

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY

Eugene C. Griffith, Jr., Circuit Court Judge

RECEIVED

AUG 1 9 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TIMOTHY CROMER,

APPELLANT

APPELLATE CASE NO. 2014-000050

RECORD ON APPEAL

WANDA H. CARTER
Deputy Chief Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

(803) 734-3727

Attorneys for Respondent

INDEX

INDEX	i
<u>NEIL V. BIGGERS IN-CAMERA HEARING</u>	5
TESTIMONY	
SERGEANT MICHAEL WOOD	5
DAVID WILLIAMS	21
JAMES BLAIR WILLIAMS	38
ARGUMENTS REGARDING SHOW-UP IDENTIFICATION	43
COURT'S IDENTIFICATION RULING	48
JURY VOIR DIRE	52
ENDING OF JURY VOIR DIRE	69
<u>JACKSON V. DENNO IN-CAMERA HEARING</u>	69
TESTIMONY	
CAPTAIN KEVIN ATKINS	70
SERGEANT KEVIN GOODMAN	81
ARGUMENT BY SOLICITOR	85
ARGUMENT BY DEFENSE COUNSEL	85
COURT'S <u>JACKSON V. DENNO</u> RULING	86
COURT'S ADDITIONAL <u>NEIL V. BIGGERS</u> RULING	88
LIFE WITHOUT PAROLE SERVICE COLLOQUY	90
JURY VOIR DIRE RESUMED	93
JURY SELECTION	114

<u>BATSON</u> MOTION	123
<u>BATSON</u> RULING	125
COURT'S OPENING REMARKS	127
OPENING STATEMENT BY SOLICITOR.....	139
OPENING STATEMENT BY DEFENSE COUNSEL	149
TRIAL TESTIMONY	
DAVID WILLIAMS	156
MARY WILLIAMS	207
JAMES BLAIR WILLIAMS	213
CORPORAL TERRANCE RYAN MATHEWS.....	225
SEARGEANT MICHAEL WOOD.....	241
CORPORAL MAJOR LOYNES.....	255
KEVIN ATKINS	263
STATE RESTS.....	289
DIRECTED VERDICT MOTIONS	291
COURT'S RULING ON DIRECTED VERDICT MOTIONS.....	304
DEFENSE RESTS	305
DIRECTED VERDCIT MOTIONS RENEWED	305
CLOSING ARGUMENT BY SOLICITOR.....	309
CLOSING ARGUMENT BY DEFENSE COUNSEL	321
JURY CHARGE ON THE LAW	334
DEFENSE'S OBJECTION TO ARMED ROBBERY JURY CHARGE	356
JURY RE-CHARGE ON ARMED ROBBERY	359

VERDICT	362
POST TRIAL/NEW TRIAL MOTIONS.....	363
COURT'S RULING ON POST TRIAL MOTIONS	363
SENTENCING	368
INDICTMENT	371
CERTIFICATE OF COUNSEL.....	375

1 State of South Carolina

Court of General Sessions

2 County of Newberry

3
4
5 State of South Carolina)

Transcript of Record

6 vs.)

2013-GS-36-0177

2013-GS-36-0178

7 Timothy Lamar Cromer,)

8 Defendant.)

9
10 January 6 - 8, 2014

Newberry, South Carolina

11
12 B E F O R E:

13 The Honorable Eugene C. Griffith, Jr., Judge; and a
14 jury.

15
16 A P P E A R A N C E S:

17 Christopher Dale Scott, Deputy Solicitor
18 Taylor Wilson Daniel, Assistant Solicitor
Attorneys for the State

19 Earnest Deon O'Neil, Esquire
20 Attorney for the Defendant

21
22
23 Stacy S. Johnson, RPR
Circuit Court Reporter

I N D E X

	WITNESS	PAGE
1		
2		
3	Pre-Trial Motion; Neil v. Biggers	5
4	Sergeant Michael Wood (In Camera)	
	Direct Examination by Mr. Scott	5
5	Cross-Examination by Mr. O'Neil	12
	Redirect Examination by Mr. Scott	19
6		
	David Williams (In Camera)	
7	Direct Examination by Mr. Scott	21
	Cross-Examination by Mr. O'Neil	28
8	Redirect Examination by Mr. Scott	34
	Recross Examination by Mr. O'Neil	36
9		
	James Blair Williams (In Camera)	
10	Direct Examination by Mr. Scott	38
11	Jury Qualification	52
12	Pre-trial Motion; Jackson v. Denno	69
13	Captain Kevin Atkins (In Camera)	
	Direct Examination by Mr. Scott	70
14	Cross-Examination by Mr. O'Neil	76
	Redirect Examination by Mr. Scott	79
15	Recross Examination by Mr. O'Neil	80
16	Sergeant Kevin Goodman (In Camera)	
	Direct Examination by Mr. Scott	81
17	Cross-Examination by Mr. O'Neil	83
18	Jury Selection	93
19	Batson Motion	123
20	Opening Statement	
	By Mr. Daniel	139
21	By Mr. O'Neil	149
22	David Williams	
	Direct Examination by Mr. Scott	156
23	Cross-Examination by Mr. O'Neil	180
	Redirect Examination by Mr. Scott	201
24	Recross Examination by Mr. O'Neil	205
25		

1	Mary Williams	
	Direct Examination by Mr. Scott	207
2	James Blair Williams	
3	Direct Examination by Mr. Daniel	213
	Cross-Examination by Mr. O'Neil	223
4	Corporal Terrance Ryan Matthews	
5	Direct Examination by Mr. Scott	225
	Cross-Examination by Mr. O'Neil	234
6	Recross Examination by Mr. Scott	240
	Redirect Examination by Mr. O'Neil	241
7	Sergeant Michael Wood	
8	Direct Examination by Mr. Scott	244
	Cross-Examination by Mr. O'Neil	251
9	Corporal Major Loynes	
10	Direct Examination by Mr. Scott	256
	Cross-Examination by Mr. O'Neil	259
11	Redirect Examination by Mr. Scott	262
12	Captain Kevin Atkins	
	Direct Examination by Mr. Scott	264
13	Cross-Examination by Mr. O'Neil	273
	Redirect Examination by Mr. Scott	282
14	Recross Examination by Mr. O'Neil	285
15	Motion for Directed Verdict	290
16	Closing Argument	
	By Mr. Scott	309
17	By Mr. O'Neil	321
18	Charge of the Court	334
19	Verdict of the Jury	362
20	Post-Trial Motions	363
21	Sentence of the Court	368
22	Certificate of Reporter	370
23		
24		
25		

1	E X H I B I T S			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	S-1	Black jacket	5, 166	169
4	S-2	Red shirt	5, 166	169
5	S-3	Black pants	5, 166	169
6	S-4	Written Statement	5, 174	174
7	S-5	Photograph	177	177
8	S-6	Photograph	177	177
9	S-7	\$8.26	232	240
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 (The following proceedings were held on
2 January 6, 2014.)

3 (State's Exhibit Numbers 1 through 4 were
4 marked for identification.)

5 **BAILIFF:** All rise.

6 **THE COURT:** All right. Y'all be seated, please.
7 All right. Mr. Scott, are you ready?

8 **MR. SCOTT:** Yes, sir.

9 **THE COURT:** Mr. O'Neil?

10 **MR. O'NEIL:** Yes, sir.

11 **THE COURT:** Which hearing do you want to do
12 first?

13 **MR. SCOTT:** Probably, chronologically; Biggers.
14 Neil v. Biggers.

15 **THE COURT:** Neil v. Biggers we'll do first. All
16 right.

17 **MR. SCOTT:** Your Honor, the State calls Mike
18 Wood.

19 SERGEANT MICHAEL WOOD,
20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. SCOTT:

23 Q. Okay. Mr. Wood, you were employed with the
24 Newberry Police Department on January 16th of this year?

25 A. I was.

1 Q. And did you have an occasion to become involved
2 with the investigation of an armed robbery, kidnapping
3 complaint that originated at the Spinx convenience
4 store?

5 A. I did.

6 Q. And that Spinx is on College Street?

7 A. Yes, sir. It's on College Street within the city
8 limits of Newberry, South Carolina.

9 Q. Okay. Approximately what time did you become
10 involved in this case?

11 A. It was approximately around 5:00. It was about
12 an hour before shift change.

13 Q. Okay. Where did you initially respond?

14 A. I responded to the complainant's house. I
15 believe it's on Reid Street.

16 Q. Okay. At 5:00 -- did you say 5:00 p.m.?

17 A. Approximately 5:00 in the evening.

18 Q. And you responded to the home of the complainant?

19 A. On Reid Street.

20 Q. And do you remember the complainant's name?

21 A. The last name was Williams. The first name is
22 not on the top of my head this morning.

23 Q. Okay. So that address is 1147 Reid Street?

24 A. That's correct.

25 Q. Okay. And who did you meet when you responded to

1 that address?

2 A. I met Mr. Blair Williams and his son. Like I
3 said, the son's name is just not popping in my head. I
4 apologize.

5 Q. Do you see him here?

6 A. I do. He's sitting over there in the leather
7 jacket.

8 Q. David Williams, does that ring a bell?

9 A. That sounds correct.

10 Q. Okay. What was the nature of the complaint?

11 A. I originally was actually responding to assist
12 Corporal Matthews, who was the first responding officer.
13 The complaint had been that a -- a gentleman had been
14 involved with an armed robbery and possible kidnapping.

15 Q. Okay. Now 5:00 was when you arrived at the Reid
16 Street address?

17 A. I'm not -- I do not remember the exact time at
18 which I arrived. It was just approximately about.

19 Q. Okay. Did you know at that time how much -- when
20 you arrived at the Reid Street address, did you have any
21 knowledge of how much time had elapsed between the time
22 of the incident and the time you arrived at Reid Street?

23 A. We did ask questions of the victim and we were
24 being advised like fifteen or twenty minutes, somewhere
25 in there.

1 Q. Okay. So you arrived within a fairly quick time
2 to the Reid Street address?

3 A. Yes, sir.

4 Q. Okay. And you spoke with David Williams you
5 said?

6 A. I did, sir, and his father.

7 Q. And his father. What did you do after that?

8 A. We obtained the best description that we could
9 possibly get at the time from the questions that we were
10 asking of what the suspect may have looked like and we
11 provided that to other units who were searching in the
12 area, and I believe that it was Newberry County who said
13 that they had located somebody they thought might match
14 the description. Corporal Loynes was another officer on
15 our shift that responded to that location of which would
16 be -- I call it the old Food Lion on Kendall Road, which
17 is just outside the city limits, and so he responded
18 over there to see who they had found.

19 Q. Okay. What was your recollection of the
20 description of the person you were looking for?

21 A. It was a black male with dark clothing. He was
22 supposed to be wearing dark pants and some kind of a
23 jacket with like a design on it.

24 Q. Okay. Okay. So I guess it's sort of like a --
25 what do you call them, like a BOLO-type call over the

1 radio about the description?

2 A. I mean, yes, sir, I guess you would call it a
3 BOLO. I mean, it was like this is -- to other units
4 this is what we're possibly looking for, you know, and
5 if you see them, please stop and identify somebody.

6 Q. Okay. And to your recollection, how soon did the
7 call come in that somebody was detained at the --

8 A. Maybe five, ten minutes at the most.

9 Q. Okay. Now just -- we're not talking about exact
10 time here.

11 A. Yes, sir. I can't give an exact time to you.

12 Q. Was it approximately 5:15?

13 A. Sir, what was the question?

14 Q. Was it approximately 5:15 then?

15 A. Approximately, yes, sir.

16 Q. Okay. And what did you do after learning that
17 somebody had been detained?

18 A. I -- at the time, the victim was a juvenile, so
19 that's why I was also speaking with his father. I asked
20 him and his father if they would be willing to ride with
21 me in the back of my patrol car over to the old Food
22 Lion on Kendall Road and make an identification, and
23 they agreed.

24 Q. How long did it take to drive from the Reid
25 Street address to the Food Lion?

1 A. Maybe five minutes.

2 Q. Okay. So now we're talking about twenty-five or
3 so minutes since the incident occurred?

4 A. I guess so.

5 Q. Was it dark?

6 A. It was getting dark.

7 Q. Okay. The Food Lion parking lot, was it lit in
8 any way?

9 A. Yes, sir, they had the parking lot lamps, so,
10 yes, it was lit.

11 Q. Okay. And the Williams father and the Williams
12 victim were in the rear of your patrol car?

13 A. They were.

14 Q. Okay. What happened when you arrived at the Food
15 Lion?

16 A. I pulled into the parking lot. I tried to
17 position my car in such a way so as, you know, the
18 person being detained would not be able to have a great
19 view of the people in the back of my car. I pulled
20 maybe 75 to 50 feet, somewhere in that range, and tried
21 to angle my car to allow them to have a look at the
22 person and I asked the question, I said is that the
23 person that, you know, you had your incident with, and
24 the response was yes.

25 Q. Was it -- I don't know, how would you describe

1 the answer? Was it --

2 A. It was just -- it was just, yes, and it was
3 brief.

4 Q. Okay. Did you make any suggestive statement to
5 him?

6 A. No.

7 Q. Who was the person that was identified?

8 A. The person identified was a Timothy Cromer. I
9 believe he's in the courtroom today. He's in like a
10 white and red stripped shirt.

11 Q. Okay. You were able to observe him as well?

12 A. I was.

13 Q. And did he match the description of the person
14 you were looking for?

15 A. He did have on dark clothing and long pants.

16 Q. What about the jacket that you were mentioning?

17 A. I did not get an up and close personal look at
18 the jacket, so.

19 Q. Okay. But to your recollection, the
20 identification was an -- I guess, an instant
21 recognition?

22 A. Yes, sir.

23 Q. All right. One more time. To your knowledge,
24 how much time had elapsed between the time of the
25 incident, the kidnapping, robbery, and the time of the

1 identification?

2 A. Maybe thirty minutes.

3 Q. Okay. And to your knowledge, did the -- David
4 Williams, did he explain to you that he had an
5 opportunity to observe the person who had robbed him and
6 kidnapped him?

7 A. Yes, sir. During our initial questioning or
8 interviewing him about the incident, he had a long --
9 well, I won't say long, but he had a good interaction --

10 **MR. O'NEIL:** Objection, Your Honor. Hearsay.

11 **THE COURT:** Rephrase that question.

12 BY MR. SCOTT:

13 Q. To your knowledge, had the victim had an
14 opportunity to observe the person who had robbed him?

15 A. I was told yes when I asked the question.

16 **MR. O'NEIL:** Objection. He doesn't -- the
17 witness doesn't have personal knowledge of what the
18 victim saw. It would be hearsay. Any -- any answer
19 he'd give would be based on hearsay.

20 **THE COURT:** I'll sustain that.

21 **MR. SCOTT:** Nothing further. Please answer any
22 questions Mr. O'Neil has.

23 CROSS-EXAMINATION

24 BY MR. O'NEIL:

25 Q. Is it Sergeant Wood? I'm sorry.

1 A. Yes, sir.

2 Q. You don't know -- you have no personal knowledge
3 as to what time the incident occurred, correct?

4 A. Exact times, no, sir.

5 Q. You know -- you have personal knowledge as to
6 what time you got to the residence of Mr. Williams?

7 A. Yes, sir.

8 Q. Okay. You said that was approximately around
9 5:00 --

10 A. Approximately, yes, sir.

11 Q. -- give or take? And how long did you stay at
12 the residence before you -- you started getting
13 information from dispatch?

14 A. I don't understand your question.

15 Q. How long were you at the Williams residence
16 before you start getting information from dispatch?

17 A. What information are you referring to? Dispatch
18 -- dispatch is called and then we gave -- you're talking
19 about other officers saying that we --

20 Q. Yeah, when you -- not when you started -- not
21 when you started giving information to dispatch. When
22 did dispatch give the information to you?

23 A. Okay. Well, other officers informed me.
24 Dispatch did not give me information, but other officers
25 informed me that they had a possible suspect. Maybe

1 ten minutes, you know.

2 Q. So it's -- you were at the residence for ten
3 minutes before you started getting information through
4 dispatch from other officers about --

5 A. But it was directed from other officers.

6 Q. Okay. Was -- that would have been about
7 ten minutes after you got to the residence?

8 A. Somewhere -- ten, fifteen minutes. Somewhere in
9 there.

10 Q. And you said the description you had was a black
11 male, dark clothing, dark pants and a jacket with a
12 design?

13 A. Yes, sir.

14 Q. That's all you got?

15 A. From my recollection at the moment, yes, sir.

16 Q. All right. That's the -- that's the entirety of
17 your recollection of the description you had?

18 A. At that moment, yes, sir.

19 Q. Okay. Now do you remember hearing Investigator
20 Atkins over dispatch?

21 A. I -- not at the moment I do not.

22 Q. All right. Let me ask you this specifically. Do
23 you remember hearing Investigator Atkins say over
24 dispatch that the description sounded -- sounded like it
25 could be Timothy Cromer?

1 A. I don't remember that, no, sir.

2 Q. Do you remember anybody on dispatch mentioning
3 the name Timothy Cromer as being the suspect?

4 A. Once officers with the county as well as Corporal
5 Loynes were out with the subject, I do believe that
6 officers then informed that they were out with a Timothy
7 Cromer.

8 Q. Okay. So you remember hearing officers say they
9 were with a Timothy Cromer at the Food Lion?

10 A. Yes, sir.

11 Q. That was before you brought the vic -- the
12 alleged victim to do the showup lineup?

13 A. Yes, sir.

14 Q. Okay. Now this information that you were hearing
15 over dispatch, who all was in the home with you at that
16 time?

17 A. It was myself, Corporal Matthews, the victim,
18 his father, and I believe his mother was there, but I
19 honestly cannot a hundred percent remember that.

20 Q. Okay. And when you say you get information from
21 other officers, it's through the two-way radio you have
22 on you right now?

23 A. Yes, sir.

24 Q. That radio -- when officers get information, that
25 -- that essentially is coming on -- for lack of a better

1 word, speaker -- over the speaker, correct?

2 A. Yes, sir.

3 Q. You're not -- you don't have earphones in?

4 A. No, sir, but I can adjust the volume up and down.

5 Q. Okay. But if you're in the same room, it's
6 possible that you could hear what's coming over through
7 your radio?

8 A. Yes, they can hear things on my radio.

9 Q. Thank you. Now you said when you got to the Food
10 Lion it was getting dark already?

11 A. Yes, sir.

12 Q. And I think at an earlier hearing you testified
13 that you pulled about a hundred feet from the suspect in
14 this case, correct?

15 A. It could be anywhere -- like I said, I don't know
16 the exact figures, but the subject could have been
17 anywhere from 75 to 50 feet or it could have been a
18 hundred feet, but it was just a distance away. I didn't
19 measure it, so.

20 Q. Okay. I just wanted to make sure we were clear
21 with what you testified to earlier. Earlier you said it
22 was -- in an earlier hearing, you said it was about a
23 hundred feet --

24 A. Yes.

25 Q. -- is that correct?

1 A. I said yes a minute ago when you asked.

2 Q. Now was there any -- where was Mr. Cromer placed
3 at when the victim was brought to the scene?

4 A. He wasn't placed anywhere. He was just standing
5 with officers against the edge of the parking lot, kind
6 of over near, I guess you would call it, the sidewalk
7 area.

8 Q. Was he the only civilian that the victim was
9 shown?

10 A. I believe so. He was the only one there, yes,
11 sir.

12 Q. Okay. He's the only one not in -- not in
13 uniform?

14 A. Correct. Yes, sir.

15 Q. Okay. Was he the only black male that was shown
16 to the victim?

17 A. At that time, yes, sir.

18 Q. Okay. And, once again, the only description you
19 had at that point was black male, dark clothing, dark
20 jeans and jacket with design on it?

21 A. Dark pants. I didn't say dark jeans.

22 Q. Okay. I apologize. Dark pants?

23 A. Yes, sir.

24 Q. Now could you see the design from where you were
25 at?

1 A. Like I said, I didn't -- I couldn't give
2 knowledge of the jacket at that time, no, sir.

3 Q. Okay. So where -- where were you positioned as
4 relates to the victim in this case when the lineup was
5 being done?

6 A. Where was I? I was in the driver's seat of the
7 car.

8 Q. Was the victim in the driver's seat of the car as
9 well?

10 A. No, the victim was in the back seat.

11 Q. So you were closer to the suspect than the victim
12 was or were you parked at --

13 A. I was parked at an angle and the victim was
14 parked -- in the passenger side of the rear.

15 Q. Okay. So he may -- the victim may have been
16 about a foot ahead of you? Essentially your car is
17 parked parallel?

18 A. To imagine my hand, he would be here, I would be
19 over here (indicating).

20 Q. So he's closer -- he's -- the distance diagonal
21 between the driver's side and the rear passenger side,
22 he's that distance closer than you are --

23 A. Yes, sir.

24 Q. -- to the suspect?

25 A. Yes.

1 Q. Okay. Did you have the lights on inside the
2 patrol car?

3 A. No, sir, I did not turn my lights on.

4 Q. Do you know whether or not the victim wore
5 glasses or could see?

6 A. I do not know.

7 Q. Okay. Was -- do you know whether or not
8 Mr. Cromer was in handcuffs at the time that he was
9 shown to the victim?

10 A. I do not.

11 Q. Okay. But he was definitely around other
12 officers?

13 A. He was definitely around other officers, yes,
14 sir.

15 Q. And, Sergeant Wood, you didn't write a report in
16 this case, did you?

17 A. No, sir, I did not.

18 Q. Okay.

19 **MR. O'NEIL:** That's all I have, Your Honor.

20 **THE COURT:** Anything else, Mr. Scott?

21 **MR. SCOTT:** Just briefly.

22 REDIRECT EXAMINATION

23 BY MR. SCOTT:

24 Q. To your knowledge, or to your recollection
25 rather, when you observed Mr. Cromer, did he match what

1 the victim had told you the suspect appeared to be like
2 -- look like?

3 A. Yes, sir. At the time he was a black male
4 wearing dark clothing, dark long pants.

5 Q. Okay. And how far away -- where did the incident
6 occur? Where did the armed robbery, kidnapping occur?

7 A. That was the Spinx convenience store on College
8 Street just down from Newberry College.

9 Q. Tell me how far away is that from the Food Lion
10 where Mr. Cromer was apprehended.

11 A. A mile, mile and a half.

12 Q. And one more time. How much time approximately
13 had elapsed between the time of the crime and the time
14 of the identification?

15 A. Maybe thirty minutes.

16 **MR. SCOTT:** Okay. Thank you. That's all, Your
17 Honor.

18 **THE COURT:** All right.

19 **MR. O'NEIL:** I don't have anything.

20 **THE COURT:** All right. Mr. Wood, you may step
21 down.

22 (Witness excused.)

23 **MR. SCOTT:** David Williams.

24 DAVID WILLIAMS,

25 having been duly sworn, testified as follows:

1 **THE CLERK:** Have a seat and state your name for
2 the record.

3 **THE WITNESS:** David Williams.

4 DIRECT EXAMINATION

5 BY MR. SCOTT:

6 Q. David, how old are you?

7 A. I'm seventeen.

8 Q. How old were you January 16th of this year?

9 A. I was sixteen.

10 Q. Okay. Do you recall going to the Spinx
11 convenience store on College Street?

12 A. Yes, sir.

13 Q. Do you remember about what time you went there?

14 A. I probably got there around 4:00.

15 Q. Okay. Tell me what happened when you got there.

16 A. When I got to the Spinx, I pulled up toward the
17 vacuum cleaners and I went inside the store -- well, I
18 got out of my car and I was approached by a man, a tall,
19 black man with a black jacket with a yellow football
20 helmet on it, dark pants and a red T-shirt, I believe.
21 I can't remember the color of the shirt though, so don't
22 quote me on that. I went inside the store, got a candy
23 bar, and I really didn't think anything of the man
24 because I just assumed he was -- you know, I don't even
25 know.

1 Q. Let me back up. You said you were confronted by
2 this man?

3 A. I was.

4 Q. What was the confrontation?

5 A. I could not tell. I could not understand a word
6 he said.

7 Q. Well, what did he do?

8 A. He came up to me kind of acting like we were old
9 friends. I -- I believe he gave me a hug and I -- I
10 just kind of brushed it off and entered the store.

11 Q. Okay. What do you mean he was acting like you
12 were old friends?

13 A. Coming up to me, shaking my hand and gave me a
14 hug. I don't know. It was kind of weird.

15 Q. Okay. And you had an opportunity to observe him
16 at this time, I guess?

17 A. I did.

18 Q. You said he embraced you?

19 A. Yes.

20 Q. Did you know this person?

21 A. I had no idea who he was.

22 Q. Okay. So you said after this initial
23 confrontation you went in to buy a candy bar?

24 A. I did.

25 Q. Okay. After that, what happened?

1 A. I walked back out of the store, went back to my
2 car to vacuum it out, and when I got to my car I
3 realized I didn't have enough change for the vacuum, so
4 I went inside to get the change, and I believe I got
5 four quarters and four dollars, and came back outside
6 and went to my car and I noticed that the man was
7 following me, so I just got in my car and I was about
8 to leave and he got in, too, and he informed me that he
9 had a gun and told me to drive him to the Food Lion on
10 Kendall Road.

11 Q. Okay. What kind of car do you have?

12 A. I have a white Toyota Corolla.

13 Q. Okay. A compact car, I guess?

14 A. It's pretty small.

15 Q. And you were in the driver's seat and he was in
16 the passenger seat?

17 A. I was.

18 Q. So how far apart are you two?

19 A. Very -- not -- not a very large distance at all.

20 Q. Were you able to get a good look at this man at
21 the time?

22 A. Very much so.

23 Q. He told you to give him a ride where?

24 A. To the Food Lion on Kendall Road.

25 Q. What was he saying during this time?

1 A. Like I said, I couldn't really understand much of
2 what he was saying, but I did understand that he told me
3 to drive him to the Food Lion. He asked if I wanted to
4 hold his gun, and I said no, and he told me he would
5 tell me where to turn at.

6 Q. Okay. And where did he tell you to turn?

7 A. When we got to -- well, when we were leaving the
8 parking lot at Spinx, he told me to turn left and I
9 pulled out of Spinx and not even a minute later my dad
10 drove by. I waved. He didn't notice anything though.
11 I came up to the stoplight on College Street. He told
12 me to turn left again. I turned left and went down
13 Kendall Road and he told me to turn right into the Food
14 Lion parking lot and pull up in front of the store.

15 Q. Okay. Now what are you focussed on at that point
16 in time?

17 A. Well, I was just -- I was -- I was very scared.
18 I was just focussing on getting there and getting out of
19 there.

20 Q. Okay. But you were able to observe this
21 person --

22 A. I was.

23 Q. -- very clearly? Do you wear glasses or
24 anything?

25 A. I wear contacts.

1 Q. Did you have them in on the day in question?

2 A. I did.

3 Q. Was it dark out?

4 A. It was getting to be dark, but it wasn't very
5 dark.

6 Q. Okay. But this is the man who hugged you in the
7 parking lot of the Spinx?

8 A. He was very close to me.

9 Q. Okay. And then when he was in the car, he was a
10 couple feet away?

11 A. Not even a couple of feet.

12 Q. Okay. When you get to the Food Lion, what
13 happens?

14 A. When I got to the Food Lion, he asked me if I
15 wanted to hold his gun again. I said no. He asked me
16 if I wanted to come in the store with him and I told him
17 no and then he asked me if I wanted to hold his gun
18 while he went in the store with him and I said no and he
19 said okay, well, give me a few dollars, and so I gave
20 him all the money I had, which was the change that I
21 got, the four quarters and four dollars, and he got out
22 of the car and the last I saw of him he was standing
23 beside a big black SUV talking to some guy and I got out
24 of there and I went straight home.

25 Q. You went directly home from the Food Lion?

1 A. I went straight home from the Food Lion.

2 Q. How long did that take you to get back home?

3 A. Three minutes, maybe.

4 Q. All right. And you called law enforcement?

5 A. Yes, as soon as I got in the house.

6 Q. About how much time -- how long did it take them
7 to get to your house?

8 A. I don't remember. It was not very long at all.

9 Q. Okay. Mike Wood, do you remember him?

10 A. I do.

11 Q. And do you remember riding in the car with him
12 back to Food Lion?

13 A. I do.

14 Q. I know this is hard to remember, but about how
15 much time had passed between when you were robbed and
16 you dropped him off at the Food Lion and when you
17 returned to the Food Lion to identify him?

18 A. I guess about twenty minutes.

19 Q. Okay.

20 A. It couldn't have been much longer than that.

21 Q. Okay. And tell me what happened when you arrived
22 back at the Food Lion with Mr. Wood.

23 A. When we arrived at the Food Lion, they had, I
24 guess it was Tim Cromer, walk -- he was standing beside,
25 I think, two police officers and there were a bunch of

1 people standing behind him and we pulled up and he got,
2 I guess, relatively close to him, enough that I could
3 see all the features on his body, and he asked me if I
4 -- if that was the man that had kidnapped me and I said
5 yes, it was -- yes, it is.

6 Q. Any uncertainty whatsoever?

7 A. No.

8 Q. So you were certain that that was the man?

9 A. Yes.

10 Q. And you mentioned the jacket and the clothing and
11 everything. Did that match?

12 A. It did.

13 Q. Your view was not obstructed in any way?

14 A. No.

15 Q. Let me show you what's been premarked as State's
16 ID Number 1. Do you recognize that?

17 A. I do.

18 Q. And what is that?

19 A. That is the jacket that the man that kidnapped me
20 was wearing.

21 Q. Okay. And when did you next see it?

22 A. When I identified him in the parking lot of the
23 Food Lion.

24 Q. And this is the same jacket that he was wearing
25 in the car when he --

1 A. Yes, it is.

2 Q. -- made you give him a ride? And this was the
3 jacket that he was wearing -- Tim Cromer was wearing at
4 the Food Lion?

5 A. Yes.

6 Q. There was some mention earlier about some radio
7 traffic at your house when Sergeant Wood was speaking
8 with you and your father. Do you recall hearing any
9 names?

10 A. I did not hear anything on the radio.

11 Q. Had you heard the name Timmy Cromer, would that
12 have meant anything to you?

13 A. No.

14 Q. Had you ever seen that person before?

15 A. No.

16 MR. SCOTT: Okay. Thank you. Please answer any
17 questions Mr. O'Neil has for you.

18 MR. O'NEIL: May it please the Court, Your Honor.

19 THE COURT: Yes, sir.

20 MR. O'NEIL: May I approach?

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. O'NEIL:

24 Q. Mr. Williams, you had mentioned -- you had
25 mentioned this jacket that's marked as State's Exhibit 1

1 is the jacket that you remember the suspect wearing,
2 correct?

3 A. Yes, sir.

4 Q. Now you mentioned something -- you mentioned on
5 direct you say that you remember that the jacket had a
6 helmet emblem on it?

7 A. Yes.

8 Q. Did you -- did you remember that back then or you
9 remembered that from a previous hearing?

10 A. I don't know. It's been a year since I've --

11 Q. Well, let me ask you this directly. When you
12 wrote your initial statement back on --

13 A. I don't believe I mentioned it.

14 Q. -- January 16th of 2013, you never mentioned
15 anything about a yellow emblem -- helmet emblem, did
16 you?

17 A. I don't believe I did.

18 Q. Because you didn't remember that detail back on
19 January 16, 2013, correct?

20 A. I'm not sure.

21 Q. Had you remembered it, would you have wrote it on
22 your statement?

23 A. I wasn't really -- I don't know.

24 Q. So what -- but you've seen this jacket before --
25 since January 16, 2013, correct?

1 A. I saw it at the previous hearing, yes.

2 Q. About a month ago?

3 A. Yes.

4 Q. So this is the first time you mentioned
5 remembering a yellow helmet being on the jacket?

6 A. I believe I mentioned it at a previous hearing,
7 too.

8 Q. At the previous hearing you mentioned that once
9 we saw it.

10 A. I'm not sure if I had seen it then.

11 Q. Okay. But in your statement back when this -- on
12 the day this happened, you never mentioned a yellow
13 helmet emblem being on the jacket?

14 A. Not in my statement, no.

15 Q. You described the jacket as a black jacket with
16 some sort of emblem on it?

17 A. Yes.

18 Q. That's all you remember about -- that's all you
19 remember about the jacket back in January 16th of 2013?

20 A. Yes.

21 Q. Okay. Now I want to make sure I'm clear on this.
22 You said you cannot remember exactly what color shirt
23 the suspect had on?

24 A. Not today, no, I can't remember.

25 Q. And you got -- you said you got to the Spinx

1 around 4:00 in the afternoon?

2 A. Yes, sir.

3 Q. And by five or so o'clock it was getting dark and
4 it was raining that day, correct?

5 A. I believe it was drizzling.

6 Q. And initially where y'all pulled up to the Food
7 Lion for you to identify the suspect, y'all were not
8 close enough to even see, correct?

9 A. Um, I believe that we were close enough for me to
10 see, but I think I told him to pull forward just so I
11 could be sure.

12 Q. Yeah, because I think at the -- at the first
13 hearing you said initially we were a little too far back
14 so I asked him to pull up some.

15 A. Okay.

16 Q. So at --

17 A. Yes.

18 Q. -- so at first you weren't close enough to see?

19 A. Yes.

20 Q. So you had -- so you had to ask him to pull up a
21 little bit so you could get a little closer here?

22 A. Yes.

23 Q. Okay. Now how long was the ride from the Spinx
24 to the Food Lion?

25 A. From the Spinx to the Food Lion is five minutes

1 maybe.

2 Q. Now when you were in the car with the suspect
3 here, would it be safe to say you're not focussing on
4 his face at that point?

5 A. Not indefinitely, no.

6 Q. Because you were driving.

7 A. Well, I already had a pretty good look at him
8 before that.

9 Q. But while you were in the car would -- would be
10 the longest time you were in contact with him?

11 A. Yes.

12 Q. Okay. And while you're in the car, you're
13 driving, correct?

14 A. Yes.

15 Q. So you're not looking at his face while you're
16 driving?

17 A. Well, I believe I turned once or twice to see
18 him.

19 Q. Were there extended looks when you -- how long
20 were the looks when you turned to see him?

21 A. Ten seconds at most.

22 Q. You kept your eyes off the road for ten seconds?

23 A. Yes.

24 Q. Okay. But the other portion of the five minutes
25 in the car, you're -- you're looking at the road, you're

1 not paying attention to the passenger?

2 A. Yes.

3 Q. Okay. Now when you got to the Food Lion,
4 Mr. Cromer is the only civilian person they showed you
5 that day, correct?

6 A. That they showed me, yes, but there were more
7 civilians standing behind him.

8 Q. Okay. But they didn't ask you to look at those
9 civilians to see whether or not they were the person?

10 A. They didn't point out a specific person.

11 Q. They had him -- they had Mr. Cromer between the
12 two cop cars, correct?

13 A. Yes.

14 Q. Okay. And was there anybody in front of
15 Mr. Cromer for you to look at other than him?

16 A. No.

17 Q. Okay. So when you -- you got to the Food Lion,
18 what person did your eyes first go to out there in the
19 parking lot?

20 A. Mr. Cromer.

21 Q. Okay. Did you ever examine the individuals
22 behind Mr. Cromer to see whether or not they were --
23 whether or not they were the person that was in the car
24 with you?

25 A. I skimmed through, but none of them really looked

1 like the person who had done it.

2 Q. Mr. Cromer was the guy in front of all of them?

3 A. Yes.

4 Q. Okay. Did they ever show you any photo lineup,
5 any -- any paper photo lineups?

6 A. No.

7 Q. Okay.

8 **MR. O'NEIL:** That's all I have, Your Honor.

9 **THE COURT:** All right. Mr. Scott, anything else?

10 **MR. SCOTT:** Yes, sir.

11 REDIRECT EXAMINATION

12 BY MR. SCOTT:

13 Q. You mentioned though that you did observe this
14 person when he first approached you when you arrived at
15 the Spinx?

16 A. I did.

17 Q. And he hugged you?

18 A. Yes.

19 Q. And then you mentioned that you were able to
20 observe him when he was following you back to your car?

21 A. Yes.

22 Q. And you also observed him when you were riding
23 in the car from the Spinx to the Food Lion; is that
24 correct?

25 A. Yes, sir.

1 Q. Okay. And you mentioned today as you sit here
2 you can't recall what color shirt he wore?

3 A. No.

4 Q. Do you remember describing that in a statement --

5 A. I do.

6 Q. -- that you gave police? If I showed you your
7 statement, could that refresh your memory?

8 A. Yes.

9 Q. (Handing.) What color shirt did you tell the
10 police the suspect was wearing?

11 A. A red one.

12 Q. Okay. State's Number 2 for ID, do you recognize
13 this?

14 A. Yes.

15 Q. And what is it?

16 A. That's the shirt he was wearing.

17 Q. This is the shirt he was wearing when he was in
18 the car with you?

19 A. Yes, sir.

20 Q. And the shirt he was wearing at the Food Lion
21 when you identified him?

22 A. Yes, sir.

23 Q. And you were -- what was your degree of certainty
24 that the person you saw at the Food Lion when you were
25 with Sergeant Wood was the person who had robbed you?

1 A. 99 percent.

2 Q. 99 percent?

3 A. Yes.

4 **MR. SCOTT:** Thank you.

5 RECROSS EXAMINATION

6 BY MR. O'NEIL:

7 Q. Mr. Williams, what about this shirt makes --
8 makes you sure this is the shirt he was wearing -- the
9 suspect was wearing at that time? What's so special
10 about this shirt?

11 A. It's red.

12 Q. Anything -- anything other than besides it's red?

13 A. It's a T-shirt.

14 Q. Because he would -- he would have had a jacket
15 on, correct?

16 A. Yes.

17 Q. So you don't know whether the suspect had on a
18 long-sleeved red shirt or a short-sleeved red shirt?

19 A. Well, he was wearing the jacket when I identified
20 him, too.

21 Q. Okay. But I'm asking about -- I'm asking about
22 the shirt though.

23 A. Yes.

24 Q. You're -- you're saying you're sure this is the
25 shirt, but there's nothing about this shirt that -- that

1 resembles the shirt the suspect was wearing other than
2 it was red?

3 A. Yes.

4 Q. Okay. That's the only thing that makes you think
5 this was the shirt the suspect had on?

6 A. Yes.

7 Q. Okay. And you also said the suspect had on black
8 pants, correct?

9 A. I believe I did.

10 Q. Okay. And we don't have to go through the whole
11 thing again, but you understand that Mr. Cromer didn't
12 have on black pants that -- when he was stopped that
13 day?

14 A. I believe they were dark.

15 Q. But they weren't black?

16 A. They were not black.

17 Q. They were jeans?

18 A. Yes.

19 Q. And your -- your words were black pants?

20 A. Yes, sir.

21 Q. And he didn't have on black pants?

22 A. No, sir.

23 Q. No? I'm sorry.

24 A. No, sir.

25 Q. Okay.

1 **MR. O'NEIL:** That's all I have, Your Honor.

2 **MR. SCOTT:** Judge, just briefly may I call
3 Blair Williams?

4 **THE COURT:** Sure. All right. Step down young
5 Mr. Williams.

6 (Witness excused.)

7 JAMES BLAIR WILLIAMS,
8 having been duly sworn, testified as follows:

9 **THE WITNESS:** Blair Williams.

10 DIRECT EXAMINATION

11 BY MR. SCOTT:

12 Q. Thank you. Mr. Williams, do you remember
13 January 16th of this year?

14 A. Yes, I do.

15 Q. I'm sorry. Last year.

16 A. Last year, yeah.

17 Q. And who is David Williams?

18 A. He's my son.

19 Q. Okay. That after -- or late afternoon, you
20 recall him arriving home from the gas station?

21 A. Yes, I do.

22 Q. Okay. And approximately what time did he get to
23 the house?

24 A. It was -- it would have been -- it would have
25 been somewhere around 5:00.

1 Q. Okay. And what did you learn when he got to the
2 house?

3 A. Well, when he entered the house, I was sitting in
4 my chair next to the front door and I could tell -- and
5 his mother was in the room with me, and I could tell
6 when he first came in the house something was wrong. I
7 mean, he was pretty much white faced and just had an odd
8 look on his face, so his mother immediately jumped up
9 off the couch and asked him what had happened.

10 Q. Okay. And did he explain to you what he'd just
11 gone through?

12 A. Yes, he did.

13 Q. And what was -- what happened?

14 A. He had explained to me --

15 **MR. O'NEIL:** Objection, Your Honor. Hearsay.

16 **MR. SCOTT:** It doesn't go to the truth of the
17 matter asserted, Judge. This is -- this is really just
18 describing what he is observing and the nature of what
19 he -- the steps he took after learning of this.

20 **MR. O'NEIL:** Your Honor, this is ambiguous. The
21 only question at this point is the identification of the
22 suspect. I don't know how this is relevant to a Biggers
23 hearing.

24 **THE COURT:** I'll sustain it. You can -- as a
25 result of what you heard, what steps did you take would

1 be a more appropriate question to ask.

2 **MR. SCOTT:** Okay. I'm sorry, Judge. Did you
3 sustain the objection?

4 **THE COURT:** I sustained the objection.

5 BY MR. SCOTT:

6 Q. After he arrived, his demeanor, what was --
7 without saying anything he told you, what was his
8 demeanor?

9 A. He looked very frightened.

10 Q. And in response to this, what did you do?

11 A. His mother and I both -- like I said, we jumped
12 up and asked him what was the matter and he told us --

13 Q. Without -- did you call anybody?

14 A. His mother called the police immediately.

15 Q. Okay. Approximately how much time passed between
16 the time he arrived back to the house and when you
17 called the police?

18 A. Less than a minute.

19 Q. Okay. And how long did it take them to arrive at
20 the house?

21 A. Approximately three to five minutes maybe.

22 Q. Okay. So they got there pretty quick?

23 A. Yes.

24 Q. And who was the officer that arrived?

25 A. I don't remember his name. It was a dark-haired

1 officer and then Officer Wood came after that.

2 Q. Okay. And you rode with Sergeant Wood back to
3 the Food Lion?

4 A. Yes, sir, I did.

5 Q. Okay. And you and David sat in the back seat?

6 A. That's correct.

7 Q. All right. How long did it take to get from your
8 house to the Food Lion?

9 A. Again, three to five minutes approximately.

10 Q. Okay. What did Sergeant Wood -- what did you
11 observe when you got up to the Food Lion?

12 A. We pulled up -- we pulled up and we observed,
13 you know, several officers seated right there in front
14 of the liquor store next to the Food Lion and Officer
15 Wood asked if we saw the man that had, you know,
16 accosted David and kidnapped him, and David immediately
17 identified him.

18 Q. Okay. Any hesitancy in his identification?

19 A. No, sir. No, sir.

20 Q. Did Sergeant Wood make any kind of suggestive
21 comments to you?

22 A. No.

23 Q. He didn't say that's the guy that robbed you,
24 isn't it?

25 A. No, absolutely not.

1 Q. What did he say?

2 A. He asked if that -- from what I remember is he
3 asked if we saw the -- the fella that had -- that had
4 kidnapped David. Asked David that question.

5 Q. Okay. Do you recall approximately how far you
6 guys were from the suspect whenever --

7 A. If I had to -- if I had to guess a distance,
8 maybe one and a half times the length of this room.

9 Q. Okay. Any trouble seeing in that light?

10 A. No, sir. I mean, it was dusky, but there were no
11 issues to seeing.

12 Q. Were you clearly able to make out the features of
13 the person they had?

14 A. Yes, I was.

15 Q. Okay. And who was it that David identified?

16 A. Mr. Timothy Cromer, seated over there.

17 Q. Okay. You threw out some numbers, and I might
18 have to do some math here, but how much time passed
19 between the time David arrived at your house and when
20 y'all we back at the Food Lion to do the identification?

21 A. We really weren't keeping track at the time, but
22 it would have had to have been less than thirty minutes.

23 **MR. SCOTT:** Okay. Thank you. Please answer any
24 questions Mr. O'Neil may ask.

25 **MR. O'NEIL:** I don't have anything, Your Honor.

1 **THE COURT:** All right. You may step down.

2 (Witness excused.)

3 **THE COURT:** All right. What else do you got,
4 Mr. Scott?

5 **MR. SCOTT:** Judge, we would argue that that would
6 meet all five criteria of Neil v. Biggers. Witness
7 opportunity to view the criminal at the time of the
8 crime. The victim witness testified that he was
9 immediately approached by the Defendant at the time he
10 arrived at the Spinx. The Defendant hugged him, shook
11 his hand and tried to make small-talk with him. Again,
12 after he exited the gas station, the Defendant, again,
13 followed him. The Defendant did sit next to him in a
14 compact car. The -- plenty of opportunity for him to
15 view Mr. Cromer at the time.

16 The degree of attention. He said he was very
17 frightened, very focussed on this individual, was
18 able to identify clothing and other features of the
19 Defendant. The accuracy of the witness's prior
20 description. He had given this description of the bald
21 black male with a red shirt, a black jacket with an
22 emblem on it, which was exactly what Mr. Cromer appeared
23 to be like whatever he was caught up with. The level
24 of certainty. He, himself, testified he was 99 percent
25 certain at the time. Sergeant Wood testified that he

1 appeared very certain and answered very quickly. His
2 dad, Blair Williams, testified to the same. The length
3 of time between the crime and the ID. Approximately
4 thirty minutes is what the testimony has been today.

5 And, again, show-ups. This would have
6 been the show-up-type identification, which probably is
7 not favored, but in circumstances such as this it's
8 sometimes unavoidable and really the most efficient way
9 to do them. Here we have the crime that occurs, the
10 victim was able to speed home and immediately notify
11 law enforcement who puts out this description and
12 they're able to catch Timmy Cromer at the scene the
13 victim last saw him at in a very short period of time.
14 Again, approximately thirty minutes between the time of
15 the crime and the time that they're doing a show-up
16 identification. Near the scene of the crime. It was
17 testified to that it was a mile, mile and a half away
18 from the Spinx to that Food Lion. Obviously the
19 witness's memory was still very fresh. It was just a
20 half an hour in between this crime that he'll probably
21 remember the rest of his life and then identifying
22 Mr. Cromer. The suspect had not had time to alter his
23 looks. Apparently he was wearing the same clothing. It
24 appeared to be exactly the same as the witness described
25 him.

1 Another factor that may expedite the release of
2 innocent suspects, not an issue here. That's one of the
3 reasons show-ups are proper sometimes and may enable
4 police to determine whether to keep searching. In other
5 words, they can -- instead of stopping and trying to do
6 a lineup and whatnot, they've got this guy here, we need
7 to know if should let him go or if this is the guy, you
8 know, that did the crime or else keep looking.

9 Judge, just based on the totality of all the
10 evidence presented here, the identification was proper
11 and does meet all the criteria of Neil v. Biggers.

12 **THE COURT:** All right. Mr. O'Neil?

13 **MR. O'NEIL:** Thank you, Your Honor. We would
14 ask that the out-of-court identification of Mr. Williams
15 and any sort of in-court identification by Mr. Williams
16 of Mr. Cromer be suppressed under the due process clause
17 of both the State and the Federal Constitution, the
18 Fifth amendment due process clause, because they are
19 unduly suggestive, Your Honor, and unreliable.

20 As Your Honor is aware, State versus Blassingame,
21 which is 338 SC 240, it indicates that single person
22 show-ups are disfavored because they are suggestive by
23 their nature, and that's what we have in this case, was
24 a single person showup identification of Mr. Cromer.
25 There was no six pack photo lineup shown to the victim

1 in this case, there was no in-person six-person lineup
2 shown. There was only one show-up lineup of Mr. Cromer
3 shown to the -- to the victim in this case. In that
4 case, I think by its very nature it should suggest that
5 it would then only be admissible if it was not -- if it
6 was reliable under the totality of circumstances, Your
7 Honor.

8 And I think what's key in this case is the
9 description the victim gave to law enforcement at the
10 time of the crime. In this hearing, and in this record,
11 the only description that came out -- came out through
12 Sergeant Wood, Sergeant Wood said the description was
13 black male, dark clothing, dark pants and a jacket
14 with a design on it. The State added the description
15 of a bald head, but that -- there's no element of a
16 description of a bald head in this record. The victim
17 on the stand did not testify to the suspect having a
18 bald head, nor did Sergeant Wood testify that the
19 description given to him was a bald head, so at this
20 point the only description we have is a black male, dark
21 clothing, dark pants and a jacket with a design on it.
22 I think that description is so vague it's almost
23 impossible for there to be a proper -- proper
24 identification at that point. There's no age, there's
25 no height, there's no weight, there's no facial features

1 being described there. The only -- the only description
2 they had was a black male, dark clothes, dark pants and
3 a jacket with a design on it at that time, Your Honor.

