VOLUME I of III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

JUL 22 2018

S.C. SUPREME COURT

Certiorari to York County

J. Mark Hayes II, Circuit Court Judge

MARQUIS JAERIS SANTONI ROBINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000785

APPENDIX

SUSAN B. HACKETT
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JANELL GREGORY
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

Pages 1-500

INDEX

INDEX i

TRIAL TRANSCRIPT DATED JANUARY 28-30, 2013 1

TRIAL TRANSCRIPT DATED JULY 22-25, 2013 386

FINAL BRIEF OF APPELLANT 1214

FINAL BRIEF OF RESPONDENT 1226

INITIAL REPLY BRIEF OF APPELLANT 1250

STATE V. MARQUIS J. S. ROBINSON, 2015-UP-486 (S.C. Ct. App. filed Oct. 14, 2015) 1258

REMITTITUR 1260

APPLICATION FOR POST-CONVICTION RELIEF 1261

RETURN 1268

AMENDED POST-CONVICTION RELIEF APPLICATION 1274

POST-CONVICTION RELIEF HEARING TRANSCRIPT 1276

ORDER OF DISMISSAL 1329

INDICTMENTS AND SENTENCE SHEETS 1340

State of South Carolina.,
County of York.

In the General Sessions Court of York

Case No.: 2011-GS-46-02909
2011-GS-46-02902

State of South Carolina.,

Plaintiff.,

-vs-

Marquis Robinson and Dantonyo Heath.,

Defendants.

Transcript of Record
Partial Transcript

January 28-30, 2013

B E F O R E:

Honorable John C. Hayes, III., Judge, and a jury.

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

Ms. Misty Horton Shelton
Assistant Solicitor
Sixteenth Circuit Solicitor's Office
Moss Justice Center
York, South Carolina
For the Plaintiff

Mr. John Freeman
Halford, Niemiec & Freeman
238 Rockmont Drive
Fort Mill, South Carolina 29708
803-547-6618
For the Defendant

COPY

Mr. Phil Smith
Sixteenth Circuit Public Defender's Office
Moss Justice Center
York, South Carolina
For the Defendant.

Wanda Nelson, CVR-M
Official Court Reporter
Sixteenth Judicial Circuit

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS	BY:	PAGE NO.
Detective Bruce Haire	Solicitor Shelton	P.49-52
	Mr. Freeman	P.53-61
Detective Cedric Stokes	Solicitor Shelton	P.68-73
		P.82-84
		P.85-90
	Mr. Freeman	P.73-82
		P.73-82
		P.91-92
Ernest Jordan	Solicitor Shelton	P.92-98
		P.104-107
		P.164-202
		P.224-227
	Mr. Freeman	P.99-101
		P.202-219
		P.228-229
	Mr. Heath	P.108
	Mr. Smith	P.219-224
Tashia Smith	Solicitor Shelton	P.111-115
	Mr. Freeman	P.115-120
Jared Crane	Solicitor Shelton	P.121-126
		P.321-330
		P.343-344

E-X-A-M-I-N-A-T-I-O-N - CON'T

WITNESS	BY:	PAGE NO.
Jared Crane	Mr. Freeman	P.126-133
		P.330-336
	Mr. Smith	P.336-343
Amanda Crane	Solicitor Shelton	P.134-137
		P.307-316
		P.320
	Mr. Heath	P.138
	Mr. Freeman	P.138-139
		P.316-317
	Mr. Smith	P.317-319
Officer Tim Buchannan	Solicitor Shelton	P.230-244
		P.259-264
	Mr. Freeman	P.244-250
		P.264-265
	Mr. Smith	P.250-258
Officer Ray Hamilton	Solicitor Shelton	P.265-270
	Mr. Freeman	P.271-274
Betty Butler	Solicitor Shelton	P.275-279
	Mr. Freeman	P.280-281
Lily Gallman	Solicitor Shelton	P.282-295
		P.303-305
	Mr. Freeman	P.295-296
		P.306

E-X-A-M-I-N-A-T-I-O-N - CON'T

WITNESS	BY:	PAGE NO.
Lily Gallman	Mr. Smith	P.296-303

E-X-H-I-B-I-T-S

NO.	DESCRIPTION	I.D.	EVD.
St.1	Item 1.1, white T-shirt	P.238	P.288
St.2	Item 5, .9mm Luger Revolver	P.239	P.242
St.3	Item 7, spent .9mm shell casing	P.239	P.241
St.4	Item 8, .9mm Luger	P.239	P.242
St.5	Item 9, .9mm Luger	P.231	P.242
St.6	Item 10, .9mm Luger	P.231	P.242
St.7	CD of Channel 2 Surveillance Video	P.181	P.182
St.8	CD of Channel 5 Surveillance Video	P.183	P.184
St.9	CD of Channel 8 Surveillance Video	P.188	P189
St.10	Item 3, Cell phone	Note Entered	
St.11	Photo close up of Jordan's facial wounds	P.171	P.173
St.12	Photo Jordan's facial wounds	P.171	P.173
St.13	Photo Jared Crane's knee	P.308	P.312
St.14	Photo Jared Crane's arm	P.308	P.312
St.15	Photo Jared Crane's ear	P.308	P.312

E-X-H-I-B-I-T-S CON'T

NO.	DESCRIPTION	I.D.	EVD.
St.16	Photo closeup Jared Crane's Facial wounds	P.308	P.312
St.17	Photo profile Jared Crane's facial wounds	P.308	P.312
St.18	Photo front of Five Star Custom	P. 174	P.176
St.19	Photo Crane's car and Bay Door	P.174	P.176
St.20	Photo Bay door	P.174	P.176
St.21	Photo back entrance of shop	P.174	P.176
St.22	Photo looking into shop	P.174	P.176
St.23	Photo - back entrance of shop	P.174	P.176
St.24	Photo-damage to bathroom	P.174	P.176
St.25	Photo of Store	P.174	P.176
St.26	Photo, bathroom wall with Bullet hole	P.174	P.176
St.27	Photo, cell phone	P.233	P.234
St.28	Photo, .9mm round	P.233	P.234
St.29	Photo, .9mm shell casing	P.234	P.234
St.30	Photo, .9mm shell	P.233	P.234

E-X-H-I-B-I-T-S

NO.	DESCRIPTION	I.D.	EVD.
St.31	Photo, .9mm shell	P.233	P.234
St.32	Photo, .9mm shell	P.233	P.234
St.33	Photo, bullet hole	P.226/233	P.234
St.34	Photo, t-shirt	P.233	P.234
St.35	Photo, blood splatter on floor	P.233	P.234
St.36	Photo, blood splatter on toilet	P.233	P.234
St.37	Line-up of Robinson	P.195	P.196
St.38	Line-up of Robinson		P.330
St.39	Line-up of Heath	P.88	P.110/133
St.40	DNA Report	Not Entered	
St.41	Buccle Swab	P.242	P.295
St.42	Item 1.1; 1.2	P.278	P.295
Ct.1	Jury Note		P.306
Ct.2	Jury note		P.373

Reporter's Note: All State's Exhibits were returned to the Solicitor's Office. Court's Exhibits were filed with the Clerk of Court's Office.

(COURT IN SESSION IN THE MATTER OF STATE V. MARQUIS ROBINSON AND DANTONYO HEATH, JANUARY 28, 2013, ON MONDAY, JANUARY 28, 2013 AT 02:15 P.M..)

THE COURT: Thank you, take your seats.

Mr. Freeman, you represent which one of these gentlemen?

MR. FREEMAN: Marquis.

THE COURT: Marquis.

(PAUSE.)

(ATTORNEY MARK MCKINNON ENTER COURTROOM.)

(DEFENDANTS ENTER COURTROOM.)

THE COURT: Is the State ready?

SOLICITOR SHELTON: Yes, sir, Your Honor.

The State at this time would call the case of State versus Dantonyo Heath and Marquis Robinson. In reference to Mr. Heath the State calls the case of 2011-GS-46-2898 for armed robbery, 2899 for attempted murder, 2900 for criminal conspiracy, 2901 for kidnapping and 2902 possession of a firearm during the commission of a violent crime.

In reference to Mr. Robinson the State calls 2011-GS-46-2905 for armed robbery, 2906 for attempted murder, 2907 for criminal conspiracy, 2908 for kidnapping and 2909 possession of a firearm during the commission of a violent crime.

THE COURT: All right. Now the strikes I had to look those up but I think they would be ten, ten, ten.

SOLICITOR SHELTON: Yes, sir, Your Honor.

THE COURT: Do you understand that, Mr. Heath, you have the right, you can ask Mr. McKinnon about that; when the jurors come up you can excuse up to ten. You can excuse up to ten - you will see how it's done but they will go first.

And then Mr. Freeman on behalf of Mr. Robinson will go and then you'll have a chance if they are still there to excuse them or seat them.

Yes, sir, Mr. Freeman.

MR. FREEMAN: Your Honor, one more matter by way of housekeeping then, for the record I had previously ask for a few additional voir dire for which I think the Court granted. I would ask that the witnesses be sequestered.

THE COURT: That will be granted reciprocally.

MR. FREEMAN: Thank you, Your Honor.

Also, the witnesses, a lot of them work together and I think makes that - makes some of them related to each other. I would ask that they be sequestered from each other.

SOLICITOR SHELTON: Your Honor, two of my victims - Two of my witnesses are victims and as such have a right to be present in the courtroom. There is only one - -

THE COURT: The victim's do have a right to be here.

SOLICITOR SHELTON: There is only one lay witness who is Ms. Amanda Crane. I will instruct her not to discuss the case with her husband, Jerry Crane, one of the victims. I would ask that Detective Stokes be allowed to remain as my case agent. The rest are all law enforcement or with FSU or SLED.

THE COURT: Okay.

MR. FREEMAN: Yes, Your Honor. And again I anticipate that the Court will grant the sequestration request. Just simply that they are sequestered from each other as well at least until after they've testified.

THE COURT: Yeah, I think —

SOLICITOR SHELTON: They live together so I don't know that we can ask them to sleep separately —

THE COURT: Just instruct them very firmly that they are not to discuss their testimony.

SOLICITOR SHELTON: Yes, sir, Your Honor.

THE COURT: Anything else before we get the jury up?

SOLICITOR SHELTON: Nothing from the State, Your Honor.

THE COURT: Mr. Freeman?

MR. FREEMAN: Nothing from Mr. Robinson, Your Honor.

MR. HEATH: Your Honor.

THE COURT: Yes, sir.

MR. HEATH: I'd like to ask for a - -

(DEFENDANT HEATH STOOD.)

MR. HEATH: I'd like to ask for a continuance.

THE COURT: All right, on what grounds?

MR. HEATH: On that I just received my full motion eleven days ago and I ain't had time to go over it.

THE COURT: You got eleven days and you been incarcerated and you've had it you've got eleven days to go over it. What is it, what discovery are you talking about?

SOLICITOR SHELTON: Your Honor, the entirety of the discovery was given to Phil Smith some time ago.

THE COURT: Right.

SOLICITOR SHELTON: Mr. Heath as you know relieved Mr. Smith's representation. I took him all of the paper discovery, the incident report, case summary, lineups, rap sheets; that sort of thing, everything that I had. At that time I also took - offered him photos; he refused those photos. I also offered to allow him to watch the videos, he refused to watch the videos. He signed a discovery receipt accepting discovery of the written discovery, signed a receipt saying that he refused to watch the video or receive the pictures but that would be the entirety of the discovery that I gave him.

THE COURT: All right. That was when?

SOLICITOR SHELTON: That was Thursday.

MR. HEATH: The 17th.

SOLICITOR SHELTON: The 17th.

THE COURT: Well I'm gonna deny the motion. You've had time to go over the discovery.

MR. HEATH: Then, Your Honor, and I'm trying to seek a lawyer as well and we're already in the process of getting one.

THE COURT: Well you've had time to do that. I don't know when it was I relieved Mr. Smith but you've had time to get an attorney. I know these are substantial charges and I tried - I wish you had kept the good attorney you had but you had a problem with him and that's your right but we're going to go forward with the trial. If an attorney pops up in here on your behalf we will deal with that.

Who is the attorney?

MR. HEATH: Arthur Gaston.

THE COURT: Well he's in Chester. Have you told him you were up for trial today?

MR. HEATH: No, sir, because I was just informed of this myself on that same day when I relieved Phil Smith.

THE COURT: Well that's plenty of time to get an attorney.

SOLICITOR SHELTON: Your Honor, just for the record, the hearing with Mr. Smith was on the 14th but - of January. But, Your Honor, we also had a hearing during the

month of December. I believe it was the week of December 17th where I placed Mr. Heath on notice on the record at that time that the State intended to call the case for trial this week.

MR. HEATH: Your Honor. And during that time, Your Honor, I say that's not true because then on - the last time I seen Mr. Smith was October till I seen Channel 5. That's the last time I seen him so I wasn't placed on the record for that, Your Honor.

THE COURT: Well there will be a record through the court reporter and you can find that out if you need to but I'm not going to continue the case. Its time for this case to go to trial. This happened June - last June. No June two years ago so it's time for this case to go to trial.

SOLICITOR SHELTON: And, Your Honor, just further. I believe this is the second time that the case has been scheduled for trial. Mr. Robinson was at one point represented by a different attorney who was - who became suspended just on the eve of the case going to trial so that was last summer in 2012. So its been over a year since the case was originally scheduled for trial.

THE COURT: All right. You ready for the jury?

SOLICITOR SHELTON: Yes, sir, Your Honor.

THE COURT: You ready for the jury, Mr. Freeman?

MR. FREEMAN: Yes, Your Honor.

THE COURT: Mr. Heath, you ready for the jury?

MR. HEATH: Yes, Your Honor.

THE COURT: All right, bring up the jury.

We'll just stand at ease but we won't take a break.

(COURT AT EASE AT 02:36 P.M..)

(JURY ENTERS COURTROOM AT 02:40 P.M..)

THE COURT: Members of the jury panel, I'm John Hayes and along with Judge Alford who you met this morning, I am one of the two resident judges, I live in Rock Hill.

I am going to start in this courtroom the first case for the week and it is the case of the State versus Marquis Robinson.

Mr. Robinson, will you stand and let the jury see who you are?'

(DEFENDANT MARQUIS ROBINSON STOOD.)

THE COURT: Mr. Robinson is represented by Mr. John Freeman of the York County Bar.

(ATTORNEY FREEMAN STOOD.)

THE COURT: You can be seated.

There is a second defendant named Dantonyo Heath.

Would each of you stand up so they can see who you are?

(DEFENDANT HEATH AND ATTORNEY PHIL SMITH STOOD.)

THE COURT: He is representing himself but with him is Mark McKinnon who has been appointed by the Court as what's

called standby counsel to advise him on procedural matters or answer any questions he may have.

You all be seated.

The gentlemen are each charged with five offenses yet charged with the same. All of these are alleged to have occurred on June 8th, 2011, here in York County. They are both charged with attempted murder. It's alleged that on that date they both and they are charged with the last and I'll tell you called criminal conspiracy which means they acted together in doing this. But that the attempted murder each is charged with an attempted murder on - or actually there are two attempted murders, one was a victim named Ernest O. Jordan and that is the charge on Mr. Robinson. He is charged with attempt to kill Ernest O. Jordan.

Mr. Heath is charged on that same date June 8th, 2011, with attempted to kill Jared Crane. They're each charged with armed robbery and it's alleged that on that date June 8th, 2011, each of them tried to rob Mr. Jordan and Mr. Crane of approximately Seven Thousand Dollars. Both are charged with possession of a firearm during the commission of a violent crime. It's alleged that during the crime of attempted armed robbery - I mean attempted murder and armed robbery that both of those are what's called by our law crimes of violence and under a statute enacted by our

legislature it's separate crime to while committing a violent crime to have a weapon when you do that. They each are charged with that.

They're each charged with kidnapping. Mr. Heath is charged with kidnapping Jared Crane and Mr. Robinson is charged with kidnapping both Mr. Crane and Mr. Jordan. Finally both are charged with conspiring with each other to commit armed robbery and kidnapping or attempted murder.

First, are any of you - know anything about any of these cases? Heard about them from any source whatsoever or formed or expressed any opinion about any matter or issue that would be involved in these cases; if so, please stand?

No one stands. Are any of you know or are any of you related to or know Mr. Robinson or Mr. Heath; if so, please stand?

No one stands. Now the State is represented by Misti Shelton and Mr. Newkirk.

(SOLICITOR SHELTON AND NEWKIRK STOOD.)

THE COURT: Are either of you - Ryan Newkirk. Are any of you related by blood or marriage to any of those - either of those individuals; if so, please stand?

(NO ONE STANDS.)

Ms. Shelton and Mr. Newkirk work for the Solicitor's office and Mr. Freeman is in private practice. Mr.

McKinnon who is assisting Mr. Heath is with the public defender's office. Are any of you related by blood or marriage, or a close personal friend or acquaintance of anyone who having been represented by any of the attorneys, solicitor's office, or the public defender's office, that's Harry Dest's office; if so, please stand?

No one stands.

Are any of you members of the grand jury which passed on these ten indictments at an earlier time; if so, please stand?

No one stands.

Are any of you or a member of your family contributors to or members of organizations such as Student's Against Drunk Driver's, Mother's Against Drunk Driver's, Citizen's Against Violence, Trooper's Association, the sheriff's association, or fraternal order of police; if so, please stand?

No one stands.

MADAME COURT REPORTER: Judge.

THE COURT: I need you to stand so I can see you.

A. If we contribute to the trooper's association or something would that be considered?

THE COURT: Yeah. If you'll just give me your name and number.

A. Okay. Robert Guyton, 85.

THE COURT: All right. Just remain standing.

Yes, ma'am.

A. Linda Lindsey, 133.

THE COURT: All right, which organization?

MS. LINDSEY: The troopers and Mother's Against Drunk Driving.

THE COURT: All right, remain standing.

Mr. Guyton, which organization?

MR. GUYTON: Troopers I believe so, sir.

THE COURT: All right. And I believe there is a lady standing there. Your name and number?

A. I'm Connie Elkins, 65 and I have a cousin who is actually works for the sheriff's department but I don't know if he's in any organization.

THE COURT: Okay. All right, just remain standing. I'll ask you another question along these lines in a few minutes so you might have to stand again.

Yes, sir, your name and number?

A. Chris Billingslea, 251. My father is a sheriff.

THE COURT: All right. In what county?

MR. BILLINGSLEA: York.

THE COURT: Oh a sheriff's deputy?

MR. BILLINGSLEA: Yes, sir.

THE COURT: Okay. All right. Is this a city case or a county case?

SOLICITOR SHELTON: It's a Rock Hill city case, Your Honor.

THE COURT: Rock Hill City. All right, those of you who are - Oh one more is standing.

Your name and number?

A. James Tarlton, 222. Trooper's association.

THE COURT: All right. Those of you who are standing, if this relationship would prevent you from being fair and impartial please raise your right hand?

No one does. All right, you may be seated. Thank you.

Now, you may have to stand again two of you because my next question is are any of you related by blood or marriage or a close personal friend of acquaintance of anyone involved in law enforcement at any level; sheriff, military police, anything like that, or, are any of you related by blood or marriage or a close personal friend or acquaintance of anyone who is involved in prosecuting criminal cases such as our solicitor, Kevin Brackett, or a US attorney, or a JAG officer or something like that; if so, please stand?

We'll start over here and if you'll just give me your name and number and why you are standing. That is Uncle Joe is a sheriff or something like that.

A. Beth Ann Buckley, Number 32. My brother was a police

officer in Rock Hill and is currently a police officer in Tega Cay.

THE COURT: All right. How long ago has it been?

MS. BUCKLEY: He's currently a policeman over in Tega Cay. He left Rock Hill probably about a year ago.

THE COURT: He likely would have been there when this --

I'll excuse you. I'm not even gonna ask you about being fair and impartial. Here's the reason but I think you probably could but he most probably since this is almost two years old if he just left a year ago he would have been - -

MS. BUCKLEY: He would have been a police officer in Rock Hill.

THE COURT: He would have been a police officer in June of 2011 so I'm gonna excuse you. Just have a seat. Thank you.

Yes, sir, your name and number.

A. Matthew McGrade, 156. My cousin is a police officer in Indiana.

THE COURT: All right, just remain standing if you don't mind.

All right.

A. Robert Guyton, 85. I got a cousin who is on the - the sheriff's deputies in York County.

THE COURT: All right.

MR. GUYTON: And I've got a cousin who is a judge, David Guyton.

THE COURT: Okay. All right. Yes, sir, your name and number?

A. Cecil Nance, 168. I got a sister that works for the sheriff's department and I got a son in law works for the police department.

THE COURT: Which police department?

MR. NANCE: Clemson.

THE COURT: Clemson? Okay. I'll forgive you for that.

SOLICITOR SHELTON: Your Honor, I did not get his number.

THE COURT: Your number?

MR. NANCE: 168.

SOLICITOR SHELTON: Thank you, Your Honor.

THE COURT: All right. Yes, ma'am. In the yellow again.

A. Connie Elkins, Number 65. My cousin works for the sheriff's department.

THE COURT: All right. The five of you who are standing, if you would be unable to be fair and impartial because of that relationship please raise your right hand?

None do. You may be seated. Thank you.

The next question may be - the answer not the question - the answer may be a little sensitive so I'm not going to ask you to go into great detail. But if any of you are or a member of your immediate family ever been charged with any of these offenses that I have just gone over or any violent offense, or have any of you been what you consider to be a victim of any of these charges or any violent offense; if so, please stand?

All right, we'll start over here. Your name and number?

A. Brian C. Whitehead, Juror Number 2-3, 2-4-3; 2-4-3.

THE COURT: Okay. And your name and number?

A. James Connolly, Number 252.

THE COURT: All right. The two of you are standing. If your past life experience reflected by your standing in regard to that question; if that would prevent you from being fair and impartial in this trial, please raise your right hand?

Neither does. Thank you, you may be seated.

The following are possible witnesses' in this case. I do not know if all will testify but even if they don't testify they names may come up so I'm going to ask if any of you are related by blood or marriage to any of these individuals please stand? And I will go through the whole list and then I'll come back and say, if you are standing,

which person you know or to whom you are related.

From the Rock Hill Police Department Detective Cedric Stokes, Detective Toshia Smith, Detective Bruce Haire, Officer Benjamin Glynn and Ray Hamilton. From the York County Forensic Service's Unit Investigator Tim Buchannan. From our State Law Enforcement Division Lily Gallman, Betty Butler, Patricia Crooks. Then non associated with law enforcement and you heard two of these names already, Jared Crane and Ernest Jordan and the third is Amanda Crane who I understand is the wife of Jared Crane.

Any of you related by blood or marriage, close personal friend or acquaintance to any of those individuals if so please stand?

(NO RESPONSE.)

THE COURT: Anything further from the State?

SOLICITOR SHELTON: Nothing from the State, Your Honor.

THE COURT: Mr. Freeman?

MR. FREEMAN: Nothing from this defendant.

THE COURT: Mr. Heath, you have any other questions?

MR. HEATH: No, sir.

THE COURT: All right. The way we draw juries, one of the bailiff's will come and stand in the middle of the floor up here and if you hear your name called, and called at random, please come forward and stand beside the bailiff

turn and face the table first where the two solicitor's are seated and one of them will say either present the juror or excuse the juror. If you hear the words excuse the juror, that means you can return to your seat, not leave, but return to your seat. If you heard the words present the juror, turn and face the table where Mr. Heath is seated and - I'm sorry, Mr. Robinson is seated and Mr. Freeman will say either excuse the juror which again means you may return to your seat, or present the juror. If he says present the juror then Mr. Heath will have the opportunity to say either excuse the juror, that is to excuse you, or say swear the juror which means that person at that time you will be seated in the jury box. We will draw twelve jurors and two alternates. Each side has - can strike up to ten individuals and then on the alternates strikes will be as to each alternate one for the State and two for each of the Defendants.

All right, please come forward and when you come forward bring your jackets, your coats, pocket books or anything like that so you won't have to go back and get them if you are seated.

SOLICITOR SHELTON: Your Honor, before we start may I approach?

THE COURT: Yes.

SOLICITOR SHELTON: Briefly.

THE COURT: Let's come around and let Mr. Heath come up.

(SIDE BAR CONFERENCE OFF THE RECORD AT 02:55 P.M..)

THE COURT: All right, you may proceed.

MADAME CLERK: Number 199, Laura Sarn.

(WHITE FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

MADAME SOLICITOR: Please present this juror.

MADAME CLERK: Defense, Robinson. Robertson. Excuse me.

MR. FREEMAN: Please excuse this juror.

MADAME CLERK: You are excused from this case.

Number 54, Hope Cummings.

(WHITE FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MR. FREEMAN: Please swear the juror.

MADAME CLERK: Defense Heath?

MR. HEATH: Please excuse the juror.

MADAME CLERK: You are excused from this case.

Number 99, Kyle Hosenfeld.

(WHITE MALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present the juror.

MADAME CLERK: Defense Robinson?

MR. FREEMAN: Please swear the juror.

MADAME CLERK: Defense Heath?

MR. HEATH: Please excuse the juror.

MADAME CLERK: You are excused from this case.

Number 68, Susan Evans.

(WHITE FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MR. FREEMAN: Please swear Ms. Evans.

MADAME CLERK: Please swear the juror.

MADAME CLERK: Please have a seat in the jury box.

Number 5, Duane Alsobrooks.

(WHITE MALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MR. FREEMAN: Please swear Ms. Evans.

MADAME CLERK: Defense Heath?

MR. HEATH: Please swear the juror.

MADAME CLERK: Please have a seat in the jury box.

Number 148, Michael Mayfield.

(BLACK MALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MR. FREEMAN: Please swear the juror.

MADAME CLERK: Defense Heath

MR. HEATH: Please swear the juror.

MADAME CLERK: Please have a seat in the jury box. Number 65, Connie Elkins.

(WHITE FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MR. FREEMAN: Please excuse this juror.

MADAME CLERK: You are excused from this case. Number 215, Dona Stewart.

(WHITE FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MR. FREEMAN: Please swear the juror.

MADAME CLERK: Defense Heath?

MR. HEATH: Please swear the juror.

MADAME CLERK: Please have a seat in the jury box. Number 95, Aretha Holley.

(BLACK FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please excuse this juror.

MADAME CLERK: You are excused from this case.

Number 18, Donna Bielenica.

(WHITE FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defnese Robinson?

MR. FREEMAN: Please swear the juror.

MADAME CLERK: Defnese Heath?

MR. HEATH: Please swear the juror.

MADAME CLERK: Please have a seat in the jury box.

Number 156, Matthew McGrade.

(WHITE MALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MR. FREEMAN: Please swear the juror.

MADAME CLERK: Defense Heath?

MR. HEATH: Please excuse the juror.

MADAME CLERK: You are excused from this case.

Number 224, Elizabeth Thomas.

(ASIAN FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson.

MR. FREEMAN: Please swear the juror.

MADAME CLERK: Defense Heath?

MR. HEATH: Please swear the juror.

MADAME CLERK: Please have a seat in the jury box.

Number 158, Dianne McKenzie.

(WHITE FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MR. FREEMAN: Please swear the juror.

MADAME CLERK: Defense Heath?

MR. HEATH: Please excuse the juror.

MADAME CLERK: You are excused from this case.

Number 239, Preston Wells.

(WHITE MALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MR. FREEMAN: Please swear the juror.

MADAME CLERK: Defense Heath?

MR. HEATH: Please swear the juror.

MADAME CLERK: Please have a seat in the jury box.

Number 230, Sebrina Tucker.

(WHITE FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please excuse this juror.

MADAME CLERK: You are excused from this case.

Number 91, Kenneth Hawk.

(WHITE MALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please excuse this juror.

MADAME CLERK: You are excused from this case.

Number 155, Erica McGill.

(BLACK FEMALE COMING FORWARD.)

SOLICITOR SHELTON: What's that number, Madame Clerk?

MADAME CLERK: 155.

SOLICITOR SHELTON: Thank you.

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MR. FREEMAN: Please swear the juror.

MADAME CLERK: Defense Heath?

MR. HEATH: Please swear the juror.

MADAME CLERK: Please have a seat in the jury box.

Number 69, Karen Ferguson.

(WHITE FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MR. FREEMAN: Please excuse this juror.

MADAME CLERK: You are excused from this case.
Number 142, Dorothy Mackey.
(BLACK FEMALE COMING FORWARD.)
MADAME CLERK: What say you for the State?
SOLICITOR SHELTON: Please excuse this juror.
MADAME CLERK: You are excused from this case.
Number 2-0-9, Michelle Smith.
(WHITE FEMALE COMING FORWARD.)
MADAME CLERK: What say you for the State?
SOLICITOR SHELTON: Please present this juror.
MADAME CLERK: Defense Robinson?
MR. FREEMAN: Please excuse this juror.
MADAME CLERK: You are excused from this case.
Number 187, Jorjeana Quinn.
(BLACK FEMALE COMING FORWARD.)
MADAME CLERK: What say you for the State?
SOLICITOR SHELTON: Please present this juror.
MADAME CLERK: Defense Robinson?
MR. FREEMAN: Please swear the juror.
MADAME CLERK: Defense Heath?
MR. HEATH: Please swear the juror.
MADAME CLERK: Please have a seat in the jury box.
Number 124, Timothy Knight.
(WHITE MALE COMING FORWARD.)
MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present the juror.

MADAME CLERK: Defense Robinson?

MR. FREEMAN: Please swear the juror.

MADAME CLERK: Defense Heath?

MR. HEATH: Please swear the juror.

MADAME CLERK: Please have a seat in the jury box. Number 2-0-1, Michael Scronce.

SOLICITOR SHELTON: Your Honor.

THE COURT: Yeah, I'm gonna excuse —

Mr. Scronce, I'm going to excuse you. You haven't done anything wrong; I'm going to excuse you from serving on this panel.

MADAME CLERK: Number 193, Angela Richert.

(WHITE FEMALE COMING FORWARD.)

SOLICITOR SHELTON: Madame Clerk, what's that number?

MADAME CLERK: 193.

SOLICITOR SHELTON: Thank you.

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MR. FREEMAN: Please swear the juror.

MADAME CLERK: Defense Heath?

MR. HEATH: Please excuse the juror.

MADAME CLERK: You are excused from this case. Number 110, Bradford James.

(WHITE MALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MR. FREEMAN: Please present the juror.

MADAME CLERK: Defense Heath?

MR. HEATH: Please present the juror.

MADAME CLERK: Please have a seat in the jury box.

Number 210, Amanda Somjak.

(WHITE FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

THE COURT: Start with the alternate the State has one strike, defense two on each.

MADAME CLERK: Number 222, James Tarlton

(WHITE MALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MR. FREEMAN: Please present the juror.

MADAME CLERK: Defense Heath?

MR. HEATH: Please swear the juror.

MADAME CLERK: Please have a seat in the jury box.

Number 180, Ollie Paster.

(BLACK MALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please excuse this juror.

MADAME CLERK: You are excused from this case.

Number 85, Robert Guyton.

(WHITE MALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MR. FREEMAN: Please excuse this juror.

MADAME CLERK: You are excused from this case.

Number 184, Patrick Powers.

(WHITE MALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MR. FREEMAN: Please swear the juror.

MADAME CLERK: Defense Heath?

MR. HEATH: Please excuse the juror.

MADAME CLERK: You are excused from this case.

Number 29, Robyn Brown.

(WHITE FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MR. FREEMAN: I apologize. Please swear the juror.

MADAME CLERK: Defense Heath?

MR. HEATH: Please excuse the juror.

MADAME CLERK: You are excused from this case.

Number 152, Carmen McClinton.

(BLACK FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MR. FREEMAN: Please swear the juror.

MADAME CLERK: Defense Heath?

MR. HEATH: Please swear the juror.

MADAME CLERK: Please have a seat in the jury box.

THE COURT: Anything from the State involving the striking of the panel?

SOLICITOR SHELTON: No, sir, Your Honor.

THE COURT: Anything on behalf of Mr. Robinson involving the striking of the panel?

MR. FREEMAN: Nothing, Your Honor.

THE COURT: Mr. Heath, do you have any matters involving the striking, the way the others exercised their strikes?

MR. HEATH: No, Your Honor.

THE COURT: Those of you who were not chosen I'm going to allow you to leave. I'm going to ask you to leave quietly, please call back tonight after 7:00 and you will receive your instructions.

(JURY DISMISSED.)

THE COURT: Those of you who were chosen I'm going to talk to you for a few minutes and then I'm going to let you go until 10:00 in the morning. We've got some legal matters to take up we have to take up outside your presence so we will do that and not keep you sitting in the jury room and start in the actual trial and presentation of evidence in the morning. When you get here in the morning I will have some things to talk to you about and I'll talk to you a little bit before you leave and then I'll turn the case over to the attorneys.

Mr. James, I'm going to ask you to be the foreperson when you come back tomorrow. There is no need for you to move now but you will always sit in the first seat on the front row. The two alternates will sit on the seats that they are in now and with everybody else there is no assigned seating. You just sit sort of where you happen to come in in the line. We're not going to give you the oath until in the morning but you are on this jury panel so jury rules apply. You are not to try to make up your own mind or discuss the case among yourselves until we reach the point in the trial where I instruct you to jointly deliberate and return a unanimous verdict. Prior to that time you're not equipped with all the tools you need to make a fair and reasonable decision so do not discuss the

case and try to make up your own mind.

If anyone outside the courtroom tries to discuss this case with you tell them you cannot do so since you are a juror and report back to me if anyone tries to discuss the case with you hopefully giving me that person's identity because I will have to take action against anyone who tries to talk to a seated juror. I do not know whether this case will receive any news coverage but if it does do not let yourself be exposed to it. Don't listen to anything, watch anything, or read anything that could remotely deal with this trial. As I alluded to you got to base your verdicts solely on the law and the evidence that's developed here in the trial and nothing outside of the courtroom. And that includes electronic devices. You are not to go on line or social media or do anything with your computer involving this case or do any research involving this case either without electronic means or with electronic means. And you may think that it's going a little over board to say not even use social media and tell a friend something like I served on a jury. If you do that you're liable to get a message back from that person that you sent with some information or a statement or something that will cause problems. So don't use any links to the outside world because you got to of course go home and do the things you do but don't do any research of any kind electronic or

otherwise or use any social media involving this case.

I do not yet know where exactly this case took place. Where was the location?

SOLICITOR SHELTON: It was located at a business called Five Star Customs which was on Cherry Road.

THE COURT: All right. So there is no reason - I don't know that that business is even still there and if it is it might be different so there is no reason and I'm going to ask you not to go to that particular location. Again you may hear testimony about where certain things were and they may not be there any more. You go out there and you look and you say well that doesn't make sense, they said this and it's not true. With those admonitions I'm going to let you go in just a moment. You won't need to take notes and I'll have a few more things to tell you in the morning.

Anything else before the jury is let loose for the day?

SOLICITOR SHELTON: Nothing from the State, Your Honor.

MR. FREEMAN: Nothing from the defense, Your Honor.

MR. HEATH: No, Your Honor.

THE COURT: All right. The bailiff will show you how to get in and out and I talked about the alternates and foreperson's seating. The bailiff will tell you how to get

in and out while you're serving on the jury and we'll look for you at ten o'clock in the morning. Have a pleasant evening.

(PETIT JURY EXITS COURTROOM AT 03:24 P.M..)

THE COURT: I was told before we may have some legal matters to take up, so let's move to that.

SOLICITOR SHELTON: Yes, Your Honor.

Your Honor, there's a couple of housekeeping matters that the State has complied with Rule Five and Brady request from - I never received one from Mr. Freeman but I did receive one on behalf of Mr. Heath by Phil Smith and I have complied with those requirements. The other thing I'd like to clarify before witnesses testify, I'm planning on calling three lay witnesses, I've provided the criminal history of those three individuals to Mr. Freeman. I did that last week. We did that via e-mail. I can print him a copy if he did not get that e-mail.

MR. FREEMAN: Your Honor, I got numerous e-mails from the Solicitor and I thought I had opened and printed all of them. I don't recall any of them being criminal to any rap sheets of any of the defendants. It was copies of the indictments --

THE COURT: Not defendants.

MR. FREEMAN: I'm sorry. The potential witnesses for the State.

THE COURT: The witnesses.

MR. FREEMAN: Yes, sir.

SOLICITOR SHELTON: I can get another copy. We sent those I believe it was last Thursday but the only — from the State's position, the only impeachable offense on any of those witnesses would be Mr. Jordan. Ernest Jordan had a receiving stolen goods conviction. He pled no contest to that in this court I believe two years ago. Jared Crane had some convictions but they were not within the requirements. They were I think a couple of simple assaults and a possession of marijuana and Amanda Crane had a DUI but I can provide those to him.

THE COURT: All right.

SOLICITOR SHELTON: And Your Honor, just for the record I have not received any — I did serve both Mr. Freeman and Mr. Heath with a reciprocal Rule Five request. I have not received anything in that vein. I have not been put on any kind of notice for any alibi defense or any insanity defense or any affirmative defense they would have to put me on notice for just for the record. And then we probably should do a Jackson versus Denno hearing and a Neil versus Biggers hearing. I have witnesses here for those too.

THE COURT: Before we get too comfortable, any impeachment on behalf of either of the defendants if they

chose to exercise and also any Lyle?

SOLICITOR SHELTON: I do not intend to introduce any Lyle, Your Honor, but both defendants do have impeachable offenses. Mr. Heath, he has a possession of crack cocaine from 2002 and a distribution - distribution in proximity or PWID. You can't really tell from his criminal record but it's a distribution or PWID crack cocaine with an accompanying proximity from 2002. That would be the extent of his impeachable offenses.

THE COURT: I thought there was some cases that said drug cases?

SOLICITOR SHELTON: I would just ask if I would be allowed at ask him are not impeachable.

THE COURT: Well, they're not impeachable under one year but not under --

SOLICITOR SHELTON: Yes, sir.

THE COURT: Not under the --

SOLICITOR SHELTON: The moral turpitude.

THE COURT: The moral turpitude.

SOLICITOR SHELTON: Yes. I would ask to be allowed to question him about that under the one year rule, Your Honor.

THE COURT: Right. Okay.

SOLICITOR SHELTON: And if Your Honor feels that because its drug related, I can ask that if he had been

convicted of a felony.

THE COURT: Right. Let's keep it like that.

SOLICITOR SHELTON: Yes, sir. As far as Mr. Robinson, he has a breaking and entering from North Carolina in 2006. He has a receiving — I'm sorry, Your Honor, he does not have a receiving. He has a possession of crack from 2007 and a failure to stop for a blue light -- I mean from 2000 a failure to for a blue light from also from 2000. He has an assault and battery of high and aggravated from 2000. Has a possession of a pistol under the age of twenty-one from 2000 and an unlawful carrying from 2000. He was on a YOA for that, Your honor. I did inquire with probation to see when he was released off of his - from probation and it was after 2005.

THE COURT: Well an assault and battery of a high and aggravated nature and the course I guess with all of these -- first of all let me start at the top. If it's a North Carolina check and make sure breaking and entering is a felony on this particular charge.

SOLICITOR SHELTON: I believe he was charged as a felony. It may be that he entered - He did, he was found guilty at trial and it looks like a misdemeanor, Your Honor.

THE COURT: Okay. It is not a misdemeanor. I don't know ...

SOLICITOR SHELTON: It was in 2006.

THE COURT: I know but what did it carry?

SOLICITOR SHELTON: I do not know. I can inquire about that but I will check.

THE COURT: Find that out. And the reason I was asking you is -0

SOLICITOR SHELTON: It may not carry more than a year?

THE COURT: I don't know. Since it is North Carolina we need --

SOLICITOR SHELTON: Yes sir.

THE COURT: It probably is but we need to check. Now it's a little unusual --

SOLICITOR SHELTON: On the assault and battery of a high and aggravated nature, Your Honor, if I could if I could ask if he was convicted of a crime that carried more than a year on that charge since it is related to these and the weapons charge but I ask what the charge if he were convicted of a felony.

THE COURT: Well I don't feel comfortable impeaching him on a offence which I personally have found to be unconstitutional and the court has found to be unconstitutional ---

SOLICITOR SHELTON: Yes sir.

THE COURT: --- and is not against the law so the pistol charge I would say the law at the time since it's

now found to be unconstitutional --

SOLICITOR SHELTON: Yes sir.

THE COURT: I wouldn't feel comfortable allowing that to be used for impeachment.

SOLICITOR SHELTON: Yes sir. On the assault and battery will I be allowed to ask him if he's been charged -- convicted of a crime that carries more than a year?

THE COURT: Yeah on that but I'm not talking about pistol charge.

SOLICITOR SHELTON: Yes sir.

THE COURT: All right.

MR. FREEMAN: If I could respond to that before we move on to the other things. Just so we're clear the court's ruling is going to be not withstanding whatever we may discover about North Carolina regarding South Carolina charges that the assault and battery of a high and aggravated nature would be the only charge that they would be allowed to ask him about. Is that correct?

THE COURT: No, she's just going to ask that as a felony but the blue law - No the blue law is a misdemeanor it carries more than a year.

SOLICITOR SHELTON: Yes, sir. There was a drug charge.

THE COURT: And then a drug charge and she can ask him about those because they carry more than one year within a

ten year period of time.

SOLICITOR SHELTON: And, Your Honor, I do apologize there. I thought this was a non conviction but he also has an indecent exposure conviction from 2004.

MR. FREEMAN: Your Honor, that was not on the rap sheet I was provided.

SOLICITOR SHELTON: I have the copy, the same copy that I gave him. It's on a different page from the one he's currently holding in his hand. It is on page 4.

THE COURT: Now before we get to Jackson versus Denno, any issues on behalf of Mr. Robinson?

MR. FREEMAN: Your Honor, if I could I wanted to touch back on that other one. Regarding the court's ruling on what is admissible and what is not, I would ask the court to exercise discretion and the charges that she's referring to, the one's that the court's ruled on are from 2000. It's not even a year ago. It's not even a decade ago. I understand he didn't come off YOA for a couple of years, but that's more than 10 years ago and almost 13 years ago now.

THE COURT: Well we'll have to verify when he was -- when the implications of his sentence - when his sentence was five. His sentence was five, four to ten years then it was -- you can't use it, but if the sentence expired within the ten year period of time they can use it.

SOLICITOR SHELTON: I did check with probation on that last Friday and it was after 2002. I believe she told me that he was released sometime in 2005, but it was after 2002, Your Honor.

THE COURT: Well I'll allow those.

MR. FREEMAN: Thank you, Your Honor. I note my objection for the record and that I do feel that again given the amount of time the Court that it just doesn't add anything to the jury.

THE COURT: Anything else, Ms. Shelton?

SOLICITOR SHELTON: No sir, Your Honor.

THE COURT: All right. Mr. Freeman, you have any other issues before we do Jackson versus Denno?

MR. FREEMAN: No, sir.

THE COURT: All right. Mr. Heath, do you have any issues before -- I'll ask Mr. McKinnon to explain more too but Jackson versus Denno hearing apparently one of you gave a statement and I don't know which one, but apparently one of you gave a statement to the police and before the jury can hear that statement I have to make a determination whoever or which ever gave that statement number one that you gave it and that it was given after which ever one or both you gave a statement that it was done freely voluntarily and knowingly and intelligently after the giver of the statement had been warned of their constitutional

rights, have an attorney appointed and have an attorney present, stop answering questions, and if you made a statement it could be used against you and your right to remain silent. That's what a Jackson versus Denno hearing is about. Any question about that?

MR. HEATH: No, Your Honor.

MR. FREEMAN: Can we have about one minute to use the facilities?

THE COURT: All right. Why don't we take a short break and - Let's take a short break before we get into this because it might go for a while.

And before you leave, Mr. Robinson, I know you've been out on bond, but I'm going to have your bond revoked because the trial has now started and I'll have you been in the hands of the sheriff's deputies.

MR. FREEMAN: Your Honor, I'd like to be heard on that.

THE COURT: Okay.

MR. FREEMAN: Mr. Robinson has been out on bond since August of 2011. Bond was set at that time and it wasn't a PR bond, he had to post the bond. He's come to numerous hearings. In fact we were in front of Your Honor about two weeks ago. He was here all morning at my request, I thought we might start before lunch. He's come to every hearing. He's returned after lunch. I wasn't involved

previously but the Solicitor indicated they called for trial before, so I would submit that even though the charges are in fact serious he's not a flight risk, he's from Rock Hill, he has family here. You'll see on his record those charges are from York County. He's thirty years old and been from here his whole life, so I just ask the court to continue him under the same conditions he has been previously.

THE COURT: Well I'm not setting precedent, but my president is the charges of this magnitude that once we start the trial everybody that's charged remains in jail.

SOLICITOR SHELTON: Your Honor, we would just request that they are separated by detention.

THE COURT: Mr. Robinson, you can talk to your attorney and if has anything else to say we'll talk about it after break.

(COURT IN RECESS AT 03:37 P.M..)

(COURT BACK IN SESSION AT 03:53 P.M..)

(DEFENDANT HEATH REENTERS COURTROOM.)

THE COURT: Call your first witness.

MR. MCKINNON: Your Honor, he does, want to address Your Honor before the jury --

THE COURT: Okay.

MR. MCKINNON: I'm sorry, before the hearing.

THE COURT: Okay.

MR. HEATH: Your Honor, may I have Phil back on my case, Your Honor?

THE COURT: Well if he's willing to come back up and sit with you, I don't know that he'd be prepared. Well go through - forward with the Jackson v. Denno hearing, I'll have my office call and have him come up here and we'll see what ---

MR. HEATH: All right. Thank you.

THE COURT: --- what he says.

SOLICITOR SHELTON: Your Honor, just for complete candor with the court, I have - I inquired with Mr. McKinnon if Mr. Heath would in inclined to plead guilty. I am open to still try to negotiate the case if he would so choose to do that once -- whether it's with representation or without representation.

THE COURT: All right. Let's go ahead and start the hearing.

SOLICITOR SHELTON: Your Honor, the State would call Detective Bruce Haire.

(WHEREUPON: DETECTIVE BRUCE HAIRE, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

DIRECT EXAMINATION - IN CAMERA

DETECTIVE BRUCE HAIRE BY SOLICITOR SHELTON:

Q. State your name for the record please?

A. My name is Bruce Haire.

Q. And is it Detective Haire?

A. Yes.

Q. Where are you employed?

A. The City of Rock Hill Police Department.

Q. And were you employed with Rock Hill back in June of 2011?

A. Yes I was.

Q. In what capacity?

A. I was a detective.

Q. And during that time did you have an encounter with Marquis Robinson?

A. Yes I did.

Q. And was that when he turned himself in?

A. Yeah.

Q. At that time did you take a statement from him?

A. Yes I did.

Q. Did you advise him of his *Miranda Rights*?

A. Yes.

Q. Did you use anything to assist you in advising him of his rights?

A. Yes.

Q. What was that?

A. It was a paragraph that's attached to the actual statement that is read to him from a computer monitor.

Q. And are you holding that paragraph now?

A. Yes.

Q. Could you read that report please?

A. "Before we ask any questions you must understand your rights, you have the right to remain silent, anything you say can be used against you in court, you have the right to talk to a lawyer for advice before we ask any questions and have them with you during questioning, you have this right to the advice and presence of a lawyer even if you can not afford to hire one, we have no way of appointing you a lawyer but one will be appointed by the court for you if you wish, if you wish for me to ask you questions without the presence of a lawyer and you may stop answering any time you desire until a lawyer is present."

Q. Did Mr. Robinson appear to understand those rights?

A. Yes.

Q. Did he sign anything indicating that he understood his rights?

A. Yes he did.

Q. And that paper that you're holding there bares his signature?

A. Yes.

Q. Did he appear to be under the influence of any drugs or alcohol?

A. No sir -- no ma'am.

Q. Did you do or say anything to influence him in giving a statement?

A. No.

Q. Did you display your weapon at anytime?

A. No.

Q. Did you say -- Did you threaten him in any way?

A. No I did not.

Q. Did you make any promises to him?

A. No.

Q. Was there anyone else present in the room with you that threatened or coerced him in any way?

A. No.

Q. Or promised anything to him?

A. No.

Q. Do you remember if anybody -- if anyone else was in the room other than yourself and Mr. Robinson?

A. It was just myself and Mr. Robinson.

Q. You were not involved in the act of investigation of the case, is that correct?

A. Correct.

Q. Did Mr. Robinson at any time ask for an attorney?

A. No.

Q. And after being advised of his rights and signing the form, did he give a statement to you?

A. Yes he did.

Q. Is that statement a written statement?

A. Yeah, It was a typed statement.

Q. And did he -- after you -- and you typed it?

A. Yes.

Q. And then printed the statement off?

A. Yes.

Q. Did you show it to Mr. Robinson?

A. Yes I did.

Q. Did he sign and acknowledging that that was his statement?

A. Yes.

Q. And as part of that statement did he admit to knowing Dantonya Heath?

A. Yes.

Q. Did he admit to knowing the victim?

A. Yes.

Q. How did he refer to his relationship with, I guess I should say with Ernest Jordan, the victim Ernest Jordan?

A. He said he'd know him for seven years and that he was like a cousin to him.

Q. And that was the victim Ernest Jordan, not Jared Crane?

A. Yes.

Q. Thank you. Please answer any questions that the defense has for you.

CROSS EXAMINATION - IN CAMERA

DETECTIVE BRUCE HAIRE BY MR. FREEMAN:

Q. Detective Haire, you said this statement was typed up. Right?

A. Yes.

Q. And who actually typed it?

A. I'm sorry.

Q. Who actually typed it?

A. I did.

Q. Did you type it while you were sitting in the room with Mr. Robinson or did you leave the room to type it?

A. While we were in the room together I typed it.

Q. And is it one a computer or something like that presumably?

A. Yes.

Q. Does it print out in the room or did you have to leave the room to get it?

A. It prints out in the adjoining room.

Q. So you stepped out of the room to get it, you came back in?

A. Yes.

Q. Did Mr. Robinson have a chance to read and review it?

A. Yes he did.

Q. Do you know if he can read and write?

A. Yes.

Q. You do know?
A. Yes.
Q. Okay. Did he make any changes to it?
A. Nope.
Q. Now how come you were the officer who took the statement if you weren't involved in the investigation of the case?
A. I was the only detective available at the time when he turned himself in to give a statement.
Q. Turned himself in voluntarily?
A. Yes.
Q. And it's your understanding this guy just came and turned himself in for these crimes?
A. Yes.
Q. Okay. Did you have at that point a copy of the city report available to you so you at least knew generally what you were talking about with this person?
A. Yes I had one available.
Q. Was that with you in the room or on the computer?
A. It wasn't on the computer. I don't recall if I had it in the room with me or not.
Q. Let me rephrase that. You had to know a little bit about this so you could at least take the statement as opposed to having zero knowledge of what was going on. Is that correct?

A. Correct.

Q. Okay. And when you take a statement like this do you interact with the other person?

A. Sure. Yes.

Q. How?

A. Just talk to them in general to begin with.

Q. Do you record those conversations?

A. No we're not required to.

Q. So the answers no?

A. Correct.

Q. Does the office have the ability to record those conversations?

A. No.

Q. Does the office have any recording equipment in the city of Rock Hill for anything?

A. Not for interview purposes.

Q. So if I wanted to come in and confess to a very serious crime, the City lacks the ability to record that confession?

A. They don't lack the ability, we are not required to do it.

Q. So you do have some technology available and presumably did a year and a half ago where you could record things?

A. Yes.

Q. Okay. Didn't do that in this case?
A. No.
Q. Why not?
A. Because we're not required to.
Q. I guess the question is, it sounds like it's your discretion, your judgement call. Right? You're the only detective available at that time.
A. It's not a discretion, we're just not required to do it.
Q. Could you have if you wanted to?
A. I could have.
Q. And you didn't?
A. No.
Q. Now reading through the statement, who gets all the, for example the contact information from Mr. Robinson? Did you take all that?
A. Yes.
Q. Did you not ask him his social?
A. No.
Q. Didn't ask him his work or cell phone? Those aren't on there are they?
A. No.
Q. So you have his name, birth date, and street address?
A. Yes.
Q. With no zip code. Right?

A. Correct.

Q. And then some of the things in the statement, it goes back and forth a little bit, but you said this relates to the matter with Mr. Jordan; is that correct?

A. Yes.

Q. Well where in this statement does it have the name Ernest Jordan?

A. His name's not in there.

Q. So the only way you know it's Ernest Jordan is either you read it on another piece of paper or in response to the Solicitor's question today; is that correct?

A. I believe he goes by Neil.

Q. I understand that, but if I read that piece of paper, no where on it does it have the name of Ernest Jordan does it?

A. That is correct.

Q. How are you connecting the word Neil with Mr. Jordan? There's got to be something else that's not in front of us today that allowed you to make those connections? What is that something?

A. I don't recall if I wrote that on the incident report at the time or not.

Q. There's some other names on here. I'm referring to the - it would be the last line next to the last sentence of the first paragraph. I don't know who Yodi is? Do you

know who Yodi is?

A. Yodi was on the original incident report narrative if I recall.

Q. Okay. So you would have also brought that information over from something else?

A. Yes.

Q. Okay. That's an unusual spelling. How'd you come up with that spelling, Y-o-d-I?

A. It was on the incident report.

Q. Same thing, last sentence of the first paragraph. Dantonya Heath, where would you have gotten that name to put into this?

A. I would have had to have gotten it from the incident report.

Q. Again because you didn't investigate this -- this was not your case?

A. Correct.

Q. You had no first hand knowledge of any of this?

A. Correct.

MR. FREEMAN: One moment, Your Honor.

(PAUSE.)

Q. That's a relatively short statement is it not, Detective Haire?

A. Yes.

Q. It's one paragraph and a couple of sentences. How

long did you actually spend with Mr. Robinson to generate that document?

A. I don't recall.

Q. Most of the day, an hour, can you even give me a ballpark?

A. No, sir, it was a long time ago.

Q. Well you knew you were coming to court today, did you not?

A. Yes.

Q. You have the opportunity to review your notes from back then?

A. I didn't take any notes because I typed as he was talking about the incident.

Q. Well let me just refer you to the bottom of Page 2 then. It says "statement prepared by D. Haire". That's you correct?

A. Correct.

Q. And then it says time 11:31 am. Is that the time you printed it?

A. Yes. Well that's the time -- the time that we concluded the interview.

Q. So that time is at the end of your communication with Mr. Robinson, is it not?

A Yes.

Q. But you're testimony today is you don't know when that

started, how long that started?

A. No sir.

Q. When does the police department normally change shifts, the city of Rock Hill?

A. At that time 6:00 a.m. is when the patrol shift --

Q. What about your shift?

A. We begin at eight.

Q. So you could have been there as early as eight, give or take a few minutes that morning assuming this was the day that you were working normally. Is that correct?

A Correct.

Q. Reading this statement in its entirety, Mr. Robinson denies any involvement in this, does he not?

A. Yes.

Q. In fact he expresses something in candid surprise and then in the last sentence, these are my words not his, indignation. I just don't understand how in South Carolina somebody can put your name in something and then you get arrested before the detective even investigates what happened. Again his words not yours. Right?

A. Correct.

Q. But you can't tell us how long you were in there exactly with him?

A. No sir.

Q. It ended at 11:31, maybe a minute later when everybody

signed everything. Did you give him a copy of this statement?

A. I did.

Q. Do you -- And again, because I think I already asked you this. Did he make any changes from the, I'll call it the first draft you showed him, or did he just sign that one?

A. Before I had him sign it I had him read it, ask him if there was any changes that needed to be changed, anything he wishes to add to it or delete from it, and he stated no and signed.

Q. You say you have him read it? A paper copy or the computer screen copy?

A. The printed copy.

Q. Okay. And if he had made a change, what would you have done with the first draft? Would you have thrown it away or kept it?

A. I would have thrown it away.

Q. And you don't believe that there was such a draft in this case?

A. I don't believe so.

MR. FREEMAN: I don't have any further questions of this witness, Your Honor.

THE COURT: Mr. Heath, you want to ask him anything about the statement?

MR. HEATH: No, sir.

THE COURT: Anything else from the State?

SOLICITOR SHELTON: No, sir, Your Honor.

THE COURT: All right. You can step down.

(WITNESS LEAVING WITNESS STAND.)

THE COURT: Anything else?

SOLICITOR SHELTON: Not on the Jackson versus Denno, Your Honor.

THE COURT: Mr. Freeman, any argument?

SOLICITOR SHELTON: Your Honor, before Mr. Freeman starts, may Mr. Haire be excused until tomorrow?

THE COURT: Sure.

MR. FREEMAN: And that was his only testimony today, I have no objection.

THE COURT: Yes.

(WITNESS DETECTIVE BRUCE HAIRE EXCUSED FROM THE COURT.)

MR. FREEMAN: Your Honor, taking the statement at face value, I think it constitutes the simple denial of involvement in this case. I think - and I'm very much admit I'm on the fence. I think the statement helps us as much as it potentially hurts us, but some of the facts in here very clearly the simple denial of involvement in this case. I think and I'm very much I'll admit I'm on the fence. I think the statement helps us as much as it

potentially hurts us, but some of the facts in here very clearly come from this outside source the detective is conveniently vague on. I -- He has to get some of this from some where else because he admits he has no first hand knowledge of the case. So at this Courts discretion on this one, Your Honor, to be very frank with you -

THE COURT: I'll make a ruling in just a minute. I do have some concerns about identifying Neil as Mr. Jordan unless it's some other testimony --

SOLICITOR SHELTON: There will be your honor. Neil is Mr. Jordan's middle name. He goes by Neil. Everybody knows him as Neil.

