

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

MICHAEL D. JACKSON,

APPELLANT

APPENDIX

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Michael D. Jackson,

Appellant.

Appeal from Richland County
L. Casey Manning, Circuit Court Judge

Unpublished Opinion No. 2011-UP-522
Submitted November 1, 2011 – Filed December 1, 2011

AFFIRMED

Appellate Defender Elizabeth A. Franklin-Best, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Attorney General Salley W. Elliott, and Senior
Assistant Attorney General Harold M. Coombs, Jr.,

all of Columbia; and Solicitor Daniel E. Johnson, of Columbia, for Respondent.

PER CURIAM: Michael D. Jackson appeals his conviction for armed robbery, arguing the circuit court erred in denying his motion to redact his written statement and by not charging the jury with the lesser-included offense of strong arm robbery. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to whether the circuit court erred in denying Jackson's motions to redact portions of his written statement: State v. McWee, 322 S.C. 387, 393, 472 S.E.2d 235, 239 (1996) (holding error without prejudice does not warrant reversal); State v. Mansfield, 343 S.C. 66, 77, 538 S.E.2d 257, 263 (Ct. App. 2000) (holding the admissibility of evidence is within the sound discretion of the circuit court and will not be reversed on appeal absent an abuse of discretion).

2. As to whether the circuit court erred in refusing to charge the lesser included offense of strong arm robbery: State v. Rivera, 389 S.C. 399, 404, 699 S.E.2d 157, 159 (2010) ("The law to be charged must be determined from the evidence presented at trial."); State v. Hernandez, 386 S.C. 655, 659, 690 S.E.2d 582, 584 (Ct. App. 2010) (holding the circuit court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant to warrant reversal).

AFFIRMED.

HUFF, PIEPER, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

MICHAEL D. JACKSON,

APPELLANT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

Opinion No. 2011-UP-522

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for Michael D. Jackson, petitions the Court for rehearing. Counsel respectfully submits that the court overlooked the fact that petitioner was prejudiced by both the error in refusing to redact the written statement containing information in regard to other uncharged crimes as well as the error in refusing to charge the lesser included offense of strong armed robbery when there was evidence to support the lesser charge.

First, the trial court judge erred by not granting appellant's motion to properly redact his written statement so that information relating to other, uncharged crimes would not be before the jury for their consideration. During its case-in-chief, the state introduced appellant's statement that he gave to police regarding these events. It was admitted into evidence, and published to the jury.

Tr. p. 29- 57. This statement actually recounted appellant's involvement in three armed robberies, although appellant was only tried for this count. Defense counsel moved to redact the statement. In some measure, the parties agreed. Defense counsel, however, also wanted to redact references to a "drill" and to "Mr. Hendricks" which were irrelevant to this case. The court denied counsel's motion. Tr. 2, l. 3- p. 14, l. 17; Tr. p. 15, l. 18- p. 16, l. 9. This was error, because the additional material constituted improper character evidence, and appellant should have his conviction reversed.

The evidence from appellant's statement, and published to the jury, was the following:

A: It's started out with the first question basically, Michael, I have previously advised you of your rights verbally after your arrest this morning? His response was, Yes. Question, Did you indicated to me that you understood your rights and were willing to talk to me about the robbery? Answer was, Yes. What was the location and time? The video store on Broad River Road next to laundry mat that was about a week ago was his answer.

Question, Were you armed during the robbery?

Answer, On the store—on the video store I had a box cutter without the blade in it. . . .

Question, What happened to the box cutter and the drill?

Answer, That box cutter that I threw it away that same night when I left the video store. I slung it when I was running through the people's yards coming through the store going back to Crazy Mike's. I got the drill from a guy named Brian Hendricks who I had basically been with everyday. I want to level with you, that was his coat too I had on at the video store. That drill might be at Crazy Mike's house in a black tote bag which is right behind the TV.

Next question, Did Brian Hendricks have anything to do with the robbery:

His answer was, No, sir, he just let me use the coat and the drill.

Question, Did he know what you were using the coat and drill for?

Answer, I just told him I would be right back. He didn't have nothing to do with that. He didn't ask no questions.

Tr. p. 29, l. 13- p. 31, l. 19.

Later, the interviewer asked where Brian lived, and asked for a description of him. Tr. 32, l. 1-15.

All of this information was improperly before the jury because, until this point, they had heard nothing about either a drill or Brian Hendricks. Both the reference to the drill and to Hendricks was irrelevant information, and improperly introduced character evidence into the trial. The jury would have known, from this exchange, that appellant was also responsible for other criminal acts. See SCRE Rule 403, 404(b), and State v. Lyle, 125 S.C. 406, 118 S.E.803 (1923). Appellant was denied due process. U.S.C.A. 5, 14. See also Estelle v. McGuire, 502 U.S. 62 (1991).

In affirming the conviction this court wrote, "As to whether the circuit court erred in denying Jackson's motions to redact portions of his written statement: State v. McWee, 322 S.C. 387, 393, 472 S.E.2d 235, 239 (1996) (holding error without prejudice does not warrant reversal); State v. Mansfield, 343 S.C. 66, 77, 538 S.E.2d 257, 263 (Ct. App. 2000) (holding the admissibility of evidence is within the sound discretion of the circuit court and will not be reversed on appeal absent an abuse of discretion)." The judge's refusal to properly redact the statement constitutes a prejudicial abuse of discretion.

Second, the trial court judge erred by not charging the jury with the lesser-included offense of strong armed robbery because the evidence supported giving the charge, and because deciding whether a box-cutter without a blade is a "deadly weapon" under the statute is a question for the jury. Before the jury was given their instructions, trial counsel objected to the judge's refusal to charge the jury with the lesser-included offense of strong armed robbery. The judge denied the motion. Tr. 58, l. 9-62, l. 9.

Pursuant to S.C. Code Ann. §16-11-330(a) (1976):

A person commits robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, is guilty of a felony

A deadly weapon is generally defined as any article, instrument or substance which is likely to produce death or great bodily harm. State v. Scurry, 322 S.C. 514, 473 S.E.2d 61 (Ct.App.1996).


The State has the duty to prove each element of charged crime beyond a reasonable doubt. In re Winship, 397 U.S. 358 (1970). The State was obligated to prove that the instrumentality used during the robbery was a deadly weapon beyond a reasonable doubt. Whether a particular instrument used in an armed robbery is a deadly weapon is a factual issue for the jury. State v. Bennett, 328 S.C. 251, 493 S.E.2d 845 (1997)

By not submitting the jury instruction for the lesser-included offense of strong armed robbery, the judge effectively determined, as a matter of law, that box-cutter without a blade constitutes a deadly weapon for purposes of the statute. This was an improper usurpation of the jury's role. The jury was left with only two alternatives—to acquit appellant completely, or find him guilty of using a deadly weapon during the commission of this crime. Only a charge of strong armed robbery would have allowed the jury to make the finding that appellant was guilty of robbery, but that a denuded box cutter is not a deadly weapon. The judge's refusal to give the instruction, then, contradicts the holding in Bennett, supra. Appellant is entitled to have this Court direct a verdict of guilty of strong armed robbery and grant him a new sentencing hearing. See State v. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002).

In affirming the conviction this Court wrote, "As to whether the circuit court erred in refusing to charge the lesser included offense of strong arm robbery: State v. Rivera, 389 S.C.

399, 404, 699 S.E.2d 157, 159 (2010) ("The law to be charged must be determined from the evidence presented at trial."); State v. Hernandez, 386 S.C. 655, 659, 690 S.E.2d 582, 584 (Ct. App. 2010) (holding the circuit court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant to warrant reversal). The evidence supported a charge for the lesser included offense of strong armed robbery and petitioner was prejudiced by the failure to charge the lesser included offense. Petitioner respectfully requests rehearing on these tow issues.

Respectfully submitted,


Elizabeth A. Franklin-Best
Appellate Defender

This 16th day of December, 2011.

8

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
L. Casey Manning, Circuit Court Judge

THE STATE,

RESPONDENT,


V.

MICHAEL D. JACKSON,

APPELLANT

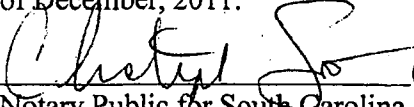
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Harold M. Coombs, Jr., Esquire, this 16th day of December, 2011.


Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 16th day
of December, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: May 16, 2021.

The South Carolina Court of Appeals

The State,

Respondent,

v.

Michael D. Jackson,

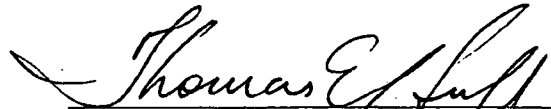
Appellant.

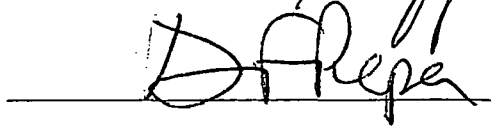
The Honorable L. Casey Manning
Richland County
Trial Court Case No. 2007-GS-40-1683

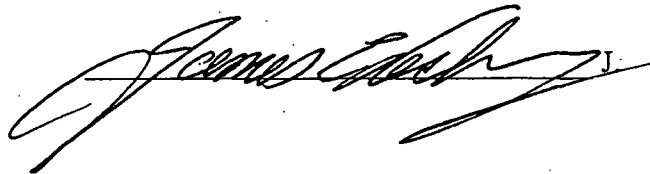
ORDER

After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

IT IS SO ORDERED.

 J.

 J.

 J.

Columbia, South Carolina

FILED

30 Jan 2012

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

MICHAEL D. JACKSON,

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RECORD ON APPEAL

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 6 MICHAEL DAVID JACKSON,) 2007-GS-40-1683
 7)
 8 DEFENDANT.)

9
 10 JUNE 22, 23 AND 25, 2009
 11 RICHLAND, SOUTH CAROLINA

12
 13 B-E-F-O-R-E:

14 HONORABLE L. CAYCE MANNING, JUDGE; AND A JURY

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

16 FOR THE PLAINTIFF:

17 KATHRYN LUCK CAMPBELL, ESQ.

18 JOANNA MCDUFFIE, ESQ.

19 FOR THE DEFENDANT:

20 CAROL MCCURRY, ESQ.

21
 22
 23
 24
 25

*Accepted
 Helmer*

1 THE COURT: This is redacting the statement you
2 send up to me where he admitted to two other robberies?

3 MS. CAMPBELL: Yes, we're just going to redact out
4 any reference to any other robberies unless the court rules
5 otherwise.

6 MS. MCCURRY: Your Honor, I did a proposed
7 redaction that I --

8 THE COURT: I think, you know, at first I thought
9 you were talking about lying in robberies from a previous
10 year, not something he confessed to. I don't know whether I
11 need to redact anything. I mean, I can't keep him from
12 telling on himself. Let me take a look at it again. I
13 don't know whether I'm going to redact anything. I mean, I
14 will have to give a cautionary instruction, he's not charged
15 with that, you'll have to disregard it. I mean, you know,
16 he says what he says.

17 MS. MCCURRY: Okay. Thank you, Your Honor.

18 THE COURT: I mean, I'm going to listen to your
19 motions and everything but after I, after I, read this, you
20 know, yeah I robbed A and I robbed B and C too, I mean, what
21 am I suppose to do about that? You help me out, give me a
22 reason to redact that -- those statements.

23 MS. MCCURRY: Your Honor, there are -- they are
24 subsequent bad acts that aren't admissible under State
25 versus Lyle, under 404(b).

1 THE COURT: They're confessions. He confessed.
2 Not only did I kill A but I killed B and C too. He's only
3 charged with killing A but he confesses to B and C too, what
4 am I suppose to do?

5 MS. MCCURRY: Well, Your Honor --

6 THE COURT: Help me out.

7 MS. MCCURRY: Okay. The fact -- the very fact
8 that these are, are, identical crimes that they're asking
9 to, to, introduce in the course of this trial, this trial,
10 is extremely --

11 THE COURT: Well, this, this, is something he's
12 hasn't been charged with. This is something he confessed
13 to.

14 MS. MCCURRY: That's true.

15 THE COURT: All right.

16 MS. MCCURRY: And the fact of the matter is it's,
17 it's, not -- to anything that's in issue with this case.
18 They don't need any information whatsoever about the
19 additional robberies to prosecute this particular case.
20 That he has not been convicted for those things and though
21 he did talk about these in the, in the, investigation and
22 with Captain Smith they're still, they're still, identical
23 crimes.

24 THE COURT: Well, let he see your proposed
25 redaction, after reading it I don't know if I'm going to

1 redact anything or not to be honest with you, I mean.

2 MS. MCCURRY: But the prejudicial --

3 THE COURT: Let me see your proposed redaction
4 please. He can't save him from himself, Ms. McCurry,
5 neither can you, I mean, how am I suppose to do it?

6 (Ms. McCurry hands the Court her
7 proposed redaction.)

8 THE COURT: What happened, what happened, to page
9 two?

10 MS. CAMPBELL: She's retyped the entire statement.
11 If you notice, your Honor, it's in a different font than the
12 first paragraph. She's just retyped in the questions she
13 wants --

14 THE COURT: Oh, were you. Okay, were you, were
15 you, armed during the robberies?

16 On the video store I had a box cutter without the
17 blade in it. I'll let you look at it but I think I would
18 redact a little bit differently, I mean, you leave too much
19 out. And then the problem is, if I, I, will not allow the
20 redaction as is to go in, okay. I think it's, I think it's
21 self serving and I think it's unfair to the state the way
22 you've done it.