4 When it comes to the five factors that Neil v.
5 Biggers laid out here, the victim testified to his
6 opportunity to see the criminal -- the suspect at the
7 time it happened and Your Honor could take into account
8 what the victim thought his opportunity was. There's
9 been no testimony to the second prong as to the
10 witness's degree of attention. The witness didn't
11 testify on the stand how closely or how not closely he
12 was paying attention to the suspect at the time it was
13 happening. And the third one, like I say, the most
14 important one, the accuracy of the witness's prior
15 description of the criminal. It's almost impossible
16 to have a truly accurate description if the initial
17 description that the victim gives is not specific
18 enough to make the show-up lineup reliable. The only
19 description that was given on the record here today is
20 black male, dark clothing, dark pants and jacket with a
21 design on it. And when -- when asked about the shirt,
22 the victim said the only thing that made him realize
23 that that was the shirt was that it was red and the
24 victim today on the stand testified that he remembered a
25 yellow helmet emblem on the jacket, but that's nowhere

1 here in these prior statements and the prior description
2 he gave in the statement to law enforcement back in
3 January of last year, Your Honor.

4 The fourth prong and the fifth prong when it
5 comes to Biggers is the -- the level of certainty, and
6 the victim testified to what his level of certainty
7 was, and I'll let Your Honor judge the credibility on
8 that. And the amount of time between the -- the crime
9 and the confrontation, the victim says that he got to
10 the Spinx around 4:00 and from my math calculations here
11 it appears that this show-up lineup occurred somewhere
12 between 5:20 and 5:30, so Your Honor could determine
13 from the testimony here how long it actually occurred
14 between the actual crime and the show-up lineup.

15 It would be our position that under the totality
16 of circumstances that this show-up lineup is not
17 reliable and, therefore, should be suppressed under the
18 due process clause of both the Fifth and Fourteenth
19 amendments of the State and Federal constitution.

20 **THE COURT:** All right. Let me tell you what I'm
21 gonna do. I'm gonna go read Blassingame over lunch
22 because we're not gonna get done before we start working
23 on this jury, so I want to read that and eat lunch and
24 then we'll start qualifying the jury for the whole week.
25 Tell me again. You've got a hearing at 2:30 this

1 afternoon?

2 **MR. O'NEIL:** I've got a termination of parental
3 rights hearing in Manning.

4 **THE COURT:** Those are hard to schedule.

5 **MR. O'NEIL:** Yes, Your Honor. And it's been
6 pending for two years, so.

7 **THE COURT:** Okay. I'm aware -- all right. It
8 would suit me better to do the jury selection all today,
9 but if we can't get it all done and get them in and out
10 and just them qualified and if you want to pick in the
11 morning, I don't mind because, I mean, you're gonna be
12 pushing time to get down there. So y'all decide that,
13 but -- I'll do what I can to help, but I don't -- I
14 don't see us getting -- I see you being late if we pick
15 that jury today.

16 **MR. O'NEIL:** Yes, sir.

17 **THE COURT:** And that's your problem going into
18 Family Court late, not mine. If you don't want to pick
19 until the morning, I'll do what I can to help you.

20 **MR. O'NEIL:** I would ask to pick the jury in the
21 morning. I think the State's amenable to picking the
22 jury in the morning.

23 **THE COURT:** I don't like bringing them in like
24 that. I wish -- so we'll qualify and pick them in the
25 morning and then we'll also have more time to do the

1 Jackson v. Denno hearing also. Is there a Jackson v.
2 Denno hearing?

3 **MR. O'NEIL:** Yes, Your Honor.

4 **THE COURT:** Anything else?

5 **MR. SCOTT:** We might like Your Honor to determine
6 whether or not certain evidence --

7 **THE COURT:** Okay. All right. We can do that
8 then. All right. Good enough. All right.. Let's stand
9 down until the jury starts -- the jury will be here
10 about one, but some of us have got to get a quick snack
11 for lunch.

12 **MR. SCOTT:** Judge, I think we probably lead that
13 way, but could I give you a couple of cases that we
14 would -- I think -- I think Blassingame was probably a
15 re-do of these. There's State v. Carlson, 611 SE 2d --

16 **THE COURT:** Give me South Carolina.

17 **MR. SCOTT:** I don't have it for that one, Judge.

18 **THE COURT:** I've got South Carolina in chambers
19 in books. I like reading them because they're in hand.
20 I've got a fancy shelf the County got for me and a whole
21 set -- I've got Reporters since Volume I.

22 **MR. SCOTT:** I'll get that South Carolina site,
23 Judge. The other one I do have the South Carolina site
24 for, the State v. Govan. That's an '07 case.
25 372 South Carolina 552.

1 **THE COURT:** All right. Shoot that other one to
2 me, Carlson, and we'll read it.

3 **MR. SCOTT:** Okay. I got it here.
4 363 SC 586.

5 **THE COURT:** Sometimes I like to revert back to
6 the old school and actually have a book in my hand to
7 read rather than on the computer. That's kind of fun.

8 **MR. O'NEIL:** Your Honor, for scheduling purposes,
9 what time would you like to start in the morning?

10 **THE COURT:** I'd like to start early and get those
11 -- no later than 9:30 because we've got to get the jury
12 back in here and pick them. Is 9:00 too early for you?

13 **MR. O'NEIL:** I can be here.

14 **THE COURT:** Okay. We'll start at nine and
15 whether we do the jury right at nine or do the jury at
16 ten or so, we'll decide with the jury and I'll talk to
17 them and find out what they want to do. I want to
18 minimize their inconvenience as much as I can.

19 (Lunch recess was taken.)

20 **BAILIFF:** All rise.

21 **THE COURT:** All right. Everyone be seated
22 please. Good afternoon, everyone. All right. We have
23 had roll call?

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

25 **THE COURT:** Have we placed them under oath yet?

1 **THE CLERK:** No, sir.

2 **THE COURT:** All right, folks. We have a litany
3 of questions to ask. They're not very complicated,
4 they're not difficult, you need not have studied before
5 you got here, but they're questions I must ask you in
6 preparation of having you sit as a juror for this week
7 in any of the trials which may be called and so, first
8 and foremost, I'll need y'all to stand as a group and
9 our Clerk of Court will put you under oath.

10 (The jury panel was sworn in by the Clerk of
11 Court.)

12 **THE COURT:** All right. Those that don't know, my
13 name's Eugene Griffith, and I'm the resident judge for
14 the Eighth Judicial Circuit. I live here in Newberry
15 about a mile from the courthouse, since y'all have been
16 giving mileage, and this is my home courthouse, but yet
17 I'm really responsible or assigned to about four
18 counties; Greenwood, Laurens, Newberry and Abbeville,
19 and I get assigned to those counties on a weekly basis,
20 so I move around a lot, but when I'm home this is where
21 I am. And, anyway, there's a couple of other judges in
22 that circuit, but I live here and am glad to be holding
23 court here.

24 I apologize for us not being in the main
25 courtroom. I would rather be over there, it's a little

1 more roomy, but we're making some repairs and changes
2 over there and so Ms. Bowers and I decided this will be
3 the most appropriate place to select a jury. We'll move
4 to a different room to have a trial. A little bit
5 different room that's a little more accommodating to
6 twelve people and all the personnel we need for a trial.

7 Now I'm gonna ask you a series of questions
8 called qualification and exemption questions, and
9 they're not hard, but some people feel a little
10 uncomfortable answering in front of a group of people
11 questions about maybe about a health issue or
12 educational background, that kind of thing, so I'll tell
13 you up front if you feel uncomfortable answering a
14 question in front of the group, at the very end I'll
15 allow you to come up front and speak with me one-on-one.
16 And so, with that being said, if you'll stand -- the
17 first question I'm gonna ask you is what's your name and
18 I'm gonna try to figure your juror number out because
19 some of the lawyers are in here and they're taking notes
20 and so their idea as we go is they're trying to get to
21 know you a little bit, so what you do for a living, what
22 your spouse does for a living, just a little bit of
23 background. They're learning about you because they
24 probably don't know you because the two prosecutors
25 sitting here aren't from Newberry, they're from

1 Lexington County, but they now are working in Newberry
2 and Laurens County so they don't have the Newberry
3 background like I may have or my law clerk doesn't have.
4 But, anyway, they're getting to know you a little bit to
5 make certain you're the kind of juror they're looking
6 for, I guess, and anybody who can listen well, be
7 attentive and have common sense, you're qualified in my
8 book, so that's what I'm looking for.

9 All right. First question for you as a group.
10 Is there any member of this jury panel who is not a
11 citizen of the United States of America? If you're not
12 a citizen, please stand. No one's standing. I didn't
13 expect that. Any member of this jury panel who is not a
14 resident and citizen of Newberry County? So if you
15 don't live within the boundaries of Newberry County,
16 you're not qualified to be a juror in Newberry County.
17 You're qualified in the county you live in. Anybody not
18 living in Newberry, please stand. We've got one. Tell
19 me your name, please, sir.

20 **JUROR:** Michael Higgins.

21 **THE COURT:** Higgins? And he is juror
22 number --

23 **THE CLERK:** 58.

24 **THE COURT:** Mr. Higgins, where do you live now?

25 **JUROR:** Richland.

1 **THE COURT:** Richmond?

2 **JUROR:** Richland.

3 **THE COURT:** Richland County. When did you move
4 over there?

5 **JUROR:** Last month.

6 **THE COURT:** Last month? Are you a student down
7 there?

8 **JUROR:** (Shakes head.)

9 **THE COURT:** Where -- where do you work?

10 **JUROR:** U.S. Security.

11 **THE COURT:** Okay. So your permanent address and
12 driver's license show you live down there? Do you still
13 get your mail in Newberry?

14 **JUROR:** Nods head.)

15 **THE COURT:** How old are you?

16 **JUROR:** 29.

17 **THE COURT:** Okay. Are you gonna change your
18 driver's license this week?

19 **JUROR:** Yeah.

20 **THE COURT:** Okay. All right. If you're now
21 living in Richland County, you're subject to being
22 called down there and the trials down there are much
23 longer and lengthy and more cumbersome, but, no, if you
✓ 24 live in Richland County, and I'm taking your word --
25 because you're under oath -- that you live down there,

1 then I'm gonna allow you to be secured down there. Now
2 be advised the Clerk of Court will tell the Clerk of
3 Court down there that you're a good one and she may put
4 you on the list, but that's between you and Ms. McBride,
5 okay? So you're free to go.

6 (Juror excused.)

7 **THE COURT:** All right. Excuse me. Any member of
8 this jury panel who does not possess one of these three
9 forms of identification; a state identification card, a
10 state driver's license or a voter registration card, or
11 if not possessing one of those three, you are eligible
12 to acquire any of the three? Anybody got any issue with
13 that question, please stand. That includes everybody.
14 That's a hard question to get out of.

15 Any member of the jury panel not able to read,
16 write, speak or understand the English language, please
17 stand. I didn't write that question. I always wondered
18 if you don't speak any English whatsoever, how do you
19 know what I just said? I don't get it, but these aren't
20 my questions. These are questions given to me by the
21 Supreme Court. So no one's standing.

22 Any member of the jury panel have less than a
23 sixth grade education or its equivalent, please stand.
24 That's one of the questions sometimes I get people want
25 to come up and talk to me, and that's perfectly okay. I

1 had a gentleman in Greenwood said he dropped out of
2 school in fourth grade, so I asked him -- these are my
3 questions to find out if you're equivalent. Do you have
4 children? He said I've got four. How old are they?
5 They're all grown. Any of them graduate high school?
6 He said all four of them; two of them went to college.
7 I said where do you work? He said this place. How long
8 have you worked there? He said forty years. You've got
9 more than a sixth grade education because of doing those
10 three things. No possible way you could accomplish
11 raising four kids, all graduated, and held a job down
12 for forty years and not being a pretty bright guy. He
13 just didn't have an opportunity of going to school. So
14 he was a -- he actually got picked and served as my
15 foreperson. So, anyway, that's my example.

16 Any member of the jury panel not able -- because
17 of certain mental or physical infirmaries not able to
18 render efficient jury service? Loosely translated, jury
19 service requires you to be on time, to come into court
20 and listen attentively, to take notes if you'd like and
21 to then be able to discuss with common sense the
22 instructions and testimony as you've seen it. Anybody
23 not able to meet that rigorous standard of
24 participating? No one's standing.

25 Any member of this jury panel been convicted by a

1 guilty plea or trial in a state or Federal court of
2 record to a crime which potentially would carry prison
3 of more than one year and your civil rights to vote have
4 not been restored by pardon or amnesty. Loosely
5 translated, magistrate court. Anything in magistrate
6 court does not count. Magistrates can give up to
7 thirty days. No convictions down there count regardless
8 of whether it's tried down there. Most driving under
9 the influence, second and below, driving on suspension,
10 third and below, only carry up to a year. Those don't
11 count. You have to get more than a year, not a year and
12 below. Anybody got issues with that? If so, please
13 stand. No one's standing.

14 Any member of this jury panel who is a county
15 officer, commissioned law enforcement officer of any
16 type, employed within the walls of any courthouse,
17 please stand. No one's standing. Any member of the
18 jury panel have prior jury service within the last
19 twelve months, you're not eligible to serve this week.
20 Anybody served in the last year, please stand. No one's
21 standing.

22 Any member of the jury panel been a member of the
23 Newberry County grand jury in the past several years?
24 If you do not know what the grand jury does, you were
25 not on it. And I qualified a grand jury panel this

1 morning and they started their work just before lunch.
2 I had another group just like y'all where a grand jury
3 was qualified and set to work for the next year. No
4 one's standing.

5 All right. Those are my qualification questions.
6 My next few questions are exemptions or good cause and
7 undue hardship questions. The roles kind of change a
8 little bit. The qualifications, the gentleman that did
9 not live in Newberry County? I had to excuse him. He
10 couldn't decide to serve here and live there. It's not
11 allowed. These questions are more for y'all's benefit.
12 You can choose to serve or choose to not serve if you
13 meet the exemption language.

14 And the first question. Is there any member of
15 this jury panel who is age sixty-five years or older and
16 would like to choose to not serve, please stand. We'll
17 know how old you are. No one's standing. Is there any
18 member of the jury panel who has served as a juror --
19 and magistrate's court and city court does not count,
20 sorry -- within the last three years? You're not
21 required to serve more often than every three. This
22 question is different than the one year question I asked
23 moments ago. One year you can't serve, within three
24 years you can choose or not. Anybody got prior service
25 in the past three years, please stand. No one's

1 standing.

2 Any member of this jury panel who has a child or
3 children under the age of seven, you're the primary
4 caregiver for that child or children and you cannot make
5 adequate arrangements for the care and well-being of
6 that child while serving on the jury this week, please
7 stand. No one's standing. Same question, but this is
8 the converse, the other way. Any member of the jury
9 panel who's a primary caregiver for a disabled person or
10 elderly person and you being the caregiver cannot make
11 arrangements for the care and wellbeing of that person
12 while meeting the terms of jury service this week,
13 please stand. No one's standing.

14 Any member of the jury panel who's a student
15 attending school, working in some capacity within a
16 school and you wish to be transferred to a more
17 inconvenient week later in your summer vacation? I'm
18 sorry. A different week of court. Some people like
19 to be transferred to the summer. Some people would
20 rather do it now. This is not a bad week to be a
21 juror. I promise you that the trials are short, so your
22 likelihood of getting picked, I don't know, one in five,
23 but the trials will be short. This is not a week long
24 book deal trial. You won't be interviewed on any of the
25 talk shows for these jury services. This is -- this is

1 plain vanilla, old fashioned, Newberry County, we have
2 something we need you to listen to, and here's the case
3 type of trial. It's not -- they're not tricky. No
4 one's standing.

5 Any member of the jury panel who's employed at
6 the South Carolina Department of Corrections, a state
7 penitentiary, please stand. No one's standing.

8 Any member of the jury panel who performs
9 services for a business, commercial or agricultural
10 enterprise which your presence is so essential to the
11 operation of the enterprise that the enterprise would
12 cease to operate by meeting the terms of jury service
13 this week? Loosely translated, anybody work for a
14 one-man show, a self-employed person, a hairdresser, and
15 if you close the store and put closed, be back, I'm
16 serving on a jury on your door to come down here, you
17 can sign an affidavit saying I'm self-employed, my
18 business is closed because I'm here on jury service, I
19 can exemption you for that reason. Anyone meeting those
20 terms, please stand. No one's standing.

21 All right. This is my question. I did write
22 this one. Is there any member of this jury panel who
23 would like to serve, but something has happened very
24 recently to you, your immediate family, such that this
25 week is now -- most recently has become particularly

1 inconvenient to you personally and you'd just like to
2 be transferred to a different week because perhaps
3 there's a death in the family over the weekend, there's
4 a funeral tomorrow, something along those lines? Before
5 Christmas this worked well. I did this for a jury in
6 Laurens. Your in-laws are about to come in and you want
7 to stay home and clean the house exceptionally well to
8 impress them, but everybody's already done all the
9 visiting and we won't have to worry about guests for a
10 few weeks. No one's standing on that question.

11 All right. Those are all my questions. I've got
12 one back here.

13 **JUROR:** Yes, sir. On Thursday I have a doctor's
14 appointment.

15 **THE COURT:** Let me back up. Please tell me your
16 name.

17 **JUROR:** Yes, sir. My name is Brenda K. Pitts.

18 **THE COURT:** All right. You've got a doctor's
19 appointment Thursday?

20 **JUROR:** (Nods head.) And also --

21 **THE COURT:** Can I -- can I protect you on
22 Thursday and you stay with us? So you don't have to
23 serve on Thursday, but you stay the rest of the week?

24 **JUROR:** If you pick me, sure.

25 **THE COURT:** Very well. I'll be glad to protect

1 you on Thursday, but that's not hard to do.

2 I can handle that.

3 All right. Now were there any questions I asked
4 that anyone was reluctant or apprehensive about standing
5 up in front of the panel as a whole and would like to
6 come speak with me one-on-one? I'll be glad to receive
7 those questions now. And I still have to make a record
8 of them, so I'll come down to my court reporter who's on
9 the far end, Ms. Johnson, and we can receive those
10 comments and questions right now. You've got one,
11 ma'am? All right. Come on down here.

12 (Juror comes forward.)

13 **THE COURT:** All right. Tell us your name.

14 **JUROR:** Delores Jacobs. I'm a registered nurse
15 at Laurens County Emergency and there's a shortage of
16 nurses at my department and they need me there. I'm an
17 ER nurse.

18 **THE COURT:** Could I transfer you to a different
19 week? That's your choice. I can transfer you for
20 something like this or I can keep you and just keep your
21 fingers crossed because here's the gist of it.
22 Everybody here has a job and rather -- or their employer
23 or employee would rather have them working because
24 they're needed, that's just about across the board, and
25 so I can transfer you or I can keep you and, like I

1 said, what I'm gonna do is we're gonna pick a jury
2 tomorrow morning and start a trial and once that jury's
3 picked, I won't need you except to call back to see if I
4 need you for a second trial. So it will be get
5 qualified, pick a jury, that jury will work and the
6 balance of the people would have to call in that
7 evening, so you'd kind of have a day's notice to come in
8 or not, so it kind of helps people. And I'll explain
9 that to the crowd, too. So do you want to wait and see
10 as I explain this or you want to take your chances or...

11 **JUROR:** I'll wait and see.

12 **THE COURT:** Okay. All right. Fair enough.

13 (Juror returns to her seat.)

14 **THE COURT:** All right, folks. The last comment
15 to you before we move forward with other business, this
16 -- I understand this being a juror is an inconvenience.
17 No one volunteered. I rarely have people waiting to get
18 in to jury service because they want to. My grandfather
19 did. He was retired, he liked to come listen and he
20 would volunteer to be a juror, but it just doesn't
21 happen. So I understand it's an inconvenience; that
22 you've got your family, other things, your job. If
23 being an employee were a reason to let people go, the
24 General Assembly would have to make that decision, and I
25 cannot, so everyone is under the same burden, but the

1 jury system is one of the best things going in the
2 United States. The other countries don't have it and so
3 judges are not allowed to excuse you because you've got
4 to work or I've got this to do. It's an inconvenience
5 to all of you as a group and so I promise you I will do
6 my utmost and best to minimize the inconvenience of your
7 time in coming and going.

8 So what I plan on doing is I'm gonna pick a jury
9 and I planned on picking it this afternoon, but I can't.
10 The lawyer involved -- and there's a pecking order of
11 courts. He got put into court in a trial before I got
12 him in here and so that court kind of trumped me, so
13 he's there this afternoon dealing with some court
14 business this afternoon. He can be here first thing in
15 the morning and as soon as he's here, his client's here,
16 the prosecutors are here, we're gonna pick that jury.

17 And so what I need you to -- what I need you to
18 do is I'm going to let y'all go home for the evening.
19 Now everybody got a card? Now I don't. I've read it a
20 bunch of times. I know what it says. It has the number
21 321-2110. That is Ms. Bowers' clerk's office right over
22 here across the way. I want y'all -- just in case
23 something happens, I want y'all to call in tonight after
24 six. There will be a message on there. One of Ms.
25 Bowers' staff members will put a recording on that. It

1 will say please report at -- my guess is tomorrow
2 morning. I'm gonna have y'all report back at ten.
3 We're gonna immediately pick a jury and so my questions
4 tomorrow will be a lot different. It will be do you
5 know the lawyers; do you know the defendant, have you
6 heard anything about the case, can you be fair and
7 impartial. My questions will be much more focussed than
8 they are general today. Today was are you eligible to
9 serve. Tomorrow, are you biased or prejudiced or you
10 know nothing about the case type of questions I'll ask
11 tomorrow about the first case up for trial.

12 In case that trial -- something happens and they
13 lawyer can't get away, he doesn't finish this afternoon,
14 I may change the time of coming in tomorrow from ten.
15 Right now I'm working toward ten. Once I pick that
16 first jury, the rest of you will be excused for the day,
17 you will not need to come back and you'll be allowed to
18 call in tomorrow night to see if we got finished, if you
19 can call in the next night, and so I'm gonna give you a
20 call-in system to listen to the recording as to when to
21 report back or when to come back each day to try to
22 minimize your inconvenience.

23 Now here's my request to you. We're in this
24 building and I'm conducting business here or in the
25 family courtroom down here, which is where we'll be. If

1 you call early and say -- at 4:30 and ask one of the
2 girls across the street, because that's where the phone
3 will ring, what time will I need to be here in the
4 morning, they will not know. These three ladies will be
5 here with me conducting business in this building and
6 they're not gonna keep them apprised across the street
7 and so every small courthouse that I deal with I have
8 the same request. Please don't call early. The ladies
9 that are answering the phone aren't in the courtroom and
10 they really don't know and can't give you any
11 information, so it just rings the phone off the hook
12 taking them away from running a skeleton crew across the
13 street while we're doing court's work over here.

14 So I ask you to wait until after six and just
15 call and listen to the recording and get your
16 information there and do what the recording says do. If
17 it says come in tomorrow at ten, I'd like to see you in
18 the morning tomorrow at ten. We'll pick a jury and
19 release the ones that aren't so selected and we'll have
20 them call back, and that's how we'll proceed for the
21 rest of the week.

22 I anticipate one or two trials this week, so if
23 you get picked on one or the other day, it will be a
24 day, day and a half case maybe, then you'll be excused
25 and then you'll have jury service credit for three

1 years.

2 Any questions? Yes, sir.

3 **JUROR:** I've just got a question; like if this
4 term will be done this week?

5 **THE COURT:** Absolutely. I mean, it would be
6 unlikely -- well, we could go into Friday. I doubt it.
7 The reason being is if the State didn't have a case. If
8 we start one tomorrow, it should be finished Wednesday,
9 we can start one Thursday and maybe finish Friday
10 morning. That's kind of how it's gonna work. I am of
11 the opinion that I do not want to work jurors late into
12 the night. We're not on TV, we don't have to worry
13 about commercials. I mean, television make a difference
14 if you've got a jury trial on TV. It makes a huge
15 difference, but we're not on TV. I've been on TV and
16 it's very cumbersome to manage a trial with a television
17 camera and all that sort of nonsense, but, I mean, in
18 all seriousness these are day, day and a half cases.

19 Mr. Scott, do you see anything other than that on
20 our trial schedule?

21 **MR. SCOTT:** Aside from?

22 **THE COURT:** A day, day and a half trial?

23 **MR. SCOTT:** No, I don't intend on calling more
24 than two cases.

25 **THE COURT:** Okay. That's what I purport.

1 Probably two trials and we'll be done and if we get to
2 a stopping point at five, five-thirty in the evening,
3 we'll break for the day and see you back the next
4 morning about nine and get right back started and try
5 to minimize your time.

6 So unless there are any questions, y'all are
7 excused for the day. Please call in tonight; otherwise,
8 just be here tomorrow at ten. If you want to come at
9 ten, we may not need you at ten, but that's your problem
10 if you don't call. Make sure you have that little card
11 like I just dropped on the floor. The 2110 number is
12 Ms. Bowers' office, so call that number after six.

13 (The jury panel was excused for the day.)

14 (The proceedings were concluded for
15 January 6, 2014.)

16 (The following proceedings were held on
17 January 7, 2014.)

18 **BAILIFF:** All rise.

19 **THE COURT:** All right. Have a seat. You ready
20 to go?

21 **MR. SCOTT:** Yes, sir.

22 **THE COURT:** Are you ready to go?

23 **MR. O'NEIL:** Yes, sir.

24 **THE COURT:** All right. We've got the Jackson v.
25 Denno hearing first?

1 **MR. SCOTT:** Yes, sir.

2 **THE COURT:** All right.

3 **MR. SCOTT:** That will be the only motion we have
4 at this time, Your Honor.

5 **THE COURT:** Well, good. That makes the other one
6 easier.

7 **MR. SCOTT:** The State will call Kevin Atkins
8 fist.

9 CAPTAIN KEVIN ATKINS,
10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. SCOTT:

13 Q. Mr. Atkins, January 16, 2013, were you employed
14 by the Newberry Police Department?

15 A. Yes, sir.

16 Q. And you were captain of the department at that
17 time?

18 A. Yes, sir.

19 Q. Did you have an occasion to become involved with
20 an allegation of a kidnap/armed robbery that originated
21 at the Spinx gas station on College Street?

22 A. Yes, sir.

23 Q. On January 16th, how did you become involved in
24 the case?

25 A. I heard the original call from dispatch. Based

1 on the information they provided over the radio, they
2 indicated to the other units they probably should be on
3 the lookout for Mr. Cromer because that fit him -- fit
4 his MO, plus the physical description.

5 Q. Based upon the physical description and the
6 nature of the call?

7 A. Yes, sir.

8 Q. All right. And on the 16th, do you have any
9 knowledge of whether or not Mr. Cromer was arrested?

10 A. Yes, he was.

11 Q. Okay. Where was he taken after being arrested?

12 A. He was taken to the jail. When they -- they
13 called me and said they had caught up with him and I
14 told them to do a show-up. I requested they drive the
15 victim over to the location and then once they took him
16 in custody they said he was grossly intoxicated and I
17 told them to go ahead and take him to the jail.

18 Q. Incidentally, did you -- was there a description
19 given over the radio? Is that what you said?

20 A. I believe so.

21 Q. Okay. Now you said he was intoxicated when they
22 arrested him?

23 A. That's what the officers advised me. I did not
24 go to the scene.

25 Q. Okay. Well, did you have any other involvement

1 January 16, 2013?

2 A. No, sir.

3 Q. Okay. What happened the next day?

4 A. I prepared warrants for Mr. Cromer, met with
5 Judge Koon and had them signed. I had Corporal Loynes,
6 who's a Newberry police officer, serve the warrants at
7 the jail. Customarily, if an officer serves a warrant
8 at the jail, I ask them to ask the Defendant would they
9 like to come talk. I don't want to waste a trip, have
10 them shackle them up and bring them to the police
11 department and then tell me they don't want to talk to
12 me or they'd rather have an attorney present and then
13 ship them back. He said Mr. Cromer indicated that he
14 did want to talk to me, so then I requested him to bring
15 him to the Newberry Police Department.

16 Q. Okay. Now did you give a report on this case?
17 Did you write a report?

18 A. I did write some investigative notes, yes, sir.

19 Q. Okay. Would you agree that you wrote that this
20 interview occurred on January 16th?

21 A. In my notes I did make a typo.

22 Q. Okay. That was a typo. It was actually the 17th
23 that you interviewed him?

24 A. Yes, sir.

25 Q. The day following his arrest?

1 A. Yes, sir.

2 Q. Okay. But when he was brought in, he was
3 certainly under arrest; is that correct?

4 A. Yes, sir. He had been served with the warrants
5 when he came to see me. He had already been charged.

6 Q. Okay. And he was booked into the jail and
7 everything, too?

8 A. Yes, sir.

9 Q. Okay. So when he shows up to the office, is he
10 shackled?

11 A. Yes, sir.

12 Q. Okay. And where do they take him?

13 A. To my office at the police department.

14 Q. Now describe your office for us.

15 A. A desk, a couple of chairs -- or two chairs on
16 this side and there's a chair to the right of me and
17 then my chair's behind my desk, and I think Sergeant
18 Goodman was either -- I can't remember which chair he
19 was sitting in.

20 Q. Okay. Did you take his handcuffs off?

21 A. I don't believe so.

22 Q. What did you do? Did you start asking him
23 questions or what happened next?

24 A. I asked him if he did want to talk about his
25 charges and he said that he did. At that time, I read

1 him his Miranda warning from a card that I keep in my
2 pocket at all times.

3 Q. Okay. Is that customary that you read from the
4 card?

5 A. Yes, sir. I've had the same card since 2000,
6 2001. It's been through the ringer.

7 Q. Do you have it with you?

8 A. Yes, sir.

9 Q. Read for us what the card says and how you
10 instructed Mr. Cromer.

11 A. You have the right to remain silent. Anything
12 you say can or will be used against you in a court of
13 law. You have the right to talk to an attorney and
14 have him or her present with you while being questioned.
15 If you cannot afford to hire an attorney, one will be
16 appointed to represent you before any questions if you
17 wish. You can decide at any time to exercise these
18 rights and not answer any questions or make any
19 statements. I said do you understand each of these
20 rights as I have explained them to you; he said yes. I
21 said having these rights in mind, do you wish to talk
22 to us, and he said did.

23 Q. Okay. Did he appear to be under the influence of
24 anything at the time?

25 A. No, sir.

1 Q. Did he appear to have any trouble understanding
2 those rights as you read them to him?

3 A. No, sir.

4 Q. Okay. What did you ask him?

5 A. I asked if he could tell me what happened and he
6 said that he did not remember.

7 Q. Okay.

8 A. He did not remember being at the Spinx or --
9 because I went into a little more detail about how the
10 victim had related his -- his version of the events and
11 Mr. Cromer said that he did not remember the previous
12 day. He said he had been to the Spinx a couple of days
13 earlier maybe.

14 Q. But had absolutely no recollection of the day
15 prior?

16 A. No recollection of this event or being at the
17 Spinx the day prior.

18 Q. He did not deny, but just said he did not
19 remember?

20 A. He said I don't remember being there.,

21 Q. Okay. Is that essentially it?

22 A. Yes, sir. It was a cordial conversation; no
23 yelling or screaming on either part. We talked about --
24 he said he had been there maybe a couple of days earlier
25 and eaten some chicken. He said he had money in his

1 pocket, he didn't need to rob anybody. I asked if he
2 had anything to add to the story or -- he said he did
3 not, and he was taken back to the jail.

4 Q. Okay. Anyone else in the office with you who was
5 able to sit in and listen to the conversation you had
6 with Mr. Cromer?

7 A. Sergeant Kevin Goodman.

8 Q. Okay. Did he at any time ask for an attorney or
9 at any time ask to stop being talked to or anything like
10 that?

11 A. No, sir.

12 MR. SCOTT: Okay. Thank you. Please answer any
13 questions that Mr. O'Neil might have.

14 MR. O'NEIL: May it please the Court, Your Honor?

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. O'NEIL:

18 Q. Mr. Atkins, you -- you said that you were advised
19 that Mr. Cromer was grossly intoxicated on the date he
20 was arrested?

21 A. I believe those are my words, yes, sir. That's
22 what the officers at the scene told me. I did not
23 interact with him that -- on the 16th.

24 Q. But the officers on the scene on the 16th
25 characterized him as just -- as being grossly

1 intoxicated?

2 A. Yes, sir.

3 Q. And you -- you said earlier in the record that
4 you agree that in -- in your investigative notes you
5 indicated that you'd actually spoken to Mr. Cromer on
6 the 16th?

7 A. Yes, sir, I did. I do have typed in my notes it
8 was the 16th.

9 Q. And you -- you're now saying that's a typo?

10 A. Yes, sir.

11 Q. Okay. Are there any other typos in your
12 investigative notes that you're aware of?

13 A. Not that I'm aware of, no, sir.

14 Q. Okay. You talked to him -- what time on the 17th
15 did you speak with Mr. Cromer?

16 A. It was pre -- pre-11:00 I would say. I met with
17 the judge first thing that morning. By the time he got
18 served and brought down, it was no later than 11.

19 Q. What did you -- what did you do to ascertain
20 whether or not he was still under the influence of
21 alcohol at that point?

22 A. I didn't do any sobriety test or anything.

23 Q. Okay. So nothing was done to see whether or not
24 he was still under the influence?

25 A. No, sir.

1 Q. You did say you agree that at the time you -- you
2 spoke with Mr. Cromer he was clearly under arrest?

3 A. That's correct.

4 Q. What -- did you do anything to ascertain
5 Mr. Cromer's educational level?

6 A. I did not.

7 Q. Okay. Did you do anything to ascertain whether
8 or not he could actually read or write?

9 A. I did not ask him.

10 Q. Okay. What did you do to actually ascertain
11 whether or not he understood the Miranda warnings you
12 gave him?

13 A. I asked him if he understood, just as I read on
14 the card, do you understand these rights as I've read
15 them to you, and he said that he did. He was speaking
16 clearly.

17 Q. So the only evidence you had that he understood
18 was that he didn't verb -- what did he say? Did he
19 verbally say anything, did he nod his head? What did he
20 do?

21 A. He said yes.

22 Q. But you didn't do anything to further investigate
23 whether or not he actually understood the words you were
24 saying?

25 A. No, sir.

1 Q. Did you have Mr. Cromer sign any formal waiver of
2 his rights?

3 A. No, sir, I did not.

4 Q. Did Mr. Cromer give you any written statement?

5 A. No, sir.

6 Q. Did you audio or video-record any conversation
7 you had with Mr. Cromer?

8 A. I did not.

9 Q. And was -- you said Sergeant Goodman was in there
10 during this interrogation?

11 A. Yes, sir, Sergeant Kevin Goodman.

12 Q. Was he in there the entire time?

13 A. Yes, sir.

14 MR. O'NEIL: That's all I have for this witness,
15 Your Honor.

16 THE COURT: Okay.

17 REDIRECT EXAMINATION

18 BY MR. SCOTT:

19 Q. How long have you been in law enforcement?

20 A. Fourteen and a half years.

21 Q. All right. Have you had opportunity to come
22 across people under the influence of drugs or alcohol?

23 A. Yes, sir.

24 Q. Kind of common in your line of work?

25 A. Yes, sir.

1 Q. Did Mr. Cromer display any of these effects?

2 A. Not when I spoke to him, no, sir.

3 Q. You stated he spoke clearly?

4 A. Yes, sir.

5 Q. Carried on a conversation with you?

6 A. Yes, sir.

7 Q. Ask to leave at any time?

8 A. No, sir.

9 Q. Ask to go to the bathroom?

10 A. No, sir.

11 Q. Ask for a break or anything?

12 A. No, sir.

13 **MR. SCOTT:** Okay. Thank you.

14 **THE COURT:** Anything else, Mr. O'Neil?

15 **MR. O'NEIL:** Just one thing, Your Honor.

16 RECROSS EXAMINATION

17 BY MR. O'NEIL:

18 Q. Mr. Atkins, you would agree that different
19 individuals manifest signs of intoxication differently?

20 A. Absolutely.

21 Q. Some people -- some people have more evident
22 signs of intoxication than others?

23 A. Yes, sir.

24 Q. Depending on their -- depending on their history
25 of drinking and tolerance level and those sorts of

1 things?

2 A. Sure.

3 **MR. O'NEIL:** Okay. That's all I have, Your
4 Honor.

5 **THE COURT:** All right. You may step down.
6 (Witness excused.)

7 **MR. SCOTT:** The State calls Kevin Goodman, Your
8 Honor.

9 SERGEANT KEVIN GOODMAN,
10 having been duly sworn, testified as follows:

11 **THE CLERK:** Have a seat and state your name,
12 please.

13 **THE WITNESS:** Kevin Goodman.

14 DIRECT EXAMINATION

15 BY MR. SCOTT:

16 Q. Sergeant Goodman, January 17th of last year, did
17 you have an occasion to meet Timmy -- Tim Cromer?

18 A. Yes, sir.

19 Q. Did you know Mr. Cromer at that point?

20 A. Yes, sir.

21 Q. You were familiar with him?

22 A. Yes.

23 Q. Had you ever seen him intoxicated before?

24 A. I have.

25 Q. Did he appear intoxicated on January 17, 2013?

1 A. No, sir.

2 Q. What was the occasion for you to become in
3 contact with him on January 17th of last year?

4 A. Basically just at an interview that the captain
5 was conducting.

6 Q. Okay. So you were strictly a witness?

7 A. Right.

8 Q. He was brought in in shackles; is that correct?

9 A. That's right.

10 Q. Okay. What, if anything, did Captain Atkins do
11 before initiating the interrogation?

12 A. He read him his rights.

13 Q. And you heard him read him the Miranda rights?

14 A. Yes, sir.

15 Q. Did the Miranda rights outline -- how do you read
16 them?

17 A. I actually have a form that I read them from and
18 have them to initial as I read them.

19 Q. Okay. But that didn't occur in this case though;
20 is that correct?

21 A. No, sir, he read it from the card that he just
22 read in court.

23 Q. Okay. After Captain Atkins read the rights to
24 him, what did Timothy Cromer do?

25 A. Basically, as was already testified, he just said

1 he didn't remember that day or didn't remember being at
2 the Spinx that day.

3 Q. Well, in regards to the Miranda rights, what did
4 he say?

5 A. He said he understood them.

6 Q. Okay. And did it appear that he understood?

7 A. Yes, sir.

8 Q. Was he ever communicating with y'all?

9 A. Yes, sir.

10 Q. Okay. Did he appear to be under the influence of
11 anything at the time?

12 A. No, sir.

13 Q. Okay. And tell me what, again, did he say.

14 A. He said he just didn't remember being at the
15 Spinx that day.

16 Q. And that was the extent?

17 A. That was basically it.

18 **MR. SCOTT:** Thank you.

19 **MR. O'NEIL:** May it please the Court, Your Honor?

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

21 CROSS-EXAMINATION

22 BY MR. O'NEIL:

23 Q. Sergeant Goodman, did you interact with
24 Mr. Cromer on -- on January 16th at all?

25 A. No, sir.

1 Q. Were you on duty January 16th?

2 A. I believe so.

3 Q. Okay. Were you aware of the arrest of Mr. Cromer
4 on January 16th?

5 A. No, sir.

6 Q. Okay. Do you know anything about Mr. Cromer's
7 educational background?

8 A. No, sir.

9 Q. You don't know how far he went in school?

10 A. I don't.

11 Q. Okay. You indicated that you thought he
12 understood the -- the Miranda rights?

13 A. Right.

14 Q. What -- what did he do to make you think he
15 understood the Miranda warnings?

16 A. He said he understood them.

17 Q. Okay. So he -- other than him saying yes, I
18 understand, is there anything else that he did that led
19 you to believe he actually understood what you were
20 saying?

21 A. Other than I've talked to Mr. Cromer before and
22 -- and he's always been the kind of person that if he
23 had a question about something, he'd ask you.

24 Q. Okay. So you just assume because he didn't ask a
25 question he understood?

1 A. He said he understood and he didn't -- didn't ask
2 any other thing. That's basically it.

3 **MR. O'NEIL:** Okay. That's all I've got, Your
4 Honor.

5 **THE COURT:** All right.

6 **MR. SCOTT:** That's all, Judge.

7 (Witness excused.)

8 **MR. SCOTT:** We just argue that under the facts in
9 Jackson v. Denno that he was under arrest, he was in
10 custody, there was an interrogation; however, Miranda
11 was properly administered. The testimony was that he
12 appeared to understand his rights and in past dealings
13 with him they were aware of Mr. Cromer's communication
14 skills and understanding and have observed him being
15 intoxicated before. The testimony was on January 16th
16 he appeared to be intoxicated; however, this interview
17 was conducted January 17th. And just to reiterate, the
18 testimony was that he appeared to be able to understand
19 clearly all the rights as read to him.

20 **THE COURT:** All right. Mr. O'Neil?

21 **MR. O'NEIL:** One moment, Your Honor. Your Honor,
22 as Your Honor knows, it's the State's burden not only
23 to prove that Miranda was given in this case, but that
24 Mr. Cromer made a knowingly and voluntary waiver of his
25 Miranda rights. I think that it would be obvious in

1 that the State has not carried their burden in proving
2 that Mr. Cromer made a knowingly and voluntary waiver
3 of his rights. There's nothing to indicate that he
4 actually understood the Miranda rights other than him
5 just saying yes. I mean, they did nothing to
6 investigate whether or not he had the educational
7 background or the understanding to actually really
8 understand the rights that he was -- he was waiving. I
9 think it's the State's burden to prove that it's a
10 knowingly and voluntary waiver and I think they have
11 not met that burden and I would ask that Mr. Cromer's
12 statement be suppressed.

13 **THE COURT:** All right. I guess I'm thinking
14 about when I was a lawyer. I don't understand why the
15 prosecution wants it in and why you want it out. I
16 would be arguing the opposite position to both of you.
17 It doesn't seem to be very much of a statement at all:
18 I don't remember what happened yesterday. That doesn't
19 say yes or no or nothing. It's just pretty nebulous
20 from my point of view. I believe based upon the
21 testimony provided by the State, the history of the mere
22 area and the police officers with Mr. Cromer as
23 evidenced by the testimony of Mr. Goodman and Captain
24 Atkins, that the rights were read with specificity
25 verbatim from a card. Mr. Cromer understood those,

1 waive them and provided the statement, how nebulous it
2 was.

3 I mean, it's a very nebulous statement, I don't
4 remember yesterday, but I think he -- it meets the
5 standards on the Jackson v. Denno; that he did waive his
6 rights after being advised of them, and did -- I'm not
7 certain he even answered the question that was asked to
8 him: Do you want to talk about what you're charged
9 with? That's really not responsive to it, but whatever
10 it is, that was a statement made by Mr. Cromer and I
11 will allow it if the State so chooses to try to
12 introduce it through the testimony of either Atkins or
13 Goodman, both of them being present at the interview.

14 On the issue yesterday, I studied Carlson and I
15 studied Blassingame in particularity and -- I don't have
16 the last page -- I want to see the parameters of Neil
17 versus Biggers.

18 **MR. SCOTT:** Did that cite the Govan case, Judge?

19 **THE COURT:** I found the cite on Govan.

20 **MR. SCOTT:** Okay.

21 **THE COURT:** I had to find the cite on
22 Blassingame, but I found it. Anyway, I've got nearly
23 all of Blassingame copied, but not quite all of it.
24 I'm missing the last two pages, which I wanted to read
25 from because this is what I read this morning and that's

1 exactly where I want my finding to be is based upon
2 the parameters that are outlined there or recited in
3 Biggers.

4 **MR. SCOTT:** Is Jackie getting it for you? I've
5 got it here.

6 **THE COURT:** She's looking for it, but let me
7 see.

8 **MR. SCOTT:** (Handing.)

9 **THE COURT:** It's my understanding from the
10 Neil versus Biggers and -- that the touchstone of
11 the show-up, while not favored, the touchstone is,
12 outside of being the suggestive concerns of the
13 court as this undue suggestiveness creates concern,
14 reliability and the totality of circumstances are
15 what the judge considered during the admissibility of
16 the identification testimony. And there are five
17 parameters: opportunity to view at the time of the
18 crime, the witness' degree of attention, accuracy of
19 the prior description, level of certainty demonstrated
20 at the confrontation and the amount of time. All those
21 things together.

22 The young man's confronted by someone at the
23 Spinx several times, a handshake, a hug, get in the car,
24 drive I'm gonna guess two miles by route of travel from
25 the Spinx out to Kendall Road, turn left and go on

1 around to the Food Lion that's closed on the corner
2 of Oak and Kendall Road, getting out of the car, so
3 opportunity to view was there, the degree of attention,
4 interaction for those number of minutes, and I find his
5 description to be credible at sixteen years of age, his
6 level of certainty demonstrated during his testimony,
7 particularly by his father's observation of his son, and
8 his level of certainty and the young man's testimony and
9 the time from the confrontation to the identification
10 at the outside inside of an hour. Worse case scenario
11 it's inside an hour. I think it's tighter than that.
12 I think it's inside of forty minutes, but all those
13 things considered I will allow the identification as
14 it was done even though it's less than perfect. I
15 believe the totality of circumstances, the degree of
16 certainty, the opportunity to observe, his description
17 all considered together give the effect of a proper
18 identification in this case. So that's my ruling on the
19 Biggers issue. Anything else we need to do?

20 **MR. SCOTT:** I don't think we have anything, Your
21 Honor.

22 **MR. O'NEIL:** I do have a -- we have a motion I
23 need to renew, Your Honor.

24 **THE COURT:** Okay.

25 **MR. O'NEIL:** Back on September 11, 2013, we filed

1 a speedy trial motion in this case and the case was set
2 for trial in December of last year. We started -- we
3 started the pre-trial and then there came an issue that
4 came up as it relates to the State's service of life
5 without parole notice here. At that point the judge
6 agreed to -- made an initial ruling that he felt that
7 the service of notice or to seek life without parole was
8 not properly served on Mr. Cromer at that point, so the
9 court continued the case to allow proper service of life
10 without parole notice.

11 We had -- prior to that, we had asked for a
12 speedy trial to be heard in that case. Since then --
13 that case was scheduled for trial December 16th. We're
14 now here on trial on January 6th. We would renew our
15 speedy trial motion at this point so we have that
16 preserved for the record and we would ask for a
17 dismissal because of a violation of the speedy trial
18 motion because this case was not heard back in December
19 of last year when it was set for.

20 **THE COURT:** December of '13 or '12?

21 **MR. O'NEIL:** '13, Your Honor.

22 **MR. SCOTT:** Last term.

23 **THE COURT:** Wasn't that the first week of
24 December and not the second week of December?

25 **MR. SCOTT:** Keesley was the judge.

1 **MR. O'NEIL:** I have -- the transcript says it
2 was -- I'm sorry. The transcript says it was
3 November 13th.

4 **THE COURT:** Okay. I was thinking the first week
5 of December I was here.

6 **MR. O'NEIL:** Yes. I'm sorry, Your Honor.

7 **THE COURT:** I couldn't remember.

8 **MR. O'NEIL:** It was November 13th. My memory
9 is --

10 **THE COURT:** Okay. That's the second week of
11 November. I was thinking the first week of December I
12 was holding court and I don't remember any of that.
13 I've got to look back and see what happened.

14 **MR. O'NEIL:** I apologize, Your Honor.

15 **THE COURT:** That make much more sense.

16 **MR. O'NEIL:** It was November 13th.

17 **THE COURT:** All right. Your motion for speedy
18 trial is noted and I don't have anything to consider
19 whether or not proper notice was given on the life
20 without parole by the State. Am I to consider that
21 right now?

22 **MR. O'NEIL:** No, Your Honor.

23 **THE COURT:** Okay. So we acknowledge notice has
24 been given since Judge Keesley continued the case at
25 that time?

1 **MR. O'NEIL:** Yes, Your Honor. He gave -- he had
2 notice on the record in November.

3 **THE COURT:** Okay. Fair enough. Let's --

4 **MR. SCOTT:** Judge, I think it probably goes
5 without saying, but the only thing I'd ask just while
6 we're touching on that is I would make a motion in
7 limine to -- I don't know what they intend to produce,
8 whether the Defendant intends to take the stand or
9 anyone else does, but that the fact that he has been
10 noticed for LWOP not be discussed in front of the jury.
11 I think that probably goes without saying.

12 **THE COURT:** I don't think anybody wants to
13 discuss that in front of the jury.

14 **MR. O'NEIL:** It goes without saying.

15 **THE COURT:** Yeah, it goes without saying.
16 Jurisdiction is stipulated like in a multiple offense
17 case where this would be on the offense charged,
18 kidnapping and what was the other charge, carjacking?

19 **MR. O'NEIL:** Kidnapping and armed robbery.

20 **THE COURT:** Kidnapping and armed robbery, two --
21 two indictments. All right. Fair enough. We'll stand
22 at ease until we get the jury in here and the jury
23 should be here at 11?

24 **THE CLERK:** Yes.

25 **THE COURT:** Okay. That's kind of why I wanted to

1 get that done earlier. Now it will be easier for the
2 Clerk if I stage the jurors in here and so we'll let
3 the Clerk scan the jurors in as they come in and let
4 them sit in here rather than putting them down in the
5 family courtroom or wherever while we were in here. So
6 we'll stand at ease until we get the jury in here and
7 immediately we'll begin our voir dire of the jury, all
8 right?

