

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County
Honorable William H. Seals, Circuit Court Judge

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S.C. SUPREME COURT

TARRANCE L. JORDAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001341

APPENDIX

TAYLOR D GILLIAM
Appellate Defender

ALAN WILSON
Attorney General

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

LINDSEY MCCALLISTER
Assistant Attorney General
Rembert Dennis Bldg, Room 519
1000 Assembly Street
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

v.

TARRENCE LARON JORDAN,)

DEFENDANT.)

TRANSCRIPT OF RECORD
2008-CS-21-1919, 1920, 1921
April 19, 2010 - April 22, 2010
Florence, South Carolina

BEFORE:

THE HONORABLE RALPH KING ANDERSON, JR., JUDGE;

AND JURY

APPEARANCES:

PATRICIA SINGLETON PARR, ESQ.
DAVID RICHARDSON, ESQ.
Assistant Solicitors

PATRICK J. MCLAUGHLIN ESQ.
Attorney for the Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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1 THE COURT: Ms. Parr, you're the Solicitor on these
2 charges against the defendant. Would you call them
3 please.

4 MS. PARR: Your Honor, at this time the State calls
5 the State of South Carolina versus Tarrence Laron Jordan.
6 It's indictment 2008-GS-21-1919 and 1920 and 1921. And
7 assisting me with this case will be David Richardson.

8 THE COURT: Mr. McLaughlin, are you ready for trial?

9 MR. MCLAUGHLIN: We are, Your Honor.

10 THE COURT: Jurors, the papers that I hold in my
11 hand are called indictments. They don't prove anything.
12 They're just the pending charges; that's all. The
13 accusation, that's all. In this instance there are 14
14 different charges, 14 different charges. The 14 different
15 charges relate to count one, armed robbery, and I won't go
16 into the allegations in the indictment. That will be
17 presented to you at the trial. Count two is kidnapping.
18 Count three is burglary in the first degree. And count
19 four is possession of a weapon during the commission of a
20 violent crime.

21 Then I go to the next indictment. Count one, armed
22 robbery; count two, armed robbery; count three, armed
23 robbery; count four, kidnapping; count five, possession of
24 a weapon during the commission of a violent crime; count
25 six, burglary in the first degree.

1 The next indictment: Count one, armed robbery;
2 Count two, kidnapping; count three, burglary in the first
3 degree; and count four, possession of a weapon during the
4 commission of a violent crime. Once again, the facts and
5 circumstances surrounding this matter will be explained to
6 you in regard to what is involved in regard to these
7 pending charges.

8 Now Ms. Bailiff, Ms. Bailiff in the back door, close
9 that back door. I don't want anyone living coming in, if
10 that will take care of it. And deputy over here, there's
11 not going to be any in and out; stop it. Close that door
12 over there. One of you deputies stop that door. This is
13 serious business, serious business.

14 Mr. Tarrence Laron Jordan, stand, face the jury
15 panel.

16 Is there any member of the jury panel who is related
17 by blood or connected by marriage to the defendant
18 Terrence Laron Jordan? If so, please stand.

19 (There was no response.)

20 THE COURT: Is there any member of the jury panel
21 who has any direct or indirect connection of any nature
22 whatsoever with the defendant Tarrence Laron Jordan? If
23 so, please stand.

24 (There was no response.)

25 THE COURT: Is there any member of the jury panel

1 who is a personal acquaintance of the defendant Tarrence
2 Laron Jordan or any members of his family? If you have
3 any personal acquaintance, relationship, any nexus in that
4 regard, please stand.

5 (There was no response.)

6 THE COURT: Thank you, sir. Please be seated.

7 Witnesses for the State, as I call your name please
8 stand and remain standing until I posit the query. Once
9 again, please stand and remain standing until I present
10 the query to the panel. Investigator Russell Cox, Paul
11 Morrison, Corporal Adam Moore, Jay McLaurin, Lieutenant
12 Robert Hooks, Paul Bird, James Allen, Alvin Worsley,
13 Brandon Hale, Corporal Stewart Johnson, Chase Iseman,
14 Johnny Johnson, Dean Shappell, Albert Meyer, Lewis
15 Oberfrank, Richard Ward, Gilbert Cameron, Garrett Nowell.

16 Defense, any witnesses Defense?

17 MR. MCLAUGHLIN: Yes, Your Honor. If I may
18 approach.

19 THE COURT: Please.

20 MR. MCLAUGHLIN: We provided this to the State this
21 morning, Judge.

22 THE COURT: Thank you. Sergeant Patrick Peterkin,
23 Susan Abraham, Robert Williams, and Tarrence Jordan has
24 already been identified. Is there any member of the jury
25 panel who is related by blood or connected by marriage to

1 any of these witnesses that I have identified for you? If
2 so, please stand.

3 (There was no response.)

4 THE COURT: Is there any member of the jury panel
5 who has any kind of personal relationship with any of
6 these witnesses or members of their family? If so, please
7 stand.

8 (There was no response.)

9 THE COURT: Is there any member of the jury panel
10 who has had any connection with any of these witnesses or
11 members of their family in the past? If so, please stand.

12 (There was no response.)

13 THE COURT: Thank you. Please be seated.

14 Members of the jury panel, the allegations in regard
15 to some of these charges related to Albert Meyers and a
16 contention that he was robbed and kidnapped and that
17 burglary was involved. There is some contention in regard
18 to Lewis Oberfrank, having been subjected to armed
19 robbery, and Richard Ward, having been subjected to armed
20 robbery, and Gilbert Cameron, having been subjected to
21 armed robbery. And that Lewis Oberfrank, Richard Ward,
22 and Gilbert Cameron were subjected to kidnapping. There
23 is some allegation in regard to the dwelling of Lewis
24 Oberfrank in regard to burglary. There is an allegation
25 in regard to Dean Shappell concerning armed robbery, an

1 allegation as to kidnapping in regard to Dean Shappell, an
2 allegation in regard to burglary first degree in reference
3 to the dwelling of Dean Shappell, an allegation in regard
4 to possession of a weapon during the commission of a
5 violent crime. These are nothing but allegations. The
6 reason I identify these for you is, is there any member of
7 the jury panel who has ever heard any of these cases
8 discussed in any form or fashion, or have you made a
9 statement about any of these cases in any form or fashion
10 prior to today? If so, please stand.

11 (There was no response.)

12 THE COURT: As I've indicated the pending charges
13 are armed robbery, kidnapping, burglary first degree, and
14 commission of a violent crime with a weapon. As a
15 consequence of these pending charges, is there any member
16 of the jury panel who could not give both the State and
17 the Defendant a fair and impartial trial in regard to
18 these offenses and this type of litigation? If so, please
19 stand?

20 (There was no response.)

21 THE COURT: Is there any member of the jury panel or
22 any member of your immediate family who have — who has
23 ever been charged with a crime or prosecuted for a crime?
24 And once again, these weapons are mandated by the State
25 Supreme Court, not me, State Supreme Court. If you've

1 been charged with a crime or prosecuted for a crime
2 please stand.

3 (There was no response.)

4 **THE COURT:** Is there any member of the jury panel or
5 any member of your immediate family who has ever been
6 prosecuted by the 12th Circuit Solicitor's Office,
7 Solicitor Clements or his office? If so, please stand.

8 (There was no response.)

9 **THE COURT:** Is there any member of the jury panel
10 who has a moral or religious belief that would preclude
11 you from passing judgment on another person? If so,
12 please stand.

13 (There was no response.)

14 **THE COURT:** Solicitor, and Deputy Solicitor, would
15 you stand, introduce everybody who is participating in the
16 case and the members of the staff please.

17 **MR CLEMENTS:** Good afternoon. I'm Ed Clements. I'm
18 solicitor of the 12th Judicial Circuit. Prosecuting this
19 case is Assistant Solicitor Patricia Singleton Parr.
20 Assisting her is Assistant Solicitor David Richardson.
21 And in the courtroom is Deputy Solicitor John Jeperfinger.

22 Thank you, Your Honor.

23 **THE COURT:** All right. And Mr. McLaughlin,
24 introduce yourself and the members of your firm please.

25 **MR. MCLAUGHLIN:** Thank you, Your Honor. My name

1 is Patrick McLaughlin. I practice law here in Florence at
2 the Wukela Law Firm: Steve and Steven Wukela, Ben Moore,
3 Christy McDaniel, Phoebe Clarke, Michael Miller, and April
4 Purvis. Seated right here with me is my assistant, Sue
5 Cox, who may be assisting me throughout the trial.

6 THE COURT: We've identified a lot of lawyers.
7 Please understand, I must posit this query to you. Is
8 there any member of the jury panel or any member of your
9 immediate family who is now being represented by any of
10 these lawyers in any legal matter or who has in the past
11 been represented by any of these lawyers in any legal
12 matter? If so, please stand.

13 (There was no response.)

14 THE COURT: Yes. Name and number please.

15 THE POTENTIAL JUROR: Sarah Wilson, 157.

16 THE COURT: I'm sorry?

17 THE POTENTIAL JUROR: Sarah Wilson 157.

18 THE COURT: Yes, ma'am, Ms. Wilson.

19 THE POTENTIAL JUROR: Mr. Clements represented our
20 church which I was a part of years ago. That's all.

21 THE COURT: Okay. Do you feel comfortable in saying
22 that you can and will give both State and the Defendant a
23 fair and impartial trial?

24 THE POTENTIAL JUROR: Yes, sir. Yes, sir.

25 THE COURT: You didn't hesitate?

1 **THE POTENTIAL JUROR:** No, I didn't know if you heard
2 me the first time.

3 **THE COURT:** Okay, thank you. At a certain age
4 hearing goes too. Thank you.

5 Anyone else?

6 (There was no response.)

7 **THE COURT:** Anyone else please?

8 (There was no response.)

9 **THE COURT:** Anyone else?

10 (There was no response.)

11 **THE COURT:** I understand some of this is personal,
12 jurors; but once again, I am mandated to present query to
13 the panel. Is there any member of the jury panel or any
14 member of your immediate family who has been the victim of
15 a crime in the past? If so, please stand.

16 (There was no response.)

17 **THE COURT:** If you've been the victim of a crime.

18 Yes, your name and number please.

19 **THE POTENTIAL JUROR:** 108, Coretha Milo. I had —

20 **MR. MCLAUGHLIN:** Your Honor, I would ask that she
21 approach to answer this question.

22 **THE COURT:** All right, come forward please.

23 (WHEREUPON, potential juror approached the Bench
24 for an on-the-record discussion.)

25 **THE COURT:** What is your name now again?

1 THE POTENTIAL JUROR: I'm Coretha Milo.
2 THE COURT: Yes. And you're number 108?
3 THE POTENTIAL JUROR: Yes, sir.
4 THE COURT: And you had —
5 THE POTENTIAL JUROR: A nephew that was murdered
6 three weeks ago.
7 THE COURT: Okay. And can you give both State and
8 the Defendant a fair and impartial trial?
9 THE POTENTIAL JUROR: I don't feel like I could, no.
10 THE COURT: So the answer is no?
11 THE POTENTIAL JUROR: No.
12 THE COURT: Okay. Go back and have a seat but
13 she'll be excused. She'll be excused.
14 (Potential juror was excused.)
15 THE COURT: Come forward please.
16 (Potential juror approached the Bench for an on-the-record
17 discussion.)
18 THE COURT: Yes, ma'am, your name and number?
19 THE POTENTIAL JUROR: Number 130.
20 THE COURT: 130, hold it one second. Yes,
21 Ms. Shrells?
22 THE POTENTIAL JUROR: My son Rodney Harris, I think
23 it was three years ago.
24 THE COURT: What was it?
25 THE POTENTIAL JUROR: Rodney Harris.

1 THE COURT: Yes.

2 THE POTENTIAL JUROR: He was convicted of assault
3 and battery.

4 THE COURT: Yes. And what is your relationship?

5 THE POTENTIAL JUROR: None, I'm -- I'm his mother.

6 THE COURT: You're his mother, okay.

7 THE POTENTIAL JUROR: Yes.

8 THE COURT: All right. In regard to that do you
9 feel comfortable in saying that you can and will give both
10 the State and Defendant a fair and impartial trial?

11 THE POTENTIAL JUROR: Uh-huh.

12 THE COURT: You will do that?

13 THE POTENTIAL JUROR: Yes.

14 THE COURT: All right, okay. Thank you.

15 (Potential juror approached the Bench for an
16 on-the-record discussion.)

17 THE COURT: Yes, sir, your name and number.

18 THE POTENTIAL JUROR: Jerry Garner, number 58.

19 THE COURT: Yes, sir.

20 THE POTENTIAL JUROR: I had my house broken into
21 like a year-and-a-half ago.

22 THE COURT: Okay. Now obviously this case involves
23 burglary. I just ask you, as a matter of conscience, can
24 you give both State and the Defendant a fair and impartial
25 trial?

1 THE POTENTIAL JUROR: Yes.
2 THE COURT: You can?
3 THE POTENTIAL JUROR: Yes.
4 THE COURT: You will do that?
5 THE POTENTIAL JUROR: Yes.
6 THE COURT: Thank you. You may have a seat.
7 (Potential juror approached the Bench for an
8 on-the-record discussion.)
9 THE COURT: Yes, ma'am.
10 THE POTENTIAL JUROR: Number 41, Mary Culleton.
11 THE COURT: Yes.
12 THE POTENTIAL JUROR: My daughter was raped a couple
13 of years ago. I don't know if that would be considered.
14 THE COURT: Yeah, all right. Just take a deep
15 breath now. Can you give both the State and the Defendant
16 a fair and impartial trial in this case?
17 THE POTENTIAL JUROR: Yes, sir.
18 THE COURT: You will do that?
19 THE POTENTIAL JUROR: Yes, sir.
20 THE COURT: Thank you. Please go back and have a
21 seat.
22 (Potential juror approached the Bench for an
23 on-the-record discussion.)
24 THE COURT: Your name and number?
25 THE POTENTIAL JUROR: My name is Donna Phillips.

1 I'm 121.

2 THE COURT: Okay, hold it one second. Let me flip
3 the page. Yes, ma'am.

4 THE POTENTIAL JUROR: I've had several members of my
5 family who have been victims of crime, and I'm not real
6 sure I can be unbiased.

7 THE COURT: Okay. Take a deep breath now and let me
8 ask you a question.

9 THE POTENTIAL JUROR: Okay.

10 THE COURT: Just take a deep breathe.

11 THE POTENTIAL JUROR: Okay.

12 THE COURT: As a matter of conscience, can you give
13 both the State and the Defendant a fair and impartial
14 trial?

15 THE POTENTIAL JUROR: I think I can.

16 THE COURT: Take another deep breath now. You
17 understand?

18 THE POTENTIAL JUROR: Yes, sir.

19 THE COURT: I need a yes or no but just take a deep
20 breath now. Take a deep breath and relax. Just relax. I
21 want it to be your decision. It's your call. You
22 understand that?

23 THE POTENTIAL JUROR: Yes, sir.

24 THE COURT: Okay. As a matter of conscience, can
25 you give both the State and the Defendant a fair and

1 impartial trial?

2 THE POTENTIAL JUROR: Yes, sir.

3 THE COURT: Yes?

4 THE POTENTIAL JUROR: Yes.

5 THE COURT: Okay, thank you. Go back and have a
6 seat.

7 Anyone else please? Anyone else please?

8 (There was no response.)

9 THE COURT: Thank you. I've had fair ranging voir
10 dire. Is there any further requests of voir dire from the
11 State?

12 MS. PARR: Nothing further, Your Honor.

13 THE COURT: From the Defense?

14 MR. MCLAUGHLIN: Yes, Your Honor. Could we
15 approach?

16 THE COURT: Sure.

17 (WHEREUPON, counsel approached the Bench for an
18 on-the-record discussion.)

19 MR. MCLAUGHLIN: Judge, simply the standard question
20 about law enforcement testifying, whether or not that
21 would — they could give more credence —

22 THE COURT: I can't ask that question under State
23 versus Adams. Ms. Court Reporter, put this down. Under
24 State versus Adams it is improper to ask about whether the
25 jury would believe a law enforcement officer over a

1 general regular witness. And I rely on State versus
2 Adams, A-D-A-M-S, and its holding.

3 MR. MCLAUGHLIN: Yes, sir. And I would, same
4 request for members of military.

5 THE COURT: I don't believe I'll go there, Counsel,
6 I'm sorry.

7 MR. MCLAUGHLIN: Just protect me on the record.

8 THE COURT: Let the record show I refuse to ask that
9 question.

10 (Court's Exhibit Number 1, voir dire request,
11 was marked and made a part of the record.)

12 THE COURT: All right, we need to draw the jury with
13 the computer and we'll proceed in that regard. Is that in
14 place please?

15 DEPUTY CLERK OF COURT: We're getting it, Judge.

16 THE COURT: Jurors, while the computer work is being
17 done, I'm sure that the other judge has explained to
18 you the constitution mandates a public selection process
19 so you come forward.

20 And Mr. Bailiff, would you pull that mic around
21 there.

22 If the Defense excuses you please return to your
23 seat. If the Defense accepts you you've been accepted by
24 both sides and you will have a seat in the jury box.
25 Please understand, this is a public constitutional

1 selection process. Don't be embarrassed or upset or go
2 home and lose any sleep or fret over the fact if someone
3 excuses you; that's just the way the system works. You
4 might not have enough hair to suit them or something like
5 that. You understand?

6 Lawyers, peremptory challenges are five and ten,
7 five and ten. And please remember, please remember,
8 Batson versus Kentucky. I'll give you just a moment to
9 review the list, counsel.

10 (Pause.)

11 THE COURT: Ready for the State?

12 MR. RICHARDSON: Yes, Your Honor.

13 THE COURT: Defense?

14 MR. MCLAUGHLIN: We are, Your Honor.

15 THE COURT: All right. Ms. Clerk.

16 DEPUTY CLERK OF COURT: 151, Sandra Urquhart
17 (white female). What say the State?

18 MR. RICHARDSON: Please present Ms. Urquhart.

19 DEPUTY CLERK OF COURT: What say the
20 Defendant?

21 THE COURT: The fellows that play baseball for
22 Carolina; I went to the game Saturday. But the crowd used
23 to play for the Gamecocks, your son, what?

24 THE POTENTIAL JUROR: Grandson.

25 THE COURT: Grandson?

1 THE POTENTIAL JUROR: Right.
2 THE COURT: Both of them?
3 THE POTENTIAL JUROR: Derrick —
4 THE COURT: Yeah.
5 POTENTIAL JUROR: ---is with — yeah.
6 THE COURT: Yeah.
7 POTENTIAL JUROR: That was -- well, my husband's
8 grandson.
9 THE COURT: Great, great —
10 POTENTIAL JUROR: Outstanding player.
11 THE COURT: Outstanding, I agree. I agree.
12 POTENTIAL JUROR: Thank you.
13 MR. MCLAUGHLIN: Please excuse Derrick's
14 grandmother.
15 THE COURT: You've been excused for this trial. You
16 may return to your seat.
17 DEPUTY CLERK OF COURT: 150, Corine Truluck (white
18 female). What say the State?
19 MR. RICHARDSON: Please present Ms. Truluck.
20 DEPUTY CLERK OF COURT: What say the Defendant?
21 MR. MCLAUGHLIN: Please excuse Ms. Truluck.
22 DEPUTY CLERK OF COURT: You've been excused for this
23 trial only. You may return to your seat.
24 131, Matthew Singletary (black male). What say the
25 State?

1 MR. RICHARDSON: Please excuse Mr. Singletary for
2 this trial only.

3 DEPUTY CLERK OF COURT: You've been excused for
4 this trial only, sir. You may return to your seat.

5 144, Betty Theis (white female). What say the
6 State?

7 MR. RICHARDSON: Please present Ms. Theis.

8 DEPUTY CLERK OF COURT: What say the Defendant?

9 MR. MCLAUGHLIN: Please seat the jury.

10 THE DEPUTY CLERK OF COURT: Please have a seat in
11 the jury box, ma'am.

12 50, John Elliott (white male). What say the State?

13 MR. RICHARDSON: Please present Mr. Elliott.

14 DEPUTY CLERK OF COURT: What say the Defendant?

15 MR. MCLAUGHLIN: Please excuse Mr. Elliott.

16 DEPUTY CLERK OF COURT: You've been excused for this
17 trial only, sir. You may return to your seat.

18 Number 12, Gene Benton (white male). What say the
19 State?

20 MR. RICHARDSON: Please present Mr. Benton.

21 DEPUTY CLERK OF COURT: What say the Defendant?

22 MR. MCLAUGHLIN: Please excuse Mr. Benton.

23 DEPUTY CLERK OF COURT: You've been excused for this
24 trial only, sir. You may return to your seat.

25 109, David Mims (white male). What say the State?

1 MR. RICHARDSON: Please excuse Mr. Mims from this
2 trial.
3 DEPUTY CLERK OF COURT: You've been excused from
4 this trial only, sir. You may return to your seat.
5 43, Kevin Demery (black male). What say the State?
6 MR. RICHARDSON: Please excuse Mr. Dimmery from
7 this trial only.
8 DEPUTY CLERK OF COURT: You've been excused for this
9 trial only, sir. You may return to your seat.
10 Number 40, Karen Creel (white female). What say the
11 State?
12 MR. RICHARDSON: Please present Ms. Creel.
13 DEPUTY CLERK OF COURT: What say the Defendant?
14 MR. MCLAUGHLIN: Please excuse Ms. Creel from this
15 trial.
16 DEPUTY CLERK OF COURT: You're excused from this
17 trial only, ma'am. You may return to your seat.
18 42, Bruce Cummins (white male). What say the State?
19 MR. RICHARDSON: Please present Mr. Cummins.
20 DEPUTY CLERK OF COURT: What say the Defendant?
21 MR. MCLAUGHLIN: Please seat Mr. Cummins.
22 DEPUTY CLERK OF COURT: Please have a seat in the
23 jury box.
24 Number 7, Connie Askins (white female). What say
25 the State?

1 MR. RICHARDSON: Please present Ms. Askins.
2 DEPUTY CLERK OF COURT: What say the Defendant?
3 MR. MCLAUGHLIN: Please excuse Ms. Askins from this
4 trial.
5 DEPUTY CLERK OF COURT: You've been excused from
6 this trial only, ma'am. You may return to your seat.
7 24, George Brown (black male). What say the State?
8 MR. RICHARDSON: Please present Mr. Brown.
9 DEPUTY CLERK OF COURT: What say the Defendant?
10 MR. MCLAUGHLIN: Please seat Mr. Brown.
11 DEPUTY CLERK OF COURT: Please have a seat in the
12 jury box, sir.
13 58, Jerry Garner (black male). What say the State?
14 MR. RICHARDSON: Please present Mr. Garner.
15 DEPUTY CLERK OF COURT: What say the Defendant?
16 MR. MCLAUGHLIN: Please excuse Mr. Garner from this
17 trial.
18 DEPUTY CLERK OF COURT: You've been excused from
19 this trial. You may return to your seat.
20 94, Jack Mace (black male). What say the State?
21 MR. RICHARDSON: Please present Mr. Mace.
22 DEPUTY CLERK OF COURT: What say the Defendant?
23 MR. MCLAUGHLIN: Please seat Mr. Mace.
24 DEPUTY CLERK OF COURT: Please have a seat in the
25 jury box, sir.

1 36, Shelley Coker (white female). What say the
2 State?
3 MR. RICHARDSON: Please present Ms. Coker.
4 DEPUTY CLERK OF COURT: What say the Defendant?
5 MR. MCLAUGHLIN: Please excuse Ms. Coker from this
6 trial.
7 DEPUTY CLERK OF COURT: You've been excused from
8 this trial only. You may return to your seat.
9 68, Hattie Ham (black female). What say the State?
10 MR. RICHARDSON: Please present Ms. Ham.
11 DEPUTY CLERK OF COURT: What say the Defendant?
12 MR. MCLAUGHLIN: Please seat Ms. Ham.
13 DEPUTY CLERK OF COURT: Please have a seat in the
14 jury box.
15 121, Donna Phillips (white female). What say the
16 State?
17 MR. RICHARDSON: Please present Ms. Phillips.
18 DEPUTY CLERK OF COURT: What say the Defendant?
19 MR. MCLAUGHLIN: Please excuse Ms. Phillips from
20 this trial.
21 DEPUTY CLERK OF COURT: You've been excused from
22 this trial, ma'am. You may return to your seat.
23 161, Markques Wright (black male). What say the
24 State?
25 MR. RICHARDSON: Please excuse Mr. Wright from this

1 trial only.

2 DEPUTY CLERK OF COURT: You've been excused from
3 this trial only, sir. You may return to your seat.

4 66, Judy Griffin (white female). What say the
5 State?

6 MR. RICHARDSON: Please present Ms. Griffin.

7 DEPUTY CLERK OF COURT: What say the Defendant?

8 MR. MCLAUGHLIN: Beg the Court's indulgence.

9 THE COURT: Yes, sir.

10 MR. MCLAUGHLIN: Please seat Ms. Griffin.

11 DEPUTY CLERK OF COURT: Please have a seat in the
12 jury box, ma'am.

13 101, Jacqueline McFadden (black female). What say
14 the State?

15 MR. RICHARDSON: Please present Ms. McFadden.

16 DEPUTY CLERK OF COURT: What say the Defendant?

17 MR. MCLAUGHLIN: Please seat Ms. McFadden.

18 DEPUTY CLERK OF COURT: Please have a seat in the
19 jury box, ma'am.

20 21, Derrick Brooks (black male). What say the
21 State?

22 MR. RICHARDSON: Please excuse Mr. Brooks.

23 DEPUTY CLERK OF COURT: You've been excused for this
24 trial only, sir. You may return to your seat.

25 63, Mary Grant (white female). Does the State wish

1 to challenge this juror for cause?

2 MR. RICHARDSON: No, please present this juror.

3 DEPUTY CLERK OF COURT: What say the Defendant?

4 MR. MCLAUGHLIN: Please seat Ms. Grant.

5 DEPUTY CLERK OF COURT: Please have a seat in the
6 jury box, ma'am.

7 61, Richard Gibson (white male). What say the
8 State? Does the State wish to challenge this juror for
9 cause?

10 MR. RICHARDSON: No, please present Mr. Gibson.

11 DEPUTY CLERK OF COURT: What say the Defendant?

12 MR. MCLAUGHLIN: Your Honor, may we approach?

13 THE COURT: Sure.

14 (Counsel approached the Bench for an
15 on-the-record discussion.)

16 MR. MCLAUGHLIN: Judge, in the prior jury striking,
17 this particular individual, they were asked about law
18 enforcement. This particular individual came up and asked
19 whether or not he would give more credence. He said
20 that -- I can't remember if he said yes or he couldn't say
21 that he would not, and he was struck for cause from the
22 last because of that. I feel like we're entitled to have
23 him struck for cause for this 'cause he did indicate to
24 Judge Nettles in the last drawing he wasn't sure he could
25 be fair and impartial.

1 THE COURT: Well, that query is absolutely improper
2 under State versus Adams. State versus Adams is a death
3 penalty case. The Supreme Court said that query is
4 improper, my understanding what the law is.

5 MR. MCLAUGHLIN: And I understand that —

6 (End of on-the-record Bench conference.)

7 THE COURT: Mr. Gibson, as matter of conscience, can
8 you give both the State and the Defendant a fair and
9 impartial trial in this case?

10 THE POTENTIAL JUROR: I believe I can.

11 THE COURT: Take a deep breath now. And I need a
12 yes or no because the law doesn't let me take a ambivalent
13 kind of response. You understand?

14 THE POTENTIAL JUROR: Uh-huh.

15 THE COURT: Just take a deep breath now. As a
16 matter of conscience, can you and will you give both the
17 State and the Defendant a fair and impartial trial?

18 THE POTENTIAL JUROR: Yes.

19 THE COURT: You will do that?

20 THE POTENTIAL JUROR: Yes, sir.

21 THE COURT: Thank you.

22 MR. MCLAUGHLIN: Beg the Court's indulgence.

23 THE COURT: Yes, sir.

24 MR. MCLAUGHLIN: Please excuse Mr. Gibson.

25 DEPUTY CLERK OF COURT: You've been excused from

1 this trial only, sir. You may return to your seat.

2 THE COURT: Ten?

3 DEPUTY CLERK OF COURT: Yes, sir.

4 41, Mary Culleton (white female). State wish to
5 challenge this juror for cause?

6 MR. RICHARDSON: Please present Ms. Culleton.

7 DEPUTY CLERK OF COURT: Defendant wish to challenge
8 this juror for cause?

9 MR. MCLAUGHLIN: Please seat, Ms. Culleton.

10 DEPUTY CLERK OF COURT: Please have a seat in the
11 jury box, ma'am.

12 27, Tyrell Brown (black male). Does the State wish
13 to challenge this juror for cause?

14 MR. RICHARDSON: Please present Mr. Brown.

15 DEPUTY CLERK OF COURT: Does Defendant wish to
16 challenge this juror for cause?

17 MR. MCLAUGHLIN: Please seat Mr. Brown.

18 THE COURT: Please have a seat in the jury box, sir.

19 111, William Montgomery (white male). Does the
20 State wish to challenge this juror for cause?

21 MR. RICHARDSON: Please present Mr. Montgomery.

22 DEPUTY CLERK OF COURT: Does the Defendant wish to
23 challenge the juror for cause?

24 MR. MCLAUGHLIN: Your Honor, may we approach.

25 THE COURT: Sure.

1 (WHEREUPON counsel approached the Bench for an
2 on-the-record discussion.)

3 MR. MCLAUGHLIN: Your Honor, on Mr. Montgomery it's
4 my understanding he works here with DSS child enforcement.
5 As such, we'd like to challenge him for cause because we
6 believe he works closely with the solicitor's office.
7 Child support enforcement is similar to working with hand
8 in hand. With the Solicitor's Office under DJJ they
9 enforce the orders that the Solicitor in fact obtains
10 so -- or not the solicitor, excuse me, but that the family
11 court order kind of enforces.

12 MR. RICHARDSON: This doesn't have anything to do
13 with it.

14 THE COURT: What?

15 MR. RICHARDSON: We don't have anything to do with
16 child support.

17 THE COURT: I didn't think so.

18 MR. MCLAUGHLIN: The State does though.

19 THE COURT: That's different. Anyway, I'll ask him.

20 MR. MCLAUGHLIN: Yes, sir.

21 (End of Bench conference.)

22 THE COURT: Mr. Montgomery.

23 THE POTENTIAL JUROR: Yes, sir.

24 THE COURT: You have some authority in regard to
25 child support with DSS; is that correct?

1 THE POTENTIAL JUROR: Yes, sir.
2 THE COURT: And as I understand that that's totally
3 within the family court jurisdiction —
4 THE POTENTIAL JUROR: Yes, sir.
5 THE COURT: —and the Solicitor doesn't have
6 anything to do with that, does it?
7 THE POTENTIAL JUROR: No, sir.
8 THE COURT: Does the Solicitor's Office have
9 anything to do with that?
10 THE POTENTIAL JUROR: No, sir.
11 THE COURT: As a matter of conscience can you give
12 both the State and Defendant a fair and impartial trial?
13 THE POTENTIAL JUROR: Yes, sir.
14 THE COURT: You will do that?
15 THE POTENTIAL JUROR: Yes, sir.
16 THE COURT: Thank you, sir. He's qualified.
17 MR. MCLAUGHLIN: Thank you, Your Honor.
18 THE COURT: Have a seat, Mr. Montgomery, in the jury
19 box.
20 THE DEPUTY CLERK OF COURT: 46, Edward Douglas
21 (black male). Does the State wish to challenge this juror
22 for cause?
23 MR. RICHARDSON: No, please present Mr. Douglas.
24 THE DEPUTY CLERK OF COURT: Does the Defendant wish
25 to challenge the juror for cause?

1 MR. MCLAUGHLIN: Please seat Mr. Douglas.

2 THE COURT: Ms. Mary Culleton, come forward and be
3 the foreperson. Take seat number one, Ms. Culleton.
4 Ms. Culleton, use that seat at all times as the
5 foreperson.

6 THE FOREPERSON: Uh.

7 THE COURT: She doesn't indicate too much pleasure
8 with my appointment of her. You'll have a good day.

9 All right, we go to the alternate status. Alternate
10 one and the statute provides one and two. One and two on
11 peremptories, alternate one.

12 THE DEPUTY CLERK OF COURT: 71, Michael Haselden
13 (white male). What say the State?

14 MR. RICHARDSON: Please present Mr. Haselden.

15 THE DEPUTY CLERK OF COURT: What say the Defendant?

16 MR. MCLAUGHLIN: Please excuse Mr. Haselden from
17 this trial.

18 THE DEPUTY CLERK OF COURT: You've been excused from
19 this trial only, sir. You may return to your seat.

20 29, Richard Burch (white male). What say the State?

21 (Potential speaks to Mr. Clements.)

22 MR CLEMENTS: Your Honor, he wants to approach the
23 Bench.

24 THE COURT: Sure, yes, sir.

25 (Potential juror approached the Bench for an

1 on-the-record discussion.)

2 THE COURT: Yes, sir, how are you doing?

3 THE POTENTIAL JUROR: Yes, sir. I had talked with

4 Judge Nettles.

5 THE COURT: Yeah.

6 THE POTENTIAL JUROR: I have a problem. Every now

7 and then I want a restroom. He told me that was fine; I

8 could just raise my hand.

9 THE COURT: Well, let me discuss that with you. In

10 terms of, of course, I'm — if you raise your hand I'm

11 required to let all the jurors go out. I can't let just

12 one. Does it happen within like the hour, or is it —

13 THE POTENTIAL JUROR: Well, two hours at the most.

14 THE COURT: Two hours at the most?

15 THE POTENTIAL JUROR: Right.

16 THE COURT: Well, you yourself feel comfortable in

17 kind of serving in this setting or would you like to be

18 excused? What is your personal?

19 THE POTENTIAL JUROR: I think I can do it.

20 THE COURT: Okay.

21 THE POTENTIAL JUROR: I mean, I just wanted — it's

22 better to have understanding than a misunderstanding.

23 THE COURT: Oh, yeah. And you think you can go with

24 the two hours?

25 THE POTENTIAL JUROR: I think so.

1 THE COURT: Okay, all right.

2 (End of Bench conference.)

3 DEPUTY CLERK OF COURT: What say the State?

4 MR. RICHARDSON: Please present Mr. Burch.

5 DEPUTY CLERK OF COURT: What say the Defendant?

6 MR. MCLAUGHLIN: Please seat Mr. Burch.

7 DEPUTY CLERK OF COURT: Please have a seat in the
8 jury box, sir.

9 THE COURT: All right, let the record show that
10 Mr. Burch is alternate number one. Mr. Burch, use that
11 chair at all times where you will be -- no, that one, yes.
12 Use that chair at all times as alternate number one. We
13 now go to alternate number two. Once again, one and two
14 on peremptories. One and two.

15 DEPUTY CLERK OF COURT: 130, Sadie Sherells (black
16 female). What say the State?

17 MR. RICHARDSON: Please excuse Ms. Sherells from
18 this trial only.

19 DEPUTY CLERK OF COURT: You've been excused from
20 this trial only, ma'am. You may return to your seat.

21 Number 3, James Anderson (white female). Does the
22 State wish to challenge this juror for cause?

23 MR. RICHARDSON: No, please present Ms. Anderson.

24 DEPUTY CLERK OF COURT: What say the Defendant?

25 MR. MCLAUGHLIN: Please seat Mr. Anderson.

1 DEPUTY CLERK OF COURT: Please have a seat in the
2 jury box, sir.

3 THE COURT: Mr. Anderson, you are alternate number
4 two. Please use that seat at all times. Sit there during
5 the trial please.

6 Counsel, just give me a yes or no in this regard,
7 Batson versus Kentucky?

8 MR. RICHARDSON: No, Your Honor.

9 THE COURT: Batson versus Kentucky?

10 MR. MCLAUGHLIN: No, Your Honor.

11 THE COURT: Thank you very much.

12 Jurors, there's some brief matters that I need to
13 take up now in your absence. If it takes too long I'll
14 bring you back out and we will choose to excuse you for
15 the day. Let me just see how long this takes. Please if
16 you will, go to your jury room and --

17 THE BAILIFF: Just follow me please.

18 (WHEREUPON, the jury was removed from the
19 courtroom at 3:39 p.m., and the following proceedings
20 commenced in open court.)

21 THE COURT: All right, counsel, motions.

22 MR. MCLAUGHLIN: May it please the Court, Your
23 Honor, I believe the Court has given us this kind of break
24 here to bring up the motion that we discussed with Your
25 Honor in chambers concerning our motion to quash or for

1 relief in the alternative. Judge, I believe you should
2 have before you a written motion that we filed this
3 motion -- this morning. You have --

4 THE COURT: Hold it one second, let me get that
5 motion, Ms. Clerk. Is it in the file?

6 MR. MCLAUGHLIN: Judge, there was a --

7 THE COURT: I got it. Yes, go ahead, I got it.

8 MR. MCLAUGHLIN: Your Honor, the defendant's motion
9 to quash and I won't belabor the point by rearguing the
10 entire thing. I'll just hit the high points. Judge, as I
11 indicated to you in chambers and as I have to both
12 Ms. Parr, Mr. Richardson, a part of this motion we
13 understand is we're arguing against precedent and that is
14 basically we're challenging the kidnapping statute itself.
15 As I indicated to Your Honor in chambers, this challenge
16 has been made before and South Carolina courts have found
17 that the kidnapping statute is constitutional. However,
18 we want to bring this motion before the Court to protect
19 the issue for the record.

20 THE COURT: All right, let me rule on that. The
21 motion posited by the Defendant is a challenge to the
22 kidnapping statute as being unconstitutional, vague, and
23 overbroad.

24 State versus Smith, 275 S.C. 165, 268 S.C.2d 276 is
25 apposite and is controlling. The statute has been held to

1 be constitutional under State versus Smith and other
2 precedent extant thereafter including State versus Plath
3 and it's progeny. And it is so ordered. Motion is denied
4 based on the precedent. What's the next motion please?

5 MR. MCLAUGHLIN: And thank you, Your Honor. The
6 only other part of that was the relief we requested in the
7 alternative, and judge, that was basically that all the
8 description in that statute of what conduct had
9 constituted kidnapping. We ask that the State be required
10 to basically elect what conduct they are going to allege
11 during the trial that Mr. Jordan is guilty of. But Judge,
12 I'm specifically referring to the language in the statute
13 of seizing, confining, inveigling.

14 THE COURT: Inveigling.

15 MR. MCLAUGHLIN: Inveigling, decoying, kidnapping,
16 abducting or carrying away of another person. And Your
17 Honor, we simply ask that the State be required to pick
18 one or two of those terms to use instead of relying on all
19 of them to avoid confusion.

20 THE COURT: That motion is denied based on precedent
21 that is specific and is actually directly on point in
22 regard to that particular issue. The motion is denied.

23 MR. MCLAUGHLIN: And Your Honor, the only other two
24 motions we have I believe could be taken up after the —
25 we can bring the jury back out, swear them, and then

1 perhaps maybe even cut them loose for the day. I don't
2 know. I think we'll probably take up the rest of the day
3 at least with the suppression issue. I believe the State
4 agrees with me on that.

5 THE COURT: All right. And what other issue beside
6 the suppression issue concerning identification? Anything
7 else?

8 MR. MCCLAUGHLIN: Just the motion to sequester the
9 witnesses, Your Honor, and I think kind of part of my
10 argument in there I think that maybe the Court should
11 consider that after the identification argument 'cause
12 it's kind of interrelated.

13 THE COURT: All right now, are you lawyers
14 comfortable with swearing the jury after I bring them out
15 or wait until in the morning to do it?

16 MR. RICHARDSON: Your Honor, if we're not going to
17 proceed today we might as well wait till in the morning to
18 swear them.

19 THE COURT: Swear them. Because if we swear them I
20 want to do some preliminary statements to them. Let's do
21 that. Bring them out.

22 (WHEREUPON, the jury was returned to the courtroom
23 at approximately 3:48 p.m., and the following proceedings
24 commenced in open court.)

25 THE COURT: All right, deputy, I don't want anybody

1 coming in now for a minute.

2 Jurors, give me your attention. There is a
3 procedure that I must conduct now that certainly will take
4 me well beyond 5:00, and because of that I'm going to
5 excuse you until in the morning at 9. Can everyone be
6 here at 9:00 in the morning? 9:00. There are two
7 procedural rules that I must tell you about now and give
8 you instructions in regard to their application. One is,
9 you cannot under any circumstances discuss this case with
10 any other person. You cannot talk to your husband, your
11 wife, your friend, or as one case we had where they went
12 to see the preacher. You cannot talk to anyone about this
13 matter. The evidence must come in this courtroom from
14 this witness stand, and no other source of information can
15 be involved in regard to your decision. Please do not
16 talk to anyone now about this matter. Obviously the only
17 thing you know is the generalities in regards to some
18 names and some offenses; but please, again, the law
19 requires that you not discuss the matter at all with any
20 other outside person. Please remember that.

21 The second matter, you cannot even discuss it among
22 yourselves now from this point forward until I charge the
23 law. That means you cannot have conversations about the
24 matter until I give you a final charge. Talk about
25 weather, sports, politics, gossip or whatever, but do not

1 talk about this case now until I charge you the law. That
2 is mandatory and if something like that occurs I'm
3 required to set the jury verdict aside so please, please
4 help me try the case under the rules in a pristine
5 fashion. I hope you have a good night's rest. I'll see
6 you in the morning at 9:00. You come a little before nine
7 we'll have hot coffee ready and waiting on you and come to
8 this middle door here, please, in the morning so you can
9 come right on into the jury room. All right.

10 No one leaving now but the jury. Catch them the
11 elevator please. Catch them the elevator.

12 (WHEREUPON, the jury was removed from the
13 courtroom at 3:51 p.m., and the following proceedings
14 commenced in open court.)

15 THE COURT: We begin an identification hearing to
16 determine admissibility of identification evidence. It is
17 conducted under the historic case of Neil versus Biggers
18 and its progeny. As everyone knows Neil versus Biggers
19 has articulated rules and procedures and factors to
20 consider. Neil versus Biggers is reported at 409 U.S.
21 188, 93 Supreme Court 375. The case of State versus Ford,
22 which was actually tried in this courtroom, is also
23 applicable and efficacious, 278 S.C. 384, 296 S.C.2d 866.

24 State ready?

25 MR. RICHARDSON: Your Honor, if we could have just

1 a moment for a bathroom break, I'm sorry.

2 THE COURT: Everybody, ten minutes.

3 (WHEREUPON, a recess was taken from the
4 proceedings.)

5 THE COURT: All right, Ms. Solicitor, call your
6 first witness please.

7 MS. PARR: Your Honor, Mr. Richardson will be
8 handling this motion.

9 THE COURT: Mr. Richardson, call your first witness
10 please.

11 MR. RICHARDSON: Thank you, Your Honor. The State
12 will call Doctor Dean Shappell.

13 THE DEPUTY CLERK OF COURT: Please place your left
14 hand on the Bible, raise your right hand.

15 WHEREUPON,

16 DEAL L. SHAPPELL,
17 having been duly sworn by the Deputy Clerk of Court,
18 testified as follows:

19 DEPUTY CLERK OF COURT: Please be seated, then state
20 your name for the record.

21 THE WITNESS: My name is Dean L. Shappell.

22 THE COURT: Thank you. Proceed.

23 MR. RICHARDSON: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. RICHARDSON:

1 Q Doctor Shappell, where do you live now?

2 A I live at -- my mailing address is Leesburg, Florida,
3 south of Leesburg.

4 Q And what do you do for a living?

5 A Basically I'm retired. I still return to Michigan. I
6 work every 18 months in a nuclear plant.

7 THE COURT: In what? Nuclear what?

8 THE WITNESS: Nuclear plant.

9 THE COURT: Yes.

10 BY MR. RICHARDSON:

11 Q What had you done prior to retiring?

12 A I was, I'd say, an educator for ten years and the last
13 25, 26 years as a psychologist, the last 20 years
14 primarily forensic.

15 Q Okay. What level of education do you have?

16 A Bachelors and Masters of Bowling Green State, Ohio,
17 Ohio State, Ph.D. 1969.

18 THE COURT: What was the Ph.D. in?

19 THE WITNESS: Psychology.

20 THE COURT: All right.

21 BY MR. RICHARDSON:

22 Q All right. Back in July of 2008 were you traveling
23 through Florence, South Carolina?

24 A I was.

25 Q All right. What did you do when got to Florence, South

1 Carolina?

2 A I registered at the Super 8 Motel and went over to Taco
3 Bell and had something to eat.

4 Q Okay. About what time of evening or day did you
5 register at Super 8?

6 A It would be very late on the July 3rd, probably around
7 11:30 or so.

8 Q Okay. After you registered you said you went over to
9 Taco Bell?

10 A Yes, sir.

11 Q Got something to eat?

12 A Yes, sir.

13 Q What did you do when you left Taco Bell?

14 A I came back to the hotel and parked my car in front of
15 my room, 121.

16 Q All right. When you did that did you notice anything
17 suspicious at that point?

18 A I can't say that I saw suspicious. I had seen two of
19 the gentlemen, including Mr. Jordan, walking from the rear
20 of the building to the front toward the office as I was
21 parking and then I didn't pay more attention. I got out
22 of the driver's side with the passenger side, pulled out
23 briefcase, one piece of luggage, locked the door, was in
24 the process of setting them down in the room, the two
25 pieces. The door was open. I turned around to shut it.

1 I was greeted by the two gentlemen at that time.

2 Q Okay. Was the light in the hotel room on?

3 A Yes, it was.

4 Q All right. What happened when they came to your door?

5 A They — they were in the room when I turned around.

6 Q Okay. What happened from there?

7 A Mr. Williams had the gun in his hand, right hand, and

8 Mr. Jordan more or less took over, took the briefcase,

9 spread it out on the one or two beds in there and was

10 going through the briefcase and asked me where my laptop
11 was.

12 Q Okay. By Mr. Williams do you mean Shakeem Williams?

13 A I do, yes, sir.

14 Q All right. You stated that Mr. Williams had the gun?

15 A Yes, sir.

16 Q All right. And you stated that Mr. Jordan was inside
17 the room as well?

18 A Yes, sir.

19 Q And what did Mr. Jordan do?

20 A Mr. Jordan went to — took the briefcase, spread that

21 out — the contents — spread it out on the bed and was

22 looking for things in there and asked me where my laptop
23 was.

24 Q All right. So you had more or less a conversation with
25 him?

1 A Short conversation, yes.

2 Q All right. Approximately how far away from you was he
3 standing? And I'll come to you and tell me to stop when
4 I'm at the right spot.

5 A Probably the width of a double bed.

6 Q The width of the double bed?

7 A About where you're at now. I think you get a double
8 bed here.

9 Q All right. At any point in time did you have the
10 opportunity to make eye contact with Mr. Jordan while he
11 was talking to you?

12 A I did.

13 Q All right. And continue. What was going on in the
14 hotel room?

15 A Well, I said I don't have a laptop, and then with that
16 he had my billfold. Asked me for the pin numbers on my
17 American Express and Visa card, and I have never taken any
18 money out of the account and I don't even know what the
19 pin numbers are. And he responded in so many words,
20 you'll pay. In other words, if he found out that I did
21 know. Second question was my ATM card, asked for the pin
22 number of that. I responded by saying I'm pretty
23 confused, pretty upset right now, I really, I just can't
24 think of it. His response again was you'll pay if you --
25 if they found that not to be true. He -- and the third

1 thing was asked me if I had any money in my vehicle. I
2 said probably have about two dollars in change in the
3 console. And again, the third time he said you'll pay if,
4 you know, he found out to the contrary.

5 Q Did he do all the talking to you?

6 A You say all -- virtually all the instruction, yes.

7 Q Right. Did Mr. Williams talk to you at all?

8 A Mr. Williams instructed me a couple of times. I wasn't
9 moving as fast when he asked me to start undressing and
10 moved into the bathroom to, you know, and he nudged on me.

11 Q Okay. At what point were you ordered to undress?

12 A When they apparently were satisfied that they'd gotten
13 everything they could. Billfold was the primary thing, a
14 camera, and a telephone. They threw the keys. They
15 didn't take the keys. Pulled the phone out of the wall
16 and Mr. Williams ordered me into the bathroom.

17 Q Were either wearing masks at either time?

18 A No. No.

19 Q So you could see their faces?

20 A Yes, yes.

21 Q All right. So they ordered you into the bathroom?

22 A Basically Mr. Williams did, yes. He's the one that
23 actually verbalized for me to undress and move into the
24 bathroom.

25 Q Okay. When you went into the restroom --

1 A Bathroom.

2 Q —what happened then? When you went into the bathroom
3 what happened?

4 A I was — I was undressed. I did undress, and I got
5 into the tub, shallow tub. It was a very long tub. And
6 quite frankly I thought at that point that I was going to
7 get shot.

8 Q Okay. What happened once you got in the tub?

9 A Mr. Williams closed the door. I did not hear him
10 depart from the room. I stayed in there a few minutes and
11 finally got the nerve to open the door and they were gone.

12 Q Okay. About how long would you estimate that the
13 encounter with the two individuals took?

14 A Can't be more than five to ten minutes.

15 Q And you were able to see them in lit conditions in the
16 hotel room?

17 A Oh, yes, yes.

18 Q Okay. Was this the standard hotel room with two beds
19 with the bathroom behind them?

20 A I don't know what the word standard means but there
21 were two double beds and a bathroom.

22 Q Okay. When you realized that the individuals had left
23 and you were alone in your room again, what did you do?

24 A I grabbed a pair of cutoffs and walked fast, ran slowly
25 up to the main desk, and I think Mr. Alan was the clerk

1 that evening and asked him -- told him I'd just been
2 robbed in the room. And he called the authorities at that
3 time. I didn't know it was what city I was in or, you,
4 know, he made the call.

5 Q Did you wait around in your room at all or did you go
6 see him immediately?

7 A Oh, I wait -- I went immediately to the front desk.

8 Q When you came out of the hotel room did you see
9 anybody?

10 A I did not.

11 Q Okay. How long approximately did it take for deputies
12 to arrive?

13 A Deputy Worsley, I would say, seemed like a long time.
14 Again, five to ten minutes. It was pretty fast.

15 Q Okay. What description did you give to Deputy Worsley
16 about the two individuals who had robbed you?

17 A Well, Mr. Williams was the larger of the two. He was
18 probably a couple of inches taller than I and probably a
19 good 40 pounds bigger. And I'll say he had dark trousers
20 on. It could have been jeans; I'm not sure. But he had a
21 white T-shirt that indicated of a high school graduating
22 class of 2008. What school, I don't remember.

23 Q Okay.

24 A That -- and then Mr. Jordan I said he had baggy jeans,
25 or it could have been some kind of sweats and a white

1 T-shirt.

2 Q Okay.

3 A T — I think both of them had tennis shoes on that
4 would be, you know, some —

5 Q What was his size compared to Mr. Williams?

6 A Smaller, a tad shorter, not much shorter but smaller
7 built over all.

8 Q Okay. When you gave this description to Deputy Worsley
9 what did he do then?

10 A He came back to the room. I went back to -- I stayed
11 up front when he arrived. He wanted me to go to the room.
12 He drove his squad car back down the line. I went to the
13 room. He came in the room and started interviewing me in
14 121.

15 Q Okay. Did anyone else at the scene with you give any
16 description at all of the two individuals?

17 A I don't know exactly —

18 MR. MCLAUGHLIN: Objection, Hearsay, Your Honor.

19 THE COURT: This is personal knowledge now. He
20 must — I don't want him to testify about what somebody
21 told him.

22 MR. RICHARDSON: That's correct, Your Honor. I'm
23 not trying to elicit what anyone else told him at the
24 scene. Just for purposes of his later identification if
25 anyone else had given him information, what they may have

1 looked like.

2 THE COURT: Yes, you may ask that. Yes.

3 MR. RICHARDSON: Yes, sir.

4 BY MR. RICHARDSON:

5 Q Doctor Shappell.

6 A I saw the deputy interviewing the gentleman right
7 beside 123. I wasn't privy to that conversation, the
8 deputy didn't invite me, and I stayed away at that
9 particular time. Only I heard later at the -- when they
10 were apprehended, that he had identified the car almost
11 perfectly by model, year, color, and condition.

12 THE COURT: But that was later?

13 THE WITNESS: That was about 5:00 in the morning.

14 BY MR. RICHARDSON:

15 Q Doctor Shappell, after Deputy Worsley spoke with you
16 did he then leave the scene?

17 A He left the hotel room, yes, uh-huh.

18 Q And after he left what did you do?

19 A Tried to find my belongings behind the bed, under the
20 bed, and in the process trying to put my head back
21 together and I laid down. I didn't sleep; I laid down at
22 that point.

23 Q And at what point did Deputy Worsley come back to you?

24 A He came back the second time -- I'm not sure -- but it
25 was probably maybe 3:00 or so. I think the first time he

1 was there around 1:20, 1:30, came around about 3:00 with
2 two other deputies.

3 Q Okay.

4 A I think they were in separate cars.

5 Q All right.

6 A And when all three of them came in the Deputy Worsley
7 was primarily -- he got on the phone with American Express
8 and found out where these charges had been made and--

9 Q From the card that had been taken from you?

10 A Yes, yes.

11 Q Okay. In that exchange was there any mention of any
12 suspects that had been captured or anything at that point?

13 A No.

14 Q Okay.

15 A No.

16 Q So did Deputy Worsley then leave again?

17 A All three of the deputies left, yes.

18 Q Okay. And when did you see Deputy Worsley for the
19 third time?

20 A Came back about, I would say, around 5:00. I really
21 didn't know exactly, 4:30, 5:00. Knocked on the door and
22 I -- he identified himself. I don't think I would have
23 opened the door otherwise. And he says I think we got
24 them. That's about all he said. I got in the squad car.
25 We went out. Seemed like he drove quite a ways out to the

1 shopping center where I know where it was now. And
2 there — go ahead, I'm sorry.

3 Q Before we get there, the hotel room you were staying in
4 was it a hotel that had room entrance from the outdoors?

5 A Outdoors, exterior door.

6 Q So you parked your car—

7 A Right in the front.

8 Q —and went straight in the hotel room door?

9 A That's correct.

10 Q Okay. Sorry for cutting you off. Deputy Worsley
11 picked you up?

12 A Yes.

13 Q And what did Deputy Worsley say to you when he picked
14 you back up?

15 A He just said, I think we got them. That's about all he
16 said.

17 Q All right. Was there anyone else in the vehicle with
18 him?

19 A No, just the two of us.

20 Q So the two of you traveled to —

21 A To the shopping center. I can't identify it by name.

22 Q Okay. When you got to the shopping center, was there
23 an IHOP there, an International House of Pancakes?

24 A At this moment I don't know what was there. It was a
25 lengthy shopping center and then pulled in the parking

- 1 lot. There were buildings. That might well have been the
2 IHOP; I'm not sure.
- 3 Q So what happened when Deputy Worsley pulled up there?
- 4 A Well, I saw all kinds of deputy sheriff's car, City of
5 Florence car. There must have been eight to ten police
6 officers there. And I saw one — I didn't know who he
7 was — turned out it was a Mr. Williams apparently,
8 Mr. Shakeem Williams' older brother on the ground. He was
9 handcuffed, hands behind his back. He was sitting there
10 and —
- 11 Q Did you recognize him?
- 12 A I did not.
- 13 Q Okay.
- 14 A Another gentleman with a multicolored horizontal
15 different colored T-shirt top. I think he had longish
16 hair with some braids as I recall. I never saw him.
- 17 Q Okay. So those were two individuals. How many
18 individuals total were out there?
- 19 A All of the —
- 20 Q In custody or in handcuffs?
- 21 A Four.
- 22 Q Four people total?
- 23 A Yes.
- 24 Q All right. So you saw two guys that you did not
25 recognize?

1 A That's true.

2 Q Okay. What about the other two?

3 A And Mr. Shakeem was walking, either somebody gave him
4 permission to walk from one, where they were sitting down.

5 I said, that's him. And the way the deputy moved his car
6 around I could then see Mr. Jordan and he, the deputy, he
7 did it in such a way that I don't think that Mr. Jordan
8 could see me but I could see him. And I said, yeah,
9 that's him. That was number two.

10 Q Did you have any hesitation?

11 A No, absolutely. No, none, none.

12 Q So you immediately recognized him, —

13 A Oh, yes.

14 Q —Mr. Jordan?

15 A Yes.

16 Q Do you see him in the courtroom today?

17 A I do.

18 Q Could you indicate where he is?

19 A Blue shirt with blue tie.

20 Q Okay.

21 A Sitting beside his counsel.

22 Q Very good. At any point in time while you were there
23 where the suspects were located did anybody in law
24 enforcement or anyone else suggest to you in any way who
25 you should pick?

1 A Oh, no, no, no.

2 Q Okay. Did they give you any information as far as who
3 those four individuals were?

4 A I was told later the two that I didn't -- couldn't
5 identify, that one, one of the older Mr. Williams was the
6 ring leader and his other friend were in the car.

7 Q But all that was post-identification?

8 A Yes, that was given to me 'cause I didn't know who they
9 are.

10 Q All right. How sure were you at the time you picked
11 them out that those two guys were the ones that robbed
12 you?

13 A Hundred percent.

14 Q All right.

15 MR. RICHARDSON: Beg the Court's indulgence one
16 moment, Your Honor.

17 THE COURT: Yes, sir.

18 MR. RICHARDSON: Doctor Shappell, please answer any
19 questions that Mr. McLaughlin has for you.

20 THE WITNESS: Yes, sir.

21 **CROSS-EXAMINATION**

22 BY MR. MCLAUGHLIN:

23 Q Doctor Shappell, my name is Patrick McLaughlin.

24 A Yes, sir.

25 Q I apologize for you having to come all the way back to

1 South Carolina.

2 A That's fine.

3 Q I'm sorry, I'm very sorry for what happened to you.

4 Having said that, I need to ask you some questions. I
5 believe you told Mr. Richardson that you are a
6 psychologist; is that right?

7 A Yes, I'm still licensed in the State of Michigan.

8 Q Okay. And then you also said that you worked like at a
9 nuclear — you're retired but you still work part-time
10 with a nuclear power plant?

11 A Every nuclear plant has an outage every 18 months.
12 Because of the surge of business at that particular time
13 it's worth my while to go back. I'm now the senior oldest
14 one there. So I've gone back twice. And now he's coming
15 in August, September, and that may be my last one because
16 that particular supervisor is going to be retiring.

17 Q What do you — what do you do at that point?

18 A Basically you would boil it down to worker fitness. We
19 evaluate, examine potential workers both for Detroit
20 Edison, but mostly contractual people, and to see if
21 they're sound and dependable, reliable, you know, is there
22 any reason they shouldn't be working there.

23 Q Your work, when you go back up to Michigan work in
24 these plants it's still related to psychology?

25 A Yeah, yes, yes.

1 Q All right. Doctor, a couple of things that you told —
2 all right, I refer to you doctor. I don't know, do
3 psychologists, are they considered M — I call you doctor?

4 A I hope so.

5 Q Okay. How long did your entire encounter with these
6 two people last?

7 A In the room?

8 Q Yes, sir.

9 A I'd say approximately five to ten minutes.

10 Q Okay. You indicated that Deputy Worsley was the
11 initial responder.

12 A Yes.

13 Q And then that he left and came back and then left and
14 came back again; is that right?

15 A Three times, that's right.

16 Q Okay. You stated that at one point you were told that
17 whoever this other witness was had described the car, I
18 think the phrase you said, was perfectly.

19 A I was told that he was the gentleman 123 with his
20 family.

21 Q Had described the car?

22 A Yes.

23 Q I guess the suspect car perfectly?

24 A Yes.

25 Q Okay, all right. And when were you told that?

1 A While we were out -- while I was out at the shopping
2 center.

3 Q Okay, all right.

4 A And the car was there.

5 Q Was it a -- dark, or was the sun coming up? How bright
6 was it when you got out there?

7 A I don't think the sun was coming up at that time.

8 Q All right. It was still dark?

9 A The sun wasn't up so I guess you would say it was --
10 that there were a lot of lights. Seemed like all the
11 lights were on.

12 Q When you say all the lights, are you referring also to
13 the police lights? Were they running?

14 A Some were. I'm referring to parking lot lights.

15 Q Okay. I'm not exactly sure the way you described it to
16 Mr. Richardson, how these four individuals were set up.
17 It almost sounds like -- and I want you to correct me if
18 I'm wrong -- it sounded like you described the two others
19 which would be Lewis Williams and Johnny Johnson as being
20 somewhat separated from Mr. Jordan?

21 A I don't think I said separated.

22 Q Okay. Well, and I don't think you said the word
23 separated either. That's what I want to understand. The
24 way you described it you first described Mr. Williams as
25 being on the ground in handcuffs?

- 1 A Yes, sir.
- 2 Q And then you described a Mr. Johnson being a young man
3 in a multi-colored shirt.
- 4 A That's true, I did.
- 5 Q Where was he in relation to ---
- 6 A I'm not sure I can give you a total pictorial layout
7 there, but they were different places usually near or in
8 front of a police vehicle and on the ground.
- 9 Q All right. Were the -- were those two closer together?
- 10 A No.
- 11 Q All right. Was Mr. Jordan and Shakeem Williams, were
12 they together?
- 13 A No.
- 14 Q Were they close to those other two individuals?
- 15 A No, no, no closer, no far away. I can't tell you how
16 many feet the four were apart, but they were -- the four
17 were separated. Now if you would have measured it you
18 might have found some little closer to others.
- 19 Q Well --
- 20 A They were different.
- 21 Q Were they all just sitting on the sidewalk together?
- 22 A No, it was a parking lot. There's no sidewalk.
- 23 Q All right. Were they all sitting on the ground?
- 24 A Mr. Shakeem Williams was walking between, apparently
25 had permission to move from one spot to another. He was

1 in custody at that time. He was walking a short distance.

2 Q All right. Mr. Shappell, according to the Florence
3 County Sheriff's Officer's report that we were given by
4 the State, the description that you gave was, subject one
5 was wearing a white T-shirt, he was large build and
6 had the words seniors 2008 printed on the T-shirt inside
7 some kind of -- now that is the description that's
8 contained in Deputy Worsley's report.

9 A Correct.

10 Q Is that an accurate reflection of the description you
11 gave Deputy Worsley?

12 A Yes.

13 Q Okay. That was as to subject one. As to subject two,
14 subject two was small build and was wearing a white in
15 color T-shirt, baggie jeans.

16 A Yes.

17 Q All right. Is that an accurate description?

18 A Yes.

19 Q Or accurate reflection of the description you gave
20 Deputy Worsley?

21 A Yes.

22 Q Okay, all right. Was there -- was Mr. Jordan in
23 handcuffs?

24 A I think they were all in handcuffs, but I don't -- I
25 don't particularly recall because I was sort of

1 preoccupied with identifying him. He was secured in some
2 manner. He was either beside a deputy because they wanted
3 him to stay there while Deputy Worsley drove past such way
4 that I had a good shot at him.

5 Q So there was —

6 A I can't say for sure that he was in cuffs but he was
7 secured. He wasn't going any place.

8 Q All right. And well, do you say that because in part
9 there was a deputy or some law enforcement officer
10 standing there right there with him?

11 A Yes.

12 Q Okay. When you looked at Mr. Jordan —

13 A Yes.

14 Q —was he the only black male there?

15 A They all four were black.

16 Q Okay. Well, were they close enough together where you
17 could see them all together or —

18 A No.

19 Q —when you were focusing that one —

20 A No.

21 Q —you were focusing on the other one?

22 A No. They were maybe, like, you have the rows in the
23 parking lot. Here's one set of rows, another set of rows.

24 The first two were like one row of cars, another row of
25 cars. How many feet would that be? 35, 40 feet perhaps.

- 1 Q So there were 35, 40 feet between each one?
- 2 A That would be my -- that would be my estimation, yes.
- 3 Q All right. And was Mr. Jordan the only one that you
- 4 would classify as being small build in a white T-shirt?
- 5 A Small build in -- you're asking in comparison to?
- 6 Q Well --
- 7 A In comparison to Mr. Williams he's small build.
- 8 Q Well, I can only assume 'cause that's the only
- 9 identification that I have from Mr. Worsley?
- 10 A That's right.
- 11 Q Okay.
- 12 A He certainly was smaller than Mr. Williams.
- 13 Q Let me ask you this, the other individual who was in
- 14 the bright colored multi-colored shirt, would you say that
- 15 he was of similar build to Mr. Jordan?
- 16 A Similar, certainly not as heavy as Mr. Shakeem
- 17 Williams.
- 18 Q Okay, all right. And of course, one of the primary
- 19 things you noticed on him was his shirt; wasn't it?
- 20 A On?
- 21 Q On this other individual?
- 22 A This --
- 23 Q The bright colored shirt?
- 24 A Yeah, it was sort of was, you know.
- 25 Q We'll refer to him as Mr. Johnson if I told you we

1 think that's Mr. Johnson.

2 A All right, fine.

3 Q Okay. You indicated before going out there that Deputy
4 Worsley had told you, I think we got him.

5 A He came to the door he said that and I, you know, put a
6 T-shirt on and still had cutoffs on. I hadn't really --
7 trying to nap on the bed. I wasn't sleeping, no pajamas,
8 I put a T-shirt on.

9 Q I would have imagined it would have been hard to get
10 back to sleep that night.

11 A It was hard to sleep, period.

12 Q And did you identify these people before or after you
13 were told that this other witness had described the
14 suspect vehicle perfectly?

15 A I identified him first because I got out of the squad
16 car and looked at the, I call it the get-away car, and in
17 that back seat I'm not sure which is, which was my green
18 camera and black phone.

19 Q You see anything else --

20 A Cell phone.

21 Q You see anything else in the car?

22 A I saw other things in the trunk, none of which was my
23 possessions.

24 Q All right. Were there clothes in the trunk?

25 A I can't tell you exactly. There were odds and ends in

1 the trunk. The trunk certainly wasn't full of any one
2 particular thing. Perhaps clothes, perhaps pair of shoes,
3 something along those lines. But my possessions weren't
4 in there.

5 Q And it wasn't until about 5:00 you believe that you
6 made your identification; is that right?

7 A I'm estimating 4:30 to 5 in that it seemed like a long
8 ride out there. I didn't know that Florence was that
9 large, but I don't know the difference where I was and
10 where the shopping center is located. But it took him
11 probably a good ten minutes, it seems to me, to drive out
12 to the shopping center.

13 Q When you describe Deputy Worsley coming back that, I
14 guess, the second time?

15 A Second time.

16 Q What was the purpose of that visit?

17 A You have to ask the deputy. I mean, I know what
18 happened. I don't know that the purpose was.

19 Q What happened when he came out the second time?

20 A I had numbers from American Express. He called them --
21 or I called them, got them on the line, identified myself,
22 and then he got on the line and asked the questions
23 because he knew where this rest-- or this gas mart was and
24 other places. They gave him that information but he
25 immediately knew exactly where these places were?