THE COURT: Unless there is something to tie Neil and Jordan, unless there's something else to do it I have some concern about that. But otherwise I find that the statement is admissible. The State had proven by a preponderance of the evidence that Mr. Robinson freely voluntarily and knowingly and intelligently advised of his Miranda Rights and his rights under the Fifth and Sixth Amendment. He was advised that he had the right to remain silent. That any statement could be used against him, that he had the right to talk to an attorney before and during any interrogation, that if he could not afford an attorney that one would be appointed to represent him.

He could answer any questions if he wished but he may

stop - that he could stop answering at any time. And his testimony is that he appeared to understand, that he was not under the influence of drugs or alcohol, no threats particularly no weapon involved in the retaining of the statement. No promises made in exchange for the statement. That nobody else was in the room and the witnesses' testimony by Detective Haire was that no one else threatened or promised -- made any threats or promises to extract a statement from Mr. Robinson. That he, Mr. Robinson, never ask for an attorney, he gave the statement, read it, signed it and the statement - well what the statement says speaks for itself. I already discussed my concern. I think the part about - I find by a preponderance of the evidence that the State has proven what it needs to as far as voluntariness, knowingly and intelligently, understanding and waiving, that he freely voluntarily and knowingly waived those rights and gave the statement. Those rights being those required by Miranda, particularly the Fifth and Sixth Amendment.

MR. FREEMAN: Your Honor, two responses to that very briefly. I understand the State's representation that they will later explain who Neil is. In the event that they do not do so I will revisit that. And then secondly --

THE COURT: I'm kind of shooting a shot across the bow, unless there's something to tie it in I don't see

how..

SOLICITOR SHELTON: Your honor I can --

THE COURT: I don't need it right now. You're telling me it's gonna be there.

SOLICITOR SHELTON: Yes, sir.

MR. FREEMAN: Yes. Right. As long as they introduce it. Your Honor, the second thing, I'm simply just listening to what the court said and reading along on the statement. It does a recitation of all the fundamental rights, including the right to counsel, but I would read this for the record the way the City of Rock Hill has phrased it.

"We have no way of appointing you a lawyer but one would be appointed by the court for you is you wish."

If I'm sitting there and I'm not familiar with my rights, the first thing I hear is we don't have any way to get you a lawyer and then kind of like fade out the rest of that sentence so it doesn't give you some pause the way they've done it.

THE COURT: Well the phraseology is always I guess different but I've heard it done that way quite a while. I don't have any real problems with it. They telling me of course they can't do it but he does have the right to have an attorney or have one appointed, so I guess you could phrase - you couldn't phrase it a hundred different ways

but you could phrase it several different ways and they phrased it that say so I have no problem with that but I appreciate you calling that to my attention but that does not change my ruling.

MR. FREEMAN: Yes, sir.

THE COURT: All right. Anything else from the State?

SOLICITOR SHELTON: We do have

SOLICITOR SHELTON: We need to do a Neil versus Biggers hearing. Both victims identified Mr. Robinson through a photo display. And one of the victims identified Mr. Heath during that photo display. On that issue, Your Honor, there's something I need to put on the record that was a discrepancy between the victim's recollection, Mr. Jared Crane and the officer's recollection. When I met with Jared Crane in preparation for trial, he indicated to me that he had picked Mr. --

MR. FREEMAN: Your Honor, I early made some sequestration motions, she relating to her sitting in the courtroom listening to her say what she's about to --

THE COURT: I don't know that this is --

SOLICITOR SHELTON: Those are the victims. Ms. Crane I didn't realize, she does need to leave.

THE COURT: Okay.

SOLICITOR SHELTON: But those are the victims, Your Honor.

THE COURT: The victims have a right to be here. But not if they are lay witness but non victim.

SOLICITOR SHELTON: Yes sir. Thank you. And I did ask Detective Smith to step out earlier and I inadvertently forgot to tell Mrs. Crane to step out.

Mr. Crane during the interview in preparation for trial indicated that he believed that he had picked Mr. Dantonya Heath out of a line up. In going through all the forms that I had I did not see a line up that Mr. Crane had identified Mr. Heath, so when I met with the detectives I went through that with Detective Stokes. He said that he did take a lineup to Mr. Crane but Mr. Crane was not a hundred percent sure so he did not consider that to be an effective lineup and when I talked to Mr. Crane about that today he said that I wasn't a hundred percent sure. So there was a discrepancy. He thought he had picked him out of a line up. Detective Stokes said he did not. We will not be going forth with any kind of lineup on Mr. Heath with Mr. Crane as the victim, but we will with, Mr. Jordan picked out Mr. Heath and both victims picked out Mr. Robinson. If that makes sense.

THE COURT: I follow you.

SOLICITOR SHELTON: So at this time we would call Detective Stokes to the stand.

(WHEREUPON: CEDRIC STOKES, BEING

FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION - IN CAMERA

DETECTIVE CEDRIC STOKES BY SOLICITOR SHELTON:

Q. Would you state your name for the record please?

A. Cedric Stokes.

Q. And, Mr. Stokes, how are you employed?

A. I'm employed with the city of Rock Hill as a police officer.

Q. What is your rank?

A. actually currently ranked police officer II and I'm a detective with the police department.

Q. And back in June of 2011, were you assigned to the detectives division at that point?

A. Yes, ma'am, I was.

Q. And did you get assigned to investigate an attempted murder, armed robbery and kidnapping of Ernest Jordan and Jared Crane from Five Star Customs in Rock Hill?

A. Yes, ma'am, I did.

Q. And just so the court is -- just briefly what were the -- what were the allegations of those charges?

A When I was called I actually was the on-call detective that night. I actually was paged out to respond to Five Star Customs on Cherry Road. It was in reference to an attempted murder. We believed at the time -- well patrol believed at the time that we had a shooting victim and they

also stated that we had two victims and a witness to the crimes that occurred there at Five Star Customs.

Q. And at some point during your investigation did you meet with the victims?

A. I did.

Q. What were their names?

A. Jared Crane and Ernest Neil Jordan.

Q. So Mr. Jordan goes by the name Neil?

A. Yes.

Q And in meeting with them did you show them a photo display of Marquis Robinson?

A. Yes.

Q. Did you show it to both or just to Mr. Jordan?

A. I showed the photo line up to Mr. Jordan.

Q. And how long after the incident did this -- did you show Mr. Jordan a line up of -- in this case?

A. It was approximately about 12:30 in the morning. We were paged out a quarter to eleven that night, so within a hour or hour and a half.

Q. Where was he when you showed him the photo display?

A. Piedmont Medical Center.

Q. You met with him at the hospital?

A. I did.

Q. How did you determine that the name to come up with the pictures for the photo display?

A. When I arrived at the scene, when I was paged out I initially went to Five Star Customs and I received information from patrol who the potential suspects were, who the potential actors in the case were and I went back to the law center and produced a lineup.

Q. And what process did you use to produce the display?

A. What I did was I used our records management system, our RMS system.

Q. And are these just photos that are in the line up?

A. Six person photo lineup.

Q. And what type -- You can't use the word mug shot or any kind of police, but in the -- What types of photos were these are far as in relation to the potential suspect? How were the other pictures compared to in similarities?

A. I usually -- Well whenever I do a photo lineup I usually try to do same hair styles, skin complexion, and body weight whenever I put these lineups together so you know can't be really any bias in it. Kind of either you know or you don't know.

Q. Were the photos marked in any way? Any names identifying anybody in any of the photos?

A. No ma'am. No, ma'am.

Q. Lighting different on one with one glaringly bright while the rest are blurred out or anything like that?

A. Not that I can recall.

Q. And you did -- There are two suspects in this case and the night at the hospital when you met with Mr. Jordan you showed him a photo display of both suspects or just one?

A. Just one suspect that night.

Q. And you said that there were six photos in the display. And how did you show the photos to Mr. Jordan?

A. When I met with Mr. Jordan, like I said it was at Piedmont Emergency Room. I had a form -- I actually had a form in my vehicle -- I carry a form whenever I show a photo lineup and I actually read it to the victim of the crime, and the form kind of states it out and lays it out exactly what, you know, as far as you see the accurate person who committed, you know, the offense against you or the offense, then you know you mark them. It's two places on the photo lineup where you can either affirm that you know who it is or the yellow part states you don't know.

Q. And when showing him the photo display, did you say that the suspect is one of these six pictures?

A. It may.

Q. Maybe?

A. Maybe.

Q. Was there anyone else present with you and the victim at the time that the display was shown to him?

A. At that time no. In the emergency room no. Detective Smith did respond but she was actually in the other room

with Mr. Crane.

Q. Did you say anything to the victim before showing him the display or show him a single picture of the potential suspect or anything like that?

A. No, ma'am.

Q. Was the victim able to select a photo from the display?

A. Yes, ma'am, he did.

Q. How long did it take him to pick this photo out?

A. Almost instantaneously.

Q. Did he say anything while looking at the display?

A. It's been a while, ma'am, but I believe he may have said that's him and circled and initialed. I usually have them circle and initial.

Q. I'm going to show you what's been marked for identification as State's Exhibit Thirty-seven.

Do you recognize that?

A. Yes, ma'am, I do.

Q. And how do you recognize it?

A. It's actually the form that I read to Mr. Jordan and I had him sign it. I also signed.

Q. Now is there something else attached to the form as part of that exhibit?

A. Yes, ma'am. Attached to the form is the actual photo line up.

Q. And that is the actual photo line up that you showed Mr. Jordan?

A. Yes. ma'am.

Q. And is that the exact one that you showed or is that a copy?

A. This is the exact one.

Q. And who did Mr. Jordan identify as one of the suspects of the attempted murder and robbery and kidnapping?

A. Mr. Robinson.

Q. Is that Marquis Robinson?

A. It is yes, ma'am.

Q. Is he present in the courtroom?

A. Yes, ma'am, sitting right there.

SOLICITOR SHELTON: Thank you, I have no questions, no further questions.

A. Thank you.

THE COURT: Mr. Freeman.

MR. FREEMAN: Thank you, Your Honor.

CROSS EXAMINATION - IN CAMERA

DETECTIVE CEDRIC STOKES BY MR. FREEMAN:

Q. And, Detective, when you interviewed Mr. Jordan, he was at the hospital?

A. Yes.

Q. Was he in the emergency room?

A. Yes, my first contact he was at Piedmont.

Q. Was he in the waiting area or back in one of the rooms?

A. Back in one of the rooms.

Q. Did you ask the nurse -

SOLICITOR SHELTON: I'm sorry I stopped with Mr. Robinson. I do have further questions on Mr. Heath but I assume we would take it one at a time.

THE COURT: That's fine.

SOLICITOR SHELTON: I'm sorry.

BY MR. FREEMAN:

Q. Did you have to ask anyone to leave the room?

A. Sir, I can't recall, but if there's someone in the room I ask them to leave.

Q. Doctor, nurse, somebody like that?

A. Anybody in the room.

Q. Were you aware of what Mr. Jordan's medical condition was before you questioned him?

A. I was told at the scene that he had some sort of laceration to his face.

Q. Told by whom?

A. Patrol officers on the scene when I arrived.

Q No, my question is, when you walked into the emergency room did a doctor tell you anything about Mr. Jordan's condition? Did you ask anything about his condition?

A. No sir. No I didn't.

Q. So you don't know if a doctor, for example felt he had a concussion?

A. No. Sir, I don't know. I didn't ask.

Q. Any kind of stress reaction or any medicines he may have been taking or anything of that nature?

A. No, sir, I don't think they're allowed to tell me that.

Q. Did Mr. Jordan tell you that?

A. Not that I can recall that night.

Q. So you just walked in and said what room is this guy in, I want to talk to him. Is that it?

A. I walked in and I asked -- At the time we actually had two officers at the hospital and they told me which room he was in the time yes, sir.

Q. Did you coordinate with the hospital security for example?

A. No, sir.

Q. And again you can't recall if there's actually anyone in the room?

A. No I can't recall.

Q. Do you recall if Mr. Jordan for example had an IV in his arm?

A. Not I can't.

Q. Anything of that nature?

A. No, sir, I can't recall.

Q. And then you said you showed him ---

Can I see?

--- these pictures and he identified somebody after you went through your litney. Is that correct?

A. Yes, sir, I read the form.

Q. And this is a color copy that I'm handing to you. This is the actual, original one you took. Where was this document printed?

A. It was printed at the Rock Hill Police Department.

Q. So you printed it before you left and took it over there?

A. Sure.

Q. And you printed a couple of copies?

A. I printed two copies.

Q. One for him and one for the other gentleman?

A. Correct.

Q. And you based the facts you needed to on what, reports from ...

A. From our patrol officers. They gave a potential suspect at the time.

Q. Okay. And did Mr. Jordan say anything to you when he circled that person's name?

A. I believe he said that's him right there and circled it.

Q. Okay. And then initialed it it appears?

A. Yes, sir.

Q. Okay. And then what's the date and time on that?

A. June 9th at 12:30 am.

Q. But it doesn't say -- Your testimony was done at Piedmont, but it doesn't say that anywhere on here does it?

A. No not on the form. No, sir.

Q. Okay. Now I see at the top of the form who's writing is that on the top right?

A. I'm sorry?

Q. Who's writing is this on the top right?

A. Oh that's my handwriting.

Q. What is that? It looks like letters, numbers?

A. Numbers.

Q. To do what?

A. As far as Page One and Page Two.

Q. And you wrote it the same on the other one as well?

A. I can't recall. I believe I did.

Q. Was the form attached to that when you gave it to Mr. Jordan? That Page One of that two page document?

A. No it was not.

Q. Did he sign the form before he looked at the document or after?

A. After.

Q. Did you say I've got a document for you to sign or...

A. No, sir, I actually read what's in the form.

Q. You read it but he doesn't sign it until he looks at the pictures?

A. Well I read it to him, the top portion.

Q. Yes, sir.

A. And then I present the pictures and if he sees the person or the actor he signs. I ask that they sign, that they circle and initial, and then sign the other part that says I freely and voluntarily viewed the lineup.

Q. And why do you have only six pictures in there?

A. That's just the way the system is when I run it, sir.

Q. For example could you have had the system generate more than six?

A. If there's a way to do it, I don't know how to do it.

Q. Could you have the system generate two pages of six each for a total of twelve?

A. If there's a way to do it. I wouldn't know how to do it.

Q. Now in your soliloquy that you read him it uses the phrase "you should not conclude nor guess at the photographs containing the picture of the person who committed the crime". So I'm reading that and I assume that there's a person who committed a crime. Is that correct?

A. Well that's what you would assume.

Q. This doesn't say that it, for example, does it; that

the picture might not be in there at all?

A. It says the fact that the photos are shown should not influence your judgment in any way.

Q. I guess my question is you could of generated six pictures neither or which were Mr. Heath nor Mr. Robinson, giving it to Mr. Jordan in theory he would not have identified anyone. Is that correct?

A. Correct.

Q. You didn't do that?

A. No, sir.

Q. You know how long Mr. Jordan was in the hospital?

A. No, sir. As far as for his injuries is that the question you're asking?

Q. Yes. Was he --

A. Sir, I'm not sure.

Q. Okay. When -- How long was it until you met with him again, if you remember?

A. Either the next day or the day after.

Q. Was he in the hospital then?

A. No he met me at the Rock Hill Police Department.

Q. And did you show him the line up again and say I just want to give you this one more time now that you're not in the hospital?

A. No sir.

Q. Did you offer that? Did you say would you like to

look at the pictures again?
A. No sir.
Q. He's in the emergency room and then later on he's in your office presumably under his own power?
A. Yes sir.
Q. Now he does have the option at the bottom to say "I was unable to positively identify any particular photo as being the person" and again we see that phrase "responsible for the crime committed". Your document assumes that a crime has been committed does it not? Doesn't say the accused, alleged, it says "the crime committed" at least twice.
A. That's what the form says.
Q. You didn't generate the form?
A. No, sir.
Q. You said you keep a handful of them in your car?
A. I try to.
Q. And if he'd been unable to identify anybody you would have attached it and signed the bottom part?
A. Correct, have him sign the bottom part and attach it.
Q. Did Mr. Jordan have any family with him while he was at the hospital that you recall?
A. I think his wife may have been there.
Q. Do you remember if you would have had to ask her to leave the room?

A. I can't remember, sir.
Q. You remember speaking to her?
A. I can't recall.
Q. When you meet someone for the first time in a situation like this, would you normally give them your card and say call me?
A. Usually -- Yes, usually I do.
Q. But you don't recall if you did that in this case?
A. I can't recall if I met Ms. Jordan at the hospital or at the police department.
Q. Now what -- Let's use the phrase exemplars. Were you looking for when you generated this half a dozen people, just what general physical characteristics did you have your system tag on?
A. When you generate through the system you put the potential suspect's name in and the computer will -- it pulls up how ever many pictures fit and the height, weight, age, length of hair, complexion.
Q. But somebody tells it those things. Correct?
A. The computer is already inputted from previous times that Mr. Robinson was there. I didn't tell it.
Q. Who chose the other five pictures?
A. The computer generates it.
Q. So you don't know if these are recent or older pictures or anything?

A. No, sir.

Q. And I notice his picture is the very first one.

A. Yes sir.

MR. FREEMAN: I don't have any further questions, Your Honor.

SOLICITOR SHELTON: Just very briefly.

REDIRECT EXAMINATION - IN CAMERA

DETECTIVE CEDRIC STOKES BY SOLICITOR SHELTON:

Q. Detective Stokes, when you met with Mr. Jordan he had been a victim of an assault?

A. Yes.

Q. And did he have visible injuries?

A. He did.

Q. How many years have you been a law enforcement officer?

A. Shoo, date back to '96.

Q. Now you pointed out through the questioning of the defense that you didn't talk to any doctors to find out anything about his condition, you don't remember if there were any IV's or anything like that. You been a law enforcement officer for a long time.

A. Yes.

Q. Did he appear to be so out of it that he could not accurately pick somebody out of a lineup?

A. No, ma'am.

Q. If he had appeared to be so out of it that he could not pick someone out of a lineup, would you have --

MR. FREEMAN: Your Honor, I realize we're out of the presence of the jury, but there's leading and it's just --

THE COURT: Don't lead the witness.

MR. FREEMAN: Just say agree with me.

THE COURT: She's gonna ask you something else or the same thing a different way.

Go ahead.

BY SOLICITOR SHELTON:

Q. What is your procedure when meeting with someone to show them the lineup to assess whether or not they are able to successful -- to look at the lineup to pick someone out?

A. Well if I believe that they're visibly impaired either by alcohol or drugs, you know, some sort or medication where I can't ask questions, or have them review paperwork, I won't do it at that time. But Mr. Jordan was not in that state the night that I met him at the hospital.

Q. And in showing him the lineup, do you show folks lineups when no crime has been committed?

A. No, ma'am.

Q. Had he been the victim of a crime?

A. He had been?

Q. Is that why you were showing him the lineup?

A. That's correct.

SOLICITOR SHELTON: Your Honor, I don't have any further questions for Detective Stokes.

CROSS EXAMINATION - IN CAMERA

DETECTIVE CEDRIC STOKES BY MR. FREEMAN:

Q. Somebody told you he'd been the victim of a crime. Correct? You didn't ask him the details of it that evening?

A. I couldn't.

Q. Why?

A. I didn't.

Q. You didn't?

A. I did not.

Q. You just said look at these pictures, pick one?

A. Well, I was told by patrol at the time that he was already to the hospital and what his injuries potentially were, so when I got there yes. Why I actually left the scene, Five Star Customs, went back to the police department, generated the lineup and took it up there at that time yes.

MR. FREEMAN: I don't have any further questions, Your Honor. I do have a response to

THE COURT: The lineup in evidence?

SOLICITOR SHELTON: I have not moved it into evidence. I was going to call the witness who identified ---

THE COURT: Okay.

SOLICITOR SHELTON: --- and I don't know if you want to take them in that order and bring Mr. Stokes back up or. Mr. Stokes showed a line up to both victims for different --

THE COURT: Why don't we get all his testimony and then do anyone else?

REDIRECT EXAMINATION CON'T- IN CAMERA

DETECTIVE CEDRIC STOKES BY SOLICITOR SHELTON:

Q. Detective Stokes, moving on to the lineup for the second suspect.

A. Yes.

Q. Did you meet with Mr. Jordan at a later date?

A. I did.

Q. And at that point had you been able to, through your investigation come up with a second suspect?

A. Yes, ma'am, I did.

Q. And how were you able to do that?

A. When I met with Mr. Jordan at the law center, I'm not sure if it was the day after or the day after that, we actually -- I did the formal interview with him as far as what happened on that night. Mr. Jordan told me when I was speaking with him that the second suspects name he gave the name of Yodi and I said "well okay". Well can you give me his last name? He said "well his mom lives off of Crest Street -- or he lives off of Crest Street and he drives a

Buick." At that time, myself and Detective Smith, we drove down towards the apartments on Crest Street that Mr. Jordan told us and I noticed that there was a older Buick out there. I ran the tag number and it came back registered to Mr. Heath. At that time I generated the photo lineups of Mr. Heath to see if that was potentially Yodi. I met with Mr. Jordan. He positively ID him and we issued warrants for Mr. Heath at that time.

Myself and Detective Smith and a few others actually responded a few days later to try to apprehend Mr. Heath and he wasn't at his residence. When we got there, there was several family members and I actually spoke with his mother and I asked her you know -- well I pretty much explained to her that there was an outstanding warrant for her son and I said they call him Yodi and she said, "Yeah I don't know where Yodi is". So they kind of put it together whether we had the right person besides the ID on the photo line up.

Q. Going back to the ID, you determined through the nickname Yodi, the name Dantonyo Heath?

A. Correct.

Q. And you compiled a six -- I think you said a six picture?

A. Yes, ma'am.

Q. And again those pictures, how were they as far as

physically?

A. Same way, ma'am. I try to use the same complexion, the computer generates through height, weight, age, you know, whatever; however the computer prints the pictures out, ma'am, based upon Mr. -- the victim or suspects information that's in our computer system.

Q. And with Mr. Jordan where did you meet with him to show him the display?

A. I actually met him out at Lancaster at the Bojangles out I believe on Highway 5 and showed him the lineup. He was actually going out of town that weekend and I met him out there. Called him and we met out at the Bojangles.

Q. And in showing him the lineup, did you read your form to him?

A. No I didn't have a form at that time. I thought I had a form but I didn't at the car -- you know in the car but I explained to Mr. Jordan it's the same procedure like what we did with Mr. Robinson, that I'm going to show you a six person lineup, if the potential person is there then you were to circle and initial. If not just initial it that, you know, he's not there.

Q. And did you say anything or do anything to influence Mr. Jordan's decision?

A. No, ma'am.

Q. Did you show him a picture of Mr. Heath ahead of time

and said this is the suspect?

A. No, ma'am.

Q. Was there anything marking, any writing, or anything like any names on the pictures on the photo lineup?

A. No, ma'am.

Q. Was there anyone else with you?

A. No, ma'am.

Q. Was there anyone else with Mr. Jordan?

A. His wife was there.

Q. Did she do anything to influence?

A. No, ma'am.

Q. Was she there that night of the crime?

A. She wasn't at the crime scene that night. No.

Q. Did you ask her to assist in identifying Mr. Heath whatsoever?

A. No, ma'am.

Q. And in reference to Mr. Jordan, was he able to identify one of the suspects in the lineup?

A. Yes, ma'am, he did.

Q. And who did he indicate?

A. He indicated it was Mr. Heath.

Q. And is Mr. Heath present today?

A. Yes, ma'am.

(WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-NINE PREMARKED FOR IDENTIFICATION.)

Q. I'm showing you what's been marked for identification of State's Exhibit Number Thirty-nine.

A. Yes, ma'am.

Q. Do you recognize that?

A. Yes, ma'am.

Q. And what is that?

A. This is actually the six person lineup that was generated.

Q. And did Mr. Jordan do something on that to indicate who he believed was the suspect of the crime?

A. Yes, ma'am. He actually initialed it, dated it with a time stamp on it with the time and he actually wrote this is him.

Q. Did he circle it or anything?

A. And he did circle it yes, ma'am.

Q. Do you remember if he said anything while picking out Mr. Heath in the lineup?

A. No, ma'am, I can't recall if he said anything.

Q. About how long did it take him to pick out Mr. Heath?

A. Almost instantaneously.

Q. And sticking with that lineup, did you also meet with Mr. Crane?

A. I did.

Q. And you used basically the same line up ---

A. Yes, ma'am.

Q. --- prepared in the same way?
A. Yes, ma'am.
Q. And where did you meet with Mr. Crane?
A. I actually met with Mr. Crane right at the York County, Lancaster County border at the Fast Bucks.
Q. Okay.
A. It's a gas station on Highway 5.
Q. Was anyone with you when you met with him?
A. No, ma'am.
Q. Was it the same evening?
A. It was that same evening actually prior to meeting with Mr. Jordan.
Q. Did -- Was anyone with Mr. Crane?
A. He had someone in the car with him, but we got out of the car and he was unsure. He wasn't really sure at that time so he didn't identify.
Q. Okay. He was not able to identify?
A. No, ma'am.
Q. And did you do anything to make note of that that he was not able to identify?
A. Just in my case summary.
Q. So that appeared in your case summary?
A. It did.

SOLICITOR SHELTON: I have no more questions for Mr. Stokes, Your Honor, Detective Stokes.

THE COURT: Mr. Heath, do you have any questions you want to ask this witness about the lineup?

MR. HEATH: No, Your Honor.

THE COURT: You can step down.

MR. FREEMAN: I do.

THE COURT: Okay. Go ahead.

MR. FREEMAN: I realize I don't represent Mr. Heath.

CROSS EXAMINATION - IN CAMERA

DETECTIVE CEDRIC STOKES BY MR. FREEMAN:

Q. You said earlier that you printed these things at the police station and took them with you.

A. Yes.

Q. The pictures, I'm talking about the pictures. When the case of Mr. Heath, did you take two sets of pictures because you met both these people back to back you just testified?

A. Yeah I did. I met Mr. Crane first at the Fast Bucks.

Q. Is that the one over by Bowater

A. Yes.

Q. Or Abitibi now.

A. Yes, sir. And then straight from there straight down 5 and met with Mr. Jordan.

Q. So do you have a copy of the one where he couldn't identify him?

A. Sir, I don't have it with me no.

Q. You don't have that document?

A. No.

THE COURT: Anything else?

SOLICITOR SHELTON: Not from Detective Stokes, Your Honor.

THE COURT: You may step down. Thank you.

(WITNESS LEAVING WITNESS STAND.)

THE COURT: Call your next witness.

SOLICITOR SHELTON: Your Honor, at this time we would ask for Ernest Jordan to take the stand.

THE COURT: Place your left hand on the Bible and raise your right. Left on the Bible.

WHEREUPON: ERNEST JORDAN, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:

MADAME CLERK: Thank you. Please have a seat.

DIRECT EXAMINATION - IN CAMERA

ERNEST JORDAN BY SOLICITOR SHELTON:

Q. State your name for the record please?

A. Ernest Jordan.

Q. And, Mr. Jordan, do you go by some other name than Ernest?

A. Neil.

Q. Mr. Jordan, where do you currently live?

A. [redacted] in Lancaster, South Carolina.

Q. And where do you work?

A. Five Star Custom Tire.

Q. Who's your employer?

A. Actually I own the whole company.

Q. And did you own the company on June 8th of 2011?

A. Yes ma'am.

Q. Were you the victim of a crime on that evening?

A. Yes, ma'am.

Q. And at some point did you go to the hospital?

A. Yes, ma'am.

Q. And while at the hospital did you meet with any detectives?

A. Yes ma'am.

Q. And you met with -- Was it Detective Stokes that you met with at the hospital?

A. Yes, ma'am.

Q. Where did you meet with him? Actually in the hospital where were you?

A. I was actually in the room.

Q. Was there anyone in the room with you?

A. No, ma'am.

Q. Had your wife gotten to the hospital yet?

A. No, ma'am.

Q. She had not?

A. Uh-huh.

Q. Did she come to the hospital that night?

A. Yes, ma'am. I think she came to the hospital like -- I think they was already out there. I think they was in the lobby but I rode in the ambulance.

Q. You think your wife might have been in the lobby ---

A. Yes.

Q. --- but she had not come back to the room yet?

A. Yeah.

Q. Did Detective Stokes show you a photo display?

A. Yes, ma'am.

Q. And that was immediately that same night?

A. Yes, ma'am.

Q. So within hours of the crime?

A. Yes, ma'am.

Q. When he showed you the display, did he say anything to you to influence your decision?

A. No, ma'am.

Q. Did he point to anyone on the page to influence your decision?

A. No, ma'am.

Q. Was there any marking on the photo display?

A. No, ma'am.

Q. Did he show a picture of Mr. Robinson ahead of time and say this is him?

A. No, ma'am.

Q. Do you remember in looking at the photo display about

the similarities with the folks taken in the pictures there?

A. Yes, ma'am.

Q. How are they similar?

A. About the same.

Q. You talking about hair, size, color?

A. Like the hair and shoulder wise.

MR. FREEMAN: Your Honor, leading.

THE COURT: Don't lead him.

SOLICITOR SHELTON: Yes, Your Honor.

Q. How were they similar?

A. Hair and shoulder wise.

Q. Any other similarities?

A. Color.

Q. What do you mean when you say color?

A. Skin complexion.

Q. How were they similar in hair and skin complexion?

A. They skin complexion was about the same.

Q. About the same in what way? If you had to describe them as being a certain skin tone.

A. Like a caramel brown-type color.

Q. And all the people in all the photos were about the same color?

A. Yes, ma'am.

Q. And same hair?

A. Yes, ma'am.
Q. And speaking specifically of the alleged crime that night, it occurred in your shop?
A. Yes, ma'am.
Q. What was the lighting conditions like?
A. It's bright.
Q. All the lights were on?
A. Yes, ma'am.
Q. How long did you have an opportunity to see Mr. Robinson? Best guess?
A. For about thirty or forty minutes.
Q. And was that far away, close up?
A. Close up.
Q. Did he have anything covering his face?
A. Not when he walked in. He had a little t-shirt on his - like right on his mouth area and as soon as he grabbed me it kind of fell.
Q. So when he first walked in he had a t-shirt and then it fell down?
A. Yes, ma'am.
Q. Did he have his face uncovered the rest of the time?
A. Yes, ma'am.
Q. The closest that he got to you, how close was it?
A. It was like face to face.
Q. And when you were face to face the lighting conditions

were -- how were they?

A. Bright.

Q. How long have you known Mr. Robinson?

A. About seven years.

Q. How often had you seen him recently?

A He was coming around the shop helping me out like pretty much every other day before I hired Jared.

Q. And when this happened, how long had it been since you'd seen him last or this happened?

A. About three days.

Q. And when you met with Mr. Stokes and he showed you the photo display, were you able to pick someone out?

A. Yes, ma'am.

Q. How long did it take you before you were able to figure out who -- to pick someone out?

A. Like as soon as I seen the paper.

Q. I'm going to show you what's been marked for identification of State's exhibit number Thirty-seven. And I'm going to ask you to look at the second page of that exhibit. Do you recognize that exhibit?

A. Yes, ma'am.

Q. What is it?

A. Marquis Robinson.

Q. What's the whole thing?

A. Say what now?

Q. Is it just a picture of Marquis Robinson?

A. No. It's a picture of six other people — I meant - yeah five other people.

Q. Now is there anything special, anything special about the photo of Mr. Robinson?

A. No, ma'am.

Q. Is there any markings on it?

A. No ma'am. Nothing besides the circle where I circled it and marked and initialed.

Q. So that's a picture that you circled and marked and initialed?

A. Yes, ma'am.

Q. And is it your testimony that that picture that you circled and initialed, that's the person who committed the assault and armed robbery on you on the night of June 8th, 2011?

A. Yes, ma'am.

Q. And is that person still present in the courtroom today?

A. Yes, ma'am.

Q. Where is he?

A. Sitting right there with the green shirt.

SOLICITOR SHELTON: Your Honor, let the record reflect that the witness has pointed to Mr. Marquis Robinson.

(WITNESS INDICATED TO DEFENDANT MARQUIS ROBINSON.)

SOLICITOR SHELTON: Your Honor I would remove State'S Exhibit Number Thirty-seven in at this time.

THE COURT: Yes, Your Honor.

Very briefly though cross examine of the witness then and make an argument.

CROSS EXAMINATION - IN CAMERA

ERNEST JORDAN BY MR. FREEMAN:

Q. Mr. Jordan, you were in the hospital when you were shown these pictures. is that correct?

A. Yes, sir.

Q. And you said you went there by ambulance?

A. Yes, sir.

Q. How long did you end up staying at the hospital?

A. Probably about four or five hours.

Q. I'm sorry, I couldn't hear you.

A. About four to five hours.

Q. Did you -- How did you get home from the hospital?

A. My wife.

Q. Were you given any medicine or treatment? Do you recall?

A. Yeah I got about seven stitches in my face.

Q. Did they give you any pain pills or medicine or antibiotics or anything like that?

A. They offered but I didn't want it.

Q. Well when they put stitches in your face did they give

you some sort of anesthetic for that?

A. No, sir, they just rinsed it out. Rinsed it out.

Q. Did you have any follow up visits with the doctor ---

A Yes, sir.

Q. --- or do you remember?

A. Yes, sir.

Q. Now you said you were shown these pictures by the detective. He came into your room?

A. Yes, sir.

Q. Was anybody else in the room? Do you recall?

A. Not at the moment. The nurse was but then she had left out.

Q. Did he close the door behind him?

A. Yes, ma'am -- I mean yes, sir.

Q. And was this one of those rooms where there's a curtain between you and the other half or --

A. No it was an actual room with a door.

Q. Now the detective showed you these pictures and did he say pick one? What did he say to you?

A. No he just come in the room and said I want to show you this lineup to see if you can ID anyone of the suspects.

Q. Okay.

A. At that time he showed me the lineup and I picked.

Q. And you said you circled it and wrote your initials?

A. Yes, sir.

Q. And was that your idea to put the initials or did the detective ask you to do that?

A. He told me to circle the one and initial it.

Q. And you did what he asked you to do?

A. Yes, sir.

Q. And you don't know if your wife was present in the hospital, but you said she wasn't in the room?

A. I think my whole family was there.

MR. FREEMAN: I don't have any further questions for this witness, Your Honor.

SOLICITOR SHELTON: Your Honor, would you like to see the lineup?

THE COURT: Well, you haven't put it into evidence.

MADAME SOLICITOR: I would ask that it be moved into evidence at this time.

MR. FREEMAN: I objection, your Honor.

THE COURT: On what ground?

MR. FREEMAN: Your Honor, I think first of all the officer's presentation is he's placed my client as the first choice. He said pick one and circle it.

THE COURT: He said - His testimony was that he didn't place him with --

MR. FREEMAN: I'm sorry the computer placed him, but my client was the first one he circled and pick one and he

picked number one and he circled it. Also he then - I'll use the phrase sort of a excitable and vulnerable position in that he's in the hospital, and the detective said that it appeared to be - at least he's not a doctor - there was no life threatening condition, so he had him come by under his own power a day or two later down to the police station. He could have easily done that for this. Instead they zip out to the hospital which I submit is part of a neutral area. Mr. Jordan is there in an excitable condition. I just think that the lineup as it's presented was suspect at best.

THE COURT: Won't you let me look at it.

That's Number Thirty-seven?

SOLICITOR SHELTON: Yes sir, Your Honor.

(STATE'S EXHIBIT THIRTY-SEVEN RECEIVED UP BY THE COURT.)

(ATTORNEY FREEMAN'S CELL PHONE GOES OFF IN THE COURTROOM.)

MR. FREEMAN: I apologize, Your Honor. I thought I had turned it off.

(PAUSE.)

THE COURT: All right. Well I find that the identification procedure is not inadmissibly suggestive. This - I find that the photo lineup is not, like I say, unduly suggestive, I find that it is reliable. There is no

substantial lack of irreparable misidentification, so I find that I will let the exhibit in because I do find that it is not suggestive. Also looking at the totality of the circumstances, in addition to the lineup not being suggestive, Mr. Jordan's identification was based on, one he said he knew the man prior to the event, that his observation at the time of the crime was done with a bright light for thirty or forty minutes close up. In fact he said face to face. That the individual committing the crime had nothing on their face, that this lineup took place shortly after the event, and that he, he Mr. Jordan, was able to almost instantaneously pick out Mr. Robinson from the lineup.

I find no testimony and that the burden would be on the defense to show by clear and convincing evidence - I'm sorry, the burden is on the defense to show by a preponderance of the evidence that there was some inadmissable suggestiveness and under the totality of the circumstances there is a very substantial likelihood of irreparable misidentification I find the defense has not carried that burden and that it is reliable, the lineup reliable identification by Mr. Jordan of Mr. Robinson and here in the courtroom and at the time of the crime so I will allow it in.

SOLICITOR SHELTON: Thank you, Your Honor.

Q. Mr. Jordan, moving on to the second photo display that was shown to you by Detective Stokes, do you remember about how long after the alleged crime was that display shown to you?

A. Which one?

Q. The second lineup that was shown to you.

A. It was approximately I think like a day later.

Q. And do you remember where you met with Detective Stokes?

A. At Bojangles.

Q. But where at, which Bojangles?

A. Bojangles on 521 in Lancaster, South Carolina.

Q. Do you remember if anyone was with Detective Stokes?

A. No, ma'am.

Q. Did you have anyone with you?

A. I had my wife with me.

Q. And again in the photo display that Detective showed to you, how many pictures were in that display?

A. Six.

Q. And in looking at those pictures, how did they look to you as far as similarities?

A. All of them looked kind of the same but you know what I'm saying just the complexion and -- the complexion was about the same and the hair was about the same.

Q. And did Detective Stokes or your wife or anybody say

anything to influence your identification?

A. No, ma'am.

Q. Did anyone point out to you who the alleged suspect was?

A. No, ma'am.

Q. Did Detective Stokes show you any picture of Mr. Heath before hand ---

A. No, ma'am.

Q. --- when showing you the lineup? Was there any markings or anything identifying any of the pictures in the lineup?

A. No, ma'am.

Q. And in showing you the lineup, did he say that the suspect is in this line, up?

A. No, ma'am.

Q. And going back to the evening of the crime, the second suspect; not speaking about Mr. Robinson, but the second suspect, how long were you able to see him?

A. For about twenty to twenty-five minutes.

Q. And was his face covered?

A. When he first came in he had like a little blue bandana tied over his mouth, you know, but it came off after they started fighting..

Q. Were you able to see his face without it covered?

A. Yes, ma'am.

Q. Were you able to get a good look at his face?
A. Yes, ma'am.
Q. At some point during the assault were you close, were you close to him?
A. Yes, ma'am..
Q. And what was the lighting like when you were close to him?
A. Bright.
Q. And had you seen that individual before?
A. Yes, ma'am.
Q. Where had you seen him?
A. He come in the shop with Marquis Robinson.
Q. How soon did you see him before the day of the crime - the night of the crime?
A. It had been about two weeks ago.
Q. And when Detective Stokes showed you the photo display, were you able to select the picture out of it?
A Yes, ma'am.
Q How long did it take you before you were able to select the picture?
A. Instant.
Q. I'll show you what's marked for identification as State's Exhibit Number Thirty-nine. Do you recognize that?
A. Yes, ma'am.
Q. What is it?

A. Dantonyo Heath.

Q. What's - beside this just being Dantonyo --

A. My signature and date and time.

Q. What's the entire piece of paper?

A. It's six people on a lineup.

Q And is that the same lineup that Detective Stokes showed you?

A. Yes, ma'am.

Q. And you're saying that you circled the picture of Dantonyo Heath?

A. Yes, ma'am.

Q. Is that the person that committed the crimes against you on June 8th of 2011?

A. Yes, ma'am.

Q. Is that person present here in the courtroom?

A. Yes, ma'am.

Q. Where is he?

A. Sitting right there in that tux -- in the blue tux.

SOLICITOR SHELTON: Your Honor, I have no further questions. At the appropriate time I will remove the exhibit into --

THE COURT: Mr. Heath, do you have any questions you want to ask this particular witness about the lineup?

CROSS EXAMINATION - IN CAMERA

ERNEST JORDAN BY DANTONYO HEATH:

Q. Mr. Jordan, if Mr. Heath had a mask on how did you identify him in a lineup?

A. Because it came off as you'll was struggling.

Q. Mr. Jordan, if Mr. Crane could not ID Mr. Heath and they at one point been struggling, how could you?

A. I seen you when you first bent down in front of the car. I know who you was.

Q. So if you seen me how come Mr. Crane didn't?

A. He seen you too. He seen you but he might just didn't identify you because of the photo, but I seen you.

Q. But in the statement, Mr. Jordan, it states that Mr. Heath, or whoever the second suspect was, had the mask on the whole time, so how now you say he ain't had it on?

A. Cause I seen -- I mean his bandana fell down, you know, and plus I know you so. I seen you. You come to the shop so it ain't like I didn't know who you was. I mean it ain't like you all had on a mask. You all just come in with a partial bandana. I mean your face still look the same.

MR. HEATH: No further questions.

THE COURT: Anything else?

SOLICITOR SHELTON: Your Honor, we just move that State's Exhibit Number Thirty-nine be admitted into evidence.

THE COURT: Can I see it?

SOLICITOR SHELTON: Yes, Your Honor.

(STATE'S EXHIBIT THIRTY-NINE RECEIVED UP BY THE COURT.)

THE COURT: Mr. Heath, do you objection to --

MR. HEATH: Yes, sir, Your Honor, I object.

THE COURT: What is your objection?

MR. HEATH: Because he seen me and Mr. Robinson together so he assumed it was me.

THE COURT: Well I'm going to admit the lineup again as with the earlier one, the burden's on the defense to show by preponderance of the evidence that the identification procedure was inadmissable suggestive and that under the totality of the circumstances there is a substantial likelihood of irreproachable misidentification. Along with that would assume the burden with which the State if that was not shown - only if that was shown the burden switches to the State and I find the burden is not switched to the State. The lineup is not unduly suggestive, it's individuals, black males with the same skin tone and hair -- similar skin tone and similar hair.

The confrontation took place in Mr. Jordan's shop, that he previously knew Mr. Heath, that as with the earlier lineup took place -- the event took place in bright light for twenty to twenty-five minutes. The testimony is -- obviously Mr. Heath disputes this but that the testimony is

that there was - one of the perpertrators who has been identified as Mr. Heath had a blue bandana which came off, or came down, so Mr. Jordan was able to see his face, he was close to him, and like I said in bright light, had seen Mr. Heath in his shop before. So I find that no only is the photo lineup not unduly suggestive, but that the lineup as with Mr. Robinson is reliable - that the identification of Mr. Jordan of Mr. Heath like it was of Mr. Robinson is reliable and I will admit it into evidence, Number Thirty-nine, State's Number Thirty-nine and allow the eyewitness identification.

(WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-NINE IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

SOLICITOR SHELTON: Thank you, Your Honor.

MR. FREEMAN: Your Honor, may I just review that real quickly?

THE COURT: Yeah.

MR. FREEMAN: I have a copy but not the original.

SOLICITOR SHELTON: May I get Defective Tashia Smith in here please?

THE COURT: You can step down.

You through with this witness?

SOLICITOR SHELTON: Yes, sir, Your Honor.

THE COURT: You can step down. Thank you.

(WITNESS LEAVING WITNESS STAND.)

THE COURT: Stop right there. Place your left hand on the Bible and raise your right.

(WHEREUPON: TASHIA SMITH, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION - IN CAMERA

OFFICER TASHIA SMITH BY SOLICITOR SHELTON:

Q. State your name for the record please?

A. Tashia Smith.

Q. And Ms. Smith how are you employed?

A. I am currently employed with the Rock Hill Police Department as a detective.

Q. Detective Smith, you say you're currently employed with Rock Hill Police Department as a detective. Were you employed as a detective with Rock Hill PD on June 8th of 2011?

A. Yes.

Q. How long had you been assigned to the detective division at that point?

A. I think I had only been there for a few months. I believe I may have started in May.

Q. And as part of your assignment, did you get assigned to the investigation of an attempted murder, kidnapping, and armed robbery at Five Star Customs, which is in Rock Hill?

A. Yes.

Q. Did you go to meet with any of the victims of that robbery?
A. Yes.
Q. Where did you go?
A. At Piedmont Medical Center.
Q. What victim did you meet with?
A. I met with Mr. Crane.
Q. And in meeting with him did you show him a photo display?
A. Yes I did.
Q. How long after the alledged crime did you meet with him?
A. Probably around -- It was within an hour after Detective Stokes and I had gone to Five Star Customs.
Q. So the same evening?
A. The same evening yes.
Q. Did you -- Are you the one that actually prepared the photo display?
A. I am not. Detective Stokes prepared the photo display. I was sitting next to him because I was training.
Q. Do you remember how many photos were used?
A. Six.
Q. Do you remember in speaking of physical terms what the pictures looked like in comparison to each other?
A. They were very close in description.

Q. In what types of -- when you say very close, what type, like how were they close?

A. They -- we tried -- During choosing a photo lineup we try to choose people with the same physical characteristics just so that it will be a valid lineup.

Q. When you say physical characteristics, can you list what types of characteristics you're looking at being similar?

A. Like the same hair style, the same build, same age --

Q. And are these the same types of photos that you used in the photo display that you showed to Mr. Crane?

A. Yes.

Q. And in the photos that you showed to Mr. Crane, were any of the pictures marked in any way?

A. No they were not?

Q. Anything on any of the pictures identifying anyone in the pictures?

A. No.

Q. Do you remember who was present when you showed Mr. Crane the display?

A. His wife.

Q. Did she say anything or do anything to influence his decision?

A. She did not.

Q. Did she pick anyone out in his presence?

A. She did not.
Q. Did you say anything to influence his decision?
A No I did not.
Q. Did you point to any pictures?
A. No I did not.
Q. Did you tell him that the suspect was in that lineup?
A I did not.
Q. Did you do anything to physically indicate which suspect?
A. No I did not.
Q. Was Mr. Crane able to select a photo from the display?
A. Yes he was.
Q. Who did he select?
A. Mr. Robinson.
Q. How long did it take him when looking at the pictures to select Mr. Robinson?
A. It didn't take him long at all.
Q. Do you remember if anything was said to him while he was looking at the pictures?
A. No.
Q. Do you remember if he said anything to you while he was looking at the pictures?
A. If he said something to me I don't remember.
Q. Let me show you what's marked for identification and State's Exhibit Number Thirty-eight.

Would you look at both pages of that and tell me if you recognize it.

A. Yes.

Q. What is it?

A. It's the photo lineup that I presented to Mr. Crane.

Q. Had it been changed or altered in any way?

A. No it hasn't.

Q. Is that the exact same one that was shown to Mr. Crane or is that a copy?

A. This is the exact one that was shown to Mr. Crane.

Q. And you testified that Mr. Crane was able to select Marquis Robinson out of it. Did he do anything to indicate his selection?

A. He circled it and initialed next to the picture.

Q And is the person that he circled and initialed present in the courtroom today?

A Yes he is.

Q. Thank you.

SOLICITOR SHELTON: I have no further questions, Your Honor.

CROSS EXAMINATION - IN CAMERA

DETECTIVE TASHIA SMITH BY MR. FREEMAN:

Q. So, Detective Smith, you met with him at the hospital in the emergency room?

A. I did.

Q. You remember if he was up front or had he been admitted into one of the rooms?

A. He was in one of the rooms when I met with him.

Q. I believe you testified his wife was also in the room?

A. She was.

Q. Was anyone else there, a nurse, a doctor or any of the hospital staff?

A. No.

Q. And if they had been, would you have asked them to leave?

A. I probably would have told them yes I need to speak with him for a little while. They usually leave the room when I tell them I'm speaking with one of their patients.

Q. But you didn't ask his wife to leave?

A. No I did not.

Q. Now -- And then you showed him some pictures. Did you then complete the form, which is the cover page, the one that says Rock Hill Police Detective Division Photographic Lineup?

A. Yes.

Q. Sign that and all that. Is that his signature above yours?

A. It is.

Q. And then is your -- I'm sorry your first name is Tashia?

A. It's Tashia.

Q. Tashia J. Smith?

A. Yes.

Q. Okay. You then signed it and printed your name to the right; is that correct?

A. That's correct.

Q. Did you -- How did you get from Rock Hill to the hospital -- from the city to the hospital?

A. In one of the city vehicles.

Q. Did you drive yourself?

A. I did not. I rode with Detective Stokes.

Q. So you rode with him? He drove you over there?

A. Yes. I was training with him.

Q. I understand. Did he drive or did you drive?

A. I believe he drove.

Q. Now was he the detective in charge of the case?

A. He was.

Q. So after you finished the forms you give it back to him?

A. Yes for the case file.

Q. Okay. But you filled that one out, the one in your hand, which I believe is State's Thirty-nine. You filled that one out?

A. Thirty-eight.

Q. Thirty-eight, I apologize?

A. Yes.

Q. Okay. But the marks on the second page were not done by you, they were done by Mr. Crane?

A. You mean the identification?

Q. The circle and what appears to be initials; is that correct?

A. That's correct.

Q. Well what about the marks at the top right? The little number three, who wrote that there?

A. Detective Stokes may have written that. I didn't.

Q. Did you?

A. No I didn't write that.

Q. So some change was made to it after it left your hands?

A. I can't testify to that because I don't know if that three was there. Actually yeah, that three wasn't there. There were no markings on this paper when I showed it.

Q. So some change was made by somebody else, you don't know who, after you turned that document in?

A. Right.

Q. Or over to Detective Stokes?

A. Correct.

Q. Okay. What about the rest of the form? Did you fill out the bottom part?

A. No. Again that was handed to Detective Stokes when he

walked into the room after meeting with Mr. Jordan.

Q. So really all you did was sign it?

A. I read the information to Mr. Crane before presenting the lineup to him. I presented it to him and I explained to him that he needed to circle and initial the person.

Q. How far apart were Mr. Crane and Mr. Jordan's rooms if you know? Were they very close?

A. It's probably like a room away.

Q. Do you know if you finished first or if Detective Stokes?

A. Detective Stokes finished first because he met me down in the room that I was in.

Q. So he came. Did he knock on the door or did he just come in?

A. I don't remember.

Q. Do you know if he came in before or after Mr. Crane circled that document?

A. Mr. Crane had circled it and I was finishing up and I handed it to Detective Stokes. I had not filled out the bottom portion so I guess that's when he decided to start filling it out for me.

Q. So he -- Any other markings were made not by you?

A. No there were no other markings on here.

Q. There was no other attachment to that page?

A. No.

Q. No lineup details?

A. Not at the time. Usually when we show lineups we don't include the lineup details.

Q. Did you ask Mr. Crane, or his wife, who was present if he was taking any medicine at the time?

A. I did not. I read what was on this sheet to him and explained to him that the person responsible may or may not be included in the lineup.

Q. Did he have an IV in his arm, do you recall?

A. He didn't.

Q. So you didn't see him taking any medicine of that nature?

A. No.

Q. But again, you didn't talk to a nurse or a doctor and say is he okay to talk to me?

A. I don't remember speaking to a nurse or doctor.

MR. FREEMAN: Your Honor, that's all the questions I have of this witness.

SOLICITOR SHELTON: Nothing further, Your Honor.

THE COURT: Mr. Heath, do you have any questions?

MR. HEATH: No, your Honor.

THE COURT: Okay. You can step down. Thank you.

(WITNESS LEAVING WITNESS STAND.)

THE WITNESS: Thank you your Honor.

SOLICITOR SHELTON: Your Honor, I want to call Jared

Crane to the stand at this time.

MADAME CLERK: Raise your right hand, place your left hand on the Bible.

(WHEREUPON: JARED CRANE, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

DIRECT EXAMINATION - IN CAMERA

JARED CRANE BY SOLICITOR SHELTON:

Q. State your name for the record please?

A. Jared Crane.

Q. And, Mr. Crane, where do you live?

A. I live in Lancaster.

Q. And where were you employed on June 8th of 2011?

A. Five Star Customs.

Q. And is that in Rock Hill?

A. Yes, ma'am.

Q. And on June 8th of 2011 were you the victim of a crime there?

A. I was.

Q. And at some point as the victim of that crime, did you meet with any detectives?

A. Yes I did.

Q. Did you meet with detectives that same night?

A. Yes I did.

Q. Where was that at?

A. At the hospital.

Q. Do you remember which detective that was you met with?
A. The lady that just left.
Q. Do you remember her name?
A. I don't remember her name besides what you all -- I mean I just heard it stated.
Q. She showed you a photo display?
A. Uh-huh.
Q. How did she do that?
A. Basically just handed it to me. There wasn't too much said. She told me that if I knew who the suspect was or if I had a good description of the suspect to circle it and I guess that's what I did.
Q. Did she tell you anything indicating which suspect to select?
A. No.
Q. Tell you anything to point out who it was?
A. No.
Q. Was the picture -- Were the pictures marked in any way to show you who it was?
A. No.
Q. Did anyone else in the room influence your decision in any way?
A. No.
Q. Do you remember how many pictures were shown to you?
A. Six on one page.

Q. And in thinking about the physical description of each picture, how were they similar?

A. They were close on skin tone and weight I would guess, I mean as much as you could see of the picture.

Q. Any other way they were similar?

A. No just all African-American males.

Q. Were you shown any individual pictures of the suspect before being shown the lineup?

A. No I was not.

Q. And talking specifically about your opportunity to see the suspect, ---

A. Uh-huh.

Q. --- what were the lighting conditions like where the crime took place?

A. Brighter than it is in here.

Q. How close were you to the suspect?

A. Face to face.

Q. During the whole time?

A. Not the whole time.

Q. But you did at some point encounter face to face?

A. Yeah.

Q. Did he have his face covered up?

A. He did have his face covered up partial of the time. I pulled the bandana off of his face.

Q. We're not -- This is on the first suspect at the

hospital?

A. Oh. No.

Q. He did not have his face covered up?

A. He did when he first came through the door.

Q. Now speaking of him because I know you said you were face to face. Speaking of the first suspect, the one who's - the lineup you looked at the hospital, how close were you to him?

A. Really close to him at points and times, I mean might as well -- face to face at sometime. Not in the beginning but at the end face to face.

Q. What -- At the end what room were you in?

A. In the bathroom.

Q. In the bathroom. And the suspect from the line up that night, because we're just talking about the one from the hospital.

A. Okay.

Q. Were you able to -- How long had you known that person?

A. I would say a week maybe.

Q. You had seen him before?

A. Yeah I'd seen him a few times before.

Q. Where had you seen him?

A. At Five Star Customs.

Q. And were you able to pick someone out of the photo

display that you were shown?

A. Yes.

Q. How long did it take you to pick someone out?

A. Instantaneous.

Q. Was anyone saying anything to you ---

A. No.

Q. --- while you were looking at it?

A. No.

Q. I'm going to show you what's been marked for identification by the State's Exhibit Number Thirty-eight.

A. All right.

Q. I ask you to look at both pages and tell me if you recognize that.

A. I do.

Q. What is it?

A. It's where I signed my name or put my initials down and circled who I seen.

Q. But what's the piece of paper?

A. Oh it's a photo lineup.

Q. And it's the one where you circled and put your initials?

A. Yes it is.

Q. And is that the person who was part of the attack on you?

A. Yes it is.

Q. Is he present in the courtroom?

A. He is.

Q. Where is he?

A. Sitting right there.

(WITNESS INDICATED TO DEFENSE TABLE.)

Q. And what's he wearing?

A. A green shirt.

SOLICITOR SHELTON: Your Honor, I have no further questions. I will ask to move into evidence at the appropriate time.

THE COURT: Mr. Freeman.

MR. FREEMAN: Thank you, Your Honor.

CROSS EXAMINATION - IN CAMERA

JARED CRANE BY MR. FREEMAN

Q. Mr. Crane, did you make any other markings on that document?

A. Not to my recollection.

Q. And did you sign another piece of paper that, in your words, the lady officer gave you?

A. I signed a cover sheet.

Q. Okay. Did you make any other markings on it in any way?

A. Not to my -- Not that I remember.

Q. How long were you in the hospital?

A. A couple hours.

Q. They discharged you that night?
A. Sure did.
Q. Did they give you any medicine or treatment or anything of that nature?
A. No.
Q. Are you taking any medicine as a result of that? I guess that was a year and a half ago.
A. Yeah.
Q. Did the lady officer ask you any questions in the hospital?
A. Not that I remember.
Q. Did the other officer, Officer Stokes, ask you any questions that you remember?
A. I mean just what went on. I don't remember it was close to two years ago. I really don't remember but I mean I would expect he would ask me what happened.
Q. Okay. So do you remember more talking to him or more to the lady officer?
A. I remember more talking to him because I mean I seen him more.
Q. But the first time you seen him was at the hospital that night?
A. I believe so.
Q. And that would have been in your room?
A. Yes.

Q. You know what these little marks are at the top up here? The top right, they look like maybe little numbers that have been circled.

A. No I don't know what they are.

Q. You didn't make them?

A. I would expect that they would be pages. I mean I don't know.

Q. Well they both say the same number.

A. Well it could be, I mean the first one that was two pages could a been marked as one and one and the second one could have been marked as two and two.

Q. I'll refer you to it. I'm going to hold you State's Thirty-seven. That says one and two.

SOLICITOR SHELTON: Your Honor, I'm going to object. He's testified that he doesn't -- he's asking him to speculate what --

MR. FREEMAN: He wants to speculate, Your Honor, he's allowed to do so.

THE COURT: This is cross.

Go ahead.

