

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable J. Mark Hayes, Circuit Court Judge

RECEIVED

JAN 20 2017

S.C. SUPREME COURT

BOYD RASHAEEN EVANS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001287

APPENDIX

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VOLUME I OF II
Pages 1-500

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

State's Exhibits 30-32 and 40-50 (photographs)¹

¹ Pursuant to Rules 210(f) and 243(f), SCACR, transportation is being requested for these exhibits because they could not be accurately reproduced by copying into the Appendix.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON) IN THE COURT OF GENERAL SESSIONS

The State,) TRANSCRIPT OF RECORD
)
) 2007-GS-32-3335,-3336,
-vs-) -3338,-3339,-3357,-3358,
) -3359,-3360
)
Lywone Capers & Boyd)
Evans)
)
) January 11, 12, 13, and 14, 2010
)
Defendants.) Lexington, South Carolina

B E F O R E:

HONORABLE R. KNOX MCMAHON, JUDGE; and a jury

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Margaret A. Woods
Circuit Court Reporter

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JURY QUALIFICATION

1 (Proceedings January 11, 2010)

2 THE COURT: All right. Mr. Mr. Attorney General, you may
3 call your your first case for trial.

4 MR. MALDONADO: Thank you, Your Honor. May it please the
5 Court. The State calls Docket No. 2007-GS-32-3335, the State
6 vs. Lywone Capers indictment for armed robbery. The State
7 calls 2007-GS-32-3336, State vs. Lywone Capers indictment for
8 kidnapping. The State calls 2007-GS-32-3338, State vs. Lywone
9 Capers indictment for kidnapping. State calls
10 2007-GS-32-3339, State vs. Lywone Capers indictment for
11 possession of a firearm during the commission of a violent
12 crime.

13 The State also calls 2007-3357, State vs. Boyd Evans
14 indictment for kidnapping; 2007-GS-32-3358 State vs. Boyd
15 Evans indictment for kidnapping; 2007-GS-32-3359, State vs.
16 Boyd Evans indictment for armed robbery and 2007-GS-32-3360
17 State vs. Boyd Evans indictment for possession of a firearm
18 during the commission of a violent crime.

19 THE COURT: Yes, sir.

20 (Whereupon, counsel handed the documents to the Court.)

21 THE COURT: Ladies and gentlemen of the jury panel, if
22 you'll please give me your complete and undivided attention, I
23 would advise you that you are still under oath. We're going
24 to go through a process whereby we select a trial jury for the
25 trial of the cases that the attorney general has now called

JURY QUALIFICATION

1 for trial. I'm going to ask you certain questions and and as
2 kind of a backdrop to that I'm gonna publish or read to you
3 the indictments that have been called for trial by the
4 attorney general. It appears there are four indictments as to
5 each defendant. Before I read them I would advise you, ladies
6 and gentlemen, that these indictments are not evidence. These
7 indictments are mere allegations. These indictments are the
8 formal documents by which an individual is placed on notice of
9 charges that have been brought against him or her and are in
10 no way any evidence of the allegations contained therein. An
11 indictment is a notice document. I publish or read these
12 indictments because of the questions that I will ask you
13 concerning your potential knowledge about the facts of the
14 case or any of the individuals involved in the trial of this
15 case.

16 As to Lywone Shatate Capers -- did I pronounce that
17 correctly?

18 THE DEFENDANT: Shatete.

19 THE COURT: Shatete?

20 THE DEFENDANT: (Nodded in the affirmative.)

21 THE COURT: Capers. Did I pronounce it correctly?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. As to Lywone Caper, there are
24 four indictments. Is that correct, Mr. Attorney General?

25 MR. MALDONADO: That's correct, Your Honor.

JURY QUALIFICATION

1 THE COURT: The indictments are for armed robbery, two
2 indictments for kidnappin', an indictment for possession of a
3 firearm during the commission of a violent crime. Your first
4 Indictment 07-GS-32-3335 charges that Lywone Capers did along
5 with Boyd Evans and two other people unknown to the grand jury
6 at this time in Lexington, South Carolina on or about July
7 27th -- excuse me, July 26th of '07 knowingly and wilfully
8 while armed with a deadly weapon and/or having a possession of
9 an object which the victim reasonably believed to be a deadly
10 weapon and alleging by actions or words that they were armed,
11 to wit, a handgun did feloniously take from the person or
12 presence of Sue Anne Irick, an employee of Pitt Stop
13 Convenience Store, by means of force, threats or
14 intimidations, goods or monies being described as follows:
15 U.S. currency with the intent to permanently deprive the owner
16 of the use of such property in violation of Section
17 16-11-330(A) of the Code of Laws of South Carolina, that is a
18 true bill indictment for armed robbery. Rather than read
19 another indictment word-for-word there's also a true bill
20 indictment for armed robbery as to Boyd Rashede Evans
21 alleging the same crime of armed robbery on that date, that
22 time, that location, that alleged victim.

23 As to each defendant, that being Lywone Capers and Boyd
24 Evans, there are two indictments each for kidnapping.

25 Indictment 07-GS-32-3336 as to Mr. Capers and 07-GS-32-3358 as

JURY QUALIFICATION

1 to Mr. Evans they read that Lywone Capers did along with Boyd
2 Evans and that Boyd Evans did along with Lywone Capers and two
3 other people unknown to the grand jury at this time in
4 Lexington County, South Carolina on or about July 26th of '07
5 knowingly, wilfully, unlawfully seize, confine, inveigle,
6 decoy, kidnap, abduct or carry away Sue Anne Irick by any
7 means whatsoever without authority of law and without her
8 consent, to wit, the defendant held the victim at gun point
9 against her will and demanded money from the cash register in
10 violation of 16-3-910 of the Code of Laws of South Carolina,
11 that is an indictment for kidnapping as to each defendant.
12 There are two other kidnapping indictments one as to each
13 defendant: 07-GS-32-3338 as to Mr. Capers, 07-GS-32-3357 as to
14 Mr. Evans reads that Lywone S. Capers, that Boyd Arbus Evans
15 did along with each other and two other people unknown to the
16 grand jury at this time in Lexington County, South Carolina on
17 or about July 26th of '07 knowingly, wilfully and unlawfully
18 seize, confine, inveigle, decoy, kidnap, abduct or carry away
19 Edward Lasseter by any means whatsoever without authority of
20 law and without consent in violation of 16-9 -- excuse me,
21 16-3-910 of the Code of Laws of South Carolina, that is a true
22 bill indictment as to kidnapping as to each defendant.

23 And the final two indictments as to Mr. Evans
24 07-GS-32-3339 and as to Mr. Evans 07-GS-32-3360 these
25 indictments read that Lywone S. Capers, that Boyd Rashad Evans

JURY QUALIFICATION

1 did along with each other and two other persons unknown to the
2 grand jury at this time in Lexington County, South Carolina on
3 or about July 26th of '07 knowingly and wilfully possess a
4 firearm and/or visibly display what appeared to be a firearm,
5 to wit, a handgun during the commission of a violent crime or
6 an attempt to commit a violent crime, to wit, armed robbery
7 and/or kidnapping in violation of 16-23-490 of the Code of
8 Laws of South Carolina, those are true bill indictments for
9 possession of a firearm during the commission of a violent
10 crime. To sum up, each defendant is charged with four
11 indictments: charged with armed robbery, two counts of
12 kidnappin', possession of a firearm during the commission of a
13 violent crime.

14 The attorney general's office is represented by
15 Mr. Robert Maldonado. Mr. Maldonado, would you please stand,
16 introduce yourself to the jury panel and any other members of
17 the attorney general staff that's going to assist you in the
18 prosecution of this case.

19 MR. MALDONADO: Yes, Your Honor. Thank you. As I
20 stated, my name is Robert Maldonado. I'm assistant attorney
21 general with the Attorney General's Office. Assisting me is
22 Joshua Underwood. He's also an assistant attorney general
23 with our office.

24 THE COURT: And and say his last name for me.

25 MR. MALDONADO: Underwood.

JURY QUALIFICATION

1 - THE COURT: Underwood. Thank you. The defendant
2 Mr. Capers is represented by Ms. Hahn. The defendant
3 Mr. Evans is represented by Mr. Miller. Ms. Hahn, would you
4 please stand and introduce yourself to the jury panel and any
5 other members of your staff that are gonna assist you in the
6 defense of this case.

7 MS. HAHN: Yes, Your Honor. My name is Sarah Hahn and
8 this (indicating) is Casey Cornwell who's with me today and we
9 represent Lywone Capers one of the defendants in this trial.

10 THE COURT: Thank you. Thank you, Ms. Hahn,
11 Mr. Cornwell, Mr. Capers. And, Mr. Miller, would you please
12 stand, introduce yourself, any members of your staff and your
13 client to the jury panel.

14 MR. MILLER: Yes, sir. As he said my name is David
15 Miller. I actually have my own law office and work by myself.
16 I represent Mr. Boyd Evans one of the defendants in this case.

17 THE COURT: Thank you, Mr. Miller. Thank you,
18 Mr. Evans. Is any member of the jury panel related by blood
19 or marriage or close personal friends of either Mr. Maldonado
20 or Mr. Underwood with the South Carolina Attorney General's
21 Office, if so please stand?

22 (No response.)

23 THE COURT: Is any member of the jury panel related by
24 blood or marriage or close personal friends with either
25 Ms. Hahn, Mr. Cornwell or Mr. Miller the defense attorneys in

JURY QUALIFICATION

1 this case, in these cases, if so please stand?

2 (No response.)

3 THE COURT: Has any member of the jury panel or any
4 member of your immediate family ever been represented by or
5 prosecuted by Mr. Maldonado or Mr Underwood or any member of
6 the South Carolina Attorney General's Office, if so please
7 stand?

8 (No response.)

9 THE COURT: Has any member of the jury panel ever been
10 represented either you or any member of your immediate family
11 ever been represented by Ms. Hahn, Mr. Cornwall [sic] or
12 Mr. Miller, if so please stand?

13 (No response.)

14 THE COURT: Is any member of the jury panel related by
15 blood or marriage or close personal friends with either of the
16 defendants either Mr. Lywone Capers or Mr. Boyd Evans, if so
17 please stand?

18 (No response.)

19 THE COURT: As you recall in my publication of the
20 indictments this alleges an incident which occurred July 26th
21 of '07 in Lexington County at a Pitt Stop Convenience Store --
22 what what location?

23 MR. MALDONADO: It's south on I-26 of -- right off the
24 exit ---

25 MR. UNDERWOOD: Charleston Highway.

JURY QUALIFICATION

1 MR. MALDONADO: Charleston Highway, Your Honor.

2 THE COURT: All right. I-26 and Charleston Highway
3 that's Exit ---

4 MR. UNDERWOOD: Gaston.

5 THE COURT: --- 113? Is that, is that right?

6 POLICE OFFICER: Yes.

7 THE COURT: It's West Columbia Cay -- well the Cayce
8 exit?

9 MR. MALDONADO: Yes, Your Honor.

10 THE COURT: All right. Does any member have any
11 knowledge about the facts of this case, if so please stand?

12 (No response.)

13 THE COURT: Does any member of the jury panel have any
14 bias or prejudice towards the parties or the subject matter
15 involved in the trial of this case, if so please stand?

16 (No response.)

17 THE COURT: Has any member of the jury panel heard or
18 know anything about the case from any source whatsoever, if so
19 please stand?

20 (No response.)

21 THE COURT: I'm gonna call a list of names of potential
22 witnesses in the trial of this case. I would ask if any of
23 these individuals are present at this time if they would
24 please stand and face the jury panel when their names are
25 called. I would advise the jury panel that I may call names

JURY QUALIFICATION

1 and no one stands because the witnesses are not required to be
2 present during this procedure.

3 Detective Edward Prestigacombo Lexington County Sheriff's
4 Department. Detective Prestigacombo to my front right.

5 (The witness stood.)

6 THE COURT: Thank you. Of course, ladies and gentlemen,
7 the question is is any member of the jury panel related by
8 blood or marriage or close personal friends of any of these
9 individuals whose names I call and/or who stand before you.
10 If you're related by blood or marriage or close personal
11 friends of any of these individuals, I would ask you to please
12 stand at the time their names are called.

13 THE COURT: Sue Irick. I believe it's Sue Anne Irick
14 (stood). Edward Lasseter (stood). Mr. Lasseter to the rear
15 of the courtroom to my right. Thank you. Thank you,
16 Mr. Lasseter. You may be seated. Michael Rhaney (stood).
17 Mr. Rhaney to the rear of the courtroom to my front right.
18 Thank you, Mr. Rhaney. Glynnessa Marie Evans (stood).
19 There's Ms. Evans also to the rear of the courtroom to my
20 front right. Again, ladies and gentlemen, is any member of
21 the jury panel related by blood or marriage or close personal
22 friends with any of those individuals whose names I just
23 called and/or who stood before you, if so please stand?

24 (No response.)

25 The next five: Rosa Lugo, L-U-G-O, Detective J. Lookabill

JURY QUALIFICATION

1 with the Lexington County Sheriff's Department. Excuse me, I
2 said detective I believe that's the Deputy J. Lookabill,
3 Deputy T. Mitchum, Lexington County Sheriff's Department,
4 Detective Beaver, Lexington County Sheriff's Department,
5 Lieutenant Grimes-Gould, G-O-U-L-D. The next names: Frederick
6 Demond Neal, Investigator Larry D. Crutchlow, 11th Circuit
7 Solicitor's Office, Trina Fallow, Donald Cox, Jr. (stood).
8 This is Mr. Cox to my -- to the rear of the courtroom to my
9 front right. Is any member of the jury panel related by blood
10 or marriage or close personal friends with any of those
11 individuals whose names I just called and/or who stood before
12 you, if so please stand?

13 (No response.)

14 THE COURT: Are there any other witness's names to be
15 called Mr., potential witness's names, Mr. Maldonado?

16 MR. MALDONADO: None from the State.

17 THE COURT: Mr. Miller?

18 MR. MILLER: None from this defendant, Your Honor.

19 THE COURT: Mr. Ha --- Ms. Hahn?

20 MS. HAHN: Yes, Your Honor.

21 THE COURT: All right.

22 MS. HAHN: May I approach?

23 THE COURT: Yes, ma'am.

24 (Whereupon, counsel handed a document to the Court.)

25 THE COURT: Thank you. All right. Other potential

JURY QUALIFICATION

1 witnesses in the trial of this case: Tammy Coleman (stood).
2 Ms. Coleman to the right rear of the courtroom. Thank you
3 very much, Ms. Coleman. Tidleek Capers (stood). Did I
4 pronounce that correct, Mr. Capers?

5 MR. CAPERS: Taleek Capers.

6 THE COURT: Taleek Capers. Thank you. You may be
7 seated. Bilal Haynesworth (stood). Mr. Haynesworth to my --
8 to the rear of the courtroom to my front right. Teshimia
9 Capers, Jaid Jackson (stood). Ms. Jackson to the rear of the
10 courtroom to my front right. Again, is any member of the jury
11 panel related by blood or marriage or close personal friends
12 with any of those individuals whose names I just called, if so
13 please stand?

14 (No response.)

15 THE COURT: Is there any member of the jury panel
16 currently employed by or ever been employed by the Pitt Stop
17 Convenient Stores, if so please stand?

18 Yes, sir, your number and name, please.

19 JUROR NUMBER 81: Eighty-one.

20 THE COURT: I'm sorry. I didn't catch your name.

21 JUROR NUMBER 81: Ernest Howard.

22 THE COURT: And you are now employed or previously
23 employed?

24 JUROR NUMBER 81: Long time ago. Years.

25 THE COURT: What you call a long time ago?

JURY QUALIFICATION

1 JUROR NUMBER 81: Twenty years.

2 THE COURT: That's a long time ago.

3 (Laughter.)

4 THE COURT: That's right. Long time ago. I just wanted
5 to see if we was on the same wavelength.

6 JUROR NUMBER 81: Okay.

7 THE COURT: That may keep you awake at night you know.

8 JUROR NUMBER 81: Yeah (laughing).

9 THE COURT: All right. The fact that you were employed
10 twenty years ago the Pitt Stop Convenience Store could you
11 still be a fair and impartial juror to both the State and the
12 defense -- defendants in this case?

13 JUROR NUMBER 81: Yes, Judge.

14 THE COURT: Thank you, Mr. Howard. You may be seated.
15 Any others?

16 (No response.)

17 MR. MILLER: Your Honor, I'm sorry. I did leave one
18 person off and I apologize to you ---

19 THE COURT: All right.

20 MR. MILLER: --- as a name, Private Investigator Carlisle
21 McNair.

22 THE COURT: All right. Thank you. Thank you very much.
23 There's one another name for a potential witness in the case
24 it's Carlisle McNair, private investigator. Is any member of
25 the jury panel related by blood or marriage or close personal

JURY QUALIFICATION

1 friends of Investigator McNair, if so please stand?

2 (No response.)

3 THE COURT: Thank you. Has any member of the jury panel
4 been a victim of a crime of violence involving a weapon, if so
5 please stand?

6 Yes, sir, your number and name, please.

7 JUROR NUMBER 57: Fifty-seven, Steve Fink. That's years
8 ago.

9 THE COURT: It's Mr. Fink, is that correct?

10 JUROR NUMBER 57: Yes, sir.

11 THE COURT: And how many years ago, Mr. Fink?

12 JUROR NUMBER 57: About thirty-five.

13 THE COURT: Thirty-five. And you were a victim?

14 JUROR NUMBER 57: Yes.

15 THE COURT: What type crime?

16 JUROR NUMBER 57: I was held up by gunpoint.

17 THE COURT: All right. The fact that you were a victim
18 of a violent crime of that manner thirty-five years ago could
19 you still be a fair and impartial juror to both the State and
20 the defense in this case?

21 JUROR NUMBER 57: I believe so.

22 THE COURT: And when you say "I believe so," that may
23 just be a matter of semantics. The question really is can you
24 decide the case based on what you hear in the courtroom ---

25 JUROR NUMBER 57: Yes, sir.

JURY QUALIFICATION

1 THE COURT: --- putting aside what may have happened to
2 you thirty-five years ago.

3 JUROR NUMBER 57: Yes, sir.

4 THE COURT: All right. Thank you. You may be seated.
5 You may stay with us. Any others?

6 (No response.)

7 THE COURT: I believe I've already asked you that
8 que -- this here if not I'll ask it again. Does any member of
9 the jury panel know either of the defendants in this case, if
10 so please stand?

11 (No response.)

12 THE COURT: Are any of the witnesses or SLED involved in
13 this trial in any manner, Mr. Maldonado?

14 MR. MALDONADO: No, Your Honor.

15 THE COURT: All right. Does any member of the jury panel
16 have a relative employed with either the Lexington County
17 Sheriff's Department or the South Carolina Attorney General's
18 Office or the Lexington County Solicitor's Office, if so
19 please stand?

20 All right. Yes, sir, your number and name.

21 JUROR NUMBER 28: Twenty-eight, Gregory Byrley.

22 THE COURT: Twenty-eight. Family or friend?

23 JUROR NUMBER 28: Family. Brother-in-law investigator
24 for the 11th Circuit Solicitor's Office.

25 THE COURT: And who is that, sir?

JURY QUALIFICATION

1 JUROR NUMBER 28: Howard Jernigan.

2 THE COURT: All right. The fact that your
3 brother-in-law's employed with the Lexington County
4 Solicitor's Office could you still be a fair and impartial
5 juror to both the State and the defense in this case?

6 JUROR NUMBER 28: Yes, sir.

7 THE COURT: Thank you. You may be seated. Yes, sir,
8 your number and name, please.

9 JUROR NUMBER 137: One thirty-seven, Donald Poole.

10 THE COURT: All right, Mr. Poole. Family? Friend?

11 JUROR NUMBER 137: I have a family nephew Lexington
12 County.

13 THE COURT: The fact that you have a nephew employed with
14 the Lexington County Sheriff's Department could you still be a
15 fair and impartial juror to both the State and the defense?

16 JUROR NUMBER 137: Yes.

17 THE COURT: Thank you. You may be seated. Yes, ma'am,
18 your number and name, please.

19 JUROR NUMBER 37: Thirty-seven, Sandra Collins.

20 THE COURT: All right, Ms. Ms. Collins. Family or
21 friend?

22 JUROR NUMBER 37: Family.

23 THE COURT: And employed with who?

24 JUROR NUMBER 37: I have a son who works in the warrant
25 division for Lexington County Sheriff's Department. My

JURY QUALIFICATION

1 son-in-law is a deputy with Lexington County Sheriff's
2 Department for the courthouse and my brother is I believe an
3 Investigator Lexington County Sheriff's Department.

4 THE COURT: All right. The fact that you have those
5 family members employed with the Lexington County Sheriff's
6 Department could you still be a fair and impartial juror to
7 both the State and the defense in this case?

8 JUROR NUMBER 37: Yes, I could.

9 THE COURT: Thank thank you. You may be seated. Yes,
10 your name and number, please.

11 JUROR NUMBER 108: Sherri Lybrand, 108.

12 THE COURT: All right, Ms. Lybrand, family or friend?

13 JUROR NUMBER 108: Distant family.

14 THE COURT: And employed by?

15 JUROR NUMBER 108: Lexington County County Sheriff's
16 Department.

17 THE COURT: The fact that you have family member employed
18 with the Lexington County Sheriff's Department could you still
19 be a fair and impartial juror to both the State and the
20 defense in this case?

21 JUROR NUMBER 108: Yes, sir.

22 THE COURT: Thank you. You may be seated. Yes, sir, in
23 the back.

24 JUROR NUMBER 168: One sixty-eight, Darren Truel. My son
25 is with Lexington County Sheriff's Department.

JURY QUALIFICATION

1 THE COURT: And the fact that your son is employed with
2 the Lexington County Sheriff's Department could you still be a
3 fair and impartial juror to both the State and the defense in
4 this case?

5 JUROR NUMBER 168: Yes, sir.

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

7 Is any member of the jury panel or a member of your
8 immediate family presently in -- or in the past a member of or
9 financial supporter of or otherwise involved or connected with
10 any group that has as its primary concern the promotion of law
11 enforcement or victim's rights? These groups would include
12 but not be limited to groups such as MADD, SADD, CAVE or
13 CODRA? If you're a member of such a group or a financial
14 supporter of such a group, I've asked you to please stand at
15 this time.

16 (No response.)

17 THE COURT: Have -- has any member of the jury panel ever
18 sought assistance from, been employed by or performed
19 volunteer work for any center or program whose primary purpose
20 is the prevention or treatment of violence, if so please
21 stand?

22 (No response.)

23 THE COURT: Since you have arrived here for jury duty has
24 any member of the jury panel seen or heard anything that has
25 led you to form some opinion as to this case one way or the

JURY QUALIFICATION

1 / other, if so please stand?

2 (No response.)

3 THE COURT: Any additional requested voir dire from the
4 State?

5 MR. MALDONADO: Nothing from the State, Your Honor.

6 THE COURT: From the defense?

7 MS. HAHN: Your Honor, not as to Mr. Capers but I would
8 ask that any unanswered questions be made a part of the
9 record.

10 THE COURT: All right. Yes, ma'am, and you'll just have
11 to have 'em marked, if you'll have it marked. Mr. Mr. Miller,
12 any additional requested voir dire?

13 MR. MILLER: None, Your Honor.

14 THE COURT: All right. Thank you. And finally, ladies
15 and gentlemen, does any member of the jury panel know any
16 reason whatsoever why you feel like you could not be a fair
17 and impartial juror in the trial of this case for both the
18 State and the defendants, if so please stand?

19 (No response.)

20 THE COURT: All right. And the strikes are ---

21 MR. MALDONADO: Ten/twenty, Your Honor, ---

22 THE COURT: Ten for the State and twenty for the defense?
23 Is that correct?

24 MR. MILLER: Yeah, that's correct.

25 MS. HAHN: Yes, Your Honor.

JURY QUALIFICATION

1 MR. MALDONADO: Ten ten I guess, yeah.

2 THE COURT: All right. Ladies and gentlemen, the
3 procedure we i -- when we say "strike," nobody's gonna
4 physically strike you. The State has the right to exercise
5 ten preemptory challenges and each defendant has a right to
6 exercise ten preemptory challenges in this matter. Is the
7 list prepared, madam clerk?

8 THE CLERK: We're fixin' to have to draw it, Your Honor,
9 I was ---

10 THE COURT: All right.

11 THE CLERK: --- trying to calculate the numbers.

12 THE COURT: All right. Thank you.

13 THE CLERK: Fifty.

14 (Whereupon, a discussion was held off the record.)

15 THE COURT: All right. Mr. Miller, Ms. Hahn, ya'll are
16 striking individually?

17 MR. MILLER: Yes, Your Honor.

18 THE COURT: You you -- your your position is you have ten
19 strikes, Mr. Miller?

20 MR. MILLER: That's correct, Your Honor.

21 THE COURT: And your position is?

22 MS. HAHN: That I have ten as well, Your Honor.

23 THE COURT: All right. And normally the manner in which
24 you proceed is by the numbering of the indictment. In other
25 words, whatever indictment was numbered lowest, if that is

JURY QUALIFICATION

1 a -- the correct terminology, would be the defendant attorney
2 to strike first. It appears ---

3 THE CLERK: Be Mr. Capers.

4 THE COURT: --- that would be Mr. Capers. So Mr. Capers
5 will strike then first then Mr. Mr. Evans would strike second.
6 All right. Any objections to that procedure, Ms. Hahn,
7 Mr. Miller?

8 MS. HAHN: No, Your Honor.

9 MR. MILLER: No.

10 (Whereupon, a discussion was held off the record.)

11 THE COURT: What's the, what's the alternate strikes
12 under the statute, Mr. Maldonado? Does that, does that change
13 it at all or Mr. Miller or Ms. Hahn? It's hard to do math
14 this early in the morning. Actually, it's not early in the
15 morning but it's just hard to do math.

16 MR. MALDONADO: I think it's it's one or two, Your Honor.

17 (Whereupon, a discussion was held off the record.)

18 THE COURT: You you know amount?

19 MR. MALDONADO: Your Honor, may I approach?

20 THE COURT: Yes. Yes, please.

21 (Whereupon, a bench conference was held off record.)

22 THE COURT: All right. It will be one, one and one on
23 the alternates, madam clerk.

24 THE CLERK: One, one, one.

25 THE COURT: So it'd be just like we normally draw. It

JURY QUALIFICATION

1 will be ---

2 THE CLERK: All right, sir.

3 THE COURT: --- four per alternate.

4 THE CLERK: All right, sir. I'll just rehash here. I'll
5 give them instructions on what they need to do.

6 THE COURT: Please do. Yes, ma'am. Please, she's ---

7 THE CLERK: Okay.

8 THE COURT: --- gonna give you instructions, uh, ---

9 THE CLERK: All right. As I call your name, bring all
10 your personal property with you, come up here and stand right
11 here (indicating) in front of this podium in the same
12 direction I'm facing right now. You'll remain standing right
13 here in front of this podium until I give you instructions to
14 either have a seat in the jury box or to return to your seat
15 in the audience.

16 (Whereupon, a discussion was held off the record.)

17 THE COURT: All right. We ready?

18 THE CLERK: Yes, sir.

19 (Pause.)

20 THE CLERK: You ready, Your Honor?

21 THE COURT: Yes, ma'am, please. Could you give us a jury
22 panel please, madam clerk.

23 THE CLERK: Yes, sir. Number 62, Julie Gagline [sic].
24 What say for the State?

25 MR. MALDONADO: Please present the juror.

JURY QUALIFICATION

1 THE CLERK: What say you for defendant Capers?

2 MS. HAHN: Please seat the juror.

3 THE CLERK: What say for defendant Evans?

4 MR. MILLER: Please seat the juror.

5 THE CLERK: Have a seat in the jury box, ma'am. Number

6 14, David Begnode -- Begnaud. What say for the State?

7 MR. MALDONADO: Please present this juror.

8 THE CLERK: What say for defendant Capers?

9 MS. HAHN: Please seat the juror.

10 THE CLERK: What say for defendant Evans?

11 MR. MILLER: Please strike the juror.

12 THE CLERK: Return to your seat please, sir. Okay

13 No. 102, Frederick Ladson. What say for the State?

14 MR. MALDONADO: Please excuse this juror.

15 THE CLERK: Return to your seat please, sir. Number 112,

16 Robert Mackintosh. What say for the State?

17 MR. MALDONADO: Please present this juror.

18 THE CLERK: What say for defendant Capers?

19 MS. HAHN: Please excuse the juror.

20 THE CLERK: Return to your seat please, sir. Number 52,

21 Donald Evans. What say for the State?

22 MR. MALDONADO: Please present this juror.

23 THE CLERK: What say for defendant Capers?

24 MS. HAHN: Please seat the juror.

25 THE CLERK: What say for the defendant Evans?

JURY QUALIFICATION

1 MR. MILLER: Thank you. Please seat the juror.

2 THE CLERK: Have a seat in the jury box, sir. Number
3 168, Darren Truel. What say for the State?

4 MR. MALDONADO: Please present this juror.

5 THE CLERK: What say for defendant Capers?

6 MS. HAHN: Please excuse this juror.

7 THE CLERK: Return to your seat please, sir. Number 101,
8 Edward Koontz. What say for the State?

9 MR. MALDONADO: Please present this juror.

10 THE CLERK: What say for defendant Capers?

11 MS. HAHN: Please seat the juror.

12 THE CLERK: What say for defendant Evans?

13 MR. MILLER: Please seat the juror.

14 THE CLERK: Have a seat in the jury box, sir. Number 28,
15 Gregory Byrley. What say for the State?

16 MR. MALDONADO: Please present this juror.

17 THE CLERK: What say for defendant Capers?

18 MS. HAHN: Please excuse the juror.

19 THE CLERK: Return to your seat please, sir. Number 151,
20 Anthony Scribellito. What say for the State?

21 MR. MALDONADO: Please present this juror.

22 THE CLERK: What say for defendant Capers?

23 MS. HAHN: Please excuse the juror.

24 THE CLERK: Return to your seat please, sir. Number 10,
25 Paula Barnhill. What say for the State?

JURY QUALIFICATION

1 MR. MALDONADO: Please present this juror.

2 THE CLERK: What say for defendant Capers?

3 MS. HAHN: Please seat the juror.

4 THE CLERK: What say for defendant Evans?

5 MR. MILLER: Please seat the juror.

6 THE CLERK: Have a seat in the jury box, ma'am. Number
7 179, Frederick Williams.

8 THE COURT: One seventy-nine. Mr. Williams?

9 MR. MILLER: Your Honor, my ---

10 THE COURT: Sir?

11 MR. MILLER: I w --

12 THE CLERK: There he comes.

13 MR. MILLER: Never mind.

14 THE COURT: Right there (indicating).

15 THE CLERK: No, no, right there (indicating).

16 THE COURT: Right there.

17 THE CLERK: Right there. Turn around. There you go.

18 Turn back around the other way. There you go. All right.

19 What say for the State?

20 MR. MALDONADO: Please excuse this juror.

21 THE COURT: All right. Return to your seat, Mr. Williams.

22 One fifty-seven, John Siciliano. What say for the State?

23 MR. MALDONADO: Please present this juror.

24 THE CLERK: What say for defendant Capers?

25 MS. HAHN: Please excuse the juror.

JURY QUALIFICATION

1 THE CLERK: Return to your seat please, sir. Number 44,
2 Leah Crocker. What say for the State?

3 MR. MALDONADO: Please present this juror.

4 THE CLERK: What say for defendant Capers?

5 MS. HAHN: Please seat the juror.

6 THE CLERK: What say for defendant Evans?

7 MR. MILLER: Please excuse the juror.

8 THE CLERK: Return to your seat please, ma'am. Number
9 26, Connie Brook.

10 JUROR NUMBER 26: Brock.

11 THE CLERK: Brock. I'm sorry, ma'am.

12 JUROR NUMBER 26: It's okay.

13 THE CLERK: What say for the State?

14 MR. MALDONADO: Please present this juror.

15 THE CLERK: What say for defendant Capers?

16 MS. HAHN: Please seat the juror.

17 THE CLERK: What say for defendant Evans?

18 MR. MILLER: Please excuse the juror, Your Honor.

19 THE COURT: Return to your seat please, ma'am. 105,
20 Randy Langston. What say for the State?

21 MR. MALDONADO: Please present this juror.

22 THE CLERK: What say for defendant Capers?

23 MS. HAHN: Please excuse the juror.

24 THE CLERK: Return to your seat please, sir. Number 68,
25 Douglas Graczyk. What say for the State?

JURY QUALIFICATION

1 MR. MALDONADO: Please seat this juror.

2 THE CLERK: What say for defendant Capers?

3 MS. HAHN: Please seat the juror.

4 THE CLERK: What say for defendant Evans?

5 MR. MILLER: Please excuse the juror.

6 THE CLERK: Return to your seat please, sir. Number 20,
7 Darryl Bobojelick? What say for the State?

8 MR. MALDONADO: Please present this juror.

9 THE CLERK: What say for defendant Capers?

10 MR. MALDONADO: Please seat the juror.

11 THE CLERK: What say for defendant Evans?

12 MR. MILLER: Please seat the juror.

13 THE CLERK: Have a seat in the jury box, sir.

14 Number 2, Thomas Alessi. What say for the State?

15 MR. MALDONADO: Please excuse this juror.

16 THE CLERK: Return to your set please, sir. Number 77,
17 Catherine Harsey. What say for the State? Back up for me
18 just a little bit more. Thank you, ma'am. What say for the
19 State?

20 MR. MALDONADO: Please present this juror.

21 THE CLERK: What say for the defense? Oh, excuse me,
22 Capers.

23 MS. HAHN: Please excuse the juror.

24 THE CLERK: Return to your seat please, ma'am. Number
25 93, Judy Kallgren. What say for the State?

JURY QUALIFICATION

1 MR. MALDONADO: Please present this juror.

2 THE CLERK: What say for defendant Capers?

3 MS. HAHN: Please seat the juror.

4 THE CLERK: What say for defendant Evans?

5 MR. MILLER: Please excuse the juror.

6 THE CLERK: Return to your seat, please, ma'am. Number

7 148, Christina Rucker. What say for the State?

8 MR. MALDONADO: Please present this juror.

9 THE CLERK: What say for defendant Capers?

10 MS. HAHN: Please seat the juror. What say for defendant
11 Evans?

12 MR. MILLER: Please seat the juror.

13 THE CLERK: Have a seat in the jury box, ma'am.

14 Eighty-one, Earnest Howard. What say for the State?

15 MR. MALDONADO: Please present this juror.

16 THE CLERK: What say for defendant Capers?

17 MS. HAHN: Please excuse the juror.

18 THE CLERK: Return to your seat please, sir. Number 128,
19 Randy Oliver. What say for the State?

20 MR. MALDONADO: Please excuse this juror.

21 THE CLERK: Return to your seat please, sir. Number 113,
22 Karen Madden. What say for the State?

23 MR. MALDONADO: Please present this juror.

24 THE CLERK: What say for defendant Capers?

25 MS. HAHN: Please seat the juror.

JURY QUALIFICATION

1 THE CLERK: What say for defendant Evans?

2 MR. MILLER: Please excuse the juror.

3 THE CLERK: Return to your seat please, ma'am. Number

4 43, Jason Cox. What say for the State?

5 MR. MALDONADO: Please present this juror.

6 THE CLERK: What say for defendant Capers?

7 MS. HAHN: Please seat the juror.

8 THE CLERK: What say for defendant Evans?

9 MR. MILLER: Please excuse the juror.

10 THE CLERK: Return to your seat please, sir. Number 110,

11 Connie Mabus. What say for the State?

12 MR. MALDONADO: Please present this juror.

13 THE CLERK: What say for defendant, excuse me, Capers?

14 MS. HAHN: Please seat the juror.

15 THE CLERK: What say for defendant Evans?

16 MR. MILLER: Please seat the juror.

17 THE CLERK: Have a seat in the jury box, ma'am. Number

18 34, Michael Catt. What say for the State?

19 MR. MALDONADO: Please present this juror.

20 THE CLERK: What say for defendant Capers?

21 MS. HAHN: Please excuse the juror.

22 THE CLERK: Return to your seat please, sir. Number 135,

23 Ronald Pierce. What say for the State?

24 MR. MALDONADO: Please present this juror.

25 THE CLERK: What say for defendant Capers?

1 MS. HAHN: Please seat the juror.

2 THE CLERK: What say for defendant Evans?

3 MR. MILLER: Please seat the juror.

4 THE CLERK: Have a seat in the jury box, sir. Number
5 145, Edward Robinson. What say for the State?

6 MR. MALDONADO: Please present this juror.

7 THE CLERK: What say for defendant Capers?

8 MS. HAHN: Please present the juror.

9 THE CLERK: What say you for defendant Evans?

10 MR. MILLER: Please seat the juror.

11 THE CLERK: Have a seat in the jury box, sir. Number 15,
12 Robert Bell. What say for the State?

13 MR. MALDONADO: Please present this juror.

14 THE CLERK: What say for defendant Capers?

15 MS. HAHN: Please seat the juror.

16 THE CLERK: What say for defendant Evans?

17 MR. MILLER: Please excuse the juror.

18 THE CLERK: Return to your seat please, sir. Number 90,
19 Dewitt Jenkins. What say for the State?

20 MR. MALDONADO: Please present this juror.

21 THE CLERK: What say for the defendant Capers?

22 MS. HAHN: Please seat the juror.

23 THE CLERK: What say for defendant Evans?

24 MR. MILLER: Please excuse the juror.

25 THE CLERK: Return to your seat please, sir. Number 60,

JURY QUALIFICATION

1 Beatrice Geiger. What say for the State?

2 MR. MALDONADO: Please present this, excuse me, please
3 present this juror.

4 THE CLERK: What say for defendant Capers?

5 MS. HAHN: Please seat the juror.

6 THE CLERK: What say for defendant Evans?

7 MR. MILLER: Please seat the juror.

8 THE CLERK: Ma'am -- excuse me. Have a seat in the jury
9 box, ma'am. Number 24, James Bradshaw. What say for the
10 State?

11 MR. MALDONADO: Please present the juror.

12 THE CLERK: What say for defendant Capers?

13 MS. HAHN: Please seat the juror.

14 THE CLERK: What say for defendant Evans?

15 MR. MILLER: Please excuse the juror.

16 THE CLERK: Return to your seat please, sir. Number 175,
17 Paula White. What say for the State?

18 MR. MALDONADO: Please present this juror.

19 THE CLERK: What say for defendant Capers?

20 MS. HAHN: Please excuse the juror.

21 THE CLERK: Return to your seat please, ma'am. Number
22 120, Christopher Mcfarland. What say for the State?

23 MR. MALDONADO: Please present this juror.

24 THE CLERK: What say for defendant Capers?

25 MS. HAHN: Please seat the juror.

JURY QUALIFICATION

1 THE CLERK: What say for defendant Evans?

2 MR. MILLER: Please seat the juror.

3 THE CLERK: Have a seat in the jury box, sir. Number

4 130, James Owen. What say for the State?

5 MR. MALDONADO: Please present this juror.

6 THE CLERK: What say for for defendant Capers?

7 MS. HAHN: Please seat the juror.

8 THE CLERK: What say you for the defendant Evans?

9 MR. MILLER: Please seat the juror.

10 THE CLERK: Have a seat in the jury box. Strikes are
11 one, one, one, Your Honor?

12 THE COURT: Yes, ma'am, two alternates.

13 THE CLERK: Yes, sir. Number 37, Sandra Collins. What
14 say for the State?

15 MR. MALDONADO: Please present this juror.

16 THE CLERK: What say for defendant Capers?

17 MS. HAHN: Please excuse the juror.

18 THE CLERK: Return to your seat please, ma'am.

19 THE COURT: Ms., uh, ---

20 THE CLERK: Number fi ---

21 THE COURT: --- just a minute. No, that's all right.

22 THE CLERK: Yes, sir?

23 THE COURT: That's all right. Go ahead.

24 THE CLERK: All right, sir. Number 50, David -- I'm
25 sorry. He knows.

JURY QUALIFICATION

1 (Laughter.)

2 THE CLERK: Please tell me how to pronounce that, sir.

3 JUROR NUMBER 50: Enzastiga.

4 THE CLERK: Enzastiga?

5 JUROR NUMBER 50: Yes, ma'am.

6 THE CLERK: Sorry. What say for the State?

7 MR. MALDONADO: Please present this juror.

8 THE CLERK: What say for defendant Capers?

9 MS. HAHN: Please seat the juror.

10 THE CLERK: What say you for defendant Evans?

11 MR. MILLER: Please excuse the juror.

12 THE CLERK: Return to your seat please, sir. Number 106,

13 Ruth Anne Lawson. What say for the State?

14 MR. MALDONADO: Please present this juror.

15 THE CLERK: What say for the defendant Capers?

16 MS. HAHN: Please seat the juror.

17 THE CLERK: What say you for defendant Evans?

18 MR. MILLER: Please seat the juror.

19 THE CLERK: Have a seat in the jury box please, ma'am.

20 That's the Alternate No. 1, Your Honor.

21 THE COURT: All right.

22 THE CLERK: Number 164, William Tanner. What say for the
23 State?

24 MR. MALDONADO: Please present this juror.

25 THE CLERK: What say for defendant Capers?

JURY QUALIFICATION

1 MS. HAHN: Please seat the juror.

2 THE CLERK: What say for defendant Evans?

3 MR. MILLER: Please seat the juror.

4 THE CLERK: Have a seat in the jury box, sir. That's
5 Alternate No. 2, Your Honor.

6 THE COURT: All right. Thank you. Thank you very much.
7 Any motions regarding the jury selection process from the
8 State?

9 MR. MALDONADO: Not from the State, Your Honor.

10 THE COURT: From the defendant Capers?

11 MS. HAHN: No, Your Honor.

12 THE COURT: From the defendant Evans?

13 MR. MILLER: None at this time, Your Honor.

14 THE COURT: All right. Well there's not gonna be another
15 time.

16 MR. MILLER: No, sir, I mean, other than a pretrial.

17 THE COURT: All right. All right. Thank you. Thank you
18 very much, Mr. Miller. With that being said, ladies and
19 gentlemen of the jury panel, I'm going to, that have been
20 selected for the trial of this case, I'm going to momentarily
21 ask you to step to your new temporary home, your jury room,
22 the bailiff will show you there. I have to deal with your
23 colleagues that are very disappointed they were not selected
24 for the trial of this case but they needn't worry there are
25 other judges in other courts in other trials, plenty of cases.

JURY QUALIFICATION

1 It will take me a few minutes to give them their instructions
2 and I'll have you back out here momentarily but during this
3 recess and during all the recesses you'll be advised by me not
4 to discuss this case with anyone, that includes your fellow
5 jurors, family friends or anyone else. You will not be
6 authorized to discuss the case with your fellow jurors until
7 you've heard all the evidence and testimony in the case,
8 closing arguments by the attorneys, charge on the law by the
9 Court and I have instructed you then and only then to begin
10 your deliberations with your fellow jurors in your jury room
11 so please, please keep that in mind. You can talk about the
12 weather or sports or whatever you like but you cannot talk
13 about the case until I instruct you to do so.

14 I need Mr. Tanner and Ms. Lawson if ya'll would always
15 maintain those (indicating) two seats so I can keep up. I
16 have to keep up with fourteen people, my two alternates and
17 whoever I select to be the foreperson of that jury -- this
18 jury and I will make that selection during this brief recess.
19 With that being said, if you'll please now go with your
20 bailiff to your jury room. Thank you very much.

21 (Whereupon, a discussion was held off the record.)

22 (Whereupon, the remaining jury panel was released.)

23 (Whereupon, a recess was taken.)

24 THE COURT: Can you give me an idea about how long it's
25 gonna take to try this case, Mr. Maldonado.

JURY QUALIFICATION

1 MR. MALDONADO: Obviously depending on how each defense
2 attorney questions 'em I -- I'm guessing two days.

3 THE COURT: Two days?

4 MR. MALDONADO: That's right.

5 THE COURT: Do ya'll agree or disagree? I'm not holding
6 ya to it, I just ---

7 MR. HAHN: Your Honor, we do have some witnesses that we
8 do intend to call and it may take longer than two days.

9 MR. MILLER: Yeah, I'm I'm thinking sometime maybe by the
10 end of the day Wednesday. I I don't know. Again, ---

11 THE COURT: All right.

12 MR. MILLER: --- in that vicinity.

13 THE COURT: Well you know like a good trial judge told me
14 one time good trial lawyers can't estimate time.

15 MR. MILLER: That's true.

16 THE COURT: So I've always hung on that mantra in my at
17 least my career when I was out there. All right. And ya'll
18 have motions?

19 MR. MALDONADO: State has one, Your Honor.

20 MS. HAHN: We do, Your Honor.

21 MR. MILLER: We do and, Your Honor, basically ours other
22 than one is is they're really joint motions. We'll be joining
23 in each other's motions.

24 THE COURT: All right. And ya'll ya'll wanna start the
25 actual trial, the taking of testimony, the openings tomorrow

JURY QUALIFICATION

1 morning, is that, is that my understanding,
2 Mr. Maldonado and Ms. Hahn, Mr. Miller, ---

3 MR. MILLER: That's fine.

4 MR. MALDONADO: Yes, Your Honor.

5 MS. HAHN: Yes, Your Honor.

6 THE COURT: --- is that right? All right. All right. I
7 want -- I'm gonna appoint Ms. Rucker. I believe it is
8 number --- Mr. Boyd, --

9 THE BAILIFF: Yes, sir.

10 THE COURT: How ya doin'?

11 THE BAILIFF: Making my way, Judge.

12 THE COURT: Where ya been?

13 THE BAILIFF: I've been back at the back door outside.

14 THE COURT: All right. So you you gonna just take the
15 place of Mr. ---

16 THE BAILIFF: Mr. Hohn.

17 THE COURT: Derrick?

18 THE BAILIFF: Mr. Hohn.

19 THE COURT: Oh, Mr. Hohn.

20 THE BAILIFF: That's right.

21 THE COURT: You can fill those shoes?

22 THE BAILIFF: I hope so.

23 THE COURT: You'll do a great job. Ms., let's see what I
24 say Rucker No., I believe I'm gonna find her number in a
25 minute.

JURY QUALIFICATION

1 MR. MALDONADO: It's 148.

2 THE CLERK: Ms. Rucker is 148.

3 THE COURT: Number 148?

4 THE CLERK: Yes.

5 THE COURT: I want her foreperson of the jury. If you'd
6 bring our jury out for me please Ms. Rucker and then the two
7 on the back. So I'm not gonna charge 'em at all. I'm not
8 gonna swear 'em in at all now. I'm just ---

9 THE BAILIFF: You ready for 'em, Judge?

10 THE COURT: Yes, sir, I'm ready. I'm gonna give 'em some
11 instructions and let 'em go for the day and tell 'em to be
12 here -- what time do ya'll wanna start in the morning, eight
13 o'clock?

14 MR. MALDONADO: Whenever Your Honor wants to.

15 THE COURT: I'll tell 'em to be back probly about 9:30.

16 (Pause.)

17 (The following takes place in the presence of the jury.)

18 (Whereupon, a discussion was held off the record.)

19 THE COURT: Ms. Rucker, I'm gonna appoint you foreperson
20 of the jury. I appreciate you volunteering to perform that
21 very vital function. Thank you. Thank you very much.

22 Ladies and gentlemen of the jury panel, momentarily I'm
23 gonna release you from your jury service for the remainder of
24 the day and I want to explain to you why I'm doing this. This
25 case like most cases there are certain motions, pretrial

JURY QUALIFICATION

1 matters that have to be heard by the Court outside of your
2 presence. Of course it's getting to the lunch hour, we take a
3 break, go to lunch, come back start hearing those motions.
4 You can never estimate how long they're gonna take. Rather
5 than hold ya'll captive in there, we could be finished at
6 3:30, we could be finished at 5:30 so rather than hold ya'll
7 captive in there I'm gonna release you for the remainder of
8 the day and we'll start fresh at 9:30 in the morning; however,
9 I must advise you of certain matters concerning your selection
10 as members of this jury. Please remember during this break,
11 as I told you before you took your brief recess just now,
12 you're not to discuss this case with anyone this includes your
13 fellow jurors, your friends, family members, people involved
14 in the trial or anyone else. Obviously, you can tell your
15 family members you've been selected for a a trial jury. If
16 your home is any -- anything like mine used to be, right time
17 you get home in the afternoon, you know, wanting to chat and
18 say, What you do today daddy or what you do today mommy, and
19 you of course can explain to 'em that. I'm proud to report I
20 have got all my children out of the household but there's some
21 of 'em kinda teetering on gettin' off the payroll but no,
22 they're all doing very well but of course you can share with
23 your family members your selection as jurors in the trial of
24 this case but you cannot discuss the case with them.

25 Also, by a new Supreme Court order I must instruct you

JURY QUALIFICATION

1 that until your service is concluded you shall not discuss the
2 case with others including other jurors except as authorized
3 by the Court, read or listen to any news reports about the
4 case should there be any, use a computer, cellular phone or
5 other electronic device with communication capabilities while
6 in attendance at trial or during deliberations. These devices
7 may be used during lunch break but may not be used to obtain
8 or disclose information that I'm gonna discuss with you
9 momentarily. You may not use a computer, cellular phone or
10 other electronic device with communication capabilities or any
11 other method to be obtain or disclose information about the
12 case when you're not in court. Information about the case
13 includes but is not limited to the following: Information
14 about a party, witness, attorney or court officer or news
15 accounts of the case or information collected through juror
16 research on any topic raised or testimony offered by any juror
17 or by any witness or information collected through juror
18 research on any other topic which the juror might think would
19 be helpful in deciding the case. Basically, what this means
20 there've there've been instances not in South Carolina but in
21 other areas of the country now that we find ourself in the
22 midst of the information age it's just so easy to get on your
23 laptop and just put in a name or put in a term or something
24 like that and you can receive all type of information
25 concerning that person or concerning that term. I don't know

JURY QUALIFICATION

1 if ya'll do it. I mean, I do it as far as medical terms and
2 such like that and and various other terms but you can't do
3 any independent research, you can't do any research on the
4 internet. You have to try this case and determine this case
5 based on what you hear in the courtroom, the evidence and the
6 testimony of the witnesses testifying under oath and the law
7 as I tell you the law is. You can't put a person's name in
8 there and find out somethin' about him or her, you can't put a
9 term in there it could be defined differently than what the
10 Court may define the term, what our law may define the term.
11 I'm sure ya'll will understand those admonitions which I have
12 explained to you. If anyone tries to talk with you about the
13 case, please let me know immediately. I'm gonna now excuse
14 you for the remainder of the day and ask you to please be in
15 your jury room promptly at 9:30 in the morning. The deck
16 should be clear at that time and we'll be ready to start at
17 that time. Any any questions?

18 (No response.)

19 THE COURT: All right. Thank you very much. You're now
20 excused for the remainder of the day. I hope you have a
21 pleasant afternoon and a pleasant evening. Thank you very
22 much.

23 (The following takes place outside the presence of the
24 jury.)

25 THE COURT: Any objection to anything I've told the jury

MOTIONS AND MATTERS

1 from the State?

2 MR. MALDONADO: Nothing from the State, Your Honor.

3 THE COURT: From the defense, Ms. Hahn?

4 MS. HAHN: No, Your Honor.

5 THE COURT: Mr. Miller?

6 MR. MILLER: No, Your Honor.

7 THE COURT: All right. Thank you very much. As far as
8 this case, we'll be in recess until 2:30.

9 (Whereupon, a recess was taken.)

10 THE COURT: We have some motions?

11 MR. MALDONADO: Yes, Your Honor, two.

12 THE COURT: All right. Whose got a motion?

13 MR. MALDONADO: Mine's real quick, Your Honor. Your
14 Honor, the -- I'll try to keep it brief because I believe it's
15 not not opposed by the defense. One of the witnesses in our
16 case has been evaluated and we received copies of her her
17 mental evaluations and doctor's stuff from the defense that's
18 why we're making this motion. The the State would move to
19 exclude any testimony regarding her her mental issues. She
20 was evaluated I believe more than ten years ago. This is
21 based on *State vs. Turner*, cited as 644 S.E.2d 693, that's a a
22 Supreme Court South Carolina case. And as I said, Your Honor,
23 I believe talking with the defense that they don't oppose this
24 motion so we would just ask to exclude any testimony regarding
25 her mental impairment.

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1 THE COURT: All right. Thank you, Mr. Maldonado.

2 Ms. Hahn, is that correct?

3 MS. HAHN: Yes, Your Honor.

4 THE COURT: So, Mr. Miller, is that correct?

5 MR. MILLER: That's right, Your Honor. Some some
6 subpoenas were sent out, some additional material sent back
7 that shouldn'ta been I I believe under HIPAA and I don't have
8 any basis to oppose the motion ---

9 THE COURT: All right. So then I'm ruling that I -- and
10 I don't even know what witness this is.

11 MR. MALDONADO: This is Glynnessa Marie Evans.

12 THE COURT: All right. Vanessa Marie Evans that ---

13 MR. MALDONADO: Glynnessa ---

14 THE COURT: --- the ---

15 MR. MALDONADO: --- sorry, Glynnessa with a "G".

16 THE COURT: --- that the psychiatric testimony is not
17 admissible ---

18 MR. MALDONADO: Yes, Your Honor.

19 THE COURT: --- under *State vs. Turner*, is that, is that
20 correct?

21 MR. MALDONADO: That's correct, Your Honor. It's
22 considered a side issue.

23 THE COURT: All right. And ya'll agree with that is that
24 correct, Mr. Miller and Ms. Hahn?

25 MS. HAHN: Yes, Your Honor.

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1 MR. MILLER: Yes.

2 THE COURT: All right. Any other motions, Mr. Maldonado?

3 MR. MALDONADO: Not from the State at this time, Your
4 Honor.

5 THE COURT: All right. Ms. Ms. Hahn.

6 MS. HAHN: Yes, Your Honor. I have a few. As an initial
7 matter, I understand the the Court's ruling on my voir dire
8 questions earlier but I believe I neglected to put my position
9 on the record. May I do that at this time?

10 THE COURT: (No verbal response.)

11 MS. HAHN: Your Honor, the questions that I submitted
12 were intended to elicit any responses that would reveal
13 potential biases against my client. My position would be that
14 not asking those questions would violate his due process
15 rights. I wanted to put that on the record. And I would also
16 ask that the unasked voir questions be marked as a court's
17 exhibit and the clerk of court -- excuse me, the court
18 reporter has that at this time.

19 THE COURT: All right. Let me see if I can find a copy
20 and you can have it marked as a -- here it is right here,
21 Ms. Hahn.

22 MS. HAHN: I have provided the original copy to the ---

23 THE COURT: All right and you've already had it marked as
24 a court's exhibit?

25 MS. HAHN: I believe it will be marked as ---

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1 (Defendant's requested voir dire marked Court's Exhibit
2 No. 1.)

3 THE COURT: How how is it marked, madam court reporter?

4 THE COURT REPORTER: Court's Exhibit No. 1.

5 THE COURT: All right. Any other motion, Ms. Hahn?

6 MS. HAHN: Yes, Your Honor. At this time I'd like to
7 move to sever the trial of Boyd Evans and Lywone Capers. The
8 case law in this says that a severance should be granted only
9 when there's serious risk a joint trial would compromise a
10 specific right of a co-defendant and prevent the jury from
11 making a reliable judgment about a co-defendant's guilt and
12 that's the law recently stated in *State v. Holcombe* and also
13 in *Hughes v. State* and some older cases. There's no --
14 there's another case called *State v. McIntyre* that says
15 there's not a clearly defined rule for determining when a
16 defendant is entitled to a separate trial because the exercise
17 in discretion means the decision must be based on a just and
18 proper consideration of the circumstances that are presented
19 to the Court in each case.

20 The *Hughes* case initially focuses upon the likelihood
21 that the defendant will receive a more favorable result at a
22 separate trial and cites a California case that talks about
23 how an appellate court shouldn't reverse a conviction achieved
24 at a joint trial in the absence of a reasonable probability
25 that the defendant would have gotten a more favorable result

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1 at a separate trial. My position on this is that trying
2 Lywone Capers with Boyd Evans is gonna compromise a specific
3 trial right of Mr. Capers and present -- prevent the jury from
4 making a reliable judgment about his guilt and by doing so
5 trying them together is gonna compromise his right to a fair
6 trial. That's a right that's guaranteed by the Fifth and
7 Fourteenth Amendments of the U.S. Constitution and also by
8 Article 1 Section 3 of the South Carolina Constitution which
9 guarantees the right to due process and that includes the
10 right to a fair trial.

11 One of the problems in this case is the evidence is much
12 stronger against Boyd Evans. They have surveillance video
13 from the Pitt Stop convenience store that shows a person with
14 two scars and those scars are nearly identical to the ones
15 that Boyd Evans has. There's also a man from Charlotte, NC,
16 Mr. Frederick Neal, who's gonna testify that he lent his blue
17 Ford Explorer to Boyd Evans in exchange for some drugs. The
18 State's gonna try to prove that that vehicle was used in a
19 robbery. There's some other things that are stronger against
20 Boyd Evans as well but my point is since the evidence against
21 him is very strong, I think the jury's gonna find him guilty
22 on the charges. If he denies being present at the scene but
23 the evidence clearly puts him there, the jury's not gone
24 believe his defense. If Lywone Capers asserts the same
25 defense he wasn't there, that he wasn't present at the scene

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1 of the crime at the Pitt Stop, the jury is gonna be less
2 likely to believe him because his defense is the same and as
3 Boyd Evans who I think was more clearly there so I think he's
4 got a big problem with that.

5 There's also a possibility that both defendants may
6 assert an alibi defense. The concern there is the same as
7 with both of them saying that they're not there. Boyd Evans
8 comes in and says that he's got an alibi but the evidence very
9 clearly puts him at the scene, Lywone Capers comes in and
10 asserts an alibi as well I think that there's a big risk the
11 jury's gonna assume that his alibi is not correct as well.

12 I think there's also a risk of guilt by association here.
13 I think that there's a danger that the jury's gonna convict
14 him along with Boyd Evans because they're associated with with
15 each other, they're both family members. There's some
16 evidence of that that's gonna come in that dates back.
17 There's also some risk of guilt by association in that a
18 couple of the witnesses are gonna say that they were seen
19 together the day before the crime and also the jury's gonna
20 see 'em in the court together and treat it similarly in court
21 but I think there's a reasonable probability that a jury's
22 gonna come to associate Lywone Capers and Boyd Evans even to
23 the point that they're gonna believe that if Boyd Evans is
24 guilty, Lywone Capers is guilty too.

25 I think also that some of the evidence that is gonna be

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1 admissible against Boyd Evans would not be admissible against
2 Lywone Capers if he were tried separately. I would argue that
3 under Rule 403 some testimony that Frederick Neal exchanged
4 his car to Boyd Evans for drugs would not be used against
5 Lywone Capers. I would -- my position would be that that's a
6 bad act and that that information would taint Lywone Capers
7 for something that he wasn't even involved in and they're
8 gonna be painted with the same brush and the jury's gonna
9 think they were both involved together. My -- the bottom line
10 on this I think is that there's gonna be significant harm to
11 Lywone Capers if he's tried along with Boyd Evans and that
12 harm would not occur if they were tried separately so I'm
13 asking the Court to consider severing the trials.

14 THE COURT: Thank you. Thank you, Ms. Hahn.
15 Mr. Maldonado.

16 MR. MALDONADO: Thank you, Your Honor. May it please the
17 Court. I guess I'll, unless Your Honor wants me to, I'll skip
18 over the voir dire Your Honor has already ruled on.

19 THE COURT: You you may address it if you wo -- you'd
20 like to. That which I didn't ask was based on my discretion.
21 Some some of the questions were of course not admissible under
22 *State vs. South* and some of the other case law but, uh, ---

23 MR. MALDONADO: Yes, Your Honor it's it's the State's
24 position that that the -- most of the questions do already
25 asking the jury to to come to some conclusions about the

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1 evidence which they have not heard and pitting witnesses
2 against each other like the party evaluating positions of
3 police officers before they they testify. It is -- case law's
4 pretty clear that they can evaluate the the evidence for
5 themselves and that it's not appropriate for voir dire. I
6 believe most of the other questions were encompassed in your
7 voir dire questions so I think that it falls within your
8 discretion to to ask those.

9 Your Honor, on the, on the motion to sever there's no
10 case law that just says because one, the evidence is a little
11 bit stronger for one then then it should -- they should sever.
12 This is -- the case law's pretty clear that there's gotta be
13 some conflict in this case. There's there's no, like for
14 example, conflicting statements by defendants in this case,
15 they bo -- neither of them gave statements. The evidence is
16 there's just some evidence for Boyd that that that isn't there
17 for Capers that doesn't necessarily preclude trying them
18 together. They -- there is evidence they were together. Case
19 law, Your Honor, has to take in consideration judicial
20 economy, the witnesses, all the evidence taken as a whole. As
21 far as, you know, an alibi defense, Your Honor, that doesn't
22 preclude either of them from from evaluating their own alibi
23 defense and Your Honor shou -- can instruct the jury to, and
24 will I'm sure, instruct the jury to take the evidence per
25 individual, per defendant so the guilt by association can be

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1 answered by Your Honor's charge. Every case that would be
2 tried together could be considered guilt by association but
3 that's not necessarily an appropriate reason to sever this
4 case, Your Honor.

5 And as far as prior bad act that she mentioned about the
6 it was a traded traded the car that was used and involved for
7 drugs that is is an incident up to this, it's not a, it's not
8 a prior bad act for Mr. Capers. There's no way to tie it into
9 Mr. Capers and I don't -- there's no reason that, you know,
10 that wouldn't be admissible. They might not hear about it if
11 they were tried separately but it doesn't make it
12 inadmissible, doesn't -- it doesn't prejudice Mr. Capers at
13 all because it doesn't have -- it doesn't involve him so we
14 don't believe that that's any reason to sever this this trial.

15 THE COURT: Thank you. Thank you, Mr. Maldonado. Do you
16 care to reply, Ms. Hahn?

17 MS. HAHN: Your Honor, I think as as far as the judicial,
18 excuse me, judicial economy argument I think that certainly
19 Mr. Capers' due process rights are more important than
20 balancing the judicial economy. I would also focus on the
21 *Hughes* case which talks about the *People vs. Greenberger* case
22 from California that focuses on the result that would come out
23 at a separate trial and it says, well in this case it
24 basically says, "An appellate court should not reverse a
25 conviction achieved at a joint trial in the absence of a

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1 reasonable probability the defendant would have obtained a
2 more favorable result at a separate trial." I think
3 there's -- in this case I think the evidence shows that Lywone
4 Capers stands a much better chance at a separate trial than he
5 does if he's tried along with Boyd Evans.

6 As far as the bad act with the drug use, I think that's
7 much more prejudicial and probative against Mr. Capers and I
8 think that is very harmful testimony that would come in
9 against him. It sounds like he's he's associated with
10 somebody that's involved in drug transactions.

11 THE COURT: What is the cite on *Hughes*, Ms. Hahn?

12 MS. HAHN: That is 552 S.E.2d 315 at 317.

13 THE COURT: 552 315?

14 MS. HAHN: Yes, Your Honor. I think the most significant
15 aspect of this is that the *Hughes* case it seems to focus on
16 one defendant getting a more favorable trial if he were tried
17 separately. In this case I think Mr. Capers would certainly
18 have a more favorable trial if he were tried separately from
19 Mr. Evans.

20 THE COURT: Anything further, Ms. Hahn?

21 MS. HAHN: Your Honor, I do have a couple of other
22 things. I have one motion ---

23 THE COURT: Anything further on this motion?

24 MS. HAHN: No, Your Honor.

25 THE COURT: All right. Did you have any response? I saw

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1 you stand up, Mr. Maldonado.

2 MR. MALDONADO: Your Honor, I I think that just I wanted
3 to make sure to clarify that that the the result could be
4 different because of some reason, not just because there's
5 some evidence that's less than another defendant because the
6 jury has a presumption that they can evaluate the evidence per
7 individual without, you know, they get to cite each case on
8 its own basis per your instructions so just because there's
9 different and additional defendants doesn't lead to the
10 results that that Ms. Hahn is is talking about.

11 MR. MILLER: And, Your Honor, at the appropriate time I'd
12 like to place an objection on the record as well.

13 THE COURT: All right. Yes, sir, Mr. Miller.

14 MR. MILLER: Thank you, Judge. And particular in this
15 case I wanted to go back and focus on exactly what Ms. Hahn
16 said in the very beginning that it's the standard is a serious
17 risk of there -- of being a better result for one defendant
18 than another and this particular case when you review and the
19 jury sees the discovery that's been compiled by the State: the
20 witness statements, the police reports, investigator reports,
21 they all indicate very much the same facts at every juncture
22 Lywone Capers and Boyd Evans are listed together from witness
23 statements, people who identified them. Your Honor, the
24 issues are the same, the charges are the same, the IDs are
25 very similar. In other words, one of the the the issues that

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1 they'll deal with, the State will present in this case is
2 Mr. Evans having some type of scar on his arms that was
3 distinguishable, likewise, the statement both by witnesses and
4 investigators indicate that Mr. Capers was identified by the
5 size of his nose or his, face something to that effect and so
6 I think that we have very similar issues. You know, I don't
7 think that, with all due respect to Ms. Hahn, I don't think
8 that she can judge or state right now that, I mean, I'm sure
9 in her opinion that the evidence is much stronger against my
10 client than Mr. Capers, but in reality I think the evidence is
11 actually very much the same and there's not a serious risk
12 here of there being a different outcome for either defendant,
13 particularly that Mr. Capers would have a better results and I
14 and I really think the judicial economy is very, you know,
15 important in this case. We've had opportunities to to sever
16 this before, it's not been done, we are now ready on the eve
17 of trial and, you know, I I think these cases should go
18 forward together.

19 THE COURT: All right. Thank you very much. Well as I
20 read the case law both *Hughes vs. State*, *Holcombe* and outline
21 of cases, it's clear that criminal defendants who are jointly
22 tried are not entitled to separate trials as a matter of
23 right. As *Hughes* states, "The general rule allowing joint
24 trials applies with equal force when a defendant's severance
25 motion is based upon the likelihood he and a co-defendant will

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1 present mutually antagonistic defenses, that being accuse one
2 another of committing the crime." I see no evidence of that
3 here. I hear no evidence of that. "A severance should be
4 granted only when there is a serious risk that a joint trial
5 would compromise a specific trial right of a co-defendant or
6 prevent the jury from making a reliable judgment about a
7 co-defendant's guilt." The law goes on to say, "A proper
8 cautionary instruction may help protect the individuals right
9 of each defendant and ensure that no prejudice results from a
10 joint trial." I think we do that in every case even when
11 they're not joint cases that the jury must separately and
12 distinctly return a verdict on the indictments themselves.
13 Expanding on that the jury would be advised that they must
14 separately and distinctly evaluate the evidence as it applies
15 to Mr. Evans or as it applies to Mr. Capers, that they can
16 find Mr. Evans guilty or not guilty, they can find him -- or
17 any combination of guilt or not guilt on any combination of
18 the indictments, the same for Mr. Capers. I don't think -- I
19 think the jury will be properly charged in that regard and I
20 will deny Capers' motion for a severance.

21 Now, Ms. Hahn, you have other motions you say?

22 MS. HAHN: Yes, Your Honor.

23 THE COURT: All right.

24 MS. HAHN: I would move to exclude the testimony of
25 Glynnessa Evans, Michael Rhaney, Rosa Lugo or Frederick Neal

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1 about the contents of the surveillance tape obtained from the
2 Pitt Stop Convenience Store and I have a written motion on
3 that I would like to submit at this time.

4 THE COURT: All right.

5 (Whereupon, counsel handed the document to the State and
6 to the Court.)

7 (Pause.)

8 THE COURT: All right. Mr. Maldonado.

9 MR. MALDONADO: Your Honor, Michael Rhaney and Glynnessa
10 Evans and to some extent Ms. Lugo ---

11 THE COURT: I I can't quite hear you. I apologize.

12 MR. MALDONADO: That's fine. Glynnessa Evans and -- is
13 is the sister of -- who grew up with Boyd Evans and is cousins
14 with Lywone Capers, grew up with them, knew them, knew their
15 personal mannerisms, can ID them from the, from the video,
16 Your Honor. I believe they have personal knowledge and they
17 don't have to be the ones actually at the scene to to be able
18 to ID someone. They have personal knowledge, that they can
19 see the video, they can -- they are sure that this person is
20 in the video and the I believe the -- their knowledge goes to
21 their identities. It's not like someone else, you know, just
22 taking a look at the video. In those cases the video speaks
23 for themselves but this case there needs to be some
24 interpretation. They have personal knowledge that the jury
25 can can use to evaluate the case and the evidence and that

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1 should be allowed in, Your Honor.

2 THE COURT: Thank you. Ms. Hahn.

3 MS. HAHN: Your Honor, first of all it's my understanding
4 that two of the witnesses, Frederick Neal and ---

5 THE COURT: I I apologize. I can't hear you, Ms. Hahn.

6 MS. HAHN: I'm sorry, Your Honor. It's my understanding
7 that two of the witnesses, Ms. Lugo and Mr. Neal, have
8 somewhat limited contact with Boyd Evans for which to base an
9 opinion but also that Michael Rhaney and Glynnessa Evans have
10 not been in much contact with either of these two young men to
11 even base an opinion on but I think the bottom line here is
12 that this is an issue that's for the jury to decide. It's not
13 appropriate for either of any of the four to give testimony
14 about these people and I would point out it's not only that
15 indication of the four men but also of the vehicle.

16 THE COURT: All right. Thank you. Thank you very much.
17 It's very difficult to determine evidentiary issues such as
18 this without hearing the testimony. First blush it would seem
19 to me that the witnesses would be able to testify but it's no
20 more than a matter of circumstantial evidence; however, this
21 is a motion in limine so I'll wait for the unfolding of the
22 evidence at the time these witnesses are called. They would
23 have to have some basis; for example, Mr. Maldonado, you
24 stated that Ms. Evans was a sister to Mr. Evans and a cousin
25 of Mr. Capers and as I understand it Mr. Rhaney is Ms. Evans's

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1 is or was her ---

2 MR. MALDONADO: Yes, sir.

3 THE COURT: --- fiancée, meanwhile obviously if the
4 proper foundation's laid in that regard that makes a
5 difference to me as opposed to there being no foundation
6 whatsoever so I guess what I'm doing is waiting for the
7 evidence to unfold in that regard upon the proper objection at
8 the time it's offered. All right. Any other motions, Ms.
9 Hahn?

10 MS. HAHN: Yes, Your Honor.

11 THE COURT: Yes, yes, ---

12 MR. MILLER: I'm sorry.

13 THE COURT: --- Mr. Miller.

14 MR. MILLER: I -- just for the record we're I think the
15 rest of these motions we're joining in kinda jointly so I
16 would, you know, on behalf of Mr. Evans support Ms. Hahn's
17 motion to exclude understanding your ruling already made.

