

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

Jun 22 2020

S.C. SUPREME COURT

QUINCY A. MCCANTS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001436

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

-vs-

QUINCY ANDRE McCANTS,

Defendant.

)
)
)
)
)
)
)

TRANSCRIPT OF RECORD

05-GS-32-4674

October 16 & 17, 2006
Lexington, South Carolina

B E F O R E:

HONORABLE R. KNOX McMAHON, Judge; and a jury.

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

SAMUEL R. HUBBARD, III, Deputy Solicitor
Attorney for the State

JONATHAN HARVEY, Esquire
STANLEY L. MYERS, Esquire
Attorneys for the Defendant

L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

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7 NO. DESCRIPTION ID. EV.

8 1 Advise of rights 47 265

9 2-5 Photographs 175

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23 1 Note from jury 441

24

25

Date: 10/16/06⁵County: Lexington

VOIR DIRE

Case No: 05-GS-32-4674Judge: McMahonPl./State: StateState/Pl's. Atty: HubbardDefendant: Quincy McCantsDefense Atty: Harvey / MyersCourt Reporter: Pantsari

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Juror No.	Name	Sex	Race	*Court	Strikes		Accept
					Plaintiff	Defense	
219	Samme Willis	m	w			✓(1)	
103	Robert Laffoday	m	w				✓(1)
153	David Peterson	m	w				✓(2)
78	Timothy Harrison	m	w			✓(2)	
29	Ricky Conner	m	w			✓(3)	
150	Tony Parker	m	w				✓(3)
45	Danny Driggers	m	w				✓(4)
140	Theresa Murphy	F	w			✓(4)	
199	Danny Suggs	m	w				✓(5)
188	Kimberly Smith	F	w				✓(6)
51	John Fisher	m	w			✓(5)	
230	Julie Creel	F	w			✓(6)	
67	Carolyn Green	F	B				✓(7)
60	Kelly Gardner	F	w				✓(8)
72	Curtis Hall	m	w		✓(1)		
234	Jack Thacker	m	w				✓(9)
81	Cathi Hers	F	w				✓(10)
10	Cynthia Boone	F	w				✓(11)

*For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense.

Date: 10/16/06
County: Lexington

VOIR DIRE

Case No: 05-GS-32-4674

Judge: *Mc Mahon*

Pl./State: State

State/Pl's. Atty: Hubbard

Defendant: Quincy McCants

Defense Atty: Harvey / Myers

Court Reporter: Pantzari

Page 2 of 2

[illegible]

*For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense.

1 (The following proceedings were reported on
2 October 16, 2006.).

3 THE COURT: Solicitor, if you would call your
4 first case for trial, please.

5 MR. HUBBARD: Yes, sir, Your Honor. The State
6 calls Indictment 2005-GS-32-4674, the State versus
7 Quincy Andre McCants. It's an indictment for armed
8 robbery. Your Honor, it has been true billed. The
9 State is ready for trial.

10 THE COURT: Thank you, Solicitor. Mr. Harvey,
11 Mr. Myers, you represent Quincy Andre McCants?

12 MR. HARVEY: We do, Your Honor.

13 THE COURT: Is the defense ready for trial?

14 MR. MYERS: Yes, Your Honor.

15 MR. HARVEY: Ready, Your Honor.

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

17 Ladies and gentlemen of the jury panel, the
18 State has called for trial 2005-GS-32-4674. It is a
19 true bill indictment, the State versus Quincy Andre
20 McCants.

21 The indictment reads that Quincy Andre McCants
22 did in Lexington County, on or about November 7, 2004,
23 while armed with a deadly weapon, to wit, a firearm,
24 and/or what appeared to be a firearm and/or what the
25 Defendant represented to be a firearm and/or what a

1 person present during the robbery would reasonably
2 believe to be a deadly weapon, feloniously take from the
3 person or presence of the victim, to wit Chandra Wright,
4 an employee of Li'l Cricket located at 2900 Sunset
5 Boulevard, West Columbia, South Carolina by means of
6 force or intimidation, goods or monies described as U.S.
7 currency, in violation of Section 16-11-330 (a) of the
8 South Carolina Code of Laws, 1976 as amended.

9 The indictment is not evidence. It is only a
10 charging paper. It is the formal document by which a
11 defendant is placed on notice of the charge lodged
12 against him or her and by which the Defendant is advised
13 to appear in court and answer said charge.

14 I am going to ask a number of questions and
15 again ask you to respond fully and completely and
16 truthfully as to the responses to any of these
17 questions.

18 The State in this case is represented by
19 Deputy Solicitor Hubbard. Mr. Hubbard, would you
20 introduce yourself to the jury panel and any members of
21 the Solicitor's staff that will be assisting you in the
22 prosecution of this case.

23 MR. HUBBARD: Yes, sir, Your Honor. I'm Rick
24 Hubbard. I've been with this office since 1994. I'm
25 the Deputy Solicitor. We have an office of about 20

1 attorneys, and I will be handling this one by myself.

2 THE COURT: Thank you, Mr. Hubbard. Is any
3 member of the jury panel related by blood or marriage or
4 close personal friends of Mr. Hubbard or any employee of
5 the Lexington County Solicitor's Office? If so, please
6 stand.

7 (There is no response).

8 THE COURT: The defense in this case is
9 represented by Mr. Jonathan Harvey and Mr. Stanley
10 Myers. Mr. Harvey, if you would introduce yourself and
11 Mr. Myers and your client, please.

12 MR. HARVEY: My name is Jonathan Harvey. I'm
13 a lawyer from Columbia. I represent this young man,
14 Mr. Quincy McCants. Another lawyer who is helping me in
15 this case is Mr. Stanley Myers. He practices here in
16 West Columbia. Stanley is able to speak for himself
17 better than I, I think.

18 MR. MYERS: Good morning, ladies and
19 gentlemen. I'm Stanley Myers. I grew up in Lexington
20 County by way of Swansea, South Carolina. I practice
21 over in West Columbia in the law firm of Moore, Taylor,
22 and Thomas. We have got 12 lawyers.

23 Your Honor, should I run down the names of all
24 those?

25 THE COURT: No, sir. Thank you, Mr. Harvey,

1 Mr. Myers. Is any member of the jury panel related by
2 blood or marriage or close personal friends of either
3 Mr. Harvey or Mr. Myers or have you ever been
4 represented by either Mr. Harvey or Mr. Myers? If so,
5 please stand.

6 (Juror stands).

7 THE COURT: Your number and name, please, sir?

8 PROSPECTIVE JUROR: Number 44, David Dowdy.

9 THE COURT: Mr. Dowdy, are you friends or have
10 you been represented by one of these two gentlemen?

11 PROSPECTIVE JUROR: I've been represented by
12 Mr. Myers.

13 THE COURT: Mr. Myers. The fact that you have
14 been represented by Mr. Myers, could you still be a fair
15 and impartial juror to both the State and the defense in
16 this case?

17 PROSPECTIVE JUROR: I don't see why not.

18 THE COURT: Thank you, sir. You may be
19 seated. Any others?

20 (There is no response).

21 THE COURT: Mr. Harvey also introduced his
22 client, Quincy Andre McCants. Is any member of the jury
23 panel related by blood or marriage or close personal
24 friends of Quincy Andre McCants? If so, please stand.

25 (There is no response).

1 THE COURT: In the indictment the individual
2 named as the victim -- again, the indictment is not
3 evidence -- is named Chandra Wright, C-H-A-N-D-R-A,
4 Wright. Is Ms. Wright present in the courtroom?

5 MR. HUBBARD: She is not in the courtroom,
6 Your Honor, but she is here.

7 THE COURT: Again, some of the witnesses may
8 or may not be present. They are not required to be
9 present at this time. But is any member of the jury
10 panel related by blood or marriage or close personal
11 friends of an individual Chandra Wright? If so, please
12 stand.

13 (There is no response).

14 THE COURT: Besides what I have read in the
15 indictment this morning, which is not evidence, does any
16 member of the jury panel have any knowledge about the
17 facts of this case?

18 It alleges an armed robbery which occurred on
19 November 7, 2004, at the Li'l Cricket located at 2900
20 Sunset Boulevard, West Columbia. Does any member of the
21 jury panel have any knowledge about the facts of this
22 case? If so, please stand.

23 (There is no response).

24 THE COURT: Does any member of the jury panel
25 have any bias or prejudice towards the parties, either

1 the State of South Carolina or the Defendant, Quincy
2 Andre McCants? If so, please stand.

3 (There is no response).

4 THE COURT: Has any member of the jury panel
5 heard or know anything about this case from any source
6 whatsoever? If so, please stand.

7 (There is no response).

8 THE COURT: I am going to read out a list of
9 potential witnesses in the case. If any of them are
10 present, I will ask them to stand as I call out their
11 names. I will call their names out in groups of five.

12 Again, the question is if you are related by
13 blood or marriage or close personal friends of any of
14 these individuals who are listed as potential witnesses
15 in this case. Brett Sims. This is Mr. Sims. Bryant
16 Hinz, Eddie Poplin, Jim Hickman. This is Mr. Hickman.
17 And Duane Johnson.

18 (There is no response).

19 THE COURT: The next five: Ashley Milton
20 Russell, Ernestine McDaniels, Eliza Davis, Luke Fossum,
21 and Edward A. Porter.

22 (There is no response).

23 THE COURT: The next five: Joe Means,
24 M-E-A-N-S, Stan Smith, Scott McDonald, Chandra Wright.

25 (There is no response).

1 THE COURT: The next five: Joe Galloway,
2 Gloria Hill, Joseph McCants, Andre Bates, Helen Hudson,
3 and finally an individual listed as a custodian of
4 records with Li'll Cricket store.

5 MR. HUBBARD: Your Honor, I believe it's
6 Audrey Bates. I may have misspelled it.

7 THE COURT: Audrey Bates. Is any member of
8 the jury panel related by blood or marriage or close
9 personal friends of any of the names of the potential
10 witnesses that I just called? If so, please stand.

11 (There is no response).

12 THE COURT: Is any member of the jury panel
13 related by blood or marriage or close personal friends
14 of any member of the Lexington County Sheriff's
15 Department? If so, please stand.

16 (Juror stands).

17 THE COURT: Yes, sir, your number and name,
18 please?

19 PROSPECTIVE JUROR: Forty-two, David DeFlorio.

20 THE COURT: You are related or are you
21 friends?

22 PROSPECTIVE JUROR: Close friends with the
23 Lexington County Sheriff's Department.

24 THE COURT: The fact that you have a close
25 friend with the Lexington County Sheriff's Department,

1 could you still be a fair and impartial juror to both
2 the State and the defense in this case?

3 PROSPECTIVE JUROR: I believe I can.

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

5 Is any member of the jury panel related by
6 blood or marriage or close personal friends of any
7 officer employed with the Richland County Sheriff's
8 Department or the State Law Enforcement Division? If
9 so, please stand.

10 (Juror stands).

11 THE COURT: This is Mr. Dowdy.

12 PROSPECTIVE JUROR: Again, sir.

13 THE COURT: You are related or friends?

14 PROSPECTIVE JUROR: My brother is a sheriff's
15 deputy in Richland County.

16 THE COURT: The fact that your brother is a
17 Richland County sheriff's deputy, could you still be a
18 fair and impartial juror to both the State and the
19 defense in this case?

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Thank you, sir. You may be
22 seated.

23 (Juror stands).

24 THE COURT: Yes, ma'am, your number and name,
25 please?

1 PROSPECTIVE JUROR: One hundred thirty-seven,
2 Debbie Morrow.

3 THE COURT: Is it relation or friends?

4 PROSPECTIVE JUROR: Friends.

5 THE COURT: With Richland County or S.L.E.D.?

6 PROSPECTIVE JUROR: S.L.E.D.

7 THE COURT: The fact that you have a close
8 personal friend employed with the State Law Enforcement
9 Division, could you still be a fair and impartial juror
10 to both the State and the defense in this case?

11 PROSPECTIVE JUROR: Yes, I believe so.

12 THE COURT: Thank you, ma'am. You may be
13 seated.

14 Has any member of the jury panel personally
15 been employed by a civilian or military law enforcement
16 agency? If so, please stand.

17 (Juror stands).

18 THE COURT: Your number and name, please?

19 PROSPECTIVE JUROR: Number 29, Rick Connor.

20 THE COURT: Were you employed by civilian or
21 military?

22 PROSPECTIVE JUROR: I was employed by a
23 civilian, Richland County.

24 THE COURT: The fact that you were employed
25 with a Richland County law enforcement agency, could you

1 still be a fair and impartial juror to both the State
2 and the defense in this case?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: Thank you, sir. You may be
5 seated.

6 (Jurors stand).

7 THE COURT: Yes, sir.

8 PROSPECTIVE JUROR: I missed one, 234, Jack
9 Thacker. I have a brother-in-law that is a guard here
10 in Lexington.

11 THE COURT: You say that's your
12 brother-in-law?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: He is employed where?

15 PROSPECTIVE JUROR: Over here at the jail.

16 THE COURT: At the detention center?

17 PROSPECTIVE JUROR: Yeah, the detention
18 center.

19 THE COURT: The fact that you have a
20 brother-in-law employed at the detention center, could
21 you still be a fair and impartial juror to both the
22 State and the defense in this case.

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Thank you, sir. You may be
25 seated.

1 Is there any member of the jury panel a member
2 of or a contributor to any group which has as its
3 primary concern the promotion of law enforcement or
4 victims' rights?

5 These groups would include but not be limited
6 to C.A.V.E., C.A.D.R.E., M.A.D.D., or S.A.D.D. If you
7 are a member or contributor to any of those groups,
8 please stand.

9 (Juror stands).

10 THE COURT: This is Ms. Smith?

11 PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: One hundred eighty-nine; is that
13 right, Madame Clerk?

14 CLERK: Yes, sir.

15 THE COURT: What group is that, Ms. Smith?

16 PROSPECTIVE JUROR: I am the activity site
17 director for Mothers Against Drunk Drivers.

18 THE COURT: The fact that you have a
19 relationship with Mother's Against Drunk Driving, could
20 you still be a fair and impartial juror to both the
21 State and the defense in this case?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Thank you, ma'am. You may be
24 seated.

25 (Juror stands).

1 THE COURT: Yes, ma'am, your number and name,
2 please?

3 PROSPECTIVE JUROR: Two hundred thirty, Cree1.
4 I am retired from the State Office of Victim Assistance.
5 I know it's not one you mentioned, but we did work with
6 that.

7 THE COURT: The fact that you are retired from
8 the State Office of Victim Assistance, and that's
9 S.O.V.A., could you still be a fair and impartial juror
10 to both the State and the defense in this case?

11 PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: Thank you, ma'am. You may be
13 seated. Any others?

14 (There is no response).

15 THE COURT: Is there any member of the jury
16 panel or a member of your immediate family that has been
17 a victim of a violent crime within the past five years?
18 If so, please stand.

19 (Juror stands).

20 THE COURT: Your number and name, please, sir?

21 PROSPECTIVE JUROR: One hundred twenty-four,
22 George McCrary.

23 THE COURT: Was it you or a family member?

24 PROSPECTIVE JUROR: My grandson was murdered.

25 THE COURT: The fact that you have had such a

1 tragedy in your life, sir, could you still be a fair and
2 impartial juror to both the State and the defense?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Thank you, sir. You may be
5 seated.

6 (Juror stands).

7 THE COURT: Yes, ma'am.

8 PROSPECTIVE JUROR: One hundred thirty-seven,
9 Deborah Morrow.

10 THE COURT: Was it you or a family member?

11 PROSPECTIVE JUROR: Did you say friend?

12 THE COURT: Close personal friend, that's fine
13 also, yes, ma'am. Was it a close personal friend?

14 PROSPECTIVE JUROR: Yes, it was.

15 THE COURT: What type of crime was it?

16 PROSPECTIVE JUROR: It was a murder/suicide.

17 THE COURT: The fact that a close personal
18 friend was involved in such a tragedy, could you still
19 be a fair and impartial juror to both the State and the
20 defense in this case?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: Thank you, ma'am. You may be
23 seated.

24 Has any member of the jury panel or a member
25 of your immediate family been an actual or potential

1 witness in a case on behalf of the Lexington County
2 Sheriff's Department? If so, please stand.

3 (Juror stands).

4 THE COURT: Your number and name, please, sir?

5 PROSPECTIVE JUROR: I think it's 78. Yes,
6 sir, it's 78, Tim Harrison.

7 THE COURT: Were you a witness or a potential
8 witness?

9 PROSPECTIVE JUROR: I thought you said for a
10 family member.

11 THE COURT: I did. I did. Was it a family
12 member that was a witness?

13 PROSPECTIVE JUROR: My wife witnessed an
14 automobile accident about six months ago.

15 THE COURT: The fact that your wife witnessed
16 an automobile accident, could you still be a fair and
17 impartial juror to both the State and the defense in
18 this case?

19 PROSPECTIVE JUROR: Yes, I can.

20 THE COURT: Thank you, sir. You may seated.

21 Does any member of the jury panel know of any
22 reason whatsoever why you feel you could not be a fair
23 and impartial juror to both the State and the defense in
24 the trial of this case? If so, please stand.

25 (There is no response).

1 THE COURT: I find that the panel is
2 qualified. The strikes are ten and five; is that
3 correct?

4 MR. HUBBARD: Yes, sir, Your Honor.

5 THE COURT: If you would give us a jury
6 please, Madame Clerk.

7 (During the jury selection process, the jurors
8 were called forward and peremptory strikes were
9 exercised as noted by the attached voir dire sheet made
10 a part of this record at page 5).

11 (The jury is impaneled at 11:58).

12 THE COURT: Any motions from the State
13 regarding the jury selection process?

14 MR. HUBBARD: No, sir, Your Honor.

15 THE COURT: Any motions from the defense
16 regarding the jury selection process?

17 MR. HARVEY: No motions from the Defendant,
18 Your Honor.

19 THE COURT: Ladies and gentlemen of the jury
20 panel, I have some matters of law to take up in regards
21 to this case this afternoon. So rather than hold y'all
22 captive back in the jury room, momentarily I am going to
23 release y'all from jury service for the remainder of the
24 day.

25 When I release you, the bailiff will show you

1 where to report back to in the morning. I will ask you
2 to please be back in place at 9:30 a.m., 09:30 in the
3 morning to your new home, the jury room, in regards to
4 this case.

5 During the break I remind you that you are not
6 to discuss this case with anyone. This will include
7 your fellow jurors, your friends and your family. If
8 your home is like mine, right time you get home in the
9 afternoon someone is asking: What did you do today or
10 how was your day, something like that.

11 Obviously you can tell your family you have
12 been selected on a jury, but you cannot discuss the case
13 with even your family members. Additionally, you cannot
14 discuss it with any of the people involved in this trial
15 or anyone else.

16 If anyone tries to talk with you about this
17 case, please let me know immediately. You may do so by
18 contacting the number for the Clerk's Office. I don't
19 know if there is any media coverage of this or any case,
20 but do not read, watch or listen to any news reports
21 about this trial.

22 Additionally, do not do any research on the
23 internet or do not do any investigations on your own
24 concerning this trial. You will decide this case based
25 on the law as I tell you the law is and the evidence

1 that is presented from this witness stand in this
2 courtroom, that and that alone. Remember to keep an
3 open mind about this case until I instruct you to begin
4 your deliberations.

5 Any objections to what I have just told the
6 jury from the State?

7 MR. HUBBARD: No, sir, Your Honor.

8 THE COURT: From the defense?

9 MR. HARVEY: None from the defense, Your
10 Honor.

11 THE COURT: Ladies and gentlemen, with that
12 being said, again, you are excused for the remainder of
13 the day. If you will go with our bailiff, Mr. Corley.
14 He will show you where to report back at 09:30 in the
15 morning. Have a pleasant afternoon.

16 (The jury is excused for the day at
17 12:01 p.m.)

18 THE COURT: At 1:30, Solicitor?

19 MR. HUBBARD: That would be fine.

20 MR. MYERS: That would be fine.

21 THE COURT: Y'all can stand aside until 1:30.

22 (Whereupon there was a luncheon recess).

23 THE COURT: What motions do y'all have?

24 MR. HUBBARD: Your Honor, I know we have a
25 Denno hearing. Then I know Mr. Harvey has got a number

1 of motions.

2 MR. HARVEY: If Your Honor please. It may be
3 before we go to Jackson v. Denno hearing, Your Honor, I
4 had filed a motion to suppress the statements that I
5 assume will be the substance of the Jackson v. Denno
6 hearing.

7 Your Honor, in this particular case.
8 Mr. McCants, it's my understanding, that the statements
9 that are intended to be offered by the State are
10 statements made by Mr. McCants on several occasions to
11 law enforcement officers.

12 There is clearly no question he was in
13 custody. We don't need -- we concede that. Then we
14 have the Miranda issue, but to get to the heart of the
15 matter is whether or not these statements that the State
16 intends to offer are, in fact, confessions.

17 The statements, as I understand the
18 statements, are denials of this particular conduct. The
19 statement is saying in essence: I can't remember. I
20 was on drugs. I was high. I can't say if I remember
21 anything about this particular incident.

22 So, Your Honor, then what we have got, we have
23 got the initial issue, which is whether or not these
24 statements are confessions. A confession is a direct
25 acknowledgement of guilt. There is no direct

1 acknowledgement of guilt.

2 A confession does not apply to a mere
3 statement of fact from which guilt may be inferred. A
4 confession is distinguished from an admission as to
5 pertinent facts because an admission, in conjunction
6 with other facts, tends to prove guilt.

7 But a confession is a direct acknowledgement
8 of guilt; whereas, an admission is a statement of
9 pertinent facts. In this particular instance, the
10 motion we had filed and the supporting memorandum, one
11 salient issue is whether or not the statements amount to
12 confessions or even admissions.

13 In essence he is saying I -- he is not saying
14 he did it. He is saying: The reason I can't say I can
15 tell you whether I did it or not, I was on drugs. If
16 these statements come in, then you have his character
17 placed into evidence about drugs, and he hasn't
18 testified.

19 These statements amount to: I can't remember,
20 and the reason I can't remember is I was on drugs. So
21 one of the linchpin issues in a Jackson v. Denno hearing
22 is for Your Honor to decide about the confession and
23 whether or not the substantive content of the statement
24 is a confession, and then there is the other criteria.

25 Your Honor, there is no evidence of drug use

1 in the case. He says he may have been high. It's
2 certainly not clear and convincing evidence that he was
3 under the influence of cocaine at the time of the
4 incident.

5 Evidence of drug use unrelated to the crime
6 charged, we contend is inadmissible under 404 (b) and
7 Lyle as any part of the res gestae of the crime --

8 MR. HUBBARD: I might be able to speed things
9 up a little bit if Mr. Harvey doesn't mind me jumping
10 in.

11 If Mr. Harvey is willing to concede that
12 Miranda was given both on January 5 and January 7, that
13 everything was properly done and his client understood
14 what he was doing, and freely and voluntarily spoke to
15 Brett Sims with the Sheriff's Department, and on the 5th
16 he denied doing the crime and didn't have any idea how
17 his fingerprints got on the chips.

18 On the 7th he said: I don't recall. I don't
19 remember. I will drop any language or any discussion
20 about the cocaine, although those words came from his
21 mouth. I think I can logically go into them. I will
22 ask my officer to just say he said: I can't remember.

23 As to the chips, once again, he said: I have
24 no idea how my fingerprints got on those chips. The
25 significance to me is two days later he goes from a

1 denial to: I don't know. I can't tell you if I was
2 there or not.

3 If he is willing to concede that, I will drop
4 any discussion of cocaine, which hopefully would satisfy
5 him about prior crimes.

6 THE COURT: All right. Do we have a bailiff
7 for the back door, Mr. Corley?

8 BAILIFF: No, sir, we don't, but I can go back
9 there if you want me to.

10 MR. HARVEY: Your Honor, this is some of his
11 family.

12 THE COURT: That's all right. If that's his
13 family coming in, I will allow it.

14 MR. HARVEY: If Your Honor please. Our
15 position is that these statements still don't amount to
16 an admission or a confession. I mean, he has the
17 perfect --

18 THE COURT: Let me ask you this, Mr. Harvey.
19 I don't want to interrupt you, but I did. I may not
20 want to but I did.

21 MR. HARVEY: Certainly.

22 THE COURT: Then does it just become a matter
23 of whether or not they are admissible under 403,
24 separate and distinct from the drug use? He is saying
25 the statement on the 5th is he denies doing the crime,

1 and he doesn't know how his fingerprint got on a chip
2 bag.

3 Then on the 7th he is saying: I don't recall.
4 I don't remember. Since you can prove a crime or you
5 can prove a fact -- it doesn't have to be a crime -- by
6 direct or circumstantial evidence and the jury has to
7 make that decision, isn't that an inference that a jury
8 can draw that the change of a statement, whether we call
9 it a confession or not, is some evidence of
10 consciousness of guilt?

11 That takes care of your 404 (b) issue
12 entirely, your drug issue. I'm not -- please, don't get
13 me wrong, I am not trying to box you in. He has got his
14 witnesses here, and he can go forward with the Jackson
15 versus Denno because. I am just hearing what y'all are
16 telling me right now, not what the witnesses have
17 testified to.

18 But if a person -- and the jury may say:
19 Well, that's not a change of story. He denies doing it,
20 and then he says he didn't recall. A jury could draw
21 that inference also. They don't have to say that is an
22 inference of guilt. They can say that it -- they can
23 put no weight to it.

24 But isn't it something that the jury would
25 have the right -- that a jury could listen to, and then

1 the jury would determine the weight of the evidence?
2 That cures obviously the drug issue, which is of concern
3 to you also and to the Defendant.

4 MR. HARVEY: Your Honor, my position is that
5 these statements are really of no substantive value.
6 It's the functional equivalent of him not saying
7 anything at all.

8 He says: I didn't do it, and I think the
9 change is somewhat semantic, not substantive, and that
10 what the State in essence wants to do is put into
11 evidence his denial of wrongdoing without him having to
12 testify.

13 What the difficulty in that is, Your Honor, if
14 he has said: I did it, on day one, and day two he says:
15 I can't remember now or if you had some evidence of him
16 acknowledging guilt and then you had these subsequent
17 conversations that would, as Your Honor would say, tend
18 to show some sort of acknowledgement of guilt, but he
19 has never done that.

20 He said: I didn't do it. I don't know. I
21 can't remember. He never said: I may have done it. I
22 can't remember. He never made an admission of
23 wrongdoing. He just says he can't remember.

24 So to have him saying: I can't remember, come
25 in, I believe, is improper. Then the prejudicial impact

1 to him puts him in a position of having to explain to
2 the jury why he doesn't remember when he is really not
3 compelled to have to offer any evidence at all.

4 So it's a subtle burden-shifting issue as
5 well. If he had, again, acknowledged culpability or
6 admitted wrongdoing with respect to this incident, it
7 would be different, if he had a confession or an
8 admission. These particular statements, I would
9 respectfully submit, don't fit into either category.

10 THE COURT: I think they are relevant. I
11 think they are relevant under 403. I do not think they
12 are the functional equivalent of silence because
13 obviously he has a right to remain silent under the
14 Federal and State Constitution.

15 Further, like a wise judge once told me, you
16 can't prove everything on a pencil point. The State can
17 offer this evidence. Whatever weight and value it has,
18 the jury can decide.

19 It clearly doesn't burden shift because I will
20 tell the jury that the State has the burden of proving
21 its case beyond a reasonable doubt. Mr. McCants is
22 presumed innocent.

23 Should he not testify, I would fully and
24 completely charge them his right not to testify and that
25 they could not even discuss that fact back in the jury

1 room.

2 To get back to the basics though, I don't know
3 where we are at on the record as far as the Jackson
4 versus Denno hearing and what we started off with. We
5 now have already gone to discussing the admissibility of
6 statements made on the 5th and the 7th of January of
7 2006. I don't even know what year it was, 2006?

8 MR. HUBBARD: 2004, Your Honor.

9 THE COURT: Justice moves slowly, 2004.

10 MR. HUBBARD: In 2005 the statements were
11 made. I'm sorry, Your Honor.

12 THE COURT: 2005. All right. It's not as
13 slow as I thought. So I guess to back up a moment, this
14 motion is -- well, now that I look at it, your motion
15 did not revolve around Jackson v. Denno.

16 It did revolve around Lyle and Adams and Huff.
17 So I have ruled in limine. Is that what I have done,
18 that this evidence is admissible under 401?

19 MR. HUBBARD: Your Honor, I guess my question
20 is I know I offered to withdraw anything any comment
21 about the cocaine if he would say that Miranda was
22 properly given, which I don't think has been in dispute.

23 If he is willing to do that, I am willing to
24 pare down the actual substance of the statements. I
25 didn't get a response from him on that.

1 MR. HARVEY: Your Honor, our position is one,
2 I am cognizant of the Court's ruling about the
3 substantive nature of the statements. I understand that
4 has been overruled.

5 But with respect to -- it's the State's
6 decision what to do about the drug use. We clearly
7 think that any statement made to law enforcement with
8 respect to his drug use, clearly we contend is
9 inadmissible.

10 Again, we think it's highly prejudicial. They
11 can't prove his drug use by clear and convincing
12 evidence. Then it isn't part of the res gestae of the
13 alleged armed robbery that is before the Court.

14 If the State is going to make that decision on
15 what it intends to put before the Court with respect to
16 the drug use, we stand by our position. I am here on
17 behalf of my client.

18 Our position for purposes of the record is
19 that, one, the statements shouldn't come in because of
20 their substantive nature, which Your Honor has
21 overruled.

22 The second ground is any comment about his
23 drug use or why he can't remember because of drug use or
24 anything to do with drug use certainly is inadmissible
25 under 403 and 404 (b).

1 Our position would be his drug use is
2 intertwined with the nature of the statements. If they
3 can't get in the statement about his drug use, they
4 ought not to be allowed to use the statement at all
5 because they are not using -- it's just improper.

6 Again, rather than belabor the point, I have
7 cited in the motion to suppress one ground that it's not
8 clear and convincing. Another ground, that the evidence
9 of drug use is unrelated to the crime charged. It's not
10 Lyle or res gestae.

11 The prejudicial value of his drug use clearly
12 outweighs the probative value in this particular
13 instance. We just feel as though his drug use is not
14 relevant to the State's ability to prove the crime in
15 this case.

16 THE COURT: Solicitor, did you want to say
17 something?

18 MR. HUBBARD: Your Honor, without conceding
19 his objection to the statements as a whole, if he would
20 simply let us know if he is okay with Miranda or not on
21 both of these statements, then we can go forward without
22 Jackson v. Denno. Otherwise, I can go ahead and put my
23 witnesses up to make a record about the Denno hearing.

24 THE COURT: Mr. Harvey.

25 MR. HARVEY: Beg the Court's indulgence for a

1 moment.

2 (Pause).

3 THE COURT: Solicitor, Mr. Harvey, don't you
4 think we have to have a hearing on the statements being
5 introduced if he is in custody to determine the
6 voluntariness of the statements? Aren't you going to
7 expect me to charge the jury on the voluntariness of the
8 statement?

9 MR. HUBBARD: Yes, sir, we do.

10 THE COURT: Don't I have to make the initial
11 determination about Miranda and the voluntariness?

12 MR. HUBBARD: You do, Your Honor. I was just
13 wondering if his client says that on the record, if we
14 got that on the record. But I have never waived it.
15 Since we were in this posture, I wanted to ask.

16 THE COURT: I think I still have to make that
17 initial determination.

18 MR. HARVEY: Your Honor, I think the best
19 thing -- I have talked with my client. I think the best
20 course is to -- again, I may have, when Mr. Hubbard
21 mentioned the statements in Jackson v. Denno hearing, I
22 thought that was the appropriate time to make the
23 substantive argument about the content of the statement.
24 But I think we need to go forward with the hearing in
25 respect to the statement.

BRETT SIMS -- IN CAMERA DIRECT -- MR. HUBBARD

35

1 THE COURT: Thank you, Mr. Harvey.

2 Solicitor, you may call your witness.

3 MR. HUBBARD: Call Brett Sims to the stand.

4 BRETT EDWARD SIMS, being
5 first duly sworn, testified as follows:

6 CLERK: State your full name, please.

7 THE WITNESS: Brett Edward Sims.

8 IN CAMERA DIRECT EXAMINATION

9 BY MR. HUBBARD:

10 Q Detective Sims, are you employed with the Sheriff's
11 Department?

12 A I am.

13 Q Back in January of 2005, were you employed with the
14 Sheriff's Department?

15 A I was.

16 Q Were you the lead investigator on a case involving
17 Quincy Andre McCants?

18 A That's correct.

19 Q January 5, 2005, did you have an opportunity to
20 interview Mr. McCants?

21 A I did.

22 Q Where did that interview take place?

23 A Richland County Sheriff's Department.

24 Q Prior to interviewing him -- he was a suspect
25 obviously in armed robbery cases?

1 A Correct.

2 Q Prior to interviewing him, did you go over his
3 rights, commonly known as Miranda rights, before he
4 spoke to you?

5 A I did.

6 Q Did you use anything to assist you in going over
7 those rights?

8 A I did.

9 Q I want to show you this form and see if you
10 recognize that.

11 A I do.

12 Q What is that form?

13 A It is a suspect statement form with the Lexington
14 County Sheriff's Department.

15 Q At the top of that form, does it have the Miranda
16 rights listed one, two, three, four, and five?

17 A It does.

18 Q Now, if you would, at the very top it has the
19 information about January 5, 2005?

20 A That is correct.

21 Q Who filled all that information out?

22 A I did.

23 Q That includes Quincy McCants' name, his date of
24 birth, and all that information?

25 A That is correct.

1 Q Then you get down to a part where it says: Duly
2 warned and advised me. Then it lists the rights,
3 one, two, three, four, and five?

4 A That is correct.

5 Q And then below that it says: Understanding these
6 rights, I make the following statement. There is a
7 space there for a written statement?

8 A That is correct.

9 Q Please explain to the Court what you did with this
10 form and how you used it in interviewing
11 Mr. McCants.

12 A After obtaining the information, personal
13 information, that was filled in at the top of the
14 statement, I then read each line to Mr. McCants.
15 After having done that, I asked if he understood
16 that and had him initial by that number after each
17 individual line, one through five.

18 Q Will you do it just as you did for Mr. McCants on
19 January 5, 2005.

20 A Yes, sir. Number one states: That I have the
21 right to remain silent and not make any statements
22 at all.

23 Q Did he initial that line?

24 A He did. Number two states: That any statement I
25 do make can be used against me in court.

1 Q Did he initial that line?

2 A He did. Third statement states: That I have the
3 right to have an attorney present at any time
4 during questioning.

5 Q Did he initial that statement?

6 A He did. The fourth: That if I cannot afford an
7 attorney, I can apply to the Court to have one
8 appointed at no cost to me.

9 Q Did he initial number four?

10 A He did. The fifth and final one says: If I decide
11 to talk to an officer without an attorney present,
12 I may stop at any time and request an attorney be
13 present for further questioning.

14 Q Did he initial number five?

15 A Yes, sir.

16 Q And did you go on to read: Understanding these
17 rights, I make the following statement?

18 A Yes, sir.

19 Q Did he agree at that point to talk to you?

20 A Verbal statements. He agreed.

21 Q He would not write anything down?

22 A That is correct.

23 Q Let me pull this microphone back just a touch.

24 It's very sensitive. Just speak up and it will be
25 fine.

1 A Okay.

2 Q At the time you were questioning Mr. McCants, was
3 he in custody in Richland County?

4 A He was.

5 Q At the time you were questioning him, did he appear
6 to understand what he was doing?

7 A He did.

8 Q Did he appear to be under the influence of any
9 drugs or alcohol or medication?

10 A Not to my knowledge, no.

11 MR. HARVEY: I'm sorry, I can't hear.

12 BY MR. HUBBARD:

13 Q Speak up if you would.

14 A Okay.

15 MR. HARVEY: If you could repeat the last
16 question, please.

17 BY MR. HUBBARD:

18 Q Did he appear to be under the influence of any
19 drugs, alcohol or medication?

20 A No, sir.

21 Q Detective, at one point you used to be a narcotics
22 officer with Lexington County; is that true?

23 A That is correct.

24 Q You had plenty of opportunity to see people under
25 the influence of drugs, both legal and illegal

1 drugs?

2 A That is correct, yes, sir.

3 Q And people under the influence of alcohol?

4 A Yes, sir.

5 Q Did he show any signs of being under the influence
6 at all?

7 A No, sir.

8 Q Did he seem to acknowledge each and every one of
9 his rights?

10 A He did.

11 Q Did he reveal anything about himself or was there
12 anything obvious to you that might tell you that he
13 didn't understand what was going on?

14 A No, sir.

15 Q Did you make any promises to him that if he were to
16 talk to you, you might be able to do something for
17 him?

18 A Did not.

19 Q No promises?

20 A Absolutely not.

21 Q Did you threaten him: If you don't talk to me,
22 something is going to follow. These consequences
23 are going to follow if you don't talk to me?

24 A No, sir.

25 Q No threats, no coercion?

- 1 A No.
- 2 Q Did he decide to speak to you?
- 3 A He did.
- 4 Q You say he just decided he would speak orally, give
5 an oral statement but not a written statement?
- 6 A That is correct.
- 7 Q What did he tell you on January 5, 2005, when you
8 asked him if he committed this robbery on
9 November 7, 2004, at the Li'l Cricket in Lexington
10 County?
- 11 A He said he had no knowledge.
- 12 Q Is this the one where he said he didn't do it?
- 13 A That's correct.
- 14 Q Do you have your notes with you if you need them?
- 15 A No, sir, I don't have them.
- 16 Q I think they are in here, Detective. (Hands to
17 witness).
- 18 A Thank you.
- 19 Q January 5th, did he admit he was involved in this
20 robbery, did he deny it or did he not remember on
21 January 5th?
- 22 A Denied it.
- 23 Q Did you ask him about fingerprints on the potato
24 chip bags?
- 25 A I did.

1 Q What was his response about the fingerprints, his
2 fingerprints on the potato chip bag?

3 A He didn't know how they got on there.

4 Q Is this the substance of the statement he gave you
5 on January the 5th?

6 A It was.

7 Q I want to jump ahead or actually two days after
8 this. On the 6th you actually booked him into
9 Lexington County, wasn't it? It might have been on
10 the 5th.

11 A Yes, I did.

12 Q Did he indicate to you when you were having him
13 brought over and put in the jail that he wanted to
14 talk with you?

15 A He did.

16 Q Did you talk to him on the night of the 6th or the
17 night of the 5th in Lexington County or did you
18 wait until January 7th?

19 A The 7th.

20 Q At whose request did he talk or did you get with
21 him on the 7th?

22 A His.

23 Q At his request?

24 A Uh-huh. (Indicating affirmative response).

25 Q So on the 7th he had at least spent a night in the

1 jail and got whatever rest he needed, and you spoke
2 to him on the 7th?

3 A That is correct.

4 Q Prior to speaking to him on January 7th, what, if
5 anything, did you ask?

6 A I went to the booking area and asked him if he
7 would like to talk. He stated that he did. At
8 that time he was escorted to an interview room, and
9 he was again given Miranda off of a card verbally
10 by myself.

11 Q Let me ask you this. Prior to even giving him the
12 verbal warnings -- I mean, giving him his warnings
13 off a card -- did you ask him again about this
14 Miranda form he had filled out on the 5th?

15 A I did.

16 Q Did he remember doing that?

17 A He did.

18 Q After you did that, what did you do?

19 A I then Mirandized him again verbally from a card.

20 Q Do you have that card with you?

21 A Yes, sir.

22 Q Will you please produce it and read those rights as
23 you did for Mr. McCants on January the 7th. Is
24 that the very card you used?

25 A It's the only one I have, yes, sir.

1 Q Please read those rights if you can the way you
2 read them to Mr. McCants on January the 7th,
3 2005.

4 A You have the right to remain silent. Anything you
5 say can and will be used against you in a court of
6 law. You have the right to talk to a lawyer and
7 have him present while you are being questioned.

8 If you cannot afford to hire a lawyer, one
9 will be appointed to represent you before any
10 questioning if you wish. You can decide at any
11 time to exercise these rights and not answer any
12 questions or make any statements.

13 Do you understand each of these rights as I
14 have explained to you? Having these rights in
15 mind, do you wish to talk to us now?

16 Q Did he indicate he wanted to talk to you?

17 A He agreed to, yes, sir.

18 Q What, if anything, did he tell you on January 7th,
19 2005?

20 A He stated he did not recall. He did not remember
21 doing it.

22 Q Did you ask him specifically about the robbery at
23 the Li'll Cricket on November 7, 2004?

24 A I did.

25 Q And his response as to the robbery was what again?

1 A "I do not remember doing it."

2 Q Did he give an indication why he did not remember?

3 A He said he was on cocaine, and it was hard for him
4 to remember, and he could not recall.

5 Q Did you ask him as to the fingerprints on the
6 potato chip bags again?

7 A I did.

8 Q What was his response?

9 A He again stated that he did not remember, that he
10 was on cocaine, and it was hard for him to
11 remember.

12 Q Could he give any explanation or did he give any
13 explanation for the fingerprints?

14 A None further.

15 Q Again, on this date, as someone who has been an
16 officer for some time and worked in narcotics, did
17 he appear at that time to be under the influence of
18 any drugs, legal or illegal, or alcohol?

19 A No, sir.

20 Q At any time on that date, did you make any promises
21 that if he were to talk to you or to change his
22 story or tell you something new, you would do
23 something for him?

24 A No, sir.

25 Q Did you in any way make any threats on January 7,

1 2005, that if he were to just change his story from
2 the 5th, that he didn't do it, he was going to face
3 certain consequences?

4 A No, sir.

5 Q Let me ask you this. On both the 5th and the 7th
6 when you are talking to him, at any time during
7 either one of those conversations, did he stop you
8 and say: I don't want to talk anymore?

