

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

MICHAEL P. CORNELIUS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001792

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) COURT OF GENERAL SESSIONS
)

2009-GS-40-1596

State of South Carolina

)

vs.

)

TRANSCRIPT OF RECORD
(Trial)

)

)

Michael P. Cornelius,

)

)

Defendant.

)

June 7, 8, 9, 2010
Columbia, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE

APPEARANCES:

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KATHRYN ASHTON, ASSISTANT SOLICITOR
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Monday, June 7, 2010

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(WHEREUPON, State's Exhibit No. 2 is marked for identification.)

(WHEREUPON, State's Exhibit No. 3 is marked for identification.)

(WHEREUPON, State's Exhibit No. 4 is marked for identification.)

THE COURT: All right, Solicitor. Call your case.

MS. CAMPBELL: The State vs. Michael Paul Cornelius. He's charged with one count of armed robbery, indictment number 2009-GS-40-1596.

THE COURT: The State ready to proceed?

MS. CAMPBELL: The State's ready, Your Honor.

THE COURT: Defense ready to proceed?

MR. SUTHERLAND: Ready, Your Honor.

THE COURT: It's my understanding we're going to draw a jury at this time, then take up pre-trial motions following the selection of the jury.

MS. CAMPBELL: Yes, sir.

THE COURT: Send the jury home.

MS. CAMPBELL: Yes, sir.

THE COURT: All right. Any voir dire on behalf

1 of --

2 **MR. SUTHERLAND:** Your Honor, just the standard
3 voir dire about members of, you know, victims's
4 associations, victims of crimes, all that.

5 **THE COURT:** We do all that.

6 **MR. SUTHERLAND:** Yes, sir.

7 **MS. CAMPBELL:** And we would ask that that all be
8 made reciprocal.

9 **THE COURT:** I understand. Bring the jury,
10 please.

11 (Pause)

12 **THE COURT:** Solicitor, what's the name of the
13 victim in this case?

14 **MS. CAMPBELL:** Ann Beltrami, B-E-L-T-R-A-M-I. I
15 think it's Elizabeth Ann on there maybe.

16 **THE COURT:** That's correct.

17 (Pause)

18 **THE COURT:** And where is this business located?

19 **MS. CAMPBELL:** It's on Blythewood Road in
20 Blythewood.

21 **THE COURT:** It's in Blythewood?

22 **MS. CAMPBELL:** I think it's 235 Blythewood Road.

23 (Pause)

24 **THE BAILIFF:** All the jurors are accounted for,
25 Your Honor.

1 **THE COURT:** All present and accounted for.
2 Welcome. Good afternoon, ladies and gentlemen.
3 Welcome to the Court of General Sessions. This is
4 the criminal division of our court system, so those
5 of you who are selected on the jury today will be
6 sitting on a criminal case. I'm going to tell you
7 something about it in a few minutes. But before I do
8 I'm going to introduce some of the parties or the
9 parties involved and let you get to know who they
10 are. We're going to go through what's I guess called
11 again a qualification process, although this process
12 will be much more specific to the case that you're
13 about to hear.

14 So what I'm going to ask you to do when I -- if
15 I ask a question and you can answer that question,
16 I'm going to ask you to stand and give me your juror
17 number. So everybody look at their numbers so you'll
18 know what number to give.

19 I've found over the years that jurors,
20 particularly in criminal court, are more comfortable
21 being identified by their number as opposed to their
22 name. It's sort of a privacy thing. But
23 nevertheless I would appreciate it if you would
24 identify yourself by number.

25 Now, as you all know, criminal cases are

1 prosecuted or the trials are conducted by the State
2 Circuit Solicitor's Office. Now, in some
3 jurisdictions or in some states they refer to their
4 prosecuting entity as the District Attorney or some
5 places the State's attorney. But in South Carolina
6 we have a system of solicitors and the solicitors
7 actually present the cases at trial.

8 Now, your state solicitor is Mr. Barney Giese.
9 You may have met Mr. Giese this morning at your
10 original qualification. I'm not sure he was there.
11 He frequently is there and is introduced to the jury
12 panel. But he will not be actually trying the case
13 today. He will not be in charge of the prosecution.

14 Two of his deputy solicitors, Ms. Luck Campbell
15 and Ms. Kathryn Ashton, will be actually conducting
16 the trial. So, counsel, if you'll stand and face the
17 jury. Any member of the jury panel related by blood,
18 connected by marriage or employment or a close
19 personal acquaintance of either Ms. Luck Campbell or
20 Ms. Kathryn Ashton, two solicitors in the Solicitor's
21 Office? Anybody know either of these attorneys?
22 Thank you very much. I'm sorry. Yes, ma'am. And
23 your number, please?

24 **JUROR:** 224.

25 **THE COURT:** 224. Let me find you on my list.

1 Yes, ma'am. And which one of these two ladies do you
2 know?

3 **JUROR:** Campbell. Luck Campbell.

4 **THE COURT:** Ms. Campbell. Can you tell me how
5 you know her? Is it socially?

6 **JUROR:** No.

7 **THE COURT:** Or business wise or --

8 **JUROR:** She --

9 **THE COURT:** Would you care to approach the
10 bench?

11 **JUROR:** Please.

12 **THE COURT:** All right. Anything, ladies and
13 gentlemen, that you feel is sort of something you'd
14 rather not disclose to fellow jurors, I'm going to
15 ask if you will come forward and I'll talk to you
16 privately. Do you wish to hear it? Come on up.

17 (Whereupon, a bench conference is had)

18 **THE COURT:** Anybody know either of these two
19 attorneys? All right. Because the state Solicitor's
20 Office works very closely with law enforcement and
21 law enforcement generally are witnesses in most of
22 the cases that are prosecuted, I need to know if any
23 member of the jury panel or any member of your family
24 is involved in law enforcement; in other words, works
25 for the Richland County Sheriff's Department or the

1 City of Columbia Police Department or the Forest
2 Acres Police Department or SLED or any military
3 police force, any member -- or FBI or DEA. Any
4 member of the jury panel or any member of your family
5 involved in law enforcement? If so, please stand.
6 Yes, ma'am. And your number, please?

7 **JUROR:** 103.

8 **THE COURT:** What?

9 **JUROR:** 103.

10 **THE COURT:** 103. We've got a long list here.

11 **MS. CAMPBELL:** Number 103.

12 **THE COURT:** Ms. 103, where does your -- is it
13 a -- who is it and where do they work?

14 **JUROR:** My sister.

15 **THE COURT:** Your sister. Where does she work?

16 **MS. CAMPBELL:** Here in the Solicitor's Office.

17 **THE COURT:** Where?

18 **JUROR:** Solicitor's Office.

19 **THE COURT:** Your sister works in the Solicitor's
20 Office?

21 **JUROR:** (Nods head affirmatively).

22 **THE COURT:** What is your sister's name?

23 **JUROR:** Yvette Goodwin Henry.

24 **THE COURT:** Okay. Ms. 103.

25 **JUROR:** Mm-hmm (affirmative).

1 **THE COURT:** Based on that fact, do you think you
2 could be fair and impartial to both parties?

3 **JUROR:** Yeah.

4 **THE COURT:** Do you feel comfortable with that?

5 **JUROR:** Mm-hmm (affirmative).

6 **THE COURT:** Mr. Number?

7 **JUROR:** 275. I don't know if it was only to be
8 local, but my brother is a Naval police officer. My
9 sister-in-law is a police officer in Connecticut. My
10 father is a Sheriff's Deputy in Tampa, Florida. And
11 I served a year and a half as a juvenile correctional
12 officer here in Columbia.

13 **THE COURT:** You're 157 or 175?

14 **JUROR:** 2. 275.

15 **THE COURT:** Mr. 275, would that fact in any way
16 interfere with your ability to give both the State
17 and the defendant a fair and impartial trial?

18 **JUROR:** No, sir.

19 **THE COURT:** Thank you very much. Anybody else?
20 Yes, ma'am. Number, please.

21 **JUROR:** I'm not sure if he's a law enforcement
22 agency or correctional.

23 **THE COURT:** What's your number?

24 **JUROR:** Oh. Number 48.

25 **THE COURT:** Number 48. Yes, ma'am.

1 **JUROR:** I work for a correctional facility.

2 **THE COURT:** Do you?

3 **JUROR:** At the Department of Juvenile Justice.

4 So does that qualify?

5 **THE COURT:** Sure. I just -- I need to -- I
6 mean, even if you have a question about it, just tell
7 me about it. Okay. That's fine.

8 **JUROR:** Well, I'm actually a manager for human
9 resources and budget director, so I don't actually
10 work with the juveniles.

11 **THE COURT:** That's good information. Ms. 48,
12 would that fact interfere with your ability to give
13 both the State and the defendant a fair and impartial
14 trial in this case?

15 **JUROR:** Absolutely not. Absolutely not.

16 **THE COURT:** Thank you very much. Anybody else
17 with connections to law enforcement? All right. Any
18 member of the jury panel a regular contributor to or
19 supporter of groups which have as their primary
20 function the support of law enforcement? For
21 example, groups like the Troopers Association or the
22 Sheriff's Association or Mothers Against Drunk
23 Driving or Students Against Drunk Driving or Citizens
24 Against Violence or some groups of a similar name or
25 any of the groups which have as their primary

1 function the assistance to victims of crime; for
2 example, Sister Care or perhaps even groups that help
3 returning prisoners sort of get back into society,
4 like the Austin Wilkes Society; any of those groups
5 that you support either financially or with your
6 volunteer time? And a lot of people do volunteer for
7 such groups. Any member of the jury panel? Yes,
8 ma'am. Your number, please.

9 **JUROR:** 245.

10 **THE COURT:** What?

11 **JUROR:** 245.

12 **THE COURT:** 2-4-5. Which of the groups do you
13 support.

14 **JUROR:** Sister care in Charleston. We go once a
15 month to work.

16 **THE COURT:** Okay. Thank you very much. Anybody
17 else? Nobody donates to the Troopers Association.
18 Well, come on. Stand up. Yes, sir. On the front
19 row.

20 **JUROR:** Number 63.

21 **THE COURT:** And which groups do you support?

22 **JUROR:** Troopers Association.

23 **THE COURT:** The lawyers know I ask this
24 question. But when you sent your donation to the
25 Troopers Association, did you get a little sticker to

1 put on the back of your car?

2 **JUROR:** Yes, sir.

3 **THE COURT:** You put it on the car?

4 **JUROR:** Yes, sir.

5 **THE COURT:** Did you ever get a ticket?

6 **JUROR:** No, sir.

7 **THE COURT:** Y'all listen now. Thank you very
8 much, sir. The lady on the front row.

9 **JUROR:** Juror 67.

10 **THE COURT:** 67?

11 **JUROR:** Mm-hmm (affirmative).

12 **THE COURT:** Yes, ma'am.

13 **JUROR:** Troopers Association. Only send a
14 donation. That's it.

15 **THE COURT:** I'm not going to ask you the same
16 question. The gentleman with the green shirt.

17 **JUROR:** 163. Troopers Association. And the K-9
18 Association.

19 **THE COURT:** The K-9 Association?

20 **JUROR:** Yes, sir.

21 **THE COURT:** Your number was?

22 **JUROR:** 163.

23 **THE COURT:** 163. And Ms. 103.

24 **JUROR:** State Troopers Association.

25 **THE COURT:** Okay. Thank you. The lady with the

1 white --

2 **JUROR:** 196.

3 **THE COURT:** 196?

4 **JUROR:** Yes.

5 **THE COURT:** Yes, ma'am.

6 **JUROR:** Donation to Mothers Against Drunk
7 Driving.

8 **THE COURT:** Thank you very much. Anybody else?
9 All right. Now, ladies and gentlemen, the defendant
10 in this case today is Mr. Michael Paul Cornelius.
11 Mr. Cornelius, would you stand and face the jury,
12 please.

13 Any member of the jury panel related by blood,
14 connected by marriage or employment or a close
15 personal acquaintance of Mr. Michael Paul Cornelius?
16 If so, please stand. Anybody know Mr. Cornelius?
17 All right. You can be seated, sir.

18 Mr. Cornelius is represented today by attorney
19 Tivis Sutherland. Mr. Sutherland practices law here
20 in Columbia, in Richland County. I need to know if
21 any member of the jury panel is related by blood,
22 connected by marriage or employment or a close
23 personal acquaintance of Mr. Tivis Sutherland or
24 perhaps have been represented by him in the past or
25 at the present time? Anybody know Mr. Sutherland?

1 Thank you very much, sir.

2 Now, ladies and gentlemen, the document that I
3 hold in my hand is what's known as an indictment.
4 This is the formal legal document by which a case is
5 brought into court. It's not evidence of anything.
6 It's not evidence against the defendant. It is
7 merely the charging document.

8 So when I tell you what the charges are and some
9 of the facts of the charge, you are not to assume or
10 presume that the defendant is guilty or that --
11 you're really not to presume anything. As I say,
12 it's just a document. It is just the formal charges
13 that brings a case into court.

14 Any individual in the state of South Carolina,
15 in this nation is presumed innocent of the charges
16 brought against him by the State unless and until the
17 State proves those charges beyond a reasonable doubt
18 to a jury. I'm sure you've heard that before. But
19 it's a serious concept of our law, that any
20 individual is presumed innocent of the charges
21 brought until proven guilty of those charges.

22 Now, the indictment in this case charges
23 Mr. Michael Cornelius on or about February 16th, 2009
24 with armed robbery of the Sharpe Shoppe, Sharpe
25 Shoppe which is located on Blythewood Road in

1 Blythewood, or in or about Blythewood, that Mr.
2 Cornelius did with intent to deprive the owner of
3 certain property, that being money or U.S. currency,
4 did act to take that property, that money while armed
5 with a deadly weapon or any object which a person
6 present during the commission of the robbery believed
7 to be a deadly weapon.

8 All right. So it's a little over a year ago,
9 February of '09, on Blythewood Road in Blythewood at
10 a business known as the Sharpe Shoppe. I need to
11 know if any member of the jury panel knows anything
12 about it, heard anything about this case, know
13 anything about it, heard anything, saw something on
14 television, read something in the newspaper, talked
15 with your neighbors about it. Some of you may live
16 in the Blythewood area and have heard about it, that
17 sort of thing.

18 Now, a gentleman raised his hand. If you'll
19 come forward. Those of you who have some knowledge
20 of this, just come on up to the bench and I'll talk
21 to you about it up here. He can come on up. Come on
22 up, sir.

23 (Whereupon, a bench conference is had)

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

25 **THE CLERK:** This is 199.

1 (Whereupon, a bench conference is had)

2 **THE COURT:** All right. Anybody else? All
3 right, ladies and gentlemen. Has any member of the
4 jury panel or any member of your family ever been a
5 victim of a violent crime? It doesn't have to be
6 armed robbery, just any violent crime. Any member --
7 and I'm not going to ask you a lot about it. I don't
8 want to embarrass anybody. But number --

9 **JUROR:** 224.

10 **THE COURT:** 224. All right. Ms. Randall, you
11 approached the bench earlier. I understand your
12 situation. I'm sorry. Ms. 224, thank you very much.
13 All right. Let's start with the gentleman with the
14 black --

15 **JUROR:** 89.

16 **THE COURT:** 89?

17 **JUROR:** Yes, sir.

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

19 **JUROR:** My grandmother was mugged many, many
20 years ago.

21 **THE COURT:** Was what?

22 **JUROR:** Mugged.

23 **THE COURT:** Is that matter concluded now?

24 **JUROR:** No, sir.

25 **THE COURT:** It's not been concluded?

1 **JUROR:** Oh, no. It has been. I'm sorry. It
2 does not matter to me now. It has been concluded.
3 Yes, sir.

4 **THE COURT:** It has been concluded. And how long
5 ago was it?

6 **JUROR:** Before I was born.

7 **THE COURT:** Before you were born? Okay. Well,
8 let me ask -- I've got to ask the same question to
9 everybody -- would that fact in any way interfere
10 with your ability to give both the State and the
11 defendant a fair and impartial trial?

12 **JUROR:** Of course not.

13 **THE COURT:** The lady with the --

14 **JUROR:** Could I come up?

15 **THE COURT:** Yes, ma'am. She can come on up.
16 That's fine.

17 (Whereupon, a bench conference is had)

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

19 **JUROR:** My younger sister was --

20 **THE COURT:** Hold it.

21 **JUROR:** I'm sorry.

22 **THE COURT:** Number, please?

23 **JUROR:** Oh. 43. A younger sister when she was
24 around 19 I think was carjacked at a convenience
25 store. The person who did it was apprehended and

1 brought to justice.

2 **THE COURT:** All right. Where was that?

3 **JUROR:** It was in Aiken.

4 **THE COURT:** Aiken?

5 **JUROR:** Mm-hmm (affirmative).

6 **THE COURT:** How long ago?

7 **JUROR:** I think it was around four years ago.

8 **THE COURT:** Mr. 43, would that fact in any way
9 interfere with your ability to give both the State
10 and the defendant a fair and impartial trial?

11 **JUROR:** No.

12 **THE COURT:** All right. Thank you very much.
13 The gentleman with the blue shirt on.

14 **JUROR:** Juror 213.

15 **THE COURT:** 2-1-3?

16 **JUROR:** Yes.

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

18 **JUROR:** I was robbed at gunpoint.

19 **THE COURT:** Who?

20 **JUROR:** My first cousin was robbed at gunpoint.

21 **THE COURT:** How long ago?

22 **JUROR:** About a year ago.

23 **THE COURT:** A year ago?

24 **JUROR:** Yes.

25 **THE COURT:** In Richland County?

1 **JUROR:** Out of state.

2 **THE COURT:** Out of state. Mr. 213, would that
3 fact in any way interfere with your ability to give
4 both the State and the defendant a fair and impartial
5 trial in this case?

6 **JUROR:** No, sir.

7 **THE COURT:** Thank you very much. The lady with
8 the blue and white --

9 **JUROR:** Number 239.

10 **THE COURT:** 2-3-9. Yes, ma'am.

11 **JUROR:** My brother was murdered.

12 **THE COURT:** Your brother?

13 **JUROR:** Yes.

14 **THE COURT:** How long ago?

15 **JUROR:** '93.

16 **THE COURT:** '93. And in Richland County?

17 **JUROR:** Yes.

18 **THE COURT:** It was?

19 **JUROR:** Mm-hmm (affirmative).

20 **THE COURT:** Has that matter been concluded,
21 ma'am?

22 **JUROR:** Yes, it has.

23 **THE COURT:** The legal part of it?

24 **JUROR:** Yes.

25 **THE COURT:** All right. Ms. 239, would that fact

1 in any way interfere with your ability to give both
2 the State and the defendant a fair and impartial
3 trial?

4 **JUROR:** No.

5 **THE COURT:** You sure?

6 **JUROR:** Yes. I'm sure.

7 **THE COURT:** All right. Thank you very much,
8 ma'am. The lady with the --

9 **JUROR:** 297. 197.

10 **THE COURT:** I've just got to find it. Yes,
11 ma'am. Excuse me. Yes, ma'am.

12 **JUROR:** A brother, Richland and Lexington.

13 **THE COURT:** And what type of crime?

14 **JUROR:** Not murder. But break-ins.

15 **THE COURT:** Come up, please, ma'am. I can't
16 quite hear you.

17 **JUROR:** Okay.

18 (Whereupon, a bench conference is had)

19 **THE COURT:** Yes, ma'am. With the blue striped
20 shirt on.

21 **JUROR:** I was --

22 **THE COURT:** That is kind of sometimes funny when
23 I say the lady with the blue striped shirt.

24 **JUROR:** Well, I had something different earlier.

25 **THE COURT:** I understand. Your number, please.

1 **JUROR:** 214.

2 **THE COURT:** I'm just joking with you, ma'am. I
3 hope you understand that.

4 **JUROR:** Yes.

5 **THE COURT:** Yes, ma'am.

6 **JUROR:** I was robbed by a stranger at a Citgo.

7 **THE COURT:** How long ago?

8 **JUROR:** It was ten years ago.

9 **THE COURT:** And was that matter ever concluded?

10 **JUROR:** Yeah. The person is in prison.

11 **THE COURT:** Okay. That fact and that life
12 experience you had, would that in any way interfere
13 with your ability to give both the State and the
14 defendant a fair and impartial trial?

15 **JUROR:** I don't think so.

16 **THE COURT:** Thank you very much, ma'am. Yes,
17 ma'am, with the white.

18 **JUROR:** 155. My sister was raped, I believe 25
19 to 30 years ago.

20 **THE COURT:** 125?

21 **JUROR:** 155.

22 **THE COURT:** I'm sorry. It takes me a minute to
23 find you on the list. You say how long ago?

24 **JUROR:** 25 to 30 years ago.

25 **THE COURT:** Okay. Is that in Richland County?

1 **JUROR:** No. Out of state.

2 **THE COURT:** Would that fact in any way interfere
3 with your ability to give both the State and the
4 defendant a fair and impartial trial?

5 **JUROR:** It would not.

6 **THE COURT:** Thank you very much, Ms. 155. Yes,
7 ma'am.

8 **JUROR:** 289. May I approach?

9 **THE COURT:** Yes, ma'am.

10 (Whereupon, a bench conference is had)

11 **THE COURT:** Anybody else? All right. Now,
12 ladies and gentlemen, I'm going to ask you just sort
13 of the opposite of that question. I've asked you
14 about victims. Now I need to ask if any member of
15 the jury panel or any member of your family has been
16 accused of committing a violent crime. Now, juror
17 number 297, I've already talked to you about that.
18 So you don't need to stand. Any member of the jury
19 panel or any member of your family ever been accused
20 of committing a violent crime? And your number
21 again, ma'am?

22 **JUROR:** 289.

23 **THE COURT:** 289. And I think we just spoke
24 about that.

25 **JUROR:** Yes, sir.

1 **THE COURT:** And you feel you could be fair and
2 impartial?

3 **JUROR:** Yes.

4 **THE COURT:** All right. Thank you, Ms. 289.
5 Yes, sir; with the white shirt.

6 **JUROR:** Yes. 229.

7 **THE COURT:** 2-2-9. Yes, sir. Can you tell me
8 briefly about it?

9 **JUROR:** Can I approach?

10 **THE COURT:** Sure. Certainly.

11 (Whereupon, a bench conference is had)

12 **THE COURT:** Yes, sir. Number, please?

13 **JUROR:** 275.

14 **THE COURT:** 275 again?

15 **JUROR:** Yes, sir. May I approach?

16 **THE COURT:** You certainly may approach.

17 (Whereupon, a bench conference is had)

18 **THE COURT:** Anybody else? All right, ladies and
19 gentlemen. I'm going to call out a list of the
20 potential witnesses in this case. The question is
21 the same as to each witness. I'm not going to repeat
22 the question each time. Is any member of the jury
23 panel related by blood, connected by marriage or
24 employment or a close personal acquaintance of any of
25 the following witnesses or potential witnesses in

1 this case? And as I call the names, I'll ask that
2 you stand and face the jury, please.

3 Elizabeth Ann Beltrami. This is Ms. Beltrami.
4 Anybody know Ms. Beltrami? Thank you, ma'am. Ricky
5 Green. Anybody know Mr. Green? Terri Nance. If any
6 of these witnesses are present and they stand up in
7 the back, I'll tell you ladies and gentlemen. But no
8 sense in you cricking your neck every time I call out
9 a name. I'll tell you if somebody is here.

10 Margaret Diane Jamison. Jennifer Blair works
11 with 911. Kyle Brazell with the Fairfield County
12 Sheriff's Department. Matt Ellis with the Richland
13 County Sheriff's Department. Anybody know Mr. Ellis?
14 Kevin Isenhoward, Richland County Sheriff's
15 Department.

16 Michael Smith, Richland County Sheriff's
17 Department. Horace Grant with the Richland County
18 Sheriff's Department. Jonathan Mears, Richland
19 County Sheriff's Department. James Smith with the
20 Richland County Sheriff's Department. Andrew
21 Caldwell seated at the back of the room, or standing
22 in the back of the room, with the Richland County
23 Sheriff's Department.

24 Henry Hall, Richland County Sheriff's
25 Department. Raymond Hayhurst, Richland County

1 Sheriff's Department. Vincent Goggins, Richland
2 County Sheriff's Department. Yes, ma'am. How do you
3 know --

4 **JUROR:** 179.

5 **THE COURT:** How do you know --

6 **JUROR:** He used to be at Spring Valley High
7 School when I was an administrator there.

8 **THE COURT:** Any other relationship with him?

9 **JUROR:** Hmm-mm (Negative).

10 **THE COURT:** All right. Thank you, ma'am.

11 Kathryn Robinson, the Richland County Sheriff's
12 Department. Robert Oates, Richland County Sheriff's
13 Department. Dr. Gray Amick, the Richland County
14 Sheriff's Department. William Cedarstaff, Richland
15 County Sheriff's Department. Curtis Burnett,
16 Richland County Sheriff's Department.

17 Tena Goff, Richland County Sheriff's Department.
18 Christine Barrickman, Richland County Sheriff's
19 Department. Donald Robinson, Richland County
20 Sheriff's Department. Any member of the jury panel
21 know any of the names I have just called out? Yes,
22 sir.

23 **JUROR:** I think I know one. Jamison.

24 **THE COURT:** Margaret Diane Jamison?

25 **JUROR:** Right.

1 **THE COURT:** All right. And your number, please,
2 again?

3 **JUROR:** 124.

4 **THE COURT:** 124? And how do you know
5 Ms. Jamison?

6 **JUROR:** I think she's a --

7 **THE BAILIFF:** Stand up, please. Stand up.

8 **JUROR:** I think she went to class with my wife
9 and is a church member.

10 **THE COURT:** She is a member of your church?

11 **JUROR:** I think so.

12 **THE COURT:** Okay. Is she a witness in this
13 case?

14 **MS. CAMPBELL:** (Nods head affirmatively).

15 **THE COURT:** Okay. Mr. 124, given that fact, do
16 you think you can be fair and impartial to both
17 parties?

18 **JUROR:** Yes.

19 **THE COURT:** Okay. Thank you very much, sir.
20 Anything further from the State?

21 **MS. CAMPBELL:** Your Honor, may we approach?

22 **THE COURT:** Yes, ma'am. I just want to know,
23 any other questions from the State?

24 **MS. CAMPBELL:** No, sir. But there was an
25 additional witness list.

1 **THE COURT:** Oh, there's an additional witness
2 list?

3 **MS. CAMPBELL:** The defense's witness list.
4 That's not mine.

5 **THE COURT:** Whose?

6 **MR. SUTHERLAND:** Okay. I'm sorry, Your Honor.
7 I put it up there. It's redundant.

8 **THE COURT:** Two of them are not. I'm sorry.
9 There are several other witnesses that I overlooked.
10 Paul Cornelius. Wendy Lake. Margaret -- oh, I've
11 already called Margaret Jamison. Now, anything
12 further from the State?

13 **MS. CAMPBELL:** No, sir.

14 **THE COURT:** Any other witnesses? Any other
15 questions? Anything further from the defense?

16 **MR. SUTHERLAND:** None, Your Honor.

17 **THE COURT:** All right. Approach the bench,
18 please.

19 (Whereupon, a bench conference is had)

20 **THE COURT:** The State ready for the jury?

21 **MS. CAMPBELL:** The State's ready, Your Honor.

22 **THE COURT:** Defense ready for the jury?

23 **MR. SUTHERLAND:** The defense is ready, Your
24 Honor.

25 **THE COURT:** All right. Give us a jury, Madam

1 Clerk.

2 **THE CLERK:** Ladies and gentlemen of the jury
3 panel, when I call your juror number, bring your
4 personal belongings with you. Come to this
5 microphone. Repeat your jury number and give your
6 occupation, please. 152.

7 (Black male)

8 **JUROR:** 152.

9 **THE CLERK:** Turn around.

10 **THE COURT:** Just turn around.

11 **JUROR:** Oh. Sorry.

12 **THE COURT:** Just face the lawyers, please.

13 **JUROR:** 152, sales.

14 **THE CLERK:** What says the State?

15 **MS. CAMPBELL:** Please present the juror.

16 **THE CLERK:** What says the defense?

17 **MR. SUTHERLAND:** Please swear the juror.

18 **THE CLERK:** Have a seat in the jury box, please.

19 218.

20 (White female)

21 **JUROR:** 218, and I'm a student.

22 **THE CLERK:** What says the State?

23 **MS. CAMPBELL:** Please present the juror.

24 **THE CLERK:** What says the defense?

25 **MR. SUTHERLAND:** Please swear the juror.

1 **THE CLERK:** Have a seat in the jury box. 124.

2 (Black male)

3 **JUROR:** 124, BellSouth, retired.

4 **THE CLERK:** What says the State?

5 **MS. CAMPBELL:** Please excuse the juror.

6 **THE CLERK:** Have a seat in the back of the
7 courtroom, please. 43.

8 (White male)

9 **JUROR:** 43. 43, marketing director.

10 **THE CLERK:** What says the State?

11 **MS. CAMPBELL:** Please present the juror.

12 **THE CLERK:** What says the defense?

13 **MR. SUTHERLAND:** Please excuse the juror.

14 **THE CLERK:** Have a seat in the back of the
15 courtroom. 201.

16 (White female)

17 **JUROR:** Number 201, and I'm a media assistant.

18 **THE CLERK:** What says the State?

19 **MS. CAMPBELL:** Please present the juror.

20 **THE CLERK:** What says the defense?

21 **MR. SUTHERLAND:** Please excuse the juror.

22 **THE CLERK:** Have a seat in the back of the
23 courtroom. 267.

24 (White female)

25 **JUROR:** 267. I'm a teacher.

1 **THE CLERK:** What says the State?

2 **MS. CAMPBELL:** Please present the juror.

3 **THE CLERK:** What says the defense?

4 **MR. SUTHERLAND:** Please swear the juror.

5 **THE CLERK:** Have a seat in the jury box. 121.

6 (Black male)

7 **JUROR:** 121. Automotive technician.

8 **THE CLERK:** What says the State?

9 **MS. CAMPBELL:** Please excuse the juror.

10 **THE CLERK:** Have a seat in the back of the

11 courtroom. 155.

12 (White female)

13 **JUROR:** 155. Teacher.

14 **THE CLERK:** What says the State?

15 **MS. CAMPBELL:** Please present the juror.

16 **THE CLERK:** What says the defense?

17 **MR. SUTHERLAND:** Please excuse the juror.

18 **THE CLERK:** Have a seat in the back of the

19 courtroom. 81.

20 (Black female)

21 **JUROR:** 81, supervisor.

22 **THE CLERK:** What says the State?

23 **MS. CAMPBELL:** Please present the juror.

24 **THE CLERK:** What says the defense?

25 **MR. SUTHERLAND:** Please swear the juror.

1 **THE CLERK:** Have a seat in the jury box. 289.

2 (Black female)

3 **JUROR:** Certified Public Accountant.

4 **THE CLERK:** What says the State?

5 **MS. CAMPBELL:** Please present the juror.

6 **THE CLERK:** What says the defense?

7 **MR. SUTHERLAND:** Please swear the juror.

8 **THE CLERK:** Have a seat in the jury box. 125.

9 (White male)

10 **JUROR:** 125, full-time graduate student.

11 **THE CLERK:** What says the State?

12 **MS. CAMPBELL:** Please excuse the juror.

13 **THE CLERK:** Have a seat in the back of the
14 courtroom. Thank you. 21.

15 (White female)

16 **JUROR:** 21, assistant preschool teacher.

17 **THE CLERK:** What says the State?

18 **MS. CAMPBELL:** Please present the juror.

19 **THE CLERK:** What says the defense?

20 **MR. SUTHERLAND:** Please swear the juror.

21 **THE CLERK:** Have a seat in the jury box. 277.

22 (White female)

23 **JUROR:** 277, customer service manager.

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

25 **MS. CAMPBELL:** Please present the juror.

1 **THE CLERK:** What says the defense?

2 **MR. SUTHERLAND:** Please excuse the juror.

3 **THE CLERK:** Have a seat in the back of the
4 courtroom. 84.

5 (White male)

6 **JUROR:** 84, operations manager.

7 **THE CLERK:** What says the State?

8 **MS. CAMPBELL:** Please present the juror.

9 **THE CLERK:** What says the defense?

10 **MR. SUTHERLAND:** Please swear the juror.

11 **THE CLERK:** Have a seat in the jury box. 89.

12 (White male)

13 **JUROR:** 89, client advocate.

14 **THE CLERK:** What says the State?

15 **MS. CAMPBELL:** Please present the juror.

16 **THE CLERK:** What says the defense?

17 **MR. SUTHERLAND:** Please swear the juror.

18 **THE CLERK:** Have a seat in the jury box. 179.

19 (White female)

20 **JUROR:** 179. Education associate, Department of
21 Education.

22 **THE CLERK:** What says the defense?

23 **MS. CAMPBELL:** Please present the juror.

24 **THE CLERK:** What says the defense?

25 **MR. SUTHERLAND:** Please excuse the juror.

1 **THE CLERK:** 266.
2 (White male)
3 **JUROR:** Restaurant manager and a student.
4 **THE CLERK:** What says the State?
5 **MS. CAMPBELL:** Please present the juror.
6 **THE CLERK:** What says the defense?
7 **MR. SUTHERLAND:** Please swear the juror.
8 **THE CLERK:** Have a seat in the jury box. 231.
9 (White male)
10 **JUROR:** 231. I'm a school counselor.
11 **THE CLERK:** What says the State?
12 **MS. CAMPBELL:** Please present the juror.
13 **THE CLERK:** What says the defense?
14 **MR. SUTHERLAND:** Please swear the juror.
15 **THE CLERK:** Have a seat in the jury box. 63.
16 (Black male)
17 **JUROR:** Number 163. I'm a keyboard source
18 manager.
19 **THE CLERK:** What says the State?
20 **MS. CAMPBELL:** Please present the juror.
21 **THE CLERK:** What says the defense?
22 **MR. SUTHERLAND:** Please swear the juror.
23 **THE CLERK:** Have a seat in the jury box. 67.
24 (Black female)
25 **JUROR:** 67, school bus driver.

1 **THE CLERK:** What says the State?

2 **MS. CAMPBELL:** Please excuse the juror.

3 **THE CLERK:** Have a seat in the back of the
4 courtroom. 206.

5 (White male)

6 **JUROR:** 206, sales manager.

7 **THE CLERK:** What says the State?

8 **MS. CAMPBELL:** Please present the juror.

9 **THE CLERK:** What says the defense?

10 **MR. SUTHERLAND:** Please excuse the juror.

11 **THE CLERK:** Have a seat in the back of the
12 courtroom. 224.

13 (White female)

14 **JUROR:** 224, retired.

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

16 **MS. CAMPBELL:** Please present the juror.

17 **THE CLERK:** What says the defense?

18 **MR. SUTHERLAND:** Please excuse the juror.

19 **THE CLERK:** Have a seat in the back of the
20 courtroom. 162.

21 (White male)

22 **JUROR:** 162, full-time student.

23 **THE CLERK:** What says the State?

24 **MS. CAMPBELL:** Please present the juror.

25 **THE CLERK:** What says the defense?

1 **MR. SUTHERLAND:** Please swear the juror.

2 **THE CLERK:** Have a seat in the jury box. The
3 first alternate, 282.

4 (Black female)

5 **JUROR:** 282, administrative specialist and
6 student.

7 **THE CLERK:** What says the State?

8 **MS. CAMPBELL:** Please present the juror.

9 **THE CLERK:** What says the defense?

10 **MR. SUTHERLAND:** Please swear the juror.

11 **THE CLERK:** Have a seat in the jury box. The
12 second alternate, 270.

13 (White female)

14 **JUROR:** 270. I'm a teacher's assistant.

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

16 **MS. CAMPBELL:** Please present the juror.

17 **THE CLERK:** What says the defense?

18 **MR. SUTHERLAND:** Please swear the juror.

19 **THE CLERK:** Have a seat in the jury box.

20 **THE COURT:** Any objections to the jury selection
21 process from the State?

22 **MS. CAMPBELL:** Beg the Court's indulgence.

23 (Pause)

24 **MS. CAMPBELL:** Nothing from the State, Your
25 Honor.

1 **THE COURT:** From the defense?

2 **MR. SUTHERLAND:** None from the defense, Your
3 Honor.

4 **THE COURT:** All right. Thank you very much.
5 All right, ladies and gentlemen. That concludes the
6 jury selection process. Those of you who were not
7 selected on this jury, I'm going to ask you to return
8 to the jury assembly room for further instructions.
9 There may be more cases. We have numerous cases
10 going on every week in this courthouse. So I believe
11 that there will be something for you to do.
12 Hopefully you will get to sit on a case. Some of you
13 might not agree with that; but, nevertheless, I would
14 hope that you would be able to.

15 But before you go I want to thank you for
16 coming. This system can operate without me, without
17 these attorneys. I tell jurors all the time this
18 system cannot operate without you. You're a very
19 important part of our process here, and we appreciate
20 your willingness to come and sit and help resolve
21 these matters. So with that, I'll excuse you now.
22 Please return to the jury assembly room.

23 (Pause)

24 **THE COURT:** All right, ladies and gentlemen of
25 the jury. There are a number of matters I need to --

1 well, to begin with, it's Monday. But there a number
2 of matters I need to take up with the attorneys
3 before we actually start the testimony and evidence
4 in this case. So I'm going to dismiss you now until
5 9:30 in the morning at which time we'll begin the
6 trial.

7 I think if I take the rest of the afternoon and
8 go over some preliminary matters with the attorneys,
9 the case will run more smoothly once we get started.
10 So I'm going to ask you to do a couple of things for
11 me. First off, and this is very important, it is
12 very important that you not discuss the case among
13 yourselves, anything about the case when you return
14 to the jury room in the morning.

15 I'm going to have more instructions about this
16 later tomorrow, but it's very important that you just
17 go home or go back to work if you choose to do so.
18 And if you have to tell your friends or family you're
19 on a jury, that's fine. I'm going to ask you not to
20 discuss the case with them or among yourselves when
21 you return to the jury room in the morning. I just
22 want you to relax, have a cup of coffee with us, and
23 we'll get started right shortly after 9:30.

24 Now, that's the first thing I'm going to ask you
25 to do. The second thing I'm going to ask you to do

1 is when you return in the morning I want you to
2 select one of your members to be the foreperson of
3 the jury. It can be any member of the jury panel. I
4 doesn't matter. But the foreperson will take the
5 seat where the gentleman is seated on the front row
6 with the black shirt on and will maintain that seat
7 throughout the trial.

8 The rest of the seats don't have any names on
9 them, so I want you to sit where you're most
10 comfortable and where you can hear and see what's
11 going on. Most all the witnesses will testify from
12 this witness stand to your left and most of the
13 exhibits will be presented right here in front of
14 you.

15 But, for example, if you have a hearing problem
16 or something of that nature, you would maybe want to
17 sit closer to the front. Now, I said you need to
18 select one of your members to be the foreperson. The
19 last two ladies who were selected will be our
20 alternates. They could not serve as the foreperson
21 of the jury.

22 The third thing I'm going to ask you to do is
23 just have a pleasant evening. I'll see you at 9:30
24 in the morning. We'll get started. Thank you very
25 much. Yes, ma'am.

1 **JUROR:** This might be a random question; but
2 does this last four days like she said downstairs?

3 **MS. CAMPBELL:** No.

4 **THE COURT:** Is this what?

5 **JUROR:** Does the trial last four days, or was it
6 until Thursday, or was this a different case she was
7 talking about?

8 **THE COURT:** I don't have any idea. I don't
9 think it will last until Thursday, but I don't know
10 when you were told. I will tell you that Friday at
11 noon there is a memorial ceremony here in the
12 courthouse. And even though it may carry over 'til
13 Friday, we would have to stop or the jury may be
14 deliberating at that time.

15 But I don't know. I know about as much about it
16 as you do and what I've read to you. So we'll just
17 get to work in the morning and we'll deal with
18 anybody that has any time problems as we go along.
19 And if any member of the jury panel has any child
20 care issues, please bring it to the attention of the
21 bailiffs and let us know. Sometimes people have to
22 pick up children at a certain hour, that kind of
23 thing. Just let us know. We'll try to accommodate
24 you.

25 All right. Thank you very much. If you'll go

1 with the bailiffs to your jury room. And remember
2 that when you return in the morning come back to your
3 jury room, not downstairs to the jury assembly room.
4 Because if you go back down there, I'll just have to
5 come looking for you. Thank you very much. See you
6 at 9:30 in the morning.

7 (Jury out at 3:25 p.m.)

8 **THE COURT:** All right, counsel. Any matters of
9 a pre-trial nature that need to be decided before the
10 trial, the start of the trial?

11 **MS. CAMPBELL:** Yes, Your Honor. In this case
12 there were photo line-ups shown to two of the
13 witnesses in the case or a photo line-up shown to two
14 witnesses in the case, as well as there was a
15 statement that was taken from the defendant. And I
16 believe Mr. Sutherland also has a search issue he
17 wants to bring up.

18 **MR. SUTHERLAND:** Yes, sir. I do have a search
19 issue with respect to his residence. Your Honor, if
20 I may on behalf of my client, might I request about a
21 ten-minute break so that he could go to --

22 **THE COURT:** Step out?

23 **MR. SUTHERLAND:** Yes, sir.

24 **THE COURT:** All right. We'll reconvene at 3:30.
25 I'm sorry. In about ten minutes. And it's my

1 understanding I'm anticipating that you have a
2 motion.

3 **MR. SUTHERLAND:** Yes, sir.

4 **THE COURT:** To suppress any in-court
5 identification of your client.

6 **MR. SUTHERLAND:** Absolutely, Your Honor.

7 **THE COURT:** The photo line-up, right?

8 **MR. SUTHERLAND:** Absolutely.

9 **THE COURT:** And you also challenge the
10 voluntariness of any statement made by him which is
11 going to require a Denno hearing. And you challenge
12 the search warrant that was based on probable cause
13 that was used to search his residence.

14 **MR. SUTHERLAND:** Well, ultimately, they had an
15 arrest warrant, and I'm challenging the entry. It's
16 a little convoluted, but --

17 **THE COURT:** What did they find?

18 **MR. SUTHERLAND:** They found a jacket which is
19 actually -- it's in the photo, in the photo line-up
20 that the victims viewed, as well as it's in the
21 video. It's a pretty substantial piece of evidence,
22 Your Honor.

23 **THE COURT:** Okay. We'll take it up in about ten
24 minutes.

25 **MR. SUTHERLAND:** Thank you, sir.

1 (Whereupon, a break is taken)

2 **THE COURT:** All right. Solicitor, is this the
3 Biggers hearing? What do you want to do first?

4 **MS. CAMPBELL:** We can go ahead and do the photo
5 line-ups and then the statement, and the photo
6 line-ups can be included together with Sergeant
7 Ellis. The State calls Ricky Green.

8 RICKY GREEN, after being duly sworn, testifies
9 as follows:

10 **THE CLERK:** Have a seat in the witness box and
11 state your name for the record, please.

12 **THE WITNESS:** Ricky Green.

13 DIRECT EXAMINATION

14 **BY MS. CAMPBELL**

15 **Q** Mr. Green, where are you employed?

16 **A** Currently, now, Wade Security.

17 **Q** At a security company?

18 **A** Yes, ma'am.

19 **Q** What do you do for them, sir?

20 **A** I'm a security officer. I patrol the neighborhood.

21 **Q** And are you from the Columbia area?

22 **A** Yes, ma'am.

23 **Q** Live out near Blythewood?

24 **A** Yes, ma'am.

25 **Q** Back last year about this time, where were you

1 employed?

2 **A** I was employed for Blythewood Oil.

3 **Q** At Blythewood Oil?

4 **A** Yes, ma'am.

5 **Q** Did you work for a man named Larry Sharpe?

6 **A** Yes, ma'am.

7 **Q** And which one of his stores were you working in back
8 in May of last year?

9 **A** I was working at Sharpe Shoppe #2.

10 **Q** And where is that located?

11 **A** 235 Blythewood.

12 **THE COURT:** 235 Blythewood?

13 **Q** You've got to speak up a little bit--because he can't
14 hear you.

15 **THE COURT:** I can't hear you.

16 **A** 235 Blythewood.

17 **Q** What were you duties there at the Blythewood Road --

18 **A** I was a cashier. And, I mean, I served customers.

19 **Q** I want to turn your attention back to, I believe it
20 was May the 16th. Were you working that day?

21 **A** Yes, ma'am.

22 **Q** And who all was working with you that evening?

23 **A** Ms. Ann. Ann.

24 **Q** Ann?

25 **A** Yes, ma'am.

1 Q Beltrami?

2 A Yes, ma'am.

3 Q And was it just the two of you working in the store
4 that night?

5 A Yes, ma'am.

6 Q And what hours were you working?

7 A I was working the second shift which was normally
8 from 2 'til 11.

9 Q And during that evening around 10:30, 10:35, did
10 something happen that caught your attention?

11 A Yes, ma'am. And --

12 Q Can you explain to the judge where you were and what
13 you observed?

14 A I was getting ready to clean the restrooms and Ann
15 called me out and said: Ricky, we have just got
16 robbed. I ran outside to see what -- you know, what
17 was going on. And I witnessed the truck pulling off.
18 And as I was walking outside, the defendant looked at
19 me, and I got the tags as he rolled off.

20 Q Okay. So you were in the back part of the store
21 during the actual robbery itself?

22 A Yes, ma'am.

23 Q And you mentioned that Ann yelled out for you that
24 there was a robbery going on?

25 A Yes, ma'am.

1 Q And at that point where did you go?

2 A I ran from the restroom straight to the door to look
3 to see if I could get a tag.

4 Q Okay. And once you got out in the parking lot, was
5 the light sufficient so that you could see?

6 A Yes, ma'am.

7 Q And in fact are there lights in and around the areas
8 where the gas pumps are and all in the front of the
9 store?

10 A Yes, ma'am. The canopy is lit up. It has to stay
11 lit up until the store is closed.

12 Q You mentioned that you observed the person you now
13 know to be the defendant getting into an automobile?

14 A Yes, ma'am.

15 Q And what kind of automobile was he getting into?

16 A It was a late model Ford Ranger.

17 Q Do you remember what color was?

18 A It was maroon, like a maroon/burgundy'ish color.

19 Q And you also mentioned that you were able to get
20 close enough to the truck to get at least what you
21 referred to as a partial tag?

22 A Yes, ma'am.

23 Q And what part of the tag were you able to get for the
24 police?

25 A It was the letters that were A-N-E.

1 **Q** You also mentioned that at some point while you were
2 out there as the person was getting into your [sic]
3 car, approximately how far away were you from him
4 when you saw him?

5 **A** I was about from the door 'til the corner of her
6 desk.

7 **Q** So from where you're sitting to the corner of her
8 desk?

9 **A** Yes. The other corner.

10 **Q** This corner?

11 **A** Yes, ma'am.

12 **Q** And what was the lighting like that night?

13 **A** It was dark; but the canopy lights, they keep it
14 pretty bright under there.

15 **Q** Were you able to get a good look at the person's face
16 as they were getting into the automobile?

17 **A** Yes, ma'am.

18 **Q** Had you ever seen that person before?

19 **A** I have seen him from coming in the previous stores
20 that I've worked at for Sharpe Shoppe.

21 **Q** And specifically is there another Sharpe Shoppe from
22 across the street from the one you were working that
23 night?

24 **A** Yes, ma'am.

25 **Q** The one you were working at that night is what

1 gasoline affiliation?

2 **A** It was -- the one I was working that night was a BP.

3 **Q** And across the street is what?

4 **A** An Exxon.

5 **Q** And in the back of the Exxon, is there a certain
6 restaurant back there?

7 **A** Yes, ma'am. There is a Bojangle's connected to it.

8 **Q** And you mentioned that when you saw the person
9 getting into the truck, you had seen him on previous
10 occasions?

11 **A** Yes, ma'am.

12 **Q** Did you know his name though?

13 **A** No, ma'am.

14 **Q** And when you had been -- had you worked at the Exxon
15 Sharpe Shoppe also?

16 **A** Yes, ma'am.

17 **Q** Had you seen him in there on multiple occasions?

18 **A** Yes, ma'am.

19 **Q** And did you know him any other way from him coming in
20 that store?

21 **A** Nothing but from coming in the store.

22 **Q** So you never knew his name?

23 **A** No, ma'am.

24 **Q** But you recognized his face?

25 **A** Yes, ma'am.

1 Q Later that day did the police -- no. I believe it
2 was the next day. Let me check. On the next day did
3 you -- Sergeant Ellis make contact with you? I
4 believe it was at your home?

5 A Yes, ma'am.

6 Q And when he came to your home, did he show you some
7 photographs?

8 A Yes, ma'am.

9 Q I'm going to show you what's been marked as State's
10 Exhibit No. 2 for identification purposes. Do you
11 recognize that series of photos?

12 A Yes, ma'am.

13 Q And were these the photographs he showed you that
14 day?

15 A Yes, ma'am.

16 Q And when he showed you this photograph though, was
17 any of this handwriting on it?

18 A No, ma'am.

19 Q And do you remember what, if anything, he said to you
20 when he showed you the photos?

21 A He said: Take your time, and anyone you recognize,
22 just point him out.

23 Q And when you looked at the six photos, did you
24 recognize anyone?

25 A Yes, ma'am.

1 Q And who did you recognize, Mr. Green?

2 A I recognized the defendant.

3 Q And did you memorialize that in any way on here once
4 you pointed him out to Sergeant Ellis?

5 A I circled it and put my initials in like he told me
6 to.

7 Q And would that be the one that's labeled photo number
8 2?

9 A Yes, ma'am.

10 Q And when you looked at these six photographs, did you
11 base your identification based on what you saw that
12 night, the night of the robbery?

13 A Yes, ma'am.

14 Q And from the person you had recognized from seeing
15 him before?

16 A Yes, ma'am.

17 Q And did you base that on the facial features?

18 A The facial features because, I mean, that's what I
19 recognized off of him.

20 Q And you totally based your identification of this
21 person the next day on what you'd seen the night
22 before as the person was getting into the truck?

23 A Yes, ma'am.

24 Q And again, that night when you were several feet away
25 from him, there was nothing obstructing your view of

1 his face?

2 **A** No, ma'am.

3 **Q** When you got a look at his face, you got a good look?

4 **A** I got a good look at him.

5 **Q** And it made an impression because you had seen him on
6 prior occasions?

7 **A** Yes, ma'am.

8 **Q** After indicating to him and circling the one and
9 initialing it, did you also then sign off at the
10 bottom that that's the person you identified?

11 **A** Yes, ma'am.

12 **Q** And that's all reflected here on State's Exhibit
13 No. 2?

14 **A** Yes, ma'am.

15 **MS. CAMPBELL:** Your Honor, may I approach?

16 **THE COURT:** Show it to defense counsel.

17 **MR. SUTHERLAND:** Oh, I've seen it. Yes, Your
18 Honor.

19 (Document handed to the Court)

20 **Q** And I've been saying it wrong. This is actually
21 February the 16th, not May. Sorry. There were also
22 some new -- did you even see any of the news accounts
23 on this robbery or anything?

24 **A** No, ma'am.

25 **Q** So you based your identification the next day which

1 would be February the 17th based on what had happened
2 the day before when you saw the man getting in the
3 truck?

4 **A** Yes, ma'am.

5 **Q** And the person that you saw getting in the truck
6 after the robbery that day and you got the license
7 tag number, --

8 **A** Yes, ma'am.

9 **Q** -- do you see him here in the courtroom?

10 **A** Yes, ma'am.

11 **Q** Can you point him out for the judge?

12 **A** He's the defendant.

13 **Q** Sitting next to his lawyer?

14 **A** Yes, ma'am.

15 **MS. CAMPBELL:** Your Honor, may the record
16 reflect he's identified the defendant?

17 **THE COURT:** The record will so reflect the
18 witness identified the defendant.

19 **Q** Just for the record, too; do you remember back when
20 this robbery first happened filling out or giving
21 some information to police officers about the
22 defendant's height and weight and things of that
23 nature?

24 **A** Yes, ma'am.

25 **Q** And do you remember how you described him?

1 **A** Not -- vaguely I can -- I remember, you know, his
2 facial features.

3 **Q** Facial features? General build?

4 **A** Yes, ma'am.

5 **Q** And how did you describe him generally?

6 **A** He was about a little shorter than I was, and he had
7 a, you know, beard on his face, a little scruffy
8 looking.

9 **Q** Did you also give him a description of the clothing
10 he was wearing and everything like that?

11 **A** Yes, sir. Yes, ma'am.

12 **MS. CAMPBELL:** That's all I have for this area,
13 Your Honor.

14 **THE COURT:** Cross examination.

15 **MR. SUTHERLAND:** May it please the Court.

16 CROSS EXAMINATION

17 **BY MR. SUTHERLAND**

18 **Q** Mr. Green. Mr. Green, what I want to try to do is
19 sort of get a little diagram so I can understand, as
20 we go through this, understand exactly what happened
21 and where you saw -- I mean, what shape is the Sharpe
22 Shoppe? Is it like a box or like an L?

23 **A** The store is a box. The canopy outside is a capital
24 T. If you were looking at it, you would be looking
25 at it from upside down.

1 Q All right. So you're talking about this kind of
2 canopy coming right out over the entrance?

3 A Yes, sir.

4 Q So something like that there?

5 A That's right.

6 Q And this is where the light was coming from?

7 A Yes, sir.

8 Q Okay. Were there any other lights other than the
9 canopy light there?

10 A They have lights on the corners of the building.

11 Q Okay. So here and here. Okay. So you were back.
12 Let's say this is the counter. And it looked like
13 the bathroom area was sort of back from the counter,
14 back that way?

15 A Yes, sir.

16 Q So you were back here when this actually occurred.
17 Is that correct?

18 A Yes, sir.

19 Q And what happened was, because this whole thing was a
20 matter of, I mean, a matter of seconds really.

21 Because what it looks like on the video is you go and
22 you're gone for maybe ten seconds or something like
23 that. And then it's when everything pops off, and
24 then you coming running out and go to the front?

25 A Yes, sir.

- 1 Q Okay. So you say that she called to you?
- 2 A Mm-hmm (affirmative).
- 3 Q And she said: Somebody has just robbed us?
- 4 A Mm-hmm (affirmative).
- 5 Q And so you come running out from back here through
- 6 the front door?
- 7 A Yes, sir.
- 8 Q Now, are the parking spaces -- are they up against
- 9 the building or out towards the edge of the canopy?
- 10 A They are up against the building. But he was also
- 11 parked further horizontally across the parking lot,
- 12 parking spaces.
- 13 Q Okay. So horizontally, like if you come out this
- 14 way, was it to the right or was it to the left?
- 15 A If the door was right here, he was parked here facing
- 16 that way.
- 17 Q Okay. So you come out. And sort of here is the
- 18 truck. And I'll just put little headlight things
- 19 like that. So when you come out, you look around;
- 20 the truck is over here?
- 21 A Yes, sir.
- 22 Q And you had said from here maybe to the other edge of
- 23 that table there?
- 24 A Yes, sir.
- 25 Q So I don't know. Thirty feet? Something? Twenty

1 feet, thirty, forty feet; somewhere in there?

2 **A** Possibly.

3 **Q** Okay. From here. Now, when the car leaves, when
4 you're coming out, is the car moving, or is it just
5 sitting there?

6 **A** Well, I noticed that the car was a stick and he was
7 having trouble getting it in gear.

8 **Q** So you were hearing this ur-ur (ph) thing?

9 **A** Yes, sir.

10 **Q** And was it rolling at all, or was it just sort of
11 sitting there making that noise?

12 **A** It was like he was just sitting there trying to get
13 it in gear.

14 **Q** And so were you standing you think right here, or did
15 you move over towards the truck, or did you just
16 stand and look and try to get the tag number?

17 **A** I was standing at the doorway trying to get a tag
18 number.

19 **Q** And so you're looking this way. Now, what did you
20 see? Did this thing just pull out and go this way,
21 or did it pull out and go that way?

22 **A** When he pulled out, there was a road on the corner or
23 the side of the building. He pulled straight out to
24 the road, made a right, stopped at a stop sign, made
25 another right and went down Blythewood Road.

1 Q So you're talking about a road here?

2 A Yes, sir.

3 Q And then here. So the car comes out and it goes and
4 it stops here and then heads that way?

5 A Yes, sir.

6 Q And you're looking from behind, from this location
7 right here?

8 A Yes, sir.

9 Q Now, did you see -- was it in the side view? Was it
10 in the rearview mirrors? Or was it as the car was
11 moving? When was it that you made the connection
12 when you saw the face?

13 A He was like trying to get it in gear. I mean, it was
14 clear as day. I could see him.

15 Q And was it -- with him driving this way and you over
16 here, I mean, were you looking like in a side mirror,
17 or were you looking at the back of his head, or was
18 the --

19 A I was looking at the driver mirror at the driver
20 window.

21 Q At the driver window. So from this angle you were
22 sort of looking this way at an angle?

23 A Yes, sir.

24 Q And then the car takes off and it goes out here?

25 A Yes, sir.

1 Q Did you see anything once the car got out on the road
2 or once the car went off that way?

3 A No, sir. I went in to attend to Ann because she was
4 a little distraught.

5 Q Okay. I understand that. So you're looking from
6 this angle here. Once you came out, how long 'til
7 that car was rolling on the thing? You said the
8 gears were shifting --

9 A Mm-hmm (affirmative).

10 Q -- when you came out the door. And it started moving
11 shortly thereafter?

12 A Yes, sir. I'd say about maybe 15 seconds. It
13 wasn't -- it wasn't long.

14 Q Okay. So around 15 seconds. So you come out, and
15 it's around 15 seconds, and then the car is gone?

16 A Yes, sir.

17 Q And you're seeing through the window on this angle.
18 I wanted to ask you, did you ever write any sort of
19 statement? Did Investigator Ellis ever take a
20 statement from you?

21 A He came to my house and showed me the line-up.

22 Q But, I mean, did he ask you to write out what you
23 remember, all the details at that time?

24 A Not him. It was the officer that was first on the
25 scene that asked me for my statement.

1 Q Oh. So did you write out a statement?

2 A I didn't write out a statement. I told him what I
3 observed.

4 Q Okay. And I bet maybe we're talking about the
5 robbery questionnaire where it's certain questions:
6 Was a weapon in one hand or was a weapon in another
7 hand?

8 A Yes, sir. And I told him -- I told them that I
9 wasn't there for that portion of the robbery, so I
10 didn't know of any weapon or anything.

11 Q But it was the officer that filled out the
12 questionnaire?

13 A Yes, sir.

14 Q Just while he was talking to you?

15 A Yes, sir.

16 Q At any point at any time, did you see the video of
17 this incident?

18 A Yes, sir.

19 Q Did you see the video with a law enforcement officer?

20 A I watched the video with Terri Nance and Debbie
21 Taylor as they were reviewing the film.

22 Q And Terri Nance is ...?

23 A She is -- Terri Nance and Debbie Taylor are the
24 retail support for the Sharpe Shoppe.

25 Q Okay. But nobody -- how soon after this, after what

1 you saw out here, were you able to review the video?

2 **A** I'd say about maybe 15, 20 minutes.

3 **Q** So 15 or 20 minutes. Did you -- and maybe this is
4 what's coming up in the robbery questionnaire. You
5 noticed some distinctive clothing? At least that's
6 what the officer -- see, Investigator Ellis didn't
7 take the statement from you, so I don't really know
8 what you said. But the officer wrote down that you
9 had said there was a distinctive jacket?

10 **A** Yes, sir.

11 **Q** And the jacket had diamonds or like a checkerboard
12 hood?

13 **A** I told them, you know, it was a grayish jacket. And
14 I saw -- no, I didn't get to see him, you know, as he
15 was running out.

16 **Q** It's at this point here --

17 **A** Yes, sir.

18 **Q** -- that you saw the jacket? And this was prior to --
19 it was the next day when Investigator Ellis brought
20 the photo line-up over?

21 **A** Yes, sir.

22 **Q** Now, I believe Ms. Campbell has put this thing
23 somewhere. So Ms. Campbell had showed you this.
24 Now, is this the jacket that you saw in the video?
25 Because what they have in this robbery questionnaire,

1 they have you saying that there is a gray sweatshirt?

2 **A** Yes, sir.

3 **Q** Or a gray t-shirt. I'm sorry. And then this jacket
4 with these diamonds and everything. And did you
5 recognize that from the video when you looked at the
6 photo?

7 **A** No, I didn't. I recognized his face. That's what
8 made me pick him.

9 **Q** Okay. And so the recognition of the face comes from
10 this 15-second, from this period right here?

11 **A** Yes, sir. The 15 -- that viewing right there and
12 from me seeing him come in the other stores.

13 **Q** Okay. And the other stores, you testified there was
14 a Bojangle's. These are both Sharpe Shoppes? There
15 is a British Petroleum and there is an Exxon across
16 the street?

17 **A** Yes, sir.

18 **Q** And so you sort of just work --

19 **A** I worked where they needed me.

20 **Q** All right. I understand that. And so it was over at
21 the Exxon that you had seen him before, and you had
22 said several times?

23 **A** Yes, sir.

24 **Q** Do you remember when?

25 **A** No, sir. I mean, I was a cashier. I worked hard.

1 So I worked often.

2 **Q** Okay. But so you're saying what? Buying cigarettes,
3 buying soda or just --

4 **A** Yes, sir. I mean, just coming in as a customer
5 getting odds and ends. I was a people person. So I
6 recognize people's faces.

7 **Q** All right. Beg the Court's indulgence, sir.

8 (Pause - Mr. Sutherland confers with defendant)

9 **MR. SUTHERLAND:** Your Honor, I have no further
10 questions of this witness at this time.

11 **THE COURT:** Anything further?

12 **MS. CAMPBELL:** Just one question, Your Honor.

13 REDIRECT EXAMINATION

14 **BY MS. CAMPBELL**

15 **Q** Mr. Green, he asked you about that he was out there
16 maybe 15 seconds before he pulled off?

17 **A** Yes.

18 **Q** At that point, explain to the judge, did you get a
19 good look at his face?

20 **A** Yes, ma'am. Yes, ma'am.

21 **Q** And how did that happen?

22 **A** My -- well, you know, you -- we were just robbed.

23 So, you know, my adrenaline was pumping. So I'm

24 going to go out there and be as most observant as I

25 can to get a good look at his face and try and get a

1 tag number to help catch him. So obviously that's
2 the first things I would look for, is the face and
3 the tag.

4 **Q** And you got a good look at his face?

5 **A** Yes, ma'am.

6 **Q** Thank you.

7 **THE COURT:** Anything further?

8 **MR. SUTHERLAND:** Nothing further from the
9 defense.