18 THE COURT: All right. All right, Mr. Miller. Yes,
19 Ms. Hahn.

20 MS. HAHN: My next motion is that I understand that the
21 State wants to present evidence that Glynnessa Evans and
22 Michael Rhaney identified Lywone Capers when presented with a
23 single booking photograph of him. I would object to testimony
24 coming in under *Neal v. Biggers* and I would like to have a
25 hearing on that. Both of them identified him from a single

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1 booking photo and I think that that was unnecessarily
2 suggestive and created a substantial likelihood of
3 misidentification and I would like some more foundation about
4 the basis of their knowledge to make that identification in
5 the first place.

6 THE COURT: Well I thought I just ruled on that. I
7 thought I just ruled at the time the evidence is offered and
8 I'm I'm not gonna pretrial the case this afternoon unless all
9 these witnesses are here and ya'll wanna start doing that.

10 MR. MALDONADO: That's the -- there's two issues with
11 that, Your Honor. I did -- I asked them before lunch if they
12 needed the witnesses to exclude so they said they could go and
13 so we had Mr. -- we had Ms. Glynnessa Evans and Michael Rhaney
14 here so we coulda had the Neal v. Biggers but but, Your Honor,
15 we we let 'em go but, Your Honor, there is a case and *State v.*
16 *Liverman* where if they have personal knowledge of the
17 individuals then their ID doesn't need to -- you don't need to
18 do a *Neal v. Biggers* so if, Your Honor, that's just a recent
19 case December 4th 2009, it's a court of appeals case. I don't
20 believe it has a number yet but it was it's actually in
21 Richland County when I was there *Liverman* had some ID by by
22 family members similar to this case. If they have personal
23 knowledge, then they don't need a a lineup or there's no,
24 there's no prejudice for that, Your Honor.

25 MS. HAHN: Your Honor, ---

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1 THE COURT: Give me just a moment, Ms. Hahn.

2 (Pause.)

3 THE COURT: Yes, Ms. Hahn.

4 MS. HAHN: Your Honor, two things: the way I'm looking at
5 this this is a separate issue from the video surveillance;
6 however, I understand your ruling if it applies as well as to
7 the video surveillance. Secondly, I've read the *Liverman*
8 case and I understand that when someone has prior personal
9 knowledge that can admit the need for the, you know, the
10 *Biggers* hearing my question is how much knowledge do these
11 people have of Lywone Capers. It's my understanding that
12 they've not had very much contact at all in recent history and
13 I don't know how much earlier on.

14 THE COURT: Well and it it does appear here that Judge
15 Johnson held a in camera hearing with the witness identified
16 as Tyrone concerning his prior relationship and knowledge of
17 the defendant *Liverman* I take it. The trial judge determined
18 the State should put up evidence on Tyrone's prior
19 relationship or knowledge and he would then decide whether
20 there needed to be a further showing other than the
21 relationship between the two so so obviously there's gotta be
22 a, there's gotta be a foundation for the identification. I
23 agree that *Neal vs. Biggers* under normal circumstances applies
24 to strangers but there has to be a foundation laid for how
25 Ms. Evans or Mr. Rhaney have knowledge of, and I understand

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1 both attorneys, both defendants are involved in this motion,
2 how they have knowledge of Mr. Evans and and Mr. Capers for
3 purposes of making identification. In *Liverman* a witness
4 testified that he had known Liverman since he was an
5 elementary school aid and had known him for a period of
6 approximately seven years, that the fella used to visit Goo's
7 home, an apartment next to where Tyrone's ant lived, that the
8 appellant and Goo were friends of his at the time and
9 appellant used to talk to Goo for him because Goo was deaf and
10 the three of them hung out together for about a four-day
11 period. Since elementary school Tyrone had seen the appellant
12 twice in 2003 at McDonald's where appellant worked and he also
13 saw appellant earlier on the day of the shooting from about
14 two houses away at a housing complex where he observed
15 appellant talking to Delshawn so it appears it's very fact-
16 driven in that regard so at some point in time we'd have to
17 hear that testimony from Evans and Rhaney and any of the other
18 witnesses that fit into we'll call it the Tyrone category in
19 the *Liverman* case. Is is that your point, Ms. Hahn?

20 MS. HAHN: Yes, Your Honor, I believe it is.

21 THE COURT: All right. And if we don't have the
22 witnesses here and we obviously can't take that testimony
23 now.

24 MS. HAHN: Right.

25 THE COURT: Now there was a second part was the booking

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1 photograph?

2 MS. HAHN: Your Honor, I I would move to exclude the
3 photos and that that was my intent with the motion that I want
4 those single booking photos, the identification made from
5 those excluded, but I also would move, I guess, separately to
6 exclude the photos themselves. In my opinion they look like
7 booking photos and I think that's an inadmissible comment on
8 the character of Mr. Capers, you know, they're both taken from
9 a similar distance from the camera, they look like they're
10 against a wall, they're fairly close to the person's face,
11 they look like booking photos to me and I would also move to
12 exclude any reference to them as booking photos.

13 THE COURT: All right. What about that, Mr. Maldonado,
14 the booking photographs themselves?

15 MR. MALDONADO: I don't, I don't believe I have a problem
16 with that. It shouldn't be ---

17 THE COURT: Sir?

18 MR. MALDONADO: I don't think I'll have a problem with
19 that. No, that's fine.

20 THE COURT: All right. And they'll be no reference to
21 'em being booking photographs?

22 MR. MALDONADO: That's correct, Your Honor. I mean,
23 there are other photograph that's separate from the the photos
24 of obviously the incident but but yeah, the actually booking
25 photo's that's ---

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1 THE COURT: All right. So let let me make sure I understand
2 then. The officer, for example, the officer will testify, I
3 showed photographs Mr. Evans, Mr. Capers to Ms. Evans and
4 Mr. Rhaney and they identified one of those photographs as a
5 photograph of Mr. Evans and one of those photographs as a
6 photograph of Mr. Capers ---

7 MR. MALDONADO: That's ---

8 THE COURT: --- assuming they have the proper found --
9 the proper foundation being laid.

10 MR. MALDONADO: Correct. That's that's our intent is
11 just to mention that that she didn't even see photographs we
12 don't necessarily have to admit them as ---

13 THE COURT: All right. Well that should resolve the
14 issue on the booking photographs and they'll be no reference
15 to them as booking photographs.

16 MR. MALDONADO: That's correct, Your Honor, just
17 pictures.

18 THE COURT: All right. Any other motions, Ms. Hahn,
19 Mr. Miller?

20 MS. HAHN: Your Honor, I have no further motions.

21 MR. MILLER: Your Honor, I have a a couple and I don't
22 wanna belabor points I just ---

23 THE COURT: No, ---

24 MR. MILLER: --- wanna make sure ---

25 THE COURT: --- no, sir, you're not belaboring it at

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1 all ---

2 MR. MILLER: Okay.

3 THE COURT: --- Mr. Miller.

4 MR. MILLER: Thank you, sir. The -- let me start with
5 the I guess if the photos are not going to be admitted I had a
6 motion to redact the writing that was on there as hearsay.
7 There's various things scribbled on each photo: I showed this
8 to so-and-so, he identified it as such and such. If they're
9 not gonna be admitted I guess that motion's moot.

10 THE COURT: All right.

11 MR. MILLER: Okay ---

12 THE COURT: I I will take it the wording on the
13 photograph's not comin' in.

14 MR. MALDONADO: No, Your Honor, but I just to clarify, I
15 mean, I believe that that it still would be okay for them to
16 take a look at those to refresh their memory in case they need
17 to, I don't think they will, but, you know, I I did take a
18 picture, they saw a picture of them on this date and I signed
19 that and so that it -- that's all we intend to to offer. We
20 don't intend to admit it as evidence.

21 THE COURT: True and I I think the officer can refer to
22 'em and look at 'em, ---

23 MR. MALDONADO: That -- that's ---

24 THE COURT: --- This is the photograph I showed to so --
25 if -- assuming they become admissible with the proper

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1 foundation.

2 MR. MALDONADO: Yes, Your Honor. Okay.

3 MR. MILLER: Your Honor, additionally to supplement
4 Ms. Hahn's motion regarding excluding the the eyewitness
5 iden -- or excuse me, the identification on the videotape I
6 just wanted to add the point the fact that when these photos
7 where shown we believe it was an impermissible photo lineup in
8 that there were only four photos shown, they were of the
9 people who were already, who who the detective suspected but
10 they were not placed in what I would consider to be a standard
11 photo lineup, you know, say six photos, I don't, I don't know
12 exactly what the standard is but in other words, all that were
13 shown were the four, the four people supposedly involved in
14 the crime and none other and these peo -- then they were
15 identified by Michael Rhaney and Glynnessa Evans so I would
16 object to that.

17 THE COURT: They're just shown to Evans, Rhaney, Neal and
18 Lugo?

19 MR. MILLER: Correct.

20 THE COURT: So you got four photos shown to four
21 witnesses?

22 MR. MILLER: And no -- correct, but no no other photos,
23 none other whatsoever.

24 THE COURT: Four, not four witnesses ---

25 MR. MILLER: No.

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1 THE COURT: --- but four individuals that are shown a
2 video of the crime ---

3 MR. MILLER: Correct, Your Honor. You've got ---

4 THE COURT: --- or stills from the video of the crime and
5 that have allegedly some knowledge of Mr. Evans and some
6 knowledge of Mr. Capers.

7 MR. MILLER: And there are actually two other people
8 allegedly involved in the crime a John Sosa and an Anton and
9 I -- I'm not sure the the last name ---

10 MR. CORNWELL: Was it?

11 MR. MILLER: --- Goldman, excuse me. Those four photos
12 Boyd Evans, Lywone Capers, Anton Goldman and John Sosa were
13 the only photos shown to every single witness, that's ---

14 THE COURT: I understand.

15 MR. MILLER: --- that's my, that would be my objection to
16 that identification.

17 THE COURT: Of course if if they come in under the Tyrone
18 exception in Liverman as to Rhaney and Evans then you'd never
19 reach the Neal vs. Biggers issue as far as Evans and Rhaney's
20 concerned. I'm not saying you agree with that but I I ---

21 MR. MILLER: Correct.

22 THE COURT: --- have to use law.

23 MR. MILLER: I understand, yes.

24 THE COURT: Is there a distinction then between Neal and
25 Lugo? I don't, I don't know the relationship, if any, of Neal

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1 and Lugo to Mr. Boyd Evans and Mr. Capers.

2 MR. MILLER: Well that's where I feel like they they
3 would not come in on a Tyrone exception in that they had no
4 relationship with any of the defendants. Rosa Lugo was ---

5 THE COURT: Mr. Neal did 'cause Mr. Neal allegedly loans
6 Mr. Boyd Evans his automobile, correct?

7 MR. MILLER: Correct, ---

8 THE COURT: Or or did I miss ---

9 MR. MILLER: --- and that's, and that's allegedly what he
10 did but none of the others and and Ms. Lugo again, I would
11 extend this to just Frederick Neal and Rosa Lugo because they
12 were the on -- in in the discovery it's indicated that she
13 only and he only identified Boyd Evans.

14 THE COURT: All right. Yes, sir, Mr. Maldonado.

15 MR. MALDONADO: Just to clarify, Your Honor, Mr. Neal
16 obviously's gonna put, our intention is to put him in the car,
17 he's not gonna say he didn't see the the video so he's not
18 gonna ID the video, he's gonna just testify that, I gave Boyd
19 Evans the car and then then Ms. Rosa Lugo puts them in the
20 area 'cause they're from North Carolina. She she is the
21 manager of of the the mobile home park right next door to this
22 gas station. She also is not gonna testify as to looking at
23 the video but that they put these people, that she knows them,
24 in the area right before the crime.

25 THE COURT: So she do -- she doesn't touch the video.

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1 MR. MALDONADO: Right.

2 THE COURT: She doesn't look at stills on the video.

3 MR. MALDONADO: Right. She just says, I saw them in the
4 area in the, in the -- right before it happened, just puts
5 them and and and got the license plate number, um, ---

6 THE COURT: And and she makes that decision that it's
7 them based on being shown four photographs.

8 MR. MALDONADO: She knew, she knew them. I mean, yeah
9 they they used to live in the trailer park ---

10 THE COURT: All right.

11 MR. MALDONADO: --- that she managed so she ---

12 THE COURT: All right.

13 MR. MALDONADO: --- knew of them and actually she was
14 instrumental in kicking 'em out because of the problems ---

15 THE COURT: So they may -- she and, uh, may become a
16 Tyrone witness also.

17 MR. MALDONADO: Yes, Your Honor.

18 THE COURT: All right. May. All right. I'm -- I think
19 I'm tracking it.

20 MR. MILLER: So with regard to all those I understand
21 your ruling on the, on the law but just we place that
22 objection on the record.

23 THE COURT: All right. Yes, sir, certainly, Mr. Miller.

24 MR. MILLER: Your Honor, also briefly I had a a motion to
25 exclude specifically a testimony of Mr. Neal stating that he

1 exchanged the SUV for crack in that specifically that would be
2 I I think hearsay I guess unless he actually testifies to it
3 himself. I would, I would make a motion to exclude it from
4 anybody else but also under Rule 403 I don't think it's
5 relevant; number one, I don't know that it's true; Number 2, I
6 don't think that it's relevant in that ---

7 THE COURT: If we start, if we start excluding evidence
8 that's not true we'll quicken up some trials ---

9 MR. MILLER: Indeed ---

10 THE COURT: --- so ---

11 (Laughter.)

12 MR. MILLER: --- but I understand it's his testimony. I
13 don't think it's relevant in that the only relevant portion of
14 that would be that he gave the SUV to Mr. Evans and that that
15 SUV was later seen. I think that, you know, beginning to
16 bring in, I traded it for crack that is so much more
17 prejudicial and and implication on his character that I think
18 would be inadmissible.

19 THE COURT: All right. Mr. Maldonado.

20 MR. MALDONADO: Your Honor, I don't think it has anything
21 to do with his character it just goes into the transaction of
22 why he he was given that. The jury has -- is gonna wanna know
23 why he's just giving his his truck to Mr. Evans. He actually
24 he he calls them I believe it's by his nickname Black so, Your
25 Honor, we're just, we're going to, you know, just put him in

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1 the car and he's gonna testify as to why he did it. I don't
2 believe that's prejudicial and it's the incident that
3 happened.

4 THE COURT: Well isn't that a a prior bad act? And if
5 it's a prior bad act wouldn't it have to meet the proper
6 standards under 404(b)?

7 MR. MALDONADO: Your Honor, I believe it's -- it goes to
8 the entire crime. They took the -- this was the beginning of
9 the crime. They took the car down to to Lexington County from
10 North Carolina to rob the convenience store. It's the -- and
11 the the Latin escapes me, Your Honor, but it's the totality of
12 the crime.

13 THE COURT: There's a case also out of Richland County of
14 I believe it's State vs. George Adams. It talks about, and I
15 understand what you're talking about the totality of the
16 circumstances of the crime, but how is the trading for
17 track -- crack not just giving him the keys or loaning him the
18 car how does the trading the crack have a nexus to the crime
19 itself?

20 MR. MILLER: Correct, Your Honor. In our opinion it's
21 not part of a, you know, a common scheme or plan. He's not on
22 trial for a drug charge, he did not in any way has not been
23 alleged to commit a drug offense in South Carolina. I think
24 it's fine for Mr. Neal to say, I know him as "Black" and I
25 think it's fine for him to say, I gave him the truck but when

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1 you bring in the fact that he's trading it for crack which is,
2 you know, mere allegation I think that that prejudice him and
3 it's it's really irrelevant to the facts of the case.

4 THE COURT: I mean, if it if it's got some connection
5 under one of those exceptions under 404(b), you know, if if
6 there's some nexus between the crack and the crime of armed
7 robbery like it was in *Adams* where you know he smokes crack
8 cocaine or cocaine and then he says, Well I'm going to rob
9 this place to get more cocaine or somethin' like that, I --
10 I'll give you a chance to research that Mr. Maldonado if you
11 want in that regard but I think the testimony of loaning the
12 truck's admissible. Of course sometime when doors are opened
13 or cracked open, they're pushed open thereafter but you you
14 can certainly research that this evening in that regard and
15 I'll wait till tomorrow to rule on it, just the crack issue on
16 loaning the truck.

17 MR. MALDONADO: Yes, Your Honor.

18 THE COURT: What else, Mr. Miller?

19 MR. MILLER: Your Honor, we have a motion to sequester I
20 believe specifically Glynnessa Evans and Michael Rhaney is I
21 think those are the only, are those the only two that we
22 will -- well, I mean I guess preferably we'd like all the
23 witnesses sequestered based on the fact that; number one, the
24 majority of the family is like we've already said related,
25 obviously that goes without saying, they're family, but the

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1 friends, the family and specifically Glynnessa Evans and
2 Michael Rhaney being fiancée they were interviewed at separate
3 times obviously to kinda take their statements and make sure
4 they didn't take one off of the other and we're afraid that if
5 they're in here now we won't know if in fact they're changing
6 their statement and if they do why that is. You know, I think
7 it would just, of course this is something that's in the
8 discretion of the Court but there's no harm in sequestering
9 the witnesses and I think that would just make it a little bit
10 more fair, credible as far as the trial goes, Your Honor.

11 THE COURT: All right. Mr. Maldonado.

12 MR. MALDONADO: Your Honor, I I don't have any objection.
13 The, um, obviously it should be reciprocal to their witnesses
14 also. Obviously, we would ask for the victims to remain in
15 the courtroom and the lead investigator.

16 THE COURT: All right. Your victims can stay. The chief
17 investigating officer can remain. If there's an evidence
18 custodian, they can remain and it is reciprocal so that if
19 Mr. Evans and --excuse me, Ms. Evans and Mr. Rhaney and
20 Mr. Neal and Mr. Lugo and those others are not in here neither
21 neither will any potential witnesses on behalf of the
22 defendants. All right. And that's up to ya'll to police
23 'em ---

24 MR. MILLER: Yes, sir.

25 THE COURT: --- 'cause I don't, I don't know the

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1 witnesses.

2 MR. MILLER: And of course it will be reciprocal to to
3 ours, sir, no ---

4 THE COURT: All right.

5 MR. MILLER: --- problem there. Just two left, Your
6 Honor. I'll be really brief. Motion just to exclude the
7 evidence of the scars, photos of the scars that are found on
8 my client on his shoulder and forearm pursuant to Rule 403
9 it's obviously more prejudicial than probative. People can
10 make identification based on body build. They were able to
11 view the videotape, they were shown photos of just the face of
12 a booking photo, they made their identification based on that.
13 The fact that I think you see the scars in in the actual still
14 on the video and then it was sometime later that they, I think
15 it was several months later, that the detectives went up and
16 took pictures in the Charlotte jail before the extradition
17 right after the defendants were arrested and held there and at
18 that time they they noticed the scars and took the photos of
19 the arms. You know, Your Honor, I think that it's not
20 necessary evidence and I think that when it comes in I I think
21 that would prejudice my client far more than being probative
22 in this case.

23 THE COURT: All right. Mr. Maldonado.

24 MR. MALDONADO: Your Honor, it's it's it's evidence that
25 that it's prejudicial because it puts them in the video.

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1 The -- I don't believe it's permissibly prejudicial that
2 there's no right to people with scars, you know, are
3 prejudiced by jurors. There's no, there's no standing for
4 that, Your Honor. There there would be a a question I would
5 just bring up now because it might be an issue: the the
6 pictures do include I believe them wearing some orange
7 jumpsuits at least from the pants down. Your Honor, in in
8 light of not putting that in we're gonna ask to -- for the the
9 defendant to show his his shoulder and his, and his his
10 basically his arm, his two scars in the courtroom, Your Honor,
11 and I just wanted to and so I'll throw that out there now
12 before that becomes ---

13 THE COURT: So you want either the pictures or the
14 defendant?

15 MR. MALDONADO: Or the defendant, Your Honor.

16 THE COURT: You're giving them that choice.

17 MR. MALDONADO: Yes, Your Honor.

18 THE COURT: Well I think, I think pictures of scars just
19 like pictures of tattoos or pictures of any unique item as a
20 part of a person's body is admissible, it's non-testimonial.
21 I'm looking at *State vs. Tisdale* 527 S.E.2d 389 which was
22 identification by scar on the arm of the defendant from a bank
23 video and close-ups of the photographs of the scar were
24 admitted into evidence at trial. I'm gonna allow as I
25 understand it those in provided the proper foundation is laid.

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1 Mr. Miller.

2 MR. MILLER: Yes, Your Honor, but with regard to the the
3 orange jumpsuit is it possible, if it's possible, to redact
4 that, can we redact that portion of the photo?

5 THE COURT: Well I don't know if it's possible to redact
6 it or not but as I understand it they're already, "they", your
7 client, was under arrest for this charge?

8 MR. MILLER: He was being held at that time on a warrant
9 from South Carolina, yes.

10 THE COURT: All right. So on this charge.

11 MR. MILLER: Yes.

12 THE COURT: I mean, I can, I can give a curative
13 instruction to the jury on that. I mean, most jurors are
14 gonna think that if a individual is arrested on an armed
15 robbery and two kidnapping charges that he's gonna be in jail
16 for some period of time before he does or doesn't make bond so
17 I don't know if it's the photographs of such where they can be
18 redacted but if they can't be redacted, I'll certainly give a
19 curative instruction that that that -- that's not evidence of
20 how he's dressed at the time whether he's in jail or not in
21 jail or in a jumpsuit or ---

22 MR. MILLER: Okay.

23 THE COURT: --- not in a jumpsuit so I I think we can
24 handle that.

25 MR. MILLER: That be fine, Your Honor, and my last motion

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1 for the record in the indictments themselves, and I'll just
2 consent to an amendment if it's possible, if these are gonna
3 become evidence for the jury to see Boyd is referred to in
4 J845399, 400, 401 and 402 as Body Evans which may or may not,
5 that may sound kind of minor, however the name Body Evans just
6 , kinda comes off as perhaps gang-related, dangerous ---

7 THE COURT: I'm I'm not sure what you're looking at.

8 MR. MILLER: I -- I'm looking at the indictments, Your
9 Honor, for Boyd Evans regard to the just all four of the
10 indictments the two kidnapping, possession of a weapon in a
11 violent crime and robbery that I would just make a motion that
12 his name be changed from Body Evans to Boyd Evans to reflect
13 properly in case the jury's reading the names. And again, I
14 realize that's very ---

15 THE COURT: The name's misspelled?

16 MR. MILLER: Yes, ---

17 THE COURT: Oh, ---

18 MR. MILLER: --- I'm sorry.

19 THE COURT: --- I apologize.

20 MR. MILLER: Typo, yeah.

21 THE COURT: Yes, sir, I ---

22 MR. MILLER: It's Body instead of Boyd and I I just
23 thought that come -- comes off kinda ---

24 THE COURT: My my typical practice is not to send the
25 indictments to the jury anyway. I usually do a formal verdict

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1 form on that but if that's a motion to amend the indictment
2 I'll certainly do that. No objection to that, Mr. Maldonado?

3 MR. MALDONADO: I I don't see the the typo. I don't know
4 what, uh, where it is.

5 MR. MILLER: In the, in the, I mean, uh, excuse me, Your
6 Honor. Let me see the indictment. I'm looking at the
7 warrants that I just pulled out.

8 (Whereupon, a discussion was held off the record.)

9 MR. MILLER: I'm sorry, Your Honor. I didn't mean to
10 waste the Court's time. I'm looking at the wrong thing. I
11 apologize.

12 THE COURT: All right. That may be the best decision I
13 made today, Mr. Miller.

14 (Laughter.)

15 THE COURT: Any other motions?

16 MR. MILLER: I have none, Your Honor, thank you.

17 THE COURT: Ms. Hahn?

18 MS. HAHN: Your Honor, I would request a ruling on one
19 issue on the sequestration motion. My investigator Lisa
20 Williams may be called by Lywone Capers who impeached some
21 testimony that's elicited. I was wondering if Your Honor
22 wants her sequestered as well or if it would be possible to
23 have her in during the trial.

24 THE COURT: Do you have any objections in that regard
25 since you're keeping your chief investigator, Mr. Maldonado?

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1 MR. MALDONADO: No, Your Honor. I'm -- I didn't get
2 that. That's not on the, on the witness list. I'm sorry.

3 THE COURT: Well I believe she said for impeachment
4 purposes. I'm not sure, uh, ---

5 MS. HAHN: Yes, Your Honor.

6 THE COURT: I don't know what the law is quite frankly as
7 far as qualifying the jury on potential impeachment witnesses.
8 Sometimes you don't know who they are. You don't know what
9 the witness is gonna testify to so ya don't know whether or
10 not a person's going to be called for impeachment purposes
11 only.

12 MR. MALDONADO: I don't think I'll have a pr -- if Your
13 Honor if I -- if you permit me to to just double che -- I
14 don't think I'll have an objection for right now but if Your
15 Honor would let me just possibly renew it in the, in the
16 morning just to double check.

17 THE COURT: That's fine just just and I'm sure you will
18 remind me of that Ms. Hahn like I say I'm sure you will. Any
19 other motions, Ms. Hahn?

20 MS. HAHN: No, Your Honor.

21 THE COURT: Mr. Miller?

22 MR. MILLER: No, sir.

23 THE COURT: Mr. Maldonado?

24 MR. MALDONADO: No, Your Honor.

25 THE COURT: All right. So as I understand it are any of

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1 these witnesses that we brought up these fact, these fact
2 witnesses Evans, Rhaney, Lugo or Neal are any of them going to
3 be your first witnesses?

4 MR. MALDONADO: Sorry. The first one would be the the
5 victim in the case.

6 THE COURT: That's Ms. Irick?

7 MR. MALDONADO: Irick and ---

8 THE COURT: Mr. Lasseter?

9 MR. MALDONADO: --- Mr. Lasseter.

10 THE COURT: I'm not asking who your witnesses are I just
11 wanna see if we got enough time to press on right at 9:30,
12 that I don't have to delay, um, is there any issue that I
13 need to rule on before opening, Mr. Maldonado? I mean, if
14 you're gonna say something along the lines that his own sister
15 and their own sister and cousin identified 'em, that may give
16 rise to me having to decide that issue before openin'.

17 MR. MALDONADO: Yeah, we probly will have to decide that
18 before opening.

19 THE COURT: All right. All right. Anything further this
20 afternoon?

21 MR. MALDONADO: Nothing from the State.

22 MR. MILLER: No, Your Honor.

23 MS. HAHN: No.

24 THE COURT: All right. Let's have those witnesses here
25 at 8:30 in the morning then.

MOTIONS AND MATTERS

1 MR. MALDONADO: Yes, sir.

2 THE COURT: 0830 the Court will be in recess till that
3 time. Thank you very much.

4 MR. CORNWELL: Thank you, Your Honor.

5 (Proceedings January 12, 2010)

6 (State's Exhibit Nos. 1 through 50 premarked for
7 identification.)

8 (The following takes place outside the presence of the
9 jury.)

10 THE COURT: I couldn't hear ya.

11 MS. HAHN: I'm sorry, Your Honor, I I don't know where he
12 is. Your Honor, I'm not sure whether he understood that he
13 needed to be here at 8:30. I didn't think to remind him that
14 Your Honor had told everyone that. Would Your Honor mind if I
15 stepped out and made a call to my office to see if anybody can
16 locate him?

17 THE COURT: No, Ma'am, I don't mind.

18 MS. HAHN: Thank you.

19 (Pause.)

20 MS. HAHN: Your Honor, I've gotten in touch with Emma
21 Evans, one of his relatives, and she says that she's gonna get
22 him here as soon as possible. They misunderstood and thought
23 they didn't have to be back until 9:30 when the jury was
24 supposed to be here.

25 THE COURT: Order -- Ms. Ms. Hahn, I understand your

MOTIONS AND MATTERS

1 client didn't understand to be here at 8:30, he'll be here by
2 9:30. Can we proceed with the motion, the in camera hearing
3 in this matter? Will you waive his presence?

4 MS. HAHN: I will, Your Honor.

5 THE COURT: All right. Mr. Capers's presence is waived
6 for purposes of this hearing. Mr. Boyd is present along with
7 his attorney. All right. I believe the issue is the
8 testimony of Ms. Evans, Mr. Rhaney, Mr. Lugo or Ms. Lugo and
9 Mr. Shealy, is that correct, Mr. Maldonado?

10 MR. MALDONADO: Yes, Your Honor, except for Ms. --
11 Mr. Neal. I -- we haven't been able to get ahold of him last
12 night to tell him. I told him 2:30 originally. We're not --
13 well if it's okay with Your Honor we'll just not talk about
14 his his knowledge in the, in the opening and and probly deal
15 with him when he, when he gets here.

16 THE COURT: All right.

17 MR. MALDONADO: And we have ---

18 THE COURT: You may call your first witness.

19 MR. MALDONADO: Thank you, Your Honor.

20 MR. UNDERWOOD: Your Honor, the State calls Michael
21 Rhaney.

22 THE COURT: All right, Mr. Rhaney, if you'd come around
23 and be sworn please.

24 MICHAEL RHANEY, having been
25 first duly sworn, testified as follows:

MICHAEL RHANEY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 THE CLERK: Have a seat right up there (indicating), sir.
2 Once you're seated I need you to speak up loud and clear
3 statin' your name, spelling your last on the record, please.

4 MR. RHANEY: How ya'll doin' today? I don't know if
5 ya'll can hear me.

6 THE COURT: Excuse me?

7 MR. RHANEY: Can you hear me?

8 THE COURT: Yes, sir.

9 MR. RHANEY: All right. Michael, last name Rhaney,
10 R-H-A-N-E-Y.

11 DIRECT EXAMINATION BY MR. UNDERWOOD:

12 Q. Good morning, Mr. Rhaney.

13 A. Morning.

14 Q. Are you familiar with the defendants in this case Boyd
15 Evans and Lywone Capers?

16 A. Yes, sir.

17 Q. And how do you know them?

18 A. How do I know 'em?

19 Q. Yes.

20 A. Let's see. I met their sister in 2005 and as of then
21 that's when I started knowing 'em.

22 Q. Now what's -- what is your relationship with their
23 sister?

24 A. Significant other.

25 Q. Okay.

MICHAEL RHANEY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 THE COURT: Say that again.

2 MR. RHANEY: Significant other.

3 BY MR. UNDERWOOD:

4 Q. And through her what contact have you had with Mr. Evans
5 and Mr. Capers?

6 A. By let's see when I used to go over to their house, you
7 know, I used to see them occasionally.

8 Q. Now when you say "occasionally" what what do you mean by
9 occasionally?

10 A. Whenever I would go over there to see her.

11 Q. And how often would you go over there to see her?

12 A. Let's see usually on my off days, yeah.

13 Q. And ---

14 A. Let's say like maybe once or twice outta the week.

15 Q. And this is over ---

16 A. Over ---

17 Q. --- this is since ---

18 A. Yes.

19 Q. --- 2005 when you met with her?

20 A. Yes, sir.

21 Q. During the -- this investigation, did you ever have a
22 chance to meet with Detective Prestigacombo?

23 A. Yes, sir.

24 Q. And did you have a chance to view a videotape from the
25 robbery?

MICHAEL RHANEY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 A. Yes, sir.

2 Q. Did you recognize anybody in that videotape?

3 A. Yes, sir.

4 Q. And who did you recognize in that videotape.

5 A. Recognized Boyd, John, Warren -- well, Lywone and Ton.

6 Q. Okay. Now earlier that day did you have a chance to meet
7 with any of those individuals?

8 A. Earlier yes, sir. They did come by the house.

9 Q. "By by the house" whose house do you mean?

10 A. Me and Glynnessa's.

11 Q. And where is that?

12 A. It's in Rolling Meadows.

13 Q. Okay. When you had a chance to meet with them, what
14 happened?

15 A. Well let's see that day I was on my way to work and it
16 was probly right about might have been a little bit before
17 three or so or a little bit after three -- well, no -- yeah, a
18 little bit before three and I was scheduled to be at work I
19 think three to eleven and I was going the way to work it's,
20 uh, let's see, once you come outta my driveway you make a left
21 and it's a road coming like almost parallel to that and, you
22 know, it's kinda like I was on my way to work and I noticed a,
23 you know, blue SUV approaching, you know, at speed so so
24 basically that almost hit me and so I was like well then I
25 realized, you know, before I got to work I almost -- I left my

MICHAEL RHANEY - CROSS-EXAMINATION BY MS. HAHN

1 tag and so I came back to the house and asked Glynnessa I was
2 like, Um, your brother, um, I said, I think I seen your
3 brother drivin' a truck and then, you know, and I'm thinkin'
4 about him havin' a license.

5 She was like, Well I I don't know so, um, and by the time
6 I came back to the house, you know, they were there.

7 Q. Now when you say her brother who is that?

8 A. Boyd Evans.

9 Q. Okay. And when you say they were there at the house, who
10 was there at the house?

11 A. It was Boyd, John, Warren and Ton.

12 Q. And you saw them there at the house?

13 A. Yes.

14 Q. Mr. Boyd [sic], do you know them well enough to be able
15 to recognize them if you saw them?

16 A. Yes, sir.

17 MR. UNDERWOOD: No further questions, Your Honor.

18 THE COURT: Thank you. Ms. Hahn?

19 CROSS-EXAMINATION BY MS. HAHN:

20 Q. Mr. Rhaney, you said that you knew Lywone Capers, is that
21 right?

22 A. Yes.

23 Q. Okay. When did you first meet him?

24 A. He came down it might have been a couple a times, you
25 know, when I was at the house.

MICHAEL RHANEY - CROSS-EXAMINATION BY MS. HAHN

1 Q. Can you name any specific occasions when you saw him?

2 A. It was 'round about like the same time like I say when I
3 met Glynnessa.

4 Q. And what time was that?

5 A. In '05, 2005.

6 Q. Was it -- ca -- do you remember what season it was maybe
7 or what month?

8 A. To be specific it was in August.

9 Q. Okay. And on that case -- on that occasion what was your
10 interaction with Mr. Capers?

11 A. It was just, you know, part of the family, uh, cousin and
12 basically that's it and I I saw him and a couple other
13 people.

14 Q. Who else was there?

15 A. Let's see, basic just family members.

16 Q. But you don't remember anybody specifically?

17 MR. MALDONADO: Objection, Your Honor, the -- she's not
18 talking about specific incidents so it's kinda hard to be
19 specific.

20 THE COURT: He said he met him in August of '05. He can
21 answer the question if he remembers..

22 MR. RHANEY: Yes, I've -- let's see, other cousins,
23 Bilal, let's see, and small kids, yeah.

24 BY MS. HAHN:

25 Q. Okay. And where was that?

MICHAEL RHANEY - CROSS-EXAMINATION BY MS. HAHN

1 A. You say when?

2 Q. Where was -- where did you meet or ---

3 A. I was at, uh, in Rolling Meadows at Lot .

4 THE COURT: ?

5 MR. RHANEY: Yes, sir.

6 BY MS. HAHN:

7 Q. So he came to your house on that occasion?

8 A. No.

9 Q. No? Okay. All right. How long were you around in
10 that -- on that occasion?

11 A. Like I said, you know, mostly on my off days, you know, I
12 would come over there, you know, see her and, you know, they
13 would be around.

14 Q. So he would just sort of be around sometimes?

15 A. Yeah, I guess like, you know, just comin' out to
16 visit.

17 Q. Okay. And how often did this happen?

18 A. Well it might have been, you know, more than the days
19 when I was there but like I say, you know, I would only see
20 her on my off days.

21 Q. So it's every off day for a certain period of time. Can
22 you give me any more specific idea of how often you saw
23 Mr. Capers?

24 A. About every every week or every other week.

25 Q. So you saw him every other weekend ---

MICHAEL RHANEY - CROSS-EXAMINATION BY MS. HAHN

1 A. Yeah.

2 Q. --- from that time in August of 2005?

3 A. Um-hum. That's right.

4 Q. Until when?

5 THE COURT: I believe he said every week or every other
6 week. Was that your answer? Did I misunderstand that?

7 MR. RHANEY: Yes.

8 THE COURT: Was that your answer?

9 MR. RHANEY: Yes, sir.

10 THE COURT: All right. I just wanna make sure
11 understood.

12 BY MS. HAHN:

13 Q. So you saw him every week or every other weekend from
14 2005 until when?

15 A. Up until the point where she moved out.

16 Q. When was that?

17 A. That's probably been like like that next month
18 September.

19 Q. So you saw him maybe two or three times?

20 A. No, I was talkin' about, I was talking' about Glynnessa
21 up until the time she moved out of Lot 16.

22 Q. So you saw him every other weekend or every weekend from
23 August until September. So you would have seen him two or
24 three times?

25 A. Yeah.

MICHAEL RHANEY - CROSS-EXAMINATION BY MS. HAHN

1 Q. Okay. All right. When was the last time that you saw
2 him before July of 2007?

3 A. Oh, this was -- as far as the exact date, I can't really
4 remember because they moved to Raleigh, North Carolina and I
5 helped them move.

6 Q. Was Lywone there that day that you helped the family
7 move?

8 A. Yes, ma'am, I believe he was.

9 Q. But you're not sure?

10 A. Not quite sure 'cause I know -- let's see, it was me,
11 Glynnessa, couple of the kids, you know, the kids they road in
12 my car and some people road in the U-Haul.

13 Q. Okay. And when was that?

14 A. Like I told you earlier I can't remember exactly.

15 Q. Do you remember what month or what season of what year?

16 A. Let's see, it happened like around I say around about
17 November.

18 Q. Of what year? That same year? 2005?

19 A. Yeah, I believe so.

20 Q. Okay. Let's go to July of 2007 when you saw the stills
21 from the video. You're an employee at the the Pitt Stop,
22 correct?

23 A. Yes, ma'am.

24 Q. Okay. And Detective Prestigacomo came in and talked with
25 some employees that were there, correct?

MICHAEL RHANEY - CROSS-EXAMINATION BY MS. HAHN

1 A. Yes, ma'am.

2 Q. And he showed a video. Were you standing there when he
3 showed the video?

4 A. Yes, ma'am.

5 Q. Okay. And did you tell him at first that you didn't know
6 anybody in the video?

7 A. No, I actually, I, you know, pulled him to the side and I
8 told him that, you know, I mighta had a pretty good idea of
9 who, you know, will do it.

10 Q. Okay. And so you told him that you recognized three of
11 the men in the video, is that correct?

12 A. Yes, sir.

13 Q. Okay. And what kind of clothing did they have on?

14 A. At that particular time they -- let's see, I remember
15 somebody having on a a blue shirt, black jeans; one had on
16 blue jeans and a black shirt and the other one had on red
17 shorts.

18 THE COURT: What was that, Mr. Rhaney? The ---

19 MR. RHANEY: Sir?

20 THE COURT: You said the other one had on what?

21 MR. RHANEY: Red shorts like basketball shorts.

22 THE COURT: All right.

23 BY MS. HAHN:

24 Q. The person that you identified as Mr. Capers what did he
25 have on?

1 A. Let's see, he had on I believe it was either a pair of
2 blue, blue or black pants.

3 Q. How'd you recognize him?

4 A. Which one?

5 Q. Mr. Capers?

6 A. Just, I mean, you know, like I say I been 'around him for
7 a good many -- I mean, the family actually and I just, you
8 know, it it was kinda like hard to believe at first but, you
9 know, it's just like well you have the eerie feeling thinking,
10 you know, if you would know someone but you don't think they'd
11 be capable of doing anything like that.

12 Q. Let me ask you more specifically. I think the video was
13 less than a minute long. What specifically about Mr. Capers
14 did you recognize as Mr. Capers?

15 A. Just the walkin', you know, the talk.

16 Q. What about his walk did you recognize?

17 A. Well, I mean, just you know. Like I say if you be around
18 a person you can pretty much tell.

19 Q. But you can't tell me anything more specific than that?

20 A. Well, I mean, I know his voice when I hear it.

21 Q. Okay. And what specifically about his voice?

22 A. Just different than I guess, you know, the average.

23 Q. Okay. Let's talk about the day before, the 25th, when
24 you say they were at your house. What time did you encounter
25 them? That was on your way to work, correct?

MICHAEL RHANEY - CROSS-EXAMINATION BY MS. HAHN

1 A. Yes, ma'am.

2 Q. And you testified that you go to work around three?

3 A. Yes, ma'am.

4 Q. So what time do you think you saw him if you were leaving
5 for work?

6 A. It was probly about I say about quarter till three yeah,
7 about 2:45 to be exact.

8 Q. And when you saw him, Michael, you said that on -- excuse
9 me, you said that Mr. Evans was driving the SUV, is that
10 correct?

11 A. Yes, ma'am.

12 Q. Okay. So you turned around and went back home,
13 correct?

14 A. Yes, ma'am.

15 Q. And you said that these young men were at your house.

16 A. Yes, ma'am.

17 Q. Where exactly were there they at your house?

18 A. They were parked in the parking space in -- well in front
19 of my house and they were like in the yard.

20 Q. Did they come into your home?

21 A. Well, um, let's see, I -- honestly, I really didn't stay
22 that long but, you know, just I I believe one of 'em did use
23 the phone.

24 Q. But you're not su -- you didn't see him use the phone so
25 you don't know, right?

MICHAEL RHANEY - CROSS-EXAMINATION BY MS. HAHN

1 A. No.

2 Q. Okay. And since you had to go back to work how long was
3 it before you left again to go to work?

4 A. Matter of like five minutes after that.

5 Q. Now when they were at your house exactly where was Lywone
6 Capers?

7 A. In the yard.

8 Q. Okay. What was he doin'?

9 A. He was standin' in the yard.

10 Q. Just standin' out in the middle of the yard. Was he
11 talking to somebody or anything?

12 A. I mean, yeah, I mean, he was, you know, standing in the
13 yard just just spoke with Nessa, Glynnessa.

14 Q. He was in the yard talkin' to Glynnessa?

15 A. Uh-uh (negative).

16 Q. Okay.

17 A. They were on the porch.

18 Q. Were they on the porch or in the yard?

19 A. Well, it's like ---

20 Q. Where was he?

21 A. In the yard.

22 Q. So he was in the yard.

23 A. And Glynnessa was on the porch.

24 Q. Okay. What did he have on when he was at your house?

25 A. Lywone?

MICHAEL RHANEY - CROSS-EXAMINATION BY MS. HAHN

1 Q. Um-hum.

2 A. I know they were jeans -- well pants or either they're
3 blue or black.

4 Q. But you don't remember anything else about what he had on
5 than that?

6 A. No, ma'am.

7 Q. Did he talk to you?

8 A. No, ma'am.

9 Q. How close did you get to him that day?

10 A. About as close as me and you are now.

11 Q. Okay. So several feet away?

12 A. Yes.

13 Q. All right. Now I believe that you talked to the officers
14 later on after you left the Pitt Stop Convenience Store when
15 you saw the video, is that correct?

16 A. Yes.

17 Q. And at one point you wrote a statement, is that right?

18 A. Yes.

19 Q. In that statement did you refer to Lywone as Warren
20 Capers?

21 A. Yes.

22 Q. And then you also had to identify him from a photograph,
23 is that correct?

24 A. Yes, ma'am.

25 Q. Okay. And did the officer have you write something down

MICHAEL RHANEY - CROSS-EXAMINATION BY MS. HAHN

1 on the side of that photograph?

2 A. He -- I believe so.

3 Q. And on there did you write down the name Laquan Capers?

4 A. No, Lywone Capers.

5 MS. HAHN: Your Honor, I beg the Court's indulgence?

6 THE COURT: Yes, ma'am.

7 BY MS. HAHN:

8 Q. Is this (indicating) your handwriting?

9 A. (No audible response.)

10 Q. And is this (indicating) the photograph that the police
11 officer showed you?

12 A. Yes.

13 Q. And do you see ---

14 THE COURT: Is that, is that a yes? You need to answer
15 out loud.

16 MR. RHANEY: Oh, yes, sir.

17 THE COURT: All right. Thank you.

18 BY MS. HAHN:

19 Q. And what is the name that you've written below the
20 picture?

21 A. Lywone Capers.

22 Q. And how did you spell that?

23 A. L-A-Q-U-A-N.

24 Q. Okay. Back when Lywone Capers was around in 2005 did he
25 live here in Lexington County?

MICHAEL RHANEY - CROSS-EXAMINATION BY MS. HAHN

1 A. No, ma'am.

2 Q. Okay. So why was he here?

3 A. Just visitin' family I guess.

4 Q. Okay. And I believe that when you talked to Detective
5 Prestigacombo you told him that the Explorer belonged to or
6 excuse me, the blue SUV belonged to Emma Evans, is that
7 correct?

8 A. I believe I did, yeah, say somethin' like that.

9 Q. Is this (indicating) the statement that you wrote at the
10 officer's request?

11 A. Yes, um-hum.

12 Q. And I refer you to the second page. Would you read the
13 answer and the the -- excuse me, the question and your answer.

14 A. You said question and answer?

15 Q. Um-hum.

16 A. Describe -- oh, you want me to read it out loud?

17 Q. Um-hum. Yes, please.

18 A. "Describe the vehicle they were in," and that was just at
19 Line 2.

20 And my answer was, "The vehicle was a blue Explorer. It
21 belongs to Emma Evans about the tire was a tan color."

22 Q. Thank you.

23 MS. HAHN: Your Honor, I have no further questions.

24 THE COURT: Thank you. Thank you very much, Ms. Hahn.

25 Mr. Miller?

MICHAEL RHANEY - CROSS-EXAMINATION BY MR. MILLER

1 MR. MILLER: Thank you, Your Honor.

2 CROSS-EXAMINATION BY MR. MILLER:

3 Q. Mr. Rhaney, good morning. My name's David Miller.

4 A. Morning.

5 Q. Just a couple a questions. You said you've known I guess
6 Lywone Capers since 2005. Have you also known Boyd Evans
7 since that time?

8 A. Yes, sir.

9 Q. Okay. Now he moved to Charlotte in 2005, 2006, is that
10 correct?

11 A. I believe so, yes.

12 Q. Okay. And so you hadn't seen him between 2005 and when
13 you claimed to have seen him in 2007, is that correct?

14 A. Yeah, either.

15 Q. No, I mean between the years of 2005 and 2007 you never
16 saw Boyd Evans, did you?

17 A. Yes, sir.

18 Q. When when did you see him?

19 A. You said ---

20 Q. You said you met him in 2005 and I'm asking you did you
21 see him after you, after you met him and he move -- he then
22 moved to Charlotte in about two thou -- enda 2005, 2006 did
23 you ever see him again?

24 A. Only the time that they came down.

25 Q. Okay. Now in this case we're talking about a robbery

MICHAEL RHANEY - CROSS-EXAMINATION BY MR. MILLER

1 that allegedly took place at the the Pitt Stop, correct?

2 A. Yes.

3 Q. Okay. Were you at the Pitt Stop at the time the robbery
4 happened?

5 A. No, sir, I wasn't. I just got off.

6 Q. Okay. And you actually went to work at three, is that
7 correct?

8 A. Yes.

9 Q. Three to eleven?

10 A. Yes, sir.

11 Q. Okay. And you said that you saw Boyd and the others
12 before you went to work.

13 A. Yes, sir.

14 Q. Okay. Did you see him again afterward?

15 A. No, sir.

16 Q. So you never saw him again other than that brief
17 encounter in in your yard, Glynnessa's yard.

18 A. Yes.

19 Q. Okay. Now when you did know Boyd before he moved to
20 Charlotte what experiences, if any, did you have with him?
21 Did you go to dinner, movies, out to a club?

22 A. Oh, actually, you know, just me being a friend of the
23 family, you know, I just, you know, when I came over, you
24 know, they were all in the room either playing games or
25 talkin' about somethin' or anything, you know.

1 Q. Okay. But you're not related to Boyd yourself.

2 A. No, sir.

3 Q. Didn't grow up with him.

4 A. No, sir.

5 Q. Okay. Did you say you met Glynnessa in 2005 also?

6 A. Yes, sir.

7 Q. Okay. Now moving to the actual date of the incident you
8 spoke with the o -- Detective Prestigacombo and I believe he
9 showed you the stills from the video?

10 A. Yes, sir.

11 Q. Okay. And that's how you claimed to have identified Boyd
12 and Lywone and John and Anton.

13 A. Yes, sir.

14 Q. Okay. Were there any faces visible on the video?

15 A. No, sir.

16 Q. And did you hear anybody actually utter any words or ---

17 A. Talk, ---

18 Q. --- say anything?

19 A. --- yes, sir.

20 Q. You did? So did he show you the video or just the still
21 pictures from it?

22 A. I saw the videos and the still picture.

23 Q. Okay. What, if anything, do you recall that that Boyd
24 Evans said?

25 A. At that particular time he didn't say anything.

MICHAEL RHANEY - REDIRECT EXAMINATION BY MR. UNDERWOOD

1 Well, ---

2 Q. It's okay if you don't recall but ---

3 A. Um, let's see. I'm seeing the video, yeah, I believe he
4 probly was, yeah, he probly had said somethin'.

5 Q. Okay but you can't recall what.

6 A. No, sir.

7 Q. Okay. Did you recognize a voice or how did you identify
8 Boyd Evans?

9 A. Yeah, by voice.

10 Q. By voice. Okay. Anything else?

11 A. No, sir.

12 Q. Okay. But in all honesty if you had to say with one
13 hundred percent certainty that this was Boyd Evans in that
14 video you really can't because you weren't at that incident
15 site and don't have any personal knowledge of that incident do
16 ya?

17 A. Well I did go back to the store that night but it was
18 after.

19 Q. But you we weren't there at the time it happened.

20 A. No, sir.

21 Q. Okay. That's all I have. Thank you.

22 THE COURT: Redirect, Mr. Underwood?

23 REDIRECT EXAMINATION BY MR. UNDERWOOD:

24 Q. Mr. Rhaney, just to to go back, you said that you had
25 first met on direct exam you had said that you first met Boyd

1 and Lywone through Glynnessa back in 2005 and I believe you
2 said that you had seen him several times and then Ms. Hahn
3 spoke about specifically in the month of I think it's August,
4 are there any other occasions that you had seen either
5 Mr. Evans or Mr. Capers?

6 A. None other than what they were talkin' about earlier.

7 Q. Okay. And at those times that you met with them how long
8 did those encounters last?

9 A. Sometimes might have been about half an hour to an hour
10 so.

11 Q. So that's -- and is that per occasion or a particular
12 occasion?

13 A. Yeah, per occasion.

14 Q. Okay. So you're saying each time that you met with them
15 you were with 'em for at least half an hour to an hour?

16 A. Yes.

17 Q. Okay. Now is that the same for Mr. Evans and
18 Mr. Capers?

19 A. Yes, sir.

20 Q. Now as far as the video that Mr. Miller talked to you
21 about you said that you recognized Mr. Evans by his voice, ---

22 A. Yes.

23 Q. --- correct? Now you had -- that is -- that's the same
24 day you had seen him at your house, correct?

25 A. Yes.

MICHAEL RHANEY - REDIRECT EXAMINATION BY MR. UNDERWOOD

1 Q. When he was at your house, did you have a chance to
2 notice what kind of clothes he was wearing?

3 A. I believe it was black jeans.

4 Q. Okay. And when you saw the video how did the clothes of
5 the people in the video compare with the clothes that both
6 Mr. Evans and Mr. Capers were wearing at your house that same
7 day?

8 A. Like -- well I'm not meaning like nothin', like a slight
9 change, you know, maybe when they took their shirt off; their
10 underclothing now that I couldn't see.

11 MR. UNDERWOOD: The Court's indulgence, Your Honor.

12 THE COURT: Yes, sir.

13 MR. UNDERWOOD: Okay.

14 BY MR. UNDERWOOD:

15 Q. Now, Mr. Rhaney, when you met with Detective
16 Prestigacombo, you said that he showed you pictures?

17 A. Yes.

18 Q. Did you recognize anybody in those pictures?

19 A. From the clothing yes, sir.

20 Q. So you were able to identify them by more than just their
21 voice is that correct?

22 A. Yes.

23 Q. Now, sir, are you sure that that you recognized them from
24 the video that you observed?

25 A. Yes.

1 MR. UNDERWOOD: No further questions, Your Honor.

2 THE COURT: Thank you. Anything further, Ms. Hahn?

3 MS. HAHN: No, Your Honor.

4 THE COURT: Mr. Miller?

5 MR. MILLER: Just one question, Judge, if you don't mind
6 and I'll keep it short. May I approach the witness?

7 THE COURT: Certainly.

8 MR. MILLER: Thank you.

9 RECROSS-EXAMINATION BY MR. MILLER:

10 Q. Mr. Rhaney, let me show you again a a voluntary statement
11 that you made. Is that (indicating) your statement?

12 A. Yes.

13 Q. It is. And if you would there's a question that says
14 "Why were they at hour house?" Can you read the answer that
15 you wrote below that.

16 A. Answer: "They were visiting their sister which is my
17 fiancée. Also..." oh, you want me to continue?

18 Q. Yeah, go ahead. I'm sorry.

19 A. "Also, when she saw them she told them to leave
20 immediately."

21 Q. She told them to leave immediately?

22 A. Yes, sir.

23 Q. Did they?

24 A. No, sir.

25 Q. They didn't.

MICHAEL RHANEY - RECROSS-EXAMINATION BY MR. MILLER

1 A. No, sir.

2 Q. Okay. But you were only there five minutes?

3 A. Yes.

4 Q. Okay.

5 A. That's enough time, you know, just to see whether they
6 left or not.

7 Q. I gotcha. But after five minutes you wouldn't know if
8 they left immediately or not.

9 A. No, sir.

10 Q. Okay. Thanks. I have no further questions.

11 THE COURT: All right. Thank you. Thank you very much.
12 Anything further?

13 MR. UNDERWOOD: Not with this witness, Your Honor.

14 THE COURT: All right. Thank you, Mr. Rhaney. You may
15 step down.

16 (Whereupon, the witness left the stand.)

17 THE COURT: All right. You may call your next witness.

18 MR. MALDONADO: Thank you, Your Honor. The the State
19 calls Glynnessa Evans.

20 THE CLERK: Have you got somebody getting her?

21 MR. MALDONADO: Yes.

22 THE CLERK: Oh, okay. Right up here (indicating),
23 Ms. Evans.

24 GLYNNESSA EVANS, having been
25 first duly sworn, testified as follows:

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

1 THE CLERK: Have a seat please, ma'am. Once you're
2 seated you need to speak up loud and clear statin' your full
3 name on the record spelling your last please.

4 MS. EVANS: My name is Glynnessa Evans, E-V-A-N-S.

5 DIRECT EXAMINATION BY MR. MALDONADO:

6 Q. Morning, Ms. Evans. How are you?

7 A. Good morning.

8 Q. Do you know Boyd Evans and and Lywone Capers?

9 A. Yes.

10 Q. Okay. And what is your relation to Mr. Evans?

11 A. Brother.

12 Q. Okay. Is that is that by birth or how -- were you
13 adopted into the family? How how is -- how long have you --
14 I mean, ---

15 A. My father's son.

16 Q. Father's son. Okay. And how long -- have you grown up
17 together?

18 A. Yes.

19 Q. So you've known him your whole life?

20 A. Basically yes.

21 Q. Okay. How 'bout Mr. Mr. Capers. How -- what's your
22 relation to him?

23 A. Cousin.

24 Q. Okay. And how often would you see him?

25 A. Like when they come for visits down.

1 Q. Okay. Where -- coming down from where?

2 A. Charlotte where they live at.

3 Q. Okay. And how often would they come down?

4 A. Holidays, weekends.

5 Q. Okay. So you basic -- you saw him a lot is that ---

6 A. Yes.

7 Q. Okay. Would you be able to recognize both of them if you
8 saw them again?

9 A. Yes.

10 Q. Okay. Did -- when did you start your relationship with
11 Mr. Rhaney?

12 A. I started it was March -- no, it was -- yeah, March the
13 1st of 2005.

14 Q. Okay. And did you ever, you know, hang out together
15 with Mr. Capers and and Mr. Evans at that time?

16 A. They they was in the house ---

17 Q. Oh really ---

18 A. --- but I ain't really hang with them; ---

19 Q. Right but I mean with ---

20 A. --- they're boys.

21 Q. --- Mr. Rhaney. Was Mr. Rhaney there when you ---

22 A. He come, he come when he get offa work ---

23 Q. Okay.

24 A. --- to get me.

25 Q. Okay. So he saw them -- about how many times do you

1 think he he met them?

2 A. He seen 'em like probly off and on whenever 'cause they
3 maybe was in school.

4 A. Okay.

5 Q. But you -- was Mr. Capers living with you too or was was
6 it just Mr. Evans?

7 A. Evans.

8 Q. Okay. Where was -- where's Mr. Capers at that time in
9 2005?

10 A. He lived with his momma.

11 Q. Okay. Where was that?

12 A. In Charlotte.

13 Q. Okay. But then he'd come down and and was he still
14 coming down to visit?

15 A. Yeah, when his mother bring him.

16 Q. Okay. Did you, did you get to see him on July 25th of
17 2007?

18 A. Yeah, that's when he came to my house.

19 Q. Okay. How long do ya think he was there?

20 A. They prob -- they probly was not there about a hour.

21 Q. Okay. So describe to the judge what happened when they,
22 when they first came when you first saw them.

23 A. When they came they said hello to me, they rolled up and
24 they asked -- my brother asked me did I have a rubber band. I
25 gave him a rubber band.

1 Q. That's Mr. Evans?

2 A. Yes.

3 Q. Okay.

4 A. And then they went to see their little girlfriends they
5 had, they knew in the neighborhood.

6 Q. Okay.

7 A. They were going back and forth, you know, and then they
8 said they seen me later they was goin' home.

9 Q. So you basic -- you live in a mobile home park, is that
10 correct?

11 A. Yes.

12 Q. So they would go to the other other homes in the, in the
13 neighborhood and come back around?

14 A. Yes.

15 Q. Okay. Did you notice anything else that happened when
16 they were there? Did they get in any trouble or anything like
17 that?

18 A. When they, when they came down, they was mainly goin' to
19 see people that they knew when they was livin' out there and
20 and John he was just loud with, he was just real loud with the
21 music and then they was tryin' to calm him down tell him to
22 stop that noise.

23 Q. That's John Sosa?

24 A. Yes.

25 Q. Okay. What were they driving?

1 A. A Ex -- it looked like a Explorer.

2 Q. Okay. Did you know whose Explorer that was?

3 A. No.

4 Q. Okay. Did they -- did you know them to own an Explorer
5 as far as you know?

6 A. I don't know.

7 Q. All right. Had you ever seen 'em drive an Explorer
8 before?

9 THE COURT: Just just a minute please.

10 MR. MALDONADO: Yes, I'm sorry.

11 THE COURT: Mr. Bailiff, will you keep that juror that
12 just walked through the courtroom out of the jury room.

13 THE BAILIFF: Yes, Your Honor.

14 THE COURT: Did you see him, Mr. Corley?

15 MR. CORLEY: No, sir, I didn't but I won't let him see
16 anybody.

17 THE CLERK: I did.

18 THE COURT: Caucasian male that just walked through here.

19 THE CLERK: We've got him, Judge.

20 THE COURT: Will you keep him separated from the other
21 jurors? All right. Thank you, Mr. Maldonado. You may
22 proceed.

23 MR. MALDONADO: Thank you, Your Honor.

24 BY MR. MALDONADO:

25 Q. Did you ever get a chance to to view the videotape of

1 this -- of the robbery of the Pitt Stop?

2 A. Yes.

3 Q. Okay. Was it the videotape or was it the pictures or how
4 how did you see those?

5 A. I seen both.

6 Q. Okay. Did you recognize anybody in those pictures?

7 A. Yes.

8 Q. Who'd you recognize?

9 A. I seen all of them. I know every last one of 'em: Boyd,
10 Lywone, John and Ton.

11 Q. Okay. So that's Boyd Evans, Lywone Capers, John Sosa?

12 A. Yes.

13 Q. And what's Ton's full name? Do you remember?

14 A. I don't know his last name.

15 Q. But you know him as Ton?

16 A. Um-hum.

17 Q. Okay. What about the the video did you recognize? How
18 did you recognize them?

19 A. I recognized, how I recognized John' dreads and he the
20 lightest one and the way he was walkin' and I recognized Ton.

21 Q. Did you recognize any facial features?

22 A. I recognized my brother by the the, um, by how his his
23 shoulder was and how built he was.

24 Q. Okay. Does he have any distinguishing marks on him?

25 A. He had a mark on his shoulder.

1 Q. What kinda mark?

2 A. Looked like a, like a scar.

3 Q. Okay. Did you recognize anybody, you know, -- when you
4 saw their face, I mean, were all the pictures completely
5 covered up or did did did some of their, you know, ---

6 A. You can, you could see their eyes if you really payin'
7 attention.

8 Q. Okay. And are you sure that the people you saw in the
9 picture are ---

10 A. Yes.

11 Q. --- Mr. Evans and Mr. Capers?

12 A. Yes.

13 Q. Okay. You made a -- in your statement you talk about
14 Mr. Capers' nose. Did you -- is there anything distinguishing
15 about that that you -- what did you say?

16 A. Yes. His his nose is bringin' everything out with his
17 eyes covered.

18 Q. Okay. You mentioned that it was kind of a larger nose.

19 A. Yes.

20 Q. Okay.

21 MR. MALDONADO: That's all I have, Your Honor.

22 THE COURT: Thank you, Mr. Maldonado. Ms. Hahn?

23 MS. HAHN: Thank you, Your Honor.

24 CROSS-EXAMINATION BY MS. HAHN:

25 Q. Ms. Evans, I wanna talk to you specifically about Lywone

1 Capers. Now how often have you been around him before July
2 2007?

3 A. Not that, not that, um, rarely.

4 Q. I'm I'm -- I don't think I understand your answer. Is
5 that that you're not around him very often?

6 A. Yes.

7 Q. Okay. And it's my understanding that your family is
8 sorta fractured. Some some of ya'll don't get along with
9 other people, is that correct?

10 A. Yes.

11 Q. Is there some -- you don't see everybody in the family,
12 is that right?

13 A. Yes.

14 Q. Okay.

15 A. Now when you say that you didn't see him often, can you
16 tell me more specifically than that how often you would see
17 him.

18 A. Holidays.

19 Q. Okay. Do you remember any specific holidays or anything
20 like that or ---

21 A. No.

22 Q. Okay. When was the last time before July of 2007 that
23 you saw Lywone Capers?

24 A. When I went for Christmas to see my daughter.

25 Q. You remember what year that was?

- 1 A. That was in '05.
- 2 Q. Okay. And on that occasion what interaction did you have
- 3 with Mr. Capers?
- 4 A. Really nothing.
- 5 Q. So you didn't have ---
- 6 A. He aint ---
- 7 Q. --- much interaction at all.
- 8 A. --- he ain't really talk to me.
- 9 Q. All right. Before that do you have any idea when the
- 10 last time you saw him woulda been?
- 11 A. When they came down to my house to visit.
- 12 Q. Okay. And about how long ago was that?
- 13 A. In July.
- 14 Q. You mean July 2007?
- 15 A. Yes.
- 16 Q. Okay. So other than July in 2007 and Christmas of 2005
- 17 do you remember the last time before that that you saw him?
- 18 A. When I used to live up there with my aunt.
- 19 Q. Okay. And when was that?
- 20 A. Since '99.
- 21 Q. So it'd been a while since you ---
- 22 A. Yeah.
- 23 Q. --- had seen him back then. Okay. All right. Now on
- 24 July 26th of 2007 Detective Prestigacombo came out and talked
- 25 to you about this incident, correct?

1 A. Yes.

2 Q. And I believe that he showed you some video stills, is
3 that correct?

4 A. Yes.

5 Q. Okay. Now I believe that you testified that you were
6 able to see the eyes of some of the people in the video, is
7 that correct?

8 A. Yes.

9 Q. Whose eyes could you see?

10 A. I seen, I seen John's face clear as the day with that
11 blue stockin' cap he had over his face.

12 Q. And I think that you said that one person had dread
13 hairstyle, is that correct?

14 A. Yes.

15 Q. What was that?

16 A. John, it was john, my brother and Ton his was, his was --
17 his eyes were showing and his legs the way he was walking gave
18 him up.

19 Q. Okay. Let me slow down. I wanna make sure I got
20 everything that you're saying correct. So your saying that as
21 far as the dread style hair cut that was John?

22 A. Yes.

23 Q. Okay. And then as far as Boyd did you notice his
24 hairstyle?

25 A. Just a little bit of the back.

1 Q. Okay. And what did his hair look like in the back?

2 A. It was, it was covered but just half a little bit was
3 hangin' out like short part.

4 Q. Okay. And then as far as Ton what could you tell about
5 him?

6 A. His his legs and stuff I noticed about him and then he
7 had like when he had it covered, he was lookin' at the camera
8 at the same time and you could see his face really when he was
9 walkin' down the aisle.

10 Q. Okay. And then as far as Mr. Capers you indicated that
11 he had a larger nose, is that right?

12 A. Yes.

13 Q. Is there anything more specific than that that you
14 remember about him?

15 A. The clothes didn't, he didn't have that stuff on when
16 they came to my house.

17 Q. So you're saying that the clothes in the video were
18 different from the ones he had on when he came to your house.

19 A. Yes.

20 Q. Okay. Well let's talk more about when he did come to
21 your house. I believe you testified they were there for about
22 an hour, is that correct?

23 A. Yes.

24 Q. During that time what was Lywone doin'?

25 A. He went to see his his old girlfriend.

1 Q. So of the time that they were at your house did he leave
2 during that time?

3 A. Yeah, he he walked right across the street. Everybody
4 went to see mainly their friends. It was just mainly John
5 that stuck around really playing loud music, jumpin' up and
6 down on the little, on the little part of the truck.

7 Q. Okay. So how long do you think Lywone was actually there
8 before he left to go see his old girlfriend?

9 A. About two minutes.

10 Q. Okay. Did you talk to Lywone any that day?

11 A. He just said, "What's up," to me and he asked -- he was
12 talkin' mainly to Boyd and them.

13 Q. Okay. Where were ya'll standin' when he said that?

14 A. Like on the side, the front by my tree of my house.

15 Q. Were were ya'll out in the yard?

16 A. Yes.

17 Q. Okay. You weren't on the porch or anything were ya?

18 A. No.

19 Q. Okay. Okay. What about the vehicle that they were
20 drivin'?

21 A. It's like a a Explorer type. It was 4-door. It was like
22 a looked like a greenish with gold on the trimmin'.

23 Q. Okay. And that was in the middle of the day so you had a
24 pretty good look at the vehicle, is that right?

25 A. Yes.

1 MS. HAHN: Beg the Court's indulgence. No further
2 questions, Your Honor.

3 THE COURT: Thank you. Mr. Miller?

4 MR. MILLER: Thank you, Judge.

5 CROSS-EXAMINATION BY MR. MILLER:

6 Q. Glynnessa, good morning. My name's David Miller.

7 A. Good morning.

8 Q. Just a couple questions for you. Is Boyd your brother or
9 your cousin?

10 A. Boyd is my brother.

11 Q. Your brother. Okay. Do you recall in in your statement
12 or when you, when you spoke to the detective didn't you say
13 that it was your cousins that came down to see ya?

14 A. Yes.

15 Q. Okay. But not ---

16 A. But I ---

17 Q. --- your brother.

18 A. --- but I also said my brother too ---

19 Q. Okay.

20 A. --- once I seen the pictures.

21 Q. Okay. Now you said that you grew up with Boyd?

22 A. Yes.

23 Q. Can you tell me what you mean by that? How many -- how
24 long did you spend time with him growing up?

25 A. I seen -- I basically had Boyd, you know, when they was

1 younger we all used to live in the house ---

2 Q. Okay.

3 A. --- together before my -- before our dad got sick ---

4 Q. Okay.

5 A. --- and we got separated.

6 Q. What year did you get separated in?

7 A. 90 -- 1980 -- no it was 9 -- it was 1992 'cause my dad
8 died July the 18th we buried him.

9 Q. Okay. So -- okay. So 1992 was the last time that you
10 saw Boyd for some time?

11 A. Yes.

12 Q. Okay. And he was only born in '89, correct?

13 A. Yes.

14 Q. Okay. Now you were actually placed in jail in '99 isn't
15 that true?

16 A. Yes.

17 Q. What what year did you get out?

18 A. I got out March the 1st of 2002.

19 Q. 2002 or 2004?

20 A. I got out 2002.

21 Q. So you didn't see Boyd during any of those years,
22 correct?

23 A. I was carcerated.

24 Q. Okay.

25 THE COURT: I was what? What was that answer?

1 MS. EVANS: Carcerated.

2 THE COURT: All right.

3 BY MR. MILLER:

4 Q. Do you recall what school Boyd and Lywone went to?

5 A. Not in my know.

6 Q. Okay. You you mentioned somethin' about Boyd havin' a
7 scar on his shoulder, is that correct?

8 A. Yes.

9 Q. How did you know that?

10 A. Because that afternoon when he came they -- he had, he
11 had on a little tank top on and I look.

12 Q. You know how he got the scar?

13 A. No.

14 Q. Okay. Now when you went to, when you went to jail, what
15 happened to your kids? who took them?

16 A. My aunt had my daughter ever since she was a newborn,
17 ever since I had her November the th.

18 Q. Okay. And your aunt is Emma Evans?

19 A. Yes.

20 Q. Okay. Now when you got out did you get the kids back
21 immediately?

22 A. Only had one at that time.

23 Q. Okay. I'm sorry. Okay. I'm sorry. Just a couple other
24 questions. Regarding specifically July of 2007 when this
25 incident happened, were you yourself at the Pitt Stop when it

GLYNNESSA EVANS - CROSS-EXAMINATION BY MR. MILLER

1 occurred?

2 A. No, I was not.

3 Q. Okay. And do you recall I believe you said when these
4 four showed up at your house that that they were told to leave
5 immediately?

6 A. Yes.

7 Q. So you didn't want them hangin' out there.

8 A. I didn't know they was coming.

9 Q. Um-hum. And did they leave?

10 A. No they -- the, um, they went and seen their friends and
11 then John was makin' all the noise and they almost hit some
12 other kids and the rent lady had to come and and tell 'em they
13 was not -- they was trespassin'.

14 Q. So then they left.

15 A. Yes.

16 Q. Okay. You said in the video you recognized -- well,
17 excuse me. You said regarding Boyd Evans that his head was
18 covered, is that correct, ---

19 A. Yes.

20 Q. --- the one that you believe is Boyd Evans?

21 A. Yes.

22 Q. Okay. And you just saw a little bitta hair sticking out.

23 A. Yes.

24 Q. And you haven't seen him in in years before July 2007,
25 correct?

GLYNNESSA EVANS - REDIRECT EXAMINATION BY MR. MALDONADO

1 A. I seen him but not I hadn't been around, you know, been
2 around him like that.

3 Q. Yeah. And so you really couldn't tell from any voice or
4 any hair or any walk or anything that it was Boyd Evans or
5 some other person, could you?

