just tennis shoes. I don't know the
21 brand.

22 Q. And do you remember how tall he was or ---

23 A. He was taller than me. I couldn't really, you know, it
24 was quick.

25 Q. And you said he had a gun. What kind of gun -- do you

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1 remember the ---

2 A. I ---

3 Q. --- color of the gun?

4 A. I could tell it was black and it was a small caliber.

5 And it did look like it had a silver stripe. I only got a

6 good look at it once. That was when it -- it was like this

7 at the counter. That was the only time the gun actually

8 pointed at me.

9 Q. Okay. All right. Well, Mr. Flynn, I want to show you

10 -- I want to show you what's been admitted into evidence as

11 State's exhibit 1. This is a video of that night. I want

12 you to take a look at it with us, okay?

13 MR. WILKINS: Your Honor, do you mind if we cut the

14 lights down a little bit?

15 THE COURT: I don't mind as long as my clerk can stay

16 awake.

17 (Laughter)

18 (Whereupon State's exhibit 1, video, was played for the

19 jury)

20 Q. Is that an accurate representation of what happened

21 that morning?

22 A. Yes, sir.

23 Q. Now you talk about him wearing a mask. I want to show

24 you what's marked as State's exhibit 14. And I want you to

25 look in here. I'm going to ask you if this particular mask

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1 is similar to the one that you saw the night of October
2 18th?

3 A. It is similar, yes.

4 Q. Now you can't tell us if that's the exact mask ---

5 A. No, ---

6 Q. --- or not, can you?

7 A. --- I can't prove that.

8 Q. Okay. But it's similar to the one?

9 A. It is similar.

10 Q. Now why do you think it's similar to the mask?

11 A. Because it was homemade.

12 Q. What do you mean homemade?

13 A. He was having trouble seeing out the eyes.

14 Q. He was having trouble seeing out of the eyes?

15 A. Yeah, he was having trouble seeing out.

16 Q. Okay. Well, let's show you a different angle of this
17 -- of this as well. Now what do you believe the person in
18 that video was doing right then?

19 A. He was making sure nobody seen his face.

20 Q. By doing what?

21 A. By pulling the mask down.

22 Q. Now is the mask loose or was it tight fitting?

23 A. It was somewhat loose.

24 Q. All right. Now, Mr. Flynn, on one of those videos the
25 screen goes blue. Why does it go blue?

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1 A. Well, it's the motion detectors. Pretty much it's set
2 up to where if there isn't, you know, if there is no
3 movement, there is no, you know, there isn't going to be
4 anything playing.

5 Q. And on this one we didn't hear any audio as well.

6 A. No, there's only audio at the register itself.

7 Q. And that was recording it in the first video?

8 A. Yes.

9 Q. Okay. All right. Now you also mentioned that he had a
10 gun.

11 A. Yes, sir.

12 Q. And you were able to identify what the gun appeared to
13 be?

14 A. Yes.

15 Q. I'm going to show you what's State's exhibit 12 and ask
16 you if you can take a look at that.

17 A. That's similar, yes.

18 Q. Okay. Is that similar to the gun that you saw being
19 used against you on October 18th?

20 A. Yes, sir.

21 Q. Okay. I'm going to show one more view. Now is that
22 the gun in the person's hands who robbed you right there?

23 A. You can see the silver stripe on the gun just from the
24 photo right there.

25 Q. Okay. Now what is he asking you to do right there?

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1 A. He was asking me to lift the drawer. And at that
2 moment he was pointing at the safe. He was wanting me to
3 open that. I just went ahead and took him to the next
4 register because at that time we kept fifty dollars in it.
5 It was like a back-up drawer so we could switch shifts
6 easier.

7 Q. Okay. And what is he saying to you when he's leaving
8 right there?

9 A. When he first started running around he was saying good
10 man, good man. And as he -- as he got closer to the door or
11 to the door he said contribute to the streets.

12 Q. Okay. Were you scared?

13 A. Yeah, at that time. It all happened quick though.

14 Q. You had talked about the drop. Explain to the jury
15 real quick what the drop -- and what was he doing when he
16 was looking for the drop?

17 A. Well, he reached underneath the register that we kept
18 in a little white basket. You see the white basket right
19 there?

20 Q. Uh-huh (affirmative).

21 A. We kept this little yellow envelope. And we did
22 hundred dollar drops at the time. And there was forty
23 dollars actually in the drop.

24 Q. Do you know how much money he took that night?

25 A. It was -- it was about a hundred and fifty.

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1 Q. And how do you know that?

2 A. I was running the register.

3 (Laughter)

4 Q. Makes good sense. All right. Mr. Flynn, I'm going to
5 refer you to the night or the morning of November 5th.

6 That's about eighteen days later from this October 18th
7 robbery. Were you working that night?

8 A. Yes, sir.

9 Q. And now, again, how long had you been working for Citgo
10 up until this time?

11 A. Well, for the first robbery it was two weeks. So
12 eighteen days later, that would have been about a month.

13 Q. And on the morning of November 5th can you tell us what
14 happened then?

15 A. Well, I had just -- I had just got finished stocking
16 the cooler. And I was bringing the boxes out to throw them
17 away into the dumpster. And as soon as I opened the door I
18 looked to my right and he was in front of me and told me to
19 go back into the store.

20 So I went ahead and dropped the boxes and I turned
21 around. And as I was walking to go behind the, you know, go
22 behind the counter he told me to take all of the money out
23 of my pockets and all the money out of the register. And as
24 we was walking around I was walking somewhat fast, but not
25 too fast, and I heard him cock the gun back.

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1 And I went to reach for my back pocket and I heard him
2 go, whoa, whoa, whoa. I guess he thought I had a gun on me.
3 I'm not sure. I went ahead and flipped my wallet onto the
4 counter.

5 I went over to the first register and I opened it and
6 lifted the drawer. Then he told me to go to the next
7 register. Well, we had stopped keeping money in that
8 register at the time because we'd been getting robbed. And
9 in my first drawer I had all my bills marked with a 4 'cause
10 my shift had started on the 4th and went to the 5th.

11 And once, you know, I was trying to get the register
12 open for the second one, but it wouldn't open 'cause -- had
13 to boot it up 'cause it was shut down. And he told me that
14 -- he pulled a bag out and told me to put all the money, you
15 know, that I took out of the register and out of my wallet
16 in the bag. So if he'd actually took my whole wallet he
17 would have got more money, but ---

18 Q. How much money did you have in your wallet?

19 A. I had a hundred and twenty-five altogether.

20 Q. And how much ---

21 A. But I just -- I just went ahead and took the twenty-
22 five out of the top and threw it in the bag. That was the
23 only money that wasn't marked. And when he seen that there
24 wasn't no money in the second register he backed up and he
25 asked me where is the money? And I told him there wasn't no

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1 more money. And then he just walked out and didn't say
2 nothing.

3 Q. Did he ever say anything to you ---

4 A. Not after that.

5 Q. Okay. All right. Let's take a look at that video, I
6 believe, which is State's exhibit 4, November 5th robbery.

7 (Whereupon State's exhibit 4, video, was shown to the
8 jury)

9 Q. All right. What's going on right there?

10 A. He's telling me to empty all the money out of my
11 pockets and then the registers.

12 Q. And as he -- you mentioned earlier he'd cocked the gun.
13 Has he cocked the gun yet?

14 A. Yeah, he cocked the gun when he got around to the
15 counter.

16 Q. Okay.

17 A. To the side.

18 Q. And what do you believe the individual in this video is
19 doing right there?

20 A. Well, right there is where we put the drops in there.
21 It's just a little slide. And I guess he's looking to see
22 if there's any way to open it.

23 Q. Were you scared?

24 A. That one shook me up a little more than the first
25 robbery 'cause he was -- he was more aggressive and he

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1 seemed nervous.

2 Q. Now let's go back. What was -- what was the individual
3 in that video wearing?

4 A. He was wearing blue jeans. And this time he put a
5 black shirt over his hoodie, I guess, so he could move
6 better or that you wouldn't see him as much in the night.

7 Q. Was he wearing a mask?

8 A. Yes. And he actually had a different mask for this
9 robbery.

10 Q. All right. I showed you what was in -- what's marked
11 for identification State's exhibit 14.

12 A. Yes.

13 Q. Was the mask in that robbery similar to this one?

14 A. No.

15 Q. Okay. How was it dissimilar?

16 A. This one was actually one that you would buy at the
17 store because it was tighter to his face and I could see his
18 eyes.

19 Q. Would you say it was -- it's like a ski mask?

20 A. It was -- it was an actual ski mask.

21 Q. And was he -- was this individual wearing gloves?

22 A. Yes, he was wearing gloves.

23 Q. All right. And did he have a weapon?

24 A. Yes.

25 Q. What kind -- do you remember what the weapon looked

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1 like?

2 A. It was -- it looked like the same gun.

3 Q. And I'm going to show you what's State's exhibit 12
4 that I showed you earlier, the same exhibit. Did it appear
5 to be the same kind of gun as this?

6 A. Yes, sir.

7 Q. Let me show you one more view of this particular item.
8 Could you kind of tell us what's going on?

9 A. Well, that's where I threw my wallet out on the
10 counter and I started taking money out of the drawer. And
11 that's where he tells me to put the money in the bag. And
12 he does say at the time to hurry up or he shoots me. And
13 you can tell he's staying down 'cause this is the third time
14 around. And I'm trying to tell him that there ain't no
15 money in that drawer, but I'd still have to prove it.

16 Q. All right. What's coming up on the screen right there?

17 A. That's showing that I'm booting up the register.

18 Q. So the computer's tied to the register?

19 A. Yes, sir. And he's asking me where -- where's the
20 money? And I told him that there ain't no more money. So
21 he just runs out.

22 Q. Now you were robbed twice in eighteen days.

23 A. Yes, sir.

24 Q. On the second robbery, your impression, was it the same
25 person or a different person as to who robbed you on the

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1 second time?

2 A. It seemed to be the same person. I mean, at the -- at
3 the time, you know, I was confused, you know, and it's the
4 second time around, you know.

5 Q. All right. Mr. Flynn, answer any questions the defense
6 counsel may have for you.

7 A. Yes, sir.

8 MR. ROBINSON: May it please the Court.

9 THE COURT: Yes, sir. Absolutely.

10 **Cross Examination by Mr. Robinson:**

11 Q. Mr. Flynn, the first video, the one from October 18th,
12 you saw a second ago, didn't that person seem to be familiar
13 with drops and where the money would be?

14 A. Well, I had just started working there. So I wouldn't
15 -- I wouldn't have known any of the regulars.

16 Q. But he was asking you about -- he was asking you where
17 the drawer was and he went to the location of where the drop
18 was, is that correct?

19 A. Well, he went straight for the location of the drop.

20 Q. Okay. Wouldn't that -- wouldn't that indicate that he
21 knew or he was possibly a former employer -- an employee of
22 the store?

23 A. Yes, sir. Well, I couldn't say employer, but ...

24 Q. Employee, excuse me.

25 A. But I can't prove that.

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1 Q. Okay. But it seemed to you that that's what -- now
2 that's what it's like, is that correct?

3 A. Yes, sir.

4 Q. Now the gun that Mr. Wilkins asked you about, you're
5 not sure if that's the same gun or not, are you? You don't
6 know, do you?

7 A. Well, it's similar.

8 Q. Similar?

9 A. Yes.

10 Q. And how many -- in your -- do you know much about guns?

11 A. Sir?

12 Q. Do you know a lot about guns?

13 A. Not too much. Not pistols.

14 Q. Would it be fair to say that there are a lot of black
15 guns out there?

16 A. There is.

17 Q. A lot of black guns that have silver on them? Pretty
18 accurate to say that?

19 A. Yes, sir.

20 Q. Okay. And in the first video, I think, you said that
21 the person had black jeans on, is that right?

22 A. Yes, sir.

23 Q. In this last video that Mr. Wilkins showed you the
24 person had jeans, I think you stated that, right?

25 A. (Affirmative nod).

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1 Q. And you've had an opportunity to view that video. That
2 person didn't have any holes in his jeans, did he?

3 A. I wasn't able to tell that. It was too fast.

4 Q. Too fast? And he had a hoodie on, is that correct?

5 A. Yes, sir.

6 Q. And you're not sure whether it was -- actually, you
7 testified that it was a different mask this time, is that
8 correct?

9 A. Yes, it was.

10 Q. Okay. He was wearing gloves this time, right?

11 A. He wore gloves every time.

12 Q. Gloves every time? Okay.

13 A. For both of my robberies, yes.

14 Q. That first video when you got -- when the person got on
15 top of the register did he actually through his feet get on
16 top of the register?

17 A. On top of the register?

18 Q. Top of ...

19 A. The counter.

20 Q. The counter?

21 A. Yes.

22 Q. He did, didn't he?

23 A. He jumped over the counter.

24 Q. Okay. And did he make prints to your knowledge?

25 A. Yes, sir.

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1 Q. And the police, to your knowledge, took these prints,
2 didn't they, as evidence?

3 A. Yes, they did. I seen them.

4 Q. Okay.

5 A. 'Cause I asked if they was going to. And they was,
6 sir, don't tell me how to do my job. I was like, all right.

7 (Laughter)

8 Q. So it would be fair to say that if they took those
9 prints that those prints would indicate the person that
10 committed this robbery that day, correct?

11 A. I guess.

12 Q. Well, you said that he was that person that the jury
13 saw that he got on top of the counter and had a footprint on
14 top of that counter, correct?

15 A. Yes, sir.

16 Q. And the deputies took an imprint of that, ---

17 A. Um-hum (affirmative).

18 Q. --- is that correct?

19 A. Yes, sir.

20 Q. And this would be fair -- and it would be fair to say
21 that the person who committed that robbery had the same ---

22 MR. WILKINS: Objection ---

23 Q. --- footprints?

24 MR. WILKINS: --- to speculation, Your Honor.

25 THE COURT: Okay. I'll overrule the objection. And

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1 I'll let you answer it.

2 Q. Fair to say?

3 A. So what are you asking again?

4 Q. If you're saying that the person that robbed you that
5 you can see from that video was this guy on top of the
6 counter with their shoes, ---

7 A. Um-hum (affirmative).

8 Q. --- an imprint of their shoe, ---

9 A. Yes, sir.

10 Q. --- and the police took that imprint and did testing on
11 it, the person whose prints those belonged to, they would
12 most likely belong to the person that robbed you that day,
13 correct?

14 A. Yes, sir.

15 Q. Okay. And when the deputies came out to -- to the
16 scene these days they took fingerprints, didn't they?

17 A. Yes, sir. He had gloves on. So there wasn't no way to
18 get prints.

19 Q. Okay. That's all I have. Thank you.

20 THE COURT: Any redirect, sir?

21 MR. WILKINS: No, Your Honor.

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

23 A. Thank you.

24 THE COURT: Appreciate you being here.

25 MR. WILKINS: Your Honor, can Mr. Flynn be released

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1 from his subpoena?

2 MR. ROBINSON: No objection.

3 THE COURT: All right, he may.

4 MR. ELLIS: Your Honor, the State calls Victor Campbell
5 to the stand.

6 MADAME CLERK: Mr. Campbell, please pause at the end of
7 the bench, place your left hand on the Bible and raise your
8 right hand.

9 Victor Campbell, being
10 duly sworn testified as follows:

11 MADAME CLERK: Thank you. Please be seated. Please
12 state your full name for the record.

13 MR. CAMPBELL: Victor Campbell.

14 **Direct Examination by Mr. Ellis:**

15 Q. Good afternoon, Mr. Campbell. Where are you currently
16 employed?

17 A. Currently I'm with Lowe's Corporation.

18 Q. And where were you employed on October 30th, 2009?

19 A. I was with the Citgo Corner Mart on Woodruff Road.

20 Q. And is that store in Greenville County?

21 A. Yes.

22 Q. What was your job title?

23 A. I was the store clerk.

24 Q. And what is that -- what does being the store clerk
25 entail?

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1 A. Mainly cashier duties, clean up duties, restocking,
2 that kind of thing.

3 Q. And the early morning hours of October 30th, 2009 which
4 shift were you working?

5 A. I was working the third shift. It's from ten til six.

6 Q. And did anything unusual happen that night?

7 A. Yes. I was robbed.

8 Q. Please tell the jury about what happened.

9 A. Well, I had just come out of the restroom. And
10 whenever you do that you have to put a note or sign on the
11 door saying bathroom break, lock the door. So I was -- I
12 went and took the note down off the door, unlocked it.

13 And then I went down to the drink machines. I was
14 starting my clean up duties. And out of the corner of my
15 eye I saw a customer, I thought, coming down the sidewalk.
16 And so I immediately started heading to the cash register,
17 and I met the robber at the door.

18 He came in and he said, it's on. And that's when he --
19 he put the, you know, showed me his gun. And he says, go to
20 the register, hurry up. And so that's when he cocked the
21 gun.

22 And then after taking a few steps he says, hurry up,
23 hurry up, and he pushes me. Then we go around the counter
24 together and he starts telling me to open up the cash
25 registers and get the money out.

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1 And the whole time he's asking, you know, where are the
2 hundreds, where are the hundreds, where's the rest of the
3 money? And I was trying to tell him, there's not anymore
4 money. I said, you have it all. At that time we had
5 stopped putting money in, you know, large sums of money in
6 the drop.

7 After that he turns to go and he stops at the cigar bin
8 and takes some blunts, or cigars or he took something. I'm
9 not exactly sure what. Then he says, appreciate your
10 cooperation and he runs out the door.

11 Q. Will you describe the physical appearance of this
12 person?

13 A. He had on a hoodie and a black mask. I would say he's
14 probably, I don't know, between five-eight, maybe six foot
15 tall. I'm not sure.

16 Q. What -- do you remember anything else about the mask?

17 A. It was black. And it was really -- it was very loose
18 fitting. You could tell where he -- he had cut the eyes out
19 of it. He was having a very hard time seeing because he
20 kept trying to adjust the mask so -- I guess so he could see
21 out of it.

22 Q. And I'm going to show you what's previously been marked
23 for identification purposes as State's exhibit 14. Does
24 that mask look similar to the one that person was wearing
25 that night?

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1 A. Yes, it does.

2 Q. And would you describe its similarities, please?

3 A. Well, the holes doesn't have any -- you can tell it's
4 -- it looks like just a regular stocking cap that instead
5 of, you know, rolling it up it's been pulled straight down
6 where the eyes have been cut out on it.

7 Q. And did you say he had a gun?

8 A. Yes, sir.

9 Q. Will you, please, describe that gun to the jury?

10 A. I could tell it was an automatic. And it was black
11 with a gray -- like a -- the barrel part had some gray on it
12 or silver.

13 Q. And by automatic you mean it has a clip, kind of a clip
14 ---

15 A. Yes, sir. It's the kind of gun that you have to pull
16 the bar back to load the bullet in the chamber, which is
17 what he did to me as soon as he came into the door.

18 Q. Now, Mr. Campbell, I'm going to show you what's been
19 previously marked for identification purposes only as
20 State's exhibit number 12. Do you recognize this?

21 A. Um-hum (affirmative). This looks very similar to the
22 one that was used in the robbery.

23 Q. And this person, I know you've testified that he had a
24 mask on and he was covered up, but did you -- did you
25 recognize him in any way?

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1 A. No, I -- not by, you know, appearance, but it's just
2 that -- I don't know if it was the things he was saying or
3 the way he moved. I felt like I had waited on this guy
4 before. I just, you know, just a gut feeling.

5 Q. Now -- and did you -- you testified that he took some
6 merchandise. What -- what did he take ---

7 A. I believe it was a wrap, or a blunt or maybe a cigar.
8 We had this one rack that had all the different things in
9 it, those different types of things.

10 Q. And can you estimate about how much money he took that
11 night?

12 A. I'm just going to guess. I believe it was around two
13 hundred, a little over two hundred dollars, I believe. I'm
14 not sure.

15 Q. Okay. Mr. Campbell, I'm going to show you what's
16 previously been introduced into evidence as State's exhibit
17 2. And I'm going to play it through and ask you some
18 questions about it.

19 A. Okay.

20 (Whereupon State's exhibit 2, video, was played for the
21 jury)

22 Q. Is that you up there in the top of the screen?

23 A. Yes.

24 Q. Were you scared?

25 A. Yeah.

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1 Q. Now I want to show you a different camera angle. And
2 I'm going to rewind the video. And I'm going to -- we'll
3 start it and then I'm going to pause it at a point and I'm
4 going to ask you some questions about this one. Was there
5 any money in that register?

6 A. I don't believe there was at that time. Well, maybe
7 there was. Yeah, 'cause he's getting it out. But it was
8 only fifty dollars because it was like a back-up register.
9 And it made it easier when we changed shifts. That's where
10 he was getting -- that's when he was getting the tobacco
11 products.

12 Q. Let me get a better view of it. So what's that -- in
13 his hand right there?

14 A. Yeah. It's either a cigar, or a blunt or a wrap. It's
15 one of the three.

16 Q. And is that where you keep your tobacco products, on
17 that rack ---

18 A. That type, yes, sir.

19 Q. And you previously were talking about what he was
20 wearing. Did he have gloves on?

21 A. Yes. They're -- they were like plastic gloves.

22 Q. Finally, I want to show when he was coming the way you
23 described -- what you were describing when he was coming in.
24 And is that you up top -- is that coming ---

25 A. Yes.

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1 Q. --- from the bathroom as you were saying?

2 A. No. That's -- I had already gone to the bathroom. And
3 I was -- went to the drink machine to start, you know, doing
4 some cleaning up. And I don't know, out of the corner of my
5 eye I saw -- I thought it was a customer. And that's when
6 he met me at the door.

7 Q. Okay. And I want you to ---

8 A. See him cock the gun?

9 Q. What was that? I'm sorry.

10 A. That's when -- just then he cocked the gun back. He
11 put a bullet in the chamber.

12 Q. And is that the gray stripe that you testified was on
13 the gun?

14 A. Yes.

15 Q. Mr. Campbell, that's all the questions I have. Please
16 answer any questions Mr. Robinson may have for you.

17 A. Thank you.

18 MR. ROBINSON: May it please the Court.

19 THE COURT: Yes, sir. Absolutely.

20 **Cross Examination by Mr. Robinson:**

21 Q. Mr. Campbell, back in October of 2009 what was your
22 position again? You were a clerk, is that right?

23 A. Yes.

24 Q. And what shift did you normally work?

25 A. Actually, I worked pretty much all three except for

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1 first. I worked the first shift like on the weekends when
2 the regular first shift person was off.

3 Q. And prior to October, November of 2009 how many -- how
4 long had you worked at that Citgo?

5 A. Probably a couple, three, maybe three or maybe four
6 months. I'm not exactly ---

7 Q. Three or four months?

8 A. --- sure. Yeah.

9 Q. In that period of time that you -- in three or four
10 months how many -- did you work just forty hours a week?

11 A. Not usually. It was a part-time job.

12 Q. Part-time job. So how many hours a week did you work?

13 A. How many hours?

14 Q. Um-hum (affirmative).

15 A. Usually around thirty.

16 Q. Okay. And during that period of time how many
17 customers did you have coming in and out of that store,
18 would you estimate?

19 A. I have no clue.

20 Q. Over -- over a thousand?

21 A. During that whole time period?

22 Q. Um-hum (affirmative).

23 A. Probably.

24 Q. So it'd be fair to say that during that period of time
25 that you had waited on or had at least a thousand customers

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1 during that period of time, is that correct?

2 A. Um-hum (affirmative).

3 Q. And we're talking for all your shifts that you worked,
4 is that correct?

5 A. Um-hum (affirmative).

6 Q. Okay. And I think you described the gun that this
7 person had as being an automatic, is that correct?

8 A. Yes.

9 Q. And I think Mr. Ellis showed you a minute ago the gun
10 that they -- that they have as a potential exhibit in this
11 case. You're not sure if that's the same gun, though, are
12 you?

13 A. No.

14 Q. Okay. It could actually be another gun or this could
15 -- this may not even be the same gun, would that be fair to
16 say?

17 A. That'd be fair.

18 Q. Okay. That's all I have. Thank you.

19 THE COURT: Any redirect, sir?

20 MR. ELLIS: No, Your Honor.

21 THE COURT: All right, Mr. Campbell. Thanks for being
22 here, sir. Appreciate it.

23 A. Uh-huh (affirmative).

24 MR. ELLIS: May we ask that he be excused from his
25 subpoena, Your Honor?

1 **THE COURT:** No objection, Mr. Robinson?

2 **MR. ROBINSON:** No objection.

3 **THE COURT:** All right. Good. You may. Thank you.

4 **MR. ELLIS:** Your Honor, ---

5 **THE COURT:** Hold on a second. Let's take a break
6 because we're getting at about an hour and a half, I think,
7 from when we came back on the record. Anybody need a break
8 at this point?

9 (No response)

10 **THE COURT:** Nobody? East and west? I knew somebody
11 was going to bail me out. I knew somebody would.

12 (Laughter)

13 **THE COURT:** Okay. Take a break. Please don't discuss
14 the case.

15 (Whereupon the jury exited the courtroom at 3:56 pm)

16 **THE COURT:** All right, gentlemen, we'll be in recess
17 for about five to ten minutes.

18 **MR. ELLIS:** Thank you, Your Honor.

19 (Whereupon court was in recess at 3:56 pm)

20 (Whereupon court resumed at 4:14 pm)

21 **THE COURT:** All right. Gentlemen, you ready for the
22 jury?

23 **MR. ROBINSON:** Your Honor, one thing I wanted to take
24 up. This is my fault. And I should have been a little more
25 observant ---

1 THE COURT: Yes, sir.

2 MR. ROBINSON: But during the testimony of these two
3 gentlemen that were the clerks in this case, they were
4 describing the height of the individual.

5 THE COURT: Yes, sir.

6 MR. ROBINSON: And a lot of times what they do, they --
7 there's a thing as you go into the stores where it says like
8 height and so forth, ---

9 THE COURT: Yes, sir.

10 MR. ROBINSON: --- they've described this individual
11 between five-eight and five ---

12 MR. WILKINS: Six feet.

13 MR. ROBINSON: --- six feet, something like that. And
14 my client's very -- a lot larger than that. And I wanted to
15 recall them at a certain point to basically have my client
16 stand up and say is this the -- is this the height of the --
17 because it's just totally different height.

18 THE COURT: Okay.

19 MR. ROBINSON: And that's what I wanted to do, but I've
20 excused them. When you asked Mr. -- actually Mr. Wilkins
21 asked ---

22 THE COURT: I got you.

23 MR. ROBINSON: And I did that and -- kind of out of --
24 it's something my investigator's just mentioned.

25 THE COURT: They're still here.

1 MR. ROBINSON: Yes.

2 THE COURT: So what I'm going to do is I'm going to
3 advise them that they continue under subpoena.

4 MR. ROBINSON: Yes, sir.

5 THE COURT: Okay?

6 MR. ROBINSON: Thank you.

7 THE COURT: And that you can call them in your case in
8 chief.

9 MR. ROBINSON: Yes, sir.

10 THE COURT: That doesn't mean that they have to be here
11 the whole time. You can kind of advise them when you rest
12 so that you can recall them, okay?

13 MR. ROBINSON: Yes, sir. And they have -- they have
14 advised my investigators -- they won't talk to my
15 investigators. So if Mr. Wilkins or his staff can let them
16 know when they can be called ---

17 THE COURT: Yeah. I trust that Mr. Wilkins will help
18 you out in that regard.

19 MR. WILKINS: We'll take care of that, Your Honor.

20 THE COURT: Okay. Good enough.

21 MR. WILKINS: Is it okay if they stay in here, Your
22 Honor?

23 THE COURT: Yeah. Here's the question, is your
24 examination of them going to be limited to height?

25 MR. ROBINSON: That's it.

1 THE COURT: If -- they can stay in here, but that --
2 their testimony would be limited to that sole issue that you
3 just brought up.

4 MR. ROBINSON: Um-hum (affirmative).

5 THE COURT: Now if you want to go outside of that, then
6 I would ask that they leave. But if that's it, I'm okay
7 with it. Okay. Good enough. All right. Let's bring in
8 the jury.

9 MR. WILKINS: This next witness is a technical witness
10 for a video tape.

11 THE COURT: Yes, sir.

12 MR. WILKINS: The following witness is Reagan
13 McCroskey, a very important witness that we've had a lot of
14 pretrial motions on. And assuming the State's allowed to go
15 forward, she's going to be a lengthy witness.

16 THE COURT: Okay.

17 MR. WILKINS: Probably the most lengthy.

18 THE COURT: Okay. And I know that you had some issues
19 ---

20 MR. WILKINS: We had some issues about talking about
21 the marijuana. I'd like to -- like to, you know, whether
22 she can say that or not and sort of debate that. And, of
23 course, we believe she will identify the defendant as the
24 person in the robberies based on voice along with ---

25 THE COURT: Okay.

1 MR. WILKINS: --- other ---

2 **THE COURT:** Well, let's do this. We'll take this
3 witness, this next witness, and then we'll -- then I'll
4 release the jury and ask them to come back tomorrow and
5 we'll take up issues related to Ms. McCroskey.

6 MR. ROBINSON: Thank you, Judge.

7 THE COURT: Yes, ma'am, bring them in.

8 (Whereupon the jury entered the courtroom at 4:17 pm)

9 THE COURT: All right, Mr. Wilkins, your case, sir.

10 MR. ELLIS: Your Honor, the State calls Eric Frazee to
11 the stand.

12 THE COURT: Okay.

13 **MADAME CLERK:** Sir, please come forward. If you'll
14 pause at the end of the bench. Please place your left hand
15 on the Bible and raise your right hand.

16 Eric Frazee, being duly
17 sworn testified as follows:

18 **MADAME CLERK:** Thank you. Please be seated. Please
19 state your full name for the record.

20 MR. FRAZEE: Eric Frazee.

21 Direct Examination by Mr. Ellis:

22 Q. Mr. Frazee, where are you employed?

23 A. At Rite Aid pharmacy.

24 Q. And what's your job title?

25 A. I'm the loss prevention manager.

ERIC FRAZEE - DIRECT EXAMINATION BY MR. ELLIS

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1 Q. And what are your job duties and responsibilities?

2 A. I am responsible for controlling external and internal
3 theft and reducing losses at our store.

4 Q. And what type of region do you service?

5 A. I cover Columbia and Greenville.

6 Q. And about how many store locations are in that region?

7 A. Thirty-seven.

8 Q. I want you to refer to State's exhibit number 10, which
9 has already been admitted into evidence.

10 MR. ELLIS: And, Your Honor, can he come down and ---

11 THE COURT: Sure.

12 MR. ELLIS: --- take a look at it with me?

13 Q. And the store in the center here, is that store
14 accurately labeled as a Rite Aid?

15 A. It is.

16 Q. And how are you familiar with that store?

17 A. I've been to it probably a hundred times before. Go
18 there all the time to do business.

19 Q. And it's obviously in your region, ---

20 A. Yes, ---

21 Q. --- in your district?

22 A. --- it is.

23 Q. Okay. You can have a seat. Thank you, sir. And does
24 that Rite Aid store have surveillance cameras as part of its
25 security system?

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1 A. It does.

2 Q. And is the recorded footage from those surveillance
3 cameras maintained in the regular course of business?

4 A. Yes, it is.

5 Q. And as the loss prevention manager of Rite Aid do you
6 have access to those recordings?

7 A. I do.

8 Q. And were the surveillance cameras in working order on
9 the evening of October 18th, 2009 or the early morning hours
10 of October 18th, 2009?

11 A. They were.

12 Q. Mr. Frazee, I'm going to show you what's been marked as
13 State's exhibit 11. Do you recognize that item?

14 A. I do.

15 Q. What is it?

16 A. It is the footage from the location that you showed me
17 and I initialed.

18 Q. And you've had an opportunity to view that ---

19 A. I viewed it to make sure that -- that was our footage
20 from our location. And it was. So I initialed it.

21 Q. And is that video footage a fair and accurate
22 representation of what was recorded on your video cameras on
23 the -- in the early morning hours of October 18th?

24 A. Yes.

25 MR. ELLIS: Your Honor, at this time the State moves

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1 State's exhibit 11 into evidence.

2 THE COURT: Any objection, sir?

3 MR. ROBINSON: Objection goes to relevance, Your Honor.

4 THE COURT: Okay. I respectfully overrule the same.

5 I'll allow it as State's exhibit number 11.

6 (Whereupon State's exhibit 11 was admitted into
7 evidence)

8 MR. ELLIS: Thank you, Your Honor.

9 Q. Mr. Frazee, I'd like to take a look at this video
10 footage. Mr. Frazee, what are we looking at right there?

11 A. These are all the cameras at this location that we use
12 for mainly internal and external purposes, if we have an
13 incident or a case I need to review footage on.

14 Q. And those appear to be inside the store and outside the
15 store, is ---

16 A. They are.

17 Q. --- that correct? I note that that says oh thirty-
18 three hundred. Is that military time?

19 A. It is.

20 Q. Is that 3:00 in the morning?

21 A. It is.

22 Q. And also I noticed that -- what appear to be the time
23 stamps seem to be maybe a second or two off. Is that -- is
24 that normal or is that ---

25 A. It is normal. It's hundredths of a second. And it is

ERIC FRAZEE - CROSS EXAMINATION BY MR. ROBINSON

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1 normal. So for that -- for that DVR.

2 Q. Okay. I want to take a look specifically at -- and do
3 you recognize this footage as being the Rite Aid at that
4 location that we've previously talked about?

5 A. It is, yes.

6 Q. I'm going to take a look at camera number eight first.
7 And I'm going to play a snippet of it and ask you a
8 question. In the top left hand corner of that video is that
9 car in your -- in the Rite Aid parking lot?

10 A. It is.

11 Q. Now I'm going to look at camera number six. And is
12 that car in your -- in the drive-thru area of your Rite Aid
13 store at that location?

14 A. It is.

15 Q. Thank you, Mr. Frazee. Please answer any questions Mr.
16 Robinson may have for you.

17 MR. ROBINSON: May it please the Court.

18 THE COURT: Yes, sir.

19 **Cross Examination by Mr. Robinson:**

20 Q. In the capacity that you have working for Rite Aid, ---

21 A. Um-hum (affirmative).

22 Q. --- as far as the time of night that we're speaking of
23 here, how many -- tell me about this area this is in. This
24 is a pretty well traveled area, where this particular Citgo
25 -- where this particular Rite Aid is?

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1 A. It is. But I'll be honest with you, I don't review
2 footage from ---

3 Q. Okay.

4 A. --- the middle of the night very often.

5 Q. Oh, I'm sorry. I'm sorry.

6 A. Yeah.

7 Q. So you really -- you really don't know whether or not
8 -- how many cars go back and forth across the Rite Aid
9 parking lot at any time of night back in 2009, do -- you
10 have no idea?

11 A. No, I don't.

12 Q. And you have no idea what the purpose of any car going
13 in the Rite Aid parking lot is at that time of night, do
14 you?

15 A. No, I don't.

16 Q. Okay. That's all the questions I have. Thank you.

17 THE COURT: Any redirect, sir?

18 MR. WILKINS: No, sir.

19 MR. ELLIS: No, sir, Your Honor.

20 THE COURT: Thank you for being here. I appreciate it.

21 MR. ELLIS: May we ask that he be excused from his
22 subpoena, Your Honor?

23 THE COURT: Any objections to that, Mr. Robinson?

24 MR. ROBINSON: No objection, Your Honor.

25 THE COURT: All right. Good enough. Thank you very

1 much. All right. Ladies and gentlemen, right before y'all
2 came in the attorneys advised me that the next witness is a
3 witness that's probably going to take some deal of time,
4 probably in excess of an hour or more on both direct
5 examination and cross examination.

6 And there are several issues that I need to take up
7 regarding that 'witness' testimony to determine what may or
8 may not be admissible. I don't know exactly what the issue
9 is yet, but I'm going to hear it.

10 So what I'm going to do is I'm going to go ahead and
11 dismiss y'all for the evening and ask you to be back here at
12 9:00 tomorrow morning. Again, y'all were very timely coming
13 back from lunch, probably because I gave you such a long
14 lunch period. But tomorrow morning, if you would be here
15 just at a little bit before nine, five or ten minutes, so
16 that we can start just as promptly at nine as possible.

17 Again, as I told you earlier, please don't discuss the
18 case. Somebody's going to invite you to have a conversation
19 about it, I promise. Somebody in your house, somebody that
20 you know. Just say I can't do it yet and talk to them about
21 it after everything is over and done with. So y'all have a
22 great evening. And I will see you tomorrow morning.

23 (Whereupon the jury exited the courtroom at 4:27 pm)

24 **THE COURT:** All right, gentlemen. I'll be happy to
25 hear motions regarding Ms. McCroskey's testimony.

1 MR. ROBINSON: Your Honor.

2 THE COURT: Yes, sir.

3 MR. ROBINSON: May it please the Court.

4 THE COURT: Sure.

5 MR. ROBINSON: You know my original pretrial motion,

6 ---

7 THE COURT: Yes, sir.

8 MR. ROBINSON: --- which the Court has denied. I would
9 renew that again at this time.

10 Your Honor, Mr. Wilkins, in discussing the testimony of
11 Ms. McCroskey mentioned that there may be some information
12 regarding drugs and possibly why as far as the Citgo and so
13 forth. This is a -- I want to proffer her testimony and
14 find out how much she's going to testify to that because I'm
15 really concerned about the prejudicial value of it as far as
16 that evidence, that she's not going to use that information
17 to testify like that.

18 THE COURT: Okay. Mr. Wilkins, what do you anticipate
19 her saying with respect to drugs and/or prospective drug
20 deals?

21 MR. WILKINS: Your Honor, in her first statement and
22 again in her last statement when asked what she was -- she's
23 going to testify that she drove Mr. Butts through that Rite
24 Aid, she'll testify that was her car that parked and let him
25 off at Rite Aid close to the Citgo and ask her what was the

1 purpose of you dropping him off there? She said, my
2 understanding was that he was going to do a dope deal.

3 And she will even explain further, if asked, that that
4 means either sell dope, or rob somebody who has dope or rob
5 somebody who has money who he's selling dope to, one of the
6 three. And what it does is explains for our sake why she's
7 dropping Mr. Butts off at the Citgo.

8 Secondly, in the last robbery, or, I'm sorry, in the
9 October 30th robbery Mr. Ellis pointed out where the person
10 who's robbing the Citgo pulls out a cigar, a blunt. And she
11 will testify that they oftentimes smoked marijuana together
12 and they oftentimes used blunts. They would take the
13 tobacco out and roll it in a blunt and smoke marijuana. And
14 the person is stealing one on the October 30th robbery. So
15 that's the relevance that we're trying to -- trying to give
16 the jury.

17 You know, I would say, Your Honor, it's really not that
18 prejudicial with a curative instruction or what have you
19 because we need to explain why she's dropping -- what's her
20 reasoning or why she's dropping Mr. Butts off at the Citgo.
21 And that's her testimony two years ago and that's her
22 testimony today.

23 **THE COURT:** Okay.

24 **MR. WILKINS:** Otherwise, I'd have to instruct her to
25 say I dropped him off -- I dropped him off at the Rite Aid

1 parking lot. And then she's not going to be able to explain
2 why they went there, what the purpose of it was. And then
3 she's going to testify I went around and parked in -- around
4 the corner at the Swedish -- I think it's called the Swedish
5 Car Lot where ten minutes later he walks up and gets in the
6 car and they leave on October 18th. So it filled -- it
7 completes the story.

8 **THE COURT:** I understand. Okay. I'm going to grant
9 the Defendant's motion to exclude that testimony. Under a
10 403 analysis I think that it is unduly prejudicial. And I
11 think that its probative value is negligible at best.

12 The question that you posed is she can't just say that
13 she dropped him off and the question that I would pose is
14 why not? I don't think you have to close the loop on that
15 story. She dropped him off. There's a video that shows
16 that somebody was in there. She can say she went around and
17 stayed at the Rite Aid and then she came back around and she
18 picked him up.

19 I don't necessarily think that that closes the loop. I
20 just think that that's fairly gratuitous in that it puts
21 something into the record that prejudices him significantly
22 without really providing significant probative value.

23 **MR. WILKINS:** As to her stating that she smokes
24 marijuana, and she's smoking marijuana with him and they
25 used blunts together.

1 **THE COURT:** I don't have any problem with her
2 testifying that they had smoked that type of cigar before,
3 but the reference to the blunts and the marijuana usage,
4 again, I think that that just offers something gratuitous
5 into the record that has negligible probative value and just
6 is more prejudicial than probative. Okay?

7 **MR. ROBINSON:** So, Your Honor, if I can -- so what the
8 Court is going to allow her to do then, just for both of our
9 purposes, just say she dropped him off, picked him up, that
10 they smoked those cigar things together before, is that it?

11 **THE COURT:** Well, I'm not going to put that fine of
12 point on it because I don't know what else she may have to
13 say. All I'm doing, I'm only excluding that particular
14 testimony that we just talked about. And that is going to
15 do a drug -- dope deal and we regularly used marijuana
16 together.

17 **MR. ROBINSON:** That's what I'm ---

18 **THE COURT:** And I don't know what else she may have to
19 say. So I'm not in a vacuum going to preclude her from
20 saying something that might otherwise be probative and
21 relevant. Okay?

22 **MR. ROBINSON:** Yes, sir. Thank you.

23 **THE COURT:** Okay. All right, gentlemen, anything else?

24 (No response)

25 **THE COURT:** We've got a little bit of time. Anything

1 prospectively that we need to discuss about evidence? I
2 know that there was a -- there was one issue regarding
3 identification that we had to take up. Do you have a
4 witness available to proffer evidence into the record at
5 this point?

6 **MR. WILKINS:** I've got Ms. McCroskey and I've got her
7 mother who will both say they recognize that's Mr. Butts on
8 the video based on the voice that they hear and his
9 mannerisms and, of course, the clothes that they're familiar
10 with. Again, I point to rule 901, voice identification.
11 Certainly you don't need to be an expert to do that.

12 **THE COURT:** Yeah. I'm not necessarily worried about
13 them. I think it was Officer Tench to which you took
14 exception that you made a motion in limine, is that correct?

15 **MR. WILKINS:** Yeah. He's our last witness. So he's
16 not here today.

17 **THE COURT:** That's fine. I was just trying to get it
18 out of the way, if we could, for efficiency sake. But if
19 he's not here, that's okay. That's okay. All right,
20 gentlemen, anything else?

21 (No response)

22 **THE COURT:** Okay. All right. Then I'll see y'all
23 tomorrow morning. I ordinarily get here sometimes between
24 eight and 8:15. So if y'all need to talk to me about
25 something, come talk to me in the morning before 9:00, okay?

1 And we'll see what we can handle before 9:00 because after
2 nine it's the jury's time, okay?

3 MR. ROBINSON: Thank you, Your Honor.

4 MR. WILKINS: Yes, sir.

5 THE COURT: Good enough, gentlemen. Y'all have a great
6 evening.

7 MR. ELLIS: Thank you, Your Honor.

8 (Whereupon court was in recess at 4:34 pm)

25 A. In Simpsonville.

SARAH REAGAN McCROSKEY - DIRECT EXAMINATION BY MR. WILKINS

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- 1 Q. And who do you live with?
- 2 A. My mom.
- 3 Q. And have you graduated high school?
- 4 A. Yes.
- 5 Q. Okay. And what high school did you graduate from?
- 6 A. Southside High School.
- 7 Q. And do you know the Defendant in this case?
- 8 A. Yes, sir.
- 9 Q. Who is that?
- 10 A. My -- the father of my child.
- 11 Q. Okay. And do you know his name?
- 12 A. Mr. Butts.
- 13 Q. Is he in the courtroom today?
- 14 A. Yes, sir.
- 15 Q. And tell me about when you met the Defendant.
- 16 A. I was fifteen. And I met him in August through a
- 17 friend.
- 18 Q. I'm going to ask you to put that microphone just a
- 19 little closer so you can get used to talking into it. There
- 20 you go.
- 21 A. I was fifteen. And I met him in August of 2008 through
- 22 a friend.
- 23 Q. Okay. And what friend did you meet him through?
- 24 A. Megan.
- 25 Q. Megan who?

SARAH REAGAN McCROSKEY - DIRECT EXAMINATION BY MR. WILKINS

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- 1 A. Burnette.
- 2 Q. And where did y'all meet?
- 3 A. At her house.
- 4 Q. And was it a social gathering?
- 5 A. Yes, sir.
- 6 Q. And did y'all begin a relationship at that time?
- 7 A. About a month later.
- 8 Q. Okay. And how long did y'all -- did y'all have a
- 9 relationship?
- 10 A. Like two and a half years.
- 11 Q. And did y'all -- was y'all's relationship romantic?
- 12 A. Yes, sir.
- 13 Q. And did y'all have a child together?
- 14 A. Yes, sir.
- 15 Q. And when did you find out you were -- you were pregnant
- 16 with your child?
- 17 A. Like November 27th, 2010.
- 18 Q. Okay. I'm going to refer you back to October/November
- 19 of 2009.
- 20 A. Okay.
- 21 Q. At that time where were you living?
- 22 A. In Mauldin.
- 23 Q. Okay. And who were you living with?
- 24 A. My grandmother and my mother.
- 25 Q. And what was the location there? Do you remember?

SARAH REAGAN McCROSKEY - DIRECT EXAMINATION BY MR. WILKINS

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- 1 A. The address?
- 2 Q. The address.
- 3 A. 109 Courtneybrook Trail.
- 4 Q. And were you dating the Defendant at that time?
- 5 A. Yes, sir.
- 6 Q. Okay. And during that time had the Defendant ever
- 7 stayed with you?
- 8 A. Yes, sir.
- 9 Q. Okay. How often would the Defendant stay with you?
- 10 A. Like a couple of nights out of a week.
- 11 Q. And would he keep clothes there?
- 12 A. Yes, sir.
- 13 Q. Okay. What kind of clothes would he leave there?
- 14 A. Jeans, t-shirts, sweatpants.
- 15 Q. And when he stayed there where did he sleep?
- 16 A. In my bed.
- 17 Q. From '08 until '09 did y'all spend a good amount of
- 18 time together?
- 19 A. Yes, sir.
- 20 Q. Did you talk to him a lot?
- 21 A. Yes, sir.
- 22 Q. Did y'all go out to social gatherings together?
- 23 A. Yes, sir.
- 24 Q. Did you eat dinner together?
- 25 A. Yes, sir.

SARAH REAGAN McCROSKEY - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. Obviously, y'all engaged in a sexual relationship
2 together?

3 A. Yes, sir.

4 Q. Do you feel like you know the Defendant very well or at
5 that time you knew the Defendant very well?

6 A. Yes, sir.

7 Q. Do you feel that you could recognize his voice if you
8 heard it on a recording?

9 A. Yes, sir.

10 Q. Do you feel that you could recognize his mannerisms,
11 his appearance, the way he walks if you saw it on a
12 recording?

13 A. Yes, sir.

14 Q. All right. Does the Defendant have a car?

15 A. No, sir.

16 Q. How would he get places?

17 A. I would take him. And he had like other friends too.

18 Q. Okay. And whose car did you drive?

19 A. My mom's.

20 Q. Okay. And what other cars did he have access to?

21 A. I'm not sure. He had like a couple of friends with
22 cars.

23 Q. Did you have more than just your mom's car?

24 A. Yeah, my grandmother's car.

25 Q. What kind of car is that?

SARAH REAGAN McCROSKEY - DIRECT EXAMINATION BY MR. WILKINS

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- 1 A. Chrysler Town and Country.
- 2 Q. Is that a van?
- 3 A. Yeah. Yes, sir.
- 4 Q. All right. We will skip over. Let me ask you this.
- 5 Do you know if the Defendant ever carried a gun?
- 6 A. Yes, sir.
- 7 Q. How do you know he carries a gun?
- 8 A. I seen him with it.
- 9 Q. You seen him with it?
- 10 A. (Affirmative nod).
- 11 Q. Do you remember what it looked like?
- 12 A. It was black.
- 13 Q. And where did you see him with it?
- 14 A. In our house.
- 15 Q. And did he ever keep a gun at your house?
- 16 A. Yes, sir.
- 17 Q. Where would he keep it?
- 18 A. Under my mattress.
- 19 Q. And did he keep it there a lot or just sometimes?
- 20 A. Just sometimes.
- 21 Q. Okay. I'm going to show you some videos, if that's
- 22 okay. If you can turn around, I'll show you a video. Have
- 23 you seen all these videos before?
- 24 A. Yes, sir.
- 25 Q. You've watched these before, haven't you?

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1 A. (Affirmative nod).

2 Q. I'm going to ask you to watch a video, that's been
3 already admitted into evidence, on November 3rd, 2009.

4 (Playing video)

5 Q. Now did you hear what the person in the video said
6 right there?

7 A. Yes, sir.

8 Q. What did he say?

9 A. He asked for a Grape Dutch.

10 Q. Did he say anything else after that? Do you recall?

11 A. I don't know.

12 Q. You didn't hear it?

13 A. Uh-uh (negative).

14 Q. Okay. Let me play that back a little to be sure. Did
15 you hear what the person in the video said there?

16 A. Yes, sir.

17 Q. What did he say?

18 A. Chillin', chillin'.

19 Q. Is that something the Defendant would say?

20 A. Yes, sir.

21 Q. Do you recognize that person right there in the video?

22 A. Yes, sir.

23 Q. Who's that?

24 A. Tony.

25 Q. Tony. What other names does Tony go by?

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1 A. City.

2 Q. Okay. And that purple shirt, do you recognize that
3 purple shirt?

4 A. Yes, sir.

5 Q. Is that a shirt that he kept at your house?

6 A. Yes, sir.

7 Q. Do you recognize those blue jeans?

8 A. Yes, sir.

9 Q. You ever seen those blue jeans?

10 A. Yes, sir.

11 Q. How do you know those blue jeans?

12 A. They're Tony's. I mean, he -- Tony had a pair like
13 that.

14 Q. Okay. And where did he keep those blue jeans?

15 A. They were at my house.

16 Q. What about those black shoes?

17 A. Tony had some shoes like that.

18 Q. And did he keep those at your house as well?

19 A. Yes, sir.

20 Q. I'm going to refer you back to October 18th of 2009.

21 Do you remember that day?

22 A. Yes, sir.

23 Q. How do you remember that day?

24 A. It was our anniversary.

25 Q. Okay. On October 18th were you with the Defendant?

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1 A. Yes, sir.