1 Q Was — were there charges —

2 A Yes, sir.

3 Q —on these cards?

4 A Oh, yes.

5 Q Okay. Do you remember what the charges were?

6 A There was gas for at least three of them, and I think
7 they were all, I believe all Darlington addresses. One
8 was a Quik Mart or something where they probably had to go
9 inside. 28-dollars one, 30-dollars for another. The gas
10 was 50 and — around 50 and 60-dollars for each of the
11 three. So I don't know where the vehicles were that took
12 the gas.

13 Q All right. So just so I'm understanding, this — if
14 this incident began at about 1:20 to 1:30?

15 A Yes.

16 Q Okay. And Deputy Worsley returned around 3:00?

17 A That's the best of my recollection.

18 Q And I understand it's hard to remember the exact time,
19 but there were apparently several charges to several
20 different locations?

21 A Yes.

22 Q And did you — was it your calling your credit card
23 number company — did you discover this and then call
24 Deputy Worsley and ask him to come back or —

25 A No, no, no, no. He came in. That apparently — I

1 can't read his mind -- but that apparently was his focus,
2 his mission, and he asked me -- I had their 800-888
3 number. I called, identified myself sufficiently so, and
4 said I'd been robbed, and here's the deputy, he'd like to
5 speak with you.

6 Q I think I understand. Worsley came back, said
7 Mr. Shappell, can you check and see if your cards have
8 been used. Is that what happened?

9 A So many words. I don't know that he said exactly that,
10 or we, you know, he might have said we want to find out
11 what the charges were because I had closed the account or
12 said the card had been stolen after he left the first
13 time.

14 Q Okay.

15 A So they had stopped the card at that time.

16 Q Other than giving Deputy Worsley a description of the
17 two individuals, do you recall giving anyone else a
18 description of the two individuals?

19 A When I say in casual conversation with Mr. Cox, I
20 perhaps, but I would not have been any real reason after
21 that to give the same information.

22 Q And I probably didn't ask that very well. I'm -- I
23 should have asked you, did you give anyone else before
24 riding back out to make an identification a description?

25 A Oh, no, I had no contact with anyone.

1 Q Okay. When you called -- did you call 9-1-1 or did you
2 have someone call for you?

3 A I think his name was Mr. Allen or Allen at the front
4 desk Super 8. I did not call. I didn't know where to
5 call.

6 Q Okay. He called 9-1-1 for you?

7 A He got the deputy. That's all I know.

8 Q And at the time did he -- got them on the phone, did he
9 at any point ask you to describe the people who had come
10 into your room?

11 A No.

12 Q Okay.

13 MR. MCLAUGHLIN: Beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 MR. MCLAUGHLIN: Mr. Shappell, thank you very much.

16 I don't have any further questions.

17 THE COURT: Redirect, Counsel.

18 MR. RICHARDSON: None, Your Honor.

19 THE COURT: You may step down, sir. Thank you.

20 Next witness please.

21 MR. RICHARDSON: Your Honor, the State would call

22 Alvin Worsley.

23 DEPUTY CLERK OF COURT: Please place your left hand
24 on the Bible, raise your right hand.

25 WHEREUPON,

1 **ALVIN KEITH WORSLEY,**
2 having been duly sworn by the Deputy Clerk of Court,
3 testified as follows:

4 DEPUTY CLERK OF COURT: Please be seated and state
5 your name for the record.

6 THE WITNESS: Alvin Keith Worsley.

7 **DIRECT EXAMINATION**

8 BY MR. RICHARDSON:

9 Q Deputy Worsley, are you still employed as a deputy with
10 the Florence County Sheriff's Office?

11 A Yes, I am.

12 Q And were you so employed back in July of 2008?

13 A Yes, I was.

14 Q All right. Back on July 4th, 2008, did you have
15 occasion to be called to a scene at the Super 8 Motel in
16 Florence?

17 A Yes, I was.

18 Q What was the nature of that call that you received?

19 A Armed robbery, just happened at the motel.

20 Q What did you do when you arrived at the Super 8?

21 A I pulled around to the side of the Super 8 and they
22 gave me a room number, room 121, and I pulled in. I
23 immediately met with Mr. Shappell.

24 Q All right. In meeting with Doctor Shappell did he give
25 you a description of the guys who did it to him?

1 A He did.

2 Q All right. What did he tell you?

3 A He told me one was large build. T-shirt he described
4 with 2008 on, senior T-shirt, high school printed on the
5 T-shirt. Another guy was small build, fellow with white
6 T-shirt, baggy jeans.

7 Q You received this information -- did you interview
8 anybody else at the scene?

9 A I talked to the person that was staying in room 123.
10 Gary Nowell.

11 Q Okay.

12 A He gave me a description. He saw four black males out
13 in that area prior to my arrival. And he gave me a
14 description what kind of vehicle they drove away in.

15 Q All right. Did he give you anything more than that
16 they were black males?

17 A He did say he saw one was kind of a big fellow. I
18 think it was the Williams subject. He didn't know none of
19 the names. But he did give me that description one was
20 big and the other guy was small.

21 Q At any point in time was Doctor Shappell anywhere near
22 you while you were interviewing Mr. Nowell?

23 A No, he wasn't.

24 Q Okay. At any point in time did you tell Doctor
25 Shappell the results of your interview with Mr. Nowell?

- 1 A No, I didn't.
- 2 Q Okay. About what time did you respond to the Super 8?
- 3 A I responded at 0135. I received the call at 0133.
- 4 Q So according to your report you arrived at the Super 8
- 5 about 1:35 a.m.?
- 6 A Yes, sir.
- 7 Q On July 4?
- 8 A Right.
- 9 Q After you left, after you got the information from
- 10 Doctor Shappell, you left the hotel?
- 11 A I did.
- 12 Q Okay. When did you come back?
- 13 A I can't remember exactly what time; but I came back to
- 14 see had anyone used his credit cards, and which we found
- 15 out they did in Darlington getting two, three different
- 16 gas stations.
- 17 Q And at this meeting with Doctor Shappell did any
- 18 exchange, conversation take place between you two
- 19 regarding descriptions or that any suspects had been
- 20 captured at that point?
- 21 A No, it didn't.
- 22 Q Okay. After you got through dealing with the credit
- 23 card issue, did you then leave the hotel again?
- 24 A I left the hotel.
- 25 Q All right. And did you come back to the hotel again at

1 a later time?

2 A I did.

3 Q Approximately what time did you come back?

4 A Around between 4:30 and 5 in the morning.

5 Q Okay. So according to your report about three hours
6 after the incident took place?

7 A Yes, sir.

8 Q Okay. Why did you come back that last time?

9 A I only came back because the Florence City Police
10 identified the vehicle in question and described four
11 males that was inside the IHOP eating; and there was, I
12 think, some of our vehicles had been watching the vehicle
13 and I think the guys called the taxicab. Someone tried to
14 come pick them up to get a ride, and then they took all
15 four of the guys into custody. My supervisor had me to
16 get the victim, which is Mr. Shappell, and bring him in
17 the general area to identify, see if he could identify who
18 robbed him.

19 Q So you picked Mr. Shappell up at the Super 8 and drove
20 him to the IHOP at Magnolia Mall?

21 A Right.

22 Q In Florence?

23 A The parking area right in front of the mall. Between
24 the mall parking lot and IHOP.

25 Q And the Super 8 is on Highway 52, correct?

1 A Lucas Street, yeah.

2 Q Highway 52 and 95?

3 A Right.

4 Q When you arrived back at the hotel and saw Mr.

5 – Doctor Shappell, what did you say to him about the
6 reason you were there?

7 A I know I identified myself. I said I think we got the
8 guys who robbed you. I said, you get in my vehicle and
9 I'll drive you to the scene.

10 Q Okay.

11 A So he got in the back seat.

12 Q From Super 8 to the IHOP parking lot, did any
13 conversation take place between you and Doctor Shappell
14 regarding who these individuals were or what they might
15 look like?

16 A No, we didn't.

17 Q Okay. When you arrived on scene at the IHOP what did
18 you do?

19 A When I pulled in it was a lot of officers out there
20 with four males. They was in custody. He first
21 identified Mr. Williams, the larger fellow, white T-shirt
22 with seniors on it. He identified him first. And then he
23 immediately identified Mr. Jordan afterwards.

24 Q All right. Were the two of you, Doctor Shappell and
25 yourself, located in the your police vehicle?

- 1 A In my patrol vehicle.
- 2 Q Was anyone else there—
- 3 A No.
- 4 Q —in the car? Had anyone else on scene spoken with
- 5 Doctor Shappell at that point?
- 6 A No, they didn't.
- 7 Q Okay. So you basically just rode him through?
- 8 A I rode him through, made one path, and I turned around
- 9 kind of in a way where they wouldn't know who I had in the
- 10 vehicle, if they know I had anybody at all.
- 11 Q Did he have an opportunity to view all four individuals
- 12 that were in detention at that point?
- 13 A He did. He saw all four.
- 14 Q Okay. Did he indicate that he knew the other two guys
- 15 that were there?
- 16 A No.
- 17 Q Okay. Did he hesitate at all in identifying
- 18 Mr. Williams and Mr. Jordan?
- 19 A No, he did not.
- 20 Q Okay. After he identified Mr. Williams and Mr. Jordan,
- 21 did he make any other indications or statements about the
- 22 identification?
- 23 A No, I asked him, you know, was he sure, you know, when
- 24 he pointed out and he said he was real sure.
- 25 Q Okay. At that point what did you do with Doctor

1 Shappell?

2 A At that point my supervisor had me to ask him to get
3 out, go to the vehicle, that red color Toyota, that see
4 whether the items in the back seat — I think it was a
5 green digital camera, a phone in the back seat — was the
6 items his. And he immediately identified, yeah, those are
7 mine; that's what they took off me from the motel.

8 Q All right. From that point on at the scene did
9 anything else go on regarding any kind of identification?

10 A No.

11 Q All right. Did you transport Doctor Shappell back to
12 Super 8?

13 A I did.

14 Q All right. And is that all that took place with regard
15 to any identification?

16 A Yeah, that's the last contact I had with him.

17 Q Okay. Please answer any questions Mr. McLaughlin may
18 have.

19 A Okay.

20 MR. MCLAUGHLIN: May it please the Court.

21 **CROSS-EXAMINATION**

22 BY MR. MCLAUGHLIN:

23 Q Mr. Worsley, you're still with Florence County
24 Sheriff's Office, right?

25 A I am.

1 Q So Deputy Worsley; is that right?

2 A Yes, that's right.

3 Q You mentioned several times your supervisor. Who is
4 your supervisor?

5 A Lieutenant Hooks.

6 Q All right. And when you say your supervisor asked you
7 to go back and pick up Mr. Shappell, how did he relay that
8 information to you?

9 A I can't remember. All I know is by phone or radio.

10 Q Not personally?

11 A Right, right.

12 Q Okay, all right. And why did you go back the first
13 time around three? What was that visit for?

14 A You mean the second time with the credit cards?

15 Q Yes, sir.

16 A Oh, to see was anybody using the credit cards that was
17 taken from him.

18 Q What spurred that visit? Whose idea was it for you to
19 go back over there?

20 A I think my supervisor, Lieutenant Hooks, again.

21 Q Okay, all right. And you went back over there. You
22 heard Mr. Shappell's testimony just now about that; didn't
23 you? Was his testimony accurate?

24 A It was.

25 Q Okay, all right. So y'all called and found out there

- 1 had been —
- 2 A Gas purchases.
- 3 Q Gas purchases I believe he said at three different
- 4 places; is that right?
- 5 A I know it was in Darlington, different gas stations
- 6 there. It was two or three. I'm not hundred percent
- 7 sure.
- 8 Q Okay. Was it more than —
- 9 A It was more than one I know.
- 10 Q Okay, all right. How long were you there during that
- 11 —
- 12 A The second visit?
- 13 Q Yes, sir.
- 14 A I'm not sure, maybe 15 minutes. I'm not sure though.
- 15 Q Y'all had to call in to the credit card company?
- 16 A Yeah, it was on the phone with the operator.
- 17 Q Was it one of those automated things where you got to
- 18 keep hitting the buttons?
- 19 A No, I was talking to a woman.
- 20 Q Okay, you were talking to —
- 21 A Yeah, I was talking to a person.
- 22 Q Did they put you on hold a lot?
- 23 A I don't know. I don't think. I don't know.
- 24 Q All right. Did you have any conversation with
- 25 Mr. Shappell while you were on hold or sitting there on

1 the phone about the people who came into his room?

2 A No.

3 Q Okay. You have any conversation with Mr. Shappell
4 about anything else in the case, any other leads y'all
5 had?

6 A No.

7 Q So you left, and then you were contacted again by your
8 supervisor?

9 A I was.

10 Q All right. And was that Lieutenant Hooks again?

11 A Lieutenant Hooks.

12 Q All right. And what did Lieutenant Hooks tell you
13 then?

14 A To go to Super 8 to get Mr. Shappell, bring him to IHOP
15 see if he could identify, —

16 Q All right.

17 A —so to speak.

18 Q So you testified to Mr. Richardson, that when you went
19 up there you said I think we have the guys who robbed you.

20 A Uh-huh.

21 Q All right. What did he say?

22 A He say okay. He put on his pants and got on in the
23 car.

24 Q Well, did you tell him we need you to come I.D. them?

25 A No, I don't think I did that.

1 Q Well?

2 A I'm not sure of that. I'm not sure.

3 Q All right. Would you have explained to him why you
4 needed him to come with you?

5 A I did. I would have.

6 Q Okay. When you first -- I'm sorry, I know this is kind
7 of jumping around, I apologize. When you first got there
8 the very first time when you responded to the initial
9 call --

10 A Right.

11 Q --and you interviewed Mr. Shappell, and in fact, you
12 told the description he gave you, which was large build,
13 white T-shirt, seniors 2008, and a small build, white
14 T-shirt, jeans.

15 A Right.

16 Q Right? Was that the description he gave you?

17 A It was.

18 Q Okay. Since Mr. Shappell was from out of town, did you
19 ask him what his plans were when you were first there? In
20 other words, did you say, Mr. Shappell, listen, are you
21 gonna be around for a few days in case we find these guys?

22 A No.

23 Q Okay. Did he tell you, listen, I'm hitting the road
24 first thing in the morning, I'm getting out of here? Did
25 you know what his plans were at all?

1 A No, I didn't.

2 Q Okay. In fact, I think, on your report you indicated
3 that you just gave him a card maybe with a number to call;
4 is that right?

5 A It'd be the card with the case number on the phone on
6 the back.

7 Q You gave them a case number on a business card and
8 advised that a report would be available in three to five
9 days; is that right?

10 A Right.

11 Q Okay. When you left Mr. Shappell's room that first
12 time, all right, did you think you would be going back
13 over there?

14 A I did.

15 Q Okay, all right. When Lieutenant Hooks called you and
16 told you to go back that second time when you went back
17 for the credit cards —

18 A Right.

19 Q All right? Did Mr. Shappell ask you any questions
20 regarding the investigation at that time?

21 A Not that I can recall.

22 Q He didn't ask you if you guys found anybody yet?

23 A (There was no response.)

24 Q That wasn't his first question when you walked up to
25 the door when you got him?

1 A What now?

2 Q You walked back up to his door at three in the morning.

3 Was he surprised to see you again?

4 A I think he was.

5 Q Okay, all right.

6 A Uh-huh.

7 Q He didn't seem excited like maybe you'd caught the guys
8 who robbed him?

9 A Not that I recall, no.

10 Q All right, okay. When you left the room that second
11 time did you think you were gonna be going back over there
12 at all?

13 A I didn't.

14 Q Okay. But yet, you were called and sit back over there
15 that third time, right?

16 A Right.

17 Q And when you went up to him this time you told him that
18 y'all had caught the guys; didn't you?

19 A I think we got your suspects.

20 Q All right. And then did you explain to him what you
21 needed him to do?

22 A I'm pretty sure I did. I just can't remember at that
23 time, you know, exactly what I said.

24 Q Well, I mean, it would seem logical to me you would
25 probably say, we need you to come over and take a look?

1 A Right.

2 Q Is it possible that's what you told him?

3 A It might be. I'm not sure.

4 Q All right. He says, I get -- think he described he had
5 to get dressed. And then he got in the car with you. He
6 sit in the front or the back?

7 A Back seat.

8 Q And y'all didn't talk on the way over there at all?

9 A Not nothing about the case if we did talk.

10 Q All right. Well, did you talk about what he was doing
11 coming through town, where he was going, how long he
12 intended to be here?

13 A No.

14 Q All right. So you get out there to the Magnolia Mall
15 parking lot?

16 A Right.

17 Q All right. Now nobody came over to you? Was your
18 supervisor out there?

19 A He was out there.

20 Q All right. Did he come over to you and talk to you
21 about how he wanted you to do this?

22 A No. Not at all.

23 Q Well, did he get on the radio and explain to you how he
24 wanted you to do this?

25 A No.

1 Q All right. Was Investigator Cox there?

2 A He was there.

3 Q All right. Did Investigator Cox talk to you at all
4 about how he wanted you to do it?

5 A No, he did not.

6 Q All right. Did he not walk over to the car at all and
7 talk to you before you started driving Mr. — the way
8 Mr. Shappell described it and I think the way you
9 described it, you just kind of drove him around the
10 suspect?

11 A Kind of in a loop.

12 Q I'm sorry?

13 A I kind of drove around like in a little loop.

14 Q Okay, all right. You just pulled into the parking lot
15 and just kept driving and went in a loop?

16 A Well, I stopped. I did talk to Mr. Cox and drove
17 around a little loop and then went from there.

18 Q All right. You stopped to talk to Mr. Cox before you
19 drove him by the suspects; didn't you?

20 A I think it was afterwards.

21 Q So nobody who was there explained to you the way they
22 wanted you to do that drive-around —

23 A Huh-uh.

24 Q —identification?

25 A Not that I can recall.

- 1 Q You ever done that before?
- 2 A I did.
- 3 Q Is that standard practice?
- 4 A I -- just experience I think.
- 5 Q All right. Was Mr. Jordan -- and I guess I need to
- 6 clarify when I refer to large build and small build.
- 7 Would you agree with me the two Williams brothers are kind
- 8 of the same physical appearance?
- 9 A I only remember Shakeem, the larger fellow. I don't
- 10 remember what the brother looked like.
- 11 Q All right. Would it be fair to say they're little bit
- 12 big boys?
- 13 A I don't remember what the other one look like.
- 14 Q Okay, all right. How about Mr. Jordan and Mr. Johnson?
- 15 How similar are they?
- 16 A I don't know what Mr. Johnson look like either.
- 17 Q All right. Do you remember Mr. Johnson's shirt that
- 18 Mr. Shappell described, that bright, that bright color?
- 19 A Multicolored shirt?
- 20 Q Yeah.
- 21 A I remember he mentioned something about it, yeah.
- 22 Q Mr. Shappell mentioned something about it?
- 23 A Right.
- 24 Q That day?
- 25 A That night, that morning, yeah.

1 Q He did? What did he say?

2 A I don't know exactly what he said, but I know I heard
3 the world multicolored shirt on one of the individuals.

4 Q So during the identification procedure as you were
5 driving him around —

6 A Right.

7 Q —he made a comment about that multicolored shirt?

8 A No, not in the vehicle, no. This was later on.

9 Q Later on?

10 A Right.

11 Q Well, when — all right, I think that's -- I want to
12 know when he made that comment.

13 A Probably on the way back to the motel when I was taking
14 him back from the mall.

15 Q All right. So after he identified Mr. Jordan you took
16 him back to the hotel?

17 A Right.

18 Q And he had a comment about Mr. Johnson's shirt?

19 A I don't know if it was Mr. Johnson. I mean, I just
20 remember he was saying something about a multi-color
21 shirt.

22 Q Fair enough. If I represented to you that Mr. Johnson
23 was the one person there wearing a multicolored —

24 A Okay.

25 Q —shirt, can we assume that he was talking about

- 1 Mr. Johnson if that's true?
- 2 A I guess.
- 3 Q All right. And you don't remember what he said?
- 4 A No, I don't.
- 5 Q After Mr. Shappell gave the identification, he, I think
- 6 you said you drove him and stopped at the car; is that
- 7 right?
- 8 A Stopped at which?
- 9 Q I'm sorry, I believe he referred to it as the get-away
- 10 car.
- 11 A Right. Right.
- 12 Q The Camry that was in the IHOP parking lot?
- 13 A Right.
- 14 Q How far were these guys from that Camry?
- 15 A I don't remember. I don't know how far they was.
- 16 Q You heard Mr. Shappell describe how they were seated in
- 17 the parking lot, right?
- 18 A Right.
- 19 Q I believe he was saying there was something like 45 to
- 20 40 feet between them. Do you remember them being seated
- 21 that far apart?
- 22 A They wasn't real close together but they wasn't real --
- 23 they was all in the general area.
- 24 Q All right. Were they just seated down on the pavement
- 25 of the parking lot?

1 A I think Mr. Williams, Shakeem, he was walking. He was
2 standing.

3 Q Okay. How about the other three fellows?

4 A I can't remember right off, right at this time. I
5 don't -- I can't remember.

6 Q Okay. Were they handcuffed?

7 A I know Mr. Williams was, and I'm not really sure right
8 now 'cause I know Mr. Williams was -- that's the main one
9 I was looking at when I was driving through. Then I heard
10 Mr. Shappell say, you know, he had identified Mr. Jordan.
11 And I looked over there at Mr. Jordan and then I was
12 looking at, you know, the other two guys, you know, in the
13 area as well. I mean, officers were with each one of
14 them.

15 Q So let me ask you this, Deputy.

16 A Uh-huh.

17 Q If I indicated to you that as part of Rule 4 Brady
18 we've been provided with a video, in-car video of the
19 actual traffic stop of this cab.

20 A Right.

21 Q And that video is 20 to 30 minutes long maybe, but
22 before that video ends all four of these individuals were
23 handcuffed, all right. Would it be Sheriff's Office
24 policy to un-handcuff them once they had handcuffed them
25 from arresting them?

1 A Oh, no.

2 Q I'm sorry?

3 A Not to un-handcuff them, no.

4 Q Okay, all right. Beg the Court's indulgence please.

5 THE COURT: All right.

6 MR. MCLAUGHLIN: No further questions, Deputy.

7 Thank you very much.

8 THE COURT: Redirect.

9 MR. RICHARDSON: Briefly, Your Honor.

10 **REDIRECT EXAMINATION**

11 BY MR. RICHARDSON:

12 Q Deputy Worsley, Doctor Shappell gave you a description
13 of a small build individual wearing a white shirt, baggy
14 jeans; is that right?

15 A Yes, he did.

16 Q Did Tarrence Jordan match that description at the IHOP?

17 A Yes, he did.

18 Q All right. Did anyone between the time you received
19 that description to the time Doctor Shappell pointed him
20 out in the IHOP parking lot, did anyone suggest, coerce,
21 pressure Doctor Shappell in any way, shape, or form to
22 identify anyone?

23 A No.

24 Q All right. Did Doctor Shappell hesitate at all when he
25 identified Mr. Jordan?

1 A No, he did not.

2 Q All right.

3 MR. RICHARDSON: That's all, Your Honor.

4 THE COURT: Recross.

5 MR. MCLAUGHLIN: Yes, Your Honor, briefly.

6 **RECROSS - EXAMINATION**

7 BY MR. MCLAUGHLIN:

8 Q Mr. Richardson just asked if anybody coerced, I believe
9 he used the word suggest as well, to Mr. Shappell
10 about the identification and you said no, correct?

11 A Right.

12 Q All right. You did, in fact, tell Mr. Shappell you
13 thought you had the guys; didn't you?

14 A Right, at the motel.

15 Q Okay. And was there any other suspect that you drove
16 Mr. Shappell by that would be considered small build and a
17 white T-shirt?

18 A I don't know.

19 Q Thank you. No further questions.

20 THE COURT: All right. Anything further?

21 MR. RICHARDSON: That's all from the State, Your
22 Honor.

23 THE COURT: Thank you. You may step down. Any
24 testimony from Defense?

25 MR. MCLAUGHLIN: I don't believe so, Your Honor.

1 **THE COURT:** All right. Argument? Do you want to be
2 heard?

3 **MR. RICHARDSON:** Yes, sir, Your Honor. Your Honor,
4 the factors, Neil versus Biggers are as follows. First,
5 it talks about the victim or witness's opportunity to view
6 the crime. Doctor Shappell testified that when he was
7 confronted by these individuals that his hotel room light
8 was on, the two individuals were inside his hotel room.
9 They had no masks. He made eye contact with Mr. Jordan,
10 and the confrontation lasted between five and ten minutes.
11 I believe that more than satisfies that particular point
12 in that case. Your Honor, Doctor Shappell was in the
13 middle of being robbed at gun point. The next question
14 becomes his degree of attention. Your Honor, I believe
15 there's case law that supports the proposition that
16 someone under that sort of duress during the time the
17 crime is taking place has a more acute degree of attention
18 to his surroundings than a mere passerby.

19 Your Honor, Doctor Shappell gave a description to
20 law enforcement which included the build of the
21 individual, also the clothing which matched the clothing
22 and build of the defendant. Doctor Shappell immediately
23 picked out Mr. Jordan as being the man who robbed him, as
24 well as Mr. Williams who was also there. The other two
25 individuals that were there, he said I've never seen

1 before, did not recognize them. He immediately picked out
2 the two who he said that only three to four hours prior
3 had been inside his hotel room with him unmasked, lights
4 on, for five to ten minutes. Your Honor, I understand
5 that the individuals at the scene were handcuffed, in
6 police custody, but I rely on the Court of Appeals case,
7 South Carolina State versus Mansfield, which cites
8 language that a —

9 THE COURT: Who wrote Mansfield?

10 MR. RICHARDSON: I believe it would be Your Honor.

11 MR. MCLAUGHLIN: Somebody who is about to leave the
12 Bench, Judge.

13 THE COURT: Well, maybe I can leave something with
14 you lawyers.

15 MR. RICHARDSON: State versus Mansfield has language
16 that indicates that individual who is handcuffed and is
17 identified may still — that that situation may still
18 produce a reliable identification for trial purposes. In
19 that particular case the question and answer portion is
20 delineated, and part of that is the law enforcement
21 officer came to the victim and made some language to the
22 effect, I think we got them.

23 THE COURT: Almost identical to what's been
24 testified here.

25 MR. RICHARDSON: Right. The victim in that case was

1 then escorted to the police station where he then
2 identified positively one individual that he had to choose
3 from out of a number of one individual. This particular
4 situation involved four suspects at the location, two of
5 whom were immediately picked out. And other than that
6 basically the same type situation. Your Honor, I think
7 based on those facts that have been elicited from the
8 stand, taking in consideration State versus Mansfield and
9 other case law that's applicable, I believe that this is
10 completely reliable in terms of identification, and we
11 would stand on that principle. Thank you, Your Honor.

12 THE COURT: All right, Counsel.

13 MR. MCLAUGHLIN: Your Honor, first let me say that I
14 know that, and I apologize, Judge, that you just got that
15 brief that I did in support of my motion not too long ago.
16 And I certainly would ask that the Court consider that
17 brief. I don't know if you've had time to review it or if
18 it may be something you need to take under advisement.

19 THE COURT: I don't need to take it under
20 advisement. I've written opinions in addition to State
21 versus Mansfield. I wrote five other cases. I mean, this
22 is not my first time —

23 MR. MCLAUGHLIN: Yes, sir.

24 THE COURT: —out of the block.

25 MR. MCLAUGHLIN: Well, Judge, basically, first of

1 all, there are several things that I think are important
2 about this particular show-up identification.

3 THE COURT: Yes.

4 MR. MCLAUGHLIN: Number one was he was the only one
5 wearing the clothing described. He was the only one that
6 fit the description. To me, Your Honor, it is inherently
7 more suggestive than just a single ride up or a single
8 person identification because what you're saying is, hey,
9 we think we got the guys who did this, take a look at
10 them, and you've only got one who is wearing the really
11 the key thing that he described, the clothing. And
12 there's a case that's cited in the brief, Your Honor, a
13 South Carolina case, that go into in some detail where the
14 lady came upon her —

15 THE COURT: What's the name of the case you're
16 talking about.

17 MR. MCLAUGHLIN: I'm looking for it. Give me one
18 second, I'm sorry. I think it's State versus Moore.

19 THE COURT: State versus Moore is reported at 343
20 S.C. 282, 540 S.C.2d 445. It's a 2000 case. I'm somewhat
21 familiar with that. Tell me about it.

22 MR. MCLAUGHLIN: Well, Judge, and the key point
23 there is that also in State versus Moore the witness in
24 that case gave the same type of description, a general
25 physical description, and then relied on the clothing.

1 Now Your Honor, obviously there was another issue in State
2 versus Moore.

3 THE COURT: There definitely was.

4 MR. MCLAUGHLIN: Which was the other fellow, I think
5 it was Whitman or something.

6 THE COURT: That's right.

7 MR. MCLAUGHLIN: And supposedly that witness knew
8 Whitman and because she had it realized she had known him
9 when she saw him.

10 THE COURT: Personal knowledge.

11 MR. MCLAUGHLIN: The Court considered that as well.
12 But Judge, I believe the way the Court rules they kind of
13 take those two things up separately. They address the
14 Whitman part and then they say -- then they move on to
15 Moore and they say -- and with Moore she only gave the
16 clothing, general physical description, and then she
17 really based it off of the clothing description. And I
18 think it's obvious from Mr. Shappell's comment that we
19 elicited from Mr. Worsley. He was focused on that shirt
20 that Johnny Johnson had, which was a bright multicolored
21 polo shirt that looked absolutely nothing like a white
22 T-shirt. And because of that, Your Honor, we feel that
23 it's -- the lineup was inherently suggestive. Now Judge,
24 I realize that we're arguing somewhat against the law
25 here, but I believe that Biggers and the factors are

1 outdated, and I believe we know that now. If you look at
2 those Biggers factors and what we have learned with the
3 advent of forensic DNA testing, look at what the Biggers
4 case, the factors are. The opportunity of the witness to
5 view the criminal at the time of the crime. The vast
6 majority of all the cases that have been exonerated
7 through DNA evidence are sexual assault cases, rapes. You
8 don't get a better opportunity to look at whether or not,
9 you know, is committing a crime against you than in sexual
10 assault cases. They're person to person contact. You're
11 right there with the person. Certainty is another factor.
12 We know that certainty doesn't really matter. With
13 eyewitness testimony now it doesn't matter how certain the
14 witness thinks they are, we know now scientifically that
15 that doesn't matter; they could be wrong.

16 Degree of attention is the same thing as proximity.
17 I would imagine that someone who's being sexually
18 assaulted is aware of it and they're paying pretty close
19 attention to what's going on with them. And that's the
20 one that's in closer proximity, has probably a better
21 opportunity face-to-face or close, than Mr. Shappell would
22 have had. And we know from these DNA exonerations, Judge,
23 these Biggers factors ---

24 THE COURT: You can't -- I don't think you can say
25 that, Counsel. I don't think you can say that in every

1 one of those DNA cases that the Biggers factors were
2 absolutely inapplicable and non-efficacious. There may be
3 some but you can't say that all of those cases fall within
4 that parameter.

5 MR. MCCLAUGHLIN: Judge, we know that —

6 THE COURT: I know there's some writings out there
7 contesting the idea of the eyewitness identification; but
8 as is in place in regard to a lot of these principles.
9 There are a lot of writings that emanate from law
10 professors and people who never tried any cases and people
11 who are self-appointed experts in the law.

12 MR. MCCLAUGHLIN: Well, what we do know, Your Honor,
13 is according to — these are stats from the Innocence
14 Project which is the organization that was founded by —

15 THE COURT: I'm familiar with that operation.

16 MR. MCCLAUGHLIN: —Barry Scheck and Newfield. We
17 know of the first 239 cases, 179 of those cases had
18 eyewitness misidentification as a central cause to the
19 original conviction. That means that approximately
20 75 percent of wrongful — that the wrongful convictions
21 that we know now, scientifically we know they were
22 wrongful convictions dealt with mistaken eyewitness
23 identification. And of those 179 were eyewitness
24 misidentification, you know, played a very integral part
25 in the conviction. And 50 percent of those cases it was

1 the sole cause for the conviction. An eyewitness who --
2 it's we can assume that that person was certain. They got
3 on the stand. They testified. That means basically that
4 eyewitness misidentification is the sole cause for
5 approximately 90 percent of the DNA exonerated wrongful
6 convictions we know about of the first 239. And, Your
7 Honor, that that to me speaks to the fact that these
8 Biggers factors -- Biggers was decided -- what year?

9 THE COURT: 1972.

10 MR. MCLAUGHLIN: 1972. Well before -- well before
11 the DNA evidence came about. The factors are old. The
12 factors are outdated. And Your Honor, it would be my --
13 it would be my argument that the Court should almost
14 consider eyewitness identification now pursuant to
15 Rule 701 of evidence, opinion testimony by lay witnesses.
16 It's opinion. We know now scientifically that eyewitness
17 identification often is not fact. It's simply an opinion,
18 and it's an opinion that science is telling us is wrong.
19 And because of that if you look at Rule 701 --

20 THE COURT: In essence you are arguing that
21 eyewitness testimony simply should be disregarded and not
22 even admissible? Is that that you're getting to?

23 MR. MCLAUGHLIN: Well, Your Honor, obviously that
24 can't be the case in everything. But what we're dealing
25 here is, is with a suggestive identification at the very

1 beginning of it. And if we know that all factors without
2 suggestive lineups, when we don't have this issue, if they
3 would have done a photo lineup three months afterwards,
4 sequential, what they call the double blind where the cop
5 who was giving the photos didn't know anything about the
6 case. If they'd done it like that, we know that it could
7 still be wrong, but they didn't. They did a roll-up I.D.
8 where the only person sitting there was Mr. Jordan. He
9 was the only one that was wearing the clothes that Mr.
10 Shappell described and he was sitting there in handcuffs.

11 THE COURT: So now you're arguing about show-up
12 identification.

13 MR. MCLAUGHLIN: Well, what I'm saying, Judge, is
14 that we know that there's problems with eyewitness
15 testimony. And we know that if it's suggestive I.D. then
16 we're supposed to look at it more closely. And what I'm
17 arguing now is that the Court used to say, well, even if
18 it's inherently prejudicial, courts can admit it based on
19 the totality of the circumstances. Remember, those
20 Biggers factors aren't the only thing. It's just so --
21 it's just what courts can look at in deciding what the
22 totality of the circumstances are. And what I'm arguing
23 to you, today, Judge, is you're allowed to look beyond
24 those factors. And I believe that we should look beyond
25 those factors because we know now that those factors don't

1 work anymore, that they don't mean as much as we thought
2 they meant when we decided Biggers over a quarter of a
3 century ago.

4 THE COURT: All right. Any further argument?

5 MR. MCCLAUGHLIN: None, Your Honor.

6 THE COURT: Order: the hearing has been conducted
7 pursuant to Neil versus Biggers, 409 U.S. 188, 98 Supreme
8 Court 375, State versus Ford, cite is omitted; State
9 versus Gambrell, cite omitted; State versus Patterson,
10 cite omitted; State versus Cheeseborough, cite omitted;
11 State versus Mansfield, cite omitted; State versus Moore,
12 cite omitted; and finally, State versus Blassengame, cite
13 omitted.

14 Addressing the factors that are enunciated with
15 certitude in Biggers and the referenced precedent extant
16 in South Carolina: Number one, witness opportunity to
17 view the subject at the time of the crime; Number two, the
18 witness's degree of attention; number three, the accuracy
19 of the witness's prior description of the criminal; four,
20 the witness's level of certainty at the confrontation; and
21 five, the length of time between the crime and the
22 confrontation.

23 This testimony in this particular hearing is the
24 absolute quintessential evidence that is reliable and
25 trustworthy under an analysis under Biggers and its

1 progeny.

2 The argument of counsel that these factors are
3 outdated because of DNA and its efficacy is hereby
4 specifically rejected in this case. I decline to rule
5 that Biggers and the factors as adopted by the South
6 Carolina Supreme Court and the South Carolina Court of
7 Appeals are outdated, outmoded, and non-reliable. The
8 truth of the matter is that in a total context there is no
9 way to identify all the cases where the witnesses did
10 identify with absolute exactitude the defendant under the
11 Neil versus Biggers factors as juxtaposed to a DNA
12 analysis.

13 In totality, this evidence is not only admissible
14 within the penumbra of Biggers and it's precedent, but it
15 is absolutely presented in the context of total
16 reliability. And in that regard I will reference one
17 other case which is edifying for those people who might be
18 interested in non-edifying or others, but State versus
19 Moore that's been referenced by counsel, has a statement.
20 What is a statement in Moore? Reliability is an issue for
21 the Judge, not the jury, in regard to first line
22 admissibility. Reliability in this case is an issue for
23 me, is absolutely convincing. Concomitantly the evidence
24 is admissible. And it is so ordered.

25 All right, anything before we take the nighttime

1 hiatus?

2 MR. MCCLAUGHLIN: Your Honor, briefly, and I
3 apologize, Judge, and not for bringing this up earlier,
4 but also, we did address the potential in-court
5 identifications by the other victims in this case and that
6 we've been given no information concerning any pretrial
7 identifications by those witnesses and we object to them.
8 In other words, we're asking that the Court suppress any
9 such testimony identifying Mr. Jordan in court. We feel
10 it would be inherently prejudicial that they sat here
11 through court. I've been meeting with the State, I'm
12 sure, for the past several days to get their case ready.
13 In that entire time they've been told that Mr. Jordan
14 is the one who participated in this robbery and we think
15 that allowing them to identify him in court after that
16 would be highly prejudicial.

17 THE COURT: Well, first and foremost, in-court
18 identification occupies a special, separate status. If
19 there has been no prior identification of the defendant
20 and the first time identification is in court, there is no
21 Neil versus Biggers analysis. Under State versus Lewis,
22 363 S.C. 37, 609, S.C.2d 515, the state Supreme Court
23 ruled, no hearing is necessary if law enforcement
24 conducted no pretrial out-of-court identification in
25 regard to that witness. So if that witness is virginal in

1 regard to the issue of identification, under State versus
2 Lewis there is no pretrial analysis. And Lewis says the
3 remedy for any alleged suggestiveness of an identification
4 that occurs for the first time in court is
5 cross-examination and argument. So I will just view each
6 one of these witnesses as to whether they are first time
7 virginal witnesses.

8 MR. MCLAUGHLIN: And I understand that ruling, Your
9 Honor.

10 THE COURT: Okay, all right. Anything else before
11 we take the nighttime respite? Anything?

12 MR. MCLAUGHLIN: Judge, what time would you like us
13 back in here?

14 THE COURT: I'm going to start at nine. Y'all can
15 come whenever you please, but I'm going to start at nine.

16 MR. MCLAUGHLIN: I don't know they'll let me in here
17 before then, Judge.

18 (Court was adjourned at 5:30 and resumed on April 20,
19 2010 at 9:00 a.m.)

20 THE COURT: The first matter that we address relates
21 to a nexus concerning an alleged victim and a lawyer who
22 works in the law firm with Mr. McLaughlin.
23 Mr. McLaughlin, you're recognized.

24 MR. MCLAUGHLIN: Thank you, Your Honor, may it
25 please the Court, Ms. Parr, Judge, as we had a brief

1 discussion in chambers this morning where I informed the
2 Court and the State that yesterday in the hallway I
3 believe it's Mr. Ward, who is seated here with the cane,
4 one of the alleged victims in this matter, introduced
5 himself to me and in passing made reference to the fact
6 that Phoebe Clarke, an attorney in our office, represented
7 him on some type of case. I did not know that; it was
8 news to me. And but I felt it only prudent to inform
9 Mr. Jordan here that a potential victim who may sit on the
10 stand and point a finger at him in court is represented by
11 attorney in my office. I personally don't feel like
12 there's a conflict there. It certainly, the fact that
13 Ms. Clarke is representing Mr. Ward has not influenced my
14 defense of Mr. Jordan whatsoever because I didn't even
15 know about it.

16 THE COURT: Yeah.

17 MR. MCLAUGHLIN: But I think it's only prudent to
18 let Mr. Jordan know about that and we've talked about it.
19 I've informed Tarrence I don't feel it has prejudiced him.
20 I don't feel like it will prejudice him going forward.
21 We even had a talk about how it's not unusual for me not
22 to know what lawyers in my office, who they represent. We
23 do not share any fees in our office. We are basically in
24 essence employees of our own. Just share a roof.

25 THE COURT: Is that right?

1 MR. MCLAUGHLIN: We just share a roof.

2 THE COURT: Okay.

3 MR. MCLAUGHLIN: And so I've explained that to
4 Tarrence. He's informed me that he understands, and he's
5 ready to move forward. But I simply would like the Court
6 to ask him if that is, in fact, how he feels and to place
7 that on the record.

8 THE COURT: Mr. Jordan, would you please stand.
9 Good morning.

10 THE DEFENDANT: Good morning, sir.

11 THE COURT: You have heard Mr. McLaughlin state this
12 matter to me, and you have had discussions with Mr.
13 McLaughlin; is that correct?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: You understand it completely?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: You have any problem with this?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: You understand what has been related?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You have any questions about that?

22 THE DEFENDANT: No, sir.

23 THE COURT: You satisfied?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You ready to go forward?

1 THE DEFENDANT: Yes, sir. Yes, Your Honor.

2 THE COURT: You comfortable with that?

3 THE DEFENDANT: Yes, Your Honor.

4 MR. MCCLAUGHLIN: Thank you, Your Honor.

5 THE COURT: All right. We're ready to proceed?

6 MS. PARR: Yes, Your Honor. May I -- the one thing
7 we have not had a chance to mark the exhibits with the
8 Madam Court Reporter, and as we have got out here late
9 yesterday and...

10 THE COURT: Why don't we get the jury in, and let's
11 do the opening statements and then we'll take a hiatus to
12 mark exhibits.

13 MS. PARR: Okay, all right.

14 (WHEREUPON, the jury was returned to the courtroom
15 at approximately 9:11 a.m., and the following proceedings
16 commenced in open court.)

17 THE COURT: Good morning, everyone. Is everyone
18 feeling okay? Everybody all right?

19 Ms. Clerk, give them the oath of office please.

20 DEPUTY CLERK OF COURT: Please stand and raise your
21 right hand.

22 (WHEREUPON, the jury was sworn at 9:12 a.m.)

23 DEPUTY CLERK OF COURT: You may be seated.

24 THE COURT: Jurors, please if you will, turn and
25 face me now please. We did not ask you to stand and raise

1 your right hand to go through the motions; it's not that
2 at all. It's a solemn obligation now thrust upon you to
3 freely decide this case based on the evidence coming from
4 this witness stand and the law as I shall charge it to
5 you. I love Latin, probably use it too much, but the
6 Latin word jurat is the word for a juror. Jurat. What
7 does it mean in Latin? It means an oath person, a person
8 who has taken a solemn oath. And that's what you are. We
9 have now given you a solemn oath to perform your duty and
10 responsibility.

11 The papers that I hold in my left hand are called
12 indictments. They contain pending charges against this
13 defendant. These documents are charging papers. They do
14 not constitute evidence. They do not prove anything.
15 They are certainly the paper vehicle used in our procedure
16 to bring the matter for trial. There are 14 different
17 charges. This defendant is entitled to a separate and
18 distinct consideration of the pending charges. Please,
19 please, pay close attention to the witnesses and the
20 testimony. Please, do not let your thoughts wander and
21 your eyes rove around the courtroom because you will take
22 into the jury room after I charge you the law a
23 recollection of the testimony, a remembrance of the
24 testimony in totality. As we proceed to try this case it
25 is tried under constitutional rules. The United States

1 constitution controls, the state constitution controls.

2 And these are very, very important relevant constitutional
3 principles. What are these principles?

4 The first principle is this: A defendant in a
5 criminal trial, no matter how great or serious may be the
6 offense with which he is charged, is always presumed to be
7 innocent. That's a constitutional rule. This defendant
8 is presumed to be innocent of these charges and that
9 presumption of innocence remains with the defendant until
10 you, the jury, remove the presumption of innocence by
11 evidence satisfying you of his guilt beyond a reasonable
12 doubt. The burden placed upon the State is to prove the
13 defendant guilty beyond a reasonable doubt. I will
14 explain that term to you in detail in my charge to you
15 before I give you the case for decision; and I will
16 explain what the words mean, reasonable doubt, and how you
17 are to use those words. But the burden of proof is upon
18 the State to prove the defendant guilty beyond a
19 reasonable doubt, once again, considering the charges
20 separately and distinctly. We ask you to write a verdict
21 on all 14 charges.

22 And I have prepared verdict forms that the forelady
23 will use in writing your response, and the responses will
24 be presented to the Court on these forms. I love the word
25 verdict. Once again, it comes from Latin. Many of our

1 legal terms come from Latin, and this word verdict is so
2 important. The word verdict comes from two Latin root
3 words. The first word in Latin is verus. The word means
4 truth. In the old Latin the concept is pure truth.
5 People, whatever you do in life, if you get your handle on
6 pure truth you made process. Truth, but pure truth,
7 verus. The other word in Latin is dicto; it means to
8 speak. The two words are combined in Latin the word is
9 veredicto. Veredicto, what does it mean? Veredicto means
10 to speak the truth and that's what your verdict must do
11 under the oath that you took. It must speak the truth in
12 this case. Anything less than that is a miscarriage of
13 justice.

14 As we proceed now, the lawyers will come before you
15 as soon as I finish to make an opening statement. They
16 will simply outline what the case is about. The lawyers
17 are not witnesses. The lawyers are officers of the Court,
18 and as officers of the Court they have duties and
19 responsibilities. And at times, they will exercise these
20 duties and responsibilities to the point of presenting
21 certain matters to the Court for decision. For example,
22 the lawyer may object and I will rule on that objection in
23 your presence. Please understand, as I make rulings on
24 these matters in your presence, first and foremost I do
25 not have an opinion on the facts; but above that, under

1 the constitution I'm not entitled to opinion on the facts.
2 My role is to decide the law. Your role is to decide the
3 facts. We blend our duties and responsibilities together
4 so that you might arrive at a just and fair verdict in the
5 case.

6 As the lawyers present matters to you please
7 understand they are representing their respective parties
8 insofar as this case is concerned. The State is
9 represented by the solicitor's office. The solicitor is
10 an elected public position as it ought to be, and the
11 deputy solicitor — well, two deputy solicitors
12 representing the State in this case present the State's
13 version. The defendant is Mr. McLaughlin. He represents
14 Tarrence Jordan, and Mr. McLaughlin has duties and
15 responsibilities so understand that. And finally, at
16 times I will ask you to go to your jury room while I take
17 up matters of law in your absence. Why? Because the
18 rules require that. The procedures require that. Please
19 understand, folk, I must try this case under rules and
20 regulations that control criminal cases. And this may be
21 a little narcissistic on my part, but since it's my last
22 trial I'll do it anyway. I have written a book in regard
23 to South Carolina jury charges and criminal court. I
24 wrote this book; it's my book. And I look forward to
25 trying the case with you and instructing you the law when

1 it comes to at that point in reference to this trial.

2 Thank you for the time and talent you bring to the task.

3 Now the forelady is spokesperson on behalf of the
4 jury. If you need to bring matters to my attention we are
5 required to communicate in writing, and so we will observe
6 that rule as to any matter that might come up.

7 Opening statement for the State.

8 MS. PARR: Yes, Your Honor.

9 THE COURT: Ms, Parr, you're recognized.

10 MS. PARR: Good morning, ladies and gentlemen of
11 the jury. When we think of July, July brings images of
12 fun, sun, swimming, vacation, family, and a celebration of
13 the 4th of July. Those are images that we all have of the
14 month of July. Unfortunately, going back to July of 2008
15 those images were in our victims' minds as well. When I
16 say victim I'm gonna tell you who those people are.
17 Doctor Albert Meyer and his son, Evan, who was ten at the
18 time. Richard Ward and his friends, Frank Oberfrank and
19 cam -- Gilbert Cameron. And also Doctor Dean Shappell.
20 Those gentlemen were preparing to enjoy the 4th of July
21 holiday as we have you when those fun times were literally
22 snatched from them. Today we begin a trial, as the Judge
23 has told you, against the defendant for a series of armed
24 robberies, kidnapping, and burglary first. And I know you
25 look over and say, gosh, those are awful charges for

1 anybody to be charged with. And we submit to you that
2 they are and that we intend to prove that the defendant
3 and his group of friends stole that from Doctor Meyer,
4 Doctor Shappell, and Mr. Ward and his friends. They took
5 that from him along with worldly positions I call them:
6 Moneys, credit cards, camera, cell phones.

7 We intend to show that on July 2nd, 2008, Doctor
8 Meyer and his son, Evan, were traveling from Florida going
9 up north to visit family; and they stopped in Florence,
10 the halfway point, to break up the trip. And they secured
11 a hotel room at the Holiday Inn on Highway 52 and 75 – I
12 mean, 95. Not knowing anything, believing the Holiday Inn
13 would be a safe place for them to stay for the night. We
14 believe the evidence will show that after – they checked
15 in and went to their room, and as they were going to their
16 room, this defendant and his co-defendant, Shakeem
17 Williams, literally broke into their room and by breaking,
18 we believe the evidence will show, they pushed their way
19 into that room and held a gun on them. And you will hear
20 testimony from this witness stand from Doctor Meyer as he
21 experienced that event on that particular night. You will
22 also hear evidence from Mr. Richard Ward who, not quite
23 two days later, experienced the same thing, not at the
24 Holiday Inn, but we believe the evidence will show that
25 the defendant and Shakeem Williams also broke into or

1 pushed their way into his room, which is located at the
2 Americas Best Value Inn located on TV Road. And they --
3 that they used a gun, a small handgun as well, which we
4 intend to present into evidence so you can see what they
5 faced. And we also believe the evidence will show that
6 they made Mr. Ward, Mr. Gilbert Cameron, and Mr. Oberfrank
7 undress and put them in the bathroom. We also believe the
8 evidence will show that the defendants did the same thing
9 to Doctor Meyer and his son, took their clothes and put
10 them in the bathroom and told them not to come out or they
11 would be killed.

12 Now when they broke into Mr. Ward's room we believe
13 the evidence will show that was on the early morning of
14 July 4th. Mr. Ward and his friend had a cookout at the
15 hotel because he was staying there and while his house was
16 being prepared or repaired. And they thought they were
17 starting a celebration for the 4th of July, which is not
18 uncommon, when the defendants came to their room and took
19 their cell phones, moneys, and their credit cards and ATM
20 cards. We also believe the evidence will show that, well,
21 since it was going so well for them and so comfortable, a
22 couple of hours later they did the same thing to Doctor
23 Shappell, who was also coming through from Florida in
24 route to visit friends for the 4th of July in another
25 state. We believe the evidence will show that this

1 robbery and kidnapping and burglary occurred at the Super
2 8 Motel on highway -- on Lucas Road, Highway 52, here in
3 Florence. We believe the evidence will show that after
4 Doctor Shappell checked in to his motel he went and got
5 something to eat and then went back, parked in front of
6 his hotel room or motel room, and went into his room and
7 as he was going in these defendants, Mr. Tarrence Jordan
8 and Mr. Shakeem Williams, pushed their way into their
9 room, his room, and then did the same thing. Took all of
10 his personal items, held a handgun on him, took his
11 clothes after making him undress, and putting him in the
12 bathroom and threatening to kill him.

13 Now, you will also hear that there were four
14 defendants. We believe the evidence will show that only
15 two went in; the other two were in the car. One was the
16 driver and another defendant as well. And, in fact, the
17 -- we submit to you that from this witness stand you will
18 hear from the, one of the co-defendants who was the
19 driver, Mr. Johnny Johnson. Now ladies and gentlemen, you
20 will be presented with evidence by way of testimony from
21 that witness stand. You will hear from the Doctor Meyer,
22 Doctor Shappell, and Mr. Richard Ward as to what happened.
23 You will hear how they were able to get a good look at
24 this defendant and Shakeem Williams. You will also get to
25 see demonstrative evidence that will be presented, the

1 clothing that they wore. And I already told you you'll
2 get to see the gun as well. That will be placed into
3 evidence. You will also see the cell phones that had been
4 taken from the defendant who -- where they were recovered
5 from the vehicle that they drove that night during the
6 robberies. You will also get an opportunity to see an
7 in-car video of the arrest that was made a couple of hours
8 later after Doctor Shappell was the victim of the armed
9 robbery at the Magnolia Mall parking lot.

10 Ladies and gentlemen, after you have heard and
11 viewed all of the evidence, we would ask you to apply the
12 evidence that you have heard and seen and reviewed to the
13 law that Your Honor Judge Anderson will give you. And
14 once you've had an opportunity to do that, we would ask
15 that you find the defendant guilty of all 14 charges. And
16 we ask that you just listen very closely to what you hear
17 and let him know this is not what Florence is about. This
18 is not what July is supposed to be about. And not only
19 July, January, February, March, April, May, June, August,
20 September, October, November, December. It's not about
21 being robbed and being a victim in your own personal
22 surrounding and your space. Thank you.

23 THE COURT: Mr. McLaughlin, you're recognized.

24 MR. MCLAUGHLIN: Thank you, Your Honor. May it
25 please the Court.

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

2 **MR. MCLAUGHLIN:** Ms. Parr. Good morning. I have to
3 admit it's a pleasure to be here with you guys this
4 morning, and it's a pleasure to be taking part of one of
5 Judge Anderson's -- or his last trial. I got into the law
6 because I like telling stories. I like stories. I like
7 finding out what really happened. When I was growing up I
8 loved to read. I used to work at the Capri theater right
9 here on Irby Street. I was a projectionist so I didn't
10 really have to do anything. I ran the film through, start
11 it up and that would be, you know, I'd do that probably
12 five minutes worth of work every two hours and that was
13 about it. And the rest of the time I could sit there and
14 I could read, and that's what I would do. When I was
15 young, when I first started I'd stop at Ray's right there
16 on Irby Street and every day I'd pick up a Louis Lemoore
17 book, one of those little thin westerns. And I'd usually
18 get through one of those books in one shift. And as I got
19 older I started reading other authors. You know, some
20 others, there's a Mark Twain, Kurt Vonnegut. My mom got
21 me hooked on Lewis Bizzard, his little compilation books.
22 As I'd gotten older I really continue to read when I can.
23 I like a lot of new writers like Michael Roten, Michael
24 Lewis. These are gentlemen that they don't have a
25 specific genre. They write about highly technical things.

1 They write about completely opposite fields, work,
2 research. And they write about these things, but when you
3 read the book it's almost like it's hard to believe they
4 aren't experts in that field. The stories are so
5 complete, so smooth, so flowing that it's completely
6 convincing that they're experts. There's nothing left to
7 make you wonder, does this guy know what he's talking
8 about. They convince you in these books that they know
9 exactly what they're talking about.

10 Make no doubt about it, over the next day or so
11 you're gonna here a story. You're gonna here a story from
12 the State. Ms. Parr has already let you know what their
13 version of the story is. Now as you sit there and you
14 listen to that story, in fact, before you start listening
15 I want you to look at Mr. Jordan. So look at him right
16 now. When you look at him you're looking at him as
17 innocent. After that opening you're looking at him as
18 guilty because as Judge Anderson just told you, you got a
19 solemn duty to be looking at this young man right here and
20 thinking that he's innocent. Now that's hard. We all
21 have preconceived notions about people. And there's a
22 reason why we've all heard the phrase you never get a
23 second chance to make a first impression, you know. We
24 all judge each other every time we meet someone. We judge
25 them like that, within the first couple of seconds. So I

1 don't fault you if after hearing that opening you look at
2 this young man and that's the way you looked at him.
3 That's human nature. But we ask more of you when you sit
4 in this box. So if you have a feeling like that I want
5 you to pause. I want you to take a deep breath and I want
6 you to look at this young man. I want you to look at him
7 the way you're supposed to. As a juror you're supposed to
8 look at anyone who sits at this table; and that is, look
9 at him, try by what judges sometimes call the cloak of
10 innocence. One of my favorite authors growing up was
11 Harper Lee; y'all probably all know why. To Kill a
12 Mocking Bird. I don't think there's anyone who practices
13 law who hadn't read that story. Certainly I doubt there's
14 any lawyer who doesn't aspire to be the type of man that
15 Atticus Finch was. I know I do. I know whenever that
16 movie comes on and that final courtroom scene is going on
17 I'm not leaving the house; I'm watching it. When they go
18 to leave and the reverend tells the scout, stand up, Ms.
19 Finch, your daddy is going through, the room gets a little
20 dusty. That's what we aspire to. That room, Atticus
21 during his speech and tells something that jurors should
22 aspire to and that is that the court system is only as
23 good as you. The court system can only be as good as the
24 people who sit in that jury box; and part of that is
25 looking at this young man right now and remembering what

1 your duty is, to look at him as if he's innocent.

2 Now there's another part that you need to do as you
3 hear this story, and there is a role for scepticism to
4 play in this. But your skepticism during this trial
5 should not be pointed here. It should be pointed here, at
6 the State. They've got the burden in this trial. I think
7 back to -- well, I want you to think back, probably the
8 middle school; that's when I learned it. I had a science
9 teacher, I think, in the eighth grade when we learned it.
10 Jiles Roberts, who taught us -- it was the first, probably
11 the first class really in middle school we really started
12 having lab experiments. And if you think back to school,
13 what did you learn in science, what is the hallmark of
14 science? It's the scientific method. Everybody remember
15 that? What was the key to the scientific method? Came up
16 with a hypothesis, right? Or you looked at data, you came
17 up with a hypothesis, then what did you do? You did
18 experiments. You didn't reach a conclusion first; you did
19 experiments. And you did experiments, you did
20 experiments. You attacked that hypothesis. After you did
21 all that, then you sat back and you looked at your data,
22 and then you reached a conclusion about your hypothesis.
23 Science is the hallmark of our civilization, what we owe
24 things like this computer to, the lights that we have on,
25 the cars we drive, where we get to idea of scientific

1 truth. And the key stone of that truth is what? Holding
2 or ideas and our opinions up to the crucible of withering
3 attack. It doesn't take anybody to come with an idea to
4 hear a problem and say, oh, this is the answer, that's
5 easy. But you never know if it's an accurate answer
6 unless you attack that idea, unless you look for the holes
7 in there. The idea behind science is that it is easy to
8 have a hypothesis and then go out and try to prove the
9 hypothesis; that's not hard. That's not the way science
10 works, is it? You work in reality to prove your
11 hypothesis; you work to disprove your hypothesis. You
12 work to attack it.

13 Ladies and gentlemen, at the end of this State's
14 story we're gonna ask you to make a decision. We're gonna
15 ask you whether or not the State, in fact, did that while
16 they were thinking about their story. Or whether or not
17 they chose the path of least resistance, whether or not
18 they had a hypothesis and worked back from it. So I ask
19 that you keep an open mind, that that skepticism that you
20 have that you pointed at this table right here, and at the
21 end of this trial you listen to everything that you're
22 presented with; and only then, after the judge has sent
23 you back in that room and told you to begin deliberating.
24 Up until then you should be looking at this young man as
25 what? As innocent. To do anything else would be to

1 violate that duty that Judge Anderson talked to you about.

2 Now it's a terrible thing to have -- to these
3 gentlemen. There's no doubt about it. And I know that as
4 people who live here in Florence I know that we're all
5 offended that somebody who comes and visits us has to do
6 this, has to drive all the way back here and go through
7 this. And there are people who are responsible. You're
8 gonna meet one of them, Mr. Johnson. Two other people
9 were involved; they're responsible. But this young man
10 sitting here today in front of you, by virtue of this
11 trial saying I am not responsible.

12 This is not about getting vengeance for the wrongs
13 doing to these gentlemen. However much you may want to,
14 this is not what a criminal trial is about. Your duty is
15 to insure that this man is treated fairly and in
16 accordance with the law. And if you continue to look at
17 him with that cloak of innocence and you listen to this
18 case with an open mind and you wait till the Judge gives
19 you this case and sends you back in the jury room, and not
20 until then do you make up your mind do you listen and talk
21 to each other, and you decide whether or not the State has
22 met that, the highest burden we have, beyond a reasonable
23 doubt. Not until then can you look at this man and not
24 look at him as innocent. If you do that, that's all we
25 can ask of you. Thank you very much.

1 THE COURT: Attorneys, the exhibits have not been
2 premarked as I understand it.

3 MS. PARR: That's correct, Your Honor.

4 THE COURT: How many exhibits do you have for the
5 State?

6 MS. PARR: Your Honor, the State has 20.

7 THE COURT: Assumptively, I conclude some of these
8 will be admitted without objection; is that correct,
9 Counsel?

10 MR. MCLAUGHLIN: I imagine a great deal of them
11 would be, Your Honor.

12 THE COURT: Jurors, let me do this, let me get these
13 exhibits marked so we'll be ready to go. I know you think
14 I'm running an exercise center, but I'm not. Please go to
15 your jury room, let me just get these marked. Bring it to
16 the court reporter's table now. Let's all converge up
17 here, see what we can agree to. Bring them up here
18 please.

19 (WHEREUPON, the jury was removed from the
20 courtroom at 9:46 a.m.)

21 (WHEREUPON, State Exhibits Nos. 1 through 20 were
22 marked for identification only.)

23 (WHEREUPON, the jury was returned to the courtroom
24 at approximately 10:07 a.m., and the following proceedings
25 commenced in open court.)

1 THE COURT: Mr. McLaughlin, as I understand it 1
2 through 20 is in evidence without objection?

3 MR. MCLAUGHLIN: That's correct, Your Honor.

4 THE COURT: Okay, all right.

5 (WHEREUPON, State Exhibits Nos. 1 through 20 were
6 received into evidence.)

7 THE COURT: We have exhibits 1 through 20 that are
8 in evidence without objection, 1 through 20. So you will
9 have these exhibits presented to you by way of testimony,
10 but you will have these exhibits in the jury room when I
11 give you the case for decision so you'll have all these
12 exhibits with you when you make the final decision.

13 All right, we're ready.

14 MS. PARR: Your Honor, at this time we would call
15 Doctor Albert Meyer to the stand.

16 THE COURT: All right. Put your hand on the Bible,
17 raise your right hand, Doctor.

18 WHEREUPON,

19 **ALBERT JOSEPH MEYER,**
20 having been duly sworn by the Court, testified as follows:

21 THE COURT: Have a seat. Give us your full name for
22 the record please.

23 THE WITNESS: Albert Joseph Meyer.

24 THE COURT: Thank you.

25 Yes, sir.

SW - A. MEYER - DIRECT

DIRECT EXAMINATION

- 1
2 BY MS. PARR:
3 Q Doctor Meyer, would you please state your name.
4 A Albert Joseph Meyer.
5 Q And Doctor Meyer, where do you live?
6 A I live in Gainesville, Florida.
7 Q And how —
8 A Want the whole address?
9 Q That's fine. Yes, sir. You said you live in
10 Gainesville?
11 A Gainesville, Florida.
12 Q How long have you lived in Gainesville, Florida?
13 A Approximately four years.
14 Q And where were you living prior to moving to
15 Gainesville, Florida?
16 A Louisville, Kentucky.
17 Q And who lived with you in Gainesville, Florida?
18 A My wife Marybeth and my two children Evan and Rebecca.
19 Q Okay. And what are the ages of your children?
20 A Now they're — Evan is 12 and Rebecca is 7.
21 Q Now are you employed?
22 A I'm retired.
23 Q Okay, and what's your — what was your occupation?
24 A I worked in the states of New York and Kentucky in a
25 social security disability program, various positions.

SW - A. MEYER - DIRECT

1 Q All right. And would you please tell us a little bit
2 about your educational background?

3 A Ph.D. along with a Master's and a Bachelor's degree in
4 political science. I have cer-- I have training after
5 being a disability hearing officer for social security
6 disability program.

7 THE COURT: What's the Ph.D. in?

8 THE WITNESS: Political science.

9 BY MS. PARR:

10 Q And Doctor Meyer, how long have you been retired?

11 A Basically -- well, since I've been in Gainesville.

12 Q Now do you do any work part-time?

13 A I'm working on a book, and I guess I'm a house husband,
14 take care of my children.

15 Q All right.

16 THE COURT: Is that retirement pretty good?

17 THE WITNESS: It's just as busy as when I was
18 working. In fact, now my wife is my supervisor but, you
19 know.

20 THE COURT: My daughter has instructed me I've got
21 to get a job.

22 BY MS. PARR:

23 Q So Doctor Meyer, let's go back to July of 2008. Now
24 would you please tell us where you were July 2nd of 2008,
25 or July 1st, I guess that's when you were...

1 A Well, we started out in Florida, Gainesville, and we
2 drove up to Florence. We had reservations at the Holiday
3 Inn here in Florence, the one on 52. I don't know if
4 there's another one. And I knew I was going to be late so
5 I called them up saying we'd be late, and we arrived
6 around 12:30 a.m. on July 2nd.

7 Q Okay. And when you say "we," who came with you?

8 A My son, Evan, was ten at the time.

9 Q Okay. And where were you headed ultimately?

10 A Ultimately we're headed to New Hampshire where my older
11 daughter and her husband and my grandchild lived.

12 Q Okay. And where were you -- tell us what your plans
13 were for your trip?

14 A Well, after stopping in Florence which was recommended
15 by the AAA as a logical stopover point, and we were going
16 to go to Washington, D.C. for a few days before we got to
17 New Jersey. We had reservations in a hotel to see the
18 fireworks celebration, you know, by the Washington
19 Monument. But they were supposed to be spectacular, you
20 know, we had many local fireworks despite this, but not
21 that one, and so that was gonna be special. And then we
22 were gonna head up to New Jersey.

23 Q Now were you supposed -- when were you supposed to be
24 in Washington, D.C. for the fireworks?

25 A We were gonna be there on the 4th. We were supposed to

1 arrive there on July — we were gonna go to Richmond the
2 following day to sleep over and then the next day we were
3 gonna be in Washington, D.C.

4 Q Okay. So that would have been July 4th; is that
5 correct?

6 A We'd have gotten there July 3rd, I believe, and been
7 there on the 4th definitely.

8 Q All right. Now and so you said — so it was a trip
9 with just you and your son; is that correct?

10 A Correct.

11 Q And tell us what happened when you arrived in Florence?

12 A Okay. We drove up to the office, and we went in. I
13 guess we were in there about ten minutes. It was kind of
14 busy in there in the sense that there was a big boat
15 parked in front of the office which was a Coast Guard
16 vessel and there were Coast Guard sailors guarding the
17 boat, you know, with pistols and everything and a bunch of
18 Coast Guard people standing around talking to people
19 inside the office so it was busier than you might expect
20 to think at 12:30 in that part of the motel. We spoke to
21 the clerk who registered us, you know, gave the credit
22 card and all that. And then she gave us a map about where
23 our room was gonna be, which was quite a way around back
24 and then to the side. And she very carefully explained
25 how to get there; she pointed that out. We wouldn't be

1 able to park right in front of the room. We had to park
2 in a certain area, which we did. And okay, so we
3 parked — you want —

4 Q Yeah, and I'm gonna show you what has been admitted
5 into evidence as State's Exhibit Number 2. And Doctor
6 Meyer, first would you come down and mark where your room
7 was and where you parked and then draw it on the board.