6 A. Yes.

7 Q. With absolute certainly?

8 A. Yes.

9 Q. Okay. Even though you were not there, had no personal
10 knowledge of the incident site?

11 A. No.

12 MR. MILLER: I don't have any further questions, Judge.

13 THE COURT: Thank you. Any redirect, Mr. Maldonado?

14 REDIRECT EXAMINATION BY MR. MALDONADO:

15 Q. You mentioned that that the clothes are different in your
16 statement but ---

17 A. Yes.

18 Q. --- didn't you -- did you tell the officers that he was
19 wearin' the same tank top in the, in the pictures?

20 A. Yes.

21 Q. Okay. So you recognized that?

22 A. Yes.

23 Q. Okay. No further questions.

24 THE COURT: Anything further, Ms. Hahn, Mr. Miller?

25 MR. MILLER: No, Judge.

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1 MS. HAHN: No, Your Honor.

2 THE COURT: Thank you. Thank you very much, Ms. Evans.
3 You may step down.

4 (Whereupon, the witness left the stand.)

5 MR. UNDERWOOD: Your Honor, at this time the State calls
6 Rosa Lugo.

7 THE COURT: I think I would prefer to wait on Ms. Lugo.
8 We're now five minutes late for the jury so just don't refer
9 to her in your opening if that's all right and we can handle
10 her or Mr. Neal. Does that cause ya'll a problem
11 Mr. Maldonado, ---

12 MR. MALDONADO: Not at all, Your Honor.

13 THE COURT: --- Mr. Underwood? All right. Ms. Hahn,
14 Mr. Miller, ya'll have any evidence or testimony ya'll want to
15 present in camera?

16 MS. HAHN: No, Your Honor. I do have a position I -- I'd
17 like to get to before the jury comes back.

18 THE COURT: All right. Well we have to finish this issue
19 as far as Ms. Evans and Mr. Rhaney. I'll be glad to hear from
20 you, Ms. Hahn.

21 MS. HAHN: Your Honor, I would move, well I guess I would
22 continue my motion from yesterday that these identifications
23 that have been made are inadmissible and that they are unduly
24 suggestive and I would have a problem with getting -- with the
25 State getting into those in opening statements before we've

MOTIONS AND MATTERS

1 got a ruling on that and I I don't know that I fully
2 understand Your Honor's intent as far as scheduling with the
3 opening arguments.

4 THE COURT: As far as scheduling what?

5 MS. HAHN: With the opening arguments I wanna make sure
6 that ---

7 THE COURT: My intent was to hear these motions yesterday
8 but obviously nobody cared about my intent but me so I've
9 heard these motions today because the attorney general says
10 that he was going to refer to the witnesses in his opening so
11 I'm going to rule on Mr. Rhaney and Ms. Evans as to whether or
12 not an in camera ruling whatever my ruling may be obviously if
13 I rule they're not admissible, he's not gonna refer to 'em but
14 but that's that's my intent. He cannot refer to Ms. Lugo or
15 Mr. Neal because I haven't had the in camera hearing. A close
16 reading of *Liverman* tells me that Judge Johnson had these
17 evidentiary motions two months before that trial. I tried to
18 have it at least a day before the trial but was unsuccessful
19 in that regard because the witnesses weren't here. I'm not,
20 I'm not sure what you're asking me to do ---

21 MS. HAHN: Your Honor, I ---

22 THE COURT: --- or not do.

23 MS. HAHN: --- think I have one point that I I would like
24 to make ---

25 THE COURT: All right.

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1 MS. HAHN: --- before we get to that. As far as the
2 issue of personal knowledge, I think the attorney general has
3 has made a lot out of that. I think that that's less
4 important although I don't think that Michael Rhaney and
5 Glynnessa Evans have provided a substantial basis for their
6 personal knowledge of Lywone Capers but also in the *Herring*
7 case that was a case where the witnesses were testifying to
8 what they had seen, not only what they'd seen on the video so
9 and in that case the judge still issued a curative instruction
10 preventing them from talking about what they had seen on the
11 video even though they were eyewitnesses to the scene. I
12 think Mr. Rhaney and Ms. Evans are even more remote than that.

13 THE COURT: All right. All right, Mr. Miller?

14 MR. MILLER: Judge, I would supplement her her argument
15 to say that, you know, this this rule is is meant and I I talk
16 of personal knowledge rule Rule 602 specifically, you know, it
17 it gives a source of a witness's knowledge and it prevents a
18 witness from offering conclusion and speculation and right now
19 I'm referring to *State vs. Pitts* 256 SC 420. Additionally,
20 it -- it's -- it -- it's and I'm gonna now refer to the *State*
21 *vs. Whiley* it's a 614 S.E.2d 862, "Witness can be shown to
22 have personal knowledge if he or she had the opportunity and
23 was able to perceive or otherwise obtain knowledge through the
24 senses." A pers -- a position's -- excuse me, "A person's
25 position or status alone does not provide a competent

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1 witness." And I think that that being the the case what we
2 have here are witnesses who were shown specifically video
3 stills, they were never there to witness the situation, they
4 have limited, if any, knowledge personally of at least Boyd
5 Evans and Lywone Capers that we talked about, very limited
6 time spent with them, unable to see their faces or any face on
7 video. I don't think that there's any personal knowledge here
8 for them to do anything but speculate and and I think that the
9 jury can draw their own conclusion from viewing the video and
10 seeing our clients in the courtroom so with that respect we'd
11 ask you to to grant our motion.

12 THE COURT: All right. Thank you. Mr. Maldonado or
13 Mr. Underwood?

14 MR. MALDONADO: Thank you, Your Honor. Your Honor, I I
15 analogize this to someone IDg a -- an audiotape. Obviously
16 courts have held that someone can hear someone's voice and
17 if they recognize it they can ID that voice on the record.
18 That doesn't necessarily mean the person had to be there when
19 it -- when the person actually spoke if they have personal
20 knowledge and can recognize the voice and this is a similar
21 sort of situation. They have personal knowledge of the
22 person, they know their body characteristics, they know their
23 style, they they don't have to actually be at the scene to
24 actually testify.

25 Your Honor, just to kinda clarify some of their their

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1 quotes. They they mentioned in their motion *State v. Bottoms*.
2 I would -- I wanted to go lun -- finish the quote that they
3 they kinda cut off. They said, "Opinion must be based on the
4 personal observation of the witness," they cut it off there
5 but they they forgot to include, "and not merely upon the
6 statements of another witness." That case obviously is for
7 the conclusion that they can't testify because someone told
8 them something. This is obviously their personal knowledge.
9 The *Herring* case was specifically on a gunshot so they they
10 couldn't interpret a A video. They weren't there to see the
11 gunshot. They saw the video and just concluded it was a
12 gunshot but then the Court said that that they can't make that
13 conclusion. They didn't have an independent knowledge of the
14 gunshot. This one they have independent knowledge of the
15 individuals, can ID them and can give knowledge to the jury.
16 The jury doesn't know them but they have independent
17 knowledge, they grew up with them, they had seen them under
18 several circumstances.

19 The State would also like to -- the cases that are
20 mentioned and that are cited in the the *Liverman* case they
21 cite *State v. McLeod* and in the interest of *Robert D.* In both
22 the cases the the the knowledge they had was very, was a lot
23 more tenuous in this circumstance. This one in in *State v.*
24 *McLeod* it was a a neighbor basically. She knew the the child
25 in the neighborhood, she saw him around and and knew them to

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1 be the daughter of of a friend of theirs. So that obviously
2 is a lot more tenuous. The the Court there cited that that
3 was enough, that they did not have to have a a *Neal Neal v.*
4 *Biggers* and that personal knowledge was good enough. And then
5 State v. the situation in in the interest of Robert D. this
6 was a family court case. Your Honor, the the situation was a
7 lot more tenuous. This is -- we're talking here about family
8 court. Let -- the -- in that case the the victim knew knew
9 the defendant by his first name only, recognized him a friend
10 of two of their classmates and remembered them watching a
11 couple of films in their class. That is a very limited
12 interaction. We have witnesses who had multiple conversations
13 or at least events with them, family events with them and and
14 a specific relationship so both those cases as long as they
15 had prior knowledge to be able to recognize them they can
16 argue the weight of that, you know, maybe they can say that
17 that they didn't know them well enough but I think that goes
18 to the weight. Once they they do have the, you know,
19 established prior knowledge, I don't -- if Your Honor would
20 need a copy of those cases I cited I I do have a copy.

21 THE COURT: I I have 'em. Thank you.

22 MR. MALDONADO: And obviously *Liverman* too, Your Honor,
23 is -- describes that that as long as they have personal
24 knowledge this isn't necessary and they are -- they should be
25 allowed to testify. That is all.

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1 THE COURT: Thank you. Anything in response? Yes, sir.

2 MR. CORNWELL: Your Honor, may I co -- may I speak?

3 THE COURT: Certainly, yes, sir.

4 MR. CORNWELL: Your Honor, I realize I'm not lead counsel
5 in this case but Ms. Hahn's requested that I kinda clarify ---

6 THE COURT: If you speak, just speak up for me please.

7 MR. CORNWELL: I know you have that problem with me, Your
8 Honor.

9 THE COURT: All right. Thank you.

10 MR. CORNWELL: Your Honor, specifically in regards to lay
11 opinions on videotape, Your Honor, and just to point out we
12 believe that *Herring* does control in this matter, Your Honor.
13 They specifically have an entire section where they discuss
14 this entirely: lay opinion regarding videotape. The witnesses
15 who were asked to comment on the videotape that was presented
16 at trial had the most personal knowledge, they were
17 eyewitnesses. They had an independent basis to be
18 knowledgeable of what happened on that video, Your Honor, or
19 they had a independent basis to have knowledge supposedly of
20 what was going on in the video. What was depicted on the
21 video is exactly what they saw. If any case controls in this
22 matter it's *Herring*, *Herring* and and even with all of that in
23 place the Supreme Court and the judge, Judge Johnson, said
24 that it was improper for those witnesses to comment on the
25 video as ---

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1 THE COURT: I believe that ---

2 MR. CORNWELL: --- lay witnesses ---

3 THE COURT: --- was Judge Cooper.

4 MR. CORNWELL: Judge Cooper. I'm sorry.

5 THE COURT: Yes, sir.

6 MR. CORNWELL: It was improper for them to comment on
7 that video because, and I think this is the main thrust and
8 this is the main thing we need to focus on, it is the purvey
9 of the jury to determine fact. The only people who can give
10 opinion on things of that nature, Your Honor, and it's been
11 carved out in exception is expert witnesses and there's been
12 much value made about personal knowledge in this case but I
13 don't even think personal knowledge was a prong of the
14 analysis that Supreme Court made when they made the
15 determination that lay witnesses cannot comment on this video
16 or in situations like this. I think their main concern was
17 that there was an opinion being given or a fact being proposed
18 when in fact the jury's purvey is to determine whether or not
19 what on the video is what the State is alleging is on the
20 video. I I think, Your Honor, if you follow me what I'm
21 sayin' I think that you would agree that that is in fact the
22 case. The problem with this, Your Honor, is that not only
23 were they not eyewitnesses to the crime, but in the crime
24 whoever committed this crime, their faces were covered, the
25 only thing that was visible on some of 'em was the torso, the

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1 the clothes were different according to one of the witnesses
2 than the clothes that was worn at least by our client. If you
3 wanna talk about, if you wanna bring in personal knowledge, I
4 think if they're gonna comment on what happened they had to
5 have personal knowledge of the incident, Your Honor, and they
6 weren't there at all. But I -- like I said I do not believe
7 that personal knowledge comes into play in this case. The
8 important thing is to have the jury decide what they say,
9 what -- what's on the video. The thing speaks for itself in
10 other words, Your Honor. The video should be allowed to be
11 played in front of the jury, they make their own
12 determinations. The State can ask the witnesses what clothes
13 did our clients have on that day, what clothes did they see
14 them with, they can go into details about how they knew them,
15 what their appearance was but they can't draw the conclusion
16 for the jury that those were the guys on the video and I think
17 that's what this case stands for. To allow that to happen
18 would just invade the whole purpose of having the jury there
19 in the first place. I think that's what the important thing
20 is here.

21 THE COURT: All right. Thank you. Thank you,
22 Mr. Cornwell. Mr. Miller, you have anything further ---

23 MR. MILLER: No, Your Honor.

24 THE COURT: --- in response to either Mr. Maldonado's
25 argument or any -- anything in follow up?

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1 MR. MILLER: None, sir. Thank you.

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

3 I I read with a high degree of interest a a little closer
4 details of *Liverman* last night and early this morning and then
5 reviewed *State vs. McLeod* and *In re Robert D.* When you look
6 at *Liverman*, the judge determined the State should put up
7 evidence on Tyrone's prior relationship or knowledge and he
8 would then decide whether there needed to be further showing
9 other than the relationship between the two. Of course
10 Mr. Rhaney and Ms. Evans are in the position of, in this case
11 they're in the position that Tyrone was in in that case as far
12 as the prior relationship. I understand and Mr. Cornwell's
13 point is well taken that they are not eyewitnesses to the
14 event as was Tyrone in the *Liverman* case although he was
15 upstairs or looking through a window. Then to determine
16 though however whether there was any meaningful preexisting
17 relationship between Mr. Rhaney, Ms. Evans and the defendants
18 in this case Mr. Capers and Mr. Evans. As I listened to the
19 the testimony during the in camera hearing, Mr. Rhaney
20 testified that he had knowledge of and knew Mr. Evans and
21 Mr. Capers because he began dating their --Mr. Evans's sister
22 in August of 2005, that he would see them occasionally when he
23 would go to see her on his off days once or twice a week over
24 2005. He also testifies that he saw them along with two other
25 individuals on the day before the armed robbery occurred at

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1 the residence of his fiancée Ms. Evans. In fact, his
2 testimony is he saw them in a particular vehicle, I believe an
3 Explorer, while he, Mr. Rhaney, was on the way to work. I I
4 take it from the testimony he thought that's who it was
5 because he turned around and went back to his fiancée's and in
6 fact that was who who was there: four individuals, two of
7 which was Mr. Evans and Mr. Capers, I take it this was in the
8 daytime out in the open. He saw Mr. Capers talking with his
9 cousin Glynnessa Evans, he saw Boyd Evans, saw the vehicle
10 that was being operated. In fact, I believe his testimony was
11 something about he made some statement about why was Boyd
12 driving the vehicle he didn't have a driver's license I
13 believe or something to that effect. So it's clear that he
14 did have a sufficient prior relationship with both Mr. Evans
15 and Mr. Capers whereby he could testify to their
16 identification. He'd been shown, I I took it he was shown
17 both the video and heard the video and was shown stills from
18 the video and indicates he was able to recognize the four
19 individuals, two of which were the, were the defendants in
20 this case. Personal knowledge of as I understand Rule 602
21 doesn't mean that the person has to be an eyewitness in the
22 crime, that's what circumstantial evidence is. See a person
23 walking down the road, later on you find out the place had
24 been robbed you can testify. He could testify that he's --
25 area he saw him in at Rolling Meadows Trailer Park at the

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1 location where the armed robbery occurred was at Rolling
2 Meadows Convenience Store, that's circumstantial evidence.
3 The issue then becomes, according to all the parties, the
4 issue on the *Herring* case which, and let me say one thing
5 before I address *Herring* as Mr. Maldonado addressed both
6 *McLeod* which is 196 S.E.2d 645 and *In re Robert D.* which is
7 530 S.E.2d 137, the relationship in those cases is much more
8 tenuous than the relationships in the cases be -- in the case
9 before the Court today, the two cases before the Court today.
10 In *McLeod* the victim knew the defendant by being "Hattie's
11 boy" is the way she described him, that he would -- she would
12 see him I believe at the local neighborhood tackle shop and
13 that he knew the defendant's mother, that they went to the
14 same church, I think that's meaning that the defendant's
15 mother went to the same church, and that Hattie lived about
16 two and a half miles from the defendant's house.

17 In *Robert D.* what you have there is a victim who is a
18 mentally disabled girl victim who was assaulted allegedly the
19 defendant and obviously he was found guilty of that assault,
20 only knew her by her first name, by his first name, had been
21 in some classes with her, knew he was friends with two girls
22 in her special ed class and had watched a couple of movies in
23 class with him. It's interesting that the teacher in that
24 case corroborated the victim's testimony about seeing
25 Robert D. and the victim in a class where films were presented

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1 and of course you have the two witnesses in this case
2 corroborating that each sees the other observing Mr. Evans and
3 Mr. Capers so I think there is more than sufficient
4 relationship.

5 And when I look at *Herring*, if ya'll give me just a
6 minute, on that video, which is opinion No. 26750 cited
7 December 21st of 2009, lay opinion regarding videotape and of
8 course part of the motion that was handed up to me regarded
9 the opinion testimony by the lay witnesses. That case
10 factually you have three witnesses, two of which -- one of
11 which was at the scene, the other two were officers so I take
12 it that those officers were not at the scene at the time of
13 the homicide that was committed by Mr. Herring. On the video,
14 as I understand it, it depicts the outside of the club
15 Chastity between 12:05 and 12:06 a.m. on the night in question
16 which is the precise time when the victim John John was shot.
17 Two witness: Donald Hawkins, a bouncer and Officer Gwyn
18 testified they saw a flash of light coming from the vehicle.
19 The third witness Officer Linfert testified he saw a shot
20 fired from the vehicle later clarifying that obviously we saw
21 the video where the shot was fired from the inside of the
22 vehicle. Herring objected. The judge issued a curative
23 instruction to the effect that the witness could not give such
24 an opinion as to whether or not the flash was a gunshot and
25 that the jury should strike any such inference from its

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1 memory. The trial court instructed the jury that you are the
2 only ones who can draw from conclusions from what you saw on
3 the tape and his testimony in that regard. I think factually
4 it's very different interpreting a flash of light as a gunshot
5 by a lay witness and identification by a lay witness who is
6 the brother -- excuse me, who is the sister of one of the
7 defendants, the cousin of the other defendant and her fiancée.
8 I think *Herring* is factually distinguishable. Of course at
9 the time of the testimony I would advise the jury that, which
10 which I do in my closing charge, they can believe any, all, or
11 part but it's ultimately their decision as to the issue of the
12 identification of the parties and the interpretation.

13 I also looked at a number of cases that had to do with
14 lay opinion. Under Rule 701 a lay witness may give an opinion
15 when the opinion is based on the witness' personal observation
16 is helpful to the jury and it's not on a matter not requiring
17 specialized knowledge. I think in *Herring* perhaps you could
18 get a ballistics expert with specialized knowledge to say that
19 was a gunshot. I I don't know. I I don't know if an expert
20 would go that far or not. When these conditions are satisfied
21 however, the Court does not have to declare the witness to be
22 an expert to allow an opinion to come in. Whether a
23 particular lay opinion is admissible is generally a matter of
24 judicial discretion. Whether a lay witness gives an opinion
25 either party may question the witness about the basis of his

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1 opinion. Several areas have consistently been held to be
2 appropriate for lay opinion when based on the perception of
3 the witness and that's what we're referring to here. One of
4 those cases cites *Roche vs. Young Bros., Inc.*, 504 S.E.2d 311
5 (1998) the physical condition of a person based on ordinary
6 observations. That was a wife testifying to her husband's
7 physical condition although she had no medical knowledge.
8 *State vs. McClinton* 217 S.E.2d 584 (1985), a bite mark on a
9 person's hand that was inflicted by the victim in that case.
10 The officer also testified that being a bite mark. Obviously,
11 lay witnesses can testify to insanity as a defense,
12 competency, intoxication, all such as that. I don't see why
13 they could not be allowed to testify as to identification with
14 the relationship in this regard.

15 Mr. Maldonado's point's also well taken concerning
16 analogy to voice identification. There is a case of out of
17 Anderson which name escapes me now where there was voice
18 identification by a lay witness in a double homicide case.
19 Also, you'll see things on the news all the time where they
20 put videotapes on television and say, Call us and tell us who
21 this person is, and they're obviously not witnesses to the
22 crime. With that being said, I think it goes to the weight of
23 the testimony, not its not its admissibility so the testimony,
24 identification testimony of Mr. Rhaney and Ms. Evans is
25 admissible. That's my ruling in camera.

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1 All right. We're gonna take a break. We've we've had
2 our court reporter out here working since about quarter till
3 nine. When I get back from the break, I need to address the
4 issue of the juror that walked through the courtroom in the in
5 camera hearing and ya'lls position on that, but let's take
6 about a fifteen minute break. Sheriff, Mr. Capers is in
7 custody of the Lexington County Sheriff's Department.

8 POLICE OFFICER: Okay.

9 THE COURT: Thank you very much.

10 MR. UNDERWOOD: Thank you, Your Honor.

11 THE COURT: The Court will be in recess let's say ten
12 minutes since the jury's been waiting.

13 (Whereupon, a recess was taken.)

14 THE COURT: The juror that walked in the courtroom was
15 No. 101, Mr. Koontz. Do ya'll have any position in that
16 matter, Mr. Maldonado, Mr. Underwood?

17 MR. MALDONADO: I'm I'm not sure. I don't even know
18 what -- how long he was -- I didn't see him so I don't know
19 how much -- how long he was in here or not.

20 THE COURT: I didn't see him till he was passing behind
21 ya'lls table to go out. My law clerk indicated to me he was a
22 juror. I I didn't see him come in. I I think he just came in
23 the back door, this is what I think, walked up the center
24 aisle, turned left and went out that (indicating) door, you
25 know, and I stopped the testimony during part of his walk

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1 after he turned left to go out that door. I haven't
2 questioned him at all. He's been sequestered from the other
3 jurors out there with the the bailiff.

4 MR. MALDONADO: I I don't, I don't have any opinion. If,
5 you know, the defense, you know, objects to him on the jury,
6 I'm not gonna oppose that just to clarify the record so I'd
7 just kinda leave it to Your Honor's discretion.

8 THE COURT: All right. Ms. Ms. Hahn?

9 MS. HAHN: Your Honor, I -- I'd kinda like to know what
10 he heard. Without knowing ---

11 THE COURT: All right.

12 MS. HAHN: --- that I don't know really my position on
13 that.

14 THE COURT: No I don't mind during that at all. I, Like
15 I say I hadn't questioned him at all. I'll I'll be glad to
16 bring bring him out and see what, if anything, he heard. He
17 he may have notta heard anything. I I agree with ya.

18 MS. HAHN: I I would request that Your Honor do that.

19 THE COURT: All right. If you'd bring that juror in,
20 that's Mr. Koontz.

21 THE BAILIFF: Bring him in this way?

22 THE COURT: Yes. Bring him in and, madam clerk, will you
23 place him under oath for me when he comes in?

24 THE CLERK: Yes, sir.

25 THE COURT: Thank you.

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1 (The following takes place in the presence of Juror
2 No. 101.)

3 (Whereupon, the Juror No. 101 was sworn.)

4 THE COURT: Thank you. Mr. Koontz, you can have a seat
5 right here (indicating) for me just a moment, please. I just
6 wanna ask you a few questions and make sure we're on the same
7 wavelength. This is Edward S. Koontz?

8 JUROR NUMBER 101: Yes, sir.

9 THE COURT: Juror No. 101?

10 JUROR NUMBER 101: Yes, sir.

11 THE COURT: All right. And, Mr. Koontz, I want you to
12 understand you've done absolutely nothing wrong in this
13 regard. Normally we have a bailiff stationed at the back door
14 to to make sure when we have an in camera hearings or hearings
15 outside the presence of the jury the jurors aren't able to
16 access the courtroom. Because of staffing issues we didn't
17 have that this morning but be that as it may you came through
18 the courtroom this morning?

19 JUROR NUMBER 101: Yes, sir.

20 THE COURT: Can you tell us what, if anything, you heard
21 during that walk through the courtroom.

22 JUROR NUMBER 101: I didn't listen. I was panicked
23 trying to figure out where to go to the jury room.

24 THE COURT: All right. So you didn't, you you didn't
25 really hear anything, is that right?

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1 JUROR NUMBER 101: I didn't pay attention to anything.

2 THE COURT: All right. All right. Thank you. You you
3 don't know any reason you making that trip that would make you
4 not be a fair and impartial juror in the trial of this
5 case ---

6 JUROR NUMBER 101: Not at all.

7 THE COURT: --- for both the State and the defense?
8 Thank you very much. If you'd just step right outside the
9 door for me please with the bailiff.

10 (Whereupon, Juror No. 101 left the courtroom.)

11 THE COURT: Does that take care of it from your
12 respect -- perspective, Ms. Hahn?

13 MS. HAHN: Yes, Your Honor. I don't think I have any
14 objection to his continuing.

15 THE COURT: All right. Thank you. Mr. Miller?

16 MR. MILLER: No objection to him being on the jury.

17 THE COURT: Mr. Maldonado?

18 MR. MALDONADO: No.

19 THE COURT: All right. Thank you. If you would have our
20 juror Mr. Koontz join the jury panel -- well, I tell you what,
21 bring him back in just a moment for me ---

22 (The following takes place in the presence of Juror
23 No. 101.)

24 THE COURT: Mr. Koontz, thank you very much. I'm gonna
25 have you rejoin or join your jury panel this morning. We'll

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1 have you out here in just a moment all right?

2 JUROR NUMBER 101: Thank you, sir.

3 THE COURT: Thank you. Thank you very much. Appreciate
4 it. Hope there's been no inconvenience to you.

5 (Whereupon, Juror No. 101 exited the courtroom.)

6 THE COURT: As soon as they get -- he gets settled, bring
7 us our jury.

8 (Whereupon, a discussion was held off the record.)

9 THE COURT: May I, may I have the indictments also, madam
10 clerk?

11 THE CLERK: Yes, sir, Your Honor.

12 (Whereupon, a discussion was held off the record.)

13 THE COURT: Can you bring us our jury.

14 (The following takes place in the presence of the jury.)

15 THE COURT: All right. It appears our jury is present.
16 Madam clerk, if you'd swear our jury, please.

17 (Whereupon, the jury panel was sworn.)

18 THE COURT: Was there any member of the jury panel unable
19 to take the oath, if so please stand?

20 (No response.)

21 THE COURT: Thank you. Good morning, ladies and
22 gentlemen. I said 10:30, right?

23 (Laughter.)

24 THE COURT: I apologize. Best laid plans. I don't want
25 you to hold it against any of the attorneys or parties. They

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1 have been here, they worked yesterday afternoon, they've been
2 here working diligently since 8:30 this morning. Please do
3 not hold it against them as I'm sure you will not. Also, do
4 not hold it against one of your numbers Mr. Koontz. He was
5 here on time. He was present and available. I just had him
6 sequestered from ya'll for a brief period of time that has no
7 issue whatsoever to do with with the trial of this case.

8 The way we're going to proceed now is I'm going to give
9 you kind of a brief overview of how we will proceed in the
10 trial of this case. This is not a charge on the law. Before
11 we begin the trial I want to tell you that this trial will
12 probly be different than what you might expect. Many people
13 do not have a chance to attend actual court sessions as you
14 are now doing and may think from watching television or movies
15 or reading books that trials are always full of high drama,
16 intense action and riveting circumstances. While all of
17 the -- all of these things may be true at times, this trial is
18 not for entertainment. It is a fundamental part of our
19 democracy, a search for the truth in an effort to make sure
20 that justice is done between the parties before this court.
21 Searching for the truth and making sure that justice is done
22 is often slow, deliberate and repetitive the opposite of what
23 you may have seen on television or in movies or read in books.
24 This courtroom I consider to be a place of honor dedicated to
25 the protection and preservation of citizen's rights through

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1 what many have called, rightfully so, the greatest justice
2 system ever created by man. The attorneys appearing before
3 you are advocates for the parties they represent but first and
4 foremost they are officers of this court sworn to uphold the
5 integrity and farness of our judicial system and to help you
6 in the search for the truth. You should expect them to be
7 professional, competent and ethical in the representation of
8 their client's interest. Remember that you have taken an oath
9 to try this case and reach a fair and just verdict and you are
10 also expected to be professional, reasonable and ethical.
11 Thank you for accepting this important responsibility of jury
12 service and for your contribution to our criminal justice
13 system today.

14 Ladies and gentlemen of the jury, the cases we're about
15 to try are the cases of the State vs. Boyd Rashaeen Evans and
16 Lywone Capers. What I will now say is intended to serve as an
17 introduction to the trial of this case. These remarks are not
18 a charge on the law; I will instruct you on the law that
19 applies to the case at the end of the trial before you begin
20 your deliberations. This is merely an explanation of the
21 procedures that we will follow in the trial of this case so
22 you may better understand what may be happening. Each
23 defendant, Mr. Evans and Mr. Capers, are charged by
24 indictments filed with this court with the crimes of armed
25 robbery, two counts of kidnapping and possession of a firearm

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1 during the commission of a violent crime the elements of which
2 will be explained to you later. These indictments, ladies and
3 gentlemen, are simply the charges by which the cases are
4 brought into court and they are not in any sense evidence of
5 any of the allegations that are contained. The defendants
6 have pled not guilty to these indictments. The State
7 therefore, has the burden of proving each of the elements of
8 the indictment beyond a reasonable doubt and it will be your
9 duty, ladies and gentlemen, to decide whether the State has
10 met that burden. Each of the indictments should be considered
11 by you separately and distinctly from the other indictments.
12 Ea -- the testimony should be considered by you as to each
13 defendant, not as a group, not by association. The testimony
14 and the evidence as to Mr. Evans, if any, the testimony and
15 the evidence as to Mr. Capers, if any, should be considered by
16 you distinctly and independent of the testimony as against the
17 other defendant. Your purpose as jurors is to find and
18 determine the facts. You are the sole judge of the facts. If
19 at any time I make any comment regarding the facts, you must
20 disregard it. You are to determine the facts from the
21 testimony you hear and the other evidence introduced in the
22 court. It is up to you to determine the inferences which you
23 feel may properly be drawn from the evidence. It is
24 especially important you perform your duty of determining the
25 facts diligently and conscientiously because ordinarily there

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1 is no way to correct an erroneous determination of the facts
2 by a jury.

3 On the other hand, and with equal emphasis, the same law
4 that makes you the judges of the facts make me the judge of
5 the law. The law as given by the Court is the only law you
6 may consider. You must accept it and follow it even though
7 you may disagree with it. I cannot tell you what the facts
8 are, you cannot disagree with me about what the law is or
9 should be. Your job is to take the law as I give it to you
10 and apply it to the facts as you find them from the testimony
11 of the witnesses and any other evidence that is introduced.
12 After doing that you will render your verdict a true and just
13 verdict under the solemn oath which you have just taken.

14 Please recall until I advise you to begin your
15 deliberations you must not discuss this case with anyone
16 including your fellow jurors, friends, family members and
17 anyone involved in the trial. After the case is submitted to
18 you you must discuss it only in the jury room with your fellow
19 jurors. Again, the attorneys and parties have been advised
20 that they are not to talk to you at all so if you see anyone
21 involved in the trial and they do not even say hello, they're
22 not being unfriendly, they are merely following the Court's
23 instruction. During the trial do not read, listen to or watch
24 any news reports about the case this includes anything that
25 may be in the newspapers or on the internet, radio or

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1 television. You must not consider anything you may have read
2 or heard about the case outside the courtroom whether before
3 or during the trial. Please recall my instructions concerning
4 a computer or a cell phone or other electronic device with
5 communication capabilities. You may not use those while in
6 attendance at trial or during deliberations. On your lunch
7 breaks you will have of course your computer, cell phone or
8 other device with electronic communication capabilities;
9 however, you may not obtain or disclose information about any
10 party, witness, attorney or a court officer or look up any
11 news accounts about the case, if any, or any information
12 collected through juror research on any topic raised or
13 testimony offered by any witness or any information collected
14 through juror research on any other topic which you, the
15 juror, might think would be helpful in deciding the case. It
16 is important that you keep an open mind and not decide any
17 issue in the case until all of the evidence has been
18 presented, the parties have made their closing arguments and I
19 have instructed you on the law in this case. It is your sole
20 and solemn responsibility to determine the guilt or the
21 innocence of each defendant separately and distinctly from the
22 guilt or innocence of the other defendant and your verdicts
23 must be based solely on the evidence as it is presented to you
24 in this trial and on the law as I instruct you during and at
25 the close of the trial.

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1 In just a moment the attorney general will make what is
2 called an "opening statement" in which the Attorney General
3 will explain to you the issues in the case or at least what
4 the attorney general thinks the issues are in the case. The
5 attorneys for the defendant may also make an opening statement
6 although they are not required to do so. What the attorneys
7 tell you during their opening statements is not evidence in
8 the case, it is only their contention as to what the issues
9 are. The evidence will be presented to you by the testimony
10 of sworn witnesses from this (indicating) witness stand and/or
11 by any exhibits that may be introduced into evidence. From
12 time to time during the trial you may hear one of the
13 attorneys say something like, Your Honor, I believe we have a
14 question of law or a matter of law to discuss with you or,
15 Your Honor, may we approach the bench, or sometime I myself
16 might find it necessary to excuse you from the courtroom for a
17 short while so the attorneys and I may discuss a legal matter.
18 The reason for this is because you are the sole judges of the
19 facts and sometimes when I am determining or discussing
20 matters of law with the attorneys it may be necessary for me
21 to make some comment as to the facts in connection with ruling
22 whether or not a particular law applies. I am not supposed to
23 tell you what I think the facts are so I must excuse you from
24 the courtroom while these discussions take place so that you
25 in no way will be influenced by anything I might say or do in

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1 connection with the facts.

2 In determining what the true facts are and using your
3 good judgment and common sense, you must decide whether or not
4 the testimony of the witnesses is believable. It will be my
5 responsibility to rule as a matter of law as to whether or not
6 certain testimony is admissible but once the testimony is
7 admitted whether or not you believe it is solely for you, the
8 jury, to determine.

9 In deciding whether to believe a witness, again using
10 your good judgment and common sense, you have the right to
11 consider the interest of any witness, the bias of any witness,
12 the prejudice of any witness, the opportunity for the witness
13 to have seen the matters and things about which the witness
14 may testify and the way the witness acts on the witness stand.
15 You have the right to consider anything that is in the record
16 that will help you evaluate the testimony of the witnesses.
17 That means it will be your duty to pay close attention to
18 these witnesses, to observe 'em, to listen to 'em, to pay
19 close attention to the attorneys and to the Court. Don't let
20 your thoughts wander but give strict attention to the
21 testimony in this case so that at the end of the testimony
22 after the arguments of the attorneys and the charge on the law
23 by the Court you will then be in a position to determine what
24 the true facts are and to apply the law to those facts and
25 thus return and render a true and just verdict. It will be

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1 your added duty, madam forelady, to preside in the jury room
2 and to be the jurors -- the jury's spokesperson here in court.
3 Will dot -- it will also be your duty too write the verdict
4 but I will give you further instructions about that at the
5 conclusion of the trial.

6 Ladies and gentlemen, just a couple of housekeeping
7 matters. We have a speaker system in the courtroom; however,
8 many times when a witness is testifying they may not speak up
9 adequately for the jurors, particularly those further away
10 from the witness stand, to hear. Please, if you cannot hear a
11 witness or an attorney, I think you'll be able to hear me,
12 I've always -- well I don't wanna say I'm loud but I at least
13 when I was out there where these gentlemen and ladies were
14 I -- if I were gonna win or lose a case, I didn't want it to
15 be 'cause they couldn't hear me. Be that as it may if you
16 cannot hear a witness please raise your hand, get my
17 attention, the attention of one of our fine bailiffs and we'll
18 certainly have the witnesses speak up.

19 I don't know what the evidence may be that's presented.
20 Many times there could be photographs, diagrams such as
21 presented here in the courtroom offered into evidence,
22 accepted into evidence. Many times those photographs may be
23 handed to our forelady and then passed among the jury while
24 you're out here in the courtroom in your jury box. If an item
25 is introduced into evidence, it will be with the jury at the

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1 time of your deliberations in your jury room. Now, you may
2 look at it all you want while you're out here in the courtroom
3 in your jury box; I just remind you that is not the only time
4 or the last opportunity you would have to look at a photograph
5 or a diagram. If it's introduced into evidence, it'll be in
6 the jury room. Look at it all you want out here but just keep
7 that in mind.

8 Breaks. I tell jurors from week to week when I wanna
9 take a break, we take a break. It's it's kinda that simple.
10 Well this isn't some type of judicial marathon. Anybody needs
11 a break if you've been sittin' out here too long, you're
12 squirming in your seats, your your your thoughts start to
13 wander, please raise your hand, ya'll will take ya'lls break,
14 we will take our break. As I say it's not a judicial marathon
15 in any way. Any time you need to take a break, a refresher
16 break, any of you jurors please raise your hand and we will
17 certainly abide by your wishes.

18 Madam forelady, just let me know, you may wanna check
19 with the jury at your morning break and let me know if anyone
20 has any commitments or child care issues where they have to
21 pick up children by a particular time in the afternoon or if
22 they already have something scheduled for the evening just let
23 me know and I'll certainly try to accommodate that. If you
24 have any questions during the course of the trial, just please
25 write out a note, knock on the door, give it to your bailiff

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1 and they will get it to me. Again, do not discuss the case or
2 begin your deliberations until you're instructed by the Court
3 to do so.

4 In order to preserve everyone's rights, I'll give the
5 parties an opportunity to object to anything I've told the
6 jury. Any exception from the State, Mr. Maldonado?

7 MR. MALDONADO: No, Your Honor.

8 THE COURT: From the defendant Mr. Capers?

9 MS. HAHN: No, Your Honor.

10 THE COURT: From the defendant Mr. Evans?

11 MR. MILLER: None, Your Honor.

12 THE COURT: Thank you. Thank you very much. We'll now
13 begin the trial. Mr. Maldonado or Mr. Underwood you may
14 address the jury.

15 MR. UNDERWOOD: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 MR. UNDERWOOD: May it please the Court.

18 THE COURT: Yes, sir.

19 MR. UNDERWOOD: It's July 26th 2007 about half past
20 midnight. Sue Anne Irick and Ed Lasseter are working the late
21 night shift at the Pitt Stop Gas Station and Convenience Store
22 next to Maggie Mae's Restaurant just off of I-26. They wait
23 on the occasional customer, do their clerical duties, it's
24 their job. Then when there were no customers in the store and
25 they were otherwise all alone it happened. Without warning

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1 four men rushed into the Pitt Stop, held Sue Anne Irick at
2 gunpoint, forced her behind the counter. Ed Lasseter lies
3 down on the floor. They force Sue Anne to open the registers.
4 They tell her to open the safe which she can't open. They
5 take the money outta the registers then they flee the scene
6 but on their way out they make sure to take Ed Lasseter's cell
7 phone from his waistband as he's lying on the floor. Sue Anne
8 Irick she holds back her tears and repeatedly pounds on the
9 emergency panic button but at that point it's too late,
10 there's nothing the police can do to stop this from happening.
11 This invasion is the reason why we're all here today in this
12 trial. As the judge told you, Mr. Maldonado and I we're
13 prosecutors with the Attorney General's Office and we're here
14 to prove the State's case that Boyd Evans (indicating) and
15 Lywone Capers (indicating) are guilty of armed robbery,
16 possession of a firearm during the commission of a violent
17 crime and two counts of kidnapping: one against Ms. Sue Anne
18 Irick and one against Mr. Ed Lasseter.

19 Now it's very important that you understand we have a
20 burden to prove this case to you beyond a reasonable doubt,
21 that is our burden and we welcome that burden but let me tell
22 you a little bit about reasonable doubt. Reasonable doubt
23 does not mean all doubt. It has to be a reasonable doubt, not
24 all possible doubt. It's possible that space aliens came to
25 Lexington County and robbed that convenience store but that's

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1 probably not reasonable. It's our job to prove to you for you
2 to find reasonable doubt -- excuse me, guilt beyond a
3 reasonable doubt.

4 Now these crimes essentially speak for themselves. Armed
5 robbery. The judge will explain to you the the legal terms
6 that define armed robbery but for now as we go into the trial
7 most people generally know what armed robbery is: possession
8 of a firearm during a violent crime. Again, that's pretty
9 self-explanatory. Armed robbery is a violent crime,
10 kidnapping is also a violent crime.

11 Now kidnapping is a little bit different in this case
12 than what most people would generally think of. Most people
13 think of kidnapping as someone coming in, grabbing someone and
14 taking them away to some other place. Kidnapping also
15 includes confining someone to a place and forcing them to stay
16 in one place or move around a place against their will and
17 that's the kind of the kidnapping case that we have here in
18 this trial.

19 Now that you know what we have to prove let me give you
20 just a very brief preview, not to waste your time, but a brief
21 preview, to know what you can expect to see in this trial.

22 The two victims in this case, Ms. Sue Anne Irick and Mr. Ed
23 Lasseter, they will be here to testify. Sue Anne will be here
24 to talk about how she was surprised by men running into her
25 store pointing a gun at her, giving her orders. She'll be

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1 here to tell you what she experienced. Ed Lasseter will be
2 here to tell ya how he was also scared, how he had to lay on
3 the ground, how his phone was taken from him as he laid there
4 on ground. You'll hear from the deputies who responded to the
5 scene. You will also hear from several witnesses who can
6 place these two defendants: Boyd Evans (indicating) and
7 Lywone Capers (indicating) in the same type of vehicle that
8 was captured on the surveillance camera at the store around
9 the scene, around the time of the crime. You'll have
10 testimony from all of these people two of whom who are -- have
11 a a family relationship with Mr. Evans and Capers here to
12 testify how they led law enforcement to them after reviewing
13 pictures and video.

14 Now one thing you're not gonna see much of, and I know
15 it's great television, but we're not gonna have any CSI 3D
16 holographic models showing what happened in this case. We're
17 not gonna have any of that fancy stuff. It's great television
18 but that's really all that is, it's just television. This is
19 the real world in Lexington County not Hollywood. But one
20 thing that you will see is you will see this video that I
21 referenced before. You will see this robbery take place as
22 Boyd Evans and Lywone Capers came into the store and robbed
23 it. Now let me tell you this video isn't just a camera, an
24 old VHS camera that somebody stuck on the shelf, it doesn't
25 have a video cassette. This is a digital system with multiple

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1 camera angles. Now as we watch it you'll see that sometimes
2 cameras are on and sometimes they're not, that's because it's
3 a system that involves motion sensors and it's a digital
4 system so it saves short images. So it will be slightly
5 choppy as you watch it, it's not just somebody's video
6 cassette. I want you to know that so as you see it you know
7 what to expect but you will get to see that video of the crime
8 as it took place.

9 Now again, we are here for these (indicating) two
10 defendants who each have four charges. They're each charged
11 with armed robbery, both with possession of a firearm and with
12 two counts of kidnapping each. At the end of this trial,
13 after you've heard all the evidence, either myself or
14 Mr. Maldonado will have another chance to speak to you and at
15 that point we will ask you to deliberate, review the evidence
16 and find Boyd Evans (indicating) guilty and Lywone Capers
17 (indicating) guilty of all the crimes they've been charged
18 with.

19 THE COURT: Thank you. Thank you very much,
20 Mr. Underwood. Ms. Hahn?

21 MR. MILLER: I'm actually gonna proceed.

22 THE COURT: All right. Are you both of you gonna do
23 opening?

24 MR. MILLER: Yes, I believe so ---

25 THE COURT: Oh, ---

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1 MR. MILLER: --- Your Honor.

2 THE COURT: --- all right, Mr. Miller. That's fine.

3 Thank you.

4 MR. MILLER: May it please the Court.

5 THE COURT: I didn't catch your hand signals there,

6 um, ---

7 (Laughter.)

8 MS. HAHN: Sorry.

9 THE COURT: I apologize. All right. Mr. Miller.

10 MR. MILLER: Thank you. May it please the Court. Good
11 morning, ladies and gentlemen. My name's David Miller. I
12 represent Mr. Boyd Evans. I'll try to keep this as short as
13 possible because after me you're gonna hear from Mr. Cornwell
14 or Ms. Hahn who represent Mr. Capers. I'll first thank you
15 for being here and for your service. I know that probably
16 this is not the thing you had planned to do with your week but
17 the the neat thing about being on a jury is that you're
18 helping actually uphold the very right that each one of you
19 would expect if you were charged with a crime, okay, so try to
20 remember that going in.

21 The attorney general talked to you a little bit about
22 what they think they're going to present during this trial and
23 what the charges are and you already know what the charges are
24 but I wanna remind you that the State in this case, being the
25 Attorney General's Office, has the entire burden, okay. We

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1 have none. People sometimes ask me about being a defense
2 lawyer and they say, you know, you've probably heard it
3 before, How can you sleep at night? Well, I'm very privileged
4 to do what I do because whether a person's innocent or guilty,
5 okay, we uphold a constitution and a set of rights just like
6 any one of you would expect an attorney to represent you if
7 you were charged with a crime. We balance, you heard of the
8 scales of justice, we balance those scales because if we just
9 let the State come in and say whatever they wanted and toss
10 anything around to you, well you'd probably believe a lot but
11 the reality is proving something beyond a reasonable doubt is
12 difficult. It may not always be fair but it is our system of
13 justice whether we like it or not.

14 Now they talked to you a little bit about reasonable
15 doubt. I always look at it kinda like like building a house
16 with bricks, okay. You wanna build one up completely but ya
17 can't leave the roof off you get wet. Ya can't leave a
18 foundation out or it falls down. They have to establish
19 foundation to introduce evidence and they have to build their
20 case until their house is complete and that is reasonable
21 doubt. Now that's just one analogy to it but I think that
22 like the attorney general mentioned it doesn't have to be
23 beyond all doubt but it does have to be beyond any reasonable
24 doubt, okay, and any reasonable doubt is sufficient. Now you
25 may find yourself at some point in this case listening to

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1 evidence and saying, Hmm, maybe, I'm not sure. That's doubt.
2 That's a reasonable doubt. That hesitation is a reasonable
3 doubt. I think you need to remember looking at both
4 Mr. Capers and my client Mr. Evans that as you sit here right
5 now today you may have your own personal feelings about these
6 people already. That's okay but you have an oath to be fair
7 and impartial and I would ask you when you follow that to put
8 away your personal feelings about that and if you have
9 personal feelings about me I -- you know, put put those away
10 too. If if sometime I do something that that you don't like
11 or is somehow unkind or or seems crass in any way, shape or
12 form, don't hold that against my client because I'm just here
13 to do a job for ya but these clients both are innocent as they
14 sit here right now and they cannot be found guilty until the
15 State proves every element of an offense beyond a reasonable
16 doubt so remember that. Now I think that if the State doesn't
17 build their house, they don't prove all of the elements then
18 at the end of the trial we're gonna ask you to come back and
19 find these clients not guilty.

20 I'm gonna tell ya a little bit about what their -- the
21 State is not gonna be able to show you during the course of
22 this trial: number one, there were, as you're gonna see in the
23 video, at least two guns that were used in this trial none of
24 which were recovered. They don't have those for you. They
25 really fail to have any direct evidence whatsoever because as

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1 you'll also see in the video this is a video of four people
2 over fifty-seven quick seconds with masks, rags over their
3 head, unidentifiable. Unidentifiable. They have an arrest
4 some some great time after the actual event occurred. There
5 is no witness that is gonna be presented by the State to tell
6 you that either of these two people were even in the state at
7 the time because they're from Charlotte. Interestingly enough
8 they're going to present a detective who investigated this
9 case and made a determination, as you'll see in the video, not
10 only were there two people involved, there were four. Where
11 are the other two? Now the detective knew where they were at.
12 The detectives interviewed them. They're not here today and
13 you're gonna have to ask yourself why because if we're so
14 confident that these four people were involved why are two not
15 under arrest and why are they still out in society right now
16 whether it be in North Carolina or South Carolina?

17 MR. MALDONADO: Your Honor, we're gonna object to this
18 case. The the investigation regarding the other two being
19 ongoing is irrelevant to the, to the individuals in this case.

20 THE COURT: All right. Again, ladies and gentlemen, the
21 determination of the facts will be by you the jury. As I told
22 you in the beginning, what the attorneys tell you is not
23 evidence. The evidence comes from the witnesses testifying
24 under oath from this (indicating) witness stand and I will
25 make a determination at the appropriate time whether or not

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1 the evidence as is offered is admissible or not. Again,
2 that's gonna be your decision as far as the facts, what the
3 facts are based on the evidence that I'll allow into the
4 record. What the attorneys tell you is not evidence. Thank
5 you, Mr. Maldonado. You may proceed, Mr. Miller.

6 MR. MILLER: Thank you. And, ladies and gentlemen, at
7 all times when it regards the law you always listen to him if
8 if myself or the other attorneys at all make a comment on the
9 law that we we are not the the master of the law, the judge
10 is, I'll say that now, but just basically when you listen to
11 this case I think the important thing to remember is there are
12 a lot of unanswered questions, okay. There are a whole lot of
13 unanswered questions and ya have to ask yourself why. Again,
14 it's not enough that you have a personal feeling. You know,
15 you can say maybe you have to ask yourself if the State has
16 proven beyond a reasonable doubt. You have to ask yourself
17 about the credibility of the witnesses: Who do you believe?
18 Who do you believe and are they credible? Is the
19 identification a good one? Is the evidence circumstantial or
20 is it direct evidence, okay. The attorney general made the
21 nice comment about, you know, aliens coming to Lexington to
22 rob the convenience store but at the same time the aliens
23 didn't come here, any four people, any four people because we
24 don't know who they were, could have robbed the store and
25 that's just a fact. There is no visible face. There is no

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1 identification that they're going to be able to make to show
2 you that these two or any two others were involved in this
3 case. It's it's kinda like I guess "My Cousin Vinnie" if
4 ya'll have seen that, that's probly the movie they tell you to
5 watch before you go to law school but and it's funny and it's
6 not, you know, real but there was an interesting part at the
7 end where, you know, the two people, two kids were on trial
8 for a murder and they had to prove, Marisa Tomei helped them
9 do that with her knowledge of cars, that there was another,
10 you know, identical metallic green car that had driven off
11 with a guy with a gun that they actually were able to recover,
12 unlike this case, and they were able to show that somebody
13 else actually committed the crime and that's very possible. I
14 think when you watch the video and when you hear the evidence
15 you're gonna understand that it's very possible somebody else
16 committed the crime and if it's that possible, if we don't
17 know enough to say beyond a reasonable doubt that these two
18 men were involved, please don't send them away for years of
19 their life for something that you only think, Hmm, it could
20 have been. Remember to to remember that they're innocent, put
21 aside your personal feelings, be fair and impartial that's all
22 I can ask and I thank you again for your service and we'll
23 talk again at the end of the case.

24 THE COURT: Thank you. Thank you very much, Mr. Miller.
25 Mr. Cornwell. This is on behalf of Mr. Capers.

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1 MR. CORNWELL: How are you guys doing this mornin'? I
2 know you guys heard the judge talk about if ya can't hear
3 somebody, you know, let him know they need to speak up. He's
4 probly talkin' about me. He always gets on me because I talk
5 kinda soft, I'm kinda soft-spoken. I'm speaking loudly now
6 because I know I have to and in my head it sounds very loud
7 but I know to you guys it might not be as loud. But anyway
8 what I wanna talk to you about today is Mr. Lywone Capers
9 because today we have two defendants and both of them deserve
10 your attention. They're on trial together but they're
11 separate people, all right. Temptation will come to you to
12 lump them together but they are not together. The facts as
13 they pertain to both defendants are different. The amount of
14 evidence that the State will present as pertaining to both
15 defendants is different. We will distinguish our client from
16 Mr. Evans in that manner. A lot of things that I would
17 normally talk to you about or I would normally think would
18 need to be addressed in front of a jury have already been
19 addressed by Mr. Miller and the State. One thing I would like
20 to talk about again because it is so important that you guys
21 understand this is reasonable doubt. You heard this, it will
22 be brought up again at the end of the trial but it's important
23 that you guys understand that that is one of the most
24 important hurdles in proving someone is guilty of a crime,
25 hear the State say that it is your duty to find guilt beyond a

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1 reasonable doubt. I disagree. I disagree entirely. It is
2 not your duty to find guilt beyond a reasonable doubt, it is
3 your duty to determine if the State has proven their case
4 beyond a reasonable doubt because you're not back there trying
5 to find our clients guilty, you're back there trying to see if
6 they've proven them guilty because the fact of the matter is
7 both of them are innocent. As they sit before you right now,
8 nothing has been established, nothing has been proven against
9 them as of yet beyond a reasonable doubt. You've gonna hear
10 many analogies about reasonable doubt. One of my favorites is
11 that it's any doubt that gives you pause before you make that
12 final decision and I think we've all experienced that a lotta
13 times at the grocery store or your kids begging you for some
14 sugary cereal and right before you reach out to grab it you
15 pause because you know that's gonna bite you in the butt when
16 he eats that cereal on Saturday morning, is bouncing off the
17 walls and you gotta tell him to calm down, you're gonna
18 remember that you had that pause before you bought that
19 cereal, before you bought that candy, before you bought the
20 big screen TV, that's reasonable doubt. I would submit to you
21 that the State will not beyond -- be able to prove their case
22 beyond a reasonable doubt. You will hear testimony, you'll
23 hear testimony from the State from their witnesses who say
24 they saw our clients in South Carolina. You may hear that.
25 You'll also hear testimony from us, from our side, from our

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1 perspective that will place our client in an entirely
2 different state at a time where there was no way he could have
3 committed a armed robbery and driven back to where he was that
4 the time frame would be impossible to satisfy, okay. You will
5 hear that. For everything they present, you will hear a
6 counter argument. The fact of the matter is they will not be
7 able to establish what they've promised you they're going to
8 establish. They will not be able to come -- overcome
9 reasonable doubt which is very key here. I think one thing
10 that we forget and one thing that's lost on people in general
11 especially in the times we live in with the threat of
12 terrorism and everybody believin' that there's danger around
13 every corner the thing that's lost on us is that it should not
14 be easy to put people in jail. It shouldn't be. It's not
15 easy. That's the whole purpose of our Constitution. That's
16 one the founding principles of this nation. That's one of the
17 things our founders believed in when they came over from
18 England to a escape the tyranny of the English government.
19 That was one of the main driving principles be -- behind them
20 in crafting the Bill of Rights. They don't wanna make it easy
21 to put people in jail. It's supposed to be hard. You're
22 supposed to go back there and have a healthy debate about what
23 you heard in the trial. You're supposed to go back there and
24 deliberate. You're supposed to even maybe disagree to the
25 point of argument. That's healthy. That's what's supposed to

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1 happen. I'll be if -- disappointed if everybody just walked
2 in the jury room, reached a consesive -- consensus in five
3 minutes and came out with a verdict even if it was not guilty
4 because that's not the purpose. That's not the purpose of our
5 founders writing the Bill of Rights. That's not the purpose
6 of the jury system. You guys are supposed to listen to the
7 facts as they're given, listen to the positions, listen to the
8 arguments and make your own determination. Do not let anyone
9 in this courtroom decide for you what is true and what is not
10 because that is your job. That is your job. I don't care
11 what they say about any piece of evidence it is your job to
12 determine whether that evidence, whether that testimony is in
13 fact the truth. You are the finders of fact. You are the
14 truth seekers. That is your duty. Don't let anybody assert
15 your authority. That is your job. That's why you're here,
16 okay?

17 I mentioned earlier that there's gonna be some
18 conflicting testimony. The number one question on everybody's
19 mind is gonna be: Well why would these people say one thing
20 and these set of people say another? What's gonna come out in
21 this trial and what we're gonna show is that there is in fact
22 a bias here, okay. There's a reason why one side would make
23 something up about the other side. There is a reason why they
24 may feel some way about the other side and there is a reason
25 why there hurt feelings. You're gonna -- it's gonna come out

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1 that this family is fractured, okay, that they don't always
2 get along, that they're not a close family, that the time and
3 distance and the amount of contact between them is in fact
4 tenuous from our position enough to sway their opinion about
5 each other. That's all gonna come out. But in the end it's
6 gonna be up to you guys to determine what is true and what is
7 not. Who do you believe more? Who do you feel is telling the
8 truth based on your objective observations, your objection --
9 objective decisions about the facts presented. Thank you.

10 THE COURT: Thank you very much, Mr. Cornwell. Give me,
11 give me just a minute, Mr. Underwood.

12 (Pause.)

13 THE COURT: Ladies and gentlemen, I do wanna define I
14 think a couple a terms because all the attorneys brought it up
15 in their openings and you will -- you'll hear the definition
16 of these terms later on at the close of all the evidence in
17 the case. Reasonable doubt. What is a reasonable doubt in
18 the law? A reasonable doubt is the kind of doubt that would
19 cause a reasonable person to hesitate to act. The State has
20 the burden of proving the defendant guilty beyond a reasonable
21 doubt. Some of you may have served in the past as jurors in
22 civil cases where you were told that it is only necessary to
23 prove that a fact is more likely true than not true such as by
24 the greater weight of the preponderance of the evidence. In
25 criminal cases the State's proof must be more powerful than

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1 that, it must be beyond a reasonable doubt. Proof beyond a
2 reasonable doubt is proof that leaves you firmly convinced of
3 the defendant's guilt. There are very few things in this
4 world that we know with absolute certainty and in criminal
5 cases the law does not require proof that overcomes every
6 possible doubt. If based on your consideration of the
7 evidence you are firmly convinced that the defendant is guilty
8 of the crimes charged, you must find the defendant guilty.
9 If, on the other hand, you think there is a real possibility
10 that the defendant is not guilty, you must give the defendant
11 the benefit of the doubt and find him not guilty. I use those
12 terms of course singularly, defendant, but it's plural
13 defendants.

14 Also, you heard the terms "direct" and "circumstantial
15 evidence" and we hear that in every day life many times in
16 various circumstances. There are two types of evidence which
17 are generally presented in a trial: direct evidence,
18 circumstantial evidence. Direct evidence is the testimony of
19 a person who claims to have actual knowledge of a fact such as
20 an eyewitness or a earwitness. It is evidence which
21 immediately establishes the main fact to be proved.
22 Circumstantial evidence is proof of a chain of facts and
23 circumstances indicating the existence of a fact. It is
24 evidence which immediately establishes collateral facts from
25 which the main fact may be inferred. Circumstantial evidence

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1 is based on inference and not on personal knowledge or
2 observation. Our law, the law makes absolutely no distinction
3 between the weight or the value to be given to either direct
4 or circumstantial evidence nor is there a greater degree of
5 certainty required of circumstantial evidence than of direct
6 evidence. You should weigh all the evidence in the case and
7 after weighing all of the evidence if you're not convinced of
8 the guilt of the defendant beyond a reasonable doubt you must
9 find the defendant not guilty. If, on the other hand, after
10 weighing all of the evidence you are convinced of the guilt of
11 the defendant beyond a reasonable doubt, you must find the
12 defendant guilty. Again, I use the term "defendant"
13 singularly, it's also plural.

14 And one final administrative matter, I only bring this up
15 because a juror one time brought it up to me, from time to
16 time you will see me on my computer. I assure you I'm not
17 playing any games, I can't win 'em anyway, I can't, I can't
18 figure out, block out, sometimes somethin' will pop into my
19 mind about where the testimony may be going or legal issues
20 and I I will do that if it's I think I distract -- distracted
21 that particular juror but it's all case-related entirely I
22 assure you. With that being said, Mr. Maldonado,
23 Mr. Underwood, you may call your first witness.

24 MR. MALDONADO: Thank you, Your Honor. May it please the
25 Court.

SUE ANNE IRICK - DIRECT EXAMINATION BY MR. MALDONADO

1 THE COURT: Yes, sir.

2 MR. MALDONADO: The State calls Sue Anne Irick, please.

3 THE COURT: All right. Ms. Irick, if you would come
4 around and be sworn for us, please.

5 SUE ANNE IRICK, having been first
6 duly sworn, testified as follows:

7 THE CLERK: Have a seat up there please, ma'am. Once
8 you're seated speak up loud and clear, state your full name on
9 the record spelling your last, please.

10 MS. IRICK: Sue Anne Irick, I-R-I-C-K.

11 MR. MALDONADO: May it please the Court, Your Honor.

12 THE COURT: Yes, sir.

13 DIRECT EXAMINATION BY MR. MALDONADO:

14 Q. Good morning, Ms. Irick. How are you?

15 A. All right.

16 Q. Can you introduce yourself to the jury. Where is it that
17 you live right now?

18 A. Saint Mathews.

19 A. Okay.

20 Q. Are you working?

21 A. Sir?

22 Q. Are you working right now?

23 A. No, sir.

24 Q. Okay. Did you work anywhere in 2007?

25 A. Yes.

SUE ANNE IRICK - DIRECT EXAMINATION BY MR. MALDONADO

1 Q. Where did you work?

2 A. I worked at Wilco.

3 Q. Wilco?

4 A. Oh 2007.

5 Q. July two thou -- July 26th 2007 did you work anywhere?

6 A. No.

7 Q. You didn't work at a convenience store?

8 A. Oh, yeah, Pitt Stop.

9 Q. I'm sorry. It -- I know the dates might confusing since
10 it was, it was two years ago. Anything -- how long had you
11 worked there, um, ---

12 A. I was there for three years.

13 Q. Three years. What did you do there?

14 A. I ran the cash register and I was trainin' for assistant
15 manager.

16 Q. Okay. Where where exactly is that the Pitt Stop?

17 A. It's 119 exit offa I-26.

18 Q. So it's south of Columbia goin' down towards the highway
19 towards Charleston, correct?

20 A. Yes.

21 Q. And it's off the the Charleston highway exit?

22 A. Yes.

23 Q. Okay. Would you recognize if you saw kind of an overhead
24 map on it?

25 A. Yes.

SUE ANNE IRICK - DIRECT EXAMINATION BY MR. MALDONADO

1 MR. MALDONADO: Your Honor, can -- I I forgot to premark
2 this. Can I get the clerk to -- I mean, the court ---

3 THE COURT: Certainly.

4 MR. MALDONADO: -- reporter to mark it?

5 (Overhead photograph marked State's Exhibit No. 51 for
6 identification.)

7 (Whereupon, defense counsel examines the exhibit.)

8 THE COURT: All right. This is State's 1?

9 MR. MALDONADO: This is State's actually 51. I premarked
10 some other evidence ---

11 THE COURT: State's 51?

12 MR. MALDONADO: Yes, Your Honor.

13 THE COURT: All right. Thank you very much. Any
14 objections, Ms. Hahn?

15 MS. HAHN: No, Your Honor.

16 THE COURT: Mr. Miller?

17 MR. MILLER: No.

18 THE COURT: State's 51 is in evidence without objection
19 provided the proper foundation's laid.

20 (State's Exhibit No. 51, overhead photograph, admitted
21 into evidence.)

22 MR. MALDONADO: Thank you, Your Honor, yes.

23 BY MR. MALDONADO:

24 Q. Do you recognize this this (indicating) overhead
25 photograph? I'm sorry. I wanna -- do you recognize this

SUE ANNE IRICK - DIRECT EXAMINATION BY MR. MALDONADO

1 (indicating) area?

2 A. Yes.

3 Q. What is that?

4 A. Um, ---

5 Q. Yeah, I mean, let me put it on this side so the jurors
6 can see kinda what picture you're talking about. Do you
7 recognize -- what is that road right there (indicating)?

8 A. That is 176.

9 THE COURT: 176? Is that -- you're away from the
10 microphone. It's kinda hard to hear you, Ms. Irick.

11 MR. MALDONADO: Yeah, it's it's ---

12 THE COURT: I apologize.

13 MR. MALDONADO: I'm sorry.

14 THE COURT: Thank you, Mr. Maldonado.

15 BY MR. MALDONADO:

16 Q. Okay. This is the highway right here (indicating)?

17 You -- I mean, is that --

18 A. That Rolling Meadows?

19 Q. Okay. Where is Rolling Meadows?

20 (Pause.)

21 A. Can't tell.

22 Q. Can't tell. That's fine. But, um, we'll go into it a
23 little bit on this. The, um, this this happened right off the
24 highway.

25 A. Um-hum.

SUE ANNE IRICK - DIRECT EXAMINATION BY MR. MALDONADO

1 MR. MALDONADO: We'll we'll lay the foundation with the
2 other ones, Your Honor, ---

3 THE COURT: All right. It's ID only at this time.

4 MR. MALDONADO: Yes, Your Honor.

5 BY MR. MALDONADO:

6 Q. Okay. So you're you're at the the gas station right off
7 I-26 ---

8 A. / Yes.

9 Q. --- south of Columbia. The -- was anyone working with
10 you on on July 26th 2007?

11 A. Eddie.

12 Q. Ed and that's who? What's his full name?

13 A. Eddie Lasseter.

14 Q. Okay. The -- did anything happen on on that day that
15 that you remember?

16 A. Yes, um, ---

17 Q. If you need a moment, we can take it, you know, if you
18 wanna wanna. Can can -- you need some water or ---

19 A. I was workin'. I came in at eleven o'clock and then
20 around twelve I went to go around the counter (crying) and
21 four guys came in from the back door. One pointed a gun in my
22 stomach and told me to go around the counter and told me to
23 give him that for me to open the registers for them to get all
24 the money out. And one of 'em had a gun pointed in Eddie's
25 back and he was on the floor and they took his cell phone and

SUE ANNE IRICK - DIRECT EXAMINATION BY MR. MALDONADO

1 the other one had a gun pointed in my back telling me to get
2 the drawers open.

3 Q. When they, when they came in, was there -- what did you
4 see about them? How di -- can you describe them for the
5 jury?

6 A. I know one of 'em had orange or red shorts on and all of
7 'em had towels over their heads coverin' their chin and their
8 foreheads.

9 Q. Okay. Did you know any of these individuals?

10 A. No.

11 Q. Okay. Were they, were they holding anything?

12 A. Two of 'em had guns.

13 Q. Okay. Did you feel threatened at that time?

14 A. Yes.

15 Q. Okay. Did you give them anything?

16 A. No, I didn't give them anything. I hit "no sale" on the
17 drawers and opened the drawers and they took the money out
18 theirselves.

19 Q. Okay. Do you know how much money that was taken?

20 A. It was about two hundred dollars (\$200).

21 Q. Okay. Did they touch you or do anything to you when they
22 came in?

23 A. No, they didn't touch me. The gun touched me but they
24 didn't touch me.

25 Q. Okay. You were originally -- where were you originally

SUE ANNE IRICK - DIRECT EXAMINATION BY MR. MALDONADO

1 when they first came in standing in the, in the door.

2 A. When they came in, I was walkin' around the counter
3 around the aisle going to the coffee machine cleaning, under
4 the cabinets.

5 Q. Okay. And then once they came in what did they do?

6 A. I was walkin' this way (indicating) and they were comin'
7 from this way (indicating) ---

8 Q. Um-hum.

9 A. --- and he met me right there at the door right there in
10 the hallway, ---

11 Q. Um-hum.

12 A. --- the aisle and he pointed a gun in my stomach and told
13 me to go around the counter.

14 Q. Okay. So they actually wanted you to go around ---

15 A. Yes.

16 Q. --- the counter and that's behind the counter to the
17 registers.

18 A. Yes.

19 Q. Okay. Now you you you mentioned that this was the back
20 door, they came in through the back door. Can you describe
21 the the gas station to the, to the jury. How -- is is that
22 like a a hidden back door or is that a public back ---

23 A. No, the back door is for truck drivers.

24 Q. Okay. So one side is for cars and you consider that the
25 front door?

SUE ANNE IRICK - DIRECT EXAMINATION BY MR. MALDONADO

1 A. Yes.

2 Q. Okay. And that's over the side by the highway?

3 A. Yes.

4 Q. So and then, and then the the diesel and the trucks go
5 into the back of the the store.

6 A. Yes.

7 Q. And there's a public entrance that they can come in that
8 way?

9 A. (The witness nodded in the affirmative.)

10 Q. Okay. You, um, so they they moved you around to the to
11 behind the counter and and took the money.

12 A. (The witness nodded in the affirmative.)

13 Q. And you said, remind me again what what happened to
14 Mr. Lasseter?

15 A. As soon as they came in, he hit the floor and they had a
16 gun pointed in his back.

17 Q. Okay. And so he, so he was laying on the floor through
18 this whole incident?

19 A. Yes.

20 Q. Just to clarify, this money in the register whose -- who
21 basically owned the money for for this? Is that the store's
22 money?

23 A. Yes.

24 Q. Okay. It wasn't your personal money. Okay. Did they
25 have permission to take that that money from you or anyone ---

SUE ANNE IRICK - DIRECT EXAMINATION BY MR. MALDONADO

1 A. No.

2 Q. --- as far as you know? Sorry it's just legal kind of
3 questions that that that seems kinda silly. And you said that
4 they took Mr. Lasseter's cell phone?

5 A. Yes.

6 Q. Okay. What happened then? Did you, did you try to call
7 anybody or ---

8 A. Yeah, after it happened I tried to pick up the store
9 phone to call and it was dead ---

10 Q. Okay.

11 A. --- so they musta cut the lines or somethin', I don't
12 know, but I hit the panic button repeatedly and then I called
13 my manager on my cell phone.

14 Q. Okay. The the panic button is tha -- that's to call the
15 police ---

16 A. Yes.

17 Q. Okay. How long before they got there?

18 A. Um, I'm not sure probly about fifteen minutes I guess.

19 Q. Okay. Now can you describe the store. Is -- are there
20 cameras in the store?

21 A. Yes.

22 Q. Do you know about how many of 'em?

23 A. I think there eighteen. I'm not sure.

24 Q. Okay. But there's se ---

25 THE COURT: How many is that, Ms. Irick?

SUE ANNE IRICK - DIRECT EXAMINATION BY MR. MALDONADO

1 MS. IRICK: I think it's eighteen.

2 THE COURT: Eighteen. Thank you. I just didn't
3 understand. Thank you, Mr. Maldonado.

4 MR. MALDONADO: That's fine.

5 BY MR. MALDONADO:

6 Q. Did you ever -- well, as far as you know was this
7 incident on tape?

8 A. Sir?

9 Q. Was this incident taped on those cameras?

10 A. Yes.

11 Q. Did you get a chance to see that video?

12 A. Yes.

13 Q. Did -- does it accurately represent what what happened
14 that day?

15 A. Yes.

16 Q. Is there any alterations or or changes that that were
17 made on this video?

18 A. No, sir.

19 Q. Okay. And it it shows you in this video?

20 A. Yes.

21 Q. Okay.

22 MR. MALDONADO: Your Honor, the, um, I guess we we need
23 if we could mark that as ---

24 THE COURT: I can't can't quite hear you when you're
25 turned away from me. I apologize.

SUE ANNE IRICK - DIRECT EXAMINATION BY MR. MALDONADO

1 MR. MALDONADO: I apologize, Your Honor. I'm I'm a
2 little bit kind of at a loss. We do have the video. We'd ask
3 to admit it. I don't know if you can mark it with a sticker
4 because I'm afraid it might not play so I guess if we can ---

5 THE COURT: You ---

6 MR. MALDONADO: --- mark that.

7 THE COURT: --- you have a a cover for it?

8 MR. MALDONADO: No, I don't.

9 THE COURT: All right.

10 MR. MALDONADO: The -- if she can, she can probly write
11 on it. I have a a marker.

12 MR. MILLER: Your Honor, we've got a cover. They can
13 just have mine. I've got another one.

14 THE COURT: All right.

15 MR. MALDONADO: Okay. That's fine.

16 THE COURT: Thank you, Mr. Miller.

17 MR. MALDONADO: And mark that I guess State's State's 52?
18 (Video marked State's Exhibit No. 52 for identification.)

19 MR. MALDONADO: It -- Your Honor, we'd ask to be able to
20 play that video for for the jury.

21 THE COURT: Any objection to State 52, Ms. Hahn?

22 MS. HAHN: None, Your Honor.

23 THE COURT: Mr. Miller?

24 MR. MILLER: None, Your Honor.

25 THE COURT: All right. State 52 is in evidence without

SUE ANNE IRICK - DIRECT EXAMINATION BY MR. MALDONADO

1 objections.