9 A No, sir.

10 Q During either one of these conversations, did he
11 stop you and say: I want my lawyer?

12 A No, sir.

13 Q Both of the these statements when he was talking to
14 you, did he appear to understand what he was doing?

15 A He did.

16 Q Did he appear to understand his rights?

17 A He did.

18 Q Did he appear to voluntarily give up those up
19 rights and talk to you?

20 A He did.

21 MR. HARVEY: Your Honor, that's a conclusion
22 for the Court or finder of fact to make, the
23 voluntariness of it.

24 THE COURT: I overrule the objection. You may
25 proceed, Solicitor.

1 BY MR. HUBBARD:

2 Q At each statement did he tell you he would only
3 give a verbal statement?

4 A That is correct.

5 MR. HUBBARD: Your Honor, I would like to mark
6 for identification purposes at this time the original
7 Miranda form from January 5th, 2005.

8 MR. HARVEY: I would like to see it. Has that
9 been Bate stamped into evidence.

10 MR. HUBBARD: No, it has not. But your copy
11 is on page 148 of the information I gave you. This is
12 the original.

13 (State's Exhibit Number 1 is marked for
14 identification).

15 MR. HUBBARD: That's all I have at this time,
16 Your Honor.

17 THE COURT: May I see that, Solicitor.

18 MR. HUBBARD: Yes, sir, Your Honor.

19 (Hands to Court).

20 THE COURT: Did you locate your copy of this,
21 Mr. Harvey?

22 MR. HARVEY: I have, Your Honor.

23 THE COURT: By this I was referring to State's
24 1 for I.D. Mr. Harvey, you may proceed.

25 MR. HARVEY: Thank you, Your Honor.

1 **IN CAMERA CROSS EXAMINATION**

2 BY MR. HARVEY:

3 Q Other than the advise of rights form from
4 January 5, 2005, do you have any other notes
5 concerning that conversation?

6 A My report.

7 Q Your report, the typed report?

8 A It is.

9 Q And in that report is that report generated from
10 your handwritten recollection of what transpired or
11 did you type that report subsequent to the
12 interview?

13 A I don't recall.

14 Q Now, do you recall when the statement that you took
15 and has been marked for identification, was that
16 actually taken in Richland County or in Lexington
17 County?

18 A Richland.

19 Q And that was after Mr. McCants had turned himself
20 in to Richland County, right?

21 A That's correct.

22 Q At the time you took the statement in Richland
23 County, do you know if Richland County had
24 questioned him prior to your arrival?

25 A I believe they had.

1 Q And prior to your questioning of Mr. McCants,
2 hadn't you been informed by Richland County agents
3 that Mr. McCants had informed them of his drug use?

4 A I don't recall.

5 Q And you don't -- hadn't Mr. McCants told the
6 Richland County authorities that he had been in
7 essence on a cocaine binge prior to him turning
8 himself in?

9 A I wasn't present during that part of the interview.

10 Q And your testimony is you can't recall whether or
11 not Richland County authorities had informed you of
12 Mr. McCants' informing them of his cocaine use
13 within -- at least extensive cocaine use in close
14 proximity to the time he turned himself in?

15 A I don't recall.

16 Q As I recall your testimony, on January 5th,
17 Mr. McCants denied being involved in this case;
18 correct?

19 A That is correct.

20 Q And then you testified on January 6th in your
21 notes, you saw him when he was being booked
22 correct?

23 A That was the same day, correct.

24 Q January 6th was when he was being booked into
25 Lexington County, correct?

1 A Correct.

2 Q Your notes, you generated some notes concerning the
3 conversation on January 7th; correct?

4 A The report, yes, sir.

5 MR. HARVEY: May I approach the witness, Your
6 Honor?

7 THE COURT: Yes, sir.

8 BY MR. HARVEY:

9 Q I will hand you a document and tell me, it's Bate
10 stamped page 67. Do you recognize that document?

11 A Yes, sir.

12 Q That is your report, correct?

13 A That is correct, yes, sir.

14 Q And that report talks about the events of
15 January 7th, correct?

16 A Correct.

17 Q And Mr. Melton, Deputy Melton, was present as well
18 or Detective Melton?

19 A Correct.

20 Q Did Detective Melton make any notes about this
21 case?

22 A I don't recall.

23 Q To your recollection Mr. McCants said that he did
24 not remember doing the robbery, he was on cocaine,
25 and it made him unable to remember. Did he

1 actually use the exact words, "made him unable to
2 remember details," or is that your -- since you
3 typed this on the 13th, which was a week later, and
4 you didn't take any contemporaneous notes, with
5 respect to your recollection of the substance of
6 the conversation on the 7th, there are no
7 contemporaneous notes; are there?

8 A I don't recall.

9 Q So when you typed this -- because this says on
10 1/13/05, correct?

11 A Uh-huh. (Indicating affirmative response).

12 Q On 1/13/05 what is typed in this report isn't based
13 upon contemporaneous notes that you made of what
14 Mr. McCants said, it's your recollection a week
15 later; correct?

16 A It's based on his statement.

17 Q No, sir. My question to you is: You have
18 testified there are no contemporaneous notes of the
19 1/7/05 conversation, correct?

20 A Not to my knowledge at this time.

21 Q Well, if there were, you were the lead investigator
22 you would know; right?

23 A Uh-huh. (Indicating affirmative response).

24 Q So does the file have contemporaneous notes of what
25 Mr. McCants said on January 7, 2005?

1 A I don't recall at this time.

2 Q Now, you will agree with me that the date on the
3 report is January 13, 2005; correct?

4 MR. HUBBARD: Which report is he referring to,
5 Your Honor?

6 MR. HARVEY: It's Bate stamped page 67.

7 MR. HUBBARD: That's good.

8 A That is correct.

9 Q That date means that's the date you typed it up,
10 correct?

11 A That's correct.

12 Q All I'm asking you is January 13, 2005, is six days
13 after you met with Mr. McCants; correct?

14 A Yes, sir.

15 Q When you typed up that report, that was your
16 recollection of what you remember Mr. McCants
17 saying; correct? I mean, you wouldn't have just...

18 A That is absolutely correct.

19 Q Okay. And you can't tell us with any degree of
20 certainty that you are sure that the words that you
21 put in the report are the words that Mr. McCants
22 used in talking with you? That's just your trying
23 to remember the gist of what Mr. McCants told you,
24 correct?

25 A That was his statement.

1 Q No, sir, that is your recollection.

2 THE COURT: No, sir. He said that's his
3 statement.

4 BY MR. HARVEY:

5 Q Now, you testified that Mr. McCants had requested
6 the meeting on 1/7?

7 A He stated that he wanted to rest, that he would
8 talk, and to come back, he would talk. He said
9 that he was tired, and if I would come back and
10 talk to him the next day. At that time he was very
11 tired.

12 MR. HARVEY: Beg the Court's indulgence for a
13 moment.

14 THE COURT: Yes, sir, certainly.

15 (Pause).

16 BY MR. HARVEY:

17 Q What exactly did Mr. McCants tell you on 1/7/05?

18 A Do you want me to read the report?

19 Q No, sir. I want you to tell me what Mr. McCants
20 told you, not what the report says. Do you know
21 exactly what Mr. McCants told you?

22 MR. HUBBARD: Your Honor, my only objection is
23 going to be if it's what was said is in that report,
24 he's got a right to refer to the report.

25 THE COURT: I would agree. He does have that

1 right under 803 (5). He may refer to his reports,
2 Mr. Harvey.

3 MR. HARVEY: Certainly. Again my question is,
4 Your Honor -- if I may, Your Honor?

5 THE COURT: Yes, sir.

6 MR. HARVEY: Our position is he testified he
7 talked to Mr. McCants on January 7th. Then he says on
8 January 13th he wrote a report based upon his
9 recollection of what Mr. McCants said.

10 THE COURT: Yes, sir.

11 MR. HARVEY: I am asking him, does he remember
12 exactly what Mr. McCants said, not what the report says,
13 but what does he remember what Mr. McCants said. The
14 reason I am asking that Your Honor is this.

15 If the report is his recollection of what he
16 thought Mr. McCants said rather than a contemporaneous
17 record of what Mr. McCants said, that places the
18 statement or what it is in a different light than a
19 confession. It's his recollection about what
20 Mr. McCants said rather than what Mr. McCants said.

21 So I think that is distinguishable between a
22 statement -- if you have a written statement or recorded
23 statement and contemporaneous notes of what Mr. McCants
24 said without him being able to remember what Mr. McCants
25 said.

1 Then this is just, you know, a recollection of
2 a conversation that he had that they are trying to
3 introduce as a confession without being able to give the
4 Court the content of what was supposedly said in that
5 second conversation. So that's the purpose in asking
6 the question.

7 THE COURT: I understand your purpose, but the
8 purpose of Jackson versus Denno is the voluntariness of
9 the statement. For example, Mr. Sims could have had a
10 head injury from January the 7th or from January the
11 13th of '05 to today and not even be able to remember
12 Mr. McCants or meeting with Mr. McCants.

13 You can certainly ask him: Do you
14 independently remember what Mr. McCants said? He may
15 say -- I don't know what he will say, but he can still
16 refer to his notes even if he didn't have an independent
17 recollection.

18 Now, he may have had an independent
19 recollection. He obviously did on the 13th of January
20 or either he made it up. Of course, that would go to
21 the weight and not the admissibility.

22 I'm not saying you can't ask the question: Do
23 you remember what he says? I don't know what the answer
24 is going to be. You can ask him that, but I still say
25 under 803 (5), he could say: I don't remember. But he

1 can also refer to his report.

2 Again, I think that goes to the -- I haven't
3 made my finding under Jackson versus Denno, but I think
4 that would go to the weight to be given to Mr. Sims'
5 testimony by a jury, not whether or not it's admissible.

6 MR. HARVEY: I understand, Your Honor.

7 THE COURT: All right, sir.

8 BY MR. HARVEY:

9 Q You will agree with me other than the report
10 that you looked at, that I showed you, there is no
11 independent documentation of what transpired during
12 the meeting of the 7th; correct?

13 A Just what you see here.

14 Q Mr. Melton didn't make any notes?

15 A I don't recall.

16 Q You didn't videotape him?

17 A No.

18 Q And you didn't have Mr. McCants initial that card
19 that you read the rights from and put it in the
20 file?

21 A No, sir.

22 (Pause).

23 Q I have asked so many questions I may have
24 forgotten. In your discussions with Mr. McCants on
25 the 5th, did Mr. McCants ever inform you he had

1 been up on cocaine?

2 A I don't recall.

3 Q On the 7th did Mr. McCants ever inform you that he
4 had been up on cocaine within like close proximity
5 to the 7th when you questioned him, within several
6 days?

7 A The 6th, again, like I said, he stated he was
8 tired, and we ceased and then returned when he was
9 rested.

10 Q Just for the purpose of clarity, I may have missed
11 it. What is the statement that the solicitor asked
12 you Mr. McCants made on the 7th?

13 A He said he was unable to remember, unable to -- the
14 suspect was confronted with the fingerprints on the
15 bag of chips from the robbery. He said he did not
16 remember doing the robbery, and he was on cocaine.
17 It made him unable to remember some details.

18 MR. HARVEY: That's all we have, Your Honor.

19 THE COURT: Thank you, Mr. Harvey. Anything
20 in redirect, Solicitor?

21 MR. HUBBARD: No, sir, Your Honor.

22 THE COURT: Thank you, Detective Sims. You
23 may step down. Any other witnesses, Solicitor?

24 MR. HUBBARD: Not on this matter, Your Honor.

25 THE COURT: Mr. Harvey, do you have any

1 witnesses?

2 MR. HARVEY: No witnesses, Your Honor.

3 THE COURT: Thank you, Mr. Harvey. Would you
4 like to be heard, Mr. Harvey, as to Jackson versus
5 Denno?

6 MR. HARVEY: Your Honor has heard the
7 substance of the testimony. I am aware of the standard
8 of Jackson v. Denno. Again, we have an individual
9 who -- I guess my objection -- I won't argue. I will
10 let the Court decide.

11 I think the evidence is unpersuasive in
12 Jackson v. Denno, understanding the Court to rule
13 differently and would interpose that objection on behalf
14 of my client.

15 I guess we will address, as the Court
16 correctly pointed out to me and I stand corrected, that
17 the substantive nature of the statement may be a
18 different issue than the voluntariness of the statement.

19 THE COURT: Solicitor.

20 MR. HUBBARD: Your Honor, I think we have
21 given ample testimony to show that both statements were
22 given in full knowledge of his rights. Both statements
23 were made voluntarily.

24 There was a substantive change in those
25 statements, which although is not part of Jackson v.

1 Denno, it certainly shows why those statements are
2 relevant.

3 Miranda was complied with on both occasions,
4 and we should be able to proceed. Everything else goes
5 to the weight of the evidence.

6 THE COURT: Thank you, Solicitor. I would
7 find, as far as the Court's initial determination,
8 based on the testimony presented as to the statement
9 of January 5, 2005, that the statement was given in
10 compliance with the mandates of Miranda versus Arizona
11 and that it was given freely and voluntarily. There
12 is no question the Defendant was in custody at that
13 time.

14 Additionally, the statement on the 7th, he
15 was again advised of his Miranda rights after being
16 allowed to rest. The testimony is uncontroverted at
17 this point that he waived those rights and voluntarily
18 gave those statements, verbal statements, also on the
19 7th.

20 I would find that as an initial determination
21 which complies with Miranda and that it was voluntarily.
22 At this point unless I hear otherwise based on my ruling
23 in limine, I would rule that drug use would not be
24 admissible.

25 MR. HUBBARD: Yes, sir.

1 THE COURT: In the statement of the 7th.

2 MR. HUBBARD: I will instruct Detective Sims.
3 I know he is present in the courtroom, but we will go
4 over that again and make sure that that will not come
5 out.

6 THE COURT: That is based on what I heard now.
7 Obviously that can change during the course of the
8 trial. Should you think it were to change, Solicitor,
9 please notify the Court before --

10 MR. HUBBARD: Yes, sir.

11 THE COURT: -- you waded into that territory.

12 MR. HUBBARD: Yes, sir.

13 THE COURT: Any other motions at this time as
14 to the statements, Mr. Harvey?

15 MR. HARVEY: Again, Your Honor, I would just
16 readdress my point about the substantive content of the
17 statement. It's not a confession. I don't think it's
18 an admission.

19 The fact he says: I didn't do it or I can't
20 remember doing it, I think is of no probative value. It
21 really doesn't provide any evidence or link to any other
22 evidence that the State is going to present in its case
23 in chief.

24 It's just a statement by him saying: I didn't
25 do it and I can't remember doing it. So, again, the

1 statement, his denial, I believe if it were in
2 conjunction with the ability of the State to show some
3 affirmative acknowledgement or some evidence found out
4 about Mr. McCants making a statement admitting facts in
5 relation to this case, that his not being able to
6 remember or his denying doing it, would be of no
7 probative value.

8 It's not as if he told someone: I did it.
9 Now I can't remember. He just says: I can't remember.
10 So I believe under a 403 analysis, the prejudice that
11 Mr. McCants would face from a jury hearing the fact he
12 said: I didn't do it or I can't remember doing it,
13 without that evidence being linked to anything the State
14 can put in its case in chief, would be prejudicial.
15 Thank you, Your Honor.

16 THE COURT: Thank you, Mr. Harvey. I would
17 rule at this time that it would be admissible under 401,
18 and I have conducted a 403 analysis and find it would
19 not be inadmissible as a result of that analysis. Do
20 you have other motions?

21 MR. HARVEY: I do.

22 THE COURT: All right, sir.

23 MR. HARVEY: Your Honor, I have -- there is a
24 motion with respect to the fingerprint evidence in this
25 case. We have submitted a written motion to the Court

1 and a memorandum in support of this.

2 Your Honor, Quincy McCants moves to suppress
3 all evidence related to a fingerprint allegedly taken
4 from a potato chip bag on the basis that the State's
5 loss or destruction of the bag deprives the Defendant of
6 his right to due process, his right to a fair trial, his
7 right to complete -- present a complete defense, his
8 right to exculpatory evidence.

9 We make these arguments under the United
10 States and South Carolina Constitutions and therefore
11 move that all evidence related to the potato chip bag
12 and to the alleged fingerprint taken from that bag is
13 inadmissible.

14 We submitted a written motion to that effect.
15 Your Honor, there is a memorandum in support of the
16 motion. Your Honor, it's my understanding that the
17 chronology of events roughly is this.

18 An armed robbery takes place. The employee of
19 the incident site contacts law enforcement. Law
20 enforcement officers respond to the scene. Subsequent
21 to the initial officers being at the scene, an
22 identification officer is called.

23 The identification officer performs some
24 identification work at the incident location. Included
25 in that work was processing two potato chip bags for

1 latent fingerprints.

2 There are two potato chip bags in question.
3 One was a potato chip bag that was purportedly purchased
4 by the perpetrator of this armed robbery in close
5 proximity.

6 What happened, if I may, Your Honor, someone
7 bought a potato chip bag, left the incident location,
8 returned a short time thereafter with a bag, put the bag
9 on the shelf -- a shelf, put that bag on a shelf -- went
10 to a cooler, got a drink and came back to the counter
11 with a different bag of potato chips and effectuated the
12 alleged armed robbery that we are here for today.

13 Your Honor, it's my understanding that the bag
14 or the bags that were processed for latent prints were
15 not kept in evidence. It's my understanding that they
16 were never brought back to the Lexington County
17 Sheriff's Department and placed into evidence.

18 The bags either remained at the incident
19 location or were destroyed, I don't know which. But be
20 that as it may, the bags were never placed into
21 evidence.

22 Under the Federal Constitution, we believe
23 that the State's actions in failing to preserve the
24 potentially exculpatory evidence violates the standard
25 of due process. The seminal case was Arizona versus

1 Youngblood and California versus -- I believe it's
2 pronounced Tribeta (phonetic).

3 Your Honor, South Carolina addressed that
4 issue in State versus Cheeseborough. In State versus
5 Cheeseborough the Defendant claimed his due process
6 rights were violated by the destruction of a murder
7 weapon, and he sought to suppress any testimony
8 regarding what was a gun.

9 The gun had been recovered months after the
10 crime and ballistic tests showed it matched bullets
11 recovered in the investigation of the barber shop murder
12 for which the Defendant was on trial and another
13 killing.

14 It was photographed. The bullets from the
15 scene -- the bullets from the scene and the bullets test
16 fired from the gun were preserved and made available to
17 the defense, but the gun itself had been destroyed
18 through normal police procedures before the defense team
19 could examine it.

20 The Supreme Court found that there was no
21 Federal due process violation; however, the Court found
22 that under the alternative prong under the due process
23 standard, there was no showing that the gun had
24 exculpatory value that was apparent before it was
25 destroyed.

1 The witness did not express any doubt that the
2 gun in the photographs was the gun given to the
3 Defendant. The gun was definitively identified as the
4 murder weapon.

5 But most significantly, the Court held there
6 was a lack of apparent exculpatory value, especially
7 given the fact that the gun was recovered months after
8 the crime, and fingerprints were not an issue.

9 In this case the Cheeseborough analysis
10 compelled a finding that the Defendant's Federal due
11 process rights were violated by the State's failure to
12 preserve the potato chip bag.

13 Here from the outset of the investigation, the
14 potato chip -- actually bags -- but one bag in
15 particular was known by the police to be relevant and
16 potentially exculpatory.

17 The store videotape connected the potato chip
18 bag to the robbery. The bag was recovered immediately
19 following the robbery, and fingerprints were clearly an
20 issue as the State lifted prints from the bag for
21 testing.

22 The bag's relevance and exculpatory value was
23 clearly known to law enforcement officials at the time
24 the decision was made not to preserve the bag as
25 evidence.

1 The failure to preserve the bag deprived the
2 Defendant of any opportunity to verify that the lift
3 from which the State contends matches the Defendant's
4 known print was actually taken from this bag.

5 No other comparable evidence is available to
6 the defense. The State's failure to preserve this
7 evidence violates fundamental fairness as guaranteed by
8 the right to due process and deprives him of his right
9 to present a complete defense.

10 Your Honor, we also submitted a State
11 constitutional right to due process claim as well. The
12 South Carolina Constitution provides a separate and
13 independent due process guarantee from the United States
14 Constitution. That's our constitutional Article I,
15 Section 3.

16 Your Honor, the South Carolina cases have
17 addressed claims under the Federal due process guarantee
18 applicable in State prosecutions. A number of -- what I
19 believe we have to do in this particular instance is we
20 should balance a number of factors, as the degree of
21 culpability of the State, the materiality of the
22 evidence, the potential prejudice to the Defendant, and
23 other evidence of guilt.

24 In this case even if Your Honor finds that the
25 Arizona Youngblood standard wasn't met, it should apply

1 a balancing test like the State's cases I cited in the
2 memorandum in determining if the South Carolina
3 Constitution's due process protection was violated.

4 Your Honor, the State was at least negligent,
5 if not grossly negligent, in failing to preserve the
6 only piece of evidence which had the potential to
7 identify the perpetrator of this robbery.

8 The value was clearly material. It was the
9 only potential source of evidence by which an
10 identification could be made. The prejudice to the
11 Defendant is great.

12 He can't challenge the State's conclusions
13 concerning the identification without having his own
14 expert compare the print analyzed by the State to the
15 print actually left on the bag.

16 The fingerprint, until Friday at 5:00 o'clock
17 when we had prepared this motion -- and that's another
18 issue -- when this motion was done, we contend the
19 fingerprint is the State's only evidence linking him to
20 this crime.

21 Under these circumstances he has been deprived
22 of his State constitutional right to due process to a
23 fair trial and an opportunity to present a complete
24 defense.

25 We believe that the State, by destroying the

1 bag, has -- the State, by not preserving the bag, and
2 again, Your Honor, we are not saying the bag was taken
3 in and then destroyed. The bag was never kept.

4 The failure for the State to preserve this
5 evidence deprives him of due process, we contend, under
6 the Federal Constitution. If Your Honor doesn't find a
7 Federal claim, we believe under the State Constitution,
8 he is also entitled to due process.

9 The State, by its failure to preserve the bag,
10 has deprived him of the opportunity to examine this
11 evidence and for him to conduct an independent
12 examination of this piece of evidence.

13 We are not talking about doing an independent
14 evaluation of the identification, but the actual piece
15 of evidence from which the fingerprint identification
16 came from was not kept into evidence and clearly had
17 potential exculpatory value at the time it was taken.

18 Another ground, it has material value because
19 had he been able to have his own expert identify it,
20 then he would have been able to have gotten the full
21 benefit of being able to fully analyze all the evidence
22 in the case against him.

23 He is able to look at the fingerprint card and
24 the fingerprint identification, but he is unable to have
25 someone go to the piece of evidence which was the source

1 of the card.

2 Again, Your Honor, we would respectfully
3 submit that the fingerprint identification, because of
4 the State's failure to keep this potentially exculpatory
5 and material evidence, has deprived him of due process,
6 and as a result of that the fingerprint identification
7 evidence should be prohibited in this case. Thank you,
8 Your Honor.

9 THE COURT: Thank you, Mr. Harvey. Let me ask
10 you a couple of questions on Cheeseborough. I don't
11 think I saw it in your memorandum. You do not contend
12 that the State destroyed the evidence in bad faith?

13 MR. HARVEY: No. I mean, that's why I
14 articulated the second...

15 THE COURT: So that under Cheeseborough you
16 contend that the evidence possessed an exculpatory value
17 apparent before the evidence was destroyed, and the
18 Defendant cannot obtain other evidence of comparable
19 value by other means?

20 MR. HARVEY: Correct. Your Honor, the source
21 of the print was the bag.

22 THE COURT: Then, of course, you allege the
23 Federal constitutional and the State constitutional due
24 process.

25 MR. HARVEY: Right. Again, I'm not alleging

1 bad faith. As I understand it, it's one or another.
2 Even though it is somewhat inexplicable to me why the
3 bag would not have been preserved, they weren't taking
4 it into evidence.

5 THE COURT: Thank you, Mr. Harvey. Solicitor.

6 MR. HUBBARD: Yes, sir, Your Honor. Your
7 Honor, the State did not fail to preserve evidence.
8 They did not fail to keep evidence or destroy evidence.
9 The evidence taken in this case were latent lifts.

10 They took three latent lifts, one off one
11 potato chip bag. They couldn't get a reading on that
12 one later. Two latent lifts came off another bag of
13 chips. That's what the expert that we are going to put
14 up says: The fingerprints belong to Quincy McCants.

15 That's the evidence. We don't care about the
16 bag of chips. I would like to have them in the
17 courtroom as a demonstrative aid, but they are not
18 evidence.

19 If I give the jury a bag of chips, I don't
20 know what they are going to do with them. The evidence
21 is what was on them. That's the latent lifts. As Your
22 Honor knows, these bags are greasy, slippery bags.

23 On the one hand, they are good for getting a
24 print. But once you lift that print, the best place for
25 another expert who wants to reanalyze this case is to

1 look not to the bag of chips, but it's the original
2 latent lift.

3 We have got those. We have had those since
4 the night of this armed robbery. They have been
5 preserved in evidence. We are prepared to put them in
6 evidence at trial.

7 No one has at any time requested to review
8 those for expert analysis. The defense has never
9 produced an expert saying: I would like to review those
10 to see if those are, in fact, Quincy McCants'
11 fingerprints.

12 If they would like to do that, Your Honor,
13 they can do that tonight or if Your Honor wants to give
14 them a day to do that, that's fine. But in the two
15 years we have been sitting on this case, no one has
16 requested to do an independent analysis of those latent
17 lifts.

18 If they were to try to pull them off those
19 bags, they are not going to get anything because of the
20 nature of those bags, and I think that's what my expert
21 would tell Your Honor as well. He was out of town
22 today.

23 MR. HARVEY: Your Honor again, I hate to
24 interrupt, but I have had an independent person look at
25 the match.

1 MR. HUBBARD: Well, then I'm not sure where
2 the prejudice is.

3 MR. HARVEY: The prejudice is, Your Honor,
4 that the independent expert cannot look at the bag. If
5 you use super glue or you use dust or if the bag is
6 preserved, then the expert can go to the source of the
7 print and do a complete independent latent fingerprint
8 examination.

9 The prejudice to him is he is deprived of the
10 opportunity to do that because it may be exculpatory and
11 it's material for him to have someone tell him:

12 Mr. McCants -- if it is, in fact, the case, and I am
13 just saying in terms of materiality, in terms of getting
14 the full benefit of counsel, which is knowing what is
15 exculpatory and also knowing how to assess the nature of
16 your case, he has been deprived of the opportunity to
17 have a complete independent exam done of that piece of
18 evidence because the State has failed to keep that piece
19 of evidence.

20 I assume when the fingerprint identification
21 expert comes in on behalf of the State, he is going to
22 say: I matched the latent with a known sample, but that
23 expert can't say: I know of my only knowledge that
24 latent print that I matched came from that bag because I
25 never looked at the bag.

1 So having someone be able to say: Yes, I
2 looked at a latent print and I looked at a known sample,
3 and I reviewed the identification, and the
4 identification was either proper or improper, is
5 different than that independent expert being able to
6 look at that piece of evidence and be able to determine
7 conclusively and advise conclusively Mr. McCants that:
8 Yes, that print came from that piece of evidence.
9 That's the prejudice that he suffers.

10 He hasn't suffered from the ability to have
11 someone look at whether or not the identification was
12 sufficient. He has been prejudiced because his own
13 expert, just like the State's own expert, can't say of
14 their own knowledge that that came from the piece of
15 evidence that they found in the store because that piece
16 of evidence that was found at the scene wasn't
17 preserved. Thank you, Your Honor.

18 THE COURT: Yes, sir. Solicitor, do you want
19 to offer any testimony on this issue? I mean, it
20 appears to me, Mr. Harvey, that the potato chip bag is
21 not even as close to the murder weapon in Cheeseborough.

22 For example, if somebody breaks in a home and
23 kills the resident of the home and leaves their prints
24 in that home, the police don't necessarily cut the wall
25 where the prints were left. They photograph and/or they

1 lift those prints. Then you have these latent lifts to
2 compare.

3 If, for example, someone shoots a police
4 officer while the officer is engaged in a traffic stop
5 and they process the vehicle, the lifts are taken off
6 the vehicle, they don't necessarily preserve the vehicle
7 for years and years and years to try that particular
8 case.

9 I don't see where it meets prong two, that the
10 evidence possessed an exculpatory value apparent before
11 the evidence was destroyed, and the Defendant cannot
12 obtain other evidence.

13 I assume they are going to have an expert say:
14 I went to the scene -- if they want to offer the
15 testimony, they can certainly can or if you want to
16 offer it, you certainly can - I processed the scene. I
17 processed two bags. I have got one latent lift off of
18 one bag and two latent lifts off the other, and one of
19 those lifts matches the Defendant.

20 It appears to me it's not the bag, it's the
21 lifts that allegedly point the finger at the Defendant,
22 depending on what latent value the jury wants to give to
23 it.

24 It seems like to me if the murder weapon under
25 Cheeseborough did not meet the standard laid out by our

1 Supreme Court, that the potato chip bag in McCants
2 wouldn't meet it. However, if you want to offer
3 evidence -- yes, sir, Mr. Myers.

4 MR. MYERS: May it please the Court, Your
5 Honor. Your Honor, I certainly respect the Court's
6 example. However, I believe that this case is
7 distinguishable.

8 Your Honor, in Cheeseborough if we are talking
9 about the example that the Court gave as far as a latent
10 print found in a home or a latent print found in a
11 vehicle, the defense would still have an opportunity to
12 go inside that home with its own expert to look at the
13 fingerprints to determine whether or not it's
14 exculpatory or not.

15 It's the same thing with a car. It would not
16 be prudent to wait years before you send your own
17 expert, but at least the car would still be available
18 for the defense to send its own expert to look at it.

19 Here we are talking about a potato chip bag
20 that Mr. Harvey, prior to my involvement in this case,
21 wanted to look at the potato chip bag but was never
22 given an opportunity to because the State did not
23 preserve it.

24 We all know, just from common lay terms, we
25 know people going inside stores picking up objects and

1 then changing their mind as to whether or not they want
2 to purchase that.

3 The reason we believe exculpatory evidence may
4 be on that potato chip bag is because we know that his
5 prints may or may not have been found on the potato chip
6 bag, but there may have been some other individual that
7 may have touched that same bag.

8 The thing that the fingerprints can't tell us
9 is exactly how long anyone touched that bag or when. It
10 doesn't give any time frame, but at least we should have
11 an opportunity to test it.

12 The State should be made to preserve it so we
13 in fact can send our own expert in to look at it to
14 determine whether or not there was any exculpatory
15 evidence that could be on that bag. I think that's how
16 we distinguish our case from Cheeseborough.

17 THE COURT: Yes, sir. You tell me how a
18 fingerprint expert having the bag is going to be able to
19 give any different time frame though? I don't
20 understand that concept either.

21 Even if we had the bag now or we had the bag
22 then, I don't see where that changes the potential
23 testimony. All the fingerprint testimony I have ever
24 heard was you can't time a print unless -- you know the
25 examples, Mr. Myers and Mr. Harvey and Solicitor.

1 Unless somebody comes in here and dusts this
2 rail off, and then we all leave and come back an hour
3 later and there are fingerprints there and you know it
4 wasn't there an hour before, I don't see where that is
5 exculpatory.

6 What may be exculpatory, quite frankly, is
7 that they didn't preserve the bag, exculpatory as far as
8 the weight the jury gives it if they don't have the bag
9 at all.

10 But that's not exculpatory as to the
11 Defendant. That may be some lack of care as the
12 Cheeseborough Court said where they actually destroyed
13 the evidence and it's a murder weapon.

14 But if you have the lifts and you have had the
15 expert examine the lifts, I just don't see where it
16 rises to the level of exclusion under Cheeseborough or
17 under the Federal or State Constitution.

18 Again, I've offered both of you an opportunity
19 to put whatever evidence in you want to as far the
20 record is concerned.

21 MR. HARVEY: Your Honor, just briefly.

22 THE COURT: If you have an expert that you
23 want to get up here and have testify as to the
24 exculpatory nature of the potato chip bag that you
25 didn't have, he didn't have or she didn't have the

1 opportunity to examine.

2 MR. HARVEY: Your Honor, just by way of
3 proffer or by way of explanation to the Court, I did
4 engage a fingerprint expert to look at the fingerprints
5 on the identification component.

6 What the expert would tell the Court is: I
7 looked at the identification that was made. He would
8 give an expert opinion about that. All the expert can
9 say with respect to the potato chip bag is he cannot
10 give an expert opinion of his own knowledge that those
11 fingerprints came from the bag because he has not been
12 able to examine the bag.

13 Again, not having the bag, that fingerprint
14 expert could also have tested the bag for other
15 fingerprints. Other fingerprints were tested in this
16 case.

17 Just by way of information to the Court, they
18 submitted the fingerprints to the A.F.I.S database, and
19 it didn't come up. But had the expert been able to look
20 at the bag and lift latent prints and if we were able to
21 have other prints put into the A.F.I.S. database, other
22 print may have shown up. It may have shown that someone
23 else had touched the bag.

24 So, again, the gist of what the expert would
25 say isn't with the methodology of the identification,

1 but the expert can't tell the Court, me or Mr. McCants
2 conclusively that those latent prints that he looked at
3 came from the bag because the bag is gone. Thank you,
4 Your Honor.

5 THE COURT: Yes, sir. Thank you, Mr. Harvey.
6 Solicitor.

7 MR. HUBBARD: Your Honor, I don't have any
8 evidence on this matter. Obviously I believe the
9 defense has the burden of putting something forward to
10 say that something was improper here.

11 Again, we are just contending that the
12 evidence that we collected was preserved, and that's the
13 only evidence we are going to be putting in as far as
14 fingerprints with the latent prints.

15 There is no indication of bad faith. There's
16 not even an indication of negligently handling evidence.
17 All the cases cited are really about destroying
18 evidence.

19 As Your Honor mentioned, we don't go out and
20 seize a cash register when the Seven/Eleven is robbed.
21 We dust them and usually those cash registers are in
22 operation the next day or that same day. No one goes
23 back to look at them.

24 That's all we have, Your Honor. We have
25 evidence and it's been preserved. That's all we are

1 going to try to put in. We don't need the bags.

2 THE COURT: All right. I would respectfully
3 deny your motion based on State versus Cheeseborough and
4 the language in Cheeseborough. The burden would be on
5 the defense to establish a due process violation.

6 I don't see that the evidence possessed
7 exculpatory value before the evidence -- although it
8 wasn't actually destroyed, there may have been a failure
9 to take it into evidence. I would respectfully deny
10 your motion. Any other motions?

11 MR. HARVEY: Yes, Your Honor. By way of
12 information to the Court, last Friday afternoon as part
13 of our ongoing dialogue concerning this case, I was
14 advised by Mr. Hubbard that he had interviewed
15 Ms. Chandra Wright who is a witness in the case.

16 Based upon his interview of Ms. Chandra
17 Wright, he had been advised that sometime after the
18 robbery on November 7, 2004, an officer came by with a
19 piece of paper containing one to three photographs.

20 She believes the photos were the same
21 individual. She said she recognized the man in the
22 photo as the man who robbed the store on the night of
23 November 7th, 2004.

24 She mentioned that after she identified the
25 man in the photograph, she learned that the man's cousin

1 or nephew had given law enforcement information on the
2 man as well.

3 Your Honor, this was the first time I had
4 heard of it. Frankly I was under the impression it was
5 the first time that Mr. Hubbard had heard of it. This
6 raises -- again, Your Honor, the posture this case has
7 been in until we had received this information was there
8 was information about the incident taking place.

9 There was information about officers
10 responding. There was information about some
11 identification evidence. There was information about
12 the statements Your Honor has heard.

13 We were given a one-page statement by
14 Ms. Wright in which she gave a description of the
15 incident and did not give anything more than a general
16 description of the Defendant.

17 This case was set, as Your Honor recalled,
18 there was a motion before the Court. Mr. McCants was
19 anxious to get to court. The Court appointed Mr. Myers,
20 and we find ourselves in court today. This is a case
21 that has been on the trial horizon for a considerable
22 period of time.

23 Your Honor, with respect to this out-of-court
24 identification, I am making a motion on behalf of Quincy
25 McCants. He objects to any identification by Ms. Wright

1 in court as being tainted from a prior illegal
2 identification.

3 The identification described in Mr. Hubbard's
4 letter to me, it doesn't cover the basics. It doesn't
5 say when. There is no indication of when this took
6 place. There is no indication of who.

7 It's someone that she believes to be
8 Mr. McCants, and it's my understanding that Mr. Hubbard,
9 to his credit, has tried and exercised diligence to find
10 out if there is any independent law enforcement
11 documentation of this occurrence.

12 As I know of this morning, the State could not
13 produce documentation of this occurrence. As I am sure
14 the Court is aware, that show-ups while not per se
15 unconstitutional, are disfavored. I am not telling the
16 Court that show-ups are completely prohibited, but
17 show-ups are oftentimes allowed in certain exigent
18 circumstances.

19 What we have here and also, Your Honor, by way
20 of proffer, Mr. Sims, I believe, in the Lexington County
21 Sheriff's Department case jacket indicates that on
22 November 9th he went back to talk to Ms. Wright, and his
23 notes reflect she couldn't provide any additional
24 details about the perpetrator.

25 Your Honor, if all three photographs, whether

1 it's three, one, two or three, are of the same
2 individual, we would respectfully contend that that is
3 unduly suggestive, and it would create a likelihood of
4 irreparably harming misidentification.

5 Your Honor, even if the Court went through the
6 five Neil v. Biggers factors, if you look at factors
7 four and five, which is the level of certainty
8 demonstrated by the witness at the time of the
9 confrontation, we don't know because there is failure to
10 document the procedure.

11 We don't know her certainty. We will never
12 know about the amount of time between the crime and
13 confrontation. That's unknown. We do know, based upon
14 the accuracy of the witness's prior description on
15 November 9th 2005, to Detective Sims and his report, he
16 unequivocally says that the victim two days after the
17 incident could provide no more details than her initial
18 statement which gives a description by race, sex,
19 height, and weight, nothing more.

20 So, Your Honor, the gist of the objection is
21 this is tantamount to a show-up. We believe that under
22 the totality of the circumstances, any in-court
23 identification now would be tainted by this undocumented
24 show-up of Mr. McCants.

25 To Mr. Hubbard's credit, he disclosed this to

1 us as soon as he knew about it. Mr. Myers and I
2 discussed it today. Your Honor, again, they can't tell
3 us when it occurred, whose in the photo lineup.

4 There is no independent basis to describe her
5 conduct at the time of the show-up. We submit if you
6 look at factors four and five in the Neil v. Biggers
7 requirements and you look at her earlier identification
8 without specifics, this show-up is unduly suggestive and
9 has created a problem with any subsequent in-court
10 identification.

11 THE COURT: So you want a Neil v. Biggers
12 hearing?

13 MR. HARVEY: Yes, Your Honor. I don't know if
14 the State, as Mr. Hubbard had asked me to do, I don't
15 think Mr. Hubbard would contest the fact that he can't
16 say when it happened, who prepared the lineup, what were
17 the contents of the lineup.

18 He can say that in his conversations with
19 Ms. Wright, she identified the individual based upon
20 this show-up. I don't know if -- we can have the
21 hearing. I was hoping to expedite the matter and see if
22 the State would agree those points.

23 MR. HUBBARD: To be honest, I think I have got
24 to do the Biggers hearing. I have got to have testimony
25 from my witness to say just what type of photo show-up

1 was given to her.

2 The big question in this case is going to be
3 any identification in the courtroom, is it based on what
4 happened the night of October 7th, 2004, or was it this
5 mysterious photographic lineup or this photo that was
6 shown that I have never seen.

7 The second thing I'm going to do is put up an
8 officer, Britt Sims, who is the lead detective to tell
9 Your Honor and this Court that he didn't do it. No one
10 did it at his direction.

11 But there were multiple agencies working on a
12 series of armed robberies involving Mr. McCants. If
13 someone else did it, I don't know who did it. But I
14 think you are going to hear -- well, I will put her up
15 and let Your Honor hear it.

16 THE COURT: All right. Let's prepare for
17 that. Court will be in recess for 15 minutes.

18 (Whereupon there was a recess).

19 THE COURT: Solicitor.

20 MR. HUBBARD: Yes, sir, the State calls
21 Chandra Wright.

22 THE COURT: Ms. Wright, come around, please.

23 CHANDRA ANN WRIGHT, being
24 first duly sworn, testified as follows:

25 THE COURT: Have a seat and state your full

1 name for the record, spelling your last name.

2 THE WITNESS: Chandra Ann Wright, W-R-I-G-H-T.

3 IN CAMERA DIRECT EXAMINATION

4 BY MR. HUBBARD:

5 Q Ms. Wright, I will get right to it. Back in
6 November of 2004, where were you working?

7 A Li'l Cricket convenience store.

8 Q The day of November 7, 2004, were you working?

9 A Yes.

10 Q Do you remember that day as the day -- how long had
11 you been working prior to that? Let me ask you
12 that.

13 A One week.

14 Q And prior to this day, had someone always been with
15 you?

16 A Yes, that was my first day by myself.

17 Q The 7th. Do you remember something happening on
18 the 7th?

19 A I got robbed.

20 Q You got robbed. I want to ask you, do you know
21 about what time that was? If you don't, that's
22 fine.

23 A I think it was around about maybe eight, somewhere
24 around there.

25 Q I want to ask you this. Can you tell us about that

1 incident and about whether you saw the individual
2 that came in and robbed you, whether you saw him at
3 any time earlier in the day as well?

4 A No, I didn't see him earlier in the day.

5 Q But around 8:00 o'clock or 8:30 or whenever, can
6 you tell us about a man purchasing potato chips?

7 A A gentleman came in, purchased some potato chips,
8 went back out, came back a few minutes later, and
9 asked me if he could exchange them because he got
10 the wrong ones. I told him as long as he got it
11 from the same rack, that wasn't a problem.