10 **THE COURT:** All right, sir. You may come down.
11 Thank you very much.

12 **MS. CAMPBELL:** The State calls Ann Beltrami.

13 ELIZABETH ANN BELTRAMI, after being duly sworn,
14 testifies as follows:

15 **THE CLERK:** Have a seat in the witness box and
16 state your name for the record, please.

17 **COURT REPORTER:** And I need you to spell your
18 last name, too, please.

19 **THE WITNESS:** No problem. It's Elizabeth Ann
20 Beltrami, B-E-L-T-R-A-M-I.

21 DIRECT EXAMINATION

22 **BY MS. CAMPBELL**

23 **Q** Ms. Beltrami, are you currently living out of state?

24 **A** Yes, ma'am.

25 **Q** I want to turn your attention back to February -- I

1 keep saying May for some reason -- February of last
2 year. Were you working here in the Blythewood area?

3 **A** Yes, ma'am.

4 **Q** And where were you working back on February the 16th?

5 **A** At Sharpe Shoppe, BP.

6 **Q** And what were your duties there, ma'am?

7 **A** I was the assistant manager.

8 **Q** If you could talk up just a little bit because the
9 acoustics in this courtroom are horrible.

10 **A** Sorry.

11 **Q** You were the assistant manager?

12 **A** Yes, ma'am.

13 **Q** And on that evening what shift were you working?

14 **A** The night shift.

15 **Q** And what hours does that run?

16 **A** It's typically 12:30 to either 11 or midnight,
17 depending on the day of the week.

18 **Q** I want to turn your attention to around 10 and 10:30.
19 Who all was working in the shop that night?

20 **A** It was Ricky Green and myself.

21 **Q** And what was Ricky doing that evening?

22 **A** Ricky -- when the incident happened?

23 **Q** Yeah.

24 **A** Okay. I had just sent him back to go ahead and start
25 cleaning the bathrooms so that we would start doing

1 our closing list.

2 **Q** So basically it takes a while to get all the closing
3 things done?

4 **A** Yes, ma'am.

5 **Q** And he was working on part of that. Did he actually
6 go to the back of the store?

7 **A** Yes, ma'am.

8 **Q** And at that point as he is walking to the back of the
9 store, did you notice someone enter the front of the
10 store?

11 **A** A few seconds later; yes, ma'am. A gentleman had
12 walked into the front of the store.

13 **Q** And where did he go once he walked in?

14 **A** He just kept coming straight towards the counter.

15 **Q** Had you ever seen him before?

16 **A** No, ma'am.

17 **Q** And as he's coming in the store to the counter, what
18 do you do?

19 **A** I noticed that he was walking. And we have a little
20 step that you have to come up to to get onto where
21 our cashiers' registers are at. And we have a
22 medicine aisle right there, and a lot of people
23 mistake thinking that they can come up. So I met him
24 and I asked him, I said: Can I help you with
25 anything? And that's when he asked me to open my

1 register.

2 Q Okay.

3 A I'm sorry.

4 Q I know. Are you nervous here today?

5 A Yes, ma'am.

6 Q Okay.

7 A And I thought I misheard him. And I said: Excuse
8 me? And then that's when he said: Open your
9 register and showed me his knife. And I backed up.
10 And he came up on the counter and grabbed the money
11 out of the register.

12 Q Did you actually open the register?

13 A Yes, ma'am.

14 Q Once you saw the knife?

15 A Yes, ma'am; once I saw the knife.

16 Q And he actually went in and took the money out of the
17 register?

18 A Yes, ma'am.

19 Q And at that point what did he do?

20 A At that point he just -- he took the money out. At
21 first he was just taking it with one hand because he
22 still had ahold of the knife in his right hand. And
23 he turned the knife to where that he still had it
24 held, but he was able to use both hands to grab at
25 the money. And that's when he just turned around and

1 he walked out the door. And I yelled back for Ricky.

2 Q And did Ricky come out?

3 A Yes, ma'am.

4 Q And did you see where Ricky went?

5 A Ricky took off running straight to the door. And I
6 was like: Be careful; he has knife. And Ricky just,
7 he kept going straight to the door to go see what he
8 could see.

9 Q And once that happened did y'all call 911?

10 A Yes, ma'am. I had pushed the alarm on both sides of
11 the register, the silent alarm on both sides of the
12 register. And as soon as Ricky took off out the
13 door, that's when I had called 911.

14 Q I want to back up a little bit. You said that he
15 approached you. He came in the front door?

16 A Yes, ma'am.

17 Q Is that when you first observed him?

18 A Yes, ma'am.

19 Q What's the lighting like inside the shop?

20 A Very bright.

21 Q Were you able to get a good look at his face?

22 A Yes, ma'am.

23 Q And his physical characteristics?

24 A Yes, ma'am.

25 Q And was there anything obstructing your view as he

1 approached you at the counter before he first said:
2 Give me the money?

3 **A** The only thing is is there is a little sunglass hut.
4 But before it, that would have been the only thing.
5 Other than that, he was as close as you and I when he
6 first asked for the money almost. We were very
7 close.

8 **Q** And I know these are stupid questions. But nothing
9 was obstructing your view?

10 **A** No, ma'am.

11 **Q** You got a good look at his face?

12 **A** Yes, ma'am.

13 **Q** And do you remember if he was tall, short, thin,
14 stocky?

15 **A** He was stocky. I remember that he was stocky and
16 that he wasn't tall by my means. I said that he was
17 close to my height.

18 **Q** And how tall are you?

19 **A** That explained him. I'm five-four.

20 **Q** And did you also give them -- were you able to
21 observe his clothing?

22 **A** Yes, ma'am. His hoodie, the only thing that I
23 noticed is that it had the three diamonds that went
24 down the front of it. Other than that, I was just
25 zeroed in on his face because we had just been going

1 over with new employees, you know, what you're
2 supposed to do during a robbery. So I was trying to
3 grab his face and look for anything that I could
4 think of.

5 Q So you all actually get training in how to try to --

6 A Yes, ma'am, we do. They keep up with our training.

7 Q And that day you got a good look at his face?

8 A Yes, ma'am.

9 Q And this is another stupid question. But were you
10 paying attention to him since he had a knife on you?

11 A Yes, ma'am.

12 Q The next day did you make contact with Sergeant
13 Ellis? I think he asked you to meet him back at the
14 Sharpe Shoppe?

15 A Sharpe Shoppe. Yes, ma'am.

16 Q And at that point I want to show you what's been
17 marked as State's Exhibit No. 1. Did he show you a
18 series of photographs?

19 A Yes, ma'am.

20 Q And is State's Exhibit No. 1, other than at the time
21 it didn't have any handwriting on it?

22 A Correct.

23 Q Would that be what he showed you?

24 A Yes, ma'am.

25 Q And do you remember what, if anything, he said to you

1 when he showed you the photographs?

2 **A** The only thing he said is to take my time and look at
3 the faces closely to make sure that I identified the
4 proper person. And that was all that was said.

5 **Q** Did he say you had to identify someone?

6 **A** No, ma'am. No, ma'am.

7 **Q** Did he tell you who to identify?

8 **A** No, ma'am.

9 **Q** Suggest or influence you in any way?

10 **A** No, ma'am.

11 **Q** And when you looked at those six photographs, did you
12 recognize anybody in there?

13 **A** Yes, ma'am.

14 **Q** And which one did you recognize?

15 **A** The gentleman, number 2, is the one that's circled.

16 **Q** Number 2?

17 **A** Yes, ma'am.

18 **Q** And Ricky wasn't around when you were looking at
19 these photographs, was he?

20 **A** No, ma'am.

21 **Q** And when you recognized that, did you indicate to
22 Sergeant Ellis who you recognized?

23 **A** Yes, ma'am.

24 **Q** And did you then circle it and initial it at his
25 request?

1 **A** Yes, ma'am.

2 **Q** And ultimately sign off on it down here at the
3 bottom?

4 **A** Yes, ma'am.

5 **Q** And again, did you recognize him based on clothing or
6 on his face?

7 **A** Just his face. Just his face. I really didn't even
8 pay attention to the clothing. I look straight at
9 their faces because that's --

10 **Q** And this is the person, and you based that on what
11 you observed during the robbery the night before?

12 **A** Yes, ma'am.

13 **MS. CAMPBELL:** Your Honor, may I approach with
14 State's Exhibit 1?

15 **THE COURT:** Yes, ma'am.

16 **MR. SUTHERLAND:** I've seen it. Thanks.

17 (Document handed to the Court)

18 **Q** And there are video cameras set up in that store. Is
19 that true?

20 **A** Yes, ma'am.

21 **Q** And that night did you also review the video?

22 **A** Later that night; yes, ma'am.

23 **Q** Okay. And who was present when you did that?

24 **A** Debbie Taylor and Terri Nance.

25 **Q** Explain to the judge how these video cameras are kind

1 of set up in the store?

2 **A** We have ones that are directly over the top of our
3 registers. We have ones that take notice who is
4 walking out the door. And we have some that take
5 notice who is walking in the door. It has a lot of
6 cameras in there.

7 **Q** And so there is a direct one that shows people coming
8 in and out of the front door?

9 **A** Yes, ma'am.

10 **Q** As well as coming over the register?

11 **A** And one straight over the register; yes, ma'am.

12 **Q** And at my request did you review this video, I think
13 earlier today actually?

14 **A** Yes, ma'am.

15 **Q** And does that fairly and accurately represent with
16 some time lapse involved -- we'll get back to that.

17 **A** Right. Yes, ma'am.

18 **Q** -- what happened in the store?

19 **A** Yes, ma'am.

20 **MS. CAMPBELL:** Your Honor, at this time we'd
21 mark this for purposes of this hearing.

22 (WHEREUPON, State's Exhibit No. 5 is marked for
23 identification.)

24 **MS. CAMPBELL:** Beg the Court's indulgence. I'm
25 just trying to expedite, if you could just watch

1 this.

2 **THE COURT:** Now?

3 **MS. CAMPBELL:** Any time you want rather than
4 setting up the whole thing. It will play on that.
5 I'm just trying to make things faster.

6 **THE COURT:** I think she could narrate it.

7 **MS. CAMPBELL:** Okay. Then I'll set it up. Beg
8 the Court's indulgence. Get the machine. I thought
9 it was in here. I don't know why it's not.

10 **THE COURT:** Do you need it?

11 **MS. CAMPBELL:** I just need five minutes to set
12 it up, Your Honor. I apologize. I thought it was
13 set up.

14 **THE COURT:** Do you need it for purposes of this
15 hearing?

16 **MS. CAMPBELL:** Well, it won't hurt me.

17 **THE COURT:** Hmm? All right. Come here.

18 (Whereupon, a bench conference is had)

19 **THE COURT:** Anything else she needs to testify
20 to?

21 **MS. CAMPBELL:** You wanted her to narrate it.

22 **THE COURT:** I know. Will that be the testimony?

23 **MS. CAMPBELL:** Other than her in-court
24 identification, no, Your Honor.

25 **Q** (By Ms. Campbell) And the person that robbed you got

1 a good look at his face?

2 **A** Yes, ma'am.

3 **Q** Will you ever forget his face?

4 **A** No, ma'am.

5 **Q** And do you see him here in the courtroom?

6 **A** Yes, ma'am.

7 **Q** Can you point him out for the judge?

8 **A** The defendant.

9 **Q** Sitting next to his lawyer?

10 **A** Yes, ma'am.

11 **MS. CAMPBELL:** Your Honor, may the record
12 reflect she's identified the defendant?

13 **THE COURT:** I think that's sufficient.

14 **MS. CAMPBELL:** Okay.

15 **THE COURT:** Cross examination.

16 **MS. CAMPBELL:** Thank you.

17 **MR. SUTHERLAND:** May it please the Court.

18 CROSS EXAMINATION

19 **BY MR. SUTHERLAND**

20 **Q** Ma'am, how are you?

21 **A** I'm here.

22 **Q** Okay. It will be all right. I'm just going to run
23 through a little bit of the same questions that you
24 went through before. And things will be all right.
25 This whole incident, it seems, you know, from

1 reviewing the videotape -- and I think you've
2 reviewed the videotape as well?

3 **A** Yes, sir.

4 **Q** Maybe, it looks like, 15 seconds from start to
5 finish. Does that seem -- I mean, or were you able
6 to tell?

7 **A** It felt like a lifetime standing through it.

8 **Q** That's what I figured.

9 **A** Reviewing it, it was -- it was only a few seconds. I
10 mean, it could have been 30 seconds. I mean, to know
11 exact time; no, sir.

12 **Q** Okay. So again, and you saw me messing with this
13 diagram before when you were sitting over there?

14 **A** Yes, sir.

15 **Q** Okay. So what I drew here --

16 **A** Mm-hmm (affirmative).

17 **Q** -- when I was talking to Ricky, I drew the bathroom
18 area here and I drew the counter here.

19 **A** Mm-hmm (affirmative).

20 **Q** So it looked like you were over here and you were
21 talking to Ricky. And it looked like you went down
22 and you were doing something with a trash bag?

23 **A** Mm-hmm (affirmative).

24 **Q** Or getting the trash together?

25 **A** I was getting a new trash bag.

1 Q And as Ricky was going this way, it looked like this
2 person was coming this way?

3 A Yes, sir.

4 Q And when they reached this point here --

5 A Mm-hmm (affirmative).

6 Q -- it sort of -- you looked up from the trash bag,
7 and it looks like you said something to the person?

8 A Yes, sir.

9 Q Now, did you -- at that time it was just like a
10 regular customer?

11 A Yes, sir.

12 Q To you?

13 A Yes, sir.

14 Q An interaction?

15 A Yes, sir.

16 Q And you said that the person had said to open the
17 cash drawer and then showed a knife to you?

18 A Yes, sir.

19 Q How was the knife displayed to you? Was it in a
20 pocket?

21 A It was --

22 Q Like a jacket pocket?

23 A I don't know if it was in a jacket pocket or his
24 pants pocket. But all it was is it was pulled out to
25 me and it was -- he had it pointed at me.

1 Q So you saw the --

2 A Blade.

3 Q -- entire thing?

4 A Yes, sir.

5 Q And what did it look like to you?

6 A It looked like a big butcher knife.

7 Q It looked like a butcher knife to you?

8 A Yes, sir; like a big butcher knife.

9 Q And were you able to see what color it was or what
10 color the handle was or anything like that?

11 A The blade was silver. You know, I don't have a
12 recollection as to the color of the handle. No, sir.

13 Q Okay. All right. So from this point -- and again,
14 you said you viewed the video. From this point here,
15 it seems really almost instantaneously. You walk
16 over from here and then there is maybe words
17 exchanged. There's no sound on the video.

18 A Mm-hmm (affirmative).

19 Q And you're looking. And then you hit the button on
20 there. And then you step back?

21 A Correct. Because there is actually another register
22 on the other side. That's where --

23 Q Over here?

24 A Yes, sir. And that's where I was able to hit the
25 alarm while he was in the store.

1 Q Okay. And so you were over here?

2 A Mm-hmm (affirmative).

3 Q And basically there is a counter. And then you hit
4 it and you walk over towards this one to trip the
5 alarm?

6 A Well, I backed up, yes. I never took my eyes off of
7 him because he had a blade in his hand.

8 Q Okay. And so the money was taken out of the till and
9 then the person left right away?

10 A Yes, sir.

11 Q All in all, how many seconds -- you're saying that
12 you can't really testify as to how many seconds --

13 A No, I would not.

14 Q -- that you were there were face-to-face or looking
15 at the person?

16 A Hmm-mm (negative).

17 Q And you probably wouldn't be able to distinguish
18 between how long you were looking at the person's
19 face versus looking at the knife?

20 A It was very -- I very quickly looked at the knife and
21 then looked at the face, I mean. But the face, I
22 stuck on the face because, like I said, I had just
23 gotten finished reviewing, you know, when that you're
24 robbed, the steps that you take, you know. So I just
25 kept my eyes right on his face so that I could make

1 sure that I would grab as many details from his face
2 as I possibly could.

3 **Q** And so if -- for example, if, let's say, we have
4 about a 20-second window from when the person enters
5 the door to when the person walks out of the door --

6 **A** Mm-hmm (affirmative).

7 **Q** -- we're probably talking about five seconds or five
8 to ten seconds?

9 **A** When he is at the register?

10 **Q** (Nods head affirmatively).

11 **A** Probably maybe ten, ten, fifteen seconds. Yes.

12 Probably, I mean.

13 **Q** Okay.

14 **A** I mean, you know, when I first saw him, he was at the
15 gum rack, I mean, which is like from myself to the
16 end of this first little ledge right here. I mean,
17 it's not far at all. When I first recognized him,
18 saw him -- not recognized him but saw him. And I
19 said, you know: May I help you, because he just was
20 doing a brisk walk up to my register area. And as I
21 explained, there's a medicine display right there and
22 a lot of people think they can just come right up,
23 which of course they're not able to. And that's when
24 that he had first asked me to open my drawer.

25 **Q** All right. And so, briefly just going back through

1 this, I mean, nobody can see this. And there's a
2 trashcan under there. And you're working on this
3 thing. And then you look up and somebody is
4 approaching the thing. You say: May I help you?
5 They say: Open the drawer. You say: Excuse me.
6 They show you a knife. You open the drawer. You
7 back over and you trip the other alarm over here?

8 **A** Yes. It's on the same side as he -- we were all on
9 the same side.

10 **Q** So you have a register here and a register here?

11 **A** Correct.

12 **Q** And then this is the one where you tripped the alarm
13 on?

14 **A** Yes.

15 **Q** Over here?

16 **A** Yes.

17 **Q** Okay. I want to ask you a little bit; I believe you
18 testified that you reviewed the video as well?

19 **A** Yes.

20 **Q** Later on?

21 **A** Later that night.

22 **Q** And it was with the regional people from the shop?

23 **A** Yes.

24 **Q** Or something to that effect?

25 **A** Yes, sir.

1 Q Did you ever review any videotape or anything with
2 any members of law enforcement?

3 A Today I did with the attorney, like I had already
4 spoke. But other than that; no, sir. I had not seen
5 any video at all. I saw it that night and then I
6 just saw it again for today.

7 Q So other than today and today in preparing for your
8 testimony today, you haven't seen that video in 15,
9 16 months?

10 A Correct.

11 Q Back to whenever it was? But you had looked at it
12 with your regional people prior to Investigator Ellis
13 coming over? Or actually he met you at the Sharpe
14 Shoppe?

15 A He met me at the Sharpe Shoppe, yes.

16 Q You testified. And that was when he brought the
17 line-up. And Ms. Campbell was asking you questions
18 about the line-up, about the picture in the line-up?

19 A Correct.

20 Q On your robbery questionnaire, let me back up a
21 little bit. Did Investigator Ellis ever sit down
22 with you and have you write out a statement, you
23 know, this is what I saw?

24 A I did not write out a statement. I verbalized and
25 they wrote down as I was telling them because I was

1 extremely shook up --

2 **Q** And so this --

3 **A** -- when it was over.

4 **Q** -- one of the original, like one of the original
5 responding officers --

6 **A** Yes, sir.

7 **Q** -- had one of the little questionnaire things with
8 the fill in the blanks --

9 **A** Yes, sir.

10 **Q** -- and the boxes like that? But at no point after
11 that did anybody ask you to sit down and make a
12 statement with them?

13 **A** I don't remember. I do not believe so. No, sir. Of
14 course we have our own robbery log that I had written
15 on that. And they may have taken that. I don't
16 remember if they had or not. But I did on our
17 robbery log, yes. I had written out that statement.

18 **Q** Oh. So there is a store robbery log?

19 **A** Mm-hmm (affirmative).

20 **Q** You were talking about the training that you had
21 earlier?

22 **A** Right.

23 **Q** And part of that is for -- I mean, did they just
24 train you as soon as you can write down what happened
25 in the log?

1 **A** Mm-hmm (affirmative).

2 **Q** Something to that effect?

3 **A** Yes, sir.

4 **Q** And so effectively you have had written everything
5 out that you're testifying to?

6 **A** Yes, sir.

7 **Q** And that you saw at that time in the robbery log?

8 **A** Yes, sir.

9 **Q** And are you aware of whether -- you weren't sure that
10 the State --

11 **A** I don't know. I don't know. I don't know what
12 happened with the paper. I don't know if it was just
13 all bundled onto one thing. I don't know.

14 **Q** Did you at any point make anybody aware with law
15 enforcement that you had written this stuff out in
16 this log?

17 **A** No, sir.

18 **Q** Okay. And then it was -- when he came up there and
19 he came up there with this photo line-up thing?

20 **A** Mm-hmm (affirmative).

21 **Q** You had reviewed, you know, the video and you had
22 seen him in the store. But you testified that it was
23 just the face?

24 **A** Just the face.

25 **Q** You didn't recognize the distinctive jacket in the

1 photograph?

2 **A** No, sir. No, sir. The only thing that I noticed was
3 the diamonds that went down the front of it. I
4 didn't even, you know, notice, recognize the hoodie
5 because all it was is just the face in the line-up.
6 The hoodie made no difference to me. Because at that
7 part I hadn't recognized that in the video because it
8 was just the diamonds in the front of it that I had
9 saw on it. He was right in front of me.

10 **Q** All right. Well, I think we're squared away.
11 Thanks. No further questions, Your Honor.

12 **THE COURT:** Anything further?

13 **MS. CAMPBELL:** No, sir.

14 **THE COURT:** Thank you. Come on down. Thank you
15 very much, ma'am. Anything further from the State?

16 **MS. CAMPBELL:** Sergeant Matt Ellis.

17 MATTHEW ELLIS, after being duly sworn, testifies
18 as follows:

19 **THE CLERK:** Have a seat in the witness box.
20 State your name for the record, please.

21 **THE WITNESS:** Matthew Ellis.

22 DIRECT EXAMINATION

23 **BY MS. CAMPBELL**

24 **Q** Sergeant Ellis, where are you employed?

25 **A** Richland County Sheriff's Department.

1 Q What do you do there, sir?

2 A Supervise the burglary unit and the criminal
3 investigative division.

4 Q I want to turn your attention back to the evening of
5 February the 16th of 2009. Did you respond to the
6 Sharpe Shoppe on Blythewood Road?

7 A Yes, ma'am.

8 Q That's the one with the BP station?

9 A That's correct.

10 Q And when you got there, did you make contact with two
11 witnesses to an armed robbery?

12 A I did.

13 Q And who did you speak to that night?

14 A Ms. Ann and Ricky Green.

15 Q Ann Beltrami and Ricky Green?

16 A Yes.

17 Q And did you actually get information from them that
18 was pertinent to the robbery?

19 A I did. They had a responding officer that actually
20 had already completed a robbery questionnaire upon my
21 arrival. When I got there I reviewed that robbery
22 questionnaire with them and also verbally interviewed
23 them on the scene separately.

24 Q And, in fact, did you do a follow-up in this case?

25 A I did follow up on this case.

1 Q Does that include the summary of what information
2 they were able to give you that night?

3 A I do have that in my follow-up. Yes, ma'am.

4 Q The next day were you able to develop a suspect in
5 this case?

6 A I did. We had received the video from the store.
7 And I had released it out to the media. And I
8 received several CrimeStoppers tips advising me of
9 who these tipsters believed the individual in the
10 picture from the robbery in fact was.

11 Q And were you able to develop a photo line-up based on
12 the information that was provided to you?

13 A Based upon that information and reviewing the photos,
14 I did formulate a photo line-up of Michael Paul
15 Cornelius.

16 Q And on the 17th, which one of the witnesses did you
17 make contact with first?

18 A On the 17th at approximately 9:15 I met with Ann. I
19 made telephone contact with her. And it was agreed
20 that we would meet back at her place of employment at
21 the Sharpe Shoppe in the parking lot where I met with
22 her and showed her the line-up.

23 Q And what, if anything, did you say to her when you
24 showed her the line-up?

25 A I just told her I had a line-up, a spread of six

1 individuals, to look at the line-up carefully, to
2 take her time and to see if anybody in that photo
3 line-up could have been the individual that robbed
4 her.

5 Q And when you showed her that six photo line-up, I
6 believe it's State's No. 1, what was her reaction
7 when she saw the pictures?

8 A She looked at it. And as she viewed it, without
9 hesitation, she selected the individual, Michael Paul
10 Cornelius, that we had received the tips on
11 immediately.

12 Q And --

13 A I think it was photo number 2.

14 Q -- did you do anything to influence her?

15 A I did not.

16 Q Did you tell her who to pick?

17 A No, ma'am.

18 Q Did you coerce her into picking someone?

19 A I did not. She picked it almost --

20 Q Did anyone or anybody influence her decision in any
21 way?

22 A No, ma'am.

23 Q And was she able to immediately identify the person
24 she recognized from the robbery the night before?

25 A She did. She circled it, initialed it and signed the

1 photo line-up affidavit.

2 Q Later that day did you also make contact with Ricky
3 Green?

4 A I did. As a matter of fact, after I left the Sharpe
5 Shoppe, Mr. Green doesn't live too far away, and I
6 responded to his house. And he actually came outside
7 and sat in my car. And I did the same thing with
8 him, told him what I had, the photo line-up
9 consisting of six photos and asked him to view it
10 carefully to see if the individual that robbed him
11 might be in it. And once again, he without
12 hesitation looked at it and identified Mr. Michael
13 Paul Cornelius as the individual that came into the
14 Sharpe Shoppe on the 16th of February and robbed them
15 at gunpoint. At knife point. Excuse me.

16 Q And did you have them memorialize that by circling
17 and initialing?

18 A He did the same.

19 Q As well as signing it?

20 A As well as signed it.

21 Q And at any point while you were with Ricky Green, did
22 you or anyone else influence him in any way?

23 A No, they did not.

24 Q Did you tell him who to pick?

25 A No, I did not.

1 Q Did you tell him he had to pick anybody?

2 A I did not.

3 Q And in fact his reaction was he immediately
4 recognized the person?

5 A That's correct. He actually identified it as the
6 person he saw in the truck leaving the scene from the
7 robbery.

8 Q Subsequent to that did you then obtain an arrest
9 warrant for the defendant?

10 A An arrest warrant was obtained for armed robbery.

11 Q And ultimately the fugitive team was, looking for
12 him?

13 A That's correct. We had received some media attention
14 on it. We thought we had some good locations of
15 where he might be. It was turned over to the
16 fugitive team. And that's their job. They do a good
17 job at it. And we sent them to locate him.

18 Q And ultimately after they made contact with his
19 family, did the defendant -- did his father turn him
20 in?

21 A I believe it was actually his mother --

22 Q His mother. I'm sorry.

23 A -- and girlfriend that arrived I believe the
24 following day and late afternoon with Mr. Cornelius
25 at our headquarters.

1 **Q** And I want to show you what's been marked as --
2 Judge, do you want to rule on the other two, Your
3 Honor, or can I go into the statement?

4 **THE COURT:** Yeah. Hold that. Hold that.

5 **MS. CAMPBELL:** Hold this?

6 **THE COURT:** Yeah.

7 **MS. CAMPBELL:** Okay.

8 **THE COURT:** Cross examination.

9 **MR. SUTHERLAND:** Thank you, Your Honor.

10 CROSS EXAMINATION

11 **BY MR. SUTHERLAND**

12 **Q** Investigator Ellis.

13 **A** Mr. Sutherland.

14 **Q** Did you just testify that you had reviewed this video
15 from the shop? Did you review the video that night?

16 **A** That night? I don't know if I saw it at the store.
17 I formulated a picture to send out to the media from
18 it. So I had reviewed it, yes. I just don't know if
19 I did it actually at the store or not.

20 **Q** All right. But you sort of reviewed it. Let me see
21 if I can sort of get a timeline on this thing. What
22 time was the video turned over to you?

23 **A** I arrived at the incident location at 11:15 in the
24 evening. And between 11:15 on the 16th and 2:00 in
25 the morning on the 17th when I arrived back at

1 headquarters, between those times.

2 **Q** And that 2:00 is when you entered everything into
3 evidence when you got basically back to the Sheriff's
4 Department?

5 **A** I know that's when I entered a \$5 bill in a cash
6 drawer that I collected that were entered into
7 evidence at that point.

8 **Q** What time did you put this media package together?
9 Was it the same evening? Basically, you know, you
10 get back from the incident location. And you're
11 putting things that you're collecting into evidence.
12 Did you sit down and did you review this and put
13 something together for -- what do you all call it?
14 Is it grasshopper or something? Your media?
15 Cricket? What's your nickname?

16 **A** Captain Cavalry?

17 **Q** Okay.

18 **A** He's sometimes referred to grasshopper as well.

19 **Q** What time did you get all this put together and get
20 it over to your media people? Was it that same
21 evening or before you -- what time did you get off
22 work?

23 **A** It was done on the 17th. It was obviously done
24 before I went home on the 17th, when I got back to
25 the office. Because that morning we were already

1 receiving the tips about that incident.

2 Q Okay.

3 A So normally something like that, I had a pretty
4 decent photo of the individual, try to get it put
5 together, send it to them. They get it put out;
6 probably get it that morning.

7 Q So you sort of just worked straight through and
8 reviewed that video and got it out to your media
9 person?

10 A Well, I had responded to this location. And
11 regardless if I keep this case or not, I am required
12 to complete a follow-up and have everything in the
13 line so anybody, any investigator that morning when
14 they come to work could pick up this case and work on
15 it.

16 Q Yeah.

17 A So loose ends need to be tied up. So that, yes, it
18 was.

19 Q All right. And I think the ultimate point that I'm
20 trying to make though is, prior to your putting this
21 line-up together that you were going to show Ricky
22 and Ms. Ann, prior to you putting this together, you
23 had reviewed that video. Is that correct? Because
24 you put these things out and were starting to get
25 tips. And then you went and you showed -- you got

1 the -- you put the media package out. You get the
2 tips. And you say it's Michael Paul Cornelius. Then
3 you go and you put his picture in a line-up. Is that
4 a pretty effective --

5 **A** Inbetween there I had -- after I received the name.
6 I mean, I just don't go and put somebody's name in a
7 line-up because the name -- or picture in a line-up
8 because the name is given to me. I reviewed the
9 pictures that I had access to. Those pictures seemed
10 consistent with the photos from the store,
11 surveillance photos.

12 **Q** So the booking, you could pull up and like all the
13 booking photos will come up, like a dozen or so if
14 they've been checked into Richland County?

15 **A** Sure.

16 **Q** I used to be able to do that. So you pulled up --
17 and all the prior booking photos of Michael Cornelius
18 came up?

19 **A** All one.

20 **Q** All one. He'd only been booked in one time?

21 **A** That's correct.

22 **Q** Did you pull a driver's license photo, anything from
23 DMV?

24 **A** Not that I know of. No.

25 **Q** Okay.

1 **A** Not at that point in time.

2 **Q** Well, what I'm trying to get at is, you put a picture
3 of him wearing a jacket that was in the video that
4 you just reviewed in a photo line-up to show people,
5 to show victims in the case. And I was just
6 wondering if you had any other photos available or if
7 you noticed that?

8 **A** Well this, is his photo. I mean, the descriptions I
9 think that you probably have copies of from the
10 robbery questionnaires indicate that there is --

11 **Q** Three black diamonds?

12 **A** -- three black diamond shapes on it. And Mr. -- or
13 excuse me. Ms. Ann indicates that they're on the
14 side.

15 **Q** But you --

16 **A** There's no indication of any kind of design or
17 anything on it. I don't know what he had on. I
18 wasn't there, you know.

19 **Q** So you didn't --

20 **A** And I don't know what jacket he has on when he's
21 arrested.

22 **Q** All right. So you didn't review the video and put
23 the media package together?

24 **A** No, I did do that.

25 **Q** You did do that?

1 **A** Correct.

2 **Q** And you compared pictures -- maybe I misapprehended
3 your testimony a little while ago. I thought that
4 you were comparing a picture to pictures or stills
5 that you had pulled from the video to maybe this. Is
6 that the comparison that you were making prior to
7 putting something in a line-up? I think you said: I
8 don't just put a person's picture in the line-up --

9 **A** That's right.

10 **Q** -- because I get a tip?

11 **A** That's right.

12 **Q** And so you were comparing this picture I guess to the
13 video, to the still frames?

14 **A** That's right.

15 **Q** And you didn't notice that that's the same jacket?

16 **A** I can't see if it has three diamonds on the front. I
17 have no idea if that's the same jacket.

18 **Q** No. But, I mean, I've seen the video; and this
19 pattern here, I mean, you didn't scrutinize it?

20 **A** But I don't know if this has three diamonds now. I
21 don't know if that's -- I can't testify that's the
22 same jacket.

23 **Q** Okay. All right. Well, I don't think I have any
24 further questions at this time. Let me think about
25 it ten seconds. I have no further questions of this

1 witness at this time, Your Honor.

2 **THE COURT:** Anything further on this issue?

3 **MS. CAMPBELL:** No, sir.

4 **THE COURT:** All right. You may come down. Mr.
5 Sutherland, anything?

6 **MR. SUTHERLAND:** May it please the Court, Your
7 Honor.

8 **THE COURT:** Any witnesses for the defense?

9 **MR. SUTHERLAND:** Oh. Nothing from the defense
10 for the witness stand, Your Honor.

11 **THE COURT:** All right. Your motion.

12 **MR. SUTHERLAND:** And the motion, Your Honor,
13 with respect to the identification, you know,
14 Investigator Ellis has got up there and he's
15 testified that he's reviewed this video. I mean,
16 I've watched it several times. And the first thing
17 that stood out to me when I saw the line-up was this
18 is the jacket from the video.

19 And as far as a line-up being suggested, if you
20 put distinctive clothing, if you put a picture of an
21 individual or if you stand people up in the line-up
22 and they're wearing distinctive clothing that closely
23 matches the clothing of the perpetrator or the
24 alleged perpetrator of the crime, then it's
25 inherently suggestive.

1 I actually haven't been able to find any South
2 Carolina case law that was on point because I'm just
3 unaware other than with respect to show-ups, and
4 show-up line-ups are completely different matter.
5 But with respect to this being suggestive, I was able
6 to find a case in the second circuit. It's Rahim vs.
7 Kelly.

8 And it's a federal case from the second circuit
9 where they had taken several individuals in one of
10 old sort of old-style stand up line-ups and a person
11 had a black jacket on that closely -- it was a black
12 three-quarter length jacket that closely matched the
13 description of a jacket that the victims of a crime
14 had given.

15 And ultimately it worked its way through the
16 courts, and the decision of the second circuit was
17 that it is improper to put distinctive clothing on an
18 individual in a line-up that closely matches the
19 clothing of a person that has perpetrated a crime,
20 that it's inherently suggestive to use that same
21 clothing.

22 I understand that there was testimony in the
23 opposite direction of that, but I think objectively
24 it doesn't change the fact that this is the jacket
25 from the video and it's inherently suggestive, which

1 may be an instance of first impression, Your Honor.
2 But I don't believe that it can be said as if, let's
3 say a description was of somebody wearing a certain
4 kind of eyeglasses and it was a guy with a monocle
5 and then you had five people in there with regular
6 glasses on and one guy with a monocle on in the
7 picture. I mean, it jumps out individually.

8 And I do -- I'm sorry. I do have a case that I
9 was speaking of. I mean, it's human nature to have
10 one's attention drawn to the distinctive clothing
11 from an event that's traumatic or otherwise from the
12 night before.

13 And the argument that I'm laying out here,
14 Judge, is I think it's improper for the State to
15 place pictures of defendants in line-ups where the
16 defendant or potential defendant or suspect is
17 wearing the distinctive clothing that was described
18 by the individuals who were the victims of the crime.

19 And it clearly shows that jacket and that
20 pattern in the video. And this is something that
21 would have been seen by people otherwise. So that's
22 the first prong with respect to the suggestive nature
23 of the line-up, sir.

24 **THE COURT:** Are you suggesting that law
25 enforcement took a photograph and placed this hooded

1 jacket on him for purposes of the photo line-up?

2 **MR. SUTHERLAND:** Oh, no, no; not going all the
3 way back to the booking photo. Basically I would
4 think that an officer should scrutinize photos that
5 he's going to place into a line-up for --

6 **THE COURT:** How do you suggest they got this
7 photograph?

8 **MR. SUTHERLAND:** Well, this is just -- this is
9 an older -- I mean, this is a booking photo from the
10 detention center, sir.

11 **THE COURT:** I'm talking about factually.

12 **MR. SUTHERLAND:** Oh. Just factually, the
13 argument is, if an investigator looks at a booking
14 photograph and the person is wearing the same jacket
15 that a person in a video or a person that victims
16 describe as having --

17 **THE COURT:** Are you saying he just happened to
18 be wearing this hooded jacket when he was booked six
19 months or a year ago?

20 **MR. SUTHERLAND:** Yes, sir.

21 **THE COURT:** And the video shows him wearing the
22 same jacket?

23 **MR. SUTHERLAND:** Yes, sir.

24 **THE COURT:** He really likes that jacket.

25 **MR. SUTHERLAND:** It is apparent, sir.

1 **THE COURT:** How about that, Ms. Campbell?

2 **MS. CAMPBELL:** Your Honor, the testimony from
3 the witnesses is they based their identification on
4 the face, that they didn't even see what was inside
5 the hoodie of the jacket which he keeps referring to,
6 that the only thing the witnesses have testified to
7 is that there was a diamond shaped pattern on the
8 front or the side of the hoodie. I believe Ms.
9 Beltrami even went so far as to say she didn't even
10 notice what the hoodie was in.

11 If anything, Sergeant Ellis did go out of his
12 way to make sure that even another of the people that
13 are in the line-up are wearing some type of hoodie in
14 order to make it less suggestive, because I believe
15 each one of the people in there do have some type of
16 hoodie on.

17 As far as whatever pattern or whatever the
18 defense's attorney is referring to, that has not been
19 testified as having any influence on anyone that has
20 identified these people in these photo line-ups.

21 **THE COURT:** He's saying it's suggestive because
22 it is distinctive. It's clearly distinctive. He
23 says, I mean, it's his position that it is unduly
24 suggestive.

25 **MS. CAMPBELL:** And even if you were to give him

1 that it is distinctive, Your Honor, the cases in our
2 jurisdiction have held that even if there is some
3 suggestibility, that based on the totality of the
4 circumstances and based on these two witnesses'
5 testimony, as to the reason they identified this
6 person was based totally on what they saw on his
7 face. And both of them even went to so far as to say
8 it was not based on clothing. And I believe that
9 would be their testimony, Your Honor.

10 **THE COURT:** Well, I think certainly the first
11 witness gets by that because he had other experiences
12 with the defendant. I'm not so sure about the second
13 one.

14 **MS. CAMPBELL:** The second witness, Your Honor,
15 was actually face-to-face with him in a well lit
16 room.

17 **THE COURT:** I understand.

18 **MS. CAMPBELL:** She was paying attention. She
19 had just taken a course in how to recognize people's
20 facial features. And her testimony was I believe,
21 Your Honor, that she totally based --

22 **THE COURT:** Did she testify that she had taken a
23 course?

24 **MS. CAMPBELL:** That she had just had training on
25 how to identify people and that she based her

1 identification off of what she saw of his face.

2 **THE COURT:** I understand.

3 **MS. CAMPBELL:** Not, as she said, I mean,
4 clothing. In fact she said she didn't even see the
5 hoodie part of his clothing. She was focused on his
6 face.

7 **THE COURT:** It's hard not to see it.

8 **MS. CAMPBELL:** I'm not saying in that picture
9 it's not. But I'm just saying as far as what she saw
10 when she spoke with him that night of his face --

11 **THE COURT:** I guess I'd better look at the
12 video. I guess I'd better look at the video.

13 **MS. CAMPBELL:** Yes, sir. And that's one reason
14 we were attempting to put it in. But, Your Honor,
15 even if she had testified she saw the hoodie, which
16 she didn't say she did, based on her testimony that
17 she's doing it off his facial features which is what
18 she testified to, it would survive any kind of
19 suggestibility. Or it should.

20 **THE COURT:** It should.

21 **MS. CAMPBELL:** Yes, Your Honor. And I'll be
22 glad to pull some cases if you want me to. You have
23 them all.

24 **THE COURT:** It might be important. How about
25 it, Mr. Sutherland? You got anything besides second

1 circuit?

2 **MR. SUTHERLAND:** That was ultimately all that I
3 was able to come up. Within the state of South
4 Carolina, there was -- it was all about show-up ID's
5 where individuals were wearing pretty much the same
6 clothing described. I think it was distinctive.

7 **THE COURT:** I'll look at the video.

8 **MR. SUTHERLAND:** Yes, sir.

9 **MS. CAMPBELL:** And, Your Honor, I would point
10 out that in our state, you know, show-up ID's are
11 routinely held to be admissible. And in that case
12 there's no doubt the person has on the same clothing.

13 **MR. SUTHERLAND:** Well, there's State vs. Moore I
14 believe is the case -- I didn't have it present --
15 that's a show-up I.D. case about distinctive clothing
16 where the identification was --

17 **MS. CAMPBELL:** Was based on the clothing.

18 **MR. SUTHERLAND:** Well, but the identification
19 was --

20 **MS. CAMPBELL:** That's not in testimony here
21 though.

22 **THE COURT:** Wait a minute. Please don't
23 interrupt him. I'm trying to hear what Mr.
24 Sutherland has to say. Go ahead.

25 **MR. SUTHERLAND:** Yes, sir. I believe it was

1 State vs. Moore. I didn't pull the case because I
2 didn't think it was appropriate to the facts of this
3 case. But I have read that case, and this was a case
4 where a person was -- I don't believe it was 30 feet
5 away, as was testified in one instance with respect
6 to the driving off in the vehicle, but maybe 40 to
7 50 feet.

8 Two individuals with distinctive clothing by a
9 neighbor viewed him attempting to break into house I
10 believe and they were apprehended perhaps a mile or
11 so away. They did a show-up identification, a
12 show-up line-up there. And ultimately -- I wish I
13 had read it more recently -- but ultimately they did
14 suppress the identification. I believe the
15 distinctive clothing played a part in that. But I
16 was unable to find anything that was on point in
17 South Carolina or Georgia or maybe something a little
18 close, State vs. Butler in Florida.

19 **THE COURT:** I think that case more likely would
20 resolve on a totality of the circumstances because
21 factually most defendants don't change their clothes
22 while they're fleeing. But this is a little bit
23 different in that the State views a prior booking
24 photo as the basis for creating the photo line-up.
25 It just happened to match the video, as you say. I

1 don't know. I'll look at the video. I'll let you
2 know.

3 **MR. SUTHERLAND:** Yes, sir.

4 **THE COURT:** How about the Denno issue? Any case
5 law you want me to read? I'll be glad for you to
6 submit it.

7 **MR. SUTHERLAND:** Actually I believe that's the
8 second circuit case I had with respect to the Biggers
9 case that I had submitted.

10 **THE COURT:** Okay. Well, call your first
11 witness.

12 **MS. CAMPBELL:** Sergeant Ellis.

13 MATTHEW ELLIS, after being duly sworn, testifies
14 as follows:

15 **COURT REPORTER:** Do you need to remind him he's
16 still under oath for this?

17 **THE COURT:** No. He's under oath. You
18 understand you're under oath?

19 **THE WITNESS:** Yes, sir.

20 **THE COURT:** Thank you, Ms. Williams.

21 DIRECT EXAMINATION

22 **BY MS. CAMPBELL**

23 **Q** Sergeant Ellis, --

24 **MR. SUTHERLAND:** I'm terribly sorry to
25 interrupt. My client has a bladder problem because

1 of a wreck. He's telling me that it's imperative --

2 **THE COURT:** All right. Take five. I'm not
3 going to leave the courtroom.

4 **MR. SUTHERLAND:** Yes, sir.

5 (Whereupon, a break is taken)

6 **THE COURT:** Ms. Campbell, you may proceed.

7 **MS. CAMPBELL:** Thank you, Your Honor.

8 **Q** (By Ms. Campbell) Sergeant Ellis, turning your
9 attention to I believe it's February the 19th, during
10 that afternoon did you come in contact with Michael
11 Cornelius?

12 **A** Yes, ma'am.

13 **Q** And where did you first come in contact with him that
14 day?

15 **A** I was notified by the desk sergeant that he was
16 actually in our lobby downstairs at our headquarters
17 on Two Notch Road.

18 **Q** And what, if anything, did you do once you came, once
19 they informed you of this?

20 **A** I went downstairs and introduced myself to him. Like
21 I stated before, I believe his mother and girlfriend
22 were present with him. And we went upstairs to my
23 office.

24 **Q** And once you were in your office what, if anything,
25 happened?

1 **A**) I immediately advised Mr. Cornelius of his rights,
2 read it to him off of our advice of rights form,
3 checked off the advice of rights as I read them to
4 him, make sure he understood them and then asked him
5 to sign them. Then I read the waiver of rights, made
6 sure he understood that, and asked him was he willing
7 to talk to me about the incident. And he signed that
8 freely waiving his rights.

9 **Q** I want to show you what's been marked as State's
10 Exhibit No. 3. Do you recognize that?

11 **A** I do. It's a Richland County Sheriff's department
12 advice of rights form.

13 **Q** Is that the form you used that day with Mr.
14 Cornelius?

15 **A** It is. This is my handwriting. I filled out his
16 name, the location that this form was read to him, my
17 name, the date and time that this was done which was
18 October -- or excuse me -- February the 19th, 2009,
19 at 1655 hours, 4:55 in the afternoon.

20 **Q** And that's when you would have initiated the advice
21 of rights?

22 **A** This is when I started reading them to him. As soon
23 as I put the time down, I started reading to him. I
24 could tell I had this form where he could read it in
25 front of him because my check marks are backwards

1 that I always do. And I read this, which states:

2 Before I ask you any questions you must
3 understand your rights. You have the right to remain
4 silent. Anything you say can be used against you in
5 court. You have the right to talk to a lawyer for
6 advice before we ask you any questions and to have a
7 lawyer with you during any questions. If you cannot
8 afford a lawyer, one will be appointed before any
9 questions if you wish. If you decide to answer
10 questions now without a lawyer present, you still
11 have the right to stop answering at any time. You
12 also have the right to stop answering at any time
13 until you talk to a lawyer.

14 At that point I asked Mr. Cornelius if he
15 understood the series that I just read him. He did.
16 He signed that at an "x" or beside an "x" that I
17 marked on the form next to "signed". And then I
18 continued with the advice of rights form to the
19 waiver of rights portion which states:

20 I have read this statements of my rights and I
21 understand what my rights are. I am willing to talk
22 and answer questions. I understand and know what I
23 am doing. No promises have been made to me. No
24 pressure or coercion of any kind has been used
25 against me.

1 I circled pressure and coercion to make sure he
2 understood those two terms. And I once again put an
3 "x" by the signed line. He signed there. I
4 witnessed both of his signatures. And I also
5 indicated on here that I asked him how far he had
6 gone in school. And I have written down that he went
7 through the 12th grade. He graduated from Spring
8 Valley High School, and that he is able to read and
9 write.

10 **Q** And during this time period when you were asking him
11 these questions and he was responding, did he seem to
12 be coherent?

13 **A** He did.

14 **Q** Did he seem to be under the influence of any alcohol
15 or drugs?

16 **A** He did not.

17 **Q** At any time did you promise him anything to make him
18 talk to you?

19 **A** I did not.

20 **Q** Did you threaten him in any way?

21 **A** No, ma'am.

22 **Q** Did you try to coerce him?

23 **A** No, ma'am.

24 **Q** Did you use any type of physical force in order to
25 make him talk to you?

1 **A** No, ma'am.

2 **Q** And in your opinion as an investigator, did he freely
3 waive his rights and choose to talk to you?

4 **A** Yes, ma'am.

5 **Q** And did he seem to understand what his rights were?

6 **A** He did.

7 **Q** Did you deprive him of any creature comforts in any
8 way?

9 **A** No, ma'am.

10 **Q** At any point did he ever ask to stop talking?

11 **A** No, ma'am.

12 **Q** And at any point did he ever ask for a lawyer?

13 **A** He did not.

14 **Q** On that afternoon when you were talking to him?

15 **A** He did not.

16 **Q** Once that he had signed off that he understood what
17 his rights are and then that he wanted to waive his
18 rights, did you then proceed to ask him some
19 questions about what had happened at the BP?

20 **A** I did.

21 **Q** And I'll show you what's been marked as State's
22 Exhibit No. 4 which is a four-page document dated
23 February the 19th at 1712 hours. Is that when that
24 would have been commenced?

25 **A** That's correct.

1 Q And you advised him of his rights about what, 20
2 minutes earlier?

3 A That's correct.

4 Q And then you were able to reduce what he told you
5 into a written form?

6 A Yes, ma'am.

7 Q And prior to reducing it to written form, was he able
8 to basically relate most of this information to you?
9 How did that work?

10 A I asked him about the incident. He was fully aware
11 of what I had a warrant on and was charging him with.
12 I asked him, you know, what he could tell me about
13 the incident. He gave me a synopsis of what had
14 happened. Once he had done that, I reduced that
15 synopsis to this statement and then I asked him
16 several or quite a few follow-up questions that I had
17 beyond what he had told me. And that was also put in
18 his statement.

19 Q And, in fact, in his statements, did he indicate how
20 he knew he was wanted for the robbery and to turn
21 himself in?

22 A Yes. A family member.

23 Q Had seen him on TV?

24 A Yes.

25 Q During this time period when he was giving you

1 information, you were actually typing it in I believe
2 into a computer?

3 **A** Yes. We had already --

4 **Q** Where did the questioning take place?

5 **A** At the Sheriff's Department headquarters in the
6 investigative division. I have a cubicle, a desk and
7 a file cabinet and a couple of chairs. I sat at my
8 desk and he sat right beside me and just talked, and
9 I typed what he told me.

10 **Q** Once you had reduced it to a typewritten form, did he
11 have an opportunity to review it? Did you go over it
12 with him?

13 **A** Yes. I always, once we have completed a statement, I
14 print it off, I hand it to them. Like I stated
15 before, he advised he graduated from high school, was
16 able to read and write; hand it to them and let them
17 review it, tell them that if there's any corrections
18 I need to make, typos, wording, this is their
19 statement, they need to tell me what I need to
20 change. So we went through that. If he would have
21 had any corrections that we needed to make, we'd have
22 made them at that time, and then I would have printed
23 out an additional copy of the corrected form and had
24 him review it again. And then if it was what he
25 wanted, then we would sign it.

1 **Q** And even at the end of the statement I believe you
2 even asked the question of if there's anything he
3 wishes to add to the statement?

4 **A** Correct.

5 **Q** And did he indicate that was all that he wanted to
6 relate to you that day?

7 **A** Right.

8 **Q** Once he was able to review the four-page document,
9 did he then acknowledge it as being his statement?

10 **A** He did.

11 **Q** And how did he do that?

12 **A** He signed it.

13 **Q** On all four pages?

14 **A** On all four pages. And he was also provided a copy
15 of it.

16 **Q** And was anybody present there when he was signing it
17 to notarize it?

18 **A** He did. Sergeant Don Robinson notarized it.

19 **Q** And State's Exhibit No. 4 is the actual original that
20 was signed by him?

21 **A** That is the original.

22 **MS. CAMPBELL:** Your Honor, may I approach?

23 **THE COURT:** Yes, ma'am. Have you seen this,
24 counsel?

25 **MR. SUTHERLAND:** Briefly, if I can look at the

1 advice of rights.

2 (Pause)

3 **MR. SUTHERLAND:** Okay. Thanks.

4 (Document handed to the Court)

5 **Q** Once you were able to reduce his statement into a
6 typewritten form and he signed off on it, was he then
7 transported to the jail?

8 **A** Not directly. Like I said, actually his mother and
9 girlfriend were there. And I think he requested and
10 asked could he see them before he went to jail. And
11 I actually went down and got them and brought them
12 up, let them speak for a little bit while I think I
13 waited on the paddy wagon to arrive. And then, yes,
14 he was transported after that to the detention
15 center.

16 **Q** At any point that day when you were talking to him,
17 did he ever request a lawyer?

18 **A** No, he did not.

19 **Q** Did he ever tell you he didn't want to talk to you
20 any more?

21 **A** No, he did not.

22 **Q** Did you ever make any threats or promises or use any
23 kind of coercion to make him talk to you?

24 **A** No, ma'am. He was very open.

25 **MS. CAMPBELL:** That's all I have for this

1 witness, Your Honor.

2 **MR. SUTHERLAND:** May it please the Court, Your
3 Honor?

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

5 CROSS EXAMINATION

6 **BY MR. SUTHERLAND**

7 **Q** Investigator Ellis, you testified during your
8 testimony, you said that this, what you had typed up,
9 was a synopsis of -- that's how you characterized it?

10 **A** That might have been the word I used.

11 **Q** Okay.

12 **A** It's what he told me.

13 **Q** Okay. But, you know, a synopsis is a sort of
14 distillation of a larger context. You specifically
15 used the word "synopsis". So you reduced your
16 conversation with Michael to what's contained within
17 the statement?

18 **A** Correct.

19 **Q** Okay. How long -- I didn't hear on direct -- how
20 long was he sitting there talking to you?

21 **A** I don't have the statement in front of me any more.
22 I'm not -- I'm not sure. I think it started at like
23 1712 or 15 or something like that, which would be
24 5:15 in the afternoon. We typed the statement, and
25 then at 18 --

1 Q There you go.

2 A We started at -- he arrived at the office at 4:55.

3 The statement started at 5:12. And at 6:47 he signed
4 a consent to search form for DNA.

5 Q And there's still more, a couple more questions after
6 that, right? You asked him a couple more questions
7 after he signed the --

8 A No. That's the actual time.

9 Q Oh, yeah. I mean, I think you put in there that he
10 signed at 6:47. He signed a consent to search for
11 DNA or whatever you all call it. And there were a
12 couple more questions after that. So we're talking
13 about this statement ended up pushing towards 7:00
14 beginning with the advice of rights -- or wait a
15 minute. Was it 4:55? That's when he met you at the
16 lobby. And was it 5:12 or 1712 that the advice of
17 rights was signed?

18 A Yeah. No. 4:55 is when the advice of rights was
19 signed.

20 Q Oh. Okay. So pretty much right away after you met
21 him, then you had him sign that paper?

22 A Yes. That's the first time I was with him, was 4:55.

23 Q So we're sort of looking at about a two-hour period
24 here. And how long is that statement?

25 A Four pages.

1 **Q** All right. Now, there's some of it -- well, I don't
2 want to mess around with this too much. All of this
3 stuff is notarized. And there's a bunch of questions
4 and, you know, this, that and the other on the
5 bottom. I mean, these are condensed down to where
6 it's down maybe three quarters -- should I slow down?

7 **COURT REPORTER:** No. That's okay.

8 **MR. SUTHERLAND:** Oh. I thought you were giving
9 me the look.

10 **COURT REPORTER:** No.

11 **Q** We'll slow down. It's about three quarters of a page
12 maybe on each page once you take all of the headings
13 and the --

14 **A** Sure.

15 **Q** Okay. So what we're really looking at, we're looking
16 at about three pages here including your question and
17 answer, and this is over a period of about two hours?

18 **A** Yeah. I mean, it takes a little bit of time. You
19 know, that's probably pretty consistent with
20 interviewing and talking with people. I mean, I even
21 see in here where I went and got the photos to show
22 him. So that would have taken time to look at the
23 photos of the actual video. And he stated that it
24 was him.

25 **Q** All right. And Michael -- so Michael turns himself

1 in. You brought him up to your office. And he was
2 under arrest at that time?

3 **A** That's correct. We had a warrant for him.

4 **Q** He was under arrest at that time. Okay. He told
5 you -- I see this. I recognize this in your report.
6 He told you that he had been smoking crack for
7 several days? Do you remember that?

8 **A** That's in my report. Yeah. I think it was on
9 Sunday, if I recall correctly.

10 **Q** And did he mention anything to you about alcohol or
11 other drugs, consuming other drugs?

12 **A** Without reading this whole thing, I remember the
13 crack and I see the crack in here that he had been
14 smoking for a couple of days.

15 **Q** Just, did you smell any booze or anything?

16 **A** I don't recall smelling any.

17 **Q** Okay.

18 **A** I don't have it indicated.

19 **Q** Now, if -- I mean, you have a lot of experience as an
20 officer. If somebody stays up for five or six days
21 smoking this stuff or snorting it or whatever; I
22 mean, it has an impact on the body. It has an impact
23 on the mind. Did you ever work narcotics?

24 **A** No, sir.

25 **Q** But ultimately, common knowledge as far as police

1 officers go, if somebody sits up smoking crack for
2 five or six days, it's going to be problematic for
3 them?

4 **A** If you say so. I guess. I never did it.

5 **Q** I'm just asking you.

6 **A** I don't know.

7 **Q** What I'm trying to get at --

8 **A** I know he clearly understood exactly what we were
9 doing. He was very coherent.

10 **Q** He was very coherent?

11 **A** He knew what was going on. He was very open about
12 what had happened and his past, as you see in my
13 report, telling me about what he had done.

14 **Q** Yes.

15 **A** So he was very coherent about what he was telling me.

16 **Q** All right. But did you at any time consider maybe
17 some sort of drug test or alcohol test? If you get
18 somebody in there that tells you they've been
19 shooting heroin, smoking, snorting Drano or whatever
20 for six or seven days, do you ever consider letting
21 them dry out for a period of time or at least drug
22 testing them or something, just trying to make sure
23 that -- I mean, if somebody comes in there on LSD or
24 something, maybe other than, you know, pupils or
25 something, they could look completely normal to you.

1 What I'm getting at is, when somebody tells you that
2 they were smoking crack for five or six days in a
3 row, it doesn't raise any sort of concerns with you,
4 I mean, medically? I mean, that stuff is supposed to
5 make your heart race. It doesn't throw up any flags
6 with you?

7 **A** I'm not sure about that. But he was extremely
8 coherent. I had no concerns about him at that point
9 in time when he was sitting in my office. I had no
10 concerns about his medical --

11 **Q** Was he upset?

12 **A** I think he was emotional about being caught.

13 **Q** Well, about being caught perhaps. But turning
14 himself in --

15 **A** Sure.

16 **Q** -- and not necessarily being caught. But didn't he
17 tell you that he lost his job?

18 **A** Mm-hmm (affirmative).

19 **Q** He lost his girlfriend?

20 **A** Yes.

21 **Q** They cut the power off to his apartment or whatever
22 this thing is?

23 **A** Yes.

24 **Q** And I think there might have been a couple of other
25 things. But he's going through this litany of

1 horrible things. And I think --

2 **A** He was worried about the life sentence. I remember
3 him saying that. He knew about that.

4 **Q** Okay. But you know what I'm talking about, and you
5 can talk about that at another time if you wish. But
6 he is telling you all the things that are going
7 wrong. His girlfriend is leaving him. You know, he
8 had the power cut off to his house. He's been
9 smoking crack for several days. I think you were
10 made aware; was it Deputy Grant had run into him
11 maybe two days prior?

12 **A** It would have been four days prior to me interviewing
13 him; a day prior to the robbery.

14 **Q** And he sort of went through the same thing with just
15 speaking about what he says and what y'all were
16 talking about. Well, he sort of went through the
17 same thing with Grant, didn't he, as far as the
18 problems, the list of problems that he was having?

19 **A** I'm not sure if it was him or his girlfriend. But
20 Grant has a follow-up in there that details his
21 encounter with him.

22 **Q** But you have been willing to concede that he was
23 emotional, though you say it's about getting caught.
24 But he did at least describe to you these other
25 things that were going on that were affecting him?

1 **A** He told me about them. Yes.

2 **Q** Okay. And he --

3 **A** But for me, when you're -- you were asking my opinion
4 of sitting there interviewing him, he is telling me
5 all this stuff. He's telling me about going to
6 prison for life. He's telling me about his
7 girlfriend, his electricity.

8 **Q** Did you put that in there?

9 **A** Put what in where?

10 **Q** In the report about going to prison for life?

11 **A** I don't know.

12 **Q** I have a --

13 **A** But he was coherent enough to remember all that, is
14 the point I'm getting to. To remember that list of
15 things that you were just talking about, he was
16 coherent enough to remember all that.

17 **Q** Well, I mean, you could be talking --

18 **A** He wasn't jumping all around in his seat and his
19 feet, you know, just acting all crazy; wasn't acting
20 crazy sitting there. So I had no concerns about it.

21 **Q** I mean, you could be talking to somebody who is
22 totally insane and they could seem normal to you?

23 **A** Well, I mean, I'm an investigator. I'm not a doctor.
24 So he looked coherent to me.

25 **Q** All right. Okay. Well, that is interesting that you

1 said that. Did you think from what you were hearing
2 about the systemic drug use and about the different
3 problems that he was having and that he was getting
4 emotional because of being caught you say; but at any
5 point did you think maybe that he should be seen by a
6 doctor or maybe be seen by a psychiatrist?

7 **A** No.

8 **MR. SUTHERLAND:** Okay. Beg the Court's
9 indulgence. Your Honor, I have no further questions
10 at this time, sir.

11 **MS. CAMPBELL:** Just a couple.

12 REDIRECT EXAMINATION

13 **BY MS. CAMPBELL**

14 **Q** He asked you about his history of systemic drug use.
15 You specifically asked him when the last time was
16 that he had smoked crack. Is that correct? The
17 third page of your statement, of the statement?

18 **A** Yes.

19 **Q** And when did he indicate was the last time prior to
20 you talking to him on the 19th when he had smoked any
21 crack?

22 **A** The night before the robbery.

23 **Q** And the robbery occurred on the 16th?

24 **A** Correct.

25 **Q** So that would have been some four days prior to you

1 talking to him on the 19th?

2 **A** That would have been on the 15th where he was
3 referring to Deputy Grant getting up with him.

4 **Q** And you saw absolutely no signs that he was in any
5 way under the influence of anything?

6 **A** I did not.

7 **Q** You didn't smell any alcohol?

8 **A** I did not.

9 **Q** He didn't appear to be slurred, incoherent or
10 anything of that nature?

11 **A** No, ma'am.

12 **Q** And as a matter of fact, he was able to relate to you
13 many details in your statement, including about the
14 girlfriend which is in here, as well as everything
15 else?

16 **A** Correct.

17 **Q** Thank you.

18 **MR. SUTHERLAND:** May it please the Court?

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

20 RE CROSS EXAMINATION

21 **BY MR. SUTHERLAND**

22 **Q** You just said -- you got your report?

23 **A** Sure.

24 **Q** All right. Because what I am seeing -- and there was
25 one that looked -- I sort of got two versions; or not

1 versions, two copies of your report that look a
2 little bit different. This one that I'm looking at,
3 he hasn't been on crack since the Sunday before the
4 incident and had been in an argument with his girl,
5 Wendy Lake. He would continue to smoke crack until
6 eventually going home where he stated he hasn't been
7 in several weeks? Where is that --

8 **A** I don't know where you're reading from.