9 **MR. O'NEIL:** Yes, sir.

10 (Recess taken.)

11 **BAILIFF:** All rise.

12 **THE COURT:** You can be seated, please. All
13 right, Solicitor. Are we ready to call the case?

14 **MR. SCOTT:** We are, Your Honor. I've got two
15 indictments to call for trial this week. State
16 versus Timothy Lamar Cromer, indicted for kidnapping,
17 2013-GS-36-0178. I also have an indictment for armed
18 robbery, indicted at 2013-GS-36-0177. Each of these
19 indictments were true billed by a Newberry County grand
20 jury April 19, 2013.

21 **THE COURT:** Very good. All right. Ladies and
22 gentlemen of the jury venire, the State's called two
23 indictments. They've read the number. The two
24 indictment numbers in the record being 13-GS-36-177 and
25 178. I'm gonna give you some preliminary comments as

1 to the process to go through as to selecting a jury.

2 First and foremost, what my intent and goal is,
3 is this; is that we go through a process of asking
4 certain questions to the potential jurors so we can
5 learn a little bit about your -- just learn a little
6 bit about you basically, and what I'm looking for in
7 the end is to have twelve jurors and an alternate
8 willing to listen to the case that have good common
9 sense and know very little about the case at all. I
10 don't want anybody that has a preconceived notion of
11 anything about the case. That's what I'm looking for
12 in the end and so my questions are gonna be more
13 pointed than they were yesterday as to do you know
14 anything about the case, have you heard anything about
15 the case, do you know anybody involved in the case,
16 whether they are the State, the defense, a witness,
17 anybody, so that we have unbiased and good-listening
18 jurors. That's my goal.

19 So now as I ask these questions and go through
20 this, I'm gonna ask does anybody know, related by blood
21 or marriage, close personal friends to the potential
22 witnesses, to the lawyers, to -- this type of thing.
23 And when I ask those questions, what I don't want is a
24 potential juror to get up, and I've had this happen a
25 couple of times, but I had a car wreck case and we were

1 over in the other courtroom and there was a guy there
2 that didn't want to be on the jury and his dad was
3 involved in some other incident way before and he
4 thought it was a big waste of time and so he stood up
5 and say well, my name is and my dad was involved in a
6 car wreck and he got hurt really bad and the insurance
7 company was a bunch of jerks and whoa, whoa, stop,
8 stop. I don't need all that information. I'm gonna
9 ask questions very -- you know, how do you know this
10 person, would that make you not be able to be fair and
11 impartial. Let me ask the questions so I don't hear
12 everything that you know about whoever it is.

13 So I'm gonna ask questions very specific so I
14 get specific responses so that -- I mean, for instance,
15 was it in Laurens right before Christmas the lady stood
16 up? Do you know any of the police officers? Yeah, I
17 know the officer sitting over there. He shot my daddy.
18 It happens. Were you in Laurens before Christmas or was
19 it here? I don't remember where it was, but she said
20 that. I don't need to know that. And then everybody
21 else. I had to set her aside and that just wasn't fair
22 to anybody because I want good jurors and good-listening
23 jurors and so that's what I want. I just don't want a
24 comment volunteered like that. I mean, it didn't affect
25 the case, but we still had to do it that way.

1 Now with those preliminary comments in mind, I'm
2 gonna have each of the tables stand up and introduce
3 themselves. The State's represented by the Solicitor's
4 office and there's an investigating officer at the
5 table. Mr. Cromer's in the courtroom represented by an
6 attorney. I'm gonna let the State introduce themselves
7 and then Mr. O'Neil will introduce himself and Mr.
8 Cromer and then I'm gonna ask you a question to the end
9 I've just described. So, Mr. Scott.

10 **MR. SCOTT:** Thank you, Your Honor. May it please
11 the Court. My name's Dale Scott and I'm the Deputy
12 Solicitor here in the Eighth Circuit. I primarily
13 prosecute cases in Laurens and Newberry County. Your
14 Solicitor is David Stumbo, who's the elected Solicitor
15 for this circuit. Our job is to represent the State.
16 I'm gonna be assisted by Taylor Daniel. He is an
17 Assistant Solicitor here in this circuit. Captain Kevin
18 Atkins with the Newberry Police Department is my lead
19 investigator. Alice Douglas here is our paralegal for
20 our office.

21 **THE COURT:** All right. Mr. O'Neil, introduce
22 yourself and Mr. Cromer.

23 **MR. O'NEIL:** Good morning, ladies and gentlemen.
24 My name is Deon O'Neil. I'm in private practice
25 primarily in Columbia, South Carolina. This is Timothy

1 Lamar Cromer.

2 **THE COURT:** All right. Ladies and gentlemen of
3 the jury, my first question to you is this. Is any
4 member of this jury panel, potential jurors, related by
5 blood, marriage, close personal friends of any of the
6 parties just introduced? That's everybody seated at the
7 tables. Anybody close personal friends, related by
8 blood or marriage, please stand. We've got one. All
9 right. Ma'am, tell me your name and your juror number
10 if you know it.

11 **JUROR:** I'm Anita McCullough and I believe the
12 juror number is 98.

13 **THE CLERK:** 96.

14 **THE COURT:** 96. All right.

15 **JUROR:** Sorry.

16 **THE COURT:** You're Juror Number 96. All right.
17 Which of the parties involved are you related to?

18 **JUROR:** I'm not related to any of them. I'm a
19 close personal friend.

20 **THE COURT:** Of which one?

21 **JUROR:** Ms. Douglas.

22 **THE COURT:** Okay. Now she's an employee, a
23 paralegal, for the Solicitor's office. Would the fact
24 that you're friends with her, would that affect your
25 ability to be fair and impartial to both the State --

1 **JUROR:** No, sir.

2 **THE COURT:** -- and the defense?

3 **JUROR:** No, sir.

4 **THE COURT:** Very well. Thank you very much.

5 **All right.** Any member of the jury panel ever
6 been represented in any fashion by any of the attorneys
7 introduced moments ago in any type of legal action? If
8 so, please stand. No one's standing.

9 All right. Now the next question. The two
10 indictments that were presented by the State, these
11 indictments were presented and considered by the
12 Newberry County grand jury, and they were true billed,
13 meaning they are now accusations, formal accusations,
14 made by the State of South Carolina through its
15 prosecutorial arm against Mr. Timothy Cromer for the
16 offense of armed robbery and kidnapping. These events
17 were alleged to have occurred last January 16, 2013 in
18 the city limits of Newberry.

19 All right. Now these accusations made by the
20 State allege that there was an armed robbery and a
21 kidnapping on January 16th of '13 in the city limits of
22 Newberry. The victim to these two offenses is David
23 Williams. Mr. Williams is in the courtroom, I believe.

24 **MR. SCOTT:** He is, Your Honor.

25 **THE COURT:** Mr. Williams, will you please stand.

1 All right. Now does any member of the jury panel know
2 anything, heard anything on the street, read on the
3 Internet, any social media websites, in the beauty shop,
4 read the newspaper, any type of communication
5 whatsoever, does anyone know or heard anything about
6 this incident that the State is bringing these two
7 indictments for prior to today? If so, please stand.
8 No one's standing.

9 Any member of the jury panel related by blood,
10 marriage, close personal friends to the victim in this
11 case, Mr. David Williams, or his family? If so, please
12 stand. No one's standing. Oh, I'm sorry. I looked
13 away, ma'am. Tell me your name, please.

14 **JUROR:** Mary Hawkins.

15 **THE COURT:** Ms. Hawkins, your juror number is?

16 **JUROR:** 56.

17 **THE COURT:** You're related by blood, marriage or
18 close personal friends to Mr. Williams?

19 **JUROR:** I know his mother real well.

20 **THE COURT:** Know his mother real well. The fact
21 that you're close friends with his mother, how -- you
22 work with her, go to church with her, what?

23 **JUROR:** I used to baby-sit for her and I deal
24 with her business-wise.

25 **THE COURT:** Okay. The fact that you have a

1 relationship with her to that extent, would that affect
2 your ability to be fair and impartial in this case?

3 **JUROR:** No.

4 **THE COURT:** All right. Can you be fair and
5 impartial to both the State and to Mr. Cromer in this
6 case?

7 **JUROR:** (Nods head.)

8 **THE COURT:** Very well. Thank you, ma'am. All
9 right. Let's -- tell me your name, please, sir.

10 **JUROR:** Jerry Parkman.

11 **THE COURT:** All right. Mr. Parkman, which --

12 **JUROR:** I don't remember my number. I think it's
13 117.

14 **THE CLERK:** 115.

15 **THE COURT:** 115. Okay. How do you know
16 Mr. Williams?

17 **JUROR:** He's a previous student of mine.

18 **THE COURT:** And you teach in the local school?

19 **JUROR:** Yes, sir.

20 **THE COURT:** Where?

21 **JUROR:** Newberry County Career Center.

22 **THE COURT:** How long was he a student for you?

23 **JUROR:** About nine weeks.

24 **THE COURT:** Okay. Now the fact that you have
25 instructed him in class, does that affect your ability

1 to be fair and impartial to both the State and to
2 Mr. Cromer?

3 **JUROR:** No, sir.

4 **THE COURT:** All right. Very well. Thank you
5 much.

6 All right. I'm gonna ask the same question, but
7 I'm gonna read a list of potential witnesses to be
8 called in this trial in no particular order and then
9 I'm gonna ask the same question. Potential witnesses
10 involved, and I've already mentioned Mr. David Williams,
11 also Mary Roach Williams, James Blair Williams, Terrance
12 Ryan Matthews, Mike Wood, Major Loynes, Daniel Floyd,
13 Christopher Cleveland and Kevin Goodman. Also a
14 potential witness, Kevin Atkins, but we've already asked
15 as to Mr. Atkins at the table.

16 Regarding those potential witnesses to be called
17 by either side, any member of the jury panel related by
18 blood, marriage, close personal friends to any potential
19 witnesses? If so, please stand.

20 Yes, ma'am. Tell me your name, please.

21 **JUROR:** Mary Jo Piester, and I'm Juror 120, and
22 I'm just friends of Kevin Goodman and I know Kevin
23 Atkins.

24 **THE COURT:** You know Deputy Goodman and Captain
25 Atkins?

1 **JUROR:** Uh-huh.

2 **THE COURT:** How long have you known them?

3 **JUROR:** Probably eight to ten years.

4 **THE COURT:** Okay. Now the fact that you know
5 them, would that effect your ability to be fair and
6 impartial both to the State of South Carolina and
7 Mr. Timothy Cromer?

8 **JUROR:** No.

9 **THE COURT:** You can do that?

10 **JUROR:** Yes, I can.

11 **THE COURT:** Very well. Anyone else? Tell me
12 your name again.

13 **JUROR:** Anita McCullough, Juror Number 96.

14 **THE COURT:** All right. Ms. McCullough, which of
15 the potential witnesses?

16 **JUROR:** I know Ms. Williams from church and I
17 know Mr. Floyd.

18 **THE COURT:** All right. Now the fact that you
19 know Ms. Williams, the victim's mother, would that
20 affect your ability to be fair and impartial in this
21 case?

22 **JUROR:** No, sir.

23 **THE COURT:** Also now regarding Mr. Floyd, how do
24 you know him?

25 **JUROR:** He goes -- he attends church with me and

1 I know him and his wife.

2 **THE COURT:** All right. The fact that you're
3 friends with he and his wife, does that affect your
4 ability to be fair and impartial in this case?

5 **JUROR:** No, sir.

6 **THE COURT:** Very good. All right. Thank you
7 much. Y'all know when y'all stand up and I look down
8 and y'all stand up again, that's tricky.

9 All right. Mr. Parkman, you're Juror Number 98?

10 **JUROR:** 115.

11 **THE COURT:** 115. Which of the potential
12 witnesses do you know?

13 **JUROR:** I'm friends with the mother and father.

14 **THE COURT:** Okay. Now you -- and Mr. Williams
15 was a student of yours. The fact that you're friends
16 with the parents of Mr. Williams, will that affect your
17 ability to be fair and impartial in this case?

18 **JUROR:** No, sir.

19 **THE COURT:** Very well. Thank you much. Tell me
20 your name, please, sir.

21 **JUROR:** Barry Brown. I don't know my number.

22 **THE COURT:** All right. I'll look it up for you.

23 **THE CLERK:** 14.

24 **THE COURT:** You're Number 14, Mr. Brown.

25 **JUROR:** And I know the parents as well.

1 **THE COURT:** All right. You know Mr. and
2 Mrs. Williams?

3 **JUROR:** Yes, sir.

4 **THE COURT:** How do you know them?

5 **JUROR:** Just close friends.

6 **THE COURT:** All right. Now the fact that you're
7 close friends with the parents of the victim, would that
8 affect your ability to be fair and impartial in this
9 case?

10 **JUROR:** Yes, sir.

11 **THE COURT:** It would?

12 **JUROR:** No, it wouldn't. It wouldn't.

13 **THE COURT:** You could be -- let me rephrase the
14 question. Can you be fair and impartial?

15 **JUROR:** Yes, sir, I can.

16 **THE COURT:** You're gonna give the State a fair
17 trial and Mr. Cromer a fair trial?

18 **JUROR:** Yes, sir, I will.

19 **THE COURT:** Very well. All right. Thank you
20 much.

21 All right. Any member of this jury panel or
22 member of your immediate family ever been employed in a
23 law enforcement capacity, a State or Federal agency, in
24 any capacity whatsoever? If so, please stand. All
25 right. I'm gonna start here. All right. Now y'all

1 don't trick me again when I look down. All right.

2 Ma'am, I'll start with you. Tell me your name.

3 **JUROR:** I'm Carla Armfield. I'm Juror Number 2,
4 and my dad was a law enforcement officer for South
5 Carolina for probably thirty years.

6 **THE COURT:** Now the fact that your father was a
7 law enforcement officer, would that affect your ability
8 to be fair and impartial to both the State and the
9 defense in this case?

10 **JUROR:** No, sir.

11 **THE COURT:** Thank you, Ms. Armfield. All right.
12 Right here in front. Tell me your name, please,
13 ma'am.

14 **JUROR:** Helen Morgan.

15 **THE COURT:** Ms. Morgan, how -- what relation are
16 you with an law enforcement officer?

17 **JUROR:** I have a cousin who used to be a
18 probation officer.

19 **THE COURT:** And were they a local probation
20 officer or far away?

21 **JUROR:** They were in Lexington County.

22 **THE COURT:** Lexington County. The fact you had a
23 cousin who was a probation agent, would that affect your
24 ability to be fair and impartial?

25 **JUROR:** No.

1 **THE COURT:** Thank you much. All right. Staying
2 on this side, ma'am, tell me your name.

3 **JUROR:** Ladonna Dickert.

4 **THE COURT:** Ms. Dickert, which relation to you is
5 a law enforcement officer?

6 **JUROR:** My husband's uncle works for Newberry
7 County as an investigator and I used to work for
8 Newberry County.

9 **THE COURT:** All right. And this case does not
10 involve the Newberry County Sheriff's Office directly.
11 It was brought by the City of Newberry. The fact that
12 your husband was -- or family members were working for
13 the sheriff's department here locally, would that affect
14 your ability to be fair and impartial in this case?

15 **JUROR:** No, sir.

16 **THE COURT:** All right. Thank you much. All
17 right, ma'am, still standing over here in the front row,
18 tell me your name.

19 **JUROR:** Josie Wilkes, Juror Number 153.

20 **THE COURT:** 153.

21 **JUROR:** My dad's a SLED agent.

22 **THE COURT:** Okay. And where does he normally
23 work, out of Columbia?

24 **JUROR:** All around the State and part of north
25 Carolina.

1 **THE COURT:** Okay. Now the fact that your father
2 is a SLED agent, would that affect your ability to be
3 fair and impartial in this case?

4 **JUROR:** No, sir.

5 **THE COURT:** It would?

6 **JUROR:** No, sir.

7 **THE COURT:** It would not. Very well. Very good.
8 Thank you. All right. Coming over here, I'm gonna
9 start on the far left. Tell me your name, please, sir.

10 **JUROR:** Ty Senn, 135. I've got three daughters
11 that either are or did work at the detention center.

12 **THE COURT:** They worked where?

13 **JUROR:** The detention center.

14 **THE COURT:** The Newberry County Detention Center?

15 **JUROR:** (Nods head.)

16 **THE COURT:** Would the fact that your three
17 daughters at different times worked at the -- as
18 correctional officers or what?

19 **JUROR:** One's a nurse and two were jailers.

20 **THE COURT:** Okay. The fact your daughters have
21 been employed at the Newberry County detention facility,
22 would that affect your ability to be fair and impartial?

23 **JUROR:** No.

24 **THE COURT:** You can do that?

25 **JUROR:** Yes, sir.

1 **THE COURT:** Thank you, Mr. Senn. All right.
2 Ma'am, in the middle.

3 **JUROR:** My name is Debora Kaigler, Juror Number
4 72. I have a nephew that works for Newberry County
5 Corrections.

6 **THE COURT:** Currently?

7 **JUROR:** Yes, sir.

8 **THE COURT:** Now the fact that your nephew is a
9 correctional officer at the local detention facility,
10 would that affect your ability to be fair and impartial?

11 **JUROR:** No, sir.

12 **THE COURT:** Thank you, ma'am. All right. Ma'am
13 in the white sweater, tell me your name.

14 **JUROR:** Lauren Hook.

15 **THE COURT:** All right, Ms. Hook.

16 **JUROR:** And my husband is a sheriff's deputy for
17 Richland County.

18 **THE COURT:** And the fact your husband's a deputy
19 sheriff in Richland County, would that affect your
20 ability to be fair and impartial here in this trial?

21 **JUROR:** No.

22 **THE COURT:** Yes, sir. Tell me your name.

23 **JUROR:** Ben Bishop, Number 6.

24 **THE COURT:** All right, Mr. Bishop.

25 **JUROR:** I have a brother who's an officer in

1 Oxford, Mississippi, I have three cousins, one's SLED,
2 one Newberry County and one Richland, a state trooper,
3 and three in county.

4 **THE COURT:** All right. And the fact that you've
5 got numerous family members, would that affect your
6 ability to be fair and impartial in this case and give
7 the State of South Carolina a fair trial and, in
8 particular, give the defense a fair trial in this
9 matter?

10 **JUROR:** No.

11 **THE COURT:** You can do that?

12 **JUROR:** Yes.

13 **THE COURT:** Very well. Any member of the jury
14 panel ever testified in court before in a court of
15 common pleas or a court of general sessions? I'm not
16 asking about family court. Anything else? Anybody
17 ever testify in court before? If so, please stand. No
18 one's standing.

19 Anybody ever served on a jury before in any
20 capacity? If so, please stand. This is for information
21 only. Any experienced jurors?

22 All right. Would y'all like their names?

23 **MR. O'NEIL:** Numbers.

24 **THE COURT:** Numbers. All right. Ma'am, Juror
25 Number what?

1 **JUROR:** 103.

2 **THE COURT:** Ma'am in the burgundy?

3 **JUROR:** 96.

4 **THE COURT:** Ma'am beside her?

5 **JUROR:** 120.

6 **THE COURT:** All right. Y'all be seated as I call
7 you down. All right. Ma'am in the back?

8 **JUROR:** 49.

9 **THE COURT:** Juror Number 49. Ma'am here?

10 **JUROR:** I think I'm 69.

11 **THE COURT:** All right. Let me verify. What's
12 your name?

13 **JUROR:** Delores Johnson.

14 **THE COURT:** 69. All right. Beside you,
15 Ms. Johnson, what's your number?

16 **JUROR:** 25.

17 **THE COURT:** 25.

18 **JUROR:** 76.

19 **THE COURT:** 76. Ma'am?

20 **JUROR:** 62.

21 **THE COURT:** 62.

22 **JUROR:** 97.

23 **THE COURT:** 97.

24 **JUROR:** 14.

25 **THE COURT:** 14.

1 **JUROR:** I believe 61.

2 **THE COURT:** All right. Let me verify it. Your
3 name? Ms. Hook?

4 **JUROR:** Lauren Hook.

5 **THE CLERK:** 60.

6 **THE COURT:** 60. All right.

7 **JUROR:** 135.

8 **THE COURT:** Mr. Senn. Okay. Very good.

9 Any member of this jury panel ever -- a member of
10 their immediate family ever been a victim to a violent
11 crime in any capacity? If so, please stand. This is
12 just for information purposes much like the last one.
13 If so, please stand. No one's standing.

14 Any member of the jury panel a member of any
15 citizens activist group or temperance organization such
16 as MADD mothers, SADD students, Citizens Against Violent
17 Crime or any type of organization such as that? If so,
18 please stand. No one's standing.

19 Any member of this jury panel -- we didn't
20 discuss these voir dire. Are there any objections to
21 any of them that were presented by either one?

22 **MR. SCOTT:** I've seen them. No, Your Honor.

23 **THE COURT:** Any objection to the voir dire he
24 presented?

25 **MR. O'NEIL:** No.

1 **THE COURT:** Any member of this jury panel or
2 member of your immediate family a regular -- I'm sorry.
3 This is jury panel only. Any member of the jury panel a
4 regular shopper of the local Spinx service station out
5 on College Street near Newberry College? This is
6 information purposes also. If so, please stand. No
7 one's standing.

8 Any member of the jury panel a member of the NRA
9 or a gun safety organization or any organization whose
10 primary promotion is citizens' gun rights? If so,
11 please stand. No one's standing.

12 Any member of the jury panel know any reason
13 whatsoever that they cannot give both the State of South
14 Carolina and Mr. Timothy Cromer a fair trial in this
15 matter? If so, please stand.

16 Any member of the jury panel not understand that
17 this case will be presented through witnesses, evidence
18 and testimony, that there's a presumption of innocence
19 on behalf of the defense and that presumption remains
20 throughout the entire trial until you hear all the
21 evidence and then you must take the instructions of the
22 Court, and that will be me, as I am sworn to apply the
23 law and instruct the law as I understand it as handed
24 down by the General Assembly and the Supreme Court? And
25 does anybody not understand that you'll have to apply

1 the law as I instruct it? If you do not understand
2 this, please stand.

3 I will go over this a lot during the trial. And
4 what I'm getting at is there's a lot of television,
5 Internet, sources of the law, which is not actually the
6 law. I have two sources for the law, and that's the
7 General Assembly and the Supreme Court, and one of the
8 things you take when you take the oath is accept the law
9 as the Court instructs it. So I'll instruct you if you
10 have a belief of what the law is or what it ought to be
11 or what you heard it was, you've got to disassociate
12 yourself with that belief and take the law as I am
13 instructing it to you. If anyone does not understand
14 that, please stand. No one's standing.

15 All right. I think that's sufficient voir dire.
16 Anyone got anything further?

17 **MR. SCOTT:** Nothing further.

18 **THE COURT:** Anything further?

19 **MR. O'NEIL:** No, Your Honor.

20 **THE COURT:** All right. Ladies and gentlemen,
21 this is what's gonna happen. Thank you for your
22 attention to those questions. The Clerk of Court now
23 will generate a list randomly from your number of
24 roughly twenty people. And Ms. Brehmer's doing that.
25 She's the computer operator.

1 Back in the old days, they had a cricket box and
2 they'd put your names on little slips of paper and stick
3 them in a little plastic tube and spin the cricket box
4 and draw them out. The computer does it randomly now
5 and so once the list is generated randomly, we'll call
6 one at a time each of you to come forward. And each
7 side has a certain number of "please excuse the juror"
8 in the selection process and we'll go through that until
9 I receive thirteen jurors; twelve primary jurors and one
10 alternate, and then I'll excuse the balance of the
11 panel. So y'all bear with me.

12 All right. Here's what I'd like to do.
13 Ms. Wardlaw, I want you to come up close to me and I
14 want the jurors to come all the way and then turn your
15 back to me and look back toward the clock where the
16 parties can see you. It's a little bit different in
17 civil court. They just strike off with a list and say
18 we strike the third and the sixth and the eighth on the
19 list and that's how it goes, but in a court of general
20 sessions, you get to look at them.

21 **THE CLERK:** As I call your name, please come
22 forward. Number 91, Patrick Mathis.

23 (Whereupon, Patrick Mathis, a black male, was
24 called forward.)

25 **THE CLERK:** What's says the State?

1 **MR. SCOTT:** Please present the juror.

2 **THE CLERK:** The defense?

3 **MR. O'NEIL:** Please seat the juror.

4 **THE CLERK:** Have a seat. Judge, we need to --

5 **THE COURT:** I'll tell you what let's do.

6 **THE CLERK:** Mr. Mathis, hold on just a second.

7 **THE COURT:** Let's -- we'll do them on the front
8 row. That's fine. Just start him over there on the far
9 left.

10 **THE CLERK:** 38, John Rhett Frazier.

11 (Whereupon, John Rhett Frazier, a white male, was
12 called forward.)

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

14 **MR. SCOTT:** Please excuse the juror.

15 **THE CLERK:** You're excused, Mr. Frazier. You may
16 have a seat. 23, Deena Connelly.

17 (Whereupon, Deena Connelly, a white female, was
18 called forward.)

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

20 **MR. SCOTT:** Please present the juror.

21 **THE CLERK:** The defense?

22 **MR. O'NEIL:** Please excuse the jury.

23 **THE CLERK:** You're excused, Ms. Connelly. 64,
24 Timmesha Jackson.

25 (Whereupon, Timmesha Jackson, a black female, was

1 called forward.)

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

3 **MR. SCOTT:** Please present the juror.

4 **THE COURT:** The defense?

5 **MR. O'NEIL:** Please seat the juror.

6 **THE CLERK:** Have a seat on the front row, please,
7 ma'am. 76, Kandace Kneece.

8 (Whereupon, Kandace Kneece, a white female, was
9 called forward.)

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

11 **MR. SCOTT:** Please present the juror.

12 **THE CLERK:** Defense?

13 **MR. O'NEIL:** Please excuse the juror.

14 **THE CLERK:** I'm sorry?

15 **MR. O'NEIL:** Please excuse the juror.

16 **THE CLERK:** You're excused, Ms. Kneece. 87,
17 Charles Lyles.

18 (Whereupon, Charles Lyles, a black male, was
19 called forward.)

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

21 **MR. SCOTT:** Please present the juror.

22 **THE CLERK:** The defense?

23 **MR. O'NEIL:** Please seat the juror.

24 **THE CLERK:** Have a seat on the front row, please.
25 44, Christy Gates.

1 (Whereupon, Christy Gates, a white female, was
2 called forward.)

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

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

5 **THE CLERK:** The defense?

6 **MR. O'NEIL:** Please seat the juror.

7 **THE CLERK:** Have a seat on the front row, please,
8 ma'am. 65, Delores Jacobs.

9 (Whereupon, Delores Jacobs, a black female, was
10 called forward.)

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

12 **MR. SCOTT:** Please excuse the juror.

13 **THE CLERK:** You're excused Ms. Jacobs. 143,
14 Rashaan Suber.

15 (Whereupon, Rashaan Suber, a black male, was
16 called forward.)

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

18 **MR. SCOTT:** Please present the juror.

19 **THE COURT:** The defense?

20 **MR. O'NEIL:** Please seat the juror.

21 **THE CLERK:** Have a seat on the front, please.
22 117, Louise Parr.

23 (Whereupon, Louise Parr, a white female, was
24 called forward.)

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

1 **MR. SCOTT:** Please present the juror.

2 **THE CLERK:** The Defense?

3 **MR. O'NEIL:** Please seat the juror.

4 **THE CLERK:** Have a seat, please, ma'am, on the
5 front row. 157, Melissa Wise.

6 (Whereupon, Melissa Wise, a black female, was
7 called forward.)

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

9 **MR. SCOTT:** Please present the juror.

10 **THE CLERK:** The defense?

11 **MR. O'NEIL:** Please present the juror.

12 **THE CLERK:** Number 138, Ernest Singley.

13 (Whereupon, Ernest Singley, a white male, was
14 called forward.)

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

16 **MR. SCOTT:** Please excuse the juror.

17 **THE CLERK:** You're excused, Mr. Singley. 55,
18 Jessie Hawkins.

19 (Whereupon, Jessie Hawkins, a black female, was
20 called forward.)

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

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

23 **THE CLERK:** The defense?

24 **MR. O'NEIL:** Please seat the juror.

25 **THE CLERK:** Have a seat, please. 60, Lauren

1 Hook.

2 (Whereupon, Lauren Hook, a white female, was
3 called forward.)

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

5 **MR. SCOTT:** Please present the juror.

6 **THE CLERK:** The defense?

7 **MR. O'NEIL:** Please excuse the juror.

8 **THE CLERK:** You're excused, Ms. Hook. 54,
9 Brittany Hardy.

10 (Whereupon, Brittany Hardy, a black female, was
11 called forward.)

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

13 **MR. SCOTT:** Please present the juror.

14 **THE CLERK:** The defense?

15 **MR. O'NEIL:** Please seat the juror.

16 **THE CLERK:** Have a seat, please. 92, Kevin
17 Matney.

18 (Whereupon, Kevin Matney, a white male, was
19 called forward.)

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

21 **MR. SCOTT:** Please present the juror.

22 **THE CLERK:** The defense?

23 **MR. O'NEIL:** Please present the juror.

24 **THE CLERK:** You can have a seat on the second
25 row, please, sir. 27, Angie Davis.

1 (Whereupon, Angie Davis, a black female, was
2 called forward.)

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

4 **MR. SCOTT:** Please excuse the juror.

5 **THE CLERK:** You're excused, Ms. Davis. 95,
6 Nathan Mayer.

7 (Whereupon, Nathan Mayer, a white male, was
8 called forward.)

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

10 **MR. SCOTT:** Please present the juror.

11 **THE CLERK:** The Defense?

12 **MR. O'NEIL:** Please excuse the juror.

13 **THE CLERK:** You're excused, Mr. Mayer. 2, Carla
14 Armfield.

15 (Whereupon, Carla Armfield, a white female, was
16 called forward.)

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

18 **MR. SCOTT:** Please present the juror.

19 **THE CLERK:** The defense?

20 **MR. O'NEIL:** Please excuse the juror.

21 **THE CLERK:** You're excused, Ms. Armfield.
22 Number 1, Melissa Amick.

23 (Whereupon, Melissa Amick, a white female, was
24 called forward.)

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

1 **MR. SCOTT:** Please present the juror.

2 **THE CLERK:** The defense?

3 **MR. O'NEIL:** Please seat the juror.

4 **THE CLERK:** Have a seat, please, on the second
5 row, please. 14, Barry Brown.

6 (Whereupon, Barry Brown, a white male, was called
7 forward.)

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

9 **MR. SCOTT:** Please present the juror.

10 **THE CLERK:** Defense?

11 **MR. O'NEIL:** Please excuse the juror.

12 **THE CLERK:** You're excused. 151, Buffie Wicker.

13 (Whereupon, Buffie Wicker, a white female, was
14 called forward.)

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

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

17 **THE CLERK:** The defense?

18 **MR. O'NEIL:** Please seat the juror.

19 **THE CLERK:** Have a seat on the second row. 146,
20 Jack Tate.

21 (Whereupon, Jack Tate, a white male, was called
22 forward.)

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

24 **MR. SCOTT:** Please present the juror.

25 **THE CLERK:** The defense?

1 **MR. O'NEIL:** Please seat the juror.

2 **THE CLERK:** Have a seat on the second row,
3 please, sir, on this side. Thank you.

4 **THE COURT:** That was the alternate?

5 **THE CLERK:** Right.

6 **THE COURT:** All right. For the record, any
7 matters of law regarding the selection process employed
8 by the Court and/or the composition of this jury from
9 the State or the defense?

10 **MR. SCOTT:** We do have an issue we'd like to have
11 heard, Your Honor.

12 **THE COURT:** All right. Very well. That being
13 the case, I've got to put someone -- here's an easy way
14 to explain it. When a jury deliberates, twelve jurors
15 in the room by themselves, the Court doesn't help them,
16 you don't get any help from the outside. The twelve
17 jurors deliberate. That's y'all's business. That's
18 what I'm gonna let y'all do later on. When there's a
19 legal issue, the Court gets to hear it, but the lawyers
20 just told me they want to make a record for my court
21 reporter down here, and I don't need y'all's help
22 discussing this, and so I'm gonna ask y'all to step out,
23 step down the hall.

24 We stage them in different places. The family
25 courtroom's open. Ms. Georgia, take them that way and

1 I'll be done in a few minutes and I'll call you back in.
2 Once I call you back in, I want the jurors selected to
3 sit back in the same place, okay? The other ones can
4 sit wherever. That way I can keep track of who was
5 selected. So remember who you are. Y'all know if you
6 were selected, so y'all come back and sit in the same
7 spots.

8 All right. Y'all, please, be excused for a few
9 minutes.

10 (The jury and panel exit the courtroom.)

11 **THE COURT:** All right. Mr. Scott, you've got
12 an issue you'd like to present? Is everybody out the
13 door? Okay. Mr. Tim, you stay there and the deputy
14 over here. I don't want anybody coming in or out while
15 this record is being made.

16 All right. Mr. Scott, let's hear from you.

17 **MR. SCOTT:** Your Honor, this would just really
18 be under the Batson case and it would, I guess, be
19 termed a Batson motion. The defense did have ten
20 strikes, utilized six of them. Every one of them was
21 a white or Caucasian potential juror, including four
22 white females and two males. Those were the only
23 strikes and the only race class that was struck by the
24 defense and we would just ask for a race neutral reason
25 for the strikes.

1 **THE COURT:** All right. I'll be glad to hear from
2 Mr. O'Neil.

3 **MR. O'NEIL:** Your Honor, may it please the Court.
4 My records indicate my first strike was on Juror Number
5 23. My records indicate that she had served before and
6 honestly the first thing when I looked at her, Your
7 Honor, she struck me to be a mom and I -- I fear that
8 she would -- she would sympathize with the victim in
9 this case and that was the reason why I struck the Juror
10 Number 23. Juror number -- my second strike according
11 to my records was Juror Number 76. My records also
12 indicate that Juror Number 76 had served on a jury
13 before and that was my reason for striking Juror 76. My
14 third strike according to my records indicated it was
15 Juror Number 60. Her husband was a deputy sheriff in
16 Richland County. My fourth strike was Juror Number 95.
17 I submit to the Court I think Juror Number 95 was
18 stricken because of client preference. My client
19 indicated to me when Juror Number 95 was standing that
20 he did not want that juror on the jury. My fifth strike
21 was Juror Number 2. Juror Number 2's father was in law
22 enforcement. That's -- according to my records, that's
23 why I struck Juror Number 2. And Juror Number 14,
24 according to my records, knew the victim's parents and
25 that's why that juror was struck.

1 **MR. SCOTT:** I did not have -- I'm sorry, Your
2 Honor.

3 **THE COURT:** Go ahead. I'm ready.

4 **MR. SCOTT:** Okay. I did not have the first
5 strike.

6 **THE COURT:** Ms. Connelly, Number 23. He gave two
7 reasons.

8 **MR. SCOTT:** I did not have that she was a
9 previous juror. Number 25 I have did indicate they
10 were. I could have misread that.

11 **MR. O'NEIL:** And it could have been my bad
12 handwriting, Your Honor. I apologize. All we had was
13 numbers to go on.

14 **MR. SCOTT:** 25 was the one who indicted that they
15 had been a prior juror, not 23? Regardless, the issue
16 of her appearing to be a mom, the Defendant did seat at
17 least four black females and I just -- I don't know why
18 they wouldn't appear to be mothers themselves.

19 **THE COURT:** Well, I mean, even if it was a
20 mistake and it was prior service and he was striking
21 prior service, candidly, for the Court, I asked just for
22 numbers very rapidly, information only, did not get
23 names and numbers, and so I believe that is a race
24 neutral reason. Even if he miswrote the 5 for a 3, it
25 was done rapidly during the voir dire, so I will allow

1 that reason in and of itself to stand as a neutral
2 reason. It seems plausible and reasonable to me in
3 light of the fact that Ms. Kneece was also struck for
4 prior service. And the other four jurors, they were
5 related either to the victims and/or law enforcement,
6 and the Court would find those are race neutral reasons
7 also.

8 **MR. SCOTT:** Thank you for hearing us.

9 **THE COURT:** All right. Anything else? Any
10 issues from you Mr. O'Neil?

11 **MR. O'NEIL:** No.

12 **THE COURT:** All right. Here's what we'd like
13 to do. It's a few minutes to twelve. Do y'all want to
14 do a little work before lunch or -- I'll be honest with
15 you. That would really not suit me. I just thought
16 Ms. Johnson needed to move and so we can't do opening
17 arguments very quickly and get about forty minutes done,
18 and it will take her fifteen or twenty minutes to move,
19 and since she moved this morning already because of some
20 misinformation, we're gonna take a lunch break. We'll
21 get the jury in and we'll show them the jury room and
22 let them depart. How about 1:15, 1:30 come back time?
23 Does that sound okay, Mr. O'Neil?

24 **MR. O'NEIL:** 1:30 is fine with me, Your Honor.

25 **MR. SCOTT:** That works for us, Your Honor.

1 **THE COURT:** Okay. Bring everybody back in,
2 please, ma'am.

3 (The jury and panel return to the courtroom.)

4 **THE COURT:** Is that everybody? We've got them
5 all? Very good. All right. Those of you not selected,
6 so I've got twelve and the alternate, everyone else, as
7 long as y'all remember to call that number tonight after
8 six, follow your instructions.

9 Now this is kind of important. I'm trying to
10 be -- I'm trying to make things run efficiently. The
11 bailiffs checking you coming in always say put your
12 cell phone back in your car and the reason is it's a
13 distraction. The Supreme Court says no cell phones in
14 courtrooms and so I really must insist that you don't
15 bring them in. If you ever get selected, I allow people
16 ample time to make calls at breaks. We'll take a little
17 extended break sometimes to check on your family, your
18 pet or your house or whatever. And so when you report
19 back, any of you that come back later, please leave your
20 cell phone in the car so it doesn't get -- put the
21 bailiffs in a bad spot. It's just very helpful to us,
22 it creates less distraction, so please remember that.
23 It's not a rule where we're trying to punish anybody,
24 but it's a distraction and we just have things move
25 quicker if we don't have the cell phones in the

1 courtroom. The lawyers are allowed by rule to have
2 them, but no one else is, so I'll pass that along for
3 you.

4 So if your weren't selected, you're free to go.
5 Remember 321-2110 after six tonight.. My expectation is
6 the message will say please call back Wednesday night
7 after six. My expectation is I may have you back in
8 here Thursday morning, but most likely tomorrow we'll
9 be working on this case. So -- this afternoon and
10 tomorrow, so we don't need y'all. So y'all are free to
11 go. The thirteen on the front two rows, y'all need to
12 stay with me and I'll instruct y'all.

13 (The remaining jury panel was excused.)

14 **THE COURT:** All right. Ladies and gentlemen
15 picked, I've got a few preliminary instructions. It's
16 about noon. We got a late start. I kind of want to
17 start about 1:30 and start with the trial, the opening
18 comments, the opening summaries, opening arguments, if
19 you will, and then immediately right into testimony.
20 It's important you remember my instructions. I'm gonna
21 give you instructions just about every break. As I told
22 you early on, I'm the instructor of the law, y'all are
23 gonna be the finders of facts. So y'all are judging the
24 case to some extent because you're gonna judge the
25 credibility of the witnesses and whatnot that are

1 testifying as to what happened or who saw what and that
2 kind of thing and so your common sense is required.
3 Other than that, you can take notes if you'd like. You
4 don't have to. I'm gonna -- ma'am, tell me your name.

5 **JUROR:** Brittany Hardy.

6 **THE COURT:** Ms. Hardy, you're the foreperson of
7 this jury. You've just been appointed. Any objection
8 from the other twelve? See there, it's unanimous. How
9 about that? Now your first task when y'all come back
10 from eating lunch is to find out if you need any
11 notepads for any of your other jurors if they want to
12 take notes. Notes are allowed for your own personal
13 use. If you'd like to have something to do with your
14 hands, you can take notes. Some people like it. It's
15 not required. If you can sit there and listen and take
16 it all in, that's fine. As I told you, these trials
17 this week, this one should last a day, day and a half.
18 You don't need to take notes. You're more than welcome
19 to. So you need to determine, Ms. Hardy, how many
20 notepads you need and the Clerk will get them for you.

21 The second thing is y'all are not gonna be
22 allowed to talk about the case even from this point
23 forward. All you know is the general nature of the
24 charges, some of the witnesses, the accused's name. You
25 really know nothing about the crime, so it's too early

1 to start discussing the case; I wonder what they're
2 gonna say, I wonder what this witness is gonna do. You
3 can't do that. It's against my instructions to discuss
4 the case until you've got everything you need to decide,
5 particularly the testimony of all the witnesses that the
6 parties are gonna present and my instructions on how to
7 evaluate, to consider, to do with the evidence presented
8 and heed my instructions.

9 The law of South Carolina is that y'all do this,
10 this and this. Well, the law of South Carolina is that
11 Mr. Cromer is presumed innocent until the State proves
12 beyond a reasonable doubt each and every element of the
13 crimes charged. So if y'all begin discussing the case
14 at the first break before I've told you that, that would
15 be improper.

16 The second thing that will be improper is
17 discussing the case among yourselves, so just don't do
18 it. Don't tell anybody when you walk out of here, other
19 than your family, anything other than I'm on the jury
20 and the judge told me don't discuss the case. And for
21 heaven's sake, this is really a big thing that's come
22 into my instructions recently, don't put it on Facebook
23 that you're a juror and I'm sitting on a jury and my
24 judge has got gray hair. Nothing on Facebook please
25 because you don't know it, but it may be somebody else

1 out there oh, is that the case about such and such and
2 the next thing you know you're getting information off
3 Facebook from an un-intending person, whoever that may
4 be, about some other trial. They may have it confused
5 with this one.

6 The purpose of having a trial in a courtroom
7 with a court reporter is that y'all thirteen get to
8 hear the testimony presented and you get to see the
9 people testify, you get to hear the way they say it,
10 you get to see their body language, you get to see all
11 of that all together. If it were well, I heard on
12 Facebook, well, I heard at the beauty shop, well, I
13 know my first cousin's husband -- you don't get that.
14 Y'all get to hear it right here under my supervision
15 with a court reporter so we know what was said and how
16 it was said and who said it clearly in the courtroom.
17 That's why it's important not to talk about the case
18 and not let somebody influence you on what y'all's job
19 is. So don't discuss the case among yourselves and tell
20 anybody that talks to you I'm on the jury and the judge
21 told me not to discuss the case with anybody. And stay
22 off Facebook.

23 Now the third thing is no independent research on
24 Facebook, the Internet. There's a lot of bad law out
25 there. I'm gonna give you the law. That's my job. So

1 don't go to Wikipedia and look up the definition of
2 anything. That's just not allowed either because
3 Wikipedia -- I didn't know this until I went to a
4 computer class as a judge. You can sign onto Wikipedia
5 and put in stuff as a volunteer contributor, so there
6 maybe some nut out somewhere that says oh, yeah, this
7 means that and this means this, and what in the world is
8 all that about? I had no idea. I thought it was some
9 smart guy actually putting information out there, but it
10 can be anybody. Well, that's no good. Y'all are gonna
11 get what y'all need to decide this case in the courtroom
12 down there.

13 My last instruction. As soon as we break for
14 lunch, I'm gonna have y'all walk down and see the family
15 courtroom and Ms. Wardlaw and Mr. Cotes will show you
16 where to come back after lunch because we're gonna try
17 the case down in another courtroom rather than in this
18 county council chambers. It will be a little smaller, a
19 little more quaint. It's set up more like a courtroom.
20 This room was big enough to house all the jurors.
21 That's why we did it in here. So we're gonna move to
22 the next courtroom and that's where we'll try the case.

23 Now you have stickers on and there's a point in
24 that. Newberry is a small community. Laurens,
25 Greenwood. Mostly small communities that I hold court

1 in. You may know a law enforcement officer, a potential
2 witness, family, whomever. The parties involved in this
3 case, even indirectly, are not allowed to interact with
4 y'all. They're told look, good morning, good afternoon,
5 and that's about the length of the conversation you're
6 gonna get with anybody because it would be improper for
7 them to say look, you know, I'm counting on you in this
8 case. Well, I'm counting on you to do what I ask and to
9 take your oath seriously and do a job and find justice
10 in this case. That's your job. And so I don't want
11 it to be even an appearance that someone's trying to
12 influence your decision outside this room and that's
13 why these parties know they can't interact with y'all
14 if you've got a jury badge on, so don't take it as
15 they're being rude or impersonal. They're told not to
16 talk to you. They know these rules and so don't take
17 offense to it. Well, I saw what that witness did.

18 Now the Clerk's office, not so much me, but the
19 bailiffs, they can speak to you, and they will. The
20 bailiffs are your go-to-person. So if something
21 happens coming and going to the courtroom, Ms. Wardlaw,
22 Mr. Coats, Mr. Tracey, anybody in a burgundy blazer,
23 that's who you go talk to. They can help you. They can
24 get you a bottle of water, a cup of coffee, anything
25 like that to make you more comfortable. The bailiffs

1 are your go-to people and they can communicate with the
2 Clerk's office and/or my office to help whatever issue
3 comes up.

4 Like when the other juror jumped up and he went
5 to the deputy, well, it really wasn't the deputy's job,
6 it was the bailiff's job to come talk to me. Somehow he
7 had a phone in his pocket and got a text message and
8 jumped up. Well, that's why I made the comment about
9 the cell phones. You're not supposed to have cell
10 phones in the courtroom because of that.

11 Now during the trial, I'm gonna take an extended
12 break in the morning and the afternoon, so you've got
13 before, during, lunchtime, midafternoon that I will
14 allow you a longer break. If we have any smokers that
15 need to step outside and smoke a cigarette or anybody
16 who wants to step outside and use their cell phone to
17 make a call, check on whatever you need to check on,
18 work, children, parents, whomever or whatever, we do
19 that. Sometime I have short breaks, sometime I have
20 extended breaks, and when we have an extended break
21 that's what your opportunity is.

22 That being my preliminary instructions, don't
23 discuss the case, don't tell -- tell anybody the judge
24 says don't discuss it, don't do any independent
25 research, and I will allow y'all time for cell phones.

1 And then you find out about your notepads and you can
2 let Ms. Wardlaw know. She's probably gonna be at the
3 courtroom door or the jury's door and she can help with
4 the Clerk's office and retrieve all those.

5 And so now when we come in the courtroom, there
6 will be chairs in the family courtroom and, Ms. Hardy,
7 I know you're the foreperson. I'd like you on the front
8 row, any seat you'd like, and everybody else can sit
9 wherever they like. And I always kind of notice when
10 jurors get seated they kind of -- it's like going to
11 church. You feel comfortable in the corner or you're
12 comfortable in the middle. Kind of where y'all come in
13 the first time, that's probably where you'll end up the
14 whole trial, and that's fine, but I'd like you on the
15 front row so when I can talk I can see your face because
16 the bench is kind of high in the family courtroom. So
17 y'all can sit wherever in the thirteen chairs you like
18 and we'll try to make this a good experience for you.

19 So thank y'all for serving. It's a few minutes
20 after twelve. Ms. Wardlaw, show them where the jury
21 room is and as soon as you know where it is, come back
22 after lunch. Y'all are free until just before 1:30. I
23 need you back in the jury room at 1:30.

24 All right. Thank you y'all.

25 (The jury was excused for lunch.)

1 **THE COURT:** All right. We'll stand at ease until
2 1:25 and I'll be back over here.

3 (Lunch recess was taken.)

4 **THE COURT:** All right. Are we ready to go?

5 **MR. SCOTT:** Yes.

6 **MR. O'NEIL:** Yes, sir.

7 **THE COURT:** All right. Mr. Tracey, send for
8 them.

9 **MR. SCOTT:** Judge, Taylor is gonna do the opening
10 for the State.

11 **THE COURT:** Okay.

12 (The jury enters the courtroom.)

13 **THE COURT:** All right. Ms. Hardy, and ladies
14 and gentlemen of the jury, this is the family courtroom
15 in case y'all didn't know. Generally where they hold
16 family court. Generally -- or in family court, there
17 are never jurors. The family court judge decides all
18 the matters in family court. They don't need a jury
19 because the questions of fact aren't allowed to be a
20 done on -- it's just not allowed, it's not the way its
21 done. So we have y'all in that group of chairs there.
22 Y'all may spread out a little bit in there because what
23 I'm gonna do, except for y'all, the thirteen are gonna
24 walk behind there when you come and go from the room.
25 The witnesses aren't gonna walk through there, so that's

1 y'all's area. The witnesses are gonna come in front of
2 you and sit right there. Someone may come around to
3 that computer screen if they put something on the
4 projector, I don't know, but y'all can move that way
5 toward that bench. That will make y'all a little more
6 comfortable. Y'all can spread out that way. As long as
7 y'all can get in and out that way, I want y'all to be
8 comfortable, so that's y'all's area if you see fit. The
9 lawyers are over here and Ms. Bowers and whatnot will be
10 here.