12 Q And did he do that?

13 A Yes.

14 Q He went to the same rack?

15 A Yes.

16 Q Did he put the potato chips, the bag, back on that
17 same rack?

18 A Yes.

19 Q And did he pick up another bag of potato chips?

20 A He picked another bag.

21 Q Did you see what he did then?

22 A Walked around back to the back cooler and got a
23 juice.

24 Q And then what did he do?

25 A Came up to the register and paid for the juice.

1 Q Then what happened?

2 A Then he pulled a gun and asked me to give him --
3 told me to give him all the money that was in the
4 register.

5 Q And did you comply with him?

6 A Yes.

7 Q Then what did he do? Where did he go?

8 A He got the money up because it was all on the
9 counter, and then he went out the door.

10 Q Did you follow him to the door?

11 A To lock it.

12 Q Did you see him leave in a vehicle?

13 A Yeah.

14 Q And do you remember law enforcement coming that
15 night?

16 A Yes.

17 Q And do you remember giving a statement to an
18 officer about what happened that night?

19 A Yes.

20 Q Let me back you up. At some point after
21 8:00 o'clock, you say this individual comes in and
22 buys a bag of potato chips?

23 A Yes, sir.

24 Q Was anybody else in the store to your memory at
25 that time?

1 A No.

2 Q When he bought that bag of chips, how close did he
3 get to you? Can you tell me when to stop (walking
4 towards the witness).

5 A That's good right there. That's about how wide the
6 counter is.

7 Q The counter. You are behind the counter with the
8 cash register, and he is right in front of you?

9 A Yes.

10 Q And this is the first opportunity you have to see
11 him?

12 A Yes, the first time he came in and purchased the
13 potato chips.

14 Q So you have seen him walk in, walk by you to get
15 the potato chips; is that fair?

16 A Yes.

17 Q Are the potato chips on the front aisle or are they
18 in the back of the store?

19 A They're on the front.

20 Q So that whole time he is right there in your view?

21 A Yes.

22 Q Then when he picks up that bag the first time, he
23 brings them up to you, and it's just a counter
24 length away from you when he purchased them?

25 A Yes.

1 Q Nothing happens at that point, correct?

2 A No.

3 Q Now, you are telling us that he left and then came
4 back a few minutes later?

5 A Yes.

6 Q So this is the second time you see him?

7 A The second time.

8 Q When he walked in that second time, was anybody
9 else to your memory in that store?

10 A No, wasn't no one else in the store.

11 Q So the only person you needed to focus on was this
12 guy?

13 A Yes.

14 Q Did he speak to you?

15 A He let me know he got -- what he said is he got his
16 girl the wrong bag of potato chips and could he
17 exchange them.

18 Q Is he walking in the store when he's saying that?

19 A Yeah, he come right through the door.

20 Q So he gets your attention and talks to you?

21 A Yeah.

22 Q So you have an opportunity to talk to him and see
23 him again?

24 A Yes.

25 Q Again, where does he go to drop those potato chips

1 or that bag off and get another bag? Does he walk
2 by you?

3 A Yes, he has to walk right across me.

4 Q And you can see him that whole time? He is right
5 there?

6 A Yes.

7 Q After that you tell us you noticed he went
8 somewhere else in the store. Where did he go?

9 A To the back where the juices and things were.

10 Q While he's back there, does anybody else come in
11 the store or is it still just you and this person?

12 A Just me and him still in the store.

13 Q When he comes up with the juice and the bag, how
14 close does he get to you that time (walking towards
15 the witness)?

16 A Just right about there.

17 Q Again, a counter width away from you?

18 A Uh-huh. (Indicating affirmative response).

19 Q You say he actually got money out to pay for the
20 drink?

21 A He paid for it.

22 Q And you ran the cash register?

23 A Yes.

24 Q The cash register draw opened?

25 A Yes.

1 Q The bag of potato chips, is there a bag of potato
2 chips on the counter, too?

3 A Yeah, the one he exchanged.

4 Q Once that draws opens up, what happens?

5 A He tells me to give him all the money that is in
6 the register.

7 Q And what do you notice in his hand at that time?

8 A He had a little black gun.

9 Q A little black gun. When you gave a statement to
10 law enforcement, you gave them a written statement
11 that night?

12 A Yes.

13 Q In your own hand?

14 A Yes.

15 Q Do you have a copy with you?

16 A No.

17 Q In your statement -- for the defense it's page 54
18 of the materials I gave y'all -- in the statement
19 you describe what transpires that night?

20 A Yes.

21 Q And correct me if I err here, but when you are
22 asked to describe the subject in your statement, do
23 you describe him as a black male, five-eleven, 150,
24 160-pounds?

25 A Yes.

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1 Q Tan shirt, tan pants, blue and yellow hat?

2 A Yes.

3 Q Rough hands?

4 A Yes.

5 Q Do you describe the gun as a small black gun?

6 A Yes.

7 Q And do you describe the vehicle you see him leave
8 in as a tan Cutlass, half brown top?

9 A Yes.

10 Q This individual that came in twice and eventually
11 robbed you, did you know who this person was at
12 that point?

13 A No.

14 Q Had you ever seen him before?

15 A No.

16 Q I want to you ask you this. At some point did
17 someone come to you with a photograph or
18 photographs and ask you to look at them?

19 A Yes.

20 Q Can you describe what was shown to you?

21 A It was a piece of paper, just a single piece of
22 paper, with a photo on it and some writing on the
23 side. I don't know exactly what was on the side.

24 Q Do you know how many photos were on that piece of
25 paper?

1 A I do remember one.

2 Q The writing, do you remember anything about the
3 writing?

4 A No.

5 Q At the time you were shown this, did you look at
6 the writing?

7 A No.

8 Q Do you recall a name?

9 A No.

10 Q Or an incident date?

11 A No.

12 Q Or "Wanted," or anything like that on it?

13 A No.

14 Q The photo you were shown, was it a photocopy or do
15 you remember?

16 A I don't remember.

17 Q Do you recall who showed you this?

18 A It was a white male in a blue uniform.

19 Q Do you know whether he was with the Sheriff's
20 Department or West Columbia or Columbia P.D.?

21 A No, I don't.

22 Q Did you write anything down?

23 A No.

24 Q Or sign anything?

25 A No.

1 Q When you were shown this piece of paper by this man
2 in a uniform and he came up and showed you this
3 piece of paper, what, if anything, did he say to
4 you?

5 A He asked me was that the guy that robbed me, and I
6 said yes.

7 Q Did he say anything about: This is the guy?

8 A No. He asked me is this -- well, yeah, is this the
9 guy?

10 Q What was your response?

11 A Yes, that's him.

12 Q Now, looking at that photograph and going by your
13 memory, was that the man you saw that night?

14 A Yes.

15 Q Now, today in this courtroom, looking around this
16 courtroom, do you see the man you saw the night of
17 November 7, 2004?

18 A Yes.

19 Q Is the man you see the man that put a gun in your
20 face and robbed you?

21 A Yes.

22 Q Will you please point him out for the Court.

23 A He is sitting right there (indicating).

24 Q Is he the man on the far end of the table?

25 A Yes.

1 Q With the yellow shirt?

2 A Yes.

3 MR. HUBBARD: Your Honor, just for the record,
4 that's Quincy McCants.

5 THE COURT: All right, sir.

6 BY MR. HUBBARD:

7 Q Now, Chandra, this is important. The man you have
8 just pointed out, do you remember him because of a
9 photograph or do you remember him because of this
10 incident --

11 MR. HARVEY: I object, Your Honor. Let her
12 answer how she remembers. He is leading her.

13 MR. HUBBARD: It's not leading.

14 THE COURT: No, sir, I don't think that's a
15 leading question. There is no assumption of the answer
16 in there. I would overrule the objection.

17 BY MR. HUBBARD:

18 Q Again, Chandra, this is very important. The man
19 that you have pointed out, do you remember him
20 because of a photograph you were shown or do you
21 remember him because of the incident, November 7,
22 2004?

23 MR. HARVEY: Again, Your Honor, I would object
24 to that question.

25 THE COURT: Yes, sir, I have ruled on it.

1 When I have ruled on it, I don't need to rule on it
2 twice, Mr. Harvey.

3 MR. HARVEY: Yes, Your Honor.

4 BY MR. HUBBARD:

5 Q Go ahead.

6 A I remember him from the incident of being robbed
7 and him holding a gun at me.

8 Q Is that what sticks in your mind? Is it a
9 photograph or a gun?

10 A The gun.

11 Q And the man that held that gun, when you looked up,
12 did you look at his face?

13 A Yes.

14 Q And he was as close as I am to you?

15 A Yes.

16 Q And that was your second opportunity to see him?

17 A Yes.

18 Q Was the store well lit?

19 A Yes.

20 Q And you say that was the man held that gun?

21 A Yes.

22 Q Do you have any doubt in your mind?

23 A No.

24 Q I guess one follow-up question or one other
25 question. That photograph, when you were shown

1 that, did you have any doubt at that time?

2 A No, I didn't. I still remember his face.

3 Q When you pointed him out at that time, was it
4 because something the officer said or was it --

5 MR. HARVEY: Your Honor?

6 MR. HUBBARD: I am giving her a choice.

7 MR. HARVEY: Your Honor?

8 THE COURT: Yes, sir, a couple of things.

9 Don't talk to each other.

10 MR. HUBBARD: Yes, sir.

11 THE COURT: Y'all talk to me.

12 MR. HUBBARD: I apologize, Your Honor.

13 THE COURT: What is your objection,

14 Mr. Harvey?

15 MR. HARVEY: Your Honor, I am objecting to his
16 leading questions. She certainly can testify to her own
17 independent basis how she knows something. I am
18 objecting to his form of the question, which is giving
19 her yes or no answers.

20 His questions are reaching a conclusion for
21 her to answer yes or no. She -- I object because she
22 has to testify from her own knowledge how she is making
23 this conclusion, not his questions getting her to answer
24 yes or no.

25 THE COURT: I thought a leading question was a

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1 question that assumes the answer: The truck was red,
2 correct? I thought if she had a choice -- and I thought
3 we had this discussion a moment ago -- but let me hear
4 the question, and I will rule on it. I have now
5 forgotten the question, Mr. Harvey.

6 MR. HARVEY: Yes, Your Honor.

7 MR. HUBBARD: I will try to remember it
8 myself, Your Honor.

9 THE COURT: I figured the solicitor wouldn't
10 remember it at this point either, Mr. Harvey.

11 BY MR. HUBBARD:

12 Q I think it went something like this. The
13 photograph that you were shown, when you said:
14 That is the man that robbed me, were you saying
15 that because somebody, that officer or somebody
16 else, told you that was the man or was it because
17 you remembered the man, that man, being the man you
18 saw November 7, 2004?

19 A I remembered.

20 THE COURT: Hold on just a moment, Ms. Wright.
21 Do you have an objection to that question, Mr. Harvey?

22 MR. HARVEY: Yes, Your Honor. Yes, I
23 respectfully submit the question ought to be -- I object
24 to the form of the question.

25 THE COURT: You don't want to know whether or

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1 not someone told her that was the man that robbed her?

2 You don't want to know the answer to that?

3 MR. HARVEY: I want her to be able to testify.

4 Your Honor, I want her to be able to recall what

5 happened during the time that she was shown the

6 photographic array without any prompting in the form of

7 the question by the State. Your Honor has ruled and

8 again --

9 THE COURT: Rephrase the question, solicitor.

10 MR. HUBBARD: I will try to break it down,

11 Your Honor.

12 BY MR. HUBBARD:

13 Q The photograph you were shown, you don't recall or
14 do you recall when you were shown that?

15 A I don't recall when I was shown that.

16 Q I thought that is what you would say. When you
17 were shown that, what, if anything, did the officer
18 say about who was in that photograph?

19 MR. HARVEY: Objection to what the officer
20 said.

21 THE COURT: You didn't want to know that
22 either, whether or not an officer used some kind of
23 influence on her?

24 MR. HARVEY: Your Honor, our position is that
25 if she is unable to recall of her own recollection the

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1 how, what, why, when, and where of this identification,
2 then that certainly would go to the factors in the
3 Court's being able to determine whether or not the
4 identification of Mr. McCants now was tainted by this
5 procedure that took place at an unknown time with an
6 unknown individual with one photograph of Mr. McCants.

7 THE COURT: So you don't want to know if there
8 was any impermissible suggestiveness by the officer,
9 Mr. Harvey? If you don't want to know, that's fine. I
10 am just asking you --

11 MR. HARVEY: No, Your Honor. My position is
12 part of their ability to be able to -- if they want to
13 use this to get over the hurdle about this
14 identification is her being able to tell the Court to
15 the Court's satisfaction the circumstances surrounding
16 this show-up. If they are unable to tell you how, what,
17 why, when, and where, if she is unable to tell you that,
18 of her own recollection...

19 MR. HUBBARD: I can try to rephrase it again
20 if that makes it any easier. I will give that a whirl.

21 THE COURT: All right.

22 BY MR. HUBBARD:

23 Q Ms. Wright, the photograph you were shown, why did
24 you say: That was the man who robbed me?

25 A That was him in the picture.

1 Q And as you are sitting here in the room and you
2 pointed out that man over there, Quincy McCants,
3 why did you do that?

4 A That was the gentleman that held the gun to me and
5 robbed me.

6 Q And, Ms. Wright, do you have any doubt whatsoever
7 that that is the man that robbed you that night?

8 A No, I have no doubt.

9 Q Thank you. Please answer any questions Mr. Harvey
10 has.

11 THE COURT: Thank you, Solicitor. Mr. Harvey.

12 **IN CAMERA CROSS EXAMINATION**

13 BY MR. HARVEY:

14 Q Good afternoon, Ms. Wright.

15 A Hello.

16 Q Ms. Wright -- may I approach the witness, Your
17 Honor?

18 THE COURT: Yes, sir, certainly.

19 BY MR. HARVEY:

20 Q Ms. Wright, the solicitor showed you -- you have a
21 document in front of you, and I have a document in
22 my hand. Do you remember that document?

23 A Uh-huh. (Indicating affirmative response).

24 Q That's the document that you wrote in your own
25 handwriting on November 7, 2004; correct?

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1 A Yes.

2 Q On November 7, 2004, you were asked a question to
3 describe the subject; correct?

4 A Yes.

5 Q And you described the subject -- tell me if I am
6 reading correctly -- black male, five-eleven, 150,
7 160-pounds; right?

8 A Yes.

9 Q And then it says: Tan shirt, right? Tan pants,
10 blue and yellow hat and rough hands; correct?

11 A Yes.

12 Q Do you recall on November 7, 2004, you talked to
13 several deputies? A couple of deputies arrived
14 right away or close after you called the Sheriff's
15 Department, correct?

16 A Yes.

17 Q And do you recall talking to some deputies before
18 you gave the written statement?

19 A Yes.

20 Q And do you recall talking to a deputy or an
21 investigator a couple of days after the incident?

22 A No, I don't recall.

23 Q So you don't recall if you talked to a deputy or an
24 investigator on November 9, 2004?

25 A No, I don't recall.

1 Q Do you recall meeting an investigator within a week
2 of the incident and being asked about any other
3 details of the incident?

4 A No, I don't recall.

5 Q You can't tell us when you met with this man in the
6 blue uniform, can you?

7 A No, I don't recall.

8 Q And you can't tell -- do you know where it was?

9 A He came to the store.

10 Q And your testimony is there was one picture,
11 correct?

12 A I remember one picture. It may have been more, but
13 I remember one picture.

14 Q That one picture that you remember as being of the
15 person you identified in court today?

16 A Yes.

17 MR. HARVEY: Beg the Court's indulgence one
18 moment.

19 THE COURT: Yes, sir, Mr. Harvey.

20 (Pause).

21 BY MR. HARVEY:

22 Q The statement that you have in front of you today,
23 the November 7, 2004, statement?

24 A Yes.

25 Q That's the only written statement you have given in

1 this case, right?

2 A Yes, I believe so.

3 Q Did the man who showed you the photographic lineup
4 leave you a business card or anyway to get in touch
5 with him?

6 A No, sir.

7 MR. HARVEY: Thank you very much, Your Honor.

8 THE COURT: Anything on redirect?

9 MR. HUBBARD: No follow up with this witness,
10 Your Honor. I do have one more witness.

11 THE COURT: May I ask Ms. Wright a question?

12 MR. HUBBARD: Yes, sir.

13 THE COURT: Ms. Wright, do you still work for
14 Li'l Cricket?

15 THE WITNESS: Part-time, yes.

16 THE COURT: At the same location?

17 THE WITNESS: Yes.

18 THE COURT: 2900 Sunset?

19 THE WITNESS: Yes.

20 THE COURT: The man in the blue uniform, that
21 was a law enforcement officer?

22 THE WITNESS: I believe so, yes.

23 THE COURT: From when the incident happened,
24 were you working full-time at that time for Li'l
25 Cricket?

1 THE WITNESS: Yes.

2 THE COURT: How long did you work -- or, in
3 other words, when did you go from full-time to
4 part-time?

5 THE WITNESS: I stopped working for them in
6 January of this year, and I went back part-time, I
7 think, in March of this year.

8 THE COURT: When you were shown this
9 photograph by the officer in the blue uniform, were you
10 working full-time?

11 THE WITNESS: Full-time.

12 THE COURT: So it would have been prior to
13 January of this year?

14 THE WITNESS: Yes, sir.

15 THE COURT: And do you know if it was in '05,
16 2005, or when?

17 THE WITNESS: I'm not for sure when he came.

18 THE COURT: All right. Thank you, ma'am. I
19 don't have any further questions.

20 MR. HUBBARD: If I may follow up real quick.

21 THE COURT: Yes, sir.

22 IN CAMERA REDIRECT EXAMINATION

23 BY MR. HUBBARD:

24 Q The photograph we are talking about, you said you
25 can't remember when it was shown to you?

CHANDRA WRIGHT -- IN CAMERA REDIRECT -- MR. HUBBARD¹⁰⁷

1 A No, I can't.

2 Q The incident occurred November 7, 2004?

3 A Uh-huh. (Indicating affirmative response).

4 Q Do you know if it happened, if you were shown this,
5 before the new year? Was it like weeks or months
6 or was it days or do you even recall?

7 A I would say weeks.

8 Q As opposed to two years later or a year later?

9 A Oh, no, it wasn't long after it happened. It was
10 like in the process of them investigating because
11 they had fliers with the car posted on the store
12 and things like that. They were still up.

13 Q At that point you had never seen a photograph of
14 the individual on the fliers?

15 A No.

16 Q Okay. That's all.

17 THE COURT: Just a moment, Solicitor. Would
18 you have any follow up with those questions, Mr. Harvey?

19 MR. HARVEY: No, sir.

20 THE COURT: Thank you, Ms. Wright. You may
21 step down. Thank you.

22 MR. HUBBARD: The State calls Brett Sims to
23 the stand again.

24 CLERK: Is he still under oath, Your Honor?

25 THE COURT: Yes. Detective Sims you are still

1 under oath.

2 THE WITNESS: Yes, sir.

3 BRETT EDWARD SIMS, having
4 being previously duly sworn, resumed the witness stand
5 and testified as follows:

6 IN CAMERA DIRECT EXAMINATION

7 BY MR. HUBBARD:

8 Q Detective, were you the lead detective on this
9 case?

10 A I was.

11 Q Sometime after, in fact two days after this armed
12 robbery, did you have a chance to talk with
13 Ms. Wright?

14 A I did.

15 Q And was part of the evidence that was collected
16 November 7, 2004, a video of the incident that took
17 place?

18 A That's correct.

19 Q I want to ask you about the description Chandra
20 Wright gave. You have seen the video, have you
21 not?

22 A I have.

23 Q The video of the incident, does it show a white
24 male or a black male?

25 A Black male.

BRETT SIMS -- IN CAMERA DIRECT -- MR. HUBBARD

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1 Q Does it show other people to your memory in the
2 store at the time -- either time he is in?

3 A No.

4 Q Do you recall what type of clothing he was wearing,
5 the color of the clothing?

6 A Yes, sir.

7 Q What color?

8 A Tan.

9 Q Tan shirt and pants?

10 A Uh-huh. (Indicating affirmative response).

11 Q Is that a yes?

12 A Yes, sir.

13 Q Was he wearing anything on his head?

14 A A hat.

15 Q Was there a color to that hat?

16 A It was tan with blue and yellow.

17 Q Blue and yellow hat. Were you able to see a weapon
18 in his hands during the course of the robbery on
19 the video?

20 A Yes.

21 Q Can you describe what that weapon looked like?

22 A A small black handgun.

23 Q All very consistent with the statement she gave
24 that night, Ms. Wright?

25 A Correct.

1 Q Now, you have heard Ms. Wright testify about what
2 appears to be a photo show-up, someone showing a
3 photograph of an individual. Was that you?

4 A No.

5 Q Again, you are the lead detective. For anybody to
6 do that through your agency, are they supposed to
7 go through you?

8 A Yes.

9 Q Did you authorize anybody to show a photograph to
10 Ms. Wright?

11 A No.

12 Q Do you have any knowledge of anybody showing
13 Ms. Wright a photograph?

14 A I do not.

15 Q Did you show her a photographic lineup?

16 A I did not.

17 Q You did not. Now, did you show other victims of
18 Mr. McCants photographic lineups?

19 A I did.

20 Q But you did not show one to Ms. Wright?

21 A No.

22 Q Can you explain to the Court why you did not.

23 A The fingerprints and the identification.

24 Q Explain that for me, please.

25 A The fingerprint identification.

1 Q You had fingerprints. Why then do you not show a
2 photographic lineup?

3 A We had the fingerprints. We chose not to show a
4 lineup.

5 MR. HUBBARD: That's all I have, Your Honor.

6 THE COURT: Thank you, Solicitor. Mr. Harvey.

7 **IN CAMERA CROSS EXAMINATION**

8 BY MR. HARVEY:

9 Q Do you recall speaking with Ms. Wright on
10 November 9 --

11 A Yes, sir.

12 Q -- 2004?

13 A I'm sorry?

14 Q November 9, 2004, you spoke with Ms. Wright;
15 correct?

16 A I did.

17 Q And you noted in your report that you actually --
18 you went to see Ms. Wright to find out more details
19 about the case, correct?

20 A Correct.

21 Q And you noted that in your report on November 9
22 when you met with Ms. Wright, she couldn't provide
23 you any additional information about the case;
24 correct?

25 A No additional, other than what was reported the

1 first time.

2 Q And so everything that was reported the first time,
3 nothing was added; correct?

4 A That is correct.

5 Q Thank you.

6 THE COURT: Anything on redirect, Solicitor?

7 MR. HUBBARD: No, sir, Your Honor. That's all
8 the State has on this matter, Your Honor.

9 THE COURT: You may step down. All right.
10 Mr. Harvey.

11 MR. HARVEY: Briefly, Your Honor. Your Honor,
12 in this type of hearing the Court has to assess a number
13 of factors. The Court has heard evidence before as to
14 the opportunity of the witness to view the Defendant at
15 the time of the incident, the witness's degree of
16 attention.

17 Then there are three other elements the Court
18 must use: The accuracy of the witness's prior
19 description, the level of certainty demonstrated by the
20 witness at the confrontation, and the amount of time
21 between the crime and the confrontation.

22 The confrontation I am addressing, Your Honor,
23 our motion was based upon this show-up. Again, Your
24 Honor, the witness's prior description was, as she
25 stated, a black male, five-eleven, 150 to 160-pounds,

1 and she described his clothes.

2 Then we have the detective, the lead
3 detective, going back two days later for other details
4 or other information. She couldn't provide any other
5 information.

6 Then what we have is we have, at an unknown
7 time, a show-up. As far as the level of certainty
8 demonstrated by Ms. Wright at that show-up, it's
9 unknown because we don't have the witnesses from that
10 show-up.

11 The amount of time between the incident and
12 the second show-up is unknown. Ms. Wright can't say the
13 amount of time that passed between the incident and the
14 second show-up.

15 So, Your Honor, with respect to the five
16 elements that the Court has to weigh or the five factors
17 the Court has to weigh in making its determination, we
18 would respectfully submit that you have evidence of a
19 prior description, which is fairly benign.

20 When she has the opportunity two days later to
21 add details, it isn't done. The level of certainty at
22 the second -- or at the show-up, we don't know. The
23 amount of time between the crime and the show-up is
24 unknown.

25 It's not even been able to have been

1 demonstrated, I would respectfully submit to the Court,
2 by even a greater weight of the evidence. Ms. Wright
3 says she thinks it occurred about a time, but she can't
4 be specific.

5 So with respect to the identification of
6 Mr. McCants in court, we would respectfully submit that
7 this prior illegal show-up has impermissibly tainted any
8 subsequent identification. Thank you, Your Honor.

9 THE COURT: Thank you, Mr. Harvey. Solicitor.

10 MR. HUBBARD: Yes, sir, Your Honor. Your
11 Honor, I believe that the testimony you have heard shows
12 by clear and convincing evidence that although there may
13 have been an impermissible show-up, photo show-up,
14 Ms. Wright's recollection is the basis. Her
15 recollection of that incident of November 7, 2004, is
16 the basis of her identification of the Defendant, Quincy
17 McCants, in the courtroom today.

18 Going through Neil versus Biggers, opportunity
19 is the first element. She describes she had plenty of
20 opportunity. She had two times to view him, twice. No
21 one else was in the store either time.

22 She describes that he had to walk by her each
23 time. She describes that he came up within feet from
24 her, a counter width apart, on two occasions, Your
25 Honor.

1 She said the second time he came in the store
2 he even spoke to her. Again, to the best of her memory,
3 there was no one else in the store, nothing else to
4 distract her. He speaks to her here. She looks at him,
5 answers him.

6 He puts the chips back. She watches what he
7 is doing. He brings a drink up, and then she describes
8 the robbery. She says she saw his face. She saw the
9 gun, saw his face in close proximity. She didn't know
10 who he was.

11 The degree of attention, I think she expressed
12 a tremendous degree of attention in this case. Because,
13 again, she says she noticed when he walked in the second
14 time, he had, in fact, been in the store minutes
15 earlier. She again says there's no other distractions.
16 She describes that he scooped the money up off the
17 counter right in front of her. She saw his face.

18 As far as her accuracy, which is the third
19 prong, the third element, the accuracy of the witness's
20 description of the criminal, that night she describes
21 him as a black male, five-eleven, 150 to 160-pounds, tan
22 shirt, tan pants, blue and yellow hat, rough hands.

23 Detective Sims says the video shows exactly
24 that: A man who is a black male, tan shirt, tan pants,
25 blue and yellow hat. She describes the weapon as a

1 small black gun, not a sawed-off shotgun, not a silver
2 pistol, a small black gun. Detective Sims says she is
3 accurate there, too. The video shows the same thing.
4 She is paying attention.

5 As far as the level of certainty, which is
6 number four, Your Honor, at the show-up, she said no one
7 prompted her. She knew right away, immediately: That's
8 the man.

9 She said she knew that, not because of
10 something somebody said, not because of something
11 written on a piece of paper, because that was the face
12 she was looking at November 7, 2004, pointing a gun at
13 her.

14 She didn't express any doubt whatsoever. The
15 fifth and final prong under Neil v. Biggers is the
16 amount of time between the crime and the confrontation.
17 She described it as weeks as opposed to months to the
18 best of her recollection.

19 The main thing obviously is this was not a
20 year later. This was not a year and a half later. This
21 was fairly close to the time when the picture in her
22 mind from that incident was fresh and shows a lack of
23 mistake.

24 Finally, Your Honor, when she pointed out
25 Mr. McCants in this courtroom, she made it clear to Your

1 Honor, she had no doubts. She wasn't doing it because
2 of that photograph that was shown to her. She was doing
3 it because that is the man she was looking at
4 November 7, 2004, just feet away from her, pointing a
5 gun at her, and robbing her at the Li'l Cricket. That's
6 the man.

7 Your Honor, I believe we have satisfied Neil
8 v. Biggers. I believe we have shown certainly by clear
9 and convincing evidence that the in-court identification
10 is not because of the photo that was shown to her.

11 THE COURT: Thank you, Solicitor. Anything in
12 reply, Mr. Harvey?

13 MR. HARVEY: Your Honor, without abandoning
14 our position that the in-court identification is tainted
15 by the show-up, if the Court finds that there is an
16 independent basis for her recollection, we would ask
17 that any testimony -- that testimony with respect to
18 the show-up not be permitted.

19 MR. HUBBARD: Your Honor, if they don't want
20 me to go into that, I won't.

21 THE COURT: Either one of y'all have any cases
22 you want me to look at?

23 MR. HUBBARD: Your Honor, the main case I
24 worked from is Neil v. Biggers.

25 THE COURT: I have that and those factors.

1 MR. HUBBARD: Yes, sir. I realize there is
2 case law on photographic show-ups. I believe the
3 standard, which is certainly met by the defense by the
4 preponderance of the evidence, shows there was a
5 show-up.

6 I have not contested that. I think I have got
7 to show by clear and convincing evidence under the
8 statute and under the case law, and I believe I have
9 done that. I will see if I have got that case, Your
10 Honor. I actually had it in my hand a second ago.

11 MR. HARVEY: Your Honor, this kind of came up
12 suddenly. But it's my understanding that show-ups may
13 be proper. There is a case called State v. Brown, which
14 is an appeals case from 2003, 589 S.E.2d 781:

15 Show-ups have been upheld by the South
16 Carolina appellate courts. These situations usually
17 involve either exigent circumstances or are very close
18 in time to the crime. That is with respect to show-ups.

19 Your Honor, as we look at cases, quite
20 candidly as an officer of the Court, the cases are
21 depending on situations. The central question is under
22 the totality of the circumstances is the identification
23 reliable, even though the confrontation procedure was
24 suggestive.

25 So if the Court finds that based on the

1 testimony here, there is an independent basis for her
2 recollection and her identification, which we submit was
3 impermissibly tainted, again, Your Honor, our position
4 is that -- actually the Cheeseborough case is cited.
5 There must have been an identification issue there.

6 THE COURT: Yes, sir, that was post hypnosis.
7 That's what that was.

8 MR. HARVEY: Your Honor, again: Was the
9 identification process unduly suggestive? And if it
10 was, does that taint the in-court identification?
11 That's what the cases are, Your Honor.

12 Again, the Brown case has to do with the
13 utilization of show-ups. It's clear to me that what
14 we have is tantamount to a show-up, and then whether or
15 not that show-up has now tainted the in-court
16 identification.

17 THE COURT: Yes, sir, Solicitor.

18 MR. HUBBARD: Your Honor, when there is per se
19 a suggestive show-up, whether it's by photograph or a
20 physical show-up, the Supreme Court, going all the way
21 back to, I believe it was Wade, Your Honor -- it was
22 United States versus Wade.

23 It said what happens in that instance is that
24 it doesn't get kept out. The burden shifts to the State
25 to then prove by clear and convincing evidence that the

1 in-court identification was not a result of the taint.

2 Your Honor, probably has that case, but I will
3 be happy to give Your Honor cites on that case. It's
4 388 U.S. 218, I think specifically page 240. That's a
5 1967 case. That's still the law when we have a
6 suggestive show-up pretrial identification.

7 As for this State, Your Honor, we have had
8 instances where we have had show-ups, photo show-ups,
9 and they were suggestive. I know in Manson versus
10 Brathwaite, another U.S. Supreme Court case, they said
11 they frowned upon that.

12 That's where they said you have got to look at
13 these other factors. The State has got to prove by
14 clear and convincing evidence that, again, the in-court
15 identification is not a result of that suggestive photo
16 show-up.

17 In South Carolina State versus Larue, it's a
18 '78 case.

19 THE COURT: Yes, sir, I have Larue.

20 MR. HUBBARD: Yes, sir, and that one is very
21 distinguishable. Because, again, that case hinges on
22 what the officer said at the time of the show-up. He
23 gets a letter from, I believe, one of the Defendants'
24 wife saying: This is the man. And he tells the witness
25 that, that the wife says this man did it. Now look at

1 this photo. Is this the man that did it?

2 That's a no-brainer. We don't have that here.
3 What is critical, no matter what was said, our victim
4 says nothing was suggested to her and that the decision
5 to point that man out was because that was the man that
6 robbed her.

7 THE COURT: Thank you, Solicitor. There is
8 one case I can't quite wrap my mind around it right now.
9 I'll find it. It's out of Charleston County. It's a
10 bank robbery case. I can remember that. It's out of
11 North Charleston as a matter of fact.

12 I will look at it tonight. I will take it
13 under advisement. I will let you know prior to 9:30 in
14 the morning. I want to read that case tonight. If
15 y'all want me to look at anything else, I have that
16 cite, Mr. Harvey, 589, 781. If you want me to look at
17 anything else, I would be glad to. You can e-mail it to
18 me or give it to my clerk. All right, sir.

19 MR. HUBBARD: Yes, sir, Your Honor.

20 MR. HARVEY: That's fine.

21 THE COURT: Any other motions?

22 MR. HARVEY: Your Honor, we had also made a
23 motion to sequester witnesses. We can address that
24 tomorrow.

25 THE COURT: Yes, sir, I have that here. I

1 believe the chief investigating officer would be allowed
2 to stay. I believe the evidence custodian and the
3 victim under the Victim/Witness Bill Of rights. Are
4 there specific witnesses you want excluded one from the
5 other, Mr. Harvey?

6 MR. HARVEY: Your Honor, I don't think the
7 evidence custodian is here.

8 MR. HUBBARD: He is right here, Jim Hickman.

9 MR. HARVEY: I don't think he is the evidence
10 custodian. He is the identification technician. He's
11 not the evidence custodian from the Sheriff's
12 Department.

13 MR. HUBBARD: He is the one holding the
14 evidence in my case. I don't have boxes of stuff. I've
15 got latent prints and I've got a C.D.

16 MR. HARVEY: We don't have any chain of
17 custody documents.

18 THE COURT: I would typically allow those
19 witnesses, unless -- in other words, I don't want the
20 solicitor to have to go in and out every time when a
21 particular piece of evidence was dealt with.

22 MR. HARVEY: Your Honor, at the appropriate
23 time, there may be issues raised on behalf of the
24 Defendant with respect to some of the evidence. I would
25 think that the best search for the truth would be for

1 those witnesses who are involved in testimony concerning
2 that evidence should be sequestered.

3 THE COURT: I am going to allow the chief
4 investigating officer, whoever Mr. Hubbard designates as
5 his evidence custodian, and the victim to remain present
6 throughout the trial.

7 MR. HARVEY: Thank you, Your Honor.

8 MR. HUBBARD: Out of curiosity, are you going
9 to keep any witnesses out or potential witnesses? I
10 know you might not know at this point.

11 MR. HARVEY: If we have any witnesses, we will
12 let the Court and the solicitor know.

13 THE COURT: I already asked that question
14 because --

15 MR. HARVEY: We don't have any witnesses, Your
16 Honor.

17 THE COURT: I mean, the only reason I bring
18 that up is to qualify the jury. Under State versus
19 Powers, there should be a witness list provided before
20 we qualify the jury. That's the only point I am making.
21 Thank you, Mr. Harvey. Any others?

22 MR. HUBBARD: No, sir, Your Honor.

23 THE COURT: I will ask y'all to be here
24 promptly at 09:15. Because I know if I give good trial
25 lawyers overnight to think about it, y'all will have

1 some more motions that will certainly take no more than
2 15 minutes. Because at 9:30, the jury is going to be
3 sitting in that box. See y'all at 9:15 in the morning.

4 MR. MYERS: Thank you, Your Honor.

5 THE COURT: Thank you, Mr. Myers, Mr. Harvey.

6 (Whereupon the proceedings were concluded for
7 October 16, 2006).

8 (The following proceedings were reported on
9 October 17, 2006).

10 THE COURT: I am prepared to rule on the
11 identification issue. Is there anything additional the
12 State would like me to look at prior to that ruling?

13 MR. HUBBARD: No, sir, Your Honor.

14 THE COURT: From the defense?

15 MR. HARVEY: No, Your Honor.

16 THE COURT: All right. I have reviewed State
17 versus Brown, 589 S.E.2d 781, which was the case you
18 cited, Mr. Harvey. I also reviewed State versus Moore,
19 540 S.E.2d 445, State versus Tisdale, Neil v. Biggers,
20 and also Manson versus Brathwaite, 432 U.S. 98, a 1977
21 case, which was a single photograph in that particular
22 case.

23 Even with the singular photograph, the Court
24 went back through the five Biggers' criteria in making
25 the determination of the admissibility of the

1 identification evidence.

2 In that particular case and as all the cases
3 state, reliability is the linchpin in determining
4 admissibility of identification testimony. Further, a
5 criminal defendant may be deprived of due process of law
6 by an identification procedure that is unnecessarily
7 suggestive and conducive to irreparable mistaken
8 identification.

9 An in-court identification of an accused is
10 inadmissible if a suggestive out-of-court identification
11 procedure created a very substantial likelihood of
12 irreparable misidentification.

13 The United States Supreme Court has developed
14 a two-prong inquiry to determine the admissibility of an
15 out-of-court identification. First, a Court must
16 ascertain whether the identification process was unduly
17 suggestive.

18 The Court must next decide whether the
19 out-of-court identification was nevertheless so reliable
20 that no substantial likelihood of misidentification
21 existed. Only if the procedure was suggestive may the
22 Court consider the second question, whether there was a
23 substantial likelihood of irreparable misidentification.

24 In looking at the five Neil v. Biggers'
25 criteria, it appears that the individual, Ms. Wright in

1 this case, saw the suspect twice in the store. She had
2 a good opportunity to view this individual. These two
3 times were within minutes of each other.

4 The second time the individual was the only
5 other person in the store beside the victim. The victim
6 saw him both times a counter width away. The second
7 time she saw him, she had a conversation with him.

8 She also saw him move throughout the store,
9 saw him back at the counter making the transaction
10 paying for the juice. He talked with her again, giving
11 her directions as to what to do once the cash register
12 was open.

13 Afterwards she gave a description of the
14 suspect, a very detailed description of his clothing,
15 including his shirts, pants, hat, with the colors of
16 those items, and also a description of the gun he was
17 carrying.

18 All of this is confirmed by the testimony of
19 Detective Sims after viewing the videotape. The victim
20 also gave a description of some detail of the vehicle
21 that the suspect was driving.

22 She stated she was focused on the individual
23 with the gun, and further she had no doubt about her
24 identification. Even if her identification was based on
25 seeing the suspect the night of the robbery and seeing

1 him in court, under State versus Cunningham, 268 S.E.2d
2 289, a 1980 case, whereby the individual saw the suspect
3 at a preliminary hearing, that would not be suggestive.

4 There was some testimony according to the
5 victim that was within weeks of the incident, a white
6 male in a blue uniform came by and showed her a single
7 piece of paper with a photograph.

8 However, there was testimony that there may
9 have been more than one photograph on that single piece
10 of paper and that she picked out the Defendant, the same
11 individual that she picked out in the courtroom, as the
12 man who robbed her on November 7, 2004.

13 Although this has been characterized as a
14 show-up, I find that there is evidence in the record
15 this was not a show-up, as there is an inference that
16 there was more than one photograph shown.

17 Further, suggestiveness would imply
18 significance. This event was so insignificant to the
19 victim that she does not even remember the date or the
20 officer's name or any other details about that. Clearly
21 that could not be held to be suggestive.

22 So I do not even think the first prong of Neil
23 v. Biggers would be met. I would ascertain that that
24 identification process was not unduly suggestive. We
25 don't even know who this individual was that showed her

1 the single piece of paper with a photograph or with
2 numerous photographs on it.

3 Additionally, there is testimony in the record
4 from the chief officer that there was no such procedure
5 conducted as part of his investigation. Additionally,
6 the victim testifies that her identification is based on
7 seeing the Defendant or seeing the individual she picks
8 out as the robber. She identified the Defendant at the
9 time of the crime, not on this process that occurred
10 weeks later.

11 I therefore find that it was not an unduly
12 suggestive procedure that was used, that if it was
13 unduly suggestive, that it would meet the reliability
14 prong of Neil versus Biggers in the five various
15 factors that we all must look at in determining the
16 admissibility of the identification testimony.

17 Additionally, I would point out under Manson,
18 which was a single photograph shown by a police officer,
19 that under circumstances of that case, they could not
20 say there was a substantial likelihood of irreparable
21 misidentification.

22 I find there is not even suggestiveness at
23 this point. Short of that, such evidence is for the
24 jury to weigh. The U.S. Supreme Court stated: We are
25 content to rely upon the good sense and judgment of

1 American juries, for evidence of some element of
2 untrustworthiness is customarily grist for the jury
3 mill.

4 Jurors are not so susceptible that they cannot
5 measure intelligently the weight of identification
6 testimony that has some questionable feature. With that
7 being said, I find that the in-court identification by
8 Ms. Wright is admissible.

9 Mr. Harvey, yesterday at the end of the day
10 you mentioned that you did not want to go into the
11 procedure of the single piece of paper with the
12 photograph or numerous photographs on it. Is that still
13 the defense position?

14 MR. HARVEY: Your Honor, based on today's
15 ruling, the defense position is we understand the Court
16 has found based upon the in camera hearing the
17 reliability of the identification.

18 Being mindful of what the Court said, once it
19 has ruled on an issue, it doesn't need to have that
20 issue readdressed, our position is you have ruled on the
21 reliability.

22 Our position is when the witness testifies,
23 the State will still have to lay a proper evidentiary
24 foundation, and we'll be able to cross examine the
25 witness as to what transpired.

1 THE COURT: Certainly. That's why I asked you
2 the question.

3 MR. HARVEY: As much as I had argued for a
4 different ruling, I am understanding of the Court's
5 ruling, and that was our position for purposes of that
6 hearing.

7 The Court has ruled that the identification is
8 reliable, and as the Court stated a moment ago, when the
9 Supreme Court said it relied on the good common sense of
10 American juries, I would assume the Court also addressed
11 the fact that the Defendant would have the right to
12 cross examine fully the witness making the
13 identification.

14 THE COURT: Yes, sir.

15 MR. HARVEY: Thank you, Your Honor.

16 THE COURT: I only brought that up because you
17 brought it up yesterday. I wanted to make sure there
18 wasn't some issue I had left out there dangling that I
19 failed to rule on.

20 Your point is well taken, Mr. Harvey. You
21 surely would have the right and the opportunity to fully
22 cross examine the victim and any other witness as far as
23 identification or any other witness that may be relevant
24 to it.