MR. FREEMAN: Go ahead.

Q. This one says -- appears to say one and two does it not?

A. It does.

Q. And the one you have says three and three.

A. Well actually no. If you look closer it says one and one. If you really look close.

Q. Okay. So where's two?

A. Does that one say two and two.

Q. and I'm handing you State's Thirty-nine, which is just one page there's no cover page.

A. No it does not.

Q. We don't have anything that says two, at least you don't?

A. No I don't.

Q. Okay. Get those back from you Mr. Crane. Thank you.

Now -- Oh, I'm sorry, one last thing. The writing at the bottom, this is not your writing where it says case number, date, time, all that stuff?

A. No that is not my handwriting.

Q. The only thing - The only handwriting on there is your signature, and then did you print your name to the side?

A. I may have.

Q. Well let me show it to you.

A. Show it to me and I can tell you..

Q. Okay. Well that's your signature; right, but what about the printing?

A. That's my print.

Q. Okay. You said your wife was present while all this was going on?

A. While all what was going on.

Q. While you were looking at those pictures?

A. Yes, sir.

Q. Did they ever show you any other pages that evening that appeared to give any names or descriptions or anything else?

A. No I didn't need it, I knew who it was.

Q. You didn't never see anything that says lineup image details?

A. Not that I recall.

Q. Not that you recall. Okay.

MR. FREEMAN: I don't have any further questions, Your Honor.

SOLICITOR SHELTON: I have no further questions, Your Honor. I would ask to move State's Exhibit Number Thirty-eight into evidence.

THE COURT: Any objection?

MR. FREEMAN: Yes, Your Honor. I think that there is and that's why I went back to the earlier piece of evidence, it appears that there's some numbers written at the top, there's a missing gap; I don't know where that piece of paper is. And I think I would renew my argument earlier about the circumstances in this situation. They have every opportunity to have a more relaxed time to speak with him instead their in a hospital. He's in the

emergency room with his family around him.

THE COURT: And if they had waited two or three days you'd been arguing it was a long time and they should have done it sooner.

MR. FREEMAN: Your Honor, in fact they did some the very next day. Both of these gentlemen were released from the hospital, they were under their own power, they were in a more what I call relaxed or less stressful situation. One was at a gas station, one was at a Bojangles. So again the State concedes that they were both able to communicate, so I just think that the timing of it is suspect. Also again I don't know where the missing document is. I don't know what that document is. I don't know if it's one that they printed and weren't happy with.

THE COURT: Well you don't even know it's really a missing document. You just know that --

MR. FREEMAN: I just know they went from one to three.

Your Honor, I would also point out taking the two together that the time is exactly the same. The handwriting that indicates the time is exactly the same, and yet they were two people in two different rooms and Detective Smith testified that Detective Stokes finished first, came down there, so I think taking those two together makes them both suspect collectively.

THE COURT: Well I'm gonna allow it in but a lot of

what you just went over there toward the end was certainly fodder for jury arguments and case doubt, the number situation and the time, but let me see Number Thirty-eight.

SOLICITOR SHELTON: I'm not sure where it got to last.

MR. FREEMAN: I think I left them both up with the reporter, Your Honor.

(STATE'S EXHIBIT NUMBER THIRTY-EIGHT RECEIVED UP BY THE COURT.)

THE COURT: I find again as with the others that this photo lineup is not unduly suggestive. I find that there has been no showing by the defendant, by any evidence whatsoever let alone by the preponderance of the evidence that the identification was inadmissibly suggestive.

I also find under the totality of the circumstances there is no substantial likelihood of irreparable misidentification. I find that the identification is reliable and I find that it is not suggestive. This took place in a business, this took place between a subject and a defendant, or a person who claimed - a person the victim, Mr. Crane claims to have previously known and seen on more than one occasion, that the lighting was bright in the shop at the time, that he was not coached in any way regarding who to identify if anybody on the photo lineup; that while Mr. Robinson's face was covered at one time, it was uncovered also during the occasion. That the selection of

Crane - of Mr. Robinson was - I hate to be using the word as detainious but it's been used in some other testimony - but it did not take a very long time. So I find that under the totality of the circumstances that Mr. Crane's identification of Mr. Robinson is reliable and admissible.

SOLICITOR SHELTON: Thank you, Your Honor.

THE COURT: I'll allow Exhibit Thirty-eight into evidence.

SOLICITOR SHELTON: Thank you your Honor.

(WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-EIGHT, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

SOLICITOR SHELTON: Your Honor I do not have any other lineups, but Mr. Crane's --

Mr. Crane, you can step down.

(WITNESS LEAVING WITNESS STAND.)

SOLICITOR SHELTON: Mr. Crane's wife was present for the later end of the events that happened that evening. At one point she came fairly close face to face contact with Mr. Heath on that same night that she met with - that detectives met with her husband at the hospital. They also wanted to do a lineup with her. At that point Mr. Crane did not want his wife involved for her safety. He was concerned about her safety so she was not shown a lineup, but she wants to -- I would like for her to be able to identify Mr. Heath in court. I think we need to address

that in pretrial as well.

THE COURT: We do. Or else --

SOLICITOR SHELTON: Get Ms. Amanda Crane please.

THE COURT: I think you better go ahead and do it now even though it is getting late rather than do it when she's called as a witness or not. I realized the time I did not realize it would take this long although you take as long as you want.

(WHEREUPON: AMANDA CRANE, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

MADAME CLERK: Please have a seat.

DIRECT EXAMINATION - IN CAMERA

AMANDA CRANE BY SOLICITOR SHELTON

Q. State your name for the record, please.

A. My name is Amanda Crane.

Q. And, Ms. Crane, where do you live?

A. I live in Lancaster, South Carolina.

Q. And are you married?

A. I am.

Q. Who are you married to?

A. I am married to Jared Crane.

Q. And were you and Mr. Crane married on June 8th of 2011?

A. Yes, ma'am, we were.

Q. Do you remember where he was working at that time?

A. He was working for Five Star Customs.
Q. And on that evening, there's been alleged that there was a crime committed that evening?
A. Yes, ma'am.
Q. Were you at any point in time at Five Star Customs that night?
A. Yes, ma'am, I was.
Q. And how did you get there?
A. I drove my car.
Q. And when you got there, did you see anything unusual?
A. When I got there, I sat there for a minute and I called my husband and he wouldn't answer his phone and a few seconds later, two males come out, with Neil, of the building. They come out of the bay doors of the building and walked past me.
Q. And what was the lighting like out there?
A. It was kind of dark. I mean, it was 10:30 at night, so it was pretty dark but I could see light from coming inside of the building.
Q. Were there any street lights?
A. I don't remember.
Q. What about your car?
A. My car was on.
Q. What about the light inside your car?
A. Inside, yes, ma'am. My driver's side door was open so

the light was on on the inside of my car.

Q. Did anyone approach you?

A. When they walked by, I just heard one of them say that he'll be out in a second and a few seconds later one of them comes — approached my car and asked me for my cell phone.

Q. Did he have his face covered?

A. No, ma'am.

Q. Did you see his face?

A. Yes, ma'am.

Q. How were you able to see his face in the dark?

A. Because he was leaned up against the side of the side and scooched down asking me for my phone and I could see it from the light of my car, the inside of my car.

Q. So it wasn't face on?

A. No, ma'am.

Q. And were you ever shown a lineup?

A. No, ma'am.

Q. Why not?

A. They had asked to show me a lineup that night and my husband was still a little upset and shaken from the whole incident and he didn't want me to get involved for my safety.

Q. Do you feel like you could identify that suspect?

A. Yes, ma'am.

Q. Since that evening, have you had an opportunity to see the suspect again?

A. Yes, ma'am.

Q. When?

A. I've seen him at his bond hearing and also on the website, on the Moss Justice Center website.

Q. And do you see that suspect here in the courtroom today?

A. Yes, ma'am. I do.

Q. Where is he?

A. He is sitting here.

(WITNESS INDICATED TO DEFENSE TABLE.)

Q. What's he wearing?

A. He has on a tie and a blue shirt and a suit.

Q. Now, in pointing to him and saying that's him, are you basing that indication on seeing him on the web site or seeing him here in court at other times?

A. No, ma'am. Seeing him that night.

Q. Are you one hundred percent sure about that?

A. Yes, ma'am.

SOLICITOR SHELTON: Thank you. Please answer any questions that the defense has for you.

THE COURT: Mr. Heath, do you have any questions for this witness?

MR. HEATH: Yes, your Honor.

CROSS EXAMINATION - IN CAMERA

AMANDA CRANE BY MR. HEATH:

Q. In your statement, Ms. Crane, then you stated that you didn't see neither suspect?

A. Did I – My statement says that I was approached by one of the suspects.

Q. And in your statement it said that you did not see any suspects, you cannot identify any suspects. You said it in your statement. You said it in your statement.

A. My statement, your Honor, says that I was approached by one of the suspects.

MR. HEATH: That's all, your Honor.

THE COURT: Mr. Freeman, do you have anything?

MR. FREEMAN: Very briefly.

CROSS EXAMINATION - IN CAMERA

AMANDA CRANE BY MR. FREEMAN

Q. You said what, was the outside lighting of the building or you don't remember?

A. It was dark. There was a store right beside of the building. They have outside lights so I mean it wasn't pitch black. There were – there was lights outside.

MR. FREEMAN: No further questions, your Honor.

THE COURT: Ms. Shelton.

REDIRECT EXAMINATION - IN CAMERA

AMANDA CRANE BY SOLICITOR SHELTON

Q. At the time that you gave your statement, that is at the same time that you did not do a photo lineup identifying anyone; is that correct?

A. No, ma'am. I gave my statement on the 9th.

Q. On the 9th?

A. Yes, ma'am.

Q. At that point you had declined to do a lineup?

A. That night, yes, ma'am, at the hospital.

Q. Did anyone re-offer you the opportunity to do a lineup?

A. No, ma'am.

Q But when you gave your statement, is it your position that you did see one of the suspects and could identify him?

A Yes, ma'am.

SOLICITOR SHELTON: Thank you, Your Honor.

THE COURT: You may step down. Thank you.

(WITNESS LEAVING WITNESS STAND.)

THE COURT: Mr. Heath, do you have anything to say about her testimony at this point?

MR. HEATH: No, Your Honor.

THE COURT: Well I'm going to - I find that her, Ms. Crane's identification of Mr. Heath is reliable under the totality of the circumstances. She had a good opportunity to view the subject at the time of the crime as they were

coming out. The lighting, while not raised, at least was good there in her car when the individual came over and actually face to face and ask her for a cell phone.

I find her level of certainty has been high and I find that her testimony is again within the totality of the circumstances, her identification testimony, her identification of Mr. Heath is reliable and admissible.

SOLICITOR SHELTON: Thank you, Your Honor.

Your Honor, I have nothing further on any identification or statements. Just very briefly --

THE COURT: I'm not being picky, but you need to watch the sequestration. I mean I'm not sure we're going to be going over anything.

SOLICITOR SHELTON: I'm not, Your Honor. I just wanted Mr. Heath, since he's not familiar with the Rules of Court, to be advised to not in his opening statement tomorrow, or any time during the trial, mention the number of years he is facing in prison should he be convicted.

THE COURT: Mr. Heath, whatever sentence the penalties of these offenses carry, you can't tell the jury I'm looking at twenty years or things like that. Mr. McKinnon might give you some hints. There's some things you could say but you can't go exactly onto how much time you're facing. I don't know what happened to Mr. Smith. We were trying to get Mr. Phil Smith back up. We'll try to get him

to talk to you.

Ms. Lipinski, do you know of anything about -

MS. LIPINSKI: I've not heard from downstairs, Your Honor.

THE COURT: Okay.

MS. LIPINSKI: So I do not know but I will certainly try and communicate with him.

THE COURT: Mr. Heath wants to talk to him to either - as soon as possible or either the first thing in the morning.

MS. LIPINSKI: I'll make that known to Mr. Smith.

THE COURT: All right. Thank you. Anything else before we adjourn from the State?

SOLICITOR SHELTON: No, sir, Your Honor.

THE COURT: Mr. Freeman.

MR. FREEMAN: Yes, Your Honor, I would - nothing legal wise. I would renew my motion to the Court and allow Mr. Robinson to remain out on bond. He does have one of those leg bracelet monitors. He has had that again for a year and a half. He's gotten into no other trouble, he understands the conditions to stay away from the victims. He's complied with that for a year and a half. I'm sorry, seventeen months. Almost a year and a half.

I would simply ask the Court to allow that. It will make him better able to assist me in his defense. He's

talked to me and as I've indicated he's been here numerous times. I understand certainly the charges are serious but he has that history of complying, showing up. Again he does have the leg — I was not aware of that earlier and he reminded me of that. That was a condition of Judge Cooper's bond. I think he said it's with Mr. Culvert Bonding Service and the Court is familiar with that, the electronic conditions that the Court often impose upon people. So we would simply ask the Court to reconsider it's earlier decision and allow him to remain out on bond which he has done. Again he came back this morning.

THE COURT: Well I can certainly appreciate all that and I appreciate him being here of course. But first of all, my usual procedure in these type cases where we have incidents of this magnitude is to require a defendant to remain incarcerated during trial.

Now the posture has changing somewhat because we have had testimony under oath and I'm not the fact finder, that's up to the jury but at least there is some evidence on the record connecting Mr. Robinson to these offenses. Also and I feel confident this was taken into consideration - not confident but most likely these factors were taken into consideration when bond was set. He was entitled to a bond to these not without a past history with the authorities going back twelve or so years at least so I am

not going to allow him to get out, I'm going to require him to stay incarcerated.

MR. FREEMAN: Thank you, Your Honor.

THE COURT: We'll start back at ten in the morning.

SOLICITOR SHELTON: Thank you, Your Honor.

(STATE V. KAREN BARRETT PLEA TAKEN AT 05:48 P.M..)

(COURT IN RECESS AT 05:51 P.M..)

(COURT BACK IN SESSION TUESDAY, JANUARY 29, 2013, AT 09:41 A.M..)

(CHARRON MARTAE BRICE BOND HEARING WITH GARY LEMEL AND SOLICITOR MATTHEW SHELTON.)

(COURT AT EASE AT 09:58 A.M..)

(DEFENDANT'S MARQUIS ROBINSON AND DANTONYO HEATH REENTER COURTROOM AT 10:09 A.M..)

(COURT BACK IN SESSION AT 10:10 A.M..)

THE COURT: Do you all have anything to do before we -

SOLICITOR SHELTON: Not that I'm aware of, Your Honor. That was it.

THE COURT: Okay. I'm going to sit here for a few minutes and sign some things and then we'll take a short break and then have one of the bailiff's know when the jury is up and we'll get cranked up.

(COURT AT EASE AT 10:12 A.M..)

(COURT BACK IN SESSION AT 10:20 A.M..

MS. SHELTON: I ask that the victims be here at 9:45.

Ms. Kyzer just came in, my paralegal came in and said that they had not gotten here yet: They had called and said they were on their way and I plan to start with Mr. Jordan, one of the victims, if I can have a few minutes?

THE COURT: You got a few minutes but we've got my - the remainder of my opening statement and your opening statement and Mr. - I don't see him in here yet, Mr. Freeman's opening statement and Mr. Heath if he wishes to make one.

SOLICITOR SHELTON: Yes, sir, Your Honor.

THE COURT: So that will be at least an hour. But if they are on the way then - on their way from anywhere in York County they ought to be here by 10:30.

SOLICITOR SHELTON: Yes, sir.

(COURT AT EASE AT 10:21 A.M..)

(IN CHAMBERS CONFERENCE AT 10:30 A.M..)

(COURT BACK IN SESSION AT 11:07 A.M..)

THE COURT: Thank you. Take your seats.

Is the State ready to proceed?

SOLICITOR SHELTON: The State's ready, Your Honor.

THE COURT: Mr. Freeman, you ready to proceed?

MR. FREEMAN: One moment, Your Honor.

(PAUSE.)

MR. FREEMAN: Judge, can we have a few minutes?

THE COURT: He can go back.

MR. FREEMAN: Yes, sir, we'll go back there.

THE COURT: That's fine.

SOLICITOR SHELTON: Your Honor, before they step out, can I just put something briefly on the record?

THE COURT: Well we're getting kind of confused. Yes real quick.

SOLICITOR SHELTON: Just for the court's information there have been talks this morning since we haven't been able to talk in chambers, due to Mr. Heath's position, there have been talks this morning about plea negotiations. Mr. Heath has rejected any further negotiations. I've reopened the door to plea negotiations to Mr. Freeman, just for the record, Your Honor.

THE COURT: All right. And while we're doing that, Mr. Heath, I do understand that Mr. Smith did meet with you at your request?

MR. HEATH: Yes, sir.

THE COURT: You don't want him involved any further?

MR. HEATH: Yes, sir.

THE COURT; I mean that's correct. You don't want him anymore?

MR. HEATH: Yes, sir.

THE COURT: Yes, sir, you don't?

MR. HEATH: I don't.

THE COURT: Okay. We'll take a short break.

(COURT IN RECESS AT 10:21 A.M..)

MR. MCKINNON: Your Honor, Mr. Heath indicates - Phil to represent him again so with your blessing I was going to go ask Phil if he is minimal to that. I don't know what his response is going to be but...

THE COURT: Well you can certainly ask Mr. Smith.

Mr. Heath, I want you to be represented appropriately, and we've been up and down this road, but at some point it's bait cuttin time as they call it, we'll have to go forward. But I'll see if Mr. Smith will talk to you.

MR. HEATH: Thank you, Your Honor.

THE COURT: All right. If somebody will contact Mr. Smith we'll take a break.

MR. MCKINNON: I'll just run downstairs and see.

(COURT AT EASE AT 10:21 A.M..)

(IN CHAMBERS CONFERENCE AT 10:30 A.M.. OFF THE RECORD.)

(COURT BACK IN SESSION AT 11:00 A.M..)

THE COURT: Thank you. Take your seats. We're back on the record in the case State versus Robinson and Heath. Mr. Heath is now represented by Mr. Smith who was representing him earlier. It's sort of been an on again, off again situation, but I'm going to let mr. Heath, first Mr. Smith first tell us what he wants to put on the record regarding his relationship with Mr. Heath and then Mr.

Heath let you follow up with comments confirming if that's in fact the case that you want Mr. Smith on the case and continue on the case.

So I'll hear first from Mr. Smith.

MR. SMITH: Thank you, Your Honor, may it please the court. I was contacted I guess about an hour ago now and informed that Mr. Heath wished to speak to me again. I had spoken to him this morning about possibly reentering representation on his behalf. He indicated at this time that he did want me to come back on his case. He and I had talked about some of the issues in the case and obviously some of my concerns given that I had been off it for a period of time, but I believe he understands that was of his choosing and that now he wishes me to be back on the case in full representation, Your Honor.

THE COURT: Mr. Heath, is that where we are?

MR. HEATH: Yes, sir.

THE COURT: Okay. Mr. Heath, I will tell the jury that he is now representing you. I'm not gong to tell them that you - I'm not going to go through all of what's happened but I do want them to know that he just didn't appear this morning, that he has knowledge through this office of this case so they won't think all of a sudden he popped in and doesn't know anything about the case. He shouldn't be coming in at this stage.

Anything from the State?

SOLICITOR SHELTON: Your Honor, just very very briefly, and I don't know that this is the perfect time to bring it up, I didn't mention it yesterday because Mr. Heath was representing himself. There is some DNA evidence with SLED on Mr. Heath that I attempted to introduce. There is a slight deficiency in the chain. I do have the person who collected the evidence on the scene. The transport officer who took it from Rock Hill PD to SLED. I have the lady from SLED from the internal chain, the lady who tested the cutting and the lady who took the cuttings.

What I do not have are both the intake officer at Rock Hill PD, Linda Erby, she is no longer there, but Officer Hamilton can testify as to her role and the chain and that was who took it in. There is also the intake lady at SLED. I'm drawing a blank on her last name. Her first name was Selena, who took the evidence from Officer Hamilton, placed it in a heat sealed bag from SLED and had Officer Hamilton sign the SLED bag. I have the folks that can testify to their roles in the chain but I do not have either of those people.

I don't know if we need to address that in pretrial or just - If it's going to be excluded then I can call the SLED ladies and tell them not to come at 1:30 today but if they can either stipulate to those two people or address

that issue pretrial.

THE COURT: Why don't we go ahead.

Mr. Smith, do you have any --

MR. SMITH: Your Honor, I think I'm familiar with your ruling on this issue. I think the testimony is gonna be that they got sealed before it is handled by either of those persons.

Is that the understanding --

SOLICITOR SHELTON: No. The testimony will be that Tim Buchannan who is with FSU brought in a brown paper bag that had the evidence tape over it and gave it to Linda Erby who was with Rock Hill PD. She logged it in and placed it into evidence. Linda Erby is no longer with evidence so that paper bag was sealed up by Tim Buchannan.

THE COURT: The person who sealed it and the chemist who unsealed it will both testify?

SOLICITOR SHELTON: Yes, sir.

THE COURT: And there is a written chain. I mean while humans are not available there is a written chain.

SOLICITOR SHELTON: The way SLED does it, they don't do a signature chain, but they do a written internal chain that's logged into the computer so they can testify as to who had it but that person doesn't sign for it but it is logged in. So yes, sir, there is a written chain.

MR. SMITH: For my client, a prior rulings on that

same issue, he understands would not require actually any of those chain witnesses so long as we get as Your Honor described it the person who seals the bag and the chemist who unseals it and can say it did not appear tampered with which I assume -

THE COURT: Okay. Bring in the jury.

Wait a minute.

MR. FREEMAN: Your Honor, from my understanding from the Solicitor and from Mr. Heath's counsel, that DNA evidence in no way has any impact on us or neither involved, positively or negatively or anything. I don't have a problem --

SOLICITOR SHELTON: That is correct, Your Honor. There was no DNA collected that matched Mr. Robinson or was linked to Mr. Robinson in any way.

MR. SMITH: In light of that, then I would have a position but I would --

THE COURT: Okay. All right.

Bring in the jury.

(JURY ENTERS COURTROOM 11:14 A.M..)

THE COURT: Now that you all are comfortably seated I'm going to ask you to stand and the Clerk will administer the oath.

MADAME CLERK: Raise your right hand.)

(PETIT JURY SWORN AT 11:16 A.M..)

THE COURT: You can be seated.

I know when you look at the clock you think I missed that class in kindergarten that taught you how to tell time. I really didn't. I told you yesterday we had some matters to take up outside of your presence and we worked until almost six last night and then started back at ten dealing with some issues that will make the case go quicker based on rulings I have already made, so we haven't been ignoring you. We were trying to streamline the case so that when we get started, which is now, we can go through without a lot of stopping and starting that may have been necessary otherwise, so we apologize but we have been working to make the case go smoother.

With Mr. Heath you will notice now there is a new attorney named Mr. Phil Smith who is now representing Mr. Heath. Mr. Smith through his office has been involved in this case and is now not assisting Mr. Heath but will be appearing as Mr. Heath's attorney. Yesterday I told you Mr. Heath was representing himself with Mr. McKinnon as his standby. Well Mr. McKinnon is relieved and now Mr. Smith who has been involved in this case through his office is aware of the issues and is knowledgeable of Mr. Heath and been in communication with Mr. Heath and will be representing Mr. Heath.

To the charges, five each, that were related to you

yesterday, both Mr. Robinson and Mr. Heath have entered pleas of not guilty. These pleas of not guilty place on the State of South Carolina the burden of proving each of their guilt as to each charge beyond a reasonable doubt before you could convict one or both of any or all of those offenses. Each of the defendants, Mr. Robinson and Mr. Heath, are presumed innocent of the charges against them. They do not have to prove their innocense, the State must prove they're guilty beyond a reasonable doubt. This presumption of innocense in their favor is a substantial right. I will talk to you more about that at the end of the trial. It is a substantial right. Keep in mind they are presumed innocent, the State must prove their guilt, they need not prove their innocence.

I have three primary jobs in the case such as this, One is I'm the logistics person. I make sure that one person is speaking at a time, take we take breaks, the mechanical part of the trial. I also rule on questions of admissibility of evidence. It is up to me to determine whether certain evidence that one side believes may be submitable to you for evidence in the case, and the other for some reason believes it is not appropriate, I have to make that ruling which I have been doing on some issues already.

I also am the sole judge of the law in this case. You

must take and accept and apply the law as I charge it and this is true even if you think I charge the law in error or even if you think the law should be different than what I tell you the law is. I am giving you some legal principles now, during the trial I may give you some at the end of the trial before you deliberate, and I will give you a concise and comprehensive charge on the law that you are to apply to the facts as you determine them to be.

You are not to infer from anything that I say or do at any time during the trial as indicating that I have an opinion on the facts in this case because I'm not allowed to formulate and of course not to express to you any opinion on the facts. It is solely your job as the trial jury in this case to examine the evidence, give to the evidence to effect, the value, the weight, and the truth you believe the evidence should have.

In doing this you may believe one witness as opposed to several, several witnesses as opposed to one. You may believe all or part of a witness' testimony. Use your common sense, your sense of logic, your sense of reason. Use your experiences in life as you analyze the evidence. As judges of the facts you must judge the credibility, that is the believability of the witnesses who testify. In assessing believability, credibility, you can use the things I just talked about. You can use those things that

you find in day to day life as being indicative of an individual being truthful, and you can use certain evaluators: how a witness acts on the stand, their demeanor, are they hesitant or straightforward in answering questions? Is their testimony consistent or inconsistent? Do they have any bias or prejudice, any reason to help or hurt one side or the other? And you can consider the opportunity a witness had to actually know those things to which the witness testified. All these things you consider to determine the true facts, you will be in a position to apply the law and return a verdict that speaks the truth.

Mr. Foreman, you will be the liaison between the jury panel and myself, preside over the jury's deliberations and ultimately sign the unanimous verdict of the jury on the indictments.

In just a moment the attorneys have a right to come before you and make what are called opening statements. They are not arguing their case. They at a later time will have the opportunity to appear before you and tell you why, based on what you've heard from the witness stand and any exhibits or any visual representations that have been presented, they will tell you or argue at that time why that should lead you to a certain verdict, or why you should conclude either that the defendants or that the State's carried it's burden of proof or that the State has

not. So don't try to make up your mind as I discussed yesterday. And at this point in just a moment what they are stating to you are more like blueprints of the trial or outlines of the trial. They'll just be telling you what they anticipate will occur during the trial and help you know a little bit more about what is going to be presented.

We take breaks about every hour and a half. If you need a break, raise your right hand and with no questions asked we'll take a break. We'd like to move the case along but we don't want anybody to be sitting in a position that they don't feel comfortable and would need a break. And I extend that to the attorneys and Mr. Robinson and Mr. Heath. We do want to move the case along but we're not in such a hurry that we won't take a break.

I may have told you this yesterday, I can't recall, but we try to take breaks about every hour and a half. I find that's a good comfort level time so we try to break on that kind of schedule but if you need a break, let me know.

Keep in mind, I call them abominations I made yesterday about no research, not discussing the case or making up your mind and what to do if anyone discusses the case, tries to discuss the case with you so I'm not going to repeat that.

Counsel.

SOLICITOR SHELTON: Ladies and gentlemen, on June 8th

of 2011, Jared Crane was at work the evening around nine o'clock. It was a pretty normal day for him. He was a car painter, he was painting cars for Ernest Jordan who goes by Neil. Neil owns Five Star Customs in Rock Hill on Cherry Road, has owned it for some time.

Jared was there that night working and it was like I said a normal night for him. They were prepping a car to be painted and taping it off. The business was closed, there was no reason for anybody to be there but he and his boss. Neil was there with him.

Jared's wife had come by to pick him up some food, she had left and was on her way back when he heard a noise. He looks up and he sees Marquis Robinson walking in. Marquis had his face covered up but Jared didn't think anything about it because they knew Marquis. Marquis had been in and out of his shop, Marquis had worked at that shop, so Jared went back to work just doing his job, not suspecting that Dantonyo Heath was lurking behind a car waiting for the right moment to attack him. Waiting for Jared to have his back turned, waiting for Jared to be unaware of what was about to happen to him.

Dantonyo Heath when I say lurks, lurks behind a car that was in the shop until Jared's back is turned and he rushes out and he hits him in the left ear while Jared's back is turned to him. And then for many minutes after

that chokes him, beats him, chokes him unconscious, almost unconscious, never lets up. Stalks him for several minutes.

The other player in this robbery and attempted murder was Marquis Robinson. When he comes in as I said his face is covered up and they know them. You will be able to see. There is a video of all of this happening. You will be able to see Neil run when he sees somebody with a face then he turns, turns and faces the camera, he smiles. He smiles because he knows who's there: It's Marquis. He knows exactly who it is and he greets him with a smile. This is a friend. And how does that smile get answered? Marquis comes up to him, grabs him by his shirt, puts a gun to his throat and pulls him off the camera.

This is the beginning of twenty minutes of pure torture for Jared Crane and Neil Jordan. For twenty minutes they suffer at the hands of these two men who show no regard for their life. Once it was all over you will hear testimony that money was stolen from both Mr. Crane and Mr. Jordan, and the two suspects left. Mr. Heath and Mr. Robinson left. Mr. Jordan calls 911. Law enforcement shows up, the investigation begins. There are bullets and shell casings collected from the scene. The gun went off twice. There are pictures taken, pictures of the victims are taken. The video from the store, from the shop, is

taken into evidence. So you don't just get to hear about it, you will also get to see exactly what happened that evening.

Law enforcement, Detective Stokes and Detective Smith, met with Mr. Crane and met with Mr. Jordan, they showed them a photo lineup of Mr. Robinson; both victim's separately. They positively identify Marquis Robinson. And then they meet with - the detectives meet with Mr. Jordan and Mr. Crane, again separately, and Mr. Jordan identifies Mr. Dantonyo Heath both as the two attackers. And as opening statement as Judge Hayes said it's just a blue print. It's just a chance to give you a snap shot of what you're going to hear over the next couple of days. And over the next couple of days this is the testimony and evidence that will be presented to you through the eyewitnesses, through the detectives who investigated the case, and through some other officers who will testify about their role in the investigation.

I thank you for your attention and I just ask that you pay attention for the next two days, three days, however long we're here. At the end I will address you again and I will at that time ask you to return a verdict of guilty for five charges. They are charged with attempted murder, kidnapping, armed robbery, criminal conspiracy and possession of a weapon during the commission of a violent

crime. And, ladies and gentlemen, I submit to you that at the end of this after you've heard and seen everything you will be fully convinced that they are guilty of all five charges. Thank you.

THE COURT: Mr. Freeman.

MR. FREEMAN: Thank you, Your Honor.

Ladies and gentlemen of the jury, my name is John Freeman. I'm an attorney and my office is over in Fort Mill and I am from Fort Mill. I been appointed to represent Mr. Robinson and he is the gentleman in the blue stripe shirt. The solicitor tells a good story, compelling. It's just this story. But the judge mentioned earlier about some of the law, and that's what you really have to apply. It's the law to the State of South Carolina. They've alleged that something bad happened and you heard all the charges and all that. Essentially they've said that two men robbed two other men or a business that had two men in it. That's all it is. That's all it boils down to.

Now if you remember your grade school social studies I have a child in school so we get to go through some of this again. The founding fathers both the United States and ultimately South Carolina realize that a normal person, Mr. Robinson, doesn't have the same resources as the State or the government or the country so they are presumed not

guilty. He' doesn't have to say anything, he doesn't have to do anything. He's here. He doesn't have to do anything. It's up to the State to prove to the satisfaction of each and everyone of you, all twelve of you, on all five charges, that he is guilty beyond a reasonable doubt. And you will hear from the Court later I believe, what's a reasonable doubt? This is not a question of maybe or something happened or we're not sure let' flip a coin. No, it's more than that. These people are charged with serious crimes and look at where we are with the solid salinity of this place. They're charged with very serious crimes and it's up to the State and the presence of the solicitor through evidence to convince the twelve of you that what she just said is what happened.

Now, Mr. Robinson, again, doesn't have to say anything but in fact he has already spoken one thing to you. He said not guilty I didn't do it, you know I didn't do it, why should I have to say or do anything? I didn't do it. And that's his right, that's why we're here.

Now because of our legal system Mr. Heath has a different attorney so you have two defendants, two attorneys. Mr. Heath has all those exact same options that Mr. Robinson does. And the solicitor talked about evidence and some video evidence. You're going to see the video evidence. I submit to you it's not like we see on TV where

it's crystal clear. Kind of a fuzzy camera like you might see but again you'll see some of that I believe. But at the end of the day what this trial is I believe and what most trials are is going to be people sitting in this chair. Human beings sitting in this chair, telling you as best as they can remember what happened almost a year and a half ago. As best they can remember. You will hear some other law enforcement and stuff but it all stems from that. What happened that evening - and I remember sort of this, but I don't.

Human nature, you know over time memories change so you have some things in writing and you have some things on video but the end of the day it's going to be people sitting in that chair answering questions of the State and probably questions of myself, probably questions of Mr. Heath's attorney telling you as best as they can remember or maybe not remember or sort of remember. So it's not just a question of the state showing that something happened, it's also a question of the State showing that Marquis was one of the people there who did something wrong. Not just okay lets just show this.

So as we go through I want you to keep all of that in mind. You took an oath a few minutes ago, you swore to this court. You use to take oaths on the Bible that you would keep that common sense, you would keep that judgment

till the end of the case, till the judge tells you you've heard all of the facts, you've heard all of the evidence, till the judge has explained to you how the law works, how you're supposed to apply the law to the evidence. And I'm going to submit to you at the end of that that I don't believe the State will be able to prove their burden and that Mr. Robinson will be sitting there and his plea of not guilty will be the correct verdict. Thank you.

MR. SMITH: May it please the Court, Your Honor.

THE COURT: Yes, sir.

MR. SMITH: Why are we even here? Have you wondered that? You heard a story from the solicitor that there is a video and people on it. Why are we even in the courtroom if all that stuff is true?

We are here because Dantonyo Heath is not guilty. But I'm his lawyer, right? What else am I gonna say. That's what you expect me to do. Pause and think what you've learned this morning. Its just not me saying it, okay. You heard from the judge that Mr. Heath is presumed innocent, okay. That means you have to prejudge him and right now you know Mr. Heath is innocent of these charges. That's why we're here.

But they made some promises to you about what you're gonna see in evidence that they are gonna present to you. And I ask you to hold them to those promises that they've

made. And I ask you to another thing. In looking at the two cases you're going to see, and I don't mean two defendants, I'm talking about two different cases that you will get presented because you're gonna hear testimony in a courtroom today, tomorrow, however many days, now and then you're gonna hear what was said back in June of 2011. Let's see what's different. See if somehow their case has gotten better now. Will people be better able to remember now what happened a year and a half ago or back then? I submit to you obviously it's back when. And if things have now gotten better that should trouble you.

And also look at what evidence they had. You head a video. See what other real evidence they have. Not of somebody just saying they saw something or think that something might have happened. See what real forensic evidence they have and see what that evidence is because that can't change. That evidence doesn't see pictures in newspapers and then make up it's mind. That evidence stays what that evidence is. And I think what you will see if you analyze the two cases you will see a case that's gotten better for trial. That should bother you. And you will see a case that doesn't match the physical evidence with regards to Mr. Heath. And the reason is, because Dantonyo Heath is not guilty.

THE COURT: All right, you may call your first

witness, Ms. Shelton.

SOLICITOR SHELTON: Your Honor, the State would call Ernest Jordan.

(WHEREUPON: ERNEST JORDAN, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

MADAME CLERK: Thank you. You may have a seat right up there.

DIRECT EXAMINATION

ERNEST JORDAN BY SOLICITOR SHELTON:

Q. Would you state your name for the record, please?

A. Ernest Jordan.

Q. And, Mr. Jordan, where do you live?

A. Lancaster, South Carolina.

Q. And where did you work?

A. Five Star Custom Tire and Wheel'./= .

Q. Where is that business located?

A. 1270 Cherry Road.

Q. Are you employed at that business?

A. I own it.

Q. You own the business?

A. Yes.

Q. What kind of business is it?

A. Rim and tire shop and painting. Like a whole custom shop.

Q. For cars?

A. Yes, ma'am.
Q. Were you working there on June 8th of 2011?
A. Yes, ma'am.
Q. Did you own the shop at that time?
A. Yes, ma'am.
Q. Were you in the shop that evening?
A. Yes, ma'am.
Q. Was there anyone with you?
A. Jared Crane.
Q. What was he doing there?
A. Fixin to paint a car.
Q. And on that evening did anything unusual happen?
A. Yes, ma'am.
Q. What happened?
A. Actually we were sitting there taping up a car gettin ready to paint it. I actually turned around to go to the bathroom and I heard a bay door come up when I was coming out so I kind of turn around and ran for a minute and I was like, I was like what is that, so Jared was around there so I turned around and started back walking, I seen somebody come in like that with their shirt like that with a gun ---

(WITNESS DEMONSTRATED.)

A. --- so I was like, man quit playing. You know, I thought he was playing and then I seen --
Q. When you said man quit playing, did you know who it

was?

A. Yeah. Marquis Robinson.

Q. Is that person in the courtroom?

A. Yeah. He there with a blue striped shirt on.

SOLICITOR SHELTON: Let the record reflect that he has pointing to the defendant Marquis Robinson, Your Honor.

(WITNESS INDICATES TO DEFENDANT MARQUIS ROBINSON.)

Q. You said that you told him to quit playing. What did he do next?

A. He grabbed me by my shirt and put the gun to my head saying "go in the bathroom" and then I seen Dantonyo Heath bending down behind the Dodge Durango and so then I knew what it was.

Q. And you say you knew what it was. What was — what did you think was happening?

A. A robbery.

Q. Where did he take you next?

A. To the bathroom.

Q. And what hap —

A. He took me to the bathroom. When he say "go in the bathroom" I said, "man I ain't going in no bathroom. You think I'm going to let you kill me in the bathroom?" So he pulled me to the bathroom with the gun on me so as we get to the bathroom, I stopped. He pulled my shirt on in the bathroom then he said, "shut the door." I said, "shut the

door for what? You think I'm going to let you kill me in the bathroom?" So he come on in the bathroom. He got the gun to me and pulled me on into the bathroom. He tried to shut the door. That's when I tried to lodge for it. It went off. I said, "man you shot me." He like grabs the gun — I grabs the gun and he got one arm around my neck so break the clip off the gun with the other hand and then we fumbling over the gun but he got his arm around my neck. Then the gun went off again and so at that time, you know, he on my back, he got me around my neck chocking me so I'm just running him up against all the walls in the bathroom, just the bathroom, so I fell. I fell. I said, "man let me go, let me go, I can't breathe, I can't breathe." He saying "go to sleep.: I said "man, I ain't going to sleep in the bathroom. I ain't going to let you kill me in the bathroom." So he said "go to sleep." So about that time he grabs a piece of glass off the ground, as I roll over he trying to put the glass in my throat but I'm holding his hand, holding both his hands trying to stop him at the time he trying to reach for — there's like a bar there. After I left the hand go I tried to reach for that, that bar, so about that time he grabs the bar. It's like a crow bar. He grabs it and now he trying to press it down on my throat, on my throat. That probably lasted about - about thirty minutes.

Q. So you all were wrestling in the bathroom?
A. Yes, ma'am.
Q. And you said – just going back to the beginning, you said he came in and had his face covered up. Did his face stay covered up the entire time?
A. No, ma'am. He just walked in with his tee shirt like that over his face --
(WITNESS DEMONSTRATED.)
Q. Don't cover your mouth, we can't hear you.
A. Okay. This what he do with his tee shirt right over his mouth and then as he walked in it just came off.
Q. And you also testified earlier that Dantonyo Heath was behind the truck. At that time you did not know the person's name that was behind the truck. You just saw another person behind the truck?
A. I seen him. I knew who it was but I just didn't know – I know his name was Yodi but I just didn't know his real name.
Q. Was Mr. Robinson asking you for anything?
A. No, ma'am.
Q. He wasn't trying to get anything from you?
A. No, ma'am.
Q. While you all were in the bathroom?
A. No, ma'am.
Q. Did he ever ask you for anything?

A. No, ma'am.
Q. Did he ever take anything from you?
A. Yes, ma'am.
Q. How did he take it if he never asked you for anything?
A. I just felt like towards the robbery I just felt like he was gonna kill me but towards the end Dantonyo Heath he was like, "man get the money. Let's go. Get the money, let's go." And at that time that's when they walked me back out the door.
Q. Stop right there. When Mr. Heath was saying that, get the money, let's go, where were you all at that point?
A. He was tying Jared up.
Q. He tied him up where?
A. Right there at the bathroom.
Q. So you all all were right there at the bathroom?
A. Yes, ma'am.
Q. And then after that where did you all go next?
A. I told him I couldn't breath. I asked him could I get something to drink. He said, "no" and Dantonyo Heath gave me something to drink and then they walked me out to the car.
Q. Whose car?
A. My car.
Q. Did you all see anyone out — on the way out of the building?

A. Yeah. Amanda was out there.

Q. Who is Amanda?

A. That's Jared Crane's wife.

Q. Where was she when you say out there?

A. She was sitting in her car.

Q. And when they walked you to your car, what happened next?

A. We were walking — as we were walking out it's like I was going to try to run and then Marquis told Dantonyo Heath to get Amanda's cell phone.

Q. Did he take her cell phone?

A. Yes, ma'am.

Q. And just going back to Mr. Robinson, how long have you known him?

A. About five to seven years.

Q. And how did you know him?

A. I met him through my wife's brother.

Q. And how often did you see him?

A. He used to come to the shop just about every day.

Q. Did he ever work for you?

A. Yes, ma'am.

Q. Was he working for you at this time?

A. No, ma'am. He was about a week or two prior to that.

Q. And why did he stop working for you?

A. I had hired Jared.

Q. So you let Mr. Robinson go?
A. Yes, ma'am.
Q. Did you hear Mr. Robinson call the person that was with him by any particular name?
A. Yodi.
Q. Yodi?
A. Yes, ma'am.
Q. You heard him call him that name?
A. Yes, ma'am.
Q. Did you go to the hospital that night?
A. Yes, ma'am. I left in the ambulance.
Q. They took you in the ambulance?
A. Yes, ma'am.

(WHEREUPON: STATE'S EXHIBITS NUMBER ELEVEN AND TWELVE PREMARKED FOR IDENTIFICATION.)

Q. Mr. Jordan, I'm going to show you what's been marked for identification as State's Exhibit Number Eleven and State's Exhibit Number Twelve. Could you look at those pictures, please?
A. Yes, ma'am.
Q. Let me get them back from you real quick. Can you identify those pictures?
A. Yes, ma'am. That's me.
Q. That's you?
A. Yes, ma'am.

Q. When were those taken?

A. At the hospital.

Q. And do those pictures – At the hospital that evening?

A. Yes, ma'am.

Q. And do those pictures accurately reflect your injuries that night?

A. Yes, ma'am.

Q. What's being shown in those pictures?

A. A graze across my cheek.

Q. So it's a picture of your face?

A. Yes, ma'am.

SOLICITOR SHELTON: Your Honor, at this time I would move to place State's Exhibits Eleven and Twelve into evidence.

MR. FREEMAN: Your Honor, I don't think she's authenticated them other than its him. It's obvious he didn't take them.

THE COURT: Mr. Smith?

MR. SMITH: No objection.

THE COURT: In over objection by counsel for Mr. Robinson.

SOLICITOR SHELTON: And permission to publish to the jury.

THE COURT: You may.

(WHEREUPON: STATE'S EXHIBITS ELEVEN AND TWELVE

IDENTIFIED AND MARKED, RECEIVED INTO THE RECORD.)

SOLICITOR SHELTON: May I see State's Exhibit Eleven please.

(STATE'S EXHIBIT NUMBER ELEVEN PUBLISHED TO THE JURY.)

Q. Mr. Jordan, this is a picture of - Mr. Jordan, this is a picture of you that evening?

A. Yes, ma'am.

Q. And what is that across your cheek?

A. A graze when the gun went off.

Q. And what's that around your mouth and down your face?

A. Blood.

Q. Where was that blood, was there any other part of you bleeding other than the graze on your face?

A. A couple of scars on my chest and stuff, arm.

Q. Was your nose bleeding at any time?

A. Yes, ma'am.

SOLICITOR SHELTON: And can I see State's Exhibit Twelve.

(STATE'S EXHIBIT NUMBER TWELVE PUBLISHED TO THE JURY.)

SOLICITOR SHELTON: And that's just a different angle.

Q. What are those marks across your nose?

A. Scratches.

Q. From that evening?

A. Yes, ma'am.

Q. Is there any part of you that is swollen?

A. My face.

(WHEREUPON: STATE'S EXHIBITS EIGHTEEN THROUGH TWENTY-SIX, PREMARKED FOR IDENTIFICATION.)

Q. Mr. Jordan, I'm going to show you what's been marked for identification as State's Eighteen through Twenty-six. I'm going to have you look through those please.

(WITNESS REVIEWING EVIDENCE/PHOTOS.)

Q. Did you look through all of them?

A. Yes, ma'am.

Q. Do you recognize those pictures?

A. They're pictures of my shop.

Q. There are several of them. Are they all pictures of your shop?

A. Yes, ma'am.

Q. Just looking at State's Exhibit Number Eighteen.

A. It's a picture of the shop.

Q. What part of the shop?

A. The outside.

Q. Do you recognize picture Number Twenty-six?

A. Picture of a bullet hole in the bathroom.

Q. Without describing it, do you recognize it?

A. Yes, ma'am.

Q. And picture Number Twenty-five?

A. That's the front entrance.

Q. Just if you recognize it. Picture Number Twenty-four?

A. Yes, ma'am.
Q. Exhibit Number Twenty-three?
A. Yes, ma'am.
Q. Exhibit Number Twenty-two?
A. Yes, ma'am.
Q. Exhibit Number Twenty-one?
A. Yes, ma'am.
Q. Exhibit Number Twenty?
A. Yes, ma'am.
Q. And Exhibit Number Nineteen?
A. Yes, ma'am.
Q. Do these pictures all accurately reflect the condition of your shop, the interior, exterior and the condition of the damages that were done to the shop that night?
A. Yes, ma'am.

SOLICITOR SHELTON: Your Honor, at this time, I'd move State's Exhibits Eighteen through Twenty-six into evidence.

THE COURT: Any objection?

MR. FREEMAN: Same as before, Your Honor. With these we don't even know exactly when they could have been taken or ...

BY SOLICITOR SHELTON:
Q. Do you know when they were taken?
A. It had to be after the robbery.
Q. After the robbery?

A. Like during the time once after the police was out there investigating.

Q. So that same night?

A. Yes, ma'am.

Q. You did not take them?

A. No, ma'am.

Q. And you were not present when they were taken?

A. No, ma'am.

Q. Then it's your testimony that this is your shop and these accurately reflect what your shop looks like and the condition of your shop the evening of the robbery?

A. Yes, ma'am.

SOLICITOR SHELTON: Your Honor, I'd move these into evidence at this time.

THE COURT: Anything else?

MR. FREEMAN: The same as before, Your Honor his comment it had to have been afterwards, vague at best. They have to rehabilitate that.

MR. SMITH: No objection.

THE COURT: In over objection, the entire series.

(WHEREUPON: STATE'S EXHIBIT EIGHTEEN THROUGH TWENTY-SIX IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

SOLICITOR SHELTON: Thank you, Your Honor.

Can I see State's Exhibit Eighteen please.

(STATE'S EXHIBIT NUMBER EIGHTEEN PUBLISHED TO THE

JURY.)

Q. Mr. Jordan, could you tell the jury what this is a picture of?

A. The outside of the shop.

Q. Is this the front entrance of your shop?

A. Yes, ma'am.

SOLICITOR SHELTON: And can I see State's Exhibit Number --

Q. And what is this a picture of?

A. The garage door.

Q. And whose car is that there?

A. That's Jared Crane's car. His wife Amanda.

Q. When this all - when we in look at this picture in relation to this picture when the robbery started and Mr. Robinson and Mr. Heath entered, where did they enter into?

A. The bay door right there.

Q. And where were you at that time?

A. Coming out the bathroom.

SOLICITOR SHELTON: And can I see State's Exhibit Twenty.

Q. And what is this a picture of?

A. The bay door.

Q. And where did you first see Mr. Robinson, if you can describe in this picture?

A. Like right there where the tires is, there's like a

little opening right there.

Q. Yes, sir.

A. Coming through that opening.

Q. And where did you see Mr. Heath go?

A. Near behind the Durango.

SOLICITOR SHELTON: State's Exhibit Twenty-one.

Q. Can you see the opening in this picture? Is that the opening you were talking about?

A. Yes, ma'am. Yes, ma'am.

SOLICITOR SHELTON: State's Exhibit Twenty-three.

Q. What is this picture of?

A. That's where I was standing at. Right there by that yellow pole. I was standing right around that yellow pole when they come through right about that fan.

SOLICITOR SHELTON: State's Exhibit Twenty-two.

Q. And what's this a picture of?

A. The inside shop area in the back.

Q. When you were in the bathroom, could you see this area of your shop from the bathroom?

A. Yes, ma'am.

Q. I know it's off camera, but where is the bathroom in relation to this shop?

A. Towards the right hand side behind them tires right there.

Q. So past the tires?

A. Yes, ma'am.

SOLICITOR SHELTON: State's Exhibit Twenty-four.

Q. What's this a picture of?

A. That's the bathroom.

Q. Now does it always look like this?

A. No, ma'am.

Q. How did the sink get to be down in the floor like that?

A. We was in there tussling. When we was in there tussling he was choking me I was running him against the sink and stuff trying to a loose.

Q. The tires are always in there though, right?

A. No, ma'am.

Q. They're not?

A. No, ma'am.

Q. How did those tires get in there?

A. Once I kind of got him, once he had me around the neck and we got out the bathroom we knocked over the tires and they rolled in there.

SOLICITOR SHELTON: And State's Exhibit Twenty-six.

Q. What is this picture of?

A. A bullet hole.

Q. Had that always been there?

A. No, ma'am.

Q. When did that get put there?

A. When we was tussling over the gun.

SOLICITOR SHELTON: And State's Exhibit Number Twenty-five.

Q. What's this a picture of?

A. The inside of my shop.

Q. The business part ---

A. Yes, ma'am.

Q. --- where you sell stuff?

A. Yes, ma'am.

Q. And then you also do work in the back part of - the picture that we've already looked at?

A. Yes, ma'am.

Q. Mr. Jordan, does your business have security cameras?

A. Yes, ma'am.

Q. Did you at any point meet with any detective about your security cameras?

A. Yes, ma'am.

Q. Did you turn over anything to them?

A. Yes, ma'am.

(WHEREUPON: STATE'S EXHIBIT NUMBER SEVEN PREMARKED FOR IDENTIFICATION.)

Q. I'm going to show you what's been marked for identification State's Exhibit Number Seven. Do you recognize that?

A. Yes, ma'am.

Q. What is that?

A. Its just the bay door.

Q. What do you mean when you say the bay door?

A. That's Channel 2 camera for the bay door area right there.

Q. How do you recognize it? How do you recognize that disc?

A. That's the one I turned over to the detective.

Q. Is there any markings on it that would lead you to believe that that is the disc that has the footage from Camera 2 on it?

A. No, ma'am. I mean, just my initials.

Q. When did you initial it?

A. After I seen the - After the tape and stuff was down.

Q. So you watched the video footage?

A. Yes, ma'am.

Q. Can you testify to this jury that what you watched before initialing the disc is the video footage from Camera 2, the video for the bay door from that evening from June 8th of 2011?

A. Yes, ma'am.

Q. And it's an accurate representation of what happened that night and the video footage from your cameras from your security system?

A. Yes, ma'am.

SOLICITOR SHELTON: Your Honor, at this time I would ask to move State's Exhibit Number Seven into evidence.

THE COURT: Mr. Freeman?

MR. FREEMAN: Same objection as before, Your Honor. Again this is not even a still picture. This is a video camera presumably from a computer.

THE COURT: Mr. Smith?

MR. SMITH: No objection.

THE COURT: In without objection. I mean in over objection from counsel for Mr. Robinson.

(WHEREUPON: STATE'S EXHIBIT NUMBER SEVEN IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

SOLICITOR SHELTON: Your Honor, each camera is roughly thirty minutes long. I don't intend to introduce the entirety but I would request to publish clips of State's Exhibit Seven at this time.

THE COURT: You can publish any or all and if the defense wants something else published they can publish it for Mr. Robinson at some other time.

(STATE'S EXHIBIT NUMBER SEVEN PUBLISHED TO THE JURY AT 11:55 A.M..)

Q. And the person who just walked in with the white shirt with his face covered up, who is that?

A. Marquis Robinson.

(STATE'S EXHIBIT NUMBER SEVEN CONTINUED TO PLAY AT

21-07-09 TIME STOP.)

Q. And did you at that point recognize this person?

A. Yes, ma'am.

Q. Did you know his name? But did you know his name?

A. I know they called him Yodi but I ain't know his real name.

Q. And that's who you are saying was standing behind the truck?

A. Yes, ma'am.

Q. That head that was just bobbing in and out of the bottom of the frame, who was that?

A. Jared.

(WHEREUPON: STATE'S EXHIBIT NUMBER EIGHT PREMARKED FOR IDENTIFICATION.)

Q. Mr. Jordan, I am going to show you what's been marked for identification as State's Exhibit Number Eight. Do you recognize that?

A. Yes, ma'am.

Q. What is that?

A. A DVD of Camera 5 inside the shop area.

Q. And is there any markings on that, that leads you to be able to recognize that DVD?

A. Just my initials.

Q. Just your initials?

A. Yes, ma'am.

Q. When did you initial it?

A. After watching it.

Q. And after watching it can you testify to the jury that that is an accurate representation of the surveillance camera of Channel 5 from that evening?

A. Yes, ma'am.

SOLICITOR SHELTON: Your Honor, at this time I would move State's Exhibit Number Eight into evidence.

THE COURT: Mr. Freeman.

MR. LEMEL: Same as before, Your Honor.

THE COURT: Mr. Smith. .

MR. SMITH: No objection.

THE COURT: In over objection.

(WHEREUPON: STATE'S EXHIBIT NUMBER EIGHT IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

(STATE'S EXHIBIT NUMBER EIGHT PUBLISHED TO THE JURY AT 11:59 A.M..)

Q. And, Mr. Jordan, who is that in the video?

A. That's me.

Q. And where were you running?

A. As they was coming up I was coming out the bathroom I heard the bay coming up. And I was fixing to run back up front but I knew Jared was still back there so I turned around to see what was going on and that's when I started walking back to see who was coming in.

(STATE'S EXHIBIT EIGHT STOPPED AT 21.12.24 MARK.)

Q. And why are you smiling there?

A. Because I knew who it was.

Q. And who was it?

A. Marquis Robinson.

Q. Were you saying anything to him at this point?

A. I was telling him to quit playing.

Q. So you thought he was playing?

A. Yes, ma'am.

(STATE'S EXHIBIT EIGHT STOPPED AT 22.17.24 MARK.)

Q. Where are you at this point?

A. It's the bathroom.

Q. In the bathroom. Who was back there with you at this point?

A. Marquis Robinson.

Q. And who is that?

A. Dantonyo Heath.

Q. Where is Mr. Robinson taking you at this point?

A. Right there at the front. Right up front.

Q. Is this where he's taking you to get something to drink?

A. No. He's taking me right there. He's telling Dantonyo tie Jared up.

Q. Okay. Whose leg is that that you see in the top part going back and forth?

A. Dantonyo Heath.
Q. What's he doing?
A. I think he had dropped something. He was looking for something.
Q. Where was Jared at this point?
A. Tied up over there.
Q. When you say over there, where --
A. In the bathroom. They put him in the bathroom.
Q. What are you and Mr. Robinson doing off camera at this point?
A. I told him I had money in my car so Dantonyo Heath was like let's get that money so that's when they brought me back right there. He's looking for - I think he dropped his phone or something. He's looking for something and then that's when he got me standing there telling me don't move and that's when I was asking him for something to drink cause I couldn't breath.
Q. There you are with something in your hand.
Where is he taking you now?
A. Back to the bathroom.
Q. And who is this?
A. Jared Crane.
Q. Where are you at this point?
A. In the bathroom.
Q. And you're fighting with Mr. Robinson in the bathroom

at this point?

A. Yes, ma'am.

Q. Could you hear anything being said? I know there was no audio with the camera, but could you hear anything being said between them?

A. He kept telling him to go to sleep.

Q. He kept telling Mr. Crane to go to sleep?

A. Yes, ma'am.

Q. What did you think was going to happen to Mr. Crane at this point?

MR. SMITH: Objection, Your Honor.

A. I didn't --

THE COURT: I sustain the objection.

Q. Did you have any fears as to what was going to happen to yourself at this point?

A. I thought I was going to die.

Q. And at this point, this is pretty close to where the bathroom is where they are?

A. Yeah. They like right in front of the bathroom.

Q. Where is he taking him there?

A. Right there by the bathroom where we was.

Q. And how was - What kind of condition was Mr. Crane at that point? How did he get to the bathroom?

A. Crawling.

Q. Were either Mr. Robinson or Mr. Heath saying anything

to Mr. Crane at that point?

A. No. Telling him to come over there where I was.

(WHEREUPON: STATE'S EXHIBIT NUMBER NINE PREMARKED FOR IDENTIFICATION.)