2 Q. How did you -- how did you and him get together that
3 day?

4 A. I went and picked him up.

5 Q. At about what time did you pick him up?

6 A. Like 2:30 in the morning.

7 Q. And whose car did you use?

8 A. My mom's.

9 Q. Okay. What kind of car did she have?

10 A. A 2000 Chevy silver Impala.

11 Q. And did you ask permission to use that car?

12 A. Yes, sir.

13 Q. And where did you go pick him up?

14 A. His house.

15 MR. WILKINS: Your Honor, for the matter of this
16 hearing I'm not going to go into the details of -- I've got,
17 you know, my direct examination will be much more involved
18 than this.

19 THE COURT: I would very much appreciate you not going
20 into those details.

21 MR. WILKINS: Thank you, Your Honor.

22 Q. And where did you drop him off after you picked him up?

23 A. The Rite Aid parking lot.

24 Q. Okay. And is the Rite Aid parking lot near that Citgo
25 on Woodruff Road?

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1 A. Yes, sir.

2 Q. All right. I'm going to ask you to look at this video
3 here, okay?

4 (Playing video)

5 Q. Do you recognize the voice in that video?

6 A. Yes, sir.

7 Q. Whose voice is that?

8 A. It sounds like Tony's voice.

9 Q. How do you know that?

10 A. I listened to him talk every day.

11 Q. Does he say things similar to that as what's being said
12 in the video there?

13 A. Yes, sir.

14 Q. Okay. Do you recall what he said in the video?

15 A. Good man.

16 Q. Is that something that the Defendant says?

17 A. Yes, sir.

18 Q. Okay. What about the mannerisms of the person in the
19 video? The way he walks, the way he moves.

20 A. I think his shoulders, like, 'cause they're broad like
21 that, they remind me of Tony.

22 Q. Okay. I'm going to show you a video on November --
23 October 3rd, 2009.

24 (Playing video)

25 Q. Do you recognize the voice in that video?

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1 A. Yes, sir.

2 Q. Whose voice is that?

3 A. It sounds like Tony.

4 Q. Now you say it sounds like Tony. Does it sound like
5 Tony or do you believe it is Tony?

6 (Pause)

7 A. I think it is Tony.

8 Q. You think it is Tony?

9 A. (Affirmative nod).

10 Q. How much do you think it is Tony?

11 A. It just sounds like him.

12 Q. It does sound like him?

13 A. Yes, sir.

14 Q. How sure are you?

15 MR. ROBINSON: Your Honor, it's been asked and
16 answered. And if you watch what Mr. Wilkins is doing, he's
17 like this with the witness. And I'd ask that ---

18 THE COURT: I understand. You can move on. I
19 recognize ---

20 MR. WILKINS: And I'm not doing that for my purpose,
21 I'm doing that for purposes of this hearing so that we get a
22 full understanding of Ms. McCroskey's testimony.

23 THE COURT: I've got it. I'm fully cognizant of what's
24 going on. You can move on.

25 MR. WILKINS: Okay. Let's go to the next video.

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1 (Playing video)

2 Q. Do you recognize the voice in that video?

3 A. Yes, sir.

4 Q. Whose voice is that?

5 A. Tony's.

6 Q. What about the mannerisms, the actions, physical
7 attributes?

8 A. The way he was like bending over looking at stuff.

9 Q. Is that similar to Tony?

10 A. Yes, sir.

11 MR. WILKINS: No further questions, Your Honor.

12 THE COURT: Mr. Robinson.

13 MR. ROBINSON: May it please the Court.

14 **Cross Examination by Mr. Robinson:**

15 Q. Good morning, ma'am. Between the -- between October
16 2009 til the time that you made this -- looked at these
17 videos, how much time was that?

18 A. Over a year.

19 Q. Over a year?

20 A. (Affirmative nod).

21 Q. Could it possibly be over two years or about a year?
22 Do you remember?

23 A. Yes, sir. It could possibly have been two.

24 Q. About two years or so?

25 A. Yes, sir.

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1 Q. Did you -- did you get shown these videos by the
2 officers prior to August of 2011?

3 A. No, sir.

4 Q. So in August of 2011 is when you were shown this video?

5 A. Yes, sir.

6 Q. So between October and November, excuse me, August 2011
7 is about two years, does that sound about right?

8 A. Yes, sir.

9 Q. Okay. And the time -- at the time that this occurred
10 back in 2009 how old was Tony?

11 A. Seventeen?

12 Q. Seventeen? And so about -- so in 2011 he'd be about
13 nineteen, twenty?

14 A. Yes, sir.

15 Q. That sound about right? Okay. You gave this
16 identification as far as these video tapes. When -- you
17 viewed these in August of 2011, is that correct?

18 A. Yes, sir.

19 Q. Who was with you when you viewed these tapes?

20 A. My mom. .

21 Q. Who from the State was with you?

22 A. Investigator Grounsell, Walt Wilkins, ---

23 Q. Walt Wilkins? Okay.

24 A. And there was like two other people.

25 Q. Two other people?

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1 A. (Affirmative nod).

2 Q. And they came to your -- did they show it at your house
3 or at the courthouse?

4 A. Both.

5 Q. Both?

6 A. (Affirmative nod).

7 Q. And how long did they stay? How long did they stay
8 with you going through the videos and so forth?

9 A. Like two hours.

10 Q. About two hours?

11 A. (Affirmative nod).

12 Q. And who was -- who stayed the entire two hours?

13 A. Investigator Grounsell and Campbell.

14 Q. Okay. Okay. And -- all right. As far as the -- as
15 far as the videos that you were shown by these individuals
16 at your home, you had never identified Tony before, had you?

17 A. No, sir.

18 Q. And, in fact, the -- you had actually told them that
19 Tony had not been involved with this, isn't that correct?

20 A. Yes, sir.

21 Q. Okay. And it was only after this meeting you had with
22 Mr. Wilkins -- Mr. Ellis was there too, wasn't he?

23 A. Yes, sir.

24 Q. It was only after that meeting did you change your
25 story to say that he was the person, is that correct?

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1 A. Yes, sir.

2 Q. Okay. And there were two years, you had never
3 identified him before that time as the person and it was
4 only after you met with those folks in this meeting that you
5 did so, is that correct?

6 A. Yes, sir.

7 Q. Okay. And before that time you were not certain, in
8 fact, today, you're not certain if that person is Tony Butts
9 or not, are you?

10 A. Can you repeat the question, please?

11 Q. You're not certain that's Tony Butts' voice on the
12 recordings at all, are you?

13 A. No, sir.

14 Q. What was that?

15 A. No, sir.

16 Q. Thank you, ma'am. Answer any questions the Judge may
17 have for you.

18 THE COURT: Any follow-up questions, sir?

19 MR. WILKINS: I do, Your Honor.

20 **Redirect Examination by Mr. Wilkins:**

21 Q. Reagan, you gave a statement on November 19th, 2009,
22 didn't you?

23 A. Yes, sir.

24 Q. Were you truthful in that statement?

25 A. No, sir.

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1 Q. Did you tell the Investigator Campbell everything that
2 happened that day?

3 A. No, sir.

4 Q. Okay. And November 20th you wrote out a statement.
5 Were you truthful with that statement as well?

6 A. No, sir.

7 Q. And in August of this year when we came and talked to
8 you and you signed a proffer agreement, what's the
9 requirement of that agreement?

10 A. That you have to tell the truth.

11 Q. And have you told investigators the truth in October, I
12 mean, in August of this year?

13 A. Yes, sir.

14 Q. All right. Why didn't you tell investigators the truth
15 two years ago?

16 A. 'Cause I was still in love with him.

17 Q. 'Cause you were still in love with him?

18 A. (Affirmative nod).

19 Q. And I'll just ask the same question. Mr. Robinson
20 asked you if you're -- and he phrased it a little -- are you
21 sure or not if that's Mr. Butts in that video? And I want
22 you to tell the Court exactly what your opinion is of who
23 that is in that video right there.

24 A. In my opinion I think it's him, but like I still just
25 don't want to believe that it is.

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1 Q. Can you explain that? Why don't you want to believe
2 it?

3 A. Because he's the father of my child. Like I don't want
4 -- I don't want it to be him.

5 Q. I know you don't want to believe it's him. I know this
6 is really hard because he is the father of your child, but
7 we need to make a determination as to whether you believe
8 that's him in that video or not. And so we've asked it a
9 couple of different ways. And the question is whether you
10 want to believe it or not do you believe it, that's the
11 Defendant in that video?

12 A. Yes, sir.

13 THE COURT: All right. Okay. Ms. McCroskey, what I'm
14 going to ask you to do, ma'am, is please step down and you
15 can exit the courtroom. And you'll be called back in at the
16 appropriate time, okay? Thank you.

17 (Whereupon Ms. McCroskey exited the courtroom)

18 THE COURT: All right, gentlemen, any arguments we need
19 to put on the record?

20 MR. ROBINSON: Your Honor, may it please the Court.

21 THE COURT: Yes, sir.

22 MR. ROBINSON: Under a Neil v. Biggers analysis -- and
23 also too, Your Honor, I think the Court had an opportunity
24 to view the witness and so forth in this case.

25 Your Honor, the two things that I think are missing in

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1 this matter are, one, you have a two year period of time
2 from the time of the incidents in October/November of 2009,
3 about two years til August of 2009 -- 2011 she met with Mr.
4 Wilkins, Mr. Ellis and two other investigators.

5 And, secondly, Your Honor, she's not sure. She's not
6 -- their level of certainty is not one that would rise to
7 the level, I believe, of someone who is certain that that's
8 the person because there's -- there was a lot of -- I felt
9 sorry for this girl, I did. I felt sorry for her because I
10 believe she's not certain. I believe she's being pressured.
11 But, Your Honor, I don't believe she has a level of
12 certainty.

13 And I believe that the amount of time is too great as
14 well as the Court's aware -- and I'm just -- I'm not -- but
15 I think once the analysis is done as far as under 901 I
16 think it also has to go back to whether or not the testimony
17 would be -- the prejudicial value would be far outweighed by
18 the probative value in this case.

19 And this case, it is a circumstantial evidence case.
20 And her testimony, we believe, would be so prejudicial in
21 this matter. This would also go to Ms. -- the mother as
22 well. But since we're talking about just the younger Ms.
23 McCroskey, it's our position that it would -- it's not
24 admissible because it's not certain and it's also -- the
25 time-frame is greater than it should be. It's almost two

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1 years. So we'd ask the Court to suppress this statement
2 under Neil v. Biggers and 901.

3 THE COURT: All right. Mr. Wilkins, you care to
4 respond?

5 MR. WILKINS: Very briefly, Your Honor. Admissibility
6 -- the weight of the evidence versus the admissibility, it
7 goes to the weight of the evidence. 901 is not an expert --
8 testimony expert, it's a lay witness standard that the
9 courts have outlined. And it goes to the credibility.

10 THE COURT: Okay. All right. The required analysis is
11 two pronged. And that is that I determine whether the
12 identification was unduly suggestive and then whether it was
13 reliable.

14 There is suggestions that it was -- that there was some
15 pressure brought to bare on this witness, but I don't find
16 that it rose to the level that it would be considered unduly
17 suggestive. Therefore, under the first prong I think it's
18 admissible and appropriate.

19 Under the second prong for reliability, it's obvious
20 that she is conflicted. And it's obviously -- she's
21 obviously suffering from a great deal of pressure incident
22 to the fact that she has a longstanding relationship with
23 the Defendant and he is the father of her child. I
24 recognize that.

25 And I understand also there's a certain degree of

1 equivocation depending on who was asking the question. I
2 understand. But I think that would go to the weight of her
3 -- of the testimony as to the admissibility. And I think
4 it's going to be real interesting what she actually says in
5 front of the jury.

6 But under the Neil v. Biggers analysis, I think that
7 it's admissible. And under a 403 analysis, certainly it's
8 prejudicial to the interest of the Defendant. No question
9 about that. But the probative value -- but the prejudicial
10 effect does not outweigh the probative value. It's an
11 identification which is necessary for the -- for the State's
12 case. And it doesn't rise to the level that it would be
13 inadmissible under rule -- under a rule 403 analysis.

14 **MR. WILKINS:** Thank you, Judge.

15 **THE COURT:** Okay. All right. Y'all ready for the
16 jury?

17 **MR. WILKINS:** Do you want to do this with the older Ms.
18 McCroskey as well? You know, she lived with him as well.
19 We can do it -- I can lay the foundation in front of the
20 jury and get to her testimony. There's some shirts and
21 stuff that I intend to admit and then we can stop and we can
22 do a Biggers analysis there.

23 **THE COURT:** It's -- we don't have to have it in every
24 instance. And if the Defense asks for it on the record at
25 some point, then we'll do it. We're not going to do it

1 right now because the jury's back there and they've been
2 there for about twenty minutes waiting for us.

3 So let's go ahead and get started. Let's go through
4 Ms. McCroskey's testimony. And then if we need to step back
5 and have a Biggers hearing on that one, we can. And we may
6 be able to do it as you suggest, in stride, okay? So let's
7 take about -- let's come back on the record at 9:30, okay?

8 MR. ROBINSON: Thanks, Judge.

9 (Whereupon court was in recess at 9:26 am)

10 (Whereupon court resumed at 9:34 am)

11 THE COURT: Okay. Gentlemen, we ready for the jury?

12 MR. ROBINSON: The Defense is ready, Your Honor.

13 THE COURT: Okay. Bring them in, please.

14 (Whereupon the jury entered the courtroom at 9:35 am)

15 THE COURT: All right, ladies and gentlemen, good
16 morning.

17 THE JURY: Good morning.

18 THE COURT: I hope everybody had a good evening. I'm
19 sorry we're starting a little bit later. We had to take up
20 another legal issue. So we've been here before nine on a
21 hearing. So we've been busy. And I apologize that you had
22 to wait for that, but as I told you yesterday, sometimes we
23 just have to take time in some of these matters to make sure
24 that everybody is getting a fair trial. So, having said
25 that, I'm going to turn it over to the Prosecution. Mr.

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1 Wilkins.

2 MR. WILKINS: The State calls Reagan McCroskey.

3 MADAME CLERK: Ms. McCroskey, please come forward. If
4 you'll pause at the end of the bench. Please place your
5 left hand on the Bible and raise your right hand.

6 Sarah Reagan McCroskey,
7 being duly sworn testified as follows:

8 MADAME CLERK: Thank you. Please be seated. Please
9 state your full name for the record.

10 MS. McCROSKEY: Sarah McCroskey.

11 **Direct Examination by Mr. Wilkins:**

12 Q. And, Ms. McCroskey, do you go by Reagan?

13 A. Yes, sir.

14 Q. And how old are you?

15 A. Eighteen.

16 Q. And where do you live?

17 A. In Simpsonville.

18 Q. And who do you live with in Simpsonville?

19 A. My mom and my baby.

20 Q. And did you graduate high school?

21 A. Yes, sir.

22 Q. What high school did you graduate from?

23 A. Southside.

24 Q. And about when did you graduate?

25 A. In June of 2011.

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- 1 Q. And where do you live now?
- 2 A. In Simpsonville.
- 3 Q. I'm sorry. Where did you live back in 2009?
- 4 A. In 2009 I lived in Mauldin.
- 5 Q. And have you -- do you know the Defendant in this case?
- 6 A. Yes, sir.
- 7 Q. How do you know the Defendant?
- 8 A. He is the father of my child.
- 9 Q. And whenabouts did you meet Mr. Butts, the Defendant?
- 10 A. August of 2008.
- 11 Q. August of 2000 and ...
- 12 A. 8.
- 13 Q. Okay. And tell the jury, how did y'all meet?
- 14 A. I went to a friend's house and he was there. So we met
- 15 through some friends.
- 16 Q. And what friends did you meet through?
- 17 A. My friend was Megan Burnette.
- 18 Q. And that's who invited to the -- to a party that night?
- 19 A. It wasn't a party. I just went to spend the night with
- 20 her.
- 21 Q. He was there?
- 22 A. Yes, sir.
- 23 Q. And did y'all begin a relationship?
- 24 A. Yes, sir.
- 25 Q. Was it immediately thereafter that y'all began a

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1 relationship?

2 A. About a month later.

3 Q. And so that would be when?

4 A. Like two months later. It was in like October of 2009.

5 Q. Of 2009?

6 A. 2008, I'm sorry.

7 Q. That's okay. And how long did you and the Defendant
8 date?

9 A. Like two years, two and a half years.

10 Q. And did y'all's relationship become romantic?

11 A. Yes, sir.

12 Q. And did y'all ever have a child together?

13 A. Yes, sir.

14 Q. When about did you realize you were pregnant?

15 A. I actually was pregnant twice. I got pregnant in like
16 February of 2009 and then in November of 2009.

17 Q. And during 2008 and through 2009 when y'all were dating
18 did y'all ever live together?

19 A. Yes, sir.

20 Q. Okay. And where were you -- who were you living with
21 at that time in 2009?

22 A. My mom and my grandmother.

23 Q. And when I said y'all lived together, did he stay at
24 your house?

25 A. Yes, sir.

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- 1 Q. Did he keep clothes there?
- 2 A. Yes, sir.
- 3 Q. All right. And about how often would he stay at your
- 4 house during that time?
- 5 A. A couple of days out of the week.
- 6 Q. Now when he was doing that did he keep clothes there?
- 7 A. Yes, sir.
- 8 Q. What kind of clothes would he keep at your house?
- 9 A. Jeans and t-shirts, and then like shorts and t-shirts
- 10 and stuff that you would just wear around the house.
- 11 Q. Okay. And did y'all assist him with doing the laundry
- 12 and those kind of things?
- 13 A. Yes, sir.
- 14 Q. I'm going to show you what's marked as State's exhibit
- 15 13. I'll have to open that up for you. I'm going to ask
- 16 you to take a look at these. Are these clothes that you're
- 17 familiar with?
- 18 A. Yes, sir.
- 19 Q. And how are you familiar with these clothes?
- 20 A. They're Tony's.
- 21 Q. And you know they're Tony's?
- 22 A. Yes, sir.
- 23 Q. How do you know they're Tony's?
- 24 A. I've seen him wear it.
- 25 Q. Okay. All right. And what do we have here?

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1 A. Two t-shirts and a pair of jeans.

2 Q. Okay. Now in 2009 were you approached by investigators
3 to talk about some armed robberies?

4 A. Yes, sir.

5 Q. All right. And did you actually give a statement in
6 2009 to Investigator Wayne Campbell?

7 A. Yes, sir.

8 Q. And what did you say in that statement? Do you
9 remember?

10 MR. ROBINSON: Your Honor, I'm going to object to
11 hearsay in this case and relevance.

12 THE COURT: Okay. That is her statement, is that
13 correct?

14 MR. WILKINS: This is her statement. And I'm going to
15 ask her if she wants to use it to refresh her memory to
16 testify as to what she told investigators.

17 THE COURT: Okay. All right. Okay. I'll overrule the
18 objection.

19 Q. Did you give a statement in 2009 to Investigator Wayne
20 Campbell?

21 A. Yes, sir.

22 Q. Do you remember, just in general, what you told Mr.
23 Campbell that day?

24 A. A little.

25 Q. Do you want to -- do you want to look at your statement

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1 to refresh your memory?

2 A. Sure.

3 (Pause)

4 Q. Can you tell us, generally, what you told the
5 investigators that day?

6 A. That I dropped Tony off behind the Citgo in the Rite
7 Aid parking lot. And when he got out of the car he had on
8 green sweatpants and a hoodie.

9 Q. All right. And that day did you tell the police
10 everything about what happened that day?

11 A. No, sir.

12 Q. All right. And we're referring to October 18th. Does
13 that ring a bell?

14 A. Yes, sir.

15 Q. How is October 18th familiar to you?

16 A. It was our anniversary.

17 Q. Okay. And so when you gave this statement in November
18 -- November 19th, you were referring to the date of October
19 18th, 2009, is that correct?

20 A. Yes, sir.

21 Q. And in that statement did you tell the police the
22 entire truth?

23 A. No, sir.

24 Q. Why did you not tell them the entire truth?

25 A. I guess 'cause I was trying to protect Tony.

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1 Q. And why were you trying to protect him?

2 A. 'Cause I loved him.

3 Q. Now did you talk with investigators August of this
4 year?

5 A. Yes, sir.

6 Q. All right. And did you enter into a cooperation or a
7 proffer agreement?

8 A. Yes, sir.

9 Q. All right. And do you remember what the terms of that
10 proffer agreement are?

11 MR. ROBINSON: Your Honor, I'm going to object on the
12 base of relevance in this case.

13 THE COURT: Okay.

14 MR. ROBINSON: This agreement.

15 THE COURT: Come forward.

16 (Whereupon a bench conference was held off the record
17 in the presence of the jury, but out of their hearing)

18 MR. ROBINSON: Your Honor, I withdraw that objection.

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

20 Q. Now, Ms. McCroskey, did you enter into an agreement
21 with the State at that time?

22 A. Yes, sir.

23 Q. And do you remember what that agreement was?

24 A. That if I was found not to be telling the truth I would
25 be charged.

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1 Q. Okay. And what does that agreement tell you to do?

2 A. Tell the truth.

3 Q. And did you discuss possible charges by being involved
4 in the October 18th incident?

5 A. Yes, sir.

6 Q. And did you have an agreement with the Prosecution
7 about those -- any potential charges?

8 A. Yes, sir.

9 Q. What is that agreement?

10 A. That if I signed a proffer agreement and told the truth
11 I wouldn't be charged.

12 Q. And is that your understanding today as well?

13 A. Yes, sir.

14 Q. Now do you -- ever known the Defendant to carry a gun?

15 A. Yes, sir.

16 Q. All right. And how do you know that?

17 A. I've seen him with it.

18 Q. How often have you seen him with it?

19 A. I never seen him with it until like September and
20 October of 2009.

21 Q. And do you know where he kept that gun?

22 A. It was with him.

23 Q. Did he ever keep it at your house?

24 A. Yes, sir.

25 Q. When he was -- when he kept it at your house where

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1 would he keep it?

2 A. Under our mattress.

3 Q. Now can you describe -- what kind of car do you have
4 access to?

5 A. I have a silver Chevy Impala ---

6 Q. And whose car ---

7 A. --- 2000.

8 Q. Whose car is that?

9 A. My mom's.

10 Q. And does she allow you to drive it?

11 A. Yes, sir.

12 Q. And did you ever drive around with the Defendant in
13 that car?

14 A. Yes, sir.

15 Q. And what color was it again? I didn't hear you.

16 A. Silver.

17 Q. Does -- do you have access to any other cars that are
18 within your family?

19 A. Yes, sir.

20 Q. What kind of car is that?

21 A. My grandmother's van.

22 Q. And does she allow you access to that car?

23 A. Yes, sir.

24 Q. Have you and the Defendant ever ridden in that car
25 before?

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1 A. Yes, sir.

2 Q. Do you know if the Defendant ever had a job while you
3 were dating?

4 A. No, sir.

5 MR. ROBINSON: Your Honor, relevance in this case.

6 Objection to relevance, Your Honor.

7 THE COURT: Okay. Overruled. You may continue.

8 Q. Would it -- would you say that he was not working while
9 y'all were dating?

10 A. Yes, sir.

11 Q. I'm going to refer you to the night of October 18th,
12 2009. Can you tell us about that day?

13 A. Yes, sir. It was our anniversary. And he asked me to
14 come get him late that night.

15 Q. About what time did -- did he ask you to come get
16 ya' [sic]?

17 A. It was about 2:30 in the morning.

18 Q. Okay. So what did you do?

19 A. I went and got him.

20 Q. Okay. And what car did you take to go -- go get him?

21 A. My mama's Impala.

22 Q. And where was he located for you to go get him?

23 A. In ---

24 Q. Where did you pick him up from?

25 A. His house.

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1 Q. His house?

2 A. (Affirmative nod).

3 Q. And after y'all left his house what did you do?

4 A. I went -- I dropped him off in the Rite Aid parking
5 lot.

6 Q. Well, did you pick up anybody else before that?

7 A. Yes, sir.

8 Q. Who did you pick up before that?

9 A. Chris Belcher.

10 Q. And who is Chris Belcher?

11 A. That was my best friend's boyfriend.

12 Q. And how did you know to go pick up Chris Belcher?

13 A. Tony asked me to.

14 Q. And so after you picked up Chris Belcher where was
15 everybody driving in the car, riding in the car?

16 A. I was driving. Tony was in the passenger's seat. And
17 Chris was in the back.

18 Q. And you picked up Chris Belcher. Where did you go
19 after that?

20 A. We exited the neighborhood, and I went to the Rite Aid
21 parking lot.

22 Q. All right. Well, let's show the -- if you would come
23 down here and I'm going to ask you to take a look at this.

24 (Whereupon the witness left the witness stand)

25 Q. This is State's exhibit 10, which has already been

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1 admitted into evidence. It's a map. Can you show me where
2 you picked up the Defendant?

3 A. Right here.

4 Q. Okay. And where is that?

5 **MADAME COURT REPORTER:** I need you to speak up. I
6 can't hear you.

7 Q. Can you speak up, please?

8 A. It's in Simpsonville, [REDACTED] Spring Lake Loop.

9 Q. All right. And after you picked him up where did you
10 go?

11 A. I went like around the curve to get to Chris' house,
12 like over here. And then I left.

13 Q. And where did you go after you left Chris' house?

14 A. To the Rite Aid.

15 Q. Okay. Show -- kind of show us the route that you took.

16 A. Went like this right here.

17 Q. Okay.

18 A. And came in right here.

19 Q. And you came in right here? Is that ---

20 A. (Affirmative nod).

21 Q. --- what you said? Okay. To the Rite Aid?

22 A. Yes, sir.

23 Q. All right. And what happened at the Rite Aid?

24 A. I parked the car and Tony got out.

25 Q. And when Tony got out how was he dressed?

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1 A. He had on like some sweatpants and just like a t-shirt.

2 Q. Okay. Did he -- what color were his sweatpants?

3 A. Black.

4 Q. And what else did he have?

5 A. He had some other stuff in his hand like a hoodie or
6 something ---

7 **MADAME COURT REPORTER:** I'm sorry, you're going to have
8 to speak up. I can't hear you. You're going to have to
9 repeat your answer.

10 Q. Ms. McCroskey, why don't you return to the stand.

11 **THE COURT:** Ms. McCroskey, just speak up loudly enough
12 so the court reporter can hear you because she's taking
13 everything down, okay?

14 Q. So what was the Defendant wearing when he exited your
15 car?

16 A. Like some sweatpants and a t-shirt.

17 Q. Do you know what color his shoes were?

18 A. Black.

19 Q. And can you -- can you point on the map exactly where
20 you dropped him off?

21 A. It was like over here.

22 Q. And what did you do after he exited the car?

23 A. I backed out of the parking place and I went around the
24 building to the light, to the other light. And then I
25 parked in this right here.

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1 Q. Okay. Can you show about over here where you parked?

2 A. It's right there.

3 Q. Okay. And which way were you facing?

4 A. Towards -- facing this way.

5 Q. Okay. Now did you know where -- did the Defendant tell
6 you where he was going?

7 A. He just told me he was meeting somebody.

8 Q. Okay.

9 (Whereupon the witness returned to the witness stand)

10 Q. Now, Ms. McCroskey, I'm going to show you what's
11 already been admitted into evidence, a video, and ask you to
12 take a look at this video.

13 (Playing video)

14 Q. Now do you recognize that car?

15 A. Yes, sir.

16 Q. Whose car is that?

17 A. My mom's.

18 Q. And who's driving that car right there?

19 A. Me.

20 Q. And do you -- look at the time on the camera. What
21 about -- what time was that?

22 A. 3:30.

23 Q. That's 3:30 in the morning?

24 A. Yes, sir.

25 Q. And is that about the time you dropped the Defendant

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1 off in that parking lot?

2 A. I don't know exactly what time it was.

3 Q. And who else is in the car with you?

4 A. Chris.

5 Q. When you drove around the parking lot, you say you
6 parked in the Swedish Automotive where you pointed to
7 earlier. How long did you sit there?

8 A. Like seven to ten minutes.

9 Q. And then did the Defendant come back after you were
10 there?

11 A. Yes, sir.

12 Q. All right. And what did the Defendant look like when
13 he came back?

14 A. He just like walked up to the car.

15 Q. Okay. And what was he wearing?

16 A. He had on the sweatpants and the shirt that he had on
17 when he got out of the car.

18 Q. Now when he got in the car did the Defendant say
19 anything once he got in to anybody?

20 A. No, sir.

21 Q. He didn't -- he just got in the car and didn't say
22 anything to you?

23 A. He was just like let's go.

24 Q. Did he say anything to Chris?

25 A. Chris asked him was he all right. And he just told him

SARAH REAGAN McCROSKEY - DIRECT EXAMINATION BY MR. WILKINS

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1 yeah.

2 Q. He just told him what?

3 A. Yes.

4 Q. Okay. After he got back in the car where did y'all go?

5 A. We dropped Chris off at a friend's house.

6 Q. And what did y'all do?

7 A. We went to the Waffle House.

8 Q. And at Waffle House did y'all order some food?

9 A. Yes, sir.

10 Q. Who paid for the food?

11 A. Tony.

12 Q. And how did he pay for the food? With what kind of
13 currency?

14 A. Like a twenty dollar bill.

15 Q. How do you know that?

16 A. 'Cause I seen him get it out like before he went in the
17 store.

18 Q. I'm sorry. You need to speak up, Ms. ---

19 A. I seen him get it out of his pocket before he went in
20 to pay for the food.

21 Q. What did you see him get out?

22 A. A twenty dollar bill.

23 Q. One twenty dollar bill or more than one twenty dollar
24 bill?

25 A. He just got out one.

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- 1 Q. And that's all you saw?
- 2 A. Yes, sir.
- 3 Q. And then he went and bought some food?
- 4 A. Yes, sir.
- 5 Q. What happened after he bought the food?
- 6 A. We went to my house.
- 7 Q. And when you went back to your house what did y'all do?
- 8 A. We ate and we laid down.
- 9 Q. All right. And did y'all get ready for bed?
- 10 A. Yes, sir.
- 11 Q. And when y'all got ready for bed did you see anything?
- 12 A. Yes, sir.
- 13 Q. All right. What happened?
- 14 A. He laid -- took all of his stuff off and he had the
- 15 gun, like I said. And he like put it in his shoes, and we
- 16 went to bed.
- 17 Q. Now you said he took his clothes off, is that correct?
- 18 A. Yes, sir.
- 19 Q. And then you said he took a gun out of his shoes, I
- 20 mean, out of his -- he took a gun out. Where did he take it
- 21 out from?
- 22 A. His waist.
- 23 Q. And where did he put it?
- 24 A. Put it in the floor with the rest of his stuff, like in
- 25 his shoe.

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1 Q. In his shoes. And where were the shoes located?

2 A. On the floor.

3 Q. Okay. And what color -- what kind of shoes were they?

4 A. They were black.

5 Q. And did he have a hoodie as well with him?

6 (Pause)

7 A. I don't remember.

8 Q. I'm going to show you what's marked for identification
9 State's exhibit 12. Is this similar to the gun that you saw
10 him put in his shoes?

11 A. Yes, sir.

12 Q. Did you see the Defendant with a mask?

13 A. No, sir.

14 Q. Have you ever seen the Defendant with a mask?

15 A. No, sir.

16 Q. Have you ever found a mask in your room?

17 A. Yes, sir.

18 Q. Well, tell the jury about that.

19 A. When we moved from Mauldin to Simpsonville I had like
20 my mattresses or whatever, and when I like lifted them up to
21 move them there was a mask under there.

22 Q. Okay. Under where?

23 A. The mattresses.

24 Q. Okay. And what kind of mask was it?

25 A. Like a black ski mask.

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1 Q. Was it a mask that appeared to be handmade or a mask
2 that -- one you buy from a store?

3 A. It appeared to be handmade.

4 Q. And when I say handmade -- what do you mean?

5 A. Like there was holes cut in it and stuff.

6 Q. And what did you do with that mask?

7 A. I threw it away.

8 Q. Did anyone else have access to your room during that
9 time?

10 A. Yes, sir.

11 Q. Who else did?

12 A. Anybody that lived in the household, like my little
13 brother, my grandma, my mom.

14 Q. And did you know that mask to be anybody else in your
15 family's?

16 A. It was a possibility that it was my little brother's,
17 but I don't know for sure.

18 Q. Did you ever see your little brother with that mask?

19 A. No, sir.

20 Q. And where did you find the mask in your room?

21 A. Under my mattress.

22 Q. I'm going to show you a video from October 18th, 2009.
23 I want you to take a look at this video.

24 (Playing video)

25 Q. Now when you dropped him off at the Rite Aid parking

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1 lot, which we just looked at the map, did he have anything
2 in his hands when he exited the car?

3 A. I don't remember.

4 Q. You just saw the person in that video. Was that
5 consistent with what he was wearing when he exited your car
6 that night?

7 A. Yes, sir, except for the -- the hoodie.

8 Q. He was not wearing a hoodie when he exited your car?

9 A. No, sir.

10 Q. He was wearing black sweatpants?

11 A. Yes, sir.

12 Q. Was he wearing black shoes?

13 A. Yes, sir.

14 Q. Did he exit your car with any gloves on him?

15 A. No, sir.

16 Q. Now you heard the voice on the video right there.

17 A. Yes, sir.

18 Q. Do you recognize that voice?

19 A. Yes, sir.

20 Q. Whose voice is it?

21 (Pause)

22 A. Tony's.

23 Q. And do you recognize the mannerisms of the person who's
24 in that video?

25 A. Yes, sir.

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1 Q. And are those mannerisms similar to anyone that you
2 know?

3 A. Yes, sir.

4 Q. Who are they similar to?

5 A. Tony.

6 Q. All right. I'm going to show you another video. This
7 is a video of October 30th.

8 (Playing video)

9 Q. Ms. McCroskey, do you recognize the voice in that
10 video?

11 A. Yes, sir.

12 Q. And whose voice do you believe that to be?

13 A. Tony's.

14 Q. What about the mannerisms in which the individual was
15 walking, moving, are those familiar to you?

16 A. Yes, sir.

17 Q. And why are they familiar?

18 A. Like the way he was like bending over looking in the
19 stuff, it just reminds me of Tony.

20 Q. And as you previously stated, the person in this video
21 appears to have a black t-shirt. Does the Defendant own a
22 black t-shirt?

23 A. Yes, sir.

24 Q. And does he own black sweatpants?

25 A. Yes, sir.

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1 Q. And does he own black shoes?

2 A. Yes, sir.

3 Q. I'm going to show you a video which has already been
4 admitted into evidence from November 3rd.

5 (Playing video)

6 Q. Do you recognize the person in that video?

7 A. Yes, sir.

8 Q. Who is that?

9 A. Tony.

10 Q. Now do you know -- does Tony have a nickname?

11 A. Yes, sir.

12 Q. What's his nickname?

13 A. City.

14 Q. And do you recognize that shirt he was wearing?

15 A. Yes, sir.

16 Q. I'm going to ask you to look at this at a different
17 angle and see if you recognize his pants. Do you recognize
18 those jeans?

19 A. Yes, sir.

20 Q. And are those the jeans similar to the ones that I
21 showed you earlier in State's exhibit 13?

22 A. Yes, sir.

23 Q. And did you ever wash those jeans for him?

24 A. Yes, sir.

25 Q. And those shoes, do you recognize those shoes?

SARAH REAGAN McCROSKEY - DIRECT EXAMINATION BY MR. WILKINS

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- 1 A. Yes, sir.
- 2 Q. Are those the Defendant's shoes?
- 3 A. Yes, sir.
- 4 Q. And at the time what kind of haircut did the Defendant
- 5 have?
- 6 A. A low cut.
- 7 Q. A low cut?
- 8 A. (Affirmative nod).
- 9 Q. What's a low cut?
- 10 A. A regular haircut.
- 11 Q. A regular haircut. What's on his head there in that
- 12 video?
- 13 A. A doo rag.
- 14 Q. All right. And would the doo rag cover his entire
- 15 hair?
- 16 A. Yes.
- 17 Q. So when you say a low cut, a short haircut, is that
- 18 what you mean by that?
- 19 A. Yes, sir.
- 20 Q. Did he have any facial hair?
- 21 A. Yes, sir.
- 22 Q. What kind of facial hair?
- 23 A. On his chin.
- 24 Q. I'm going to ask you to look at one more video.
- 25 (Playing video)

SARAH REAGAN McCROSKEY - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. Do you recognize the voice in that video of November
2 5th, 2009?

3 A. Yes, sir.

4 Q. And whose voice do you believe that to be?

5 A. Tony's.

6 Q. And you recognize the clothes that individual was
7 wearing in that -- Mr. Butts was wearing in that video?

8 MR. ROBINSON: Your Honor, Your Honor, I'm going to
9 object to the characterization, excuse me, by the Prosecutor
10 in this case saying that that's Mr. Butts. I think it's
11 leading. It puts facts not in evidence, Your Honor.

12 THE COURT: All right. I respectfully overrule. You
13 may continue.

14 MR. WILKINS: I'll refer to him as the Defendant, Your
15 Honor.

16 Q. Do you recognize the clothing that that person in the
17 video is wearing?

18 A. Yes, sir.

19 Q. Okay. And who has clothes similar to that?

20 A. Tony.

21 Q. Do you recognize the mannerisms in the way that person
22 acts and moves in that particular video?

23 A. Yes, sir.

24 Q. And who are they similar to or who would you -- are you
25 familiar with those? I'm sorry, go ahead.

SARAH REAGAN McCROSKEY - DIRECT EXAMINATION BY MR. WILKINS

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1 A. Yes, sir.

2 Q. And whose actions are those?

3 A. Tony's.

4 Q. In November of 2009 -- I'm sorry, Ms. McCroskey, let me
5 refer you back -- I apologize. In -- on the October 18th
6 video, your one year anniversary, do you recall any sayings
7 that the Defendant said in that video? Let me play it back
8 again for you very briefly, if you'd like. And I apologize.
9 I'll skip back. Any particular words that the person in the
10 video says that are familiar to you?

11 (Playing video)

12 Q. Now you just heard what was in the video. Did those
13 words -- familiar to you?

14 A. Yes, sir.

15 Q. What words are familiar to you?

16 A. Good man.

17 Q. Is that something that the Defendant would say?

18 A. Yes, sir.

19 Q. Have you heard him say that before?

20 A. Yes, sir.

21 Q. Back in 2009, November of 2009 did you ever get a call
22 from the Defendant?

23 A. Yes, sir.

24 Q. And what did he tell you to do?

25 A. He asked me to take the gun that was under my mattress

SARAH REAGAN McCROSKEY - DIRECT EXAMINATION BY MR. WILKINS

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- 1 to his cousin.
- 2 Q. And do you remember when you received that call?
- 3 (Pause)
- 4 A. The day he went to jail or the day after.
- 5 Q. And what did you do after you talked to him?
- 6 A. I went home.
- 7 Q. What did you do next?
- 8 A. I got the gun and I took it to his cousin's house.
- 9 Q. All right. And where was the gun located?
- 10 A. In my house.
- 11 Q. Where specifically?
- 12 A. Under the mattress.
- 13 Q. Okay. And when you grabbed the gun what did you do
- 14 with it?
- 15 A. I wrapped it up in a jacket.
- 16 Q. Did you tell your mama what you were doing?
- 17 A. Yes.
- 18 Q. What did you tell her?
- 19 A. That I was taking something to Ace.
- 20 Q. To whose?
- 21 A. Ace.
- 22 Q. Who is Ace?
- 23 A. His cousin.
- 24 Q. And where does Ace live?
- 25 A. I don't know.

SARAH REAGAN McCROSKEY - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. Where did he live at that time?

2 A. In Mauldin.

3 Q. Do you remember the -- you don't know the address or

4 ---

5 A. No, sir.

6 Q. But it was in Mauldin?

7 A. Yes.

8 Q. And once you got the gun and put it into a jacket what
9 did you do next?

10 A. I got in my car, and I drove to his house, and I gave
11 him the jacket.

12 Q. Okay. And did you have anybody else in the car with
13 you?

14 A. Yes, sir.

15 Q. Who else was in the car?

16 A. Megan.

17 Q. Megan who?

18 A. Burnette.

19 Q. I'm sorry?

20 A. Burnette.

21 Q. Megan Burnette. And was Megan with you when you
22 retrieved the gun or did you go pick her up?

23 A. She was with me.

24 Q. She was at your house with you?

25 A. Yes.

SARAH REAGAN McCROSKEY - DIRECT EXAMINATION BY MR. WILKINS

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- 1 Q. And what car did you drive?
- 2 A. Hers. She drove her car.
- 3 Q. And did you ride with her?
- 4 A. Yes.
- 5 Q. And when you arrived to Ace's house what did you do?
- 6 A. I handed him the jacket.
- 7 Q. You handed who ---
- 8 A. Him the jacket.
- 9 Q. --- the jacket?
- 10 A. Ace.
- 11 Q. And where did you -- were you in the car when you
- 12 handed him the jacket?
- 13 A. Yes, sir.
- 14 Q. And did Ace come out to the car ---
- 15 A. Yes, sir.
- 16 Q. --- to meet you?
- 17 A. Yes, sir.
- 18 Q. All right. And did he receive the jacket?
- 19 A. Yes, sir.
- 20 Q. And the gun?
- 21 A. Yes, sir.
- 22 Q. And is that the gun that you previously looked at
- 23 earlier? Similar to that gun that you previously looked at
- 24 earlier?
- 25 A. Yes, sir.

SARAH REAGAN McCROSKEY - DIRECT EXAMINATION BY MR. WILKINS

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- 1 Q. And what did Ace do after he received the jacket and
2 the gun?
- 3 A. He went in the house.
- 4 Q. I'm sorry?
- 5 A. He went in the house.
- 6 Q. He went in his house.
- 7 A. (Affirmative nod).
- 8 Q. And what did you do next?
- 9 A. Went back to Megan's house.
- 10 Q. And do you know Ace's real name?
- 11 A. No, sir.
- 12 Q. You don't ---
- 13 A. I just know Kyille.
- 14 Q. I'm sorry, I can't hear you.
- 15 A. Kyille.
- 16 Q. Kyille is his first name?
- 17 A. Yes. I ---
- 18 Q. Do you ---
- 19 A. --- guess so.
- 20 Q. --- know his last name?
- 21 A. Seward.
- 22 Q. I'm sorry?
- 23 A. Seward.
- 24 Q. Kyille Seward? Ms. McCroskey, do you need to take a
25 break?

SARAH REAGAN McCROSKEY - CROSS EXAMINATION BY MR. ROBINSON

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1 A. No.

2 Q. Please answer any questions the defense counsel may
3 have for you.

4 MR. ROBINSON: May it please the Court.

5 THE COURT: Yes, sir.

6 Cross Examination by Mr. Robinson:

7 Q. Ms. McCroskey, what -- what do I need to call you? Do
8 I call you Sarah, Reagan, which do you like to go by?

9 A. Reagan.

10 Q. Reagan's what you like to go by?

11 A. Yes, sir.

12 Q. You were with Tony for a couple of years, is that
13 right?

14 A. Yes, sir.

15 Q. And he's the father of your child, is that right?

16 A. Yes, sir.

17 Q. Okay. How tall is Tony?

18 A. Six-one.

19 Q. About six-one. Okay. Does Tony have a -- and this is
20 Tony sitting next to me, is that right?

21 A. Yes, sir.

22 Q. Okay. Does Tony have any -- does he have -- you're
23 familiar with his arms and so forth. Does he have a tattoo
24 on his left arm? That's this arm right here.

25 (Pause)

SARAH REAGAN McCROSKEY - CROSS EXAMINATION BY MR. ROBINSON

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1 A. I don't know which arm it's on.

2 Q. Okay. Would it surprise you if he does not have a
3 tattoo on his left arm?

4 A. What did you say?

5 Q. Would it surprise you if he doesn't have a tattoo on
6 his left arm? You wouldn't disagree, would you?

7 A. No, sir.

8 Q. Okay. Now this -- I want to go back. This may take a
9 while. So if you need a break, let me know. Now the 10/18
10 video that Mr. Wilkins was showing you, that night as far as
11 your car at the Rite Aid and so forth, when Tony left the
12 vehicle that you guys were in, remember, going back to that
13 date?

14 A. (Affirmative nod).

15 Q. When he left that vehicle he did not have any gloves on
16 or a hoodie, did he?

17 A. No, sir.

18 Q. Okay. In fact, he had that he was wearing sweatpants,
19 isn't that right?

20 A. Yes, sir.

21 Q. Okay. And now let's talk about -- let's talk about
22 too, another point I wanted to get across, these -- the
23 words that you heard on the video, good man, different
24 things like that, you'd heard that from other people as
25 well, hadn't you?

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1 A. Yes, sir.

2 Q. Those are -- actually those are actually pretty common
3 phrases, aren't they?

4 A. Yes, sir.

5 Q. Now I want to kind of take you through how this all
6 went. Now you gave two statements to law enforcement. One,
7 if you can remember this far back, you gave one on
8 11/19/2009 and one on the 20th of November 2009. Do you
9 recall that?

10 A. Yes, sir.

11 Q. And do you recall that ---

12 MR. ROBINSON: May I approach the witness, Your Honor?

13 THE COURT: Yes, sir.

14 MR. ROBINSON: I want to get this one statement marked
15 Defense exhibit 1 for identification purposes only.

16 Q. Do you recognize that statement? Can you identify
17 that?

18 A. Yes, sir.

19 Q. Is that your signature on the bottom?

20 A. Yes, sir.

21 Q. Okay. And what is the date of that?

22 A. 11/19.

23 MR. ROBINSON: I'd like to have this marked Defendant's
24 exhibit for identification purposes only, number 1.

25 (Whereupon Defendant's exhibit 1 marked for

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1 identification)

2 Q. Reagan, in this statement, which is marked Defense
3 exhibit number 1 for identification purposes, you didn't
4 mention anything about a robbery in that statement, did you?

5 A. No, sir.

6 Q. Okay. Then you give another statement on the 20th,
7 which is a day later, is that correct?

8 A. Yes, sir.

9 Q. Do you recognize this document?

10 A. Yes, sir.

11 Q. And is that your signature and handwriting?

12 A. Yes, sir.

13 Q. Okay. And what is the date of that document?

14 A. That's not my handwriting, but it's my signature.

15 Q. Whose handwriting is that, do you know?

16 A. Detective Campbell.

17 Q. Okay.

18 **MR. ROBINSON:** I'd like to have this marked Defense
19 exhibit number 2 for identification purposes only.

20 (Whereupon Defendant's exhibit 2 was marked for
21 identification)

22 Q. And turning to Defense exhibit number 2 for
23 identification purposes only, that was written by Officer
24 Campbell, correct? Detective Campbell?

25 A. Yes, sir.

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1 Q. And that's your signature, correct?

2 A. Yes, sir.

3 Q. And you don't mention anything in that statement about
4 a robbery, do you?

5 A. No, sir.

6 Q. Okay. Now let's fast forward to the Summer of 2011.
7 You were contacted by the Sheriff's Office, weren't you?

8 A. Yes, sir.

9 Q. Okay. And you were contacted by an Officer Weiner, is
10 that correct?

11 A. Yes, sir.

12 Q. And Officer Weiner set up a meeting with you at your
13 house, isn't that correct?

14 A. Yes, sir.

15 Q. Now who lives with you and your -- is it just you or
16 who else is there?

17 A. At that time it was me, my baby, my mom, my grandmother
18 and my little brother.

19 Q. And how old was your baby at the time?

20 A. One.

21 Q. This is in -- this is August 2011?

22 A. Yes, sir.

23 Q. Okay. And this meeting arranged by Officer Weiner, Mr.
24 Wilkins was at the meeting, correct?

25 A. Yes, sir.

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1 Q. Mr. Ellis was at the meeting, correct?

2 A. Yes, sir.

3 Q. Officer Gosnell was at the meeting, I think that's his
4 name, Grosner, Gosnell, is that right?

5 A. Grounsell, yes, sir.

6 Q. Grounsell. And Officer Weiner, who's sitting next to
7 him was also at the meeting, is that correct?

8 A. Yes, sir.

9 Q. And, I think, also -- was there anybody else there
10 besides these four folks?

11 A. Detective Campbell.

12 Q. There was one other person, Detective Campbell was also
13 in the -- in there. I don't see Detective Campbell here.

14 So you had -- you had never made a statement before this
15 time regarding any robberies connected to Tony, but this
16 date in November, excuse me, August 9th of 2011 these folks,
17 these -- actually five folks, four or five folks, Solicitor,
18 Assistant Solicitor, two detectives came to your house with
19 your baby and they wanted you to make statements against
20 Tony, didn't they?

21 A. Yes, sir.

22 Q. And they actually offered you -- they actually gave you
23 -- and, ma'am, you weren't even charged in this case, were
24 you?

25 A. No, sir.

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1 Q. You had never been charged at any time with any crime
2 in this case, had you?

3 A. No, sir.

4 Q. These folks, the Solicitor, the Assistant Solicitor and
5 two detectives came to your house where you and your baby
6 and your mom were and they wanted you to cooperate against
7 Tony, isn't that correct?

8 A. Yes, sir.

9 Q. And if you didn't cooperate they threatened you, didn't
10 they?

11 A. Yes, sir.

12 Q. They threatened you and they told you that if you
13 didn't testify against him and identify him in these videos
14 that they've got that they would put you in jail and take
15 your kid away from you, didn't they?

16 A. They said that they would charge me with accessory
17 before and after and that if that happened my son would be
18 taken away.

19 Q. That your son would be taken away from you. You would
20 do anything -- your son is a very important person to you,
21 isn't he?

22 A. Yes, sir.

23 Q. You wouldn't want anything to happen to your son, would
24 you?

25 A. No, sir.

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1 Q. You wouldn't want your son to wind up in protective
2 custody or in foster care, would you?

3 A. No, sir.

4 Q. But they threatened you that they would charge you if
5 you didn't cooperate or give a statement against him, that
6 they would put you in jail for an accessory and they would
7 take your kid, didn't they?

8 A. They didn't say that they would take him. They told me
9 that that's what would happen.

10 Q. They said that's what would happen. And you took that
11 as a threat, didn't you?

12 A. Yes, sir.

13 Q. You were actually -- called Tony Butts on the phone
14 after that and said you were scared to death, didn't you?

15 A. Yes, sir.

16 Q. You were scared to death and you told him that they
17 would have done anything -- they told you that they would
18 charge you if you didn't -- if you didn't testify for them,
19 didn't they?