25 MR. HUBBARD: My only question is I am still

1 not clear. I had agreed that I wouldn't even go into
2 that if he doesn't want me to. So I don't know if the
3 date factor ended up being something prejudicial to him,
4 I don't want to tread there. If it's something he
5 doesn't want me to do, I am fine proceeding either way.
6 I just was not clear by his answer, and I am willing to
7 work either way.

8 THE COURT: He clearly has the right to fully
9 cross examine.

10 MR. HUBBARD: Okay.

11 THE COURT: I will leave that up to you. You
12 ask the question, and Mr. Harvey can decide whether to
13 object to the point you are asking or not. Are we ready
14 for our jury?

15 MR. HUBBARD: There is one issue I know
16 Mr. Myers brought up. He has got a board for
17 demonstrative purposes for his opening about the
18 different standards of doubt. I do have an issue with
19 that.

20 MR. MYERS: Yes, sir, Your Honor. May it
21 please the Court. Your Honor, through the National
22 College of D.U.I. Defense, if I can approach to show the
23 Court.

24 THE COURT: All right.

25 MR. MYERS: Your Honor, I have a level of

1 proof chart which I only intend to use for demonstrative
2 purposes during opening statement. It has steps. The
3 first step is obviously if there is absolutely no
4 evidence at all, the jury must find the Defendant not
5 guilty.

6 It goes all the way up to reasonable doubt.
7 If they believe there is a reasonable doubt, they must
8 give my client the benefit of the doubt and still find
9 him not guilty.

10 Out of all fairness to Mr. Hubbard, I showed
11 him the chart prior to so that we could all be fair. He
12 takes issue with the language next to clear and
13 convincing.

14 That language next to it says: Clear and
15 convincing, not guilty. They basically said the
16 definition of clear and convincing is a firm belief that
17 the allegations are true.

18 I understand Judge Keesley made some language
19 or had some language about what reasonable doubt is. I
20 believe he stated that reasonable doubt is a firm -- or
21 firm, convincing evidence or some language to that
22 effect as to what reasonable doubt is.

23 I would submit to the Court that I have never
24 had anyone object to it. I have used it several times
25 before. Courts have obviously allowed me to use it

1 because the opening statement is obviously not
2 evidence.

3 I only want to have the jury look at this so
4 that they can assess the evidence as it comes in. The
5 Court will certainly give them its definition or the
6 definition of reasonable doubt.

7 I'm of the opinion, Your Honor, that
8 reasonable doubt is any doubt that would cause a
9 reasonable person to pause. I believe that has been
10 charged to juries in criminal matters across the State
11 for years.

12 I would respectfully submit that I do not
13 think there is anything wrong with the chart. The jury
14 will certainly know that what I say is not evidence. It
15 is just for demonstrative purposes, and I would ask the
16 Court to allow me to use that.

17 THE COURT: I don't charge State versus
18 Manning hesitate to act. I do charge firmly convinced.
19 I asked Mr. Carson to go get me a copy of that right
20 now.

21 I will provide both of y'all with a copy of
22 what I charge as far as reasonable doubt is concerned.
23 But is your only concern what is to the right of clear
24 and convincing on the chart?

25 MR. HUBBARD: Your Honor, I guess that's the

1 major concern, but also the steps here. We are only
2 dealing with reasonable doubt. Everything else is for
3 Your Honor.

4 That standard of clear and convincing was for
5 Your Honor when we just had that I.D. situation. A
6 preponderance of the evidence is for civil court. All
7 this other stuff, probable cause, that's for an officer
8 and a magistrate. It's not for this courtroom, not this
9 jury.

10 The only thing we are talking about is this
11 (indicating), reasonable doubt. When we get a firm
12 belief under the clear and convincing, my problem is, of
13 course, under Victor v. Nebraska and State v. Darby, we
14 are talking about firmly convinced of the Defendant's
15 guilt, the language that I am sure you probably have in
16 your charge if it's the standard charge.

17 I think it confusing. They are being shown
18 standards that they don't have to consider, and it
19 contains language that pertains to the reasonable doubt.
20 He doesn't have any language next to that reasonable
21 doubt.

22 It's very confusing. I think we are starting
23 off on the wrong foot if we confuse the jury. Obviously
24 you are the judge of the law. I think we just need to
25 stay away from that, not only the chart but just

1 discussing reasonable doubt.

2 If he wants to discuss it, he needs to go by
3 what we are going to charge and by what the State has
4 approved -- the Court has approved -- whether it's
5 another Court case, Manning or whatever. He needs to
6 stick to reasonable doubt.

7 THE COURT: Yes, sir. I didn't mean to
8 interrupt you, Mr. Myers.

9 MR. MYERS: Your Honor, the only thing I would
10 add is that obviously I am entitled in an opening
11 statement to discuss burden of proof. My client is
12 obviously facing 30 years. I am entitled to actually
13 educate the jury on what we believe their burden of
14 proof or what the burden of proof is in this trial.

15 I see absolutely no reason. Mr. Hubbard, I
16 have actually offered to him if he wants to use my
17 chart, I will be nice enough to let him use it, and he
18 can argue the same.

19 THE COURT: That is nice, Mr. Myers.

20 MR. HUBBARD: It's gracious.

21 MR. MYERS: Your Honor, I guess my point is
22 that what I would be saying in opening statement would
23 not be evidence. I believe the Court will certainly let
24 the jury know that is not in evidence.

25 Obviously we are here for a criminal matter.

1 I just wanted to educate the jury that there are certain
2 other proceedings, there are certain other hearings
3 where different standards of proof may or may not be
4 used.

5 In all the cases I have tried, some jurors
6 afterwards admitted to basically just thinking: Oh, I
7 was kind of confused about the difference between
8 preponderance of the evidence and clear and convincing.

9 THE COURT: Those are cases you have won,
10 Mr. Myers; is that correct?

11 MR. MYERS: Yes, sir, Your Honor. But I
12 believe that I am at least entitled to show the jury
13 this chart and explain it. The Court, again, will tell
14 the jury that what I say is not evidence. They can
15 certainly use it to their benefit. If Mr. Hubbard has
16 any objection to that point, he can certainly argue to
17 the jury.

18 THE COURT: Part of my thinking, too, this is
19 what I charge on reasonable doubt. The State has the
20 burden of proving the Defendant guilty beyond a
21 reasonable doubt.

22 This is part of why I don't think the chart is
23 inappropriate. Some of you may have served as jurors in
24 civil cases where you have been told that it is only
25 necessary to prove that a fact is more likely true than

1 not true, such as by the greater weight or preponderance
2 of the evidence.

3 In criminal cases the State's proof must be
4 more powerful than that. It must be beyond a reasonable
5 doubt. So in a sense I charge them all the way up to
6 the reasonable doubt line.

7 Obviously I would agree with Mr. Hubbard, with
8 the solicitor, there are issues there that are never for
9 a jury to decide, as far as probable cause, as far as
10 scintilla, as far as clear and convincing. Those are
11 all threshold issues by the Court.

12 In criminal cases the State's proof must be
13 more powerful than that. It must be beyond a reasonable
14 doubt. Proof beyond a reasonable doubt is proof that
15 leaves you firmly convinced of the Defendant's guilt.

16 There are very few things in this world that
17 we know with absolute certainty. In criminal cases the
18 law does not require proof that overcomes every possible
19 doubt.

20 Based on your consideration of the evidence,
21 if you are firmly convinced that the Defendant is guilty
22 of the crime charged, you must find the Defendant
23 guilty.

24 If on the other hand, you think there is a
25 real possibility that the Defendant is not guilty, you

1 must give the Defendant the benefit of the doubt and
2 find him not guilty.

3 I have a little concern about what is to the
4 right of preponderance. You have the firmly convinced
5 language there, Mr. Myers?

6 MR. MYERS: Yes, sir, Your Honor. Basically
7 what it says -- I will bring it a little closer for Your
8 Honor. Basically, Your Honor, next to preponderance of
9 the evidence it states: Greater weight or amount of
10 evidence. Next is clear and convincing, a firm belief
11 that the allegations are true. And next to reasonable
12 doubt, simply not guilty.

13 MR. HUBBARD: Not to jump in, but I think the
14 definition for clear and convincing is really more the
15 definition for reasonable doubt. Reasonable doubt is
16 left with no definition because there is a not guilty
17 sign here. The jury at this point is going to go
18 wondering what is reasonable doubt. That's a problem.

19 THE COURT: How about just block that. What
20 is to the right?

21 MR. MYERS: Clear and convincing.

22 MR. HARVEY: Clear and convincing?

23 MR. MYERS: Yes, sir.

24 THE COURT: Just don't use that language as
25 far as clear and convincing. If you comment on it, you

1 can comment on it, but just don't use that language.

2 Mr. Hubbard, you can take up the offer of
3 using Mr. Myers' chart if you so desire.

4 MR. HUBBARD: Yes, sir.

5 MR. MYERS: Your Honor, the only thing I would
6 say, I believe that clear and convincing -- I believe
7 the Court sometimes plays with semantics when basically
8 discussing the definitions of these words.

9 I don't believe anyone has offered the
10 definition of actually what clear and convincing is. I
11 believe my last recollection was pretty close to what's
12 on this chart, but I certainly agree with the Court's
13 ruling and will redact it.

14 THE COURT: I understand, I don't think you
15 are trying to mislead the jury. I don't mean that. But
16 with my language here about reasonable doubt is proof
17 that leaves you firmly convinced of the Defendant's
18 guilt, there may be some confusion.

19 As a matter of fact, that could reduce the
20 State's burden of proof. They could think this was
21 clear and convincing. So I think in an abundance of
22 precaution, I will allow you to use the chart.

23 MR. MYERS: Thank you, Your Honor.

24 THE COURT: And you say you have offered it to
25 Mr. Hubbard also. If you could just block out that one

1 section somehow.

2 MR. MYERS: Yes, sir.

3 MR. HUBBARD: The only thing is I am assuming
4 he's not going to be able to read that language as well,
5 even though it's not on the chart, but to say: Clear
6 and convincing is...

7 THE COURT: He can comment on clear and
8 convincing.

9 MR. HUBBARD: Right. But the definition that
10 we are blocking out, I'm assuming we are blocking it out
11 because we don't want him to either say it or show that
12 definition.

13 THE COURT: I would agree.

14 MR. MYERS: I won't say the actual language I
15 am blocking out, but I would like to comment on what our
16 position is concerning clear and convincing, but it's
17 not the language I am blocking out.

18 THE COURT: Thank you, Mr. Myers. If y'all
19 would get that ready.

20 (Pause).

21 MR. HUBBARD: Your Honor, one thing at some
22 point if I get the C.D. in with the video footage of the
23 incident, if you don't mind if we could take a quick
24 break so I can have somebody set this up. We've got the
25 equipment up here. I am so untechnical that I'm afraid

1 I would not do it right.

2 THE COURT: I understand. I will have a brief
3 precharge that takes about ten minutes, I would think.
4 Then, solicitor, you will open and then Mr. Myers is
5 going to open, Mr. Harvey?

6 MR. HARVEY: If Your Honor please. This would
7 be an opportune time to address that issue. Mr. Myers
8 and I have divided up some of our duties. I know the
9 customary practice.

10 Mr. Myers is going to open, and Mr. Myers may
11 take the cross examine of a witness. I just didn't want
12 Mr. Myers -- I didn't want the Court to prohibit either
13 me or Mr. Myers from cross examining other witnesses. I
14 intend on cross examining most of the witnesses. I am
15 not going to sit down and let Mr. Myers do it in tandem,
16 like a tag team.

17 THE COURT: Right, yes, sir.

18 MR. HARVEY: But I just wanted the Court to be
19 aware that Mr. Myers may take a witness, and I may take
20 a witness.

21 THE COURT: Y'all try to keep in mind whoever
22 is going to cross examine a particular witness needs to
23 be the one objecting on direct.

24 MR. HARVEY: Yes, sir.

25 THE COURT: Sometimes you will step on each

1 other in the heat of battle, so to speak.

2 MR. HARVEY: And just another housekeeping
3 matter. We had lengthy pretrial hearings. The Court
4 has ruled on the admissibility of some evidence. Rather
5 than having to fully articulate the objection, would the
6 Court consider allowing me just to contemporaneously
7 object and maybe at a break more fully develop that
8 objection rather than interrupt the trial?

9 THE COURT: I don't mind you doing that. I
10 want y'all to make sure y'all feel totally and
11 completely protected on the record. I would certainly
12 allow you to supplement the record at a break, but at
13 the same time I want you and Mr. Myers to feel like
14 whatever objections you make are protected on the
15 record.

16 MR. HARVEY: Yes, sir. I was basically
17 addressing the objections to that were -- I anticipated
18 just renewing my objection to the evidenced that Your
19 Honor has ruled on.

20 THE COURT: I understand.

21 MR. HARVEY: Rather than redo that. Of
22 course, there may be some other evidentiary objections
23 that will take up contemporaneously, but I didn't want
24 to belabor it.

25 I am confident that if we object and then

1 supplement it, one, we will protect our client and, two,
2 it will help with the flow of the trial, which I believe
3 will also help my client.

4 THE COURT: All right.

5 MR. HARVEY: Thank you, Your Honor.

6 THE COURT: Yes, sir, certainly.

7 For those of you out in the courtroom, I
8 believe Mr. Corley stated my position. I don't like
9 people moving about when the witness is on the witness
10 stand.

11 You are welcome to leave between witnesses.
12 In other words, when I say between, when both parties
13 are fully and completely finished with a particular
14 witness, and the witness is getting done and leaving the
15 stand.

16 But it's not fair for the jury for there to be
17 movement in the courtroom while the attorneys are
18 directing or cross examining, redirecting or recrossing
19 a witness.

20 I certainly understand if the Solicitor's
21 Office staff or Mr. Harvey or any member of his staff
22 has to move about or enter or exit the courtroom for any
23 particular reason, that's fine.

24 Please try to bear that in mind. All right.
25 Would you please get us the jury. I want Ms. Green --

1 put her in the foreman chair, Ms. Green.

2 (Pause).

3 THE COURT: I understand the jury has already
4 selected a foreperson. I guess that's why Mr. Corley
5 couldn't figure out who Ms. Green was.

6 (The jury returns to the courtroom at
7 10:09 a.m.)

8 THE COURT: Madame Clerk, if you would swear
9 our jury, please.

10 CLERK: Yes, sir.

11 (The jury is duly sworn).

12 THE COURT: I understand the jury has selected
13 a foreperson. Let's see, I have two alternates. These
14 are my two alternates. If y'all would always keep those
15 two seats. Don't move around on me. I will memorize
16 where you are at sooner or later. But everyone else is
17 welcome to sit wherever they want to sit. The foreman
18 will maintain his seat, and the two alternates will
19 maintain theirs.

20 Mr. Foreman, and ladies and gentlemen of the
21 jury, the case we are about to try is the case of the
22 State versus Quincy Andre McCants, the Defendant. What
23 I will now say is intended to serve as an introduction
24 to the trial of this case. These remarks are not a
25 charge on the law in this case.

1 I will instruct you on the law applicable to
2 this case at the end of the trial before you retire to
3 consider your verdict. This is merely an explanation of
4 the procedure that we will follow in the trial of this
5 case so that you may better understand what may be
6 happening.

7 The Defendant is charged by an indictment
8 filed in this Court with the crime of armed robbery, the
9 elements of which will be explained to you later. The
10 indictment is simply the charge by which the case is
11 brought into court, and it is not in any sense evidence
12 of any of the allegations it contains.

13 The Defendant has pled not guilty to this
14 indictment. The State therefore has the burden of
15 proving each of the elements of the indictment beyond a
16 reasonable doubt. It will be your duty, ladies and
17 gentlemen, to decide whether the State has met that
18 burden.

19 Your purpose as jurors is to find and
20 determine the facts. You are the sole judge of the
21 facts. If at any time I make any comment regarding the
22 facts, you must disregard them. You are to determine
23 the facts from the testimony you hear and the other
24 evidence introduced in court.

25 It is up to you to determine the inferences

1 which you feel may properly be drawn from the evidence.
2 It is especially important that you perform your duty of
3 determining the facts diligently and conscientiously
4 because ordinarily there is no way to correct an
5 erroneous determination of the facts by a jury.

6 On the other hand and with equal emphasis, the
7 same law that makes you the judges of the facts makes me
8 the judge of the law. The law as given by the Court is
9 the only law you may consider. You must accept and
10 follow it even though you may disagree with it.

11 I cannot tell you what the facts are, and you
12 cannot disagree with me about what the law is or should
13 be. Your job is to take the law as I give it to you and
14 apply it to the facts as you find them from the
15 testimony of the witnesses and any other evidence that
16 is introduced.

17 After doing that you will render your verdict,
18 a true and just verdict under the solemn oath that you
19 just took as jurors. Until I advise you to begin your
20 deliberations, you must not discuss this case with
21 anyone, including your fellow jurors, friends, family
22 members, and anyone involved in the case. After the
23 case is submitted to you, you must discuss it only in
24 the jury room with your fellow jurors.

25 The attorneys and parties in this case have

1 been advised that they are not to talk to you at all.
2 So if you see anyone involved in the case, and they do
3 not even say hello, they are not being unfriendly. They
4 are just following my instructions.

5 It is important that you keep an open mind and
6 not decide any issue in the case until all of the
7 evidence has been presented, the parties have made their
8 closing arguments, and I have instructed you on the law
9 in this case.

10 It is your solemn responsibility to determine
11 the guilt or innocence of the Defendant, and your
12 verdict must be based solely on the evidence as it is
13 presented to you in this trial and on the law as I
14 instruct you during and at the close of the trial.

15 In just a moment, the solicitor will make what
16 is called an opening statement in which the solicitor
17 will explain to you the issues in the case or at least
18 what the solicitor thinks the issues are in the case.
19 The attorney, either Mr. Harvey or Mr. Myers, for the
20 Defendant may also make an opening statement, although
21 they are not required to do so.

22 What the attorneys tell you during their
23 opening statements is not evidence in this case. It is
24 only their contention as to what the issues are. The
25 evidence in this case will be presented to you by the

1 testimony of sworn witnesses from this witness stand
2 and/or by exhibits that may be introduced into evidence.

3 From time to time during the trial, you may
4 hear one of the lawyers say something like: Your Honor,
5 I believe we have a question of law or a matter of law
6 to discuss with you or Your Honor may we approach the
7 bench or sometime I myself might find it necessary to
8 excuse you from the courtroom for a short while so the
9 attorneys and I can discuss a matter of law.

10 The reason for this is because you are the
11 judge of the facts in this case. And sometimes when I
12 am discussing matters of law with the attorneys, it may
13 be necessary for me to make some comment as to the facts
14 in connection with ruling whether or not a particular
15 law applies.

16 I am not supposed to tell you what I think the
17 facts are. So I will excuse you from the courtroom
18 while these discussions take place so that in no way
19 will you be influenced by anything I might say or do in
20 connection with the facts.

21 In determining what the true facts are in this
22 case, you must decide whether or not the testimony of
23 the witnesses is believable. It will be my
24 responsibility to rule as a matter of law as to whether
25 or not certain testimony is admissible at all or not.

1 But once the testimony is admitted, whether or not you
2 believe it is solely for you to determine.

3 In deciding whether to believe a witness, you
4 have the right to consider the interest of any witness,
5 the bias of any witness, the prejudice of any witness,
6 the opportunity for the witness to have seen the matters
7 and things about which the witness may testify, and the
8 way the witness acts on the witness stand.

9 You have a right to consider anything that is
10 in the record that will help you evaluate the testimony
11 of the witnesses. That means that it is your duty to
12 pay close attention to these witnesses, to observe the
13 witnesses, to listen to the witnesses, and to pay close
14 attention to the attorneys and to the Court.

15 Don't let your thoughts wander but give strict
16 attention to the testimony in this case. So at the end
17 of all the testimony, after the arguments of counsel,
18 and the charge on law by the Court, you will then be in
19 a position to determine what the true facts are and to
20 apply the law to those facts and thus render a true and
21 just verdict.

22 It will be your added duty, Mr. Foreman, to
23 preside in the jury room and be the jury's spokesperson
24 here in court. It will also be your duty to write the
25 verdict, but I will give you further instructions about

1 that at the conclusion of the case.

2 Just several other points, ladies and
3 gentlemen. Believe it or not, your time and your
4 convenience is very important to me. I apologize, I had
5 some other matters to deal with this morning in getting
6 you out here late. I try to be prompt and it was
7 totally my fault. It had nothing to do with either one
8 of the parties involved in this case.

9 It was just some other matters I had to attend
10 to that came up at that same time. With that being
11 said, I will reiterate, your time, your comfort is very
12 important to me.

13 When I want to take a break, we take a break.
14 I find if get too tired, if I sit too long, I can't
15 focus. The same goes for y'all. If somebody needs a
16 break and we haven't gotten to the point where I have
17 decided to take a break, please get my attention, get
18 the attention of Mr. Corley, one of our bailiffs, just
19 raise your hand, and we will take a break. As I say,
20 don't let your thoughts wander. Stay focused. If you
21 need a comfort break, if you need a few moments, that's
22 fine. Just please let me know.

23 Also if you cannot hear, again raise your
24 hand, cup your ear. There are speaker systems in the
25 courtroom. I try to talk loud. I try to talk loud

1 because I don't hear real well, and I try to get other
2 people to hear real well.

3 If you are cannot hear what the witnesses are
4 testifying to, you will not be able to determine what
5 the true facts are. So please, again, just raise your
6 hand and just let me know. I think our fine Clerk of
7 Court has already ordered us lunch; is that correct?

8 CLERK: I've got the menus. I'm waiting on
9 them to open up.

10 THE COURT: You won't have to go out in the
11 weather today, and we can move along with the trial. If
12 at any time you need to be in contact with the Court, if
13 you will write something out, Mr. Foreperson, and give
14 the note to bailiff, he will certainly bring it to my
15 attention.

16 Any objections from the State to anything I
17 have said to the jury?

18 MR. HUBBARD: No, sir, Your Honor.

19 THE COURT: From the defense?

20 MR. HARVEY: No, Your Honor.

21 THE COURT: We will now begin the trial of the
22 case. Solicitor, you may address the jury.

23 **OPENING STATEMENT**

24 MR. HUBBARD: Thank you, Your Honor. The
25 first day on the job all by herself. Her first day by

1 herself at the Li'l Cricket store here in Lexington
2 County. Chandra Wright, who you are going to hear from,
3 is going to tell you that was the first day she was by
4 herself, November 7, 2004.

5 She had been working there about a week but
6 always had somebody there with her training her, showing
7 her what to. This day of all days, she is by herself
8 and she's new. She's working a later shift, afternoon
9 shift. It carried her on into the evening of November
10 7, 2004.

11 About 8:20 she notices somebody come in. It's
12 a black male, tan pants, tan shirt, blue hat with
13 yellow. It was kind of pulled down. At this point he
14 is just like any other customer. He's by himself. No
15 one else was in the store.

16 He walks in front of her, crosses in front of
17 her, goes to an aisle in her presence, gets a bag of
18 potato chips, comes right up to her, and pays for them.
19 Then he leaves. She sees he goes out the store.

20 About ten minutes later, she sees a black
21 male, tan pants, tan shirt, blue hat, gold on that hat,
22 yellow on that hat, come back in the store. She
23 recognizes, "That's the guy I just sold a bag of potato
24 chips to." As he is walking in, he holds up that bag of
25 potato chips, "Can I exchange these?"

1 She says: Sure. Put them right back when you
2 got them and get another flavor. You've got to put them
3 right back where you got them. He walks in front of her
4 again, puts the bag back, picks up another bag, walks to
5 the back of the store and gets a drink.

6 Again, no one else is in the store. For the
7 second time he comes up right up to her at the counter,
8 puts his drink down, potato chips down, pulls out some
9 money, and she hits the register.

10 What happens? The register opens. When that
11 happened, she looks up and the man who was buying a
12 drink and some chips is now holding a pistol, a small
13 black pistol. He says: Give me the money in the till.

14 She starts dumping it out onto the counter.
15 At one point he puts his pistol down and scoops it up.
16 She's smart. She doesn't try to fight. No job is worth
17 that. She let's him have it.

18 He takes the money and heads for the door.
19 She sees him right up close to her, just a counter
20 length away. In fact, he is leaning over. He leaves
21 out the door of the store.

22 She follows, as she has been trained, and
23 immediately locks that door. Then she notices he has
24 dropped some money. He bends down outside, picks it up,
25 and goes and gets in his car, and she sees it ride away.

1 Her first day, first day on the job by
2 herself. She calls the police, like she is trained to
3 do. Law enforcement gets there. They start questioning
4 her, and they found out that there is a video camera in
5 the store, a video system, that shows the events that I
6 have just described.

7 You will hopefully get to see that. An
8 officer comes in, Jim Hickman, who processed the crime
9 scene. He interviews her and talks to her and takes
10 photographs. He finds that the man that entered that
11 store, the man in tan, the man in the blue and yellow
12 hat left his calling card. He left his fingerprints.

13 In fact, he left two bags of potato chips in
14 that store, the one he was going to buy and the one he
15 returned on the shelf. He left his calling card. You
16 are going to hear an expert testify about that calling
17 card.

18 He's going to say: No two fingerprints are
19 the same. Your fingerprints are different from yours,
20 and yours are different from yours. Everybody's
21 fingerprints are unique. Two fingers on the left hand
22 on the bag of chips that were put back.

23 You are going to hear those fingerprints
24 belong to Quincy Andre McCants. You are going to hear
25 Detective Brett Sims. He is going to talk about his

1 job, how he followed up the vehicle information, went to
2 Richland County because that's where he determined the
3 owner of the car was, and that's how the name Quincy
4 McCants comes up.

5 You are going to hear on January 5, 2005, he
6 actually interviews Mr. McCants. Mr. McCants says: I
7 didn't do this. You are going to hear that he requests
8 that fingerprint analysis and that he gets the result of
9 that fingerprint analysis.

10 He gets a warrant as a result of that
11 fingerprint analysis and that he serves it. You are
12 going to hear that he interviews Quincy McCants a second
13 time, January 7, 2005.

14 "Mr. McCants, did you do it?"

15 "I don't remember."

16 That's going to be his response: I don't
17 remember. He went from: I didn't do it to I don't
18 remember. He is going to say: Mr. McCants, I've got
19 some fingerprints that are yours on a bag in that store.
20 Can you --

21 MR. HARVEY: Your Honor, I am going to object.
22 I haven't so far.

23 THE COURT: Wait just a minute. Mr. Bailiff,
24 would you take our jury to the jury room. Please do not
25 discuss this matter.

1 (The jury retires to the jury room).

2 THE COURT: Yes, sir, Mr. Harvey.

3 MR. HARVEY: I apologize to the Court.

4 THE COURT: That's all right.

5 MR. HARVEY: I was going to interpose an
6 objection, and then I rethought it. I don't have an
7 objection. I apologize for interrupting you.

8 THE COURT: That's all right, Mr. Harvey.

9 MR. HARVEY: I apologize, Your Honor. I know
10 Mr. Hubbard wouldn't do that. I frankly -- he was doing
11 a very good opening statement, and I thought he may have
12 gone far afield on some issues, but in retrospect I am
13 not going to object and will address that matter later.

14 I apologize to the Court. It's not like me to
15 do that. I guess in the heat of the battle sometimes
16 you tend to try and do things without giving it a second
17 thought.

18 THE COURT: That's quite all right,
19 Mr. Harvey. No apology is necessary. If you think it
20 is, it's certainly accepted. I will say this to both of
21 you. If you object, I don't like objections where, "I
22 thought about moving to object," because I think that
23 gives an implication perhaps to the jury that there may
24 have been something objectionable that was said earlier
25 that you decided not to object to it, and then I haven't

1 ruled on it.

2 I just say that because it's just my procedure
3 if you want to object, that's fine, object, one word,
4 objection. If I can't figure it out -- and many things
5 I can't figure out perhaps what you are talking about.
6 I then will ask you to come to the bench or do it
7 outside their presence. As I say, Mr. Harvey, no
8 apology is necessary. But if you think one is, it's
9 certainly accepted.

10 Mr. Bailiff, brings us our jury please. Thank
11 you.

12 While the jury is coming back in, Solicitor,
13 don't forget Rule 615 on the sequestration.

14 MR. HARVEY: That's the man who came in a
15 little bit earlier. We escorted him across the hall.

16 THE COURT: Based on my ruling, I don't know
17 if that affects the opening.

18 MR. HUBBARD: Yes, sir.

19 THE COURT: I just bring that to your
20 attention.

21 (The jury returns to the courtroom).

22 THE COURT: It appears our jury is back in
23 place. Solicitor, you may proceed.

24 MR. HUBBARD: Yes, sir. On two occasions
25 Mr. Sims spoke to Quincy Andre McCants. January the 5th

1 was the first occasion. He got the response: I didn't
2 do it. January the 7th he gets the response: I don't
3 remember.

4 When confronted with the fingerprints on the
5 bag in that store: Mr. McCants, you know, what about
6 this bag with your fingerprints? The response is: I
7 don't know how it got there. That's the evidence you
8 are going to hear.

9 But you are going to hear one more piece of
10 evidence. It will come from Chandra Wright, who had
11 those two occasions to see Mr. McCants. She is going to
12 tell you today when she looks out in this courtroom, she
13 sees the face of a man who held a gun on her November 7,
14 2004, and again it's Quincy Andre McCants.

15 Ladies and gentlemen, "I don't know or I don't
16 remember," may sound like there is a lot of confusion in
17 the answer that Quincy McCants gave. At the end of this
18 trial, you are not going to be confused.

19 At the end of this trial, you will have all
20 the evidence to do what you are sworn to do, to find the
21 truth. I believe the truth, when you search for it
22 beyond any and all reasonable doubt, is going to be that
23 that man, Quincy Andre McCants, is guilty of committing
24 the armed robbery at the Li'l Cricket in Lexington
25 County November 7, 2004.

1 THE COURT: Thank you, Solicitor. Mr. Myers.

2 MR. MYERS: May it please the Court.

3 THE COURT: You may address the jury. Yes,
4 sir.

5 **OPENING STATEMENT**

6 MR. MYERS: Mr. Foreman, ladies and gentlemen
7 of the jury, I was introduced to you on yesterday, but
8 again my name is Stanley Myers. I'm a lawyer over in
9 West Columbia at Moore, Taylor, and Thomas. I have the
10 honor and privilege of trying the case with my good
11 friend Jonathan Harvey.

12 Together we have the honor and privilege of
13 representing a fine young man, Quincy McCants. We also
14 have the opportunity to try this case in front of
15 perhaps the finest judge in the State of South Carolina.
16 He is going to give you the law. Quincy is charged
17 with armed robbery. Judge McMahon later on in trial is
18 going to give you all the elements of what armed robbery
19 is.

20 He is also going to talk with you about what
21 is called burden of proof. That's important. To show
22 you what I believe burden of proof is all about and the
23 correct standard that you have to apply in this case, I
24 brought along a chart.

25 Before I go into this chart, I want to tell

1 you this, ladies and gentlemen. Lady Justice is
2 blindfolded. Lady Justice also has what is called the
3 scales of justice in her right hand. Those scales are
4 important.

5 Lady Justice is blind because she doesn't care
6 who comes into her courtroom. She doesn't care if they
7 are rich, poor, black, white, Jew or gentile. She
8 simply does not care. As you represent Lady Justice,
9 you also are blindfolded.

10 You must apply the correct burden of proof or
11 the correct burden or level of proof in this case before
12 you even think about finding Quincy McCants guilty of
13 armed robbery.

14 Now, ladies and gentlemen, if you look at this
15 chart, if in the State's case they put up absolutely no
16 evidence, you must find Quincy McCants not guilty. If
17 they put up a scintilla of evidence or a measurable
18 amount of evidence, you still must find Quincy McCants
19 not guilty.

20 If you believe that there is a reasonable
21 suspicion that Quincy McCants committed armed robbery,
22 you still must find him not guilty. If you believe
23 through the testimony that there is probable cause to
24 believe that Quincy McCants committed armed robbery, you
25 must find him not guilty.

1 If you believe that there is a preponderance
2 of the evidence or a greater weight of the evidence,
3 basically if you look at those scales of justice, the
4 scales tip even so slightly by but what some Courts
5 refer to as 51 percent, you still must find Quincy
6 McCants not guilty.

7 If you believe that there is clear and
8 convincing evidence, looking as those scales of
9 justice again, that they tip about 75 percent in one
10 way or in the State's favor, you still must find him not
11 guilty.

12 Ladies and gentlemen, if you believe there is
13 a reasonable doubt in this case, which Mr. Harvey and I
14 believe that you will, you must certainly find Quincy
15 McCants not guilty. You must give him the benefit of
16 the doubt. It's not until those scales tip unanimously
17 in the State's favor that you find Quincy McCants guilty
18 of armed robbery.

19 Our Constitution and our Supreme Court has
20 said that every criminal defendant who steps into a
21 courtroom, steps into the courtroom presumed to be
22 innocent. He or she, black or white, Jew or gentile has
23 a cloak of innocence around his or her body.

24 That cloak of innocence is not to be removed
25 unless and until the State of South Carolina in this

1 case proves each and every element beyond a reasonable
2 doubt.

3 Let me tell you a little bit about Quincy.
4 Quincy is 33 years old, grew up in Richland County, went
5 to Eau Claire High School, grew up with his mom, who is
6 in the courtroom today. His girlfriend is here and his
7 niece.

8 I believe later on in the day, you will
9 probably see a lot of other family members come here.
10 Quincy has always worked in either construction or
11 heating and air. I must say it is certainly a pleasure
12 and privilege to say I represent the man.

13 Mr. Hubbard stood up and he told you what he
14 believes the evidence will show. Because, again, when
15 you are talking opening statements, it's just a chance
16 for us to tell what we believe that the evidence will
17 show.

18 You won't hear us deny that what happened to
19 Chandra Wright on November 7, 2004, was a horrific
20 event. We are not going to deny it. We are not going
21 to deny that someone walked in and perhaps robbed the
22 Li'l Cricket.

23 That's not in dispute. We are not going to
24 deny the where. We will give it to the State that this
25 incident occurred at the Li'l Cricket right over here in

1 Lexington County on Highway 378 on November 7, 2004. We
2 won't deny again the when or the where.

3 But we deny the who. Because we don't believe
4 that there is no evidence that the State will present
5 that Quincy McCants is the individual that committed
6 this robbery.

7 Again, I don't mean to belittle Ms. Chandra
8 Wright. She went through a horrific event, but the
9 individual that committed that robbery is not the man
10 who is sitting in this courtroom today.

11 You took an oath, ladies and gentlemen. As an
12 officer in the South Carolina Army National Guard, I
13 understand oaths. You swore to uphold the Constitution
14 of this fine State and our government. You took that
15 oath to say that you realize that Quincy McCants is
16 presumed to be innocent.

17 You have no enemies to punish nor friends to
18 reward. You are to look at the evidence as it comes
19 from this stand, from that witness stand, not what we
20 lawyers say is evidence, not what we believe the
21 evidence will show.

22 You have the opportunity. No one will disturb
23 your verdict. No one will even mess with it. In the
24 end, ladies and gentlemen, I ask that you hold the State
25 to its burden. You make them prove each and every

1 element of this offense beyond a reasonable doubt.

2 You don't say there is clear and convincing
3 evidence. You don't say well there is a preponderance
4 of the evidence. You say beyond the benefit of the
5 doubt, Quincy McCants is guilty of armed robbery.

6 If you do that, ladies and gentlemen, it's my
7 client's belief, it's Mr. Harvey's belief, and it's my
8 belief that you will find Quincy McCants not guilty of
9 armed robbery. Thank you.

10 THE COURT: Thank you, Mr. Myers. Solicitor,
11 you may call your first witness.

12 MR. HUBBARD: The State calls Chandra Wright
13 to the stand.

14 CHANDRA ANN WRIGHT, being
15 first duly sworn, testified as follows:

16 CLERK: State your full name loud and clear on
17 the record, please.

18 THE WITNESS: Chandra Ann Wright.

19 **DIRECT EXAMINATION**

20 BY MR. HUBBARD:

21 Q Ms. Wright, are you a little bit nervous today?

22 A Yes.

23 Q Prior to this have you ever had an opportunity to
24 testify in a court of law?

25 A Yes.

1 Q In another case? We are just talking about another
2 trial. Have you ever been involved in another
3 trial?

4 A Oh, no, I'm sorry.

5 Q Family court or anything like that?

6 A Not until yesterday.

7 Q I will move this microphone a little bit. You can
8 stay where you are, but just speak up for us.

9 A Okay.

10 Q Do you have any children?

11 A Yes.

12 Q How many?

13 A One.

14 Q A boy or a girl?

15 A A boy.

16 Q How old is he?

17 A Twenty-one.

18 Q Was he living with you at the time of this?

19 A Yes.

20 Q Do you have a job?

21 A Yes.

22 Q Where do you work?

23 A I'm still with Li'l Cricket part-time, and I work
24 at America's Best's Eyeglasses and Contacts now
25 full-time.

1 Q So you have two jobs?

2 A Yes.

3 Q What are your duties with America's Best?

4 A I'm assistant to the doctor, which is called a V.A.
5 tech.

6 Q What do you do?

7 A Pretesting.

8 Q When a patient comes in, you help with their eyes
9 to see what their status is before the doctor gets
10 to them?

11 A Yes.

12 Q Li'l Cricket, how long have you worked for Li'l
13 Cricket?

14 A About a year and a half now.

15 Q Do you remember when you started working for Li'l
16 Cricket?

17 A Yes.

18 Q Was that in 2004?

19 A Yes.

20 Q What were your duties with Li'l Cricket?

21 A I was a cashier.

22 Q Back in 2004 which Li'l Cricket were you working?

23 A Sunset Boulevard.

24 Q Is that here in Lexington County?

25 A Yes.

1 Q And, again, your duties at that Li'l Cricket, you
2 were a cashier?

3 A Yes.

4 Q Do you remember an incident that took place
5 November 7, 2004?

6 A Yes.

7 Q How long had you been on the job prior to that
8 incident?

9 A A week.

10 Q The day of that incident, did you have anybody
11 working with you?

12 A No.

13 Q Prior to the incident, had you had anybody working
14 with you?

15 A Yes.

16 Q So November 7, 2004, was your first day on the job
17 by yourself?

18 A Yes.

19 Q Do you remember what shift you were working?

20 A From 3:30 to one.

21 Q Three-thirty p.m.?

22 A P.m.

23 Q Till what time?

24 A One a.m.

25 Q Do you remember something happening? Let's talk

1 about an incident, an incident happening sometime
2 after 8:00 o'clock p.m.

3 A Yes.

4 Q Can you tell me about that.

5 A I was robbed by gunpoint.

6 Q The man that robbed you, how many times did he come
7 in your store?

8 A Twice.

9 Q Can you tell this jury when he came in the store
10 the first time what he did.

11 A Purchased a bag of potato chips.

12 Q Chandra, I want you to describe it for the jury.
13 You were behind the counter or were you somewhere
14 else in the store?

15 A I was behind the counter.

16 Q If you are behind the counter, the door is over to
17 your left?

18 A Yes.

19 Q When this man came in to purchase potato chips,
20 where did he have to go?

21 A To my right.

22 Q So he had to walk in front of you?

23 A Yes.

24 Q Were those potato chips on an aisle in the back or
25 what part of the aisle were they on?

- 1 A They're on the front aisle?
- 2 Q So he had to come in the front door, walk in front
3 of you to get a bag of potato chips.
- 4 A Yes.
- 5 Q Did he purchase those potato chips?
- 6 A Yes.
- 7 Q When he did will you describe for the jury how
8 close he was. Tell me or put me in the position of
9 Mister -- or the person at that time.
- 10 A A little closer.
- 11 Q (Walking towards the witness).
- 12 A About that far.
- 13 Q A counter width apart?
- 14 A Yes.
- 15 Q Did he buy those potato chips?
- 16 A Yes.
- 17 Q The man that came in at that point, what was he
18 wearing?
- 19 A Tan pants, tan shirt, a blue hat with a yellow
20 design around the band.
- 21 Q Now, was this like a baseball hat or what type of
22 hat?
- 23 A No, it was one of those caps that you can pull all
24 the way down.
- 25 Q Kind of like a bucket hat --

1 A Yes.

2 Q -- or a fishing hat type of thing?

3 A Yes.

4 Q Did you have another opportunity to see the same
5 man?

6 A Yes, he returned with the potato chips.

7 Q Was it hours, minutes or seconds later?

8 A Minutes.

9 Q When he came back in the store, was there anybody
10 else in the store?

11 A No.

12 Q Had you been having customers in and out all that
13 time?

14 A No, there was only a few minutes in between each
15 visit.

16 Q When he comes in the second time, what does this
17 man do?

18 A He said he purchased the wrong potato chips and
19 could he exchange them.

20 Q What did you tell him?

21 A Yes, he could but he had to get the same ones off
22 the same rack.

23 Q Again, you are in the store. You are still behind
24 the counter?

25 A Yes.

1 Q There is only that one door for customers to come
2 in and out of?

3 A Yes.

4 Q He comes in that same door?

5 A Yes.

6 Q When he talks to you, is he somewhere in front of
7 you.

8 A Yes.

9 Q Where does he go?

10 A Back to the rack where the potato chips are.

11 Q To your right?

12 A Yes.

13 Q Does he exchange those potato chips?

14 A Yes.

15 Q And then what do you observe him do?

16 A Go around, go to the back where the juices were.

17 Q In the very back of the store?

18 A Yes.

19 Q And then what do you observe him do?

20 A He got a juice out of the cooler.

21 Q And then what happened?

22 A He came up front and paid for the juice, and once I
23 rang it up and opened the drawer, he pulled out a
24 gun.

25 Q Did he actually put -- did he have juice or

1 anything else with him?

2 A He had that bag of potato chips that he had
3 exchanged.

4 Q Did he place both of those on the counter?

5 A Yes.

6 Q And, again, how close is he to you (walking towards
7 the witness)?

8 A About right there.

9 Q Again, just a counter width?

10 A Yes.

11 Q Just like a normal purchase?

12 A Yes.

13 Q Does he pull money out of his pocket to pay?

14 A Yes.

15 Q What do you do in response? Do you start ringing
16 him up?

17 A I rang him up and he gave me the money. When the
18 drawer opened, I put the change in there, and then
19 I heard him say: Give me the money. When I looked
20 up, he was standing there with a gun.