Q. I'm going to show you what's been marked for identification as State's Exhibit Number Nine. Do you recognize that?

A. Yes.

Q. What is that?

A. That's Camera 8.

Q. Camera 8. What does that show?

A. Out back.

Q. And how do you recognize it? Is there anything on there that leads you to believe that's the DVD of Camera 8?

A. Yeah. I had signed it.

Q. When did you sign it?

A. After I watched it.

Q. And when you say out back, what does that mean? What angle is that?

A. Right face down towards the garage doors.

Q. Facing out onto the street?

A. Yes, ma'am.

Q. And you said you watched it and initialed it?

A. Yes, ma'am.

Q. Does what you watched accurately reflect the security footage from your security camera, Camera 8, and what happened on the evening of June 8, 2011?

A. Yes, ma'am.

SOLICITOR SHELTON: Your Honor, at this time the State would ask to move State's Exhibit Number Nine into evidence.

THE COURT: Mr. Freeman.

MR. LEMEL: Same as before, Your Honor.

MR. SMITH: No objection, Your Honor.

THE COURT: In over objection.

(WHEREUPON: STATE'S EXHIBIT NUMBER NINE IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

SOLICITOR SHELTON: Play clip Number 7 for me please.

(STATE'S EXHIBIT NUMBER NINE PUBLISHED TO THE JURY AT 12:10 P.M..)

Q. Tell the jury what street this is here.

A. Cherry Road.

Q. And that bright light coming toward the camera, what is that?

A. That's Amanda pulling back in.

Q. And where are you at this point?

A. Coming out the bathroom.

Q. You're still in the shop?

A. Yes, ma'am. I mean, we still in the shop at that

time. I was fixing to get ready to come out.

Q. It takes a minute for it to get to that part. Explain to the jury. This is the bay door that faces out to Cherry Road?

A. Yes, ma'am.

Q. Where is the front entrance to your shop?

A. Right there on the side like in front of this car like towards my right, that's the front door right there.

Q. And so the front entrance of your shop also faces Cherry Road?

A. Yes, ma'am.

Q. And what is that bright light across the street?

A. That's a street light from Insure Insurance.

Q. Were there any other street lights on your side of the street?

A. Yes, ma'am. Coming from the store.

Q. Okay. Is that right beside - is there a store right beside you?

A. Yes, ma'am. Like right there where she parked at, like right there on the left hand side of it.

Q. And who is that right there?

A. That's me and Marquis Robinson. That's Dantonyo Heath right there.

Q. Did Mr. Robinson say anything to him to get him to come back?

A. Yeah. He told him to get her phone.
Q. Is his face covered up at this point?
A. No, ma'am.
Q. Now just briefly to go back over some of the things that happened that evening. Did you get a good look at the gun?
A. Yes, ma'am.
Q. And you testified that when you were in the bathroom, you used the word tussling?
A. Yes, ma'am.
Q. What does that mean exactly for anybody on the jury who may not know what that means?
A. When he grabbed me around my neck, I just kind of like run him up against the wall and everything.
Q. So fighting?
A. Yes, ma'am.
Q. Did anything happen with the gun while you all were in the bathroom?
A. Yeah. Like when we first went in the bathroom, he pulled me to the bathroom and he tried to tell me to shut the door. I was like "I ain't shutting the door" so he started trying to shut the door. He got the gun to my head so at that time --
Q. He had the gun to your head?
A. Yes, ma'am. While he was trying to shut the door, I

reached for the gun and it went off and I said, "damn man you done shot me" and by the time I grabs the gun, I grabbed the gun he threw one hand around my neck, and so I ain't worry about him grabbing the hand around my neck, I'm just trying to get the gun away from him. So I grabbed this hand and I take my other hand and I break the clip off the gun and try to bring it back around and it went off again and that's when he just dropped and locked both arms around my neck.

Q. Now when you say broke the clip off the gun, did anything happen when you did that?

A. All the bullets fell out.

Q. And did anything later on with those bullets?

A. Yes, ma'am.

Q. What happened with the bullets?

A. Pretty much like once the struggle was over with, once the struggle was over with he had us down he pretty much just pulled the gun back and dropped another bullet into the hole - into the chamber, and that's pretty much when he got ready to walk me out.

Q. So the gun was armed during the remainder of what we see on video ---

A. Yes, ma'am.

Q. --- you being walked outside to your truck?

A. Yes, ma'am.

Q. And when you went to the hospital, did you meet with anyone at the hospital?

A. Yes, ma'am.

Q. Who did you meet with? If you don't remember by name, that's fine.

A. Detective Stokes came into my room when I was at the hospital.

Q. And did Detective Stokes talk about anything?

A. Yes, ma'am.

Q. What did you all talk about?

A. He came in with a lineup and asked me could I pick out the suspect, they believed that committed the crime, in the lineup.

Q. So he came in to show you a photo lineup?

A. Yes, ma'am.

Q. And you said that was at the hospital?

A. Yes, ma'am.

Q. So how long after the crimes did this occur?

A. It was probably like - probably about an hour. About an hour or two.

Q. Was anything said to you before the lineup was shown to you?

A. No, ma'am.

Q. As far as was anything said to you to influence your decision?

A. No, ma'am.
Q. Did Detective Stokes do anything to indicate who the suspect was from the lineup?
A. No, ma'am.
Q. Did he do anything to mark the right picture?
A. No, ma'am.
Q. Did he show you a picture of anybody beforehand and say this is the guy and then show you the lineup?
A. No, ma'am.
Q. Was there anybody else with you in the room?
A. No, ma'am.
Q. Was there anybody with Detective Stokes?
A. No, ma'am.
Q. Did anyone else say anything to you at all to influence?
A. No, ma'am.
Q. In looking at the pictures, can you describe how they compared with each other physically? And this is just by the lineup that was shown to you at the hospital.
A. All the skin color was about the same. All of them had hair and all of them about the same, shoulder, weight and build.
Q. So they were similar to each other?
A. Yes, ma'am.
Q. And we're already talked about that during the actual

crime, your encounter with Mr. Robinson, how close were you to him while everything was going on?

A. We pretty much was face to face.

Q. And what was the lighting like in your shop?

A. It was bright.

Q. And in the bathroom?

A. Bright.

Q. And when Detective Stokes showed you the photo display, were you able to pick someone out of it?

A. Yes, ma'am.

Q. How long did it take you to identify a picture?

A. Like soon as I seen it.

Q. And what made you pick that picture?

A. Because I know -- you know, I had just seen him. And you know I pretty much know him and just pretty much know who he was.

(WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-SEVEN PREMARKED FOR IDENTIFICATION.)

Q. I'm going to show you what's been marked as State's Exhibit Number Thirty-seven.

Do you recognize this Exhibit?

A. Yes, ma'am.

Q. And what is it?

A. It's a photo lineup.

Q. And is that the same one that was shown to you that

evening after the crime?

A. Yes, ma'am.

Q. And did you do anything to that lineup to mark who you wanted the suspect to be?

A. Yes, ma'am.

Q. What did you do?

A. Circle and initial.

Q. And which picture did you circle and initial?

A. Marquis Robinson.

Q. And is Mr. Robinson present here in the courtroom today?

A. Yes, ma'am.

Q. And where is he?

A. With the blue shirt on.

(WITNESS INDICATES TO DEFENSE TABLE.)

SOLICITOR SHELTON: Your Honor, at this time we would ask to move State's Exhibit Number Thirty-seven into evidence.

MR. FREEMAN: Subject to everything else today, Your Honor.

MR. SMITH: No objection.

THE COURT: Based on earlier rulings, in over objection.

(WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-SEVEN IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

SOLICITOR SHELTON: Thank you, Your Honor.

Court's indulgence, Your Honor.

(PAUSE.)

Q. Mr. Jordan, you at some point -- When did you leave the hospital?

A. About four hours later.

Q. When you left the hospital, at some point did you meet with detectives again?

A. Yes, ma'am.

Q. And did you give a statement when you met with the detectives?

A. Yes, ma'am.

Q. And in giving that statement did you again indicate - did you tell the detective- You had already identified Mr. Robinson?

A. Yes, ma'am.

Q. Did you tell the detective of any way that he could possibly identify the second suspect?

A. Yes, ma'am.

Q. And what did you tell them?

A. Told him that they call him Yodi. That they call him Yodi and where his mama stayed at.

Q. And the name Yodi, did do you hear Mr. Robinson call him that name that night?

A. Yes, ma'am.

Q. And at some point did you meet back again with Detective Stokes? Did he have another lineup to show you?

A. Yes, ma'am.

Q. Do you remember where you were when he set that lineup?

A. He met me at Bojangles in Lancaster.

Q. And with that lineup, how was it shown to you?

A. It was shown - It had six pictures, it had six pictures on the lineup.

Q. And thinking about the similar - the physical of each picture, how did they compare with each other?

A. About the same skin complexion, about the same weight, build, and about the same hair length.

Q. Did Detective Stokes say anything to you to indicate which suspect to pick out of the lineup?

A. No, ma'am.

Q. Were the pictures marked in any way?

A. No, ma'am.

Q. Did he show you a picture of the suspect ahead of time and say this is the guy and then show you the lineup?

A. No, ma'am.

Q. Did he have anyone with him?

A. No, ma'am.

Q. Did you have anyone with you?

A. I had my wife with me.

Q. Did she do anything to influence?
A. No, ma'am.
Q. And in going back to the night of the crime, you didn't have as much of an encounter with Mr. Heath. Is that correct?
A. No, ma'am.
Q. But at some point did you have a face to face encounter with him?
A. Yes, ma'am. He had got me some water.
Q. He did. And about how much time did you have to actually get a look at his face?
A. Probably about ten minutes.
Q. And was he present with you when you went outside?
A. Yes, ma'am.
Q. What was the lighting condition outside?
A. It was bright.
Q. Was it bright?
A. Yeah, because its got street lights.
Q. Was it as bright as it was in the shop?
A. No, ma'am.
Q. But light enough that you could see?
A. Yes, ma'am.
Q. And were you able to get a good look at Mr. Heath?
A. Yes, ma'am.
Q. Had you seen Mr. Heath before?

A. Yeah. He had came in the shop like a week prior to that with Marquis Robinson.

Q. So you had seen him before?

A. Yes, ma'am.

Q. And in going back to the photo display, when Detective Stokes showed you the display, were you able to pick out a suspect?

A. Yes, ma'am.

Q. How quickly, how long did it take you to pick someone out?

A. Like instant.

Q. Did Detective Stokes or anyone do anything to influence you while you were viewing the photo display?

A. No, ma'am.

Q. Did he guarantee you that the suspect was present in the photo display?

A. No, ma'am.

(WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-NINE PREMARKED FOR IDENTIFICATION.)

Q. I'm going to show you what's been marked as State's Exhibit Number Thirty-nine. Do you recognize it?

A. Yes, ma'am.

Q. What is it?

A. Dantonyo Heath.

Q. When you say it is Dantonyo Heath, is it just a

picture of Dantonyo Heath?

A. No. It's a picture of six other people. Well, six people. It's a picture of six people and I just circled one and initialed it.

Q. And which one did you circle?

A. Dantonyo Heath.

Q. And is that the same lineup that you were shown by Detective Stokes?

A. Yes, ma'am.

Q. And when you say you circled and initialed Dantonyo Heath, is that person present in the courtroom today?

A. Yes, ma'am.

Q. Could you point him out, please?

A. With the blue tuxedo.

Q. With the blue suit on?

A. Yes, ma'am.

SOLICITOR SHELTON: Please let the record reflect that Mr. Jordan has indicated Dantonyo Heath as being the same person in the lineup.

(WITNESS INDICATES TO DEFENSE TABLE.)

Q. And is that the same person who was present during the crime that was committed on June 8th of 2011?

A. Yes, ma'am.

Q. The same person who attacked Mr. Crane and who was part of the robbery?

A. Yes, ma'am.

SOLICITOR SHELTON: Your Honor, at this time the State would ask to move State's Exhibit Number Thirty-nine into evidence.

MR. FREEMAN: Same objection, Your Honor.

MR. SMITH: Without objection, Your Honor

THE COURT: Based on earlier rulings, and the testimony today, over objection I'll allow it in.

SOLICITOR SHELTON: Thank you, Your Honor.

(WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-NINE IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

SOLICITOR SHELTON: Mr. Jordan, please answer any questions defense has for you.

A. Okay.

THE COURT: Mr. Freeman.

MR. FREEMAN: Thank you, Your Honor.

CROSS EXAMINATION

ERNEST JORDAN BY MR. FREEMAN:

Q. You are the only person that owns this?

A. Yes, sir.

Q. You've been doing that kind of work your whole life?

A. Eleven years.

Q. Is this your first shop or have you had shops before that?

A. I had a shop before that.

Q. Did you own the building that shop was in or were you renting it?

A. I was renting it.

Q. Did you have any business partners?

A. No, sir.

Q. You said Mr. Robinson had worked for you before?

A. Yes, sir.

Q. How long did he work for you?

A. He been up there best I can recall about eight months.

Q. Had he worked for you in the years before that?

A. No, sir.

Q. Did you know him in the years before that?

A. Yes, sir.

Q. Did you know him casually or better than casually?

A. I knew him.

Q. Did you and he ever do stuff together?

A. One or two times.

Q. What kind of stuff?

A. We went to the mall one day. Went to the mall one time and I think we went to a strip club one time.

Q. Now, did you and him have any financial arrangements together?

A. No, sir.

Q. Did you pay him when he was working for you?

A. Yes, sir.
Q. Did you pay him by the job or was he on hourly?
A. I paid him by the job.
Q. Is that how you paid all your employees?
A. No, sir.
Q. Is that how you paid Mr. Crane?
A. No, sir.
Q. Now, so you would testify that you didn't owe him any money?
A. No, I didn't owe him no money. I'll put on the record he owed me money.
Q. He owed you money?
A. Yes, sir.
Q. For what?
A. For the rims he had on that car.
Q. Did he buy them from you?
A. Yes, sir.
Q. Now, you gave the police a statement I guess the next day or the day after that. Very shortly afterwards. You didn't say anything about the rims in that statement, did you?
A. No, sir.
Q. How much money did he owe you?
A. The rims was Twenty-four Hundred. He gave me Eighteen.

Q. So he owed you Six Hundred Dollars?
A. Yes, sir.
Q. A set of four rims, right?
A. Yes, sir.
Q. Did you put them on?
A. Yes, sir.
Q. Did he help you put them on?
A. Yes, sir.
Q. Was this when he was still working with you or later?
A. No. He just used to come up there. He used to come back and forth up there.
Q. When did he get the rims?
A. I think that was during tax time.
Q. But he still hadn't paid you for the rims as of June of 2011?
A. No, sir.
Q. You didn't mention that to the police though?
(PAUSE.)
Q. You didn't say anywhere in your statement he owes me money?
A. That really wasn't the concern then.
Q. Let me ask the question again. Did you say anywhere in your statement to the police Mr. Robinson, or Marquis, owes me money?
A. No. Why should I? I mean, he owes me money but I

mean that wasn't during the robbery, you know that didn't have anything to do with this case.

Q. You didn't think your history with him would be of interest to law enforcement or anybody?

A. No. I'm telling, I told them.

Q. And if they didn't put it in your statement, that was them just didn't put it in your statement?

A. Yes, sir.

Q. Now, we saw some pictures earlier of you that were taken at the hospital.

A. Yes, sir.

Q. And did that show all the injuries to your head?

A. Yes, sir.

Q. There is a cut, a bunch of bruises.

MR. FREEMAN: Your Honor, may I approach.

Q. It looks like you may be laying on a pillow or something in the pictures. Right?

A. Yes, sir.

Q. Does that show all the injuries?

A. Yes. Laying on the hospital bed

Q. Okay. Did you get stitches on the cut?

A. Yeah, I got eight.

Q. Did they put them in that night?

A. Yes, sir.

Q. Well now show me where in the pictures there's

bruises on your neck.

A. On the neck?

Q. Yeah.

A. I reckon they didn't take them. I don't know.

Q. Huh? Take a look.

I'm going to submit that State's Twelve has a better view of your neck but you look at both of them.

A. There are bruises on my neck.

Q. On the front or the back?

A. On the sides.

Q. On the side?

A. Yes, sir.

Q. Well you told the police in your statement that he was choking you with a pry bar. How was he choking you from the sides?

A. No. I said he was choking me with his hand — he was choking me with his hand, with his arms. He was choking me with his arm around my neck. He was choking me with his arm around my neck then once we rammed up against the bathroom in there fightin just you know what I'm saying trying to get him off my neck, finally once I fell on my stomach some kind of way when I catch - when I caught that second wind cause I was about out of it at first. I caught that second wind and I kind of rolled up on my stomach and that's when he grabbed the glass and he was trying to put

it in my throat but I was holding his hand so when he dropped that I was trying to grab the crow bar pulling it over, that's when he grabs it. He trying to press down but my hand right here trying to hold it back.

Q. So if the police statement says, "I fell on my stomach and he fell with me and started choking me with a pry bar," that's not what you're testifying to today?

A. That's what I'm testifying to. I mean, when I fell on my stomach I caught that second wind I rolled over on my back.

Q. And that's when you said he grabbed the piece of glass?

A. Yeah.

Q. So there aren't any bruises in those pictures from a pry bar because there was never a pry bar against or around your neck?

A. No. It was on my throat.

Q. I understand. Was it on the front or the back?

A. On the front.

Q. But you're on your stomach.

A. I'm on my back.

Q. "I fell on my stomach."

A. Yeah. I fell on my stomach. I was about out of it. I was about out of it. I thought I was gone then by that time I caught a second wind from somewhere. I reckon from

the Lord. I caught a second wind when I rolled over on my back, that's when he grabbed the piece of glass and he tried to stick it in my throat from the mirror that broke. And finally when he dropped that piece of glass that's when I tried to pull the crow bar over to me and that's when he grabbed it.

Q. He didn't cut you with the glass though?

A. No because I was holding his hands. He was trying.

Q. Did his hand get cut from holding the glass?

A. I don't know.

Q. Do you know?

A. I don't know.

Q. If it did, there would be blood in that bathroom. Right?

A. There was blood in the bathroom but — there was plenty of blood in the bathroom.

Q. But if I'm grabbing a cut piece of glass, because you said it was broke, right? The mirror was shattered?

A. Yeah.

Q. And in fact some of those pictures we see appear to be pieces of glass or the mirror on the floor. Don't they?

A. Yes there is.

Q. Do you know which piece he grabbed? Is that in this picture?

I'm going to show you State's Twenty-four, and I understand about the tires, but it looks like there's some maybe that back, that gray stuff, that's probably the back of the mirror. Isn't it?

A. That's the glass yeah.

Q. Okay. You don't know if that's the exact piece he grabbed?

A. No. I don't know which piece. There's a lot of pieces in there. I can't tell which piece it was.

Q. The police went through all this stuff with a fine tooth comb as far as you know?

A. Yeah.

Q. Okay. Now, also we have a picture, and this is going to be State's Twenty-six, and you said that's a bullet hole. Is that in the bathroom?

A. That's in the bathroom.

Q. Is there just one?

A. I don't even know.

Q. You said the gun went off twice so where is the other bullet hole?

A. I don't even know.

Q. It's your shop.

A. Yeah.

Q. How big is the bathroom?

A. It's about 8 by 6. It's small. It ain't that big.

Q. Did you go back to the shop after all this happened?
A. Yeah.
Q. Did you ever find the second bullet hole?
A. Yes. There's a lot of holes in the wall.
Q. Okay. Let me ask you the question again. We've got a picture of a bullet hole. Where is the second bullet hole? In a small room like that, where's the bullet going to go?
A. There's two holes where — there's two holes in that wall but there's plenty of holes but they dug one of them out that wall.
Q. They didn't dig or find the second bullet that you're talking about?
A. I don't think they cut the hole - I don't think they cut another hole in the wall. They just cut one. They just got one out.
Q. Tell me about the bathroom again. You said it's sort of off to the side?
A. Yes, sir.
Q. Now is it lit?
A. It's a small bathroom with a hundred watt bulb in it.
Q. Does it have it's own light switch or is in on the same switch as the main shop?
A. It's got it's own light switch.
Q. Was the light on or off when you went in the bathroom

the first time?

A. It was on.

Q. So you normally keep the light on in your bathroom?

A. Yes, sir.

Q. And this was at 10:30 at night roughly is when all this started? Or nine?

A. Probably about nine. Probably about nine.

Q. It was dark outside?

A. Yes, sir.

Q. We saw that in the video so it was dark outside.

A. Yes, sir.

Q. What were the normal hours for your shop?

A. From nine to six.

Q. So if I walk up to the door I'm going to see it posted nine to six?

A. Yes, sir.

Q. You were there three hours after closing time?

A. Yeah. Because we had two cars we had to paint for customers.

Q. What was the other car? You said a Durango. What was the other one?

A. There was a truck in front of that Durango.

Q. Was the truck in your bay or was it out in the parking lot?

A. In the bay.

Q. What was the one we saw taped up? That was the Durango, right?

A. That was the Durango. That is the one we was fixin to paint. We had just finished tapin it up.

Q. Now do you normally keep money in the shop?

A. Yeah. I keep — yes, sir.

Q. Cash register, do you have a safe? Where was it at the time?

A. In my truck.

Q. Was your truck in the shop?

A. Huh-huh, It was parked in front of the shop.

Q. So actually the money would have been kept outside the shop?

A. Yes, sir.

Q. How much money did you normally keep in your truck?

A. Just whenever I collected at the end of the day I use to just put it out there in the truck.

Q. In the glove compartment? Under the seat? Where?

A. In the console.

Q. Was it in an envelope? Sitting loose? What?

A. Just sittin in the truck. Sittin loose.

Q. If I looked in your truck window would I see it?

A. No, sir.

Q. Why not?

A. Because you have to open the console up.

Q. So you closed it up somehow in the console?
A. Yes, sir.
Q. Did you normally keep your truck locked?
A. Yes, sir.
Q. How much cash did you have in your truck that evening?
A. Seven thousand.
Q. Seven thousand in cash?
A. Yes, sir.
Q. That's how much money you had made that day?
A. Two days before that.
Q. Seven Thousand Dollars from — What kind of job pays Seven Thousand Dollars?
A. I sell rims and tires. I mean, I can sell one set of rims that would cost Ten Thousand.
Q. And those people pay cash?
A. Yes, sir. Some people don't. Some people run their cards up. A lot of people run their credit card.
Q. Whoever paid you that Seven Thousand didn't pay with a credit card?
A. No, sir.
Q. Was that from one job or several jobs? Do you remember?
A. That was from one job.
Q. Had you reported that to the IRS?

A. Yes, sir.

Q. With the little form because it was more than Five Thousand in cash?

A. If it's over Ten Thousand in cash.

Q. That's was the old rule. It's Five Thousand in cash now. Where do you do your banking? Your normal banking for the business.

A. PNC.

Q. Do you have those little forms that they give you --

SOLICITOR SHELTON: Objection, Your Honor, its not relevant to the case.

THE COURT: Well this is cross examination.

MR. FREEMAN: He's saying he took money from him.

Q. What happened with that money that night?

A. It was locked up in my truck and pretty much as he was trying to, Yodi was like, "man get some money, get some money, get the money." And I was like. "Man I got about five or seven thousand dollars out there in the truck." And that's when they walked me out to the truck and Marquis was like "give me the key". I said, "Man I ain't givin you my key." And I unlocked the door and when I got ready to open the door he was like "don't make no sudden moves" you know, and so once I opened the door, opened the console, he dived over me and he got the money and they ran off and jumped in a truck.

Q. Now, you told the police in your statement to them that you thought you had Ten Thousand in your truck.
A. Yeah.
Q. But your testimony today is it wasn't Ten Thousand?
A. It was Seven Thousand.
Q. Well tell me about that money. Did you ever get it back?
A. No, sir.
Q. Did you ever recover it from any other source?
A. No, sir.
Q. Ever file a claim with the insurance company or anything like that?
A. I filed one but they said I didn't have it on my policy so they couldn't pay out so pretty much I had to come out my own pocket to cover the loss.
Q. Your business is still in business though isn't it?
A. Yes, sir.
Q. Still doing a lot of cash transactions?
A. Yes, sir. You said do we do a lot of transactions?
Q. Now tell me how the police got called. Did you call them or did someone else call them? That night.
A. When I walked back in – when I walked back in, I grabbed the phone and I dialed 9-1-1 and I passed out.
Q. 9-1-1. Did you leave a message or you just – the phone fell on the floor or you don't remember?

A. I don't remember. I remember just passing out.
Q. Did you wake up before you went to the hospital?
A. I remember Jared coming in. I remember Jared coming in and I told him, I was like, "Ha, man, if I die tell my wife and kids I said I love them" and that was it.
Q. Was that before or after you dialed 9-1-1?
A. That was after.
Q. Well now you also told the police something different in your statement didn't you?
A. I don't recall that.
Q. You said "I went back inside the shop and hit the panic button to the alarm system on my key ring."
A. Yeah, I hit that too.
Q. Are you just now remembering that today?
A. No. I had the key pad in my pocket but I still dialed 9-1-1 though.
Q. Okay. Was that panic system for the shop or for your vehicle?
A. For the shop.
Q. Would that have automatically altered the police?
A. Yeah.
Q. Okay. So you contacted them two ways?
A. Yeah.
Q. Do you know how long it took them to get there?
A. Seemed like forever but I was out of it so I don't --

Q. Do you know if the ambulance got there first?

A. I remember seeing the police first. Then I remember seeing the ambulance.

Q. But you didn't see I guess the detective at that time?

A. No, sir.

Q. You didn't see him until the first time was in the hospital a couple hours later?

A. Yes, sir.

MR. FREEMAN: Beg the court's indulgence one moment, Your Honor.

(PAUSE.)

Q. I want to back up just a second. You said when you were tussling in the bathroom you broke the clip of the gun?

A. Yes, sir.

Q. How did you break it? Did you pull it out? Did you snap it? How did it break?

A. I grabbed my hand on the gun on his hand and I had his hand on the gun and I took my other hand and pulled the bottom of the clip.

Q. Was it a plastic bottom? Do you remember?

A. It was a plastic bottom.

Q. And you said the bullets just went all over the floor?

A. Yeah. The spring just popped out and all the bullets just started fallin on the floor.

Q. More than one?

A. Yeah. It was about ten of 'em.

Q. So several. Would you say several?

A. Yes, sir.

Q. But later on – Without the clip later on a bullet got put back into the gun?

A. Yeah you put a clip --

Q. What happened to the clip?

A. It was still on the floor.

Q. The bottom piece of it or the whole thing?

A. The whole – well, the spring and the bottom piece.

Q. What about - I'll call it the cannister, the main cartridge of the clip, did it stay in the handle or did it fall out?

A. It was still in the gun.

MR. FREEMAN: I don't have any further questions for this witness, Your Honor.

THE COURT: Mr. Smith.

MR. SMITH: May it please the Court.

CROSS EXAMINATION

ERNEST JORDAN BY MR. SMITH

Q. Mr. Jordan, you know Mr. Robinson. Right?

A. Yes, sir.

Q. And you've known him for many years?
A. Yes, sir.
Q. Do you know how you all met?
A. Used to be my wife brother.
Q. And you indicated that he had worked with you for some period of time?
A. About eight months I had him helping me out.
Q. Helping you out?
A. Yes, sir.
Q. And did you fire him or how did you all end that relationship?
A. Well I had started painting cars and I had brought him on. I was trying to help him out, you know. I was trying to help him out. As a friend I was trying to help him out so I was trying to help him out, you know what I'm saying, to come in and paint cars or whatever. The same cars that I painted. And he didn't really want to do it you know so I looked for other sources so that's when Jared came to my shop and he told me he knew how to paint cars.
Q. Okay. And did you then have to fire Mr. Robinson or did he just not - you said you didn't want to keep painting him so he was ask to leave?
A. No. I think he was getting married because you know what I'm saying like he wanted to paint cars and I wouldn't let him paint, you know. He said he knew how to

paint but I wouldn't let him paint, you know.

Q. Okay. What type work was he doing for the shop?

A. Just sanding cars.

Q. Just sanding. Before this incident, how recently had you seen Mr. Robinson?

A. About a week and a half.

Q. A week and a half prior?

A. Yeah.

Q. And is that where you indicate that Mr. Heath came by the store with him. Is that right?

A. Yes, sir.

Q. So is it fair to say that the way you know Mr. Heath is through Mr. Robinson because you've seen them together?

A. Yes, sir.

Q. And you indicated that this night you didn't know Dantonyo Heath's name. Is that right?

A. No, sir.

Q. Do you know when you learned that name?

A. That day coming to the shop. I had heard him saying something about Dantonyo, about Yodi, but I didn't know who he was until he came in the shop asking about some rims for that Cadillac that day.

Q. Okay. But when did you learn the Dantonyo Heath?

A. After the detectives.

Q. And that night as you described in the video you say

you were coming out of the bathroom and you saw someone who you recognized as Mr. Robinson and you smiled. Is that right?

A. Yes, sir.

Q. And then you indicate that you saw another individual sort of ducking down behind somewhere. Is that right?

A. Yes, sir.

Q. Now did that person have a mask on or anything over their face at that time?

A. He had a little bandana tied around his mouth.

Q. He just had a little bandana tied around his mouth?

A. Yes, sir.

Q. Do you know what color that bandana was?

A. It looked either blue or black. One of the two.

Q. Blue or black, one of the two?

A. Yes, sir.

Q. And when you said him, this other person duck down, you say at that point you realized something was serious as well?

A. Yes, sir.

Q. And did you call out to warn Jared at that point?

A. No, sir.

Q. And during the whole time everything went on, you only saw one gun. Is that right?

A. Yes, sir.

Q. And that was in the hand of the person you're saying was Mr. Robinson. Right?

A. Yes, sir.

Q. And you indicated that the other person was in the shop at some point and gave you some lemonade. Is that right?

A. Yes, sir.

Q. And we see a cup in your hand at some point on the video?

A. Yes, sir.

Q. And that's while they're still in the shop and what you're describing as this attempted robbery is going on?

A. Yes, sir.

Q. Did you give a description height and weight wise or hair style or clothing to the police?

A. Yes, sir.

Q. What did you describe?

A. I just told them he was about 6'1", about 6'1" slim.

Q. Anything else about hair, eye color, skin tone?

A. No. I just told 'em he was kind of dark skinned.

Q. Clothing?

A. Yeah. I done forgot what kind of clothing. I gave them clothing but I done forgot what it was.

Q. And when did you first get to see that video?

A. When I came from the hospital.

Q. That same evening or the next day?
A. Next day.
Q. Next day. And you went back to the shop and watched that video?
A. Yes, sir.
Q. And you mentioned a — You said something about putting rims on that car with regard to Mr. Robinson. Are you talking about a vehicle that's in the video or are you talking about a different one?
A. A different one.
Q. Did you at any point in time see anyone else unknown in your shop?
A. No, sir.
Q. Did you ever tell the police that there were three suspects?
A. Yeah.
Q. You did?
A. Yes, sir.

MR. SMITH: No further questions.

THE COURT: Redirect.

SOLICITOR SHELTON: Just very briefly, Your Honor.

REDIRECT EXAMINATION

ERNEST JORDAN BY SOLICITOR SHELTON:

Q. Mr. Jordan, on that evening when all this was happening, were you fighting for your own life?

A. Yes, ma'am.

Q. Were you completely aware of everything that was going on?

A. Yes, ma'am.

Q. When Mr. Robinson's attorney was questioning you about the 9-1-1 call, you kept saying you were out of it. What do you mean when you say you were out of it?

A. I just thought I was going to die cause I couldn't catch my breath.

Q. So was it stressful?

A. Yes, ma'am.

Q. And you were just asked if you ever told the law enforcement there were three suspects. You didn't tell Detective Stokes that did you?

A. No, ma'am.

Q. Was it an officer that very first thing that night?

A. Yeah. Yeah, I told him I thought it was three suspects cause when they jumped in the car I thought somebody was driving the car for 'em.

Q. So nobody else came inside?

A. No, ma'am.

Q. But you thought there might have been somebody else driving the car?

A. Yes, ma'am.

Q. Did you see that person?

A. No, ma'am.
Q. And you never really talked to Detective Stokes about that?
A. No, ma'am.
Q. And you never had any kind of identification on that?
A. No, ma'am.
Q. And you're not confusing the person Yogi as the person that was in the car?
A. No, ma'am.
Q. And you're not saying there was a third person in your shop?
A. No, ma'am. There was only two in the shop. I just said a third person cause I thought somebody was driving the car they was in.
Q. And just very briefly. Since there was some talk of this on cross, I'm going to show you for identification purposes only State's Exhibit Number Thirty-three.

(WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-THREE PREMARKED FOR IDENTIFICATION.)

Q. What is that?
A. Two bullet fragments.
Q. Two bullet what?
A. Fragments.
Q. And where is that?
A. That's at the bathroom at the shop.

Q. And that's a picture of it?

A. Yes, ma'am.

SOLICITOR SHELTON: Your Honor, I have nothing further.

THE COURT: Recross?

MR. FREEMAN: I do, Your Honor. May I approach?

THE COURT: Yes.

(SIDE BAR OFF THE RECORD OUT OF THE HEARING OF THE JURY.)

BY SOLICITOR SHELTON:

Q. Mr. Jordan, just very briefly. You do have two prior criminal convictions?

A. Yes, ma'am.

Q. I believe it's a possession of crack from 2003?

A. Actually from 2000.

Q. Was the conviction later?

A. Yes, ma'am.

Q. And a conviction for receiving stolen goods in 2009?

A. Yes, ma'am.

Q. Okay.

SOLICITOR SHELTON: Thank you.

THE COURT: Recross.

MR. FREEMAN: Thank you, Your Honor.

RECROSS EXAMINATION

ERNEST JORDAN BY MR. FREEMAN:

Q. Mr. Jordan, are you familiar with guns?

A. Familiar with guns? Yes, sir.

Q. Do you have many guns?

A. No, sir.

SOLICITOR SHELTON: Your Honor, that's not — That's outside of - I didn't --

THE COURT: Well there was a question about fragments. I think --

MR. FREEMAN: He knew to break off the clip --

SOLICITOR SHELTON: That was not part of redirect.

THE COURT: Well recross is to what she did on redirect.

MR. FREEMAN: Yes, sir.

THE COURT: She did talk about bullet fragments so I will allow you to go into that.

MR. FREEMAN: Thank you.

THE COURT: But not very broadly.

MR. FREEMAN: Thank you.

THE COURT: But I think that's what we call opening the door to questions about ballistics.

MR. FREEMAN: Yes, sir. I don't intend to ask him about ballistics.

Q. Have you ever seen guns with clips before in your life?

A. Yes, sir.

Q. Have you ever used at any point in your life guns with clips?

A. I mean, I had one but I ain't used it.

Q. But you don't own it now?

A. No, sir.

MR. FREEMAN: No further questions.

THE COURT: Mr. Smith.

MR. SMITH: Nothing further, Your Honor.

THE COURT: You can step down, Mr. Jordan. Thank you. Appreciate your time.

(WITNESS LEAVING WITNESS STAND.)

THE COURT: We're going to break for lunch until 2:15. Have a pleasant lunch. Please report back at 2:15. As the bailiff tells you how to enter and exit while you're serving on the panel like you've been doing. Have a pleasant lunch and we'll see you at 2:15.

(JURY EXITS COURTROOM FOR LUNCH RECESS AT 12:52 P.M..)

THE COURT: Anything from the State before we break for lunch?

SOLICITOR SHELTON: Nothing from the State, Your Honor.

THE COURT: Mr. Freeman?

MR. FREEMAN: Nothing from us, Your Honor.

THE COURT: Mr. Smith?

MR. SMITH: No, Your Honor.

THE COURT: We'll reconvene at 2:15.

(COURT IN LUNCH RECESS AT 12:53 P.M..)

(COURT BACK IN SESSION AT 02:18 P.M..)

THE COURT: Thank you. Take your seats.

(DEFENDANT'S REENTER COURTROOM.)

THE COURT: All right, is the State ready?

SOLICITOR SHELTON: The State's ready, Your Honor.

THE COURT: Mr. Freeman?

MR. FREEMAN: Yes, sir, we are.

MR. SMITH: Ready, Your Honor.

THE COURT: Bring in the jury.

(JURY REENTERS COURTROOM AT 02:20 P.M..)

THE COURT: You may proceed.

SOLICITOR SHELTON: The State's ready, Your Honor. Your Honor, the State would call Tim Buchanan at this time.

MADAME CLERK: Please raise your right hand and place your left hand on the Bible.

(WHEREUPON: TIMOTHY BUCHANNAN, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

MADAME CLERK: Thank you. You may have a seat right up there.

DIRECT EXAMINATION

TIMOTHY BUCHANNAN BY SOLICITOR SHELTON:

Q. Could you state your name for the record, please?

A. Timothy S. Buchanan.

Q. And how are you employed?

A. I'm sorry?

Q. How are you employed?

A. I'm employed with the York County Sheriff's Office with the FSU Unit.

Q. Can you explain to the jury what the FSU unit is?

A. It's a multi-jurisdictional unit. It's just like CSI. We go out and collect evidence and package it up and put it away.

Q. What does the F stand for?

A. Forensic Service Unit is what it stands for.

Q. How many years have you been in law enforcement total?

A. Fifteen.

Q. And how long have you been on the Forensic Service Unit?

A. Four and a half years.

Q. So you were on the Forensic Service Unit on June 8th of 2011?

A. Yes, ma'am.

Q. Do you remember being assigned to investigate an alleged armed robbery, kidnaping, attempted murder at - off of Cherry Road at Five Star Customs?

A. Yes, ma'am.

Q. What was your involvement in that investigation?

A. I was one of the first forensic guys on the scene. We took digital photos and collected the evidence from the scene.

Q. And did you prepare any reports?

A. I did. I typed a report of our activities at the scene and what we collected.

Q. Did you physically collect evidence?

A. Yes I did.

Q. And are you the person that took the pictures?

A. Yes, ma'am, I am.

Q. Did you ever meet with any of the victims that night?

A. I think there may have been one of them there. Generally I don't talk to the victims. All I do is document the scene. I think Director Weeks was dispatched out to the hospital for one of the victims. He took photos there and then later came to the scene and assisted with the evidence.

Q. But its your testimony that you're not part of the active investigation with dealing with the victims and getting statements from them or anything like that?

A. No, ma'am. We deal mainly with just the evidence and the documentation.

Q. I'm going to show you some photos.

(WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-SEVEN THROUGH THIRTY-SIX PREMARKED FOR IDENTIFICATION.)

SOLICITOR SHELTON: I'm going to show you what's been marked for identification as State's Exhibit Twenty-seven, State's Exhibit Twenty-eight, State's Exhibit Twenty-nine, State's Exhibit Thirty, State's Exhibit Thirty-one, State's Exhibit Thirty-two, State's Exhibit Thirty-three, State's Exhibit Thirty-four, State's Exhibit Thirty-five and State's Exhibit Thirty-six.

I'll ask you to look through those pictures.

(WITNESS REVIEWING EXHIBITS.)

Q. Do you recognize those photos?

A. They appear to be copies of the photos that I took that night. Yes, ma'am.

Q. And the photos that you're holding, is that an accurate representation of the photos that you took that night?

A. Yes, ma'am.

SOLICITOR SHELTON: Your Honor, at this time the State would move to move Exhibits Twenty-seven through Thirty-six into evidence.

MR. FREEMAN: I thought some of them had already been entered, Your Honor.

SOLICITOR SHELTON: Thirty-three has come in.

MR. FREEMAN: Without objection.

MR. SMITH: No objection, Your Honor.

THE COURT: In without objection.

(WHEREUPON: STATE'S EXHIBIT TWENTY-SEVEN THROUGH THIRTY-SIX, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

Q. I'm showing you State's Exhibit Twenty-seven.

(STATE'S EXHIBIT TWENTY-SEVEN PUBLISHED ON THE OVERHEAD.)

Q. Can you explain to the jury what this is?

A. That was a cell phone that was near the corner of the bathroom laying down beside some tires there.

Q. And that "three" beside it, what is that?

A. That's an item marker that identifies it as Item - Well it was beside placard Number Three and I note that on the evidence sheet when I turn it in which tells where it was taken from.

Q. And that becomes Item Number Three --

A. Well it doesn't necessarily mean it's Item Number Three but it was beside Marker Number Three and that's annotated in there because sometimes we collect other items before we start marking them ---

Q. Gotcha.

A. --- and that's the way we normally put it in there, beside Placard Number Three.

Q. Okay. And I'm going to show you State's Exhibit Twenty-nine.

(STATE'S EXHIBIT TWENTY-NINE PUBLISHED ON THE OVER HEAD.)

Q. What is that?

A. That appeared to be a shell casing. I believe that was in the bathroom. I'd have to look at the overall photos. Some overall photos that show the floor in the bathroom but I'm pretty sure that's going to be in the bathroom. It's one of the shell casings.

Q. And again that's Seven?

A. Yes, ma'am. Beside Marker Number Seven.

Q. Did you put those numbers down?

A. Yes, ma'am.

Q. And State's Exhibit Number Thirty.

(STATE'S EXHIBIT THIRTY PUBLISHED ON THE OVER HEAD.)

A. What is that?

A. That would be a unfired round that was also in the bathroom beside the Placard Number Eight.

Q. And you put that Placard down?

A. Yes, ma'am.

Q. And State's Exhibit Number Thirty-one?

(STATE'S EXHIBIT THIRTY-ONE PUBLISHED ON THE OVER HEAD.)

A. Here again, in the bathroom. It's a busted piece of mirror beside the toilet. It's almost behind the toilet there and that's another shell casing.

Q. State's Exhibit Number Thirty-two?

(STATE'S EXHIBIT THIRTY-TWO PUBLISHED ON OVER HEAD.)

A. Another shell casing beside the mirror there. You can see the mirror's reflection on the placard and the shell casing there.

Q. And as part of your duties that night, did you collect those shell casings or the unspent or the live rounds and the shell casing?

A. Yes, ma'am.

Q. Did you collect the mirror fragments?

A. No, I didn't collect - We didn't collect any of the mirror fragments I don't believe.

Q. I want to show you State's Exhibit Thirty-four.

(STATE'S EXHIBIT THIRTY-FOUR PUBLISHED ON OVER HEAD.)

Q. Do you recognize that?

A. That was a tee shirt that appeared to have blood stains on it. It was on a table inside the shop area in the warehouse.

Q. And did you collect that?

A. Yes, ma'am.

Q. State's Exhibit Number Thirty-five?

(STATE'S EXHIBIT THIRTY-FIVE PUBLISHED ON OVER HEAD.)

A. Those appeared to be blood. It was a red stain on the floor that appeared to be blood. They took swabs from those and placed them into evidence.

Q. And on this one did you place that placard down as well?

A. Yes, ma'am.

Q. State's Exhibit Number Thirty-six?

(STATE'S EXHIBIT THIRTY-SIX PUBLISHED ON OVER HEAD.)

A. Some more blood stains. These are in the bathroom on top of the toilet.

Q. And did you place that placard down?

A. Yes, ma'am.

Q. State's Exhibit Number Twenty-eight?

(STATE'S EXHIBIT TWENTY-EIGHT PUBLISHED ON OVER HEAD.)

A. And that's another live round that was in the bathroom, or right outside of it on the floor there.

Q. I'm going to how you exhibits previously admitted into evidence, State's Exhibit Number Twenty-six.

(STATE'S EXHIBIT TWENTY-SIX PUBLISHED ON OVER HEAD.)

Q. Do you remember that, recognize that?

A. Without looking back through all the photos I took, I believe it's going to be where a bullet went through the wall in the bathroom on the inside there of the bathroom.

Q. And State's Exhibit Number Thirty-three?

(STATE'S EXHIBIT THIRTY-THREE PUBLISHED ON OVER HEAD.)

A. That would be the exterior of the wall outside the bathroom where the bullet came through.

Q. Are there are two holes there?

A. Yes, ma'am. But the bullet could have fragmented and caused the two pieces on the outside. I think there's one

hole on the inside because it's in a corner like.

Q. Yes, sir.

A. And it may have fragmented and busted through there but I'd have to ...

(WHEREUPON: STATE'S EXHIBIT NUMBER ONE, PREMARKED FOR IDENTIFICATION.)

Q. I'm going to show you what's been marked for identification as State's Exhibit Number One. See if you can — You need to rip that outer bag enough to see the inner bag.

A. Yes, ma'am.

Q. Do you --

A. This would be the tee shirt that I collected on top of the table there.

Q. And how are you able to determine that?

A. That's my signature here where I dropped it into evidence and where I collected it.

Q. And when you collected it, what did you do with it?

A. I put it in this bag and carried it back to Rock Hill PD.

Q. Do you have a knife on you?

(WITNESS RETRIEVED KNIFE FROM POCKET.)

A. You want me to open it up?

Q. Yes, sir. Just so that you can verify that what's in there is — Don't take it out yet but can you?

A. That appears to be.

Q. And you put it in that bag? You can leave it in, you can put it in.

(WITNESS RETURNED EVIDENCE INTO EVIDENCE BAG.)

A. Yeah. I normally wrap it up in these — in this paper and then I put it inside the bag after we get back and process it at the lab.

Q. And once it goes in the brown paper bag, what do you with it to secure it?

A. Tape it up and sign the outside here with the date.

Q. And then it goes into evidence and after that it's out of your hands?

A. I'm done with it yes, ma'am.

(WHEREUPON: STATE'S EXHIBITS TWO, THREE, FOUR, FIVE AND SIX PREMARKED FOR IDENTIFICATION.)

Q. Investigator Buchannan, I'm going to give you what's been marked for identification as State's Exhibit Two, Three, Four, Five, and Six.

Do you recognize those packages?

A. Yes, ma'am. They're packages that we sealed the evidence up and dropped it.

Q. And just taking them one item at a time, Item 3, what is in that?

A. Item 3 is a Sanyo cell phone.

Q. And was that collected at the scene?

A. Yes, ma'am. At Marker Cone Number 3.

Q. And once it was collected, where did it go next?

A. This bag.

Q. And what did you do with the bag?

A. Sealed it up, signed it and dropped it into evidence.

Q. And is that the same – You may have to put them back. You may need to open them so that you can look at them.

(WITNESS OPENED EVIDENCE.)

Q. Is that the same phone that you placed into evidence back in June of 2011?

A. It appears to be yes, ma'am.

SOLICITOR SHELTON: Your Honor, I would ask to move State's Exhibit Number Three into evidence.

MR. FREEMAN: Without objection, Your Honor.

MR. SMITH: No objection.

THE COURT: In without objection.

(WHEREUPON: STATE'S EXHIBIT NUMBER THREE IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

Q. And if you could look at State's Exhibit Four through Six. You don't have to open them. Did you collect those items at the scene?

A. Yes, ma'am. I collected all these items that are in these bags.

Q. And what are in each of those bags?

A. State's Exhibit Number Four is a .9 millimeter Luger round. State's Exhibit Number Three is a spent .9 millimeter shell casing. Number Ten is Item Number 3 was the Sanyo cell phone. I apologize. You put a different number --

Q. Yes, sir.

A. That's like a marker cone, they get changed around sometime as we use them. State's Exhibit Number Two is a .9 millimeter Luger round. State's Exhibit Five, a .9 millimeter round and State's Exhibit Number Six is a .9 millimeter round.

Q. And is it your testimony that, you see your signature on there, that those are the items ---

A. Yes, ma'am.

Q. ---- you collected at the scene that you placed into evidence?

A. Yes, ma'am.

SOLICITOR SHELTON: Your Honor, at this time we would ask to move State's Exhibits Two through Six into evidence.

MR. FREEMAN: Without objection, Your Honor.

MR. SMITH: No objection.

THE COURT: In without objection.

(WHEREUPON: STATE'S EXHIBIT NUMBERS TWO THROUGH SIX, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

(WHEREUPON: STATE'S EXHIBIT NUMBER FORTY-ONE

PREMARKED FOR IDENTIFICATION.)

Q. Investigator Buchanan, I'm going to show you what's been marked for identification as State's Exhibit Forty-one. Could you identify that, please?

A. It's a buccle swab that was taken at the Detention Center. I'm trying to see the name on it here. I'll have to open it up.

Q. Do you have your report that you did from that buccle swab? If you could refer to that.

A. Yes, ma'am. That was on 4-25 I received a request to get a buccle swab, that was 4-25-12, on Dantonyo Heath.

Q. Yes, sir. And without saying where you were when you took the swab, can you explain to the jury what is entailed when taking a --

A. A buccle swab is just a cotton tip swab that we rub inside your cheek on both sides so generally there's two in a pack. We rub them. Put them inside a container and that has your DNA in it for identification purposes.

Q. And did Mr. Heath consent to that swab?

A. Yes, ma'am, he did.

Q. And once you got the swab, what did you do next?

A. I packaged it up and dropped it into evidence.

Q. And have you seen it since then?

A. No, ma'am., I haven't.

Q. Until today?

A. No.

Q. Did you do anything to tamper with that sample or anything before you placed it into evidence?

A. No, ma'am. It was sealed up and taken straight over there.

Q. Investigator Buchanan, as part of your investigation were you asked to compare any palm prints at any time?

A. We compared the prints that were lifted from the vehicle to the victims because that's all they had to start with and identified LP 1 to the left middle finger of Jared Crane. And then I identified a palm print to Mr. Crane too of Jared Crane.

Q. And the finger print and the palm print that you compared to identify it as Mr. Crane's, where were those taken from?

A. I had to actually go and physically get the prints from him.

Q. No, I mean the --

A. They were from the outside of the vehicle, I believe. I'd have to pull the LP file to look at it.

Q. But from the scene.

A. Yes, ma'am. There was a vehicle parked outside. That's where the prints came from, off the vehicle out there.

Q. And so through that, that you were only able to match

those prints to the victims?

A. That's right.

Q. And even neither of the suspects?

A. Correct.

Q. And you were not aware of what happened with the evidence once it left your possession as far as the buccle swabs or the tee shirt or anything like that?

A. No, ma'am.

Q. Thank you.

SOLICITOR SHELTON: Please answer any questions the defense has for you.

CROSS EXAMINATION

OFFICER TIMOTHY BUCHANNAN BY MR. FREEMAN:

Q. Officer Buchannan, so you went out there that evening and took those pictures and all those samples and then I believe you said you packaged them up?

A. I'm sorry?

Q. You said then you packaged all of them up. You identified and wrote on the tape and essentially sealed up everything.

A. Yes, sir.

Q. Okay. Did you perform any analysis yourself of any of those items once they were packaged up?

A. No, sir. Just the latent prints that we lifted off the vehicle. They are retained in the FSU Unit and any

developments we compare them to any suspects or victims.
Q. And the only prints you found on anything --
A. Were on the outside of the vehicle. That's correct.
Q. The outside of the vehicle. And they were Mr. Crane's?
A. Yes, sir.
Q. Not from either defendant; not even from Mr. Jordan?
A. We weren't able to identify any other prints no, sir.
Q. And then I think you said you took some swabs of blood. Did they then go down to SLED after they leave you?
A. I don't have any control over anything after it's put into evidence. The detectives decide what's sent down or what's not. They ask us to fill out the forms. We fill out the forms and print out a receipt which is given to evidence and then they transport it directly to SLED.
Q. And do you work for the sheriff's department or the city of Rock Hill?
A. I work for the York County Sheriff's Office, but like I said, it's a multi-jurisdictional forensic service unit and all the municipalities and the sheriff's office together and all of them are deputized through the solicitor's office so that the city employees can work in the county and we work all the scenes together.
Q. So if SLED returned the items to you, that was

incorrect?

A. They wouldn't return them directly to me. I never touch the items after they're put into evidence.

Q. So if SLED sent a letter back dated April 17, 2012, to Tim Buchanan, --

A. That's correct. I type up the paperwork to send it down. I don't physically touch any of the evidence.

Q. My question is, did it come back to you?

A. The evidence?

Q. Yes, sir.

A. No. It never came back to me.

Q. So if this is --

A. If it was sent - When they say it was sent back, they mean it was sent back to Rock Hill City's evidence.

Q. But if it was addressed to you, Tim Buchannan, Rock Hill Police Department, that's not you?

A. No. Well, it's me. I filled out paperwork for Rock Hill PD. Do you follow me?

Q. Did you fill out the paperwork here at the sheriff's department or over in Rock Hill?

A. I filled it out at my desk. At any computer I've got access to their website and I can fill it out.

Q. Where is your desk?

A. Downstairs at the sheriff's office.

Q. And we're here in York; not Rock Hill?

A. Correct.

Q. You don't have anything to do with it once it leaves your custody?

A. No, sir.

Q. And then you took some pictures, I believe, we saw?

A. Yes, sir.

Q. Is that all the pictures you took? Are there any pictures that you took that we don't have?

A. No. There's more pictures than that. There's pictures of the overall scene and everything.

Q. And the little yellow cone like markers, those are yours?

A. Yes, sir.

Q. And you put them up and then collect some of the items and some you don't?

A. What do you mean? I'm confused.

Q. If you put up a yellow marker, are you going to guarantee that you're going to take up something at a later time or is it just to identify sometimes what something is?

A. Sometimes they're used for identification purposes in our overall picture, but I believe we picked up something for every marker this time.

MR. FREEMAN: Your Honor, may I approach.

Q. Let me just show you some of the pictures you

identified before. Let me show you State's Thirty-one and Thirty-two, and I'll use layman terms. Those are both pictures of bullets. Correct?

A. Correct.

Q. But that gray stuff behind, is that a broken mirror?

A. It looks like a broken mirror in the picture here yes, sir.

Q. And that's like the silver coating on the back of the mirror, perhaps?

A. Yes, sir.

Q. No where in there did you find any blood ---

A. There was blood ---

Q. --- that you couldn't account for?

A. --- on top of the toilet ---

Q. Okay.

A. --- right there, right above the mirror there yes, sir.

Q. Now were you made aware that some of the allegations were that one of the defendants grabbed a piece of that mirror?

A. No. I – We're not privy to all the testimony from the suspects and the --

Q. You had a general idea of what had happened though.

A. I have a general idea of what I saw and could, you know, they give you a quick – it's not a – it's a dynamic

situation when you walk in. We walked in 15, 20 minutes after it happens. The officers on the scene have a brief synopsis of what the victims and suspects that they may have apprehended have told them. We have what we look at on the scene and that's what we have to interpret.

Q. All right. Let me ask it this way then. If I look at State's Thirty-six, that appears to be pictures of what you said was blood on the back of a toilet. Is that correct?

A. Yes, sir.

Q. Presumably in that same bathroom we've heard so much about. You don't find any blood on the floor. You don't find any blood on at least in the pictures you've given us any piece of mirror or glass in that bathroom did you?

A. I didn't say that. There may be blood on the floor and on some of the mirror. I don't have all the pictures in front of me.

Q. In the pictures you have, is there blood on the edges of any of these pieces of glass?

A. There appears to be a spot of blood right in front of that bullet right there, sir.

Q. Okay.

A. Two of them.

Q. That's on the back of the mirror though.

A. Correct.

Q. Not on the edge.

A. Huh-huh.

Q. That's a large piece of glass isn't it? I mean, I --

A. Yeah, it's pretty large. I would say it's 12 by 12.

Q. Okay. So that's a big piece. That's not something I could grip easily in one hand.

A. Depends on how big your hand was yes.

Q. Normal size. But again, once you're done with this it leaves your custody and really today is the next time you touched it.

A. That's correct, sir.

MR. FREEMAN: I don't have any further questions, Your Honor.

THE COURT: Mr. Smith.

MR. SMITH: May it please the Court, Your Honor.

CROSS EXAMINATION

OFFICER TIMOTHY BUCHANNAN BY MR. SMITH

Q. Investigator Buchannan, you indicated that you worked for a multi-jurisdictional unit here in York County. Is that right?

A. Yes, sir.

Q. And to do that, you have special training in forensics and crime scene investigations. Is that correct?

A. Yes, sir.

Q. And part of your training talks about different types

of evidence that there can be for criminal cases. And is it fair to say that one type of evidence is what we might call trace evidence?

A. Yes, sir.

Q. And trace evidence would be something that gets left somewhere or somehow gets deposited behind from some other person or object or some other source. Is that fair to say?

A. Yes, sir.

Q. And at a crime scene, you're looking for trace evidence when you go in. Is that right?

A. Yes, sir.

Q. And you've indicated you don't know exactly what all happened so you have to sort of look for things that look like they may be out of place when you get there?

A. Yes, sir.

Q. And one type of trace evidence is fiber evidence. In other words, cloth strips or even minute fibers could be left from one thing onto something else and it looks out of place and you could recover that. Is that right?

A. Yes, sir.

Q. And then hair evidence as well could be trace evidence. Is that right?

A. Yes, sir.

Q. And then another type evidence I believe you've talked

about would be prints; finger prints, palm prints, those types of impressions. Is that right?

A. Yes, sir.

Q. And fingerprints can be left a couple of different ways. One, it could be that you touch a soft surface and actually make an indentation in that surface which would be the ridge detail from whatever the print presses on. Is that right?

A. That would be a plastic print yes, sir.

Q. Plastic prints. And then another way that it could happen is there could be a foreign substance on someone's hand or palm and they can touch an object and it can transfer the print that way. Is that correct?

A. That would be a patent print, yes, that you can see with the visible eye.

Q. You can see it with the visible eye. And then another form would be sort of the natural oils from the skin when they touch a surface could leave a print as well that may not be visible to the eye without assistance. Is that fair to say?

A. That's correct.

Q. Okay. And for that you would have to use amino black or blue star or something to indicate that there --

A. Amino black and blue star would be used on blood trace evidence.

Q. Okay.

A. We use regular powder, magnetic, or regular, or perhaps cyanoacrylate fumes, SuperGlue fumes, to try to develop those.