20 A. Yes, sir.

21 Q. And they actually had you in protective custody since
22 August of 2011, didn't they?

23 A. Yes, sir.

24 Q. They had you and your mom someplace that no one could
25 get you, didn't they?

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1 A. No, sir.

2 Q. Okay. How many times did you meet with the Prosecutor
3 prior to this case, prior to today?

4 A. Twice.

5 Q. Twice?

6 A. (Affirmative nod).

7 Q. Is that after this meeting on August 9th of 2011?

8 A. Yes, sir.

9 Q. Okay. Now this proffer agreement that you signed with
10 these folks, you weren't even charged at the time of this
11 proffer was given to you, were you?

12 A. No, sir.

13 Q. This was given to you by Walt Wilkins, Mr. Wilkins at
14 the time these four folks went out there, he and Mr. Ellis,
15 one of the Assistant Solicitors and two detectives went out
16 there, is that right?

17 A. Yes, sir.

18 Q. In looking at these videos that they have played to the
19 jury in this case you're not saying that that's Tony Butts,
20 are you? You don't know if that's Tony Butts or not, do
21 you?

22 (Pause)

23 Q. Do you want me to repeat the question, ma'am?

24 A. Please.

25 Q. I'm sorry. Are you all right?

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1 A. (Affirmative nod). Yes, sir.

2 Q. Okay. Take your time. Now, Reagan -- Reagan, now you
3 know that this is a court of law and that the truth is
4 what's most important. You know that, correct?

5 A. Yes, sir.

6 Q. You know when you took an oath a second ago you swore
7 to tell the truth, right?

8 A. (Affirmative nod).

9 Q. Looking at those videos you can't say that's Tony
10 Butts, can you?

11 A. Yes, I can.

12 Q. You can?

13 A. (Affirmative nod).

14 Q. Okay. So tell me this, if you don't testify according
15 to the way you're testifying what do you think -- what's
16 going to happen to you if the Solicitor doesn't like what
17 you say?

18 A. Nothing.

19 Q. Nothing?

20 A. (Affirmative nod).

21 Q. But didn't you sign a proffer agreement basically with
22 him?

23 A. Yes, sir.

24 Q. And you -- I thought you just said a moment ago that
25 you had been threatened.

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1 A. I didn't feel threatened. Like, I mean, they didn't
2 come at me threatening me, but I felt like I had to do it.

3 Q. You had to do it?

4 A. Yes, sir.

5 Q. You think you had any other choice?

6 (Pause)

7 Q. Hm?

8 A. I felt like my only other choice was taking a chance
9 and going to jail.

10 Q. So you felt a lot of pressure, is that right?

11 A. Yes, sir.

12 Q. You felt coerced?

13 A. What did you say?

14 Q. Did you feel -- you felt coerced, didn't you?

15 A. Yes, sir.

16 MR. ROBINSON: I beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 (Pause)

19 Q. Megan, I want to -- Reagan, I want to go to your first
20 statement that you gave, which would have been on -- this is
21 marked Defense number 1 for identification purposes. That's
22 signed 11/19. You stated that he was wearing dark green
23 sweatpants, isn't that correct?

24 A. Yes, sir.

25 Q. Not black sweatpants, but dark green sweatpants, right?

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1 A. Yes, sir.

2 Q. Okay. Now you and William have a child together, is
3 that right?

4 A. Yes, sir.

5 Q. All right. And at some point you and he kind of
6 drifted apart, didn't you?

7 A. Yes, sir.

8 Q. Because he -- this was prior to August of 2011, isn't
9 that correct?

10 A. Yes, sir.

11 Q. That was because he got involved with a different girl,
12 is that correct?

13 A. Yes, sir.

14 Q. And your feelings toward him changed at that time,
15 didn't they, when he had another girl in his life, is that
16 right?

17 A. Yes, sir.

18 Q. And didn't you state in your statement to the officers
19 in August of this year that you -- when you looked at these
20 videos you had never seen William ever wear a white shirt
21 over a hoodie, isn't that correct?

22 (Pause)

23 Q. You can -- you can look at me, not the Prosecution.

24 What's -- What is the answer? Isn't that what you said? Do
25 you ---

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1 MR. WILKINS: Objection.

2 A. A shirt over a hoodie?

3 Q. --- to refresh your memory?

4 THE COURT: Hold on. Is there an objection?

5 MR. WILKINS: Objection to the characterization by Mr.
6 Robinson.

7 THE COURT: Okay. I'm not going to rule on that. I
8 don't know exactly what the legal objection is. I'm going
9 to let you just keep going.

10 A. A white shirt over a hoodie or just a shirt over a
11 hoodie, period?

12 Q. I think what you -- I think you said that you had never
13 seen him with a white shirt over a hoodie, isn't that
14 correct?

15 A. No, sir.

16 Q. When you -- when you originally gave the officers in
17 this case -- when they actually showed you the videos they
18 were at your house, weren't they?

19 A. Yes, sir.

20 Q. They actually -- Mr. Wilkins, Mr. Ellis and the
21 detectives actually brought the video machine to your house
22 for you to view a video, isn't that correct?

23 A. Yes, sir.

24 Q. And when you did your -- when you did your viewing of
25 this video they were standing around with you, isn't that

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1 correct?

2 A. Yes, sir.

3 Q. And they wanted you to identify that person as being
4 Tony, didn't they?

5 A. Yes, sir.

6 Q. And that was -- that was actually after the
7 identification you did with the meeting of these folks at
8 your house, that was actually after they had told you that
9 they were going to charge you, they could charge you as
10 being an accessory, isn't that correct?

11 A. Yes, sir.

12 Q. Okay. So the identification only came after -- make
13 sure I get this right. The identification in this video and
14 so forth was only given after they had threatened you with
15 jail if you had not -- if you -- that you did not tell them
16 that was him, isn't that correct?

17 A. They told me that if I didn't tell the truth, then the
18 consequences would be jail.

19 Q. You didn't tell the truth -- and what you're telling
20 this jury though is this -- is it from -- from -- I think if
21 you look at these videos these videos are seconds long,
22 isn't that correct?

23 A. Yes, sir.

24 Q. And you can tell from -- with all these things
25 happening with these threats, and innuendo and possibly

SARAH REAGAN McCROSKEY - REDIRECT EXAMINATION BY MR. WILKINS

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1 intimidation you could tell that in the seconds of these
2 videos were shown to you in court today that you could tell
3 from that that that's his voice and that that's his
4 mannerism?

5 A. Yes, sir.

6 Q. From the seconds that we had in court, is that right?

7 A. Yes, sir.

8 Q. And you're expecting this jury then to believe that
9 your testimony was not coerced? Is that what you're trying
10 to say?

11 A. Yes, sir, I guess.

12 (Pause)

13 Q. Reagan, thank you very much.

14 THE COURT: Any redirect, sir?

15 MR. WILKINS: Brief redirect, Your Honor.

16 THE COURT: Yes, sir.

17 **Redirect Examination by Mr. Wilkins:**

18 Q. Ms. McCroskey, when you met with investigators in
19 August of this year who was sitting with you?

20 A. My mother and my grandmother.

21 Q. And did anybody -- did any officer, anyone threaten to
22 take your kids away that day?

23 A. No, they just said that -- basically telling me what
24 the consequences would be if I were to go to jail.

25 Q. And when you say they, who do you mean? Do you mean

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1 your mom and your grandmother?

2 A. Yes, sir. And then it was like the detectives like
3 elaborated on it.

4 Q. Now you haven't been in protective custody, have you?

5 A. No, sir.

6 Q. And when we met, you signed a proffer agreement that we
7 talked about a little earlier, didn't you?

8 A. Yes, sir.

9 Q. And that proffer agreement, did that protect your
10 statements that you were going to give to police officers
11 and the Thirteenth Circuit Solicitor's Office that day?

12 A. Yes, sir.

13 Q. Did it say you can tell us, but we promise not to use
14 those words against you, is that correct?

15 A. Yes, sir.

16 Q. And why would we offer you something like that?

17 **MR. ROBINSON:** Your Honor, objection. Calls for
18 speculation.

19 **THE COURT:** Yeah, I'm going to sustain the objection.

20 Q. And I'm going to show you a document. I'm going to
21 mark it as State's exhibit 16 for identification purposes
22 only.

23 (Whereupon State's exhibit 16 was marked for
24 identification)

25 Q. Do you recognize this document?

SARAH REAGAN McCROSKEY - RECROSS EXAMINATION BY MR. ROBINSON

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1 A. Yes, sir.

2 Q. And is that your signature on the back?

3 A. Yes, sir.

4 Q. And can you read this outlined portion right here?

5 Just that little paragraph right there.

6 A. Provided you are truthful as described above remaining
7 terms of the agreement are as follows; no statements made
8 or other information provided by you during this proffer or
9 discussion will be used against you in any criminal or civil
10 case except as provided herein.

11 Q. And is that your understanding of the agreement?

12 A. Yes, sir.

13 MR. WILKINS: No further questions, Your Honor.

14 THE COURT: Any recross, sir?

15 MR. ROBINSON: Yes, sir.

16 Recross Examination by Mr. Robinson:

17 Q. Ma'am, when this proffer -- when this proffer was
18 offered to you you had not been charged, had you?

19 A. No, sir.

20 Q. You actually -- and when this proffer was done by you
21 the -- Mr. Wilkins, Mr. Ellis and the detectives were all
22 there with you, weren't they?

23 A. Yes, sir.

24 Q. And you signed that in front of them, is that correct?

25 A. Yes, sir.

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1 Q. They had told you that if you didn't help them they'd
2 charge you and possibly put your kid in foster care?

3 A. They would charge me and then my kid would go to foster
4 care.

5 THE COURT: Thank you, Ms. McCroskey. I appreciate you
6 being here. You may step down.

7 A. Do I have to leave the courtroom?

8 THE COURT: It all depends. And that's up to the
9 attorneys. She asked if she has to leave the courtroom.

10 MR. WILKINS: I have no ---

11 THE COURT: I don't know ---

12 MR. WILKINS: --- problem with it, Your Honor.

13 THE COURT: Do you intend to call her to the stand in
14 your case, sir?

15 MR. ROBINSON: I haven't thought about it, Your Honor.
16 But if I could talk to my client, I could -- but I don't ---

17 THE COURT: Okay. That's fine. We're going to take a
18 break in any event.

19 MR. ROBINSON: Yes, sir.

20 THE COURT: Ladies and gentlemen, let's go ahead and
21 take a brief break. We'll come back in on the record in
22 about ten or fifteen minutes. Thank you very much. Please
23 don't discuss the case.

24 (Whereupon the jury exited the courtroom at 10:38 am)

25 THE COURT: Okay. We'll be in recess.

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1 (Whereupon court was in recess at 10:39 am)

2 (Whereupon court resumed at 11:07 am)

3 THE COURT: Ready for the jury? Good enough. We can
4 bring them.

5 (Whereupon the jury entered the courtroom at 11:08 am)

6 THE COURT: All right. Mr. Wilkins, Mr. Ellis, your
7 case.

8 MR. WILKINS: Thank you, Your Honor. The State calls
9 Kay McCroskey.

10 MADAME CLERK: Please come forward. Please place your
11 left hand on the Bible and raise your right hand.

12 Mary Katherine Spaulding,
13 being duly sworn testified as follows:

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

16 MS. SPAULDING: It's Mary Katherine Spaulding.

17 **Direct Examination by Mr. Wilkins:**

18 Q. Do you go by Kay McCroskey or Kay Spaulding?

19 A. I go by Spaulding now because I'm married.

20 Q. Okay. And is your first name Kay?

21 A. Yes.

22 Q. And, Ms. Spaulding, how old are you?

23 A. Forty-three.

24 Q. And how far did you go in school?

25 A. I had two years of college.

MARY SPAULDING - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. And where do you currently live?

2 A. In Simpsonville.

3 Q. And who do you live with?

4 A. My daughter and my grandson.

5 Q. And who is your daughter?

6 A. Sarah McCroskey.

7 Q. And back in 2009 where were you living?

8 A. In Courtneybrook Trail in Mauldin.

9 Q. And who were you living with?

10 A. My mother, my son, my daughter and that was basically
11 it.

12 Q. And who was your -- who was your mother?

13 A. Nancy McCroskey.

14 Q. And your daughter?

15 A. And my daughter's Sarah McCroskey.

16 Q. Is that Sarah Reagan McCroskey?

17 A. Yes.

18 Q. And you have another son?

19 A. And then I have a son named William.

20 Q. Who's living there with you as well?

21 A. Yes, sir.

22 Q. And do you know the Defendant in this case?

23 A. Yes, I do.

24 Q. Is he in this courtroom?

25 A. Yes.

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1 Q. Where is he?

2 A. Right there.

3 (Whereupon the witness pointed to the Defendant)

4 Q. How do you know him?

5 A. He was my daughter's boyfriend and the father of my
6 grandson.

7 Q. And does the grandson live with you now?

8 A. Yes.

9 Q. How -- how often did you interact with the Defendant
10 while he was dating your daughter?

11 A. Pretty often.

12 Q. Did he come by the house a lot?

13 A. Yes. In fact, there for a while he was staying with
14 us.

15 Q. All right. And what would y'all do to interact? Would
16 y'all eat dinner together?

17 A. Watch tv, have dinner.

18 Q. Did you have conversations with him?

19 A. Yes.

20 Q. Did y'all ever go out together, go to dinner?

21 A. Not really.

22 Q. And how often did he stay at your house during that
23 time, 2009?

24 A. Probably about a month or so.

25 Q. About -- do you remember what months he was staying

MARY SPAULDING - DIRECT EXAMINATION BY MR. WILKINS

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1 with you?

2 A. In October, first of November.

3 Q. And did he -- did he keep clothes at the house?

4 A. Yes, he did.

5 Q. What kind of clothes would he keep at the house?

6 A. Blue jeans, sweat suit -- sweatpants, t-shirts.

7 Q. I want to show you what's marked for identification

8 State's exhibit 13 and ask you if you recognize these items,

9 okay? Do you recognize these items?

10 A. Yes, I do.

11 Q. Whose items are those?

12 A. Mr. Butts.

13 Q. Okay. And how do you know that?

14 A. Because I washed them.

15 Q. And how often do you think you washed them?

16 A. A couple of times. I mean, he would need clothes going
17 back and forth to school and things like that.

18 Q. Now did you ever have an occasion to talk to
19 Investigator Wayne Campbell out at Southside High School?

20 A. Yes. I had gone to pick my daughter up for an early
21 dismissal and it was taking a long time for her to come out.
22 And we didn't know what was going on. I had gone into the
23 school to find out why it was taking so long. And when I
24 came back out he was talking to my mother, who was in the
25 van, and was telling her that ---

MARY SPAULDING - DIRECT EXAMINATION BY MR. WILKINS

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1 MR. ROBINSON: Objection, Your Honor, hearsay.

2 THE COURT: Sustained.

3 Q. And did you talk to Mr. Campbell, Investigator Campbell
4 that day?

5 A. Yes, I did.

6 Q. And what did y'all talk about?

7 A. He was explaining that there had been some robberies
8 ---

9 MR. ROBINSON: Your Honor, objection. Hearsay and
10 relevance, Your Honor.

11 MR. WILKINS: This is her -- her perception, her
12 understanding ---

13 THE COURT: Okay.

14 MR. WILKINS: --- of the conversation.

15 THE COURT: All right. I believe that based on what
16 I'm hearing that it's not offered to prove the fact of the
17 matter asserted, therefore, it's not hearsay. I'm going to
18 let her answer that question.

19 MR. ROBINSON: Thank you, Judge.

20 Q. What did y'all talk about?

21 A. Could you ---

22 Q. You and Investigator Campbell.

23 A. He was just informing me that there had been some
24 robberies and Reagan was somehow involved in it and that she
25 needed to -- we needed to come to the Law Enforcement Center

MARY SPAULDING - DIRECT EXAMINATION BY MR. WILKINS

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1 and bring her and that there was a possibility she could be
2 charged with accessory after the fact and go to jail
3 herself.

4 Q. And did he show you any videos?

5 A. Yes.

6 Q. What kind of video did he show you?

7 A. He showed me -- it looked like surveillance at a
8 convenience store.

9 Q. I'm going to show you a quick video. Ms. McCroskey --
10 Ms. Spaulding, this is a video of October 18th that has
11 already been admitted into evidence. If you'll take a look
12 at it, please.

13 (Playing video)

14 Q. Is this the video that he showed you?

15 A. Yes.

16 Q. And what did you tell him?

17 A. That that was my car.

18 Q. And you're looking at a video now. Is that your car in
19 that video?

20 A. Yes, it is.

21 Q. Thank you. Now did you ever know the Defendant to
22 carry a gun?

23 A. No, I didn't.

24 Q. You never seen him with a gun?

25 A. I never saw him with a gun.

MARY SPAULDING - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. Now in August of this year investigators -- did they
2 come to your house to talk to Reagan about this case?

3 A. Yes.

4 Q. And were you there?

5 A. Yes.

6 Q. Who else was there?

7 A. My mother.

8 Q. And was your grandson there?

9 A. Yes.

10 Q. And was he in the room when everybody was talking?

11 A. Yes, he was.

12 Q. And when investigators were there and y'all were
13 talking what was -- what was the discussion?

14 A. They were explaining that there was a proffer agreement
15 that was being offered to her. And -- well, for her
16 cooperation. And that if she would just tell the truth of
17 what she knew that she would not be charged with any crimes.

18 MR. ROBINSON: Your Honor, I'm going to object to this
19 and ask it to be stricken. I think it's not relevant to
20 this case, in this matter and it's hearsay, discussing what
21 other people said.

22 THE COURT: Okay. I'll respectfully overrule. I think
23 that the evidence has already been introduced in the record.

24 MR. WILKINS: Thank you, Your Honor.

25 Q. Continue.

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1 A. I'm sorry. And I basically told -- told my daughter to
2 think really long and hard about it and to accept the offer
3 because -- mainly because of my grandson.

4 Q. Did anybody threaten you or her?

5 A. No, they did not.

6 Q. Did anybody threaten to take your grandson away?

7 A. No.

8 Q. Who discussed taking the grandson away?

9 A. Me and my mother were pointing the fact out that she
10 wasn't in good -- good health and is on disability and she's
11 older. And I'm a real bad type I diabetic on an insulin
12 pump. And we were trying to make her realize that Malachi
13 should be her first priority because if she ended up going
14 to jail too, what was going to happen to him?

15 Q. Now after -- and then did -- were you with Reagan while
16 she gave her statement to Investigator Campbell and
17 Grounsell?

18 A. Yes, I was.

19 Q. All right. And during that time did y'all locate
20 anything else in the house?

21 A. Yes. I had found a ski mask or a cap. And it had eye
22 slots cut out of it.

23 Q. Where did you find it?

24 A. I actually had found it in the van. We were riding
25 down the road. My son is the one that actually found it.

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1 It was underneath one of the seats. And he jokingly was
2 like, what did y'all do, rob a bank? And we were like, no.
3 We didn't know where it had came from.

4 Q. And did he give you the mask or how did you get the
5 mask?

6 A. He gave it to me. And I had just put it up. I was
7 getting things together for a yard sale that I was going to
8 have. And ...

9 Q. And do you remember when this occurred?

10 A. When he found it?

11 Q. Yeah, when he found it. Yes, ma'am.

12 A. Probably about a month prior to ...

13 Q. Talking with the investigators?

14 A. Talking with the investigators.

15 Q. So -- so are you saying it would be a month before
16 August of this year?

17 A. Yeah. It was around August.

18 Q. And where did you put it in your house?

19 A. I had it in my room.

20 Q. Where specifically in your room?

21 A. It ---

22 Q. Do you remember?

23 A. Yes. It was in the pile of clothes that I had set
24 aside for the yard sale.

25 Q. All right. Ms. Spaulding, I'm going to show you

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1 State's exhibit 14 for identification purposes. Is this the
2 mask that you found?

3 A. Yes, it is.

4 Q. And what did you do with this mask in August while you
5 were talking to investigators?

6 A. I gave it to them.

7 Q. And do you remember who you gave it to?

8 A. Officer Campbell.

9 Q. Now back in November -- back in 2009, November of 2009
10 you met with Investigator Campbell and y'all spoke with him.
11 Did he come to your house soon after y'all had spoken with
12 him back in 2009?

13 A. Yes, he did.

14 Q. Did you invite him there or did he just show up?

15 A. No, he was -- he came out to talk to us, but he had
16 asked me about some clothing that I had.

17 Q. And did you invite him in the house?

18 A. Yes, I did.

19 Q. And what happened once he got in the house?

20 A. We sat down and talked and reviewed our statements and
21 everything. And then I allowed him to go upstairs to my
22 daughter's room. And that's where he recovered the clothing
23 from.

24 Q. And that's the clothing that we've previously looked at
25 as State's exhibit 13 that I just showed you a second ago?

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1 A. Yes.

2 Q. And is that the clothing you gave Investigator
3 Campbell?

4 A. Yes.

5 Q. Now you said that the mask was found in the van, is
6 that correct?

7 A. Correct.

8 Q. Did the Defendant have access to that van?

9 A. He rode in the van.

10 Q. So you've known him to ride in that van?

11 A. Yes.

12 Q. Now I'm going to refer you back to October of 2010.

13 We're doing a lot of dates here. Did you have an occasion
14 to talk with investigators for Mr. Robinson?

15 A. I talked to an investigator Wayne Sheers (phonetics).

16 Q. Okay. And what did you tell him on that day?

17 A. I told them that I recanted my -- that I wanted to
18 recant my statement, ---

19 Q. Your ---

20 A. --- my original statement.

21 Q. Okay. And in your original statement to Mr. -- that's
22 your original statement to Mr. -- Investigator Campbell?

23 A. Correct.

24 Q. And your original statement, what did you say?

25 A. I just had told them about the clothes that I washed

MARY SPAULDING - DIRECT EXAMINATION BY MR. WILKINS

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1 and -- that was at the house.

2 Q. And in October of 2010 with Mr. Sheers, you said you
3 recanted that statement?

4 A. Correct.

5 Q. Do you remember anything else that you said? I can
6 show you -- would you like me to show you this statement?

7 A. Please.

8 Q. To refresh your memory.

9 (Whereupon State's exhibit 17 was marked for
10 identification)

11 Q. This is State's exhibit 17 marked for identification
12 purposes only. Do you recognize this?

13 A. Yes.

14 Q. And is this your signature back here?

15 A. Yes, it is.

16 Q. Okay. And what are the general provisions of this
17 statement?

18 A. It was basically telling him about Investigator
19 Campbell and them talking to her at the school without me
20 being present, and that I didn't really agree with that, and
21 because they told me that they were going to arrest her and
22 she could go to jail, I just recanted the statement.

23 Q. Why did you recant the statement?

24 A. Because I really wanted to believe that he was innocent
25 of what he's being charged with, and because of the fact

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1 that he's the father of my grandson and my daughter was in
2 love with him.

3 Q. Was your first statement true?

4 A. Yes, it was.

5 Q. I'm going to show you some videos, ---

6 MR. ROBINSON: Your Honor, ---

7 Q. --- if you'd take a look at them.

8 MR. ROBINSON: --- at this time I have a motion outside
9 the presence of the jury.

10 THE COURT: Okay. Good enough. Ladies and gentlemen,
11 let's take a short break. Please don't discuss the case.

12 (Whereupon the jury exited the courtroom at 11:25 am)

13 THE COURT: All right, Mr. Robinson.

14 MR. ROBINSON: May it please the Court.

15 THE COURT: Yes, sir.

16 MR. ROBINSON: Your Honor, before we had a Neil v.
17 Biggers on the daughter at first.

18 THE COURT: Yes, sir.

19 MR. ROBINSON: And I think I'd like to have a short
20 Neil v. Biggers on the mother because he's going to identify
21 -- try to identify the videos. And I'd like to do that
22 first so she can ---

23 THE COURT: All right. It sounds to me as though
24 you've asked all of the preparatory questions. So if you
25 would cue up the video and you can ask her questions related

MARY SPAULDING - DIRECT EXAMINATION BY MR. WILKINS

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1 to her identification and you can ask questions on cross
2 examination if you need to, Mr. Robinson.

3 MR. ROBINSON: Okay.

4 Neil v. Biggers Hearing:

5 Direct Examination by Mr. Wilkins:

6 Q. Ms. Spaulding, I'll just ask that you take a look at
7 this video and I'll ask you some questions.

8 (Playing video)

9 Q. Do you recognize that person in the video?

10 A. Yes, that's Mr. Butts.

11 Q. Do you recognize his voice?

12 A. Yes.

13 Q. Did he say anything that's familiar to you?

14 A. Not really.

15 (Playing video)

16 Q. Ms. Spaulding, do you recognize the voice in that
17 video?

18 A. Yes.

19 Q. Whose voice is it?

20 A. Tony's.

21 Q. You recognize the clothes in that video?

22 A. I recognize the -- the pants. And I know he's wore
23 that hoodie before.

24 Q. And what about any mannerisms of the way the person in
25 there walks or talks?

MARY SPAULDING - DIRECT EXAMINATION BY MR. WILKINS

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1 A. He walks like Mr. Butts. I mean, all the mannerisms
2 are there.

3 Q. Okay.

4 (Playing video)

5 Q. You recognize that voice?

6 A. Yes.

7 Q. Whose voice is it?

8 A. Mr. Butts.

9 Q. Do you recognize the clothes?

10 A. Yes.

11 Q. What kind of -- what clothes do you recognize?

12 A. The black t-shirt.

13 Q. Is that -- is that the t-shirt that I just showed you

14 ---

15 A. Yes.

16 Q. --- earlier?

17 A. Yes, sir.

18 Q. What about the mannerisms?

19 A. The mannerisms are Tony up one side and down the other,
20 the way he walks, the accent.

21 (Playing video)

22 Q. You recognize the voice in that video?

23 A. Yes.

24 Q. Whose is it?

25 A. Mr. Butts.

MARY SPAULDING - CROSS EXAMINATION BY MR. ROBINSON

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1 Q. Do you recognize those clothes?

2 A. The -- yes.

3 Q. Which ones?

4 A. The blue jeans.

5 Q. And are those similar to the jeans that I showed you
6 earlier?

7 A. Yes.

8 Q. What about the t-shirt?

9 A. It looks like the same t-shirt.

10 Q. And mannerisms?

11 A. And the -- yeah, especially when he said hurry up and
12 the "F" word.

13 MR. WILKINS: No further questions, Your Honor.

14 THE COURT: Mr. Robinson.

15 MR. ROBINSON: May it please the Court.

16 THE COURT: Yes, sir.

17 Cross Examination by Mr. Robinson:

18 Q. Ma'am, Ms. Spaulding, I believe, is that correct?

19 A. Yes.

20 Q. Ms. Spaulding, you were -- you were there at the
21 meeting in November, excuse me, in August of 2011, correct?

22 A. Yes.

23 Q. Your grandmother was also there, is that right?

24 A. No, my mother.

25 Q. Your mother, I'm sorry, but Reagan's grandmother, is

MARY SPAULDING - CROSS EXAMINATION BY MR. ROBINSON

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- 1 that correct?
- 2 A. Correct.
- 3 Q. And Mr. Wilkins was there?
- 4 A. Yes.
- 5 Q. And Mr. Ellis was there?
- 6 A. Yes.
- 7 Q. Two detectives, correct?
- 8 A. Correct.
- 9 Q. I think Mr. Campbell was there, wasn't he?
- 10 A. Yes, he was.
- 11 Q. Okay. Ma'am, in terms of how long you saw him, in
- 12 terms of between 2009, October 2009 til November -- August
- 13 of 2011 how many times did you see him?
- 14 A. See who?
- 15 Q. Tony.
- 16 A. A couple probably.
- 17 Q. Where did you see him?
- 18 A. When my daughter would go to visit him at the jail.
- 19 Q. And you would go with her?
- 20 A. Um-hum (affirmative).
- 21 Q. They would let you in to see him?
- 22 A. No.
- 23 Q. Oh, so you were outside?
- 24 A. I was outside.
- 25 Q. So you weren't able to listen to him or anything like

MARY SPAULDING - CROSS EXAMINATION BY MR. ROBINSON

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1 that, correct?

2 A. Correct.

3 Q. And what you're -- what you're telling this Court is
4 that that particular -- those particular -- that particular
5 black t-shirt is a t-shirt that is exclusive to Tony because
6 that is the only black t-shirt that is available at any
7 place and that's it. Is that -- you can recognize that t-
8 shirt from that picture? That's your thoughts?

9 A. True.

10 Q. So it's a special -- it's a special t-shirt, correct?

11 MR. WILKINS: Your Honor, is there -- is this related
12 to Neil v. Biggers? I thought we were trying to discuss the
13 ---

14 THE COURT: I'll grant Mr. Robinson a little bit of
15 latitude.

16 MR. WILKINS: Okay.

17 MR. ROBINSON: I'm not going very far with this. I'm
18 just trying to ---

19 THE COURT: I understand.

20 MR. ROBINSON: It's a reliability ---

21 THE COURT: I understand what point you're making.

22 MR. WILKINS: He's getting a free shot at my witness
23 here.

24 MR. ROBINSON: It goes to reliability, Your Honor,
25 under Neil v. Biggers as well ---

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1 **THE COURT:** I understand. I understand the points that
2 you're making.

3 Q. Now, ma'am, so you gave a prior statement to the
4 officer, Officer Campbell, where you recanted your previous
5 testimony, correct? Saying that you'd never seen Tony with
6 a gun, anything like that, correct?

7 A. Correct.

8 Q. Okay. And then two years later -- now you had -- you
9 had never said to them, yeah, that's him on the video, or,
10 yeah, that's his voice, or, yeah, that's how his mannerisms
11 are before August of 2011, correct?

12 A. No. When I was showed the video the first time ---

13 Q. Which was when?

14 A. In 2009.

15 Q. 2009?

16 A. Um-hum (affirmative).

17 Q. Did you give a statement?

18 A. Yes, but I wasn't asked about the video in the
19 statement.

20 Q. Okay. Okay. Interesting. And who did you -- who did
21 you talk to about this statement? Who is the person you
22 spoke to? Officer Campbell?

23 A. Which statement are you referring to?

24 Q. This first statement that -- I've never seen this first
25 statement, but who did you give this statement to? The

MARY SPAULDING - CROSS EXAMINATION BY MR. ROBINSON

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1 first statement?

2 A. To Detective Campbell.

3 Q. Okay. And where is this statement?

4 (Pause)

5 Q. Do you know where this statement is?

6 A. I'm sure you have a copy of it.

7 MR. ROBINSON: I have no more -- no more questions,

8 Your Honor.

9 THE COURT: Okay.

10 MR. ROBINSON: Thank you.

11 THE COURT: All right. Good enough. Under the
12 relevant analysis pursuant to State versus Moore I do find
13 that it's -- that the identification is not unduly
14 suggestive and it is suitably reliable to be admissible in
15 keeping with the enumerated requirements in State versus
16 Moore and Neil versus Biggers. All right. Anything else we
17 need to put on the record?

18 MR. ROBINSON: (Negative nod).

19 THE COURT: Okay. Let's bring the jury, please.

20 (Whereupon the jury entered the courtroom at 11:38 am)

21 THE COURT: All right. Ladies and gentlemen, I'm sorry
22 we had to stop for just a little bit. Sometimes, as I told
23 you, we have to stop and take up legal issues and determine
24 whether certain evidence is admissible. And we're starting
25 a little bit late this morning. And we took a break here

1 because I had to make a legal determination as to whether
2 the testimony is admissible.

3 The State is required to prove beyond a reasonable
4 doubt identification evidence, that is, to prove that the
5 Defendant that they allege committed this crime is indeed
6 that Defendant and to identify him. You heard
7 identification testimony earlier from young Ms. McCroskey
8 and you'll hear identification testimony from Mrs.
9 McCroskey.

10 I'm required under the law to make a determination as
11 to whether the identification testimony is admissible. But
12 after I've made that determination I am not authorized to
13 have an opinion and I don't take a position as to whether
14 it's credible and what weight should be put on that
15 testimony. That is entirely up to you.

16 I just make the threshold determination of
17 admissibility. And you will determine whether the State has
18 met its burden of proving identification beyond a reasonable
19 doubt. I'll give you a fuller charge on that at the end of
20 the case.

21 But I wanted y'all to know what we were doing. I had
22 to make that determination. And I have to hear a little bit
23 of testimony in order to make that determination. Okay.
24 Mr. Wilkins.

25 **MR. WILKINS:** Thank you, Your Honor.

MARY SPAULDING - DIRECT EXAMINATION BY MR. WILKINS

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1 Direct Examination by Mr. Wilkins Continued:

2 Q. Ms. Spaulding, you say you've spoken with the Defendant
3 on numerous occasions over a significant amount of time, is
4 that true?

5 A. True.

6 Q. Do you know -- does he have any other names besides --
7 does he go by a nickname?

8 A. Yes. He goes by City.

9 Q. Do you know why they call him City?

10 A. Because he used to -- he's from New York.

11 Q. I'm going to show you a video from November 3rd and ask
12 you to take a look at it.

13 (Playing video)

14 Q. Do you recognize the person in that video?

15 A. Yes.

16 Q. Who is that?

17 A. Mr. Butts.

18 Q. And do you recognize that t-shirt?

19 A. Yes.

20 Q. And at that time when he was staying with you what kind
21 of -- what kind of haircut did he have?

22 A. He kept it cut short.

23 Q. And do you know what -- do you know what he was
24 purchasing in that video?

25 A. It looked like a Dutch Cigarillo.

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1 Q. Have you ever seen him smoke cigars before?

2 A. Yes.

3 Q. Do you know what kind of cigars he liked to smoke?

4 A. Dutch or White Owl.

5 Q. I'm going to refer you to a video of October. Also,
6 I'm going to show you another view of this video and see if
7 you recognize the clothes the person in the video is
8 wearing.

9 (Playing video)

10 Q. Do you recognize those clothes?

11 A. Yes. Those are the blue jeans and the purple t-shirt.

12 Q. And is that the clothes that I just showed you earlier?

13 A. Yes, it is.

14 Q. And what about the shoes? Did you know Mr. Butts to
15 have shoes like that?

16 A. Yes.

17 Q. I'm going to show you a video from October 18th, 2009.
18 I'd like you to take a look at it.

19 (Playing video)

20 Q. Do you recognize the voice in that video?

21 A. Yes.

22 Q. Can you tell us whose voice that is?

23 A. Mr. Butts.

24 Q. Do you recognize any of those clothes that are in the
25 video?

MARY SPAULDING - DIRECT EXAMINATION BY MR. WILKINS

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1 A. Yes. I've -- I've seen him wear that hoodie, but in
2 this particular video it's turned inside-out.

3 Q. What about the pants?

4 A. I've seen him in those pants and shoes.

5 Q. And what about mannerisms?

6 A. He -- the way he walks. He's got a swagger about his
7 -- the way he walks. I mean, ...

8 Q. Is that consistent with the Defendant?

9 A. Yes, it is.

10 Q. Let me show you the video from November 3rd, 2009.
11 October 30th, I'm sorry.

12 (Playing video)

13 Q. Ms. Spaulding, do you recognize the voice in that
14 video?

15 A. Yes.

16 Q. Whose voice is it?

17 A. Mr. Butts.

18 Q. Do you recognize those clothes that you see in the
19 video?

20 A. Yes. I recognize the black t-shirt and the pants. And
21 that's the same hoodie.

22 Q. And what about his voice do you recognize?

23 A. When he was talking to the clerk, called him a good
24 man, thanks for cooperating and when he made him pick up
25 whatever money he dropped on the floor.

MARY SPAULDING - DIRECT EXAMINATION BY MR. WILKINS

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- 1 Q. What about mannerisms?
- 2 A. He -- he had this -- he's got the same walk as Mr.
- 3 Butts, and when he said stop playing with me.
- 4 Q. Is that something that Mr. Butts says?
- 5 A. (Affirmative nod).
- 6 Q. You have to answer.
- 7 A. Yes, it is. I'm sorry.
- 8 Q. That's okay. Finally, a video from November 5th, 2009.
- 9 (Playing video)
- 10 Q. Finally, Ms. Spaulding, do you recognize the voice ---
- 11 A. Yes, I do.
- 12 Q. --- on this video? And whose voice is that?
- 13 A. Mr. Butts.
- 14 Q. Do you recognize the clothes?
- 15 A. Yeah, that looks like the same blue jeans and black t-
- 16 shirt.
- 17 Q. That I previously showed you earlier?
- 18 A. Yes.
- 19 Q. And what about shoes?
- 20 A. I've seen him in those shoes.
- 21 Q. What about that hoodie?
- 22 A. It appears to be the same hoodie, still turned inside-
- 23 out.
- 24 Q. And what about mannerisms?
- 25 A. He has the same walk, the same talk. When he said

MARY SPAULDING - CROSS EXAMINATION BY MR. ROBINSON

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1 hurry up, it sounded just like Mr. Butts.

2 Q. And, finally, Ms. Spaulding, have you ever been
3 convicted of a crime?

4 A. Yes, I have.

5 Q. You've been convicted of six counts of fraudulent
6 checks?

7 A. Yes.

8 Q. What about a petty larceny?

9 A. Yes.

10 Q. And pay restitution back on those?

11 A. Yes, I did. I made restitution on the checks. And the
12 money was -- the petty larceny charge was given back the
13 same night it was taken.

14 Q. No further questions. Please answer any questions
15 defense counsel may have.

16 THE COURT: Mr. Robinson.

17 MR. ROBINSON: May it please the Court.

18 THE COURT: Yes, sir.

19 Cross Examination by Mr. Robinson:

20 Q. So, ma'am, you were convicted or pled guilty to
21 fraudulent checks, is that right?

22 A. Yes.

23 Q. And that's where you would have written a check knowing
24 that there's not money in the account, is that correct?

25 A. That wasn't necessarily the case. I wrote the check

MARY SPAULDING - CROSS EXAMINATION BY MR. ROBINSON

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1 and it -- I just didn't have enough money in the bank to
2 cover it at the time, but I thought I did.

3 Q. Okay.

4 A. They were not wrote to be fraudulent ---

5 Q. Sure.

6 A. --- in any kind of way.

7 Q. But you pled guilty to fraudulent -- have been
8 convicted of writing fraudulent checks?

9 A. Correct.

10 Q. Ma'am, I want to go to the video in this case that
11 you've looked at. I'm just trying to understand. If you
12 can explain -- Mr. Wilkins asked you about the hoodie.
13 You're telling this jury then that that hoodie is -- that
14 hoodie was unique to Mr. Butts. Is that your testimony?

15 A. My testimony is that I have seen him in that hoodie.

16 Q. Well, aren't there -- ma'am, -- okay.

17 A. I mean, yes, that hoodie is available to anybody in the
18 public that could go out there and buy it.

19 Q. That's what I wanted to know. Okay. So you're not
20 saying -- you don't know -- that is a hoodie that is not
21 unique to Mr. Butts, is it? Mr. Butts is not the only
22 person in the State of South Carolina to have a white
23 hoodie, is he?

24 A. No, he's not. And that hoodie was not white.

25 Q. What was the color of that hoodie? Excuse me.

MARY SPAULDING - CROSS EXAMINATION BY MR. ROBINSON

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1 A. The one that I have seen him wear was gray, ---

2 Q. Okay.

3 A. --- but when it's turned inside-outward, it looks
4 white.

5 Q. Okay. So you would agree with me that many people,
6 men, women have gray hoodies. You would agree with that,
7 wouldn't you?

8 A. Yes.

9 Q. And you would agree, too, that these hoodies that lots
10 of people have could be turned inside out. You would agree
11 with that, wouldn't you?

12 A. Yes.

13 Q. Now let's talk about these shoes that you talk about,
14 these black shoes. You're not telling this jury that these
15 shoes, these black shoes are unique to Mr. Butts, are you?

16 (Pause)

17 Q. He's not the only -- let me rephrase it. He's not the
18 only person in South Carolina, a man at least, that has
19 black shoes, is he?

20 A. No.

21 Q. And these shoes that were in this video that you saw a
22 snippet of a minute ago in these videos, those weren't --
23 those black shoes were not unique black shoes, were they?

24 A. No. Anybody can buy a pair of black Nikes, ---

25 Q. Right.

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1 A. --- but every person has a different shoe size. So
2 they would be unique to him because they would fit his feet.

3 Q. But you don't know from that tape whether those shoes
4 belonged to him or some other Joe, do you?

5 A. No, sir.

6 Q. Okay. That's a no, is that correct?

7 A. Correct.

8 Q. Okay. Regarding the t-shirt that you saw in this case,
9 you're not arguing -- you're not telling this jury, the
10 fourteen people on this jury that that's a unique t-shirt,
11 are you?

12 A. No. Anybody can go out and buy a black t-shirt.

13 Q. In fact, it would be very -- very common for persons to
14 wear black t-shirts, isn't that correct?

15 A. Correct.

16 Q. You probably have a black t-shirt yourself, don't you?

17 A. Yes.

18 Q. Okay. And wearing a black t-shirt over a hoodie is not
19 very unusual, is it?

20 A. I don't guess so.

21 Q. Now ---

22 A. Most people would wear it underneath the hoodie, not on
23 top of it.

24 Q. But you've seen people -- now you go out and about in
25 your daily life and so forth. You've seen lots of people

MARY SPAULDING - CROSS EXAMINATION BY MR. ROBINSON

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1 with white hoodies and black t-shirts on top, you've seen
2 that, haven't you?

3 A. Yes, but as I stated, most people wear their t-shirts
4 underneath their hoodie, not on top of it.

5 Q. But what you just said, I want to make sure I clarify
6 it, you have actually seen other persons wear black t-shirts
7 over hoodies, but it's not common, right? Is that what
8 you're saying?

9 A. It's not that common.

10 Q. Okay. But it's not unique to Mr. Butts. Whoever it
11 was in that picture, that's not unique, is it?

12 A. I don't guess it's unique.

13 Q. Okay. Now how tall is Mr. Butts? Do you remember?

14 A. I'm not sure. He's at least six foot.

15 Q. Is he at least six foot? Okay. And as far as the --
16 as far as these -- I think Mr. Wilkins asked you about stop
17 playing with me and hurry up. You've heard those said by
18 many people in your life, haven't you?

19 A. No.

20 Q. So the only person you have ever heard -- you're
21 telling this jury the only person you've ever heard say
22 hurry up was Mr. Butts? Is that what you're -- you're
23 telling this jury that?

24 A. Well, no. I mean, yeah, I've heard other people say
25 hurry up.

MARY SPAULDING - CROSS EXAMINATION BY MR. ROBINSON

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1 Q. That's what I want to know. Also, too, regarding the
2 stop playing with me, you've heard other people say that,
3 haven't you?

4 A. Yes.

5 Q. Okay. Now I want to go back to -- this is a statement
6 that Mr. Wilkins put in as an exhibit for identification
7 purposes only. And I believe this is -- you recognize
8 what's been marked State's exhibit 17 for identification
9 purposes. You recognize that, is that right?

10 A. Correct.

11 Q. And that actually is your signature on the back there?

12 A. Yes.

13 Q. Is that right? And you gave that statement?

14 A. Yes, I did.

15 Q. And, ma'am, in your statement -- I'm going to let you
16 have a copy of this real quick. Why don't you -- let's go
17 down to the second paragraph on that statement, if you don't
18 mind. Do you have -- you got the statement?

19 A. Yes, I do.

20 Q. I want you to read the first five lines of this --
21 actually, let's read it together, okay? Looking at what's
22 been marked as an exhibit for identification purposes only,
23 let's start with on November 20th, 2000 [sic], I want you to
24 read that for the jury.

25 A. On November 20th, 2009 I was questioned by Investigator

MARY SPAULDING - CROSS EXAMINATION BY MR. ROBINSON

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1 Campbell regarding a robbery at the Citgo gas station on
2 Woodruff Road. Investigator Campbell told me if I did not
3 cooperate with him my daughter, Sarah Reagan McCroskey,
4 would go to jail for being an accessory after the fact.

5 This caused me to panic and write a statement I did not
6 mean to write just to save my daughter. I, therefore,
7 recant all statements prior to this date regarding the case
8 of William Anthony Butts.

9 Q. Now, ma'am, let's go back to -- let's go to August of
10 2011. I think Mr. Wilkins asked you about that. Now at the
11 time -- who was living at your house at the time? In August
12 of 2011 who was living there?

13 A. My daughter, my son, my grandson, and my mother and
14 myself.

15 Q. Okay. Your daughter was living with her -- you had
16 your grandson, is that right?

17 A. Correct.

18 Q. And how old is he?

19 A. He's about thirteen months.

20 Q. And your mother -- your mother, excuse me, what kind of
21 -- and she was there. What kind of health was she in?

22 A. She's disabled.

23 Q. Okay.

24 A. She isn't in the best of health.

25 Q. Okay. Now in August of 2011 did you have a -- have a

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1 number of people come over to your house from the
2 Solicitor's Office and the Sheriff's Office?

3 A. Yes.

4 Q. You actually had Walt Wilkins come to your -- come to
5 your house, right?

6 A. Correct.

7 Q. You had Sloan Ellis come to your house?

8 A. Correct.

9 Q. You had Officer Campbell come to your house?

10 A. Correct.

11 Q. You also -- also I think it's Gosnell or Grosnell come
12 to your house, is that right?

13 A. It's Grounsell.

14 Q. Grounsell, excuse me. And he's sitting in the
15 courtroom in the first row, is that correct?

16 A. Correct.

17 Q. And you also had this meeting arranged by Officer
18 Weiner, is that correct, who is also sitting in the front
19 row, is that correct?

20 A. Correct.

21 Q. Okay. Now at this meeting your daughter -- you were
22 there at this -- at this meeting and so forth. They had a
23 -- they had a video machine with them, is that correct, or
24 some sort of device that would show videos, is that right?

25 A. Yes.

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1 Q. And they told your daughter -- this is what -- they --
2 would you agree with me that it was kind of a very
3 intimidating situation when they all came over there to --
4 with this video? Would you agree with me on that?

5 A. No.

6 Q. So this was just a -- this was just a meet and greet
7 kind of in a way?

8 A. Yes.

9 Q. Just kind of inviting a few folks over just for a
10 friendly little chat? Is that right?

11 A. Well, they had some questions because the case was
12 getting ready to come to trial.

13 Q. And what kind of -- what kind of promises did they make
14 to your daughter regarding ---

15 A. She wasn't made any promises. She was not threatened
16 ---

17 Q. Okay.

18 A. --- in any type of way.

19 Q. Okay.

20 A. She was told about the proffer agreement. They
21 explained what the proffer agreement consisted of. And the
22 decision was left totally up to her to make whether she
23 wanted to agree to it or not.

24 Q. Let's go back to that date then. You would agree with
25 me on that date that they told her -- this is -- this is --

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1 they told her, you cooperate -- if you don't cooperate --
2 and they had her sign off on a proffer agreement in this
3 case, if you don't cooperate we're going to take -- we're
4 going to put you in jail, we're going to take your kid,
5 isn't that right?

6 A. They never threatened to take her kid away from her.
7 The -- that was brought up by myself and my mother because
8 of our health issues.

9 Q. But you're -- but ---

10 A. Because if she went to jail for accessory after the
11 fact or whatever, he would -- he's in jail, she was going to
12 be in jail, my main concern was who's going to raise
13 Malachi?

14 Q. So you didn't say -- you're telling this jury you
15 didn't think with five folks -- four folks there, two
16 Solicitors and two investigators, you didn't think that this
17 was intimidation?

18 A. No.

19 Q. You didn't think this was coercion?

20 A. Nope.

21 Q. You just thought they just came there just to have a
22 nice little conversation, is that right?

23 A. Correct.

24 Q. But you said in this statement, which is marked as an
25 exhibit by the State as identification that Mr. Campbell

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1 threatened you, didn't you, back in 2009?

2 A. Yes.

3 Q. And he was the same guy who was there in August of
4 2011.

5 A. Correct.

6 Q. And you didn't feel -- you didn't feel with this
7 specter of prosecution that there was any sort of
8 intimidation or any sort of consequences if she didn't
9 cooperate or you didn't cooperate?

10 A. Could you repeat your question?

11 Q. You're telling this jury that you didn't feel there was
12 any intimidation towards you or your daughter by the four of
13 them being there that day? You didn't feel any intimidation
14 when they were -- when they were telling you and her, you do
15 this, you're fine, you sign this proffer agreement, if you
16 don't cooperate or don't help us in this, you're going to go
17 to jail and get the kid taken away or whatever, you didn't
18 think that was intimidation?

19 A. No, because that's not the way that the -- the meeting
20 went.

21 Q. So you just had coffee and tea, basically, and
22 doughnuts and just talked about sports and game and that was
23 it?

24 A. No, sir. We -- they talked about the case ---

25 Q. Right.

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1 A. --- and her prior statements, my prior statements. And
2 they offered the proffer agreement to keep her from going to
3 jail.

4 Q. So ---

5 A. And that was my main concern.

6 Q. So the main concern of you and her was made by the
7 Solicitor, the Assistant Solicitor, these detectives, if
8 they -- you or she didn't say what they wanted, she'd go to
9 jail?

10 A. No. They did not threaten us with that in any kind of
11 way. I knew there was a possibility once the investigation
12 was over just because my car was involved in the fact, that
13 there was a chance she could go to jail.

14 Q. But here -- but, ma'am, she wasn't even charged. There
15 was no investigation going on. So ---

16 A. Not at the time.

17 Q. So you don't -- you didn't feel like there was any
18 intimidation of you or your daughter or anything when these
19 folks are sitting there at your house telling you if you
20 don't cooperate we're going to put you in jail? No
21 intimidation? That's what you're telling this jury under
22 oath?

23 A. Yes, I'm telling this jury that under oath.

24 Q. Okay.

25 MR. ROBINSON: That's all I have, Your Honor. Thank

1 you.

2 THE COURT: Okay. Any redirect, sir?

3 MR. WILKINS: No, Your Honor.

4 THE COURT: Thank you, Ms. McCroskey. I appreciate you
5 being here. You may step down.

6 A. Thank you.

7 THE COURT: Yes, ma'am.

8 MR. WILKINS: Your Honor, may Ms. Spaulding be excused
9 or you want to keep ---

10 MR. ROBINSON: Yes, sir. No objection.

11 MR. WILKINS: Can she sit in the courtroom?

12 THE COURT: Yeah, that's fine. Absolutely no problem.
13 Okay. All right. Mr. Wilkins, you have an additional
14 witness, sir, before lunch?