23 I'm not yelling at you, I don't blame you, I would
24 do the same thing. But I think you -- I think it slices
25 things a little too much.

1 I'll invite you to look at it again. I invite
2 Ms. Campbell to look at it and I'll look at it myself. I
3 don't necessarily -- I'm not convinced I should keep
4 anything out, it's his own statement. I, I, you got him on
5 video, he's got a confession, I mean, it is prejudicial I
6 don't know what probative value it has but it shows the
7 overall scheme. I'm going to think about -- you know,
8 there's some things -- there's a better way to redact than
9 what you've submitted to me.

10 MS. MCCURRY: Your Honor, I apologize.

11 THE COURT: That's -- I'm not yelling at you. If
12 I were you I would probably do the same thing but --

13 MS. MCCURRY: I'm just trying to take out --

14 THE COURT: You're trying to do the best you can
15 for your client --

16 MS. MCCURRY: Well --

17 THE COURT: I would agree.

18 MS. MCCURRY: Well, it made it -- just trying to
19 focus on one and take out things that were clearly --

20 THE COURT: Well, let me just show you what I
21 mean. On your page two, look at page two, were you armed
22 during a robbery, instead of robberies. On the video store
23 I had a box cutter, all right, I don't want to leave that
24 out.

25 MS. MCCURRY: Yes, Your Honor, I changed robberies

1 to robbery because we're --

2 THE COURT: I don't see robberies on yours, on
3 yours I don't see -- you stole --

4 MS. MCCURRY: It's on, on --

5 THE COURT: Let me finish. Please, let me finish.
6 I'm going to let you talk, but let me finish. We can't talk
7 at same time.

8 Now, I'm looking at the top of page two that you
9 have submitted to me as your proposed redaction. The first
10 question on the original statement were you armed during the
11 robberies? You got where's the clothing? That's what I'm
12 talking about.

13 Were you armed during a robbery? On a video store
14 I had a box cutter. I'm going to let that in. I'm not, you
15 know, how am I going to keep that out? On the other two I
16 would redact, I stuck it in my pants pocket I would redact.
17 I have shown you the surveillance video, is that correct?

18 Yes, sir. I mean, why did you take that out is
19 what I'm asking you. And then you -- then on your proposed
20 redaction you skip all the way down to the third paragraph,
21 where's the clothing? Look, I'll redact this much, you
22 know, I'm not yelling at you, you're doing your job, nothing
23 it's personal.

24 MS. MCCURRY: Your Honor, may it please the Court?

25 THE COURT: Go ahead.

1 MS. MCCURRY: As you mentioned they're all on my
2 first page.

3 THE COURT: What?

4 MS. MCCURRY: They're on my page one.

5 THE COURT: I don't see it.

6 Do you see them, Brad? I can't see very well.

7 MS. MCCURRY: I just changed were you armed during
8 the robberies to robbery.

9 THE COURT: I tell you what, relax. Let me take a
10 look at it. And we'll visit this first thing in the
11 morning. Just relax a bit. I'm either going to let it all
12 in or I'm going to try to re -- I'm not going to take out
13 something that should be in related to the video store,
14 that's all I'm saying. And, maybe, I need to read a little
15 bit more closely. So I'm not yelling at you and if I were
16 you're doing your job. So I'm not upset with you. You're
17 obligated to do the best you can.

18 But look at -- we'll revisit it. Let me take time
19 to look at it really carefully line-by-line and see -- but I
20 don't, don't, want anything -- any, any, reference -- I
21 might be yelling at you prematurely, okay. Relax. In fact,
22 I'll go look at it now. If you want to hang around a little
23 bit I'll come back. Y'all don't have to hang around. We'll
24 just do this in the morning, y'all want to?

25 MS. CAMPBELL: Yes sir?

1 MS. MCCURRY: Whatever you like, Your Honor.

2 THE COURT: Okay. And it's nothing personal. You
3 know, I got to be fair to the state, I got to be fair to
4 him. Sometimes the balance is lost in between, that's all I
5 want -- so we're good to go on everything else?

6 MS. CAMPBELL: 9 o'clock?

7 THE COURT: Yes, ma'am.

8 MS. CAMPBELL: 9 o'clock in the morning?

9 THE COURT: Oh, yeah, 9 o'clock, 9 o'clock. Which
10 means we'll probably get started at 9:15 or so. We have
11 plenty of time to get this squared away.

12 MS. CAMPBELL: Thank you, Your Honor.

13 THE COURT: Let me read more carefully. You might
14 have put in something I meant so far. All right. Y'all
15 have a good night. Thank you.

16 (The proceedings were concluded
17 for June 22, 2009.)

18 (The following proceedings were
19 held on June 23, 2009.)

20 THE COURT: All right, is everybody ready?

21 (There was no response.)

22 THE COURT: What do we need to take up before the
23 jury comes in? Is it the redaction, do we need to do that
24 now?

25 MS. CAMPBELL: Yes, Your Honor, I would hand up a

1 proposed --

2 THE COURT: And, and, yesterday, Ms. McCurry, I
3 mean, my objection -- you didn't change the content just the
4 page that made it a little bit --

5 MS. MCCURRY: Yes, sir.

6 THE COURT: All right. Let me take a look at
7 this. I left a message with -- have you seen their
8 redaction?

9 MS. MCCURRY: Yes, sir. I just went through it.

10 THE COURT: Okay. You have any objection to it?

11 MS. MCCURRY: Yes, I do.

12 THE COURT: What, what, is your objection?

13 MS. MCCURRY: My objection is that in their
14 version they have a lot of information that deals with a
15 fellow by the name of Brian Hendricks that has, that has,
16 nothing to do with this particular incident other than the
17 fact that my client states he got the coat from him.

18 THE COURT: Okay.

19 MS. MCCURRY: The issue that they add deals with,
20 and as you've read the statement, you see the issue of a
21 drill, the drill had nothing to do with the This is it
22 video. So we object to everything that goes beyond talking
23 about that he got a coat from that guy Brian Hendricks.

24 THE COURT: Do they mention any other robberies or
25 any or criminal offenses that he is -- that he admitted to

1 in his statement, that's the only concern that I have. I
2 mean, I'm going to have to explain to the jury this has been
3 redacted because I decided as a matter of law as a judge
4 that certain things are not relevant and are not to remain
5 and they've got to ignore the spaces, that's what I'm going
6 to charge the jury. And so, I mean, you know, the fact is
7 it's kind of hard to separate everything but I'm going to
8 give you a chance to more specifically state on page by page
9 what you objection to, I'll let you do that, go ahead.

10 MS. MCCURRY: Okay.

11 THE COURT: On page one.

12 MS. MCCURRY: On page one, the second question
13 they have the dashes between the and robbery, Did you
14 indicate to me you understood your rights and are willing to
15 talk to me about the dash, dash, robbery.

16 THE COURT: Uh-hum.

17 MS. CAMPBELL: We'll get rid of the dash, dash,
18 Your Honor.

19 THE COURT: Okay.

20 MS. MCCURRY: Next, the next question that's
21 there, the last one that's on page one, the objection I have
22 is that big space that's between the and the video store.

23 THE COURT: Okay.

24 MS. MCCURRY: Because in his initial statement it
25 was, the one was --

1 MS. CAMPBELL: The first one --

2 THE COURT: Okay. I understand. I'm going to try
3 to make both of y'all happy I can, go ahead.

4 MS. MCCURRY: All right. On page two the first
5 question -- my objection is the first part of the answer on
6 the video store, I think that implies there was other
7 robberies, there --

8 THE COURT: Wait, on were, Were, you armed during
9 the robbery?

10 MS. MCCURRY: Yeah, and, and --

11 THE COURT: And wait, wait, hold on a minute.

12 MS. MCCURRY: Okay.

13 THE COURT: And answer, On the video store I had a
14 box cutter without the blade in it.

15 MS. MCCURRY: Yes, sir. My objection to the
16 question is the end of the question, at least on my copy, it
17 clearly looks like something was altered on robbery.

18 THE COURT: Well, it had to be, it had robberies,
19 I think originally.

20 MS. MCCURRY: It did.

21 THE COURT: Okay. Well --

22 MS. MCCURRY: I'm just saying.

23 THE COURT: If that's your objection, I don't care
24 about that, that's overruled, go ahead.

25 MS. MCCURRY: But.

1 THE COURT: I mean, we might could clean it up a
2 little bit, I mean, typographically but, I mean, look this
3 is for his benefit. Go ahead.

4 MS. MCCURRY: Yes, sir.

5 THE COURT: Do your job, go ahead. What's the
6 neck one?

7 MS. MCCURRY: The answer on the video store, the
8 third question that they have listed they add the last part
9 that they had, The crack head, this black guy in his 30's,
10 they call him B or D, I'm not sure which is right. That's
11 just -- I just noted that as the only additional thing that
12 they added to what we had produced, so I don't really have a
13 problem with that if they just leave it at that.

14 MS. CAMPBELL: We're leaving it at that.

15 THE COURT: Okay.

16 MS. MCCURRY: Number three on page three.

17 THE COURT: Yes, ma'am.

18 MS. MCCURRY: The first question again, Why were
19 you committing the robbery? The robbery portion of that
20 question really looks like it's been monkeyed with.

21 THE COURT: Well, I'm going to tell the jury it
22 has been, I had to take some of it out. I've concluded
23 what's relevant, if there's anything that looks disputed
24 hold it against me not against the state, not against you,
25 not against Mr. Jackson. So, I mean, I'm going to clear

1 some of it up with my charge.

2 MS. MCCURRY: Okay.

3 THE COURT: All right, go ahead.

4 MS. MCCURRY: Second question, What happened to
5 the box cutter and the drill. We object to the, And the
6 drill portion of that. There was no drill used at the This
7 Is It Video. The drill was connected with the other two
8 robberies.

9 THE COURT: I got the drill from the guy name
10 Hendricks.

11 MS. CAMPBELL: We just didn't know how you would
12 redact that part because it says that was his coat that I
13 had on in the video store which is relevant and he refers to
14 him as Brian.

15 The drill in and of itself --

16 THE COURT: I'm going to leave it like it is.

17 MS. CAMPBELL: Thank you.

18 THE COURT: All right. I note your objection for
19 the record. All right, next one.

20 MS. MCCURRY: The questions -- the next question,
21 Did Brian Hendricks have anything to do with the robbery? I
22 don't know why that's relevant to have here, there's no,
23 there's no, my client is not denying that he was there.

24 THE COURT: Uh-huh.

25 MS. MCCURRY: So there's no reason to bring in the

*Disc
of the
Drill*

2 objects
 ① Drill
 ② Brian Hendricks

1 stuff that deals with Brian Hendricks.

2 THE COURT: All right. If that's your objection
 3 it's overruled, go ahead. What's the next one?

4 MS. MCCURRY: Again the next question, you know,
 5 we object to any reference to the drill because there's no
 6 evidence that he had a drill at This Is It Video.

7 THE COURT: All right. That's overruled, what's
 8 your next one?

9 MS. MCCURRY: The next to the last question on
 10 page where it asks about where Brian lives --

11 THE COURT: Doesn't he be at Crazy Mike's house?

12 MS. MCCURRY: Yes, that answer. That where again
 13 where Brian lives and that isn't -- that's not relevant in
 14 this case, none of that matters in this case.

15 THE COURT: All right. Overruled, go ahead.

16 MS. MCCURRY: Your Honor, there's no objection to
 17 the rest of it.

18 THE COURT: Okay, all right. How about page four?

19 MS. MCCURRY: No objections on that page.

20 THE COURT: All right. I think you had about four
 21 or five there I will note them for the record -- and I will
 22 note as an observation the state or the defense is entitled
 23 to a fair redaction, not a perfect one. Thank you all so
 24 very much.

25 Anything further?

Reference
 to
 Brian
 Hendricks
 Hendricks

1 I just don't know -- and I think the case says the mere
2 opportunity of the witnesses to repeat their testimony is
3 insufficient, you must make a showing that states that it is
4 intended and -- and I don't think that applies here. We
5 have only one lay witness and that would be the first
6 witness.

7 THE COURT: And what's your response?

8 MS. MCCURRY: Well, Your Honor, the -- all the law
9 enforcement witnesses do have in there reports about what
10 happened.

11 THE COURT: Okay, look. I'll sequester them and
12 put them outside. Y'all will just have to come in as we
13 call you, it won't take long. Just be -- I don't think it's
14 going to make any difference but out of an abundance of
15 caution I will do it. So y'all got to go outside, we'll
16 just call your name.