Q. Okay. And so there are a bunch of different ways to potentially get evidence and it depends which type evidence you're looking for to determine which method to use to achieve that. Is that fair to say?

A. Yes, sir.

Q. Okay. And then another thing that you do is you just take pictures of the scene. Is that right?

A. Yes, sir.

Q. Now, with oils — Well let me start. There's another type evidence and you've talked some about it which is called DNA evidence. Right?

A. Yes, sir.

Q. And that would be a way to determine who may have been somewhere because characteristics subject to that person have been left behind through some source. Is that fair to say?

A. Yes, sir.

Q. And when we're talking about DNA sometimes it comes up in semen and that's not what you were looking for in this case. Is that right?

A. Right.

THE COURT: You need to speak up a little bit.

A. I'm sorry. Yes.

Q. But it could be blood. You've talked about blood. Is that right?

A. Right.

Q. And DNA can be found in blood. Is that right?

A. Right.

Q. And you're trained in how to preserve that evidence so as not to harm or destroy the DNA so that it can be tested at some later point. Is that right?

A. That's correct.

Q. And you did that here with blood evidence that you took into evidence?

A. Yes, sir.

Q. Okay. And then another way that it can be transferred is by the swabs that you talked about. You took some buccal swabs by rubbing the inside of the cheek of a person. Is that right?

A. That's correct.

Q. And again that's maintained in a specific way that it doesn't get contaminated or deteriorated so that it can go be tested at a later time?

A. Correct.

Q. And then another form, maybe a newer form of DNA, is what they call touch DNA. Is that right?

A. That's correct.

Q. And what that means is a person could touch an object and though not cut or not salivating, could leave behind like a fingerprint oil, some DNA from their body on whoever or whatever or whatever object they may touch. Is that fair to say?

A. It could be salt, sweat, anything that you secrete. That's correct.

Q. Okay. Anything that gets secreted from the body and you're training in how to collect those items or collect what you think may have been touched so as to potentially preserve that DNA. Is that right?

A. You can.

Q. This scene when you arrived, was it a secure scene?

A. The police were there. Yeah, it was — I felt secure there. Yeah.

Q. The crime scene tape was already up.

A. Okay. And the reason that you put crime scene tape up is that so that people don't start wandering through and contaminating or cross contaminating or taking some of the evidence out inadvertently on their shoe or depositing other things there on the scene. Is that right?

A. Correct.

Q. And so while you were there, you were able to look around wherever you wanted and do whatever procedures you

needed to take evidence from that scene. Is that fair to say?

A. Yes, sir.

Q. All right. Now you prepared a report in this case. Do you have that?

A. Yes, sir.

Q. And you also filled out what's called a supplement or an Evidence Inventory Sheet and in this case there was enough that you have a Supplemental Evidence Inventory Sheet. Is that correct?

A. Correct.

Q. And you indicated you give item numbers which may not match the exhibit numbers that we've gotten, but for instance the first item you took was a red handle snap on knife. Is that correct?

A. Correct.

Q. And that was found I believe on your form you write where it was found and here it was found on the floor inside the shop at what you indicate as Marker Number 1, that sort of yellow marker that we saw on some of the photos. Is that right?

A. Yes, sir.

Q. And the next item you took into evidence was what?

A. On my report I've got an orange longhorn ball cap. That's what I've got.

Q. Okay.

A. But I don't have the evidence sheet which lists it in order.

Q. Oh, I'm sorry. Okay. But per your report, you understand that you took into evidence a longhorn ball cap.

A. Correct.

Q. And that doesn't mean the cap had horn, I assume it means Texas, the team, the Longhorns?

A. I guess. It was a ball cap is what it was.

Q. Okay. And you also took into evidence you indicated already yourself a cell phone. Is that right?

A. A cell phone.

Q. Okay. And a black dew-rag. Is that right?

A. That's correct.

Q. And then you indicated you took four .9 millimeter Lugar rounds into evidence?

A. Correct.

Q. And then a black ball cap. Is that right?

A. And I took one .9 millimeter spent shell casing and then — yeah, the black ball cap.

Q. Okay. And then the white tee shirt that we saw with stains on it.

A. Correct.

Q. And then you took swabs from floor, tire rim, toilet

and the vehicle. Is that correct?

A. Correct.

Q. And when I'm saying swabs there, you indicated they were swabs of red stain so thought to be blood.

A. By this time Director Weeks, Cheryl Boyd, and Investigator Sullivan were there also to help me.

Q. Okay. So you had a number of people there at that point.

A. Correct.

Q. And the director of the Multi-Jurisdictional Unit, George Weeks, was there as well. Is that right?

A. Correct.

Q. And did you recover any speaker wire?

A. Any, I'm sorry?

Q. Speaker wire or any wire of any sort?

A. I don't have any listed. No, sir.

Q. Did you recover a gun?

A. No, sir.

Q. How about a clip from a gun or any broken pieces of a clip?

A. No, sir.

Q. Okay.

MR. SMITH: I have no further questions.

THE COURT: Redirect.

SOLICITOR SHELTON: Very briefly, Your Honor.

REDIRECT EXAMINATION

OFFICER TIMOTHY BUCHANNAN BY SOLICITOR SHELTON:

Q. Investigator Hamilton, Mr. Smith talked to you about amino black and --

THE COURT: Did you call him Hamilton?

SOLICITOR SHELTON: I'm sorry?

THE COURT: Did you call him Hamilton?

MR. FREEMAN: She did, Your Honor.

SOLICITOR SHELTON: I'm sorry.

Q. Investigator Buchanan, Mr. Smith talked to you about amino black and one other thing and I didn't catch what that was. Was that --

A. I think he said Leuco Crystal Violet.

Q. Or Blue Star maybe or is there such a thing as --

A. Blue Star, yeah. All three of those are blood free agents. They help develop prints in blood and locate blood.

Q. And I don't know the answer to this. Is that something you keep with you as part of a kit that you take out?

A. We have access to all those chemicals yes, ma'am.

Q. Did you have - But do you keep it with you in the truck with you when you go out?

A. I probably have some Blue Star on my truck yes, ma'am.

Q. In what type of situation would you use it?

A. If we thought that there was a trace blood evidence that had been cleaned up or that we might be able to develop, we would use it.

Q. And you didn't use it in this case?

A. No, ma'am. We didn't.

Q. And why is that?

A. It was a – From what we had been told there was a struggle out there. There was some blood in the bathroom and we didn't know if the suspect had been cut or not. We just didn't – we didn't process it with any blood elements.

Q. Was there blood there that you could see to the naked eye?

A. Yes, ma'am.

Q. And you all took swabs of that blood?

A. Yes, ma'am.

Q. And if you need to refer to your report, can you testify as to where you took swabs from what areas?

A. Red stains on the back of the Toyota Camry which could have been mud. I don't know how the test came out. A tire rim beside the bathroom. The shop floor. And the toilet tank lid in the bathroom.

Q. And you determined to not go in to do any further process to determine if there was any other trace evidence as far as blood that night?

A. That would have been Director Weeks' call at the scene

at that time yes, ma'am.

Q. And as far as Mr. Smith asked you about touch DNA, and there's a little bit of a description of that. How would you know if there was touch DNA?

A. Well anything that you touch could possibly hold touch DNA. I mean, anywhere that – Typically if we go on a scene when we process a scene, we look for items that the suspects have handled. That, you know, we can verify that he's handled. I mean, you could take thousands of swabs from somewhere and probably get – you know, this was a – a lot of people went in and out of this shop. You could have got you know possibly hundreds of people's DNA from there, so we try to limit it to things that we know that they have touched or used in the commission of the crime.

Q. And not just bag up the whole business and --

A. Yeah. I mean, it's still pretty expensive to do that and you know they're constrained by budgets. We have to limit what we send down to SLED to five items on most cases. I mean, if we get a hundred swabs, the detectives have to chose which five that they send.

Q. Is that a SLED policy?

A. Yes, ma'am, that's SLED policy.

Q. And going back just briefly on a question that Mr. Freeman had on the letter addressed to you.

Did you receive a letter from SLED?

A. I received an email and it was forwarded on to the detectives. They send it to me because I actually fill out the SLED request on line. We usually do it for the detective for the item of evidence and what testing that they want. We send it down and they send us a letter back and then we forward it on to the detectives to see what they want to do from there.

Q. What is the purpose of the letter that you received from SLED?

A. Well, I've got four or five from them on this particular case. There was a - They said that we didn't have the suspect's DNA to test and I think that they were --

Q. Just specifically talk about the one that Mr. Freeman questioned you about as far as evidence that you received. Do you ever receive back a report from SLED as to what was in evidence and what happened to it once SLED received it? I guess a report of their conclusion.

A. Yeah. We get reports back. I will get the report back saying what they're conclusion was and forward it to the detectives.

Q. And that's the purpose of that letter addressed to you?

A. That's correct.

Q. Not to --

a. That's the only reason that I received the letter is because I filled out the form and that's who they send it to.

Q. But it's not to indicate that you received evidence back?

A. Correct. I didn't receive any evidence back.

Q. And would that be the proper way to get evidence back even if it were to do it by letter? How would they normally return evidence?

A. Evidence is returned back to the evidence room. You can ask them the procedure for that. I've never taken any evidence or received any evidence from SLED so I really can't comment on that.

Q. But just in your own personal experience, would you ever notify somebody by letter that you were sending evidence to them?

A. No.

SOLICITOR SHELTON: Court's indulgence, Your Honor.

(PAUSE.)

Q. Mr. Smith asked you about speaker wire. Did you see any speaker wire at the scene?

A. Did I see any speaker --

Q. Do you remember seeing any speaker wire?

A. That was a couple of years ago. No, ma'am, I don't recall. I mean, I can go back and maybe look through all

the pictures and see if there is any in the pictures.

Q. At the time that you were collecting evidence and viewing the scene for evidence, did you have any indication that you needed to be looking for speaker wire?

A. No, ma'am, we didn't.

SOLICITOR SHELTON: Thank you.

THE COURT: Mr. Freeman?

MR. FREEMAN: Thank you, Your Honor.

RECROSS EXAMINATION

OFFICER TIMOTHY BUCHANNAN BY MR. FREEMAN:

Q. Officer Buchanan, were you the only FSU investigator that worked on this case at all?

A. No. There were four of us there.

Q. And I believe you said once Mr. Weeks got there it was his call to do something or not do something?

A. He is the director of the unit, and if he decided something needed to be done or didn't do, he would have been the one directing us, that's correct.

Q. And you said he arrived on the scene that evening.

A. Yes, sir, he did.

Q. Your boss was there basically?

Q. He was going to make the calls at that point?

A. Yes, sir.

Q. And you followed what your boss told you to do?

A. Well, we do what we're suppose to do. We do our job

yes, sir.

Q. But at one point in response to the Solicitor's question you said that, that was Director Weeks' decision to make whether to do or not do something.

A. That's correct.

MR. FREEMAN: I don't have no further questions, Your Honor.

THE COURT: Mr. Smith?

MR. SMITH: Nothing further, Your Honor.

THE COURT: You can step down and be excused. We appreciate your time.

(WITNESS LEAVING WITNESS STAND.)

THE COURT: Call your next witness.

SOLICITOR SHELTON: Your Honor, the State would call Officer Ray Hamilton at this time.

Your Honor, may Investigator Buchannan be excused?

THE COURT: He may.

SOLICITOR SHELTON: Thank you.

MADAME CLERK: Please raise your right hand, place your left hand on the Bible.

(WHEREUPON: RAY HAMILTON, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

MADAME CLERK: You can have a seat right up there.

DIRECT EXAMINATION

OFFICER RAY HAMILTON BY SOLICITOR SHELTON:

Q. State your name for the record please?

A. My name's Officer Ray Hamilton.

Q. Officer Hamilton, how are you employed?

A. I am the chief evidence technician for the city or Rock Hill.

Q. And as Chief Evidence Technician, what are some of your duties?

A. Our primary duties -- the primary duty that I have is the responsibility of all evidence that comes into the Rock Hill Police Department. I receive that evidence, I log it into the system, track that evidence, and as needed I take evidence to Columbia to SLED where evidence is processed and or return it back from there.

Q. And did -- How long have you been working in that capacity?

A. I've been in the evidence room for almost two years.

Q. And how long you been in law enforcement?

A. Nine years.

Q. Officer Hamilton, do you have any direct involvement with the investigation of this case the State versus Marquis Robinson and State versus Dantonyo Heath?

A. No, ma'am, I do not.

Q. Did you go to the scene that night?

A. No, ma'am, I did not.

Q. Take any statements from anybody?

A. No, ma'am.

Q. Did you personally collect any evidence?

A. No, ma'am, I did not.

Q. I'm going to show you what's been marked for identification of State's Exhibit Number Forty-one. Can you identify that exhibit please?

A. Yes ma'am. This is a evidence envelope that I take to SLED. Our envelope is inside that we received from the officers or from the forensics individuals. When I take it to SLED they placed it into the plastic and sealed it and then I initial and date it.

Q. It's hard to see inside that bag, would having your evidence inventory sheet help be able to identify what's inside this sealed bag?

A. Yes, ma'am, it would.

Q. Could you please tell the jury what is inside the outside bag, the piece of evidence that you have there?

A. The item that is inside the bag is a -- I don't know the proper pronunciation, but I call it a buccle swab.

Q. And did that buccle swab ever come into your possession?

A. Yes, ma'am, it did.

Q. And where was it when you took possession of it?

A. It was in the envelope that was logged into the evidence room where I work?

Q. And who was it logged in by?
A. It was logged in by my co-worker who is since retired, Ms. Linda Erby.
Q. And once Ms. Erby logged it in what would she have done with it?
A. Once she logs it into the system and does the paperwork, she places it in one of our bins.
Q. And then who collects -- who gets it next? Who is the next person to touch it?
A. The next person that touches the evidence after that and in this case was myself as I took it to Columbia to SLED to be examined.
Q. And when you -- Did you do that? Did you take it from Rock Hill evidence to Columbia?
A. Yes, ma'am, I did.
Q. When you say Columbia, where exactly did you take it?
A. I took it to the SLED headquarters on Broad River Road.
Q. And the package that you took from Rock Hill, had that been tampered with in any way?
A. No, ma'am, it had not.
Q. Was it still sealed at the time that you received possession of it?
A. Yes, ma'am, it was.
Q. If it had appeared to be tampered with in any way or

the seal broken or anything like that, what would you have done?

A. I would have had to investigate why because there's only two individuals that are allowed where I work.

Q. Once you take the package to SLED what happens with it next?

A. At that point when I take the yellow envelope that's in here, I give it to the SLED technician, I sign a sheet that is called a pre log sheet that either the detective or one of our forensics individuals fills out. At that point they seal it into a bag. When they seal it into the bag I initial and date on that and I also write my name on it as the sealing official and date on bag as well. At that point they place it into evidence.

Q. And so when you give that piece of evidence to SLED it had been sealed up in that outside bag and you signed that sealed bag was placed into evidence with SLED?

A. That is correct.

Q. In your presence?

A. Yes ma'am.

Q. Now I'm going to show you what's been marked for identification as State's Exhibit Number One. Could you identify that please?

A. Yes ma'am. This is also a piece of evidence that came into our office and I also took it to SLED.

Q. When you say it came into your office, who logged that piece of evidence in?

A. In this case it was also Ms. Linda Erby that logged this one into evidence.

Q. And the same thing with that one. What would have happened to that piece of evidence after she logged it in?

A. Once she logged it in and put our bar code on it and sealed it up, we place it into the bin for the appropriate case.

Q. And were you the next person to get it?

A. Yes, ma'am, I was.

Q. And you transported that to SLED as well?

A. Yes, ma'am, I did.

Q. And did it appear to have been tampered with in any way or compromised in any way?

A. No, ma'am.

Q. And then with that piece of evidence once you arrived at SLED what did you do with that?

A. As I did with the other piece of evidence, we have several pieces that I take for one case, I will give the evidence over to the evidence technician at SLED and they will seal it in a bag. As I did on this one I initial and date and sign and dated on the bag as well.

Q. Thank you.

SOLICITOR SHELTON: Please answer any questions the

defense has for you.

CROSS EXAMINATION

OFFICER RAY HAMILTON BY MR. FREEMAN:

Q. Now, Officer Hamilton, you are the person that drove those things from where they were given to you to Columbia. Is that correct?

A. That's correct.

Q. Were those items both taken at the same time?

A. I didn't observe the date on it. I'm not sure if they were, sir.

Q. Would you normally just take items from one case or would you not take a bunch of stuff to be efficient?

A. Normally when I take evidence I take what ever cases have been turned in at that point to go to SLED.

Q. How often do you go down to SLED?

A. I normally go probably once every two weeks.

Q. Okay. So just let me just show you the larger piece, which has been marked as State's One apparently. And tell me, can you tell from that what date you dropped it off?

A. Yes, sir. This was dropped off at 11/29/2011.

Q. November of '11. Okay. Let me show you State's Forty-one, the other item you identified. When was that dropped off?

A. That was dropped off 5/23/12.

Q. So six months later?

A. Yes, sir.
Q. You have any idea why they were taken six months apart?
A. Yes, sir. Periodically we do have situations where we have evidence that's taken in, we'll have evidence that comes in at one point and then later other evidence will be gathered and in this case a buccle swab belonging to an individual was taken after ---
Q. Okay.
A. --- a crime?
Q. Do you know, if you can remember, did you take anything else to Columbia on that first trip, let's say the first trip in November?
A. Without the paperwork that I get from SLED I would not remember.
Q. And now it's your testimony that between June and November, whatever the date is on that bag, just sat there in you all's locker?
A. Yes, sir.
Q. Is that common?
A. The evidence.
Q. For evidence to ---
A. No, sir.
Q. --- tit there for five months?
A. No, sir, not necessarily. We have evidence that comes

in periodically in a case and sometimes we'll have evidence come in two or three weeks, two or three months later, but when it comes in it's logged in and put into a bin.

Q. And then you drop it off and then at some point later you - the next time you're down at SLED, you pick up stuff as well?

A. If it's ready yes, sir.

Q. Again to be efficient would you normally try to schedule those drops so you can, say I'll drop those off and by the way I'll pick up some stuff since I'm already there? It's at the same address is it not?

A. Yes, sir.

Q. You don't have any control over what happens while it's out of your custody?

A. Right.

Q. And you said if there's a problem like it appears to have been altered in some way you would investigate that?

A. Actually in our department it would probably be our Internal Affairs investigating because there's only two individuals that are allowed into our office at any given time, which is myself and the other evidence technician.

Q. The lady you mentioned who since retired?

A. Yes, sir.

Q. Presumably who has been replaced. Nothing like

that happened that you're aware of with those items. Correct?

A. That's correct.

MR. FREEMAN: I don't have any further questions, Your Honor.

MR. SMITH: No questions.

SOLICITOR SHELTON: Nothing further, Your Honor.

THE COURT: You can now be excused. We appreciate your time.

(WITNESS LEAVING WITNESS STAND.)

THE COURT: Call your next witness.

SOLICITOR SHELTON: Your Honor, the State at this time would call Betty Butler.

Your Honor, may Officer Hamilton be excused?

THE COURT: Yes, ma'am.

SOLICITOR SHELTON: Thank you.

THE COURT: Come forward, you will see a Bible on the front of these two ladies. If you will put your left hand on one and raise your right.

WHEREUPON, BETTY BUTLER, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

MADAME CLERK: Thank you. You can have a seat right up there.

DIRECT EXAMINATION

BETTY BUTLER BY SOLICITOR SHELTON:

Q. Good afternoon.

A. Good afternoon.

Q. State your name for the record please?

A. Betty Butler.

Q. And, Ms. Butler, where are you employed?

A. The South Carolina Law Enforcement Division also known as SLED.

Q. And in what capacity are you employed there?

A. I'm a forensic technician in the DNA department.

Q. How long have you worked as a forensic technician?

A. Over ten years.

Q. And what is your educational background?

A. My educational background is mainly on the job training. I was trained on hundreds of items by two forensics technicians who's expert witnessing the court of South Carolina and also DNA analyst that's also an expert. I was trained on hundreds of items before you go online you have to take a competency test and every year we have to take an proficiency test to make sure that we know what we're doing.

Q. And exactly what is it that you do?

A. I'm a forensic technician. As a forensic technician we look for a presumptive test for blood, semen, hairs, fibers. We look for sometime glass, skin cells, body fluids, or anything that could be of value to a particular

case.

Q. And as far as this case that you are here about today, you were not actively involved in any investigation. You're not a part of the Rock Hill Police Department. You didn't collect any evidence or anything like that?

A. That's correct.

Q. Ms. Butler, I'm going to show you what's been marked by identification as State's Exhibit Number One. And I ask you take a look at that and see if you can identify that?

A. Yes I can.

Q. And how are you able to identify it?

A. Every item that we receive, we have to put a item number on it, which is Item Number One with my initials which is BWB, we put the lab number which is L1113387, we put the date that we process the items. And after we get finished we close the items up, we put our initials and the date. And on the inside of this you will -- on the t-shirt you will see my initials, the lab number on it also with the item number.

Q. And when you received that item of evidence, what kind of condition was the bag in?

A. When I received this, this bag was completely sealed.

Q. And was there any signatures on it?

A. Yes it was. They had the agency signature across the

top and initials and date across the top and the signature and the date on it.

Q. And who did you receive the bag from?

A. I received this particular bag from forensic technician in evidence control department, Selena Kinard.

Q. And when you received it, if the bag had been tampered with in any way what would have happened?

A. I would not have processed it.

Q. And is it your testimony that the bag was not tampered with and that you processed the evidence?

A. That's correct.

Q. As far as processing the evidence, what did you do with it?

A. When I receive this particular bag I open it along the sides, right here. We do a visual test. The test was for ownership. That's meaning who wore this particular t-shirt. And the way we do this, most of the time when you wear something you rub against the collar of your clothes. Even if you have something else underneath it, your neck rubs against the inside of the collar of your clothes. We scrape that down and we swab it and you come up with skin cells. It was also possible blood that was on the front of the shirt. I also took a sample of that.

Q. And with the swab what did you label the swab?

A. The swab was labeled our Item 1.1.

Q. And the -- that -- And you took the cutting?

A. I took a cutting and was SLED Item Number 1.2.

Q. And I apologize if you've already testified to this, but did you do a test for -- a presumptive test for those two items?

A. I did a presumptive test for item -- SLED Item Number 1.2 and the presumptive test is if it was a possibility that it was blood it would turn pink and it did turn pink so I did a cutting and sealed it into an envelope, put my initials and date on it and sealed it into another heat sealed pouch.

(WHEREUPON: STATE'S EXHIBIT NUMBER FORTY-TWO PREMARKED FOR IDENTIFICATION.)

Q. I'm going to show you what's been marked for identification as State's Exhibit Number Forty-two.

Can you identify that exhibit please?

A. State's Exhibit Forty-two is the cutting SLED Item Numbers 1.1 and 1.2 that I took from the t-shirt.

Q. And how are you able to recognize it?

A. I put them into this gold color envelope, I have my initials against tape here and have the date, I sealed it inside of this heat sealed pouch, I put my initials, the date, and also signed and date. And also have the lab number for always tracking throughout the agency.

Q. And then once you do that you place it back into

evidence?

A. Once I did this I gave it to Patricia Cooks in the evidence control department so she can put it into our locked DNA box for the DNA analyst.

Q. And do you have anything else to do with it after that?

A. No I do not.

Q. And the t-shirt that you were previously testifying to, once you finished with the cuttings what did you do with that t-shirt?

A. Once I finished with the t-shirt I seal it back into the heat sealed pouch, as I said, and put my initials against the seal and date against the seal and seal it back up and I'll return it back to Patricia Cooks in the evidence control department.

Q. And then after that you have nothing else do with that item?

A. That's correct.

Q. And just with the t-shirt, did you also test it for hair, fibers, or anything like that?

A. Once I did the scrapings, I always look for hair, and on my worksheet it says no hair was found on the t-shirt.

Q. Thank you.

SOLICITOR SHELTON: Please answer any questions that either of the defense may have for you.

CROSS EXAMINATION

BETTY BUTLER BY MR. FREEMAN:

Q. Ms. Butler, once you had done that you didn't have any more contact with those items until today.

A. Yes.

Q. Is that correct?

A. That's correct.

Q. You didn't do any of the DNA test or any of that stuff?

A. That's correct.

Q. And you said you did a cutting of the shirt?

A. I did.

Q. Just so -- This may be a dumb question, did you cut it with a pair of scissors or what did you cut it with?

A. I did. We have a pair of scissors where we always -- we have to clean down everything before we use it for one case to the next. We use alcohol swabs where we clean it and then we use scissors to cut with the cuttings.

Q. Did you cut -- You said that the collar was a particular interest to you. Is that correct?

A. That's correct.

Q. So did you cut the collar off or where did the cutting come from on the shirt?

A. The cutting came from the front section of the t-shirt.

Q. So you didn't remove the collar?

A. No. I did scrapings in the inside and outside of the collar for skin cells.

Q. You don't analyze them after that, you just turn them over to someone else?

A. That's correct.

MR. FREEMAN: I don't have any further questions, Your Honor.

THE COURT: Mr. Smith?

MR. SMITH: No questions, Your Honor.

THE COURT: Redirect?

SOLICITOR SHELTON: Nothing, Your Honor.

Thank you Ms. Butler.

May she be excused, Your Honor?

THE COURT: You can step down and be excused, we appreciate your time.

(WITNESS LEAVING WITNESS STAND.)

THE COURT: Call your next witness.

SOLICITOR SHELTON: Your Honor, at this time the State would call Lily Gallman.

MADAME CLERK: Please raise your right hand, place your left hand on the Bible.

(WHEREUPON: LILY GALLMAN, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:

MADAME CLERK: Thank you. You may have a seat right

up there.

DIRECT EXAMINATION

Q. Would you state your name for the record, please?

A. My name is Lily Smalls Gallman.

Q. Ms. Gallman, how are you employed?

A. I am employed with the South Carolina Law Enforcement Division.

Q. How long have you been employed with SLED?

A. Twenty-three years.

Q. What is your current job?

A. I'm employed as a forensic DNA analyst.

Q. Tell the jury about your educational background.

A. I have a degree in Biology from the University of South Carolina. Once I received my degree I continued working at the University in ermanicular genetics and during that time I did sequencing and cloning of DNA. I began working with the South Carolina Law Enforcement Division on January the 17th, 1990, as a forensic DNA analyst. My first year there I attended the FBI DNA typing schools. I also worked with court qualified serologist to become qualified in serology and since that time I've been an analyst there at SLED.

Q. How long did it take you to complete your training to become an analyst?

A. I was like part of the beginning crew so it took

approximately six months to a year.

Q. And have you been qualified as an expert in the field of forensic serology and DNA analysis before?

A. Yes I have.

Q. Approximately how many times?

A. Fifty.

SOLICITOR SHELTON: Your Honor, at this point I would offer Ms. Gallman as an expert in the field of forensic DNA analysis.

THE COURT: Any voir dire?

MR. FREEMAN: Not on that matter no, sir.

MR. SMITH: None and no objection.

THE COURT: No objections?

MR. FREEMAN: No objections.

THE COURT: I find she is qualified.

BY SOLICITOR SHELTON:

Q. Ms. Gallman, can you explain to the jury in as close to layman's terms as possible, what DNA is?

A. Okay. DNA stands for deoxyribonucleic acid. It's considered to be the blueprint of the body. You get part of your DNA from your mother and part from your father. The unique thing about DNA is that everyone's DNA is different except for identical twins and since that's the case we're able to compare evidence that's collected at a crime scene to known standards to distinguish whether we

have a match or we do not have a match between the evidence and the standard.

Q. And just briefly describe to the jury the chain of custody process once evidence is delivered to SLED.

A. Evidence comes into SLED into the evidence control area. The evidence stays there until someone retrieves it. Everything is tracked in a computer system. The evidence is transferred from one person to another even though it sits on a shelf. Once it's removed from the shelf it's placed in someone's custody and then another person's custody. For instance in this particular case, I received evidence that came in the evidence control and I also received evidence that came from evidence processing technician. All of that evidence went into evidence control and I went to evidence control and retrieved it.

Q. And can you just briefly tell the jury what -- And you've kind of touched on a little bit, but just in a little more detail in general, what does SLED do to preserve the integrity of the items that are taken into evidence?

A. Once evidence comes into evidence control it is sealed in what we call a heat sealed pouch and that seal is initialed and dated by the person who's sealing the evidence. When I go to evidence control and retrieve the evidence so that I can begin the analysis the first thing I

do is check to see if the seal is intact. If it is not intact for some reason or another, maybe the heat sealer doesn't work properly at that time, I would back track to find out exactly what could have possibly happened. But in this particular case the evidence was sealed properly when I retrieved it from evidence control.

Q. And does SLED maintain a list of everyone who touches the evidence as it goes through the system?

A. Yes SLED does. All of that is tracked on the computer and you can also tell by looking at the evidence on the seals as to who sealed the evidence by their initials and the date that they sealed it.

Q. And do you and the other analyst there, do you take special measures to prevent any kind of contamination from the testing from you from being in the lab while it's being tested?

A. Yes we do. We wear gloves. Everything's conducted under a hood where there's a shield in front of you to make sure that you do not have any contamination. We also utilize negative and positive controls to check our agents, our solutions, to make sure there's no contamination in the solutions that we're using to do the analysis.

Q. Is there anything about the testing that can be done to change DNA? In conducting your test on the evidence, is there anything that's part of that testing that would

change the structure of that DNA?

A. No.

Q. And as part of your job as a DNA analyst just in general from the beginning of taking a piece of evidence to the end, what do you do?

A. In this particular case it's blood evidence. First thing is check to see what the agency would like me to do with the evidence. With blood evidence the samples are removed from the pouch. They are analyzed through by doing extraction of DNA from the samples and then a DNA profile, if possible, is generated from that particular evidence or standard.

Q. And you've already mentioned controls. What are controls and why are they important to what you do?

A. I mentioned negative and positive controls. Take for instance the solution that I'm using to do the analysis, I would just utilize that solution without adding any DNA to it and that should come up clean, no DNA present. Positive control will let you know that your application is working properly and also it should generate certain DNA profile from that control.

Q. And as part of your testing is there a peer review process?

A. Yes there is.

Q. And what is that and why is it important?

A. When she's speaking about a peer review that's when another analyst reviews your work. We have a technical review and what we call administration, admin review. During the technical review another analyst reviews all of the work that you've done in that particular case to make sure that you've done the proper controls, that you've done everything you can in order to generate a DNA profile.

Q. And does that happen in every case?

A. Oh yes. The technical review and admin review is done in every case.

Q. And as far as the results that you can get from DNA testing, what are the possible results that you can get?

A. Oh, there's so many. From the point where you do the extraction of the DNA it's possible that you won't get any DNA from that particular sample. You could get a match between the evidence and the standards. Evidence and standards could not match. There's possibility that no conclusive statement can be made because you might have such a mixture of three or four different individuals from that evidence because you have no control over that. Evidential samples are pretty much not pristine in that there's one person there, so you might not be able to pull out this particular person's DNA profile from that mixture. So you could have an exclusion, a match, or you could not get any DNA from the sample at all.

Q. And just briefly, what is a population statistic?

A. Once you establish that you have a match between evidence and a standard we are, based on our guidelines, will have to put a statistical value to the probability of seeing that DNA profile in a population. So all -- Once you establish that you have a match then you plug all that information now into a computer and it tells you whether the statistical value for that particular DNA profile.

Q. And I'm going to show you what's been marked for identification of State's Exhibit One. You never had any contact with this item did you?

A. No I did not. I can tell there's no seal with my initial on it.

SOLICITOR SHELTON: Your Honor, at this time the State would ask to move State's Exhibit Number One into evidence.

MR. LEMEL: She just testified she had had no contact with that?

THE COURT: I don't understand either.

SOLICITOR SHELTON: I didn't know if she did or not. The other -- that chain has been established up through the point of the cutting.

THE COURT: I got you.

Any objections?

MR. FREEMAN: No, sir.

MR. SMITH: No objections.

THE COURT: In without objection.

(WHEREUPON: STATE'S EXHIBIT NUMBER ONE, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

SOLICITOR SHELTON: Thank you, Your Honor.

THE COURT: You confused me a little bit.

SOLICITOR SHELTON: Sorry.

THE COURT: But I'm easily confused.

BY SOLICITOR SHELTON:

Q. And, Ms. Gallman, do you have a list of the evidence that you did receive in this case?

A. Yes I do.

Q. And I'm going to show you what's been marked for identification as State's Exhibit Forty-two.

A. These are the cuttings from the t-shirt that were given to me for analysis.

Q. And did you perform an analysis on those cuttings?

A. Yes I did.

Q. And there's also a swab in there. Is that correct?

A. There's our Item Number 1.2 is a cutting from the t-shirt and our Item 1.1 is a swab from the t-shirt.

Q. And when you received those items how were they packaged?

A. They were packaged in this heat sealed pouch. The seal on it was with Betty Butler who's the evidence processing technician and then I made my cutting on the

side.

Q. And had that pouch been tampered with in any way?

A. No it had not.

Q. And what would have happened had it been tampered with?

A. My expectation when I receive this based on the chain that the only person who's initials and initials that would be on here would be from the evidence processing technician Betty Butler. And if that was not the case I would go back to her to find out exactly what happened before the evidence was taken in evidence control.

Q. And just to the Items 1.1 and 1.2, did you file an initial report on those items?

A. Yes I did.

Q. And were you able to make any conclusions as to those items initially?

A. I'm referring to my report.

Q. April -- I believe it's April 17th.

A. April 17th.

Q. Yes, ma'am.

A. Yes, yes I did. The first step -- The first analysis that I did on these items was to check for the presence of blood on Item 1.2. And Item 1.1 was given to me for ownership type, so the swab -- there were swabs taken from around the collar of the t-shirt, and that went straight to

DNA, but the cutting from the t-shirt I checked for the presence of blood in which I performed a presumptive test for blood and blood was indicated and the next day I took it over to DNA.

Q. And were you able to determine from the swabbing if there was a match to that swab?

A. The swab that was taken from the shirt basically for ownership was a mixture of at least two individuals and the DNA profile for major contributor to our item 1.1, which is the swab from the t-shirt, matched the DNA profile of Jared Crane.

Q. Okay. And then from the cutting were you able to make a determination on the cutting?

A. Yes. The DNA profile developed from Item 1.2 which is the cutting also matched Jared Crane.

Q. Was that also a mixture or were they both mixtures or just one?

A. Item 1.1 was a -- Item 1.1 was a mixture and Item 1.2 was a clean profile of just one individual and that matched Jared Crane.

Q. And there was no -- From the swabbing around the neck there was no blood there, did you test it for blood?

A. I did not test it for blood.

Q. What type of DNA material would be left behind from the swab that you're testing for ownership? What type of

material would be left if it's not blood?

A. It could be from sweat from skin cells coming from the individual who came in contact with it.

Q. With the neck of the shirt?

A. Yes. With the area that was swabbed.

Q. I'm going to show you what's been marked for identification as State's Exhibit Forty-one. And just going back to State's Exhibit Forty-two with the cuttings. In that initial report did you have enough information to test for a possible contributor to the mixture from 1.1?

A. Yes. There was a minor contributor to Item 1.1 and that particular profile was from an unidentified individual at that time.

Q. And then at some point later the Item 41 I believe I handed you, did you receive that at a later date?

A. Yes. This is SLED Item Number Eight.

Q. And when did you receive that?

A. Item Number Eight -- SLED Item Number Eight came into my custody on June 28, 2012.

Q. And what is SLED Item Number Eight, which is State's Exhibit Forty-two?

A. It was given to me as being the buccle swab from Mr. Heath.

Q. From Mr. Heath. Dantonyo Heath?

A. Yes.

Q. And were you able to develop a DNA profile from the buccle swabs from Mr. Heath?

A. Yes I was.

Q. And after developing that profile did you do any comparisons with the results from the previous testing of the swab at the 1.1?

A. Yes. I already generated a DNA profile from Item 1.1 so once I receive the standard from Mr. Heath, all I had to do was generate a DNA profile from the buccle swab and then do a comparison between the two.

Q. And did you do that?

A. Yes I did.

Q. And what were the results of that comparison?

A. I'm reading from my report that the DNA obtained from Item 1.1 was a mixture of at least two individuals. The DNA profile of the major contributor to Item 1.1 also matches the DNA profile of Jared Crane. Dantonyo Heath cannot be excluded as the minor contributor to this mixture.

Q. Okay. What does "cannot be excluded" mean?

A. That when I compared the DNA that came from Item 1.1 and the buccal swab standard from Mr. Heath I could not exclude him as being a contributor. I looked at each low side that we look at in our lab, which is 15 to check and see if his profile is there and as I went along looking at

each one there were oleos that could be contributed to him.
Q. And was there a probability number that he could not be excluded by that you determined?
A. Yes. I generated a probability. Again I'm reading from my report and it states that the probability of randomly selected an unrelated individual who could have contributed to this mixture is approximately one in one hundred and eleven.
Q. And if you can explain in layman's terms, you sort of had to do it for me, exactly what that means?
A. Okay. The DNA that I obtained from Item 1.1 is a mixture and the major contributor is matching Mr. Crane. But also I looked at the minor contributor and looking at each one of the areas on the chromosomes that we utilize in the laboratory, based on our protocol, there are low side or areas on the chromosome that I could not use in the statistical calculation but I could use them to include or exclude an individual. In this particular case there are only a few of the low side areas that I could use in the statistical calculation and then I ended up with the number of one in one hundred and eleven.
Q. But -- But it boils down to Mr. Heath could not be excluded?
A. He could not be excluded.
Q. You could not say that it's absolutely him that

contributed to that DNA profile but he cannot be excluded?
A. I could not exclude him from being a part of this mixture and once I could not exclude him then I generated a match statistic on that probability.
Q. Thank you.
SOLICITOR SHELTON: Your Honor, at this time I ask to move State's Exhibits Forty-one and Forty-two into evidence.
MR. FREEMAN: No objection.
MR. SMITH: No objection.
THE COURT: In without objection.
(WHEREUPON: STATE'S EXHIBIT NUMBERS FORTY-ONE AND FORTY-TWO, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)
SOLICITOR SHELTON: Ms. Gallman, please answer any questions defense has for you.

CROSS EXAMINATION

LILY GALLMAN BY MR. FREEMAN:
Q. Ms. Gallman, you don't have any of this DNA evidence if in any way fails to exclude, I'm going to use your phrase, Mr. Robinson. The only evidence you have other than Mr. Crane is from Mr. Heath. Is that correct?
A. Yes. Based on the samples that were given to me.
Q. Based on what you were given?
A. Yes.
Q. So the only way you would have Mr. Robinson's name is

somebody gave it to you when they gave you this report information. Is that correct?

A. They listed him as a subject in this particular case.

Q. But it's zero DNA evidence that you have that says his DNA matches any of those swabs or cutting or any of that?

A. That's correct.

Q. Okay.

MR. FREEMAN: I have nothing further.

THE COURT: Mr. Smith.

MR. SMITH: Thank you, Your Honor, may it please the Court.

CROSS EXAMINATION

LILY GALLMAN BY MR. SMITH:

Q. Agent Gallman, based on your report in all the items that you analyzed you found two matches. Is that right? Or you matched two individuals.

A. Yes.

Q. Okay. And one of those individuals is Jared Crane?

A. Yes.

Q. And the other one is Ernest Jordan?

A. Well, I have three people.

Q. You have three people. You have two matches?

A. That's not totally correct. I could not exclude Mr. Heath.

Q. It's your report. Show me where it says match by my

client's name.

A. It says that I could not exclude him. If I could have excluded him the report would have stated that. Based on the fact that this is a mixture to error on the conservative side we say that we could not exclude and then we put a statistical value to that.

Q. Let's error on the side your report. Does it say match by my client Dantonyo Heath?

A. It does not say actually -- It does not say match it says I could not exclude him as a contributor to that mixture.

Q. Okay. It says the DNA matches Jared Crane. Correct?

A. Because he was the major contributor in this particular sample and I was able to pull his DNA profile out of the mixture.

Q. It says --

A. There was more him there than anyone else.

Q. It says the DNA matches Jared Crane. Correct?

A. Yes. Again, he was the major contributor. I was able to pull his DNA profile out the mixture so I could state that he matched.

Q. It says --

A. The DNA from the minor contributor is less in that particular sample. And also some of the oleos are the same for Mr. Crane and Mr. Heath, so I was not able to

definitively state that he matched the minor contributor but I could not exclude him.

Q. It says the DNA matches Ernest Jordan. Is that correct?

A. Yes. It's from a single source individual, there's no mixture there.

Q. Okay. And the statistical odds of it being someone other than Jared Crane are how much?

A. One in eleven quadrillion. Quadrillion.

Q. Quadrillion?

A. Sorry. Quadrillion.

Q. What's the population of the earth?

A. They say it's around seven or eight billion now.

Q. So now where close to what these odds are that it's not Mr. Crane. Correct?

A. No. If you read the whole statement it says a randomly selected an unrelated individual.

Q. Right.

A. Yes.

Q. So not an identical twin or something like that. Okay. The odds of the match of Ernest Jordan being some other random individual are how much?

A. One in six hundred and fifty quadrillion.

Q. Not just eleven quadrillion but six hundred and fifty quadrillion?

A. Yes. But that's based on that particular DNA profile how often you would see it in a given population.

Q. Right. To see if we just had somebody else what are the odds that it's anybody's DNA other than Mr. Jordan's. Right?

A. Yes.

Q. And there are one in one hundred -- I'm sorry, six hundred and fifty quadrillion or basically nonexistent. And that's why per your protocol you're trained to call those matches. Right?

A. It's not based on a statistical value. The matches is established before any statistics is applied to it.

Q. Right. So before we even get to those numbers you call these two matches and this one not?

A. I wouldn't say that he's not in that particular sample. I said he could not be excluded from that sample based on the information that I had.

Q. You can't call him a match. Right?

A. I could not pull his DNA profile out of that mixture.

Q. Per your training you can't call what you got on Dantonyo Heath a match?

A. I could not exclude him. I --

THE COURT: Well let's just - We been going kind of around in a circle here.

He's asking you a specific question and then just

answer the question. You don't need be expanding on it just give - you can give him a yes or no answer.

A. I did not place him in the match category for that particular samples based on the information that I had.

Q. That's right. And you couldn't place those in match category?

A. Because --

THE COURT: For the record, those?

MR. SMITH: I'm sorry.

Q. Mr. Jordan and Mr. Crane.

A. With Mr. Jordan there was a single source sample meaning that there was only one person there. Mr. Crane, he was the major contributor in that sample and I was able to do that with him, call it a match.

Q. Call him a match?

A. Uh-huh.

Q. And then when you go past that to look at the odds you've got with Mr. Crane one in eleven quadrillion. Correct?

A. Yes. But that I could just take his DNA profile. It doesn't mean -- It's not because it's Mr. Crane's DNA profile. You take a particular DNA profile and establish a statistical value for that profile.

Q. That's right. Because truth be told you don't know who's DNA it is?

A. I could generate a DNA profile without having his standard.

Q. Right. So all you know are the odds in randomly finding something that matches those exact elils that are listed when you look at the fifteen locite u test?

A. Yes. That's why I say the matches are established up front and then you generate the statistical value.

Q. So we had two matches, one not matching, you went to do the statistics?

A. I had two matches and could not exclude.

Q. And if it had matched you would have written match. Right?

A. If I was able to pull his DNA profile out as a minor contributor single source I would have said match.

Q. So since you couldn't, you didn't put match?

A. That's correct.

Q. All right. So then you go to the odds and the odds of any random person being selected and being placed in the same category that this report puts Antonio Heath is how many?

A. When you're generating --

THE COURT: Again, he asked you a specific question. If you can answer it answer it, then you can maybe explain it. When he ask a question he deserves a direct preciseness.

WITNESS: Yes, sir. It's just hard. Too much knowledge. Too much knowledge.

THE COURT: Well yeah.

A. Okay. Would you ask your question again?

Q. Sure. The odds of selecting a random person and putting them in that same test and having them end up in the same category that you have placed Dantonyo Heath would be what?

A. I'll read from my report, okay.

Q. Yes, ma'am.

A. The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately one in one hundred and eleven.

Q. One in one hundred and eleven. Just randomly pick someone and every one hundred and eleventh person would be placed in the same category your report puts Dantonyo Heath. Is that correct?

A. If you - Looking at this statistic, yes.

Q. Yes, ma'am. And that's why you can't call it a match.

A. I placed him in the cannot exclude category.

Q. Right. Just like you couldn't exclude every one hundred and eleventh person if we just started grabbing random person from this courtroom, these streets, or that detention center?

A. I'm sorry, sir. It doesn't actually work like that.

Q. It doesn't. But per your training you're allowed to say match for certain things that have high values and you can't say match for certain things that aren't reliable. Right?

A. No. What you're saying is not correct. I could have gotten a partial profile with a single source and that particular number could have been one in one hundred and eleven. I can't draw conclusion on that.

Q. Okay. But you were able to tell that there were more than one person's DNA on some of these items. Is that right?

A. Yes.

Q. Okay. So there's DNA there that you're able to pull out and test. Is that right?

A. That's correct.

Q. Okay. And perhaps some other individual would have had statistic odds of being matched a whole lot higher than one hundred and eleven. Right?

A. No. It doesn't work like that. I obtain DNA from a sample and whether I could utilize all of the areas on the chromosome also comes into play when you're generating a statistical value.

Q. And did you have another suspect to test?

A. No I did not.

MR. SMITH: No further questions.

THE COURT: Redirect?

SOLICITOR SHELTON: Very briefly, Your Honor.

REDIRECT EXAMINATION

LILY GALLMAN BY SOLICITOR SHELTON:

Q. Ms. Gallman, based on your training experience and the number of times you've prepared reports, can you have a not match?

A. Yes.

Q. And that is not what you had from Mr. Heath. Correct?

A. No it was not.

Q. And there are times when you compare the DNA profiles and your determination is he doesn't match?

A. Yes and in this particular case where I have a mixture if I looked at the DNA obtained from either 1.1 and look at Mr. Heath's DNA, his standard, his profile, if he was not in this sample I would say that he was excluded as a contributor to this mixture.

Q. And that would be the not match?

A. Yes.

Q. So you do have two matches Mr. Crane and Mr. Jordan?

A. Yes.

Q. And they were single - In some of those swabs they were the single contributors and there are quadrillions and quadrillions of that's the match and that you call that a match?

A. Yes.
Q. And then you would have some people that don't show up at all and that would be when you use the words not match?
A. I would say they're not there, yes.
Q. And there's been some talk about other swabs that were tested and it's part of your report. You did test some other swabs that were sent to you?
A. Yes I did.
Q. And what were those other swabs?
A. I received swabs from the shop floor and swab from the rim off the --
Q. The tire rim?
A. The tire rim also. And the swab from the tire rim matched Ernest Jordan and the swab from the shop floor matched Jared Crane.
Q. Did you also receive a swab four and five?
A. Yes. I did.
Q. And was there any DNA on those swabs?
THE COURT: Ms. Shelton.
SOLICITOR SHELTON: I'm sorry, Your Honor.
Q. Was there any DNA on those two swabs?
A. No. I was not able to extract any DNA from those two swabs.
Q. Thank you.
THE COURT: Mr. Freeman?

RECROSS EXAMINATION

LILY GALLMAN BY MR. FREEMAN:

Q. What was on those two swabs, the ones that you couldn't match any DNA?

A. The two swabs were our Item Number Four and Five.

Q. Right.

A. They gave indication of blood but I was not able to extract any DNA from them.

Q. So they were no good to you for DNA analysis purposes?

A. Yes.

MR. FREEMAN: No further questions.

THE COURT: Mr. Smith?

MR. SMITH: Nothing further, Your Honor.

THE COURT: You can step down and be excused. We appreciate your time and we'll take a break.

(WITNESS LEAVING WITNESS STAND.)

SOLICITOR SHELTON: Thank you.

THE COURT: About a ten minute break. If you will follow the bailiff to the jury room for a refresher.

(JURY EXITS COURTROOM AT 04:00 P.M..)

(COURT IN RECESS AT 04:00 P.M..)

(WHEREUPON: COURT'S EXHIBIT NUMBER ONE MARKED FOR IDENTIFICATION, RECEIVED INTO EVIDENCE.)

(COURT BACK IN SESSION AT 04:24 P.M..)

THE COURT: Take your seats.

Bring in the defendants.

(DEFENDANT'S REENTER COURTROOM.)

THE COURT: Bring in the jury.

(JURY REENTERS COURTROOM AT 04:25 P.M..)

THE COURT: Call your next witness.

SOLICITOR SHELTON: Your Honor, the state would call Amanda Crane at this time.

MADAME CLERK: Please raise your right hand, place your left hand on the Bible.

(WHEREUPON: AMANDA CRANE, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:

MADAME CLERK: Thank you. Take a seat right up there.

DIRECT EXAMINATION

AMANDA CRANE BY SOLICITOR SHELTON:

Q. State your name for the record please?

A. Amanda Crane.

Q. Ms. Crane, where do you live?

A. I live in Lancaster, South Carolina.

Q. And are you married?

A. I am married.

Q. Who are you married to?

A. I'm married to Jared Crane.

Q. And were you married on June 8th of 2011?

A. Yes, ma'am.

Q. Where was Jared working at that time?

A. He was working at Five Star Customs.
Q. And where is that at?
A. It's located on Cherry Road in Rock Hill.
Q. And did you have an opportunity to see your husband that night?
A. Yes, ma'am, I did.
Q. And where did you see him?
A. I saw him at his place of business at the Five Star Customs.
Q. How many times did you see him?
A. A few.
Q. Did anything unusual happen?
A. Yes, ma'am. I had been with Jared and left to go get us something to eat and when I returned there were two black males carrying the owner Ernest out of the building when I returned. I called out Jared's name. I couldn't find him and I walked in the building and he was coming out of the bathroom untying himself, bleeding from his face.
Q. Did you know what was going on?
A. No.
Q. Did he say anything to you?
A. All he --
Q. Without saying what he said, was he saying something to you?
A. Yeah. He was responsive to me, yeah.

Q. Did anything -- Once you found him what happened, what happened next?

A. After I found him we talked for a split second and he pushed me to the bathroom in the front of the store and put me in the ceiling.

Q. He put you in the ceiling?

A. Yeah.

Q. How long did you stay up in the ceiling?

A. I stayed there I would say ten, fifteen minutes until the police arrived.

Q. And you testified that when you got back you saw two males walking out with Neal? Who is Neal?

A. Ernest Jordan, the owner of the business.

Q. And did you have any kind of interaction with either of those males that you saw walking him out?

A. When they walked past the first time, one of them said he'd be out in a minute and a few minutes later one of them approached my car and asked me for my cell phone.

Q. And when he approached your car what was the lighting like?

A. It was dark outside but there was light out there. I had the inside light in my car was on. The store lights next door were on and there was lights coming from inside of the building from the door that they had exited out of.

Q. Did the person that came up to your car have anything

over his face?

A. He had something around his neck but nothing over his face no, ma'am.

Q. Were you able to get a good look at his face?

A. Yes, ma'am.

Q. And did you say he asked you for something?

A. He asked me for my cell phone.

Q. And what did you tell him?

A. I told him that my phone was dead, that my husband was inside and he could use his.

Q. And did you ever -- Were you ever shown a line up of that person?

A. No, ma'am.

Q. Why not?

A. Because they asked to show me one that night in the hospital and my husband was still shaken up and scared of what happened and he didn't want me to get involved in fear of my safety.

Q. And have you seen that suspect since that night?

A. Yes, ma'am.

Q. How often or where?

A. I've seen a picture and I've seen him in bond hearing.

Q. And are you able to point him out in the courtroom today?

A. Yes, ma'am.

Q. Where is he?

MR. SMITH: Objection.

THE COURT: Overruled. Based on earlier ruling your objection is overruled.

Q. Where is he?

A. He's sitting over here in a blue suit with a tie and a button up blue shirt.

Q. And are you saying that's the person that asked you for your phone that night?

A. Yes, ma'am.

Q. Are you basing that on the picture that you saw after?

A. No, ma'am. I clearly saw him that night.

Q. And are you a hundred percent sure that's him?

A. Yes, ma'am.

Q. Mrs. Crane, I'm going to show you a few pictures.

A. Okay.

SOLICITOR SHELTON: Thirteen, Fourteen, Fifteen, Sixteen, Seventeen. That should be it.

(WHEREUPON: STATE'S EXHIBITS THIRTEEN THROUGH SEVENTEEN PREMARKED FOR IDENTIFICATION.)

Q. I'm going to show you what's been marked for identification of State's Exhibits Thirteen through Seventeen. I'm going to ask you to look through those pictures.

(WITNESS REVIEWING EXHIBITS.)

Q. Do you recognize those picture?

A. Yes, ma'am.

Q. What are those pictures of?

A. They're pictures of my husband's injuries.

Q. And were those taken that night?

A. Yes, ma'am.

Q. And were you -- you were with him that night?

A. Yes, ma'am.

Q. Do those pictures accurately reflect your husband that evening?

A. Yes, ma'am.

SOLICITOR SHELTON: Your Honor, at this time we would ask to move State's Exhibits Thirteen through Seventeen into evidence.

THE COURT: You seen them?

MR. FREEMAN: No, Your Honor.

(DEFENSE COUNSEL REVIEWING EXHIBITS.)

THE COURT: Any objections, Mr. Freeman?

MR. FREEMAN: Two things, Your Honor. I don't think we have proper authentication and secondly I believe the person in the pictures is available to testify. Perhaps at that time it would be better suited coming in, but she didn't say she took them and he's available.

MR. SMITH: No objection.

THE COURT: In over objection.

(WHEREUPON: STATE'S EXHIBITS THIRTEEN THROUGH SEVENTEEN IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

SOLICITOR SHELTON: Thank you, Your Honor.

Let me see Number Thirteen.

(STATE'S EXHIBIT THIRTEEN PUBLISHED ON OVER HEAD.)

Q. Mrs. Crane, what is this a picture of?

A. It's a picture of Jared's knee from where he was fighting on the concrete.

Q. If you can refrain from commenting too much on what the pictures are of just because you weren't --

A. Okay.

Q. But I'll ask you some questions but just refrain from making comments about what they're about?

A. Okay.

Q. Just from the questions. And did he knees normally look like that?

A. No, ma'am.

Q. And that's what they looked like that night?

A. Yes, ma'am.

SOLICITOR SHELTON: And State's Exhibit Number Fourteen.

(STATE'S EXHIBIT FOURTEEN PUBLISHED ON OVER HEAD.)

Q. And what is that a picture of?

A. His forearm.

Q. And is -- Is that mark that is on there is that

normally there?

A. No, ma'am.

Q. Is that something that was there that evening?

A. Yes, ma'am.

SOLICITOR SHELTON: And State's Exhibit Number Fifteen.

(STATE'S EXHIBIT FIFTEEN PUBLISHED ON OVER HEAD.)

Q. What's that a picture of?

A. Jared's ear.

Q. And the back of his neck?

A. And the back of his -- yes, ma'am.

Q. Could you from your own physical from looking at him that could you see anything on the back of his neck? What did the back of his neck or his ear look like?

A. It was just real red and swollen.

Q. And State's Exhibit Number Sixteen.

(STATE'S EXHIBIT SIXTEEN PUBLISHED ON THE OVER HEAD.)

Q. And that's a picture of?

A. His face.

Q. And that's your husband?

A. Yes, ma'am.

Q. Are those -- Is that how he normally looks or is that from that evening?

A. That's from that evening.

SOLICITOR SHELTON: And Number Seventeen.

(STATE'S EXHIBIT SEVENTEEN PUBLISHED ON OVER HEAD.)

Q. And that's a picture of?

A. My husband.

Q. And again from his injuries that he received that night?

A. Yes, ma'am.

Q. Mrs. Crane, you previously testified about your encounter with your husband when you came in. I'm going to show a clip from State's Exhibit Number Eight, which was previously admitted into evidence.

(STATE'S EXHIBIT EIGHT PUBLISHED ON OVER HEAD.)

Q. Who is that?

A. That's me.

Q. And what are you saying to him at this point?

A. I'm just trying to figure out what's going on, what's -- trying to ask if I need to call the cops. I'm just -- I don't know what's happening.

Q. What are you going back to get there?

A. A cell phone.

Q. Whose cell phone is that?

A. My husband's.

Q. And at that point in time, what were you feeling?

A. I was scared. I was worried. I didn't know what was happening or what had happened to him.

Q. Could you see your husband's injuries at that point?

A. Yes, ma'am.

Q. And then after that when you go off camera is that when he took you and put you in the ceiling?

A. Yes, ma'am.

Q. And what room did he take you into?

A. It was the bathroom in the front of the shop where the sales go on. There's a bathroom, a public bathroom in the front.

Q. Did he have to punch out any ceiling tiles?

A. Yeah. He had to take them down. He took out two ceiling tiles and then placed me in.

Q. As far as you know after that did you see either Mr. Heath or Mr. Robinson after that evening?

A. No, ma'am.

Q. They never came back in?

A. No, ma'am.

Q. And when you -- once you got back -- once you got out of the ceiling did you ever go back to your car?

A. Not at that time.

Q. But at some point did you go back to your car? Was your cell phone there?

A. No, ma'am.

SOLICITOR SHELTON: Court's indulgence, Your Honor.

(PAUSE.)

SOLICITOR SHELTON: Please answer any questions

defense has for you.

MR. FREEMAN: Thank you.

CROSS EXAMINATION

AMANDA CRANE BY MR. FREEMAN:

Q. Mrs. Crane, you testified earlier that you knew Mr. Jordan and obviously your husband. You recognized both of them. Correct? The only other person though that you identified that night was Mr. Heath. Is that correct?