21 Q He's still right in front of you?

22 A Yes.

23 Q Now, this man that's right in front of you, what is
24 he wearing?

25 A Tan pants, the tan shirt, and the hat.

1 Q You say he has a gun?

2 A Yes.

3 Q Can you describe that for us?

4 A It was a little black gun.

5 Q Did you give him the money?

6 A Yes.

7 Q Do you recall exactly how much money?

8 A No, not exactly.

9 Q Can you give me an estimate based on your knowledge
10 of what was in the till?

11 A Maybe a hundred dollars or less, a little less.

12 Q That's pretty typical for your till?

13 A Yes. Chandra, after -- after he takes this money,
14 what does he do?

15 A He leaves out of the store.

16 Q Goes back out the main door?

17 A Yes.

18 Q What do you do?

19 A I go to the door and lock it.

20 Q Is that procedure?

21 A Yes.

22 Q While you were at the door, what, if anything, do
23 you observe?

24 A He had dropped some of the money and stopped to
25 pick it up. He stopped and picked it up and then

1 he went to his car.

2 Q Again, this is the same man in the tan and blue hat
3 with the gold or yellow on it?

4 A Yes.

5 Q Did you see his car?

6 A Yes.

7 Q And you saw him leave?

8 A Yes.

9 Q Then what did you do?

10 A Called the police.

11 Q Chandra, I want to show you some photographs and
12 see if you can recognize these.

13 MR. MYERS: Your Honor, if I may take a look
14 prior to this.

15 (Attorneys confer).

16 MR. MYERS: No objection, Your Honor.

17 BY MR. HUBBARD:

18 Q Ms. Wright, if you would, please look at the these
19 and let me know, are those photographs from the
20 store you were working in that night?

21 A Yes.

22 Q Do these photographs show one of the items that was
23 left on the counter after the robbery?

24 A Yes.

25 Q Does it show the cash register after the robbery?

1 A Yes.

2 Q And does it show the aisle with the bag of chips?

3 A Right there (indicating).

4 MR. HUBBARD: Your Honor, I offer these into
5 evidence at this time.

6 THE COURT: Mr. Myers.

7 MR. MYERS: Absolutely no objection, Your
8 Honor.

9 THE COURT: State's 2 through 5 are in
10 evidence without objection.

11 (State's Exhibits Number 2-5 are received into
12 evidence).

13 BY MR. HUBBARD:

14 Q I want you to look at State's Exhibit Number 3.

15 This photograph, does it show the cash register?

16 A Yes.

17 Q Is this taken from back where you were standing
18 behind the counter or in front of the counter?

19 A Behind the counter.

20 Q The doors we see here, the glass doors, are those
21 the doors you have been talking about?

22 A Yes.

23 Q Where customers come through?

24 A Yes.

25 Q So on the photograph the doors to the left, and you

1 were standing back here (indicating) behind the
2 counter?

3 A Yes.

4 Q The cash register is still open?

5 A Yes.

6 Q I want to show you two more shots. Let me start
7 with this one. State's Exhibit Number 4, is this
8 another shot of that cash register?

9 A Yes.

10 Q Is this taken from the customer side or from your
11 side?

12 A From my side.

13 Q Is it looking in the opposite direction of the
14 door?

15 A What do you mean?

16 Q The door is on one side?

17 A Yes.

18 Q Do you see the chips stand?

19 A Right there (indicating).

20 Q Is that a display?

21 A Yes, that's their stand that they place the chips
22 on.

23 Q And that stand also would have been to your right?

24 A Yes.

25 Q So, again, we see from your viewpoint the register

1 and then the bag of chips stand in the back over
2 actually to your right; is that correct?

3 A Yes.

4 Q Let me show you what has been marked as State's
5 Exhibit Number 5. Again, is this from the customer
6 side of the counter or from your side?

7 A That's the customer's side.

8 Q What do you notice on this countertop that was not
9 there prior to this robbery?

10 A The bag of potato chips.

11 THE COURT: Keep your voice up for us,
12 Ms. Wright.

13 A The bag of potato chips.

14 Q Is that the second bag that was purchased --

15 A Yes.

16 Q -- or that he was going to buy?

17 A That was the second, yes, what he exchanged.

18 Q Again, this shot is from the customer's side of the
19 countertop?

20 A Yes.

21 Q Looking at State's Exhibit 2, is that the shelf or
22 the stand with the potato chips?

23 A Yes, right there (indicating).

24 Q What shelf -- going from the bottom to the top --
25 do you know what shelf he left the potato chips on?

1 A On the fourth shelf.

2 Q The fourth shelf going from bottom to top?

3 A Yes.

4 Q Do you see the bag that he put back?

5 A That one right there (indicating).

6 Q Do you see the bag -- how do you know that's the
7 bag?

8 A I seen him when he put it back.

9 Q Is that the one kind of laying on its side?

10 A Yes.

11 Q That was the first bag? He came back in and put it
12 back on the shelf?

13 A Yes.

14 MR. HUBBARD: Your Honor, if the jury wishes
15 to look at those, that's fine.

16 THE COURT: All right, sir.

17 BY MR. HUBBARD:

18 Q Ms. Wright, when you called law enforcement, did
19 law enforcement show up?

20 A Yes.

21 Q Did some deputies talk to you?

22 A Yes.

23 Q Do you recall anybody coming in and asking you
24 about the events of that night?

25 A Yes.

1 Q Do you also recall from your working in Li'l
2 Cricket, that store, was there a camera system?

3 A Yes.

4 Q Do you remember how many cameras were in that
5 store?

6 A It's a few of them. I think like four.

7 Q I want to show you a C.D. and see if you recognize
8 this.

9 A Yes.

10 Q Do you recognize that C.D.?

11 A Yes.

12 Q The video camera system, does it download to a
13 C.D.?

14 A Yes, they can.

15 Q And did you observe the contents of this C.D.?

16 A Yes.

17 Q Does it fairly and accurately depict the events
18 that you went through when that happened on
19 November 7, 2004?

20 A Yes.

21 MR. HUBBARD: Your Honor, I offer it into
22 evidence.

23 MR. MYERS: Without objection, Your Honor.

24 THE COURT: That would be State's Exhibit 6 in
25 evidence without objection.

1 (State's Exhibit Number 6 is received into
2 evidence).

3 MR. HUBBARD: Your Honor, at this time I would
4 like a moment to set up so we can show the footage if I
5 could.

6 THE COURT: All right. It will take you a few
7 minutes?

8 MR. HUBBARD: Yes, sir, I need to get a tech
9 up here to operate this system.

10 THE COURT: You need to get a 16 year old up
11 here to operate it?

12 MR. HUBBARD: Yes, somebody younger than me.

13 THE COURT: Mr. Foreman, and ladies and
14 gentlemen of the jury, if you would step to your jury
15 room momentarily. Again, do not discuss the case with
16 each other during this break. Thank you very much.

17 (The jury retires to the jury room).

18 THE COURT: Ms. Wright, you may step down
19 during the break, but please remember you are under
20 oath. You are subject to continuing direct and cross
21 examination. You may move about but you cannot discuss
22 your testimony with anyone during this break. We will
23 take about ten minutes.

24 (Whereupon there was a recess).

25 THE COURT: Ready, Solicitor?

1 MR. HUBBARD: Yes, sir, Your Honor.

2 THE COURT: Mr. Harvey, Mr. Myers?

3 MR. HARVEY: Yes, sir.

4 THE COURT: If you would bring us our jury
5 please.

6 (The jury returns to the courtroom).

7 THE COURT: It appears our jury is back in
8 place. Solicitor, you may proceed.

9 MR. HUBBARD: Yes, sir.

10 BY MR. HUBBARD:

11 Q Ms. Wright, I am going to attempt to play this
12 video. If you would bear with me. Then I will ask
13 you some questions about what we see.

14 A Okay.

15 (State's Exhibit Number 6 is played for the
16 jury).

17 (During the playing of the C.D., State's
18 Exhibit Number 6, the following was reported).

19 BY MR. HUBBARD:

20 Q Ms. Wright, these four different frames that we
21 see, are these pictures of the store you were
22 working in that night?

23 A Yes.

24 Q Down here (indicating) is this the date and the
25 time?

- 1 A Yes.
- 2 Q This camera view, camera one, are these the doors
3 we were talking about?
- 4 A Yes.
- 5 Q Is that the counter where you were working behind
6 the counter?
- 7 A Yes.
- 8 Q Is this the rack with the potato chips?
- 9 A Yes.
- 10 Q Camera two, is this kind of a side or back angle of
11 the potato chip rack?
- 12 A Yes.
- 13 Q Is that the counter where you were working up
14 there?
- 15 A Yes.
- 16 Q Camera three, is this from behind the counter?
- 17 A Yes.
- 18 Q Is that you in this picture?
- 19 A Yes.
- 20 Q That's your register?
- 21 A Yes.
- 22 Q Camera four, is this the rack with the potato
23 chips?
- 24 A Yes.
- 25 Q That's just the aisle going back to the drinks?

- 1 A Yes.
- 2 Q Okay. If I can, I am going to put it in motion. I
- 3 will ask you, this man coming in in camera one, is
- 4 that the man you described earlier?
- 5 A Yes.
- 6 Q Tan shirt, tan pants?
- 7 A Yes.
- 8 Q With a blue and yellow hat?
- 9 A Yes.
- 10 Q Is this the first or second occasion he comes into
- 11 the store?
- 12 A That's the first time.
- 13 Q He's walking right by you here?
- 14 A Yes.
- 15 Q Getting a bag from the potato chip stand?
- 16 A Yes.
- 17 Q One, two, three, fourth row?
- 18 A Yes.
- 19 Q From the bottom. Now he is purchasing that bag?
- 20 A Yes.
- 21 Q At this point, Ms. Wright, no robbery just a sale?
- 22 A Yes.
- 23 Q I want to skip ahead. This was 8:23. Let's skip
- 24 ahead to 8:35. I am having to learn this. At
- 25 8:35, again, we are looking at camera one,

- 1 Ms. Wright. The man standing here, is that the
2 same man that came in earlier?
- 3 A Yes.
- 4 Q Still in the tan shirt and tan pants?
- 5 A Yes.
- 6 Q Still in the blue and yellow hat?
- 7 A Yes.
- 8 Q What is he holding up in his hand right here?
- 9 A The potato chips that he purchased.
- 10 Q At that point are you and this man talking?
- 11 A Yes.
- 12 Q What is he talking about? What is he asking you?
- 13 A Can he exchange the potato chips, he got the wrong
14 flavor.
- 15 Q And your response?
- 16 A As long as he gets one off the same rack.
- 17 Q The rack is right here (indicating), again?
- 18 A Yes.
- 19 Q Can you see which hand he is holding this bag with
20 right now?
- 21 A It looks like the left hand.
- 22 Q Is that him with another bag?
- 23 A Yes.
- 24 Q Is he going back to the drinks?
- 25 A Yes.

- 1 Q Now, looking at camera three, is that him back here
2 coming towards you?
- 3 A Yes.
- 4 Q What has he placed on the counter right here?
- 5 A That's the juice.
- 6 Q What is in his hand right here?
- 7 A The bag of potato chips.
- 8 Q Is this the new bag?
- 9 A Yes.
- 10 Q Again, this is the same hat?
- 11 A Yes.
- 12 Q Can you really see? Has he got it pulled down?
- 13 A Yes, he's got it pulled down, but I can see him.
- 14 Q Is he handing you money right there?
- 15 A Yes.
- 16 Q What's he got in his hand right here, Ms. Wright?
- 17 A That's the gun.
- 18 Q What is he telling you?
- 19 A To give him all the money in the register.
- 20 Q Is that what you have placed on the counter?
- 21 A Yes.
- 22 Q Right now, where is that pistol? Is that it right
23 there?
- 24 A Right there.
- 25 Q What is he doing in this picture?

1 A Trying to gather up the money.

2 Q Ms. Wright, that gun is lying there on the counter.

3 Do you make any attempt to get that pistol?

4 A No.

5 Q Are you trained to let the money go?

6 A Yes.

7 Q Ms. Wright, what are you doing right here?

8 A Some money fell behind the counter. He told me to
9 pick it up.

10 Q He wanted every bit of it?

11 A Yes.

12 Q Ms. Wright, he picked up what was a juice?

13 A Yes.

14 Q You see him leaving now?

15 A Yes.

16 Q Is that him putting the bag back and backing up,
17 Ms. Wright, from camera one. I will play it again,
18 Ms. Wright. I am at 8:35. I believe he comes in
19 at 8:36. This is the second time or the first
20 time?

21 A That's the second time.

22 Q He puts the bag back. What hand did he use to do
23 that?

24 A The left hand.

25 Q I will speed it up again. All right. Is that when

1 he's robbing you right here?

2 A Yes.

3 Q Ms. Wright, I see you moving, too. Are you moving
4 toward the door or where are you going to?

5 A Towards the door to lock it.

6 Q At this point can you see this individual outside
7 the store?

8 A Yes.

9 Q What is he doing?

10 A He stopped. Some of the money had dropped on the
11 ground, and he stopped to pick it up.

12 Q Do you see him leave?

13 A Yes.

14 Q Do you see what he leaves in?

15 A Yes.

16 Q What does he leave in?

17 A A tan Cutlass.

18 Q What was the roof on that Cutlass like?

19 A It was half brown.

20 Q Kind of like a landau top?

21 A Yes.

22 Q All right, Ms. Wright. I want to back it up a
23 second. I'm going to 8:21 before he enters the
24 store. Is this a customer before you ever see this
25 man?

1 A Yes.

2 Q This is before the first occasion that you saw the
3 man in tan clothes and the blue and yellow hat?

4 A Yes.

5 Q This man we see here in camera one is the last
6 customer you had before this incident?

7 A Yes.

8 Q Ms. Wright, do you see some headlights outside this
9 window?

10 A Yes.

11 Q I want you to look at that vehicle as it passes by.
12 Do you recognize that vehicle?

13 A Yes.

14 Q What vehicle is that?

15 A That's the vehicle he got in when he left.

16 Q The man that was wearing tan and the blue hat with
17 the yellow stripe?

18 A Yes.

19 MR. HUBBARD: Your Honor, we can turn the
20 lights back on.

21 THE COURT: Thank you.

22 BY MR. HUBBARD:

23 Q Ms. Wright, after this incident who did you call?

24 A The police.

25 Q When they came there, did you give them a

1 statement?

2 A Yes.

3 Q Did you point out for them the potato chips that
4 were in that store that this man touched?

5 A Yes.

6 Q I want you to look at State's Exhibit 5, the potato
7 chip bag on the counter, is that the bag he left
8 during the robbery?

9 A Yes.

10 Q Was this the first or second bag that he was
11 getting?

12 A That's the second bag.

13 Q So he took his drink, he took the money, but he
14 left this bag?

15 A Yes.

16 Q State's Exhibit Number 2, can you point out again
17 the bag that he put back.

18 A That bag right there (indicating).

19 Q That's on the fourth shelf lying on its side; is
20 that correct?

21 A Yes.

22 Q So this man comes in and he basically touches two
23 bags?

24 A Yes.

25 Q Do you point out both of these bags to officers at

1 the scene?

2 A Yes.

3 MR. MYERS: Objection, leading, Your Honor.

4 THE COURT: I will overrule the objection.

5 BY MR. HUBBARD:

6 Q Do you recall this man right here, Jim Hickman,
7 with the Sheriff's Department?

8 A Yes.

9 Q Do you remember pointing them out to him?

10 A Yes.

11 Q Ms. Wright, have you ever gone through anything
12 like this before?

13 A No.

14 Q And this was your first day by yourself?

15 A Yes.

16 Q What did you do after this thing?

17 A I had to take three days off. I couldn't go back
18 in there for a little while.

19 Q Why was that?

20 A Scared and nervous.

21 Q Was this your main job?

22 A Yes.

23 Q Did you have to go back to work?

24 A Yes.

25 Q Ms. Wright, there are a lot of people in this

1 courtroom today. I want you to look out,
2 throughout this courtroom, and see if you recognize
3 anyone in this courtroom being present in that
4 store on November 7, 2004. Do you see anyone?

5 A Yes.

6 Q Please point him out if you see the individual who
7 held a gun to you November 7, 2004, and robbed you.

8 A The gentleman sitting --

9 MR. MYERS: Your Honor, I would just object
10 and renew our pretrial objections.

11 THE COURT: Certainly, Mr. Myers. The
12 objections are noted for the record. Thank you,
13 Mr. Myers.

14 BY MR. HUBBARD:

15 Q Ms. Wright, please point out the man that held the
16 pistol to you if you see him, held a pistol up to
17 you on November 7, 2004.

18 A It's the gentleman sitting over there.

19 Q In the suit with the yellow shirt?

20 A Yes.

21 Q Ms. Wright, do you have any doubt in your mind that
22 the man seated over there, right there on the end,
23 is the man that robbed you?

24 A No doubt.

25 Q Do you have any doubt that it was that man who got

1 this close to you, not once but twice? Do you have
2 any doubt?

3 A No, I have no doubt.

4 Q Do you have any doubt that it was that man that had
5 a pistol this close to you?

6 A I have no doubt.

7 Q Ms. Wright, I know you are nervous. I want to
8 thank you for answering my questions. Please
9 answer any questions the defense has for you.

10 THE COURT: Mr. Myers.

11 MR. HARVEY: Thank you, Your Honor. May it
12 please the Court.

13 **CROSS EXAMINATION**

14 BY MR. MYERS:

15 Q Ms. Wright, I believe you just testified that on
16 that day this incident allegedly occurred, you gave
17 a statement, correct?

18 A Yes.

19 MR. MYERS: Your Honor, if I may approach the
20 witness, Your Honor.

21 THE COURT: Yes, sir.

22 BY MR. MYERS:

23 Q Ms. Wright, is this the statement that you recall
24 providing to law enforcement on the day this
25 incident occurred?

1 A Yes.

2 MR. HUBBARD: Your Honor, I have no objection
3 if he wants to introduce it in evidence.

4 MR. MYERS: Your Honor, if I may continue
5 questioning the witness at this point.

6 THE COURT: Yes, sir.

7 BY MR. MYERS:

8 Q Ms. Wright, I believe in your statement, this
9 statement was actually given when this incident
10 occurred while the facts were fresh in your mind;
11 correct?

12 A Yes.

13 Q After this incident had just happened?

14 A Yes.

15 Q And you have given no other statements to law
16 enforcement, other than the one I have in my hand
17 right now?

18 A Correct.

19 Q And I believe in your statement you testified or
20 you stated that this was a black male, five-eleven,
21 between 150 to 160-pounds; is that correct?

22 A Yes.

23 Q Ma'am, are you aware that when Mr. McCants was
24 booked, he weighed in at 210-pounds --

25 MR. HUBBARD: Objection, Your Honor. Unless

1 he has evidence of weight, unless he has a foundation to
2 show what she would know that this man weighed, I
3 object. It is absolutely improper with this witness.
4 If he wants to put somebody else up to get that in, he
5 can do that, not this witness.

6 THE COURT: I will sustain the objection.

7 MR. MYERS: Thank you, Your Honor.

8 BY MR. MYERS:

9 Q In your statement, Ms. Wright, you continued to say
10 that the individual who robbed you had a tan shirt;
11 correct?

12 A Yes.

13 Q Tan pants?

14 A Yes.

15 Q Blue and yellow hat?

16 A Yes.

17 Q And he had rough hands?

18 A Uh-huh. (Indicating affirmative response).

19 Q And you previously testified, through use of the
20 photographs that are in evidence and what was shown
21 to the jury momentarily, that the individual -- if
22 I may approach -- that he was approximately a
23 counter length away from you?

24 A Yes.

25 Q He was about this close, would you say or even

1 closer?

2 A Step back.

3 Q About like this?

4 A Yes.

5 Q And you have absolutely no doubt that the person
6 that you saw was Quincy McCants?

7 A Yes.

8 Q Because you had an opportunity to observe him on
9 two occasions?

10 A Yes.

11 Q There is not a doubt in your mind that the face you
12 saw was Quincy McCants?

13 A No doubt.

14 Q Do you recall putting in your statement or where is
15 it in your statement that says that the individual
16 who robbed you had a gold tooth?

17 A No, I didn't put that in there.

18 Q Are you aware that Quincy McCants actually has a
19 gold tooth?

20 A No, I'm not aware.

21 Q And you certainly didn't put any of that in your
22 statement that the individual who robbed you on
23 that day had a gold tooth?

24 A No, I didn't put that in my statement.

25 Q You would agree with me that a gold tooth is

1 something that would make an individual stand
2 out?

3 A Yeah, it will. I wasn't looking at his mouth.

4 Q But you said you had an opportunity to observe
5 him?

6 A Yes, I seen him. I didn't see a gold tooth.

7 Q If you are saying now that you didn't have an
8 opportunity to look at his mouth, what are you
9 saying you actually had an opportunity to look at?

10 A I was looking at his face. I didn't see his teeth.

11 Q But he was talking to you?

12 A Yes, he did talk to me.

13 Q Because according to your testimony he told you to
14 give him the money that was in the cash register?

15 A Uh-huh. (Indicating affirmative response).

16 Q So if he was talking to you, there would have been
17 a chance that if had a gold tooth, you would have
18 had an opportunity to look at it?

19 A I don't see all your teeth now, and you are talking
20 to me.

21 Q Yes, ma'am. Let me step a little closer if you
22 don't mind. If I were to step up to you and tell
23 you that I wanted all the money, can you at least
24 see my front teeth?

25 A I don't see these.

1 Q You don't see these teeth (indicating)?

2 A When you are stretching your mouth open, but
3 regularly talking, no, I don't see all of them.

4 Q Now, you stated that this was your first day alone;
5 correct?

6 A Yes.

7 Q And you were working the cash register?

8 A Yes, I was the cashier.

9 Q And you stated that the person who robbed you took
10 money, right?

11 A Yes.

12 Q Do you have a receipt as to any accounting that may
13 have come from your cash register on November 7,
14 2004?

15 A No, I don't have a receipt.

16 Q So sitting in that witness chair, we don't know how
17 much money was taken from the Li'l Cricket on
18 November 7, 2004?

19 A No, I don't know how much it was.

20 Q Because there were no receipts, no accounting, no
21 nothing to tell us?

22 A No, I don't know.

23 Q This potato chip bag, do you have the bag to show
24 the jury today?

25 A No I don't have the bag.

1 Q Do you know if the State has the bag to show the
2 jury?

3 A I don't know.

4 Q Do you have any idea where the potato chip bag is
5 today?

6 A No.

7 Q This potato chip bag, I was looking at one the
8 other day, they have bar codes; correct?

9 A Yes.

10 Q Where you actually scan across the register to find
11 out how much it actually costs to purchase that bag
12 of potato chips?

13 A No, we manually ring it up.

14 Q I guess what I'm getting at, that bar code, can't
15 it -- isn't it true that that bar code can be
16 traced back to a specific manufacturer?

17 MR. HUBBARD: Your Honor, I object. He is,
18 again, putting facts in evidence that he has no
19 foundation for.

20 THE COURT: I think he can ask her if she
21 knows that or not, Solicitor. I would overrule the
22 objection.

23 A What was your question?

24 THE COURT: If you know the answer to the
25 question, you can answer it, Ms. Wright.

1 BY MR. MYERS:

2 Q Isn't it true that a bar code on any item, not just
3 a potato chip bag, can be traced back to the
4 manufacturer as to where it came from, like Frito
5 Lay or wherever?

6 A I don't know.

7 Q Is it safe to assume that that may be true?

8 A I don't know.

9 Q But sitting here today, you know that that specific
10 potato chip bag had not been traced to any
11 manufacturer or you have no idea when that potato
12 chip bag first got to the Li'l Cricket?

13 A I don't know.

14 Q Is it you don't know or is that a yes or no, you
15 don't know?

16 A I don't know.

17 Q Do you know anything about fingerprints,
18 Ms. Wright?

19 A No.

20 Q Do you know that fingerprints cannot tell us how
21 long ago an individual --

22 MR. HUBBARD: Your Honor, I object.

23 THE COURT: Yes, sir.

24 MR. HUBBARD: This isn't the proper witness.

25 THE COURT: She said she doesn't know anything

1 about it. I would sustain the objection.

2 MR. MYERS: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 BY MR. MYERS:

5 Q The video, who turned the video off?

6 A That I don't know exactly who turned it off.

7 Q Was it turned off prior to law enforcement
8 arriving?

9 A I don't know.

10 Q You stated that after the individual who robbed
11 you, after he left, he got in a vehicle; correct?

12 A Yes.

13 Q Did you ever have an opportunity to observe a tag
14 number from that vehicle?

15 A No.

16 Q So the only thing that you know about that vehicle
17 is that it had some type of color on it, correct?

18 A It had a half color, different color than the car.

19 Q But you didn't get a tag number?

20 A No.

21 Q Did you have an opportunity to see how many
22 individuals, if any, were in the vehicle?

23 A No, I didn't.

24 Q Now, in these photographs that the State has moved
25 into evidence, I believe this is State's Exhibit

1 Number 4, 3, and 5. If I may approach Your Honor.

2 THE COURT: Yes, sir.

3 BY MR. MYERS:

4 Q You testified, Ms. Wright, that the individual who
5 robbed you came to this counter; correct?

6 A Yes.

7 THE COURT: What are you referring to?

8 MR. MYERS: This is State's Exhibit Number 5.

9 Q And in State's Exhibit Number 4, this is another
10 photograph of the counter; correct?

11 A (Witness nods). (Indicating affirmative response).

12 Q Do you know if any fingerprints were taken from
13 this counter?

14 A No, I don't know.

15 Q But certainly on that videotape law enforcement saw
16 that whoever robbed you, at least should have
17 placed their fingerprints or hands on that counter?

18 A Yes, sir.

19 Q And you also testified that the person who robbed
20 you went to a cooler?

21 A Yes.

22 Q Do you know if law enforcement took any
23 fingerprints from that cooler?

24 A I don't know.

25 Q How about the door, exiting and entering the store?

1 Do you know if law enforcement took any
2 fingerprints from that door?

3 A I seen them dusting.

4 Q But they don't have any fingerprints today?

5 A I don't know.

6 Q So the only fingerprints that we have are
7 fingerprints from a potato chip bag, correct?

8 A That's what they say.

9 Q To your knowledge that potato chip bag is not in
10 this courtroom for this jury to view?

11 A No, it's not.

12 Q Now, I know that you say that you had just started
13 working at the Li'l Cricket. Was it your first
14 time -- was this the first time on November 7,
15 2004, that an individual came in and asked to ever
16 exchange an item?

17 A No, it wasn't the first time.

18 Q Because you've got policies in place just in case
19 someone wanted to do that; right?

20 A Yes.

21 Q Do you know if Mr. McCants had ever gone into the
22 Li'l Cricket prior to November 7, 2004?

23 A No, I don't know.

24 MR. MYERS: Beg the Court's indulgence.

25 THE COURT: Yes, sir, Mr. Myers.

1 (Pause).

2 MR. MYERS: No further questions.

3 THE COURT: Thank you, Mr. Myers. Anything on
4 redirect, Solicitor?

5 MR. HUBBARD: A couple of things.

6 **REDIRECT EXAMINATION**

7 BY MR. HUBBARD:

8 Q Ms. Wright, after you were robbed, were you really
9 all that concerned about what happened to the
10 potato chips?

11 A No, I wasn't.

12 Q During the robbery were you particularly concerned
13 how much money was taken?

14 A No, I wasn't.

15 Q Did you see money get taken?

16 A Yes.

17 Q During the robbery were you focused on someone's
18 mouth, face or which?

19 A The face.

20 Q During the robbery did you focus on something else
21 as well?

22 A The gun that he had in his hand.

23 MR. HUBBARD: That's all I have, Your Honor.

24 THE COURT: Anything on recross, Mr. Myers?

25 MR. MYERS: Briefly, Your Honor.

RECROSS EXAMINATION

1
2 BY MR. MYERS:

3 Q Ms. Wright, when I asked you what you were looking
4 at, you stated that you saw his face; correct?

5 A Yes.

6 Q When the solicitor just asked you what you were
7 looking at, you said you were looking at the gun.

8 MR. HUBBARD: Your Honor, I object. That is
9 not what she said. That's a mischaracterization. I
10 think it's for the jury.

11 THE COURT: The facts of the case will be
12 determined by the jury. It will be as the jury heard
13 the particular testimony and as the jury finds the facts
14 to be. However, you may proceed with recross
15 examination, Mr. Myers.

16 MR. MYERS: Thank you, Your Honor.

17 BY MR. MYERS:

18 Q I believe you may answer the question.

19 A What was the question?

20 Q The question was when I asked you what you were
21 paying attention to, you said that you had a good
22 look at the face and you thought that face belonged
23 to Quincy McCants?

24 A Yes.

25 Q And just a few seconds ago, Mr. Hubbard asked you

1 what you were looking at, and you said that you
2 were paying more attention to the gun.

3 MR. HUBBARD: Your Honor, I just ask that he
4 rephrase it because that's mischaracterizing my
5 question.

6 BY MR. MYERS:

7 Q Were you looking at his face or were you looking at
8 the gun?

9 A I was looking at both. I look at your face. Then
10 when he said, "Give me the money, "I looked down at
11 his hand and I seen this metal gun.

12 MR. MYERS: Your Honor, at this time I would
13 like to submit her statement in evidence as Defense
14 Exhibit number 1.

15 MR. HUBBARD: No objection.

16 THE COURT: Defense 1 is Ms. Wright's
17 statement of November 7, 2004, in evidence without
18 objection.

19 (Defendant's Exhibit Number 1 is received into
20 evidence).

21 BY MR. MYERS:

22 Q Again, on this statement you mentioned nothing
23 about the person who robbed you having a gold tooth
24 in his mouth?

25 A No, I didn't mention anything about it.

1 MR. MYERS: Your Honor, at this time I would
2 actually ask that Mr. McCants be allowed to show the
3 jury his front tooth.

4 MR. HUBBARD: I object unless they can show by
5 some evidence that Mr. McCants looks the way he did
6 November 7, 2004.

7 MR. MYERS: Your Honor, I don't think --
8 certainly the rules allow that a criminal defendant be
9 used as an exhibit. Obviously we would have to deal
10 with that later on. But if that is the route that we so
11 choose, Your Honor, I think he is certainly allowed to
12 stand before this jury to show that he has, in fact, a
13 gold tooth.

14 THE COURT: I will take that under advisement.
15 I don't think his looks will change throughout the
16 course of the trial, Mr. Myers.

17 MR. MYERS: Thank you, Your Honor. No further
18 questions of this witness.

19 THE COURT: We have had direct, cross,
20 redirect, recross.

21 MR. HUBBARD: No more, Your Honor.

22 THE COURT: Ms. Wright, you may step down.
23 Thank you very much.

24 MR. HUBBARD: Your Honor, I do have a matter
25 at this time for Your Honor.

1 THE COURT: All right. If you will recall,
2 Mr. Foreman, and ladies and gentlemen of the jury, I
3 told you from time to time, one of the attorneys may say
4 they have a matter for me. The solicitor just so
5 informed me.

6 So, again, I will ask you to please
7 momentarily step to your jury room. Do not discuss the
8 case with each other during this break. Thank you very
9 much.

10 (The jury retires to the jury room).

11 THE COURT: Solicitor.

12 MR. HUBBARD: Your Honor, I wasn't going to go
13 into this, but on at least two occasions on cross,
14 Mr. Myers specifically asked this victim if she got a
15 tag number off the vehicle she saw in that parking lot.

16 I told Mr. Harvey I wouldn't go into how we
17 tracked down the vehicle because it involves another
18 robbery. The tag number we get comes from a robbery at
19 the Citgo January 3rd, 2005.

20 I have got another victim that I now want to
21 put up. I can limit what I ask, but I want her to
22 testify that she sees a green vehicle, she gives the tag
23 number, and she has just been robbed.

24 THE COURT: But how does that, Solicitor --
25 and I haven't quite connected the dots -- if Ms. Wright

1 has just testified: I didn't get a tag number. How
2 does Mr. Myers' cross examination open the door for
3 another victim of a different armed robbery, the tag
4 number?

5 All he is asking: Did you get a tag number?
6 I took it as he was just testing the limits of her
7 knowledge about whether or not she had gotten a tag
8 number --

9 MR. HUBBARD: I understand.

10 THE COURT: -- that led the police to
11 Mr. McCants.

12 MR. HUBBARD: I will explain that.

13 THE COURT: All right, sir.

14 MR. HUBBARD: The way we even got Quincy
15 McCants' name was Brett Sims went and interviewed or
16 talked with the victim from the robbery at the Citgo
17 January 3rd, '05.

18 He gets a tag number to a green car or law
19 enforcement does. Brett follows it up. The way we get
20 Quincy McCants is we followed that tag number, get a
21 registered owner.

22 That registered owner is Gloria Hill, Quincy
23 McCants' mother. Brett Sims goes to Richland County --
24 excuse me, Gloria Hall. I said Hill -- follows the lead
25 to Richland County, talks to Gloria Hall, finds out that

1 Quincy McCants is her son. He lives in that residence.
2 He's not there at that point in time.

3 At this point though we are all set on: We
4 need to talk to this man. He is definitely a suspect.
5 That's how we got his name to bring him in. He turned
6 himself in in Richland County on January the 5th.
7 That's where Brett Sims did the first interview. I was
8 leaving all of that out.

9 But, Your Honor, I do believe I have a right
10 to show how we got to Quincy McCants. We didn't just
11 pick him out arbitrarily. I think I particularly do in
12 light of the opening saying: That's just not the man.
13 I understand openings, but it is my burden and I have
14 got to show why it's Quincy McCants and how we got to
15 him.

16 MR. MYERS: May it please the Court, Your
17 Honor. Your Honor -- I'm sorry, was Mr. Hubbard done?

18 MR. HUBBARD: I'm done.

19 THE COURT: Yes, sir, Mr. Myers.

20 MR. MYERS: Our argument is simple and I
21 believe the Court has hit on it. I certainly was not
22 trying to open the door, and I do know that my
23 involvement in this thing has only been for a couple of
24 months.

25 There may have been conversation between

1 Mr. Hubbard and Mr. Harvey, that I was not privy or was
2 not a part of it at the time. But, Your Honor, my
3 question, I believe if the Court recalled, the witness
4 either said no, yes or she can't recall a lot of
5 different things.

6 All I asked was did she get a tag number,
7 didn't pursue it after that. Obviously, Your Honor, if
8 they have the benefit of being able to say that: Did
9 you have an opportunity, Ms. Wright, to see a car drive
10 away? Is that the car that you saw?

11 I think that my mere question of: Did you get
12 a tag number, clearly is not opening up the door for any
13 type of Lyle issues or any other additional witnesses or
14 how they got to Mr. McCants.

15 She said she didn't know or no, she didn't get
16 a tag number. I left it at that. Again, Your Honor, it
17 was the State who basically slowed it down after several
18 minutes of saying: Do you see the car? Is that the
19 car? How do you know that's the car?

20 Again, all I asked was that a tag -- did you
21 get a tag number? And I don't think that was improper
22 cross. I wasn't opening the door. She said she can't
23 remember, and I left it at that.

24 THE COURT: Yes, sir, I would tend to agree
25 with Mr. Myers as far as his cross examination. The

1 issue now becomes whether or not the tracking of the
2 vehicle by Detective Sims through a green vehicle with
3 the tag number back to the Defendant's mother, Gloria
4 Hall, fits under some exception to Lyle under 404 (b),
5 irrespective of Mr. Myers' cross examination.

6 Because I don't think his cross examination
7 opens the door for that. The issue is whether or not
8 cases, such as the line of cases, Bell and others, that
9 there is some common plan or scheme or identification --

10 MR. HUBBARD: And I can address that.

11 THE COURT: -- something of that nature. Yes,
12 Solicitor.

13 MR. HUBBARD: Your Honor, if Your Honor would
14 like me to, if I put up this victim -- actually I can
15 put up Brett Sims to talk about the number of cases.
16 This is quite a spree, and I elected not to try them
17 altogether, but I think had a legal basis to have tried
18 all these cases together.

19 I elected to simplify this for this very
20 reason, because there's so many other hurdles you go
21 through. I let Mr. Harvey know that. I know I have
22 spoken to both of these gentlemen in my office where I
23 had the board up and showed them exactly what I was
24 going to do.

25 Your Honor, but what happens after this is as

1 far as common scheme or plan, at the Citgo it's the
2 same, same pattern. At the Citgo on January 3rd, a man
3 comes in the store with a bucket style hat. It's black
4 on this occasion.

5 He comes in. He has no weapon on this
6 occasion, but he does exactly what he did in this case.
7 He gets, in this case, a pack of lifesavers, goes up to
8 the counter, begins to pay for it.

9 Once the register opens, it's: Give me your
10 money. He grabs the money. He leaves. It's the same
11 old ruse of pretending to buy a product at the store and
12 then leaving.

13 The cashier does the exact same thing that
14 Ms. Wright does. She observes him. She follows him to
15 the door, locks the door, looks at the car leaving and
16 gets the tag.

17 It's the same thing, the same pattern that is
18 being used. In every single one of these cases that I
19 could have elected to try, Your Honor, he has either
20 taken potato chips, it's candy, it's Cokes, drinks,
21 things like that.

22 Every time he is wearing a hat, similar style
23 hat. He goes up and begins to purchase it. When the
24 register is open, he grabs and runs. I think though
25 with what I can do with this case is I would like

1 Ms. Hudson -- she doesn't have to point this man out. I
2 don't plan on doing that.

3 I plan to taper the testimony if Your Honor
4 will allow me: Mr. Hudson, did you have an opportunity
5 on January 3rd to speak with officers with the Sheriff's
6 Department? Had you been robbed that day?

7 I think I can ask her that. "And did you give
8 a description of a vehicle? What was it?" Then I can
9 put Brett Sims up: Did you follow up on that
10 information?

11 If Your Honor wants me to taper it more, I'll
12 just say: Did you have an occasion to report a vehicle
13 and a tag number to Brett Sims on January 3rd, '05? I
14 will do it that way.

15 But I think now I get to comment somehow on
16 that tag number so this jury isn't thinking that we just
17 jumped to Quincy McCants. My whole reason for pointing
18 out that car is I was going to ask Brett Sims: Did you
19 pursue vehicle information?

20 That was with the consent of Mr. Harvey, so we
21 wouldn't be getting into this. I've got to do it now.
22 I've got to show that jury how we followed a tag number
23 and where did it come from.

24 THE COURT: Yes, sir, Mr. Harvey.

25 MR. HARVEY: If the Court will allow me.

1 THE COURT: Certainly, yes, sir.

2 MR. HARVEY: Your Honor, the question was in
3 response to direct testimony about the witness' --

4 THE COURT: I'm already beyond that point. I
5 do not think Mr. Myers' cross examination of Ms. Wright
6 opened the door for this. I do think that the door may
7 have already been there for the solicitor to attempt to
8 walk through anyway under 404 (b).

9 So you don't -- I am not taking into
10 consideration Mr. Myers' cross examination. I think
11 that is a non issue on 404 (b).

12 MR. HARVEY: If Your Honor please. I think
13 the State -- I did talk to Mr. Hubbard, and I think the
14 consensus reached between Mr. Hubbard and myself with
15 respect to the State being able to just say they
16 followed up on vehicle identification in their
17 investigation, without going into the other details,
18 without going into the substance of the other bad
19 conduct, still is viable and a viable way to proceed in
20 this case.

21 Naturally our position is they are able to try
22 this case. They are able to present the evidence in
23 this case without the danger of the client being
24 prejudiced, the danger of the other acts evidence
25 depriving him of a fair trial by simply what Mr. Hubbard

1 presented to the Court and what we discussed.

2 The detective followed up on some vehicle
3 information and that led him to Mr. McCants, which is
4 true. He did follow up the other information. We would
5 object to getting into it. That's why I talked to
6 Mr. Hubbard about trying to keep this trial as simple
7 and as straight forward as possible.

8 THE COURT: Yes, sir.

9 MR. HARVEY: Again, I stand by my agreement
10 with Mr. Hubbard. I am appreciative of the zealousness
11 of my colleague, but I still don't think that has done
12 damage or changed the nature of what we agreed to.

13 I still think the State can proceed in this
14 case with Mr. Sims' limited activity on getting the
15 information about the tag number because that's the
16 salient fact.

17 THE COURT: Mr. Harvey, I certainly don't
18 disagree with what you say. I will retrace my steps
19 again. I do not think Mr. Myers' cross examination
20 opened the door to this. I am not party to any
21 agreement. I just rule on the admissibility or
22 inadmissibility of the evidence.

23 MR. HARVEY: Yes, Your Honor.

24 THE COURT: That goes back to Mr. Myers' chart
25 with clear and convincing testimony. As a matter of

1 fact if it's offered under 404 (b) -- I think it's 404
2 (b) -- you have got cases such as Beck, Bell, Cutro,
3 Cheeseborough, several others, Smith, that I just
4 happened to write down off the top of my head.

5 I haven't researched them because I didn't
6 know this issue was there, but I will certainly do it.
7 Obviously if you have an individual committing a crime
8 and his identity is at issue and he uses vehicle A. at a
9 particular crime, a particular described vehicle, and
10 then he uses vehicle A. at the scene of another crime
11 and they get a tag, obviously those dots do connect to a
12 certain point.

13 But obviously if y'all have agreed to
14 something, I don't have to rule on anything. But it
15 appears to me at this moment there is not an agreement;
16 is that correct?

17 MR. HUBBARD: That is correct, Your Honor.

18 THE COURT: I am obviously not ruling on the
19 admissibility or inadmissibility of the evidence under
20 Lyle before it's offered if y'all can reach an agreement
21 on how Detective Sims followed up on this tag number on
22 January 3rd and how it led to Mr. McCants.

23 MR. HARVEY: Your Honor, may I have a moment
24 to confer with Mr. Hubbard?

25 THE COURT: Yes, sir.

1 MR. MYERS: Your Honor, would it be proper to
2 take a five-minute break?

3 THE COURT: Yes, sir. Y'all talk for a few
4 minutes and be back in my chambers about five after
5 twelve.

6 (Whereupon there was a luncheon recess).