9 **Q** Oh. 2-19, 1655 hours. That's what Ms. Campbell was
10 just directing you to I believe.

11 **A** No. She had a statement.

12 **MS. CAMPBELL:** His sworn statement.

13 **A** She had page 3 of his sworn statement which was a
14 question that I directly asked him.

15 **Q** Oh. All right.

16 **A** Do you want me to refer to something here?

17 **Q** Yeah. I'm just asking you to go through -- hold on
18 just a second. All right. We're good to go. I have
19 no further questions at this time, Your Honor.

20 **THE COURT:** All right, sir. You may come down.

21 **THE WITNESS:** Thank you.

22 **THE COURT:** Anything further on this issue?

23 **MS. CAMPBELL:** Nothing further on this issue,
24 Your Honor.

25 **THE COURT:** The defendant?

1 **MR. SUTHERLAND:** May it please, sir; for the
2 purposes of this hearing, I'd like to call Michael
3 Paul Cornelius.

4 **THE COURT:** Come around.

5 **THE CLERK:** Raise your right hand. Place your
6 left hand on the Bible. Face the clerk.

7 MICHAEL P. CORNELIUS, after being duly sworn,
8 testifies as follows:

9 **THE CLERK:** Have a seat in the witness box.
10 State your name for the record.

11 **THE WITNESS:** Mike Cornelius.

12 DIRECT EXAMINATION

13 **BY MR. SUTHERLAND**

14 **Q** Mike, I want to ask you, do you remember the first
15 time I came down to see you at the jail?

16 **A** Yeah.

17 **Q** I asked you to tell me about your statement. I'd
18 like you to tell the Court and to tell me effectively
19 what you told me at that time what you remember about
20 your statement?

21 **A** I didn't remember too much because I was under the
22 influence.

23 **Q** Now, when you're saying that you're under the
24 influence, of what? Of what?

25 **A** Of crack cocaine and alcohol.

1 Q Do you remember -- is there anything else? Just
2 crack cocaine? What kind of alcohol?

3 A Just beer, liquor.

4 Q Okay. So your testimony is that you don't remember
5 making this statement. Do you remember being at the
6 police station?

7 A I remember going there. Yes.

8 Q Do you remember being Mirandized? Do you remember
9 signing anything?

10 A No, sir.

11 Q So these things, this statement, you don't remember
12 signing that?

13 A No, sir. Not to my recall.

14 Q And you don't remember Ellis going through the waiver
15 of rights with you?

16 A No, sir.

17 Q I had read from the discussion, had it been several
18 days? Had it been a week? How long were you smoking
19 the stuff and were you drinking alcohol?

20 A It was --

21 Q You're not sure?

22 A -- five or six days. It was a pretty long period of
23 time.

24 **COURT REPORTER:** Excuse me. Excuse me, Your
25 Honor. Could he scoot up to the microphone, please?

1 Q Oh, I'm sorry. So your testimony is five or six days
2 smoking crack and drinking alcohol?

3 A Yes, sir.

4 Q And nothing else. Do you know if you smoked crack or
5 if you used alcohol on the day -- you testified that
6 you sort of remember being at the police station?

7 A Yes. I -- yes.

8 Q On the day that you went there, I believe your mother
9 took you there?

10 A Yes, sir. That's it. Yes.

11 Q Did you smoke or did you drink alcohol that day?

12 A Yes, sir.

13 MR. SUTHERLAND: All right. I have no further
14 questions of this witness at this time, Your Honor.

15 THE COURT: Ms. Campbell.

16 CROSS EXAMINATION

17 BY MS. CAMPBELL

18 Q Do you remember why you went to the Sheriff's
19 Department?

20 A Excuse me?

21 Q Do you remember why you went to the Sheriff's
22 Department?

23 A Yes. My mother, she called and talked to me and told
24 me to come go with her.

25 Q Okay. And when you got there, do you remember

1 meeting Sergeant Ellis?

2 **A** No -- not -- not --

3 **Q** Do you remember him placing you under arrest?

4 **A** I remember going up and talking to him.

5 **Q** Okay. So you did talk to him that day?

6 **A** Yes.

7 **Q** And do you remember relating to him that you had gone
8 through the 12th grade and graduated from Spring
9 Valley High School?

10 **A** No, ma'am.

11 **Q** Is that true?

12 **A** Yes, ma'am.

13 **Q** Do you remember telling him that you can read and
14 write?

15 **A** I mean, I don't remember. I was --

16 **Q** Is that true?

17 **A** I don't remember too much from that night.

18 **Q** Is it true you can read and write?

19 **A** Yes, ma'am.

20 **Q** And do you remember telling him that you knew you
21 were wanted for a robbery in Blythewood and that's
22 why you turned yourself in?

23 **A** I remember my mother saying something to me about it
24 when she came and picked me up.

25 **Q** And do you remember telling him that you knew that?

1 And do you remember telling him that you got a call
2 from a family member and they asked you what you had
3 done; you stated you were on TV?

4 **A** No.

5 **Q** Was that the truth though?

6 **A** I heard it from my mother.

7 **Q** And do you remember signing off on this advice of
8 rights form after being advised of your rights?

9 **A** No, ma'am.

10 **Q** But you aren't disputing you were advised of your
11 rights?

12 **A** Excuse me?

13 **Q** You aren't disputing that you were advised of your
14 rights?

15 **A** No. I don't know. I can't recall.

16 **Q** Is that your signature?

17 **A** Yeah. It could be.

18 **Q** Is that your signature down at the bottom of the
19 page, too?

20 **A** Yeah.

21 **Q** No dispute about that?

22 **A** (Nods head affirmatively).

23 **Q** Is it true that your girlfriend's name is Wendy Lake?

24 **A** Yes, ma'am.

25 **Q** And that would have been information you gave

1 Sergeant Ellis?

2 **A** If he -- it could be. I mean --

3 **Q** Was it true that y'all got stopped over on Percival
4 Road when you were in an argument?

5 **A** Yeah.

6 **Q** And that's here in this statement?

7 **A** I read it in the statement. My lawyer went over it
8 with me. It's in the statement.

9 **Q** And is it true that your mother had turned off the
10 lights on the shed?

11 **A** I'm not sure if she did. I mean, they was off. I
12 haven't been there. When I went there, the lights
13 was already off.

14 **Q** But you acknowledge that's in this statement?

15 **A** Yes. That's what it said in the statement.

16 **Q** And you remember telling him about how you had gone
17 over and borrowed Aunt Diane's truck?

18 **A** Yes.

19 **Q** And that's in the statement?

20 **A** I don't know.

21 **Q** And do you remember telling --

22 **MR. SUTHERLAND:** Your Honor, if I may briefly.
23 The only objection is that he's already testified
24 that he doesn't remember this. And, you know, Ms.
25 Campbell is sort of going line by line. She hasn't

1 gotten into -- she's sort of creeping towards outside
2 the scope of the hearing if we're going to get into
3 facts that are at issue in the trial, sir, with
4 respect to the offenses.

5 **THE COURT:** Well, I mean, the issue is
6 voluntariness.

7 **MR. SUTHERLAND:** Yes, sir.

8 **THE COURT:** The problem is getting to be that he
9 admits certain things but denies that they're in the
10 statement or denies that he realized that they were
11 in the statement.

12 **MR. SUTHERLAND:** And this is what's sort of
13 beginning to get to me here. He's already testified
14 he doesn't remember making the statement. And,
15 therefore, we're approaching factual matters that I
16 think are outside the scope of the hearing, I mean,
17 if she is going to go line by line through everything
18 that he remembers.

19 **THE COURT:** I read it. I know what's coming.
20 The question I have is how do you challenge his
21 statement, that it's an involuntary statement, other
22 than just accepting his testimony that it's
23 involuntary?

24 **MR. SUTHERLAND:** Well, ultimately, he's
25 testifying --

1 **THE COURT:** If he has knowledge of what's in the
2 statement, unless he just read it recently, I mean.

3 **MR. SUTHERLAND:** Well, I mean, he and I have
4 been over it. He knows what the evidence is in the
5 case. But with respect to the voluntariness of the
6 statement, what Mike has testified is that he just
7 doesn't remember making the statement and he doesn't
8 remember signing the thing. And just as we move
9 along towards getting towards individual facts --

10 **THE COURT:** Facts.

11 **MR. SUTHERLAND:** Yes, sir. I mean, do you
12 remember this; do you remember that; but this, but
13 that; she's sort of starting to slip over into the
14 area.

15 **THE COURT:** Of cross examination.

16 **MR. SUTHERLAND:** But outside the scope of the
17 hearing only with respect to voluntariness, sir.

18 **MS. CAMPBELL:** And if he --

19 **MR. SUTHERLAND:** I mean, it's getting towards
20 the facts of the case.

21 **THE COURT:** I understand. Yes, ma'am.

22 **MS. CAMPBELL:** I just don't know how else to
23 cross him on voluntariness.

24 **THE COURT:** Well, I'm sure you do. Other than
25 ask him directly to either affirm or deny the facts

1 of the case which are outside, I think Mr. Sutherland
2 says, the issue of voluntariness.

3 **MS. CAMPBELL:** And maybe I just need guidance.
4 I don't know where to go.

5 **THE COURT:** Well, you can go through the
6 statement, but what you may or may not have intended
7 is asking him if these -- take the shed. If these
8 acts of these facts, you're asking him to confirm
9 facts outside the giving of the statement.

10 **MS. CAMPBELL:** The only thing, that's
11 information that he would have to have provided to
12 the police. That's the only reason I'm going through
13 it as far as voluntariness. It would show
14 voluntariness and coherentness [sic] as far as going
15 to voluntariness.

16 **THE COURT:** But what you're doing is asking him,
17 doesn't the statement say this? He says he doesn't
18 remember. And then you say: But didn't this really
19 occur? Which is outside the issue of voluntariness.
20 I think that's Mr. Sutherland's point.

21 **MR. SUTHERLAND:** That's exactly what I'm saying.
22 I mean, every statement by every defendant -- you
23 would be able to question every defendant on
24 voluntariness. You could just go through the meat.
25 Well, didn't this happen? Isn't it true that you

1 were at such-and-such an address at such-and-such a
2 time? When the issue is the facts surrounding the
3 making of the statement. And she's just going
4 through the individual facts.

5 **THE COURT:** Let me ask you to approach the
6 bench, please.

7 **MR. SUTHERLAND:** Yes, sir.

8 (Whereupon, a bench conference is had)

9 **Q** (By Ms. Campbell) Mr. Cornelius, have you had an
10 opportunity to review this statement?

11 **A** Yes, I have.

12 **Q** Look at it?

13 **A** I have when my previous lawyer went over it with me.

14 **Q** And this here on the first page of the statement
15 labeled Michael Paul Cornelius, is that in fact your
16 signature?

17 **A** I don't -- I'm -- I'm basically confused. I mean, I
18 haven't -- I talked to my old lawyer and everything.
19 I'm just getting this lawyer here. I don't ...

20 **Q** Is that your signature?

21 **A** It looks like my signature.

22 **Q** And then on page 2, in those two places, is that your
23 signature?

24 **A** Yes. It could be my signature.

25 **Q** Okay. Page 3, on this page, is that your signature

1 twice?

2 **A** Yes.

3 **Q** And finally on page 4, is that your signature?

4 **A** Yes, it is. Yeah.

5 **Q** Okay.

6 **MS. CAMPBELL:** That's all I'd have, Your Honor.

7 **MR. SUTHERLAND:** Just briefly.

8 **THE COURT:** Sure. Remember this is only a
9 preponderance of the evidence standard.

10 **MS. CAMPBELL:** I was going to say, if he opens
11 the door --

12 **THE COURT:** This is only a preponderance of the
13 evidence standard. I shouldn't have to repeat that.

14 **MR. SUTHERLAND:** Yes, sir.

15 REDIRECT EXAMINATION

16 **BY MR. SUTHERLAND**

17 **Q** And so again, Mike, your testimony is you just don't
18 remember?

19 **A** Yes.

20 **MR. SUTHERLAND:** Nothing further.

21 **THE COURT:** All right, sir. You may come down.
22 All right. What's your position on the statement,
23 Mr. Sutherland?

24 **MR. SUTHERLAND:** With respect to the statement,
25 Your Honor, I have a South Carolina Supreme Court

1 case from 1973. It's State vs. Saxon. If I may
2 approach, sir. And it sets out the rule with respect
3 to voluntariness where an individual is intoxicated.
4 And effectively what it says: This is turning down
5 an individual who claims to be intoxicated but at the
6 same time was able to get up there and confirm
7 certain things.

8 Michael's position on the stand is no different
9 than his position has been all along. He doesn't
10 remember this thing. And the rule is on page 4 of 5.
11 The fact that one is intoxicated at the time the
12 confession is made does not necessarily render him
13 incapable of comprehending the meaning and effect of
14 his words. Therefore, proof that an accused was
15 intoxicated at the time he made the confession does
16 not render the statement inadmissible as a matter of
17 law unless the accused's intoxication was such that
18 he did not realize what he was saying.

19 And that is the point of law that was able to
20 match up with what I discovered in speaking with Mike
21 about the case. He told me he had no memory of this.
22 He's testified that he has no memory of making this
23 statement, barely a memory of turning himself in,
24 spending time at the police department.

25 So the voluntariness hinges -- you know, it's

1 true that he was in custody for a couple of hours,
2 and it's true that this was a synopsis or a
3 distillation of what appears to be a much larger
4 conversation. But ultimately, where he is unable to
5 recall or realize what was being said, what was being
6 done, Your Honor, that's an involuntary statement due
7 to the crack use and due to the intoxication of
8 liquor. And if there are any other drugs, I'm
9 unaware, sir. But the statement is involuntary on
10 that basis, and that's the defense argument.

11 **THE COURT:** What's the State's position?

12 **MS. CAMPBELL:** The State's position is in his
13 own case, in this case there's actually credible
14 evidence that this defendant was intoxicated at the
15 time, that he had been drinking heavily and that he
16 was not acting normally, I believe is the language at
17 the bottom of page 4.

18 It says that the fact that one is intoxicated at
19 the time of confession does not mean necessarily it
20 would render him incapable of comprehending the
21 meaning and effect of his words. And, therefore, it
22 goes back to the basic totality of the circumstances.
23 And in this case I think it would be a credibility
24 issue.

25 I think another case on point, Your Honor, is

1 the State vs. Alfonso Simmons which is your case.

2 **THE COURT:** Yes. I'm familiar with that.

3 **MS. CAMPBELL:** Which I would be glad to hand up
4 at this time, which is a 2009 opinion, Your Honor.
5 It talks about properly considering the credibility
6 of witnesses.

7 **THE COURT:** Right. And the statement says he
8 smoked crack the night of the robbery which was
9 purportedly three days --

10 **MS. CAMPBELL:** Prior to this.

11 **THE COURT:** -- prior to the statement. The
12 officer didn't say that he noticed any abnormality
13 about his speech or mannerisms. Intoxication at the
14 time of the statement is one thing. The officer said
15 he smelled no -- admittedly, he's probably not going
16 to smell anything from the use of the crack or the
17 cocaine. If he was intoxicated from the use of
18 alcohol, there's a likelihood the officer could have
19 perceived that through some overt smell.

20 I just think because it is a preponderance of
21 the evidence standard and, I mean, I have to judge
22 the credibility of the witnesses, it's not unusual
23 for a witness to say that they don't remember or they
24 may have been under the influence of something.

25 If the statement was taken in what I would

1 consider a fairly traditional manner, I'm not sure I
2 can agree with your position that he was so
3 intoxicated either from the use of crack or alcohol,
4 that the statement was given involuntarily. I mean,
5 I just don't see that there's enough evidence to
6 support that position.

7 **MR. SUTHERLAND:** Yes, sir. And that's just
8 the -- the evidence that I have is, you know,
9 speaking with my client and reading through the
10 investigative report.

11 **THE COURT:** Well, now, I have not --

12 **MR. SUTHERLAND:** Yes, sir.

13 **THE COURT:** I have not seen any investigative
14 report. All I have is this and the testimony of the
15 officer and the testimony of your client.

16 **MR. SUTHERLAND:** Oh. And that's where when I
17 was cross examining him about that, didn't he say to
18 you that he had smoked crack for five days, that kind
19 of stuff, sir.

20 **THE COURT:** Right. Well, all right. I
21 respectfully deny your motion to suppress the
22 statement. I find that the statement was given from
23 the defendant. He was fully advised of his rights
24 under the Fifth and Sixth Amendments to the
25 Constitution, and he was advised of his

1 Constitutional safeguards required by Miranda v.
2 Arizona.

3 He was advised that he had the right to remain
4 silent. He was advised prior to any interrogation
5 that if he waived his right and made a statement, the
6 statement could and would be used against him in a
7 court of law.

8 He was advised prior to interrogation he had the
9 right to select an attorney of his own choice and
10 that if he did not have the funds or resources to
11 employ an attorney the State would appoint and pay an
12 attorney for him. He had a right to consult with his
13 attorney prior to any interrogation.

14 And I find based on a preponderance of the
15 evidence that he knowingly and intelligently waived
16 his rights under the Fifth and Sixth Amendments to
17 the Constitution, that the statement was given freely
18 and voluntarily without duress, coercion, undue
19 influence, reward, promise of reward, promise of
20 leniency, without threat of injury and without
21 compunction or inducement of any other kind such that
22 the statement was the voluntarily product of the free
23 and unconstrained will of the defendant. I find that
24 by the preponderance of the evidence. Of course you
25 can argue as you wish to the jury, but I think it can

1 go to the jury.

2 As to the in-court identification, what's your
3 position, Mr. Sutherland?

4 **MR. SUTHERLAND:** Again, going back to the
5 in-court identifications with respect to the two
6 victims in the case who testified earlier, Neil v.
7 Biggers, again my position is that for a law
8 enforcement officer to put a picture in a line-up of
9 an individual wearing distinctive clothing, it's
10 clearly available on video that was testified to and
11 written about somewhat; and further, if he'd taken
12 statements from these individuals, maybe there would
13 have been more evidence there or information to flesh
14 this thing out at the time instead of 16 months
15 later.

16 But the position is that's inherently suggestive
17 to put distinctive clothing on a person. I think I
18 used the analogy of having four people with
19 eyeglasses and one person with a monocle in a
20 line-up. I believe that's inherently suggestive, and
21 I believe that it ultimately in light of the totality
22 of the circumstances would have tainted the
23 identification by both individuals.

24 With respect to Mr. Green, he did testify about
25 viewing him from a certain angle at a certain

1 distance outside under canopy lights. This is in the
2 middle of the night. He did say that there was
3 lighting from the canopy, but he did say that he was
4 30 or 40 feet away at the time looking at an angle
5 from the rear, as the truck drove away that he
6 spotted the individual. He also further testified
7 that he did review the video with the regional people
8 from the security company.

9 So with respect to the identification based on
10 that encounter there, that looking sideways from the
11 truck, I don't think that he had much of an
12 opportunity to view him, sir. He testified I do
13 believe that it was at most 15 seconds and that the
14 car was in gear and that he was trying to drive off.
15 This was at an angle.

16 With respect to Ann, I understood with Ms.
17 Beltrami, I understood her to say that she had this
18 training in how to handle situations like this so
19 that she was trying to concentrate on the face during
20 this, ultimately, in the video, it looks to me from
21 entering to leaving maybe 20 seconds tops. But in
22 the time between her taking care of her duties as far
23 as standing up and speaking to him and being that
24 close to him, it appears to me it couldn't have been
25 ten seconds; you know, maybe five seconds. And this

1 is from watching the video that Ms. Campbell has put
2 in as a court exhibit.

3 I don't -- she testified that she was looking
4 back and forth and looking to the knife and she was
5 trying to focus on the face. I don't think that we
6 have an opportunity to view to the extent that would
7 outweigh the suggestibility of putting that picture
8 of him in the jacket in the line-up.

9 So ultimately, prong one is certainly
10 suggestive. Even though I don't think we've had the
11 opportunity to have case law on point with respect to
12 this outside the show-up line-up. But with respect
13 to the totality of the circumstances, it's my
14 position with respect to both of those that the
15 suggestive line-up offered by Investigator Ellis
16 irretrievably tainted the subsequent chance for them
17 to come into court and identify him in front of the
18 jury, Your Honor.

19 **THE COURT:** All right. I'm going to look at the
20 video overnight and I'll let you know about this one
21 in the morning.

22 **MS. CAMPBELL:** Your Honor, may I hand up some
23 case law?

24 **THE COURT:** Yes, ma'am.

25 **MS. CAMPBELL:** I believe The State vs. Tisdale

1 talks about reviewing the video. And State vs.
2 Willie Campbell, Scipio and Stuart addresses
3 suggestiveness.

4 **COURT REPORTER:** Addresses what?

5 **MS. CAMPBELL:** Suggestiveness. I'm sorry. I
6 can't say that.

7 **THE COURT:** All right. And, Mr. Sutherland,
8 I'll hear your search warrant issue in the morning at
9 9:00.

10 **MR. SUTHERLAND:** Yes, sir. Thank you, Your
11 Honor.

12 **THE COURT:** The jury is not coming until 9:30.

13 **MR. SUTHERLAND:** Yes, sir.

14 **THE COURT:** All right. Let's stand at ease
15 until 9:00. Where is the video, Ms. Campbell?

16 **MS. CAMPBELL:** It's right there, Your Honor.

17 (Whereupon, the proceedings are concluded for
18 the day, to be reconvened tomorrow morning)

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24

25

1 Tuesday, June 8, 2010

2 **THE COURT:** All right. With regard to the
3 in-court identifications by Ricky Green and Beltrami,
4 I find that both witnesses had an ample opportunity
5 to view the accused. The lighting was certainly
6 sufficient or more than sufficient. The witness,
7 Beltrami, had a close, face-to-face encounter with
8 the defendant. The witness, Green, said he saw him
9 face-to-face as he was in the pick-up truck leaving
10 the scene after he ran outside to get the license
11 plate. .

12 Both of them demonstrated a certain certainty
13 when confronted with the photo line-ups. Neither of
14 them hesitated, according to Officer Ellis, in
15 identifying the accused as the perpetrator of the
16 armed robbery.

17 I don't recall a lot of testimony about their
18 descriptions of the defendant, but the officer
19 apparently had enough to go on to locate the file
20 copy of the defendant plus the video of the
21 defendant. And the reports came in after the media
22 release that the defendant was certainly a suspect in
23 this crime.

24 The confrontation was fairly -- that is, the
25 in-court identification -- I mean, the photo line-up

1 identification was fairly close in time to the actual
2 robbery. So I find that -- and I find that the
3 witnesses, particularly Ms. Beltrami, had a
4 recollection of the defendant's face and the diamonds
5 that were on the jacket that he wore. She didn't
6 identify him from the pattern on the hood. She said
7 she remembered the -- in other words, her
8 recollection of the person who committed the robbery
9 was based on facial features and the diamonds on the
10 jacket.

11 I did review the video. I'm not sure that even
12 the pattern on the -- was -- it's from a camera. And
13 it's fairly quick. But I'm not sure that the pattern
14 on the hood itself was all that visible. It seemed
15 like it, but I couldn't tell that it had a pattern on
16 it from the camera angles.

17 So I do feel that there was not a sufficient
18 taint, if any, to the out-of-court identification;
19 and, thus, I find that the in-court identification
20 would be proper in this case.

21 Now, Mr. Sutherland, you said you had a motion
22 regarding the search warrant.

23 **MR. SUTHERLAND:** Yes, sir. I do move -- I would
24 move to suppress at this time any evidence obtained
25 from the search of his residence.

1 **THE COURT:** Tell me factually what happened.

2 **MR. SUTHERLAND:** Factually, I believe it was
3 Investigator Caldwell and I think Bell and Hall
4 approached the Cornelius property with an arrest
5 warrant. They were looking for Mike and they had a
6 warrant for his arrest. They got onto the property
7 and they received consent to search. And again, I
8 don't have reports on these, so --

9 **THE COURT:** What does the property consist of?

10 **MR. SUTHERLAND:** Oh. The property is a main
11 house which is where the family lives, and there is
12 what's called on a consent to search form a studio
13 apartment in a shed behind the house where Mike
14 lives. And they received consent to --

15 **THE COURT:** It's separate, detached?

16 **MR. SUTHERLAND:** Yes, sir. Separate and
17 detached. And separate power. From the testimony
18 yesterday, the power had been cut off to his place
19 and separately from the other one. And what happened
20 was they approached with an arrest warrant and they
21 received a consent to search from the homeowner but
22 not from Mike who is the -- has the property interest
23 and the privacy interest in the studio apartment in
24 the back. So in that regard, you can't have third
25 party consent for somebody else's residence.

1 And also with respect to them having an arrest
2 warrant and their limited authority, this is
3 something that I'd like to explore during the hearing
4 because there are no reports, other than I think
5 Ellis and Isenhoward have two reports that are
6 different. And I'd just like to hear from the
7 officers that were there with respect to the limited
8 authority to enter a premises with an arrest warrant.

9 But the consent, it's my belief that the consent
10 is definitely bad. And I believe that the entry
11 ultimately will prove to be bad if we can get the
12 testimony from them as to exactly what happened.
13 Because they were proceeding under consent. They had
14 the arrest warrant, but they still -- their authority
15 is limited. It's almost as if they didn't have
16 consent at all because that was invalid.

17 . So with respect to them entering, they would
18 have -- well, are they -- I don't want to give away
19 too much, Judge. But under the law they have to --
20 there are certain factors which are required for them
21 to enter with an arrest warrant to search for the
22 body of a person.

23 **THE COURT:** What took place? I assume they
24 entered.

25 **MR. SUTHERLAND:** They did. Yes, sir.

1 **THE COURT:** Did they arrest the defendant?

2 **MR. SUTHERLAND:** No, sir. He was not there.

3 **THE COURT:** Okay. And what evidence are you
4 seeking to exclude, are you moving to exclude that
5 was located in that residence?

6 **MR. SUTHERLAND:** In particular, that jacket with
7 three diamonds in the pattern.

8 **THE COURT:** The patterned hood?

9 **MR. SUTHERLAND:** Yes, sir.

10 **THE COURT:** All right. What's the State's
11 position?

12 **MS. CAMPBELL:** Our position, or do you want to
13 put up testimony?

14 **THE COURT:** Well, I think you have to.

15 **MS. CAMPBELL:** I think so, too.

16 **THE COURT:** Okay. Call your first witness.

17 **MS. CAMPBELL:** Sergeant Caldwell.

18 ANDREW R. CALDWELL, after being duly sworn,
19 testifies as follows:

20 **THE CLERK:** Thank you. Please have a seat in
21 the witness stand and state your full name for the
22 record.

23 **THE WITNESS:** Andrew Reid Caldwell.

24 DIRECT EXAMINATION

25 **BY MS. CAMPBELL**

1 Q Sergeant, where are you employed?

2 A Richland County Sheriff's Department.

3 Q What do you do there, sir?

4 A I'm currently the sergeant supervising the Richland
5 County Sheriff's Department fugitive task force.

6 Q I'm going to turn your attention back to February of
7 2009. Did you become aware that there was an arrest
8 warrant for a Michael Paul Cornelius?

9 A I did.

10 Q And once you became aware of that arrest warrant,
11 what was your role in this case?

12 A To attempt to locate and apprehended Mr. Cornelius
13 for those charges.

14 Q And is that what the fugitive team does on a regular
15 basis?

16 A It is.

17 Q And in doing that, did you attempt to contact family
18 members of Mr. Cornelius?

19 A We went to -- the first location we went to was what
20 was known as his home at ■ Smith Lane in Ridgeway.

21 Q ■ Smith Lane in Ridgeway?

22 A Yes, ma'am.

23 Q And were you aware of who all lived on that property?

24 A I believe it was a parent's location or a parent's
25 house.

1 Q So it was actually a parent's house where you were
2 going?

3 A Yes, ma'am.

4 Q Can you describe to the judge how that property is
5 set up?

6 A As you pull into the one common driveway there is a
7 large, what I would call a main home. There was a
8 trailer to the rear of that home. I believe it was
9 the aunt's trailer. And then if you were stepping
10 out the back door of the main house, more to the left
11 was a shed garage that had been turned into an
12 apartment.

13 Q I'm going to show you what's been marked or is being
14 marked --

15 (WHEREUPON, State's Exhibit No. 6 is marked for
16 identification.)

17 Q -- as State's Exhibit No. 6. Is this a diagram of
18 the property where you went looking for Mr.
19 Cornelius?

20 A Yes, ma'am.

21 Q And that's an actual overhead view?

22 A Yes, ma'am, it is.

23 Q And you mentioned that you come off -- there's a
24 common roadway in, and then there's a main entrance.
25 Is that correct?

1 **A** Yes. This is the common driveway that I was
2 referring to.

3 **Q** And can you show the -- can you see this?

4 **THE COURT:** (Nods head affirmatively)

5 **Q** Can you show the judge where the main house would be?

6 **A** This was the main parent's house of Paul Cornelius's
7 home.

8 **Q** And you mentioned that there was also a separate
9 trailer that's also located on that property?

10 **A** Yes. I believe it was more up here in this wooded
11 area here that was the aunt's trailer.

12 **Q** And you also referred to a shed apartment type. Was
13 it also located on the same piece of property?

14 **A** Yes, ma'am, it is.

15 **Q** And where is that on this diagram?

16 **A** It's this building right here. This is a swim --

17 **Q** Is this a swimming pool?

18 **A** Above-ground swimming pool. This is the shed that we
19 searched.

20 **Q** And this white thing next to the shed, what is that?

21 **A** That's an R.V.

22 **Q** And is that -- other than you can't see the
23 trailer -- approximately how the property appeared?

24 **A** Yes, ma'am, it is.

25 **Q** When you got to -- what is it? 79 Smith?

1 **A** Yes, ma'am.

2 **Q** -- residence that day, who did you make contact with
3 initially?

4 **A** Initially I believe it was Paul Cornelius, the
5 father; and if not before, shortly thereafter, the
6 aunt.

7 **Q** The aunt?

8 **A** Yes.

9 **Q** And that would be Margaret Jamison?

10 **A** Yes, ma'am.

11 **Q** And when you get an arrest warrant as you did in this
12 case and in any other case, what do your duties
13 involve as far as how you attempt to arrest somebody?

14 **A** We try to develop as much background on the defendant
15 as we possibly can, meet with the investigators,
16 determine any vehicle descriptions, places that they
17 may be known to frequent, friends, family members,
18 the logical locations of where someone may be hiding
19 at.

20 **Q** And is it unusual for you to go to, say, a family
21 residence to search for a member of that family?

22 **A** No, it is not unusual.

23 **Q** And when you have a lawful arrest warrant -- in this
24 case you did have a valid arrest warrant?

25 **A** We did. For that address.

1 **Q** Is it then your duty to go in and search in order to
2 secure someone, especially when a violent crime is
3 involved?

4 **A** Yes, ma'am.

5 **Q** On this date what area did y'all initially search?
6 Or explain to the judge how things proceeded once you
7 got to the property?

8 **A** When we arrived upon the property, the first thing we
9 noticed was a dark red pick-up truck that matched the
10 description of the suspect's vehicle that was seen
11 leaving the robbery. I believe at the time of the
12 initial robbery the owners obtained a partial tag of
13 A-N-E. When we arrived we observed what was
14 identified as a 1987 Ford Ranger pick-up truck
15 bearing the South Carolina license plate of ANE-489.
16 And that was parked in what would be behind the main
17 house but in front of Ms. Jamison's trailer. This
18 was --

19 **THE COURT:** Say that again?

20 **A** It would be behind the main house but in front of
21 Ms. Jamison's trailer. It was kind of inbetween the
22 two.

23 **THE COURT:** Not over by the shed?

24 **A** No, sir. No, it's not.

25 **Q** But it was located on the same property?

1 **A** It's on the same property. And that matched the
2 description of the vehicle that the suspect was last
3 seen operating. So we believed he -- we thought he
4 was probably there. And that was when we came in
5 contact with Ms. Jamison and Paul Cornelius, the
6 father.

7 **Q** Once you came in contact with them, what happened?

8 **A** Advised them why we were there, asked him for
9 Michael. I believe from what I recall, I believe Mr.
10 Cornelius was telling us he didn't think he was
11 there. He told us that he stayed in that apartment,
12 shed sometimes.

13 **Q** Sometimes?

14 **A** Yes.

15 **Q** Did he indicate whether or not he had seen him
16 staying in that shed in the recent past?

17 **A** I don't recall the timeframe that we discussed.

18 **Q** Okay. Did he indicate whether or not the shed was
19 part of his property?

20 **A** I asked him could we look in there and he had the key
21 for it because it was locked. He allowed us -- he
22 unlocked the door for us so we could go in. We
23 didn't have to force entry or anything.

24 **Q** Okay. So you asked him if you could go in. And, in
25 fact, did you get him to out of an abundance of

1 caution sign a consent to search?

2 **A** He did. I believe that was Corporal Hayhurst and
3 Investigator Hall that actually completed that form
4 and had Mr. Cornelius sign it.

5 **Q** And I believe in doing that, it was specifically for
6 the studio apartment at ■ Smith Avenue?

7 **A** Yes, ma'am. Studio apartment on property of ■ Smith
8 Lane.

9 (WHEREUPON, State's Exhibit No. 7 is marked for
10 identification.)

11 **Q** Your Honor, may I approach? In this case, thinking,
12 in your opinion since the car was there and he had
13 been known to stay there in the past, were you going
14 to search it?

15 **A** Yes, ma'am.

16 **Q** Would that have been as a result of an abundance of
17 caution you got a consent to search?

18 **A** Yes, ma'am.

19 **Q** And you've already testified to this, but Mr.
20 Cornelius, Paul Cornelius, the defendant's father,
21 actually had the key and let you in that area?

22 **A** Yes, ma'am.

23 **Q** And when you went in, did you notice whether or not
24 the power was on or off?

25 **A** From what I recall, I believe the power was off. I

1 think I recall Mr. Cornelius telling me that there
2 was no power to the building.

3 **Q** Once you went inside, what were you looking for?

4 **A** Michael Cornelius.

5 **Q** And in doing a search of the -- describe the interior
6 of that apartment?

7 **A** It's a small building. Again I would describe it as
8 maybe a garage that's been converted into an
9 apartment. I recall as soon as you come through the
10 front door a common living room and a kitchen. I
11 don't recall how they were separated, if it was by an
12 island or a half of a wall. And then you make a left
13 down the hallway. There was a bathroom on the right
14 and I believe what would be referred to as the master
15 bedroom or bedroom at the end of that hallway.

16 **Q** As you searched the area, were you looking for the
17 defendant himself?

18 **A** Yes. Yes. We went in tactically prepared to
19 confront an individual.

20 **Q** And prior to going to the Smith Street property, had
21 you had gotten a description of the vehicle that had
22 been used?

23 **A** Yes, ma'am. We did.

24 **Q** Which you had already confirmed was there on the
25 property?

1 **A** Yes.

2 **Q** In addition to that had you gotten a description of
3 the clothing?

4 **A** Yes. We had the BOLO as well as his past
5 descriptions from previous book in's.

6 **Q** And you say you had the BOLO?

7 **A** Yes, ma'am. The warrant has also the physical
8 descriptions of the defendant.

9 **Q** What date was this when you all were there looking
10 for him?

11 **A** I believe that was February 19th. February 18th.
12 I'm sorry.

13 (WHEREUPON, State's Exhibit No. 8 is marked for
14 identification.)

15 **Q** I'm going to show you what's been marked as State's
16 Exhibit No. 8. You mentioned the BOLO that you had.
17 And you also had the description that had been given
18 by the witnesses of the clothing?

19 **A** Yes, ma'am.

20 **Q** And is that the BOLO you actually had or a copy
21 thereof?

22 **A** A copy. Yes, ma'am. That's a common practice of
23 BOLO's and photos be provided to us when we're
24 searching for a defendant.

25 **Q** In making your sweep in a search for the defendant in

1 order to effect his arrest, did you see anything out
2 in the open?

3 **A** Yes, ma'am, I did.

4 **Q** And tell the judge what you found?

5 **A** In the bathroom there's a pile of clothes. In the
6 right to the top of that pile of clothes, I noticed a
7 dark hoodie. The first thing that stuck out to me
8 was the "X" or checkerboard type pattern of the
9 inside of the hood that I recognized. I thought at
10 that point that was the jacket the defendant wore
11 during the incident.

12 **Q** And when you saw this, did you have to reach into
13 anything? Did you pull it out of anywhere or --

14 **A** No, ma'am.

15 **Q** -- how was it left?

16 **A** It was just thrown, strewn on the stack of clothes in
17 on the bathroom floor.

18 **Q** So you didn't move anything to find it? You didn't
19 open any draws or anything of that nature?

20 **A** No, I did not.

21 **Q** And in fact you were in there looking for who or
22 what?

23 **A** Michael Cornelius.

24 **Q** And you happened upon this jacket that you thought
25 was significant?

1 **A** Yes, ma'am.

2 (WHEREUPON, State's Exhibit No. 9 is marked for
3 identification.)

4 **Q** I show you what's been marked as State's Exhibit
5 No. 9. Do you recognize this?

6 **A** Yes, ma'am. That's what was -- this is what was
7 sticking out that drew my attention to it.

8 **Q** And that's the actual hoodie that you collected that
9 day when you saw it in plain sight?

10 **A** Yes, ma'am. I called Sergeant Isenhoward and asked
11 him to respond to the scene since we'd located the
12 jacket and the truck. As well as Ms. Jamison, I
13 thought that they needed to speak with her. She had
14 some information.

15 **Q** Did you also search any other buildings there on the
16 property or the vehicles?

17 **A** We did.

18 **Q** And what else was searched?

19 **A** We searched the -- I searched the R.V. In total, it
20 was myself, Captain Robert Lanier, Corporal Hayhurst,
21 Investigators Bell and Hall with the Richland County
22 Sheriff's Department. Lieutenant Keith Johnson and
23 Alex Underwood with SLED were with us, too. They're
24 on SLED's fugitive team. A combination of us, we
25 searched the R.V., the shed, the apartment, Mr. Paul

1 Cornelius's home and Mrs. Jamison's trailer.

2 **Q** And why did you search those areas?

3 **A** To make sure that Michael Cornelius wasn't hiding in
4 one of those buildings.

5 **Q** Beg the Court's indulgence. Let me back up. When
6 you spoke to Mr. Cornelius, you asked him whether or
7 not the defendant was there on the property?

8 **A** Yes, ma'am.

9 **Q** What did he indicate to you?

10 **A** I recall him indicating that he didn't believe he
11 was.

12 **Q** That he didn't believe he was?

13 **A** No.

14 **Q** Is that unusual for a family member to say that to
15 you?

16 **A** No, ma'am, it's not.

17 **Q** And even when information like that has been relayed
18 to you in the past, is it unusual to find the
19 defendant there hiding?

20 **A** No, it is not.

21 **Q** And, in fact, would you in every instance go ahead
22 and search for him if you had a valid arrest warrant?

23 **A** We would.

24 **Q** And in this case you did?

25 **A** Yes, ma'am, we did.

1 **MS. CAMPBELL:** I don't have anything further.

2 **THE COURT:** Cross examination.

3 **MR. SUTHERLAND:** May it please the Court.

4 CROSS EXAMINATION

5 **BY MR. SUTHERLAND**

6 **Q** Sir, how did you prepare for your testimony today?

7 **A** Reviewing the notes.

8 **Q** So you have notes?

9 **A** Well, reviewing the case file.

10 **Q** But was it whose notes or whose report? I mean, did
11 you write a report? Did you take notes?

12 **A** No, sir.

13 **Q** You did not?

14 **A** No, sir.

15 **Q** So whose work did you review to prepare for your
16 testimony?

17 **A** I'm not sure if this follow-up is Sergeant
18 Isenhoward's or Sergeant Ellis's. The chain of
19 custody is Sergeant Isenhoward. That's what I signed
20 at the scene.

21 **Q** Okay. But again you didn't take any notes or you
22 didn't write any report about what happens?

23 **A** No.

24 **Q** Okay. Now, I am going to draw up here -- and this is
25 going to sort of approximate this satellite photo

1 thing. I'm going to ask you for a little bit of help
2 with some of it. But we have a main residence and an
3 outdoor pool?

4 **A** Yes.

5 **Q** And then --

6 **A** I'm not sure what your orientation is.

7 **Q** It was from whichever way I was looking at this
8 thing. But do you have the main residence and then
9 diagonally from that you have that pool and then you
10 have that shed?

11 **A** Yes, sir.

12 **Q** Now, where in respect, like where is the road?

13 **A** The driveway or the road?

14 **Q** The driveway.

15 **A** The driveway would be -- well, as you're looking at
16 it, it would be on your left.

17 **Q** So over on this side of the house?

18 **A** Yes.

19 **Q** Does it come out this way, or does it sort of go down
20 that way?

21 **A** Well, I mean, what you're drawing here would be the
22 back. So it would be go out to the top of that
23 paper.

24 **Q** So out to the top. Now, where with respect to this
25 is that trailer?

1 **A** It would be more to your left.

2 **Q** So it was sort of over on this side?

3 **A** May I get up? It would be more about right here.

4 **Q** Okay. I appreciate that.

5 **A** And this is all driveway, and he's got it concreted
6 in.

7 **Q** Okay. Through here?

8 **A** Yes, sir.

9 **COURT REPORTER:** Speak up, please.

10 **A** He's got it concreted in around the pool.

11 **Q** So by this trailer, was the truck out here in front
12 of the trailer?

13 **A** Yes, sir. The truck would have been parked more like
14 that.

15 **Q** Okay. So sort of at this angle here. Now, did you
16 talk to -- when you saw the truck, did you approach
17 the trailer? Did you talk to Margaret Jamison?

18 **A** I spoke to Margaret Jamison. I'm not sure if I am
19 the first one that spoke to her.

20 **Q** Okay.

21 **A** At that point we tried to cover all three locations.
22 With the truck being there, it was our belief that he
23 was at one of those locations. So obviously with the
24 truck, we weren't sure if he was in the trailer, the
25 main house or even that shed apartment.

1 Q Did Margaret tell you or tell anybody that this truck
2 had been returned to her, that the truck had been
3 stolen, that she filed a report?

4 A Yes. I recalled her telling me that she filed it
5 with the Fairfield County Sheriff's Department. And
6 I don't remember -- I can't recall if it was reported
7 as a breach of trust or a stolen motor vehicle.

8 Q One of the things?

9 A But it was reported and had been returned.

10 Q And while you all were over here, I guess you had to
11 go up here to get the consent to search from Paul
12 Cornelius?

13 A From what I recall, Mr. Cornelius came out.

14 Q Okay.

15 A I don't think we ever had a chance to knock on the
16 door and --

17 Q Okay. And he just came out?

18 A Yes, sir. Well, I mean, when all the cars come in
19 the driveway, it's a fairly secluded area. I mean, I
20 think he probably heard the cars coming up the
21 driveway.

22 Q And so it was at that time that you talked to him and
23 you said: Is your son here?

24 A Yes.

25 Q Does he live here?

1 **A** Mm-hmm (affirmative).

2 **Q** And he said that he lives back here?

3 **A** Stayed in that apartment.

4 **Q** You called it a studio apartment. I think that was a
5 fair --

6 **A** I think so. Yes, sir.

7 **Q** All right. Okay. So he said that he was staying in
8 this apartment back here. Y'all got the consent to
9 search. You did testify that he had a key. I did
10 hear you say that.

11 **A** Yes.

12 **Q** And so he led you back here and he unlocked it and
13 you all entered?

14 **A** Yes.

15 **Q** Did you all knock?

16 **A** No, we didn't knock. It is -- obviously standard
17 procedure is we yell and scream out Sheriff's
18 Department upon entering. We don't want to try to
19 surprise anybody. We want them to know. We called
20 him. You know, we would call him out, even though I
21 didn't know specifically whether he was in there, we
22 called for him to come out. And after a few moments
23 of that with negative results, we made a tactical
24 sweep of the entire apartment.

25 **Q** Okay. You said a few moments. How long were you all

1 out there? Or how long were you all on the property
2 prior to entering the --

3 **A** Oh, gosh. That may have been -- that may have been a
4 good ten minutes or more.

5 **Q** Okay.

6 **A** I was not overly concerned about that. That's much
7 longer than what I would call normal procedure. But
8 when we went around to cover the back of that
9 apartment, whoever it was that covered that, I
10 remember there was no back door, no back windows. So
11 containment at that point as long as we were in the
12 front was not as big an issue as it normally is.

13 **Q** Yes, sir. I understand. So you were -- when you
14 went here, it was about ten minutes on the property
15 before you got over to the apartment?

16 **A** That's, you know, from a year and a half memory I
17 believe.

18 **Q** Yes, sir.

19 **A** It was longer than normal.

20 **Q** Okay. Longer than normal. And, you know, then
21 outside calling in, you know, if you're in there:
22 Come out?

23 **A** Mm-hmm (affirmative).

24 **Q** And did you listen? You didn't hear anything?

25 **A** Yeah. I didn't hear anything.

1 Q And so that's when you had him -- or did you get the
2 door unlocked and then say: Come out?

3 A No. We had the door open and yelled in.

4 Q Oh. And yelled in?

5 A Mm-hmm (affirmative).

6 Q What kind of lock was on the door?

7 A I recall it being a --

8 Q Padlock?

9 A Oh, no. Like, I mean, a regular lock, like a
10 deadbolt.

11 Q Okay.

12 A Or at least the face of a deadbolt.

13 Q And then what could you see from the outside? Were
14 you all like at this position here? Is that where
15 the door was on this thing?

16 A Yes, sir.

17 Q And what could you see with the door opened from out
18 here?

19 A Not very much. Just immediately right inside.

20 Q Okay. But, I mean, you all were looking in and you
21 were calling in --

22 A Yes.

23 Q -- the same: You need to come?

24 A Yes.

25 Q All right. I appreciate it.

1 **A** Thank you.

2 **MR. SUTHERLAND:** No further questions of this
3 witness at this time, Your Honor.

4 **THE COURT:** Anything further?

5 REDIRECT EXAMINATION

6 **BY MS. CAMPBELL**

7 **Q** Let me ask you just a couple of questions about the
8 automobile. Did you also get a consent to search
9 from Ms. Jamison to search the automobile?

10 **A** I believe one was obtained. I don't think it was --

11 **Q** Actually Kevin Isenhoward obtained that?

12 **A** Yes.

13 **Q** Is that correct?

14 **A** Yes, ma'am.

15 **Q** And he also asked you about whether or not you were
16 aware Ms. Jamison had told you the vehicle had been
17 reported stolen?

18 **A** Yes, ma'am. She indicated to me that it had been,
19 that she had made that report.

20 **Q** And did she tell you who she reported had stolen the
21 vehicle?

22 **A** Yes. Her I believe it was nephew.

23 **Q** Michael Cornelius?

24 **A** Yes, ma'am. The defendant.

25 **MS. CAMPBELL:** Your Honor, can I mark this one?

1 (WHEREUPON, State's Exhibit No. 10 is marked for
2 identification.)

3 **MS. CAMPBELL:** That's all I have.

4 **MR. SUTHERLAND:** May it please the Court, sir.

5 **THE COURT:** Sure.

6 RECROSS EXAMINATION

7 **BY MR. SUTHERLAND**

8 **Q** She also told you that she had seen him with the
9 vehicle; is that correct, and cleaning out the
10 vehicle?

11 **A** I don't recall that. I recall her saying something
12 about I think he used the vehicle to go get a -- she
13 let him have the vehicle to go get a pack of
14 cigarettes or something and then never did bring it
15 back. I don't recall the cleaning out off the top of
16 my head.

17 **Q** Did she tell you that she had confronted him and said
18 that: I'm going to the police about the vehicle?

19 **A** If she did, I just -- don't remember that. She
20 probably did if that's what -- if she confronted him.
21 We spoke about the vehicle. But I don't recall that
22 specific detail.

23 **Q** Okay. All right. Thanks. No further questions,
24 Your Honor.

25 **THE COURT:** All right, sir. You may come down.

1 Anything further?

2 **MS. CAMPBELL:** No, sir.

3 **MR. SUTHERLAND:** Nothing further from the
4 defense, sir.

5 **THE COURT:** What's your position, Mr.
6 Sutherland?

7 **MR. SUTHERLAND:** Yes, sir. Your Honor, with
8 respect to the consent to search issue, there has
9 been testimony yesterday while Investigator Ellis was
10 testifying and Ms. Campbell had been eliciting some
11 testimony from my client about his residence there
12 and about the power being out. Some of that was
13 further elicited today from the officer testifying
14 that he had spoken with Paul Cornelius and that he
15 did live back there and that the power was cut off.

16 Your Honor, these are two separate residences.
17 I have -- the case that I have to hand up expressly
18 just sets out the rule. Wherever there is some sort
19 of -- wherever there is a separation to the point
20 where we're talking about a landlord/tenant
21 relationship between a property owner and between an
22 individual living in a separate space or something
23 that's owned by that property owner that there can be
24 no third party consent. And that would be State vs.
25 Moultrie which the State may have already.

1 And in this instance, The State vs. Moultrie,
2 there were two separate residences that were owned by
3 the same person and that both of these residences
4 were unequivocally owned by the same person. It
5 wasn't an instance, as here today, where there is a
6 separate residence where he lives there and the
7 family lives in the house. These were two separate
8 houses. Both houses were owned by the individual who
9 could pretty much come and go as he pleases in
10 Moultrie.

11 Here there is a separate residence with a
12 deadbolt, with a separate power supply. We've all
13 heard the testimony in that regard. There is no
14 common authority. It's true that he does have a key.
15 But oftentimes people will have a key to -- I've got
16 a key to Longshore's house, and I can't go running
17 into Longshore's house in that regard. So oftentimes
18 people will have a key to a residence. That doesn't
19 explicitly say that, oh, you may come in any time
20 that you wish.

21 And they've offered no testimony to that effect.
22 They have not called Mr. Cornelius to the stand to
23 state for the record that he could come and go and
24 that there was common authority with respect to this
25 separate apartment. Which I don't think that there

1 is any dispute that it is a separate apartment. So
2 the position on the consent is that the consent is
3 invalid. There is no common authority. They may say
4 that there's evidence in the form of the key, but
5 they could well -- they could call anybody they want
6 to the stand. They didn't call the property owner to
7 the stand. I don't know why, but that's up to them
8 to make that call. So that's the argument with
9 respect to the consent, that the consent is invalid.

10 With respect to the search warrant, I have State
11 vs. Lofton. And that is 1981.

12 **THE COURT:** Was there a search warrant?

13 **MR. SUTHERLAND:** Or, I'm sorry. Arrest warrant.
14 I got those kind of jumbled up, sir.

15 **THE COURT:** That's all right.

16 (Document handed to the Court)

17 **MR. SUTHERLAND:** And effectively in Lofton we
18 have a residence that is under surveillance by
19 officers who have an arrest warrant. I believe they
20 go up and they knock on the residence. They knock on
21 the door, receive no answer. They had staked out the
22 apartment for approximately an hour. They persuaded
23 the complex manager to let them enter. Oh, okay.
24 They persuaded the complex manager to let them enter.
25 And then the argument goes forward from there that

1 since they had an arrest warrant they had limited
2 authority to enter to search for the person.

3 And the position of defense is there has to be
4 some sort of exigent circumstances. The testimony
5 from Investigator or Sergeant Caldwell was that they
6 found the truck at this residence. He further
7 testified that he spoke with Ms. Jamison. His memory
8 was a little bit hazy about and whether she said --
9 and this is 15 months ago and there's no report. So
10 I'm not being critical in that regard. But there was
11 testimony that he had talked to Ms. Jamison and she
12 had said, yes, this vehicle was stolen, had seen him,
13 he went to the store for that purpose only.

14 So at that place, at that time going to the
15 store which obviously was the same day as the
16 incident here he had used the truck. But there is no
17 information or evidence that he regularly used the
18 truck, just at that time.

19 And so proceeding on from there, they're
20 searching the property. They're on the property for
21 ten minutes or more. Again, this was a long time
22 ago. They have the front door opened with the key;
23 similarly to this case, although they continue to
24 wait outside and they continue to look in and yell
25 for somebody to come out. They don't hear anything.

1 There's no power. There could be no machinery,
2 nothing in there of any sort making any kind of noise
3 that would lead them to believe that the person that
4 they're looking for is in this apartment.

5 And then they further entered the apartment and
6 they start searching for Mike, and this is when they
7 find this jacket, sir. And, you know, my position is
8 the position of the State vs. Lofton. There are no
9 exigent circumstances that could legitimately testify
10 to that they had a reasonable belief that he was
11 inside that shed at that time. They had plenty of
12 opportunity to view the shed, listen to the shed.
13 The door was open. They yelled inside for him to
14 come out, they heard nothing, and then they went
15 forward.

16 So in the two-step process, the consent is
17 invalid, and they should have gone and they should
18 have procured a search warrant. He testified himself
19 that there was one entrance and one entrance only to
20 this place; no back doors, no windows. They could
21 have gone and procured a search warrant and then come
22 back and then searched the house. And that would be
23 proper under the law, sir. So it's my sincere belief
24 this jacket was obtained unlawfully and it should be
25 excluded. Thank you, sir.

1 **THE COURT:** The State's position.

2 **MS. ASHTON:** Thank you, Your Honor. First we
3 would argue that the lawful entry, that the jacket
4 should come in because the officer has made lawful
5 entry pursuant to the arrest warrant. I'm handing up
6 State v. Asbury which is a Supreme Court case which
7 distinguishes their facts from Lofton in that the
8 case that Mr. Sutherland mentioned to you, there is
9 an hour and a half stakeout. Well, the court ruled
10 against the State because there was no reasonable
11 belief that the defendant was inside that residence.
12 But in that case there is an hour and a half
13 stakeout. In here the officer testified they were
14 only there ten minutes before they made entry.

15 And they specifically noted that the blue car
16 that the defendant was known to be driving was not
17 there involved in the Lofton case. In this case we
18 have clear testimony that the car that he was most
19 recently associated with, the Ford Ranger, was
20 present on the property at the Corneliuses' property.

21 And the case that I handed up is State v.
22 Asbury, the court held that because the officers
23 reasonably believed Asbury was home at the time they
24 attempted to effectuate the arrest and they entered
25 the residence based on this belief, that they were

1 rightfully in a position to then later observe the
2 blanket in plain -- excuse me -- the electric blanket
3 that was evidence that they seized which was in plain
4 view.

5 But specifically I would point out that here
6 it's different than in Lofton because they were only
7 there ten minutes before they entered the apartment
8 in the back. They saw the red truck that the
9 defendant had most recently been associated with,
10 unlike in Lofton where that truck was not present.

11 And then, as Sergeant Caldwell testified, the
12 consent was only a precautionary measure since they
13 did have the arrest warrant and they were there to
14 look for Cornelius, not evidence in this case. The
15 consent to search was just a precautionary measure
16 and it was appropriate because Sergeant Caldwell
17 believed that Mr. Cornelius was able to get consent.
18 Under the apparent authority theory he had a key.
19 There was nothing for him to -- there was nothing for
20 Sergeant Caldwell to believe that he didn't have
21 authority to get consent to search that residence.

22 And on that I would hand up State v. Flowers.
23 Under State v. Flowers, the homeowner does not
24 relinquish control over the premises to the property
25 simply because a third party occasionally resides in

1 the home. Also U.S. Supreme Court State v Laux --

2 **COURT REPORTER:** I'm sorry. State v. what?

3 **MS. ASHTON:** Laux, L-A-U-X. Holds that it's
4 objectively reasonable for officers to conclude that,
5 in this case it was a girlfriend had apparent
6 authority to consent to the search. Even though they
7 determined that she did not have actual authority,
8 she was -- or even if she didn't have actual
9 authority that she did have apparent authority
10 because there were clothes, a purse there and other
11 items. And so it was reasonable to believe that she
12 had apparent authority to consent to the search of
13 the residence.

14 And then in the alternative we would also ask --
15 we would also argue that Sergeant Caldwell was acting
16 on a good faith basis. We would offer State v.
17 Herring on that point which applies to an actual
18 search warrant they were discussing. But in that
19 case they found -- but even if that search warrant
20 was not valid because they did not comply with the
21 technical aspects of a statute, that because an
22 officer riding on good faith the search was valid
23 and; therefore, you know, the whole purpose of
24 excluding evidence is to deter police conduct. And
25 in that case it was found since they were acting on

1 good faith there was no need to exclude the evidence
2 that was found.

3 And also, Your Honor, the defendant's own
4 statement to Sergeant Matthew Ellis, he admits that
5 his parents had control over the power in his home
6 because they had just turned off the power when he
7 got there around this incident date which indicates
8 that they did have, I mean, control over the premises
9 if they were able to turn off the power at his
10 apartment in the back.

11 And there is also no evidence in this case that
12 he was a tenant. It was not a landlord/tenant
13 situation. All the evidence in this case is that he
14 was a guest on that property.

15 **THE COURT:** All right. Mr. Sutherland.

16 **MR. SUTHERLAND:** May it please the Court. I'll
17 go through these as quickly as I can. With respect
18 to State v. Flowers, I remember that the individual
19 had come out in front of the house and said: This is
20 my house, you can't search it. And then later on the
21 girlfriend who lived in there with the fella, or
22 whatever the arrangement was, arrived home and she
23 gave consent after the individual himself had said:
24 This is my house; you have to wait for her to get
25 home. So she gets home, and there is consent in that

1 regard.

2 If I recall State vs. Herring correctly, it
3 might have been Linfert was walking up by a garage,
4 just, you know, investigating that case, and he
5 looked in a window and he saw an SUV in there that
6 had just come from a murder scene. There are no
7 windows in this shed. I think this is
8 distinguishable also from Herring.

9 Let's see. The State vs. Asbury. I believe --
10 well, she had mentioned that a light was on inside
11 the residence. There was a kitchen window open.
12 There was -- let's see. People had told that this
13 guy leaves just after daybreak, had informed the
14 police that he leaves just after daybreak. So they
15 showed up just before daybreak. And I also believe
16 that the officers in that case entered, and while
17 they did see the evidence -- and again it's been
18 about five years since I've read this case -- but I
19 believe that after they entered the residence and saw
20 this evidence they left and got a search warrant.

21 And so the argument was that it was
22 impermissible to go in initially but that the
23 officers at that place, at that time realized they
24 needed to go get a search warrant to go in and seize
25 this evidence. In this case the evidence was seized

1 on the spot. So it's distinguishable in that regard.

2 And let's see. The Supreme Court case they have
3 looks like Laux, Bernard Laux. Or I don't know if
4 it's French. I don't know if I'm pronouncing it
5 right. But there is a girlfriend who is living there
6 who is a co-tenant. It does appear just from briefly
7 going over it, it says that she'd been living there
8 for a week I believe. And so she is living there.
9 She has a key. She is a co-tenant. She has
10 authority to allow him into the house or the
11 apartment, sir.

12 So I believe that each of these cases are
13 distinguishable from the facts of this case. And I
14 would just fall back on my earlier position there is
15 no -- the consent is invalid. They haven't presented
16 any evidence.

17 Even speaking of the power being cut off, your
18 power gets cut off when you don't pay for stuff. So
19 as far as common authority, there is evidence I will
20 concede with respect to a key in that regard. But
21 again, Your Honor, I've got keys to people's places
22 and I could be arrested if I went in their house. So
23 that's just enough to get past that common authority
24 part.

25 And the exigent circumstances, the observations,

1 the opportunities that they had being on the property
2 to observe that shed, it was open. The door was open
3 for a few more minutes. There is no reason in the
4 world for them to go in there without a search
5 warrant at that time.

6 **THE COURT:** All right. Thank you. Well, I'm of
7 the opinion that the property itself was under the
8 control of -- I'm talking about the curtilage of the
9 entire property -- was obviously under the control of
10 the family. And the father who had the key made it
11 fairly apparent to the officers that he had authority
12 to use the key.

13 I don't know about the power. I mean, it's not
14 a landlord/tenant situation. There's no evidence
15 that it's a separate power bill or that it somehow
16 creates some sort of separate entity over there on
17 that shed side, that it had its independent meter and
18 all that sort of thing. It may have. I don't know.

19 But the officers come onto the property with an
20 arrest warrant for the defendant, see his car, don't
21 know if he's armed or not. I think the car alone
22 gives them reason to search even without consent.
23 But they did have the apparent authority from the
24 parent of the defendant. And that's not unusual.
25 Those kind of relationships give rise to the

1 presumption that the parent has control over the
2 premises where the child lives, even if the child
3 happens to be an adult.

4 It doesn't mean that the police can without some
5 sort of circumstances go in and search anywhere they
6 want to. But I think the fact that they had an
7 arrest warrant in this case is very significant.
8 There's no -- the State is searching for evidence and
9 intruding upon a person's privacy rights in their own
10 premises and that an armed robbery had been committed
11 two days, a day and a half before this, that the
12 defendant had been identified; his truck had been
13 identified. His family had been identified. It's
14 reasonable for the officers to go there and search
15 the premises.

16 The fact that the evidence in this case was in
17 plain view, I don't think there's any violation of
18 any Fourth Amendment privilege at that point. They
19 had reasonable suspicion to be there. They had
20 reasonable suspicion to go in. They had apparent
21 authority to go in given the fact that the father had
22 the key. And once inside they discovered a piece of
23 evidence. I think it's reasonable what they did and
24 that the evidence should be admitted.

25 All right. Anything else --

1 **MR. SUTHERLAND:** Thank you, sir.

2 **THE COURT:** -- before we bring the jury?

3 **MR. SUTHERLAND:** Nothing from the defense, Your
4 Honor.

5 **THE COURT:** From the State?

6 **MS. CAMPBELL:** No, sir.

7 **THE COURT:** All right. Bring the jury, please.
8 (Jury in at 10:26 a.m.)

9 **THE BAILIFF:** The jury is seated, Your Honor.

10 **THE COURT:** All right. Good morning, ladies and
11 gentlemen. Thank you for your patience. As I
12 explained to you yesterday afternoon, there are a
13 number of pre-trial matters that must be taken up
14 before the trial actually starts. We worked 'til
15 about 6:00 last night trying to get these matters
16 resolved and came back this morning at 9 and started
17 again. So I'm just trying to make a little
18 explanation of why it took so long to get started
19 this morning. But we're here. We're ready to go.
20 Madam Clerk, if you'll swear the jury.

21 **THE CLERK:** Yes, sir. Madam Forelady and Ladies
22 and Gentlemen of the Jury, please stand and raise
23 your right hand.