15 MR. WILKINS: Sure. I've got -- we've got three more
16 witnesses we intend to call. The next two are law
17 enforcement witnesses.

18 THE COURT: Okay.

19 MR. WILKINS: Relatively -- relatively quick. It's
20 Investigator Campbell, who we've heard a lot about.

21 THE COURT: Okay. All right. I tell you what, let's
22 go ahead and call him just with the understanding that this
23 next witness that you call, which is under your subpoena, is
24 the only thing standing between this jury getting lunch.

25 (Laughter)

1 MR. WILKINS: Your Honor, I never want to stand between
2 a jury and lunch.

3 THE COURT: All right. We're going to go to about --
4 we can be finished, I hope, by 1:00, do you anticipate?

5 MR. WILKINS: Absolutely, Your Honor.

6 THE COURT: Okay. All right. Good. Well, if we need
7 to break, then we will. We'll break between direct and
8 cross examination. So you may call your next witness, sir.

9 MR. WILKINS: Your Honor, the State calls Master Deputy
10 Wayne Campbell.

11 **MADAME CLERK:** Please come forward, put your left hand
12 on the Bible and raise your right hand.

13 Wayne Campbell, being
14 duly sworn testified as follows:

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

17 MR. CAMPBELL: It's Wayne Taylor Campbell.

18 Direct Examination by Mr. Wilkins:

19 Q. Investigator Campbell, with whom are you employed?

20 A. Greenville County Sheriff's Office.

21 Q. And how long have you been employed with the Sheriff's
22 Office?

23 A. Since 2002.

24 Q. And what kind of duties have you had as a -- at the
25 Sheriff's Office?

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1 A. I've worked uniform patrol. I've done juvenile
2 investigations, armed robbery investigations and now
3 homicide investigations.

4 Q. And where are you currently assigned?

5 A. Homicide Division.

6 Q. Now in 2009 did you get involved in the armed robberies
7 of the Citgo that occurred on the 18th, the 30th and
8 November 5th of 2009?

9 A. That's correct, sir.

10 Q. Okay. How did you -- how did you get involved?

11 A. I was assisting Investigator Weiner with the two armed
12 robberies, the first two armed robberies. And I received a
13 tip that the suspect in those two armed robberies had
14 possibly been in the store on November 3rd, that evening.

15 He also -- the tipster said that ---

16 MR. ROBINSON: Your Honor, I'm going to object and ask
17 it to be stricken, anything regarding what a tipster said as
18 hearsay in this case.

19 THE COURT: Okay. All right. I sustain it. Ladies
20 and gentlemen, the Defense has asked that the record be
21 stricken. And there was a reference that you heard with
22 respect to a tipster.

23 When I strike evidence from the record it means you
24 can't consider that evidence and that that evidence
25 shouldn't be considered by you in your deliberations in any

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1 way, shape or form. So I'm going to tell you to completely
2 disregard that evidence. All right.

3 Q. Investigator Campbell, did your investigation of these
4 armed robberies lead you to a video of November 3rd of that
5 Citgo that was robbed?

6 A. That's correct, it did.

7 Q. And with that video did you go out to Mauldin High
8 School to try to identify that person?

9 A. I did.

10 Q. Tell us about that.

11 A. I took the video or a CD of it to Mauldin High School
12 to the SRO, Dennis Tench. We went to the media center,
13 which is right off the library because that was the only
14 computer we could get to play it. And we played it. A
15 positive identification was made from that. School
16 administrators came into the media center and also made a
17 ---

18 MR. ROBINSON: Your Honor, ---

19 A. --- positive identification.

20 MR. ROBINSON: --- objection. I ask that it be
21 stricken as far as what other people may have said. It's
22 hearsay again in this case.

23 THE COURT: Well, I didn't hear that he said they said
24 anything, that they had identified ---

25 MR. WILKINS: I think he said ---

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1 **THE COURT:** On hearsay grounds I'm going to overrule
2 the objection. I didn't hear him state what anybody else
3 had said. And I may be incorrect in that regard. But go
4 ahead and -- ask the question again.

5 Q. Out at Mauldin High School what did you do with the
6 video?

7 A. I played it for several people including the SRO.

8 Q. All right. And now this is the November 3rd video of
9 the Citgo on Woodruff Road, correct?

10 A. Correct, sir.

11 Q. This is -- now who did you play it for?

12 A. SRO Dennis Tench and the administrators, which are
13 basically principals, guidance counselors at Mauldin High
14 School.

15 Q. And after you played it for them did you -- did you --
16 who did you believe was in that video after you played it
17 for them?

18 **MR. ROBINSON:** Objection, again, Your Honor. This
19 calls for speculation as well.

20 **THE COURT:** All right. Overruled. You may continue.

21 **MR. WILKINS:** Thank you.

22 A. They told me that some of the ---

23 **MR. ROBINSON:** Objection to hearsay, Your Honor.

24 **THE COURT:** All right. I sustain that objection.

25 Q. Who did you believe was in the video after you had met

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1 with them?

2 A. William Anthony Butts.

3 Q. Thank you. And with that information what did you do?

4 A. I went back to the Law Enforcement Center and met with
5 Investigator Weiner. And some still photos were taken from
6 the video.

7 Q. All right. I'm going to show you what's exhibits --
8 State's exhibits 15A and 15B. Do you recognize those?

9 A. Yes, sir, I do.

10 Q. All right. And what are those?

11 A. This is where I cut out the individual from the picture
12 cutting the background as much as I could out of it where I
13 could still see his clothing and his face.

14 Q. And that photo came from what video?

15 A. The November 3rd Citgo video.

16 Q. Okay. Armed with ---

17 MR. WILKINS: Your Honor, State moves exhibits 15A and
18 15B into evidence.

19 MR. ROBINSON: If I could see those, Your Honor?

20 (Pause)

21 MR. ROBINSON: I have no objection to that, Your Honor.

22 THE COURT: All right. Without objection, the same
23 will be moved into evidence.

24 (Whereupon State's exhibits 15A and 15B were admitted
25 into evidence)

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1 Q. With these, what did you do?

2 A. Investigator Weiner and I went back to Mauldin High
3 School just a couple of days later and spoke with the SRO,
4 Dennis Tench. And we had Rasheed Butts, who is William
5 Butts' brother brought into the SRO office.

6 Q. And what did you do with him?

7 A. We sat down and just showed him those pictures and
8 asked him if he could identify the person in the photo.

9 Q. And after meeting with Rasheed Butts what did you
10 learn?

11 A. That was ---

12 MR. ROBINSON: Your Honor, ---

13 A. --- William Anthony Butts.

14 MR. ROBINSON: Your Honor, I think this is hearsay
15 again.

16 THE COURT: Yeah, I'm going to sustain that objection.

17 Q. After you met with Rasheed Butts what did you do next?

18 A. After allowing him to go back to class we found William
19 Anthony Butts in the common area because it was lunchtime at
20 the high school. Investigator Weiner and SRO Tench
21 approached him and just asked him to come to the SRO office,
22 which he did willingly.

23 Q. And did you -- did you speak with Mr. Butts?

24 A. Yes. Investigator Weiner gave him Miranda warning
25 verbally and told him we needed to talk with him. And we

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1 showed him the pictures.

2 Q. And what did he say as to these pictures, State's
3 exhibits 15A and 15B?

4 A. That's me.

5 Q. What happened next?

6 A. We had a conversation with him. And that's where I
7 learned that his girlfriend, Sarah Reagan McCroskey, was a
8 student at Southside High School. And basically that was
9 the extent of the interview.

10 Q. And that was all y'all talked about?

11 A. That's pretty much it.

12 Q. And after you learned that his girlfriend was Reagan
13 McCroskey what did you do?

14 A. The next morning I went to Southside High School to
15 meet with her at the school.

16 Q. And tell us about your meeting at Southside High School
17 with Reagan.

18 A. The SRO at Southside High School was not at the
19 facility at that particular time. So I got Dexter Reeves,
20 who is an administrator there, to go and bring her to his
21 office and have him sit in on the interview. During the
22 interview I learned certain things about the first robbery
23 that had occurred such as ---

24 **MR. ROBINSON:** Your Honor, I object, Your Honor.
25 Hearsay in this case.

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1 **THE COURT:** All right.

2 **MR. WILKINS:** It's already been testified to, Your
3 Honor.

4 **THE COURT:** I'm going to overrule the objection. What
5 he's testified to so far is already in the record as
6 evidence.

7 **MR. WILKINS:** Thank you, Your Honor.

8 Q. Continue.

9 A. She just told me the type car her mother had and gave
10 some details that only a person at the scene ---

11 **MR. ROBINSON:** Objection, Your Honor.

12 A. --- would have known.

13 **MR. ROBINSON:** It calls for speculation. He's making a
14 judgment as far as what -- what he feels this person's going
15 to say. I'd ask that that be stricken in this case.

16 **THE COURT:** Overruled.

17 Q. Continue.

18 A. So at that point in time, since I am secondary
19 investigator, I called Investigator Weiner and basically
20 give him a brief overview of what mine and Reagan's
21 interview was like. He wanted to bring her in to the LEC
22 and let's take a written statement, interview her further.

23 So when I went back in the office Mr. Reeves told me
24 that by chance her grandmother was there at the school for
25 an early dismissal. I walked outside, spoke with Nancy

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1 McCroskey, the grandmother. I wasn't told that Kay, her
2 mother, was there at the school also.

3 So I'm talking to Nancy, and then I'm introduced to Kay
4 McCroskey. And I explained to her basically that we need
5 her to come down to the Law Enforcement Center to talk to
6 her, take a written statement, and this is why, that she was
7 possibly involved in an armed robbery at the Citgo.

8 Q. What happened next?

9 A. She gave me some information about her car and told me
10 that it was in the shop at Mr. Transmission on Highway 291
11 in Greenville and stated that it had been there for a while.
12 So we arranged a meeting for like 1:00 at the Law
13 Enforcement Center later that afternoon.

14 I left Southside High School, went to 291 and stopped
15 at Mr. Transmission and found out that the vehicle was
16 brought to their facility to be worked on on October 28th,
17 2009.

18 Q. Then where did your investigation lead you?

19 A. The McCroskeys came to the Law Enforcement Center and
20 met with Investigator Weiner, myself. Several videos were
21 shown at that point in time. A statement was taken from
22 Reagan McCroskey at the Law Enforcement Center. Due to time
23 constraints, meaning Ms. McCroskey, Kay McCroskey had a
24 young son in school. She had to go pick him up.

25 So they were allowed to leave the Law Enforcement

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1 Center. And I made a appointment to come to their home to
2 finish talking to them and interview them, which was made
3 for Friday afternoon when Reagan got out of school.

4 Q. And did you go to their house at a later time?

5 A. I went to 109 Courtneybrook Trail in Mauldin and met
6 with Nancy McCroskey, Kay McCroskey and Reagan McCroskey.

7 Q. And at their home what happened?

8 A. I was invited in the home, sat down in their den. At
9 first Kay and Reagan were not home. I sat and had a
10 conversation with Nancy, the grandmother. They arrived.
11 Once they arrived I took a written statement, which I wrote,
12 from Kay McCroskey. And we discussed a little bit about
13 this case further.

14 Articles of clothing were brought up. And she said she
15 had some ---

16 MR. ROBINSON: Objection, ---

17 A. --- clothing upstairs.

18 MR. ROBINSON: --- Your Honor. Hearsay.

19 THE COURT: Okay. Was the statement that was taken, it
20 was admitted for purposes of identification, was it not?

21 MR. WILKINS: Yes, it was.

22 THE COURT: Okay. All right. I'm going to overrule
23 the objection. Based on what he's saying he's recounting
24 what she said. It's not offered to prove the truth of the
25 matter asserted. So far I think that it's admissible and

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1 I'm going to overrule it. But you need to be careful about
2 saying what other people said. All right. Go ahead.

3 MR. WILKINS: Yes, sir, Your Honor.

4 A. At that point in time Kay McCroskey and I went to
5 Sarah's room or Reagan's room and she picked out of some
6 clothing a purple t-shirt, a black t-shirt and a pair of
7 blue jeans.

8 Q. Now did Ms. McCroskey give you those items?

9 A. She asked me if I wanted them. And I told her that I
10 would take them. At that point in time I went and got a
11 paper bag and a property and evidence form, which is
12 standard with the Sheriff's Office, went back in the house,
13 collected the clothing, put them in the bag. And I had her
14 sign the property and evidence form where she gave me the
15 clothes.

16 Q. I'm going to show you what's State's exhibit 13 and ask
17 you to identify this for us.

18 A. This is the purple shirt, the black t-shirt and the
19 pair of blue jeans that were collected that day.

20 Q. I'm going to hand you property and evidence log to
21 refer to if you need to.

22 A. And this was collected at 18:27, which is military
23 time. It's 6:27 pm regular time. And that was on Friday,
24 November 20th, 2009 from their residence. And the reason I
25 know that I collected these is on this evidence tape, it's

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1 got my name and the date.

2 Q. And once you collected those where did you take them?

3 A. Sir?

4 Q. Once you collected those items where did you take them?

5 A. I put them in the trunk of my car. It's designed with
6 a cable and a padlock on the trunk so that evidence -- once
7 I padlock it, evidence can't be tampered with.

8 Q. Did you take them to property and evidence?

9 A. Not that particular afternoon. I went home.

10 Q. Did you ultimately take those to property and evidence?

11 A. Yes, sir, I did. I took them to property and evidence
12 on December 1st, 2009.

13 MR. WILKINS: Your Honor, State moves exhibit 13 into
14 evidence.

15 THE COURT: Any objections?

16 MR. ROBINSON: No objection, Your Honor.

17 THE COURT: All right. Without objection, the same is
18 moved into evidence as State's exhibit number 13.

19 (Whereupon State's exhibit 13 was admitted into
20 evidence)

21 Q. Now, Investigator Weiner [sic], did you go back to
22 McCroskey's house in August of this year?

23 A. I did.

24 Q. And who was with you?

25 A. Yourself, Assistant Solicitor Sloan Ellis and

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1 Investigator Keith Grounsell.

2 Q. Tell us about that meeting.

3 A. Investigator Weiner had set up the meeting so that we
4 could go over some aspects because the case was coming to
5 trial, getting ready for trial. And since Investigator
6 Weiner could not go, he asked me if I could go since I was
7 secondary investigator in this case. And I agreed to go.

8 We originally went to 109 Courtneybrook Trail and found
9 out rather quickly that they had moved from that address.
10 So we went to their Simpsonville address and met with Kay
11 McCroskey, Reagan McCroskey, Nancy McCroskey, a one year old
12 child and then a thirteen year old.

13 Q. And at that time did y'all discuss this case with
14 Reagan McCroskey, and her mom and her grandmother?

15 A. We did.

16 Q. And did you ultimately take a statement from Reagan
17 McCroskey?

18 A. After yourself had talked with her for a few minutes,
19 you and Mr. Ellis left the residence. Mr. Grounsell and I
20 then took a statement from her in which Mr. Grounsell took
21 extensive notes from the interview. And a statement was
22 typed up at a later date to which she came to the Law
23 Enforcement Center to sign.

24 Q. While you were there were you ever given a mask?

25 A. While we were doing the interview Kay McCroskey asked

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1 me to come to where she was at. And she walked to her
2 bedroom near the front door of the residence. She opened
3 the door and asked me if I would be interested in this. And
4 I said, what are you talking about? And there was an object
5 on the floor. I walked in the room, picked the object up
6 and it was the item in the bag.

7 Q. I'm going to show you State's exhibit 14. I'll ask you
8 to pull that out and ask if you can identify that.

9 A. This is the black toboggan that was given to me on that
10 particular day, August 9th.

11 Q. Once you received it what did you do with it?

12 A. I placed it in a brown paper bag and took it back to
13 the Law Enforcement Center where it was placed in property
14 and evidence.

15 MR. WILKINS: State moves exhibit 14 into evidence,
16 Your Honor.

17 THE COURT: Any objection, sir?

18 MR. ROBINSON: The same objection I had before, Your
19 Honor, pretrial.

20 THE COURT: Okay. All right. I'll overrule that
21 objection. And the same is admitted as Defense exhibit,
22 excuse me, State's exhibit.

23 (Whereupon State's exhibit 14 was admitted into
24 evidence)

25 Q. Now, Investigator Campbell, when you were working on

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1 this case -- you previously stated you had the November 3rd
2 video of the Defendant walking into Citgo. And you've
3 identified these jeans as coming from the McCroskey house.
4 Did you do any further investigation to associate those two
5 pieces of evidence together?

6 A. In looking at the video the purple shirt and the jeans
7 ---

8 **MR. ROBINSON:** Objection, Your Honor. And I have a
9 motion outside the presence of the jury, Your Honor.

10 **THE COURT:** Come on up.

11 (Whereupon a bench conference was held off the record
12 in the presence of the jury, but out of their hearing)

13 **THE COURT:** Okay. I note the objection for the record.
14 And I've overruled the same. You may proceed, Mr. Wilkins.

15 **MR. WILKINS:** Thank you, Your Honor.

16 Q. I'm going to show you the November 3rd video. Is this
17 the November 3rd video that you initially got?

18 A. That's correct, it is.

19 Q. And did you in detail look at the jeans that Mr. Butts
20 was wearing in that video?

21 A. Yes, sir, we did.

22 Q. And once you received the jeans from Ms. McCroskey did
23 you compare those jeans to him in that video?

24 A. We did.

25 Q. And I'm going to show you the video of November 5th.

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1 (Playing video)

2 Q. And armed with this video as well did you attempt to
3 make comparisons of the jeans that you now had in your
4 possession and the jeans that were used in this video?

5 A. Yes, sir. We noticed some similarities between the
6 articles of clothing.

7 Q. All right. I'm going to ask you to come down here and
8 take a look at what's already been admitted as State's
9 exhibit 9 and explain to the jury your investigation and
10 analysis of the comparison of these jeans. If you would
11 speak up so that the court reporter can -- can hear you.

12 (Whereupon the witness left the witness stand)

13 A. You have five still photographs here from the video
14 taken on November 3rd, 2009. These four still photos were
15 from November 5th, 2009. If you look at the jeans, they
16 have some defect or they're made this way. But you have
17 marked here, ---

18 MR. ROBINSON: Your Honor, ---

19 A. --- marked here.

20 MR. ROBINSON: Your Honor, ---

21 THE COURT: Yes, sir.

22 MR. ROBINSON: --- before he continues his testimony I
23 think there should be a foundation as far as him testifying
24 regarding this. I think it's pretty much irrelevant as far
25 as his testimony. He's talking as an expert in this case,

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1 as far as the jeans.

2 THE COURT: Is your objection that the foundation for
3 the pictures have not been laid or the foundation for his
4 knowledge has not been laid?

5 MR. ROBINSON: His knowledge, Your Honor.

6 THE COURT: Okay. I find that the characterization of
7 jeans is outside of the realm of expert testimony. This is
8 within the context of what a lay person or an investigator
9 could conclude. The jury can determine his credibility and
10 whether it should be given any weight or not. You may
11 proceed.

12 MR. ROBINSON: Thank you, Your Honor.

13 A. On the jeans the most noticeable spots are the lighter
14 spots. When we went back and looked at the different videos
15 we started looking for similarities. You can see on the
16 lower part of the right leg a spot, the thigh on the left
17 leg, a spot. Again, here's a spot on the lower part of the
18 leg here.

19 If you also notice that the length of the jeans are
20 long in this particular photograph here. And you've got a
21 light spot on the back side. We've got a light spot here.
22 This is the one where -- video where he was identified. And
23 you can also see the spots here.

24 On the robbery on the 5th, right leg, lower part, it
25 matched. Upper thigh, you've got a light spot. Here,

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1 again, is a better shot of this. If you'll look at the
2 length of the jeans and also at the back of the jeans here,
3 you've got a spot.

4 Those are the most obvious and most noticeable
5 similarities between these jeans that were collected at the
6 McCroskey residence, the video, November 3rd, which he's
7 already identified himself and then during this particular
8 robbery.

9 Q. You can return to the stand.

10 A. Thank you.

11 (Whereupon the witness returned to the witness stand)

12 Q. Investigator Campbell, in your investigation did you
13 also notice anything about the logo on the back of the pants
14 as well?

15 A. As far as you could see something that looks like
16 purple on the back. Did some research about the jeans ---

17 MR. ROBINSON: Your Honor, I'm going to object to this
18 testimony if he's going to -- as far as foundation ---

19 MR. WILKINS: I'll withdraw that.

20 THE COURT: He withdrew the question.

21 Q. You can finish about you noticed ---

22 A. It's a purple embroidery across the back of the pockets
23 ---

24 Q. Okay.

25 A. --- that also can be observed in a couple of the

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1 photos.

2 Q. Please answer any questions Defense counsel may have
3 for you, Investigator Campbell.

4 Cross Examination by Mr. Robinson:

5 Q. Investigator Campbell, I want to clarify something in
6 terms of the pictures. The picture that -- and I want to
7 make sure the jury's not confused by this. The picture that
8 you took from -- that you actually -- this picture from
9 11/3/2009, this is not -- 11/3/2009 is not where any of the
10 robberies took place, right?

11 A. That's correct.

12 Q. I want to make sure -- no robbery took place on
13 11/3/2009, correct?

14 A. No robbery.

15 Q. And as far as the similarities and so forth like that,
16 you're telling this jury that -- that these are unique jeans
17 just to Mr. Butts, are you?

18 A. They're fairly unique jeans.

19 Q. And you're -- you're saying that the only person in
20 South Carolina that has this particular brand of jeans, and
21 I believe ---

22 A. They're LRG jeans.

23 Q. What is it?

24 A. LRG jeans.

25 Q. LRG jeans has been marked as an exhibit. So LRG jeans,

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1 these were only sold to Mr. Butts in South Carolina?

2 A. They're fairly rare pants.

3 Q. So you're telling this jury that the only person in the
4 United States, in South Carolina, in Greenville County that
5 bought a pair of this Lagina by -- whatever this is called,
6 is Mr. Butts?

7 A. What I'm saying is they're very rare jeans. There are
8 more jeans out there, ---

9 Q. Right.

10 A. --- but they're very rare. You don't buy them off the
11 shelf at Wal-Mart.

12 Q. But you don't know -- you don't know if these are the
13 same jeans or not, do you?

14 A. They look similar.

15 Q. But you don't -- the question is this. You don't know
16 whether or not they're the same jeans or not, do you?

17 A. No.

18 Q. And when you went out to this -- this meeting that you
19 had at the McCroskey house to meet Reagan did you have your
20 gun -- gun on? Did you carry a gun -- did you and officer
21 -- the other officers that were out there, they had their
22 guns on?

23 A. I had my gun on because I was on duty. If I don't have
24 my gun on on duty, I get sent home. So ---

25 Q. So it's ---

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1 A. --- yes.

2 Q. --- fair to say that when you went out there, you and
3 your -- you and Mr. Wilkins, and Mr. Ellis and the other
4 investigator, it's fair to say that you had your gun on and
5 -- is that true?

6 A. I had one, yes.

7 Q. Okay. And in terms of the other officer that was out
8 there, do you know if he had his -- his gun on?

9 A. I'm unaware if he had it on or not.

10 Q. Unaware if he did or not? Okay. And they -- you
11 participated in this entire investigation, didn't you,
12 pretty much?

13 A. I picked up around the 1st of November on the original
14 two. And then the third one occurred.

15 Q. Okay. Now did you ever speak to a Mr. McDonald, who
16 was a manager at one of the Citgos?

17 A. The name doesn't ring a bell.

18 Q. Doesn't ring a bell? Okay. But you were -- were you
19 familiar what was going on in this investigation at all?

20 A. Yes.

21 Q. You were? Do you recall whether or not any of the
22 officers, such as Officer Weiner, talked to Mr. McDonald?

23 A. I'm unaware -- the name doesn't ring a bell.

24 Q. Excuse me. I'm sorry. Let me -- let me -- I've got
25 the wrong name. Sorry. Doug Kelly. I'm sorry. Do you

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1 recall a Doug Kelly name surfacing?

2 A. Not right off, no, sir.

3 Q. And the name Doug Kelly was a manager at the Citgo at
4 that time. You don't recall speaking to him?

5 A. Not right off.

6 Q. Never talked to him, okay.

7 A. I'm not saying I never did. I'm saying I don't recall.

8 Q. Don't recall, okay. Now in terms of the videos and so
9 forth, there were -- there were prints taken by your office
10 or footprints taken of your office, the Sheriff's Office,
11 the prints on that counter, isn't that correct?

12 A. On the robbery where he -- the suspect jumped over the
13 counter, yes, there were some footwear lifted there.

14 Q. And those were tested and compared against Mr. Butts,
15 his shoes, isn't that correct?

16 A. That's a question I can't answer.

17 Q. Okay. Would it surprise you if -- if that came back as
18 not being his, not being his prints? Would it surprise you?

19 A. That's a question I can't answer.

20 Q. So who is the person who did this testing since you
21 don't know?

22 A. Investigator Weiner would be the one to answer that
23 question.

24 Q. Officer ---

25 A. He was the primary investigator.

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1 Q. Okay. And he was the one who arranged this meeting
2 that y'all had with Ms. McCroskey, her child and the
3 grandmother, right?

4 A. That's correct.

5 Q. In which you had a gun on, correct?

6 A. Correct.

7 Q. Okay. This statement -- you were there -- it looks
8 like -- you were there for a period of hours, weren't you?
9 Weren't you and the other investigator there for a period of
10 hours?

11 A. Probably about two hours or so.

12 Q. So you were there at her house for two hours. Okay.
13 And did you ever record this conversation you had?

14 A. No.

15 Q. Okay. Any sort of video ever taken of this -- this
16 conversation with her talking?

17 A. No. The only recording we did was Investigator
18 Grounsell's notes, handwritten notes. They would have been
19 the only recording or dictation of it.

20 Q. And the person who prepared these -- the statement was
21 prepared by your office, isn't that correct?

22 A. Yes.

23 Q. Thank you very much, officer.

24 THE COURT: Any redirect, sir?

25 MR. WILKINS: No, sir, Your Honor.

1 THE COURT: All right. Thank you, deputy. I
2 appreciate ---

3 A. Thank you.

4 THE COURT: --- you being here, sir. All right, ladies
5 and gentlemen, let's take a lunch break. There may be some
6 business that we need to take up during the lunch break. So
7 I'm going to go for about an hour and a half.

8 I'm going to ask y'all to be back at 2:00, if you
9 would, please. Thank you. Y'all have a great lunch.
10 Please don't discuss the case.

11 (Whereupon the jury exited the courtroom at 12:37 pm)

12 THE COURT: All right, gentlemen, anything we need to
13 put on the record before we break for lunch?

14 MR. WILKINS: Nothing from the State, Your Honor.

15 THE COURT: Mr. Robinson?

16 MR. ROBINSON: Nothing from the Defense, Your Honor.

17 THE COURT: Okay. Good enough. All right. Do we have
18 any matters that we need to take up before we go back on the
19 record? I know that Officer Tench, you anticipate calling
20 him as a witness. Do we need to come back a little bit
21 early and have an identification hearing with him?

22 MR. WILKINS: You're welcome to do that, Your Honor.
23 Our order is going to be Investigator Weiner and then Tench
24 would be our last witness.

25 THE COURT: Okay.

1 **MR. WILKINS:** So we can -- we can do it before we get
2 cranked up with Investigator Weiner and do it back to back,
3 if we're permitted to, or however you want to do it.

4 **THE COURT:** How long do you anticipate Investigator
5 Weiner will take?

6 **MR. WILKINS:** We were forty minutes with Investigator
7 Campbell. I would say with him and cross examination,
8 twenty minutes.

9 **THE COURT:** Okay. All right. Well, do this, let's
10 come back on the record at quarter til two. And we will
11 take up any -- any matters related to Officer Tench's
12 testimony, okay. And then when the jury gets back at two,
13 we'll go right in. And just so I've got kind of an idea of
14 where we are, Mr. Robinson, do you intend to put witnesses
15 on the stand, sir?

16 **MR. ROBINSON:** I need to speak to my client probably at
17 lunch ---

18 **THE COURT:** Okay.

19 **MR. ROBINSON:** --- so I can ---

20 **THE COURT:** All right. Just let me know, okay? 'Cause
21 I just want to give the jury some idea of where we stand and
22 what we can anticipate going forward.

23 **MR. ROBINSON:** Yes, sir.

24 **THE COURT:** All right. Thank you.

25 **MR. WILKINS:** Thank you, Judge.

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1 (Whereupon court was in recess at 12:39 pm)

2 (Whereupon court resumed at 2:06 pm)

3 THE COURT: Take your seats, ladies and gentlemen. All
4 right. Looks like we've got our three jurors just come back
5 from Trios. It took a little longer to eat than they had
6 anticipated. So are we ready for the jury, gentlemen?

7 MR. WILKINS: The State's ready, Your Honor.

8 THE COURT: Okay. We're just lacking one person.

9 Okay. Bring the jury in, please.

10 (Whereupon the jury entered the courtroom at 2:08 pm)

11 THE COURT: All right. Mr. Wilkins, your case, sir.

12 MR. WILKINS: Thank you, Your Honor. May it please the
13 Court. The State calls Sergeant David Weiner to the stand.

14 MADAME CLERK: Sir, please place your left hand on the
15 Bible and raise your right hand.

16 David Weiner, being duly
17 sworn testified as follows:

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

20 MR. WEINER: David Weiner.

21 **Direct Examination by Mr. Wilkins:**

22 Q. Mr. Weiner, who -- with whom are you employed?

23 A. The Greenville County Sheriff's Office.

24 Q. And how long have you been employed with the Sheriff's
25 Office?

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1 A. Going on twelve years now.

2 Q. And what are you -- what do you do for the Sheriff's
3 Office?

4 A. Currently I'm a sergeant there assigned as a supervisor
5 in criminal investigations.

6 Q. And what other roles have you had in the Sheriff's
7 Office?

8 A. I started off assigned to uniform patrol. Worked
9 there for about seven years. And spent almost five years
10 assigned to armed robbery as an investigator.

11 Q. Did you become in the investigation -- did you become
12 involved in the investigation of the armed robberies of the
13 Citgo on Woodruff Road back in 2009?

14 A. Yes, sir, I did.

15 Q. And about when did you become involved in that
16 investigation?

17 A. Within a couple of days of the first one occurring.
18 Actually, I think it was the next day. The first one
19 occurred on October 18th. I was assigned the case the
20 following morning on the 19th.

21 Q. And tell us about your investigation. Where did it
22 lead you?

23 A. The initial case didn't have a whole lot to go on.
24 I've worked close to eight hundred robberies in my time
25 there. And unfortunately most robberies are very quick,

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1 very brief. And they leave behind very little physical
2 evidence. No fingerprints, things like that. So I'll start
3 by trying to talk to clerks, witnesses, of course, watching
4 the video would be one of the first things I'd do.

5 Q. Did you watch the video in this case?

6 A. Yes, sir.

7 Q. Did you find any other videos outside of the Citgo that
8 helped you in your investigation?

9 A. Initially, no. Of course, I always like to go to the
10 scene, take a walk around, see what else I see. And I found
11 a couple of cameras at the Rite Aid, which is directly
12 behind the Citgo. I went inside, reviewed their video
13 surveillance. And that's when I found the vehicle.

14 Q. And what did you do next in your investigation?

15 A. Took that vehicle or took still images of that vehicle
16 at the Rite Aid, put out a be on the lookout flier, went out
17 to all law enforcement and just at that point you kind of
18 sit back and wait and hope something comes forward, some
19 kind of lead.

20 Q. Did your investigation lead you to a November 3rd video
21 of the Citgo?

22 A. Eventually, yes, sir, it did.

23 Q. And how did -- how did your investigation lead you
24 there?

25 A. Investigator Campbell had advised me ---

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1 MR. ROBINSON: Objection, Your Honor, hearsay.

2 THE COURT: The advisement, you're talking about?

3 MR. ROBINSON: He's saying that the officer advised him
4 of something.

5 THE COURT: Okay. All right. I'm anticipating perhaps
6 some hearsay, but I don't think I've got it so far. So at
7 this point in time I'm going to overrule the objection.

8 MR. WILKINS: Thank you, Your Honor.

9 A. Investigator Campbell advised me that there was a video
10 of a possible suspect from the 3rd.

11 Q. And did you obtain a copy of that video?

12 A. Yes, sir.

13 Q. And did you review it?

14 A. Yes, sir.

15 Q. With that information what did you do?

16 A. Again, some still images were made. This would have
17 led me to making an identification on Mr. Butts from the
18 November 3rd video, which led me to his girlfriend, Sarah
19 Reagan McCroskey.

20 Q. And did you ever talk to Ms. Reagan McCroskey?

21 A. I did, yes, sir.

22 Q. In talking to her, what did you learn?

23 A. That her mom owned a vehicle like I had seen on the
24 video. And so I questioned her about it. And she
25 specifically remembered that day and specifically remembered

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1 being in that Rite Aid parking lot that day.

2 Q. And what happened next in your investigation?

3 A. She also informed me that she had a firearm. And that
4 at one time was in her possession, but she had turned it
5 over to a cousin of Mr. Butts, who she knew as Ace or Kyille
6 or Kyille Seward. I was able to locate where he lived, did
7 a search warrant on that residence, and I recovered a
8 firearm.

9 Q. All right. Tell us about the -- the execution of the
10 search warrant. Tell us how you went about getting that.

11 A. Basically, I obtained a search warrant based on her
12 statement to me that she did possess a firearm and she
13 turned it over to Mr. Seward at his residence, I want to say
14 within the past day, day or two of when I took the statement
15 from her.

16 Got the search warrant, went and knocked on the door.
17 A female, an older female answered the door. And I
18 presented her with the documents for the search warrant.
19 Basically told her what I was looking for.

20 I felt that there was -- I informed her I felt there
21 was no need to search the entire residence, that the
22 probable location would be the bedroom for Mr. Seward. And
23 so that's where I started.

24 Almost every search I do, the first place I start is
25 the bed. A lot of people like to hide stuff under there.

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1 And when I search a residence or a room I'll put things on
2 the bed. And that way I can say I've searched the bed,
3 there's nothing on it, now you can put stuff on it that you
4 want to keep. So I started on the bed, lifted the mattress.
5 That's where I found the firearm.

6 Q. And whose -- whose bedroom did you search?

7 A. Mr. Seward's bedroom.

8 Q. And what is his first name?

9 A. It's Kyille or Kyille Seward, but they referred to him
10 as Ace.

11 Q. I'm going to show you what's been marked as State's
12 exhibit 12.

13 A. Yes, sir.

14 Q. I'd ask if you would identify that for the jury,
15 please.

16 A. The firearm I seized from that residence and placed
17 into property and evidence.

18 Q. Is that the firearm that you retrieved from Kyille
19 Seward's bedroom?

20 A. Absolutely, yes, sir.

21 MR. WILKINS: Your Honor, State moves exhibit 12 into
22 evidence.

23 THE COURT: Any objection, sir?

24 MR. ROBINSON: Same objection as at the pretrial, Your
25 Honor.

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1 THE COURT: Okay. Good enough. I'll overrule the
2 objection and I'll admit the same as State's exhibit.

3 (Whereupon State's exhibit 12 was admitted into
4 evidence)

5 Q. In your investigation, Sergeant Weiner, did you go back
6 to the Citgo and walk around the area?

7 A. Yes, sir, several times. Especially after I had
8 numerous robberies, I knew I had a problem. I had a case I
9 had to work. So I visited the Citgo numerous times, walked
10 the property, Rite Aid, the car lots, the entire area
11 several times.

12 Q. Do you mind stepping down ---

13 A. No, sir.

14 Q. --- and just showing the jury what you did in your
15 investigation?

16 (Whereupon the witness left the witness stand)

17 Q. And I'll just hold this for you.

18 A. The Citgo is right here. Obviously, you can see Five
19 Forks here, Scuffle Town Road, it's a big intersection.
20 Rite Aid's directly behind it. And the Rite Aid connects to
21 the parking lot here. There's a -- it's a Wells Fargo ATM.
22 There's a small auto business right here. And then there's
23 a -- this Swedish Automotive, which is here. I don't
24 believe they sell cars, I think they just work on them.

25 I noticed several different things, especially after I

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1 arrested Mr. Butts. And that's from this Citgo, once you
2 cut across the parking lot here, there's just a little bit
3 of grass, there's a path, and it's paved, it's actually
4 paved. It's like a car path. I don't think it's there
5 anymore. They've built like a doctor's office or something
6 right here now.

7 But there's a paved path that goes right here, which
8 takes you out onto Adam's Mill Road. And then once you walk
9 right here through the tennis courts there's actually a worn
10 path. And I -- I did this from his house. There's a worn
11 path through the woods from his house, where he was staying,
12 one of the places he was staying, to the tennis courts. And
13 it took me three or four minutes to walk it.

14 Q. When you say his ---

15 A. Mr. Butts was staying right here at [REDACTED] Spring Lake
16 Loop.

17 Q. And how long did it take you to walk from the Citgo to
18 his house?

19 A. Five minutes or less. And that was just me walking. I
20 mean, I'm looking for anything on the ground, maybe a mask
21 is dropped, a gun's dropped. I've found stuff like that
22 before. So I was looking.

23 Q. Okay.

24 (Whereupon the witness returned to the witness stand)

25 Q. Once you recovered the gun did you offer to do any --

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1 any forensic analysis on it?

2 A. No, sir.

3 Q. Did you test it for DNA?

4 A. No, sir.

5 Q. Did you test it for fingerprints?

6 A. No, sir.

7 Q. Tell the jury why.

8 A. Through the statement of Ms. McCroskey I had
9 established a direct link to the firearm to Mr. Butts. She
10 told me she -- that it was in his ---

11 MR. ROBINSON: Objection, ---

12 A. --- possession ---

13 MR. ROBINSON: --- Your Honor, hearsay.

14 THE COURT: I'm going to overrule the objection. I
15 note that testimony's in the record already. Go ahead.

16 MR. WILKINS: Thank you, Your Honor.

17 A. She told me that it was in his possession, he stored it
18 under her bed. She retrieved it and gave it to Mr. Seward,
19 which is where I found it.

20 Q. Did you have any other suspects that you looked at
21 while you were investigating this case?

22 A. Just one other came up, a store manager, a gentleman by
23 the name of Doug Kelly, had watched the -- at least one of
24 the tapes. And I had a conversation with him. And he
25 identified one individual by the name of Dedrick McCray born

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1 in 1998.

2 My research on him indicated that his weight -- he
3 weighed at least two hundred and twenty pounds. And it's
4 very clear to me in these three robberies, watching the
5 surveillance tape that it's a slender individual.

6 Q. And what about -- and you reviewed the October 18th
7 video as well. Did y'all find any shoe prints?

8 A. Just on the October 18th when, obviously, you see him
9 cross that counter. I'm not really versed on how forensics
10 takes the prints, some kind of gel lift that they do. And
11 we did have one shoe print from the countertop.

12 Q. Now did that -- did that come back to the Defendant?

13 A. No. The only -- I went to his house and searched the
14 bedroom for any clothes from the robberies, the hoodie,
15 sweatpants, anything. Didn't find any shoes or clothes that
16 matched. The only shoes I had were the ones that when he
17 was arrested he was wearing. And those are some kind of
18 like Timberland boots. Had big lugs on the bottom. And the
19 print I had from the countertop was clearly like some kind
20 of sneaker pattern. It ---

21 Q. Do you remember what color the shoes he had on when he
22 was arrested?

23 A. If I remember, I wanted to say they were like that --
24 that tan color, like the suede color, if I recall. I'm not
25 positive. But it was not the -- the black shoes from the

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1 video, I know that.

2 Q. Answer any questions ---

3 A. Yes, sir.

4 Q. --- Mr. Robinson may have.

5 A. Yes, sir.

6 **Cross Examination by Mr. Robinson:**

7 Q. Now officer -- Officer Weiner, this -- so the manager,
8 Doug Kelly, told you that he suspected that it was a former
9 employee, Dedrick McCray, is that correct?

10 A. Yes, sir.

11 Q. Okay. And he didn't mention to you anything about the
12 weight, did he?

13 A. No, sir.

14 Q. So you don't know how much -- how much this Dedrick
15 McCray weighed versus this person in the -- in the video, do
16 you?

17 A. According to our records, I have McCray at about two
18 hundred and twenty pounds.

19 Q. And Mr. Kelly looked at the videos, didn't he?

20 A. That -- I think he -- I talked to him after the second
21 robbery, ---

22 Q. Okay.

23 A. --- was my understanding. So he would have -- if he
24 observed any, it would have been the first two.

25 Q. And when he looked at the first two videos he did not

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1 recognize that being Mr. Butts, did he?

2 A. He didn't say either way. He just -- I asked him, I
3 said, of anybody, who can you think of? And he says, the
4 only thing I can think of is this kid that used to work
5 here, Dedrick McCray.

6 Q. And not Mr. Butts?

7 A. Right. I don't -- I don't know that he was familiar
8 with him.

9 Q. And, in fact, the footprint that was taken from the --
10 from the counter, the one on the videos in this case, that
11 did not match Mr. Butts either, did it?

12 A. I don't know that it matched him or not. All I can
13 tell you is that it did not match the shoe he was wearing
14 when he was arrested.

15 Q. Okay. Now you arranged this meeting at Ms. McCroskey's
16 house, didn't you?

17 A. Yes, sir.

18 Q. Okay. And prior to that time there had been -- there
19 had been no indication from Ms. McCroskey that Mr. Butts was
20 on any of these tapes, was there? She had not said anything
21 to you before that time about these tapes, actually?

22 A. No. In her original statement to me she talked about
23 how the clothing matched clothing that she had seen him wear
24 before.

25 Q. But I'm talking about the tapes though. She had ---

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1 A. I never showed her -- I showed her still images of --
2 of the robberies.

3 Q. Okay. Now this meeting that you had all arranged --
4 the purpose of this meeting was to get testimony, wasn't it?

5 A. All I know is that Solicitor Wilkins wanted to speak to
6 her about any evidence she may have for the trial.

7 Q. Okay. As far as the manager goes, I'm kind of curious
8 about this, this Mr. Kelly. After your meeting with him --
9 how many times do you think you met with him?

10 A. Best of my knowledge, I can only remember meeting with
11 him that one time where I really talked with him. I may
12 have walked in the store on one of my times going out there
13 and seen him, but that was really the only full conversation
14 I recall having with him.

15 Q. So when he looked at these two videos and he says to
16 you, that looks like Dedrick, excuse me, Dedrick McCray, a
17 former employee, did you follow up with that and go
18 investigate Mr. Dedrick McCray?

19 A. That's what I -- I said I did, yes, sir. That's when I
20 recognized that his weight was well off of what the videos
21 were.

22 Q. But did you ever establish any alibis for him or
23 anything like that?

24 A. I wasn't able to locate him. I didn't locate him, no,
25 sir.

DAVID WEINER - CROSS EXAMINATION BY MR. ROBINSON

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1 Q. And you -- so you were able to check out his weight,
2 but you weren't able to find him, correct?

3 A. Correct.

4 Q. Okay. You don't think it's important to investigate a
5 potential suspect like that other than just talking one time
6 to the manager about this person and that's it?

7 A. Absolutely I think it's important.

8 Q. Isn't it even more important though for you to -- since
9 the manager's told you he doesn't recognize Mr. Butts on
10 this video -- these videos, the two videos, didn't you think
11 it was important to establish that this Mr. McCray was not
12 the person?

13 A. Absolutely.

14 Q. And you didn't do that though, did you?

15 A. Wasn't able to locate him.

16 Q. And this gun that you recovered at Reagan's house or
17 the mother's house, that was never fingerprinted, was it, to
18 ensure who it belonged to?

19 A. I found the gun at Ace's house.

20 Q. Ace found the -- I'm sorry.

21 A. Correct.

22 Q. Found it at Ace's house.

23 A. Correct.

24 Q. You didn't ever fingerprint it to see ---

25 A. No, sir.

DAVID WEINER - CROSS EXAMINATION BY MR. ROBINSON

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1 Q. --- if it belonged to anybody? So you have no idea who
2 this gun belongs to, do you?

3 A. I believe it belongs to Mr. Butts.

4 Q. But you ---

5 A. Based on her statement.

6 Q. But the gun was found -- as far as it being connected
7 to this robbery, you have no idea if this is the gun
8 connected to this robbery though, do you, these robberies?

9 A. I'm pretty confident it is, sir, based on the video and
10 looking at the gun. It has some distinguishing
11 characteristics.

12 Q. The gun has distinguishing characteristics?

13 A. Yes, sir.

14 Q. When the manager -- let's go back to these
15 distinguishing characters. We have a black gun that's
16 silver. What is distinguishable ---

17 A. It's got a gray stripe down the side. It's made by a
18 company called Hi-Point.

19 Q. Okay.

20 A. Hi-Point makes -- they make a lot of guns, .45, .49,
21 .380, but they only make one that I'm aware of with this
22 stripe, which is the .380. And in all three robberies that
23 gun can be clearly seen. You can see the gray stripe. And,
24 of course, that's what we have in the box.

25 Q. Well, but the question for you is this though. Since

DAVID WEINER - CROSS EXAMINATION BY MR. ROBINSON

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1 you're a -- since you're a officer of law, ---

2 A. Um-hum (affirmative).

3 Q. --- this particular gun, this .380 with the silver and
4 the black, you would agree that there are thousands of these
5 guns made, wouldn't you?

6 A. Probably more than that.

7 Q. More than a thousand made?

8 A. Probably -- I would gander to say tens of thousands, if
9 not over a hundred thousand made.

10 Q. And you can't actually say to a degree -- to a
11 reasonable degree of certainty that this is the same gun,
12 can you?

13 A. No, I -- I think it is, yes, sir.

14 Q. No, that's not the question. Can you say to a
15 reasonable degree of certainty that that particular gun is
16 the same gun out of all the thousands of guns that are out
17 there that that particular gun is the one?

18 A. Based on the case that I made, yes, sir, that's the
19 gun..

20 Q. But you would agree with me that there are thousands of
21 these guns out there and you have no fingerprints on this
22 gun ---

23 A. Correct.

24 Q. --- to connect it to Mr. Butts, correct?

25 A. Yes, sir.

DAVID WEINER - REDIRECT EXAMINATION BY MR. WILKINS

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1 Q. Okay. What -- I'm going to follow up on this. What
2 did you do exactly to follow up on this other suspect, this
3 Mr. McCray?

4 A. I don't recall the details of what I did. I attempted
5 to locate him, didn't have any luck. And then, of course,
6 as the case developed against Mr. Butts, once he was
7 arrested, I didn't look for Mr. McCray anymore.

8 Q. But then you had -- you got rid of Mr. McCray as a
9 suspect after you latched on to this. And then you had --
10 if you were so sure about this though -- you had a meeting
11 scheduled at Ms. McCroskey's house where she was going to
12 sign a statement or cooperate or she was going to go to
13 jail. Tell -- tell me about that.

14 A. I don't know anything about the meeting, sir. I wasn't
15 there.

16 Q. Oh, okay. That's all the questions I have. Thank you.

17 A. Yes, sir.

18 THE COURT: Any redirect, sir?

19 MR. WILKINS: Briefly, Your Honor.

20 **Redirect Examination by Mr. Wilkins:**

21 Q. Detective Weiner, how many cases have you been involved
22 in where there have been guns used?

23 A. Technically I'm assigned to the unit that's called
24 armed robbery, but we get any kind of strong arm robbery,
25 most money grabs or purse snatchings. Out of the close to

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1 the eight hundred cases, probably half of them involve
2 firearms.

3 Q. And do you oftentimes fingerprint the guns?

4 A. Generally, no, sir.

5 Q. And why don't you typically fingerprint ---

6 A. The surface of a firearm is not suitable for holding
7 fingerprints. And more importantly when you hold the
8 firearm or operate it your hand is constantly moving,
9 pulling on the slide, things like that that smudge the
10 prints that wouldn't allow it to retain them if it could.

11 Q. Did you -- in your -- did your investigation reveal
12 that other individuals had handled this particular gun
13 during the course ---

14 A. Yes, sir. And that, of course, factors into whether or
15 not DNA or fingerprints is done as well. I knew Ms.
16 McCroskey had handled it. And I knew Mr. Seward had handled
17 it. So it would have been cross contaminated.

18 Q. Thank you.

19 MR. ROBINSON: I have just one recross, Your Honor.

20 THE COURT: Yes, sir.

21 **Recross Examination by Mr. Robinson:**

22 Q. So -- so there was DNA taken from this gun?

23 A. I don't know.

24 Q. But you just told the Solicitor that several people,
25 Ms. McCroskey and Ace handled this gun.

DAVID WEINER - RECROSS EXAMINATION BY MR. ROBINSON

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1 A. Correct.

2 Q. And you talked about DNA -- and he talked about DNA.

3 Did you test the gun for DNA?

4 A. No, sir.

5 Q. So you don't know who handled the gun, do you?

6 A. I know that Ms. McCroskey handled it and that Mr.

7 Seward handled it.

8 Q. Other than those two folks though you don't really know
9 who else handled it then, do you?

10 A. Mr. Butts based on Ms. McCroskey's statement to me.

11 Q. But that was her statement after you guys got her to
12 the -- to this meeting that y'all had at this ---

13 A. No, sir, that -- she told me that statement on the
14 19th, was that she -- that he had the gun.

15 Q. But -- but the DNA was never tested to ---

16 A. Correct.

17 Q. --- indicate that Mr. -- it was Mr. Butts' gun,
18 correct?

19 A. Correct.

20 Q. Okay. Was there any DNA testing on the trigger?

21 A. No, sir. There was no DNA testing done.

22 Q. Thank you.

23 THE COURT: Thank you. Appreciate you being here.

24 A. Yes, sir.

25 THE COURT: You may step down, sir. All right. Mr.

1 Wilkins, you have another witness to call, sir?

2 MR. WILKINS: Your Honor, the State rests at this time.

3 THE COURT: Okay. All right. Ladies and gentlemen,
4 the State has indicated they intend to rest, which means in
5 its case in chief it will not put up anymore evidence. And
6 at this point I'm compelled under the law to take up several
7 legal matters with each side before we proceed.