2 (State's Exhibit No. 52, video, admitted into evidence.)

3 MR. MALDONADO: Thank you, Your Honor. Now -- I I
4 apologize, Your Honor. This is a new system for me. Slow.

5 THE COURT: Hope, you know how to do that?

6 THE CLERK: No, sir. I can ---

7 THE COURT: Can you go see if David ---

8 THE CLERK: Yes, sir, I'll go get David.

9 (Whereupon, a discussion was held off the record.)

10 MR. MALDONADO: While we're waiting, Your Honor, I guess
11 we -- if we can go into the pictures.

12 THE COURT: All right and we'll see if we can get
13 Mr. Reynolds or one of the young ladies to come out.

14 MR. MALDONADO: Yes, Your Honor, we'll get it back up.

15 THE COURT: Yes, sir, you may continue.

16 (Whereupon, a discussion was held off the record.)

17 (Whereupon, defense counsel examines the photographs.)

18 MR. MALDONADO: May it please the Court, Your Honor.

19 THE COURT: Yes, sir. You may continue.

20 BY MR. MALDONADO:

21 Q. Did you see any pi -- still pictures from the, from the
22 video after this incident?

23 A. Yes.

24 Q. Okay. And do they fairly and accurately represent what
25 happened that day?

SUE ANNE IRICK - DIRECT EXAMINATION BY MR. MALDONADO

1 A. Yes.

2 Q. Any changes or alterations in that?

3 A. No, sir.

4 MR. MALDONADO: Your Honor, can I show the the witness
5 the pictures?

6 BY MR. MALDONADO:

7 Q. These have been marked State's 1 through 33. Can you
8 take a look at those and make sure those are the same as you
9 described.

10 (Whereupon, the witness examines the photographs.)

11 Do you recognize those photos?

12 A. Yes.

13 Q. Okay. And they fairly and accurately represent what
14 happened that day?

15 A. Yes.

16 Q. So and they're from where? What what do they -- can you
17 describe just for the record what what they're des -- what
18 they're showing ---

19 A. Okay.

20 Q. --- just in general.

21 A. They're showing the vehicle.

22 Q. So there's some pictures from the outside?

23 A. Yes.

24 Q. Okay. And then there's some from the inside?

25 A. Yes. This (indicating) one is when they first come in

SUE ANNE IRICK - DIRECT EXAMINATION BY MR. MALDONADO

1 the door.

2 Q. And what number, I'm sorry, what number is that on the
3 back, on the back of it?

4 A. Nine.

5 Q. State's Exhibit 9 okay.

6 A. And then this (indicating) is when he had me behind the
7 counter gettin' me to open the drawer.

8 Q. Okay. What number is that, please.

9 A. Eleven.

10 Q. And those you you looked through them all. They're
11 they're all what happened that day?

12 A. Yes.

13 MR. MALDONADO: Your Honor, we'd ask to admit State's 1
14 through 33 into evidence.

15 THE COURT: Ms. Hahn?

16 MS. HAHN: Your Honor, we object on the photos of the
17 vehicle. I don't think this witness has made any foundation
18 about viewing the vehicle.

19 THE COURT: All right. Mr. Miller?

20 MR. MILLER: Same objection, Your Honor.

21 THE COURT: All right. Do do you have those separated
22 out?

23 MR. MALDONADO: We can. Those are ---

24 (Whereupon, a discussion was held off the record.)

25 MS. HAHN: Your Honor, ---

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1 THE COURT: Yes, ma'am.

2 MS. HAHN: --- I would also extend my objection to any
3 video which is of the vehicle if there's been no foundation.

4 THE COURT: All right. Are there videos of the vehicle?

5 MR. MALDONADO: It's -- yes, Your Honor. It's it's one
6 cam -- it -- there's -- all the cameraing has come up at the
7 same time. The -- we can lay a foundation with the the
8 manager who who who took the video the, you know, got the
9 video from the the system.

10 THE COURT: Well I think, I think your point is,
11 Ms. Hahn, Mr. Miller, is there's no connection of the vehicle
12 to the suspects that committed the crime, correct?

13 MS. HAHN: Yes.

14 MR. MILLER: Correct and obviously these witnesses were
15 not outside ---

16 THE COURT: Well let ---

17 MR. MILLER: --- the vehicle.

18 THE COURT: --- let me -- I'm sorry. Madam forelady,
19 ladies and gentlemen, if you'll step to your jury room
20 momentarily. Do not discuss the case during this brief
21 recess.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: Yes, sir, Mr. Miller.

25 MR. MILLER: Judge, well the basis being it would have no

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1 connection with the the suspects but also the the victims in
2 this case weren't outside to view the truck driving by or
3 anything to do with the SUV. They were inside the store and
4 can certainly testify to the events that took place there but
5 I I would object as to to no foundation actually viewed the
6 SUV.

7 THE COURT: So let let me make sure I get this straight
8 'cause this rule's gonna apply throughout. She can testify
9 this is a fair and adequate representation of the scene both
10 inside and out from the cameras at this particular time,
11 correct?

12 MR. MILLER: Correct.

13 THE COURT: But since she doesn't know if this vehicle
14 was or was not involved in the crime she can't testify to
15 that.

16 MR. MILLER: Correct and just specifically she wasn't out
17 there to view that she ---

18 THE COURT: I understand. I just wanna make sure that
19 rule's gonna apply throughout. If a total and complete
20 foundation is not laid on each and every witness, I'm gonna
21 have 'em recall witnesses and that's gonna apply to the State
22 and the defense ---

23 MR. MILLER: Okay.

24 THE COURT: --- 'cause the other way we just gonna be
25 shufflin' witnesses up and down. If he gets into it now and

MOTIONS AND MATTERS

1 and later on they don't tie it up, that -- that's gonna hurt
2 the State anyway so the video which ya'll had agreed earlier
3 was admissible is now not admissible. Before you had no
4 objection but now you have an objection. Please bring us our
5 jury please. The video is not admissible at this time until
6 it's tied in and Ms. Irick will be subject to being
7 recalled, ---

8 MR. MALDONADO: Well, ---

9 THE COURT: --- Mr. Maldonado.

10 MR. MALDONADO: --- Your Honor, we can play just the the
11 the the camera angles from inside so we can kind of exclude
12 the the ones from the outside of the the ---

13 THE COURT: If you, if you can do that, that's fine.

14 MR. MALDONADO: Yes, sir.

15 MR. MILLER: There's no objection. They they can do that
16 on the the tape.

17 MR. MALDONADO: If we ---

18 THE COURT: This trial's gonna take several weeks ---

19 MR. MALDONADO: Yes, Your Honor.

20 THE COURT: --- under this particular ruling of the Court
21 and I'm not gonna change that ruling. That -- that's not by
22 way of complaint, Mr. Maldonado.

23 MR. MALDONADO: Yes, Your Honor.

24 THE COURT: You know it's obvious to me you cannot prove
25 everything on pencil point ---

MOTIONS AND MATTERS

1 MR. MALDONADO: Yes.

2 THE COURT: --- that's that's -- that goes with common
3 sense.

4 MR. MALDONADO: This is, this is why just to, just to
5 edify Your Honor that they all come up at the same time with
6 the audio but we can kinda select individual ---

7 THE COURT: All right.

8 MR. MALDONADO: --- cameras and if I can just make
9 sure -- the problem -- if we can have some more time before
10 the jury comes in. So -- they don't all pop up at the same
11 time so I don't know which ones are the outside ones and which
12 ones are the inside ones yet.

13 (Whereupon, the attorney general reviews the video.)

14 MR. MALDONADO: Your Honor, it seems seems like camera
15 angles 1, 2, 4, 6, 9, 14 and 16 are the inside so there's
16 camera angles 3, 7, 10 and 11 are definitely the outside. Any
17 other ones I'm not really sure. They don't -- they didn't pop
18 up so I just won't play them until we're sure or I can kinda
19 figure that out but we'd ask to to play those camera --
20 cameras for the jury, Your Honor.

21 THE COURT: All right. Any objections to the inside
22 cameras, Ms. Hahn?

23 MS. HAHN: No, Your Honor.

24 THE COURT: Mr. Miller?

25 MR. MILLER: None.

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1 THE COURT: All right. Are you ready for the jury,
2 Mr. Maldonado?

3 MR. MALDONADO: Yes, Your Honor.

4 THE COURT: Say again.

5 MR. MALDONADO: Yes, Your Honor.

6 THE COURT: All right. If you'll bring us our jury,
7 please.

8 (The following takes place in the presence of the jury.)

9 THE COURT: All right. Madam clerk, do we have notepads?

10 THE CLERK: Yes, sir. There should be some in the supply
11 room.

12 (Whereupon, a discussion was held off the record.)

13 THE COURT: It's my understanding one of the jurors was
14 wanting to know if he could take notes. How many jurors wanna
15 take notes?

16 UNIDENTIFIED JUROR: I brought my pad.

17 THE COURT: You have a pad?

18 UNIDENTIFIED JUROR: Yeah.

19 UNIDENTIFIED JUROR: I'd like to.

20 THE COURT: All right. Any others? All right. The
21 clerk will get the pads right now and I have to give you an
22 instruction. I have to give instructions on everything. It's
23 not like at home. I just take instructions at home, you know,
24 instructions. Give me just a minute. I would take it that
25 our writer would have a pad with him.

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1 (Laughter.)

2 THE COURT: All right. I'm not sure all of 'em want
3 pads, madam clerk, but whoever wants a pad if you'd raise your
4 hand the clerk will provide 'em.

5 (Whereupon, notepads were distributed to the jury.)

6 THE COURT: Gentleman in the back row do you want one
7 also? No? All right. All right. Everybody have a pad and
8 pen that wants one?

9 (No verbal response.)

10 THE COURT: All right. Thank you. And if you'd write
11 your juror number on on your pad. Let me advise you as far as
12 note taking. You may take notes during the trial of the case
13 however please remember that some people are better note
14 takers than others. Juror's notes should not be given any
15 greater weight than the recollection of other jurors. The
16 recollection of individual jurors should be considered as
17 reliable as notes taken by any other juror. I would also
18 advise you that when you are taking notes you may not notice
19 the body language or demeanor of a witness which maybe used by
20 you in deciding the witness's credibility. You may not have
21 your notes with you until the time of your deliberation so
22 each time you go out I would ask you to please turn your notes
23 upside down on on on your chair and they will be here upon
24 your return. Lunchtime I'll have 'em taken up and they'll be
25 secured by the clerk's office, overnight they'll be secured by

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1 the clerk's office and then at the time of your deliberations
2 you will have access to 'em. All right. I don't know if the
3 gentleman that was already takin' notes had -- has other
4 information besides what ---

5 UNIDENTIFIED JUROR: I didn't start ---

6 THE COURT: --- he's entitled to use ---

7 UNIDENTIFIED JUROR: I just ---

8 THE COURT: --- I'm segregatin' that out.

9 UNIDENTIFIED JUROR: I didn't start taking any until ---

10 THE COURT: All right. That's fine. All right,
11 Mr. Maldonado, you may proceed.

12 MR. MALDONADO: Thank you, Your Honor.

13 THE COURT: Yes, sir. As I understand it you're offering
14 the video State's Exhibit 51 the the inside cameras, is that
15 correct?

16 MR. MALDONADO: That's correct.

17 THE COURT: All right. And there's no objection to that,
18 that correct, uh, -- excuse me, I said State's 51, I think
19 it's State's 52. Any objections to that, Ms. Hahn?

20 MS. HAHN: No, Your Honor.

21 THE COURT: Mr. Miller?

22 MR. MILLER: No, Your Honor.

23 THE COURT: All right. Thank you. You may proceed.

24 MR. MALDONADO: Thank you, Your Honor.

25 (Whereupon, the video was played.)

SUE ANNE IRICK - DIRECT EXAMINATION BY MR. MALDONADO

1 BY MR. MALDONADO:

2 Q. Ms. Irick, can you describe who the people in in this
3 (indicating) cam -- this camera angle?

4 A. That's Eddie in the white shirt and me in the black
5 shirt.

6 Q. Okay. And this is from behind the counter?

7 A. Yes.

8 Q. Where is the the front door and the back door in in this
9 angle?

10 A. The back door is like right in fronta me and the front
11 door is over this way (indicating).

12 Q. So the the back door's at the top of the video?

13 A. Yes.

14 Q. Okay. And then so the opposite wall that is the the
15 front door, right?

16 A. Yes.

17 Q. And that's the side over by the the highway, right?

18 A. Yes.

19 Q. Okay. Let me try a different angle.

20 (Whereupon, the video was played.)

21 BY MR. MALDONADO:

22 Q. Can you describe for the jury this camera angle 2.
23 Where's this showing?

24 A. That's right by the front door.

25 Q. Okay. So it's and it's showing the -- what's over there

SUE ANNE IRICK - DIRECT EXAMINATION BY MR. MALDONADO

1 on the right ---

2 A. That's the counter where the register is.

3 Q. Okay. So everything happened behind the right side of
4 this?

5 A. Yes.

6 (Whereupon, the video was played.)

7 BY MR. MALDONADO:

8 Q. Just to clarify, Ms. Irick, do you know why sometimes the
9 cameras don't show up?

10 A. No.

11 Q. Okay. You don't know anything about the system? Okay.

12 (Whereupon, the video was played.)

13 MR. MALDONADO: For the record, Your Honor, this is
14 camera angle 6.

15 BY MR. MALDONADO:

16 Q. Ms. Irick, can you describe briefly what what they're
17 seeing here.

18 A. Right there (indicating) is the bathroom and then that's
19 where the counters are over there (indicating).

20 Q. And so the bottom is the -- is where the bathrooms are?

21 A. Yes.

22 Q. And at the top of the screen is is looking right down
23 into the the counter?

24 A. Yes.

25 (Whereupon, the video was played.)

SUE ANNE TRICK - DIRECT EXAMINATION BY MR. MALDONADO

1 Q. Can you describe to the jury what -- which angle this is
2 camera angle 9.

3 A. The register is to the right and the door is all the way
4 over here (indicating).

5 Q. To the left?

6 A. The back door.

7 Q. Okay. Just a couple more.

8 (Whereupon, the video was played.)

9 Can you describe what you see in camera angle 14.

10 A. Over here (indicating) is the back door ---

11 Q. To the ---

12 A. --- and ---

13 Q. --- left?

14 A. Yes, to the left. And over there (indicating) is the
15 counter.

16 Q. Okay. So opposite that is the counter. And so this
17 camera is placed right next to the the back door?

18 A. Yes.

19 (Whereupon, the video was played.)

20 Q. Can you describe what he's -- this person's doing right
21 now with camera angle 16.

22 A. He's taking the money out the drawer.

23 Q. Okay. Is this the one who had the gun?

24 A. Yes.

25 (Whereupon, the video was played.)

SUE ANNE IRICK - DIRECT EXAMINATION BY MR. MALDONADO

1 Q. Wait a minute. I think it just messed up once.

2 Can you describe to the jury what's -- what you see in
3 this one, this frame.

4 A. I'm trying to open the drawer and he's pointin' a gun.

5 Q. Okay. Is that the gun you saw that day?

6 A. Yes.

7 Q. How'd that make you feel?

8 A. I was scared to death.

9 Q. How -- you no longer work there, correct?

10 A. No.

11 Q. How long had you work -- that you worked there after this
12 incident?

13 A. Maybe six months.

14 Q. Why did you end up leaving there ---

15 A. Because ---

16 MS. HAHN: Objection, Your Honor.

17 THE COURT: What's the relevance?

18 MR. MALDONADO: This is -- that's one of the effects of
19 of this incident had on her.

20 THE COURT: All right. I'll allow it. Overruled. You
21 may answer that.

22 MS. IRICK: I had asked them to take me off the third
23 shift ---

24 BY MR. MALDONADO:

25 Q. That's the night shift?

SUE ANNE TRICK - DIRECT EXAMINATION BY MR. MALDONADO

1 A. --- because I was scared and a week after they took me
2 off third shift I was fired.

3 Q. So you you feel this has had an ongoing effect on your
4 life?

5 A. Yes.

6 MR. MILLER: Your Honor, I'm gonna object. It's
7 impermissible due to the impact statement.

8 THE COURT: All right. I'd overrule that objection.

9 MR. MILLER: Okay.

10 THE COURT: You may proceed.

11 BY MR. MALDONADO:

12 Q. How does this -- how has that affected you?

13 A. Sir?

14 Q. How has it affected you?

15 A. Everybody that would walk in the door I would look at
16 'em. I would be afraid of -- that somethin' was gonna happen
17 with everybody and I didn't wanna be on third shift and they
18 kept puttin' me on third shift.

19 Q. Okay. And do you have any trouble sleeping?

20 THE COURT: All right. You you can move along now,
21 Mr. Maldonado.

22 MR. MALDONADO: Yes, Your Honor. Did we specify which
23 one's the camera pictures, Your Honor?

24 THE COURT: Yes, the 1 through 8 appear to be photographs
25 that were handed up that that ya'll objected to so those will

1 be for ID purposes only, State's 1 through 8.

2 MS. HAHN: Thank you, Your Honor.

3 THE COURT: Ten (10) through thirty-three (33) I think
4 that that's the other numbers ---

5 MR. MALDONADO: Yes, Your Honor.

6 THE COURT: --- are in evidence without objection. Is
7 that correct, Ms. Hahn?

8 MS. HAHN: Yes, Your Honor.

9 THE COURT: Is that correct, Mr. Miller?

10 MR. MILLER: Yes, Your Honor.

11 (State's Exhibit Nos. 10 through 33, photographs,
12 admitted into evidence.)

13 THE COURT: Are we done with the video?

14 MR. MALDONADO: Yes, Your Honor.

15 THE COURT: Could we get the lights back on please,
16 Mr. Derrick? Thank you.

17 MR. MALDONADO: Your Honor, may I publish these to the
18 jury?

19 THE COURT: Yes you may.

20 (Whereupon, the photographs were published to the jury.)

21 BY MR. MALDONADO:

22 Q. Do you -- do you know what county that your store was in?

23 A. Lexington.

24 Q. Okay.

25 MR. MALDONADO: Your Honor, my co-counsel's confused

SUE ANNE IRICK - CROSS-EXAMINATION BY MS. HAHN

1 about number, I think he confused about No. 9. It might have
2 just been a clerical error on the pictures. Is there a No. 9
3 on the -- can I, can I take a look at these?

4 THE COURT: All right. You wanna check that, please.

5 MR. MALDONADO: Yeah. Your Honor, No. 9 is part of the
6 inside so we -- I didn't catch that if if you may have or may
7 not have included that in what's admissible but if, just to
8 clarity, if if ---

9 THE COURT: One through eight's ID only.

10 MR. MALDONADO: ID only. Nine ---

11 THE COURT: Nine through thirty-three's in evidence
12 without objection.

13 MR. MALDONADO: Thank you. No further questions, Your
14 Honor.

15 THE COURT: Thank you, Mr. Maldonado. Ms. Ms. Hahn.

16 MS. HAHN: Thank you, Your Honor.

17 CROSS-EXAMINATION BY MS. HAHN:

18 Q. Hello, Ms. Irick. You testified that the four men who
19 came into the Pitt Stop that day had their faces covered,
20 correct?

21 A. Yes.

22 Q. So you weren't able to see who they were and you didn't
23 recognize them, is that right?

24 A. No.

25 Q. You weren't able to recognize ---

1 A. That's right.

2 Q. Okay. I'm sorry about that. And there was also a loud
3 noise that we heard after you had had had the money taken
4 outta the register. Can you tell us what that loud noise
5 was?

6 A. Which one?

7 Q. It sounded like a crash.

8 A. He threw the drawers on on the counter.

9 Q. Okay. So it was the drawer hitting the the counter
10 itself. Okay. Now you said that you met one of these men
11 while you were walkin' around the counter, is that correct?

12 A. Yes.

13 Q. And I believe that you said that one of 'em told you to
14 go behind the counter but I I do -- I didn't here it in the
15 video. Was it more that they said for you to go behind the
16 counter or was it that they told you to get the money and you
17 knew where where to go?

18 A. They told me to go behind the counter.

19 Q. Okay. And did you write a statement regarding this
20 incident?

21 A. Yes.

22 MS. HAHN: May I approach the witness, Your Honor?

23 THE COURT: Yes, ma'am.

24 BY MS. HAHN:

25 Q. Is this (indicating) the statement that you wrote?

SUE ANNE IRICK - CROSS-EXAMINATION BY MR. MILLER

1 A. Yes.

2 Q. Okay. In the statement did you include any information
3 about them telling you to walk behind the register?

4 A. No.

5 Q. Okay. Thank you.

6 MS. HAHN: Beg the Court's indulgence, Your Honor.

7 THE COURT: Yes, ma'am.

8 MS. HAHN: No further questions, Your Honor.

9 THE COURT: All right. Thank you, Ms. Hahn. Mr. Miller.

10 MR. MILLER: Thank you, Your Honor.

11 CROSS-EXAMINATION BY MR. MILLER:

12 Q. Morning, Ms. Irick. How are you?

13 A. Fine.

14 Q. Ms. Irick, I'm David Miller. I represent Boyd Evans and
15 I I know you're a little upset up here, believe me I'm not
16 here to upset you further, just wanna ask you a couple quick
17 questions, okay? You said you were three years at Pitt Stop?

18 A. Yes.

19 Q. Okay. And have you ever worked anywhere else similar to
20 that, any other, you know, any restaurant, gas station,
21 anything?

22 A. After that but not before.

23 Q. Afterwards? And have you ever been robbed before?

24 A. Attempted robbery.

25 Q. Okay. When was that?

1 A. A couple months before that happened ---

2 Q. Before ---

3 A. --- maybe.

4 Q. --- this incident happened?

5 A. Yes.

6 Q. Okay. Where was -- where where did that occur at?

7 A. But that one wasn't as scary because the guy came in and
8 said he had a bomb in the bathroom so that was at another
9 store, they sent me to another store, and he said he had a
10 bomb in the bathroom and so I shut down the register and went
11 to the bathroom and looked and he ran out the door.

12 Q. Talkin' about and coming back to this incident on July
13 26th 2007, okay, ---

14 A. Um-hum.

15 Q. --- when when this occurred it occurred very quickly, ---

16 A. Yes.

17 Q. --- just a matter of seconds.

18 A. Two minutes.

19 Q. Two minutes. Okay. Now when these men came in the
20 store, whoever's on that video, all wearing towels and masks
21 on their head, correct?

22 A. Yes.

23 Q. Okay. And you didn't have any idea when that took place
24 who the people were that robbed you.

25 A. No.

SUE ANNE IRICK - CROSS-EXAMINATION BY MR. MILLER

1 Q. And to this day you you don't know who those people were.

2 A. No.

3 Q. Okay. And you can't say with any certainty whatsoever
4 that Boyd Evans was in that store that day.

5 A. No.

6 Q. Okay. This this whole event was obviously horrible.

7 A. Yes.

8 Q. Okay. And I noticed earlier you were upset. You're
9 still upset today about it and you want whoever did this to
10 get caught don't you?

11 A. Yes.

12 Q. Okay. You want them to pay for making you this upset.

13 A. (The witness nodded in the affirmative.)

14 Q. Okay. But you definitely don't want the wrong people to
15 be caught for this, do ya?

16 A. No.

17 Q. I mean, if you're not sure, you definitely don't want
18 those people to be caught because that means whoever did this
19 is still out there, correct?

20 A. Yes.

21 Q. Okay. Thank you. No further questions.

22 THE COURT: Redirect, Mr. Maldonado?

23 MR. MALDONADO: No, Your Honor.

24 THE COURT: Thank you. Thank you very much, Ms. Irick.

25 You may step down.

1 (Whereupon, the witness left the stand.)

2 THE COURT: All right. You may call your next witness.

3 MR. MALDONADO: State calls Edward Lasseter.

4 THE COURT: All right. If you'd come around and be sworn
5 for us, please.

6 EDDIE LASSETER, having been
7 first duly sworn, testified as follows:

8 THE COURT: Have a seat right up there please, sir. Once
9 you're seated please speak up loud and clear and state your
10 full name on the record spelling your last.

11 MR. LASSETER: My name's Eddie Lasseter, L-A-S-S-E-T-E-R.

12 DIRECT EXAMINATION BY MR. MALDONADO:

13 Q. Morning, Mr. Lasseter.

14 A. Morning.

15 Q. How you doing? Can you describe, introduce yourself to
16 the jury. Where is it that you, that you live and where are
17 you from?

18 A. Specific -- well at the time I was living at Capital
19 B Road in Gaston.

20 Q. Okay. And how long you live there?

21 A. Twenty-one years.

22 Q. You originally from South Carolina?

23 A. Well I've been living here since I was two.

24 Q. Okay. Were you working on July 26th 2007?

25 A. Yes, sir.

EDDIE LASSETER - DIRECT EXAMINATION BY MR. MALDONADO

1 Q. Where were you working?

2 A. At the Pitt Stop Convenience Store. It's off the 119
3 exit which is the St. Matthews Exit on 26.

4 Q. Okay. You know what county that's in?

5 A. Lexington.

6 Q. Okay. Was anybody working with you?

7 A. Yes, sir, Sue Anne Irick.

8 Q. Okay. What kind of stuff did you do for the Pitt Stop?

9 A. I was there for just stocking and cleaning.

10 Q. Okay. And about what time did you start work?

11 A. It was about eleven o'clock.

12 Q. P.M.?

13 A. P.M.

14 Q. What happened that day? Any incident?

15 A. Oh, with the robbery?

16 Q. Yeah.

17 A. I was behind the counter. I saw the four people come in.
18 When I saw they had guns, I felt the best thing for me to do
19 was just hit the floor and cover my eyes 'cause I didn't wanna
20 do anything to upset 'em that would make em mad enough to use
21 their guns. The fellas that are pacing was on my mind,
22 'course I also figured that video cameras of course would do a
23 better job in identifying them accurately ---

24 Q. Okay. So you basically laid down?

25 A. (The witness nodded in the affirmative.)

1 THE COURT: Is that a yes? You need to ---

2 MR. LASSETER: Yes.

3 THE COURT: --- answer out loud for the ---

4 MR. LASSETER: Oh, sorry.

5 THE COURT: --- court report reporter. That's all right.

6 Thank you.

7 BY MR. MALDONADO:

8 Q. Can you describe how they looked when they came in.

9 A. I just noticed that their head were covered.

10 Q. Okay. Anything about their their size and build, race,
11 anything like that that's ---

12 A. Well at first and again, I didn't wanna do anything to
13 upset 'em so I was kind of afraid if I recognized 'em too much
14 it would upset 'em too much or ---

15 Q. Okay. Did you --- you said you saw the gun. How many
16 guns did you see?

17 A. At least two.

18 Q. Two. How did that make you feel?

19 A. Terrified.

20 Q. Okay. Did you feel free to leave at that time?

21 A. No, sir.

22 Q. Okay. What happened then? Did they, did they do
23 anything?

24 A. They took my cell phone ---

25 Q. Okay.

1 A. --- and of course with my eyes covered I couldn't tell
2 what they were doing, if there were any guns pointed at me or
3 what what I could only hear what was going on but of course
4 the -- unfortunately store was being robbed.

5 Q. So they said something? What did they say?

6 A. Sound like one of 'em said, you know, This is a robbery,
7 and they demanded that Sue Anne give 'em the money.

8 Q. And you didn't give 'em permission to get the money, did
9 you?

10 A. No, sir.

11 Q. Okay. So they took your your cell phone?

12 A. Yes, sir.

13 Q. Okay. Did you give 'em permission to take your cell
14 phone?

15 A. No, sir.

16 Q. Okay. Did you ever get that back?

17 A. No, sir.

18 Q. And what happened then after -- they leave? They
19 leave?

20 A. They left. You know, Sue Anne asked me if I was all
21 right and then, you know, she asked me get up and my reaction
22 of course for whatever reason was that are they gone.

23 Q. And you called the police?

24 A. She got 'em.

25 Q. And they get there.

1 A. Yes.

2 Q. About how long it took -- take 'em to get there?

3 A. I'm not sure. It was oh, at least ten, fifteen minutes

4 ---

5 Q. Okay.

6 A. --- probably.

7 Q. So you were in the courtroom when we just saw the video,
8 correct?

9 A. Um-hum.

10 Q. Did you you watch that the video ---

11 A. Yes.

12 Q. --- we played several times? Does that fairly and
13 accurately represent what happened that day?

14 A. Yes, sir.

15 Q. Okay. And that was you in the video?

16 A. Yes.

17 Q. Okay.

18 MR. MALDONADO: No further questions, Your Honor. Please
19 answer any questions the defense ---

20 THE COURT: Thank you, ---

21 MR. MALDONADO: --- might have.

22 THE COURT: --- Mr. Maldonado. Ms. Ms. Hahn?

23 CROSS-EXAMINATION BY MS. HAHN:

24 Q. Hello, Mr. Lasseter.

25 A. Hey, how you doin' today?

1 Q. Good. How are you?

2 A. Good. I'm not too bad so far.

3 Q. All things considered. You testified that the men that
4 came into the Pitt Stopp had their faces covered, right?

5 A. Yes, ma'am.

6 Q. So you weren't able to tell who they were from their
7 faces, right?

8 A. Correct.

9 Q. And everything happened pretty quickly so you didn't have
10 a chance to take in much information about 'em, is that right?

11 A. Well yeah, as I said before my main concern was not doing
12 anything to upset 'em 'cause I feared it was a robbery and,
13 you know, the cameras would be able to catch everything and
14 pretty much tell what happened so my main concern was, you
15 know, not doing anything that could be upsetting to 'em and
16 cause 'em to use the guns 'cause, you know, I didn't have any
17 idea how trigger-happy they were, anything like that so I I
18 was just more concerned about my safety more than anything
19 else.

20 Q. Okay. And you said that you heard them or heard one of
21 them ask Ms. Irick to give them the money, is that right?

22 A. Yes.

23 Q. And you didn't hear 'em ask her to do anything else, did
24 you?

25 A. I didn't remember anything else that -- it was just, you

1 know, wanting to get all the money that was in there.

2 Q. Okay. Did they ask you to do anything?

3 A. No, ma'am.

4 Q. And you got down on the floor 'cause you were concerned
5 for your own safety, is that right?

6 A. Well and well for both of our safety 'cause, you know,
7 once again, with the video cameras that were there and, yeah,
8 I didn't think it wouldn't matter that much if I saw anything
9 or not 'cause every -- I figured everything would be caught on
10 video.

11 Q. Okay. Thank you.

12 MS. HAHN: No further questions, Your Honor.

13 THE COURT: Thank you, Ms. Hahn. Mr. Miller?

14 MR. MILLER: Thank you, Your Honor. May it please the
15 Court.

16 CROSS-EXAMINATION BY MR. MILLER:

17 Q. Mr. Lasseter, good morning.

18 A. Morning.

19 Q. It may be afternoon by now I'm not sure. I think I think
20 she's asked you a lot of relevant questions but just to
21 clarify, the majority of the time after this happened and
22 whether it was two minutes or fifty seconds, however long, it
23 was a very short period of time, correct?

24 A. Yes.

25 Q. And you you basically as soon as you saw them and they

1 they came into the store you were on the ground, okay.

2 A. That's correct.

3 Q. We saw the video with your face down.

4 A. Yes.

5 Q. Okay. But you did see how many came in, correct?

6 A. Well I knew there -- it looked, it looked like there were
7 at least four.

8 Q. At least four. How many people do you see here today at
9 the defense table as defendants?

10 A. Two.

11 Q. Okay. And you have no idea because you just didn't see
12 anybody. You have no idea if these two people were in your
13 store that night or not, do you?

14 A. No, sir, I can't say for sure.

15 Q. Okay. Now one last question, and to your knowledge as it
16 applies to Ms. Irick but also to you personally, nobody who
17 came in there that night did anything, touched you in any way
18 or was inappropriate with you or her physically.

19 A. Oh, the robbers?

20 Q. Um-hum.

21 A. Well they reached in my pants pocket and got my cell
22 phone.

23 Q. Okay. But they did not, they did not and this is more of
24 a legal question ---

25 A. Um-hum.

1 Q. --- just to establish something, that nobody touched you
2 inappropriately or her inappropriately sexually ---

3 A. Oh, okay.

4 Q. --- or any other way?

5 A. No, sir.

6 Q. Okay. And you said you never received the cell phone
7 back?

8 A. No, sir.

9 Q. If it had been recovered I guess they would have given it
10 back to you?

11 A. They who?

12 Q. The police.

13 A. Yes.

14 Q. Okay. No further questions. Thank you.

15 THE COURT: Redirect?

16 MR. MALDONADO: Really quick.

17 REDIRECT EXAMINATION BY MR. MALDONADO:

18 Q. Mr. Lasseter, do you feel it's appropriate for anybody to
19 point a gun at you?

20 A. No, sir.

21 Q. You feel threatened?

22 A. Terrified.

23 MR. MALDONADO: Then that's all I have, Your Honor.

24 THE COURT: Recross Ms. Hahn or Mr. Miller?

25 MS. HAHN: No, Your Honor.

EDDIE LASSETER - RECROSS-EXAMINATION BY MR. MILLER

1 RECROSS-EXAMINATION BY MR. MILLER:

2 Q. Did you ever feel a gun touch you or on any parta your
3 body?

4 A. I wouldn't be able 'cause I was so terrified and I was
5 just worried about what was gonna happen that I probly
6 wouldn't have noticed it anyway.

7 A. Okay.

8 THE COURT: Thank you. Thank you very much,
9 Mr. Lasseter. You may step down.

10 (Whereupon, the witness left the stand.)

11 THE COURT: All right. You may call your next witness.

12 MR. UNDERWOOD: Your Honor, the State calls Deputy John
13 Lookabill.

14 THE COURT: All right. Ladies and gentlemen, the
15 witnesses are sequestered, that's why they're not in the
16 courtroom except the two victims Ms. Irick and Mr. Lasseter
17 and the chief investigating officer Detective Prestigacomo and
18 of course the investigator for the defendant may also.

19 JOHN IRVIN LOOKABILL, JR., having
20 been first duly sworn, testified as follows:

21 THE CLERK: Have a seat up there please, sir. Speak up
22 loud and clear, statin' your full name spelling your last on
23 the record.

24 DEPUTY LOOKABILL: My name is John Irvin Lookabill, Jr.
25 Last name is spelled L-O-O-K-A-B-I-L-L.

1 DIRECT EXAMINATION BY MR. UNDERWOOD:

2 Q. Good afternoon, Deputy. If you could, please tell the
3 jury how you're connected to this case.

4 A. Yes, on July the 26th 2007 at about 12:30 p.m. I was
5 dispatched to 125 Rolling Meadows Lane in response to an armed
6 robbery call.

7 Q. Okay. And what agency were you working with?

8 A. With the Lexington County Sheriff's Department.

9 Q. And in what capacity?

10 A. As a deputy.

11 Q. And how long have you been in law enforcement?

12 A. I've been in law enforcement about four years.

13 Q. Going back to this incident, how did you -- how exactly
14 did you become involved again?

15 A. We were dispatched to the location for an armed robbery
16 call.

17 Q. And when were you dispatched?

18 A. About approximately 12:30.

19 Q. Okay. Were you the only officer to respond?

20 A. No, there were other officers there. Deputy Mitchum who
21 I was riding with was my partner, also the shift supervisor
22 was there, canine officer was there and also crime scene was
23 there.

24 Q. And off the top of your head do you remember who who from
25 crime scene was there?

JOHN IRVIN LOOKABILL - CROSS-EXAMINATION BY MS. HAHN

1 A. The crime scene who was there was Grimes.

2 Q. And this loca -- this location that you just gave what
3 county is that located in?

4 A. Lexington County.

5 Q. And what did you do once you got to the scene?

6 A. Once we got to the scene we talked with both of the
7 victims and got their stories. Also, the shift supervisor
8 there was a videotape of of the incident, he re -- he reviewed
9 that. After that we we we left and the crime scene was still
10 there. They had requested a copy of the videotape. We
11 received that copy of the videotape and I turned it into
12 evidence and also we had -- I mean, we went back out there
13 about forty-five minutes later to receive the manager had
14 called and said they had greenbacks book that had been taken
15 by the subjects, we went back out there, retrieved it and also
16 entered that into evidence.

17 Q. And what did you do after that involving this case?

18 A. That's the extent of my involvement with this case, just
19 turned it over to investigators.

20 Q. Please answer any questions opposing counsel may have for
21 you.

22 THE COURT: Thank you. Ms. Hahn?

23 MS. HAHN: Thank you, Your Honor.

24 CROSS-EXAMINATION BY MS. HAHN:

25 Q. Deputy, just briefly. At the time that you were involved

JOHN IRVIN LOOKABILL - CROSS-EXAMINATION BY MR. MILLER

1 in this investigation, there were no suspects at that point,
2 is that correct?

3 A. That's correct.

4 Q. Thank you.

5 MS. HAHN: No further questions, Your Honor.

6 THE COURT: Mr. Miller?

7 MR. MILLER: Thank you, Your Honor.

8 CROSS-EXAMINATION BY MR. MILLER:

9 Q.. And, Deputy, you said that you arrived at the scene well
10 after the incident already took place, correct?

11 A. After the incident took place.

12 Q. Excuse me, after the incident took place. CSI was
13 already there, other deputies were already there?

14 A. We were the first on the scene and then the other the the
15 CSI came and canine came and the shift supervisor came but we
16 were first on the scene.

17 Q. Okay. Did -- but you didn't actually see any of the
18 alleged suspects enter or leave the building.

19 A. I did not.

20 Q. Okay. And did you ever have an opportunity to interview
21 anybody yourself who was a a suspect or who allegedly was in
22 that store at that time?

23 A. No, I just talked to the victims.

24 Q. Okay. Thank you.

25 THE COURT: Redirect?

TONY RAY MITCHUM - DIRECT EXAMINATION BY MR. UNDERWOOD

1 MR. UNDERWOOD: Nothing further, Your Honor. May I ---

2 THE COURT: Thank you. Thank you, Officer. You may step
3 down.

4 (Whereupon, the witness left the stand.)

5 THE COURT: All right. You may call your next witness.

6 MR. UNDERWOOD: Your Honor, we ask that the witness be
7 excused from his subpoena.

8 THE COURT: Any objections, Ms. Hahn, Mr. Miller?

9 MS. HAHN: None, Your Honor.

10 MR. MILLER: None.

11 THE COURT: Thank you. Thank you very much for being
12 with us today, sir. You may be excused.

13 MR. UNDERWOOD: Thank you, Your Honor. Your Honor, at
14 this time the State would call Deputy Mitchum.

15 THE COURT: All right. Deputy Mitchum.

16 TONY RAY MITCHUM, having been
17 first duly sworn, testified as follows:

18 THE CLERK: Have a seat please, sir. Once you're seated
19 state your full name, speak up loud and clear and spelling
20 your last.

21 DEPUTY MITCHUM: Tony Ray Mitchum, M-I-T-C-H-U-M.

22 DIRECT EXAMINATION BY MR. UNDERWOOD:

23 Q. Good afternoon, Deputy. Could you please tell the jury
24 how you were connected with this case.

25 A. I was responding deputy.

TONY RAY MITCHUM - DIRECT EXAMINATION BY MR. UNDERWOOD

1 Q. Okay. And what agency were you working with?

2 A. Lexington County Sheriff's Department.

3 Q. And how long have you worked there?

4 A. Three and a half, three years now.

5 Q. Back to this incident how exactly did you become
6 involved?

7 A. Received a call from dispatch in reference to an armed
8 robbery that already occurred. I responded to that location
9 which was 125 I I can't recall the address.

10 Q. Do do you remember the the name of the place that you
11 went to?

12 A. It was a gas station just down from Maggie's Mae --
13 Maggie Mae's. It was Rolling Meadows Lane that's correct.

14 MR. UNDERWOOD: Your Honor, may I approach the witness?

15 THE COURT: Certainly.

16 BY MR. UNDERWOOD:

17 Q. Deputy, I'm now showing you what's been marked as State's
18 Exhibit No. 51. Could you describe what this is please for
19 the record?

20 A. Interstate and the roadway where we responded.

21 Q. Okay. And could you show the jury, show there, can you
22 show the jury exactly where you responded to.

23 A. It's the gas station here (indicating) I believe is
24 correct.

25 Q. Okay. And you referenced Maggie Mae's Restaurant. Could

TONY RAY MITCHUM - DIRECT EXAMINATION BY MR. UNDERWOOD

1 you show where that is on this map.

2 A. Maggie Mae's is right here (indicating).

3 THE COURT: Point point that out for the jury and just
4 show it, show it down the line, Mr. Underwood.

5 MR. UNDERWOOD: Your Honor, I just ---

6 THE COURT: He he may step down and point it out.

7 MR. UNDERWOOD: And ---

8 THE COURT: You keep your voice up for us, Deputy
9 Mitchum?

10 DEPUTY MITCHUM: Yes, sir.

11 (Whereupon, the witness left the stand.)

12 MR. UNDERWOOD: And, Your Honor, just to make sure was
13 this (indicating) admitted into evidence? Just ---

14 THE COURT: State's 51 I don't think it was through
15 Ms. Irick. Any objection to State's 51 at this time,
16 Ms. Ms. Hahn?

17 MS. HAHN: No, Your Honor.

18 THE COURT: Mr. Miller?

19 MR. MILLER: None.

20 THE COURT: Well it is now, Mr. Underwood. State 51's in
21 evidence without objection.

22 (State's Exhibit No. 51, overhead photograph, admitted
23 into evidence.)

24 MR. UNDERWOOD: Thank you, Your Honor.

25 BY MR. UNDERWOOD:

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1 Q. Deputy, could you now show the jury so they have a a
2 better view what these different locations are.

3 A. Maggie Mae is the restaurant here (indicating.) This
4 (indicating) is the frontage road. This (indicating) is the
5 gas station we responded to.

6 Q. Thank you very much.

7 THE COURT: Do you -- did you -- do you all even see it
8 up here.

9 (No verbal response.)

10 BY MR. UNDERWOOD:

11 Q. Deputy Mitchum, once you arrived on the scene what did
12 you do?

13 A. We secured the scene, received information from the clerk
14 that was working the cash register that night and put out
15 the information that we received to all other responding
16 officers and deputies.

17 Q. Now when you say you secured the scene, what does that
18 mean?

19 A. Well I just kept the scene from anybody comin' in or
20 goin' out.

21 Q. Did you collect any evidence while you were there?

22 A. I did not collect any evidence. I believe Deputy
23 Lookabill was the officer or deputy that collected the
24 evidence.

25 Q. And what other involvement, if any, did you have with the

TONY RAY MITCHUM - CROSS-EXAMINATION BY MS. HAHN/MR. MILLER

1 case?

2 A. That -- that's that's pretty much the involvement that I
3 had on that case.

4 Q. Okay. And just to be sure, the incident location what
5 county was that located in?

6 A. Lexington County.

7 Q. Please answer any questions opposing counsel may have.

8 THE COURT: Ms. Hahn?

9 MS. HAHN: Thank you, Your Honor.

10 CROSS-EXAMINATION BY MS. HAHN:

11 Q. Very briefly, Deputy Mitchum. At the point when you were
12 involved in the investigation there were no suspects at that
13 point, is that correct?

14 A. No, ma'am.

15 MS. HAHN: Thank you, Your Honor.

16 THE COURT: Mr. Miller.?

17 MR. MILLER: Thank you.

18 CROSS-EXAMINATION BY MR. MILLER:

19 Q. Deputy, do you -- to your knowledge was any gun or cell
20 phone ever recovered from the scene?

21 A. Not to my knowledge, no.

22 Q. Okay. You didn't see any of the robbers?

23 A. Not that night, no.

24 Q. Okay. You could not that night ID any of the
25 suspects, correct?

TONY RAY MITCHUM - CROSS-EXAMINATION BY MS. HAHN/MR. MILLER

1 A. No.

2 Q. No further questions.

3 THE COURT: Thank you. Any redirect, Mr. Underwood?

4 MR. UNDERWOOD: No, Your Honor. We ask that the witness
5 be excused.

6 THE COURT: Thank you. You may step down, Deputy
7 Mitchum. Any objections to Deputy Mitchum being excused,
8 Ms. Hahn?

9 MS. HAHN: No, Your Honor.

10 THE COURT: Mr. Mitch -- Mr. Miller? I'm sorry.

11 MR. MILLER: No, Your Honor.

12 THE COURT: Thank you. Thank you very much. You're now
13 excused.

14 (Whereupon, the witness left the stand.)

15 THE COURT: You may call your next witness.

16 MR. MALDONADO: The State calls Donald Cox, Jr.

17 THE COURT: All right. If you'd come around and be sworn
18 please.

19 DONALD WOFFORD COX, JR.,

20 having been first duly sworn, testified as follows:

21 THE CLERK: Have a seat up there please, sir. Once
22 you're seated speak up loud and clear statin' your full name,
23 spelling your last.

24 MR. COX: My name is Donald Cox, last name C-O-X.

25 DIRECT EXAMINATION BY MR. MALDONADO:

1 Q. Good morning, Mr. Cox, or good afternoon.

2 A. Morning.

3 Q. And is that your full name?

4 A. Donald Wofford Cox.

5 Q. Is it -- and are you a junior?

6 A. Yes, I am.

7 Q. Mr. Cox, can you just introduce yourself to the jury
8 where you live, where you work.

9 A. At this time I'm living in Greer, South Carolina. I work
10 with an armored cary car delivery service out of Greenville.

11 Q. Okay. How 'bout back in July 2007?

12 A. July 2007 I was the manager of the Pitt Stop store.

13 Q. Okay. What what all did that that entail? What was your
14 responsibilities there?

15 A. I did all the book work, the banking, the ordering,
16 handling of the merchandising, I supervised several employees
17 and ta -- their tasks that they were assigned, anything to do
18 with store operations, getting equipment repaired, ordering,
19 general overseeing everything, every aspect of the business.

20 Q. Okay. And do you know the address of that, the Pitt
21 Stop?

22 A. Not right offhand.

23 Q. Okay. That's fine.

24 A. It's been so long.

25 Q. Do you, do you know what county that's in?

1 A. Yes, it's in Lexington County.

2 Q. Can you describe to the jury about the the location like
3 the highways anywhere near ---

4 A. It's in -- off of Dixiana exit off of I-26 going towards
5 Charleston.

6 Q. Okay. Do you -- were you called in on an incident on
7 July 26th 2007?

8 A. Yes, I was.

9 Q. What what happened?

10 A. I received a phone call at home from Sue Anne stating
11 that the store had been robbed.

12 Q. That's Sue Anne Irick?

13 A. That's correct.

14 Q. Okay.

15 A. And she asked me to come to the store immediately and I
16 got ready and I went right to the store.

17 Q. Okay. What happened then?

18 A. I got there and the sheriff's department was there. I
19 walked in, she told me exactly what had happened that four men
20 had come through the back door and they had robbed the store
21 at gunpoint and ---

22 Q. Describing the store, the -- is there like a a back door
23 is that public access or employee?

24 A. It's public access. The front is for the gasoline
25 operations for cars. At the back door we have three diesel

1 pumps where the diesel drivers will come up and come through
2 the back door.

3 Q. And the front door faces the highway?

4 A. It does.

5 Q. What did you do when you -- after she told you that the
6 place had been robbed?

7 A. The police were there. They came in to look around and
8 gather evidence. I spoke with them, let them do their job for
9 a while and they asked me can I burn them a copy of the video
10 that we have locked up in the office. I said, Yes, I
11 certainly can, it may take me few minutes to get it done, sir,
12 but I'll run off and get it for ya.

13 Q. Okay. So you -- the the store has cameras?

14 A. Yes.

15 Q. How many cameras?

16 A. Had like sixteen.

17 Q. Okay. Can you describe the system. What -- how does it
18 work, um, ---

19 A. It's a digital video recorder. It has a time, date stamp
20 on it. It records for forty-five days in a row and then
21 records over the oldest and starts anew.

22 Q. Okay. So the forty-sixth day gets taped over.

23 A. That's correct.

24 Q. Okay. The cameras can you describe how how they work.

25 Do they they run constantly or ---

1 A. Uh-huh (affirmative). They're on twenty-four hours a day
2 seven days a week.

3 Q. When they're recording, anything about how they record
4 when they show up?

5 A. They're standard surveillance cameras.

6 Q. Well I guess the the point I'm trying to make is motion
7 sensors or anything like that on on them?

8 A. No, they go continuously.

9 Q. Okay. Is there security involved with the camera system?

10 A. As far as the cameras themselves, they're in placements
11 most of 'em are out of reach as far as the outside. The
12 inside it would be difficult to get to all of 'em because a
13 lot of 'em are up on the ceiling out of hands reach without a
14 ladder. The actual recorder is locked in a metal box. I
15 carry the key with me. No one else inside the store had a
16 key.

17 Q. So none none of the other employees could access that.

18 A. No.

19 Q. They couldn't change anything about the cameras.

20 They ---

21 A. The only person that carries a key is the district
22 manager.

23 Q. Okay. And she wasn't there that night.

24 A. Nope.

25 Q. And so when you got there do you -- you took a look at

1 the video, is that right?

2 A. That's correct.

3 Q. You watched it with the deputies?

4 A. Yes.

5 Q. And you said you burned them a copy of that.

6 A. Yes, I did.

7 Q. Did -- or anything change by -- from what you saw that
8 night? Did did did you before you burned it alter the video
9 in any way?

10 A. I can't change it at all. The only thing I can do is
11 bring it back to a particular time, start the recorder and
12 when I get to a stop -- stopping point just stop it and take
13 it out.

14 Q. Okay.

15 A. Even if I do that it doesn't change the memory on the
16 machine, it stays the same.

17 Q. Okay. When you play the video, they they all come up at
18 the same time?

19 A. Yeah.

20 Q. Okay. So one incident would have multiple camera angles,
21 correct?

22 A. Correct.

23 Q. And so some cameras are are from inside and some of 'em
24 are outside?

25 A. Yes.

DONALD WOFFORD COX - DIRECT EXAMINATION BY MR. MALDONADO

1 Q. Do you know how many cameras are on the outside?

2 A. I think there were like, if my memory, my memory's
3 correct, I think there were like four.

4 Q. Okay. So when you, when you gave the video to police
5 officers nothing had been changed?

6 A. That's correct.

7 Q. Okay.

8 MR. MALDONADO: Your Honor, we'd ask to to admit the --
9 those camera angles for the, for the the jury.

10 THE COURT: Ms. Hahn?

11 MS. HAHN: No objection.

12 MR. MILLER: No objection, Your Honor.

13 THE COURT: So this this is going to the outside camera
14 angles?

15 MR. MALDONADO: Yes, Your Honor.

16 THE COURT: And there's no objection to that, Ms. Hahn,
17 Mr. Miller?

18 MS. HAHN: No, Your Honor.

19 MR. MILLER: May I -- may may we approach for a second?

20 THE COURT: Sure.

21 (Whereupon, a bench conference was held off the record.)

22 THE COURT: All right. Thank you. You may proceed.

23 (Whereupon, a discussions was held off the record.)

24 MR. MALDONADO: I guess if it's all right with everybody
25 the -- we can play 'em all at the same time and kind of give

DONALD WOFFORD COX - DIRECT EXAMINATION BY MR. MALDONADO

1 everybody a glorified picture since they're they're all
2 basically admitted, Your Honor.

3 THE COURT: All right.

4 (Whereupon, the video was played.)

5 BY MR. MALDONADO:

6 Q. Excuse me. Mr. Cox, can you explain to the jury why
7 sometimes the the cameras are are coming up and sometimes they
8 don't.

9 A. The sequencer on it will pull up at random one camera at
10 a time to be viewed on the main screen that we have so it
11 probly affected the results over there.

12 Q. Okay. And then that has a lot to do with the just what
13 coming up on the computer not what's taped originally,
14 right?

15 A. Yes.

16 Q. Okay. So and then the system basically records them all
17 at the same time.

18 A. That's correct.

19 Q. The -- okay. Did you, did you end up doin' an audit
20 from, I'm sorry -- the cameras for now, Your Honor. Um, ---

21 A. Yes, we did.

22 Q. The -- what did you find?

23 A. We found that there was a cash discrepancy.

24 Q. What was that discrepancy?

25 A. I have a copy of the paper.

DONALD WOFFORD COX - DIRECT EXAMINATION BY MR. MALDONADO

1 Q. You can refer to that if it will refresh your memory.

2 A. We went ahead and closed third shift out at that
3 particular time. It showed a shortage of five hundred and two
4 dollars and four cents (\$502.04).

5 Q. Okay. Did you give anybody permission to take that that
6 money from the store?

7 A. / No.

8 Q. Let me -- may I, here. I'm showing you what's been
9 marked State's 1 through 8. Can you, can you describe to the
10 jury what's -- what do ya see there.

11 A. That's (indicating) the truck as it's approaching the
12 rear of the store ---

13 Q. Okay.

14 A. --- on that first slide. Second slide is a
15 continuation ---

16 Q. Okay.

17 A. --- so is the third.

18 Q. Is that where where -- what camera is that that these
19 from?

20 A. These (indicating) two, actually these (indicating) three
21 are mounted on what I would call the eastward facing portion
22 of the building.

23 Q. Okay. And I'm sorry just for the record can you look at
24 the back and and say the numbers.

25 A. Yes. One, two, and three.

DONALD WOFFORD COX - DIRECT EXAMINATION BY MR. MALDONADO

1 Q. Okay. And then the other ones.

2 A. The No. 4 is where it's coming around through the diesel
3 islands coming to a resting place. Number 4 and 5 show it
4 almost to the stop ---

5 Q. Okay.

6 A. --- where they exited the car and came in.

7 Q. Okay.

8 A. Six, seven, six and seven are actually where they were
9 driving past the diesel parking area heading out back out
10 along the access road ---

11 Q. Okay.

12 A. --- going back toward that housing development and 8 is
13 where it's almost parked again next to the diesel islands.

14 Q. Okay. So do these fairly and accurately represent what
15 you pulled up that night from the ---

16 A. These are very good representations, yes.

17 Q. Okay. There any alterations that you can say?

18 A. Say again, sir.

19 Q. Have they been altered in any way as far as you can tell?

20 A. Not in any way.

21 MR. MILLER: Your Honor, ---

22 THE COURT: Excuse me. Yes, sir?

23 MR. MILLER: --- let me just for the record put an
24 objection on. He he indicated I believe that that they were
25 driving past. I don't, I don't believe that there's any

DONALD WOFFORD COX - DIRECT EXAMINATION BY MR. MALDONADO

1 evidence that anybody who who was driving, what vehicle or
2 anything else in ---

3 THE COURT: He hadn't said that number one. Number two,
4 it's already gone into evidence. You didn't object to this.

5 MR. MILLER: I I was trying to object temperaneously what
6 he just said here a couple seconds ago. I would ask the court
7 reporter to read it back if that's okay.

8 THE COURT: Well, the photographs will speak for
9 themselves. It'll be the jury's decision to determine what's
10 depicted in any particular photograph or the videotape so the
11 jury's the finders of the fact, you know. Thank you,
12 Mr. Miller.

13 MR. MILLER: Thank you, Your Honor.

14 THE COURT: You may continue. Yes, sir.

15 MR. MALDONADO: That's fine. Then we would ask to admit
16 1 through 8 into evidence so I guess so just to clarify.

17 THE COURT: Sir?

18 MR. MALDONADO: Yeah, just to clarify that that 1 through
19 8 has been admitted into evidence.

20 THE COURT: Any objection to 1 through 8?

21 MS. HAHN: No, Your Honor.

22 MR. MILLER: None.

23 THE COURT: All right. State's 1 through 8's in evidence
24 without objection.

25 (State's Exhibit Nos. 1 through 8, photographs, admitted

DONALD WOFFORD COX - DIRECT EXAMINATION BY MR. MALDONADO

1 into evidence.)

2 THE COURT: And I think the other, the other issue of
3 course is "they" who not refer to any particular individual
4 either, Mr. Miller.

5 MR. MILLER: Correct, Your Honor, but ---

6 THE COURT: You know, I assume the vehicle is not remote,
7 it's not moving on its own so if he sees it in different
8 stages movement, someone's drivin' it. It's not referring to
9 any particular video. He's not here to the identification you
10 understand.

11 MR. MILLER: I I I understand, Your Honor. Okay. Thank
12 you.

13 THE COURT: All right. Yes, sir. All right. You may
14 continue, Mr. Maldonado.

15 MR. MALDONADO: Thank you.

16 BY MR. MALDONADO:

17 Q. You didn't -- you don't know who's in that car or ---

18 A. I do not know the people at all.

19 Q. Okay. But that was the the car that was outside the
20 store at the time of the incident, right?

21 A. Yes, sir, it was.

22 Q. No further questions. Please answer any questions the
23 defense may have.

24 THE COURT: Thank you, Mr. Maldonado. Ms. Ms. Hahn?

25 MS. HAHN: Thank you, Your Honor.

DONALD WOFFORD COX - CROSS-EXAMINATION BY MS. HAHN

1 THE COURT: Can you cut that TV off, Mr. ---

2 MR. MALDONADO: Yes. I don't ---

3 THE COURT: --- TV.

4 MR. MALDONADO: Yes. Yes, Your Honor.

5 THE COURT: Thank you.

6 CROSS-EXAMINATION BY MS. HAHN:

7 Q. Hello, Mr. Cox.

8 A. Hello.

9 Q. Were your stores phone lin -- lines damaged in any way
10 during this incident?

11 A. Phone lines?

12 Q. Yes.

13 A. No, ma'am.

14 Q. Okay. And when you're looking at those photographs are
15 you able to see any kind of license plate on the SUV-type
16 vehicle that's depicted?

17 A. No, ma'am.

18 MS. HAHN: Thank you, Your Honor. No further questions.

19 THE COURT: Thank you, Ms. Hahn. Mr. Miller?

20 MR. MILLER: I don't have any questions, Your Honor.

21 THE COURT: Thank you very much. Redirect,

22 Mr. Maldonado?

23 MR. MALDONADO: No, Your Honor.

24 THE COURT: Thank you, Mr. Cox. You may step down.

25 (Whereupon, the defendant left the stand.)

MOTIONS AND MATTERS

1 MR. MALDONADO: Can Mr. Cox be excused?

2 THE COURT: Any objection to Mr. Cox being excused?

3 MS. HAHN: No, Your Honor.

4 MR. MILLER: No. None.

5 THE COURT: Thank you. Thank you very much for being
6 with us, Mr. Cox, you're excused. All right. I think we're
7 at a point now we'll take our lunch and recess. One thing I
8 don't know where my manners have been today I neglected to
9 introduce this (indicating) is my law clerk to my right, he
10 wasn't with us yesterday. I apologize that I hadn't
11 introduced him earlier. I seem to introduce everybody else in
12 the courtroom on Monday so you'll be a little bit more
13 comfortable as you've done for me so and this is Ryan Holt.
14 He's been my law clerk since August of '08 -- excuse me, '09.
15 I guess it seems longer than it's really been Mr. Holt. Our
16 clerk's usually stay with us about a year and he's a graduate
17 of the University of South Carolina and a member of the South
18 Carolina Bar so I guess he's my lawyer as opposed to my law
19 clerk. We're gonna take our lunch and recess. Please
20 remember as I told you during this recess you're not to
21 discuss this case with anyone, that includes your lunch mates,
22 fellow jurors, family, friends or anyone else. If anyone
23 tries to talk with you about the case please let me know
24 immediately. Do not read, watch, listen to any news reports
25 about the trial should there be any. Please remember, and

MOTIONS AND MATTERS

1 ya'll will be able to repeat this back to me before the end of
2 the week I'm sure, that although you may have your computer or
3 cellular phone or other electronic device with you during your
4 recess you may not access any information about any party,
5 witness, attorney or court officer or any news accounts about
6 the case or any information included through juror research on
7 any topic raised or testimony offered by any witness, or any
8 information collected through juror research on any other
9 topic that you might think would be helpful in deciding the
10 case. In other words, don't do any independent investigation,
11 don't do any investigation on the internet or anything like
12 that. Remember to keep an open mind about the case and do not
13 begin your deliberations until I instruct you to do so. I
14 would ask you to please be back in your jury room at well I'll
15 say 2:30. If you'll please be back promptly at 2:30, we'll
16 begin thereafter. Thank you very much. Leave your notes
17 upside down on your chair, please. The clerk's office will
18 secure them through your recess. Make sure your juror
19 number's on your notes and if you would please be back
20 promptly at 2:30. I hope ya'll have a pleasant lunch. Thank
21 you very much.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: Anything before we take our lunch and recess
25 from the State?

MOTIONS AND MATTERS

1 MR. MALDONADO: None that I can think of right now, Your
2 Honor.

3 THE COURT: Thank you. From the defendant Capers?

4 MS. HAHN: No, Your Honor.

5 THE COURT: Defendant Evans?

6 MR. MILLER: No, Your Honor.

7 THE COURT: All right. We'll be in recess till 2:30 and,
8 Sheriff, both of the defendants are now in custody of the
9 Lexington County Sheriff's Department. Thank you very much.
10 Promptly at 2:30.

11 (Whereupon, a recess was taken.)

12 THE COURT: All right. Now tell, me tell me, madam
13 clerk, the the protocol for juror wearing buttons. Tell me,
14 tell me what ---

15 THE CLERK: Well they're supposed to be wearing their
16 buttons, you know, to and from court so people would recognize
17 they're jurors, um, ---

18 THE COURT: So they're supposed to wear 'em when they ---

19 THE CLERK: When they go to lunch.

20 THE COURT: --- when they go to lunch, get outta the
21 parking lot and ---

22 THE CLERK: Right.

23 THE COURT: And there are some that have been reported
24 that were not wearing the button?

25 THE CLERK: It was reported to me when I went down when

1 we broke for lunch that another clerk of court employee was on
2 the elevator and wanted to know did the criminal jurors not
3 have to wear their buttons because the three that she was with
4 took their buttons off and put 'em in their pockets.

5 THE COURT: And that and that's a credible source?

6 THE CLERK: Oh, yes, sir, most definitely. She's been
7 here, she's been here longer than I have.

8 THE COURT: I'll remind 'em. Thank you. Anything before
9 we bring in our jury, Mr. Maldonado?

10 MR. MALDONADO: Yes, two brief ---

11 THE COURT: All right.

12 MR. MALDONADO: --- things. One, I just wanna bring to
13 Your Honor's attention. Frederick Demond Neal we had him
14 under subpoena, outta state subpoena, Your Honor the order.
15 Detective John Dixon out of the the Mecklenburg DA's office
16 served it. He is not outside. He was told to be here at two
17 o'clock. I just wanted to bring that to, Your Honor, that
18 I've never dealt with it, missing witness.

19 THE COURT: I've never, I've never dealt with it quite
20 frankly, Mr. Maldonado, where a witness failed to appear on an
21 out of state subpoena when they had been properly ordered to
22 do so.

23 MR. MALDONADO: Yes, Your Honor.

24 THE COURT: If you'll look up, at the appropriate time,
25 look up the law. I don't know what hoops you may have to go

MOTIONS AND MATTERS

1 through to move for a bench warrant here and if that'd be
2 valid in Mecklenburg County or not. I I don't know those
3 answers but I'll be glad to try to learn 'em and, uh, ---

4 MR. MALDONADO: I just wanted to bring that to your
5 attention in case, you know, when we get to the end of the day
6 that we're still dealing with I'll I'll try to continue to
7 call his number but he's not responding.

8 THE COURT: All right. Well you know people can get lost
9 in this courthouse too.

10 MR. MALDONADO: Absolutely. Yeah, that's ---

11 THE COURT: He could be on another floor. There's a -- I
12 walked up and there's a quite a number of individuals on the
13 second floor. There's not a lot on the third floor right now;
14 I'm not sure what time they're starting back. You may,
15 Sheriff, you -- if you would call his name or get someone to
16 maybe call his name on each floor. It's Frederick Neal?

17 MR. MALDONADO: Yes, Your Honor.

18 THE COURT: N-E-A-L?

19 MR. MALDONADO: N-E-A-L.

20 THE COURT: Is he a Caucasian or African-American?

21 MR. MALDONADO: I believe he's an African-American. I
22 haven't met him ---

23 THE COURT: African-American? Sheriff, would you do
24 that?

25 THE POLICE OFFICER: Take care of it, sir.

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1 THE COURT: If you'll call on all the floors and see if
2 we can locate him.

3 MR. MALDONADO: He is from Charlotte and and he said he
4 could find the courthouse but of course, you know, that is ---

5 THE COURT: Of course, Ms. Hahn, I recall a case that she
6 and Mr. Buchanan tried where they had the coach comin' down
7 from Asheville I think and he got lost after he got into town
8 and he was a little bit late himself, wasn't he, Ms. Hahn?

9 MS. HAHN: Yes, Your Honor.

10 THE COURT: I don't think he was under subpoena or at
11 least I don't recall if he was under an out-of-state subpoena
12 but he he just got lost in the traffic I guess so he
13 couldn't ---

14 MR. MALDONADO: Could be. Yes, and, Your Honor, I just
15 wanted to make sure.

16 THE COURT: All right. Is there another matter?

17 MR. MALDONADO: Yeah, briefly the Rosa Lugo we don't need
18 to do an an out of court hearing. She's not gonna go into a
19 ID. She's just gonna talk about meeting the the car and some
20 individuals that she can't really identify, ---

21 THE COURT: All right.

22 MR. MALDONADO: --- took down the license plate tag kinda
23 thing.

24 THE COURT: All right. All right. Thank you,
25 Mr. Maldonado. Anything from the defendant Mr. Capers before

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1 we begin, Ms. Hahn?

2 MS. HAHN: No, Your Honor.

3 THE COURT: Mr. Edwards [sic], Mr. Miller?

4 MR. MILLER: No, sir.

5 THE COURT: All right. If you'll bring us our jury,
6 please.

7 (The following takes place in the presence of the jury.)

8 THE COURT: Good afternoon, ladies and gentlemen. I hope
9 you had a -- ya'll had a pleasant lunch. It's actually pretty
10 nice outside today. Maybe you all went for a walk. Just just
11 as a reminder please remember to wear your jury buttons when
12 you're around the grounds of the courthouse, out in the
13 parking lot or in your comings and goings if you would do that
14 for us please so you can be easily identifiable as a sitting
15 juror in the case I would appreciate that. I understand one
16 young lady needs needs to leave by 5:30. All right. I think
17 there's another commitment whereby we may quit a little
18 earlier today quite frankly about 4:15. That should give
19 approximately appropriate amount of time. If ya'll would plan
20 accordingly, we'll take about a ten minute recess sometime in
21 the afternoon but I know one of the other parties has a long
22 standing prior commitment that I'd like to make sure they make
23 but that won't, that won't be a problem. All right. With
24 that being said, Mr. Underwood, you may call your next
25 witness.

1 MR. UNDERWOOD: Thank you, Your Honor.

2 THE BAILIFF: Notes. Those notes.

3 THE COURT: Notes?

4 THE CLERK: Right here.

5 THE BAILIFF: Right here.

6 THE COURT: Oh, there they are.

7 THE BAILIFF: Excuse me. I'm sorry.

8 THE COURT: Thank you. Thank you for reminding me of
9 that.

10 (Whereupon, the notebooks were distributed to the jury.)

11 (Whereupon, a discussion was held off the record.)

12 THE COURT: Yes, sir, Mr. Underwood, you may call your
13 next witness.

14 MR. UNDERWOOD: Thank you, Your Honor. Your Honor, the
15 State calls Laura Gould.

16 THE COURT: All right. Yes, ma'am, if you'll come around
17 for us please and be sworn.

18 LAURA SUZANNE GRIMES-GOULD, having
19 been first duly sworn, testified as follows:

20 THE CLERK: Have a seat please, ma'am. Once you're
21 seated state your full name on the record spelling your last.

22 MS. GRIMES-GOULD: My name is Laura Suzanne Grimes-Gould,
23 G-R-I-M-E-S G-O-U-L-D.

24 DIRECT EXAMINATION BY MR. UNDERWOOD:

25 Q. Good afternoon. Could ya please tell the jury what your

LAURA GRIMES-GOULD - DIRECT EXAMINATION BY MR. UNDERWOOD

1 profession is.

2 A. Yes. I'm currently a forensic death investigator with
3 the Lexington County Coroner's Office.

4 Q. Okay. And what other agencies have you worked for?

5 A. Before that I lived in Virginia and worked for the
6 Rappahannock Regional Jail Community Corrections Center and
7 before that I was employed with Lexington County the sheriff's
8 department for approximately ten years.

9 Q. And what did you do at the Lexington County Sheriff's
10 Department?

11 A. My first five years at the sheriff's department I worked
12 as a sheriff's deputy and as a school resource officer. The
13 last five years of my employment at the sheriff's department I
14 worked as a crime scene investigator.

15 Q. And as a crime scene investigator what kind of training
16 did you have?

17 A. Yes, sir. I hold a Bachelor's of Science in criminal
18 justice from Kalplan University. I also attended a 40-hour
19 internship with the South Carolina Law Enforcement Division, a
20 60-hour work on-the-job training through the sheriff's
21 department in their crime scene unit. I've gone to two
22 separate latent print schools one hosted by the Criminal
23 Justice Academy and one hosted by Sirchie which is located in
24 Raleigh, North Carolina as well as several forensic arson
25 investigation schools, blood stain analy -- analysis schools

1 and various other schools related to that field.

2 Q. Okay. And just to be clear at what point in time with
3 Lexington County were you working as a forensics examiner?

4 A. I was working as a crime scene investigator from 2003 to
5 February of 2008.

6 Q. Okay. On the date of July 26th 2007, did you respond to
7 any crime scenes?

8 A. Yes. I responded to 125 Rolling Meadows Lane, West
9 Columbia in Lexington County.

10 Q. And what was that location?

11 A. That location was a gas station which is off of Exit 119
12 on I-20 like you're going -- excuse me Exit 119 of I-26 like
13 you're going to Charleston.

14 Q. And when did you arrive?

15 A. I arrived, I got the call at 2:00 in the morning and I
16 arrived around 2:30 that morning.

17 Q. Okay. And what did you do upon arrival?

18 A. When I arrived at the crime scene, I met with the
19 deputies on scene. They gave me a prief -- brief summary of
20 what they had done thus far and from there I did a walk-
21 through through the crime scene, was able to vi -- look at the
22 video that recorded the incident and I worked from there.

23 Q. Now when you say you did a "walk through," what does that
24 entail?

25 A. What a walk through entails is basically I get a feel of

1 a layout of the residence or business that I've responded to,
2 look for any apparent evidence at that moment in time and
3 kinda get a game plan of what I need to do in order to
4 accomplish the task of processing the crime scene.