11 I gave you my earlier instructions about not
12 discussing the case and I will renew that instruction to
13 you. That instruction will go throughout the trial so
14 until I begin to tell you please begin discussing the
15 case, you're not allowed to discuss the case whatsoever.
16 You can talk about how cold it is, talk about your lunch
17 or whatever, the Christmas holiday season, anything like
18 that, but until then you can't discuss the case, no
19 independent research. Judge Griffith says don't discuss
20 the case. I want you to tell everybody that. So don't
21 let anybody influence you on how you're doing your job
22 and everything you'll need to decide this case, you'll
23 hear it here.

24 Now in a court of General Sessions, which is a
25 criminal court rather than a civil court, the State goes

1 first because it's their burden to prove the charges
2 they bring against any individuals. Any accused is
3 always presumed innocent until each and every element
4 of the crime they're accused of is proven by the State
5 beyond a reasonable doubt. I will define to you what
6 beyond a reasonable doubt is at the end of the trial.

7 For your purposes now, I need you to give careful
8 attention to all of the witness. You can take notes
9 if you'd like. I notice you've done the inventory of
10 notepads, and that's fine, but since the State brings
11 the case, the State gets to open first, the State gets
12 to call its witnesses first because it would be unusual
13 or hard -- no one thinks about it, but if someone were
14 accused of a crime, the first thing you hear is well I
15 didn't do it. Well, the defense has nothing to prove or
16 disprove. They don't have to say anything. The State
17 has to prove beyond a reasonable doubt what they bring
18 and what they accuse anyone of. So that's the State's
19 responsibility. For that reason, they sit a little
20 closer to you and they call their witnesses first.

21 Now for that matter, I will tell you again that
22 Mr. Cromer comes to court clothed in the presumption of
23 innocence and that stays with him all the way through
24 the trial until we get to the very end and then you
25 consider whether or not that presumption of innocence

1 and proof beyond a reasonable doubt has been met by the
2 evidence you've heard.

3 So those instructions being given, I ask y'all to
4 stand and take your oath for this trial.

5 (The jury was duly sworn by the Clerk of Court at
6 1:38 p.m.)

7 **THE COURT:** All right. Mr. Daniel.

8 **MR. DANIEL:** Thank you, Your Honor. May it
9 please the Court?

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

11 **MR. DANIEL:** Ladies and gentlemen, Timothy
12 Cromer, sitting over here, is an opportunist. Let me be
13 a little more specific. On January 16th of last year,
14 Timothy Cromer saw an opportunity to take advantage or
15 prey on a teenager. That teenager in this case is
16 David Williams. He was sixteen years old when this
17 incident occurred. That's why you're here today is what
18 happened to David Williams. Or another way of saying
19 that's why you're here today is because of what Timothy
20 Cromer did that day. Because of Timothy Cromer's
21 actions that's why he stands before you on trial today
22 for armed robbery and kidnapping.

23 I'll give you some of the facts of this case
24 and what we, the State, intend to prove during this
25 trial from the evidence you're gonna hear. As I

1 stated, January 16, 2013, almost a year now to the
2 date, David Williams, a 16-year-old kid, Newberry
3 High School, hadn't had his driver's license too long,
4 decides to go to the Spinx convenience store on College
5 Street, just a couple of miles down the road from
6 school. Nothing unusual about that. Getting a snack
7 at the convenience store, driving a nice car. David
8 Williams goes to the Spinx convenience store, pulls in
9 the back next to the vacuum. They only had one vacuum
10 there. He gets out, heads into the store. He's in the
11 parking lot and who does David Williams see? Who is he
12 confronted by I should say? Timothy Cromer.

13 Now keep in mind, David Williams doesn't know
14 Timothy Cromer from a can of paint, never seen the guy
15 before, and what's Timothy Cromer do? He kind of comes
16 up to him, embraces him, hugs him, gives him one of his
17 handshakes. Now it's a little awkward. David Williams
18 is confused by this naturally. He doesn't know the
19 person he's embracing. Doesn't know him. This
20 encounter lasts a few seconds and David Williams kind
21 of shrugs it off and goes into the store and goes in to
22 get a snack. David Williams is in there a couple of
23 minutes. He gets his candy bar, makes the purchase and
24 heads on back to his car, and he's planing on backing
25 out. He doesn't see Timothy Cromer though. Timothy

1 Cromer is not loitering around the parking lot. At
2 least he doesn't see him. David Williams looks in his
3 car for some spare change. He realizes he doesn't have
4 any and so he goes back into the Spinx to get some
5 change. He's got a five dollar bill and gets four ones
6 and four quarters. That's gonna be important later on,
7 the change he gets.

8 So David Williams gets the change and heads back
9 out to his car the second time and who does he see? He
10 sees Timothy Cromer for a second time. At this point,
11 David Williams is concerned now. First it was kind of
12 awkward, now he's concerned. So in an effort to avoid
13 Timothy Cromer, David Williams heads straight to his
14 car, his white Toyota Corolla vehicle, in an effort to
15 avoid Timothy Cromer. It's the kind that has one of
16 these automatic locks and when he unlocks the driver's
17 side door, the passenger side unlocks as well. Well,
18 guess who jumps in the car with David Williams without
19 David Williams' permission? Timothy Cromer just hops in
20 his car.

21 Now obviously this is disturbing, terrifying.
22 David Williams doesn't know what to do. This is a
23 16-year-old kid. He has an adult male, much larger than
24 him, jumping in his car without his permission. At that
25 point they're both in the car together, sitting side by

1 side, driver and passenger seat. At that point, Timothy
2 Cromer tells the man, David Williams, to take him to the
3 Food Lion on Kendall Road, which is just a couple of
4 minutes away. You just take a left out of the Spinx,
5 head down to College, take a left and that's where the
6 Food Lion is we're talking about. He tells David
7 Williams to drive to that Food Lion and so David
8 Williams, what's he do? He complies. What other choice
9 does he really have right now? A much larger man is
10 sitting in the car with him without his permission.

11 While en route -- so David Williams start to
12 drive. Well, what goes on in the car? Well, Timothy
13 Cromer starts talking about being armed with a gun. He
14 tells David Williams he has a gun on him. Essentially
15 he says would you like to see the gun? He's patting
16 his jacket, gesturing, motioning, that he has a gun.
17 Presumably a handgun. So he's making these gestures
18 that he has a firearm. So at this point, David
19 Williams, even if he wanted to drop Timothy Cromer off
20 on the side of the road, would he? No, he wouldn't do
21 it at this point. What purpose did Timothy Cromer have
22 in telling David Williams, a complete stranger, that
23 he's armed? The intent of that is so he could rob him,
24 which is exactly what he did.

25 When David Williams pulls up at the Food Lion

1 with Timothy Cromer in the passenger seat, Timothy
2 Cromer at that point demands money. Tells him to give
3 him some money. David Williams gives him the cash that
4 he had from the change he got. He gives him four ones
5 and four quarters. Fortunately for David Williams
6 Timothy Cromer exits the vehicle at that point. David
7 Williams, terrified, speeds out of the parking lot and
8 heads straight home. David Williams lives over on Reid
9 Street here in town. He goes straight home and tells
10 his parents what happened.

11 You're gonna hear testimony from his parents
12 how distraught he was, how upset he was. You're gonna
13 hear that testimony. They call 9-1-1 and inform law
14 enforcement of the situation. Law enforcement is
15 dispatched to their home. The Newberry Police
16 Department had jurisdiction over this case. They
17 respond. David Williams gives a description of this
18 man; gender, race, his build, what he's wearing because
19 David Williams gets a good look at this man. Sees him
20 twice in the parking lot, then he's in a car with him
21 and has plenty opportunity to see what he's wearing.

22 So he gives that description; a red shirt, black
23 jacket, his build, all that. That information is
24 relayed to other units because they know where he is.
25 The last place David Williams dropped him off was that

1 Food Lion. There's kind of a shopping center there.
2 There's other businesses. I believe the Food Lion's
3 closed down now, but there's some other stores there,
4 too. So a BOLO, or a be-on-the-lookout, for a suspect
5 fitting the description David Williams gives the police
6 is sent out. Within a matter of minutes they find a
7 suspect matching that description that David Williams
8 gives. At that point, one of the officers that responds
9 to David Williams' house to investigate takes him in his
10 police vehicle along with David Williams' father. They
11 go out there to verify that the man that they detained
12 was, in fact, the person that David Williams encountered
13 at the Spinx. David Williams is a hundred percent sure
14 that that's him. He says that's the guy essentially.
15 At that point Timothy Cromer's placed under arrest.

16 That's the facts in this case.. It's not
17 complicated. It centers around eyewitness testimony
18 from David Williams, the victim in this case. So
19 you're gonna hear testimony from David's parents, David
20 Williams, of course, from the officers who investigated,
21 and that's it. It's not a complex case at all. The
22 armed robbery and kidnapping are the two charges that
23 Timothy Cromer stands on trial before you today for.

24 Now briefly I'm gonna touch on the law. The
25 Judge will give you instructions at the conclusion of

1 the trial. I'm just gonna go ahead and briefly mention
2 some of the things that you may want to pay attention
3 to on the armed robbery aspect. Now keep in mind
4 everything I've told you about Timothy Cromer saying he
5 had a gun, alleging that he was armed, they never found
6 a gun. That's -- that's the one thing that's kind of
7 conspicuously absent from this case, but in the state of
8 South Carolina you don't actually have to be armed with
9 a gun to commit armed robbery. You can represent. You
10 can tell someone and represent, such as patting your
11 jacket, motioning, saying I have a gun. That's -- that
12 has the same effect as actually having a gun in your
13 hand and that's what -- that's the scenario we have here
14 in this case, the armed robbery.

15 Kidnapping. Well, Hollywood probably hasn't done
16 us any favors on this kidnapping charge. You may think
17 that kidnapping is where someone is duct-taped down,
18 thrown in the trunk of a car, you know, whisked away to
19 some secluded location, someone calls up the parents and
20 demands a ransom. That's kidnapping, but it doesn't
21 have to be that way. The scenario you have here, the
22 case before you, that's kidnapping. That's what
23 happened to David Williams. He was confined in this
24 vehicle with a man alleging that he's armed with a gun.
25 He was essentially trapped in the car. He was confined.

1 He was -- his freedom of movement -- he was deprived of
2 his freedom of movement. He couldn't just drop Timothy
3 Cromer off. Timothy Cromer was in his car. He jumped
4 in his car without permission and said he had a gun.
5 That's kidnapping. And it can be -- it can be almost
6 subtle that way. It's certainly not subtle to David
7 Williams from David Williams' aspect. Nothing was
8 subtle about what happened to David Williams that day.
9 In the testimony you're gonna hear, you will see that.
10 It will be illustrated to you.

11 And, lastly, the burden of proof is on the State
12 of South Carolina. We have to prove Timothy Cromer's
13 guilt beyond a reasonable doubt. Now reasonable doubt
14 quickly -- the Judge will give you instructions on what
15 is reasonable doubt. Reasonable doubt is not some
16 hurdle, an impossible hurdle to get over. We just have
17 to leave you firmly convinced of Timothy Cromer's guilt.
18 So once the Judge instructs you on what the law is at
19 the end of the trial, all you have to do is just use
20 your common sense and apply the law to the facts.
21 You're the factfinder. The Judge is the judge of the
22 law. He's gonna give you the law and use your common
23 sense and decide that Timothy Cromer is guilty. And I
24 submit to you that the evidence is only gonna point to
25 one thing, it's gonna lead you to only one conclusion,

1 that Timothy Cromer is guilty of armed robbery and
2 kidnapping. We just have to leave you firmly convinced
3 that he is guilty of these offenses.

4 Firmly convinced. You can't put a percentage on
5 what is firmly convinced. That's where your common
6 sense comes into play. For instance, if I were to tell
7 you -- none of us were there, you and I weren't there
8 that day in the car with David Williams. We didn't
9 actually see it with our own eyes what happened. For
10 instance, you didn't see it rain. Here's an example.
11 You wake up one morning and you see that they're calling
12 for rain. A 90 percent chance of rain. When you're
13 travelling to work you see gray skies. When you get to
14 work you hear what sounds like water hitting the roof of
15 the building and you see a coworker come in with a rain
16 coat and an umbrella, and they're wet. What would you
17 conclude at that point? Why are they wet? You would
18 have concluded that it had, in fact, rained. You didn't
19 have to go out and see raindrops coming from the sky.
20 You concluded based on everything that it had been
21 raining. That's firmly convinced. You were firmly
22 convinced it was raining.

23 Just like in this trial you're gonna be firmly
24 convinced what happened to David Williams that day.
25 You're gonna be firmly convinced that David Williams was

1 kidnapped, was accosted at the Spinx, forced to give a
2 ride to a man who got in his vehicle without permission
3 and then forced to hand over that four ones and
4 four quarters. That's what it's gonna lead you to
5 conclude. That he represented he had a gun. David
6 Williams certainly thought he had a gun and he had no
7 choice, he felt like he could not get away from this
8 man, that he had to comply, and that's essentially the
9 crux of this case. It's just common sense. Don't check
10 your common sense at the door, bring it here. You need
11 it more than ever because that's all the law is, common
12 sense.

13 Briefly, my name's Taylor Daniel, and we met
14 earlier this morning. I'm Assistant Solicitor here in
15 Newberry. We work for David Stumbo, your elected
16 Solicitor here in the Eighth Circuit. This is a
17 four-county circuit; Newberry, Laurens, Abbeville and
18 Greenwood. I'm trying this case with Deputy Solicitor
19 Dale Scott. And as I mentioned before, the burden of
20 proof is on the State. At the end of this trial you
21 will be firmly convinced of Timothy Cromer's guilt.
22 Thank you for your attention.

23 **THE COURT:** Thank you, Mr. Daniel.
24 Mr. O'Neil.

25 **MR. O'NEIL:** May it please the Court?

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

2 **MR. O'NEIL:** When I was getting ready to prep
3 for this trial, one of my best friends from high school
4 sent me an e-mail. He's one of them guys that's always
5 sending me these crazy e-mails and I looked at the
6 e-mail he sent me and it said it was a one-question IQ
7 test to see if you're a genius. If you answer this one
8 question correctly, it would prove that you're a genius.
9 So I say I'll take a little break here, I'm a pretty
10 smart guy, let me see if I'm a genius. So I open up the
11 e-mail that says how many months have twenty-eight days
12 and I thought to myself, man, this is easy, I am a
13 genius. I said easy, one month, February. So I scroll
14 down and it says if you said month February, you're
15 absolutely wrong. You see, all twelve months have
16 twenty-eight days. Some just have more. I learned two
17 things then. One, I'm not genius and, two, more
18 importantly in this case, most times the easy answer
19 isn't the right answer. The easy answer is almost never
20 the right answer.

21 In this case, the State of South Carolina charged
22 Timothy Cromer because it was the easy answer. From the
23 very beginning, from seconds, mere seconds after this
24 call came from dispatch, the police already had their
25 mind made up that it was Timothy Cromer and everything

1 they did was only to support what they had already made
2 their mind up about. They already had a profile that
3 it was Timothy Cromer and they had their mind made up.
4 Most times the easy answer isn't the right answer
5 because you act too fast, you don't have enough
6 information and you haven't done enough investigation,
7 and that's what happened here.

8 Mr. Daniel told you some of what happened in this
9 case, but he didn't give you all of the facts here. I
10 want you to pay close attention in this case to what
11 are they not telling you. What evi -- evidence are they
12 not giving you? You will learn that Mr. Williams, the
13 victim in this case here, gave a statement the day this
14 incident occurred. Pay close attention to the statement
15 he gave the day this incident occurred. Listen to see
16 if anything he says on the stand today is different from
17 that statement he gave over a year ago when this first
18 happened. Officers wrote reports on the date that this
19 happened. Pay close attention to what they said in
20 those reports. Pay close attention to what Mr. Williams
21 said in his statement.

22 In Mr. Williams' statement, you're gonna hear
23 words like the person who got in my car asked for money,
24 told me which way to turn. You're not gonna hear words
25 like threatened, forced, demanded. Nowhere in that

1 statement written back the day this occurred did he
2 indicate in any way the person who got in that car
3 threatened him. You're not gonna hear in that statement
4 that was made the day this happened that Mr. Williams
5 demanded anybody get out of his car. He never said get
6 out of my car, I'm not gonna take you anywhere. He
7 never said please get out of my car, I'm scared. None
8 of that was said.

9 When you see what happened on that day, pay close
10 attention to also what they're not giving you. This
11 Spinx store had video surveillance inside the store and
12 outside the store. Ask yourself if the State of South
13 Carolina is gonna show you the video of what happened
14 that day. They're gonna characterize for you and tell
15 you what happened that day. Are they gonna show you a
16 video of what happened that day? There were managers at
17 the store that day. You're gonna hear neither one of
18 those managers saw Timothy Cromer at the store that day.
19 On that video from the Spinx on the day this occurred
20 when they said Timothy Cromer got in the victim's car,
21 you're not gonna see Timothy Cromer anywhere on that
22 video. Why are they not telling you that? Why are
23 they not showing you that? You're not gonna see any
24 forensics, any fingerprints, anything that links Timothy
25 Cromer to that vehicle, to the money.

1 Pay close attention to the money that
2 Mr. Williams gave this individual. Four dollars and
3 four quarters. Pay close attention to the money they
4 find on Timothy Cromer when he's arrested. It won't be
5 just four dollars and four quarters. There's gonna be
6 \$8.20, but they don't want to tell you that. They say
7 that Mr. Williams felt scared when he was in the car.
8 You're gonna hear while he was driving in his car with
9 this individual he passed his father on the road.
10 You're not gonna hear from anybody Mr. Williams blowing
11 his horn, waving at his hands saying something's going
12 on, somebody's in my car, I'm scared. You're not gonna
13 hear any of that. Mr. Williams went in the store twice
14 before he left the Spinx that day. Never did he say
15 anything to anybody at the Spinx about this guy's
16 bothering me, somebody's outside harassing me. You're
17 not gonna hear any of that. Ask yourself why you're not
18 gonna hear from the managers, the people that were in
19 the store that day. Ask yourself why aren't they
20 calling those people.

21 They say Mr. Williams identified Timothy Cromer
22 and Mr. Williams gave a description of the individual.
23 Mr. Williams gave a description of a jacket, shirt and
24 pants the individual had on. Pay close attention to
25 what evidence and what piece of clothing the State puts

1 into evidence. I will tell you that the evidence will
2 show that the pant description that the victim gives
3 won't match, but they won't tell you that -- or they
4 won't show you that. The State don't want to put the
5 pants that Mr. Cromer was wearing into evidence. They
6 said Mr. Williams picked Mr. Cromer out of this lineup.
7 They're gonna tell you they did what they call a show-up
8 lineup. They brought Mr. Williams to the Food Lion
9 where they had Mr. Cromer standing out there in front of
10 the police officers in between the patrol cars. Who
11 else was Mr. Williams gonna pick? Mr. Cromer was the
12 only guy out there standing between the cars. Of course
13 he's gonna pick Mr. Cromer. He's the only one standing
14 there.

15 What else won't they tell you? They won't tell
16 you that Investigator -- Captain Atkins here interviewed
17 Mr. Cromer the day this happened, asked Mr. Cromer what
18 happened. Mr. Cromer said I wasn't there, I don't
19 remember being out there. They won't tell you that.
20 Mr. Cromer said I remember going out there a couple of
21 days ago to eat some chicken. Captain Atkins went to go
22 talk to the manager up there at the Spinx. The managers
23 out there at the Spinx did not remember Timothy Cromer
24 being there on the day this happened, but they do
25 remember him being there a couple of days earlier eating

1 some chicken. The managers, the video, the pants, the
2 money. What sort of things are they not telling you?
3 Who are they not bringing to you?

4 We all have a job here to do today. My job is
5 to make sure that nobody infringes upon Mr. Cromer's
6 rights. Judge Griffith's job is to be referee to make
7 sure everything goes according to plan and to give you
8 guys the rules of what to do here and tell you what the
9 law is. If I say something about the law, Mr. Daniel,
10 Mr. Scott say something about the law, Judge Griffith is
11 the ultimate judge of the law. He tells you what the
12 law is, so I'm not gonna tell you what the law is on
13 armed robbery. I'm not gonna tell you what the law is
14 on kidnapping.

15 I will tell you that what happened on June 16th
16 -- January 16, 2013, was not armed robbery, it was not
17 kidnaping. They overcharged Timothy Cromer because they
18 had in their mind at the very beginning it was him, but
19 it's the State of South Carolina's job to prove their
20 case beyond a reasonable doubt. People get on jury duty
21 and they say I'm so glad I'm on the jury to figure out
22 what happened. It's not your job to figure out what
23 happened. It's the police's job to investigate, it's
24 the prosecutor's job to prove their case. When you get
25 back in that jury room when it's all said and done and

1 you're trying to figure out what happened, they haven't
2 done their job. You thirteen, your job is simply to
3 decide whether or not the State of South Carolina has
4 done their job. Have they proved their case beyond a
5 reasonable doubt? Have the police investigators got
6 enough evidence and has the State proved their case
7 beyond a reasonable doubt?

8 You're going to be tempted to make a decision in
9 this case based on emotion and sympathy. They're gonna
10 ham -- hammer into you that Mr. Williams was sixteen
11 years old when this happened. You've got to decide this
12 case based on the evidence. Judge Griffith will tell
13 you can't decide this based on emotion, sympathy or
14 anger. Simply on the evidence. Have they proved their
15 case beyond a reasonable doubt? Two things. Have they
16 proved all the definitions, all the parts of each crime,
17 armed robbery and kidnapping, and, secondly, have they
18 proved to you beyond a reasonable doubt that it was
19 Timothy Cromer that did those things, and the evidence
20 will show that they will not be able to do that. Your
21 job won't be comfortable and it won't be convenient,
22 but at the end of the case I'm gonna simply ask you to
23 do what's correct. Don't settle for the easy answer.
24 Most times the easy answer isn't the right answer. The
25 right answer you get in this case is to find Timothy

1 Cromer not guilty of armed robbery and not guilty of
2 kidnapping.

3 **THE COURT:** Call your first witness.

4 **MR. SCOTT:** The State calls David Williams.

5 **THE COURT:** All right. Mr. Williams, come around
6 and be sworn, please.

7 DAVID WILLIAMS,
8 having been duly sworn, testified as follows:

9 **THE CLERK:** Have a seat and state your name.

10 **THE WITNESS:** David Williams.

11 DIRECT EXAMINATION

12 BY MR. SCOTT:

13 Q. Thank you. Mr. Williams, where are you from?

14 A. I'm from Newberry South Carolina.

15 Q. How long have you lived here?

16 A. Eight years.

17 Q. Where did you live before that?

18 A. Prosperity.

19 Q. It's still Newberry County though?

20 A. Yes, sir.

21 Q. Do you go to school here?

22 A. I do.

23 Q. Are you still in school?

24 A. I am.

25 Q. Where?

1 A. Newberry High School.

2 Q. What grade are you in?

3 A. I'm a senior this year.

4 Q. Do you work?

5 A. I do.

6 Q. How do you work and go to school?

7 A. I go to -- I go to school and then I go to work
8 afterwards.

9 Q. Okay. Where do you work?

10 A. C.T. Summer's downtown.

11 Q. That's the hardware store one block up the street
12 here?

13 A. Yes, sir.

14 Q. You live within town limits here?

15 A. I do.

16 Q. On January 16th of last year, were you going to
17 Newberry High School at that point?

18 A. I was.

19 Q. How old were you January 16th?

20 A. I was sixteen years old.

21 Q. What did you do after school that day?

22 A. I went and hung out with one of my friends and
23 dropped him off at his house and went to the Spinx.

24 Q. And the Spinx, that's the gas station we've
25 already heard about?

1 A. Yes, sir.

2 Q. On College Street?

3 A. Yes, sir.

4 Q. A couple of miles up the road toward Newberry
5 College?

6 A. Yes, sir.

7 Q. Why did you go to the Spinx?

8 A. I went there to get a candy bar and to vacuum out
9 my car.

10 Q. Is that some place you go often?

11 A. It's a few blocks up the street from my house,
12 so, yes, sir.

13 Q. Okay. About what time of day was that you went
14 by there?

15 A. It was between 4:15 and 4:30.

16 Q. Okay. Well, let's cut to the chase. What
17 happens when you get there? Where did you park?

18 A. I parked next to the vacuums because I was
19 planing to clean out my car and when I got out of my
20 car, I was approached by Mr. Timothy Cromer and he --
21 his speech was very slurred, he was hugging me and
22 shaking my hand like we were long-lost friends. I kind
23 of shrugged it off. It was weird, but it wasn't, you
24 know, scary at this point. So I walked inside and --

25 Q. Wait a minute. Had you ever seen him before?

1 A. I'd never seen him before.

2 Q. So he wasn't your friend?

3 A. No, he wasn't.

4 Q. What was he doing? He was hugging you?

5 A. Yes, sir.

6 Q. Shaking your hand?

7 A. Yes, sir.

8 Q. And what was he saying?

9 A. I couldn't tell what he was saying. His voice
10 was too slurred.

11 Q. How did that make you feel?

12 A. I was a little bit uncomfortable. I didn't -- I
13 didn't know this guy. He was, you know, hugging up on
14 me. I was just trying to get away from him, so I went
15 inside.

16 Q. But he hadn't threatened you or anything at this
17 point?

18 A. Not at this point.

19 Q. He was just hugging you like he knew you?

20 A. Yes.

21 Q. Okay. And you went inside?

22 A. I did.

23 Q. What did you do when you went inside?

24 A. I went and got a candy bar and bought it and went
25 back to my car to vacuum it out. I realized I didn't

1 have enough change to vacuum it out, so --

2 Q. Well, wait. Where's Timothy Cromer at this
3 point?

4 A. I didn't see him.

5 Q. Okay. So you -- the original confrontation
6 happens, you go inside and you go back to your car and
7 you don't see him at this point?

8 A. I did not see him.

9 Q. Okay. So what did you do, vacuum your car out?

10 A. No, I didn't have enough change, so I went inside
11 to get change so I could vacuum my car out. I only had
12 five dollars on me, so I got change. I got four fours
13 and four quarters -- or four ones and four quarters, and
14 I went back out to my car. And on the way back out
15 there, I noticed he was following me, so, you know, I
16 was getting a little bit nervous. I didn't know that
17 guy, I didn't want him to come and, you know, hug me
18 again, so I got in my car and when I unlocked my door to
19 get in, my passenger side door unlocked, too, and when I
20 got in my car he got in the passenger seat.

21 Q. He just got in by himself?

22 A. He just got in.

23 Q. You didn't ask him to get in the car?

24 A. I did not.

25 Q. Did you see him approaching the passenger door?

1 A. I was on my way into my car. I didn't notice him
2 walking around.

3 Q. All right. What are you thinking when this
4 stranger jumps in the car with you?

5 A. I was -- I was very freaked out. I had no idea
6 of why he was getting in my car. I was -- I was -- I
7 was scared at this point.

8 Q. Okay. At this point you asked him if he wanted a
9 ride somewhere?

10 A. I did not ask him. He just -- he told me to
11 drive him to the Food Lion.

12 Q. Why didn't you tell him to get out of my car?

13 A. I was scared of him. He was bigger than me.
14 What if I said no, what would he do?

15 Q. What did you say when he told you to drive him to
16 the Food Lion?

17 A. I said okay and I went to go pull out of the
18 Spinx parking lot and he asked me if I wanted to hold
19 his gun.

20 Q. Why did he say that?

21 A. Why did he --

22 Q. Why did he say that?

23 A. I -- I guess to threaten.

24 **MR. O'NEIL:** Objection, Your Honor; speculation.

25 **THE COURT:** Rephrase the question.

1 BY MR. SCOTT:

2 Q. How did you feel when he asked you that?

3 A. I got very, very scared. I thought that if I
4 didn't do what he wanted me to he would shoot me, so I
5 turned where he told me to turn at and I refused to hold
6 the gun, but I turned out of the Spinx and went left and
7 on the way passed the Dollar General down there. My dad
8 drove by and I didn't want to make it seem like I was
9 trying to get any attention, so I didn't wave at him, so
10 my dad --

11 Q. Wait a minute. I'm sorry. I hate to keep
12 interrupting.

13 A. That's okay.

14 Q. What did you mean you didn't want it to seem like
15 you were getting somebody's attention?

16 A. I didn't want -- I didn't want to cause any
17 trouble with Mr. Cromer because I was scared, I was very
18 scared, and I thought that if I got somebody's attention
19 or made it seem like I was trying to get somebody's
20 attention, that he might hurt me.

21 Q. Okay. So after you passed your dad -- and that's
22 why you didn't wave your father down? That's your
23 testimony?

24 A. Yes, sir.

25 Q. What is Timothy Cromer saying now?

1 A. I -- I don't remember. I really don't think I
2 could understand him at this point.

3 Q. Okay. So you're driving down College Street now
4 and where did you go next?

5 A. I turned left onto Kendall Road and he kept
6 motioning to his pocket and asking if I wanted to hold
7 his gun and we got to the Food Lion, I pulled in, he
8 told me to pull up next to the building behind this SUV
9 up there and I pulled up behind it and he told me to
10 give him five dollars, so -- or he said to give me some
11 money -- or give him some money and so I pulled out my
12 wallet and all I had was the four dollars and
13 four quarters that I got earlier, and I gave that to
14 him. He asked me if I wanted to hold his gun again
15 while he went in the store, I said no, and so he got out
16 and went and talked to some person. I got out of there
17 as fast as I could and went straight home.

18 Q. How many -- how many times did he talk about this
19 gun on that ride?

20 A. It was four or five times.

21 Q. How long does it take to get from the Spinx to
22 that old Food Lion?

23 A. Three or four minutes at most.

24 Q. What effect did it have on you each time he talks
25 about this gun?

1 A. I got more and more scared every time he
2 mentioned it.

3 Q. Did you ever feel like you should just pull over
4 and ask him to get out of your car?

5 A. I felt like if I did he was gonna shoot me.

6 Q. Tell me again what is he doing besides talking
7 about the gun.

8 A. Besides talking about the gun, he's leaning
9 towards me and kind of reaching over at his pocket where
10 he was motioning to the gun.

11 Q. Like he was gonna pull something out?

12 **MR. O'NEIL:** Objection, Your Honor; leading.

13 **THE COURT:** Yeah, don't lead.

14 BY MR. SCOTT:

15 Q. Explain what you mean he was reaching towards his
16 pocket.

17 A. He's got his hand rested on his side and whenever
18 he would motion to the gun he would just kind of slide
19 his hand down a little bit and pat and he -- I mean, he
20 was kind of -- whenever he would talk about anything
21 besides the gun, he would mumble and his words were
22 slurred, so I couldn't understand what he was saying.

23 Q. Okay. Well, then what did you understand?

24 A. I understood do you want to hold my gun.

25 Q. All right. You're talking about getting to the

1 Food Lion. You said you gave him five dollars you had?

2 A. (Nods head.)

3 Q. Where did you go next?

4 A. I went straight home.

5 Q. How long did it take you to get home?

6 A. Two minutes.

7 Q. What did you do when you got home?

8 A. I told my parents what happened and they
9 immediately called the police.

10 Q. How long do you think it took the police to get
11 to your house?

12 A. It wasn't very long. I don't really know. I was
13 kind of -- I was freaking out, so I couldn't really tell
14 you the amount of time it took for them to get there.

15 Q. Okay. Are you saying you were still shook up by
16 the time you got home?

17 A. I was very shook up.

18 Q. Once the officers got there, what did you do
19 next?

20 A. Once the officers got there, we told them what
21 happened and then they wrote down the description that I
22 gave them and then they got a call over their radio, I
23 think, and we -- me and my father got into the back of
24 Officer Wood's police car and we went to the Food Lion
25 to identify Timothy Cromer.

1 Q. Okay. What did you see when you got back to the
2 Food Lion?

3 A. When we got to the Food Lion, I saw officers
4 standing outside with Timothy Cromer in between them
5 still at the Food Lion and I identified Mr. Cromer as
6 the man who had kidnapped me.

7 Q. All right. Let me back up. I sort of skipped
8 while I was looking for something. What was the
9 description you gave officers once they first arrived at
10 your house?

11 A. I told them that he was wearing a black jacket
12 with some form of emblem on it, a red shirt, he was a
13 tall, African-American man, bald head, kind of a bigger
14 guy, and I believe I told them he had dark pants.

15 Q. Did you tell them where the incident occurred?

16 A. I told them it was the Spinx and he made me drive
17 him to Food Lion.

18 Q. So you told them that was the last place you saw
19 him was at the Food Lion?

20 A. Yes.

21 **MR. SCOTT:** I beg the Court's indulgence.

22 **THE COURT:** Uh-huh.

23 (State's Exhibit Numbers 1, 2, and 3 were marked
24 for identification.)

25 **THE COURT:** All right. So y'all understand

1 what's going on, Ms. Johnson, my court reporter,
2 she's in charge of taking down all the testimony and
3 inventorying any evidence that's discussed and/or moved
4 into the evidence part of the case, so I didn't want to
5 interrupt her while she was over there doing her job
6 because she does this (demonstrating) when people are
7 talking and her hands were busy doing something else and
8 so I remained silent before I explain it to you.

9 Every piece of evidence will be numbered. She
10 keeps inventory of it, that's her job, and the witnesses
11 can discuss it and they describe it by saying State's
12 Exhibit Number 1 or 2 or whatever, so that's what they
13 were doing and that's part of her job and when she's
14 doing her job, I try not to talk to y'all because she's
15 supposed to be writing down what I'm saying. So anyway,
16 that's what they've been doing. I just wanted to make
17 sure you knew what Ms. Johnson did for us.

18 All right. Mr. Scott.

19 **MR. SCOTT:** Thank you, Your Honor.

20 BY MR. SCOTT:

21 Q. Let me show you State's 1. Do you recognize
22 that?

23 A. That's the jacket he was wearing.

24 Q. Okay. What is it that you recognize about it?

25 A. It's a large black jacket with an emblem on it.

1 Q. That's the emblem you were talking about?

2 A. Yes, sir.

3 Q. And that's one of the descriptions you gave
4 officers when you described the person who had taken you
5 from the Spinx to the Food Lion?

6 A. It is.

7 Q. Okay. And this is what he was wearing when he
8 hugged you?

9 A. Yes, sir.

10 Q. And when he followed you back to the car?

11 A. Yes, sir.

12 Q. Is this what he was wearing when he was in your
13 car?

14 A. Yes, sir.

15 Q. And what was the person wearing when the officers
16 took you back to the Food Lion to identify the suspect?

17 A. That jacket right there.

18 Q. State's Number 1?

19 A. Yes.

20 **MR. SCOTT:** Your Honor, the State would offer
21 Number 1 for admission into evidence.

22 **MR. O'NEIL:** No objection.

23 **THE COURT:** No objection. So State's Exhibit 1
24 is admitted into evidence.

25 (State's Exhibit Number 1, a black jacket, was

1 admitted into evidence.)

2 BY MR. SCOTT:

3 Q. What else was he wearing besides the black jacket
4 that you told them about?

5 A. A red shirt.

6 Q. State's Number 2, do you recognize this?

7 A. That's the shirt he was wearing.

8 Q. Okay. At the 'Spinx?

9 A. Yes, sir.

10 Q. And is this what the suspect they had detained at
11 the Food Lion was wearing?

12 A. Yes, sir.

13 MR. SCOTT: The State would offer Number 2 for
14 admission.

15 MR. O'NEIL: No objection.

16 THE COURT: State's Number 2 admitted without
17 objection.

18 (State's Exhibit Number 2, a red shirt, was
19 admitted into evidence.)

20 BY MR. SCOTT:

21 Q. Okay. And what was the pants you said he was
22 wearing?

23 A. Dark pants.

24 Q. I'll show you State's Number 3. Do you recognize
25 these?

1 A. Those are the pants he was wearing.

2 Q. Who?

3 A. Timothy Cromer.

4 Q. That's what he was wearing at the Spinx gas
5 station?

6 A. Yes, sir.

7 Q. Is this what the suspect they detained at the
8 Food Lion was wearing?

9 A. Yes, sir.

10 MR. SCOTT: Your Honor, the State would offer
11 Number 3 into evidence.

12 MR. O'NEIL: No objection.

13 THE COURT: State's 3 without objection.

14 (State's Exhibit Number 3, black pants, were
15 admitted into evidence.)

16 BY MR. SCOTT:

17 Q. You mentioned it was about 4:15 when the
18 confrontation on College Street occurred at the gas
19 station?

20 A. Yes, sir.

21 Q. About what time was it when you went to the Food
22 Lion with law enforcement to ID the suspect they
23 detained?

24 A. It was about 5:00.

25 Q. Okay. January 16th, approximately this time of

1 year --

2 A. Yes, sir.

3 Q. -- tell me what was the lighting like when you
4 got to the Food Lion.

5 A. It was getting dark, but it wasn't completely
6 dark yet.

7 Q. This was a grocery store parking lot?

8 A. Yes, so the lights were on in the parking lot.

9 Q. Okay. You were in the back of the police car?

10 A. Yes, sir.

11 Q. The other lawyer said with your father?

12 A. Yes, sir.

13 Q. How close did y'all get to the suspect they
14 detained?

15 A. It wasn't very far. It was close enough that I
16 could see who it was.

17 Q. Did you have any trouble seeing the person they
18 had?

19 A. At first I wasn't positive because I couldn't see
20 his face very well, so I asked Officer Wood to move
21 closer and when we did, I could tell without a doubt
22 that it was him.

23 Q. Okay. How certain were you it was him?

24 A. I was very, very certain.

25 Q. This was the person wearing the black jacket with

1 the emblem?

2 A. Yes.

3 Q. And a red shirt?

4 A. Yes.

5 Q. And dark pants?

6 A. Yes.

7 Q. What else was it that made you recognize him?

8 A. His face was very recognizable. He has a very
9 unique facial shape.

10 Q. Okay. Had you had an opportunity to observe his
11 face during the --

12 A. On many occasions, yes.

13 Q. On many occasions?

14 A. Well, on that day. When he first approached me,
15 he was standing very close to me, he was hugging me.
16 When I came back outside the second time, he was
17 following me and I turned around and I could see his
18 face very well. When we got in the car, he was -- he
19 was no more than a foot and a half from me. I could see
20 his face very well. And when we stopped in the Food
21 Lion parking lot, he turned to me and I could see his
22 face very well.

23 Q. Do you think you'll ever forget that face?

24 A. I will not.

25 Q. Do you see that face in the courtroom?

1 A. Right there (indicating).

2 Q. Are you pointing at me?

3 A. No, Timothy Cromer.

4 Q. The man to the left of the lawyer?

5 A. Yes, sir.

6 Q. Any doubt in your mind that's who jumped in your
7 car on the 16th of January last year and made you drive
8 him to the Food Lion?

9 A. No doubt.

10 Q. Any doubt that's the man who motioned to his
11 pocket about the gun?

12 A. No doubt in my mind.

13 Q. Now my friend, the lawyer, was talking about a
14 statement that you gave. Do you remember that?

15 A. Yes, sir.

16 Q. And you wrote it down?

17 A. Yes, sir.

18 Q. And this was January 16th, that same night?

19 A. Yes, sir.

20 Q. And you talked about what had happened?

21 A. Yes, sir.

22 Q. How soon after all this occurred did you give a
23 statement?

24 A. I guess it was -- it was no later than 5:15,
25 5:20. It was not long after the incident occurred. It

1 was probably less than an hour.

2 Q. Do you recognize this?

3 A. That's the statement I gave to the police.

4 **MR. SCOTT:** State's Exhibit Number 4 for ID at
5 this point, but -- well, I'd ask to admit it for
6 admission into evidence.

7 **MR. O'NEIL:** One second, Judge.

8 **THE COURT:** All right.

9 **MR. O'NEIL:** No objection, Your Honor.

10 **THE COURT:** All right. State's 4 admitted --
11 marked and admitted without objection.

12 (State's Exhibit Number 4, a statement, was
13 marked for identification and admitted into evidence.)

14 BY MR. SCOTT:

15 Q. Okay. That's what you would have given that
16 night?

17 A. Yes, sir.

18 Q. Did you write that at the police department?

19 A. I did.

20 Q. Okay. So at this point Mr. Cromer had been
21 arrested?

22 A. Yes, sir.

23 Q. They took him to jail?

24 A. Yes, sir. I assume so.

25 Q. Okay. And then you went to the police

1 department?

2 A. I did.

3 Q. How many police officers were there around you?

4 A. There was -- the number kept growing as it got
5 later. I think it started off with two and then it just
6 added up till three or four, five maybe.

7 Q. Read your statement to this jury that you wrote
8 that night.

9 A. I got out of my car at Spinx to go inside to get
10 a candy bar. A tall, bigger, black male with bloodshot
11 eyes approached me and started talking to me as if I was
12 a long-lost friend. His words were slurred and so --
13 and I shook his hand and he kept talking. I could not
14 understand him. I went inside and did not think
15 anything of it. He was wearing a black jacket with some
16 sort of emblem on it and a red shirt with black pants.
17 I came back outside and he followed me to my car still
18 talking. I got in the car and he got in, too. He made
19 a comment about my candy bar. I couldn't understand
20 him. I just knew because I heard the words candy bar,
21 peanut and good and he was pointing at it. He then told
22 me to drive him to Food Lion and he told me where to
23 turn. We passed my dad in front of Dollar General. He
24 kept motioning -- he kept motioning to his pocket and
25 asking me if I wanted to hold his gun. I refused every

1 time. When we got to Food Lion, he asked me for five
2 dollars. I gave him four ones and four quarters. He
3 then asked me to come inside the store with him. I
4 refused. He asked if I wanted to hold his gun while he
5 did, I refused. He got out of the car, started talking
6 to some other male. I drove off before he could turn
7 back around and went straight home.

8 Q. Now in opening, the defense talked about you
9 terming it asking. What did you mean by that?

10 A. I put asking in there instead of demanding and
11 whatnot because I was trying to act tougher than I
12 actually am because I was freaking out and I didn't want
13 to show it, so I put asking in here several times when I
14 should have put demanded.

15 Q. Okay. You put he asked me for five dollars.
16 What did he actually say?

17 A. Give me some money. Sorry. I didn't realize I
18 was doing that.

19 Q. He told me to drive him to Food Lion. I guess
20 I'm asking what was going through your mind? Did you
21 have a choice? Did you feel like you had a choice of
22 what to do?

23 A. I did not have a choice.

24 Q. Did you believe he had the gun?

25 A. I did.

1 Q. You never saw one though, right?

2 A. I never saw a gun, but I believed that he had
3 one.

4 Q. And how many times did he talk about it?

5 A. Four or five times.

6 Q. Let me --

7 (State's Exhibit Numbers 5 and 6 were marked for
8 identification.)

9 BY MR. SCOTT:

10 Q. Let me show you State's 5 and 6. Let's start
11 with Number 5. Do you recognize that?

12 A. That's the vacuum I parked next to at Spinx.

13 Q. And Number 6?

14 A. That's the Spinx.

15 **MR. SCOTT:** Your Honor, I believe without
16 objection the State would offer 5 and 6 for admission
17 into evidence.

18 **MR. O'NEIL:** No objection, Your Honor.

19 **THE COURT:** Two photographs, 5 and 6, will be
20 admitted without objection.

21 (State's Exhibit Number 5, a photograph, and
22 State's Exhibit Number 6, a photograph, were admitted
23 into evidence.)

24 BY MR. SCOTT

25 Q. Okay. This is State's Number 6. What are we

1 looking at here?

2 A. That's the Spinx.

3 Q. Okay. Where this all started?

4 A. This is where it all started at.

5 Q. Tell me where you pulled your car.

6 A. I -- right there on the right-hand side next to
7 the vacuum. You can hardly see it.

8 Q. Somewhere right over here is what you're saying?

9 A. Yes.

10 Q. Okay. This is where you parked your car when you
11 first got there and this is where the infamous hug
12 started?

13 A. Yes, sir.

14 Q. Okay. It was your intention to vacuum your car
15 when you got there, is that what you're saying?

16 A. Yes, sir.

17 Q. All right. Let me show you State's Number 5.
18 What is that?

19 A. That is the vacuum I parked next to.

20 Q. Just in relation to the gas station, you just
21 kind of testified that they're kind of far set aside to
22 the right of the convenience store there?

23 A. Yes, sir.

24 Q. Who was it that approached you January 16th of
25 last year at the Spinx gas station?

1 A. Timothy Cromer.

2 Q. And who was it that jumped in your car without
3 your permission?

4 A. Timothy Cromer.

5 Q. Who was it that you were talking about that
6 mentioned a gun five times within a mile and a half?

7 A. Timothy Cromer.

8 Q. And who was it that you picked out at the Food
9 Lion when law enforcement took you back over there to
10 the person that robbed and kidnapped you?

11 A. Timothy Cromer.

12 Q. And why didn't you jump out of the car or ask him
13 to get out of the car?

14 A. I was scared that if I did he would shoot me.

15 Q. Was there any reason for you to make this story
16 up that day?

17 A. No reason whatsoever.

18 Q. Were you in trouble for being out and you were
19 late getting home or anything like that?

20 A. No, sir.

21 Q. Had you ever seen Timothy Cromer before that day?

22 A. No, sir.

23 Q. Do you see Timothy Cromer in this courtroom right
24 now?

25 A. Yes, sir. He's sitting right over there.

1 Q. Wearing the black shirt to the left of the
2 lawyer?

3 A. Yes, sir.

4 MR. SCOTT: Thank you. Please answer any
5 questions Mr. O'Neil has for you.

6 MR. O'NEIL: May it please the Court, Your Honor?

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. O'NEIL:

10 Q. Mr. Williams, do you still have the statement you
11 gave in this case?

12 A. Not right now.

13 MR. O'NEIL: May I approach, Your Honor?

14 THE COURT: Yes, sir.

15 BY MR. O'NEIL:

16 Q. I'll give you what's been marked as State's
17 Exhibit Number 4. Is that your statement?

18 A. Yes, sir.

19 Q. Nobody forced you to give that statement?

20 A. No, sir.

21 Q. Nobody threatened you?

22 A. No, sir.

23 Q. And this was a sworn statement?

24 A. Yes, sir.

25 Q. You were sworn to tell the truth here?

1 A. Yes, sir.

2 Q. And when you gave the statement, you knew it was
3 important?

4 A. I did.

5 Q. And you knew it was important to be accurate in
6 the statement, correct?

7 A. I did.

8 Q. You knew it was important to be detailed?

9 A. I did.

10 Q. Okay. And was it Officer Matthews who conducted
11 this statement with you?

12 A. That's what it says here.

13 Q. Okay. And he gave you an opportunity to write
14 down everything you wanted to write in the statement?

15 A. Yes, sir.

16 Q. There's no limit on the statement?

17 A. No, sir.

18 Q. In fact, your statement is one and a half pages?

19 A. Yes, sir.

20 Q. If you wanted to add something, you could have
21 added something to it?

22 A. I could have.

23 Q. If you wanted to delete something from it, you
24 could have?

25 A. I could have.

1 Q. Okay. You knew possibly one day somebody else
2 was gonna be relying on the statement as to what
3 happened that day at the Spinx?

4 A. Yes, sir.

5 Q. Nowhere in this statement did you describe the
6 suspect, the guy in your car, as having a bald head?

7 A. Not in the statement, no.

8 Q. Yet you knew it was important to be accurate and
9 detailed in the statement?

10 A. I did.

11 Q. And you say you gave a description of what the
12 suspect had on, correct?

13 A. Yes, sir.

14 Q. And you looked at what's been marked as State's
15 Exhibit Number 3?

16 A. Yes, sir.

17 Q. You said these were the pants that the suspect
18 had on?

19 A. Yes, sir.

20 Q. And in your statement you said the suspect had on
21 black pants, correct?

22 A. I did, but I wasn't focussed on his pants.

23 Q. Okay. You said you were between one and one and
24 a half feet away from him?

25 A. Yes, sir.

1 Q. And on direct you kept saying that they were dark
2 pants and that's not, correct, is it?

3 A. That's what I wrote in the statement.

4 Q. What you wrote in your statement is your words,
5 correct?

6 A. Yes, sir.

7 Q. Did anybody force you to write the statement?

8 A. No.

9 Q. Did anybody write it for you?

10 A. No.

11 Q. You wrote it in your own handwriting?

12 A. Yes.

13 Q. And your words were black pants?

14 A. Yes.

15 Q. You agree these are not black pants?

16 A. Those are not black pants.

17 Q. But these were the pants Timothy Cromer had on
18 when he was arrested?

19 A. Yes, sir.

20 Q. And let's talk about this emblem. In your
21 statement, you didn't remember what the emblem was on
22 the jacket, did you?