24 (Whereupon, the jury is sworn)

25 **THE CLERK:** Thank you. You may be seated.

1 **THE COURT:** All right, ladies and gentlemen.
2 Just a few brief remarks before we start the
3 testimony. I want to explain to you that this trial
4 may be somewhat different from what you might expect.
5 Many people do not have the chance to attend actual
6 court settings as you're now doing and may think from
7 watching television or movies or reading books that
8 trials are always full of high drama and intense
9 action and riveting circumstances. While all these
10 things may be true at times, this trial is not for
11 entertainment. It's a fundamental part of our
12 democracy, a search for the truth in an effort to
13 make sure that justice is done between the parties
14 before the court. Searching for the truth, making
15 sure that justice is done is often a slow and
16 deliberate and repetitive, the opposite of what you
17 might have seen on television, in movies or read in
18 books.

19 Now, in this court a criminal law violation is
20 presented, as I explained to you yesterday, in a
21 document called an indictment. There's only one
22 indictment in this case charging the defendant with
23 armed robbery. Again, the indictment is not
24 evidence. It's merely the document bringing the
25 specific charge against a particular individual.

1 The defendant has pled not guilty to this
2 charge; and, therefore, the State has the burden of
3 proving the elements of the crime and the indictment
4 beyond a reasonable doubt to you. It will be your
5 duty to decide whether the State has met that burden.

6 Now, please do not infer from anything that I
7 say or do during the course of this trial what your
8 verdict should be. You are to determine the
9 innocence or guilt of the defendant based on the
10 evidence that's introduced that you hear and see
11 during the course of this trial.

12 I have no opinion about the guilt or innocence
13 of the defendant. You and you alone will determine
14 what the facts are in this case. And you alone are
15 the exclusive finders of the facts. While you
16 determine what the facts are in this case from the
17 evidence, I am the judge of the law, and you are
18 required to accept the law precisely as I state it to
19 you.

20 Now, there are two integral principles that
21 guide our presentations in a trial. First is what we
22 call the legal yardstick in judging or measuring the
23 evidence. And that legal yardstick is known as the
24 burden of proof. In this case the burden of proving
25 the case is on the State to prove guilt to you beyond

1 a reasonable doubt. Should the State fail to meet
2 that burden of proof, it would be your duty to find
3 the defendant not guilty. There is absolutely no
4 burden whatsoever on the defendant to prove or
5 disprove anything. There is no burden on the
6 defendant to testify or present any evidence because
7 the burden is and remains on the State to prove guilt
8 beyond a reasonable doubt.

9 And, second, I want you to recall my earlier
10 comment to you about the presumption of innocence.
11 This is a cardinal and fundamental rule of law that a
12 defendant will always be presumed innocent of the
13 crime or crimes for which he or she is indicted. The
14 presumption of innocence in other words is not just a
15 simple legal theory or a legal phrase. It is a
16 substantial right to which any accused, including
17 this defendant, is entitled.

18 Now, as the trial judge, as I said, I will
19 preside over the trial of the case, rule on the
20 admissibility of the evidence and at the end of the
21 case explain to you the law as it applies to this
22 case. What I tell you is not evidence in this case.
23 What the attorneys tell you is not evidence in this
24 case. And the attorneys will make what we call
25 opening statements and closing statements to you, but

1 that's not evidence in the case. The evidence comes
2 from the witness stand, from the questions that are
3 answered by the witnesses and any exhibits that are
4 introduced during the course of the trial.

5 You and I do not ask questions. We do not offer
6 any exhibits. Your duty is to listen openly and
7 honestly to the evidence, keep an open mind. Do not
8 form any conclusions or judgments until you've
9 received and considered all the evidence, the
10 arguments of the attorneys and my final instruction
11 to you on the law.

12 Consistent with your oath, do not discuss the
13 case with fellow jurors or with anyone else. The
14 first opportunity you will have to discuss this case
15 will be at the end of the time when I authorize you
16 to begin your deliberations. And I trust you will
17 honor my instructions and your oath in that regard.

18 To emphasize this comment I just made about not
19 discussing the case with fellow jurors, last week or
20 perhaps two weeks ago now, we had a trial right here.
21 12 jurors sat where you're sitting. And the case
22 involved an assault and battery of a high and
23 aggravated nature. And it arose out of a sort of a
24 family feud where somebody got their jaw broken.

25 Well, in the beginning of the case there was

1 some evidence that one of the women in this group of
2 family members that were conducting this, having this
3 little row, struck the victim in the head with a
4 grapefruit that was in a sack in a plastic bag,
5 whacked him in the head with a grapefruit.

6 All right. Well, it turns out, I found out the
7 next morning that the jury the first break they had
8 went back in the jury room and were talking about the
9 grapefruit and how the guy got hit on the head with a
10 grapefruit and why he got hit on the head with a
11 grapefruit and who hit him on the head with a
12 grapefruit and what happened after.

13 In other words, I think what they interpreted
14 when I said: You're not to discuss the case, I think
15 they interpreted that to mean not to discuss guilt or
16 innocence. But they just started talking about the
17 case. I just told them: Please don't talk about the
18 case, and the first thing they did when they got in
19 the jury room is start talking about the case.

20 Now, that came to me through one of the jurors
21 who wrote me a note, a letter and said: This jury is
22 not listening to what you say, because the first
23 thing they did when they got back in the jury room is
24 start talking about the case.

25 It's easy -- I know you're 12 people who don't

1 know each other -- well, anyway, to just try to find
2 something in common to talk about. And the case
3 that's going on is certainly something natural that
4 you would talk about. But it does -- it can over the
5 course of a trial tend to make people believe one
6 thing or the other or one way or the other or perhaps
7 you inadvertently would reveal your feelings about
8 the case prior to hearing all the evidence. And so
9 that's the purpose of this discussion.

10 I mean, today there's plenty to talk about.
11 There's an election going on. In other words, plenty
12 to talk about without talking about the case. I'm
13 going to ask you to try hard not to discuss the facts
14 of this case prior to your deliberations.

15 And it's happened to me recently that jurors
16 have taken it upon themselves to do independent
17 investigation. In this day and age with the Internet
18 and cellphones and cell cameras and everything else,
19 it's very easy to say, well, I'm going to find out
20 what really happened and I'm just going to go on and
21 Google this thing or Google the Sharpe Shoppe or
22 something, find out, go up there to the Sharpe
23 Shoppe, see what that place looks like. It's not
24 that hard, as you know, to find out most anything
25 from the Internet these days.

1 The Supreme Court just very recently issued an
2 order that all Circuit judges are to tell jurors that
3 they are not supposed to do that. I'm going to ask
4 you -- under your oath I'm going to ask you not to
5 try to do any investigation, independent
6 investigation. Because what you see and hear in this
7 courtroom should be, has to be the basis for your
8 decision, not: I found out something about
9 so-and-so, and I think that should be -- that
10 everybody ought to know that.

11 Well, this is what we call an adversarial
12 system, and the lawyers are going to present all the
13 evidence that is applicable to this case to you, and
14 from that you are to make your decision about the
15 guilt or innocence.

16 I'm going to remind you of this every time we
17 leave the courtroom, but I want to emphasize it at
18 this point because it is such an important point
19 because trials can break down because of jurors
20 that -- and I trust you. Don't get me wrong. I'm
21 just talking about recent experiences I've had in
22 trying cases in this court where jurors maybe just
23 didn't understand the importance of staying
24 independent until the case is delivered to you.

25 Now, Mr. Dye, would you -- would the jury like

1 to have pads and pencils just to take a few notes?
2 Go to my office and get them, please. I mean to
3 deliver them to you. Go ahead.

4 You're free to take notes. I will caution you
5 that the notes are to be used for your own benefit if
6 you need sort of to keep up with things. Sometimes
7 cases get very complex because they're different
8 people and different names and people go here and go
9 there. And sometimes it's easier if you have notes
10 that you can refer to later on.

11 Another problem or another issue I want to bring
12 to your attention before we get started is that --
13 and I don't know if there is going to be any written
14 evidence. There may be photographs. There may be
15 all sorts of things that come in. They're going to
16 be passed around to you.

17 But I want to caution you, if you're going to
18 look at photographs and look at this, that, whatever
19 the evidence is -- I don't know what the evidence
20 is -- make sure you at the same time listen to what
21 the testimony is because it's not going to be that
22 easy once you get in the jury room to come back and
23 say: Well, what did so-and-so say? I was looking at
24 those pictures or I was looking at those documents
25 that were being passed around and I forgot, I didn't

1 hear what so-and-so said. And it's just not that
2 easy.

3 Jurors have come back in after the trial, you
4 know, after they're deliberating and say: Could we
5 have a transcript of the testimony? Well, yeah, in
6 about three weeks we'll get it to you. We just don't
7 have the capability of -- although we have an
8 excellent court reporter that takes down everything
9 that's said and done in this courtroom and we can
10 play back to you if we need to, but it's not that
11 easy. So all I'm asking you to do is pay close
12 attention to the testimony. That's about it.

13 If you need a break, we'll take a break. Just
14 raise your hand. We're going to run for about an
15 hour and a half to two hours between breaks.
16 Sometimes we'll have brief conferences with the
17 attorneys. I'll have to have brief conferences with
18 the attorneys at which time I'll probably ask you to
19 step out and go to the jury room, because what the
20 attorneys want to argue or discuss has to be on the
21 record. And we can work it both ways, if there's a
22 question about the evidence, things like that. Go
23 ahead, Mr. Dye.

24 (Pause)

25 **THE COURT:** All right. We're now going to begin

1 with opening statements. The State goes first
2 because the State brought these charges and has the
3 burden of proof, as I said. Once we've received all
4 the evidence in the case, the attorneys will be
5 permitted to give you their final arguments and after
6 which I will discuss with you the law as it applies
7 to this case. All right. Counsel for the State.

8 **MS. ASHTON:** May it please the Court. Ladies
9 and gentlemen, this case is about an armed robbery.
10 You are here today because on February 16th, 2009
11 that defendant walked into the Sharpe Shoppe
12 Convenience Store armed with a butcher knife, walked
13 up to the clerk, demanded that she open the cash
14 register, took as much money as he could while
15 holding the knife and left right out of the front
16 door.

17 On February 16th, 2009, the defendant drove an
18 old Ford Ranger to the Sharpe Shoppe located at 235
19 Blythewood Road. He walked right in the front door,
20 demanded that the clerk open the register. She
21 didn't hear him right away. Her name is Ann
22 Beltrami. She said: Excuse me? He showed her the
23 knife. She knew what he meant, opened the cash
24 register. He barely gave her time to get out of the
25 way, grabbed as much money as he could and walked out

1 of the front door just as quickly as he came in.

2 Ladies and gentlemen, my name is Kathryn Ashton,
3 and I along with Deputy Solicitor Luck Campbell
4 represent the Fifth Judicial Circuit for South
5 Carolina. It's our job to prosecute crimes that
6 occur in Richland and Kershaw County.

7 Now, as a result of the defendant's actions on
8 February 16th, 2009, he is charged with armed
9 robbery. Now, armed robbery is defined as the taking
10 away of the property of another, such as cash, by use
11 of force, intimidation or threats and while armed
12 with a deadly weapon or while representing to the
13 victim that he is armed with an object that is
14 reasonably believed to be a deadly weapon by the
15 victim.

16 Now, it is our job to produce evidence, to
17 produce proof to you that over -- beyond a reasonable
18 doubt. Proof beyond a reasonable doubt can be
19 described as proof that leaves you firmly convinced
20 of the defendant's guilt at the end of this trial.
21 Now, it's not proof that overcomes every single
22 possible doubt. That would be unreasonable for us to
23 have to do. But it is proof that convinces you of
24 the defendant's guilt.

25 Now, how -- the judge, Judge Cooper, is the

1 judge of the law in this case. He is going to
2 instruct you on the law as it applies to this case.
3 But you are the judges of the facts. Each of you
4 individually and collectively will determine whether
5 the defendant is guilty of the crime of armed
6 robbery, as the State alleges he is.

7 Now, how are you going to decide that, that
8 guilt? Well, we're going to produce evidence to you
9 that comes in two forms. One is physical evidence,
10 such as photographs, videotapes, that sort of thing.
11 And the other type of evidence will come from this
12 witness stand.

13 Witnesses will swear under oath that they are
14 going to give their knowledge as to the incident that
15 occurred that night. Then you will be able to listen
16 to all of it throughout this case.

17 Now, some of the witnesses you're going to hear
18 from is Ann Beltrami. She was a clerk that was
19 working that night. She is going to tell you what
20 she felt, she saw when the defendant walked in with
21 that butcher knife demanding money from the cash
22 register. You're going to hear her describe that in
23 her own words.

24 You're also going to hear from Ricky Green.
25 Ricky Green was also working that night. But when

1 the defendant came in, he was actually in the back
2 cleaning up because it was 10:30. But as soon as the
3 defendant left, Ann Beltrami screamed: We just got
4 robbed, we just got robbed. He comes running to the
5 front, is able to get a good look at the defendant.
6 He's able to get a good look at the car, the truck,
7 and he's able to even get a partial tag.

8 You're also going to hear from Corporal Michael
9 Smith. He responded immediately to the Sharpe
10 Shoppe, got all this information from both Ricky
11 Green and Ann Beltrami that night.

12 You're going to hear from the defendant's aunt.
13 Now, the defendant's aunt had actually -- the truck
14 that was used during that robbery actually belonged
15 to her. The defendant took that truck February 16th,
16 2009 without her permission to commit that robbery.
17 You're going to hear that the truck description, the
18 partial tag matches his aunt's truck that was later
19 found where the defendant was known to live.

20 You're also going to hear from Sergeant Andrew
21 Caldwell. He actually was -- he is on the Fugitive
22 Task Force Team with Richland County. And he went to
23 the defendant's residence to actually locate him to
24 arrest him for this robbery. And he found the jacket
25 that can be seen in that video on the surveillance,

1 from the surveillance video that you'll be able to
2 see in the defendant's bathroom right on the floor.

3 Now, you're going to also hear from deputies
4 with Richland County who saw that video. Well,
5 actually they saw the images that were on the news
6 that night from the surveillance video. They
7 actually recognized the defendant because they had
8 had previous encounters with him..

9 Deputy Horace Grant with Richland County is
10 going to testify that he saw the defendant wearing
11 that same exact jacket the day before during a
12 traffic stop. And you're going to hear from Deputy
13 Mears who also had an encounter with the defendant
14 two days before, and he was wearing this -- well, I
15 don't know if he was wearing the same jacket, but he
16 was able to match -- he recognized the defendant from
17 his previous encounter. And he reported that to
18 Sergeant Matt Ellis who was the lead investigator.

19 You're going to hear from Sergeant Kevin
20 Isenhoward who is also at defendant's residence
21 trying to arrest him a couple of days after the
22 robbery. He was able to take swabs from the truck
23 that was used during the robbery and then later turn
24 that into the evidence room. Those swabs from the
25 gearshift actually tested as a match to the

1 defendant's DNA. You'll hear from Dr. Gray Amick
2 with the Sheriff's Department who was able to match
3 that DNA from the gearshift to the defendant.

4 And finally you'll hear from Sergeant Matt Ellis
5 who is the lead investigator in this case. You'll
6 hear how he followed leads and tips that all lead him
7 to this defendant.

8 Ladies and gentlemen, after you hear all the
9 evidence in this case, after you view the physical
10 exhibits, we'd ask you to return a verdict of guilty
11 against Michael Cornelius for armed robbery. Thank
12 you.

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

14 **MR. SUTHERLAND:** May it please the Court?

15 **THE COURT:** Mr. Sutherland.

16 **MR. SUTHERLAND:** Thank you, Your Honor. Ladies
17 and gentlemen, I'm not going to take up as much of
18 your time. My name is Tivis; last name is
19 Sutherland. We sort of met yesterday.

20 The one thing that I should be clear about up
21 front in introducing you all to me is that it is my
22 great privilege, it is indeed a privilege to
23 represent Michael Cornelius.

24 As you've heard from the government lawyer over
25 the past 15 or 20 minutes, they've made some pretty

1 serious, most serious accusations against Mike. And
2 as you've also previously heard, this honorable Court
3 instructed you all that these opening statements are
4 not evidence in the case.

5 The government already touched on it a little
6 bit about the evidence coming from this stand. This
7 is what you all are going to scrutinize. Anything
8 that I might say here or that she might have said,
9 what we just saw was an attempt for them to sort of
10 create a prism through which you all are going to
11 view the evidence. You all need to view this
12 evidence independently of these accusations. You
13 need to evaluate each and every piece of evidence for
14 what it is and what you see it is, not what they tell
15 you it is or not even necessarily what an individual
16 might tell you that it is from the stand.

17 You all make up your mind about this stuff,
18 because in this country when the government makes
19 accusations, 12 citizens and members of the community
20 come in as a jury and they hear these accusations and
21 they decide.

22 The community decides whether or not somebody is
23 guilty of armed robbery, as they accuse, which is
24 effectively -- she touched on this -- you go in, you
25 take some money by force or intimidation, and it's

1 aggravated by the fact that you possess a deadly
2 weapon.

3 So, again, cast aside what I say. Cast aside
4 what the government lawyers have said. And listen to
5 the evidence, take your notes, and make up your own
6 minds. That's the only thing that I would ask from
7 each of you.

8 And ultimately it's my hope, and I do believe
9 that at the end of the day you all will see what I
10 believe, is that the government is attempting to swat
11 a fly with a sledgehammer. Thank you.

12 **THE COURT:** All right, Solicitor. Call your
13 first witness.

14 **MS. CAMPBELL:** The State calls Ann Beltrami.

15 ELIZABETH ANN BELTRAMI, after being duly sworn,
16 testifies as follows:

17 **THE CLERK:** Thank you. Please have a seat in
18 the witness stand and state your full name for the
19 record. Please spell your last name.

20 **THE WITNESS:** Elizabeth Ann Beltrami,
21 B-E-L-T-R-A-M-I.

22 DIRECT EXAMINATION

23 **BY MS. CAMPBELL**

24 **Q** Ms. Beltrami, where do you currently live? Out of
25 state?

1 **A** Out of state. Yes, ma'am.

2 **Q** And back in February of 2006, where did you live? I
3 mean 2009. Excuse me.

4 **A** Where did I live?

5 **Q** Yes, ma'am.

6 **A** In Blythewood, South Carolina.

7 **Q** And how long had you lived in the Blythewood area?

8 **A** I lived in the Blythewood area for almost a year.

9 **Q** Are you married?

10 **A** Yes, ma'am.

11 **Q** Do you have any children?

12 **A** Yes, ma'am.

13 **Q** Back in February of 2009, what did you do for a
14 living?

15 **A** I worked at the Sharpe Shoppe as a cashier.

16 **Q** And describe to this jury, what is the Sharpe Shoppe?
17 What type of store is it?

18 **A** It's gas station, convenience store.

19 **Q** And what logo does it actually have on the outside of
20 the gas station?

21 **A** It's the BP.

22 **Q** And where is that located?

23 **A** On Blythewood Road, 235 Blythewood Road.

24 **Q** So if you're going out I-77 towards Charlotte, do you
25 remember what exit number that is?

- 1 **A** Exit 24.
- 2 **Q** 24 or 27?
- 3 **A** 27. Okay.
- 4 **Q** And it's the actual Blythewood Road?
- 5 **A** Yes.
- 6 **Q** In the heart of Blythewood?
- 7 **A** Yes, ma'am.
- 8 **Q** Is that here in Richland County?
- 9 **A** Yes, ma'am.
- 10 **Q** How long had you worked there back in February of
11 2009?
- 12 **A** For I believe about six months; six, seven months I
13 believe.
- 14 **Q** And are you familiar with young man named Ricky
15 Green?
- 16 **A** Yes.
- 17 **Q** And how did you know Ricky Green?
- 18 **A** He was my co-worker.
- 19 **Q** And is he here in the courtroom?
- 20 **A** Yes, ma'am.
- 21 **Q** And can you point him out for the jury?
- 22 **A** Ricky is sitting right there in the middle of the two
23 ladies on the first bench.
- 24 **Q** With the gray shirt on?
- 25 **A** Yes, ma'am.

1 Q On the evening -- what shift were you working back on
2 February the 16th?

3 A The second shift.

4 Q And what hours are those?

5 A It's approximately 2:30 until 11 or 12, depending on
6 the day of the week.

7 Q And is your shop open all night, or does it close
8 around midnight?

9 A It closes at midnight, or at 11, just depending on
10 which shift, what day it is.

11 Q That evening shift you were working the cash register
12 I believe?

13 A Yes, ma'am.

14 Q Who else was also working there that day?

15 A Ricky Green was working with me.

16 Q And what were his duties including that day?

17 A The same as myself. He was a cashier as well. We
18 have our nightly duty list that we do, you know, once
19 that it starts getting close to closing time. But
20 other than that, we help our customers. We greet our
21 customers and ...

22 Q And up until around 10:30 that night, had you all had
23 any problems?

24 A No, ma'am.

25 Q Tell this jury, around 10:30 or a little bit after,

1 what happened that night?

2 **A** A gentleman approached into our store. And I had
3 noticed that he was walking quickly close up to the
4 register. We have a little step that you actually
5 have to step up on to get to our counters, and we
6 have a medicine display. A lot of people mistake,
7 thinking that they can come up and pick -- you know,
8 look at the medicine, pick what they want. And so I
9 had approached him right there to stop him and said,
10 you know: May I help you?

11 And at that time he asked me to open the
12 register. Not ever in my life having anything happen
13 to me, I said: Excuse me? And at that point he
14 repeated: Open your register, and showed me his
15 blade, his knife which looked like a large butcher
16 knife.

17 And at that time I had backed up out of his way,
18 and I pushed the button. There's a button to open up
19 the register, and I had backed away from him.

20 **Q** What did he do once you opened the register?

21 **A** Once that I opened up the register, he immediately
22 started grabbing for the cash. And once that he had
23 gotten the cash that he had grabbed for, he turned
24 around and walked directly right out the store.

25 **Q** As he was grabbing the cash, was he grabbing the cash

1 when the drawer was open?

2 **A** Yes, ma'am.

3 **Q** Was he grabbing it with one hand or with both hands?
4 Or how did that happen?

5 **A** In the beginning he was grabbing it with strictly his
6 left hand because the knife was in his right hand.
7 He was grabbing strictly with just his left hand.
8 And then he ended up turning the blade where that he
9 was able to grab like with both hands but he was just
10 like using the two fingers to grab with because he
11 still had the knife in his hand.

12 **Q** But he had turned it up towards his wrist?

13 **A** Up towards; yes, ma'am.

14 **Q** So you couldn't see the blade of the knife any more
15 at that point? It was up --

16 **A** No, ma'am. Yeah. It was just up underneath his arm.

17 **Q** What were you doing while he was going into the cash
18 register and grabbing the money?

19 **A** I was looking directly at him to try and grab as many
20 features. I had just become an assistant manager.
21 So I had freshened up on all of my training because I
22 knew that I would be training new employees coming
23 in. So I had gone through the additional safety
24 briefs that we have to go through if a robbery takes
25 place, all the steps that you're supposed to follow.

1 So I was looking straight at his face to try and grab
2 anything that I could think of; you know, to grab
3 details so that way when that the police were able to
4 show up that I would be able to give them the best
5 description available.

6 **Q** And did you get a good look at his face that day?

7 **A** Yes, ma'am.

8 **Q** And this sounds like a stupid question; but were you
9 paying attention to what he looked like?

10 **A** Yes, ma'am.

11 **Q** Once he got the money out of the register, where did
12 he go?

13 **A** He went directly straight out the front door.

14 **Q** And so he wasn't in the store for a very long period
15 of time?

16 **A** No, ma'am.

17 **Q** But you were able to get a good look at his face?

18 **A** Yes, ma'am.

19 **Q** Where was Ricky during the robbery?

20 **A** Ricky was in the back. All it is is just in our
21 store, it's a big rectangle, and it's just right down
22 the hallway where that our restrooms are located at
23 is where that Ricky was at.

24 **Q** And he was back there doing some of the things you
25 need to do for closing?

1 **A** Yes, ma'am.

2 **Q** As the man exited the store; what, if anything, did
3 you say to Ricky?

4 **A** I immediately yelled to Ricky, I said: Ricky, we
5 just got robbed; Ricky, we just got robbed.

6 **Q** And what did Ricky do when he heard you yelling?

7 **A** Ricky took off out the store. And I told him, I
8 said: Be careful because he had a knife, as he was
9 going out the door. And at that time I immediately
10 went to the phone to call 911. And I had pushed the
11 alarms our silent alarms at our registers and then
12 just waited for Ricky to come back inside.

13 **Q** Did you call 911?

14 **A** Yes, ma'am.

15 **Q** And did you report what had happened to you?

16 **A** Yes, ma'am.

17 **Q** Do you know what Ricky was doing when he was outside
18 in the front of the store?

19 **A** No, ma'am, I do not.

20 **Q** And were you able to get a good look or any look at
21 the vehicle that the person was driving?

22 **A** No, ma'am. I did not.

23 **Q** And to your knowledge, did Ricky get a look at that?

24 **A** To my knowledge, yes, ma'am.

25 **Q** You mentioned that you had pressed the alarm?

1 **A** Yes, ma'am.

2 **Q** And what kind of alarm is that?

3 **A** It's a silent alarm to notify the Sheriff's
4 Department, an alarm system.

5 **Q** And in addition to that, you called 911?

6 **A** Yes, ma'am.

7 **Q** Did police respond?

8 **A** Yes, ma'am.

9 **Q** Once the police got there, did they make contact with
10 you and Ricky to get information about what had
11 happened?

12 **A** Separately. Yes, ma'am.

13 **Q** And were you able to give a description of the person
14 that had robbed you?

15 **A** Yes, ma'am.

16 **Q** Do you remember generally what that description was?

17 **A** Yes, ma'am. I remember telling them that he was not
18 tall. I remember saying that he seemed to be a
19 little bit shorter than I was and that he was stocky
20 built. And I had described the jacket that he was
21 wearing, the front of it, that it had three diamonds
22 around the front of it, because when he had first
23 approached I just happened to notice just the
24 diamonds down the front of his coat.

25 **Q** Did you also describe what type of weapon you

1 observed?

2 **A** Yes, ma'am. I had explained to them that it was a
3 large butcher knife that he had approached me with.

4 **Q** And that evening after the initial responding
5 officers took information from you, did you also make
6 contact with Sergeant Matt Ellis and give him
7 information?

8 **A** Yes, ma'am.

9 **Q** In this store is there any kind of video system set
10 up?

11 **A** There are. Yes, ma'am. There is numerous cameras
12 inside our store.

13 **Q** And obviously this is a stupid question; but they
14 don't all show the same part of the store?

15 **A** No, ma'am. No, ma'am.

16 **Q** But is there a camera set up that kind of shows as
17 people enter in and out of the store on the inside?

18 **A** Yes, ma'am.

19 **Q** And is there also another counter that shows what
20 happens right there at the register, the cash
21 register that you were referring to?

22 **A** Yes, ma'am.

23 **Q** Are there any videos on the outside of the store? Or
24 do you know?

25 **A** I'm not -- I don't remember. No, ma'am.

1 Q But on the interior, there were several cameras. Is
2 that correct?

3 A Yes, ma'am.

4 Q That night as the police came and after the police
5 came, did you have an opportunity to review any video
6 that might have recorded what happened that night?

7 A Later that night; yes, ma'am, some time after it had
8 lapsed. Yes, ma'am. I did that night before we
9 left.

10 Q And to your knowledge, do you know whether or not a
11 copy of that video was turned over to the police? Or
12 would that have been someone else that had done that?

13 A Someone else had done that.

14 Q But you had an opportunity to review it that night?

15 A Yes, ma'am.

16 Q And that was after you had spoken to the police?

17 A Yes, ma'am.

18 Q And after you told them what happened?

19 A Yes, ma'am.

20 Q And when you reviewed the video, the various camera
21 angles, were you able to see the defendant on any of
22 those camera angles?

23 A Yes, ma'am.

24 Q Do you know exactly how much money was taken that
25 night?

1 **A** I do not know the exact figure.

2 **Q** Did some other manager come and count up how money
3 was taken?

4 **A** Yes, ma'am.

5 **Q** And who would that have been?

6 **MR. SUTHERLAND:** Your Honor, if I may, she's
7 just leading here.

8 **THE COURT:** Try not to lead your witness.

9 **MS. CAMPBELL:** Thank you, Your Honor.

10 **Q** Who would that have been?

11 **A** Terri Nance.

12 **Q** But you yourself observed -- did you yourself observe
13 him taking any money?

14 **A** No, ma'am. Observe.

15 **Q** The defendant.

16 **A** The defendant? Yes. He -- yes.

17 **Q** Okay. The next day did the police make contact with
18 you?

19 **A** Yes, ma'am. At my home. They called me.

20 **Q** And who actually made contact with you? Do you
21 remember?

22 **A** I believe it was Mr. Ellis that had contacted me.

23 **Q** And did you meet him anywhere?

24 **A** I met him at the Sharpe Shoppe.

25 **Q** And that would have been the day after the robbery?

1 **A** The day after. Yes, ma'am.

2 **Q** And when you went to the Sharpe Shoppe to meet him,
3 what happened?

4 **A** He approached me and said that he had a survey of
5 photos that he would like for me to look at.

6 **MR. SUTHERLAND:** Your Honor, I just renew my
7 previous objections.

8 **THE COURT:** All right. Overruled.

9 **Q** Go ahead. I'm sorry.

10 **A** No problem. And he said that if I recognized anyone,
11 to point it out to him if I recognized anyone.

12 **Q** I'm going to show you what's been marked as State's
13 Exhibit No. 1. Do you recognize that?

14 **A** Yes, ma'am.

15 **Q** And other than the handwriting that's now on there,
16 was that the series of photos that Sergeant Ellis
17 showed you that next day?

18 **A** Yes, ma'am.

19 **Q** And again, was Mr. Green present when he was showing
20 you those?

21 **A** No, ma'am.

22 **Q** What, if anything, did Sergeant Ellis say to you as
23 he was showing you those pictures?

24 **A** The only thing that he said is just for me to tell
25 him if I recognized anyone that was in the photos.

1 **Q** And when you looked at those six photos, did you
2 recognize anyone?

3 **A** Yes, ma'am. Almost immediately I recognized the
4 gentleman that had robbed me the night before.

5 **Q** And where is he located on this six-photo array?

6 **A** Photo number 2.

7 **Q** And when you saw that you, did you indicate to
8 Sergeant Ellis that you recognized that person?

9 **A** Yes, ma'am, I did. And he asked me how. And I said
10 that he was the gentleman that had robbed me the
11 night before. And that's when he asked me to circle
12 it and then initial it.

13 **Q** And you actually circled and initialed it after you
14 saw it?

15 **A** Yes.

16 **Q** And then later he filled out this part, but then you
17 signed off on it?

18 **A** Yes, ma'am.

19 **MS. CAMPBELL:** Your Honor, at this time we'd
20 offer State's Exhibit No. 1 into evidence.

21 **MR. SUTHERLAND:** Your Honor, with respect to
22 this exhibit, I do have an objection that I'd like to
23 take up outside the presence of the jurors.

24 **THE COURT:** Why not just mark it for
25 identification at this point?

1 **MS. CAMPBELL:** And put it in after she gets off
2 the stand?

3 **THE COURT:** I think.

4 **MS. CAMPBELL:** May we approach?

5 **THE COURT:** I think you need to approach.

6 (Whereupon, a bench conference is had)

7 **Q** Since this happened to you, you've quit working at
8 the Sharpe Shoppe?

9 **A** Yes, ma'am.

10 **Q** And you have actually moved out of the state?

11 **A** Yes, ma'am.

12 **Q** At my request yesterday you came back in over the
13 weekend. Is that correct?

14 **A** Yes, ma'am.

15 **Q** Did you review the video again that was collected in
16 this case?

17 **A** Yes, ma'am.

18 **Q** And did that video fairly and accurately portray at
19 least parts of what happened in the Sharpe Shoppe
20 that night?

21 **A** Yes, ma'am.

22 **Q** I'm going to show you what's been marked as State's
23 Exhibit No. 5. This is the video that you reviewed
24 at my request yesterday?

25 **A** Yes, ma'am.

1 **MS. CAMPBELL:** Your Honor, at this time we'd
2 offer the video into evidence.

3 **MR. SUTHERLAND:** Your Honor, with respect to if
4 the foundation were properly laid, I would think the
5 district manager who is in charge of the video or who
6 was in custody of the video, just as far as the rules
7 go, they just need to lay the proper foundation, sir.

8 **THE COURT:** Maybe she can.

9 **Q** Does this video accurately portray at least the parts
10 it shows of what happened where you were actually
11 there that night?

12 **A** Yes, ma'am.

13 **THE COURT:** Where are they located? Do they run
14 all the time?

15 **Q** Specifically, two of the cameras, does one of the
16 cameras show the area coming into the actual store
17 itself?

18 **A** Yes, ma'am.

19 **Q** And a separate camera actually shows the area above
20 the cash register looking down on the cash register?

21 **A** Yes, ma'am.

22 **Q** Thank you. And was this video kept in the normal
23 course of business by y'all?

24 **A** Yes, ma'am.

25 **Q** And it hasn't been altered or tampered with in any

1 way?

2 **A** Not to my knowledge; no, ma'am.

3 **MS. CAMPBELL:** Your Honor, at this time we'd
4 offer the video.

5 **THE COURT:** What's the objection?

6 **MR. SUTHERLAND:** Your Honor, there's four
7 cameras. Are all four on the --

8 **MS. CAMPBELL:** (Nods head affirmatively).

9 **MR. SUTHERLAND:** Okay.

10 **MS. CAMPBELL:** Two cameras show him.

11 **MR. SUTHERLAND:** Just the same objection just
12 with respect to the rules, Your Honor. But of course
13 it's all coming in.

14 **THE COURT:** Well, she is the assistant manager?

15 **MS. CAMPBELL:** Yes, sir.

16 **THE COURT:** Overruled.

17 **MR. SUTHERLAND:** Thank you, Your Honor.

18 **MS. CAMPBELL:** Your Honor, permission to show
19 the video?

20 **THE COURT:** Yes, ma'am.

21 (WHEREUPON, State's Exhibit No. 5 is admitted
22 into evidence.)

23 (Pause)

24 **MS. CAMPBELL:** Can we take a short break and set
25 it up?

1 **THE COURT:** All right.

2 **MS. OUTEN:** Five.

3 **THE COURT:** Ladies and gentlemen, just go to
4 the -- just relax for a minute. They need a few
5 minutes to get this equipment set up. So again,
6 don't discuss the case among yourselves while you're
7 in the jury room. Just have a cup of coffee or
8 refreshment, and we'll get started in just a minute.
9 It will be just a few minutes until they get it set
10 up.

11 **MS. CAMPBELL:** Thank you, Your Honor.

12 (Jury out at 11:10 a.m.)

13 **THE COURT:** We'll stand at ease.

14 **MR. SUTHERLAND:** I was going to say maybe ten
15 minutes or so, Your Honor, for my client.

16 **THE COURT:** Well, as quick as possible. He has
17 got to go down.

18 (Whereupon, a break is taken)

19 (WHEREUPON, State's Exhibit No. 11 is marked for
20 identification.)

21 (WHEREUPON, State's Exhibit No. 12 is marked for
22 identification.)

23 (WHEREUPON, State's Exhibit No. 13 is marked for
24 identification.)
25

1 (WHEREUPON, State's Exhibit No. 14 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 15 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 16 is marked for
6 identification.)

7 **THE COURT:** The State ready to proceed?

8 **MS. CAMPBELL:** No. The State is having a
9 technical malfunction.

10 **MS. OUTEN:** No. It's just old.

11 **MS. CAMPBELL:** Patience.

12 (Pause)

13 (WHEREUPON, State's Exhibit No. 17 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 18 is marked for
16 identification.)

17 **THE COURT:** Bring the jury.

18 (Jury in at 11:28 a.m.)

19 **THE BAILIFF:** The jury is seated, Your Honor.

20 **THE COURT:** Thank you very much. All right,
21 Ladies and Gentlemen. We had a little equipment
22 malfunction, but I think we're ready to go now. Ms.
23 Campbell, you may continue.

24 **MS. CAMPBELL:** Thank you, Your Honor.

25 **Q** (By Ms. Campbell) Let's play the first one.

1 (Whereupon, the CD is being played for the jury)

2 **THE COURT:** Can you see from there, from the
3 witness stand?

4 **THE WITNESS:** Not really.

5 **THE COURT:** She can come down. If you will step
6 down. And if you need to --

7 **Q** And what does that show right there?

8 **A** The top of the first register.

9 **Q** Talk really loud so the court reporter can hear you.
10 Okay? The top of the register?

11 **A** Yes, ma'am.

12 **Q** And I see that there's a leg and a foot over there to
13 the left-hand side. Whose leg and foot is that?

14 **A** That's mine.

15 **Q** And then over on the other side of register, you can
16 barely see in the corner up here, who is this over
17 here? Can you see that?

18 **A** I can't see that. No, ma'am.

19 **Q** Can you go ahead and start playing it. What are you
20 doing over there?

21 **A** I am putting in a new trash bag. I just emptied the
22 trash.

23 **Q** Can you tell where Ricky is in this?

24 **A** He's -- we're talking. That's Ricky standing right
25 there.

1 Q Right here?

2 A Yes, ma'am. You just saw the red sleeved shirt that
3 he had on and the green smock.

4 Q And at this point has he gone back around the
5 counter?

6 A Yes, ma'am. He is starting to walk back around the
7 counter.

8 Q Where are you going now?

9 A The door, as soon as the door opens, the door dings.
10 And I'm a very friendly person, so I'm likely saying:
11 Hi. How you are doing, as soon as someone walks in
12 the door. So I heard the door open, and that's when
13 the defendant was briskly walking up to the front --

14 Q What are you doing right there?

15 A I am pushing the register open.

16 Q Who is this standing at the register?

17 A The defendant.

18 Q At that point has he gotten everything?

19 A Yes, ma'am. He was already halfway to the door. And
20 that's when the guy walked over to yell -- there's
21 another little counter there. And I yelled back for
22 Ricky to -- yelled to Ricky that we had just been
23 robbed.

24 Q Will you replay this one more time, please. You can
25 pull the screen down. Is this Ricky?

1 **A** Yes, ma'am. That was Ricky.

2 **Q** And this time I just want you to talk to the jury.

3 As you opened the register, right after that, are you
4 able to actually see the knife in the defendant's
5 hand?

6 **A** Yes, ma'am. At the end of that counter, it's a
7 little just like a swinging door, and that's where
8 that he had actually pulled out the blade for the
9 second time telling me to open it up.

10 **Q** There you're opening the register?

11 **A** Yes, ma'am.

12 **Q** And where is the knife?

13 **A** Right there in his hand.

14 **Q** You can actually see it in which hand?

15 **A** In his right hand.

16 **Q** Right before he goes into the register?

17 **A** Yes, ma'am.

18 **Q** Can we play the other angle which shows -- what area
19 does this show?

20 **A** That's by the front door.

21 **Q** Okay. At this point he's not in this picture. Where
22 is he?

23 **A** He is up at the register.

24 **Q** And then he's out?

25 **A** Yes, ma'am.

1 Q And is that the person that robbed you that night?

2 A Yes, ma'am.

3 Q Okay. You can take your seat back. And just for the
4 record, there are two other camera angles on here,
5 but they don't show really that much, correct?

6 A Correct.

7 **THE COURT:** Approach the bench please, counsel,
8 just for a minute.

9 (Whereupon, a bench conference is had)

10 Q Your Honor, for the record, we'd also play the other
11 two videos that were in the store that night, or
12 camera angles. Can you see this one? You can step
13 down again. I apologize. Does that show part of the
14 store?

15 A Yes, ma'am.

16 Q And who is that that's in this video right here?

17 A That's Ricky Green.

18 Q And you actually can see the defendant entering
19 there?

20 A Yes, ma'am. Yes, ma'am.

21 Q That would be him exiting?

22 A Yes, ma'am.

23 Q And what are you doing there?

24 A I'm yelling back to Ricky.

25 Q And what part of the store does this show?

1 **A** That's at the door showing into the front of our
2 store.

3 **Q** That would be the defendant?

4 **A** Yes, ma'am.

5 **Q** Thank you. You can take your seat now.

6 **MS. CAMPBELL:** Anything else?

7 **MR. SUTHERLAND:** I believe that's everything as
8 far as the videos go.

9 **MS. CAMPBELL:** Okay.

10 **Q** I want to show you what's been marked State's
11 Exhibits 12 through 16 and just first ask, are these
12 representative stills off the video?

13 **A** Yes, ma'am.

14 **Q** Do you want to look through them and make sure
15 they're ...

16 (Pause)

17 **A** Yes, ma'am.

18 **Q** And do those fairly and accurately depict parts of
19 the video that we just reviewed?

20 **A** Yes, ma'am.

21 **MS. CAMPBELL:** Your Honor, at this time we'd
22 offer State's Exhibits 12 through 16.

23 **MR. SUTHERLAND:** Your Honor, I just object under
24 best evidence. I mean, the still frames of the
25 video, the jury is going to have the video back there

1 to watch it.

2 **THE COURT:** Overruled. Go ahead.

3 (WHEREUPON, State's Exhibit No. 12 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 13 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 14 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 15 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 16 is admitted
12 into evidence.)

13 **Q** State's Exhibit No. 12, who is actually depicted in
14 that one?

15 **A** The defendant.

16 **Q** And then also I believe in 11, 15 and 16; are those
17 all straight-on shots of the defendant?

18 **A** Yes, ma'am.

19 **COURT REPORTER:** You didn't move 11 in.

20 **MS. CAMPBELL:** And I move at this time to move
21 11. I'm sorry.

22 **THE COURT:** Over defendant's objection.

23 **MS. CAMPBELL:** Thank you.

24 (WHEREUPON, State's Exhibit No. 11 is admitted
25 into evidence.)

1 **MS. CAMPBELL:** Your Honor, permission to
2 publish.

3 **THE COURT:** Yes, ma'am.

4 **Q** Finally, in State's Exhibits No. 13 and 14, what does
5 that show?

6 **A** That shows the defendant holding the knife.

7 **Q** Specifically in State's Exhibit No. 13, you can see
8 it clearly?

9 **A** 13. Yes, ma'am. And No. 14 is the one that he had
10 turned it around.

11 **Q** To be able to grab the money?

12 **A** To be able to -- yes, ma'am.

13 **Q** So in State's Exhibit No. 13, you can actually see
14 the knife in his hand?

15 (No response)

16 **MS. CAMPBELL:** Permission to publish this, too,
17 Your Honor?

18 **THE COURT:** Yes, ma'am.

19 **MS. CAMPBELL:** Thank you.

20 **Q** The person that robbed you back on February 16th,
21 2009 of last year, had you ever seen him before that
22 night?

23 **A** No, ma'am.

24 **Q** Do you see him here in the courtroom?

25 **A** Yes, ma'am.

1 **MR. SUTHERLAND:** Your Honor, just out of an
2 abundance of caution, since it's been so long since
3 the first objection, I renew my objections.

4 **THE COURT:** Overruled. Go ahead.

5 **Q** Can you point him out for the jury?

6 **A** Yes, ma'am. He's sitting right over there next to
7 the gentleman in the beige blazer.

8 **Q** Over at this table?

9 **A** Yes, ma'am.

10 **MS. CAMPBELL:** Your Honor, may the record
11 reflect she's identified the defendant?

12 **THE COURT:** The record will reflect the witness
13 identified the defendant.

14 **Q** Thank you. Please answer any questions the defense
15 may have.

16 **THE COURT:** Mr. Sutherland.

17 **MR. SUTHERLAND:** May it please the Court.

18 CROSS EXAMINATION

19 **BY MR. SUTHERLAND**

20 **Q** Ms. Ann, this is probably getting a little bit
21 redundant for you, but we just have to go back over
22 some of the same stuff that we went over yesterday.

23 **A** Yes, sir.

24 **Q** You know you testified on direct that this was a
25 pretty brief encounter?

1 **A** Yes, sir.

2 **Q** And I think by looking at the video, and at least the
3 jury is going to be able to look at the video, we're
4 talking maybe from entering to leaving, maybe 15
5 seconds or something like that?

6 **A** Okay.

7 **Q** The one thing that I wanted to ask you about with
8 respect to the distinction to date, have you gone
9 over the evidence in this case with the Solicitor's
10 Office? Have you gone over the evidence, your
11 testimony with the Solicitor's Office, with anybody
12 from law enforcement?

13 **A** I -- not to my knowledge. I viewed the videotape
14 which I had already said earlier. But they just
15 wanted to verify that it was the videotape and
16 everything like that. But other than that, no, sir.

17 **Q** Okay. So there was a distinction between your
18 testimony today and your testimony yesterday. You
19 testified today just about turning a knife around or
20 a knife maybe being held down like this and then
21 turned inward or something. And your testimony
22 yesterday was nothing about turning the knife around.

23 **A** I did state yesterday that the knife was turned
24 around. Because I remember you distinctly asking me
25 if I remembered the color of the blade yesterday, is

1 what you had asked me. And at that time is when that
2 I had told you that the gentleman had turned it
3 around and grabbed the money.

4 **Q** Oh. I believe you testified that the blade was
5 silver and you couldn't see the handle?

6 **A** I said I did not know -- I did not have a
7 recollection as to what the color the blade, the
8 handle was. Correct.

9 **Q** Okay. Well, you were -- again, just very briefly,
10 you had about five seconds in the general vicinity,
11 15 from start to finish. You testified previously
12 that your concentration and your focus was on the
13 face and on the facial features?

14 **A** Mm-hmm (affirmative).

15 **Q** And I believe this is where sort of the questioning
16 about the knife or the weapon was a little bit of a
17 back and forth on that. But you were focusing on the
18 facial features because of this class that you had
19 taken. And again, briefly, it was a very brief
20 encounter. You were focusing on the individual's
21 face for the purposes of making an identification
22 because you had taken this course?

23 **A** Correct.

24 **Q** And that is what you remembered. That's what you
25 recall. And I believe you reviewed the video

1 afterwards and may have picked up on something about
2 details about a jacket or something?

3 **A** The details of the jacket I had given before I had
4 even viewed the video.

5 **Q** Okay.

6 **A** The diamonds across the front of it was given before
7 I reviewed the video.

8 **Q** Okay. Just a moment. Your Honor, may I approach
9 with Ms. Campbell briefly?

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

11 (Whereupon, a bench conference is had)

12 **Q** And the last couple of things. This occurred about
13 16 months ago; is that correct, 16, 17 months ago?

14 **A** Yes, sir.

15 **Q** All right. No further questions at this time, Your
16 Honor.

17 **THE COURT:** Redirect?

18 **MS. CAMPBELL:** No, sir.

19 **THE COURT:** All right. You may come down,
20 ma'am. Thank you very much. Call your next witness.

21 **MS. CAMPBELL:** The State calls Ricky Green.

22 RICKY GREEN, after being duly sworn, testifies
23 as follows:

24 **THE COURT:** Thank you. Please have a seat in
25 the witness stand and state your full name for the

1 record.

2 **THE WITNESS:** Ricky Green.

3 DIRECT EXAMINATION

4 **BY MS. CAMPBELL**

5 **Q** Mr. Green, how old are you?

6 **A** I am 21 years old.

7 **Q** And do you live here in the Columbia area?

8 **A** I live in Blythewood now.

9 **Q** Blythewood, South Carolina?

10 **A** Yes, ma'am.

11 **Q** How long have you lived in Blythewood?

12 **A** About four years now.

13 **Q** And did you go to school out there?

14 **A** Yes, ma'am.

15 **Q** What school did you attend?

16 **A** Blythewood High School.

17 **Q** Blythewood High School?

18 **A** Yes, ma'am.

19 **Q** And over the last several years, have you held a
20 series of jobs?

21 **A** Yes, ma'am.

22 **Q** And have those been mainly in the Blythewood area?

23 **A** Yes, ma'am.

24 **Q** And what type of jobs have you had over the last
25 several years?

1 **A** I have worked for Blythewood Oil which is Sharpe
2 Shoppes, and I work for a security company now.

3 **Q** You work for a security company now?

4 **A** Yes, ma'am.

5 **Q** And Blythewood Oil Company, does it own a number of
6 different convenience stores?

7 **A** Yes, ma'am. I believe they own seven stores
8 throughout Blythewood.

9 **Q** And are you familiar specifically with two of those
10 stores that are located on Blythewood Road?

11 **A** Yes, ma'am. #1 and #2.

12 **Q** And #1, what type of store is that?

13 **A** That is an Exxon.

14 **Q** That's an Exxon?

15 **A** Yes, ma'am.

16 **Q** And #2, what type of store is that?

17 **A** That is the BP across the street.

18 **Q** And they're actually, you just said it, across the
19 street from each other?

20 **A** Yes, ma'am.

21 **Q** And you had worked at both of those?

22 **A** Yes, ma'am.

23 **Q** You are currently working for a security company?

24 **A** Yes, ma'am.

25 **Q** And what type of work do you do for them, sir?

1 **A** I do private security for neighborhoods in gated
2 communities.

3 **Q** And are you also involved in some military activity?

4 **A** Yes, ma'am. I'm a National Guard military police
5 officer.

6 **Q** How long have you been doing that?

7 **A** For three years now.

8 **Q** Back in February 2009, which of the Sharpe Shoppes
9 were you working then?

10 **A** I was working at #2 which is the BP.

11 **Q** The BP. And February 16th, were you working a shift
12 that day?

13 **A** Yes, ma'am.

14 **Q** What shift were you working, sir?

15 **A** I was working the night shift which is from 2 to 11,
16 give or take, during the weekend.

17 **Q** Who was working with you that evening?

18 **A** Ms. Ann.

19 **Q** What were your duties at the BP that night?

20 **A** I was a cashier and to serve customers and, you know,
21 clean up the store and make it look good.

22 **Q** And those were kind of the duties that you and
23 Ms. Ann, you all had --

24 **A** Yes, ma'am.

25 **Q** -- together? That evening, at some point did you

1 have to go to the back of the store?

2 **A** Yes, ma'am. I was told by Ann which was my assistant
3 manager at the time to go clean the restrooms because
4 we were getting ready to close.

5 **Q** And about what time of night was that? Do you
6 remember?

7 **A** I'm not sure. Around about 10, something like that.

8 **Q** Okay. When you went to the back of the store, what
9 were you doing back there?

10 **A** I was getting ready -- I was filling the mop bucket
11 and getting ready to mop the floors in the restrooms.

12 **Q** What caught your attention?

13 **A** Ann called me and said that -- she started screaming
14 my name, saying we had just got robbed.

15 **MR. SUTHERLAND:** Your Honor, objection.
16 Hearsay.

17 **MS. CAMPBELL:** Res gestae.

18 **THE COURT:** Overruled. Go ahead.

19 **Q** Thank you. You can continue.

20 **A** We had just got robbed. And I ran to the front.
21 First, immediately I ran outside to see if I could
22 get any ID off the suspect or anything.

23 **Q** Okay. And when you exited the front of the store,
24 what did you observe?

25 **A** I observed the vehicle that he was driving. I got a

1 partial tag and I got a view of his face.

2 Q Specifically, when you went out the front door, you
3 didn't actually see the person inside the store. Is
4 that correct?

5 A No, ma'am.

6 Q So when he came in, the only person that would have
7 been out in the front area of the store was Ann?

8 A Yes, ma'am.

9 Q And then once she screamed to you, you went to the
10 front?

11 A Yes, ma'am.

12 Q And went out the front door?

13 A Yes, ma'am.

14 Q And you said you observed a person. Where did you
15 see this person in the parking lot?

16 A He was located to the left of the front door getting
17 in his truck.

18 Q How was his car parked or his truck parked in the
19 front of the store that night?

20 A The parking spaces are set up to pull straight in,
21 and he was parked across them.

22 Q And did you observe anybody else in that parking lot
23 that night?

24 A No, ma'am.

25 Q And when you saw him, was he already in the truck,

1 getting in the truck; or what was going on?

2 **A** He was already in the truck trying to put it in gear,
3 because you could obviously tell that it was a stick
4 shift and that he didn't know how to drive a stick
5 shift. He was trying to put it in gear to leave.

6 **Q** And did you get a good look at his face?

7 **A** Yes, ma'am.

8 **Q** And how did that happen?

9 **MR. SUTHERLAND:** Your Honor, renewing my
10 previous objections.

11 **THE COURT:** Overruled.

12 **Q** How did that happen?

13 **A** When I walked outside I could clearly see the driver
14 window and I got a good look at his face, and then my
15 second nature was to get a tag number.

16 **Q** And what did -- the truck that he was driving, what
17 did it look like?

18 **A** It was a maroon in color, sort of like the bailiff's
19 jacket, Ford Ranger, late model.

20 **Q** You say a late model?

21 **A** Yes, ma'am.

22 **Q** Was it an older car or a younger car?

23 **A** Older. Older.

24 **Q** Older?

25 **A** Yes, ma'am.

1 Q And the person that you saw, how close were you --
2 how far away were you from him when you actually got
3 a look at his face?

4 A I was about from here to the corner of that desk over
5 there.

6 Q The corner of this desk?

7 A Yes, ma'am.

8 Q So from about where you're sitting to over here where
9 I'm standing?

10 A Yes, ma'am.

11 Q What was the lighting out there that night when you
12 ran out the front door?

13 A There is lights on the corners of the building, and
14 plus the canopy lights. It's pretty well lit up
15 outside.

16 Q So was there anything obstructing your view of his
17 face when you looked at him through the window?

18 A No, ma'am.

19 Q And you were able to get a good look at his face?

20 A Yes, ma'am.

21 Q You also mentioned that you were trying to get some
22 information because it was a Ford Ranger, an older
23 model truck, right?

24 A Yes, ma'am.

25 Q Were you able to get any information about the

1 license tag?

2 **A** Yes, ma'am. I got the letters A-N-E off his license
3 tag.

4 **Q** So as well as getting a look at him, you also got the
5 letters A-N-E. Is that correct?

6 **A** Yes, ma'am.

7 **Q** Was the person you said that he was having trouble
8 getting it in gear --

9 **A** Yes, ma'am.

10 **Q** -- eventually was he able to pull out of the parking
11 lot?

12 **A** Yes, ma'am.

13 **Q** And where did he pull out?

14 **A** He pulled out to the left of the store. There is a
15 road that runs beside the store. He pulled out to
16 the left of the store, made a right and blew the stop
17 sign and made another right going down Blythewood
18 Road.

19 **Q** And that would be going down Blythewood Road towards
20 21?

21 **A** Yes, ma'am.

22 **Q** And once he passed back in front of your store,
23 because he actually would have come back in front --

24 **A** Yes, ma'am.

25 **Q** -- did you see him any more?

1 **A** No, ma'am. By that time I had already went in the
2 store to check up on Ann because I figured she would
3 be a little distraught.

4 **Q** And was she?

5 **A** Yes, ma'am.

6 **Q** Did y'all call 911?

7 **A** I believe Ann called when I was on my way out of the
8 store. So she --

9 **Q** Did the police respond?

10 **A** Yes, ma'am.

11 **Q** And when the police responded, did you give them the
12 information you had?

13 **A** Yes, ma'am.

14 **Q** Were you able to describe the individual you
15 observed?

16 **A** I described him as -- I mean, I couldn't get a good
17 feel of his build or anything like that. But he
18 looked short and stocky with, you know, a rugged
19 looking face.

20 **Q** And were you able to give them a description of the
21 automobile?

22 **A** Yes, ma'am.

23 **Q** And were you also able to give them the information,
24 the A-N-E on the tag?

25 **A** Yes, ma'am.

1 **Q** Once the police came and you gave them that
2 information, later on that night did you have an
3 opportunity to review the video?

4 **A** Yes, ma'am.

5 **Q** And in parts of that video I believe you can actually
6 see where you were in front of the counter?

7 **A** Yes, ma'am.

8 **Q** But it is also clear that you weren't present when
9 the defendant was actually in there robbing the
10 place?

11 **A** Yes, ma'am.

12 **Q** I want to show you what's been marked as State's
13 Exhibit No. 17. Do you recognize what this map
14 shows?

15 **A** Yes, ma'am. That's the heart of Blythewood.

16 **Q** That's the heart of Blythewood?

17 **A** Yes, ma'am.

18 **Q** And is the BP station we've been referring to, is it
19 reflected on here?

20 **A** Yes, ma'am.

21 **MS. CAMPBELL:** Your Honor, at this time we'd
22 offer State's Exhibit No. 17 into evidence.

23 **MR. SUTHERLAND:** Without objection, Your Honor.

24 **THE COURT:** Without objection.

25

1 (WHEREUPON, State's Exhibit No. 17 is admitted
2 into evidence.)

3 **MS. CAMPBELL:** Your Honor, may the witness step
4 down?

5 **THE COURT:** Yes, ma'am.

6 **Q** Thank you. You can come down. If you'd come over
7 and stand on this side so that the court reporter
8 might be able to hear you better. You mentioned that
9 this is the heart of Blythewood. Where is Blythewood
10 Road on this map?

11 **A** This is Blythewood Road right here.

12 **Q** And where would I-77 be coming in right at
13 Blythewood?

14 **A** I-77 would be coming in about right here. You can't
15 see it here, but about right there.

16 **Q** You mentioned that there were two Sharpe Shoppes
17 actually located there on Blythewood Road?

18 **A** Yes, ma'am.

19 **Q** Are those shown on here?

20 **A** Yes, ma'am. This is #2 here and this is #1, the
21 Exxon Mobile.

22 **Q** And that's the Exxon. So where is the BP one again?

23 **A** This is the BP right here.

24 **Q** You mentioned that you observed the red truck and the
25 person inside of it parked in front of the BP. Can

1 you show the jury on that map where it was parked?

2 **A** Yes, ma'am. Right under the canopy, he was parked
3 horizontally about right here in front of the doors.

4 **Q** And that's where you were able to get a look at the
5 person's face?

6 **A** Yes, ma'am.

7 **Q** And can you show on the map where he actually pulled
8 out and the route he took to exit?

9 **A** When he left he went out on Creek Road and continued
10 up, made a right and on down Blythewood Road.

11 **Q** And that would have been the last you saw that
12 vehicle?

13 **A** Yes, ma'am.

14 **Q** And that was the vehicle that you got the A-N-E part
15 of the tag?

16 **A** Yes, ma'am.

17 **Q** Okay. Step back up for me. The next day did
18 Sergeant Ellis make contact with you?

19 **A** Yes, ma'am.

20 **Q** And where did he actually meet with you that next
21 day?

22 **A** He met me at my home.

23 **Q** And when he met you at your home, what, if anything,
24 did he show you?

25 **A** He showed me a photo line-up.

1 **MR. SUTHERLAND:** Renewing my previous objection,
2 Your Honor.

3 **THE COURT:** Overruled.

4 **Q** I'm sorry. What did he show you?

5 **A** A photo line-up of some suspects that he might have
6 had.

7 **Q** I'm going to show you what's been marked as State's
8 Exhibit No. 2. Do you recognize that?

9 **A** Yes, ma'am.

10 **Q** And when you were actually shown those series of
11 photos, was any of that handwriting actually on
12 there?

13 **A** No, ma'am.

14 **Q** And when you were shown the photos by Sergeant Ellis,
15 what, if anything, did he say to you?

16 **A** He told me to take my time and if I can identify
17 anyone just point him out.

18 **Q** And were you able to recognize anyone in that
19 six-photo lineup?

20 **A** Yes, ma'am. Almost instantaneous.

21 **Q** And which one did you recognize?

22 **A** I believe it's photo number 2, ma'am.

23 **Q** And did he influence you or tell you who to pick or
24 anything like that?

25 **A** No, ma'am.

1 Q And why did you recognize photo number 2?

2 A I recognized him as the person that I viewed from the
3 robbery being out of the window and also from coming
4 in, you know, previous stores from being, you know,
5 just a regular customer.

6 Q And I want to get to that in a minute. The night
7 before you actually met with Sergeant Ellis prior to
8 even reviewing the video or anything, didn't you?

9 A Yes, ma'am.

10 Q And did you give him some information about how you
11 might have seen this person before?

12 A Yes, ma'am.

13 Q And how had you seen this person who you saw leaving
14 in the truck right after the robbery, how had you
15 seen him before?

16 A Well, like I say, I worked at both of stores, the
17 Exxon #1 and 2. And as I was at #1 I remember him
18 coming in as a customer frequently.

19 Q And the #1 which is the one across the street?

20 A Yes, ma'am. At the Exxon.

21 Q So you had seen him on prior occasions. Did you know
22 his name?

23 A No, ma'am.

24 Q But you had seen him before?

25 A Yes, ma'am.

1 Q And you related that information to Sergeant Ellis?

2 A Yes, ma'am.

3 Q And that's the person you recognized in this one?

4 A Yes, ma'am.

5 Q Once you recognized him, did you memorialize it in
6 any way on this piece of paper?

7 A Yes, ma'am.

8 Q How did you do that, sir?

9 A Circled it and put my initials inside.

10 Q And ultimately Sergeant Ellis filled this out and you
11 signed it?

12 A Yes, ma'am.

13 Q The person that you saw in the truck that was in the
14 truck with the A-N-E tag that left the store right
15 after the robbery, do you see him here today?

16 A Yes, ma'am.

17 Q And can you --

18 MR. SUTHERLAND: Again, I would caution renewing
19 the objection, sir.

20 THE COURT: It's a continuing objection. I
21 understand. Overruled.

22 MR. SUTHERLAND: Thank you, Your Honor.

23 Q Can you point him out for the jury?

24 A Yes, ma'am. He's the defendant sitting right there,
25 right there.

1 Q What's he wearing?

2 A Right there.

3 Q The blue shirt?

4 A Yes, ma'am.

5 MS. CAMPBELL: Your Honor, may the record
6 reflect he's identified the defendant?

7 THE COURT: Let the record reflect the witness
8 identified the defendant.

9 MS. CAMPBELL: That's all I have, Your Honor.

10 THE COURT: Cross examination.

11 MR. SUTHERLAND: May it please the Court.

12 CROSS EXAMINATION

13 BY MR. SUTHERLAND

14 Q Mr. Green, again we're going to have to go back over
15 some of the same, cover some of the same ground here.

16 A No problem.

17 Q All right. Okay. Well, we had -- you looked at that
18 Google map, that satellite photo thing, and we also
19 sort of went over the layout of everything
20 previously.