8 THE COURT: Doctor Meyer, you got to keep your voice
9 up because the court reporter must take down everything
10 you say, every word. So when you walk over there speak
11 up.

12 THE WITNESS: Okay.

13 THE COURT: Thank you.

14 THE WITNESS: All right, this is room 158 where we
15 were on — this is on the first floor. There was a road,
16 right. It might not look — this one was upstairs.

17 THE COURT: Just one second. These jurors on the
18 end over here, turn it just a little bit. Is that better?
19 Okay.

20 THE WITNESS: Okay, so this is room 158 over here.
21 And we had to park, and this is the pool and lawn type
22 stuff. We had to park over here when there are rooms here
23 also. I say about here is where we parked.

24 BY MS. PARR:

25 Q Okay.

1 A And, okay.

2 Q Okay. And so, and what floor was your room located on?

3 A First floor.

4 Q Okay, all right. You can have a seat.

5 MR. MCLAUGHLIN: Pat, do you want to mark these some
6 type of number for the record so that —

7 MS. PARR: Your Honor, we've already done it.

8 MR. MCLAUGHLIN: No, no, I mean, the actual marks he
9 made. In other words —

10 MS. PARR: Your Honor, may it please the Court.

11 MR. MCLAUGHLIN: The parking markup to put some time
12 of designation beside it for the record.

13 MS. PARR: Your Honor, with the Court's permission
14 I would ask that the witness be allowed to mark on the
15 board indicate parking Meyer and room Meyer.

16 THE COURT: Yes, you may do that.

17 (Witness complies.)

18 BY MS. PARR:

19 Q Now, Mr. Meyer, I'm gonna show -- Doctor Meyer, I'm
20 gonna show you what has been marked and entered into
21 evidence as State's Exhibit Number 1(a), 1(b) and 1(c).

22 Would you please look at these items and tell us if you
23 recognize those? Just tell us whether you recognize them,
24 then we'll go through them first.

25 A Yes.

1 Q Which number, which exhibit is that?

2 A 1(a).

3 Q Okay.

4 A 1(b).

5 Q Okay.

6 A I recognize it, uh-huh. And 1(c), I recognize it.

7 Q Okay. And how are you able to recognize those
8 photographs?

9 A 'Cause this is where I stayed and the images are pretty
10 unfortunately embedded in my mind.

11 Q Okay.

12 MS. PARR: Judge, at this time we would ask
13 permission to publish those photographs that's already
14 been entered into evidence.

15 THE COURT: You may do so.

16 BY MS. PARR:

17 Q Now Doctor Meyer, using your lazer pointer would you
18 please tell us where you were.

19 A You mean where I was...

20 Q Yes. Which room you were in?

21 A 158, which is -- I'm sort of a technological klutz.

22 Right there. That was the room.

23 Q Okay, and would you please tell us, when you came in to
24 that room which direction did you come from?

25 A Around the side there.

1 Q Okay, if you would just point with the lazer pointer
2 please.

3 A (Complies.)

4 Q Now is that an alcove there?

5 A Yeah.

6 Q Now where would you have parked?

7 A I parked around the back.

8 Q Okay.

9 A About halfway down the aisle.

10 Q Okay. And when you came in please tell us what you had
11 in your hand when you came in?

12 A I had one -- we had one duffle bag and I had one
13 leather bag. I believe Evan, my son, was carrying one
14 bag.

15 Q Okay. Now is this another photograph of that
16 particular area?

17 A Yes, it is.

18 Q Okay. And would you point where your room would have
19 been in relations to that?

20 A (Complies.)

21 Q And do you recognize this one? What's that a picture
22 of?

23 A That's the door, the room 158.

24 Q Okay. Now when you got there please tell us exactly
25 what you did as you approached your room.

1 A As I approached — starting at the parking lot or
2 starting —

3 Q Yes, you can start in the parking lot.

4 A Okay. We got out of the parking lot, had our bags. I
5 noticed — I noticed there was a guy, I'd say about 38, 40
6 years old, sitting on the far end. I don't know if he was
7 smoking, using a cell phone; he was doing something there.
8 And I looked over at him. Then I saw two males walk by
9 him and passed us. A guest, but everybody was a guest.
10 And so then we walked around the corner there to our room.
11 We got to the room. I put in my key. There's a light
12 switch right by the door. Turned on the light switch and
13 there was no light. So Evan being more flexible than I
14 am, I sent him inside. I said, could you look around, see
15 if you can find a light. There was no light. We were
16 gonna go back to the office and say we're not gonna stay
17 in a dark room. So it took him a few minutes. He finally
18 found the light in the middle of the two beds. We put —
19 and he turned the light on. At just about that time,
20 these guys come running up to me.

21 Q And where were you?

22 A In the doorway basically.

23 Q Okay.

24 A The door is open. I was standing there for a few
25 minutes, you know, until Evan got the lights. And so I

1 was pushed and grabbed by the bigger of the two guys.
2 Pushed to the ground. I turned around and was facing
3 them. They told me to stand up, and they told Evan to
4 kneel down on the ground.

5 Q And where was Evan?

6 A Evan was almost in that area between the two beds but
7 outside of the beds..

8 Q Okay. So they actually pushed you down inside the
9 room?

10 A Correct. Into and down, yes.

11 Q Okay. Go on.

12 A And the bigger of the two guys, once he -- even though
13 I was down on the ground, you know, I could have gotten
14 right up; but then all of sudden the bigger of the two
15 guys had a gun in his right hand, which he held up like
16 this. And he's over six feet so I guess the gun is at
17 about 8 feet high. And they said, you know, cooperate
18 with us and nobody will get hurt. They asked me for my
19 wallet, which I handed to them. They -- I said, listen,
20 you can do whatever you, any material, goods you want you
21 can take. My son was there. I just couldn't have
22 anything happen to him. Here, take the keys to my car,
23 take anything you want. They said they didn't want my
24 car. But then they asked me what was inside the car. And
25 I said mainly gifts for people that we're traveling to

1 see. They asked me what kind of gifts. I said mainly
2 like souvenirs like University of Florida T-shirts and
3 that, and gifts for my granddaughter who is, you know,
4 very small, so kind of things you give to a baby. And
5 they said, what about a laptop? I said I don't have a
6 laptop. At first they didn't believe me. I said, listen,
7 I'm just not a tech guy and, you know, and so I guess they
8 accepted that. It was the guy who was the bigger guy who
9 was doing almost all the talking. The other younger –
10 well, they're both about the same age. But the other guy
11 about the same height, but thinner, was prancing back and
12 forth very nervously. Even though we saw these guys in
13 the parking lot we had seen them up close. The guy was
14 prancing back and forth. I guess, I'd say, moving side to
15 side, was very – looked very nervous. And then after we
16 saw him he kept taking his T-shirt and bringing it up over
17 his mouth and nose but we already could see them. But the
18 fact that he was so nervous made us nervous because we
19 didn't know that he didn't have a gun. There's one gun
20 there already we knew for sure. And I asked the officer,
21 look, very often people get shot when people get nervous.
22 I'm trying to keep them calm saying take whatever you
23 want. And then they told us just – oh, then the bigger
24 guy reached into my pocket and took out my cell phone.
25 And then they told us to get to the towards the bathroom,

1 walk to the bathroom, at which point my son Evan said, are
2 you gonna kill us. That was one of the hardest things I
3 ever had to deal with, I mean, that he was afraid for
4 his life — I mean, I was afraid too but I have lived.

5 For my son to go through that was just terrible. So they
6 kind of — told us to go into the bathroom. They closed
7 the door. What I did with my hands —

8 Q Did they tell you how long to stay in the bathroom when
9 —

10 A They told us not to come out, you know. And what I did
11 in the bathroom was, using my hand I had Evan to bend
12 really down so if they were going to shoot for the door
13 they'd get me rather than him. After about ten minutes, I
14 mean, I only know it was about ten minutes later because,
15 you know, checked the clock. It seemed like a lot longer;
16 I don't know. I didn't know if they were in the room or
17 not. I took a towel, white towel, from the bathroom, held
18 it out even just so if they're still there just as a peace
19 gesture we could talk. If they were gonna shoot they'd
20 shoot the towel. But no response. Looked out. They were
21 gone. The door was wide open. Called the front desk and
22 said I was robbed, please call the police.

23 Police arrived very quickly in just a few minutes
24 and then basically explained to the police what had
25 happened. They also asked me if, you know, I wanted to go

1 to the hospital 'cause when they had grabbed me my
2 shoulders had hurt and the back of my head, I think, he --
3 my head was hit with the gun. And they asked me if I
4 wanted to go to the hospital and I said -- I knew my arms
5 weren't broken, my shoulders weren't broke, but there was
6 no fractures there. And I didn't feel I had a concussion
7 and I didn't want -- Evan was tired already. And my main
8 concern was for him. And I knew he's tired and immune
9 system gets worse when you're tired. I didn't want him
10 exposed to anything in the hospital so I said no. And
11 then they asked me do I want to stay here tonight, go to
12 another motel. I said I didn't want to go to another
13 motel, I'd be checking in all over again. But I said I
14 don't want to stay in this room either. So they put me in
15 a room close to the office, you know, and we stayed there.
16 A brief summary, I guess, of what happened.

17 Q Doctor Meyer, first of all I'm going to show you what
18 has been entered in evidence.

19 (Deputy examines gun.)

20 THE COURT: What number is that please?

21 MS. PARR: This is State's Exhibit 3(a).

22 THE COURT: 3(a). Proceed.

23 BY MS. PARR:

24 Q Okay. Do you recognize this?

25 A Yes, ma'am.

1 Q And would you please tell the Court what this is?

2 A Pistol.

3 Q Okay. And how are you able to recognize this pistol?

4 A It looks exactly like the one that was in the bigger
5 guy's hand.

6 Q Okay. Now you say it looks like the one that was in
7 the bigger guy's hand. Okay, now do you see -- or can you
8 identify in the courtroom who the other defendant was that
9 was with the bigger guy?

10 MR. MCLAUGHLIN: Your Honor, may we approach?

11 THE COURT: Sure.

12 (WHEREUPON counsel approached the Bench for an
13 off-the-record discussion.)

14 THE COURT: All right. For the record of the Bench
15 conference I conclude that State versus Lewis is
16 efficacious and applicable and you may proceed under that
17 ruling.

18 BY MS. PARR:

19 Q Okay. Would you please answer my question. Are you
20 able to identify or do you see the person in the courtroom
21 that --

22 A Yes, I do.

23 Q Okay. And where is that person seated?

24 A Right next to the defending attorney in the turquoise
25 blue shirt.

1 Q Okay.

2 MS. PARR: And Your Honor, would you let the record
3 reflect that Doctor Meyer has identified the defendant as
4 the person who was at his room that night.

5 THE COURT: The record will show that. Proceed.

6 BY MS. PARR:

7 Q And where was the defendant in relations to the guy
8 holding the gun?

9 A If the — if the guy holding the gun was basically most
10 of the time till they marched us into the restroom,
11 bathroom, sort of in the corner there, he was on the side
12 along the side, I guess, where the television and
13 everything was. He was just like moving back and forth
14 very nervously.

15 Q Okay. And who was the person who tried to disguise
16 their face after a while?

17 A It was he, the person sitting in front of me
18 (indicating.)

19 THE COURT: You're pointing to the defendant —

20 THE WITNESS: Defendant, yes.

21 THE COURT: —in the courtroom?

22 BY MS. PARR:

23 Q Okay. And how long did you get a look at the
24 defendant?

25 A I saw him in the parking lot, and then I saw him

1 basically the whole time in the room until the bathroom
2 door was closed.

3 Q All right. And how was the lighting in the room?

4 A It was adequate. I mean, 'cause, again, we wouldn't
5 have gone in if — wouldn't even start to go in till it
6 was on.

7 Q Now what, if anything, did they take from you?

8 A They took my wallet, which had over at least four
9 hundred dollars in cash. I know I had 400 'cause I took
10 it out of the ATM, might have had a little bit more.

11 THE COURT: 400?

12 THE WITNESS: \$400. Had credit cards, various I.D.
13 cards, my driver's license, my health insurance card, and
14 a bunch of other cards and names of people, you know, with
15 phone numbers, that kind of thing, that I needed to call
16 and...

17 BY MS. PARR:

18 Q And do you recall the names of those, the credit cards?

19 A One I think was Wachovia.

20 Q Okay, was that a credit card or debit card?

21 A It was a credit card. It was a debit card in there too
22 I believe, Wachovia. There was another credit card. I
23 don't remember now if it was Chase or City Bank.

24 Q Okay.

25 A And there was a Best Buy credit card.

1 Q Okay. And after those credit cards were taken what did
2 you do in order to report them?

3 A Okay. I called up the bank first cards right away, you
4 know, and closed them out, tell them what happened and
5 they were gonna send me new ones. Best Buy, I didn't,
6 wasn't able to deal with till the next morning 'cause I
7 forgot that had been in there. And, you know, so that's
8 basically what I did regaling those cards.

9 Q Okay, all right. Now did you find -- did you check on
10 those cards to determine whether or not they had been
11 utilized?

12 A One of the bank cards had been utilized for a purchase
13 of gas. And the Best Buy card had been used for a
14 telephone purchase at Best Buy where the items were then
15 picked up at Best Buy. It was roughly 550-dollars worth
16 of items almost all regarding electronic games.

17 Q And where were those items? Which Best Buy did they
18 say, which store?

19 A It was local. It was either Florence or Darl-- it was
20 one in Florence; I don't know. It was either Florence or
21 Darlington so...

22 Q Okay. Beg the Court's indulgence. Now Doctor Meyer,
23 do you recall how long they had you in the bathroom?

24 A We stayed in there -- about ten minutes we were in the
25 bathroom.

1 Q Okay. And what injuries did you sustain?

2 A My shoulders were, you know, felt like I had been
3 twisted a bit. And my head had this aching kind of
4 feeling that, you know, occasionally still persists to
5 this day.

6 Q Okay, all right. Did the defendant say anything when
7 they left?

8 A I better not to come out, not.

9 Q Okay, and did they tell you what would happen if you
10 all did not cooperate?

11 A With the gun they didn't have to. I mean, they, you
12 know, I mean, once we were in the bathroom. They already
13 said before if we cooperated then nobody will get hurt.
14 With the gun already on us so I assume that still applied,
15 you know, to our time in the bathroom.

16 Q All right. Would you please answer any questions that
17 Defense may have for you?

18 A Yes.

19 MR. MCLAUGHLIN: May it please the Court.

20 THE COURT: Yes.

21 **CROSS-EXAMINATION**

22 BY MR. MCLAUGHLIN:

23 Q Doctor Meyer, I apologize to you that you had to come
24 all the way back here, that you had to go through this,
25 but do I have some questions I need to ask you. You just

1 sat in front of the jury and identified Mr. Jordan as one
2 of the individuals that came into your room, correct?

3 A Correct.

4 Q All right. Have you ever identified him before?

5 A No.

6 Q All right. Is this the first time you've ever seen
7 Mr. Jordan?

8 A No.

9 Q Okay. Other than when you say you saw him in your
10 room, correct?

11 A I saw him yesterday too.

12 Q All right. Well, here in court, I'm sorry. Were you
13 ever shown any photos of Mr. Jordan by the State?

14 A No.

15 Q All right. How long did police interview you and your
16 son that night?

17 A There were a couple of interviews.

18 Q Yes, sir.

19 A And if I had — I think the first was a young guy and
20 I'd say he interviewed me for about at least ten minutes.
21 And then another older, well, older, maybe a little
22 younger than me.

23 Q Yes, sir.

24 A And, you know, he, then he took over the investigation
25 and you know, he asked me some other questions. And so

1 I'd say at least 20 minutes between the two of them and
2 occasionally — there were a number of police officers
3 there, and occasionally somebody else would make a comment
4 so.

5 Q Yes, sir. And how did you describe Mr. Jordan? How
6 did you describe both the people who came into your room
7 to the cops?

8 A Okay. I described them both being about 6 foot 1 to 6
9 foot 3. I described the bigger one as estimate
10 230 pounds. The other one being a thinner build, maybe
11 180, 160. I'm not good at estimating weights. And, but
12 he was definitely thinner, significant thinner than the
13 bigger guy.

14 Q Okay.

15 A He had also he had white T-shirt on and dark pants. I
16 wasn't paying too much attention to the pants, but once a
17 gun is involved I'm mainly looking at the arms and the
18 face.

19 Q Doctor, if I told you that according to the police
20 report there's a description of that one, was a heavy set
21 black male wearing a red shirt approximately 6 feet and
22 had a small handgun black or gray in color. And then the
23 complaint victim stated that the other subject was a black
24 male wearing a white shirt, thin build, approximately 6
25 foot one inch. Would that sound like the description you

1 gave to authorities?

2 A Except I gave the range of 6'1" to 6'3" for both of
3 them. I thought they were both about the same height.

4 Q Okay, fair enough. But that sounds like a fair and
5 accurate description of what you gave them but with that
6 caveat there?

7 A Yes, uh-huh.

8 Q Okay. You talked about when you came in you mentioned
9 something about getting pushed down, correct?

10 A Correct.

11 Q All right. When these gentlemen entered your room was
12 your back to them?

13 A Yes, but as I heard something and I turned around a
14 little bit. I saw them running for a second. I thought
15 they were running away from something. And then all --
16 then turned back, then that's all of a sudden when the
17 bigger guy was on me.

18 Q Okay, all right. And I think you said he hit you with
19 the gun?

20 A Yeah, and essentially grabbed me. The gun, you know,
21 just in the back of my head.

22 Q Okay, all right. And then you went down to the ground?

23 A I twisted and I -- so I went to the ground. I don't
24 know exactly what they were trying to do. So with the
25 twisting, how much they twisted, how much I twisted, I

1 couldn't tell you exactly. It was very quick.

2 Q Yes, sir.

3 A And I wound up sort of in a seated position on the
4 floor.

5 Q Okay.

6 MR. MCLAUGHLIN: May I approach, Your Honor?

7 THE COURT: Yes.

8 BY MR. MCLAUGHLIN:

9 Q The room that you were in or that y'all were walking
10 into, what — did it have two beds?

11 A Yes.

12 Q Okay. And just the general nature of hotel rooms, two
13 beds, usually got a — when you walk in would the beds
14 have been to your left?

15 A Yes.

16 Q Okay. You usually have a little open space to begin
17 with?

18 A I believe.

19 Q Then one bed, then a little open space?

20 A Yeah.

21 Q And then another bed?

22 A And there was a lamp.

23 Q In between the —

24 A No, a lamp before you got to the beds, that was the
25 lamp that was supposed to be turned on when you turn on

1 the light switch that had been disconnected.

2 Q Okay, all right. So when you say that you turned and
3 wound up kind of sitting on -- sitting on the ground?

4 A I can demonstrate.

5 Q Well, no -- well, if you'd like to.

6 A Make it clearer.

7 (Witness demonstrates).

8 THE WITNESS: You'll be Mr. Williams. Okay, now I
9 was down like here.

10 BY MR. MCLAUGHLIN:

11 Q Yes, sir, okay. All right. You need a hand?

12 A No, not yet.

13 Q And I'm interested to know, Doctor, what you just
14 showed the jury where were you at in relation to the room
15 when that happened?

16 A Okay. I was, I guess, that was just in front where I
17 was, was in front of that first bed.

18 Q In front of that first bed, okay. All right. And did
19 you stay there?

20 A No, they told me to get up.

21 Q Okay. You got up and went where?

22 A Stood right in that spot.

23 Q Okay, all right. You stood up, all right. Then you
24 describe Mr. Williams holding a handgun.

25 A Correct.

- 1 Q I believe you described—
- 2 A Like that, holding it.
- 3 Q —him holding it up like that. All right. And then
- 4 you, Mr. Williams, you were still seated right here on the
- 5 floor like you were.
- 6 A Uh-huh.
- 7 Q The bed is right there;—
- 8 A Uh-huh.
- 9 Q —is that right?
- 10 A Correct.
- 11 Q All right. So he's holding the gun up like this?
- 12 A But he's over there a little more right.
- 13 Q Like this?
- 14 A Toward me, yeah.
- 15 Q Okay, where is the other person?
- 16 A He's along the side there on that side wall, you know.
- 17 Q Well, Mr. Williams is sitting here like this .
- 18 A So he'd be — the wall where the microphone is —
- 19 Q Yes, sir.
- 20 A He'd be like, you know, laterally moving back and forth
- 21 you know, facing us.
- 22 Q Like this way?
- 23 A Only — yeah, only more so, you know.
- 24 Q Okay, all right. And then where is your son at?
- 25 A He was a little bit to the, I guess, would be left of

1 me kneeling. He was told to kneel down and he kneeled
2 down.

3 Q If I understood correctly, if you were sitting here and
4 then the bed is right here, right?

5 A Yes, sir. It might have been right next to the bed on
6 the front side, yeah.

7 Q So he's right here?

8 A Yeah, sort of.

9 Q Okay. And then the person who you say is Mr. Jordan is
10 over here?

11 A Yes.

12 Q All right. Behind y'all?

13 A Well, to the side.

14 Q Okay. Well, he's right here and then Williams is right
15 here, right?

16 A Little bit more over.

17 Q Okay, all right.

18 A Okay.

19 Q Several times during your testimony, your direct
20 Doctor, you referred to — you referred to him as bigger
21 guy and smaller one —

22 A Thinner.

23 Q —I believe?

24 A Thinner one.

25 Q Bigger guy and thinner, okay. Is it fair to say that's

1 how you described them to the police?

2 A Correct.

3 Q All right. When did this happen?

4 A On July 2nd about 12:40 in, you know, 12:40 a.m.

5 Q Okay, two thousand and?

6 A 8.

7 Q 8?

8 A Correct.

9 Q Doctor Meyer, how much contact have you had with the
10 State about this case since that day?

11 A I spoke to Detective Cox several times. I was told he
12 was officer in charge. He was keeping me abreast of what
13 was going on. I spoke to him several times. I spoke to
14 the solicitor, somebody from the solicitor's office. I
15 remember every time somebody was coming up for a bond
16 hearing I was told I could come to that hearing which,
17 okay. And so, every so — at first quite a bit with
18 Detective Cox and then, you know, occasionally. When you
19 say the State you mean all of the state, county,
20 municipal?

21 Q The cops, the solicitors, yes, sir.

22 A All right.

23 Q Fair to say this happened a year-and-a-half ago at
24 least?

25 A Yeah, uh-huh.

1 Q And you've talked to people in the State numerous times
2 since then? Half dozen, dozen?

3 A Yeah, more like around a dozen overall, you know.

4 Q Dozen times since then? All right.

5 A Something if it's a technical hearing coming up, you
6 know.

7 Q I understand.

8 A I knew about this, you know, date, you know.

9 Q I understand. I understand. When did you first find
10 out that somebody had been arrested?

11 A I believe it was July 4th or 5th. I can't remember
12 exactly.

13 Q How did you find that out?

14 A I believe I spoke to Detective Cox.

15 Q Okay. What did Detective Cox tell you?

16 A That the people that he, you know, they were
17 apprehended. And he described them, you know, and it
18 sounded pretty good. I couldn't be positive but it
19 sounded good. You know, I mean, 'cause I really wanted
20 them apprehended, as you might understand.

21 Q I can understand, absolutely, yes, sir. Did he tell
22 you their names?

23 A He, I think -- I believe he might have, yes.

24 Q Okay, what else did he tell you?

25 A He just mentioned that Williams was big and they also

1 had his brother who is bigger, you know. And they
2 mentioned something about the driver. One of the guys I
3 was interested in the driver 'cause one of the things the
4 police told me, and then I was also talking to the victim
5 services person, that they had been searching for these,
6 for motel robbers for a while and they thought the driver
7 might be a female. And then he said, no, but it was
8 somebody, you know, with, you know, you know, that there
9 was a female, okay.

10 Q Did he tell you that the suspect had been identified by
11 another victim?

12 A I don't remember for sure. He did tell me that the car
13 had been identified by a victim.

14 Q Okay, all right. When is the first time that you heard
15 Mr. Jordan's name?

16 A At that time?

17 Q Okay. When did you -- when did you come up here for
18 Florida for this trial?

19 A Sunday.

20 Q Sunday?

21 A This Sunday.

22 Q All right. And Sunday did you meet at all with anybody
23 from the State?

24 A Yes, I met with Ms. Parr and Detective Cox along with
25 Mr. Shappell.

1 Q Okay, all right. What was the purpose of that meeting?

2 A Just sort of an update about what we could expect, you
3 know, yeah.

4 Q Okay. They were trying to explain to you how the trial
5 would be presented?

6 A How — basically also like to look at some of these
7 pictures if we thought they were correct pictures and so
8 forth.

9 Q All right. And during those conversations did they
10 identify Mr. Jordan as —

11 A No —

12 Q —the one on trial?

13 A Oh, yeah, the name, I think I was even told before that
14 that was the name of the person on trial. But I was told
15 who the trial was about —

16 Q Yes, sir.

17 A —when I was told to come up here when I had the
18 subpoena and everything.

19 Q I understand. I understand. And did they go through
20 their exhibits and stuff with you to give you an idea how
21 they were gonna present the case?

22 A Some of the material, you know, maybe not all of it.

23 Q Okay. And then you come in here today and obviously
24 pointed at Mr. Jordan and said that was, in fact, the man
25 who was in my room, —

1 A Correct.

2 Q —correct? All right. There's no doubt in your mind
3 about that?

4 A No doubt in my mind.

5 Q Okay. And you can say that after a year-and-a-half
6 looking at this young man, say I'm absolutely certain that
7 he was in my room?

8 A The moment is frozen in my memory, I mean, what
9 happened that time. You know, I, in a way I wish I could
10 forget it.

11 Q Yes, sir.

12 A I can't forget it. It's just it's in there. It's in
13 my mind.

14 Q I understand. You talked about you mentioned -- when
15 on direct you mentioned one of the reasons mentioned
16 seeing him in the parking lot, correct?

17 A Correct.

18 Q All right. Is that kind of what helps you make certain
19 that you can see him, that when you look at him and point
20 him out to this jury that he was the one, is it because
21 not only did you see him in the room but that you also saw
22 him walking in the parking lot?

23 A Yes.

24 Q Okay. Doctor, do you have a lawsuit pending in
25 Florence County about this?

1 A I don't know. I mean, I'm working with an attorney;
2 exactly what he's filed to the State, I don't know. But
3 it has nothing to do with Mr. Jordan.

4 Q Well, it's arising out of this incident, correct?

5 A Arising out of the incident, correct.

6 Q In fact, you got a lawsuit pending against the hotel;
7 don't you?

8 MS. PARR: Your Honor, I would object. That's
9 irrelevant.

10 THE COURT: I overrule the objection in terms of
11 generalities. Counsel, we're not going into specifics in
12 allegations in the complaint, but just general.

13 MR. MCLAUGHLIN: Your Honor, may we approach.

14 THE COURT: Sure.

15 (WHEREUPON counsel approached the Bench for an
16 off-the-record discussion.)

17 THE COURT: As a consequence of Bench conference are
18 you satisfied, Counsel, with your conditions with the
19 Court?

20 MR. MCLAUGHLIN: Yes, Your Honor.

21 THE COURT: Thank you.

22 BY MR. MCLAUGHLIN:

23 Q Mr. Meyer -- excuse me, Doctor Meyer, this lawsuit that
24 you have pending, you're suing the hotel because you think
25 that they were somehow negligent, correct?

1 A Correct.

2 Q All right. And isn't it true that one of the things
3 that you think they didn't do a good job of was lighting
4 around their hotel and in their parking lot?

5 A No, it was lighting in the room when I turned on the
6 light switch.

7 Q So you do not allege that the parking lot lighting was
8 bad in your lawsuit?

9 A I don't even know that I have a lawsuit. An action was
10 taken. Whether there's an actual suit I don't know.

11 Q Let me ask you this.

12 A I have an attorney. Maybe you should speak to him.

13 Q Well, the attorney is not in the courtroom today
14 pointing a finger at Mr. Jordan. That's why I have to ask
15 you.

16 A Okay, but I'm not sure of the exact actions. He's been
17 in contact with the insurance company. But the hotel,
18 whether it's going to resolve in a suit or not, I don't
19 know.

20 Q Well, have you given any depositions?

21 A No.

22 Q All right. Have you had to answer any questions,
23 written questions, that have been submitted to your
24 attorney by the other side in a lawsuit?

25 A In a lawsuit?

1 Q Yes, sir.

2 A I answered some questions but I don't know if it was in
3 a lawsuit.

4 Q All right. These are written questions that your
5 attorney gave you?

6 A Correct, or someone gave me, someone forwarded to me.

7 Q Okay. And any of those questions did it ask you –
8 well, were those questions, did they come from your
9 attorney or did they come from the hotel?

10 A I believe they may have come from both.

11 Q Okay. Came from maybe hotel and your attorney
12 forwarded them to you?

13 A Some of them, right.

14 Q Okay, all right. Did any of those questions ask you
15 specifically, Meyer, why are you saying that we're wrong
16 in this?

17 A Not in that language.

18 Q Well, I'm sorry, I generalized. It would have been
19 much more legalese I'm sure. What actions or failures to
20 act do you say that the defendant so and so has taken?

21 A No, it was more specific. It was still worded in a
22 legal framework. It was more like what specifically were
23 the problems and I think the lighting was a key one. The
24 security guard, you know, there was also some mention
25 about the security guard I believe.

1 Q And then I'd imagine you were upset too about -- may I
2 approach, Your Honor?

3 THE COURT: Yeah.

4 BY MR. MCLAUGHLIN:

5 Q I imagine you were upset too about your room being here
6 and having to park all the way over there.

7 A Certainly once the event occurred, yeah, you know, I'm
8 sort of an exercise fanatic. Walking a little bit at
9 first didn't bother me. This was only when I realized it
10 led to, you know, that I became, you know, upset and it
11 seemed like that was the perfect scenario to have a
12 robbery occur.

13 Q You also said that you still have some trouble with
14 your head I believe; is that right?

15 A Right, uh-huh.

16 Q All right.

17 A The outside of my head.

18 Q Not the inside, all right. Well, I think you said on
19 direct that you weren't sure whether or not you had a
20 concussion or not, correct?

21 A No, no, I'm quite sure I didn't say I had a concussion.

22 Q Oh, okay. I'm sorry.

23 A And it's not that -- it's like a burning feeling in the
24 scalp. It's not a concussion. I'm pret-- you know,
25 that's pretty clear.

1 Q All right. And you still have problems today?

2 A Occasionally I feel the burning sensation, yes.

3 Q Are you under medical treatment at all for that?

4 A I speak to my physician. I had a CAT scan. They
5 couldn't find anything. The only one who found anything
6 was my hair dresser. It's a little rough there. But I
7 mean, it's just like, but I -- in 2001 I was very sick and
8 they had gave me was what's a needle, you know, I had a
9 bad case of pneumonia, come to a severely bad case. And
10 one put a saline solution they put into my arm. It was a
11 burning feeling and they were doing one of their tests.
12 It's that same sort of burning feeling that's in the back
13 of my head. I never received medication for my hand
14 burning feeling.

15 Q Yes, sir. You talked about a -- some cards that were
16 taken from you that night.

17 A Correct.

18 Q And I believe you said one of them was a Best Buy card?

19 A Yes.

20 Q Okay. And if I understood correctly you were
21 telling the jury that there had been some purchases on
22 that card that you -- that were made after it was taken
23 from you, correct?

24 A Correct.

25 Q All right. And when did you find out about those

1 purchases?

2 A I believe fairly soon because I did -- I did get in
3 touch with Best Buy and once, you know, the next day after
4 I tried to think about all things that I had in there and
5 so I was in touch with them and they told me there was a
6 purchase made. It took a couple of months of going back
7 and forth with them to clear the whole thing up as far as,
8 you know, that I wasn't responsible for these purchases.

9 Q They wanted somebody to pay; didn't they?

10 A Yeah, they were very cooperative but they just needed,
11 you know, documentation and everything.

12 Q And so when you say they needed documentation you had
13 to give them a police report I imagine?

14 A Yes.

15 Q How did you get that police report?

16 A It was sent to me. I believe I requested the police
17 report and it was sent to me.

18 Q Yes, sir. Did you have that police report before you
19 were trying to clear up those purchases, or did you kind
20 of ask for that police report so you could clear up those
21 purchases?

22 A I -- I needed a police report for a whole bunch of
23 reasons. Now I don't remember was the police report -- I
24 was even given a report to take with me.

25 Q Yes, sir.

1 A 'Cause I didn't have my driver's license so I needed
2 something to, you know, document that even, you know,
3 there was a good reason why I didn't have my driver's
4 license.

5 Q I understand. I understand. Did you inform anybody in
6 law enforcement about these purchases on your Best Buy
7 card?

8 A Yes, I did, the Detective Cox knew about them and —

9 Q Okay, how — you got any idea when you told Detective
10 Cox?

11 A Very soon.

12 Q Okay. Within a few days of the incident?

13 A Yes.

14 Q Okay, all right. And how many — how much was there
15 done purchase?

16 A Roughly 550-dollars.

17 Q And did I understand you saying that it was in more
18 than one store?

19 A No, no, just in —

20 Q One store?

21 A —one, Best Buy.

22 Q Okay. And that was the Best Buy somewhere around here?

23 A Yeah. The reason I don't remember exactly, it was made
24 by a telephone purchase and maybe the phone calls came
25 from Darlington but it could — and to Florence, you know,

1 Best Buy is where they were picked up. And so it involved
2 both areas if I remember right.

3 Q So it was one of those where you order it, then go into
4 the store and pick it up?

5 A Right.

6 Q Doctor Meyer, when Mr. Williams ordered you to go into
7 the bathroom, you and your son went into the bathroom,
8 were you glad to get out of the room and get into another
9 room away from them?

10 A No.

11 Q Okay. You talked about taking that opportunity to
12 shield your son I believe.

13 A Yes.

14 Q Were you glad to be able to do that? I imagine so.

15 A I was very upset that I had to do it. I mean, I
16 willingly did it. I mean, his life is more valuable than
17 mine.

18 Q Yes, sir, I understand.

19 A Yeah, but glad is the wrong kind of word to use.

20 Q Yes.

21 MR. MCLAUGHLIN: Beg the Court's indulgence one
22 second.

23 THE COURT: Yes, sir.

24 BY MR. MCLAUGHLIN:

25 Q Doctor Meyer, other than the Best Buy charges did any

1 charges show up on the other cards that were taken?

2 A Just the one from the gas station.

3 Q Okay, and do you know where that was?

4 A I did at one time and I remember it's in the local area
5 here. It's Darlington or Florence.

6 Q All right. After you told law enforcement about those
7 charges did you followup with them at all to find out if
8 they had been able to find some video or something related
9 to it?

10 A Yes, I did.

11 Q All right. And what were you told?

12 A I was told that they found it.

13 Q They tell you who was on the video?

14 A No.

15 Q Okay. When — it was Investigator Cox who first called
16 you and told you that someone had been called?

17 A I don't remember if it was one of my phone calls to him
18 or he told me or he called me. I don't remember that.

19 Q Okay. And I think you said you were pretty happy that
20 somebody had gotten caught, right?

21 A Right.

22 Q All right. Did you feel relief?

23 A Yes.

24 Q Thank you, Doctor, I appreciate your answering my
25 questions. You may have some from the State.

1 **THE COURT:** Redirect.

2 **REDIRECT EXAMINATION**

3 **BY MS. PARR:**

4 **Q** Mr. Meyer, what specifically was Mr. Jordan, the
5 defendant, doing in the room when they got you in the
6 room?

7 **A** He was moving back and forth as I described him.
8 Mr. Williams was the other big guy, may have handed him my
9 wallet and my cell phone 'cause, you know, he had the gun
10 in his right hand. But other than that, 'cause mainly he
11 was just -- moved his shirt. He just was seemed very
12 nervous. I, you know, and he didn't -- he didn't seem to
13 be doing too much other than that pacing back and forth.

14 **Q** Okay, all right. Nothing further for this witness.

15 **THE COURT:** Recross.

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

17 **THE COURT:** You may step down. Thank you, sir.
18 Next witness please.

19 Or just one second. Is everybody okay on the jury?
20 Everybody all right? You need a break anyone? Everybody
21 okay? Okay, let's roll. Next witness.

22

23 **MS. PARR:** Your Honor, at this time we will call
24 Richard Ward to the stand.

25 **DEPUTY CLERK OF COURT:** Please place your left hand

1 on the Bible, raise your right hand.

2 WHEREUPON,

3 **RICHARD DENNIS WARD,**

4 having been duly sworn by the Deputy Clerk of Court,

5 testified as follows:

6 THE DEPUTY CLERK OF COURT: Please be seated, then
7 state your name for the record.

8 THE WITNESS: Richard Dennis Ward.

9 **DIRECT EXAMINATION**

10 BY MS. PARR:

11 Q Mr. Ward, what's your -- where do you live?

12 A Florence, South Carolina.

13 Q If you would talk nice and loud for me.

14 A In Florence.

15 Q Okay. Where in Florence do you live?

16 A [REDACTED] McDaniel Road.

17 Q Okay. And how long have you lived here?

18 A Just moved in this past six months.

19 Q Okay. Now are you employed?

20 A Disabled.

21 Q Okay. And how long have you been disabled?

22 A Since 2000.

23 Q Now back in July of 2008 where were you staying?

24 A Staying at the motel on TV Road, Americas Best Value
25 Inn.

1 Q And how long did you stay at Americas Best Value Inn?

2 A I had been there two weeks.

3 Q Okay. And what room were you staying in? What was
4 your room number?

5 A 141.

6 Q Now why were you staying there?

7 A My house was getting redone, redoing the floors in the
8 house and redoing bathroom construction so -- I had my son
9 so we moved in. He wanted to go swimming so we rented a
10 motel room that had a pool and everything.

11 Q Okay. And so you said you stayed there about two
12 weeks?

13 A Yes, ma'am.

14 Q Now going back to July 3rd or July 4th, would you
15 please tell us what was going on that particular day with
16 you?

17 A We -- we were celebrating the 4th for the 4th. We
18 cooked out early that evening.

19 Q So that would have been July 3rd?

20 A July 3rd, right, probably around 6, 7:00 me -- and some
21 friends had come over. Lewis Oberfrank had come over and
22 had another friend, Uncle Gilbert, was there, called him
23 Uncle Gilbert. They were there. We cooked out some
24 chicken and stuff. And then about 12:00 to 12:30, Lewis,
25 he wanted to walk down to the bar get him a drink. When

1 we walked into the bar—

2 Q Now was that Lewis?

3 A Oberfrank.

4 Q Okay.

5 A We noticed two guys walking up and down the side of the
6 building, and I said, look at them guys over there. He
7 said, you know them? I said, no, I don't know who they
8 are, they look suspicious walking up and down the aisles.
9 So we got back from the bar. Time we got back from the
10 bar there was a knock on the door. And I was eating
11 another piece of chicken, midnight snack. I was sitting
12 on the bed, far right bed. And Lewis opened the door.
13 Time he opened the door two guys pushed their way in
14 through the door and pulled out a gun out the side of —
15 the big guy pulled out side of — a gun out of the side of
16 his pants and then told us to get undressed and get in the
17 bathroom. And at that time we got undressed and got in
18 the bathroom. He said throw all your clothes out. And
19 they were searching the clothes and there was a smaller
20 skinny individual about the same height. He was — kept
21 running back and forth asking us where our money was and
22 if we didn't give him the money he was gonna kill us or
23 shoot us. So Uncle Gilbert had five hundred dollars in
24 his wallet and they finally found it. And when they found
25 it the skinny one really went crazy and thought we had

1 more money, and we thought they were going to shoot us
2 then.

3 MS. PARR: Your Honor, some water?

4 THE COURT: Are you all right?

5 THE JUROR: Yes, sir.

6 MS. PARR: Your Honor, I'm going to pass...

7 THE COURT: Yes, please. Just one second, ma'am.

8 Are you okay?

9 THE JUROR: Yes, sir.

10 BY MS. PARR:

11 Q And Mr. Ward, if you would keep your voice up.

12 A Okay. The skinny individual kept running back and
13 forth from the door to the — bathroom door to the room
14 searching the room tearing up drawers and suit cases
15 looking for stuff. And he come back, back and forth look
16 at us, and then run and open we're here, you know,
17 everything plundering like going through suitcases and
18 moving the beds around and stuff. Then after about five
19 or ten minutes they come up there, said don't come out the
20 door or we'll shoot you or kill you, don't look out. And
21 then so I give them just a few minutes and I thought I
22 heard them go out the door and I didn't — then I kind of
23 got mad, you know, 'cause we were being robbed and had a
24 gun on us. And I put on my pants real fast and ran out
25 the door and 'cause it was so late, to see if any cars was

1 going I figure I could get their car and I ran to the
2 right of the pool and looked to the right and I seen the
3 red older car, front-end damage, kind of foreign car,
4 going to the right and then coming out into the front of
5 the motel. Then it took a left going toward, like going
6 toward the interstate. And we called the police and they
7 came out, made a report. Missing a bunch of stuff, money,
8 credit cards, cell phones.

9 Q Okay. Now Mr. Ward, I'm going to show you what has been
10 introduced into evidence as State's Exhibit 4(a) through
11 (d). And would you please tell us whether or not you
12 recognize -- you can take the paper clip off.

13 A 4(a) I do.

14 Q And what is that a picture of?

15 A That's the front of the motel where I was staying.

16 Q Okay.

17 A Okay, and 4(b) I do. That's the side of the motel
18 where I was staying in the room. And 4(c) I do. That's
19 the -- also the side where I was staying where the pool
20 was. That's where I saw them go out the front. And 4(d)
21 is my room 141.

22 Q Okay.

23 MS. PARR: Your Honor, the State would ask
24 permission to publish those pictures to, the exhibits to
25 the jury.

1 THE COURT: You may do so.

2 MS. PARR: Okay.

3 THE COURT: Jurors, we're going to hand you these
4 photographs and you'll just pass them along. You will
5 have them with you in the jury room for final review.

6 MS. PARR: Okay. And Your Honor, we will just
7 publish them at this time by way of the projector and then
8 we can...

9 THE COURT: Do that, go ahead.

10 BY MS. PARR:

11 Q And would you please tell us?

12 A That's the front of the motel.

13 Q Okay. And using the lazer pointer?

14 A I got it.

15 Q And would you show us?

16 A That's the front right here of the motel. That truck
17 wasn't there during the time this happened, but it would
18 be a opening right here.

19 Q Okay. And what did you see there at that time?

20 A I seen the car, red car, with front-end damage come out
21 from the right side of the motel and leave to the left of
22 the motel.

23 Q Okay. And the next photo?

24 A This is where I — our room was right in here. I ran
25 out to right around here, and I could see that way and

1 also that way when the car was leaving.

2 Q Okay.

3 A This is the area I was at. I could see right through
4 here. That's the opening. We could see the car go
5 through and then front part up here. That's the room
6 right here.

7 Q Okay. What room number was that?

8 A 141.

9 Q All right. And you stated that the first time you saw
10 the defendants where were they?

11 A They were walking along this right here up and down the
12 walkway here.

13 Q Okay. Now do you see one of the defendants in the
14 courtroom today that robbed you on July 4th?

15 A Yes, ma'am.

16 Q Okay. And would you point him out?

17 A (Indicating.) Well, the guy wearing the turquoise
18 shirt.

19 MS. PARR: May it please the Court, let the record
20 reflect that the witness has identified the defendant as
21 the person who -- one of the persons that robbed him that
22 night.

23 THE COURT: The record will show an identification
24 by the witness.

25 MR. MCCLAUGHLIN: Subject to just note our objection,

1 previous objection please, Your Honor.

2 THE COURT: Yes, and I assume this is presented
3 under the penumbra of State versus Lewis.

4 MS. PARR: That is correct, Your Honor.

5 THE COURT: Proceed.

6 BY MR. PARR:

7 Q Now on that particular evening you indicated that that
8 Oberfrank, Lewis, wanted to go to the bar; is that
9 correct?

10 A Yes, ma'am.

11 Q Okay. And were you drinking that night?

12 A No, ma'am, I don't drink.

13 Q Okay. And how long did you all stay out at the bar
14 area?

15 A Just pick up a drink. He went and picked up, I think,
16 a beer. Five minutes to order the beer and go back to the
17 room.

18 Q And how long were you back in the room when this
19 incident —

20 A It wasn't a matter of five minutes, enough for me to
21 probably warm up, go to walk in, go to the refrigerator,
22 grab a piece of chicken, stick it in the microwave,
23 probably five minutes.

24 Q Okay. Now, and how did the defendants get to your
25 room? When I say how they got to your room I know they

1 walked there, but how did they come in?

2 A They knocked on the door and then Lewis opened the
3 door. When he opened the door they pushed their way in.

4 Q Okay. And who pushed their way in?

5 A The big guy, he was first, and then the skinny guy was
6 behind him.

7 Q Okay. And did you get a look at what they were
8 wearing?

9 A Yes, ma'am.

10 Q Okay. And did you give a description of that to law
11 enforcement?

12 A Yes, ma'am.

13 Q Okay. And what were they wearing?

14 A The big guy was wearing regular jeans and had a white
15 T-shirt, had some writing on the front of the shirt. The
16 skinny guy was wearing kind of baggy pants that the
17 younger children wear, like navy pants and a white
18 T-shirt.

19 Q Okay. And now I'm gonna show you -- I'm gonna show you
20 what's been entered into evidence as State's Exhibit 5(a).

21 Do you remember this?

22 A Yes, ma'am, I do now.

23 Q And how is it that you're able to recognize this?

24 A That's the shirt the big guy was wearing.

25 Q And would that guy have been Shakeem Williams?

1 A I never — I didn't know his name but that's the one
2 that he was wearing. The big guy was wearing that shirt.

3 Q Okay. And State's Exhibit 5(b)?

4 A That looks like his pants right there.

5 Q Okay, so you recognize these pants?

6 A That's the big guy's pants.

7 Q Okay. And I show you what's been marked as State's
8 Exhibit 6(a). Do you recognize this?

9 A White T-shirt.

10 Q Okay, and did you — and did you see this T-shirt
11 before?

12 A He was wearing a white T-shirt, the skinny guy.

13 Q Who is that skinny guy?

14 A I call him the defendant, the skinny guy.

15 Q That's what you call Mr. Jordan?

16 A Yeah, I just call him the skinny guy.

17 Q And this is what you had on the night —

18 A Yes, ma'am.

19 Q —of this incident?

20 MR. MCLAUGHLIN: Objection, Your Honor, I believe
21 that -- may we approach?

22 THE COURT: Sure.

23 (WHEREUPON, counsel approached the Bench for an
24 off-the-record discussion.)

25 THE COURT: All right, the rule is that you

1 rephrase the query. Proceed.

2 BY MS. PARR:

3 Q And how are you able to recognize State's Exhibit 6(a)?

4 A White T-shirt.

5 Q And how do you know — yeah. What is it about this
6 white T-shirt that you recognize?

7 A That's what he was wearing was a white T-shirt.

8 Q And State's Exhibit number 6(b)?

9 A That's the darker jeans, jeans like that. Yes, ma'am.

10 Q Now who was wearing these jeans?

11 A That's the skinny guy jeans.

12 Q And who is that?

13 A That would be the defendant.

14 Q All right. Now when they came into your room what, if
15 anything— did you see a weapon?

16 A Yes, ma'am.

17 Q Okay, and what kind of weapon did you see?

18 A It was a small black handgun.

19 Q Okay. Now I'm gonna show you what's been entered into
20 evidence as State's Exhibit 3(a). You recognize this?

21 A Yes, ma'am.

22 Q Okay. How is it that you're able to recognize it?

23 A That's the guy that the big guy had putting on us in
24 the bathroom and hold it against us.

25 Q Okay. Now what items were taken?

- 1 A Money, credit cards and cell phones.
- 2 Q Okay.
- 3 A And my cell phone. I had two cell phones.
- 4 Q Okay. And do you -- can you recall how much money was
- 5 taken?
- 6 A All together between --
- 7 Q Would you go individually, what was taken from --
- 8 A Individually Uncle Gilbert had around \$540.
- 9 Q And that was taken?
- 10 A That was taken. I had around \$80 and Lewis had around
- 11 \$20. We also had credit cards and ATM cards.
- 12 Q Now you said -- so cell phones were taken as well?
- 13 A Yes, ma'am, we had two cell phones that were taken from
- 14 me.
- 15 Q Okay. Now I'm gonna show you this, what's been entered
- 16 into evidence as State's Exhibit Number 7. Do you
- 17 recognize that?
- 18 A Yes, ma'am.
- 19 Q And how are you able to recognize it?
- 20 A It's my cell phone.
- 21 Q And what type of cell phone is that?
- 22 A It's a Alltel.
- 23 Q Okay.
- 24 A It's even got my name in it.
- 25 Q All right. And this was taken from you that night?

1 A Yes, ma'am.

2 Q Okay. Now what did the defendant Tarrence Jordan do
3 while Mr. Shakeem Williams held the gun on you in the
4 bathroom?

5 A He ransacked the room. He was the one that actually
6 went through the clothes, got the money, and went
7 through the wallets, went through the drawers, all the
8 suitcases and everything and ransacked the beds and, like
9 I said, tore up all the suitcases, threw clothes, just
10 plundered back and forth through everything.

11 Q Okay. And what, if anything, did he say?

12 A He kept saying that after he got that money that we had
13 he was gonna kill us if we didn't tell him where some more
14 was at.

15 Q And did you end up telling him where more money was?

16 A They -- no, there wasn't no more money. We was talking
17 about that was all we had. You know, they kept get-- take
18 what they want to, just don't shoot us.

19 Q Okay. And how long did you stay in the bathroom?

20 A We was in the bathroom probably close to anywhere from
21 five to ten minutes, probably closer to ten.

22 Q Okay. Now how was the lighting in your room?

23 A The lighting was great.

24 Q Okay. So the light was on when they came?

25 A Oh, yes, ma'am.

1 Q All right. Now how long did you get a look at both
2 defendants?

3 A A good -- the big one, the whole time he stood at the
4 bathroom with the gun pointing at us. And the skinny
5 one -- I call the defendant the skinny one -- he was
6 running back and forth. Well, when he came in a good
7 three minutes when he came in the door and then put --
8 made us undress and get in the bathroom, then he ran back
9 probably five to eight times back and forth hollering at
10 us wanting to know where stuff was.

11 Q And what was he hollering when he would run back and
12 forth?

13 A A lot. He was hollering, you know, where was
14 everything at, where was more stuff, where was more money,
15 'cause it made him mad after he count the money that he
16 had.

17 Q And how do you know it made him mad?

18 A That's when he started hollering more talking about he
19 was gonna kill us.

20 Q So it was the defendant Tarrence who was threatening to
21 kill you?

22 A Right.

23 Q Now you said that after they left, what did you do?

24 A That's when I heard the door 'cause I wasn't gonna wait
25 no more. He was sitting there looking. You think you can

1 grab the gun but then you think you can't grab the gun.
2 You don't want to be no hero and get shot. Then you're
3 scared to death you're gonna get shot and get killed, but
4 then you're also mad because somebody is robbing you, and
5 you know, taking something away from you. So I just got
6 my pants on and ran out the door. I said, well, if I go
7 out the door at least I can run. If they point the gun at
8 me and try to shoot me I'm gonna see what they're driving.
9 That's when I ran out the door and seen the car leaving
10 the motel.

11 Q Okay. Now I'm gonna show you what's been entered in
12 evidence as State's Exhibit 8(b) through (d). Okay.

13 Would you please tell us, identify each exhibit and then
14 tell us if you recognize it.

15 A 8(a) I recognize it.

16 Q What is it a picture of?

17 A It's a picture of the red car I seen that night. And
18 8(b) is also a picture of the car I seen that night. 8(c)
19 is a picture of the car I seen that night. And 8(d) is a
20 picture of the car with the front-end damage I seen that
21 night leaving the motel.

22 MS. PARR: Okay. Your Honor, the State would ask
23 permission to publish this to the jury.

24 BY MS. PARR:

25 Q And where is the damage that you saw in the car?

1 A I really couldn't -- it was on the front part, front of
2 the car. Right around that area around there, this right
3 here.

4 Q Okay.

5 A (Indicating.)

6 Q And the next one?

7 A All right, right around here, there.

8 Q Okay. And then... Now who reported the robbery to law
9 enforcement?

10 A I don't know exactly who. I don't know exactly who
11 called.

12 Q But they were called immediately?

13 A Yes, ma'am, called immediately.

14 Q And did they respond?

15 A Yes, ma'am.

16 Q Okay. And at that time did you give -- did you all
17 give a description of the defendants?

18 A Yes, ma'am.

19 Q Now are you positive the person that -- one of the
20 persons that robbed you that night is in this courtroom
21 today?

22 A Yes, ma'am.

23 Q Okay, and was there anything obstructing your view of
24 the defendant?

25 A No, ma'am.

1 MS. PARR: Beg the Court's indulgence a moment.

2 BY MS. PARR:

3 Q Now Mr. Ward, I notice now that you're using a cane.

4 A Yes, ma'am.

5 Q Were you using a cane back in 2008?

6 A Yes, ma'am, I -- sometimes I have to use it; sometimes
7 I don't have to use it but I probably was, yes, ma'am.

8 Q Okay. Now how were you able to run out?

9 A Then I was probably not able to use it. It's just the
10 weather, different effects. I just had surgery now so
11 I'm -- back then I wasn't had a problem using it as much
12 as I have to use it now.

13 Q Okay. So you've had surgery since this incident
14 occurred?

15 A Yes, ma'am.

16 Q Okay, what kind of surgery did you have?

17 A I've had knee surgery and hernia surgery.

18 Q Oh, okay. And so even though you were -- but you were
19 -- had been declared disabled before?

20 A Yes, ma'am.

21 Q Okay. But your condition --

22 A When you get mad, you get mad you can do things.

23 Q But your condition was not as it is now?

24 A No, ma'am.

25 Q Okay, all right. Would you please answer any questions

1 the Defense may have for you.

2 MR. MCLAUGHLIN: May it please the Court.

3 **CROSS-EXAMINATION**

4 BY MR. MCLAUGHLIN:

5 Q Mr. Ward, Ms. Parr just asked you about whether or not
6 you're on disability, and you said you were?

7 A Right.

8 Q Okay. And how long have you been on disability?

9 A Since 2000.

10 Q Since 2000? What did you originally receive your
11 disability for?

12 A What I received it for?

13 Q Yes, sir. What was your problem that led to that
14 initial determination?

15 A My back.

16 Q Okay, all right. And what was wrong with your back?

17 A I had degenerative disk disease.

18 Q All right. And that was in 2000?

19 A Right.

20 Q Have you had additional problems pop up since then?

21 A Well, 2001 I had additional surgery on my back.

22 Q Okay. And then I think you mentioned something about a
23 knee replaced or some type of knee surgery?

24 A That was — that was about eight months ago.

25 Q Okay, all right. And you've been fully disabled since

1 2000.

2 A Right.

3 Q Have you been under a doctor's care that entire time?

4 A Well, no. I mean, what do you mean doctor's care?
5 Just...

6 Q Have you been having to see a doctor because you've had
7 problems with your back since 2000?

8 A No, not regular, no.

9 Q All right. Said you had to have additional back
10 surgery when?

11 A 2001.

12 Q All right. Still have back problems today?

13 A I get sore.

14 Q All right. When is the last time you went to go see a
15 doctor about your back?

16 A Probably a year ago.

17 Q All right. Were you having -- were you under any
18 medical care at the time this happened?

19 A No.

20 Q Okay. When's the last time you've been under medical
21 care before July of 2008?

22 A 2005.

23 Q 2005?

24 MR. MCLAUGHLIN: Your Honor, may I approach?

25 THE COURT: Yes.

1 BY MR. MCLAUGHLIN:

2 Q I believe on direct examination Ms. Parr showed you
3 what's been marked as 4(b);—

4 A Right.

5 Q —is that right?

6 A Right.

7 Q All right. Do you need glasses for closeup stuff?

8 A Yes, uh-huh, numbers and stuff.

9 Q Okay, all right. She showed you that picture right
10 there, right?

11 A Right.

12 Q Okay. And did you say your room was somewhere down
13 here?

14 A Yes, sir.

15 Q Okay. So your room was down in this room right where
16 my finger is?

17 A Right.

18 Q And then you told the jury that you ran out kind of
19 coming like that, right?

20 A Right.

21 Q Okay. There's the pool right there. Did you run all
22 the way past the pool or were you still kind of even with
23 the pool?

24 A Past about the middle of the pool right here.

25 Q Okay. So you were right there?

1 A Right.

2 Q All right. And then Ms. Parr showed the jury this
3 picture right here and you said—

4 A Around where it happened.

5 Q So where were you out in this picture?

6 A Down further this way about halfway. Same place that
7 you put the picture in the same together down here.

8 Q Okay, all right. You said you could see the car
9 through that gap right there, —

10 A Right.

11 Q — right?

12 A Right.

13 Q All right. There's not a road — there's not a road
14 that comes down right there between the pool and that
15 building, is there?

16 A Yeah.

17 Q All right. Is that road connected back here, or is the
18 road on the other side of that building?

19 A Road — one here right beside that building.

20 Q Okay, all right. And through that you saw the victim's
21 car?

22 A That stuff wasn't there that night. All those pictures
23 right there are — that stuff wasn't there and that truck
24 wasn't there.

25 Q Well, is there a truck right there?

- 1 A I'm talking about there was a different picture.
- 2 Q Yes, sir, that picture right there shows a truck.
- 3 A Yeah.
- 4 Q That one right there ---
- 5 A Yeah, you can easily see through there at night.
- 6 Q Okay. And you can see the front of that car.
- 7 A I seen the side of the car there and I seen the front
- 8 when they turned up in the front of the motel.
- 9 Q All right. How far is it from that pool to TV Road?
- 10 A How far?
- 11 Q Yes, sir.
- 12 A Probably ---
- 13 Q 'Cause you were right here, right?
- 14 A Right.
- 15 Q All right. Probably it's not actually -- you say TV
- 16 Road.
- 17 A When they cut across they cut right across up under the
- 18 building right here where that ---
- 19 Q They went around that way and ---
- 20 A Right.
- 21 Q ---cut around, right?
- 22 A It's probably -- they were probably 50 yards when I
- 23 seen them.
- 24 Q Well, ---
- 25 A 50 to, you know, 75-yards.

1 THE COURT: Counsel, you need to identify that
2 photograph.

3 MR. MCLAUGHLIN: I'm sorry, 4(c) is the one we're
4 talking about.

5 BY MR. MCLAUGHLIN:

6 Q All right, when you're looking at 4(c) here, you're
7 telling the jury that you're standing down here on the
8 bottom corner of 4(c) and you see the car go by on the
9 other side of the pool.

10 A Right.

11 Q And then it goes on the far side of that building right
12 there, which is the office and the bar and everything,
13 right?

14 A Right.

15 Q And then it goes out there to the main road and turns
16 left?

17 A Right. I even — when I seen it right here when I was
18 down here I even walked this way more.

19 Q Uh-huh.

20 A When I seen it on the side past here I walked up this
21 way, look at it, see which way it was going up here. So I
22 probably when it come to the front I was probably up here
23 right around here. You know, everything happened so fast.
24 I know I walked all the way up here. You could see the
25 car go out.

1 Q All right.

2 MR. MCLAUGHLIN: May I use the chalkboard, Judge.

3 THE COURT: No, can't use the chalkboard. You know,
4 the case that I'm referring to the appellate judges sit up
5 there, they don't like the chalkboard.

6 BY MR. MCLAUGHLIN:

7 Q All right. When you're at that pool where you're
8 standing and you look forward, you can't see the road
9 looking straight forward, can you?

10 A Yeah.

11 Q What's that building right there?

12 A That's not a building; it's a fence.

13 Q It's a fence?

14 A Well, if you — if you're right here, if you're right
15 here standing on the side of the pool you got a straight
16 shot looking down there. I was there for two weeks; I was
17 seeing everything.

18 Q Is that a building and a fence right there that my
19 finger is touching on photograph 4(c)?

20 A Right. There's a hole right through here where that
21 truck is. There's a big drive where you can drive a truck
22 through. Obviously there was a truck there.

23 Q All right. But you're right here. You even said you
24 came kind of to the corner, right?

25 A Right.

1 Q All right. How far is it from there to the main road?

2 A To the main road probably 100 yards or where they
3 turned at probably 50 yards because there's a parking --
4 there's a big parking area that you come out of when you
5 come out the motel that you had to drive through to get to
6 the road.

7 Q So you're telling the jury that you saw them make a
8 left-hand turn?

9 A Yes, sir.

10 Q All right. That office and that bar that's sitting
11 right there didn't hinder your view at all from them going
12 around it and then turning left?

13 A No, sir, 'cause there's a big gap right there that you
14 can, like I said, drive a truck through it.

15 Q And that building in that photo and the fence that's
16 right in front of you, that didn't hinder your viewing of
17 the car?

18 A No, sir.

19 Q Okay. You ever identify Mr. Jordan before today?

20 A No, sir.

21 Q All right. Were you ever asked to identify Mr. Jordan
22 before today?

23 A No, sir.

24 Q All right. You ever showed any photographic lineups to
25 try to identify Mr. Jordan before today?

- 1 A No, sir.
- 2 Q How long were the cops out there that night?
- 3 A They probably stayed 30 minutes.
- 4 Q All right. And who came out there? What cop came?
- 5 A It was a Sheriff's officer.
- 6 Q You remember his name?
- 7 A I don't remember his name; he's here today.
- 8 Q All right. Point him out the room for me.
- 9 A The one beside — the man in the camouflage.
- 10 Q Tall fellow right there, is that who you're pointing
- 11 at?
- 12 A The tall fellow, yeah.
- 13 Q Did you tell him all that description that you just
- 14 told the jury?
- 15 A Yes, sir.
- 16 Q All right. So you told him that you went outside and
- 17 you saw the car?
- 18 A I probably — I don't know if I was specific. I told
- 19 him I seen a red car. I didn't say about having to run up
- 20 there and I seen it through here, I seen it through there.
- 21 I seen they were driving a red car.
- 22 Q How about that front-end damage? You talk to him —
- 23 A Yeah.
- 24 Q —about the front-end damage?
- 25 A Yeah.

1 Q You did? You positive about that?

2 A I'm positive. I think there was someone else there,
3 too, that also came up the next morning and said that they
4 had told Lewis that they also seen the car, a red car,
5 parked around back with two people sitting in it that had
6 front-end damage.

7 Q Really. That was the next morning you heard about this
8 car parked around back?

9 A Sitting there that night, that night we got robbed.

10 Q All right. And that's -- and something told Lewis
11 about a car parked around back with front-end damage?

12 A Right, had also seen the car.

13 Q How did you describe the --

14 A I described it as a red older car.

15 Q I'm sorry, let me -- I didn't ask that question. How
16 did you describe the two people that came in the room?

17 A As a big guy, skinny guy.

18 Q All right. Was that the extent of your description of
19 big guy and skinny guy?

20 A Well, no, they were wearing the jeans and the writing
21 on the white shirt and the T-shirt.

22 Q Yes, sir, I understand. When did you first find out
23 that somebody had been arrested for this?

24 A When I first find out?

25 Q Yes, sir.

1 A I heard it on the news.

2 Q All right. Got any idea when that was?

3 A Next day.

4 Q All right. Had they given you a — maybe a business
5 card with a case number or something on it?

6 A No.

7 Q All right. Did they give that to Uncle Gilbert?

8 A I don't know; I can't speak for him.

9 Q How about to Mr. Oberfrank?

10 A I don't know; I can't speak for him. Not that I know
11 of.

12 Q Well, did the police not give you any information so
13 you could followup on this crime?

14 A He said they'd be in touch.

15 Q All right. When did they get in touch with you?

16 A Probably a few months ago.

17 Q All right. Got any idea how long ago that was?

18 A Not exactly.

19 Q Okay. Has it been since the first of the year?

20 A Yes.

21 Q Okay, all right. So the first time somebody with law
22 enforcement called you was after the first of the year?

23 A Right, but I had my cell phone and stuff I — I left my
24 cell phone with them, probably had a hard time finding my
25 number.

1 Q Yes, sir. Well, did you give them your address where
2 you were living?

3 A Yeah, but I moved.

4 Q What was the address you gave them where you were
5 living?

6 A It was — it would have been [REDACTED] Cashua Drive.

7 Q Okay, where are you living at now?

8 A [REDACTED] McDaniel Road.

9 Q When did you move from Cashua to McDaniel?

10 A Six months ago.

11 Q All right. Before then anybody try to get a hold of
12 you at your Cashua place?

13 A No, no.

14 Q All right. When they got in touch with you after the
15 first of the year what did they say to you?

16 A That the guys they had caught they were going to go to
17 trial on them and I would need to come testify.

18 Q All right. And did you meet with them?

19 A One time.

20 Q Okay. Where did you meet with them at?

21 A At complex at the Sheriff's Office.

22 Q When was that?

23 A Last week.

24 Q Okay. I think I saw you out there; didn't I?

25 A I think so, yeah.

1 Q You were out there the same day I went out there;
2 weren't you?

3 A Yeah.

4 Q That was last week; wasn't it?

5 A Right.

6 Q All right. When you met with them last week what did
7 they tell you?

8 A They were basically taking my statement 'cause Ms. Parr
9 had taken it over the phone a while back, and then she was
10 basically writing it down and taking it in person.

11 Q Ms. Parr had taken a statement from you a while back?

12 A Right.

13 Q Do you know when that was?

14 A Probably, like I said, a couple of months ago.

15 Q You know whether or not she recorded that statement?

16 A I don't know.

17 Q Did she tell you whether or not she was recording that
18 statement?

19 A She didn't tell me.

20 Q And did they tell you who was going to be on trial?

21 A Yeah.

22 Q Who'd they tell you they were going to be trying?

23 A The guy named Jordan, Jordan.

24 Q Okay. They tell you about their case against him?

25 A Not really, no.

1 Q Well?

2 A Just, I mean, wanted to know what I knew.

3 Q All right. Well, did they tell you how they arrested
4 him?

5 A Well, I heard, I had already knew that.

6 Q How did you know that?

7 A On the news.

8 Q All right.

9 A And I think one of the policemen came back the next day
10 and told either Gilbert or one of them — might have been
11 me; I can't remember — but he told that they had caught
12 them that night or that morning, early that morning. They
13 had robbed a doctor off of 52.

14 Q So somebody did come by —

15 A Right.

16 Q —and see you?

17 A Right.

18 Q All right. And they told you we got the guys?

19 A Right.

20 Q All right. Well, did they tell you or they told some

21 —

22 A They told somebody else.

23 Q Who told you?

24 A I was asleep.

25 Q You told the jury y'all had been cooking out that

1 afternoon, correct?