5 Q. Okay. And after you did your walk-through then what did
6 you do?

7 A. I asked some questions to the clerk that was there during
8 the incident. I spoke with them and we were also able to
9 preview the video that caught the incident.

10 Q. Okay. Did you examine any surfaces in the crime scene?

11 A. Yes. Generally what I do is with a convenience store of
12 this manner I dust for latent prints of the in -- the door,
13 the entry door, the countertop area and the cash register, the
14 cash drawers if they're there.

15 Q. Okay. And what exactly are latent prints?

16 A. Latent prints are what our fingers le -- leave behind on
17 a surface. It's -- they're made up of valleys and furrows and
18 it's mixture of sweat and oils that our body produces and when
19 we touch somethin' it can leave a latent print.

20 Q. Okay. Were you able to find any useful latent prints?

21 A. At that time processing, no I wasn't.

22 Q. Is that common or uncommon?

23 A. That's common. Depends on if the person sweats, depends
24 on what typha oil they have in their body that produces on
25 their fingertips, it depends on if the person had gloves on

1 at the time of the incident that they won't leave any latent
2 prints. A lot of the times we find smudge marks of where
3 someone has touched somethin' and when they did they take
4 their hand to kinda do on a swiping motion.

5 Q. And is a smudge mark useful?

6 A. No, a smudge mark is not useful. If you, if you look at
7 your fingers, you can probly look at them now or later on and
8 even use a magnifying glass, you can see where latent prints
9 are. In those latent prints, there's ridge endings and
10 certain characteristics all of us have on our latent prints
11 that are not alike.

12 Q. In addition to checking the surfaces of the crime scene,
13 did you collect any physical evidence?

14 A. Yes, sir, I did. I collected a Exxon holiday gift card
15 and one roll of 50 cents pennies.

16 Q. And did you find anything on the items collected?

17 A. I collected those items and processed them later on at
18 our lab at the sheriff's department. During that process I
19 did not process or develop any type of latent prints of
20 value.

21 Q. And as a -- at a gas station such as this crime scene,
22 how many fingerprints would you expect to find?

23 A. Oh, dozens. And if you think about how many people enter
24 and exit a gas station on a daily basis or in it -- and even
25 in a 8-hour basis that's a lot of people.

LAURA GRIMES-GOULD - CROSS-EXAMINATION BY MS. HAHN

1 Q. So how do you determine on certain services such as a
2 door, for example, useful prints versus not useful prints?

3 A. Generally, I would look to see if it's a clear print. On
4 the metal bar of a door it's very hard to develop latent
5 prints just with powder or black dust, black powder that we
6 use to develop it.

7 Q. Please answer any questions opposing counsel may have.

8 THE COURT: Thank you, Mr. Underwood. Ms. Hahn?

9 MS. HAHN: Thank you, Your Honor.

10 CROSS-EXAMINATION BY MS. HAHN:

11 Q. Hello, Ms. Grimes-Gould.

12 A. Hello. How are you?

13 Q. How are you?

14 A. Good. Thank you.

15 Q. Just a couple questions.

16 A. Okay.

17 Q. So you you said that you processed the scene and you
18 weren't able to find any latent prints from the crime scene.

19 A. Yes, ma'am, that is correct.

20 Q. Okay. And then did you find anything at the scene that
21 you could identify to a particular person like, you know,
22 somebody dropped their wallet or anything like that?

23 A. No, ma'am, I did not.

24 Q. Okay. Thank you. No further questions.

25 THE COURT: Thank you, Ms. Hahn. Mr. Miller?

1 MR. MILLER: Thank you, Your Honor.

2 CROSS-EXAMINATION BY MR. MILLER:

3 Q. Ms. Gould, Mrs. Gould, excuse me.

4 A. Yes, sir.

5 Q. You said you were able to view the video.

6 A. Yes, sir.

7 Q. Okay. Did you, did you notice any of the perpetrators
8 wearing any gloves in the video?

9 A. Not when I looked at the video, no.

10 Q. Okay. So that wouldn't be a cause of why you didn't find
11 latent prints.

12 A. Not necessarily.

13 Q. Okay. And from from all of your analysis were you able
14 to ID any of the perpetrators?

15 A. No, sir, I was not able to develop any latent prints that
16 could be used for further examination.

17 Q. Okay. Thank you. No further questions.

18 THE COURT: Redirect, Mr. Underwood?

19 MR. UNDERWOOD: Nothing further, Your Honor. We ask the
20 witness be excused.

21 THE COURT: Thank you very much. Any objections to
22 Ms. Gould being excused?

23 MS. HAHN: No, Your Honor.

24 THE COURT: Mr. Miller?

25 MR. MILLER: No objection ---

MICHAEL RHANEY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 THE COURT: Thank you very much. Thank you for being
2 with us today. You're now excused.

3 (Whereupon, the witness left the stand.)

4 THE COURT: All right. You may call your next witness.

5 MR. UNDERWOOD: Your Honor, at this time the State would
6 call Michael Rhaney.

7 MICHAEL RHANEY, having been first
8 duly sworn, testified as follows:

9 THE CLERK: Have a seat please, sir. Speak up loud and
10 clear statin' your name, spelling your last on the record
11 please.

12 MR. RHANEY: Yes my name is Michael Rhaney, R-H-A-N-E-Y.

13 DIRECT EXAMINATION BY MR. UNDERWOOD:

14 Q. Good afternoon, Mr. Rhaney. Could you please tell the
15 jury where you live.

16 A. Charleston Highway which is Rolling Meadows. It's a
17 mobile home park.

18 Q. Okay. And where is that mobile home park in relation to
19 the Pitt Stop gas station?

20 A. I would say no more than a mile down the road.

21 MR. UNDERWOOD: Your Honor, may I approach the witness?

22 THE COURT: Yes, sir.

23 MR. UNDERWOOD: Your Honor, may the witness step down
24 just to demonstrate to the jury on this map?

25 THE COURT: Yes, sir. Mr. Rhaney if you would please

MICHAEL RHANEY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 keep your voice up when you're away from the microphone.

2 MR. RHANEY: Okay.

3 THE COURT: Speak clearly, distinctly and slowly for us.

4 Thank you. You may step down.

5 (Whereupon, the witness left the stand.)

6 BY MR. UNDERWOOD:

7 Q. All right. Mr. Rhane, this is State's Exhibit No. 51.

8 If you could please show the jury where you live on this map.

9 A. Right here (indicating).

10 THE COURT: Is everybody able to see that?

11 (No verbal response.)

12 THE COURT: All right. Thank you.

13 BY MR. UNDERWOOD:

14 Q. And and again, where is the Pitt Stop gas station in
15 relation to that?

16 A. There it is right here (indicating).

17 Q. Thank you. Now, Mr. Rhane, have you ever been employed
18 at that gas station?

19 A. Yes, sir.

20 Q. When were you employed there?

21 A. Let's see, I was -- I believe it was like I know it was
22 only like a couple months but I know I was up there, you know,
23 during that time that that I worked.

24 Q. Okay. So you were an employee there at the time frame
25 when the ro --this robbery took place?

1 A. Yes.

2 Q. Okay. Were you working on July 25th the day leading up
3 to the robbery?

4 A. I believe I was.

5 Q. And what what shift did you work?

6 A. It was three to eleven.

7 Q. Okay. As you're an employee there, did you ever have --
8 after the robbery had taken place did you meet with Detective
9 Prestigacombo of the Lexington County Sheriff's Office?

10 A. Yes, sir.

11 Q. When did you first meet with him?

12 A. The day -- well the day after when he came to the store
13 with the pictures.

14 Q. And what was the -- so what was the nature of that
15 meeting?

16 A. Basically just to see if anyone, you know, knew who did
17 anything.

18 MS. HAHN: Objection, Your Honor.

19 THE COURT: All right. And the basis of your objection?

20 MS. HAHN: I would simply renew my earlier objections to
21 this witness's testimony about the identification from his
22 opinion testimony of the video and the photographs. I believe
23 Your Honor has ruled on both of those issues.

24 THE COURT: All right. Thank you. Thank you. I would
25 overrule your objections at this time.

MICHAEL RHANEY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 BY MR. UNDERWOOD:

2 Q. So, Mr. Rhaney, again, what was the the purpose of that
3 meeting?

4 A. Basically, like I said just see if I knew anyone.

5 Q. And did you know anyone from viewing those pictures?

6 A. Yes, /sir, I had a pretty good, pretty good idea.

7 Q. Okay. And how did you know those people that you thought
8 you knew?

9 A. Well basically it was like, you know, just by them being
10 in town and you know.

11 Q. Well let let me rephrase the question. What is the
12 relationship that led you to know who they were?

13 MR. MILLER: Your Honor, at this time I just
14 contemporaneously renew my objection.

15 THE COURT: I'm sorry?

16 MR. MILLER: I said I will contemporaneously renew my
17 objection as well on behalf of Mr. Evans at this time ---

18 THE COURT: All right. Uh, ---

19 MR. MILLER: --- specifically with regard to his opinion
20 testimony regarding the photographs.

21 THE COURT: He hasn't given his opinion. That question
22 was relationship but your your objection is noted and my
23 previous ruling will stand. Thank you. You may proceed,
24 uh, ---

25 MR. UNDERWOOD: Thank you, Your Honor.

MICHAEL RHANEY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 THE COURT: --- Underwood.

2 BY MR. UNDERWOOD:

3 Q. Mr. Rhaney, what was the relationship that led you to
4 recognize the people in those pictures?

5 A. Well like I said my dealings with their sister.

6 Q. Okay. And who is, who is their sister?

7 A. Glynessa Evans.

8 Q. And what's your relationship to her?

9 A. It's my fiancée.

10 Q. Okay. So the relationship is through her then?

11 A. Yes.

12 Q. Okay. And what is the relationship that you have with
13 the defendants -- well with the people you saw in those
14 pictures?

15 A. Basically, I mean, I only saw them, you know, when I went
16 to go visit her like I said earlier.

17 Q. Okay. Now in in those pictures who is it that you
18 recognized?

19 A. Let's see, well by their clothing I recognized John, Boyd
20 and Anton.

21 Q. Did you recognize anyone else?

22 A. There was only four.

23 Q. Okay 'cause I think I heard -- I only heard three names.
24 I'm sorry. Could you repeat the ---

25 A. Oh, John, John, Boyd, Lywone and Ton.

1 Q. Okay. And Boyd and Lywone do you re -- see them in the
2 courtroom today?

3 A. Yes, sir.

4 Q. Could you please point them out for the jury.

5 A. That's Boyd right there (indicating) and that's Lywone
6 (indicating).

7 MR. UNDERWOOD: Okay. Your Honor, would the record
8 reflect that he pointed to the defendants.

9 THE COURT: Tell tell me who you're pointing to. Tell me
10 who Boyd is, uh, ---

11 MR. RHANEY: The the man right here (indicating) in the
12 pinstriped suit.

13 THE COURT: All right with the -- what kind of tie?

14 MR. RHANEY: The red tie.

15 THE COURT: All right. And that's Boyd?

16 MR. RHANEY: Yes.

17 THE COURT: And the other individual you identified.

18 MR. RHANEY: Lywone. Yes, sir.

19 THE COURT: And whi -- who -- which one's Lywone?

20 MR. RHANEY: The one right there (indicating) with the
21 blue blazer.

22 THE COURT: Where is he sitting at the table?

23 MR. RHANEY: On the outside right here (indicating).

24 THE COURT: All right. The record would so reflect he's
25 identified Boyd and Lywone.

MICHAEL RHANEY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 BY MR. UNDERWOOD:

2 Q. So again, Mr. Rhaney, after viewing the pictures how were
3 you able to recognize those individuals?

4 A. Could you repeat the question again.

5 Q. How -- explicitly, how were you able to recognize those
6 individuals Mr. Evans and Mr. Capers?

7 A. By voice ---

8 Q. Uh, ---

9 A. --- and what they had on.

10 Q. Okay. So now you said "by voice." Is that from -- where
11 where did you hear their voices to make that identification?

12 A. You know basically like when you're -- at -- during the
13 time like when I was at the house or whatever, you know, like
14 I said I would hear them talk or whatever.

15 Q. So were were you able to also view the videotape as well
16 as the pictures?

17 A. Yes.

18 Q. Okay. Now, Mr. Rhaney, earlier that day did you have any
19 encounters with the defendants?

20 A. That day before before I went to work yes, sir.

21 Q. Could you please tell the jury about that.

22 A. Basically, I said I was on my way to work, uh, must have
23 been like quarter to three, somethin' like that I say about
24 yeah, about 2:45 and I was on my way to work and as I was
25 leaving out of my my residence, you know, you have to make a

MICHAEL RHANEY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 left and then there's a road that comes up, you know, almost
2 parallel to it and I noticed like, you know, a blue SUV, you
3 know, approachin' the stop sign but, you know, it was like it
4 didn't stop, it didn't slow all the way down so I was like
5 well, and like I said as they were approaching, you know, I
6 immediately focused on the driver's face which, you know, was
7 Boyd and like I said I went back to the house 'cause I forgot
8 my name tag so I turned around and I got to the house. I was
9 like, You know, you know, your brother does he have a license?

10 She was like, Not that I know of.

11 So I was like, Well he almost hit me, you know. And they
12 just, uh, ---

13 Q. Okay. So now, Mr. Rhaney, so you knew him well enough to
14 know that he didn't have a driver's license?

15 A. Yes, sir.

16 Q. And you were able ---

17 A. Well ---

18 Q. And you were able to to see him as he was driving?

19 A. Yes.

20 Q. Okay. And again, what was the vehicle that you saw?

21 A. It's a blue Ford Explorer.

22 Q. Were there any other colors on the vehicle?

23 A. It had like a kind of like tan over the wheel rail tan
24 color.

25 MR. UNDERWOOD: Your Honor may, I approach the witness?

MICHAEL RHANEY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 THE COURT: Yes, sir.

2 MR. UNDERWOOD: Court's indulgence, Your Honor?

3 THE COURT: Yes, sir. Certainly.

4 BY MR. UNDERWOOD:

5 Q. Sir, I'm handing you what has been admitted as State's
6 Exhibits 1 through 8. Could you please examine those
7 photographs for me.

8 (Whereupon, the witness examined the exhibits.)

9 Now, Mr. Rhaney, how do those photographs compare to the
10 vehicle that you saw Boyd Evans driving that day?

11 A. It's the exact same ---

12 MS. HAHN: Objection.

13 MR. RHANEY: --- description.

14 THE COURT: All right. What's the basis of your
15 objection?

16 MS. HAHN: I don't think he's laid the foundation that
17 the vehicle he sees in that picture is the same one he saw
18 earlier.

19 THE COURT: I think that goes to the weight not the
20 admissibility.

21 MS. HAHN: Yes, Your Honor.

22 THE COURT: Did you also have an objection, Mr. Miller?

23 MR. MILLER: I would second that objection, Your Honor.

24 THE COURT: Excuse me?

25 MR. MILLER: I said I I concur with her objection.

MICHAEL RHANEY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 THE COURT: All right. Ladies and gentlemen of the jury
2 panel, a witness, a lay witness may give opinion testimony.
3 If a witness is not testifying as an expert, witness testimony
4 in the form of opinion or an inference is limited to those
5 opinions and inferences which are rationally based on the
6 perception of a witness or are helpful to a clear
7 understanding of a witness's testimony or the determination of
8 a fact at issue and do not require special knowledge, skill,
9 experience or training. The ultimate issue though of
10 identification of an individual or individuals or
11 identification of a vehicle is for you to determine based on
12 your determination of the believability or the credibility of
13 the particular witness and the witness's perception. Thank
14 you. You may proceed, Mr. Underwood.

15 MR. UNDERWOOD: Thank you, Your Honor.

16 BY MR. UNDERWOOD:

17 Q. And, Mr. Rhaney, just to to be clear how did that vehicle
18 compare to the vehicle that you saw Boyd Evans driving?

19 A. It's the exact same one.

20 Q. And, Mr. Rhaney, I'm also gonna hand you now Exhibits
21 Exhibits 9 through 33, if you could take a few moments and
22 review those photographs, please.

23 (Whereupon, the witness examined the exhibits.)

24 Now now, Mr. Rhaney, after looking through those pictures
25 you stated that by looking at those photos and the video that

MICHAEL RHANEY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 those photos came from you were able to identify both the
2 defendants. Could you please identify out of those pictures
3 some of the photographs you used to make that identification
4 first for Mr. Evans, Boyd Evans.

5 A. Okay. You said some?

6 Q. Could -- can you look on the back and tell me what the
7 number is.

8 A. State's Exhibit 12.

9 Q. Okay. And what about that exhibit helps you to make that
10 identification?

11 A. Well, like I said the the clothes that they had on early
12 that day.

13 Q. And how does that clothing compare?

14 A. It's the exact same description I gave you earlier.

15 Q. And what -- any other photographs?

16 A. Yes, sir. Number 28.

17 Q. And what about that exhibit?

18 A. The clothes, yes, sir, they are still the same.

19 Q. And how do the skin tones, body build how do those
20 different characteristics compare?

21 A. By the the shades of their skin.

22 Q. How does the shade of the skin of the people in those
23 pictures compare to the defendants'?

24 A. Well, I mean, just lookin' at, you know, Boyd he's a
25 little bit dark -- darker than than John and Lywone.

MICHAEL RHANEY - DIRECT EXAMINATION BY MR. UNDERWOOD

1 Q. So so basically the -- you're saying that the skin color,
2 body shape looks like the defendant?

3 A. Yes.

4 Q. Okay. And which defendant is that you're talkin' about
5 right now?

6 A. You said Boyd Evans right?

7 Q. Yes. Are there any photographs in there that aid you in
8 identifying Lywone Capers?

9 A. Yes, sir. Let's see, that's No. 13.

10 Q. Okay. And what about Exhibit No. 13 aids you in
11 identifying Mr. Capers?

12 A. Like I said earlier the clothing are the same and I said
13 their complexion.

14 Q. Okay. And what about the body build, body type?

15 A. It's the same.

16 Q. And you say that you were able to watch the video?

17 A. Yes, sir.

18 Q. Okay. And in that video, which the jury has seen several
19 times already, how did the characteristics of their their
20 movements and styles compare to how you know them?

21 A. Well, I mean, just like I said, you know, when when I saw
22 them and just, you know, being around 'em basically.

23 Q. And are you sure that that's who was in those pictures?

24 A. Yes, sir.

25 Q. Now, Mr. Rhane, say you have a family relationship with

MICHAEL RHANEY - CROSS-EXAMINATION BY MS. HAHN

1 these two defendants through is it your fiancée you said?

2 A. Yes.

3 Q. If that is the case, why did you come forward to law
4 enforcement about identifying them in this crime?

5 A. Well, I mean, actually, I mean, I I would have basically,
6 you know, I'm an employee of the store and if I ever came
7 forward to say anything or if I well, you know, being my
8 choice to resign and, you know, I just basically thought that
9 later on, you know it still would come back and haunt me
10 anyway so that's why I just, you know, decided to tell the
11 truth.

12 Q. Please answer any questions opposing counsel might have.

13 A. Okay.

14 THE COURT: Thank you, Mr. Underwood. Ms. Hahn.

15 MS. HAHN: Thank you, Your Honor.

16 CROSS-EXAMINATION BY MS. HAHN:

17 Q. Good afternoon, Mr. Rhaney.

18 A. Good afternoon.

19 Q. Now I believe you testified that you know Lywone Capers
20 because he and Boyd are your fiancée's brothers, is that
21 correct?

22 A. Well Boyd is her brother.

23 Q. Okay. What about Lywone?

24 A. Cousin.

25 Q. Okay. And what occasions in the past have you been

MICHAEL RHANEY - CROSS-EXAMINATION BY MS. HAHN

1 around Lywone specifically?

2 A. Like I said the times when they came down, you know,
3 visitin' family.

4 Q. Okay. How many times were those?

5 A. It was several times.

6 Q. When was that?

7 A. Right around the time that I met her, Glynessa.

8 Q. And what month or year was that?

9 A. This was in August.

10 Q. Of what year?

11 A. '05.

12 Q. Okay. So you saw them some in August of '05. How many
13 times did you see 'em then?

14 A. Like I said earlier, you know, whenever I was off which
15 occasionally is sometimes maybe every other week or, you know,
16 just whenever I was off.

17 Q. And that went on until when?

18 A. Up, like I said up until September.

19 Q. Okay. So you saw them every other week from August until
20 September of 2005?

21 A. Yes.

22 Q. Okay. And then have you seen Lywone Capers on other
23 occasions?

24 A. Only like I said the last time is when I -- we moved them
25 to Raleigh.

MICHAEL RHANEY - CROSS-EXAMINATION BY MS. HAHN

1 Q. I believe you testified at an earlier hearing that you
2 helped them move ---

3 A. Yes.

4 Q. --- but you weren't sure whether you'd seen Lywone or
5 not, is that correct?

6 A. Yes. Like I said the kids were with me and some ha --
7 some people was in the U-Haul.

8 Q. Okay. So you may have seen him then, you may not have
9 seen him then, is that right?

10 A. Yes.

11 Q. Okay. And so then skippin' ahead until July 25th of 2007
12 my understanding is that was the day before the robbery, is
13 that right?

14 A. Yes.

15 Q. Okay. And on that day you said you were goin' to work
16 and you saw the car and you'd forgotten your your name tag and
17 then came back to your house, ---

18 A. Yes.

19 Q. --- right? Okay. And you said that during that time you
20 saw Lywone again, is that right?

21 A. Yes.

22 Q. About how long did you see him during that time period?

23 A. Like I say they were at the house that was probly like
24 maybe five minutes or so.

25 Q. Okay 'cause you had to turn out and go back to work, is

1 that right, ---

2 A. Yes.

3 Q. --- and be there at three?

4 A. Yes.

5 Q. Okay. And what did he have on when you saw him?

6 A. Then it was like I remember dark color jeans.

7 Q. Okay. So you remember the dark color jeans and that --
8 that's all that you remember that he had on.

9 A. And the t-shirt.

10 Q. Okay. I think you testified earlier in a prior hearing
11 that he had on either black pants or blue pants, is that
12 right?

13 A. Yes, ma'am.

14 Q. And and that's what you remembered?

15 A. Yes.

16 Q. You're remembering something differently now?

17 A. It was dark jeans.

18 Q. Okay.

19 A. It was either blue or black.

20 Q. And that's all you remember?

21 A. Yes.

22 Q. Okay. Where was he when you saw him?

23 A. They were in the yard.

24 Q. Okay. Where in the yard was he in proximity to the
25 house?

1 A. Well, like I said just standing in the yard from which is
2 distance like from where I'm at to where you're at.

3 Q. Okay. So several feet away ---

4 A. Yes.

5 Q. --- from you and what was he doin'?

6 A. Just talkin'.

7 Q. Who was he talking to?

8 A. Glynnessa.

9 Q. And where was she standing?

10 A. On the porch.

11 Q. Okay. So he's standing in your yard and he's talkin' to
12 Glynnessa who's standin' on the porch, is that right?

13 A. Yes.

14 Q. Okay. I'd like to ask you a few questions about -- well,
15 excuse me. First of all, did you have any conversation with
16 Lywone when he was at your house?

17 A. No, not really.

18 Q. Okay. I'd like to skip ahead to the video that you
19 looked at. Now I think you described Lywone you you said that
20 you recognized him by his build. Can you tell me specifically
21 what about his build that you remember.

22 A. Oh, you mean ---

23 Q. And without ---

24 A. --- as as far as ---

25 Q. --- without looking at the photo ---

1 A. Oh.

2 Q. --- what did you, what did you remember about him?

3 A. Just, I mean, like I said, you know, when I was at the
4 house, you know, a couple times he have his shirt off, stuff
5 like that so.

6 Q. How would you describe his build if you had to describe
7 him to somebody?

8 A. Almost muscular.

9 Q. About how tall is he?

10 A. I say about maybe about 5'8, ---

11 Q. And I notice that ---

12 A. --- 5'9.

13 Q. Excuse me, 5'8 or 5'9?

14 A. Yes, sir.

15 Q. I notice that you're looking in his direction now. Is
16 that your recollection or is that from lookin' at him in the
17 courtroom today?

18 A. Well you can't really judge how tall someone is by them
19 sittin' down.

20 Q. Okay. I'm just wondering -- I'm noticin' that you're
21 lookin' over you're sayin' that you're not noticin' his height
22 from where he's sittin' today, is that right?

23 A. Yeah.

24 Q. Okay. And about how much do you recall that he weighed
25 back then if you had to guess?

MICHAEL RHANEY - CROSS-EXAMINATION BY MS. HAHN

1 A. I'd say about maybe 130 to 140.

2 Q. Okay. All right. I believe that you also said that you
3 recognized his voice. What do you remember Lywone saying on
4 video?

5 A. It was like, "C'mon, son, let's go."

6 Q. Okay. And how did that voice stand out to ya? Was there
7 anything remarkable about it?

8 A. No, it was just different.

9 Q. Okay. All right. And it's my understanding that when
10 the police were investigating this case they came out and
11 talked to you about it, is that right?

12 A. Yes, ma'am.

13 Q. Okay. And during that time you wrote a statement, is
14 that right?

15 A. Yes, ma'am.

16 Q. And in that statement I believe that you referred to a
17 Warren Capers not Lywone, is that correct?

18 A. Yes.

19 Q. Okay. And then I believe that they also showed you a
20 photo and you made some notes on the photo and on the photo
21 that you wrote Laquan Capers.

22 A. Well it was Lywone.

23 Q. How did you spell that?

24 A. L-A-Q-U-A-N.

25 Q. Okay. Which is not his name, is that correct?

MICHAEL RHANEY - CROSS-EXAMINATION BY MS. HAHN

1 A. Yes, that's his name.

2 Q. Okay.

3 A. I might have not spelled it right but that's his name.

4 Q. Okay. Do you know him by Laquan or do you know him by
5 Lywone.

6 A. Lywone, Warren.

7 Q. Okay. Let's go back to the the vehicle. Now I believe
8 that you told the police in the statement that you made when
9 they were investigating the case that that vehicle belonged to
10 Emma Evans, is that correct?

11 A. That's -- I thought it did.

12 Q. So you told the police what you thought was true and you
13 wrote that down and signed it ---

14 A. Yes.

15 Q. --- is that correct?

16 A. Yes.

17 Q. Okay. And when you saw that vehicle on the 25th, did you
18 notice any kind of identifying marks about the vehicle: any
19 scratches or dents or anything like that?

20 A. Not exactly.

21 Q. What does ---

22 A. I ---

23 Q. --- that, what does that mean?

24 A. No.

25 Q. No?

MICHAEL RHANEY - CROSS-EXAMINATION BY MS. HAHN

1 A. I did happen to notice the tag though. They were North
2 Carolina plates.

3 Q. Okay. Now when you looked at the photographs from the
4 surveillance video, there was a vehicle that's a -- an SUV in
5 that photo too and I believe you testified that that's the
6 exact same vehicle that you saw, is ---

7 A. Yes.

8 Q. --- that correct?

9 A. Yes.

10 Q. Would it be more correct to say that that's a vehicle
11 like the one that you saw, the same, the same kind of vehicle
12 perhaps?

13 A. Well that is the same vehicle.

14 Q. How do you know that the vehicle in that video is the
15 same one you saw earlier on the 25th?

16 A. Because, I mean, anybody can just look at the pictures
17 and tell the time frame. I mean, ---

18 Q. Is there anything in particular about that vehicle: any
19 kind of identifying marks or North Carolina plate number or
20 anything that you can recognize on that photograph that tells
21 you that was the exact same vehicle you saw the day before?

22 A. In these photos now?

23 Q. Yes.

24 A. Only other than the the color and the the trim on the
25 wheel rail that's about it basically.

MICHAEL RHANEY - CROSS-EXAMINATION BY MS. HAHN

1 Q. So in other words the vehicle in those photographs is the
2 same color and has the same trim color as the one you saw, is
3 that right?

4 A. Yes.

5 Q. Okay. Now my understanding is that you were an employee
6 of the Pitt Stop Convenience Store, is that correct?

7 A. Yes.

8 Q. All right. And how long had you worked there?

9 A. It might have been two or three months. It wasn't that
10 long.

11 Q. How were things goin' with your job?

12 A. It was okay.

13 Q. Here ---

14 A. I mean, it was -- paid the bills.

15 Q. Did you ever get in trouble while you were workin' there?

16 A. Yes.

17 Q. Did you get arrested for trying to put Greenbax reward
18 points ---

19 A. Yes, ma'am.

20 Q. --- on a card while you were working ---

21 A. Yes.

22 Q. --- there? I believe that at the time ---

23 THE COURT: Those convictions?

24 MS. HAHN: Your Honor, they're not, uh, ---

25 THE COURT: Well step out please, madam forelady, ladies

MOTIONS AND MATTERS

1 and gentlemen.

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: How is the arrest admissible?

5 MS. HAHN: Your Honor, I would argue that it's admissible
6 under Rule 608(c) which addresses someone who has a motive to
7 misrepresent testimony. I think in this case since Mr. Rhaney
8 had just been arrested I think he had a real incentive to
9 provide information that; number one, helped out his employer,
10 but; number two, helped out law enforcement that would have
11 given him some leverage in his own case and he was later
12 enrolled in PTI and I believe successfully completed PTI
13 so ---

14 THE COURT: Is that why he, is that why he was put into
15 PTI because he was of assistance in this case?

16 MR. HAHN: Your Honor, that's my -- I don't, I don't know
17 why he was placed in the PTI. I think that's how his case was
18 resolved but I think when he made this identification that
19 would have given him a reason to wanna help out law
20 enforcement because he knew that he had a pending charge at
21 the time as well as try to help out his own boss. My
22 understanding is that that case came up at the same Pitt Stop
23 where the incident on the 26th occurred.

24 THE COURT: All right. Yes, sir.

25 MR. UNDERWOOD: Your Honor, if I may I believe that the

MOTIONS AND MATTERS

1 incident that Ms. Hahn is referring to happened after the
2 incident that we're having a trial here about today. I don't
3 believe that it was -- well I think that that arrest happened
4 after he was cooperating with law enforcement. I don't
5 believe that it was before which would give any kind of a
6 motive.

7 MS. HAHN: Your Honor, the incident report that I have
8 says that that happened on July 9th 2007 which would have been
9 immediately before this case arose.

10 THE COURT: I don't know. I mean, I think the dots
11 connect up to what Ms. Hahn is saying. I just wanna get it
12 straight in my mind if if that gives him a motive to assist
13 law enforcement to assist his employer to get a favorable
14 result on his prior charge. I I don't know the date. I mean,
15 Ms. Hahn's telling me as an officer of the Court the incident
16 report's July 9th, Ms. Hahn?

17 MS. HAHN: Your Honor, that's what what my copy says if
18 you'd like to review it.

19 MR. MALDONADO: Can I take a look at it?

20 THE COURT: No, I mean, I I trust your word. I I don't
21 have any reason not to.

22 MS. HAHN: Your Honor, I stand corrected. Mr. Maldonado
23 has pointed out that the actual incident date didn't occur
24 until August 1st. It's got a range of dates. Apparently he
25 was not arrested until that date until the third.

MOTIONS AND MATTERS

1 THE COURT: Is there a range of dates from, unless ya'll
2 are tracking, there was Greenbax stamps credited to a card
3 between July 9th and August 1st?

4 MS. HAHN: Yes, Your Honor. It says between July 9th and
5 August 1st the subject added approximately two hundred
6 thousand dollars (\$200,000) worth of points that amounted to
7 seventeen hun -- excuse me, seventy ---

8 THE COURT: Two hundred thousand dollars (\$200,000) worth
9 of Greenback points?

10 MS. HAHN: They say it was only about seventeen hundred
11 dollars (\$1,700) worth of merchandise credit. I don't know
12 how that works out in Greenbax ---

13 THE COURT: I don't either.

14 MS. HAHN: --- but ---

15 THE COURT: So the incident could have been occurring
16 prior to July 26th but when he gave his statement it had been
17 prior to August 1st?

18 MS. HAHN: His statement would have been prior to August
19 1st. My position would be that he knew that there was a
20 substantial likelihood he might need to help out on this
21 case.

22 THE COURT: Well ask him about that. I mean, that
23 that -- that's kind of a big assumption there but you can, you
24 can ask him about that in camera. The other dots seem to
25 connect but quite frankly if it was July 9th I'm having

MICHAEL RHANEY - DIRECT EXAMINATION BY MS. HAHN

1 trouble con -- reconnecting those dots now.

2 DIRECT EXAMINATION BY MS. HAHN:

3 Q. Mr. Rhane, did you between July 9th and August 1st
4 appropriate two hundred thousand dollars (\$200,000) worth of
5 Greenbax points?

6 A. Well all it was was just like, you know, it was a program
7 that was for the store and I was basically like, You purchased
8 merchandise such as --- well basically anything in the store
9 and, you know, a lotta truckers they come in if they don't
10 have their POC card whatever I ask them, you know, well okay
11 and they just they purchase some fuel, you know, and you don't
12 have a PSE card card, you know, what I'm saying to add your
13 points on it so if you don't want 'em can I have 'em. They'd
14 be like, Sure, and you know just ---

15 Q. Did you understand at the time that you weren't supposed
16 to be doin' that?

17 A. Well no one told me that I couldn't do that.

18 Q. Did you have an inkling that that might be against the
19 the store policies?

20 A. No. Like I said, uh, they -- I mean, no one said that,
21 you know, I couldn't do that.

22 MS. HAHN: Your Honor, I don't have any any further
23 questions. I think that answers your question.

24 THE COURT: Do you still wanna offer the testimony?
25 You you ---

MICHAEL RHANEY - DIRECT EXAMINATION BY MS. HAHN

1 MS. HAHN: I think that the weight of -- I think his
2 credibility whether he's telling the truth about whether he
3 thought that okay or not is still something that the jury
4 could consider.

5 MR. MALDONADO: Your Honor, I think we can solve this.

6 THE COURT: All right.

7 MR. UNDERWOOD: Your Honor, we're willing to allow her to
8 go through this line of question especially since what the
9 jury's already heard.

10 THE COURT: Well ya'll didn't object. I I understand ---

11 MR UNDERWOOD: We continually ---

12 THE COURT: --- you now ---

13 MR. UNDERWOOD: --- object now, Your Honor.

14 THE COURT: -- but I'll ---

15 MR. MALDONADO: I mean, now the genie's outta the bottle
16 we're probly gonna have to go into it anyway so we're we're
17 gonna -- we'll let him explain and let her, you
18 know, ---

19 THE COURT: I brought it up because it was an arrest ---

20 MR. MALDONADO: Yes, Your Honor, I didn't ---

21 THE COURT: --- and I didn't want it to later on come in
22 perhaps with perhaps Mr. Evans or Mr. Capers had had an arrest
23 somewhere on the way and I was locked in on the ruling here
24 but if nobody objects bring our jury back.

25 (The following takes place in the presence of the jury.)

MICHAEL RHANEY - CROSS-EXAMINATION BY MS. HAHN

1 THE COURT: All right. Welcome back, ladies and
2 gentlemen. You may proceed, Ms. Hahn.

3 MS. HAHN: Thank you, Your Honor.

4 BY MS. HAHN:

5 Q. Mr. Rhaney, is it true that you were arrested for a
6 breach of trust for taking some Greenbax points from the same
7 Rolling Meadows Pitt Stop Convenience Store?

8 A. Yes, sir.

9 Q. And that was for taking two hundred thousand dollars
10 (\$200,000) worth of points that would have amounted to about
11 seventeen hundred dollars (\$1,700) worth of merchandise
12 credit, is that correct?

13 A. Yes, ma'am.

14 Q. And I believe that happened between July 9th and August
15 first, is that correct?

16 A. Yes, ma'am.

17 Q. Okay.

18 THE COURT: Of what year? July 9th and August 1st of
19 what year?

20 BY MS. HAHN:

21 Q. Was that 2007, Mr. Rhaney?

22 A. Yes.

23 Q. Okay. And did you have any idea that that was probly the
24 wrong thing to do?

25 A. Yes, ma'am.

MICHAEL RHANEY - CROSS-EXAMINATION BY MR. MILLER

1 Q. You thought it was the wrong idea to take those points?

2 A. Yes.

3 Q. And maybe you thought that it would be in your best
4 interest later on to try to help out your employer and law
5 enforcement in case you got in trouble for that?

6 A. Not really. I mean, the -- like I say, you know, I still
7 got arrested so how could that, you know, why would that help
8 my ---

9 MS. HAHN: Beg the Court's indulgence, Your Honor. No
10 further questions Your Honor.

11 THE COURT: Thank you. Mr. Miller?

12 CROSS-EXAMINATION BY MR. MILLER:

13 Q. Afternoon, Mr. Rhaney.

14 A. Afternoon.

15 Q. Just to to start out and be clear you worked from 3 p.m.
16 until approximately 11 p.m. on the date right -- well, excuse
17 me the day before the incident, is that correct, July 25th
18 2007?

19 A. Yes.

20 Q. Okay. You saw Boyd Evans, according to you you saw him
21 driving a blue in color SUV before you went to work that day.

22 A. Yes.

23 Q. You ever see him afterward?

24 A. No.

25 Q. Okay. You said you went to your fiance's house and that

1 they were there but she told them to leave immediately.

2 A. Yes.

3 Q. Okay. And you were only there for five minutes so to
4 your knowledge they did.

5 A. Yes, sir.

6 Q. Okay. Never came back that night?

7 A. Did they you mean?

8 Q. You said you'd never seen them after the, after the time
9 you went to work at 3 p.m. that day, is that correct?

10 A. Yes.

11 Q. Okay. Now you met Glynnessa in 2005?

12 A. Yes, sir.

13 Q. Okay. And that's the same time you would have met Boyd I
14 guess.

15 A. Yes.

16 Q. When I say "Boyd", I mean Mr. Evans my client ---

17 A. Yes.

18 Q. --- but we refer to him as Boyd. Before that you've
19 never known Mr. Evans.

20 A. No, sir.

21 Q. Okay. And in fact after that date Mr. Evans moved to
22 Charlotte sometime the end of 2005, beginning of 2006,
23 correct?

24 A. Yes.

25 Q. You never saw him again until allegedly you saw him in

MICHAEL RHANEY - CROSS-EXAMINATION BY MR. MILLER

1 July of 2007.

2 A. Yes.

3 Q. And when you did know him was he living with you?

4 A. No, sir.

5 Q. Okay. You take him to dinner?

6 A. No, sir.

7 Q. Movies?

8 A. No.

9 Q. Nothing? Throw a football around with him?

10 A. No, sir.

11 Q. Ever sit and visit with him?

12 A. Yeah. Like I said the time that I met their sister.

13 Q. Um-hum. How many times would you say that was?

14 A. Every once in a while like, you know, on my off days.

15 Q. How many was that?

16 A. I say maybe twice a week.

17 Q. Okay. For for part of one year.

18 A. Yes.

19 Q. Okay. And now you you you viewed that video with

20 Detective Prestigacomo, correct, ---

21 A. Yes.

22 Q. --- the video of the incident on July 26th 2007?

23 A. Yes, sir.

24 Q. Okay. Was it, and I'm I'm not clear on this, was it he
25 that approached you and asked you about this or did you

1 actually approach him originally to talk about the crime?

2 A. Well when he asked the question, you know, I, you know,
3 like I said that I, you know, pretty much had a good idea who
4 it was.

5 Q. Well and that was my question. You weren't actually
6 there when the incident occurred, correct?

7 A. No, sir.

8 Q. I mean, you'd already gone home from work.

9 A. Yes, sir.

10 Q. How did you learn about the incident?

11 A. I did come back to the store that night.

12 Q. You you came back to the store when? later that night?

13 A. Yes, sir.

14 Q. Okay. After it occurred.

15 A. Yes.

16 Q. Okay. And so you never saw anybody who was there coming
17 or going.

18 A. Not at that time 'cause I -- well, I can tell anyway
19 because the police officer said that somethin' just occurred
20 so we couldn't basically do anything.

21 Q. Okay. Now you did see the video. Were any of the faces
22 visible to you?

23 A. No, sir.

24 Q. Okay. Uh, ---

25 A. Only the eye and nose part, yeah.

MICHAEL RHANEY - CROSS-EXAMINATION BY MR. MILLER

1 Q. Eye and nose part?

2 A. Yes.

3 Q. And are you are you testifying that you were able to
4 identify anybody by their eyes?

5 A. Well like I said, you know, I've been seein' 'em, I've
6 seen 'em so...

7 Q. You you you you think you'd seen 'em.

8 A. No, I'm telling you I seen 'em.

9 Q. Okay. You've known Boyd for all of part of a year. You
10 said you could recognize his voice also, ---

11 A. Yes.

12 Q. --- is that correct? What was he saying?

13 A. He was the one that entered.

14 Q. He he was the one that entered.

15 A. Entered in the store first.

16 Q. Okay. And again, what what did he say if anything? I
17 mean, how did you recognize his voice?

18 A. He was like, "Just give me the money."

19 Q. His -- this tape's probly two minutes or under isn't
20 it?

21 A. I believe so.

22 Q. So knowing somebody for part of a year, not seeing them
23 for over a year and a half and viewing a video tape of
24 something that occurs under two minutes with a little bitta
25 sound, you're absolutely one hundred percent certain that you

1 can identify these people?

2 A. Yes.

3 Q. Okay. Now you said that there was an SUV. Do you recall
4 or does anybody have the the number of that picture that you
5 were looking at regarding that SUV? Was it Exhibit 28?

6 A. I believe so.

7 MR. MILLER: Your Honor, may I ---

8 MR. RHANEY: You already took.

9 MR. MILLER: --- approach?

10 THE COURT: SUVs are 1 through 8 all of the all the
11 pictures.

12 BY MR. MILLER:

13 Q. Okay. Do you have those in your possession or does ---

14 MR. UNDERWOOD: Your Honor, I think those pictures were
15 placed back on the table right there (indicating).

16 MR. MILLER: Right here. May I?

17 THE COURT: Certainly.

18 BY MR. MILLER:

19 Q. It's right here. Yes. Okay. All right. So you never
20 actually saw this SUV in person but you you saw these video
21 still photographs, correct?

22 A. I saw it in person.

23 Q. You saw this (indicating) SUV at that night at the
24 incident site?

25 A. Earlier that day.

MICHAEL RHANEY - CROSS-EXAMINATION BY MR. MILLER

1 Q. Right earlier that day. I'm asking you though however
2 to -- at the time of the incident you were not actually
3 viewing this (indicating). You noticed this (indicating) SUV
4 from these (indicating) video stills, correct?

5 A. Yes, sir, which is the same one I saw earlier.

6 Q. Okay that's and I understand your testimony in that
7 regard. Let me hand these to you again briefly. I just ask
8 you to flip through them and tell me if you can identify in
9 any one of those photos a license plate. Now all those photos
10 are actually taken in those video still photographs but those
11 are -- that's at nighttime, correct?

12 A. Yes, sir.

13 Q. Okay. And would you say that SUV's maybe a little
14 blurry?

15 A. No, not really.

16 Q. Not really?

17 MR. MILLER: Your Honor, I'd like permission to publish
18 these to the jury.

19 THE COURT: Yes. When you get that close, sometimes the
20 jurors can't hear.

21 MR. MILLER: Oh I apologize and if yeah, I apologize.

22 THE COURT: You'd like permission to publish 'em?

23 MR. MILLER: Publish 'em to the jury.

24 THE COURT: Certainly. Yes, sir. Keep your voice up
25 also, Mr. Miller.

MICHAEL RHANEY - CROSS-EXAMINATION BY MR. MILLER

1 MR. MILLER: Yes, Your Honor.

2 THE COURT: Thank you.

3 (Whereupon, the photographs were published to the jury.)

4 BY MR. MILLER:

5 Q. So when you saw the SUV earlier in the day and I I won't
6 belabor this but I believe you said it almost hit you when it
7 ran a stop sign.

8 A. Yes, sir.

9 Q. And you turned around, went back briefly to get your tag
10 and race back to work.

11 A. Yes, sir.

12 Q. Okay. So you you probly saw that SUV very quickly.

13 A. Yes, sir. The front end of it and the back when I came
14 back to the house.

15 Q. Okay. And looking at those video stills you were able to
16 identify that as the exact same SUV.

17 A. Yes, sir.

18 Q. Okay.

19 MR. MILLER: Beg the Courts indulgence, Your Honor.

20 THE COURT: Certainly.

21 MR. MILLER: Your Honor, I don't have any further
22 questions at this time. Thank you, Mr. Rhaney.

23 THE COURT: Thank you. Thank you very much, Mr. Miller.
24 Redirect, Mr. Underwood?

25 MR. UNDERWOOD: Briefly, Your Honor.

MICHAEL RHANEY - REDIRECT EXAMINATION BY MR. UNDERWOOD

1 REDIRECT EXAMINATION BY MR. UNDERWOOD:

2 Q. Mr. Rhaney, could you explain to the jury in your own
3 words again that situation you were talking about with the
4 Greenbax points exactly what happened.

5 A. I was saying it was just a a like a program or somethin',
6 you know, bonus points or whatever you can put onto your your
7 bonus card and like I said, you know, well, basically you can
8 buy merchandise with it with -- within the store or whatever
9 and, you know, you have a lotta truckers, truck drivers that
10 come in, you know, they purchase fuel and they can put that on
11 their POC card as well and, you know, we had a lotta, you
12 know, well a lot of our truckers that didn't have POC cards at
13 the time and so I would ask them, you know, would it be okay,
14 you know, since you didn't have POC card can I I put put put
15 your points on my card and so like well, that's fine and...

16 Q. Now, in in doing that did you ever take any money out of
17 the till of the store?

18 A. No, sir.

19 Q. Did you have permission from the customers before you did
20 that?

21 A. Yes, sir.

22 Q. And at the time you were doing that did you think there
23 was anything wrong with doing that?

24 A. No, sir, not at the time, yeah.

25 Q. And did anyone ever tell you that you couldn't do that?

MICHAEL RHANEY - REDIRECT EXAMINATION BY MR. UNDERWOOD

1 A. No, sir. Also, like when we purchased stuff we could,
2 you know, put it on our cards as well so.

3 Q. So did you -- and this, and this occurred -- when did you
4 get in trouble for that?

5 A. I know it it happened sometime around in in August.

6 Q. So was that before or after you were cooperating with law
7 enforcement in this case?

8 A. I think it was after.

9 Q. Okay. So did at any point did you develop some scheme to
10 get innocent people arrested to get yourself outta trouble?

11 A. No, sir.

12 Q. You discussed a license plate in that SUV you saw at your
13 house.

14 A. Yes.

15 Q. Did you by any chance remember the license plate number
16 on that?

17 A. It was WPD 2995.

18 Q. And did you give that license plate number to the
19 detective you were speaking to?

20 A. Yes.

21 THE COURT: Tell me that tag number again you remember.

22 MR. RHANEY: WP -- WPD 295 -- 2995.

23 THE COURT: WPD 2 --

24 MR. RHANEY: 995.

25 THE COURT: 2995. Thank you.

MICHAEL RHANEY - RECROSS-EXAMINATION BY MS. HAHN

1 MR. RHANEY: All right.

2 MR. UNDERWOOD: No further questions, Your Honor.

3 THE COURT: Recross, Ms. Hahn?

4 MS. HAHN: Yes, Your Honor.

5 RECROSS-EXAMINATION BY MS. HAHN:

6 Q. Mr. Rhaney, can you tell me just one more time what
7 license plate number you remember.

8 A. WT -- WPD 2995.

9 Q. And that's from your memory.

10 A. It was either -- okay it was either a D or a G.

11 THE COURT: D or ---

12 BY MS. HAHN:

13 Q. Are ---

14 THE COURT: --- D or what?

15 MR. RHANEY: Or G.

16 BY MS. HAHN:

17 Q. I believe you initially gave Officer Prestigacombo the
18 incorrect license plate number. Is that correct now?

19 A. I believe so.

20 Q. But you remember the right one now, is that correct?

21 A. Yes.

22 Q. So you've had a chance to review the discovery and review
23 back over the case and prepare for today?

24 A. Just, I mean, yeah, pretty much thinkin' about it,
25 yeah.

MICHAEL RHANEY - RECROSS-EXAMINATION BY MS. HAHN

1 MS. HAHN: No further questions.

2 THE COURT: Thank you. Recross, Mr. Miller?

3 MR. MILLER: No, Judge. I don't have any further
4 questions right now.

5 THE COURT: Thank you. Thank you very much, Mr. Rhaney.
6 You ---

7 MR. UNDERWOOD: Your Hon ---

8 THE COURT: --- may step down.

9 MR. UNDERWOOD: Your Honor, may I ask just one more
10 question?

11 THE COURT: No, sir. Let's see, you've had direct and
12 redirect? Yes, no more. Thank you. You may step down.

13 MR. RHANEY: Do I leave all the stuff up here?

14 THE COURT: Sir?

15 MR. RHANEY: Leave this up here?

16 THE COURT: The photographs and such? yes, sir, you can
17 leave those up there.

18 (Whereupon, the witness left the stand.)

19 THE COURT: How long is your next witness gonna be you
20 think?

21 MR. UNDERWOOD: Not very long, Your Honor, probly be the
22 last witness for the day for the 4:15.

23 THE COURT: Will you be able to finish by 4:15?

24 MR. UNDERWOOD: Yes, Your Honor.

25 THE COURT: All right. Thank you. Yes, sir.

ROSA LUGO - DIRECT EXAMINATION BY MR. UNDERWOOD

1 THE CLERK: What's the name? - The name, sir?

2 MR. UNDERWOOD: Rosa Lugo, Your Honor..

3 THE COURT: All right. Thank you. 'Is somebody getting
4 Ms. Lugo, Sheriff?

5 MR. UNDERWOOD: I believe Mr. Maldonado was, Your Honor.

6 THE COURT: All right. Come around here (indicating) for
7 me, please, ma'am. Thank you very much.

8 ROSA LUGO, having been first
9 duly sworn, testified as follows:

10 THE CLERK: Thank you, ma'am. You can take your stuff.
11 Have a seat right up there (indicating). Once you're seated
12 speak up loud and clear, statin' your full name, spelling your
13 last on the record, please.

14 MS. LUGO: My name is Rosa Lugo, L-U-G-O.

15 DIRECT EXAMINATION BY MR. UNDERWOOD:

16 Q. Good afternoon, Ms. Lugo. Could you please tell the jury
17 where you live.

18 A. I live in Rolling Meadows, Charleston Highway.

19 Q. And what is your profession?

20 A. I'm the assistant manager there.

21 Q. And how long have you been the assistant manager there?

22 A. I was -- I worked there for three years. I left for
23 almost a year then I came back. I went back so it's almost
24 five years altogether.

25 Q. Okay. And to your knowledge as the assistant manager

ROSA LUGO - DIRECT EXAMINATION BY MR. UNDERWOOD

1 there do you know if either of the defendants ever lived in
2 that community?

3 A. Yes.

4 Q. Who?

5 A. Mr. Evans.

6 Q. And approximately do you recall when he lived there?

7 A. I have the papers here. That was July of 2005.

8 Q. Now, Ms. Lugo, I wanna bring you to July 25th 2007. Do
9 you remember an incident on that date involving a Ford
10 Explorer?

11 A. Yes, sir.

12 Q. Could you please tell the jury about that.

13 A. I was called -- one of the residents called me and told
14 me that there were some some young guys in an SUV that
15 almost ---

16 MR. MILLER: Your Honor, I'm gonna object to hearsay.

17 THE COURT: All right. If you would rephrase that
18 question then please, Solicitor -- I mean, please,
19 Mr. Attorney General.

20 BY MR. UNDERWOOD:

21 Q. Ms. Lugo, what was the -- without talking about what
22 anyone had said, can you just tell the events that occurred
23 involving that Ford Explorer.

24 A. Okay. I I went out on the, on the property and I came
25 across for I was -- went to see one of the residents there and

ROSA LUGO - DIRECT EXAMINATION BY MR. UNDERWOOD

1 that's where I had seen the Flo -- Ford Explorer.

2 Q. And why did you go there? Without talking about what
3 anyone else told you, why did you go there?

4 A. About a complaint I got.

5 Q. And what was the nature of that complaint?

6 A. It was just loud music and, uh, ---

7 MR. MILLER: Again, Your Honor, I'm gonna object to
8 anything ---

9 THE COURT: All right. Well now this isn't being offered
10 for the truth of the matter. Surely this is being offered as
11 to why Ms. Lugo goes to the particular location so I'm gonna
12 allow that under *State vs. Green* and *State vs. McFadden*. You
13 may proceed, Mr. Underwood.

14 BY MR. UNDERWOOD:

15 Q. Please continue, Ms. Lugo, as to why you were going
16 there.

17 A. Okay. I went to see 'cause I -- there was a Ford
18 Explorer that was there and there was some individuals there
19 and they were playing their loud music. I went to talk to the
20 resident about it and I explained to her the situation. I
21 told her that they couldn't stay there and she went and she
22 told them to leave.

23 THE COURT: She -- he can't go -- she can't go into that.
24 Now that would be ---

25 MR. UNDERWOOD: Yeah, don't ---

ROSA LUGO - DIRECT EXAMINATION BY MR. UNDERWOOD

1 THE COURT: --- double hearsay ---

2 MR. UNDERWOOD: --- please don't go into ---

3 THE COURT: --- at that point.

4 MR. UNDERWOOD: Please don't ---

5 THE COURT: Please ---

6 MR. UNDERWOOD: --- go into what was said, ---

7 THE COURT: --- disregard that.

8 MR. UNDERWOOD: --- just just go into what you actually
9 saw.

10 MS. LUGO: Okay. I did see the the black Explorer then
11 yes, sir.

12 BY MR. UNDERWOOD:

13 Q. Now after the the people had to leave did anything else
14 happen with the Explorer?

15 A. They almost ran into me.

16 Q. And what did you do?

17 A. Well well I just took the tag down 'cause they almost ran
18 into me.

19 Q. And do you remember what that license plate was?

20 A. I wrote it down. No, I don't remember what it is. No, I
21 don't.

22 Q. Okay. Do you remember what what state the license place
23 was from?

24 A. Well I I -- I'm not sure. I don't remember. I know I
25 wrote it down.

ROSA LUGO - DIRECT EXAMINATION BY MR. UNDERWOOD

1 Q. And and that note that you wrote it down on do you know
2 what you did with that?

3 A. I gave it to the police officer, the deputy.

4 MR. UNDERWOOD: Your Honor, may I approach the witness?

5 THE COURT: Yes, sir.

6 BY MR. UNDERWOOD:

7 Q. Ms. Lugo, could you please take a look at that and tell
8 me what it is.

9 A. It's the note that I wrote.

10 Q. And do you recognize your handwriting on that?

11 A. Yes, sir.

12 Q. And what what did you write on that note?

13 A. It's WU 2895.

14 Q. Is there anything else that you wrote on that note?

15 A. Explorer.

16 Q. Okay. And did you write down what state that license
17 plate was from?

18 A. I'm not sure. I'm not sure of the blanks if it's North
19 Carolina.

20 Q. Okay. Are there, are there any abbreviations that
21 indicate that?

22 A. North Carolina.

23 Q. Okay. No further questions, Your Honor.

24 THE COURT: All right. Thank you very much. Ms. Hahn?

25 MS. HAHN: Thank you, Your Honor.

ROSA LUGO - CROSS-EXAMINATION BY MS. HAHN/MR. MILLER

1 CROSS-EXAMINATION BY MS. HAHN:

2 Q. Hello, Ms. Lugo.

3 A. Hello.

4 Q. I believe you testified that Boyd Evans lived in the
5 Rolling Meadows ---

6 A. Yes.

7 Q. --- Park, ---

8 A. Yes.

9 Q. --- is that correct? Did Mr. Capers ever live there to
10 your knowledge?

11 A. Not to my knowledge.

12 Q. Okay. And what color was the vehicle that you saw?

13 A. It was black.

14 Q. Black Explorer.

15 A. Yes.

16 Q. And can you tell me again the tag number that you wrote
17 down.

18 A. The tag number that I wrote is WU 2895.

19 Q. Thank you. I have no further questions.

20 THE COURT: Thank you, Ms. Hahn. Mr. Miller?

21 CROSS-EXAMINATION BY MR. MILLER:

22 Q. Ms. Lugo, just one question. Do you, do you have any
23 knowledge of whether or not Mr. Evans, my client sitting here
24 (indicating), lived in Rolling Meadows Mobile Home Park during
25 July of 2007?

ROSA LUGO - CROSS-EXAMINATION BY MS. HAHN/MR. MILLER

1 A. No, not not to my knowledge no, sir.

2 Q. And do you know after you gave this note with this
3 license plate number to the police did -- were you ever made
4 aware of who that actually belonged to?

5 A. No. No.

6 Q. Okay. Thank you. I don't have any further questions.

7 THE COURT: Redirect, Mr. Underwood?

8 MR. UNDERWOOD: No further questions, Your Honor. We'd
9 ask that the witness being excused.

10 THE COURT: Thank you. Thank you very much. Thank you
11 for being with us, Ms. Lugo. You may step down. Any
12 objections to this young lady being excused?

13 MR. MILLER: Not at all.

14 MS. HAHN: No, Your Honor.

15 THE COURT: Thank you. You're excused, Ms. Lugo.

16 (Whereupon, the witness left the stand.)

17 THE COURT: You got a 20-minute witness?

18 MR. MALDONADO: No, Your Honor.

19 THE COURT: All right. All right, ladies and gentlemen,
20 I apologize for stopping early today. We'll just work late
21 tomorrow night by that we'll make it up. Madam forelady,
22 ladies and gentlemen of the jury, we're now going to take our
23 evening recess. Again, I would remind you during this recess
24 you're not to discuss this case with anyone including your
25 fellow jurors, family, friends or anyone else. Remember to

MOTIONS AND MATTERS

1 not watch or read any news reports about the case should there
2 be any, do not do any in -- investigation independent or on
3 the internet. Again, I advise you do not use your phone or
4 computer or any electronic device with communication
5 capabilities to obtain or disclose information about any party
6 or witness or attorney or news accounts of the case or any
7 information or topic that you think might be helpful in
8 deciding the case. As I told you earlier, you decide the case
9 based on the evidence and the testimony you hear from the
10 witnesses testifying under oath in the courtroom and the law
11 as I will tell you the law is in the case at the conclusion.
12 With that being said, you're now excused for the remainder of
13 the day. I'd ask you to please be back in your jury room
14 promptly at 9:30 in the morning. Just leave your notes on the
15 chair. The clerk's office will take them up and secure them
16 for the evening. Thank ya'll very much. Hope you have a
17 pleasant evening.

18 (The following takes place outside the presence of the
19 jury.)

20 THE COURT: Anything from the State before before we take
21 our recess, Mr. Maldonado, Mr. Underwood?

22 MR. MALDONADO: Not that I can think of.

23 MR. UNDERWOOD: No, Your Honor.

24 THE COURT: Ms. Hahn?

25 MS. HAHN: No, Your Honor.

MOTIONS AND MATTERS

1 THE COURT: Mr. Miller?

2 MR. MILLER: No, sir.

3 THE COURT: How many, about how many more witnesses do ya
4 have?

5 MR. MALDONADO: Two that we know of. The third one is
6 the the witness that hasn't shown.

7 THE COURT: All right. You're gonna do some research on
8 that issue?

9 MR. MALDONADO: Yes, ma' -- yes, sir. We've -- I
10 contacted his daughter and she's trying to locate him as
11 well.

12 THE COURT: All right. About how long do you think it
13 will be before you rest then?

14 MR. MALDONADO: It -- the the two witnesses are gonna be
15 some of the the lengthier ones but not -- if we went beyond
16 lunch I would be shocked.

17 THE COURT: All right. So ya'll need to be ready to
18 present any evidence or testimony I would say maybe prior to
19 lunch. You need to keep that in mind all right? All right.
20 You have anything, Mr. Miller?

21 MR. MILLER: (No audible response.)

22 THE COURT: Ms. Hahn?

23 MS. HAHN: No, Your Honor.

24 THE COURT: Thank you. Thank you very much. We'll be in
25 recess till 9:30.

MOTIONS AND MATTERS

1 (Proceedings January 13, 2010)

2 THE COURT: All right. Anything before we bring out our
3 jury, Mr. Maldonado?

4 MR. MALDONADO: Yes, Your Honor. Our next witness has
5 has yet to appear. She says she's having child care issues
6 and but she's on her way so she has not arrived yet, Your
7 Honor. And just in full disclosure to the Court a a witness
8 heard her angry -- angrily leaving yesterday. Um, ---

9 THE COURT: Angrily what?

10 MR. MALDONADO: Leaving yesterday about coming back so I
11 don't know if she's being completely truthful with me that
12 she's on her way. If we might ask the Court for help to get
13 her here if that's the case.

14 THE COURT: All right. Do you have her contact numbers?

15 MR. MALDONADO: Yes, Your Honor.

16 THE COURT: Do you have a cell number?

17 MR. MALDONADO: Yes, Your Honor. She says she's on --
18 she said she's on her way. I just talked to her in five
19 minutes ago.

20 THE COURT: All right. How long she say it take her to
21 get here?

22 MR. MALDONADO: She's -- she -- I didn't -- she said she
23 was co -- right on her way but I didn't say -- give her an
24 estimate of time.

25 THE COURT: All right.

MOTIONS AND MATTERS

1 (Whereupon, a discussion was held off the record.)

2 MR. MALDONADO: Ten or fifteen minutes is is her, is her
3 residence distance from -- according to the investigator.

4 THE COURT: All right. Anything from the defense,.
5 Ms. Hahn?

6 MS. HAHN: No, Your Honor.

7 THE COURT: Mr. Miller?

8 MR. MILLER: No, sir.

9 THE COURT: All right. Well we'll wait about fifteen,
10 twenty minutes see if she arrives.

11 (Whereupon, a recess was taken.)

12 THE COURT: All right. Are we ready now, Mr. Maldonado?

13 MR. MALDONADO: We are, Your Honor.

14 THE COURT: All right. Anything from the defense before
15 we bring out our jury, Mr. ---

16 MR. CORNWELL: No, Your Honor.

17 THE COURT: --- Miller?

18 MR. MILLER: No, sir.

19 THE COURT: All right. If you would bring our jury,
20 please.

21 THE BAILIFF: All right.

22 (The following takes place in the presence of the jury.)

23 THE COURT: Good morning, ladies and gentlemen of the
24 jury panel. I hope ya'll had a pleasant evening. Thank you
25 again for your promptness this morning. I apologize for the

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

1 delay. I assure you it had nothing to do with either of the
2 parties. They were present, available and ready to go to work
3 at 9:30. In fact, they were here before then. With that
4 being said, we'll continue the trial of the case by the
5 presentation of testimony by the State in their case in chief.
6 Mr. Maldonado, you may call your next witness.

7 MR. MALDONADO: Thank you, Your Honor. State calls
8 Glynnessa Marie Evans.

9 THE COURT: All right, Ms. Evans, if you'd come around
10 and be sworn, please.

11 GLYNNESSA EVANS, having been first
12 duly sworn, testified as follows:

13 THE CLERK: Please state your full name and spell your
14 last name.

15 MS. EVANS: Glynnessa Evans, E-V-A-N-S.

16 DIRECT EXAMINATION BY MR. MALDONADO:

17 Q. Good morning, Ms. Evans. How are you this morning?

18 A. Fine.

19 Q. Can you introduce yourself to the jury. Where is it that
20 you you live?

21 A. In Rolling Meadows.

22 Q. Okay. And that's in South Carolina? How long have you
23 lived there?

24 A. I've been in South Carolina goin' on close to about nine
25 now.

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

1 Q. And you previously lived a little time in in Charlotte is
2 that right?

3 A. Yes.

4 Q. About how long?

5 A. Like two.

6 Q. Two years? Okay. Do you live -- do you work? I'm
7 sorry.

8 A. No, I do not.

9 Q. Were you living in Rolling Meadows on July 26th 2007?

10 A. Yes.

11 Q. Okay. Do you know what county that's in?

12 A. Yes.

13 Q. Which county is that?

14 A. That's in, that's in Lexington County. That's Lexington
15 County.

16 Q. Okay. Was anybody living with you at the time?

17 A. Yes.

18 Q. Who else?

19 A. It's Michael Rhaney and my kids.

20 Q. Let me show you what's been, what's been marked State's
21 Exhibit 51. Your Honor, can I ask her to come down?

22 THE COURT: Yes. Just please keep your voice up when
23 you're away from the microphone, Ms. Evans.

24 (Whereupon, the witness left the stand.)

25 BY MR. MALDONADO:

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

1 Q. Can you show the jury where is the -- where is Rolling
2 Meadows.

3 A. Rolling Meadows is right here (indicating).

4 Q. And where about that area do you live?

5 A. Right in here (indicating.)

6 Q. Okay. And what's this down here (indicating)?

7 A. That's -- this is the truck stop.

8 THE COURT: Can keep your voice up for me a little bit,
9 please.

10 BY MR. MALDONADO:

11 Q. Can you say it again.

12 A. The truck stop.

13 THE COURT: All right.

14 BY MR. MALDONADO:

15 Q. The Pitt Stop that ---

16 A. Yes.

17 Q. --- that was involved?

18 A. That's the store.

19 Q. And what's this road right here (indicating)?

20 A. That's the highway.

21 Q. Okay. I-26?

22 A. Yes.

23 Q. Okay. Thank you.

24 (Whereupon, the witness returned to the stand.)

25 Do you remember what happened that day of -- well the day

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

1 July 25th 2007? Did you get any visitor?

2 A. Yes.

3 Q. Who who came?

4 A. My cousins and my brother they had came down from North
5 Carolina.

6 Q. Okay. Who who are these these people?

7 A. Boyd, Lywone, John and Ton.

8 Q. Okay. And that the Boyd is Boyd Evans?

9 A. Yes.

10 Q. And Lywone is Lywone Capers?

11 A. Yes.

12 Q. Okay. Were they -- anyone else with 'em?

13 A. And Ton.

14 Q. Ton?

15 A. And John.

16 Q. Okay. About what time do you think they -- you saw
17 them?

18 A. I know it was in the like in the afternoon part.

19 Q. Okay. What happened? When when -- were they invited?
20 What what was going on?

21 A. They just came down.

22 Q. Um-hum. And they they came to see you or ---

23 A. Yeah, they had, they had came to see me and they went to
24 see their other friends that they know around in the
25 neighborhood.

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

1 Q. Okay. So they knew people around? Why -- how did they
2 know people around in the area?

3 A. Because we all used to live around there ---

4 Q. Okay. So that he's ---

5 A. --- and I went ---

6 Q. --- familiar ---

7 A. --- to school with them.

8 Q. --- he's -- they're familiar with the area.

9 A. Yes.

10 Q. Okay. What were they driving?

11 A. A Ford, a Ford Explorer. It was blue and gold.

12 Q. Okay. Did you recognize the car?

13 A. No, not really.

14 Q. So you didn't, you didn't know if it was your brother's
15 car or had he -- you ever seen him drivin' that before?

16 A. No.

17 Q. Okay. So then describe -- he -- they -- he came over.
18 Was was there an issue? What what happened when they came in
19 and ---

20 A. They just said, they just said I had to mend stuff and
21 they was makin' sure like normal like they come and see me but
22 they'll go to their friends and see people that they know.

23 Q. Okay. Did they -- was there an issue with with
24 management?

25 A. Yes, causa John.

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

1 Q. Okay. What happened?

2 A. He was makin' -- they was tellin' him to be quite and
3 stuff and he wouldn't listen to them and they was tellin' him
4 to turn the loud music down and he was just jumpin' up and
5 down and singin' songs and stuff and he was loud.

6 Q. Okay. So what the management do?

7 A. She told them, she told them ---

8 MR. MILLER: Your Honor, I'm gonna object ---

9 MS. EVANS: --- they had to, um, ---

10 MR. MILLER: --- to this this being hearsay.

11 THE COURT: All right. Overruled. You may continue.

12 BY MR. MALDONADO:

13 Q. Go ahead.

14 A. She told them they had to get off the property.

15 Q. Okay. And and did she tell that to you or tell tell that
16 to them?

17 A. Show told that to them and she also had said to me
18 because they ain't supposed to be around here.

19 Q. Okay. And then what did you -- whadyou do at the time?
20 Did you tell 'em anything?

21 A. They just had left ---

22 Q. Okay. Did you see what happened?

23 A. --- and they told me they'd see me later and I thought
24 they would go on. They said they was goin' home. I aint
25 thinkin' nothin' of it.

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

1 Q. Okay. Can you describe 'em: what they were wearing,
2 anything like that, do you remember or ---

3 A. I know my cousin had on a pair a jeans and my brother and
4 he had a little -- the tank top on and my cousin had a t-shirt
5 on and the other one had like pants on too ---

6 Q. Okay.

7 A. --- and sneakers and stuff.

8 Q. Okay. What what kind of -- I mean, dark or light color
9 pants? What -- I mean, you said ---

10 A. It was dark.

11 Q. Okay. Next thing did you find out anything happenin'
12 that night?

13 A. Then then later on that night when we had the fluid --
14 fill up or van to go to court the next -- for the next day to
15 go to Charlotte for court ---

16 Q. Um-hum.

17 A. --- and the police we noticed the police was there and he
18 was like, We can't get no food. And so Mike said, "I work
19 here," and what happened and he told 'em it was just a robbery
20 and he told us we couldn't get no food so we went back to the
21 house and wait ---

22 MS. HAHN: Objection, Your Honor.

23 THE COURT: All right.

24 MS. EVANS: --- to the next mornin'.

25 THE COURT: Your objection?

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

1 MS. HAHN: Hearsay.

2 THE COURT: All right. Objection is sustained.

3 BY MR. MALDONADO:

4 Q. You don't have to -- just don't say what they said but
5 but did you see -- I mean, they -- describe the the area. Was
6 the -- was there crime scene tape or or or stuff around or
7 --there's police out there obviously, right?

8 A. Yes.

9 Q. Okay. And you couldn't get, you couldn't get in ---

10 A. No.

11 Q. --- so you just left.

12 A. Yes. We just went back to the house.

13 Q. Okay. And that was you and and Mr. Rhaney?

14 A. Yes.

15 Q. Okay. And just to clarify the Court next -- the next day
16 that was for custody of your your child, right?

17 A. Yes.

18 Q. Okay. Then did the police ever show up to your house?

19 A. Yes.

20 Q. When was that?

21 A. When Michael Rhaney had brung him -- brung them to to the
22 house.

23 Q. Okay. And Mr. Rhaney is how in relation to you?

24 A. He's he's my baby' father.

25 Q. Okay. And then was -- who was that? Who came to your

1 house?

2 A. Eddie. Eddie.

3 Q. The detective here (indicating)?

4 A. Yes.

5 Q. Okay. Is Prestigacomo that's kind of a long name is that
6 right?

7 A. Yes.

8 Q. Okay. So what what what had happened when he hi -- when
9 he showed up?

10 A. When he came in, he just asked asked me do I know what's,
11 you know, why he's here and I just told him I think I know, I
12 got a idea.