21 A Mm-hmm (affirmative).

22 Q I believe you said pretty much shaped like a box?

23 A Mm-hmm (affirmative).

24 Q There is a canopy out front and the lights -- oh.
25 You're going to have to use the pointer here. And

- 1 the lights are around the area of the canopy?
- 2 **A** They're under the canopy.
- 3 **Q** Under the canopy. And then some on the corner of the
- 4 store?
- 5 **A** Yes, sir.
- 6 **Q** Now, initially -- and this can pretty much be seen on
- 7 the video -- but you had been back in the bathroom?
- 8 **A** Mm-hmm (affirmative).
- 9 **Q** And just as part of your -- was the shift ending or
- 10 was it just beginning?
- 11 **A** Yes, sir. Yes, sir. Our nightly closing list.
- 12 **Q** Okay. And so there was a counter here with a
- 13 register, and Ms. Ann was back there. And at one
- 14 point -- and this is visible in the video -- you are
- 15 speaking with her and you all I guess are going
- 16 through your closing list --
- 17 **A** Mm-hmm (affirmative).
- 18 **Q** -- of things to do? And then you head around here
- 19 and start to get your work in the bathroom. And
- 20 almost immediately I believe it was your testimony --
- 21 **A** Mm-hmm (affirmative).
- 22 **Q** -- that you heard something, Ms. Ann saying
- 23 something?
- 24 **A** Mm-hmm (affirmative).
- 25 **Q** Is that correct?

1 **COURT REPORTER:** Your Honor, could you get the
2 witness to answer yes or no, please?

3 **A** Oh. Yes. Yes, sir.

4 **Q** So by almost immediately, and I think this will sort
5 of be apparent in the video, you are walking out and
6 walking in right as this thing is -- basically
7 they're almost simultaneously occurring?

8 **A** Yes, sir.

9 **Q** And so you run out the front door, and your testimony
10 was that you saw the truck?

11 **A** Yes, sir.

12 **Q** And the truck was parked here in this direction.
13 I'll do the headlights like that. But parked here
14 and facing that way?

15 **A** Yes, sir.

16 **Q** Now, as far as scale goes, you had said 30 feet or
17 something from here to the corner of that table?

18 **A** Give or take; yes, sir.

19 **Q** Okay. And so your view upon running out here, and
20 you said you were standing in the doorway I believe
21 previously?

22 **A** Yes, sir.

23 **Q** So your view would have been of the back of the
24 truck. But this is also how you got the partial tag
25 number?

1 **A** Yes, sir. But the truck also wasn't as far to the
2 edge of the building as you have it.

3 **Q** All right. So it was a few more feet away from it?

4 **A** It was -- the tail of the truck was a little closer
5 to the back of the door.

6 **Q** Okay. So the sight line, the angle at 30 feet
7 though, you're effectively looking towards the
8 driver's side door?

9 **A** Yes, sir.

10 **Q** And the driver's side window. And this vehicle
11 was -- as previously testified, you heard the
12 gearshift cranking and the vehicle was beginning to
13 move --

14 **A** Yes, sir.

15 **Q** -- when you got out the door? And then it took off,
16 and I believe this way, and then headed back over
17 that way?

18 **A** Yes, sir.

19 **Q** And it was at no point from here for basically the
20 rest of the time did you have any opportunity to
21 view?

22 **A** Other than viewing him when I first initially walked
23 out; no, sir.

24 **Q** All right. And he was working -- I believe you
25 previously testified that the clutch was grinding as

1 you got out the door?

2 **A** Yes, sir.

3 **Q** So the truck was attempting to drive away when you
4 got out there?

5 **A** Yes, sir.

6 **Q** So how many -- we're talking maybe five, a few
7 seconds?

8 **A** About 10, 15 seconds. I mean, it happened quick.

9 **Q** Okay. And again, this is close to 11:00 in February.
10 And so it's dark. Other than these lights, you know,
11 from the convenience store --

12 **A** Yes, sir.

13 **Q** -- similar to any convenience store?

14 **A** Mm-hmm (affirmative). Yes, sir.

15 **Q** You also testified about speaking with Investigator
16 Matt Ellis from the Sheriff's Department?

17 **A** Yes, sir.

18 **Q** But initially I believe you spoke with one of the
19 responding officers?

20 **A** Yes, sir.

21 **Q** Okay. Now, you gave the responding officer a
22 description. I believe you testified about it
23 earlier?

24 **A** Yes, sir, I did.

25 **Q** You spoke -- did you give that same description to

1 Investigator Matt Ellis?

2 **A** Yes, sir.

3 **Q** How long did you speak with him?

4 **A** I'm not sure. Things happened quick.

5 **Q** Okay.

6 **A** I'm not sure.

7 **Q** So, I mean, it was quickly; just a brief interview
8 with him?

9 **A** Yes, sir.

10 **Q** Did he ever at any point attempt to take a statement
11 from you?

12 **A** No, sir. Other than the robbery questionnaire.

13 **Q** Right. Which were filled out initially by one of the
14 responding officers?

15 **A** Yes, sir.

16 **MR. SUTHERLAND:** I have no further questions of
17 this witness at this time, Your Honor.

18 **THE COURT:** Cross examination. I'm sorry.
19 Redirect.

20 **MS. CAMPBELL:** Nothing, Your Honor.

21 **THE COURT:** All right. You may come down, sir.
22 Thank you very much.

23 **MS. ASHTON:** The State calls Terri Nance.

24 TERRI NANCE, after being duly sworn, testifies
25 as follows:

1 **THE CLERK:** Thank you. Please have a seat in
2 the witness stand and state your name for the record.
3 Please spell your first name.

4 **THE WITNESS:** Terri, T-E-R-R-I, Nance,
5 N-A-N-C-E.

6 DIRECT EXAMINATION

7 **BY MS. ASHTON**

8 **Q** Ms. Nance, where are you employed?

9 **A** Blythewood Oil Company.

10 **Q** And how long have you been employed there?

11 **A** Since February 5th, 2007.

12 **Q** And what are your duties at Blythewood Oil Company?

13 **A** I'm considered retail support and human resource.
14 Basically it's a direct district manager over the
15 stores.

16 **Q** Okay. And how many stores are you district manager
17 for?

18 **A** Three of the seven.

19 **Q** And is one of those the BP located at 235 Blythewood
20 Road?

21 **A** Yes.

22 **Q** Okay. Did you go to that store on February 16th,
23 2009?

24 **A** Yes, ma'am.

25 **Q** Why did you go?

1 **A** Ricky Green, one of the cashiers at the store, called
2 me in a panic to state that the store had been
3 robbed.

4 **Q** Okay. When you got to the store, did you see Ann?

5 **A** Yes, ma'am.

6 **Q** Did you see Ricky?

7 **A** Yes, ma'am.

8 **Q** Were the officers there when you arrived?

9 **A** Yes, ma'am.

10 **Q** Now, as retail support and district manager, is it
11 your responsibility to determine whether all the
12 money that's supposed to be in the register is
13 actually there?

14 **A** Yes, ma'am.

15 **MR. SUTHERLAND:** Your Honor, it's leading.

16 **THE COURT:** Yes, ma'am. Don't lead your
17 witness.

18 **Q** And how do you make that determination?

19 **A** We do a shift report for every shift, and we run a
20 Pay-Point report. And we compare the Pay-Point
21 report to the monies that we have, whether it be
22 cash, credit, debt, coupons or gift certificates;
23 that nature.

24 **Q** And how often is that done?

25 **A** Every shift every day.

1 Q And was that done after this robbery?

2 A Yes, ma'am.

3 Q Did the report show that there was any cash short?

4 A Yes, ma'am. For that particular till, on the cash
5 record, the credit cards came up perfect. They
6 balanced to zero. But the cash was short \$536.21.

7 Q Okay. And is that mechanism that you use, is that
8 usually accurate?

9 A It's very accurate; yes, ma'am.

10 Q And does that come along with the register?

11 A Yes, ma'am. That particular register was a G site
12 register, and it's considered a G site Pay-Point
13 report.

14 Q Were there any other transactions after the robbery?

15 A No, ma'am. We -- it's our policy to close the store
16 and lock it down so nobody else can come in.

17 Q And did you give the amount that was taken to the
18 deputies at the store?

19 A Yes, ma'am.

20 Q Did you also assist in giving them video?

21 A Yes, ma'am. I burned a CD for them.

22 Q Okay. And did you turn that video over?

23 A Yes, ma'am.

24 Q Beg the Court's indulgence. Nothing further. Please
25 answer any questions from the defense. Thank you.

1 **MR. SUTHERLAND:** Your Honor, I have no questions
2 of this witness.

3 **THE COURT:** All right. You may come down,
4 ma'am. Thank you very much.

5 **MS. CAMPBELL:** The State calls Michael Smith.

6 MICHAEL P. SMITH, after being duly sworn,
7 testifies as follows:

8 **THE CLERK:** Thank you. Please have a seat in
9 the witness stand and state your name full name for
10 the record.

11 **THE WITNESS:** Michael Patrick Smith.

12 DIRECT EXAMINATION

13 **BY MS. CAMPBELL**

14 **Q** Sir, where are you employed?

15 **A** Forest Acres Police Department.

16 **Q** What do you do there, sir?

17 **A** I'm a patrolman.

18 **Q** Back in February of 2009, where were you working?

19 **A** Richland County Sheriff's Department.

20 **Q** And what did you do there?

21 **A** I was a corporal in Region 6 which is basically the
22 Blythewood area.

23 **Q** The Blythewood area?

24 **A** Yes, ma'am.

25 **Q** I want to turn your attention to around 10:30, 10:40

1 on February the 16th. Did you respond to 235
2 Blythewood Road?

3 **A** I did.

4 **Q** And is that here in Richland County?

5 **A** Yes, ma'am.

6 **Q** What kind of call were you responding to that night?

7 **A** It was an armed robbery call.

8 **Q** Were you the only one that responded that night, or
9 were there other people that also came?

10 **A** Other deputies as well.

11 **Q** Once you got to the store, did you make contact with
12 two witnesses in this case?

13 **A** I did.

14 **Q** And what witnesses were those, sir?

15 **A** Ms. Beltrami and Mr. Green.

16 **Q** And as the first respond -- are you one of the first
17 responding officers?

18 **A** I believe I was the first responding officer.

19 **Q** What do your duties include when you respond to an
20 armed robbery call?

21 **A** To get a description of the suspect and the vehicle
22 direction of travel so we can get up a perimeter.

23 **Q** And you can't say what they told you, but were you
24 able to get that information from them?

25 **A** I was.

1 Q And were you able to radio it out, a description of
2 the vehicle as well as the defendant?

3 A Yes, ma'am.

4 Q And is that commonplace in an armed robbery?

5 A Yes, ma'am.

6 Q Did you also have them fill out what's known as a
7 robbery questionnaire, basically a physical
8 description of the person?

9 A Yes, ma'am.

10 Q And they were also, at least one of them, was able to
11 give you information about a vehicle?

12 A Yes, ma'am.

13 Q Once you got that information, do you also try to
14 take steps to ensure the crime scene is preserved
15 somewhat?

16 A Yes, ma'am.

17 Q And did you do that in this case?

18 A Yes, ma'am.

19 Q Subsequent to you and other officers responding
20 there, was there a major crime investigator who was
21 called out?

22 A Yes, ma'am.

23 Q And who was that that night?

24 A It was Matt Ellis.

25 Q And once he responded did he actually meet with the

1 victims and get more information?

2 **A** Yes, ma'am.

3 **Q** That night did you also assist in gathering possible
4 evidence from the scene?

5 **A** Yes, ma'am.

6 **Q** And what evidence did you collect, sir?

7 **A** I swabbed the door handle for DNA.

8 **Q** The door handle. And which door handle was that?

9 **A** It was the exterior I believe door handle.

10 **Q** The exterior door handle?

11 **A** Yes, ma'am.

12 **Q** And that would have been the front door of the actual
13 Sharpe Shoppe?

14 **A** Yes, ma'am.

15 **Q** And to try to collect any possible DNA?

16 **A** Yes, ma'am.

17 **Q** And was that ultimately turned into the evidence room
18 to be forwarded to --

19 **A** I did it myself.

20 **Q** -- whoever it would have been appropriate? And that
21 would have been a determination by Sergeant Ellis to
22 make at a later time, right?

23 **A** Yes.

24 **Q** And did you also assist Sergeant Ellis in collecting
25 a cash drawer?

1 **A** Well, he collected it.

2 **Q** Or were you there when he did?

3 **A** He collected it. Yes, ma'am.

4 **Q** And he actually collected the cash drawer to take it
5 in for any further testing. Is that correct?

6 **A** Yes, ma'am.

7 **Q** The person that actually committed the robbery, he
8 was not apprehended that night to your knowledge, was
9 he?

10 **A** That's correct.

11 **Q** Thank you. I have nothing further.

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

13 **MR. SUTHERLAND:** May it please the Court.

14 CROSS EXAMINATION

15 **BY MR. SUTHERLAND**

16 **Q** Briefly, sir.

17 **A** Yes, sir.

18 **Q** How are you? Effectively, you as the responding
19 officer, you arrive. And you've got to evaluate
20 what's going on. You've got to secure the scene. I
21 believe you testified that ultimately you secured the
22 crime scene. Is it done like on TV with tape or
23 anything? Or were just other officers keeping people
24 away?

25 **A** There was no tape put that up evening. It was late

1 and there was not that many customers. We had three
2 or four patrol cars out there with blue lights on
3 that usually stops people from coming in.

4 **Q** Sir, was there any crime scene log created?

5 **A** I don't recall.

6 **Q** And you testified that you met and you completed
7 these robbery questionnaires and swabbed the door for
8 DNA. And did you turn that in just to the evidence
9 locker?

10 **A** Yes. I turned it into the evidence room, the
11 evidence locker.

12 **Q** Ultimately, how long do you think that you were on
13 the scene there?

14 **A** I believe it was an hour.

15 **Q** That's all I've got. Thanks. No further questions,
16 Your Honor.

17 **THE COURT:** Anything further?

18 **MS. CAMPBELL:** No, Your Honor. May he be
19 excused?

20 **THE COURT:** The witness may be excused without
21 objection.

22 **MR. SUTHERLAND:** No objection, Your Honor.

23 **MS. CAMPBELL:** The State would call Sergeant
24 Drew Caldwell.

25 ANDREW R. CALDWELL, after being duly sworn,

1 testifies as follows:

2 **THE CLERK:** Thank you. Please have a seat in
3 the witness stand and state your full name for the
4 record.

5 **THE WITNESS:** Andrew Reid Caldwell.

6 DIRECT EXAMINATION

7 **BY MS. CAMPBELL**

8 **Q** Sergeant Caldwell, where are you employed?

9 **A** Richland County Sheriff's Department.

10 **Q** What do you do there, sir?

11 **A** Currently the first sergeant in charge of supervising
12 the Richland County Sheriff's Department fugitive
13 task force.

14 **Q** And what does the fugitive task force do?

15 **A** Our main goal in cooperation with other agencies and
16 networking is to locate, identify and apprehend all
17 dangerous, wanted, violent offenders.

18 **Q** Are you familiar with the robbery that took place on
19 the evening of February the 16th of 2009 at the
20 Sharpe Shoppe on Blythewood Road?

21 **A** Yes, ma'am.

22 **Q** And you did not become involved in this case I
23 believe until the 18th. Am I correct on that?

24 **A** Correct. It would have been after the arrest warrant
25 was issued.

1 **Q** So typically in a case like this you don't become
2 involved until an arrest warrant is issued?

3 **A** No, ma'am.

4 **Q** And did you become aware on February the 18th of 2009
5 that there was an arrest warrant for armed robbery
6 for Michael Paul Cornelius?

7 **A** I did.

8 **Q** What, if any, steps did you take at that point in
9 getting information about the defendant or trying to
10 locate him?

11 **A** In coordination with our criminal investigations
12 division, the investigators assigned to the case, I
13 obtained all the information on the defendant,
14 physical descriptions, the particular case. A
15 clothing description from the video of the store was
16 available. As a general practice, too, two part-time
17 researchers will try to develop any other information
18 as far as the vehicles that anybody may be associated
19 with, owns or has access to, as well as friends,
20 family, co-workers, that type of background; anything
21 that would help me in trying to locate that
22 individual.

23 **Q** And were you able to locate a possible residence for
24 Michael Cornelius?

25 **A** Yes, ma'am.

1 Q And where was that?

2 A That was at ■ Smith Lane in Ridgeway, South
3 Carolina.

4 Q And where is Ridgeway located in conjunction with
5 Blythewood, South Carolina?

6 A More of a north -- it's just -- this particular
7 residence was just inside the Fairfield County line.

8 Q Just inside the Fairfield County line?

9 A Yes, ma'am.

10 Q And so that would be just slightly north of
11 Blythewood?

12 A Yes, ma'am.

13 Q If you're going out 77, how many exits up would it be
14 past the Blythewood exit?

15 A The particular house, I'm not sure how you get to it
16 from 77. If you go outbound on 21, it's several
17 miles west. Five miles I guess.

18 Q Less than five miles?

19 A Yes, ma'am.

20 Q What was the address you went to there? I'm sorry.

21 A ■ Smith Lane.

22 Q ■ Smith Lane?

23 A Yes, ma'am.

24 Q When you got to ■ Smith Lane, did you make contact
25 with anybody there at that --

1 **A** Yes. I had made contact -- myself and the other
2 officers with the fugitive task force made contact
3 with the defendant's father, Paul Cornelius, and his
4 aunt, Margaret Jamison.

5 **Q** I want to show you what's been marked as State's
6 Exhibit No. 6. Does that fairly and accurately
7 represent the Smith Lane address you went to?

8 **A** Yes, ma'am, it does.

9 **MS. CAMPBELL:** Your Honor, at this time we'd
10 offer State's Exhibit 6 into evidence.

11 **MR. SUTHERLAND:** Without objection, Your Honor.

12 (WHEREUPON, State's Exhibit No. 6 is admitted
13 into evidence.)

14 **MS. CAMPBELL:** Your Honor, may the witness step
15 down?

16 **THE COURT:** Yes, ma'am.

17 **Q** You mentioned that you made contact with a I think
18 Paul Cornelius?

19 **A** Yes, ma'am.

20 **Q** As well as a Margaret Jamison. Is that correct?

21 **A** Yes.

22 **Q** Describe the area up in Ridgeway, what this shows?

23 **A** This is an aerial photograph of the property. As you
24 can see, it's a fairly rural area, farm, I guess farm
25 land predominantly. And then further south would be

1 the town of Blythewood.

2 Q Where is the actual residence associated with ■
3 Smith Lane?

4 A Right here.

5 Q Right there?

6 A Yes, ma'am.

7 Q And are there any other outbuildings and/or other
8 structures nearby?

9 A Yes. This is an R.V. This is a small shed or studio
10 apartment. This is an above-ground swimming pool
11 with an attached deck. And the aunt's trailer, Ms.
12 Jamison, I believe was somewhere here in this wood
13 line right behind the main residence, ■ Smith Lane.

14 Q And what areas -- before you sit down so you don't
15 have to stand back up -- did you all ultimately
16 search that day in an attempt to locate the defendant
17 in this case?

18 A Myself or other task force officers searched both
19 this R.V., the studio apartment as well as what I
20 call the main house, as well as Ms. Jamison's
21 trailer.

22 Q Okay. You can step back up. You mentioned at that
23 point you would have been in possession of various
24 information. I show you what's been marked as
25 State's Exhibit No. 8. What is that?

1 **A** This is a BOLO, be-on-the-lookout. It's an
2 information sheet put out to officers throughout the
3 Sheriff's Department requesting information as to the
4 identity; in this particular case, the identity of
5 this person in this BOLO.

6 **Q** Okay. And were you equipped with that information,
7 including the physical description as well as the
8 clothing description of what you were looking for?

9 **A** Yes, ma'am, I was.

10 **Q** Once you were there, when you have an arrest warrant
11 that's already been issued and you're attempting to
12 find someone; what, if any, steps in this case did
13 you take in an attempt to find Mr. Cornelius?

14 **A** In this particular case myself, other officers of the
15 Richland County Sheriff's Department along with State
16 Law Enforcement Division, SLED's fugitive team, we
17 arrived at that location, which obviously as you've
18 seen, there are several buildings that we had to keep
19 our attention on. We weren't sure which one, if any,
20 the defendant might be located in.

21 Another piece of information that I was provided
22 with was that the defendant was last seen driving
23 away in an older, dark red Ford pick-up truck. And
24 it had -- one of the victims was able to provide a
25 partial tag, A-N-E. And when we drove up into the

1 driveway, I observed what was later determined to be
2 a 1987 Ford Ranger pick-up truck bearing South
3 Carolina tag ANE-489 parked behind what I would call
4 the main residence and in front of the aunt's
5 trailer, Ms. Jamison's trailer.

6 **Q** And was that significant to you based on the
7 information that had been provided?

8 **A** Yes, ma'am. It did. I thought there was a high
9 probability the defendant would be there.

10 **Q** And based on that information, did you make attempts
11 to search the truck?

12 **A** It was just a small pick-up truck. We could look
13 through the windows.

14 **Q** Okay. And in addition to that, did you search other
15 areas in the yard?

16 **A** Yes, ma'am.

17 **Q** And what were those?

18 **A** The R.V., Paul Cornelius' home, Mrs. Jamison's
19 trailer, and a small like a shed or a studio.

20 **MR. SUTHERLAND:** Your Honor, renewing my
21 previous objection, yes, sir.

22 **THE COURT:** Overruled. Go ahead.

23 **A** A small shed or garage type structure had been
24 converted into like a small apartment.

25 **Q** And prior to searching the shed I want to show you

1 what's been marked as State's Exhibit No. 7. Do you
2 recognize that?

3 **A** Yes, ma'am. This is a Richland County Sheriff's
4 Department consent to search form. It's provided to
5 individuals to document in writing their consent for
6 the search of their property for people.

7 **Q** And whose consent were you attempting to --

8 **MR. SUTHERLAND:** Your Honor, objection. It's
9 hearsay.

10 **THE COURT:** Overruled.

11 **Q** Thank you. Whose consent were you attempting to get?

12 **A** The defendant's father, Paul Cornelius.

13 **Q** And did he ultimately sign the consent to search?

14 **A** He did. He signed it. It was also witnessed by
15 Corporal Ray Hayhurst and Investigator Jerry Hall
16 which are members of the fugitive task force.

17 **MS. CAMPBELL:** Your Honor, at this time I'd
18 offer State's Exhibit 7.

19 **THE COURT:** Over defendant's objection.

20 **MS. CAMPBELL:** Thank you.

21 (WHEREUPON, State's Exhibit No. 7 is admitted
22 into evidence.)

23 **Q** How did you actually gain access into what you refer
24 to as the apartment area or shed?

25 **A** The defendant's father had a key and helped to unlock

1 the door and let us in. We didn't have to make
2 forced entry or anything like that.

3 Q And what were you actually looking for when you went
4 in the house?

5 A My primary responsibility or goal was to locate the
6 defendant, Michael Cornelius, the person.

7 Q And during the course of looking for him, how is that
8 apartment set up? Describe it to the jury.

9 A The best I can recall, you enter through the front
10 door. There were no back windows or back doors. I
11 recall that. So containment was not an issue. We
12 didn't have to have people stationed in the back like
13 we normally would. And that's -- Mr. Paul Cornelius
14 being cooperative, we allowed him to get the key and
15 open the door.

16 As soon as you walk in, I recall like a main
17 living room type area and kitchen. I can't recall
18 how the kitchen was separated, if it was a bar or
19 half a wall. But when you go down the hall to the
20 left, there was a bathroom and then ultimately at the
21 end of that hall, I guess you'd call it a master
22 bedroom or the bedroom.

23 Q And over the course of searching for the defendant,
24 did you observe anything in plain sight that was
25 significant to you?

1 **A** Yes, ma'am, I did.

2 **Q** And what was that, sir?

3 **A** Lying on the bathroom in the floor of the bathroom, a
4 pile of clothes. And kind of right on top was a dark
5 hoodie. The first thing that struck my eye when I
6 realized what it was was an "X" or checkerboard cross
7 pattern on the inside lining of the hoodie that was
8 visible to me lying right there on the pile of
9 clothes.

10 **Q** I want to show you what's been marked as State's
11 Exhibit No. 9. Do you recognize that?

12 **A** Yes, ma'am. That's the hoodie.

13 **Q** And is that what you actually collected from the
14 door --

15 **A** That is, yes.

16 **Q** -- when you observed it?

17 **A** That was turned over to Sergeant Isenhoward on the
18 scene.

19 **MS. CAMPBELL:** Your Honor, at this time we'd
20 offer State's Exhibit No. 9 into evidence.

21 **MR. SUTHERLAND:** Over objection.

22 **THE COURT:** Sir?

23 **MR. SUTHERLAND:** Previous.

24 **THE COURT:** Subject to --

25 **MR. SUTHERLAND:** Yes, sir.

1 **THE COURT:** Subject to that objection, it's
2 overruled.

3 (WHEREUPON, State's Exhibit No. 9 is admitted
4 into evidence.)

5 **Q** Is this the actual hoodie?

6 **A** Yes, ma'am.

7 **Q** And did you observe anything significant, once you
8 collected it, on the front?

9 **A** Once I collected it, I observed that diamond or
10 diamond cross pattern. I could not see that though
11 when it was just lying in the pile of clothes.

12 (WHEREUPON, State's Exhibit No. 19 is marked for
13 identification.)

14 **Q** I'm going to show you what's been marked as State's
15 Exhibit No. 19. Do you recognize that?

16 **A** Yes, ma'am.

17 **Q** And what does that show?

18 **A** That's a picture of Ms. Jamison's pick-up truck that
19 was parked outside her trailer the day that I was
20 there.

21 **Q** And was that actually taken the day while you were
22 there?

23 **A** Ma'am, I'm not sure.

24 **Q** Does that fairly and accurately represent what you
25 observed?

1 **A** Yes, ma'am. It does.

2 **MS. CAMPBELL:** Your Honor, at this time I'd
3 offer State's Exhibit 19.

4 **MR. SUTHERLAND:** Without objection, Your Honor.

5 **THE COURT:** Without objection.

6 (WHEREUPON, State's Exhibit No. 19 is admitted
7 into evidence.)

8 **MS. CAMPBELL:** Permission to publish?

9 **THE COURT:** Yes, ma'am.

10 **Q** Excuse me before I do that. The license plate, can
11 you actually see it there?

12 **A** Yes, ma'am, you can.

13 **Q** And what are the numbers?

14 **A** ANE 489, for South Carolina.

15 **Q** Once you observed the truck and then secured the
16 hoodie, did you then -- or did other investigators
17 respond to the scene that day?

18 **A** Yes, they did.

19 **Q** And who was that specifically?

20 **A** I contacted Sergeant Kevin Isenhoward with the
21 Richland County Sheriff's Department.

22 **Q** And what was your purpose in contacting him?

23 **A** At this point I realized that we had recovered the
24 vehicle that was apparently used in the robbery as
25 well as a significant clothing item that the

1 defendant had used. Ms. Jamison was present at the
2 trailer. She was the owner of the vehicle. I felt
3 it necessary for Sergeant Isenhoward to come out and
4 collect that jacket and speak with Ms. Jamison.

5 Q And did he actually respond out there that day to
6 Ridgeway?

7 A He did.

8 Q And he actually made contact with Ms. Jamison?

9 A Yes, ma'am. He did.

10 Q Were you able to locate the defendant that day?

11 A We were not.

12 Q And then you had no further involvement in this case.
13 Is that correct?

14 A No, ma'am.

15 Q Thank you. I don't have anything further.

16 CROSS EXAMINATION

17 **BY MR. SUTHERLAND**

18 Q Sir, briefly, your role is when you all get notified
19 that there's a warrant for somebody, then you go out
20 and try to find the person?

21 A Correct.

22 Q You didn't do any investigating on this case. You
23 didn't report to -- obviously you found things and
24 entered them into evidence. But, I mean, as far as
25 investigating the actual substance of the crime, I

1 mean, you weren't a participant?

2 **A** No, sir. My priority is not to take statements or
3 try to collect evidence or work on probable cause.
4 I'm just merely trying to find the person who the
5 warrant is issued on.

6 **Q** Thank you, sir. No further questions, Your Honor.

7 **THE COURT:** Anything further?

8 **MS. CAMPBELL:** No, sir.

9 **THE COURT:** You may come down. Thank you very
10 much. May this witness be excused?

11 **MR. SUTHERLAND:** Without objection.

12 **MS. CAMPBELL:** Yes.

13 **THE COURT:** Without objection. Approach the
14 bench, counsel, please.

15 (Whereupon, a bench conference is had)

16 **THE COURT:** All right, ladies and gentlemen.
17 I'm just trying to get the schedule. The next
18 witness is -- I think at this time, it's 12:30, it
19 would be a good time to take our lunch break. I'm
20 going to ask you to be back in the jury room at 2:00,
21 at which time we'll continue with the trial.

22 You can take your -- you can leave your notes if
23 you wish to do so on the seats or you can take them
24 to the jury room, whichever is -- it's probably just
25 as easy just to leave them in here.

1 Again, don't discuss the case, please, over the
2 lunch hour when you return, with anyone over the
3 lunch hour or when you return to the jury room. Have
4 a pleasant lunch, and we'll see you at 2:00. Thank
5 you very much.

6 (Jury out at 12:30 p.m.)

7 **THE COURT:** We'll stand at ease until 2:00.
8 Could I see Mr. Sutherland on a different matter?

9 **MR. SUTHERLAND:** Yes, sir.

10 **THE COURT:** We'll stand at ease until 2:00.

11 (Whereupon, a lunch break is taken)

12 (WHEREUPON, State's Exhibit No. 20 is marked for
13 identification.)

14 (WHEREUPON, State's Exhibit No. 21 is marked for
15 identification.)

16 (WHEREUPON, State's Exhibit No. 22 is marked for
17 identification.)

18 (WHEREUPON, State's Exhibit No. 23 is marked for
19 identification.)

20 (WHEREUPON, State's Exhibit No. 24 is marked for
21 identification.)

22 (WHEREUPON, State's Exhibit No. 25 is marked for
23 identification.)

24 (WHEREUPON, State's Exhibit No. 26 is marked for
25 identification.)

1 (WHEREUPON, State's Exhibit No. 27 is marked for
2 identification.)

3 **THE COURT:** Is the State ready to proceed?

4 **MS. CAMPBELL:** Your Honor, I just have one
5 exhibit I want to find. Yes, sir.

6 **THE COURT:** Defense ready to proceed?

7 **MR. SUTHERLAND:** The defense is ready, Your
8 Honor.

9 **THE COURT:** Bring the jury, please.

10 (Jury in at 2:13 p.m.)

11 **THE BAILIFF:** The jury is seated, Your Honor.

12 **THE COURT:** Thank you very much. All right,
13 Solicitor. Call your next witness.

14 **MS. CAMPBELL:** May it please the Court. The
15 State calls Kevin Isenhoward.

16 KEVIN S. ISENHOWARD, after being duly sworn,
17 testifies as follows:

18 **THE CLERK:** Thank you. Please have a seat in
19 the witness stand and state your full name for the
20 record.

21 **THE WITNESS:** My name is Kevin Scott Isenhoward.

22 DIRECT EXAMINATION

23 **BY MS. CAMPBELL**

24 **Q** Sergeant Isenhoward, where are you employed?

25 **A** At the Richland County Sheriff's Department.

1 Q What do you do there, sir?

2 A I'm a sergeant in the major crimes unit. My primary
3 responsibility is to supervise the robbery unit. We
4 also work homicides.

5 Q I want to turn your attention back to February the
6 16th of 2009. Were you aware that there was a
7 robbery, an armed robbery that occurred at the Sharpe
8 Shoppe on Blythewood Road?

9 A Yes, ma'am.

10 Q That's the actual BP station?

11 A Yes.

12 Q Is that here in Richland County?

13 A Yes, it is.

14 Q And who was the primary investigator in that case,
15 sir?

16 A I believe I assigned Sergeant Ellis to work it from
17 the beginning.

18 Q And Sergeant Ellis actually responded out to the
19 scene the night it occurred. Is that correct?

20 A Yes, he did.

21 Q And over the course of the evening of the 16th and
22 17th and into the 18th, were you kind of monitoring
23 what was going on with the case?

24 A Yes, I was.

25 Q And did you become aware that a suspect had been

1 developed?

2 **A** Yes.

3 **Q** And that arrest warrants were issued after
4 identifications by the victims?

5 **A** Yes. And the fugitive team was trying to locate him.

6 **Q** That's what I was getting to next. And the fugitive
7 team was called in to try to locate him?

8 **A** Yes.

9 **Q** The afternoon of the 18th I believe, did the fugitive
10 team make contact with you?

11 **A** Yes, they did.

12 **Q** And in fact you spoke to I believe Sergeant Caldwell?

13 **A** Yes.

14 **Q** At his request did you respond to an area out in
15 Ridgeway, South Carolina?

16 **A** Yes, I did.

17 **Q** What was the purpose of you going out there that day,
18 sir?

19 **A** Sergeant Caldwell, again he'd called me and told me
20 that one --

21 **MR. SUTHERLAND:** Your Honor, objection. It's
22 hearsay.

23 **A** I learned --

24 **THE COURT:** I sustain the objection.

25 **Q** As a result of -- why were you going out to Ridgeway?

1 **A** To recover evidence of the crime and to interview
2 possible potential witnesses.

3 **Q** And did you actually respond to a residence on Smith
4 Lane in Ridgeway, South Carolina?

5 **A** Yes, I did.

6 **Q** And when you got there, did you meet up with members
7 of the fugitive team?

8 **A** I did.

9 **Q** Prior to you getting there, had they obtained consent
10 to search certain areas?

11 **A** Yes, they did.

12 **Q** Once you got there were you introduced to a young
13 woman named Margaret Jamison?

14 **A** Yes.

15 **Q** And did you request certain things from Ms. Jamison?

16 **A** I did.

17 **Q** Specifically what were you requesting her assistance
18 in?

19 **A** A consent to search a vehicle that belonged to her, a
20 '97 I believe a -- excuse me -- '87 Ford Ranger
21 pick-up.

22 **Q** I'm going to show you what's been marked as State's
23 Exhibit No. 10. Do you recognize that?

24 **A** Yes, I do.

25 **Q** What is that, sir?

1 **A** This is a Richland County Sheriff's Department
2 consent to search form. It's a form we use to
3 authorize a search of a residence or item or vehicle
4 signed by Ms. Jamison.

5 **MR. SUTHERLAND:** Objection, Your Honor. The
6 consent is hearsay.

7 **THE COURT:** Overruled.

8 **MS. CAMPBELL:** Thank you.

9 **THE COURT:** Go ahead.

10 **Q** Go ahead.

11 **A** It was signed by Ms. Jamison in my presence. And
12 it's a search warrant.

13 **MS. CAMPBELL:** Your Honor, at this time we'd
14 offer State's Exhibit No. 10 into evidence.

15 **THE COURT:** Over defense objection.

16 **MR. SUTHERLAND:** Yes, sir.

17 (WHEREUPON, State's Exhibit No. 10 is admitted
18 into evidence.)

19 **Q** She actually signed this in your presence?

20 **A** Yes, ma'am.

21 **Q** Once you obtained a consent to search, did you take
22 some photographs of the vehicle?

23 **A** I did.

24 **Q** I want to show you what's been marked as State's
25 Exhibits 20 through 25, just ask you to look at

1 those. Do those fairly and accurately reflect the
2 vehicle that Ms. Jamison gave you consent to search
3 that day?

4 **A** Yes they do.

5 **MS. CAMPBELL:** Your Honor, at this time we'd
6 offer State's Exhibits 20 through 25.

7 **MR. SUTHERLAND:** If I could just take a quick
8 look at them, Your Honor.

9 **MS. CAMPBELL:** They've been provided.

10 **MR. SUTHERLAND:** Without objection, Your Honor.

11 (WHEREUPON, State's Exhibit No. 20 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 21 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 22 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 23 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 24 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 25 is admitted
22 into evidence.)

23 **Q** State's Exhibit No. 20, does that just show the back
24 area of the truck?

25 **A** Yes, ma'am. And the tag.

1 Q When you went in to search the truck, what evidence,
2 if any, were you looking for that day?

3 A I was looking for any physical evidence of the crime
4 itself, weapons, any items taken from the robbery or
5 any items that could have belonged to the Sharpe
6 Shoppe.

7 Q And were you able to recover any physical evidence as
8 far as a weapon or anything of that sort?

9 A No weapons.

10 Q No weapons? What evidence did you collect from the
11 truck?

12 A I processed the vehicle for DNA evidence.

13 Q I want to show you State's Exhibits 24 and 25. Are
14 you familiar with those areas?

15 A Yes.

16 Q And did you specifically -- when you said process,
17 what kind of processing would you have done that day?

18 A Using a sterile swab or applicator and distilled
19 water, we process high traffic areas in a vehicle in
20 an attempt to obtain a DNA profile. In this
21 particular vehicle, the steering wheel, because it's
22 a manual transmission vehicle, the gearshift knob and
23 the interior door handles and any -- if it's a manual
24 window, those are the areas that would be processed.
25 And that's what I did in this case.

1 **Q** You said this was a manual gearshift. Did you
2 actually process the gearshift itself?

3 **A** Yes.

4 **Q** And what is the manual gearshift?

5 **A** It's the mechanism that you change the gears in the
6 transmission of the vehicle. It's handled -- in that
7 type of handle it's handled frequently. Therefore, I
8 attempted to get DNA evidence.

9 **Q** How was the DNA evidence collected by you that day?

10 **A** Again, I used the sterile swab applicator, distilled
11 water. Basically just you dampen the applicator.
12 You process whatever surface you want, you're going
13 after; in this case the steering wheel. I used a
14 different swab to process the gearshift and a
15 different swab for the door handles and so on and so
16 on. That's what I did in this case.

17 **Q** And when those are collected, is there a certain
18 package that's provided to you through the Sheriff's
19 Department to make sure you collect these things
20 properly?

21 **A** Yes.

22 **Q** And was that used in this case?

23 **A** Yes, it was.

24 **Q** Was there any cross contamination or any
25 contamination of any of the swabs you collected from

1 the truck that day?

2 **A** No.

3 **Q** And in fact once you collect them, what steps do you
4 take to make sure, to ensure their integrity?

5 **A** When I collect the items, I secure them in a sterile
6 carton or container. And each individual swab is
7 placed in the container. That container is sealed.
8 Then it's placed in an envelope which is also sealed
9 with evidence tape. I initial it. Then those items
10 are placed in the Richland County Sheriff's
11 Department evidence room where they are logged in and
12 secured there.

13 **Q** And was that done in this case?

14 **A** Yes.

15 **Q** And during the time period that you had the items,
16 specifically the swab from the gearshift as well as
17 the swab from the steering wheel, the time period you
18 had those items, did anyone alter them, tamper with
19 them or do anything to them --

20 **A** No, ma'am.

21 **Q** -- that could compromise their value?

22 **A** No.

23 **Q** And those were submitted into evidence in the proper
24 manner?

25 **A** Immediately upon my return to the Sheriff's Office.

1 Q While you're out at the scene that day, in addition
2 to collecting the DNA evidence, did Sergeant Caldwell
3 also turn some evidence over to you that he had
4 collected?

5 A Yes, he did.

6 Q And I'm going to show you what's been marked as
7 State's Exhibit No. 9 I believe and ask you if you
8 recognize this?

9 A Yes, ma'am.

10 Q And is that the item that was turned over to you by
11 Sergeant Caldwell?

12 A Yes.

13 Q Did you also submit it into evidence?

14 A I did.

15 Q When you made contact with Ms. Jamison that day; you
16 can't talk about what she said to you, but was she
17 able to give you some information about her truck?

18 A Yes.

19 Q And did you actually take a statement memorializing
20 what she told you that day?

21 A Yes.

22 Q And usually when you're interviewing a witness or
23 things, you would either memorialize it in notes or
24 actually have them have a handwritten statement. Is
25 that correct?

1 **A** That is correct.

2 **Q** And Ms. Jamison was cooperative with you?

3 **A** Could you repeat that?

4 **Q** Ms. Jamison was cooperative?

5 **A** Yes. Very much so.

6 **Q** And were you able to determine the relationship
7 between Ms. Jamison and the defendant?

8 **A** I believe Ms. Jamison is his aunt.

9 **Q** The defendant was not actually located out there that
10 day, was he?

11 **A** No, he wasn't.

12 **Q** I don't have anything further. Thank you.

13 **THE COURT:** Cross examination.

14 **MR. SUTHERLAND:** Yes, sir.

15 CROSS EXAMINATION

16 **BY MR. SUTHERLAND**

17 **Q** Sir, how are you?

18 **A** Good.

19 **Q** Just briefly. I heard your testimony about how you
20 collected the evidence. You put it -- you sealed it
21 up and you initialed it. And really what I'm
22 wondering about that is just, to whom was it turned
23 over?

24 **A** That particular -- when I returned to the Sheriff's
25 Office, it's all packaged up.

1 **Q** Yes, sir.

2 **A** It's taken to the evidence room. It can either be
3 placed in a locker or turned over person-to-person.
4 I don't recall specifically which was the case here.
5 But either way they would be secured and stored
6 safely.

7 **Q** And so either to the evidence locker and/or to an
8 individual?

9 **A** Yes. An evidence technician.

10 **Q** All right. And you testified that you had searched
11 the truck for weapons or for evidence, for items from
12 the store and that you didn't find any of that?

13 **A** No.

14 **Q** Thank you, sir. No further questions, Your Honor.

15 **THE COURT:** Anything further?

16 **MS. CAMPBELL:** No, sir.

17 **THE COURT:** All right, sir. You may come down.
18 May this witness be excused? Without objection.

19 **MR. SUTHERLAND:** Without objection, Your Honor.

20 **MS. CAMPBELL:** The State calls --

21 **THE COURT:** Next witness.

22 **MS. CAMPBELL:** The State would call Horace
23 Grant.

24 HORACE GRANT, after being duly sworn, testifies
25 as follows:

1 **THE CLERK:** Thank you. Please have a seat in
2 the witness stand and state your full name for the
3 record.

4 **THE WITNESS:** Deputy Horace Grant.

5 DIRECT EXAMINATION

6 **BY MS. CAMPBELL**

7 **Q** Deputy, where are you employed?

8 **A** The Richland County Sheriff's Department.

9 **Q** And what region do you work there, sir?

10 **A** In Region Two.

11 **Q** And tell this jury a little bit about your duties in
12 Region Two?

13 **A** Ma'am, I patrol the area of Region Two from West
14 Beltline to Sparkleberry Lane. I respond to calls
15 for different things, from noise complaints up to any
16 other offense, such as burglary calls or any other
17 calls for service.

18 **Q** And you described Region Two as being what area of
19 town?

20 **A** The West Beltline to Sparkleberry Road. It
21 boundaries Farrow Road and Percival Road.

22 **Q** Okay. So that area would be right below I believe
23 the Blythewood Road area?

24 **A** Yes, ma'am.

25 **Q** And that one is in a different region, is it not?

1 **A** Yes, ma'am. It's Region Seven.

2 **Q** Region Seven?

3 **A** Mm-hmm (affirmative).

4 **Q** I want to turn your attention back to February the
5 17th. Did you have an opportunity to observe a news
6 clip on WIS?

7 **A** I did, ma'am. Yes.

8 **Q** And what were you seeing on the news that night?

9 **A** I had noticed that there was a -- an armed robbery
10 had taken [sic] place at a --

11 **Q** If you could speak up a little bit. It's hard to
12 hear in here.

13 **A** I'm sorry. I noticed that an armed robbery had
14 taken [sic] place at a convenience store in
15 Blythewood and they had a pic of a potential suspect
16 on the --

17 **Q** When you say they had a pic, was it an actual
18 picture?

19 **A** Yes, ma'am. It was a picture.

20 **Q** That looked like it had been taken from a video?

21 **A** Yes, ma'am. It was taken from a video.

22 **Q** And did the news actually show the picture that
23 night?

24 **A** Yes, they did show it.

25 **Q** And I show you what's been marked as State's Exhibit

1 11 or State's Exhibit 16 which is the color and the
2 black and white. Do you recognize that?

3 **A** Yes, ma'am, I do recognize it.

4 **Q** And is that in fact either similar to what was shown
5 on TV or what was shown on TV?

6 **A** This was exactly what was shown on TV. Yes, ma'am.

7 **Q** And when you saw that on the TV that night, did it
8 have an affect on you?

9 **A** Yes, it did. I immediately recognized the individual
10 from the picture here. And I --

11 **Q** You recognized the individual in the picture?

12 **A** Yes, ma'am, I did.

13 **Q** And when had you had prior contact with the
14 individual in the picture?

15 **A** I believe it was on the 15th. It was on a Sunday.

16 **Q** Sunday, the 15th?

17 **A** Yes, ma'am.

18 **Q** Of February?

19 **A** Yes, ma'am.

20 **Q** So it would have been approximately two days or so
21 before this?

22 **A** Yes.

23 **Q** Before you saw it on the news?

24 **A** Mm-hmm (affirmative).

25 **Q** And tell this jury how you came in contact with him?

1 **A** I was on patrol. I was going down Percival Road.
2 And a vehicle came up behind me really close to my
3 bumper, almost like going to strike my vehicle. So I
4 pulled over and let the vehicle pass. I performed a
5 traffic stop for being -- driving that closely. Once
6 I stopped the vehicle, a female passenger immediately
7 jumped out the vehicle and conveyed to me that she
8 was --

9 **Q** Wait a minute.

10 **MR. SUTHERLAND:** Objection.

11 **Q** Don't talk about what she said. Okay?

12 **A** Okay.

13 **Q** And did you make contact with the female --

14 **A** Yes, I did.

15 **Q** -- who jumped out of the passenger's side?

16 **A** Yes.

17 **Q** And were you also able to that day on that Sunday,
18 the 15th, make contact with the person that was
19 actually driving the vehicle?

20 **A** Yes, ma'am.

21 **Q** And what information were you able to get about that
22 person?

23 **A** The driver was a female. She conveyed to me that she
24 did not want the passenger that was in the car --

25 **MR. SUTHERLAND:** Your Honor, that's hearsay.

1 **THE COURT:** I agree. Sustained.

2 **Q** Without saying what she said, was there another
3 passenger in the car that was male?

4 **A** Yes, there was.

5 **Q** And were you able to identify that person?

6 **A** Yes, ma'am, I was.

7 **Q** And did that person ultimately get out of the car?

8 **A** Yes, he did.

9 **Q** And without saying anything else about what was said
10 to you, did the vehicle -- what kind of vehicle was
11 it?

12 **A** It was a -- I believe it was an Ultima. It was a
13 black in color Ultima.

14 **Q** And were you able to determine whether or not the
15 vehicle actually belonged to either the female or the
16 male?

17 **A** Yes. I did determine it belonged to the female.

18 **Q** Without saying what she said to you, did you then
19 ensure that the vehicle left without the male in it?

20 **A** Yes, I did, ma'am.

21 **Q** Did you get some identifying information on that
22 person, the male that you got out of the vehicle?

23 **A** Yes, ma'am. Usually when we get someone out of a
24 vehicle it's normal protocol to ask to identify
25 everyone in the vehicle.

1 **Q** And this is a copy of the report I believe you
2 generated about a day later. Is that correct?

3 **A** Yes, it is.

4 **Q** And does it have the information from the person, the
5 male person that you got out of the car and kept out
6 of the car?

7 **A** Yes, it does.

8 **Q** And what was the information you had on him?

9 **A** I had the name, the race, gender, age, height and
10 weight.

11 **Q** And what was the name of the person?

12 **A** The name of the person is Michael Cor --

13 **MR. SUTHERLAND:** Your Honor, if I may, may we
14 approach briefly?

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

16 (Whereupon, a bench conference is had)

17 **THE COURT:** All right, ladies and gentlemen. I
18 need to take up a matter with the attorneys on the
19 record. I'm going to ask you to just go to the jury
20 room for a few minutes, and we'll call you in just a
21 minute, few minutes.. Don't discuss the case among
22 yourselves while you're in the jury room, please.

23 (Jury out at 2:31 p.m.)

24 **THE COURT:** What's the objection?

25 **MR. SUTHERLAND:** Your Honor, with respect to

1 whatever statement, I understand that he was
2 beginning to testify about information that was
3 received from my client. There were actually
4 accusations made against my client during the stop by
5 the other person that was there. It's the position
6 of the defense that if they want to introduce any
7 information or anything that my client said at the
8 stop at this location that they should have had a
9 Jackson vs. Denno hearing prior to the trial, sir.

10 **THE COURT:** Was he in custody?

11 **MS. CAMPBELL:** No.

12 **MR. SUTHERLAND:** Well, this would be something
13 that they should have determined prior to trying to
14 introduce --

15 **THE COURT:** Well, go ahead. Proffer the
16 testimony.

17 **Q** (By Ms. Campbell) Were you able to get identifying
18 information from the male passenger?

19 **A** Yes, ma'am, I was.

20 **Q** And what was his name?

21 **A** Michael P. Cornelius.

22 **Q** And were you also able to get his date of birth?

23 **A** Yes, ma'am, I was.

24 **Q** And what was that?

25 **A** It was -- I don't have the date of birth here in

1 front of me, ma'am, on this report. I do have his
2 age listed.

3 **Q** Age. I'm sorry. I should have said that. His age?
4 Height?

5 **A** Yes.

6 **Q** That information?

7 **A** Mm-hmm (affirmative).

8 **Q** And as far as what was said, that's all I'm going
9 into. I deliberately didn't go into the whole
10 domestic dispute that was going on.

11 **THE COURT:** I understand. That's objectionable,
12 too.

13 **MS. CAMPBELL:** Yes, sir.

14 **MR. SUTHERLAND:** And that was my principal
15 concern; knowing what happened, what occurred at the
16 incident that they were heading in the direction.

17 **MS. CAMPBELL:** We aren't going to go into any of
18 these statements where he said his life was over.

19 **MR. SUTHERLAND:** So just the name?

20 **MS. CAMPBELL:** We won't go into any of the
21 statements, just the identifying -- just this.

22 **THE COURT:** Just the identification itself.

23 **MR. SUTHERLAND:** Okay. That will work. I just
24 had to make sure.

25 **THE COURT:** You ready for the jury?

1 **MR. SUTHERLAND:** Yes, Your Honor.

2 **THE COURT:** Bring the jury back in.

3 (Jury in at 2:34 p.m.)

4 **THE COURT:** All right, sir.

5 **THE BAILIFF:** The jury is seated, Your Honor.

6 **THE COURT:** Solicitor, you may continue.

7 **MS. CAMPBELL:** Thank you.

8 **Q** (By Ms. Campbell) As I was asking you basically was,
9 the person, the male passenger, was he able to give
10 you certain identifying information about himself?

11 **A** Yes, ma'am, he was.

12 **Q** Was he able to give you his name?

13 **A** Yes, ma'am, he was.

14 **Q** What was his name?

15 **A** Michael P. Cornelius.

16 **Q** And as far as his age?

17 **A** Yes. I had age, race, gender, height.

18 **Q** And that was all information you got from him that
19 day?

20 **A** Yes, ma'am.

21 **Q** And once you got that information, did you then
22 direct him just to go to a nearby filling station?

23 **A** Yeah. He was directed to walk to the Shell station
24 which was like a quarter of a mile, less than a
25 quarter of a mile up the road.

1 Q And then you had no more contact with him that day.
2 Is that correct?

3 A Correct.

4 Q When you saw the still from the video on the WLTX
5 clip, what was significant? Why did you recognize
6 that person?

7 A The reason why it stood out to me so much, it was
8 because the defendant was wearing the exact same
9 thing the night that I had an incident or ran into
10 him.

11 Q Two days earlier on the 15th?

12 A Correct. Yes, ma'am.

13 Q The Michael Cornelius that you stopped, what was he
14 wearing?

15 A He was wearing an overcoat jacket, dark colored
16 pants. He appeared to me to have been rough shaven.

17 Q Did it appear to have the same items that you saw on
18 the clip?

19 A Yes, ma'am. The exact same.

20 Q And was the face the same?

21 A Yes, it was.

22 Q And once you recognized the person in the clip on
23 WLTX, did you then contact Sergeant Ellis and get
24 this information to him?

25 A I immediately called him. Yes, ma'am.

1 Q And then I think he asked you to write a follow-up
2 which you have a copy of there?

3 A Yes, I do.

4 Q Containing this information?

5 A Mm-hmm (affirmative).

6 Q Because at that point his identity was unknown?

7 A Correct.

8 Q And in State's Exhibit 11, the Michael Cornelius you
9 stopped on the 15th, that's exactly what he was
10 wearing and how he appeared?

11 A The exact same way. Yes, ma'am.

12 Q And that's why you called Sergeant Ellis?

13 A Correct.

14 Q And you didn't have any other participation in the
15 investigation of the Sharpe Shoppe incident. In
16 fact, you didn't even respond to the scene, did you?

17 A No, ma'am, I didn't.

18 Q And the area of town where you stopped the female and
19 Mr. Cornelius, that would be in Region Two?

20 A Yes, ma'am. It was in Region Two.

21 Q Which was part of your patrol?

22 A Yes, ma'am.

23 Q The person that you stopped on the 15th and that you
24 recognized in the clip, do you see him here in the
25 courtroom?

1 **A** Yes, I do, ma'am.

2 **Q** Would you point him out for the jury?

3 **A** He's the defendant sitting right over there.

4 **Q** Thank you. I don't have anything further, Your
5 Honor.

6 **THE COURT:** The witness identified the
7 defendant.

8 **MR. SUTHERLAND:** Your Honor, I have no questions
9 of this witness.

10 **THE COURT:** All right, sir. You may come down.

11 **MS. CAMPBELL:** Your Honor, may he be excused?

12 **THE COURT:** Without objection?

13 **MR. SUTHERLAND:** No objection.

14 **MS. ASHTON:** The State calls William Cedarstaff.

15 **MR. SUTHERLAND:** Your Honor, briefly, sir, may
16 we approach?

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

18 (Whereupon, a bench conference is had)

19 **MS. ASHTON:** The State calls William Cedarstaff.

20 WILLIAM CEDARSTAFF, after being duly sworn,
21 testifies as follows:

22 **THE CLERK:** Thank you. Please have a seat in
23 the witness stand. State your full name for the
24 record, and please spell your last name.

25 **THE WITNESS:** William Cedarstaff,

1 C-E-D-A-R-S-T-A-F-F.

2 DIRECT EXAMINATION

3 **BY MS. ASHTON**

4 **Q** Mr. Cedarstaff, where are you employed?

5 **A** Richland County Sheriff's Department.

6 **Q** And what are your duties?

7 **A** I'm an evidence technician.

8 **Q** And what was your involvement with this case, the
9 armed robbery, February 16th, 2009?

10 **A** I initially brought in all the evidence that was
11 turned in on the case.

12 **Q** And do you have a copy of the evidence reports?

13 **A** Yes, I do.

14 **Q** And what were the items of evidence that you actually
15 received?

16 **A** Items 1 through 10; item 1 being a swab from a door
17 handle, item 2 being a swab from an inside door
18 handle. Item 3 was a black hooded sweatshirt with a
19 zippered front. Item 4 was a swab of the interior
20 door. Item 5 was a gearshift, a swab of a gearshift.
21 Item 6 was a swab of the steering wheel. Item 7 was
22 a buccal swab from Cornelius, Michael. Item 8 was a
23 five dollar bill. Item 9 was a black cash drawer.
24 Item 10 was a swab from the cash -- a swab of the
25 cash drawer money clip. Item 12, a CD of the

1 dispatch calls.

2 **Q** Okay. And I'm going to specifically direct your
3 attention to items 4, 5, 6, 7 and 10. Where and whom
4 did you obtain those items from?

5 **A** I obtained those items from Officer Matt Ellis.

6 **Q** Okay. I'm sorry. Who turned those into you?

7 **A** I stand corrected. I received them from -- just a
8 minute. I'm sorry. From a Smith, Michael Patrick.

9 **Q** I'm sorry. Let me direct your attention to this.

10 **A** Which one?

11 **Q** These are the --

12 **A** Down at the bottom. I'm sorry. Items 5, 6 -- 3, 4,
13 5 and 6?

14 **Q** No. 4, 5, 6, 7 and 10.

15 **A** Okay. 4, 6 and 5, from Officer Kevin Isenhoward on
16 the 19th of February at 10:53.

17 **Q** Okay.

18 **A** Item 7 was from Officer Matthew Ellis on the 20th of
19 February at 11:54. And item -- you said item 10 --
20 was from Officer Robert Oates on the 26th of February
21 at 16:04.

22 **Q** And what was the condition of the evidence when you
23 received it?

24 **A** They were in a sealed container.

25 **Q** In separate bags, separate containers?

1 **A** Yes.

2 **Q** Okay. And what, if anything, did you do with the
3 evidence?

4 **A** Once the evidence -- once I had received it, I logged
5 it in in the computer system, assigned them a
6 property location within the evidence room, printed a
7 bar code. It's like a bar code you use if you go
8 shopping and you buy something and scan it, a typical
9 bar code. And it was placed into evidence under a
10 secured location.

11 **Q** Okay. At any time did you ever -- when it was in
12 your custody in the evidence room, was it tampered
13 with?

14 **A** No, ma'am.

15 **Q** Was it contaminated in any way?

16 **A** No, ma'am.

17 **Q** And when it is actually transferred out, is that
18 documented?

19 **A** Yes, ma'am.

20 **Q** And according to your documentation that you're
21 looking at, did you actually transfer any of this out
22 after it was turned into you, the items that we just
23 specifically went over? Here. Let me show you.

24 These are your other notes?

25 **A** No.

1 Q No?

2 A No, I did not.

3 Q Thank you. No further questions.

4 MR. SUTHERLAND: May it please the Court.

5 THE COURT: Yes, sir..

6 CROSS EXAMINATION

7 BY MR. SUTHERLAND

8 Q Briefly, sir, with respect to item number 5, your
9 testimony was that you received that from
10 Investigator Isenhoward?

11 A That is correct, sir.

12 Q And item 7 was received from Investigator Ellis?

13 A That is correct, sir.

14 Q Do you recall if their signatures were on the tape or
15 the seals?

16 A Yes, sir. It had to be on the seal.

17 Q Do you have a specific recollection, or that's
18 just --

19 A It would not have been accepted into evidence had it
20 not been properly submitted.

21 Q All right. Appreciate it. Thank you, sir. No
22 further questions.

23 THE COURT: Anything further?

24 MS. ASHTON: Nothing further.

25 THE COURT: You may come down, sir. May this

1 witness be excused? Without objection.

2 **MR. SUTHERLAND:** No objection.

3 **THE COURT:** You're free to go, sir. Thank you.

4 Next witness.

5 **MS. ASHTON:** The State calls Curtis Burnett.

6 CURTIS L. BURNETT, after being duly sworn,

7 testifies as follows:

8 **THE CLERK:** Thank you. Please have a seat in
9 the witness stand and state your full name for the
10 record.

11 **THE WITNESS:** I'm Curtis Lee Burnett. It's
12 B-U-R-N-E-T-T.

13 DIRECT EXAMINATION

14 **BY MS. ASHTON**

15 **Q** Mr. Burnett, where are you employed?

16 **A** The Richland County Sheriff's Department.

17 **Q** And what are your duties?

18 **A** As evidence technician.

19 **Q** What was your involvement with the armed robbery that
20 occurred February 16th, 2009?

21 **A** The only time I was actually involved with it was
22 transferring some of the items of evidence, 4, 5, 6,
23 7 and 10, to Ms. Barrickman for DNA testing.

24 **Q** Okay. And can you just briefly describe what those
25 items are; 4, 5, 6, 7 and 10?

1 **A** Okay. Number 4 is the swab of the interior door.
2 Number 5 is the swab of the gearshift. Number 6 is
3 the swab of the steering wheel. And number 7 is the
4 actual buccal swab of Mr. Cornelius. And then number
5 10 is the swab of the cash drawer.

6 **Q** Okay. And before you transferred it out, where did
7 you actually come in contact with the evidence?

8 **A** Where it's put on the bin inside the evidence room
9 for storage, we get a list of items from
10 Ms. Barrickman that she needs for testing. I go to
11 that bin, pull them out. And when she comes down, I
12 transfer them over to her through the electronic
13 system.

14 **Q** And what was the condition of those items? How were
15 they packaged?

16 **A** They are sealed as when they were put in there to
17 begin with. If they're tampered with at all, then we
18 have to make other issues and explain why they were
19 tampered with. There is nothing. None of these have
20 been tampered with, hadn't been opened.

21 **Q** And are all the transfers clearly documented?

22 **A** Yes.

23 **Q** And what time of day did you say you transferred it
24 out, those items of evidence?

25 **A** It's on 1:30 p.m. on May 11th, 2009.

1 **Q** And as far as you're aware, there was no
2 contamination of that evidence while it was in --

3 **A** No, ma'am.

4 **Q** -- the evidence locker room? No further questions.

5 **MR. SUTHERLAND:** May it please the Court.

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

7 CROSS EXAMINATION

8 **BY MR. SUTHERLAND**

9 **Q** Briefly, sir. How long had this been in evidence
10 prior to your transferring just the items that she
11 asked you about to Ms. Barrickman?

12 **A** According to this, they were received on
13 February 19th, 2009, and then they were transferred
14 out on May 11th.

15 **Q** Thank you, sir. No further questions, Your Honor.

16 **THE COURT:** Anything further?

17 **MS. ASHTON:** Nothing further, Your Honor.

18 **THE COURT:** May the witness be excused?

19 **MR. SUTHERLAND:** No objection.

20 **THE COURT:** Without objection. You're free to
21 go, sir. Thank you very much.

22 **THE WITNESS:** Thank you, sir.

23 **THE COURT:** Next witness.

24 **MS. CAMPBELL:** May it please the Court. The
25 State calls Margaret Jamison.

1 MARGARET D. JAMISON, after being duly sworn,
2 testifies as follows:

3 **THE CLERK:** Thank you. Please have a seat in
4 the witness stand and state your full name for the
5 record.

6 **THE WITNESS:** Margaret Diane Jamison.

7 DIRECT EXAMINATION

8 **BY MS. CAMPBELL**

9 **Q** Ms. Jamison, where do you currently live?

10 **A** Ridgeway.

11 **Q** And how long have you been living in the Ridgeway
12 area?

13 **A** 48, 9 years.

14 **Q** And you live over there on Smith Lane?

15 **A** Yes, ma'am.

16 **Q** And who all lives there on Smith Lane with you?

17 **A** Some family.

18 **Q** It's your family?

19 **A** Family.

20 **Q** And do you know Michael Cornelius?

21 **A** Yes, ma'am.

22 **Q** And how do you know Michael?

23 **A** He is my nephew.

24 **Q** And back a year ago in February, was he living there
25 on and off some?