2 A Right.

3 Q Y'all got started about 6 p.m.?

4 A Right.

5 Q All right. And you told the jury about Uncle Gilbert
6 and Mr. Oberfrank being there?

7 A Right.

8 Q Anybody else coming and going?

9 A Ken and Lisa Watson was there, Uncle Gilbert's niece
10 and nephew.

11 Q They were out there?

12 A They come by.

13 Q What time did they leave?

14 A They left right before this happened about 11, 11:30.

15 Q Y'all cooking out for the 4th of July, anybody
16 drinking?

17 A Lewis.

18 Q All right. He was the only one that was drinking?

19 A He was the only one.

20 Q All right. Were you under the influence of alcohol at
21 all?

22 A I don't drink at all.

23 Q How about anything else?

24 A No.

25 Q Prescription medication?

1 A No.

2 Q Illegal?

3 A No.

4 Q Narcotics?

5 A No.

6 Q All right. I imagine you had to take some prescription
7 meds before?

8 A I've had so, yes.

9 Q Yes, sir.

10 MR. MCLAUGHLIN: Beg the Court's indulgence one
11 second.

12 THE COURT: Yes.

13 BY MR. MCLAUGHLIN:

14 Q Mr. Ward, who all talked with your deputy when he came
15 out there?

16 A I think all three of us did.

17 Q Okay.

18 A Me, Lewis, and Uncle Gilbert.

19 Q All right. How big is that bathroom?

20 A It's not big at all.

21 Q Would it be fair to say that it maybe goes from maybe
22 the front of this witness stand, maybe to the wall back
23 there? Would that be about a fair approximate?

24 A Well, standing room you wouldn't have -- but standing
25 room we had three grown men up in there up against each

1 other.

2 Q Yes, sir. Okay, all right. And who was front by the
3 door?

4 A I was.

5 Q All right. And who was behind you?

6 A Uncle Gilbert.

7 Q And then who was behind him?

8 A Well, more or less behind me -- both of them more or
9 less behind me too. Lewis to my left behind me and Uncle
10 Gilbert was right behind me.

11 Q No further questions. Thank you, Mr. Ward.

12 THE COURT: Redirect.

13 **REDIRECT EXAMINATION**

14 BY MS. PARR:

15 Q Where were your clothes?

16 A Clothes were thrown out in front of the bathroom.

17 Q All of y'all were buck naked?

18 A Yes, ma'am.

19 Q And but -- and where was the defendant in relationship
20 to the bathroom?

21 A He was running back and forth to the bathroom when he
22 checking the suitcases. Then he stood right there at the
23 door checking the clothes, pulling the wallets out,
24 checking all the pockets and all the clothes that we threw
25 out the bathroom door.

1 Q And where was —

2 A He was standing beside the big guy, then actually —

3 Q Okay. And that would have been Shakeem Williams?

4 A Right.

5 Q Okay. And was the door open or closed at that time?

6 A It was open. Only time they shut it is when they
7 started to leave, said don't come out.

8 Q Okay.

9 MS. PARR: Nothing further, Your Honor.

10 THE COURT: Recross.

11 MR. MCLAUGHLIN: Just very briefly.

12 **RECROSS-EXAMINATION**

13 BY MR. MCLAUGHLIN:

14 Q Mr. Ward, on picture 4(b).

15 A Right.

16 Q We look at -- back here where the rooms are --

17 MS. PARR: Your Honor, that's further than
18 redirect.

19 THE COURT: Counsel, over the years I've been very
20 liberal on recross and redirect so I'm going to stay with
21 my regimen.

22 Go ahead.

23 MR. MCLAUGHLIN: Thank you.

24 BY MR. MCLAUGHLIN:

25 Q From right there where the rooms are to right in here,

1 I believe, is where you said you ran to see the vehicle,
2 right?

3 A Right.

4 Q Okay. How far would you say that is? And if it helps,
5 it may — I know it's hard to judge distances, maybe
6 football fields.

7 A Hundred yards.

8 Q Okay, all right. So you were completely naked?

9 A No, I put my pants on. When I heard the door shut —

10 Q I didn't think you ran outside naked, but you — when
11 these gentlemen left —

12 A Right.

13 Q —you were completely naked in the bathroom?

14 A Right.

15 Q And you threw your pants on?

16 A Right.

17 Q All right. And you ran outside and you ran
18 approximately 100 yards?

19 A Well, I probably went first probably 40 or 50 and I
20 could see the car going to the right. Then when it was
21 going up then I, you know, walked, ran, whatever, up
22 closer to the front and seen them go out the front.

23 Q Okay. And then you ran up a little bit more —

24 A Right.

25 Q —is that what you're saying? Okay, all right. No

1 further questions. Thank you.

2 THE COURT: Anything further?

3 MS. PARR: No, sir.

4 THE COURT: You may step down. Lawyers, I think
5 it's probably a good break time for lunch. Is that
6 suitable with your routine?

7 MS. PARR: Whatever the Court sees fit.

8 THE COURT: All right, jurors, it's about ten
9 minutes till 12. Can you get lunch and be back by 1:00?
10 Can everybody be back by one? Is that too -- is everybody
11 okay by one? All right, remember my instructions. Don't
12 talk to anyone else about the case and don't talk among
13 yourselves. Please don't talk among yourselves if some of
14 you go to lunch together. Please remember that rule in
15 regard to no discussion please.

16 All right, catch them the elevator please. No one
17 leaving but the jury. 1:00 please. 1:00.

18 (WHEREUPON, the jury was removed from the
19 courtroom at 11:50 a.m., and the following proceedings
20 commenced in open court.)

21 THE COURT: For planning purposes, lawyers, I had
22 agreed to take a guilty plea on some armed robbery cases
23 at 4:00 with lawyers coming from out of town with
24 Mr. Richardson and Ms. Parr and those. So once we get
25 close to four I'm going to stop to take those guilty

1 pleas, involves another case, other lawyer, and so forth.
2 So please think about that as you put up witnesses. Have
3 a nice lunch.

4 Anything you need to put on the record?

5 MR. MCLAUGHLIN: I just had a question about that,
6 Judge. Are you -- is it your intention that we're gonna
7 completely break at four and that will be it for the day?

8 THE COURT: Yeah.

9 MR. MCLAUGHLIN: Okay, all right.

10 THE COURT: I don't know whether I'll do it right at
11 4. I might to 4:15. I might even go to 4:30 depending on
12 what we're doing.

13 MR. MCLAUGHLIN: I was trying to figure out if I'd
14 be able to slide out whenever we break, yes, sir.

15 THE COURT: You'll be able to slide out, but it
16 might not be at 4.

17 (WHEREUPON, a lunch break was taken.)

18 THE COURT: At this time we consider a matter in
19 involving a juror. The juror's name is what please.

20 MS. PARR: Your Honor, I think it would be juror
21 27. I think it's juror 27.

22 MR. MCLAUGHLIN: Is it the younger guy?

23 MS. PARR: It's the younger guy. That's not 27?

24 MR. MCLAUGHLIN: It was like -- he was one of the
25 first ones on the second page of the list. I think

1 it's -- is it Brown?

2 MS. PARR: Yeah, that's what I had, Brown.

3 MR. MCCLAUGHLIN: Tyrell Brown.

4 THE COURT: All right, he's juror 27.

5 MS. PARR: That's right. That's his juror number.

6 THE COURT: Okay. Now what is the background of
7 this event? This juror was out smoking?

8 MS. PARR: Your Honor, we'll have to have ---

9 THE COURT: All right, Deputy, come around please.
10 Left hand on the Bible, raise your right hand.

11 WHEREUPON,

12 **HARRY DAMAR BROWN,**

13 having been duly sworn by the Deputy Clerk of Court,

14 testified as follows:

15 THE COURT: Have a seat please. Give us your full
16 name for the record.

17 THE WITNESS: Harry Damar Brown.

18 THE COURT: Deputy Brown, what do you know about
19 this event involving this juror?

20 THE WITNESS: Judge, during my lunch break when I
21 walked outside the back door of the complex I looked to my
22 left and I noticed one of the jurors in a little smoking
23 area smoking a cigarette. And I noticed one of the
24 victims approach him briefly. Don't know -- I'm not sure
25 if anything was said or not. And then he immediately

1 walked away. Afterwards I walked over to the juror and
2 mentioned to him that I don't believe that they like for
3 them, the jurors to be wandering around outside after they
4 come back from their lunch break because some -- anybody
5 can come up and try to talk to you.

6 THE COURT: Yeah.

7 THE DEPUTY: And soon after that he walked away from
8 that particular area and walked back towards the doors to
9 go back in the building. But while he was walking back
10 towards the door he was still smoking his cigarette. He
11 finished his cigarette real quick, then he went back in.

12 THE COURT: I understand. State want to ask him any
13 questions?

14 MS. PARR: No, Your Honor.

15 THE COURT: Defense?

16 MR. MCLAUGHLIN: Did you see the entire encounter
17 between Mr. Ward and the juror?

18 THE DEPUTY: No, sir, I -- I immediately looked over
19 to my left and that's when I saw one of the victims
20 approach the juror.

21 THE COURT: And did you know which victim it was?

22 THE DEPUTY: Yes, sir, I can identify him.

23 THE COURT: Is he in the court—

24 THE DEPUTY: I don't believe he's in the courtroom
25 right now.

1 MS. PARR: It's Richard Ward, Your Honor.

2 THE DEPUTY: Yes, he has the cane. He walks with

3 —

4 THE COURT: Where is he?

5 THE DEPUTY: I believe he's the last —

6 MR. MCLAUGHLIN: The last gentlemen to testify.

7 THE DEPUTY: Yes, yeah.

8 MR. MCLAUGHLIN: So you saw him — you saw Ward
9 approach the juror?

10 THE DEPUTY: Yes.

11 MR. MCLAUGHLIN: And then you saw Ward leave the
12 juror?

13 THE DEPUTY: Yes.

14 MR. MCLAUGHLIN: Okay, all right. How long did that
15 take?

16 THE DEPUTY: Maybe about six, seven seconds.

17 MR. MCLAUGHLIN: Okay.

18 THE DEPUTY: Just a few seconds. It was just a few
19 seconds.

20 MR. MCLAUGHLIN: Beg the Court's indulgence.

21 THE COURT: All right.

22 MR. MCLAUGHLIN: Couple of — a few more questions,
23 Deputy. Did Mr. Ward see you?

24 THE DEPUTY: I'm not sure if he did or not.

25 MR. MCLAUGHLIN: All right. Did he see — do you

1 know whether or not he saw you go over and talk to the
2 juror?

3 THE DEPUTY: He probably did 'cause he was still in
4 that area. There wasn't any close contact with the two of
5 them, but he probably did see me walk over there.

6 MR. MCLAUGHLIN: Okay, and then —

7 THE DEPUTY: I'm pretty sure he did.

8 MR. MCLAUGHLIN: And then who was the first person
9 you mentioned this to?

10 THE DEPUTY: To the juror.

11 MR. MCLAUGHLIN: Other than the juror who did you
12 mention this to?

13 THE DEPUTY: Well, whenever I came back up here I
14 mentioned it to the solicitor, assistant solicitor —
15 well, deputy solicitor.

16 MR. MCLAUGHLIN: Mr. Richardson?

17 THE DEPUTY: Yes, Mr. Richardson.

18 MR. MCLAUGHLIN: All right, thank you.

19 No further questions, Judge.

20 THE COURT: Thank you, sir. Where is this juror, I
21 mean, where is this victim? Where is Mr. Ward?

22 MS. PARR: Your Honor, he went home. Since he was
23 done we let him go home and told him we would call him
24 back if we needed him.

25 THE COURT: All right. Bring out Mr. Tyrell Brown.

1 Bring just that one juror out.

2 (Juror Tyrell Brown was returned to the courtroom.)

3 THE COURT: Mr. Brown, come around here and have a
4 seat right there in the witness chair please. In fact,
5 before you have a seat put your left hand on the Bible,
6 raise your right hand please.

7 WHEREUPON,

8 **TYRELL BROWN,**

9 having been duly sworn by the Deputy Clerk of Court,
10 testified as follows:

11 THE COURT: Have a seat, Mr. Brown.

12 **EXAMINATION BY THE COURT**

13 Q Mr. Brown, there has come to my attention the fact that
14 you were out behind the complex smoking during lunch
15 recess; is that correct?

16 A Yes, sir.

17 Q You got to answer up now.

18 A Yes, sir.

19 Q And while you were smoking did one of the witnesses
20 approach you?

21 A Yes, sir.

22 Q All right. Do you know which witness that was?

23 A I don't see him.

24 Q Don't see him in the courtroom. Did he testify before
25 lunch?

1 A Yes, sir.

2 Q Okay. What did he ask you?

3 A He asked me could he get a cigarette, and I told him I
4 don't have anymore and that was it.

5 Q And that was it?

6 A Yes, sir. And the officer came over and told me that
7 you can't be talking to nobody if you're a juror. So I
8 told him I was going to out my cigarette and walk in the
9 building and that's what I did.

10 Q That's what you did?

11 A Yes, sir.

12 Q Did the witness say anything to you other than could I
13 get a cigarette?

14 A No, sir, he didn't say nothing.

15 Q Nothing else?

16 A No, sir.

17 Q Did he say anything about the case?

18 A No, sir.

19 Q Nothing about the case?

20 A No, sir.

21 Q And then, in fact, no other conversation?

22 A No other conversation.

23 Q No other statement?

24 A No, sir.

25 Q Is that it?

1 A Yes, sir.

2 Q Sir?

3 A Yes, sir, that's it.

4 Q All right.

5 THE COURT: Want to ask any questions of the State?

6 MS. PARR: No, Your Honor.

7 THE COURT: Defense?

8 MR. MCLAUGHLIN: No, Your Honor.

9 THE COURT: Okay, all right. Thank you. Go back
10 around.

11 (Juror Brown is removed from courtroom.)

12 THE COURT: What says the State?

13 MS. PARR: Beg the Court's indulgence. Your Honor.

14 The State doesn't have any objection to the juror
15 remaining on. What say —

16 THE COURT: Anything else?

17 MS. PARR: No.

18 THE COURT: What says Defense?

19 MR. MCLAUGHLIN: We don't have any objection, Your
20 Honor. We think it was harmless.

21 THE COURT: All right. Order — let the record
22 show I have conducted an in-camera hearing that is
23 mandated under the law now when information is brought to
24 the attention of the Court concerning a contact inter sese
25 juror and witness.

1 Based on the testimony now from the two witnesses
2 Deputy Harry Brown and the juror involved in this
3 particular instance, Tyrell J. Brown, juror number 27, I
4 conclude that there was no inappropriate statement or
5 contact and the entire scenario is pristine, salutary, and
6 salubrious. And it is so ordered.

7 Bring the whole jury out.

8 (WHEREUPON, the jury was returned to the courtroom
9 at approximately 1:07 p.m., and the following proceedings
10 commenced in open court.)

11 THE COURT: Hope you had a nice lunch, jurors. Any
12 problem? Anybody with a problem? Everybody okay?

13 (There was no response.)

14 THE COURT: Next witness please.

15 MS. PARR: Your Honor, we would call Deputy Jay
16 McLaurin to the stand.

17 DEPUTY CLERK OF COURT: Please place your left hand
18 on the Bible, raise your right hand.

19 WHEREUPON,

20 **JOHN FRANKLIN MCLAURIN,**
21 having been duly sworn by the Deputy Clerk of Court,
22 testified as follows:

23 THE DEPUTY CLERK OF COURT: Please be seated, then
24 state your name for the record.

25 THE WITNESS: John Franklin McLaurin.

DIRECT EXAMINATION

BY MS. PARR:

Q Deputy McLaurin, where are you employed?

A Florence County Sheriff's Office.

Q How long have you been with the Florence County Sheriff's Office?

A Approximately three years.

Q Were you in law enforcement prior to going to the Sheriff's Office?

A Yes, ma'am, I was.

Q Who were you with?

A I was a state parole agent here in Florence.

Q Okay. How long were you a state parole agent?

A Two-and-a-half years.

Q And so your total law enforcement experience is?

A Roughly five years.

Q Have you had any special training for your job?

A Yes, ma'am. I graduated from the police academy. As anyone, any C-1, that's a certified officer, has to also hold a four year degree in sociology, criminal justice from Clemson University.

Q And what are your duties with the Florence County Sheriff's Office?

A At the time of this report was responding to any calls that I was assigned to and also patrol an assigned area of

1 Florence County.

2 Q Okay. Now on July 4th, 2008, did you have an occasion
3 to become involved in this matter?

4 A Yes, ma'am.

5 Q Okay. And would you please tell the Court how you
6 became involved and what time?

7 A Approximately an hour after midnight, July 4th, early
8 morning, I was dispatched to the Americas Best Value Inn,
9 30—

10 Q Where is that located?

11 A 3024 TV Road, Florence.

12 Q Okay. That is in the County of Florence?

13 A Yes, ma'am.

14 Q Okay. And why were you dispatched there?

15 A An armed robbery had been reported.

16 Q Okay. And would you please tell the Court what you
17 found when you arrived?

18 A When I arrived I found the three victims,
19 Mr. Oberfrank, Mr. Ward, and Mr. Cameron. They were there
20 at the hotel room, room 141, and they had stated they had
21 been robbed by two subjects.

22 Q Okay. And what other information were you able to
23 determine?

24 A They gave me a description of the two subjects. They
25 were — well, first off they had told me that there was a

1 knock on the door and Mr. Oberfrank got up to answer the
2 door, and there was a black male standing in the doorway.
3 Mr. Oberfrank said, what's up, to him. And the black male
4 subject raised a pistol from his side and put it in his
5 face and told him to get in the room. Mr. Oberfrank
6 stated that the two black males that entered the room, one
7 was approximately 25 to 30 years old, 6' 3", 250-pounds,
8 white T-shirt, black writing on the front and blue jeans.
9 The other was a black male approximately 19 to 21 years
10 old, approximately 5'8, 180 pounds, wearing a white
11 T-shirt and jeans.

12 The two subjects made all the victims get in the
13 bathroom and take their clothes off, demanded money. I
14 was told that approximately five to ten minutes went by,
15 and they peaked out of the bathroom to see if the subjects
16 were gone. They stated they were. And after speaking
17 further with Oberfrank he stated that he had seen the two
18 subjects earlier that day walking around the property and
19 that he had seen them in a red in color vehicle with
20 front-end damage.

21 Q Okay, all right. And after you got that description
22 what did you do?

23 A I — first I canceled the rest of the units that were
24 coming out there. We didn't know whether it was in
25 progress. Then I gave out the description of the vehicle

1 because at that time we were having a lot of robberies
2 around the area, and I gave that description of the
3 vehicle, red in color vehicle with heavy front-end damage,
4 possibly two black males armed in the area, be on lookout
5 for. And we also give that information out to the city as
6 well because it's such a close proximity.

7 Q Okay. And then what, if anything else, did you do at
8 that time?

9 A I contacted my investigator, and from there on the
10 investigator took control of that case.

11 Q Okay. Now did you have an occasion to respond later
12 that night or that early that morning of July 4th?

13 A I did respond with Deputy Worsley, but it was only to
14 back him up on a call. I wasn't involved with his call at
15 all. Once Deputy Worsley told me that he was safe, I
16 cleared the call and let him handle his call.

17 Q And where was that call to that you responded to?

18 A I can't recall the exact location of where it was; it
19 was a long time ago. But I do remember responding with
20 Deputy Worsley to a call that was similar. I believe it
21 was a armed robbery that night.

22 Q Okay. Was this at another hotel or motel?

23 A It was at a hotel on Lucas Street but I'm not sure
24 which one. I can't remember.

25 Q But you were not further involved in that incident; is

1 that correct?

2 A No, ma'am, not any further than making sure my fellow
3 officers was safe.

4 Q Okay. Now after you left the location with Deputy
5 Worsley did you do anything else in regards to this
6 matter?

7 A Later that night I believe the city officer had called
8 in. He had reported seeing a vehicle that matched that
9 description at the IHOP, which is off David McLeod
10 Boulevard in Florence. And I believe that was real early
11 in the morning; I'm not sure the exact time. But pretty
12 much our whole shift had responded over there. And as far
13 as that situation, I really wasn't involved much in that
14 situation with except with safety of everybody there. I
15 wasn't involved in detaining anyone or stopping anyone or
16 anything like that. It was more or less just for manpower
17 and safety from what I recall.

18 Q Okay.

19 MS. PARR: Beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 MS. PARR: Would you please answer any questions
22 Mr. McLaurin (sic) may have for you.

23 THE WITNESS: Yes, ma'am.

24 MR. MCLAUGHLIN: May it please the Court.

25 CROSS-EXAMINATION

1 BY MR. MCLAUGHLIN:

2 Q Deputy McLaurin, you were present earlier when Mr. Ward
3 testified; weren't you?

4 A Yes, sir.

5 Q Did Mr. Ward give you descriptions of the subjects that
6 night?

7 A All three of the victims, any time a situation is like
8 that, all three of them kind of talk to you at the same
9 time.

10 Q Uh-huh.

11 A And that was -- I -- I remember speaking with Mr.
12 Oberfrank. He was the main one that I remember speaking
13 to, and the other two victims were present. They were
14 standing there while the descriptions were being given.
15 They had all agreed on the description that was given that
16 I was gonna put in my report.

17 Q Okay. And that's the description that you put in your
18 report?

19 A Yes, sir.

20 Q Okay. And you talked a little earlier about how you
21 went to the academy?

22 A Yes, sir.

23 Q Right, and that's where you learned how to fill out
24 reports, right?

25 A Basically fill in the blank. You ask questions, fill

- 1 in the blank.
- 2 Q And they teach you to put in all the things that you
- 3 think might be relevant, right?
- 4 A Yes, sir.
- 5 Q And do you try to do that when you fill out the
- 6 reports?
- 7 A The best I can.
- 8 Q All right. And of course, the description that was in
- 9 your report, they described to black males; didn't they?
- 10 A Yes, sir.
- 11 Q Okay. And we'll call subject one who was holding the
- 12 gun, 25 to 30 years of age, 6'3", approximately
- 13 250-pounds; is that right?
- 14 A Yes, sir.
- 15 Q Okay. Wearing a white T-shirt with black writing on
- 16 the front and blue jeans?
- 17 A Yes, sir.
- 18 Q All right. The other subject was a black male
- 19 approximately 19 to 21 years of age, 5'8, approximately
- 20 180 pounds; is that correct?
- 21 A Yes, sir.
- 22 Q Wearing a white T-shirt and blue jeans, all right. Was
- 23 that the description that those three men gave you?
- 24 A Yes, sir.
- 25 Q All right. Well, you heard Mr. Ward in here testifying

1 about how he threw his pants on and ran out and chased out
2 the parking lot and he identified that car. Did he ever
3 tell you that?

4 A No, sir, I was told that they had seen the vehicle
5 earlier that day and they had seen those two subjects in
6 the vehicle.

7 Q Okay, and in fact, it was Oberfrank who told you that
8 he had seen the vehicle earlier?

9 A Yes, sir.

10 Q Right?

11 A That's what my report states.

12 Q And when Oberfrank was explaining that to you I think
13 you said they were all three together, right?

14 A Yes, sir.

15 Q Okay, all right.

16 MR. MCLAUGHLIN: Beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 MR. MCLAUGHLIN: Thank you, Deputy. No further
19 questions.

20 THE COURT: Redirect.

21 **REDIRECT EXAMINATION**

22 BY MS. PARR:

23 Q Deputy McLaurin, you said all three of them were
24 talking to you at the same time as to what was occurring?

25 A Yes, sir -- yes, ma'am, sorry.

1 Q And but you just said -- you just put in there
2 Oberfrank; is that correct?

3 A Yes, ma'am, because he -- he was the main subject that
4 called. He was the person that called and he was the
5 subject I spoke to to begin with, and he was the one I
6 list as my complainant. He was the one that did the
7 majority of the talking for the three victims.

8 Q Okay. But all of them gave you information as to what
9 occurred?

10 A Yes, ma'am.

11 MS. PARR: Nothing further.

12 THE COURT: Recross.

13 MR. MCLAUGHLIN: Nothing, Your Honor.

14 THE COURT: You may step down.

15 Next witness please.

16 MS. PARR: Your Honor, we would call Doctor Dean L.
17 Shappell.

18 Your Honor, we would ask permission for the deputy
19 to be released from the subpoena.

20 MR. MCLAUGHLIN: No objection.

21 THE COURT: Have a good day.

22 THE DEPUTY CLERK OF COURT: Please place your left
23 hand on the Bible, raise your right hand.

24 WHEREUPON,

25 **DEAN L. SHAPPELL,**

1 having been duly sworn by the Deputy Clerk of Court,
2 testified as follows:

3 THE DEPUTY CLERK OF COURT: Please be seated, then
4 state your name for the record.

5 THE WITNESS: My name is Dean L. Shappell.

6 **DIRECT EXAMINATION**

7 BY MS. PARR:

8 Q Doctor Shappell, where are you from?

9 A I live in -- my mailing address Leesburg, Florida.

10 Q How long have you been in Leesburg, Florida?

11 A Since about November 28th of 2006.

12 Q Okay. And what's your occupation or --

13 A I'm still a licensed psychologist in the State of
14 Michigan, but my career was basically clinical psych and
15 forensic psych and I still return to Michigan to work at
16 outages at a nuclear plant.

17 Q Now do you consider yourself retired?

18 A Yes, ma'am.

19 MS. PARR: Someone's over there smiling about that.

20 THE COURT: Do you learn how to fish?

21 THE WITNESS: I'm learning, sir.

22 BY MS. PARR:

23 Q Now Doctor Shappell, what's your educational
24 background?

25 A Bachelor's and master's degree from Bowling Green

1 States, Ohio '62, '64. Ph.D., Ohio State University,
2 1969. Some postdoctoral and ongoing continuing ed over
3 the years.

4 Q Okay. And so what's your Ph.D. in?

5 A Psychology.

6 Q Now ---

7 THE COURT: Doctor Shappell, you kind of need to
8 speak up a little more, little more.

9 THE WITNESS: Yes, sir.

10 BY MS. PARR:

11 Q Now Doctor Shappell, let's go back to July 3rd,
12 July 4th of 2008. Would you please tell us where you
13 were?

14 A In Florence at the Super 8 Motel.

15 Q Okay, and where did you come from?

16 A I had driven -- left late in the afternoon from
17 Leesburg near my home south of Leesburg, and was driving
18 -- my destination was Cary, North Carolina. It was about
19 midnight, and I didn't want to wake up my friends at 3:00
20 in the morning so I stopped here.

21 Q Okay. Cary, North Carolina right outside of Raleigh?

22 A Yes, ma'am.

23 Q Okay. And so you stopped in Florence?

24 A Yes, ma'am.

25 Q Okay. Did you have reservations here in Florence?

1 A I did not.

2 Q And tell us about what time did you stop?

3 A It had to be a little before midnight because the
4 billing statement says July the 3rd so it had to be around
5 11:30, 11:45 p.m. I registered. I did not go into my
6 room. I went to Taco Bell to get something to eat. I say
7 across the river, I tried something; I'm not exactly sure.
8 And then I came back to the motel and was in the process,
9 when I say unloading my car, basically one piece of
10 luggage and one briefcase from the passenger side and
11 entered the room. I'm not sure if it was a key or plastic
12 key. And as I entered the room the door was wide open or
13 I entered. The door was open. My hands were both full.
14 Moved to the right to get ready to set it down on the
15 table. As I turned to close the door I was greeted by Mr.
16 Williams and Mr. Jordan.

17 Q Now was the light on in your room?

18 A Yes. I flipped it on. It was in the door jamb on the
19 left side.

20 Q Okay. And you said that you turned around and was
21 greeted by them?

22 A Well, I turned around to close the door and they were
23 in the room, both of them.

24 Q Okay. And what did you do?

25 A Well, I did whatever they told me to do at that time.

1 Mr. Jordan was primarily the spokesperson, and he didn't
2 have to take the briefcase from me. It was set in there
3 and that's what he went for, put it on the bed closest to
4 the bathroom, two double beds in the room. Started going
5 through the briefcase and throwing things and asked me
6 where my laptop was. Said I didn't have one, didn't have
7 it with me, didn't have one. And started asking
8 questions, go through my billfold, American Express Card,
9 Visa Card, U.S. Bank, and wanted the pin numbers from
10 those to get cash. I said I didn't know there are pin
11 numbers. I was not aware of them and did not know them.
12 I could not give them. Same question regarding the ATM.
13 I, of course, did know that pin number 'cause I used it;
14 but at this time I told him a little confused, a little
15 upset, and I really just, you know, couldn't get it. I
16 couldn't recall what it was.

17 Q Okay, let me stop you right there. You said that when
18 you turned around you were greeted by them. So exactly
19 how were you greeted?

20 A Greeted in the sense Mr. Williams had the gun pointed,
21 you know, at me and there wasn't any greeting. There was
22 no verbal greeting. It was just sort of a remark there,
23 you know, and they took it from there, both of them.

24 Q Okay.

25 THE COURT: Who had the gun?

1 **THE WITNESS: Mr. Williams, Shakeem Williams.**

2 **BY MS. PARR:**

3 **Q All right. And so after you saw the gun where was the**
4 **defendant Jordan standing?**

5 **A He — two double beds in the room. There was like a**
6 **little aisle there between the two beds at the end of that**
7 **nightstand, and he had thrown my briefcase on the second**
8 **bed closest to the bathroom, as opposed to the other bed**
9 **closest to the front window, and was going through my**
10 **briefcase.**

11 **Q Okay. Now I'm gonna show you pictures that have been**
12 **photos that have been entered into evidence as State's**
13 **Exhibit 9(a) through 9(e). Would you please review each**
14 **photo and identify them by exhibit numbers please and tell**
15 **us whether or not you recognize them and how you recognize**
16 **them and what is the picture a photo of.**

17 **A 9(a) I recognize as the front entrance of the hotel**
18 **where I had registered.**

19 **Q What's the name of that hotel?**

20 **A Super 9 Motel.**

21 **Q Okay.**

22 **A And it was there that I had returned after I was robbed**
23 **and Mr. Allen, I think, was the night clerk, desk clerk,**
24 **and telling what had happened and that's where I first met**
25 **Deputy Worsley.**

1 Q Okay.

2 A That's 9(a).

3 Q Yes.

4 A 9(b) is the Super 8 Hotel, motel. On the side, I think
5 it's the only side. I was on the first floor of room 121.

6 It's an exterior hotel, motel, of corridors. And here is
7 a picture photo of 121, 123. I was in room 121.

8 Q Okay.

9 A And that -- if that certainly -- is that the room for
10 sure? Basically it's the same layout, two double,
11 nightstand here, bathroom here, and the places where I say
12 I threw up -- or was going to put the luggage, you know,
13 normal spots usually tied to the wall and they're just
14 double beds.

15 Q Okay.

16 A And 9(e) is the wide angle shot of the same thing which
17 shows a refrigerator and microwave, place to put the
18 luggage, a TV, and the back wash basins and bathroom, just
19 the corner of the second bed where the briefcase had been
20 thrown. That's 9(e).

21 MS. PARR: Your Honor, the State would ask
22 permission to publish these.

23 THE COURT: Proceed.

24 THE WITNESS: Yes, it's...
25

1 BY MS. PARR:

2 Q That's State's Exhibit 9(a).

3 A Yes, front entrance.

4 Q Okay. And that's the — would you please tell us what
5 that is again.

6 A That's the front entrance of the hotel where you
7 registered and right where I first met Deputy Worsley.

8 Q Okay, if you would talk nice and loud for us.

9 A Yes, I'm sorry.

10 Q Okay.

11 A Front entrance of the hotel.

12 Q Okay. And State's Exhibit 9(b).

13 A The line of rooms barely two stories. I was on the
14 first story 121, include back there is like I just,
15 unmarked parking area at the very end of the, like the
16 corridor.

17 Q And where were you parked?

18 A I parked in front of my room. Probably 121, probably
19 the third or fourth door from the rear of the building.

20 Q Okay.

21 A And that's a picture of 121 and 123. That was my room,
22 121.

23 Q Okay.

24 A And that's a pretty good picture of the beds. And this
25 is about where I was when I deposited the briefcase and

1 the one piece of luggage and I turned around and the
2 gentlemen were inside the door approximately there. And
3 this is the bed that Mr. Jordan threw the briefcase up on
4 and started going through that. And then later the phone
5 was here; he pulled that out of the wall. And this is the
6 bathroom back here that I was put into. Mr. Williams
7 pretty well had me under the gun toward the -- this area
8 back here, the front of the wash basin.

9 Q Okay. Now and you said the lights were on?

10 A Yes, the lights would be -- excuse me. We were up here
11 and when you walked into the door they're's a light switch
12 there. Usually some kind of a switch or put your card in
13 turns the lights on, and it was just a switch.

14 Q And so you turned the lights on immediately.

15 A Yes, yeah, it was just ...

16 Q And how well lit was the room?

17 A It was adequate to see if I wanted to read that night.
18 I think -- well, this room here I don't recall I did any
19 reading. If I wanted to read something I would have
20 wanted a table light over here. This picture shows --
21 does not show a table light, and I don't recall that there
22 was one in there and I didn't do any reading--

23 Q Okay.

24 A --that night.

25 Q Now did you get a good view of the defendants?

1 A Yes, ma'am.

2 Q Okay. And were you able to give a description of them?

3 A I did, yes, to the deputy.

4 Q Okay. And would you please tell us what description or
5 please describe the defendants from that night?

6 A Shakeem Williams is the larger of the two gentlemen.

7 I'm 6'1" if I'm standing straight and he's a couple of

8 inches taller than. I am a good 40 pounds heavier and

9 thicker and bigger. And he had a white T-shirt on and the

10 lettering indicated something of his, his, or somebody's

11 graduating class of June or May of 2008. It was very easy

12 to read. Baggy jeans, dark jeans, they weren't any denim

13 or anything light.

14 Mr. Jordan on the other hand, white T-shirt and more

15 baggy jeans. Fairly tall, probably as tall as I am. And

16 I suggested his weight was around 170 to 180. I think

17 that's what I probably quoted to the deputy at that time.

18 Both had T-shirts, walking shoes, whatever you want to

19 call, canvas shoes.

20 Q Okay, all right. And did you get a good closeup view
21 of their face?

22 A Yes.

23 Q Okay.

24 A Yes.

25 Q And how long did you get to view them?

1 A I estimated — I would estimate five to ten minutes.
2 Looking at both of them it took me times trying to look —
3 well, to look a little bit more Mr. Williams. Mr. Jordan
4 that was a little further away, I really didn't want to
5 make too much eye contact with him because he was not too
6 happy with what he wasn't finding.

7 Q Okay. Now what do you mean he wasn't too happy with
8 what he wasn't —

9 A Well, he kept asking where's my laptop. I didn't have
10 a laptop with me, and I told him I don't have a laptop.
11 And then the issue with the two credit cards, the issue
12 with the ATM card. And then a third question is, do you
13 have any money in your vehicle. And I said I probably in
14 the console I put change there. I said probably a couple
15 of dollars. And each time his response to my response was
16 you'll pay if we find that you're not telling the truth.

17 Q And who made those comments?

18 A Mr. Jordan.

19 Q Okay. And so, and then what did they do? How — he
20 continued —

21 A He continued — he, Mr. Jordan, continued go
22 through the briefcase and at this moment I don't recall
23 that he ever touched my luggage. I don't recall him
24 doing it, but I recall picking up stuff all over the room
25 when they left and try to, you know, put my head and my —

1 so he had to go through it. It wasn't very thorough.

2 Like I said, he was looking for something big it seems to
3 me, like a laptop, which the luggage is not that big so he
4 came to the conclusion there was no laptop.

5 Q Now what, if anything, did they take from you?

6 A They took a new camera that had been used once, a
7 telephone, a cell phone, my billfold which included two
8 credit cards, ATM cards, professional cards, driver's
9 license, some medical information, cash. I had got --
10 taken \$180 dollars ATM in Claremont, Florida, my bank
11 Fifth Third and I know I paid cash to Taco Bell. So the
12 range of cash would be somewhere around 170-dollars, would
13 be 180. And then I did not report to Deputy Worsley they
14 took my watch. But as Deputy Worsley was driving me back
15 for the third time I looked and there was no watch; and I
16 said, oh, yes, they took my watch.

17 Q Okay. Now Mr. Shappell, Doctor Shappell, I'm going to
18 show you what has been entered into evidence as State's
19 Exhibit 3(a).

20 A Yes, ma'am.

21 Q Do you recognize this?

22 A If I can see the front of it.

23 Q Okay. If you'd talk nice and loud.

24 A Yes. I had an awfully good view of the front. And I
25 keep saying the front; I'm not sure if that's the

1 technical term. But it was either a little bit white here
2 or like stainless steel or because of it being fired. I
3 don't know if it was all black, but this is what I was
4 looking at and I would estimate it was a small bore
5 automatic. Could have been -- it could have been .22, .25
6 or .32 caliber and --

7 Q How close was that weapon to you?

8 A Very (indicating) -- very close. Mr. Williams pretty
9 well had me under hundred percent control with it.

10 Q Okay, all right. And I'm gonna show you what's been
11 entered into evidence as State's Exhibit Number, State's
12 Exhibit Number -- oh, Number 10. Do you recognize this?

13 A Yes. That's the inside, the interior of the, I call
14 get-away car, what turned out to be a Toyota Camry. And
15 that's my telephone in the back seat, and this is the
16 front seat and that's where the green camera was.

17 Q Okay. Now I'm gonna show you what's been entered into
18 evidence as State's Exhibit Number 11. Would you take a
19 look at that and tell us if you recognize it?

20 A That's my Samsung phone. Yes, it's mine.

21 Q Okay.

22 A And the battery is dead after 21 months.

23 Q Okay.

24 A If you put a battery in it you would get a couple of
25 photos of the interior of my house.

1 Q And State's Exhibit 12, do you recognize that?

2 A That's my ATM card and I'd asked Investigator Cox if I
3 could please have it so I could have some kind of money to
4 get home, and he said, yes, but keep it under lock and
5 key.

6 Q Okay.

7 A I've kept it and that's the same, same numbers.

8 Q All right. And I'll show you what's been entered into
9 evidence as State's Exhibit Number 13.

10 A Same as -- matches.

11 Q Okay. And State's Exhibit Number 14, do you recognize
12 this?

13 A Yes. Fuji camera, my camera. My first green camera.
14 I started losing black cameras and phones in my car so I
15 decided to get a green one and it, too, was barely used, a
16 couple of photos in it. And it's -- the battery obviously
17 is dead after 21 months but you would find some photos in
18 here.

19 Q Okay. And where was this recovered?

20 A Back seat -- front seat, excuse me.

21 Q I tell you what, I will show you what's been entered
22 into evidence as State's Exhibit 15(a) and 15(b). Can you
23 -- do you recognize those?

24 A Yeah, that's a camera. That's a back seat.

25 Q Now and whose camera is that?

1 A That's my camera, and at this point it looks like the
2 phone is there also.

3 Q Okay.

4 A I thought one was in the front one, was in the back.
5 Might have been moved; I don't know. Here they're both
6 side-by-side so another photo. Green camera. And the
7 black telephone.

8 Q All right.

9 MS. PARR: Your Honor, the State would ask
10 permission to publish those exhibits.

11 THE COURT: You may proceed.

12 BY MS. PARR:

13 Q And Doctor Shappell, if you would indicate where your
14 phone is in State's Exhibit 10. Can you see?

15 A It's a little hard to see, but I think it's right next
16 to the, whatever those materials are.

17 Q Okay, if you could use the pointer.

18 A Yeah, yeah. Should be right there. It is very
19 difficult to see. The jury can't see that.

20 Q Can you come down. If you can come down. The State
21 would ask permission for the witness to come down.

22 A (Witness complies.)

23 THE COURT: Yes, sir.

24 THE WITNESS: Oh, goodness gracious.

25 MS. PARR: If you would stand to this side.

1 **THE WITNESS:** Yes, up here, yeah. I was looking
2 over here. It's -- no, that's it. That's the phone.
3 **BY MS. PARR:**
4 **Q** And while you're standing there, State's Exhibit
5 Number 12.
6 **A** That's my ATM card, Fifth Third Bank.
7 **Q** Okay. And State Exhibit Number 15(a) and (b).
8 **A** Back to the car. Oh, there's the phone, excuse me.
9 **Q** Is that the phone or your camera?
10 **A** Thank you. That's the green camera. That's the Fuji
11 camera.
12 **Q** All right, you may have a seat. Now who took those
13 items from you?
14 **A** Pardon?
15 **Q** Who took your camera, your credit card, or your debit
16 cards and your cell phone?
17 **A** They weren't taken from me. They were in my briefcase
18 and they were taken from the briefcase.
19 **Q** Okay. And who took those?
20 **A** Mr. Jordan.
21 **Q** Okay. And where was Mr. Williams at the time?
22 **A** I was going to say I was under his control with the gun
23 to my back.
24 **Q** All right. Now you described what they were
25 wearing; is that correct --

1 A Yes, sir.

2 Q —earlier?

3 A Yes.

4 Q I'm gonna show you what's been entered into evidence as
5 State's Exhibit 5(a). Do you recognize this?

6 A I certainly do. That's the T-shirt that Mr. Shakeem
7 Williams had on, and it says senior 2008. I couldn't
8 remember the name of the high school. Well, it's not on
9 there. Seen there, been there, done it. That's the same
10 T-shirt he had at the mall when I I.D.'d him.

11 Q All right. And was this what he had on when he —

12 A Oh, yes.

13 Q —came to your room?

14 A Yes, ma'am, yes, definitely.

15 Q And State's Exhibit 5(b)?

16 A I would say that's Mr. Williams' jeans, trousers,
17 bottoms, whatever you want to refer to them as, dark.

18 Q And was this what he had on that night?

19 A Yes, best of my knowledge. Certainly they were dark
20 and they would have been large.

21 Q And State's Exhibit 6(a)?

22 A Mr. Jordan had a white T-shirt on. There was nothing
23 unusual about it. It wasn't — didn't appear to be dirty,
24 soiled. I see some soiling there. I don't know if that
25 was in there.

1 Q Was it a plain T-shirt?

2 A It was a plain white T-shirt, yes. No collar, no
3 nothing.

4 Q Okay.

5 A No lettering.

6 Q Okay, all right. And State's Exhibit 6(b)?

7 A That was a pair of dark jeans, trousers, bottoms, that
8 he was wearing yes, ma'am.

9 Q And you think he, "he who wearing"?

10 A Mr. Jordan, Mr. Jordan, I'm sorry.

11 Q Okay. Now do you see the defendant, one of the
12 defendants that robbed you that night in the courtroom?

13 A I do.

14 Q Identify him?

15 A Yes, sitting beside his defense counsel with the bluish
16 shirt and the striped tie.

17 Q Okay. And would you point him out please?

18 A Yes (indicating). Standing beside attorney McLaughlin
19 or sitting beside him.

20 Q Okay.

21 MS. PARR: Your Honor, would the record reflect
22 that the witness has identified Mr. Jordan as —

23 THE COURT: The record will show the identification
24 of the defendant.

25 MR. MCLAUGHLIN: Just our previous objection.

1 **THE COURT:** And the previous objection is reserved
2 and protected. My prior ruling is in tact and remains
3 with full efficacy.

4 **MS. PARR:** Okay.

5 **BY MS. PARR:**

6 **Q** Now Doctor Shappell, now after you were robbed exactly
7 what did you do?

8 **A** The first thing I did was get a pair of cutoffs on. I
9 mean, that's all I was wearing and was no reason to use
10 the phone. I wasn't even going to waste the time. It had
11 been unplugged. I didn't know if it had been, you know,
12 damaged. I went to the front desk, walked outside and
13 went to the front desk.

14 **Q** Okay, one question I forgot to ask you. You said you
15 grabbed a pair of cutoffs. Tell me how was it that you
16 didn't have any pants on?

17 **A** Well, because I was instructed to undress outside the
18 bath-- the bathroom incidentally, that hotel was a toilet
19 and tub. The basin was outside as you can see from the
20 photos. I was told to undress outside the bathroom.

21 Mr. Jordan and Mr. Williams seconded that motion, and I
22 followed. I did what I was told to do.

23 **Q** And so, and you took your clothes off. What did you do
24 with your clothes?

25 **A** What'd they do with my clothes? Threw them around

1 pitched them around the room.

2 Q Okay, so when you took your clothes off you gave it to
3 the defendant?

4 A I didn't give it. I just dropped them, you know, on
5 the floor.

6 Q All right. And then where did you go after you —

7 A I was told to get in the bathroom and told to get
8 inside the tub.

9 Q Okay. And did you get inside?

10 A I certainly did.

11 Q All right.

12 A Best I could. It's about a five foot tub and it's not
13 very high but I did everything I could to try to get
14 below the top of it. Probably made out some kind of
15 plastic but I thought I was going to get shot at that
16 point.

17 Q Okay. And was the door open or closed?

18 A Oh, they closed it.

19 Q All right. And what did they tell you about being in
20 the bathroom?

21 A I don't know what — Mr. Williams probably said
22 something about, you know, get in there. And I don't know
23 if he said stay in there. I don't know if he said stay in
24 there five minutes, but I wasn't about to challenge him as
25 to the length or duration or whatever. I stayed in there

1 probably a long five to ten minutes. It might have been
2 shorter. It seemed a little long. It's not very -- when
3 I say not very comfortable, given the circumstances.

4 Q Okay. And so at what point did you leave the bathroom?

5 A I finally opened the door and sort of looked around the
6 corner and I didn't see anything and the door was closed,
7 they were gone. That was it.

8 Q Okay. And so was it at that point you grabbed some
9 cutoffs you said?

10 A Yes.

11 Q Okay. And did you drive to the front desk?

12 A Oh, no, I walked in. When the deputy arrived I had no
13 shirt on. I had no shoes and pair of cutoffs. I was not
14 very well attired.

15 Q Okay. And so you were -- and so you met them at the
16 --

17 A Met him.

18 Q --front desk?

19 A Met the deputy.

20 Q Okay. And then what did you do?

21 A He drove the squad car down the driveway and I walked
22 back to the room and he came in the room, and you know,
23 started the interview.

24 Q Okay. And so at that time you were able to give a
25 description?

1 A Off?

2 Q The defendants?

3 A Yes.

4 Q Okay. And that was with Deputy Worsley; is that
5 correct?

6 A Yes, ma'am.

7 Q Okay. And how many times did you talk with Deputy
8 Worsley?

9 A Well, talked with an — I had three contacts with him.
10 We verbalized on all three occasions.

11 Q And all of them were that night; is that correct?

12 A That morning.

13 Q That morning?

14 A Uh-huh.

15 Q All right. When was the second occasion you talked
16 with him?

17 A Second occasion was around 3:00. I'm sure he would
18 have that accurately. He came back into the room. He
19 must have — I'm sure he knocked and said Worsley or
20 something, Deputy Worsley. I opened the door. He came
21 in. There were two other deputies. When I say with him
22 who came in, one was taller than the other. It's not very
23 good — they didn't take part in the interview and I think
24 that they drove. So I think there were three squad cars
25 out there; I know there were two. And but I think each of

1 the deputies drove their own car, and I didn't really know
2 the particular purpose or their role or their experience
3 at that time.

4 Q Okay. And what, if anything, did Deputy Worsley do at
5 that time when he came back?

6 A At that time he instructed me to get a hold of American
7 Express, which I did, and they, you know, qualified me
8 that that's who I was. And I said I'd been -- I
9 previously had told her I was robbed so I didn't have to
10 go through any great detail. And gave the phone to the
11 deputy who wanted to find out where these charges had been
12 made. He was obviously aware of the community; I wasn't.
13 And he wanted to write down or they gave him the five
14 charges. There were five charges on the American Express
15 Card. Why the Visa wasn't used, I don't know.

16 Q Okay. And do you know where those charges were used?

17 A They were all in Darl-- they all had Darlington on my
18 American Express. Sometimes that doesn't tell you
19 exactly. But the first three were in Darlington, I think,
20 they were Racetrack. They were all for gasoline,
21 60-dollars, 50-dollars, and some odd pennies. 60, 50 and
22 40. So there were three charges. Another was some place,
23 Darlington, also some general merchandise, and that was
24 like 30 and 28-dollars or something like that.

25 Q Okay. And how long did Deputy Worsley stay at that

1 time, if you recall?

2 A Well, because he was on the phone and everything I
3 think went smoothly with the American Express, I'd say
4 probably no more than ten minutes. That was his focus.
5 That's what he wanted to do; that's what he got done.
6 They left. All three of the deputies left I believe
7 almost the same time.

8 Q Okay.

9 A Deputy Worsley might have left last only because the
10 other two went to their cars, and they were parked out
11 front on the, I call it the driveway.

12 Q Okay, and then you said you saw Deputy Worsley a third
13 time?

14 A A third time around -- not sure of the time 4:30, 5.
15 He came back, knocked on the door, said Deputy Worsley.
16 You know, I knew his voice. I opened the door and he says
17 I think we got them. And at that time I don't think that
18 he verbally instructed me to get in the car but obviously
19 something along those lines. And I probably put a T-shirt
20 on at that time and got in the squad car. And I didn't
21 know where we were going, but we went out here to the --
22 now I know where the motel is and IHOP is.

23 Q Okay. And you went out -- you rode with Deputy
24 Worsley?

25 A Yes, yes.

1 Q Where were you seated in Deputy Worsley's vehicle?

2 A I thought I was in the front seat. He says the rear.

3 If he wrote it down in his memory that evening might have
4 been a little better than mine.

5 Q But you were in his vehicle; is that right?

6 A I was in his vehicle, yes. He was the driver.

7 Q And where did you go?

8 A We went to the mall, Magnolia Mall, all right. I
9 didn't ask the name or anything and we got there and all
10 the lights were on in the parking lot and there were
11 police cars all over the place. And then I saw the four
12 men and there was the city of Florence police car there
13 and the rest were deputies. I think there was an unmarked
14 car so forth and so on. Lights were on those cars. And
15 it was really quite a scene, really.

16 Q Okay. And who did you see other than the deputies
17 there when you arrived?

18 A Probably the first person I saw, which I now know was
19 Mr. Lewis Williams. I didn't know his name. He was
20 sitting on the ground. He was cuffed and seemed to be
21 taking it in stride.

22 Q Okay.

23 A Saw him, saw another man. I said -- I never -- told
24 deputy I don't know who he is; I never saw him. And the
25 next person I saw I think was Johnny Johnson. I didn't

1 know his name. I said never seen him again. And then the
2 other gentleman, Mr. Jordan, was apparently walking. I
3 don't know — I think it was Mr. Jordan was walking a
4 short distance under the guidance of a deputy. I'm not
5 sure exactly where he had been, where he was going. And
6 the same thing with Mr. Williams. I mean, I didn't know
7 any names. I was, you know, remembering who they were and
8 I — and then deputy, like, took like a half circle around
9 the parking lot so I would be able to come up and see
10 these two gentlemen. They didn't have good shot at me.
11 They had a good shot at seeing the deputy, but he sort of
12 like protected me. And I said that's him, that's him,
13 referring to Mr. Jordan and to Mr. Shakeem Williams.

14 Q And was that — was there any doubt in your mind that
15 those were the two persons who had robbed you that night?

16 A No doubt, none.

17 Q Now after you identified the defendant, Tarrence Jordan
18 and Shakeem Williams, did you have an occasion to go to a
19 Toyota vehicle?

20 A Yes. I'm not positive there — I said there was so
21 many police officers there. It seems to me that police
22 officer — I hope I have the right rank right, was a
23 sergeant, a deputy sergeant, that seemed to escort me to
24 the Toyota that was sitting there. And the front seat and
25 the camera and the telephone; and for what reason, I don't

1 know, he opened the trunk. And I looked. I said none of
2 my stuff, no luggage, no billfold, no nothing.

3 Q Okay. Did you see your camera and telephone?

4 A Yes, I did.

5 Q Okay. Now were you subsequently given your debit card,
6 your JEANIE?

7 A Seems to me that Investigator Russell Cox gave me that
8 ATM, that he had -- he had, or one of the officers had
9 taken from the person's body, one of these two men, I
10 don't know which one. And I sort of at that point I asked
11 could I have my card back, I sort of need it, and he --
12 later, I'm not sure how he did it, made a copy of the card
13 and gave it back to me. I'm not sure exactly how fast he
14 did that but I went home with the ATM card.

15 Q Doctor Shappell, would you please answer any questions
16 Mr. McLaurin will have -- let me ask you one other. How
17 was the lighting at the mall parking lot when --

18 A It was like daytime. I mean, they -- all of the
19 parking lights were on. It seemed like even the store
20 lights were on. I'm sure they have some kind of night
21 light. But it was, like I said, we had driven back, I
22 don't know on which expressway, and all of a sudden it
23 was like daylight.

24 Q Would you please any questions Mr. McLaurin might have.

25 MR. MCCLAUGHLIN: May it please the Court.

1 THE COURT: Yes, sir.

2 **CROSS-EXAMINATION**

3 BY MS. PARR:

4 Q Mr. Shappell, we got a chance to meet a little bit
5 yesterday with some pretrial stuff. Once again I'd like
6 to apologize for you having to come back up here. And I'm
7 sorry for what happened to you. Having said that I need
8 to ask you some more questions like we went through
9 yesterday. And I realize I'm gonna be asking you some
10 questions about things that happened in the past and, you
11 know, if you don't know or can't recall, that's perfectly
12 acceptable. Fair enough?

13 A Yes.

14 Q Okay. Is it fair to say that your description of the
15 two men that came into your room to Deputy Worsley was
16 fairly generic, body type description, and then a clothing
17 description?

18 A Well, I think you need to elaborate what do you mean by
19 generic. I didn't know the style of the jeans or Levis,
20 the make of the T-shirts or anything like that, nor the
21 make of the tennis shoes, or as I said, canvas shoes,
22 whatever you want to call it.

23 Q Well, let me ask you this. In his report Deputy
24 Worsley has recorded that subject one was wearing a white
25 in color T-shirt. He was large build and had the words

1 seniors 2008 printed on the T-shirt inside some kind of
2 block.

3 A Yes.

4 Q Okay. And then subject two he has down, subject two
5 was small build and was wearing a white in color T-shirt
6 and baggy jeans?

7 A I don't know what the report says. If I said small or
8 smaller, he certainly was smaller than Shakeem Williams.

9 Q Yes, sir, I understand. So small build could be in
10 relation to the other fellow?

11 A That's correct.

12 Q Fair enough?

13 A Yes.

14 Q Those descriptions, I mean, is that what you told
15 Worsley?

16 A I would say that's pretty accurate, yes.

17 Q Okay, all right. Would you agree with me that what
18 we're describing there is somewhat general characteristics
19 of a body build and then somewhat outside of the lettering
20 on the seniors 2008 —

21 A Yeah.

22 Q —we're talking about —

23 A No, I wouldn't consider generic at all.

24 Q All right, well.

25 A Not the white T-shirt with Mr. Williams.

1 Q And that's -- yes, sir, that's what I'm saying. That
2 was specific obviously.

3 A Yes, sir.

4 Q The stuff about that T-shirt was specific, but in fact,
5 I think when Ms. Parr showed you the other white T-shirt,
6 the plain white T-shirt, I think you kind of specifically
7 said, well, it was a white shirt.

8 A A white T-shirt. I have no way of knowing if that was
9 the T-shirt that actually reflected his body chemistry,
10 after 21 months especially.

11 Q All right. It was Mr. Williams who instructed you to
12 undress; wasn't it?

13 A Yes, on the basis, as I said, the orders were pretty
14 much coming from Mr. Jordan; but yes, he's the one that
15 carried it out, verbalized it, and then carried it out.

16 Q All right. And in fact, I think you told us yesterday
17 that Mr. Williams touched you when you weren't moving fast
18 enough?

19 A He touched me; and I said, you know, I knew that I
20 wasn't moving fast enough, yes.

21 Q Okay. Well, you told me yesterday that you were pretty
22 confused and pretty upset after this.

23 A I don't know when I said that. I did say something to
24 that effect regarding recollection of the ATM I.D. number,
25 pin number.

1 Q In fact, after these events, when you walked out to the
2 — you put on your cutoffs and you went outside, you
3 walked down to the front office. Did you pass anybody on
4 your way to the front office?

5 A At that time, no.

6 Q Okay. And when you got to the front office it was the
7 fellow up at the front office that called 9-1-1; wasn't
8 it?

9 A The person that had registered me 11:30, 11:45 the
10 previous night or July 3rd, yes. Mr. Allen I believe was
11 his name.

12 Q All right. In fact, yesterday you told me you weren't
13 really sure where you were to — when you called 9-1-1.
14 In other words, you wouldn't have known where to tell them
15 where you were at.

16 A No. If you would have said are you in the county, are
17 you in the township, are you in the city, no, I would not
18 have known.

19 Q Okay, all right. Ms. Parr asked you on direct examine
20 if you got a good opportunity to look at these two
21 subjects?

22 A Yes.

23 Q All right. And you said total time somewhere five to
24 ten minutes.

25 A Yes.

1 Q Isn't that right? All right. Then at this entire
2 affair from the time they walked into your room to when
3 you walked out and went down there to call, didn't that
4 take about five to ten minutes?

5 A I said the entire incident from start to finish
6 approximately five to ten minutes.

7 Q So you're not telling the jury that you got five to ten
8 minutes worth of viewing of Mr. Jordan?

9 A I'm saying---

10 Q Or of Mr. Williams?

11 A Well, I see that as a couple of questions. I said the
12 entire incident took between five and ten minutes. So
13 during that time I didn't divide it up as to how many
14 seconds I looked at one and how many. I said three at the
15 time. I had my eyes on both of them. A little bit more
16 than Mr. Williams who seemed pretty calm and I was a
17 little more pleased that he was a little more calm with
18 the automatic to my back.

19 Q Okay. How long did Deputy Worsley stay at your room
20 that first time he came?

21 A I don't know exactly, but I would estimate -- first of
22 all, in my room maybe ten minutes. He then interviewed
23 the gentleman in 123 outside the room between the two
24 doors. And you can add another five to ten minutes but I
25 wasn't a part of that.

1 Q Okay. And then he left?

2 A He did.

3 Q All right. Was anybody else with him that first visit?

4 A No.

5 Q All right. He gave you a business card or something
6 with a case number on it?

7 A No.

8 Q He did not at that time?

9 A No.

10 Q Okay. Well, what did he tell you?

11 A Told me they were going to investigate it, you know,
12 let me know. I didn't ask for a file number.

13 Q All right. Well, did you think they were coming back
14 after they left that first time?

15 A At that particular time I had no idea. I mean, if you
16 don't catch them you're probably not going to come back.
17 I had no idea what was going on. I wasn't going any
18 place.

19 Q Okay. You were going to be there for a while?

20 A Yes, ma'am -- yes, sir.

21 Q How long were you planning on staying?

22 A Sir, I had driven from Florida about a seven hour
23 drive. I'd gone through this incident. I laid down on
24 the bed and I'm sure I dozed some period of time, and I
25 was not about to leave at 4:00 in the morning and ride

1 with my friends at six. I mean, it defeated the whole
2 purpose.

3 Q Yes, sir, I understand. And then Deputy Worsley came
4 back at what time?

5 A I said around 3:00.

6 Q All right. And when he came back at three there were
7 two other deputies with him?

8 A They came into the room, yes, right.

9 Q Okay. Do you remember when you testified yesterday
10 whether or not you said there was two people with Deputy
11 Worsley?

12 A I never said they were with him. I said Deputy Worsley
13 had knocked on the door, had come in. He started talking
14 to me and the door was open. A taller deputy walked in, a
15 shorter deputy walked in, and they never asked me any real
16 specific questions especially while Deputy Worsley was on
17 the phone. He was — I don't like the word chit-chat, but
18 they were not asking any specific questions of me.

19 Q Okay, all right. But that didn't come out in your
20 testimony yesterday, did it?

21 A I believe it did.

22 Q How long was Worsley there?

23 A Same thing I said yesterday, probably five to ten
24 minutes. It could be a little bit longer with his — the
25 fact he was on the phone with American Express. But he

1 knew -- he asked these questions. They gave him the
2 information without any delay.

3 Q Okay.

4 A And he wrote it down.

5 Q Okay. When he left that second time did he give you
6 any information, business card with a case number on it,
7 or anything like that?

8 A Not to my knowledge.

9 Q Okay, all right. And then he came back about 5:00?

10 A Yes, sir.

11 Q All right. And what was it that he told you when he
12 came back?

13 A Knocked on the door. Deputy Worsley opened the door,
14 said I think we got them. I put on a T-shirt at that time
15 and followed him into the patrol car.

16 Q All right. And when you got to the patrol car
17 yesterday you said you were seated in the front.

18 A I thought I was.

19 Q Okay. But Deputy Worsley yesterday said, no, he was in
20 the back and you're willing to defer to Deputy Worsley on
21 that?

22 A I am. It may be the policy that's set in the back so,
23 you know, he's so better qualified to answer that than I
24 am.

25 Q I understand. And then you rode over to the mall?

1 A Yes.

2 Q All right. And I think yesterday you told me it seemed
3 like it took a while to get there but you not knowing
4 Florence you don't know how long —

5 A I don't know where I was staying exactly and where we
6 were going. And if he had told me where we were going it
7 wouldn't have meant anything to me.

8 Q Yes, sir.

9 A You know.

10 Q And it was nighttime when this was going on, right?

11 A Yes, as I said, you know, we're 5:00, this is July, so,
12 you know, it was basically dark.

13 Q And then you got — when you got over to the mall you
14 described to the jury basically that Deputy Worsley kind
15 of drove you around.

16 A No.

17 Q Okay, I'm sorry, please explain it to me.

18 A You told me what?

19 Q Well, when — the way you viewed the suspect, how was
20 that?

21 A He drove me into the parked area, I'm not saying that
22 he checked in with supervisors or with Investigator Cox at
23 that time, all right. But it was sort of like he made
24 contact, I got Shappell in the car, I got the victim in
25 the car. What he said, I don't remember. After I looked

1 at the two people that I said I don't know and I never
2 seen them, he then made -- went back into the parking lot,
3 made like a half circle, came around in such a way that I
4 could see the two men at two different locations. They
5 couldn't see me. Does that help? Yep, yep.

6 Q All right. So the two men and two different locations.

7 A Yes.

8 Q That would be one man and one man or two men and two
9 men?

10 A One man and one man. All four were different locations
11 within the same general area. They weren't going any
12 place but they were not together. They were not talking
13 to each other.

14 Q Okay. And you recall what color shirt Mr. Lewis
15 Williams had on?

16 A No. All I remember is him sitting on the ground, and I
17 sat taking it all in and I have no idea how tall. He
18 looked big but I had no idea how tall he was or anything
19 else along those lines.

20 Q All right. How about Mr. Johnny Johnson, do you recall
21 what he had on?

22 A He had some kind of jeans, dark jeans, and I'd say
23 multicolored T-shirt, different colors horizontal layers
24 like. And I do believe -- I'm not sure if I'm saying it
25 accurately -- somebody's hair was long and braided. I say

1 braided; I don't know if that's a technical term.

2 Q And then what did Mr. Shakeem Williams have on?

3 A Shakeem Williams had the same outfit on that Solicitor
4 Parr has shown, the same T-shirt, same outfit that he had
5 on in the motel room.

6 Q And then Mr. Jordan had on a white T-shirt and dark
7 jeans?

8 A Same thing, yes, same that he had on in the motel room.

9 Q All right. Now when Mr. — or Deputy Worsley came to
10 your room, told you I think we got them —

11 A Uh-huh.

12 Q —and you got in the car and rode with him —

13 A Uh-huh.

14 Q —from the Super 8 Motel to the mall, Magnolia Mall.

15 A Yes.

16 Q What did y'all talk about on the way over there?

17 A We didn't really talk much about anything. He was
18 driving and radio was on and I don't think returned any
19 calls or anything at that time. And he was focused and it
20 was up to him to ask me questions if he wanted so he
21 didn't.

22 Q All right. Did you ask him any questions?

23 A No, sir.

24 Q You weren't curious to know where you were going?

25 A It's not curious. He's a deputy sheriff. He said, I

1 think we got them. He's driving me someplace. I have to
2 start trusting somebody; I trusted him.

3 Q Yes, sir. You weren't curious to know how they got
4 them?

5 A All I'm looking at is the fact that they were there. I
6 was quite pleased that they had -- they were gotten. They
7 had been identified. They were in cuffs. Curiosity at
8 that point later I was told -- when I say bits and pieces
9 different people told different things but certainly not
10 curiosity.

11 Q Well, at one point didn't somebody talk to you about an
12 identification of the car?

13 A People didn't talk to me too much about the
14 identification of the car because I, even though I had
15 seen it parked back there I had no idea what kind of car
16 it was, never got into that. I was later told what kind
17 of car it was. The gentleman in 123 had identified it as
18 a Toyota Camry, '85, burgundy reddish with a damaged
19 front. I wouldn't have known it was a Toyota or a Camry
20 if it was set in front of me. So I didn't see the car up
21 close until the deputy, or the sergeant -- I left the
22 deputy, got out of the car with the sheriff, the sergeant,
23 and looked in the car, that's my phone, that's my camera.

24 Q Okay, didn't yesterday you tell me you used the phrase
25 that someone had identified the car perfectly?

1 A I thought it was pretty accurate. Certainly I couldn't
2 have done that.

3 Q Okay. Somebody had told you that —

4 A You use —

5 Q —is what you told me yesterday.

6 A They didn't use the word perfectly. That was my
7 adverb.

8 Q Okay. But at some point somebody had relayed to you
9 information that the car had been identified?

10 A And they found the car.

11 Q Okay, and you don't — when was that? When did
12 somebody tell you that?

13 A When you see the car sitting there, and then I don't
14 think it was Deputy Worsley — I don't want to name anyone
15 — but I had more communication with Investigator Cox.

16 Q And I understand that if you don't recall when it was
17 told or who told you I understand.

18 A Yes, I had contact with the deputy, sergeant, sheriff
19 there. I'm sorry, I don't recall his name. With Deputy
20 Worsley, I recall his name. And I recall Russell Cox's
21 name and so forth.

22 Q How close did Deputy Worsley drive you? How far away
23 were the suspects when you were driven around?

24 A As close as to myself and the judge right now.

25 Q Okay. Mr. Shappell, you are a psychologist?

1 A Licensed psychologist in the state of Michigan.

2 Q All right. What is psychology?

3 A You know, that's a study of human behavior with all
4 different aspects, specializations under the
5 classification of psychology. We're licensed on the basis
6 of our training and pretty well function within the
7 guidelines of our specialty.

8 Q So is it fair to say perception, human perception, is
9 an important part of the study of psychology?

10 A It's studied by psychologists. Research is done
11 regarding perception, yes.

12 Q Yes, sir. And you practiced psychology for how long?

13 A Well, that's a pretty hard question. As far as a
14 licensed psychologist since 1973.

15 Q What do you do as a psychologist? What...

16 A You're asking me what my practice was when I retired,
17 what my practice has been over the years?

18 Q Well how does -- I apologize, I asked that poorly. All
19 right. What's the purpose of a psychologist? What
20 benefit does it give us?