8 So I'm going to ask you to retire to your jury room for
9 just a little bit. And we'll come back in and resume fairly
10 shortly. Please don't discuss the case.

11 (Whereupon the jury exited the courtroom at 2:30 pm)

12 THE COURT: All right. Motions?

13 MR. ROBINSON: Your Honor, at this time I'd make a
14 motion for a directed verdict on the basis that -- well,
15 this is a circumstantial case. It's not a direct evidence
16 case. They've presented no substantive -- substantial
17 evidence that would -- that would tend to link these
18 robberies to this particular Defendant in this matter.

19 THE COURT: Okay. All right. Mr. Wilkins, you care to
20 respond, sir?

21 MR. WILKINS: In the light most favorable to the State,
22 we feel that we've presented substantial evidence that could
23 get us past a directed verdict and the jury could consider
24 the evidence presented to make a decision.

25 THE COURT: Okay. Under the applicable standard that

1 I'm compelled to apply under the law, I must view it in the
2 light most favorable to the State. And I'm not in a
3 position to determine the weight or the efficacy of the
4 evidence just whether there is evidence in the record upon
5 which a jury could determine that the State has met its
6 burden of proof. Therefore, I will respectfully deny the
7 motion for a directed verdict. Anything else?

8 MR. ROBINSON: And, Your Honor, I would renew my motion
9 that I made at the outset regarding dismissal of the case
10 based on the conduct of the State in this matter. I think
11 the Court at this -- we've had testimony come in from both
12 Ms. McCroskey and her mother regarding this meeting that
13 took place on August 9th, 2011.

14 It indicates that there was quite a bit of -- the Court
15 had the opportunity to view the -- view the witness and how
16 scared she was. And she testified that she felt scared, she
17 felt intimidated and so forth with four -- Mr. Wilkins, Mr.
18 Ellis as well as two other officers in this case. And we
19 believe that that is not appropriate in these kind of cases
20 because it just adds a very dangerous element to the -- to
21 this particular matter in this case. We'd ask the Court to
22 dismiss based on the facts that have been presented.

23 THE COURT: Okay. Thank you. And I note for the
24 record that you've renewed that motion. And I'll
25 respectfully deny that motion as well. I believe that the

1 testimony is fairly clear from both of those witnesses that
2 they didn't feel intimidated, and under oath they stated
3 that in open court.

4 And having stated that, I'm compelled to deny that
5 motion and find that it appears that there was not any
6 intimidation by the State by and through their own direct
7 testimony regarding the matter. Okay. Anything else?

8 MR. WILKINS: Nothing from the State, Your Honor.

9 MR. ROBINSON: I would like some time, Your Honor, a
10 period to talk to my client's family about this.

11 THE COURT: All right. I'm going to give you fifteen
12 minutes, okay? And then at the expiration of fifteen
13 minutes just let me know what you want to do, okay?

14 MR. ROBINSON: Yes, sir.

15 THE COURT: All right. Good enough.

16 (Whereupon court was in recess at 2:34 pm)

17 (Whereupon court resumed at 3:00 pm)

18 THE COURT: Mr. Robinson.

19 MR. ROBINSON: May it please the Court.

20 THE COURT: Yes, sir.

21 MR. ROBINSON: Your Honor, I've had the opportunity to
22 meet with my client at length. And we have made -- he has
23 made the decision not to testify in this case.

24 THE COURT: Yes, sir.

25 MR. ROBINSON: We've also made the decision to rest.

1 And like I had advised him that the Court would stand him up
2 and tell him about the -- about that and so forth.

3 THE COURT: Okay. Good enough.

4 MR. ROBINSON: Yes, sir.

5 THE COURT: Mr. Butts, sir, I need to advise you of
6 your rights. And I understand from Mr. Robinson that you
7 have elected not to testify today, which is certainly within
8 your rights.

9 And under our Constitution we are -- we have a right
10 against self-incrimination, which means that we are not
11 compelled to do, say or prove anything. And you have a
12 right to remain silent, which means that you can exercise
13 your constitutional right and not testify in this case.

14 And, in fact, if you elect not to testify, I will
15 charge the jury that they can't hold it against you, that
16 just because you are exercising a constitutional right,
17 which we all enjoy as a citizen -- as citizens of the United
18 States of America, that it cannot be held against you and
19 even -- and not only can it not be held against you, but
20 they can't even talk about it in the jury room.

21 However, know that you do have the right to take the
22 stand if you want to in your discretion and you could take
23 the stand and tell the jury your side of the story. You
24 could explain whatever it is that you need to explain to
25 them bearing upon the facts of this case. Understanding, of

1 course, that if you do elect to take the stand, then the
2 State would have the opportunity to ask you questions in
3 cross examination and to attempt to impeach your testimony.
4 You understand all that, sir?

5 MR. BUTTS: Yes, sir.

6 THE COURT: All right, sir. And you've had the
7 opportunity to fully discuss that with your attorney today,
8 sir?

9 MR. BUTTS: Yes, sir.

10 THE COURT: Okay. And how do you -- having me explain
11 that to you and having had the opportunity to discuss it
12 with Mr. Robinson, do you wish to testify in this case or
13 not, sir?

14 MR. BUTTS: No, sir, I wish not.

15 THE COURT: Okay. Good enough. Good enough. Thank
16 you, Mr. Butts. I appreciate it.

17 MR. BUTTS: Thank you.

18 THE COURT: You may be seated. All right. Okay.
19 Well, then let's move to argument and charge. We've got two
20 hours left this afternoon. Are there any requests for
21 charge?

22 MR. ROBINSON: Your Honor, ---

23 THE COURT: Yes, sir.

24 MR. ROBINSON: --- could we possibly do the argument
25 and charge tomorrow?

1 THE COURT: Well, ---

2 MR. ROBINSON: I spoke to Mr. Wilkins, ---

3 THE COURT: Yes, sir.

4 MR. ROBINSON: --- and he's on board with me. While
5 I'm not prepared for a closing in this case, but I wasn't
6 anticipating this to happen this fast.

7 THE COURT: I understand. I understand. All right. I
8 don't like to stop while we have two hours left in the day,
9 particularly with the docket that's as heavy as I have this
10 week. But I do understand, Mr. Robinson, that your client
11 is facing very serious charges and potentially a serious or,
12 excuse me, a substantial period of incarceration.
13 Therefore, in deference to you, I'll wait until tomorrow
14 morning ---

15 MR. ROBINSON: Thank you, Your Honor.

16 THE COURT: --- to argue and charge. Now having done
17 that, it may give us the luxury of having a short charge
18 conference in chambers. And I'll just very briefly go over
19 what I intend to charge and I'll listen to each of you with
20 respect to charge as well. So anything else that we need to
21 put on the record at this point?

22 MR. WILKINS: Nothing from the State, Your Honor.

23 THE COURT: Okay. Mr. Robinson?

24 MR. ROBINSON: Nothing from the Defense, Your Honor.

25 THE COURT: Okay. Then we'll just do that. We can go

1 off the record for just a second.

2 (Whereupon court was in recess at 3:03 pm)

3 (Whereupon court resumed at 3:05 pm)

4 (Whereupon the jury entered the courtroom at 3:06 pm)

5 **THE COURT:** All right, ladies and gentlemen. I have
6 been advised by the Defense that they intend to rest, that
7 is, they're not going to put any evidence into the record,
8 which is entirely the Defendant's right.

9 And I will tell you tomorrow when I charge you that the
10 Defendant has the right to remain silent, which means the
11 Defendant has nothing to prove in this case. Therefore,
12 it's within his rights and discretion not to put any
13 evidence into the record. And that can't be held against
14 him in any way, shape or form. And I'll charge you that
15 again tomorrow morning.

16 But this afternoon what I'm going to do is I'm going to
17 sit down with the attorneys and talk about the law that I'm
18 going to charge you so that when they argue to you their
19 respective sides they'll know the law that I intend to apply
20 to the evidence which has been presented in this case.

21 So I'm going to release you this afternoon and ask you
22 to be back here tomorrow at nine am and we'll start with
23 closing arguments and with the charge on the law. And I
24 hope if we start promptly at nine, then y'all should
25 probably have the case somewhere around 10:30-ish. Okay.

1 So y'all have a good evening. Please don't discuss the
2 case with anyone or do any self-help and try to find out
3 anything else about the case. Have a great evening.

4 (Whereupon the jury exited the courtroom at 3:08 pm)

5 **THE COURT:** All right, gentlemen. We'll be in recess
6 until tomorrow morning.

7 (Whereupon court was in recess at 3:09 pm)

1 Wednesday, October 19, 2011:

2 THE COURT: Take your seats, ladies and gentlemen.
3 Good morning. Hope everybody's doing well. Please put Ms.
4 Griner in the foreperson's seat, will you, please?

5 THE BAILIFF: What's the last name?

6 THE COURT: Griner, G-r-i-n-e-r.

7 THE BAILIFF: Okay.

8 THE COURT: Okay. We ready for the jury, gentlemen?

9 MR. ROBINSON: Defense is ready.

10 MR. WILKINS: The State's ready, Your Honor.

11 THE COURT: All right. Good enough. Bring them in,
12 please.

13 (Whereupon the jury entered the courtroom at 9:06 am)

14 THE COURT: Okay. Morning, ladies and gentlemen.

15 THE JURY: Good morning.

16 THE COURT: Welcome back. Thanks for being on time. I
17 appreciate it. Ms. Griner, I've appointed you as foreperson
18 of the jury. Congratulations. Got a lot of hope for you.

19 (Laughter)

20 THE COURT: The foreperson of the jury -- the duties
21 are fairly well defined, but they don't necessarily -- don't
22 really tell you everything that's involved with being the
23 foreperson of the jury. And I'm afraid I can't either.

24 The duty of the foreperson of the jury is to ensure
25 that when you begin your deliberations, everybody has the

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1 opportunity to be heard, that everyone's voice is heard in
2 the jury room. And over and beyond that, I really can't
3 tell you anything else about what you're supposed to do
4 because I'm not allowed to encroach upon your province in
5 the jury room.

6 And I can't tell you how to deliberate, what to talk
7 about, what order to take things and how to organize your
8 deliberations. It's up to y'all.

9 And also, Ms. Griner, when y'all come to the unanimous
10 verdict, you'll sign the verdict form and let the bailiff
11 know that y'all have come to a decision. And then I'll
12 bring you back into the courtroom. All right.

13 Having said that, we are about to begin closing
14 arguments and charge on the law. So as I told you when we
15 began the case, the attorneys' arguments are not evidence.
16 You've heard all the evidence that you will hear in the
17 case, both sides have rested. Therefore, please consider
18 the argument in the context in which it is offered. That
19 is, as argument, as advocacy for the parties' respective
20 positions.

21 The State, Mr. Wilkins, will argue first. Then Mr.
22 Robinson will have the opportunity to argue in closing.
23 Then I will give you a charge on the law. All right. Mr.
24 Wilkins.

25 **MR. WILKINS:** Thank you, Your Honor. May it please the

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1 Court.

2 THE COURT: Yes, sir.

3 MR. WILKINS: Good morning.

4 THE JURY: Good morning.

5 MR. WILKINS: This is closing argument. This is my
6 opportunity, my last opportunity to talk to y'all about this
7 case. We have talked about evidence. And I talked about it
8 in my closing argument. And the Judge has instructed you on
9 evidence. And you'll hear more instructions on that.

10 And closing argument, as he said, is my opportunity to
11 lay out the case that -- in the way that I feel it best
12 presents it to you. Now, you've heard it all. You've heard
13 every witness. You've seen every exhibit. And this is my
14 time to really fine tune it for you.

15 Now this case is a little complicated. It's simple in
16 some respects, and it's complicated in some respects.
17 There's three armed robberies. And I have to prove each
18 armed robbery independently.

19 And in my opening statement I showed you -- and you've
20 heard from the Judge about the charges. Of course, that's
21 not evidence, that's merely allegations.

22 And in this case there are six charges that you're
23 going to be deliberating on, two for each armed robbery.
24 And, of course, one is the actual armed robbery itself. And
25 then the second charge is the possession of a weapon during

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1 the commission of the armed robbery. And so for each armed
2 robbery, the 18th, the 30th and the 5th you'll make that
3 determination. So guilty or not guilty on two charges on
4 each armed robbery.

5 And I told you in my opening as well that it's really
6 not a -- in dispute that somebody on those dates robbed the
7 Citgo on Woodruff Road. We have videos. And you've seen
8 the videos, I think, about four times now of the robberies.
9 And you're probably sick of seeing them. I've seen them
10 about eighty-two times. I can -- I dream about them at
11 night now, I think.

12 And it's clear that somebody went into the Citgo -- and
13 they meet the elements of the crime. And that -- and
14 they're very simple.

15 And the evidence shows the robberies, the videos
16 themselves show that, one, we're in Greenville County.
17 Well, this was on Woodruff Road, Two Notch Road or Two Forks
18 Road right there, Woodruff Road in Greenville County, that
19 the Defendant unlawfully took property.

20 Well, in each of the videos you can see the person in
21 the videos taking cash on the 18th, on the 30th and the 5th.
22 You can see the cash on the video. You can see the clerks
23 handing them the cash. And the second day you can see the
24 clerk picking it up off the ground and handing it back to
25 him as he says give me that, give me that.

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1 And the third robbery you can see the cash as well.
2 You can see the clerk, who also testified that he gave him
3 cash from his wallet. So he was actually robbed personally
4 in addition to the Citgo.

5 So we know there was an unlawful taking of property.
6 We know it was in the immediate presence of another because
7 the clerks are right there. They're the ones handing it to
8 him. They're the ones having the gun pointed at them.
9 They're the ones feeling the gun being jacked in the second
10 robbery. So they're there.

11 And that there was violence or they were put in fear of
12 their life. Well, all the clerks testified when we asked
13 them were you scared? And they said, yeah, I was scared.

14 And you can see that there's violence going on in the
15 video as well through the voice and the mannerisms of the
16 person who is -- who is robbing them. He's pointing a gun,
17 hurry up, I don't want to kill nobody today, you know, all
18 the things that he says in those videos that we can talk
19 about that's expressing violence.

20 The way he jumps over the counter in the first robbery,
21 that's violence. Just having the gun pointed at them alone
22 is violence. But these clerk's clearly admitted that they
23 were scared. So that's really not an issue.

24 And, finally, that he was armed with a pistol. Well,
25 you can see in the videos as well that there's clearly a

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1 pistol. And we tried to show it to you each time when we
2 were showing the videos that he's carrying a pistol. And
3 it's this pistol right here. It's this pistol that we
4 recovered from the Defendant, silver stripe, black handle.
5 And you can see the silver stipe very clearly in each of the
6 videos.

7 So the question that there was an armed robbery and a
8 weapon used in the commission of a violent crime, I would
9 submit, is really that there's no argument as to whether
10 that occurred or not. That seems very -- on very solid
11 ground. I think -- I'd also submit that you would leave
12 here firmly convinced, beyond a reasonable doubt that that
13 actually occurred.

14 And I told you in my opening, the issue here is
15 identity. And in all armed robberies where you have
16 somebody with a mask and gloves, identity typically becomes
17 the issue. And I submit to you, ladies and gentlemen, that
18 after eight witnesses and two days of testimony we've left
19 you with the one conclusion is that it was the Defendant,
20 right here, Mr. William Butts, City, who robbed that Citgo
21 not once, not twice, but three times.

22 So let's talk about it. Here is State's exhibit 8 that
23 was admitted into evidence. And this is going to go back to
24 the jury room with you. So you'll get to have this and
25 y'all can study it. Now you can also watch the videos as

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1 many times as you want.

2 Again, I've seen them about eighty-two times. Y'all
3 can catch up with me if you'd like.

4 (Laughter)

5 You don't have to. But you'll have that because those
6 -- these videos right here are admitted into evidence as
7 well. But here are stills from those videos. And this is
8 -- this is something that you can look at to show this
9 robbery.

10 And so what I've done, since we have three robberies is
11 that I want to look at the robberies from a broad sense
12 before I get into the details because there are a lot of --
13 I want to call them tentacles in this case. There are a lot
14 of specific detailed facts that are extremely important for
15 the State to prove that it was the Defendant who robbed
16 these -- this Citgo on those three days.

17 But let's look at it first of all from a broad
18 perspective. You have three robberies, the 18th, the 30th
19 and the 5th. Now there are a lot of similarities in these
20 three robberies. And you saw it from the videos, but when
21 you look at the stills you can see the similarities. You
22 can see in the first robbery black pants, black shirt,
23 hoodie, gun. There's the gun right there. You can see it
24 pointing at the clerk as he's jumping over the counter.

25 About twelve days later Citgo, white hoodie, black

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1 shirt that we recovered from the McCroskey's house that
2 belonged to the Defendant, gun, black pants, black shoes as
3 well.

4 And then you've got the November 5th robbery, same
5 hoodie, black shirt, again, except blue jeans. I'm going to
6 talk about blue jeans a little more, the Defendant's blue
7 jeans.

8 And you remember Investigator Campbell talking about
9 these blue jeans and comparing all the points in the blue
10 jeans, kind of like a fingerprint. You know, you match up
11 points on your fingerprint to make an identification. Well,
12 that's what he kind of did in the jeans, he matched up the
13 similarities in the jeans.

14 So what we've done -- and then, of course, mask. And I
15 failed to mention mask. Mask that we recovered from the
16 McCroskey's, who they say it had to be Mr. Butts' because it
17 wasn't theirs and this was one that they found. And it's
18 homemade. This is a toboggan. This is something you put
19 over your head, but it's something that you, you know, if
20 you pull down over -- over your face, you can see through
21 there.

22 If you recall on the first robbery you'll remember the
23 clerk testifying, and we showed you the video of, him
24 pulling it down as he walked in the door. And so this would
25 be the kind of mask that you would have to pull down over

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1 your face. And it was loose. He said it was loose fitting
2 as well. So it was loose fitting over his face and that he
3 could see out of the eyes. He said he had trouble seeing --
4 seeing through the eye-holes and had to keep moving it down.

5 So in addition what we've done in preparing this case
6 is we've got to control -- remember in high school where you
7 did an experiment and you had a control -- you had a known,
8 a known in something? And then you do your experiment and
9 you compare it to the knowns so you can come to a scientific
10 conclusion.

11 Well, in this case the known is the video of November
12 3rd. This is the Defendant at the Citgo. Now we know it's
13 him in the Citgo because everybody who knows him, the
14 McCroskeys, both McCroskeys and even himself has said that's
15 me in that video.

16 Investigator Campbell showed him this still right here
17 that's entered in. Showed him that still and he said,
18 that's me. Reagan McCroskey and Kay McCroskey both said,
19 that's Williams Butts.

20 So we know that's -- we know that's William Butts, we
21 know that's our control. And so we're comparing the known
22 to the ones in which we've got to prove identity. And so we
23 look at all the similarities there.

24 So that's what -- that's what this board does -- does
25 for you. It shows you how similar -- and I submit, ladies

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1 and gentlemen, there's no doubt that the same person robbed
2 all three of these. The similarities are almost
3 unquestionable. The mannerisms, the way the person goes
4 down and looks under the cash register on each robbery. The
5 same gun, the same mask, the same hoodie, the same clothes
6 in the first two, jeans in the second.

7 Finally, right here we'll notice our control is buying
8 a cigar. Right there, you can see the clerk getting a
9 cigar. Well, we also know in the second robbery the person
10 takes a cigar while he's robbing the place. There it is
11 right there.

12 And you can see his hoodie -- this comes up and you can
13 see the gloves right there, and the hoodie comes up to his
14 wrist right there, and the gloves, and then he's taking the
15 cigar while he's robbing it. A lot of similarities, a lot
16 of circumstantial evidence there, a lot of conclusions you
17 can draw from those things.

18 But let's get to the details, the specifics even more
19 than just laying out the broad scheme of the -- of the
20 robberies. The first armed robbery, let's start there. And
21 that's the way we presented it the first, second and third.
22 It just helps me remember the evidence that we put up.

23 So we have the first robbery. And we have William
24 Butts being dropped off at a Rite Aid the exact same time,
25 around 3:30 in the morning at the time the robbery occurred.

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1 Now that's pretty coincidental.

2 We know that Reagan McCroskey picked up Mr. Butts here,
3 went and got Chris Belcher, came back up, drove through here
4 and dropped him off right here. Well, the Citgo's right
5 there. So it's twenty yards, fifteen yards away to the
6 Citgo. She drove back out and parked right here where about
7 eight minutes later he came walking up to the car.

8 Now how do we know Ms. McCroskey's telling the truth
9 about that? Well, talked about corroborating evidence. We
10 know beyond a shadow of a doubt that it was her car in a
11 video that we showed you, the Rite Aid video that dropped
12 her [sic] off right there. She said she dropped her [sic]
13 off, and we had a car in a video from the Rite Aid that
14 shows her in that Rite Aid at 3:30 in the morning. So we
15 know she's telling the truth.

16 So he then goes in, robs the bank, I mean, robs the
17 Citgo, leaves, gets in her car and they go about their merry
18 way. They go eat at Waffle House. He pays with a twenty.
19 And they go back and what does she see? She sees him get
20 undressed and sees him put a gun, a gun that she later
21 removes from her house and takes to Kyille Seward's house,
22 this gun, in his shoes, in his black shoes, and that she
23 knows him to carry this gun during this time.

24 Now Ms. McCroskey, Reagan McCroskey, was about sixteen
25 and a half years old at this time. High school sweethearts,

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1 high school, in love, falls in love with the Defendant.
2 They have a child together. They're even living together on
3 and off at her house.

4 But she walked into this courtroom, and she had to
5 testify. And she testified right there on that stand for
6 over an hour through my direct examination and through cross
7 examination. And she said that I took him to the Rite Aid.
8 We saw the video. She said that's her car. She said that
9 he [sic] picked him up.

10 When she dropped him off right there at exact -- within
11 minutes of the robbery, she said he was wearing black pants,
12 and black shoes and she didn't really say what -- and a t-
13 shirt. And I asked her if he had anything else in his arms
14 and she said, I don't remember.

15 But she put him right there. She put him right there
16 at the robbery, at the time of the robbery, 3:32, right
17 there on the stand. You saw the Rite Aid video, it was
18 3:30. And then she picked him up and took him home and then
19 went to bed after going to Waffle House.

20 But then she looked at this video and what did she say?
21 I said, do you recognize that voice? She said, yes. I
22 said, whose voice is that on the video? She said, William
23 Butts. Do you recognize those mannerisms? Yes. Who is
24 that? It's William Butts.

25 She identified him in this video, in this video, in

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1 this video and in this video. That's the father of her
2 child. She was on cross examination, she hesitated. She
3 hesitated for forty-five seconds. Defense counsel asked
4 her, it's not him on that video, is it? She hesitated, and
5 she hesitated. And rightfully so. And she said, no, that's
6 him.

7 You've heard a lot from Defense counsel about a meeting
8 that we had with Ms. McCroskey in August of this year of
9 threats and coercion. And there was a meeting of a witness
10 that had given a statement on November 18th of 2009. And
11 she told you what she initially said in that statement.

12 She said, I drove him to the Rite Aid, I dropped him
13 off, he came back and we went home. And she told
14 investigators about a gun that she had carried over to
15 Kyille Seward's house, also known as Ace. That's what she
16 said in November 18th of 2009. So in August of this year
17 when this case is being prepared for trial she's then --
18 talks to investigators about her statement and whether she)
19 wants to cooperate.

20 Now, it's clear, she has been at least associated with
21 potential criminal activity. And so she was offered, as was
22 disclosed, a proffer agreement. She was offered an
23 agreement to protect her words. And she agreed to cooperate
24 and give a full statement.

25 I asked her, I said, did you tell the police

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1 everything, the entire truth when you gave that statement
2 back in '09? She said, no, I did not. And then I read -- I
3 had her read a portion of the proffer. I said, what is the
4 agreement that you have? And it says, I have to tell the
5 truth. And if I tell the truth, then I'm protected, and I'm
6 not going to be charged. That was the agreement.

7 You heard her mama talk about that agreement. And her
8 mom was unequivocal when she said there was no threats,
9 there was no coercion, there was -- there was nothing. It
10 was a conversation. I'm the one who really told her to do
11 -- to do the right thing, to tell the truth.

12 And that's exactly what Reagan McCroskey did. She came
13 in here and told you, ladies and gentlemen, that it was her
14 father's child who robbed the Citgo three separate times in
15 about eighteen days. That man sitting right there. That's
16 what she told you.

17 Also, and I mentioned earlier in the first robbery was
18 the mask. She mentioned that she threw a mask away at one
19 point in time. We know that this was one mask that belonged
20 to the Defendant because McCroskeys gave it to us. We know
21 that Reagan McCroskey threw a mask away when she found one
22 in her house.

23 The clerk, the same clerk in the first and the third
24 robberies says, the mask was different in the third, and it
25 was tighter. It was -- it was a little bit different than

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1 the one that I saw. Well, through Reagan McCroskey's
2 testimony we know that the Defendant had at least two masks.
3 Makes sense.

4 Now let's go to the second robbery. We've got same
5 pants, same shoes, same gun, a black mask, white hoodie and
6 a robbery, this shirt owned by the Defendant. And keep in
7 mind that this clerk said, you know, I felt like it was
8 somebody I'd served before. Well, we know the Defendant had
9 been to the Citgo at least once. And we know that he lives
10 within a five minute walk from there. And that was just
11 something that the clerk sort of -- sort of felt.

12 We also know, as I pointed out earlier, that this --
13 this person, the Defendant, took a cigar when he was robbing
14 it, and we know he likes to buy cigars, in the same exact
15 area, almost identical where he bought it.

16 And then we go to the third robbery. In this robbery,
17 same t-shirt, same hoodie, but he's got jeans on. The
18 jeans. Well, we found these jeans at the McCroskey
19 household. They were given to us. These are the jeans.

20 And y'all heard Investigator Campbell talk about the
21 jeans. So you've got the jeans, and you've got your known
22 in our scientific experiment here. You've got your known.
23 And you've got your person you're trying to identify.

24 And you've got the points that are the same points that
25 you can see in each one that there's no doubt, those are his

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1 jeans, and he's wearing them in this robbery. You can look
2 at the bottoms. You can look at these points and these
3 points, and you can see them in the videos. And, again,
4 same hoodie right there.

5 Now, all of that is a lot of circumstantial evidence.
6 And I talked about Reagan McCroskey. But then we had her
7 mother come in and testify as well. And, again, her mother
8 was a little more unequivocal. She was a little more stern.
9 She said -- she looked at the videos, she said, that's him.

10 Now, he'd been living with her. She'd been doing his
11 laundry, they've been together many times, she heard his
12 voice, she knew his mannerisms and she knew what clothes he
13 wore. And she said, that's him. Can't get anymore direct
14 than that.

15 Then we have the gun. How else are we going to tie the
16 Defendant to the robberies? Well, we've got to have a gun.
17 Now how do we know this is his gun? Well, we know this
18 because in '09 Reagan McCroskey told us that she took this
19 gun after she got a phone call from William Butts to take it
20 over to Kyille Seward's house.

21 So what does she do? She and her friend, Megan, grab
22 the gun, roll it in a shirt, drive it over to Kyille Seward.
23 He takes it from them and goes and puts it in his house.
24 Well, as soon as Investigator Weiner learned this what did
25 he do? He went over to Kyille Seward's house. And what did

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1 he find right under the mattress? This gun. So we know
2 that he has a gun like this. We know that the gun used in
3 each robbery looks exactly like it. Another way of
4 identification.

5 Now this is my last chance to talk to you. So I have
6 to kind of anticipate what opposing counsel may say and try
7 to -- try to talk about some miscellaneous items and
8 investigative issues.

9 And you may hear about a shoe print. And there was a
10 shoe print left in this robbery right here because he's
11 climbing over the counter right there. And a shoe print was
12 -- was extracted. And it was not a match to the shoes that
13 Mr. Butts was wearing when he was arrested.

14 And I asked Mr. Weiner, Investigator Weiner, what kind
15 of shoes was he wearing? And he said, kind of Timberland
16 boots. I said, what color were they? He said, they were
17 tan. Well, this person is not wearing any tan shoes, he's
18 wearing black shoes.

19 And so -- and I asked Mr. Weiner, you know, did you --
20 were you able to find any shoes? He said, no, I wasn't able
21 to find any shoes like that from the Defendant. But that
22 doesn't mean he wasn't wearing them then. It's just that
23 the shoe print didn't match the shoes that we had recovered.

24 But everybody, Reagan McCroskey, on this date said he
25 was wearing black shoes. And she says he has black shoes

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1 like that. And guess what he was wearing in our control?
2 Black shoes. So we know he owns a pair of black shoes.
3 Another way to link identity.

4 You also heard Investigator Weiner talk about another
5 employee. He's talking with the manager, you know, who do
6 you think could do this? He's doing an investigation. He
7 says, what about us, look at this other employee. He may --
8 he may know something because it's true, he's looking down
9 for the drops.

10 Now I don't know how hard it is to learn that
11 convenience stores keep drops down in here. We know that
12 they're getting cash all the time, especially the really
13 busy ones. And after a certain amount of time they've got
14 to put it in a safe, but they've got to come up with a
15 policy about how often they do that.

16 But we know that he's been to this store a lot. And we
17 know that he likes to chat with the clerk right there
18 because he does it on the video. Now how he knows that, I
19 don't know, but this individual looks for the drop each
20 time. And so an employee would be a good suspect.

21 And so Investigator Weiner got the name, looked him up
22 and said, he's two hundred and twenty pounds. I got the
23 videos of the robbery, there's no way that this guy is two
24 hundred and twenty pounds. So he immediately excluded him
25 and at the same time he was getting further evidence of the

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1 known in the videos of the Defendant right there. So his
2 investigation led him straight to where we are now.

3 We talked about the gun, and we talked about
4 fingerprints, we talked about DNA and triggers. And DNA and
5 fingerprints are a lot of things that's kind of fun to watch
6 on TV and CSI. And I'm a big fan of those shows.

7 And I asked Detective Weiner about fingerprints. And
8 he said, you know, I've done hundreds of these with guns,
9 and it's not that common that you give fingerprints on
10 there. They smudge, they don't take well. So it's not
11 uncommon. So it wasn't dusted for fingerprints.

12 DNA can even be trickier. It's difficult. It wasn't
13 tested for Mr. Butts' DNA as well. And I said, why did you
14 do that? And I said, well, -- he said, well, we didn't need
15 to do that because we knew whose gun it was. We knew it was
16 William Butts' gun. DNA is for when you don't know who it
17 is. We know who it is.

18 So that's why law enforcement chose not to test any of
19 those forensics because it was unnecessary. We knew that
20 Reagan McCroskey had taken that gun to Ace's house. And we
21 knew that was his gun. And we knew it was the same gun used
22 in the robberies.

23 So let's just sort of recap, and I'll let y'all be so
24 y'all can get to your deliberations and back to your -- your
25 normal lives. We've got the same clothes, we've got shoes,

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1 we've got pants, we've got jeans by the same person. We all
2 know those are William Butts'.

3 We know he was there at the exact same time of the
4 location of the first robbery wearing those clothes at the
5 exact same time. He has a five minute walk from his house
6 to the Citgo. We know he's familiar with the store. We
7 know he steals a cigar down there. We have two people, this
8 child's mother, who said it was him in the robberies.

9 You get to use your common sense in here. And that's
10 the great thing about being a juror. You don't leave your
11 common sense at the door. You get to take it with you, your
12 life experiences and everything that you know. And you get
13 to put it when you analyze all this evidence. You get to
14 use all that in the jury room.

15 And you can look at all that. And you can see that
16 it's the Defendant. So he had the opportunity to rob the
17 store on those three days. He had the inclination. He
18 certainly had the proximity. And he had the tools.

19 So, therefore, ladies and gentlemen, I submit and leave
20 you that you should be -- beyond a reasonable doubt, without
21 hesitation, firmly convinced that it was the Defendant right
22 there, William Butts, who did rob the Citgo with a gun on
23 these three dates, the 18th, the 30th and the 5th, putting
24 in fear those two clerks. Thank you.

25 THE COURT: Mr. Robinson.

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1 MR. ROBINSON: Please the Court.

2 THE COURT: Yes, sir.

3 MR. ROBINSON: Good morning, again.

4 THE JURY: Good morning.

5 MR. ROBINSON: How are you? You know, they were -- I
6 was nice enough to get this whole thing cleared so that I
7 don't have a battlefield here to trip over or injure myself.

8 (Laughter)

9 I was all ready to get tripped up over here. But let
10 me -- I appreciate y'all being here today and listening and
11 so forth. But I want you to go through with me a little bit
12 this evidence that they say they have in this case.

13 And I want you -- because you'll be able to take back
14 all these exhibits. And you'll see the times on everything.
15 And I want you to think about this. This is -- first thing
16 I want you to take with you. And you're all going to -- you
17 have no pads. So you -- want you to look at this. Okay.

18 The Rite Aid video that they have, it shows the car,
19 look at the car. Look at the time. It is 3:32. She drives
20 by -- she drives around at 3:35. You know what time the
21 Citgo video comes up -- the Citgo is? 3:32. He was in the
22 car at that time.

23 According to their own evidence that they have she
24 would have dropped him off at 3:32. So it would be
25 physically impossible for him to be at this Citgo doing

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1 anything at that time. So look at the State's own evidence.
2 We'll look at it in here, 3:32, drives by at 3:35, Citgo
3 video is at 3:32. Dropped off after the alleged incident,
4 after the alleged incident.

5 So that's the first crack that you're going to see in
6 the State's case that they have. There are a lot of cracks
7 because if -- to believe what the State's saying, all this
8 stuff that we have here, the gun, these jeans and so forth,
9 these LaGear jeans. I don't think anything in evidence is
10 regarding the size that the jeans, this t-shirt, this t-
11 shirt and this hoodie are all unique to Mr. Butts.

12 Now on cross examination Mr. Weiner said this
13 particular gun and so forth. And no one has connected this
14 gun to these robberies. No one could identify this gun as
15 being the gun.

16 This gun is something that is made. And thousands and
17 thousands of this particular gun are made. There's no --
18 there's nothing on this gun that distinguishes it at all in
19 this case. Neither of the clerks could identify this gun as
20 the gun that was the gun used by this robber in the case.
21 They can't do it.

22 These t-shirts, I think we all can agree most of the t-
23 shirts that are out there, that we're talking about here,
24 the t-shirts that are in evidence. These are t-shirts that
25 we can probably -- that most of us can get at stores like

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1 Wal-Mart, Target, any place really.

2 The hat, the thing about the hat that's interesting is
3 that you know this person was supposed to have -- that wore
4 this hat, did you see glasses on this person that had this
5 hat on? Did you see glasses on this person? The robber
6 wasn't wearing -- didn't have glasses. Mr. Butts wears
7 glasses.

8 The pants, these are pants that the officer tried his
9 best to say these are the most rare pants in the world and
10 that only one person in South Carolina, in the County of
11 Greenville could have this particular pair of pants.

12 Now the physical evidence, if you look at it, is kind
13 of a weird situation in a way. It's kind of different if
14 you listen to how the State's saying this. And just think
15 about -- you know, Mr. Wilkins talks about common sense.
16 And I'm -- I'm a big believer in common sense, especially
17 when you come to that door and you don't leave your common
18 sense at the door, of course.

19 But I was thinking about what we're talking about here.
20 We have probably -- I can't imagine -- you can't really
21 imagine how many people live in this area. Did you hear the
22 officer -- Officer Weiner say the path was a well worn path
23 between where he lived and this -- this Citgo.

24 So what he wants you to believe -- and just think about
25 this. He's saying that because the path was worn Mr. Butts

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1 must have been walking this path for like -- God, I can't
2 imagine how many times they'd have to walk on this path to
3 wear that path like it was. He's saying he's the only
4 person that was walking on this path, had the opportunity to
5 wear this path down, and he's the only person in this whole
6 little area here that could have -- could have been, the
7 whole person. Now does that make any sense to you?

8 And is he the only person that would ever go to a Citgo
9 or a convenience station to get a cigar or cigarette? Think
10 about that. Would he be? Use your common sense.

11 Then -- and this was a little bit unusual. I don't
12 know if I could understand this. You see -- and look what
13 the State's done, if you think about it. What they've done,
14 they've taken a picture -- and I think Mr. Wilkins alluded
15 to this. He said that Mr. Butts identified himself in this
16 November 3rd picture and -- which is right here, and right
17 here and right here.

18 That's -- you know what's funny? That's not the date
19 of the robbery. That's not the date -- and think to
20 yourself, why they put this picture that's not even the date
21 of the robbery in front of y'all when it's not even -- when
22 it's not even connected to these pictures. Why did they do
23 that? Could it be a smoke screen? Could it be some sort of
24 red herring out there that you're supposed to look at and
25 think about?

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1 And, you know, in the beginning of this case the Judge
2 told you about reasonable doubt and what it means and so
3 forth. Reasonable doubt is not something like could be,
4 maybe, possibly, maybe it's the guy, maybe it's not him.
5 Because, you know, a lot of us, when we watch TV, and we get
6 on the internet and watch or look at the news and so forth,
7 when we see an arrest being made or the police getting
8 someone, we want to believe that the police got the right
9 guy or the right gal. And we presume that that person is
10 guilty.

11 But when you came into this courtroom you took an oath,
12 and that was gone. And the oath that you took is that the
13 Defendant, Mr. Butts, why don't you stand up, Mr. Butts, Mr.
14 Butts is presumed innocent. And the State must prove their
15 case beyond a reasonable doubt.

16 And the instruction -- you can sit down. And the
17 instruction that the Judge is going to give you is
18 reasonable doubt is not every doubt, it's a doubt -- if
19 you're firmly convinced that Mr. Butts is guilty, that's
20 what the Judge is going to tell you. But the State can't do
21 that based on what they've shown here.

22 Because, you know, we all know -- now, we all in our --
23 in our past may have worn toboggan hats and things like
24 that. This was found in a van. Now this is -- this is the
25 incredible part because you guys are all real -- I can tell

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1 you're all pretty -- you're going to be beyond this.

2 But think about this, this was found in a van in 2011.

3 This is two years after, I'm not a mathematician, after
4 2009, this is two years found in a van that had access by
5 the brother, the son, her husband. I'm talking about the
6 senior Butts, Mrs. Butts [sic], all these folks had access
7 to that van where this was found.

8 That wasn't Mr. Butts' van. He wasn't even around.

9 They're trying to tie this little hat -- but, you know, they
10 could have gone one step further if they really wanted to --
11 to prove this. They could have gone one step further 'cause
12 what do you think we have when we put on a hat, what do you
13 think is left behind, usually? Hair follicles.

14 Guess what? There were no follicles tested. There was
15 no DNA. I'm a firm believer in CSI. I watch it all the
16 time. But I'll tell you, it's not hard, you can see hair
17 follicles are usually left behind, something. Well, this
18 was never tested. Not only was it never tested, this was
19 found two years after the fact in a van that belonged to Ms.
20 McCroskey, not Mr. Butts.

21 But I want you to keep in mind when you look at this,
22 these are the pictures from the times where there were no
23 robberies. Mr. Butts acknowledges that's him 'cause he went
24 to the Citgo on this date. And that's him. Does it prove
25 anything? No. What it proves is that there's something odd

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1 going on here for all these together like this when it's not
2 even a part of this. That's odd.

3 So let's look at what we're talking about here as far
4 as I've looked at the video eighty-three times. No, I'm
5 just kidding. I haven't looked at it that many times. But
6 let's go back to look at why there's reasonable doubt, the
7 physical characteristics of this robber that allegedly did
8 this, okay?

9 Now we have the fact that I told you in the beginning
10 the times -- look at the times when you go back there. He
11 -- no one -- Mr. Butts could not have been there in this
12 store at that time because he was just being dropped off and
13 picked up. There's no way.

14 Plus, she also testified it wasn't black pants, it was
15 green pants. Green pants she's testified to. Green pants
16 and a t-shirt. No hoodie, no mask, no gloves. Their
17 witness testified to that.

18 Well, let's look at the physical characteristics.
19 First thing as far as reasonable doubt goes, the height.
20 The testimony was that Mr. Butts is six-one and above. The
21 clerks testified the robber -- and you could -- and I want
22 you to do this for me, seriously. I want you to go back and
23 look at it and see how tall this guy is. And you'll see --
24 remember the smaller clerk? Remember the smaller clerk?
25 The guy that's got a little goatee or whatever it is? He's

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1 small -- he's -- he's small. This guy -- he's a lot less
2 than six foot.

3 Look at the difference in height between Mr. Butts and
4 the six-one that they talked about and this alleged robber.
5 He's a head shorter, if you look at it, than these clerks.

6 Secondly, look at the -- listen to the voices. The
7 Prosecution was nice enough in this case to give you the
8 opportunity to listen to the voice from 11/3, which is the
9 date he went into the Citgo. Has nothing to do with these
10 robberies. And as the employee from Citgo said, thousands
11 of people go in and out of the Citgo all the time as
12 customers. Listen to his voice, compare it to the other
13 three incidents. They're dramatically different. But
14 listen. Use your ears; listen. Height, sound.

15 And look, if you will, for me, if you notice -- if you
16 look carefully at these pictures the robber has got
17 something on his left arm. Look at one of the videos here.
18 He's got a -- it appears to be a tattoo on his left arm,
19 left arm.

20 Ms. McCroskey, Sarah McCroskey, when she was describing
21 him said he did not have a tattoo on his arm. She also said
22 he was six-one. Glasses, shoe size. Okay. Now the officer
23 -- Officer Weiner said it was -- Mr. Wilkins has minimized
24 that by saying, well, he had Timberland boots. Don't you
25 think that they would have been able to show that the sizes

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1 were the same? That the person on this counter had the same
2 size shoe as Mr. Butts? But they couldn't do it because
3 they don't match.

4 And, you know, if you think about the testimony of Ms.
5 McCroskey, the elder Ms. McCroskey, she never saw him ever,
6 never saw him -- never saw him with a gun, ever.

7 The other piece of reasonable doubt, we've got another
8 person as a suspect. The person's name is Dedrick McCray.
9 That's the person the manager of the Citgo, who's probably
10 in the best position of anyone being the manager of looking
11 at these videos. He said or he suspected that it was a
12 former employee, Dedrick McCray.

13 The clerks also testified that they thought it was a
14 former person or someone who had a familiarity with the
15 operations and where things were. Well, if you'll notice in
16 the videos, he went right exactly to the cash box, knew
17 where the drops were, knew where the money was kept, knew
18 the hundreds were in a different place. He knew all that
19 stuff. Does that sound like a former employee? Now Mr.
20 Kelly thought it was.

21 So we have physical identity's different, physical
22 differences, we have a former employee possibly in this
23 case. And, you know, if you look at Sarah McCroskey as far
24 as this person, it's not only out of time, it's completely
25 different.

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1 But also, too, she said when she dropped him off at the
2 exact same time she said it was green pants and a white
3 shirt. That's what she said. It wasn't black pants. It
4 wasn't a hoodie, wasn't gloves.

5 But you see, in your deliberations you have to find
6 beyond a reasonable doubt that all these materials, all
7 these materials and these things are also in here. These
8 items, this gun were all in there and these robberies and so
9 forth are all connected to that.

10 But you know what is the most disturbing thing in this
11 case? And you may have seen that at the outset. Now Mr.
12 Wilkins has painted this as a meeting. The older Ms.
13 McCroskey painted this as a little get together, basically.

14 And Mr. Wilkins in his opening said, imagine, imagine
15 being a clerk. You imagine, the fourteen of you, the twelve
16 of you, imagine what it would be like with two investigators
17 with guns, at least one with guns, two Solicitors, the
18 sitting Solicitor and an Assistant Solicitor coming to your
19 house, and you have a baby, or a grandchild, telling you --
20 and you've heard the testimony of Sarah McCroskey. You
21 heard that testimony.

22 Was that right? Was that testimony that she gave with
23 the identification of voices -- now we're talking about --
24 about five seconds, twenty seconds of this person coming in
25 this place. Think about where -- when he came, think about

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1 the threats that were made. You had an opportunity to look
2 at her up on the stand there. She was scared to death
3 because if she didn't testify the way the State wanted her
4 to testify, she could go to jail. And that's what they told
5 her, go to jail, lose your kid.

6 Is that right? Do you think their testimony is
7 credible up on that stand? Do you think either of the
8 testimony is credible when you've got a kid and a grandchild
9 being threatened? You telling me that's a -- just a meeting
10 between friends for cookies and doughnuts? Heck, no.

11 That was a meeting for the purpose of implicating Mr.
12 Butts over there as a perpetrator. But they forgot in all
13 that -- not only did they forget that it was wrong what they
14 did, but they also forgot that the evidence in this case
15 does not establish that Mr. Butts is the perpetrator. Their
16 time's wrong. The clothes are wrong. The voice is wrong.
17 The height is wrong. Everything's wrong.

18 And you remember that the younger Mr. -- younger,
19 excuse me, older Mrs. Butts -- Ms. McCroskey talked to Mr.
20 Wayne Campbell back there, back in 2009/2010 and she told
21 you she read out her affidavit that she was threatened by
22 him, that he would take away the kid, her granddaughter.
23 You remember that? What he said? What she said? How can
24 you trust, how can you find credible threatened testimony?
25 How can you believe someone who's been threatened, and

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1 coerced and intimidated? You can't.

2 Ladies and gentlemen, I ask you to use your common
3 sense in this case and listen to the Judge's instructions on
4 the law. You are in this case as the Judge described in the
5 beginning, you are the judges of the facts.

6 Look at all these pieces of evidence. Look at the fact
7 that there's a big physical difference between Mr. Butts and
8 this robber. Look at the fact that the times are odd. Look
9 at the fact in the Citgo and the Rite Aid videos that there
10 -- it is physically, it is impossible, what they're talking
11 about. Look at these things and tell this Court, tell --
12 ask yourself, are these so unique, this, to Mr. Butts?
13 They're not.

14 There's a famous quote that I wanted to use in this
15 case. It is -- it describes your role. In the beginning I
16 talked about the fact in this courtroom, what you're doing
17 in this courtroom is one of the biggest things that you can
18 do as a citizen is to sit as a juror in peacetime.

19 This is a quote -- and there was just a -- just an
20 announcement a little while ago, this is Martin Luther King,
21 Jr., who I -- who I read a lot. This is what he said, this
22 is -- this is -- this is perfect for this. This is what he
23 says, injustice anywhere, anywhere, is injustice everywhere.

24 I ask you to do justice, seek the truth, look at the
25 evidence in this case. And if you do that, if you do that,

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1 if you follow your hearts and you follow your heads, there
2 can be one conclusion, and that is that Mr. Butts is
3 innocent.

4 And, again, I'm sorry, I've tripped a lot, ---

5 (Laughter)

6 --- and I made silly moves, but I'm sorry. Don't hold
7 it against my client. But I want to thank you very much.

8 **THE COURT:** All right, ladies and gentlemen, it's time
9 for me to give you a charge on the law. I've told you when
10 you -- when we first got in here that you are the judges of
11 the facts, and I am the judge of the law, which means that
12 you must, under your oath, accept the law as I give it to
13 you. If you come into this courtroom with any preconceived
14 notions about what you think the law is or what you think
15 the law should be, then I would ask you now to disregard
16 that and accept the law as I give it to you.

17 Now, before I get started, it's probably going to take
18 me fifteen or twenty minutes. Is there anyone among you who
19 wants to take a break before you hear my charge?

20 (Whereupon a juror responded affirmatively)

21 **THE COURT:** You do?

22 **JUROR:** Yes, sir.

23 **THE COURT:** Okay. Good. We'll take about a five
24 minute break, and we'll come back in, and I'll give you the
25 charge.

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1 (Whereupon the jury exited the courtroom at 9:58 am)

2 **THE COURT:** All right. We'll be in recess.

3 (Whereupon court was in recess at 9:58 am)

4 (Whereupon court resumed at 10:06 am)

5 **THE COURT:** Bring them in.

6 (Whereupon the jury entered the courtroom at 10:07 am)

7 **THE COURT:** All right, y'all. I don't blame you for
8 wanting a break. It's hard enough to listen to two
9 attorneys in a row, much less three. Particularly when the
10 third one's wearing a dress.

11 (Laughter)

12 **THE COURT:** But let me go ahead and get started. I
13 told you probably twice over the course of these last couple
14 of days that the Defendant is presumed innocent until proven
15 guilty beyond a reasonable doubt. And I'm reminding you of
16 that again. And the Defendant will not -- will retain that
17 presumption of innocence until you determine that the State
18 has met its burden of proving each and every element beyond
19 a reasonable doubt.

20 The reason why you've heard me say that several times
21 is because it's not just a legal theory and it's not just a
22 happy set of words that I say. It, indeed, is the
23 cornerstone of our criminal justice system. Therefore, you
24 must take that very seriously and remember that in your
25 deliberations in this case.

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1 Now, I've also bandied about the term reasonable doubt.
2 And the attorneys have spoken about reasonable doubt as
3 well. And it's important that I define that for you. And
4 proof beyond a reasonable doubt is proof that leaves you
5 firmly convinced of the Defendant's guilt.

6 Now, we all understand that there's very little in this
7 world that can be proven to an absolute certainty. And the
8 law doesn't require that the State convince you beyond any
9 possible doubt.

10 However, if you are firmly convinced of the Defendant's
11 guilt based on all of the evidence that you have received,
12 then it's your obligation to find the Defendant guilty.
13 However, understand, that if after reviewing all of the
14 evidence and analyzing all the witnesses who took the stand
15 in this case, looking at it all together, that there's a
16 real possibility that the Defendant is not guilty, then
17 under your oath you must give him the benefit of the doubt,
18 and you must find him not guilty.

19 Now, ladies and gentlemen, in this case there are
20 multiple charges. There are six charges, three armed
21 robberies and three possession of a firearm during the
22 commission of a violent crime.

23 Now, you consider each and every one of those charges
24 separately and distinctly. They are all separate. And
25 understand that the State has the burden of proving each and

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1 every charge beyond a reasonable doubt.

2 So understand that when you return your verdict it
3 doesn't have to be monolithic, meaning you don't have to
4 return a verdict of guilty or not guilty on every charge.
5 You can have any combination of verdicts that you determine
6 is appropriate based on your consideration of the evidence
7 in this case.

8 Now, evidence takes two forms, direct evidence and
9 circumstantial evidence. And I'll define the difference for
10 you. And then I'll give you an example that may -- that may
11 explain it a little bit more clearly.