23 A. No.

24 Q. You just remember it was some sort of emblem?

25 A. Yes.

1 Q. You saw the jacket a couple of times since
2 January of last year, correct?

3 A. Yes.

4 Q. You saw it close a couple of times?

5 A. Yes.

6 Q. As a matter of fact, you saw all these clothes a
7 couple of times since January of last year, correct?

8 A. Yes, sir.

9 Q. And you said this was the shirt that the suspect
10 had on?

11 A. Yes, sir.

12 Q. How do you know it was this shirt?

13 A. Because that's what's in the evidence.

14 Q. Because -- the only way you know it's this shirt
15 is this is what has been presented to you as being in
16 evidence?

17 A. But it's a red shirt.

18 Q. Okay. What about other it being a red shirt that
19 makes you realize this was the shirt the suspect had on?

20 A. There's no identifying features on it, so
21 nothing.

22 Q. So the only reason you think this is what the
23 suspect had on is because Mr. Scott showed it to you out
24 of the evidence bag?

25 A. Well, that and it was the shirt that he was

1 wearing when he was arrested.

2 Q. Okay. How do you know that this was the shirt
3 the suspect had on that was in your car?

4 A. Because he -- I don't know.

5 Q. Okay. How do you know that this is the jacket
6 the suspect had on?

7 A. Because I recognize the jacket.

8 Q. What about the jacket do you recognize?

9 A. I recognize the size of it, there's an emblem on
10 it, the color of it.

11 Q. Okay. So what about the size of it?

12 A. It's a large jacket.

13 Q. Okay. You didn't recognize what the emblem was?

14 A. Well, I recognized it once I saw it, yes.

15 Q. In your statement you said it had some sort of
16 emblem on it?

17 A. Yes.

18 Q. So the individual that got in your car had big
19 black jacket on with some sort of emblem?

20 A. Yes.

21 Q. Nothing else is identifiable about this jacket?
22 You didn't say a letterman's jacket, you said some sort
23 of black jacket?

24 A. Yes.

25 Q. It could have been any sort of black jacket?

1 A. Yes.

2 Q. Now you said in your statement you used the word
3 ask because you were trying to be tough?

4 A. Yes.

5 Q. That's what you're saying now, but this isn't the
6 first time you've talked about this case, correct?

7 A. No.

8 Q. You've talked about this case at least -- under
9 oath at least two more times since January?

10 A. Yes.

11 Q. And you continually used the word ask as to what
12 the suspect did in the car?

13 A. Yes.

14 Q. You never said -- not in your statement, not in
15 two previous court hearings, you testified under oath
16 that the suspect demanded any money from you?

17 A. I believe I said it in our previous hearing.

18 Q. You said the word demand?

19 A. Maybe not the word demand, but I used a synonym
20 for it.

21 Q. Okay. Do you want to see your prior testimony?

22 A. Yes.

23 Q. Okay. Would that refresh your memory as to what
24 you said?

25 A. Yes, sir.

1 **MR. O'NEIL:** Permission to approach, Your Honor?

2 **THE COURT:** Sure.

3 Q. (Hanging.) I'll give you time to look at it.

4 A. (Witness reading the document.)

5 **THE COURT:** Mr. O'Neil, can we take a quick
6 break? I need a break.

7 **MR. O'NEIL:** Yes, sir.

8 **THE COURT:** We've been going about an hour and
9 ten minutes or a little better. Ladies and gentlemen of
10 the jury, we're gonna take a short break. If you want
11 to step in the jury room, if you need to go to the
12 restroom, make yourself at home. If you need anything
13 from the bailiffs, they'll get it for you. Everybody
14 remain seated while the jury leaves and we'll take about
15 a good ten minutes.

16 (The jury retires to the jury room.)

17 **THE COURT:** Y'all stand at ease.

18 (Recess taken.)

19 **THE COURT:** All right. Are we ready to continue?

20 **MR. O'NEIL:** Yes.

21 **MR. SCOTT:** We are, Your Honor.

22 **THE COURT:** All right. Bring the jury in,
23 please, Ms. Wardlaw.

24 (The jury returns to the courtroom.)

25 **THE COURT:** All right. Mr. O'Neil, you may

1 continue.

2 CONTINUED CROSS-EXAMINATION

3 BY MR. O'NEIL:

4 Q. Mr. Williams, do you need any more time to go
5 over your prior testimony?

6 A. No, I found what I was looking for.

7 Q. Okay. Tell me what you -- you found.

8 A. I found -- I lost my page.

9 MR. SCOTT: I'm sorry, what was the question to
10 the witness?

11 MR. O'NEIL: I first wanted to see if he ever
12 used the word demand as relates to what the suspect said
13 in the car.

14 A. I did not use the word demand; however, I did use
15 -- let's see. Here it is. It says --

16 Q. Well, don't read what it says. Did you use the
17 word -- did you ever use the word demand?

18 A. I did not use the word demand. I used the word
19 give.

20 Q. Okay. You used the word give?

21 A. It says give me some money.

22 Q. Okay. So he didn't -- you didn't use -- the
23 suspect never said -- never demanded money, never
24 threatened, never yelled?

25 A. I believe that's a demand.

1 Q. Okay. You said you used the word give. You
2 never used the word demand, threatened, yelled,
3 screamed?

4 A. No.

5 Q. Okay. None of those words?

6 A. None of those words specifically.

7 Q. And those were your words. Your opportunity to
8 describe what was going on?

9 A. Yes.

10 Q. Nobody rushed you to describe what was going on.
11 You had all the opportunity you wanted to to describe
12 what was going on?

13 A. Yes.

14 Q. In your statement, you also described kind of
15 what happened when you first got to the Spinx there?

16 A. Yes.

17 Q. And the suspect that came up to you never did
18 anything threatening to you when you first got there to
19 the Spinx?

20 A. Not when I first got to the Spinx.

21 Q. In fact, you said he hugged you and you said you
22 shook his hand?

23 A. I did.

24 Q. I think you said he was -- his eyes were
25 bloodshot red?

1 A. Yes.

2 Q. Okay. You got that -- you said his speech was
3 slurred?

4 A. Yes.

5 Q. Were you under the impression that he was
6 intoxicated?

7 A. I wasn't sure.

8 Q. But he was stuttering and you really couldn't
9 understand what he was saying?

10 A. Yes.

11 Q. He never showed you a gun when he -- when you
12 first interacted with him there at the Spinx?

13 A. No. No, sir.

14 Q. And, in fact, during no part of this interaction
15 you had with the suspect were you ever shown the
16 firearm?

17 A. I was never shown one.

18 Q. Were you -- did anybody ever threaten to shoot
19 you with a firearm?

20 A. No.

21 Q. Did anybody ever threaten to use a firearm
22 against you in any way?

23 A. No.

24 Q. In fact, I think you said the only thing the
25 suspect said was did you want to either see or hold his

1 firearm?

2 A. Hold.

3 Q. Okay. And the person that got in your car asked
4 you did you want to hold his firearm?

5 A. Yes.

6 Q. He never said I'm gonna use this firearm against
7 you?

8 A. No.

9 Q. Did he ever physically -- other than hug you and
10 shake your hand, did he ever physically touch you?

11 A. No.

12 Q. He never hit you?

13 A. No.

14 Q. Never threatened to hit you?

15 A. No.

16 Q. Did he ever threaten to harm any family members?

17 A. No.

18 Q. Other than talking about -- asking you did you
19 want to hold his gun, I think you talked about a candy
20 bar?

21 A. Yes.

22 Q. And those were the comments you were saying in
23 the car?

24 A. Yes.

25 Q. In your statement, you describe what happens once

1 you come back out of the store the second time?

2 A. Yes.

3 Q. You go in the store two times?

4 A. I do.

5 Q. And never did you go in the store and say Miss
6 Clerk, this guy's outside bothering me?

7 A. No.

8 Q. There were two clerks in the store?

9 A. I don't remember.

10 Q. There were staff in the store?

11 A. I believe so.

12 Q. Other shoppers there in the store?

13 A. I don't know.

14 Q. Do you know whether the store had a phone to use?

15 A. I don't know.

16 Q. Did you have your cell phone?

17 A. I did.

18 Q. You never tried to use any sort of phone to call
19 law enforcement saying look, there's a guy outside the
20 Spinx harassing me?

21 A. I was not scared until he got in the car, so I
22 did not.

23 Q. So you -- you say you were not scared until he
24 got into the car?

25 A. No.

1 Q. When you came back out of the store, you say he
2 was still talking to you when he was walking behind you,
3 correct?

4 A. I believe he was, yes, sir.

5 Q. You walked out of the store and he was still
6 talking to you?

7 A. Yes.

8 Q. You couldn't understand what he was saying?

9 A. Not really, no.

10 Q. You don't know whether or not he was asking you
11 for a ride when you came out of the store?

12 A. No.

13 Q. In any event, you're coming out of the store,
14 he's walking behind you and he's talking to you?

15 A. Yes.

16 Q. He could have asked you for a ride and you told
17 him no?

18 A. He could have, but I didn't tell him to get in my
19 car.

20 Q. But you did unlock the door, correct?

21 A. I did.

22 Q. And you unlocked the driver's side door and all
23 the other doors?

24 A. On accident, yes.

25 Q. Okay. And when you unlocked the door, he got in

1 the car?

2 A. Yes.

3 Q. All right. In looking at your statement here,
4 you said once he got in the car he made a comment about
5 the candy bar.

6 A. Yes.

7 Q. You said you couldn't understand him, but you
8 heard the word candy bar, peanut, good, and he was
9 pointing at it?

10 A. Yes.

11 Q. And according to your statement, he gets in the
12 car talking about the candy bar and then your statement
13 says he then told me to drive to the Food Lion?

14 A. Yes.

15 Q. Okay. You're in the car and he's talking about
16 the candy bar and he said drive towards the Food Lion.
17 In your statement, you then said he told me where to
18 turn?

19 A. Yes.

20 Q. Okay. Then according to your statement, and I
21 guess you're driving at this point, because according to
22 your statement you said we passed my dad in front of the
23 Dollar General?

24 A. Yes.

25 Q. Okay. So you're driving the car, he's telling

1 you where to turn at, you're were passing your dad in
2 front of the Dollar General here, and then you say he
3 had motioned toward his pocket?

4 A. Yes.

5 Q. And then you said he asked you did you want to
6 hold his gun?

7 A. Yes.

8 Q. Not threatening to hold a gun against you?

9 A. No, sir.

10 Q. He's just -- he asked you did you want to hold
11 it?

12 A. He just asked if I wanted to hold it.

13 Q. He's not yelling at you?

14 A. No.

15 Q. You say you refused every time?

16 A. Yes.

17 Q. In your statement, that's the first time you
18 mention him asking you whether or not you want to hold
19 his gun?

20 A. Yes.

21 Q. And that was after you had passed your dad going
22 in front of the Dollar General?

23 A. Yes.

24 Q. You never tried to flag your dad down, never
25 tried to say hey, dad, something's going on here?

1 A. No. Like I said, I was scared that if I did he
2 was gonna hurt me.

3 Q. Did he -- did he threaten you at any point up
4 until then?

5 A. No, he did not threaten me.

6 Q. Okay. All he did at this point was talk about a
7 candy bar, hug you and shook your hand?

8 A. Yes.

9 Q. Did you flash your lights at your dad?

10 A. No.

11 Q. Did you ever tell the gentleman to get out of my
12 car?

13 A. No.

14 Q. And when you got to the actual Food Lion here,
15 according to your statement he asked you for five
16 dollars?

17 A. According to my statement, he asked.

18 Q. Did he demand five dollars?

19 A. He actually did demand five dollars, but I wrote
20 that he asked.

21 Q. Your words were he asked?

22 A. In my statement, yes.

23 Q. And you wrote the statement the day this
24 happened?

25 A. Yes.

1 Q. To law enforcement?

2 A. I did.

3 Q. Knowing they're investigating an armed robbery
4 and a kidnapping?

5 A. Yes.

6 Q. Now according to your statement, when you got to
7 the Food Lion he asked you to come in the Food Lion with
8 him?

9 A. He did.

10 Q. And you said no?

11 A. Yes.

12 Q. Did he try to force you to come in the Food Lion
13 with him?

14 A. No.

15 Q. Then you said from your statement he asked you
16 did you want to hold his gun while he went into the Food
17 Lion?

18 A. Yes.

19 Q. So he was gonna leave the gun with you while he
20 went into the Food Lion?

21 A. I don't know.

22 Q. That's what he asked you, if you wanted to?

23 A. That's what he asked, yes.

24 Q. And you said no?

25 A. Yes.

1 Q. At that point, did he refuse to get out of the
2 car?

3 A. No.

4 Q. Did you tell him to get out of the car?

5 A. Well, he asked for money.

6 Q. Okay.

7 A. Or he demanded money and then gets out of the
8 car.

9 Q. Did you force him to get out of the car?

10 A. I did not.

11 Q. He got out of the car on his own?

12 A. Yes.

13 Q. He never threatened you while he was in the car?

14 A. No.

15 Q. When you drive off, did he try to stop you from
16 driving off?

17 A. No.

18 Q. Did he -- did he tell you don't call the cops,
19 don't tell the cops you seen me?

20 A. No.

21 Q. Did he say anything about don't tell anybody what
22 happened?

23 A. No.

24 Q. When you showed back up to the Food Lion with
25 Officer Matthews, you said that Mr. -- there was an

1 individual standing in between some patrol cars,
2 correct?

3 A. I believe so.

4 Q. Okay. And you say that you were probably
5 approximately 75 feet to a hundred feet away from them
6 at that point?

7 A. I guess so.

8 Q. Okay. And you wear glasses, correct,
9 Mr. Williams?

10 A. I wear contacts.

11 Q. Okay. Why do you wear contacts?

12 A. Because my vision is blurry if I don't.

13 Q. Are you nearsighted, farsighted?

14 A. I'm farsighted.

15 Q. Tell me what farsighted means. I forgot.

16 A. I can't see things from far away without my
17 contacts in.

18 Q. So you have difficulty seeing things far away?

19 A. If my contacts are not in.

20 Q. In fact, when you first got there, you say you
21 couldn't see anything, correct?

22 A. I was having trouble seeing him, but upon asking
23 him to move closer, I could see him clearly.

24 Q. And at this point it's dark. It's getting dark,
25 I think, correct?

1 A. Yes.

2 Q. And it's at least raining at some point in some
3 sort of way; raining, misting, something to that effect?

4 A. A little bit, yes.

5 Q. Now the police never showed you any sort of like
6 6-person photo lineup, did they?

7 A. No, they didn't.

8 Q. Okay. And I think in direct you used the term --
9 you went to the Food Lion to -- to identify Timothy
10 Cromer. Is that what you said on direct?

11 A. On the statement or in the --

12 Q. Earlier when you were questioned by Mr. Scott
13 here, I think you said you went to the Food Lion to
14 identify Timothy Cromer. Is that what you said earlier?

15 A. I'm not sure.

16 Q. You said -- you note -- you said earlier that you
17 noticed something particular about the facial shape of
18 the suspect?

19 A. Yes.

20 Q. But nowhere in your statement did you indicate
21 anything about his facial shape being remarkable to you.

22 A. I wasn't thinking about it because they already
23 had arrested him.

24 Q. They already had somebody arrested at that point?

25 A. Yes.

1 Q. So you weren't concerned anymore?

2 A. Well, I was concerned about it, but I wasn't
3 concerned about them finding him.

4 Q. Okay. Was there anything else taken from your --
5 your car that day?

6 A. I don't believe so.

7 Q. And lastly, Mr. Williams, you never saw a gun at
8 any time?

9 A. I never saw a gun.

10 **MR. O'NEIL:** I beg the Court's indulgence.

11 **THE COURT:** Sure.

12 **MR. O'NEIL:** That's all I have, Your Honor.

13 **THE COURT:** Any redirect?

14 **MR. SCOTT:** Yes, sir.

15 REDIRECT EXAMINATION

16 BY MR. SCOTT:

17 Q. Okay. Mr. Williams, just a couple of questions
18 you went over from defense. He asked you about seeing
19 his clothes a couple of times since this incident.

20 A. Yes.

21 Q. You said you have?

22 A. I have.

23 Q. When did you write that statement?

24 A. I wrote that statement the day it happened.

25 Q. And what did you say about his clothes then?

1 A. I said that it was a black jacket, red shirt and
2 black pants.

3 Q. Okay. And he asked you that specific shirt, how
4 can you be sure it's his?

5 A. There's no identifying features on it. I can't
6 be sure.

7 Q. But you told them it was a red shirt at the time?

8 A. Yes, I did.

9 Q. Let me ask you. What were you focussed on when
10 he was sitting beside you taking about that gun in his
11 pocket?

12 A. His hands and his face.

13 Q. How close were you to him when you were looking
14 at his face?

15 A. I was no more than two feet away.

16 Q. Tell me again where did you drop Timothy Cromer
17 off that day after he jumped in your car.

18 A. The Food Lion on -- I can't remember the name of
19 the road now.

20 Q. You said Kendall before.

21 A. Kendall Road. That's it.

22 Q. Are you nervous today?

23 A. Sir?

24 Q. Are you nervous today?

25 A. I am.

1 Q. Where did y'all go back to when law enforcement
2 asked you to ID that fella they arrested?

3 A. The Food Lion on Kendall Road.

4 Q. How much time had passed?

5 A. No more than an hour.

6 Q. Let me just ask you. Any doubt in your mind the
7 person they arrested wasn't the same guy in the car with
8 you?

9 A. No doubt at all.

10 Q. I'll ask you again. Will you ever forget that
11 face?

12 A. No.

13 Q. Now you're in high school right now?

14 A. Yes, sir.

15 Q. There's a number of ways we can term somebody
16 requesting something; is there not?

17 A. Yes.

18 Q. You can ask for something, we can demand
19 something.

20 A. Yes.

21 Q. You can tell somebody we want something.

22 A. Yes, sir.

23 Q. What was Mr. Cromer doing that day?

24 A. He was telling me to give him stuff, demanding
25 essentially.

1 Q. We're getting into semantics here, and I agree,
2 but tell this jury right now what happened that day.
3 Was it a friendly request for a ride?

4 A. It was not friendly. He made me very, very
5 scared for my life.

6 Q. Was it a friendly request to see a gun?

7 A. No, it was not friendly.

8 Q. And what effect did it have on you when he was
9 doing that?

10 A. He made me very, very scared.

11 Q. And how old are you?

12 A. I'm 17, but I was 16 at the time.

13 Q. How big a guy are you?

14 A. I'm very skinny. I'm tall, but I'm skinny.

15 Q. Did you feel the desire to fight this man back?

16 A. Not at all.

17 Q. Did you feel the desire to kick him out of your
18 car?

19 A. Not at all.

20 Q. When the lawyer asked, you said all you were
21 doing was hugging and talking about candy bars. That
22 sounds pretty nice.

23 A. Yeah.

24 Q. Is that how it happened?

25 A. No.

1 Q. I've asked you many times, do you see the man's
2 face you looked at that day who was talking at the Spinx
3 and demanded you give him a ride?

4 A. Yes, sir, he's right over there.

5 Q. That's the same person who demanded the money
6 from you?

7 A. Yes, sir.

8 Q. Any question in your mind that it was a demand or
9 that it was a simple polite request?

10 A. It was a demand.

11 **MR. SCOTT:** Thank you.

12 **RECROSS EXAMINATION**

13 **BY MR. O'NEIL:**

14 Q. Mr. Williams, you said that Mr. Cromer made you
15 scared for your life?

16 A. Yes, sir.

17 Q. And then when it relates to the gun, there was
18 never threat to use a gun on you, was there?

19 A. There was no threat, but it was implied.

20 Q. Okay. The only thing that was said was do you
21 want to hold -- hold my gun, correct?

22 A. Yes.

23 Q. So other than that, what else made you scared for
24 your life?

25 A. The fact that he's two or three times larger than

1 me.

2 Q. Okay. Had he done anything threatening to you?

3 A. Besides from aggressively hugging me, no.

4 Q. He aggress -- how did he aggressively hug you?

5 A. Like walk up to somebody and just hug them
6 without asking them if they want to hug you first.

7 Q. But he was talking to you as if y'all were
8 long-lost friends, correct?

9 A. I suppose.

10 Q. Those were your words.

11 A. Yes, it was.

12 Q. And you said that you didn't feel like you could
13 fight back against the individual that was in the car
14 with you that day?

15 A. I could not.

16 Q. Well, what sort of -- how was the individual in
17 the car fighting with you? What were they doing
18 fighting with you?

19 A. He was not fighting with me. I felt like if I
20 started a fight with him I would lose.

21 Q. Did he do anything aggressive towards you? Did
22 he try to hit you, did he try to slap you, did he try to
23 grab you?

24 A. No.

25 **MR. O'NEIL:** That's all I have, Your Honor.

1 **THE COURT:** Okay. Is that it?

2 **MR. SCOTT:** That's all.

3 **THE COURT:** All right. You may step down,
4 Mr. Smith {sic}.

5 (Witness excused.)

6 **MR. SCOTT:** Your Honor, the State calls Mary
7 Williams.

8 **THE COURT:** I'm sorry. I think I called the
9 young man Mr. Smith. It's Mr. Williams. Ms. Williams
10 come around and be sworn.

11 MARY WILLIAMS,
12 having been duly sworn, testified as follows:

13 **THE CLERK:** Please state your name.

14 **THE WITNESS:** Mary Williams.

15 DIRECT EXAMINATION

16 BY MR. SCOTT:

17 Q. Ms. Williams, how are you related to David
18 Williams?

19 A. He's my son.

20 Q. And how many children do you have?

21 A. Two.

22 Q. Is he the oldest, youngest?

23 A. Oldest.

24 Q. Do you remember January 16th of last year?

25 A. I do.

1 Q. Are you ever gonna forget that day?

2 A. No, I don't believe so, sir.

3 Q. Tell me what happened. How did the -- the events
4 that compelled this case forward, how did you become
5 involved with it?

6 A. My husband and I had been home for a brief time
7 from work and approximately 4:50 in the afternoon David
8 came in the front door. Upon his arrival, he -- he
9 didn't speak a word, but I knew something was wrong
10 immediately. He was shaking, he was very pale and he
11 had a look on his face that I've never seen. I -- I
12 knew immediately something was wrong.

13 Q. What do you mean he had a look on his face you'd
14 never seen?

15 A. David, he's a very calm, laid-back person. He
16 doesn't show, you know, grand joy. Like if we're going
17 on a trip or -- I don't know. He just doesn't show a
18 whole lot of expression and that day when he walked in
19 the door, he was just stark white and was shaking and
20 his face just -- I don't know. It was just -- I just
21 immediately knew. I really don't know how to describe
22 it. I just immediately knew something was wrong and I
23 immediately said David, what's wrong?

24 Q. Had you ever been in any kind of situation like
25 that with your children?

1 A. No, no. I never would have thought that we would
2 ever be in this type of situation.

3 Q. Okay. What about that feeling where you just
4 know something's wrong, something terrible's happened
5 without even having to hear from them? Had you ever had
6 that before?

7 A. Not like this, no. I mean, there are little
8 things, you know, when they're little kids and they trip
9 and you see, you know, they -- they fall or something,
10 you know they're hurt or, you know, you expect that, but
11 not just walking in the front door. Just -- he was just
12 right there and I just knew.

13 Q. Okay. You're saying this effect this had on you
14 was something more than seeing a child scrape his knee?

15 A. Yes. Yes, sir.

16 Q. What are you describing here, some kind of
17 mother's instinct or something?

18 A. I don't know. I think anybody could have seen
19 it. I don't -- I don't think it was just me. I think
20 anybody could have seen it on anybody's face. He just
21 -- he looked frightened.

22 Q. And trembling you said?

23 A. Trembling and -- and he was just very, very pale.

24 Q. And he told you what happened at that point?

25 A. He started -- he started to tell us what had

1 happened. My husband was in the room and he started
2 telling us that --

3 **MR. O'NEIL:** Objection, Your Honor; hearsay and
4 bolstering.

5 **THE COURT:** And I'll sustain the objection to
6 hearsay. Rephrase your question. She can say -- tell
7 what you saw. You understand.

8 BY MR. SCOTT:

9 Q. Without -- without saying exactly what he said,
10 he's already testified, did he tell you what happened is
11 what you're saying?

12 A. He did, and as soon as I realized how serious it
13 was, I dialed 9-1-1.

14 Q. Y'all called law enforcement immediately upon his
15 arrival and you say he arrived about 4:50?

16 A. Yes, it was approximately 4:50. And as he was
17 telling me, I was relaying it to the dispatcher.

18 Q. Okay. He's telling you, I guess, describing --

19 A. He told me what happened and described the
20 individual and I told the dispatcher exactly what he
21 told me.

22 Q. Ma'am, I guess what I -- I want to know, was
23 there any reason for him to tell you such a story?

24 A. Not at all.

25 Q. I guess what I was wondering, I mean, was there

1 any reason that he had to come up with an excuse for
2 being late or --

3 **MR. O'NEIL:** Objection, Your Honor; speculation.

4 **THE COURT:** I'm not sure he finished his
5 question.

6 BY MR. SCOTT:

7 Q. Was there any reason -- was he late that day or
8 anything?

9 A. He was not late.

10 Q. Was he on a curfew?

11 A. No, sir. He -- he just needed to be home in time
12 for supper, which I had not started at that point.

13 Q. Okay. He wasn't on restriction or anything?

14 A. No, sir.

15 Q. Okay. So to your knowledge, there was no reason
16 he would need to make up a story --

17 **MR. O'NEIL:** Objection, Your Honor; speculation.

18 **THE COURT:** I'll sustain that.

19 BY MR. SCOTT:

20 Q. So you immediately call law enforcement and then
21 David and your husband they go with the police?

22 A. Before I got off the phone with the 9-1-1
23 dispatcher, law enforcement was in our yard. They were
24 at our home before I hung up the phone and then they
25 came into our home and -- the two officers came into our

1 home and David, again, told them what had happened.

2 Q. Okay.

3 A. And, yes, to answer your question, then they went
4 in their car to ID the guy.

5 Q. What effect has this whole January 16th had on
6 your family?

7 A. It's been very difficult. Every time David walks
8 out the door, I'm terrified something's gonna happen
9 like this again. So he leaves, like any 17-year-old
10 child would do. He wants to go with his friends, so I
11 text him and find out where he is and he texts me and we
12 do this a lot through the day. If he doesn't respond in
13 five or ten minutes, I'm -- I'm very anxious because I
14 don't know if it's happened again, and it scares me.
15 He's supposed to go to college in the fall. It's hard
16 enough, you know, with your child going to college, but
17 this is gonna be really, really difficult.

18 Q. Did you know Timothy Cromer before that?

19 A. No, sir.

20 Q. Did your family know him?

21 A. Not to my knowledge.

22 **MR. SCOTT:** Thank you. Answer any questions
23 Mr. O'Neil has for you.

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

25 **MR. O'NEIL:** I don't have any questions of this

1 witness, Your Honor.

2 **THE COURT:** All right. You may step down, Ms.
3 Williams.

4 (Witness excused.)

5 **MR. DANIEL:** Your Honor, the State calls James
6 Williams.

7 **THE COURT:** Mr. Williams, please come around and
8 be sworn.

9 JAMES BLAIR WILLIAMS,
10 having been duly sworn, testified as follows:

11 **THE CLERK:** Please state your name.

12 **THE WITNESS:** James Blair Williams.

13 DIRECT EXAMINATION

14 BY MR. DANIEL:

15 Q. Mr. Williams, do you go by James?

16 A. Blair.

17 Q. Right, you go Blair. What do you do for a
18 living?

19 A. I'm an engineer for a local company in Newberry.

20 Q. And where do you live?

21 A. I live on Reid Street in Newberry, city limits.

22 Q. Are you married?

23 A. Yes, I am.

24 Q. Was that your wife that just testified?

25 A. Yes, it was.

1 Q. How many children do you have?

2 A. Two. David, and we have a younger son as well.

3 Q. And your son is David Williams?

4 A. Yes, it is.

5 Q. And is that the reason why you're here today?

6 A. Absolutely.

7 Q. Do you recall the events of January 16th last
8 year?

9 A. Yes, sir.

10 Q. Okay. Had you gone to work that day?

11 A. Yes.

12 Q. And one more time, where is your place of
13 employment?

14 A. My place of employment is out 76, Metal Masters.
15 On Highway 76 in Newberry. Or just outside Newberry.

16 Q. Okay. So you'd gone to work that day. What time
17 did you leave the office?

18 A. I normally leave around 4:30.

19 Q. And did you leave around 4:30 on January 16th?

20 A. I believe so, yes, sir.

21 Q. Did you -- did you see your son, David, at any
22 point while in transit?

23 A. I did. I did. On my way home, I passed him on
24 College Street just in front of the Dollar General. He
25 was -- he was headed away from town and I was headed

1 into town.

2 Q. And what kind of vehicle does your son drive?

3 A. He drives a white Toyota Corolla.

4 Q. Okay. Was he alone?

5 A. I couldn't tell. I mean, I really couldn't tell
6 at the time, but there appeared to be somebody in the --
7 in the car with him.

8 Q. And you said this was around 5:00?

9 A. No, if -- if I left at 4:30, it would have been
10 between 4:30, 4:45 maybe, somewhere around there.

11 Q. Okay. After you passed David you said around the
12 Dollar General --

13 A. Yes.

14 Q. -- did you go home at that point?

15 A. Yes, I did. Straight home.

16 Q. About what time did you see your son that night
17 -- that evening?

18 A. When he got back to the house?

19 Q. Yes, sir.

20 A. It would have been just a few minutes after that.
21 Probably closer to five, maybe ten till five, something
22 like that.

23 Q. Safe to say around 5:00 p.m. --

24 A. Yeah, around five p.m.

25 Q. -- your son comes back home?

1 A. Yeah.

2 Q. At that point, tell me what happened when David
3 walked in.

4 A. Well, when he walked in, it was like as my wife
5 said earlier. David is usually a fairly laid-back kid
6 and when he walked in the door that day immediately as
7 soon as he opened the door you could see that something
8 was wrong. He was shaking, he was trying to get his
9 words together. He was visibly upset.

10 Q. What kind of personality or demeanor -- what is
11 your son typically like? Is he introverted, outgoing?

12 A. I guess you could say David's a little bit of an
13 introvert.

14 Q. You but said he looked --

15 A. He was very, very shaken and white when he came
16 in the door that day. It's very unusual for David.

17 Q. Did David inform you why he looked this way?

18 A. Yes, soon after that, you know, his mother came
19 in. His mother immediately with her motherly instincts
20 ran up to him to ask him what's wrong and that's when he
21 related to her what had happened.

22 Q. Were you made aware of what had happened prior to
23 David coming home?

24 A. No.

25 Q. Was law enforcement contacted as a result of your

1 son looking this way?

2 A. Yeah, absolutely. As soon as -- as soon as David
3 started telling his mother what had happened, she
4 immediately dialed 9-1-1. Within a minute of the
5 conversation.

6 Q. Did an officer arrive at your home?

7 A. Yes, just a few minutes later.

8 Q. Do you recall which officers or how many?

9 A. There was one officer arrived first, whose name
10 escapes me, and then Officer Wood arrived after.

11 Q. Okay. And David informed the officers what had
12 just happened to him at that point?

13 A. Yes, he did. He gave a description of the man.

14 Q. Was it a detailed description?

15 A. I felt it was fairly detailed. It was detailed
16 enough for them to find him at the Food Lion.

17 Q. So were you present while the officers
18 interviewed your son?

19 A. Yes.

20 Q. Okay. And about what time would you say the
21 officers were there, first arrived?

22 A. Maybe five till five, somewhere around in there.

23 Q. Did you hear officers relay this information over
24 their radio?

25 A. I was aware of the fact that they were doing

1 that, yeah.

2 Q. Were you informed subsequent to that that the
3 officers had a suspect?

4 A. Before all that?

5 Q. No, after your son gave --

6 A. Yeah, shortly after we started relaying the
7 information to the police officers, I -- I believe some
8 chatter came over the radio that they had apprehended
9 someone who fit that description in the Food Lion
10 parking lot.

11 Q. Okay. What happened then after you were informed
12 of that?

13 A. After we were informed of that, we were asked --
14 my son, David, and I were asked if we would be willing
15 to ride along to see if the person they had apprehended
16 was the guy that had -- had kidnapped and robbed David.

17 Q. So you accompanied officers out to the --

18 A. To the Food Lion parking lot on Kendall Road,
19 yes, sir.

20 Q. And to your knowledge, was Food Lion the last
21 location your son saw this individual?

22 A. Yes. That's what he told us, yes, sir.

23 Q. So you rode out there with -- do you recall which
24 officer you rode out there with?

25 A. Officer Wood.

1 Q. About how long does it take to get from the Food
2 Lion from your home?

3 A. Maybe three or four minutes if you miss the
4 light..

5 Q. When you arrived at the Food Lion, what did you
6 observe?

7 A. Well, we -- we pulled up into the parking lot off
8 of Kendall Road, pulling straight in towards the store
9 itself coming down the parking lot, if you're familiar
10 with it. We pulled into the side and the officers had
11 someone apprehended or someone, you know, with them
12 right there. There were several police officers around
13 and some folks moving around down there and David was
14 asked if he could make out the guy that got in the car
15 with him and David asked the officer to pull a little
16 bit closer so he could be sure and when he did David was
17 certain that the guy that they had down there was him,
18 the man who jumped in the car with him.

19 Q. Approximately how many feet were you from this
20 suspect they detained?

21 A. Maybe -- like I said, maybe between 75 and a
22 hundred feet, if it was that much.

23 Q. Now you heard David give a description of this
24 individual?

25 A. Yes.

1 Q. Now the individual that you saw detained at the
2 Food Lion, was that description accurate?

3 A. Based on the description that I heard David give
4 the police, it was absolutely accurate. I -- I could
5 have picked him out and I wasn't there, so.

6 Q. I'll show you what's been admitted into evidence
7 as State's Number 1. Do you recognize this?

8 A. Just that it's a jacket -- it appears to be the
9 type jacket that the individual was wearing.

10 Q. The individual that was detained at the Food
11 Lion?

12 A. Yes, sir.

13 Q. Is that the same individual that your son pointed
14 out?

15 A. Yes, it is.

16 Q. I'm gonna hand you what's been admitted into
17 evidence as State's Number 2. Do you recognize this?

18 A. It's a red shirt and the suspect was wearing a
19 red shirt, yes, sir.

20 Q. Okay. Same as the jacket, this is what the
21 individual was wearing?

22 A. Yes, sir.

23 Q. At that point, you said David informed the
24 officers that that was the man --

25 A. Yes.

1 Q. -- he encountered?

2 A. Yes.

3 Q. Did you leave that location then?

4 A. Yes, I believe after that we left the location
5 and soon after went to the police station to fill out a
6 -- a written report.

7 Q. So right after leaving the Food Lion parking lot
8 you head to the police station?

9 A. I believe. I'm not sure if we came back home or
10 if we went straight to the police station. It was just
11 a matter of minutes after he made the identification.

12 Q. And what else did David have to provide officers
13 that evening?

14 A. Just his written statement.

15 Q. Do you know about what time David gave that
16 statement to police?

17 A. Well, the whole incident took less than an hour,
18 so, I mean, it couldn't have been but just a few minutes
19 after that.

20 Q. From the time -- to your knowledge, from the time
21 this incident occurred with David and this individual to
22 the time that David gives the statement, about what time
23 range was it?

24 A. Roughly an hour.

25 Q. So all of this takes place within an hour?

1 A. Yeah, I would say so.

2 Q. An hour window or so?

3 A. I really wasn't keeping track of time, but it
4 wasn't -- it couldn't have been more than an hour.

5 Q. Your son, David, how old is he right now?

6 A. He's 17.

7 Q. Is he a junior, senior?

8 A. He's a senior in high school, yes, sir.

9 Q. Any extracurricular's?

10 A. He's very active in music and he has his hobbies
11 that he likes.

12 Q. Does he work anywhere?

13 A. He does work. He works at the local hardware
14 store, C.T. Summer.

15 Q. Is he familiar with firearms?

16 A. Not really, no. We don't really -- actively
17 shoot firearms in the household.

18 Q. Has David ever fired a gun?

19 A. I believe he has, yes, sir.

20 Q. Firearms is not something he's accustomed to?

21 A. Not necessarily, no. He doesn't hunt or anything
22 like that, so.

23 MR. DANIEL: I beg the Court's indulgence. Thank
24 you. Please answer any questions Mr. O'Neil has.

25 CROSS-EXAMINATION

1 BY MR. O'NEIL:

2 Q. Mr. Williams, when you and your son show up for
3 this -- well, let me phrase it this way. When you and
4 your son was brought to the Food Lion, there was only
5 one individual that was in the middle of the police
6 cars, correct?

7 A. Yes, I believe that's the case.

8 Q. When I say one individual, one non-law
9 enforcement individual?

10 A. There were a few -- I think there were few
11 civilians milling around in the background, but I think
12 he was the only one right up there with law enforcement.

13 Q. But they're in the background?

14 A. Yes, sir.

15 Q. There's one individual in between two police cars
16 with law -- law enforcement around?

17 A. I don't know if there was -- if he was between
18 two police cars, but, yeah, he was there with law
19 enforcement.

20 Q. And you used the term on direct that you could
21 have picked him out and you weren't even there?

22 A. Absolutely.

23 Q. Did you have anybody else in front of the police
24 cars to choose from other than the one individual?

25 A. No, sir.

1 Q. Okay. Now you drove by, you passed your son in
2 front of the Dollar General, you didn't notice anything
3 wrong?

4 A. No. No.

5 Q. Nothing out of the ordinary?

6 A. Nothing appeared to be out of the ordinary, no,
7 sir.

8 Q. Nothing caught your attention?

9 A. It was unusual that David would be going down
10 Kendall Road. I remember remarking to my wife when I
11 got home that I wondered where he was going because I
12 couldn't recall any of his friends that lived down on
13 that side of town, so.

14 Q. But there was nothing unusual enough for you to
15 call him or try to flag him down to figure out what was
16 going on?

17 A. No, sir.

18 Q. Now you say you heard the radio chatter from
19 Officer Wood while y'all were in the home?

20 A. I seem to remember -- I mean, yeah, there was
21 radio chatter in the background.

22 Q. I want to make sure I'm correct on -- you said on
23 direct you heard radio chatter from Officer Wood's radio
24 while you were in the home, correct?

25 A. Yes.

1 Q. And you were not at the Spinx when all this
2 occurred?

3 A. No, sir.

4 Q. And you weren't in the car with Mr. Williams when
5 all this occurred either?

6 A. No, sir.

7 Q. You don't have any personal knowledge as to what
8 happened at the Spinx?

9 A. No, sir.

10 Q. You don't have any personal knowledge as to what
11 happened in the car?

12 A. No, sir.

13 **MR. O'NEIL:** That's all I have, Your Honor.

14 **THE COURT:** Any redirect?

15 **MR. DANIEL:** No, Your Honor.

16 **THE COURT:** All right. You may step down.

17 (Witness excused.)

18 **MR. SCOTT:** We call Ryan Matthews, Your Honor.

19 CORPORAL TERRANCE RYAN MATTHEWS,
20 having been duly sworn, testified as follows:

21 **THE WITNESS:** Terrance Ryan Matthews.

22 DIRECT EXAMINATION

23 BY MR. SCOTT:

24 Q. Ryan, what's your rank?

25 A. I'm a corporal.

1 Q. Corporal Matthews, you're with the City?

2 A. Yes, sir.

3 Q. How long have you been with the police
4 department?

5 A. Approximately three years.

6 Q. Okay. Any other law enforcement experience
7 before coming to Newberry?

8 A. No, sir.

9 Q. What are your duties?

10 A. We do standard patrol action, traffic safety,
11 threats in the city, answer any 9-1-1 calls of service.

12 Q. Do you recall a 9-1-1 request for service
13 January 16th of last year?

14 A. Yes, sir, I do.

15 Q. Specifically one that stemmed from the incident
16 that originated at the Spinx gas station?

17 A. Yes, sir.

18 Q. It's that Spinx on College Street, is that where
19 it is?

20 A. Yes, sir, that's correct.

21 Q. Is that Newberry County?

22 A. Yes, sir. It's within the county and also within
23 the city limits.

24 Q. Okay. Let me show you -- let me show you Number
25 6. That's the Spinx you were talking about?

1 A. Yes, sir.

2 Q. In regards to that call, where did you respond?

3 A. We responded to the complaintant's address on
4 Reid Street.

5 Q. Do you remember about what time it was?

6 A. Approximately 4:50 in the afternoon.

7 Q. Okay. Who did you meet there?

8 A. We met with the complainant, who is Mr. Williams'
9 mother, along with Mr. Williams and his father.

10 Q. And what kind of crime were you investigating
11 after speaking with them?

12 A. After with speaking to them, we were
13 investigating an armed robbery and kidnapping crime.

14 Q. Who did you speak with when you arrived at the
15 residence?

16 A. When we arrived at the residence, we spoke
17 with Ms. Williams first since she was the initial
18 complainant, and then after speaking with her, we sat
19 down with Mr. Williams and Mr. Williams' father in
20 their living room to speak of the incident and what had
21 occurred.

22 Q. Were you given a description?

23 A. Yes, sir, we were given a description both
24 through dispatch over the radio and then they gave an
25 additional description once we arrived on scene that we

1 also gave out.

2 Q. Now did David Williams -- I guess that's the
3 victim.

4 A. That's correct.

5 Q. The son -- you said you spoke with the son, the
6 mother and the father?

7 A. That's correct.

8 Q. Okay. And David Williams is this fella here?

9 A. Yes, sir.

10 Q. And how did he appear when you went to his home?

11 A. When we arrived, he was sitting on the couch with
12 his father. He appeared very pale and shaking, wasn't
13 saying much. He seemed very disturbed in the incident.
14 We had to speak with his mother and father first over
15 the incident before we asked him what had occurred.

16 Q. All right. And after you'd gotten this
17 description, then you said you contacted dispatch or
18 what did you do after speaking with them?

19 A. What's normally done, since I'm the primary
20 officer, we gave a secondary description of the
21 gentleman, which was just a repeat of what dispatch had
22 given over the radio, out to our law enforcement that
23 were in the area.

24 Q. All right. And what happened next?

25 A. We were informed by Corporal Loynes, who was in

1 the area searching for the individual matching the
2 description, that he had encountered the individual
3 later identified as Timothy Cromer at the Food Lion on
4 Kendall Road and had identified him by the clothing
5 description that was given.

6 Q. How soon did that call come in?

7 A. I would say within five minutes he was found and
8 identified.

9 Q. You say you were -- you said about 4:50 you made
10 contact with the victim?

11 A. Yes, sir.

12 Q. And around five or so is when you get the call
13 that somebody had been arrested or taken into detention?

14 A. Yes, sir, he was just verbally detained at that
15 time.

16 Q. Okay. Was that pending further investigation?

17 A. That's correct.

18 Q. And what was the further investigation?

19 A. The further investigation, after speaking with
20 the Williams family, Mr. Williams and his father
21 travelled along with Officer Wood in his patrol vehicle
22 to the scene on Kendall Road and identified Mr. Cromer
23 independently.

24 Q. Okay. Did you go back to the scene, the Food
25 Lion out there on Kendall?

1 A. That's correct.

2 Q. How far away is that from the residence?

3 A. From the residence on Reid Street I'd say less
4 than three minutes.

5 Q. Three minutes?

6 A. (Nods head.)

7 Q. Did you respond to the Food Lion?

8 A. Yes, sir, I did. Once Mr. Cromer was identified,
9 since I'm the primary officer on the case, I placed him
10 under arrest and transported him to the detention
11 center.

12 Q. Okay. So who was it that you observed that they
13 had stopped at the Food Lion?

14 A. The subject that I observed was Mr. Timothy
15 Cromer.

16 Q. Do you see him here in the courtroom today?

17 A. Yes, sir. He's currently sitting with the
18 defense in the black shirt.

19 Q. That's definitely the person that was there at
20 the Food Lion?

21 A. Yes, sir.

22 Q. And what was he wearing?

23 A. At the time, he was wearing a black jacket, red
24 shirt and blue jeans.

25 Q. Okay. State's 1, do you recognize this?

1 A. Yes, sir.

2 Q. What is that?

3 A. The black jacket with the gold emblem that
4 Mr. Williams described.

5 Q. Okay. Did you see it that night?

6 A. Yes, sir. Well, it was daytime, approximately
7 5:00, the sun was still out, and the parking lot was
8 very well-lit.

9 Q. When I say that day, I'm talking about
10 January 16th.

11 A. Yes, sir.

12 Q. And where did you see it?

13 A. On Mr. Cromer's person.

14 Q. This is the jacket he was wearing?

15 A. That's correct.

16 Q. State's Number 2, did you see this on
17 January 16th?

18 A. Yes, sir.

19 Q. Where did you see this?

20 A. On Mr. Cromer's person.

21 Q. State's Number 3, what are these?

22 A. They're his blue jean pants.

23 Q. Those are what he was wearing that day?

24 A. That's correct, sir.

25 Q. Were you involved with the search of Mr. Timothy

1 Cromer?

2 A. At the time, due to the Food Lion on Kendall Road
3 being a county business, the County was conducting the
4 search of his person incident to arrest due to the
5 arrest time and location, and Lieutenant Floyd with the
6 County was the one who actually searched his person
7 before he was placed inside my patrol vehicle.

8 Q. Okay. Were you there to observe the search?

9 A. Yes, sir.

10 Q. There was discussion of money earlier. Did you
11 have any knowledge of any money?

12 A. Yes, sir. At the time, once he had explained the
13 story, explained what all had occurred between him and
14 Mr. Cromer and the five dollars had been given, he said
15 that he had given him four ones and four quarters, and
16 approximately \$8.20 was found on Mr. Cromer's person,
17 which was collected and placed into evidence.

18 Q. Okay. And then that was turned over to you?

19 A. That's correct.

20 Q. And you observed this being taken off of
21 Mr. Cromer?

22 A. That's correct.

23 (State's Exhibit Number 7 was marked for
24 identification.)

25 BY MR. SCOTT:

1 Q. Let me show you State's Number 7. What is that?

2 A. This is the \$8.20 that was collected from his
3 person, as well as the evidence log and tracking sheet.

4 Q. Okay. Did you ever find a gun on him?

5 A. No, sir.

6 Q. And where was that money found?

7 A. The money was found, I believe, in his left front
8 pocket on his person.

9 Q. What was the breakdown? You said \$8.20?

10 A. The breakdown, according to the evidence log that
11 was filed, six-one dollar bills, one dollar and fifty
12 cents in quarters, fifty cents in dimes, five cents in
13 nickels and approximately fifteen cents in pennies.

14 Q. Okay. So there were at least four ones and
15 four quarters in there?

16 A. That's correct.

17 Q. And what was it that David Williams claimed was
18 taken from him?

19 A. Four-one dollar bills and four quarters totalling
20 \$5.00.

21 Q. I think you mentioned it, but what's the
22 jurisdiction of the Food Lion? That's in Newberry
23 County, too?

24 A. That's correct, sir.

25 **MR. SCOTT:** Please answer any questions

1 Mr. O'Neil has for you.

2 CROSS-EXAMINATION

3 BY MR. O'NEIL:

4 Q. Is it Sergeant Matthews?

5 A. It's corporal.

6 Q. Corporal?

7 A. Yes, sir.

8 Q. What time did you say that you arrived at the
9 Williams residence?

10 A. Approximately 4:50 in the afternoon.

11 Q. 4:50 you say?

12 A. Yes, sir.

13 Q. You generated an incident report in this case?

14 A. That's correct.

15 Q. Does your incident report tell you what time you
16 were dispatched to the incident location?

17 A. Yes, sir, it does.

18 Q. What time were you dispatched to the incident
19 location?

20 A. I believe the dispatch time was also right at
21 4:50, possibly 4:48.

22 Q. If you were to see your actual incident report,
23 would that refresh your memory as to what time you
24 actually got there?

25 A. Yes, sir, it would.

1 **MR. O'NEIL:** Okay. Permission to approach, Your
2 Honor?

3 **THE COURT:** Sure.

4 BY MR. O'NEIL:

5 Q. So, Corporal Matthews, what time did you get to
6 the Williams residence?

7 A. According to the report, it was 5:08 in the
8 afternoon.

9 Q. So it was about eighteen minutes after you
10 thought you got there?

11 A. That's correct.

12 Q. Who was the supervisor at that point?

13 A. The supervisor on scene was Sergeant Wood.

14 Q. Do you remember hearing Captain Atkins come over
15 the radio?

16 A. I believe so.

17 Q. You said on direct that you said the suspect was
18 later identified as Timothy Cromer, correct?

19 A. That's correct.

20 Q. But Sergeant -- I'm sorry, Captain Atkins over
21 the radio dispatch had already identified the suspect as
22 Timothy Cromer, correct?

23 A. I'm unsure.

24 Q. Captain Atkins didn't state over the radio that
25 he thought the suspect was Timothy Cromer before you

1 even got out to the Food Lion?

2 **MR. O'NEIL:** Hearsay, Your Honor.

3 **THE COURT:** Rephrase your question.

4 **MR. O'NEIL:** Okay.