21 A In my practice? I can only answer in my practice.

22 Q Yes, sir.

23 MS. PARR: Your Honor, I would object. That's not
24 relevant.

25 THE COURT: Counsel, we're going far-field now. I

1 just don't see the relevance of this at this point in
2 terms of the general field of psychology. I mean, that --
3 I understand you have broad latitude in regard to
4 cross-examination query but what is the relevance of the
5 general field of psychology?

6 MR. MCLAUGHLIN: Well, I'd like to hear
7 Mr. Shappell's definition of it, and then Your Honor,
8 maybe that's the end of the query. It depends on what he
9 understands it to be I believe.

10 THE COURT: All right, let's go with one query.

11 MR. MCLAUGHLIN: All right.

12 BY MR. MCLAUGHLIN:

13 Q And again, what was the -- what's the benefit of
14 psychology to people?

15 A I guess that depends on the situation. If you want to
16 benefit you're talking resolve marital difficulties, to
17 establish criminal responsibility, civil commitment,
18 vocational rehab, disability determination, driver
19 license, right to have your license back, restored, worker
20 fitness. I'm calling theories within my, my field. And
21 most people say psychotherapy. My partner did most of
22 psychotherapy and I did virtually all evaluations. It's
23 really hard to mix them and it's hard to do court work
24 when you have people -- you're counseling constantly in
25 your office psychotherapy, people don't come, and I don't

1 blame them. So that's my experiences. Next psychologist
2 will give you different experiences.

3 Q Does it do -- you ever -- would you say it deals with
4 memory?

5 A Memory is involved, yes, especially in neuropsychology.
6 That's once of the principles that you're looking at.
7 You're looking at a stroke victim, head injury, closed
8 head injury, open head injury, you know, memory, speech,
9 tension, impulse control, cognition, emotion.

10 Q As part of your practice have you ever had to help
11 people with their memory?

12 MS. PARR: Your Honor, I would object. I don't see
13 the relevance of any of this. I would ask the Court for a
14 ruling on it.

15 THE COURT: Despite the broad latitude I simply
16 sustain the objection, Counsel. We've just got to move
17 on. Objection sustained.

18 MR. MCLAUGHLIN: Thank you, Your Honor.

19 BY MR. MCLAUGHLIN:

20 Q Have you ever forgot anything, Mr. Shappell?

21 A Definitely.

22 Q You ever been mistaken?

23 A Yes.

24 Q Have you ever believed wholeheartedly something to be
25 true that wasn't?

1 A You mean by somebody else's behavior?

2 Q Anything?

3 A Investment — if you make an investment and you think
4 that you made the right investment and then things don't
5 always turn out to be so right. So I made those and —
6 many of those decisions as a non-psychologist. It's
7 pretty hard to separate.

8 Q And I'm sorry, let me clarify.

9 A Please do.

10 Q I'm not asking you just as a psychologist?

11 A Okay.

12 Q These questions are about you. Just as a human being.

13 A Definitely.

14 Q A gentleman who has lived a full life, done a lot of
15 things. You ever firmly believe something to be so and
16 you found out that it wasn't?

17 A Definitely.

18 Q And when Deputy Worsley drove you off to the IHOP
19 parking lot was there any other person that you were shown
20 that would have fit the description that you had gave law
21 enforcement other than Mr. Jordan?

22 A Break the question down, maybe drop out Deputy Worsley
23 to shorten up the sentence.

24 Q Yes, sir, I'm sorry. They took you?

25 A They?

1 Q The cops?

2 A Deputy Worsley took me.

3 Q Deputy Worsley brought you over —

4 A Yes, sir.

5 Q —to identify someone?

6 A Yes, sir.

7 Q All right, there were four individuals.

8 A Yes, sir.

9 Q All right. You had given a description of two
10 individuals who robbed you?

11 A Yes, sir.

12 Q Okay. Was there anyone other than Mr. Jordan who would
13 have fit the description that you had given Deputy
14 Worsley?

15 A Of those four?

16 Q Yes, sir.

17 A No.

18 Q And when you say that there was no one that fit, no one
19 other than Mr. Jordan that would have fit that
20 description, we're basing that off of what?

21 A You're using my answer for your question. I said there
22 was four people there. I identified two. I don't know
23 them, never saw them. Two identified. Those are the two
24 gentlemen that were in my room. Those are the two
25 gentleman that robbed me. Those are the two gentleman

1 that threatened me.

2 Q And as far as the description of Mr. Jordan went, he
3 was the only one who would have fit that description?

4 MS. PARR: Your Honor, I think that's asked and
5 answered.

6 THE COURT: All right, let him answer that, then
7 we're moving on.

8 THE WITNESS: Your question again briefly.

9 BY MR. MCLAUGHLIN:

10 Q Out of the four individuals that were there, Mr. Jordan
11 was the only one who fit your description for that other
12 suspect?

13 A Yes, sir.

14 Q Okay.

15 MR. MCLAUGHLIN: Beg the Court's indulgence.

16 THE COURT: Yes, sir.

17 MR. MCLAUGHLIN: Thank you, Mr. Shappell. I
18 appreciate it.

19 THE COURT: Redirect.

20 MS. PARR: Nothing further for this witness, Your
21 Honor.

22 THE COURT: You may step down.

23 Jurors, we're going to take a recess here now. Let
24 me explain to you the procedure this afternoon. Last week
25 I agreed to take two guilty pleas in two major cases with

1 the lawyers coming from out of town. Both lawyers are
2 coming from different towns in the state, and we agreed to
3 do that around four. So when you come back I'm going to
4 run till around that time, but I must stop at that time
5 because I agreed to have these out of town people come in
6 around four so that's what the schedule will be this
7 afternoon. Let's take a recess here now.

8 (WHEREUPON, the jury was removed from the
9 courtroom at 2:24 p.m., and a break was taken from the
10 proceedings.)

11 (WHEREUPON, the jury was returned to the courtroom
12 at approximately 2:40 p.m., and the following proceedings
13 commenced in open court.)

14 THE COURT: Next witness please.

15 MS. PARR: Your Honor, at this time we would call
16 Deputy Worsley to the stand.

17 DEPUTY CLERK OF COURT: Please place your left
18 hand on the Bible and raise your right hand.

19 WHEREUPON,

20 ALVIN KEITH WORSLEY,
21 having been duly sworn by the Deputy Clerk of Court,
22 testified as follows:

23 THE DEPUTY CLERK OF COURT: Please be seated, then
24 state your name for the record.

25 THE WITNESS: Alvin Keith Worsley.

DIRECT EXAMINATION

1
2 BY MS. PARR:

3 Q Deputy Worsley, where are you employed?

4 A Florence County Sheriff's Office.

5 Q And how long have you been with the Florence County
6 Sheriff's Office?

7 A Approximately two-and-a-half years.

8 Q Okay. Did you have any prior law enforcement
9 experience?

10 A Bennettsville Police Department, South Carolina
11 Department of Corrections, FCI Bennettsville Department of
12 Corrections.

13 Q And how long have you been in law enforcement?

14 A Since 1997.

15 Q Okay. So roughly 13 years?

16 A Yes, ma'am.

17 Q And what are your duties with the Florence County
18 Sheriff's Office?

19 A Patrol officer on the shift, answer calls, write
20 reports, monitor, track.

21 Q And are you a certified law enforcement officer?

22 A Yes, I am.

23 Q Now I see you're dressed in a different uniform. Who
24 else are you employed with?

25 A South Carolina Army National Guard.

1 Q Okay. And are you on —

2 A Active duty status right now.

3 Q For your two weeks training?

4 A Yes, ma'am.

5 Q Now on July 4th, 2008, did you have an occasion to

6 respond to a call at the Super 8 Motel?

7 A Yes, ma'am. I was dispatched to the Super 8 Motel on

8 Lucas Street in reference to an armed robbery.

9 Q Okay. And do you recall what time you responded?

10 A The dispatch time was 01:33. I arrived on scene at

11 01:35.

12 Q Okay. And what did you find upon arriving?

13 A I made contact with Mr. Shappell, front of the

14 building. Then I drove around to his room 121, and he

15 went to tell me what happened.

16 Q Okay. And then — and what did you as a result of him

17 telling you what happened?

18 A Oh, I got my report pad. I start taking notes. I made

19 contact with him. He advised two black men, gave me a

20 description of one large build, one small in comparison to

21 the other one.

22 Q Okay.

23 A And then went on —

24 Q Can you describe what they had on?

25 A Yes, ma'am. The larger fellow he described had a

1 senior shirt on, senior 2008, dark jeans. The other
2 subject, smaller build, white T-shirt, baggy jeans.

3 Q Okay. And go on.

4 A I also made contact with the person in the room beside
5 him, Mr. Gary Nowell, the one in 123. And he advised that
6 he had seen four black men inside of a dark vehicle with
7 front-end damage but two was inside. Then he went inside
8 his room; he didn't see anything.

9 Q Okay. And so you got a car description from Mr.?

10 A Nowell, Gary Nowell.

11 Q Mr. Nowell, okay. And what else did you determine?

12 A Mr. Shappell stated that there -- the one subject
13 advised him to go towards the bathroom. I'm not sure in
14 the bathroom, outside the bathroom, to undress while
15 another subject and ran around the room with his things,
16 took his camera, phone, wallet, and but the subject that I
17 think had the small handgun on him was the larger guy, the
18 larger of the two.

19 Q Now after you got the description from, of the
20 subjects, from Mr. -- from Doctor Shappell, was -- did you
21 then go next door and saw the other person?

22 A I did.

23 Q Okay. And then you got a description of the vehicle?

24 A Of the vehicle, yes, ma'am.

25 Q Okay. And then what did you do after that?

1 A I think I made contact with Deputy McLaurin and he give
2 a description of the vehicle that I had in my armed
3 robbery 'cause he had just had one at the Americas Value
4 Inn and I said I was —

5 THE COURT: Deputy, Deputy, you got to speak a
6 little slower, a little louder, and a little more volume
7 and a little slower.

8 THE WITNESS: It fit the description —

9 BY MS. PARR:

10 Q So were saying about doc— you were saying about James
11 McLaurin?

12 A Yes, ma'am, I gave — talked to him and gave him the
13 description that Mr. Gary Nowell gave me was a red in
14 color Camry or Corolla with front-end damage, the year
15 probably 1994 to '98.

16 Q Okay. And then what happened as a result of that?

17 A I think later on that night Florence City P.D. spotted
18 that vehicle at the IHOP on David H. McLeod Boulevard.

19 Q Okay. Now after you talked with Deputy McLaurin, did
20 you leave the Super 8 with Doctor Shappell?

21 A That third time I came back to the Super 8 I left with
22 Doctor Shappell and we went out towards the mall, the
23 IHOP.

24 Q Before the third time how long did you stay with
25 Mr. Shappell the first time, Doctor Shappell, the first

1 time?

2 A Maybe 20 to 30 minutes.

3 Q Okay. And then you left. And did you have an occasion
4 to go back?

5 A Yes, I did.

6 Q And what -- do you recall what time you went back?

7 A Maybe around 2:30, 3:00 that morning.

8 Q Okay, what was your purpose for going back.

9 A I advised him the credit cards that was taken from him
10 to call, see if he can get the operator on the phone to
11 see whether or not we can see was they used recently, and
12 come to find out they were used in Darlington, I think,
13 two or three gas stations for gas.

14 Q And did you have the conversations with the American
15 Express?

16 A I did. I spoke with the operator on the telephone.

17 Q And then as a result of that what did you do?

18 A I investigated -- I advised Investigator Cox that the
19 American Express card was used in Darlington. I can't
20 remember the name of the gas station. It would have been
21 two or three, but I gave him the name at that time.

22 Q And then what did you do after advising Investigator
23 Cox of the service stations or the stores in Darlington
24 where the credit card had been used?

25 A I think I gave him the purchase amount, what they used,

1 the times, as accurate the operator could give it to me.

2 Q Okay. And then what did you do after that?

3 A I left Mr. Shappell's room. And about maybe 5:00 that
4 morning I came back, knocked on the door, identified
5 myself, and said I think we got the suspects.

6 Q Okay. And then what did you do after you told him
7 that?

8 A Doctor Shappell got in my squad vehicle, got in the
9 back seat, and we drove out to David H. McLeod Boulevard
10 to the parking lot of IHOP. I pulled in to the far
11 entrance past IHOP, and I drove through -- I drove through
12 and made a little loop. And he immediately identified the
13 two subjects that came inside his room, Mr. Williams and
14 Mr. Jordan.

15 Q Okay. And did you make any suggestion to him as to who
16 was who?

17 A No, I did not.

18 Q Okay. At that time did you know who they were? Had
19 you seen who they were?

20 A No, ma'am.

21 Q Okay. And so when you saw the defendants that was the
22 first time you had seen them along that night?

23 A Yes, ma'am.

24 Q And what did you do when Doctor Shappell indicated
25 those were the two subjects that had robbed him?

1 A I advised Investigator Cox that he I.D.'d the two
2 subjects that went inside the room.

3 Q And then after he identified them what did you do? Did
4 you do anything else?

5 A No, I did not.

6 Q Now were you in there when Doctor Shappell went to the
7 vehicle?

8 A Yes, ma'am.

9 Q Okay. And where were you when he went over to the
10 vehicles?

11 A I was standing right beside him when he identified his
12 items inside the Toyota.

13 Q Okay. And did that Toyota match the description that
14 you had been given earlier?

15 A Yes, it did.

16 Q Beg the Court's indulgence. Now the Super 8 is located
17 where?

18 A On Lucas Street.

19 Q Okay, is that in the county of —

20 A County of Florence.

21 Q Okay. And what about the Holiday Inn? Was that
22 located also in the County of Florence?

23 A Yes, ma'am.

24 Q Please answer any questions the Defense may have for
25 you.

1 MR. MCLAUGHLIN: May it please the Court.

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. MCLAUGHLIN:

5 Q Deputy, when you went back over to Mr. Shappell's room
6 that third time to pick him up, what did you tell him?

7 A I knocked on the door, identified myself, and I said I
8 think we got them.

9 Q Okay, all right. And then you drove him over to IHOP?

10 A Yes.

11 Q All right. How long a drive is that?

12 A Five, ten minutes maybe.

13 Q All right. Y'all have conversation at all on the ride
14 over there?

15 A No, we did not.

16 Q You didn't speak?

17 A No.

18 Q He didn't ask any questions?

19 A He did not.

20 Q You didn't volunteer any information to him to let him
21 know what was going on, what y'all were riding over there
22 to do?

23 A No, sir.

24 Q All right. When you got to the IHOP who's in charge?

25 A My supervisor was on scene, Lieutenant Hooks.

1 Q Lieutenant Hooks, all right. Well, is the lieutenant
2 in charge of that scene or is an investigator in charge of
3 the scene?

4 A At that time I wasn't sure whether the investigator, I
5 didn't know how long he was there or anything so.

6 Q All right. Well, let me ask you about protocol, just
7 general protocol. Obviously you've got a supervisor over
8 you when you're out there being a deputy?

9 A Right.

10 Q And that is the lieutenant?

11 A Yes, sir.

12 Q All right. When you respond to a crime scene, even if
13 that lieutenant is there is he always the person who is in
14 charge?

15 A I would say until maybe a forensic investigator show up
16 or an investigator.

17 Q Okay. And if an investigator shows up on the scene and
18 once they, I guess, they catch the case, are they the ones
19 who are in charge?

20 A I would, yes, sir.

21 Q Is that how you understand it anyway?

22 A Yes, sir.

23 Q All right. When you got to IHOP was there an
24 investigator present?

25 A Investigator Cox.

1 Q Okay, all right. When you pulled up to the IHOP with
2 Mr. Shappell who told you what to do?

3 A No one.

4 Q All right. You just knew what to do?

5 A Yes, sir.

6 Q So you just knew to drive Mr. Shappell by these
7 suspects so he could look at them?

8 A Yes.

9 Q All right. Now how did you know to do that?

10 A I've done it before in the past.

11 Q All right. How regular is that practice?

12 A Don't know how regular the practice but, I mean, I've
13 done it a lot of times.

14 Q All right. You think that's a fair way to run
15 identification?

16 A I would say, yes, sir.

17 Q All right. How tall are you?

18 A Five foot nine.

19 Q 5'9". How old?

20 A 36.

21 Q All right. If there was a robbery today and the
22 description was a 5'9" black male wearing army fatigues
23 and you were asked to be part of that lineup and you were
24 the only one in army fatigues, would you think that was a
25 fair lineup?

1 A No, sir.

2 Q Okay. You went to the academy just like Deputy
3 McLaurin did?

4 A Yes, I did.

5 Q Okay. And they taught you the same things about
6 writing reports; didn't they?

7 A Yes, sir.

8 Q And they tell you to be specific in your reports 'cause
9 you're gonna be in this position right here one day,
10 right?

11 A Yes, sir.

12 Q You're gonna have to be giving testimony. And do you
13 have your report up there with you?

14 A I do.

15 MR. MCLAUGHLIN: And may I approach, Your Honor?

16 THE COURT: Yes.

17 BY MR. MCLAUGHLIN:

18 Q Okay, all right. And you've got that report. Why do
19 you have that report?

20 A Just referring back to my notes.

21 Q Okay. It helps you to remember; —

22 A Right.

23 Q —doesn't it? All right. How long had you been
24 working when you wrote that report?

25 A Just a few months with Florence County.

1 Q Okay. The description that is in there, is that the
2 description that Mr. Shappell gave you?

3 A Yes, sir.

4 Q All right. And you heard me read that description to
5 him earlier, correct?

6 A Yes, sir.

7 Q All right. Was that a -- did I read that description
8 from your report correctly?

9 A I guess, T-shirt large build and the other one is a
10 smaller build, sir.

11 Q Okay, fair enough. You heard Mr. Shappell talk about
12 how somebody had made some comments to him about how the
13 car had been identified, right?

14 A Yes, sir.

15 Q Okay, and you were here yesterday during Mr. Shappell's
16 testimony as well, right?

17 A Yes, sir.

18 Q And is it fair to say that he said that someone had
19 told him someone had described that car very well?

20 A I don't know who told Mr. Shappell, you know.

21 Q Now you don't know where he got that information?

22 A No, sir.

23 Q Do you know when he got that information?

24 A No, sir.

25 Q Okay. You remember yesterday -- or strike that. After

1 Mr. Shappell identified Shakeem Williams and Tarrence,
2 what happened then?

3 A I talked to Investigator Cox and advised him that my
4 victim did identify the two subjects that came inside the
5 motel room.

6 Q Okay. And when you talked to Investigator Cox how did
7 you do that? Did you just pull the car over there where
8 he was?

9 A I did and he approached my vehicle.

10 Q Okay. And was Mr. Shappell with you at that time?

11 A Yes, he was.

12 Q All right. And was he able to overhear your
13 conversation with Investigator Cox?

14 A I'm not sure; he was sitting in the back.

15 Q Okay. Y'all certainly weren't trying to hide it from
16 him, were you?

17 A No.

18 Q Okay, all right. What was said by Investigator Cox to
19 you at that point?

20 A I just told him, gave him that information. I can't
21 remember what he told me after that.

22 Q Okay. Well, did you stick around or did you leave?

23 A I left.

24 Q All right. Did Shappell stick around or did he leave?

25 A He left with me.

1 Q Well, there was something that y'all did. Y'all went
2 over and looked at the car too; didn't you?

3 A Yes, we did.

4 Q When did that happen? Was that before or after you
5 talked with Investigator Cox?

6 A Before.

7 Q Okay. So that was before you talked with Investigator
8 Cox. Y'all drove over, and did stop the car. And how did
9 it go? Did he get out?

10 A He got out.

11 Q All right. But did you get out with him?

12 A I did.

13 Q All right. Was there anybody over there other than
14 y'all two?

15 A It was, but I can't remember who was there.

16 Q Okay, all right. Was Investigator Cox there with you?

17 A I'm not sure.

18 Q Well, somebody taking pictures?

19 A I'm not sure.

20 Q Fair enough. I know it's a long time ago.

21 A Yeah.

22 Q When you were -- after you picked Mr. Shappell up and
23 you drove from the motel over to IHOP, how did you know
24 exactly where they were at the IHOP?

25 A I heard them on the radio.

1 Q Okay. So the radio was on at the time y'all were
2 riding over there?

3 A Yes, sir.

4 Q Do you know there being some discussion yesterday about
5 maybe stopping and Investigator Cox speaking -- speaking
6 with you before the identification?

7 A I don't remember.

8 Q Okay. You remember whether or not Mr. Shappell
9 testified as such?

10 A I don't remember.

11 Q What happened with these charges? Sorry for jumping
12 but we're going back to the second time you went to the
13 hotel. What happened with those charges?

14 A What you mean by that?

15 Q The credit card charges. What happened to them? Did
16 they send you over to look at anything?

17 A No, no, sir.

18 Q Okay, all right. And did you -- you heard Mr. Shappell
19 describe how much he thought they were?

20 A Yes.

21 Q I think he said there were like three charges at one
22 place, and like 60, 50 or 40, something like that.

23 A Yes, sir.

24 Q And then at least one other charge at some other place?

25 A Right.

1 Q Is that correct?

2 A Yes, sir.

3 Q To the best of your recollection is that what you found
4 out when you got on the phone?

5 A She was giving me different prices at different
6 locations then. I can't remember exactly what she said.

7 Q Did you make -- did you take notes of that stuff at
8 all?

9 A I did not.

10 Q Okay. So after the I.D. and then after looking at the
11 car, you said you left and Mr. Shappell went with you?

12 A Yeah.

13 Q All right. Did any investigators interview
14 Mr. Shappell while he was there?

15 A No, sir.

16 Q Okay, all right. On the drive back from the IHOP to
17 the Super 8 did you and Mr. Shappell talk at all?

18 A No, sir.

19 Q Did he make any comments about the folks he had just
20 seen?

21 A No, sir.

22 Q All right. You remember telling me yesterday that he
23 did make a comment about Johnny Johnson on the way back.

24 A I can't remember.

25 Q You don't remember telling me yesterday that he made a

1 comment about the shirt that Johnny Johnson was wearing?

2 A The multicolor shirt?

3 Q Yes, sir.

4 A Yeah.

5 Q So he did make a comment on the ride from IHOP back to
6 the hotel about the clothing that Mr. Johnson had on?

7 A That's about it.

8 Q I'm sorry?

9 A I said that's about it.

10 Q Is that a yes or no?

11 A Yes.

12 Q Or did he make a comment? All right.

13 MR. MCLAUGHLIN: Beg the Court's indulgence one
14 second.

15 THE COURT: Yes, sir.

16 BY MR. MCLAUGHLIN:

17 Q The witness that you talked with, Mr. Garrett Nowell,
18 he was in 123?

19 A Yes, sir.

20 Q All right. That's the room — that was the last room
21 right?

22 A I'm not sure if it was last room or not, but it was
23 right beside 121.

24 MR. MCLAUGHLIN: May I approach, Your Honor.

25 THE COURT: Sure.

1 MR. MCLAUGHLIN: Let's see.

2 BY MR. MCLAUGHLIN:

3 Q All right. I'm gonna show you what's been marked as
4 9(c) and ask you to take a look at that picture. Do you
5 recognize that picture or what -- do you know what hotel
6 these rooms are at?

7 A Yeah, Super 8.

8 Q And this picture shows room 121 and 123 together --

9 A Yes, sir.

10 Q --, right? All right. In fact, it looks like it
11 shows Ms. Richardson and Mr. Cox so this wasn't taken the
12 night of the robbery, right?

13 A Right.

14 Q Okay. So 123 is to the right --

15 A The right.

16 Q --of 121. So that would mean that that's really the
17 last room on that end, correct?

18 A Yes, that's the end of the hotel, yeah.

19 Q I tell you what, we'll look at room -- we're gonna look
20 at what's been marked as 9(b) and ask you to look -- yeah,
21 look way down there. That looks like Mr. Richardson
22 walking way down there at the end; doesn't it? Okay, so
23 if that is, in fact, where they're at that's the end of
24 the hotel, right?

25 A Yes, sir.

1 Q Okay. Now that hotel back here at the back, that's
2 woods and a fence, right?

3 A Yes, sir.

4 Q There's a little — I guess that driveway goes around
5 the back of that building and comes back up the other
6 side, there's another parking lot, right?

7 A Yes, sir.

8 Q Okay. And then to get out — we're looking at 9(a)
9 now. To get out, if you went down there and went around
10 the back you'd come up this side and turn left, right?

11 A Right.

12 Q Okay, all right. Where did Mr. Nowell say he was when
13 he saw this car?

14 A I can't remember at this time.

15 Q Okay. How did you find — how did you find Nowell?
16 Did he come find you —

17 A He came —

18 Q —or did you go around knocking on doors asking if
19 anybody saw him?

20 A He came and found me.

21 Q Okay. And you don't remember where he said he saw
22 that?

23 A No, sir.

24 Q All right. But he told you he saw this car and he
25 saw — well, let me read your report. This reporting

1 officer then made contact with Garrett Nowell who saw
2 subject one and subject two get inside a dark red in color
3 Toyota Camry or Toyota Corolla and drive away. Is that
4 accurate description of what you reported?

5 A Yes, sir.

6 Q All right. He also said that there were four black
7 males in the vehicle when it drove away; is that correct?

8 A Yes, sir.

9 Q All right. So when you got that description what do
10 you do with that description once you take it in? Did you
11 mention something earlier about calling something in?

12 A I think I made contact with Deputy McLaurin, gave him a
13 description of the vehicle that I had see whether or not
14 it was the same vehicle.

15 Q Okay. And the reason why you do that is why?

16 A See whether we got the same, you know, maybe the same
17 suspect.

18 Q Okay. Then does that description go out on -- y'all do
19 a -- is it called a bolo?

20 A Bolo, yes, sir.

21 Q All right. So those descriptions are put out over the
22 radio as a bolo which means be on the lookout?

23 A Yes, sir.

24 Q Did you do that with that information?

25 A I did not.

1 Q Okay, why not?

2 A I just gave that description over the phone with Deputy
3 McLaurin and I think he pass it on to the other officers
4 and deputies that was on the scene —

5 Q Yes, sir?

6 A —with him and Americas Best Value Inn.

7 Q I understand. So you gave that —

8 A No, at that time I think everybody had the information.

9 Q Okay, all right. Your understanding everybody had that
10 information then, okay. Thank you very much, Deputy.

11 THE COURT: Redirect.

12 MS. PARR: Yes.

13 **REDIRECT EXAMINATION**

14 BY MS. PARR:

15 Q Just a few short things. Isn't it fair to say that the
16 I.D. practice can also be used to release innocent
17 individuals who have been erroneously apprehended?

18 A Yes, ma'am.

19 Q Now how quickly did Mr. Doctor Shappell identify the
20 defendants?

21 A Immediately. He identified both.

22 Q Was there any hesitation?

23 A No, ma'am.

24 Q Now you said that when you talked with Mr. Garrett
25 Nowell he told you he saw four individuals?

1 A Yes, ma'am, drive away in the vehicle.

2 Q Okay. And was that the information that you passed
3 along?

4 A I did.

5 MR. RICHARDSON: Nothing further, Your Honor.

6 THE COURT: Recross.

7 MR. MCLAUGHLIN: Beg the Court's indulgence.

8 THE COURT: Yes.

9 MR. MCLAUGHLIN: No further questions, Your Honor.

10 THE COURT: You may step down.

11 MR. MCLAUGHLIN: And we certainly don't have any
12 objection to him being released.

13 THE COURT: He needs to go back to North Carolina.
14 Is that where he needs to go?

15 THE WITNESS: Columbia, Your Honor.

16 THE COURT: Columbia, okay.

17 MS. PARR: Your Honor, at this time we would call
18 Brandon Hale to the stand.

19 THE COURT: Come forward please.

20 DEPUTY CLERK OF COURT: Please place your left hand
21 on the Bible, raise your right hand.

22 WHEREUPON,

23 **BRANDON EUGENE HALE,**
24 having been duly sworn by the Deputy Clerk of Court,
25 testified as follows:

1 **DEPUTY CLERK OF COURT:** Please be seated and state
2 your full name for the record.

3 **THE WITNESS:** Brandon Eugene Hale.

4 **DIRECT EXAMINATION**

5 **BY MS. PARR:**

6 **Q** Officer Hale, where are you employed?

7 **A** Ma'am?

8 **Q** Where are you employed?

9 **A** Florence Police Department.

10 **Q** And how long have you been with the Florence Police
11 Department?

12 **A** Three flee years.

13 **Q** And are you a certified law enforcement officer?

14 **A** Yes.

15 **Q** And when did you get your certification?

16 **A** July of 2007.

17 **Q** Okay. And have you had any prior law enforcement
18 experience?

19 **A** Four years in the Marine Corp military police and three
20 years National Guard military police.

21 **Q** Now were you working on July 4th, 2008?

22 **A** Yes.

23 **Q** Okay. And in what capacity were you working?

24 **A** I was a patrol officer on the west side of town, David
25 McLeod area.

1 Q Only. Now on that particular day did you have an
2 occasion to respond to the Magnolia Mall area?

3 A Yes.

4 Q And is that in the County of Florence?

5 A Yes.

6 Q And the city as well?

7 A Yes.

8 Q Okay. And would you please tell us how is it that you
9 responded there?

10 A My supervisor, Corporal Johnson, called me. We were
11 aware of the armed robberies that the county had had at 52
12 and 95. And he wanted me to go out that area. We got
13 some hotels on Dunbarton Drive, Hospitality, that area and
14 check our hotels and just ride around and be seen. And
15 also he gave me description of a suspect's vehicle, red
16 Toyota Camry or Corolla, and wanted me to be in that area
17 looking for that vehicle, front-end damage. We had a
18 description of the suspects. I think it was like dark
19 jeans and some white T-shirts, what they had up here as a
20 vague description. I checked the hotels on Dunbarton
21 Drive which leads around by Target, in that area. When I
22 got done there I drove by IHOP. That was the only
23 restaurant I, think, open on that side of David McLeod.
24 When I drove by I saw the red Toyota Camry with the
25 front-end damage. I pulled into the IHOP parking lot. I

1 saw four suspects sitting inside as soon as I pull up, two
2 of which fit the description of what was given. They were
3 acting nervous. They wouldn't make eye contact or
4 anything like that. I walked up to the door to talk to
5 the hostess, just tell her, hey, we're here just watching
6 out for you guys, checking on you. I walk up to the door,
7 two of them — I don't remember which two — got up and
8 went to the restroom. I immediately go back out to my
9 patrol car, and I pull out the parking lot and I go over
10 by Sears where I could see the suspects' vehicle in the
11 IHOP parking lot, keep an eye on it. I contacted my
12 supervisor, Corporal Johnson, who told me to contact the
13 county. I called our dispatchers who contacted Lieutenant
14 Hooks. I don't recall if he called me on the phone or
15 what, and they arrived on scene.

16 Q Okay. And who — did Lieutenant Hooks come by himself?

17 A He had his other deputies with him, ma'am.

18 Q Okay. And where were you while you were doing this
19 again?

20 A I was in the Sears parking lot in front of Magnolia
21 Mall just trying to watch the vehicle the suspects that,
22 in the IHOP parking lot, to make sure they didn't come out
23 and get in it and leave at that time.

24 Q Okay. And then what happened?

25 A Lieutenant Hooks arrived on scene with some of his

1 deputies.

2 Q How long after you called did they arrive, do you
3 recall?

4 A It wasn't five or ten minutes they were there.

5 Q Okay.

6 A Once they arrived on the scene we sit there probably
7 ten or 15 minutes watching. We had a pair of binoculars I
8 think Lieutenant Hooks used watching the suspects. While
9 we were sitting there a white taxicab came up to the IHOP,
10 pulled up in front. All four suspects come out and got in
11 the taxi. As they pulled off at that time myself and my
12 supervisor assisted the county in conducting a traffic
13 stop of that cab.

14 Q Okay. And when you say you "assisted," specifically
15 what did you and Corporal Johnson do?

16 A We were more there for backup in case suspects were
17 armed or something got out of hand. We were just in the
18 background. They put them in cuffs. I -- we were all
19 standing by the subject if he was in cuffs while the
20 county interviewed another one or whatnot or checked on
21 the car that they were driving.

22 Q Okay. And did you obtain the names of all of the
23 subjects?

24 A Yes, ma'am, I did.

25 Q Okay. And you recorded those in your report?

1 A Yes, I did.

2 Q And who were those suspects?

3 A I don't recall all the names. I don't have my report
4 with me up here right now.

5 Q Okay.

6 MR. RICHARDSON: Beg the Court's indulgence. Your
7 Honor, the State would ask permission to allow the officer
8 to refresh his memory on concerning his report.

9 THE COURT: Sure.

10 (Report shown to Mr. McLaughlin.)

11 BY MS. PARR:

12 Q Is this your report?

13 A Yes.

14 Q Okay. Does that refresh your recollection to the
15 names?

16 A Yes, it does.

17 Q Okay. And who were the subjects?

18 A A Shakeem Williams, a Tarrence Jordan, a Lewis
19 Williams, and a Johnny Johnson.

20 Q And so you made that report, and did you have any
21 conversation with any of those subjects?

22 A I don't — I don't recall having any.

23 Q Okay. And how long did you stay at IHOP?

24 A We were there for, I think, probably at least an hour.

25 I know Investigator Cox was on scene and we exchanged some

1 information as far as names and stuff. We were there for
2 a good little bit.

3 Q Okay, all right. Now did at any time did you make an
4 examination of the Toyota vehicle?

5 A As far as looking inside of it?

6 Q Yes.

7 A I don't -- I probably did. I don't recall specifically
8 walking over and going inside of it as far as searching
9 the contents that was in it.

10 Q All right. Were you there when that vehicle was
11 searched?

12 A Yes.

13 Q Okay. And when that vehicle was searched was Doctor
14 Shappell there? Did you see Doctor Shappell?

15 A I don't recall seeing him, no.

16 Q Okay, all right. Would you please answer any questions
17 that Defense may have for you.

18 **CROSS-EXAMINATION**

19 BY MR. MCLAUGHLIN:

20 Q Officer, you still have the report?

21 A Yes, sir.

22 MR. MCLAUGHLIN: Beg the Court's indulgence.

23 THE COURT: Yes, sir.

24 MR. MCLAUGHLIN: No questions, Your Honor.

25 THE COURT: Okay, you may step down.

1 THE WITNESS: Thank you, sir.

2 THE COURT: Next witness please.

3 MS. PARR: Your Honor, at this time we would call
4 deputy -- Investigator James Allen.

5 DEPUTY CLERK OF COURT: Please place your left hand
6 on the Bible, raise your right hand.

7 WHEREUPON,

8 JAMES ALLEN,

9 having been duly sworn by the Deputy Clerk of Court,
10 testified as follows:

11 MS. PARR: Before Investigator Allen responds we
12 would ask permission for Officer Hale to be released.

13 MR. MCLAUGHLIN: No objection, Your Honor.

14 THE COURT: He's excused. Thank you.

15 THE WITNESS: James Allen.

16 DIRECT EXAMINATION

17 BY MS. PARR:

18 Q Investigator Allen, where are you employed?

19 A Florence County Sheriff's Office.

20 Q And how long have you been employed with the Florence
21 County Sheriff's Office?

22 A Since January of 2002.

23 Q Okay. And what do you do for them now?

24 A I'm currently assigned as an investigator.

25 Q And when did you become and how investigator?

1 A January of 2009.

2 Q All right. Now what were your duties as a deputy or
3 patrol officer?

4 A Routine patrol, traffic monitoring, and I was also
5 assigned as training officer for my squad.

6 Q Now on July 4th, 2008, in what capacity were you
7 working in?

8 A I was just a patrol deputy that night.

9 Q And did you have an occasion to respond to the Magnolia
10 Mall parking lot?

11 A Yes, ma'am.

12 Q And do you recall what time you responded, or how was
13 is it that you ended up going there?

14 A I was directed by Lieutenant Hooks to respond. I don't
15 recall the time. It was early in the morning.

16 Q If you would talk nice and loud for us. And when you
17 got -- arrived at Magnolia parking lot, would you please
18 tell the Court what you found?

19 A We got there. We met with the city officers who are
20 already watching a suspicious vehicle matching the
21 description given at two earlier armed robberies that
22 evening. We met with the city. Lieutenant Hooks observed
23 the suspects that had been identified as being with that
24 vehicle get out of the -- walk out of the IHOP and get
25 into, I think it was a Speedy Cab Company from Darlington,

1 taxicab that pulled up. When the cab pulled up myself,
2 Lieutenant Hooks, and several city officers initiated a
3 traffic stop on the vehicle.

4 Q Okay. Now when you were at the scene did you have an
5 in-car video?

6 A Yes, ma'am.

7 Q And was your in-car video operational at the time?

8 A Yes, sir — oh, yes, ma'am.

9 Q Did you have an occasion to retrieve that video?

10 A Yes, ma'am.

11 Q And have you had an opportunity to see that video —

12 A Yes, ma'am.

13 Q —at that time? I'm gonna show you what has been
14 entered into evidence as State's Exhibit Number 16. And
15 what is that?

16 A It's a digital copy of my initial video from my in-car
17 camera.

18 MS. PARR: Your Honor, at this time we would ask
19 permission to publish it to the jury.

20 THE COURT: You may do that.

21 BY MS. PARR:

22 Q Now Deputy, where are you when this video is made?

23 A I was probably in the apex of my driver's door.

24 Q And is this your vehicle with the lights flashing?

25 A Yes, ma'am.

1 Q And what's — what vehicle is that in front of your
2 car?

3 A That's the cab that pulled out of the IHOP parking lot,
4 Speedy Cab Company from Darlington.

5 (State's Exhibit 16 was shown to the jury.)

6 BY MS. PARR:

7 Q Now Investigator Allen, you searched some of the
8 individuals; is that correct?

9 A Yes, ma'am.

10 Q Okay. And would you please tell us who you searched
11 and...

12 A Without having their names in front of me now and
13 somebody pointing them out to me on the video, ma'am, I'm
14 not sure of their names. I don't have a lineup of them in
15 front of me to tell you who is who.

16 MS. PARR: May I have permission to show...

17 (Attorneys confer.)

18 THE COURT: Investigator, keep your voice up, keep
19 your voice up.

20 MR. MCCLAUGHLIN: Pat, how many pages is that?

21 MS. PARR: Eleven.

22 THE WITNESS: I have a copy of the report but I
23 still don't know, recall who is who without seeing the
24 photograph. I did no incident report, ma'am.

25 BY MS. PARR:

1 Q Okay. So you don't -- so you searched some of the
2 individuals; is that right?

3 A Right. Without you letting the video play and point
4 out, tell me who is who, I can't look at a list of names.
5 I know who Mr. Jordan is because that, well, my subpoena
6 says it here. I don't recall who is who.

7 Q Now when you searched individuals what, if anything,
8 did you find on them?

9 A One of the individuals I found a --

10 THE COURT: Keep your voice up.

11 THE WITNESS: One of the individuals I found a
12 credit card that was attributed belonging to the victim of
13 one of the robberies.

14 BY MS. PARR:

15 Q Okay. And I'm gonna show you what has been entered
16 into evidence as State's Exhibit Number 13. You recognize
17 State's Exhibit Number 13?

18 A Yes, ma'am.

19 Q And did you get this, retrieve this from one of the
20 subjects?

21 A Yes, ma'am.

22 Q And how was the subject addressed that you retrieved
23 this from?

24 A I believe the subject was wearing a white T-shirt and
25 blue jeans.

1 Q Okay, all right. And where was that receipt from the
2 subject?

3 A One of his front pockets. Ma'am, I don't recall which
4 side at this point.

5 Q Okay. And then after you received that debit card what
6 did you do with it?

7 A Advised Lieutenant Hooks of it and I believe we set it
8 on the trunk in front of it on the back of the cab.

9 Q Okay. And did you obtain anything else from any of the
10 other subjects?

11 A No, I got their identifications, those that had them.
12 I remember one or two of them may not have had I.D. on
13 them at the time.

14 Q And did you advise them of their rights?

15 A Yes, ma'am, I did.

16 Q Please answer any questions that Mr. McLaughlin may
17 have for you.

18 MR. MCLAUGHLIN: May it please the Court.

19 THE COURT: Yes.

20 **CROSS-EXAMINATION**

21 BY MR. MCLAUGHLIN:

22 Q Mr. Allen, you -- to the best of your knowledge was
23 that the only card that was found on any of those
24 suspects?

25 A To my knowledge, sir. If someone else found a card I

1 wouldn't know about it.

2 Q Yes, sir, I understand. Just so we can be clear you
3 don't know, there were two suspects that had on a white
4 T-shirt and jeans, correct?

5 A Yes, sir.

6 Q You don't know which one it came from?

7 A The only suspects I searched would have been the
8 smaller of the two that had on the white T-shirt.

9 Q Well, there was only one bank card recovered, right?

10 A Yes, sir.

11 Q All right, thank you.

12 THE COURT: Redirect.

13 MS. PARR: Nothing further for this witness, Your
14 Honor.

15 THE COURT: All right, you may step down.

16 MS. PARR: Your Honor, I'd like to call Lieutenant
17 Hooks to the stand.

18 THE COURT: All right, let me ask in terms of the
19 length of this prospective witness. I've got these people
20 coming from out of town.

21 MS. PARR: It would be short, Your Honor.

22 THE COURT: All right, bring him forward.

23 MS. PARR: And Your Honor, we would ask permission
24 for Investigator James Allen to be released.

25 MR. MCCLAUGHLIN: No objection.

1 THE COURT: All right, thanks.

2 WHEREUPON,

3 **ROBERT DEWEY HOOKS,**

4 having been duly sworn by the Deputy Clerk of Court,
5 testified as follows:

6 THE DEPUTY CLERK OF COURT: Please be seated, state
7 your name for the record.

8 THE WITNESS: Robert Dewey Hooks.

9 **DIRECT EXAMINATION**

10 BY MS. PARR:

11 Q Lieutenant Hooks, where are you employed?

12 A Florence County Sheriff's Office.

13 Q And how long have you been with the Florence County
14 Sheriff's Office?

15 A 17 years.

16 Q Okay. And what do you do for the Florence County
17 Sheriff's Office?

18 A Supervisor a criminal enforcement team inside the
19 county.

20 Q Okay. And have you had any special training for your
21 job?

22 A Over the years I've had different training for it, yes.

23 Q And are you a certified law enforcement officer?

24 A Yes, ma'am, I am.

25 Q Now on July 4th, 2008, did you have an occasion to

1 become involved in this matter?

2 A Yes, ma'am.

3 Q And would you please tell the Court how you became
4 involved?

5 A Well, I had several of my officers respond
6 throughout the night to several armed robberies. The
7 information that we had gathered throughout the armed
8 robberies had led us to bolo it out to the different
9 agencies around our county. Don't exactly know the exact
10 time, but at some point in time the city officer had
11 contacted me and advised me that he had found a vehicle
12 located at the IHOP parking lot that fit the description
13 that had been related to the previous armed robberies that
14 evening. I instructed several of my guys to respond with
15 me over there to the IHOP which we went through that area.
16 We didn't actually go in the parking lot at that time. We
17 stayed away from it. I did observe the vehicle through
18 binoculars. It fit the description of what we were
19 looking for. I did observe some male subjects inside the
20 IHOP -- the IHOP was fairly scarce at that point in
21 time -- that appeared to fit the description of what we
22 were looking for. During the time that we were doing
23 surveillance on the parking lot where the car was parked,
24 a white cab pulled up. The four subjects came out of the
25 IHOP; they entered the cab. And at that point in time I

1 instructed my guys to make a traffic stop in reference to
2 believing that they may have been involved in what had
3 occurred previous. We did so, and I think you've seen
4 what occurred from there.

5 Q Okay. And did you have an occasion to search some of
6 the subjects?

7 A I did. I searched -- I don't actually recall his name.
8 It was the larger subject that had on the T-shirt with the
9 senior 2008 on it I believe or something of that sort. I
10 advised him of what we were doing and why we were doing
11 it. I pat searched him and found a phone on him. I mean,
12 it was in his right pocket. I asked him whose phone it
13 was and he was unaware that the phone was there and had no
14 knowledge of the phone. I think the phone might have been
15 involved as from what it was taken from one of the victims
16 in the armed robberies.

17 Q And I show you what has been entered into evidence as
18 State's Exhibit Number 7. Do you recognize that?

19 A That appears to be the phone. I'm not exactly sure,
20 but that appears to be the phone I took out his right
21 pocket.

22 Q And what did do with this phone once you took it from
23 him?

24 A I actually -- well, the -- we laid -- the stuff that
25 was in relevant in relation to what we were missing or

1 looking for we put it on the back of the car. And then
2 once Investigator Russell Cox got there we turned that
3 evidence over to him and Corporal Bird that was with our
4 forensics department.

5 Q Okay, all right. And did you search any of the other
6 individuals other than Shakeem Williams?

7 A I do not recall searching anybody else.

8 Q Okay, all right. And did you search the vehicle,
9 interior of the vehicle?

10 A I don't think I actually searched it. I was there when
11 the vehicle was searched. There were some things that
12 were in plain view. The green camera that has been
13 introduced earlier was actually in plain view inside that
14 vehicle. I don't think I actually, again, was involved in
15 the physical aspect of searching the vehicle but I did
16 supervise it.

17 Q Okay. And then Investigator Bird came?

18 A He did. He's with the forensics —

19 Q Forensics —

20 A —department with the Florence County Sheriff's Office.
21 He was requested to respond and he did.

22 Q And he searched the vehicle?

23 A He took pictures of everything and as it stood prior to
24 doing any kind of search, and then I think they did do a
25 preliminary search of the vehicle.

1 Q Okay. But prior to Corporal Paul Bird coming, did you
2 disturb anything inside the vehicle?

3 A We did not. No, ma'am, we did not.

4 Q And did you determine who the vehicle belonged to?

5 A I did. I think -- I do not remember his name, but the
6 gentleman that was in the multi-colored shirt had
7 voluntarily gave us the information that the vehicle
8 belonged to him.

9 Q And would that have been Johnny Johnson?

10 A I can only assume so at this point in time.

11 Q Would you please answer any questions Mr. Patrick
12 McLaughlin may have for you.

13 MR. MCLAUGHLIN: Thank you. May it please the
14 Court.

15 THE COURT: Yes, sir.

16 **CROSS-EXAMINATION**

17 BY MR. MCLAUGHLIN:

18 Q Lieutenant Hooks, you just watched that video too;
19 didn't you?

20 A I did.

21 Q I'm looking at the screen the way the jury saw it.

22 A Okay.

23 Q You had a suspect over here on the left so and two of
24 them got up the left, two of them got up the right,
25 correct?

1 A Well, I'm not gonna tell you that for sure; I'm not
2 sure.

3 Q At one point there was an officer on this side talking
4 to somebody in a white shirt. Was that you?

5 A I was on that side.

6 Q Okay.

7 A Absolutely.

8 Q In fact, you were questioning him about that card he
9 had in his pocket; weren't you?

10 A Not a card, phone.

11 Q You said he had it in his back pocket, doesn't know how
12 it got here.

13 A I didn't say anything about that. I said a phone.

14 Q That wasn't you on the radio talking to somebody on the
15 radio talking about somebody having a card in their back
16 pocket, doesn't know how it got there?

17 A It may have referred to Deputy Allen at that time, that
18 he had found a card in somebody's pocket.

19 Q Uh-huh. That wasn't you asking the person on the left
20 right there in that video where the card come from, did he
21 have a card, about the card in his back pocket?

22 A I don't know any-- I don't recall that. I mean, I may
23 have made that conversation with somebody on the radio.

24 At one point in time I was conversing with Investigator
25 Cox over the radio 'cause he hadn't arrived on scene yet.

1 Q All right. You were questioning this gentleman on the
2 left the entire time —

3 A That's right.

4 Q —about that phone?

5 A About a phone.

6 Q About things in his possession?

7 A About a phone.

8 Q All right. Well, you question — that wasn't you on
9 the radio telling somebody that he had a card in his back
10 pocket and he doesn't know how it got there?

11 A And that may have been referring to the find of Deputy
12 James Allen.

13 Q And, yet, you're on the video right there on the left
14 asking the individual on the left?

15 A I asked him about a phone.

16 Q You asked him — okay, you hear phone, I thought I
17 heard card?

18 A If you can view it again.

19 Q Do we need to play it back?

20 A That's up to you, sir.

21 MR. MCLAUGHLIN: Your Honor, I ask that we play it
22 back.

23 MR. RICHARDSON: Your Honor, I believe it's what the
24 jury recalls.

25 THE COURT: No, if we got an embroglio or conundrum

1 about testimony play it back. I'm not going to have any
2 record go up without some degree of certitude in it.

3 MR. MCLAUGHLIN: And I'm just asking, Your Honor,
4 for -- I don't want to have to watch this whole thing
5 again.

6 THE COURT: All right. See if you can get to the
7 point.

8 (Portion of State's Exhibit 16 was re-played.)

9 MR. MCLAUGHLIN: A little bit further than that I
10 believe.

11 (Playing of State's Exhibit 16 continues along with
12 following questioning.)

13 BY MR. MCLAUGHLIN:

14 Q Officer, if I may, that's you right there that the
15 cursor just got put on, right?

16 A The what now?

17 Q The cursor, that's you?

18 A That's me; that's correct. That's me.

19 Q Okay. And then this individual is who?

20 A Well, at that time I had no idea who he was.

21 Q All right. It's not Mr. Jordan, is it?

22 A I have no idea, sir. I hadn't I.D.'d any of them at
23 that point in time. We were in the process of doing that.

24 Q Fair enough, Officer. Fair enough.

25 A Okay.

1 Q And that's Deputy Allen right there; isn't it?

2 A Best I can tell it is, yes, sir.

3 Q All right.

4 MR. MCLAUGHLIN: I believe that's it.

5 THE COURT: Okay, all right.

6 MR. MCLAUGHLIN: All right. No further questions.

7 the video speaks for itself.

8 THE COURT: All right, anything else?

9 MS. PARR: Nothing further for this witness.

10 THE COURT: Jurors, we'll stop here for the evening.

11 Please remember those two rules that I gave you. Do not

12 discuss the case with any other person; you cannot do

13 that. Please do not do that. And of course you cannot

14 discuss the case among yourselves until I give you the

15 case for decision. Hope you have a good night's rest.

16 9:00 in the morning. Everybody be here 9:00. All right,

17 catch them the elevator. No one leaving but the jury, no

18 one but the jury.

19 (WHEREUPON, the jury was removed from the

20 courtroom at 4:07 p.m., and the following proceedings

21 commenced in open court.)

22 THE COURT: Anything you need to put on the record

23 for the State before we take a recess from this case?

24 MS. PARR: The State doesn't have anything, Your

25 Honor.

1 THE COURT: Defense?

2 MR. MCLAUGHLIN: Nothing, Your Honor.

3 THE COURT: All right. Counsel, as we begin
4 tomorrow and proceed at some point I will do the mandated
5 hearing under State versus Orr, and please talk to him
6 about the Fifth Amendment privilege and discuss that with
7 him in great exactitude please.

8 MR. MCLAUGHLIN: Yes, sir.

9 THE COURT: All right.

10 (Court resumed on April 21, 2010 at 9:00 a.m.)

11 THE COURT: State ready to proceed?

12 MS. PARR: Yes, Your Honor.

13 THE COURT: Defense ready to proceed?

14 MR. MCLAUGHLIN: We are, Judge.

15 THE COURT: Bring the jury out.

16 (WHEREUPON, the jury was returned to the courtroom
17 at approximately 9:03 a.m., and the following proceedings
18 commenced in open court.)

19 THE COURT: Good morning, jurors. Everyone feeling
20 okay? Everybody all right?

21 (There was no response.)

22 THE COURT: Next witness please.

23 MS. PARR: Your Honor, the State calls Paul Bird to
24 the stand.

25 DEPUTY CLERK OF COURT: Please place your left hand

1 on the Bible, raise your right hand.

2 WHEREUPON,

3 **PAUL BYRD,**

4 having been duly sworn by the Deputy Clerk of Court,
5 testified as follows:

6 **DEPUTY CLERK OF COURT:** Please be seated, then state
7 your name for the record.

8 **THE WITNESS:** My name is Paul Bird.

9 **DIRECT EXAMINATION**

10 **BY MS. PARR:**

11 **Q** Corporal Bird, where are you employed?

12 **A** Florence County Sheriff's Office.

13 **Q** And what do you do for the Florence County Sheriff's
14 Office?

15 **A** I'm currently in the forensics or crime scene unit.

16 **Q** Okay. How long have you been with the Florence County
17 Sheriff's Office?

18 **A** Just over seven-and-a-half years.

19 **Q** Okay. And what is your total law enforcement
20 experience?

21 **A** About eight-and-a-half years?

22 **Q** And where were you prior to coming to the county?

23 **A** I worked for Marion City Police Department.

24 **Q** Now on -- are you a certified law enforcement officer?

25 **A** Yes, I am.

1 Q And have you — please tell the Court a little bit
2 about the special training you have had for your job?

3 A Initially, we have to go to a crime scene investigation
4 40 hour class, and then we have to go to advanced classes
5 such as bloodstain analysis, marijuana analysis,
6 fingerprint analysis, and advance photography classes,
7 things of that nature.

8 Q Okay. Now on July 4th, 2008, did you have an occasion
9 to become involved in an armed robbery?

10 A I did.

11 Q Okay. And would you please tell us what time you
12 became involved and how you responded?

13 A I received the call at about 4:00 in the morning and
14 was asked to respond out to the IHOP, which is located
15 at the Magnolia Mall in Florence, in reference to a
16 processing a vehicle.

17 Q And what time did you arrive there?

18 A At approximately quarter till five.

19 Q And would you please tell us what you found when you
20 arrived?

21 A The vehicle was, I believe it was a Toyota Camry, I
22 believe it was.

23 Q And —

24 A And it was — it was parked in the parking lot of the
25 IHOP which was — it's kind of located within the mall

1 parking lot. When I got there there were quite a few
2 officers on scene and they were parked kind of more in the
3 Magnolia Mall parking lot kind of outside from the IHOP.
4 And they advised me that the vehicle that was in question
5 that they needed me to process was located in the parking
6 lot of the IHOP. It was kind of parked about midways out
7 from the building.

8 Q Okay. And did you, in fact, go and process that
9 vehicle?

10 A I did. I was informed by Investigator Cox who was on
11 the scene there were certain items that he was -- wanted
12 me to look for in the vehicle. I did a preliminary search
13 at the scene. And where the vehicle was actually parked
14 the lighting was not that, well. I'm working off a
15 flashlight so I made the decision after locating a few
16 items there that I would have the car towed to our impound
17 to be secured so I could process it there in the --

18 Q Now would you please tell us what you found when you
19 searched the vehicle or processed the vehicle at the
20 scene?

21 A Sure. I located a Samsung cell phone from the driver's
22 front seat, a green in color Fugi camera that was in the
23 passenger side rear seat. And also located one clear
24 plastic bag containing green plant material which was
25 underneath the rear seat on the driver's side. In the

1 trunk of the vehicle there were multiple pair of shoes and
2 clothes in it and various other items.

3 Q Okay. And now as part of processing a scene do you
4 photograph it?

5 A Yes. We always photograph the scene before they do any
6 type of processing once we do initial walk-through to see
7 what needs to be done in order to be processed. That's
8 always the first thing we do is anything before anything
9 is moved.

10 Q Now I'm gonna show you what has been introduced into
11 evidence as State's Exhibit Number 7 — I'm sorry, State's
12 Exhibit Number 11. Okay, do you recognize this?

13 A That would be the cell phone that I received from the
14 seat of the vehicle.

15 Q Okay. And that was the Toyota that you processed?

16 A Correct.

17 Q Okay. And State's Exhibit Number 14?

18 A Okay, that's the Camry, the Fuji camera that was
19 located in the vehicle.

20 Q Okay. And where was this located?

21 A Passenger side, rear seat.

22 Q Okay. Now you indicated that you took photographs.

23 A Yes, ma'am.

24 Q And I'm gonna show you a number of photographs and if
25 you would identify them by saying their — the exhibit

1 number.

2 A Would you like me to go through all them?

3 Q Yes, please.

4 A Okay, I was waiting for the questions.

5 Q I'm sorry.

6 A Exhibit 8(a), that would be the left side of the
7 vehicle, the Toyota Camry. That was kind of reddish or
8 burgundy in color as I call it. 8(b) is also the left
9 side and also kind of the left rear trunk quarter panel
10 area of the vehicle. 8(c) would be the front and the
11 right front quarter panel showing damage. 8(d) is a
12 closeup of the front and also of the right rear quarter
13 panel of the trunk. I'm not sure if this is 10 or 1(d).

14 It's showing the cell phone, some traffic tickets that
15 were inside the seat as well as the passenger side.

16 Q It's 10.

17 A 10? Okay. Exhibit 10 will be the driver's seat
18 showing the phones and traffic tickets and also a closeup
19 of it.

20 Q Okay.

21 A Exhibit 12, the bank card. Got it photographed on the
22 hood of a vehicle.

23 Q Okay.

24 A Exhibit 15(a) is the passenger rear seat showing the
25 Fuji cell phone and pair of jeans.

1 Q A Fugi cell phone?

2 A I mean, I'm sorry, Fugi camera, green camera.

3 Q Okay.

4 A Exhibit 15(b), once again is a -- another closeup of
5 the camera on the seat. And 17(a) is, it's another inside
6 shot of the driver's side front. 17(b) would be from the
7 driver's side. This is also a front and one also of the
8 driver's side rear seat. 17(c), interior from the
9 passenger front. 18(a) would be of the trunk, various
10 clothing in it, quite a bit actually. 18(b) is another of
11 the trunk. 18(c), it looks like this is taken at the
12 impound there in the daytime hours of trunk and also of
13 the Nike shoe. And 18(d) is a closeup of the Nike shoe
14 trying to show that there was a small handgun stuffed down
15 in it. Before I removed it I photographed it.

16 Q And when did you take that one?

17 A This would have been the following day in daylight
18 hours.

19 Q Okay. And this was after you had these items --
20 had the car in impound?

21 A Correct, it was secured to impound.

22 Q Okay.

23 MS. PARR: Your Honor, the State would ask
24 permission to pass these to the jury, publish this to the
25 jury.

1 THE COURT: You may proceed.

2 (Pictures tendered to the jury.)

3 BY MS. PARR:

4 Q Now on the scene you said that you were given certain
5 items; is that correct?

6 A I was given a LG cell phone from Investigator Russell
7 Cox. I believe he had retrieved it off of a suspect at
8 the scene possibly or either from another deputy.

9 Q Okay. And would that have been State's Exhibit Number
10 ?? Do you recognize that?

11 A Yes, I see it.

12 Q And is this the LG phone that you retrieved?

13 A That's the LG phone I retrieved.

14 Q Okay. Now you indicated that you did a more thorough
15 search the next day when it was in impound; is that
16 correct?

17 A Correct.

18 Q And would you please tell us what you retrieved when
19 you did that search?

20 A Only thing additional in that particular search was of
21 the small handgun retrieved out of the sneaker that was
22 located in the trunk of the vehicle.

23 Q Okay. Now I'm gonna show you what has been entered in
24 evidence as State's Exhibit 3(a) and State's Exhibit 3(b).

25 Would you identify each one of those items for us?

1 A Okay. This is the small black handgun that was located
2 within the sneaker and the trunk. It was not loaded.
3 Exhibit 3(b), this would be the magazine within the gun.
4 When I received it it was actually up inside the gun. I
5 removed it for safety reasons, make sure that the gun
6 wasn't loaded.

7 Q All right. And did you obtain other items that --
8 well, first of all, can you identify State's Exhibit
9 Number 19?

10 A Yes, that's the sneaker that the gun was located in.

11 Q Okay. And how was the gun in this sneaker, if you
12 would demonstrate for us. Do you need your glove?

13 A No, that's all right. It was actually stuffed all the
14 way down inside up into the toe area not easily -- not
15 easy to see there. And the shoe was actually kind of near
16 the back of the trunk underneath a bunch of clothing. It
17 was stuffed. It's a small gun. I don't know if you want
18 to pass it around for them to see it.

19 Q Well, they'll take it when they go into evidence.

20 A Anyway, it was pushed all the way up into the toe area.

21 Q And did you also on the next day process some other
22 items in this case, obtain some other items?

23 A Well, I processed the gun, is that what you're relating
24 to?

25 Q Yeah.

1 A I did process the gun within the lab. I fumed it with
2 cyanoacrylate and dust it for prints, or attempted to
3 locate prints.

4 Q Okay. And were you able to locate any usable prints?

5 A I was able to locate two latent prints on the magazine
6 itself, the small clip that was inside the gun, but they
7 were not AFIS quality which means there's not enough
8 points on the fingerprints for identification.

9 Q So you did try to process it for fingerprints?

10 A Correct.

11 Q Now did you, in fact, on the next day as well obtain
12 clothing from the subjects?

13 A Actually, when I responded, left the scene, I had to go
14 back to the impound to meet the wrecker driver to secure
15 the vehicle, and I received a telephone call from Deputy
16 James Allen. He had taken some suspects to the jail and
17 informed me that there was bags of clothing and some money
18 that, over there at the jail, that needed to be entered
19 into evidence and I responded over there and collected
20 them and secured them in the evidence room.

21 Q Okay. And I'm gonna show you what has been entered
22 into evidence as State's Exhibit Number 20. Would you
23 please tell us what that is.

24 A This is the bag that's -- it's actually heat sealed at
25 the jail when I pick it up. It has -- they count the

1 money and put the amount down here on this entry area
2 here, and then they put the name on there, who they got it
3 from. So anytime anybody is booked into the jail any
4 personal belongings are itemized and stored. In this case
5 it was given to us to put into evidence. Once we receive
6 it the next day myself and another colleague, Corporal
7 Moore, we count it together. Any time there's money
8 involved you never count alone just to make sure there's
9 not going to be anything said there. We both obtained the
10 same amount, 471-dollars and 30 cents, and it was marked
11 from the jail to Mr. Jordan.

12 Q Okay. And so that's from Tarrence Jordan?

13 A Tarrence, yes. And that's the heat seal there where
14 myself and Mr. Moore signed it again after we recounted
15 it.

16 Q Okay.

17 MS. PARR: Your Honor I ask permission to...

18 THE COURT: You may do so.

19 (Exhibits tendered to the jury.)

20 BY MS. PARR:

21 Q Now Corporal Bird, you indicated you also obtained the
22 defendant's clothing; is that correct?

23 A That's correct. There are three bags I actually picked
24 up from the booking area of the jail and one was marked
25 Shakeem Williams. One was Tarrence Williams. And one was

1 Johnny Johnson. The tops were tied on them. I did not
2 open them. I just secured them in the evidence room.

3 Q Okay. And you said they were marked Shakeem Williams
4 and —

5 A Tarrence Williams.

6 Q Was it —

7 A Johnny Johnson.

8 Q Was it Tarrence Jordan?

9 A It possibly could be. These are my case notes; that's
10 not the file.

11 Q Okay.

12 A I have to look at the actual bags. I may have actually
13 put it in order and the names mixed up.

14 MR. MCCLAUGHLIN: Your Honor, we stipulate those bags
15 were the clothes of Mr. Jordan.

16 THE COURT: Let that stipulation show for the record
17 and you may proceed from that point.

18 MS. PARR: Okay, all right.

19 BY MS. PARR:

20 Q And so that bag would have been Tarrence Jordan; is
21 that correct?

22 A I believe so if that's what's written on the bag there.
23 I could have written it down wrong.

24 Q Okay. Would you please answer any questions
25 Mr. McLaughlin would have for you.

1 MR. MCLAUGHLIN: May it please the Court.

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. MCLAUGHLIN:

5 Q Scrivener's errors, we all the make them, Corporal
6 Bird? That's all right.

7 A 5:00 in the morning. I may have written it down wrong.

8 Q That's all right. You work in the forensic crime scene
9 unit, correct? All right. And the forensic in that
10 refers to what? Forensic science?

11 A Basically that's just anything to do with any type of
12 physical evidence that may be located, secured on the
13 scenes. So it can range anything from item like recovered
14 on this to homicide where it may be blood and fibers and
15 bullets and things of that nature.

16 Q This general area we refer to as forensics is forensic
17 science; isn't it?

18 A I guess so, if that's what you...

19 Q Okay. You told us a little bit about your job history
20 or career background, professional background. How about
21 your educational background?

22 A Educational background, high school graduate, some
23 college.

24 Q Are you a member of any type of forensic science
25 organization or association or forensic crime type of

1 organizations?

2 A No.

3 Q Okay. Are you familiar with any such organizations?

4 A I'm familiar with some but not a member of any, no.

5 Q Okay. Are you aware of whether or not any such
6 organizations have any educational requirements?

7 A No, I'm not aware of any, no, sir.

8 Q Okay. You collected these three bags of clothing,
9 correct?

10 A Correct.

11 Q All right. And you -- I believe you said you collected
12 them 'cause Deputy Allen called you and told you they had
13 arrested three people, needed you to come collect them,
14 right?

15 A Right there at the booking area of the jail and they
16 need to be collected and logged into evidence.

17 Q Okay.

18 MR. MCLAUGHLIN: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 MR. MCLAUGHLIN: That's all the questions I have,
21 Corporal Bird.

22 THE COURT: Redirect.

23 MS. PARR: Nothing further for this witness, Your
24 Honor.

25 THE COURT: You may step down.

1 MS. PARR: We ask permission for him to be excused.

2 THE COURT: He's excused? Is it suitable, Counsel?

3 MR. MCLAUGHLIN: No objection.

4 MR. RICHARDSON: Your Honor, may we check out the
5 door to see if our witness is ready?

6 THE COURT: Yes.

7 (Pause.)

8 MR. RICHARDSON: Your Honor, the State would call
9 Johnny Johnson.

10 DEPUTY CLERK OF COURT: Place your left hand on the
11 Bible, raise your right hand.

12 WHEREUPON,

13 JOHNNY ARTERIO KASHAD (PH) JOHNSON,
14 having been duly sworn by the Deputy Clerk of Court,
15 testified as follows:

16 DEPUTY CLERK OF COURT: Please be seated, then state
17 your name for the record.

18 THE WITNESS: My name is Johnny Arterio Kashad
19 Johnson.

20 THE COURT: Just one second, Counsel.

21 MR. RICHARDSON: Yes, sir, Your Honor.

22 THE COURT: Please.

23 MR. RICHARDSON: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. RICHARDSON:

1 Q Mr. Johnson, I notice you're wearing the Florence
2 County Detention Center uniform. You are currently
3 incarcerated related to these armed robbery charges we're
4 here about today; is that right?