7 THE COURT: Yes, sir.

8 MR. HARVEY: May it please the Court.

9 THE COURT: Yes, sir.

10 MR. HARVEY: Your Honor, in the interim since
11 we last broke, I discussed with Mr. Hubbard the issue of
12 witnesses and sequestration of witnesses. As Your Honor
13 may recall, I did in fact -- we need our client. But I
14 believe it's just an administrative --

15 THE COURT: Hold on just a moment. Wait on
16 your client.

17 (Pause).

18 THE COURT: Mr. Harvey.

19 MR. HARVEY: May it please the Court. Your
20 Honor, since we last were in court, Mr. Hubbard and I
21 had discussed the issue of sequestration of witnesses.
22 Your Honor, I had, in fact, moved to sequester
23 witnesses.

24 Now that we are in the posture of having
25 placed items into evidence, I discussed with

1 Mr. Hubbard -- and he advised me he had no objections --
2 I informed him of two potential witnesses. They are
3 these ladies in the courtroom.

4 They have been in here the whole time, Your
5 Honor. Frankly until the cross examination of the last
6 witness, our strategy didn't involve that. I have
7 advised Mr. Hubbard the gist of what their testimony
8 would be.

9 One is my client's mother and one is I guess
10 his significant other. I asked Mr. Hubbard if he had an
11 objection to them remaining in the courtroom. He asked
12 did I have an objection to his witnesses, meaning
13 principally the I.D. technician from the Sheriff's
14 Department, being in the courtroom.

15 As a matter of comity, I told him I agree, but
16 Your Honor has ruled, and we thought we would put that
17 out there. It's one thing we have been able to agree on
18 before the Court to see if that would be satisfactory
19 with the Court.

20 THE COURT: My sequestration rule is still in
21 effect. If you don't have any objections to the
22 Defendant's mother and friend remaining in the courtroom
23 and being on the witness list and not violating the
24 sequestration order, I certainly don't.

25 MR. HUBBARD: I do not. As I understand it,

1 Mr. Harvey doesn't have an objection if Duane Johnson,
2 my fingerprint expert, sits in the courtroom.

3 MR. HARVEY: No objection, Your Honor.

4 THE COURT: It sounds like the sequestration
5 order is pretty much lifted; is that correct?

6 MR. HUBBARD: Yes, sir.

7 MR. HARVEY: We wanted to explain that to Your
8 Honor.

9 MR. HUBBARD: One other thing that could
10 expedite that. If Mr. Harvey, as we proceed along,
11 thinks he is going to put up another witness or put up a
12 witness, obviously we would like to run a rap sheet. It
13 may be clean but just for date of birth and a social.

14 THE COURT: If you will do that. Anything
15 else before we bring in our jury?

16 MR. HUBBARD: Not from the State, Your Honor.

17 THE COURT: From the defense?

18 MR. HARVEY: No, Your Honor.

19 THE COURT: If you would bring us our jury
20 please, Mr. Corley.

21 (The jury return to the courtroom at
22 1:16 p.m.)

23 THE COURT: Good afternoon, Mr. Foreman, and
24 ladies and gentlemen of the jury. When you return to
25 the courtroom, you may go ahead and be seated. I

1 apologize, I was writing a note.

2 It's very difficult in court to determine
3 when an issue may come up or how long that particular
4 issue may take to be resolved. In the unfolding of a
5 case, all cases are different, all witnesses are
6 different.

7 So I want y'all to know I am not holding you
8 captive because I enjoy doing that. I like jurors to be
9 in the courtroom working, listening to the testimony
10 being presented.

11 However, because of decisions I have to make,
12 which have nothing to with either one of the parties in
13 this particular case, it's very difficult to keep on a
14 straight time frame like that.

15 With that being said, I hope you at least had
16 a pleasant lunch. We are now continuing with the
17 presentation of the State's case.

18 Solicitor, you may call your next witness.

19 MR. HUBBARD: Yes, Your Honor. The State
20 calls Jim Hickman to the stand.

21 JAMES L. HICKMAN, being
22 first duly sworn, testified as follows:

23 CLERK: State your full name on the record,
24 please.

25 THE WITNESS: James L. Hickman, H-I-C-K-M-A-N.

DIRECT EXAMINATION

1
2 BY MR. HUBBARD:

3 Q Detective Hickman, where do you work?

4 A Lexington County Sheriff's Department.

5 Q How long have you been there?

6 A Twenty years -- 22.

7 Q What are your duties with the Sheriff's Department?

8 A I'm one of the crime scene officers. Being a crime
9 scene officer, I go to crime scenes of a crime that
10 has occurred and I investigate the scene.

11 Q Are you one of the ones they call an I.D. tech?

12 A Yes, sir.

13 Q Is that the person that collects the fingerprints,
14 dusts and photographs and does all that?

15 A Yes, sir.

16 Q Do you recall getting a call to go to the Li'l
17 Cricket on Sunset Boulevard the night of
18 November 7, 2004?

19 A Yes, sir.

20 Q And when you got there, was this scene of an armed
21 robbery?

22 A Yes, sir.

23 Q When you got there, what did you do when you got
24 there?

25 A My normal procedure when I first arrive is I either

1 talk to the first officer on the scene or one of
2 the officers on the scene that has some knowledge
3 of what happened. I get the basic information from
4 him. It's just what has occurred.

5 Either at the same time or sometime a little
6 bit later, I usually talk to the victim myself and
7 see if they can add anything else or if I have
8 something I need to ask, I usually talk to them.
9 Then I make my decision on how to proceed on into
10 the scene.

11 Q On that night November 7, did you talk to the
12 victim Chandra Wright?

13 A Yes, sir, I did.

14 Q Did you ask her what had happened?

15 A Yes, sir.

16 Q Is that, again, to let you know what you need focus
17 on?

18 A Yes, sir.

19 Q What did you do after you talked to Chandra and any
20 officers?

21 A I started doing just general photography work on
22 it, just photographing the scene to document it and
23 see where everything was located at. Then I
24 started -- my next step would be my latent prints.

25 At some period of time in between the

1 photography and latent prints, I usually try to
2 view the surveillance video to see and make sure
3 that I am doing or going where I need to go in
4 processing what I need to process.

5 Q Let's go back. You said you took photographs. I
6 want to show you what has already been put into
7 evidence as State's 2 through 5. Are these some of
8 the photographs you took?

9 A (Pause). Yes, sir, they are.

10 Q In particular, State's Exhibit Number 5, do you see
11 a bag of potato chips up on the counter?

12 A Yes, sir.

13 Q Again, you talked with Chandra Wright; correct?

14 A Yes, sir.

15 Q Then in State's Number 2, do you see the potato
16 chip rack?

17 A Yes, sir.

18 Q Is that also based on talking to Chandra Wright?

19 A Yes, sir.

20 Q Now, after you took these photographs, you said
21 something about a surveillance video?

22 A Yes, sir.

23 Q Did you at that point watch the video of this case?

24 A Yes, sir, I did.

25 Q Did Chandra Wright help you do that?

1 A No, sir.

2 Q Who helped you or assisted you in that matter?

3 A That was Mr. Joe Galloway. I think he is the
4 district manager or the manager of the store.

5 Q So he was called to the scene as well?

6 A Yes, sir.

7 Q Is he the individual that was able to pull up and
8 put the video on the C.D.?

9 A Yes, sir, he was.

10 Q Now, having taken the photographs, did you sit
11 there and watch the same video that we just watched
12 today?

13 A Yes, sir.

14 Q How does that help you?

15 A It shows me where the fellow that came into the
16 store where he touched his hands, what he did when
17 he was inside. It gives me a place where I can
18 look to make sure I can find evidence or if there
19 is any there. It also helps me to determine places
20 where I don't need to look.

21 Q After you watched the video, what was your next
22 step?

23 A To finish my processing of the crime scene for
24 latent prints.

25 Q And tell us about the process you went through for

1 dusting for prints.

2 A Most of the time there's a couple of areas that
3 usually are dusted or processed on every scene.
4 That's the area where he was at, which would have
5 been the counter area, where he might have touched
6 the counter where the cash register was and the
7 inside and outside of the door. In this instance
8 that's the places I concentrated on.

9 Q Let me ask you this. A lot of people come in and
10 out of a store like that, correct?

11 A Yes, sir.

12 Q A lot of people go up to a countertop like that?

13 A Yes, sir.

14 Q Were you able to get any lifts of any value or any
15 prints when you dusted of any value?

16 A No, sir, I was not.

17 Q So you did not make any lifts or did not get any
18 fingerprints?

19 A Not off the counter area or the door.

20 Q Is that unusual when you are dealing with a door or
21 with a countertop such as what you have at this
22 Li'l Cricket?

23 A No, sir.

24 Q Again, how long have you been doing this type of
25 work?

1 A Thirty-four years.

2 Q Did you work in law enforcement prior to Lexington
3 County?

4 A Yes, sir, I spent 13 years with the Orangeburg
5 Police Department.

6 Q Did you print or try to pull any latents off the
7 bag of potato chip that was on the countertop?

8 A Yes, sir, I did.

9 Q How many, if any, latents were you able to pull off
10 there?

11 A There was one latent lift that come off the potato
12 chip bag on the counter.

13 Q Let me ask you this. We are talking some technical
14 terms. What is a latent lift?

15 A Whenever you touch something, you leave, if you
16 pull your fingers, you leave the oil that's on your
17 fingers. You will leave them on that object. What
18 I do is I go back and take a powder, a real fine
19 powder, sort of like soot out of a chimney, and put
20 it over it.

21 It sticks to those images that's left there.
22 Then I go back and put a piece of tape across the
23 top and pull it up. The latent comes up with the
24 tape. Then I put it on a backer card, what we call
25 a backer card, so you can view it on the card

1 itself.

2 Q Did you do that as well with another set of potato
3 chips, another bag of potato chips?

4 A Yes, sir, I did.

5 Q Is that bag that you looked at in State's Exhibit
6 Number 2, do you see that bag?

7 A Yes, sir, I do.

8 Q Will you please point it out and tell the jury
9 which bag it is. First of all, do this for me.
10 Tell them what shelf number it is from the bottom
11 to the top.

12 A It's on the fourth shelf from the bottom. It looks
13 like it's about in the middle. You can see it
14 because it's sort of ajar. It's not in the same
15 orientation as the rest of them. It's sort of
16 laying down.

17 Q That's the other bag you dusted?

18 A Yes, sir, it is.

19 Q This dust, you use -- how do you get the dust on
20 these bags?

21 A There's a couple of different ways you can put them
22 on. Most of the time people use a brush, sort of
23 like a makeup brush or a paint brush. You paint
24 them on that way.

25 Some of the other ways, I like to use what is

1 called a M.A.G.N.A. It's just a magnetic powder
2 and it's a little bit cleaner and works a little
3 bit better sometimes for me. In this particular
4 instance I believe I did use the M.A.G.N.A. brush
5 on the potato chip bags.

6 Q About that magnetic dust, when you put dust on an
7 object, you've got dust everywhere; right?

8 A Yes, sir.

9 Q Do you usually go back and brush it off so you see
10 where the prints are?

11 A Yes, sir. You go back and try to clean it up so
12 you can see a little better.

13 Q Magnetic dust, you just pass over like a magnet or
14 something to lift all the excess dust?

15 A Yes, sir.

16 Q Is there any reason why you use that type of
17 procedure on potato chip bags?

18 A I just felt it would be a little cleaner method and
19 a better method than regular powder.

20 Q Is that because of the surface of the bag?

21 A Yes, sir.

22 Q How would you describe that? Would you describe
23 that as -- once you get that dust on that bag, is
24 that a permanent fixture of that bag or is it
25 vulnerable and easily disturbed?

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1 A No, sir, you can wipe it completely off if you try
2 real hard.

3 Q Once you got that dust print on there and you have
4 taken off the excess, is that when you get the
5 clear tape?

6 A Yes, sir.

7 Q And that comes in a kit?

8 A Yes, sir.

9 Q You lift it off and then you put it on a white
10 board?

11 A Yes, sir.

12 Q I want to show you these items and see if you can
13 recognize these.

14 A Yes, sir, I do.

15 Q What are these?

16 A Those are the lifts I made off the potato chip
17 bags.

18 MR. HUBBARD: Your Honor, I offer these into
19 evidence at this time.

20 MR. HARVEY: Your Honor, we don't object to
21 them being marked for identification, but certainly
22 there has got to be more -- we just object to them being
23 offered into evidence. I don't know if you want to hear
24 more from me at this time or not.

25 THE COURT: Solicitor, you offer them in

1 evidence at this time?

2 MR. HUBBARD: Yes, sir, and I believe I have
3 laid a foundation.

4 THE COURT: Mr. Foreman, and ladies and
5 gentlemen of the jury, if you will step to your jury
6 room momentarily. Please do not discuss the case.

7 (The jury retires to the jury room).

8 THE COURT: Yes, sir, Mr. Harvey.

9 MR. HARVEY: If Your Honor please. He has
10 testified that he lifted prints from the scene. We
11 don't know what has happened to those prints since that
12 time, where they have been, where they haven't been.

13 Clearly, they have to account for more than:
14 I took prints from a scene and here they are. In this
15 particular instance, Your Honor, the reason I am making
16 this objection -- and this is by way of information
17 concerning that issue.

18 There hasn't been testimony to this point yet,
19 but these prints at some point in time went from the
20 scene to the evidence room, went from the evidence room
21 to S.L.E.D. They came back from S.L.E.D. and then were
22 given to Mr. Johnson for an identification.

23 At this juncture I don't know where the prints
24 have been since the time they have been taken until they
25 have gotten to court. They don't have to have every

1 single person who ever handled the print testify, but I
2 would respectfully submit they should account for the
3 whereabouts of the prints from the time they were taken
4 or lifted and brought to court.

5 THE COURT: Solicitor.

6 MR. HUBBARD: Your Honor, I believe these
7 being, at this point, non fungible, because now they are
8 covered with tape, and they are not going to be altered,
9 we've got an officer that marked them at the scene, and
10 he is the chain.

11 He collected them from the scene. He said
12 those are the lifts as he lifted them. I can put up
13 these other people and that's fine, but the next stop is
14 Duane Johnson who has analyzed them.

15 I don't know if he wants me to put up who
16 works in the evidence room because they don't have
17 anything to do with these lifts and wouldn't know them
18 from Adam.

19 I don't think this -- this is not like blood
20 or cocaine or something like that. These are lifts.
21 This is identified by this officer. Once he put it on
22 that piece of paper, he marked it and tagged it so he
23 knew where it came from and that he is the one that
24 lifted it. That's why I am putting it in now.

25 THE COURT: What about that, Mr. Harvey?

1 MR. HARVEY: Again, Your Honor, it's my
2 understanding of the status of the law he is not
3 required to put up everyone in the chain as long as he
4 can account for the whereabouts of the prints between
5 the time they were taken -- excuse me, I apologize --
6 the time the latent prints were lifted from the potato
7 chip bag, placed on a card and where the cards went from
8 the scene, and if they ever left the Sheriff's
9 Department, where they went, when they came back, where
10 they were.

11 Then ultimately they got to Mr. Johnson for an
12 identification, and I think that is what they have got
13 to be able to do to get the prints into evidence.

14 THE COURT: So your objection is based on the
15 chain of custody?

16 MR. HARVEY: At this point, yes.

17 THE COURT: Although this officer has said
18 that -- these items have not been marked. Would you
19 mark them.

20 (State's Exhibits Number 7-9 are marked for
21 identification).

22 THE COURT: It is now circled State's for
23 identification Number 7, Number 8, and Number 9.

24 Mr. Harvey, isn't it kind of like the
25 nightgown in State versus Kahn that stayed in the locker

1 down at the Florence police department. It's a non
2 fungible item.

3 The officer has said these are the lifts. He
4 has not said -- he has identified these as the lifts he
5 took from the potato chip bags.

6 MR. HARVEY: Your Honor, it is, except if I
7 recall in that case, I have looked -- they should be
8 able to account and if he can account for the
9 whereabouts of the prints from the time they were
10 taken until the time they came to court, I don't think
11 it's more than just saying: I took these and these
12 are the cards I got on November 7, 2004. Because it's
13 my understanding these cards at some time went to
14 S.L.E.D.

15 THE COURT: I don't know I haven't heard that
16 the testimony. What if they didn't? You are
17 anticipating. Your objection is on anticipation. What
18 if he said: These are the lifts. These are what I took
19 off the potato chip bags. I don't know where they went.

20 MR. HARVEY: Your Honor, again, the position
21 on behalf of my client is I'm not objecting to -- if he
22 can account for where the lifts have been from the time
23 he took them and brought them to the Sheriff's
24 Department until now or until -- because these prints
25 have gone through several hands.

1 My objection is that without them being able
2 to account for the whereabouts -- they don't have to
3 have every single person if he can account for them.
4 Because the purpose of being able to account for a
5 chain of custody is to ensure the integrity of the
6 evidence.

7 I am not arguing to the Court that they have
8 to have every single person. I think they have to be
9 able to account for them. Thank you, Your Honor.

10 THE COURT: I will look at this case.

11 (Pause).

12 THE COURT: I got my county wrong. It was
13 Chesterfield, I'm sorry. Based on the State versus
14 Kahn, I will allow them for identification purposes only
15 at this time.

16 Mr. Corley, if you would bring us our jury
17 please.

18 (The jury returns to the courtroom).

19 THE COURT: Thank you, Solicitor. You may
20 proceed. State's 7, 8, and 9 are for identification
21 purposes only.

22 MR. HUBBARD: Yes, sir, Your Honor.

23 **DIRECT EXAMINATION**

24 BY MR. HUBBARD:

25 Q I will show you what has been marked for I.D.

1 purposes State's 7, 8, and 9. Are these the
2 latents that we were talking about?

3 A Yes, sir, they are.

4 Q I will ask you, as to State's I.D. Number 9, do you
5 know what bag you obtained that latent lift from?

6 A This come from the Lay's sour cream and onion bag.

7 Q Let me show you this photograph. The bag on the
8 counter, which is State's Number 5, the bag on the
9 counter that you see in this photograph, is that
10 the sour cream and onion bag?

11 A Yes, sir, it is.

12 Q The other two, State's I.D. 7 and 8, what bag did
13 you get those from?

14 A These come from the Lay's salt and vinegar bag.

15 Q So they are both Lay's bags, but it's a different
16 flavor?

17 A Yes, sir.

18 Q Do you see that bag again? Is that the same bag as
19 in State's Exhibit Number 2?

20 A Yes, sir, it is.

21 Q From the shelf?

22 A Yes, sir.

23 Q And, Detective, when you lift prints -- and, again,
24 this is a white card with tape; right?

25 A Yes, sir.

1 Q Then you write on the back where you got it. Let
2 me ask you, the date on all of these is November 7,
3 2004?

4 A Yes, sir.

5 Q You have the location Li'l Cricket?

6 A Li'l Cricket.

7 Q Sunset Boulevard?

8 A Yes, sir.

9 Q Lexington County obviously?

10 A Yes, sir.

11 Q And you have the brand of chips?

12 A Yes, sir.

13 Q And do you have like a diagram on the back of each
14 one of these cards showing where you got the lift?

15 A Yes, sir, I usually draw a little picture showing
16 basically where it came from.

17 Q Are those your initials down here (indicating)?

18 A Yes, sir.

19 Q That's how you are able to recognize these?

20 A Yes, sir.

21 Q Then on the flip side, you actually have a white
22 card, and then you place the tape and it just
23 adheres to this white card?

24 A Yes, sir.

25 Q When you collected these, what did you do with

1 them?

2 A I took them to the Lexington County Sheriff's
3 Department and put them into the property room.

4 Q When you are dealing with something like a potato
5 chip bag with a slippery surface?

6 A Yes, sir.

7 Q You lay that piece of tape down and lift it up,
8 what's the likelihood generally in your experience
9 of that print remaining on that bag?

10 A It's very unlikely. It doesn't happen too many
11 times.

12 Q That you have something remaining or it's not
13 there?

14 A That you have anything remaining, especially on a
15 potato chip bag.

16 Q So the prints, from what you're saying, go from a
17 bag to those latent lifts?

18 A Yes, sir.

19 Q And then the bag is no longer with the prints?

20 MR. HARVEY: I will object to the form of the
21 question. He is leading the witness. The witness can
22 testify. I object to the form of question.

23 MR. HUBBARD: I will rephrase.

24 THE COURT: He said he would rephrase the
25 question, Mr. Harvey.

1 MR. HARVEY: Thank you, Your Honor.

2 BY MR. HUBBARD:

3 Q What, if anything, in your typical procedure when
4 you make a lift off a bag of potato chips, what, if
5 anything, do you typically find?

6 A I find the latent print, and I bring it off. There
7 is nothing left. When you lift the tape up, it
8 brings the latent print off. Chances are there is
9 nothing left on that bag after you lift it off.

10 Q Now, that night did you collect into evidence the
11 bags?

12 A No, sir.

13 Q Why not?

14 A Because there was nothing left on the bag, and it's
15 also a food item. I don't like to collect food
16 items and turn them in. There is nothing on the
17 bag left. So the latent print was the best thing
18 to do. So I took it.

19 Q As an evidence I.D. tech with your training, is the
20 evidence the potato chip bags or those latent
21 lifts?

22 A The latent lift.

23 Q We talked about the video. You mentioned that an
24 individual -- what was his name?

25 A Joe Galloway.

- 1 Q Is he, I think, you said the district manager?
- 2 A I think he is the district manager.
- 3 Q Were you the one that collected this C.D. from him
- 4 with the video footage?
- 5 A Yes, sir.
- 6 Q What did you do with this C.D.?
- 7 A It also went to the Sheriff's Department, and I
- 8 placed it into the property room.
- 9 Q That's the same C.D. that you viewed that night?
- 10 A Yes, sir.
- 11 Q The same C.D. we watched earlier today?
- 12 A Yes, sir.
- 13 Q Detective Hickman, please answer any questions the
- 14 defense has.

15 **CROSS EXAMINATION**

16 BY MR. HARVEY:

- 17 Q Hello, Mr. Hickman. My name is Jonathan Harvey. I
- 18 represent Quincy McCants. Good afternoon.
- 19 A Yes, sir.
- 20 Q Your job description is identification technician;
- 21 is that correct?
- 22 A Yes, sir.
- 23 Q Now, when you go to a major crime scene -- and you
- 24 will agree with me that an armed robbery charge is
- 25 a major crime?

1 A Yes, sir.

2 Q Do you have an administrative work sheet that you
3 follow, a protocol?

4 A No, sir.

5 Q You don't have a written protocol that you would
6 document what you do when you go to a major crime
7 scene?

8 A I do not have a written protocol, but I do document
9 what I find at the crime scene by my crime scene
10 report, photographs and/or a crime scene sketch if
11 I do one.

12 Q Did you mention crime scene sketch?

13 A Yes, sir, I did.

14 Q We don't have a crime scene sketch in this case, do
15 we?

16 A No, sir, I did not do one.

17 Q In a standard protocol that you just mentioned, you
18 had mentioned a crime scene report. Did you do a
19 narrative description of the general appearance of
20 the crime scene as you first observed it, a
21 narrative?

22 A No, sir, I did not do a narrative.

23 Q All right. Did you do any type of narrative
24 detailing the actual collection of evidence, any
25 type of narrative?

1 A No, sir, I do not do a narrative. I fill out a
2 property sheet as to the evidence I collected. On
3 the property sheet, it indicates what the evidence
4 was.

5 Q Right. But my question was: Do you fill out a
6 report or do a narrative to describe what you
7 collected and from where you collected it? Is
8 there an independent narrative that you write that
9 someone could look at about your evidence
10 collection activities?

11 A There is no narrative written, but there are two
12 reports to indicate the evidence that I collected
13 and the location which I collected it from, one
14 being my crime scene report and the other one being
15 the property report where I turned it in.

16 MR. HARVEY: May I approach the witness, Your
17 Honor?

18 THE COURT: Yes, sir.

19 BY MR. HARVEY:

20 Q Do you have those reports with you?

21 A Yes, sir.

22 Q Will you show me -- what is that that you are
23 holding in your hand?

24 A It's a crime scene report that I fill out on all
25 the crime scenes.

1 Q Tell me if this is the substance of your narrative:
2 I received -- tell me if I am reading correctly.

3 MR. HUBBARD: Your Honor, if he wants to put
4 it it, I don't have an objection.

5 MR. HARVEY: Thank you. May I proceed, Your
6 Honor?

7 THE COURT: Yes, sir.

8 BY MR. HARVEY:

9 Q Tell me if I am reading correctly, sir: Summary of
10 incident, and underneath there is a bullet. It
11 says next to the bullet: I received a C.D. of
12 surveillance video from the manager, Joe Galloway.

13 A Yes, sir.

14 Q And there is not a time on that, is there?

15 A No, sir. If you look up at the top, you will see
16 the times are located in a block, where it says:
17 Received call time and arrival at the crime scene
18 time and departure of the crime scene.

19 Q Yes, sir. I am asking with respect to the
20 activities that you conducted at the incident
21 location, this report doesn't have a time that
22 corresponds to when you got the C.D.; does it?

23 A Yes, sir. When I arrive at the scene, the scene is
24 mine. I have control over it. So the time that I
25 choose to put down on the crime scene report and

1 the property report as to the collection of
2 evidence is the time that I arrive. It may be 15
3 minutes later when I collect the piece of evidence,
4 but the time -- from the time of arrival where I
5 come in control of the crime scene is what I put
6 down.

7 Q Yes, sir. So today if we are looking at this
8 report and we were to put it into evidence like the
9 just solicitor just mentioned, it wouldn't have a
10 time when you received the C.D.? That's all I'm
11 asking. There is no time like: I received C.D. at
12 22:02 hours. It doesn't say that, does it?

13 A No, sir.

14 Q Both bags of Lay's were processed for prints with
15 positive results. It' doesn't have a time when
16 that was done, does it?

17 A No, sir.

18 Q No other latent prints found, correct?

19 A Correct.

20 Q On this report, and since you don't have a
21 narrative, when you testified earlier about going
22 to the door or going to the cooler or going to the
23 counter, those activities aren't reflected in that
24 report; are they? They are not written in that
25 report?

- 1 A No, sir, they are not written in the report.
- 2 Q Now, you took some photographs; correct?
- 3 A Yes, sir.
- 4 Q And you don't keep a separate photographic log, do
- 5 you?
- 6 A No, sir.
- 7 Q And some crime scene techniques involve taking an
- 8 overall picture of the scene, correct?
- 9 A Yes, sir.
- 10 Q We don't have an overall picture of the scene, do
- 11 we?
- 12 A As overall what do you mean, sir?
- 13 Q Showing the entire scene in one photograph.
- 14 A No, sir. The camera I use, you cannot do that. I
- 15 don't have a wide enough angle lens to show it in
- 16 one photograph. What I do is I take a series of
- 17 photographs to show the scene.
- 18 Q Are those wide lenses available for purchase in
- 19 South Carolina?
- 20 A Yes, sir.
- 21 Q Does the Sheriff's Department have an annual
- 22 budget?
- 23 A Yes, sir.
- 24 Q Does the Sheriff's Department update its equipment?
- 25 A Yes, sir.

1 Q Okay. Now, also, there is a picture of the potato
2 chip bag, and you mentioned two bags. Do you
3 recall when this picture was taken in relationship
4 to when you did the prints?

5 A That one was taken before I did the prints.

6 Q And you didn't take a close-up of the other bag,
7 did you?

8 A No, sir.

9 Q And that close-up of the other bag would have
10 reasonably and accurately depicted the condition of
11 the bag as you saw it on that night, correct?

12 A Yes, sir.

13 Q And if, in fact, that bag was out of sorts or
14 laying on its side, as has been depicted in the
15 testimony, that close-up photograph of the Lay's
16 salt and vinegar bag would have showed its position
17 in the rack; correct?

18 A It would have showed it better than the photograph
19 we have now, yes, sir, it would.

20 Q And you spent an hour, about an hour, at the scene?

21 A Yes, sir.

22 Q You weren't in a hurry, were you?

23 A No, sir.

24 Q How difficult would it have been to take a picture
25 of the bag in the rack before you lifted the latent

1 prints?

2 A None whatsoever.

3 Q Okay. Now, one of the duties of someone who is an
4 I.D. technician is evidence recovery; correct?

5 A Yes, sir.

6 Q In evidence recovery, part of what the duties are
7 is the documentation of the recognition, the
8 collection, the marking, and packaging of evidence;
9 right?

10 A Yes, sir.

11 Q And in this particular case, the evidence that was
12 collected was a C.D.?

13 A Yes, sir.

14 Q And actually you didn't make a separate log for
15 that, you just have a report saying what you
16 gathered, correct, and you log it into evidence?

17 A I'm not following you now.

18 Q The C.D., did you keep a separate journal or
19 separate evidence recovery log?

20 A No, sir, I filled out one evidence log showing the
21 C.D. and the three latent prints.

22 Q And did you keep a separate latent print log?

23 A No, sir.

24 Q Because the separate latent print log would
25 document the recognition, the collection, the

1 marking, and packaging of lifts; right?

2 A I don't know. I don't use a latent print log.

3 Q If you had used these logs and you had used this
4 documentation, you would be able to tell the jury
5 when and where and what you did with specificity on
6 November 7, 2004; right? Because it would be
7 reflected in the logs or reflected in the
8 documents, correct?

9 A I don't know. I have never seen one of those logs.
10 I'm not familiar with a log. The C.D. and the
11 latent prints were collected and documented the way
12 they were supposed to be.

13 Q What you are telling us is between the time you
14 arrived and the time you left, you know you got
15 them, and that's the best you can tell us today;
16 right?

17 A Yes, sir.

18 Q You can't tell us or you didn't document, when I
19 asked you before, about your other activities,
20 dusting on the door?

21 A Yes, sir.

22 Q Now, when we talk about latent prints and a
23 technician or I.D. person does some latent prints,
24 one of the things to determine is if there is a
25 print and whether the print has any value; correct?

1 A Yes, sir.

2 Q Now, you were asked about the prints that you did,
3 and I'm going -- may I approach the witness, Your
4 Honor?

5 THE COURT: Yes, sir.

6 BY MR. HARVEY:

7 Q I am showing you State's Exhibit Number 5. In
8 State's Exhibit Number 5 is a sour cream and onion
9 Lay's potato chip bag, correct?

10 A Yes, sir.

11 Q You lifted a latent print from the sour cream and
12 onion potato chip bag, right?

13 A Yes, sir.

14 Q And that print was determined to be of no value,
15 correct?

16 MR. HUBBARD: Your Honor, no one has
17 testified. If he wants to get into that, that's fine.
18 That's fine. I know he was concerned about the chain,
19 but if he wants to jump on ahead.

20 THE COURT: Thank you, Solicitor. You may
21 proceed, Mr. Harvey.

22 MR. HARVEY: I withdraw my question, Your
23 Honor. Strike that.

24 BY MR. HARVEY:

25 Q This is the -- you processed this potato chip bag,

1 correct?

2 A Yes, sir.

3 Q And we know for certain -- now, you have viewed
4 this C.D.; correct?

5 A Yes, sir.

6 Q And you know for certain that on the evening of
7 November 7, 2004, when this alleged armed robbery
8 was to have transpired, the perpetrator left this
9 bag of potato chips on the counter; correct?

10 A Yes, sir.

11 Q And of the two bags of potato chips, you are
12 certain that this bag of potato chips on the night
13 in question never left the incident location?

14 A It never left until I lifted off the print, and I
15 don't know what happened to it after that.

16 Q You don't know what happened to the bag. Did you
17 just leave the bag at the location?

18 A Yes, sir.

19 Q Now, y'all have evidence bags that you can place
20 items that are recovered at a scene into evidence?

21 A Yes, sir.

22 Q And you weren't in a hurry, were you?

23 A No, sir.

24 Q This isn't really a big item of evidence, is it?

25 A No, sir.

1 Q It doesn't take up a lot of space?

2 A No, sir.

3 Q It's sealed in some sort of paper commercial
4 packaging that is vacuum sealed, correct?

5 A Yes, sir.

6 Q What would have been the difficulty for you to lift
7 this bag of potato chips and put it into a plastic
8 bag and take it to the Sheriff's Department?

9 A None.

10 Q When you examined the bag, did you put the tape,
11 the latent fingerprint tape on both sides of the
12 bag?

13 A I put the latent -- the tape -- on the side of the
14 bag where the latent print was. I don't think it
15 was on both sides.

16 Q You don't know where the -- I mean, you don't have
17 one of those lights, that alternative light source,
18 that you can look at something and see where a
19 print is? You didn't use any type of alternative
20 light source, did you?

21 A No, sir, there was none available at the time.

22 Q How did you know that the print would be on one
23 side or the other? Wouldn't you have checked both
24 sides to see if there was a print?

25 A Yes, sir, I checked both sides.

1 Q That's what I asked: Did you check both sides of
2 the bag for prints?

3 A No, sir. You asked if I put the tape on both
4 sides. I don't put the tape on the print -- on the
5 bag -- until I develop a latent print. I develop
6 the latent print with the powder.

7 Q Very good. Did you look at both sides?

8 A Yes, sir, I did.

9 Q Are you familiar with potato chip bags?

10 A Yes, sir.

11 Q Do you eat potato chips?

12 A Try not to, but I do.

13 Q Potato chip bags have bar codes, don't they?

14 A Yes, sir.

15 Q And bar codes are an item that can identify a
16 product?

17 A Yes, sir.

18 Q And a bar code is like all sorts of unique
19 identification markings. A bar code is particular
20 to an item; correct?

21 A I think a bar code is particular to a sort of batch
22 of items, but, yes, sir.

23 Q With a bar code in a batch of items, if you wanted
24 to investigate the origin or how a batch of items
25 got to a specific location like a Li'l Cricket, if

1 you had kept the bag and had the bar code, you
2 could have traced the history of that bag of potato
3 chips in commerce; couldn't you?

4 A Yes, sir.

5 Q But you didn't, did you?

6 A No, sir, I saw no need for it.

7 Q You saw no need for it. But you don't know of your
8 own knowledge, and we will never now since the bag
9 is gone, the course of that potato chip bag in
10 commerce?

11 A No, sir.

12 Q And because we don't have that bar code, we don't
13 know with certainty whether or not that bag that we
14 saw leave the store was the same bag that came back
15 into the store? It may look like it, but you can't
16 tell us with certainty it's the bag; can you?

17 A No, sir. I was not concerned with the bag that
18 left the store, I was concerned with the bag that
19 he brought back into the store when he committed
20 the robbery.

21 That's what I was concerned with. That was
22 the bag that he brought back in that I viewed on
23 the surveillance. That was also the bag that the
24 victim pointed out to me as the one he brought in
25 and out.

1 Q But in order to determine conclusively that that
2 was the bag that left the store and was brought
3 back, if we had had the bar code, we would be able
4 to determine that with certainty; right?

5 A As to my understanding of bar codes, yes.

6 Q You took -- Your Honor, may I approach the witness
7 again?

8 THE COURT: Yes, sir, certainly.

9 MR. HARVEY: Thank you, Your Honor.

10 BY MR. HARVEY:

11 Q This is State's Exhibit Number 3. State's Exhibit
12 Number 3 is a photograph taken from the side of the
13 register and the counter, correct?

14 A Yes, sir.

15 Q And if we look in the photograph, in the doorway
16 there is a red and white, looks like vertical
17 stripe. Do you see where I'm pointing to?

18 A Yes, sir.

19 Q It has numbers. It has four, five, and six;
20 correct?

21 A Yes, sir.

22 Q And do those numbers -- what is the purpose of
23 those numbers?

24 A A lot of stores put in the banks, put those in so
25 the victim or the cashier can give a pretty good

1 estimate of how tall a subject is. In other words,
2 when they walk by them, it's just a reference mark
3 so they can say how high they are.

4 Q Now, you are the I.D. technician in this case;
5 correct?

6 A Yes, sir.

7 Q And a C.D. can be stopped to make a single
8 photograph, can't it?

9 A Yes, sir.

10 Q Did you guys ever develop a single photograph of
11 the perpetrator exiting the location to see the
12 height of the perpetrator?

13 A No, sir, I did not.

14 Q You did not. If we wanted to know with certainty
15 the height of the perpetrator, that would have been
16 something that would have aided that determination;
17 correct?

18 A Yes, sir.

19 Q Now, fingerprints, as you testified to, are made by
20 a finger being applied to a surface and some sort
21 of substance in oil or something that remains on
22 that surface after the finger or the palm is
23 removed; correct?

24 A Yes, sir.

25 Q In your experience, 30-something years, you found

1 that fingerprints have been lifted from a lot of
2 surfaces; correct?

3 A Yes, sir.

4 Q Paper?

5 A Yes, sir.

6 Q Wood?

7 A Yes, sir.

8 Q Metal?

9 A It depends on the metal, but, yes, sir.

10 Q Glass?

11 A Yes, sir.

12 Q Plastic?

13 A Yes, sir.

14 Q And the cooler had glass in it?

15 A Yes, sir.

16 Q Had metal?

17 A Yes, sir.

18 Q The doors had metal and glass?

19 A Yes, sir.

20 Q The counter that you took a picture of was a
21 countertop, and in State's Exhibit Number 3, there
22 is also a separate plastic surface?

23 A Yes, sir.

24 Q Did you fingerprint both of those surfaces?

25 A Yes, sir, I did.

1 Q Now, paper, you discussed the magnetic method that
2 you used?

3 A Yes, sir.

4 Q There is also a method in common lawman's parlance
5 called superglue, correct?

6 A Yes, sir.

7 Q And I believe superglue is a cyano-acrylic?

8 A Cyanoacrylate.

9 Q Cyanoacrylate. And cyanoacrylate is a method of
10 obtaining a print from a surface, correct?

11 A Yes, sir.

12 Q If you utilize the superglue method, when you make
13 the print with the superglue method, it remains on
14 the surface because the glue dries on it; is that
15 correct?

16 A Yes, sir.

17 Q So if you had used the superglue method and kept
18 the bag, we would have the print and the bag to
19 show to the jury today; correct?

20 A Yes, sir.

21 Q Now, is that a prohibitively expensive method?

22 A No, sir.

23 Q Is that a commonly accepted method?

24 A Yes, sir.

25 Q Does your department have any criteria or any

1 protocol that you are to follow when you are at a
2 crime scene when determining what method to utilize
3 to get a fingerprint?

4 A No, sir.

5 Q So you really -- it's just up to you?

6 A Yes, sir.

7 Q And do you ever use superglue?

8 A Yes, sir.

9 Q One thing about fingerprints that's a little bit
10 unusual, you can't tell us how -- the age of a
11 print, can you?

12 A Yes and no. If you just look at the latent print
13 or if I look at, say, State's Exhibit 9, I can't
14 tell you how long that has been there. However, if
15 I have some object that I know I have cleaned or
16 you cleaned a door off tonight and you come back
17 tomorrow and I find latent prints or a can or
18 something along those lines, yes, I can tell you
19 the age of it. But generally speaking, no, sir, I
20 cannot tell you the age.

21 Q In this particular instance on the State's
22 Exhibits, you can't tell us the age of prints; can
23 you?

24 A No, sir, I cannot.

25 MR. HARVEY: Beg the Court's indulgence one

1 moment.

2 THE COURT: Yes, sir, Mr. Harvey.

3 (Pause).

4 MR. HARVEY: Thank you, Your Honor.

5 THE COURT: Anything on redirect, Solicitor?

6 MR. HUBBARD: No, sir, Your Honor.

7 THE COURT: Solicitor, we need to take a
8 break. I have one matter I have to take care of.

9 Mr. Hickman, you may step down.

10 Mr. Foreman, and ladies and gentlemen of the
11 jury, if you would please step to your jury room
12 momentarily. Do not discuss the case with each other
13 during this break.

14 (The jury retires to the jury room).

15 THE COURT: Court will be in recess.

16 (Whereupon there was a recess).

17 THE COURT: Mr. Bailiff, if you would bring us
18 the jury, please.

19 (The jury returns to the courtroom).

20 THE COURT: It appears our jury is back in
21 place all present and accounted for.

22 Solicitor, you may call your next witness.

23 MR. HUBBARD: The State calls Detective Brett
24 Sims.

25 BRETT E. SIMS, being

1 first duly sworn, testified as follows:

2 CLERK: State your full name on the record,
3 please.

4 THE WITNESS: Brett E. Sims.

5 DIRECT EXAMINATION

6 BY MR. HUBBARD:

7 Q Detective Sims, can you tell us where you work?

8 A I currently work full-time with the State L.L.R.,
9 Labor, License, and Regulation, as well as
10 continued employment part-time with the Lexington
11 County Sheriff's Office in investigations.

12 Q Back in November of 2004, were you working
13 full-time with the Sheriff's Department?

14 A I was.

15 Q What were your duties there?

16 A I was assigned to the major crimes unit at the
17 Lexington County Sheriff's Department.

18 Q So you investigated the big crimes?

19 A Correct.

20 Q Do you recall investigating an armed robbery at the
21 Li'l Cricket on Sunset Boulevard back in 2004?

22 A Yes, sir.

23 Q And did you have an opportunity to interview the
24 victim of that armed robbery?

25 A Yes, sir.

1 Q This armed robbery at the Li'l Cricket, that's in
2 Lexington County?

3 A That is correct.

4 Q The victim, do you know the victim's name? Go
5 ahead and look at your notes. It's been a while.

6 A Yes, sir, Chandra Wright.

7 Q Chandra Wright?

8 A Yes, sir.

9 Q You didn't go out that night to the scene; is that
10 correct?

11 A That is correct.

12 Q You weren't assigned the case until sometime after?

13 A That is correct.

14 Q Did you attempt to talk to Ms. Wright or did you,
15 in fact, talk to Ms. Wright at some point?

16 A I did.

17 Q And obviously -- were you made the chief
18 investigator on this case? I want to ask you that.
19 I kind of went about it in a backwards way. As a
20 detective, were you assigned this case and told you
21 were in charge of pursuing this case?

22 A That is correct.

23 Q As the chief detective, were you responsible for
24 everything that was done by, say, Jim Hickman at
25 the scene, Detective Hickman, or other officers?