5 BY MR. O'NEIL:

6 Q. Did you have any indication as to who the suspect
7 was before you got out to the Food Lion?

8 A. No, sir.

9 Q. You weren't given a name of a suspect before you
10 got to the Food Lion?

11 A. Before we arrived on the Food Lion scene, the
12 subject had been identified. A name had come over the
13 radio from Corporal Loynes, but at the time of arrival
14 on scene on Reid Street, I was unaware of Mr. Cromer's
15 identity.

16 Q. So you weren't listening to the dispatch on your
17 radio?

18 A. Yes, sir, I was.

19 Q. But you weren't the supervisor, it was Loynes
20 that was -- it was Wood who was the supervisor?

21 A. That's correct.

22 Q. And you said that you're certain Mr. Cromer was
23 searched before he was placed in your patrol car?

24 A. That's correct.

25 Q. And there was no firearm on Mr. Cromer when you

1 searched him?

2 A. That's correct.

3 Q. And you got out to the Food Lion within minutes
4 of this crime being reported to dispatch?

5 A. That's correct.

6 Q. Was the Food Lion area searched for a firearm?

7 A. I'm unsure.

8 Q. That would have been something that you might
9 have wanted done? If there's an allegation of a firearm
10 being involved, you'd want to search the scene where the
11 suspect was apprehended to see if you find and recover a
12 firearm, correct?

13 A. Yes, sir.

14 Q. You don't want a firearm just floating around
15 there in the Food Lion shopping center, would you?

16 A. That's correct.

17 Q. So to your knowledge there was no firearm found
18 on Mr. Cromer's person or anywhere out in the Food Lion?

19 A. Yes, sir, to my knowledge no firearm was found.

20 Q. I think the only thing that was found on
21 Mr. Cromer was some marijuana?

22 A. That's correct.

23 Q. And \$8.20?

24 A. That's correct.

25 Q. And that was -- you said it was at least four

1 dollars and four quarters, but there were actually six
2 ones and six quarters and some other loose change as
3 well?

4 A. That's correct.

5 Q. What's next to the Food Lion?

6 A. The Food Lion is a small shopping complex. It
7 contains a liquor store, a laundromat and a Chinese food
8 restaurant, as well as a barber shop.

9 Q. Is that a coin-operated laundromat?

10 A. I believe so.

11 Q. So it would be fair to say that probably people
12 out there utilizing the laundromat would have four
13 quarters -- quarters on them to a certain extent?

14 A. That's correct.

15 Q. So there could have been other people out there
16 with quarters on them as well?

17 A. That's correct.

18 Q. It's not unusual to have singles and quarters
19 near a laundromat?

20 A. I would assume so.

21 Q. Was anybody else searched out there to see
22 whether or not they had any ones on them or quarters on
23 them?

24 A. Not to my knowledge.

25 Q. Mr. Cromer was the only individual that was shown

1 to David Williams?

2 A. That's correct, because he matched the clothing
3 description provided.

4 Q. Were there any other black males out there that
5 night?

6 A. Not that I'm aware of.

7 Q. No other black males out there at all?

8 A. I'm unsure at the time.

9 Q. And you searched your car after Mr. Cromer got
10 out of your car?

11 A. That's correct. It's part of procedure to search
12 the rear of my vehicle both before and after transport
13 to make sure no contraband is found.

14 Q. You didn't find any guns stuffed under your seat?

15 A. No, sir.

16 Q. No firearms found in your vehicle?

17 A. No, sir. Not a thing.

18 **MR. O'NEIL:** That's all I have, Your Honor.

19 **THE COURT:** Redirect?

20 **MR. SCOTT:** Your Honor, I can't recall if I
21 admitted State's Number 7 for admission, but I would
22 offer it for admission now, if I have not.

23 **THE COURT:** Any objection?

24 **MR. O'NEIL:** No.

25 **THE COURT:** All right. State's 7 is admitted

1 without objection.

2 (State's Exhibit Number 7, \$8.20, evidence log
3 and tracking sheet, were admitted into evidence.)

4 REDIRECT EXAMINATION

5 BY MR. SCOTT:

6 Q. Okay. State's 7, six one's, six quarters, five
7 times, one nickel and fifteen pennies?

8 A. That's correct.

9 Q. \$8.20?

10 A. Yes, sir.

11 Q. Within all that money there was certainly four
12 ones and four quarters, correct?

13 A. Yes, sir.

14 Q. Okay. Did Timothy Cromer have any laundry with
15 him?

16 A. No, sir.

17 Q. Did he appear to be doing his laundry to you?

18 A. No, sir.

19 Q. To your knowledge, did anyone else there at the
20 Food Lion match the description given?

21 A. No, sir. From what I can remember of the area
22 and from the other officers who had arrived on scene
23 before us, no other persons were found matching that
24 clothing description.

25 Q. Okay. But you didn't see anybody with dark pants

1 or black pants, a black jacket with an emblem or a red
2 shirt?

3 A. No, sir.

4 **MR. SCOTT:** Thank you.

5 RECROSS EXAMINATION

6 BY MR. O'NEIL:

7 Q. Corporal, you didn't do -- you didn't do the
8 actual search that day at the Food Lion, correct?

9 A. That's correct.

10 Q. By the time you got to the Food Lion, Mr. Cromer
11 was already detained?

12 A. That's correct.

13 Q. So you don't know who was in the laundromat, you
14 don't know who was in the barber shop, you don't who was
15 in the Food Lion?

16 A. That's correct.

17 Q. You didn't go in and search it for anybody?

18 A. No, sir.

19 Q. That was all done before you got there?

20 A. That's correct.

21 Q. So you don't know if anybody -- you don't know
22 whether or not somebody could have been in there that
23 matched the description as well?

24 A. No, sir.

25 Q. Because you didn't -- you didn't do the search?

1 A. That's correct.

2 Q. Now the money that was found on Mr. Cromer, was
3 that tested for any sort of forensics?

4 A. I'm unaware if it was tested or not.

5 Q. Was there any fingerprint test done on it or any
6 DNA to link it in any way to Mr. Williams?

7 A. I'm unaware of that. That is the -- our
8 investigators do the majority of that, not myself, so
9 I'm not aware if any testing was done.

10 Q. Who actually collected the -- the monetary
11 evidence?

12 A. The -- the evidence was collected on scene from
13 -- excuse me, from the detention center by Major Loynes
14 and it was then transferred to myself and I then
15 transferred it into our evidence bin.

16 Q. Who had the ability to request forensic testing?
17 Was it you or the investigator? Who does that at your
18 department?

19 A. Anyone from our sergeant level and onward can
20 request that.

21 Q. So you could have requested it?

22 A. No, sir. It was for my on scene sergeant who was
23 the on scene supervisor. He could request it.

24 Q. That would have been Sergeant Wood?

25 A. That's correct.

1 **MR. O'NEIL:** That's all I have.

2 **THE COURT:** All right. You may step down.

3 (Witness excused.)

4 **THE COURT:** Mr. Scott, let's take a -- it's
5 almost 4:00. Let's take about ten minutes and then
6 we'll see where we stand and finish up for the day after
7 this break.

8 **MR. SCOTT:** Yes, sir.

9 **THE COURT:** All right. Y'all step in the jury
10 room. You may not begin discussing the case. You can
11 have a few minutes and we'll have you back out here in a
12 moment.

13 (The jury retires to the jury room.)

14 (Recess taken.)

15 **BAILIFF:** All rise.

16 **THE COURT:** Y'all be seated. All right. State,
17 three more witnesses?

18 **MR. SCOTT:** Yes, sir.

19 **THE COURT:** Where's Captain Atkins?

20 **MR. SCOTT:** He's on the phone.

21 **THE COURT:** Do you need him?

22 **MR. SCOTT:** No, the next one will be Mike Wood.

23 **THE COURT:** All right. Bring the jury in,
24 please, Ms. Wardlaw.

25 (The jury returns to the courtroom.)

1 **THE COURT:** All right. Mr. Scott.

2 **MR. SCOTT:** Thank you, Your Honor. The State
3 calls Michael Wood.

4 SERGEANT MICHAEL WOOD,
5 having been duly sworn, testified as follows:

6 **THE CLERK:** Have a seat and state your name.

7 **THE WITNESS:** My name is Sergeant Michael Wood.

8 DIRECT EXAMINATION

9 BY MR. SCOTT:

10 Q. Sergeant Wood, this case, how did you become
11 involved with it?

12 A. It was January 16, 2013. A call had been given
13 out by dispatch and Corporal Matthews had responded as
14 the primary officer and I responded to assist him being
15 his supervisor.

16 Q. Okay. What are your duties as supervisor of the
17 police department?

18 A. My general function is the same as a regular
19 patrolman. I patrol the city of Newberry, I enforce
20 traffic, state laws, federal laws, respond to calls for
21 service. I also assist people that I work with to make
22 sure that they're following proper procedure and
23 guidelines.

24 Q. Okay. So Matthews was the first to arrive.
25 Where did he respond to again?

1 A. He responded to Reid Street, which is in the city
2 limits of Newberry, South Carolina.

3 Q. Okay. What type of complaint were you
4 investigating at the time?

5 A. A possible armed robbery and kidnapping.

6 Q. Who did you speak with once you arrived at the
7 home on Reid Street?

8 A. I spoke with the Williamses. I spoke with
9 Mr. Blair Williams and his son.

10 Q. The son being David Williams?

11 A. That's correct.

12 Q. What, if anything, did you observe about David
13 Williams?

14 A. He appeared very pale and upset.

15 Q. Can you elaborate any more? What was he doing to
16 look upset?

17 A. He just was kind of speechless at the time. We
18 were getting most of our information from Mr. Williams,
19 Mr. Blair Williams, his father, and he wasn't really
20 explaining much to us at the time. He was speechless.

21 Q. So this was something that was readily observable
22 for you?

23 A. Yes, sir.

24 Q. Okay. Once you kind of, I guess, asked what the
25 nature of the call was, what did you do next?

1 A. We spoke with the Williamses and, specifically
2 David, and obtained a description of the person that had
3 robbed and kidnapped him and then we provided that
4 description via radio to other units so that they could
5 start looking for possible suspects. We also relayed
6 the last known possible location.

7 Q. All right. Specifically what was the description
8 that you relayed?

9 A. It was a black male wearing a dark colored jacket
10 and dark pants.

11 Q. And do you recall anything about a shirt color?

12 A. To my knowledge, I did not remember the shirt
13 color.

14 Q. Anything else that you recall relaying as far as
15 a description?

16 A. To my knowledge, no, sir.

17 Q. Okay. And what was the last known location that
18 the person was?

19 A. The last known location would have been the old
20 Food Lion, which is off Kendall Road, which is in the
21 county.

22 Q. All right. At some point while you were at the
23 home on Reid Street, did you receive information
24 regarding, I guess, the detention of some suspect that
25 matched the description that you cast out?

1 A. Another one of our officers working shift,
2 Corporal Major Loynes, stated that he was out with a
3 person that was matching the description that we'd given
4 out that he thought might be a possible suspect and he
5 was at the Food Lion on Kendall Road in the county.

6 Q. Okay. The location that the suspect in this case
7 was last seen?

8 A. Correct.

9 Q. What did you do upon learning about this?

10 A. I asked David Williams and Blair Williams --
11 mainly I asked Blair, because David was a juvenile at
12 the time, if they would both be willing to ride with me
13 to the Food Lion to possibly identify the suspect.

14 Q. And did they agree to do so?

15 A. They did.

16 Q. And did they ride in the back of your patrol car?

17 A. They did. They rode in the back of my patrol
18 car.

19 Q. Approximately what time was it?

20 A. I responded to the house somewhere approximately
21 around five. I do not know the exact time. I know it
22 was about an hour before shift change.

23 Q. Okay. Shift change is, what, six?

24 A. 6:00.

25 Q. All right. So you proceed to the Food Lion. How

1 long did it take you to get there?

2 A. Maybe five minutes from their house.

3 Q. Okay. And what did you see when you got to the
4 Food Lion?

5 A. We pulled into the parking lot. Officers had a
6 gentleman detained. I pulled my car to a position to
7 where it was not so close that the person could see the
8 passengers in the back of my car, but close enough for
9 them to say that they could see. I positioned my car
10 kind of at an angle and then I turned and asked -- I
11 said do you see the suspect.

12 Q. And?

13 A. David replied yes.

14 Q. All right. Did he hesitate?

15 A. No, sir.

16 Q. Did he appear to be certain?

17 A. He appeared very certain.

18 Q. He answered instantly?

19 A. He answered instantly, yes, sir.

20 Q. Who did he indicate?

21 A. He indicated that Mr. Timothy Cromer, who was
22 being detained, was the person that had robbed him and
23 kidnapped him and asked him to go the Food Lion.

24 Q. The distance that your car was that you pulled it
25 up to Timothy Cromer at the Food Lion in relation to

1 this room, is there any way you can show this jury how
2 far away you were?

3 A. I would say the distance from my car from him was
4 anywhere between a hundred feet down to as low as about
5 50 feet. I did not measure it. I don't have exact
6 figures. I would say that it's longer than the distance
7 from wall to wall.

8 Q. Were you able to clearly see the person that you
9 were asking him to identify?

10 A. I was.

11 Q. As far as -- as far as conditions, were you able
12 to -- it wasn't dark, was it?

13 A. It was evening time. It was where it starts to
14 begin to get dark, but it was not -- it was not dark at
15 the time. It wasn't -- it was a slightly overcast day,
16 but you could still clearly see in the parking lot.

17 Q. About 5:00 is what you're saying on January 16th?

18 A. Yes, sir.

19 Q. Did you -- I think I already asked this. Did you
20 have any difficulty making out the features or the
21 clothing of the individual that you were asking them to
22 look at?

23 A. No, sir.

24 Q. Was their view obstructed in any way to your
25 knowledge?

1 A. No, sir.

2 Q. Did they ask you to pull up closer?

3 A. I was asked to pull up a little bit closer, which
4 I did.

5 Q. Was that before or after the identification?

6 A. It was -- when I pulled up, he said can you pull
7 up just a little bit closer and then I pulled up a
8 little bit closer.

9 Q. And then he made the identification?

10 A. Then he made the identification.

11 Q. What did you say before he did it? Did you say
12 that's they guy, -isn't-it? Did you make any kind of
13 suggestive --

14 A. I made no suggestive comments. Once we were in
15 position, I just said do you see the suspect and he
16 respond yes.

17 Q. Okay. And that was your sole involvement?

18 A. After that point, I was asked to ask the
19 Williamses, specifically Blair and David, who were
20 riding in my car, if they would go to the police
21 department to complete a written statement and which I
22 did provide them transportation to the police
23 department.

24 Q. Did you take the statement?

25 A. I was in the room during the time that the

1 statement was taken.

2 Q. Okay. All right. What --

3 MR. SCOTT: Okay. Thank you. Please answer any
4 questions Mr. O'Neil has for you.

5 CROSS-EXAMINATION

6 BY MR. O'NEIL:

7 Q. Sergeant Wood, would you say you were the
8 supervisor there that day?

9 A. I was the actual second in command of the shift.
10 The main supervisor was Lieutenant Michael Kennedy, but
11 he at the time was -- being that it was, you know, the
12 transition time between shift change, he was at the
13 police department completing paperwork that he was
14 required to do.

15 Q. Okay. I want to make sure I'm clear on this.
16 What was the description you sent out over the radio?

17 A. The description that -- that I sent out was a
18 black male wearing a dark colored jacket and pants.

19 Q. And that's it?

20 A. That was it.

21 Q. No age, no height, no weight, no color of the
22 shirt or color of the shoes, no facial description?

23 A. No, sir.

24 Q. Only a black male, dark jacket, dark pants?

25 A. No, sir, that was it.

1 Q. You said that Corporal Loynes indicated they
2 might have somebody that matched that description?

3 A. Corporal Loynes, yes, sir.

4 Q. Okay. And that description was black male, dark
5 jacket, dark pants?

6 A. Yes, sir. And I was not the only officer
7 relaying, you know, detailed information. Corporal
8 Matthews was also on scene and he gave out information,
9 but I cannot tell you exactly what he said. I can tell
10 you what I said.

11 Q. Yeah, that's what I'm concerned about. I'm
12 talking about what you said and all you said was black
13 male, dark pants, dark jacket?

14 A. That's correct.

15 Q. And you weren't -- you were not one of the
16 individuals that were out there searching the Food Lion
17 for the individual fitting that description?

18 A. No, I was not.

19 Q. Help me out a little bit, Sergeant Wood. You say
20 when you first got there that you -- you didn't pull
21 close enough to where the suspect could see the witness
22 identifying him?

23 A. At first he said no. He asked that I pull a
24 little closer.

25 Q. No, I don't think you understood my question.

1 You said you didn't pull close enough to where the
2 suspect could see who was identifying him?

3 A. I said my attempt to try to position my car in
4 such a way so that they would not be able to make a
5 clear identification of who was sitting in the back of
6 my patrol car.

7 Q. How did you do that?

8 A. Sir?

9 Q. How did you do that?

10 A. I parked my patrol car slightly at an angle and
11 attempted to keep enough distance that things could
12 still be clearly seen.

13 Q. Well, no, you said that you didn't want -- I got
14 the impression you didn't want the suspect to see who
15 was identifying him. Was I wrong about that?

16 A. That's correct. That's what I'm saying.

17 Q. What did you do to prevent the suspect to see who
18 was identifying him?

19 A. I mentioned that I attempted to park my car at a
20 distance just close enough that the people in the back
21 could make the identification and parked it at an angle.

22 Q. So how would that -- why would that not affect
23 the person who was making the identification? If the
24 suspect can't see the person making the identification,
25 wouldn't the person making the identification have

1 difficulty seeing the suspect?

2 A. I cannot testify as to what the suspect was
3 actually able to see, but a person sitting in the back
4 of my car requested that I pull a little closer until
5 the point when they said they could see, which I did,
6 and then they said they could see.

7 Q. But your attempt when you initially got there was
8 to park far enough away where the suspect couldn't look
9 into the car and figure out who was the person
10 identifying him?

11 A. Yes, sir. That was my attempt. I cannot testify
12 as to what the suspect was able to see.

13 Q. Are your windows tinted?

14 A. No, sir. Just the normal tint that is provided
15 on a stock car.

16 Q. Would you have rolled your back window down for
17 Mr. Williams to look out of?

18 A. If he'd asked me to, but I did not at the time.

19 Q. Okay. And you said it was definitely dusk time,
20 getting dark, while this was going on?

21 A. That's correct.

22 Q. And Mr. Cromer is the only individual that's out
23 there in between the patrol cars with the other law
24 enforcement officers?

25 A. That was correct.

1 Q. Nobody else that David Williams had to choose
2 from other than Mr. Cromer?

3 A. No, sir.

4 Q. David Williams was never shown any what we call
5 a six-pack lineup, six pictures of individuals?

6 A. Not to my knowledge.

7 Q. Or any six live people standing in a lineup even?

8 A. Not to my knowledge.

9 Q. Only shown Mr. Cromer?

10 A. That's correct.

11 Q. And the description you had of the suspect was a
12 dark jacket, dark pants, a black male?

13 A. That's correct.

14 Q. Do you know if there were any other individuals
15 at the Food Lion, the barbershop, the laundromat who was
16 a black male wearing a dark jacket, dark pants?

17 A. I do not know.

18 **MR. O'NEIL:** That's all I have, Your Honor.

19 **THE COURT:** Okay. Any redirect?

20 **MR. O'NEIL:** None, Your Honor.

21 **THE COURT:** You may step down, Sergeant.

22 (Witness excused.)

23 **MR. SCOTT:** Your Honor, the State calls Corporal
24 Major Loynes.

25 CORPORAL MAJOR LOYNES,

1 having been duly sworn, testified as follows:

2 **THE CLERK:** Have a seat and state our name,
3 please.

4 **THE WITNESS:** My name is Corporal Major Loynes.

5 DIRECT EXAMINATION

6 BY MR. SCOTT:

7 Q. Corporal Loynes, on January 16th of this past
8 year, were you on duty at the police department?

9 A. I was.

10 Q. Specifically around 5:00 p.m., that afternoon,
11 did you have an occasion to investigate an armed
12 robbery, kidnapping complaint that originated from that
13 Spinx gas station on College Street?

14 A. Yes, sir, I did.

15 Q. Okay. And how did you become involved in that
16 investigation?

17 A. A call was dispatched over the radio by multiple
18 -- I generally scan my radio, so I pick up County and
19 City radio, so must multiple came on, several times.

20 Q. Okay. And was a description of the suspect
21 given?

22 A. The description of the subject given was a black
23 male, red shirt, dark colored jacket and dark pants.

24 Q. That was the description you received?

25 A. (Nods head.)

1 Q. That was the description you heard on your radio?

2 A. That's right.

3 Q. And did you -- were you aware of the last known
4 location of that suspect?

5 A. Basically it came over as the old Food Lion on
6 Kendall Road.

7 Q. Okay. Is that Food Lion still operating?

8 A. No, it's not. It's been closed for about year or
9 so now.

10 Q. Okay. But was it at the time?

11 A. Sir?

12 Q. Was it at the time of this incident,
13 January 13th?

14 A. It was closed.

15 Q. Okay. All right. So where did you respond after
16 getting that description over the radio?

17 A. At first we generally searched the area around.
18 It didn't happen right away. Several minutes after we
19 heard that, there was a call from the County and
20 dispatch that there was an individual that they had in
21 custody that matched the description. I went to that
22 location and several deputies were there and I got out
23 and Mr. Cromer was there.

24 Q. Okay. And did you help detain him?

25 A. Yes, sir, I did.

1 Q. Did you look around the area for any other
2 individuals matching that description?

3 A. There were multiple deputies there, so they were
4 -- everyone was looking all over the place, checking
5 different areas.

6 Q. To your knowledge, was anyone else there found
7 that matched the description given?

8 A. There were multiple individuals in the area, but
9 none of them matched the description with the jacket,
10 the red shirt and jeans.

11 Q. All right. Okay. Were you present when -- well,
12 who was the suspect they had?

13 A. They had Mr. Timothy Cromer.

14 Q. Okay. Did you know Timothy Cromer?

15 A. I do.

16 Q. Okay. And were you present for a search of
17 Mr. Cromer?

18 A. I was.

19 Q. Were you involved with that search?

20 A. I stood by with Lieutenant Floyd while he
21 searched him.

22 Q. Do you remember what he had on him?

23 A. He had a small quantity of marijuana and in one
24 of his pockets he had some single dollar bills and some
25 coins.

1 Q. Okay. And was that your involvement in the case
2 pretty much?

3 A. Basically we went there and they had him out and
4 -- I got there and he was there with the -- matching the
5 description and we went from there. We looked around a
6 little bit to see if the gun was there and -- as well as
7 all the deputies, and then after that I went to the jail
8 with Corporal Matthews.

9 Q. You took Timothy to jail?

10 A. Corporal Matthews did and I followed him.

11 MR. SCOTT: Thank you. I beg the Court's
12 indulgence. Please answer any questions Mr. O'Neil may
13 have.

14 CROSS-EXAMINATION

15 BY MR. O'NEIL:

16 Q. Corporal Loynes, so what -- you didn't search the
17 Food Lion either, correct?

18 A. Sir?

19 Q. You didn't search the Food Lion for the suspect
20 either?

21 A. When I got there, the deputies were getting out
22 simultaneously when I got there and Mr. Cromer was in
23 the area.

24 Q. By the time -- let me just make it simple for
25 you. By the time you got to the Food Lion, Mr. Cromer

1 was already in custody by the time you got there?

2 A. He wasn't in handcuffs. He was -- we were all
3 talking.

4 Q. Whatever word you want to use, detain, custody,
5 held, by the time you got there law enforcement already
6 had Mr. Cromer?

7 A. When I got there, Mr. Cromer was still walking
8 and we were all approaching him at the same time and he
9 wasn't in custody.

10 Q. Okay. But you didn't -- you didn't search the
11 Food Lion, the barbershop, the laundromat, that area?

12 A. The Food Lion was boarded up so no one could
13 search that area. There was several deputies inside
14 looking in different locations for a weapon.

15 Q. I understand about the other deputies. I'm
16 talking about you.

17 A. No, I didn't.

18 Q. You didn't search the Food Lion?

19 A. No, I didn't.

20 Q. So you don't know -- because you didn't search,
21 you don't know what other individuals were out there
22 because you didn't search?

23 A. I did a brief search, but the Food Lion was
24 boarded up. You wouldn't be able to make entrance.

25 Q. The barbershop, the laundromat, you didn't check

1 those areas?

2 A. No, that's right.

3 Q. Other deputies did?

4 A. That's right.

5 Q. When you got there, did Timothy Cromer try to run
6 from you?

7 A. No, he didn't.

8 Q. Okay. Did he make any sort of attempt to escape
9 or evade law enforcement?

10 A. No, he didn't.

11 Q. He came with you willingly?

12 A. He wasn't under arrest, so there wouldn't be no
13 reason for him not to come.

14 Q. No reason for him not to come with you willingly?

15 A. No.

16 Q. And he came with you willingly?

17 A. Sure.

18 Q. Okay. He didn't fight with you?

19 A. No.

20 Q. You searched the whole area and didn't find any
21 firearms?

22 A. No.

23 Q. You searched Mr. Cromer's person and no firearm
24 on his person?

25 A. No.

1 Q. The only thing found on his person was money --

2 A. And marijuana.

3 Q. -- and marijuana?

4 A. Yes, sir.

5 Q. I guess in your opinion was Mr. Cromer
6 intoxicated when you got there?

7 A. In my opinion, he -- I'm not sure what he was
8 under the influence of. I couldn't say.

9 Q. You don't have an opinion one way or the other?

10 A. I'm not a medical doctor, so I don't know --

11 Q. That's fine.

12 A. --- if he was under any prescription or anything
13 like that.

14 MR. O'NEIL: That's all I have, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. SCOTT:

17 Q. I just want to, I guess, ask you to elaborate on
18 that. What do you mean? Did he appear to be under the
19 influence of anything?

20 A. His eyes were red and he had slurred -- I've
21 encountered Mr. Cromer before and he's been intoxicated,
22 so I was just thinking maybe he was the same as usual.

23 Q. Did you say red eyes?

24 A. Yeah, very bloodshot eyes.

25 Q. Did you say he was slurring his speech?

1 A. Yes, sir.

2 Q. Okay. What other kind of shops are in that Food
3 Lion shopping center?

4 A. There's a coin laundry, a liquor store, Chinese
5 restaurant and, I believe, a hairdresser over there.

6 Q. A liquor store would be open at five, wouldn't
7 it?

8 A. Sir?

9 Q. That liquor store would still have been open at
10 five, right?

11 A. Yes, sir.

12 Q. Whereabouts was he in relation to it?

13 A. He was at the beauty salon, which is about five
14 feet or more from the liquor store.

15 MR. SCOTT: All right. Thank you. Nothing
16 further.

17 THE COURT: All right. You may step down,
18 Corporal.

19 (Witness excused.)

20 MR. SCOTT: The State calls Kevin Atkins.

21 THE COURT: Captain, come around and be sworn.

22 KEVIN ATKINS,

23 having been duly sworn, testified as follows:

24 THE CLERK: Have a seat and state your name.

25 THE WITNESS: Kevin Atkins.

1 DIRECT EXAMINATION

2 BY MR. SCOTT:

3 Q. Okay. Kevin, you're the captain over at the
4 police department?

5 A. Yes, sir.

6 Q. January 16, 2013, did you hear the dispatch
7 regarding the description of the suspect involved with
8 this armed robbery and kidnapping?

9 A. Yes, sir.

10 Q. And what was that description?

11 A. It was a large black male. I didn't get the
12 clothing description. He had a bald head.

13 Q. Okay. You said they didn't give clothing
14 description?

15 A. I think they did give a clothing description. I
16 don't recall the clothing description.

17 Q. Did you learn of them apprehending a suspect that
18 matched the description?

19 A. Yes.

20 Q. Where was that?

21 A. At the Food Lion on Kendall Road. The old Food
22 Lion.

23 Q. Okay. What is a show-up lineup?

24 A. A show-up lineup? If you -- the way I look at
25 it, if you have a crime that occurs within a reasonably

1 short amount of time, you have the crime occur and law
2 enforcement gets out someone matching that description,
3 in order to keep us from apprehending the wrong person
4 or inconveniencing that person further or to let us
5 know, hey, we need to stop our investigation, we've got
6 that person or, hey, we've done a show-up before, pulled
7 up and say no, that's not the guy, we're back to square
8 one and just keep looking. So that's why we do it. Do
9 we need to keep looking or have we come to the right
10 spot?

11 Q. Well, if it's close enough to the time of
12 incident in time and location; it would help you --

13 **MR. O'NEIL:** Objection, Your Honor; leading.

14 **THE COURT:** All right. Rephrase. Sustained.

15 BY MR. SCOTT:

16 Q. Tell me about your concern of arresting people
17 who you have no proof committed a crime. What would be
18 your concern and how would a show-up lineup alleviate
19 that?

20 A. Well, certainly. My goal as a police officer is
21 not to arrest the wrong person ever and a show-up lineup
22 is helpful. You could make a -- you know, on TV you see
23 they'll find six people of similar height, weight and
24 size, and if you tell me you've just had an armed
25 robbery, then we get out and somebody matching the same

1 jacket, shirt, pants, build, hairstyle, it's difficult
2 to go out and find, go canvas the community and say hey,
3 do you mind coming and do a show-up for us, or a lineup
4 so that's really out of order for us to have six people
5 join in and have them all stand side by side like they
6 do on television.

7 Q. How about this? You have a description of
8 somebody and then you find somebody who matches the
9 description, why not just arrest them and take them into
10 jail? Why take the witness over there to identify him?

11 A. It's a huge inconvenience to that individual if
12 they're not positively identified by the victim.

13 Q. Okay. So did you ask them to do the show-up
14 lineup?

15 A. I did. When I heard that they were out with this
16 individual, I believe I called Sergeant Wood over the
17 radio -- I can't remember if we talked by telephone or
18 over the radio, and said, you know, it's within a
19 reasonable amount of time, go ahead and do a show-up
20 style of lineup.

21 Q. Okay. And to your knowledge, they arrested
22 Timothy Cromer?

23 A. Yes.

24 Q. All right. January 17th, the day following, did
25 you have occasion to speak with Timothy Cromer?

1 A. I did.

2 Q. Where was he on the 17th?

3 A. He was still being held at the Newberry County
4 Jail. He had actually been served with arrest warrants
5 and formally charged.

6 Q. Did you have an opportunity to speak to him?

7 A. What I had done is I routinely -- if I have an
8 officer serving warrants on somebody at the jail,
9 I'll ask them to ask that individual would they like
10 to discuss their charges. That way the officer doesn't
11 bring them down to the police department and they say
12 I don't want to talk to you and the officer's got to
13 transport them back. That's a safety issue because
14 they have to shackle them up to get them in and out
15 of the jail, so Corporal Loynes served the warrants on
16 Mr. Cromer, the two warrants, so when he served those
17 papers on him, he asked him at my request would you
18 like to discuss your charges with the captain and he
19 said that he did, so he was then transported down to my
20 office at the police department on Nance Street.

21 Q. Okay. If somebody's in custody and you speak
22 with them, what precautions do you take before speaking
23 with them?

24 A. I read them their Miranda warning.

25 Q. Those are the warnings we see on TV all the time

1 and everything?

2 A. Yes, sir.

3 Q. Do you have it memorized?

4 A. Well, I do after almost fifteen years, but I
5 still read from the same card I've had since 2000.

6 Q. Do you have that card with you?

7 A. I do.

8 Q. May we see it?

9 A. Yes, sir.

10 Q. Okay. It's laminated?

11 A. In 2000 it was. It's been through the washer a
12 couple of times.

13 Q. All right. And that's the one you would have
14 read to Timothy Cromer?

15 A. Yes, sir.

16 Q. What does it say?

17 A. It says you have the right to remain silent.
18 Anything you say can and will be used against you in a
19 court of law. You have a right to talk to an attorney
20 and have him or her present with you while you're
21 questioned. If you cannot afford to hire an attorney,
22 one will be appointed to represent you before any
23 questioning. You can decide at any time to exercise
24 these rights and not answer any question or make any
25 statement. And then the sixth prong is, do you

1 understand each of these rights as I've explained them
2 to you. If I ask that question and they say yes, I say
3 having these rights in mind, do you wish to talk to me
4 now and if they say yes again, then we'll proceed with
5 questioning.

6 Q. Okay. Did you read those to Timothy Cromer?

7 A. I did.

8 Q. Did he seem to understand them?

9 A. He said he did.

10 Q. He said he understood them?

11 A. Well, when I asked him do you understand these
12 rights as I've just read them to you, he said that he
13 did and I asked him well, do you want to talk to me?
14 Yes.

15 Q. Do you have any reason to believe he didn't
16 understand them?

17 A. No, sir.

18 Q. Did he seem intoxicated the day after this
19 incident occurred?

20 A. No, sir.

21 Q. All right. What did he say to you?

22 A. I asked him -- I told him, you know, what he'd
23 been charged with and just said what can you tell me
24 about yesterday. I don't remember anything.

25 Q. I don't remember anything?

1 A. I don't remember anything about the previous day.

2 Q. I mean, what time on the 17th was he talking to
3 you?

4 A. It was pre-11 a.m. I had to find a judge and get
5 his signature and have him transported, so it was prior
6 to 11 a.m.

7 Q. So this incident occurred 5:00 p.m. the day
8 before?

9 A. I think it was originally dispatched right around
10 five, yes, sir.

11 Q. And he said I don't remember nothing?

12 A. I don't remember anything.

13 Q. Okay. Is that it?

14 A. Well, what I did is I kind of asked the same
15 question again; you don't remember anything, he told me
16 he did not, so I recounted the victim's version of the
17 events that he had told to law enforcement and he said
18 I don't remember, but I've got my own money, why would
19 I rob anybody? And I said well, I could -- the example
20 I used is I could go to the bank and have a hundred
21 dollars in my pocket and still rob you. Having money
22 in your pocket wouldn't preclude you from committing
23 the offense of robbery.

24 Q. Okay. That's all he told you though, right? I
25 just don't remember anything?

1 A. He said that he had been -- he said I went to the
2 Zesto a couple of days before that and got some chicken
3 and ate it in the parking lot of the Spinx and that a
4 white man that lived nearby gave him a ride to the same
5 spot, the old Food Lion on Kendall Road.

6 Q. Was he talking about the 16th?

7 A. No, he was talking about several days prior to
8 the 16th -- or to the 17th.

9 Q. Specifically on the 16th, what did he say about
10 that date, the date that our crime occurs?

11 A. No recollection of anything he had done that day.

12 Q. Did you ever go to the Spinx gas station?

13 A. On the 17th I did.

14 Q. Okay. What was your purpose of going out there?

15 A. In my conversation with Mr. Cromer, he said well,
16 the whole thing should be on video and I said well, I
17 know. We had a cordial conversation. There was no like
18 you see on TV, me throwing stuff off my desk and yelling
19 and screaming. It was just me and him talking, and
20 there was another investigator, Sergeant Kevin Goodman
21 who works for the police department, was in the room
22 with us. I said well, that's certainly my intention is
23 to go the Spinx to see what kind of video it had because
24 at the time, as some of you remember, the Spinx used to
25 be the Enmark, so it was under new management and they

1 had a new video surveillance system, so I really at that
2 time wasn't sure what type of equipment or what camera
3 angles they had being a new store. I knew the Enmark
4 did not have video outside of anything other than
5 cameras focussing down on the pumps, but I did go on
6 the 17th to try to see what type of video they had.

7 Q. And were you eventually able to see all the video
8 they had from the 16th?

9 A. I watched it in-store with one of the employees
10 named Vanessa -- I don't remember.

11 Q. What angle were you looking for? Where was your
12 understanding --

13 A. I wanted an angle or a shot of the pumps -- or of
14 the vacuum cleaner on the far right of the parking lot.

15 Q. All right. I think was testified to or some
16 reference made to it. Is that it right there?

17 A. I believe so as far as seeing -- I believe that's
18 the area.

19 Q. Okay. Were you able to obtain any kind of video
20 evidence of that specific area?

21 A. They don't have any exterior video at that store.
22 You can kind of see outside a little bit from the inside
23 cameras, but it's not -- there's no actual outside shots
24 of that parking lot.

25 Q. Well, they probably have video of the pumps

1 though, right?

2 A. I'm not even sure if the new store has -- I know
3 the Enmark did. I don't recall.

4 Q. None specifically for this general area here?

5 A. No, sir, even when it was the Enmark they didn't
6 have any -- any cameras pointed that way.

7 Q. And that's where the -- that specifically is
8 where that vacuum -- Number 5, that vacuum cleaner was,
9 right?

10 A. Yes, sir. The same spot you pointed to.

11 Q. Did any of the video show Timothy Cromer on them?

12 A. Not inside the store, no, sir.

13 Q. Okay. And he doesn't remember anything from
14 January 16th?

15 A. That's what he told me.

16 **MR. SCOTT:** I believe that's all the questions I
17 have.

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

19 CROSS-EXAMINATION

20 BY MR. O'NEIL:

21 Q. Captain Atkins, would it be fair to say you were
22 kind of the lead investigator in this case?

23 A. Yes, sir, I'll -- I'll take that responsibility.

24 Q. Your job is to kind of oversee the whole
25 investigation. If something needs to be done, you

1 follow up on it or you make sure it gets followed up on?

2 A. Yeah, or somebody. I have several investigators
3 that work under my supervision, but I heard this call go
4 out, so certainly I take responsibility for it.

5 Q. And, I guess, the minute you heard the call went
6 out, you thought it was Timothy Cromer as a suspect?

7 A. Yes, sir.

8 Q. And you indicated that information to Sergeant
9 Wood, it would have been?

10 A. Yes, sir. I mean, I put it over the radio
11 direct to Sergeant Wood, but I told them based off the
12 description they'd given that -- I don't know how to
13 phrase it. Exploits. I'm not -- I don't know how to
14 properly say it without getting in trouble, but based
15 on what was given to me, the description of the -- the
16 crime and the physical description, I thought it would
17 be a good idea to start with Mr. Cromer.

18 Q. Okay. Fair enough. And you instructed the
19 officers to do a show-up lineup essentially at that
20 Food Lion.

21 A. Yes, sir, when I learned they had somebody out at
22 the Food Lion. And I don't know if they said over the
23 radio we're out with Tim Cromer. I know they were out
24 with somebody and, like I say, I don't know if me and
25 Sergeant Wood were talking on the telephone or on the

1 radio, but I told him that because of the limited time
2 that had lapsed between the crime and when they were out
3 with somebody that they should take them to the Food
4 Lion and do a show-up style identification.

5 Q. But you would agree in the most pristine or most
6 desirable scenario, it would be better to show a witness
7 a range of individuals -- to pick someone out of a range
8 of individuals?

9 A. In a perfect world, it would.

10 Q. In a perfect world, it would be better -- it
11 would be less likely for misidentification in a perfect
12 world if you could show a witness a group of individuals
13 and they could just pick out -- pick out of that group
14 instead of just showing one person?

15 A. It's not just for the positive identification.
16 It's also for the elimination. That's an important part
17 of that process, too.

18 Q. When you talked with Timothy on the 17th, he
19 wasn't confrontational with you?

20 A. No, sir.

21 Q. He talked to you freely about what was going on?

22 A. He was lucid. It was a cordial conversation.

23 Q. He told you that he didn't remember being at the
24 Spinx on the 16th?

25 A. Yes, sir.

1 Q. He told you that he remembered being there
2 several days earlier and that a gentleman had dropped
3 him off there several days earlier than the 16th?

4 A. He said he had gone to the Zesto and gotten some
5 chicken and then gone into the parking lot of the Spinx
6 and ate the chicken and he just said a white male, a
7 white man, that lived nearby had given him a ride to the
8 old Food Lion on Kendall Road.

9 Q. And when he was -- when he was saying that, he
10 was referring to several days earlier than the day in
11 question?

12 A. Right, he was alluding to something some day
13 prior; whether it be the 14th, 15th, 13th, 12th, but
14 just a day prior to.

15 Q. He wasn't saying that he was there on the 16th.
16 He was saying he was there some day before the 16th?

17 A. Yes, sir. Yes, sir.

18 Q. And you went to talk to the manager of the --
19 Vanessa there at the Spinx?

20 A. I believe that was her name, yes, sir.

21 Q. And Vanessa didn't remember Timothy being there
22 on the day of the 16th, did she?

23 A. Not coming inside the store or -- no, sir. I
24 don't think she had a recollection he had been there
25 period. We'll say that.

1 Q. Well, she did say she remembered him being there
2 several days prior eating chicken outside the store?

3 A. Yes, sir.

4 Q. And that's what Mr. Cromer had told you?

5 A. Yes, sir.

6 Q. So she corroborated what Mr. Cromer had told you
7 about being there several days earlier?

8 A. Right. That's why it seemed odd that he could
9 remember eating chicken three or four days earlier, but
10 couldn't remember what he did the previous day. That
11 was why I noted that in my notes.

12 Q. And Vanessa -- Vanessa, the manager, didn't
13 remember him being there on the 16th, the day in
14 question?

15 A. Right.

16 Q. And you went and got the video because Mr. Cromer
17 said I wasn't in the store; get the video, I wasn't
18 there?

19 A. He didn't go in the store, yes, sir.

20 Q. He said I wasn't there at all, I don't remember
21 being there. Get the video, the video will show whether
22 or not I was there.

23 A. Well, he said he didn't remember, but, yeah, he
24 suggested that I look at the video and I said I had
25 every intention of doing so once we wrap this up.

1 Q. And you, in fact, did that?

2 A. Yes, sir.

3 Q. And there were two angles of this building.

4 There's two angles of the building inside the store.

5 There's an angle of the video that shows the cashiers
6 from the back?

7 A. Yes.

8 Q. And there's an angle that shows the floor of the
9 store from the side?

10 A. Yes, sir. I'm not sure what all shots are on
11 that video because I watched it inside the store. They
12 were not able to burn the video for me inside the store,
13 they don't have those privileges, so what they do is
14 they send off to corporate and then corporate then in
15 turn mails us the disk.

16 Q. And you, in fact, got a disk mailed to you?

17 A. Yes, sir.

18 Q. And there is -- in addition to the two angles in
19 the store, there are two angles that show the outside of
20 the store?

21 A. From the inside you can kind of see outside.

22 Q. No, not from the inside. There are two cameras
23 located on the outside of the store that show two
24 different angles of the outside of the store.

25 A. I know they had some at the pumps, I believe.

1 I'm not sure what angles you're talking about. Without
2 looking at it, I don't --

3 Q. But you watched these videos?

4 A. I watched what they showed me in the store. I'm
5 not -- I don't know that I've seen what video they
6 mailed. I believe I turned it over to the -- I think I
7 turned it over to the Solicitor's office after we got
8 it.

9 Q. You didn't even watch the video that they mailed
10 to you?

11 A. I don't recall doing it. I'm not gonna say I did
12 and tell you what's on it.

13 Q. Okay.

14 A. I mean, I'm pretty sure that I would, but I --
15 I'm not gonna sit here and tell you exactly what's on
16 the video if I don't recall.

17 Q. Well, you were -- you were looking to see what
18 happened on the outside of the store, right?

19 A. That's why I went to the Spinx store, yes, sir.

20 Q. So you would have looked at the video that they
21 mailed to you to see what angles they had from the
22 outside the store because that's what you're concerned
23 about?

24 A. I'm sure that I did. Plus I watched it in the
25 store and they -- like I say, I can't -- when it was

1 Enmark, I could go in there with a thumb drive and tell
2 them I want camera 1, 2 and 3 and put it on a thumb
3 drive, but now they won't do that.

4 Q. But in any event, in the two angles that are on
5 the out -- that show the outside of the store, Timothy
6 Cromer is not in any one of those?

7 A. I did not see Mr. Cromer, but, like I said,
8 there was no shot of the vacuum cleaner area.

9 Q. But there are shots of the outside of the store
10 and there are shots of the inside of the store, correct?

11 A. I believe so. You can see outside.

12 Q. And he's not on the outside of the store and he's
13 not on the inside of the store?

14 A. No, sir.

15 Q. Any forensics done on the money that was
16 recovered from Mr. Cromer?

17 A. No, sir.

18 Q. Any forensics done from the inside of Williams'
19 car?

20 A. No, sir.

21 Q. And when I'm saying forensics, I'm talking about
22 fingerprints, DNA, those sort of things.

23 A. No, sir. It was not done.

24 Q. And those -- if an individual is suspected
25 of being at a location, the one thing that could

1 corroborate that would be if that individual's DNA or
2 fingerprints are in that location?

3 A. Yes, sir.

4 Q. And that was never done to verify whether or
5 not Mr. Cromer was in the car or had the money that
6 Mr. Williams allegedly gave to him?

7 A. No, sir.

8 Q. Did Mr. Cromer give you a written statement?

9 A. No, sir.

10 Q. Did Vanessa, the manager at the Spinx who said
11 she didn't see Mr. Cromer out there that day, did she
12 give you a written statement? -----

13 A. No, sir, I just documented it in my notes.

14 Q. Did you talk to anybody else that was there? I
15 think there were a couple of other -- if I remember
16 correctly, there were at least two -- two cashiers that
17 were present that day, correct?

18 A. I don't recall.

19 Q. Did you talk to any of the cashiers that were
20 there that day?

21 A. Just -- just the manager.

22 Q. Okay. Did you talk to anybody other than
23 Mr. Williams that indicated they saw Mr. Cromer at the
24 Spinx that day?

25 A. No, sir, we didn't have anybody come forward.

1 Q. Now any other evidence other than Mr. Williams'
2 statements that corroborates that Timothy Cromer was at
3 the Spinx on January 16, 2013?

4 A. No, sir.

5 Q. You didn't do any of the searching out at the
6 Food Lion?

7 A. No, sir, I didn't go on the scene.

8 Q. You didn't go out there to see whether or not
9 any of -- anybody else was out there that matched the
10 description?

11 A. No, sir.

12 Q. That would have been what, I guess, the line
13 officers would have done?

14 A. Yes, sir. Being that location was in the county,
15 I do know some sheriff deputies went out there with
16 Corporal Loynes just from the testimony you've heard,
17 yes, sir. I did not.

18 MR. O'NEIL: Okay. That's all I have, Your
19 Honor.

20 THE COURT: Any redirect?

21 MR. SCOTT: Yes, just really briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. SCOTT:

24 Q. Now where, again, was your understanding of where
25 the incident occurred at the Spinx?

1 A. (Indicating.) That's where he was supposed to be
2 vacuuming out his car.

3 Q. You're saying that vacuum is somewhere in this
4 vicinity?

5 A. Yes, sir.

6 Q. Did you obtain any video surveillance that
7 depicted this area of the parking lot?

8 A. I did not.

9 Q. But, again, the videos that you did obtain none
10 of them showed Timothy Cromer?

11 A. That's correct.

12 Q. But your understanding of where the incident
13 occurred was in this -- this area where you were unable
14 to obtain any surveillance?

15 A. There are no cameras in that direct area.

16 Q. All right. The defense attorney was asking you
17 about fingerprints and DNA on money. We're not law
18 enforcement, but we do watch TV. DNA's a big topic on
19 TV, right?

20 A. Yes.

21 Q. You can get it off anything on TV, right?

22 A. Yes, you can.

23 Q. You can get fingerprints off anything too, right?

24 A. Sure.

25 Q. In the real world that you work and operate in,

1 explain to this jury some of the difficulties in lifting
2 DNA off money that's exchanged between many people on
3 any given day.

4 A. Well, DNA, if you take a dollar out of your
5 wallet now and say it says 1976, so it's been in
6 circulation for forty years, that's a lot of people
7 touching and handling money.

8 Q. Touch DNA?

9 A. Touch DNA would be what you're looking for, which
10 is, in reality, very difficult to get. Matter of fact,
11 a lot of times -- not to give away trade secrets, but
12 touch DNA is the lowest classified form of DNA they will
13 process at SLED. We have years and years of touch DNA
14 we've submitted that's never been processed.

15 Q. Okay. What about fingerprints? Do you typically
16 get fingerprints off dollars or money?

17 A. I have tried to fingerprint counterfeit money
18 before that's been in circulation and we say it is a
19 giant fingerprint because it's just constantly handled.
20 Especially a one or -- you know, it's just constantly
21 getting circulated, so it is a giant fingerprint. You
22 know, multiple -- once you're putting print over print
23 over print over print. You know, a car would be more
24 suitable, the exterior of a car; however, once it rains,
25 it significantly degrades. A fingerprint is just oil

1 that you're leaving behind after you touch something.

2 Q. Okay. So like a smooth surface, like glass or
3 sheet metal or something like that would be ideal?

4 A. Yes.

5 Q. Coins with ridges or dollar bills maybe not?

6 A. No, sir. I've personally never gotten a good
7 fingerprint off of money; change or paper currency.

8 Q. Okay. And, lastly, the only other thing, did
9 Timothy Cromer remember how he had gotten to that Food
10 Lion when he was found there? Did he indicate as to how
11 he had gotten there?