- 1 **A** Yes, ma'am.
- 2 **Q** And do you have your own place on Smith Lane that's
- 3 separate from --
- 4 **A** Yes, ma'am.
- 5 **Q** And does your sister also live there?
- 6 **A** Yes, ma'am.
- 7 **Q** And then Michael would stay there some, too. Is that
- 8 correct?
- 9 **A** He has his own residence or house.
- 10 **Q** Where do you work, ma'am?
- 11 **A** Bojangle's.
- 12 **Q** At Bojangle's? How long have you been working at
- 13 Bojangle's?
- 14 **A** Going on ten years.
- 15 **Q** And where is the Bojangle's you work located?
- 16 **A** In Blythewood.
- 17 **Q** Is it right there on Blythewood Road?
- 18 **A** Yes, ma'am.
- 19 **Q** And are you familiar with the Sharpe Shoppes?
- 20 **A** Yes. I'm inside his place.
- 21 **Q** And which one are you inside?
- 22 **A** The Exxon.
- 23 **Q** The Exxon one?
- 24 **A** Mm-hmm (affirmative).
- 25 **Q** And is that across the street from the BP?

1 **A** Yes, ma'am.

2 **Q** And back before all of this happened, when you were
3 working there, would Michael come in and visit you
4 sometimes?

5 **A** He would come in, get breakfast.

6 **Q** I want to turn your attention back to the evening of
7 February the 16th when your truck went missing. Do
8 you remember that?

9 **A** Yes, ma'am.

10 **Q** And can you tell this jury, what shift do you work at
11 the Bojangle's?

12 **A** My hours is from 4 to 1.

13 **Q** And that would be 4 in the morning?

14 **A** Yes, ma'am.

15 **Q** 'Til 1?

16 **A** Yes, ma'am.

17 **Q** So typically what time do you have to get up to be at
18 work at the Bojangle's in Blythewood?

19 **A** It will be around 3 or 3:15.

20 **Q** Something in that area?

21 **A** Yeah.

22 **Q** On the evening of the 16th -- well, let me back up
23 for one more second. What time do you typically go
24 to bed?

25 **A** I have no real certain time.

1 Q On the evening of the 16th, do you remember seeing
2 Michael at your trailer?

3 A Yes, ma'am. He came in my house.

4 Q And was it still light out when he came or dark?

5 A It was dark.

6 Q It was dark?

7 A It was dark.

8 Q When he came over what did he want?

9 A He wanted me to give him a cigarette.

10 Q And did you do that?

11 A Yes, ma'am.

12 Q And was Michael still there when you went ahead and
13 went to bed?

14 A Yes, ma'am.

15 Q Do you know what time it was you went to bed that
16 night?

17 A I don't know. I was already laying down when he
18 came. I got up. He asked me for a cigarette. So I
19 said: Well, lock the door behind you.

20 Q You told him to lock the door behind him when he
21 left?

22 A Yes, ma'am.

23 Q And at that point was your truck still parked outside
24 your trailer?

25 A As far as I know.

1 Q And when you went to bed that night, would it have
2 been before 10:30?

3 A It's possible.

4 Q It's possible?

5 A (Nods head affirmatively).

6 Q You got up the next morning. Did you look for your
7 keys?

8 A Yes, ma'am.

9 Q And that would have been the morning of the 17th.
10 And could you find your keys?

11 A No, ma'am.

12 Q And when you went outside, did you look in your car?

13 A Yeah. That's when I noticed my truck was gone.

14 Q It was gone --

15 A Yes, ma'am.

16 Q -- you said? I'm going to show you State's Exhibit
17 19. Is that the truck you're referring to?

18 A Yes, it is.

19 Q That morning how did you get to work? What time was
20 it when you noticed it was gone?

21 A Well, I used to leave home about a quarter 'til.

22 That was really about the time I started looking for
23 the keys. I could not find the keys.

24 Q A quarter 'til 4?

25 A About a quarter 'til 4.

1 Q In the morning?

2 A Yes, ma'am.

3 Q And when was the last time you had seen the keys?

4 Before you went to bed the night before?

5 A Yes, ma'am.

6 Q And who was the only other person in your home with

7 you when you went to sleep that night?

8 A My friend.

9 Q Was Michael there?

10 A Oh. That same night?

11 Q That night.

12 A Yeah. Michael. Yeah. Michael was there because I

13 told him to lock the door behind him.

14 Q To lock the door behind him?

15 A Yes, ma'am.

16 Q After he smoked his cigarette or got his cigarette?

17 A Yeah.

18 Q And you don't know where Michael went that night, do

19 you?

20 A No, ma'am.

21 Q How did you get to work the next morning?

22 A My friend.

23 Q And once you got to work, did you make any phone

24 calls to law enforcement?

25 A Yes.

1 Q Who did you call?

2 A I called Fairfield.

3 Q And is Ridgeway in Fairfield County?

4 A Fairfield is -- well, yeah. Ridgeway. Winnsboro.

5 Q So you would have called the police in Winnsboro?

6 A Yeah.

7 Q And what did you tell the police?

8 A I told them my truck had been stolen.

9 Q And did you tell them who had stolen it?

10 A Well, I think that morning, we didn't really talk
11 that morning. But when I got in that afternoon, they
12 came out.

13 Q Okay. So you told them just that morning it had been
14 stolen?

15 A Yeah. And they came and got that statement.

16 Q Once you got off work that afternoon, did you get a
17 ride back to Ridgeway?

18 A Yeah, to my house.

19 Q Back to your house? And when you got to your house,
20 who and what was there?

21 A When I got back home, my truck and Michael was there.

22 Q And did you talk to Michael?

23 A I told him I had called the police.

24 Q And did he say anything to you?

25 A He just told me he was very sorry. He was sorry.

1 Q And he was sorry for what?

2 A For taking my truck.

3 Q Did you call the police that afternoon when you got
4 home?

5 A Yeah.

6 Q Did they come out?

7 A Yeah.

8 Q Did they take a report from you about your truck?

9 A Yes, ma'am.

10 Q Being taken?

11 A Yes, ma'am.

12 Q Without your permission?

13 A Yes, ma'am.

14 Q Is that it?

15 (Ms. Campbell hands statement to witness)

16 Q And who did you tell them had taken your truck?

17 A My -- Michael Paul.

18 Q When you got back that afternoon and Michael was
19 there with your truck and he said he was sorry --

20 A Yes, ma'am.

21 Q -- did you tell him you were going to call the
22 police?

23 A Yes, ma'am.

24 Q And did he wait around for the police to come?

25 A He wasn't there when they got there.

1 **Q** Had you given Michael consent to use your truck?

2 **A** No, ma'am.

3 **Q** The next day, on the 18th, do you remember talking to
4 a Sergeant Isenhoward from the Richland County
5 Sheriff's Department?

6 **A** Yeah. A fellow came out that day.

7 **Q** And do you remember him taking a statement from you
8 about what had happened with your truck?

9 **A** Yes.

10 **Q** And do you also remember him asking to consent to
11 search your truck?

12 **A** Yeah.

13 **Q** And I'm showing you State's Exhibit No. 10. Is that
14 the consent to search you signed?

15 **A** Yes, ma'am.

16 **Q** And that would have been after Michael returned your
17 truck?

18 **A** Yes, ma'am.

19 **MS. CAMPBELL:** Your Honor, at this time we'd
20 offer State's Exhibit 10.

21 **MR. SUTHERLAND:** Is that the consent?

22 **MS. CAMPBELL:** That's the consent.

23 **MR. SUTHERLAND:** Without objection.

24 **COURT REPORTER:** I think it's already in
25 evidence.

1 **THE COURT:** It's already in.

2 **MS. CAMPBELL:** Oh. I thought you objected to
3 it. I'm sorry.

4 **Q** (By Ms. Campbell) After you called the police and
5 they came and Michael was already gone, did you see
6 him any after that?

7 **A** No, ma'am.

8 **Q** And you don't know what he did with your truck while
9 he had it?

10 **A** No, ma'am.

11 **Q** Beg the Court's indulgence. Your nephew, Michael, do
12 you see him here in the courtroom?

13 **A** Yes, ma'am.

14 **Q** Would you mind pointing him out for the jury?

15 **A** He's sitting right there.

16 **MS. CAMPBELL:** Your Honor, may the record
17 reflect she's identified the defendant? Thank you
18 very much.

19 **THE COURT:** It will so reflect. Cross.

20 **MR. SUTHERLAND:** May it please the Court.

21 CROSS EXAMINATION

22 **BY MR. SUTHERLAND**

23 **Q** Briefly, ma'am. Have you ever let Michael use your
24 truck before?

25 **A** Yes, sir.

1 **Q** Okay. No further questions, Your Honor.

2 **THE COURT:** Thank you very much. You may come
3 down, ma'am. May this witness be excused? I'm
4 sorry. Redirect?

5 REDIRECT EXAMINATION

6 **BY MS. CAMPBELL**

7 **Q** Did you tell Michael he could use your truck that
8 night he took it?

9 **A** No, ma'am.

10 **Q** Thank you. That's all I have.

11 **THE COURT:** Now you're free to go, ma'am. Thank
12 you very much.

13 **MS. CAMPBELL:** The State would call Investigator
14 Robert Oates.

15 ROBERT OATES, after being duly sworn, testifies
16 as follows:

17 **THE CLERK:** Thank you. Please have a seat in
18 the witness stand. State your full name for the
19 record, and please spell your last name.

20 **THE WITNESS:** Robert Oates, O-A-T-E-S.

21 DIRECT EXAMINATION

22 **BY MS. CAMPBELL**

23 **Q** Investigator Oates, where are you employed?

24 **A** Richland County Sheriff's Department.

25 **Q** What do you do there, sir?

1 **A** I am a crime scene investigator.

2 **Q** And as a crime scene investigator, what do your
3 duties include?

4 **A** Processing evidence at crime scenes, photography,
5 other specialized duties as far as drug analysis,
6 latent fingerprint development and identification,
7 crime scene reconstruction, things of that nature.

8 **Q** And you mentioned that you process evidence. When
9 you say process evidence, what do you typically mean
10 by that?

11 **A** It can be evidence that is collected at a crime scene
12 or evidence that is turned into our evidence room for
13 me to process if there's a special request to
14 process.

15 **Q** When you say processing, are you typically processing
16 for like two kinds of evidence, kind of fingerprint
17 evidence and/or DNA evidence?

18 **A** Right.

19 **Q** Depending on the item?

20 **A** Depending on the item, yes.

21 **Q** I want to turn your attention to the case involving
22 the Sharpe Shoppe on Blythewood Road. Did you
23 receive certain -- you never actually responded to
24 the scene that night?

25 **A** I did not.

1 **Q** And are most of the units equipped that if there is
2 any processing to be done they can do it? Like the
3 road units can do some of that themselves?

4 **A** Yes.

5 **Q** And in a case such as an armed robbery, are you
6 trying to look for places where a person or a
7 defendant may have touched in order to get any kind
8 of fingerprint and/or DNA evidence?

9 **A** Right. We are. Yes.

10 **Q** And let me ask you this. If I walk up, say, to the
11 front door of a convenience store and pull it open
12 and touch it, say, with my hands; am I necessarily
13 going to leave either DNA evidence or fingerprint
14 evidence?

15 **A** Yes, you can. Yes. But there is a possibility --

16 **Q** That you will?

17 **A** Yes.

18 **Q** As well as you won't?

19 **A** That's right. Yes.

20 **Q** And high traffic areas such as the front door of a
21 convenience store, is it less likely to leave any
22 kind of evidence?

23 **A** It is. It is.

24 **Q** And why is that?

25 **A** It's because it's high travel. So you basically can

1 get fingerprint on top of fingerprint which can cause
2 distortions and an actual fingerprint itself. So it
3 can cause you to push your objects. So your front
4 door, the angle of the actual handle, things like
5 this can make it kind of difficult, too, sometimes.

6 **Q** And in some things, such as, say, if a person is
7 reaching into a cash drawer, you may want to try to
8 process it for what we call touch DNA evidence?

9 **A** Right. Of course. Yes.

10 **Q** And again, even if a person reaches in and actually
11 touches part of the drawer and not just the bills,
12 are they necessarily going to leave DNA evidence?

13 **A** It's -- there is variables there. You could and you
14 can't. It depends.

15 **Q** And in order to examine something for a fingerprint,
16 does a certain amount of what we call ridge detail
17 have to be left before there is even something that
18 it can be compared to?

19 **A** Yes. We have to be able to have enough ridge detail
20 in order to be able to identify an actual fingerprint
21 type.

22 **Q** So if I walk up and touch this and move it down
23 perfectly and move it straight up, am I necessarily
24 going to leave a fingerprint there?

25 **A** Like I say, there's variables. It depends --

1 **Q** On what factors?

2 **A** -- on how you touch it. On how you touch the object,
3 the perspiration within the fingertips. We have
4 sweat glands in our fingers which basically fills up
5 the ridges; okay, if we leave like a latent print,
6 which is basically sweat or water. Okay. So it
7 depends on the object and like I say, the size of the
8 object, the shape, basically whether we leave an
9 actual fingerprint there.

10 **Q** And an object such as a door handle which is touched
11 over and over by people coming in and out, is there
12 any real probability of being able to get a useable
13 fingerprint at that point?

14 **A** It would be very, very bad, very tough. Yes. I
15 would say no.

16 **Q** In this case specifically, did you receive certain
17 items that had been collected from a crime scene at
18 the Blythewood Shop?

19 **A** Yes, I did.

20 **Q** On Blythewood Road?

21 **A** Mm-hmm (affirmative).

22 **Q** I want to show you what's been marked as State's
23 Exhibit No. 26. I haven't marked this one yet.

24 Excuse me. I have. And 27?

25 **A** Yes, I did.

1 **Q** Did you retrieve both of these items from the
2 evidence room?

3 **A** Yes, I did.

4 **Q** And when you received those items, were they packaged
5 in a proper manner?

6 **A** They were properly sealed, yes, with evidence tape
7 and initialed.

8 **Q** And had you received a request from the investigator
9 in the case to process these items for possible --

10 **A** Yes, I did.

11 **Q** -- latent prints and/or DNA?

12 **A** Yes, I did. Sorry.

13 **Q** Taking the black cash drawer, tell this jury exactly
14 how you processed it for possible evidence?

15 **A** Upon receiving the sealed -- evidence sealed box,
16 evidence box which contained the cash register
17 drawer, on the outside of the evidence label, it read
18 'For DNA processing only', not for latent prints. So
19 I basically used a sterile cotton swab and distilled
20 water --

21 **COURT REPORTER:** I'm sorry. You used what? I
22 didn't hear you.

23 **A** I'm sorry. A cotton swab, a sterile cotton swab.
24 I'm sorry I'm talking too fast. I apologize. A
25 sterile cotton swab with distilled water and

1 processed it or swabbed it with the distilled water
2 to collect a possible DNA sample from the cash
3 drawer.

4 **Q** And what parts of the drawer did you actually swab?

5 **A** The exterior that's going to -- I'm sorry. The five
6 money clips. That's what I called them or described
7 them as, money clips or dollar bill holders or clips
8 to hold the money down, the clips, the dollar bills.

9 **MS. CAMPBELL:** Your Honor, I would offer State's
10 Exhibits 26 and 27 into evidence.

11 **MR. SUTHERLAND:** No objection.

12 **THE COURT:** Without objection.

13 (WHEREUPON, State's Exhibit No. 26 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 27 is admitted
16 into evidence.)

17 **Q** On State's Exhibit No. 27, when you talk about the
18 clips, are you talking about these?

19 **A** Yes. Those. Yes.

20 **Q** And you actually swabbed those to see if there would
21 be any possible DNA evidence on those?

22 **A** Yes, I did.

23 **Q** And do you know of your own volition whether or not
24 the defendant in this case actually even touched
25 those?

1 **A** No, I don't. No.

2 **Q** Did you also receive item number 26, the five dollar
3 bill?

4 **A** Yes, I did.

5 **Q** And did you try to process it for any possible
6 evidence?

7 **A** Yes. I sure did.

8 **Q** And what were you processing that item for?

9 **A** Any fingerprints, latent fingerprints.

10 **Q** And were you able to retrieve any usable prints from
11 the five dollar bill?

12 **A** No, I was not.

13 **Q** And is that unusual on an item such as money?

14 **A** That's not unusual.

15 **Q** Why is that, sir?

16 **A** The texture of the actual paper that the money is
17 made out of. And also again we go back to how an
18 object or how an article is grabbed or held within
19 your hand. There has to be enough pressure from your
20 hand to that object or to that piece of the paper or
21 the money and enough sweat or liquid from the hands,
22 the sweat glands has to transfer from the person's
23 finger onto that object.

24 And if you're running or if you're -- in this
25 case, if you're grabbing money from the cash register

1 drawer during an armed robbery or any kind of a case
2 like this, you're going to be grabbing it pretty
3 fast. So there's a possibility when I grab that
4 object you nor I is going to leave a fingerprint.

5 Q So there were no usable prints --

6 A No.

7 Q -- with any kind of ridge detail --

8 A No.

9 Q -- suitable for comparison?

10 A Hmm-mm (negative).

11 Q Once you collected the DNA swabs from the cash drawer
12 in item number 27, did you submit those back into
13 evidence for further processing?

14 A Yes, I did.

15 Q And it was actually one swab. And you just swabbed
16 the different money clips. Is that correct?

17 A Yes. Mm-hmm (affirmative). Yes.

18 Q And that was packaged properly and sealed for
19 submission?

20 A Yes, it was.

21 Q Thank you. I don't have anything further.

22 **THE COURT:** Cross.

23 **MR. SUTHERLAND:** Just briefly, Your Honor.

24 CROSS EXAMINATION

25 **BY MR. SUTHERLAND**

1 **Q** So, no fingerprints on the register on the drawer,
2 sir?

3 **A** No, sir.

4 **MR. SUTHERLAND:** I have no further questions,
5 Your Honor.

6 **THE COURT:** All right, sir. You may come down.
7 Thank you very much.

8 **MS. CAMPBELL:** Your Honor, may he be excused?

9 **THE COURT:** The witness may be excused without
10 objection?

11 **MR. SUTHERLAND:** No objection, sir.

12 **THE COURT:** Next witness.

13 **MS. ASHTON:** The State calls Christine
14 Barrickman.

15 CHRISTINE BARRICKMAN, after being duly sworn,
16 testifies as follows:

17 **THE CLERK:** Thank you. Please have a seat in
18 the witness stand and state your full name for the
19 record. And please spell your last name.

20 **THE WITNESS:** Christine Barrickman,
21 B-A-R-R-I-C-K-M-A-N.

22 DIRECT EXAMINATION

23 **BY MS. ASHTON**

24 **Q** Ms. Barrickman, where are you employed?

25 **A** Richland County Sheriff's Department.

1 Q And what are your duties there?

2 A I am the technician in the DNA lab.

3 Q What was your involvement with the Sharpe Shoppe
4 armed robbery?

5 A I picked up items 4, 5, 6, 7 and 10 and brought them
6 to the lab to be processed.

7 Q And briefly, just what were those items?

8 A Item 4 was a swab from the interior door. Item 5 is
9 swab from a gearshift. Item 6 was a swab from the
10 steering wheel. Item 7 was the buccal swab from
11 Michael Cornelius. And item 10 was a swab from the
12 cash drawer.

13 Q And who did you receive those items from?

14 A Curtis Burnett.

15 Q And is he in the evidence room?

16 A Yes.

17 Q When you received those items, were they packaged and
18 sealed?

19 A Yes.

20 Q And were they in individual packages, individually
21 sealed?

22 A Yes.

23 Q Who did you then transfer those items to?

24 A Gray Amick.

25 Q And while the items were in your possession, were

1 they contaminated or damaged in any form?

2 **A** They weren't contaminated, no.

3 **Q** Did they stay sealed?

4 **A** No. I opened the evidence and processed the swabs.

5 **Q** Oh. You did?

6 **A** Mm-hmm (affirmative).

7 **Q** Okay. At what point did you turn them over to Gray?

8 **A** Once the swabs are cut and put in the tubes and
9 they're placed into a rack and then once the case is
10 complete, then the rack with the cut swabs are turned
11 over to Gray.

12 **Q** And Gray, he's actually with the Richland County
13 Sheriff's Department?

14 **A** Yes.

15 **Q** What's his full name?

16 **A** Amick. Gray Amick.

17 **Q** Okay. And he's in the ...?

18 **A** DNA lab.

19 **Q** Okay. When you say you processed the swabs, how do
20 you do that?

21 **A** Basically I open the evidence and the swabs are all
22 in individual containers and they are -- it's just
23 like a cotton swab that, you know, you'd have at your
24 house. You just cut it with scissors. It's placed
25 into a tube. It goes into a rack and then it's

1 turned over to whoever is analyzing the case, which
2 would be Gray Amick in this one.

3 **Q** Okay. And what does he do once he gets those from
4 you?

5 **A** He processes them on the instrumentation to see if
6 there's any DNA there.

7 **Q** Okay. Beg the Court's indulgence. No further
8 questions.

9 **THE COURT:** Anything?

10 CROSS EXAMINATION

11 **BY MR. SUTHERLAND**

12 **Q** So maybe you open the evidence, you cut the swabs,
13 what you call process it, then you turned it directly
14 over to Dr. Amick?

15 **A** Right.

16 **Q** Thank you. No further questions, Your Honor.

17 **THE COURT:** Redirect?

18 **MS. ASHTON:** Nothing, Your Honor.

19 **THE COURT:** All right. You may come down,
20 ma'am. Thank you very much. May this witness be
21 excused?

22 **MR. SUTHERLAND:** Yes, sir.

23 **THE COURT:** Without objection. Next witness.

24 **MS. CAMPBELL:** Thank you. The State would call
25 Dr. Gray Amick.

1 DR. GRAY AMICK, after being duly sworn,
2 testifies as follows:

3 **THE CLERK:** Thank you. Please have a seat in
4 the witness stand and state your full name for the
5 record.

6 **THE WITNESS:** My name is Gray Amick, A-M-I-C-K.

7 DIRECT EXAMINATION

8 **BY MS. CAMPBELL**

9 **Q** Dr. Amick, where are you employed?

10 **A** The Richland County Sheriff's Department.

11 **Q** What do you do there, sir?

12 **A** I am the supervisor or the DNA technical leader in
13 the forensic DNA laboratory.

14 **Q** Can you tell this jury a little bit about your
15 education and your training in the field of DNA?

16 **A** Sure. I have a Bachelor of Science. I received that
17 in 1989. And a Ph.D in '93 from University of South
18 Carolina. I was hired by the South Carolina Law
19 Enforcement Division at that point. I worked for
20 SLED for 11 years. I was trained by court experts in
21 the field of forensic serology, forensic DNA
22 analysis. I was involved in their method development
23 and protocol authoring. In 2004 I was hired by the
24 Richland County Sheriff's Department to start their
25 DNA laboratory. And I'm involved in continuing

1 education every year in that career since 1993.

2 **Q** So you actually developed the laboratory at the
3 Richland County Sheriff's Department?

4 **A** That's correct.

5 **Q** For DNA testing?

6 **A** That's correct.

7 **Q** And is your laboratory accredited in any way?

8 **A** We are internationally accredited by ASCLAD, American
9 Society of Crime Laboratory Directors.

10 **Q** And have you testified before as an expert in DNA
11 analysis?

12 **A** I have.

13 **Q** And how many times have you been qualified as an
14 expert in that area, sir?

15 **A** Approximately 70 times.

16 **MS. CAMPBELL:** Your Honor, at this time we'd
17 offer him as an expert in DNA analysis.

18 **THE COURT:** Any voir dire or objection?

19 **MR. SUTHERLAND:** No voir dire, sir. I'm
20 satisfied. Without objection.

21 **Q** Dr. Amick, I want to turn your attention to -- it's
22 case number 09-02149216, The State vs. Michael
23 Cornelius. Did you receive certain items for testing
24 for DNA?

25 **A** I did.

1 Q And tell this jury, when you receive items, what
2 testing are you able to do and what are you looking
3 for?

4 A What we do is, with the basic serology, if it's
5 warranted, that means identify the body fluid, is it
6 blood, is it semen, is it saliva; and then we'll
7 attempt to develop a DNA profile from evidence, any
8 evidence or any standards submitted in the case from
9 the people involved.

10 Q Are you familiar with the term of touch DNA?

11 A I am.

12 Q What does that mean?

13 A That's the type of DNA that you attempt to get a
14 profile from off an item that you just touch.

15 Q And say I walk up and I touch the top of this, am I
16 necessarily going to leave DNA there?

17 A Not necessarily.

18 Q And are there different factors that affect whether
19 or not, even if I grab something or touch it or even
20 grab it repeatedly, whether or not I'll leave DNA?

21 A There are.

22 Q And what are some of those factors, just to
23 illustrate for the jury?

24 A They are similar to what you heard for fingerprints,
25 or what you may have heard for fingerprints; and that

1 is, if the person has a sweaty hand, if they shed
2 their cells or they have a tendency to shed cells,
3 the type surface they touch, how long they touch it,
4 the pressure which they touch it, things like that.

5 Q Okay. But there is -- in many cases you will test
6 just to see if you can get something, even if it's
7 remote?

8 A That's correct.

9 Q In this case you received four items of evidence as
10 well as a known standard from Michael Cornelius?

11 A That's correct.

12 Q And the items you received, I believe the first item
13 you received was item number 4?

14 A That's correct.

15 Q And what was that?

16 A A swab from interior door.

17 Q And item number 5?

18 A A swab from gearshift.

19 Q What was the next item?

20 A Item 6 was a swab from the steering wheel.

21 Q And then I believe the known standard was item number
22 7?

23 A That's correct. Buccal swab from Michael Cornelius.

24 Q And then the final item was item number 10?

25 A That's right. A swab from the cash drawer.

1 **Q** And what analysis -- and this one, the first thing I
2 want to touch on is item number 7 which is the swab
3 from Michael Cornelius. Before doing a DNA
4 comparison, if you have a known suspect, is it
5 advisable to have their known standard?

6 **A** To do any comparison of DNA you need the evidence and
7 something to compare it against. So the answer would
8 be, yes; you need a standard of a person that's
9 involved to say whether they match it or don't match
10 it.

11 **Q** And typically, how is a standard collected from a
12 defendant or a victim or whoever it was collected it?

13 **A** Well, we typically receive buccal swabs which is a
14 swab from your mouth. So you take a Q-tip and stick
15 it in your mouth basically.

16 **Q** And did you receive a buccal swab in this case?

17 **A** I did.

18 **Q** So that would have been collected from the inside of
19 your mouth, from your saliva?

20 **A** That's correct.

21 **Q** And that would have been your known standard in this
22 case which was item number 7?

23 **A** Yep.

24 **Q** And in collecting, trying to collect what's known as
25 touch DNA from, say, the interior of a car as in the

1 first three in this case, how would those be
2 collected?

3 **A** The individual collecting them would moisten a swab,
4 a sterile swab, and then take that moistened swab and
5 basically rub it back and forth on the item they're
6 trying to collect evidence from.

7 **Q** And do you all in your department and the Sheriff's
8 Department actually have little kits set up that are
9 made for doing that?

10 **A** There is a box it's put into that the crime scene
11 will have the necessary reagents and supplies to do
12 that, yes.

13 **Q** And actual investigators can even do it?

14 **A** That's correct.

15 **Q** And investigators often collect, say, the buccal swab
16 from the defendant and/or swabs from, say, a car?

17 **A** That's correct. They are trained to do that as well.
18 Yes.

19 **Q** And what type of expertise does it take to actually
20 collect one of these swabs?

21 **A** Basically just what I've told everybody today. You
22 could probably do it without training.

23 **Q** Okay. When you're first doing your testing, I
24 believe you testified earlier that you were looking
25 for the presence of DNA?

1 **A** That's correct.

2 **Q** Just because an item is swabbed doesn't mean
3 necessarily there's going to be any DNA to be tested
4 in it. Is that correct?

5 **A** That's correct.

6 **Q** And in this case were you able to get actual DNA from
7 any of the four items? Of course, did you get any --
8 the buccal swab from Michael Cornelius, it had DNA.
9 Is that correct?

10 **A** Yes.

11 **Q** And were you able to get DNA from any of the other
12 swabs?

13 **A** There was no analysis performed on number 4. So I
14 can't answer that for number 4. The other items, 5,
15 6 and 10, I did get DNA from those.

16 **Q** And once you were able to determine the presence of
17 DNA -- and with DNA as with fingerprints, can you say
18 how long that DNA has been there before the swab
19 comes along and picks it up?

20 **A** No. You cannot tell how long it's been there.

21 **Q** So it's similar to fingerprints in that manner?

22 **A** That's correct.

23 **Q** But if there is DNA there, you are able to either
24 include it or exclude it and make a comparison to
25 someone else. Is that correct?

1 **A** If there's enough DNA there, we can develop a profile
2 and then compare it to standards in the case and then
3 say, yes, they're included or excluded.

4 **Q** And when you tested item number 10 which was a swab
5 from the cash drawer that was collected by
6 Investigator Oates; what, if anything, were you able
7 to determine about whether or not -- when you
8 compared it to Michael Cornelius?

9 **A** Item 10 was a mixture, meaning there was more than
10 one individual there. And Michael Cornelius was
11 excluded from being a contributor to that mixture.

12 **Q** So there was a mixture there. And would you expect
13 in something, say, like a cash drawer where there are
14 different people handling the money and/or touching
15 the drawer on a daily basis, would it be unusual to
16 find a mixture in something like a cash drawer at a
17 convenience store?

18 **A** No..

19 **Q** And even if the defendant had reached into the cash
20 drawer, if he hadn't necessarily touched these, or
21 even if he had, he may not leave DNA?

22 **A** He may or may not. That's correct.

23 **Q** And you were able to eliminate the defendant from the
24 mixture from the cash drawer. Is that correct?

25 **A** That's correct.

1 Q And what --

2 MR. SUTHERLAND: Your Honor, if I may. We're
3 just getting yes or no questions.

4 THE COURT: I understand. Leading your witness.

5 Q Okay. Moving your attention to item number 6, the
6 steering wheel, were you able to get any -- what
7 happened when you compared it to Michael Cornelius?

8 A Item 6 was also a mixture. And Michael Cornelius was
9 excluded from being a contributor in the case.

10 Q And again, just for the record, you didn't get any
11 known standards from anyone else, such as the owner
12 of the car, did you?

13 A I did not.

14 Q And even if a person had driven the car and touched
15 the material, they may not necessarily leave DNA?

16 A That's correct.

17 Q Finally, the swab from the gearshift in the truck,
18 were you able to compare that to swab number 7?

19 A Yes, I was.

20 Q Which is the known standard. What was your result?

21 A The DNA profile developed from item 5 which was a
22 swab the gearshift matched Michael Cornelius.

23 Q And once you make a match in a case showing that the
24 person's DNA is present, are you then able to put a
25 statistical probability compared to anyone else?

1 **A** Yes, I am.

2 **Q** And in this case what were the results when you did
3 that?

4 **A** Based on those genetic results that I obtained, the
5 frequency of seeing this profile in the Caucasian
6 population is approximately 1 in 21 billion and in
7 the African-American population approximately 1 in
8 41 billion.

9 **Q** Billion?

10 **A** Billion with a B. Correct.

11 **Q** How many zeroes is that?

12 **A** Nine zeroes.

13 **Q** And do you have any opinion in your expert opinion as
14 to whether or not Michael Cornelius's DNA was on that
15 gearshift?

16 **A** Yes. In my opinion his DNA was on that gearshift.

17 **Q** And again, there was no blood evidence or anything of
18 that type such as would be involved with a stabbing
19 or anything of that nature in this case that was
20 submitted to you?

21 **A** No.

22 **Q** As far as, say, in a high traffic area such as a
23 convenience store on, say, such as a front door or
24 anything like that, is the probative value of DNA
25 that may be left there less probative than it may be

1 such as inside a cash drawer or something like that?

2 **MR. SUTHERLAND:** Your Honor, I'm sorry. Is this
3 a legal conclusion?

4 **THE COURT:** Well, he can offer an opinion. I'll
5 allow it.

6 **A** My opinion is, on items that are touched by more and
7 more people, it has less and less value when trying
8 to match somebody in this type of a case. So, on
9 items that are touched by a lot of people, it's
10 very -- they have a lot less value than potentially
11 an item that is touched by less people or just one
12 person.

13 **Q** Thank you. I don't have anything further.

14 **THE COURT:** Cross examination.

15 **MR. SUTHERLAND:** May it please the Court.

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

17 CROSS EXAMINATION

18 **BY MR. SUTHERLAND**

19 **Q** So, Doctor, the long and the short of everything is
20 that there was a match from that gearshift on his
21 aunt's truck?

22 **A** On his --

23 **Q** On the truck. On number 5, item number 5. Sorry.

24 **A** Yes. He was present on the gearshift of the truck.

25 **Q** And very briefly -- this is almost out of

1 curiosity -- there is a -- you've got numbers here of
2 1 -- she wrote that stuff up there -- of 1 in
3 21 billion and then 1 in 41 billion?

4 **A** That's correct.

5 **Q** And does that say anything to you about the quality
6 of the DNA? And only from a laymen's perspective,
7 because I've seen 1 in something quadrillion before.
8 Sort of, what would be the distinction between one of
9 those kind of matches and one that was down in the
10 billions?

11 **A** Okay. The distinction is, it's based on the amount
12 of DNA that's probably deposited on that item. The
13 less DNA and the less profile, like if I get a
14 partial profile, then I have less information to do a
15 frequency from.

16 **Q** So that's that thing like where there are boxes and
17 you'll have like 12.2 and like a number of boxes and
18 what you're able to plug into those boxes?

19 **A** That's correct.

20 **Q** Okay.

21 **A** It's basically a full profile versus a partial. And
22 that's basically tons of DNA there versus a small
23 amount of DNA. Now, it doesn't -- it's two different
24 things we're talking about. It doesn't -- you
25 shouldn't use quality of match. I mean, it's a match

1 first.

2 **Q** Yes, sir.

3 **A** That's one thing. Then there's a statistic attached
4 to that. So, just because you have a relatively
5 lower number, it doesn't mean that the match was
6 lesser. It just means there was less information for
7 me to draw on a statistic amount. But they're still
8 a match.

9 **Q** Yes, sir. I understand. And Ms. Campbell had asked
10 you, you know, if somebody is just -- if only a
11 couple or a few people touch a certain thing versus a
12 whole bunch of people touching a certain thing, I
13 think the increased likelihood, you testified
14 something along the lines of if a bunch of people are
15 touching something, it has the potential to make it
16 problematic to get DNA from that item?

17 **A** Not that you couldn't get DNA from it. It just makes
18 it less valuable potentially because it's difficult
19 to interpret something that has lots of people's DNA
20 on it.

21 **Q** Well, does that sort of make that box longer or --

22 **A** No. It's just there is just more DNA there from more
23 people. So you get to the point where you end up
24 saying this person is included or excluded versus I
25 can surely say it's a match and this is the

1 statistic. So you go from just it's a match and I
2 can include or exclude it because there's so much
3 more DNA there.

4 **Q** Yes, sir. And you wouldn't be able to say like how
5 many different people would touch a cash drawer
6 versus a gearshift?

7 **A** From the DNA?

8 **Q** Or just -- as she was asking you, I think she was
9 asking you about the cash drawer and, you know,
10 whether -- would it make a distinction if a couple,
11 three people touched a cash drawer or a couple, three
12 people touched a gearshift?

13 **A** I'm not sure of the question.

14 **Q** In terms of the value that you were speaking of
15 earlier.

16 **A** I mean, the way I interpreted her question is, if a
17 lot of people touch something, does it have probative
18 value. And I think my answer would be to that, it
19 has less value as a DNA analyst because I don't
20 expect to get a mess of DNA that I can't adequately
21 draw a very -- a match conclusion.

22 **Q** Yes, sir.

23 **A** So, does that answer your question?

24 **Q** Yes, sir. Absolutely. Thank you. No further
25 questions, Your Honor.

1 **THE COURT:** Redirect?

2 **MS. CAMPBELL:** No, sir.

3 **THE COURT:** All right, sir. You may come down.

4 **THE WITNESS:** Thank you.

5 **THE COURT:** Thank you very much. This witness
6 be excused?

7 **MR. SUTHERLAND:** No objection.

8 **THE COURT:** All right, ladies and gentlemen.
9 Let's take a short afternoon break. Everybody just
10 go to your jury room. You got some refreshments, Mr.
11 Dye?

12 **THE BAILIFF:** Yes, sir.

13 **THE COURT:** And relax for a few minutes. We'll
14 call you when we're ready. Again, don't discuss the
15 case among yourselves while you're in the jury room,
16 please.

17 (Jury out at 3:30 p.m.)

18 **THE COURT:** We'll stand at ease for about ten
19 minutes.

20 **MR. SUTHERLAND:** Thank you, Your Honor.

21 (Whereupon, a break is taken)

22 **THE COURT:** What's your witness list consist of?

23 **MS. CAMPBELL:** One more witness.

24 **THE COURT:** One more?

25 **MS. CAMPBELL:** Yes, sir.

1 **THE COURT:** All right.

2 **MS. CAMPBELL:** Sergeant Ellis.

3 **THE COURT:** Ready for the jury?

4 **MS. CAMPBELL:** Yes, sir. I just want to get
5 these -- I'm ready.

6 **THE COURT:** Defense ready?

7 **MR. SUTHERLAND:** The defense is ready. Sorry,
8 Your Honor.

9 **THE COURT:** Bring the jury, please.

10 (Jury in at 3:55 p.m.)

11 (WHEREUPON, State's Exhibit No. 28 is marked for
12 identification.)

13 **THE BAILIFF:** The jury is seated, Your Honor.

14 **THE COURT:** All right. Solicitor, you can call
15 your next witness.

16 **MS. CAMPBELL:** Your Honor, the State calls
17 Sergeant Matt Ellis.

18 MATTHEW ELLIS, after being duly sworn, testifies
19 as follows:

20 **THE COURT:** Thank you. Please have a seat in
21 the witness stand and state your full name for the
22 record.

23 **THE WITNESS:** Matthew Ellis.

24 DIRECT EXAMINATION

25 **BY MS. CAMPBELL**

1 Q Sergeant Ellis, where are you employed?

2 A Richland County Sheriff's Department.

3 Q What are your duties there, sir?

4 A Currently a sergeant assigned to the burglary unit in
5 the criminal investigative division.

6 Q Back in February of 2009 what did your duties
7 include?

8 A I was an investigator assigned to the major crimes
9 scene division; specifically, the robbery unit.

10 Q I want to turn your attention to the evening of
11 February the 16th of 2009. Did you receive a call to
12 respond to an armed robbery on Blythewood Road?

13 A I did. Periodically we have to work evening shift
14 and cover the nighttime calls that officers might
15 have for an investigator where an incident might
16 occur we need to respond to. On the 16th of
17 February 2009, approximately 10:30 or a little after,
18 I received a call from Corporal Michael Smith in
19 reference to a confirmed robbery which had happened
20 at 235 Blythewood Road which is the Sharpe Shoppe in
21 Richland County.

22 Q And did you actually proceed out to the crime scene
23 itself that evening?

24 A I did. Once I finished -- I was actually at the
25 hospital dealing with a shooting, and once I finished

1 up there I responded to that incident location.

2 Q And approximately what time was it when you got there
3 that night? Do you remember?

4 A It was about 11:15 when I arrived at the Sharpe
5 Shoppe in Blythewood.

6 Q Once you got there tell this jury what you did?

7 A I met with the officers on the scene, particularly
8 Corporal Smith who was the supervisor on the scene
9 and was also compiling all the information to write
10 the report. He advised me that they had already
11 completed robbery questionnaires with the two
12 employees who were at the location during the time of
13 the robbery.

14 He advised me that there was video of the
15 incident at the location. He had already processed
16 the exterior of the door. After viewing the video
17 you could see where the handles had been touched, he
18 processed that. He gathered that information. And
19 once I got the basic knowledge of what had happened,
20 what had transpired in this incident, I proceeded to
21 go over the robbery questionnaires with the two
22 employees that were at the scene and interviewed
23 them.

24 Q And you actually made contact with Ann Beltrami and
25 Ricky Green that evening?

1 **A** I did.

2 **Q** And you interviewed each of them separately?

3 **A** I did.

4 **Q** And did you take notes about the information they
5 were able -- you can't say what they said to you.
6 But did you take notes about what information they
7 were able to give you?

8 **A** I documented what they told me. It may have been in
9 addition to what they had already mentioned on the
10 questionnaire that I went over and made notes about
11 what they said.

12 **Q** Were you able to determine if any amount of money was
13 actually missing?

14 **A** I did a -- I'm not sure if it's a district manager or
15 another employee at the Sharpe Shoppe or Blythewood
16 Oil responded to the scene and counted the drawer
17 down and advised me that they were missing \$536.21
18 from the cash register.

19 **Q** While you were there that evening, did you also
20 collect the videotape that has been submitted into
21 evidence?

22 **A** I did. It was turned over to me.

23 **Q** And I show you what's been marked as State's Exhibit
24 No. 27 and State's Exhibit No. 26. Do you recognize
25 those two items?

1 **A** I do. It's the cash drawer that was in the register
2 that the individual that robbed the Sharpe Shoppe
3 that night took money from. When I arrived there the
4 cash drawer was still in the cash register, the
5 portion that slides out. When I viewed it there was
6 still change in the change area. There was the one
7 dollar bills I believe were all still there, and this
8 five dollar bill that is in this bag appeared to have
9 been disturbed. So I collected this five dollar bill
10 for processing. It was submitted to our evidence to
11 have the crime scene individuals, investigators
12 process that for possible DNA or fingerprints.

13 And the cash drawer was also collected for DNA
14 evidence. And all the other money that was in it was
15 turned back over to the Sharpe Shoppe. When I
16 collected this cash drawer from the cash register, I
17 put on gloves to secure any evidence that was there
18 and then put it in a bag and took it to our office
19 and properly packaged it to submit to evidence.

20 **Q** In the video you can actually see the defendant
21 reaching into the drawer grabbing the cash?

22 **A** You can.

23 **Q** Are you able to determine actually if he actually
24 touched anything in the cash drawer or not?

25 **A** I can't really tell. It appears, you know, taking

1 money out of there. So my feelings were that he
2 possibly could have.

3 Q And since he possibly could have, you would collect
4 that evidence?

5 A Sure.

6 Q I want to turn your attention to the morning of
7 February the 17th. Did you receive -- without going
8 into what was said to you, did you receive some phone
9 calls about information about the identity of the
10 person who robbed?

11 A I did. It would have been probably the morning or
12 the evening of the 16th. After getting that video
13 from the store, I was able to obtain a still shot or
14 a photo that I put together a BOLO or what we call a
15 be-on-the-lookout trying to identify the subject that
16 had gone into that store. And once I compiled a
17 packet for our public information office, that
18 information was released to the media I believe that
19 following morning.

20 Q And that evening did you also receive a phone call
21 from a Deputy Grant?

22 A I did.

23 Q And was he able -- without going into what he said to
24 you -- was he able to give you information about the
25 identity as well of the person who robbed?

1 **A** I did. We had put the media release out. We
2 received information from tipsters that had called in
3 and also Deputy Grant --

4 **MR. SUTHERLAND:** Your Honor, it's hearsay.

5 **THE COURT:** Overruled.

6 **Q** Thank you. Go ahead.

7 **A** I received information from tipsters that Deputy
8 Grant corroborated with the same information later
9 that day.

10 **Q** That day did you also meet with Ann Beltrami at the
11 Sharpe Shoppe?

12 **A** I did.

13 **Q** What was the purpose of you meeting her that day?

14 **A** We had identified the individual that we believed was
15 in the -- or that had robbed the store. The
16 information I had gathered, the name that had been
17 provided to me, that person's description matched
18 what was on the video that was collected from the
19 Sharpe Shoppe.

20 Along with information that the tipsters
21 provided gave me enough reasonable belief that it was
22 the person. So I put that individual's picture into
23 what we call a photo line-up. And it's a spread of
24 six photos of individuals, including the one that
25 obviously we thought had done this. And I had called

1 the two employees that were robbed that night to show
2 them that photo line-up to see if we could identify
3 this individual.

4 Q When you're doing a photo line-up, do you try to get
5 photos of people that have similar characteristics of
6 the person that actually is your suspect at that
7 point?

8 A We do. We don't want a photo line-up to be
9 suggestive or anything like that.

10 Q In this case I show you State's Exhibit No. 1. Was
11 this a photo line-up that you assembled and showed to
12 Ms. Beltrami?

13 A This is. Prior to me showing it to her, it was
14 blank. The handwriting on this form was done after
15 she viewed it.

16 Q And what time was it you showed her that?

17 A This was on the 17th of February 2009 at 2115 or 9:15
18 in the evening. I showed this to her actually at the
19 Sharpe Shoppe. She met me in the parking lot.

20 Q And when you showed her -- what, if anything, did you
21 say to her when you showed her those photographs?

22 A Before I showed it to her I asked her to look this
23 photo line-up over carefully and if she saw anybody
24 that she thought was the individual that had robbed
25 her to please let me know. After looking it over,

1 without hesitation she identified number 2 as the
2 individual that had come into the store and robbed
3 her with a knife or at knife point.

4 **Q** And once she did that, did you ask her to memorialize
5 that in any way?

6 **A** I did. I had her circle the photograph, put her
7 initials in that area of that photograph. I finished
8 completing the bottom portion of the form and had her
9 sign the affidavit.

10 **Q** Shortly after showing Ms. Beltrami the photo line-up
11 at the Sharpe Shoppe, did you then proceed to Ricky
12 Green's residence?

13 **A** I did.

14 **Q** And I show you what's been marked as State's Exhibit
15 No. 2. Do you recognize that?

16 **A** I do. It's a copy of the same line-up. It's not the
17 the same line-up. I took it to Mr. Green. I had
18 lined it up with both of them. I could meet them at
19 separate locations. I didn't want to show it to them
20 at the same time obviously. I went to Mr. Green's
21 house. He came outside of his residence, got into my
22 truck. I advised him the same thing, to look this
23 photo line-up over to see if he recognized the
24 individual he saw getting into the truck just after
25 the robbery on the outside of the store and if he did

1 to let me know. He once again after carefully
2 looking it over, almost immediately without
3 hesitation identified the same subject, number 2, as
4 the individual he saw. He circled that picture and
5 initialed it.

6 **MR. SUTHERLAND:** Your Honor, if I may briefly.
7 He's sort of semi publishing that to the jury and I
8 believe there was a previous objection that hadn't
9 been ruled upon because it wasn't proper or
10 appropriate at the time.

11 **THE COURT:** All right. Just let him identify it
12 without publishing it at this point.

13 **Q** Is that the photo line-up that you showed to Mr.
14 Green?

15 **A** It is. And he identified number 2 and memorialized
16 it by circling it and putting his initials on it, and
17 I completed the bottom portion and he signed the
18 affidavit.

19 **Q** And State's Exhibits 1 and 2 are the actual ones you
20 showed them without the other being present?

21 **A** Separately. Correct. Yes.

22 **MS. CAMPBELL:** Your Honor, at this time we'd
23 offer State's Exhibits 1 and 2 into evidence.

24 **MR. SUTHERLAND:** Your Honor, I do object. And
25 perhaps we should discuss it outside the presence of

1 the jury.

2 **THE COURT:** Approach.

3 (Whereupon, a bench conference is had)

4 **THE COURT:** The objection is overruled.

5 **MS. CAMPBELL:** Thank you, Your Honor.

6 (WHEREUPON, State's Exhibit No. 1 is admitted
7 into evidence.)

8 (WHEREUPON, State's Exhibit No. 2 is admitted
9 into evidence.)

10 **Q** Once both the victim and the witness positively
11 identified the defendant as the person who had robbed
12 them, did your office take steps to try to get an
13 arrest warrant?

14 **A** We did. My commanding officer of the major crime
15 unit was Captain Stan Smith, and he was fully briefed
16 on this incident along with my sergeant, Kevin
17 Isenhoward. That following morning, on the 18th,
18 Captain Smith after being fully briefed on the
19 incident obtained an arrest warrant.

20 **Q** Did you also on the early morning hours of the 18th
21 attempt to get additional ATM footage that may show
22 or may not show the defendant?

23 **A** I did. Beside the Sharpe Shoppe, if you come out the
24 front door to the left, there is a teller machine, a
25 First Citizens Bank teller machine. And my thoughts

1 were that it might have been triggered by vehicle
2 movement and that we might have caught the truck
3 exiting and/or the individual in that. I requested
4 from there an investigative unit from Steven Hearn,
5 from First Citizens Bank to look into that. But I
6 was unable to obtain anything. They didn't have any
7 video.

8 **Q** And I show you State's Exhibit No. 17. Approximately
9 where is that ATM located?

10 **A** It's right here I believe.

11 **Q** And again --

12 **A** This is the exit of the store here. This would be
13 the ATM machine.

14 **Q** -- were you able to get any footage showing anything
15 from that?

16 **A** I was not.

17 **Q** And why was that, sir?

18 **A** Excuse me?

19 **Q** Why was there no footage?

20 **A** They said they had no -- the ATM didn't capture
21 anything. The cameras must not have been triggered.

22 **Q** The daytime of the 18th did you also become aware
23 that the fugitive team had attempted to find the
24 defendant up in Ridgeway, South Carolina?

25 **A** That's correct.

1 Q And was Sergeant Isenhoward assisting you at that
2 point in that investigation up in Ridgeway?

3 A That's correct. As I stated, early on I was on night
4 shift or evening shift duty. So my sergeant, Kevin
5 Isenhoward, was following up with these leads while I
6 was not in the office.

7 Q That evening around 10:00 did you receive call from a
8 family member of Michael Cornelius?

9 A I did. His father.

10 Q And without going into what he said to you, did he
11 provide you with some information?

12 A He did.

13 Q The next day, on the 19th, were you able to make
14 contact with the defendant in this case?

15 A Yes, ma'am. Approximately 1655 or 4:55 in the
16 afternoon our front desk sergeant notified me that
17 Mr. Cornelius was in our front lobby.

18 Q And did you go down to the front lobby and make
19 contact with him?

20 A I did.

21 Q What happened next?

22 A He was brought there by family members. He was then
23 brought up to my office from my cubicle that I have
24 and immediately advised in writing of his rights.

25 Q I show you what's been marked as State's Exhibit

1 No. 3 for identification at this point. When you
2 advised Mr. Cornelius of his rights, explain to the
3 jury why you do that when a person is taken into
4 custody?

5 **A** Because it's a right they have. Anybody in custody
6 has the right to an attorney during any questioning
7 if they wish. So we advise them of their rights all
8 the time in writing and have them sign it waiving
9 those rights to talk to us.

10 **Q** I'm going to show you State's Exhibit No. 3. Is this
11 the actual form you used with Mr. Cornelius?

12 **A** It is. It's a Richland County Sheriff's Department
13 interrogation/advice of rights form.

14 **Q** The information at the top, who actually fills that
15 in?

16 **A** I do.

17 **Q** And what information does the include?

18 **A** The first line has the name of the individual that
19 we're advising which says Michael Paul Cornelius.
20 The place is Richland County Sheriff's Department CID
21 or Criminal Investigative Division. The officer's
22 name is M. Ellis. The date is February 19th, 2009.
23 And the time is 1655 hours, 4:55.

24 **Q** And that would have been the time when you actually
25 started advising him of his rights?

1 **A** That's right.

2 **Q** And on that form; first, does it outline the rights
3 you went through with him that day?

4 **A** It does.

5 **Q** And after he acknowledges those rights, do you then
6 go through what's called a waiver of rights?

7 **A** That's correct.

8 **Q** And was that done in this case?

9 **A** Yes.

10 **Q** And did he sign off on that form?

11 **A** He did.

12 **Q** Is that the form you actually used?

13 **A** That is correct.

14 **MS. CAMPBELL:** Your Honor, at this time we'd
15 offer State's Exhibit 3 into evidence.

16 **MR. SUTHERLAND:** Your Honor, renewing any
17 previous objection with respect to the waiver.

18 **THE COURT:** Overruled.

19 **MS. CAMPBELL:** Thank you, Your Honor.

20 (WHEREUPON, State's Exhibit No. 3 is admitted
21 into evidence.)

22 **Q** Can you explain to the jury exactly what rights you
23 went through with him and how you did that?

24 **A** These are all listed in separate lines. And as I
25 read them to the individual I check them off. And I

1 can tell this is my form because I can see where the
2 check marks are backwards if you look at this form
3 because I have the form where they can read it. So
4 as I'm reading it, they can read it along with me.

5 It says: Before we ask you any questions, you
6 must understand your rights. You have the right to
7 remain silent. Anything you say can be used against
8 you in court. You have the right to talk to a lawyer
9 for advice before we ask you any questions and to
10 have a lawyer with you during any questioning. If
11 you cannot afford a lawyer, one will be appointed for
12 you before any questions if you wish. If you decide
13 to answer questions now without a lawyer present, you
14 still have the right to stop answering at any time.
15 You also have the right to stop answering at any time
16 until you talk to a lawyer.

17 Each one of those were checked off as I read
18 them to him, and he acknowledged that he understood
19 those. He then -- I then had him sign that portion
20 of the form which I witnessed his signature.

21 And after that the bottom portion is the waiver
22 of rights forms. And I read this to him also. It
23 says: I have read this statement of my rights and I
24 understand what my rights are. I am willing to talk
25 and answer questions. I understand and know what I

1 am doing. No promises have been made to me. No
2 pressure or coercion of any kind has been used
3 against me.

4 And I circled pressure and coercion to make sure
5 he understood what those meant and once put an X, and
6 he signed on the line marked signed. And I witnessed
7 it.

8 Just below that, typical questions I ask
9 individuals before I talk to them is how far they --
10 their educational level. And he indicated that he
11 had graduated 12th grade from Spring Valley High
12 School and that he was also able to read and write.

13 Q And that's reflected on the form?

14 A That is reflected at the bottom of the form.

15 Q Was the defendant cooperative with you that day?

16 A Very cooperative.

17 Q At any time did he invoke any of his rights?

18 A He did not.

19 Q Did he agree to talk to you?

20 A I did.

21 Q Did you threaten him?

22 A I did not.

23 Q Did you promise him anything to make him talk to you?

24 A I did not.

25 Q Did you deprive him of any creature comforts or in

1 any way intimidate him?

2 **A** No, ma'am.

3 **Q** And did he speak to you freely and voluntarily in
4 your experience?

5 **A** Yes, ma'am.

6 **Q** At any point during the advice of rights and/or the
7 ultimate statement you took from him, did he tell you
8 he didn't want to talk any more?

9 **A** No, ma'am.

10 **Q** Did he ever ask for a lawyer?

11 **A** No, ma'am.

12 **Q** And he acknowledged his rights by signing off on that
13 piece of paper?

14 **A** Yes, ma'am.

15 **Q** And he appeared coherent?

16 **A** Correct.

17 **Q** Did he appear to be under the influence of anything?

18 **A** Not to me.

19 **Q** Once you advised him of his rights, did you then sit
20 down and start asking him some questions?

21 **A** Yes.

22 **Q** And what were you asking him about?

23 **A** About the incident, the robbery at the Sharpe Shoppe,
24 235 Blythewood Road on the 16th of February.

25 **Q** And just explain to the jury basically how you

1 questioned him about that?

2 **A** I asked him to tell me about this incident. He was
3 obviously cooperative when he came in. So he was
4 freely talking about what had happened. And after we
5 had discussed the incident, I took a statement from
6 him.

7 **Q** I'm going to show you what's been marked as State's
8 Exhibit No. 4. It's a four-page document. First
9 just ask you to review that.

10 **A** It's the original statement I took from Michael Paul
11 Cornelius on the 19th of February.

12 **Q** And approximately what time was it? You advised him
13 of his rights I believe around 4:55?

14 **A** Correct.

15 **Q** And then you started reducing the statement to
16 writing at what time?

17 **A** 5:12.

18 **MS. CAMPBELL:** And in that -- Your Honor, at
19 this time we'd offer State's Exhibit No. 4 into
20 evidence.

21 **MR. SUTHERLAND:** Your Honor, renewing my
22 previous objection, sir.

23 **THE COURT:** Overruled. Go ahead.

24 (WHEREUPON, State's Exhibit No. 4 is admitted
25 into evidence.)

1 Q In that, is it in a question/answer form?

2 A It is.

3 Q And whose words are the answer part?

4 A Michael's.

5 Q Once you completed that statement, did he have an
6 opportunity to review it?

7 A Yes. Once I finish a statement with an individual, I
8 always print it out. Before they sign it I have them
9 read it, look over it. If there's any typos that
10 I've made, any wording that needs to be changed, if I
11 misunderstood them and they want to make changes,
12 that's the time we do it. We make those changes. If
13 there is any changes and we make them and then I
14 print out a new copy of it and have them review it
15 again. And if it's correct, then that's when we sign
16 it.

17 Q And in fact did he have an opportunity to review that
18 statement?

19 A He did.

20 Q And did he make any changes?

21 A I don't recall if we made changes to a statement
22 prior to this, but this is the one that we ultimately
23 signed that he wanted to be his statement.

24 MS. CAMPBELL: Your Honor, permission for the
25 witness to publish the statement to the jury?

1 **THE COURT:** Yes, ma'am. Go ahead.

2 **Q** Thank you. You can read it.

3 **THE COURT:** I understand the objection.

4 **MR. SUTHERLAND:** Yes, sir.

5 **THE COURT:** Overruled.

6 **COURT REPORTER:** Not too fast, please.

7 **A** It says: Statement of Michael Paul Cornelius. ■
8 Smith Lane, Ridgewood -- Ridgeway, South Carolina.
9 And it has his social: ■■■■■, and date of
10 birth: ■■■■■. Made at Columbia, South
11 Carolina, this 19th day of February, 2009, at 1712
12 hours in the presence of Investigator Matt Ellis, the
13 Richland County Sheriff's Department.

14 It says: I, Michael Paul Cornelius, understand
15 I have the right to remain silent. Anything I say
16 can be used against me in court. I have the right to
17 talk to a lawyer for advice before you ask me any
18 questions, to have a lawyer with me during any
19 questions. If I cannot afford a lawyer, one will be
20 appointed for me before any questions if I wish.

21 If I decide to answer questions now without a
22 lawyer present, I still have the right to stop
23 answering at any time. I also have the right to stop
24 answering at any time until I talk to a lawyer. Do
25 make the following statements. Q equals Investigator

1 I didn't have a ride, so I started walking back
2 towards home. On the way I made a stop and got some
3 crack. I then walked the rest of the way home. I
4 had not been home for about two to three weeks, and
5 when I had got there, I guess my mother had turned
6 off the lights to the shed that I lived in because
7 they wouldn't come on.

8 Since I didn't have anything to eat there, I
9 went to my Aunt Diane's house and asked her if I
10 could use her truck to go get some cigarettes from
11 Blythewood. She let me use her red Ford pickup and I
12 drove it to Blythewood.

13 I went to the BP and parked in front of the
14 store. I got out and in and walked up to the counter
15 and told the girl I needed some money. I guess she
16 didn't hear me, so I showed her the knife that I had
17 in pants pocket. After she saw it she opened the
18 cash register and backed away. I went up to the
19 register and got the money from it. I then walked
20 back out to the truck and left. After leaving the BP
21 I went back to the drug dealer and got some more
22 crack.

23 "Q Where did you get the knife from?

24 "A From my house.

25 "Q Where is the knife?

1 Matt Ellis; A, Michael Paul Cornelius.

2 "Q Michael, did you turn yourself into the
3 Richland County Sheriff's Department this afternoon
4 because you knew that you were wanted for a robbery
5 in Blythewood?

6 "A Yes, sir.

7 "Q How did you learn that you were wanted for the
8 robbery?

9 "A I called a family member and he had asked me
10 what I had done. He stated that I was on TV.

11 "Q Michael, did I advise you of your rights and
12 did you sign that waiver of rights form this
13 afternoon?

14 "A Yes.

15 "Q Are you able to read and write?

16 "A Yes.

17 "Q Tell me what happened Monday night that led up
18 to the robbery?

19 "A I had been on crack since Sunday after Wendy
20 Lake who is my girlfriend and I were on Percival Road
21 by Richland County Sheriff's Department. Wendy and I
22 had gotten into an argument and she had told the
23 officers that she was tired and didn't want me to get
24 back into her car. So the officer told me that I had
25 to find a ride or walk.

1 "A I don't know.

2 "Q Can you describe the knife?

3 "A It has a silver blade and a black handle.

4 "Q What made you pick the BP?

5 "A I don't know. I wasn't going there to hurt
6 anyone. I just was going there to get the money.

7 "Q Did you ever go back to your shed after this
8 robbery?

9 "A Yes.

10 "Q Where is the jacket that has the diamonds on it
11 that you had on during the robbery?

12 "A I left it on the floor in my shed.

13 "Q How much money did you get?

14 "A I don't know.

15 "Q When was the last time you did crack?

16 "A The night of the robbery.

17 "Q Which way did you go after leaving the BP?

18 "A Towards Wilson Boulevard.

19 "Q Was there anyone else involved in the robbery?

20 "A No, sir.

21 "Q Have you committed any other robberies?

22 "A No, sir.

23 "Q Did you ever make any movement towards the
24 clerk with the knife?

25 "A No, sir. I think I left the knife in my pocket

1 the entire time but I know I showed it to her.

2 "Q I showed you a photo from the BP's video. Did
3 you state that was you?

4 "A Yes.

5 "Q Are you confessing to this armed robbery
6 because in fact it was you that went into the BP in
7 Blythewood armed with a knife and took money from the
8 register?

9 "A Yes, sir.

10 "Q Are you willing to consent to a DNA oral swab?

11 "A Yes.

12 "Q Have you now consented in writing and also
13 provided a DNA swab?

14 "A Yes.

15 "Q Is there anything else you would like to add to
16 your statement?

17 "A I'm sorry that I did it. It wasn't my
18 intentions to hurt anyone and I hope that the
19 employee is all right, and I'm sorry for putting her
20 through this.

21 "Q Is this statement the truth to the best of your
22 knowledge?

23 "A Yes, sir.

24 And after reviewing all that he signed each page
25 two different places, I witnessed it, and it was

1 notarized.

2 **Q** You asked him some follow-up questions that you
3 referred to, that he went towards Wilson Boulevard
4 when he left the BP?

5 **A** Correct.

6 **Q** Is that consistent with what Ricky Green reported?

7 **A** Correct.

8 **Q** You also mentioned in there that he consented -- that
9 you showed him a still from the video. I show you
10 what's been marked as State's Exhibit No. 11. Is
11 that the still or a copy?

12 **A** Correct.