5 A Yes, sir.

6 Q All right. And you've been incarcerated since the
7 night of July or the early morning July 4th, 2008?

8 A Yes, sir.

9 Q All right. How old are you, Mr. Johnson?

10 A Twenty-one.

11 Q Okay. So back in 2008 around July how old would you
12 have been?

13 A Nineteen.

14 Q Okay. Where are you from, Mr. Johnson?

15 A Darlington.

16 Q All right. And is that where you still call home?

17 A Yes, sir.

18 Q All right. Where do you live over in Darlington?

19 A Lewinsville, Road.

20 Q And did you grow up over in Darlington?

21 A Yes, sir.

22 Q Where did you go to school over there?

23 A Darlington High School.

24 Q All right. Have you been offered anything special,
25 promised anything, threatened, coerced, pressured in any

- 1 way shape or form to testify here today?
- 2 A No, sir.
- 3 Q Okay. So you don't have some deal on the table for
- 4 your testimony today?
- 5 A No, sir.
- 6 Q Okay. Do you know Tarrence Jordan?
- 7 A Yes, sir.
- 8 Q When did you meet him?
- 9 A Mainly in high school. I got to know him through high
- 10 school but I know him a little bit before that.
- 11 Q Okay. So how long would you say you've known
- 12 Mr. Jordan?
- 13 A Maybe about seven years.
- 14 Q Seven years, all right. Would you say y'all kind of
- 15 grew up together?
- 16 A Not really grew up, but we knew each other before a
- 17 little bit before that but around high school is when we
- 18 started to know each other.
- 19 Q Okay. So he was from Darlington too?
- 20 A Yes, sir.
- 21 Q All right. And do you recall where he lived over
- 22 there?
- 23 A I know he moved right across the street from me.
- 24 Q So he lived right across the street from you?
- 25 A Yes, sir.

1 Q Is that where y'all lived when these events took place?

2 A Oh, yes, sir.

3 Q Okay. So he lived pretty close to you then?

4 A (Shakes head.)

5 Q Okay. Did you also know the other two guys that were
6 with you, Shakeem Williams —

7 A Yeah.

8 Q --- and Lewis Williams?

9 A Yes, sir.

10 Q How did you know them?

11 A I know Shakeem from high school and I only met Louis
12 maybe two times.

13 Q Okay. Louis was Shakeem's brother?

14 A Yes, sir.

15 Q So that's how you knew him, through Shakeem?

16 A Yes, sir.

17 Q All right. Back on July 2nd how did y'all get together
18 that day, how did these, how this group come together?

19 A Early that afternoon Tony called me and asked me to
20 take me, go hit a lick because maybe steal some more
21 robberies and I agreed.

22 Q So he called you and said something about hitting a
23 lick?

24 A Yes, sir.

25 Q Now could you describe what a lick is?

- 1 A Yes, that would be like a robbery or maybe stealing
2 something.
- 3 Q Okay. So he called you and asked you if you wanted to
4 participate in a lick?
- 5 A Yes, sir.
- 6 Q Okay. What happened then?
- 7 A So later on that night I went to go pick Tarrence up
8 first, then I went and picked Shakeem and Louis up.
- 9 Q Okay. Now you went to pick them up. So were you
10 driving?
- 11 A Yes, sir.
- 12 Q What kind of car do you have?
- 13 A A '95 Toyota Camry.
- 14 Q Okay. Is there anything about that car that
15 distinguishes it from any other Camry?
- 16 A Yeah, my front hood got a dent in it and my driver's
17 side window is missing.
- 18 Q Okay. I want to show you an exhibit, Mr. Johnson. Mr.
19 Johnson, this is State's Exhibit 8(a). I ask if you can
20 identify that.
- 21 A Yes, sir, that's mine.
- 22 Q Okay, what is it?
- 23 A Toyota Camry.
- 24 Q That's your vehicle?
- 25 A Yes, sir.

1 Q So you went to pick up Mr. Jordan and the two Williams
2 brothers in your Toyota Camry back on July 2nd?

3 A Yes, sir.

4 Q When you picked them up what was the plan from there?
5 Well, first, about what time did you pick them all up?

6 A Maybe around about 9:00. I can't really recall the
7 exact time.

8 Q Okay. So when you got all four of you in the car what
9 was the plan from there?

10 A Told me to drive around Florence and when we got on 52
11 we road 52 for maybe about five minutes, then they told me
12 to stop at the first hotel.

13 Q Okay. Was that the Holiday Inn?

14 A Yes, sir.

15 Q When you got to the Holiday Inn what was the plan?

16 A To just park, wait in the car, wait on them to come
17 back.

18 Q Okay. Do you recall where about the Holiday Inn
19 parking lot you parked the car?

20 A Kind of close to the front side on the right.

21 Q Okay. What did -- what was your role at that point?

22 A Just to wait in the car, wait for them to come back.

23 Q Okay. And who waited in the car with you?

24 A Me and Louis.

25 Q So you and Louis were in the car? Who got out of the

1 car?

2 A Tarrence and Shakeem.

3 Q And did you know when they got out of the car what they
4 were planning to do?

5 A Yes, sir.

6 Q Okay. What was that?

7 A To go — basically I knew they was gonna, either
8 they an— they was actually going in to rob somebody or
9 just break into the hotel room. I knew they was gonna
10 rob.

11 Q Do you recall approximately what time this was?

12 A I can't recall the exact time, but it was maybe close
13 to midnight.

14 Q Okay. How long approximately were Mr. Jordan and
15 Mr. Williams gone from your car at that point?

16 A Maybe about five or ten minutes.

17 Q Okay. When they got back to the car, did they bring
18 anything back that they didn't take with them? Did you
19 see anything?

20 A Nothing I could see.

21 Q You couldn't see what they had?

22 A No, sir.

23 Q Where were you and Lewis Williams located in the
24 vehicle?

25 A I was in the driver's seat. Lewis was in the back

1 side.

2 Q He was in the where now?

3 A The back seat.

4 Q He was in the back seat. So was he in the back seat
5 behind you or on the passenger side?

6 A I can't really recall exactly, but I think he was
7 across from me.

8 Q Okay. So the other two guys, one got in the driver's
9 passenger seat.

10 A Yes, sir.

11 Q The front passenger seat, and one got in the back seat?

12 A Yes, sir.

13 Q All right. What did Mr. Jordan say when they got back
14 to the car if you remember?

15 A When they got back to the car they just told me to pull
16 off.

17 Q All right. Is that what you did?

18 A Yes, sir.

19 Q Where did you go when you pulled away?

20 A After we came toward Darlington stopped at Hudson gas
21 station. That's where I got gas.

22 Q Okay. So after the Holiday Inn y'all drove over to
23 Darlington to a gas station?

24 A Yes, sir.

25 Q Who bought gas?

- 1 A I can't really recall who got out, but they got out and
2 they paid for it with the credit card.
- 3 Q They paid for it with a credit card?
- 4 A Yes, sir.
- 5 Q Okay. Did you have any knowledge as to whose credit
6 card that was that they used it?
- 7 A Yes, sir, at that time I did.
- 8 Q Was it any of their credit card?
- 9 A No, sir.
- 10 Q All right. Was it a profit from the robbery?
- 11 A Yeah, that's basically what I got for our taking.
- 12 Q Okay. So you just touched on that. What was your
13 benefit for going along with these fellows on these
14 robberies?
- 15 A Just give me gas for the tank.
- 16 Q So they were going to fill your tank up with gas?
- 17 A Yes, sir.
- 18 Q All right. After you went to the gas station in
19 Darlington, this was still on July 2nd, where did you go
20 from there?
- 21 A I dropped everyone back off at home.
- 22 Q So you took everybody back home in Darlington?
- 23 A Yes, sir.
- 24 Q And that was it for that night?
- 25 A Yes, sir.

1 Q Okay. July 3rd, how did the four of you get together
2 again?

3 A Early that afternoon Tarrence called me to come get him
4 went over and pick him up. We came back to Syracuse,
5 which is on Lamar Highway, and we stayed over there maybe
6 till about, maybe around about nine. I know it was
7 getting dark at the time. And that's when we left to go
8 pick up Shakeem and Lewis again.

9 Q Okay. And what was the plan on July 3rd?

10 A Basically the same routine.

11 Q Okay. What time did y'all get together on July 3rd?

12 A All of us maybe got together maybe around maybe about
13 10, 10:30.

14 Q That night?

15 A Yes, sir.

16 Q Okay. And when y'all got together at that time what
17 did y'all do?

18 A We came back on 52 and we rode 52 and then he told me
19 to go to Americas Best Value, which is located on TV Road,
20 so we drove to Americas Best Value.

21 Q Okay. Who was giving you these directions?

22 A Basically -- I can't really say who actually gave me
23 directions. I know it was -- they told me to go down TV
24 Road, Americas Best Value.

25 Q When you got to America's Best Value Inn, where did you

1 go in the parking lot?

2 A We went around the first corner from the entrance and
3 there was like a parking space that goes on on in a lit
4 bit. We parked in the middle, basically middle of the
5 back of the Americas Best Value.

6 Q Okay. So when you parked your car who got out?

7 A Tony and Shakeem.

8 Q Okay. And you and Louis remained in the vehicle again?

9 A Yes, sir.

10 Q Kind of the same way it was a couple of nights before?

11 A Yes, sir.

12 Q About how long were Mr. Jordan and Mr. Williams gone?

13 A The first time they stayed gone about five minutes, but
14 then they came back and told us to wait. And then they
15 left again, stayed maybe another five or ten minutes and
16 came back, and we left.

17 Q Okay. So Americas Best Value Inn you said they left
18 the car the first time for about five minutes and came
19 back?

20 A Yes, sir.

21 Q And then left again?

22 A Yes, sir.

23 Q When they were doing all this coming and going to the
24 car, were you aware of what they were doing at those
25 separate times?

1 A Oh, yes, sir.

2 Q All right. What had they done the first time they left
3 the car and come back?

4 A Basically they was just walking around trying to find
5 what place they want to hit first.

6 Q Okay. And when they came back to the car and left
7 again, what did they do when they left, again?

8 A That's when they went to go into one of the rooms.

9 Q Okay. You say they were gone approximately five
10 minutes?

11 A Maybe five to ten.

12 Q Five to ten? All right. And you and Louis Williams
13 waited in the vehicle the whole time?

14 A Yes, sir.

15 Q All right. How did Mr. Jordan and Shakeem Williams
16 approach the vehicle when they came back? Were they
17 walking, running?

18 A Yeah, they came running back.

19 Q Okay. What did you do when they got back in the car?

20 A They told me to drive off.

21 Q Okay. Did Mr. Jordan say anything about what they'd
22 gotten?

23 A That basically -- I go -- not what they got but what
24 they did on the inside.

25 Q Okay. What did he say they did on the inside?

1 A They robbed a man, put him in the bathroom, and took
2 his clothes, searched the room for what they wanted, and
3 left.

4 Q Okay. When they got back in the vehicle where were
5 y'all situated in the the car at that point?

6 A I can't recall exact seating but I know I was driving.

7 Q Okay. When you left Americas Best Value Inn on July, I
8 guess -- was that early morning July 4th?

9 A Yeah, around that time.

10 Q When you left there where did you go?

11 A We stopped at the gas station on TV Road. I think it's
12 the BP gas station across between East McIver and TV Road
13 and stopped—

14 Q What did you do at the gas station?

15 A We stopped there, and Louis went in and bought some
16 beer and he came back out, put it in my trunk. And then
17 from there, he drove. He drove from there to the next
18 destination.

19 Q So y'all switched? He was then driving your car?

20 A Yes, sir.

21 Q Okay. Where did he then drive you to?

22 A When we got back on 52 we stopped at the Exxon station
23 right across from Hardees and I got back in the driver's
24 seat and then we went to the Super 8 parking lot.

25 Q Okay. And who said go to the Super 8, do you recall?

1 A I can't really recall exactly who said go there.

2 Q But that was the plan, go to the Super 8?

3 A Yes, sir.

4 Q When you pulled into the Super 8 what was the procedure
5 from there?

6 A We went around on the right side, came around the back,
7 and tole me to park on the left side. And they got out,
8 went around, back around the other side, stayed gone for
9 maybe five or ten minutes again and came back.

10 Q Okay. You said you parked around on the left side of
11 the building?

12 A Yeah, like if you coming from the front, you come
13 around the right and go around the back and park on the
14 left side on that side.

15 Q Were there any room entrances on the side where you
16 parked?

17 A Yes, sir.

18 Q All right. I'm gonna show you a photograph -- beg the
19 Court's indulgence, Your Honor.

20 THE COURT: Yes, sir.

21 MR. RICHARDSON: It may take me a moment to find it.

22 BY MR. RICHARDSON:

23 Q Mr. Johnson, I want to show you what's been marked
24 State's Exhibit 9(b). It's already in evidence. Can you
25 identify that area?

1 A Yes, sir.

2 Q What is that?

3 A Super 8 Motel.

4 Q All right. Where is this in relation to where you
5 were?

6 A I can tell -- is the front up here or on the side?

7 Q Well, I'll show you. This is 9(a). You recognize
8 that?

9 A Yeah. We came around on the right side first.

10 Q Okay. So you went around to the right of this?

11 A (Shakes head.)

12 Q Came down this way?

13 A Yes, sir.

14 Q All right. Where did you park in relation to?

15 A So if I came on the right we came down this side,
16 right. We went around and parked on the other side.

17 Q So you parked on the other side of the hotel, all
18 right.

19 A Yeah.

20 Q So you went around back?

21 A Yes, sir.

22 Q When you parked the car who got out?

23 A Tarrence and Shakeem.

24 Q Okay, did they -- did Mr. Jordan say anything at that
25 point about what they were gonna do or?

1 A No, basically just told me to wait.

2 Q Okay. How long were they gone?

3 A About five or ten minutes.

4 Q Okay. Did you see them — obviously you saw them come
5 back?

6 A Yes, sir.

7 Q Were they running, walking, do you remember?

8 A They kind of walked back.

9 Q Okay. Did you see anything that they had on them?

10 A No, not — I believe everything was pocket size.

11 Q Okay. Did you see anything inside the car, stuff that
12 they brought with them?

13 A Oh, yes, sir, cell phone and a camera.

14 Q Okay. At any point in time were you aware that they
15 had a pistol?

16 A Not until after everything was over.

17 Q Okay. When they got back in the vehicle at the Super 8
18 where did you go from there?

19 A We came back to Darlington and stop at Kangaroo Gas
20 Station, and then that's when he used one of the credit
21 cards to put gas in my car. And we left from there and
22 went to West McIver to a trailer park, and we stayed there
23 for about, maybe about five or ten minutes. And I saw
24 Shakeem get out and went to go put something in my trunk.

25 Q Do you have any idea what he put in your trunk?

1 A Yeah, the gun.

2 Q Okay. You say you went to a gas station after you left
3 Super 8 and you bought gas. Who bought the gas, do you
4 recall?

5 A Shakeem used the credit card.

6 Q Do you know which credit card he used?

7 A Oh, not exactly.

8 Q So you wouldn't be able to recognize the card?

9 A No, sir.

10 Q All right. After you said you went to a trailer park?

11 A Yes, sir.

12 Q Do you recall about what time this was?

13 A No, early that morning. Maybe around 2, 2:30.

14 Q Okay. Where did you go after you left the trailer
15 park?

16 A We left and went to IHOP.

17 Q International House of Pancakes?

18 A Yes, sir.

19 Q Was that the Magnolia Mall area?

20 A Yes, sir.

21 Q Okay. Do you remember about what time you got there?

22 A Maybe around three.

23 Q Okay. Where did you park your car when you got to
24 IHOP?

25 A Close to the middle of the parking lot.

1 Q Were there a lot of cars there, do you remember?

2 A It wasn't really packed.

3 Q Okay. Were all four of you still together?

4 A Yes, sir.

5 Q Had anyone separated at any time from the time of the
6 robberies?

7 A No, sir.

8 Q Were all of you wearing the same clothing?

9 A Would you explain the question?

10 Q Well, were y'all wearing the same thing that you'd been
11 wearing all night?

12 A Oh, yes, sir.

13 Q Okay. Were you wearing a multicolored stripe-type
14 shirt?

15 A Yes, sir.

16 Q Okay. What did you do when you got inside the IHOP?

17 A We sat down and ordered.

18 Q Okay. At any point did you notice police cars or
19 police officers?

20 A Yes, sir.

21 Q Okay. What did you notice?

22 A Unmarked car pull up behind my car. An officer got out
23 and when they shine the flashlight in my car and then came
24 in and talked to one of the waitresses at the cashier desk
25 then left out. That's when I noticed more police cars

1 pulling up in the mall parking lot.

2 Q Okay. At that point did y'all know something was up?

3 A Yes, sir, we kind of figured it.

4 Q All right. Y'all were still in your red Camry, right?

5 A Yes, sir.

6 Q Did Mr. Jordan say anything while y'all were sitting at
7 the table in the IHOP with all these police mulling around
8 outside?

9 A I was basically the one recognize at first. Then
10 that's when Shakeem and Louis got up and went to the
11 bathroom and they came back. And when, we was like, well,
12 we gonna get ready to go. I asked about the keys and
13 Louis like, I can't find the keys, so we called for a cab.

14 Q So whose idea was it to call for a taxicab?

15 A Louis.

16 Q And you say he had lost your keys?

17 A Yes, sir.

18 Q Okay. So he had — he and his brother Shakeem had gone
19 to the restroom and when he came back you didn't have your
20 keys?

21 A Yes, sir.

22 Q Okay. Who called the taxi?

23 A Louis.

24 Q All right. About how long did it take the taxi to get
25 there?

1 A Maybe about 10 to 15 minutes.

2 Q Okay. What did y'all do when the taxi arrived?

3 A We went to go pay for our food and then we left out and
4 got in the cab.

5 Q Whose money did you use to pay for the food?

6 A Oh, we used our own money.

7 Q Was it money that was taken from anybody else or?

8 A Oh, no, sir.

9 Q Okay. When you got outside IHOP what happened?

10 A We got in the cab. And we got ready to pull out of the
11 IHOP parking lot; that's when the police pulled up on the
12 cab.

13 Q Okay. And at that point is that when all of y'all were
14 taken out of the vehicle?

15 A Yes, sir.

16 Q And y'all were all placed into custody from then on,
17 right?

18 A Yes, sir.

19 Q Okay.

20 MR. RICHARDSON: Beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 BY MR. RICHARDSON:

23 Q Mr. Johnson, do you recall who was seated where inside
24 the taxi?

25 A Louis was in the front. Me and Shakeem and Tarrence in

1 the back.

2 Q Okay. Do you recall what Mr. Jordan was wearing that
3 night?

4 A Not exactly.

5 Q I know it's been about a year and-a-half.

6 MR. RICHARDSON: Beg the Court's indulgence.

7 BY MR. RICHARDSON:

8 Q Mr. Johnson, at what point when you were inside your
9 vehicle throughout that night did you see the items that
10 were taken from, during the robberies?

11 A The point when we stopped at the trailer park and
12 before we get out to IHOP.

13 Q You mentioned camera and phones. Did you see those?

14 A Yes, sir.

15 Q I want to show you -- Mr. Johnson, this is State's
16 Number 14 already in evidence. Do you recognize that?

17 A Yes, sir.

18 Q What is that?

19 A The camera.

20 Q Okay. Is that the camera you saw in your car?

21 A Yes, sir.

22 Q State's Number 11 already in evidence, do you recognize
23 that?

24 A Yes, sir.

25 Q What is that?

1 A The cell phone.

2 Q Okay. State's number 7 already in evidence, do you
3 recognize it?

4 A No, sir.

5 Q You don't recognize that one?

6 A No, sir.

7 Q All right. You recognize these other two?

8 A Yes, sir.

9 Q And you saw those in your car?

10 A Yes, sir.

11 Q Who brought those to your car?

12 A When we got out -- when he got out, stopped at the
13 trailer park they were just there. They just left them in
14 the back seat. The camera was sitting in the back seat.
15 I don't know who actually put what down.

16 Q Okay, so they just left it in the back seat of your car
17 when you got out? Okay. Did Mr. Jordan indicate to you
18 at any time anything about the people, the individuals
19 that they robbed?

20 A Yes. When we was -- not towards me personally but him
21 and Shakeem was talking about it in the back seat when we
22 left America Best Value.

23 Q What was said about the people that were robbed?

24 A Basically only thing they say what they did on the
25 inside.

1 Q Okay. What did they say they did on the inside of the
2 hotel room?

3 A When they went out they put them in the bathroom, took
4 their clothes, and searched the room for what they wanted.

5 Q Is that what they did at each one?

6 A Only one I really recall was at -- was the America Best
7 Value.

8 Q Okay. And is that the extent of what you heard them
9 say about the people inside?

10 A Yes, sir.

11 Q Okay. Please answer any question Mr. McLaughlin may
12 have for you.

13 MR. MCLAUGHLIN: May it please the Court.

14 THE COURT: Yes, sir.

15 **CROSS-EXAMINATION**

16 BY MR. MCLAUGHLIN:

17 Q Mr. Johnson, we've never met, have we?

18 A No, sir.

19 Q My name is Patrick McLaughlin. I represent Tarrence
20 Jordan. How long did you tell the jury you'd known
21 Tarrence?

22 A Maybe about seven years.

23 Q And he lived across from you? Is that what you said?

24 A Yes, sir.

25 Q All right. You guys also worked together; didn't you?

1 A Yes, sir.

2 Q All right. In fact, you worked with him and Shakeem;
3 didn't you?

4 A Yes, sir.

5 Q Where did y'all work at?

6 A Zaxby's.

7 Q All right. You and Shakeem got fired though; didn't
8 you?

9 A Yes, sir.

10 Q All right. Tarrence was still working there; wasn't
11 he?

12 A Yes, sir.

13 Q Okay, all right. He had other job too; didn't he?

14 A Not that I know of.

15 Q You didn't know about him working for the National
16 Guard?

17 A Yes, I knew he was in the National Guard but you just
18 called it a job.

19 Q Well, yeah, they pay you for working in the guard. You
20 didn't know that — you never seen the commercial?

21 A Yes, sir.

22 Q Okay, all right. How many times have you talked to
23 people from the State about this case? And when I mean
24 the State, I mean any cops, any solicitors?

25 A Twice.

1 Q Twice? All right. You gave two interviews,
2 recorded statements; didn't you?

3 A Yes, sir.

4 Q Okay, all right. Do you remember when you gave that
5 first statement?

6 A Maybe about three days after I first got arrested.

7 Q If I told you it was July 7th, 2008, would that sound
8 about right?

9 A Yeah, that's about right.

10 Q Okay, all right. And where was that statement taken
11 at?

12 A In -- at Effingham at the detention center.

13 Q Okay. Do you remember who all was present for that
14 statement?

15 A Officer Compton.

16 Q Well, from the city, Mr. Tim Compton?

17 A Yes, sir.

18 Q Okay. And who else do you remember being there?

19 A He was the only one.

20 Q Okay. How about Mr. Timmons, Calvin Timmons?

21 A Yeah.

22 Q With the Sheriff's Office, you remember him?

23 A Yes, sir.

24 Q How about Mr. Powell? You remember him being there as
25 well?

1 A I don't actually know him by face.

2 Q All right. There was — would you say there was —
3 would you agree there were three people present at that
4 interview?

5 A Yes, sir.

6 Q Okay, all right. And then you gave another interview
7 at some point; didn't you?

8 A Yes, sir.

9 Q Okay. And do you remember when that interview was?

10 A Maybe a month ago, like a month ago.

11 Q Okay. If I told you it was in February, like
12 February 11th of this year, would that sound about right?

13 A Yes, sir.

14 Q Okay. And who was present when you gave that
15 interview?

16 A My lawyer, the solicitor, and one — two of the
17 investigators.

18 Q All right. Was it Mr. Cox?

19 A Could you?

20 Q Was it this gentleman sitting right here?

21 A Yes, sir.

22 Q So Investigator Cox. Was it Ms. Parr who was present
23 as well?

24 A Yes, sir.

25 Q Okay. And then your lawyer Mr. Lawson, correct?

1 A Yes, sir.

2 Q All right. You told the jury that you got phone calls
3 from Mr. Jordan; didn't you?

4 A Yes, sir.

5 Q All right. So he called you to ask you if you wanted
6 to come join them in these crimes. Is that what you're
7 saying?

8 A Yes, sir.

9 Q Okay, all right. And what did he call you on?

10 A Cell phone.

11 Q All right. Your cell phone?

12 A Yes, sir.

13 Q Okay, all right. And did you tell the cops that?

14 A Yes, sir.

15 Q All right. When did you tell them about him calling
16 you to commit these crimes?

17 A The first time I ever give a statement.

18 Q Okay. Back in July of 2008 you told them about that;
19 is that right?

20 A Yes, sir.

21 Q Okay, all right. Did you give them your cell number at
22 that time?

23 A I remember -- I remember telling them my cell number,
24 but I don't know if they ever went to my phone.

25 Q Do you remember them asking you for your cell number at

1 your second interview too?

2 A No, sir.

3 Q Okay. Was your cell number at the time 616-3749?

4 A Yes, sir.

5 Q Does that sound familiar?

6 A Yes, sir.

7 Q All right. And do you remember Investigator Timmons
8 asking you about that?

9 A Yes, sir.

10 Q And you told them that number, right? Okay. When you
11 were just talking to the jury and you were talking about
12 the Americas Best event, that was the, I guess, the first
13 robbery on July ---

14 A Yes, sir.

15 Q ---4th?

16 A Yeah, that's correct.

17 Q All right. And you talked about going to somebody's
18 house over there in Syracuse; is that right?

19 A Yes, sir.

20 Q All right. What's that fellow's name, do you remember?

21 A I only know him by his nickname 'cause I ain't knew him
22 for him that long.

23 Q Well, Sly, right?

24 A Yeah.

25 Q Okay, all right. And you told the jury just now that

1 y'all stayed over at Sly's house till about 9:00.

2 A Yes, sir.

3 Q Okay, all right. Was that what you originally told the
4 cops?

5 A I know it was somewhere around that time, but I can't
6 say exactly what time it was.

7 Q All right. Let me ask you this, I want you to think
8 about that second statement you gave, okay. How were
9 y'all taking that statement? Were y'all sitting around
10 the table?

11 A I was sitting at the officer's desk.

12 Q Okay, all right. And you're sitting across from
13 Investigator Cox?

14 A Yes, sir.

15 Q Okay. And you got a microphone in front of you?

16 A Yes, sir.

17 Q All right. Is there a tape player right there in front
18 of you?

19 A Yes, sir.

20 Q So you can see it when he presses start, right?

21 A Yes, sir.

22 Q All right. You can see it when he presses stop, right?

23 A Yes, sir.

24 Q Okay, all right. During that interview at any time
25 while you were talking did Investigator Cox press stop?

1 A Yes, sir.

2 Q Okay. How many times did Investigator Cox stop that
3 recording while you were giving a statement?

4 A Maybe two or three.

5 Q Two or three times? Okay. All right. Do you remember
6 whether or not one of those stops came when you were
7 explaining how long y'all were at Sly's house?

8 A No, I can't really recall exactly what point.

9 Q Okay. You remember originally telling the police that
10 you picked up Tarrence about 6:00 that evening?

11 A For exactly which one?

12 Q The America's Best. When y'all went out to Sly's
13 house, before y'all went to Sly's house.

14 A Yeah, somewhere late afternoon.

15 Q Okay. 6:00 sound about right what you originally told
16 them?

17 A Maybe around about 5, 5:30.

18 Q Okay, all right. You remember originally telling the
19 cops that or saying any statement, we stayed out there for
20 about an hour?

21 A I can't remember exactly how long I said we stayed out
22 there.

23 Q Would you like to look at your statement to refresh
24 your memory? Would that help?

25 A Yeah.

1 Q This is Page 7 of a transcript we were given about
2 your — from your interview with Investigator Cox. Okay,
3 all right. Does it give you — now is your memory
4 refreshed about what you originally told the cops about
5 when you picked up Tarrence, what time y'all were at Sly's
6 house?

7 A Yes, sir.

8 Q And what time was that?

9 A Around six.

10 Q Okay. And then does it refresh your memory about how
11 long you originally told the cops that y'all stayed at
12 Sly's house?

13 A Yes, sir.

14 Q And how long was that?

15 A About an hour.

16 Q All right. After telling them that you stayed at Sly's
17 house for about an hour, then what did you originally tell
18 the cops?

19 A That after we left Sly's house we went to go pick up
20 Louis and Shakeem.

21 Q Okay. And then what?

22 A Then we came to Florence.

23 Q Then you went to TV Road, right?

24 A Yes, sir.

25 Q Okay, all right. Now at that point do you remember

1 Investigator Cox hitting stop?

2 A I can't exactly recall the points where he exactly hit
3 it.

4 Q Okay. I'm gonna show you statement again, see if that
5 refreshes your memory. Bottom of Page 7 it looks like
6 what you just told the jury. And then I'd ask you to flip
7 over to the next page and look. All right. And looking
8 at that can you see a line where Investigator Cox asked
9 you to wait a minute.

10 A Yes, sir.

11 Q Okay. And does that refresh your memory whether or not
12 that may have been one of those points when he had
13 stopped?

14 A Yes, sir.

15 Q You think it is?

16 A Yes, sir.

17 Q Okay, all right. And then the interview comes back on,
18 correct?

19 A Yes, sir.

20 Q All right. And then what did you tell the cops when
21 the interview came back on?

22 A I think I told them what happened at TV Road at the
23 hotel on TV Road, America Best Value.

24 Q Is that where you pick right back up off?

25 A I can't recall exactly whether or not.

- 1 Q Okay. Let me show you your statement again and I'm
2 gonna ask you to look right after the interview was
3 stopped at that first paragraph when it came back on.
4 Where did you go pick back up now?
- 5 A We picked Shakeem and Louis up.
- 6 Q And then what did you say?
- 7 A That we waited for about 20, 30 minutes.
- 8 Q Okay. So now you stop the interview and then come back
9 and now we remember that, oh, we waited for a little
10 while; is that right?
- 11 A Yes, sir.
- 12 Q Okay, all right. Talk a little bit about the clothing
13 that you had on that night. How did you describe the
14 clothing to the jury?
- 15 A I had on an orange highlighted yellow and white stripe
16 academic collar shirt.
- 17 Q And what did you have on your bottom?
- 18 A Some blue jean pants with a orange and highlighted
19 yellow designing on the back pockets.
- 20 Q Blue jeans dark? Dark blue?
- 21 A Medium red/blue.
- 22 Q And did you have anything else on?
- 23 A Just a — some white fosses (ph) and a hat, white hat.
- 24 Q Did you have a undershirt on?
- 25 A Yes, sir.

- 1 Q Okay. What color was your undershirt?
- 2 A White T -- small white T-shirt with writing on it.
- 3 Q Okay. Who drove -- you described when y'all left
- 4 America's Best that y'all went where?
- 5 A To the BP station, gas station on TV Road.
- 6 Q TV Road?
- 7 A Yes, sir.
- 8 Q Okay. And then where did y'all go?
- 9 A We left from there and went to the Super 8.
- 10 Q All right. After the Super 8 where did you go?
- 11 A We head back to Darlington, stop at Kangaroo gas
- 12 station.
- 13 Q Okay. And what happened after Kangaroo gas station?
- 14 A We went to West McIver to the trailer park.
- 15 Q All right. And how long were y'all at the trailer
- 16 park?
- 17 A About five, ten minutes.
- 18 Q All right. And then y'all went where?
- 19 A To the IHOP.
- 20 Q To the IHOP, okay. Who drove to the IHOP?
- 21 A Louis.
- 22 Q All right. Well, who drove that night the rest of the
- 23 time?
- 24 A Which night, the first night or the second night?
- 25 Q Yeah, the 4th, the night when the two robberies

1 occurred?

2 A From West McIver Louis drove and when we got to IHOP
3 that was it.

4 Q All right. Did Louis drive some more that night at
5 all?

6 A Yes, sir.

7 Q All right. He drove from the gas station after the
8 Americas Best; didn't he?

9 A Yes, sir.

10 Q Okay. And then he drove from West McIver to IHOP;
11 didn't he?

12 A Yes, sir.

13 Q Okay. So why did y'all have to keep switching?

14 A At first I thought he had his license, but he didn't
15 and my license was suspended so I really wasn't driving
16 much.

17 Q Well then why wasn't he driving all night?

18 A We just kept switching back and forth.

19 Q In fact, y'all switched every time y'all went and did a
20 robbery; didn't you?

21 A No, sir.

22 Q You weren't the driver every time when you left the
23 hotel?

24 A When we left, yeah, when we left the hotel, yes, sir.

25 Q Okay. So every time you did a robbery would it be fair

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1 to classify you as the getaway driver?

2 A Yes, sir.

3 Q Okay. You said that you noticed the police officer
4 coming to IHOP first, right?

5 A Yes, sir.

6 Q Okay. And they asked you, I believe they asked you on
7 direct, whether or not Tarrence said anything.

8 A When -- they asked me did he say anything?

9 Q Yeah, when the cops come in. Well, I'm asking you.
10 Tarrence say anything when the cops came in?

11 A No, sir.

12 Q Okay. In fact, Investigator Compton asked you that way
13 back right afterwards; didn't he?

14 A I can't really recall.

15 Q Okay, all right. Mr. Johnson, you always told the
16 truth to the cops about this?

17 A Yes, sir.

18 Q You have?

19 A Yes, sir.

20 Q From the day you were arrested you have told the cops
21 nothing but the truth?

22 A Yes, sir.

23 Q Well, you got any idea then why Investigator Compton
24 would put in his reports that you've lied to him?

25 A No, sir.

1 Q Don't you remember telling Investigator Compton that
2 you picked Tarrence up from somewhere that night?

3 A Yes, sir.

4 Q All right. Where did you tell Investigator Compton you
5 picked him up from?

6 A I can't really exactly remember the first date but...

7 Q DV8. Sound familiar?

8 A Oh, yes, sir.

9 Q Did you tell — so you told Investigator Compton you
10 picked Tarrence up from DV8 that night —

11 A Yes, sir.

12 Q —didn't you?

13 A Yes, sir, that's —

14 Q All right. That's not what you're telling the jury, is
15 it?

16 A No, sir.

17 Q It's not what you told Investigator Compton later, is
18 it?

19 A No, sir.

20 Q It's not what you told Investigator Cox, is it?

21 A No, sir.

22 Q Okay, all right. Is that being truthful to the police?

23 A No, sir.

24 Q Okay. You also told the police stuff about who went in
25 and who was in the car; didn't you?

- 1 A Yes, sir.
- 2 Q All right. That wound up being different; didn't it?
- 3 No?
- 4 A I don't recall.
- 5 Q Okay. You always told the cops that Louis was part of
- 6 this?
- 7 A Yes, sir, as far as I remember.
- 8 Q Okay, from day one? How about the night y'all were
- 9 pulled? Any of the sheriff's deputies pull you to the
- 10 side and talk to you?
- 11 A Yes, sir.
- 12 Q Okay. And what did you tell them when they did that?
- 13 A I told them Louis was driving for me.
- 14 Q You told them what?
- 15 A I told them Louis was driving for me.
- 16 Q Was driving for you?
- 17 A Yes, sir.
- 18 Q All right. Is that all you told them the night they
- 19 pulled you to the side?
- 20 A Yes, sir.
- 21 Q Okay. Did you tell them the keys were lost?
- 22 A Oh, yes, sir.
- 23 Q What happened to the keys?
- 24 A Louis said he lost the keys.
- 25 Q You think Louis lost the keys?

1 A I can't honestly say.

2 Q Well, you think Louis lost them or you think Louis got
3 rid of them?

4 A It's a possibility.

5 Q Well right after the cop come into IHOP you saw him;
6 didn't you?

7 A Yes, sir.

8 Q All right. In fact, you told the jury you were the
9 first one to recognize him, right?

10 A Yes, sir.

11 Q You told the jury that you saw him shining his
12 flashlight in your car, right?

13 A Yes, sir.

14 Q Okay. Then right after that Shakeem and Louis got up
15 and did what?

16 A Went to the bathroom.

17 Q Went to the bathroom; didn't they? All right. And
18 they went in the bathroom and they come out and what
19 happened to the keys?

20 A Said he didn't have them.

21 Q All right. And there was no discussion about that?

22 A No, sir.

23 Q You were just going to leave your car there?

24 A No, I was going to get the cab driver take me home. My
25 father had a spare key. I was going to get him to bring

1 me back to come get the car.

2 Q All right. Mr. Richardson asked you whether you've
3 been about offered any deals; didn't he?

4 A Yes, sir.

5 Q All right. In fact, I believe he put it so there's no
6 deal on the table; didn't he?

7 A Well, as far as I know my offer is 15 years.

8 Q So there is a deal on the table.

9 A Yes, sir.

10 Q Okay. Do you know how much time you're facing?

11 A Yes, sir.

12 Q All right. Do you know what counts you've got against
13 you?

14 A Yes, sir.

15 Q All right. Five counts of burglary in the first
16 degree. Does that sound familiar?

17 A No, it was five armed robberies.

18 Q I'm sorry?

19 A It was armed robberies.

20 Q So you don't think you have any burglary first charges?

21 A Yes, sir, I got -- I had one burglary first charge.

22 Q You think it's just one?

23 A As far as I saw from my warrants.

24 Q Have you seen your indictments?

25 A Yes, sir.

1 Q You've seen them?

2 A Yes, sir.

3 Q Would you like to see them again to be refreshed?

4 A Yes, sir.

5 Q Okay. I'm gonna show you these indictments, and I tell
6 you all you got to do is look for your name to know if
7 you're facing one of those charges, okay?

8 (Pause while witness reviews documents.)

9 BY MR. MCLAUGHLIN:

10 Q All right. After looking at those, I'm gonna ask you
11 what I think you're facing and see if it sounds right,
12 okay? Fair enough? All right. Seven counts of armed
13 robbery. Does that sound correct?

14 A No, sir.

15 Q Feel free to look at the indictments if you need to
16 know.

17 A I remember from my warrants what I had it was only
18 five, five armed robberies.

19 Q I'm asking you about what you have been about indicted
20 for, the charges you currently face.

21 A Okay.

22 Q Arrest warrants — do you know the difference between
23 arrest warrants and indictments?

24 A No, sir.

25 Q Okay, all right. Well, you can be arrested for one

1 thing and then later on they can charge you for any number
2 of crimes to get it billed as an indictment, okay. So
3 sometimes your arrest charges could be different than what
4 you're indicted for, what you're actually facing. Does
5 that make sense?

6 A Yes, sir.

7 Q So knowing that and having reviewed those documents,
8 okay, I'm gonna ask you about these charges?

9 A All right.

10 Q And you tell me whether or not it sounds correct based
11 on that, okay?

12 A Yes, sir.

13 Q Seven counts of armed robbery, does that sound correct?

14 A Yes, sir.

15 Q One count of conspiracy, does that sound correct? Five
16 counts of possession of a weapon in the commission of a
17 violent crime, does that sound correct?

18 A Yes, sir.

19 Q All right. Seven counts of kidnapping, does that sound
20 correct?

21 A Yes, sir.

22 Q All right. One count of grand larceny less than five
23 thousand, does that sound correct?

24 A Yes, sir.

25 Q Okay, all right. You know how much time those charges

1 carry?

2 A Certain one, not all of them.

3 MS. PARR: Your Honor, I would object to that line
4 of questioning. That's for the Court to determine.

5 THE COURT: That is correct but there is a state
6 Supreme Court case saying that in regard to a defendant
7 who is testifying that the query can be posited concerning
8 his understanding of what the crime carries in the way of
9 charges. But Counsel —

10 MR. MCLAUGHLIN: State versus Mizell I believe,
11 Judge is right on point.

12 THE COURT: I wrote part of that, counsel. I thank
13 you for reminding me. I do require you to give the
14 sentence with exactitude. Now let's be specific. I'm not
15 going to allow you to deviate at all from the statutory
16 offenses that I have in front of me.

17 MR. MCLAUGHLIN: Yes, sir.

18 THE COURT: All right.

19 BY MR. MCLAUGHLIN:

20 Q Each armed robbery count — all right, let me ask it
21 this way. Mr. Johnson, do you know that each armed
22 robbery count carries 10 to 30 years?

23 A Yes, sir.

24 Q All right. Do you know that each count of burglary can
25 be fifteen — or burglary first can be 15 to life?

1 A Yes, sir.

2 Q Okay. Do you know that the conspiracy count can be not
3 more than five years or not more than five thousand
4 dollars?

5 A Yes, sir.

6 Q Okay. Do you know that the possession of a weapon in
7 commission of a violent crime, each one of those could be
8 5 years?

9 A Yes, sir.

10 Q Do you know that each count of kidnapping could be not
11 more than 30 years?

12 A Yes, sir.

13 Q Okay. Do you know that the count of grand larceny is
14 not more, could be not more than 5 years?

15 A Yes, sir.

16 Q Okay, all right. That's a lot of weight; ain't it?

17 A Yes, sir.

18 Q Okay. And you just told the jury what you understood
19 your plea offer to be; didn't you?

20 A Yes, sir.

21 Q What are you understanding your plea offer to be?

22 A 15, 15 years.

23 Q All right. Sounds like a good deal?

24 A Yes, sir.

25 Q Okay. Why haven't you pled yet?

1 A (There was no response.)

2 Q Let me ask you this, you want that offer?

3 A If that's what I got to take.

4 Q All right. You intend to take that offer?

5 A Yes, sir, if that's going to be on the table.

6 Q Yes, sir, but you have not done it yet, have you?

7 A No, sir.

8 Q Okay. You talked when we first got started about your
9 taped interview with Investigator Cox, and we talked about
10 him stopping that tape a couple of times, right?

11 A Yes, sir.

12 Q Do you remember him having to stop that tape near the
13 end of that interview to clear something up from your
14 earlier interview with Investigator Compton and Timmons?

15 A Yes, sir?

16 Q Okay. And what did they have to clear up?

17 A About the Red Roof Inn.

18 Q Okay. 'Cause isn't it so in your interview with
19 Compton back in July of 2008 you put yourself at the Red
20 Roof Inn; didn't you?

21 A Yes, sir.

22 Q But y'all had to clear that up in the Cox interview;
23 didn't you?

24 A Yes, sir.

25 Q You and Shakeem had been fired?

1 A Yes, sir.

2 Q How about Louis, was he working?

3 A Not that I know of.

4 Q Okay.

5 MR. MCLAUGHLIN: Beg the Court's indulgence please.

6 BY MR. MCLAUGHLIN:

7 Q You got any knowledge right now about where Shakeem and
8 Louis are?

9 A Yes, sir.

10 Q Where are they at?

11 A Right down the road.

12 Q I'm sorry?

13 A Right down up the road.

14 Q All right. Are they in the detention center or they in
15 prison?

16 A Prison as far as I know of.

17 Q Okay, all right. Do you know why that is?

18 A Yes, sir.

19 Q Why is it?

20 A Because they plead out.

21 Q Thank you. No further questions.

22 THE COURT: Redirect.

23 **REDIRECT EXAMINATION**

24 BY MR. RICHARDSON:

25 Q Mr. Johnson, you were offered 15 years as an initial

1 plea offer about a year and-a-half ago; is that right?

2 A Yes, sir.

3 Q When you got that plea offer there had been no
4 discussions about any trial on anybody in any sort, form,
5 or fashion, was there?

6 A No, sir.

7 Q You had that plea offer from the very beginning?

8 A Yes, sir.

9 Q Before you discussed anything with anyone from my
10 office; is that correct?

11 A Yes, sir.

12 Q The State -- by State I'm referencing my office and law
13 enforcement -- has not offered you anything sweeter than
14 what we offered you to begin with, have we?

15 A No, sir.

16 Q So you still have the same initial offer you got from
17 the very beginning before any of this came up?

18 A Yes, sir.

19 Q All right. You mentioned that it was mentioned on
20 cross-examination that you made two separate statements to
21 law enforcement, one in the beginning and one recently.

22 A Yes, sir.

23 Q All right. In the most recent statement there was
24 reference that at some point through that interview that
25 the tape was stopped and restarted.

1 A Yes, sir.

2 Q At any point during that statement were you told what
3 to say or what the right answers were?

4 A No, sir.

5 Q Did you tell your story from your own experience?

6 A Yes, sir.

7 Q Did anyone suggest to you what you should say?

8 A No, sir.

9 Q All right. So you told your story as you recall it
10 happening?

11 A Yes, sir.

12 Q All right.

13 MR. RICHARDSON: That's all, Your Honor.

14 THE COURT: Recross.

15 MR. MCLAUGHLIN: None, Your Honor.

16 THE COURT: All right, you may step down.

17 MS. PARR: That's the State's case, Judge.

18 THE COURT: State rests. Jurors, I must take up
19 matters of law here now in your absence. Please go to
20 your jury room.

21 (WHEREUPON, the jury was removed from the
22 courtroom at 10:32 and following proceedings commenced.)

23 THE COURT: Motions, Counsel.

24 MR. MCLAUGHLIN: Your Honor, at this time we move
25 for directed verdict based on the evidence viewed in a

1 light favorable to the State. We don't believe they've
2 reached the burden of proof to counts against Mr. Jordan.

3 MR. RICHARDSON: Your Honor, we contend that there's
4 a plethora of evidence from eyewitness identifications,
5 the co-defendant testimony, basically amount of evidence
6 that is plenty to reach a jury.

7 THE COURT: Order: The defendant moves for a
8 directed verdict pursuant to Rule 19 of the South Carolina
9 Rules of Criminal Procedure.

10 State versus Williams, 303 S.C. 274, 400 S.C.2d 131,
11 articulates the rule, "When ruling on a motion for a
12 directed verdict, the trial court is concerned with
13 existence or nonexistence of evidence, not its weight."

14 Under State versus Kelsey, 331 S.C. 50, 502 S.C.2d
15 63, we are further edified, "If there is any direct
16 evidence or any substantial circumstantial evidence
17 reasonably tending to prove the guilt of the accused, then
18 the case is properly submitted to the jury."

19 In regard to the evaluation of the evidentiary
20 record in this case there is evidence that is both direct
21 evidence and circumstantial evidence.

22 In a colliquiefaction of the evidentiary record in
23 this case, the Court notes that there is Brobdignagian
24 direct evidence and circumstantial evidence mandated that
25 the case be submitted to the trial jury. All motions for

1 directed verdict as to each charge and each count
2 respectfully denied, and it is so ordered.

3 All right, Counsel, we'll take a short recess now.
4 When I come back I want to take up with the defendant the
5 idea/notion of his Fifth Amendment privilege, and I will
6 take that up in sworn testimony from the defendant.
7 Beyond that decision are you contemplating or cogitating
8 in regard to other witnesses?

9 MR. MCLAUGHLIN: Your Honor, I'll go ahead and
10 inform the Court and State that we don't intend to put
11 anything up.

12 THE COURT: Okay. All right, let's take a 15 minute
13 recess.

14 (WHEREUPON, a recess was taken from the
15 proceedings.)

16 THE COURT: Counsel, would you please stand. Have
17 you talked to the defendant in detail concerning his Fifth
18 Amendment privilege?

19 MR. MCLAUGHLIN: We have, Your Honor.

20 THE COURT: Have you talked to him concerning his
21 right of testifying or not testifying?

22 MR. MCLAUGHLIN: I have, Your Honor.

23 THE COURT: Have you done that to your satisfaction?

24 MR. MCLAUGHLIN: I have, Your Honor.

25 THE COURT: And you have performed your duty as

1 mandated by the law?

2 MR. MCLAUGHLIN: Yes, sir.

3 THE COURT: What is his decision in this case?

4 MR. MCLAUGHLIN: We will not be putting up any
5 testimony, Your Honor.

6 THE COURT: All right. Do you concur with that
7 decision?

8 MR. MCLAUGHLIN: I do.

9 THE COURT: Okay. All right, come around, sir, and
10 be sworn.

11 Ms. Clerk, swear him.

12 THE DEPUTY CLERK OF COURT: Place your left hand on
13 the Bible, raise your right hand.

14 WHEREUPON,

15 **TARRENCE LARON JORDAN,**
16 having been duly sworn by the Deputy Clerk of Court,
17 testified as follows:

18 DEPUTY CLERK OF COURT: Please be seated and state
19 your name.

20 THE DEFENDANT: Tarrence Laron Jordan.

21 **EXAMINATION BY THE COURT**

22 Q Turn around and face me now and listen closely. If you
23 do not understand, ask me to repeat it and I will do so or
24 to further explain it and I will do so. You understand
25 that?

1 A Yes, sir.

2 Q I tell you now that under the Constitution, the Fifth
3 Amendment, you have the right not to testify. You
4 understand that?

5 A Yes, sir.

6 Q And if you do not testify it will not be used against
7 you because I will instruct the jury that the jury cannot
8 use that against you, and the jury cannot even discuss
9 that in the jury room. Do you understand that?

10 A Yes, sir.

11 Q You also have the absolute right to testify. And if
12 you elect to take the stand and testify you must answer
13 all questions that I rule are relevant or proper
14 questions. Do you understand that?

15 A Yes, sir.

16 Q What is your decision in this case? Are you going to
17 testify or not testify?

18 A Not going to testify, Your Honor.

19 Q Is that decision not to testify made freely and
20 voluntarily on your part?

21 A Yes, sir.

22 Q Has anyone put any pressure on you in any way to cause
23 you not to testify?

24 A No, sir.

25 Q Your decision not to testify is made of your own free

1 will and accord?

2 A Yes, sir.

3 Q Your decision not to testify is made in consultation
4 with your counsel Mr. McLaughlin?

5 A Yes, sir.

6 Q Have you talked to him in detail to your satisfaction
7 about that?

8 A Yes, sir.

9 Q And you now make the decision not to testify?

10 A Yes, sir.

11 Q And you're comfortable with that decision?

12 A Yes, sir.

13 Q You understand that decision?

14 A Yes, sir.

15 Q Would you like to ask me any questions about that
16 decision?

17 A No, sir.

18 Q You understand it completely?

19 A Yes, sir.

20 Q And you're willing to proceed in this case and not
21 testify?

22 A Yes, sir.

23 Q And that's what you want to do?

24 A Yes, sir.

25 Q And you understand your constitutional rights in that

1 regard?

2 A Yes, sir.

3 Q You don't need to ask me any questions about those
4 constitutional rights?

5 A No, sir.

6 Q Mr. McLaughlin has explained them to you in detail?

7 A Yes, sir.

8 Q And you're comfortable with that?

9 A Yes, sir.

10 Q Thank you very much. Go back around.

11 THE COURT: Order: The Court has conducted a
12 hearing pursuant to State versus Orr, 304 S.C. 185, 43
13 S.C.2d 623. I am cognizant and aware of the fact that Orr
14 has been somewhat diminished in regard to the efficacy of
15 its holding, but any circuit judge in this state would
16 need to read Brown versus the State of South Carolina, 340
17 S.C. 590, 533 S.C.2d 308. In Brown there is some academic
18 articulation of the rule that has a header, quote,
19 "Must the trial court establish on the record that a
20 defendant understands his right not to testify?" That's
21 the header in the case. The writing is as follows: "We
22 have previously addressed the question in Brown versus
23 State" — and that's another Brown case, not this one —
24 "There we said an on-the-record waiver of a constitutional
25 or statutory right is but one method of determining

1 whether the defendant knowingly and intelligently waived
2 that right." While Orr can be read to require an
3 on-the-record colloquy to establish the voluntariness of
4 any statutory or constitutional right, Brown made clear
5 the requirement was limited to pre-Tarrence death penalty
6 cases... "Failure to inform a client of his Fifth
7 Amendment Rights and the consequence of exercise and
8 waiver of those rights, falls below an objective standard
9 of reasonable representation."

10 Applying that precedent to the issue at hand, i.e.,
11 whether the court should take part in the hearing, I
12 conclude that it is absolutely preferable that the Court
13 conduct a hearing rather than leaving the burden upon
14 trial counsel in a post-conviction review. I understand
15 there may be dissonance and disagreement in regard to that
16 feeling; however, experientially, if you've been there for
17 31 years you have some understanding as to how these
18 issues are presented and the dispositive nature of the
19 issues.

20 Be that as it may, I have conducted the hearing and
21 now conclude beyond a reasonable doubt that the defendant
22 has been apprized of his constitutional rights concerning
23 testifying or not testifying. I conclude and am now
24 absolutely convinced that trial counsel has performed the
25 duty imposed upon him in regard to discussing this

1 constitutional issue of the defendant testifying or not
2 testifying.

3 In totality, the Court concludes that the defendant
4 has made a decision not to testify and that decision is a
5 free and voluntary decision on his part after a full
6 discussion with the Court and trial counsel concerning the
7 Fifth Amendment privilege in regard to testifying or not
8 testifying. And it is so ordered.

9 All right. Insofar as the matters are concerned
10 here, we have oral argument ready and because the
11 defendant has not presented any evidence the defendant's
12 counsel has the last right to argue. Defendant's counsel
13 has submitted certain requests concerning instructions to
14 the jury. And let me say out of hand, I'm going to use my
15 own book. I didn't write this book and spend three years
16 in copious review of precedent extent and not intend to
17 use it myself. I am now told that some circuit judges use
18 it, at least that's what they say.

19 In regard to defendant's instruction request number
20 one, kidnapping, ab initio I'm going to use my complete
21 charge. And in regard to the request kidnapping one and
22 two, the Court cites State versus Plath, 277 S.C. 126, 284
23 S.C.2d 221, which holds that the kidnapping statute is
24 constitutional and is not unconstitutionally vague and
25 overbroad. State versus Smith 275 S.C. 165, 268 S.C.2d

1 276, is a direct holding in regard to the kidnapping
2 statute being held constitutional.

3 The other facet of the request concerning kidnapping
4 one and two involves precedent that is controlling. State
5 versus Hall, 280 S.C. 74, 310 S.C.2d 429, holds that:

6 "The trial court did not err in failing to charge the jury
7 that in order to establish kidnapping the State must prove
8 confining and carrying away of a victim is more than
9 instant to commission of another crime." Hall has been
10 addressed and cited in State versus Donnell Porter,
11 opinion number 4672, emanating from the Court of Appeals
12 where my personal friend Judge Williams pens the
13 following: "Logically, in order to commit armed robbery
14 an assailant must constrain his victim's activities in
15 some way; otherwise, the victim could simply walk away.
16 The issue here is whether the same act of constraining the
17 employees and customers that was necessary to commit the
18 armed robbery could also be the basis for a kidnapping
19 conviction."

20 Continuing to quote: "Our Supreme Court has held
21 when a single act combines the requisite ingredients of
22 two distinct offenses the defendant may be severally
23 indicted and punished for each." State versus Steadman,
24 cite is omitted. The question of whether an act of
25 confinement can constitute kidnapping when that

1 confinement is incidental to the commission of another
2 crime was raised in State versus Hall, cite omitted. In
3 that case the victim was abducted at knife point as she
4 placed a call from a phone booth. The perpetrator forced
5 the victim to walk to an adjacent pool area where he
6 sexually assaulted her and forced her to walk to different
7 locations around the pool... Hall argued, "The trial
8 court erred in failing to charge the jury that in order to
9 establish kidnapping, the State must prove the confinement
10 of the victim was more than instant to the commission of
11 another crime. Our Supreme Court disagreed holding the
12 restraint of the victim constituted kidnapping regardless
13 of the fact that the purpose of the seizure was to
14 facilitate the commission of a sexual battery." Here
15 obviously it's not a sexual battery but it is an armed
16 robbery as is articulated in the facts of State versus
17 Porter. So as to make the record crystal clear and to
18 leave no ambivalence, equivocation, or vacillation, I rule
19 and hold directly today that in South Carolina when an
20 evidentiary record is posited to a circuit judge such as
21 this one, where the prime videlicet of the activity was to
22 engage in a armed robbery but the victim is in marched
23 butt naked into a bathroom, that that additional activity
24 constitutes kidnapping without doubt or question.

25 I understand the ruling will be reviewed and so be

1 it. This case constitutes a record that meets the test in
2 every aspect, elemental and otherwise, Blockburger and
3 other precedent concerning armed robbery and kidnapping.
4 Concomitantly, I decline to charge the request of one and
5 two and will use my own charge in my book commencing to
6 Page 58 in regard to kidnapping. I decline to give my
7 imprimatur or approbation upon the position that
8 kidnapping in this evidentiary record is consumed by the
9 armed robbery activity, and it is so ordered.

10 All rights are protected, all rights are reserved
11 for purposes of appeal. I've tried to put on the record
12 the full extent of my ruling and the contention of the
13 defendant.

14 Moving to the request to charge in regard to mere
15 presence, I'm going to use my own charge and my own book.
16 But obviously counsel has presented a charge that somewhat
17 tracks what's in my book. Insofar as defendant's request
18 number four, it is an extension of the so-called mere
19 presence doctrine and goes to a more cognitive analysis in
20 reference to knowledge, and I note the case of State
21 versus Mouzon is cited in regard to that request. I do
22 have some familiarity with Mouzon, stayed there 13 years.

23 What do you say for the State, Ms. Solicitor or
24 Mr. Solicitor, concerning request number four?

25 MR. RICHARDSON: Your Honor, we'd object. I think

1 the -- based on the evidence that's been presented I'm not
2 sure that that language will be applicable.

3 THE COURT: Would you like to be heard further,
4 Counsel?

5 MR. MCLAUGHLIN: Your Honor, my answer to that would
6 simply be, obviously the evidence shows Mr. Jordan in the
7 car that was stopped at IHOP and we think because -- just
8 because he was in that car we're entitled to this charge
9 so that the jury can get this charge and be able to know
10 that just because he's in the car doesn't mean he
11 committed any of that conduct. Evidence aside, that
12 evidence has to rise beyond a reasonable doubt.

13 THE COURT: Let the record show that I decline to
14 charge request number four. I will charge the hand-of-one
15 hand-of-all commencing on Page 250 in my own book to 251
16 relying upon State versus Dickman, State versus Langley.
17 State versus Foust, which was tried in this very courtroom
18 by this circuit judge some years ago, State versus
19 Franklin, State versus Zeigler which I wrote, and State
20 versus Condrey. All rights are reserved in regard to my
21 denial of that request and I will make it a part of the
22 record. Insofar as number six in form or other witness
23 with possible gain, I decline to charge that. The
24 argument may made to the jury by counsel concerning
25 credibility, but I will give my general credibility

1 charge.

2 And then we come to request number seven, inference
3 from fact that witness is not called by the State. Very
4 intriguing doctrine in regard to a charge by the Court
5 concerning an inference from fact that witness not called
6 by the State. First and foremost, Counsel, I don't
7 remember -- and when you get beyond 65 -- but I don't
8 remember you identifying any witness that should have been
9 called that you didn't have access to. Would you
10 enlighten me in that regard or help me in that regard?

11 MR. MCLAUGHLIN: Your Honor, obviously we have
12 questions seriously with the investigation, and we put
13 this charge forward because it's our contention that it
14 wasn't handled as well as it should have been and perhaps
15 there are other people who could have answered some of the
16 holes the jury may have. And we ask that this charge be
17 given to the jury so they can make that inference by the
18 fact that these people, other people weren't called.

19 THE COURT: Let the record show that the request is
20 number seven, and I really am so delighted to be reminded
21 of my past history. The bottom of the request says CEG
22 Arnold versus Yarborough. I tried Arnold versus
23 Yarborough in Darlington County, civil case. It was ruled
24 upon by the appellate entities in 1984, and I'm happy to
25 say I was affirmed in that case. The other cite that I'm

1 referencing is State versus Hammond, and I do not believe
2 that you can read State versus Hammond to mandate that
3 instruction can be given and mandated by the court
4 concerning adverse inference. Because as you look at
5 State versus Charping, C-H-A-R-P-I-N-G, 33 S.C. 124, 508
6 SC2d 851, you find this rule: "However, in Davis versus
7 Sparks" — cite is omitted — "we recognize the general
8 rule that a party is not be prejudiced by his failure to
9 call a witness who is equally available to the other
10 party." Citing Am jurisprudence, Baker versus Port City
11 Steel Erectors. Unfavorable inference arising from
12 failure of a party to call an available material witness
13 may be drawn only where under all circumstances of the
14 case the failure to produce such witness creates suspicion
15 of a willful attempt to withhold competent evidence.
16 Accordingly, under these circumstances we find the trial
17 court acted within its discretion in limiting Charping's
18 comment."

19 I am at a total loss, Counsel, to understand exactly
20 how you would want to argue this to the jury. I will
21 discuss that with you now and have colloquy with you.
22 What do you want to say to the jury about what witness and
23 let's see if it meets the test.

24 MR. MCLAUGHLIN: Well, Your Honor, I don't know per
25 se if I'm sure exactly how I'm gonna argue that yet or

1 not.

2 THE COURT: Okay, all right.

3 MR. MCLAUGHLIN: I really don't know. Your Honor.
4 I really don't know, Your Honor, but there's — obviously,
5 as I just told the Court and about the theory of our
6 closings and I don't want to tip my hand too much at this
7 point so.

8 THE COURT: Well, don't have a heart attack if I
9 happen to interrupt you.

10 MR. MCLAUGHLIN: Yes, sir, I understand.

11 THE COURT: All right. Number nine, circumstantial
12 evidence. When I served on the Court of Appeals I wrote a
13 dissenting opinion in State versus Cherry en banc where
14 the nine judges heard State versus Cherry and all nine
15 thought they knew all the law in the state about
16 circumstantial evidence, and it turns out that none of the
17 nine knew what the state Supreme Court would do because
18 when the State Supreme Court got State versus Cherry they
19 more or less gingerly placed the writing of State versus
20 Cherry en banc from Court of Appeals in the trash can and
21 ruled that a charge would be given to the jury in regard
22 to circumstantial evidence. After State versus Cherry
23 along came State versus Grippon, G-R-I-P-P-O-N. And in
24 State versus Grippon, the State Supreme Court held without
25 doubt or question that the proper charge hereafter in the

1 trial of a criminal case involving circumstantial evidence
2 would be the exact verbiage that Grippon mandates.

3 I do note that Chief Justice Toal in a writing,
4 which was not concurred in by anybody else but her, said
5 she still likes State versus Edwards. When I wrote my
6 opinion in State versus Cherry, I relied upon State versus
7 Edwards because I used it for all those years; but today,
8 I decline to regress back to State versus Edwards and I'm
9 going to trust the writing in State versus Grippon because
10 what has happened since State versus Grippon? In State
11 versus Needs. N-E-E-D-S, the State Supreme Court said,
12 stay with Grippon. So that's what I'll do today, straight
13 out of Grippon. I believe that takes care of all the
14 requests, Counsel.

15 MS. PARR: Your Honor, for clarification what was
16 the Court's ruling on defendant's request for charge
17 number seven?

18 THE COURT: Seven?

19 MS. PARR: Yes.

20 THE COURT: I deny that charge.

21 MS. PARR: Thank you.

22 THE COURT: All right. For the record I have given
23 the court reporter the request so that it will be made
24 part of the record in the case.

25 (Court's Exhibit Number 2 was marked

1 and made a part of the record.)

2 THE COURT: All right, let's go over the charge in
3 totality. I will, of course, start with the basic seminal
4 charge concerning the presumption of innocence, the burden
5 of proof. And lawyers, today, once again, I'm going by
6 the precedent extant that I believe is controlling is
7 State versus Manning, M-A-N-N-I-N-G, a death penalty case
8 emanating from the county of Dillon. And in State versus
9 Manning the State Supreme Court said, if you define
10 reasonable doubt, judges, if you define reasonable doubt
11 use this definition. What is the definition in State
12 versus Manning? Quote, "What is a reasonable doubt in the
13 law? A reasonable doubt is the kind of doubt that would
14 cause a reasonable person to hesitate to act." That's
15 where you are on reasonable doubt. Stay within that rule.
16 We're staying within Manning today.

17 I will tell the jury that they are the fact finders
18 in the case. They are the sole judges of the credibility
19 of the witnesses, and I will give certain factors that
20 they need to consider. And I will give to the jury an
21 instruction concerning their right to believe a small
22 portion of a witness' testimony, disregard the larger
23 part, or believe a larger portion and disregard the
24 smaller part, or believe it in totality or disregard it in
25 totality if they have sound reason in the record for doing

1 so.

2 I then will go, as I've already said, to the mere
3 presence charge from my book. I then will go to the
4 defendant not testifying. Once again I will use my own
5 book and use it in haec verba. I then will go to the
6 circumstantial evidence charge from State versus Grippon.
7 And for the record, I probably need to cite Grippon, 327
8 S.C. 79, 489 S.C.2d 462. And then I will go to kidnapping
9 Page 58 in my book, 59. I'll then go to armed robbery
10 Page 60, 61, and 62. I then will charge out of the Code
11 the additional count concerning possession of a firearm or
12 a weapon during the commission of a violent crime. And
13 then I will go to the hand-of-one hand-of-all Page 250 in
14 my book. I then will go to identification, and I'm going
15 to give my own charge out of 451 but, but, probably you
16 can only make this statement as you get to retirement but
17 some of the writing from the appellate entities is
18 indicative of obfuscation concerning identification when
19 there is a single eyewitness identification.
20 Specifically, the State Supreme Court had rejected the
21 Telfair charge, which is the federal charge, United States
22 versus Telfair. And in State versus Simmons, the Telfair
23 charge is discussed even though it had been rejected. But
24 in State versus Simmons, 308 S.C. 80, 417 S.C.2d 92, the
25 State Supreme Court, I think, kind of backed up from its

1 initial decision to exclude the Telfair charge and made
2 this statement. "In State versus Motes, M-O-T-E-S," cite
3 omitted, "this court recognized that the court in Telfair
4 was dealing with the one witness identification ruling and
5 the model instruction there was designed to focus the
6 attention of the jury on this identification issue and
7 minimize the risk of conviction through false or mistaken
8 identification. See State versus Simmons, 308 S.C. 80,
9 417 S.C.2d 92. In single witness identification cases
10 court should instruct jury burden of proving identity of
11 defendant rests with the State. Because that case did not
12 involve single witness identification the Court further
13 said: "We find a Telfair charge was unnecessary". I
14 understand State versus Patterson saying no Telfair
15 charge. I understand State versus Simmons. And I also
16 understand in this record when you couple the victim's
17 identification with the testimony emanating from Mr.
18 Johnny Johnson, you don't have single witness
19 identification any longer because Mr. Johnny Johnson
20 identified this defendant with absolute exactitude. But
21 in order to make sure I meet the test, I will give my own
22 charge out of my book on 451 but then I'll give the number
23 three. I will give number three. I'll give you number
24 three, Counsel.

25 MR. MCLAUGHLIN: Thank you, Your Honor.

1 **THE COURT:** All right. Now finally, because there
2 are a plethora or multitude of pending counts in the
3 indictment, and we do not send in the indictment
4 indictments to the jury any longer, there being three
5 indictments in this case, I knew I had to prepare a
6 verdict form that first and foremost was absolutely
7 pristine but the jury needed to know what count one, armed
8 robbery, in that indictment dealt with. So what I've
9 attempted to do -- and I believe correctly, Counsel --
10 come forward and take a look. I have divided the
11 indictments, divided the three indictments, and on each
12 indictment I have the count identified in a very, very
13 pristine fashion. But on the front of each of the
14 indictments I just simply identify the indictment number
15 and the fact that the event arises from the Holiday Inn,
16 from the Americas Best Value Inn, and from the Super 8
17 motel, and then thereafter the counts are simply
18 identified. And of course, let me make sure I've got my
19 stuff in here right.