17 Any, anything else?

18 MS. MCCURRY: Your Honor, I just again would like
19 to fully renew my objection to the mention in the statement
20 of the drill for the record to fully elaborate that we
21 believe that that clearly indicates that he was involved in
22 other robberies that would not be admissible in this case
23 it -- under Lyle and it would be the prejudice of that is
24 substantial outweighed there's no probative value in having
25 it, identity is not an issue in this case indicate, intent

Obj. 1
with
drill
again

1 is not an issue in this case, the only issue is whether or
2 not my client --

3 THE COURT: Well, I guess I shouldn't mention the
4 clothes either how about the clothes?

5 MS. MCCURRY: We don't have any objection to what,
6 what, jacket.

7 THE COURT: All right, it's denied.
8 Anything further?

9 MS. MCCURRY: No, Your Honor.

10 THE COURT: Bring the jury in.

11 BAILIFF: Be glad to, Your Honor.

12 THE COURT: I've already told the jury that we
13 will probably go through lunch go until about two o'clock.

14 (The jury returned to the
15 courtroom.)

16 BAILIFF: The jury's all present.

17 THE COURT: All right. Thank you, sir.

18 Mr. Foreman, members of the jury, welcome back
19 this morning.

20 Ms. Pentigrass, you may swear them.

21 THE CLERK: Ladies and gentlemen of the jury,
22 please stand and raise your right hand to be sworn. At the
23 end of state that I'm about to give you please respond by
24 saying I do.

25 (Whereupon the jury was duly

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

- 1 Q And how long have you been working there?
- 2 A Since the end of January.
- 3 Q I want to turn your attention back to February of 2007,
- 4 where were you employed then?
- 5 A This Is It Video.
- 6 Q And what type of store is the This Is It Video?
- 7 A An adult store.
- 8 Q An adult store?
- 9 A (The witness nodded head.)
- 10 Q Does it have videos there?
- 11 A Videos, toys and lingerie.
- 12 Q Lingerie?
- 13 A (The witness nodded head.)
- 14 Q And how long had you been working at the This Is It
- 15 Video as of February 5th of 2007?
- 16 A May of the previous year.
- 17 Q That night on February the 4th of 2007, what day of the
- 18 week was this?
- 19 A Sunday.
- 20 Q And how late does the video store stay open?
- 21 A Two a.m.
- 22 Q That night, what shift were you working?
- 23 A Five p.m. to two a.m.
- 24 Q And did you always work at the This Is It Video over on
- 25 Broad River?

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

- 1 A I'd work between that one and the one on Two Notch.
- 2 Q That night who all was at the video store working?
- 3 A Just me.
- 4 Q And was that unusual for you to work alone there?
- 5 A No, that was my usual shift.
- 6 Q I want to turn your attention to around midnight until
7 the early morning, will be just after midnight on the
8 fifth that same night, you were there, you were going
9 to close up at two a.m?
- 10 A Uh-hum.
- 11 Q What did you notice shortly after midnight, were there
12 any customers in the store?
- 13 A There was one customer and then Mr. Michael Jackson
14 walked in while the other customer was still in the
15 store.
- 16 Q And did you know either one of those two people?
- 17 A No.
- 18 Q Prior to that night. And when Mr. Jackson walked in
19 the store the other customer was already in there, did
20 you think anything about it?
- 21 A No.
- 22 Q Where were you in the store?
- 23 A Behind the register.
- 24 Q What were you doing?
- 25 A I was on the phone and walking back and forth keeping

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

- 1 an eye on the customers.
- 2 Q At some point did you notice that the first man who was
- 3 in the store when the second person came in, did you
- 4 notice him leave?
- 5 A Shortly after, yes.
- 6 Q Did he exit out then front door?
- 7 A Yes.
- 8 Q And there was nothing remarkable about him being in
- 9 there that night?
- 10 A No.
- 11 Q After the first person that was in store was in there
- 12 and was Mr. Jackson then the only customer in the
- 13 store?
- 14 A Right after the first one left.
- 15 Q And what part of the store was he in when the customer
- 16 was in the store?
- 17 A The department to the left which is where the lingerie
- 18 and clothing would be.
- 19 Q Okay. At some point did you notice him come up towards
- 20 the counter?
- 21 A Yes, after the first customer left.
- 22 Q And what happen then?
- 23 A He asked me for the money and then at that time point I
- 24 stated, Are you kidding me? And he grabbed my hoodie
- 25 at the time and then dragged me down to where the

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

1 register was.

2 Q Let me back up. You said that he came up to the
3 counter and he asked you for the money?

4 A Correct.

5 Q And do you remember exactly what he said?

6 A He was like, Give me your money.

7 Q And at that point you were behind the counter and he's
8 on the other side?

9 A Uh-hum.

10 Q And you said he grabbed you?

11 A Right.

12 Q And where did he grab you?

13 A On my chest towards my jacket where the punisher skull
14 is.

15 Q And I believe you said at first when he demanded money
16 you said, Are you kidding?

17 A Uh-hum.

18 Q And did you think he was kidding at that point?

19 A Yeah.

20 Q What changed your mind?

21 A When he grabbed me and dragged me down to where the
22 register was.

23 Q And at that point did you get a good look at the guy's
24 face, this is stupid questions?

25 A Right.

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

- 1 Q And were -- this is another one, were you paying
2 attention?
- 3 A Yes.
- 4 Q And how far was he from you when you were looking at
5 his face?
- 6 A Probably a feet or so.
- 7 Q You said he dragged you down towards the register?
- 8 A Uh-hum.
- 9 Q And is there a computer monitor right there?
- 10 A Yes.
- 11 Q And what happened to the computer monitor?
- 12 A It about got knocked over I had to keep it from getting
13 busted on the floor.
- 14 Q Was he saying anything else?
- 15 A Not that I could remember.
- 16 Q At some point did you notice that he reached into his
17 pocket?
- 18 A Yes.
- 19 Q And what did you see then?
- 20 A Well, he threatened me with a weapon saying that he had
21 something in his pocket and then we -- when we got down
22 to the register I went to go open the draw to press the
23 bottom to worn the cops and to turn I just had to turn
24 the key to prop the draw. And then at that point when
25 the door opened he grabbed that money and punched me

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

1 and then ran out the door.

2 Q Prior to opening the draw, did you notice whether or
3 not -- you said he reached towards his pocket, did he
4 pull anything out of it?

5 A Not that I'm aware of. It wasn't until we got down to
6 the drawer when I was getting --

7 Q And that's the part I'm talking about, when you were
8 getting the drawer open.

9 A Right.

10 Q Did see some type of weapon?

11 A Yes.

12 Q And who had the weapon?

13 A Michael Jackson.

14 Q How was he holding it?

15 A In his hand.

16 Q What kind of weapon was it?

17 A I believe it to be a box cutter.

18 Q A type of knife, a box cutter type?

19 A Right.

20 Q And, in fact, prior to pulling it out, I believe you
21 just testified that he said something about it?

22 A Right.

23 Q What did he say to you?

24 A He threatened me, he had like a knife in his pocket.

25 Q And then he produced it?

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

- 1 Q And would that -- are you familiar with Zemer Crest and
2 Broad River Road?
- 3 A I know where it's at.
- 4 Q Okay. Did he go in that direction?
- 5 A Correct.
- 6 Q Were you able to determine that night approximately how
7 much money he took?
- 8 A Yes, about \$104.
- 9 Q And was he also able to -- did he also take something
10 else that was in the register?
- 11 A Credit card receipts.
- 12 Q After the police came I believe you gave them the
13 description of the person and direction he went in?
- 14 A Yes.
- 15 Q And did you also turn over the video that night to him?
- 16 A My manger did that.
- 17 Q So your manager actually came down that night?
- 18 A No, he did not.
- 19 Q Okay. Had you ever seen the person that committed this
20 armed robbery before?
- 21 A No.
- 22 Q Is there any doubt that he had a weapon in his hand?
- 23 A He defiantly had one.
- 24 Q I want to turn your attention to the 12th of February
25 about a week later, did a Captain Smith from the

MICHAEL VAZQUEZ CROSS BY MS. MCCURRY

1 THE COURT: Thank you, sir.
 2 Welcome back Mr. Foreman, members of the jury.
 3 Ms. Campbell -- I'm sorry, Ms. McCurry, you may
 4 continue with your cross-examination.

5 BY MS. MCCURRY:

6 Q Now, Mr. Vasquez, when you initially spoke to law
 7 enforcement about this incident you never told anyone
 8 that Mr. Jackson threatened to cut you, did you?

*Initially
 ↓ did tell
 Pol. G
 He threatened
 to cut him*

9 A He just had the knife, he threatened me when he said
 10 that he had a knife on him.

11 Q Okay. But you never told anyone that he threatened to
 12 cut you?

13 A No.

14 Q And isn't it true that you never told anyone that
 15 Mr. Jackson said that he had a knife on him at the
 16 time?

17 A He did have a knife on him.

18 Q No, my question is, isn't it true that you never told
 19 anyone that my client said to you that he had a knife?

20 A I told the police officer that he had a knife in his,
 21 yes.

22 Q But Mr. Jackson never told you he had a knife?

*Jack-
 never
 told him
 he had
 a "knife"*

23 A He just threatened my by saying he had a weapon in his
 24 pocket.

25 Q Mr. Vasquez, isn't it true that you did not report to

*Statute
 Law
 didn't
 report?*



MICHAEL VAZQUEZ CROSS BY MS. MCCURRY

- 1 law enforcement that Michael Jackson indicated to you
2 that he had a knife on him?
- 3 A I don't remember exactly I said to the police officer.
- 4 Q When Michael Jackson grabbed you were you scared,
5 correct?
- 6 A Yes.
- 7 Q Okay. And at that point you were going to give him
8 money, correct?
- 9 A Correct. He wanted me to open the register.
- 10 Q But at that point you were going to give him money?
- 11 A No, not my money.
- 12 Q The store's money?
- 13 A Correct.
- 14 Q And isn't it true that when you looked at the video you
15 can't actually see Mr. Jackson punch you in the face?
- 16 A No, you couldn't clearly see that.
- 17 Q Okay. And immediately after Michael left the store
18 after being robbed, you called the other store,
19 correct?
- 20 A Yes.
- 21 Q Okay. You didn't immediately call 911?
- 22 A No.
- 23 Q So there was five minutes before you called 911,
24 correct?
- 25 A I don't know the exact time.

Didn't
keep it
to
police
just
D
i-looked
He had
A
knife
on
him.

MICHAEL VAZQUEZ CROSS BY MS. MCCURRY

- 1 A Yes.
- 2 Q And you were scared when this took place?
- 3 A I'm sure anyone would be.
- 4 Q You're right and anybody would be. And you've just
5 testified that you don't have a clear recollection as
6 to absolutely what happened and what you did?
- 7 A I remember what happened, yes.
- 8 Q But you don't remember reviewing the videotape when you
9 were speaking to 911?
- 10 A No.
- 11 Q Isn't it true, Mr. Vasquez, that you never told anyone
12 in law enforcement that Mr. Jackson had a box cutter?
- 13 A I told them that he threatened me with a weapon.
- 14 Q With a weapon?
- 15 A Yes.
- 16 Q But you never identified -- did you identify it as a
17 knife?
- 18 A It was -- all I saw was a red handle of the box cutter
19 and that was it.
- 20 Q But you just said you didn't know it was a box cutter?
- 21 A I mean, it had to be some type of knife.
- 22 Q Had to be some type of a knife?
- 23 A Yes.
- 24 MS. MCCURRY: Beg the Court's indulgence one
25 moment.

Told them
that he
threatened
with
a
weapon.

ROBERT SNUFFER CROSS BY MS. MCCURRY

- 1 Q Okay. Now, your report does not reflect any where that
2 you were told that that was a knife with a sharp edge,
3 does it?
- 4 A No, it does not.
- 5 Q But you testified on direct that the that -- that
6 Mr. Vasquez told that you it was a, a, that it was a
7 knife or something with a sharp edge?
- 8 A Yes, ma'am.
- 9 Q Okay. But that's not true, is it?
- 10 A Oh, it was a knife.
- 11 Q But he didn't tell you that or you didn't put it in the
12 report.
- 13 A I may have not put it in the report.
- 14 Q Okay. When you interviewed crime victims in any case,
15 do you try to put down the sequence of events as they
16 describe to you what happened?
- 17 A Yes, ma'am, to the best I could.
- 18 Q Okay. So your report, isn't it true, indicates that
19 the suspect in this case, Mr. Jackson, walked to the
20 cashier at which time he punched the cashier in the
21 face, is that true?
- 22 A Yes, ma'am.
- 23 Q And then the subject presented a knife, correct?
- 24 A Correct.
- 25 Q And reached over the counter and took the cashier --

SCOTT FAUST DIRECT BY MS. MCDUFFIE

1 A He stated, that, that, he committed the robbery due to
2 feed his drug habit. He went on to say that the
3 pictures from the -- the still pictures that we had
4 from the video was -- that was him in the video. He
5 would talked about the quality of the picture and it
6 was clear that it was him and he went on to admit that
7 he had a box cutter that he used to commit the robbery
8 but he said it didn't have a razor in it.

9 Q And after he gave you this verbal statement did
10 yourself and Captain smith want to get a written or
11 reduce this into writing or get a written statement
12 from him?

13 A That's correct.

14 Q And who proceeded to take a written statement from the
15 defendant?

16 A Captain Smith did.

17 Q And were you present the entire time this written
18 statement was taken?

19 A I was present for the entire verbal at that time when
20 we were going to reduce it to writing I decided that I
21 needed to go get some items to do some clerical matters
22 with some paper work to finish up the case and at that
23 time I would check periodically back in to see how
24 things were going and near the end of the statement I
25 was coming back into the office, I was going to leave

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

1 State's Exhibit Number 3, the redacted version into
2 evidence.

3 THE COURT: All right. If you still have your
4 previous technical objection it's observed for the record
5 but that's going in as we discussed it.