13 Q. Okay. And what did you -- then what happened?

14 A. Then he sat down and he showed me some pictures.

15 Q. Okay. What were in the pictures?

16 A. Some pictures of the robbery at the store.

17 Q. Okay. Did you recognize any -- anything in the, in the
18 pictures?

19 A. Yes.

20 MS. HAHN: Objection.

21 THE COURT: All right. Basis of your objection?

22 MS. HAHN: Your Honor, I would just renew my prior
23 objections to this line of testimony regarding identification
24 in photographs and the video. I believe Your Honor's already
25 ruled on that.

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

1 THE COURT: All right. Now, ---

2 MR. MILLER: I would make that same objection for
3 Mr. Evans.

4 THE COURT: All right then lay the foundation please or
5 the relationship with the individuals, Mr. Maldonado.

6 MR. MALDONADO: Yes, Your Honor.

7 BY MR. MALDONADO:

8 Q. How how long have you known Boyd Evans?

9 A. Ever since of, ever since he was little.

10 Q. Okay 'cause you guys lived together, right?

11 A. Yeah up till, up till my dad died.

12 Q. Okay. When was that?

13 A. July the 18th of 1992.

14 Q. Okay. And then did you, did you see him after that
15 ever?

16 A. We separated for a while ---

17 Q. Um-hum.

18 A. --- and then I had renited with him when I had contact my
19 aunt and stuff ---

20 Q. Um-hum.

21 A. --- and I noticed my aunt had them. That's how I renited
22 back with them.

23 Q. Okay. And then after that did you start visiting with
24 each other or how -- how'd that go?

25 A. Yes. When when I felt like comin' over and when I was,

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

1 when I was pregnant, I went to my aunt and stuff.

2 Q. Okay. So you saw him pretty regularly? You you would
3 recognize Mr. Evans if you saw him, correct?

4 A. Yeah, but he was mainly in school.

5 Q. Yeah. Okay. But he's your brother, right?

6 A. Yes.

7 Q. Okay. Mr. Capers is what relation to you?

8 A. My cousin.

9 Q. Okay. And how often would you see him?

10 A. Only sometimes like holidays or sumtin' ---

11 Q. Okay.

12 A. --- or when they come down.

13 Q. They would come down to visit ---

14 A. Yes.

15 Q. --- holidays and ---

16 A. --- and birthdays and stuff.

17 Q. Okay. So how -- about how many times do you think maybe
18 in a year you would, you would see him?

19 A. Not not that often.

20 Q. Okay. I mean, one to five, five to ten?

21 A. Like ---

22 Q. Christmas? I mean ---

23 MS. HAHN: Objection. Leading, Your Honor.

24 THE COURT: All right. Well you can rephrase the
25 question. She had said holidays. You can rephrase the

1 question.

2 (Whereupon, the witness's cell phone rang.)

3 MS. EVANS: Sorry. My bad.

4 THE COURT: Your phone?

5 MS. EVANS: Yes sorry.

6 THE COURT: Is that a ring tone? What what ring tone is
7 that?

8 MS. EVANS: That was a ring tone.

9 MR. MALDONADO: I apologize, Your Honor.

10 BY MR. MALDONADO:

11 Q. So but you would also be able to recognize Mr. Capers
12 if ---

13 A. Yes.

14 Q. --- you saw him? How -- and when you, when you -- he
15 came down to visit you'd spend some time with him, is that
16 correct?

17 A. They maybe -- not really because I always been under my
18 aunt.

19 Q. Okay. But he would come down to visit your family.

20 A. Yes.

21 Q. Okay. So you you seen him several times.

22 A. Yeah.

23 Q. Okay. You'd be able to to pick him out of a crowd.

24 A. Not not really, not so so like that because, you know,
25 they ain't really be down like that.

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

1 Q. Okay.

2 A. When they do come they be in the room playin' games and
3 stuff so ---

4 Q. Okay.

5 A. --- we not allowed to go in the boys' room.

6 Q. Okay. Then when when the officers came in to -- well,
7 when Detective Prestigacombo came in to show you the pictures,
8 did you recognize anything?

9 A. Only reason why I recognized it because the the day they
10 came down.

11 Q. Okay. And what did you recognize in the pictures?

12 A. The the sneakers and his like his nose and his eyes
13 type.

14 Q. Okay. I'm gonna show you what's been marked State's 9
15 through 33 I believe and do you recognize those pictures?

16 A. Yes.

17 Q. What are those pictures of?

18 A. Picture of the robbery.

19 Q. Okay. That's what the detective showed you?

20 A. Yes.

21 Q. What do you -- can you describe what you see in the, in
22 the pictures. What -- how did the the conversation with the
23 detective go about those pictures?

24 A. I just knowed it's -- I just right off and picked them
25 out.

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

1 Q. Okay. So you recognized ---

2 A. And he just ---

3 Q. --- them in these pictures?

4 A. Yeah, he just asked me was I sure and I said yes.

5 Q. Okay. Are you sure that that's who -- who's in the
6 pictures?

7 A. Yes.

8 Q. Okay. Can you name just for the record who -- who's in
9 in the pictures?

10 A. Yes.

11 Q. Can you please.

12 A. This one here (indicating) is Lywone.

13 Q. Lywone Capers?

14 A. Yes.

15 Q. Okay.

16 THE COURT: What number's on the backa that picture?

17 MS. EVANS: Twenty-five.

18 THE COURT: May I see it?

19 (Whereupon, the exhibit was handed to the Court.)

20 MS. EVANS: This right here (indicating) this picture
21 really had gave it up, ---

22 BY MR. MALDONADO:

23 Q. Okay.

24 A. --- yeah, because ---

25 Q. Which number is that?

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

1 A. Twenty-six.

2 Q. Okay.

3 THE COURT: And what do you mean "gave it up?" I don't
4 understand.

5 MS. EVANS: Because John. John had lightest skin outta
6 the bunch.

7 BY MR. MALDONADO;

8 Q. So you're you're sure it's John, ---

9 A. Yes.

10 Q. --- John Sosa?

11 A. Yes.

12 Q. Okay. Which -- I'm sorry that was 26 you said?

13 A. Yes.

14 MR. MALDONADO: Your Honor, can I I guess publish each
15 one of these as she says it to the jury?

16 THE COURT: Sure. Let me see this one, please. All
17 right.

18 (Whereupon, the exhibits were published to the jury.)

19 MS. EVANS: That's John and Boyd together.

20 THE COURT: John and who?

21 MS. EVANS: John and Boyd together.

22 MR. MALDONADO: Okay.

23 THE COURT: Point who's who according ---

24 MS. EVANS: This ---

25 THE COURT: --- to you.

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

1 MS. EVANS: --- this (indicating) is John.

2 BY MR. MALDONADO:

3 Q. In the blue mask cap and ---

4 A. Yes, and that's Boyd.

5 Q. With the white?

6 A. Yes.

7 Q. Okay. With the white mask.

8 THE COURT: And, again, ladies and gentlemen, that's a --
9 an opinion of the witness. The ultimate decision as to who is
10 or is not shown in the stills of the video is a determination
11 by the jury based on your your decisions applicable to the
12 case.

13 BY MR. MALDONADO:

14 Q. Okay. Do you see any other pictures you'd recognize of
15 them?

16 A. Yeah. This (indicating) the one that he -- the one --
17 the picture that -- this ain't the direct picture of Ton
18 walking down the aisle.

19 Q. Um-hum. Which number is that?

20 A. This is 29.

21 Q. Okay. But there was another picture that was shown to me
22 where Ton was walkin' down the aisle.

23 Q. Okay. And so the the the man in the red pants in the
24 picture you you recognize from a different picture.

25 A. Yes.

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

1 Q. Okay.

2 A. There was one where he was walkin' down the aisle.

3 Q. Let's see, make sure we get ---

4 A. See.

5 Q. Okay and that's number?

6 A. Twenty-three.

7 Q. Twenty-three. And also in number -- is this one also?

8 A. Yes.

9 Q. And what number is that?

10 A. That's 22.

11 (Whereupon, the Court examined the exhibits.)

12 Q. And I'm sorry I'm not sure if you said the number. The
13 the first one you talked about was nu -- was picture
14 number ---

15 A. Twenty-nine.

16 Q. Twenty-nine. Okay.

17 THE COURT: All right.

18 MS. EVANS: These these the ones that I remember seein'.
19 I don't remember seeing that one.

20 MR. MALDONADO: Okay. She didn't remember seeing that
21 one, Your Honor.

22 BY MR. MALDONADO:

23 Q. Okay. These other pictures do you see -- do you
24 recognize anything in these other pictures?

25 A. John again.

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

1 Q. Okay. What number is that?

2 A. That's 2. That look like 21.

3 Q. Twenty-one, yeah. Can you describe what he's wearing in
4 that, in that picture.

5 A. A black, a black shirt with some shorts and a pair a
6 sneakers.

7 Q. Okay.

8 A. And then ---

9 Q. And the guy with the white shirt is?

10 A. Boyd.

11 Q. Boyd. Okay.

12 (Whereupon, the photographs were published to the jury.)

13 I'm gonna bring your attention to pictures 31, I'm sor --
14 30, 31 and 32. Do you recognize anything in in these
15 pictures?

16 A. The scar.

17 Q. Okay. What kind -- can you describe for the record kind
18 of what's in those -- what's that scar.

19 A. It look like a, like a a cut or somethin' on his
20 shoulder.

21 Q. Okay.

22 THE COURT: Like a what?

23 MS. EVANS: A cut or somethin' on ---

24 THE COURT: Okay.

25 MS. EVANS: --- his shoulder.

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

1 BY MR. MALDONADO:

2 Q. Does does Boyd have a scar like that?

3 A. Yeah, on his, on his shoulder.

4 Q. Okay. Is there another scar on his, on his elbow or ---

5 MR. MILLER: Objection, Your Honor. This is leading I
6 believe.

7 THE COURT: I don't think that's leading. She can answer
8 yes or no.

9 MS. EVANS: I'm not sure about ---

10 BY MR. MALDONADO:

11 Q. Not sure.

12 A. --- that one, ---

13 Q. That's fine.

14 A. --- just know about the top one.

15 Q. Okay. Let me publish these.

16 (Whereupon, the photographs were published to the jury.)

17 THE COURT: What numbers are those, Solicitor?

18 MR. MALDONADO: I believe 31 -- 30, 31 and 32.

19 THE COURT: Thank you.

20 BY MR. MALDONADO:

21 Q. Okay. And did you ever get a chance to see the video of
22 the incident?

23 A. Yes.

24 Q. Okay. Let me play that again. We can -- can we get
25 the, uh, ---

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

1 (Pause.)

2 MS. HAHN: Your Honor?

3 THE COURT: Yes.

4 MS. HAHN: Out of an abundance of caution I'd like to put
5 on the record my objection to the video as well.

6 THE COURT: All right. Certainly. And that's as to
7 Mr. Capers and as to Mr. Evans?

8 MR. MILLER: Yes, Your Honor. Thank you.

9 THE COURT: Certainly. The motions -- objection is noted
10 for the record. My rulings are the same.

11 MR. MALDONADO: This worked this af -- yesterday
12 afternoon.

13 (Pause.)

14 (Whereupon, a discussion was held off the record.)

15 MR. MALDONADO: Your Honor, if we can get the person that
16 assisted us yesterday.

17 (Whereupon, a discussion was held off the record.)

18 BY MR. MALDONADO:

19 Q. Can you see that all right?

20 A. (The witness nodded in the affirmative.)

21 (Whereupon, the video was played.)

22 Q. Okay. Do you recognize this video?

23 A. Yes.

24 Q. Okay. What is that?

25 A. The parking lot, inside.

1 Q. No, I mean, I mean, in general is it -- was this what
2 you were shown by ---

3 A. Yes.

4 Q. Okay.

5 (Whereupon, the video was played.)

6 Now when the detective showed that to you, were you able
7 to hear it when when he showed it to you? Did it come with
8 with the sound?

9 A. I just seen the pictures.

10 Q. Okay. He didn't show you the video?

11 A. No.

12 Q. You didn't testify earlier that you actually saw the
13 video?

14 A. I seen the video later on, ---

15 Q. Okay. And ---

16 A. --- not on the same day I seen the pictures.

17 Q. Okay. When you, when you finally did see the video, did
18 you recognize anything in -- that you heard?

19 A. The voices.

20 Q. Okay. What about the voices did you, did you
21 recognize?

22 A. One voice sounded just like Lywone' voice.

23 Q. Lywone Capers?

24 A. Yes.

25 Q. Okay. Anything else?

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

- 1 A. And Boyd digging in the cash register.
- 2 Q. Okay. Are you sure it's his voice. I mean, ---
- 3 A. Yes.
- 4 Q. Okay.
- 5 A. It sounded just like.
- 6 Q. Okay. Any -- can you just just basically I guess go and
- 7 describe what about the -- describe about the the people in
- 8 the pictures and the video that you recognize, you know,
- 9 characteristics of their body, anything that that tells you
- 10 that looks like them.
- 11 A. One with the red this -- understand it better. This one
- 12 with the red shorts ---
- 13 Q. And which picture is that?
- 14 A. This 16.
- 15 Q. Okay.
- 16 A. He's bowlegged and and that's how everything's, um,
- 17 that's how I recognize who it was.
- 18 Q. Okay.
- 19 A. And then halfa when they was close up to me and I look he
- 20 he like the bumps on his face had was showing, that's how I
- 21 know who he was.
- 22 Q. Okay.
- 23 A. John I recognized him from the backa his head.
- 24 Q. Okay.
- 25 A. And then I recognized my brother by that scar and how he

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

1 was built and cut.

2 Q. How's his skin tone compare to to those individuals?

3 A. John is the lightest one out of the whole bunch.

4 Q. Is the one -- the pictures the one you think is John is
5 the the skin tone about the same?

6 A. Yes.

7 Q. Okay. Do you see the -- those people that that committed
8 that robbery in the courtroom today?

9 A. I see two of them. The other two is not here.

10 Q. Okay. Who do you see?

11 A. Boyd and Lywone.

12 Q. Okay. Can you desc -- point them and describe what
13 they're wearing for the record. The court reporter has to
14 kinda put it down so you have to say what they're wearing.
15 Can you point to 'em.

16 A. Right there (indicating).

17 Q. Okay. What -- and that's who? That's who? The first
18 one is?

19 A. My brother Boyd.

20 Q. Brother. Boyd. And what's he wearing?

21 A. Stripy suit.

22 Q. Okay.

23 MR. MALDONADO: Your Honor, we'd ask the record reflect
24 that he -- she identified the defendant Boyd.

25 THE COURT: All right so reflect.

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MALDONADO

1 BY MR. MALDONADO:

2 Q. And then who's the other one?

3 A. Lywone.

4 Q. Lywone Capers?

5 A. Yes.

6 Q. And do you -- can you point to him.

7 A. (The witness complied.)

8 Q. And describe what he's wearing.

9 A. A black suit.

10 Q. Okay. Where is he on the table?

11 A. On the left.

12 Q. So he's in the far left.

13 A. Yes.

14 Q. Okay.

15 MR. MALDONADO: Your Honor, we'd ask the record to
16 reflect he -- she identified Lywone Capers.

17 THE COURT: So reflected.

18 BY MR. MALDONADO:

19 Q. Now they're your family, right?

20 A. Yes.

21 Q. Why are you testifying against them?

22 A. Why I'm testify against 'em?

23 Q. Yeah. Is it -- have -- there -- are you, are you doing
24 it out any malice or any revenge or ---

25 A. No.

GLYNNESSA EVANS - CROSS-EXAMINATION BY MS. HAHN

1 Q. --- anything? Are you gettin' anything for ---

2 A. No.

3 Q. --- for testifying? Have you been contacted by any
4 family members about this?

5 A. No, not really.

6 Q. Okay. Has there been any tension in the family because
7 of this?

8 A. Not really.

9 Q. Okay. That's all I have. Please answer any questions
10 the defense might have.

11 THE COURT: Thank you. Thank you very much,
12 Mr. Maldonado. Ms. Hahn?

13 MS. HAHN: Thank you, Your Honor.

14 CROSS-EXAMINATION BY MS. HAHN:

15 Q. Good morning, Ms. Evans.

16 A. Good mornin'.

17 Q. Okay. You testified that you knew Lywone Capers, is that
18 correct?

19 A. Yes.

20 Q. And it sounded to me like you indicated that you hadn't
21 seen him a whole lot when you knew him earlier, is that
22 right?

23 A. Yes.

24 Q. Would it be fair to say that you knew Boyd Evans a lot
25 better than you knew Lywone Capers?

GLYNNESSA EVANS - CROSS-EXAMINATION BY MS. HAHN

1 A. Yes.

2 Q. Okay. Um, --- .

3 THE COURT: Speak up. Speak up for me just a little bit
4 all right, Ms. Evans?

5 MS. EVANS: Yes.

6 THE COURT: Thank you. I'm just a little harda hearing.
7 I'm not fussin' at you. I'm not fussin' at ya. I just can't
8 quite hear. All right. Thank you, Ms. Hahn. You may
9 continue.

10 MS. HAHN: Thank you, Your Honor.

11 BY MS. HAHN:

12 Q. I'm gonna ask you some questions about what happened back
13 in 2007 and first I wanted to ask you if you suffer from any
14 kind of conditions that cause you any confusion.

15 A. Yes.

16 MR. MALDONADO: Your Honor, I'm gonna object at this
17 time.

18 THE COURT: Well, I would, I would overrule that
19 objection if as far as if it's connected to 2007 or her
20 perceptions of 2007. You wanna be heard on that, sir,
21 Mr. Maldonado?

22 MR. MALDONADO: Yes, Your Honor.

23 THE COURT: All right. Madam forelady, ladies and
24 gentlemen, if you'd step momentarily to your jury room.
25 Please do not discuss the case during this brief recess and

GLYNNESSA EVANS - DIRECT EXAMINATION BY MS. HAHN

1 leave your notes on your chairs. Thank you very much.

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Yes, sir.

5 MR. MALDONADO: Your Honor, I just believe that that if
6 she wants to go into this where it's just been established in
7 camera that there's a foundation for for anything just her
8 asking is -- outta the blue is is just mere suggestion of of
9 some things that that we talked about that the State's
10 position it shouldn't be allowed.

11 THE COURT: All right, but I I wasn't sure exactly where
12 she's goin' I -- that she said anything that may affect her
13 perceptions.? Can you enlighten me on it a little bit,
14 Ms. Hahn?

15 MS. HAHN: Yes, Your Honor. I'd be happy to ask the
16 questions now in camera ---

17 THE COURT: All right.

18 MS. HAHN: --- if you'd like on that.

19 THE COURT: And you you may proceed.

20 DIRECT EXAMINATION BY MS. HAHN:

21 Q. Ms. Evans, do you suffer from any conditions that cause
22 you any confusion?

23 A. Yes.

24 Q. And does that condition affect the way you think
25 sometimes?

1 A. No.

2 Q. Has that condition ever caused you to see things that
3 aren't there?

4 A. No.

5 Q. Did you suffer from that condition back in 2007?

6 A. That was sumtin' that I ain't supposed to be on. That
7 was medicine I ain't supposed to be taking that they made me
8 take.

9 Q. Let me make sure I understand your testimony. You're
10 saying that you do suffer from a condition that causes you
11 confusion, correct?

12 A. No. I supposed to been only on depression medicine from
13 my parents, losing my parents. They put me on on Dyprexa 2.5
14 milligram that I didn't need. Only thing I need was a
15 counselor really so they just put me on medicine for sumtin'
16 that I ain't need.

17 Q. I believe initially when I asked the question you said
18 yes, you suffer from a condition that can sometimes make you
19 confused, that's all I'm askin'.

20 A. Yeah, but the medicine I ain't supposed to be takin'
21 that. Ain't nuttin' wrong with me.

22 Q. Okay. So the condition itself, not not an issue of
23 medication, but just the condition itself that's something
24 you've had for a while, right?

25 A. Yes.

GLYNNESSA EVANS - DIRECT EXAMINATION BY MS. HAHN

1 Q. Okay. That -- that's what I'm gettin' at. Now were you
2 taking that medication as you were supposed to be taking it
3 back in 2007?

4 A. No.

5 Q. No? All right.

6 THE COURT: And how how how do we know so she was
7 supposed to be taking this stuff? I hadn't made that
8 conclusion yet.

9 BY MS. HAHN:

10 Q. Had a doctor prescribed medication to you for that
11 condition back in 2007 that that they wanted you to take?

12 A. Yes.

13 Q. Okay. And you weren't taking the medication?

14 A. I was takin' it but then I got reevaluated back over.

15 Q. Do you remember whether in July, towards the end of July
16 in 2007 whether you were taking medication that a doctor ---

17 A. I was not on no medication.

18 Q. Okay. And at that point had the doctor taken you off of
19 it or were you ---

20 A. Yes.

21 Q. Okay. And today is there any doctor that has -- are you
22 taking any prescription medication for that condition that ---

23 A. No.

24 Q. Okay. Has any doctor prescribed any medication that they
25 want you to take your -- right now?

GLYNNESSA EVANS - DIRECT EXAMINATION BY MR. MILLER

1 A. No.

2 Q. No. Okay.

3 MS. HAHN: Your Honor, those are all the questions that I
4 have.

5 THE COURT: All right.

6 MR. MILLER: Your Honor, I -- am I allowed to also
7 examine her briefly as an in camera hearing rather than try to
8 have to do it again?

9 THE COURT: On this issue?

10 MR. MILLER: Yes, ---

11 THE COURT: Certainly.

12 MR. MILLER: --- just ---

13 THE COURT: All right.

14 MR. MILLER: mainly -- okay.

15 DIRECT EXAMINATION BY MR. MILLER:

16 Q. Ms. Evans, what what specifically was the condition for
17 which you were being treated?

18 A. They was talkin' about I was mild retardation.

19 Q. Okay. Did they -- they didn't ever mention
20 schizophrenia, anything like that?

21 A. No, not really.

22 Q. Okay. And you -- when when were you first diagnosed with
23 that condition?

24 A. Nine -- in ---

25 Q. And it can be approximate, I mean, if if you don't recall

1 exactly.

2 A. I said I got on the medicine when I came down here in
3 '99 ---

4 Q. Okay. And you said you ---

5 A. --- and I had ---

6 Q. I'm sorry.

7 A. --- I was taking Dyprexa.

8 Q. Dyprexa?

9 A. Yeah.

10 Q. What specifically did that medicine do to you? How did
11 it affect your your mind or your thinking?

12 A. It was just made me not with the rest of the family.

13 Q. When you say that you mean -- can you kinda describe how
14 you felt when you were on it.

15 A. Drugged up, sleepy.

16 Q. Okay. You said you were reevaluated in 2007?

17 A. Yes.

18 Q. Okay. And what -- they -- did they put you on any other
19 medication and but did they take you off of Dyprexa?

20 A. They took me -- no, they had me on another medicine but
21 it was too strong for me and then they reevaluate me and stuff
22 and find out I need the medicine.

23 Q. What was the other medicine that you were on, do you
24 recall, that was too strong for you?

25 A. Can't remember that one.

GLYNNESSA EVANS - CROSS-EXAMINATION BY MR. MALDONADO

1 Q. Okay? Did it also make you feel kind of ---

2 A. Yeah.

3 Q. --- drugged up but -- okay. What ---

4 A. It was making me like I was out of it. I was not with
5 everybody else.

6 Q. Okay. Was this -- what what part of 2007 were you on
7 this medication?

8 A. Can't recall.

9 Q. We -- do you think it would have been over the time of
10 this incident in July 2007?

11 A. No.

12 Q. Were you on any medication at the time of this
13 incident?

14 A. No.

15 Q. And then you were reevaluated and put back on Dyprexa?

16 A. No. I'm not on no kinda medicine.

17 Q. None whatsoever.

18 A. I went to mental health, they evaluate me, they told me I
19 don't need no medicine.

20 Q. Okay. I don't have any further questions.

21 THE COURT: Thank you. Mr. Maldonado?

22 CROSS-EXAMINATION BY MR. MALDONADO:

23 Q. So just to clarify, you weren't on any meds during
24 this -- the time of the robbery.

25 A. No.

GLYNNESSA EVANS - CROSS-EXAMINATION BY MR. MALDONADO

1 Q. Do -- did did -- was your memory affected in any way?

2 Can you remember what was goin' on?

3 A. Yes, I can remember everything.

4 Q. Okay. Can you, can you remember everything now?

5 A. Yes.

6 Q. Can you -- does anything affect your ability to remember
7 from back in 2007 between anything change your memory that ---

8 A. No.

9 Q. This was for depression, right?

10 A. Yes, ---

11 Q. Okay.

12 A. --- and some other stuff they labeled me on that I don't
13 know why.

14 Q. Okay. But they said before this incident that you didn't
15 need any meds.

16 A. Yes.

17 Q. Okay. I guess that's all. That's all the questions that
18 I have.

19 THE COURT: All right. I'll be glad to hear from you was
20 your objection.

21 MR. MALDONADO: Your -- yes, Your Honor. Basically two
22 levels: obviously the the cases that I I handed up to Your
23 Honor yesterday. I ---

24 THE COURT: Let let me ask Ms. Hahn and Mr. Miller first.
25 What do ya'll plan on asking in this regard now?

MOTIONS AND MATTERS

1 MS. HAHN: Your Honor, my questions are gonna be the same
2 ones that I just asked. I'm primarily asking whether she had
3 any condition that caused her to become confused and my
4 understanding is she testified that she did have that
5 confusion. I don't plan to get into anything else.

6 THE COURT: So that's the only question you're gonna ask?

7 MS. HAHN: Yes, Your Honor.

8 MR. MILLER: I guess I'm I'm planning to ask more or less
9 what I asked there to indicate honestly whether or not she's
10 absolutely sure of the date, absolutely sure of who and what
11 she saw. I mean, if something affected not so much the the
12 memory but the perception at the time, I think these cases say
13 that is is relevant but if it's just something to bias the
14 witness it's not, and I'm not trying to bring up anything to
15 bias her, trying to bring up something that's relevant as to
16 the time, if ever, if they visited at the time, when and who
17 she saw.

18 THE COURT: All right. All right, Mr. Maldonado.

19 MR. MALDONADO: Your Honor, she she testified that she
20 she wasn't on any meds, didn't need any meds and remember,
21 that -- they failed to tie any nexus. Anything else doesn't
22 fall within the cases *State vs. Turner* and that's 644 S.E.2d
23 693 and *U.S. v. Lopez*, that is 611 Federal.2d 44. It is a
24 side issue that that doesn't need to be goin' into unless they
25 can provide that nexus. And secondly, Your Honor, on the

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1 second level it's basically fruit of the poisonous tree kind
2 of argument, Your Honor. They got their meds -- medical
3 records from her I believe improperly and so allowing this
4 line of questioning would just be rewarding that so on two
5 levels, Your Honor, I believe that that this shouldn't be
6 allowed 'cause once she she asked the question, Was anything
7 confusing you then we have to get into when was that and, you
8 know, the time frame and because she she answered before it
9 was but not during and then, you know, we're gonna open the
10 door to a lot of of questioning we're gonna have to explain
11 and I believe that's just a side issue and a tangent that
12 that -- that's improper, Your Honor.

13 THE COURT: Thank you. Yes, ma'am.

14 MS. HAHN: Your Honor, my question is just whether she
15 has a condition but I would like to respond to what
16 Mr. Maldonado said about the way we got this information. I
17 got the information that I knew about from several of her
18 family members that told me that she had medical problems and
19 she was confused and had all these different issues, excuse
20 me, mental health problems and a lot of other issues related
21 to that and that information, my knowledge of mental health
22 issue came first from family members not from the information
23 that was obtained perhaps improperly.

24 THE COURT: All right. Thank you. Yes, sir.

25 MR. MILLER: Just briefly, Your Honor.. What I think

MOTIONS AND MATTERS

1 Mr. Maldonado said it hits right on the head. The very
2 argument he's making is why we need to do this. She's a
3 witness against two people that are charged with serious
4 crimes. Even as we sit here and ask her questions she changes
5 her answers, cannot remember, cannot remember when, is not
6 sure, that's the entire crux of the argument. She's trying to
7 tell us and a jury that she can remember exactly the day when
8 these people came down what they were wearing having not seen
9 them forever and and yet and even as we sit here and ask her
10 questions about her own medical history and her medicine she
11 can't recall. She's not sure when, she's not sure where she
12 went. I I think that that is something that's extremely
13 relevant to this case if she's gonna try to make an
14 identification and set a certain date.

15 THE COURT: All right. Thank you.

16 MR. MALDONADO: Just, Your Honor, I don't, briefly, I
17 don't remember what drugs I I was prescribed last year so the
18 I think that that's not an appropriate correlation to that,
19 Your Honor, it's just -- but she said she wasn't on at the
20 time. I -- that's the core of this is is whether or not she
21 remembers at the time and she says she she can.

22 THE COURT: All right. All right. Well I want Ms. Evans
23 to understand that I find Ms. Evans to be a very intelligent
24 young lady. Her answers appear to be responsive to the
25 questions given, they appear to be reasonable. I think it's

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1 very different when if you lead her to the date July 25th of
2 '07 she says she remembers that date. Even if she didn't
3 remember that date she says the day after her brother Boyd
4 Evans, her cousin Lywone Capers, John and Todd [sic] came to
5 visit her and other friends in Rolling Meadows Trailer Park in
6 a dark Ford Explorer blue and gold, that the next day she and
7 Michael Rhaney were going to court in Charlotte and stopped by
8 the location of the -- where the robbery had occurred to gas
9 up and couldn't because the police was there and the place had
10 been robbed so that's the crux of her memory goin' back to
11 that particular date and that particular time and then
12 sometime shortly thereafter she's shown still photographs.
13 After that she shows the video. She's testified consistently
14 that she was not on any medication at the time this incident
15 occurred in '07, that they -- II still don't -- she said they
16 tried to label her mild retardation, I -- I'm not an expert in
17 that field but as I say I, in my listening to Ms. Evans, I
18 find her to be a very intelligent young lady and her testimony
19 before the Court today she remembers medication that she took
20 and remembers the scientific name of that medication and the
21 milligrams, 2.5 milligrams, surprised me that I would think an
22 intelligent person that would be -- it'd take an intelligent
23 person to remember that and the actual dosage. She even said
24 all she ever needed was a counselor, I believe she said, for
25 depression from losing her parents. I don't think this is

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1 relevant at all. It's not admissible under 401, 403, under
2 644 S.E.2d 693, *United States vs. Lopez* 611 Fed2d 44. Now,
3 that ruling does not mean, Ms. Hahn or Mr. Miller, that you
4 can't ask her about her memory of July of '07. That doesn't
5 mean you can't ask her about events of that day and
6 recollections of that day, obviously you can. Obviously,
7 that's highly relevant and you can cross-examine her in that
8 regard but her medications that she was not on would have no
9 affect whatsoever.

10 MR. CORNWELL: And, Your Honor, just a point of
11 clarification. Are we able to ask her about any conditions
12 that she had that may have affected her perception because she
13 did answer in the affirmative?

14 THE COURT: What what condition have ya'll told me that
15 affects her perception? depression? No -- nobody's told me,
16 there's been nobody up here that tells me that a witness who
17 is depressed that that affects their perception.

18 MR. CORNWELL: Ms. Hahn asked the question ---

19 THE COURT: Yeah she asked the question. You got to have
20 a reasonable basis for that. Is there a witness that's gonna
21 testify that she she can -- you can ask are you depressed. I
22 mean, you can ask the witness are you depressed but you gotta
23 have a witness to say that depression causes a person to to
24 not be able to perceive.

25 MR. CORNWELL: I think she herself answered Ms. Hahn.

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1 THE COURT: No, sir, I don't think she has. She asked
2 confused. She never used the word "perception" and I'll be
3 glad to go back and check the record but what witness is gonna
4 get up here and tell me that an individual who is depressed
5 cannot perceive the event? You can ask her about her
6 perception of the event, that's following up on what
7 Mr. Miller said, but I don't see any nexus between depression
8 and and her perception. She says, she also says nothing that
9 affects the way she thinks, not see the things that are -- not
10 see things that are there and she was takin' medicine that she
11 wa -- was not supposed to be takin' but she was not takin'
12 that medicine in '07 when this event occurred.

13 MR. CORNWELL: And and, Your Honor, I might be -- I may
14 have misspoke, I might have even misunderstood but I I thought
15 Ms. Hahn had asked her about a condition that caused her to be
16 confused and she answered in the affirmative.

17 THE COURT: Confused?

18 MR. CORNWELL: Yes, and and it would be our position that
19 if there was a condition that caused her to be confused then
20 that would affect her perception.

21 THE COURT: Well and and I don't disagree with you if
22 there's a condition that causes her to be confused but you
23 gotta make that connection of what that condition is. All
24 I've heard is that she was depressed because her parents died.
25 I think you said her dad died in 1992. A lotta people won't

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1 even remember the dates their dad died. Do you remember the
2 date your dad died?

3 MS. EVANS: July the 18th '92 ---

4 THE COURT: The only reason I ask her that 'cause she's
5 already testified to that.

6 MS. EVANS: And my mother, and my mother died July the
7 18th of 1986.

8 THE COURT: And and the only reason I asked her if she
9 remembered the date because I recall in the in camera hearing
10 on Monday, was it Monday? What's today? Wednesday? Tuesday?

11 MR. MALDONADO: Tuesday morning, Your Honor.

12 THE COURT: Tuesday? That she testified to that that
13 particular fact. So it's an issue of depression. If if
14 there's a showing if you gonna have a witness that says
15 because a person's depressed they're they're they're not able
16 to identify and, you know, it it affects their perception in
17 some way, not that they're not able to identify that -- that's
18 going way beyond what I'm tryin' to say. Yes, sir,
19 Mr. Cornwell.

20 MR. CORNWELL: Your Honor, like I said it was just a
21 point of clarification because ---

22 THE COURT: All right.

23 MR. CORNWELL: --- we wanted to make sure to be sure what
24 we could ask and ---

25 THE COURT: But ---

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1 MR. CORNWELL: --- couldn't go into.

2 THE COURT: --- I mean, ya'll can clearly ask, and it's
3 kinda like what Mr. Miller said, the crux of it is the 25th
4 and the 26th and obviously goin' back to the relationship
5 which Ms. Hahn was -- had had asked some questions about also
6 about well kinda comparing between Mr. Evans and Mr. Capers
7 she obviously has a stronger relationship with Mr. Evans than
8 she does with Mr. Capers, I mean, everybody in the courtroom
9 knows that. Even if they're confused they they know that. I
10 mean, we we can figure that out. And and if they're -- I
11 mean, are there other questions or am I not -- if I'm not
12 being clear, Ms. Ms. Hahn, I don't I don't I don't wanna have
13 to send the jury back out. I don't want to inhibit the flow
14 of your cross-examination or inhibit you from being able to
15 fully and completely cross-examine Ms. Evans.

16 MS. HAHN: I think I understand your ruling, Your Honor.

17 THE COURT: All right. Thank you. And, Mr. Miller?

18 MR. MILLER: I I understand, Your Honor.

19 THE COURT: All right.

20 MR. MILLER: We're fine.

21 THE COURT: All right. Anything further before we bring
22 our jury back in?

23 MS. HAHN: No, Your Honor.

24 MR. MILLER: No.

25 MR. MALDONADO: No, Your Honor.

GLYNNESSA EVANS - CROSS-EXAMINATION BY MS. HAHN

1 THE COURT: All right. Bring us our jury. Are you all
2 right, madam court reporter?

3 THE COURT REPORTER: Yes, sir.

4 THE COURT: All right. Bring us our jury.

5 (The following takes place in the presence of the jury.)

6 THE COURT: All right. Welcome back. Ladies and
7 gentlemen, we're continuing the trial of the case by the
8 cross-examination of Ms. Evans by Ms. Hahn. Ms. Hahn, you may
9 proceed.

10 MS. HAHN: Thank you, Your Honor.

11 CROSS-EXAMINATION BY MS. HAHN:

12 Q. Okay, Ms. Evans, you said that on July 25th of 2007 the
13 defendants came to your house, is that correct?

14 A. Yes.

15 Q. Okay. And about what time did they get there?

16 A. They got there that afternoon.

17 Q. You remember more specifically what time it was?

18 A. I ain't look at no time but I know it was the afternoon.
19 The sun had -- it was goin' down.

20 Q. The sun was goin' down at that point?

21 A. Yes.

22 Q. So it was more in the evening than the afternoon?

23 A. Yes.

24 Q. Okay. And did you see Lywone there?

25 A. Yes.

GLYNNESSA EVANS - CROSS-EXAMINATION BY MS. HAHN

1 Q. And what was he doing when you saw him?

2 A. Like I said, they went to visit their little girlfriends
3 and people that they knew.

4 Q. Okay. And I wanna make sure that the jury understands
5 exactly what Mr. Capers did as opposed to what any of the
6 other three ---

7 A. He ---

8 Q. --- guys did.

9 A. --- he walked across the street, the trailer across the
10 street from my house.

11 Q. Okay. And that's where his old girlfriend lived?

12 A. Yes.

13 Q. Okay. What was her name?

14 A. Her name was, um, I can't recall right now.

15 Q. But she was somebody that lived across the street. You
16 knew who she was and ---

17 A. Yes.

18 Q. --- and knew her pretty well, right?

19 A. Yes.

20 Q. Okay.

21 A. She knew me very well too.

22 Q. All right. Now from the time that Lywone got there until
23 the time that he went to see the old girlfriend, about how
24 much time went by?

25 A. He he walked over there. He stayed over there for a

GLYNNESSA EVANS - CROSS-EXAMINATION BY MS. HAHN

1 while 'cause he was waitin' on her to come out.

2 Q. So the time that he was around you would have been only a
3 few minutes, is that right?

4 A. Yes.

5 Q. Okay. Did you talk to him?

6 A. No.

7 Q. Okay. And when you saw him where was he?

8 A. When I saw him?

9 Q. Yeah.

10 A. He was across the street ---

11 Q. Okay.

12 A. --- waitin' on his friend to come out the door.

13 Q. Did you ever have a conversation with him where you were
14 standin' on the porch and he was standin' in the yard?

15 A. No.

16 Q. Okay. Now what did Lywone have on when you saw him?

17 A. He had some pants on with a, with a silver thing like a
18 belt chain thing hangin' from his jeans and they was like
19 baggy pulled down a little bit.

20 Q. Do you remember the color of his pants?

21 A. It was a dark color.

22 Q. Okay. You remember anything else about what he had on
23 that day?

24 A. And a -- he had his head down and a shirt, t-shirt and
25 sneakers.

1 Q. Okay. Now who drove everybody to your house?

2 A. Who drove everybody to my house?

3 Q. Um-hum, the guys.

4 A. I couldn't answer that question because there was so many
5 people was takin' turn in there that truck.

6 Q. Okay. Do you remember what kinda vehicle it was they
7 were driving?

8 A. Yes.

9 Q. Okay. What was it?

10 A. It was a Ford Explorer blue and gold trimmin' on it.

11 Q. Now I believe that you testified in an earlier hearing
12 that the vehicle was green, is that right?

13 A. It was, it was like blue, yes.

14 Q. Do you remember when you testified earlier that it was
15 green?

16 A. Yes.

17 Q. Okay. And now you're saying that it was more of a
18 blue?

19 A. Yes.

20 Q. All right. Now I believe that you testified that you saw
21 some video surveillance from the Pitt Stop Convenience Store,
22 is that right?

23 A. Yes.

24 Q. And in that you testified that you had seen the
25 defendants in this case as well as two other guys, right?

GLYNNESSA EVANS - CROSS-EXAMINATION BY MS. HAHN

1 A. Yes.

2 Q. Okay. Now what was it about Lywone that you recognized
3 specifically?

4 A. Basically, the way he was cut: his nose and his eyes.

5 Q. Was his eyes too you said.

6 A. Yes.

7 Q. Okay. And did he have on the same clothes or different
8 clothes?

9 A. That's different.

10 Q. He had on different clothes from when you saw him?

11 A. Yes.

12 Q. What about his voice? Did you hear him saying anything
13 on the video?

14 A. His voice, "Come on, son."

15 MS. HAHN: Your Honor, I beg the Court's indulgence just
16 briefly. I wanna see the photos that she identified earlier.

17 THE COURT: Certainly.

18 BY MS. HAHN:

19 Q. Okay. And I believe that Detective Prestigacombo came out
20 when he showed you the video and asked you some other
21 questions about what happened, is that right?

22 A. Yes.

23 Q. Did you tell him that you recognized all four of the
24 people in the video?

25 A. Yes.

GLYNNESSA EVANS - CROSS-EXAMINATION BY MS. HAHN

1 Q. And you gave him their first and last names right?

2 A. Yes.

3 Q. Did you tell how you knew 'em or anything?

4 A. Yes.

5 Q. Okay. So you informed the officer about those people,
6 right?

7 A. Yes.

8 Q. Okay. And did you also tell him that Lywone had been
9 there but had gonna across the street to visit his ex-
10 girlfriend?

11 A. Yes.

12 Q. Okay. Did you point out where she lived or did you
13 just ---

14 A. I showed him.

15 Q. You showed him. Okay. All right. I wanna get into a
16 couple other things with you. It's my understanding that you
17 were convicted of killing your 9-year-old cousin several years
18 ago, is that correct?

19 THE COURT: No, that ---

20 MS. EVANS: That's not my cousin.

21 THE COURT: --- that's not the proper form of question.

22 MS. HAHN: I ---

23 THE COURT: That's ---

24 MS. HAHN: --- apologize.

25 THE COURT: --- not the proper form. Madam forelady and

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1 ladies and gentlemen of the jury, please step out.

2 (The following takes place outside the presence of the
3 jury.)

4 MR. MALDONADO: Just for the record, Your Honor, we would
5 put our objection on the record.

6 THE COURT: What what is her prior criminal history?

7 MR. MALDONADO: I believe she has an involuntary
8 manslaughter.

9 THE COURT: And when?

10 MR. UNDERWOOD: '99.

11 MR. MALDONADO: '99.

12 THE COURT: I can't quite hear ya.

13 MR. MALDONADO: '99, Your Honor.

14 THE COURT: '99?

15 MR. MALDONADO: Yes, Your Honor.

16 MS. EVANS: It was December the 31st of 1999.

17 THE COURT: What what would this be? What's your
18 objection, Mr. Maldonado?

19 MR. MALDONADO: That was completely improper that she, I
20 mean, the the conviction is for involuntary manslaughter and
21 the way she she phrased it, I mean, it's completely improper
22 and I believe it's, I mean, I don't believe it's relevant in
23 this, in this case, Your Honor, and not sure it's more
24 probative -- more prejudicial than probative in this case.

25 (Pause.)

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1 THE COURT: Do you have a copy of the history of
2 Ms. Evans?

3 MR. MALDONADO: Yes, Your Honor.

4 (Whereupon, counsel handed the document to the Court.)

5 (Pause.)

6 THE COURT: All right. And tell me again your
7 objections, Mr. Maldonado.

8 MR. MALDONADO: I believe she's getting into the facts of
9 the case. I believe that's improper. The the question probly
10 should have been were you convicted of of involuntary
11 manslaughter, it's -- and then I believe it's too remote, you
12 know, I guess.

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

15 MS. HAHN: Thank you, Your Honor. The facts of the case,
16 I don't wanna get too much into it, but the facts of the case
17 are significant in the present case because I believe they
18 create a bias and therefore would come un -- come in under
19 Rule 608(c), I believe, as a -- as testimony that would
20 present a bias or motive to misrepresent her testimony and the
21 reason why is that when this happened this was a a 9-year-old
22 cousin, it was somethin' that caused a huge rift in the family
23 and it's my understanding that there were family members that
24 testified -- well not, excuse me, did not testify but talked
25 to the police officers investigating that case and that hurt

GLYNNESSA EVANS - DIRECT EXAMINATION BY MS. HAHN

1 Ms. Evans and that she may harbor some resentment for that and
2 that is a reason for bias on her part against Mr. Capers and
3 Mr. Evans.

4 THE COURT: All right. Well you can ask her about that
5 in camera.

6 DIRECT EXAMINATION BY MS. HAHN:

7 Q. Ms. Evans, you were convicted of killing your 9-year-old
8 cousin, um, ---

9 A. Excuse me, it's not cousin, it's sister.

10 Q. Your sister, excuse me and I I apologize. I didn't mean
11 to use the wrong word. Your sister several years ago, is that
12 right?

13 A. Yes.

14 Q. And since then that's created some hardships in your
15 family, is that correct?

16 A. No.

17 Q. Your family members do not hold that against you and you
18 don't hold that against them that they talked to ---

19 A. I ---

20 Q. --- the police again?

21 A. --- I don't know if they hold that against me or not.

22 Q. So you don't know. Okay.

23 THE COURT: Do do you hold it against them?

24 MS. EVANS: Not really.

25 THE COURT: Okay. All right. You may ask your next

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1 question.

2 MS. HAHN: Your Honor, I think that's all of my questions
3 on that issue but I think that her credibility on whether
4 she's answering whether she has any hard feelings towards them
5 is an issue for the jury.

6 THE COURT: She says she doesn't so they're they're gonna
7 speculate on that?

8 MS. HAHN: Your Honor, I don't, I personally don't think
9 that her testimony's credible.

10 THE COURT: Nobody's testified otherwise.

11 MS. HAHN: Okay.

12 THE COURT: I mean, you -- you're talkin' about somethin'
13 over over ten years ago. So somethin' over ten years ago from
14 the date of this trial and over seven years ago from the date
15 of the incident that somehow after seven years she fingers her
16 brother, her cousin and two other individuals that I -- I'm
17 not sure if they're her cousins or not, I I was a little
18 unclear about that testimony, in an armed robbery of a
19 location down from her house because because they may have
20 given -- because somebody else in the family may have
21 cooperated with the police on an investigation in the early
22 part of 2000, that's, I mean, that's the basis of the 608(c)
23 testimony?

24 MS. HAHN: It is, Your Honor.

25 MR. MILLER: Your Honor?

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1 THE COURT: Yes, sir.

2 MR. MILLER: I don't mean to interrupt at all but ---

3 THE COURT: No, you're you're not ---

4 MR. MILLER: --- what I'll be doing in my
5 cross-examination I I can tie in the relevance to you now if
6 you'd like.

7 THE COURT: All right.

8 MR. MILLER: When she was arrested and convicted in '99,
9 when she went to jail I believe at that time or shortly after
10 it's my understanding that she was released. She did spend
11 some time in in-patient care, whether she did or she didn't
12 the kids were taken or the the child, she only had one at the
13 time, Ms. Emma Evans was raising that child. At the time that
14 this incident happened when she said her and Michael Rhaney
15 were going to gas up the van to go to Charlotte, she was going
16 to court trying to get her children back because Ms. Evans did
17 not feel she was a proper guardian for her children and she's
18 been fighting to get her children back until that time. She
19 had a -- right at the time of the incident the next day she
20 was goin' to Charlotte because Ms. Evans, who is Boyd's mother
21 and caretaker, doesn't -- won't give her her kids back and
22 there's a major bias or reason for her to lie specifically
23 with regard to Boyd and Lywone in this incident because of her
24 dislike or hatred for Ms. Evans and that's what I'm gonna try
25 to to bring out.

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1 THE COURT: So that fortuitously four unknown individuals
2 robbed the the Pitt Stop on the morning, the early morning
3 hours of the same day she was supposed to go to Charlotte for
4 her custody hearing and ---

5 MR. MILLER: It's relevant. I'm sorry, Your Honor.

6 THE COURT: Sir?

7 MR. MILLER: No, I'm sorry. I just -- I I was gonna say
8 I -- fortuitous or not, I mean, I think it's it's relevant for
9 the jury to understand the facts and be able to judge for
10 themselves. I mean, that is certainly a a bias if there, if
11 there is one. I mean, she's saying that there are no hard
12 feelings between her and the family. Clearly there's there's
13 potential that she's being untruthful about that, I mean, they
14 won't give back her kid.

15 MR. MALDONADO: The best they can argue is that she had a
16 bias against Emma Evans. If she didn't do anything to frame
17 Ms. Evan, Ms. Emma Evans, there's nothing that's a bias.

18 MS. HAHN: Your Honor, ---

19 MR. MILLER: It's still relevant testimony, Your Honor, I
20 believe would be my argument.

21 THE COURT: Yes, Ms. Hahn.

22 MS. HAHN: I was gonna ask you the same, about the same
23 issue that Mr. Miller just asked you. I also wanted to get in
24 some questions about the custody issue and this is probly the
25 best time to do it now too.

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1 THE COURT: Well, the prosecutor asked her about custody
2 so and that was because you were goin' to Charlotte on a
3 custody issue. I don't think that totally opens the door for
4 all factors involved potentially in a custody issue. Perhaps
5 if that dispute is between perhaps, I need to think through
6 this, if that dispute between Glynnessa, if you don't mind me
7 calling you by your first name so I get my Ms. Evanses
8 straight, Glynnessa and Ms. Emma Evans who is the mother of
9 Boyd Evans perhaps at least going that far is is relevant,
10 that she was in a custody dispute with the mother, not your
11 client, but with the mother of Mr. Miller's client. Am I
12 tracking that right? Ms. Emma Evans is Mr. Boyd Evans's
13 mother?

14 MR. MILLER: That's that's correct.

15 MS. HAHN: Yes.

16 THE COURT: Of course I ---

17 MR. MALDONADO: I think ---

18 THE COURT: --- I don't know that there's any relevance
19 of that as far as, uh, ---

20 MR. MALDONADO: My my understanding was that Evans, Emma
21 Evans is a, is an ant is that what Ms. Ms. ---

22 MS. HAHN: My understanding is that that -- excuse me,
23 I'm sorry, I didn't mean to speak over you.

24 MR. MALDONADO: That's what I was told.

25 MR. CORNWELL: And and, Your Honor, Ms. Emma Evans is

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1 also our client's grandmother. That's the ---

2 THE COURT: All right.

3 MR. CORNWELL: I think that -- let me clarify something.

4 MR. MILLER: Ms. Evans is in the courtroom so if you need
5 to ask her she can clarify.

6 MR. CORNWELL: And this whole situation with the ---

7 THE COURT: I thought the witnesses were sequestered.

8 MR. MILLER: But at the time she was not ---

9 MS. HAHN: She's not ---

10 MR. MILLER: --- a witness. We haven't named her as a
11 witness but if -- and so I don't think we can if she's not
12 sequestered now but if we need her to and you're permitting it
13 we would certainly ---

14 THE COURT: I I didn't call a witness list.

15 MR. MILLER: Oh.

16 MR. CORNWELL: What I wanna point out is that the whole
17 incident with her killing a kid, involuntary manslaughter with
18 the sister caused a giant rift in the family. It basically
19 pit the family against her. They were given ---

20 THE COURT: Pits the family against who?

21 MR. CORNWELL: Against the witness, Your Honor. And and
22 I think it's important that you in Rule 608(c), and this this
23 is why we think all of that comes in, once you ask the
24 question of the witness is she bias, does she hold anything
25 against the family, you know, or, you know, you ask her that

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1 question to see if there is a bias, once she says no, as she;
2 has already says, it comes in to impeach her so the fact that
3 she says no actually allows us to present evidence of bias to
4 impeach her against her claim of non-bias, Your Honor, and I
5 think that's what is important to to understand about Rule 608
6 and that's our position, Your Honor.

7 THE COURT: You're saying you can com -- impeach on a
8 collateral issue?

9 MR. CORNWELL: And and, Your Honor, the the issue is it
10 would be our position that the issue is not collateral because
11 it goes directly towards the source of bias.

12 THE COURT: All right.

13 (Pause.)

14 MR. MILLER: Your Honor, there's a case, I don't wanna
15 interrupt you but ---

16 THE COURT: Yes, sir.

17 MR. MILLER: --- if it would be helpful I was just
18 looking at *State Vs. Hale*, 284 S.C. 348 ---

19 THE COURT: That's a child abuse case?

20 MR. MILLER: I believe so, Your Honor.

21 THE COURT: Spartanburg County?

22 MR. MILLER: Stating -- let's see, I'm looking through
23 citing it out of this this book right here, Your Honor. This
24 goes to the three elements. If it is considered collateral
25 evidence when it may be admissible for impeachment essentially

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1 the -- what the case is looking at either specific bad conduct
2 involving no conviction, conviction of a crime or bad
3 character for truth, veracity under Rule 608(a) which I think
4 is what we were simply trying to enter it for.

5 MR. MALDONADO: Your Honor?

6 THE COURT: Yes, sir.

7 MR. MALDONADO: I'd like to cite *United States vs. Abel*,
8 469 U.S. 45. A witness may be impeached by showing that he or
9 she's biased for or against one of the parties in a
10 litigation. Then just saying that there's a rift in the
11 family isn't, you know, make it so. The -- they don't show
12 anything that Mr. E -- Boyd Evans and Mr. Lywone Capers did in
13 in any of this. Is there no connection there then this is
14 just random speculation.

15 MR. CORNWELL: Your Honor, I I I would say that that's
16 not the case here because you got just these are all family.
17 You hurt one you hurt the family. I mean, what better way to
18 get back at someone than to hurt their child. It's not just
19 random speculation. I think it goes directly towards bias.
20 Rule 608 let's it in.

21 MR. MALDONADO: Case law says against one of the parties
22 in the litigation not against one of the parties and their
23 families.

24 (Pause.)

25 THE COURT: The cases I have looked at or tried to look

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1 under 608(c), and I take it that's the area concerning showing
2 a bias or prejudice motive, I looked at *State vs. Gilbert*, 150
3 S.E. 321 (1929) ill feelings between the parties, that was a
4 homicide case; *State vs. Petit*, 142 S.E.2d 725 ill feeling
5 between the parties it was a 1927 case also. Further, under
6 608(c) may be inquired into if they are or were engaged in any
7 other litigation with one of the parties, which is not the
8 case here, that's citing *State vs. McFarland* 306 S.E.2d 611.
9 None of these other areas that I look at appear to apply to
10 this case as far as pleading to a lesser included offense or a
11 mother coerces a child or a young witness to testify. I
12 looked back at *State vs. Herman Jim Hale* which is a case out
13 of Spartanburg County, it's a aggravated assault and battery
14 case. It indicates, Hale, which is cited by the defense,
15 indicates to me, which is the position I was taking
16 originally, I would point out that was written by Judge Bell,
17 states there are three ways to impeach the credibility of a
18 witness by collateral evidence. The first is by showing that
19 he had been convicted of a crime involving moral turpitude,
20 not too remote in time citing *State vs. Harvey*. The second is
21 by showing he has been guilty of bad conduct that was not
22 subject to a conviction. This inquiry into matters collateral
23 to the case in chief is limited to cross-examination of the
24 witness sought to be impeached; if the witness denies the act,
25 the inquiry ends, citing *State vs. Allen*. At this point with

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1 this witness I don't quite understand and I can't find the
2 case. I'll be glad to look at a case if ya'll tell me there's
3 one out there where you can inquire any further of this
4 witness in this regard when she denies it because ya'll don't
5 believe she's credible. I'm having a hard time connecting
6 that dot. I'll be glad to look at any cases ya'll have in
7 that regard under 608(c). Maybe I'm missing the point. I
8 mean, I mean, I look back at that ruling in the case, that was
9 a -- which has cited to the notes of 608(c) that was a case
10 only where a co-defendant testified against a defendant and he
11 testified as to what he had pled guilty to and the prosecution
12 brought it out, the defense objected because it was a issue of
13 levels of the assault and they allowed that in in that case,
14 that's of course pre-codification of the rules as in *State vs.*
15 *Hale* but it is cited after the note to 608(c). I guess the
16 initial issue on the table still is the involuntary
17 manslaughter and of course then it becomes as as Ms. Hahn and
18 Mr. Miller pointed out that they wanna take that and link it
19 to a a reason for bias in the family because the family
20 cooperated with that investigation I take it in 2000 against
21 Ms. Evans.

22 MS. HAHN: Yes, Your Honor.

23 THE COURT: Do ya'll know of such a case under 608(c)?

24 MS. HAHN: I do not, Your Honor.

25 THE COURT: And you cited the same case also, a federal

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1 case, Mr. Maldonado?

2 MR. MALDONADO: Uh, ---

3 THE COURT: I I didn't look at it. Will you hand that up
4 to me.

5 MR. MALDONADO: Your Honor, we just got the summary from
6 the South Carolina Evidence, um, ---

7 THE COURT: All right. Just give a cite. My law clerk
8 can ---

9 MR. MALDONADO: Your Honor, it's *U.S. v. Abel*, 469 U.S.
10 45.

11 MR. CORNWELL: Your Honor, I I ---

12 THE COURT: Yes, sir.

13 MR. CORNWELL: --- and correct me if I misstate, you
14 know, the State's position. I think their position was is
15 that our clients but the bias wasn't necessarily against our
16 clients and that their I think their position was it has to be
17 against parties involved.

18 THE COURT: That -- that's -- I think that's one and one
19 one of those cases are cited under the notes under 608(b)
20 under South Carolina Evidence Second Edition, Danny R.
21 Collins. There are some State cases in that regard. Is that
22 what you cited *Abel* for?

23 MR. MALDONADO: Yes, Your Honor.

24 THE COURT: And I I see that. There's *State vs.*
25 *McFarland*.

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1 MR. CORNWELL: Yeah, and of course our position is the
2 the biases against the family generally, ---

3 THE COURT: I understand.

4 MR. CORNWELL: --- of course they're family.

5 THE COURT: Right.

6 MR. CORNWELL: Okay.

7 THE COURT: Well and that's why I looked back at *Gilbert*
8 which talks about ill feelings between the parties, *State vs.*
9 *Gilbert*, 150 S.E.2d 321. She can ask the question, Do you
10 have any ill feelings towards Ms. Evans. I guess she could
11 ask that the mother of Mr. Evans and the grandmother of
12 Mr. Capers. I'm not saying she can't ask that because the
13 child custody came in but still at the same time I I don't
14 know that you can go into all that under 608(c). That's the
15 point I'm makin'.

16 MR. CORNWELL: So the question can be asked about ill
17 feelings but not necessarily about the details of the source
18 of the ill will feelings. Is that what the Court's ---

19 THE COURT: I can't make the connection. I mean, if the
20 sour -- testimony's already been offered about the child
21 custody: Why were you going to Charlotte? the child custody.
22 She asked the child custody did that involve a dispute between
23 you and Mr. Evans's mother and Mr. Capers's grandmother, is
24 that correct?

25 MS. HAHN: Yes.

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1 THE COURT: Do you have any que -- any objection to that
2 question, Mr. Maldonado?

3 MR. MALDONADO: No, it should be fine.

4 THE COURT: All right. I mean, a jury can interpret that
5 however they want. I mean, the jury, you know, child custody
6 issues can get more inflammatory, if you will, than ---

7 MR. MILLER: I think we can live with it ---

8 THE COURT: --- trials up here in general sessions.

9 MR. MILLER: And our -- but -- well but a part of the,
10 part of the issue is that at all times Boyd, Lywone, Cherise,
11 brothers and sisters and even Lywone's mom Tammy all lived
12 together, helped take care of that child, raised that child,
13 you know, along with other children and I think that, you
14 know, in other words, I guess the the connection we're making
15 is there's a conviction of the crime which should be able to
16 be brought up for impeachment following ---

17 THE COURT: I haven't decided that yet ---

18 MR. MILLER: Well correct ---

19 THE COURT: --- of course because it's over ten years
20 old.

21 MR. MILLER: Okay. I know by about two weeks but now
22 assuming, Your Honor, the ---

23 THE COURT: Ten years old.

24 MR. MILLER: I know. I know. I'm just kidding but, you
25 know, assuming that that you would allow that in and that the

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1 direct connection from that would be that, you know, her
2 children were then sent to live with this family as a whole
3 then they didn't feel she was able to have them back so she's
4 fighting for custody, that is a, I think to me that's a direct
5 connection to the bias as to why she would be -- have a bias
6 and that's an issue of weight. I mean, the jury can decide if
7 she's biased or not but ---

8 MR. MALDONADO: Well but, Your Honor, they're just,
9 they're just speculating that the bias extends to the entire
10 family. This isn't one family against another family. She's
11 in the family so that doesn't mean she has bias against the
12 great grandmother, the the children, the, you know, everybody
13 there's no -- there's nothing to say that that there's any
14 bias against this person. You can't extend it just because
15 of ---

16 THE COURT: All right. Yes, Ms. Hahn.

17 MS. HAHN: I have one other issue.

18 THE COURT: Sure.

19 MS. HAHN: As far as the the conviction date, while the
20 ten years has passed I -- my understanding is that we'll apply
21 the ten years from the release from custody and she was
22 actually held in custody after that I wanna say that she
23 testified earlier that it was in 2002 that she was released.

24 THE COURT: The evidence of a conviction under this rule
25 is not admissible if a period of more that ten years has

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1 elapsed since the date of the conviction or the release of the
2 defendant that's correct so it it would be admissible I
3 think ---

4 MR. MALDONADO: Your Honor, but I I believe the proper
5 way to actually for her to ask that question would have been,
6 Have you been convicted of involuntary manslaughter --- (

7 THE COURT: I agree.

8 MR. MALDONADO: --- not the way she brought -- got it --
9 twisted the facts of the case.

10 THE COURT: I agree with that.

11 MS. HAHN: Your Honor, may I clarify it just so I
12 understand your ruling.

13 THE COURT: You'll clarify ---

14 MS. HAHN: Excuse me ---

15 THE COURT: --- to see if I understand my ruling.

16 (Laughter.)

17 MS. HAHN: May I ask for clarification of your ruling?

18 THE COURT: Certainly.

19 MS. HAHN: Is your ruling that I can get into whether or
20 not she was convicted but nothing else or is your ruling that
21 I can get into was she convicted and does she harbor ill will
22 towards family members who ---

23 THE COURT: You can ask, you can ask her -- I -- here's
24 here's what I think my ruling is: I think you can ask her
25 whether or not she's been convicted of involuntary

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1 manslaughter in 2000. I think you can ask her, as far as the
2 backdrop of the child custody issue, she's testified that her
3 and Mr. Rhaney was going to Charlotte to a court to a child
4 custody hearing, you can ask her did that involve the custody
5 of her child and that was a hearing that involved her and
6 Mr. Evans's mother, Mr. Capers's grandmother, Ms. Emma Evans,
7 that's the parties to that lawsuit, correct? Correct?

8 MS. HAHN: That's my understanding, Your Honor.

9 THE COURT: And as a result of that do you harbor -- is
10 there any ill feeling or any bias that you hold towards
11 Mr. Evans or towards Mr. Capers because of that ongoing
12 custody issue between you and their mother and their
13 grandmother. All right.

14 MS. EVANS: Excuse me.

15 THE COURT: Give me just a minute. Let me, let me --
16 I'll I'll answer you in a minute. I'll answer you in a
17 minute. Yes, ma'am?

18 MS. HAHN: I think I understand now.

19 THE COURT: All right. Yes, ma'am.

20 MS. EVANS: One thing, I already got custody of my
21 daughter ---

22 THE COURT: All right.

23 MS. EVANS: --- nothing to do ---

24 THE COURT: And that -- and really ---

25 MS. EVANS: --- so I don't have nothing to do with no

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1 custody thing.

2 THE COURT: And and and, Ms. Evans, my ruling is just
3 based on what I believe the law is and the -- that may be
4 brought out also but, you know, as a witness you -- you've
5 done fine so far, you need to just answer Ms. Hahn's questions
6 just like you did Mr. Maldonado, just like you did me and.
7 Mr. Millers', all right?

8 MS. EVANS: Um-hum.

9 THE COURT: Do you have any other questions?

10 MS. EVANS: No.

11 THE COURT: All right. Does that clarify my ruling?

12 MS. HAHN: It does, Your Honor. Thank you.

13 THE COURT: All right. And like I say if if there's a
14 case out there, I I can't, I can't find it up here. It's, I
15 know it's not one out there under 60(b) -- 608(b) but there is
16 out there under 608(b) 'cause it says you can't go into it
17 unless under very minimal exception. Why don't we take about
18 a ten minute recess. Ms. Evans, you may step down during this
19 brief recess. You are subject to continuing cross and
20 cross-examination and perhaps redirect so you can't discuss
21 your testimony with anyone but you can get down and refresh
22 yourself, okay?

23 MS. EVANS: Thank you.

24 (Whereupon, the witness left the stand.)

25 THE COURT: All right. Be back in in about ten minutes.

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1 Thank you very much.

2 (Whereupon, a recess was taken.)

3 (Whereupon, the witness returned to the stand.)

4 THE COURT: All right. Anything before we bring in our
5 jury, Mr. Maldonado?

6 MR. MALDONADO: I believe, Your Honor, can maybe instruct
7 the jurors on that last question disregard and clarify that.

8 THE COURT: All right. You're you're asking for a
9 curative instruction?

10 MR. MALDONADO: That's correct.

11 THE COURT: All right. Anything, Ms. Hahn, Mr. Miller?

12 MR. MILLER: No, I mean, we're just gonna reask the
13 question the proper way so I have no objection to that unless
14 she does.

15 MS. HAHN: No, Your Honor.

16 THE COURT: All right. Thank you. If you'll bring us
17 our jury, please.

18 THE BAILIFF: All right.

19 (The following takes place in the presence of the jury.)

20 THE COURT: All right. Welcome back, ladies and
21 gentlemen. I apologize that I have, uh, kind of in and out of
22 the courtroom so much today. I guess you get your, a little
23 bit of your exercise in at least, a few are a little quicker.
24 Many times it's very difficult to gauge how much time a --
25 it'll take to flush out the issues and hopefully once they're

1 flushed out and you get back in the courtroom this will go
2 smoothly, we'll see, keep our fingers crossed. I have
3 sustained the objection to the last question. There's a
4 particular form as to a question asked that's not not by way
5 of criticism whatsoever, I I don't mean it like that, and
6 remember the the question is not the testimony, it's the
7 answer which is the testimony but as far as the last question
8 and the last answer though I'm gonna ask you to or order you
9 to, it's hard to say put it outta your mind, it's hard to
10 unring a bell, however that question, that response would not
11 be any part of your deliberations in the form in which it was
12 asked and/or answered. You will not discuss that at all and
13 it will not be part of your deliberations and part of your
14 verdict in this case. With that being said, Ms. Hahn, you may
15 continue. You may ask your next question.

16 MS. HAHN: Thank you, Your Honor.

17 CROSS-EXAMINATION BY MS. HAHN:

18 Q. Ms. Evans, is it true that you were convicted of
19 involuntary manslaughter?

20 A. Yes.

21 Q. Okay. And is it true that in 2007 there was an ongoing
22 custody dispute regarding the custody of your dau -- your
23 daughter and that that dispute was between you and Emma
24 Evans?

25 A. Yes.

1 Q. And Emma Evans is the mother of Boyd Evans and
2 grandmother of Lywone Capers, is that correct?

3 A. The aunt of Boyd Evans. She adopted Boyd ---

4 Q. She's his ---

5 A. --- but she ---

6 Q. --- adopted mother, right?

7 A. Yes.

8 Q. She raised him.

9 A. Yes.

10 Q. Okay. I understand. And you talked to Detective
11 Prestigacombo after the robbery, correct?

12 A. Yes.

13 Q. And he showed you some of the photographs from the video,
14 is that right?

15 A. Yes.

16 Q. I believe you testified earlier that you saw Lywone
17 Capers' eyes in that video, is that right?

18 A. Yes.

19 Q. Do you see his eyes in any of the photographs up there
20 (indicating)?

21 THE COURT: And there's some over there on the jury rail
22 also, Ms. Hahn.

23 MS. HAHN: Thank you, Your Honor.

24 MS. EVANS: His eyes right there (indicating) and his
25 nose.

GLYNNESSA EVANS - CROSS-EXAMINATION BY MR. MILLER

1 THE COURT: Spe -- speak up for us.

2 MS. EVANS: His eyes right here (indicating) and his
3 nose. He look real clear.

4 BY MS. HAHN:

5 Q. And which photograph is that?

6 A. That's 24.

7 Q. That's No. 24?

8 MS. HAHN: Your Honor, may I publish this to the jury?

9 THE COURT: Yes, ma'am. Certainly.

10 (Whereupon, the exhibit was published to the jury.)

11 BY MS. HAHN:

12 Q. And again in that photograph you're looking at his eyes
13 and nose and recognized him by his eyes and nose, ---

14 A. Yes.

15 Q. --- is that correct? Okay. Did officer -- excuse me,
16 Detective Prestigacomo inform you that some of your family
17 members were suspects?

18 A. Yes.

19 MS. HAHN: Thank you, Your Honor, no further ---

20 THE COURT: Thank you.

21 MS. HAHN: --- questions.

22 THE COURT: Thank you very much, Ms. Hahn. Mr. Miller.

23 MR. MILLER: Thank you, Your Honor.

24 CROSS-EXAMINATION BY MR. MILLER:

25 Q. Ms. Evans, let me ask you some questions directly with

1 regard to my client Boyd Evans, okay? Let's start out do you
2 know when Boyd was born? what year?

3 A. He was born -- 25th -- I mean, rd of 1983.

4 Q. '83?

5 A. Yes.

6 Q. Okay. And you said that then that would make him let's
7 see he's he's approximately 20-years-old now, right?

8 A. Yes.

9 Q. So was it 1989 that he was born or 1983?

10 A. He should be about, he should be 20 now.

11 Q. Yeah, so maybe he ---

12 A. '89.

13 Q. --- was born in '89. Okay.

14 A. Yes.

15 Q. Okay. And then you said that you you only knew him for a
16 couple years when he was real small until your father passed
17 away in 2002, is that right?

18 A. No, my father died ---

19 Q. Oh, excuse me, '92. Excuse me.

20 A. Yes.

21 Q. See, we both get dates wrong. It's okay. After that
22 period a time when was the next time you saw or lived with
23 Boyd?

24 A. I seen Boyd next time when my aunt got custody of him and
25 I went to visit him.

1 Q. When was that? Do you recall?

2 A. That was around about ---

3 Q. Was it before 1999?

4 A. Yes.

5 Q. Okay. Do ---

6 A. It before I had my daughter.

7 Q. When did you have your daughter?

8 A. I had my daughter November the 1st of '98.

9 Q. '98. Okay. And I believe Ms. Hahn asked you already
10 it's true you were convicted of involuntary manslaughter in
11 1999, correct?