13 **Q** That you showed him?

14 **A** Yes.

15 **Q** And did he acknowledge that he was the person in the
16 video?

17 **A** He did.

18 **Q** You also asked him about consenting to give you a DNA
19 swab, and he was cooperative there?

20 **A** Yes, he was.

21 **Q** And did he sign a consent form?

22 **A** Yes, ma'am.

23 **Q** And do you have that?

24 **A** Yes, ma'am.

25 **Q** May I see it? Thank you. 29.

1 (WHEREUPON, State's Exhibit No. 29 is marked for
2 identification.)

3 Q I show you State's Exhibits 29. Is that the DNA
4 consent form you got from him that day when you were
5 taking the statement?

6 A It is.

7 MS. CAMPBELL: Your Honor, at this time we'd
8 offer State's Exhibit 29 into evidence.

9 MR. SUTHERLAND: Renewing my previous objection,
10 Your Honor.

11 THE COURT: Overruled.

12 (WHEREUPON, State's Exhibit No. 29 is admitted
13 into evidence.)

14 Q I want to show you what's been marked as State's
15 Exhibit No. 28. I don't think you need to get down.
16 Does that just show the general area of Blythewood
17 and Ridgeway?

18 A It does.

19 MS. CAMPBELL: Your Honor, at this time we'd
20 offer it into evidence.

21 MR. SUTHERLAND: No objection.

22 THE COURT: Without objection.

23 (WHEREUPON, State's Exhibit No. 28 is admitted
24 into evidence.)

25 Q And on this specifically, are two different locations

1 shown?

2 **A** Correct.

3 **Q** And Smith Lane, is it shown?

4 **A** It is shown on the top portion of this map.

5 **Q** And then in proximity to Blythewood?

6 **A** Correct. And he was seen by witnesses in his own
7 statement indicating he was going towards Wilson
8 Boulevard which is right here which would lead up to
9 his house.

10 **Q** When booking someone in, do you often get a general
11 physical description of a person?

12 **A** We do.

13 **Q** And Michael Cornelius's general physical description,
14 is it consistent with what the witnesses reported?

15 **A** Correct. It's consistent.

16 **Q** You also mentioned that there was a DNA swab taken
17 from the front door of the BP. Was a decision made
18 not to submit that for DNA testing?

19 **A** Correct.

20 **Q** And what was the reason for that?

21 **A** Well, I had the cash drawer that I knew that less
22 people had touched. Or it would be my opinion that
23 less people had touched it due to the fact that it's
24 not the front door that every customer comes in and
25 touches. The cash drawer would only be the employee

1 that was there at the time. So I thought submitting
2 the five dollar bill and the cash drawer would have a
3 better likelihood of receiving a match. We had also
4 already obtained two photo line-up picks of Mr.
5 Cornelius. So it was also for budget reasons not to
6 run them all.

7 **Q** And in your investigation -- how long were you an
8 investigator in major crimes in armed robberies?

9 **A** Three years.

10 **Q** And during that period of time, is it unusual even if
11 a person had touched this not to get a DNA result?

12 **A** It's not unusual.

13 **Q** The person that you interviewed that turned himself
14 in that identified himself on the video, or the still
15 from the video -- excuse me -- do you see him here in
16 the courtroom?

17 **A** He's sitting at the table to the left with the dark
18 suit and the blue shirt on.

19 **MS. CAMPBELL:** Your Honor, may the record
20 reflect he's identified the defendant?

21 **THE COURT:** The record will reflect the witness
22 identified the defendant.

23 **MS. CAMPBELL:** I don't have anything further,
24 Your Honor.

25 **THE COURT:** Cross examination.

1 **MR. SUTHERLAND:** May it please the Court.

2 CROSS EXAMINATION

3 **BY MR. SUTHERLAND**

4 **Q** Investigator Ellis.

5 **A** Mr. Tivis.

6 **Q** How are you, sir?

7 **A** Fine.

8 **Q** Just regarding your testimony, and obviously you've
9 testified previously, I just want to take you through
10 a few questions. I'd like to talk to you about your
11 interactions with the victims in the case. Remember
12 I brought up the issue of why statements weren't
13 taken from these individuals. And what I'd like to
14 ask you, I do believe that it is standard procedure
15 to take a statement from somebody in the event that
16 16 months later there may be a jury trial. Is that
17 fair to say?

18 **A** You're saying that it is --

19 **Q** Is it fair to say that you usually will take a
20 statement from a victim in a case at around the time
21 of the incident?

22 **A** We normally interview people. Whether we take a
23 written statement, document it in our investigative
24 follow-up, complete robbery questionnaires, write
25 incident reports, there is multiple different avenues

1 that we can document what an individual tells us.

2 **Q** But, say, your practice, if you say and I have a
3 case, I should ordinarily expect to see the statement
4 of a victim in a case, in one of your cases. Is that
5 correct?

6 **A** Each case is different. It's case-by-case.

7 **Q** Case-by-case, each case is different. Now, there are
8 these robbery questionnaires that were filled out
9 earlier. And that would be the responding officer
10 sitting there basically asking questions and
11 recording information. That's what a robbery
12 questionnaire is?

13 **A** That was a question? Yes, sir.

14 **Q** Yes.

15 **A** I'm sorry.

16 **Q** I'll try to slow down or compact it into a smaller
17 question. These robbery questionnaires are pretty
18 straightforward; you know, a description. It doesn't
19 really ask any details about the event. And I guess
20 the overall point that I'm trying to make is, you
21 know, you are here and this is 16 months later. And
22 you have -- you know, you have your report. Then in
23 order to, you know, prepare and refresh your
24 recollection and take the stand and testify about
25 something, I'm sure you've had a couple hundred or

1 more cases since that point in time.

2 You have your report to refer to. And
3 individual officers, you know, Isenhoward, whoever is
4 testifying, they have reports to refer to simply
5 because it tends to be a long time between an
6 incident and when an officer or a witness appears in
7 court. And about you writing your report, I'll just
8 go ahead and say this. I think it's fair to say you
9 write your report at that time while everything is
10 fresh in your mind?

11 **A** As soon as I can do it, you know. We take -- you
12 know, we write notes and we compile our investigative
13 follow-up as soon as the case is over. You know,
14 this case didn't last but four days, three days at
15 the most. So it was over fairly quick.

16 **Q** All right. Did you have notes? Did you take notes
17 or did you sit down all at one time and put your
18 report together?

19 **A** Did I take notes?

20 **Q** Did you take notes?

21 **A** When I go over the robbery questionnaire with them
22 with the people on the scene?

23 **Q** Oh, no, no, no. I'm sorry. I'm sorry. With
24 respect -- we're talking about with your report.
25 Your report is pretty lengthy. And did you take

1 notes throughout the investigation that you used to
2 prepare your report?

3 **A** Yes.

4 **Q** Did you turn those notes over to the Solicitor's
5 Office?

6 **A** Once I complete my investigative follow-up, I no
7 longer have them. They're handwritten, jotted notes
8 that are scribbled all over pages, you know, that are
9 nothing --

10 **Q** Oh, I understand.

11 **A** -- but a date and time. And then you go back and I
12 review -- I can look at your client's statement to
13 get the meat of what we talked about, and then the
14 time written down is how that works.

15 **Q** Well, I understand that. Just so we're clear; I
16 mean, do you still have these notes that --

17 **A** No, sir. No, sir.

18 **Q** You don't have them?

19 **A** No, sir.

20 **Q** Do you throw them away or --

21 **A** Yes, sir.

22 **Q** Don't you think that might be just important in terms
23 of the case file and in terms of the evidence and
24 turning things over to the defense?

25 **A** I did. I turned everything over. I have a I don't

1 know -- excuse me -- how many page follow-up here,
2 about a five-page follow-up that I typed, and it's
3 typed, that I turned over.

4 Q I understand. But basically the point I'm trying to
5 make is, you know, I'd like to be able to look at
6 everything. Ultimately you sit down. And four days,
7 you say a case takes four days. And at the end of
8 the four days, you know, you write your report and
9 you pull it together from all these notes. And you
10 have -- and human nature is that you have different
11 things fixed in your mind at different times and
12 different perceptions of things.

13 I mean, you may have -- what were you thinking
14 when you were doing a certain thing on the first day
15 versus looking back on it on the fourth day? And so
16 the point about that with respect to the notes, I was
17 just curious as to why it hadn't been turned over to
18 the Solicitor's Office. But your -- so that they
19 could turn it over to me. But your answer is once
20 you write the report you dispose of the notes?

21 A Correct.

22 Q Okay.

23 A That's my practice. I give them a formal report.

24 Q And we started sort of sliding down this path when I
25 was asking you about taking statements from victims

1 and witnesses of crimes. And, you know, you had
2 referred to the robbery questionnaire and the blanks
3 and everything. But ultimately someone would sit
4 down -- generally in a criminal case where there's a
5 witness or there's a victim in a criminal case, they
6 sit down with an investigator and the investigator
7 does the same thing that you have done with that
8 statement that you're reading, your, you know,
9 synopsis of your conversation with Michael is they'll
10 sit down with an investigator, sit down with you, and
11 they'll tell you what happened and then you'll
12 formalize the statement and then you'll sign the
13 statement. I mean, that's typical, isn't it?

14 **A** Like I said, it's a case-by-case basis.

15 **Q** So how do you -- do you judge by how smart people
16 are? Do you think they can remember all these
17 details in 16 months? I mean, how do you
18 distinguish --

19 **A** Well, what I think is when somebody gets a knife
20 pointed at them and robbed, that's a pretty traumatic
21 event in their life, and I believe that they recall
22 that fairly well.

23 **Q** Well, I understand that. And I understand that
24 you're being inflammatory. But I'm asking you a
25 legitimate question. I'm using logic. And your

1 function as a police -- how long have you been at the
2 Sheriff's Department?

3 **A** Ten years.

4 **Q** So you've been at the Sheriff's Department for ten
5 years and you've worked cases for ten years. And
6 what I'm asking you is fairly simple. And you can
7 weave around and you can be inflammatory or not. Do
8 you think it was a mistake to not --

9 **MS. CAMPBELL:** Objection, Your Honor, to the
10 comments.

11 **THE COURT:** Overruled. It's cross examination.
12 I'll allow it. Go ahead.

13 **Q** Do you think that you made a mistake in not taking
14 statements from the victim and the witnesses in this
15 case?

16 **A** No, I do not.

17 **Q** So, okay. Let's go back to, you say it's, you know,
18 pointing a knife. Nobody pointed a knife at Ricky,
19 according to all the evidence in this case. So he is
20 going to be equally traumatized? You see, if this is
21 your path, if this is your line of reasoning with
22 respect to why you're doing things, it has to apply
23 to everybody within a single case. You say
24 case-by-case. And you do it
25 individual-by-individual, not case-by-case, correct?

1 **A** Correct.

2 **Q** Okay. So why didn't you take a statement at the time
3 from Ricky Green?

4 **A** Because there's no policy with the Richland County
5 Sheriff's Department that says that I have to take a
6 statement from any particular person. There's
7 hundreds of cases that I've been assigned before
8 where statements were not obtained. I adequately
9 interviewed these individuals on the scene, I went
10 over the information that we had, and I compiled in
11 my follow-up everything that they said. And I also
12 had their robbery questionnaire.

13 **Q** Okay. So you compiled everything that they said and
14 this is in your notes and this is your report and
15 you're a government agent. So if they come back to
16 you, they should come back to you in the future to
17 see what they said or see what they remembered? I
18 mean, this -- you're in charge of the information.
19 You see what I'm saying?

20 What people -- it's 16 months between an
21 incident. Typically in a trial it's eight, nine, ten
22 months. Sometimes it can be up to five years. You
23 know, that's my experience. I'm sure it's your
24 experience as well. Again, do you think it was a
25 mistake to not take statements from the victim and

1 the witnesses in this case?

2 **A** I don't think it's a mistake. No, sir.

3 **Q** Okay. I think we'll hop off of that and slide back
4 over to the statement. Michael came and he turned
5 himself in?

6 **A** Correct.

7 **Q** And he has -- his parents, his mother, his sister,
8 some family members dropped him off?

9 **A** I recall his mother and his girlfriend is who I
10 recall.

11 **Q** Did you have any conversation with his mother and his
12 girlfriend?

13 **A** I did.

14 **Q** Okay. Well, obviously I can't ask you what was said.
15 You took him up. You go back to your office at 4:55?

16 **A** That's when I advised him of his rights. Yes.

17 **Q** Okay. Obviously -- well, wait a minute. It was
18 1712. So the advice of rights was at 4:55. And it
19 was 5:12 was when the statement actually began to be
20 typed?

21 **A** Correct.

22 **Q** And ultimately I believe there was a reference to a
23 time period of maybe 6:47 p.m. with a couple of
24 questions remaining in the statement. Does that
25 sound about right?

1 **A** Is the statement in front of me?

2 **Q** Oh, shoot. I'm sorry. All right. Was it
3 approximately two hours?

4 **A** I think so. It was around about that time. During
5 the time I believe we were going over his statement,
6 he was reviewing it, is when the DNA consent was
7 signed. And that was added into his statement and we
8 finished it up. So whenever that consent was signed,
9 the statement would have been signed right after
10 that. If you have those times, then that's what it
11 was.

12 **Q** Okay. And you do recall earlier testimony of yours
13 that this was a synopsis? You characterized it as a
14 synopsis?

15 **A** I did.

16 **Q** And again, just the characterization here in front of
17 the jury was this was a statement but as a synopsis.
18 And again, I have to cover with sort of the same
19 words. This is a distillation of something of a
20 larger context or a larger subject matter. So you
21 summed it. It's a summary?

22 **A** Well, it -- and as I told you afterwards, that was
23 probably a poor choice of word that I used, a
24 synopsis. It was his statement. I did say the word
25 synopsis. But it was his statement. He reviewed it.

1 Everything he told me, he made any changes that he
2 wanted to. During that hearing I used the word
3 synopsis. I know that.

4 Q Okay. He told you -- this is in your report and I
5 believe it's in the -- I'm not going to keep saying
6 synopsis -- that it's in the statement to some degree
7 that he had been up prior to the incident date for
8 several days smoking crack and then on the incident
9 date continued to smoke crack. Is that sort of --
10 that's your recollection of the statement of your
11 report?

12 A I do remember him saying -- I think it's in the
13 report -- that he did smoke a large amount of crack
14 up during the incident time. And I think one of the
15 questions in the statement was the last time -- when
16 was the last time you smoked crack? And he said the
17 night of the incident or the robbery I think is what
18 his words were.

19 Q Did you personally -- did you speak with anyone about
20 whether he had been smoking crack that day? Or do
21 you recall any conversations?

22 A I don't.

23 Q You don't recall any conversations?

24 A I don't.

25 Q Is it possible that somebody told you that?

1 **A** I don't recall it. If somebody did, I do not recall
2 it.

3 **Q** Okay. Just so it's possible. And I'm not going to
4 go into it as deeply as before. But when people are
5 strung out on drugs -- oh, let me go back quickly.
6 Anything, alcohol, any odor of alcohol or anything on
7 him during your interview?

8 **A** No, sir.

9 **Q** None? Okay. But, I mean, in your experience as a
10 law enforcement officer, if someone is up
11 continuously using drugs, then, especially with at
12 least lay people I would consider to be dangerous
13 drugs like crack cocaine for several days at a time
14 without sleeping, it does affect their mental
15 capacity to some degree. Do you agree with that
16 or --

17 **A** It probably could, but he indicated he hadn't smoked
18 it in three days.

19 **Q** And again, I was just asking you that. You can
20 answer it however you want to. Did you have any
21 concern at the time that you met with him
22 understanding minimally that he had been up for five
23 or six days smoking crack up until again minimally a
24 couple of days prior; did you have any concern for
25 his state of mind or for his health at that time?

1 **A** I thought he was very coherent.

2 **Q** But understanding not sleeping and being strung out,
3 did you have any concerns about what you were talking
4 about or what you were saying? Did you have anything
5 internally that gave you pause about maybe taking
6 some time out, maybe having him visit or treated by a
7 doctor or physician or something, give him a little
8 break between all the drug use and the interview and
9 the statement that you were taking?

10 **A** No, sir.

11 **Q** Okay. And he told you he'd been upset, that he'd
12 lost his job, he'd lost his car, he'd lost his
13 girlfriend, all this stuff. I believe you
14 characterized him as being emotional earlier?

15 **A** When he talked to his mother and his girlfriend?

16 **Q** No. When he was talking to you that he was
17 emotional?

18 **A** About what all had happened? Correct.

19 **Q** Well, see, I think you kept saying because he got
20 caught, because he got caught or something similar
21 thereto. Or could it have been that he'd lost his
22 job and he'd been smoking crack for all these -- you
23 sort of remember the previous --

24 **A** Sure.

25 **Q** -- exercise in that regard?

1 **A** Sure.

2 **Q** When you say emotional, I mean, there are a lot of
3 different ways. At any point was he breaking down?
4 Was he crying in front of you? Anything?

5 **A** I remember him crying.

6 **Q** You do remember -- you do recall him crying?

7 **A** (Nods head affirmatively).

8 **Q** Okay. And --

9 **A** Which is pretty typical in my line of work, you know.

10 **Q** Okay. The reason -- let me ask a little bit about
11 this. The reason that you don't let people write
12 their own statements out, the reason behind that is
13 ...?

14 **A** Well, we do take statements. It is our policy in the
15 investigative division that we take the statements,
16 that we write them all out or type them.

17 **Q** And this is when you do take statements?

18 **A** And they're reviewed by these individuals. Correct.

19 **Q** And I believe, was it -- was Investigator Robinson
20 the -- was it Investigator Robinson that notarized
21 it?

22 **A** Yes.

23 **Q** Okay. And was he also present, or was he just there
24 to notarize at the bottom of the page?

25 **A** He was there to swear and affirm the statement that

1 Michael provided.

2 **Q** And this incident, I think in total, I think it's
3 been pretty well established. Whatever this is, this
4 is something that took approximately ten to fifteen
5 seconds, maybe twenty seconds tops, the incident that
6 evening?

7 **A** Right.

8 **Q** Okay. I have no further questions of this witness at
9 this time, Your Honor.

10 **THE COURT:** Redirect?

11 **MS. CAMPBELL:** Yes, sir.

12 REDIRECT EXAMINATION

13 **BY MS. CAMPBELL**

14 **Q** He asked you about how long this took. And it took
15 15 to 20 seconds?

16 **A** Correct.

17 **Q** In reviewing the video, did you notice that the times
18 on different cameras are slightly off? Is that
19 unusual?

20 **A** No. It's not unusual.

21 **Q** One is a little faster than the other?

22 **A** Correct.

23 **Q** But the time period was actually in and out as can be
24 seen on the different cameras is consistent?

25 **A** Correct.

1 Q He's asked you about that you didn't take statements
2 from these witnesses. But you did memorialize -- and
3 I refer to page 2 of your follow-up, these paragraphs
4 there -- what information they were able to give you?

5 A I did.

6 Q So what they told you was memorialized?

7 A Correct.

8 Q Both Ricky Green and Ann Beltrami?

9 A In my follow-up. Yes, it was.

10 Q And he also asked you about your written notes.
11 What's the purpose in you having written notes? And
12 is that information all incorporated into your
13 follow-up?

14 A That's correct. It is.

15 Q So then there's no need to keep a duplicate
16 handwritten note?

17 A No. We type our follow-ups.

18 Q And in this case he talked about memorializing or
19 taking a formal written statement. In this case
20 there is actually a video of a crime?

21 A Correct.

22 Q That memorializes what happened?

23 A Correct.

24 Q In certain crimes you investigate, are certain
25 victims less cooperative than others?

1 **A** Yes.

2 **Q** Would it then be prudent in those cases to take a
3 statement?

4 **A** It could, yes.

5 **Q** And there is no doubt that these two victims were
6 fully cooperative?

7 **A** They were.

8 **Q** He asked you about the defendant's condition when you
9 saw him that day. You've been in investigations or
10 at the Sheriff's Department for ten years and an
11 investigator in major crimes for a number of years
12 and you're now a supervisor in the investigative
13 division?

14 **A** Correct.

15 **Q** During the course of that time, if you had any
16 indication that a person was impaired, incoherent or
17 had any functioning problem, you would seek treatment
18 for them, wouldn't you?

19 **A** There has been numerous times that I have not been
20 able to take a statement.

21 **Q** For those very reasons?

22 **A** Correct.

23 **Q** Was there any indication in this case that Michael
24 Cornelius had any drugs and/or alcohol influencing
25 him on that day?

1 **A** No, there wasn't.

2 **Q** And by his own admission, when was the last time, by
3 his own admission, that he said he had smoked crack?

4 **A** The night of the incident.

5 **Q** Which would have been the 16th. And you're talking
6 to him on the evening of the 19th?

7 **A** The 19th. Correct.

8 **Q** During the time period you were with him, he was
9 fully cooperative?

10 **A** He was.

11 **Q** And even became emotional?

12 **A** Correct.

13 **Q** At any time did he express to you that he was under
14 the influence of anything or didn't know what he was
15 saying? Did he appear incoherent?

16 **A** He did not. When we were finished he wanted to talk
17 to his mother and his girlfriend.

18 **Q** Did you allow him to do that?

19 **A** I did.

20 **Q** And in fact, in his statement, that was his version
21 of the events?

22 **A** That's correct.

23 **Q** Such as how he told you how the aunt leant him his
24 car, her car?

25 **A** That's right.

1 **Q** And in order to type out the statement, reduce it,
2 let him review it, get the DNA and everything, that
3 took approximately two hours?

4 **A** Yes. Which is reasonable taking a statement, going
5 through all that.

6 **Q** And at no time did he ever tell you he didn't want to
7 talk to you any more?

8 **A** He did not.

9 **MS. CAMPBELL:** That's all I have, Your Honor.

10 **MR. SUTHERLAND:** Nothing further, sir.

11 **THE COURT:** All right, sir. You may come down.
12 Thank you very much. Next witness.

13 **MS. CAMPBELL:** Your Honor, State would rest.

14 **THE COURT:** All right, ladies and gentlemen.
15 That concludes the case for the State. As I
16 instructed you or advised you at the beginning, the
17 defense has the opportunity to present a defense but
18 need not do so. But it's 5:00. And so we're going
19 to adjourn for the day.

20 I hope that those of you who have not voted will
21 take that opportunity before 7:00 and vote at your
22 local precinct. I'm not going to tell you who to
23 vote for, not that it would do any good if I did.
24 But I do want to encourage you to do that. If you
25 are registered and can vote, do that.

1 All right. We'll reconvene in the morning at
2 9:30. It is my understanding this case will wind up
3 tomorrow, sometime tomorrow. So I'm going to ask you
4 and caution you again about making -- you can watch
5 the election results if you're interested. That
6 would be something to do this evening rather than
7 trying to look up something on the Internet about
8 this case.

9 I doubt there's anything on there about it; but,
10 nevertheless, it would be improper to do is any in or
11 out-of-court investigation of the case. So, with
12 that, have a pleasant evening. We'll see you at 9:30
13 in the morning. Thank you very much. And again,
14 don't discuss the case among yourselves when you get
15 back to the jury room.

16 (Jury out at 4:50 p.m.)

17 **THE COURT:** All right. I don't know, Mr.
18 Sutherland, if your client is planning to present a
19 defense or not, but I think at this time I'll advise
20 him of his right to testify and his right not to
21 testify.

22 **MR. SUTHERLAND:** Yes, sir.

23 **THE COURT:** Mr. Cornelius, will you stand,
24 please. Mr. Cornelius, at this time I am going to
25 explain certain of your rights to you. If you do not

1 understand anything I say, please let me know. If
2 you want me to explain anything in more detail,
3 please let me know. Do you understand?

4 **MR. CORNELIUS:** Yes, sir.

5 **THE COURT:** We've now reached the stage of the
6 trial where you may present your defense. You have
7 the right to claim the protections given to you by
8 the Fifth Amendment to the Constitution of the United
9 States. This amendment states in part: No person
10 shall be compelled in any criminal case to be a
11 witness against himself.

12 This means that you cannot be required to
13 testify in this case. You have the right to testify
14 in your own behalf. However, no one can make you
15 testify. This is a personal right and no one can
16 waive this right except you. If you decide to
17 testify, you will be subject to the same rules that
18 govern other witnesses, and you may be examined and
19 cross examined on any relevant issue in this case.

20 In addition, if you have any convictions
21 involving dishonesty or false statement or for crimes
22 punishable by imprisonment for more than one year and
23 this Court determines that the probative value of
24 admitting this evidence outweighs its prejudicial
25 effect to you, the solicitor will be able to

1 introduce your record to attack your credibility.

2 If you decide to testify, this decision on your
3 part must be freely, voluntarily and intelligently
4 made with knowledge of the protections given to you
5 by the Fifth Amendment and the consequences of your
6 decision to testify.

7 If you decide not to testify, I will instruct
8 the jurors that they cannot give the fact that you
9 did not testify any consideration whatsoever and
10 there is to be absolutely no prejudice to you because
11 you did not testify.

12 You may talk with your attorney, your family and
13 friends or anyone else, but the final decision will
14 be left entirely up to you. Do you understand what I
15 have explained to you?

16 **MR. CORNELIUS:** Yes, sir.

17 **THE COURT:** Do you have any questions about what
18 I have explained to you?

19 **MR. CORNELIUS:** No, sir.

20 **THE COURT:** Have you discussed with your lawyer
21 whether or not you should testify?

22 **MR. CORNELIUS:** Yes. We discussed it. Can I
23 ask one question from him?

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

25 (Pause)

1 **THE COURT:** You've talked with your lawyer about
2 it?

3 **MR. CORNELIUS:** Yes, sir.

4 **THE COURT:** All right. Now, from the State's
5 standpoint, just so you'll be fully informed, what
6 offenses are impeachable offenses that the State
7 would plan to offer to impeach the defendant's
8 credibility if he takes the stand?

9 **MS. CAMPBELL:** Your Honor, in 1994 he was
10 convicted on an armed robbery. I need to get that
11 release date to see if it's within the ten years.
12 Then in 2002 he was convicted of use of vehicle
13 without permission. In 2002 he was convicted of
14 burglary in the second degree.

15 **THE COURT:** 2002?

16 **MS. CAMPBELL:** Mm-hmm (affirmative). Criminal
17 domestic violence of a high and aggravated --

18 **THE COURT:** Slow down. Slow down. Burglary
19 second. And --

20 **MS. CAMPBELL:** Then in 2000 --

21 **THE COURT:** What's the --

22 **MS. CAMPBELL:** Burglary second and criminal
23 domestic violence of a high and aggravated.

24 **THE COURT:** All right. This is his record.
25 These are not offenses that you believe are

1 impeachable.

2 **MS. CAMPBELL:** Yes, sir. I believe these
3 offenses are impeachable.

4 **THE COURT:** All right. Well, we'll have to
5 discuss that.

6 **MS. CAMPBELL:** I'm just proposing what we would
7 submit. Then in 2003 it looks like he's got a
8 conspiracy to commit kidnapping.

9 **THE COURT:** To do what?

10 **MS. CAMPBELL:** Commit kidnapping.

11 **MR. SUTHERLAND:** Isn't that on a revocation? Is
12 that something from SCDC where he got a revocation
13 and they put the wrong charge in?

14 **MS. CAMPBELL:** I'll have to check that.

15 **MR. SUTHERLAND:** I believe we talked about that
16 previously. Because this is custody in the South
17 Carolina Department of Corrections. I think they
18 probably just put the wrong CDR code in there because
19 it's got the same --

20 **THE COURT:** I don't know. You're going to have
21 to work it out. What else?

22 **MS. CAMPBELL:** Those were all common
23 convictions. Then it looks like in 2005 a burglary
24 second.

25 **THE COURT:** 2005 a burg second.

1 **MS. CAMPBELL:** And another criminal domestic
2 violence of a high and aggravated nature. Those
3 aren't impeachable. And then that brings us up to --
4 I mean, there's a petit larceny, but I don't care. I
5 mean, that would be it. In the last ten years.

6 **MR. SUTHERLAND:** Your Honor, I have discussed
7 with Mike; he does not wish to testify.

8 **THE COURT:** All right. I want to be clear what
9 offenses could be used to impeach him, because I'm
10 not sure all of that would qualify.

11 **MR. SUTHERLAND:** No, sir. I would object to the
12 armed robbery. I mean, I understand I think it's
13 Al-amin. But I don't think it was armed robbery that
14 they were attempting to impeach the individual with.
15 But I am certain Mike is not going to testify.

16 **THE COURT:** I'm going to ask him again in the
17 morning.

18 **MR. SUTHERLAND:** Yes, sir.

19 **THE COURT:** Let him think about it overnight.

20 **MR. SUTHERLAND:** Yes, sir.

21 **THE COURT:** But you need to clearly understand
22 what he can be impeached with.

23 **MR. SUTHERLAND:** Yes, sir.

24 **THE COURT:** Not everything on that list --

25 **MR. SUTHERLAND:** Absolutely.

1 **THE COURT:** -- would qualify. All right. We'll
2 stand at ease until 9:30.

3 **MR. SUTHERLAND:** Oh, sir. Briefly.

4 **THE COURT:** Oh, I beg your pardon. I beg your
5 pardon. Any motions at this time? We'll take them
6 up now, or would you rather take them up in the
7 morning?

8 **MR. SUTHERLAND:** I think I can probably handle
9 it in short minutes.

10 **THE COURT:** Go right ahead.

11 **MR. SUTHERLAND:** Your Honor, at this time I'd
12 like to renew all my previous motions and objections
13 from this trial from pre-trial. And at this time I
14 would like to move for a directed verdict in favor of
15 the defendant on the grounds that the evidence is not
16 competent to support a guilty verdict.

17 **THE COURT:** What's the State's position?

18 **MS. CAMPBELL:** In a light most favorable to the
19 State, we --

20 **THE COURT:** For the record.

21 **MS. CAMPBELL:** For the record, in a light most
22 favorable to the State, we have more than adequate
23 evidence as far as the elements of the crime of the
24 defendant's guilt.

25 **THE COURT:** Namely?

1 **MS. CAMPBELL:** Namely that there is a video that
2 has been submitted in evidence showing the person
3 going in with a knife in his hand, robbing the woman.
4 There is testimony from the eye witness, Ann
5 Beltrami. There is also testimony from the other
6 witness, Ricky Green, who saw him get in the truck.
7 Right after he got the tag number.

8 We have the testimony from Ms. Jamison who said
9 that he had taken the truck that night. We also have
10 his own confession where he confessed that he
11 actually committed the armed robbery while armed with
12 a knife and that he did display it to the clerk is
13 some of the evidence.

14 **THE COURT:** Well, it's not my decision to weigh
15 the evidence. The only standard that I have is
16 whether there is any evidence to support a
17 conviction. I feel there is and I must respectfully
18 deny your motion.

19 **MR. SUTHERLAND:** Thank you, sir.

20 **THE COURT:** Thank you. 9:30.

21 (Whereupon, the proceedings are concluded, to be
22 reconvened tomorrow morning)

23

24

25

1 Wednesday, June 9, 2010

2 **THE COURT:** They've gone to get your client. Do
3 you want your client?

4 **MR. SUTHERLAND:** I'll waive his presence for
5 this.

6 **THE COURT:** You can tell Pat. She was calling
7 the holding cell.

8 **MR. SUTHERLAND:** Certainly.

9 **THE COURT:** All right. I have furnished counsel
10 with a proposed set of jury charges. And I believe
11 in chambers those were approved. Is that correct,
12 Ms. Campbell, Mr. Sutherland?

13 **MR. SUTHERLAND:** Yes, sir.

14 **THE COURT:** I want to take up now specific
15 requests. The State is requesting a voluntary
16 intoxication charge and the defense has also
17 submitted an intoxication and defense to the
18 voluntariness of the statement charge. First off let
19 me just address the State's. Any objection to the
20 State's voluntary intoxication charge from the
21 defense?

22 **MR. SUTHERLAND:** Your Honor, I would object in
23 this respect. It's my belief that I'm not going to
24 be able to get the charge with respect to the
25 statement, and I believe that the basis for that

1 would be that there is no evidence of intoxication.
2 Therefore, --

3 **THE COURT:** At the time the statement was made?

4 **MR. SUTHERLAND:** Yes, sir. And I would also --
5 well, I would just object to it, Your Honor, on that
6 basis for reciprocity.

7 **THE COURT:** This is voluntary intoxication at
8 the time of the crime.

9 **MR. SUTHERLAND:** Yes, sir.

10 **THE COURT:** Although he admits in his statement
11 that the -- I forget the language -- but was smoking
12 crack at the time of the crime.

13 **MR. SUTHERLAND:** Yes, sir.

14 **THE COURT:** All right. I think it's an
15 appropriate charge.

16 **MR. SUTHERLAND:** Thank you, sir.

17 **THE COURT:** Now, I assume the only other request
18 is for a lesser-included offense. Is that correct?

19 **MR. SUTHERLAND:** Yes, sir.

20 **THE COURT:** Would you put your reason on the
21 record, please?

22 **MR. SUTHERLAND:** Yes, sir. My basis for the
23 request for the lesser-included offense of strong arm
24 robbery is that whether this was committed with a
25 deadly weapon or not is a questionable fact for the

1 jury. I understand that there is testimony that
2 there was a deadly weapon. I would argue that the
3 credibility of that testimony that there was a deadly
4 weapon would be a question of fact for credibility,
5 something for the jury to weigh with respect to that.

6 Also there is a video that shows from several
7 different angles the incident; now, particularly,
8 what's alleged to be my client's hands over the
9 register, at which point he is supposed to have had a
10 deadly weapon in his hand.

11 I believe that the jury should be able to view
12 this and the jury should be able to decide whether or
13 not it is in fact a knife or it is a representation
14 of a deadly weapon that could reasonably be believed
15 to be a knife. And ultimately I just believe that
16 the jury should decide whether or not it was a deadly
17 weapon that was involved, sir.

18 **THE COURT:** What about the provision of the
19 statute that says: Or while alleging either by
20 actions or words he was armed while using a
21 representation of a deadly weapon or an object which
22 a person present during the commission of the robbery
23 reasonably would believe to be a deadly weapon?

24 **MR. SUTHERLAND:** And then whether or not, I
25 would say --

1 **THE COURT:** That's the testimony, that she said
2 it was a knife, but even if it wasn't a knife, she
3 believed it was a knife.

4 **MR. SUTHERLAND:** And there would be -- if that
5 was a reasonable belief on her part, I believe it
6 would be a question for the jury, sir.

7 **THE COURT:** The State's position.

8 **MS. CAMPBELL:** Your Honor, part of the statute
9 you just quoted, as well as in his own statement, the
10 only other evidence was from the defendant himself.
11 He represented he did have a knife. That confession
12 has been admitted into evidence.

13 The victim was sure it was a knife. She had no
14 problems with that. She even talked about how the
15 part of the video where you can't see it in his hand
16 because he diverted it up. And there is a clear
17 picture of the knife or what appears to be a knife in
18 the video. And all the testimony is that there was a
19 knife. Do you want that photograph, sir?

20 **THE COURT:** They know which one it is.

21 **MS. CAMPBELL:** Okay. That's the best one. If
22 you want to see another one.

23 **LAW CLERK:** And this is the statement?

24 **MS. CAMPBELL:** That's the statement.

25 **THE COURT:** All right. Well, there has to be

1 evidence of the lesser-included offense. In other
2 words, there would have to be evidence that there was
3 no knife. His testimony -- I mean his statement --
4 says: I showed her the knife.

5 "Q Where did you get the knife from?

6 "A My house.

7 "Q Where is the knife?

8 "A I don't know.

9 "Q Can you describe the knife?

10 I mean, he never said he didn't have a knife.
11 If he had said even in this statement that he didn't
12 have a knife, I think I'd let --

13 "Q Did you make any movement toward the clerk with
14 the knife?

15 "A I think I left the knife in my pocket the
16 entire time, but I know I showed it to her.

17 I mean, there's got to be something that the
18 jury has to decide. The photograph, I mean, I agree
19 that it's not clear, but there's something in this
20 gentleman's right hand that certainly could be, could
21 be a knife. The witness said it was a knife. He
22 said it was a knife. There is no evidence that it's
23 not a knife. So I must respectfully deny your
24 motion.

25 **MR. SUTHERLAND:** Thank you, Your Honor.

1 **MS. CAMPBELL:** Thank you, Your Honor.

2 **THE COURT:** Anything further?

3 **MR. SUTHERLAND:** Nothing from the defense, sir.

4 **THE COURT:** You have offered no evidence,
5 correct?

6 **MR. SUTHERLAND:** That's correct, Your Honor.

7 **THE COURT:** All right. You'll argue last. All
8 right.

9 **MS. CAMPBELL:** Thank you, Your Honor.

10 **THE COURT:** 2:00.

11 (Whereupon, a lunch break is taken)

12 **THE COURT:** Is the State ready for the jury?

13 **MS. CAMPBELL:** The State's ready.

14 **THE COURT:** Defense ready for the jury?

15 **MR. SUTHERLAND:** Yes, sir.

16 **THE COURT:** Bring the jury, please,
17 Mr. Dessausure.

18 (Jury in at 2:05 p.m.)

19 **THE BAILIFF:** All the jurors are present, Your
20 Honor.

21 **THE COURT:** Thank you very much. Good
22 afternoon, ladies and gentlemen. I apologize for the
23 delay this morning. Something unavoidable came up.
24 So we're now ready to continue with the trial. Mr.
25 Sutherland.

1 **MR. SUTHERLAND:** Yes, sir.

2 **THE COURT:** Defense rests?

3 **MR. SUTHERLAND:** The defense rests, Your Honor.

4 **THE COURT:** All right. That will conclude all
5 the evidence. As I told you at the beginning of the
6 trial, the defense has no obligation to offer a
7 defense. The burden still is on the State to prove
8 the charges in the indictment beyond a reasonable
9 doubt.

10 And that brings us to the final arguments of
11 counsel in this case and my charge to you on the law
12 of South Carolina as it applies to this case. The
13 State will argue first; the defense will argue last,
14 and after which I will give you what we call my legal
15 charge on the law as it applies. Solicitor.

16 **MS. CAMPBELL:** May it please the Court?

17 **THE COURT:** Yes, ma'am.

18 **MS. CAMPBELL:** Good afternoon. The first thing
19 I would like to do on behalf of The State of South
20 Carolina, on behalf of Ricky Green and Ann Beltrami
21 and the citizens of our county is to thank you for
22 your service in this case. I know when you showed up
23 here on Monday you probably didn't have any idea what
24 type of case, if any, you would actually serve on.
25 And I think, as you have seen over the last day or

1 so, although this case, the testimony went up very
2 quickly, it is a very important case to both the
3 State and the defendant in this case.

4 Now, I'm going to take this opportunity first to
5 talk to you a little bit about the law, and then I'm
6 going to talk to you a little bit about the facts,
7 and then the defense is going to have the opportunity
8 to speak to you last.

9 As I am talking about the law, if I misquote,
10 you take the law as the judge gives it to you. It's
11 not intentional on my part. If I say anything
12 different from what Judge Cooper ultimately charges
13 you is the law, you take the law as he gives it.

14 And in that same vein, if either side
15 mischaracterizes the facts or misrepresents them, you
16 remember them, because the roles in this courtroom
17 are defined. And it's for a reason. The role of the
18 prosecution is to bring forth all relevant
19 information, testimony, evidence as far as this crime
20 is concerned.

21 And the defendant's role is obvious also. It's
22 to defend his client to the best of his ability. The
23 Judge's role is to decide what actual evidence is
24 admissible and should be considered by you, the jury;
25 and then ultimately after you hear from both of us,

1 to advise you what the law is that you must apply to
2 the facts in this case.

3 But by far, Ladies and Gentlemen, the most
4 important role in this courtroom is yours. Both
5 individually and after you hear the judge's charge,
6 collectively when you go back to that jury room.
7 Because you must determine what the credible,
8 reasonable evidence in this case in this courtroom
9 shows happened back on February the 16th of 2009,
10 both as to the facts as they happened and to the
11 identity of who actually perpetrated this crime.

12 Now, you have heard all the evidence you can
13 consider in this case. And you must base your
14 verdict on that evidence, the testimony, the physical
15 evidence that will actually go back to the jury room
16 with you. You are not, and the judge will tell you,
17 to base your verdict on questions by defense
18 attorneys or prosecutors. The answers are the actual
19 evidence. It's not to be on innuendo, speculation,
20 conjecture or just plain wishful thinking. You must
21 base it on credible evidence.

22 And I want to take this opportunity to apologize
23 if over the last day or so we have done anything to
24 offend you. At times our questioning has been
25 clumsy, inartful, sloppy. That's not it. At times

1 you have heard us caution witnesses not to say
2 something because it may be hearsay and, therefore,
3 is not admissible, things of that nature which have
4 made it a little bit choppy at times. So if we have
5 done anything, on behalf of Ms. Beltrami, Mr. Green,
6 the state of South Carolina, please don't hold it
7 against us. It was not intentional.

8 Now, criminal cases are somewhat unique. I
9 think we've all seen TV and are somewhat familiar
10 with things. In criminal cases the defendant has, as
11 he should, the absolute right to confront each and
12 every witness against him. That is his absolute
13 right. It's the confrontation clause. It's in our
14 Constitution.

15 And because of that, in criminal cases, unlike
16 civil cases, you haven't heard any depositions being
17 read to you. You haven't seen any video depositions.
18 As you noticed, each and every witness, no matter
19 what, if they've written a report, like Dr. Amick,
20 must come before you and testify. And the reason for
21 that is because in the law, criminal law, it
22 recognizes that you should have the opportunity to
23 judge the credibility of each and every witness
24 before considering the evidence that they put before
25 you.

1 That's why you heard from Dr. Gray Amick and
2 just didn't get a report. That's why you don't --
3 you haven't seen any witness statements. Those are
4 not admissible except for the State. And the only
5 exception to that is a statement by the defendant.
6 You haven't seen any video depositions, any reports
7 from anyone, no robbery questionnaire that's been
8 referred to. The reason is because in criminal cases
9 the Constitution dictates that you have the right to
10 see each and every witness.

11 Now, you've also heard some references to other
12 pieces of the case which are other officers that may
13 not have come before you. And the thing is is we
14 can't bring in -- there were multiple officers that
15 responded to the scene that night. You've heard
16 about how Captain Smith actually got an arrest
17 warrant. We can't bring in each and every witness
18 just to say the same thing over and over.

19 Each witness that came before you must have
20 something to contribute. And you may ask why we put
21 up the witnesses that were talking about the chain of
22 evidence, how it was logged in at the county, who
23 logged it out. Before you're allowed to hear about
24 any testing, such as DNA testing, we must prove the
25 chain was not tampered with. There was no tampering

1 with any of the evidence in this case that affected
2 any results. But that's why you heard from some of
3 those witnesses; and because some other witnesses you
4 may have heard reference to are cumulative, why those
5 did not come before you.

6 Now, the law in this case. The burden of proof
7 is on the State of South Carolina to prove this
8 defendant's guilt beyond a reasonable doubt. It is
9 the highest level of proof of any court in this
10 country, as it should be. It is to protect his
11 Constitutional rights.

12 Now, what does that phrase mean, proof beyond a
13 reasonable doubt? Our courts have given us some
14 verbiage that helps describe or may aid you -- and
15 the judge will charge you on this. The easiest way
16 to describe what's a reasonable doubt is the type of
17 doubt that makes a reasonable man hesitate to act.

18 But the courts have gone a little further in
19 defining what is proof beyond a reasonable doubt. As
20 the judge will charge you, when considering whether
21 this man is guilty beyond a reasonable doubt, you
22 must consider that proof beyond a reasonable doubt is
23 proof that leaves you firmly convinced of the
24 defendant's guilt. And that's also a very simple
25 way. Are you firmly convinced of the defendant's

1 guilt?

2 There are very few things in this world that we
3 know with absolute certainty, and in criminal cases
4 the law does not require proof that overcomes every
5 possible doubt. If based on your consideration of
6 the evidence you are firmly convinced that the
7 defendant is guilty of the crime charged, you must
8 find him guilty. On the other hand, if you think
9 that there is a real possibility that he is not
10 guilty, then you must find him not guilty.

11 So proof beyond a reasonable doubt is not beyond
12 each and every doubt. Anyone can doubt that the sun
13 will rise tomorrow. It's whether or not it's
14 reasonable. The law recognizes that there are very
15 few things in this world that we know with absolute
16 certainty. And we don't have to get to that level.
17 We just have to provide enough testimony or enough
18 credible evidence to leave you firmly convinced of
19 the defendant's guilt in this case. And, ladies and
20 gentlemen, I submit in this case the evidence is
21 overwhelming as to this defendant's guilt in this
22 crime in this courtroom.

23 Now, the judge will tell you you will have one
24 indictment. There will be one verdict. An
25 indictment is not evidence. As the judge told you at

1 the beginning of this case, it is merely the charging
2 paper that puts the defendant on notice as to what
3 the offenses are we are going to come into court
4 about, and it also puts us on notice as to the
5 elements that we need to prove.

6 And the definition of armed robbery, and the
7 judge will give you a more detailed definite, because
8 armed robbery is a lesser-included of a larceny
9 within it. But the only charge that will be before
10 you, there are no lesser included's in this case, is
11 armed robbery, whether he is guilty or not guilty of
12 armed robbery.

13 Our Legislature has defined armed robbery as
14 this. In Code 16-11-330, a person who commits
15 robbery while armed with a pistol, dirk, slingshot,
16 metal knuckles, razor or other deadly weapon or while
17 alleging --

18 **MR. SUTHERLAND:** I'm sorry, Your Honor. I have
19 to object. It misstates the law of the case, sir.

20 **THE COURT:** Approach the bench.

21 (Whereupon, a bench conference is had)

22 **MR. SUTHERLAND:** I withdraw the objection, Your
23 Honor.

24 **MS. CAMPBELL:** Section 16-11-330 of our Code of
25 Laws defines armed robbery as this. A person who

1 commits robbery while armed with a pistol, dirk,
2 slingshot, metal knuckles, razor or other deadly
3 weapon -- and the judge will define to you the
4 definition of any deadly weapon, it includes a knife
5 or what appears to be a knife -- or while alleging
6 either by action or words he was armed while using a
7 representation of a deadly weapon or any object which
8 a person present during the commission of the robbery
9 reasonably believed to be a deadly weapon, that
10 person is guilty of armed robbery.

11 Our Legislature understands the gravity of what
12 happens when people are approached with what is or
13 even appears to be -- we don't even have to have a
14 deadly weapon, although in this case there is a
15 knife -- a representation of a deadly weapon, words
16 or actions to state you have a deadly weapon.
17 Because the Legislature understood that when people
18 pull weapons on other people, bad things can happen.
19 That raises it to the level of armed robbery.

20 In this case, ladies and gentlemen, there is no
21 dispute that there is a knife. There is a picture of
22 it, there is the testimony of Ms. Beltrami, and
23 there's the defendant own statement in which he
24 acknowledged he had a knife and displayed it.

25 In armed robbery you will find in the

1 definitions that the judge will talk to you about,
2 he'll talk about how a person has to take property
3 away with the intent to permanently deprive that
4 person of the property, that it's done either while
5 they're armed or alleging to be armed. His language
6 will be a little more than that. But those are the
7 basic elements of armed robbery.

8 There doesn't have to be a certain amount of
9 money taken, such as more than \$100. In this case it
10 was more than 500. It doesn't have to be that you
11 actually even have to get away with the money.
12 Asportation to another part of the store alone would
13 be considered a completed armed robbery.

14 In this case it is a classic armed robbery, one
15 well thought out, one well executed. But for video,
16 one may be gotten away with. In and out, less than
17 15 seconds. Classic armed robbery. In armed
18 robbery, listen as the judge tells you, the defense
19 in their opening minimized what happened as far as
20 what happened to Ms. Beltrami. It doesn't become
21 armed robbery because you don't go in and stab
22 someone. That becomes attempted murder. It's not
23 armed robbery because you go and shoot at someone.
24 That's attempted murder. The mere showing or acting
25 like a person is armed is armed robbery. Give me the

1 money, display the knife; nobody is going to get up
2 here and argue it's not armed robbery. Those are the
3 elements of armed robbery. And the judge will give
4 you a more thorough charge on those actual facts.

5 Now, in every case there are types of evidence
6 that are presented. And the two types of evidence
7 classically are direct and circumstantial evidence.
8 As the judge will tell you, there is no difference to
9 be given to either one. What do those terms mean,
10 direct evidence versus circumstantial evidence?

11 Direct evidence is typically eye witness
12 evidence. It's someone who witnesses or is even the
13 victim of a crime and can come into court and talk to
14 you about what they see, smell, heard, tasted, things
15 that were perceived through the senses, eye witness
16 testimony. That's direct evidence.

17 In this case Ricky Green, Ann Beltrami, his
18 aunt, Margaret Jamison, all those were eye witnesses
19 to either the commission of the crime or part of the
20 collateral part; say, getting of the automobile.
21 That's direct evidence.

22 And what is circumstantial evidence? The judge
23 will instruct you it is proof of a chain of
24 circumstances that point or infer the existence of a
25 fact or even the nonexistence of a fact.

1 Typically a classic example is I go to bed at
2 night. When I look outside my window, the ground is
3 bare. It's brown. The next morning I get up. The
4 ground is covered as far as I can see with white,
5 with snow. The reasonable inference and the
6 circumstantial evidence of what I observed the next
7 morning is that it snowed while I was asleep. That
8 is a reasonable inference from what I observed the
9 next morning.

10 It is not reasonable to then try to do the
11 hypothesis of my nextdoor neighbor went out, bought a
12 snow machine and decided to decorate the neighborhood
13 with snow. That is not reasonable. You can use that
14 type of evidence to point to the existence of
15 something.

16 The finding of the hoodie which is displayed in
17 the video in the defendant's residence is a piece of
18 circumstantial evidence that would point to his
19 guilt. In this case, ladies and gentlemen, luckily
20 you have both kinds of evidence. Sometimes you'll
21 only have one piece, a piece of circumstantial or one
22 eye witness.

23 In this case, ladies and gentlemen, you have
24 multiple eye witnesses and you have multiple
25 circumstantial evidence pointing to this defendant's

1 guilt. Each one is totally corroborated by the
2 other. And that's what the evidence is in this case.
3 That's the difference between direct and
4 circumstantial evidence.

5 And the judge will also instruct you that before
6 you can find anyone guilty of any crime you must come
7 up with the idea that he was acting with criminal
8 intent. Criminal intent, it's a conscious
9 wrongdoing. In this case, ladies and gentlemen, no
10 one is going to get up here and argue that the person
11 that entered the Sharpe Shoppe back in February of
12 last year was not acting with criminal intent.

13 The judge will tell you that we can't take a
14 person and dissect their brain and figure out to a
15 mathematical certainty what they were thinking and
16 what their actual intent was at the time, so that you
17 must look at the facts and the circumstances leading
18 up to, at the time of and afterwards of this
19 defendant's actions to infer whether or not there was
20 criminal intent.

21 And I submit, ladies and gentlemen, when a
22 person walks into the BP station for the purpose of
23 robbing another one while armed with a weapon and
24 displays it and then gets the money out of the
25 register and flees in their aunt's stolen car, that's

1 criminal intent. There is no question about that.

2 Now, you've also heard from at least one witness
3 that was qualified as an expert witness. And the
4 difference between that and the reason why Dr. Amick,
5 I went through some of his qualifications is so that
6 he can then give an opinion. If certain people have
7 certain training and certain expertise in an area,
8 then they can be qualified as an expert and give
9 opinions that a lay person cannot.

10 I am not an expert in anything. Dr. Amick is
11 qualified, has been qualified I think over 70 times
12 as an expert in DNA testimony. And that's why his
13 testimony was so important. Because we brought forth
14 all the DNA testimony to show you, whether it showed
15 the defendant's guilt in some areas or whether it was
16 not.

17 Because merely when using touch DNA; and I'll go
18 into this further, as Dr. Amick explained to you,
19 it's not like a crime scene where someone shot and
20 there's blood. It's not like -- excuse me -- a rape
21 crime scene where there are other bodily fluids which
22 may point to someone. Touch DNA is much more fragile
23 than that, a little bit harder to get. It's
24 comparable to fingerprints.

25 And in this case, and I want you to review the

1 video; as you will see, the defendant, the only area
2 he really touched other than when he grabbed the
3 money, and it was the money he touched; if you look
4 at the video, he was careful only to touch the front
5 door, whereas you've heard the testimony is that it's
6 just impossible practically to get fingerprints from
7 that because it's in and out so much.

8 That's why the judge will tell you when
9 considering an expert's testimony you consider it the
10 same way that you consider the credibility of any
11 witness. Were they credible? Did they try to make
12 it better than it was, or did they get up there and
13 tell you the truth?

14 Now, the judge will also instruct you on
15 identification. In this case you've heard about that
16 there were two eye witnesses, the victim and Ricky
17 Green, who actually were able to later make
18 identification through photo line-ups.

19 And the judge will tell you when you're
20 considering whether or not a person's identification
21 is accurate there are many, many factors you can
22 consider. Whether or not they'd ever seen the person
23 before, as Mr. Green had, how close they were to him.
24 What was the lighting like? Were they able to
25 observe? In this case were they trained in any way

1 to actually observe the people?

2 Remember Ms. Beltrami stated that she recently
3 had a class, a training class where she was actually
4 told how to focus on a person's face. That's what
5 she was focused on in order to try to give a better
6 description later. That's part of her training
7 unfortunately that we have to have now.

8 Did they observe it, was their description
9 accurate, and were they later certain about their
10 identification? There is no doubt in this case that
11 Ann Beltrami and Ricky Green made positive
12 identifications based on what they did that night and
13 observing that defendant's face. Mr. Green had
14 actually seen him on prior occasions, didn't know his
15 name; he was honest, but had seen him before in the
16 Exxon across the street where the defendant's aunt
17 happened to work.

18 You also will hear about before you can consider
19 the confession in this case. Although the judge had
20 to make a preliminary finding on whether or not the
21 confession was admissible for you all to consider,
22 you must also make a finding of whether or not the
23 defendant made the statement voluntarily.

24 And the judge will give you a much longer charge
25 on this, on the factors to consider as to whether or

1 not a person's statement was voluntary. You can
2 consider a defendant's age. Is he a young man, in
3 his teens, or is he in his thirties? You can
4 consider his education. Did he never graduate from
5 school? You can consider his background and mental
6 abilities.

7 You can also consider length of detention, how
8 long the statement actually took. Did it take ten
9 hours, twelve hours, fourteen hours? Was it a
10 prolonged interrogation with multiple people? You
11 can also consider, most importantly, whether or not
12 the defendant was advised of his rights. Because
13 under our Constitution, as it should be, whenever a
14 defendant is taken into custody, they must be advised
15 of their rights before any questioning continues.

16 And in this case, ladies and gentlemen, did the
17 defendant make a statement is a consideration. Was
18 the defendant warned of his Constitutional rights?
19 Did the defendant knowingly and intelligently waive
20 his Constitutional rights? And was the statement
21 given voluntarily?

22 In this case, ladies and gentlemen, all of the
23 evidence is that this defendant was advised of his
24 rights not only verbally but in a written form, that
25 he signed off acknowledging those rights and that

1 subsequent to that he then waived his rights because
2 he wanted to give his version of the story, because
3 his version, we'll get to that in a minute.

4 There is absolutely no evidence that this
5 statement was anything but voluntarily made. That's
6 a consideration you must make when considering the
7 statement this defendant made.

8 The judge will also instruct you on the final
9 concept -- or excuse me. One of the final things I
10 want to talk about is the concept of voluntary
11 intoxication. There has been evidence in this case
12 through the defendant's own statement that he was
13 using drugs up until and right around the time that
14 he decided to rob the Sharpe Shoppe.

15 The law is this, ladies and gentlemen.
16 Voluntary intoxication is never an excuse or a
17 defense to a crime. A person who voluntarily renders
18 himself intoxicated is no less responsible for his
19 acts while in such condition. If a person
20 voluntarily drinks intoxicating liquors or takes
21 drugs and becomes intoxicated or if while in that
22 condition commits an act that would be a crime that
23 would be committed by a sober person, the fact of
24 drunkenness or intoxication would not relieve an
25 intoxicated person from responsibility.

1 So if a person goes out and voluntarily gets
2 drunk and that releases their inhibitions and they
3 commit a crime, or if they take drugs for which they
4 need to get out there and get some money so they can
5 get some more, they are just as responsible as a
6 sober person who commits that crime. They are not
7 relieved of responsibility just because they decide
8 to ingest drugs such as crack cocaine or drink
9 liquors, anything that would make them perhaps alter
10 their mental state.

11 They are just as responsible whether they're
12 drunk or intoxicated as they are when they are sober.
13 It does not relieve them of criminal intent. It does
14 not relieve them of responsibility. And that is the
15 law.

16 The final thing I want to talk to you a little
17 bit about as far as the law goes is credibility,
18 because this case boils down to it. Whenever a
19 witness elects to take the stand, you then have the
20 job of judging their credibility or believability,
21 because that's all it is.

22 In considering their believability, the judge
23 will instruct you that you can believe all of their
24 testimony, none of their testimony, part of it. You
25 can believe one witness over another. You can

1 believe one against many. That is totally your job.

2 As I mentioned earlier when talking about the
3 reason even the experts have to come in here and give
4 opinions, it's because you have to judge the
5 credibility. And, ladies and gentlemen, I beg you,
6 judge these witnesses's credibilities. Judge Ricky
7 Green. What does he -- these are factors -- have to
8 gain or lose by identifying the person who robbed
9 that store that night?

10 Judge Ann Beltrami. What does she have to gain
11 or lose? Was there any prior ill will between them?
12 They didn't even know each other, other than Ricky
13 Green had seen him and served him in the store
14 before. Do they have something to gain or lose?

15 And judge them by their testimony from the
16 stand. Were they forthright? Were they hesitant?
17 Were they sure about their identification? What do
18 they base it on? Was their testimony corroborated by
19 not only the other testimony but the physical
20 evidence? Judge Ms. Jamison. What did she have to
21 gain or lose? That wasn't easy for her.

22 Judge them. Because that's what this case boils
23 down to, is believability. And I submit, ladies and
24 gentlemen, once you judge their believability, those
25 two alone are beyond a reasonable doubt. That alone

1 is proof beyond a reasonable doubt. But in this
2 case, ladies and gentlemen, there is so much more
3 than that.

4 Now, when I was getting ready for this case, you
5 always try and anticipate what the defense will be.
6 And in an armed robbery case the defense typically
7 will be: You got the wrong guy. It's not Michael
8 Cornelius. He was misidentified by the one eye
9 witness. Or, well, it's not really an armed robbery.
10 There was never any weapon produced. It was just a
11 crack deal gone bad.

12 But this defense is a little bit different,
13 having listened to the opening arguments, talking
14 about the government this, the government lawyers.
15 And we are government lawyers. We represent the
16 citizens of this county. Because when he ended, he
17 started talking about the proof in this case, the
18 evidence in this case, that the government was trying
19 to swat a fly with a sledgehammer.

20 I don't know if he's trying to then say that,
21 oh, this just really wasn't that bad; armed robberies
22 are fine; it's not that bad a crime; don't hold him
23 responsible. It's fine for members of our community
24 to walk in on innocent people and to threaten them
25 with a knife and rob them of either the store or

1 their personal belongings. That's not just such a
2 crime that you should hold him responsible for.

3 Or, you know, it happened so quickly. It's only
4 because he's very good. He is in and out fast.
5 Minimizes exposure. Ricky Green, think about it,
6 might not have gotten a very good look at him but for
7 the fact he couldn't drive the stick shift. He is in
8 and out.

9 Fly with a sledgehammer? Or maybe he's talking
10 about the evidence in this case which is
11 overwhelming. It's not just that it's a confession
12 case. It's not just that it's a DNA case. It's not
13 just that it's an eye witness, a one eye witness
14 identification case. It's not just that we found the
15 clothing. It's all of that and more. We even found
16 the car.

17 Or maybe it's that, oh, you can't convict
18 because we never recovered the knife. So it's not an
19 armed robbery? You can even see it in the video at
20 one point in his hand. And you'll have the actual
21 video, too. The sworn testimony from Ms. Beltrami.
22 And more than that, he tells you: Yeah, I had a
23 knife. I don't know where it is now. I left my
24 hoodie at my house, but I don't know where the knife
25 is.

1 **MR. SUTHERLAND:** Objection, Your Honor. Facts
2 not in evidence.

3 **THE COURT:** It's a fair characterization. Go
4 ahead.

5 **MS. CAMPBELL:** Thank you. The statute doesn't
6 require that anyone has to be stabbed or shot for it
7 to be an armed robbery. The statute doesn't even
8 require -- it can be a toy gun. It doesn't even have
9 to be a gun. It can be a hand in a pocket. It can
10 be words with a hand in a pocket. That's all the
11 statute requires for armed robbery.

12 He may also get up here and argue that, well,
13 you know, you don't have DNA from the crime scene.
14 He's absolutely right. And this defendant did his
15 best to ensure we wouldn't have DNA from the crime
16 scene. No one was, thank goodness, stabbed in this
17 case leaving blood anywhere. Touch DNA is more
18 fragile than that.

19 And in this case watch the video. The only
20 thing he touches is the front door which is touched
21 by tens of thousands of other people on a weekly
22 basis. And as Dr. Amick explained to you, you can't
23 even match anyone to it because the gene pool is so
24 big you can't narrow it down to anyone. That's the
25 reason we don't test the front door. It's logical.

1 It makes sense. The same reason for, well, there are
2 no fingerprints in this case. No, there aren't. And
3 when you look at that, how he goes and he gets this
4 money out of the drawer, look at how he's reaching in
5 and pulling the bills out, like this and like this.
6 You can see it even though the actual camera itself
7 is tilted.

8 No, there's no DNA. And, ladies and gentlemen,
9 if there was, you should be concerned. Because there
10 wasn't real time to leave it. That does mean that
11 something is wrong with this case. The State brought
12 forth the fact before you that there wasn't DNA. We
13 tested for it on the outside chance there could have
14 been. There wasn't any. We bring forth all the
15 relevant evidence, good or bad.

16 But that doesn't mean that it wasn't an armed
17 robbery. And it sure doesn't mean that it wasn't
18 that man. That means the police did their job in
19 trying to collect each and every piece of evidence,
20 just like they got all the rest of this.

21 They're going to say, well, there was no DNA on
22 the steering wheel. It was a mixture of two people.
23 That's consistent. It was his aunt's car. He is not
24 necessarily going to leave DNA. If we found DNA on
25 every single place, then you should be suspect. This

1 is real life, not TV.