6 MS. MCCURRY: Yes, sir.

7 THE COURT: All right.

8 MS. MCCURRY: The previous objection as discussed.

9 THE COURT: All right, very well.

10 (State's Exhibit 3 admitted into
11 evidence.)

12 BY MS. CAMPBELL:

13 Q If you can refer to the portions that are relevant to
14 this case.

15 MS. CAMPBELL: Your Honor, permission to publish?

16 THE COURT: Yes, ma'am.

17 MS. CAMPBELL: Thank you.

18 BY MS. CAMPBELL:

19 A It's stated out with the first question basically,
20 Michael, I have previously advised you of your rights
21 verbally right after your arrest this morning?

22 His response was, Yes.

23 Question, Did you indicate to me that you
24 understood your rights and were willing to talk to me
25 about the robbery?

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

1 Answer was, Yes.

2 What was the location and time?

3 The video store on Broad River Road next to the
4 laundry mat that was about a week ago was his answer.

5 Question, Were you armed during the robbery?

6 Answer, On the store -- on the video store I had a
7 box cutter without the blade in it.

8 Question, I have shown you some surveillance
9 video, is that correct?

10 Answer, Yes, sir.

11 Question, Where are the clothing particularly the
12 coat's that in the video?

13 Answer, The coat I had on when I robbed the video
14 store I had taken from a crack head who was at Crazy
15 Mike's house. Crazy Mike lives in a trailer I pointed
16 out to you this morning. I was at Crazy Mike's when I
17 left to go do the robbery, I brought the coat back to
18 Mike's and left it there. The crack head is a black
19 guy in his 30's, they call him B or D but I'm not sure
20 which is right.

21 Next question, Why were you committing the
22 robbery?

23 Answer was, Drugs and stupidity, I was smoking
24 crack.

25 Question, What happened to the box cutter and the

*Don't
say he
used it
dur,
the
robbery.*

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

1 drill?

2 Answer, That box cutter I threw it away that same
3 night when I left the video store. I slung it when I
4 was running through the people's yards coming through
5 the store going back to Crazy Mike's. I got the drill
6 from a guy named Brian Hendricks who I had basically
7 been with everyday. I want to level with you, that was
8 his coat too I had on at the video store. That drill
9 might be at Crazy Mike's house in a black tote bag
10 which is right behind the TV.

11 Neck question, Did Brian Hendricks have anything
12 to do with the robbery.

13 His answer was, No, sir, he just let me use the
14 coat and the drill.

15 Question, Did he know what you were using the coat
16 and drill for?

17 Answer, I just told him I would be right back. He
18 didn't have nothing to do with that. He didn't ask no
19 questions.

20 Question, So the other crack head, the one you
21 said had the coat who you talked previously doesn't
22 exist by that name.

23 His answer was, Well, that was Brian I was talking
24 about. I call him B, I just didn't want to say his
25 name.

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

1 Question, Where does Brian live?

2 Answer, Mostly he be at Crazy Mike's house but he
3 use to live with a faggot in Trenton Court Apartments,
4 the faggot was named Shannon Carmichael. Shannon
5 always talked about his momma being a judge.

6 Question, Can you describe Brian Hendricks?

7 His answer was, He's a black guy about 43 years
8 old, he's skinny, about 130 pounds, he's about my
9 height which is 5'9" tall. He just got out of
10 Lexington County about three weeks ago. They were
11 holding him in for Georgia for a bad check but they
12 never came and got him so they turned him loose. He's
13 from Columbia, his people live on Forklin and Bonnie
14 Forest I have known him since high school. We went to
15 Columbia High together.

16 Next question, Where are you buying your crack?

17 His answer was, The house on the dirt road behind
18 the Calamines right around -- right on the corner just
19 past the house with all the cars and the stumps in the
20 yard. I buy from a guy named Russel -- put I'm not
21 sure on the spelling of his name. I also buy from the
22 Schoolhouse Road and Piney Grove Road, they still sell
23 back up in the whole on Piney Grove Road.

24 Next question, How much would you smoke in a day?

25 Answer, On the second a Friday was when I started

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

1 getting high, I smoked as much of a quarter to a half
2 of an ounce a day. Previously I didn't smoke everyday
3 but I have smoked every since the second except this
4 past Saturday and Sunday when I was at my mother's
5 home.

6 Question, Tell me again why you had to start doing
7 the robbery?

8 I wanted to get high, I needed the money.

9 Question, When did you shave your mustache?

10 Answer, About two days ago this weekend when I was
11 home.

12 Question, Is the black toboggan hat you had today
13 the hat seen on the video?

14 His answer was, Yes, sir.

15 The last question, Is there anything you want to
16 add to this?

17 His answer was, I'm sorry for what I did, it was
18 stupid.

19 Q Once you had taken the statement from him he mentions
20 in the statement that you refer to a hat he was wearing
21 when he was taken into custody?

22 A Yes, ma'am.

23 Q I show you State's Exhibit Number 40, do you recognize
24 that?

25 A Yes, ma'am, it's the hat.

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

1 Q And you collected that then?

2 A I did.

3 MS. CAMPBELL: Your Honor, at this time we'd offer
4 State's Exhibit 40 in.

5 MS. MCCURRY: No objection.

6 THE COURT: All right, without objection.

7 (State's Exhibit 40 admitted
8 into evidence.)

9 MS. CAMPBELL: Thank you.

10 BY MS. CAMPBELL:

11 Q I want to go back through the statement. Before he
12 gave his written statement you had shown him some
13 stills?

14 A Yes.

15 Q And in those stills you could see something in his
16 hands?

17 A Yes.

18 Q And you had always actually played the video where you
19 could even see it better, is that correct?

20 A Yes. It's better when it runs, than the stills.

21 Q And in this statement specifically, did you ask him
22 whether or not he was armed?

23 A Yes.

24 Q What did he indicate to you?

25 A He indicated he had a box cutter.

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

- 1 Q And so at that point he even seen the video and there
2 was something in his hand, but he said it was a box
3 cutter charge?
- 4 A He said it was a box cutter, yes, ma'am.
- 5 Q With no blade in it?
- 6 A That's correct.
- 7 Q Is it unusual when confronted with pretty compelling
8 evidence for someone to minimum what they do?
- 9 A It's very typical. Another example may be well, yeah I
10 had a gun but it was a toy or a cap gun, things of that
11 nature.
- 12 Q And in this case he said it was a box cutter with no
13 blade?
- 14 A That's right.
- 15 Q Even if it was a box cutter with no blade with that
16 effected him being charged with armed robbery in this
17 case?
- 18 A Still the threat of what appeared to be a deadly
19 weapon.
- 20 Q And again, he had been confronted with the video, is it
21 unusual for someone to want to give their version of
22 what happened?
- 23 A No, it's actual pretty typical.
- 24 Q And in this case, he said he did it because of drugs,
25 he wanted to get high?

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

- 1 A That's right.
- 2 Q At any point did he ever mention to you from that time
3 you picked him up until you finish taking the statement
4 any kind of health problems that compelled him to rob?
- 5 A I don't recall anything about that, no, ma'am.
- 6 Q But, in fact, he goes into quite a bit of detail about
7 his drug use?
- 8 A His drug use, how long he's been using, where he was
9 buying.
- 10 Q He mentioned a person a Brian Hendricks?
- 11 A Yes, ma'am.
- 12 Q Did y'all attempt to today follow up on a Brian
13 Hendricks?
- 14 A Yes. We -- again I think we went to that trailer twice
15 trying to locate this individual and some of the things
16 he talked about -- we were unsuccessful.
- 17 Q Was there any evidence in this case that anyone other
18 than the defendant was involved in this robbery?
- 19 A No, none whatsoever.
- 20 Q So even if you found Mr. Hendricks it would merely be
21 to possibly corroborate part of his statement?
- 22 A Just gets more detail.
- 23 Q But there is no evidence he had any involvement?
- 24 A That's right.
- 25 Q Even by the defendant's own admission?

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

- 1 A That's correct.
- 2 Q And Crazy Mike, did investigators from your department
3 actually make contact with a person that fit that
4 description?
- 5 A I believe they did and he fit that description.
- 6 Q And did he have any relevant evidence or anything left
7 at the house that they were able to find?
- 8 A They had a difficult time communicating with him and
9 they didn't find anything specifically relevant.
- 10 Q Then again why did the defendant tell you he robbed
11 this store?
- 12 A To get money for drugs.
- 13 Q I want to show you what's been marked as State's
14 Exhibit Number 34, is that a photograph that was taken
15 of the defendant the day he was arrested on February
16 13?
- 17 A Yes, ma'am.
- 18 Q And in this statement did you specifically ask him
19 about his appearance being changed?
- 20 A I did.
- 21 Q And what did he indicate to you?
- 22 A He indicate he had shaved.
- 23 Q And State's Exhibit 34 is how he appeared?
- 24 A He was cleaned up on that day, yes, ma'am.
- 25 Q On State's Exhibits 27 through 33 are those some other

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

1 photographs of the defendant?

2 A Yes, ma'am, they are.

3 Q And in each of those photographs is the defendant have
4 some type of facial hair or mustache?

5 A He does in each one.

6 Q And is that what's reflected in State's Exhibit Number
7 8?

8 A It is.

9 MS. CAMPBELL: Your Honor, we'd State's Exhibits
10 27 through 34.

11 MS. MCCURRY: Previous objection has been noted.

12 THE COURT: All right, they're in.

13 MS. CAMPBELL: Thank you.

14 (State's Exhibit 27 through 34
15 admitted into evidence.)

16 BY MS. CAMPBELL:

17 Q State's Exhibits Number 34, when did he mentioned that
18 he had shaved his mustache?

19 A Over the proceeding weekend was at his Mother's house,
20 which would be several days after the robbery.

21 Q But would that have been the weekend when the video was
22 being run on the news cast?

23 A It would be the same weekend.

24 Q And the physical description that was given by the
25 victim in this case, did it fit the defendant?

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

1 A It was pretty well dead on.

2 Q Other than the age being off by a few years?

3 A That's, that's, not off by much.

4 MS. CAMPBELL: Beg the Court's indulgence.

5 THE COURT: Yes, ma'am.

6 BY MS. CAMPBELL:

7 Q When you went through and gave the defendant his
8 rights, did you promise him anything to make him talk
9 to you?

10 A No, ma'am.

11 Q Did you threaten him in anyway?

12 A No, ma'am.

13 Q Did you try to coerce him into talking?

14 A He was cooperative from the minute he got into my
15 office.

16 Q And did anyone threaten him, do anything to him to make
17 him talk?

18 A No, ma'am.

19 Q And, in fact, at some point I believe while he was with
20 you he requested to go outside and smoke?

21 A He did.

22 Q Did you accommodate him?

23 A We did.

24 Q Did you also accommodate him or when he requested that
25 you call his mother?

JAMES SMITH CROSS BY MS. MCCURRY

1 A He wanted me to call his mom to tell her that he was
2 okay, but he was in custody but he was okay, and I did
3 that.

4 Q The person that you took the statement from that
5 confessed to you about committing the armed robbery?

6 A Yes, ma'am.

7 Q Do you see him here in the courtroom?

8 A I do.

9 Q And where is he seated?

10 A Seated at the defense table in the dark coat, blew
11 shirt and tie.

12 Q And finally, in the defendant's own statement, did he
13 indicate, in fact, that he was there with some type of
14 weapon?

15 A He did.

16 Q And that would make this armed robbery?

17 A It would.

18 MS. CAMPBELL: Your Honor, may the record reflect
19 he's identified the defendant.

20 THE COURT: All right.

21 MS. CAMPBELL: That's all I have.

22 THE COURT: All right, cross-examination.

23 MS. MCCURRY: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. MCCURRY:

JAMES SMITH CROSS BY MS. MCCURRY

- 1 Q Good afternoon, Captain Smith?
- 2 A Good afternoon.
- 3 Q How are you doing?
- 4 A Fine.
- 5 Q In your position that you held with the sheriff's
6 department during this time, did you have knowledge of
7 the reports from the other people that worked under
8 either you, Investigator Faust, McDonald the other
9 investigators that worked with you.
- 10 A Which reports are you referring to?
- 11 Q Their particular reports, did you review them, talk to
12 them about the case?
- 13 A You mean, their investigative follow ups as they
14 pertain in this case?
- 15 Q Yes, sir.
- 16 A While we were working the case?
- 17 Q It -- have you, have you, had access to those, have you
18 reviewed them, have you talked to them about those
19 reports?
- 20 A I reviewed them in preparation for this trial.
- 21 Q Okay.
- 22 A Yes, ma'am. I don't know that I did at the time.
- 23 Q Okay. But here today then you're familiar with other
24 things that have been done that you can address?
- 25 A To some degree, I'm not sure what you're talking about,

JAMES SMITH CROSS BY MS. MCCURRY

1 I'm sure I'll find out shortly.

2 Q For example in preparation for being here today, did
3 you have the opportunity to review the sheet from the
4 911 call?