A. Yes sir.

Q. That's the guy that leaned over to your car. That's the only other person you can positively identify and I believe you said with a hundred percent certainty?

A. Yes sir.

MR. FREEMAN: I have no further questions.

THE COURT: Mr. Smith.

CROSS EXAMINATION

AMANDA CRANE BY MR. SMITH

Q. Mrs. Crane, let me clarify. That night you didn't identify Mr. Heath. is that right?

A. I didn't identify him. No, sir.

Q. When you first came into the building did you have anything in your hands at that point?

A. No, sir.

Q. Okay. And you indicated when you went back to your car that your cell phone was not in your car. Is that

where you had left it?
A. Yes, sir.
Q. Did you give a description that night to the police of either of the individuals that you saw?
A. I don't recall.
Q. Okay. At some point did you give a signed statement, maybe on June 9th of 2011?
A. Yes, sir.
Q. And in there was your description "one black male was wearing a black shirt and dark colored pants and the other was wearing a white t-shirt and jeans. I'm not sure of the color"?
A. Yes, sir.
Q. Okay. Is that the entirety of the descriptions that you've ever given to police?
A. Yes, sir.
Q. Okay. So never anything about height, skin tone, hairstyle or anything like that?
A. No, sir.
Q. And you indicated that part of the way you're confident and you can identify Mr. Heath is that you had seen a picture. Is that right?
A. Yes, sir.
Q. Where did you see a picture?
A. I don't recall. It's been -- it was after this

happened. I don't recall. I don't remember.

SOLICITOR SHELTON: Objection Your Honor. May we approach?

(SIDE BAR OFF THE RECORD OUT OF THE HEARING OF THE JURY AT 04:41 P.M..)

THE COURT: We'll start over.

You don't have to answer this time.

BY MR. SMITH:

Q. And then you indicated that you saw Mr. Heath at a bond hearing. Is that right? And by then he had already been arrested. Is that fair to say?

A. Yes, sir.

Q. And was he handcuffed and brought into a courtroom wearing the prisoner jump suit?

A. I believe so.

Q. Okay. But the night of the incident you indicated when the police ask you if you wanted to look at a photo lineup and be able to potentially pick him out and you did not that night. Is that right?

A. No, sir. I didn't.

Q. And you talked about going up in the ceiling. Did your husband climb up in the ceiling with you as well that evening?

A. He did for a second and he fell back out and he didn't get back up with me.

Q. Okay.

MR. SMITH: Thank you, I have no further questions.

THE COURT: Redirect?

SOLICITOR SHELTON: If I could just ask one question just to clarify the photo issue.

REDIRECT EXAMINATION

AMANDA CRANE BY SOLICITOR SHELTON:

Q. The photo that you testified about seeing, that was not shown to you by anyone in law enforcement in an attempt to influence an ID was it?

A. No, ma'am.

THE COURT: Mr. Freeman?

MR. FREEMAN: Nothing in response, Your Honor.

MR. SMITH: Nothing, Your Honor.

THE COURT: You can step down and be excused. We appreciate your time.

(WITNESS LEAVING WITNESS STAND.)

THE COURT: Call your next witness.

SOLICITOR SHELTON: Your Honor, the State at this time would call Jared Crane.

MADAME CLERK: Raise your right hand, place your left hand on the Bible.

(WHEREUPON, JARED CRANE, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

MADAME CLERK: Thank you. Please have a seat right up

there.

DIRECT EXAMINATION

JARED CRANE BY SOLICITOR SHELTON:

Q. State your name for the record please?

A. Jared Crane.

Q. Mr. Crane, where do you live?

A. In Lancaster, South Carolina.

Q. And going back to June 8th of 2011, where were you employed?

A. Five Star Customs.

Q. Where is that at?

A. On Cherry Road in Rock Hill.

Q. And who was your employer?

A. Neal Jordan -- Ernest Jordan.

Q. And what did you do at Five Star Customs?

A. Paint cars. Sand, tape up and paint cars.

Q. How long did you work there?

A. Maybe a year, close, give or take a month or two.

Q. And worked consistently there?

A. Yeah. Yes, ma'am.

Q. How long had you been painting cars there?

A. The whole time.

Q. The whole time?

A. Yeah.

Q. On the night of June 8th of 2011, did anything unusual

happen that evening?

A. Yes, ma'am.

Q. And just briefly tell the jury what happened.

A. I said me and Neal were there by ourselves. My wife had came and I asked her to go get me something to eat because it was going to be a little bit longer and she left to go get me something to eat. Neal walked around the corner to get some sand paper -- a piece of sand paper or something and I heard the shop door slide up. I looked and seen Marquis Robinson running around the corner and he could have had his whole shirt over his head and, I mean, I could still knew it was him, but like I said he had his shirt over his nose. When he run by me - I mean I thought him and Neal were good friends so I figured maybe that's a stupid way they play so I thought nothing about it and he didn't say anything to me. He went on by. I didn't hear anything going on. I was painting a car.

Like I said I didn't pay it any attention at all. Maybe five -- four or five minutes later I heard a chrome rim hit the floor. Knew that wasn't right. New chrome rims wasn't supposed to hit the ground that hard. I walked around the corner to see what was going on and when I come around the corner the gun shot went off right before I even got around the corner. So at that time I was at full alert and, you know, about the time I got around to see what was

going on bells started ringing and everything went black. I knew -- I mean I've been hit before and I knew I was hit. I knew something hit me.

Q. All right. Just -- just stop right there. Your testimony today is that you heard the gunshot before you got hit?

A. Yes, ma'am.

Q. Are you sure about that?

A. I'm not one hundred percent positive.

Q. And it's your testimony. I just want to make sure.

A. I'm not one hundred percent positive. I do know I heard the chrome rim hit the ground before I was struck.

Q. Okay.

A. Because that's what drawed my attention away from what I was doing.

Q. And then you were hit. Did you see the person who hit you?

A. No, not when first hit.

Q. Were you wearing anything as far as on your head? Did you have a hat on?

A. Uh-huh.

Q. What kind of hat did you have on?

A. A Texas Longhorn hat.

Q. And did you have in your possession a knife or anything like that?

A. Yes, ma'am.
Q. Was that knife collected from evidence?
A. Yes, ma'am.
Q. Did you use that knife at any time during the --
A. I was going to yeah, but I was advised that if I didn't drop the knife that my wife would be hurt when she got back so I threw the knife.
Q. Other than being hit were you assaulted in any other way?
A. Yeah. I was choked for about five or ten -- about five or six minutes repeatedly.
Q. Do you know where Mr. Jordan was during this period of time?
A. He was in the bathroom for a good little bit of it and then it come out into the shop right next to the tire changing machine.
Q. Could you see him in the bathroom?
A. No. I couldn't see him in the bathroom but I could see him when he come out of the bathroom.
Q. How -- What happened after the assault stopped? Where did you go next?
A. I was in the bathroom but I mean when it finally when I guess he finally realized that I wasn't -- he wasn't going to make me pass out or put me to sleep I was told to get on the floor and crawl to the bathroom.

Q. And did you do that?
A. I did.
Q. And what did they do once they got you into the bathroom?
A. Tied me up -- I mean not instantaneous. My pockets were gone through. Well I was tied up and then my pockets were gone through.
Q. Did at any point in any time did anybody ever point a gun at you or did you see the gun at any time?
A. I did see the gun but it was never pointed at me.
Q. Who'd you see with the gun?
A. Marquis Robinson.
Q. What were you feeling when all of this was going on?
A. I was fighting for my life.
(WITNESS CRYING.)
A. I was feeling like I was fixin to die.
Q. Did they at some point leave you in the bathroom by yourself?
A. Yeah.
Q. And what were you able to do once you were -- once they left you alone?
A. Untie myself.
Q. What happened after you got yourself untied?
A. While I was untying myself Dantonyo come back and told me I better not move and I better stay in the bathroom

until I knew they were gone and I was in the process of untying myself when I heard him coming back so I stopped. Like I said he opened up the door and told me I better not come out until I knew they were gone. And when he shut the door back again I snuck over to the door and stuck my ear to the door and I didn't hear anything so I peeped out the door and didn't see anything so I come out and then I seen my wife.

Q. And what were you saying to your wife when you first saw her?

A. Come on. Come with me. I knew what I was gonna do the whole time.

Q. And what -- When you saw your wife in there what were you feeling at that point?

A. That I needed to get her out of the situation.

(WITNESS CRYING.)

Q. And where did you go with your wife?

A. I took her into the front bathroom and put her in the ceiling.

Q. After that did you ever see -- That evening did you ever see Mr. Robinson or Mr. Heath again that evening?

A. No.

Q. Did law enforcement show up?

A. Yes.

Q. And did you end up going to the hospital?

A. Yes.

Q. While you were at the hospital did you meet with any detectives?

A. I did.

Q. And in meeting with the detectives did they show you anything?

A. They showed me a photograph line up. She, not they. She. It was one person.

Q. Do you remember the detectives name? If you don't it's okay.

A. I don't remember her name but it was a black lady.

Q. And the lineup that she showed you, how many pictures were in it?

A. Six.

Q. And just thinking about the pictures how were they similar to each other, the physical description of them?

A. Hairstyles were the same. Skin tone the same. Build, weight about the same.

Q. And when she showed you the photo of just the lineup was there anyone else present?

A. My wife.

Q. Was there anybody else with the detective?

A. No, ma'am.

Q. Did the detective or your wife or anybody say anything to influence your decision?

A. No, ma'am.

Q. Did they point out anybody to you?

A. They didn't have to.

Q. Was there any markings on the photos suggesting who the suspect was?

A. No.

Q. Did they show you any single picture of the suspect before showing you the lineup?

A. No, ma'am. I had an image burned in my head. I knew who it was.

Q. And you previously testified that you knew Mr. Jordan and Marquis as friends. You had seen Marquis Robinson before?

A. Yes, ma'am.

Q. Approximately how many times?

A. Three of four times. Actually I had about a thirty minute conversation with him in the paint mixer room just me and him. Him asking me how to airbrush and the details to airbrush so he could do something on his wheels.

Q. And the -- Where the assault occurred and the robbery occurred, how was it lit?

A. It was bright.

Q. And were you able to get a good look at Mr. Robinson?

A. Yes.

Q. Show you what's been marked as State's Exhibit Number

Thirty-eight. Do you recognize that?

A. Yes, ma'am.

Q. What is it?

A. It's the photo lineup that I was given that night.

Q. And when it was given to you did anyone say anything to you to suggest which picture to pick?

A. No, ma'am.

Q. And were you able to pick a picture?

A. I was.

Q. How long did it take you?

A. Instantaneous.

Q. And which picture did you pick out?

A. Marquis Robinson.

Q. And is Mr. Robinson here today?

A. He is.

Q. Could you point him out please?

A. Sitting right there.

(WITNESS INDICATED.)

Q. What's he wearing?

A. Blue shirt with light blue stripes.

Q. And is this the same lineup you were showed that evening?

A. It is. It's the exact same. It's my initials and my - everything.

SOLICITOR SHELTON: Your Honor, at this time I would

ask to move State's Exhibit Thirty-eight into evidence.

MR. FREEMAN: Same objection as yesterday.

THE COURT: Based on earlier -

MR. SMITH: No objection.

THE COURT: Based on earlier ruling it's allowed into evidence over objection.

(WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-EIGHT IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

SOLICITOR SHELTON: Thank you, Your Honor.

Q. And just very briefly, Mr. Crane, at some point did you meet with Detective Stokes?

A. I did.

Q. With another lineup?

A. Yes.

Q. And were you able to positively identify anybody out of that lineup?

A. I was not.

SOLICITOR SHELTON: The Court's indulgence, Your Honor.

(PAUSE.)

SOLICITOR SHELTON: Please answer any questions defense has for you.

THE COURT: Mr. Freeman?

MR. FREEMAN: Thank you, Your Honor.

CROSS EXAMINATION

JARED CRANE BY MR. FREEMAN:

Q. Mr. Crane, you said you'd been working there most of the year give or take?
A. Yeah.
Q. And going back to that evening you were working, I guess working late?
A. Yeah.
Q. 9:30 I believe?
A. Yep.
Q. Were you paid by the job or by the hour?
A. I'm paid salary. I get paid the same thing regardless.
Q. And you've indicated that you recognized Mr. Robinson.
A. Yes.
Q. Having seen him before. Before that evening did you know his name?
A. Yes.
Q. Well the statement you gave to police the next day you didn't give them his name, did you?
A. I'm not sure. As I've already stated I was asked different questions by about four or five police officers and I wasn't available -- I mean I wasn't given a chance to look at my statement for at least a month later.
Q. Okay. But if you refer to him as that guy. I mean you're saying that you knew who he was?
A. Yeah.

Q. But in the police statement you referred to this guy and that guy mostly. Does that sound right?

A. Maybe they didn't understand me correctly. Like I said I talked to four or five different cops that night that were taking statements from me.

Q. This would have been the next day. Do you recall giving a statement to Detective Stokes?

A. Yeah.

Q. The main officer?

A. Uh-huh.

Q. And you testimony is that you can identify Mr. Robinson but not the other gentleman at that time?

A. It's not that I can't identify him because I mean in the picture it didn't look like he did in person.

Q. Okay. Did you give them a description of the people?

A. I did.

Q. Did you say tall, short, et cetera?

A. I did.

Q. And that also is not in the statement that you gave to the detective?

A. There's a lot of stuff that's not in that statement.

Q. Now you had said earlier you heard one of the rims hit the floor and that's not supposed to happen because they're expensive and they could get scratched or damaged. Right?

A. That's exactly right.

Q. That's the bread and butter of a shop like that. And then you said - and I want to be clear on this - You said you heard something that you thought might be fire crackers?

A. A firecracker.

Q. A firecracker. And you believe now that that was a gunshot?

A. I know now it was a gunshot.

Q. And you just heard that once?

A. That's a loud shop. I mean the way the walls are built the air compressor is in where I was painting so I mean like I said the gunshot that I heard may have been the second one I don't know.

Q. All you know is that you heard one shot?

A. I do that.

Q. That's all you can say with certainty?

A. That's -- I can.

Q. And then the person who was assaulting you was not Mr. Robinson.

A. That's correct.

Q. Not the person you identified as Mr. Robinson, it was the other individual?

A. That's correct.

Q. Okay.

MR. FREEMAN: I beg the Court's indulgence on moment, Your Honor.

(PAUSE.)

Q. Now at the end of this incident you said you called 911?

A. No I did not.

Q. I'm sorry. Neal called 911?

A. Yes.

Q. What about the cell phone that your wife had? Was that yours our hers?

A. That was mine.

Q. You didn't call the police or have her call the police on that?

A. No. I thought -- that's what she told me she was going to do. That's the reason why she ran back and grabbed the phone so I figured she did.

Q. You don't specifically recall saying call the police, don't call the police, anything like that?

A. No.

Q. Is there a lan line in the shop?

A. There was but like I said that was behind the counter. I've only been behind the counter one or two times so I didn't know exactly where it was at.

Q. But the bathroom that you ended up in was in the front of the shop ---

A. It was.
Q. --- closer to the counter.
A. Uh-huh.
Q. Not in what I call the body shop?
A. Yeah.
Q. The back area. Did you know, if you do, did the shop have an internal alarm, a fire alarm or anything?
A. It did.
Q. Okay. Did you know where that button was?
A. It was at the front of the shop but I mean I wouldn't know what to mash not even to this day for it to go off unless I had one personally.
Q. Okay.
A. I mean the only I know to get it to go off is knock a window out.
Q. Again you didn't do that?
A. No.
Q. How long, if you know, was it until the police arrived after, let's say your wife got there?
A. After she got there?
Q. Yes, sir.
A. Twenty minutes, twenty-five minutes.
Q. Did the ambulance arrive first?
A. No the police.
Q. How did you get from the shop to the hospital? Was it

in the ambulance? Did someone drive you?

A. I think -- I'm not a hundred percent positive but I believe it was in a county car, a undercover car.

Q. You didn't drive yourself?

A. No I did not.

Q. And your wife didn't drive you?

A. No.

Q. And you were discharged from the hospital that evening?

A. Yes.

MR. FREEMAN: I don't have any further questions, Your Honor.

THE COURT: Mr. Smith.

MR. FREEMAN: Your Honor, I apologize, but may I approach the bench?

THE COURT: Yes.

(BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF THE JURY AT 04:58 P.M..)

MR. SMITH: May it please the Court, Your Honor.

CROSS EXAMINATION

JARED CRANE BY MR. SMITH:

Q. Mr. Crane, you were shown a second photo lineup that you talked about. Is that correct?

A. Yes.

Q. And from there you couldn't identify anyone from that

photo lineup?

A. No. I wasn't even going to attempt to identify so I saw no need in pointing a finger at somebody who didn't do it.

Q. Right. When did you -- I notice today you said Dantonyo, I think referring to Mr. Heath. When did you learn the name Dantonyo Heath?

A. I really don't know. Sometime after all this happened.

Q. Okay. How about the name Yodi? When did you learn that name?

A. I actually heard Yogi that night is what I thought was Yogi. I mean I heard that name called out that night, but like I said nickname. I didn't know.

Q. Okay. And the police were obviously trying to figure out the identities of who had done this. Is that correct?

A. Yes, sir.

Q. And you cooperated with them to tell them what information you knew. Is that right?

A. Yes, sir.

Q. And that's why in your statement somewhere you put that nickname?

A. That's what I heard that night.

Q. Okay. But you were able to prepare a full two page statement. Is that right?

A. Yes, sir.

Q. And no where in there do you mention that you heard that name said, do you?

A. I don't believe so. Like I said I gave statements to four or five officers.

Q. Okay. And you also said before that you didn't get a chance to go over this statement, I believe, until a month after you gave it. Is that right?

A. Yes, sir. When we found out that we needed a police statement for the cell phone.

Q. Okay.

A. We didn't even know the cell phone was gone because we wasn't allowed to get in the car that night because they had taped it off as the crime scene, so we wasn't even allowed to get back in the car to get our personal belongings so we had no idea the phone was gone.

Q. Okay. And so after that you were able to look back over a copy of your original statement?

A. I don't remember.

Q. But -- But I'm going to show you the third page of your statement. Doesn't it indicate that you were given a copy of that statement?

A. Where at now, third page? It says I did but like I said I don't remember having one. I don't have one in my personal files now.

Q. Okay.

A. If I was given one I mean any time close to when that happened like I said I wasn't worried about a piece of paper. I knew what happened.

Q. And obviously this happened way back in June of '11. Is that correct?

A. Yeah. But I remember it like it was yesterday.

Q. Yes. And you indicated in testimony today I believe at first you said you heard a gunshot before you were hit and then you were asked a follow up question by the Solicitor and now you're not positive if you heard that?

A. I don't remember when I heard the gunshot. I do know that I heard a chrome rim hit the ground before I was struck because that's what made me go that way.

Q. Do you remember that part of it like it was yesterday as well?

A. Yeah.

Q. But you just don't remember the order?

A. No.

Q. You also talked about having a knife and attempting to use that knife at some point?

A. Yep.

Q. And then you said I believe that the reason you -- Well when did you get the knife out and when did you try to use it?

A. Sometime when we were standing up close to the tires and stuff. I remember reaching in my pocket and pulling it out and trying to - When I flipped it open he heard it click open and he looked down and said "you got a blade". He said "you better get rid of that or your old lady's gonna pay for it when she gets back."

Q. Okay. And that was not long after you'd been attacked. Is that right?

A. No. I was still being attacked at that time. He was on my back.

Q. But you hadn't been taken to the bathroom or anything about that point in time?

A. No. We were still fighting, struggling.

Q. Okay. And did you put anything about that knife in the statement that you gave to the police?

A. I don't remember. I know I told them I wanted it back. I asked them if I could have it and they told me no it was part of evidence as so was my hat.

Q. And did you say anything about a threat being made to your wife in this statement?

A. Yeah.

Q. Did you --

A. I mean it's not in the statement. Like I said, there's a lot of stuff that's not in the statement. I didn't get to see the statement for a month later. So I

mean if I were to have seen that paper right there that night it wouldn't have been that paper. It would have been a lot of other stuff in it.

Q. But you created this statement, right?

A. No. The police officer created it. Some of what's in that I spoke. Some of the stuff that I said is not in that.

Q. So you believe you told the police officer that your wife's life was threatened as well and it just wasn't included in the statement?

A. Yeah.

Q. Isn't the problem that the time in which you said you had the knife within your statement you've not yet told them your wife was coming?

A. No. I told them in the very beginning that my wife was coming back. I told them if they let me go I wouldn't have nothing to do with it. I'd leave. That was the between them, whatever was going on was between them. I told him that if he let me go that'd be it.

Q. And in your statement that conversation occurs in the bathroom, right?

A. What -- conversation occurred while I was on the ground trying to keep from getting hit.

Q. Okay. Eventually you got tied up?

A. Yes.

Q. With I believe you said speaker wire?
A. Yes.
Q. And it was not the gentleman that you knew who tied you up. It was the other person?
A. No.
Q. And did you tell the police you had been tied up?
A. Uh-huh.
Q. Okay. With speaker wire?
A. Uh-huh.
Q. And you had gotten untied ---
THE COURT: You need to say yes or no.
A. Oh, okay. Yes, sir.
Q. And you had gotten untied at that point. Is that correct?
A. Yes, sir.
Q. But you hadn't thrown the speaker wire away or done anything with the speakers?
A. I believe it was on the ground right where it come off at. I mean like I said it just looked like a ball of speaker wire. It wouldn't have stood out with a red flag or anything. It was just a wadded up ball of speaker wire.
Q. But you told the police you'd been tied up?
A. Yes, sir. I mean I had marks on my arms. I mean you could see where I'd been struggling trying to get out of it.

Q. And did you tell the police there were three suspects?

A. No I did not.

Q. Did you tell the police that you heard scuffling and a rim drop and you went towards Jordan and two other black males came up behind you?

A. No I did not.

MR. SMITH: I have no further questions.

THE COURT: Redirect?

SOLICITOR SHELTON: Just very briefly.

REDIRECT EXAMINATION

JARED CRANE BY SOLICITOR SHELTON:

Q. Mr. Crane, you mentioned about giving statements to several people. You only gave one written statement. Is that correct?

A. Yes, ma'am.

Q. And you talked to officers at the scene?

A. Yes, ma'am.

Q. And did you see who hit you from behind like when you got hit?

A. No. I didn't see who done it when I got hit, but when I was on -- right after I got hit and I was on the ground looking back up I figured who was hitting me then was who hit me the first time.

Q. And that was just one person?

A. Yes, ma'am.

Q. Was this upsetting for you?

A. Very.

Q. Were you extremely upset that night?

A. Yes. I'm upset about it now.

Q. And so are you always thinking at the clearest when you're upset?

A. Yeah, I would think. I would say that I was thinking very clearly to put my wife in the ceiling.

Q. No, that's not -- What I'm saying is when you're under the emotions of something and you're thinking about every single little detail that --

A. No. I wouldn't say every single little detail.

MR. SMITH: Objection to leading.

THE COURT: Just wait a minute. She's going to ask you another question.

Rephrase the question.

SOLICITOR SHELTON: I withdraw the question, Your Honor.

THE COURT: Mr. Freeman?

MR. FREEMAN: Nothing further for this witness, Your Honor.

MR. SMITH: Nothing further.

THE COURT: You can step down. We appreciate your time. Thank you.

(WITNESS LEAVING WITNESS STAND.)

THE COURT: We'll stop for the day and start back at ten in the morning. Have a pleasant evening and we'll see you back and try to start as promptly as we can at ten. Thank you.

(JURY EXITS COURTROOM AT 05:08 P.M..)

THE COURT: Anything from the State before we're dismissed for the day?

SOLICITOR SHELTON: Just very briefly so we won't have to address it in the morning.

Your Honor, I have two remaining witnesses', Detective Stokes and Detective Smith. I anticipate that during Detective Stokes direct examination I may ask him about physical descriptions of Mr. Robinson and Mr. Heath and I may ask at that time that they stand up beside each other just for the visual for the jury of the sizes of difference between the two of them. And I didn't know if there would be an issue, I just sprung I here in the middle of the trial.

THE COURT: I think there is a case that says you can do it but I suggest that you have that available in case there is any objection of doing that.

SOLICITOR SHELTON: Yes, sir.

THE COURT: But I do think there is a case that establishes that the State can require a defendant without it being in violation of their right to remain silent or

any shifting of the burden to display physical characteristics. I'll let both sides research that over the night.

Anything before we stop, Mr. Freeman?

MR. FREEMAN: Very briefly, Your Honor. Nothing to do with the State or the Defendant's case. I notice when the jury was leaving it appeared that the foreman dropped something that is either a notebook or - I know the Court tells them not to take notes but I just noticed when he dropped it as he picked it up as he was walking out. I realize the Court admonishes them not to do that but with these electronic devices ...

THE COURT: Well I'll watch it tomorrow and see what -

MR. FREEMAN: And I don't recall his name but it was the Foreperson. Nothing else at this time, Your Honor. I would address the issues relating to whether or not my client elects to testify or not at the appropriate time tomorrow.

THE COURT: Right. We will of course after the State rest and we have any motions I will advise each of the defendants what their rights are regarding taking the stand. What will happen if they do take the stand as far as questioning and impeachment that we've already gone over to the extent that there is any, and that they have the right to remain silent and if they exercise that the jury

would be advised not to use that against them in any fashion whatsoever.

All right, anything else, Mr. Smith?

MR. SMITH: Nothing, Your Honor.

THE COURT: All right, we'll see you at ten in the morning.

(COURT IN RECESS AT 05:15 P.M..)

(COURT BACK IN SESSION WEDNESDAY, JANUARY 30, 2013 AT 11:00 A.M..)

THE COURT: Good morning. Thank you, take your seats. Get the defendant's in here.

(DEFENDANT'S MARQUIS ROBINSON AND DANTONYO HEATH REENTER COURTROOM.)

THE COURT: We're back on the record in the State versus Marquis Robinson and Dantonyo Heath. We're running a little bit late because of some issues that arisen regarding the roll eligible jurors provided under Section 14-7-130 by the Election Commission to the county. That section says as furnished a list - a file constitutes the roll of eligible jurors in the county.

It has been called to our attention the later part of last week and to my attention this morning that in preparing the York County eligible juror list the Election Commission sent the list but did not merge the Department of Motor Vehicle's list of eligible voter/drivers; that

is, everybody that has a driver's license doesn't necessarily and is not necessarily eligible to serve as a juror but the list should include those who are.

Our list provided and the list from which this jury panel now is drawn thus this jury - petit jury we have seated drawn did not fully comply with 14-7-130. I called this to the attention of all counsel, the State, Mr. Freeman, and Mr. Smith and given each the time to digest this and discuss the situation with their respective clients. Ms. Shelton has a client; she is a solicitor.

With that said I have been informed off the record that both Mr. Robinson and Mr. Heath are willing to waive any deficiencies in the preparation of the jury list from the electronic files as under that Code section and proceed to trial.

Is that correct, Mr. Freeman?

MR. FREEMAN: Your Honor, also for the record, I disagree with my client's decision and I wish to be heard on the matter.

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

MR. FREEMAN: Your Honor, and I recite the numbers as they were given to me in chambers and I'm using obviously very round figures. The Clerk advises there should be approximately a hundred and eighty thousand people in the

potential pool and that approximately forty-five thousand were not included. That is in my simple math roughly twenty-five percent of the people were excluded and I believe that is not a statistically insignificant amount. One out of four people who could have been a potential juror was not even considered. That doesn't mean necessarily and I would concede that we would get a drastically different panel but as I explained it to my client in essence a fourth of the bucket was not considered for the names that could have been drawn.

The Court - And I've also been advised that the majority of those people if not all of them were people who were on the list in some way; they either had a driver's license or a state issued ID card or paid property tax but were not registered voters. That concerns me. I mean everybody's entitled to a fair trial. I don't - I told my client this is essentially a computer glitch but again it's not a minor one. Its not like they simply left out one percent of the people, two and one out of four was not considered as potential jurors.

Obviously I think that would taint every panel this week but I'm mostly only concerned with Mr. Robinson's panel. Mr. Robinson and I've expressed this to him and I said that I understand that this is probably something you could waive and go forward and say I acknowledge that this

glitch occurred but I'm prepared to go forward with the jury that's already been drawn. Legally we're prepared of course but if you are ready for trial we were just made aware of this this morning but as an attorney I feel obliged to raise it and say that I have concerns. And even if that's my client's decision as his attorney I disagree and I believe that a new panel should be drawn on a different day with the full consideration.

There will still only be about two hundred, two hundred and twenty-five people downstairs but they will come from the full purview of what the statute intended of available potential jurors for York County. And again, it's a fourth. I realize there's people who are under age who have driver's licenses; they're not considered. And I realize that there is people that have some addresses that may look like they're in York County but are actually in another county so I know that some people just automatically aren't considered because the last census said we have approximately two hundred and forty thousand people in the county.

THE COURT: Actually I heard two thousand and ten but two forty may be right too.

MR. FREEMAN: I heard just less than a quarter million was my recollection. So I know that the one eighty is not everybody in the county but I just - It concerns me. I

troubles me greatly and as an attorney and an officer of the court I'm asking the court - I don't speak for Mr. Heath, I'm asking the court to give my client an opportunity at a future day to have a jury of his peers selected randomly from his peers. Now I've ask my client to address the Court on his position as well. Given the circumstances I would ask the court to inquire of him directly.

THE COURT: Mr. Robinson, what's your thoughts on this?

MR. ROBINSON: Yes, sir, I would like my attorney said I wish to go forward with the trial. I'm satisfied with the jury that's up there and he can disagree with me but in whatever reason you over ride his decision I wish to have my bond granted back and if there is something that you decide to do I would take, you know, responsibility to have me a bond changed to where I do house arrest.

That's one of my main concerns is that you over ride his decision to go forward.

THE COURT: I'm not going to over ride him. Its your decision if you want to move forward with the trial I will certainly honor that. Is that what you wish to do?

MR. ROBINSON: I don't know if I can ask this question but if I decide not to, would my bond be granted back?

THE COURT: I will have to see at that time. I'm not

going to give you any preliminary ruling on that. I don't know, the case has been called for trial, you certainly did adhere to your bond conditions when you were out on bond, I will go ahead and acknowledge that. At this time the court is more aware of the State's factual basis for their claim. Of course you're presumed innocent until you are found guilty and I have to take all of that into consideration so I cannot tell you one way or the other whether I will allow you to be released on bond. Of course if that were the case whoever the bond's person was would have to agree to come back on your bond but I will rule on that if it comes - if required to do so.

MR. ROBINSON: That's where I'm kind of stuck at at this time. I just need a few more minutes to think about it then.

THE COURT: All right. You be thinking and I'll ask Mr. Smith to tell me what Mr. Heaths' situation is.

MR. SMITH: Your Honor, I had a discussion with Mr. Heath. I explained to him the concerns I had and we talked about the potential - could he waive and go forward. At that time he indicated to me that he wished to go forward. At that time he was under the understanding that his co-defendant would still be going on on the trial. He's expressing to me now some reservations if part of the trial stops and he's left going forward by himself, what

appearance that would make to the jury.

THE COURT: So his decision is based to some degree what Mr. Robinson decides?

MR. SMITH: That's correct.

THE COURT: I will give Mr. Robinson a little bit of time to talk to counsel or whatever. I understand it's a tough decision and I'm not taking it lightly. That's why I called the attorneys in and discussed it with them so everybody would be above board as I'm required to do. I require other people to obey the law so I'll require myself to obey the law. That's where we are but I can't make the decision for you, it's your decision.

MR. ROBINSON: I have one more question to ask my attorney.

MR. FREEMAN: Your Honor, if I could?

THE COURT: Okay.

(PAUSE.)

MR. FREEMAN: Your Honor, his question to me was more logistical, what's the solicitor's calendar should this case come back up. I know that I have some other cases scheduled with the solicitor coming up but I said I don't know how far out that would be. I cannot answer that question. And I'm not holding the solicitor to a date but we take the place in line I assume come back on a different day.

SOLICITOR SHELTON: And, Your Honor, at this point I can't answer that question. If there are a number of witnesses to coordinate my - Mr. Crane has been out of work all of this week; he is an individual who lives pay check to pay check and would prefer not to be out of work another week, you know, within the next couple of weeks. The SLED witnesses' will need to be subpoenaed again and coordinate with their schedule. They're needed all over the state so at this point I cannot say the exact date but I would want to try it sooner rather than later. I don't know when I will be ready to go forward as far as an exact date.

THE COURT: I don't have a good answer for that. Based on the conversations I've had this morning with the Clerk of Court and in looking at the schedule, it looks like the next term, we have a term February 11th but that I don't think its going to go forward. The next possible term would be the 25th of next month which is only a month away. Just based on past experience I would be surprised if the solicitor is ready that quickly and that's no reflection on the solicitor but that's - it does take a while to get things together.

So I don't have an answer for that either, Mr. Robinson, I apologize for that.

SOLICITOR SHELTON: Your Honor, I will just say for purposes - for my purposes I do have another trial

scheduled that has four co-defendants; home invasion, armed robbery. Mr. Freeman is one of the defense attorneys in that case. That I believe is calendared for March 18th so I do not know if that case is actually going to go forward. There is a couple of hiccups with it at this point. If that case is actually going to go forward March 18th I don't know that I will try this one before that.

MR. FREEMAN: I would ask is - in all fairness to me and my office that they not be tried in close succession. There are some outstanding motions on that case that she's referred to; I have co-counsel. I've told the client it's like a holding pattern. You have to take your place in line and as it does not come up quickly certainly - Again I don't blame the solicitor for what's happened nor the court nor the clerk; it is what it is. Out of the abundance of fairness it just troubles me greatly. My client certainly can have a different opinion but my opinion will not change.

THE COURT: Okay.

SOLICITOR SHELTON: Your Honor, just so he knows, I am not agreeing to not call these in consecutive terms. I very well may call them in consecutive terms.

THE COURT: Well he's not asking you to agree to that. He's just telling us his concerns.

But, Mr. Robinson, just based on what the attorneys

have told me you're probably looking at mid April at the earliest. I couldn't guarantee it would come earlier than that. I couldn't guarantee it would be later than that. But just on the presentations made to me at this point it would appear that mid-April would be the most likely it could be tried if it could be tried that soon.

MR. FREEMAN: Your Honor, Mr. Robinson wanted to address the court again.

THE COURT: Okay. Yes, sir.

MR. ROBINSON: Yes, sir, Your Honor. I wish to postpone it.

THE COURT: All right.

SOLICITOR SHELTON: Your Honor, may I have a moment to check with Mr. Brackett on just the legal issue of whether or not he wants to be heard?

THE COURT: Okay. And I guess that follows, Mr. Smith, Mr. Heath would likewise?

MR. HEATH: Yes, sir.

THE COURT: Okay. We'll take another short break and see what the solicitor's - let them make - take a position on it because basically what the motion would be postpone. Probably not the technical word, the technical word probably would be that each party would be moving for a mistrial.

MR. FREEMAN: Yes, sir. If that's how the court

wants to phrase it certainly that would be - I'll make that motion at this time.

THE COURT: Okay. So basically we've got a motion for a mistrial on behalf of Mr. Robinson and based on where we are I'm going to give the solicitor some time to present a counter argument to that so we'll be at ease again for fifteen or twenty minutes.

MR. FREEMAN: Your Honor, may I approach very briefly?

THE COURT: Sure.

(BENCH CONFERENCE OFF THE RECORD AT 11:15 A.M..)

(COURT IN RECESS AT 11:15 A.M..)

(COURT BACK IN SESSION AT 11:54 A.M..)

THE COURT: Be seated please.

(DEFENDANT'S MARQUIS ROBINSON AND DANTONYO HEATH REENTER THE COURTROOM.)

THE COURT: Anything from the State before --

SOLICITOR SHELTON: I'm sorry, Your Honor.

THE COURT: Anything else from the State?

SOLICITOR SHELTON: No, sir.

THE COURT: Mr. Freeman?

MR. FREEMAN: Your Honor, I inquired of my client and his position is still that he - It is what it indicated before that we still maintain our request for a mistrial. In the alternative I suspect I would retroactively object to the drawing of the venire panel as soon as I became

aware there was an irregularity which translates to a mistrial.

THE COURT: All right. Mr. Smith.

MR. SMITH: My client does not wish to go forward with out the co-defendant so I think the appropriate way for him to do that is to move for a mistrial as well.

THE COURT: All right. Well I'm very reluctantly grant a mistrial on behalf of both. I find there is a manifest necessity to do so. There is a lack of compliance not by our clerk but by the State Election Commission. It's failure to comply with 14-7-130 in that the information I have - it's not under oath, there hasn't been any hearings, and we've been provided by way of a letter to me - that irregularities exist in the eligible jurors submitted to York County from the Election Commission in that it did not contain approximately forty-five thousand licensed eligible voters - drivers, of course the South Carolina Department of Public Safety identification.

Now, along with the attorneys and the solicitor I have done a fair amount of research in the short time we've had but it was all kicked off by and called to my attention at 9:30 this morning. There are some magistrate court cases that address this issue and there is some - and there is a case right now that is on appeal or wherein the State is seeking to cert on a magistrate appeal Judge Mark Hayes

where he upheld a magistrate's drawing of a jury; factually not even mirrors this case but the magistrate's municipal court jurors are drawn entirely different from that of these here in circuit court and general sessions.

I am aware that some of the cases talk about the burden being on the defendant to show prejudice. Those cases deal with quashing the venire which we're not doing here or setting aside a verdict which we're not doing here. We're in between those. I find that whether or not it is incumbent upon a defendant moving for a mistrial to show prejudice the posture where we are now creates a manifest necessity for the granting of a mistrial because there is no way with the information that I have, with the information that the solicitor has, and the information that the clerk has, and the information that counsel for Mr. Robinson and Mr. Heath have were we can do any kind of analysis to determine whether or not this error put by the Election Commission creates a prejudice.

That is arguably the make up of the driver's license holders were excluded would be the same gender wise, education wise, racially, with those forty-five thousand or however many it was individuals may represent an identical - statistically identical group as do the registered voters from which the jury was drawn but we can't assume that. And there is a reason that the legislature included

driver's license arguably it was to get more people to register to vote but the statute's are to be given their strict interpretation and the interpretation says that the panel shall consist of - the jury list of York County and every other county should consist of the merger by the Election Commission of the registered voters and the driver's license or the Department of Public Safety Identification Card.

Again, I hate this happened in the middle of a trial but this is a substantial trial. Each of these gentlemen are facing penalties that carry up to a hundred years in jail, at least by my calculations. And they deserve every - hate to call it the benefit of the doubt - but where there is the possibility of some procedural error I must give them the benefit of the doubt so I grant the motions for a mistrial on behalf of Mr. Robinson and Mr. Heath. Thank you.

SOLICITOR SHELTON: Your Honor, I'd like to be heard on bond, on the limit at the appropriate time.

THE COURT: All right.

SOLICITOR SHELTON: Your Honor, of course at the beginning of the trial and this jury's sworn, the defendant's no longer have bond. Mr. Robinson has been out on bond for quite some time. His bond was two hundred and fifty thousand; he was ordered to wear electronic

monitoring leg brace. But there were no conditions of that, of that leg brace, other than he not leave the state which - Once I got the case I tried to address that issue that there were no conditions on his house arrest other than he not leave the state and the judge who I brought that motion in front of wouldn't hear it because he didn't set the original bond and I could not get a hearing scheduled with the judge who set the original bond.

I understand that it's not their fault that we're having a mistrial either, but, as you said earlier that the court is much more aware of the allegations of these charges. You heard from all the witnesses'; you've seen the videos of what the State is alleging happened on that night.

Your Honor, two of my witnesses' were terrified to come in and testify. And as Mr. Crane has already testified her husband did not want her to be involved at all to the point to where she originally did not pick anyone out of a lineup originally and when I met with them to discuss the case and calling witnesses' to trial, he did not want her to come testify.

Because they have already taken the stand, because of Mr. Robinson and Mr. Heath, have heard their testimony, know that they are going to testify and know what they are going to say, I think it would be a danger to them because

it's substantially greater today than it was two weeks ago. And because the Court is fully aware of the facts that the State has presented and the position that the State is in and the severity of these crimes, that there was a gun involved, that Mr. Crane was savagely and viciously beaten for eight minutes or more, that there was a robbery that took place we would just ask the Court to deny both of these individuals a bond at this time. If the Court is concerned about the length of time that it would take before I could go forward with the trial, I would like to call the case in front of Your Honor when I recall it. You will be here March 4th, March 18th, April 1st, and April 15th; and I think between one of those four terms I should be able to call it to trial by April 15th.

THE COURT: What sort of record - I can't remember, what record does Mr. Robinson have?

SOLICITOR SHELTON: Your Honor, Mr. Robinson has a breaking and entering from North Carolina from 2006, that was a misdemeanor. He has an indecent exposure and furnishing contraband from 2004. He has several arrest for assault, possession of marijuana and criminal domestic violence from Rock Hill City. They do not always publish their convictions. I can check on those if you would like.

He has a violation of South Carolina gun law and possession of a pistol with an obliterated serial number.

from 2000. He has an assault and battery high and aggravated and unlawful carrying, unlawful possession of a pistol, and another count of assault and battery high and aggravated from 2000. He has a possession of crack from 2000, a failure to stop for a blue light from 2000, a driving without a license from 2000 and these charges, Your Honor.

THE COURT: All right. And you said he had one from North Carolina?

SOLICITOR SHELTON: He had a breaking and entering from North Carolina.

THE COURT: When was that?

SOLICITOR SHELTON: That was from 2006.

MR. FREEMAN: Your Honor, we discussed, I believe, the breaking and entering earlier. We weren't clear if it was going to be on his record. We didn't know if it was a misdemeanor or felony under the North Carolina statutes. The majority of the charges are now thirteen years old that the solicitor just recited and he would have been eighteen or nineteen.

Your Honor, for the record, I did not make the motion lightly. I don't make an argument I don't have no faith in. I don't want to fault anyone in the courtroom and in fact as a citizen of York County I think the court should sanction the Election Commission to reimburse the clerk if

this cost the county any money. This whole computer glitch I'll refer to as, but dealing with Mr. Robinson's bond, he was out on bond for approximately a year and a half. There were conditions on the bond; don't leave the state, no contact with the victim. He's been in no trouble since then. He's been to numerous hearings both in front of Your Honor when the other bond was set when the solicitor tried to reconsider bond. We were in front of you two weeks ago and you said I'm gonna be here for the trial Monday, he was here for the trial on Monday.

In terms of not going around the victim I am certain they would have contacted the solicitor's office. He's had no contact with the victims at all. The body shop's moved across the street so it's not like it's hidden. It's on the other side of Cherry Road from where it was before and I was only involved in the case since late November and as you know there was previous counsel. He had been out on bond for more than a year when I got involved and had no incidents, no anything. All we're asking to do is reinstate the conditions of the previous bond. Now he was on electronic monitoring with Mr. Pope's company that is I believe ICU Monitoring.

The court may be familiar with that, its an electronic bracelet. He has paid Mr. Polk I guess for a year and a half whatever those fees are without fail. So we would

simply ask the court to go back to the bond that was previously set.

I don't wish to see him sanctioned for the motions we made and I think that would be in someways the net effect of what would happen. Should the court not feel that is appropriate then perhaps an additional condition like house arrest. He has many children, he has approximately a half a dozen children and he would be carrying for them. But again he's had no contact. He's not been on the premises of the property which is still an open and notorious place in Rock Hill in approximately a year and a half.

Again his bond was dated August 1st, 2011, I assume it was processed within a day or two after that and here we are at the end of January 2013. Had he been in trouble before, had there been any suggestion that he was harassing the victims in any way directly or indirectly I wouldn't and couldn't make that argument. But again he's been here every time you or any judge has told him to be. In fact I told him to be here early Monday morning and he was here when I was down stairs watching the now suspect venire panel.

THE COURT: Well I wouldn't call them suspect.

MR. FREEMAN: Not them individually. I'm sorry. And again, it's the State Election Commission obviously that's put us all in this untenable position but I would simply

ask the Court to renew the previous bond conditions which were set by Judge Cooper August 1st, 2011. And he made some findings in there I assume the court has it in the file but makes some findings in there that there were - that he was a life long resident of York County, he had significant family ties to a stable residence where he lives with his fiancé who is present in the courtroom if the court would like to hear from her.

At that time that judge counsel represented that the defendant is a personal friend of the victim that being Mr. Jordan by the way. Those were known to the court at the time and again prior to my involvement I think the solicitor may have moved for additional conditions and either that judge declined for legal reasons but didn't impose them so I simply ask this court to go back those - to that order signed by Judge Cooper entered August 1st signed and entered August 2nd. I don't even think a supplemental order would be necessary from you at this point.

Obviously and I've told the family this, I said regardless of what you rule Mr. Polk is still going to have to indicate to the detention center that he would continue to stand his bond and impose as an electronic conditions. I believe the court also has a copy of the document from Mr. Polk dated August 20 which speaks to those compliance

things. I have a clocked in copy so I assume they're in the courts file, speaks to the conditions of just electronic monitoring in general which is the court is aware is don't leave the state. They can tell where he is and they can tell if he leaves a given location, he tries to take the thing off if it gets wet, all of those things can be determined, Your Honor, so I would simply ask again the court can return to that bond position. In the alternative I would ask the court to impose additional restrictions if the court is uncomfortable with that. But again he's shown up every time, he's gotten in no trouble and between his last real brush with the law was this breaking and entering in North Carolina which apparently is a misdemeanor but he had some charges more than a decade ago and I think I had argued it earlier when we were discussing his possible decision as to whether to testify they were beyond the ten year window, the probationary window was not.

But thirteen years ago when he was seventeen or eighteen was the last state of serious charges. Again, I've told him before don't have any contact with the victim. I tell all my clients that. Don't have no contact with the victim direct, indirect, or otherwise. You happen to see him at the Walmart you walk the other way.

And I have no problem with telling him that on the

record again today. And again his family is present or the people he lives with if the court wants to inquire further about that status and can testify if the court has some questions.

SOLICITOR SHELTON: Your Honor, just on the previous bond set by Judge Cooper, the things that Mr. Freeman took note of, the flight risk. I didn't make the argument that I do have a concern about him being a flight risk or I am not arguing that he has not shown up for court every time. He has done those things.

Mr. Freeman did note that he is a personal friend of the victim and I would say yes he was; that's how the victim recognized him but they are not personal friends anymore. Mr. Jordan supports my request in asking for no bond. He and just going on the no contact I did not bring this to the court's attention earlier because it happened before I got the case, but there were allegations and law enforcement is aware of this, that was brought to the solicitor's office attention at the time, but Solicitor Hervey felt that there was nothing that could be done about it because there was no concrete evidence but there were allegations that Mr. Jordan's business was broken into after these charges were filed and that his home - once he left his house and went to the business to check out the alarm, folks came to his home and threatened his wife.

Those reports were filed with law enforcement, they could not positively prove who did it. The people were wearing mask, they feel like it was related to this case, we did not go forward with anything on that because we cannot prove anything but they - they are afraid, Your Honor. And particularly since they have actually shown up for court Mr. Jordan believes that Mr. Robinson didn't think he would actually show up and testify and now that he has done that there is substantial fear from the victim's and we just ask because of that and because the court is fully aware of everything that has gone on because of Mr. Robinson's previous record, and that we can try the case relatively quickly after today we would ask the court to deny bond.

MR. FREEMAN: Your Honor, if we're gonna get into a whisper campaign, someone broke into the place he was staying with his fiancé and she will testify to this if you want, after he got locked up the first time before he made bond. So again that's --

THE COURT: I think I got enough information. I'm going to revoke the bond but if the case is not tried by June 1st I will reconsider my ruling. I have now heard the testimony, and usually at bond hearings all you get is a verbal recitation and sometimes you only read from the warrant, I have now heard testimony and while Mr. Robinson

is presumed innocent and it is up to the jury to determine whether or not he committed this offense, I have based on the testimony of the witnesses today and yesterday found that their identification was at least reliable and I've taken that into consideration too so I'm going to revoke the bond.

SOLICITOR SHELTON: Thank you, Your Honor.

THE COURT: Revoke the bond, but if the case is not tried by - sometime by June the 1st then you can reassert.

MR. FREEMAN: Your Honor, I would respectfully ask the court to reconsider and impose additional conditions on the bond such as house arrest.

THE COURT: Okay. All right, that's a no.

All right, --

MR. SMITH: Your Honor, Mr. Heath never made bond but he is inquiring with the same ruling. There is a bond in place, he has been unable to make it at this point.

THE COURT: Well I'm gonna revoke his bond also. The State hasn't ask for --

SOLICITOR SHELTON: I will. Yes, Your Honor, I will ask for a bond revocation on --

THE COURT: He hasn't been able to make it anyway but I'm also going to revoke his for the same reason.

MR. SMITH: Yes, Your Honor.

THE COURT: All right. Take the defendant's back

and I'll deal with the jury and semi explain to them what's going on, if I can.

(DEFENDANTS EXIT COURTROOM AT 12:18 P.M..)

THE COURT: All right, let's bring in the jury.

(JURY REENTERS COURTROOM AT 12:20 P.M..)

THE COURT: Members of the jury panel, I got my note and we were dealing with some legal issues and friends of mine have a golf tournament that they call ETU, Expect the Unexpected. Well we had unexpected turn of events this morning that I had to deal with. It has to do with the way you were drawn, not you personally, but the whole jury panel, the whole year basically. That is being corrected but it put a wrinkle in this case that made me uncomfortable with going forward with it so I declared a mistrial and the case will have to be tried later.

I regret that but I determined after a good bit of research and finding out what the facts were that that was what I as the judge had to do to make sure that these two gentlemen receive a fair and impartial trial. Not that you would not be fair and impartial but one that complied with all the requirements that our legislature has established for jury service. That is not the case at this point but that is being quickly corrected if we figure out how to do that. So I appreciate your help and we won't be able to do any more trials this week for the same reason so I

appreciate your help and this finishes your work for the week. Thank you.

(JURY DISMISSED AT 12:22 P.M..)

THE COURT: Madame Solicitor, if somebody will check with me about the rest of the schedule.

MR. FREEMAN: Your Honor, I do have one more matter.

THE COURT: Okay. All right.

MR. FREEMAN: Your Honor, as the court knows I was appointed in this case and certainly we're here and prepared to try it in completion. Its my understanding that the appointment office requires an order from the court if they believe the reimbursement will go by the statutory amount. I hadn't anticipated it would. They like to have an order from the judge signed ahead of time so I may reserve the right to request such an order or a form order from you.

THE COURT: Certainly.

MR. FREEMAN: It's got nothing to do with the merits of the trial, it's simply logistics. Again I hadn't anticipated that but in light of that it may ---

THE COURT: I will --

MR. FREEMAN: --- exceed the statutory amount.

THE COURT: I will be glad to consider it.

MR. FREEMAN: Thank you very much.

THE COURT: Thank you. We'll be at ease until further

notice.

(WHEREUPON: COURT'S EXHIBIT NUMBER TWO MARKED AND RECEIVED INTO EVIDENCE.)

(COURT AT EASE AT 12:23 P.M..)

(BACK ON THE RECORD IN THE MATTER OF STATE V. MARQUIS ROBINSON AND DANTONYO HEATH THURSDAY, MARCH 21, 2013 AT 09:31 A.M..)

SOLICITOR SHELTON: Dantonyo Heath and Marquis Robinson please.

THE COURT: Both of them?

SOLICITOR SHELTON: Yes.

(DEFENDANT'S ROBINSON AND HEATH REENTER THE COURTROOM.)

SOLICITOR SHELTON: May it please the Court, Your Honor.

THE COURT: Yes.

SOLICITOR SHELTON: This is the State versus Marquis Robinson and Dantonyo Heath. Both Mr. Robinson and Mr. Heath have the same charges; those are attempted murder, armed robbery, criminal conspiracy, possession of a firearm during the commission of a violent crime and kidnapping.

Your Honor is probably aware but for the record Mr. Robinson and Mr. Heath were before Your Honor before the January 28th term of court for a trial that started that Monday. On the third day of trial we discovered that there

was an issue with the jury, at that time Your Honor declared a mistrial. There was a short bond hearing on the record at that time since both Mr. Robinson and Mr. Heath had - Mr. Robinson was out on bond at the time but the trial started, you held that his bondman had satisfied his duties to the court and ordered that Mr. Robinson be held without bond until disposition of the court, disposition of the case. At that time you ordered the State to have the case tried by June 1st. At this time I have set the case for trial for April 15th, subpoenas have been issued and I don't anticipate that there will be any reason from the State that we cannot go forward that week.

THE COURT: All right. You represent Mr. Heath?

MR. SMITH: I do, Your Honor.

THE COURT: And you represent - Mr. Freeman, you represent Mr. Robinson. Okay.

Mr. Smith, since you're the first I'll be glad to hear from you.

MR. SMITH: Thank you, Your Honor. May it please the court. As Your Honor is aware this case did go to trial, no fault of the State that it was not able to be tried but at that point my client had never been able to make bond and had been in jail more than a year at that point. There was another underlying issue in this case with Mr. Robinson's prior attorney had been suspended for some

period of time and the State wanted to call them together as co-defendants. It obviously delayed Mr. Heath's ability to go to trial. Your Honor, he has always wanted to go to trial on this case, that is what he wants to do but at this point he's being held for him an excessively long period of time without the opportunity to get out.

At first his bond was totally denied then at some later point Judge Miller gave him the same bond that his co-defendant was able to make Two Hundred and Fifty Thousand Dollars but he and his family do not have the resources and means to make that. His mother is in contact with me, he could reside with her. He wants me to relate to the court that he wants to come to court to have his case tried; that's what he's always wanted but he would like the opportunity to be out awaiting trial.

THE COURT: All right.

MR. FREEMAN: Thank you, Your Honor. Your Honor, with a slightly different than Mr. Heath, Your Honor, Mr. Robinson is thirty years old, he's from the community, his family is in the community, he has his sister, his fiancé and a family friend who are all present. Other family members simply couldn't make it because they had to work. I believe his fiancé might even want to address the court if the court would allow her to do so.

Your Honor, in the history detailed in my motion,

but there was an incident in June of 2011 he turned himself in a couple of days later and bond was set by Judge Cooper in August. Mr. Robinson was able to meet the conditions of that bond but it was a quarter a million dollars with conditions if he met it. He did make those conditions and he was out for a period well in excess of a year. He was working supporting his family. He and his fiancé have two small children five and nine months old. He was working at Chesterwood down in Chester and the way that they would work is she would work during the day and he would stay with the children and he would work in the evening so they didn't have to have a babysitter with him being out. She indicates it's created a great financial hardship on the family.

Your Honor, again he's from Rock Hill, he went I believe to Rock Hill High but didn't graduate but got his GED. He has his CDL. Your Honor, of course the elements we believe the court has to look at are his ties to the community. He's thirty years old and he's from York County. He's not really been anywhere else his life. And then of course the - I think that covers that prong. But then the court also I believe the courts can look at the seriousness of the charges. Your Honor, and I don't know if the court recalls this case but a mistrial was through not fault of anyone --

THE COURT: I understand but I do recall the facts.

MR. FREEMAN: Though no fault -

THE COURT: The facts that were presented --

MR. FREEMAN: Yes, sir. And obviously the State hadn't even completed their presentation but through no fault of anyone including Your Honor or the State or the Defense in this courtroom a mistrial was granted. I think that was the appropriate thing to do because of the problem out of Columbia. You had revoked his bond at the start of the trial on Monday the 28th and then I don't want to call it cursory motion but at the end of the trial I said Your Honor would you go back to the bond and you did not. So I wanted the opportunity to make a more full presentation. We're simply Number One asking for him to have a bond. I would ask the court to consider basically the same conditions he had before if you make it here are your guidelines.

Your Honor, I would also like to point out that there has been an ongoing assertion from the State that they are concerned that he might have contact with the victims. He was out for more than a year. I know where this business is, it's on Cherry Road and literally across the street. It's not like their hiding and he's had no contact at all with them other than in just setting for bond hearing motions -

SOLICITOR SHELTON: Your Honor, the victims do have a different take on that.

MR. FREEMAN: I understand, Your Honor, if I could be allowed to speak. He knows, I mean the business is still there and thriving as of two days ago when I drove down Cherry Road to go to Family Court, but he again has stayed away. There have been some, again, indirect things with one of the victims; works at a bank where the family banks and she was admonished to stay away from contact with their accounts so it's a small community but they've managed to try and keep apart from each other.

Your Honor, in terms of the State the State has indicated they wish to try this case I believe April 15th. Your Honor, I received a - just for the record I want to make the court aware, I am appointed on this case, as you heard there was another delay because previous counsel had some other matters and apparently was suspended for a period of time. I have communicated with the court reporter, Ms. Nelson, regarding obtaining the transcript and I will have to get the Office of Indigent Defense to advance the cost. She indicates that's just shy of Fifteen Hundred Dollars, that's her estimate. I put a call into them, I haven't heard back so I'm going to have to followup and find out what's going on. That would be an additional delay which no one could have foreseen back in January but

I believe that would be of assistance in defending any future retrial the State would entertain, so there may be a delay again which is no fault of anyone in this court, but new evidence has come available and I believe it would assist me in the defense. And the court reporter has to have time to type those things up.