2 They found DNA on the gearshift. That would be
3 the same gearshift he kept having problems with
4 getting into gear. Would that be more likely then to
5 leave it there where he would be rubbing on it? It
6 was his DNA there on the gearshift. And that's what
7 makes this case even better, because this is real
8 life. This is what evidence is left in real life.

9 He has made talk about how with Margaret
10 Jamison, you know, she called the police. By the
11 time the police got there the defendant had left. We
12 didn't bring in those police. We can't try a
13 collateral matter in this courtroom. All we could
14 bring forth before you was Ms. Jamison who bravely
15 came forward and told the truth about her nephew.
16 Because all we're trying to do is link the car to
17 him. And, lo and behold, when the DNA testing is
18 done, the DNA on the gearshift is his. That coupled
19 with her testimony about how she went to bed that
20 night is evidence.

21 Then there was the cross examination of Sergeant
22 Ellis and his participation in this crime. And asked
23 over and over did they get a statement from the
24 victims in this case, from Mr. Green or Ms. Beltrami.
25 No, they didn't. They're cooperative. It would make

1 a lasting impression on Ms. Beltrami. It made a
2 lasting impression on Ricky Green. They were given
3 robbery questionnaires. And the thing is,
4 statements, questionnaires, whatever, are not
5 admissible. Their testimony has to come before you
6 anyway. They wrote paragraphs about what information
7 was related to them. They still have to come to
8 court and tell you themselves. They can't --

9 **MR. SUTHERLAND:** Objection, Your Honor. It's
10 facts not evidence, paragraphs on a robbery
11 questionnaire.

12 **THE COURT:** Confine your arguments to the facts
13 in the case, please.

14 **MS. CAMPBELL:** Paragraphs in the investigative
15 follow-up and a robbery questionnaire. They still
16 have to come to court and tell you. That's how it
17 works. He asked him about making some notes, the
18 notes that he then incorporated into his typewritten
19 follow-up so people could read it and that he got rid
20 of that, the notes.

21 He asked him about the defendant's statement.
22 He kept talking about when he had last smoked crack.
23 He then asked him about whether or not it took two
24 hours to take a statement. And, ladies and
25 gentlemen, it did. It took two hours to take the

1 statements. We put the times in before you. Because
2 that's simply how long it takes to get the
3 information, to reduce it into a typewritten form, to
4 let the defendant review it, to then collect his DNA,
5 get him to sign off on all that. That takes a couple
6 of hours. That's not terribly long.

7 He may get up here and talk about how on the
8 video you can see the different cameras, the times
9 are off a little bit. But if you look at the
10 incorporated time on how long you can see him in
11 there, it's all consistent. The video cameras
12 themselves, the times are off a little bit.

13 There were no cameras outside that could be
14 left. But they attempted it. Remember? Nextdoor at
15 an ATM or right there in the parking lot. But there
16 was no video outside to be had. Those are all things
17 he may get up here and try to argue. I don't know.

18 But I want to take this opportunity; there's an
19 old joke, and it's talking about how a preacher and a
20 lawyer are walking down the street. And next to the
21 sidewalk where they're walking there is mud. And it
22 had rained the night before. And one of the puddles
23 had filled up with water. And at the bottom of the
24 puddle you could see a silver dollar at the bottom
25 underneath the water kind of laying in the mud.

1 And the preacher looked down and he looked at
2 the lawyer and he goes: ' Look, there's a silver
3 dollar. And the lawyer picked up a stick and he
4 started churning it up, and the mud and the silt
5 obliterated it. You couldn't see it any more. And
6 the lawyer looked at the preacher, and he said: What
7 silver dollar?

8 Well, ladies and gentlemen, I want to take this
9 opportunity for just a little while to talk about the
10 facts in this case, the cold, hard and hard to get
11 around facts, evidence, testimony in this case that
12 all of it points conclusively to the guilt of this
13 man and no other.

14 Now, timeline. What evidence came in before
15 you? And I admit it went up quickly yesterday.
16 You've heard from multiple witnesses: Ann Beltrami,
17 Ricky Green, Terri Nance, Margaret. She goes by name
18 Jamison, his aunt. You heard from Deputy Grant and
19 other law enforcement officers.

20 And as far as the timeline on how things
21 happened; basically, it starts on Sunday, the 15th.
22 Deputy Grant makes a traffic stop. Remember the
23 female was driving. We can't get into the
24 circumstances of what happened there. But the
25 important part that came in that is relevant to this

1 case is Deputy Grant. And remember him. He ID'd the
2 defendant there. He got his personal information.
3 He related to you what that information was, his age,
4 I believe his Social Security number, his name, his
5 address, things of that nature.

6 Remember he talked about how he remembered him
7 because he was wearing some clothing and he
8 remembered his face with his beard on it. That was
9 stuff he remembered. He even diverted the defendant
10 and got him to walk down the road, which I will get
11 back to, because all of this is directly corroborated
12 by the defendant's own statement.

13 That happens on Percival Road in Region Two
14 which is right below Region Six where this happened.
15 Or Seven. And you go to Monday. Before 10:30 in the
16 evening the defendant goes to his aunt's house. He
17 goes inside. He asks her for a cigarette. Remember
18 she told you she was already in bed. She got up.
19 She gave him a cigarette and she told him to lock the
20 door when he left. It was not unusual for him to
21 come by. And at that point she went to sleep.

22 When she had gone to bed that night, her car and
23 her keys, her car was in the yard; or her truck, and
24 her keys were in her house. The next morning at
25 3:30 -- no. Excuse me. That evening between 10:30

1 and 10:40, sometime close to 10:30, 10:35, 10:38,
2 something around that time, the defendant robs the
3 Sharpe Shoppe, holds Ann Beltrami at knife point and
4 empties the register.

5 Ricky Green runs out to the front. And that
6 part is not on the video because it's cut off. Got a
7 partial tag with the letters A-N-E which proves
8 significant down the road. He sees the defendant's
9 face. That's all he sees, is the defendant's face.
10 Ms. Beltrami, all she is focused on is the
11 defendant's face. Remember, she has just had that
12 class. He recognizes the defendant's face, tells the
13 officers that night: I've seen him before. Police
14 respond. They get a description of the partial tag
15 and they collect the video.

16 Moving on to the early morning hours of Tuesday,
17 some four hours later, around 3:30 a.m., Margaret
18 Jamison wakes up in her house on Smith Lane. When
19 she wakes up she goes to look for her keys so she can
20 go to work for the same job she's had for the last
21 seven years at the Bojangle's in Blythewood which
22 happens to be in the back of the Exxon station where
23 Ricky Green used to work where he would see the
24 defendant when he would frequent there.

25 She gets a ride to work. When she gets there

1 she calls the police. They tell her to call them
2 back later. She gets home sometimes after 2 p.m.
3 because she works that early shift 'til 2 p.m. When
4 she gets home the defendant is there with her car. I
5 think she said he was doing something with the car,
6 but you remember what she said. At that point the
7 defendant apologizes for taking her car. She tells
8 him she doesn't care, she's calling the police. She
9 calls the police. She tells the defendant: I'm
10 calling the police. And he runs.

11 **MR. SUTHERLAND:** Facts not in evidence, Your
12 Honor.

13 **MS. CAMPBELL:** He leaves the premises.

14 **MR. SUTHERLAND:** Withdraw the objection.

15 **MS. CAMPBELL:** That afternoon stills from the
16 video are released to WLTX and to different TV
17 stations. That night it's shown on the news. As
18 Sergeant Ellis testified, he gets a tip. Deputy
19 Grant calls, recognizes the defendant, gives him the
20 information which is corroborated by the information
21 he already has as to the identity of the person
22 that's seen on TV in the still; this still, State's
23 Exhibit 11.

24 He develops a line-up. And when you notice when
25 you look at these line-ups, when he is developing

1 them, he said he tries to get people with similar
2 facial hair, similar features, similar clothing.
3 Look. They even each have a hoodie on. What's
4 somewhat ironic is the picture we have of him with a
5 hoodie is even similar to the one he uses here. Not
6 that either Ms. Beltrami or Ricky Green actually saw
7 the hoodie. Ms. Beltrami saw his face because that's
8 what she was concentrated on, and Mr. Green saw him
9 after he was in the truck and only saw his face. But
10 it's similar that night.

11 He goes to the Sharpe Shoppe and meets her up
12 there sometime after 9 p.m. And the times are on the
13 actual form. He gets there. He shows it to her.
14 Take your time. See if you recognize anyone. She
15 picks him, like that. Less than 24 hours or right --
16 yes. Just a little less than 24 hours after this
17 occurs, she identifies the face of the person.

18 Then Sergeant Ellis did what he should do. This
19 is good police work. He goes go Ricky Green's house,
20 goes over there, has a separate line-up, doesn't want
21 to influence him in any way; shows it to him, says:
22 Do you recognize anyone? Take your time. Ricky
23 Green immediately identifies the person that he
24 doesn't know by name but that he's seen before at the
25 Exxon and the person he saw getting into the truck

1 that made the get-away that night at the BP.

2 That point is significant because at that point
3 what you have is Deputy Grant -- excuse me -- you've
4 got the video. You've got the tips. You've got the
5 ID from Horace Grant, the deputy. You've the ID from
6 Ann Beltrami and you've got the ID from Ricky Green.

7 And at that point Captain Smith went and got an
8 arrest warrant because there was more than enough at
9 that point. And that's all the evidence that they
10 had at that point. And the magistrate issued the
11 arrest warrant.

12 But what happens after that? What other
13 evidence is developed in this case? After he gets an
14 arrest warrant, it's turned over to the fugitive
15 team. They go to ■ Smith Lane. Sergeant Caldwell
16 collects the jacket which just happens to be the
17 jacket. And where does he find it? Laying on the
18 floor of the defendant's residence after the
19 defendant's father gives him permission, unlocks it
20 with a key and let's them in.

21 Sergeant Isenhoward responds, because also seen
22 in the yard is the red truck which matches the
23 description. And remember this is good, too.
24 Because remember when Ricky Green described it? He
25 said it was like a dark red burgundy color? And look

1 at the truck. It's kind of a dark red, not burgundy.
2 But it's close. That's what makes this real life.
3 It was that color seen.

4 Guess what the tag is? A-N-E. He speaks to him
5 by the truck. He makes sure he follows procedure,
6 and he also gets permission, as he did from Mr.
7 Cornelius, to actually search the truck. Inside the
8 truck he doesn't find the knife and he doesn't find
9 the jacket. It's already here. And he doesn't find
10 the money because it's gone. But he does find DNA on
11 the gearshift which matches this defendant. He also
12 takes a statement from her. The father of the
13 defendant later that day calls Sergeant Ellis and
14 gives him information.

15 Moving on to the 19th, what happens? Between
16 4:30 and 5 p.m. the defendant's family and he show up
17 in the lobby of the Sheriff's Department. At 4:55 he
18 is given his advice of rights, as he should be,
19 before being asked any questions. And at 5:12 they
20 start writing down this defendant's version of what
21 happened on that night. And I want to talk to you
22 just a minute about that.

23 That's the timeline. So, just so we know, after
24 the arrest warrant is secured, the police then find
25 the hoodie from the defendant's residence. They get

1 the information from Margaret Jamison, as well as
2 they find the tag and photograph and process the car.
3 They get the DNA from the gearshift. They advise him
4 of his rights and the confession. That's all on top
5 of this.

6 I submit, ladies and gentlemen, right here, it's
7 proof beyond a reasonable doubt. Right here, it's
8 proof beyond all doubt. But finally, look at the
9 defendant's own statement. He is advised of his
10 rights. You will have the actual form back there.
11 This is that form.

12 And what's significant? In considering whether
13 or not it's a voluntary statement, was he advised of
14 his rights to remain silent, can be used against you
15 in court, the right to a lawyer, one will be
16 appointed, if you decide to stop answering. All the
17 rights, and I'm giving you the abbreviated version,
18 he did them all, were advised to him.

19 He then acknowledges them by signing off on
20 them. He went a step further to make sure he wasn't
21 just orally advised of his rights and didn't
22 understand them. I have read this statement. I am
23 not under any pressure or coercion. It's a waiver of
24 rights. He signs it. He then gets additional
25 information. Can you read and write? Where did you

1 go in school? He graduated from high school. We
2 know his age and his background. That's the type of
3 information.

4 This is good investigative work, and this is how
5 it should be, as far as his advice of rights. And
6 only then does he start questioning him about his
7 involvement. Was he cooperative? Yes. He was even
8 tearful. Remorseful? At being caught or at doing
9 the crime? It doesn't matter.

10 When he then started taking a statement from
11 him, he asked him, did you know -- did you turn
12 yourself in this afternoon because you knew you were
13 wanted? How did you learn that you were wanted? I
14 called a family member. He asked me what I had done.
15 He stated I was on TV.

16 And what does that corroborate? It corroborates
17 Deputy Grant, all the other information in the case.
18 Asked him about your advice of rights and did you
19 sign a waiver. Yes. Those are preliminary questions
20 before he asked him any other questions.

21 Then he asked him to tell him about his version
22 of what happened on that Monday night. And these are
23 Mr. Cornelius's words. I had been on crack since
24 Sunday after Wendy Lake who was my girlfriend and I
25 were up on Percival Road by the Richland County

1 Sheriff's Department. Wendy and I had gotten into an
2 argument and she had told the officer she was tired
3 and didn't want me to get back into her car. So the
4 officer told me that I had to find a ride or walk.

5 What is that, ladies and gentlemen?

6 Corroboration of what Deputy Grant initially told the
7 officer the day before. It all corroborates each
8 other.

9 I didn't have a ride, so I started walking back
10 towards home. On the way I made a stop and got some
11 crack and then walked the rest of the way home. I
12 had not been home for about two or three weeks, and
13 when I got there -- corroborated by the fact -- the
14 power was turned off. When I got there my mother
15 turned off the lights to the shed I live in because
16 they wouldn't come on.

17 Since I didn't have anything to eat there, I
18 went to my Aunt Diane's house and asked her if I
19 could use her truck to get some cigarettes from
20 Blythewood. She let me use her red Ford pick-up and
21 I went drove go Blythewood. I went to BP and parked
22 in front of the store. I got out and walked in,
23 walked up to the counter and told the girl that I
24 needed some money. I guess she didn't hear me, so I
25 showed her the knife that I had in my front pants

1 pocket. After she saw it she opened the register and
2 backed away. I went up to the register and got the
3 money from it. I then walked back out to the truck.
4 And he left. After leaving the BP I went back to the
5 drug dealer and got some more crack.

6 The art of confessing error. He admits he went
7 in. He admits the robbery. He said he borrowed the
8 car from his aunt. He didn't want to say he'd just
9 taken it without permission. Then when asked
10 specifically about the knife: Where did you get the
11 knife from? My house. Where is the knife? I don't
12 know. Can you describe the knife? It has a silver
13 blade and a black handle. I guess she didn't hear
14 me, so I showed her the knife.

15 And it goes on. I wasn't going in there to hurt
16 anyone. I was just going in there to get the money;
17 the money for the crack that he had to have.

18 Did you go back to your shed after the robbery?
19 And where is the jacket? He had left it on the
20 floor, because as far as he knew it was still on the
21 floor. How much money? When was the last time you
22 did crack? The night of the robbery. And the
23 defense attorney when he was questioning Sergeant
24 kept trying to infer that he perhaps was high on
25 crack when he was giving his statement. He has

1 details in here that weren't even known to Sergeant
2 Ellis at the time. This is his version of what
3 happened.

4 I showed you a photo from BP's video. Did you
5 state that was you? Yes. And you will have the
6 actual statement back there with you.

7 The video, the tip, Deputy Grant, Ann Beltrami,
8 Ricky Green, the hoodie from the defendant's
9 residence, Margaret Jamison, the truck with the
10 A-N-E, the DNA from the gearshift, the advice of
11 rights, the confession.

12 Ladies and gentlemen, all the State asks is that
13 you hold this defendant responsible for his choices,
14 for his decision to go in there and use a knife. I
15 think Sergeant Ellis kind of summed it up when he was
16 talking about he didn't need to take a statement
17 because when someone gets a knife or a gun or
18 whatever weapon pulled on them, it's a pretty
19 traumatic event in that person's life. And it
20 shouldn't happen.

21 All we ask is that you hold him responsible for
22 his choices, his crime, for whatever reason he did
23 it. Thank you.

24 **MR. SUTHERLAND:** May it please the Court, sir?

25 **THE COURT:** Yes, sir. Ms. Campbell. Ms.

1 Campbell.

2 **MS. CAMPBELL:** I'm sorry. Thank you.

3 **THE COURT:** All right, Mr. Sutherland.

4 **MR. SUTHERLAND:** Thank you, Your Honor. Ladies
5 and gentlemen, that was extraordinary. Ms. Campbell
6 is always emphatic. And she did mention some things
7 to you, and she said the defense attorney is going to
8 come up here and say this and say that. So I'm going
9 to go ahead and write down the things that she said
10 that I'm going to say, and let's see if they're true
11 or not.

12 If I were to say that there is no DNA and no
13 fingerprints at the crime scene, if I were to say
14 that, is that true or is it false, well, it's true.
15 But, I mean, what's the negative implication of
16 saying something that's true?

17 I understand the silver -- I've heard it too
18 many times -- the silver dollar and the lawyer and
19 the puddle joke about a preacher and everything. You
20 know, government lawyers are lawyers, too. So
21 they're speaking about themselves when they denigrate
22 the profession in that fashion.

23 I wasn't going to say -- of course I was going
24 to point out a lot of these things. I wasn't going
25 to say that there was no DNA on the steering wheel in

1 his aunt's car. And I was going to point out that
2 there was DNA on the gearshift of his aunt's car.
3 Now, she testified that she -- and I just asked her
4 one question because I wanted to be brief. But she
5 said emphatically from the stand: Yes, sir. I said:
6 Ma'am, have you let him use the car? And she said:
7 Yes, sir. And she looked as if she wanted to jump
8 off the witness stand and talk some more. But
9 ultimately, you know, that was the point that I
10 wanted to get from her.

11 Of course it's going to be on there one way or
12 the other. You know, the issue is: Where was it
13 that night? And so with respect to their evidence,
14 and two hours, maybe an hour and a half of chain
15 witnesses and DNA experts and all of this yesterday,
16 you know, to come to the dazzling conclusion that his
17 DNA is on the gearshift of a car that he drives.

18 His aunt was on the stand and she took the stand
19 and she said he came over for a cigarette. I got up
20 in the morning. My truck was gone. I was mad. I
21 told Mike I was calling the police. That's what she
22 said on the stand. That, ladies and gentlemen, is
23 really all that would have been required. But it's
24 sort of indicative when I talk about, you know, going
25 after a fly with a sledgehammer, that's sort of

1 indicative of what I'm saying. I mean, I think
2 ultimately it's going to become pretty clear to
3 everybody -- it's my hope that it's not -- that's not
4 precisely what I mean.

5 But the way that the government behaves, more
6 than this, in every aspect, in every action that it
7 takes with respect go individual liberties or with
8 respect to potential solving problems is always
9 overkill. And that's more the point that I was
10 making than anything.

11 And, yes, I was going to point out that there
12 are no statements from victims or witnesses, because
13 it's true. And if you're going go say -- and I'm
14 sure you recall that I was cranky and testy with
15 Investigator Ellis because he was flim-flamming
16 around on the stand.

17 You know, if you're going to say someone's
18 memory is going to be just as good as it is in 16
19 months today, if you all have seen me here for the
20 last three days, if we run into each other when I'm
21 getting my grilling together or something at the
22 Piggly Wiggly in 16 months: Maybe I know that guy,
23 I've seen that guy; you're not going to say that's
24 the guy that wore the french horn tie or anything
25 like that. That's what I'm trying to point out about

1 these things.

2 It is terribly important that they do their job
3 appropriately, because what's at risk in a criminal
4 trial is an individual's liberty. And that is the
5 point, that is the glue of the Constitution of the
6 United States, the rules, the laws, because they
7 apply to all of us equally; that's what holds us
8 together as a people, not getting up there and being
9 cute and dodging around. Just get up there and say:
10 I didn't do it. It's a mistake. You have other
11 evidence to consider. You have other evidence that
12 you will consider. Get up there, be straightforward,
13 and do a better job next time. Do a better job next
14 time.

15 Now, this was odd. Cameras. I wasn't going to
16 say that. Because who cares? It's a video. You
17 know, the timing, I think they have four different
18 videos that you all are going to watch. And the
19 timing is going to be different from one to one. But
20 there is action -- I mean, you can tell. You can
21 watch them and you can see.

22 So if one says 22:37 and 15 seconds and another
23 says 22:37 and 17 seconds, so what? Who cares? But
24 again, I think it's just a little bit backhanded and
25 slightly maybe a little bit inappropriate to be

1 demeaning the process here. This is very important.
2 You shouldn't have anything in your mind right now
3 with respect to guilt or innocence other than that he
4 is innocent, because that's the law. Right now as I
5 talk to you, as I speak to you, he is innocent. No
6 one can dispute that. None of these government
7 agents, no one here will dispute that. He is
8 innocent until proven guilty. He's not been proved
9 guilty. He is innocent.

10 And veering away from all of this stuff that she
11 said I was going to say, and I decided to say it
12 because it's true, she touched on a lot of points of
13 law. There were a lot of placards up here. And she
14 would explain a little piece of law and say: You
15 remember when this happened, and sort of mixed them
16 in together.

17 And it's similar to the beginning. It's similar
18 to an opening statement. Because in an opening
19 statement and a closing statement you're instructed
20 that this isn't evidence either. Well, that's not
21 the law. And when I objected, that was my belief.
22 That's not the law. The judge is going to instruct
23 you on the law. You all are going to go back and
24 you're going to view the evidence and you're going to
25 decide. You're going to apply the facts to the law.

1 That's where each person, each individual of
2 you, members of the community who come here and show
3 up and serve on juries, serve your community and
4 serve your country by doing your job. And that's my
5 only point with Investigator Ellis when I'm giving
6 him a hard time because he wasn't doing his job.

7 Please, ladies and gentlemen, when you go back
8 there, review this evidence. You see this photo
9 line-up. And if I hold it up, people aren't going to
10 be able to see it. But what's the first thing you
11 notice about this photo line-up when you go back
12 there? You're going to notice a circle. But if you
13 can imagine, there's no circle, what's the first
14 thing you're going to notice? That's the jacket.
15 That's the jacket that was worn.

16 You can't do that. That's suggestive. You're
17 supposed to put six people's faces in there, six
18 people's faces in there, and an individual decides.
19 Ms. Ann said: I was concentrating on the face. I
20 was focusing on the face. That's fine. That's the
21 point of a photo line-up. It is improper, this. And
22 they put this in a photo line-up. It may strike you
23 as odd, but you just cannot do that. Everything has
24 to be done appropriately. Everything has to be done
25 right, because in the end it's liberty interests that

1 we are protecting of everyone, not just Mike or not
2 just anyone else.

3 With respect to his statement, she is correct
4 that I gave him a hard time about the synopsis and
5 synthesizing what it was that was said over a
6 two-hour period of time. She has plenty of
7 explanations for that. That's fine. All you need to
8 know is that they sat there for two hours; and if you
9 take out all of the headings and the footers where
10 somebody is notarizing this, that and the other, you
11 have maybe a page and a half of actual, if you single
12 space it, of text. And you have double spaced
13 questions and answers. There's not a whole lot of
14 information in there. And it occurred over a
15 two-hour period.

16 What does that tell you? It tells you that they
17 sat there for two hours and talked. Sure, he took a
18 DNA swab, and then he typed up the summary and had
19 him sign it. I cross examined him about his state of
20 mind, about Mike's state of mind, about his
21 observations. I cross examined him about drug use
22 because it's important that individuals have the
23 capacity to understand what they are doing when they
24 sign something when they are going to be prosecuted
25 for a crime. That is the point of that, of what I

1 was saying with that.

2 I'm not being malicious or anything with respect
3 to Investigator Ellis. I'm making points that are
4 valid points and points that need to be considered
5 before a citizen is deprived of his liberty. It's
6 that simple, ladies and gentlemen.

7 You can believe the substance of the statement
8 or you cannot. Is it credible according to
9 everything you've heard? If it is, it is. But
10 you're going to make the decision, and you should
11 have all the information surrounding the taking of
12 the statement.

13 And, you know, I had a hard time really keeping
14 up with a lot of what Ms. Campbell was saying, how
15 this is well planned and executed. That's just
16 silly. I mean, there is no evidence of that. If
17 something takes 15 seconds, it's well planned and
18 executed, I run up here and I grab this thing, I just
19 did it. I wasn't even thinking I was going to do it,
20 and I just did it. Was it well planned and executed?
21 No. I just walked up and I did it.

22 I assume she is trying to show some sort of
23 premeditation or some sort of lucidity in light of,
24 you know, his intoxication at the time. Ultimately
25 the judge is going to instruct you about

1 intoxication. I mean, it's not a defense to a crime.
2 It's not. But everything is important with respect
3 to the evidence, with respect to the way that they
4 investigate a case, with respect to the way that they
5 prosecute any American citizen and with respect to
6 the way that they come and they present things in
7 court.

8 I'm still astonished at my cross examination. I
9 said: You didn't take a statement from them? No.
10 You know, that's not policy? That's not our policy.
11 If it's not, I mean, obviously I can't go certain
12 places; but I said: Hypothetically, if you and I,
13 say, have had a bunch of cases in the past, could I
14 have expected to see witness statements and victim
15 statements in there?

16 It's hard, it's difficult for you to know, but
17 use your common sense. When you think about it, if
18 you want to know everything about right now, about
19 this moment here, you know, you all have pads, you
20 all have pens. You can write everything down. You
21 know, he's up there talking, sweating a little bit,
22 sort of angry; and, you know, you write all the
23 details down. And in 16 months you can look at your
24 pad and say: This is what happened. This is what
25 happened. Not if we bump into each other and you

1 say: Oh, I remember this is what happened. You're
2 going to remember the context maybe generally because
3 it's been three days that we have been together.
4 You're going to remember the case because it's
5 important. You're going to remember your duty. But
6 ultimately, you know, this is about you. It's not
7 about me. This is about the evidence in this case.
8 That's what this is about. And that's what your
9 focus should be.

10 And if you are of the opinion now that, oh, as
11 Ms. Campbell said, oh, it's so overwhelming, well, go
12 examine everything. You know, we don't scrutinize
13 American citizens in this country. We scrutinize the
14 government's evidence. That's the way it's been.
15 That's why everyone in the world in Europe -- I was
16 stationed over there in the Army -- they all
17 complained about Americans. That's why we are where
18 we are today and they are where they are and they've
19 been around for centuries.

20 It's because we're all free and we don't let the
21 government tell us what to do. Even if we're
22 inclined to go along with it, we do our duty. So
23 please watch this video and look. Is it a knife? Is
24 it not a knife? You decide. You can look at their
25 still frames if you like. Watch the video and just

1 decide. You have four angles. You have angles of
2 him walking. Look and see and decide. And if it's
3 not a knife, is it an object that could reasonably be
4 believed to be a knife?

5 Well, if it looks like somebody, you know, is
6 holding a boiled egg, then no. You know, these are
7 decisions that you all are going to make. I mean, I
8 can't -- I just can't overemphasize, you know, the
9 importance, the significance, the Constitutional
10 import of what's going on here. But you all are the
11 biggest part of it.

12 As Judge Barber I believe said, I'm sure Judge
13 Cooper -- well, I don't want to speak for Judge
14 Cooper in advance, that you all, you know, lawyers
15 come and go, a dime a dozen. But it's the people,
16 it's the citizens in the community that come in and
17 tell the government, well, okay, your accusation is
18 true or, you know, we don't believe it beyond a
19 reasonable doubt. So, no. So please take your time,
20 please observe everything; and I'll see you all in a
21 little while. Thanks.

22 **THE COURT:** All right. Excuse me. Mr. Foreman
23 Ladies and Gentlemen of the Jury, you've heard all
24 the testimony in this case, you've heard the
25 arguments of both the State and the defendant, and

1 you will take with you to the jury room all the
2 evidence in this case that's been introduced.

3 Now, sometimes juries send me messages that they
4 would like for me to send them a copy of what I'm
5 about to go over with you. I'm not able to do that.
6 So I ask you to pay strict attention to what I am
7 about to explain to you as the law of South Carolina
8 as it applies to this case.

9 Now, under our Constitution and Code of Laws
10 only you, the jury, can make findings of fact in this
11 case. I am not permitted to indicate to you how I
12 might feel about the facts. If I have done anything
13 or said anything that would indicate to you some
14 opinion concerning the facts, then you should
15 disregard that. You must independently weigh the
16 evidence presented at the trial and render a verdict
17 based solely on that evidence.

18 The same Constitution and laws which designate
19 you the finders of fact also make me the instructor
20 of the law. I've explained that to you prior to the
21 beginning of the testimony. If you have some idea as
22 to what the law is or what the law ought to be that
23 does not agree with what I now tell you the law is,
24 you are obligated under the oath you've taken to
25 abandon this preconception on your part and apply the

1 law precisely as I now state it to you.

2 As you know, the defendant in this case has been
3 charged with armed robbery. I remind you again the
4 fact that the defendant was arrested, charged and
5 indicted in this case is not evidence, cannot be
6 considered by you as evidence of guilt, nor does it
7 create any presumption or inference of guilt.

8 Mr. Cornelius has pled not guilty to this
9 indictment. That plea puts the burden on the State
10 to prove the defendant guilty. A person charged with
11 committing a criminal offense in South Carolina is
12 never required to prove himself or herself innocent.
13 That's an important rule of law, that in a criminal
14 trial no matter how serious the charge may be, the
15 defendant will always be presumed innocent of the
16 crime for which the indictment was issued unless
17 guilt is proven to you beyond a reasonable doubt.

18 And this presumption of innocence, like
19 described, does not end when you begin your
20 deliberations, but it accompanies the defendant
21 throughout the trial until you reach a verdict of
22 guilt based on evidence satisfying you of guilt
23 beyond a reasonable doubt.

24 The presumption of innocence again is not just a
25 legal theory; it's not just a phrase. It's a

1 substantial right to which every defendant is
2 entitled unless you are satisfied from the evidence
3 of the defendant's guilt beyond a reasonable doubt.

4 The State is not required to prove guilt beyond
5 all doubt or beyond every doubt but beyond a
6 reasonable doubt. Well, what is reasonable doubt?
7 Reasonable doubt is the kind of doubt, as we describe
8 it, that would cause a reasonable person to hesitate.
9 Let me repeat that. Reasonable doubt is the kind of
10 doubt that would cause a person, a reasonable person
11 to hesitate go take some action.

12 As I said, the State has the burden of proving
13 the defendant guilty beyond a reasonable doubt. Some
14 of you may have served as jurors in civil cases where
15 you were told it's only necessary to prove that a
16 fact is more likely true than not, such as by the
17 greater weight or what we call the preponderance of
18 the evidence. However, in a criminal case the
19 State's proof must be more powerful than that. It
20 must be beyond a reasonable doubt.

21 To think that a defendant is probably guilty or
22 the circumstances are suspicious is not enough.
23 Proof beyond a reasonable doubt is proof that leaves
24 you firmly convinced of the defendant's guilt.

25 As has been stated to you earlier, there are

1 very few things in this world we know with absolute
2 certainty, and in criminal cases the law does not
3 require proof that overcomes every possible doubt.
4 If based on your consideration of the evidence you
5 are firmly convinced that the defendant is guilty of
6 the crime charged, you must find the defendant
7 guilty. If, on the other hand, you think there is a
8 real possibility that the defendant is not guilty,
9 then you must give the defendant the benefit of the
10 doubt and find the defendant not guilty.

11 Now, generally there are two types of evidence
12 which are presented during a trial: Direct evidence
13 and circumstantial evidence. Direct evidence is
14 simply the testimony of a person who claims to have
15 actual knowledge of a fact, such as an eye witness.
16 It's evidence which immediately establishes the main
17 fact to be proved.

18 Circumstantial evidence on the other hand is
19 proof of a series or chain of facts indicating the
20 existence of some basic fact. It is evidence which
21 immediately establishes collateral facts from which
22 the main fact may be inferred.

23 It's based on inference, in other words, and not
24 on personal knowledge or observation. But the law
25 makes no distinction between the weight or value to

1 be given either direct or circumstantial evidence,
2 nor is a greater degree of certainty required of
3 circumstantial evidence than of direct evidence.

4 You should weigh all of the evidence in the
5 case. After weighing all the evidence if you are not
6 convinced of the guilt of the defendant beyond a
7 reasonable doubt, you must find the defendant not
8 guilty.

9 Now, necessarily, you must determine the
10 credibility of the witnesses who have testified.
11 Credibility simply means believability. It becomes
12 your duty as jurors go analyze and evaluate the
13 evidence and determine which evidence convinces you
14 of its truth.

15 In determining the believability of witnesses
16 who have testified, you may believe one witness over
17 several witnesses or several witnesses over one. You
18 may believe a part of the testimony of a witness,
19 reject the remaining part of the testimony of the
20 same witness.

21 You may consider whether any witness has
22 exhibited to you any interest or bias or prejudice or
23 other motive in this case. You may also consider the
24 appearance and manner of the witness while on the
25 witness stand.

1 These considerations you do not exercise
2 arbitrarily. Your objective, ladies and gentlemen,
3 is to seek the truth regardless of its source. In
4 exercising your mental processes and determining what
5 you consider to be true, the law simply requires that
6 you exercise your good judgment, common sense, your
7 sense of logic and reasoning and your experiences in
8 life. You then apply these attributes to the
9 evidence and determine what you, the jury, consider
10 to be the truthful evidence. You will then take and
11 apply the law as I now state it to you and arrive at
12 a true verdict.

13 The rules of evidence; that is, the rules of the
14 road that sort of govern our trial procedure, do not
15 ordinarily permit a witness, or you might say a lay
16 witness, to offer opinions. Witnesses, lay witnesses
17 normally testify to things that they've seen or heard
18 or experienced. But a witness who by some
19 specialized education or experience has become an
20 expert in some art or profession may state an opinion
21 to you as to relevant and material matter in the case
22 in which the witness claims to be an expert and may
23 also state the reasons for that opinion. You should
24 consider any expert opinion received in evidence like
25 any other evidence and give it the weight you think

1 it deserves.

2 Now, one of the issues in this case is the
3 identification of the defendant as the person who
4 committed the crime charged. The State has the
5 burden of proving identity beyond a reasonable doubt.
6 You must be satisfied beyond a reasonable doubt of
7 the accuracy of the identification of the defendant
8 before you may convict the defendant.

9 Identification testimony is an expression or a
10 belief or impression by a witness. You must
11 determine the accuracy of the identification of the
12 defendant. You must consider the believability of
13 each identification witness in the same way as any
14 other witness.

15 You may consider whether the witness had an
16 adequate opportunity to observe the offender at the
17 time of the offense. And this would be affected by
18 things like how long or short a time was available,
19 how far or close the witness was, the lighting
20 conditions and whether the witness had a chance to
21 see or know the person in the past.

22 Once again, I instruct you, the burden of proof
23 on the State extends to every element of the crime
24 charged, and this specifically includes the burden of
25 proving beyond a reasonable doubt the identity of the

1 defendant as the person who committed the crime. If
2 after examining the testimony you have a reasonable
3 doubt as to the accuracy of the identification;
4 again, you must find the defendant not guilty.

5 There is also a statement alleged to have been
6 given by the defendant that's been admitted into
7 evidence. While the Court has determined that the
8 statement is admissible, I instruct you that you make
9 the ultimate decision of whether or not the statement
10 was -- the defendant made the statement.

11 If the defendant did make the statement, you
12 must then determine whether the statement was made by
13 the defendant voluntarily and of his own free will.
14 This means that the statement was not caused by
15 pressure or force or fear, threats, coercion or
16 intimidation or by hope or promise of leniency or a
17 reward of any kind.

18 In determining whether the statement was
19 voluntary, you should consider both the
20 characteristics of the defendant and the details of
21 the questioning. Some things you may consider are
22 the age of the defendant, the defendant's education
23 or lack thereof, his mental ability, his
24 intelligence, the defendant's background and
25 environment, the place and length of the detention,

1 the nature of the questioning and the advice or lack
2 thereof to the defendant of his Constitutional
3 rights, including the right to remain silent, that
4 the statement could be used against him in a court of
5 law, the right to have a lawyer present, that if he
6 could not afford an attorney or a lawyer the State
7 would appoint an attorney and pay an attorney for him
8 and that he could stop making the statement at any
9 time.

10 You must consider all of these surrounding
11 circumstances before you give any weight to that
12 statement. The State has the burden of proving
13 beyond a reasonable doubt again that the alleged
14 statement was voluntary. If you determine it was,
15 you may give the statement any further consideration
16 that you deem proper.

17 You must decide what weight, if any, should be
18 given to the alleged statement. And if you determine
19 the alleged statement was not the free and voluntary
20 statement of the defendant, you should not consider
21 the statement at all.

22 Now, in order go establish criminal liability,
23 criminal intent is required, intent to commit a
24 crime. For example, the mental state to be required
25 to be proven by the State for some particular crime

1 might be a specific intent to do a specific purpose
2 to do a specific thing, knowledge of certain facts or
3 recklessness. Criminal intent must be proven by the
4 State beyond a reasonable doubt. Criminal intent is
5 always a matter that must be determined by the jury
6 from the circumstances surrounding the situation.

7 Now, there's no way go prove intent to a
8 mathematical certainty. There's no way medical
9 science can dissect a person's brain and determine
10 what the person had in mind. So the law says
11 criminal intent may be inferred from the
12 circumstances shown to have existed. This is how you
13 make the determination of whether or not the element
14 requiring intent was present.

15 Criminal intent in other words is a mental
16 state, a conscious wrongdoing. It's up to you to
17 determine what the defendant intended to do based on
18 the circumstances shown to have existed at the time
19 and place.

20 The defendant, as you know, is charged with
21 armed robbery. In order to prove this offense the
22 State must prove beyond a reasonable doubt that the
23 defendant took personal property, which would be
24 money, from another person or from the presence of
25 another person. Property is in the presence of a

1 person if it's within that person's reach,
2 inspection, observation or control so that the person
3 could if not overcome with violence or prevented by
4 fear keep possession of that property.

5 Second, the State must prove beyond a reasonable
6 doubt that the defendant carried the property away,
7 intending to permanently deprive the owner of the
8 property and to keep the property for the defendant's
9 own use.

10 The slightest removal of the property or the
11 complete possession of the property even for an
12 instant by the defendant is sufficient to show the
13 taking and carrying away of the property. The taking
14 and carrying away of the property must have been done
15 with violence or by putting the owner of the property
16 in fear of violence.

17 And finally the State must prove beyond a
18 reasonable doubt either that the defendant was armed
19 with a deadly weapon during the robbery or that the
20 defendant alleged by some actions or words that he
21 was armed while using a representation of a deadly
22 weapon or any object which the person present during
23 the commission of the robbery reasonably believed to
24 be a deadly weapon.

25 A deadly weapon is any article, instrument or

1 substance which is likely to cause death or great
2 bodily harm. Some examples of instruments which may
3 be used as deadly weapons are a pistol or a knife or
4 a slingshot or metal knuckles, razors, guns, anything
5 of that nature. So that is the definition of armed
6 robbery under our statute.

7 Now, ladies and gentlemen, I do additionally
8 charge you that voluntary intoxication is an issue
9 that's been raised in this case. Voluntary
10 intoxication is never an excuse or a defense to a
11 crime. A person who voluntarily renders himself
12 intoxicated is no less responsible for his acts while
13 in such condition.

14 If a person voluntarily drinks intoxicating
15 liquors or takes drugs and becomes intoxicated and if
16 while in that condition commits an act which would be
17 a crime if it had been committed by a sober person,
18 the fact of intoxication would not relieve the
19 intoxicated person from responsibility.

20 Now, ladies and gentlemen, and this is my final
21 instruction; and it's an important one, I instruct
22 and emphasize to you the fact that the defendant did
23 not testify is not a factor to be considered by you
24 in any way in your deliberation and in your
25 consideration on the evidence of the guilt or

1 innocence of the defendant. It must not be
2 considered by you in any manner whatsoever.

3 The defendant has the Constitutional right to
4 remain silent, and the assertion of this right must
5 not be considered by you in your deliberations. I
6 repeat: Under your oath you are to draw no
7 conclusions whatsoever from the fact that the
8 defendant in this case did not testify.

9 The fact that this defendant did not testify
10 should not even be discussed in the jury room. The
11 burden of proof, as I've stated to you several times,
12 is on the State. The defendant is not required to
13 prove his innocence. The burden of proof remains on
14 the State to prove guilt beyond a reasonable doubt.

15 Now, ladies and gentlemen, I further charge you
16 that the punishment provided by law to the offense or
17 the offenses charged in the indictment is a matter
18 exclusively within the province of this Court and
19 should not be considered by a jury in any way
20 whatsoever in arriving at a fair and impartial
21 verdict as to the guilt or innocence of the
22 defendant.

23 I am required under my oath to declare the law
24 as I have done through these instructions to help and
25 guide you to a just and lawful verdict. Whether some

1 of these instructions will apply will depend on what
2 you find to be the facts. The fact that I've
3 instructed on various subjects in this case must not
4 be taken by you as indicating an opinion of this
5 Court as to what you should find to be the facts or
6 as to which party is entitled to your verdict.

7 Your verdict must represent the considered
8 judgment of each juror. In order to return a verdict
9 it's necessary that each juror agree. Your verdict
10 in other words must be unanimous. All 12 of you must
11 agree on the verdict. Your verdict cannot be based
12 on sympathy or passion or prejudice, emotion or any
13 other consideration that's not in evidence in this
14 case. Remember at all times that are you are not
15 partisans favoring one party over another. You are
16 judges, judges of the facts. Your sole interest is
17 to seek the truth from the evidence in this case.

18 Now, Mr. Foreman, I am going to send with you to
19 the jury room the indictment in this case. The
20 indictment, once you have completed your
21 deliberations on what we call the face of the
22 indictment, in the bottom left-hand corner is a place
23 for your verdict. Once you have completed your
24 deliberations, if you will write the words "not
25 guilty" or "guilty", sign your name and date it,

1 knock on the jury room door, we will receive your
2 verdict.

3 Now, the evidence that has been introduced in
4 this case is going to be sent with you to the jury
5 room, and we'll send the disk to the jury room. If
6 you wish to have the player or the equipment to play
7 the disk, we'll send that in. I would hope somebody
8 could operate it, because we can't send anybody in to
9 operate it. We probably could if we had to. But
10 we'll send the equipment in so you can view the
11 video, again if you'd like to do that.

12 I'm going to ask you not to begin your
13 deliberations until you get all that evidence. Once
14 you have received the evidence and the verdict form,
15 you can begin your deliberations.

16 All right, ladies and gentlemen. You may now
17 retire to the jury room. Just relax for a minute,
18 and we'll get the evidence to you as well as the
19 verdict form. Thank you very much.

20 (Jury out at 3:32 p.m.)

21 **THE COURT:** Mr. Dessausure, have the two
22 alternates sit in the hall, please.

23 **THE BAILIFF:** All right.

24 **THE COURT:** Did you get them? You got the
25 alternates?

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

2 **THE COURT:** Any objections or exceptions to the
3 charge from the State?

4 **MS. CAMPBELL:** No, sir.

5 **THE COURT:** From the defense?

6 **MR. SUTHERLAND:** May it please, sir; I just
7 renew my objection to not having the lesser-included
8 of strong arm.

9 **THE COURT:** Yes, sir. I understand. All right.
10 Let's -- any objection to dismissing the alternates?

11 **MR. SUTHERLAND:** None from the defense, sir.

12 **MS. CAMPBELL:** Whatever you feel is appropriate,
13 Judge.

14 **THE COURT:** Thank you. I'll let them start
15 deliberating. Let's check the evidence, please.

16 (Pause)

17 (Jury deliberating at 3:37 p.m.)

18 **THE COURT:** They got all the evidence?

19 **THE BAILIFF:** Yes, sir.

20 **THE COURT:** Everybody, the 12 are all in there?

21 **THE BAILIFF:** Yes, sir.

22 **THE COURT:** All right. Bring them in. Come to
23 order, please.

24 (Whereupon, the alternates are excused from the
25 trial of the case)

1 **THE COURT:** Be at ease.

2 (Whereupon, a break is taken)

3 **THE COURT:** All right. The bailiff informs the
4 Court the jury has reached a verdict. Are you ready
5 to receive the verdict? State?

6 **MS. CAMPBELL:** The State's ready.

7 **THE COURT:** Defense?

8 **MR. SUTHERLAND:** The defense is ready, Your
9 Honor.

10 **THE COURT:** Bring the jury, please.

11 (Jury in at 4:08 p.m.)

12 **THE BAILIFF:** All the jurors are present, Your
13 Honor.

14 **THE COURT:** All right. Thank you very much.
15 Mr. Foreman, has the jury reached a verdict?

16 **FOREPERSON:** Yes, sir, Your Honor.

17 **THE COURT:** Will you hand it to the bailiff,
18 please.

19 (Foreman complies)

20 **THE COURT:** Madam Clerk, will you publish the
21 verdict, please.

22 **THE CLERK:** Yes, sir. Indictment number
23 2009-GS-40-1596, The State of South Carolina vs.
24 Michael Cornelius, indictment for armed robbery; we,
25 the jury, find the defendant guilty, signed number

1 63, Foreperson, June the 9th, 2010. Mr. Foreman, was
2 this your verdict and the verdict of the entire jury?

3 **MR. FOREMAN:** Yes, ma'am.

4 **THE CLERK:** Thank you.

5 **THE COURT:** Would you like to poll the jury?

6 **MR. SUTHERLAND:** Poll the jury, please.

7 **THE COURT:** Madam clerk, please poll the jury.

8 **THE CLERK:** Yes, sir. Ladies and gentlemen of
9 the jury, I'm going to ask you two questions related
10 to your verdict. When I call your number, please
11 answer yes or no to both questions.

12 Number 63, was this your verdict?

13 **MR. FOREMAN:** Yes, ma'am, it was.

14 **THE CLERK:** Is it still your verdict?

15 **MR. FOREMAN:** Yes, ma'am, it is.

16 **THE CLERK:** Number 152, was this your verdict?

17 **JUROR:** Yes, ma'am.

18 **THE CLERK:** Is it still your verdict?

19 **JUROR:** Yes, ma'am.

20 **THE CLERK:** Number 218, was this your verdict?

21 **JUROR:** Yes, ma'am.

22 **THE CLERK:** Is it still your verdict?

23 **JUROR:** Yes, ma'am.

24 **THE CLERK:** Number 267, was this your verdict?

25 **JUROR:** Yes, ma'am.

1 **THE CLERK:** Is it still your verdict?

2 **JUROR:** Yes.

3 **THE CLERK:** Number 81, was this your verdict?

4 **JUROR:** Yes.

5 **THE CLERK:** Is it still your verdict?

6 **JUROR:** Yes, ma'am.

7 **THE CLERK:** Number 289, was this your verdict?

8 **JUROR:** Yes.

9 **THE CLERK:** Is it still your verdict?

10 **JUROR:** Yes.

11 **THE CLERK:** Number 21, was this your verdict?

12 **JUROR:** Yes.

13 **THE CLERK:** Is it still your verdict?

14 **JUROR:** Yes.

15 **THE CLERK:** Number 84, was this your verdict?

16 **JUROR:** Yes.

17 **THE CLERK:** Is it still your verdict?

18 **JUROR:** Yes.

19 **THE CLERK:** Number 89, was this your verdict?

20 **JUROR:** Yes.

21 **THE CLERK:** Is it still your verdict?

22 **JUROR:** Yes.

23 **THE CLERK:** Number 266, was this your verdict?

24 **JUROR:** Yes.

25 **THE CLERK:** Is it still your verdict?

1 **JUROR:** Yes.

2 **THE CLERK:** Number 231, was this your verdict?

3 **JUROR:** Yes.

4 **THE CLERK:** Is it still your verdict?

5 **JUROR:** Yes.

6 **THE CLERK:** Number 162, was this your verdict?

7 **JUROR:** Yes.

8 **THE CLERK:** Is it still your verdict?

9 **JUROR:** Yes.

10 **THE CLERK:** The jury has been polled, Your
11 Honor.

12 **THE COURT:** All right. Thank you very much.
13 Now, Ladies and Gentlemen, that will conclude your
14 service in this case. It will obviously conclude
15 your service this week. I do want to thank you, but
16 let me just tell you before I do that that the
17 remaining portion of the trial will consist of the
18 sentencing of the defendant.

19 Now, unlike what you might see on television or
20 Law & Order, we don't have the luxury here in
21 Richland County because of our heavy case load of
22 deferring sentencing at some later date. The federal
23 courts do that. We just are unable to do that
24 because of the case load and time constraints. So
25 the defendant will be sentenced immediately following

1 about a five or ten-minute break for the clerk to get
2 the paperwork ready.

3 I want to tell you that you're welcome to stay
4 for the sentencing. Jurors sometimes and frequently
5 wish to sort of see the end of the matter, the
6 closure of the trial in the case. And so we make
7 arrangements for you to sit and witness the
8 sentencing.

9 I can't tell you exactly what's going to take
10 place. I know pretty much what's going to take
11 place. But it might be of some interest to you. So
12 you may want to consider it. It's only 4:00. 5:00
13 traffic hasn't hit yet. So you may want to stay. It
14 will only take about ten or fifteen minutes after the
15 paperwork gets started, I mean or gets completed.
16 But if you choose to leave, you certainly are welcome
17 to do that.

18 If you do leave, and before all of you leave, I
19 do want to thank you on behalf of myself, the entire
20 court staff here, the attorneys, the litigants. You
21 are such an important part of our system. I think
22 you heard me tell the full panel Monday I guess it
23 was that your service is so important that the system
24 cannot function without you. It can function without
25 me. It can function without these attorneys. It

1 can't function without you, you're such an important
2 part of the system that we have in this country that
3 your role is written into the Constitution of the
4 United States many, many years ago. And that system
5 has survived this many years in our Republic. So you
6 are an important part and I want you to understand
7 that. And I hope that you've learned something this
8 week about the process that we go through every week
9 up here in Richland County.

10 All right. Thank you very much. You may retire
11 to your jury room where the clerk is going to provide
12 you with your work excuses, those of you who need
13 them, and collect the badges. And as I say, you're
14 certainly welcome to stay if you choose to do so.
15 Thank you very much.

16 (Jury out at 4:15 p.m.)

17 (WHEREUPON, Court's Exhibit No. 1 is marked for
18 identification.)

19 **THE COURT:** The State ready to proceed?

20 **MS. CAMPBELL:** The State's ready, Your Honor.

21 **THE COURT:** The defense ready to proceed?

22 **MR. SUTHERLAND:** The defense is ready, Your
23 Honor.

24 **THE COURT:** All right. Bring your client.
25 Bring the defendant.

1 **MS. CAMPBELL:** May it please the Court?

2 **THE COURT:** All right, Solicitor.

3 **MS. CAMPBELL:** Your Honor, as far as his prior
4 records goes, it starts back --

5 **THE COURT:** I want his entire prior record. And
6 speak loudly. The jury has returned to the
7 courtroom. I'd like them to hear.

8 **MS. CAMPBELL:** Your Honor, back starting in
9 August of 1993 he was convicted of simple assault and
10 a criminal offense, non-described. In 1993 he was
11 convicted of his first armed robbery charge for which
12 he received ten years of incarceration. He was
13 committed on that armed robbery in March of '94. He
14 was paroled in February of '99. His parole was then
15 revoked in December of 2002, and he completed that
16 sentence in July of 2003.

17 **THE COURT:** So he served almost the whole ten
18 years?

19 **MS. CAMPBELL:** Almost the whole ten years, Your
20 Honor.

21 **THE COURT:** And that was on another armed
22 robbery?

23 **MS. CAMPBELL:** That was his first armed robbery.

24 **THE COURT:** All right.

25 **MS. CAMPBELL:** Then in March of 1994 he was

1 convicted of assault and battery and failure to stop
2 for a blue light. Or excuse me. For a police
3 vehicle. I guess that's a blue light. Reckless
4 driving. Then in 2002 he was convicted of use of a
5 vehicle without permission.

6 In September of 2002 he was charged with
7 burglary in the first degree, criminal domestic
8 violence of a high and aggravated nature. That was
9 pled down o a burglary in the second degree and
10 criminal domestic violence of a high and aggravated
11 nature for which he received an active sentence of
12 eight years upon two years with the balance suspended
13 on probation. I'm showing --

14 **THE COURT:** So he got another Department of
15 Corrections sentence for two years?

16 **MS. CAMPBELL:** An active sentence of two years
17 on that one to begin with.

18 **THE COURT:** All right.

19 **MS. CAMPBELL:** Then it looks like in January of
20 2003 he was convicted of conspiracy to commit --

21 **THE COURT:** Did he do his probation?

22 **MS. CAMPBELL:** -- kidnapping which may have come
23 out of those same charges.

24 **THE COURT:** Did he complete his probation? Or
25 can you tell?

1 **MS. CAMPBELL:** I haven't gotten to that yet.

2 **THE COURT:** All right.

3 **MS. CAMPBELL:** In 2004 he was acquitted of
4 several burglaries and criminal domestic violence of
5 a high and aggravated nature. It looks like in 2005
6 he had another burglary in the second degree for
7 which he received ten years suspended on four years
8 plus five years probation and a criminal domestic
9 violence of a high and aggravated nature. Then I'm
10 showing in 2007 a simple assault and a petit larceny
11 with no disposition.

12 **THE COURT:** When was he released on the latest
13 burglary second charge?

14 **MS. CAMPBELL:** It would have to be sometime
15 after -- it looks like between 2005 and 2006, because
16 he was out committing more offenses in 2007.

17 **THE COURT:** All right.

18 **MS. CAMPBELL:** Your Honor, as you're aware, with
19 people with this kind of prior record, we did serve
20 life without parole notice on this defendant earlier
21 this year. I've given you a clocked copy. It also
22 reflects a handwritten date and time it was served
23 upon the defendant and his prior attorney.

24 **THE COURT:** And the qualifying offense would be
25 the prior armed robbery?

1 **MS. CAMPBELL:** Yes, sir.

2 **THE COURT:** Now, the statutes provide that if a
3 person is convicted of two or more most serious
4 offenses; and armed robbery is certainly one of the
5 more serious offenses, that the defendant shall be
6 imprisoned for life without parole. Is that correct?

7 **MS. CAMPBELL:** That's correct, Your Honor.

8 **THE COURT:** And that notice, it was given to him
9 properly before this trial. Is that correct?

10 **MS. CAMPBELL:** It was served upon him I believe
11 in Judge Manning's courtroom. And I believe the date
12 is reflected on the paperwork I handed up to Your
13 Honor.

14 **THE COURT:** March 8th, 2010?

15 **MS. CAMPBELL:** Yes, sir.

16 **THE COURT:** All right. Anything further from
17 the State?

18 **MS. CAMPBELL:** No, sir.

19 **THE COURT:** Mr. Sutherland.

20 **MR. SUTHERLAND:** May it please the Court, sir.
21 Obviously there is really no mitigation in a
22 circumstance like this. Mike didn't want to try the
23 case, but you just don't plead to life without
24 parole, sir.

25 His family is present. His children are not

1 present. I still feel obligated to say that even
2 though I've only known Mike for about five or six
3 weeks, sir, and I believe I made mention of this
4 before, a good college buddy of mine used to be
5 Mike's employer, and he had nothing but good things
6 to say about him.

7 Mike's problems are -- he can work. He can
8 contribute to society. When he smokes dope these
9 other things, these other things tend to happen. I'd
10 ask the Court to consider the Addictions Treatment
11 Unit at the Department of Corrections.

12 And I understand the State's position and I
13 understand everybody's position. I just -- I don't
14 think life is appropriate.

15 **THE COURT:** I forgot to ask. I mean, I didn't
16 ask you. For the record, do you wish to place any
17 motions on the record?

18 **MR. SUTHERLAND:** Yes, sir. Absolutely. I would
19 like to renew my prior objections with respect --
20 well, with respect to everything, but particularly
21 with the ID, with respect to the statement, also
22 with --

23 **THE COURT:** The identification?

24 **MR. SUTHERLAND:** Yeah. To the identification.
25 With respect to the admissibility of the statement,

1 the photo line-ups being admitted because of the
2 jacket; also based on the jury charge not including
3 the lesser charge of strong arm robbery. And I
4 think -- let's see. Jackson vs. Denno, Neil vs.
5 Biggers. The search. And that should cover
6 everything. But I'm renewing everything just in case
7 something is slipping my mind.

8 **THE COURT:** Motion for a new trial.

9 **MR. SUTHERLAND:** Yes, sir. Moving for a new
10 trial at this time on that basis.

11 **THE COURT:** I just want to make that part of the
12 record.

13 **MR. SUTHERLAND:** Absolutely, Your Honor.

14 **THE COURT:** I feel the jury was well within
15 their discretion based on the evidence to find the
16 verdict that they found, and I must respectfully deny
17 your motion.

18 **MR. SUTHERLAND:** Thank you, sir.

19 **THE COURT:** Mr. Cornelius, do you have anything
20 you want to say?

21 **MR. CORNELIUS:** Yes, sir. I would like to
22 direct my comment to Ms. Ann, if you don't mind, out
23 of respect.

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

25 **COURT REPORTER:** I can't hear him. He needs to

1 turn towards me.

2 **THE COURT:** You have to speak a little bit so
3 the court reporter can hear you.

4 **MR. CORNELIUS:** I'm saying if you can ever find
5 it in your heart to forgive me, I wish you would. I
6 did what I did not knowing it, but just I never meant
7 to bring any harm to you. And if you can ever find
8 it in your heart to forgive me, I would thank you.

9 **THE COURT:** Anything further?

10 **MR. SUTHERLAND:** That's it, Your Honor.

11 (Pause)

12 **THE COURT:** Approach the bench, counsel.

13 (Whereupon, a bench conference is had)

14 **THE COURT:** All right, Mr. Cornelius. The
15 sentence of the Court is that you be committed to the
16 State Department of Corrections for a period of the
17 balance of the remainder of your natural life; that
18 is, life without parole, without the possibility of
19 parole. Good luck o you, sir.

20 **MR. CORNELIUS:** Thank you.

21 **THE COURT:** All right. Anything further?

22 **MS. CAMPBELL:** Not in this case, Your Honor.

23 **THE COURT:** This case stands adjourned. Court
24 stands adjourned.

25 (Whereupon, the proceedings are concluded)

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Jenny H. Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 7th, 8th and 9th days of June, 2010.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 27, 2010

Jenny H. Williams
Jenny H. Williams, Court Reporter

FORM 5

2012 CP4007573

STATE OF SOUTH CAROLINA)

COUNTY OF)

Richland)

IN THE COURT OF COMMON PLEAS)

Michael P. Cornelius #210317)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

APPLICATION FOR)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River C.I.
2. Name and location of Court which imposed sentence Richland County Courthouse
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009G5401596
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) June 9, 2010 - Life No Parole
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Richland County Courthouse
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. March 7, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. March 7, 2012
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel-
 (b) Counsel failure to properly investigate the Applicant's case and
 (c) discussing same with Applicant cause the Applicant to not fully - line by #13

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) 2. Counsel advise to Applicant to take a trial with knowledge of
 (b) Applicant written statement by the state detectives of his
 (c) guilt to the crime,

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

12. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. understand the charges against him during the sentencing
 ii. phase. Counsel only spent (3 to 4) weeks with
 iii. Applicant's case and was then taken to trial by
 iv. jury. When Applicant clearly wanted to take a plea.
 (b) the name and location of the Court in which each was filed:

- i. _____
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. _____
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) First PCR Attorney's failure to investigate prior record
- (b) during sentencing phase
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? No
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Tivis Sutherland, Esq., Columbia, S.C.
- ii. Wanda H. Carter, Appellate Defender
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Sutherland - during trial and sentencing phase
- ii. Carter - Direct Appeal
- iii. _____
19. State clearly the relief you seek in filing this application:
Revoke Sentence for Re-Sentencing
20. Are you now under sentence from any other court that you have not challenged?
No

I would like to Reserve the Right to Amend further Evidence Upon the Common Pleas Court at a later time of Sections 10(a) and 10(b). Thank You

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Michael Cornelius

SWORN to and subscribed before me this 7th
day of November, 2012.

Susan H. Frye (L.S.)
Notary Public

My Commission Expires

March 5, 2019

My Commission Expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CORNELIUS Michael P -
00210317,

2012CP4007573

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

RICHLAND COUNTY
FILED
2013 JAN 29 PM 12:02
JEANETTE W. McBRIDE
C.C.P. & G.S.

Respondent, State of South Carolina, making its Return to the application for post-conviction relief (PCR) filed November 9, 2012, would respectfully show this Court:¹

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the April 2009 term of the Richland County Grand Jury for Armed Robbery (2009-GS-40-1596).² He was represented by Tivis Sutherland, Esquire, on the charge(s). Applicant proceeded to jury trial before The Honorable G. Thomas Cooper, Jr., and on June 9, 2010, was found guilty as indicted. He was sentenced by Judge Cooper to life imprisonment without the possibility of parole on the charge.

¹<http://www4.rcgov.us/publicindex/PCCaseDetails.aspx?County=40&Casenum=2012CP4007573&CourtType=G&CaseType=Civil&CourtAgency=40002>

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00210317>

Direct Appeal

A notice of appeal was filed and an Anders brief was submitted on Applicant's behalf by Wanda Carter of the South Carolina Office of Appellate Defense. By order of the South Carolina Court of Appeals dated March 7, 2012 appellate counsel's motion to be relieved was granted and the appeal was dismissed. The remittitur was issued March 26, 2012.

The application for post-conviction relief (PCR) was filed November 9, 2012.

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and Applicant's applicable direct appeal files.³ Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

- | |
|--|
| <p>(a) <u>Ineffective Assistance of Counsel-</u></p> <p>(1) <u>Counsel failure to properly investigate the Applicant's case and</u></p> <p>(2) <u>discussing same with Applicant cause the Applicant to not fully - line</u></p> |
|--|

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

i. understand the charges against him during the sentencing phase. Counsel only spent (3 to 4) weeks with
 ii. Applicant's case and was then taken to trial by
 iii. jury. When Applicant clearly wanted to take a plea.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) 2. Counsel advise to Applicant to take a trial with knowledge of
- (b) Applicant written statement by the state detectives of his
- (c) guilt to the crime.

IV.

For the purposes of this Return, Respondent interprets each of Applicant's allegations to be claims of ineffective assistance of counsel. Respondent contends Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The

courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing be held to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.