5 A I did not review the sheet from the 911 call, no.

6 Q Okay. Did you review Investigator Faust's
7 investigation report?

8 A I have looked at that, yes, ma'am.

9 Q Okay. Have you reviewed the incident report that was
10 prepared by Deputy Snuffer?

11 A I did.

12 Q As well as the supplemental report prepared by Deputy
13 Snuffer?

14 A I did.

15 Q Isn't it true that the first mention that the object
16 that Mr. Jackson had in his hand in the video store
17 that it was a box cutter comes in from the
18 investigation report of Investigator Faust?

19 A Well, it came from the defendant. I'm not -- are you
20 saying the first time it was ever mentioned?

21 Q Yes, the first place that it's mentioned is in the
22 investigation report?

23 A I believe it came from the defendant first.

24 Q Where it's written?

25 A Well, written in his statement, I'm not sure if, if, I

JAMES SMITH CROSS BY MS. MCCURRY

- 1 understand your question.
- 2 Q It's not contained in the incident report, correct?
- 3 A The word knife was used in this incident.
- 4 Q Well, I'm asking about the identity of what was in his
5 hand as a box cutter?
- 6 A Well, the defendant mentioned that.
- 7 Q Okay.
- 8 A First.
- 9 Q But in writing it's not mentioned in the incident
10 report, correct?
- 11 A It says knife.
- 12 Q Not mentioned in the supplemental report, correct?
- 13 A That's right.
- 14 Q Okay. First place it's actually written is in
15 Investigator Faust report?
- 16 A You mean, as far as the police documents are concern?
- 17 Q Yes, sir, yes.
- 18 A I could review the report if you'd like, I don't have
19 it with me but I'll take your word for that.
- 20 Q Okay. Okay, that's good for me.
- 21 A But the defendant I believe mentioned it first and I
22 believe that may be why it was in the report, that's
23 what I was trying to explain.
- 24 Q Okay. So Mr. Jackson is the one who said it was a box
25 cutter?

JAMES SMITH CROSS BY MS. MCCURRY

1 A I believe that he's the first one that made mention of
2 it. We just knew knife, of course, a box cutter is a
3 knife. I consider it a knife.

4 Q You consider it to be knife, not necessarily everybody
5 would consider -- you don't cut your stake with a box
6 cutter, correct?

7 A It's, it's, a form of a knife.

8 Q Yes or no, do you cut a steak with a box cutter?

9 A I don't believe I ever have, no, but I believe it would
10 work.

11 Q Okay. And when Mr. Jackson spoke to you in your office
12 and told you what had happened, there was no mention of
13 a drill involved in This Is It Video store at all,
14 there was?

15 A That's correct.

16 Q Okay. So the drill had nothing to do with anything
17 related to this case?

18 A That's correct.

19 Q Okay. When Mr. Jackson was in your office giving you
20 his statement his also told you that he slung the box
21 cutter in some people's yards when going he was running
22 from the stores, correct?

23 A I believe he said that, yes, ma'am.

24 Q On his way he was headed back to the gentleman Crazy
25 Mike?

JAMES SMITH CROSS BY MS. MCCURRY

- 1 A That's correct.
- 2 Q Okay. Did anyone from the sheriff's department ever go
3 look in the people's yard to see if they could recover
4 this box cutter?
- 5 A We went back in that area, I know went to Crazy Mike's.
6 I can't specifically say I seen and positively checked,
7 in other words, we didn't take him back to show us what
8 specific yards he ran through.
- 9 Q Okay?
- 10 A So I don't know that that was ever done.
- 11 Q Okay. And there was nothing, there was nothing, that
12 was ever found at Crazy Mike's house?
- 13 A Not relevant to this case, no, ma'am.
- 14 Q Okay. When you, when you, arrested Mr. Jackson, you
15 stated that he was, he was, very cooperative with you
16 from the beginning?
- 17 A He was.
- 18 Q Okay. And he was placed in your vehicle and you took
19 him to your office on Two Notch Road, correct?
- 20 A That's correct.
- 21 Q Okay. And you had causal conversation with him in the
22 car, correct?
- 23 A Well, after he made the initial acknowledgment, yes,
24 ma'am. We didn't go into a whole lot more detail about
25 it until we got to the office.

JAMES SMITH CROSS BY MS. MCCURRY

1 Q Okay.

2 A Until on the ride in.

3 Q Okay, yeah. I'm, I'm not concerned at this, at this,
4 moment about anything connected with the Miranda, the
5 verbal warnings that you gave him or anything like
6 that. I'm just going to talk to you right now about
7 general conversation that you had with him in your
8 vehicle on the way to the sheriff's department, that's
9 all.

10 A You're asking the questions.

11 Q Okay. Do you recall any, do you recall, exact details
12 of things that you spoke about while he was in the car
13 with you?

14 A I don't.

15 Q Do you recall the exact details of the things dealing
16 specifically with the robbery of the video store?

17 A Well, I refer to I believe the conversation was small
18 talk.

19 Q Okay.

20 A And that's generally, you know, that would discussion
21 not related to the reason why we were together.

22 Q Okay.

23 A If you will.

24 Q But it's fair to say that when you're talking about
25 having had a conversation with somebody you might not

JAMES SMITH CROSS BY MS. MCCURRY

- 1 remember particular details, right?
- 2 A Certainly.
- 3 Q Okay. But then when somebody asked you about something
4 specify that may jar your memory that you remembered
5 you had that discussion or it may not, correct?
- 6 A We could give it a try.
- 7 Q Okay. So for example, did Mr. Jackson talk to you
8 about where he worked, that he was working for a
9 landscaper at the time?
- 10 A He could have.
- 11 Q Okay. And did he talk to you about where he lived that
12 he was staying with my mother periodically?
- 13 A I, I, know we talked about that because he -- later on
14 came up in conversation about him being home that
15 weekend.
- 16 Q Okay. And the police had, in fact, gone to his
17 mother's house and spoke with her as well?
- 18 A I had gone there.
- 19 Q Okay, you went yourself?
- 20 A Yes, ma'am.
- 21 Q Okay. All right. And Mr. Jackson obviously told you
22 that he had a serous drug problem?
- 23 A He did.
- 24 Q Okay. Is it possible that he mentioned to you that he
25 was also suffering from Hepatitis C because of his drug

JAMES SMITH CROSS BY MS. MCCURRY

1 abuse?

2 A It's possible but I do not remember that.

3 Q Okay. And is it possible that he told you that part of
4 what set him off was that he been informed he been
5 exposed to HIV?

6 A I believe I'd remembered that, that's, that's,
7 something that sort of raises a red flag when you're
8 certainly dealing with people that you may be
9 physically dealing with, I think I would have
10 remembered that.

11 Q But you can't be positive?

12 A I can't be positive, no, ma'am.

13 Q Okay, all right. But he did tell you that he'd been
14 smoking crack since Friday February the 2nd?

15 A I --

16 Q He mention that to you?

17 A Had says he had a little break in between, that's
18 right.

19 Q Yeah.

20 A Started on the second.

21 Q Yeah, so he started smoking it on the second?

22 A With a little, a little, break in between I believe is
23 the way he explained it.

24 Q All right. And so did he, did he, tell you that he was
25 really tired?

JAMES SMITH CROSS BY MS. MCCURRY

- 1 A He did.
- 2 Q Okay. And did he mention to you do you recall in your
3 conversation that he'd been up for eight or nine days
4 at that point?
- 5 A I -- no, he didn't say that because he made a special
6 point of saying that he'd been to his mother's house,
7 the preceded weekend. So I, I, that's not true.
- 8 Q Well, but it is true that he could have been at his
9 mother's house and he didn't sleep, correct?
- 10 A But I'm pretty sure the break involved he rested at his
11 Mother's house is the way I remembered it. I don't
12 know that he actually used the word sleep he was not
13 smoking crack according to him during that period of
14 time.
- 15 Q Well, I wasn't asking about smoking crack, I was asking
16 was he just physically awake?
- 17 A I do know if we covered that in that kind of detail.
- 18 Q Okay.
- 19 A But it was my impression he had taken a little break,
20 you know, from smoking crack.
- 21 Q All right. Did you happen to notice whether or not he
22 had any physical injury whatsoever?
- 23 A I, I, did not annotate any, you know, I didn't inspect
24 him from head to toe. I don't have any idea what you
25 were making reference to.

JAMES SMITH CROSS BY MS. MCCURRY

1 Q So you didn't see any nicks or cuts on his hands or his
2 fingers --

3 A Again --

4 Q No notes of it when he was finger printed or anything
5 like that?

6 A I wasn't present when he was finger printed unless it
7 was relevant to the case itself or prominent, I don't
8 think I would have made a notation of it or even recall
9 it at this juncture.

10 Q Okay. And he -- when you were in the vehicle he took
11 you past Crazy Mike's house and he showed you where he
12 lived and that's where he had been at some point in
13 time?

14 A That's correct.

15 Q Okay. And he also gave you information about where
16 exactly he purchased crack cocaine?

17 A He did.

18 Q Okay. Three different locations, correct?

19 A I believe it was.

20 Q Okay. And he also told you that he had been smoking a
21 quarter to a half an ounce a day, correct?

22 A I don't have his statement in front of me, I believe
23 that's right.

24 Q Okay.

25 A He said a quarter a half an ounce a day, yes, ma'am.

JAMES SMITH CROSS BY MS. MCCURRY

- 1 Q And tell me if you could, verify Michael's height and
2 weight?
- 3 A I don't have his arrest report in front of me, but I
4 think he's, he's, 5'9, 160, 165 I don't have it in
5 front of me but I -- if you want to hand me a copy I
6 could be certain.
- 7 Q All right. Do you have any knowledge as to
8 Mr. Vasquez's height and weight?
- 9 A Other than what I would guess.
- 10 Q Who would you guess?
- 11 A Probably around 5'9, 150, maybe, something like that.
- 12 Q Okay. All right, you've had the, you've had the,
13 opportunity to review the video of the case as well,
14 correct?
- 15 A Yes, ma'am.
- 16 Q And the video shows that Michael enters a front door?
- 17 A It does.
- 18 Q Exited the same door, correct?
- 19 A Yes, ma'am.
- 20 Q Got you. Shows that he touched the computer monitor,
21 correct?
- 22 A Some point in time he brushed across it, yes, ma'am.
- 23 Q Your testimony is that the video shows he's brushing
24 across the monitor?
- 25 A Well, they sweep across it at one point in time to get

JAMES SMITH CROSS BY MS. MCCURRY

1 the cash door, I'm not sure what you mean by the --

2 Q Okay --

3 A I think you mean jostled it a little.

4 Q Let me rephrase my question, the video indicates he
5 places my hand cleaner up on the side of the monitor,
6 you can see that in the video, correct?

7 A You might be able to, I'm not sure if it actually shows
8 it actually pressing up against it or I can't say that.

9 Q Okay. All right.

10 A I know they're sweeping cross it, jostling it, from my
11 recollection, then they get the cash drawer and the
12 other action takes place.

13 Q Captain Smith, was, was there a sworn statement taken
14 from Mr. Vasquez in this case?

15 A I don't recall that there was.

16 Q Okay, just the, just the, initial incident reports,
17 that's the only memorization of what he said?

18 A That's not unusual, that's correct.

19 Q Okay. Not saying it is or not.

20 A Right.

21 Q I'm just asking if that --

22 A I believe that's right.

23 Q Okay.

24 A There was --

25 Q All right. And when Mr. Jackson gave you his statement

JAMES SMITH REDIRECT BY MS. CAMPBELL

1 Investigator Faust, excuse me, Sergeant Faust now was
2 present when that took place, correct?

3 A He was present during a good portion of it.

4 Q Okay. And the two of you were in the room at the same
5 time, you and Investigator Faust?

6 A Not for the entire, not for the entire, sequence but
7 different portions, yes, ma'am.

8 Q Okay. Were you there when he was signing the
9 statement?

10 A Yes.

11 Q Okay. And so you were there when Investigator Faust
12 actually placed Michael under oath when he was swearing
13 that what he was telling you was, in fact, the truth,
14 correct?

15 A Yes, ma'am.

16 MS. MCCURRY: Beg the Court's indulgence just one
17 moment.

18 THE COURT: Yes, ma'am.

19 MS. MCCURRY: I have no further question, Your
20 Honor. Thank you.

21 THE COURT: Anything on redirect?

22 MS. CAMPBELL: Just a few questions, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. CAMPBELL:

25 Q She asked you a series of questions about this small

JAMES SMITH REDIRECT BY MS. CAMPBELL

1 talked y'all had?

2 A Yes.

3 Q She talked about health issues and everything like
4 that?

5 A She did..

6 Q And specifically in the written statement don't you ask
7 him specifically why he was committing the robbery?

8 A Yes.

9 Q And at that point would he have had the opportunity to
10 tell you about any health issues, any exposing anything
11 and that would have been put in the statement?

12 A If it was relevant in his mind as to why he was
13 committing the robbery I would assume he would.

14 Q And is that any information he related to you that day?

15 A No, ma'am.

16 Q And if he had related that information to you when you
17 asked him why were you committing the robbery, his
18 answer was drugs and stupidity?