1 Were they supposed to bring their stuff to you?

2 A That is correct.

3 Q During the course of your investigation, did you
4 get vehicle information?

5 A I did.

6 Q And did you pursue vehicle information in this
7 case?

8 A I did.

9 Q And did you get tag information off a vehicle in
10 this case?

11 A I did.

12 Q Were you able to determine, using that tag, who the
13 registered owner of that vehicle was?

14 A I did.

15 Q Who was the registered owner?

16 A Ms. Hall, Gloria.

17 Q Gloria Hall?

18 A Correct.

19 Q Does she live in Richland County or Lexington
20 County?

21 A Richland.

22 Q Did you have an opportunity to interview her?

23 A I did.

24 Q Is she in the courtroom today?

25 A Yes, sir.

1 Q Based on her interview, on the interview of her,
2 did you get another name of someone that you felt
3 like you needed to interview?

4 A We did.

5 Q What name was that?

6 A Quincy McCants.

7 Q What, if any, relationship existed between Ms. Hall
8 and Quincy McCants?

9 A His mother.

10 Q Gloria Hall is Quincy McCants' mother?

11 A That's correct.

12 Q Did you determine where Quincy McCants was living?

13 A I did, with her.

14 Q So he was at the same residence in Richland County?

15 A Correct.

16 Q The day you interviewed Ms. Hall, do you know what
17 day that was?

18 A (Pause).

19 Q Let me ask you, was it January 3rd?

20 A That's correct.

21 Q 2005?

22 A It was.

23 Q The day you interviewed her, was Quincy McCants
24 present?

25 A He was not.

1 Q Did you see him at all that day?

2 A I did not.

3 Q Did you have an opportunity two days later, January
4 the 5th of 2005, to interview Quincy McCants?

5 A I did.

6 Q Was that in Richland County or Lexington County?

7 A It was in Richland.

8 Q Did you advise Mr. McCants of his rights prior to
9 questioning him?

10 MR. HARVEY: If Your Honor please. I
11 oppose -- I have made an objection, and I renew the
12 objection at this time.

13 THE COURT: Yes, sir, Mr. Harvey. Your
14 objection is noted for the record.

15 MR. HARVEY: Thank you, Your Honor.

16 THE COURT: Thank you. You may proceed,
17 Solicitor.

18 BY MR. HUBBARD:

19 Q January 5, 2005, in Richland County you had an
20 opportunity to interview Mr. McCants?

21 A I did.

22 Q Did you advise him of his rights, often called the
23 Miranda rights, before you talked to him?

24 A I did.

25 Q Did you use anything to assist you in advising him

1 of those rights?

2 A I did.

3 Q I want to show you what has been previously marked
4 as State's I.D. Number 1. Do you recognize this
5 form?

6 A I do.

7 Q What is this form?

8 A It's our suspect statement form that details the
9 Miranda warnings on it.

10 Q At the top of this form, does it have like the
11 date, his name, where the interview is taking
12 place?

13 A Yes, sir.

14 Q Who fills that information in?

15 A I did.

16 Q Below that do you see five numbers -- one, two,
17 three, four, five?

18 A I do.

19 Q What are those?

20 A That's the Miranda warnings.

21 Q Below that is there a section if anyone wants to
22 write something out, they can?

23 A That is correct.

24 Q This form, is this the one you used with
25 Mr. McCants?

1 A It was.

2 Q This was on January 5, 2005?

3 A That's correct.

4 MR. HUBBARD: Your Honor, I offer this into
5 evidence at this time.

6 THE COURT: It's in evidence subject to
7 previous objection.

8 MR. HARVEY: That's correct, Your Honor.

9 THE COURT: State's Exhibit 1 is in evidence.
10 (State's Exhibit Number 1 is received into
11 evidence).

12 BY MR. HUBBARD:

13 Q Detective, I will leave this with you and ask you
14 some questions about that form.

15 A Yes, sir.

16 Q When you have a form like that, and in this case in
17 particular, what process did you use to advise him
18 of his rights?

19 A First of all, after obtaining the top
20 information -- date of birth, location and date and
21 time and so forth -- I read out each number
22 individually.

23 After each number has been read, I ask if it
24 is understood and then ask him to initial by that
25 number if they understand the sentence of what I

1 have explained.

2 Q When we talk about a number, is there a sentence
3 that follows that number?

4 A Yes, sir.

5 Q And that's what you are reading out?

6 A That is correct.

7 Q And each number has a right that you are reading
8 out; is that correct?

9 A That is correct.

10 Q After you would read each number, you would ask him
11 if he understood?

12 A That is correct.

13 Q If he understood, what was he to do?

14 A To initial by the number.

15 Q Would you please read it as you did to Mr. McCants
16 on January 5, 2005.

17 A Yes, sir. Number one states: That I have the
18 right to remain silent and not make any statement
19 at all. Number two states: That any statement I
20 do make can be used against me in court.

21 Number three states: That I have the right to
22 have an attorney present at any time during
23 questioning. Number four states: That if I cannot
24 afford an attorney, I can apply to the Court to
25 have one appointed at no cost to me.

1 And number five states: That if I decide to
2 talk to an officer without an attorney present, I
3 may stop at any time and request an attorney be
4 present for further questioning.

5 Q Did he acknowledge each and every one of those
6 rights with his initials?

7 A He did.

8 Q As you were questioning him, at any time when you
9 were talking to him, did he say: I want to stop.
10 Did he assert his right to remain silent?

11 A He did not.

12 Q At any time you were talking to him, did he say: I
13 want a lawyer?

14 A He did not.

15 Q If he had said that, what would you have done?

16 A We would have stopped.

17 Q Prior to and during your conversation with him, did
18 he show any indication whatsoever of being under
19 the influence of drugs or alcohol?

20 A He did not.

21 Q Did you work in narcotics with the Sheriff's
22 Department at one point?

23 A I did, sir.

24 Q During your experience as a narcotics officer, have
25 you seen people under the influence of drugs and/or

1 alcohol?

2 A Yes, sir.

3 Q How was Mr. McCants that day?

4 A He appeared tired but nothing out of the ordinary.

5 Q Did you make any promises to him that if he talked
6 with you, it would help him out?

7 A No, sir.

8 Q Did you make any threats that if he didn't talk to
9 you, it would come back to bite him?

10 A No, sir.

11 Q Did he decide to talk to you?

12 A He did.

13 Q Did he agree to write anything out or what did he
14 tell you?

15 A He only agreed to make verbal statements.

16 Q He wasn't going to write anything down?

17 A That is correct.

18 Q On that form that has been introduced, State's
19 Number 1, did you write in your hand or did he
20 write this in his hand: I will only provide verbal
21 statements to officers at this time and not make
22 any written statements?

23 A I wrote it.

24 Q In response to what he told you?

25 A That is correct.

1 Q Whose initial is beside that?

2 A That's Quincy's.

3 Q Whose signature is at the bottom?

4 A That's Quincy's.

5 Q Whose signature is on the other side as a witness?

6 A That's mine.

7 Q You say he was willing to talk to you. When you
8 asked him -- or did you ask him if he committed the
9 armed robbery at the Li'l Cricket on the night of
10 November 7, 2004? Did you ask him that?

11 A I did.

12 Q What was his response?

13 A On the 7th?

14 Q No, on the 5th.

15 A I'm sorry.

16 Q On January the 5th, what was his response when you
17 said: Did you do it?

18 A He denied it.

19 Q He denied it?

20 A (Witness nods). (Indicating affirmative response).

21 Q I didn't do it?

22 A That is correct.

23 Q Was it about this time also, did you request any
24 fingerprints at that point?

25 A I did.

1 Q And did you put that request in to Lexington
2 County?

3 A To the I.D. department, yes, sir.

4 MR. HUBBARD: Your Honor, at this time I have
5 no further questions, but I would like leave to recall
6 Detective Sims later.

7 THE COURT: All right. Do you want to cross
8 now Mr. Harvey or Mr. Myers?

9 MR. HARVEY: If I may, Your Honor.

10 THE COURT: All right, sir.

11 (Pause).

12 **CROSS EXAMINATION**

13 BY MR. HARVEY:

14 Q Good afternoon, Mr. Sims.

15 A Good afternoon.

16 Q My name is Johnathan Harvey.

17 A Yes, sir.

18 Q And I represent Mr. McCants.

19 A Yes, sir.

20 MR. HARVEY: If I may, Your Honor.

21 THE COURT: Yes, sir, certainly.

22 BY MR. HARVEY:

23 Q Mr. Sims, you are the chief investigating officer
24 in this case; correct?

25 A Correct.

1 Q And you had testified in response to the
2 solicitor's questions that you remained the chief
3 investigating officer in this case after the
4 incident was administratively processed and
5 assigned a case number; correct?

6 A Correct. It was that morning when reports come in,
7 and my sergeant assigns them.

8 Q Now, you actually weren't the -- in law enforcement
9 parlance, when an incident takes place and the
10 first person who arrives, they are called the
11 responding officer or the reporting officer;
12 correct?

13 A First responder.

14 Q The first responder in this case would be a
15 uniformed deputy who arrives at the scene, correct?

16 A Yes, sir.

17 Q The uniformed deputy who arrives at the scene
18 interviews witnesses and secures the scene,
19 correct? That's their duties?

20 A Yes, sir.

21 Q And in this particular instance when the case was
22 assigned to you, you were able to determine the
23 location, the Li'l Cricket, when it happened, who
24 the victim was?

25 A Uh-huh. (Indicating affirmative response).

1 Q And you had the opportunity to -- might I approach,
2 Your Honor?

3 THE COURT: Yes, sir.

4 MR. HARVEY: May I approach the witness, Your
5 Honor?

6 THE COURT: Yes, sir.

7 BY MR. HARVEY:

8 Q When the case was assigned to you, you would have
9 had the opportunity to look at what is marked as
10 Defendant's Exhibit 1; correct?

11 A Yes, sir.

12 Q And that was a statement taken by -- taken from
13 Ms. Wright by Deputy Hinz, whose handwriting is
14 worse than mine, I guess. Do you know who that
15 witness is? Can you make that out? Would it be
16 Deputy Hinz?

17 A Deputy Hinz.

18 Q You had an opportunity to look at that, and it
19 describes -- tell me if I am reading correctly --
20 it describes the subject?

21 A Uh-huh. (Indicating affirmative response).

22 Q Black male, five-eleven, 150, 160-pounds; correct?

23 A Correct.

24 Q Tan shirt, tan pants, blue and yellow hat, rough
25 hands?

1 A That's correct.

2 Q And that's the totality of the descriptive
3 information as recorded in the statement from the
4 victim by the Sheriff's Department that night,
5 correct?

6 A Correct.

7 Q Now, I notice you have an investigative report on
8 the stand, and I call your attention to a document
9 that was typed on 11/10/04 and this case number.
10 It's titled Sheriff's Office Investigative Report.
11 Do you have that? At the top it says Li'l Cricket,
12 and has original suspect, unknown.

13 A Yes, sir, this one?

14 MR. HARVEY: May I approach again, Your Honor?

15 THE COURT: Yes, sir.

16 MR. HARVEY: We will try and get on the same
17 page, Your Honor.

18 THE WITNESS: Is that the one you are speaking
19 of?

20 MR. HARVEY: If I may stand here, Your Honor?

21 THE COURT: Yes, sir.

22 BY MR. HARVEY:

23 Q This is a document that you prepared, correct?

24 A Yes, sir.

25 Q The reporting officer is B. Sims and that's you,

1 correct?

2 A Yes, sir.

3 Q 11/10/04?

4 A Uh-huh. (Indicating affirmative response).

5 Q Tell me if I am reading correctly: On 11/9/04, I
6 went to the I.L. That means incident location?

7 A Correct.

8 Q And spoke with the clerk. That would have been
9 Ms. Wright, the nice young lady we heard from
10 earlier?

11 A Yes, sir.

12 Q Who stated that she did not recall any additional
13 information on the suspect in the robbery, correct?

14 A Other than what was reported initially?

15 Q Right.

16 A Correct.

17 Q But you went back to talk to her to see if there
18 was any additional information, correct?

19 A Yes, sir.

20 Q And she couldn't provide you any additional
21 information, correct?

22 A That's correct.

23 Q And when you had an opportunity to review the
24 initial report, there was nothing mentioned about
25 someone dropping money and picking money up off the

1 ground outside the store; was there.

2 A (Pause). It stated: For the subject to pick up.

3 Q And then it says: Threw it on the counter for
4 subject to pick up?

5 A That is correct.

6 Q But there was no mention of any activity outside
7 the store, correct?

8 A Not documented here, no, sir.

9 Q And that additional information wasn't given to you
10 on the 9th, was it?

11 A No, sir.

12 Q I'm sorry, I took your report. I apologize.

13 A That's okay.

14 Q Now, you have been sitting here during the trial of
15 the case, and you have heard some testimony and
16 seen pictures about potato chip bags; correct?

17 A I have.

18 Q You have never had the opportunity to view
19 firsthand any potato chip bag in this case, have
20 you?

21 A That's not my function.

22 Q So you haven't had a chance --

23 A No, sir.

24 Q -- to view the potato chip bag?

25 A No, sir.

1 Q As the chief investigating officer, you never found
2 a potato chip bag that was placed into evidence or
3 taken out of evidence?

4 A No, sir.

5 Q Now, also in the report that you and I just -- in
6 the report, the reporting or the first officer
7 writes a report, and in that document that you
8 looked at, in the incident report forms used by the
9 Sheriff's Department, there is a part that says
10 property estimate; isn't there? If you will look
11 at the initial report.

12 A Yes, sir.

13 Q And the reason there is a property estimate is if
14 property is taken or money is taken, the law
15 enforcement agency can determine what was taken
16 right away or in a robbery determine the amount
17 that was taken; correct?

18 A That is correct.

19 Q Now, over the lifetime of this investigation, in
20 any report did you ever fill in a property estimate
21 or was the Sheriff's Department ever able to
22 determine how much was taken?

23 A It was left pending.

24 Q It's pending today, isn't it? You don't know?

25 A I don't know.

1 Q Now, did you ever see firsthand the juice bottle
2 that was mentioned in this case?

3 A Other than on the video, no, sir. It was -- it
4 left with him.

5 Q Now, you had mentioned that you talked to
6 Mr. McCants on the 5th of January; correct?

7 A Yes, sir.

8 Q Mr. Hubbard only asked you about the conversation
9 on the 5th of January. Y'all went over -- you and
10 Mr. Hubbard, when I mean y'all -- in an exhibit,
11 the number of which I can't recall. May I approach
12 the jury rail, Your Honor?

13 THE COURT: Yes, sir.

14 BY MR. HARVEY:

15 Q This document right here?

16 A Yes, sir.

17 THE COURT: State's Exhibit 1?

18 MR. HARVEY: State's Exhibit 1.

19 BY MR. HARVEY:

20 Q And the time that you did that was 14:20?

21 A That's correct.

22 Q That would be 2:20 in the afternoon?

23 A Yes, sir.

24 Q Had you talked to Mr. Hickman on 1/5/05?

25 A I don't recall.

1 Q Did you talk to Mr. Johnson on 1/5/05?

2 A I don't recall.

3 Q Now, in your duties as chief investigating officer
4 in the case, did you ever attempt to verify the
5 delivery of a particular shipment of potato chips
6 to the Li'l Cricket?

7 A No, sir.

8 Q And did you ever attempt to verify the amount of
9 loss?

10 A No, sir.

11 Q Now, you had an occasion to view the videotape in
12 this case; correct?

13 A Yes, sir.

14 Q Did you ever determine -- now, the videotape that
15 was shown or the portion of the videotape that's in
16 evidence that was shown today wasn't the entire
17 videotape; was it? The videotape, what was
18 depicted here today in court or shown here today in
19 court, was a portion of the videotape which is now
20 on a C.D.; correct?

21 A That's all I have seen.

22 Q I'm sorry, I may have asked the question
23 unartfully. Deputy Hickman testified he obtained a
24 C.D. or videotape from the surveillance camera.
25 There was a surveillance camera, correct?

1 A Correct.

2 Q So at some point in time, we all agree that the
3 image that was captured on the surveillance
4 camera has now been converted to a compact disk;
5 correct?

6 A Yes, sir.

7 Q And that compact disk starts at a time that would
8 be depicted in the bottom of the image. If you
9 punch the start button and watch it all the way to
10 the end of that C.D., it covers roughly about what,
11 15 minutes ballpark?

12 A I assume.

13 Q But you have had an opportunity to watch that
14 entire video, correct?

15 A I did. I can't tell you the exact time amount on
16 it.

17 Q Even though you can't tell me the exact amount of
18 time on it, you will agree with me that what we
19 viewed on the screen here today in court was just a
20 portion of that video. It wasn't the video in its
21 entirety, was it?

22 A Correct.

23 Q When you watched the video in its entirety, you
24 will agree with me that sometime after this
25 incident, the camera stopped taking an image;

1 correct?

2 A What I was shown on the C.D., it stopped. That's
3 all I saw.

4 Q Right. And you will agree with me that the image
5 on the C.D. doesn't show the incident location from
6 the time the door was locked and the bag was
7 supposedly on the counter till the time law
8 enforcement arrived, does it?

9 A No, sir, not that portion.

10 Q So you will agree with me that there is a
11 substantial period of time from the time Ms. Wright
12 testified she locked the door until the time that
13 someone arrived that would have depicted the
14 location of the bag on the counter and the location
15 of the bag in the rack from the time of the
16 incident to the time people arrived after that? We
17 don't have that video image, do we, or that C.D.
18 image? You have to excuse me, I'm old school
19 technology.

20 A It's not on that C.D., no.

21 Q It's not on that C.D. Now, you are the chief
22 investigating officer, and you are aware of the
23 fact that ultimately Mr. McCants was charged with
24 this offense; correct?

25 A That's correct.

1 Q And there is testimony that this offense took place
2 in Lexington County, correct?

3 A Yes, sir.

4 Q And when someone is charged with an offense in
5 Lexington County, they are formally charged, a
6 normal procedure is for someone to be processed in
7 the detention center; correct?

8 A Correct.

9 (Attorneys confer).

10 MR. HARVEY: May I approach the witness, Your
11 Honor?

12 THE COURT: Yes, sir.

13 BY MR. HARVEY:

14 Q I am showing you a document which is -- tell me if
15 I am reading correctly -- Lexington County
16 Sheriff's Department booking form?

17 A That's correct.

18 MR. HUBBARD: No objection, Your Honor, to
19 that going into evidence.

20 MR. HARVEY: Frankly I have lost count of what
21 Defendant's exhibit it is.

22 THE COURT: I think it's Number 2.

23 COURT REPORTER: Yes, sir.

24 MR. HARVEY: That's about as high as I can
25 count.

1 (Defendant's Exhibit Number 2 is received into
2 evidence).

3 BY MR. HARVEY:

4 Q On Defense Exhibit Number 2, it says: Inmate vital
5 information. Quincy Andre McCants, his age?

6 A Uh-huh. (Indicating affirmative response).

7 Q It lists information. Also sex, male. Skin, dark
8 brown. You had mentioned your experience as a
9 narcotics officer, correct?

10 A Correct.

11 Q And you've been in law enforcement for awhile,
12 correct?

13 A Yes, sir.

14 Q And in your experience in talking to witnesses, in
15 dealing with people who are in the community, you
16 encounter not only white folks but black folks and
17 increasingly more Hispanic folks; correct?

18 A Yes, sir.

19 Q And you've been able to determine that sometimes
20 over the course of your many years in law
21 enforcement, when you interview an African-American
22 witness and an African-American describes another
23 African-American, oftentimes skin color is used.

24 Sometimes people say: Well, he is a
25 light-skinned dude or he's dark. But skin color,

1 in describing people as light skinned or dark
2 skinned, is fairly utilized amongst individuals
3 describing people of African-American descent;
4 correct?

5 A People in general.

6 Q People in general. Now, when you went back to talk
7 to Ms. Wright on the 9th, she never gave you any
8 details about the skin color of the perpetrator;
9 did she?

10 A No, sir.

11 Q And it says here in this report dark brown?

12 A (Witness nods). (Indicating affirmative response).

13 Q Also build is large, correct?

14 A Uh-huh. (Indicating affirmative response).

15 THE COURT: Is that a yes or no? I couldn't
16 hear you.

17 THE WITNESS: Yes, sir, I'm sorry.

18 THE COURT: Thank you.

19 BY MR. HARVEY:

20 Q Also it says weight, 210; correct?

21 A I can't see.

22 Q I'm sorry.

23 A Yes, sir.

24 Q Now, when Ms. Wright gave the report that is part
25 of the investigative file on the date of the

1 incident, the perpetrator was described as someone
2 being about five-eleven; right?

3 A Yes, sir.

4 Q One hundred fifty to 160, correct?

5 A That's what she said.

6 Q You will agree with me that there is a substantial
7 difference between 210-pounds and 150 or 160?

8 A In numbers, yes, sir.

9 Q In numbers. All right. Now, this date is
10 1/5/2005; correct?

11 A Yes, sir.

12 Q The incident in which we are talking about here
13 today was November 7, 2004; correct?

14 A Yes, sir.

15 Q So if Mr. McCants -- there is a 50-pound difference
16 between the description of the perpetrator and the
17 weight of Mr. McCants on his book-in date; correct?

18 A That is correct.

19 Q With respect to the photographs or items, all the
20 identification portion of this investigation was
21 done by Mr. Hickman; correct?

22 A That is correct.

23 Q Now, if you had wanted a still photograph to have
24 been developed from the C.D. when the perpetrator
25 went through the door, could you have done that?

1 A Yes, sir.

2 Q Did you do that?

3 A No, sir.

4 Q If you had wanted a C.D. -- excuse me, I apologize.
5 Strike that. If you wanted a photograph depicted
6 or taken or extracted from any segment of the C.D.
7 that was obtained from the Li'l Cricket, did you
8 have the capability to do that?

9 A We could attempt it, yes, sir.

10 Q In South Carolina we are blessed to have many other
11 agencies to help us. There is S.L.E.D. or possibly
12 you could ask some sort of federal help utilizing
13 the technology that is available in the 21st
14 century to enhance photographs; correct?

15 A Yes, sir.

16 Q None of that was done, was it?

17 A No, sir.

18 MR. HARVEY: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 (Pause).

21 MR. HARVEY: Thank you, Your Honor. That's
22 all I have.

23 THE COURT: Thank you. Any on redirect,
24 Solicitor?

25 MR. HUBBARD: A few quick follow-ups.

REDIRECT EXAMINATION

BY MR. HARVEY:

Q Detective, in your experience working major crimes, dealing with victims of major crimes, such as armed robbery, are victims often upset?

A Very much.

Q When you get a statement from them the very night something happens, are all the details always in there?

A No.

Q Is that uncommon?

A Not at all.

Q When you talk about height and weight, is it uncommon for a witness to be off?

A It's a perception issue.

Q Let me ask you this, particularly as to weight. When a woman looks at a man or a man looks at a woman, are they more apt, based on your experience --

MR. HARVEY: Objection, unless he has got an expert.

MR. HUBBARD: If I can get the question out, I might be able to lay a foundation.

THE COURT: If he can get it out, I might be able to rule on it, Mr. Harvey. I apologize.

1 BY MR. HUBBARD:

2 Q Based on your experience --

3 THE COURT: I will give you a chance to
4 object, Mr. Harvey.

5 BY MR. HUBBARD:

6 Q -- in talking to many witnesses, many victims,
7 where you end up capturing somebody and they are
8 either convicted or you know they end up being
9 guilty; okay?

10 A Correct.

11 Q In your experience is it uncommon for a victim or
12 witness to give a description, particularly height
13 and weight, that is not accurate when you finally
14 bring in the guy that you know is guilty?

15 THE COURT: Do you have an objection to that?

16 MR. HARVEY: Yes, Your Honor. If he is going
17 to testify about knowledge of perception and difference
18 in perceptions, unless he has got that specialized
19 knowledge and training to aid the jury in finding that
20 particular fact, I would object to him answering the
21 question.

22 MR. HUBBARD: I don't mean to interrupt. My
23 question is based on his experience dealings with these
24 people, their initial statements versus ultimate
25 results.

1 THE COURT: I will allow him to answer the
2 question if he knows the answer.

3 BY MR. HUBBARD:

4 Q Did you follow that question or do you need me to
5 repeat it?

6 A No, sir, I'm tracking it. The statement is taken
7 at the time of the incident, and a lot of times at
8 the time of the arrest --

9 MR. HARVEY: Your Honor, we didn't go into
10 that on cross.

11 THE COURT: Yes, sir. I have already ruled on
12 this, Mr. Harvey.

13 MR. HARVEY: Thank you, Your Honor.

14 BY MR. HUBBARD:

15 Q This is generally people you have dealt with. You
16 are going from statement to what, I'm sorry?

17 A To the date of arrest or booking or whatever you
18 want to call it.

19 Q Okay. Is it uncommon to have a variation in height
20 and weight?

21 A Not at all.

22 Q In cases where someone comes in and a case is
23 resolved by guilt or whatever, is it unusual for
24 the person who ends up being convicted, whether
25 it's --

1 MR. HARVEY: Your Honor, I will object to
2 anything about conviction. He can certainly ask about
3 people -- Your Honor has ruled he can ask about
4 identification and people's perception, but whether or
5 not there is guilt or innocence, that is totally
6 improper.

7 MR. HUBBARD: I will rephrase.

8 MR. HARVEY: I ask that that portion be
9 stricken from the record.

10 THE COURT: I want to make clear, I have not
11 ruled he can testify as to people's perception. I ruled
12 he can testify as to his knowledge as an experienced
13 investigator as to people's perceptions, not as an
14 expert witness on other people's perception. I want the
15 record to reflect that.

16 MR. HARVEY: I agree, Your Honor, if the Court
17 thought I was disagreeing.

18 THE COURT: No, sir, I didn't think you were
19 disagreeing. I want the record to be clear on it.

20 MR. HARVEY: I do object to the solicitor's
21 interjection of guilt or innocence.

22 MR. HUBBARD: I said I will rephrase it.

23 THE COURT: Let's see if he rephrases it.
24 Mr. Harvey, if you have an objection, please do so.

25 MR. HARVEY: Thank you, Your Honor.

1 THE COURT: Thank you, Mr. Harvey. Solicitor.

2 BY MR. HUBBARD:

3 Q Detective Sims, you agree that a case for you
4 begins with an investigation, goes to an arrest,
5 and at some point it comes to a prosecutor's
6 office; correct?

7 A Yes, sir.

8 Q The case then is resolved or handled, correct?

9 A Yes, sir.

10 Q In cases you have dealt with where you have a
11 suspect that you have arrested and you follow it
12 through that process until they are convicted --

13 MR. HARVEY: Again, Your Honor, conviction
14 doesn't have anything to do with whether or not
15 people --

16 THE COURT: Until the case is resolved.

17 BY MR. HUBBARD:

18 Q Until the case is resolved. Is it unusual where
19 you start with a height or weight that is at
20 variation with the one you end up with in the
21 courtroom?

22 A No, sir.

23 Q Based on your experience, particularly dealing with
24 one sex trying to identify another, versus males
25 identifying males, and women identifying women, is

1 there more of a variation or is it basically the
2 same based on your experience? If you can answer
3 that question. Do you want me to ask it again?

4 A Sure.

5 Q Do you understand what I'm asking you?

6 A Not totally.

7 Q Let me make sure here.

8 MR. HARVEY: Objection.

9 THE COURT: Yes, sir.

10 MR. HARVEY: I'm not trying to be
11 unnecessarily combative. He has asked a question. The
12 question was fairly clear. He couldn't answer it. If
13 he can't answer the question -- he never really gave him
14 a chance -- he said he couldn't answer it.

15 If he can't answer it, it's been asked and
16 answered. If he asked the question again about the
17 differences in sexual perception, that has been asked
18 and answered. He can't answer it.

19 THE COURT: At least it's been asked and not
20 answered, Mr. Harvey. He can ask him another question.

21 MR. HARVEY: Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 BY MR. HUBBARD:

24 Q Detective, I will try to make this clear. I don't
25 know if I can. If I can't, we will move on; all

1 right?

2 A All right, sir.

3 Q When you have a man identifying somebody, when he
4 identifies another man, based on your experience --
5 if you can answer this.

6 A Yes.

7 Q Is he more apt to get weight right?

8 A Yes.

9 Q Then when a woman identifies a man?

10 A Yes, sir.

11 Q Based on your experience?

12 A Yes, sir.

13 Q Do men tend to know more about what a man might
14 weigh?

15 A Yes, sir.

16 Q In your experience?

17 A Yes, sir.

18 Q And a woman, a woman?

19 A Yes, sir.

20 Q Let me ask you something here. Let's go over what
21 she saw, Chandra Wright. We've gone over earlier:
22 Tan pants, tan shirt, blue and yellow hat. We've
23 got that, right?

24 A Yes, sir.

25 Q And, of course, a black male?

1 A Yes, sir.

2 Q When you viewed the videotape as an investigator
3 during the investigation of this case, did you see
4 she was accurate there?

5 A Yes, sir.

6 Q When she gave you the height or when she gave the
7 height of the individual she saw in front of her,
8 what did she put down on that statement?

9 A Five-eleven.

10 Q On this booking form where Mr. McCants is arrested
11 and put into Lexington County over on January 5th,
12 what's his height?

13 A Five-eleven.

14 Q Five-eleven. She got that right?

15 A Yes, sir.

16 Q Let me ask you this, too. When a man is up this
17 close (indicating) or a person is up this close,
18 are you more apt to get the height and weight based
19 on your experience with witnesses, interviewing
20 witnesses, and victims when there is something
21 separating them?

22 A Yes, sir.

23 Q More apt to get the height?

24 A Height.

25 MR. HUBBARD: No other questions.

1 THE COURT: Any recross, Mr. Harvey?

2 RECROSS EXAMINATION

3 BY MR. HARVEY:

4 Q You went back on 11/9/04 to check with Ms. Wright
5 about any other details, correct?

6 A Yes, sir.

7 Q No other details?

8 A Correct.

9 Q You saw the booking report. You never went back to
10 talk to Ms. Wright to get any other details?

11 A No, sir.

12 Q And Ms. Wright never came to you about any other
13 details, did she?

14 A No, sir.

15 Q One of the reasons that statements are taken in
16 close proximity to the event that someone is being
17 questioned about is their memory is best at that
18 time, correct?

19 A It depends.

20 Q Well, the day of an event, your memory is pretty
21 good?

22 A Depending on the event.

23 Q Two days later, which would be 11/09/04, it's
24 pretty good?

25 A Depends on the person.

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1 Q All right. And Ms. Wright indicated to you that
2 she had given all the details that she could
3 remember, correct?

4 A Yes, sir.

5 MR. HARVEY: That's all, Your Honor. Thank
6 you.

7 THE COURT: Thank you, Mr. Harvey. Detective
8 Sims, you may step down. You are subject to recall.

9 MR. HUBBARD: The State calls Duane Johnson to
10 the stand.

11 WILBUR DUANE JOHNSON, being
12 first duly sworn, testified as follows:

13 CLERK: State your full name on the record,
14 please.

15 THE WITNESS: Wilbur, W-I-L-B-U-R, Duane,
16 D-U-A-N-E, Johnson, J-O-H-N-S-O-N.

17 DIRECT EXAMINATION

18 BY MR. HUBBARD:

19 Q Mr. Johnson, where are you employed?

20 A I am employed as a part-time employee with the
21 Lexington County Sheriff's Department.

22 Q And what is your position over there?

23 A I am a fingerprint examiner.

24 Q And how long have you been with the Lexington
25 County Sheriff's Department?

1 A Approximately five years.

2 Q You say your duties there are fingerprint analysis?

3 A That's some of my duties, yes.

4 Q What are your other duties?

5 A In addition to fingerprint analysis, which the
6 majority of my time on fingerprint analysis is
7 comparison of latent prints to known prints, I am
8 the primary A.F.I.S. operator of the automated
9 fingerprint system.

10 Other duties that I do, occasionally I will
11 assist the crime scene technicians in processing
12 scenes if they need additional help, and I also
13 train the road deputies on how to process latent
14 prints using powders and how to lift these prints
15 and also train the correctional personnel on how to
16 record a set of known prints in the detention
17 center. In addition to that, I am occasionally
18 asked to go and speak to different groups such as
19 high school classes.

20 Q Do you have any previous experience in fingerprint
21 analysis?

22 A I do.

23 Q Can you please tell us what that is.

24 A In 1964 I began my career with the F.B.I. in
25 Washington. I started out in the fingerprint

1 business at the very bottom, learning how to
2 recognize fingerprint patterns, apply a
3 classification to a fingerprint card, and search
4 the fingerprint card in the F.B.I. fingerprint
5 files.

6 I worked in this position, with the exception
7 of two years of military duty, until 1972. At that
8 time I entered the F.B.I.'s latent print unit,
9 which I was trained to process evidence, compare
10 latent prints, and do other duties that were
11 associated with the latent prints. I continued to
12 work in a full-time capacity in the latent print
13 field until I retired in 2000.

14 Q You have been doing it about as long as I been
15 alive?

16 A Probably longer.

17 Q Would you tell us your educational background in
18 this area.

19 A My secondary education, I was educated in the
20 public school system in Saluda County, South
21 Carolina. I have an Associate's Degree from Prince
22 George's College in Largo, Maryland, and I have a
23 Bachelor of Science Degree from the University of
24 Maryland at College Park, Maryland.

25 Q Do you have any certifications in the area of

1 fingerprint analysis?

2 A I do. I have a latent print examiner certification
3 through the International Association for
4 Identification, and I also am certified by the
5 F.B.I. as a latent print examiner.

6 Q Have you had an occasion to compare and identify
7 individuals based on known inked impressions and
8 compared them to latent prints?

9 A I have.

10 Q Do you know how many times?

11 A Actual comparisons, I have made millions of
12 comparisons over my career.

13 Q How many times have you identified people from
14 known fingerprints to latent fingerprints?

15 A It's in the thousands.

16 Q So it's part of your regular duty obviously?

17 A Yes, sir. I spend -- my days at the Sheriff's
18 Office, I spend majority of my day making latent
19 print comparisons.

20 Q Have you had an opportunity to testify in courts of
21 South Carolina as an expert in the field of
22 fingerprint analysis?

23 A I have.

24 Q Do you know how many times?

25 A In the State court system and the Federal court

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1 system, I probably have testified approximately 15
2 times in South Carolina.

3 MR. HUBBARD: Your Honor, I move that he's an
4 expert and move to offer him an expert in the area of
5 fingerprint analysis.

6 THE COURT: Any voir dire, Mr. Harvey,
7 Mr. Myers?

8 MR. HARVEY: No, Your Honor.

9 THE COURT: He will be qualified as an expert
10 in the field of latent print, latent fingerprint
11 analysis, Solicitor?

12 MR. HUBBARD: Yes, sir, fingerprint analysis.

13 THE COURT: Fingerprint analysis.

14 Mr. Foreman, ladies and gentlemen of the jury,
15 normally a person cannot give opinion testimony.
16 Normally when a person testifies, they must testify as
17 to what they either saw heard or sensed by smell or
18 something of that nature.

19 However, there is an exception when someone is
20 qualified because of education or experience. They are
21 permitted to give their opinion in certain areas if the
22 Court qualifies them that way.

23 This witness, Mr. Johnson, will be qualified
24 in the area of fingerprint analysis to give opinion
25 testimony in that area. That does not mean that you

1 must accept the opinion, but it is evidence for you to
2 use in any way you see fit.

3 Thank you, Solicitor. You may proceed.

4 MR. HUBBARD: Yes, sir, Your Honor.

5 BY MR. HUBBARD:

6 Q Mr. Johnson, can you please tell the jury what a
7 latent fingerprint is.

8 A Sure. On the underside or the palm side of the
9 fingers, there are raised portions of skin which
10 are called friction ridges. These ridges are
11 outlined with the tiny openings which exude
12 perspiration or sweat.

13 When the fingers come in contact with food or
14 touching the forehead or the hair or certain
15 surfaces, they will pick up oily or greasy matters
16 from these surfaces.

17 A combination of the perspiration and this
18 oily or greasy matter will coat the ridges on the
19 fingers. When the ridges touch a surface, normally
20 an outline of the ridges will be left on the
21 surface.

22 The word laten generally means hidden. You
23 can't see it. Depending upon the type of surface
24 that has been touched, it will require some type of
25 development for it to be become visible.

1 If the surface is a nonporous surface, that is
2 a surface that's hard, it's a non absorbent
3 surface, then generally certain techniques, such as
4 the superglue method, powders and some of the
5 chemical dye stains are used with alternate light
6 sources will make the prints visible if prints are
7 on there.

8 If the surface is a porous surface, such as a
9 piece of paper, other types or other development
10 techniques are used on that. Chemicals are used on
11 that to develop the prints on there.

12 Because what happens with the absorbent
13 surfaces is when the contaminates from the finger
14 touch the paper or whatever it is, over a period of
15 time it absorbs into the fibers of the paper.

16 The chemical is used to make it raise up and
17 be visible. The technique for recovering it from
18 the paper to preserve it would be through
19 photography.

20 Today it has been mentioned about powdering
21 and dusting. Powders are not used on these types
22 of surfaces. It's only used with chemicals, and no
23 lifting material should be used on taking prints
24 from paper.

25 Q Let me ask you this. A potato chip bag, a surface

1 Like that, is it appropriate to use powder on that
2 type of surface?

3 A Yes, it is. It's considered to be a nonporous
4 surface because it's along the lines of plastic or
5 cellophane or something that is not an absorbent
6 type of surface.

7 Q We have talked about latent prints. Can you
8 explain to the jury what a known ink print is.

9 A A known print would be a print where an individual
10 is intentionally trying to record the end joint of
11 the finger for record purposes. That is done by
12 taking the finger and applying it into a thin film
13 of printer's ink and than transferring this process
14 onto a fingerprint card for record purposes.

15 The contrast in the known print or the ink
16 print to the latent print is that the inked print
17 is an intentional operation to try to record a
18 person's end joint of the finger, as opposed to a
19 latent print.

20 It's a chance impression. It's usually left
21 by accident. A person doesn't intend to leave a
22 print when they touch it, similar as when we pick
23 up cups and bottles and things like that in our
24 normal daily activities.

25 Q Are there different distinguishing characteristics

1 to fingerprints?

2 A Yes, there are.

3 Q Can you please tell us about those.

4 A These friction ridges that I talked about earlier,
5 these ridges do not run continuous. They stop and
6 start. They will split and divide into two
7 separate ridges at times. Some ridges are longer
8 than others. Some are so short they may be
9 referred to as dot. They have no direction.

10 Essentially there are three different
11 characteristics at the end of those ridges. It's
12 the dividing ridge that splits into two ridges and
13 the dot. Sometimes a single ridge will split and
14 then rejoin to form a single ridge again. That
15 formation between the two dividing ridges would be
16 called an island.

17 Q Are an individual's characteristics on their
18 fingers, are those characteristics permanent?

19 A Yes, they are.

20 Q Do they change during the course of a lifetime,
21 when you are four years old to 84?

22 A The ridges are permanent. They are formed before
23 birth. They remain with us throughout our lifetime
24 until after death. They do not change their
25 appearance except for the natural growth.

1 As a person's finger grows larger, then the
2 ridge goes larger with the growth of the finger.
3 But if you were to record the prints of an infant
4 and then go back 10, 15, 20, years later and record
5 that individual again, you should see the same
6 characteristics. The only difference is they would
7 be much larger.

8 Q Mr. Johnson, is it possible for somebody to touch a
9 surface and not leave a fingerprint?

10 A Yes, it is.

11 Q Can you explain why that's the case.

12 A Well, as a general rule the smoother the surface,
13 the better for leaving latent prints. Right in
14 front of you at the rail there, there are two
15 primary surfaces there. Up on top of the post are
16 the pieces of granite or some type of stone that
17 are very smooth.

18 To me they would appear to be very conducive
19 to leaving a latent print, as opposed to the wood
20 that is on the top of the rail. Even though it
21 looks to be very smooth, is it not a very good
22 surface for leaving latent prints and developing
23 latent prints.

24 Also, the condition of the surface, if it is
25 wet and you try to leave a print on there when it's

1 wet, it's virtually impossible to do that. An item
2 that has been touched and then has become wet, say
3 from rain or moisture, can be processed for latent
4 prints after it dries out.

5 We have been very successful in developing
6 prints. Some people do not leave latent prints at
7 all. Their fingers are so dry they just don't have
8 a transfer. They don't have the moisture. They
9 don't transfer the prints on there.

10 I've worked with individuals many years such
11 as that. I would watch them handle evidence on a
12 daily basis without wearing protection on his
13 hands. Being a young examiner, I would go behind
14 him and try to identify his prints, never did, but
15 everyone does not leave latent prints.

16 Q How do you compare latent prints to known inked
17 fingerprints? What do you do?

18 A First of all, say on one of those lifts that had
19 been introduced, I will look at the lifts for
20 latent prints that are present on there. Then I
21 will do an analysis of the latent prints. I am
22 looking for characteristics, these ridge ends --

23 THE COURT: Excuse me. Yes, sir.

24 MR. HARVEY: The prints have been marked for
25 identification. They have not been introduced.

1 THE COURT: Yes, sir. He's not a lawyer. He
2 is just testifying as an expert. I understand that,
3 sir. You may proceed, Mr. Johnson.

4 THE WITNESS: Thank you.

5 A But I will do an analysis on the prints that are on
6 lifts. They could be any lifts that I work on.
7 What I am looking for within the latent print, I am
8 looking for those characteristics I talked about:
9 The dots, the dividing ridges, the ending ridges.

10 I am looking for enough of those to be on
11 there that I can make a comparison, first of all,
12 and determine that the print is of value. Whether
13 or not I make a match or as long as I can compare
14 it, it would be considered to be of value.

15 Then I try to determine from the latent print,
16 because it's a partial print, what area of the
17 finger do these characteristics lay in. Is it on
18 the side, the tip, the center, whereabouts? Based
19 on my experience of comparing many thousands of
20 prints, the experience of doing this on a daily
21 basis, it's fairly easy to go to those areas.