20 (Counsel approached the Bench and reviewed verdict form.)

21 **THE COURT:** Let me see that a minute, Counsel. I've
22 got some extra stuff in there that I had not extirpated
23 and I will do so now. Now I think I got it in pristine
24 form. That's this one. Let me clean this one up.

25 **MS. PARR:** Your Honor, you have strong armed robbery

1 in there?

2 THE COURT: I'm taking it out. That's why I didn't
3 want -- just -- you grabbed my forms, Ms. Solicitor.

4 MS. PARR: Your Honor, you put them up here for us
5 to look at.

6 THE COURT: All right, now make sure all of you go
7 through what I put together now in terms of the package.
8 Make sure the package is correct. Let's put the three
9 packages on the table and review them. Don't separate
10 them out, just review them.

11 (Attorneys review documents.)

12 THE COURT: All right. Let the record show that I
13 have gone over these verdict forms along with my little
14 explanatory sheet and the State has what position in
15 regard to these verdict forms?

16 MS. PARR: The State has no objection, Your Honor.

17 THE COURT: Defense?

18 MR. MCLAUGHLIN: No objection, Your Honor.

19 THE COURT: All right, lawyers, I'm gonna give you a
20 choice. 25 till 12. You want me to send the jury to
21 lunch now and then come back and have the summary and
22 summation after lunch and then the charge?

23 MR. MCLAUGHLIN: I certainly would like that, Your
24 Honor.

25 THE COURT: Does the State agree with that?

1 MR. RICHARDSON: I'm fine either way.

2 THE COURT: Well, I want to make everybody happy.
3 Bring the jury out.

4 (WHEREUPON, the jury was returned to the courtroom
5 at approximately 11:35 a.m., and the following proceedings
6 commenced in open court.)

7 THE COURT: Jurors, give me your attention. The
8 testimony is now complete. The Court has considered
9 various matters of law that I was mandated to review and
10 rule on, and now the next phase is the lawyers' discussion
11 with you. Rather than have the clock take us into a late
12 lunch, looks like it's about 25 to 12. I'm going to send
13 you to lunch now, and then when you come back we'll have
14 the lawyers' summation and then I'll give you the jury
15 charge in detail. Now when we come back it will be at
16 least an hour-and-a-half in terms of lawyers' discussion
17 and then at least an hour for my charge on the jury. Once
18 I give you that charge I'm gonna keep you together. You
19 don't go home at 5:00 then. I mean, once I give you the
20 charge I'm gonna keep you together. So while you are away
21 at lunch cogitate and reflect on your position. If you've
22 got a problem staying with this case — 'cause once I
23 charge you the jury, I am going to keep you together. You
24 are not going to be allowed to go home. I'm going to keep
25 you together; just make sure you understand. I got two

1 alternates and I believe they're ready and willing to
2 serve in your place. If you anticipate a problem this
3 afternoon, tonight, in terms of any problem at all, I
4 expect you to tell me about it when you get back. I
5 expect you to talk to me about it. Don't send me a note
6 out -- don't think you can send me a note late this
7 afternoon or early night that you got a problem. You need
8 to tell me now. Please now, you understand, I'm trying to
9 be straight forward with you. Tell me now. I've got two
10 alternates and they are drawn for that purpose, to help
11 you if you've got a problem. So when you come back I will
12 ask you on the record, do you have a problem staying with
13 the case. Does everybody understand?

14 Now once again, I'm required to give you the two
15 rules. Don't discuss the case with any outsider, no
16 person living. And don't discuss it among yourselves.
17 You hadn't had the discussion by the lawyers and you
18 haven't received the charge on the law as to what the law
19 actually is in this state. Have a nice lunch. Let me
20 think about when to bring you back. Can everybody be back
21 1:00? 1:00? Is that okay for lunch? One, okay. See you
22 at 1. No one leaving now but the jury, no one but the
23 jury.

24 (WHEREUPON, the jury was removed from the
25 courtroom at 11:40 a.m., and the following proceedings

1 commenced in open court.)

2 THE COURT: State want to put anything on the
3 record?

4 MS. PARR: State doesn't have anything to put on
5 the record.

6 THE COURT: Defense?

7 MR. MCLAUGHLIN: None, Your Honor.

8 THE COURT: In regard to the State, will you have
9 two presentations or one in regard to summation to the
10 jury?

11 MS. PARR: Just one.

12 MR. RICHARDSON: Just one, Your Honor.

13 THE COURT: One. Okay, see you back at 1.

14 (WHEREUPON, a lunch break was taken.)

15 MS. PARR: Give me your attention everybody. A
16 conundrum has developed in regard to one juror.

17 Ms. Clerk, come around please and be sworn. Left
18 hand on the Bible, raise your right hand please.

19 WHEREUPON,

20 MELISSA MCCUTCHEON,
21 having been duly sworn by the Court, testified as follows:

22 THE COURT: Have a seat please. State your full
23 name for the record.

24 THE WITNESS: Melissa McCutcheon.

25 EXAMINATION BY THE COURT

1 BY THE COURT:

2 Q And your position please.

3 A Deputy clerk.

4 Q Ms. Clerk, when we took the lunch hiatus a juror came
5 to you. Will you please just relax now and explain with
6 great specificity where the juror came to you, at what
7 location and site, what the juror's demeanor was and what
8 her statement was please.

9 A Okay. At lunch I went downstairs to -- we have a
10 smoking area on the first floor. And I noticed one of the
11 jurors sitting on the bench outside and I just happened to
12 look and I saw that she was crying. And I actually
13 approached her 'cause I seen the juror out there and she
14 was -- she was crying a lot. And when I approached her
15 that's when she explained to me she just could not, she
16 just could not be on the jury anymore. And she was really
17 upset and I just told her to calm down, everything is
18 going to be okay, and then that's when -- and I was just
19 trying to calm her down 'cause she was very upset. And
20 then that's when I went upstairs and spoke with you to let
21 you know what was going on.

22 Q Okay. And the clerk advised the juror pursuant to my
23 instructions just to simply calm down and that we would
24 take the matter up on the record in regard to the
25 situation. And I think we've got a -- just simply go get

1 the juror from the jury room because you don't remember
2 her name and number, do you?

3 A Correct. And I also stated to her that, you know, she
4 would be -- I would come in there and get her and when she
5 does go in the jury room, absolutely under no
6 circumstances for her to discuss nothing with the other
7 jurors and she understand that very clearly.

8 THE COURT: Okay. Does the State want to ask the
9 clerk any questions?

10 MS. PARR: No, Your Honor.

11 THE COURT: Does the Defense want to ask the clerk
12 any questions?

13 MR. MCLAUGHLIN: Your Honor, I don't wish to ask the
14 clerk any questions. I do have a query of the Court.
15 Obviously you've indicated an intention to bring this
16 juror, you know, out in front of all off us and I suppose
17 we will hear from her. Before the Court asks any opinion
18 of the Defense I would prefer to be able to give that
19 opinion to the Court outside the presence of that juror.

20 THE COURT: I'll do that.

21 MR. MCLAUGHLIN: Yes, sir.

22 THE COURT: I'll do that.

23 MR. MCLAUGHLIN: Yes, sir.

24 THE COURT: It's not my first time out of the block.

25 MR. MCLAUGHLIN: Well, it is my first time for this.

1 Judge.

2 THE COURT: It's not my first time.

3 MR. MCLAUGHLIN: I will follow your lead then.

4 THE COURT: All right. Ms. Clerk, go get her
5 please.

6 (Juror was returned to the courtroom.)

7 THE COURT: Ms. Juror, put your left hand on the
8 Bible, raise your right hand please for me.

9 WHEREUPON,

10 JUDY GRIFFIN,

11 having been duly sworn by the Court, testified as follows:

12 THE COURT: Okay, come around and have a seat
13 please. Your full name please.

14 THE WITNESS: Judy Griffin.

15 EXAMINATION BY THE COURT

16 Q Number 66, Judy A. Griffin? Ma'am?

17 A Yes, sir.

18 Q Okay, all right. Now Ms. Griffin, take a deep breath,
19 or a couple of deep breaths, and just relax. Just a
20 couple of deep breaths and relax. Now please, please
21 understand, that under the constitutional guidelines I am
22 required to ask you some very personal questions. Please
23 understand that. Please recognize that. You understand
24 that?

25 A Yes, sir.

1 Q Ma'am?

2 A Yes, sir.

3 Q Now once again, take a deep breath and please relax.

4 A (Witness begins crying.)

5 Q Ms. Clerk, hand her some tissue there please.

6 A I'm sorry.

7 Q That's all right. That's all right. That's all right.

8 Just relax. Just relax now, Ms. Griffin. Just relax

9 please. Just relax now please. Just take some deep

10 breaths now and relax please. Please relax now. Please

11 calm down. The clerk of court, who is standing there with

12 you, indicated that you were outside crying and she asked

13 you what was wrong and then you told her you were upset

14 and you made some general statement about the case that

15 you just couldn't decide or you couldn't go any further.

16 Is that kind of what you said?

17 A That's right, sir. Yes, sir.

18 Q Ma'am?

19 A Yes, sir, I cannot, don't want to do this.

20 Q Cannot do this. All right now, I want to make sure

21 that I understand exactly your feelings. Now please

22 understand that I'm just asking these questions, and I

23 just want you to respond. You just tell me how you feel.

24 Just look me in the eye and tell me how you feel. In

25 regard to your statement generally that you couldn't

- 1 decide this case or you couldn't go any further, tell me
2 what you meant by that. Just in your own words tell me
3 what you meant by that and there's no right or wrong
4 answer. Just tell me what you meant, okay?
- 5 A I just can't do it. I can't.
- 6 Q Can't do it?
- 7 A I can't. I cannot do it.
- 8 Q Okay.
- 9 A There's no other -- I can't do it.
- 10 Q Okay. And you've said I cannot do it several times,
11 and by that you mean you just simply cannot decide this
12 case. Is that correct?
- 13 A I can't do any of it.
- 14 Q Can't do any of it.
- 15 A No matter what it is, I can't.
- 16 Q Can't do any of it, okay. Is that absolutely in terms
17 of your feeling?
- 18 A Yes, sir.
- 19 Q And there's no -- there's no change in regard if I gave
20 you some time to kind of sit down and think about it,
21 would that change anything?
- 22 A No, sir.
- 23 Q Or --
- 24 A No, sir.
- 25 Q That's definite and certain?

1 A That's certain.

2 Q And that's been about in place since you were out there
3 crying on the outside the courtroom?

4 A Yes, sir.

5 Q During the break?

6 A Yes, sir.

7 Q And make sure that I get it correct now. Please make
8 sure I get it correct from you. Is it your request to me
9 as the judge that I excuse you from this jury?

10 A Yes, sir.

11 Q That's your request?

12 A Yes.

13 Q I don't want to put words in your mouth.

14 A No, no, no.

15 Q That's what you want?

16 A Yes.

17 Q Now that's what you want me to do?

18 A Yeah, excuse me.

19 Q Ma'am?

20 A Excuse me from it.

21 Q And is that a firm, absolute firm decision?

22 A Yes, sir.

23 Q And there's no equivocation about that?

24 A No, sir.

25 Q None whatever?

1 A None.

2 Q And as say, I don't want to put words in your mouth. I
3 want you to tell me. Are you telling me without any
4 doubt, no question, that you want to be excused from the
5 case?

6 A Yes, sir.

7 Q That's your request to me?

8 A That's my request to be excused from the case.

9 Q Okay, all right. If you will put her in the other
10 room, not — just in — go back there just a minute in the
11 other room please, Ms. Clerk.

12 (Juror is removed from the courtroom.)

13 THE COURT: Door closed? Now she's not in with the
14 other jurors?

15 DEPUTY CLERK OF COURT: No, sir.

16 THE COURT: All right. What does the State say?

17 MS. PARR: Your Honor, I think the juror's request
18 should be honored, but the State's question is whether or
19 not she cried in front of the other jurors.

20 THE COURT: The clerk of court, which is first and
21 foremost a wonderful person and second, a fantastic clerk,
22 instructed her when she went to the jury room not to say
23 anything to the other jurors about her feelings and not to
24 demonstrate to other jurors.

25 Is that correct, Ms. Clerk?

1 DEPUTY CLERK OF COURT: Yes, Your Honor.

2 THE COURT: Ma'am?

3 DEPUTY CLERK OF COURT: Yes, Your Honor.

4 THE COURT: Thank you. All right, anything else?

5 All right, yes.

6 MR. MCLAUGHLIN: One second, Your Honor.

7 THE COURT: Okay.

8 (Attorney confers with defendant.)

9 MR. MCLAUGHLIN: Your Honor, it's our position, and
10 for the record I would like to say on behalf of Mr. Jordan
11 that we feel that part of the juror's state may very well,
12 be the fact that she believed she's expected to convict
13 and she doesn't believe she can. Having said that, we're
14 placed in the position where Mr. Jordan asked me, well,
15 can you ask her questions about stuff. And I explained to
16 him once we start asking questions of the jury, even if
17 the Court were to do it, it — she may very well be —
18 know it's us wanting to keep her. That can prejudice us
19 against her and she is extremely emotional as we all just
20 saw. And I don't know how that would affect just with her
21 back in the courtroom. So I guess my answer is, Your
22 Honor, is number one, I certainly would like on the record
23 for it to be reflected we think that is the problem, that
24 she feels like she's expected to, or possibly feels like
25 she's expected to convict and she doesn't believe she can

1 but —

2 THE COURT: Of course you understand that's kind of
3 surmise on your part but nothing to prove that.

4 MR. MCLAUGHLIN: No, sir. No, sir. It is our
5 opinion, pure and simple, but I don't know how we could
6 oppose the Court removing her given all the other factors.

7 THE COURT: Order: Let the record show that the
8 testimony of the deputy clerk of court has been coupled
9 with direct testimony from the affected juror, Number 66,
10 Judy A. Griffin.

11 The record will reveal that when the Court asked the
12 juror to have a seat and asked her generally about the
13 matter that she began to cry. And I am convinced that I
14 am correct that she was in an emotional state in regard to
15 her decision. The Court attempted to allay her fears and
16 her feelings and finally she was able to respond. Her
17 response is on the record, and the tape concerning her
18 testimony will be available for appellate review if they
19 would like. She simply said she could not decide this
20 case and she could not go any further. And I believe that
21 I gave her the opportunity to say that from her personal
22 standpoint and as her personal decision.

23 There is historic precedent including a death
24 penalty case tried by this judge where a juror became
25 emotional, began to cry and sob; and after some review of

1 the juror, I came to the decision as a matter of
2 conscience that I could not force the juror to continue
3 and that the interest of justice mandated an excusal.

4 There is no doubt in my mind that this juror cannot
5 go forward in the case. Observing her demeanor and her
6 responses to the Court under oath and her general demeanor
7 outside the court facility during the lunch hiatus the
8 judge is mandated to excuse this juror. And I do it under
9 my discretion and I do it as matter of conscience.
10 There's no way that a judge could force a juror in this
11 emotional state to proceed. I take responsibility. It's
12 my decision; it's my call. I believe I've done the right
13 thing, but I understand the appellate entities can review
14 everything I've said or done — I understand that — but
15 I'm not going to proceed with this juror. I'm just not
16 going to do it, period, point blank.

17 Bring her out.

18 DEPUTY CLERK OF COURT: Your Honor, is she excused
19 for the week because —

20 THE COURT: Oh yeah, yes.

21 DEPUTY CLERK OF COURT: Okay, I just want to make
22 sure.

23 THE COURT: Absolutely, absolutely. No doubt,
24 Ms. Clerk.

25 (Juror Griffin was returned to the courtroom.)

1 THE COURT: Ms. Griffin, you're free to go. Thank
2 you so much. Thank you very much. Okay? All right.

3 And Ms. Clerk, she's free for the week.

4 DEPUTY CLERK OF COURT: Okay.

5 THE COURT: State ready to proceed?

6 MR. RICHARDSON: Yes, sir, Judge.

7 THE COURT: Defense ready?

8 MR. MCLAUGHLIN: Yes, Your Honor.

9 (WHEREUPON, the jury was returned to the courtroom
10 at approximately 1:15 p.m., and the following proceedings
11 commenced in open court.)

12 THE COURT: Let the record show that juror
13 Number 66, Judy A. Griffin, has been excused for cause and
14 alternate number 1 is Mr. Richard F. Burch, juror
15 Number 29.

16 Mr. Burch, move down one seat. You're now a member
17 of the jury officially. And now I've got Mr. Anderson
18 left as the alternate.

19 Now jurors, give me your attention. Please, please,
20 give me your attention. Madam Forelady, you need to
21 listen to me closely. You need to listen to me carefully.
22 You will be responsible for signing the jury verdicts on
23 behalf of this jury. Obviously what you sign must be a
24 unanimous verdict, and I will tell the jury about that
25 later. But under no circumstances, under no circumstances

1 can you sign the jury verdict in each and every instance
2 unless it is a unanimous verdict in regard to that count.

3 Now I've got three indictments. Under the law now
4 we do not send in indictments to the jury room because it
5 has surplusage information. But I've got three
6 indictments. I've got 2008-GS-21-1919. I've got
7 indictment 2008-GS-21-1920, and I've got indictment
8 2008-GS-21-1921. Now I have these verdict forms in a
9 pristine form as relates to each count in each charge.
10 But so as to make sure that you understand as jurors, I
11 prepared a little front sheet with regard to indictment
12 1919. And the little front sheet says with a point,
13 bulletin point, or whatever these young people now call
14 this thing, involves incident at the Holiday Inn so you'll
15 know this indictment involves the incident at the Holiday
16 Inn. Count one is armed robbery. Count two is
17 kidnapping. Count three is burglary in the first degree.
18 And count four is possession of a weapon during the
19 commission of a violent crime. That's the top sheet on
20 1919. And then under that I have the actual verdict form
21 as it relates to count one and you can see that relates to
22 armed robbery because there are only two choices. Not
23 guilty, if the jury unanimously, all jurors agreeing,
24 finds the defendant not guilty then, Madam Forelady, sign
25 number one; but once again, it must be unanimous. Or

1 number two, guilty of armed robbery, if the jury
2 unanimously, all jurors agreeing, all jurors concurring,
3 finds the defendant guilty of armed robbery in regard to
4 this incident at the Holiday Inn, sign number two. Once
5 again, whatever you sign, whatever it is, it must be
6 unanimous.

7 The next verdict form is count two. It relates to
8 kidnapping. And you can see, not guilty or guilty of
9 kidnapping. And number three, count three, is not guilty
10 or guilty of burglary in the first degree. And then count
11 four is not guilty or guilty of possession of a weapon
12 during the commission of a violent crime. And I'm going
13 to charge you in great detail about these various charges.
14 Now once again, that relates to the Holiday Inn and I'll
15 send in these verdict forms and the front sheet cover
16 sheet just like this when you get it in the jury room,
17 Madam Forelady.

18 And indictment 2008-GS-21-1920 has the little
19 bulletin point involves incident at the America's Best
20 Value Inn, America's Best Value Inn. And count one is
21 armed robbery in regard to the allegation of Louis
22 Oberfrank. Count two is armed robbery in regard to the
23 allegation as to Richard Ward. And count three is armed
24 robbery in regard to the allegation as to Gilbert Cameron.
25 Armed robbery in regard to three different victims that

1 are alleged. And then count four is kidnapping in regard
2 to, and all three are put together in regard to this
3 kidnapping charge. All three are on count four. All
4 three relate to count four kidnapping. And then count
5 five is possession of weapon during commission of a
6 violent crime. And count six is burglary, and in this one
7 all three are put together, burglary in regard to all
8 three.

9 Indictment 2008-GS--21-1919 involves the incident at
10 the Holiday Inn and count one is armed robbery. Count two
11 is kidnapping. Count three is burglary in the first
12 degree; and count four, possession of a weapon during the
13 commission of a violent crime. Now once again, I'll send
14 these in just like I have them in regard to the front
15 sheet and the verdict forms that are attached.

16 Madam Forelady, keep them together now so that you
17 will have them right before you insofar as directing the
18 jury concerning the jury verdict.

19 The lawyers are officers of the Court. The lawyers
20 have the right to discuss these matters with you. Please,
21 please give them your attention as they discuss these
22 matters with you. I will follow their discussion with a
23 detailed charge on the law. Thank you. Thank you for
24 listening.

25 Mr. Richardson, you're recognized.

1 MR. RICHARDSON: Thank you, Your Honor,
2 Mr. McLaughlin. Ladies and gentlemen, you are here in the
3 court, been patient, paid good attention this week and I
4 thank you for that and your continued attention. And it
5 came to me while I was listening to the testimony that you
6 all as jurors in this case, maybe none of you knew any of
7 the other before this happened; but now, as you've heard
8 this case and continue to hear it, you will be forever
9 linked together as this group who heard this particular
10 case. It also made me think that there's another group
11 who is linked by this particular case, and that group
12 includes Doctor Albert Meyer, his son Evan, Doctor
13 Shappell, Mr. Ward, Mr. Oberfrank, and Mr. Cameron. All
14 of these folks were three separate groups of individuals
15 to begin with. Doctor Shappell, traveling alone through
16 Florence, Doctor Meyer and his son were traveling through
17 Florence. And Mr. Ward, Mr. Oberfrank, and Mr. Cameron
18 were in a hotel. They were all locals and Mr. Ward was
19 staying there at the time while his home was being fixed.
20 These three groups of individuals had no knowledge that
21 the others exist or existed, but they are now forever
22 linked as victims of Mr. Jordan.

23 And before I get into the time line and the order of
24 things, I want to go over for a few minutes briefly the
25 charges that Mr. Jordan faces. Got a total of 14. And

1 each charge is separate and distinct. And the State,
2 myself and Ms. Parr, have to prove to you through the
3 witnesses that testified and the evidence that you'll have
4 with you in the jury room, we have to prove each element
5 of those offenses in order to for you to be able to
6 convict Mr. Jordan so I want to go over with you just
7 briefly, summarize the type of offenses, and where we
8 believe the facts that apply to those offenses.

9 First off, armed robbery, Mr. Jordan is charged, I
10 believe, five counts of armed robbery. The armed robbery
11 in these particular instances took place when Mr. Jordan
12 and his co-defendant, Mr. James, accosted or confronted
13 each of the victims in their hotel rooms while armed with
14 a gun. Now to have armed probably you don't necessarily
15 have to have a gun. You have to have some sort of weapon
16 or appearance thereof. In this particular case it
17 happened to be a gun in each one. When they came in the
18 rooms with the gun they then ordered each victim to do
19 some particular thing him, pinned them up in some way,
20 kept them from leaving, and ordered them to turn over
21 their belongings, which in each case took place. And that
22 briefly is a summary of why Mr. Jordan was charged with
23 armed robbery in these particular cases. Now Judge
24 Anderson will give you a much more detailed erudite
25 version of the definition of armed robbery, and he'll read

1 that law to you as it applies in the state of South
2 Carolina.

3 We also have the charge of kidnapping which applies
4 in each case. You heard the testimony how each of the
5 victims was forced at gun point into bathrooms and at
6 first forced into their hotel room. They were not free to
7 leave their hotel room and then each were placed in a
8 bathroom. That sort of speaks for itself. You know,
9 kidnapping is what it is. I know that the name sort of
10 indicates -- excuse me, you know, maybe what you've heard
11 on TV or in history or whatever that, you know, results in
12 some child abduction or something like that, that's not
13 the case with the statute in South Carolina. Anyone of
14 any age can be kidnapped. And basically, what that is, is
15 keeping someone against their will in simple terms and
16 Judge Anderson will again read to you the law in that
17 regard on law of kidnapping. Then that will be the law
18 you take back in into the jury room to apply. I believe
19 he's charged with three counts of that, one for each group
20 of individuals.

21 He's also charged with burglary first degree.
22 Burglary first degree is a law in the state of South
23 Carolina that applies when someone's dwelling, home,
24 domicile, where they're staying, is invaded by someone,
25 broken into, what have you in these particular instances.

1 these defendants according to the evidence forced their
2 way in when the occupants were either in the door way or
3 opened the door. In each of these situations the
4 occupants of the hotel rooms were staying at the hotel or
5 were about to be; they rented the room. And that was
6 gonna be where they laid their head down that night. And
7 Mr. Jordan and his codefendant came in there in the
8 nighttime brandishing a weapon. And in that instance in
9 each of the three cases is where this burglary first
10 charge comes from. It has to do with dwelling. Three
11 counts of that as well I believe.

12 And lastly, three counts of possession of a weapon
13 during the commission of a violent crime. Now the key
14 word there, violent. Each of the previously mentioned
15 defenses, armed robbery, burglary, kidnapping, are
16 classified in this State as violent crimes. So when a
17 weapon is used in one of these crimes there is a charge
18 called possession of a weapon during the commission of a
19 violent crime that can be charged if a weapon is used
20 during that violent crime. And that's simply where that
21 charge came from as to these three cases. A gun was used
22 for each particular group of victims. But Judge Anderson
23 will give you much more detail reading of the law in that
24 regard. I just wanted to go over that with you briefly.

25 On to the facts, things that you've heard from the

1 witness stand, I know Mr. Johnny Johnson was the final
2 witness to testify but he provided information to you
3 about the preliminary meetings before these individuals
4 came together to do these armed robberies. He told you
5 that Mr. Jordan, whom he had known for years, I believe
6 he said seven years, gone to high school with him, worked
7 with him, was across the street neighbor, knew him very
8 well, contacted him, wanted to hit a lick. He explained
9 what a lick is, which is some sort of robbery or in any
10 event or something of that nature. Mr. Johnson agreed to
11 participate in these crimes for gas money he testified.
12 They picked up two other individuals, the Williams
13 brothers, Shakeem and Louis. July 2nd, the first event
14 took place, and that's the event involving Doctor Meyer
15 and his then ten year old son Evan. They arrived. Doctor
16 Meyer and his son Evan arrived at the Holiday Inn,
17 registered, went to the room. He told you how they parked
18 their car. He noticed that he could not park in front of
19 his room the way the room was located. Walked to his
20 room, saw some individuals out there, didn't think
21 anything of it, thought they may have been hotel guests.
22 He opened the door to his room. Light switch didn't work
23 so he sends his ten year old son in to try to find the
24 light, which he does. The light comes on. All of a
25 sudden Doctor Meyers is met with some sort of contact back

1 of his head through his back. He hits the ground, turns
2 around, and sees who turned out to be Mr. Williams and
3 Mr. Jordan standing there with a gun pointed at him.
4 Doctor Meyer's first concern was for his ten year old son.
5 He tells Mr. Williams and Mr. Jordan what he's got. He
6 gives them what he's got. He answers their questions,
7 obviously afraid for his life and that of his son.

8 At that point in time then Evan, Doctor Meyer
9 testified, was at the end of the bed, kind of between the
10 two beds again obviously within sight of the two
11 defendants. It's hard to tell from the testimony whether
12 or not the two defendants saw the ten year old when they
13 approached and robbed Doctor Meyer. It's evident from the
14 testimony from the facts that they were acting kind of the
15 way of hunters trying to find vulnerable prey. Passers —
16 people passing through town, maybe someone they viewed as
17 weak, maybe someone who was alone. It's hard to tell from
18 the testimony whether or not they saw that ten year old
19 child in that room. But when they got up to that room
20 they saw him. They ordered him to kneel down. Mr. Jordan
21 at that point could have turned and walked away,
22 Mr. Williams as well. There's a ten year old in here, you
23 know, maybe we didn't see him, whatever, but this is just
24 wrong. But they didn't. They still assaulted his father,
25 knocked him on the ground in front of his ten year old.

1 and Doctor Meyer testified that at one point his son said,
2 are you going to kill us, as they were forced into the
3 bathroom. Ten year old little — Doctor Meyer says that
4 after they were locked or shoved in the bathroom at gun
5 point, their items taken from them, they stayed in the
6 bathroom for a few minutes, which most likely seemed like
7 an eternity. At that point they did not know whether they
8 would live or die. Doctor Meyer eventually opened the
9 door, saw the two individuals were gone, immediately
10 called for help.

11 Deputies arrived, took the report, and Doctor Meyer
12 came to testify before you and immediately without
13 hesitation identified the defendant, Mr. Jordan, as being
14 the individual in his hotel room. Mr. Jordan, by all
15 accounts, was not the individual holding the gun in some
16 of the cases. He was the one giving the orders, others
17 not so much. And I tell you that because of the crimes
18 he's charged with, armed robbery, possession of a weapon,
19 that sort of thing, has to be a weapon involved. Mr.
20 Jordan didn't hold the weapon. Why is that important? In
21 South Carolina we have a principle that is followed under
22 the law called the hand-of-one is the hand-of-all so and
23 individuals combined to commit crime like Mr. Williams and
24 Mr. Jordan did, that gun may as well have been in the hand
25 of Mr. Jordan; it's all the same. The hand-of-one is the

1 hand-of-all. Anything that one does the other is
2 responsible for. Like I said, Doctor Meyer immediately
3 identified the defendant. And at one point I believe he
4 said something to the effect of: It's frozen in my mind;
5 I wish that I could forget it.

6 Next up, July 3rd, they had just finished the
7 robbery at the Holiday Inn. They had gone to a gas
8 station in Darlington, which was their home county, used a
9 credit card that had been stolen to buy gas. They hadn't
10 been caught. Why stop now? They then speak again on the
11 3rd; let's do it again. They meet up, Mr. Johnson has a
12 vehicle, a red Toyota Camry. The front-end is messed up
13 on it. But it's a car and it works so they used it. They
14 go to the America's Best Value Inn, TV Road. Johnny
15 Johnson says to pull in the parking lot, park the car, was
16 told wait here. Mr. Jordan and Shakeem Williams exit the
17 vehicle for about five minutes, come back. They then
18 leave again. Mr. Johnson said that first five minutes he
19 presumed that they were walking around to look for a
20 potential target. Evidently they found one; they left the
21 vehicle. And at that point they go up to the room to
22 Mr. Ward who has guests over that evening for the 4th of
23 July. They knock on the door. The door opens. And there
24 they stand with the gun. At this point they escalate to
25 to some degree. Not only do they force the three

1 individuals into the bathroom like they did with Doctor
2 Meyer and his son, at this time they make them all strip
3 down completely naked, throw their clothes about the room,
4 Mr. Jordan tossing their items about. They find the
5 money, other items they're looking for. Same protocol,
6 same procedure, leave them in the bathroom, leave the
7 hotel room, get in the car and drive away. Mr. Ward
8 testified that he was the closest one to the bathroom
9 door. The bathroom is very small. All three guys
10 standing in there, he's the closest to the door so he gets
11 out first. Grabs his pants, goes outside and sees the red
12 vehicle. Mr. Johnson was driving that vehicle; and he
13 said, yeah, that was my car. At that point they go to
14 another gas station and decide that instead of just one
15 robbery tonight, we're gonna try another one. They decide
16 on the Super 8 Motel, Highway 52. Mr. Johnson says, he
17 was told to go into the parking lot. He parked, went
18 around the back of the building and parked. Again,
19 Mr. Jordan and Shakeem Williams exit while Mr. Johnson and
20 Louis Williams remain in the getaway car.

21 You recall that Doctor Shappell, who is the victim
22 in this particular case, said the encounter in his hotel
23 room lasted about five to ten minutes. Johnny Johnson
24 also said this particular time that Mr. Jordan and
25 Mr. Williams were gone from his vehicle approximately five

1 to ten minutes. Doctor Shappell had pulled up to his
2 hotel room. All these hotel rooms are outdoor entrances,
3 by the way. He pulls up in front of his door, tunnel
4 vision. It's night; he's been driving. He just wants to
5 get in his room. Goes to the door, turns the light, puts
6 his stuff down, turns to close the door, there's
7 Mr. Jordan and Mr. Shakeem Williams gun in hand ready to
8 do it again. They ask him, for the same types of
9 materials, basically valuables. Do you have a laptop, no,
10 I don't. Give me your credit card. They've already stolen
11 people's credit card and made purchases off of them so
12 this has been profitable. They get his credit card, ATM
13 card. They get his camera. It's a green Fuji camera.
14 They also take his cell phone. They'd also taken Richard
15 Ward's cell phone earlier that night. They make
16 Mr. Shappell, Doctor Shappell strip down, same as the
17 previous three, get inside of his bathroom inside of his
18 tub. Again, he testified he was under their complete
19 control, did not know if he would live past that point.
20 They told him to stay in the bathroom; he did. He
21 followed their directions. After a while he didn't hear
22 anything, you know, he can't stay in there forever. He
23 gets out, goes to the door, nobody is in his room. The
24 door is shut. Grabs a pair of cutoffs. He immediately
25 reports it. He doesn't even get fully dressed. He grabs

1 a pair of short pants, no shirt, no nothing else, runs to
2 the front desk where they call a deputy. Deputies respond
3 immediately, five to ten minutes. They take his report.
4 They come back. Deputies come back an hour or so later,
5 ask him about his credit cards had been taken. There were
6 some purchases. They got some hits on a credit card,
7 Darlington. Deputies leave again. They return -- or
8 Deputy Worsley returns one final time. He comes by
9 himself, knocks on Doctor Shappell's door. We think we
10 got them. Take Doctor Shappell to the IHOP in Florence
11 and drive them around. They drive him around the parking
12 lot where the defendants can't see him but he can take a
13 look at them.

14 Now, by the end of the testimony from Johnny Johnson
15 we know that there are four of them the whole time. Four
16 guys involved the whole time. The victims didn't know
17 that. They only knew two guys, two guys, two guys. That
18 was the constant. They were the ones going in the hotel
19 room. They had no knowledge of the fact that there were
20 four total. Now you heard Deputy Worsley testified about
21 a neighbor of Doctor Shappell's at the hotel who said he
22 saw the vehicle, same red car, with four people in it.
23 Well, initially that doesn't match up to what the victim
24 said, I mean, there's two guys, two guys. Well, the red
25 car had been spotted at the IHOP. The IHOP parking lot

1 was pretty scarce, wee hours of the morning, not a lot of
2 traffic. An officer with the city police had gone out
3 there to patrol the hotels in that area 'cause word was
4 spreading around law enforcement, we got a problem going
5 on tonight, multiple hotel armed robberies. There are a
6 lot of hotels out there around Magnolia Mall so officers
7 go to do a little preemptive work, patrol. We heard from
8 the city police officer, Brandon Hale, who said that he
9 saw the vehicle matching the description that was put out
10 over the radio, 95 or some red Toyota Camry front-end
11 damage. He sees that car in the IHOP parking lot and goes
12 from there. He reports that to the sheriff's office.
13 Sheriff's office responds, sees four guys in the hotel
14 room, two of whom match the description that each victim
15 gave. Big guy with a white shirt, writing on the front,
16 seniors 2008, jeans. Smaller guy, plain white T-shirt,
17 baggy jeans. So you got the car in the parking lot and
18 two guys that match the description in the restaurant.
19 Based on that the officers respond and wait. Meanwhile,
20 Johnny Johnson testified that the four of them were
21 sitting in there and they noticed the police activity
22 where at one point an officer even comes into the
23 restaurant. The Williams brothers go to the bathroom.
24 The keys to the vehicle vanish; therefore, they need to
25 call a taxicab. You can infer that they're trying to

1 distant themselves from that vehicle at that point. Taxi
2 cab arrives. They come out, get in the cab at that point,
3 law enforcement stops them. You saw the video from then
4 on. Saw all four individuals come out of that car.

5 After that Deputy Worsley would go back to Doctor
6 Shappell. Deputy Worsley brings Doctor Shappell over.
7 Not only does he get to see two individuals who robbed
8 him; He gets to see four. Deputy Worsley drives him
9 through the parking lot to take a look at them, and he
10 sees Louis Williams, don't know him, never seen him
11 before. He sees Johnny Johnson, don't know him, never
12 seen him before. And he sees Shakeem Williams and
13 Tarrence Jordan, immediately, no hesitation, picks them
14 out, those are the guys. Keep in mind it only happened
15 about three to four hours before. Doctor Shappell
16 testified the lights were on; he looked at both of them
17 the whole time. He got good looks at them and just a few
18 hours later he sees them, immediately identifies the two
19 that came into his room. Of course he had no idea at the
20 time, no reason to know, that the other two individuals
21 were waiting on, waiting on the other two guys in the
22 getaway car.

23 At that point based on the identification and other
24 evidence the fellows who are already in handcuffs were
25 charged. Now if that weren't enough, the vehicle is still

1 in the IHOP parking lot. Officers yet to get to that. So
2 when they do, they find a few interesting things. They
3 find a green Fuji camera immediately identified by Doctor
4 Shappell as being his, Samsung cell phone immediately
5 identified by Doctor Shappell, find an LG cell phone that
6 Richard Ward identified from this witness stand as being
7 his. They also found this in the trunk of the vehicle.
8 Johnny Johnson says at one point one of the Williams
9 brothers went in the trunk of the car to put this in it;
10 and sure enough, lodged in this shoe was the gun that was
11 identified by the victims.

12 Ladies and gentlemen, the State in this case and in
13 all criminal cases has a certain standard we have to meet,
14 and that's called beyond a reasonable doubt. It's called
15 a burden, beyond a reasonable doubt. In this case you've
16 got all this recovered stolen stuff, phones, cameras,
17 credit cards, money, gun, clothing that matched the
18 description that was from the victims taken off the
19 suspects, three eyewitnesses, immediate identifications.
20 All victims had no hesitations. And also a co-defendant
21 who had known this defendant for years, high school, work,
22 neighbor, who is involved in the whole thing the whole
23 time and says that Mr. Jordan not only was there the whole
24 time but called him about doing it and was one of the ones
25 who went in each of the hotel rooms.

1 Our standard is beyond a reasonable doubt. Our
2 burden is beyond a reasonable doubt. Ladies and
3 gentlemen, I submit to you that not only have we met that
4 burden, we crushed it. There is tremendous, tremendous,
5 evidence in this case pointing directly at Mr. Jordan.
6 And I'd ask you, when you take all this evidence back in
7 the jury room with you that you go through it diligently,
8 take a good look at it, discuss the evidence that's been
9 presented. And when you do that, I ask you to find the
10 only reasonable conclusion in this case, and that is a
11 verdict of guilty. Now I find an irony in all this. In
12 the beginning you heard something to the effect that the
13 defendant in this case has a cloak of negligence wrapped
14 around him. And how appropriate is it that the
15 individuals who he armed robbed, burglarized, and
16 kidnapped and made strip off all their clothes were the
17 ones who came in here in front of you and stripped off
18 that cloak of innocence. I ask you to consider everything
19 that you've heard from that witness stand and all that
20 evidence, find Mr. Jordan guilty. Thank you.

21 THE COURT: Mr. McLaughlin, you're recognized.

22 MR. MCLAUGHLIN: Thank you, Your Honor. May it
23 please the Court, Ms. Parr, and Mr. Richardson. Ladies
24 and gentlemen, I find nothing ironic about the cloak of
25 innocence. I find it to be very important. In fact, I

1 submit to you that right now sitting here Mr. Jordan is
2 still clothed in that cloak of negligence because you are
3 not supposed to have begun making up your minds yet.
4 Remember we talked about that at the beginning. Took a
5 deep breath, to hearing all the State's opening and we
6 decided we were gonna follow that solemn duty that Judge
7 Anderson talked about. And we were gonna wait till we
8 went back there in that room and we started those
9 deliberations until we even began to try to take that
10 cloak of innocence off of this young man. And that's
11 important. You didn't find out until later today this
12 young man works. You heard Mr. Johnson tell you about it.
13 Works at Zaxby's, in the National Guard. I'd be willing
14 to bet that surprised a few of y'all when y'all heard
15 that, didn't it, because he's supposed to be a thug. And
16 when you heard that I hope it caught your attention and I
17 hope it reminded you of what we talked about on Monday,
18 and that is, we're gonna listen to what Judge Anderson
19 told us, we're gonna wait. We're gonna give everybody an
20 opportunity to be heard before we begin to make up our
21 mind. And I don't doubt that you guys are doing that. We
22 talked about on Monday or Tuesday scrutiny, and we talked
23 about the scientific method. You've heard the State's
24 story, okay. I will submit to you that the State's story
25 are all true; they are. Something terrible happened to

1 Mr. Meyers and his son. Something terrible happened to
2 Mr. Shappell. Something terrible happened to Mr. Ward,
3 Mr. Oberfrank, and Mr. Gilbert Cameron. We don't deny
4 that. But what I want you to do is I want you to take
5 that scrutiny; I want you to think about that scientific
6 method. I want you to take it — I want you to point it
7 at the State's story that this man had something to do
8 with it, okay? We know that it's true for two of them;
9 don't we? We heard it today. Shakeem Williams, Louis
10 Williams. What'd they do? Pled out. That means they
11 stood in a courtroom like this one right here. They had
12 those facts, the same facts the State has presented this
13 week against this one man. They pled guilty. Pled out.
14 We know the other one wants to; we heard why. He wants
15 the deal. I would too; that's a lot of time. And he's
16 willing to plea. They ain't done it yet. Why is that?
17 Those three, this story is true. And I tell you that
18 because I think it's important. I think it's important
19 because I've sat in this courtroom all week. I've seen
20 the testimony Mr. Ward, Mr. Shappell, and Mr. Meyer. It
21 upsets me. I know it upsets you guys; I know that. But
22 this is not their day in court. This is his day in court.
23 This is the young man that we need to be focusing our
24 attention on. Those other fellows, they've had their day.
25 Mr. Johnson wants his day; hopefully he'll get it soon. I

1 hope that Mr. Meyers gets his day in court. And I wish
2 him nothing but the best in his lawsuit. I hope that
3 Mr. Shappell, Mr. Ward, Mr. Oberfrank, Mr. Gilbert, I hope
4 they give serious consideration to doing the same thing.
5 'Cause we heard from the cops, there's problems out there
6 with robberies; we heard that. If those motels knew about
7 it I hope they have to pay. But they'll get their day in
8 court. We're here today for Mr. Jordan.

9 Now you guys have probably watched trials on TV.
10 And on TV what do lawyers do all the time? Object, jump
11 up, object. They fight over the introduction of evidence.
12 You guys didn't see any of that in this trial, did you?
13 All this evidence came in without objection from
14 Mr. Jordan. Every bit of it. Our objections were related
15 to the identification of Mr. Jordan and we'll get into
16 that and why we object. But all this evidence Mr. Jordan
17 wants you to see. Mr. Jordan doesn't care if you see it
18 because none of it ties him to these acts beyond a
19 reasonable doubt. And we'll go through it. What's the
20 physical evidence that they have? Plain white T-shirt,
21 pair of jeans, the video, his money, and a bank card.
22 That's the physical evidence they're presenting.

23 Now in addition to that, they've got the eyewitness
24 testimony. Well, let's talk about that a little bit.
25 Just now under closing the State, when they talked about

1 how they had crushed their burden, referred to their
2 identifications, the eyewitness identification. Said
3 three eyewitness identifications. And then they added an
4 important term, one that we think is important, immediate.
5 Were their three immediate identifications of Mr. Jordan
6 in this case? I didn't see three immediate
7 identifications presented. These eyewitnesses that you
8 saw, we can understand how these people can sit in court
9 and point a finger at Mr. Jordan. Mr. Jordan understands
10 that you can believe something and be completely wrong,
11 just like Mr. Shappell, and do it on the same. Certainty
12 does not equal accuracy, ladies and gentlemen. We all
13 know that. We've all been certain of things in our lives
14 only to find out that, you know, it wasn't so.

15 Mr. Ward originally described the two subjects how?
16 Twenty-five to 30 years old, 6'3", 250-pounds. That was
17 the original description given to the police. We asked
18 him about it. That was what was written on McLaurin's
19 report. White T-shirt with black writing on the front and
20 blue jeans. That was subject one. Subject two was 19 to
21 21, 5'8", 180 pounds. Y'all watched the video. Y'all see
22 any 5'8" people on there? You've seen Mr. Jordan. It's
23 easy enough to look over there and see whether or not
24 either one of those descriptions fit him. Now, let's talk
25 about a little bit about other factors and whether or not

1 they really got a good look at these people. Mr. Ward
2 repeatedly referred to him as what, big guy and little guy
3 then, when he was on the stand. What did he say about the
4 big guy? Y'all remember? I'm going to use this doorway.
5 They were in the bathroom remember? Now this doorway is
6 kind of tall. I don't think most of our standard doorways
7 are quite that tall. They probably end somewhere around
8 here. The big guy, the 6'3" 250-pound guy was standing
9 where? In the doorway. Where were they at? Three of
10 them crammed, butt naked, in the bathroom prob-- scared.
11 I can't imagine how scared I'd be. And yet, he got a good
12 look at this second subject.

13 You saw Mr. Ward get up from back here and walk by
14 you to the stand. You heard him talk about his
15 disability. You saw him use that cane to walk up here.
16 Yet, somehow he's braver than me. As soon as these guys
17 leave the room 'cause it's got to be as soon as these guys
18 leave the room, right? I mean, they just arm robbed
19 somebody. They're not going to take their time getting
20 out of there, are they? Mr. Johnson, he's the getaway
21 driver, he's waiting on them. But yet, somehow Mr. Ward,
22 who is butt naked, disabled, has to use a cane, throws on
23 a pair of pants, gets out of the room, and runs. Now how
24 far did he say he run? He said about fifty yards or so.
25 And he runs -- he told us that his room -- you see people

1 in that picture right there right, I believe that's
2 probably Mr. Richardson and Mr. Cox and they were probably
3 doing some -- going to look at the scene of this. So
4 we'll assume the room is kind of right there where they
5 are. And he ran all the way up to here he told us.
6 Remember? All right. Right there, if you look, here's a
7 picture that shows us he was standing there to the right
8 where he saw this vehicle. And he somehow says that he
9 saw this vehicle through that gap right there, okay.
10 Didn't get a look at the front-end then; he admitted that.
11 But that when the vehicle went on the other side of that
12 building that it had to turn left on to the main road.
13 Well, despite the fact that from where he's sitting right
14 here, you can't see the main road. He tells you that he
15 somehow saw the front of the car after it had turned left.
16 And he tells you this as he looks at the pictures with
17 what? Glasses. Now I specifically asked him do you have,
18 you know, is your problem that you can't see things
19 closeup and the answer was no. Well, I have trouble
20 seeing small print. He's an older gentleman, his eyes are
21 going. But somehow this robbery has miraculously healed
22 his ailments to the point that he just gets to run out
23 there and I.D. the car. Now did that happen? I don't
24 know. I know this, he sure didn't tell McLaurin about it,
25 did he? So this is something that has happened possibly

1 in his mind since these events happened.

2 Now I don't propose to y'all Mr. Ward has come up
3 here and purposely misled you. I don't believe that. But
4 what I — but what I believe could be the problem is that
5 he went through a traumatic event, and that it was over a
6 year-and-a-half ago. And that since that time he's heard
7 stuff about this case. Remember he admitted that, well,
8 somebody said something the next day about seeing the car.
9 Well, listen, your mind and your memory is a funny thing.
10 He hears that next day and a year-and-a-half from now
11 maybe he believes he saw it. I don't know. I know that
12 he didn't tell McLaurin and I know that McLaurin went to
13 the CJA, Criminal Justice Academy, and what did they tell
14 him? Put the stuff in the report. You guys watched a lot
15 of police officers testify today. Did you see a single
16 one that didn't need to refer to a report? No, they have
17 to. These guys answer calls all the time. They can't be
18 expected to remember everything that happens by the time a
19 case gets to trial. That's why they're taught to write
20 reports. That's why they're taught to put things that are
21 important in the reports. I would propose that if that
22 had happened and McLaurin had been told, it would have
23 went in the report. Something else about that Americas
24 Best that I don't quite understand, and that was we talked
25 to McLaurin. In his report Oberfrank said that he had

1 seen the car with the two people out there all day.
2 Remember? But yet, we get Mr. Johnson on the stand
3 today -- and they weren't out there all day. They were
4 out there about 10 to 20 minutes total. Talks about
5 pulling up, he says Mr. Jordan and Shakeem Williams got
6 out the car, walked around for about ten minutes, come
7 back, told them to sit there. Then they were gone for
8 about ten more minutes. Yet they were out there all day.
9 That doesn't make sense. Mr. Meyers described the
10 subjects, the first one is a heavy set black male wearing
11 a red shirt, approximately 6 foot, that he had a small
12 handgun. Subject two was a black male wearing a white
13 shirt, thin build, approximately 6'1". And if you'll
14 remember, Mr. Meyer showed us what happened to him when he
15 came in that room. Remember he got down on the floor. He
16 showed us how he was kind of sitting; and that first
17 subject, Shakeem Williams, was sitting there with a pistol
18 and how did he have the pistol? Like this, remember?
19 Over his head. Mr. Meyers is on the floor looking up at a
20 man holding a gun at him like this. Where do you think
21 your attention is if you're in that position? Think it's
22 on the face of the guy? You think it's on the gun? You
23 think it's on the guy who's over here walking back and
24 forth? Well, I don't know. And I think that's why we get
25 such a generic description. Remember how quickly these

1 things happen, how much time we're talking about. I mean,
2 how closely do we get a good look at people.

3 We had a lady in here Monday who drove, I forgot how
4 many miles it was, like 400 something miles from Florida.
5 She's the only one and she stood up right here and that
6 was amazing that she drove that far; was it not? I think
7 everybody in the room looked at her, could not believe she
8 had driven over four hundred miles instead of calling and
9 saying, hey, I live in Florida now. She had all of our
10 attention. She stood the entire time that she was
11 talking. What'd she have on? What'd she look like? Any
12 of y'all remember? I got vague ideas what she looked
13 like. How accurate is it? And I was sitting right there.
14 And my job during that time was to look at every juror,
15 write down what y'all were saying, and I can't tell you.

16 We know that subject number two according to
17 Mr. Meyers was very nervous. Remember, he's pacing trying
18 to hide his face which would seem comical at that point.
19 We know that Mr. Meyers was hurt. We know that he was
20 probably – he probably didn't care anything about his own
21 injuries there. I imagine he was extremely worried for
22 his son. And that was extremely tough testimony to hear.
23 When we hear about the white flag coming out the door.
24 And I'd imagine some of y'all are parents and y'all hear
25 that and you can sympathize with it. And that's true;

1 it's terrible. But his concern would be on his son. We
2 know he's still having problems with his head from getting
3 hit.

4 And we know something else. Despite that term being
5 thrown out that these identifications were immediate, Mr.
6 Meyers, you know, a year, over a year and-a-half, he never
7 identified Mr. Jordan until he sat here in this witness
8 stand, until he had met with police, until he had met with
9 the State, until he had heard the same story that you guys
10 heard all this week about how this man is the man that did
11 it, this man is guilty. And he comes up here on this
12 stand and he sits down and he points across this room and
13 he identifies Mr. Jordan. And he did it with certainty.
14 And I do not doubt that he believes it with certainty.
15 But you are not concerned with certainty; you're concerned
16 with reliability. You are concerned with accuracy and
17 only if you can say that beyond a reasonable doubt that
18 type of prejudicial identification in the courtroom until
19 you can say it's beyond a reasonable doubt that it's
20 accurate and reliable, then how can you count that.
21 That's why with the identifications will be made some of
22 the rare occasions when you heard us make objections we
23 don't think that's right, but that's what the law allows
24 for. But we get to point this out to you and ask you to
25 consider how reliable that would be.

1 Part of Mr. Meyers' identification — and this was
2 not brought out by me; it was brought out on direct —
3 what did he say when he identified? Yes, that's the guy,
4 that's the guy I saw in the parking lot. And yet we know
5 that he's got a lawyer. And we know he's gonna sue for
6 negligence of the hotel's part. What's part of that
7 negligence gonna be? We know there was problem with
8 lighting in the room. He told us that, admitted to it.
9 You think some of those factors are gonna be the lighting
10 in the parking lot? The safety? Mr. Shappell identified
11 the subject. Subject one was wearing a white in color
12 T-shirt, had a large build, seniors 2008 on his shirt.
13 Subject two, small build, light in color T-shirt, baggy
14 jeans. We know that this incident didn't last any longer
15 than the other, five to ten minutes. Mr. Shappell
16 admitted on the stand he was pretty confused and upset,
17 which I think we all can understand. You remember he
18 talked about — let's see. Talked about how Mr. Williams,
19 Shakeem Williams had him under what? What'd he say? What
20 was the term? One hundred percent control. Remember
21 that? And you remember where Williams had him under
22 control? Said it was back in here in front of the sink.
23 We've all been in hotel rooms like that. It's almost like
24 a little alcove back there. And so Williams has got him
25 back in. Williams is the one who -- what was the other

1 phrase -- verbalized everything. Williams is the one who
2 is talking to him. Williams is the one who's got him
3 under hundred percent control. Williams is the one who is
4 holding the gun. And you remember the detail that, what
5 was the most specific part of Mr. Shappell's testimony?
6 Do you guys remember what it was? The barrel. He
7 described that barrel pretty doggone accurately; isn't it?
8 I'd submit to you there's a reason for that. That reason
9 is cause that's what he was focused on. That's where I'd
10 be focused if somebody was pointing a gun at me. We know
11 that he wasn't really focused on what else was going on in
12 the room. How do we know that? He was asked what they
13 did. Remember about the luggage? He didn't know at the
14 time but that they must have gone through his luggage
15 because afterwards it was strown all over but he doesn't
16 really remember seeing it. I submit to you the reason why
17 is because he was stuck back there in that alcove with
18 Shakeem Williams pointing that gun at him ordering him
19 around and that's where his attention was.

20 Deputy Worsley responds. And we heard the talk
21 about coming and showing up the first time. Oddly enough
22 Mr. Shappell doesn't remember when Worsley left the first
23 time he gave him his business card with the case number on
24 it. And that's pretty standard procedure. You, the
25 victim of a crime, the cops are gonna give you that so you

1 can followup. But there's a perfectly logical reason for
2 that. He had just been through a traumatic event. He
3 doesn't remember. Well, Worsley comes back; doesn't he?
4 And this time he comes back with a few other deputies, and
5 he comes back and they call around to check charges. And
6 we find out that there were at least three charges at one
7 place. I tried to write the numbers down. I think it was
8 like 60, 40, 30. You guys may remember that. There were
9 like three separate charges on one gas station. Then
10 there was another charge at another one. Worsley admits
11 he didn't write that stuff down. He leaves; he comes
12 back.

13 And this is another issue that we have with the
14 lineup. Because he comes back and he knocks on
15 Mr. Shappell's door, and what does he have to say? I
16 think we got them. Can you imagine Mr. Shappell's relief
17 when he heard those words? I can. I'd imagine it was
18 somewhat overwhelming. You know, when I asked about
19 whether or not there was conversation in the car and they
20 said, no, I, found originally in my mind I found that hard
21 to believe. But the more I thought about it I could see
22 that that's probably so because I said, what if I was in
23 that position, I had just been robbed at gun point, I was
24 in a strange town, the cops had already been back once.
25 And they show back up again and now they want me to go

1 identify the guys who robbed me. And I don't know if I
2 would have said anything in the car. In fact, I bet I'd
3 have been pretty doggone nervous.

4 MS. PARR: Your Honor, I would object to this line
5 —

6 THE COURT: Counsel, the rule does not allow you to
7 use your own self as an example. Please proceed from
8 there.

9 MR. MCLAUGHLIN: Yes, sir, Your Honor, my apologies.
10 But we could understand that. So they get to IHOP. And
11 what's — what happens when they get to IHOP? Do they
12 have to stop and discuss how we're gonna do this
13 identification process? No. In fact, Worsley says they
14 do it like this often. So he's driven around right by
15 four individuals. And we can refer to these as two sets
16 of individuals, A and B. A is Louis Williams and Johnny
17 Johnson. B is Shakeem Williams and Tarrence Jordan. And
18 the two guys in B are the only ones who match the
19 description that Mr. Shappell had given. In fact, we know
20 that one of them must have been right. Shakeem Williams,
21 and we know that because he pled. But the other one is
22 Mr. Jordan. And you heard Worsley admit on the stand that
23 Jordan was the only one that fit the description of
24 subject number two. He's the only one. Is it any
25 surprise that being the only one that fits the description

1. of number two and being in handcuffs surrounded by police?
2 Or was it that Shappell said? Called it quite a scene
3 really. Florence County Sheriff's Office, Florence Police
4 Department, unmarked cars, at night, they've got their
5 lights going. McLaurin told us the whole shift had turned
6 out. Is there any doubt that Mr. Jordan would have been
7 picked.

8 You guys saw Mr. Johnson today. You saw him on the
9 video that night. There's a good portion of that video
10 where they're sitting side by side, Tarrence Jordan and
11 Johnny Johnson, right in front of you. How dissimilar do
12 those two young men look if they're both wearing a white
13 T-shirt. He's got his hair pretty long now. It wasn't
14 that long in that video. But how dissimilar did they
15 look? And the reason why we believe that's important is
16 because what's the one comment that Worsley can remember
17 from the car? What's the one Shappell said to him that
18 Worsley remembered? Johnny Johnson's shirt. Not his
19 undershirt, which is a white in color T-shirt, that bright
20 multi-striped pullover shirt, the one thing that Shappell
21 actually comments on. Now, we believe you can understand
22 our concern with that type of clothing. You heard Deputy
23 Worsley. When I asked him about, well, do y'all do this
24 all the time? Yeah, not all the time. They said they do
25 it regular enough. Then I asked him if he thought it was

1 fair. What did he say? Well, yeah. Then I presented
2 that scenario to him, asked him how tall he was. He said
3 well, 5'9". Asked him how old he was, 25. And I
4 presented that scenario to him about there was a robbery
5 out on Irby Street and the description was one large black
6 male, a white T-shirt, and one mid 20's black male wearing
7 fatigues. How would he feel about getting in that lineup?
8 He changed his mind, all of a sudden this procedure
9 doesn't look so fair.

10 Now the actual physical evidence, and I want you to
11 understand this as a jury, that part of it is the video.
12 It's admitted in the evidence without objection. You saw
13 it yesterday. If there's any question look at it again.
14 Since it's part of evidence, if you got a question about
15 that video when you're back there you can ask to look at
16 it again if you want to. But I want to know if you paid
17 close attention to that video, and if you did, what did
18 you see? The judge will talk to you about a charge on the
19 law about how you guys get to decide credibility of
20 witnesses, and one of the things he'll charge you on is
21 their demeanor on the stand and that can include things
22 like body language, stuff like that. You see body
23 language on that video? Good bit of the video they bring
24 Tarrence Jordan out and Allen searches him. There's a
25 cursory search, find something, and puts it right there in

1 front of him and then sends him back to the other car
2 where he goes back to the other car and he's on the hood
3 and he's like this. That's where he spends the majority
4 of the video. And then Louis Williams is taken out of
5 that car; that's the fellow in the black. Same thing
6 happens with him except this time he's brought over to the
7 other side. But then the rest of that video consists of
8 them taking Johnny Johnson out of that car and Shakeem
9 Williams. Now it was -- it -- you guys saw Allen when he
10 got up and testified the other day. He had a hard time
11 remembering what went on. You may recall that the State
12 tried to refresh his memory by giving him the report and
13 he sat there and looked at it for a while and said,
14 listen, I can't remember. Okay? Well, he makes a comment
15 during that that he took this card, this other piece of
16 physical evidence here, card out of the small one with the
17 white shirt. Okay? Well, Hooks came after him or Hook,
18 Lieutenant Hook, and then he tried to say that card came
19 out of Tarrence Jordan's pocket too. Well, and that's
20 when we got up, we asked him, wait a minute, you were on
21 the other side of the car and you were searching the
22 bigger guy in the white shirt, Shakeem Williams. And you
23 pulled something out of his pocket and you showed him
24 something, and you asked him -- and we don't have sound up
25 until that point, remember. We had the radio from the car

1 but we didn't have the outside side. And then the sound
2 cuts in; and the sound, he said something. And it could
3 be card, could be phone. But he proceeds to say, in your
4 pocket? And then apparently Shakeem said, huh-uh, I don't
5 know what it about. Oh, you don't know what it is that's
6 in your pocket? Continues to search him, sends him back.
7 Well, right before that happens, before that sound comes
8 on, if you watch that video closely Allen is over here on
9 this side. This is the trunk of the cab. And he's
10 searching who? Johnny Johnson. And he takes something
11 out of his pocket; and instead of just placing it right
12 here like he did with whatever he took out of Tarrence's
13 pocket, Hook is walking up and he reaches over 'cause it's
14 Hook. If you were paying close attention to that video,
15 before we get the sound Hooks is facing Johnson, and
16 Allen, who is behind him. Something is being said. Now
17 what, we don't know; we don't have the sound. But I would
18 propose to you that could be this card because it's
19 obvious that Allen doesn't remember who he took it from.
20 And it's obvious that they didn't log it in detail who it
21 comes from.

22 Now we know that the money come from Tarrence.
23 That's another exhibit in without objection. We don't
24 have any problem with you guys seeing that this young man
25 has this money. It's a nice looking bag; ain't it?

1 Details who it come from. So we know we had the crime
2 scene unit deal with that just like we had the crime scene
3 unit deal with the clothes, like we had the crime scene
4 unit deal with everything. But this card, no. But then
5 when they get up here this week they want to say the card
6 came from Tarrence Jordan. Like I said, you guys can
7 watch the video. The video speaks for itself.

8 Now a couple of other things about the video that I
9 hope you picked on, picked up on, was number one, when
10 Allen, when we got sound and Allen first calls to run a
11 check on some folks, how many people were in the car?
12 Four. How many people did Allen call to run that check
13 on? Two. You remember who it was? Shakeem Williams and
14 Tarrence Jordan. Now why is that? We propose it's
15 because that's who they had already decided had done this.
16 Despite the fact that Mr. Johnson, the same build, very
17 closely in complexion, and had a white in color T-shirt
18 and dark jeans on. He had that pullover shirt, that
19 bright shirt. Even though it's his car. That's the man
20 that they had decided (pointing to the defendant.)

21 What else was important about that video? Well, at
22 some point Hooks is talking to Louis Williams, the fellow
23 in the black shirt. And what's he telling you? He tells
24 them if I find out you didn't have nothing to do with this
25 I'll give you a ride home. Now that's odd. I thought

1 we're looking for four people who committed these crimes.
2 That's the description that went out. That's what Officer
3 Hale saw the car and went in there and saw that? Four
4 black males. But yet, maybe one of them didn't do it.
5 Maybe we can let them go. In fact, wasn't that what was
6 asked of Worsley on redirect about that lineup procedure?
7 Since it seems so unfair why you do it. What was one of
8 the things? So you can let innocent people go.

9 The money, other piece of physical evidence, like I
10 said, we don't mind you seeing the money. You know why?
11 You've heard why. Out of all three of those guys this is
12 the only young man that's got a job. And not just one
13 job, two jobs. Zaxby's and the National Guard. So he's
14 working two jobs and where did Johnson originally tell the
15 cops that Tarrence was that night? DV8. The young man
16 was out at a club and then they come and picked him up.
17 It's not surprising he had money in his pocket, money
18 earned, money he worked for.

19 Now, if you look at all that we don't think the
20 State can prove beyond a reasonable doubt that Tarrence
21 had anything to do with this, that this matters, he should
22 have had money in his pocket. So we're left with this
23 physical evidence, plain white T-shirt. And we've talked
24 about that eyewitness identification, and it's not about
25 believing that any of those gentlemen came in here and

1 don't believe that Mr. Jordan was involved. That's not
2 what this is about. It's about whether or not we can rely
3 on that identification beyond a reasonable doubt to
4 convict this man.

5 The last thing we got is Mr. Johnson. Seven counts
6 of armed robbery. That's 10 to 30 a piece. Five counts
7 of burglary first. Each one of those is 15 to life. One
8 count conspiracy, up to five years, could be fined five
9 thousand dollars. Five counts of possession of a weapon
10 in the commission of a violent crime. That — each one of
11 those is up to five. Seven counts of kidnapping, one of
12 those up to 30. One count of grand larceny. That can be
13 up to five and/or fine. And he's gotten an offer for 15
14 years. That's what you need to consider when you weigh
15 his testimony. And that's before he admits to lying to
16 police. Well, he didn't admit to it at first. Kind of
17 refresh his memory about it. Why did Johnson have to keep
18 getting behind the wheel of that car? I mean, he says
19 Louis drives for him 'cause his license is suspended. You
20 know, I think once you cross the rubicon on armed robbery,
21 kidnapping, burglary and the rest, you know, why not drive
22 without a license. But no, that's why Louis would drive.
23 But then whenever they went, to his term, pull a lick, he
24 had to get behind the car. He was the wheelman. And it's
25 odd because we know that Hooks pulled Johnson aside in

1 that video. You can see it. We see him talk to Johnson
2 on the camera asking him about whether or not he can
3 search his car. So he had this opportunity to talk to the
4 police. What did he tell them about Louis. 'Cause we
5 know Louis didn't get arrested. He told us that. Bird
6 told us that. So why wasn't Louis arrested? Why didn't
7 he tell them then, hey, this guy is in on it. In fact, he
8 claims that, you know, despite the fact that he's the
9 wheelman for all these robberies, well he didn't never
10 really see a gun and not until this was all over. Well,
11 Shakeem put something in my truck -- but trunk, excuse me.
12 But he didn't see it until all this was over. Well, and
13 we know that his time didn't match up the first time he
14 told him. We know that today he's saying that all four of
15 them headed out about 9 p.m. to go to Americas Best. Two
16 months ago it would have been 7 p.m., but that didn't add
17 up. And the statement was stopped. And then it was
18 started back up and now all of a sudden -- now all of a
19 sudden, well, we hung out for a little while with Shakeem
20 and Louis and then we headed out at 9 p.m.

21 Now, do I think anybody with the State had him fib?
22 No. But I think that young man got a whole heck of a lot
23 of weight over his head and he was willing to tell them
24 whatever he had to, whatever he thought they needed. And
25 we know that because he admitted he put himself in a

1 robbery that he didn't even have anything to do with the,
2 Red Roof Inn robbery. Not part of this. Not part of this
3 case but he put himself there. Why? 'Cause listen, he's
4 gonna give them whatever they need so that he can get that
5 deal. This whole idea about four guys being involved, the
6 State told you in the opening that the word was spreading
7 that night; it was getting out. He talked to you about
8 the hand-of-one is the hand-of-all. With the word was
9 spreading and if we had witnesses that put four people in
10 the car and if the hand-of-one is the hand-of-all, why
11 didn't Louis Williams get arrested? We understand how you
12 can sit there and say, McLaughlin, you know, that's far
13 fetched. Witness said there were four people in the car.
14 They pulled them hours, a couple of hours after the last
15 robbery. There's four people in the car. Tarrence Jordan
16 is one of them. Maybe you say I don't know if I can
17 believe that. Well, we know some people who did believe
18 it, Sheriff's Office. They believed that. The State
19 believed that one of those people didn't have anything to
20 do with these robberies. The State believed that that
21 night. And if the State can believe that, you have to ask
22 yourself whether or not you can believe the opposite
23 beyond a reasonable doubt.