19 A It was.

20 Q He didn't mention any health issues?

21 A He did not.

22 Q And had he mentioned any health issues you would have
23 put it in there just like the drugs and the stupidity?

24 A I put his response down, no matter what it was.

25 Q She asked you about that he swore to tell the truth in

JAMES SMITH RECROSS BY MS. MCCURRY

1 this, in this, case, he's the one that after seeing the
2 video admits it's a box cutter, is that correct?

3 A That's correct.

4 Q And a box cutter is a form of a knife?

5 A It is.

6 Q And does it make any difference in the charge of armed
7 robbery whether or not there was a box cutter with or
8 without a blade or a knife?

9 A No, ma'am, it doesn't.

10 MS. CAMPBELL: Beg the Court's indulgence.

11 THE COURT: Yes.

12 MS. MCCURRY: I don't have anything further.

13 THE COURT: Anything on recross?

14 MS. MCCURRY: Just a couple.

15 THE COURT: All right, all right.

16 RECROSS EXAMINATION

17 BY MS. MCCURRY:

18 Q Captain Smith, isn't it true that Michael would know
19 what he had with him at the video store?

20 MS. CAMPBELL: Objection, Your Honor, she's 00 I
21 don't think you can speculate what was in his mind.

22 THE COURT: Well, I'll let him answer, try and
23 answer the question if you can.

24 BY MS. MCCURRY:

25 A The way I would answer that is yes it would be true but

JAMES SMITH RECROSS BY MS. MCCURRY

1 it also would be true that he would minimize which is
2 common when you're taking a statement if somebody is
3 confessing something. And the form of minimization
4 would be saying it's a box cutter with no blade in it.

5 Q Okay. And that's your saying that it' minimization?

6 A I believe that, I believe that, was a minimization,
7 yes, ma'am.

8 Q Okay. But the fact of the matter is and the truth is
9 isn't it, that he did not need to see a video to figure
10 out what he had with him that day, correct?

11 A No, he mentioned it to be a box cutter.

12 Q My question is, he didn't tell you that it was a box
13 cutter simply because that's what he thought he saw in
14 the video?

15 A No, no, he mentioned it was a box cutter I believe
16 before.

17 Q Okay.

18 A We got to the video part.

19 Q Okay, that's just what I want to clear up. So he knew
20 exactly what he had on him at the time he was in the
21 This Is It Video, correct?

22 A Yes, ma'am.

23 Q Okay. Thank you.

24 THE COURT: Anything further of this witness?

25 MS. CAMPBELL: No, sir.

1 THE COURT: James Standon Smith, you may step
2 down, sir.

3 MR. SMITH: Thank you, Your Honor.

4 MS. MCDUFFIE: State calls Sergeant Kevin
5 Isenhoward.

6 THE COURT: Can I see y'all for a minute?
7 (Whereupon, a bench conference
8 was held off the record, in the
9 presence of the jury, but out of
10 the hearing of the jury.)

11 THE COURT: Members of the jury, I apologize but
12 my stomach is mashing together so I immediate to eat a
13 cracker or something. So I'm going to take about five
14 minutes to do so and we're going to come back and do one
15 more witness today and we'll just about finish the state's
16 case I believe, okay.

17 So go to the jury room for a few minutes, don't
18 talk about this case, we'll come back and we'll finish
19 with --

20 Is it Sergeant Isenhoward?

21 MS. ISENHOWARD: Yes.

22 THE COURT: All right. Sergeant Isenhoward, just
23 don't talk about the case.

24 (The jury retires from the
25 courtroom.)

1 And again be prejudicial to my client because they're going
2 to be wondering what is this drill about even though there
3 was no drill mentioned in this particular case.

4 THE COURT: All right. I disagree again and my
5 ruling remains the same as at the time you contemporaneously
6 made it.

7 MS. MCCURRY: Thank you, Your Honor. And we would
8 --

9 THE COURT: You need to make your motion for me to
10 charge strong armed robbery I do believe.

11 MS. MCCURRY: Yes, sir.

12 THE COURT: Okay, go ahead.

13 MS. MCCURRY: That was the next one I was going to
14 request --

15 THE COURT: All right --

16 MS. MCCURRY: To charge for strong armed robbery.
17 We believe that there has been evidence presented in this
18 case from where the jury could conclude that my client was
19 guilty of the lesser included as apposed to the greater and
20 that under our state law that you should charge that on his
21 behalf.

22 THE COURT: All right. And my reason remains the
23 same as I think I indicated in chambers, he confesses to the
24 armed robbery, he said he had the box cutter and your
25 argument I think specifically went to the fact that he later

1 on said that there was no blade in the box cutter and I
2 analyze that having a gun with no bullets is still armed
3 robbery. So that's the reason specifically why I'm going to
4 deny that request to charge strong armed robbery.

5 MS. MCCURRY: Okay. Your Honor, I would request
6 that you charge the definition of a deadly weapon.

7 THE COURT: I will be happy to that, I mean, you
8 know, do you have a definition? I mean, have we -- this is
9 the first time that's been mentioned but I'll be happy to --

10 MS. MCCURRY: Yes. The definition of deadly
11 weapon under State versus Scurry and also that the question
12 of whether a person is armed with a deadly weapon is a
13 question of fact that the jury is to determine when that's
14 so --

15 THE COURT: Well, what's the definition? What's
16 your definition of State versus Curry you said?

17 MS. MCCURRY: Scurry.

18 COURT: Curry, what?

19 MS. MCCURRY: Scurry.

20 COURT: Scurry, I thought you said McCurry,
21 Scurry.

22 MS. MCCURRY: S-C-U-R-R-Y.

23 THE COURT: Okay. And what's that definition
24 again, you got to share it with the state so we'll be on the
25 same page.

1 MS. MCCURRY: The deadly weapon is generally
2 defined as any article, instrument or substance which is
3 likely to produce death or great bodily harm.

4 THE COURT: Ms. Campbell, I'll have your response
5 to that. No object?

6 MS. CAMPBELL: We have no objection.

7 THE COURT: Okay.

8 MS. CAMPBELL: In addition, I think it is defined
9 in the armed robbery statute itself as to any one of though
10 or other deadly weapon, but if she wants to add that line
11 in --

12 COURT: Oh, okay.

13 MS. CAMPBELL: We have no problem.

14 THE COURT: All right. We'll include that then.

15 And once again a deadly weapon doesn't have to be
16 deadly, it's just that it's the impression that's created.
17 So I'll be happy to add that language. I might have to
18 write it done, I don't think I have it in my charge but I'll
19 include it.

20 MS. CAMPBELL: If she's got the site I would just
21 like to --

22 THE COURT: Okay.

23 MS. CAMPBELL: Look the case up.

24 COURT: You have the site?

25 MS. CAMPBELL: She just --

1 MS. MCCURRY: 473 southeast second 61.

2 THE COURT: Do you have the case with you to make
3 a copy?

4 MS. MCCURRY: I can -- no, sir, not -- just have
5 my notes from the case itself.

6 MS. CAMPBELL: Your Honor, we believe --

7 MS. MCCURRY: Everybody's got computers and can
8 pull these things up, you know.

9 THE COURT: I have a slide rule.

10 MS. CAMPBELL: We do have that case, Your Honor.
11 If I can hand it up.

12 THE COURT: I think one person knows the slide
13 rule, does that mean you're old? Do you know what a slide
14 rule is?

15 (There was no response.)

16 (Ms. Campbell hands the Court
17 the case.)

18 COURT: That's when you have knowledge --

19 MS. CAMPBELL: I think in this case it even says
20 gasoline can be considered -- just that part right there.

21 THE COURT: Let's see.

22 MS. MCCURRY: And, Your Honor, I would --

23 THE COURT: Well, hold on. Let me read this
24 first. A deadly weapon is generally defined as any article
25 that's -- likely to produce death or great bodily harm,

1 and -- I'm sorry, go ahead.

2 MS. MCCURRY: Your Honor, I wanted to point out
3 for the record that my client did not confess to an armed
4 robbery, he confessed to a robbery. And he stated --

5 THE COURT: He confessed to an, he confessed to
6 an, robbery while he was armed, okay. I mean, we're talking
7 about semantics here.

8 MS. MCCURRY: Well --

9 THE COURT: He confessed to robbing the place
10 while was armed.

11 MS. MCCURRY: But the contention is he was not
12 armed with a deadly weapon and that's what --

13 THE COURT: All right. Anything else?

14 MS. MCCURRY: Armed robbery requires a deadly
15 weapon --

16 THE COURT: All right, anything else?

17 MS. MCCURRY: No, sir, Your Honor.

18 THE COURT: All right. Thank you.

19 Any other matters we need to take up?

20 MS. CAMPBELL: I just whether or not the defendant
21 wants to testify I believe --

22 THE COURT: Oh, yeah, yeah.

23 Ms. McCurry, is Mr. Jackson going to testify?

24 MS. MCCURRY: No, sir, Your Honor.

25 THE COURT: All right, then, stand up,

WITNESSES

(S) Faust - RCSD ✓

ARREST WARRANT NUMBER

J556037

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

JUN 18 2009

VERDICT

Foreperson of Petit Jury
Date:

AMENDED
DOCKET NO. 2007-GS-40-1683

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

April TERM 2007

42

THE STATE
vs.

Michael Jackson

Indictment for

ARMED ROBBERY
SC Code: 16-11-330(A)
CDR Code: 0139
Class FEL-A(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 18, 2007, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That MICHAEL JACKSON did in Richland County on or about February 5, 2007, commit robbery by feloniously taking from the person or presence of Michael Vasquez an employee of This Is It Video by means of force or intimidation goods or monies of This Is It Video, such goods or monies being described as US Currency and credit card receipts, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, to wit: a box cutter, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Warren B. Giese
WARREN B. GIESE, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 11th, 2010



Elizabeth A. Franklin-Best
Appellate Defender

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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

MAR 28 2012

Appeal From Richland County
Honorable L. Casey Manning, Judge

S.C. Supreme Court

THE STATE,

Respondent,

vs.

MICHAEL D. JACKSON,

Appellant.

SECOND SUPPLEMENTAL RECORD ON APPEAL

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ATTORNEYS FOR RESPONDENT

1 but don't yet begin discussing this matter. The time for
2 you to begin your deliberations, Mr. Foreman, will be when
3 the bailiff presents all of the evidence and exhibits that
4 have been introduced into evidence along with this verdict
5 form, that will be your signal to begin your deliberations.
6 Until then I still got to ask you not to talk about this
7 case. A slight chance or there is a chance I may have to
8 call you back out here to tell you something else. So for
9 right now, go to the jury room, but don't began discussing
10 this case until the bailiff brings you the verdict form,
11 okay.

12 (The jury retires from the
13 courtroom at 11:53 a.m.)

14 THE COURT: All right. Any additions or
15 objections from the state?

16 MS. CAMPBELL: No, sir.

17 THE COURT: From the defense?

18 MS. MCCURRY: No, Your Honor.

19 THE COURT: Once again for the record you wanted
20 me to request one of your charges strong arm, that was
21 denied, that would be -- but we can revisit that later on.
22 That's the only thing I can think of that you need to
23 mention right now.

24 And I invite y'all to look at all of the evidences
25 make sure what's in evidence is in evidence. I don't think

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Richland County
Honorable L. Casey Manning, Judge

THE STATE,

Respondent,

vs.

MICHAEL D. JACKSON,

Appellant.

CERTIFICATE OF COUNSEL

Respondent certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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ATTORNEYS FOR RESPONDENT

October 4, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Richland County
Honorable L. Casey Manning, Judge

THE STATE,

Respondent,

vs.

MICHAEL D. JACKSON,

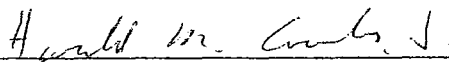
Appellant.

PROOF OF SERVICE

I, Harold M. Coombs, Jr., certify that I have served the within Second Supplemental Record on Appeal by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Elizabeth A. Franklin-Best, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 4th day of October, 2010.


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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

RECEIVED

MAR 28 2012

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

MICHAEL D. JACKSON,

APPELLANT

SECOND SUPPLEMENTAL RECORD ON APPEAL

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MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

1 in the chest area. He pulls him a short distance down the
 2 counter being careful not to knock over a computer monitor
 3 actually balances it, catches it with his hands before they
 4 reach the cash register. The cash register is then opened
 5 and Michael reaches in and takes the money from the
 6 register, puts it in his pocket and never lets go of
 7 Mr. Vasquez's shirt while he does this. And he leaves the
 8 store. There's no doubt that this is a horrifying
 9 experience for Mr. Vasquez, no doubt. And Michael is indeed
 10 sorry for what he did. This is a very serious case and we
 11 ask that you hold the state to its burden of proof that
 12 you -- the evidence or lack there of and the discrepancies
 13 very carefully.

14 We believe that once you have considered all of
 15 the evidence that you will conclude that Michael could have
 16 been charged with a completely different crime altogether,
 17 one that fits he act, that he was not committing an armed
 18 robbery and that you will render a just and true verdict of
 19 not guilty to that particular charge. Thank you very much.