So again Mr. Robinson complied with the conditions of the bond. He was not charged with anything else in the interim; not even a traffic ticket that I'm aware of so, Your Honor, we would simply ask the court to shmooze the previous bond, again, which was set first of August, a Two Hundred and Fifty Thousand Dollar surety with conditions no contact with the victim and electronic monitoring and I'm sure it had the other standard conditions, do not leave the state. Obviously we're a border county so I typically ask that Mecklenburg County be included in that restriction.

His fiancé does advise that since he's been reincarcerated she's had trouble making ends meet financially because again now she's had to get baby sitters, she's had to miss work, she's just had trouble meeting her obligations. The youngest child is scheduled for surgery to have his tonsils or adenoids I guess they call them in babies at that age, again another financial blow to the family. We would simply ask the court again at the very least go back to the bond that he had before and

allow him that opportunity to go back and try and support his family with whatever conditions the court feels appropriate to place those on him.

But I don't - I don't - They were able to make the bond before so we would simply ask the court again first of all to grant him a bond and secondly to look at the previous bond as a guideline if you will or a suggestion and I realize Your Honor did not set that bond. Your Honor, as I said he has his fiancé here and his sister and a family friend. If the court would entertain I would offer that they would like to speak to the court.

THE COURT: I'll be glad to hear from them.

MR. FREEMAN: Thank you, Your Honor.

THE COURT: While they're coming up, what is your motion, Mr. Smith, a reduction of bond?

MR. SMITH: Well technically his bond was revoked when the trial began so he is without bond at the moment but I would ask for a bond and he cannot make a Two Hundred and Fifty Thousand Dollar bond.

MR. FREEMAN: Thank you, Your Honor.

Your Honor, this is Kayla, K-a-y-l-a Higgs.

THE COURT: Higgs?

MR. FREEMAN: Higgs. Is it H-I-g-g-s?

Yes, sir, Your Honor.

MS. HIGGS: Good morning. I just want to speak on

behalf of Marquis that my family has been unstable.

I apologize if I get upset.

(MS. HIGGS CRYING.)

MS. HIGGS: His bond being revoked has really kind of hurt me financially because you know with our schedule he watched the babies when I worked and when I got off you know we would swap out and he'd go to work in Chester at Chesterwood. I don't have a sitter and I just - I'm scheduled for surgery this coming Tuesday and I just feel all alone. I'd just like to have him there. You know I miss him and I need his help because I can't pay the rent.

THE COURT: Thank you.

MR. FREEMAN: Your Honor, I think it's in my motion but I'll go ahead and put it on the record, the trial date was January 28th, you revoked his bond then. I'm not sure he posted the bond the day it was entered but he was out but the bond was in place from August 1st until January 28th, August 1st, 2011 until January 28th, 2013.

THE COURT: I'm going to deny both motions. I said if the state has to try him by June 1st and unless we can revisit it after that date if it is not tried by then unless the reasons not tried based on some factor not attributed to the State.

SOLICITOR SHELTON: Your Honor, just to, since Mr. Freeman has placed it on the record his intent to attempt

to get the transcripts, I've spoke with Ms. Nelson, she informs me that even if he requested it today he has not put in a formal request at this point so she has not start3ed working on those transcripts. She cannot have them ready by April 15th so if he anticipates asking for a continuance I'd like to address that now. I have numerous witnesses, three of those being from SLED that I would need to get resubpoenaed if its going to be continued past the 15th.

MR. FREEMAN: Your Honor, as I indicated I've been appointed to this case so I would have to and perhaps I can send the court a supplemental order directing OID to release those funds promptly. The estimate given to me by Ms. Robinson - Excuse me, Ms. Nelson, was One Thousand, Four Hundred and Sixty-two Dollars and Fifty cents, and obviously that's an estimate from her part. She said it would take thirty - Excuse me, sixty days to have that transcript prepared. I intended to request it I just received this fax a week ago. And again I unfortunately had - was in court next door yesterday but I've had to call into OID and they simply have not returned my call. Again I'll be glad to send the court a supplemental very short order that says simply this is an approved fee.

THE COURT: Well the bottom line is, it won't be available regardless before April 15th.

MR. FREEMAN: Right. Yes, sir, Your Honor, and I totally understand that and I can't - I've discussed that with Mr. Robinson. I said I believe this will be helpful, you have to understand however this will delay the trial beyond April 15th because the court reporter has a job during the day and then doing this at other times and he said - he indicated he understood. I don't need anything with the jury selection obviously that was not good. Just the testimony part.

THE COURT: Well yes but to cut to the chase are you asking to continue beyond April 15th because --

MR. FREEMAN: I am, Your Honor, I will for that reason, the sole reason I indicated. Otherwise we are prepared to go forward.

SOLICITOR SHELTON: And, Your Honor, if it will take sixty days even from today's date, the State would not be able to try it by June 1st.

THE COURT: All right. Mr. Smith, how do you and your client stand on all of this?

MR. SMITH: He's indicated to me now, Your Honor, that he wishes to join Mr. Freeman's motion.

THE COURT: Okay. Well I'm not going to change the bond but I am going to extend the date for trial. I'll continue it beyond the April 15th date. I will give you the opportunity in fairness they ought to be able to have

the transcript but I move the June 1st to sixty days, if you get it in sixty days you all will have time to view it. I'll move June 1st date to August 1st.

SOLICITOR SHELTON: Your Honor, could we just for the record, they said that we don't have to go back through another bond hearing as long as the State has tried it by August 1st.

THE COURT: Well this judge isn't going to entertain another bond hearing I can tell you that, so by August 1st.

SOLICITOR SHELTON: Thank you, Your Honor.

MR. FREEMAN: Your Honor, I will keep the court apprised if I run into any problems with OID. And again I will specifically on the record may ask you to sign a very short supplemental order essentially telling them that this is for the expense. Again because it's the fault of nobody's in the courtroom at all.

THE COURT: Thank you. We'll be at ease for a few minutes and then start back the trial.

SOLICITOR SHELTON: Thank you, Your Honor.

MR. FREEMAN: Thank you very much, Your Honor.

(END OF TRANSCRIPT OF RECORD.)

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 28th, 29th, and 30th days of January, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson

Wanda Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021
DATE: June 19 / 2014

State of South Carolina., County of York.	)	In the General Sessions Court of York Case No.: 2011-GS-46-02898 2011-GS-46-02899 2011-GS-46-02900
State of South Carolina., Plaintiff., -vs- Marquis Jearie Santoni Robinson., Dantonyo Andropul Heath., Defendants.	)	2011-GS-46-02901 2011-GS-46-02902 2011-GS-46-02905 2011-GS-46-02906 2011-GS-46-02907 2011-GS-46-02908 2011-GS-46-02909 Transcript of Record

July 22-25, 2013
York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III., Judge, and a jury.

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

Ms. Misti Horton-Shelton
Assistant Solicitor
Sixteenth Circuit Solicitor's Office
1675-1A York Hwy.
York, South Carolina 29745
803-628-3020
803-628-3025
misti.shelton@yorkcountygov.com
For the Plaintiff

ORIGINAL

Ms. Twana N. Burris, Attorney
Burris Legal Group, LLC
204 Johnston Street, Suite B
Rock Hill, South Carolina 29730
803-980-0100
803-980-0888
twana.burris@theburrislegalgroup.com

Mr. Phil Smith, Public Defender
Sixteenth Circuit Public Defender's Office
Moss Justice Center
1675-1E York Hwy.
York, South Carolina 29745
803-628-3031
phil.smith@yorkcountygov.com
For the Defendants

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS	BY:	PAGE NO.
Opening Statements		
	Solicitor Newkirk. . . .	P.217-220
	Ms. Burris	P.220-226
	Mr. Smith.	P.226-230
Detective Cedric Stokes (In Camera)		
	Solicitor Shelton. . . .	P.72-82
	. . . .	P.94-96
	Ms. Burris	P.82-93
	Mr. Smith.	P.93-94
	. . . . .	P.96-97
Detective Toshia Smith (In Camera)		
	Solicitor Shelton. . . .	P.114-119
	Ms. Burris.	P.119-131
	Mr. Smith	P.131-133
Jared Crane (In Camera)		
	Solicitor Shelton . . .	P.158-163
	. . .	P.177-
	. . .	P.179-180
	Ms. Burris.	P.64-175
	. . . . .	P.178-179
	Mr. Smith	P.176

E-X-A-M-I-N-A-T-I-O-N

WITNESS	BY:	PAGE NO.
Ernest Jordan (In Camera)		
	Solicitor Shelton . . .	P.179-180
Ernest Jordan	Solicitor Shelton . . .	P.231-270
	. . .	P.344-349
	Ms. Burris	P.271-338
	. . . . .	P.349-352
	Mr. Smith	P.338-344
Amanda Crane (In Camera)		
	Solicitor Shelton . . .	P.355-360
	Mr. Smith	P.360-364
Investigator Tim Buchannan		
	Solicitor Shelton . . .	P.367-384
	. . . .	P.409-414
	Ms. Burris	P.384-405
	. . . . .	P.415-416
	Mr. Smith.	P.405-409
	. . . . .	P.416-417
Amanda Crane	Solicitor Shelton. . . .	P.417-426
	Ms. Cruz	P.427-430
	Mr. Smith.	P.431-435
Jared Crane	Solicitor Shelton. . . .	P.440-455
	Ms. Burris	P.455-479
	Mr. Smith.	P.480-488

E-X-A-M-I-N-A-T-I-O-N - CON'T

WITNESS	BY:	PAGE NO.
Officer Ray Hamilton		
	Solicitor Newkirk . . .	P.490-493
	. . .	P.496-497
	Ms. Burris	P.494-496
Betty Butler	Solicitor Newkirk . . .	P.497-506
	Ms. Burris	P.508-509
	Mr. Smith.	P.509
Lily Gallman	Solicitor Shelton. . . .	P.510-528
	. . . .	P.551-556
	Ms. Burris	P.528-529
	. . . . .	P.557-558
	Mr. Smith	P.529-550
Investigator Toshia Smith		
	Solicitor Shelton. . . .	P.559-566
	Ms. Cruz	P.566-583
	Mr. Smith.	P.583-588
Detective Cedric Stokes		
	Solicitor Shelton. . . .	P.588-609
	. . . .	P.686-688
	Ms. Burris	P.627-679
	. . . . .	P.689
	Mr. Smith.	P.680-686

E-X-A-M-I-N-A-T-I-O-N - CON'T

WITNESS	BY:	PAGE NO.
Closing Arguments	Solicitor Shelton . . .	P.704-730
	Ms. Burris	P.731-742
	Mr. Smith	P.743-767
Charge to the Jury.		P.768-798
Recharge to the Jury.		P.802-814
Verdict		P.815-820
Sentence of the Court		P.822-828
Certificate Of Reporter		P.830
Batson/Voir Dire Sheet.		P.831

E-X-H-I-B-I-T-S

NO.	Description	ID.	EV.
ST.1	Item 1.1 White t-shirt.		P.504
ST.2	Item 5-.9mm luger round From shop floor		P.372
St.3	Item 7-Spent .9mm shell Casing from bathroom floor.		P.372
ST.4	Item 8-.9mm Luger round beside toilet		P.373
ST.5	Item 9-.9mm Luger round		P.373
ST.6	Item 10-.9mm Luger round.		P.374
ST.7	CD-Channel 2 Surveillance video		P.242
ST.8	CD-Channel 5 Surveillance video		P.243
ST.9	CD-Channel 8 Surveillance video		P.244
ST.10	Item 3- Cell phone.		P.375
ST.11	Photo-closeup of Jordan's facial wounds (same as Court's 1).		P.25
ST.12	Photo - Jordan's facial wounds		P.252
ST.13	Photo - Jared Crane's knee		P.423
ST.14	Photo - Jared Crane's arm		P.423
ST.15	Photo - back of Jared Crane's ear		P.423
ST.16	Photo-closeup Jared Crane's facial wounds		P.423
ST.17	Photo-profile Jared Crane's facial wounds		P.423

E-X-H-I-B-I-T-S

NO.	DESCRIPTION	ID.	EV.
ST.18	Photo-front of Five Star Customs		P.254
ST.17	Photo-Profile Jared Crane's facial wounds.		P.254
ST.18	Photo-front of Five Star Customs		P.254
ST.19	Photo-Crane's car and bay door.		P.254
ST.20	Photo-Bay Door		P.254
ST.21	Photo-back entrance of shop/Five Star Customs		P.254
ST.22	Photo-looking into shop		P.254
ST.23	Photo-Back entrance to shop		P.254
ST.24	Photo-damage to bathroom.		P.254
ST.25	Photo-of store		P.254
ST.26	Photo-bathroom wall with bullet hole.		P.254
ST.27	Photo-cell phone with Marker 3.		P.254
ST.28	Photo-.9mm round.		P.377
ST.29	Photo-.9mm shell casing		P.377
ST.30	Photo-.9mm shell casing		P.377
ST.31	Photo-.9mm shell		P.377

E-X-H-I-B-I-T-S - CON'T

NO.	DESCRIPTION	ID.	EV.
ST.32	Photo-.9mm shell.		P.377
ST.33	Photo-bullet hole		P.377
ST.34	Photo-T shirt		P.377
ST.35	Photo-blood splatter on floor		P.377
ST.36	Photo-blood splatter on toilet.		P.377
ST.37	Photo lineup of Robinson (Same as Court's 2)	P.76	P.596
ST.38	Photo lineup of Robinson (Same as Court's 3)	P.116.	P.564
ST.39	Photo lineup of Heath (Same as Court's 4).	P.80	P.602
ST.40	DNA Report		NOT ENTERED
ST.41	Buccle Swab - Heath		P.523
ST.42	Item 1.1; 1.2 t-shirt scrapings/cuttings.		P.524
ST.43	Still photo - Marquis with gun 1		P.604
ST.44	Still photo - Marquis with gun 2		P.604
ST.45	Still photo/Heath w. wire		P.604
ST.46	Photo-Longhorn hat		P.377
ST.47	Dew Rag		P.254
ST.48	Photo of Knife		P.377

E-X-H-I-B-I-T-S - CON'T

NO.	DESCRIPTION	ID.	EVD.
ST.49	Black hat		P.254
ST.50	Photo with Marker 5		P.377
CT.1	Photo of victim Jordan (ST.11)		P.25
CT.2	Line-up/Robinson (ST.37)		P.281
CT.3	Line-up/Robinson (ST.38)		P.181
CT.4	Line-up/Heath (ST.39)		P.181
CT.5	5 pages of emails		P.205
CT.6	Jury Note		P.231
CT.7	Jury Note		p.231
CT.8	Jared Crane's Record and disposition		P.440
CT.9	3 page CAD Report		P.647
CT.10	2 jury notes- questions and order meal		P.798
CT.11	Jury note-Replay testimony.		P.800
CT.12	Jury note-definition of attempted murder		P.810
CT.13	Jury note-smoke/phone break		P.810
CT.14	Jury note-wrong name		P.812
CT.15	Jury note-verdict		P.814

Reporter's Note: All Exhibits were filed with the York County Clerk of Court's Office.

(COURT IN SESSION IN THE MATTER OF STATE V. MARQUIS JEARIE SANTONI ROBINSON AND DANTONYO ANDROPUL HEATH MONDAY JULY 22, 2013 AT 03:07 P.M..)

THE COURT: Thank you. Take your seats.

(DEFENDANT'S MARQUIS ROBINSON AND DANTONYO HEATH, BLACK MALES, ENTER COURTROOM AT 03:09 P.M..)

THE COURT: All right, Ms. Shelton.

SOLICITOR SHELTON: Your Honor, the State is ready to proceed on the case of State versus Marquis Robinson and Dantonyo Heath.

Mr. Robinson is charged with armed robbery Indictment No. 2011-GS-46-2905; attempted murder Indictment No. 2011-GS-46-2906; criminal conspiracy Indictment No. 2011-GS-46-2-9-0-7; kidnapping Indictment No. 2011-GS-46-2-9-0-8; and possession of a firearm during the commission of a violent crime Indictment No. 2011-GS-46-2-9-0-9.

Mr. Heath has been indicted and being tried on the following charges; armed robbery Indictment No. 2011-GS-46-2898; attempted murder 2011-GS-46-2899; criminal conspiracy Indictment No. 2011-GS-46-2900; kidnapping Indictment No. 2011-GS-46-2901 and possession of a firearm during the commission of a violent crime Indictment No. 2011-GS-46-2902.

THE COURT: Mr. Newkirk is going to assist you?

SOLICITOR SHELTON: Yes, Your Honor.

THE COURT: Ms. Burris, you represent?

MS. BURRIS: Marquis Robinson, Your Honor.

And to my left, Your Honor, is Attorney Heather Cruz who will be assisting me and as a Associate counsel today.

THE COURT: Okay. Mr. Smith.

MR. SMITH: Yes, Your Honor, for Mr. Heath. And seated with us at the table is Montrey Belton. He has finished his first year in law school; he's been interning with us downstairs.

THE COURT: Anyone object to Mr. Belton who is not an attorney yet sitting at counsel's table?

SOLICITOR SHELTON: I do not, Your Honor.

THE COURT: Ms. Burris?

MS. BURRIS: No, sir, Your Honor.

MR. SMITH: Thank you, Your Honor.

THE COURT: All right, do we have any pretrial matters?

I have a number of request for Voir Dire. Why don't we do those. I'm gonna ask some and not ask some. At the end of my Voir Dire you want to put on the record any not ask that you think I should have ask I will certainly give you an opportunity to do that.

Anything else before the jury comes up?

SOLICITOR SHELTON: Yes, sir. We do have a number of pretrial issues. This is a retrial from a case that was

mistried in January. The court reporter has ask me to place on the record that she is going to renumber the exhibits by placing a new sticker over the old sticker in case there is any issue with that coming up down the road.

We had in the previous trial had intended to introduce a statement by the defendant Marquis Robinson, I do not intend to introduce that statement so I do not believe a Jackson versus Denno hearing is required. I've let Ms. Burris know that. There is also lineups that were done of both Mr. Robinson and Mr. Heath. We believe we will need to have a Neil versus Biggers hearing on that.

Ms. Burris has subpoenaed records from one of the victim's financial records and also his - the person who does his taxes. I filed a motion to quash that subpoena on - the subpoena was given to the victim on Thursday, I filed a motion to quash on Friday. I do believe we need to hear that before we get started. And I believe they were going to make some motions as well, Your Honor.

THE COURT: All right. So you got the motion to quash.

And what's the other one?

SOLICITOR SHELTON: And Neil versus Biggers hearing.

THE COURT: Ms. Burris what do you have?

MS. BURRIS: Your Honor, thank you, May it please the court.

The motion to quash is not actually an issue at this time but I will probably get to that. I actually have a motion to sequester the witnesses.

THE COURT: That will be granted reciprocally to everybody.

MS. BURRIS: Thank you, Your Honor. I also have a motion to insure that the State has complied with all the discovery. We actually submitted also a supplemental discovery request and I just want to make sure that the State has actually complied with everything.

THE COURT: The State complied with discovery?

SOLICITOR SHELTON: Just so I don't -

We've given her everything that I know of. We did have a conversation on Friday. When I was going back through the trial notebook I had the internal chain from SLED that I didn't receive until just the beginning of the trial. The last time it was not part of our electronic file. At that point I was concerned that she may not have that. We spoke, I sent that to her after going through and sending that to her and talking about why I believe she has everything.

MS. BURRIS: Thank you, Your Honor.

The next pretrial motion I have is a motion to exclude - There are certain prior convictions of course we're gonna have to go through the case law in regards to the Cole

factors in regards to Mr. Robinson should he decide to actually take the stand and testify. I would like to know exactly what prior convictions the State intends to introduce into trial so that's another pretrial motion the defense has.

Also a motion to sever the trial based on the serious right that a joint trial would compromise a specific trial right of the defendant. And would also be extremely prejudicial towards - -

THE COURT: Tell me a specific trial right?

MS. BURRIS: Your Honor, I will go ahead and just do the motion to sever, but, Your Honor, it is our position that there is a serious risk that a joint trial would compromise the specific trial right of the defendant - -

THE COURT: Don't go quite so fast.

MS. BURRIS: I apologize, Your Honor.

Or should we actually go forward in a joint trial with Mr. Heath as well as to Mr. Robinson that the jury will have - would not be able to compartmentalize the evidence to be presented against each individual defendant.

Your Honor, understanding that the risk of prejudice varies with the particular course of acts and circumstances of a particular case, this is a case where on the actual video surveillance at one point you do have what they allege to be Mr. Robinson, at one point what they allege to

be Mr. Heath. However it is our position that if we were to go forward that the jury may have some problems looking at the evidence as it pertains to Mr. Robinson and separated out as to evidence from Mr. Dantonyo Heath. And so it is our position that - -

THE COURT: You're telling me - What you're telling me is general. You said there was a specific trial. You're telling me general things that there may be something in a case that might prejudice your client that should not presented against him.

MS. BURRIS: It is my understanding that also Mr. Smith also has a motion to sever I believe in regards to the confrontation clause of the substance of his is in regards to confrontation clause and so he would of course be able to further expand on that. But it is my argument that it would be a prejudicial impact to submit into evidence against Marquis Robinson because there are actually going forward together in a joint trial I think would be a prejudicial impasse only because I believe that the jury would take the evidence as it is alleged against Mr. Dantonyo Heath and because they're going forward in trial they will automatically presume or assume that Mr. Marquis Robinson is actually guilty of the exact same thing and they would not be able to sort through or compartmentalize the evidence as presented against each

individual.

THE COURT: Now what do you base that?

MS. BURRIS: Your Honor, I actually do have a couple of cases.

THE COURT: Can you hand me a copy?

MS. BURRIS: I do not have an extra copy, Your Honor. This was just actually a federal case which was - I'll give you the citation. This is the United States versus Gonzales case which basically talked about the issues that we should discuss to the court when you're talking about co-defendants potentially even testifying or the issues that are factors that we have to go through in determining whether or not we should proceed in a joint trial.

One of the things that this court in Gonzales, United States of America versus Gonzales, Hosea B. Gonzales discussed --

THE COURT: What's that from?

MS. BURRIS: This is United States District Court of Tennessee, Southern District. It discussed whether or not the issue you have to look at is whether or not the jury is likely to find him guilty by his proximity to and association with his co-defendants, that's one of the issues that it discussed. And of course I'm not sure exactly as to who or potentially whether or not one of the

co-defendants would choose to testify. We have not actually elaborated on that issue but should one of the co-defendants - should Mr. Robinson decide to testify or should Mr. Dantonyo Heath decide to actually testify then of course with them actually being charged with a specific crime of course we know that they have a right to confront any and all witnesses against them so being that we're actually proceeding to trial together that would prevent them from actually taking the stand and testifying against each other or even in favor of each other.

THE COURT: My thoughts on that, why would - If one chooses to testify the other one has the right to cross examine them.

MS. BURRIS: But then of course they are going to place themself in a position because of course they have the right to of course take the Fifth and they don't actually have t testify, you know. Or if they do testify of course they could implicate themselves because they are also charged with the offenses. So it places both I would say defendants in a very difficult situation simply because again if one wanted to use the other as a witness they are not able to do that simply because that individual is actually also charged with the offenses. And again it is my position that if we were to proceed to trial in regards to both of them that I believe strongly that the jury would

not be able to - to basically sort through the evidence as to each of the defendants and to be able to fairly access as to what evidence is against Mr. Robinson, as to what evidence is actually against Mr. Heath. They will not be able to do that simply because again we're proceeding to trial together and of course allegedly, you know, they'll have the indictments together so they will just place it all together and neither one of them will have the opportunity to actually have a fair trial simply because if proceeded to trial together they will automatically assume both guilty of the offense or not guilty.

THE COURT: Of course I don't buy the automatic - the logic that reaches that conclusion. I think jurors have enough intelligence to use your term compartmentalize deal it with their lives all the time.

What does the State have to say about the motion to sever?

SOLICITOR SHELTON: Your Honor, there is a long line of cases that they have to - the defense has to be able to articulate how they're - how the client would be prejudiced. The best one I could figure out of the argument is that they could potentially want to call the other as a witness in their case which they would be prohibited from doing that. At this point neither Mr. Smith nor Ms. Burris has indicated that they want to call

the other as a witness in their case or that they intend to do that.

I'm trying to pull the case now because I wasn't sure what they're argument was gonna be in time to pull the case. In State versus Crowe has held that that is not a reason to sever the case if one wants to testify against - for the other that that is not a reason to sever the charges - the cases separate some other argument.

MS. BURRIS: And, Your Honor, if I may, in regards there is a video surveillance and there is a specific point on the video surveillance where it is alleged that the co-defendant - I assume they're alleging the co-defendant Mr. Heath is attacking the alleged victim and in that particular case due to the facts and circumstances of that particular attack which is quite vicious I would say, that potentially could be held against Mr. Marquis Robinson.

THE COURT: Like how?

MS. BURRIS: Simply because they're proceeding together in going forward in the trial.

THE COURT: Other than the accomplice liability or something like that.

MS. BURRIS: Your Honor, there is --

THE COURT: I'm not even sure that's an issue here but the fact that one guy is beaten up another guy I don't see how that --

MS. BURRIS: I think the facts and circumstances of that particular video, that particular moment, the facts and circumstances of that particular moment could be prejudicial to allegedly - -

THE COURT: It would be prejudicial. I've seen it, it would be prejudicial to your client or the other client. Who ever is beaten up that guy its prejudicial I agree with you and that's what - what prejudicial the State would present.

SOLICITOR SHELTON: Your Honor, they are charged with criminal conspiracy so I would argue that even if we tried the two cases separately we would be able to introduce the video in it's entirety.

THE COURT: Well I'll deny the motion to sever. I don't see any problems as far as Mr. Robinson and Mr. Heath. Mr. Heath hasn't made his motions yet but as far as Mr. Robinson's aspect I deny the motion to sever. I don't follow, in fact the only specific trial I've heard you even elude to is the right to call someone else as a witness in front of the witnesses against them. And that alone is not sufficient as I think it should be.

SOLICITOR SHELTON: Yes, sir. Your Honor, the case of State versus Crowe 258, S.C. 258 and I actually have copies brought into the courtroom at this time.

THE COURT: I'll take a look at that. I deny the

motion subject to looking at that case.

MS. BURRIS: I actually do have, Your Honor, a motion, there are some photographs, actually lots of photographs, some of the photographs actually have pictures of the alleged victims. I think that it is my motion to exclude - and I understand the elements of what each one of these individuals are actually facing and the charges, of course the attempted murder, the armed robbery, the criminal conspiracy, kidnapping and possession of a weapon during the commission of a violent crime, however, it is our position that these particular photographs are going to be presented simply to arouse the sympathy or prejudice of the jury. And I do not think that all of the photographs are actually necessary to substantiate material elements of each of the offenses charged.

There are some photographs that actually have - Of course in the indictment - Let me strike that.

In the particular photographs they're just pictures, there are actually lacerations of course and cuts but their just photographs of course just with blood on the alleged victim's face. I don't see why it's actually necessary to actually show those photographs to the jury. I think its just simply an attempt of course to have a chilling affect upon the jury and of course to arouse the jury as to sympathy. And I think they're highly prejudicial of course

to Mr. Robinson. I can understand if they were for the purpose of corroborating the testimony of the individual victims but I believe that she was allowed to show and publish those individual photographs to the jury, of course all the blood photographs is just an attempt to try to arouse the sympathy of the jury and I do not think that all of the photographs should be allowed in so I'm making a motion to exclude - there are certain photographs of course that have the victim's face - the alleged victims and just blood on it - just blood.

THE COURT: All right, Ms. Shelton, the best way to approach this is let Ms. Shelton tell us - show us which one she plans to introduce as opposed to some sort of blanket rouse.

SOLICITOR SHELTON: And, Your Honor, there were a large number of photos in the case, well over a hundred, and I want to say around twenty of the victims. I narrowed it down to about thirty pictures total and five of the victims.

THE COURT: Show those to Ms. Burris and see if she objects to any of those. And those are numbered?

SOLICITOR SHELTON: They are numbered from a previous trial and they are gonna keep the same number.

THE COURT: I know, so we'll know what you're talking about you want to tell us what number.

SOLICITOR SHELTON: Yes, sir.

I have State's Exhibit Number Eleven, State's Exhibit Number Twelve or the two that she is objecting to. I've also shown her State's Exhibit Number Sixteen, State's Exhibit Number Fifteen, State's Exhibit Number Fourteen, State's Exhibit Number Thirteen.

I'm gonna show these to Mr. Smith as well.

Mr. Smith, has informed me I miscounted.

MR. SMITH: May have.

SOLICITOR SHELTON: Again there is also State's Exhibit Number Seventeen.

May I approach, Your Honor.

(PHOTOS HANDED UP THE COURT.)

THE COURT: Which ones do you object, Ms. Burris?

MS. BURRIS: The two of Mr. Jordan, I think that's State's Exhibit...

SOLICITOR SHELTON: Eleven and Twelve, Your Honor.

MS. BURRIS: Eleven and Twelve. And as the Assistant Solicitor stated there are other photographs but she is attempting to introduce those individual photographs and publish to the jury. Again it is our position that it will place a prejudicial - It would have a prejudicial impact upon my client. Again I think it is just an attempt to evoke sympathy from the jury just because of the blood. Of course again I think on those particular photos my

understanding is behind the blood are cuts or lacerations. But the reasoning behind just wanting to publish those particular photographs to the jury again is to lure the jury to declaring guilt on the emotional basis is sympathy for the victim in regards to just the blood that's being shown.

THE COURT: Who is Eleven and Twelve? Who is that pictures of?

SOLICITOR SHELTON: Those are Ernest Jordan. He is present in the courtroom, Your Honor. And there - We didn't have pictures taken before and after he was cleaned up. All the pictures were taken at that same time. They were basically substantially the same pictures. I didn't feel it was necessary to introduce six pictures of him looking like that but we didn't - I didn't pick the most gory pictures. There were no pictures of him cleaned up with stitches in him and those were the pictures that were taken that showed the injuries that he received that night.

THE COURT: Well I'll allow one. It appears to me basically they show the same thing. The right side of his face with a gash under his right eye.

SOLICITOR SHELTON: I want to say one showed his neck more than the other and he --

THE COURT: It does. One shows his neck.

SOLICITOR SHELTON: If you're gonna keep on out I'd

rather keep the one with the neck.

THE COURT: In?

SOLICITOR SHELTON: In yes, sir.

THE COURT: That's your choice. That's Number Twelve.

(PAUSE.)

THE COURT: I'm required to choose one and she chose Number Twelve.

MS. BURRIS: Okay.

THE COURT: Make Eleven a Court's Exhibit.

Mr. Smith, do you object to any of the other ones?

MR. SMITH: No, Your Honor, I cannot say that they were I understand the basis for the State's --

SOLICITOR SHELTON: Your Honor, can I have a moment so I can just scratch that off before I try to introduce it.

(WHEREUPON: COURT'S EXHIBIT NUMBER ONE, IDENTIFIED AND MARKED, RECEIVED INTO THE RECORD.)

MS. BURRIS: Your Honor, my next motion is a motion to redact the video. My understanding they are being charged as co-defendants in this particular trial. Again as we previously discussed that particular moment in the video I think it definitely would have a prejudicial impact upon Marquis Robinson. Of course again my argument goes back to the saying that you want the jury to be able to look at the independent evidence against each of the defendants. Of course outside for the jury to look at the independent

evidence against Marquis Robinson and if we were to go forward you would want them to be able to determine whether or not they are guilty or not guilty by what evidence is actually presented against Marquis Robinson and again I think if that particular video comes that that particular video comes in against Marquis Robinson again it would have prejudicial impact against Marquis.

THE COURT: Well again that's - the State is supposed to introduce the evidence that is not relevant is not prejudicial generally. And he's charged with - your client is charged with conspiring to commit armed robbery and kidnapping or attempted murder. In addition to the attempted murder striking Jared --

Mr. Robinson is charged with attempted murder as to Ernest Jordan and armed robbery of Mr. Jordan and Jared Crane. And a criminal conspiracy including armed robbery and attempted murder and kidnapping along with others.

I don't need to look at the film again - of the video - I've seen it. It's very graphic and no question about it but it's about as good a evidence as anybody can get us to see what happened on that night there and who was involved.

I'm not going to redact any of it so that motion is denied.

MS. BURRIS: Thank you, Your Honor.

THE COURT: Mr. Smith.

MS. BURRIS: I apologize, Your Honor. I actually do of course as the Assistant Solicitor stated there is a Neil v. Biggers. She has the officers here for that. In regards to the statement my client would still like to go forwards in regards to Jackson v. Denno hearing.

THE COURT: If they are not going to present it what's --

MS. BURRIS: Are you not going to - -

SOLICITOR SHELTON: I've told her we have no intention to present that statement during our case in chief should he testify and we need it to use it to impeach him but we do not intend to introduce it at all in our case in chief.

I do not have that witness under subpoena because I didn't intend to use it.

MS. BURRIS: One second, Your Honor. Beg the Court's indulgence.

(PAUSE.)

MS. BURRIS: Unless it actually becomes an issue, Your Honor, as the state is presenting their case in chief, then at this time we will waive the Jackson v. Denno hearing. But if it becomes an issue then of course I'd like to have a Jackson v. Denno as to whether or not they're going to introduce the statement that was made.

THE COURT: Certainly.

MS. BURRIS: Thank you, Your Honor.

THE COURT: Mr. Smith.

SOLICITOR SHELTON: Your Honor, sorry. Before we get started she alluded - Ms. Burris alluded that on the Motion to Quash there wouldn't be a reason to have that and she would get to that later, we did not get to that.

THE COURT: What's the issues in regard - -

MS. BURRIS: At this point, Your Honor, I do not - I did actually issue a subpoena for the financial records of Mr. Ernest Neil Jordan. At this time that is not an issue however as we progress in trial if it becomes an issue of course then I would like to be able to present my argument before the court as to whether or not the subpoena is valid and whether or not he should actually turn over the financial documents. Thank you.

THE COURT: Mr. Smith.

MR. SMITH: Thank you, Your Honor, if it please the Court.

As far as motions before the jury selection, I suppose my motion to sever would be the only one that would have to be taken up before that.

THE COURT: All right.

MR. SMITH: My motion to sever is based upon I suppose three different reasons. One to start with and it's been argued somewhat though I believe my client Mr. Heath is in a little bit different position. The allegation by the

State is that of the two individuals on the video one of them has a mask covering his face throughout largely if not all of the entirety of his - observable on the video. That is the person they allege to be my client so my concern for my client is specifically that the jury would see two people on the video, two people in the courtroom therefore assume that these two people are these people. And the weights of the evidence from that video are obviously different against the two individuals. One's face is not covered during the majority of the time that he is on the video and one is covered I would submit the entirety of the time. The next basis would be not a confrontation clause argument if the State does not intend to elicit his statement that was given by Mr. Robinson. However it would be a fact that we cannot call him as a witness specifically, Your Honor, there is an allegation your Honor will remember concerning a nickname that may or may not have been called at the time of the use as a basis of identification of my client, that nickname being Yodie. Mr. Robinson in an interview by Detective Haire was ask if he knew who that was, his response is "I don't know who Yodie is. Dantonyo Heath is my home boy but he wouldn't do anything like that period." So obviously we think that's exculpatory in two ways, one concerning the nickname and two concerning what Mr. Heath's nature of his or inability

to likely do crimes like this so we would like to call Mr. Robinson as a witness. Obviously he has a Fifth Amendment right not to testify so if we called him we would be prevented from doing that and therefore we submit without these trials being separated Mr. Heath cannot exercise fully his defense and his ability to call witnesses.

THE COURT: So by severing we call your case first.

MR. SMITH: I would argue I'm still in the same difficult position. I would ask the State to call the other case first but we could be in the same position.

THE COURT: You don't want to sever. You want to control the docket.

MR. SMITH: I just want for my client to be able to call witnesses in his defense, Your Honor.

THE COURT: All right. Go ahead.

MR. SMITH: And my final concern is - concerns the way that the court currently deals with last argument. Currently its my understanding that if either defendant were to introduce evidence both of us would loose the right and I think the privilege or the benefit of last argument I think there is a benefit to it. That's why the State seeks to get it in cases where evidence is introduced. Here if Mr. Robinson were to introduce any piece of evidence representing Mr. Heath we would loose that last argument and though not a Constitutional right I think a valuable

right and defense that we would loose. If the State severed obviously we would not loose that.

THE COURT: Kind of go through the three real quick again.

MR. SMITH: The specific concerns with the video being damaging to my client because there is a person that is masked through out that video and that evidence I think would be weighed only as a whole video as opposed to individually separately against the two defendants so by sitting by the other defendant who is seen on the video I think it is more inculpatory of my client than it would be at a separate trial.

Next would be the right to call witnesses understanding the Crowe decision. And then finally the potential loss of last argument.

SOLICITOR SHELTON: Your Honor, on the first issue, the State has more evidence other than you see a masked person on the video. That admittedly the other person on the video is wearing a mask, the majority of the time one of the witnesses did see his fact as he was leaving - as he was leaving the building he had taken that mask off. She identified - she can identify him. There is another witness who was able to identify him in a lineup. There is also DNA evidence that Mr. Heath could not be excluded as the contributor to that DNA so the - That there is an

individual who was wearing a mask is the only evidence that the case has and now there is an individual sitting at this table beside the unmasked individual is not the extent of the State's case and do not believe it is a valid reason to sever the case.

On the - We would cite Crowe again on the inability to call Mr. Robinson as a witness hoping that case is coming in in the near future. Also in the Crowe case the court held that loss of last argument would not preclude the State from going forward with both cases at the same time, both individuals at the same time.

I sent someone to track it down, Your Honor.

THE COURT: All right. Well while we're waiting on that and I will wait to rule after we get that and take a look at the Crowe case then I'll finalize my ruling on Robinson and make a ruling on Heath why don't we go ahead-

Looks like somebody has arrived.

(DOCUMENTS RECEIVED UP BY THE COURT.)

(PAUSE AT 03:44 P.M..)

THE COURT: Crowe seems to basically take care of all three issues as I see it. I deny Mr. Heath's motions.

The Crowe directly discusses the last argument issue, discusses directly about not being able to call the co-defendant as a witness issue, and Page 267, 258 S.C., it says, "Appellant Wright contends they should have been

tried separately upon the ground that proof of the guilt of his co defendant would establish such a heinous crime as to inflame the passions of the jurors and make it impossible for him to receive a fair and just consideration by the jury of the facts applicable to him." The first hurdle.

Quote "there is no merit in this contention period. Regardless of the jury's assessment of the evidence against the co-defendant, the guilt of Wright depended upon a determination by the jury of whether he was present aiding and abetting in the commission of the crime. The jury was clearly and plainly so instructed." And that's my plan in this case.

And the court goes on saying "determining that issue did not require a separate trial."

So basically Crowe says all three of the issues raised in the motion as to both defendants, motions to sever and have separate trials are each respectfully denied as to Mr. Robinson and Mr. Heath.

Now Neil versus Biggers.

SOLICITOR SHELTON: Do you want to do the jury first, Your Honor? It doesn't matter to me that they are - -

THE COURT: Well it's almost four o'clock. What we can do is get the jury up and draw them and I'll probably let them go for the rest of the day.

Any objection to that, Ms. Burris?

MS. BURRIS: No objection, Your Honor. And also in addition to that I would like to address what prior convictions the State intends to introduce against Mr. Marquis Robinson should he decide to actually take the stand and testify. So we can do those after the jury is actually sworn.

MR. SMITH: I'll hold the remainder of my motion. No objection to the drawing - -

THE COURT: Okay. All right, well let's get the jury panel up and we'll draw a jury.

Now the strikes are five for the State and ten each?

MS. BURRIS: Yes, sir.

THE COURT: For the defense. Draw two alternates.

Anything else before we get the jury up?

MS. BURRIS: No, sir, Your Honor.

SOLICITOR SHELTON: Nothing from the State, Your Honor.

THE COURT: We'll be at ease for a few minutes.

SOLICITOR SHELTON: Your Honor, as long as there is no objection, Mr. Jordan is here, since we're not gonna get to any testimony today unless the defense thinks they will need him I'm going to excuse him. If he wants to leave.

THE COURT: That's fine with me.

MS. BURRIS: We're actually doing the Neil v. Biggers hearing.

SOLICITOR SHELTON: We're gonna start that tomorrow; is that correct?

THE COURT: No, I thought we were gonna do that this afternoon.

SOLICITOR SHELTON: Oh. Okay. I thought you said after we picked the jury we'd be out of time at that point.

THE COURT: No. We would be out of time - That's not what I meant to say but I said it. What I meant is, it's ten till four and if we don't go ahead and get the jury drawn we're gonna be pushing to get the jury drawn by five or six. I have drug court at six and I have to meet with staff probably around 5:30 or a quarter till so we got a little over an hour and a half at least.

SOLICITOR SHELTON: Thank you, Your Honor.

(COURT AT EASE AT 03:49 P.M..)

(COURT BACK IN SESSION AT 03:57 P.M..)

THE COURT: Thank you. Take your seats.

Members of the jury panel, I'm John Hayes from Rock Hill, and along with Judge Cole who you met this morning, I'm holding General Sessions Court, criminal court; we're gonna draw our jury in the first case for the week.

What I'm going to do first is ask Ms. Shelton who is representing the State - she is with the Solicitor's Office - to introduce herself. She is accompanied by Mr. Newkirk, Ryan Newkirk, also with the Solicitor's Office.

If both of you all would stand up and let the jury see who you are.

(SOLICITOR SHELTON AND SOLICITOR NEWKIRK STOOD/THEN SAT DOWN.)

THE COURT: All right. We have two defendants, we have Marquis Jearie Santonio Robinson.

Mr. Robinson, would you stand and let the jury see who you are.

(DEFENDANT ROBINSON STOOD AND SAT DOWN.)

THE COURT: He is represented by Twana Burris and Heather Cruz.

(ATTORNEY'S BURRIS AND CRUZ STOOD.)

THE COURT: You may be seated.

(DEFENSE ATTORNEYS BURRIS AND CRUZ SAT DOWN.)

THE COURT: They also have charges against Dantonyo Heath.

Mr. Heath would you stand?

(DEFENDANT HEATH STOOD.)

THE COURT: This is Mr. Dantonyo Heath. He is represented by Mr. Phil Smith. And seated at the table with them is an intern with Mr. Smith's office Mr. Montro Belton.

(DEFENSE ATTORNEY SMITH AND INTERN BELTON STOOD.)

THE COURT: You may be seated.

(DEFENSE ATTORNEY SMITH AND INTERN BELTON SAT DOWN.)

THE COURT: Now each of these defendants are charged with several offenses and they are each charged with the same offenses. They're all alleged to have occurred June 8th, 2011, at a sort of what I would call a repair shop.

What was the name of it again?

SOLICITOR SHELTON: It's Five Star Customs, Your Honor.

It's a rim shop.

THE COURT: A rim shop. Five Star Customs. What's the last word?

SOLICITOR SHELTON: The Five Star Customs.

THE COURT: Five Star Customs rim shop. This is where it allegedly happened on June 8th, 2011.

The defendants are charged with armed robbery, attempted murder, criminal conspiracy, kidnapping and possession of a firearm during the commission of a violent crime. To these charges each of the defendants have entered pleas of not guilty. This places on the State the burden of proof; that is, the burden of proving their guilt beyond a reasonable doubt before you could convict one, or both, as to any or all of the charges.

Similar to the way you were quizzed by Judge Cole this morning I have certain questions to ask. When I ask questions, if you have to respond to my question, please stand and then I will followup by asking you to give me

your name and your number and then perhaps some more information. And then I will ask you whether or not the fact that you are standing because of some issue, how if anyway that would affect your ability to serve as a juror.

First, are any of you related by blood or marriage, or are you a close personal friend or acquaintance with any of the individuals to whom you've just been introduced? The lawyers or the defendants, if so, please stand? Friend or acquaintance or related.

No one stands.

Have any of you been represented by in any fashion our solicitor's office, Kevin Brackett, and before that Mr. Tommy Pope, as a victim, as a witness, as a witness victim's assistant, as a volunteer, worked with the solicitor's office in any way whatsoever, please stand?

No one stands.

If any of you have worked with the office of Burris Law Firm, Ms. Burris, or anyone in her law office at any time, same type question as a witness or a client or are any of you now represented by Ms. Burris; if so, please stand?

(NO ONE STANDS.)

THE COURT: Finally as to Mr. Smith and the Public Defender's Office, are any of you related by blood or marriage to anyone one who works in the public defender's

office, or, have any of you been represented or a member of your family represented by a member of the York County Public Defender's Office; if so, please stand?

No one stands.

Are any of you members of the Grand Jury which passed on these indictments at an earlier time, if so, please stand?

No one stands.

Have any of you heard about this case, read anything about it, heard anything, heard anybody talk about it, know anything about it in any way whatsoever from any source whatsoever or have any of you formed, expressed any opinion about any matter or an issue involved in this case, if so, please stand?

No one stands.

Are any of you members of, contributors to organizations such as Mother's Against Drunk Drivers'; Students Against Drunk Driver's; Citizen's Against Violence, Trooper's Association, Sheriff's Association or Fraternal Order of Police, if so, please stand?

No one stands.

Are any of you or a member of your family, immediate family, - Let me rephrase that. This is one of those questions that is somewhat delicate and I'm not gonna ask you to get up and tell me the particulars if you have to

stand up. But if any of you or a member of your family been the victim of or you or a member of your family been charged with any of the type of offenses I've just gone over? I'll call them violent offenses, kidnapping, attempted murder, armed robbery. If any of you have been the victim of, charged with, or a member of your family been the victim of or charged with any type crime such as that; if so, please stand?

All right, please stand. And what I'll ask you to do is give me your name and number and don't go into - I don't want to know about your situation. By standing you've told me that this is part of your background so I'm gonna ask you your name and number and then I will simply ask whether based on this as being one of your life experiences you could be fair and impartial in this trial.

So give me your name and number first please.

A. My name is Teresia Sexton and my number is 193.

THE COURT: Okay. Yes, ma'am.

A. Lorraine Schwahl, 191.

THE COURT: All right. Yes, sir.

A. My name is John Fowler, Number 79.

THE COURT: All right. Again I'm not gonna ask you the particulars but based on the fact that you have this as part of your life experience, if that would prevent you from being fair and impartial in this trial, please raise

your right hand?

None of the three do.

Did you? You kind of - -

A. I don't understand the - -

THE COURT: All right. You're telling me that you've had, somebody, you or a member of your family has had some experience with a violent crime either somebody was charged.

A. If I told you what it was - -

THE COURT: No because you've got to - This is an independent decision, I can't make your mind up. All I can ask is - Let's assume, and I'm not saying this is the case with you, let's assume somebody in your family has been charged with kidnapping. Whether they were convicted or not, would that - That's not a good way to put it. Let me back up. Would the fact that somebody - that that question generated your standing, that is that somebody in your family history has something that made you stand either charged with or the victim of some sort of crime.

A. They were the victim.

THE COURT: Okay. Well would that affect you such that you could not be fair? That is since you've got that as part of your life experiences even with that as part of your life experience could you still be fair and impartial to these two gentlemen and the State?

A. I don't know if I could.

THE COURT: Okay. Well that's what we want so you can be seated. Your name and number again?

A. Lorraine Schwahl, 191.

THE COURT: All right.

Yes, sir, you kind of looked like at one time you were raising your --

A. Yeah. I feel the same way.

THE COURT: Okay. Your name and number again?

A. John Fowler, 79.

THE COURT: Yes, ma'am.

A. I'm okay with it.

THE COURT: The last lady, your name again?

A. Teresa Sexton.

THE COURT: All right. You will not be excused. You can stay with us. But thank you and I appreciate - I know sometimes the way I phrase these may be a little confusing and you don't understand stand up and ask me.

Have any of you or a member of your immediate family been employed as a law enforcement officer or as a prosecutor of some criminal crimes? That is anything from sheriff's deputy, sheriff or a policeman, US Marshall, military police, judge advocate general, solicitor, US attorney; anything like that, if so, please stand?

All right, we will work our way back.

Your name?

A. Brandy Hagerman, 173.

THE COURT: All right. And I will ask in this particular tell me why you're standing. Uncle Joe is a sheriff or something.

A. My uncle works for the York County Sheriff's Department.

THE COURT: All right. Your name again?

A. Brandy Hagerman.

THE COURT: Okay. Just remain standing.

Yes, ma'am.

A. Brenda Robinson, 183. My uncle and cousin both are state troopers.

THE COURT: All right. Yes, ma'am, in the back.

A. Tanika Burris, I'm 34 and my grandfather was a detective, homicide detective.

THE COURT: All right. Yes, sir.

A. Ernest Lawing, 124. My son is a policeman in Huntersville.

THE COURT: All right. Yes, ma'am, your name and number?

A. Tyresha Thompson, 223. My uncle is a military officer.

THE COURT: Your uncle is a military officer. All right.

The five of you who are standing, and I apologize for pointing that's the only way I can do it. I've never figured out another way so I point.

The fact that you have this, if that would prevent you from being fair and impartial to the trial of this case, fair and impartial to the defense and to the State, if you could not be fair and impartial please raise your right hand?

None of the five do. You may remain and have a seat.

This follows up a little bit to the one I ask earlier.

No, I think I've already covered that.

Do any of you have any beliefs, religious or otherwise, philosophical or otherwise that would prevent you from being fair and impartial in the trial of this particular case; if so, please stand?

All right, yes ma'am, your name and number?

A. My name is Rebecca Garcia and my number is 254.

THE COURT: All right. And you have --

A. I have --

THE COURT: And you believe that would prevent you from being fair and impartial?

A. Yes. I don't think I can be impartial because - -

THE COURT: Well you don't need to go any further but I will excuse you from serving. Just have a seat.

The following are possible witnesses' in this case.

Now I don't know that all of them will testify but even if they don't testify their names may come up. So if you know any of these individuals, and particularly of course if you are related by blood or marriage you obviously know them, but if you know them any way whatsoever please stand and then I'll come back and ask you which person you - the person you know or are related to.

Deputy Amy Stivender from the Colleton County Sheriff's Department, Kayla Higgs. From York County Forensics, George H. Weeks and Cheryl S. Gregory. From Rock Hill Communications Division dispatcher Lisa W.

Not indicated to me to be associated with law enforcement so I'll call them just non law enforcement, Anastacia Heath. Then from the Rock Hill Police Department Detective Cedric Stokes, Detective Toshia Smith, Detective Bruce Haire, Officer Benjamin Glynn, Officer Ray Hamilton.

Then from the York County Forensic Service Unit Mr. Tim Buchannan. Then from the State Law Enforcement Division Lily Gallman, Betty Butler, Patricia Crooks.

Then individuals who are not associated with law enforcement, Jared Crane, Amanda Crane, Ernest Jordan, Mindy Hervey Lipinski.

Anybody know any of those individuals, related?

No one stands

All right. Any further questions other than what's

been handed up from the State?

SOLICITOR SHELTON: No, sir, Your Honor.

THE COURT: Any further questions, Ms. Burris?

MR. BURRIS: No, sir, Your Honor.

THE COURT: Mr. Smith?

MR. SMITH: No, Your Honor.

THE COURT: Finally, do any of you know of any reason why you could not or should not serve as a fair and impartial juror in the trial of this particular case if so please stand?

No one stands.

Now the way we draw juries in this courtroom is the bailiff will come and stand in the floor way up here in sort of a well and if you hear your name and number called please come and stand next to him and face first the table where the solicitor's are seated. One of them will say either excuse the juror which means you may return to your seat. Or present the juror. If you hear the words present the juror turn and face the table where Mr. Robinson is seated and one of his attorneys will say either present the juror or excuse the juror. Again the words excuse the juror means you may return to your seat. And if you hear the words present the juror from someone at Mr. Robinson's table you will turn then and face the table where Mr. Heath and his attorney are seated. Mr. Smith will say either

excuse the juror, again, that means you may return to your seat. Or he will say swear the juror. If you hear the words swear the juror step toward the jury box and the bailiff will show you where to sit. Bring with you any personal belongings you may have, book, rain coat, anything like that, umbrella, so that you won't have to go back and get it if you are seated.

The State is entitled to excuse - we call it strikes - excuse up to five individuals. Each defendant has the right to excuse up to ten individuals. We want to draw a jury of twelve and two alternates. On the alternates the strikes will be one for the State and two each for each defendant.

SOLICITOR SHELTON: Your Honor, may we approach?

THE COURT: Yes.

(BENCH CONFERENCE OFF THE RECORD AT 04:13 P.M..)

THE COURT: Actually because there are two defendants the State gets ten and each of them get ten strikes.

All right, if you hear your name called, please come forward.

MADAME CLERK: Number 83, Tamara Gary.

(BLACK FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MS. BURRIS: Please present this juror.
MADAME CLERK: Defense Heath?
MR. SMITH: Please swear Ms. Gary.
MADAME CLERK: Please have a seat in the jury box.
Number 29, Jonathan Brown.
(WHITE MALE COMING FORWARD.)
MADAME CLERK: What say you for the State?
SOLICITOR SHELTON: Please present this juror.
MADAME CLERK: Defense Robinson?
MS. BURRIS: Please excuse this juror.
MADAME CLERK: You are excused from this case.
Number 5, Jeffrey Antinoro.
(WHITE MALE COMING FORWARD.)
MADAME CLERK: What say you for the State?
SOLICITOR SHELTON: Please present this juror.
MADAME CLERK: Defense Robinson?
MS. BURRIS: Please excuse this juror.
MADAME CLERK: You are excused from this case.
Number 2-0-7, Bonnie StClair.
(WHITE FEMALE COMING FORWARD.)
MADAME CLERK: What say you for the State?
SOLICITOR SHELTON: Please present this juror.
MADAME CLERK: Defense Robinson?
MS. BURRIS: Please present this juror.
MADAME CLERK: Defense Heath?

MR. SMITH: Please excuse the juror.
MADAME CLERK: You are excused from this case.
Number 182, Alex Robinson. Robertson, excuse me.
(WHITE MALE COMING FORWARD.)
MADAME CLERK: What say you for the State?
SOLICITOR SHELTON: Please present this juror.
MADAME CLERK: Defense Robinson?
MS. BURRIS: Please present this juror.
MADAME CLERK: Defense Heath?
MR. SMITH: Please swear Mr. Robertson.
MADAME CLERK: Please have a seat in the jury box.
Number 1-0-8, William Huffstetler.
(WHITE MALE COMING FORWARD.)
MADAME CLERK: What say you for the State?
SOLICITOR SHELTON: Please excuse this juror.
MADAME CLERK: You are excused from this case.
Number 76, Randall Finn.
(WHITE MALE COMING FORWARD.)
SOLICITOR SHELTON: What say you for the State?
SOLICITOR SHELTON: Please present this juror.
MADAME CLERK: Defense Robinson?
MS. BURRIS: Please excuse this juror.
MADAME CLERK: You are excused from this case.
Number 213, Cynthia Tadlock.
(WHITE FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?
SOLICITOR SHELTON: Please present this juror.
MADAME CLERK: Defense Robinson?
MS. BURRIS: Please present this juror.
MADAME CLERK: Defense Heath?
MR. SMITH: Please excuse Ms. Tadlock.
MADAME CLERK: You are excused from this case.
Number 177, Eric Ramsdell.
(WHITE MALE COMING FORWARD.)
MADAME CLERK: What say you for the State?
SOLICITOR SHELTON: Please present this juror.
MADAME CLERK: Defense Robinson?
MS. BURRIS: Beg the Court's indulgence.
(PAUSE.)
MS. BURRIS: Please present this juror.
MADAME CLERK: Defense Heath?
MR. SMITH: Please excuse Mr. Ramsdell.
MADAME CLERK: You are excused from this case.
Number 251, Kevin Baker.
(WHITE MALE COMING FORWARD.)
MADAME CLERK: What say you for the State?
SOLICITOR SHELTON: Please present this juror.
MADAME CLERK: Defense Robinson?
MS. BURRIS: Please excuse this juror.
MADAME CLERK: You are excused from this case.

Number 169, Jonathan Petty.

(WHITE MALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MS. BURRIS: Please present this juror.

MADAME CLERK: Defense Heath?

MR. SMITH: Please swear Mr. Petty.

MADAME CLERK: Please have a seat in the jury box.

Number 9, Justin Baker.

(WHITE MALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MS. BURRIS: Please excuse this juror.

MADAME CLERK: You are excused from this case.

Number 85, Micah Gaylor.

(WHITE MALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MS. BURRIS: Please present this juror.

MADAME CLERK: Defense Heath?

MR. SMITH: Please swear Mr. Gaylor.

MADAME CLERK: Please have a seat in the jury box.

Number 142. David McCauley.

(WHITE MALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MS. BURRIS: Please present this juror.

MADAME CLERK: Defense Heath?

MR. SMITH: Please excuse Mr. McCauley.

MADAME CLERK: You are excused from this case.

Number 8, Angela Baioni.

(WHITE FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MS. BURRIS: Please excuse this juror.

MADAME CLERK: You are excused from this case.

Number 124, Ernest Lawking.

(WHITE MALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MS. BURRIS: Please excuse this juror.

MADAME CLERK: You are excused from this case.

Number 233, David Wendland.

(WHITE MALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MS. BURRIS: Please present this juror.

MADAME CLERK: Defense Heath?

MR. SMITH: Please excuse Mr. Wendland.

MADAME CLERK: You are excused from this case.

Number 78, Dawn Styles.

(WHITE FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MS. BURRIS: Please present this juror.

MADAME CLERK: Defense Heath?

MR. SMITH: Please swear Ms. Styles.

MADAME CLERK: Please have a seat in the jury box.

Number 264, Jermaine Taylor.

(BLACK MALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MS. BURRIS: Please present this juror.