12 Direct evidence is evidence which immediately
13 establishes the fact to be proven such as an eyewitness --
14 an eyewitness who says I saw it, I smelled it, I touched it.
15 It directly establishes the fact to be proven.

16 Circumstantial evidence is proof of a collateral fact,
17 a chain of facts which then -- then together prove the main
18 fact to be proven, a chain of facts, collateral facts. Now
19 that's an easy definition, but I will tell you an example
20 that hopefully will give you a little bit better idea of the
21 distinction between direct and circumstantial evidence.

22 Let's say that one January evening you go to bed. And
23 as you go to your bedroom you look out the window and you
24 see in your parking lot or in your front yard you see that
25 there's no precipitation on the ground at all. You go to

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1 sleep.

2 You wake up the next morning. You pass that same
3 window. You look out and you see that there's a blanket of
4 snow across the front lawn or in the parking lot. You also
5 notice that in the snow there are footprints that come to
6 the door and then lead away from the door.

7 So you've got direct evidence that it snowed because
8 you can see the snow, you can feel it, you can touch it, you
9 can taste it, you can pick it up. So you have direct
10 evidence that it snowed. It's immediately established by
11 the fact that the snow is on the ground.

12 But you also have circumstantial evidence that someone
13 early that morning or during that night walked to your front
14 door and walked away. Now you don't see the person, and you
15 don't smell them, you don't taste them, but you know they
16 came because you can see the footprints that came and left.
17 And you know the precipitation had not been there the night
18 before. Therefore, circumstantially you know that someone
19 came to your house and left.

20 Now, there is no preference under the law for direct or
21 circumstantial evidence. Under the law they are treated
22 equally. You are left to determine what value or what
23 weight you may give to the evidence that comes into the
24 record be it direct or circumstantial. That's entirely your
25 role and your province.

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1 Ladies and gentlemen, you'll analyze the evidence in
2 this case and determine what's important and what's not
3 important. And you will judge the credibility of the
4 witnesses.

5 You saw the witnesses take the stand. You had the
6 opportunity to hear what they had to say. You had the
7 opportunity to see the manner in which they presented their
8 testimony. You saw their body language. You had the
9 opportunity to determine whether, in fact, they had
10 something to gain from what they said or not, whether there
11 was a bias or a prejudice in any way, shape or form. And
12 you'll take that and you'll determine who is to be believed
13 and who is not to be believed.

14 You'll also look at all of their testimony
15 collectively. And you will decide -- you will decide
16 whether to put great weight on a part of their testimony or
17 all of their testimony or not give great weight to a part of
18 it or otherwise.

19 Also, understand that you can believe a part of a
20 witness' testimony and choose not to believe another part of
21 a witness' testimony. Again, it's all in your discretion,
22 all in your discretion.

23 In this case you noticed that the Defendant did not
24 testify. I told you earlier, the Defendant has that right
25 not to testify. Under the Constitution of the United States

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1 of America we all enjoy the right to remain silent, which
2 means that we can't be compelled to come into court and
3 testify.

4 We don't -- and the Defendant does not have the burden
5 of proving anything. The Defendant doesn't have to say, do
6 or prove anything to you in this -- in this case. The
7 burden of proof is on the State.

8 Now, you cannot hold it against the Defendant that he
9 elected not to testify because it's his Constitutional
10 right. And you cannot hold it against somebody that they
11 have elected to exercise a Constitutional right that we all
12 enjoy. Not only can you not hold it against him, you're not
13 even allowed to discuss it in your deliberations. All
14 right.

15 I'm going to read for you the specific law as to armed
16 robbery and commission of a -- or, excuse me, possession of
17 a weapon during the commission of a violent crime. And I'm
18 sorry I'm going to read it to you, but sometimes when I have
19 a very precise definition of law, it serves me well and it
20 serves y'all well as well for me to read it so that we can
21 get it exactly right and we have some precision in that
22 regard. All right.

23 The Defendant is charged with armed robbery. In order
24 to prove this offense the State must first prove beyond a
25 reasonable doubt that the Defendant took personal property

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1 from the person or presence of another person. Property is
2 in the presence of a person if it is within the person's
3 reach, inspection, observation or control so that the person
4 could, if not overcome with violence or prevented by fear,
5 keep possession of the property.

6 The State must also prove beyond a reasonable doubt
7 that the Defendant carried the property away intending to
8 permanently deprive the owner of the property and to keep
9 the property for the Defendant's own use. The slightest
10 removal of the property or the complete possession of the
11 property, even for an instant, by the Defendant is
12 sufficient to show a taking and carrying away of the
13 property. The taking and carrying away of the property must
14 have been done with violence or by putting the owner of the
15 property in fear of violence.

16 Finally, the State must prove beyond a reasonable doubt
17 that the Defendant was armed with a deadly weapon during the
18 robbery. A deadly weapon is an article, instrument or
19 substance which is likely to cause death or great bodily
20 harm. Whether an instrument has been used as a deadly
21 weapon depends on the facts and circumstances of each case.

22 Ladies and gentlemen, I'll now read for you the law
23 relating to possession of a weapon during the commission of
24 a violent crime. The State must prove beyond a reasonable
25 doubt that the Defendant was in possession of a firearm or

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1 visibly displayed what appeared to be a firearm. A firearm
2 means any machine gun, automatic rifle, revolver, pistol or
3 any weapon which will, is designed to or may be readily
4 converted to expel a projectile.

5 Now, ladies and gentlemen, in order to find the
6 Defendant guilty of possession of a weapon during the
7 commission of a violent crime you first have to make a
8 determination of whether a violent crime had been committed.
9 Under the law in the State of South Carolina an armed
10 robbery is classified as a violent crime. Therefore, in
11 order for you to find the Defendant guilty of one of the
12 offenses of possession of a weapon during the commission of
13 a violent crime, you must also find that he committed the
14 violent crime itself, that is, the armed robbery.

15 Now, you will see on the verdict form that I have
16 prepared for you I have taken each indictment -- there are
17 two counts on each indictment. On each indictment there's
18 an armed robbery and there is a possession of a -- of a
19 firearm during the commission of a violent crime. And you
20 will see both counts on each of the three verdict forms.
21 I'm going to send the verdict form back to the jury room
22 with you so that you can -- so that you can analyze all of
23 the evidence and you can look at the specific -- these
24 specific instances.

25 Now the reason I've set it apart and I've put three

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1 different verdict forms is because as I told you before, you
2 consider everything separately and distinctly, which means
3 that you could find that he was guilty of one and not guilty
4 of another or vice versa. But understand that I've put on
5 each verdict form both the armed robbery and the possession
6 of a firearm during the commission of a violent crime
7 because you cannot find him guilty of possession of a
8 firearm during the commission of a violent crime if you
9 don't find there was a violent crime in the first instance.

10 Now, all of these verdict forms I hope are fairly self-
11 explanatory. And you will see that I have on here just the
12 caption and the case number. And then it begins on the
13 charge of armed robbery, we, the jury, unanimously find the
14 Defendant, William Anthony Butts, two choices, not guilty
15 and guilty, okay?

16 What you will do is you will "x" whatever you find to
17 be appropriate. Then you'll move to the second charge,
18 which is on the charge of possession of a weapon during the
19 commission of a violent crime, we, the jury, unanimously
20 find the Defendant, William Anthony Butts, and then again,
21 your choices, not guilty or guilty.

22 You'll notice on each of these what it says, it says
23 unanimously because your verdict must be unanimous. You
24 must all agree on the verdict. It can't be eleven to one or
25 ten to two or any other combination of numbers that equal

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1 twelve. It has to be a unanimous verdict.

2 Your verdict must also be based on the evidence and the
3 law in this case as you have promised to do under your oath,
4 meaning it can't be based on any prejudice, any bias or any
5 other material outside of this courtroom, but simply based
6 on the evidence and the law as is applied in this case.

7 And one thing that I noticed, ladies and gentlemen,
8 when I was going over this verdict form is I have the case
9 numbers on there, but I don't have the dates on there. So
10 what I'm going to do on each one right below the verdict,
11 I'm going to put the date for -- that corresponds to each
12 specific indictment so that y'all won't have to guess at
13 that, okay?

14 Now, what I'm going to ask you to do now is go back to
15 your jury room, but please don't start your deliberations
16 yet because the attorneys are going to have the opportunity
17 to take exception to what I have said, basically to correct
18 me if I've told you something that's wrong or if I've left
19 something out. So, there again, I'm going to give them the
20 opportunity to do that.

21 And if I've missed something or I need to tell you
22 something differently or in addition, I'll bring you back
23 out, but hopefully I've gotten it correct on the whole, and
24 I'll be sending back to you the verdict forms, and I'll send
25 back to you all of the exhibits as well. Thank you. Please

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1 don't discuss the case yet.

2 (Whereupon the jury exited the courtroom at 10:22 am)

3 THE COURT: All right. Gentlemen, any exceptions to
4 charge?

5 MR. WILKINS: None from the State, Your Honor.

6 MR. ROBINSON: None from the Defense, Your Honor.

7 THE COURT: Okay. Gentlemen, on indictment 5151, I
8 believe the date was November 5th, 2009, is that correct?

9 MR. WILKINS: We're going to pull them right now just
10 to confirm ---

11 THE COURT: Okay.

12 MR. WILKINS: --- that date's right. Yeah, 49 was the
13 18th, 50 was the 30th and 5151 was the 5th.

14 THE COURT: Gotcha'. Okay. All right. So 50 was
15 October 30th, 2009.

16 MR. WILKINS: (Affirmative nod).

17 THE COURT: And 5149 is 18, October 2009, correct?

18 MR. WILKINS: Yes, sir.

19 MR. ROBINSON: Yes, sir.

20 THE COURT: All right, gentlemen, I'm going to -- I'm
21 going to dismiss the alternates in chambers. I'm just going
22 to ask them to come back. And I'm -- otherwise, if y'all
23 would just do an inventory of the exhibits, and then let the
24 bailiffs know when you're satisfied with that. And then you
25 can then tell them to begin their deliberations. All right,

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1 gentlemen, thank you for having tried an excellent case. I
2 do appreciate it.

3 (Whereupon court was in recess at 10:24 am)

4 (Whereupon the jury began deliberating at 10:26 am)

5 (Whereupon court resumed at 2:19 pm)

6 THE COURT: All right, gentlemen, I've been advised
7 that we have a verdict. Are we prepared to receive the
8 verdict?

9 MR. WILKINS: Yes, Your Honor.

10 MR. ROBINSON: Defense is ready, Your Honor.

11 THE COURT: Okay. We'll wait for Mr. Butts to get in
12 here and then I'll ask them to bring the jury in.

13 (Whereupon Mr. Butts entered the courtroom)

14 (Whereupon the jury entered the courtroom at 2:20 pm)

15 THE COURT: All right. Ms. Griner, has the jury
16 reached a unanimous verdict, ma'am?

17 MS. GRINER: Yes, we have.

18 THE COURT: Okay. Can you hand the verdict forms,
19 please, to the bailiff. All right. Madame Clerk, you may
20 publish the verdict.

21 MADAME CLERK: Your Honor, in the case of 2010-GS-23-
22 5149, the State of South Carolina versus William Anthony
23 Butts, on the charge of armed robbery, we, the jury,
24 unanimously find the Defendant, William Anthony Butts,
25 guilty.

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1 On the charge of possession of a weapon during the
2 commission of a violent crime, we, the jury, unanimously
3 find the Defendant, William Anthony Butts, guilty.

4 In the case of 2010-GS-23-5150, on the charge of armed
5 robbery, we, the jury, unanimously find the Defendant,
6 William Anthony Butts, guilty.

7 On the charge of possession of a weapon during the
8 commission of a violent crime, we, the jury, unanimously
9 find the Defendant, William Anthony Butts, guilty.

10 In the case of 2010-GS-23-5151, on the charge of armed
11 robbery, we, the jury, unanimously find the Defendant,
12 William Anthony Butts, guilty.

13 On the charge of possession of a weapon during the
14 commission of a violent crime, we, the jury, unanimously
15 find the Defendant, William Anthony Butts, guilty.

16 These are all signed, Ms. Griner, our Forelady. Ladies
17 and gentlemen of the jury, if you agree those are the
18 verdicts you reached in your deliberation room, would you
19 please raise your right hand.

20 (Whereupon all jurors raised their right hand)

21 **MADAME CLERK:** Thank you.

22 **THE COURT:** All right. Gentlemen, anything further
23 from this jury?

24 **MR. WILKINS:** Nothing from the State, Your Honor.

25 **MR. ROBINSON:** Nothing from the Defense, Your Honor.

1 **THE COURT:** Okay. Ladies and gentlemen, thank you for
2 your service in this case. I know that it has been very
3 difficult for you. I recognize that. And it's been a long
4 several days. And I appreciate your being here and
5 deliberating on this case.

6 I'm going to proceed now to sentencing. And you're
7 welcome to stay and observe sentencing if you want to. And
8 if you don't want to, then I'd ask you to return to your
9 jury room. And I'll come back when I am done and I'll have
10 a very brief talk with you and give you the opportunity to
11 ask me any questions that you may have regarding this case
12 or jury service in general.

13 I will tell you that there are no more -- y'all aren't
14 going to be required to stay for the remainder of the week.
15 We will be picking another jury, but I am excusing y'all
16 from any further jury duty for this week.

17 So you are welcome to stay and observe sentencing. If
18 not, you can return to your jury room, and I'll be back
19 fairly shortly. Thank you.

20 (Whereupon the jury exited the courtroom at 2:23 pm)

21 **THE COURT:** All right. Gentlemen, I'm going to proceed
22 to sentencing, but I'm going to dismiss them and discharge
23 them first. I didn't know how many of them would want to
24 stay, but inasmuch as they've all gone back, I'm going to go
25 ahead and discharge them. And I'll come back in in about

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1 five minutes and we'll proceed with sentencing.

2 MR. WILKINS: Thank you, Your Honor.

3 MR. ROBINSON: Thank you, Your Honor.

4 (Whereupon court was in recess at 2:23 pm)

5 (Whereupon court resumed at 2:44 pm)

6 THE COURT: All right. You may approach for
7 sentencing.

8 MR. ROBINSON: Yes, Your Honor.

9 THE COURT: All right. Mr. Wilkins and Mr. Ellis, I've
10 heard the facts in this case. So certainly I don't need for
11 you to recount those for me. But is there anything
12 additional that you would like to add?

13 MR. WILKINS: No, Your Honor.

14 THE COURT: Is there any prior record?

15 MR. WILKINS: No prior record, Your Honor. The
16 Defendant's been in the Greenville County Law Enforcement
17 Center for seven hundred days.

18 THE COURT: Seven hundred days. All right. Mr.
19 Robinson, I'll be happy to hear from you, sir.

20 MR. ROBINSON: May it please the Court.

21 THE COURT: Yes, sir.

22 MR. ROBINSON: Your Honor, on behalf of my client I
23 wish to thank the Court for its hospitality and also the
24 Prosecutors in this case for trying a very good case. It
25 was very smooth, very cordial.

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1 Your Honor, you listened to the facts, you listened to
2 all the motions and so forth. Your Honor, he is a young
3 man. He's -- I think he's twenty now, nineteen, twenty.

4 MR. BUTTS: Twenty.

5 MR. ROBINSON: He does have two children. We'd ask the
6 Court to impose the minimum sentence in this case, which is
7 -- which is a mandatory sentence as well and give him credit
8 for the time he's served in the Greenville County Detention
9 Center.

10 THE COURT: Okay. Thank you, Mr. Robinson. Mr. Butts,
11 is there anything you'd like to tell me, sir?

12 MR. BUTTS: No, sir.

13 THE COURT: Mr. Butts, let me tell you how profoundly I
14 regret that you have found yourself here. You don't have
15 any prior record. You appear to be a fairly intelligent and
16 respectful young man. And I'm sorry that you committed such
17 a terrible mistake.

18 I wish truly that what I could do is go back in time
19 about thirteen months and sit down with you and tell you
20 don't do something stupid that's going -- that's going to
21 potentially ruin your life. That's what I wish I could do.
22 And I don't know -- I don't know if you had any strong male
23 figure in your life that could tell you things like that. I
24 truly wish that you had.

25 In this case I respect the jury's verdict. I believe

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1 that it was an informed and an intelligent verdict. And
2 based on the evidence that I saw, not that it is necessarily
3 important, I happen to agree with it.

4 I do note that you do have no prior record. And I
5 recognize that. That is to your credit and to your benefit.
6 It's my understanding that armed robbery carries a mandatory
7 minimum of ten and a maximum of thirty, is that correct?

8 **MR. WILKINS:** Yes, Your Honor.

9 **THE COURT:** And it's my understanding that the
10 possession of a weapon during the commission of a violent
11 crime carries five, none of which can be suspended, is that
12 correct?

13 **MR. WILKINS:** That's correct, Your Honor.

14 **THE COURT:** But there is no prescription against
15 concurrent on the possession of a firearm during the
16 commission of a violent crime, am I correct on that?

17 **MR. WILKINS:** That's my reading of the statute, Your
18 Honor.

19 **THE COURT:** Okay. All right, Mr. Butts. On the -- on
20 all three of the possession of a weapon during the
21 commission of a violent crime the sentence of the Court is
22 five years on each. Each is to run concurrent with one
23 another. Seven hundred days credit for time served on each.

24 On all three armed robberies, sir, sentence of the
25 Court is you be committed to the Department of Corrections

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1 for a period of twenty years, concurrent, seven hundred days
2 credit for time served. Good luck to you, sir.

3 MR. WILKINS: Thank you, Your Honor.

4 (Hearing Ended at 2:49 pm)

5 . (End of Requested Transcript of Record)

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WITNESSES

David Weiner

Greenville County Sheriffs Office

11/20/2009

ARREST WARRANT NUMBER

M176933, M176934

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-23-

SPE

005149

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2011

10-19-11

THE STATE

vs.

WILLIAM ANTHONY BUTTS

Indictment for

0139, 0549

ARMED ROBBERY AND POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

VIOLATION § 16-11-0330 and §16-23-0490

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
**ARMED ROBBERY AND POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME**

At a Court of General Sessions, convened on **JUL 19 2011** the Grand Jurors of Greenville
County present upon their oath:

COUNT ONE

ARMED ROBBERY

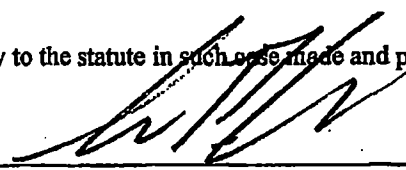
That WILLIAM ANTHONY BUTTS did in Greenville County, on or about the 18th day of October, 2009, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as U.S. currency belonging to Citgo Corner Mart from the person or presence of William S. Flynn, an employee of Citgo Corner Mart. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That WILLIAM ANTHONY BUTTS did in Greenville County, on or about the 18th day of October, 2009, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-0490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

David Weiner

Greenville County Sheriffs Office

11/20/2009

ARREST WARRANT NUMBER

M176935, M176936

ACTION OF GRAND JURY

TRUE BILL

[Signature]
FOREMAN GRAND JURY
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-23-

SPE

005150

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2011

/s-19-11

THE STATE

vs.

WILLIAM ANTHONY BUTTS

Indictment for

0139, 0549

**ARMED ROBBERY AND POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME**

VIOLATION § 16-11-0330 and §16-23-0490

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
**ARMED ROBBERY AND POSSESSION OF A WEAPON DURING
 THE COMMISSION OF A VIOLENT CRIME**

At a Court of General Sessions, convened on
 County present upon their oath:

JUL 19 2011

the Grand Jurors of Greenville

COUNT ONE

ARMED ROBBERY

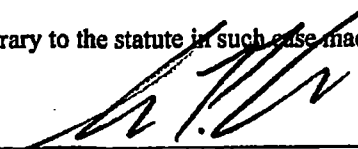
That WILLIAM ANTHONY BUTTS did in Greenville County, on or about the 30th day of October, 2009, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as U.S. currency belonging to Citgo Corner Mart from the person or presence of Victor Campbell, an employee of Citgo Corner Mart. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That WILLIAM ANTHONY BUTTS did in Greenville County, on or about the 30th day of October, 2009, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-0490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR

WITNESSES

David Weiner

[Signature]

Greenville County Sheriffs Office

11/20/2009

DOCKET NO. 2011-GS-23-

SPE

The State of South Carolina

005151

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2011

10-19-11

THE STATE

vs.

ARREST WARRANT NUMBER

M176937, M176938

WILLIAM ANTHONY BUTTS

ACTION OF GRAND JURY

TRUE BILL

[Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0139, 0549

ARMED ROBBERY AND POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

VIOLATION § 16-11-0330 and §16-23-0490

mjt

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
**ARMED ROBBERY AND POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME**

At a Court of General Sessions, convened on **JUL 19 2011** the Grand Jurors of Greenville
County present upon their oath:

COUNT ONE

ARMED ROBBERY

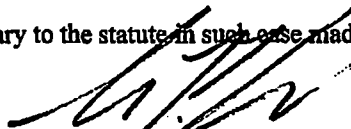
That WILLIAM ANTHONY BUTTS did in Greenville County, on or about the 5th day of November, 2009, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as U.S. currency belonging to Citgo Corner Mart from the person or presence of William S. Flynn, an employee of Citgo Corner Mart. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That WILLIAM ANTHONY BUTTS did in Greenville County, on or about the 5th day of November, 2009, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-0490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
William Anthony Butts

AKA:

Race: BLACK Sex: M Age: 20DOB: 1991 SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Simpsonville, SC 29681DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2305149A/W#: M176933Date of Offense: 10/18/2009S.C. Code § : 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weaponin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature]
W. Walter Wilkins16740
 SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 700 days.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$	<u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$	
§ 56-5-2995 (DUI Assessment)	\$12	\$	
§ 56-1-286 (DUI Breath Test)	\$25	\$	
Proviso 47.9 (Public Def/Prob)	\$500	\$	
§ 14-1-212 (Law Enforce. Funding)	\$25	\$	<u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$	
§ 50-21-114(BUI Breath Test Fee)	\$50	\$	
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
Proviso 90.5 (SCCJA Surcharge)	\$5	\$	<u>5</u>
3% to County (if paid in installments)		\$	
TOTAL		\$	

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther:
☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: S. Hudgin

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2158Sentence Date: 10-19-11

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

William Anthony Butts

AKA:

Race: BLACK Sex: M Age: 20

DOB: 1991 SS#: [REDACTED]

Address:

City, State, Zip: Simpsonville, SC 29681

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]

16740

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or 180 days/months/years under the Youthful Offender Act not to exceed 3 years and/or to pay a fine of \$ 700; provided that upon the service of 700 days/months/years and/or payment of \$ 700; plus costs and assessments as applicable*; the balance is suspended with probation for 700 days/months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 700 days.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ 700 plus 20% fee: \$ 140

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/ Deputy Clerk

Paul B. Workman

Court Reporter:

S. Hudgin

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2305149

A/W#: M176934

Date of Offense: 10/18/2009

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Presiding Judge

Judge Code: 2158

Sentence Date: 10-19-11

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
William Anthony Butts

AKA:

Race: BLACK Sex: M Age: 20DOB: 1991 SS# [REDACTED]

Address:

City, State, Zip: Simpsonville, SC 29681DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2305150A/W#: M176935Date of Offense: 10/18/2009S.C. Code § : 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

W. Walter Wilkins 16740 SC Bar# 16740 Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 700 045-1☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP days/hours Public Service Employment
 Total: \$ plus 20% fee: \$
Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u>100</u>
§ 56-5-2995 (DUI Assessment)	\$12	\$ <u>12</u>
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u>25</u>
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u>500</u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150</u>
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$ <u>50</u>
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u>40</u>
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)	\$	\$ <u> </u>
TOTAL	\$	\$ <u> </u>

Obtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther:
☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2158Sentence Date: 10-19-11

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.William Anthony Butts

AKA: _____

Race: BLACK Sex: M Age: 20DOB: 1991 SS#: _____

Address: _____

City, State, Zip: Simpsonville, SC 29681

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or deathin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____

16740

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed 1 years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 200 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk

Paul B. Wickman

Court Reporter:

S. Hudgins

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2305150A/W#: M176936Date of Offense: 10/18/2009S.C. Code § : 16-23-0490CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____

16740

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed 1 years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 200 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk

Paul B. Wickman

Court Reporter:

S. Hudgins

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2158Sentence Date: 10-19-11

STATE OF SOUTH CAROLINA

COUNTY OF
STATEGreenville
VS.

William Anthony Butts

AKA:

Race: BLACK Sex: M Age: 20

DOB: 1991 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Simpsonville, SC 29681

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: *W. Walker Wilkins* 16740*W. Walker Wilkins*

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. *700 days*☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ *100*

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ *25*

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCJA Surcharge) \$5 \$ *5*

3% to County (if paid in installments) \$

TOTAL \$

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2305151

A/W#: M176937

Date of Offense: 10/18/2009

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. *700 days*☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ *100*

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ *25*

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCJA Surcharge) \$5 \$ *5*

3% to County (if paid in installments) \$

TOTAL \$

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Paul B. Wickens
S. Hudgin

Presiding Judge

Judge Code:

Sentence Date:

*2158**10-19-11*

STATE OF SOUTH CAROLINA

COUNTY OF
STATEGreenville
VS.

William Anthony Butts

AKA:

Race: BLACK Sex: M Age: 20

DOB: 1991 SS#:

Address:

City, State, Zip: Simpsonville, SC 29681

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490

of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

W. Walter Wilkins

16740

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 700 DAYS.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5

3% to County (if paid in installments) \$

TOTAL \$

Clerk of Court/ Deputy Clerk

Paul B. Wickens

Court Reporter:

S. Hudgin

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2158

Sentence Date: 10-19-11

ARREST WARRANT

M-176933

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

THE STATE

09-165102

against

William Anthony Butts

Address:

Simpsonville, SC 29681-

Phone: SSN: [REDACTED]

Sex: M Race: B Height: 6 1 Weight: 150

DL State: SC DL #: [REDACTED]

DOB: 1991 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: David Weiner - 0630

Offense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant WILLIAM BUTTSon 11-20-09Michael E. Fortner FOR THER
Signature of Constable/Law Enforcement Officer 10/19/2023

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

ORIGINAL

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ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
Apr 21, 2003
SCCA 518Personally appeared before me the affiant David Weiner whobeing duly sworn deposes and says that defendant William Anthony Buttsdid within this county and state on or about 10/18/2009

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 10-18-09 the defendant did enter the Citgo Corner Mart located at 2608 Woodruff Rd. while armed with a gun. Once inside the business the defendant demanded the contents of the cash register. The clerk inside complied and the defendant fled from the store. The affiant has a written sworn statement from a witness implicating the defendant in this crime. This offense occurred in Greenville County.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality ofAffiant's Address 4 Mcgee StreetGreenville, SC 29601-Affiant's Telephone (864)467-5252

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/18/2009 defendant William Anthony Butts

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of) as set forth below:DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 11/20/2009L.T. Simmons (L.S.)
Signature of Issuing Judge

Lctonya T Simmons

Judge Code: 5077

Judge's Address

Judge's Telephone

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ARREST WARRANT

M-176934

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

THE STATE

09-185102

against

William Anthony Butts

Address:

Simpsonville, SC 29681-

Phone:

SSN:

Sex: M Race: B Height: 6 1 Weight: 150

DL State: SC

DL #:

DOB: 1991

Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: David Weiner - 0630

Offense: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Offense Code: 0549

Code/Ordinance Sec: 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(I.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant William Butts on 11-20-09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

ORIGINAL

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ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant David Weiner who being duly sworn deposes and says that defendant William Anthony Butts did within this county and state on or about 10/18/2009 violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of) in the following particulars:

DESCRIPTION OF OFFENSE Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 10-18-09 the defendant did enter the Citgo Corner Mart located at 2608 Woodruff Rd. while armed with a gun. Once inside the business the defendant demanded the contents of the cash register. The clerk inside complied and the defendant fled from the store. The affiant has a written sworn statement from a witness implicating the defendant in this crime. This offense occurred in Greenville County.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Affiant's Address 4 Mcgee Street
Greenville, SC 29601-
Affiant's Telephone (864)467-5252

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/18/2009 defendant William Anthony Butts

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of) as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 11/20/2009

Signature of Issuing Judge

Letonya T Simmons

Judge Code: 5077

Judge's Address

Judge's Telephone

Issuing Court

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

379

5531
11-24-09
ARREST WARRANT
M-176936

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of

THE STATE **08-171077**
against

William Anthony Butts

Address: **Simpsonville, SC 29681-**

Phone: **SSN:**

Sex: **M** Race: **B** Height: **6** 1 Weight: **150**

DL State: **SC** DL #: **DOB:** **1991** Agency ORI #: **SC0230000**

Prosecuting Agency: **Greenville County Sheriffs Office**

Prosecuting Officer: **David Weiner - 0630**

Offense: **Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death**

Offense Code: **0549**

Code/Ordinance Sec: **16-23-0490**

This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant **William Butts**
on **11-20-09**

Michael E. O'Keeffe **FORTNER**
Signature of Constable/Law Enforcement Officer **20129/623**

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

ORIGINAL

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STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant **David Weiner** who
being duly sworn deposes and says that defendant **William Anthony Butts**
did within this county and state on or about **10/18/2009** violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of)
in the following particulars:

DESCRIPTION OF OFFENSE Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

On 10-30-09 the defendant did enter the Citgo Corner Mart located at 2608 Woodruff Rd. while armed with a gun. Once inside the
business the defendant demanded the contents of the cash register. The clerk inside complied and the defendant fled from the store.
The affiant has a written sworn statement from a witness implicating the defendant in an identical incident that occurred twelve days
earlier. That incident occurred at the same location and the defendant was wearing the identical clothing and carrying the same gun.
This offense occurred in Greenville County.

Signature of Affiant

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of

Affiant's Address **4 Mcgee Street**
Greenville, SC 29601-
Affiant's Telephone **(864)467-5252**

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about **10/18/2009** defendant **William Anthony Butts**
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of) as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on **11/20/2009**
L.T. Simmons (L.S.)
Signature of Issuing Judge
Letonya T Simmons
Judge Code: **5077**

Judge's Address

Judge's Telephone

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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ARREST WARRANT ⁵⁵³¹
¹¹⁻²⁴⁻⁰⁹
M-176935

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

THE STATE

09-171077

against

William Anthony Butts

Address:

Simpsonville, SC 29681-

Phone: SSN:
Sex: **M** Race: **B** Height: **6** Weight: **150**

DL State: **SC** DL #:
DOB: **1991** Agency ORI #: **SC0230000**

Prosecuting Agency: **Greenville County Sheriffs Office**

Prosecuting Officer: **David Weiner - 0630**

Offense: **Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon**

Offense Code: **0139**

Code/Ordinance Sec: **16-11-0330(A)**

This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant **WILLIAM BUTTS**
on **11-20-09**

Michael E. Fortner **FORTNER**
Signature of Constable/Law Enforcement Officer **40129/625**

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

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ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

AFFIDAVIT

ORIGINAL

Approved by
S.C. Attorney General
April 21, 2009
SCCA 518

Personally appeared before me the affiant **David Weiner** who
being duly sworn deposes and says that defendant **William Anthony Butts**
did within this county and state on or about **10/18/2009** violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of)
in the following particulars:

DESCRIPTION OF OFFENSE **Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon**

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

On 10-30-09 the defendant did enter the Citgo Corner Mart located at 2608 Woodruff Rd. while armed with a gun. Once inside the
business the defendant demanded the contents of the cash register. The clerk inside complied and the defendant fled from the store.
The affiant has a written sworn statement from a witness implicating the defendant in an identical incident that occurred twelve days
earlier. That incident occurred at the same location and the defendant was wearing the identical clothing and carrying the same gun.
This offense occurred in Greenville County.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Affiant's Address **4 Mcgee Street**
Greenville, SC 29601-
Affiant's Telephone **(864)467-5252**

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about **10/18/2009** defendant **William Anthony Butts**
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of) as set forth below:

DESCRIPTION OF OFFENSE: **Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon**

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me
on **11/20/2009**

L. T. Simmons (L.S.)
Signature of Issuing Judge

Letonya T Simmons

Judge Code: **5077**

Judge's Address

Judge's Telephone

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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ARREST WARRANT

M-176937

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality ofTHE STATE
against

09-174377

William Anthony Butts

Address:

Simpsonville, SC 29681-

Phone: SSN:
 Sex: M Race: B Height: 6 1 Weight: 150DL State: SC DL #: DOB: 1991 Agency ORI #: SC0230000Prosecuting Agency: Greenville County Sheriff's OfficeProsecuting Officer: David Weiner - 0630Offense: Robbery / Armed Robbery, robbery while armed
or allegedly armed with a deadly weaponOffense Code: 0139Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

WILLIAM BUTTS
11-20-09

Signature of Constable/Law Enforcement Officer

FORTNER

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
GCCA 618Personally appeared before me the affiant David Weiner who
being duly sworn deposes and says that defendant William Anthony Butts
did within this county and state on or about 10/18/2009 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of)
in the following particulars:DESCRIPTION OF OFFENSE Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weaponI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:On 11-05-09 the defendant did enter the Citgo Corner Mart located at 2608 Woodruff Rd. while armed with a gun. Once inside the
business the defendant demanded the contents of the cash register. The clerk inside complied and the defendant fled from the store.
The affiant has a written sworn statement from a witness implicating the defendant in an identical incident that occurred eighteen
days earlier. That incident occurred at the same location and the defendant was wearing the identical clothing and carrying the same
gun. This offense occurred in Greenville County.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality ofAffiant's Address 4 Mcgee Street
Greenville, SC 29601-
Affiant's Telephone (864)467-5252

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/18/2009 defendant William Anthony Butts

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of

) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weaponHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before meon 11/20/2009Signature of Issuing Judge (L.S.)
Letonya T SimmonsJudge Code: 5077

Judge's Address

Judge's Telephone

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

382

5531
11-24-09
ARREST WARRANT
M-176938
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of

THE STATE 09-174377
against

William Anthony Butts

Address:

Simpsonville, SC 29681-

Phone: SSN: [REDACTED]
Sex: M Race: B Height: 6 Weight: 150

DL State: SC DL #: [REDACTED]

DOB: 1991 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: David Weiner - 0630

Offense: Weapons / Poss. weapon during violent crime, if
not also sentenced to life without parole or death

Offense Code: 0549

Code/Ordinance Sec: 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant WILLIAM BUTTS
on 11-20-09

Michael E. Fortner FORTNER
Signature of Constable/Law Enforcement Officer 023/0129

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of

AFFIDAVIT

ORIGINAL
NOT APPROVED BY
S.C. Attorney General
April 21, 2003
SCCA 516

Personally appeared before me the affiant David Weiner who
being duly sworn deposes and says that defendant William Anthony Butts
did within this county and state on or about 10/18/2009 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of)
in the following particulars:

DESCRIPTION OF OFFENSE Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

On 11-05-09 the defendant did enter the Citgo Corner Mart located at 2608 Woodruff Rd. while armed with a gun. Once inside the
business the defendant demanded the contents of the cash register. The clerk inside complied and the defendant fled from the store.
The affiant has a written sworn statement from a witness implicating the defendant in an identical incident that occurred eighteen
days earlier. That incident occurred at the same location and the defendant was wearing the identical clothing and carrying the same
gun. This offense occurred in Greenville County.

Signature of Affiant

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of

Affiant's Address 4 McGee Street
Greenville, SC 29601-
Affiant's Telephone (864)467-5252

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/18/2009 defendant William Anthony Butts
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of) as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 11/20/2009

L.T. Simmons (L.S.)
Signature of Issuing Judge
Letonya T Simmons
Judge Code: 5077

Judge's Address
Judge's Telephone

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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303

FORM 5

STATE OF SOUTH CAROLINA

County of GreenvilleWilliam A. Butts

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEFFILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2011 FEB 10 PM 2 58INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Facility
South Carolina
2. Name and location of Court which imposed sentence State of South
Caroline Thirteenth Judicial District
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011 - GS - 23 - 05149 - 05151
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) October 17, 2011 20 years incarceration
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Claim of Actual Innocence
- (b) Misidentification
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10): See attached Memorandum
- (a) Video analysis by expert
- (b) Identification witness recanted
- (c) See Attached letter & exhibits
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Scott Robinson, Esq.
9 East Avenue, Greenville, SC
 ii. Frank Eppes, Esq.
1225 S. Church St., Greenville, SC
 iii. Peter S. Smith, Esq.
54 Main Street, P.O. Box 669, Northport, NY 11768
 (b) the proceedings at which each such attorney represented you:
 i. Trial and Sentencing
 ii. Appeal
 iii. Past Conviction Relief Petition
Investigation

19. State clearly the relief you seek in filing this application:

Reversal of Conviction and Sentence
Retrial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION

I, William Butts, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

W. Butts

SWORN to and subscribed before me this 11
day of December 2014.

Debra Sims (L.S.)
Notary Public

My Commission Expires: 11-4-2015

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, William Butts, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give
security thereof.

W Butts
Applicant

SWORN or affirmed to and subscribed before me this

11 day of Dec., 2014.

Dema Swires
Notary Public

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	2015-CP-23-1027
COUNTY OF GREENVILLE	)	
	)	
William Anthony Butts,	)	
S.C.D.C. No. 348307	)	
	)	
Applicant,	)	
	)	RETURN AND MOTION TO DISMISS
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief filed February 10, 2015 would respectfully show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the July 2011 term of General Sessions for 3 counts of armed robbery (2011-GS-23-5149, count 1; -5150, count 1; -5151, count 1) and 3 counts of possession of a weapon during commission of a violent crime (2011-GS-23-5149, count 2; -5150, count 2; -5151, count 2). Scott D. Robinson, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On October 19, 2011, the Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of 20 years on each count of armed robbery and 5 years on each count of possession of a weapon during commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. Frank L. Eppes, Esquire perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and

sentences. State v. Butts, Op. No. 2014-UP-141 (S.C. Ct. App. filed April 2, 2014). The remittitur was sent on April 18, 2014.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In the application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Claim of actual innocence."
2. "Misidentification."

III.

The Court should summarily dismiss this application for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act (the Act). S.C. Code Ann. §§ 17-27-10 et seq. (2003). Pursuant to the Act, an Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief.

S.C. Code Ann. § 17-27-20(a) (2003).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The Respondent therefore moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return and Motion to Dismiss, the Respondent requests the matter be summarily dismissed.

Respectfully submitted,

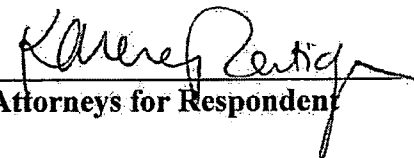
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

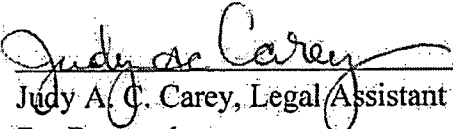
July 17, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2015-CP-23-1027
	)	
WILLIAM ANTHONY BUTTS, 348307	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Frank L. Eppes, Esquire
 Eppes & Plumblee, PA
 Post Office Box 10066
 Greenville SC 29603

DATED this 17th day of July, 2015.


 Judy A. C. Carey, Legal Assistant
 For Respondent

The Law Offices of Peter S. Smith PLLC
Defending Through Investigation

54 Main Street P.O. Box 669
Northport, N.Y. 11768
Phone: (631) 897-9374
Fax: (631) 610-3612
E-mail: smithlawfirm@msn.com

November 19, 2014

MEMORANDUM IN SUPPORT OF POST CONVICTION RELIEF

Re: State of South Carolina v. William A. Butts
 2011-GS-23-05149-05151

The following is an outline of the evidence that proves beyond any doubt that William A. Butts¹ was the subject of a misidentification and as a result was wrongfully convicted at his October 17, 2011 trial. This is a claim of actual Innocence.

Two witnesses were called by the prosecution to identify the robber. Both have now recanted their testimony. First, key prosecution witnesses Sarah Reagan McCroskey claims she was pressured to cooperate. She maintains that prosecutors and Police threatened her with arrest as an accomplice. The second key witness, McCroskey's mother Mary Spaulding, also recanted her testimony. Mary didn't wish to raise the child of Sarah was incarcerated as an accessory. Sarah lied out of fear of prosecution and subsequent loss of her child²

Second, newly discovered physical evidence eliminates Butts as the perpetrator. At my request, IAI Board Certified Video Examiner Jeff Spivack³, of Covert Sciences, Charleston, SC, conducted a forensic video examination of archived CCTV surveillance video from the location of three armed robberies, specifically, the Citgo Corner Mart located at 2608 Woodruff Road, Simpsonville, SC on October 18, October 30, and November 5, 2009, as well as an exemplar of surveillance video known to depict Mr. Butts from the same location on November 3, 2009.

As part of his examination, he traveled to the site and took high resolution photographs and obtained reference scale measurements for the purpose of conducting a close range photogrammetry analysis to determine the approximate height⁴ of the suspect(s) and that of a known image of Mr. Butts.

¹ Butts', having no prior record, was sentenced on October 19, 2011 to a 20 year term of incarceration. He has been incarcerated for approximately 2.5 years.

² References to alleged threats may be found in the record at 16 cites: T45:14, T46:25, T52:6, T212:9-25, T213:4-12, T216:1-5, T219:12-25, T220:1-11, T257:15, T259:1, T344:9-25.

³ Mr. Spivack's CV is attached hereto.

⁴ Height was found in the record at T140-142, T341:3-5, T344:17.

The following images contain heights based on analysis with Cognitech AutoMeasure stereo photogrammetry forensic analysis software.

Illustration 1: Known Image of Defendant Butts, 11/03/2009



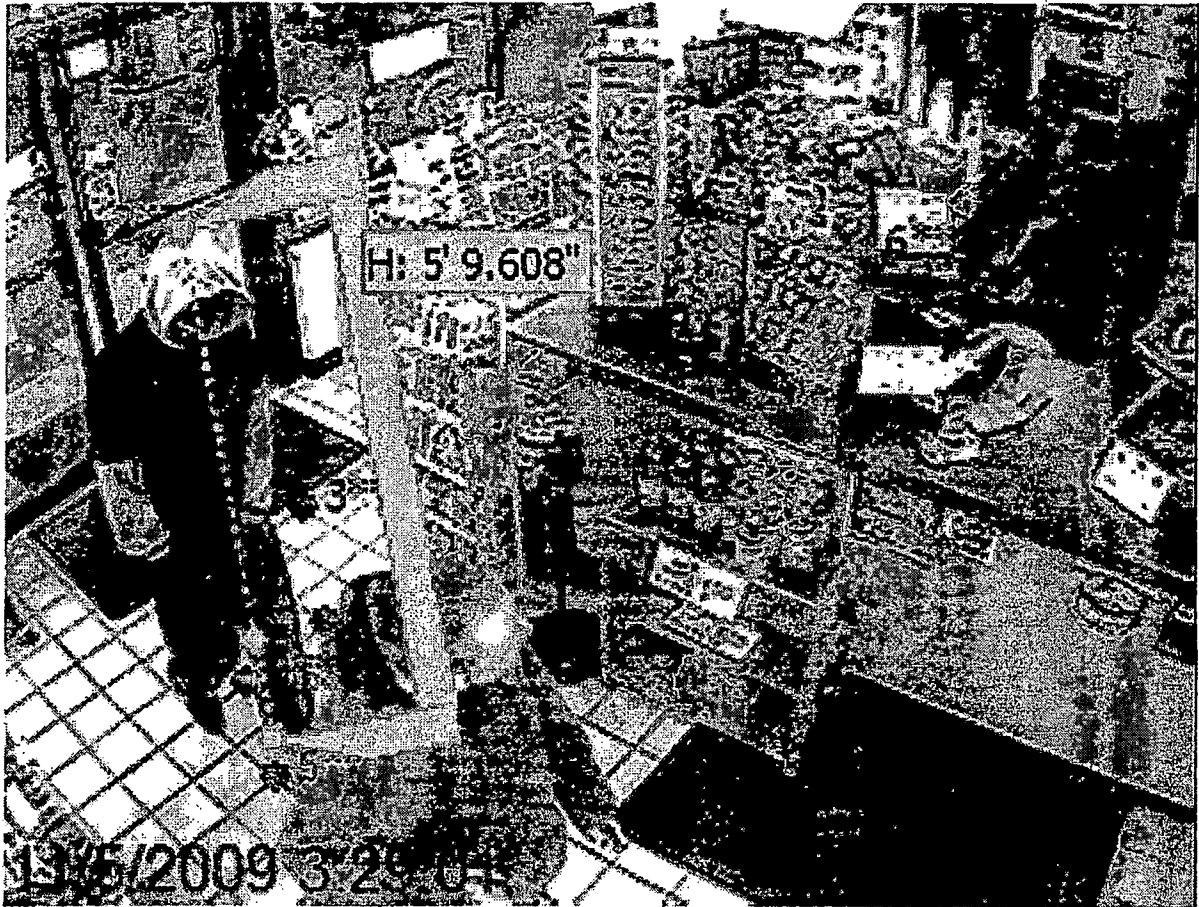
Illustration 2: Suspect on 10/18/2009 Approximate Height: 5' 9.778"



Illustration 3: Suspect on 10/30/2009 Approximate Height: 5' 8.958"



Illustration 4: Suspect on 11/05/2009 Approximate Height: 5' 9.608"



With regard to Spivack's measurements, he determined that Mr. Butts is approximately 6' 1.25" tall without shoes, and 6' 2.75" with shoes that have a 1.5" heel, which is a difference from the height calculated using the stereophotogrammetry method of less than .5".

According to the expert, the height of the suspects recorded on 10/18, 10/30, and 11/05 completely eliminate Mr. Butts as a potential suspect due to the fact that he is over 5" taller than that/those individual(s).

Based on this evidence we are asking that your Office join with us in securing immediate post conviction relief and the release of Mr. Butts from state prison.

Thank you again for your continued courtesies in this matter.

Very truly yours,

LAW OFFICES OF PETER S. SMITH, PLLC

By: Peter S. Smith
Peter S. Smith

cc: Frank Eppes, Esq.
SC Attorney for William A. Butts

The Law Offices of
Peter Smith & Associates

October 28, 2011

10 Capewood Rd Apt 162
Simpsonville, SC

Interview Sarah Reagan McCroskey
and her mother, Mary Katherine Spaulding

Peter Smith, Attorney at Law
William Andrew Butts, Sr

**The Law Offices of
Peter Smith & Associates**

Mr. Peter Smith, investigator, and Mr. William Andrew Butts arrive at 10 Capewood Rd, Apt 162, Simpsonville, SC to speak with Ms. Sarah Reagan McCroskey about Tony Junior.

Smith introduces himself to McCroskey. He tells her he is working with Tony's Uncle Wayne and family to "help Tony accept responsibility for things he has done but not get convicted for things he didn't do", relative to a robbery and shooting. Tony is imprisoned and "may be facing up to 20 years in prison" for his alleged involvement in the robbery. McCroskey is the mother of Tony's son. She was questioned by authorities about the robbery and shooting, received a subpoena to testify in court, and testified.

Smith tells McCroskey that he has spoken to a lot of people regarding the robbery and shooting. He has an upcoming meeting with Scott Robinson and would like McCroskey to answer some questions that he has. He notes that McCroskey was not an eye witness to the crime but was questioned and provided testimony about what she knew.

Smith asked McCroskey what she knew about the day of the robbery and shooting and what she discussed with the authorities. She responds, "I don't know anything about the shooting. We were at my house and we woke up late (she and Tony). He left with Chris and someone else, I don't know for sure. I didn't go outside but the guy was driving a Fusion or a Kia. Later that night grandma came home from the hospital and she came home around 8-9:00 pm. Tony was with me the night of the shooting, I don't know what time though." She notes that Tony had purple jeans and the authorities came "without a warrant or anything and basically asked my mama to go through my stuff and Detective Campbell went through stuff and took the purple jeans. We didn't know he had the right to do this."

McCroskey tells Smith that Tony Junior had purple jeans that to a certain extent were unique. They were LRG jeans that could be found at the mall or on the internet and he wore them to school. Smith asked what the significance of the jeans were. She states they came up at the trial and she answered yes that she saw the jeans in a video they presented during the trial. She notes that she was shown four videos and while testifying said she recognized the jeans in one of the videos, she thinks the second or third video from the night of October 30th or November 5th. Smith asked if they told her they had video of Tony Junior getting into the car with the victim. She answers no.

Smith asks that after looking at the videos if she recognized anyone with Tony's mannerisms. She answered "All three". Smith asks if she was induced in any way to offer testimony at the trial about that. She answers yes. Detective Weiner set up a meeting between her and a solicitor and assistant solicitor and names Weiner, Campbell and Grounse as being present for the meeting at her home. Smith asks if anyone was present for her on her side. She states her mother and grandmother. These authorities told her that they were going to charge her for being an accessory to a crime and she said they told her if she didn't cooperate they were going to arrest her for being an accessory

**The Law Offices of
Peter Smith & Associates**

to the crime and charge her with obstruction of justice. She said she would end up in jail. She felt pressured "like I was going to be charged with obstruction of justice".

Smith encourages McCroskey to tell the truth and that it was his understanding that she has given different statements that all can't be true. Smith asks for the truth in order to help Tony. Smith asks again if anyone from law enforcement encouraged McCroskey or pressured her into saying something she didn't feel comfortable with. She responds, "They were telling me, no, you are lying. Me and Tony were going through some stuff with another baby and baby mom and they were using that knowing it would get me upset. I basically told them on one of the nights of the robbery, Tony was going to meet someone to sell marijuana and law enforcement did not believe me. They said he robbed the store".

Smith asks if McCroskey felt her testimony was accurate, that she was convinced that it was Tony in all the videos. She answers no to Smith but in the trial she answered yes. She said yes at the trial to "stay out of trouble". McCroskey also said that the investigators questioned her about the gun being black and silver and she could only remember it was black. She testified, however, that the black and silver gun was the one Tony had. Law enforcement told her that she should remember what the gun looked like but she told them the event happened three years ago and she could not recall every detail. McCroskey said she would make up stuff because she wasn't sure. She did not know every detail but felt pressured to say what law enforcement wanted her to say. Smith asked if McCroskey felt uncomfortable saying what the detectives wanted her to say and lying on the stand. She said yes, that she talked to Tony about this and her Mom knew I was uncomfortable with basically lying on the stand. Smith asks if she has been in any trouble herself with the exception of this situation with Tony and McCroskey answers no.