20 MS. CAMPBELL: May it please the Court?

21 THE COURT: Yes, ma'am.

22 MS. CAMPBELL: State calls Michael Vasquez.

23 THE COURT: Come around, Mr. Vasquez.

24 THEREUPON,

25 MICHAEL VAZQUEZ,

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

1 after having been duly sworn, testified as follows:

2 THE CLERK: Please have a seat, state your full
3 name for the record.

4 DIRECT EXAMINATION

5 BY MS. CAMPBELL:

6 Q Michael, how old you are?

7 A 24.

8 Q And do you live here in the Columbia area?

9 A Yes.

10 Q How long have you been living in Columbia?

11 A Most of my life.

12 Q Where did you go to high school?

13 A Spring Valley.

14 Q And when did you finish high school?

15 A 2002.

16 Q Back in February -- where are you employed now?

17 A Fresh Market.

18 Q The Fresh Market?

19 A Uh-hum.

20 Q And what type of store is that?

21 A Grocery store.

22 Q And what do you do at the Fresh Market?

23 A Deli prep.

24 Q The deli prep?

25 A (The witness nodded head.)

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

- 1 A No.
- 2 Q But did you recognize the man that had robbed you?
- 3 A Yes.
- 4 Q And he was armed with a weapon?
- 5 A Yes.
- 6 Q Which one was he on there?
- 7 A The top middle.
- 8 Q The night when you were robbed, you mentioned I think
- 9 that the person that robbed you had a hat on?
- 10 A Yes, a beanie.
- 11 Q A beanie?
- 12 A Yes.
- 13 Q Did he have any facial hair?
- 14 A He had a mustache.
- 15 Q And that's the description you given the police?
- 16 A Yes.
- 17 MS. CAMPBELL: Your Honor, at this time we'd offer
- 18 State's Exhibit Number 1 into evidence.
- 19 THE COURT: All right, without objection.
- 20 MS. MCCURRY: No objection.
- 21 (State's Exhibit 1 admitted into
- 22 evidence.)
- 23 MS. CAMPBELL: Your Honor, may I publish it?
- 24 THE COURT: Yes, ma'am.
- 25 MS. CAMPBELL: Thank you.

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

- 1 in that night?
- 2 A Yes.
- 3 Q And it's actually shown on the video that I'm going to
4 get to in a minute?
- 5 A Yes.
- 6 Q State's Exhibit Number Six, what does that show?
- 7 A That would be where the register is.
- 8 Q And was that where you were standing behind that
9 register that night?
- 10 A Yes.
- 11 Q And you're actually in this and I see the computer
12 thing next to you, is that that computer monitor you --
- 13 A Uh-huh --
- 14 Q You referenced?
- 15 A Uh-huh.
- 16 Q And finally State's Exhibit Number Seven, what does
17 that show?
- 18 A That would be me after I got punched in the face.
- 19 Q And the police actually took that picture of you that
20 night?
- 21 A Yeah.
- 22 Q And does it show the area where you were punched?
- 23 A Yes.
- 24 Q And where is that?
- 25 A (Indicating).

MICHAEL VAZQUEZ RECROSS BY MS. MCCURRY

1 A Correct.

2 Q Thank you.

3 MS. CAMPBELL: Thank you, Your Honor. I have
4 nothing further, Your Honor.

5 THE COURT: Anything further of this witness?

6 MS. MCCURRY: Just one, one, question, Your Honor.

7 THE COURT: Go ahead.

8 RECROSS-EXAMINATION

9 BY MS. MCCURRY:

10 Q Mr. Vasquez, isn't it true that you told the officer on
11 the robbery questionnaire it was a red handled knife?

12 A Yes.

13 Q Thank you. No further questions.

14 THE COURT: You may step done, Mr. Vasquez.

15 MS. MCDUFFIE: State calls Deputy Snuffer.

16 THEREUPON,

17 ROBERT SNUFFER,

18 after having been duly sworn, testified as follows:

19 THE CLERK: Please have a seat, state your full
20 name for the record.

21 THE WITNESS: My name is Robert Paul Snuffer.

22 DIRECT EXAMINATION

23 BY MS. MCDUFFIE:

24 Q Morning, Deputy Snuffer, where are you currently
25 employee?

ROBERT SNUFFER DIRECT BY MS. MCDUFFIE

- 1 A Lexington County Sheriff's Department.
- 2 Q And what are your duties with the Lexington County
3 Sheriff's Department?
- 4 A Assistant supervisor for the road patrol.
- 5 Q And in February of 2007 where were you employed?
- 6 A Richland County Sheriff's Department.
- 7 Q And what were your duties with the Richland County
8 Sheriff's Department in February of 2007?
- 9 A I was a senior deputy for road patrol.
- 10 Q And were you assigned a specify area?
- 11 A It was, it was Broad River and -- region four.
- 12 Q And how long have you been in law enforcement?
- 13 A Ten years.
- 14 Q On the evening of -- the early morning hours of
15 February the 5th, 2007, did you have the occasion to be
16 called out to 2831 Broad River Road?
- 17 A I did.
- 18 Q And what was that in reference to?
- 19 A An armed robbery that occurred at This Is It Video.
- 20 Q And is that located in Richland County?
- 21 A It is.
- 22 Q I show you what's been marked as State's Exhibit 37, do
23 you recognize this?
- 24 A I do.
- 25 Q And is it an accurate depiction of the area that you

ROBERT SNUFFER DIRECT BY MS. MCDUFFIE

1 just described?

2 A Yes, ma'am.

3 MS. MCDUFFIE: Your Honor, at this time we offer
4 State's Exhibit 37.

5 THE COURT: Any objection?

6 MS. MCCURRY: No objection, Your Honor.

7 THE COURT: All right, without objection.

8 (State's Exhibit 37 admitted
9 into evidence.)

10 BY MS. MCDUFFIE:

11 Q Deputy Snuffer, can you show the jury on State's
12 Exhibit 37 where This Is It video is located?

13 A Right here (indicating).

14 Q And what are the cross streets around it?

15 A This is Zemer Crest (indicating) and that's Broad
16 River.

17 Q And when you arrived at This Is It Video where did you
18 park your parole car?

19 A On the side so it couldn't be seen.

20 Q And when you arrived, what was the first thing that you
21 did?

22 A I contacted dispatch and had them contact the person
23 inside which was the victim give me the clothing
24 description have them meet me at the front door.

25 Q And why was that?

ROBERT SNUFFER DIRECT BY MS. MCDUFFIE

- 1 A For officers safety.
- 2 Q And once you met the victim at the door what then
3 happened?
- 4 A The victim advised me he had been robbed.
- 5 Q What, what, did he further tell you?
- 6 A He gave a description of the individual.
- 7 Q Please tell the jury what description of the suspect
8 was given to you?
- 9 A He stated the individuals was a black male, age between
10 35 to 40 about 5'10, weight ranges between 150 and 175
11 and a mustache.
- 12 Q Did he also describe the clothing the suspect was
13 wearing?
- 14 A Yes, ma'am.
- 15 Q And how did he describe that clothing?
- 16 A He said he had a black beanie, dark jacket with orange
17 lining, dark pants and shoes were unknown.
- 18 Q And did he give you or did he tell you what had
19 happened that evening?
- 20 A He told me that individual walked into the store and
21 reached over and had a knife, had presented a knife,
22 punched him and took money out of the cash register,
23 fled the scene on foot.
- 24 Q And was the suspect there when you arrived?
- 25 A No, he was not.

ROBERT SNUFFER DIRECT BY MS. MCDUFFIE

- 1 Q Did you observe any injures to the victim, Mr. Vasquez,
2 in this case?
- 3 A A little bit of redness on his face where he was
4 punched.
- 5 Q I show you what's already in evidence as State's
6 Exhibit Number Seven, is this consistent with what you
7 observed that evening?
- 8 A It is.
- 9 Q A the injuries were due to what?
- 10 A He was punched in the face by the subject, the
11 defendant.
- 12 Q And did he tell you that the suspect had a weapon?
- 13 A He did.
- 14 Q How did he describe the weapon to you?
- 15 A He said it was a, he said it was a knife, it was a red
16 handled knife.
- 17 Q And --
- 18 A With a sharp edge at the end.
- 19 Q Sorry, I should have asked you about this before, what
20 time did you arrived at This Is It Video?
- 21 A 12:22 a.m.
- 22 Q That's on February the 5th of 2007?
- 23 A It is.
- 24 Q After you took the description of the suspect and the
25 victim's recount of what happened that evening what did

ROBERT SNUFFER CROSS BY MS. MCCURRY

1 took the cash from the register?

2 A Right.

3 Q So when you wrote this report down that's the way the
4 incident was described to you, correct?

5 A Right.

6 MS. MCCURRY: I have no further questions, Your
7 Honor. Thank you.

8 THE COURT: All right. Anything on redirect?

9 MS. MCDUFFIE: Briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. MCDUFFIE:

12 Q Deputy Snuffer, Mr. Vasquez did tell you that the
13 suspect did present a knife?

14 A He did.

15 Q And he went on further to describe it in the robbery
16 questionnaire as a red handled knife?

17 A He did.

18 Q He gave you that information?

19 A He did.

20 Q You also testified that he told you that it had -- it
21 was a knife with a sharp edge?

22 A Yes.

23 Q And just because that's not in your report doesn't mean
24 that he did not tell you that?

25 A That's right.

ROBERT SNUFFER BY MS. MCDUFFIE

- 1 Q You just failed to write it in your report?
- 2 A Yes, ma'am.
- 3 Q And you're writing these reports on the scene
- 4 typically?
- 5 A Yes, ma'am.
- 6 Q And things are usually hectic?
- 7 A Yes.
- 8 Q Trying to ascertain what's going on?
- 9 A Yes, ma'am.
- 10 Q So something like that may have been left out of your
- 11 report?
- 12 A Yes.
- 13 Q But he did tell you that there was a knife with a red
- 14 handle?
- 15 A Yes.
- 16 Q And that is in your report in two different locations?
- 17 A Yes, ma'am.
- 18 Q No further questions.
- 19 THE COURT: Anything further of this witness?
- 20 MS. MCCURRY: No, Your Honor.
- 21 THE COURT: All right. You may step down, officer
- 22 Snuffer.
- 23 MR. SNUFFER: Thank you.
- 24 MS. MCDUFFIE: Your Honor, we ask that the witness
- 25 to be excuse.

1 deliberations. Under your oath then you are to reach no
2 inference and draw no conclusion whatsoever to the fact
3 that a defendant in this case did not testify. The fact
4 that a defendant did not testify should not even be
5 discussed in a jury room.

6 The burden of proof, as I have stated to you, is
7 upon the state. It is not incumbent upon the accused to
8 prove himself innocent. The burden of proof remains upon
9 the state guilt beyond a reasonable doubt. The fact that a
10 defendant exercises his constitutional right to remain
11 silent is not a factor to be considered by you in
12 determining the guilt or innocence of the defendant.

13 Now. Now, members of the jury, by the
14 constitution and laws which makes you the finders of the
15 fact and the evidence I've just discussed with you. I am as
16 the judge made the sole and only instructor of the law. You
17 must accept as correct the law which I charge and apply it
18 to the evidence as you find it and reach your verdict. And
19 finally I charge you in this regard that you or for that
20 matter I should not be concerned about what the law ought to
21 be but rather what the law is that is as I charge it to you.

22 Now, what is armed robbery, members of the jury?
23 A person who committed robbery while armed with a pistol,
24 dirk, slingshot, metal knuckles, raiser or other deadly
25 weapon, or while alleging either by action or words he was

1 armed while using a representation of a deadly weapon or any
2 object which a person present during the commission of the
3 robbery reasonably believed to be a deadly weapon is guilty
4 of armed robbery.

5 Now, what is a deadly weapon? A deadly weapon is
6 generally defined as any article, instrument or substance
7 which is likely to produce death or great bodily harm. Our
8 armed robbery statute does not require the display of a
9 deadly weapon.

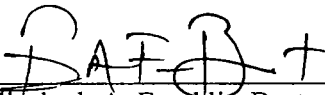
10 Now, members of the jury, although the required
11 force of threat of force for the offense of armed robbery
12 must either perceive or be contemporaneous with the taking
13 of the victim's property the use of a dangerous weapon at
14 any point in robbery shall constitute armed robbery as long
15 as it reasonable can be said to be part of a single
16 occurrence.

17 I charge you, members of the jury, Mr. Foreman,
18 that voluntary intoxication is never an excuse or a defense
19 to a crime. A person who voluntarily renders himself
20 intoxicated is no less responsible for his acts while in
21 such conduct. If a person voluntarily drinks
22 intoxicating liquors or takes drugs and becomes intoxicated
23 or if while in that conduct commits an act which will be
24 a crime if it had been committed by a sober person the fact
25 that that intoxication would not relieve the intoxicated

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Second Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Second Supplemental Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

September 9th, 2010



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL D. JACKSON,

APPELLANT

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

I. The trial court judge erred by not granting appellant's motion to properly redact his written statement so that information relating to other, uncharged crimes would not be before the jury for their consideration.

II. The trial court judge erred by not charging the jury with the lesser-included offense of strong armed robbery because the evidence supported giving the charge, and because deciding whether a box-cutter without a blade is a "deadly weapon" under the statute is a question for the jury.