12 A. How he got there on the 16th?

13 Q. Yes, sir.

14 A. No, sir.

15 **MR. SCOTT:** Thank you.

16 RECROSS EXAMINATION

17 BY MR. O'NEIL:

18 Q. Did you ask him how he got to the Food Lion on
19 the 16th?

20 A. Well, I told him what the victim had related to
21 me; that he had gotten into the car and asked for a
22 ride, and he said I don't remember.

23 Q. He said he didn't remember being at the Spinx.
24 Did you ask him how he got to the Food Lion?

25 A. No, I asked him -- I told him what do you

1 remember about these events? I don't remember anything.
2 So then I -- like I said in my notes, as I testified
3 earlier, I went over the victim's account of what had
4 transpired, how he had relayed it to law enforcement. I
5 went back over that story. He says you came up, did
6 this, did that, you got into the car, asked for a ride
7 asked for money, told him you had a gun. He said I
8 don't remember any of that. He had no recollection of
9 what he did on the 16th is what he told me.

10 Q. Okay. And you said that it's difficult to get
11 touch DNA off of coins and dollars?

12 A. The problem with it is that so many people are
13 handling so you have so many -- SLED can process it, and
14 they'll tell you it's a mixture, a combination. Just
15 like if I cut my finger open and you cut your finger
16 open and we mix the blood together and submit that, they
17 may tell you I can't positively identify it, I can just
18 tell you it's a mix of two people's DNA.

19 Q. But you didn't even try in this case, correct?

20 A. No, sir.

21 Q. You made no attempt to get DNA or fingerprints
22 off the money or the coins?

23 A. Well, that's why we preserved the money and the
24 coins. A lot times what we do is we preserve the
25 evidence. That way if -- if Mr. Cromer doesn't have

1 fifteen years to wait, but the hope is -- we keep all
2 that stuff refrigerated and on file. The hope is that
3 one day that science will allow this quick, quick, quick
4 test of DNA. And SLED is making some advances. They're
5 contracting with a private company, so that's our hope
6 is that one day -- we preserve the evidence for as long
7 as we can and that one day touch DNA will be something a
8 little more readily and easily done.

9 Q. So your hope is one day maybe we can test touch
10 DNA like in this case, but that wouldn't be useful for
11 Mr. Cromer at that point?

12 A. That's what I'm saying, yes.

13 Q. His trial is right now, today.

14 A. That's what I said. That doesn't help him.

15 Q. So all he has to do is hope that maybe
16 fifteen years down the line somebody checks the money
17 for DNA?

18 A. If he's lucky, yes, sir.

19 Q. Okay. What about the car? You didn't try any
20 DNA testing on the car either?

21 A. No, sir. It had been raining.

22 Q. What about the inside of the car?

23 A. I did not.

24 Q. And you said that the incident occurred -- on
25 direct you said the incident occurred over there by the

1 vacuum cleaner, correct?

2 A. Well, that's what the victim said, yes, sir.

3 Q. But the actual -- the victim said the actual
4 getting in the car occurred over there at the vacuum
5 cleaner, correct? That's where he parked at?

6 A. Yes, sir.

7 Q. But according to the victim, Mr. Cromer was
8 already at the scene when he got there?

9 A. He was somewhere on the premises, yes, sir.

10 Q. So Mr. Cromer -- according to the victim's
11 statement, if Mr. Cromer was already somewhere on the
12 premises, he could have been somewhere other than the
13 vacuum cleaner?

14 A. He could have been behind the fence or in that
15 yard, he could have been standing on the sidewalk.

16 Q. Or in the store or in the front of the store
17 where the cameras are?

18 A. There's a wide variety of places he could be.

19 Q. There was a chance that he could have been
20 somewhere else on the camera, but he's nowhere on that
21 video?

22 A. Not that I saw, no, sir.

23 Q. Not in the front, not in -- not in the store,
24 nowhere?

25 A. No, sir.

1 **MR. O'NEIL:** That's all I have, Your Honor.

2 **MR. SCOTT:** Nothing further, Your Honor. The
3 State rests.

4 **THE COURT:** All right. Thank you, Captain. You
5 may step down.

6 **THE WITNESS:** Thank you.

7 (Witness excused.)

8 **THE COURT:** Mr. Scott, let me see you and
9 Mr. O'Neil over here briefly.

10 (Proceedings held at the bench; not reported.)

11 **THE COURT:** I've been informed there's a two-hour
12 delay tomorrow because of the cold temperatures again.
13 So that being the case, is 10:00, Ms. Hardy, agreeable
14 with y'all to be in the jury room so we can begin work
15 and get this case finalized? There's a little bit more
16 to be done tomorrow morning. Is 10:00 quick enough,
17 early enough? I don't want to pressure anybody who's
18 got kids because a two-hour delay in my mind is 7:30,
19 9:30 drop-off, gives you thirty minutes to get here.
20 Would that be suitable for y'all? I can be here earlier
21 than that, but I don't live very far. That's kind of my
22 intent. The lawyers say that suits them fine and so I
23 want to make sure it suits y'all. Do you need a further
24 delay? I think 10:00 is early enough we'll get done and
25 so we should finish all this trial tomorrow. We won't

1 go into Thursday, we'll be done tomorrow.

2 All right. That being the case, y'all may be
3 excused for the day. You're still not allowed to
4 discuss the case. You can put your notepads in the
5 jury room and get your belongings and just be back in
6 the jury room before 10:00 and we'll get started as
7 promptly as possible.

8 (The jury was excused for the day.)

9 **THE COURT:** Do we have anything we need to do?

10 **MR. SCOTT:** I don't have anything, Judge.

11 **THE COURT:** All right. We'll be here at 10:00
12 tomorrow.

13 (The proceedings were concluded for
14 January 7, 2014.)

15 (The following proceedings were held on
16 January 8, 2014.)

17 (Court's Exhibit Number 1 was marked for
18 identification.)

19 **THE COURT:** All right.

20 **MR. O'NEIL:** Your Honor, I have my motion for
21 directed verdict marked as Court's Exhibit 1. I'll
22 pass it up at this time.

23 **THE COURT:** All right.

24 **MR. O'NEIL:** Your Honor, I would move for a
25 directed verdict on both the kidnapping and the armed

1 robbery charge. I'll address the armed robbery first.
2 I think it's clear on the armed robbery charge. And
3 I will also pass up to the Court, State versus Angelo
4 Muldrow. That is a South Carolina case, 348 SC 264.
5 348 SC 326, State versus Muldrow.

6 Your Honor, I would ask for a directed verdict
7 specifically as it relates to the armed robbery charge
8 because, number one, I don't think there's been
9 sufficient evidence that, one, that the elements of a
10 robbery has been established and, more specifically,
11 that an armed robbery has been established.

12 And the statute when it relates to armed robbery
13 is SC Code 16-11-330(A) and it states that a person
14 is guilty of armed robbery when they comit robbery while
15 armed with a deadly weapon or while alleging, either
16 by actions or words, or while using a representation
17 of a deadly weapon or any object present during the
18 commission of a robbery or a person believes they did.

19 The first thing, Your Honor, when it comes to
20 the robbery, in order for it to be an armed robbery
21 there has to be robbery first, Your Honor. In order
22 for there to be a robbery, there has to be the taking
23 of property by use of force or intimidation. I think
24 there's not sufficient evidence in the record for the
25 jury to determine that any sort of items were taken

1 from Mr. Williams by force or intimidation. If you
2 look at Mr. Williams' own statement, it indicates that
3 he gave the suspect the money and that there were no
4 threatening words used in the car, there were no guns
5 that were in the car, that the suspect merely asked
6 for the money to be given to him without any sort of
7 physical threat of harm, force or any sort of physical
8 action done toward him.

9 But, more specifically, Your Honor, when it
10 comes to armed robbery, the court is entirely crystal
11 clear in State versus Muldrow, Your Honor. In State
12 versus Muldrow, the defendant in that case walked into
13 the store and presented the clerk with a note that said
14 give me all your cash or I'll shoot you and the court
15 in that case determined that in order for there to be
16 armed robbery, it goes one or two ways. The defendant
17 has to either have a deadly weapon or the defendant has
18 to use words and accompanied with the representation
19 of a deadly weapon, meaning some sort of item that a
20 reasonable person could believe that it was a deadly
21 weapon.

22 In this case, Your Honor, there is no evidence
23 that the suspect actually had a deadly weapon. The only
24 evidence of a gun involved in this case was the victim
25 saying that the suspect told him or asked him did he

1 want to hold his gun. State versus Muldrow is clear
2 when it breaks down those two prongs of armed robbery.
3 In the first prong, being armed with a deadly weapon,
4 State versus Muldrow clearly states that words alone are
5 not sufficient to satisfy the first prong; that he
6 actually had to be armed with a deadly weapon. They
7 searched Mr. Cromer shortly after this crime and there
8 was no gun found on him. The victim said he never saw
9 a gun. There's no direct evidence whatsoever that
10 Mr. Cromer was armed with a deadly weapon when this
11 occurred. There's no substantial circumstantial
12 evidence that he was armed with a deadly weapon, so
13 that leaves the State only with the second prong when
14 it talks about with words.

15 The second prong says with words and a
16 representation of a deadly weapon. The second prong
17 says the robber alleged he was armed with a deadly
18 weapon, either by words or actions, while using a
19 representation of a deadly weapon or any object which a
20 person present for the commission of robbery reasonably
21 believed to be a deadly weapon. So in that second
22 prong, you could have words and actions, but you also
23 need an object that is a physical representation of a
24 deadly weapon.

25 There's been absolutely no evidence in this case

1 that there were any sort of object used that would
2 constitute a physical representation of a deadly weapon
3 that anybody could reasonably believe was a deadly
4 weapon. The only testimony in evidence at this point
5 was that the individual in the car asked Mr. Williams
6 did he want to hold his gun and motioned towards his
7 pocket. The -- the question about asking for the gun
8 and motioning for the pocket could satisfy the actions
9 or words part of that second element, but you have to
10 have actions or words and a physical representation of
11 a deadly weapon, some sort of item here, and I think
12 that's clear in State versus Muldrow, Your Honor, and
13 also in State versus Dodd, which is another SC --
14 South Carolina case here. It's 354 SC 113 -- I'm
15 sorry, 354 SC 13, State versus Jimmy Dodd, and in
16 that case, Your Honor, the Court also uses the word
17 that when -- it says considering the second prong of
18 armed robbery, we note that although Dodd threatened
19 to kill the store clerk, he never alleged that he was
20 armed or used an item to represent a deadly weapon,
21 therefore, the prong -- this prong of the statute was
22 not satisfied. That second prong of the statute
23 requires some item to be used that represents a deadly
24 weapon. It has to be a bulge in your pocket, some
25 stick, something that a reasonable person could believe

1 was a deadly weapon.

2 There's nothing in this case that the suspect
3 used that would indicate it's a -- it's a deadly weapon,
4 so they failed to carry their burden on the prong of
5 armed robbery. So as relates to the charge of armed
6 robbery, I would ask the Court to consider my four
7 motions here -- four written motions, which is Court
8 Exhibit 1, along with State versus Muldrow, State
9 versus Dodd, and the State has not presented evidence
10 sufficient for a jury to consider that Mr. Cromer is
11 guilty of armed robbery and for that I would ask for a
12 directed verdict of not guilty for the armed robbery.

13 **THE COURT:** Mr. Scott, what you got?

14 **MR. SCOTT:** As far as the two prongs mentioned,
15 certainly there was competent testimony that the victim
16 in this case felt intimidated. He indicated it was
17 certainly by force. He mentioned that he felt had he
18 got given over the money he would be harmed in some
19 way. And as far as the statement, asking, I can very
20 politely go ask can somebody please give me all the
21 money or there will be consequences, and I'm talking
22 semantics in this statement; however, in court his
23 testimony was certainly that he felt intimidated, that
24 he had to turn the money over.

25 The force, going to the second prong, the

1 representation, Muldrow was simply walking into the
2 store, give me the money or I'm gonna shoot you. Here
3 the representation that we have in the statute, either
4 by words -- let me see. According to the statute, while
5 alleging, either by actions or words, was armed while
6 using the representation of a deadly weapon. The
7 representation here is the patting of the pocket, the
8 consistent patting of the pocket while saying do you
9 need to see my gun, do you want to see my gun. Therein
10 lies the representation. You've got the action and the
11 words and the representation is the motion towards the
12 pocket.

13 Certainly, Your Honor, the classic give me
14 all your money (demonstrating), is akin to that in
15 this case. That would be our argument with the
16 representation, the motion, the words and the patting
17 of the pocket. Your Honor, that would be the armed
18 -- the crux of our argument as presented in court.
19 Certainly there was a taking by force and we would
20 argue that there was a representation of a deadly
21 weapon by words and actions and the patting of the
22 pocket, Your Honor.

23 **MR. O'NEIL:** Your Honor, I just want to make
24 sure I'm clear in my argument. When the statute says a
25 representation, they're talking about a physical item.

1 Some sort of physical item. Not just -- not just an
2 action. You need action, words, plus a physical
3 representation, meaning something tangible that a
4 person could reasonably believe was a deadly weapon.
5 The hand in the pocket example, the actual hand in the
6 pocket pointing toward the victim, would be a physical
7 representation. In this case, the victim's statement
8 says and the victim's --

9 **THE COURT:** You keep going to the victim's
10 statement. Talk about everything for me. Don't
11 restrict it to the statement. If you're just on the
12 statement, I may be with you, but testimony and
13 statement and everything, so talk about everything. I
14 don't want to have to eliminate something.

15 **MR. O'NEIL:** Yes, sir. The testimony and the
16 statement. The statement says motioning. The
17 testimony, in addition to motioning, he said patting.
18 Never in the testimony did he say he saw anything, any
19 bulge in his pocket, any item in his pocket that could
20 have been a physical representation of a gun. The only
21 addition he said in his testimony is that he patted his
22 pocket. He never -- he never said that the suspect had
23 his hand in his pocket. He never said anything that the
24 suspect showed him an item or presented an item to him
25 that he could reasonably believe was a deadly weapon.

1 So he specifically said he never saw a gun in
2 his testimony and in his statement. There's been no --
3 there's been no testimony that he saw an item that could
4 have reasonably believed -- that he could reasonably
5 believe was a deadly weapon, and that's what the case
6 law -- that's what Muldrow requires. Words or actions.
7 The action would be the patting, but it also requires
8 a physical representation, and that's what I think is
9 clear in State versus Dodd and in State versus Muldrow.

10 You need words or actions plus a physical
11 representation in order for it to be armed robbery
12 because armed robbery requires there to be a robbery
13 and be armed and I think they have not fulfilled --
14 specifically have not fulfilled the armed part of the
15 armed robbery. I think it's a lot -- lot closer
16 question about the actual robbery part, whether or not
17 the taking of the property was done by force. That's
18 circumstantial evidence depending on what you believe
19 the victim felt at that time.

20 **THE COURT:** I think y'all are both right. I
21 think this is all a question of the fact for the jury
22 and I believe there's enough evidence to go forward with
23 an armed robbery instruction, as well as a strong arm
24 robbery instruction. I think it's a factual question.
25 I do. And I understand your argument. I've had a

1 similar argument in a trial in Greenville where there
2 was no weapon and no weapon seen, but there was a
3 different style of representation, and I think this is
4 sufficient -- all the testimony and statements of the
5 victim is sufficient; him describing the actions of
6 Mr. Cromer, his words, his behavior, is sufficient to
7 create the factual issue for the jury to decide and so,
8 respectfully, I deny your motion, understanding the
9 nuance you said there was never a physical showing of
10 any item that could resemble a weapon. That's where
11 you're -- that's where you're pointing at for me.

12 **MR. O'NEIL:** Yes, Your Honor.

13 **THE COURT:** Pun not intended. I understand that,
14 but I believe there's enough to give this to the jury
15 on the armed question, but, likewise, I believe it would
16 be very appropriate to also instruct the jury on strong
17 arm in light of that factual issue.

18 **MR. O'NEIL:** Yes, Your Honor. And I also would
19 ask for a directed verdict as to the kidnapping, and
20 it's encompassed in my written motion as well, but
21 specifically with respect to the kidnapping there has
22 to be some sort of either restriction of movement or
23 forced movement against the victim's will. There's no
24 testimony on the record that the suspect did anything
25 or demanded any sort of movement of the victim against

1 their will. Like I said, the victim -- Mr. Williams'
2 statement is in evidence, and according to the statement
3 that's in evidence here, the only time the gun was
4 mentioned was after they had already started moving and
5 when they passed the Dollar General. I think there were
6 slight variations in his actual testimony when he said
7 when the gun was actually mentioned, but in any event
8 there was never anything mentioned by the suspect that
9 indicated that they were forcing the victim to move
10 against their will. The only -- the words that were
11 said that -- that came out during the testimony in the
12 car was do you want to hold my gun. Never any mention
13 of --

14 **THE COURT:** And as I understood the testimony,
15 that was said several times. Something similar to that.

16 **MR. O'NEIL:** Yes, sir. Do you want to hold my
17 gun. Never was there any sort of force or intimidation
18 threatened to make the witness move against their will.
19 The victim unlocked their own door, the victim got in
20 his own car. The suspect never made -- never forced the
21 victim not to leave the car. The victim could have left
22 the car at any time if they chose to. The suspect only
23 said take me to the Food Lion, turn here, and do you
24 want to hold my gun. There was never any forced
25 movement done by the suspect in this case. I understand

1 what the victim said they felt, but kidnapping requires
2 knowledge, and there's some sort of intent required for
3 kidnapping.

4 There was no action done by the suspect that
5 forced the victim to move or not move against their
6 will; therefore, I would also ask for a directed
7 verdict, coupled with my oral arguments and my written
8 motion here, as relates to the kidnapping as well. I
9 think they have not met their burden of substantial
10 circumstantial evidence to prove that Mr. Cromer made
11 Mr. Williams move against his will or held him against
12 his will.

13 **THE COURT:** All right. Mr. Scott, what about
14 kidnapping?

15 **MR. SCOTT:** Your Honor, certainly, again, the
16 jury's gonna consider what they think Mr. Cromer's
17 intent was forcing his way into the car and then
18 mentioning this gun multiple times. I can't imagine
19 any other reason he would be talking about this gun
20 other than to create a sense in the victim, David
21 Williams, that he's not free to do anything other
22 than what Mr. Cromer tells him to do.

23 Again, Mr. Williams testified in court that
24 he felt he could not leave the car, there would be
25 consequences. He felt if he did not do as Mr. Cromer

1 said there would be ramifications. He testified under
2 oath that he did not feel free to leave the confines of
3 the automobile once Mr. Cromer got in and began talking
4 about the gun. So, Your Honor, we do believe there was
5 competent testimony for the jury to consider a
6 kidnapping charge and David Williams' testimony alone
7 and the effect it had on him was that he was not free
8 to leave, that his freedom of movement had been
9 restricted by Mr. Cromer.

10 **MR. O'NEIL:** Just one last thing. I know there's
11 -- there's been some variation as to when the gun was
12 actually mentioned, but I -- I think the victim's
13 statement that's in evidence indicates the -- the first
14 time the gun was mentioned was when they'd already
15 passed Mr. Williams' father going on the road past the
16 Dollar General; therefore, at the time, according to
17 the victim, the gun was actually mentioned the victim
18 had already drove out of the Spinx and was on the road
19 headed to the Food Lion, so, therefore, any action
20 at the Spinx can't constitute a kidnapping because
21 according to the victim's statement the first time the
22 gun was mentioned was while they were already moving
23 -- moving on the road and when they passed the Dollar
24 General.

25 **MR. SCOTT:** Your Honor, would you care to hear

1 from me?

2 **THE COURT:** No, I think it's a factual question
3 for the jury and I didn't catch that distinguishment
4 about when the gun was first mentioned. You may be
5 right. I'd have to go back and check my notes, but I
6 don't remember -- that being right or wrong, I just
7 don't remember that being said.

8 **MR. O'NEIL:** Your Honor, it's clearly -- my
9 memory comes from the victim's statement. The victim
10 couldn't -- the testimony on the stand here, the victim
11 couldn't remember exactly what was said and when it was
12 said, but when I went back and looked at the victim's
13 statement in this case, Your Honor -- I can find it in a
14 second. I apologize.

15 **MR. SCOTT:** Let me just say this, Judge. A
16 voluntary ride can become a kidnapping at any time.
17 And there's a case, State v. Stokes, 345 SC 368. Their
18 was a decoy. In other words, a give-me-a-ride-type
19 situation. Halfway down the road a gun comes out, now
20 take me this way. Just because it started out -- if
21 that's their defense, a voluntary ride can become a
22 kidnapping somewhere along the way.

23 **THE COURT:** I think it's a factual question. To
24 be honest with you, I think it's a factual question.
25 No matter how -- I mean, the jury heard the facts and

1 that's their job to make the determination -- heard the
2 testimony. It's their job to make the determination of
3 what occurred when based on what they've been presented.

4 **MR. O'NEIL:** Your Honor, I'll just read -- I'll
5 just read for my record what my -- what my position was.
6 According to the victim's statement that's in evidence,
7 it says I got into the car, he got in, too. He made a
8 comment about my candy bar. I couldn't understand him.
9 I just knew because I heard the words candy bar, peanut
10 and good, and he was pointing at it. He then told me to
11 drive to the Food Lion. He told me where to turn. We
12 passed my dad in front of the Dollar General. He kept
13 motioning to his pocket and asked me if I wanted to hold
14 his gun. I refused every time.

15 That's my position though. It's my belief that
16 the victim and the suspect were already driving down the
17 road before any mention of a gun ever came up. It would
18 be my position that the mere asking if I want to hold
19 his gun while they were already driving is not force,
20 it's not substantial circumstantial evidence of the use
21 of force to get somebody to move against their will.

22 **THE COURT:** All right. I understand your
23 argument. I think it's a factual question, so I
24 respectfully deny that motion for directed verdict.

25 What else we got? Anything else, Mr. O'Neil?

1 **MR. O'NEIL:** No, Your Honor.

2 **THE COURT:** All right. Are you gonna put
3 anything up?

4 **MR. O'NEIL:** No, Your Honor.

5 **THE COURT:** Okay. Mr. Scott, do you want -- are
6 you ready to go?

7 **MR. SCOTT:** Yes, sir.

8 **THE COURT:** All right. Bring the jury in,
9 please.

10 **MR. O'NEIL:** Your Honor, just -- just for the
11 record, the defense rests at this point, but I will
12 renew my previous directed verdict motion as relates to
13 the kidnapping and the armed robbery.

14 **THE COURT:** And for the record, it's repeated
15 verbatim as if you renewed them after your resting
16 formally on the record.

17 **MR. SCOTT:** Judge, I'm gonna run to the restroom
18 real quick, if that's all right?

19 **THE COURT:** It's okay with me. You don't want to
20 be late. You've got Mr. Daniel. Mr. Daniel's here.

21 **MR. O'NEIL:** I would -- I would want to know what
22 the Court intends on charging so I can tailor my closing
23 to that.

24 **THE COURT:** I mean, obviously armed, strong arm,
25 larceny, kidnapping.

1 **MR. O'NEIL:** What about identity on charging,
2 which portion?

3 **THE COURT:** Identity? I don't know what I'm
4 trying to charge. Let me look. What are you intending
5 -- what are you asking, Mr. O'Neil, exactly what?

6 **MR. O'NEIL:** They have to prove identity beyond a
7 reasonable doubt. That portion of -- that portion of
8 the jury charge. Identity is an issue in this case and
9 they have to prove it beyond a reasonable doubt.

10 **THE COURT:** You got a proposed charge?

11 **MR. O'NEIL:** I do not, Your Honor.

12 **MR. DANIEL:** Your Honor, on the judicial website
13 it should be on there, a listing of the proposed charge.

14 **THE COURT:** Those are sometimes cumbersome to
15 use. They publish those as if they were just done this
16 past year and they're not often new to the current
17 standards.

18 (Discussion off the record.)

19 **MR. O'NEIL:** Your Honor, what reasonable doubt
20 charge are you using? The Lozano one or --

21 **THE COURT:** I use my own. I say -- I'll read it
22 to you. It reads: What is a reasonable doubt? A
23 reasonable doubt is the kind of doubt which will cause
24 a reasonable person to hesitate to act. A reasonable
25 doubt is doubt which makes an honest, sincere,

1 conscientious juror in search of truth to hesitate to
2 act. Proof beyond a reasonable doubt is proof which
3 leaves you firmly convinced of the defendant's guilt..
4 So if you have a doubt for which you can give a reason
5 as to the guilt of the defendant, then he's entitled --
6 like that. That's my charge generally.

7 **MR. O'NEIL:** And, Your Honor, I know there's been
8 some new charges as relates to circumstantial evidence
9 as well as. There's some new case law on circumstantial
10 evidence.

11 **THE COURT:** As in new law as in this morning?

12 **MR. O'NEIL:** No, sir, not this morning.

13 **THE COURT:** Okay. I saw the advance sheets came
14 out today. I didn't know if you read something this
15 morning that I hadn't. I've been working on something
16 else. We can use an identification charge out of the
17 charge book. That will suit me. It says identification
18 is an issue to be proved by the State beyond a
19 reasonable doubt and has some other general language.
20 I guess I kind of expected y'all to be familiar with
21 this. And I think that would be proper to charge the
22 issue on identification.

23 **MR. SCOTT:** Your Honor, was larceny discussed?

24 **THE COURT:** I didn't -- I was questioning it. I
25 don't know. It doesn't matter to me.

1 **MR. SCOTT:** I don't think petit larceny is a
2 lesser of armed robbery or strong arm robbery.
3 Certainly the testimony has been that it was taken by
4 force.

5 **THE COURT:** Okay. We'll just do armed robbery,
6 strong arm robbery and then nothing else.

7 **MR. SCOTT:** I think the only one we'd asked for
8 was voluntary intoxication not being a defense.

9 **THE COURT:** Y'all sure could have helped me out
10 telling me this yesterday. I mean, I wanted to be here
11 a little early and we showed up at ten and it's 10:25
12 and you keep throwing stuff at me and it's really
13 aggravating me when I've got a jury sitting there. I
14 mean, preparation is helpful, I agree with you, but a
15 little more notice. I'll put it in there.

16 All right. Bring in the jury, please, ma'am.

17 (The jury returns to the courtroom.)

18 **THE COURT:** All right. Good morning, everyone.
19 I hope everybody got here warm and safe. It appears
20 you did. So -- oh, I haven't provided you candy yet.
21 Mr. Tracey will bring it around there.

22 All right. For the record, so y'all know, the
23 State rested yesterday, meaning the State presented to
24 you all the testimony and evidence they intend to
25 present regarding these two offenses. I had some

1 matters to consider that were legal issues for me to
2 consider, and as a result of those, Mr. O'Neil has told
3 me that the defense intends to put up nothing, which I
4 told you early on, a defendant accused of a crime in
5 South Carolina, and the United States, has nothing to
6 prove or disprove and may remain silent throughout an
7 entire trial, and that's what's happened here. Because
8 of that, the State will give their closing summary
9 first and Mr. O'Neil will give his closing summary last.
10 So please give your consideration to the attorneys.

11 All right. Mr. Scott.

12 CLOSING ARGUMENT

13 **MR. SCOTT:** Thank you, Your Honor. May it please
14 the Court. Good morning, ladies and gentlemen. Timothy
15 Cromer is an opportunist. Just like Mr. Daniel said in
16 opening, he's an opportunist, and an opportunity arose
17 for him January 16th of last year and David Williams.
18 It was the old set 'em up and knock 'em down. The setup
19 is you approach a 16-year-old child, hug him, disarm
20 him, act like you know him, shake his hand; how you
21 doing, Buddy, it's me, your old friend. The knockdown
22 is when you watch him go in the store, come back out
23 with money and jump in his car with him. That's the
24 takedown. You know, it's the same with predators
25 finding prey. You find the weak. You know them, you

1 observe them and then you snare them.

2 David was the mark that day and the opportunist,
3 the predator, was Tim Cromer. The opportunist, Tim
4 Cromer, plays with extremely high stakes. You don't
5 jump in someone else's car without their permission.
6 You don't tell them you have a gun and make demands.
7 That's playing with fire; is it not? Does that not
8 strike all of you as an extremely dangerous game?

9 Now here we are at trial and the predator, the
10 lion, is very meek and mild as he sits there. The lamb
11 was a lion on January 16th and now he's asking you guys
12 what are you gonna do about it? Well, what are you
13 gonna do?

14 In my estimation, what you have is a 16-year-old
15 boy doing nothing other than going to the gas station to
16 clean his car out when he's approached by a much older,
17 larger adult who disarms him, as I said, confuses him,
18 tries to catch him off guard. He goes in the store to
19 buy some candy bars and goes back out to vacuum his car
20 and realizes he doesn't have enough change for the
21 machine, it takes quarters, and he goes back in with a
22 five and gets four ones and four quarters.

23 There's Timmy Cromer again when he's walking
24 back out. Here's the knockdown. You follow him back
25 to the car. At this point David Williams is feeling

1 uncomfortable. Why does this guy keep harassing me?
2 I'm gonna abandon the whole vacuum-my-car-thing, but
3 it's too late. Tim Cromer jumps in the car with him.
4 Take me to Food Lion. What would you do?

5 **MR. O'NEIL:** Objection, Your Honor.

6 **THE COURT:** I'll sustain that.

7 **MR. O'NEIL:** Move to strike.

8 **THE COURT:** That argument is improper. You've
9 got to argue the facts.

10 **MR. SCOTT:** David Williams had no choice. What
11 he had to do was do as this stranger demanded. And then
12 I ask you about this constant talk about the gun. What
13 was his intent, y'all? What was his intent? Why would
14 you jump in someone's car and then start talking about
15 a gun? There's only one possible intent. To threaten
16 somebody into doing what you want them to do. That's
17 what the user does. He uses other people to accomplish
18 his own goals. His goal was to get a ride to the Food
19 Lion, get some money out of it. That's kidnapping
20 though.

21 You know, like Mr. Daniel said, in the Hollywood
22 scenario of kidnapping is the duct taping by the wrist
23 and ankles, cover your mouth, throw you in the trunk of
24 the car and take you somewhere. The law says any time
25 you confine somebody against their will, that's

1 kidnapping. David Williams testified he certainly
2 didn't feel free to leave that car at that point. I
3 don't know anybody who would. He felt like there would
4 be serious ramifications had he left. The stranger's
5 talking about this gun he has. Do you get shot in the
6 back? He couldn't kick him out of the car. Keep in
7 mind this is a 16-year-old boy. The target. He talks
8 about being scared the entire ride to the Food Lion, not
9 knowing really what was gonna happen next. Who would?

10 He talks about Cromer motioning to the supposed
11 gun four or five times in that short mile and a half
12 ride. Why is he doing that? This isn't a friendly
13 ride, ladies and gentlemen. That's what the defense
14 wants you to say. They want you to believe that it's
15 just a misunderstanding. Timothy Cromer just wanted a
16 ride. David Williams was friendly enough to give him
17 this ride. Are you gonna believe that though? He
18 wanted David to know about this supposed gun, he wanted
19 Williams to think about the gun, he wanted to make sure
20 Williams continued to comply. He wanted to know that
21 there sure would be consequences if he didn't.

22 And the law says an armed robbery, which is
23 taking something by force, here's that five dollars, not
24 a whole lot of money, that doesn't matter, you're taking
25 something by force with the representation of a weapon,

1 either by actions or words. It's the classic stick 'em
2 up, the bank robbery. It might just be his hand, but as
3 long as the victim thinks it's a gun, he's representing
4 that he's got a weapon, want to see my gun, that's armed
5 robbery, ladies and gentlemen. That's what we have
6 here.

7 He takes him to Food Lion. As soon as he steps
8 out, after he demands the money, the four ones and four
9 quarters, David drives off as fast as he can, goes to
10 his parents. You know, the mother testified immediately
11 she knew something was wrong. I think I asked her if it
12 was a mother's instinct. She said it would have been
13 apparent to anybody, but it's the feeling she talked
14 about and the feeling she has to this day.

15 You know, when our kids walk out the door, you
16 know, you hope for the best and you hope other people
17 have their best interest in mind and you hope the other
18 adults of the community will look after them to some
19 degree, but there's always gonna be predators out there.
20 She'll never forget that day, but as soon as he tells
21 them what happened, they call the police, and this is
22 bam, bam, bam.

23 The police get there. He's talking about the
24 description of the guy that had just robbed him, just
25 sat in the car next to him. I'm talking passenger seat

1 and driver's seat, okay? He talks about that face he's
2 never gonna forget. I mean, look at Mr. Cromer. He has
3 fairly unique features. Are y'all gonna forget what I
4 look like if I show up next week? The police send out
5 the description over the radio; a black male, black
6 shirt and jacket, an emblem on it, red shirt, last seen
7 at the Food Lion over there on Kendall Road. The cops
8 show up there; bam, bam, bam. He's still there. They
9 arrest him. David, will you come out here and see if
10 this is the guy? He fits the description. Come on out
11 here to see if this is the guy who just robbed you,
12 okay?

13 He gets there. He's 99 percent certain I think
14 is what he testified to. That's the guy. Just like
15 that is what the cops say. When he gets there, that's
16 him. He's got the money in his pocket. He has \$3.20
17 more than the \$5.00, he has \$8.20, but he certainly had
18 at least four ones and four quarters. He had that black
19 coat on with the emblem on it, the red shirt, and that's
20 the case.

21 I mean, Captain Atkins talks to him the next day.
22 I don't remember anything about yesterday. He doesn't
23 remember a thing about yesterday. That was his story.
24 Is that -- have you ever just completely forgotten about
25 a day prior? But that's his story. He doesn't remember

1 anything about the day before. Does it make sense to
2 y'all?

3 So what else is he gonna say? In my estimation,
4 what he's told you guys is a twofold argument, okay?
5 First of all, that wasn't me who robbed David Williams,
6 okay, but if you don't believe that story, well, then
7 it was a voluntary ride. Isn't that funny? It's a
8 two-prong defense. It wasn't me, but if you believe
9 it was me, then he voluntarily gave me that ride. If
10 it wasn't you, you say, that wasn't me, I don't know
11 anything about what happened on that drive because I
12 wasn't in the car with that boy, but that's what he's
13 trying to feed y'all and he's trying to give you all
14 these things that don't make any sense. I don't
15 remember anything about the day before.

16 Reasonable doubt. You're gonna hear a lot about
17 that. It's the standard of any prosecution. Anybody
18 who's convicted from South Carolina to California has
19 to be convicted beyond a reasonable doubt. And there's
20 various ways to describe that standard, but we, from
21 our state to California, know it's a doubt that is
22 reasonable, okay?

23 It's sort of a vague term, but you can have a
24 doubt about this case. I wasn't there. None of y'all
25 were there. We can't know anything about this case

1 with 100 percent certainty because we weren't there.
2 Reasonable doubt does not require that you have
3 100 percent certainty. You can have a doubt about this
4 or that, but it's got to be reasonable. If you get back
5 there and you're deliberating and one of you says well,
6 I doubt Timmy Cromer did it because baldheaded mean
7 don't go to the Spinx gas station on College Street, you
8 would look at that person and say that's not a doubt
9 that is reasonable. It makes no sense. It's not a
10 reasonable doubt.

11 Again, like Mr. Daniel said, you don't check your
12 common sense at the door. An analogy that's used to
13 show reasonable doubt is we're all in here, we don't
14 have any windows, but a man comes through the door there
15 and he's got his raincoat on, he's got a folded up
16 umbrella, his shoulders are wet and he says it's raining
17 out there and then somebody says well, I doubt that
18 because I noticed a sprinkler out there, it was probably
19 a sprinkler that hit you. I don't know that that's a
20 reasonable doubt and common sense doesn't dictate that
21 we come to that conclusion. As long as you are firmly
22 convinced, and that's what the Judge will mention to
23 you, if he's guilty of this crime it has to be beyond a
24 reasonable doubt.

25 The defense said that if you're in the jury room

1 and you're trying to figure out certain things of the
2 case, then the State didn't do its job. Again, I cannot
3 prove anything to y'all with 100 percent certainty
4 unless I can somehow create a time machine and we can
5 all go back to the Spinx on January 16th of last year
6 and watch everything for ourselves. A reasonable doubt
7 does not require 100 percent certainty.

8 The defense used a riddle in his opening. The
9 28 days in the month thing and he says at the end the
10 simplest answer is not usually correct, and I would
11 respectfully disagree. There is a theory or a principle
12 that is used in logic and problem-solving that dates
13 back to the thirteenth century called Occam's Razor.
14 Maybe you've heard of it. It's kind of a cool name,
15 Occam's Razor, but it was named after a scientist back
16 in the twelve and thirteen hundreds who said when you
17 have competing hypotheses, competing ideas of something,
18 you should fall on the one that calls for the least
19 amount of assumptions.

20 Now Timmy Cromer is telling you that I'm the
21 unluckiest guy in the world, man. I go to the Spinx a
22 lot of times and I'm the guy at the Food Lion with the
23 red shirt, the black jacket with an emblem on it, and
24 I'm the guy who the kid's ID'ing just after it happened,
25 but it's not me. Is David Williams making the whole

1 thing up? I mean, is he? And he's carrying it on over
2 a year now through multiple hearings and now in a trial
3 in front of you guys, is he making the whole thing up?
4 Because you've got to believe that to find him not
5 guilty. I mean, truly, you saw the kid up there. Did
6 he seem credible to you or is he making the whole thing
7 up? It's not a misidentification. How can you not
8 forget the face of somebody who threatens you with a gun
9 and they're sitting right next to you. You'll never
10 forget that faces. Certainly not thirty minutes after
11 it occurred.

12 Now the two charges for you to consider are the
13 armed robbery and the kidnapping. Armed robbery I
14 alluded to earlier is just the taking of anything from
15 somebody else by force while armed with a deadly weapon
16 or with the representation of a deadly weapon, either by
17 action or words, okay? They never found the gun on the
18 man, so it's a representation by actions and words that
19 he had the gun. Again, the armed robbery with the
20 finger in the pocket. That's armed robbery, taking with
21 force, the \$5.00, and the representation is do you want
22 to see my gun, do you want to see my gun, and patting
23 the pocket, okay? That's the armed robbery charge.

24 Kidnapping, again, is being confined to the car
25 and him feeling like he could not leave, talking, or

1 there will be ramifications, there will be consequences.
2 You don't have to outright say I'm gonna shoot you if
3 you leave the car. You're representing the gun, and
4 the effect it had on him, the effect it would have on
5 anybody, that there will be consequences, and you're
6 restricting their freedom of leaving.

7 I'm drawing to a close, y'all. I'm starting to
8 ramble here. At the beginning of this thing when we
9 picked y'all and you were in the other room to come up
10 in front of us and we looked at the papers, you know,
11 that we had on you guys, stuff you had regarding your
12 background and who you are and things about you, we
13 looked at each one of you and we determined that you
14 would be fair and very qualified jurors and that you
15 would be fair and impartial and only consider what
16 was presented here that came from this stand and the
17 evidence that you were shown, and that was it.

18 You wouldn't let stuff that was irrelevant, stuff
19 that happened outside this courtroom, come in and affect
20 your decision. That's why the Judge talks about the
21 media and Facebook and not looking at that or looking at
22 this. And the Judge even said if you have some kind of
23 preconceived notion of what the law is or what you think
24 it should be, you've got to abandon that. You can only
25 consider the law that he instructs, not what you think

1 it should be. He said you should be fair and impartial.
2 The oath that was administered to you by the Clerk is
3 that you will render a verdict based on the law and the
4 evidence as presented.

5 As the Judge said -- I live in Lexington County.
6 I guess, you know, we all are probably outsiders to
7 some degree. Taylor's from Spartanburg and the other
8 lawyer's from Columbia, but you guys, this is your
9 community. What y'all make up looks like a very diverse
10 group to me, I would say. It's a collective
11 consciousness of this community, okay? If Newberry
12 County was a living, breathing thing and had a heart
13 and soul and a conscious, you would speak for it. It's
14 represented in you. You determine what the values of
15 this community are. Does that make sense? Don't check
16 your common sense at the door. That wouldn't make
17 sense to you. Don't check your courage at the door
18 either, okay? It's a hard decision I know, but the
19 facts are beyond a reasonable doubt that this occurred
20 January 16th of last year.

21 I'm done. And that's just how it works. The
22 defense gets the last argument. It's frustrating
23 because everything I say he gets to get up and counter
24 and talk about this and that and I want to raise my
25 hand and say let me be heard on that, but this is my

1 last chance really. He gets the last argument and I
2 hope you remember some of what I said. And, truly, you
3 guys are actually the last word on this matter and I'm
4 gonna ask you to find him guilty of armed robbery and
5 kidnapping as your verdict. Thank you.

6 **THE COURT:** Thank you, Mr. Scott. Mr. O'Neil.

7 **MR. O'NEIL:** May it please the Court?

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

9 **MR. O'NEIL:** Much more smarter people than me
10 talk about our legal system and they say the legal
11 system we have is the best system devised by the mind
12 of men to settle disputes between the State of South
13 Carolina and their citizens. We have the best system
14 on the earth. This jury system that we have is what
15 separates us from places like Pakistan. It's been said
16 that jury service is the most important duty that a
17 citizen can give to their country in a time of peace.

18 Martin Luther King, Junior, once said the
19 ultimate measure of man is where he stands at a time of
20 challenge and a time of controversy. You can substitute
21 in that saying the word man with jury service. This
22 case right here is the ultimate test of our jury system.
23 What happens here today is the ultimate test about
24 whether or not you truly have the best system devised by
25 the mind of men to settle disputes between the state and

1 their citizens.

2 You thirteen have been given a job. I kind of
3 told you that at the beginning. Everybody has a job to
4 do. Law enforcement, prosecutors, judges, defense
5 counsel. We all get years of training to do our job,
6 years of schooling to do our job. We bring you thirteen
7 in here and the Judge is gonna give you about ten
8 minutes' worth of instructions and tell you to go do
9 your job, but you thirteen have the most important job
10 here. Your job is to solely say whether or not the
11 State of South Carolina has met their burden. That's
12 all you've got to do. Your job is not to investigate
13 and figure out what happened. We've got tons of law
14 enforcement people here whose job it is to do that. The
15 reason we picked you thirteen is because you promised --
16 you swore an oath that you could do your job.

17 Normally when a citizen is out in the community
18 here and you see the police have arrested somebody, the
19 first thing you think is man, I'm glad they got the
20 person who did it, but when you come in here and you sit
21 in that jury box you agree to believe the opposite. You
22 swore an oath to believe that Timothy Cromer is innocent
23 until they prove him guilty. The default is that he's
24 innocent. We start in the place that he's innocent
25 until they've done their job proving that he's guilty

1 and done their job beyond a reasonable doubt. If you
2 just think he did it, that's not beyond a reasonable
3 doubt. You aren't firmly convinced.

4 They've got to prove to you, one, that Timothy
5 Cromer was the person who actually did this. Judge
6 Griffith is gonna instruct you that identity has to be
7 proven beyond a reasonable doubt. So the first thing
8 they've got to prove to you is that Timothy Cromer was
9 the person that actually did it. Identity. What do you
10 know about the identity of the person who they allege
11 did this crime? You've got a description from David
12 Williams. You're gonna have his statement in there.
13 You're gonna be able to look at his statement and read
14 what the description of the individual was.

15 You keep hearing the Solicitor refer to what the
16 description was given here. Look at the description in
17 the statement. If you notice, every time you hear the
18 statement version of the description they happen to
19 leave one important element out. The description that
20 David Williams wrote on the day this happened said the
21 suspect had on black pants. He was sitting less than
22 one and a half feet away from him and he had on black
23 pants. And you're going to have these clothes and this
24 evidence in the jury room to look at as well. This is
25 what Timothy Cromer had on when he was arrested, there

1 was no black pants, and they generally always leave out
2 that when they talk about the description.

3 They leave out things that don't fit what they
4 want you to decide. They don't even mention those
5 things that don't fit into their nice easy answer. He
6 had on jeans, blue jeans, not black pants. What about
7 -- then they say, well, David Williams picked him out
8 of this show-up lineup. Timothy Cromer was the only
9 person standing there in front of the cops, detained by
10 law enforcement. Who else did he have to pick other
11 than Timothy Cromer? He's the only one standing there.

12 They didn't do any six-pack lineup, they didn't
13 show him any other people to choose from. They showed
14 him one person and said is that him. Of course, he's
15 gonna say that's him. He's the only one standing there.
16 When he talked about the red shirt, the only reason he
17 said he remembered that red shirt as being the red shirt
18 he had on was because that's the red shirt that's in the
19 evidence. The only reason he would believe that this is
20 the black shirt -- the only thing descriptive about the
21 black jacket is that it had some sort of emblem on it
22 and they arrested Timothy Cromer with this stuff on him,
23 so it had to be him.

24 Timothy Cromer said I don't remember being there.
25 So you've got Mr. Williams saying this is the guy,

1 you've got Timothy Cromer saying I don't remember being
2 there. It would be great if we had some independent
3 evidence here to kind of break that tie, but they've
4 got to prove beyond a reasonable doubt his identity.
5 Mr. Cromer said I don't remember being there,
6 Mr. Williams said okay, that's the man. Let's see if
7 we have an independent witness.

8 Mr. Scott talked about it would be great if we
9 had a time machine so we could go back in time and
10 figure out what happened here. Ladies and gentlemen, we
11 wouldn't need a time machine. Captain Atkins and the
12 State of South Carolina went to the Spinx that day and
13 got the video footage of what happened that day. We
14 don't need a time machine. We need them to show you the
15 video footage. Captain Atkins told you what was on that
16 video footage. More precisely, who was on that video
17 footage? There were two angles on the inside of that
18 store, two angles on the outside of the store. A
19 15-minute window of time on that video. Nowhere on that
20 video is Timothy Cromer. His face is nowhere on that
21 video, and they didn't even show you the video. Why
22 won't they show you the video? Because it doesn't fit
23 into their nice little easy answer. Timothy said I
24 wasn't there that day. Mr. Williams said he was there
25 that day. The video is independent evidence and they

1 didn't show it to you because it doesn't fit their easy
2 answer.

3 What else independent do we have? The store
4 clerks. Did they bring these store clerks in and put
5 them on the stand? But you heard Captain Atkins, their
6 investigator, say I talked to the store manager,
7 Ms. Vanessa. She doesn't remember seeing Timothy Cromer
8 out there the day this happened. You saw the pictures
9 of the Spinx. There's huge glass windows all over the
10 Spinx. Timothy Cromer is not on the video. The manager
11 don't -- doesn't remember seeing him out there. Timothy
12 Cromer did tell the police I was out there a couple of
13 days earlier and just eating chicken and Ms. Vanessa,
14 the manage, does remember that, but doesn't remember him
15 being out there on that day.

16 Okay. So he's not on the video, the manager
17 doesn't see him. What else independent could they bring
18 to prove that he was there or not there? Forensics.
19 They didn't do any forensics on the car. If he was in
20 the car with David Williams, fingerprints, touch DNA,
21 blood DNA, any sort of DNA, they didn't even try to do
22 any sort of DNA, any sort of forensics that matched
23 Timothy Cromer in that car. You heard Captain Atkins
24 say well, it's difficult and maybe in fifteen years
25 we'll have some technology that could test these items

1 here. Timothy Cromer doesn't have fifteen years to
2 wait. You don't have fifteen years to try to correct
3 the mistake. It's their job, the police's job, to
4 investigate, to give the prosecutor evidence to give to
5 you to decide this case, and they haven't done that.

6 They say well the individual who did this robbery
7 had four dollars and four quarters, and they arrest
8 Timothy and he has six dollars and six quarters and
9 other various change. The money description doesn't
10 match. Timothy Cromer is stopped near a laundromat.
11 If you would have stopped any individuals near that
12 laundromat, I would suspect they would have single ones
13 on them and change. He had \$8.20 on him and some
14 marijuana. They haven't done enough to prove identity
15 beyond a reasonable doubt.

16 When they do the show-up lineup, Sergeant Wood
17 said at first when they get there he tries to park
18 far enough away where the suspect can't see who's
19 identifying him. If the suspect can't see who's
20 identifying him, the person who is identifying the
21 suspect is probably not close enough to see them either.
22 David Williams told you he wears contacts and he's
23 farsighted. Can he be sure that's the person that was
24 there? It's dark, getting dark, dusk time, right at
25 the end of the day. Can you be firmly convinced of that

1 ID?

2 There was never a gun found on Timothy Cromer.
3 They searched Timothy Cromer's person, they searched the
4 car, the patrol car they put him in, they searched the
5 area around the Food Lion. They said they got there
6 immediately -- quickly after the incident occurred and
7 never found any gun on him because he didn't have a gun.
8 They can't prove he was in the car. They first have to
9 prove beyond a reasonable doubt that the identity is
10 correct and they haven't done that.

11 What about the two charges that they indicted him
12 on? They decided to indict him on serious charges of
13 armed robbery and kidnapping. That was their decision,
14 not yours. You're not responsible for that. Your only
15 job is to decide whether or not those two charges have
16 been met by the evidence.