MADAME CLERK: Defense Heath?

MR. SMITH: Please present Mr. Taylor.

MADAME CLERK: Please have a seat in the jury box.

Number 52, Teresa Coulter.

(WHITE FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MS. BURRIS: Please present this juror.

MADAME CLERK: Defense Heath?

MR. SMITH: Please swear Ms. Coulter.

MADAME CLERK: Please have a seat in the jury box.

Number 2-0-1, Sharon Smith.

(WHITE FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MS. BURRIS: Please present this juror.

MADAME CLERK: Defense Heath?

MR. SMITH: Please excuse Ms. Smith

MADAME CLERK: You are excused from this case.

Number 173, Brandy Hagerman.

(WHITE FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MS. BURRIS: Please present this juror.

MADAME CLERK: Defense Heath?

MR. SMITH: Please excuse Ms. Hagerman.

MADAME CLERK: You are excused from this case.

Number 252, Lindsey Campbell.

(WHITE FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MS. BURRIS: Please present this juror.

MADAME CLERK: Defense Heath?

MR. SMITH: Please swear Ms. Campbell.

MADAME CLERK: Please have a seat in the jury box.

Number 193, Teresia Sexton.

(WHITE FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MS. BURRIS: Please present this juror.

MADAME CLERK: Defense Heath?

MR. SMITH: Please excuse Ms. Sexton.

MADAME CLERK: You are excused from this case.

Number 25, Joseph Brandon.

(WHITE MALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MS. BURRIS: Please present this juror.
MADAME CLERK: Defense Heath?
MR. SMITH: Please swear Mr. Brandon.
MADAME CLERK: Please have a seat in the jury box.
Number 235, Jennifer West.
(WHITE FEMALE COMING FORWARD.)
MADAME CLERK: What say you for the State?
SOLICITOR SHELTON: Please present this juror.
MADAME CLERK: Defense Robinson?
MS. BURRIS: Please present this juror.
MADAME CLERK: Defense Heath?
MR. SMITH: Please swear Ms. West.
MADAME CLERK: Please have a seat in the jury box.
Number 17, Ilse Bertilson.
(WHITE FEMALE COMING FORWARD.)
MADAME CLERK: What say you for the State?
SOLICITOR SHELTON: Please present this juror.
MADAME CLERK: Defense Robinson?
MS. BURRIS: Please present this juror.
MADAME CLERK: Defense Heath?
MR. SMITH: Please swear Ms. Bertilson.
MADAME CLERK: Please have a seat in the jury box.
Number 2-0-9, Thomas Stevenson.
(WHITE MALE COMING FORWARD.)
MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please excuse this juror.

MADAME CLERK: You are excused from this case.

Number 130, Justin Lucas.

(WHITE MALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MS. BURRIS: Please present this juror.

MADAME CLERK: Defense Heath?

MR. SMITH: Please swear Mr. Lucas.

MADAME CLERK: Please have a seat in the jury box.

THE COURT: Strikes on the alternates will be one each to the State; two each to the Defense.

MADAME CLERK: Number 117, Lynn Kimble.

(WHITE FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MS. BURRIS: Please present this juror.

MADAME CLERK: Defense Heath?

MR. SMITH: Please swear Ms. Kimble.

MADAME CLERK: Please have a seat in the jury box.

Number 64, Susan Dove.

(WHITE FEMALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MS. BURRIS: Please present this juror.

MADAME CLERK: Defense Heath?

MR. SMITH: Please excuse Ms. Dove.

MADAME CLERK: You are excused from this case.

Number 121, Gary Lamb.

(WHITE MALE COMING FORWARD.)

MADAME CLERK: What say you for the State?

SOLICITOR SHELTON: Please present this juror.

MADAME CLERK: Defense Robinson?

MS. BURRIS: Please present this juror.

MADAME CLERK: Defense Heath?

MR. SMITH: Please swear Mr. Lamb.

MADAME CLERK: Please have a seat in the jury box.

THE COURT: Anything from the State involving the striking of the panel?

SOLICITOR SHELTON: No, sir, Your Honor.

THE COURT: Ms. Burris:

MS. BURRIS: No, sir, Your Honor.

THE COURT: Mr. Smith?

MR. SMITH: No, Your Honor.

THE COURT: Those of you who were not chosen I'm going to allow you to go. Please call tonight after seven and follow whatever instructions you will receive. It may be

to call back at a certain time; it may be to report at a certain time. It's very important that you follow those instructions, so have a pleasant evening and call back tonight after seven. And please try to be fairly quite when you leave, I want to start talking with this panel.

(JURY DISMISSED AT 04:55 P.M..)

THE COURT: Those of you who were chosen I'm going to ask you to give me your attention for just a few minutes. It's almost five o'clock and I have a diversion court that I have to hold at six o'clock, plus I don't want to keep you here much later than five anyway.

I'm going to chat with you just a minute and then let you go for the day. We're not going to administer the oath to you, that is swear you in until in the morning, but you are on this jury panel so I have to give you some cautionary instructions. One is while you are serving on this jury do not try to make up your mind and do not discuss the case among yourselves until we reach the point where I instruct you to jointly deliberate and return a unanimous verdict. Prior to that time you are not equipped with all the tools you need to make a fair and reasonable decision. Do not let anyone discuss the case with you outside the courtroom. If anyone tries to discuss this case with you tell them you cannot as you are serving as a juror and report back to me if anyone tries to discuss the

case with you hopefully identifying that person because I would have to take action against any individual who tries to talk to a seated juror.

Do not let yourself be exposed to any news coverage if there is any. I don't know that there will be. Don't read about, watch anything or listen to anything that would remotely deal with this trial. Your verdict must be based on the law and the evidence as it's developed here in the courtroom. Along those lines do not do any independent research on this case. Do not go to the scene. I don't know that building -

What's the name again? Five Star?

SOLICITOR SHELTON: Five Star Customs, Your Honor.

THE COURT: Five Star Custom Rims. I don't know if it's even at that same location but there is no reason for you to go by where Five Star Rims was, Custom Rims was, or is now. You have to base your verdict on the law and the evidence.

Again don't discuss the case or let yourselves be exposed to any news coverage. Do not do any independent research. Don't go on line, don't use any social media or any kind of electronics, don't Google, or go to any source whatsoever to find out anything about this case. That is including about the law, rules of evidence, court personnel, me, the lawyers involved, the defendants.

During the week you'll hear the name of the alleged victims. Don't go and research anything about them. That is keep in mind that you are not to do any research on your own. Your verdict must be based on what's developed here in the courtroom.

To go on line and do any research would not only be a violation of your oath, it would disrupt perhaps these proceedings. And while this may sound a little out - a little far fetch, I don't think it is, don't go on line and use any social media. Do not go on line and say guess what I'm serving on a jury where we're trying someone for attempted murder. The next thing you will get back is some message from somebody who is a friend or somebody who likes you or whatever it is on Facebook that may give you some consternation or concern. There is no need for anybody - of course your family members will know you're on a jury - but there is no need for you to go into cyberspace and discuss this case of what you're doing as far as your services on this jury. Again it would be improper and unfair to the parties. They are entitled to you listening to the trial and basing your decision solely on the law and the evidence as its developed here in the trial.

I will have some other things to chat with you about in the morning but we are going to stop in just a moment. I will first ask the State is there anything else they want

me to cover this afternoon?

SOLICITOR SHELTON: No, sir, Your Honor.

THE COURT: Ms. Burris?

MS. BURRIS: No, sir, Your Honor.

THE COURT: Mr. Smith?

MR. SMITH: No, Your Honor.

THE COURT: All right. When you leave I will appoint a foreperson when you return in the morning. In fact I'll probably have the bailiff tell you who the foreperson is before you come out because the foreperson will take this first seat in the first row. The two alternates are always seated in those two seats. There is no other assigned seating. When you leave at this time follow the bailiff and he will tell you how to get in and out while you are serving as a juror and show you where the jury room is at this point, so I'm gonna allow you to leave at this time.

(PETIT JURY EXITS COURTROOM AT 05:00 P.M..)

THE COURT: Mike, I didn't tell them, tell them to be here at 9:30. Thank you.

THE COURT: We've got about forty minutes, we can work on Neil versus Biggers if you're ready.

SOLICITOR SHELTON: Yes, Your Honor.

Your Honor, just - do you want to start that or do you want to cover the matter of Mr. Robinson's prior criminal history? I know Ms. Burris wants to get that on the

record.

THE COURT: All right. Either one. We've got about like I say I have to meet with staff about twenty till and it's five o'clock now, we've got forty minutes. I'll leave it up to those of you who has something to do.

Let me ask Ms. Naylis something if she'll come up here.

(BENCH CONFERENCE WITH COURTROOM CLERK OFF THE RECORD.)

THE COURT: All right. What record do you contend on behalf of the State constitutes evidence which could be admitted to impeach Mr. Robinson?

SOLICITOR SHELTON: Your Honor, he has five charges which the convictions of would carry over a year. He has an indecent exposure. That was the - He pled to that in 2004. He has a possession of a pistol by a person prohibited, pled to that in '99 and ABHAN in '99, a possession of crack in 2000 and a failure to stop for a blue light in 2000. I know those are old and outside the ten year time limit for the conviction date but I checked with probation, he was being supervised on those charges. On one set until 2005 and on the other set till 2009 until the end of 2009.

THE COURT: All right. What were they, indecent exposure, pistol, ABHAN, failure to stop. I missed the

last one.

SOLICITOR SHELTON: Possession of crack. And on the ABHAN, Your Honor, since it is so very closely related to this charge I would only ask if that - if he had been convicted of a felony. On the gun charge as well.

MS. BURRIS: So which one do you actually, other than the gun charge and the ABHAH?

THE COURT: None of these fall into the crime of dishonesty so it would fall under 609(a)(1) as an accused the court has to determine the approbative value committing those crimes outweighs the prejudicial effect.

Do you have any comments, Ms. Burris?

MS. BURRIS: I do, Your Honor.

Your Honor, understanding - my understanding that she indicated that he was actually being supervised in 2009 of course you know there is actually a time limit and of course the conviction date indicates in 2000 the rules says of a conviction under this rule is not admissible when a time of ten years or more has elapsed since the day of the conviction or the release of the witness from the confinement if proposed for that conviction which is at a later date unless the court determines. Now the question becomes whether or not probation is the same as confinement and our position that probation is not the same as confinement. Additionally the court of Appeals of South

Carolina which is actually a 2011 case and this is a case in which the Court of Appeals remanded the case back down to the Circuit Court to discuss the five factors set forth in *Kaufe* and ruled that his prior convictions were admissible. However *Kaufe* gives us the five factor analysis that we must look at in addition to my previous argument that supervision is not the same as confinement according to the rule. It gives the five factors analysis it says that we must look at whether or not the impeachment value of the prior crime which it is our position that the convictions that the assistant solicitor stated that she would like to ask Mr. Robinson about does not have any impeachment value, is not a crime of dishonesty. We have to look at the point in time of conviction and the witnesses's subsequent history. Well of course the previous conviction was as previously stated in 2000, we are now in 2013 so of course it was some time ago. We have to look at the similarity between the past crime and the crime charged. It is my understanding that she does not intend to ask anything about the ABHAN neither the gun charge because they are similar to what the offense he's being charged with today. And of course the defendant's testimony it is our position that Mr. Robinson is facing over I would say ninety years in regards to these offenses that's charged today.

Your Honor, in his testimony it's extremely important simply because allegedly there were I guess allegedly four persons who would actually be witnesses to this particular alleged crime and so it's our position that his testimony is extremely important and should he desire to actually take the stand I do not believe that she should actually bring in charges that are ten years from this date.

And of course the other factor that *Kaufe* says took place is the centrality of the credibility issue. Again these are not crimes of dishonesty, Your Honor. I think that these would be simply presented or ask of Mr. Robinson these questions simply in order to try to bring light to the jury that he has some type or he has committed some type of offense in the past or to present him in some type of bad light or either - or some way just prior bad act. So I think that this is improper to actually allow these particular offenses into the record in regards to the indecent exposure. Again they are more than ten years old, it's not a crime of dishonesty, his testimony is extremely important --

THE COURT: Indecent exposure is 2004. My math isn't real real good but I don't put that outside the ten year -

MS. BURRIS: The indecent exposure was in 2004. But again, Your Honor, we would just ask that the assistant solicitor and the state not be allowed to ask him about any

of these prior convictions simply because of the timing of these prior convictions. And again the importance of the defendant's testimony and what he's actually facing today again over ninety years. And also we have to look at the impeachment value of the prior crime which it is our position there is not any impeachment value.

THE COURT: When was the failure to stop?

SOLICITOR SHELTON: He pled to the failure to stop and possession of crack in 2002. He was under supervision on that until 2006. And, Your Honor, I have the case State versus Joey Ellis which held that probation is the same as confinement so the period of confinement would end in 2006.

THE COURT: So he was on probation until 2006 on those 2002's. Is that right, a failure to stop?

SOLICITOR SHELTON: Yes. The failure to stop and the possession of crack I believe was 2006 and the unlawful carrying - possession of a pistol, the ABHAN and he was released from supervision on that in 2005. I believe what happened is that he was on probation and then picked up the other charges so he had to finish that before his YOA started is the way the records from probation read.

THE COURT: Say that again.

SOLICITOR SHELTON: I believe he pled in '99 to the possession and the ABHAH.

THE COURT: And what kind of sentence did he get?

SOLICITOR SHELTON: He received a probationary sentence.

THE COURT: I know but it has a number of years.

SOLICITOR SHELTON: He received - I'll tell Your Honor.

Five years suspended on probation. They are on one charge, one year suspended on probation for unlawful carrying and then five years on the remaining charges suspended on probation all to run - -

THE COURT: But how long is the probation? How long does it say it ran?

SOLICITOR SHELTON: It didn't there so I had to call probation to get his records. It was - it didn't say. It just says five years suspended on probation. He was on - I believe he got five years on probation and then he picked up the new charge and it appears from his probation record that they sort of suspended his or tolled or whatever, stopped his probation time, let him serve his YOA time and then picked back up his probation time or vice versa. He wound up serving his probation time and then started his YOA.

THE COURT: Well I'm gonna ask you to get some confirmation from somebody to exactly what happened.

SOLICITOR SHELTON: I have the printout from probation if you would like to see that.

THE COURT: Have you shown that to Ms. Burris?

SOLICITOR SHELTON: I do not think I did. I told her that we can run it but I didn't show her the printout.

(DEFENSE ATTORNEY BURRIS REVIEWING DOCUMENTS.)

MS. BURRIS: Your Honor, I actually have the sentencing sheets so I think that the sentencing sheets we were able to pull from the records.

On this particular sheet that's being presented, Your Honor, it doesn't actually even have the charges on it. It has the start date.

THE COURT: Let's do this. We don't have to decide this today. I can take this under advisement because it's not going to be determined today whether to testify or not. But I would like whatever documentation I can have and any case law. I thought there was a case that says possession of crack in and of itself does not - is not a showing of lack of veracity.

SOLICITOR SHELTON: Yes, sir. And there may be and we may have decided that last time. I cannot remember.

THE COURT: Well we'll do some research on that. The same thing for failure to stop. I don't think that makes somebody a liar because they failed to stop. The same as indecent exposure.

SOLICITOR SHELTON: They did - One of the victims also had a possession of crack charge. They were allowed to ask

him about that charge in the prior trial.

THE COURT: Well it's different. It's a witness as opposed to the accused. If the accused with the witness it says any witness evidence of a witness other than the accused has been convicted of a crime shall be admitted - you got the one year - and so there is no caveat.

SOLICITOR SHELTON: Yes, sir.

THE COURT: But the evidence of the accused had been convicted of such a crime shall be admitted if the court determines the approbative value i.e., that it shows that somebody may be lying outweighs the prejudicial effect. So there is a balancing test as to an accused that do not apply to a witness.

SOLICITOR SHELTON: Yes, sir.

MS. BURRIS: Your Honor, and this may be something that Your Honor would like to take up at a later date also, a later time also. In regards to the alleged victim's prior record we have Ernest Jordan and Jared Crane and my understanding is Amanda do not have any convictions that were actually qualify --

SOLICITOR SHELTON: Neither Jared or Amanda Crane had any convictions that would qualify.

MS. BURRIS: Well --

SOLICITOR SHELTON: Mr. Jordan did. He had two. He had a possession of crack and a receiving stolen goods.

THE COURT: We've got a little bit of time before we get to those witnesses; we'll do some research.

SOLICITOR SHELTON: Do you want what I have from probation, Your Honor?

THE COURT: Please.

Just make a copy and give it to me tomorrow and give her a copy.

MS. BURRIS: Thank you.

THE COURT: And, Ms. Burris, if you will give me a copy of what you want me to look at.

MS. BURRIS: Yes, sir, Your Honor.

THE COURT: All right. It's now almost a quarter after five. You think you got time, a half hour or so to do Neil versus Biggers?

SOLICITOR SHELTON: There's four witnesses total. I have three of those witnesses here.

THE COURT: Go ahead.

SOLICITOR SHELTON: I doubt we'll get through all of them.

THE COURT: Why don't we go ahead and get started. Does anybody need a break?

Wanda?

MADAME COURT REPORTER: No, sir.

THE COURT: Stephanie?

MADAME CLERK: I'm good.

THE COURT: All right, then we'll go ahead and do..

You want to call your first witness?

SOLICITOR SHELTON: Yes, sir. The State would call Ernest Jordan.

THE COURT: Now as far as sequestration the victims have a right to remain in the courtroom.

SOLICITOR SHELTON: Yes, sir, Your Honor. I don't think they wanted to be in here for the jury selection.

Your Honor, we can call Detective Stokes.

THE COURT: All right, come on up and put your left hand on the Bible and raise your right.

(WHEREUPON: CEDRIC STOKES, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

DIRECT EXAMINATION - IN CAMERA

DETECTIVE CEDRIC STOKES BY SOLICITOR SHELTON:

Q. State your name for the record, please.

A. Cedric Stokes.

Q. And where do you work?

A. Rock Hill Police Department, ma'am.

Q. And what do you do there?

A. I'm currently assigned as a detective with the department.

Q. What were you doing back in June of 2011?

A. I was assigned as a detective back at the police department.

Q. And at some point during June of 2011 did you become involved in the investigation of an armed robbery and attempted murder, kidnapping charges out of Five Star Customs?

A. Yes, ma'am. I was.

Q. And what was your involvement in that case?

A. I actually was called to the scene as the investigator to come and assist the patrol officers with the investigation.

Q. And as part of that investigation, did you do a photo lineup to show either of the victims or both of the victims?

A. I did.

Q. Who were the victims in this case?

A. Jared Crane and Ernest Jordan.

Q. And did you prepare those lineups yourself?

A. I did.

Q. Did you have anyone assist you in preparing those lineups?

A. No, ma'am.

Q. When – Who did you develop as a suspect in the robbery?

A. Maquis Robinson.

Q. But then that's who you developed? That's the initial suspect?

A. Yes, ma'am.

Q. How did you develop him as a suspect?

A. I was told by Mr. Jordan at the time Maquis Robinson.

Q. He knew Mr. Robinson?

A. He did.

Q. And so you developed a lineup from that information?

A. Yes, ma'am, I did.

Q. How long after the initial crime did you prepare that lineup?

A. The lineup was prepared of Mr. Robinson that evening.

Q. That same night?

A. Yes, ma'am, the same.

Q. And it was prepared. Was it shown to the victims at that point?

A. Once I prepared it, I showed it to the victims at the hospital.

Q. At the hospital?

A. Yes. Well, I showed Mr. Jordan and Detective Smith.

Q. And we're calling it a lineup. Exactly what was it? How did you prepare it?

A. It was a six person photo lineup of one picture containing Mr. Robinson.

Q. And the folks in the lineup, the different photos, how are they --

A. They are arranged by the same similar shapes, sizes,

age, skin complexion.

Q. And were those photos marked in any way?

A. No, ma'am, they weren't.

Q. Any wording on them?

A. No, ma'am, they weren't.

Q. Anything to indicate who was actually pictured in the photos?

A. No, ma'am.

Q. Who showed the — You showed the lineups to both Ernest Jordan and Jared Crane?

A. I showed it to Mr. Jordan. Detective Smith showed Mr. Crane the photo lineup.

Q. Okay. And was anyone with you when you showed it to Mr. Jordan?

A. No, ma'am.

Q. Was Mr. Crane present?

A. No, ma'am. They were in separate rooms.

Q. And was Detective Smith with you?

A. She was actually in the other room with Mr. Crane.

Q. Was the victim shown multiple lineups? Mr. Jordan.

A. No, ma'am. Just one.

Q. And how did you present that lineup to the victim, to Mr. Jordan?

A. Usually when I have a photo lineup, there is a form that I have that I actually read to the victims. Pretty

much I say don't indicate to me. If you see the person that committed the offense, then you go ahead and circle and initial or and/or initial.

Q. Do you tell them that the suspect is absolutely in that lineup?

A. No. The form actually reads may or may not. The photo lineup may or may not contain the person who committed the offense.

Q. Did you do anything to influence Mr. Jordan and when showing him that lineup to indicate who the suspect was?

A. No, ma'am.

Q. Was Mr. Jordan able to select a photo from that display?

A. Yes, ma'am, he did.

Q. And who did he select?

A. Maquis Robinson.

Q. How long did it take him to pick him out?

A. Instantaneously.

Q. Did he say anything while he was picking out the photo?

A. I can't recall exactly what he said but he told me that's him right there on the photo lineup.

(WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-SEVEN PREMARKED FOR IDENTIFICATION.)

Q. Detective Stokes, I'm going to hand you what's been

marked for identification purposes only as State's Exhibit Number Thirty-seven.

A. Yes, ma'am.

Q. Do you recognize that exhibit?

A. I do.

Q. What is it?

A. It's the actual photo lineup that I prepared that evening or that morning.

Q. And how do you recognize it?

A. Because I actually signed right underneath where Mr. Jordan signed.

Q. And is that the same lineup that you showed him?

A. Yes, ma'am.

Q. Has it been changed or altered in any way?

A. No, ma'am.

Q. And does that lineup indicate that Mr. Jordan identified Maquis Robinson as the suspect?

A. Yes, ma'am, it does.

Q. Thank you. And were you able to develop a second suspect in this case?

A. Yes, ma'am, I was.

Q. And who was that?

A. Mr. Heath, Dantonyo Heath.

Q. And did you prepare a lineup for Mr. Heath?

A. I did.

Q. Did you show those to both victims, Ernest Jordan and Jared Crane?

A. I did.

Q. How – In time line when was that lineup prepared after the initial ––

A. After speaking with Mr. Jordan, he gave me a nickname of Yodie and he told me at the time that his mother lived somewhere down on Crest Street. And he gave me the vehicle description that his mother – the vehicle that his mother was driving. Myself and Detective Smith actually went down to Crest Street, saw the vehicle – saw a vehicle that matched that description. I ran the tag and it came back to Dantonyo Heath and I did a photo lineup.

Q. And who did you show the photo lineup first, Ernest Jordan or Jared Crane?

A. It was Mr. Crane.

Q. And was he able to identify anyone in the lineup?

A. Ma'am, he was not.

Q. Did you have him – You talked about a form that you read. Was there a form that you showed to Mr. Crane?

A. That particular evening I didn't have a form. I actually met Mr. Crane at the Fast Bucks out on - I guess that's Highway 5 between Rock Hill and Lancaster, and from there I actually responded to the Bojangles down in Lancaster and that's where I met Mr. Jordan.

Q. So you did not have the form with you at all that night?

A. I didn't have the form that night.

Q. So you met with Jared Crane first. Mr. Crane was not able to identify anyone from the photo lineup and then you met with Mr. Jordan?

A. Correct.

Q. And you showed him the lineup?

A. I did.

Q. How many photos were in the lineup?

A. Six person photo lineup, same as before.

Q. How were those photos arranged?

A. It was arranged again by the same, complexion, height, weight and age.

Q. Any markings or identification on any of those photos?

A. No, ma'am.

Q. Any particular order?

A. No, ma'am.

Q. Did you do or say anything to Mr. Jordan before showing him the lineup to influence his decision on who he had identified?

A. No, ma'am.

Q. Did you advise him of how the lineup would be shown to him?

A. Yes, ma'am.

Q. And what did you tell him?

A. I advised him again it may or may not contain the person who committed the offense against him and if you see him, again just circle and initial.

Q. Was there anyone else present with you at this time?

A. I was there. Mr. Jordan and his wife were there.

Q. Was she outside of the car or inside the car?

A. He actually stepped outside of the car because I remember it raining that night.

Q. Did she say or do anything to you?

A. No, ma'am. No, ma'am.

Q. And was he able to identify someone from the photo lineup?

A. He did.

Q. And who was that?

A. Mr. Heath.

(WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-NINE, PREMARKED FOR IDENTIFICATION.)

Q. I'm going to show you what's been marked as State's Exhibit Number Thirty-nine.

A. Yes, ma'am.

Q. Do you recognize that?

A. I do.

Q. How do you recognize it?

A. This is the photo lineup that Mr. Jordan signed and

initialed and actually wrote "this is him" on it.

Q. And you recognize that from his initial on it what he wrote on it?

A. Yes, ma'am.

Q. And from that lineup, who did he identify?

A. Mr. Heath.

Q. His full name?

A. Dantonyo Heath.

Q. And you did not say anything or do anything to indicate that that was the suspect that he should choose?

A. No, ma'am.

Q. And just — did you — You prepared the lineup that was shown to Jared Crane. We've already —

A. I did.

Q. It was basically the same lineup of Maquis Robinson that was shown to Jared Crane and to Ernest --

A. Yes, ma'am. It was shown in two different places.

Q. And the photos that were contained therein — from the lineup that was shown to Jared Crane, how were those photos arranged in size, shape, weight?

A. Same again. Of course, race, size, shape, weight and age.

Q. And did you provide that lineup to Detective Smith?

A. Ma'am, I did.

SOLICITOR SHELTON: I have no more questions, Your

Honor.

MS. BURRIS: Thank you, Your Honor. May it please the Court.

CROSS EXAMINATION - IN CAMERA

DETECTIVE CEDRIC STOKES BY MS. BURRIS:

Q. Detective Stokes, you've just testified that you went to assist the initial responding officers at the scene?

A. Ma'am, I did.

Q. But you actually ended up going from the scene of the alleged incident to the hospital?

A. Correct.

Q. And when you got to the hospital, what was the condition of each alleged victim, Mr. Crane and --

A. When I got there they was being attended to at the hospital. Everybody was kind of - I think they were starting to clean him up but they was pretty battered and bruised at the hospital.

Q. So they were battered and bruised?

A. Yes, ma'am.

Q. Eyes open or closed?

A. They were open.

Q. Open?

A. Yes.

Q. Now one of the things that you do in preparing a lineup, is that you get together some lineup identification

or image details?
A. What I do is — It's a computerized system that we use. I plug in a name of the person that I want to get a photo lineup containing and the computer select images.
Q. Okay. And it is true that you actually had a lineup image detail that you presented in your file for Mr. Heath. Correct?
A. I'm sorry, ma'am?
Q. It is true that you actually presented a lineup image detail for Mr. Heath. Correct?
A. A lineup image detail as far as what?
Q. What the computer actually generated.
A. Yes, ma'am.
Q. Okay. And did you actually present a lineup image detail for Maquis Robinson also?
A. It should be in the file. Yes, ma'am.
Q. So you would have actually created a lineup image detail for Maquis Robinson?
A. Well, when it generates, it generates the photo lineup and then another second page with it.
Q. So that actually should have been turned over to the State. Correct. Or in your case file?
A. Yes, ma'am.
Q. Who was actually present in the room with Mr. Jordan?
A. When I did the photo lineup?

Q. Yes.
A. Just he and I.
Q. Okay. And who was present in the room with Mr. Crane?
A. Detective Smith did the photo lineup with Mr. Crane.
Q. So it was just Mr. Crane and Detective Smith?
A. Ma'am, I'm not sure. We were doing it at the same time. Simultaneously.
Q. But you actually eventually went into the room where Jared Crane was. Correct?
A. Yeah, after dealing with Mr. Jordan. Yes.
Q. And who was present in there once you went in there?
A. Just Detective Smith. Who I recall just Detective Smith and Mr. Crane.
Q. And in the lineup detail image that's actually generated by the computer.
A. Ma'am.
Q. You indicate that you want the same persons with the same complexion --
A. Well, the computer by default goes same age, complexion, race, hair style.
Q. Now you testified earlier when asked by the State whether or not in regards to your instruction sheet for identification ---
A. Yes, ma'am.
Q. --- that you actually read, do you actually read off

of that or is that something that you allow --

A. I read it. I usually read it. Sometimes they just read it. They ask can they just read it themselves but I usually read it.

Q. And so on that particular night when you actually went into the hospital room where Mr. Jordan was.

A. Ma'am.

Q. You actually read verbatim from the instruction sheet for identification?

A. Yes, ma'am.

Q. And you just testified that when asked by the State, when you showed or presented the photo identification to Mr. Jordan, you read that it may or may not be the alleged suspect.

A. Correct.

Q. And you remember testifying at the previous trial. Correct?

A. I do. Vaguely, but I do.

Q. And according to your previous testimony you indicated, and when showing him the photo display and that you were asked did you say that the suspect is one of these six pictures and your answer was, you stated, it may.

A. No. I don't recall saying that.

MS. BURRIS: Your Honor, may I approach the witness please?

THE COURT: You may.

MS. BURRIS: Thank you.

Q. Can you please read for the Court Line 17 through 21 of your previous testimony.

A. Sure. "And when showing the photo display, did you say that the suspect is one of these six pictures?"

Answer. "It may."

Question. "Maybe?"

Answer. "Maybe."

Q. So it was your previous testimony that you stated that the suspect may be in these photos and today your testimony is when showing the alleged victim the photographic lineup you said it may or may not.

A. May or may not, according to the form. Yes, ma'am.

Q. Now, when --

Where is the photo identification?

What's been previously marked as State's Exhibit Thirty-seven, I'm going to show you.

Is there any particular way as an arrangement as to how you place the photos in the display?

A. No, ma'am. The computer generates it.

Q. So if the computer actually generates it, you would have had to actually input Maquis Robinson's information first as Marquis Robinson is the first person on that photo display. Correct?

A. Yeah. I will place his name into the system because that's the person that I want the photo lineup generated for. Yes.

Q. But you don't necessarily have to place the individual as the first person in the photo lineup. Right?

A. I wouldn't place them at all. The computer would place it wherever it places it.

Q. So the computer decides where to place the alleged suspect?

A. Correct. Correct.

Q. And it doesn't matter as to how you input the information?

A. No, ma'am. It could be any one of the six. It depends on how the computer placed it.

Q. And the name of that system is?

A. It's just our records management system.

Q. So it was around eleven o'clock when you arrived at Piedmont Medical Center?

A. I think I was dispatched out about around eleven. I was dispatched between 10:45 and eleven. Went to the scene and there I was notified that Mr. Jordan was at the hospital. I believe Mr. Crane was being transported when I got there.

Q. When Mr. Jordan was actually picking out the alleged suspect of who he believed Maquis Robinson, what were his

emotions, if any?

A. I doh't know about his emotions. He was just laying in the hospital - the hospital room.

Q. So he was lying down in the bed?

A. Yes.

Q. Was he upset?

A. I guess, yes.

Q. What did you actually observe?

A. Him laying in the hospital bed with wounds to his face.

Q. Did he have any reaction when picking out Maquis Robinson?

A. Just I think he said, that's him right there.

Q. Did he just say, that's him, or did he say, that's him who actually committed the crime?

A. I think he said, that's him.

Q. That's him?

A. Yes.

Q. How certain would you say that Mr. Jordan was certain?

A. It was almost immediate.

Q. Now, is your testimony that you actually read the identification - instruction sheet for identification. Correct?

A. Yes.

Q. And then you actually showed him the photo lineup?

A. Right. Just like this. It was actually stapled together.

Q. You showed it or did you read it?

A. Yes, like this. I read it to him and then I flipped it over and I showed it to him.

Q. And what's been previously marked as State's Exhibit Thirty-seven, you asked him to actually sign?

A. Yes. After he did it, I actually asked him to sign and then I signed underneath. That's my signature.

Q. Right there?

A. Yes, ma'am.

Q. In the time was actually 12:30 in the morning. Correct?

A. Whatever is noted on the form there, ma'am, is when he signed it.

Q. Do you know whether or not he was under the influence of any medications?

A. Ma'am, I do not.

Q. Were nurses back and forth in the room when you were there?

A. No. I asked everybody to leave.

Q. You asked everyone to leave?

A. Yes. Meaning – When I got there I believe there was a nurse at the door and I kind of closed the door and said I need to speak with him so nobody came in at that point.

Q. Did you speak with any of the nurses to see if he was actually under the influence of any medications?

A. No, ma'am.

Q. So you don't really know what his mind set or mental condition was. Correct?

A. No, ma'am.

Q. You never asked him about any medication or drugs in his system?

A. No, ma'am.

Q. You never questioned him about the amount of sleep that he had?

A. No, ma'am.

Q. Prior to showing him the photo identification, the photo lineup, did you speak with him in regards to – just do an investigation and speak to him in regards to what happened that night?

A. I think briefly. Kind of said hey, how you doing. Introduced myself. Kind of what happened and that was it. Nothing – not an extensive interview at that time because he laying in the hospital bed.

Q. Was he hooked up to any oxygen machine or anything?

A. No, ma'am.

Q. Was anything connected to his body?

A. Not that I can recall.

Q. Not that you can recall. You're not sure though?

A. Not really sure.
Q. Tell me a little bit about the lighting in the room, in the hospital room, while he was lying in the bed.
A. Just regular hospital lights on. Regular lighting just like the courtroom.
Q. So it's 12:30 in the morning. It wasn't this light. Right?
A. I can't recall. It's almost two years ago. I can't recall. It wasn't dim in the room. It was bright enough where he could see the photos.
Q. So he was actually lying in the hospital bed ---
A. He was.
Q. --- at Piedmont Medical Center?
A. He was.
Q. You said it was not dim?
A. No it wasn't dim lighting.
Q. So was the light similar to the lighting as reflected in the courtroom?
A. Yes, ma'am.
Q. Prior to preparing the photographic lineup to take to Piedmont Medical Center to show to Mr. Jordan and Mr. Crane, what information if any did you have?
A. At the scene, I had – I think I had information that Maquis Robinson was named.
Q. Where did you receive that information from?

A. I can't — one of the patrol officers. I can't remember.

Q. At the scene?

A. Yes, ma'am. I mean it was several officers at the scene. I can't remember exactly which one gave me the name.

Q. Did you in any way actually in any way point to Mr. Robinson in the photographic lineup?

A. No, ma'am.

Q. And Detective Tashia Smith was the detective who actually presented the photographic lineup to Mr. Jared Crane?

A. Yes, ma'am.

Q. Other than signing the photographic lineup sheet as presented to Mr. Ernest Jordan, did he make any other statements that night while in the hospital?

A. Ma'am, honestly I can't remember exactly what statements he made. Once we did the photo lineup, like I said, I kind of left there because he was still being attended to so I wanted the hospital to finish working and I was going to get his statement the next day, kind of a visit the next day once he, you know, got everything squared away at the hospital because he had bad injuries to his face.

Q. To his face?

A. Yeah. Face and his --

Q. And around his eyes?

A. Yeah, I can't remember. I just remember that really bad slice below one of his eyes.

MS. BURRIS: Beg the court's indulgence.

(PAUSE.)

MS. BURRIS: No further questions for this witness at this time, Your Honor.

MR. SMITH: May it please the court, Your Honor.

CROSS EXAMINATION - IN CAMERA

DETECTIVE CEDRIC STOKES BY MR. SMITH:

Q. Detective Stokes, did you show a lineup to Mrs. Crane, Amanda Crane?

A. I can't remember if I showed it to her or Detective Smith. I can't remember, Mr. Smith.

Q. Okay. And do you know the time that you showed the lineup with my client, Mr. Heath, what time you showed that to Mr. Jordan and what time of day or night that would have been?

A. I believe he may have noted it on the form photo lineup.

(ATTORNEY SMITH HANDED WITNESS EXHIBIT.)

A. Yes, sir.

Q. Okay. So that was nine o'clock in the evening; is that right?

A. Yes, sir.

Q. Okay. And you said that that occurred where?

A. It was at the Bojangles on — I believe it's Highway 5 in Lancaster.

Q. But there was no cover form — You didn't have a cover form at that lineup at that point in time?

A. No, sir, I did not.

Q. All right. And then did you show a lineup of my client to Mr. Crane?

A. I did.

Q. Okay. And do you know when you showed that?

A. It was maybe ten minutes prior. He couldn't — he couldn't pick out your client.

Q. Was it at the same location at Bojangles or was it somewhere different?

A. He was at the Fast Bucks, further down — closer into Rock Hill.

MR. SMITH: No further questions.

THE COURT: Redirect.

SOLICITOR SHELTON: Just very, very briefly, Your Honor.

REDIRECT EXAMINATION - IN CAMERA

DETECTIVE CEDRIC STOKES BY SOLICITOR SHELTON:

Q. The lineup in the detail that Ms. Burris asked you about, you don't show that to the victims?

A. No, ma'am, I don't.
Q. And that's just gen - it's a report generated from when you do pictures.
A. Correct.
Q. Does it contain personal information of people that are not related to the case?
A. It contains personal information of everybody in this photo lineup so we --
Q. Social security number. That sort of thing?
A. Yes.
Q. And I believe Mr. Smith asked you if you showed a lineup to Amanda Crane.
A. Yes.
Q. Do you remem --
A. Honestly I can't recall.
Q. Did you make any note in your files that you showed her a lineup?
A. I did not. I can't recall making a note that we showed a photo lineup to Mrs. Crane.
Q. If you had shown her a lineup would you have made a note if she was not able to identify someone?
A. Yes, because at that time with the form it actually on the bottom part where it says if you can't identify someone, we ask them to sign that form also.
Q. But if you don't have that form.

A. If we don't have that form, then I would have made a note.

Q. If you - And there is no note in your file that you showed her a lineup?

A. No. No, ma'am.

Q. Did you see her at the Fast Bucks?

A. I believe he – yes, he pulled up with her.

Q. Okay but do you remember showing her a lineup there?

A. I did not show her a lineup. No. Just Mr. Heath -- Mr. Crane as I can remember. I can't --

Q. And you would not have had Mr. Heath's lineup to show her at the hospital?

A. No. We didn't develop him until a day or so later.

SOLICITOR SHELTON: I have no further questions, Your Honor.

MS. BURRIS: No further questions, Your Honor

RECROSS EXAMINATION - IN CAMERA

DETECTIVE CEDRIC STOKES BY MR. SMITH:

Q. If you thought that Mrs. Crane, a witness to the crime, would have been able to identify Mr. Heath, you would have shown her lineup. Right?

A. Yes. I may have ruled out - I can't remember. I can't recall, Mr. Smith, if I did or not.

Q. Okay, but I mean if you thought she could have made an I.D. and it would have been valuable to the case, you would

have shown it to her?

A. Probably.

MR. SMITH: Thank you.

No further questions, Your Honor.

THE COURT: You can step down. Appreciate your time.

(WITNESS LEAVING WITNESS STAND.)

THE COURT: You can stay in as case agent. You haven't been so designated but I believe you want Mr. Stokes to stay in.

Detective Stokes.

SOLICITOR SHELTON: Yes, sir, Your Honor.

THE COURT: All right. We'll stop until 9:30 in the morning. It's almost six and I've got drug court so we'll start back at 9:30 in the morning.

(COURT IN RECESS AT 05:48 P.M..)

(COURT BACK IN SESSION TUESDAY, JULY 23, 2013 AT 09:58 A.M..)

THE COURT: Take your seats.

Get the defendants in.

(DEFENDANTS MARQUIS ROBINSON AND DANTONYO HEATH, BLACK MALES, REENTER COURTROOM.)

THE COURT: All right, I'm gonna let the jury go until one. We have - were in the middle of a *Neil versus Biggers.*

We also I understand have some motions that were not

called to the court's attention yesterday but we'll deal with those. And so I'm gonna allow the jury to leave until one o'clock.

And they don't need to come in here. I can just --

Anybody object to me just having the bailiff telling them to return at one?

SOLICITOR SHELTON: No, sir, Your Honor.

MS. BURRIS: No, sir, Your Honor.

THE COURT: All right. Now we're kind of getting jungled here. We're getting motions on top of motions.

I've been told that defendant Robinson has a motion to quash the indictments and of course if that's granted then everything else is kind of moot. I guess that's to Mr. Robinson at least temporarily. Quashing the indictment of course is not a finding he is not guilty.

But, Ms. Burris, if you want to go forward with that and tell me which indictments you want quashed. He was indicted under several.

MS. BURRIS: Thank you, Your Honor. May it please the Court.

THE COURT: All right.

MS. BURRIS: Your Honor, on behalf of Marquis Robinson I am asking for a motion to quash Indictments Number 2001-GS-46-0-2-9-0-5 which is the armed robbery which specifically has that in this particular indictment that

defendant Marquis Robinson by means of force or intimidation goods or monies of said victims. Had both of the victims actually named in the indictment; they have the language Ernest Jordan and or Jared Crane such goods or monies being described.

Additionally in regards to the warrant, the warrant --

THE COURT: Actually the one I'm looking at doesn't -- That's Mr. Heath's.

MS. BURRIS: I have it was submitted to the Grand Jury Septe3mber 15th, 2011.

THE COURT: It will just take me a minute to find it. I know what you're talking about.

MS. BURRIS: Yes, sir.

THE COURT: Okay, I got it. I've got

MS. BURRIS: Now on the warrant it gives - which of course is the informal charge prior to him being formally indicted, it specifically just stated that Mr. Marquis Robinson is charged with robbing the victim Ernest Jordan with a handgun. It doesn't mention anything in regards to Jared Crane, and or Jared Crane.

Additionally on Indictment Number 2011-GS-46-0-2-9-0-8 which is actually the kidnapping indictment, and specifically on the warrant it list that Mr. Marquis Robinson is being charged with tying the victim Jared Crane

with speaker wire after forcing him from the garage into a bathroom, but the particular formal charges document which is the indictment charges him with adducting or carrying away the victim, Jared Crane and/or Ernest Jordan.

Your Honor, there is a case which I've actually passed up to the court and I've also given the state a copy of it, it's a 2013, recently decided May 22nd, 2013, in *State versus Samuels*. And one of the issues the court looked at is whether or not there had been any potential prejudice as a result of duplicitous indictments. Of course you know as stated in this case is as you know we're gonna require the jury to make separate findings of guilt or innocence according to the evidentiary facts. So what they did was they looked at the *Gentry* case and they talk about the *Gentry* case in regards to sufficiency of the indictment as generally. And then secondarily said but the *Gentry* case did not address - and I'm looking on Page 4 - did not consider duplicitous indictments which allege two distinct and separate offenses in the same count.

And in their analysis they specifically say that for example such indictments when you have one indictment with two different individuals and the two victims because in this particular case the facts of this particular case it was alleged in *State v. Samuels* that the defendant assaulted two women in the same account. Particularly it

states that "such indictments present the risk that a jury divided on the two separate offenses in one count could nevertheless convict through a general verdict on the one count." And it says that there is a "risk that the jurors may not have been unanimous as to any one of the crimes charged."

And it goes on and gives deference of course to the federal courts and it says "duplicitous indictments can of course create sentencing problems." And it says "in analyzing whether a defendant suffered prejudice" it gives deference to the Second Circuit which states that the "relevant policy consideration because you have to avoid the uncertainty of whether a general verdict of guilty conceals a finding of guilty as to one crime and a finding of not guilt as to the another, avoiding the risk that the jurors may not have been unanimous as to one of the crimes charged, assuring the defendant adequate notice, providing the basis for appropriate sentencing, and protecting against double jeopardy in subsequent prosecutions."

On Page 5 I'm reading in regards to it says "we recognize both the policy considerations supporting a prohibition against duplicitous indictments and that the Gentry case just did not protect against the potential harms." Then - and the court basically here in South Carolina the court - the Supreme Court of South Carolina

adopted the federal standard and said that Your Honor must apply a two part standard to this case. It agreed of course in this particular case with the defendant that his indictment was duplicitous. And it said "for offenses against the person, a separate offense exists for each person subjected to the criminal conduct. Each victim of his threatening conduct constituted a new assault offense and by including both victims in one count, the indictment charged two offenses in one count and was defective for duplicity.

THE COURT: What remedy do you seek?

MS. BURRIS: Your Honor, I am asking for a motion to quash the indictments. I understand that again that the --

THE COURT: You're trying and realize that if the indictment is quashed then the State can go back and seek two indictments against your client on each named victim which would subject him to not one indictment but two. Not one sentence, but two?

Do you understand that? Have you explained that to Mr. Robinson?

MS. BURRIS: I have not, Your Honor, but I am willing to discuss it with him.

THE COURT: Well I think I would.

SOLICITOR SHELTON: And, Your Honor, if it helps in that, the State would do exactly that.

THE COURT: What I can do is require the State to amend and sort of elect and decide to go with one victim and set aside the other one and let him be indicted on that one and try it at a later time if that's what he wants.

MS. BURRIS: Your Honor, he --

THE COURT: I want to make sure that he's happy. And you know we hate to try a case that's based on post conviction relief but I would not be surprised if he is subject to being tried twice for two different victims as opposed to this one since somebody is gonna be saying that you've gotten all of it in the basket but you're his lawyer so ---

MS. BURRIS: Yes, sir.

THE COURT: --- I want you to tell me. Do you want me to quash the indictment?

MS. BURRIS: Yes, sir, quash the indictments and of course I understand that the state can submit the indictments to the Grand Jury and have them re-indicted of course have two separate offense naming each of the victim in each of the indictments. I believe that that would forbid the prejudicial impact that it would have upon Mr. Robinson if we would actually present an indictment that actually has two of the victim's names on it given that there is different evidence against each of the alleged defendant as presented in the video.

We want to make sure that the jury again is able to make a separate finding of guilt and I do not believe they would be able to make a separate finding if they are given the prejudicial impact again that given that they are proceeding together and in the particular indictment each of the victim's are named. I understand the State if you actually grant my motion, Your Honor, they can actually send it back to the Grand Jury and actually have it re-indicted on each victim, two indictments as opposed to one and I think that would be the proper thing to do according to the case.

THE COURT: Well he's still on trial for attempted murder, criminal conspiracy and possession of a firearm. Those won't be quashed and the case will go forward and he's still facing those charges.

MS. BURRIS: And that's fine, Your Honor.

THE COURT: So we end up having three trials if we tried this one and we tried for Mr. Jordan and then tried for Mr. Crane. Is that what he wants?

MS. BURRIS: That's no problem as long as the issues are not confused and there is not any mentioning of the kidnapping and there is not any mentioning of the armed robbery. There is actually a section on the video in which allegedly Marquis Robinson on the video alleged the State that there is a gun so of course that video would have to

be redacted and they would not be able to show that particular - publish that information to - -

THE COURT: Why? He's charged with attempted murder. That's his violent crime. He's charged with possessing a firearm during the commission of a violent crime. You don't get the gun out just because those are out. I'm gonna make sure you thought through this, Ms. Burris.

MS. BURRIS: Right.

THE COURT: I'm not the lawyer but I want your client to understand that I don't think - it's not up to me to decide whether he's making progress or not in regard to these charges but he's still on trial for attempted murder. If I quash those, criminal conspiracy, the conspiracy does include armed robbery so - and that only has to do and kidnapping and that does not name a victim so he will still for purposes of committing a crime of armed robbery and attempted murder and kidnapping, so under the criminal conspiracy charge the State would still have the right to present evidence and argue that he was committing a crime of armed robbery and or attempted murder and kidnapping because that's what the conspiracy charges are.

And possession of a firearm is while attempting a armed robbery and murder so they can still try him on those and still get in all that evidence.

MS. BURRIS: Right. I think that Your Honor of course it is at your discretion but you know according to law I think we should actually ask for a continuance simply because you're exactly right. In regard to the criminal conspiracy indictments substantively the armed robbery is actually listed in the criminal conspiracy - -

THE COURT: I can tell you I'm not gonna continue the case. I mean this case you're relying on came out in March of this year so its not anything that happened over night. So if that's his position then and I haven't ruled yet, and I guess I could require the state to amend and drop - still go ahead and try him on those two that you want quashed but instead of quashing them allow them to be amended and then go forward on those anyway and have him tried either go forward on Mr. Jordan or go forward on Mr. Crane and then set aside and him them re-indict him on the other charges at a later time and try him separately on those.

I mean if that's what you want - and I haven't decided I'm gonna rule on that - but I want you to understand those are what your options are and I want your client to understand that. You know this old saying - it's not up to me, you're his lawyer - but be careful what you ask for you might get it.

MS. BURRIS: That's right.

THE COURT: And so I - with that kind of adage go

ahead.

MS. BURRIS: I understand, Your Honor. What about in regards to the criminal conspiracy submitting this indictment to the Grand Jury in regards to the armed robbery - -

THE COURT: No, no. You're - You can't just start telling us what we ought to do. You made a motion to quash two indictments ---

MS. BURRIS: Yes sir.

THE COURT: --- not those three and you did it on the grounds that those other two named two possible victims and that of course duplicitous. The others you haven't even raised and so you can't tell me to start - ask me or the state to start doing some kind of cherry picking as far as those indictments. You haven't said there was anything was basically wrong with them.

MS. BURRIS: May I, Your Honor.

THE COURT: Yeah.

MS. BURRIS: Okay. Thank you.

So in regards to the criminal conspiracy it is my position that we would make a motion to quash that indictment because two of the indictments that we previously made a motion to quash which is the armed robbery and the kidnapping is actually listed in the criminal conspiracy indictment and so we're not submitting

the kidnapping and the armed robbery indictment to the Grand Jury and we have these substantive charges as listed in the criminal conspiracy indictment. It would be our position that the criminal conspiracy also be quashed and sent --

THE COURT: Well there's nothing basically - I deny that without requiring you to go further. There is nothing basically defective about criminal conspiracy. He committed one or two armed robberies and attempted murder then the criminal conspiracy stands and again I don't believe - I might have to do some research on this - but I would quash those indictments without allowing the state the right to amend them to - so -

Let me hear from --

But go ahead. Go ahead, Ms. Burris and finish up.

MS. BURRIS: Again I would just go back to this recent case that was decided this year, Your Honor. We just want to make sure that the jury is able to make separate findings of guilt as to the evidentiary facts that would be presented through the testimony as well as evidence presented and I do believe that if we were to go forward and proceed on the kidnapping and the armed robbery which the Court's forward us and said these are duplicitous indictments that have two different - they have two victims. He was put on notice in his warrant that he would

actually be charged with both of the victims or allegedly charged with both of the victims in the formal indictment it is our position that it would be prejudicial in order to submit the armed robbery and the kidnapping indictments to the Grand Jury and we want to make sure - require the jury to make separate findings of guilt on each individual defendant as to each victim.

THE COURT: We can certainly do that by a verdict form. We can require the jury to make separate findings of guilt under these indictments as drafted and instead of a general verdict as kidnapping we can have interrogatories to find guilt as to kidnapping as to Mr. Crane and a separate as to finding guilt or not guilty as to Mr. Jordan so we can take care of that without any prejudice to your client. So I deny the motion to quash those two indictments. And I'm not sure what you - It looks like you - Sounds like you made a motion to quash the criminal conspiracy indictments somewhere in there and I deny that also.

MS. BURRIS: Thank you, Your Honor. So I just want to make sure I'm straight. You're actually going to submit a special form to the jury?

THE COURT: I don't call it - Yes, special form -

Let me hear from the State. I don't know the State may want to do something different, I can't run the show

for them. I can certainly handle the situation without quashing the indictment and take care of the concerns of you and your client by as to those two charges making a finding of guilt as Mr. Crane and guilt as to Mr. Jordan. Now that creates an interesting situation because then he can be found guilty of two charges and whether or not that would subject him to two sentencing options, doubling up instead of - instead of what you want to do is narrowing the situation.

I haven't researched it but it may open him up for sentencing for the two victims if the jury found him guilty as to the two victims and he very likely may be subject to two sentences. Just because - He has a right to be tried as to each victim, each victim is entitled to justice. Each victim is entitled to have him sentenced appropriately and if he's guilty of committing a crime against the victim they have the right each individually to have a sentence imposed as to the crime against them. So there are several ways we can approach it without quashing the indictment and I'm not going to quash the indictments.

Mr. Newkirk, you are poised.

MR. NEWKIRK: No, not at all, sir. I just wanted to put on the record that we wouldn't seek two sentences anyway especially for PCR purposes. And a curative jury form with special instructions --

THE COURT: Well let me stop you there. It's not up to you to seek two sentences.

MR. NEWKIRK: Yes, sir.

THE COURT: If the Court decides to give two sentences I'm the sentencer and so it's up to the Court to decide whether he gets two sentences for attempted robbery of two people and kidnapping two people or kidnapping two people. Whether the state ask for it or not that's up to the Court so that's very generous of you to say that you would not ask that he get what he ask for, two sentences, or the possibility of two sentences rather that he stick with what the state wants to stick with exposing him with only one sentence if he wants to be exposed to two. That's up to me.

MR. NEWKIRK: Yes, sir. The *Samuels* case that Ms. Burris handed up, the curative jury instruction with a special verdict form was how the court resolved that case so the State is in full agreement with your ruling.

THE COURT: Okay. Now we're back to *Neil versus Biggers.* We have motions to quash the three indictments which is ultimately ended up being on behalf of Mr. Robinson which were kidnapping, attempted armed robbery or armed robbery, kidnapping and tangentially criminal conspiracy motion to quash all three of those are denied.

Now anything else before we get back on *Neil versus*

Biggers?

MS. BURRIS: I don't have anything else prior to getting back to *Neil v. Biggers* but I do have three additional motions but I think, Your Honor, we can actually get to those later so we can continue *Neil v. Biggers*.

THE COURT: Okay.

SOLICITOR SHELTON: And just again, for the court's information I have no notice of any motions so we depending on what they are and it --

THE COURT: Well in chambers we talked about photographs again, I think. Isn't that right?

MS. BURRIS: That's correct. We had an issue come up yesterday in regards to Mr. Robinson's prior convictions --

THE COURT: Oh, prior convictions, yes. Those two I recall, what's the third?

MS. BURRIS: And it was in regards to the victim Ernest Jordan's prior conviction.

THE COURT: Okay. All right. We can take care of that later. Let's go ahead and do the *Neil versus Biggers*.

SOLICITOR SHELTON: Your Honor, at this time we would call Detective Tashia Smith.

THE COURT: Go ahead and be getting Ms. Smith.

Mr. Smith, do you have anything to take up before we get back into Neil versus Biggers? I don't want to go - -

MR. SMITH: I can do it any time. I do have, Your Honor, my client has requested a motion to have the charges dismissed based on double jeopardy, incorporate the last trial that occurred in January the 28th of 2013 this year. At that time a - the court granted a mistrial and I believe it was our motion as well based upon improper I don't want to say jury selection but the pool that was provided to our clerk it did not include all the proper names. My client's position is whatever error that was it was by the government general and he should only be placed in jeopardy once for this crime therefore I make a motion for a dismissal due to double jeopardy.

THE COURT: Well I deny the motion. I do not believe that he is being exposed to double jeopardy. Jeopardy did attach, there is no question. In the first case jeopardy attached, we had a jury drawn and were partly through with the trial so there is no question jeopardy attached but I made a determination that there was a manifest necessity in granting a mistrial not by any conduct by the prosecution or the defense. Arguably there was state involvement in that the reason the situation rose was I don't want to get the agency wrong, but I believe it was the election commission gave inadequate list that is list that did not have all of the potential jurors which should have been included so the list that was drawn by our clerk of court

was arguably defective because of somebody else not complying with the requirements. So while the state had some involvement so to speak certainly no intentional conduct by the state that was an inadvertence and the state did not cause a mistrial that is the prosecution did not so I deny the motion. I find that while jeopardy did attach the retrial of Mr. Heath at this time does not constitute a violation of his rights of being tried twice; that is double jeopardy twice.

Now let's go back to Ms. Smith.

SOLICITOR SHELTON: Detective Toshia Smith.

(WHEREUPON: TOSHIA SMITH, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

DIRECT EXAMINATION - IN CAMERA

DETECTIVE TOSHIA SMITH BY SOLICITOR SHELTON:

Q. Please state your name for the record, please.

A. Detective Tashia Smith.

Q. And where are you employed?

A. Rock Hill Police Department.

Q. How long have you been with them?

A. Since 2006.

Q. What are your current duties?

A. I am a Sargent over Community Services Division.

Q. And what were your duties in June of 2011?

A. I was a detective for property side.

Q. And during that time, did you become involved in an investigation of an armed robbery and kidnapping and attempted murder and various other charges from a Five Star Customs on Cherry Road in Rock Hill?

A. Yes, I did.

Q. And as part of that investigation, did you have the opportunity to show a lineup to any of the victims?

A. Yes, I did.

Q. And what victim was that?

A. Jared Crane.

Q. And the lineup was for which suspect?

A. It was for Mr. Robinson.

Q. And that lineup was prepared by Detective Stokes?

A. Yes.

Q. About how long after the initial offense did you show the lineup to Mr. Crane?

A. We responded to Five Star Customs; had a brief conversation with our victims. They were — actually I don't think they were there. They were at the hospital. So we met with the two officers that were on scene. Went back to the law center, prepared the lineup, and then met with the victims at the hospital.

Q. And when you say at the hospital, which hospital was that?

A. Piedmont Medical Center.