12 A. Yes.

13 Q. Okay. And did you actually go to prison for that
14 crime?

15 A. Yes.

16 Q. And when were you released?

17 A. March the 1st of 2002.

18 Q. Okay. You had one child you said in '98.

19 A. Yes.

20 Q. What happened to that child when you were placed in
21 prison?

22 A. She was in the caretaker of my aunt.

23 Q. And your aunt is Emma Evans?

24 A. Yes.

25 Q. And that would be Boyd's adoptive mother?

1 A. Yes.

2 Q. And did Boyd live with her at the time?

3 A. Yes.

4 Q. Now after you were released did you go directly home in
5 2002?

6 A. She came and got me ---

7 Q. Okay.

8 A. --- and took me to Charlotte and they all -- then she had
9 to bring me back to South Carolina.

10 Q. Okay. Was there -- what -- where where did you live in
11 Charlotte ---

12 A. I ---

13 Q. --- or what what did you do in Charlotte?

14 A. --- really did probation, was startin' probation.

15 Q. Okay. But were you, were you living there in a house or
16 were you in any type of of care in Charlotte?

17 A. I was living with my cousin, her daughter.

18 Q. Okay. At the -- did you try to get your child back from
19 Ms. Evans at that time?

20 A. When we was livin' in New York we had went to court.

21 Q. When were you livin' in New York?

22 A. That was in November when after right after I had my
23 daughter.

24 Q. Understand. When you went to prison then the the child
25 went to live with Emma once you got out in 2002, when was the

GLYNNESSA EVANS - CROSS-EXAMINATION BY MR. MILLER

1 child returned to you?

2 A. When she returned to me?

3 Q. Um-hum.

4 A. Of this year -- mean last year of July July the next day
5 after, the next day after they did the crime.

6 Q. Okay. So you didn't have cu ---

7 THE COURT: Next day after. I'm sorry I didn't
8 understand. The next day after what?

9 MS. EVANS: After they did the crime.

10 THE COURT: Oh, all right. Thank you.

11 BY MR. MILLER:

12 Q. Okay. Now so you didn't have custody of your child from
13 the time you were released in 2002 until 2007.

14 A. No.

15 Q. Okay. Did you attempt to get custody back ---

16 A. Yes.

17 Q. --- before 2007?

18 A. Yes.

19 Q. And what -- why would Emma not give the child back to ya?

20 A. They was sayin' I'm not fit.

21 MR. MALDONADO: Objection, Your Honor, testifying what
22 other people ---

23 THE COURT: I I'll allow that. I don't know how far
24 field we're going in the custody dispute ---

25 MR. MILLER: Very very ---

1 THE COURT: --- like family court.

2 MR. MILLER: --- very little, Your Honor. I ---

3 THE COURT: I'll give you some latitude. I realize
4 that's cross-examination.

5 BY MR. MILLER:

6 Q. What did you eventually have to do to attempt to get your
7 child back?

8 A. I had to go to parenting classes.

9 Q. Okay. Did you go to court and file any documents?

10 A. No.

11 Q. You didn't have to go to court to get your child back?

12 A. I went to court.

13 Q. Right. And that was in Charlotte?

14 A. Yes.

15 Q. Okay. In fact, you were -- you said you were going there
16 the very day after this this event happened.

17 A. Yes.

18 Q. That's why you were goin' to get your van gassed up.

19 A. Yes.

20 Q. Okay. So you were unable to get your child back from
21 Emma because she didn't think you were fit for, what, five
22 years after you were released?

23 A. Yes.

24 Q. Okay. And would you say that that that caused you any
25 ill feelings towards Ms. Evans or Boyd Evans?

GLYNNESSA EVANS - CROSS-EXAMINATION BY MR. MILLER

1 A. No.

2 Q. Didn't have any ill feelings at all?

3 A. No.

4 Q. Did you want your child back?

5 A. Yes.

6 Q. Did you miss your Child?

7 A. Yes.

8 Q. They wouldn't give her back to you.

9 A. No.

10 Q. Okay.

11 THE COURT: It wasn't, it wasn't -- you you talking about
12 a custody dispute now goes through the Court I thought,
13 correct?

14 MS. EVANS: Yes.

15 MR. MILLER: Correct.

16 THE COURT: You may continue.

17 MR. MILLER: I'll just beg the Court's indulgence for a
18 minute.

19 THE COURT: Certainly.

20 MR. MILLER: I don't wanna go too far field on that, Your
21 Honor.

22 THE COURT: Certainly, Mr. Miller.

23 BY MR. MILLER:

24 Q. Regarding I guess your relationship with my client Boyd
25 Evans, I I know he he lived with Ms. Evans as well as Lywone,

1 is that correct, in 2007?

2 A. Yes.

3 Q. Okay. Now di -- have you ever attempted to file a
4 restraining order against him?

5 A. No.

6 Q. Never have?

7 A. No.

8 Q. Did you ever accuse him of breaking into your house and
9 felt that you needed protection in 2007?

10 A. No.

11 Q. Did not?

12 A. No.

13 Q. Okay. Did you find a reason to call DSS to their house
14 in early 2007?

15 A. Yes.

16 Q. And for what did you believe was the problem?

17 A. John Sosa had called me and he was sayin' ---

18 Q. You don't tell me what anybody else said. I'm kind of
19 wondering just of your own independent ---

20 A. Okay.

21 Q. --- why did you call DSS?

22 A. John Sosa called me.

23 Q. And did DSS to your knowledge take the children that were
24 in the house?

25 A. No.

GLYNNESSA EVANS - CROSS-EXAMINATION BY MR. MILLER

1 Q. Let me take you to the day of the incident -- well
2 actually excuse me. We're talkin' about how how long you've
3 known Boyd and Lywone. You said on your direct testimony with
4 Mr. Maldonado that Lywone and and Boyd Evans would come visit
5 you or that you would see them kind of on the holidays, maybe
6 whenever Michael Rhaney was off work, you know, he'd come over
7 and visit. What what specific holidays that you can recall
8 did you see either Boyd or Lywone?

9 A. Christmas.

10 Q. Just Christmas each year?

11 A. Yes.

12 Q. So one time a year? Uh, ---

13 THE COURT: Christmas three weeks ago? Did you say this
14 year. We hadn't had Christmas yet.

15 BY MR. MILLER:

16 Q. That -- well correct. Correct. Every year at
17 Christmastime ---

18 A. He talkin' about ---

19 Q. --- is what you're sayin?

20 A. --- he's talkin' about, he talkin' about when they was,
21 must be when they was livin' in Charlotte.

22 THE COURT: All right. Back when they were livin' ---

23 MR. MILLER: Yeah, when ---

24 THE COURT: --- in Charlotte?

25 MR. MILLER: --- she was sayin' that they visited on the

1 holidays or she visited them.

2 THE COURT: Thank you. Thank you very much, Ms. Evans.

3 BY MR. MILLER:

4 Q. Now with regard to Boyd I guess up until about 2005 you
5 really didn't know him that well as an adult, did you?

6 A. No.

7 Q. I mean, you hadn't spent any time with him.

8 A. No.

9 Q. Okay. And since 2005 you haven't really had any
10 opportunity to see him other than allegedly this day in July
11 2007, ---

12 A. Yes.

13 Q. --- correct? The day of the incident you said that they
14 came down and the sun was setting when they got, is that
15 correct?

16 A. Yes.

17 Q. Okay. So you think that they they somehow came down here
18 around evening, late afternoon, early evening?

19 A. Yes.

20 Q. Okay. What time did your boyfriend or fiancée have to
21 leave for your that day?

22 A. He left around about quarter to three.

23 Q. He worked from three to eleven, is that correct?

24 A. He worked -- yes.

25 Q. Okay. And actually he testified or and I I believe you

1 would know because he came back and told you that the
2 truck ---

3 THE COURT: What what what you mean that she came back
4 and told you? He was sequestered.

5 MR. MILLER: I'm I'm I'm gonna ask it -- let me ask it a
6 different way, Your Honor.

7 THE COURT: All right.

8 BY MR. MILLER:

9 Q. Are you aware that that your fiancée claims to have seen
10 him driving the truck prior to three o'clock in the
11 afternoon ---

12 A. Yes.

13 Q. --- in July?

14 A. Yes.

15 Q. Does the sun set before three o'clock in the afternoon in
16 July?

17 A. No, ---

18 Q. Okay. So ---

19 A. --- it was still light.

20 Q. Okay. So possibly you were incorrect about the time they
21 arrived.

22 A. Yes.

23 Q. Okay. At the time that they they allegedly got there, I
24 think you told them according to your statement, and tell me
25 if this is true, to leave immediately, that you didn't want

1 them there.

2 A. Yes.

3 Q. Okay. And I know that your boyfriend or fiancée had to
4 go back to work but other than visiting with their friends
5 briefly they did end up leaving, ---

6 A. Yes.

7 Q. --- correct? And in fact you never saw them again after
8 that.

9 A. No.

10 Q. Okay. The incident that we're talkin' about occurred
11 right after midnight the following morning, correct?

12 A. Yes.

13 Q. Okay. And you watched that video you said not at the
14 same time but later when you saw the pictures, correct?

15 A. Yes.

16 Q. And when you watched the video you said that you could
17 identify Lywone and Boyd and John and Ton by voices.

18 A. Yes, sir.

19 Q. Okay. Now there was static and noise on that video.

20 A. There was only one one noise on the video voice everybody
21 else I didn't hear nothin'.

22 Q. Now I ---

23 A. There was ---

24 Q. --- I guess they ---

25 A. --- only one person.

1 Q. Okay. And they were there approximately I guess the
2 video was probably two minutes or under, correct?

3 A. Yes.

4 Q. And the whole thing appeared to take maybe sixty seconds
5 in and out and and the jury has seen the video as well, you've
6 seen it I think now twice. Are you telling me that in that
7 amount of time when we barely see any of these people three
8 times that you're able to identify them by voice and build?

9 A. Yes.

10 Q. A hundred percent certainty?

11 A. Yes.

12 Q. Okay. When they showed you the actual still photographs
13 before you saw the video, did Detective Prestigacomio come to
14 your house or did you go to him?

15 A. Came to my house.

16 Q. Okay. And he showed you the the still photographs that
17 we're looking at?

18 A. Yes.

19 Q. Okay. I believe you said and, Your Honor, I'm just gonna
20 take a look at these photos. I'm tryin', and she may have,
21 I'm tryin' to find ---

22 A. That's them ---

23 Q. --- it but yeah, ---

24 A. --- right there (indicating).

25 Q. --- that's it right there. Let me take a look at those.

1 Excuse me. Are there any others?

2 A. They're ---

3 Q. Do you have 'em right here? Okay. Thank you. Okay.

4 Here we go. This is what I'm looking for. I'm just gonna
5 borrow these. All right. I think you looked at one that's
6 marked ---

7 A. I looked at this one (indicating).

8 Q. Did you look at any of these (indicating)?

9 A. I looked at that (indicating).

10 Q. Okay. Looking at this (indicating) photograph, and this
11 is No. 32, you said that you could identify a mark or some
12 typa ---

13 A. Right here (indicating) on the shoulder.

14 Q. What did you say that was?

15 A. A scar.

16 Q. I think you said it was a cut.

17 A. Yeah, scar.

18 Q. You think it's a mole?

19 A. No, I said that's a scar.

20 Q. You think that's a scar? Okay. But you're not sure.

21 A. I said a scar.

22 Q. Okay. You you think it's possible that anybody else in
23 Lexington County or around this area has scars or moles or
24 cuts?

25 A. Yes, ---

GLYNNESSA EVANS - CROSS-EXAMINATION BY MR. MILLER

1 MR. MALDONADO: Objection. Objection.

2 MS. EVANS: --- sir.

3 MR. MILLER: I'm just askin' for a general lay opinion,
4 Your Honor.

5 BY MR. MILLER:

6 Q. Is it possible that other people have scars and moles and
7 cuts?

8 A. Yes.

9 Q. Okay. Uh, ---

10 THE COURT: She can answer that.

11 BY MR. MILLER:

12 Q. Specifically, what was Boyd wearing when he came down to
13 your house on July 26th 2007?

14 A. A tank top and a pair a pants.

15 Q. Okay. You remember what color the tank top was?

16 A. It was black.

17 Q. And the pants?

18 A. They was dark color too, black.

19 Q. You said I think in your testimony that you didn't know
20 whether there were any marks on his elbow or arm or whatever.
21 Mr. Maldonado asked you the lower part of his arm.

22 A. That's correct.

23 Q. You don't know?

24 A. No.

25 Q. You're his sister.

1 A. Yes.

2 Q. And you've seen him now with a tank top on. You just
3 don't recall?

4 A. He came to my house that afternoon. It was hot.

5 Q. Correct. I'm just asking you if know whether there were
6 any other parts of the body out?

7 A. No.

8 Q. I mean you couldn't positively identify it one way or
9 another?

10 A. Only thing I know he had a mole like a mole on the backa
11 his ear.

12 Q. Okay. Did you also say that you could identify I believe
13 the people in the robbery based on their their build ---

14 A. Yeah.

15 Q. --- and the clothes they were wearin'.

16 A. Yes.

17 Q. Okay. Were you able to identify specifically my client
18 by his clothes, by his eyes or how?

19 A. The eyes and nose.

20 Q. Of my client?

21 A. Yes.

22 Q. Okay.

23 MR. MILLER: Again, beg the Court's indulgence, Your
24 Honor. I apologize. I'm almost done.

25 THE COURT: That's quite all right, Mr. Miller.

GLYNNESSA EVANS - REDIRECT EXAMINATION BY MR. MALDONADO

1 BY MR. MILLER:

2 Q. Was was there anything, Ms. Evans, that that could have
3 caused you confusion at that time period as to anybody that
4 you may or may not have seen, anything that you might see in
5 that video of that incident?

6 A. No.

7 Q. Nothing at all?

8 A. No.

9 Q. Okay. I don't think I have any other questions, Your
10 Honor. That'll do it. Thank you, Ms. Evans.

11 THE COURT: Thank you. Thank you very much, Mr. Miller.
12 Redirect, Mr. Maldonado?

13 MR. MALDONADO: Yes, Your Honor. Thank you.

14 REDIRECT EXAMINATION BY MR. MALDONADO:

15 Q. I apologize. I'm a little confused 'cause a that, all
16 this. Where did, where did Boyd Evans live in 2005?

17 A. With my aunt.

18 Q. Which is where?

19 A. In Charlotte.

20 Q. In Charlotte? Before they moved to Charlotte where
21 were -- where did they live?

22 A. Before me moved to Charlotte New York.

23 Q. New York? They never lived in Rolling Meadows?

24 A. Yes, in Lot .

25 Q. Lot ? When was that?

1 A. I can't recall the date.

2 Q. I mean, was that with you or was it in a just separate
3 trailer or ---

4 A. No, we was -- I was stayin' with my aunt ---

5 Q. Okay.

6 A. --- and then I moved out.

7 Q. Okay. And that was in the 2000 range or ---

8 A. Yes.

9 Q. --- back in ninety -- so I think in that ---

10 A. 2005.

11 Q. --- five range? Okay. So he -- you were -- you guys
12 were actually living together.

13 A. Yes.

14 Q. So you you it's not like you you hadn't seen him since
15 '99, right?

16 A. Yes.

17 Q. Okay. I was just a little confused by that. I might
18 have took your answer corr -- incorrectly. You said you're
19 you're a hundred percent sure that's that's Boyd Evans and
20 Lywone Capers in the video.

21 A. Yes.

22 Q. And I know this is tough but and I appreciate it. The --
23 I guess -- on on the custody thing just to clarify, what
24 happened with the -- with your, with your daughter? Is it
25 daughter, right?

GLYNNESSA EVANS - RECROSS-EXAMINATION BY MR. MILLER

1 A. Yes.

2 Q. What happened? Did you ever get her back?

3 A. Yes.

4 Q. And that was the day after all all this.

5 A. Yes.

6 Q. Okay. That's all. Thank you.

7 THE COURT: Recross, Ms. Hahn?

8 MS. HAHN: No, Your Honor.

9 THE COURT: Mr. Miller?

10 MR. MILLER: Just just one question regarding the video
11 and photographs that they brought up in redirect.

12 RECROSS-EXAMINATION BY MR. MILLER:

13 Q. Do you recall, Ms. Evans, when when Detective
14 Prestigacombo came out to your house and showed you the
15 photographs and the video?

16 A. Yes.

17 Q. Do do you recall if he showed you the still photographs
18 of the crime scene -- let me ask you this: Do you recall if
19 he ever showed you individual still pictures, individual
20 pictures of the four suspects?

21 MR. MALDONADO: Your Honor, this is outside of recross.

22 THE COURT: All right. I'll allow it under 608.

23 MS. EVANS: Yes.

24 BY MR. MILLER:

25 Q. Was that before or after he showed you the video still

1 photographs of the crime scene?

2 A. That's before.

3 Q. So he showed you the individual pictures of Boyd Evans,
4 Lywone Capers, John Sosa and Anton Coleman and then asked you
5 if you could identify any of those people in that picture.

6 A. No not -- no. He showed that after he showed all these.

7 Q. Um-hum.

8 A. He showed me these (indicating) first ---

9 Q. Um-hum.

10 A. --- and he just laid them down and stuff and he was
11 just ---

12 Q. And then specifically do you -- if you recall did did you
13 name the people in those photos at that time or did you name
14 'em after you saw the individual photographs of of the
15 defendants?

16 A. I named 'em at that time ---

17 Q. Okay.

18 A. --- soon while he was pullin' them out.

19 Q. And then he did show you those individual ---

20 A. Yes.

21 Q. --- photographs of Boyd, Lywone, John and Anton.

22 A. Yes.

23 Q. Okay. Thank you.

24 THE COURT: And I want the record to reflect when she
25 said he showed her "these" she was holding up some still

MOTIONS AND MATTERS

1 photographs. Show me the ones you were holdin' up.

2 MS. EVANS: He was showin' me these (indicating).

3 THE COURT: All right. And this is State's Exhibit 24.

4 So he showed you the photographs ---

5 MS. EVANS: Yes.

6 THE COURT: --- from the Pitt Stop robbery ---

7 MS. EVANS: Yes.

8 THE COURT: --- first. I want the record to reflect
9 that. Thank you very much. You may step down, Ms. Evans.

10 (Whereupon, the witness left the stand.)

11 THE COURT: All right. You got about a 27-minute
12 witness, uh, ---

13 MR. MALDONADO: We only have one witness left, Your
14 Honor, ---

15 THE COURT: You gonna be through in twenty-seven minutes?

16 MR. MALDONADO: I can. I can but I don't I don't know
17 how the long the recross cross-examine.

18 THE COURT: All right. Well I don't wanna break up
19 direct and cross. Why don't we go and just break early and
20 then we'll come back.

21 All right Mr. Foreman, lady -- excuse me, madam forelady,
22 ladies and gentlemen of the jury, I believe we'll take our
23 lunch and recess now. Please remember do not discuss the case
24 with any of your lunch mates, a friend, family, anyone else.
25 Remember to keep an open mind and not begin your deliberations

MOTIONS AND MATTERS

1 until I instruct you to do so. If you leave your notes on the
2 table, the clerk's office will secure them during the recess.
3 If you'll please be back in place at we'll say quarter till
4 two, that be an hour and ten minutes, the -- quarter till two
5 if you report back to your temporary home in the jury room.
6 Hope ya'll have a pleasant lunch. Thank you very much.

7 (The following takes place outside the presence of the
8 jury.)

9 THE COURT: All right. Anything before we take our
10 recess?

11 MR. MALDONADO: May we excuse this witness?

12 THE COURT: Any objections to excusing Ms. Evans?

13 MS. HAHN: No, Your Honor.

14 MR. MILLER: None. Thank you very much, Ms. Evans,
15 you're now excused. All right. Anything further from
16 Ms. Hahn?

17 MS. HAHN: No, Your Honor.

18 THE COURT: Mr. Miller?

19 MR. MILLER: No, Your Honor.

20 THE COURT: All right. We'll be in recess until quarter
21 to. Thank you very much.

22 (Whereupon, a recess was taken.)

23 THE COURT: All right. Anything from the State before we
24 bring in our jury?

25 MR. MALDONADO: No, Your Honor.

EDWARD PRESTIGACOMO - DIRECT EXAMINATION BY MR. MALDONADO

1 THE COURT: From the defense, Ms. Hahn?

2 MS. HAHN: No, Your Honor.

3 THE COURT: Mr. Miller?

4 MR. MILLER: No, sir.

5 THE COURT: All right. Bring the jury.

6 (The following takes place in the presence of the jury.)

7 THE COURT: Good afternoon. Welcome back. Hope ya'll
8 had a pleasant lunch. Let's see, we're now continuing the
9 trial of the case by the presentation of testimony by the
10 State in its case in chief. Please continue to give the
11 parties your complete and undivided attention. Mr. Maldonado,
12 you may call your next witness.

13 MR. MALDONADO: Thank you, Your Honor. The State calls
14 Investigator Edward Prestigacomo.

15 THE COURT: All right. Detective Prestigacomo, if you'll
16 come around be sworn for us, please.

17 EDWARD PRESTIGACOMO,
18 having been first duly sworn, testified as follows:

19 THE CLERK: Please be seated, sir. Once you're seated
20 speak up loud and clear statin' your full name, spelling you
21 last.

22 Detective Prestigacomo: Detective Eddie Prestigacomo,
23 P-R-E-S-T-I-G-A-C-O-M-O.

24 DIRECT EXAMINATION BY MR. MALDONADO:

25 Q. Good afternoon. Detective, can you tell the jury where

1 it is you work.

2 A. I work at Lexington County Sheriff's Office.

3 Q. Okay. And how long have you worked there?

4 A. Roughly fourteen years.

5 Q. What's your position there?

6 A. Major crimes detective.

7 Q. Okay. What's your responsibilities with them?

8 A. I investigate murders, home invasions and armed
9 robberies.

10 Q. How long have you been a detective?

11 A. Ten years.

12 Q. Were you a detective on July 26th 2007?

13 A. Yes, sir.

14 Q. Okay. Did you get a call on a, on a case that day?

15 A. I did.

16 Q. Okay. What happened?

17 A. I got -- well instead of getting a call I I was assigned
18 a case on that ---

19 Q. Right.

20 A. --- particular day, that morning of the 26th of July '07
21 and it was a armed robbery report and during which it was
22 reported that two victims of a Pitt Stop Convenience Store
23 were robbed at gunpoint by four unidentified males and two
24 were possibly armed with a gun.

25 Q. And where did this allegedly occur?

1 A. At 125 Rolling Meadows Lane in Lexington County.

2 Q. Okay. And that was, um, the Pitt Stop, right?

3 A. Yes.

4 Q. Okay. Is there a major highway intersection right
5 there?

6 A. It is, uh, Rolling Meadows Lane intersects Charleston
7 Highway and butts up to I-26 eastbound.

8 Q. So what did you do when you got the the case assigned to
9 you?

10 A. I had the -- I retrieved the surveillance tape or vic --
11 the burned CD of the surveillance tape and I pulled out stills
12 from that video ---

13 Q. Okay.

14 A. --- of significance.

15 Q. So the video that we've been watching today, ---

16 A. Correct.

17 Q. --- I mean, and yesterday?

18 A. Yes, sir.

19 Q. Okay. Has that video to your knowledge been changed in
20 any way or altered in any any way?

21 A. No.

22 Q. Okay. Does it accurately represent what you, what you
23 pulled that day?

24 A. Yes.

25 Q. Let me -- well, let me get back to the investigation.

1 Who were the victims that that were also involved?

2 A. First and foremost Pitt Stop, Sue Irick and Ed Lasseter.

3 Q. Do you know how much was taken?

4 A. Two hundred dollars (\$200) roughly. We got an
5 approximate on that and Mr. Lasseter's cell phone from his
6 waistband.

7 Q. Okay. Let's talk about a little bit about the physical
8 evidence. What -- what's the general procedure for the
9 sheriff's department for collecting physical evidence?

10 A. Okay. Responding to a crime scene if I'm called to it,
11 my perspective is that I will be called to a crime scene.

12 Q. Um-hum.

13 A. In this case it didn't apply 'cause I got it the next day
14 but crime scene investigators will respond. If there's
15 physical evidence, they will seize that, label it
16 appropriately and turn it into our our evidence and the
17 evidence custodians log it in and they maintain a chain of
18 custody until it is taken out by me or used in a courtroom
19 situation.

20 Q. Okay. And is it policy to generally on a situation like
21 this call out fingerprint technicians and to give ---

22 A. Absolutely yes.

23 Q. Is it -- in your experience how often do you get
24 fingerprints off of -- in scenes like this?

25 A. Very rarely.

1 Q. Okay. Why is that?

2 A. It's it's a difficult thing to get a a full fingerprint
3 that has enough ridge detail ---

4 MS. HAHN: Objection, Your Honor.

5 THE COURT: All right. And the basis of your objection?

6 MS. HAHN: I don't think he's an expert on fingerprints
7 and why fingerprints may be left at one scene and not
8 another.

9 THE COURT: All right. Well if you'll lay a little
10 foundation in that regard, Mr. Maldonado.

11 MR. MALDONADO: Okay.

12 BY MR. MALDONADO:

13 Q. Have you -- in your training have you been trained in in
14 fingerprints and ---

15 A. I've been trained to lift them, and and I've lifted
16 many, ---

17 Q. Okay.

18 A. --- to analyze 'em but I know enough to realize what is a
19 good print and what is not a good print.

20 Q. Okay. Just in layman's terms, I mean, what, you know, in
21 in your experience what makes a bad print good?

22 A. For to have a good print on a surface, ---

23 Q. Um-hum.

24 A. --- for example, it would have to be wiped down and a
25 person would literally come in with their fingers or whatever

EDWARD PRESTIGACOMO - DIRECT EXAMINATION BY MR. MALDONADO

1 and get a full print to be able to use that for ---

2 MS. HAHN: Your Honor, I just ---

3 DETECTIVE PRESTIGACOMO: --- identification.

4 THE COURT: Yes, ma'am.

5 MS. HAHN: --- renew my objection.

6 THE COURT: All right. Well I'll sustain your objection.

7 You may ask your next question, Mr. Maldonado.

8 MR. MALDONADO: Okay. That's fine.

9 BY MR. MALDONADO:

10 Q. Now, was there an --- as far as you know, was there any
11 physical evidence collected at the scene?

12 A. The only physical evidence in this case is the video.

13 Q. Okay. You watched the video, correct?

14 A. Yes, I did.

15 Q. And it pretty detailed and I'm sure you watched it
16 several times.

17 A. Many times ---

18 Q. Okay. Did you notice ---

19 A. --- before.

20 Q. --- anything distinguishing about the individuals that --
21 in the video?

22 A. Yes, I did. When I pulled the stills and and I got them
23 printed in color for me to show victims and witnesses, I I I
24 pulled a still where all four suspects were in one frame.

25 Then from there I looked at the video for specific

EDWARD PRESTIGACOMO - DIRECT EXAMINATION BY MR. MALDONADO

1 characteristics of each individual and the two that really
2 stuck out that I was able to get stills from were one was a a
3 dark-skinned black male with a handgun in his left hand
4 pointing it at the clerk with a a specific scar on his left
5 shoulder, upper shoulder.

6 Q. Can you look through the pictures and see if you see a
7 copy of that.

8 (Whereupon, the witness complied.)

9 A. Yes, sir, I've got it ---

10 Q. Can you tell the ---

11 A. --- State's Exhibit 33.

12 Q. Thirty-three? Now what did you do after you pulled the
13 the pictures and and and watched the video? Did you continue
14 the investigation?

15 A. Yes, sir. My next stop was once I had these stills with
16 me I went to the Pitt Stop to speak to employees and and
17 hopefully catch the victim, one of the victims there, Sue
18 Irick, and show her these pictures if she recognized
19 anybody.

20 Q. Okay. And did she?

21 A. No.

22 Q. What did the -- did anything else happen when you were
23 talking to the employees?

24 A. When I was there speaking to several employees and I was
25 approached by Mr. Michael Rhaney who pulled me to the side and

1 advised me he wanted to speak to me privately at which point
2 we went outside. He told me that his fiance's cousins are the
3 ones that did this robbery and I, from there I went and showed
4 him some pictures.

5 Q. Did he give you some names?

6 A. At that point he said, he gave me first names. He gave
7 me Boyd and Lywone and I showed him a a still picture with the
8 four of them in there and he at that point gave me the first
9 names of three, Lywone, Boyd and John, and advised me that the
10 shorter person which my estimate in the video he, and by the
11 aisle he's he's about 5'1. He did not know that person.

12 Q. The one in the red shorts.

13 A. Correct.

14 Q. Okay. So did you suggest these names in any way to
15 Mr. Rhaney?

16 A. I had no names at this point.

17 Q. Okay. So he's the one that actually recognized them from
18 the pictures, correct?

19 A. At that -- he was the first one to give me somethin' and
20 which was names, first names.

21 Q. Okay. After after he gave you those those names what
22 what did you do?

23 A. We ---

24 Q. Well first of all, did you get a statement from him them
25 or did you ---

EDWARD PRESTIGACOMO - DIRECT EXAMINATION BY MR. MALDONADO

1 A. I did. We sat and talked and he agreed to write me a
2 statement. I gave him a statement form to write it out,
3 showed him a picture of of the truck as well from the
4 surveillance video. When I showed it to him, he immediately
5 said that's the truck they were in yesterday and he just went
6 into the story about how he was coming to work at 3 p.m. the
7 day before, come to the stop sign at the end of, coming out of
8 Rolling Meadows Mobile Home Park and almost was hit by a blue
9 over gold Explorer.

10 Q. Okay. And and he said those those individuals were the
11 ones driving that one?

12 A. He told me that that Boyd Evans was driving. At that
13 point he he he didn't see the others in the truck at that
14 point.

15 Q. Okay. Then after you got a statement from him what what
16 did you do?

17 A. I requested that we go see his his fiancée Glynnessa ---

18 Q. Okay.

19 A. --- and he said, "Well I'd like to go with you 'cause I
20 don't wanna get her upset about this."

21 MS. HAHN: Objection. Hearsay.

22 MR. MALDONADO: He testified.

23 THE COURT: All right. Sir?

24 MR. MALDONADO: He testified.

25 THE COURT: Yes, sir. I sustain the objection.

1 MR. MALDONADO: Okay.

2 THE COURT: You may ask your next question.

3 MR. MALDONADO: Okay.

4 BY MR. MALDONADO:

5 Q. Just without going into what he said.

6 A. He he -- we went over, based on suggestions I made to
7 him, we went over to see Glynnessa Evans at Lot in Rolling
8 Meadows Mobile Home Park.

9 Q. Okay. And and was Ms. Evans there?

10 A. Yes, sir.

11 Q. Okay. You had a conversation with her?

12 A. I did.

13 Q. What did she say?

14 A. I went and introduced myself as a detective. I advised
15 her why why I was there and and she -- it -- I learned that
16 she was aware of the robbery that had taken place.

17 Q. Okay.

18 A. We we talked briefly about a a visitor she had the day
19 before, she told me her brother and and her three cousins.

20 MR. MILLER: Your Honor, again, hearsay objection.

21 MR. MALDONADO: It's ---

22 THE COURT: I thought, I thought -- yes, sir. I'm
23 sorry.

24 MR. MALDONADO: I'm sorry. They they -- if there are
25 witnesses that actually were in the courtroom, Your Honor, I

EDWARD PRESTIGACOMO - DIRECT EXAMINATION BY MR. MALDONADO

1 believe it's not hearsay. They they testified, they were
2 available for cross.

3 THE COURT: All right. Well I thought this was going to
4 the issue of the officer's actions and investigation and
5 following up on information from Mr. Rhaney so I will allow
6 you to continue if this applies.

7 MR. MALDONADO: Thank you.

8 BY MR. MALDONADO:

9 Q. Okay.

10 A. After a brief conference with Mrs. Evans I advised her
11 that that I had some pictures I wanted her to look at of the
12 robbery, first one being the picture of the four individuals
13 in the same frame. She without hesitation pointed to each one
14 identif -- giving me names, one being Boyd Evans, Lywone
15 Capers, John Sosa and Ton is the nickname she gave me, T-O-N.

16 Q. Okay. How sure was she in your opinion?

17 A. Without hesitation she said that -- she pointed to each
18 one and rattled off the names. At that point I was writin'
19 down names.

20 Q. What happened then di ---

21 A. I showed her a picture of the truck, surrounds truck.
22 She advised me that's that's the Explorer that that they
23 drove, that that they drove to her house the day before. I
24 learned that that from her that she thought it was Emma Evans'
25 Explorer with North Carolina tags.

1 Q. Okay. Did -- okay. And did she give you a statement at
2 any time after talking with her?

3 A. She did. She she gave me a statement as to -- I, after
4 laying out the picture I had individual pictures of
5 particularly the two that stood out in my mind: one with the
6 scar and another picture of a median -- medium-skinned black
7 male with a black shirt on his head and you could see his his
8 nose and the bridge, bridge of his nose and his eyes.

9 Q. And what she say?

10 A. I showed her these two pictures. She immediately without
11 hesitation pointed to the one picture with the scar said,
12 "That's my brother."

13 I said, "Okay. Your brother Boyd Evans?"

14 She said, "Yes." She wrote on that particular picture
15 for me that this is Boyd Evans. Same thing with the other
16 picture, That's Lywone, that's hi -- that's his skin tone,
17 that's his build, I know his nose, that's him. She mentioned
18 that, going back to the first picture I showed her with the
19 four individuals, she mentioned that the clothing was similar
20 which is another thing that stuck out in her mind and and and
21 their build, the way they stood and so forth and so forth.

22 Q. Okay. So was that a, was that as far as the
23 investigation, I mean, talking with her is that ---

24 A. At that point -- well prior to getting to, we talked
25 about the tag and and our -- and prior to getting to her house

EDWARD PRESTIGACOMO - DIRECT EXAMINATION BY MR. MALDONADO

1 Mr. Rhaney had given me a a tag that was off by one digit. I
2 questioned her about her seeing it, the tag. She said she did
3 not. She mentioned at that point to me about a alterca -- not
4 altercation but they were confronted by the maintenance lady
5 Mrs. Rosa Lugo and that there was some trouble with that and
6 that that she had gotten a tag number as well ---

7 Q. Okay.

8 A. --- and le -- that led me to Mrs. Lugo. Later on the
9 next day I went to see her.

10 Q. Okay. That's Rosa Lugo?

11 A. Yes, sir.

12 Q. Okay. And did she also have a tag number and ---

13 A. She did. Her letters were off, her digits digits were
14 right and with those two together I got the right tag, ran it
15 through DMV, Department of Motor Vehicle records, realized
16 that it was registered to a Frederick Neal. I later learned
17 that Frederick Neal had a blue over gold Explorer.

18 Q. And ---

19 A. And I learned ---

20 Q. How common is it for for people to have tag numbers
21 slightly off in, you know?

22 A. Very common. It's very typical for a digit or two to be
23 off or the letters to be off. In this particular case we had
24 two witnesses with one, Mr. Rhaney his his one digit was off
25 by one and Mrs. Lugo had the digits right and had the the

1 numbers before the digits were off.

2 Q. So she talked to you about the similar incident
3 confirming the incident with with Glynnessa outside and and
4 and Ms. Lugo. You talked to her and she confirmed the the the
5 incident when she got the tag?

6 A. Mrs. Evans? I'm sorry.

7 Q. Ms. Ms. Lugo.

8 A. Yeah. The next day I went to see her when I came back to
9 see Glynnessa and and Mr. Rhaney with once I had the names I
10 went back to the office, I was able to pull up pictures of
11 these four individuals and the next day I brought them back to
12 Mrs. Evans and and Mrs. Lugo and that's when I had a
13 conversation with her on the 27th.

14 Q. Okay. And had she described what had happened with
15 almost being run over?

16 A. Yes, sir. She mentioned that she had an anonymous
17 complaint that that this this vehicle almost struck a small
18 child at the stop sign and when she was drivin' through, it
19 almost ran the stop sign, almost hit her as well and that
20 that's when it prompted her to get the tag number 'cause she
21 recognized the driver as being Boyd Evans. And when I went to
22 see her I also show -- showed her a picture of Boyd Evans.
23 She said, "Yeah, that's the person that was driving," and
24 that's when she gave me the tag number she had with the
25 numbers that were -- the letters that were off but the digits

EDWARD PRESTIGACOMO - DIRECT EXAMINATION BY MR. MALDONADO

1 were correct.

2 Q. Did she ever give you any information about Mr. Boyd ever
3 living in the area?

4 A. She said they they once lived in Rolling Meadows several
5 yea -- several years back and she was a part of getting them
6 evicted.

7 Q. Let's talk about the the Ford Explorer. You said who who
8 was it that that owned the car?

9 A. Frederick Neal.

10 Q. Did you ever go talk to him?

11 A. I did.

12 Q. I mean, how did that happen? Where where did you meet
13 him?

14 MR. MILLER: Your Honor, ---

15 DETECTIVE PRESTIGACOMO: I met him ---

16 THE COURT: Yes, sir.

17 MR. MILLER: --- I'm gonna object and ask if we can
18 approach.

19 THE COURT: I'm sorry?

20 MR. MILLER: I'm gonna object to this on the grounds of
21 of hearsay also and specifically if we could approach briefly.

22 THE COURT: Sure. Certainly you may approach.

23 (Whereupon, a bench conference was held off the record.)

24 THE COURT: Sir, Detective Prestigacomo, ---

25 DETECTIVE PRESTIGACOMO: Yes, sir.

EDWARD PRESTIGACOMO - DIRECT EXAMINATION BY MR. MALDONADO

1 THE COURT: --- you understand hearsay? You can of
2 course testify whether you did or did not ever meet Mr. Neal.
3 You cannot testify to any conversations you had with Mr. Neal.
4 You you understand that?

5 DETECTIVE PRESTIGACOMO: Yes, sir.

6 THE COURT: All right. Thank you. You may ask your next
7 question, Mr. Maldonado ---

8 MR. MALDONADO: Let ---

9 THE COURT: --- or reask your last question perhaps.
10 BY MR. MALDONADO:

11 Q. Did you go meet Mr. Neal?

12 A. I did. I met Mr. Neal in Rock Hill, South Carolina.

13 Q. Okay. Did -- you had a conversation, without going into
14 what he said, you did have a conversation with him?

15 A. I did have a conversation with Mr. Neal yes, sir.

16 Q. Did you get a good look at him?

17 A. I did.

18 Q. Okay. Can you describe describe his -- describe him
19 basically.

20 A. He -- he's about 5'8, older man. I think a ---

21 THE COURT: What do you mean older?

22 DETECTIVE PRESTIGACOMO: Oh, sorry.

23 (Laughter.)

24 He -- he's got me by several years but 1963 -- well not
25 older, older than the suspects I was loo -- I was looking

EDWARD PRESTIGACOMO - DIRECT EXAMINATION BY MR. MALDONADO

1 at ---

2 BY MR. MALDONADO:

3 Q. Okay.

4 A. --- in this case but 1963 birthdate ---

5 Q. Okay.

6 A. --- and he looked older than his age.

7 Q. Okay. So in your opinion he didn't fit the descriptions
8 in the ---

9 A. Absolutely not.

10 Q. Okay. What did you do after after meeting with Mr. Neal?
11 Did you continue with the investigation?

12 A. My meeting with Mr. Neal led me to getting information on
13 the person who borrowed his car.

14 Q. Okay. Um, ---

15 THE COURT: Yes, sir. I'm sorry?

16 MR. MILLER: Your Honor, I just renew it on on a hearsay
17 ground. I mean, he's he's taking information from
18 conversation, that was already ---

19 THE COURT: I'm sorry?

20 MR. MILLER: --- determined.

21 THE COURT: Step up here for me, Mr. Miller.

22 (Whereupon, a bench conference was held off the record.)

23 THE COURT: Thank you. All right you may ask your next
24 question, Mr. Maldonado.

25 MR. MALDONADO: Okay. Thank you, Your Honor.

EDWARD PRESTIGACOMO - DIRECT EXAMINATION BY MR. MALDONADO

1 BY MR. MALDONADO:

2 Q. Did you ever have a chance to meet with Mr. Evans, Boyd
3 Evans?

4 A. I did.

5 Q. Okay. What -- where was that?

6 A. That was September 20th of '07 around 10:40 a.m. at
7 Charlotte-Mecklenburg Jail.

8 Q. Okay. Did he have any distinguishing characteristics?

9 A. He did. When he came in wearing a tank top at the time,
10 I immediately zeroed in on the scar on his shoulder.

11 Q. Okay. Did you take any pictures?

12 A. Yes.

13 Q. Your Honor, I'm showing them, I'm showing them what's
14 been marked State's Exhibit 40 through 50. Do you recognize
15 these pictures?

16 (Whereupon, the witness examined the photographs.)

17 A. Yes, sir, I do of an explanation.

18 Q. Okay. What are those pictures of?

19 A. Okay. Exhibit 40 through 44 are pictures that I took of
20 Mr. Evans while he was at Charlotte-Mecklenburg Jail.

21 THE COURT: No, don't show 'em yet. They're not received
22 into evidence.

23 MR. MALDONADO: Just say the numbers.

24 THE COURT: Are they in evidence?

25 MR. MALDONADO: Let me get them, um, ---

EDWARD PRESTIGACOMO - DIRECT EXAMINATION BY MR. MALDONADO

1 THE COURT: You still going towards that?

2 MR. MALDONADO: Yes, Your Honor.

3 THE COURT: You may continue, Detective.

4 DETECTIVE PRESTIGACOMO: Yes, sir, um, ---

5 BY MR. MALDONADO:

6 Q. What's in the pictures?

7 A. Ye -- 40 through 44?

8 Q. Yes.

9 A. All the pictures are Mr. Evans.

10 Q. Okay.

11 A. Some are taken from Charlotte-Mecklenburg and some are
12 taken at Lexington County Jail.

13 Q. Okay. And were you there when when the pictures were
14 taken?

15 A. I took the pictures.

16 Q. Okay. Do they fairly and accurately represent what ---

17 A. Yes, sir.

18 Q. There changes any way?

19 A. No, sir.

20 Q. Alterations, digital ---

21 A. No.

22 Q. Okay.

23 MR. MALDONADO: Your Honor, we'd ask to admit the
24 pictures 40 through 50. Is it ---

25 THE COURT: All right. Ms. ---

EDWARD PRESTIGACOMO - DIRECT EXAMINATION BY MR. MALDONADO

1 MR. MALDONADO: --- 40 through 50?

2 THE COURT: --- Ms. Hahn?

3 MR. MALDONADO: Yes, 40 through 50.

4 THE COURT: Forty (40) through 50?

5 MR. MALDONADO: Yes, Your Honor.

6 MS. HAHN: No objection.

7 THE COURT: Mr. Miller?

8 MR. MILLER: Which are the ones that were taken in

9 Lexington County and which are the ones that were taken ---

10 THE COURT: I think he testified 40 through 44 were at
11 Charlotte-Mecklenburg?

12 MR. MALDONADO: I believe that's right.

13 DETECTIVE PRESTIGACOMO: Yes.

14 THE COURT: And I cut him off so I take it that the
15 others ---

16 MR. MALDONADO: Yeah, ---

17 THE COURT: --- are Lexington County Jail?

18 DETECTIVE PRESTIGACOMO: Yes, sir.

19 MR. MILLER: And I -- just for the record

20 Charlotte-Mecklenburg would have been the first pictures
21 taken, correct?

22 BY MR. MALDONADO:

23 Q. You took the the Charlotte ones first. You were -- you
24 you met him in Charlotte first.

25 A. Yes. September 20th were the first set of

1 pictures, ---

2 Q. Okay.

3 A. --- October 10th were the second set ---

4 Q. Okay.

5 A. --- when he made his way back to Lexington County and
6 then I obtained a search warrant.

7 Q. Okay.

8 MR. MILLER: Your Honor, actually I do, I'm gonna object
9 to the I guess the first ones at Charlotte-Mecklenburg.

10 THE COURT: All right. Hold hold on just a second.
11 Madam forelady, ladies and gentlemen, if ya'll will just step
12 out momentarily. Do not discuss the case during this brief
13 recess.

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

16 THE COURT: So you object to 40, 41, 42, 43 and 44?

17 MR. MILLER: If those are all the pictures from
18 Charlotte-Mecklenburg, yes.

19 THE COURT: That's that's according to his testimony ---

20 MR. MILLER: Okay.

21 THE COURT: --- and these others appear to be at a
22 different ---

23 MR. MILLER: Yeah, that would, I mean, that would ---

24 THE COURT: --- time and location.

25 MR. MILLER: --- make sense. Yeah, that would make

MOTIONS AND MATTERS

1 sense. You just for the record want me to ---

2 THE COURT: Yes, sir.

3 MR. MILLER: Okay. It's my, it's my client's belief that
4 that he was; number one, did not consent to these; number two,
5 was never properly advised of any rights and; number three,
6 that there was no warrant issued for those at that time. Now
7 the ones in Lexington County I think Judge Adams issued a
8 warrant allowing those, obviously there's no discrepancy
9 there, but for the record that would be my objection to these
10 coming in.

11 THE COURT: All right. Mr. Maldonado?

12 MR. MALDONADO: I don't believe he has any privacy rights
13 in physical characteristics whether or not he objected to it
14 or not.

15 THE COURT: Then under under your theory they wouldn't
16 have needed a search for the last six.

17 MR. MALDONADO: I think he was just covering his bases.

18 THE COURT: All right. Is that correct, Mr. Miller?

19 MR. MILLER: Well, I mean, it's my position that it's
20 not, you know, it's not really a privacy issue so much, it's
21 it's the human body, it's not, I wouldn't say that's
22 non-testimonial. I mean, he came up, I think at the very
23 least he advises -- he should advise the rights realizing he's
24 already obviously under arrest and if they -- I I think that's
25 why you do need a warrant and no warrant was ever obtained and

EDWARD PRESTIGACOMO - DIRECT EXAMINATION BY MR. MALDONADO

1 these pictures for which there's a warrant, Judge Adams I have
2 no problem with that, but to simply go up to take a person who
3 doesn't even realize maybe why they're in custody and, you
4 know, without consent take pictures of their body ---

5 MR. MALDONADO: Your Honor, it's my understanding
6 actually he agreed to take ---

7 THE COURT: I'm sorry?

8 MR. MALDONADO: It's my understanding apparently that he
9 agreed to take -- have those pictures taken according to ---

10 MR. MILLER: That's the incident report but that's not my
11 client.

12 THE COURT: Well ya need to, and if that's correct you
13 need to lay a foundation.

14 MR. MALDONADO: Yes, Your Honor. I didn't realize that
15 would be an issue.

16 THE COURT: All right.

17 MR. MALDONADO: I'll I'll do that.

18 THE COURT: All right. You can lay that foundation if
19 that's correct.

20 DIRECT EXAMINATION BY MR. MALDONADO:

21 Q. Detective, did ---

22 A. Yes.

23 Q. -- did Mr. Neal agree to take the pictures?

24 A. He did.

25 Q. Did he object in any way? I mean, how how did -- how'd

1 the conversation go?

2 A. He came up, I re -- before we sat down I I advised him
3 that we were there to interview him about the robbery and and
4 and why he was arrested and he said he understood and I
5 requested for me to take pictures of him and he had no, he had
6 no objection to it.

7 Q. So you didn't hold him down and force him to take
8 pictures?

9 A. No, sir.

10 Q. You didn't take his shirt off and and rip it right off of
11 him?

12 A. No, he was wearing that tank top just the way he is right
13 there (indicating).

14 Q. So you you saw the scar even before the ---

15 A. Yes..

16 Q. --- he agreed. Okay. That's ---

17 THE COURT: All right. Mr. Miller, would you care to
18 examine Detective Prestigacomo in camera in regard to either
19 what now appears to be either an issue of consent or an issue
20 of plain view or a mixture of both.

21 MR. MILLER: Yes, just briefly, Your Honor.

22 THE COURT: Certainly.

23 CROSS-EXAMINATION BY MR. MILLER:

24 Q. Detective, did ---

25 A. Yes, sir.

1 Q. At the time that you, that you took these photographs of
2 my client, my current client, had he requested counsel at that
3 point?

4 A. No.

5 Q. And did you prior to doing this even out of abundance of
6 caution him of of his rights?

7 A. At that point I don't recall if we had a statement form
8 out with the Miranda rights on top ---

9 Q. Okay.

10 A. --- 'cause I I gla -- and advised him as soon as we met
11 we were gonna interview him on the charge from Lexington
12 County.

13 Q. Um-hum.

14 A. I don't recall if I read, yeah, his rights before the
15 pictures or 'cause the pictures were done before the
16 interview ---

17 Q. Okay.

18 A. --- and I, and I said, "You mind if I get some picture of
19 you?"

20 He said, "No," took pictures and I don't, I don't don't
21 recall if the Miranda was prior to the pictures or after but
22 Miranda was advised to him and he agreed and wound up not
23 talking at that point. He said he wasn't in in South Carolina
24 at that time.

25 Q. Okay. This is still in Charlotte.

1 A. Yes, this is in Charlotte.

2 Q. Okay. And I guess my question if if there had been a
3 Miranda form, that not have been in discovery or provided ---

4 A. Uh, he ---

5 Q. --- if he had initialed?

6 A. --- he refused. One -- once we verbally gave those he
7 refused to initial, ---

8 Q. Okay.

9 A. --- which is our procedure, ---

10 Q. Uh-huh (affirmative).

11 A. --- or sign it or anything but, you know, I believe I
12 laid it out. You know, we we interviewed him, he refused, he
13 he wouldn't talk about -- he said that he wasn't there and
14 became visibly upset and he didn't want to talk.

15 Q. Well is there a reason that when when a warrant was
16 obtained from Judge Adams that one was not obtained in North
17 Carolina?

18 A. I'm sorry, sir?

19 Q. What -- was there a reason a warrant wasn't obtained for
20 the North Carolina pictures when there was one obtained down
21 here in South Carolina?

22 A. At that point since we got, we did one set of pictures to
23 err on the side of caution because the reason I did the second
24 search warrant was for the scar on his arm. Once I I looked
25 at the video closer I realized that there was a scar, another

EDWARD PRESTIGACOMO - CROSS-EXAMINATION BY MR. MILLER

1 scar that I failed to get in Charlotte on his arm, left arm,
2 that was the focus on that ---

3 Q. Okay.

4 A. --- search warrant.

5 MR. MILLER: I don't have any other questions, Your
6 Honor. I mean, I I guess my point is obviously there there
7 are still pictures that are coming in from Lexington County
8 but I really do think this is something that it -- whether
9 it's an issue of privacy or, you know, a testimonial issue, I
10 mean, he has the right to remain silent, he has the right, you
11 know, and if he doesn't want to to give his consent for these
12 pictures to be taken I believe a warrant would have to be
13 sought, that's my position and and we would just ask that
14 those pictures be excluded.

15 THE COURT: All right. Do you care to put up any
16 evidence or testimony in that regard, Mr. Miller?

17 MR. MILLER: I guess I, I guess I'd like to call my
18 client.

19 THE COURT: Certainly. All right. You may step down
20 momentarily, Detective Prestigacomo.

21 (Whereupon, the witness left the stand.)

22 THE COURT: Mr. Evans, if you would come around and be
23 sworn please.

24 BOYD EVANS, having been first duly
25 sworn, testified as follows:

BOYD EVANS - DIRECT EXAMINATION BY MR. MILLER

1 THE CLERK: Have a seat please, sir. Need you to speak
2 up loud and clear once you have a seat statin' your name on
3 the record.

4 THE DEFENDANT: Boyd Evans, E-V-A-N-S.

5 DIRECT EXAMINATION BY MR. MILLER:

6 Q. Mr. Evans, you understand we're here just for an in
7 camera hearing right now specifically regarding the issue of
8 your your consent to these photographs at Mecklenburg
9 County?

10 A. Yes, sir.

11 Q. Okay. Okay. Were you -- do you recall when you were
12 arrested and held in Mecklenburg County?

13 A. Yes, sir.

14 Q. Okay. And do you recall Detective Prestigacombo coming up
15 to interview you?

16 A. Yes, sir.

17 Q. Okay. At that time did he advise you of your Miranda
18 rights?

19 A. No.

20 Q. Okay. At no time?

21 A. No, no, he didn't.

22 Q. Okay. Did he ask you whether or not you were willing to
23 to have photographs taken of your body?

24 A. Yeah, he asked me.

25 Q. What was your response?

1 A. I told him no but I'm locked up that I knew.

2 Q. So did he, did he, did he then leave you alone and not
3 take the photographs?

4 A. No, he took 'em.

5 Q. Okay. He didn't, he didn't leave and come back and ask
6 you later or he just took 'em?

7 A. Nah, he just took 'em.

8 Q. Okay. But you did not give him any consent for him to do
9 so, you'd not been advised of your rights?

10 A. No.

11 Q. If he had advised you of your rights, would you have
12 given consent?

13 A. Yes.

14 Q. You would have given consent for him to take the
15 pictures?

16 A. I did the second time 'cause he had a warrant.

17 Q. Right. That was in Lexington ---

18 A. Yes.

19 Q. --- but I'm talking specifically about Mecklenburg
20 County.

21 A. Oh, yes. Did you have ---

22 Q. If he would have had a warrant.

23 A. Yes, sir.

24 Q. Okay. I understand. So if he had a warrant you would
25 have consented but otherwise no.

BOYD EVANS - DIRECT EXAMINATION BY MR. MILLER

1 A. Yes.

2 MR. MILLER: Beg your indulgence, Your Honor, ---

3 THE COURT: Sure.

4 MR. MILLER: Your Honor, I don't have any further
5 questions for my witness.

6 THE COURT: Sir?

7 MR. MILLER: I don't have any further questions ---

8 THE COURT: All right.

9 MR. MILLER: --- for my client now.

10 THE COURT: All right, Mr. Maldonado. Do you have any
11 questions?

12 MR. MALDONADO: No, sir.

13 THE COURT: Sir?

14 MR. MALDONADO: No, sir.

15 THE COURT: All right. Thank you. Thank you, Mr. Evans.
16 You may step down.

17 (Whereupon, the defendant left the stand.)

18 THE COURT: All right. Anything further, Mr. Miller?
19 Make sure I understand your argument.

20 MR. MILLER: Nothing, Judge, just to, I mean, summarize
21 basically either, you know, my my client is saying that he did
22 not give consent, was not advised of his rights and would not
23 have given consent without a warrant and even if you, if you
24 were to stray from that and and take the detective's word he
25 he still is saying if he advised him, he did, and my client is

MOTIONS AND MATTERS

1 agreeing that he did not consent and they came back again,
2 okay even after he refused and and asked him yet again, I I
3 just think that these pictures, you know, were obtained in
4 violation of his constitutional rights and I think that they
5 they should be suppressed.

6 THE COURT: And what, specifically so I know what I'm
7 ruling on, what constitutional right do you think its
8 violated?

9 MR. MILLER: I think that, I think that this, I think
10 number one, it was a, it was a search and seizure I would say
11 under the Fourth Amendment. I think that it's also a a
12 violation of his his, I mean, I think he has to be read his
13 Miranda rights, he has to be properly advised and I think that
14 he was not. Even if you assume that he was properly advised,
15 he then refused and the the officer came back without
16 remirandizing him and asked him yet again ---

17 THE COURT: Thank you.

18 MR. MILLER: --- so ---

19 THE COURT: Mr. Maldonado.

20 MR. MALDONADO: Your Honor, I don't believe anybody has a
21 right not to get their picture taken. I can take his picture
22 right now. I think that Miranda, he has a right to an
23 attorney, doesn't have anything to do with his physical
24 characteristics, it's the same, Your Honor. He he has a -- an
25 obligation in many cases to, Your Honor, we can ask him to

MOTIONS AND MATTERS

1 take his shirt off and show a physical characteristic in court
2 and it's the same thing and plus he didn't even have the shirt
3 off so it wasn't like the detective had to, you know, take his
4 shirt off so it was in plain view.

5 THE COURT: All right. Thank you. Well I think clearly
6 Miranda does not apply. As we all know, Miranda only applies
7 to custodial interrogation. This is clearly a a
8 non-testimonial, it is in no way a violation of his right to
9 remain silent or his right to have an attorney under under
10 Miranda and I would site for that proposition *Schmerber vs.*
11 *California*, 384 U.S. 757 (1966) as far as the non-testimonial
12 aspect. Clearly they're not trying to use a statement against
13 him in this regard, only photographs taken of his body. The
14 other i -- and there's South Carolina cases that follow up on
15 that, they come up in a somewhat of a different setting but
16 one of 'em comes up on a tattoo; *State vs. Pinkard*,
17 P-I-N-K-A-R-D, 617 S.E.2d 397 and also *State vs. Hart*, 412
18 S.E.2d 380. Although those are cases where a defendant wanted
19 to exhibit some physical characteristics, they lose their
20 right to closing argument in that regard. *Hart* does cite
21 *Schmerber vs. California* and other cases in that regard. A
22 physical exhibition offered cannot constitute a waiver of the
23 right against self-incrimination.

24 Now as to the Fourth Amendment issue, even if there were
25 a Fourth Amendment issue, it appears this was in plain view.

MOTIONS AND MATTERS

1 As I understand it, the officer says he saw it when he went up
2 there to Charlotte, that he could see it and took pictures of
3 it so I don't, I don't see where it's any type of a search or
4 a seizure in that regard where they just take a photograph of
5 a characteristic that that plainly visible to the officer.
6 Further, I find the officer's testimony to be credible in this
7 regard.

8 Anything further before we bring our jury back out,
9 Mr. Miller?

10 MR. MILLER: No. Thank you.

11 THE COURT: Solicitor?

12 MR. MALDONADO: I guess we -- it might be easier to bring
13 it up now. I'm debating whatever's better for Your Honor
14 if -- I'm debating whether or not to ask Your Honor to get him
15 to take his shirt off. If we do do that I don't know if we
16 need to have a hearing and and argue it or or what ---

17 THE COURT: All right.

18 MR. MILLER: I just thought, you know, I guess I don't
19 even know that it would be necessary to have a hearing, I
20 mean, if Your Honor's ordering to do that, but we did earlier
21 at a different hearing discuss this and I believe the option
22 was either show the pictures which we agreed on or have him
23 come up in front of the jury. He's got the pictures. He's
24 got the pictures taken in the jail with the orange jumpsuit
25 on, you know, he doesn't even have to redact that. I don't

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1 know that we need to have him paraded in front of the jury on
2 top of that evidence, it's just superfluous and and I think
3 prejudicial.

4 THE COURT: I don't, I don't re -- I mean, I do recall
5 something come up about it, quite frankly your memory's better
6 than mine in that regard, Mr. Miller. Are you, are you asking
7 to have the -- those locations of Mr. Evans's body shown to
8 the jury, is that what you're asking, Mr. Maldonado?

9 MR. MALDONADO: Yes, Your Honor.

10 THE COURT: Is that what you wanna do?

11 MR. MALDONADO: Yes, Your Honor. I I think that that
12 would provide some evidence that the jury can can consider.
13 Um, ---

14 THE COURT: All right. And and what's your position,
15 Mr. Miller?

16 MR. MILLER: Well number one, I think that it's and we
17 have evidence and it's just kind of superfluous, it's more
18 than what's necessary. They've got all of these pictures and
19 in two different jails but clearly he's in jail in one
20 picture, that's bad enough, I don't think -- I mean, we can
21 stipulate to the fact that that's him and that's his mark,
22 stipulate to the fact that's something that, you know, he's
23 had for -- I mean, he he says he got it during a motorcycle
24 accident, it's kind of a scar tissue that's built up but we --
25 we'll stipulate to the fact that's him and that's on him. I

MOTIONS AND MATTERS

1 don't think there's any need with all that to then parade him
2 in front of the jury with his shirt off.

3 THE COURT: All right. Well let me, let me see it.

4 MR. MILLER: Sir?

5 THE COURT: Let me him.

6 MR. MILLER: Him? Now?

7 THE COURT: Yes, sir.

8 MR. MILLER: Okay. Boyd.

9 THE COURT: I don't wanna rule on an item, particular
10 item of evidence unless I've seen it.

11 MR. MILLER: All right.

12 THE COURT: You can stand right there and take your
13 jacket and your tie and your shirt off.

14 (Whereupon, the defendant complied.)

15 (Whereupon, a discussion was held off the record.)

16 THE COURT: Thank you.

17 MR. MILLER: Your Honor, would it be okay if he go back
18 there briefly ---

19 THE COURT: Sir, ---

20 MR. MILLER: --- and let him get tucked in?

21 THE COURT: --- let him step out there.

22 (Whereupon, the defendant Evans left the courtroom.)

23 (Pause.)

24 (Whereupon, the defendant Evans returned to the
25 courtroom.)

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1 THE COURT: All right. You have anything further,
2 Mr. Maldonado?

3 MR. MALDONADO: Your Honor, I believe -- I don't know if
4 you want me to argue on the record.

5 THE COURT: You put on the record whatever you wanna put
6 on the record. If that's an argument, I'll be glad to hear
7 from you.

8 MR. MALDONADO: Just, Your Honor, we believe that that
9 physical characteristics there's plenty a case law that that
10 the jury can see the physical characteristics of the defendant
11 this is in that case, I mean, all the way back to, I hate to
12 quote this case, but O.J. Simpson had to, had to put up his --
13 try the gloves on and, Your Honor, so we believe that that
14 falls within that line.

15 MR. MILLER: Your Honor, I would just, I I think what my
16 argument's been is on the record. I I just think it's it's
17 additional evidence that's already superfluous to what we
18 already have. I mean, we have pictures of him and I don't, I
19 don't see the need to parade him in front of the jury and I
20 don't have any other argument to add that.

21 THE COURT: All right. Thank you. Thank you very much.
22 I appreciate your argument very much also, Mr. Miller. I'm
23 going to allow it in. As I view it, the photographs well 40
24 through 50 and the photographs of whichever one allegedly
25 depict the object as part of his body both on his shoulder

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1 and/or his elbow are two-dimensional and of course that's a
2 good comparison. By saying that's a good comparison I'm
3 talkin' two-dimension to two-dimension, I'm not talkin' that
4 photographs necessarily compare well, that's gonna be a
5 decision for the jury. But you go back to the basis, part of
6 the basis of the witness's identification is knowing and
7 seeing Mr. Evans and seeing this object, whatever it is on his
8 upper left shoulder, in real life so she would have got a view
9 of that three-dimensional so the question becomes if she could
10 see, if she sees that three-dimensional, can she identify it
11 two-dimensionally accurately, and ultimately that decision not
12 whether she's accurate, but whether or not that's him in the
13 video is gonna be made by the jury and so I think they're
14 entitled to see to see that. Quite frankly, this is not by
15 way of a pun, I think it cuts both ways. I think it could be
16 the same to the jury, they can make that decision yeah, that's
17 the same or they can make that decision no, that's not the
18 same. Now I do intend to tell the jury in this regard that
19 it's under my order that it's being done and I want it done in
20 a appropriate manner. It is not being done in any way to
21 embarrass Mr. Evans or be disrespectful to Mr. Evans in any
22 any manner so but it can be shown. Obviously, however the
23 sheriff wants security in that regard I imagine the sheriff
24 would be around here when the jury comes back in so there
25 wouldn't have to be any movement by the sheriff at the time

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1 Mr. Evans moves. I don't want him prejudiced in any manner in
2 that regard. Did you wanna put anything else on the record,
3 Mr. Mr. Miller?

4 MR. MILLER: No, sir, I don't. Thank you.

5 THE COURT: All right. All right. Anything further,
6 Mr. Maldonado?

7 MR. MALDONADO: No, sir.

8 THE COURT: Ms. Ms. Hahn, before we bring our jury back
9 in.

10 MS. HAHN: No, Your Honor.

11 THE COURT: And af -- I I assume you would do that at the
12 very end, I don't know this, but at the very end of your
13 direct testimony?

14 MR. MALDONADO: That's correct, Your Honor.

15 THE COURT: It's at the presentation of the direct
16 testimony?

17 MR. MALDONADO: That's my intention.

18 THE COURT: All right. Well at that point I'm gonna
19 allow the jury to go back out so that Mr. Evans will be able
20 to go back and maybe we'll just take a break right then prior
21 to cross-examination. All right. All right. Bring us our
22 jury, please.

23 (Whereupon, the witness returned to the stand.)

24 (The following takes place in the presence of the jury.)

25 THE COURT: Thank you very much, ladies and gentlemen,

EDWARD PRESTIGACOMO - DIRECT EXAMINATION BY MR. MALDONADO

1 for your patience today. We will continue with the trial of
2 the case if you'll continue to give the parties your complete
3 and undivided attention. Mr. Maldonado, you may proceed.

4 MR. MALDONADO: Thank you, Your Honor. At this time the
5 State would move to admit pictures 40 through 50.

6 THE COURT: Forty (40) through forty-four (44) are
7 admitted into evidence subject to defendant Evans's objections
8 previously noted, 45 through 50 is admitted into evidence
9 without objection.

10 (State's Exhibit Nos. 40 through 50, photographs,
11 admitted into evidence.)

12 MR. MALDONADO: Thank you, Your Honor.

13 DIRECT EXAMINATION BY MR. MALDONADO:

14 Q. So again, just just so we're clear, can you describe what
15 you see in the pictures 40 through 50.

16 A. Forty (40) through (50), yes, sir. They are pictures of
17 Mr. Evans particularly around hi -- his upper left shoulder
18 and his left arm near his elbow.

19 Q. Okay. Is there anything distinguished about that?

20 A. He has two scars that I found similar to scars of the
21 suspect holding a gun at the cash register: one being a mark
22 on the upper left shoulder and at the elbow, the left elbow.

23 Q. Okay. So on the top of the elbow not like the ---

24 A. Right, ---

25 Q. --- the pointy part of the elbow.

EDWARD PRESTIGACOMO - DIRECT EXAMINATION BY MR. MALDONADO

1 A. --- it's on the top of the left elbow.

2 Q. Okay.

3 MR. MALDONADO: Your Honor, we'd ask to publish the
4 pictures.

5 THE COURT: Certainly. You may publish 'em.

6 (Whereupon, the photographs were published to the jury.)

7 BY MR. MALDONADO:

8 Q. I'm showing you 1, pictures -- State's Exhibits 1
9 through 8. Do you recognize that?

10 A. Yes, I do.

11 Q. What is that of?

12 A. It's a picture of a blue over gold Explorer.

13 Q. Okay. And when was those -- when were those taken?

14 A. They're they're time stamped 7/26/07 at 12:30 a.m.

15 Q. So that's the time of the incident.

16 A. Around the time of the incident. I believe these
17 particular stills that that I pulled were them coming to the
18 store.

19 Q. Okay. I guess I I never -- I think I skipped over the
20 the original pictures from inside the store. Can you review
21 those. Are these -- was there anything else distinguishing
22 other -- I mean, we talked about the scar. Was anything else
23 distinguishing about about the defendant separately and what
24 you saw?

25 A. Just the the other picture that that stood out that made

EDWARD PRESTIGACOMO - DIRECT EXAMINATION BY MR. MALDONADO

1 me pull this still was the one that was later identified by
2 Glynnessa Evans as being Lywone Capers, ---

3 Q. Okay. Do you ---

4 A. --- that a ---

5 Q. --- remember the number?

6 A. --- part of his face is visible.

7 Q. Do you remember the number at all or is it ---

8 A. Yes, sir, that's exhibit, State's Exhibit 24.

9 Q. Okay. You received some some other names my my
10 understanding from in this investigation.

11 A. Yes, I did.

12 Q. What happened with that?

13 A. It's still under investigation. I I received John Sosa's
14 name who I learned was also a relative of Mr. Evans and
15 Mr. Capers and another person Ton, Anton, I don't recall the
16 last name but I believe I got the right person, is a suspect
17 out of North South Carolina and it's still under investigation
18 for those other two.

19 Q. Okay. I believe that is all on direct.

20 THE COURT: All right.

21 MR. MALDONADO: Did we wanna break after the cross
22 or ---

23 THE COURT: No, if you -- whatever else you wanna present
24 now.

25 MR. MALDONADO: Yes, Your Honor, we -- I guess we'd ask

1 to present ---

2 THE COURT: All right. Ladies and gentlemen, in your
3 absence I had a a hearing and I have ruled and ordered that
4 the part of the body of the defendant Boyd Evans may be
5 displayed to the jury panel. I want you to understand this is
6 for your viewing because you're gonna have to judge and
7 determine the facts of this case based on the evidence and
8 testimony presented and any other inferences that you think
9 may reasonably be drawn from the testimony. So what I'm gonna
10 do now is have that parts of Mr. Evans's body viewed by the
11 jury just along the rail and thereafter I'm going to allow him
12 to go back and redress himself and if ya'll will step out
13 we'll take our afternoon recess before the cross-examination
14 of Mr. Prestigacomo. All right. Solicitor, or excuse me,
15 Mr. Maldonado, you may proceed with that procedure. You can
16 escort your client up here if you would like, Mr. Miller.

17 (Whereupon, the jury views the defendant.)

18 THE COURT: Just walk walk down this (indicating) way a
19 little bit, Mr. Evans.

20 MR. MALDONADO: Turn a little bit to to with back to the
21 jury.

22 THE COURT: All right. Is that sufficient?

23 MR. MALDONADO: Yes, Your Honor.

24 THE COURT: Thank you. Thank you very much, Mr. Evans.
25 Madam forelady, ladies and gentlemen, if ya'll just step out

EDWARD PRESTIGACOMO - DIRECT EXAMINATION BY MR. MALDONADO

1 momentarily. Prior to the cross-examination we'll take about
2 a ten-minute recess. Thank you very much.

3 (The following takes place outside the presence of the
4 jury.)

5 THE COURT: All right. Let's take about a twelve-minute
6 recess.

7 MR. UNDERWOOD: Yes, Your Honor.

8 THE COURT: Thank you very much. You may step down. Do
9 not discuss the case during this brief recess.

10 (Whereupon, the witness left the stand.)

11 (Whereupon, a recess was taken.)

12 THE COURT: All right. We ready for our jury? Anything
13 from the State?

14 MR. MALDONADO: No, Your Honor. There's no further
15 questions.

16 THE COURT: The defense Ms. Hahn, Mr. Miller?

17 MS. HAHN: No.

18 MR. MILLER: Nope.

19 THE COURT: Bring us our jury back.

20 (The following takes place in the presence of the jury.)

21 THE COURT: All right. Welcome back. We'll continue
22 with the trial of the case by the prosecutor.

23 MR. MALDONADO: Your Honor, just for the record the State
24 has no further questions of ---

25 THE COURT: All right.

EDWARD PRESTIGACOMO - CROSS-EXAMINATION BY MS. HAHN

1 MR. MALDONADO: --- Detective Prestigacomo.

2 THE COURT: Thank you, Mr. Maldonado. Cross-examination
3 of Detective Prestigacomo by Ms. Hahn on behalf of Mr. Capers.

4 MS. HAHN: Thank you, Your Honor.

5 CROSS-EXAMINATION BY MS. HAHN:

6 Q. Good afternoon, Detective.

7 A. Hello.

8 Q. Did you testify that -- oh, excuse me. Is it your
9 understanding that neither of the eyewitnesses during the
10 robbery were able to identify the robbers?

11 A. I'm sorry. The two witness?

12 Q. The two eyewitnesses that were there ---

13 A. That's correct that ---

14 Q. --- at the time.

15 A. --- they were unable to identify them.

16 Q. And there weren't any fingerprints from the store.

17 A. No.

18 Q. There was no DNA taken from the store.

19 A. No, ma'am.

20 Q. And none of the young men that came in dropped any
21 personal belongings that you could use to identify them in any
22 way.