STATEMENT OF THE CASE

Michael Jackson was indicted by the Richland County grand jury of armed robbery during the April 2007 term. On June 22, 23, and 25 he was tried before the Honorable L. Casey Manning and a jury. He was represented by Carol McCurry, Esquire. He was convicted, and sentenced to life without parole pursuant to *S.C. Code Ann.* § 17-25-45.

This appeal timely follows.

ARGUMENTS

Relevant Facts

Appellant entered This Is It Video, an adult video store, on February 4, 2007 to rob it. There, he encountered the victim, Michael Vazquez, who was working a late night shift as the cashier. After another customer left, appellant approached the cashier and asked him for money. At first the cashier thought he was joking. Appellant then grabbed him and dragged him to where the register was located. According to Vazquez, appellant said that he had "something in his pocket" which the victim understood to be a weapon. The door to the register opened, appellant hit the victim in the face, and then he absconded with approximately \$104 and some credit card receipts. Tr. 17, l. 17- 136, l.1; Tr. 23, ll. 6-11.

Law enforcement arrived on the scene and used a K-9 to track appellant's scent to a nearby neighborhood. He was not, however, arrested that night. After receiving a Crimestoppers tip, law enforcement created a photo line-up, including appellant's picture, which they showed to the victim. The robbery was captured on video, and stills from that tape were broadcast by WISTV over the weekend. The victim identified appellant from that line-up, and he was eventually arrested.

The victim testified at trial that appellant produced a weapon during the robbery, a box cutter. Tr. 22, ll. 14-19. However, during cross-examination, the victim admitted that he never told anyone that appellant threatened to cut him. According to his testimony, he "just threatened [him] by saying he had a weapon in his pocket." Tr. 24, ll. 6-24. He testified that he never told anyone that appellant threatened him, or told him that he had a knife on him. Tr. 24, ll.11-21. Reluctantly, the victim testified he did not remember exactly what he told the police officer that night. Tr. 25, l.3. He also testified that all he saw was a

“red handle of the box cutter and that was it.” Tr. 26, ll.18-23. Robert Snuffer, a police officer who spoke to the victim on the night of the robbery, admitted that his report did not reflect that the victim informed him that appellant had a knife during the crime. Tr. 27, ll.1-13.

Appellant later gave a statement to the police admitting his involvement in the crime. In his statement, appellant admitted that he had a box cutter in his possession, but stated that it did not have a razor in it. Tr. 28, ll.1-8. The statement, which was admitted into evidence, was published to the jury. Appellant was asked:

“Question, Were you armed during the robbery?”

Answer, On the store—on the video store I had a box cutter without the blade in it.”

Tr. 30, ll.5-7.

A box cutter was never recovered.

I. The trial court judge erred by not granting appellant’s motion to properly redact his written statement so that information relating to other, uncharged crimes would not be before the jury for their consideration.

During its case-in-chief, the state introduced appellant’s statement that he gave to police regarding these events. It was admitted into evidence, and published to the jury. Tr. p. 29- 57. This statement actually recounted appellant’s involvement in three armed robberies, although appellant was only tried for this count. Defense counsel moved to redact the statement. In some measure, the parties agreed. Defense counsel, however, also wanted to redact references to a “drill” and to “Mr. Hendricks” which were irrelevant to this case. The court denied counsel’s motion. Tr. 2, l. 3- p. 14, l. 17; Tr. p. 15, l. 18- p. 16, l. 9. This

was error, because the additional material constituted improper character evidence, and appellant should have his conviction reversed. The evidence from appellant's statement, and published to the jury, was the following:

A: It's started out with the first question basically, Michael, I have previously advised you of your rights verbally after your arrest this morning? His response was, Yes. Question, Did you indicated to me that you understood your rights and were willing to talk to me about the robbery? Answer was, Yes. What was the location and time? The video store on Broad River Road next to laundry mat that was about a week ago was his answer.

Question, Were you armed during the robbery?

Answer, On the store—on the video store I had a box cutter without the blade in it. . . .

Question, What happened to the box cutter and the drill?

Answer, That box cutter that I threw it away that same night when I left the video store. I slung it when I was running through the people's yards coming through the store going back to Crazy Mike's. I got the drill from a guy named Brian Hendricks who I had basically been with everyday. I want to level with you, that was his coat too I had on at the video store. That drill might be at Crazy Mike's house in a black tote bag which is right behind the TV.

Next question, Did Brian Hendricks have anything to do with the robbery.

His answer was, No, sir, he just let me use the coat and the drill.

Question, Did he know what you were using the coat and drill for?

Answer, I just told him I would be right back. He didn't have nothing to do with that. He didn't ask no questions.

Tr. p. 29, l. 13- p. 31, l. 19.

Later, the interviewer asked where Brian lived, and asked for a description of him.

Tr. 32, l. 1- 15.

All of this information was improperly before the jury because, until this point, they had heard nothing about either a drill or Brian Hendricks. Both the reference to the drill and to Hendricks was irrelevant information, and improperly introduced character evidence into the trial. The jury would have known, from this exchange, that appellant was also responsible for other criminal acts. See SCRE Rule 403, 404(b), and State v. Lyle, 125 S.C. 406, 118 S.E.803 (1923). Appellant was denied due process. U.S.C.A. 5, 14. See also Estelle v. McGuire, 502 U.S. 62 (1991).

II. The trial court judge erred by not charging the jury with the lesser-included offense of strong armed robbery because the evidence supported giving the charge, and because deciding whether a box-cutter without a blade is a “deadly weapon” under the statute is a question for the jury.

Before the jury was given their instructions, trial counsel objected to the judge’s refusal to charge the jury with the lesser-included offense of strong armed robbery. The judge denied the motion. Tr. 58, l. 9- 62, 1.9.

Pursuant to S.C. Code Ann. §16-11-330(a) (1976):

A person commits robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, is guilty of a felony . . .

A deadly weapon is generally defined as any article, instrument or substance which is likely to produce death or great bodily harm. State v. Scurry, 322 S.C. 514, 473 S.E.2d 61 (Ct.App.1996).

The State has the duty to prove each element of charged crime beyond a reasonable doubt. In re Winship, 397 U.S. 358 (1970). The State was obligated to prove that the instrumentality used during the robbery was a deadly weapon beyond a reasonable doubt.

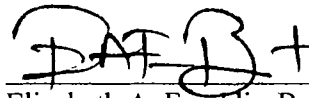
Whether a particular instrument used in an armed robbery is a deadly weapon is a factual issue for the jury. State v. Bennett, 328 S.C. 251, 493 S.E.2d 845 (1997)

By not submitting the jury instruction for the lesser-included offense of strong armed robbery, the judge effectively determined, as a matter of law, that box-cutter without a blade constitutes a deadly weapon for purposes of the statute. This was an improper usurpation of the jury's role. The jury was left with only two alternatives—to acquit appellant completely, or find him guilty of using a deadly weapon during the commission of this crime. Only a charge of strong armed robbery would have allowed the jury to make the finding that appellant was guilty of robbery, but that a denuded box cutter is not a deadly weapon. The judge's refusal to give the instruction, then, contradicts the holding in Bennett, *supra*. Appellant is entitled to have this Court direct a verdict of guilty of strong armed robbery and grant him a new sentencing hearing. *See* State v. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002).

CONCLUSION

With respect to Issue I, appellant respectfully asks this Court to reverse his conviction and order a new trial. With respect to Issue II, appellant respectfully asks this Court to direct a verdict of strong armed robbery and order a new sentencing hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'EAFB+', written over a horizontal line.

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

This 27th day of August, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 27, 2010



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL D. JACKSON,

APPELLANT

CERTIFICATE OF SERVICE

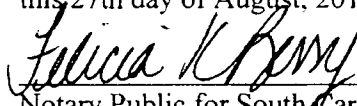
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Harold M. Coombs, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 27th day of August, 2010.



Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 27th day of August, 2010.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: June 21, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable L. Casey Manning, Judge

THE STATE,

RESPONDENT,

V

MICHAEL D. JACKSON,

APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I.

The defendant claims the court erred by not properly redacting his written statement and thereby placing other, uncharged crimes before the jury. (Appellant's Statement of Issues on Appeal I).

II.

The defendant says the court should have charged strong armed robbery, since it was supported by the evidence, and allowed the jury to decide whether a box cutter without a blade is a deadly weapon. (Appellant's Statement of Issues on Appeal II).

STATEMENT OF THE CASE

The Richland County Grand Jury charged the defendant with armed robbery (2007-GS-40-1683). The defendant and his counsel came before the Honorable L. Cayce Manning, Judge, and a jury on June 22, 23, and 25, 2009. The jury found the defendant guilty, and the court sentenced him to life imprisonment without parole. The defendant timely served opposing counsel a notice of appeal.

ARGUMENT

I.

The court ably redacted the defendant's statement

The defendant says the court redacted his statement to omit involvement in other armed robberies but declined to redact irrelevant references to a “drill” and to “Mr. Hendricks.” (IBOA, p. 6). The defendant quotes transcript about his involvement in the video store robbery: in part, the defendant allows arming himself with a box cutter without the blade; Brian Hendricks allowed him to use a drill and the coat that he wore at the video store but did not know his use for the coat and drill. (IBOA, p. 7). The defendant claims that this introduced evidence of his [bad] character and his responsibility for other criminal acts. (IBOA, p. 8).

At trial the defendant objected to including an irrelevant reference to Brian Hendricks and a drill but did not have a problem with his getting the coat from Hendricks. The defendant said the drill was used in other robberies but not at the video store. The objection to not redacting the drill from the statement was made and ruled upon, repeated and ruled upon, and again repeated and ruled upon. (ROA. p. 9; p. 13, lines 4 - p. 14, line 8; p. 15, line 18 - p. 16, line 9). The court insured the objection was renewed before the statement was presented to the jury. (ROA. p. 29, lines 1-17).

The statement admitted committing the robbery while armed with a box cutter - supposedly, with no blade. The defendant said the robbery was a result of drugs and stupidity, and he was sorry. He allowed taking a coat and a drill from a crack head named Brian “B” Hendricks who was at the home of another crack head named Crazy Mike. After the robbery, he threw away the box cutter while running from the store, but the drill and coat

were brought back to Mike's. Brian Hendricks had nothing to do with the robbery - he just let him use the coat and drill. (ROA. pp.30-33).

The defendant's references to a "drill" and to "Mr. Hendricks" show that the defendant borrowed a drill from Mr. Hendricks. Mr. Hendricks also lent the defendant the coat that the defendant wore for the video store robbery. In sum, the defendant got articles from Hendricks, but he did not necessarily use all of them. It is difficult to glean any prejudice to the defendant. The admission of evidence in a criminal case rests in the sound discretion of the trial judge and - wanting a showing of prejudice to the defendant - should not be disturbed on appeal. State v. Kirton, 381 S.C. 7, 22-24, 671 S.E.2d 107 (Ct. App. 2008).

II.

The court ably charged the jury

The victim was less than two hours away from the 2:00 AM closing of the video store when the defendant demanded money, grabbed his clothing, and dragged him to the register. (SROA. pp. 2; ROA. pp. 17-20). The defendant held a weapon - a box cutter - in his hand and threatened him. The victim opened the money drawer. The defendant grabbed the money and punched him in the face before running away. (ROA. pp. 21-22; SROA p. 4, lines 16-25).

There are two stories about the object that the victim believed to be a deadly weapon. First, the victim believed his assailant was armed with a weapon and threatened him with a red handled box cutter or other type of knife. (ROA p. 23, lines 22-23; SROA p. 3, lines 2-5; ROA p. 24, lines 14-17; p. 26, lines 11; SROA p. 5, line 12). The victim reported that the robber had a knife - a red handled knife with a sharp edge at the end. (SROA. pp. 5-9; ROA p. 27; SROA. 10-11). Second, in his statement to police, the defendant claimed that when he robbed the video store he had a box cutter without the blade in it. (ROA. pp. 29-30).

The defendant moved for a jury instruction on strong armed robbery in that, while he confessed, he later claimed that there was no blade in the box cutter. The court denied the motion on the ground that it was still armed robbery. (ROA p. 58, line 9 - p. 59, line 4; p. 62, lines 2-18). The court charged the law of armed robbery and the definition of a deadly weapon to the defendant's entire satisfaction and noted counsel's exception on strong armed robbery. (SROA. pp. 12-13; p. Second SROA p.1).

The court was entirely correct. The only evidence is that the defendant either robbed the victim while armed with a deadly weapon or robbed the victim while holding an object

that the victim reasonably believed to be a deadly weapon. In either instance, the offense was armed robbery. S. C. Code Ann. § 16-11-330. A trial judge is constitutionally required to "explain so much of the criminal law as is applicable to the issues made by the evidence adduced at trial." State v. Stone, 285 S.C. 386, 330 S.E.2d 286 (1985). There was no evidence that the defendant committed the lesser rather than the greater offense, and the court was not required to charge the lesser included offense. State v. Murphy, 322 S.C. 321, 471 S.E.2d 739 (Ct. App. 1996).

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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October 4, 2010

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Richland County
Honorable L. Casey Manning, Judge

THE STATE,

Respondent,

vs.

MICHAEL D. JACKSON,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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October 4, 2010

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Appellant.

PROOF OF SERVICE

I, Harold M. Coombs, Jr., certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Elizabeth A. Franklin-Best, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 4th day of October, 2010.

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