24 Now there was also some talk about standards, and it
25 was coached towards the burden of proof really. But I

1 would submit to you that there are other standards
2 involved in this case, and that is the standard by which
3 we allow the State to charge someone with a crime, the
4 standard by which we demand they prove their case in
5 court. And they've got a wealth of tools at their
6 disposal. What's the gold standard? DNA. DNA is the
7 gold standard. Well, I would submit to you that the
8 standards used here is wrapped in tin foil. We know DNA
9 is the goal standard. We see the press. We know that
10 people have been convicted and put in jail and sat in jail
11 for years based off of the same type of case that is being
12 presented to you today. And the eyewitnesses that
13 testified in those trials were probably just as certain,
14 were probably just as believable, were probably just as
15 sympathetic as the eyewitnesses you've all seen today.
16 And that does not change the fact that they were wrong.

17 Now, I'm about done. I'm sorry. I know I've talked
18 for a while, but I've got two things I'd like to leave you
19 with. And number one is about those standards. There's a
20 phrase that the State used in their opening and it was in
21 talking about the stuff that happened to these victims.
22 This is not what Florence is about. We'd ask you apply
23 that exact standard to Mr. Jordan and the case that the
24 State has put before you. This standard is not what
25 Florence is about. Not looking in — not getting phone

1 records. How easy would it have been to get Johnny
2 Johnson and Tarrence Jordan's phone records and prove that
3 testimony. How about let's go to these gas stations,
4 let's pull some video. Best Buy, a couple of days later.
5 A couple of days later? Weren't people in jail a couple
6 of days later? Reminds me of something Mr. Meyers said
7 when he was on the stand, something about a girl being
8 involved. You guys remember that? We got stuff being
9 ordered over the phone and picked up at Best Buy. We know
10 they got security cameras in Best Buy. A couple of days
11 after this and somebody is telling him about a girl and
12 there's no follow up. That's not what Florence is about.

13 And the last thing we want to leave you is when the
14 Judge charges you I'd expect somewhere around there will
15 be something called an Allen charge where he talks to you
16 about your verdict's got to be unanimous so you need to
17 listen to each other. You need to be firm in your
18 convictions but be polite and listen. And you need to
19 work together to come to a verdict, and that is absolutely
20 right. But what we don't want you to do is don't be one
21 of those juries that sees a lawyer in the grocery store
22 two months after a case and walks up and says, I wish I
23 would have held out. Thank you very much.

24 THE COURT: Jurors, we will take a recess here now
25 and probably in about 15 minutes bring you back out.

1 What's going to happen then? My charge is approximately
2 an hour. That'll run you down to about 4:00. Then when I
3 finish the charge I will give you the case for decision.
4 Because we have open court tomorrow I'm going to give you
5 the option of simply coming back at 9:00 in the morning
6 and my charging you the law then, and then giving you the
7 case for decision. Now Madam Forelady, when you go to the
8 jury room the majority makes this decision, the majority.
9 There's no unanimous part in this decision. The majority
10 rules. See if the majority wants to stay today, receive
11 the charge for at least an hour, and then get the case and
12 then stay with the case. Or either come back tomorrow at
13 9:00 and receive the charge and then decide the case.
14 Obviously more time would be involved tomorrow in regard
15 to at least an early start in the day. Majority rules.
16 When you come back tell me what you've decided. Let's
17 take a recess everybody.

18 (WHEREUPON, the jury was removed from the
19 courtroom at 2:50 p.m., and a recess was taken.

20 (Court's Exhibit Number 3, note from the jury,
21 was marked and made a part of the record.)

22 (Attorneys met with the Court in chambers.)

23 (Clerk of court returned jury note to the jury room with
24 response from the Court.)

25 (WHEREUPON, the jury was returned to the courtroom

1 at approximately 3:13 p.m., and the following proceedings
2 commenced in open court.)

3 THE COURT: Madam Forelady.

4 THE FORELADY: We're going to come back tomorrow.

5 THE COURT: Don't discuss the case with anyone else.
6 Don't discuss it among yourselves. Have a good night's
7 rest. See you 9:00 in the morning. Catch them the
8 elevator please.

9 (WHEREUPON, the jury was removed from the
10 courtroom at 3:13 p.m., and the following proceedings
11 commenced in open court.)

12 THE COURT: Anything you want to put on the record
13 for the State?

14 MR. RICHARDSON: No, sir.

15 THE COURT: Defense?

16 MR. MCLAUGHLIN: Nothing, Your Honor.

17 THE COURT: Have a good night's rest. See you at 9
18 in the morning. Please be here at 9. Thanks.

19 (Court resumed April 22, 2010 at 9:02 a.m.)

20 THE COURT: Is the State ready?

21 MS. PARR: State's ready, Your Honor.

22 THE COURT: Defense ready?

23 MR. MCLAUGHLIN: We are, Your Honor.

24 THE COURT: All right.
25

1 (WHEREUPON, the jury was returned to the courtroom
2 at approximately 9:02 a.m., and the following proceedings
3 commenced in open court.)

4 THE COURT: Good morning, jurors. Everyone feeling
5 okay? Y'all doing all right?

6 (There was no response.)

7 THE COURT: As I begin this charge to you on the law
8 I have this melancholy feeling about 31 years on the
9 Bench, and then this is the last time I will ever face a
10 trial jury and ever give instructions again. But
11 Ecclesiastes, chapter three verse one, says there is a
12 season for all things and a time for all purposes under
13 the heaven. That verse is very efficacious to us in many
14 activities of life and even in the most important
15 activities.

16 Jurors, as I explained to you briefly before the
17 lawyers talked to you, we have three indictments. And I
18 have these indictments divided down, and obviously you
19 must give me a verdict back in regard to the counts that
20 are encapsulated within the indictment. And in order to
21 to make sure that we are talking about the same count and
22 the same charge, I have done this front sheet. For
23 example, indictment 2008-GS-21-1919, that involves the
24 incident at the Holiday Inn. And under that you have
25 count one, amend robbery; count two, kidnapping; count

1 three, burglary first degree; and count four, possession
2 of a weapon during commission of a violent crime. And
3 once again, Madam Forelady, for your purposes just keep
4 them all together so that you'll understand in regard to
5 those verdict forms.

6 Indictment 2008-GS-21-1920 involves the incident at
7 Americas Best Value Inn. And once again, we have a number
8 of counts. Count one is armed robbery in regard to the
9 allegation as to Louis Oberfrank, separate charge. Count
10 two is armed robbery in regard to the allegation as to
11 Richard Ward, separate charge. Count three is armed
12 robbery in regard to the allegation as to Gilbert Cameron,
13 separate charge. And then count four is kidnapping, but
14 that includes all three alleged victims, all three
15 alleged victims with just one charge of kidnapping. And
16 then count five is possession of a weapon during
17 commission of a violent crime. And count six is burglary
18 in the first degree and that relates to all three of the
19 alleged victims at the Americas Best Value Inn. Finally,
20 indictment 2008-GS-21-1921 involves the incident at the
21 Super 8 motel. And once again, count one armed robbery;
22 count two, kidnapping; count three, burglary first degree;
23 count four, possession of a weapon during the commission
24 of a violent crime.

25 To all of these indictments and to all of these

1 charges this defendant has pled not guilty. That plea of
2 not guilty places the burden of proof upon the State of
3 South Carolina to prove the defendant guilty beyond a
4 reasonable doubt. This defendant is presumed to be
5 innocent under the constitution. The defendant is
6 presumed to be innocent unless and until the State has
7 established guilt beyond a reasonable doubt. A person
8 charged with committing a criminal offense in South
9 Carolina is never required to prove himself innocent. It
10 is a vital, important rule of the law that the defendant
11 in a criminal trial, no matter how grave or serious may be
12 the offense with which he is charged, must always be
13 presumed innocent unless and until his guilt has been
14 proven beyond a reasonable doubt. A person charged with
15 committing a criminal offense in South Carolina is never
16 required to prove himself innocent. This presumption of
17 innocence is legal proof of innocence. This presumption
18 of innocence remains with a defendant at all times, from
19 the moment of his arrest throughout the trial proceeding
20 and goes into your jury room and remains with a defendant
21 there unless and until you, the jury, remove the
22 presumption of innocence by evidence satisfying you of his
23 guilt beyond a reasonable doubt. Once again, considering
24 these charges separately and distinctly you must
25 separately and distinctly evaluate the evidence and

1 testimony and the law and reach a verdict separately and
2 distinctly as to each count.

3 The State is required to prove the defendant guilty
4 beyond a reasonable doubt. What is reasonable doubt in
5 the law? A reasonable doubt is the kind of doubt that
6 would cause a reasonable person to hesitate to act. Let
7 me give you that again for the sake of emphasis. What is
8 a reasonable doubt in the law? A reasonable doubt is the
9 kind of doubt that would cause a reasonable person to
10 hesitate to act. By the constitution and laws of the
11 State of South Carolina you, the jury, are the sole judges
12 of the facts and evidence in this case. I am not
13 permitted to intimate any opinion or feeling I may have on
14 the facts, nor am I permitted to indicate to you what I
15 think about the guilt or innocence of this defendant. I
16 tell you now, I do not have an opinion on the facts; but
17 above that, under the constitution I'm not entitled to an
18 opinion on the facts.

19 I have made some trial rulings on matters of
20 evidence in your presence. Please do not derive any
21 inference from any ruling that I have made as to any
22 opinion or feeling in regard to the facts. In determining
23 what the facts are in this case, you of necessity must
24 pass upon the credibility of the witnesses who took this
25 witness stand. Credibility means believability. You are

1 the sole judges of the credibility or believability of the
2 witnesses. There are many factors that you should
3 consider in determining the credibility or believability
4 of a witness, such as, is this witness credible? The
5 value and weight to be given to the testimony is in your
6 sound discretion. You alone must decide the force and
7 effect and the truth of the testimony. In making this
8 determination as to credibility you consider such things
9 as: The appearance and manner of the witness on the
10 witness stand known in the law as the demeanor of the
11 witness; did the witness have an interest in the outcome
12 of a trial; did the witness have a cause or reason to be
13 biased or prejudiced in favor of the testimony that was
14 given; was the witness forthright or hesitant; was the
15 witness's testimony consistent or did it contain
16 discrepancies; what was the ability of the witness to know
17 concerning the facts about which he or she gave
18 testimony; did the witness have a cause or reason to be
19 biased or prejudiced in favor of the testimony that he or
20 she gave; was the testimony of the witness corroborated by
21 other evidence and testimony, or was it impeached and made
22 weaker by other evidence and testimony presented.
23 Remember, you're the sole judges of the facts in the case
24 and the credibility of all the witnesses.

25 As jurors, you have the right to believe a small

1 portion of a witness' testimony and disregard the larger
2 part. Or, you may believe the larger portion of witness'
3 testimony and discard a smaller part. You may believe a
4 witness' testimony in its entirety or you may completely
5 reject the witness' testimony in totality, not doing that
6 arbitrarily but if you have sound reason in the record for
7 doing that. You may believe the testimony of a single
8 witness against several or the several as against the one.
9 Most certainly you do not consider and determine
10 credibility by counting witnesses. Throughout this entire
11 process you have but one single objective, and that is to
12 seek the truth in the case. By the very same constitution
13 and laws which make you the finders of the fact, I am as a
14 trial judge made the sole and only instructor in the law.
15 Under the oath that you took you must accept as correct
16 the law as I charge it to you. In that regard, neither
17 the jury nor the Court should be concerned with what the
18 law ought to be in this state, but rather, what the law
19 actually is.

20 The defendant is entitled to every inference in his
21 favor which can reasonably be drawn from the evidence when
22 two inferences may be drawn from the same set of facts,
23 one inference consistent with a verdict of guilty and one
24 inference consistent with a verdict of not guilty, the
25 defendant is entitled to the inference which is consistent

1 with a verdict of not guilty. You cannot find this
2 defendant guilty based upon suspicion, conjecture, or
3 speculation, no matter how strong. A conviction can only
4 be based upon proof of guilt beyond a reasonable doubt;
5 and if the proof does not meet that standard, you must
6 find the defendant not guilty.

7 There's a principle of law in this state, it is
8 called the mere presence doctrine. The mere presence of a
9 defendant where a crime has occurred or the mere
10 association by a defendant with people who have committed
11 a crime is insufficient proof that the defendant has
12 committed a crime. Evidence that an individual is present
13 at the time a crime is committed is not in and of itself
14 sufficient proof that the individual committed a crime.
15 The burden of proof is on the State to prove every element
16 of the crime charged. If you find after reviewing all the
17 evidence that the State has proved the defendant was only
18 present at the scene of a crime and the State has not
19 proved beyond a reasonable doubt any participation in the
20 crime, then you're required to find the defendant not
21 guilty.

22 The defendant in this case has not testified. This
23 is his constitutional right. It is not a circumstance
24 that you can take into consideration or even allow to
25 enter into your discussion in the jury room. Under the

1 constitution of the State of South Carolina and under the
2 United States Constitution, it is the defendant's
3 constitutional right not to testify. The burden of proof
4 is upon the State of South Carolina to establish his guilt
5 by competent evidence beyond a reasonable doubt. The fact
6 that the defendant did not take the witness stand and
7 testify in his own behalf does not create any inference
8 against him. The jury must not permit that fact to weigh
9 in the slightest degree against this defendant, nor should
10 this fact enter into discussions of deliberations of the
11 jury in any manner. Once again, do not comment on that
12 fact in the jury room.

13 In South Carolina there are two kinds of evidence.
14 They both are equally good in the law. They are direct
15 evidence and circumstantial evidence. On a contested
16 factual issue that you now decide and determine you may
17 have some direct evidence on that issue and some
18 circumstantial evidence on that issue, thus, a combination
19 of the types of evidence. Direct evidence, what is it?
20 Direct evidence is testimony of a person who asserts or
21 claims to have actual knowledge of a fact, such as an
22 eyewitness. Circumstantial evidence, what is it?
23 Circumstantial evidence is proof of a chain of facts and
24 circumstances indicating the existence of a fact. The law
25 makes absolutely no distinction between the weight or

1 value to be given either to direct evidence or
2 circumstantial evidence. Both are equally good in the
3 law. Nor is a greater degree of certainty required of
4 circumstantial evidence than of direct evidence. You
5 should weigh all the evidence in the case. After weighing
6 all the evidence if you're not convinced of the guilt of
7 the defendant beyond a reasonable doubt, you must find the
8 defendant not guilty.

9 I now go to the specific charges. Please, please,
10 please give me your attention. I will take these
11 separately and distinctly. Kidnapping, the defendant is
12 charged with kidnapping. Section 16-3-910 Subsection 1 of
13 the South Carolina Code of Laws sets forth the definition
14 for kidnapping. "Whoever shall unlawfully seize, confine,
15 inveigle, decoy, kidnap, abduct, or carry away any other
16 person by any other means whatsoever without authority of
17 law is guilty of kidnapping." The State must prove beyond
18 a reasonable doubt the elements of kidnapping. That the
19 defendant did: (a) unlawfully seize, confine, inveigle,
20 decoy, kidnap, abduct, or carry away any other person; (b)
21 by any means whatsoever; (c) without authority of law.
22 South Carolina's kidnapping statute requires proof of an
23 unlawful act taking one of several alternative forms:
24 Seizure, confinement, inveiglement, decoy, kidnapping,
25 abduction, or carrying away. Kidnapping is the

1 intentional taking of a person and compelling him to be
2 detained against his will. It is the willful and unlawful
3 seizing of a person against his will with the intent to
4 cause him to be confined, imprisoned, or detained. It is
5 false imprisonment with the element of abduction added.

6 The essence of the offense of kidnapping is the
7 unlawful holding of a person against the person's will.
8 An essential element of the offense of kidnapping is that
9 the taking or detention of a person kidnapped is without
10 lawful authority. Kidnapping means the carrying away of a
11 person by unlawful force or by fraud and against his will,
12 or his seizure and detention for the purpose of carrying
13 him away. The gravamen of the offense of kidnapping is
14 some form of compulsion, but the requisite force or
15 compulsion need not consist of the use of actual physical
16 force or violence or of expressed threats.

17 Kidnapping occurs when a person unlawfully seizes,
18 confines, inveigles, decoys, abducts, or carries away any
19 other person by any means without authority of law.
20 Kidnapping is a continuing offense. The offense commences
21 when one is wrongfully deprived of his freedom and
22 continues unless his freedom is restored. Kidnapping is a
23 mens rea offense. The two words "mens rea" are Latin
24 words. Mens rea is a Latin term meaning a guilty mind, a
25 guilty mind. The mens rea required for the crime of

1 kidnapping – the mens rea required for the crime of
2 kidnapping is knowledge. The State must prove beyond a
3 reasonable doubt the mens rea of knowledge before you can
4 convict the defendant of the offense of kidnapping. What
5 is the definition of knowledge under the law? A person is
6 said to act knowingly if he is aware that a result is
7 practically certain to follow from his conduct whatever
8 his desire may be as to that result.

9 Armed robbery, the defendant is charged with several
10 counts of armed robbery. Section 16-11- 330 of the Code
11 of Laws provides: "Robbery is committed while armed with
12 a pistol, dirk, slingshot, metal knuckles, razor, or other
13 deadly weapon, or while alleging either by action or words
14 he was armed while using a representation of a deadly
15 weapon or any object which a person present during the
16 commission of the robbery reasonably believed to be a
17 deadly weapon. To convict a defendant of armed robbery
18 the State must prove the defendant: One, committed a
19 robbery; two, while armed with a pistol, dirk, slingshot,
20 metal knuckles, razor, or other deadly weapon; or while
21 alleging either by action or words he was armed while
22 using a representation of a deadly weapon or any object
23 which a person present during the commission of the
24 robbery reasonably believed to be a deadly weapon.

25 Robbery is larceny from the person or immediate

1 presence of another by violence, intimidation, or by
2 putting such person in fear. A thing is in the presence
3 of a person in respect to robbery which is sole within its
4 reach, inspection, observation, control that he could, if
5 not overcome by a violence or prevented by fear, retain
6 his possession of it. Robbery is basically larceny
7 compounded or aggravated by intimidation or force used in
8 the taking of property from the person or in the presence
9 of another. Larceny is the felonious taking and carrying
10 away of the goods of another against the owner's will or
11 without his consent with the intent to appropriate them to
12 one's own use and to permanently deprive the owner of
13 possession of his property.

14 There are five elements the State must establish
15 beyond a reasonable doubt to prove larceny. Each of these
16 elements must be present and make out the crime of armed
17 robbery. The elements of larceny are: one, a taking;
18 two, the act of carrying away. This is called asportation
19 in the law. Once again, that word is a Latin word.
20 Asportation is the act of carrying away property. Three,
21 the personal property of another. Four, without the
22 consent or against the will of the owner of the property.
23 And five, with the intent to steal. The asportation of
24 stolen property is an indispensable element of larceny and
25 can be established by the slightest removal of the

1 property with felonious intent. The defendant must intend
2 to permanently deprive the owner of possession by
3 converting the property to his own use.

4 In addition to the elements of larceny, the crime of
5 robbery requires two additional elements. These are:
6 One, the property must be taken from the person or
7 immediate presence of the person; and two, the taking must
8 be accomplished by violence, intimidation, or by putting
9 the person in fear. The violence must be actual personal
10 violence or the threat of it. The degree of force used is
11 immaterial so long as such force or threat of force is
12 actually sufficient to overcome the victim's resistance.
13 This violence or intimidation must either precede or be
14 contemporaneous with the taking. Finally, to constitute
15 armed robbery the State must show the additional element
16 that the robbery was committed while armed with a pistol
17 or other deadly weapon and while armed he used this in the
18 commission of the robbery.

19 What is a deadly weapon? That is a factual matter
20 the jury must decide or determine. You must answer that
21 question factually based on the evidentiary record before
22 you. A deadly weapon is any article, instrument, device
23 which is likely to cause death or great bodily harm.
24 Whether an instrument or object has been used as a deadly
25 weapon depends on the facts and circumstances of each

1 case.

2 Burglary, first degree. The defendant is charged
3 with first degree burglary. Section 16-11-311(a) of the
4 Code of Laws provides: "A person is guilty of burglary in
5 the first degree if the person enters a dwelling without
6 consent and with intent to commit a crime in the dwelling.
7 And either: One, when, in effecting entry or while in the
8 dwelling he or another participant in the crime is armed
9 with a deadly weapon or causes physical injury to a
10 person, or uses or threaten the use of a dangerous
11 instrument, or displays what is or appears to be a knife,
12 pistol, revolver, rifle, or other firearm; or, the
13 entering or remaining occurs in the nighttime.

14 Under the statute the State must prove the following
15 four elements in order to establish burglary in the first
16 degree. One, entry into a dwelling. The State must show
17 there was an entering. That is, the defendant actually
18 went inside the dwelling or some part of it. The
19 slightest entry is sufficient. An entry may be
20 accomplished by simply one portion of the person's body.
21 Any entry constitutes entry into a dwelling under the law
22 of burglary. The place must be a dwelling. With respect
23 to burglary, Section 16-11-10 of the Code defines dwelling
24 house as any house, outhouse, apartment, building, in
25 which there sleeps a person, a proprietor, tenant, or

1 person who lodges with a view to the protection of the
2 property. In addition, South Carolina Code Section
3 16-11-310 Subsection 2 states: "Dwelling means the living
4 quarters of a building which is used or normally used for
5 sleeping or lodging by a person." Entry into a dwelling,
6 number one.

7 Number two, without consent. The entry must have
8 been without consent. Enters a dwelling without consent
9 means to enter without the consent of the person in lawful
10 possession. Three, with intent to commit a crime therein.
11 There must have been intent to commit a crime, any crime,
12 a felony or misdemeanor, whether or not that crime was
13 actually committed. The mere entry into a dwelling
14 without consent is not sufficient to constitute first
15 degree burglary. There must have been an intent to commit
16 a crime once inside. Further, it is not sufficient that
17 the intent to commit a crime was formulated after entry.
18 To convict the defendant of first degree burglary you must
19 find that at the time he entered the dwelling the
20 defendant intended to commit a crime once therein. The
21 defendant's actions after he entered the dwelling can be
22 evidence used to determine if he had intent to commit a
23 crime at the time of entry.

24 Proof of intent necessarily rests on inference from
25 conduct. It does not matter that the intended crime was

1 not completed. Where the intent exists at the time of the
2 entering it is no defense that the intent was abandoned
3 after entry because the entering with intent to commit a
4 crime completes the offense of burglary.

5 Criminal intent, what does criminal intent in the
6 law mean? Criminal intent is a state of mind which
7 operates jointly with an act or omission in the commission
8 of a crime. Criminal intent is a mental state of
9 conscious wrongdoing. Criminal intent includes those
10 consequences which: (a) represent the very purpose for
11 which an act is done; or (b), are known to be
12 substantially certain to result regardless of one's
13 desire. Intent may be shown by acts and conduct of the
14 defendant and other circumstances from which you may
15 naturally and reasonably infer intent. And number four,
16 presence of an aggravating circumstance.

17 If you find that the defendant entered a dwelling
18 without consent and with the intent to commit a crime
19 therein, you must then find the presence of at least one
20 of the following aggravating circumstances in order to
21 convict of first degree burglary. Only one of these
22 circumstances needs to be present. Only one of these
23 circumstances needs to be present. The aggravating
24 circumstances are: One, while entering or while in the
25 dwelling the defendant or a co-participant either: (a) is

1 armed with a deadly weapon; (b), or causes injury to any
2 person who is not a participants in the crime, or uses or
3 threatens the use of a dangerous instrument; or (d),
4 displays what is or appears to be a knife, pistol,
5 revolver, or other firearm; or, the entering or remaining
6 occurs in the nighttime. Nighttime is defined in the law
7 as follows: Nighttime for the purposes of burglary means
8 at period between sunset and sunrise during which there is
9 not daylight enough to discern a person's face except by
10 artificial light or moonlight, thus, the term nighttime is
11 not confined to the exact period between sunrise and
12 sunset, but it is the time when there is not daylight to
13 discern a person's face.

14 There is a principle of law in this state called the
15 hand-of-one is the hand-of-all. The doctrine of the
16 hand-of-one hand-of-all has been recognized by the law of
17 this state for many, many, years. What is the doctrine of
18 the hand-of-one hand-of-all? Under the hand-of-one
19 hand-of-all theory one who joins with another to
20 accomplish an illegal purpose is liable criminally for
21 everything done by his confederate incidental to the
22 execution of the common design and purpose. A principal
23 in a crime is one who either actually commits the crime or
24 who is present aiding, abetting, or assisting in the
25 commission of the crime. When two or more persons aid,

1 abet, encourage each other in the commission of a crime
2 all being present, each is guilty as a principal. Prior
3 knowledge that a person is going – whoo. Prior knowledge
4 that a crime is going to be committed without more is not
5 sufficient to make a person guilty of that crime. The
6 mere knowledge that another person is going to commit a
7 crime even if the defendant is present when the crime is
8 committed is not sufficient to convict the defendant as a
9 principal. Guilt as a principal is shown by actual or
10 constructive presence at the scene as a result of prior
11 arrangement. The State must prove beyond a reasonable
12 doubt by competent evidence the theory of the hand-of-one
13 is the hand-of-all. If two or more combined together to
14 commit an unlawful act and in the execution of that
15 criminal act a crime is committed by one of the actors,
16 then all present participating in the unlawful undertaking
17 are as guilty as the one who committed the act.

18 Identification. An issue in this case is the
19 identification of the defendant as one of the perpetrators
20 of the crime charged. The State of South Carolina has the
21 burden of proving identity beyond a reasonable doubt.
22 Identification testimony is an expression of belief or
23 impression by a witness. You may consider the opportunity
24 a witness had to observe the alleged offender at the time
25 of the offense and to thereafter make an identification.

1 It is for the jury to determine the accuracy of the
2 identification of the defendant. You must consider the
3 credibility of each identification witness in the same way
4 as any other witness. You can consider his or her
5 truthfulness as well as the capacity, opportunity, and
6 circumstances of the observation of the matters in which
7 he or she testified.

8 In evaluating the reliability of the identification
9 of the defendant, as a person who committed the alleged
10 crimes, you must consider the circumstances under which
11 the eyewitness made observations and identifications. In
12 this regard, you may consider: One, whether the witness
13 had a good opportunity to see the person; two, whether the
14 person seemed as though he was paying careful attention to
15 what was going; three, whether the witness' attention may
16 have been diverted by other persons actions, objects or
17 circumstances; four, how much time had passed between the
18 crime and the first identification by the witness; five,
19 whether at the time of the first identification by the
20 witness the conditions were such that the witness was
21 likely to make a mistake because he was queued by the
22 circumstances. For example, was the witness asked to pick
23 out the person he saw from a group of similar people? Was
24 the witness asked to pick the defendant from a group of
25 dissimilar persons? Or was the witness simply asked if

1 the defendant was the person involved? Six, whether the
2 witness and the defendant are the same or a different
3 race; and if so, whether the witness is sensitive to
4 differences among persons of another race. The burden of
5 proof is on the State to prove beyond a reasonable doubt
6 the identity of the defendant as the perpetrator of the
7 crime with which he is charged. Therefore, if you're not
8 convinced beyond a reasonable doubt as to the accuracy of
9 the identification of the defendant as the one who
10 committed the crime or participated in the crime, you must
11 find the defendant not guilty.

12 Jurors, that's the law that you must apply to the
13 facts as you find them to be to write a verdict in each
14 and every instance as to each count. Once again, the
15 verdict must speak the truth. Veredicto is the verdict.
16 Speaking the truth. I ask you now two personal questions.
17 One, is there any on the basic jury not feeling well? Now
18 if you're not feeling well, folk, don't be shy, reticent,
19 or bashful. You tell me now. You can't send me out a
20 note that I'm not feeling well, maybe I need to see a
21 doctor. You need to tell me now. I've got an alternate;
22 he's ready and willing to serve. He's ready to serve in
23 your place. Is there any person who is not feeling well?

24 (There was no response.)

25 THE COURT: Anyone on the basic jury now. People,

1 don't be shy or bashful now. Please tell me now.

2 (There was no response.)

3 THE COURT: Anyone not feeling well?

4 (There was no response.)

5 THE COURT: Anyone not feeling well?

6 (There was no response.)

7 THE COURT: For the third and last time, anyone not
8 feeling well?

9 (There was no response.)

10 THE COURT: Ms. Court Reporter, let the record show
11 clearly I have asked this jury concerning their health and
12 welfare. The next matter is, do you anticipate any
13 problems staying with the case today to decide the case?
14 If you anticipate any problem tell me now, tell me now
15 please. Tell me now, let me use the alternate.

16 (There was no response.)

17 THE COURT: Anyone anticipate any problem?

18 (There was no response.)

19 THE COURT: All right. Madam Forelady, you're the
20 spokesperson on behalf of the jury. You, of course, must
21 sign the jury verdicts on behalf of the jury. Do not
22 sign, do not sign, do not sign until all unanimously agree
23 on that verdict on that count. Whatever the verdict is it
24 must be unanimous. If it's not guilty it must be
25 unanimous. If it's guilty it must be unanimous. You will

1 sign on behalf of the jury in that regard. And as
2 spokesperson of the jury you are the one to communicate
3 with the Court, but we must communicate in writing. You
4 must send me notes out if you need some help or you have a
5 question. Send me the notes. You have the right to hear
6 the testimony again. You want to hear some of the
7 testimony, all of the testimony, parts of the testimony,
8 you have that right. We'll bring you back out and play
9 the testimony here in open court. All exhibits will be
10 with you in the jury room.

11 Now Madam Forelady, as the jury deliberates a while
12 and it gets toward lunch time, if you want food brought in
13 we will bring it in at county expense. Now it works this
14 way, if you tell me at 12 it will be 1 before we get it
15 here, always an hour lag time. If you tell me at 1 it
16 will be 2 before we get it here. So that's up to you.
17 But please just let me know when you think about food,
18 when you want the food remember, the moment you tell me
19 one hour is the lag time.

20 Folk, I thank you for listening. I thank you for
21 being a part of this trial. As I send you to the jury
22 room now do not begin talking, do not begin talking. Why?
23 I'm required to let these lawyers object to anything I've
24 said, but I must let them object in your absence. So as
25 you go to your jury room do not begin talking. Wait until

1 we send in the exhibits. As soon as you see the exhibits
2 and these verdict forms, start talking. The twelve of you
3 go to the jury room.

4 Mr. Anderson, you wait right there.

5 Please go to your jury room.

6 (WHEREUPON, the jury was removed from the
7 courtroom at 9:45 a.m., and the following proceedings
8 commenced in open court.)

9 THE COURT: Mr. Anderson, come forward. You are
10 being released now from jury service. I thank you for
11 serving to this point. It's good to have you.

12 (Alternate was excused.)

13 THE COURT: Objections, exceptions from the State?

14 MS. PARR: The State has none, Your Honor.

15 THE COURT: Objections or exceptions from the
16 Defendant?

17 MR. MCLAUGHLIN: None from the Defendant, Your
18 Honor.

19 THE COURT: All right, lawyers, come forward please.
20 Heretofore I've showed you the verdict forms. Is that
21 correct, Ms. Solicitor?

22 MS. PARR: That is correct, Your Honor.

23 THE COURT: Is that, correct, counsel?

24 MR. MCLAUGHLIN: It is, Your Honor.

25 THE COURT: All right. Help me with exhibits. Make

1 sure we have the exhibits that are identified in evidence
2 sent to the jury room.

3 (Attorneys review exhibits.)

4 THE COURT: Ms. Court Reporter, let the record show
5 we're sending in a pad in pristine condition for jury use.
6 All right, we'll be at ease now till we hear from the
7 jury.

8 (Court was in recess while the jury began deliberations at
9 9:46 a.m.)

10 THE COURT: Counsel, I have a bill adieu from the
11 jury. It reads: "We would like to re-hear the definition
12 of the hand-of-one —" end of quote, signed by the
13 forelady.

14 (Court's Exhibit Number 5 was marked, a note from the
15 jury, and made a part of the record.)

16 THE COURT: The note is made a part of the record
17 and I will proceed to respond to the jury's request.
18 Everybody understand?

19 MR. MCLAUGHLIN: Yes, sir.

20 MS. PARR: Yes, Your Honor.

21 THE COURT: Bring them out.

22 (WHEREUPON, the jury was returned to the courtroom
23 at approximately 10:34 a.m., and the following proceedings
24 commenced in open court.)

25 THE COURT: The doctrine of the hand-of-one, the

1 hand-of-all. Under the hand-of-one the hand-of-all theory
2 one who joins with another to accomplish an illegal
3 purpose is liable criminally for everything done by his
4 confederate incidental to the execution of the common
5 design and purpose. A principal in a crime is one who
6 either actually commits the crime or who is present,
7 aiding, abetting, or assisting in the commission of the
8 crime. When two or more persons aid, abet, and encourage
9 each other in the commission of a crime, all being
10 present, each is guilty as a principal. Prior knowledge
11 that a crime is going to be committed without more is not
12 sufficient to make a person guilty of that crime. The
13 mere knowledge that another person is going to commit a
14 crime, even if the defendant is present when the crime is
15 committed, is not sufficient to convict the defendant as a
16 principal. Guilt as a principal is shown by actual or
17 constructive presence at the scene as a result of prior
18 arrangement.

19 The State must prove beyond a reasonable doubt by
20 competent evidence the theory of the hand-of-one is the
21 hand-of-all. If two or more combined together to commit
22 an unlawful act and in the execution of that criminal act
23 a crime is committed by one of the actors as a probable
24 natural consequence of the acts done in pursuance of the
25 common design, all present participating in the unlawful

1 undertaking are as guilty as the one who committed the
2 actual act. The law is that if a crime is committed by
3 two or more persons who are acting together in the
4 commission of the offense, the act of one is the act of
5 both, or the act of all if there are more than two. Thank
6 you very much.

7 (WHEREUPON, the jury was removed from the
8 courtroom at 10:38 a.m., and the following proceedings
9 commenced in open court.)

10 THE COURT: Any objections or exceptions from the
11 State as to my recharge to the jury?

12 MR. RICHARDSON: No, Your Honor.

13 THE COURT: From the Defense?

14 MR. MCCLAUGHLIN: None, Your Honor.

15 THE COURT: Thank you very much. Counsel, once
16 again, please stay in close proximity because we may get
17 another note shortly so thank you very much. But please
18 stay close by. Thanks.

19 (WHEREUPON, a recess was taken from the
20 proceedings.)

21 THE COURT: Now everyone knows this, but for the
22 record, I do not allow any reaction to the jury verdict.
23 There's not going to be any reaction to the jury verdict.
24 Now people in the audience, you best not react to the jury
25 verdict; I do not allow that. And if you react I'm going

1 to hold you in contempt of court. Does everybody
2 understand? Sometimes I don't make myself clear.
3 Sometimes I'm ambivalent. Anyone not understand lift your
4 hand, just slide your hand up.

5 All right. Bring them out.

6 (There was no response.)

7 (WHEREUPON, the jury was returned to the courtroom
8 at approximately 1:37 p.m., and the following proceedings
9 commenced in open court.)

10 THE COURT: Ms. Clerk, you're recognized.

11 DEPUTY CLERK OF COURT: Members of the jury, do
12 you have a verdict?

13 THE FORELADY: Yes, we do.

14 (Form tendered to the Court.)

15 THE COURT: You're recognized, Ms. Clerk.

16 DEPUTY CLERK OF COURT: Indictment 2008-GS-21-1919
17 involves incident at the Holiday Inn, count one, armed
18 robbery; count two, kidnapping; count three, burglary
19 first degree; count four, possession of a weapon during
20 the commission of a violent crime. State of South
21 Carolina versus Tarrence Laron Jordan, indictment number
22 2008-GS-21-1919, count one, guilty of armed robbery,
23 signed by foreperson Mary Culleton, dated 4/22/2010.
24 Indictment number — State of South Carolina versus
25 Tarrence Laron Jordan, indictment number 2008-GS-21-1919.

1 count two, guilty of kidnapping, signed by Mary Culleton,
2 dated 4/22/2010. State of South Carolina versus Tarrence
3 Laron Jordan, indictment number 2008-GS-21-1919, count
4 three, guilty of burglary first degree. Signed by Mary
5 Culleton, dated 4/22/2010. State of South Carolina versus
6 Tarrence Laron Jordan, indictment 2008-GS-21-1919, count
7 four, guilty of possession of a weapon during the
8 commission of a violent crime. Signed Mary Culleton,
9 foreperson, dated 4/22/2010.

10 Indictment 2008-GS-21-1920 involves an incident at
11 the Americans Best Value Inn. Count one, armed robbery in
12 reference to allegations as to Louis Oberfrank; count two,
13 armed robbery in reference to allegations as to Richard
14 Ward; count three, armed robbery in reference to
15 allegation as Gilbert Cameron; count four, kidnapping,
16 allegations as to Louis Oberfrank, Richard Ward, and
17 Gilbert Cameron; count five, possession of a weapon during
18 the commission of a violent crime; count six, burglary
19 first degree and allegation as to Louis Oberfrank, Richard
20 Ward, and Gilbert Cameron. State of South Carolina versus
21 Tarrence Laron Jordan, count one, guilty of armed robbery.
22 Signed by the foreperson Mary Culleton, dated 4/22/2010.
23 State of South Carolina versus Tarrence Laron Jordan,
24 count two, guilty of armed robbery, signed by foreperson
25 Mary Culleton, 4/22/2010. State of South Carolina versus

1 Tarrence Laron Jordan, count three, guilty of armed
2 robbery, signed by foreperson Mary Culleton, dated
3 4/22/2010. State of South Carolina versus Tarrence Laron
4 Jordan, count four, guilty of kidnapping signed by
5 foreperson, Mary Culleton, dated 4/22/2010. State of
6 South Carolina versus Tarrence Laron Jordan, count five,
7 guilty of possession of a weapon during the commission of
8 a violent crime, signed by Mary Culleton, dated 4/22/2010.
9 State of South Carolina versus Tarrence Laron Jordan,
10 count six, guilty of burglary first degree, signed by Mary
11 Culleton, dated 4/22/2010.

12 Indictment 2008-GS-21-1921 involves incident at the
13 Super 8 Hotel. Count one, armed robbery; count two,
14 kidnapping; count three, burglary first degree; count
15 four, possession of a weapon during the commission of a
16 violent crime. State of South Carolina versus Tarrence
17 Laron Jordan, count one, guilty of armed robbery, signed
18 by Mary Culleton, dated 4/22/2010. State of South
19 Carolina versus Tarrence Laron Jordan, indictment
20 number 2008-GS-21-1921, count two, guilty of kidnapping,
21 signed by foreperson Mary Culleton, dated 4/22/2010.

22 State of South Carolina versus Tarrence Laron
23 Jordan, indictment number 2008-GS-21-1921, count three,
24 guilty of first degree burglary, Mary M. Culleton,
25 foreperson, dated 4/22/2010. State of South Carolina

1 versus Tarrence Laron Jordan, count four, guilty of
2 possession of a weapon during the commission of a violent
3 crime. Signed by Mary Culleton, dated 4/22/2010.

4 Ms. Foreperson and members of the jury, if this is
5 your verdict please raise your right hand.

6 (All jurors complied by raising their hand.)

7 THE COURT: Let the record show that the polling
8 procedure reveals unanimity in the jury verdict. Is there
9 any request from the Defendant as to personal polling?

10 MR. MCLAUGHLIN: Please, Your Honor. The Defendant
11 would so request.

12 THE COURT: That's granted automatically.

13 Ms. Clerk, please explain the procedure to the
14 jurors.

15 DEPUTY CLERK OF COURT: I'm going to ask you two
16 questions. I need a yes or no answer after each question.
17 As I call your name please stand.

18 Betty Theis, please stand. Is this your verdict?

19 JUROR THEIS: Yes.

20 DEPUTY CLERK OF COURT: Is it still your true
21 verdict?

22 JUROR THEIS: Yes.

23 THE COURT: Please be seated.

24 DEPUTY CLERK OF COURT: Bruce Cummins. Is this your
25 verdict?

1 JUROR CUMMINS: Yes.

2 DEPUTY CLERK OF COURT: Is it still your true
3 verdict?

4 JUROR CUMMINS: Yes Please be seated.

5 DEPUTY CLERK OF COURT: George Brown, is this your
6 verdict?

7 JUROR BROWN: Yes.

8 DEPUTY CLERK OF COURT: Is it still your true
9 verdict?

10 JUROR BROWN: Yes, ma'am.

11 DEPUTY CLERK OF COURT: Please be seated.

12 Jack Mace? Is this your verdict?

13 JUROR MACE: Yeah.

14 DEPUTY CLERK OF COURT: Is it still your true
15 verdict?

16 JUROR MACE: Yes.

17 DEPUTY CLERK OF COURT: Please be seated.

18 Hattie Ham, is this your verdict?

19 JUROR HAM: Yes.

20 DEPUTY CLERK OF COURT: Is this your true verdict?

21 JUROR HAM: Yes.

22 DEPUTY CLERK OF COURT: Please be seated.

23 Jacqueline McFadden, is this your verdict?

24 JUROR MCFADDEN: Yes.

25 DEPUTY CLERK OF COURT: Is this your true verdict?

1 JUROR MCFADDEN: Yes.

2 DEPUTY CLERK OF COURT: Mary Grant, is this your
3 verdict?

4 JUROR GRANT: Yes.

5 DEPUTY CLERK OF COURT: Is this your true verdict?

6 JUROR GRANT: Yes.

7 DEPUTY CLERK OF COURT: Mary Culleton, is this your
8 verdict?

9 JUROR CULLETON: Yes.

10 DEPUTY CLERK OF COURT: Is this your true verdict?

11 JUROR CULLETON: Yes.

12 DEPUTY CLERK OF COURT: Tyrell Brown, is this your
13 verdict?

14 JUROR TYRELL BROWN: Yes.

15 DEPUTY CLERK OF COURT: Is this your true verdict?

16 MR. BROWN: Yes, ma'am.

17 DEPUTY CLERK OF COURT: William Montgomery, is this
18 your verdict?

19 JUROR MONTGOMERY: Yes.

20 DEPUTY CLERK OF COURT: Is this your true verdict?

21 JUROR MONTGOMERY: Yes.

22 DEPUTY CLERK OF COURT: Edward Douglas, is this your
23 verdict?

24 JUROR DOUGLAS: Yes.

25 DEPUTY CLERK OF COURT: Is this your true verdict?

1 JUROR DOUGLAS: Yes.

2 DEPUTY CLERK OF COURT: Richard Burch, is this your
3 verdict?

4 JUROR BURCH: Yes.

5 DEPUTY CLERK OF COURT: Is this your true verdict?

6 JUROR BURCH: Yes.

7 THE COURT: Let the record show that the individual
8 polling procedure mandated by law has been conducted and
9 that procedure reveals that the jury has unanimously
10 agreed on the verdicts as published in this open court.

11 Jurors, thank you for serving. Thank you for being
12 a part of this case. And I personally extend to you my
13 feelings of thanks for serving on my last jury in the
14 criminal court. I have some feelings about leaving the
15 Bench, and it's just one of those things after 31 years my
16 daughter says you're going to wake up and think you've had
17 a nightmare or something. But I thank you for being a
18 part of this trial and being a part of the system in
19 general and specifically being a part of this procedure
20 today. Thank you so much. You bring talent and
21 capability to the task and that makes this system work and
22 that makes this system justify community confidence
23 negligence. I thank you.

24 (WHEREUPON, the jury was excused from the
25 courtroom at 1:50 p.m., and the following proceedings

1 commenced in open court.)

2 THE COURT: Motions by Defense please.

3 MR. MCLAUGHLIN: Your Honor, I would like to reserve
4 the right to file written motions within ten days for your
5 consideration.

6 THE COURT: I would deny that, Counsel, but I will
7 do this, I'll take a recess here now and let you kind of
8 cogitate and reflect and get your thoughts together. And
9 I don't mind doing that at all, just taking a recess here
10 for about 20 minutes or something like that or a little
11 longer if you need longer to think about it and —

12 MR. MCLAUGHLIN: I would imagine 20 minutes will be
13 fine, Judge.

14 THE COURT: All right, we'll take a recess here now.

15 (WHEREUPON, a recess was taken from the
16 proceedings.)

17 THE COURT: All right, Counsel, motions please.

18 MR. MCLAUGHLIN: Your Honor, at this time we move
19 for new trial for Mr. Jordan based on the following,
20 Judge. I'll go ahead and list them. I guess I've got it
21 broken down to five issues we'd like to put before the
22 court. The first two are obviously issues we've already
23 taken up several times. I won't belabor the Court by
24 rearguing that, but just bring up we're renewing all
25 motions based on the identification issues, the

1 constitutional problems we feel like were raised by the
2 way both the show-up I.D. was handled as well as the
3 in-court identifications. The other issue is the
4 kidnapping issues overlap and the conduct which we talked
5 about. And I know we had the jury charges and I think
6 even pretrial, that same argument.

7 The other two issues, Judge, involved two juror
8 issues and the first one is the juror that we had to
9 excuse yesterday, Ms. Griffin, who was I believe it was
10 juror Number 66, Judy Griffin. And Your Honor will
11 remember that at that time I informed the Court of our
12 opinion of what she meant when she said that she couldn't
13 do it, that we felt she was referring to convicting
14 Mr. Jordan. And Your Honor said that was awfully big
15 presumption for us to make and I understand that. I went
16 back last night, Your Honor, and reviewed my notes on the
17 jurors and I had a note that that lady's husband was a
18 retired deputy from North Carolina. And I would like to
19 inform the Court of that because I believe that goes
20 towards that presumption that because she was related to
21 law enforcement we feel she had — she felt some type of
22 duty, somebody's convicted of a crime, to come in and
23 convict and that's what she was referring to.

24 The second juror issue, Your Honor, as you'll recall
25 when we were striking our jury, juror number 61

1 Mr. Richard Gibson was brought up. This was the taller
2 blonde headed fellow. We came up and did a side bar on
3 this. And I brought up to the Court's attention the fact
4 that in the previous jury striking that day that jurors
5 had been brought up and asked about whether or not they
6 would give law enforcement -- when presented with
7 testimony from someone in law enforcement versus someone
8 without could they be fair and impartial between weighing
9 the two and that Mr. Gibson had shared that he did not
10 know that he could not be impartial to law enforcement
11 testimony. So we would ask for new trial based off of
12 that as well which was also an issue the Court has already
13 addressed.

14 Finally Your Honor, there are two things that I
15 guess I would have to couch as Rule 5 and Brady issues
16 here. And let me be perfectly clear, I don't believe -- I
17 don't know that the prosecution in this case knew about
18 this information, but the testimony of Mr. Meyers, when it
19 came out at trial about the charges to Best Buy that were
20 phoned in and then would have been picked up at some later
21 time. When that came out on the stand was the first we
22 knew about that, and obviously we feel like that has the
23 potential, especially if these items were picked up after
24 the 4th to support our theory that someone else, this
25 fourth person that was involved, was not Mr. Jordan. None

1 of the discovery we had informed us or put us on notice at
2 all about that.

3 The other issue is Mr. Shappell, the reports that we
4 had from Worsley and I believe -- I believe I brought out
5 on cross-examination asking Worsley about that second
6 visit. His report supports the first response where he
7 goes out there the first time. It supports the second --
8 the third response where he goes out there and picks
9 Mr. Shappell up and then takes him to view the scene.
10 There's nothing in there about that second response where
11 he came in, he found out about there were three different
12 gas charges and it sounded like at two different places.
13 And those were charges that we didn't know anything about
14 till it came out at trial. The only ones -- there was
15 another indictment that I believe was not presented for
16 trial that we knew about a charge from a Hudson's Quik
17 Mart, and I'll let the State correct me if I'm wrong, but
18 I think that was on one of the indictments we did not try
19 on. We knew about that charge, and we knew that the video
20 from the gas station on this charge did not show
21 Mr. Jordan. But we didn't know about any of these other
22 charges that happened, I'm assuming on the card possibly,
23 that was evidence. And as such we think that not knowing
24 about those things prejudiced us, kept us from being able
25 to adequately confront as well as, you know, denying us

1 our right under sixth amendment to really present a full
2 defense and we would ask the Court to consider, I guess,
3 those five issues on our motion for new trial.

4 THE COURT: All right, Ms. Solicitor.

5 MS. PARR: Your Honor, I think I'm just gonna
6 address the Rule 5 and Brady issue. Your Honor, the State
7 provided all the information that we receive on a
8 continuing basis. There was nothing that the State
9 withheld from the Defense. You know, we knew there had
10 been taken, taken some credit cards, and we turned all
11 that information over to the Defense that I knew about,
12 that we had in our file and what law enforcement obtained.

13 MR. MCLAUGHLIN: Your Honor, my response to that
14 would be if —

15 MS. PARR: And so —

16 MR. MCLAUGHLIN: When we know law enforcement knew
17 about this and we never got it, I mean, that's my concern
18 and I don't think, you know, the State isn't just Ms. Parr
19 and Mr. Richardson sitting in here today trying it. It's
20 law enforcement too. And if they had information that
21 wasn't provide to the solicitors to give to us, then I'm
22 not blaming Ms. Parr and Mr. Richardson for that, but
23 that's still the State withholding information that we
24 should have had to be able to defend the case.

25 THE COURT: All right.

1 **MS. PARR:** Your Honor, from the reports that I
2 received and in regards to Mr. Shappell, you know, he
3 just -- he indicated that, you know, his card had been
4 used and that's what they checked on. When I said
5 indicate that his card had been used because those things
6 had been taken, we didn't have anything just to other than
7 I think nothing from my understanding, you know, they were
8 trying to check to see if the card had been used. And
9 when I found out is what Mr, you know, Worsley told us as
10 well, you know, on the stand.

11 **MR. MCLAUGHLIN:** I didn't find out about Worsley,
12 about that information, until Worsley said it on the
13 stand. The minute Worsley got on the phone with American
14 Express and found out about these charges the State had
15 notice that somebody was using those cards, using those
16 charges, and that's evidence that we should have been
17 provided. I understand what Ms. Parr is saying. She
18 said, well, I didn't have it and I'm not -- I'm not
19 accusing Ms. Parr or Mr. Richardson of withholding
20 information that they had in their file.

21 **THE COURT:** Well, you had some of this information
22 about the cards being used; didn't you?

23 **MR. MCLAUGHLIN:** I didn't have any information about
24 his --

25 **THE COURT:** The cards being used?

1 MR. MCLAUGHLIN: —his card being — the only one,
2 I had is the one from the Hudson's Quik Mart.

3 THE COURT: What about the other gas station? You
4 didn't have that one?

5 MR. MCLAUGHLIN: No, sir, not to my knowledge I
6 didn't. And I'll stand corrected if that's so, but,
7 Judge, the only gas — the only charge I knew about was
8 the one from the indictment that wasn't presented.

9 MS. PARR: Your Honor, I will tell the Court that
10 Mr. Shappell did indicate on his victim impact statement
11 that there was a charge on his American Express.

12 MR. MCLAUGHLIN: Well, I've never seen — I didn't
13 get a victim impact statement as part of discovery.

14 THE COURT: What about that? You don't...

15 MS. PARR: Your Honor, I did not give them because
16 we normally do not give victim impact statement to defense
17 counsel because of the personal information on it until...

18 THE COURT: Well, first and foremost addressing
19 these other issues that have been raised heretofore, I am
20 convinced that the identification testimony was properly
21 admitted. And in regard to the juror concerning believing
22 a law enforcement officer, the state supreme court has
23 ruled specifically in a death penalty case where you can
24 actually voir dire jurors that that is not a proper query
25 to posit to jurors. In *State versus Adams*, the state

1 Supreme Court said that is not a proper query to posit to
2 jurors concerning qualification to serve. And the fact
3 that it had heretofore been used in this courtroom does
4 not change the ruling in State versus Adams, and I want to
5 make sure we understand that. I'm bound by State versus
6 Adams. That's what I go by in regard to state Supreme
7 Court cases.

8 Now in regard to this conundrum about discovery, how
9 are you prejudiced, Counsel, in regard to the information
10 you did not receive. You must show prejudice in regard to
11 a violation within the penumbra of Brady or Rule 5. Where
12 is the prejudice?

13 MR. MCCLAUGHLIN: Well, Your Honor, if I accurately
14 recall Mr. Meyer's testimony, it was that the charges --
15 what he said from the stand the charges had been done a
16 day or two after his robbery by phone and then would have
17 had to -- somebody would have had to go and it was like a
18 call-in order, then you have to go into Best Buy and pick
19 it up which the date on the Meyers, I believe, was the
20 second. And so we're talking about if it was two days
21 that means it's being called in on the 4th. It may not be
22 which these gentlemen were arrested on the 4th. So I may
23 have somebody using the credit card, or if not using the
24 credit card to actually order, actually going into the
25 store on the 4th or later to pick up merchandise bought by

1 a stolen card. And if that's the case, Judge, that sure
2 makes — I believe that makes our argument to the jury
3 that there could have been a fourth person and it wasn't
4 Mr. Jordan pretty strong because he's out there in
5 Effingham locked up.

6 MS. PARR: Your Honor, there was nothing that
7 Mr. Meyer presented to our office to indicate that someone
8 had used his credit card to Best Buy. The first time we
9 heard anything, I heard anything about Best Buy, is when
10 he testified about Best Buy. We don't have anything, nor
11 is that indicated on his —

12 MR. MCLAUGHLIN: And that's not testimony he gave,
13 Judge.

14 MS. PARR: And the card was never recovered. It is
15 still out there.

16 MR. MCLAUGHLIN: That's not the testimony he gave.
17 If you'll recall he said he did report that to one of the
18 officers 'cause I asked him.

19 THE COURT: Well, his reporting is different from
20 recovering the card.

21 MR. MCLAUGHLIN: It's not about the card, Judge.
22 It's the very fact that that card is out there being used.

23 MS. PARR: Your Honor, that — I don't see how the
24 Defense is prejudiced by the fact that there is a card out
25 there if the card, in fact, had been used. It's still —

1 the fact still remains that on that particular date the
2 card had been taken from him, and the defendant was
3 identified as being the one who was there when his items
4 were stolen.

5 THE COURT: All right. Any further argument?

6 MR. MCLAUGHLIN: Just, Your Honor, that -- not to
7 belabor the point but we feel that someone out there using
8 a stolen card potentially after Mr. Jordan has been
9 incarcerated is undoubtedly something that would be
10 material not just to the defense of Mr. Jordan, but
11 specifically to the argument that we presented to the
12 jury.

13 MS. PARR: Your Honor, also the State would also
14 argue or in defense is, once cards are stolen and used
15 that card could have been thrown away. Anybody could have
16 had -- could have gotten a hold of that card. And that --
17 and that does not negate the fact that the defendant was
18 the one who committed the burglary and armed robbery of
19 this victim.

20 MR. MCLAUGHLIN: Unless of course the person out
21 there using the card is the person who committed the
22 burglary and the armed robbery.

23 THE COURT: All motions are respectfully denied.
24 All rights are reserved for purposes of appellate review.
25 Bring him forward for sentencing please.

1 (Pause.)

2 THE COURT: All right, what does the State say about
3 sentencing?

4 MS. PARR: Your Honor, the State has no
5 recommendation for sentence. I would tell the Court as
6 far as a prior record it appears to be lower court charges
7 or lower court convictions. November 10th, 2007, a
8 conviction for simple possession of marijuana; and
9 March 14th, 2008, a conviction for simple assault and
10 battery. He does have a charge of armed robbery pending
11 in Darlington County and two more pending here. The one
12 in Darlington county occurred last summer after he made
13 bond on this one.

14 THE COURT: There was some reference to two of these
15 individuals allegedly constituting the group of four.

16 MS. PARR: That's correct.

17 THE COURT: And two had been sentenced.

18 MS. PARR: Yes.

19 THE COURT: What kind of sentence did they get?

20 MS. PARR: One got ten years; the other one got 15
21 years.

22 THE COURT: All right, Counsel.

23 MS. PARR: Well, when I — that's correct, Judge.
24 On the one that got 10 years he was already doing 20. He
25 had a 20 year sentence too for an amend robbery as well.

1 MR. MCLAUGHLIN: Your Honor, may I approach.

2 THE COURT: Yes.

3 MR. MCLAUGHLIN: I'm passing up to the Court, Judge,
4 a letter that Susan Abraham has written on behalf of
5 Mr. Jordan. Ms. Abraham was one of our witnesses that we
6 identified as a character witness. She is a schoolteacher
7 and asked that if she can do a letter and instead having
8 to kind of be by the phone and interrupt class to come and
9 I told her I would present that to the Court on behalf of
10 Mr. Jordan. Our other, both of other character witnesses,
11 Sergeant Peterkin with the National Guard as well as
12 representative Robert Williams, I believe Your Honor may
13 recall, that when the jury panel was asked about those
14 witnesses Representative Williams was in attendance.
15 Obviously his schedule keeps him in Columbia. I was
16 hoping that he was -- both of those individuals were gonna
17 try to get me letters in time to have them to present to
18 the Court. Unfortunately, they have not. They have both
19 expressed, I believe, sentiment similar to the sentiments
20 that Ms. Abraham expresses.

21 And Your Honor, that the -- the one thing I would
22 say on behalf of Tarrence is that I would ask the Court to
23 consider this young man's conduct and demeanor during the
24 trial. He has -- he's been about very conscientious about
25 his own case. He has been nothing but very attentive and

1 really been involved with me. Judge, this is a young man
2 who has some opportunity. He graduated from Darlington
3 High School in 2008. He had already gotten into the
4 National Guard. As the letter from Ms. Abraham talks
5 about she can remember how proud she was of him and how
6 proud he was. He had been accepted to Benedict, South
7 Carolina State, and Claflin. And Sergeant Peterkin, you
8 know, expressed to me shock and dismay when this happened.
9 Representative Williams is more of a family friend who has
10 known the entire family for a long time. And his mother,
11 his sister, and one of his brothers is out there in the
12 audience, Your Honor. And what he did was terrible, and
13 he — and Tarrence was very well aware of going forward
14 trial that whatever sentence he received was going to be
15 significant. But we would —

16 THE COURT: Wait one second. The letter is marked
17 into evidence.

18 (Court's Exhibit Number 6, letter, was marked
19 and made a part of the record.)

20 MR. MCCLAUGHLIN: And I would simply ask the Court to
21 have as much leniency as you can understanding the
22 testimony Your Honor heard and of the impact that this
23 obviously had on the victims and in the case.

24 THE COURT: Mr. Jordan, you want to say anything to
25 me?

1 **THE DEFENDANT:** Yes, Your Honor, I just ask that you
2 have leniency on me after all these circumstances. That's
3 all I have.

4 **MS. PARR:** Your Honor, I do have the victims'
5 impact statement.

6 **THE COURT:** Well, I heard the victims and so I think
7 that's sufficient in a case like this where they have
8 actually testified and been presented under oath. There
9 is some marking in regard to possession of weapon during
10 commission of a violent crime. Somebody's put a paren
11 here, "No longer used." What — who did that? What's "no
12 longer used?"

13 **MS. PARR:** I didn't know that that... It says —

14 **THE COURT:** I'm talking about three words.

15 **MS. PARR:** I don't know why that came on there. Let
16 me check on that. It printed out. I didn't pick that up.
17 Let me — Your Honor, may I look at it?

18 **THE COURT:** Yes.

19 (Pause while Ms. Parr and Mr. Richardson confer.)

20 **THE COURT:** Well, the statute says if a life
21 sentence is imposed.

22 **MR. RICHARDSON:** Right. But I think it — when we
23 got this new computer system that prints type for our
24 charges, sometimes it prints screwy.

25 **THE COURT:** Yeah.

1 MS. PARR: Your Honor, and it will be on the other
2 two as well.

3 THE COURT: That's correct.

4 MS. PARR: So I need to check those out.

5 THE COURT: Well, I think that's a plausible
6 explanation as to how it occurred. That if you -- the
7 statute says if you impose a life sentence.

8 MS. PARR: Right.

9 THE COURT: It doesn't say if the conviction
10 actually carried that in my discretion which it does in
11 regard to one of these offenses. But anyway, that's fine,
12 just pass it back and I'll do my thing with it.

13 MS. PARR: Okay, 'cause I did white-out "no longer
14 used" on that one, but I didn't do it on the other one.

15 THE COURT: Well, here, you can...

16 MS. PARR: I'm sorry about that; I didn't catch it.

17 (Pause.)

18 THE COURT: All right. How long has he been in
19 jail, Counsel?

20 (Attorney confers with defendant.)

21 MR. MCLAUGHLIN: The total of 11 months. Of course,
22 Ms. Pat reminded the Court he was out on bond for a little
23 while. Believe he was out on bond --

24 THE COURT: I need to know exactly how many days he
25 has served. Can we find that out so I can be specific.

1 MS. PARR: Your Honor, yeah, we need to find out —
2 this is when his bond was revoked here. He was out on
3 bond then.

4 **MR. RICHARDSON:** Your Honor, he was arrested on
5 July 7th, 2008.

6 MR. MCCLAUGHLIN: Pat, he turned himself in to
7 Darlington before you revoked his bond over here in
8 Florence.

9 MS. PARR: Well, that's because that — but he was
10 still out on bond. He won't get credit for that for these
11 charges. He turned himself in because he had Darlington
12 charges. It wasn't on this one.

13 THE COURT: Let's count up how many days he's
14 entitled to this.

15 MS. PARR: But if I can have one minute to call.

16 THE COURT: All right, just work on that.

17 MS. PARR: I got 141 days since the bond was
18 served.

19 (Pause.)

20 MS. PARR: 375 days. May it please the Court.

21 THE COURT: Let me finish this please.

22 MS. PARR: Okay.

23	THE COURT: Yes.

24 MS. PARR: The Code Section is 549. I mean, for
25 the possession of weapon during commission of crime of

1 violence.

2 THE COURT: 16-23-490.

3 MS. PARR: Yes, that's for the possession of a
4 weapon during the commission of crime of violence.

5 THE COURT: Yes.

6 MS. PARR: Yes, but the CDR code is 549.

7 THE COURT: I don't mess with the CDR codes. Y'all
8 have to get that right yourself.

9 MS. PARR: Okay, but may I change it on the plea
10 sheet when you...

11 (Pause.)

12 MR. MCLAUGHLIN: Judge, for the purpose of the
13 record I would like to -- I understand what Your Honor was
14 saying about he had heard the testimony, he didn't need to
15 hear the victim impact statement, but that was one of the
16 things brought up by Ms. Parr about the credit card
17 charges. And I understand your ruling; I'm not trying to
18 rehash that. But I would like for the record to point out
19 that the victims impact statement shows American Express
20 charges on Mr. Shappell's card of 284. 57 cents and that
21 this is dated August 26th, 2008.

22 THE COURT: All right, let that show to the record.

23 MR. MCLAUGHLIN: Thank you, Your Honor.

24 THE COURT: Did we get a number of days agreed upon?

25 MS. PARR: I have 375 days. 234 from the time he

1 was served to went out on bond and then 141 days since
2 he...

3 (Mr. McLaughlin confers with defendant.)

4 MS. PARR: Your Honor, there is one more possession
5 of a weapon that I need to change, the CDR code.

6 THE COURT: All right. Once again, we're back.
7 What number of days please, folk?

8 MS. PARR: 375 days.

9 THE COURT: All right. Is that correct, Counsel?

10 MR. MCLAUGHLIN: I just asked Mr. Jordan. He said
11 that sounds right, Your Honor.

12 THE COURT: 375 days. It takes a while to write up
13 14 sentences.

14 (Pause.)

15 THE COURT: 08-GS-21-1921, armed robbery, the
16 defendant is committed to the State Department of
17 Corrections for a term of 30 years. This sentence is
18 concurrent to all sentences imposed on indictment
19 08-GS-21-1919 and indictment 08-GS-21-1920 and concurrent
20 with all sentences imposed on this indictment. Credit for
21 jail time, 375 days already served. 08-GS-21-1921, the
22 defendant is committed to the State Department of
23 Corrections for kidnapping for a term of 30 years. This
24 sentence is concurrent to all sentences imposed on
25 indictment 08-GS-21-1919 and 08-GS-21-1920 and concurrent

1 to all sentences imposed on this indictment. Credit for
2 375 days already served. Burglary 08-GS-21-1921, the
3 defendant is committed to the State Department of
4 Corrections for a term of 30 years. This sentence is
5 concurrent to all sentences imposed on indictment
6 08-GS-21-1919 and indictment 08-GS-21-1920 and concurrent
7 to all sentences imposed on this indictment. Credit for
8 375 days already served.

9 Possession of a weapon during commission of a
10 violent crime, 08-GS-21-1921, the defendant is committed
11 to the State Department of Corrections for a term of five
12 years. This sentence is concurrent to all sentences
13 imposed on indictment 08-GS-21-1919 and indictment
14 08-GS-21-1920 and concurrent to all sentences imposed on
15 this indictment. Credit for 375 days already served.
16 08-GS-21-1919, kidnapping, the defendant is committed to
17 the State Department of Corrections for a term of 30
18 years. This sentence is concurrent to all sentences
19 imposed on indictment 08-GS-21-1920 and indictment
20 08-GS-21-1921 and concurrent to all sentences imposed on
21 this indictment and credit for 375 days already served.
22 08-GS-21-1919, burglary, the defendant is committed to the
23 State Department of Corrections for a term of 30 years.
24 This sentence is concurrent to all sentences imposed on
25 indictment 08-GS-21-1920 and indictment 08-GS-21-1921 and

1 on — concurrent on all sentences imposed on this
2 indictment. Credit for 375 days already served.
3 08-GS-21-1919, armed robbery, the defendant is committed
4 to the State Department of Corrections for a term of 30
5 years. This sentence is concurrent to all sentences on
6 indictment 08-GS-21-1920 and indictment 08-GS-21-1921 and
7 concurrent to all sentences imposed on this indictment.
8 Credit for 375 days already served.

9 Possession of weapon during commission of a violent
10 crime, the defendant is committed to the State Department
11 of Corrections for a term of five years. This sentence is
12 concurrent with all sentences imposed on indictment
13 08-GS-21-1920 and indictment 08-GS-21-1921 and concurrent
14 to all sentences imposed on this indictment. Credit for
15 375 days already served. 08-GS-21-1920, kidnapping, the
16 defendant is committed to the State Department of
17 Corrections for a term of 30 years. This sentence is
18 concurrent to all sentences imposed on indictment
19 08-GS-21-1919 and indictment 08-GS-21-1921 and concurrent
20 on all sentences imposed on this indictment. He's given
21 credit for 375 days already served. 08-GS-21-1920, armed
22 robbery, the defendant is committed to the State
23 Department of Corrections for a term of 30 years. This
24 sentence is concurrent with all sentences imposed on
25 indictment 08-GS-21-1919 and indictment 08-GS-21-1921 and