Smith asks if she knows anything about an allegation that Tony met with somebody and he wasn't happy with the type of weed that was bought. Smith asks if she knew that law enforcement says that Tony used her cell phone to contact the guys. McCroskey says that Tony was talking to people. He was talking to Chris and to another guy and it was possible that he could have used her phone. She was asked if she thought Tony is the kind of guy who can shoot someone in the car. McCroskey answers no. Smith asks if Tony was charged with the shooting and McCroskey responds no.

Smith says he has pages of notes about what happened but he asks if she knows what happened on the day of the robbery and what happened with the drug deal. McCroskey says it was early in the morning around 10:30 and she picked up Tony and Chris. (...) just had his wisdom teeth taken out and so was out of it. Tony told her he was meeting people. She drove Tony and said when she dropped Tony off, there were other people there who had street racing Hondas (they looked alike) and were by Wachovia. Tony got out and he walked away and instructed her to park behind the car lot. She parked where the trees were and sat there for about 7-10 minutes but could not see what was going on with Tony and the other guys. After the 7-10 minutes, Tony got back into the car. Tony

**The Law Offices of
Peter Smith & Associates**

was not wearing purple pants but she really doesn't remember what he was wearing, just a t-shirt and pants. It was "chill clothes" that he was wearing. Tony did not say anything when he got into the car and was in no urgent rush like he had robbed a convenience store. Smith asks McCroskey, "Now that you know some of what went on, what do you think happened"?

She said that Tony went in for a drug deal and drove away. He did not rob the convenient store. She believed he was selling marijuana. Smith asked McCroskey if she testified differently from what she just told Smith and she said yes. She said that law enforcement did not believe her. While testifying, she was asked about the second video of the robbery. She felt pressured to say that the mannerisms of the man in the video were like Tony's. She agrees that in one of the videos, the man in the video said something Tony might have said but she was not certain.

Smith asks if it was possible that Tony did not do all robberies. McCroskey says that is a chance, but she was not sure. The third video she thought could have been Tony, the one dated November 5th because he was wearing purple jeans. McCroskey believes Tony was not in the first video and the third one the man is wearing the purple jeans and saying something that Tony could have said.

Smith notes he spoke to Tony and Tony mentioned that the gun got moved from the apartment to Kyle's home. Smith asks McCroskey if police asked her about this. She answers yes, that she took it to Kyle's under a jacket. Smith said they arrested Kyle and found the gun there. When asked if she recalls what the gun looked like she remembered it to be black. She said law enforcement told her the gun was black and silver and was used in all three robberies. She does not recall that the gun had silver on it. Smith asks McCroskey if it would be possible that Tony rented or gave the gun to somebody else and someone else did the robberies. McCroskey says yes, that could be possible. Smith says there might have been another man talked about robbing the store and gave Tony \$100 for the gun. It is possible this man was doing the robberies and maybe Tony gets the gun back and does the third robbery as a copycat. Smith asks McCroskey if Tony discussed this with her. She answers no.

Smith asks McCroskey that if Tony wanted to come clean and he knew he had to be completely honest to cut a deal, is there a reason McCroskey can think of that Tony should not do this? Smith asks about Wayne Campbell saying that he is a homicide detective and wouldn't normally be investigating robberies. McCroskey said because of the shooting, she thinks he got involved with the case.

Smith asks, if law enforcement has a video of Tony getting into a car and driving away and that happens to be the guy's car who gets shot, (McCroskey interrupts) to say law enforcement thinks she was the driver of the car and she was not there and never drove a Toyota or whatever car it was. The video she saw was just Tony going into the store. Smith notes that law enforcement has calls made between her phone and the victim's phone leading up to the shooting. These calls could have been made to set up the

**The Law Offices of
Peter Smith & Associates**

meeting for the drug deal. The purple jeans were involved and similar gun was involved but Smith states they don't know without McCroskey's testimony that it was Tony. She felt the voice and the mannerisms that she saw in video three (November 5th) was Tony but it is possible that she was pressured to implicate Tony in all three robberies.

Smith asks McCroskey if her mother Mary Katherine was under pressure with the police? McCroskey told Smith that the investigators were telling her mom that McCroskey could go to jail as long as Tony was going to jail. McCroskey states "She did what she had to do to keep (me) out of jail and that possibly meant lying. Investigators asked Mary Katherine about clothes she had washed. She said she had seen the purple jeans. She washed the purple jeans while Tony was staying with them and going to school.

Smith asks about the ski mask. McCroskey states her brother had a mask with the eyes cut out and her brother wore it when plying in the back yard in the wooded area during the winter. McCroskey does not know if Tony had a ski mask. She never saw Tony wearing it. Mary Katherine during testimony said that the ski mask was her son's but McCroskey said she felt pressured to say that. Smith notes that pinning the ski mask to Tony was damaging. Smith asks, if Tony did the third robbery, did he have access to the ski mask and would McCroskey tell Smith if that was the case? Smith asks McCroskey if it seemed like the same mask and she replied that she had no idea. She notes that you can't tell in the video. The first video, the guy had a hat then he pulls it down and could not see his face before he pulls it down because he is looking down. Smith asks about a mark on somebody's wrist and McCroskey knew nothing about this.

Smith asks if she lived in Mauldin. She did from 2008-2009. This is when her grandmother was in the hospital. McCroskey notes that this is when the alleged shooting took place but said that Tony did not come home that night acting differently. She said they smoked weed but there was no indication he shot anybody. She thinks he would have acted nervous if he did.

Smith asks if McCroskey felt pressured to testify to things that law enforcement wanted her to testify to. She says she felt pressured from all of them but mentions Grounse in particular. Smith asked if McCroskey felt that the solicitor knew she was lying on the stand? Smith asks McCroskey if she told Scott that she and her mother were pressured to lie? (inaudible). Smith asks if Megan testified, McCroskey said she could have.

Smith asks McCroskey if it came down to it, if she would be willing to talk to a judge to report she felt pressured to answer the way law enforcement wanted her to at the trial. Smith said he would arrange counsel for her to protect her rights because if they find McCroskey lied under oath, it could be a problem. McCroskey said she could tell a judge she lied under oath.

Smith asked McCroskey what she thought about Scott's questioning, did he know what he was talking about? McCroskey reports that she felt she had to say yes because of the way Scott "acted". Smith asked McCroskey if she lied when Scott was questioning her

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and McCroskey says yes. Smith asks, "You are not really convinced that that was Tony except for the 4th video, and you wouldn't be saying that just to protect Tony"? McCroskey answers no. So you are saying you aren't sure who was in the purple pants? McCroskey answers yes.

Smith asks to speak with McCroskey's mother, Mary Katherine. He introduces himself as a family friend of Tony's Uncle Wayne in Long Island. Says that he was asked to come down and make sense or what happened to Tony. Smith tells Mary Katherine that he went to Kirkland yesterday and also met with Detective Wayne Campbell and will be meeting with Scott Robertson later in the afternoon. Mary Katherine states "Good luck with that one. He is an idiot, a big idiot. It's like he looked at his case the week before and then decided to go to trial". Smith explains he understands Tony needs to accept responsibility for what he did but wants to help him with what he didn't do. Smith is concerned that certain people were pressured to testify in a particular way for the prosecution.

Mary Katherine states she thought all of this was behind them but is concerned about her daughter being threatened with a charge of obstruction of justice. Smith asks, "for impeding the investigation"? Mary Katherine replies, "After she was cooperating with them, they said we were going to get them regardless of her (McCroskey) or not. They mentioned going to get Chris". Mary Katherine also states, "I never wanted to put Tony behind bars. I wanted to believe that he didn't do what they said he did. After seeing the videos, we questioned whether he did it. And we protected and would do whatever we had to do to keep her (McCroskey) out of jail. Smith asks, "lying"? Mary Katherine answers "I did not lie under oath. Everything I said was true but I testified for the prosecution because there was a threat that they were going to lock her up". Smith asks, "Did you feel pressured, did you feel uncomfortable saying certain things because you were being used as a tool to protect your daughter"?

Mary Katherine said she was uncomfortable especially when Tony's lawyers starting questioning her about things. Smith asks, was there anything in particular? She said "No, he was so vague". Smith asks about the ski mask. Mary Katherine responds: "Nobody in our family ever said that that was the ski mask Tony wore but it could have been something my son had. We moved three different times over the last three years.

Mary Katherine says that as a mother, she felt her daughter, McCroskey, knew more than she told her. Mother says that she couldn't make her daughter tell her the truth until she was ready to do that. When authorities asked mother about the mask she told them she didn't know where the ski mask came from. She notes that authorities assumed that because he had access to the car, that it was his ski mask. McCroskey questioned if DNA testing could be used to match it to Tony. Smith explained this is expensive and something not routinely done. Smith states that someone told him that Detective Weiner said that the evidence was found, the ski mask was tucked in the car and Tony had access to the car. Smith asks Mary Katherine about what she knew about the purple pants and did she testify about them. She said that the purple pants, a black shirt and a purple shirt

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had been at her house. She had washed them because Tony was going to school from their house. She had washed them several times. Smith asks if she saw the pants in the video and she responded yes. She notes that in the first video, she thinks the man had sweat pants on but thinks the second or third video is the one with the purple pants. She notes that most of Tony's clothes came from New York and that he had a lot of brand name jeans which is not common in the area they live. She mentioned that Chris Belcher wore LRG jeans but never saw him in purple jeans.

Smith asks Mary Katherine when she looked at the three videos did any of the men in them look like Tony? She notes that some of the mannerisms seemed like Tony but she could not say for sure that it was Tony. Smith asked if she expressed to any of the prosecutors that she was uncomfortable. She said no and declines she felt forced. Smith asks if her daughter (McCloskey) talked to her about lying. Mary Katherine replies "Not until the prosecution came to the house and explained it would keep her out of jail and she began to open up to what she actually knew.

Mary Katherine said that McCloskey said that Tony did meet a couple of guys and he drove away but she did not know anything about a robbery. Smith asks McCloskey if police asked her to sign a statement saying that she drove there that night knowing that Tony was going to rob the store? Isn't that basically what she testified to? McCloskey answers, "No, I was testifying as to whether the person in the video was Tony". Smith told McCloskey that she said she wasn't sure and she was pressured to say yes. McCloskey was under the impression that Tony was going to do a drug deal. This is what McCloskey initially told the authorities. She notes that they were told by prosecution that they could not say anything about doing drug deals or smoking marijuana. She notes that this was in the last statement. She was told she couldn't say anything about that. Smith acknowledges that this would prejudice the jury and that none of the charges had anything to do with the drugs. The question was, however, what were they doing there at 3:30 in the morning? If Tony wasn't going to rob, was he there to sell weed? The detectives are saying that she knew full well that Tony was going to rob the store and McCloskey says they did have her upset a few times and was telling her that they didn't believe her, that she was lying, that she was trying to protect Tony. When they first questioned me, I was 16 years old, they took me out of class and that is scary.

Smith states he wants to get all of the facts. He thanks McCloskey and her mother for their time. He tells them he will be meeting with Scott. Mother comments that Scott would never answer the phone, never return any of their calls. It upset her because it was like she didn't understand if Diane and him were paying Scott money to work the case, he never went to see or talk to Tony. Mother states that he just sat up there and acted like he was on Tony's side. Mother notes she loves Tony and thinks he has a lot of potential and she hates that he is where he is right now, especially because of the baby. The situation has caused a lot of turmoil between the two families and they just want Tony's son to grow up and for the families to get along.

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Peter Smith & Associates**

Smith says he will meet with Scott and keep them informed. Smith says his purpose is not to get anyone in trouble but to set things right. Smith states that McCroskey may go before a judge. If she does, she will have her own lawyer to advise her. He said law enforcement will not charge her with anything because of prosecutor misconduct. He said that people cannot be pressured to offer false testimony. Smith left his card with McCroskey and said he will be in touch.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

William Anthony Butts,
Petitioner

-v-

STATE OF SOUTH CAROLINA,
DEFENDANT.) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT
)
)) AMENDMENT TO PETITION
) FOR POST CONVICTION RELIEF
)) Case No. 2015 CP 23 01027
)
)FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WIGGINS
2015 AUG 12 PM 1:22

Petitioner, by and through the undersigned attorneys hereby amends his Petition for Post Conviction Relief to state in the following particulars:

In response to Item 10 on his Petition, Petitioner hereby avers that he is being held unlawfully because:

a. His trial counsel's performance during the trial was both unreasonable and prejudicial, and counsel's acts or omissions include, but are not limited to the following:

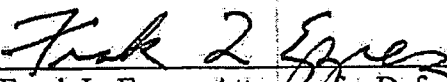
- i. Counsel was not adequately prepared for a motion to sever the three incidents into separate trials;
- ii. Counsel was not prepared, nor did he properly address issues of misidentification;
- iii. Counsel was not prepared and did not properly address issues of the Petitioners actual innocence.
- iv. Counsel's cross-examination of the officer concerning the gun found in Petitioner's possession was inappropriate and inexcusable and was wrongly allowed to contribute to Petitioner's conviction.

b. Material facts, not previously presented and heard, as to both Petitioner's innocence and a misidentification by witnesses as well as other matters, were not previously presented and heard, and require vacation of the conviction and sentence in the interest of justice;

c. Certain investigators for the Solicitor's Office unreasonably harassed and threatened key witnesses in an inappropriate manner.

Petitioner further avers that each of these claims rises to a level that materially and wrongly affected the outcome of Petitioner's trial to his detriment. Therefore, Petitioner is entitled to a new trial.

Respectfully submitted,


Frank L. Eppes, Attorney for Defendant

Greenville, South Carolina

Dated: 8/12/15

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

William Anthony Butts,)

Petitioner,)

v.)

STATE OF SOUTH CAROLINA,)

Defendant.)

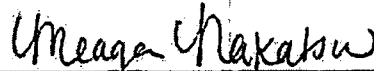
IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
2015-CP-23-01027

AFFIDAVIT OF SERVICE BY MAIL

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 AUG 12 PM 1 52

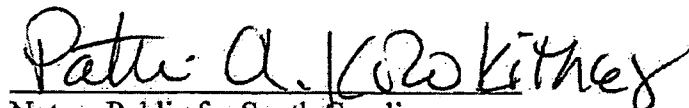
PERSONALLY APPEARED before me the undersigned, who, after being duly sworn, states that she served the Petitioner's Amendment to Petition for Post Conviction Relief upon counsel in the above-referenced matter by depositing a copy thereof in the United States Mail, postage prepaid, and addressed as follows:

Ms. Karen Ratigan
South Carolina Attorney General's Office
P.O.Box 11549
Columbia, South Carolina 29211



Meagan Nakatsu, Paralegal for Frank Eppes
Attorney for Defendant

SWORN to and SUBSCRIBED before me
this 12th day of August, 2015.



Notary Public for South Carolina

My Commission Expires: 2/24/20

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	2015-CP-23-1027
COUNTY OF GREENVILLE	)	
	)	
William Anthony Butts,	)	
S.C.D.C. No. 348307	)	
	)	
Applicant,	)	
	)	AMENDED RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Amended Return to the application for post-conviction relief filed February 10, 2015 would respectfully show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the July 2011 term of General Sessions for 3 counts of armed robbery (2011-GS-23-5149, count 1; -5150, count 1; -5151, count 1) and 3 counts of possession of a weapon during commission of a violent crime (2011-GS-23-5149, count 2; -5150, count 2; -5151, count 2). Scott D. Robinson, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On October 19, 2011, the Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of 20 years on each count of armed robbery and 5 years on each count of possession of a weapon during commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. Frank L. Eppes, Esquire perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and

sentences. State v. Butts, Op. No. 2014-UP-141 (S.C. Ct. App. filed April 2, 2014). The remittitur was sent on April 18, 2014.

II.

In the application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Claim of actual innocence."
2. "Misidentification."

In the "Amendment to Petition for Post Conviction Relief" filed by counsel on August 12, 2015, the Applicant makes the following allegations:

1. Ineffective assistance of trial counsel:
 - a. Counsel was not adequately prepared for a motion to sever the three incidents into separate trials.
 - b. Counsel was not prepared, nor did he properly address issues of misidentification.
 - c. Counsel was not prepared and did not properly address issues of the Applicant's actual innocence.
 - d. Counsel's cross-examination of the officer concerning the gun found in the Applicant's possession was inappropriate and inexcusable and was wrongly allowed to contribute to the Applicant's conviction.
2. "Material facts, not previously presented and heard, as to both [the Applicant]'s innocence and a misidentification by witnesses as well as other matters, were not previously presented and heard, and require vacation of the conviction and sentence in the interest of justice."
3. "Certain investigators for the Solicitor's Office unreasonably harassed and threatened key witnesses in an inappropriate manner."

III.

The Respondent asserts the Applicant's allegation that his trial attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant

must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises

questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Amended Return, the Respondent requests that a hearing be held on the issues raised in the "Amendment to Petition for Post Conviction Relief."

Respectfully submitted,

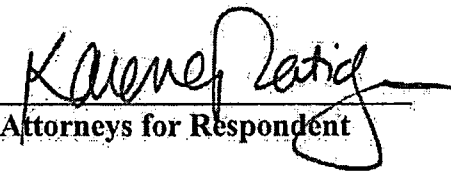
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

August 25, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2015-CP-23-1027
	)	
WILLIAM ANTHONY BUTTS, 348307	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Amended Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Frank L. Eppes, Esquire
Eppes & Plumblee, PA
1225 South Church Street
Greenville SC 29605

DATED this 25th day of August, 2015.


 Judy A. C. Carey, Legal Assistant
 For Respondent

William Anthony Butts vs. The State of South Carolina 2015-CP-23-01027

1	State of South Carolina		
2	County of Greenville	In the Court of Common Pleas	
3			
4	William Anthony Butts,	)	
5	Applicant,	)	2015-CP-23-01027
6	-vs-	)	April 19, 2016
7	The State of South Carolina,	)	
8	Respondent.	)	Transcript of Record
9	-----	)	

10

11

B E F O R E:

12

The Honorable R. Knox McMahon, Judge

13

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

Frank L. Eppes, Esquire

Peter Smith, Esquire

Attorneys for Applicant

Patrick Lowell Schmeckpeper, Esquire

Attorney for Respondent

18

19

20

21

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

22

23

24

25

William Anthony Butts vs. The State of South Carolina 2015-CP-23-01027

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Reporter's Certificate 114

E x h i b i t s

For the Applicant:

Marked	Description	I.D.	Admitted
1	Pair of Timberland boots	10	10
2	Gel imprints	12	12
3	Photographs	22	60
4	Arrest warrant		31
5	Plea offer	40	40
6	Smaller photographs	60	61

For the Defendant:

Marked	Description	I.D.	Admitted
	None offered.		

William Anthony Butts vs. The State of South Carolina 2015-CP-23-01027

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 9:38 a.m.)

4 THE COURT: Yes, sir. May it please the court.
5 My name is Patrick Schmeckpeper for the State. This is
6 the matter of William Anthony Butts vs. The State of
7 South Carolina, 2015-CP-23-1027.

8 The applicant was indicted in July of 2011 for
9 three counts of armed robbery and three counts of
10 possession of a weapon during the commission of a
11 violent crime. He was represented by Scott D.
12 Robinson.

13 Applicant was found guilty on October 19, 2011.
14 The Honorable Robin B. Stillwell sentenced him to
15 concurrent terms of 20 years on each count of armed
16 robbery and five years on each count of possession of a
17 weapon during the commission of a violent crime.

18 Timely notice of appeal was filed and ultimately
19 perfected. The appeal was ultimately dismissed by the
20 court of appeals. The remittitur was returned on
21 April 18, 2014. This application was filed February
22 10, 2015.

23 At this time we would turn matters over to
24 opposing counsel to put their allegations on the record
25 and call the case.

1 THE COURT: All right. Thank you, Mr. Attorney
2 General.

3 Mr. Eppes.

4 MR. EPPES: Your Honor, most of this will be borne
5 out in the testimony. There are a couple things we put
6 in our brief that we're really not -- we put in our
7 petition that we're really not going to raise, but it
8 falls into several categories.

9 First of all -- this was the issue on appeal as
10 well -- counsel was not adequately prepared for a
11 motion to sever the three incidents. This case
12 involved three armed robberies on three separate dates.
13 We would submit to the court with at least two
14 different perpetrators and possibly three. And yet
15 they combined them all for one trial.

16 The evidence in each case was, frankly, a little
17 bit faulty, but when you combined them all together, it
18 overwhelmed the jury. Obviously the standard on appeal
19 for that is very high. It was the discretion of the
20 court. And there was not -- the supreme court or the
21 court of appeals found there was no clear error. We
22 believe that that is part and parcel of why there is a
23 problem with counsel performance.

24 In addition to that, the counsel was not prepared,
25 did not properly address issues of identification as to

1 height and shoe size, which we'll go into in a lot of
2 detail. He was not prepared, did not adequately
3 address the issues of innocence. Counsel did not spend
4 sufficient time preparing with Mr. Butts. And I raise
5 the issued of counsel's cross-examination of the
6 officer concerning the gun just because he stepped into
7 it by asking a question he didn't know the answer to,
8 which I don't know if by itself it would be anything,
9 but it was just another straw upon the camel's back.

10 That really is the summary of where we're going
11 with this, and we'll proceed at this time --

12 THE COURT: All right.

13 MR. EPPEES: -- if it suits the court.

14 THE COURT: Thank you, Mr. Eppes. You may call
15 your first witness.

16 MR. SMITH: Good morning, Judge. Just for the
17 record, my name is Peter Smith. My address is ■ Main
18 Street, Northport, New York, and I appear today before
19 Your Honor.

20 THE COURT: And tell me your address again,
21 Mr. Smith.

22 MR. SMITH: ■ Main Street, Northport, New York.
23 Judge, it's on Long Island.

24 THE COURT: All right. Where is Northport, New
25 York in relation to New York City?

1 MR. SMITH: It's 50 miles east on the North Shore
2 of Long Island, on the Long Island Sound.

3 THE COURT: Delighted to have you with us. It was
4 a long drive this morning, wasn't it?

5 MR. SMITH: Judge, I've been on this case for
6 approximately five years, so I'm getting to know
7 Greenville.

8 THE COURT: Better than I do, I'm sure. We're
9 delighted to have you with us.

10 Do you want to call your first witness?

11 MR. SMITH: As an accommodation, we're going to
12 call Sergeant Weiner.

13 DAVID WEINER,

14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 THE CLERK: Please state your full name for the
16 record and spell it.

17 THE WITNESS: David Weiner. Spelling of the last
18 name is W-e-i-n-e-r.

19 THE COURT: All right.

20 Yes, sir, Mr. Smith. You may proceed.

21 MR. SMITH: Thank you.

22 DIRECT EXAMINATION

23 BY MR. SMITH:

24 Q Sergeant Weiner, good morning and thank you for
25 coming.

1 A Yes, sir.

2 Q What is your position right now?

3 A I am a supervisor in a violent crimes unit.

4 There's 12 investigators that investigate everything
5 from homicide to armed robbery to serious assaults.

6 Q And who are you employed by?

7 A Greenville County Sheriff's Office.

8 Q Directing your attention to October or November of
9 2009, were you so employed?

10 A Yes, sir.

11 Q And what was your title at that time?

12 A I was an investigator in that unit, investigating
13 armed robberies.

14 Q Are you familiar with the facts and circumstances
15 regarding this, the case against William Anthony Butts?

16 A Yes, sir.

17 Q Do you have knowledge of any evidence in
18 particular of footwear that was taken from Mr. Butts
19 regarding the investigation in this case?

20 A In the first robbery, some partial gel lift
21 impressions were taken from the counter of the
22 convenience store.

23 Q Were they examined?

24 A I don't know if they were -- I don't think they
25 were compared against anything that we had other than

1 I like myself looking at it.

2 Q Okay.

3 A Not that I recall.

4 Q Is there any indication of the foot size of those
5 imprints or that imprint that was left on the counter?

6 A No, sir, not that I'm aware of.

7 Q Well, is it, in your experience -- withdrawn.

8 Do you have experience in imprints left at crime
9 scenes?

10 A Zero.

11 Q Was this the first time you experienced an imprint
12 left there?

13 A No. We get gel lifts from all kinds of cases,
14 home invasions where they kick a door, convenience
15 stores like this where they jump a counter, things like
16 that.

17 Q You were subpoenaed to come here today, correct?

18 A Yes.

19 Q Did you bring anything with you today?

20 A Two partial gel lift impressions and a pair of
21 shoes seized from the defendant.

22 Q What size are the shoes, do you know?

23 A I do not know without looking at them. I'll take
24 a look right here.

25 Q Yeah, if you don't mind.

1 A Well, neither appears to be marked. Let me check
2 a P&E sheet and see if it was put on there. No, sir.
3 There's no size indicated on them.

4 Q Okay. Regarding the shoes, how did they come into
5 your property or your possession at the police
6 department, if you know?

7 A I'd have to look at a supplement to be a hundred
8 percent sure. I'm relatively confident we seized them,
9 I think, from a bedroom he was staying in. I can't
10 remember if they were from a bedroom or actually from
11 his feet, but I think they came from like a room he was
12 living in at his home.

13 Q But they are associated with footwear by the
14 applicant; is that correct?

15 A Correct.

16 MR. SMITH: Judge, at this time, if there's no
17 objection, I move to put those shoes into evidence.

18 MR. SCHMECKPEPER: Your Honor, I object at this
19 point. I'm not sure how they're relevant. I don't
20 think it's been established that they're the
21 applicant's shoes.

22 MR. SMITH: I believe the investigator just stated
23 that they were the applicant's shoes, Judge.

24 THE COURT: All right. He said they were either
25 recovered from Mr. Butts' bedroom or from Mr. Butts'

David Weiner - Direct by Mr. Smith
William Anthony Butts vs. The State of South Carolina 2015-CP-23-01027

1 feet, so I will allow it.

2 Applicant's Exhibit 1, that's just one pair of
3 shoes?

4 MR. SMITH: Yes, Judge, at this time.

5 THE COURT: Describe them a little bit more for
6 me.

7 THE WITNESS: Sure. They're tan lace-up
8 Timberland boots with almost like a quilted pattern on
9 them reading "Timberland" and then having the
10 Timberland design on it, which is a tree embroidered
11 into the leather and suede.

12 THE COURT: Applicant's 1 is in evidence subject
13 to objection.

14 (WHEREUPON, Applicant's Exhibit Number 1 was
15 marked for identification.)

16 (WHEREUPON, Applicant's Exhibit Number 1 was
17 admitted into evidence.)

18 BY MR. SMITH:

19 Q Sergeant, I believe you said you brought either
20 the imprint or copies of the gel imprints?

21 A Correct.

22 Q Could you display them to the court, please.

23 THE COURT: Give me just a minute.

24 THE WITNESS: I want to make sure we're going to
25 take possession of these. These are sealed like

1 forensically. And if I cut this seal, I can't reseal
2 it.

3 THE COURT: Well, if they're going to be offered
4 into evidence and introduced into evidence, they would
5 end up in the custody of the clerk of court, so --

6 THE WITNESS: Fair enough.

7 I may have forgotten your question. I think you
8 said just describe them; is that correct?

9 BY MR. SMITH:

10 Q Yes.

11 A Okay. They're two partial gel lift impressions
12 that appear to be the ball of a shoe. I don't see a
13 heel or anything like that. I don't know what part of
14 the shoe this one is. This one is clearly the toe, the
15 ball of it. They came off the counter of the
16 convenience store collected by forensics.

17 Q Is there any way -- is there any markings on
18 those, Sergeant?

19 A Markings by like forensics, you mean?

20 Q Yes.

21 A Yes, sir. They describe where on the counter it
22 came from. They draw a small diagram. It just says,
23 "Collected from countertop near cash register on
24 October 18, 2009."

25 Q Is there any determination there as far as the

1 size of the --

2 A No. Zero.

3 Q -- the footwear that put those gel prints on the
4 counter?

5 A No, sir.

6 Q Or impressions, I'm sorry.

7 A No, sir.

8 MR. SMITH: Judge, at this time I would ask that
9 they be marked as evidence, applicant's.

10 (WHEREUPON, Applicant's Exhibit Number 2 was
11 marked for identification.)

12 MR. SCHMECKPEPER: I don't object, Your Honor.

13 THE COURT: Applicant's 2 is in evidence without
14 objection.

15 (WHEREUPON, Applicant's Exhibit Number 2 was
16 admitted into evidence.)

17 BY MR. SMITH:

18 Q Sergeant, as part of this investigation, did there
19 come a time when you interviewed any of the witnesses
20 from the Citgo convenience store?

21 A Yes, sir. The clerk that would have been working.

22 Q Okay. And was that Flynn?

23 A I think he was the clerk for two of them, if I'm
24 not mistaken, two of the three robberies.

25 Q Anybody else, if you recall?

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1 A I don't. I don't recall, again without reviewing
2 the supplements. I know there were two separate clerks
3 that got interviewed, and then, of course, there were
4 multiple witness interviews relating to the case.

5 Q Was Victor Campbell, could he have been one of the
6 other ones that was interviewed as being one of the
7 clerks?

8 A I don't remember that name.

9 Q Well, without knowing their names, you did, in
10 fact, interview clerks that were working at the three
11 robberies?

12 A Absolutely, yes, sir.

13 Q And as part of your interviews, did you ask the
14 clerks for a description of the robber?

15 A Yes, sir. That's standard.

16 Q And did you receive a response? First of all, if
17 we can deal with the first robbery of October 18th.

18 A I didn't review the statement from the clerk
19 yesterday when I was looking over this case. I did
20 review what was given to uniformed patrol as a
21 relatively generic suspect description. I do recall,
22 specifically relating to these shoes, that they
23 described a pair of black shoes. So the case where
24 these gel lifts were taken are definitely not these
25 Timberland boots.

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1 Q Sergeant, do you recall, regarding the
2 October 18th robbery, do you recall interviewing a
3 witness or reviewing your notes where an interview was
4 conducted at which time the clerk gave a description as
5 to height of the robber?

6 A That would have been done. Without me looking at
7 his statement, I couldn't tell you what he told me.

8 Q Did you bring the statements with you?

9 A I did not, no, sir.

10 Q Okay. What was your understanding of the
11 description of the robber on the October 18th robbery
12 as you sit here now?

13 A Yeah. From what I remember, it was a black male,
14 pair of jeans, and like a gray hooded sweatshirt or
15 some kind of sweatshirt maybe turned inside out, and
16 those black sneakers.

17 Q And anything to do with the height?

18 A I don't recall what it said, sir, I'll be honest
19 with you.

20 Q So it's possible that there was a description as
21 far as the height and the weight?

22 A There would have been to be, yes, sir. And that
23 will be in the original incident report.

24 Q And why do you say it would have been to be?

25 A Because it's one of the questions we ask. It's

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1 required to fill that block out.

2 Q Okay. And how about the next robbery on
3 October 19th?

4 A As far as descriptions?

5 Q Yes. I'm going to ask the same series of
6 questions.

7 THE COURT: What was the last part? You gave the
8 date of the next robbery?

9 MR. SMITH: Yes, Judge. There were three
10 occurrences --

11 THE COURT: Just as far as this question is
12 concerned, you gave the date. Tell me the date.

13 MR. SMITH: October 19th.

14 THE COURT: Thank you.

15 Go right ahead, Officer.

16 BY MR. SMITH:

17 Q I believe the last one was November 5th?

18 A Yeah. I dont remember them being back to back day
19 to day. I know this one was the 18th. I don't
20 remember them being one day apart. It could have been.

21 Q Let me check my notes. October 31st. I stand
22 corrected.

23 A There were a couple weeks between each one.

24 Q So the first one was October 18, the second one
25 was October 31st, and the third one was November 5th.

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1 A Okay.

2 Q Okay. And the same question applies to the
3 October 31st robbery. Is it your understanding that
4 the witness was asked to describe the robber?

5 A Yes, sir. That would have been done, but I don't
6 know what was given out at this time, again, without
7 reviewing that original report.

8 Q And how much time would you need to actually
9 review the report? Is it something you can do today
10 and come back and finish your testimony, if you needed
11 to?

12 A Well, if somebody has a copy of that report here,
13 it takes about five seconds. It's right on the front
14 page.

15 MR. SMITH: I would ask the prosecution to state
16 if they have a copy of that report.

17 MR. SCHMECKPEPER: I don't have a copy of the
18 report, Your Honor. I don't think I do. I can check
19 my file. But I also understand that Mr. Weiner has an
20 investigation that he's working on right now and needs
21 to get back for.

22 MR. SMITH: Judge, if we can just take a minute.
23 We'll see if it's available in the courtroom.

24 Your Honor, may I approach the witness?

25 THE COURT: Of course, yes, sir.

1 (Document handed to witness.)

2 THE WITNESS: Very helpful. Let's see what we've
3 got.

4 BY MR. SMITH:

5 Q Sergeant, if you would look at the tabs H, I and
6 J. I believe those are the police reports. And if you
7 could let us know when you're finished reviewing them.

8 MR. EPPEES: Your Honor, for the record, what the
9 officer is reviewing is the file as organized by
10 Mr. Robinson for his trial that he provided to me a
11 minute ago that I believe has the police reports for
12 each separate robbery under those tabs, H, I and J.

13 THE COURT: Thank you for that.

14 MR. EPPEES: I wasn't able to sort through them and
15 figure out what was what, but I think that's where --
16 although Mr. Flynn's statement may be back further in
17 that notebook.

18 THE COURT: Thank you, Mr. Eppes.

19 THE WITNESS: You just have to give me a minute.
20 There are supplements in here, but I haven't seen an
21 original yet.

22 MR. EPPEES: Those may be, Your Honor, further back
23 in the notebook.

24 THE COURT: All right.

25 THE WITNESS: If you want me to clarify the P&E

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1 sheets for these boots, they were taken from him from
2 the detention center.

3 MR. EPPEES: Thank you.

4 THE WITNESS: The October 30th, I found that one
5 so far. Okay. I've got all three.

6 BY MR. SMITH:

7 Q Could you review them, the paperwork, as far as
8 any physical description of the robber?

9 A Sure. The first one, October 18, 2009. This one,
10 the clerk is William Flynn. Black male, 18 to 25, 5-7,
11 120, white hood sweatshirt, jeans, black mask and
12 gloves.

13 October 30th, just after midnight. The clerk is
14 Victor Campbell. Black male, twenties, six-foot, 170,
15 gray hoodie, black sweatpants, black shoes.

16 And then the last one, November 5th. This one is
17 Mr. Flynn again. Black male, 20 to 30s, 5-9 to 10, 150
18 to 160, white hood under black shirt, blue jeans, black
19 shoes, mask.

20 Q Thank you, Detective.

21 A Yes, sir.

22 Thank you, Mr. Robinson, for having that.

23 MR. SMITH: Thank you as well, Mr. Robinson.

24 MR. ROBINSON: Sure.

25 BY MR. SMITH:

1 Q With the description that was received, can you
2 tell by the documents who the officer was that received
3 the description?

4 A Sure. The first one on the 18th is Deputy Cox.
5 Second one on the 30th is Deputy Bowers. And the third
6 one on the 5th is Deputy Castle.

7 Q Now, in preparing for trial or any other time, did
8 you reinterview these witnesses?

9 A The deputies or the clerks?

10 Q I'm sorry, the clerks.

11 A All the clerks would have had a sit-down written
12 statement, yes, sir.

13 Q Well, what I'm saying is were you the investigator
14 that took the follow-up statements from these
15 witnesses, meaning the clerks in the three robberies?

16 A Let's see if he has them in here. More than
17 likely yes, but on occasions we get tied up on other
18 cases or I may be out and another investigator could
19 take the statement. But more than likely, yes, I took
20 it.

21 Q Do you recall, Sergeant, Mr. Flynn making the
22 statement to police that he believed that the robber
23 was a former employee of his, of the store, a
24 Mr. McCray?

25 A I don't remember that, but it is possible. If he

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1 told me that, I certainly would have put it in a
2 supplement and taken a look at it.

3 Q And I believe there was some police testimony.
4 I'm just going to say this in an effort to refresh your
5 recollection, that there was some police looking at
6 Mr. McCray and they were unable to locate him. Does
7 that refresh your recollection a little?

8 A Honestly, it does not. No. I'm looking through
9 this to see if I see that in here anywhere and I don't.

10 Q Thank you.

11 A Yes, sir.

12 Q Do the investigative reports there indicate that
13 Mr. Flynn said it looked like it was two different
14 robbers on the two different occasions that he was the
15 victim?

16 A That, actually, I'm pretty sure I remember him
17 stating he thought it was the same guy based on his
18 actions and his voice and all.

19 Q And that would be consistent with his descriptions
20 of the first robbery of the male being five-foot-seven
21 and the third robbery which is the individual is
22 five-foot-nine to five-foot-ten, correct?

23 A Absolutely. If somebody were to come in this
24 courtroom right now, I'll bet my entire paycheck that
25 every single person in here would describe him as a

1 totally different height and totally different weight.

2 Q Well, specific to this case, though, these were
3 eyewitnesses?

4 A Yes, sir.

5 Q And also the Witness Campbell from the 10/31
6 robbery when you testified the report indicated he
7 described the robber six-foot 170 pounds?

8 A Yes, sir.

9 Q Would that indicate to you as an investigator that
10 it may be, in fact, two different people?

11 A No, sir.

12 Q And why is that?

13 A I followed the evidence in this that led to
14 Mr. Butts. And like I said, everybody describes
15 everybody different, whether somebody is crouching,
16 standing differently, or just their interpretation. It
17 can be how tall I am, is the guy taller than me or
18 shorter than me. People just are not very good judges
19 of height and weight.

20 Q And were you also involved in what I call the
21 control video of November 5th, in securing that?

22 A I don't know what you're talking about.

23 Q The one with Mr. Butts in the store making a
24 purchase?

25 A I think there was a time he went in there to meet

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1 somebody out in the parking lot so he'd come in the
2 store. If I remember right, there was some kind of
3 video where we knew he had been inside there after
4 these had happened, I think. There was another
5 incident where he was charged on something else that we
6 had on video. Him -- I think it may be he was just out
7 in front of the store. I don't remember.

8 Q Okay. Well, could it be -- withdrawn.

9 I'm going to show you, Sergeant, some photographs,
10 if I may. I have a copy for them, the State and the
11 court. If I may hand up a copy and they could be
12 marked for identification.

13 (WHEREUPON, Applicant's Exhibit Number 3 was
14 marked for identification.)

15 BY MR. SMITH:

16 Q Does that refresh your recollection at all,
17 Sergeant?

18 A I vaguely remember this first image, but the other
19 three are from robberies.

20 Q And the first image, is that the one that has a
21 date 11/3/2009?

22 A Yes.

23 Q And could you tell us the importance of that
24 image?

25 A Well, it's Mr. Butts without his hoodie, mask, and

1 gloves on.

2 Q And can you tell what date that was taken?

3 A Yeah. You just told me. November 3rd, 2009.

4 Q Okay. And is that -- did a robbery occur on
5 11/3/2009, if you know?

6 A Yes. Well, there's some kind of shooting that
7 occurred.

8 Q I'm talking about the Citgo.

9 A Not at the Citgo. They drove away.

10 Q Was this photo used to identify Mr. Butts at all,
11 do you know?

12 A In that other case, yes. Not in this case.

13 Q Well, was it subsequently used to identify him as
14 well in this case? I'm talking about this case being
15 the three robberies at the Metro Mart.

16 A No. We used it to identify him in the shooting
17 case but not in the robberies.

18 Q Well, are you aware that this photograph was used
19 at the trial?

20 A If it was, I don't remember. I just -- if it was
21 used, it's probably in the context of we had spoken to
22 several people to get his nickname or something to that
23 effect. I think they called him City.

24 Q But it wasn't used to identify him as the robber
25 in any of the three robberies?

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1 A I -- I don't know. Not that I'm aware of. We
2 used these three store images of the actual robbery
3 taking place.

4 MR. SMITH: Judge, at this time I move to have
5 these photographs admitted into evidence for the
6 applicant.

7 MR. SCHMECKPEPER: Your Honor, I'd object at this
8 time just because they have been altered. Perhaps once
9 he's had an expert kind of authenticate and clarify
10 what he's done with the photos, I wouldn't have an
11 objection.

12 MR. SMITH: Well, then, I would make it subject to
13 connection by the expert, Judge. I believe he's
14 referring to the tape measurement markings on the
15 photographs.

16 THE COURT: All right. So Applicant's 3, all of
17 them -- four photographs -- Applicant's 3 are marked
18 for identification purposes only at this time.

19 THE COURT: All right. You may continue,
20 Mr. Smith.

21 BY MR. SMITH:

22 Q Just a few last questions, Sergeant. I know how
23 busy you are, and I appreciate your time.

24 A Yes.

25 Q In your investigation, did there ever come a time

1 when the height of the clerks or the clerks were asked
2 about their height in regards to the height of the
3 robber?

4 A I was thumbing through here for their statements
5 to see because that generally is the way I'll have
6 somebody describe someone's height because of that fact
7 that I don't like to say five-seven to five-nine
8 because people are not a good judge of height.

9 Generally, what I'll ask them is, "Were they
10 taller or shorter than you and how tall are you?" And
11 I didn't see any of their -- their statements could be
12 in here, I just haven't found them. That's generally
13 what I'll ask them.

14 Q Well, as you sit here today, do you recall how
15 tall Mr. Flynn was?

16 A No, not the slightest idea.

17 Q Or how about the other clerk?

18 A Campbell, no, sir.

19 Here is some statements. I don't see them in
20 here, sir.

21 Q But it's -- I don't mean to speak for you, but I
22 think you just mentioned it's fairly normal when you do
23 these investigations to ask people to compare?

24 A Yes, sir.

25 Q And would you say?

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1 A "Taller or shorter than you."

2 Q Okay. Last question, Sergeant. Do you know if
3 the shoeprint impression left on the counter was
4 analyzed as far as the size of the shoe that left that
5 print?

6 A You'd asked me that. No, not that I'm aware of.

7 Q Okay. It could have been done, but yet you're not
8 aware of it?

9 A The chain of custody on them, they have not been
10 taken out of property and evidence.

11 Q Well, in doing investigations, would it be a
12 normal part of an investigation where there's an
13 impression left on a counter of a crime scene, that it
14 be analyzed not only as far as the texture of the sole
15 material --

16 A No, sir.

17 Q -- or the imprint?

18 A Generally, the only thing we'll do is if we have
19 something to compare it against, we'll take it for
20 that, but I won't just send a random partial imprint
21 off.

22 Q Well, but in this case you did, pursuant to a
23 search warrant and the boots that were taken off the
24 applicant at the time of his arrest, you did have
25 something to compare them to; is that correct?

1 A Yeah, but I can, just with my eyeball, tell you
2 they're not the same one. They're not even close.

3 Q No as far as the boots, but how many other pair of
4 shoes or sneakers did the police take from the
5 applicant?

6 A Oh, I'm not aware of any others being taken.

7 Q Were they examined?

8 A Were what examined?

9 Q Well, when there was a search warrant, which one?
10 Was there a search warrant performed at the applicant's
11 residence?

12 A Yes.

13 Q Were you part of that search warrant?

14 A I was there, yes, sir.

15 Q Okay. And do you know whether the search
16 included any --

17 A The search warrant is there. We took a blue
18 T-shirt, looks like. Yes, that's it.

19 Q Was there any examination of any footwear that was
20 in the closet that could have been worn by the
21 applicant?

22 A No, sir.

23 Q And you didn't observe anybody looking at the
24 shoes to see if you could compare if you could find an
25 imprint that would match up with the imprint that was

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1 found at one of the robberies?

2 A No, sir.

3 Q Could you be mistaken with that if there's
4 evidence of that?

5 A If one of the other investigators said they did
6 it, but it wasn't with my knowledge.

7 Q Well, do you have a copy of the search warrant
8 return, in other words, what was actually taken with
9 the warrant?

10 A The one I looked at said we took one blue T-shirt.

11 Q Do you recall seeing any footwear when you were
12 executing the search warrant?

13 A I don't remember -- the only thing I remember is
14 maybe like a mattress on the floor and maybe a pile of
15 clothes. It wasn't very tidy. There wasn't a whole
16 lot in the room, if I recall.

17 Q Okay.

18 MR. SMITH: Judge, I want to thank the sergeant
19 very much not only for his service but also coming out
20 of his -- you know, going out of his way to appear
21 today. I am finished with the direct.

22 THE COURT: Thank you, Mr. Smith.

23 Mr. Schmeckpeper.

24 MR. SCHMECKPEPER: Thank you, Your Honor. May it
25 please the court. I just have a few questions.

CROSS-EXAMINATION

BY MR. SCHMECKPEPER:

Q The first one is that you don't know the size of either the boot or imprint; is that correct?

A Correct.

Q And I believe your testimony was that the clerk who was interviewed that was a victim of both armed robberies said it seemed like the same person at trial?

A Yes.

Q And as an investigator, in your experience, how many -- approximately how many people have you interviewed or taken descriptions from?

A All I can tell you is I've worked over 900 armed robberies.

Q And how often does somebody get somebody's height exactly right in making a description?

A I can probably count on one hand.

Q I have no further questions. Thank you, Sergeant Weiner, for your time.

THE COURT: Redirect, Mr. Smith?

MR. SMITH: Judge just one last thing. I apologize.

THE WITNESS: Yes, sir.

MR. SMITH: Let me show this to the State.

I'd like to approach to show the witness a

1 document, Judge.

2 THE COURT: Certainly, of course.

3 MR. SMITH: I'd like to show the court first
4 before I show the witness. State attorney said it's
5 already part of the packet.

6 MR. SCHMECKPEPER: I believe so.

7 THE COURT: I believe it is. Let's see. I don't
8 see this particular one by number, but I may have
9 missed it. Be that as it may, do you have any
10 objection?

11 MR. SCHMECKPEPER: I have no objection to it, Your
12 Honor.

13 THE COURT: Go right ahead.

14 REDIRECT EXAMINATION

15 BY MR. SMITH:

16 Q Sergeant, would you take a look at that document,
17 please, and let me know when you're ready.

18 A Go ahead.

19 Q Sergeant, what do you recognize that document to
20 be?

21 A An arrest warrant for Mr. Butts.

22 Q Okay. And is it dated?

23 A It is. November 3rd. I'm sorry, it was obtained
24 November 18th, 2009.

25 Q Does it contain a description of Mr. Butts?

1 A It does.

2 Q And could you tell the court what the description
3 is?

4 A It lists him as a black male, six feet, one inches
5 tall and 150 pounds.

6 Q Thank you, Sergeant.

7 A Yes, sir.

8 MR. SMITH: Judge, at this time I move that
9 document into evidence on behalf of the applicant.

10 MR. SCHMECKPEPER: I have no objection, Your
11 Honor.

12 THE COURT: Applicant's 4 is in evidence.
13 (WHEREUPON, Applicant's Exhibit Number 4 was
14 admitted into evidence.)

15 MR. SCHMECKPEPER: I have no further questions.

16 THE COURT: Thank you.

17 Thank you for being with us this morning, Sergeant
18 Weiner.

19 MR. SCHMECKPEPER: Your Honor, I would ask
20 Sergeant Weiner be excused.

21 MR. SMITH: I would ask if the detective sergeant
22 could place the reports with the imprints back into the
23 envelope with the evidence.

24 THE WITNESS: Oh, yeah.

25 Now, I can't reseal these. I don't have any

1 evidence tape.

2 THE COURT: They're in the custody of the clerk
3 now.

4 THE WITNESS: They're about to be.

5 MR. SMITH: Just so they stay together, the
6 reports and the imprints. I understand that you can't
7 seal them. I just think it's important that they stay
8 together.

9 THE WITNESS: I guess you could ask for that
10 evidence to be sealed by the clerk, if there's no
11 objection.

12 MR. SMITH: Well, we may want to have them
13 examined, Judge, because we have an expert here.

14 THE COURT: They're in custody of the clerk.

15 THE WITNESS: I just need her to sign some things.

16 THE COURT: Sir?

17 THE WITNESS: I just need her to sign some stuff.

18 THE COURT: Thank you, Madam Clerk.

19 MR. EPPES: Your Honor, we'd call Mr. Butts to the
20 stand.

21 THE COURT: All right. If you will come around
22 and be sworn and join us, please, Mr. Butts.

23 WILLIAM BUTTS,

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 THE CLERK: Please state your full name for the

1 record.

2 THE WITNESS: William Butts.

3 THE CLERK: Thank you. You may be seated.

4 THE WITNESS: Thank you.

5 DIRECT EXAMINATION

6 BY MR. EPPES:

7 Q Mr. Butts, where are you living?

8 A Where do I live? Currently at Lee County.

9 Q How long you been at Lee County?

10 A About four years, four and a half years, almost
11 five.

12 Q And you're five years into a 20-year sentence?

13 A Yes, sir.

14 Q How did you come to hire Mr. Robinson?

15 A Private Investigator Wayne Schurez, rest in peace
16 to him, he turned me on to Scott Robinson.

17 Q Spell Mr. Schurez's name for me.

18 A I really can't spell it. I think it's

19 S-c-h-u-r-e-z or something like that.

20 Q Mr. Schurez was working with you on your case,
21 correct?

22 A Yes, sir.

23 Q And he passed away about a week before trial?

24 A Yes, sir.

25 Q Now, when you -- did you look to hire any other

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1 lawyers before you hired Mr. Robinson?

2 A Yes, sir. I looked into hiring Richard Warder,
3 but things didn't work out with him.

4 Q What did Mr. Warder tell you?

5 A He told me in trial, you know, he really --
6 there's nothing really he can do for me, you know, as
7 far as helping me with my case. But I guess looking at
8 it now from a realistic aspect, he was really just
9 saying that it would be in the hands of the jury. He
10 can just only present my case to the best of his
11 ability.

12 Q What did Mr. Robinson tell you when you hired him?

13 A He told me hands down with the evidence that, you
14 know, Wayne presented to him and what he's seen for
15 himself, you know, he's pretty sure that he can get the
16 case thrown out.