23 A. No.

24 Q. Okay. Now, the incident happened in the early morning
25 hours of July 26th, right?

1 A. Correct.

2 Q. And you talked to Glynnessa Evans and Michael Rhaney in
3 the afternoon of that same day, is that right?

4 A. That's right 3, around 3 p.m.

5 Q. And at first did you say that Michael Rhaney gave you
6 only the first names?

7 A. Yes.

8 Q. Is that all he knew at that point?

9 A. He provided me with the three first names at that point:
10 John, Lywone and Boyd.

11 Q. Okay. And both he and Ms. Evans said that they were
12 relatives of Ms. Evans that had visited the day before, is
13 that right?

14 A. I'm sorry. I couldn't hear ya. I apologize.

15 Q. I'm sorry I'm not speaking very loudly. And both
16 Mr. E -- Mr. Rhaney and Ms. Evans said that those three men
17 and then later the fourth one were relatives of
18 Ms. Evans that had visited that day before, right?

19 A. That's correct.

20 Q. And by the time you left they had given you the full
21 names of all four men.

22 A. Yes. Glynnessa did give me full names of three and the
23 the fourth suspect she gave me Ton, T-O-N, and advised me that
24 he lived in North and he's a distant relative.

25 Q. Okay. Did you after that try to get a search warrant for

EDWARD PRESTIGACOMO - CROSS-EXAMINATION BY MR. MILLER

1 the homes of any of the young men that they named?

2 A. No, I did not.

3 Q. Even though a search warrant and a subsequent search may
4 have turned up either the gun or the money or the clothing
5 that was involved?

6 A. Yes.

7 Q. When did you arrest Boyd Evans?

8 A. Boyd Evans was arrested on the night of September 19th by
9 Charlotte Police Department.

10 Q. And what about Mr. Capers?

11 A. I believe he was, he was arrested on that same night.

12 Q. And you said that your investigation of the others
13 continues?

14 A. Yes.

15 Q. Have you talked to either of those young men?

16 A. I did.

17 Q. You did.

18 MS. HAHN: No further questions, Your Honor.

19 THE COURT: Thank you. Thank you very much, Ms. Hahn.
20 Mr. Miller?

21 MR. MILLER: Thank you, Judge.

22 CROSS-EXAMINATION BY MR. MILLER:

23 Q. Detective, how are you?

24 A. Fine. How 'bout you?

25 Q. Doin' okay.

1 A. Good.

2 Q. Detective, just to be clear, there were at least you said
3 from the eyewitness' accounts and from the video two guns in
4 this incident.

5 A. Yes. The -- I don't recall if it was Ed or Sue said one
6 robber had a gun in his waistband which I couldn't see on the
7 video.

8 Q. You have not recovered any guns.

9 A. No, sir.

10 Q. Okay. Was a search made for the guns?

11 A. A search of where?

12 Q. I -- I'm asking you. Was a search anywhere made for the
13 guns: outside the store, ---

14 A. Absolutely and the crime scene it was thoroughly
15 searched.

16 Q. Nothing ---

17 A. Nothing was recovered or found.

18 Q. Was -- I guess when when Mr. Evans was arrested by the
19 Charlotte Police Department, he was being held when you -- you
20 did go to Charlotte, correct, subsequently to meet with him?

21 A. Yes. I -- he was arrested on the night of September 20th
22 and the 21st -- I'm sorry. He was arrested on the 19th,
23 September 19th. On September 20th around 10:40 we were at
24 Charlotte-Mecklenburg Jail.

25 Q. Okay. Did you search Glynnessa Evans and Michael

EDWARD PRESTIGACOMO - CROSS-EXAMINATION BY MR. MILLER

1 Rhaneys' home for the gun?

2 A. No.

3 Q. Okay. Even though allegedly they were down here visiting
4 them at that time.

5 A. Yes, they were visiting.

6 Q. Okay. Did you search Boyd Evans' home with Emma Evans in
7 in North Carolina?

8 A. No.

9 Q. Did Charlotte Police Department search that home?

10 A. No, they were arrested, I don't know how much detail we
11 can go into, but it was a group suspected of selling drugs.

12 THE COURT: Perhaps we can move on from that, Mr. Miller.

13 BY MR. MILLER:

14 Q. Yeah, I understand but no gun recovered. I believe they
15 said that the cell phone was removed from Mr. Lasseter's
16 belt?

17 A. That's correct.

18 Q. Was that ever recovered?

19 A. No.

20 Q. No. Okay. Kinda interested in the ongoing investigation
21 into those two suspects Ms. Hahn talked to you about. I --
22 I'm concerned because there seems to be obvious evidence that
23 four people were involved, there seems to be enough probable
24 cause on on your part to arrest Boyd Evans and Lywone Capers,
25 the same people who provided those names provided to you ---

1 A. Yes.

2 Q. --- the other two, ---

3 A. Right.

4 Q. --- you know where they're at and you've spoken with
5 them, correct?

6 A. I spoke with one, yes, sir.

7 Q. With one. Excuse me. You have not spoken with both?

8 A. No.

9 Q. Okay. Which one did you speak?

10 A. Ton. I can't recall his last name.

11 Q. I think it's Anton Coleman but I'm not ---

12 A. Anton Coleman is correct, ---

13 Q. Okay.

14 A. --- yes, sir.

15 Q. And can you tell me why at that time you didn't find
16 cause to take him into custody?

17 A. Okay. When these pictures were shown, the names were
18 given based on the surveillance picture of the four suspects
19 in one picture. That gave me reasonable suspicion that these
20 persons were involved. When Glynnessa Evans was able to
21 identify specific physical characteristics on Boyd Evans,
22 being the two scars on his body, that put me in my belief to a
23 threshold of probable cause. When she looked at the other
24 picture of Mr. Capers and said, "That's his nose, that's his
25 skin tone," that allowed me in my belief and experience to put

EDWARD PRESTIGACOMO - CROSS-EXAMINATION BY MR. MILLER

1 me in the threshold of probable cause which is what prompted
2 me to present all this information to a judge and he issued
3 warrants for their arrest.

4 Q. What else is being done in an attempt, I mean, obviously
5 they gave you specific physical characteristics: gait,
6 otherwise, of the other two suspects and were able to identify
7 them, what is being done in this investigation to ---

8 MR. MALDONADO: Your Honor, I object. That's irrelevant
9 and that could compromise the investigation.

10 THE COURT: I would, unless you want to be heard outside
11 the presence of the jury on specific areas of which you can
12 compromise an investigation, I'm gonna overrule the objection.

13 BY MR. MILLER:

14 Q. I don't want you to go into any details that would
15 compromise an investigation, Detective, ---

16 A. Sure.

17 Q. --- I'm asking these these same two people were provided,
18 I mean, the same information seems apply to all four
19 alleged suspects and yet two, one of whom you know where he's
20 at to interview, remains free and it just -- I'm kinda wanting
21 to know what needs to be done to to bring this man into
22 custody.

23 A. Okay. My intentions were to interview upon their arrest
24 Mr. Evans and Mr. Capers hoping they would tell me who the
25 other two were.

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1 THE COURT: And that, I think that's an area better left
2 not goin' into, Mr. Miller, under *Ohio vs. Doyle*.

3 MR. MILLER: Sir, I I understand. I'm -- I -- I'm just
4 wait -- yeah, I'm trying to handle this according to his
5 responses. I apologize.

6 BY MR. MILLER:

7 Q. When you, when you showed these photographs, video stills
8 to Michael Rhaney and Glynnessa Evans, do you remember in what
9 order, and when I say this there were I believe single
10 individual pictures ---

11 A. Correct.

12 Q. --- that you also showed to them of these four
13 suspects, ---

14 A. Yes.

15 Q. --- did you ever do an actual photo lineup of say six
16 different people including one defendant in each, in each
17 photo lineup to see if they can pick them out or did you just
18 simply show them those four individual pictures of
19 the suspects?

20 A. No, I -- no, photo lineup just individual pictures.

21 Q. Okay. So those were the only people that they really had
22 to identify.

23 A. I'm sorry, sir.

24 Q. I -- I'm sayin' ---

25 A. I I don't ---

1 Q. --- you you ---

2 A. --- understand the question.

3 Q. --- showed them -- you you didn't show them a photo
4 lineup, you showed them simply Boyd Evans, Lywone Capers, John
5 Sosa and Anton Coleman, ---

6 A. Uh, ---

7 Q. --- those were the only people they had to identify.

8 A. That's correct. On on the 26th when the names were
9 provided to me by Glynnessa Evans, I went to the office,
10 pulled up pictures of these four individuals. The next day I
11 was out at her residence and I showed each picture, Is this
12 so-and-so, is this so-and-so so for her to to con -- make it
13 concrete in my mind that we have the right people.

14 Q. Okay.

15 A. And I showed her pictures of her family members.

16 Q. And after Michael Rhaney gave you the information on
17 these four people and and Glynnessa Evans did you continue the
18 investigation with other -- with the people at the store or
19 any other investigation to determine if anyone else could have
20 been involved outside of these four suspects?

21 A. Okay. The the initial investigation and the video led me
22 to four suspects but I had -- I did not gather any information
23 to let me know that there was more than four people
24 involved.

25 Q. I understand. I'm just wondering if you looked at any

EDWARD PRESTIGACOMO - CROSS-EXAMINATION BY MR. MILLER

1 other four people or any other group of people other than
2 these four suspects.

3 A. Aside from the four that were identified?

4 Q. Um-hum.

5 A. No, sir.

6 Q. Okay. Now you did say that that the actual SUV in
7 question that you saw was registered not to my client but to
8 Frederick Neal?

9 A. That's correct.

10 Q. Okay. And I think according to your police report you
11 you were the -- you said that you as the investigating officer
12 pulled up a picture of Frederick Neal, he does not match the
13 description of the suspects involved in this incident. Did
14 you show his picture to any of the other witnesses or did you
15 just unilaterally determine that he didn't match that
16 description?

17 A. No. I determined. When I pulled his picture, by seeing
18 his picture I determined that he did not fit the description
19 and I went to see him in person ---

20 Q. Okay.

21 A. --- and that's when ---

22 Q. That's that's fine. I ---

23 A. Okay.

24 Q. You also said I believe that you you obtained two other
25 tag numbers that you had said at the time were wrong tag

1 numbers that we, you know, but did you ever run either of
2 those other tag numbers?

3 A. Yes.

4 Q. Did they come back to any vehicle?

5 A. Not on file.

6 Q. Not on file.

7 A. It, ---

8 Q. Okay.

9 A. --- like I testified earlier one was off by one digit ---

10 Q. Correct.

11 A. --- and the other one was off by one letter and the
12 digits were were correct so by running 'em we came to the
13 right one.

14 Q. And that was not my client's.

15 A. Sir?

16 Q. That that did not belong to my client. That SUV did not
17 belong my -- was not owned ---

18 A. No, that ---

19 Q. --- by my client.

20 A. --- that re -- that SUV was registered to Frederick
21 Neal.

22 Q. All right. Thank you.

23 A. Yes, sir.

24 THE COURT: Yes, sir.

25 MR. MALDONADO: Thank you, Your Honor.

EDWARD PRESTIGACOMO - REDIRECT EXAMINATION BY MR. MALDONADO

1 REDIRECT EXAMINATION BY MR. MALDONADO:

2 Q. He mentioned any investigation in any four other
3 individuals. Did you have any evidence to suggest any other
4 four individuals were involved in in this crime?

5 A. No.

6 Q. Okay. You talked about lineups. Is it policy for you to
7 show lineups to people who know the people they're talkin'
8 about?

9 A. Absolutely not. That is usually done with strangers or
10 one time meetings. You know, I I usually make that discretion
11 but typically no.

12 Q. No further questions.

13 THE COURT: Thank you. Anything in recross, Ms. Hahn?

14 MS. HAHN: No, Your Honor.

15 THE COURT: Mr. Miller?

16 MR. MILLER: No, Judge.

17 THE COURT: Thank you very much, Detective. You may step
18 down.

19 (Whereupon, the witness left the stand.)

20 THE COURT: All right. You may call your next witness.

21 MR. MALDONADO: I believe the State rests, Your Honor.

22 THE COURT: All right. The State rests. All right,
23 Mr. Foreman -- oh, excuse me, madam forelady, ladies and
24 gentlemen of the jury, at this stage of the proceeding I must
25 take up a matter outside of your presence, I'm required to by

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1 law. It may take me a little more than fifteen minutes but
2 I'll get you back out here as quickly as I can. Please leave
3 your notes upside down on your chairs. Do not discuss the
4 case during this brief recess. Thank you. Thank you very
5 much. You may now go with the bailiff.

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

8 THE COURT: Any motions from the State?

9 MR. MALDONADO: I'm sorry?

10 THE COURT: Anything from the State?

11 MR. MALDONADO: No, Your Honor.

12 THE COURT: All right. Ms. Hahn?

13 MS. HAHN: Yes, Your Honor. I'd like to make a directed
14 verdict motion.

15 THE COURT: All right. Be glad to hear from ya.

16 MS. HAHN: Your Honor, my motion's in two parts but for
17 the whole, the motion is that the evidence on the whole taken
18 in the light most favorable to the State is insufficient to
19 convince a rational trier of fact that the State has proven
20 every element of the offense charged beyond a reasonable doubt
21 or the offenses charged beyond a reasonable doubt.

22 The first part of my motion I'd like to put on the
23 record, I understand that the Court has ruled on the testimony
24 of Glynnessa Evans and Michael Rhaney identifying people in
25 the video, but I would like to put some things on the record

MOTIONS AND MATTERS

1 just as an abundance of caution. Your Honor, I would base
2 this motion on the *State v. Arnold*, which is 605 S.E.2d 529,
3 which talks about the standard for a directed verdict in a
4 circumstantial evidence case and it's my belief that without
5 the identification testimony of Ms. Evans and Mr. Rhaney that
6 this would have been a circumstantial evidence case. And in
7 that case the opinion talks about how the trial judge had
8 granted a directed verdict when the evidence merely raises a
9 suspicion that the accused is guilty and I think that that
10 would apply had the -- had those witness's testimony regarding
11 the video not come in and the reason for that is that none of
12 the eye -- the eyewitnesses during the robbery identified him.
13 There wasn't any physical evidence from the scene that
14 implicated him, no fingerprints, no DNA, none of his
15 belongings there, none of the evidence from the scene was
16 found on Mr. Capers, there were no statements from any
17 co-defendants that put him there and he didn't make any kind
18 of confession on his own. The testimony that we do have shows
19 only that he was in the area the day before and he may have
20 been driving a blue SUV which is a very generic vehicle. I
21 believe that that testimony is, that he was in the area, is
22 too remote in time and location to do more than raise a
23 suspicion that he committed the robbery.

24 THE COURT: All right. There's a second part to your
25 motion?

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1 MS. HAHN: Yes, Your Honor, specifically about the
2 kidnapping. My position on this is that there was either no
3 confinement or in the alternative that any confinement that
4 did happen was so brief and incidental to the robbery itself
5 that it wasn't a separate and distinct offense kidnapping. In
6 our case testimony in the video show that the men in the Pitt
7 Stop tell Ms. Irick to give 'em the money, she wrote that in
8 her statement, that's what you could hear on the video as
9 well. Mr. Lasseter testified to the same thing that they
10 didn't tell him to do anything and that they only told her to
11 give them the money. In court her testimony differed only in
12 that she said that one of them had met her and told her to
13 move behind the counter. According to the witness' testimony
14 and the video, the men came in the store, demanded the money
15 and then left. Clearly, the point of that was to get the
16 money and get outta the store. There's not any evidence at
17 all to show that they did anything to control Mr. Lasseter's
18 movements. He says that he got down on the floor when they
19 came in, it wasn't that somebody told him to. There are -- if
20 there was no confinement, I don't think that that this issue
21 needs to go to the jury. On the other hand, if there is a
22 confinement I think that it's so brief and so inconsequential
23 that it should not -- it doesn't rise to the level that it
24 should come in and that this should go to the jury and the
25 kidnapping charges. There are a couple of cases that talk

MOTIONS AND MATTERS

1 about how when someone is confined as part of another crime
2 that that is enough to bring a separate and distinct offense
3 of kidnapping and those are *State v. East* which is 578 S.E.2d
4 748 and *State v. Hall* at 310 S.E.2d 429. I think our case is
5 substantially different from both of those cases. In the *East*
6 case, there was a lot of evidence about how the robbers had
7 come into the restaurant, they made several statements, they
8 ordered a manager around. The case talks about several
9 different things that they did and at one point they took some
10 people into an office. Another point in the case it talks
11 about how people lay there for several minutes until the
12 robbers left the store so that it's clear that that robbery
13 happened over a lengthy amount of time compared to our case.
14 And I believe in the *Hall* case the confinement, the case
15 itself said the confinement lasted forty-five minutes. In our
16 case the time frame is substantially different. When I've
17 looked at the video, it looks to me like the time stamp says
18 3441 they open the door and enter the store. At 3444
19 Ms. Irick screams which is the first time she has any inkling
20 that anybody's in there. By 3519 everyone is out of the
21 register area and leaving the store and by 3524 the last
22 person has left. And the way I count that from the time that
23 either of the victims is aware of their presence until the
24 time that they're on their way out thirty-five seconds elapsed
25 and if you count it from the time the first person came in the

MOTIONS AND MATTERS

1 door until the time they left through the door it's
2 forty-three seconds so I think it's substantially different
3 from either of the other two cases.

4 THE COURT: All right. Anything further?

5 MS. HAHN: No, Your Honor.

6 THE COURT: Thank you. Mr. Miller, do you have any
7 motion?

8 MR. MILLER: I never know how to do this with a
9 co-defendant. I -- I'm basically joining both of her motions.
10 I mean, I -- the *State v. East* case was something that, you
11 know, I agree we distinguish from. I actually was looking at
12 that the other night and, you know, all it really says is that
13 such and such can be a kidnapping but the point is it also
14 cannot be based on the facts of the case. I mean, when you have
15 something that is a I think a wholly separate crime as
16 Ms. Hahn said, I mean, the evidence is pretty clear from what
17 was testified to in the statements that they never never told
18 them, you know, to actually do anything or be confined, they
19 wanted the money, whoever this was that robbed the store
20 wanted the money, came back, got the money, immediately turned
21 around and left, about what was said was, "Hurry up. C'mon
22 son," talking to -- between the co-defendants, so the fact
23 that that these people were in fear I understand that but I
24 don't think that there is anything to rise to the level of an
25 actual confinement for purposes of kidnapping and would also

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1 make a motion that that charge be for a directed verdict with
2 regard to that charge as it shouldn't go to the jury.

3 Specifically, with regard to all of the charges I guess
4 against Boyd Evans, you know, I think a directed verdict is in
5 order in that again, you have testimony from Michael Rhaney
6 and Glynnessa Evans, that would be the the only testimony.
7 You have nobody nobody that can explain or tie Mr. Evans to a
8 car, to the SUV, doesn't own the SUV, the SUV is something
9 that was seen in the robbery, the SUV is what was seen in this
10 park but there's nobody and no testimony's been offered to
11 show that he obtained that SUV or had anything, any ownership
12 in an SUV, had anything to do with that SUV and I think that
13 there's simply nothing to rise to the level this should be
14 submitted to a jury so I would make directed verdict motions
15 on both causes. Thank you.

16 THE COURT: Thank you. Mr. Maldonado?

17 MR. MALDONADO: Thank you, Your Honor. And we believe
18 it's pretty clear that that there's that -- we do have the
19 evidence of the crime. I don't believe the the defense argues
20 that that the armed robbery occurred. Elements of that were
21 all established by the witnesses, Your Honor, and I I --
22 anybody can take the, if you take witnesses out we might not
23 build a case but in this case, Your Honor, in the light most
24 favorable to the State we do have two witnesses that actually
25 put them and they say in the video they're the ones who who

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1 did it and, Your Honor, even without all that the jury could
2 take a look at his telltale scar and and they can use that
3 alone and find him guilty, that he was the one there.

4 With regards to the kidnapping case, Your Honor, there's
5 no case that I know that I, that I can recall that says
6 there's a time limit on on how long you have to to be
7 kidnapped. The defense argues that that the time was
8 inconsequential. I believe the victim in the case would would
9 substantially disagree and I I do also, Your Honor. This was
10 a very substantial amount of time to her and she was obviously
11 in the video moved from in front of the counter to behind the
12 counter, they said, "Give me the money," she woulda had to
13 gone, you know, according to her around. It doesn't have to
14 say, you know, you don't have to say when you're kidnapping
15 somebody that, "I'm not gonna let you go or go over here," you
16 can do that by your actions and in this case pointing the gun
17 at them, moving her around, forcing her to get the money,
18 forcing her to open the the cash registers they felt that --
19 they testified they didn't feel free to leave, that is the
20 definition of kidnapping, Your Honor, and and at least it's
21 enough to go to the jury in my my opinion, Your Honor.

22 THE COURT: All right. Thank you.

23 (Pause.)

24 MR. CORNWELL: Your Honor, not to interrupt your
25 research, may I be allowed to respond ---

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1 THE COURT: I can't hear you.

2 MR. CORNWELL: If I could be allowed to respond to some
3 of the things the State stated.

4 THE COURT: All right. Give me just a minute.

5 MR. CORNWELL: Okay.

6 (Pause.)

7 THE COURT: All right. Yes, sir, I'll be glad to hear
8 from you.

9 MR. CORNWELL: Yes, Your Honor. A couple things I want
10 to address. I think the key issue is the fact of a
11 confinement and if the Court's already decided this case is
12 whether or not kidnapping is proper as a separate offense,
13 Your Honor, and in the cases they do in fact one one prong of
14 the analysis, one of the things they take into account is the
15 time of the confinement and the State said they wasn't aware
16 of a case but the two cases cited the *Hall* at least, Your
17 Honor, does take into account the amount of time of
18 confinement that that that factored into the equation there,
19 Your Honor, and we'd say as we stated earlier that whatever
20 confinement, if any, which we don't think there was, was
21 incidental to the armed robbery. If we were to accept the
22 State's position and as as they lay it out, Your Honor, then
23 it seems like we would have a arm -- a kidnapping every time
24 there was an armed robbery where we could rob somebody in an
25 open field and claim that they weren't free to leave 'cause a

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1 gun was in a bag and then they have a kidnapping. I don't
2 think that's the case and I don't think that's what the
3 Court's intended for their ruling and I think it's kinda clear
4 that the Court side with us in that matter.

5 THE COURT: All right. Anything further?

6 MS. HAHN: Your Honor, I would just like to make it clear
7 that my motion applies to all of the charges that Mr. Capers
8 has and especially the kidnapping. That's all, Your Honor.

9 THE COURT: All right. Thank you very much. As to, as
10 to the armed robbery, I'm denying the the motion for a
11 directed verdict as to both defendants in the armed robbery.
12 I think there's sufficient evidence, direct and circumstantial
13 both as to Mr. Evans and as to Mr. Capers applying the
14 standard that I'm required at this time.

15 As to the kidnapping charge, I'm directing the verdict of
16 not guilty on 07-GS-32-3357 and 07-GS-32-3338, that is the
17 kidnapping charge on Mr. Evans and Mr. Capers as to the victim
18 Ed Lasseter. As to the other two kidnapping indictments,
19 07-GS-32-3336 and 07-GS-32-3358, I'm denying the motion for
20 directed verdict of kidnapping in that regard, that is to the
21 victim Sue Anne Irick. The testimony is such that she was out
22 in the area of the store in one of the aisles and was brought
23 back behind the counter at gunpoint, that's shown in the
24 videos also. In *Benjamin Hall*, which happened at a apartment
25 complex in Lexington County, the victim of the criminal sexual

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1 conduct was taken from the clubhouse area of the apartment
2 complex around to the diving board at the pool which was not
3 as far probly as from here (indicating) to a little beyond the
4 rail. In *State vs. Dildine*, the victim was jogging and a
5 subject came out of the woods in an attempt to assault and/or
6 sexually assault her and struggled with her and a gentleman
7 came along in a car just a very brief period thereafter and
8 the subject ran away. He was charged with a kidnapping.
9 There's also another case, which name I was looking for I
10 cannot find, which involved a valet person at Harper's
11 Restaurant in Five Points. As he went to retrieve a car, the
12 subject jumped in on him and attempted to carjack him and held
13 him down less than a minute and that was a kidnapping. I'll
14 supplement the record in that regard. As -- but I think the
15 testimony's clear both in viewing the the videotape as far as
16 the victim where Ms. Irick is concerned, the cases are clear,
17 whether or not it's incidental to the main crime is is not
18 necessary. And *State vs. Jefferies* would hold for that
19 proposition where the young man stole the car not even knowing
20 the baby was in the backseat, drove all the way up to Newberry
21 and dumped the baby out in a dumpster up there. As to
22 Mr. Lasseter though however, I'm going to direct a verdict of
23 not guilty. And as to the other charge possession of a weapon
24 during the commission of a violent crime, I'm denying that
25 also. Any other motions, Ms. Hahn, Mr. Miller?

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1 MS. HAHN: No, Your Honor.

2 MR. MILLER: None. Thank you.

3 THE COURT: All right. Anything before we bring in our
4 jury?

5 MS. HAHN: Your Honor, I I think I probly should get into
6 this now. Uh, ---

7 THE COURT: Ma'am?

8 MS. HAHN: I think I should probly address this now ---

9 THE COURT: All right.

10 MS. HAHN: --- since we had a question about it earlier.
11 With some of Mr. Capers' witnesses, I wanna talk about the ill
12 will between them and Glynnessa Evans ---

13 THE COURT: All right.

14 MS. HAHN: --- and I would like to talk about the fact
15 that they assisted law enforcement in Ms. Evans' case and that
16 she's held that against them and then also get into the
17 custody matter. Since you've already made a ruling on that as
18 to Ms. Evans, I I would just request a ruling on whether I
19 made proceed down that line of questioning.

20 THE COURT: Well I don't, I don't know what the
21 particular questions are and if the question is, Do you have
22 ill will towards Ms. Glynnessa Glynnessa Evans, is that, is
23 that the question you wanted to ask?

24 MS. HAHN: That and also whether there's a rift in the
25 family since then.

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1 THE COURT: It doesn't matter whether a witness, it's to
2 me, that's not a party of this case has ill will. How is that
3 relevant? Now if if she has ill will towards Mr. -- maybe I'm
4 not tracking, Ms. Hahn.

5 MS. HAHN: Your Honor, my my point would be getting at
6 Ms. Evans' reason to make this up or to say that it happened
7 when it didn't and so I wanna talk about why she would have a
8 reason to do that and so I would like to talk about the
9 past.

10 THE COURT: All right. So the question is, Did you
11 cooperate, Mr. or Mrs. Witness, did you cooperate with the
12 police in the prosecution of Ms. Glynnessa Evans for her crime
13 in a 1999 case?

14 MR. CORNWELL: Your Honor, yes.

15 THE COURT: Yes. Please just answer my question. Is
16 that ---

17 MS. HAHN: Yes.

18 THE COURT: --- the question you wanna ask is ---

19 MS. HAHN: (Nodded in the affirmative.)

20 THE COURT: --- and the answer would be, Yes, I did.

21 As a result of that did that cause a rift in the Evans
22 family?

23 MS. HAHN: Yes.

24 THE COURT: Yes.

25 Is there ill feelings between you and as far as you know

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1 Glynnessa Evan?

2 Yes.

3 Does that carry over to to your knowledge Boyd Evans and
4 Laquan Capers?

5 Yes.

6 Is is that where you're headed in that regard?

7 MS. HAHN: I think you said it better than I planned to.

8 THE COURT: Can you tell where ---

9 MS. HAHN: Yes.

10 THE COURT: --- we're headed in that regard?

11 MS. HAHN: Yes, Your Honor.

12 THE COURT: All right. But you're not goin' into the
13 details of the statements or the details of the fact or the
14 details of the event of 1999, only that they cooperated in the
15 investigation with the police in that regard..

16 MS. HAHN: And that she was subsequently convicted.

17 THE COURT: All right. Let -- let's talk about that
18 first before -- well, that's already out that she's been
19 convicted but I I don't disagree. Let's talk about just that
20 issue first. What objection do you have of that,
21 Mr. Maldonado?

22 MR. MALDONADO: Your Honor, I would object to anything
23 that presume, any testimony that presumes what Glynnessa Evans
24 feels. They're gonna testify that she feels animosity towards
25 the family when they can't read her mind. They can testify

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1 that they know that they feel, I guess, separated from her
2 but, you know, and but unless they can establish and and
3 further I -- if they can't establish any, for example,
4 incident to suggest or or words to suggest that Glynnessa, you
5 know, says I don't like the defendants or something like none
6 of this points to the defendants so, Your Honor, I believe
7 it's all irrelevant but, you know, any of this rift, I mean,
8 the testimony of a rift assumes that Glynnessa feels that same
9 way when she testified she didn't.

10 THE COURT: Doesn't it go to the weight though? What if
11 they believe they say caused a rift in the family? Well a
12 rift in the family means there are usually two different
13 sides: there's gonna be a side that Ms. Hahn' witness,
14 Mr. Capers' witnesses are on, Mr. Capers and Mr. Boyd Evans's
15 witnesses are on and they're gonna be able to compare that
16 against Ms. Glynnessa Evans's statement.

17 MR. MALDONADO: I think they would have to establish a
18 basis for that and that would to me would be at least be the
19 threshold of did they do something to testify against her, did
20 they do something to cause -- because it has to tie to one of
21 the parties and well just because that, you know, they're all
22 one family so there might be some people who are on on on one
23 side. For all we know, Boyd Evans being her brother supported
24 her getting the child back. There's no evidence right now to
25 say either one.

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1 THE COURT: I'm not talking about the child custody right
2 now.

3 MR. MALDONADO: Well, ---

4 THE COURT: I'm not even touching that right now. I'm
5 just talkin' about the 1999, 2000 cooperation with the
6 investigation of Glynnessa Evans.

7 MR. MALDONADO: I've I've -- she -- if if they, if they
8 are the ones who cooperated, I guess ---

9 THE COURT: If they what?

10 MR. MALDONADO: If the defendants were the ones who did
11 something but I don't believe anything that Emma Evans did is
12 relevant in this case.

13 THE COURT: Ms. Emma Evans is not gonna be a witness is
14 she?

15 MR. MALDONADO: No.

16 THE COURT: So your objection's based on relevance.

17 MR. MALDONADO: That and the -- them testifying as to how
18 Glynnessa felt. So they can say how the -- they feel but
19 they -- I would object to anything them testifying how ---

20 THE COURT: Well, ---

21 MR. MALDONADO: --- Glynnessa felt.

22 THE COURT: --- you know, I'll put my cards on the table.
23 There's a case called *Stäte vs. Schmidt*, S-C-H-M-I-D-T, it's a
24 criminal sexual conduct case with a minor and it concerns me,
25 Mr. Maldonado. In that case you have a minor victim and they

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1 don't bring it out through the minor victim but the defendant
2 then tries to bring in that there was a vendetta, there was a
3 vendetta against the defendant because the defendant had a
4 affair with the mother of the victim. Father of the victim
5 found it out and there were threats passed. The judge didn't
6 let that testimony in. I I and I I read that case over lunch
7 trying to decide, of course it it didn't come in through
8 cross-examination either, if a rift is a vendetta. I mean,
9 people give their opinions and I -- I'm trying to get it to
10 where they don't go, I I don't wanna hear about family
11 squabbles to where there's specific instances 'cause squabbles
12 between Glynnessa Evans and individuals that are gonna get up
13 here and say, Well this is why we think she's biased, because
14 a camp in the family and I agree with you assuming that Boyd
15 Evans and Laquan Capers are in that camp and she's biased
16 against that camp and then it -- and for the jury to connect
17 those dots if they're connectable. Now that's that's my
18 concern.

19 MR. MALDONADO: If they lay a foundation to that but I --
20 but from what I hear everything that that the defense has
21 argued is that everything that they would -- she would be
22 upset about would be against Emma Evans not a party to this,
23 that that wouldn't, the case you recite, Your Honor, and I I
24 didn't read it but it sounds to me that that the defendant was
25 a party to that, to that case, to that rift, I mean, to to the

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1 criminal trial.

2 THE COURT: Yes, Ms. Hahn.

3 MS. HAHN: Your Honor, the larger issue is that she has
4 somethin' against them because they're part of the family that
5 doesn't get along with her. You know, ---

6 THE COURT: Well, I ---

7 MS. HAHN: --- it's not ---

8 THE COURT: --- mean, there has to be a connection to
9 that and you're connecting it back to them cooperating in
10 1999.

11 MS. HAHN: Right and yet it's it's been an ongoing thing.
12 There have been squabbles and ---

13 THE COURT: There's there's no testimony of that.

14 MS. HAHN: Right and I I don't wanna get into that stuff
15 here. I think I I wanna keep to these issues but ---

16 THE COURT: I mean, there's no testimony it's an ongoing
17 thing as far as the 1999 charge of involuntary manslaughter.

18 MR. MILLER: I think additionally though, Your Honor,
19 we've got; number one, I don't think anybody's tryin' to get a
20 witness to, at least I'll speak for Mr. Evans's and my
21 witnesses, I I mean, we're not tryin' to get testimony in that
22 there's any vendetta per se but I think what what we should be
23 allowed to do is that she was able to offer her opinion which
24 was, No, there's no hard feelings, there's no rift, and I
25 think if our clients who see Boyd -- it wasn't Emma Evans

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1 livin' in a house by herself, it was Emma, Lywone, Boyd, Tammy
2 and and some minor children all living together in in a house
3 in Charlotte. This family, you know, not only from
4 cooperating in that investigation but like we testified to
5 earlier, you know, they raised Glynnessa's child for her while
6 she was in prison and afterwards when when they didn't believe
7 she wasn't fit had to go to court for five years to get the
8 child back through DSS ---

9 THE COURT: It's not a matter of whether they believe
10 she's fit or not, it's a matter for the court ---

11 MR. MILLER: Sure. I I understand but I guess what I'm
12 getting at is she was allowed to say, you know, there is no
13 rift, certainly I think our witness should be allowed to say,
14 you know, Yeah, we felt there was a rift, I'm not saying that
15 Glynnessa felt it but I'm saying but I, you know, what I
16 mean?

17 THE COURT: I don't think Mr. Maldonado objects to that
18 if Mr. Boyd Evans wants to get up there and Laquan wants to
19 get up there and say, Yes, there was a rift.

20 Are there ill feelings?

21 Yes, there's ill feelings.

22 MR. MILLER: Correct and they're they're parties too.

23 THE COURT: I I don't think he objects to that. I think
24 his objection is just 'cause there ill feelings between, if
25 there are e e -- assuming there ill feelings between Glynnessa

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1 and Emma so what? That's all he's saying. There's gotta be
2 ill feelings between Glynnessa and one of these gentlemen.

3 MR. CORNWELL: Your Honor, I think our position is and
4 what I think Mr. Maldonado and I maybe we're not communicating
5 this well enough the ill feelings exist between Glynnessa and
6 the entire side of the family. It it -- she's not
7 discriminating based on conversation ---

8 THE COURT: Well it better be or I'm gonna strike all the
9 testimony in front of the jury.

10 MR. MALDONADO: It ought -- you know.

11 THE COURT: It it better be. If I let it in, it better
12 be. I'm gonna allow you some limited leeway in that regard,
13 Ms. Hahn, Mr. Miller.

14 MR. MALDONADO: Thank you, Your Honor.

15 MR. MILLER: Thank you.

16 THE COURT: Now as far as the child custody, I'm not here
17 to try a child custody case and of course you can ask her,
18 'cause the State brought that in, you can ask her somethin'
19 about the child custody.

20 MR. MILLER: I will and I intend to keep it very limited
21 just to the fact that, you know, Did you assist in helping to
22 raise that child and was that child in your house, and really
23 not much more than ---

24 THE COURT: I mean, I don't, I don't know, I don't know
25 that it's almost cumulative. She admitted to all that. She

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1 admitted that she kept the child, Emma kept the child during
2 the time in which she was in prison, that she had the child up
3 through 2007. She got the child back January -- excuse me,
4 July 27th of 2007 but ---

5 MR. MILLER: But she did say she ---

6 THE COURT: --- I I -- I'm not ---

7 MR. MILLER: --- wanted it back ---

8 THE COURT: --- gonna limit you in that regard.

9 MR. MILLER: I guess our our point was just and I clarify
10 this before the jury comes in that she testified that she
11 never wanted her child back before that point and the fact she
12 did that would be the testimony of almost every family member
13 but Emma and again, we're not getting into fit or not fit, I'm
14 just telling you as background that was the reason ---

15 THE COURT: She testified what?

16 MR. MILLER: Well, when when Glynnessa was on the stand,
17 I asked her, Did you want your child back before 2007 and she
18 said -- I said, Did you even -- did you, you know, did you
19 love your child?

20 Yes.

21 Did you even want your child back before 2007?

22 I believe her answer was, Not necessarily, no, that she,
23 you know, that she got it back through the Court, that it
24 wasn't such a big deal, it didn't cause a rift, it didn't
25 cause any ill feeling. The family knows better.

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1 THE COURT: I don't recall the testimony like that.

2 MR. MILLER: I mean, if I'm incorrect, then we can, we
3 can look it up. I -- that -- that's the only thing. I'm not
4 gonna go into huge detail, I'm just gonna ask maybe three
5 questions about it.

6 THE COURT: I I thought she testified she did want the
7 child back but it didn't necessarily upset her that she didn't
8 get the child back ---

9 MR. MILLER: And and maybe okay it didn't upset her but,
10 I mean, obviously I think -- oh, ---

11 THE COURT: I I don't, I don't remember specifically.

12 MR. MILLER: Oh, okay.

13 THE COURT: Well let's see where we go and,
14 Mr. Maldonado, this is really in camera. If you have
15 objections to specific questions, you may do so.

16 MR. MALDONADO: Thank you, Your Honor.

17 THE COURT: Anything further?

18 MS. HAHN: One minor thing, just the issue of the
19 conviction. I just wanna make it clear that the case that
20 we're talking about where the family members helped out is the
21 same case where she was convicted.

22 THE COURT: That's the only charge she's ever had, isn't
23 it?

24 MS. HAHN: Right. So if I, if I mention the conviction,
25 that's the only thing that I'm trying to get out about.

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1 THE COURT: All right. All right.

2 MR. MALDONADO: Your Honor, is this the appropriate time
3 to go over their right to testify or not testify?

4 THE COURT: Do ya'll want me to do that?

5 MR. MILLER: I I don't know that we've absolutely made a
6 final determination yet. I mean, he's ---

7 THE COURT: You think you gonna -- well I guess I will.
8 Stand up Mr. Capers. Stand up Mr. Evans. Place 'em under
9 oath for me, madam clerk.

10 (Whereupon, the defendants were sworn.)

11 THE COURT: Ya'll step around to the microphone for me
12 please, Mr. Evans, Mr. Capers. Lawyers can come too. Right
13 over here (indicating) at the podium. Speak up into the
14 microphone. Mr. Evans and Mr. Capers, I need to go over some
15 things with you. I have to do this with everyone who's on
16 trial and I need your responses to be under oath that's why I
17 had the clerk place you under oath. Do you understand,
18 Mr. Evans?

19 DEFENDANT EVANS: Yes, sir.

20 THE COURT: Do you understand, Mr. Capers?

21 DEFENDANT CAPERS: Yes, sir.

22 THE COURT: Mr. Evans, How old are you?

23 DEFENDANT EVANS: Twenty.

24 THE COURT: How much education do you have?

25 DEFENDANT EVANS: Eleventh grade.

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1 THE COURT: And, Mr. Capers, how old are you?

2 DEFENDANT CAPERS: Twenty-two.

3 THE COURT: How much education do you have?

4 DEFENDANT CAPERS: Tenth grade.

5 THE COURT: We've reached the stage at the trial where
6 the State has rested and your side, the defense, now has the
7 opportunity to present evidence for the jury to consider. Do
8 you understand where we're at in the trial of this case,
9 Mr. Evans?

10 DEFENDANT EVANS: Yes, sir.

11 THE COURT: Do you understand, Mr. Capers?

12 DEFENDANT CAPERS: Uh, no, sir.

13 THE COURT: You understand that the State has now rested
14 its case, they're not gonna put up any more evidence in their
15 case?

16 DEFENDANT CAPERS: Yes, sir.

17 THE COURT: And that you now have the right to present
18 evidence before the jury?

19 DEFENDANT CAPERS: Yes, sir.

20 THE COURT: In that regard, Mr. Evans, Mr. Capers, your
21 side may call witnesses to testify for you. Do understand,
22 Mr. Evans?

23 DEFENDANT EVANS: Yes, sir.

24 THE COURT: Do you understand, Mr. Capers?

25 DEFENDANT CAPERS: Yes, sir.

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1 THE COURT: You may testify yourself if you wanna do so,
2 Mr. Evans, do you understand?

3 DEFENDANT EVANS: Yes, sir.

4 THE COURT: Do you understand, Mr. Capers?

5 DEFENDANT CAPERS: Yes, sir.

6 THE COURT: No one can force you to testify. You have
7 the absolute right to remain silent and if you choose not to
8 testify I will tell the jury that they cannot hold your
9 silence against you in any way. I will tell the jury that
10 they should not even discuss and would not even discuss that
11 in the jury room. Do you understand, Mr. Evans?

12 DEFENDANT EVANS: Yes, sir.

13 THE COURT: Do you understand, Mr. Capers?

14 DEFENDANT CAPERS: Yes, sir.

15 THE COURT: If neither you, Mr. Evans, nor you,
16 Mr. Capers, if neither side of the defense presents any
17 evidence whatsoever, your attorney would have the right to
18 make the last argument to the jury; otherwise, the prosecutor
19 gets to make the last argument. In other words, if ya'll
20 said, I don't wanna put up any evidence, I'm gonna rest our
21 case right now, the prosecutor would have to address the jury
22 first in closing argument, the last argument, then Ms. Hahn
23 will get the right to make the closing argument on behalf of
24 Mr. Capers then Mr. Miller, or whatever order ya'll want quite
25 frankly, I would allow ya'll to do that, would make the last

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1 argument. Do you understand that, Mr. Evans?

2 DEFENDANT EVANS: Yes, sir.

3 THE COURT: Do you understand that, Mr. Capers?

4 DEFENDANT CAPERS: Yes, sir.

5 THE COURT: Now if either one of you present evidence,
6 either one of you, whether you call witnesses, present any
7 documents or either one of ya testify, then the prosecutor
8 gets to make the final argument to the jury. Do you
9 understand that, Mr. Evans?

10 DEFENDANT EVANS: Yes, sir.

11 THE COURT: Do you understand that, Mr. Capers?

12 DEFENDANT CAPERS: Yes, sir.

13 THE COURT: Mr. Miller, Mr. Maldonado, does Mr. Evans
14 have any criminal record that would subject him to impeachment
15 under 609?

16 MR. MILLER: My understanding is that he only had I I
17 believe one arrest that resulted in I think a nol-pros in
18 Mecklenburg County if that and I -- is that correct ---

19 MR. MALDONADO: I don't, I don't believe ---

20 (Whereupon, a discussion was held off the record.)

21 MR. MALDONADO: Maybe a drug paraphernalia. Nothing we
22 we would intend to introduce, Your Honor.

23 THE COURT: All right. And how 'bout Mr. Capers? Does
24 he have any route -- record that would subject him to
25 impeachment under 609?

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1 MR. MALDONADO: A couple assaults, simple assaults,
2 possession of drug paraphernalia. It's -- no, Your -- none,
3 none the State offers -- we'll offer to ---

4 THE COURT: All right. So that will not be a concern.
5 Do you agree with that, Mr. Miller?

6 MR. MILLER: Yes, sir.

7 THE COURT: Do you agree with that, Ms. Hahn?

8 MS. HAHN: Yes, Your Honor.

9 THE COURT: Now, Mr. Evans, Mr. Capers, the decision
10 about whether or not you testify is your decision to make and
11 yours alone. I expect you conferred with your attorneys and
12 with others whose opinions you value on important issues but
13 the decision about whether or not you testify is your
14 decision, Mr. Evans. You understand that?

15 DEFENDANT EVANS: Yes, sir.

16 THE COURT: And the decision about whether or not you
17 testify, Mr. Capers, is your decision, your call. Do you
18 understand that?

19 DEFENDANT CAPERS: Yes, sir.

20 THE COURT: Has anyone exercised any undo flue -- undo
21 influence over you, Mr. Evans, to get you to choose to testify
22 or not to testify?

23 DEFENDANT EVANS: No.

24 THE COURT: Has anyone exercised any undo influence over
25 you, Mr. Capers, to get you to choose to testify or not to

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1 testify?

2 DEFENDANT CAPERS: No, sir.

3 THE COURT: Today, Mr. Evans, are you under the influence
4 of any drug, alcohol or medication that negatively affects
5 your thinking ability?

6 DEFENDANT EVANS: No.

7 THE COURT: Today, Mr. Capers, are you under in -- the
8 influence of any drug, alcohol, medication or anything that
9 negatively affects your thinking ability?

10 DEFENDANT CAPERS: No, sir.

11 THE COURT: Mr. Evans, do you suffer from any physical or
12 mental problems that affect your thinking today?

13 DEFENDANT EVANS: No, sir.

14 THE COURT: Mr. Capers, do you suffer from any physical
15 or mental problems that negatively affect your thinking
16 today?

17 DEFENDANT CAPERS: No, sir.

18 THE COURT: Mr. Evans, do you have any questions you'd
19 like to ask me about your right to testify or not to
20 testify?

21 DEFENDANT EVANS: What you mean, sir?

22 THE COURT: Sir?

23 DEFENDANT EVANS: What do you mean by that?

24 THE COURT: Do you have -- in other words, you can
25 testify if you want to or you can choose not to testify,

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1 that's entirely up to you. Do you have any questions you
2 wanna ask me about that?

3 DEFENDANT EVANS: Oh, no, sir.

4 THE COURT: Anything you wanna ask me about where we're
5 at in the stage of the trial?

6 DEFENDANT EVANS: No, sir.

7 THE COURT: Sir?

8 DEFENDANT EVANS: I understand, sir.

9 THE COURT: Anything you wanna ask me about what we've
10 just been over?

11 DEFENDANT EVANS: No, sir.

12 THE COURT: Mr. Capers, anything you'd like to ask me
13 about your right to testify or not to testify?

14 DEFENDANT CAPERS: No, sir.

15 THE COURT: Anything you wanna ask me about the stage
16 we're at in the trial?

17 DEFENDANT CAPERS: No, sir.

18 THE COURT: Anything you wanna ask me about what we've
19 just been over?

20 DEFENDANT CAPERS: No, sir.

21 THE COURT: Whatever decision you've made about whether
22 to testify or not to testify have you made that decision yet,
23 Mr. Evans?

24 DEFENDANT EVANS: Yes, sir.

25 THE COURT: All right. Is that a decision of your own

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1 free will and accord?

2 DEFENDANT EVANS: Yes, sir.

3 THE COURT: And what is your decision?

4 DEFENDANT EVANS: To testify, sir.

5 THE COURT: All right, Mr. Capers, have you made your
6 decision about whether or not you gonna testify?

7 DEFENDANT CAPERS: Yes, sir.

8 THE COURT: And is that a decision made of your own free
9 will and accord?

10 DEFENDANT CAPERS: Yes, sir.

11 THE COURT: And what is your decision?

12 DEFENDANT CAPERS: No, sir.

13 THE COURT: You're not gonna testify, is that right?

14 DEFENDANT CAPERS: (Nodded in the affirmative.)

15 THE COURT: You are not going to testify, is that
16 correct?

17 DEFENDANT CAPERS: I'm not going to.

18 THE COURT: All right. Thank you. All right. I'll find
19 that the defendants are been fully informed of their right to
20 testify or not to testify and they have made each an
21 individual decision freely, knowingly and voluntarily.
22 Mr. Evans of course has made the decision to testify.
23 Mr. Capers has made the decision not to testify. Obviously
24 they can change their opinions prior to being called or not
25 called to the stand with further discussions with their

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1 attorneys. Thank you. Thank you very much, gentlemen. Ya'll
2 may sit back down.

3 All right. Anything further before I bring the jury out,
4 Mr. Maldonado?

5 MR. MALDONADO: No, Your Honor.

6 THE COURT: Ms. Hahn?

7 MS. HAHN: Your Honor, one thing. I hate to waste any
8 time but I would request just a very brief five minutes or
9 less recess.

10 THE COURT: All right. Well we'll take, we'll take about
11 ten minutes. All right. Thank you. I think our court
12 reporter can use it. Take about a ten minute recess. Thank
13 you.

14 (Whereupon, a recess was taken.)

15 THE COURT: All right. Anything from the State before we
16 bring our jury back in?

17 MR. MALDONADO: No, Your Honor.

18 THE COURT: From the defense?

19 MS. HAHN: No, Your Honor.

20 THE COURT: All right. I would like to try to finish the
21 testimony this evening. I don't know how long ya'lls
22 testimony's gonna be.

23 MS. HAHN: Your Honor, I I think that Mr. Cornwell has
24 already informed me that he's got a child care issue.

25 THE COURT: He did as far as closings. How how long you

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1 think your testimony's gonna be?

2 MS. HAHN: Your Honor, I have potentially five witnesses.
3 I don't know that ---

4 THE COURT: All right. Well we'll start early in the
5 morning then. All right. Thank you. Bring us our jury,
6 please. We'll start back early in the morning then. Don't
7 worry about that.

8 MS. HAHN: Thank you, Your Honor.

9 THE COURT: Thank you.

10 (The following takes place in the presence of the jury.)

11 THE COURT: All right. Ladies and gentlemen of the jury
12 panel, as you heard prior to the break the State had rested.
13 The defense either Mr. Capers or Mr. Evans may present
14 evidence and testimony if they choose to do so. They're never
15 required to present evidence or testimony. A person who's
16 presumed to be innocent is never required to prove himself
17 innocent; however, they may present evidence if they choose to
18 do so. The order in which we go is Mr. Capers' attorney may
19 call witnesses on behalf of Mr. Capers first then Mr. Evans's
20 attorney may call witnesses on behalf of Mr. Evans. With that
21 being said, I'll then go to Ms. Hahn. Ms. Hahn, does the
22 defendant Capers intend to call any witnesses on his behalf?

23 MS. HAHN: He does, Your Honor.

24 THE COURT: All right. You may call your first
25 witness.

TAMMY COLEMAN - DIRECT EXAMINATION BY MS. HAHN

1 MS. HAHN: Your Honor, I'd call Tammy Coleman.

2 THE COURT: All right. Is someone notifying your
3 witnesses?

4 MS. HAHN: Your Honor, my investigator is but I think
5 she's outside already.

6 THE COURT: All right.

7 MS. HAHN: Tammy.

8 THE CLERK: Right up here (indicating), Ms. Coleman.

9 TAMMY COLEMAN, having been first
10 duly sworn, testified as follows:

11 THE CLERK: Have a seat up there (indicating) please
12 ma'am. Once you're seated speak up loud and clear statin'
13 your name spelling your last.

14 MS. COLEMAN: My name is Tammy Coleman. My last name is
15 spelled C-O-L-E-M-A-N.

16 DIRECT EXAMINATION BY MS. HAHN:

17 Q. Thank you, Ms. Coleman. Could you please tell the jury
18 how you know Lywone Capers.

19 A. That's my son.

20 Q. And where do you live now?

21 A. I live in Swansea -- I'm sorry, in Gaston, South
22 Carolina.

23 Q. And where do you work?

24 A. I work for Industrial Construction.

25 Q. Okay. And what kind of work do ya do there?

TAMMY COLEMAN - DIRECT EXAMINATION BY MS. HAHN

1 A. Nursing.

2 Q. Okay. How long have you been a nurse?

3 A. I started doin' working since '87.

4 Q. Okay. Where was Lywone Capers on the evening of July
5 25th 2007 through the morning of Thursday July 26th of 2007?

6 A. On the 25th he was at home.

7 Q. Okay. And was he there that evening?

8 A. Yes, ma'am.

9 Q. And what about the 26th?

10 A. On the 26th he was at home until he went and picked up my
11 sister's check.

12 Q. And what time was that?

13 A. It was like four somethin' in the afternoon.

14 Q. Okay. Could you tell us your address at that time.

15 A. Means Court, Charlotte, North Carolina.

16 Q. Who else lived in your home at that time?

17 A. Me, my other children and my husband ---

18 Q. Okay.

19 A. --- and Jaid.

20 Q. And who is Jaid?

21 A. My son's girlfriend.

22 Q. All right. How was Lywone during that evening and the
23 next day?

24 A. That evening he just had started feelin' better. He was
25 sick with the flu.

- 1 Q. Okay. How long had he been sick?
- 2 A. Two weeks.
- 3 Q. Did he do anything at home that night?
- 4 A. At that night?
- 5 Q. Um-hum.
- 6 A. The night of the 26th or the 25th?
- 7 Q. On the night of the 25th.
- 8 A. The the night of the 25th he had a discussion with me and
- 9 his father.
- 10 Q. And what was that discussion about?
- 11 A. The discussion was about Jaid proceeding to live with us
- 12 at the home.
- 13 Q. Okay. Did you have any pets at that point?
- 14 A. Yes, ma'am.
- 15 Q. Did you discuss those pets?
- 16 A. Yes. We have dogs and the main pet we have is a cat and
- 17 I don't like cats and I won't let the cat in the house.
- 18 Q. So you remember that night of being a discussion about
- 19 Jaid and the cat, is that right?
- 20 A. Yes.
- 21 Q. Okay. That night on the evening of the 25th did anybody
- 22 else come over to your house that wasn't already there?
- 23 A. Yes.
- 24 Q. And who was that?
- 25 A. My sister and my niece.

TAMMY COLEMAN - DIRECT EXAMINATION BY MS. HAHN

1 Q. Okay. What is your sister's name?

2 A. Tidleek Capers.

3 Q. And what is your niece's name?

4 A. Teshima

5 Q. What time did they get there?

6 A. It was, it was 11:45.

7 Q. Okay. Why did they come over?

8 A. My sister came to bring some more medication and soup for
9 my son and to check and see was he doing okay.

10 Q. All right. Did Lywone leave your home that night?

11 A. No, ma'am.

12 Q. What time did he go to bed that night?

13 A. He went like I say around 'bout 12:30.

14 Q. Is there anything that stands out in your mind to let you
15 know that he was at home on the 25th and the 26th?

16 A. Yes, ma'am.

17 Q. And what's that?

18 A. My father's deceased now and on the 1st of July is my
19 father's birthday.

20 Q. Okay. Now do you know anything about the robbery that
21 happened in the Pitt Stop Convenience Store in Gaston?

22 A. Yes, ma'am.

23 Q. Do you know when that happened?

24 A. Yes. I was told that it was on the 26th.

25 Q. So how do you know about that robbery?

TAMMY COLEMAN - DIRECT EXAMINATION BY MS. HAHN

1 A. I know about the robbery because they locked my son up.

2 Q. Is there anyway else that you heard about the robbery
3 since then?

4 A. Yes, when I was in your office and we was discussin'
5 about Lywone's case.

6 A. Okay. All right. Now you testified that you were living
7 in Charlotte, North Carolina when this happened, is that
8 correct?

9 A. Yes, ma'am.

10 Q. Do you know most of Lywone's friends?

11 A. Yes, ma'am.

12 Q. Do you know whether he hung out with Boyd Evans when he
13 was livin' in Charlotte?

14 A. Not really. That's not his friend, that's his cousin.

15 Q. How 'bout John Sosa Evans?

16 A. Not really. That's his cousin too.

17 Q. Okay. And what about Anton Coleman?

18 A. Anton Coleman is his cousin through marriage. No, he
19 wasn't hangin' out with him.

20 Q. Okay. Do you know Emma Evans?

21 A. Yes, ma'am.

22 Q. And who is Emma Evans?

23 A. That's my mother.

24 Q. Your mother. Do you know her pretty well?

25 A. Yes, ---

TAMMY COLEMAN - DIRECT EXAMINATION BY MS. HAHN

1 Q. Okay.

2 A. --- that's my mother.

3 Q. And you would know what vehicles she's owned over the
4 last few years?

5 A. Yes, ma'am.

6 Q. At any point has she over the last few years ever owned a
7 blue SUV?

8 A. No, ma'am, she didn't.

9 Q. Okay. Now do you know Glynnessa Evans?

10 A. Yes, ma'am.

11 Q. Are you aware that there is a custody dispute between her
12 and Emma Evans?

13 A. Yes, there was.

14 Q. And was there some ill will between Glynnessa and your
15 side of the family because of that custody dispute?

16 A. Yes, ma'am.

17 Q. And did that ill will extended to Lywone?

18 A. Yes, ma'am, it extended through my, all of my children.

19 Q. Okay.

20 MS. HAHN: Your Honor, I beg the Court's indulgence.

21 THE COURT: Yes, ma'am, certainly.

22 BY MS. HAHN:

23 Q. Ms. Capers, -- excuse me, Ms. Coleman, I'm sorry, I left
24 out one thing. The next day on the 26th was Lywone in your,
25 in your home that day?

TAMMY COLEMAN - CROSS-EXAMINATION BY MR. MALDONADO

1 A. Yes, ma'am.

2 Q. Okay. And you I believe you testified he left at four
3 o'clock.

4 A. Yes.

5 Q. What he do at four o'clock?

6 A. Pardon me?

7 Q. What did he do at four o'clock?

8 A. He went to pick up my sister's check with my niece and
9 his girlfriend.

10 Q. Okay. And where'd they go get the check?

11 A. They went to the office located on Baxter Street in
12 Charlotte.

13 Q. And then after that he came back?

14 A. Yes, ma'am.

15 Q. Okay. No further questions.

16 THE COURT: All right. Mr. Maldonado.

17 MR. MALDONADO: Thank you, Your Honor.

18 CROSS-EXAMINATION BY MR. MALDONADO:

19 Q. Good afternoon, Ms. Coleman. How are you doing today?

20 A. Okay.

21 Q. Just I'll try to keep this brief. Lywone is your son?

22 A. Yes.

23 Q. And is he still living with you?

24 A. Yes.

25 Q. How long has he lived with you?

TAMMY COLEMAN - CROSS-EXAMINATION BY MR. MALDONADO

1 A. My son really lived with me all his life until he was
2 incarcerated.

3 Q. So you love him?

4 A. Yes.

5 Q. Okay. Do anything for him?

6 A. Yes, if it's the right thing.

7 Q. You said -- did you ever talk to Investigator
8 Crutchlow?

9 A. Crutchlow. I spoke to investigator up in Swansea but as
10 far as that name I don't remember the name. If that was his
11 name, I did.

12 Q. Okay. Did you ever tell him why you remembered that
13 specific date?

14 A. No, I didn't, sir. He told me of two dates and I left it
15 as that.

16 Q. Okay. How long, how long after the 26th did you learn of
17 of the incident?

18 A. When he was -- I believe in September.

19 Q. In September.

20 A. Um-hum.

21 Q. Okay. So from July to August to September you didn't
22 know anything had happened, right?

23 A. No, sir.

24 Q. Okay. But then the 26th just comes to your mind
25 specifically?

TAMMY COLEMAN - CROSS-EXAMINATION BY MR. MALDONADO

1 A. No, the 26th didn't come to my mind pacifically. The
2 reason why I know of that date 'cause like I said my father
3 born July th and my father's deceased.

4 Q. Did you do anything for that day?

5 A. Pardon me?

6 Q. Did you do anything for that?

7 A. Well me and my sister looked at some old photos and
8 conversated about it.

9 Q. Was Lywone there?

10 A. Yes, Lywone was in the home but he -- that -- it was me
11 and my sister the day we was doin'.

12 Q. Okay. Who all was there?

13 A. My whole family.

14 Q. So you learned about this on on -- in September,
15 correct?

16 A. Yes, sir.

17 Q. And did you, did you learn about the date that it
18 happened in September?

19 A. Yes, sir.

20 Q. Okay. Did you ever rush to the police and tell 'em that
21 couldn't have been, couldn't have been him and give a
22 statement and say, I wanna, I wanna swear out a statement that
23 he wasn't even there?

24 A. No, sir.

25 Q. Never did?

1 A. No.

2 Q. Did you ever call Investigator Prestigacomo?

3 A. No, sir.

4 Q. Did you ever offer to give him a statement?

5 A. No, sir. Is that's (indicating) him?

6 Q. The indiv -- the officer right here (indicating) at the
7 table.

8 A. No.

9 Q. Okay. But two months later you remember having a
10 discussion about a cat?

11 A. I remember having a discussion about the cat, about Jaid
12 continue livin' in the home ---

13 Q. Okay.

14 A. --- and other things with my son too.

15 Q. How many times have you talked about that cat?

16 A. Quite often but that particular day I had enough is
17 enough because I don't care for cats and the cat was tearin'
18 up and ruinin' things in the home.

19 Q. And this was Lywone's cat?

20 A. Yes.

21 Q. And he wanted to keep it?

22 A. Yes.

23 Q. But you didn't want it.

24 A. No, I didn't want the cat there.

25 Q. The -- was this the final night for the cat?

TAMMY COLEMAN - CROSS-EXAMINATION BY MR. MALDONADO

- 1 A. Yes.
- 2 Q. What happened to the cat?
- 3 A. We gave the cat to a neighbor down the block.
- 4 Q. Did you see the the the soup or did you see what what
- 5 your sister brought over that night?
- 6 A. Um-hum. Yes.
- 7 Q. What -- can -- what what did she bring over?
- 8 A. Some medicine and some chicken noodle soup and some
- 9 broth.
- 10 Q. Chicken noodle soup.
- 11 A. And mostly broth soup 'cause that's what she mostly get.
- 12 Q. Mostly broth and some medicine like over the counter
- 13 stuff?
- 14 A. Yes.
- 15 Q. Was it liquid or pills?
- 16 A. It was liquid.
- 17 Q. Sorta called NyQuil and stuff like that?
- 18 A. Um-hum.
- 19 Q. Do you remember what what she brought the the chicken
- 20 noodle soup in? What kinda container was it?
- 21 A. A bag. It comes in cans and it comes in boxes.
- 22 Q. Oh, so it's like store bought chicken noodle soup?
- 23 A. Yes.
- 24 Q. Okay. So it was a ---
- 25 A. Not store box, over the counter, you know, that you get

TAMMY COLEMAN - CROSS-EXAMINATION BY MR. MALDONADO

1 from the store.

2 Q. Yeah, like Campbell's Soup or ---

3 A. Yeah.

4 Q. Okay.

5 A. Um-hum.

6 Q. Ca -- was it a can a box?

7 A. It was -- it probly was both 'cause she'd bring the
8 little packages and she'd bring the can.

9 Q. So okay. So she brought the the the little ---

10 A. It could ---

11 Q. --- envelopes of, ---

12 A. --- have been both, sir.

13 Q. --- the little envelopes of dry chicken noodle soup? You
14 said "packages," what does that mean?

15 A. The -- when I say packages like you can poor it out and
16 add the water to it. She brings that, she brings cans and
17 also she brings, you know, the regular canned chicken noodle
18 soup too.

19 Q. That's a lotta soup.

20 A. Pardon me?

21 Q. That's a lotta soup.

22 A. Yeah.

23 Q. Did she say why she had to bring so many different kinds
24 of chicken noodle soup?

25 A. No, I'm sayin' that she coulda brought one or two a each

TAMMY COLEMAN - CROSS-EXAMINATION BY MR. MALDONADO

1 I'm not for sure. She coulda brought one or two each.

2 Q. Okay.

3 A. When you ill you, I guess when you buy soup from the
4 store you buy a certain amount to make sure you don't run
5 out.

6 Q. How many cans did you see?

7 A. I really can't say. I can't say 'cause I wasn't countin'
8 soup cans.

9 Q. You remember everything else about this evening and you
10 don't remember how many cans. I mean, was it, was it a bag
11 fulla cans or was it just like ---

12 MS. HAHN: Objection.

13 MS. COLEMAN: No, it was, ---

14 MS. HAHN: Asked and answered.

15 MS. COLEMAN: --- it was ---

16 THE COURT: Excuse me?

17 MS. COLEMAN: It was food in the bag, sir.

18 THE COURT: Please wait ---

19 MS. COLEMAN: I wasn't the one who took the food out.

20 THE COURT: Ms. Capers [sic], if there's an objection,
21 particularly by your son's attorney, please let me rule on
22 it. Overruled. You may continue.

23 MR. MALDONADO: Okay.

24 BY MR. MALDONADO:

25 Q. You didn't see what was in the bag.

TAMMY COLEMAN - CROSS-EXAMINATION BY MR. MALDONADO

1 A. No, I know what was in the bag but I'm sayin' I didn't
2 take the time out to count it because I wasn't the one who
3 took it and put it on the counter.

4 Q. Okay. Did she, did she -- who cooked the soup?

5 A. My sister prepared the soup.

6 Q. Did everybody eat that or did just Lywone?

7 A. No, that was for Lywone.

8 Q. Okay. But you didn't see her cooking the soup.

9 A. Pardon me?

10 Q. But you didn't see her cookin' the soup?

11 MS. HAHN: Objection. Relevance.

12 THE COURT: Overruled.

13 BY MR. MALDONADO:

14 Q. Did you see her cookin' the soup?

15 A. Yes, sir. She was preparing the soup.

16 Q. Did you see her open cans or she open packages?

17 A. She was -- I saw when she was cookin' it on the stove,
18 warmin' it up on the stove.

19 Q. Okay. But you can at least tell that there was cans in
20 the bag. I mean, you testified ---

21 A. It was cans in the bag. You asked me how many. I don't
22 know how many, sir.

23 Q. Okay. You did talk to to an investigator about this,
24 correct?

25 A. Yes.

TAMMY COLEMAN - CROSS-EXAMINATION BY MR. MALDONADO

1 Q. He he was asking you about your al -- the alibi, correct?

2 A. Yes.

3 Q. Okay. And you told him that you weren't sure of the
4 exact date but you knew he was sick, is that right?

5 A. No, sir, I did not tell him that.

6 Q. You told him the exact date?

7 A. No, I did never. He gave me two dates. He gave me the
8 19th and the 20th and when he said the date I didn't say no
9 more. I told him I prefer to wait to speak to a law -- in
10 front of the lawyer because we standing outside on the hood of
11 my car and he wanted me to sign this -- a statement and I
12 wasn't gonna do that.

13 Q. Okay. I'm sorry the the dates that that you're you're
14 referring to is that the dates to talk to him or the dates
15 about the incident?

16 A. No, that's the dates he said this happened the 19th or
17 the 20th. I did not comment about the date at all.

18 Q. Did he say what month that was?

19 A. No, he didn't say.

20 Q. Okay. So as far as you knew it was the 19th or the
21 20th?

22 A. No, that's the dates the officer gave me when he came out
23 there.

24 Q. Oh, okay.

25 A. I never said no date at all 'cause to tell you the truth

TAMMY COLEMAN - CROSS-EXAMINATION BY MR. MALDONADO

1 I didn't prefer to even talk to him 'cause like I said we was
2 outside over a car and he wanted me to sign a statement and I
3 told him I prefer to speak in front of the lawyer and he asked
4 me do -- why do I feel like that if I'm a alibi and I have
5 nothing to lie about. He said that I didn't need a lawyer. I
6 said I probably don't need a lawyer but I prefer to talk in
7 front of the lawyer.

8 Q. You never said, Hey, this aint the 19th and 20th. That
9 that didn't enter ---

10 A. No, I did not.

11 Q. Okay.

12 A. No, I do not.

13 Q. Okay. And you didn't think it would help your your your
14 son to tell the truth.

15 A. Sir, that wasn't the truth. Why would I say yes on the
16 19th or the 20th and my son called me ---

17 Q. No, no ---

18 A. --- my son was locked up ---

19 Q. --- I'm sorry, I ---

20 A. --- but I would not tell him that.

21 Q. No, no, I I misspoke. I'm talking about you giving a
22 statement about the alibi, the the investigator asked you to
23 give a statement, correct?

24 A. Yes.

25 Q. And you felt that and was he puttin' words in your mouth

TAMMY COLEMAN - CROSS-EXAMINATION BY MR. MALDONADO

1 or was he allowing you to give the statement?

2 A. Basically he was puttin' words in my mouth. He said this
3 happened on the 19th or the 20th, ---

4 Q. Okay.

5 A. --- why wouldn't I sign a statement to that. That's
6 when ---

7 Q. Did ---

8 A. --- I really didn't have no more to say. He went on to,
9 You know if you're lying he could get more time or whatever
10 and he ---

11 Q. Did he write that out or did you write that out?

12 A. He -- I never wrote nothin' for him. He wrote out
13 whatever.

14 Q. What happened to that check that he picked up next day?

15 A. A check?

16 Q. Yeah.

17 A. But that's my sister's check.

18 Q. Yeah.

19 A. What happened to it? they gave it to my sister.

20 Q. Okay. What kinda check was it?

21 A. Her payroll check.

22 Q. Okay. What ha -- and so when did she give -- when when
23 did she get the check?

24 A. She came over that night.

25 Q. Okay. But she couldn't get it herself?

TAMMY COLEMAN - REDIRECT EXAMINATION BY MS. HAHN

1 A. No, she was at work.

2 Q. Where was the payroll from?

3 A. The payroll was from her job. My niece, my son and Jaid
4 went and picked up the check for her.

5 Q. You just said she was at her job.

6 A. My sister was at her job.

7 Q. Right.

8 A. Yes. You said ---

9 Q. Why couldn't she just pick up her own check at her job?

10 A. Sir, she work at a nursing home. She -- they went to the
11 office pick up her payroll check.

12 Q. Okay. That's -- and so she she needed it right then?

13 A. Did she need it right then?

14 Q. Yeah.

15 A. She have a certain period a time that she have to pick up
16 her check for that day, that's why they went and picked the
17 check up for her.

18 Q. No further questions.

19 THE COURT: Thank you. Mr. Miller?

20 MR. MILLER: I don't have any questions, Your Honor.

21 THE COURT: Redirect, Ms. Hahn?

22 MS. HAHN: Yes, Your Honor.

23 REDIRECT EXAMINATION BY MS. HAHN:

24 Q. Ms. Coleman, are you a hundred percent sure about what
25 kinda soup this was or whether it was in a bag or a can or

TAMMY COLEMAN - REDIRECT EXAMINATION BY MS. HAHN

1 anything like that?

2 A. No, ma'am. Like I said I know soup. My sister when she
3 had brought soup for me in the past it be different varieties
4 kindsa soup.

5 Q. And I think I heard you say things like "I guess" and
6 "this is what she does" ---

7 A. Yeah.

8 Q. Right.

9 A. That's what she normally do for me. It be chicken noodle
10 soup, broth, any kindsa soup.

11 Q. So your sister brings soup over sometimes.

12 A. Well when one of us is ill, yes, she do.

13 Q. She brought some soup that night, correct?

14 A. Yes.

15 Q. But you're not a hundred percent sure what kinda soup it
16 was.

17 A. No, that's why I said different names 'cause it would be
18 one of them probly.

19 Q. Okay. And when Investigator Crutchlow came out to talk
20 to you, did he identify himself as an employee of the
21 solicitor's office?

22 A. Yes, ma'am.

23 Q. And you understand that the solicitor's office was the
24 agency that was prosecuting your son at that time.

25 MR. MALDONADO: Objection, Your Honor, she's leading.