17 Armed robbery. The Judge is gonna tell you that,
18 first of all, there has to be a robbery. That means
19 taking some item by force. You'll have David Williams'
20 statement back there for you to look at. Look at the
21 words that he used in his statement. Nobody forced him
22 to use those words. You're gonna see the words the
23 suspect asked for money. No demands. He told you on
24 the stand nobody yelled at him, nobody ever raised his
25 voice, nobody threatened him, nobody ever showed him a

1 firearm. No force was used. There was not a robbery.
2 And it definitely wasn't an armed robbery.

3 They never found a gun on Timothy Cromer. In
4 order for there to be an armed robbery, there either
5 has to be use of a deadly weapon, he never used a
6 deadly weapon in this case, or words or actions plus a
7 representation of a deadly weapon. Look and see if
8 there's any sort of representation of a deadly weapon,
9 any sort of object that was used that a reasonable
10 person could believe was a deadly weapon. If you don't
11 have that, plus actions and words, you don't have armed
12 robbery. Look at David Williams' statement. See the
13 words he used as to what happened in the car that day.

14 The last thing they charged him with kidnapping.
15 Forcing somebody to move or be confined against their
16 will. Look at the words in David Williams' statement
17 that you're gonna have back there with you. Look
18 closely to see when the first time in that statement
19 any mention of a gun was used. In that statement, the
20 first time a gun was ever mentioned was after they had
21 already passed Mr. Williams' father going toward the
22 Food Lion. No threatening to use a gun to make you move
23 here.

24 When David Williams came out of the Spinx store
25 the second time -- in that statement, he said the

1 gentleman was talking to him while he was coming out of
2 the Spinx the second time, but he couldn't understand
3 what he was saying. I don't know what was said when
4 he came out of that store. Maybe the individual asked
5 for a ride. Mr. Williams said he went to his car, he
6 unlocked his car and the guy just got in. Maybe the guy
7 asked for a ride and he just got in and the door was
8 unlocked. Either way there was never any force used.
9 This guy wasn't trying to kidnap somebody. The only
10 words that were used in that car was do you want to hold
11 my gun. If you're trying to kidnap somebody, do you
12 offer to let them hold your gun? You will see in the
13 statement that David Williams said when he got to the
14 store he heard him say do you want to hold my gun while
15 I go into the store? If you're trying to kidnap
16 somebody, do you offer to let them hold the gun? They
17 decided to charge him with kidnapping, but they haven't
18 met that burden. He is not guilty of kidnapping.

19 Mr. Scott said that you have to believe that
20 David Williams is making all this up in order to find
21 Timothy Cromer not guilty. You don't. All you've got
22 to believe is that the prosecution hadn't met their
23 burden, and that's all you have to do at that point to
24 do your job. One thing that you swore when you said
25 what you were gonna do here is you said you would decide

1 the case based on the evidence and the law and not
2 emotion and sympathy. Mr. Scott brought up a lot of
3 emotional stuff when he talked about this lamb and
4 predator and prey, all emotional words. Even put David
5 Williams' mother on the stand to tell you how emotional
6 it was for them and how it's gonna affect them for the
7 rest of their lives. It's natural for each and every
8 one of us to have emotions in this case, to have
9 sympathy for Mr. Williams. They keep referring to him
10 as oh, he's a teenager, he's sixteen years old, trying
11 to get you to make a decision based on emotion, make you
12 feel sorry, make you feel scared and make you convict
13 based on that. You may have emotions, you may have
14 sympathy for Mr. Williams in this case.

15 I always bring this box, not because I like
16 Allen-Edmonds shoes, but I like to say do you have
17 emotion, do you have sympathy, do you have fear, place
18 that emotion here in this box. Those emotions you have,
19 those fears, those sympathies that you may have for
20 Mr. Williams' family, those kind of gut feelings, put
21 them all in here and then we'll close it up. Because
22 you can't take this back there with you. You can't take
23 your emotions, your sympathies, your feelings back there
24 when you go in that jury deliberation. You have to go
25 back there and make a decision based on the law and the

1 evidence. You have to decide whether or not they've
2 proved their case beyond a reasonable doubt.

3 And the easiest way to understand beyond a
4 reasonable doubt, somebody explained this to me, one of
5 my clients said to me one time, he said if you go into
6 your refrigerator on Wednesday and you have a carton of
7 milk and the milk is set to expire on Friday and it's
8 Wednesday when you go in there and before you pour it on
9 your cornflakes and before drink it, you stop and you
10 smell it first, that's reasonable doubt because the milk
11 says it doesn't expire until Friday, but you're not
12 quite sure, you have a reason to believe -- to hesitate
13 to act, not to drink that milk, because maybe it's not
14 quite what it says. Maybe it really doesn't expire on
15 Friday.

16 That hesitation to act is reasonable doubt.
17 David Williams said he was 99 percent sure that it was
18 Timothy Cromer identified. Well, there's reasonable
19 doubt there. 99 percent sure, but the pant description
20 doesn't match. Reasonable doubt. He's 99 percent
21 sure, but Timothy Cromer is not on the video. That's
22 reasonable doubt. He's 99 percent sure that it's
23 Timothy Cromer, but Timothy Cromer is not caught with
24 a gun, no forensics, no fingerprints, the money
25 description doesn't match. All reasonable doubt. They

1 charged him with armed robbery, but never found the
2 gun. Reasonable doubt. They charged him with
3 kidnapping. In the statement, Mr. Williams said the
4 individual used the word asked. The individual was
5 friendly when he first met him. On the stand
6 Mr. Williams said he never threatened him, never yelled
7 at him, never raised his voice, he never threatened to
8 harm him, he never physically touched him. Reasonable
9 doubt.

10 They have not proven their case and now I'm just
11 asking you to do your job. You swore to me you could
12 do it and I'm asking you to do it. Simply -- your
13 verdict of not guilty simply says they haven't done
14 their job. The ultimate test of a man is not where he
15 stands at a time of comfort or convenience, but at a
16 time of challenge and controversy. Right here today
17 is a time of challenge and a time of controversy. I'm
18 not asking you to do what's comfortable. It would be
19 comfortable to say well, we feel sorry for Mr. Williams
20 and find Mr. Cromer guilty. It would be convenient to
21 say well, they're close enough, so something must have
22 happened, so I'll find Timothy Cromer guilty. I'm
23 asking you to do what's correct. What's correct is to
24 find Timothy Cromer not guilty of armed robbery, not
25 guilty of kidnapping because they have not done their

1 job, they have not proven his guilt beyond a reasonable
2 doubt. Thank you.

3 CHARGE OF THE COURT

4 **THE COURT:** Thank you, Mr. O'Neil. Folks, I'm
5 gonna come around here and talk to y'all. I've got to
6 give y'all some instructions, so I'm gonna come down
7 here because I can see you better. This is not my
8 normal courtroom. The old courthouse over there is
9 where I like to sit. This is only my second trial
10 in this courtroom and I like to make certain my
11 instructions to you are clear and efficient. Most
12 lawyers comment that I'm gonna give you instructions
13 on the law and, you know, unfortunately, some jurors
14 have told me that instructions are like taking a drink
15 of water through a fire hose, so I'm gonna throw a
16 lot at you, but you'll have the opportunity to ask
17 questions after the instructions are done like we didn't
18 understand this instruction or we weren't certain you
19 read what a reasonable doubt was, can you reinstruct us
20 on that, so this is not your only time to listen, but
21 this is the first time to listen, so if something comes
22 up later, come back and ask. I'm gonna read most of
23 these. Even though I like to sit and tell you rather
24 than read, I'll do my best to do a little of each.

25 Anyway, Ms. Hardy, and members of the jury,

1 the State of South Carolina has charged the Defendant,
2 Mr. Timothy Cromer, with armed robbery and possess --
3 I'm sorry, and kidnapping. You will have a verdict form
4 in the jury room during deliberations, which I prepared
5 moments ago. You will, of course, bear in mind that
6 he's pled not guilty and he's remained silent throughout
7 this trial and so by that act he has denied all of the
8 charges in the indictments.

9 Now an indictment, as I told you earlier, is
10 merely an accusation by the State. The evidence which
11 you are to consider is the testimony from the witnesses
12 who testified from this witness stand and the evidence
13 which has been introduced by the parties.

14 Now Mr. Cromer comes into court clothed with a
15 presumption of innocence and this presumption of
16 innocence continues in the case and entitles him to a
17 verdict of not guilty unless and until it's dispelled
18 by all the evidence satisfying you, the jury, beyond
19 a reasonable doubt that he is guilty of the offense
20 charged and the State has proved each and every element
21 of these crimes beyond a reasonable doubt.

22 Now under the Constitution of South Carolina and
23 the United States, you are to be the finders of the fact
24 in this case as to what happened or how it happened.
25 I am the sole instructor of the law under that same

1 constitution and so since I'm the instructor of the
2 law, you must accept the law as I am instructing it to
3 you. Now if I should make an error in the law as I am
4 instructing it to you, there's another time and another
5 place to consider if an error has been made and, if
6 necessary, correct that error, but for the purposes
7 today you must accept the law as I am instructing it to
8 you. So if you have an idea of what the law should be
9 or what it might be or what you've heard it is somewhere
10 else, please disregard that understanding and accept it
11 as I am instructing it to you today.

12 Now I told you y'all were the factfinders in
13 this case and as the factfinders you should have
14 listened carefully, and I noticed y'all did, to the
15 evidence presented in this case and you must now weigh
16 the evidence using your good judgment and your common
17 sense. Weighing the evidence is entirely a mental
18 process. You don't have a set of scales and you must
19 consider using your common sense. Evidence weighs with
20 you that convinces you of the truth regardless of where
21 it came from. So you are to consider the testimony and
22 evidence you've heard and weigh it and consider it with
23 your common sense.

24 Your objective is to find the truth. You're
25 the judges of the credibility and believability of

1 the witnesses as you have seen them testify. So in
2 passing upon that credibility, you may take into
3 consideration anything that you deem that's appropriate
4 in considering their credibility, including such thing
5 as what was their manner and their demeanor when they
6 were testifying, were the witnesses straightforward
7 or were they hesitant when answering the questions,
8 how did any of the witnesses come to know the facts he
9 or she testified to or what was their ability to know
10 these facts. Was there some reason a witness would
11 want to give testimony which would help or hurt one
12 side or the other? In other words, was a witness
13 biased or prejudiced in any matter whatsoever? Was the
14 testimony of the witness strengthened or weakened by
15 other testimony or other evidence?

16 You, the jury, may believe as much or as little
17 of each of the witness's testimony as you deem proper.
18 You can believe the testimony of the one witness against
19 that of many or many against one. You may believe part
20 of a witness's testimony and disbelieve the rest. The
21 fact that testimony is not disputed does not mean you
22 must accept it as true since it was undisputed. You
23 must still gauge the credibility of the witness to
24 determine the believability or the truth of the facts
25 offered through his testimony, keeping in mind you have

1 but one objective, and that is to seek the truth.

2 Now generally there are two types of evidence
3 presented during a trial. In this case, that was done.
4 There's direct evidence and circumstantial evidence.
5 Direct evidence is testimony of a person who asserts a
6 thing and had actual knowledge of facts such as an
7 eyewitness. Circumstantial evidence is the proof of
8 a chain of facts and circumstances indicating the
9 existence of another fact. Our law makes no distinction
10 between the weight or value to be given to either direct
11 evidence or circumstantial evidence, nor is a greater
12 degree of certainty required of circumstantial evidence
13 than that of direct evidence. You should just weigh all
14 the evidence which has been presented to you. After
15 weighing all the evidence, if you are not convinced of
16 the guilt of Mr. Cromer beyond a reasonable doubt, you
17 must find him not guilty.

18 Now as I've told you before, in a criminal
19 prosecution the State, and that is this table, has the
20 burden of proving this case beyond a reasonable doubt
21 and the defense has no burden whatsoever. According
22 to our constitution, the prosecution must prove their
23 case to the standard of proof called beyond a reasonable
24 doubt before a finding of guilt may occur. This term
25 reasonable doubt has been used, and I've used it in my

1 initial instructions, and it is this. Reasonable doubt
2 is a kind of doubt which would cause a reasonable person
3 to hesitate to act. A reasonable doubt makes an honest,
4 sincere and conscientious person in the search for truth
5 hesitate to act. Proof beyond a reasonable doubt is
6 proof that leaves you firmly convinced of the
7 Defendant's guilt. If you have a doubt for which you
8 can give or assign a reason as to the guilt of the
9 Defendant, then the defense is entitled to a verdict of
10 not guilty. A reasonable doubt may arise from the
11 evidence which is in the case or from a lack or absence
12 of evidence in the case. You, the jury, must make a
13 determination of whether or not reasonable doubt exists
14 as to the guilt of Mr. Cromer. And I tell you the very
15 fact that you engage in a full and free discussion of
16 guilt or innocence does not in and of itself create a
17 reasonable doubt.

18 Now criminal intent is a necessary element of
19 each crime that must be proved by the State beyond a
20 reasonable doubt. Criminal doubt -- I'm sorry.
21 Criminal intent is always a matter that must be
22 determined by the jury from the circumstances
23 surrounding the situation. There is no way to prove
24 an intent to a mathematical certainty and there's no
25 way medical science can dissect a person's brain to

1 determine what he or she had in mind, so our law
2 states that criminal intent may be inferred from the
3 circumstances shown to have existed both before or
4 after the fact, and this is how you, the jury, make
5 determinations of whether or not the element requiring
6 intent was present. Criminal intent is a state of mind
7 that operates jointly with an act or an omission in the
8 commission of a crime. Criminal intent is a mental
9 state of conscious wrongdoing, so it is up for you, the
10 jury, to determine what the Defendant intended to do
11 based upon the circumstances shown to have existed. And
12 I tell you that the State must prove criminal intent
13 beyond a reasonable doubt, just as the State must prove
14 all the other elements beyond a reasonable doubt.

15 Now I allowed y'all to take notes. Please
16 understand that taking notes is kind of a personal thing
17 for each juror. Because one person doesn't take notes
18 and one person does, don't assume that the notes are
19 better than the person's recollection. The notes are
20 just notes.

21 Now the specifics of the law in this case would
22 describe a charge of armed robbery and kidnapping. I
23 tell you that in order to prove the offense of armed
24 robbery, the State must first prove beyond a reasonable
25 doubt that Mr. Cromer took the personal property from

1 the person or presence of another person. Property is
2 in the presence of another if it is within that person's
3 reach, inspection, observation and control so that a
4 person could, if not overcome by violence or prevented
5 by fear, to keep possession of that property. The
6 State must also prove beyond a reasonable doubt that
7 the Defendant carried the property away intending to
8 permanently deprive the owner of the property and to
9 keep the property for the Defendant's own use. The
10 slightest removal of property or the complete possession
11 of property, even for an instant, by the Defendant is
12 sufficient to show the taking and carrying away of the
13 property. The taking and carrying away of the property
14 must have been done with violence or by putting the
15 owner of the property in fear of violence.

16 And, finally, the State must prove beyond a
17 reasonable doubt the Defendant was armed with a deadly
18 weapon during the robbery. A deadly weapon is any
19 article or instrument likely to cause death or great
20 bodily harm. Whether an instrument has been used as a
21 deadly weapon depends upon the facts and circumstance of
22 each case. A person who commits robbery while armed
23 with a pistol, a slingshot, a razor or any other deadly
24 weapon or while alleging, either by action or words,
25 that he is armed with -- or while using a representation

1 of a deadly weapon or any object which the person
2 present during the commission of a robbery reasonably
3 would have believed to be a deadly weapon is guilty of
4 this crime.

5 Now also included within the definition of armed
6 robbery is a lesser included offense of strong arm
7 robbery or also called common law robbery. In order to
8 prove strong arm robbery, or common law robbery, the
9 State must prove beyond a reasonable doubt all the
10 elements which I have just explained to you, except
11 that the Defendant was armed with a deadly weapon.

12 Additionally, the Defendant is charged with
13 kidnapping. A Defendant charged with kidnapping, the
14 State must prove beyond a reasonable doubt that
15 Mr. Cromer knowing and unlawfully seized, confined,
16 decoyed, kidnapped, abducted or carried away another
17 person without authority of law. To do a thing
18 unlawfully is to do it willfully against the law.
19 Knowingly means with knowledge, consciously and not
20 accidentally. Seized means to take hold of suddenly
21 or forcibly. Confined means to limit, restrict or
22 enclose within bounds or shut or keep in. Inveigle,
23 also a verb, means to lure, entice, lead astray by false
24 representations or other deceitful means. Decoy means
25 to lure by or as if by decoy. A decoy is something to

1 entice a person into a trap. Kidnap is to remove a
2 person against his will by unlawful force or by fraud.
3 Abduct means to carry off secretly or by force for an
4 illegal purpose. Carry away means to remove.

5 The State does not have to prove that the
6 Defendant did all these things. Instead, if you find
7 beyond a reasonable doubt the Defendant did any of
8 these things, you may find him guilty of the offense
9 of kidnapping. Something done without authority of
10 law is something done which the law does not sanction,
11 permit, allow, condone or provide justification for.
12 Kidnapping does not have to be done for any personal
13 or monetary gain or for any illegal purpose, but it
14 may be for any reason whatsoever.

15 Now I tell you also that an issue in this case
16 which has been raised is the identification of the
17 person committing the crime charged. The State will
18 have to prove identity beyond a reasonable doubt also
19 just as the other elements. You must be satisfied
20 beyond a reasonable doubt of the accuracy of the
21 identification of the Defendant before you may convict
22 Mr. Cromer. Identification testimony is an expression
23 or belief or an impression by a witness. You must
24 determine the accuracy of the identification of the
25 Defendant and you must consider the believability of

1 each of the identification witnesses in the same way
2 as the other witnesses. You may consider whether a
3 witness had an adequate opportunity to observe the
4 offender at the time of the offense and this will be
5 affected by things like how long or how short of a
6 time was available, how far or how close the witness
7 was, any lighting conditions, whether the witness had
8 a chance to see another person to pass.

9 And, once again, I instruct you the burden of
10 proof extends to every element of the crime charged and
11 specifically includes the burden of proving beyond a
12 reasonable doubt the identity of the Defendant as the
13 person who committed the crime. So if after examining
14 the testimony you have a reasonable doubt as to the
15 accuracy of the identification of the Defendant, you
16 must find the Defendant not guilty.

17 I also instruct you that voluntary intoxication
18 or insanity caused by the use of drugs or alcohol may be
19 a defense if the insanity is permanent and destroys the
20 Defendant's ability to know right from wrong. However,
21 when voluntary intoxication does produce permanent
22 insanity, it is not a defense to -- to this crime. A
23 person who voluntarily becomes intoxicated is just as
24 responsible for the acts committed while intoxicated as
25 when a person is not intoxicated.

1 Now I instruct you further and emphasize the fact
2 that Mr. Cromer did not testify is not a factor to be
3 considered by you in any way in your deliberations, so
4 in your determination and consideration of the question
5 of guilt or innocence of the Defendant, it must not be
6 considered by you in any manner whatsoever. The
7 Defendant has a constitutional right to remain silent
8 and his assertion of this right must not be considered
9 in your deliberations. So under the oath that you took,
10 you're not to draw any conclusion whatsoever from the
11 fact that the Defendant did not testify. The very fact
12 that he did not testify should not even be discussed in
13 the jury room. The burden of proof is on the State and
14 the State must prove his guilt and all the elements of
15 each of these crimes beyond a reasonable doubt before a
16 finding of guilt may occur. A defendant is not required
17 to prove his innocence.

18 Now, Ms. Hardy, and members of the jury, as y'all
19 retire to the jury room to begin your deliberations, I
20 wish to express the hope that y'all be mindful of the
21 importance of your duties. You're not called upon to
22 serve as jurors very often and your duty is quite
23 important even though this trial was, you know, a
24 relatively short trial. The lawyers have addressed me
25 as Your Honor and may it please the Court and that sort

1 of thing and there's decorum that goes on in a trial
2 and this Court is entrusted with the honor of this
3 community and the State in seeing that every person
4 tried here receives fair and impartial justice and I
5 trust that you will do your deliberations and whatever
6 verdict you find in that same manner. I'm not telling
7 you how to decide the case. I'm telling you I trust
8 that you will restrict your deliberations to the
9 evidence that has been presented, the instructions that
10 I've given to you and reach a unanimous verdict.

11 Everyone is entitled to justice, both the State
12 and the Defendant. Everyone is entitled to that;
13 nothing more and nothing less. You owe no support to
14 anyone or sympathy to anyone and I am convinced that
15 you will reach a fair and just verdict as that is your
16 responsibility. Remember, your verdict must be
17 unanimous.

18 Do we have the verdict form? All right. Now
19 what I've got to do now, it shouldn't take very long,
20 is I'll show you the verdict form. There's the caption.
21 It has the charge. This has got three choices: Armed
22 robbery, guilty or not guilty; strong arm robbery,
23 guilty or not guilty; kidnapping, guilty or not guilty.
24 Simple as that. You're gonna initial and it tells you
25 where to sign your name and you sign there.

1 I will send this form back to you with the
2 evidence in a few moments. What I get to do now is the
3 instructions I gave -- one of the reasons we delayed
4 getting y'all out here is the lawyers and I were
5 discussing my instructions and they were requesting you
6 charge this and don't forget to instruct that, so we
7 went through a little bit of limited instruction
8 conference. They're also allowed now on the record to
9 say Judge, would you please instruct them more fully on
10 this or that or something along those lines. I haven't
11 had that conversation yet because they just finally
12 heard my instructions to you.

13 So if y'all will step in the jury room, I will
14 confer with the lawyers and if they think the
15 instructions are sufficient and complete, y'all can
16 begin your deliberations when you receive the verdict
17 form. If I omitted something or shortened something
18 too much when I was reading or I perhaps glossed over
19 something, then I'll bring you back in here and say all
20 right, I -- I glossed over this fact and I'd like to
21 reinstruct you on that.

22 Now, also, once I have that accomplished, I need
23 to know if you have a question or if you'd like more
24 instructions on the definition of reasonable doubt or
25 the definition or the elements of armed robbery or the

1 definition or elements of kidnapping, whatever, write it
2 down, hand it to Ms. Wardlaw and she'll bring it to me.
3 And a lot of times the lawyers and I can write down a
4 response and send it back to you, sometimes I can't and
5 I've got to bring you back in here and give you a more
6 expansive instruction.

7 And, also, if you want to rehear testimony,
8 Ms. Johnson has recorded and transcribed the entire
9 trial and so if y'all want to hear someone's testimony
10 again, you're allowed to do that. And it's helpful
11 to say we'd like to hear the testimony of, and the
12 person. If you can't remember the name, that's fine,
13 too. Just say the officer, whichever one it was, you
14 know, describe them, and give me a few moments and
15 Ms. Johnson will have to queue up the time and so that
16 will be a good time if you want to hear testimony to
17 take a break and give her time to get her equipment set
18 up and queued up to hear that testimony because she
19 can't call it up like that. I'm certain she's good, but
20 it will take probably ten minutes or so to locate the
21 testimony on the recording to get it ready for y'all and
22 then I'll bring you back in here and let you hear it.

23 So any question, write it down. Any testimony
24 you want to hear, write that down also and send it out,
25 give us a few minutes and we'll queue it up.

1 Now once you begin your deliberations and start
2 deliberating, you're on your time. So if you work about
3 thirty minutes and y'all need a break and somebody wants
4 to step in the restroom, stop deliberations unless all
5 twelve of you are in there. So if you want to take a
6 ten minute break, so be it. We're gonna be here. I'll
7 perhaps be doing some other work, so it's on your time,
8 but you cannot discuss the case unless all twelve of you
9 are there. So if you want a break, everybody gets a
10 break.

11 Now it's close to lunchtime. If y'all want
12 something to eat, let me know. We have the ability to
13 send off for some light lunch. Most of the time we get
14 pizzas here recently, it's kind of simple, but it does
15 give you something warm to eat if you'd like and the
16 drinks are already back there. So if y'all want
17 something to eat, let us know and we'll send out for it
18 and we'll get it to you. Give me a little warning on
19 that, too, okay?

20 All right. Those are my instructions. Y'all
21 step back in the jury room and until you get these,
22 you're not to begin your deliberations. I've got to
23 talk to the lawyers first.

24 (The jury retires to the jury room.)

25 **THE COURT:** All right. Any additions, deletions,

1 comments on the instructions?

2 **MR. SCOTT:** No, sir.

3 **THE COURT:** I think I put them in the right
4 order. Excellent. That went smoother than I thought
5 considering y'all's suggestions, so I was pleased to get
6 them out like I did.

7 Okay. Y'all inventory the evidence and make
8 sure -- I think there's only seven exhibits. And then
9 y'all check the verdict form and make sure I didn't
10 misspell anything, but I kept it very simple.

11 **MR. O'NEIL:** Can we have the alternate pulled
12 out?

13 **THE COURT:** Yeah, as soon as I get everything,
14 Ms. Wardlaw will bring the alternate to me.

15 (The jury commenced its deliberations at
16 11:40 a.m.)

17 (Recess taken.)

18 **THE COURT:** All right. Y'all look at this. They
19 had a question about the difference between strong armed
20 robbery and armed robbery, which I thought I did pretty
21 good.

22 All right. Y'all look at this. They want the
23 definition of armed robbery. Ms. Johnson, mark that as
24 Court's Exhibit, I guess, 2.

25 (Court's Exhibit Number 2, a question from the

1 jury regarding the definition of armed robbery, was
2 marked for identification.)

3 **THE COURT:** That's not verbatim what I read. I
4 skipped over some of those weapons, like brass knuckles,
5 a dirk, and that sort of thing. All right. Staple it
6 together and send it to them.

7 (Recess taken.)

8 **THE COURT:** We got another question. Definition
9 of kidnapping. I'm gonna do the same thing.

10 (Court's Exhibit Number 3, a question from the
11 jury regarding the definition of kidnapping, was marked
12 for identification.)

13 (Recess taken.)

14 **THE COURT:** Definition of reasonable doubt.
15 I'm gonna print the same thing. Mark that as Court's
16 Exhibit 4, please.

17 (Court's Exhibit Number 4, a question from the
18 jury regarding the definition of reasonable doubt, was
19 marked for identification.)

20 (Recess taken.)

21 **BAILIFF:** All rise.

22 **THE COURT:** You may be seated.

23 **THE COURT:** All right. Bring in the jury,
24 please.

25 (The jury returns to the courtroom.)

1 **THE COURT:** All right. I'm gonna give you a
2 simple answer and then the rest of the story. The
3 question written -- we're gonna make this a Court's
4 exhibit, Ms. Johnson. You know, I've got to keep
5 putting this stuff on the record, so I'm gonna put a
6 sticker on this.

7 (Court's Exhibit Number 5, a question from the
8 jury regarding the elements of armed robbery, was marked
9 for identification.)

10 **THE COURT:** All right. This is gonna be a
11 change, if you'll notice on there. The simple answer is
12 no. The way this is written, armed robbery has four
13 elements. The State must prove beyond a reasonable
14 doubt that the accused took personal property from
15 another. Second, that the property was in the presence
16 of the person. Third, that the accused carried the
17 property away -- that's two actually. Third is the
18 accused took the property away, done with violence or
19 putting the owner in fear of violence. That's strong
20 arm robbery. The additional elements of armed robbery
21 is that it was done with or armed with a deadly weapon.

22 So strong arm robbery is done -- the way this
23 whole paragraph reads, you can take that out and
24 basically read just like this. If you believe that
25 strong arm robbery has not been committed, you can

1 consider whether a strong arm robbery -- all right. If
2 you don't believe armed robbery has been proved beyond a
3 reasonable doubt, you can consider whether a strong arm
4 robbery has been committed. In order to prove a strong
5 arm robbery, the State must prove beyond a reasonable
6 doubt that the Defendant took personal property from the
7 person or presence of another without consent and
8 carried it away. Property is in your presence within
9 the reach, inspection, control or observation, and so,
10 if not overcome with violence or prevented by fear,
11 would have retained possession. The State must show
12 that the Defendant carried the property away with the
13 intent to permanently deprive the owner of the property
14 permanently of it or convert the property to his own
15 use. The slightest removal or the complete possession,
16 even for an instant, is sufficient to show taking and
17 carrying away. The taking and carrying away must have
18 been done with violence to the owner or fear of
19 violence. That is strong arm robbery. The additional
20 element of armed robbery is the putting in fear is done
21 with a weapon.

22 Okay. Does that answer your question? I'll give
23 that back to you.

24 Is that sufficient, gentlemen? Is that what we
25 discussed?

1 **MR. O'NEIL:** Yes, Your Honor.

2 **THE COURT:** Okay. Did I read it -- I read it
3 verbatim. Hold on.

4 **MR. SCOTT:** Is representation of the weapon the
5 only addition --

6 **THE COURT:** Right. It's in the armed robbery
7 charge they've got, representation of the weapon.

8 **FOREPERSON:** That last one is the strong arm?

9 **THE COURT:** All right. It's in there. It's in
10 the charge. Y'all read that. And I think I answered
11 your question as no. And now I just basically defined
12 strong arm robbery, as I read here, without the weapon
13 element, okay?

14 All right. Any more questions, let me know.

15 (The jury retires to the jury room to continue
16 its deliberations.)

17 (Recess taken.)

18 **THE COURT:** Bring them back in. They want to
19 hear what I said again. Here's what they say, quote:
20 Can we hear what the Judge stated again? So the answer
21 is yes.

22 (The jury returns to the courtroom.)

23 **THE COURT:** Do you still have the instructions?

24 **FOREPERSON:** I don't.

25 **THE COURT:** Here's what I'm gonna do. I'll tell

1 you this. Y'all have got all the instructions back
2 there. Again -- all right. First and foremost, you're
3 to consider the offense of armed robbery, and those
4 elements, and those include the taking of property of
5 another person, carrying away, even for a moment, intent
6 to deprive the owner of the property, and you did that
7 by putting a person in fear of violence. Armed robbery
8 is putting the person in fear of violence with a weapon
9 or representing that you have a weapon.

10 So a robbery, common law robbery, strong arm
11 robbery, those are synonyms, but a robbery. If the
12 State did not prove the Defendant was armed with a
13 deadly weapon, you can consider whether they've proved
14 beyond a reasonable doubt that the Defendant committed a
15 robbery.

16 A robbery is this. The Defendant took the
17 personal property from a person or presence of another
18 without that person's consent and carried it away.
19 Property is property in a person's reach, inspection,
20 observation or control, and they could, if not overcome
21 with violence or prevented by fear, they would have
22 retained the property. The State must show the
23 Defendant carried the property away intending to
24 permanently deprive and convert the property to his own
25 use. The slightest removal, even for an instant, is

1 sufficient to show taking and carrying away. The taking
2 and carrying away of property must have been done with
3 violence or putting the owner in fear of violence.

4 That's strong arm robbery. Those elements. An
5 armed robbery is those and, in addition, the person is
6 armed or makes a representation they're armed, and that
7 paragraph that starts with finally several -- about half
8 a page down.

9 All right. Does that answer your question? All
10 right. Go back and deliberate and let me know.

11 (The jury retires to the jury room to continue
12 its deliberations.)

13 **MR. O'NEIL:** Your Honor, I think I have to --
14 have to object to that -- that reading of the armed
15 robbery. I think that's not exactly what -- what that
16 statute says, Your Honor. The State maintains that --
17 and I think the wording Your Honor used, while using --
18 while representing that you have a firearm, that's not
19 in the statute, the armed robbery statute. The armed
20 robbery statute says while armed with a deadly weapon
21 or while alleging, either by actions or words, that he
22 was armed while using a representation of a deadly
23 weapon or object which a person possessed during the
24 commission of a robbery or the person had reason to
25 believe he did.

1 **THE COURT:** Yeah, that's the whole thing, and
2 that was in my paragraph from finally on down. I
3 omitted it and was trying to restrict it. The
4 definition that they asked for was what is a strong
5 arm robbery.

6 **MR. O'NEIL:** I think the wording you used was
7 while -- was that armed robbery was strong arm robbery
8 or -- or I think the difference used was armed robbery
9 was strong arm robbery plus either having a -- having a
10 weapon or representing to have a weapon.

11 **THE COURT:** And what was described in the
12 paragraph finally on down. I understand your
13 distinction, but I think that was in that paragraph --
14 all of that was in that paragraph from finally on down.

15 **MR. O'NEIL:** I guess what I want to make sure
16 I'm clear on is what I think is oversimplification and
17 an incorrect statement as far as while representing you
18 have a weapon. I think while representing you have a
19 weapon is not what the law says. The law requires that
20 you use a representation of a deadly weapon, which is
21 different than just representing you have it. A
22 representation could be just patting, but the law
23 requires you using a representation of a deadly weapon.

24 **THE COURT:** I didn't want to read that whole
25 thing all the way through again. I didn't have it in my

1 hand. I understand I left out two words you're wanting
2 me to use, but they have that in the jury room, the
3 entire definition using those words, and I've given it
4 to them twice.

5 **MR. O'NEIL:** I think those two definitions are in
6 conflict. I just want to make sure that the jury
7 doesn't think that all you have to do is represent
8 that you have a weapon for -- for that to be an armed
9 robbery. That's not a correct statement.

10 **THE COURT:** I think I've correctly stated the
11 law. I understand your objection, and it's so noted.

12 **MR. O'NEIL:** Okay.

13 (Recess taken.)

14 **THE COURT:** We have another question. Basically
15 the same issue again, so I'm gonna read both, armed
16 robbery all the way through, and then stop. I'm gonna
17 start over and say if you find it was not an armed
18 robbery, then you must consider strong armed robbery,
19 and do it like this all the way through.

20 **MR. SCOTT:** I mean, almost in conclusion, could
21 you just say the only difference between the two is the
22 weapon or representation of a weapon?

23 **MR. O'NEIL:** I think the easiest way to do it is
24 to read the whole -- read the whole thing.

25 **THE COURT:** I think -- now here's the question.

1 Do y'all want to see it? This will be Court's 6?

2 **THE COURT REPORTER:** 7.

3 (Discussion off the record.)

4 **THE COURT:** Right. Bring them in and tell her
5 to bring that piece of paper with her, okay, where she
6 wrote the notes on. Don't leave it in the jury room
7 this time.

8 (Court's Exhibit Number 7, a question from the
9 jury regarding strong arm robbery and a gun, was marked
10 for identification.)

11 (The jury returns to the courtroom.)

12 **THE COURT:** All right. Let me see your -- where
13 you got your notes on the questions and my instructions.

14 **FOREPERSON:** (Handing.)

15 **THE COURT:** All right. The simple answer --
16 the lawyers agree with me. The simple answer to your
17 question is, and this has been identified as Court's 7;
18 if a gun is mentioned, does it rule out strong arm
19 robbery? The simple answer is no. Instructions of the
20 elements -- I see the issue y'all are working on, and
21 I'm gonna redefine it again. So I'm gonna keep reading
22 the same thing to you, but the simple answer to that is
23 no.

24 Armed robbery, as I've read here, the State's got
25 to prove all four of those elements. The State must

1 prove beyond a reasonable doubt that the Defendant took
2 the property of another; they must prove the property
3 was in the presence of the person taken from or was in
4 their reach, inspection, observation or control and so
5 if they weren't threatened with violence, prevented by
6 fear, they could have kept said property. The State
7 must prove the property was carried away, even for a
8 moment, and the taking and carrying away of property
9 must be done with violence or under the fear of
10 violence.

11 Now armed robbery, and the last element, is the
12 State must prove beyond a reasonable doubt that the
13 Defendant was armed with a deadly weapon. A deadly
14 weapon is any instrument which causes great bodily harm,
15 such as a gun, a dirk, a knife. It can also be true
16 while alleging, either by action or words, they were
17 armed using a representation of a deadly weapon or any
18 object which a person present during the commission
19 believed to be a deadly weapon. That's the elements
20 describing the weapon. It's all that language.

21 A strong arm robbery. The State must prove the
22 Defendant took possession of property in the presence of
23 another without that person's consent and carried it
24 away. The property was in control, reach or inspection
25 and if they weren't overcome with violence they would

1 have retained the property. The State must show
2 additionally the property was carried away with the
3 intent to permanently deprive even for a moment. The
4 slightest removal is still complete possession. The
5 taking and carrying away of the property must have been
6 accomplished with violence or putting the owner of the
7 property in fear of violence. Sufficient?

8 **MR. O'NEIL:** Yes, sir.

9 **THE COURT:** Sufficient?

10 **MR. SCOTT:** Yes, sir.

11 **THE COURT:** All right. You want these back?

12 **FOREPERSON:** Yes.

13 **THE COURT:** All right. I answered your question.
14 Those are the instructions; strong arm and armed. The
15 answer to your question was no.

16 **FOREPERSON:** And you said no, right?

17 **THE COURT:** Yes, ma'am. The instructions are all
18 those elements of each of the crimes.

19 (The jury retires to the jury room to continue
20 its deliberations.)

21 (Recess taken.)

22 **BAILIFF:** All rise.

23 (The jury returns to the courtroom to report its
24 verdict at 3:56 p.m.)

25 **THE COURT:** All right. Ms. Hardy, I've got the

1 exhibits handed in and the verdict form. The verdict
2 form you handed, I ask you about your verdict. Was your
3 verdict unanimous?

4 **FOREPERSON:** Uh-huh. Yes.

5 **THE COURT:** Very well. All right. Madam Clerk,
6 would you, please, publish the verdict.

7 VERDICT OF THE JURY

8 **THE CLERK:** State of South Carolina versus
9 Timothy Cromer. We the jury find as follows: Count I,
10 2013-GS-36-177, we find the Defendant, Timothy Cromer,
11 guilty of strong arm robbery. Count II, 2013-GS-36-178,
12 kidnapping, we find the Defendant, Timothy Cromer, not
13 guilty. Signed Brittany --

14 **THE COURT:** Hardy.

15 **THE CLERK:** -- Hardy. Madam Forelady, ladies and
16 gentlemen, if this is your verdict, please indicate by
17 saying yes -- or raising your right hand.

18 **THE COURT:** All right. Any further issue for the
19 jury, Mr. O'Neil?

20 **MR. O'NEIL:** No, Your Honor.

21 **THE COURT:** All right.

22 (Discussion off the record.)

23 **THE COURT:** All right. Ms. Hardy, and ladies
24 and gentlemen, I'd like, if y'all will allow me this
25 opportunity, to step back in the jury room and I'll

1 speak with you. I want to thank y'all informally and
2 I'll dismiss y'all very quickly, but I want to talk to
3 you a bit.

4 (The jury was excused.)

5 (Recess taken.)

6 **THE COURT:** All right. Are we ready for
7 sentencing?

8 **MR. SCOTT:** Yes, sir.

9 **THE COURT:** Are you ready, Mr. O'Neil?

10 **MR. O'NEIL:** Yes, Your Honor. I have a couple of
11 post-trial motions.

12 **THE COURT:** All right. Let's hear them.

13 **MR. O'NEIL:** I would ask for -- ask for a new
14 trial especially because of the -- what I would term
15 the inconsistencies of the verdicts. We've got a not
16 guilty on the kidnapping and a guilty on the strong arm
17 robbery, and I also would ask for a new trial based on
18 my previous directed verdict motion and the previous
19 discussions we had concerning the appropriate armed
20 robbery jury charge you verbally gave the jury, and
21 based on all that I would ask for a new trial at this
22 point.

23 **THE COURT:** All right. I don't think the
24 verdicts are inconsistent. I think they each stand on
25 their own, so, respectfully, I'll deny that motion. And

1 on the armed robbery versus robbery instructions, I may
2 have a different opinion if the conviction was on armed
3 robbery and the lesser included was found, and so I
4 think the instructions were clear and that the jury made
5 a decision and finding of fact as to whether or not it
6 was armed or not and the decision was in your client's
7 favor actually. So, respectfully, I will decline to
8 grant that motion for a new trial. And regarding your
9 motions for directed verdict to be renewed, I'll deny
10 those.

11 All right. Now we're ready. All right.

12 **MR. O'NEIL:** Your Honor, do you want us to stand
13 or --

14 **THE COURT:** Y'all stand right there, Mr. O'Neil.
15 That will be just fine. Nothing wrong with that at all.
16 In a different courtroom, I'd do it differently, but I
17 think that's very appropriate.

18 All right. Mr. Scott, let me hear from you
19 briefly. I mean, I heard the trial, so I don't need a
20 whole lot of mitigating.

21 **MR. SCOTT:** Yes, sir. Essentially, Judge, you
22 knew we were going with an LWOP on this case based on
23 his prior record. He has a lengthy record, including
24 multiple strong arm robberies going back to '05 -- or
25 '85. Beginning there it was privily stealing, which

1 is a lesser included of purse snatching; carrying a
2 concealed weapon, resisting arrest. '86, shoplift.
3 '87, petit larceny and ABWIK. And then on into the
4 nineties; '97, contraband, CDV. '99, A&B. '98, public
5 drunk, possession of contraband. 2000, trespass. 2001,
6 strong arm robbery and breach of trust, trespass, petit
7 larcenies. ABHAN in '06, resisting arrest, property
8 offense, third or more, trespass, public drunk,
9 harassment, hindering officers. '08, strong arm
10 robbery. '08, public drunk.

11 The list goes on, Your Honor. One of these guys
12 that it looks like ever since the mid eighties has been
13 really probably incarcerated more than he's been out.
14 He's proven to be somebody who'll serve time and get
15 back out and does the same thing. These facts just kind
16 of skimmed the line. That's what the jury had a lot of
17 trouble with, you know. Is it an armed robbery, is it
18 not? I submit to you that was no accident. I submit
19 to you Mr. Cromer knows what he's doing. He's a vet.
20 He's been doing it a long time. He knows how to skate
21 the edge and get what he wants. Truly an opportunist.
22 I truly believe, as I said in my closing, that he
23 handpicked Mr. Williams and somebody's gonna get hurt
24 eventually if Mr. Cromer keeps it up. We will ask for
25 the max though, fifteen years, understanding it not to

1 be a violent offense and just based on his record, Your
2 Honor, and the dangerous nature of this.

3 Standing beside me is Mr. Blair Williams. You
4 heard him on the stand earlier. I believe he wishes to
5 speak, Your Honor, if you care to hear.

6 **THE COURT:** I'll hear from him right now,
7 Solicitor.

8 **MR. WILLIAMS:** Thank you. I just want to --
9 first of all, Blair Williams. I want to thank you and
10 the Court and everyone here for the time you've given
11 us, our family, over the past few days. I'd just like
12 to say that I don't necessarily understand everything
13 that -- that occurred here today or agree with it, but
14 I do appreciate Your Honor's time. I guess our only
15 concern is -- my only concern is for my family's safety.
16 Hearing Mr. Cromer's record and knowing what he's
17 already done to my family concerns me greatly if he
18 would be allowed to roam the streets freely and
19 victimize others or my family further or possibly even
20 get himself hurt. I just ask that you please just
21 consider those things when sentencing.

22 **THE COURT:** Okay. All right, Mr. O'Neil.

23 **MR. O'NEIL:** Thank you, Your Honor. May it
24 please the Court. Timothy is forty-six years old at
25 this point, Your Honor, and if you look at his record

1 probably in the last ten or so years pretty much
2 every charge has been associated with some sort of
3 intoxication, some sort of alcohol-related offenses.
4 I've spent probably six months in representing him --
5 probably seven months, I guess, and he's been nothing
6 but a model client for me. We've always had cordial
7 and -- and polite discussions about these cases, he's
8 been involved in his case from every aspect and never
9 given me a real hard time or violent. That's the
10 Timothy Cromer that I know, Your Honor.

11 I would ask Your Honor to consider something
12 less than fifteen years; one, because as the State's
13 always indicated they -- very early on in the case they
14 served Mr. Cromer with notice they would seek life
15 without parole. There was never an opportunity to try
16 to resolve the case without having everybody having to
17 go through the emotional roller coaster that a jury
18 trial would cause here, Your Honor.

19 I would think a sentence of less than fifteen
20 years. Maybe a split sentence would allow Mr. Cromer to
21 pay for his actions and still come out on probation, a
22 probation where there would be some monitoring of him
23 while he's out here and some incentive for him to stay
24 on the straight and narrow, rather than giving him a
25 straight max 15-year sentence and there'd be nothing

1 hanging over his head when he would get out. Your
2 Honor, I would ask for something shorter than
3 fifteen years to allow for some reservation that when
4 he did get out there would be some things in place to
5 make sure he stay on the straight and narrow.

6 He's been incarcerated since January 16, 2013,
7 almost a full one-year on these charges. And let me ask
8 him do you want to address the court? Your Honor, he
9 doesn't want to address the Court at this point. I
10 would indicate that he -- he always has indicated to me
11 that he didn't -- that he was remorseful as to what the
12 victim had to go through in this particular matter,
13 Your Honor.

14 SENTENCE OF THE COURT

15 **THE COURT:** All right. Considering the case
16 that I've obviously been listening to the last few
17 days very closely, the prior record, comments of the
18 victims, comments of the attorneys, I kind of agree
19 with all of you. So having found the verdict of guilt,
20 the sentence of the Court is that Mr. Cromer be confined
21 to the Department of Corrections for fifteen years.
22 That's suspended upon the service of twelve years; costs
23 and assessments imposed. Probation is he's released
24 after doing the suspended portion of the sentence for
25 three years and I'm giving him credit for the days he's

1 served since January 16th, of '13. And I also recommend
2 that he attend the Addictions Treatment Unit while he's
3 in the Department of Corrections.

4 **MR. O'NEIL:** Thank you, Your Honor.

5 **THE COURT:** All right. Good luck.

6 (End of proceedings.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eighth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate and complete transcript of record of all
the proceedings had and the evidence introduced in the
hearing of the captioned case in Circuit Court on the
6th - 8th day of January, 2014.

This transcript may contain quoted material.
Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin,
counsel, nor have an interest to any party hereto.

June 12, 2014

Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

WITNESSES

Kevin Atkins
Newberry Police Department

WARRANT NUMBER

2013A3620200045

TRUE BILL

Linda M. Crater

Foreman of the Grand Jury

Date: 4-19-13

VERDICT

Guilty Strong Arm Robbery

Billy Ray 7/8/2014

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

April Term, 2013

Indictment # 2013-GS-36- 0177

THE STATE

vs.

Timothy Lamar Cromer

INDICTMENT FOR

Armed Robbery
§16-11-330(A)

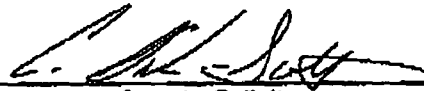
CDR: 0139

THE STATE OF SOUTH CAROLINA**COUNTY OF NEWBERRY****INDICTMENT FOR****Armed Robbery
§16-11-330(A)**

At a Court of General Sessions, convened on the 19th day of April, 2013, the Grand Jurors of Newberry County present upon their oath:

That Timothy Lamar Cromer, in Newberry County, on or about January 16, 2013 willfully and unlawfully while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon, or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take from the person or presence of David Williams by means of force or intimidation, goods or monies described as follows: Five and 00/100 (\$5.00), with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Deputy Solicitor

WITNESSES

Kevin Atkins
Newberry Police Department

WARRANT NUMBER

2013A3620200046

TRUE BILL

Linda M. Crute

Foreman of the Grand Jury

Date: 4-19-13

VERDICT

NOT GUILTY

Billy May 4-8-14
Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

April Term, 2013

Indictment # 2013-CS-36-0178

THE STATE

vs.

Timothy Lamar Cromer

INDICTMENT FOR

Kidnapping
§16-03-910

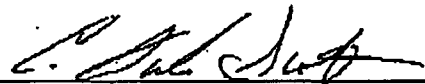
CDR: 0095

THE STATE OF SOUTH CAROLINA**COUNTY OF NEWBERRY****INDICTMENT FOR****Kidnapping
§16-03-910**

At a Court of General Sessions, convened on the 19th day of April, 2013, the Grand Jurors of Newberry County present upon their oath:

That Timothy Lamar Cromer, in Newberry County, on or about January 16, 2013 willfully and unlawfully with criminal intent, seize, confine, inveigle, decoy, kidnap, abduct or carry away David Williams without authority of law, in violation of Section 16-3-910 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

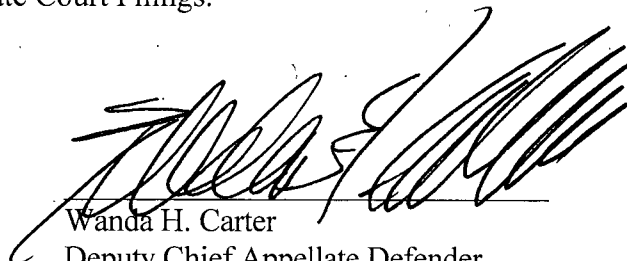


Deputy Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 19th day of August, 2014.



Wanda H. Carter
Deputy Chief Appellate Defender

RECEIVED

AUG 19 2014

SC Court of Appeals

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

ATTORNEY FOR APPELLANT