17 Q Did y'all ever talk about pleading guilty?

18 A No. We never talked about pleading guilty.

19 Q Did he ever talk to you about --

20 MR. SMITH: Your Honor, excuse me, Co-counsel, but
21 could the witness be excused from the courtroom,
22 please?

23 THE COURT: No, sir. He may be allowed to stay.

24 MR. SMITH: Thank you.

25 BY MR. EPPES:

1 Q Did he ever present a plea offer to you?

2 A No, sir.

3 Q Are you aware of whether you ever got a plea offer
4 or not?

5 A When I got my motion of discovery, I had seen that
6 it was a plea offer in there, but no one ever said
7 anything about it. Excuse me. That was from my -- I
8 forgot his name. I had the first lawyer that we hired,
9 I think he was a family court lawyer. I think he had,
10 you know, obtained all those documents and gave them to
11 Scott before, you know, I had hired him.

12 Q What did your plea offer say?

13 A I think -- I want to say it was like 15 years
14 concurrent on some charges and to throw some charges
15 out. That was the plea agreement.

16 Q Was that offer ever communicated to you?

17 A No, sir. It was in my paperwork, you know. Like
18 I said, when I got my motion of discovery, I seen it.

19 MR. SCHMECKPEPER: I beg the court's indulgence.
20 I would like to read this. This is the first time I've
21 heard this allegation.

22 THE COURT: We'll revisit it, if that's okay.

23 Mr. Eppes, you can go ahead with your
24 cross-examination.

25 MR. EPPES: I'll get back to that.

1 THE COURT: All right.

2 BY MR. EPPES:

3 Q So you said Mr. Robinson told you he thought he
4 could win the trial?

5 A Yes, sir.

6 Q Okay. Now, where were you when you hired him?

7 A In Greenville County Detention Center.

8 Q Did you ever get out of Greenville County
9 Detention Center?

10 A No, sir. I sat for almost two years.

11 Q So from November 18th of --

12 A 2009 until about my trial date. I want to say it
13 was October 18, 2011.

14 Q Okay.

15 A Or somewhere around there.

16 Q And when did you hire Mr. Robinson?

17 A I want to say somewhere in between 2010.

18 Q Okay. And how many times did he come to see you
19 while you were in jail?

20 A About a handful of times.

21 Q Did y'all talk about your trial strategy?

22 A Not really.

23 Q What did you talk about?

24 A Really just talked about -- well, at the time the
25 Yankees were supposed to be in the World Series or, you

1 know, in the playoffs. We talked about baseball. You
2 know, very brief about my case. It was very brief. It
3 wasn't -- you know, just basically, "How you doing?
4 How you hanging up" type of thing.

5 Q And did you talk about -- did you talk anymore
6 about whether you thought you'd win at trial?

7 A I mean, after he reassured me, I mean, every time
8 that, you know, as soon as we get the trial date, we'll
9 win it. So it was really, you know, we never really
10 talked about it that much as far as strategy. We only
11 talked about the strategy the day of.

12 Q Were you -- during the course of this period of
13 time, from 2010 to 2011, were you aware of the evidence
14 against you? Did you ever go over the discovery?

15 A Yeah. I went over it several times. Me and Wayne
16 Schurez, he was a frequent help, you know. He would
17 come to the county every other day or every weekend.
18 He would come over, and we would go over things and
19 things that he found and, you know, things to present
20 to Scott. But, you know, Scott never used any of those
21 things.

22 Q What kind of things are you talking about?

23 A Well, Wayne Schurez, he was a private investigator
24 so he went out to -- I want to say it's the Citgo. He
25 went out to the Citgo and, you know, did investigative

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1 work. You know, he went and talked to witnesses. He
2 did a lot of investigative work for me, but none of it
3 was used in my trial. He drew up a lot of work for me.

4 Q What kind of work did he draw up? Do you remember
5 any of it specifically?

6 A It's been so long ago. I want to say he had the
7 shoe -- the shoe imprints and stuff, and he had some
8 key notes from witnesses, and he had talked to the
9 store manager. He had some key notes from there. He
10 did -- I want to say he Google Earthed the location or
11 something. He had some locations mapped out of, you
12 know, around the Citgo and stuff so, I mean, he had a
13 great deal of work.

14 Q What happened to Mr. Schurez?

15 A Mr. Schurez, he had -- well, to my attention, like
16 in 2011, he had -- was it an aneurysm or something in
17 his driveway and he passed away.

18 Q I'm going to jump back a little bit. The lawyer
19 you mentioned was Tom Outlaw; is that correct?

20 A That's his name, Outlaw.

21 Q Okay. And Kris Hodge from the solicitor's office
22 sent you a plea offer. Do you recognize that?

23 A Yes, sir. I do recognize this.

24 Q And is that the plea offer that you saw after you
25 were convicted?

1 A I seen this, I want to say -- I want to say Scott
2 Robinson brought me this in my motion of discovery
3 about a month or so after I hired him or two months or
4 so after I hired him. It was in my motion of
5 discovery.

6 Q Did you consider taking that offer?

7 A No.

8 Q Why not?

9 A Because I wasn't guilty of any of these things.

10 Q Well --

11 A I mean, except for the, you know, I went to
12 Mauldin city court for the threatening the life of a
13 teacher. And he said himself that I didn't threaten
14 him, so.

15 Q That's not what you went to trial on.

16 A No. No, sir.

17 Q Okay. And what did Mr. Robinson say about a plea
18 offer versus a trial?

19 A He didn't say anything. He just said trial, we're
20 going to win trial. You know, that's all he was
21 talking about.

22 Q How much did you pay Mr. Robinson?

23 A I want to say my mother gave him somewhere between
24 \$5,000 to \$2,500.

25 Q 2,500 to 5,000?

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1 A Yes, sir.

2 Q Did you -- was your mother ever -- did she ever
3 stop making payments?

4 A I'm not sure. I'm pretty sure she made every
5 payment because it was -- when we first hired him, it
6 was him and Paul Silvaggio, and we were making payments
7 through Paul Silvaggio. And Paul Silvaggio stopped
8 working for him, and then that's when everything
9 started getting bumpy.

10 MR. EPPES: Your Honor, I'd like to move that this
11 plea offer be placed into evidence.

12 THE COURT: Plea offer?

13 MR. SCHMECKPEPER: Your Honor, can I get a copy of
14 it or something?

15 MR. EPPES: Sure.

16 THE COURT: The clerk will make you a copy. So
17 that would be 5.

18 (WHEREUPON, Applicant's Exhibit Number 5 was
19 marked for identification.)

20 (WHEREUPON, Applicant's Exhibit Number 5 was
21 admitted into evidence.)

22 BY MR. EPPES:

23 Q I want to go back and talk about you said
24 Mr. Silvaggio was working for Mr. Robinson?

25 A Yes, sir.

1 Q Was he working with Mr. Schurez as an investigator
2 sort of?

3 A They came off as, you know, they didn't really
4 like Wayne Schurez so they didn't really work with him
5 as much. So what me and Wayne did, you know, I paid
6 Wayne on my own. So what he did was, you know,
7 exclusively for me, so they didn't really work with him
8 like that.

9 Q Was Mr. Silvaggio working on the case?

10 A Yes. He had a hand in on the case.

11 Q Did he come to the trial?

12 A No, he didn't. Like I said, he stopped working
13 for Paul -- or I mean Scott, excuse me.

14 Q He was a retired homicide officer with the
15 Greenville County Sheriff's Office, correct?

16 A Yes, sir.

17 Q Okay. And when he terminated his relationship
18 with Scott, as far as you know, he quit working on the
19 case?

20 A Yes, he did quit working on the case. I didn't
21 hear anything from him. He went to the extent of
22 hiring some female -- I forgot her name -- to be the
23 private investigator on my case.

24 Q Okay.

25 A Scott did.

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1 Q Uh-huh. All right. Now, there were videos of
2 these crimes, correct?

3 A Yes, sir.

4 Q When did you first see these videos?

5 A The date of my trial.

6 Q Before the trial started?

7 A No, no. The date of the trial.

8 Q During the trial?

9 A Yes, sir.

10 Q That was the first time you saw the videos --

11 A Yes, sir.

12 Q -- that purported to show you or did show you or
13 somebody else robbing the stores?

14 A Yes, sir.

15 Q You had never seen them before?

16 A Never.

17 Q You had never gone over them with Mr. Robinson
18 before?

19 A Never. He told me that he had them, but we never
20 seen them until the day of trial.

21 Q Did you ask to see them before the date of trial?

22 A Yes, I asked him. He said he had visit phone call
23 conversations as well. And I asked him could we hear
24 all of those because there was certain things that I
25 was looking for that would help me in my case there,

1 and he told me that he would come down and get to play
2 them. But like I said, he was a frequent no-show.

3 Q When did y'all -- tell me about the time y'all
4 spent preparing for your trial.

5 A It was really brief. You know, he came -- I want
6 to say he was working on another trial the week before
7 mine, and he called me and the guy down at the same
8 time. Now, while he's prepping this guy for his trial,
9 he briefly told me, "Hey, you're on the trial docket,
10 and I'll be back to see you in a couple days." I seen
11 him trial date.

12 Q You didn't see him before the trial?

13 A No, sir.

14 Q So y'all didn't prepare for your trial before your
15 trial date?

16 A No, sir.

17 Q Okay. Now, what did you do during the trial to
18 help with the trial?

19 A I wrote notes, took notes down for a while, you
20 know. He told me if I had any questions or any
21 statements I wanted to make or anything that would help
22 him, you know, write it down. And I was doing a whole
23 lot of writing.

24 Q Did you give it to him?

25 A I gave it to him as well as the private

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1 investigator, but none of it was used.

2 Q None of it was used in your trial?

3 A No, sir.

4 Q Had y'all talked before your trial about the fact
5 that it was three separate armed robberies on three
6 separate days?

7 A Yes, we had talked about it.

8 Q Did you ask whether it seemed fair to you that you
9 should be tried for all three at the same time?

10 A I was naive at the time. I really didn't know too
11 much about the law. I was just, you know, starting to
12 get into it.

13 Q You relied on Mr. Robinson?

14 A Yes, sir.

15 Q And again, he told you he was going to win the
16 trial?

17 A Yes, sir.

18 Q Win, not do his best?

19 A He said he would win.

20 MR. EPPE: You're going to need to answer any
21 questions Mr. Schmeckpeper has.

22 THE COURT: Thank you.

23 Mr. Schmeckpeper.

24 MR. SCHMECKPEPER: May it please the court.

25 THE COURT: Yes, sir.

1 CROSS-EXAMINATION

2 BY MR. SCHMECKPEPER:

3 Q Good morning, Mr. Butts.

4 A Good morning.

5 Q I've just got a couple questions.

6 A All right.

7 Q You said you went to trial because you're
8 innocent; is that correct?

9 A Yes, sir.

10 Q And that you had seen the plea offer before?

11 A Yes, sir.

12 Q And you said that Mr. Robinson visited you how
13 many times in prison?

14 A About a handful.

15 Q So five?

16 A Yeah we can say five.

17 Q Roughly five?

18 A Yes, sir.

19 Q And that he didn't talk to you -- did he review
20 discovery with you?

21 A No.

22 Q Did he go over the State's evidence with you?

23 A Briefly but not too long. You know, like I said,
24 when I acquired Scott, I mostly had most of my stuff so
25 it was really more so of Wayne Schurez presenting my

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1 case to him and him saying, you know, "Well, I can win.
2 I can win." You know, "I can win with this evidence I
3 have on your case." You know, "I can take you to trial
4 and win, if that's what you want." And I told him
5 that's what I wanted.

6 Q So he had the evidence that Wayne Schurez
7 collected?

8 A Yes, sir.

9 Q You made that available to him?

10 A Yes, sir.

11 Q And Wayne Schurez was your own private -- you paid
12 Wayne separate from Mr. Robinson to investigate?

13 A Yes, sir.

14 Q And Mr. Robinson also had -- I'm sorry, I'm a
15 little unclear -- two private investigators. He had
16 one for a while, and then they parted ways, and he got
17 another private investigator?

18 A Yes, sir.

19 Q So you had three private investigators working on
20 this case?

21 A Yes, sir.

22 Q And I'm not necessarily saying they all worked
23 together?

24 A Yeah, at the same time, but, you know, three.

25 Q Now, you're saying also that Mr. Robinson didn't

1 spend time with you immediately prior to trial
2 preparing you?

3 A Correct.

4 Q In the months leading up to trial, how many times
5 did he meet with you?

6 A In the months that I had -- in the month of
7 trial --

8 Q In the months leading up to the trial -- I'm
9 sorry --

10 A Or in the months leading up to the trial? Like I
11 said, a handful times.

12 Q And did he explain to you what the elements of the
13 charges are that the State would be required to prove?

14 A Not really.

15 Q Did he explain the potential sentences you would
16 be facing at trial?

17 A Yes, we talked over that.

18 Q And you wanted to go to trial anyway even knowing
19 you were facing quite a substantial length of time in
20 prison?

21 A Correct.

22 MR. SCHMECKPEPER: I beg the court's indulgence.

23 THE COURT: Certainly.

24 BY MR. SCHMECKPEPER:

25 Q Now, Mr. Robinson never even explained to you

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1 there was a possibility that you could be convicted of
2 these charges?

3 A No, sir.

4 Q He never said you could possibly spend some time
5 in jail?

6 A No, sir.

7 Q He never said you could possibly lose?

8 A No, sir.

9 Q He said you were definitely going to win?

10 A That's what he told me.

11 MR. SCHMECKPEPER: I have no further questions.

12 THE COURT: Mr. Eppes, redirect?

13 MR. EPPES: None, Your Honor.

14 THE COURT: Thank you.

15 Thank you, Mr. Butts.

16 THE WITNESS: Thank you, sir.

17 THE COURT: You may step down.

18 All right. Mr. Eppes, Mr. Smith, you may call
19 your next witness.

20 MR. EPPES: Your Honor, our next witness is,
21 frankly, going to be the longest witness. It might be
22 good for me, for us to take just a short break, if
23 that's okay.

24 THE COURT: Who would your next witness be?

25 MR. SMITH: Jeffrey Spivack, Judge, the expert.

1 THE COURT: All right. We'll take about a
2 ten-minute recess. Thank you.

3 (WHEREUPON, a recess was taken from 10:37 a.m.
4 to 10:57 a.m.)

5 THE COURT: All right. Mr. Smith, you may call
6 your next witness.

7 MR. SMITH: Yes. With leave of the court, Judge,
8 I'd like to call Jeff S. Spivack.

9 THE COURT: If you would come around for us,
10 please, and be sworn.

11 MR. SMITH: If I could hand this up to the court
12 as well. I have already provided a copy to the State.

13 JEFF SPIVACK,

14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

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

17 THE WITNESS: Jeff Spivack.

18 THE CLERK: Thank you. You may be seated.

19 MR. SMITH: May I inquire, Your Honor?

20 THE COURT: Of course. Please, Mr. Smith.

21 DIRECT EXAMINATION

22 BY MR. SMITH:

23 Q Mr. Spivack, what is your occupation or
24 profession?

25 A I'm the owner of Coherent Legal Video, LLC and

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1 also Coherent Investigations. The former is a firm
2 that specializes in legal video and particularly in
3 forensic video analysis. And within the speciality, I
4 have a subspecialty which is close-range
5 photogrammetry.

6 Q And what is your employment experience, sir?

7 A My employment experience, I am currently in
8 private practice. I have specialized in forensic video
9 analysis for a little over ten years. In 2008 and 2009
10 I worked in the same capacity for the Las Vegas
11 Metropolitan Police Department.

12 Q In what capacity was that, sir?

13 A As a forensic multimedia analyst.

14 Q And how long were you employed by the Las Vegas --

15 A From 2008 to 2009. I'm sorry, I don't have the
16 exact dates.

17 Q What degrees, certificates, or licenses do you
18 currently possess?

19 A I have a degree from the Community College of the
20 Air Force. It's an AAS in electronic systems
21 technology. And I have -- a member of the
22 International Association for Identification, and as
23 part of that or in addition to that membership, I'm a
24 certified forensic video examiner.

25 Q And have you attended or conducted any continuing

1 education seminars, conferences, or related training?

2 A Yes, I have.

3 Q Could you describe that, please?

4 A Sure. I've taught at conferences. Most recently
5 there was -- I served on a panel discussion on
6 authentication of questioned multimedia but also
7 conducted a workshop on close-range photogrammetry for
8 the American Board of Recorded Evidence at the August
9 session at the University of California Santa Barbara.

10 I've given similar presentations on other forensic
11 video and digital evidence at the -- at different
12 sessions of the Digital Summit International Conference
13 which is for digital forensic examiners. And I
14 developed and teach the end user certification course
15 for Cognitech Incorporated which makes forensic video
16 analysis software. I teach that at their Pasadena,
17 California headquarters and on site. The most recent
18 on-site was at the Federal Bureau of Investigation
19 Forensic Audio and Video and Image Analysis Unit at
20 Quantico.

21 Q Okay. And approximately how many cases have you
22 handled in this field?

23 A Hundreds. In terms of forensic video analysis,
24 hundreds, if not thousands.

25 Q And have you testified before in other cases?

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1 A Yes, I have.

2 Q Approximately how many?

3 A 15 that I recall.

4 Q And out of the 15, were you qualified by a court
5 as an expert?

6 A Yes.

7 Q And approximately how many cases?

8 A In each of the cases where I testified at trial.
9 And I'm not really sure if there is a formal acceptance
10 as an expert witness for the grand jury proceedings,
11 but there was no objection, so.

12 Q Okay. And could you tell the court about the
13 principles of the actual science that you're here today
14 to testify about?

15 A Certainly. The speciality that I employed in this
16 case is called close-range photogrammetry.
17 Photogrammetry is the science of extracting
18 measurements from images. Could be a photograph, could
19 be an aerial photograph. Traditionally that's where
20 the science developed. But close-range photogrammetry
21 is extracting measurements from images that are taken
22 at close range. For example, from a CCTV or closed
23 circuit television system security video like in this
24 case.

25 There are some important differences between

1 traditional photogrammetry and close-range
2 photogrammetry in that, with traditional
3 photogrammetry, you typically have calibrated cameras.
4 With CCTV systems, you don't.

5 There are three different methods of close-range
6 photogrammetry. The oldest and probably most widely
7 used because it is the oldest is called reverse
8 projection, which is a light superimposition of the
9 same camera that was used to record the incident with a
10 still image of -- it's typically estimating suspect
11 height.

12 So the way that works is the examiner conducts or
13 connects a signal from the same camera and moves a
14 reference scale into precisely the same position where
15 the suspect was standing. And from that you can vary
16 the opacity back and forth between the live image and
17 the recorded image and determine or estimate the
18 height.

19 Another method that is less wisely used is known
20 as single view metrology which works on vanishing
21 points. And it has a lot of limitations. It's much
22 more difficult to use so it's not as widely used.

23 The method that I used on this case and that I
24 have found in my experience to be the most robust is
25 called stereophotogrammetry. And stereophotogrammetry

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1 combines the evidence image. For example, I picked an
2 image of the armed robber in three different cases and
3 also an image of Mr. -- I think it's Butts from another
4 date that was offered as a control, and I went to the
5 scene and I took photographs of the scene from
6 different angles.

7 So by combining those different perspectives with
8 the evidence image -- and the photographs that I take
9 are with a calibrated camera -- by combining those
10 different, those three different perspectives, the
11 software and the algorithms in the software allow me to
12 establish what's known as a coordinate system. With
13 that coordinate system and with a reference measurement
14 at the scene, I can then accurately conduct
15 measurements of height using the floor as a base plane.

16 Q Okay.

17 MR. SMITH: Your Honor, may I approach the witness
18 please?

19 THE COURT: Of course.

20 BY MR. SMITH:

21 Q Mr. Spivack, I'm going to hand you two packets of
22 papers and ask you to look at them.

23 A Yes, sir.

24 Q Could you tell the court what those documents are?

25 A These are photographic enlargements of images that

1 I extracted from the CCTV system that was in use at
2 this location.

3 I don't know, is there any way to mark these?

4 Q Well, I just have a few more questions.

5 A Certainly.

6 Q The papers to your left, the larger photographs,
7 do they appear to be copies of the other photographs?

8 A Yes, they do.

9 Q Okay. And what are they photographs of?

10 A The first one is an image of the control video
11 where Mr. Butts is known as a customer and appear on --
12 it looks like the date is, appears to be November 3rd
13 of 2009. There is an image of an armed robber on
14 October 18, 2009, another image of an armed robber on
15 October 30, 2009, and yet another image of an armed
16 robber on November 5, 2009. And you'll see that the --
17 well, you can't see. In these images, they contain a
18 scale with the measurement from the floor to the top of
19 the individual's head in each case.

20 MR. SCHMECKPEPER: Your Honor, I'd just like to
21 object at this point. And just to clear the record up,
22 I don't want him going too far into this without him
23 actually being qualified as an expert in photogeometry
24 (sic).

25 MR. SMITH: I just have a few more questions and

1 I'm going to move to have these photographs admitted.

2 If you don't object now, Your Honor, I would ask
3 that they -- they were to be admitted subject to this
4 testimony.

5 THE COURT: Okay. Let me ask Mr. Schmeckpeper
6 this: Do you have any voir dire?

7 What are you going to offer him as an expert as,
8 Mr. Smith?

9 MR. SMITH: In this photometrology (sic).

10 THE WITNESS: Photogrammetry.

11 MR. SMITH: Yes. Judge, I move right now to have
12 Mr. Spivack qualified by the court as an expert in this
13 field.

14 THE COURT: All right.

15 Mr. Schmeckpeper, do you have any voir dire as to
16 Mr. Spivack's qualifications as an expert in the field
17 of forensic photogrammetry?

18 MR. SCHMECKPEPER: No, Your Honor. I have no
19 objection.

20 THE COURT: All right. Thank you.

21 You may proceed. You're also offering the four
22 photographs into evidence at this time, Mr. Smith?

23 MR. SMITH: The four photographs together with the
24 other packet which I'm going to go into right now. I
25 move, first of all, the four photographs that I tried

1 to introduce before, I now move them into evidence,
2 Judge.

3 MR. SCHMECKPEPER: Your Honor, my only objection
4 would be as to the first photograph. I don't know what
5 testimony has been presented today to show that this
6 actually is the applicant. I don't think Sergeant
7 Weiner actually testified to that. I don't believe we
8 have anything actually establishing this as the
9 applicant other than the expert's testimony that he got
10 this as a control.

11 THE COURT: Mr. Smith.

12 MR. SMITH: Thank you.

13 Q Mr. Spivack, where did you get the underlying
14 photographs that formed those photographs?

15 A These images were extracted from archival CCTV
16 images. And when I went to visit Mr. Butts to take his
17 measurements, I confirmed with him that this is a
18 depiction of him.

19 Q Okay. But do you know where those -- the videos
20 actually originated as far as how did they come into
21 your possession?

22 A They were provided to me by you. I don't know
23 what the original source was.

24 Q Okay.

25 A Other than the Citgo.

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1 Q Okay.

2 MR. SMITH: I make the application, Judge, now to
3 have them moved into evidence.

4 MR. SCHMECKPEPER: And I have the same objection,
5 Your Honor. Again, he just said he was told by
6 applicant that this was, in fact, him. I'd argue
7 that's hearsay. I don't have any -- that's my
8 objection, Your Honor.

9 THE COURT: Say again.

10 MR. SCHMECKPEPER: That's my objection, Your
11 Honor, just that they haven't been properly
12 authenticated. And I don't think even that testimony
13 establishes that it actually is the applicant.

14 THE COURT: This is an "I think." I think
15 Mr. Smith, Mr. Eppes could recall the applicant and the
16 applicant could identify the 11/3/09, if he can, and
17 say, "That's an image of me." And that gets it beyond
18 the threshold. And it goes to the weight and the
19 credibility of whether or not that is or is not
20 Mr. Butts. Just like if other individuals came in here
21 and testified, that's not only Mr. Butts' testified to
22 it, but if other individuals also testified to it.

23 So it's been represented to him. And if that's
24 the height image that experts in Mr. Spivack's field
25 would rely on normally under 702, I guess it is, 702, I

1 think it would be authenticated.

2 For the record, I would certainly take Mr. Smith,
3 as an officer of the court, to his word and Mr. Spivack
4 that Mr. Butts says, "That's my image." But to clarify
5 the record, they could do that also.

6 MR. SMITH: Judge, if it pleases the court, could
7 the court just remind Mr. Butts that he's still under
8 oath.

9 THE COURT: If he would be recalled to the stand,
10 our fine clerk normally does that or asks me. So
11 you're still under oath, Mr. Butts --

12 THE DEFENDANT: All right.

13 THE COURT: -- you understand? Thank you.

14 MR. SMITH: Can he testify from his position at
15 this time, Judge, to clear up --

16 THE COURT: I would rather keep it clear with our
17 court reporter for the record.

18 MR. SMITH: Well, then, Judge, at this point, I
19 would ask that this witness step down for a few minutes
20 and leave the courtroom and we'll put Mr. Butts up to
21 clear it up right now, Judge.

22 MR. SCHMECKPEPER: Your Honor, I withdraw the
23 objection.

24 THE COURT: Okay. All right. Well, that's the
25 best decision I made all day then, Mr. Schmeckpeper.

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1 You may continue with Mr. Spivack.

2 MR. SMITH: Thank you, Judge.

3 So I move that the four photographs be moved into
4 evidence at this time.

5 THE COURT: That would be Applicant's 5, Madam
6 Court Reporter?

7 THE REPORTER: It's 3.

8 THE COURT: So Applicant's 3 is now in evidence
9 without objection.

10 (WHEREUPON, Applicant's Exhibit Number 3 was
11 admitted into evidence.)

12 MR. SMITH: I'm going to ask that the other photos
13 which are --

14 Q Mr Spivack, are they the same photographs, just a
15 smaller scale?

16 A Yes, they are.

17 MR. SMITH: Okay. Then I would also move them
18 into evidence at this time.

19 (WHEREUPON, Applicant's Exhibit Number 6 was
20 marked for identification.)

21 THE COURT: Now, Mr. Schmeckpeper, on Applicant's
22 6 for identification, on the fourth photograph dated in
23 the photograph 11/5/2009, there is some typed language
24 on that fourth photograph. Do you have an objection to
25 that?

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1 MR. SCHMECKPEPER: Your Honor, on this one or this
2 one? This is all I have, Your Honor.

3 MR. SMITH: The judge is referring to the other.

4 THE COURT: I'm referring to the smaller ones.

5 MR. SCHMECKPEPER: I apologize. I didn't realize
6 you were moving both of these into evidence.

7 MR. SMITH: Judge, to speed things up, I can
8 withdraw that application at this point, give counsel
9 time to read the notes, and I could elicit this through
10 further testimony of this expert. This way I could
11 offer them for what they are, photographs with
12 typewritten notes on them.

13 MR. SCHMECKPEPER: Your Honor, I have no objection
14 to it, Your Honor.

15 THE COURT: No objection? All right. So
16 Applicant's 6 is in evidence also without objection.

17 (WHEREUPON, Applicant's Exhibit Number 6 was
18 admitted into evidence.)

19 THE COURT: All right. Mr. Smith.

20 MR. SMITH: Thank you, Judge.

21 Q Mr. Spivack, when were you brought into the Butts
22 case?

23 A It was at some point in 2012. I'm afraid I don't
24 recall the exact date of retention.

25 Q So it was approximately four years ago?

1 A Correct.

2 Q And what were you asked to do?

3 A I was asked to determine if I could estimate the
4 height of the robbery suspect in all three of the
5 robbery incidents and also of the person that we've
6 established as Mr. Butts in the control video.

7 Q Okay. And could you tell the court what you did?

8 A Yes. I extracted the images that I thought would
9 be most conducive to this technique, and I traveled to
10 the scene of the robbery -- robberies and took
11 reference photographs and a measurement. The reference
12 photographs, as I explained previously, are from
13 different perspectives but contain the same elements.
14 I used my program, and I was able to do height
15 estimations of all four individuals.

16 Q Why don't we stop right there. Were you able to
17 do a height of the individual in the October 18, 2009,
18 robbery?

19 A October 18th?

20 Q October 18th, I apologize.

21 A Yes, sir, I was.

22 Q And what was the height of the robber in that
23 robbery?

24 A The apparent height is five foot 9.778 inches.

25 Q And then were you able to do the same thing with

1 the next robbery? I believe it's October 31st.

2 A October 30th.

3 Q 30th.

4 A Yes, I was, and the apparent height was five feet
5 8.958 inches.

6 Q And how about the last robbery, which I believe
7 was on November 5th?

8 A That was November 5th, yes, and I was able to
9 obtain the apparent height which was five feet 9.608
10 inches.

11 Q And how about the other photograph that you
12 alluded to of Mr. Butts?

13 A Yes. That was taken on November 3rd of 2009.

14 Q At the same location?

15 A At the same location, yes. And I was able to
16 extract an apparent height of six feet 3.221 inches.

17 Q Now, as part of your assignment, did you do
18 anything else to establish the height of Mr. Butts?

19 A Yes, I did.

20 Q Could you tell the court what that was?

21 A Sure. I wanted to make sure that I did my
22 photogrammetric studies first so that I wouldn't be
23 subject to any contextual bias.

24 Q What do you mean by that?

25 A Contextual bias can occur if, for example, I

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1 already knew what Mr. Butts' height was. I
2 specifically wanted to avoid that so I wasn't shooting
3 for a specific height estimation.

4 After I had the numbers, I got permission to do a
5 contact visit with Mr. Butts at the correctional
6 facility where he was housed. I measured him both with
7 and without shoes. The measurements I obtained without
8 shoes were 61.25 inches and with shoes six feet
9 2.75 inches.

10 Q Was there anything else that you did?

11 A Well, again, I did have him confirm that that was
12 him in the November 3rd photograph.

13 Q And based on what you did, did you form an expert
14 opinion as to what the assignment was?

15 A Yes, sir, I did.

16 Q And could you tell the judge what that opinion is?

17 A In my opinion, to a reasonable scientific
18 certainty, I would have to exclude Mr. Butts as the
19 individual depicted on the robberies on October 18th,
20 October 30th, and November 5th.

21 MR. SMITH: Thank you.

22 Your Honor, I have no further questions of this
23 witness.

24 THE COURT: Thank you. Thank you, Mr. Smith.
25 Mr. Schmeckpeper.

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1 MR. SCHMECKPEPER: Yes, Your Honor. Thank you.
2 May it please the court.

3 CROSS-EXAMINATION

4 BY MR. SCHMECKPEPER:

5 Q Good morning, Mr. Spivack.

6 A "Spivack," but that's fine.

7 Q Spivack. I apologize. I'm Schmeckpeper. I
8 certainly understand.

9 THE COURT: Y'all are pretty even in that regard.

10 MR. SCHMECKPEPER: I think I butchered Sergeant
11 Weiner's name this morning.

12 Q A few preliminary questions. You're not
13 volunteering your time here, are you?

14 A No, sir, of course not.

15 Q You didn't volunteer to go to the gas station pro
16 bono?

17 A No, sir.

18 Q You are, in fact, being paid to be here?

19 A I am paid for my time, yes, sir.

20 Q Who paid you?

21 A I got the check from Mr. Smith's firm.

22 Q How much did you get paid to be here?

23 A Let's see.

24 Q Total compensation.

25 A Total compensation with my airfare, hotel, all the

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1 other travel expenses, travel days I think was
2 \$3,631.90.

3 Q And that includes the gas station and your --

4 A Oh, no. No.

5 Q That didn't include going to the gas station?

6 A No. I believe my initial retainer was \$1,250.

7 But that's going from memory, so I can't guarantee that
8 that's accurate. I can tell you what my hourly fee
9 was. Maybe that would be more straightforward.

10 Q Absolutely.

11 A My hourly fee that I quoted or that I charged at
12 the time was \$150 an hour.

13 Q And, roughly, how many hours have you billed in
14 this case?

15 A Let's see. I'm afraid I don't have that
16 information with me.

17 Q Can you give me a rough estimate? More than five,
18 less than a hundred?

19 A Beg your pardon?

20 Q Can you give me a rough estimate?

21 A Oh, more than five, less than one hundred? Sure.
22 I would estimate somewhere in the order of 20 hours.

23 Q Now, you were qualified as an expert in, is it
24 photogrammetry?

25 A Yes, which is a subdiscipline of forensic video

1 analysis.

2 Q Okay. And you have the exhibit in front of you;
3 is that correct?

4 A I do.

5 Q The first question I'd like to ask you about is
6 where you measured from. Like where the measurements
7 are to and from. I can't tell just looking at his foot
8 where you took the measurement from or looking at his
9 head where you took the measurement from. How did you
10 determine where to take the measurements to and from?

11 A Okay. I understand that that might be a bit
12 difficult to see from these margins.

13 Q I think it's because the measurements are
14 obstructing --

15 A Beg your pardon?

16 Q I think it's because the measurements appear to be
17 obstructing a little bit.

18 A Right. It's much easier to see on the computer
19 monitor when I'm actually conducting the
20 photogrammetric study. But the point on the floor at
21 which I measured was at the heel. And then if you look
22 to the right of the circle on the top, and the bottom,
23 for that matter, you will see that the measurement
24 instrument, for lack of a better way to put it, it
25 appears to be -- it looks like calipers. Can you see

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1 that? Okay. You'll notice --

2 Q I'll take your word for it.

3 A You will notice that there is a point at the top
4 and the bottom. So, hopefully, that answers your
5 question, maybe clarifies for you the point at which I
6 began on the floor where Mr. Butts' heel was to the top
7 of his head.

8 Q And would I be correct in saying that if you were
9 to move that point maybe to where his toe is, that
10 would alter your conclusion as to what his actual
11 height is?

12 A Yes.

13 Q So it matters where you put the dots?

14 A Yes.

15 Q Fair to say?

16 A Of course.

17 Q How did you determine where to put the dot?

18 A Through experience. Again, it's not nearly as
19 easy to see in these photographs as it is on the
20 monitor, but you can -- and this is very difficult to
21 explain. But you can clearly see or I could clearly
22 see when I was conducting the photogrammetric analysis
23 exactly where the shoe was. It is, as you point out in
24 this final photograph, his foot is obscured by that
25 circle where the end of the caliper is. On the

1 computer monitor, you can clearly see it.

2 MR. SCHMECKPEPER: Your Honor, may I approach?

3 THE COURT: Yes, sir.

4 BY MR. SCHMECKPEPER:

5 Q In looking at this again, just looking at the
6 actual photograph in the first picture, you can kind of
7 see how there is a line, a tile line right there?

8 A Yes.

9 THE COURT: Show me.

10 MR. SCHMECKPEPER: Just a line of tiles. I call
11 it an axis that his foot is on.

12 THE COURT: Okay.

13 BY MR. SCHMECKPEPER:

14 Q And if this foot were kick out maybe six inches
15 that way, would that affect at all your outcome in
16 terms of height?

17 A I'm not sure I understand the question.

18 Q Does the position of his foot determine the
19 measurement at all?

20 A To a degree. The most important thing to take
21 into account is his center of gravity, his -- as you
22 can see, there is a virtual line from the top of his
23 head to his foot. And that's parallel to the center of
24 his torso.

25 Q I'll come back to that in a moment. Is there a

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1 margin of error on this?

2 A Sure.

3 Q And what, roughly, is the margin of error?

4 A It's generally accepted that the margin of error
5 when accounting for everything including --

6 Q I'm just talking about the margin of error for the
7 computer program.

8 A Oh, for the computer program.

9 Q In terms of calculating height?

10 A I took a measurement of a known height of the door
11 frame, and that was -- the error was less than half an
12 inch.

13 Q So less than half an inch?

14 A Yes.

15 Q And that's just the computer program?

16 A That's the computer program, and the error tends
17 to propagate the further away from the camera.

18 Q From the reference point or from the actual object
19 you're measuring?

20 A No, no. There is a point where the camera is
21 mounted, and then the benchmark measurement that I took
22 of the door frame is further away from the camera from
23 where, in this case, Mr. Butts was standing. So at the
24 furthest point the error propagates more so that it
25 would stand to reason that the error would be most

1 likely less than half an inch at the point where
2 Mr. Butts was standing.

3 Q But in terms of making this report, then, could
4 you give me a rough estimate of what the margin of
5 error is?

6 A I can only say what I know, which would be less
7 than plus or minus half an inch.

8 Q The reason I'm asking is, I'm sure you're aware,
9 testimony has been presented -- I don't know if
10 testimony has been presented. You stated in your
11 report that he was six foot one inches and a half?

12 A Without shoes.

13 Q Without shoes. And then with shoes he was how
14 tall?

15 A My recollection is six two and three quarters.

16 Q Six two and three quarters. That would put this
17 right within the margin of error?

18 A Correct.

19 Q On to my next question. You talk about center of
20 gravity; is that correct?

21 A Okay.

22 Q Let's take it a little more broadly. You're an
23 expert in forensic multimedia analysis. Are you an
24 expert in anatomy?

25 A Anatomy?

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1 Q Correct.

2 A No.

3 Q So when I ask you what the margin of error is in
4 terms of slouch, can you give me an informed opinion?

5 A I can tell you this. There have -- what I think
6 you're referring to is --

7 Q Posture.

8 A -- posture, gait, footwear, headgear. These are
9 all variables that can cause a disparity between
10 apparent height in a photogrammetric measurement and
11 measured stature when someone is standing erect for a
12 measuring stick. Okay. It's generally accepted
13 within -- from my experience from other practitioners,
14 that that's typically within plus or minus three inches
15 or actually not plus or minus, it's the margin of error
16 would be three inches.

17 Q Three inches. And that's from your general
18 experience as a multimedia analyst; is that correct?

19 A Within the subdiscipline of close-range
20 photogrammetry.

21 Q Did you talk to a chiropractor in preparing this
22 report?

23 A Beg your pardon?

24 Q Did you talk to a chiropractor in preparing this
25 report?

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1 A No.

2 Q I guess let's talk about the actual limitation of
3 the technology. So when you do an analysis, let's say
4 this is the subject, this piece of paper. You take the
5 height from here to here, make a measurement, convert
6 it into something usable like feet and inches; is that
7 fair to say?

8 A Sure.

9 Q So if you take the paper and bend it or curve it
10 this way, can the computer program account for that in
11 making a type -- is it still going to find the original
12 height or is it going to find from the bottom of the
13 curve to the top of the curve?

14 A What you're talking about is just another way of
15 stating what I've expressed as apparent height versus
16 measured stature.

17 Q I apologize. I have never dealt with
18 photogrammetry before. So I guess my final question is
19 you can't definitively tell me within -- you can't make
20 a definitive statement as to whether or not he might be
21 slouching more in the armed robbery photos?

22 A Could you rephrase the question? Sorry. I don't
23 follow.

24 Q Can you tell me in your expert opinion whether or
25 not you can say whether or not, just from the program,

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1 you can tell whether or not he's just slouching more in
2 these photos?

3 MR. SMITH: Judge, I have an objection as far as
4 the reference of "he." Possibly if Counsel would point
5 out the date and a particular photo that he's talking
6 about.

7 THE COURT: You can rephrase the question,
8 Mr. Schmeckpeper.

9 BY MR. SCHMECKPEPER:

10 Q In the photos from 10/30/2009, 10/18/2009, and
11 11/5/2009?

12 A Yes.

13 Q Can you tell me whether or not the person in that
14 picture is slouching more than the average three inches
15 that you usually go off of?

16 A I would have no way of knowing that.

17 MR. SCHMECKPEPER: Your Honor, I have no further
18 questions.

19 THE COURT: Redirect, Mr. Smith?

20 MR. SMITH: Yes, Judge. Thank you.

21 REDIRECT EXAMINATION

22 BY MR. SMITH:

23 Q Mr. Spivack, on the topic of slouch?

24 A Yes.

25 Q You were just asked a question about those three

1 robbery photographs.

2 A Correct.

3 Q And you said you had no way of determining slouch?

4 A Relative to what's average, no.

5 Q Lets forget about average right now. Let's look
6 at those actual documents in evidence.

7 A Yes.

8 Q Do you have any doubts or with all of your
9 knowledge and what you've been asked about slouch that
10 the individual portrayed on October 18, 2009, is
11 approximately five foot nine inches tall?

12 A I'm sorry. Which date?

13 Q October 18, 2009.

14 A Okay. In the photograph from October 18th, where
15 I've got the apparent height measured at 59.778 inches,
16 of the three images of robbery suspects, this is the
17 most erect stance or posture of all three.

18 Q Okay.

19 MR. SCHMECKPEPER: Your Honor, I'd object at this
20 point. I think he's giving an opinion. I don't think
21 he's been qualified to give an opinion on that.

22 THE COURT: I would sustain that objection.

23 MR. SMITH: Thank you. No further questions.

24 THE COURT: All right. Thank you very much,
25 Mr. Spivack. Thank you for being with us.

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1 All right. Mr. Eppes, Mr. Smith, you may call
2 your next witness.

3 MR. SMITH: Your Honor, we're going to be making
4 reference to the transcript more in the way of argument
5 than anything else. I just wanted to make clear the
6 trial transcript, is it already part of the record in
7 this case?

8 THE COURT: Yes, sir. It is part of the record.

9 MR. SMITH: Okay. That's what we needed to clear
10 up, Judge. Thank you.

11 THE COURT: Mr. Attorney General.

12 MR. SCHMECKPEPER: Absolutely, Your Honor. I
13 believe it's part of the record.

14 THE COURT: All right.

15 So you have another witness?

16 MR. EPPES: Your Honor, we rest.

17 THE COURT: Thank you, Mr. Eppes.

18 Mr. Schmeckpeper.

19 MR. SCHMECKPEPER: Thank you, Your Honor. May it
20 please the court. The State calls Scott Robinson,
21 trial counsel.

22 THE COURT: All right. Mr. Robinson, if you would
23 come around and be sworn for us, please.

24 SCOTT DAVID ROBINSON,

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

1 THE CLERK: Please state your full name for the
2 record.

3 THE WITNESS: Sure. Scott David Robinson.

4 THE CLERK: Thank you.

5 DIRECT EXAMINATION

6 BY MR. SCHMECKPEPER:

7 Q Mr. Robinson, do you have a copy of the
8 transcript?

9 A I do.

10 Q Mr. Robinson, I'm going to try to go in
11 chronological order here.

12 A Sure.

13 Q Let's start with your initial representation of
14 the applicant. Were you retained or appointed?

15 A I was retained, yes.

16 Q When were you retained?

17 A It would have been -- my working file is back
18 there. If you can bring it to me.

19 Great. I can tell you. I believe it was late
20 2010.

21 MR. SCHMECKPEPER: Your Honor, may I approach?

22 THE COURT: Of course, yes, sir.

23 BY MR. SCHMECKPEPER:

24 Q I'm sorry. What dates did you just say?

25 A Let me just confirm this date with you. One

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1 second. It would have been 12/16/10.

2 Q Roughly about ten months before the trial?

3 A If the trial was ten months later, yes.

4 Q How many times did you meet with the applicant
5 during that time?

6 A I have no independent recollection to give you
7 exact time, but it had been at least a good number of
8 times, but I'm not sure exactly.

9 Q And do you hire an independent investigator?

10 A I had Paul Silvaggio. He was my investigator.
11 In-house at first. Then Paul left. I'm not sure who
12 this other woman investigator they're talking about is.
13 I had a staff member that was a female that was with me
14 at the trial named Lisa Nieto, but I don't know who
15 this female investigator was. I'm not sure.

16 Q A good investigator investigated the facts of this
17 case?

18 A Yes. Paul would have done that, Mr. Silvaggio.

19 Q Did you review what he investigated?

20 A Uh-huh. I also reviewed what Mr. Schurez, who
21 they mentioned, Wayne Schurez, did an investigation
22 for.

23 Q That was applicant's privately retained
24 investigator?

25 A Yeah. And I believe he came to my office and he

1 would -- any information he had he would share with me.

2 Pretty nice guy.

3 Q He's had two investigators working on this case;
4 is that correct?

5 A I had Paul Silvaggio, but he wasn't with me that
6 long, so I don't know how long he worked on this case.
7 But I did not have Wayne Schurez hired. It was his
8 investigator.

9 Q Did you receive discovery in this case?

10 A Yes.

11 Q Did you review discovery?

12 A Yes.

13 Q Did you review discovery with the applicant?

14 A I'm sorry?

15 Q I apologize. I mumble. I talk fast.

16 A It's all right.

17 Q Did you review the discovery with the applicant?

18 A Yes.

19 Q Did you explain the State's case against him?

20 A Yes. He had the discovery from before from the
21 other attorneys that he had in the case. So he had the
22 discovery already.

23 Q But you also went over it again with him?

24 A Uh-huh, I did.

25 Q Did you promise applicant you would win?

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1 A No. I don't know how you would. But he was
2 pretty adamant that he was innocent. And as a result
3 of that, he did not want to enter a plea to 15 years
4 for something he didn't do. And at that point I had to
5 prepare for trial in the matter.

6 Q And, as you say, he rejected a plea offer?

7 A He did.

8 Q Now, in the actual trial there had been a number
9 of issues that have been brought up today. First,
10 let's talk about height. Do you remember the testimony
11 about height in this case?

12 A I think I've got some notes as far as height goes
13 and so forth. I think one of the clerks said he was
14 like five eight or something like that. But -- and I
15 think Mr. Flynn talked about something, but I really --
16 I think one of the most important things in this case
17 was if you look when you first come into the door,
18 there is like a -- there's a scale that tells you the
19 height of a person. And you can look at the scale to
20 see how high -- what the height is of the person a lot
21 of times. And, clearly, if you look at the picture,
22 Mr. Butts was if not the same height as the six-foot
23 part, he was higher. And I think that the robbers,
24 whoever did this, were actually shorter than that. And
25 that was something I felt was important.

1 Q And did you raise that issue to the jury?

2 A I'd have to look at the transcript. I know in my
3 closing I raised a lot of issues, but as far as that
4 one, I'm not sure. But I had a lot of questions for
5 the jury. I know I raised in my closing the height
6 difference, voice difference, tattoo, glasses, shoe
7 size, also about the former employer that Mr. Flynn
8 talked about that could have been a former employee --

9 Q Let me ask you --

10 A -- in this case.

11 Q What was the theory of this case?

12 A My theory really was that there was no physical
13 evidence in this case. The clerks could not identify
14 him. All right. There was no misidentification
15 because the clerks did not identify him. And if you
16 look at Mr. Flynn's testimony, Mr. Flynn actually
17 differentiated between the last robber and the other
18 one. He said the last one, I believe, was more
19 aggressive, I think he said, and some other statements.
20 But what I was going toward with this was that it was
21 most likely a former disgruntled employee. And I went
22 through that with Mr. Flynn, I believe, as far as on a
23 man named Rick McCray potentially as being that person.

24 Q And the State in this case didn't compare shoe
25 sizes; is that fair to say?

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1 A The shoe size thing, I think that was resolved
2 when Officer Weiner said that he could not match the
3 shoe -- I believe that's what he said, he could not
4 match the shoe to Mr. Butts.

5 Q My only question is that is something you brought
6 out before the jury; would that be fair to say?

7 A I brought up the shoe size because I brought up in
8 my closing, I believe, the footprint of the robber
9 taken from the counter did not match Mr. Butts. As far
10 as going back to the theory, though, not only was there
11 no physical evidence in this case, but the other part
12 of it was they gave different -- the clerks gave
13 different -- a differentiation in statements as far as
14 what they were doing. They couldn't identify who this
15 guy was. Couldn't do that. Two, there were no
16 fingerprints. There were no footprints that would
17 match Mr. Butts. And then I had to go into the -- to
18 cross-examine the two main witnesses for the State, the
19 ex- -- or the girlfriend, Mary McCroskey, and the -- or
20 Sarah McCroskey or the mother of Sarah McCroskey,
21 Ms. Spaulding. And I had to go and discredit them
22 because their statements prior to trial were different
23 than the trial statement. And I had to go through just
24 knocking down their testimony, knocking down their
25 credibility because they had given different

1 statements.

2 Q If you could turn to page 341 of the transcript.

3 A Sure. 341.

4 Q Around line three. And you would agree that you
5 argued to the jury the issue of height and
6 misidentification?

7 A Yes. That would be true.

8 Q And you asked the jury to look at the difference
9 in height between Mr. Butts, six one, that they talked
10 about and this robber. He's a head shorter if you look
11 at the testimony of these clerks?

12 A Also the next paragraph, the voices and so forth
13 in the matter. There are a lot of issues that we had
14 brought up as far as distinguishing the problems with
15 the State's case, the issues and so forth. But the big
16 evidence problem we had was his girlfriend and her
17 mother. That was the biggest problem we had.

18 Q Those weren't perfect identifications, right?

19 A I'm sorry?

20 Q There were issues with those identifications, too;
21 is that correct?

22 A Yes, there was.

23 Q And you brought that up on cross-examination?

24 A I believe I did.

25 Q And you made a motion to have those

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1 identifications suppressed?

2 A We had *Neil v. Biggers* hearings on each one of the
3 witnesses, each one of the mother and the girlfriend.

4 Q Just to jump back briefly, Mr. Robinson, did you
5 ever talk to the applicant about trial strategy?

6 A As far as trial strategy, I don't know if I did or
7 not.

8 Q Is it your typical practice to share with your
9 clients every detail of your trial strategy?

10 A It's not because as you, the attorney, you're the
11 one that's trying to put together how you're going to
12 attack the case, how you're going to attack the case,
13 the State's case. And me, I put forth a lot of motions
14 in the beginning of the case to try to get the case
15 severed to suppress certain things that were done. I
16 had some real --

17 Q When you moved to sever the charges; is that
18 correct?

19 A I did. I did. Along with a bunch of other
20 motions that we had as far as -- I just was having some
21 real problems with the State going after -- basically
22 capturing the witnesses that I was going to use, and I
23 had a real problem with that, as you can see in the
24 transcript.

25 Q You brought that to the judge's attention?

1 A Oh, yeah.

2 Q And to the jury's attention?

3 A Absolutely.

4 Q That was all out on the record in
5 cross-examination?

6 A Yes.

7 MR. SCHMECKPEPER: Beg the court's indulgence.

8 THE COURT: Yes, sir, of course.

9 MR. SCHMECKPEPER: Your Honor, I have no further
10 questions.

11 THE COURT: Thank you, Mr. Schmeckpeper.

12 Mr. Smith.

13 MR. SMITH: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. SMITH:

16 Q Mr. Robinson, my name is Peter Smith. We have met
17 in the past. Good to see you again. I have a couple
18 questions, and I'll be referring to the transcript. Do
19 you have a copy of it in front of you?

20 A I do.

21 Q I'm going to refer you to page 140 of the
22 transcript. Would you take a look at that page from
23 line one to line 24.

24 A 24.

25 Q Yeah. The whole page. If you would just take a