22 I get a small core of these characteristics.
23 I look at the set of ink fingerprints that I am
24 comparing. I look in the same relative position in
25 the two prints, and I make a comparison between the

1 same areas.

2 If I see that they match in those areas, then
3 I will go to another area of the latent print,
4 secure another group of characteristics, move back
5 to the known print, and again do a comparison.

6 At some point -- I have done this for so many
7 years and so many times, it's like the light comes
8 on. I don't sit there and count the
9 characteristics. I know I have got a match as soon
10 as I see them and match up. It's like doing a
11 repetitive thing that you do day in and day out.

12 Q Mr. Johnson, again, fingerprints, are they specific
13 to individuals?

14 A Yes. The ridge arrangement on every finger of
15 every person is different. There are no two --

16 Q Is it possible for two people to have the same
17 ones? I think you are about to say, even a set of
18 twins?

19 A No. No two people have the same fingerprints, even
20 identical twins. Identical twins have identical
21 D.N.A., but identical twins do not have identical
22 fingerprints. How do I know this? Well, I have
23 compared prints of twins before, identical twins.
24 I have done this in my job.

25 Within the F.B.I. we have done a lot of

1 research into this as far as family members and
2 siblings and against the parents. Just several
3 weeks ago I was doing a presentation to a fifth
4 grade class, and I was told beforehand that there
5 was a set of twins in the class.

6 It wasn't hard to pick them out. They were
7 sitting up on the front row. I asked them before:
8 Are you identical? They were not. I told the
9 class that I am going to take an impression of
10 their right index finger, and they will be
11 different.

12 However, the pattern type that they have in
13 there, I would expect to see the same pattern type
14 repeat in there, and that was what the case was.
15 So no two people have the same fingerprint.

16 Q I will show you what has been marked State's I.D.
17 Number 7, 8, and 9 and see if you can recognize
18 these.

19 A Yes, I do. I recognize them on the back side and
20 the lower right corner with my initials W.D.J., and
21 I have also written some numbers there, 2.1, 2.2,
22 and 2.3 when I did my examination.

23 Q Who submitted those or who took these? Can you
24 tell from the prints?

25 A Yes, I can. I can tell the prints were lifted by

1 Investigator Hickman.

2 Q Does it say where he pulled those latent prints?

3 A Sure. Two of the prints were lifted from a Lay's
4 salt and vinegar bag, and one lift was lifted from
5 the Lay's sour cream and onion bag.

6 Q Does it tell what store?

7 A Yes. The victim is listed as Li'l Cricket, and the
8 address location is 2990 Sunset Boulevard.

9 Q Let me ask you, did you have an occasion to compare
10 these latents to a known inked fingerprint of
11 Mr. McCants?

12 A Well, I don't know Mr. McCants personally, but I
13 compared them to an individual's whose name
14 appeared on the fingerprint card as Quincy Andre
15 McCants.

16 Q And going back to the latents, this tape that is on
17 this paper, does it appear to be altered in any way
18 or look like anybody has tried to pull the tape off
19 or change what is on here?

20 A No. The only thing different from when I initially
21 received these is when I did my comparison, I
22 folded and creased the lift so I could put them
23 side by side on the known fingerprint card to make
24 it easier to compare them, but I see no indication
25 of any alteration of the lift itself.

1 MR. HUBBARD: Your Honor, I offer the latent
2 prints into evidence at this time, State's I.D. 7, 8,
3 and 9.

4 MR. HARVEY: Same objection as before, Your
5 honor. Again -- do you want us to approach in the
6 interest of time?

7 THE COURT: If it's the same as before --
8 there is nothing additional?

9 MR. HARVEY: I would like to restate it. I
10 object and would renew the grounds of my objection and
11 would like to be heard on it.

12 THE COURT: All right. With that being said,
13 Mr. Foreman, and ladies and gentlemen of the jury, if
14 you would step momentarily to your jury room. Do not
15 discuss the case with each other at this time.

16 (The jury retires to the room).

17 THE COURT: Your objection, Mr. Harvey?

18 MR. HARVEY: If the Court will allow me one
19 moment please, Your Honor.

20 (Pause).

21 MR. HARVEY: Your Honor, in this particular
22 instance, we've heard testimony from Mr. Hickman that
23 Mr. Hickman lifted the latent prints. We have heard
24 testimony from Mr. Hickman that Mr. Hickman at some
25 point in time filled out an evidence -- a document

1 saying that the latent print cards went into evidence.

2 Other than that -- and I would respectfully
3 submit, Your Honor, proof of a chain of custody need not
4 negate all possibility of tampering so long as the chain
5 of possession is complete.

6 However, they are the party offering it. They
7 have got to be able to show where these cards have been.
8 What they have been able to show is Mr. Hickman got a
9 card, and at some date in time afterwards Mr. Johnson
10 has the card.

11 I would respectfully submit that they don't
12 have to have everyone come and testify of their
13 involvement in the chain of custody of the card, but
14 they have to account for the card.

15 What they have got is Mr. Johnson has not said
16 where, how, what, when or why he got it or who he got it
17 from. Again, they are the party offering it. He has
18 given an opinion how it looks here today.

19 He has not been able to say the condition of
20 the card before he got it. It well may look the same as
21 when he looked at it, but that is different than saying
22 and being able to show the condition of the card before
23 it got to him.

24 THE COURT: Ask him where he got it from,
25 Solicitor.

1 MR. HUBBARD: Mr. Johnson, where did you get
2 those cards?

3 THE WITNESS: I got it from the Sheriff's
4 Office property room.

5 THE COURT: Anything further, Mr. Harvey?

6 MR. HARVEY: Yes. Can you tell us when it was
7 placed in the property room?

8 THE COURT: No, sir. No, sir, this is not an
9 in-camera hearing. Detective Hickman testified he took
10 the lifts, State's identification 7, 8, and 9, from two
11 separate potato chip bags, sour cream and onion and
12 salt and vinegar, and he placed them in the property
13 room.

14 This officer just testified that he received
15 7, 8, and 9 from the property room. He did not change
16 or alter them in any way. Detective Hickman identified
17 those cards as the lifts that he took from the Li'l
18 Cricket, 2900 Sunset Boulevard, 11/7/04.

19 As I understand State versus Kahan, 233 S.E.2d
20 293, which is citing Benton versus Pllum, 100 S.E.2d
21 534, 1957, while proof need not negate all possibility
22 of tampering, it is generally held that the party
23 offering such testimony is required to establish at
24 least, as far as practical, a complete chain of
25 evidence.

1 If Detective Hickman is saying: I took them
2 from the bag, and I put them in the property room, and
3 this officer is saying: I received them in the property
4 room. I made -- and whatever he is going to say that he
5 did -- I think it goes to the weight and not the
6 admissibility.

7 Your objection is overruled and they may come
8 in evidence. If you want to put anything on the record
9 additionally, Mr. Harvey, you certainly can.

10 MR. HARVEY: If the Court would allow me to
11 ask one question. I understand the Court has ruled. I
12 may not have asked the question that the Court asked --
13 that I wanted to ask before the Court made its decision
14 and if I may explain the question.

15 THE COURT: Yes, sir. You can direct the
16 question to me.

17 MR. HARVEY: If I may, Your Honor.

18 THE COURT: Yes, sir.

19 MR. HARVEY: Your Honor; Mr. Hickman put the
20 card into evidence. He said he got it from evidence,
21 but the evidence -- there is no evidence log for this
22 piece of evidence. There's notes on an envelope.

23 Unless there is an unbroken chain between
24 Mr. Hickman putting them into evidence and Mr. Johnson
25 getting them, then if those latents have been taken out

1 of the evidence room and their whereabouts can't be
2 accounted for, I would respectfully submit it doesn't
3 meet the requirements of the cases that Your Honor had
4 cited.

5 It's my understanding that they weren't --
6 once Mr. Hickman placed the latent prints into evidence,
7 they did not remain -- they did not remain there the
8 entire time until Mr. Johnson viewed them.

9 THE COURT: There is no testimony to that
10 effect. The only testimony in this record is that
11 Mr. Hickman, after he took the lifts, put them in the --
12 I actually put a box around them. The box is important
13 to me. It's more important than a bullet. I am talking
14 about a bullet, like on the forms.

15 I actually put a box around it, and the box
16 said L.C.S.D. property room. There is no testimony that
17 they were ever removed from the property room except by
18 Detective Johnson.

19 When I read Kahan, which is a wonderful case
20 by the way, and I know you have read it many times, the
21 nightgown that the murder victim was dressed in on
22 Christmas Eve of 1974 was personally picked up by a
23 deputy from the coroner at the hospital.

24 The gown was placed in a plastic bag and taken
25 to S.L.E.D. the day after New Year's Day in 1975. This

1 is what the officer testified to. He believed the gown
2 was kept in the evidence locker during this time span.
3 He believed it, not that it was, but he believed it.

4 The only testimony in this record is that
5 Mr. Hickman placed them in the Lexington County
6 Sheriff's Department property room, 7, 8 and 9, and
7 Mr. Johnson has identified 7, 8, and 9 and that he
8 received them from the Lexington County Sheriff's
9 Department property room.

10 I don't mean to belabor the point. You make
11 excellent points, Mr. Harvey. Again, doesn't it go to
12 the weight and not the admissibility? And aren't we
13 content to rely on the good sense and judgment of
14 American juries for evidence? Isn't that exactly the
15 grist made for the jury mill? Isn't that weight and not
16 the admissibility?

17 MR. HARVEY: Your Honor, I agree if this
18 witness could say: I looked at this evidence tag. The
19 sheet says logged in 11/9/04, logged out 11/15/04, back
20 in.

21 Those prints were -- it's not in evidence, and
22 Mr. Sims is subject -- or excuse me -- Mr. Hickman is
23 subject to recall, but those prints were taken from the
24 Sheriff's Department and an A.F.I.S. analysis was done,
25 and then those prints were placed back into the evidence

1 locker at some point in time.

2 So if Mr. Johnson were able to say: I looked
3 at his envelope from which I took them from or I looked
4 at the evidence log and I see here's where they went,
5 here's where they went, here's where they went.

6 THE COURT: Again, isn't it generally a party
7 offering the specimen is required to establish at least
8 as far as is practical?

9 MR. HARVEY: I agree, Your Honor. But if the
10 State knows that its own witnesses took the fingerprint
11 cards to S.L.E.D., the fingerprint card came back from
12 S.L.E.D., they were placed into evidence, which I
13 haven't been able to find documentation of, all I'm
14 looking for is for them to be able to say: Hey, they
15 went to S.L.E.D., they came back, and they went to
16 Mr. Johnson.

17 There seems to be a gap. As far as is
18 practical, I don't think it's an impractical burden to
19 require the State to be able to prove it. Thank you,
20 Your Honor.

21 THE COURT: Yes, sir. Thank you. Again, I
22 reiterate that Mr. Hickman identifies 7, 8, and 9 as
23 being the lifts he took from the potato chip bags at the
24 incident location.

25 This witness has testified that he received

1 them from the property room. He identified Detective
2 Hickman as being the individual that took the lifts. He
3 has identified his initials and his numbering system on
4 that.

5 Even if they went to S.L.E.D., that wouldn't
6 change because he has testified, Detective Hickman, to
7 the evidence and identified it, and Detective Johnson
8 has testified to it also.

9 MR. HARVEY: Thank you, Your Honor.

10 THE COURT: Let's take about ten minutes.

11 (Whereupon there was a recess).

12 THE COURT: One other thing I would like to
13 say. I neglected to because I had engaged in the
14 conversation with Mr. Harvey. I neglected to advise the
15 witness not to discuss his testimony during the break
16 but he could move about.

17 Just in an abundance of precaution, I would
18 ask, Mr. Johnson, you have not discussed your testimony
19 during the break with anyone?

20 THE WITNESS: No, sir, Your Honor.

21 THE COURT: I apologize that I neglected to do
22 that. I know a professional witness such as this, it's
23 generally not necessary anyway, but I did want to make
24 sure that was clear on the record. Are we ready for our
25 jury?

1 MR. HUBBARD: Yes, sir, Your Honor.

2 (The jury returns to the courtroom).

3 THE COURT: It appears everyone is present and
4 accounted for. Our jury is back in place. Solicitor,
5 you may proceed.

6 DIRECT EXAMINATION

7 BY MR. HUBBARD:

8 Q Mr. Johnson, you again have identified State's 7,
9 8, and 9 -- Your Honor, again, I offer these into
10 evidence.

11 THE COURT: They are 7, 8, and 9 in evidence
12 subject to previous objection.

13 MR. HUBBARD: Thank you, Your Honor.

14 (State's Exhibit Number 7-9 are received into
15 evidence).

16 BY MR. HUBBARD:

17 Q Mr. Johnson, I will leave these up here with you, I
18 want to ask you, did you have an occasion to
19 analyze those latent prints?

20 A Yes, I did.

21 Q Did you have an occasion to compare those latent
22 prints to the known inked fingerprints of Quincy
23 McCants?

24 A I did.

25 Q Did you reach a conclusion when you compared those

1 latents to Mr. McCants?

2 A I did.

3 Q What is your conclusion?

4 A It is my opinion that on what has been marked as
5 State's Exhibit Number 8, I determined that there
6 was one latent fingerprint of value that was
7 present on that lift, and I identified it as an
8 impression of the left middle finger of
9 Mr. McCants.

10 On what has been marked as State's Exhibit
11 Number 7, I determined that there is also one
12 latent fingerprint of value present on that lift,
13 and I identified it an impression of the left thumb
14 of Mr. McCants.

15 On what has been marked as State's Exhibit
16 Number 9, I determined that there were no latent
17 prints of value present on that lift.

18 Q In looking at these pieces of evidence, the latent
19 lift Number 9, you say you did not get a read on
20 this?

21 A That's correct.

22 Q Is that the Lay's sour cream and onion bag?

23 A Yes, it is.

24 Q Just for purposes of identifying these latents, 7
25 and 8, did they come from the Lay's salt and

1 vinegar bag?

2 A They did.

3 Q And you've got a left hand?

4 A I got a left thumb and left middle finger match.

5 Q Thank you. The match, of course, is to

6 Mr. McCants?

7 A Correct, that's Quincy Andre McCants.

8 Q Did you put your conclusions in a report?

9 A I did.

10 Q I will show you this and see if you can identify
11 this.

12 A Yes, this is a copy of a report that I did. The
13 original report that I generated was on letterhead
14 stationery of the Sheriff's Office that has the
15 embedded zeal in it. It was sort of a yellow or
16 manila in color document.

17 Q Has the original been archived to your knowledge?

18 A From what I understand our procedure is, I place
19 those reports in the investigator's mailbox, and
20 then they in turn have procedures they do. They
21 pass them on to their supervisors. Once they leave
22 my hands, I have no personal knowledge what
23 actually happens to those reports.

24 Q Fair enough. Does this accurately depict and
25 represent your findings and your signature as to

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1 those findings?

2 A Yes, it does. That's my signature at the bottom.

3 MR. HUBBARD: I offer this into evidence, Your
4 Honor.

5 THE COURT: Mr. Harvey.

6 MR. HARVEY: Just the same objection, Your
7 Honor. May I state the objection for purposes of
8 clarity, Your Honor?

9 THE COURT: All right, sir. What I will do at
10 this point, were you going to use this any further with
11 this witness now, Solicitor?

12 MR. HUBBARD: No, sir, I am not.

13 THE COURT: I will mark it for identification
14 purposes only at this time subject to his objections,
15 and I will hear that outside the presence of the jury.

16 MR. HUBBARD: Yes, sir.

17 MR. HARVEY: That will be fine, Your Honor.

18 THE COURT: Thank you, Mr. Harvey. Solicitor,
19 have that marked -- is it State's 10?

20 COURT REPORTER: Yes, sir.

21 THE COURT: For identification at this time.

22 (State's Exhibit Number 10 is marked for
23 identification).

24 BY MR. HUBBARD:

25 Q Mr. Johnson, if you would please answer any

1 questions Mr. Harvey has for you.

2 A Yes, sir.

3 THE COURT: Thank you, Solicitor. Mr. Harvey.

4 MR. HARVEY: May it please the Court.

5 **CROSS EXAMINATION**

6 BY MR. HARVEY:

7 Q Hello, Mr. Johnson. I guess you figured out by now
8 my name is Jonathan Harvey, and I represent
9 Mr. McCants. You just answered a question by my
10 colleague, Mr. Hubbard, about State's Exhibit 7, 8,
11 and 9?

12 A That is correct.

13 Q When you were asked those questions, Mr. Hubbard
14 phrased the question where the latent prints came
15 from. Do you remember? He said: This came from,
16 I think, a sour cream and onion bag, a Lay's potato
17 chip sour cream and onion bag, which my be 2.3, and
18 2.1 and 2.2 and were of the other type of Lay's
19 potato chips; is that right?

20 A That's correct.

21 Q From your own personal knowledge, you don't know
22 where those prints came from. All you know is what
23 you have read off the card?

24 A That's correct.

25 Q So you can't tell the jury of your own personal

1 knowledge where the prints came from, can you?

2 A I cannot.

3 Q You have never seen the potato chip bag?

4 A No.

5 Q And to your knowledge, there are no potato chip
6 bags that were logged into evidence in this case;
7 correct?

8 A I haven't had the occasion to even inquire about a
9 potato chip bag.

10 Q Okay. Now, you have talked about being with the
11 F.B.I., and you said you were in the military and
12 with the F.B.I. early on; correct?

13 A That's correct.

14 Q When you examined evidence that was gathered by the
15 bureau -- did you ever do that?

16 A Yes, sir.

17 Q The bureau has a protocol that it follows whenever
18 an individual takes items into evidence, correct?

19 A Well, yes, they do. That generally falls upon the
20 field agent who is investigating the case to do
21 that. Because they collect the evidence and turn
22 it in and submit it to the laboratory.

23 I worked in the laboratory side. So that was
24 not one of my duties. Our field agents had certain
25 protocol they had to follow, but I'm not personally

1 familiar with it because I didn't have to do it.

2 Q So your testimony is you worked for the F.B.I. for
3 about how many years?

4 A A little over 36 years.

5 Q A little over 36 years. In your 36 years with the
6 F.B.I., by osmosis, conversation or just being on
7 the job, you gained no knowledge at all of the
8 protocol or how field agents may get evidence?

9 A Well, I know how they get evidence, but I didn't
10 ever see their paperwork. Their paperwork, when
11 they collected their evidence, never accompanied
12 their evidence to the laboratory. They kept that
13 in their own files within their particular field
14 divisions.

15 And when they submitted evidence, they created
16 additional paperwork making a request, and as far
17 as what they did is on their notes for collection.
18 I never had the occasion to see that.

19 Q And when we talk about paperwork with the bureau --
20 your report has been marked for evidence, correct?

21 A Yes, sir.

22 Q And you had testified that you had folded up the
23 latent print cards in doing your identification
24 procedure, correct?

25 A Yes, sir, during my comparison process.

1 Q Did you make any contemporaneous notes of your
2 comparisons?

3 A Yes, sir, I have notes.

4 Q And did you make those notes available to the
5 Solicitor's Office?

6 A Yes, sir, I did.

7 Q And when did you give them to the Solicitor's
8 Office?

9 A Last Thursday, I believe it was, or Wednesday.

10 Q Okay. Your notes were on a document entitled
11 Latent Fingerprint Examination Work Sheet; is that
12 right?

13 A That's correct.

14 Q Does this look like a copy of something that you
15 signed on 1/5/05; is that right?

16 A Yes, sir, I signed it for completing it. All of
17 the written and printed information on there I
18 did, with the exception in the very right bottom
19 corner, the verified date and name. Mr. Hickman
20 did that.

21 Q Now, on your report, which that is your report of
22 your identification. The identification means
23 you've got a known sample and a latent, and you
24 have identified the two in your opinion as being
25 from the same individual; correct?

1 A That's correct.

2 Q Now, the F.B.I., the F.B.I. has criteria for
3 identification, did it not? Did you have to have
4 certain number of points of similarity?

5 A No, the F.B.I. did not require a certain number of
6 points of similarity. It was up to the individual
7 examiner based on the relationship of the points
8 and if the examiner felt comfortable in making the
9 identification. There was not a set, so to speak,
10 number requirement there.

11 Q Is that the same for the International Association
12 of Identification? What is that you belong to?
13 What is the name?

14 A The International Association For Identification.
15 It is probably very similar, but the International
16 Association would be similar to your bar
17 association.

18 It's a group of fingerprint examiners that
19 have, you know, have their meetings and annual
20 meetings, monthly meetings, whatever. But whatever
21 rules they had, the F.B.I. was not -- did not have
22 to follow what their rules were and vice-versa.

23 Q Does the Lexington County Sheriff's Department have
24 a protocol that it requires for minimum points of
25 similarity?

1 A No, sir. There is no agency in this country that
2 has a minimum number.

3 Q All right. Now, with respect to the latent prints
4 that were lifted in this case, you are familiar
5 with the different procedures. What I mean by
6 procedures, I guess techniques, that can be used.
7 There is ordinary or some sort of special
8 fingerprint dust that fingerprint technicians
9 utilize, correct?

10 A That's correct.

11 Q Does it have a trade name?

12 A Well, there's different manufacturers that make
13 this. There is a company named SearchEase, Delta
14 Products, Lightning Powder. They all basically
15 make the same type of the product. They just
16 package it under a different name and give it a
17 different title. It's used in the same manner no
18 matter which manufacturer makes it.

19 Q And then there is a magnetic type of dust, correct?

20 A That's correct.

21 Q And those are best utilized in what you termed
22 nonporous surfaces, correct?

23 A Yes, sir, the powders are used on nonporous.

24 Q One of the things about fingerprints, unless you
25 have got some other information about what was

1 maybe on the hand that left the print or some other
2 information about the scene from where the print
3 was lifted, a print in of itself, you are unable to
4 determine the age of a print; correct?

5 A No, there is no scientific method for determining
6 the age of a latent print.

7 Q Okay. Even though there are many methods
8 available, such as dust, magnetic dust, or what is
9 come to be called superglue; correct?

10 A Yes, sir.

11 Q Would you agree with me that ideally nonporous
12 surfaces should be superglued and fumed at a crime
13 scene before being transported in such a way as to
14 minimize contact between any smooth surfaces and
15 packaging material?

16 A I would agree with part of that. I would agree
17 that some items can be superglued at the crime
18 scene but not all.

19 Q Nonporous, when we mean nonporous, is what a drop
20 of water would probably not soak into; right?

21 A That's correct.

22 Q When superglue is used, the superglue impression or
23 the superglue -- how the superglue makes the latent
24 print -- stays on the object that was searched for
25 the print or from which the print was lifted;

1 correct?

2 A Yes, sir. As a general rule, once that print has
3 been developed with superglue, it will remain on
4 the object, and it's very difficult to remove from
5 the object, even after applying powder and lifting
6 the print. There will be an outline of the
7 impression still left on the object.

8 Q So if superglue were used in this case and the
9 object were kept, we would have the potato chip bag
10 with the superglue imprint on it here today; is
11 that correct?

12 A That's correct.

13 Q Now, in addition to, I guess -- and I don't mean
14 this in a disparaging way -- but I guess in terms
15 of technology, we would call dusting sort of old
16 school or traditional methods of finding prints;
17 correct?

18 A Yes, sir. The method that was used in this one,
19 the dusting, using the fingerprint powder, is the
20 oldest method that there is in developing latent
21 prints. It's been in use for approximately a
22 hundred years.

23 Q And an alternate light source can help someone
24 investigating a scene detect prints that might not
25 ordinarily be visible to the eye, correct?

1 A Well, it could and couldn't. I mean, alternate
2 light sources are a big help in latent print
3 recognition. But as things go, one good thing
4 leads to another.

5 With the light sources, we have to step up our
6 photography and be able to expertly photograph
7 those. So, yes, in some situations you could find
8 more prints with a light source, and sometimes you
9 may not find any with a light source.

10 The light sources, these things work in a
11 different wave length, different bands. Unless the
12 technician is in the exact correct band that that
13 latent print was left in, they are not going to see
14 it.

15 Q Okay. If the light source is used, you are able to
16 photograph the print that is left, correct, if it
17 detects a print?

18 A Yes, you can photograph it. Again, this is where
19 you go into a different part of the photography
20 having the knowledge, experience, and equipment to
21 do this.

22 It's a very different photography because you
23 are not dealing with a black and white photography,
24 such as shooting in this room. You are dealing
25 with flourescence and dealing with exposures

1 because that print does have a fluorescence to it.

2 It's a very tricky and hard photography to do.

3 Q Yet some police departments utilize that
4 methodology, don't they?

5 A Yes, sir, they do.

6 Q And yet some don't. And some don't, correct?

7 A More don't than do.

8 Q And then going back to the superglue, if a
9 superglue latent print is obtained and it leaves
10 that image, that image likewise could be
11 photographed; correct?

12 A That's correct.

13 Q And in this particular instance, we don't have --
14 what you looked at were the latent print cards,
15 correct?

16 A I only looked at these cards, yes, sir.

17 Q So you never looked at or don't even know if there
18 were photographs of the latent prints? In other
19 words, when the print was taken, you don't know if
20 there was a photograph of the bag at the time the
21 print was lifted; do you?

22 A No, I don't.

23 Q Now, your report or your notes give your
24 conclusions; correct?

25 A My opinion and my conclusion, yes, sir.

1 Q And you had testified that when you do this, you
2 just get a feel, and you look at it and based on
3 your feeling, you believe in your opinion you have
4 had a match; correct?

5 A Yes, sir. It's just such a repetition. I just
6 know when I have a match because I see so many
7 points associating with each other.

8 Q When you were with the F.B.I., would you document
9 the ridges and dots and islands that you matched?

10 A No, sir, I was not required to do that. What you
11 see on my notes here is exactly how I did it with
12 the F.B.I.

13 Q Fingerprints can be taken from a number of
14 sources -- a number of surfaces. Paper?

15 A Yes, sir.

16 Q Glass?

17 A Yes.

18 Q Plastic?

19 A Glasses?

20 Q No, plastic.

21 A Plastic. Depending on the texture of the plastic,
22 not all plastics.

23 Q What would be needed for the texture to take a
24 print?

25 A Generally the rougher the surface, the less chance

1 you are going to develop a print on there and even
2 leave a print on there.

3 Q Would you consider glass a rough surface?

4 A Glass?

5 Q Yes, sir.

6 A No, most glass I know is smooth.

7 Q That's really all I have to ask.

8 MR. HARVEY: Sometime lawyers just want to
9 keep asking questions, but this is a good time for this
10 lawyer to stop, Your Honor. Thank you very much.

11 THE COURT: Thank you very much, Mr. Harvey.
12 Solicitor, do you have anything on redirect?

13 MR. HUBBARD: No, sir, Your Honor.

14 THE COURT: Thank you, Mr. Johnson. You may
15 step down.

16 THE WITNESS: Thank you.

17 THE COURT: Solicitor, do you have a witness
18 you can put up within 15 minutes?

19 MR. HUBBARD: I think it's going to take us a
20 little bit longer than that, Your Honor. It won't be
21 long, but I think it will run beyond that.

22 THE COURT: Thank you, Solicitor.

23 Mr. Foreman, ladies and gentlemen of the jury,
24 we are now going to take our evening recess. Again, I
25 remind you during the recess, you are not to discuss the

1 case with anyone. That includes your family members,
2 your friends, your fellow jurors, people involved in
3 this case or anyone else.

4 If anyone tries to talk with you about this
5 case, please let me know immediately. You may do so by
6 calling your juror hotline, as I call it, if anyone
7 should try to talk with you about the case.

8 Remember to keep an open mind about this case
9 until I instruct you to begin your deliberations after
10 you heard all the evidence, the closing arguments of the
11 attorneys and the charge on the law.

12 With that being said, momentarily I will
13 release you for the evening and ask you to please be
14 back in your jury room at 09:30, at 9:30 in the morning.
15 I will be prompt. Thank you and have a pleasant
16 evening.

17 (The jury is excused for the day at 4:45 p.m.)

18 THE COURT: Anything further, Solicitor?

19 MR. HUBBARD: Your Honor, did you want to take
20 up that objection on the fingerprint card?

21 THE COURT: On State's 10 for identification?

22 MR. HUBBARD: Yes, sir, I didn't know if you
23 wanted to do that now.

24 THE COURT: Yes, sir, I would be glad to. Do
25 you have that?

1 COURT REPORTER: Yes, sir, it's right here.

2 THE COURT: Mr. Harvey.

3 MR. HARVEY: If Your Honor please. If I
4 remember correctly, we objected to the introduction of
5 the fingerprint cards into evidence. By way of offer of
6 proof, Your Honor, we would simply -- we would offer
7 that Mr. Hickman got the cards. They were brought into
8 evidence. Mr. Sims requested an A.F.I.S. search.

9 The latent cards then went, as best I can
10 tell, then went to S.L.E.D. We can trace the cards to
11 S.L.E.D. Then the cards -- I have been provided with no
12 chain of custody information with respect to the cards
13 from once they were at S.L.E.D. to Mr. Johnson's
14 testimony about the cards.

15 Again, Your Honor, our position is that they
16 don't have to every witness here to account for their
17 exact role in the chain of custody, but certainly they
18 would have to account for it.

19 We would offer by way of proof that the cards
20 went to S.L.E.D. The cards were received by S.L.E.D.
21 There is a gap in the documentation of the whereabouts
22 of the cards between that time and Mr. Johnson's
23 identifying the cards today.

24 THE COURT: Any other objection as to State's
25 10 for identification, aside from the chain of custody

1 issue as to 7, 8, and 9?

2 MR. HARVEY: No, Your Honor.

3 THE COURT: With that, State's 10 will be
4 entered into evidence subject to Mr. Harvey's objection.
5 Anything further, Mr. Harvey?

6 MR. HARVEY: Well, Your Honor, rather than
7 take the point up, I've been advised that Mr. Sims is
8 going to be recalled.

9 THE COURT: Yes, sir. The solicitor said that
10 when he called him.

11 MR. HARVEY: Correct.

12 THE COURT: All right, sir.

13 MR. HARVEY: All witnesses certainly are
14 available to be recalled if they need to reply to some
15 testimony that was put into evidence. I'm not sure
16 what Mr. Sims function would be to be recalled, if it's
17 going to introduce new evidence in the State's case in
18 chief.

19 I don't know what new evidence has been placed
20 into the record since Mr. Sims has testified that he
21 would actually have to reply to. I'm making an advance
22 objection to Mr. Sims' testimony.

23 They had the right and opportunity to put him
24 up in their case, and he is certainly subject to recall,
25 as all witnesses are. But to have Mr. Sims be able to

1 have carte blanche after fully testifying, I would
2 object to that.

3 One, I don't think it's fair, and quite
4 frankly I have been searching for a particular rule or
5 something to cite, and I haven't had the time to do
6 that.

7 THE COURT: Rule 611 (d) is the rule of
8 evidence that refers to reexamination and recall. If
9 it's any new matter they can obviously do it, and they
10 can do it in rebuttal. If it's not as to new matter,
11 they can do it within the discretion of the Court.

12 As I understood the record, when the solicitor
13 called Mr. Sims, he stated he was going to make him
14 subject to recall. I took it -- and I believe that was
15 announced in open court -- that it was because the
16 fingerprints would not yet be in evidence until after
17 Detective Johnson testified.

18 So they had to get State's 7, 8, and 9 -- I am
19 thinking through it -- into evidence before they would
20 go into the part of statement that was asked or delved
21 into in camera concerning the Defendant's alleged
22 statements he made to Detective Sims on the 5th about
23 the fingerprint identification.

24 Perhaps I erroneously assumed, since there was
25 no objection at the time, that he was subject to recall

1 without me having to rule on it. If not I'm going to
2 allow the solicitor in my discretion to recall Mr. Sims
3 based on January the 5th and the January 7th statement
4 that they did not go into.

5 I am not telling him he has to do that at all,
6 but he can do so, and I think that's within my
7 discretion to do that.

8 MR. HARVEY: Thank you, Your Honor. It took
9 me a moment to find Rule 611 (d). I understand the
10 Court has discretion. I would respectfully submit that
11 the witness may be reexamined as to the same matters
12 to which he testified, only in the discretion of the
13 Court.

14 But without exception he may be reexamined as
15 to any new matter brought out during cross examination.
16 I don't think we brought out any new matters that he
17 would be able to testify on during cross examination.

18 After the examination of the witness has been
19 concluded by all parties to the action, the witness may
20 be recalled only in the discretion of the Court. I
21 recognize the Court does have the discretion.

22 But, again, Your Honor, I think just out of
23 fundamental fairness, for Mr. McCants to have the
24 fairest trial possible, the State should have -- it's up
25 to the State to try its case as it sees fit.

1 However, Mr. Johnson and Mr. Hickman could
2 have testified, and the fingerprints could have been
3 placed into evidence prior to Mr. Sims' testimony.
4 Having Mr. Sims testify at this point is a discretionary
5 decision that the State made. We would ask that they
6 not be allowed to call Mr. Sims. Thank you, Your Honor.

7 THE COURT: It puts the Court -- I will put
8 this on the record -- in a catch 22. I call it a catch
9 18 -- when the solicitor announced he is calling the
10 witness subject to recall at that point, and there is no
11 objections made at that point. However, you are
12 protected on the record, and within my discretion, I
13 will allow the solicitor to recall Mr. Sims. Thank
14 you.

15 MR. HARVEY: Thank you, Your Honor.

16 THE COURT: Have a good evening.

17 (Whereupon the proceedings were concluded for
18 October 17, 2006).

19 (The following proceedings were reported on
20 October 18, 2006).

21 THE COURT: Good morning, Mr. Harvey.

22 MR. HARVEY: May it please the Court.

23 THE COURT: Yes, sir.

24 MR. HARVEY: If Your Honor please. Yesterday
25 at the close of the testimony, we addressed in detail an

1 objection I had made to the entry of the fingerprint
2 card into evidence.

3 As I recall the soliloquy, the Court had
4 inquired during several occasions were there any other
5 grounds for the objection.

6 THE COURT: Only as to State's Exhibit
7 Number 10, I believe unless I stand corrected.

8 MR. HARVEY: Your Honor, we are on the same
9 page.

10 THE COURT: All right.

11 MR. HARVEY: Frankly driving back to my office
12 and reviewing what has transpired, I'm not certain if I
13 renewed the motion I made in limine based upon the
14 destruction of the evidence, the loss of the potato chip
15 bag.

16 If you may remember, Your Honor, I had argued
17 the State and Federal due process clauses of the State
18 Constitution. Just out of an abundance of caution,
19 frankly I cannot remember if I had renewed that motion.

20 I do remember the Court asking me if there
21 were other grounds. Just out of an abundance of
22 caution, since we haven't taken any new testimony at
23 this time, I would respectfully at this time renew that
24 ground as well to State's Exhibit Number 10.

25 THE COURT: All right. I did not consider

1 State's 10 as to those grounds, but you are certainly
2 protected on the record. I would overrule your
3 objection.

4 MR. HARVEY: Thank you, Your Honor.

5 THE COURT: You are protected.

6 MR. HARVEY: I apologize for forgetting that.

7 THE COURT: It's quite all right. Solicitor,
8 do you have anything before we bring in our jury?

9 MR. HUBBARD: I know we have already
10 introduced that fingerprint report. I would like to do
11 it in front of the jury.

12 THE COURT: Yes, sir, I think you would have
13 to. Can you give me an indication? I am not pinning
14 you down.

15 MR. HUBBARD: This is my last witness right
16 here, and it shouldn't be long for me.

17 THE COURT: Mr. Harvey, I'm certainly not
18 pinning you down either. Do you know if y'all will have
19 any testimony? Like I say, I'm not pinning you down if
20 you are not comfortable answering that.

21 MR. HARVEY: I am certainly comfortable and
22 appreciate the Court wanting to know. We anticipate
23 possibly one witness, and Mr. McCants is not going to
24 testify.

25 MR. MYERS: Your Honor, that witness should

1 only take five, ten minutes on our part.

2 THE COURT: What I will do then after the
3 State rests, then I will send the jury out. Obviously
4 you can make your motions then. And depending on how I
5 rule on your motions, I would either not have to
6 interview the Defendant as to his right to testify or
7 would have to interview the Defendant as to his right to
8 testify.

9 But I will do that after the close of the
10 State's case, and after I hear any motions you would
11 have, Mr. Harvey and Mr. Myers. Is there anything
12 further?

13 MR. HUBBARD: No, sir, Your Honor.

14 THE COURT: Mr. Harvey?

15 MR. HARVEY: No, sir.

16 THE COURT: We will be on standby. I always
17 like to get us in a little early in case we have any
18 issues.

19 (Whereupon there was a recess).

20 THE COURT: What about your family,
21 Mr. Harvey, Mr. Myers?

22 MR. MYERS: Your Honor, I just spoke with them
23 they are passing Wolfe's gym. They should be here in
24 ten minutes. That shouldn't delay us getting start.

25 THE COURT: Thank you, Mr. Myers. Mr. Corley,

1 would you bring us our jury, please.

2 (The jury returns to the courtroom at
3 9:30 a.m.)

4 THE COURT: Good morning, Mr. Foreman, and
5 ladies and gentlemen of the jury. I have my foreman and
6 my two alternates. The jury all appears to be present.
7 The State is continuing to offer evidence in its case in
8 chief. Solicitor, you may proceed.

9 MR. HUBBARD: Thank you, Your Honor. Your
10 Honor, I would like to begin by offering the fingerprint
11 analysis of Duane Johnson that we discussed yesterday
12 into evidence.

13 THE COURT: State's 10 for identification is
14 now in evidence subject to previous objections of the
15 defense.

16 MR. HARVEY: Thank you, Your Honor.

17 (State's Exhibit Number 10 is received into
18 evidence).

19 MR. HUBBARD: Your Honor, the State calls back
20 to the stand Detective Brett Sims.

21 THE COURT: Mr. Sims is recalled subject to
22 previous objection.

23 Mr. Sims, you are still under oath.

24 THE WITNESS: Yes, sir.

25 BRETT E. SIMS, having being

1 previously duly sworn, resumed the witness stand and
2 testified as follows:

3 **DIRECT EXAMINATION**

4 BY MR. HUBBARD:

5 Q Detective Sims.

6 A Yes, sir.

7 Q Were you made aware of the finding of Duane Johnson
8 as to the fingerprints on Quincy McCants?

9 A I was.

10 Q And were you aware of those fingerprints, of the
11 fingerprint analysis, when you spoke to Quincy
12 McCants a second time?

13 A I was.

14 Q And what day, if you recall, did you speak to him
15 for a second time?

16 A On the 7th, January 7, '05.

17 Q What, if anything, did you do as a result of that
18 fingerprint analysis?

19 A Approached the magistrate for a warrant.

20 Q On Quincy McCants?

21 A Correct.

22 Q And the warrant was for?

23 A Armed robbery.

24 Q Was that done before January 7th of 2005, the
25 warrant? Did you get the warrant and serve it on

1 Quincy McCants before January 7, 2005?

2 A Yes, sir.

3 Q Again, you had interviewed him on January the 5th;
4 is that correct?

5 A That's correct.

6 Q In Richland County?

7 A Correct.

8 Q On January the 7th, you are interviewing him over
9 here at booking or in an interview room?

10 A Yes, sir.

11 Q Did you remind Mr. McCants of his rights before you
12 talked to him?

13 A I did.

14 Q State's Exhibit Number 1 shows the Miranda rights
15 form from January the 5th. Did you remind him of
16 his rights from the 5th?

17 A I did.

18 Q What, if anything else, did you do to remind
19 Mr. McCants of his rights?

20 A I verbally advised him as well.

21 Q Did you use anything to assist you in advising
22 Mr. McCants of his rights?

23 A Just a card.

24 Q Do you have that card with you?

25 A Yes, sir.

1 Q Detective, I know it's sometimes kind of awkward to
2 read in front of people. If you would, to the best
3 of your ability, would you please read those rights
4 as you read them to Quincy McCants on January 7,
5 2005.

6 A Yes, sir. You have the right to remain silent.
7 Anything you say can and will be used against you
8 in a court of law. You have the right to talk to a
9 lawyer and have him present with you while you are
10 being questioned.

11 If you cannot afford to hire a lawyer, one
12 will be appointed to represent you before any
13 questioning if you wish. You can decide at any
14 time to exercise these rights and not answer any
15 questions or make any statements. Do you
16 understand each of these right as I have explained
17 to you? Having these rights in mind, do you wish
18 to talk to us now?

19 Q Did he indicate he wished to talk to you?

20 A He did.

21 Q Did he appear to understand what you were reading
22 to him?

23 A He did.

24 Q Did he appear to understand his rights?

25 A He did.

1 Q At any time during the discussion you had with him,
2 did he say: I want to stop and assert my right to
3 remain silent?

4 A He did not.

5 Q At any time in talking with you, did he say: I
6 want to have my attorney here or an attorney here?

7 A He did not.

8 Q As a former narcotics agent, did he appear to be in
9 sound mind, not under the influence of drugs or
10 alcohol?

11 A He did.

12 Q Sound mind?

13 A Sound mind, I'm sorry.

14 Q Once again, did you make any promises if he would
15 just talk to you, you would do something for him?

16 A Did not.

17 Q Did you make any threats: Mr. McCants, if you
18 don't talk to me, something is going to happen?

19 A No, sir.

20 Q Did he appear to respond and talk to you freely and
21 voluntarily?

22 A He did.

23 MR. HARVEY: Your Honor, I would object to the
24 form of the question because that question asks an
25 answer which is the ultimate issue for the jury to

1 decide about the nature of his statement.

2 THE COURT: Under State versus Albert Wilson,
3 I will allow it. Your objection is noted.

4 MR. HARVEY: If I may, this may be an
5 opportune time to renew an objection with respect to
6 this statement. We argued that in limine. I wanted to
7 renew that now.

8 THE COURT: Certainly. You are protected on
9 the record.

10 MR. HARVEY: Thank you, Your Honor.

11 THE COURT: Thank you, Mr. Harvey. Solicitor,
12 you may proceed.

13 BY MR. HUBBARD:

14 Q Detective Sims, did Mr. McCants agree to talk to
15 you?

16 A Yes, sir.

17 Q Did he indicate whether he would just talk to you
18 or did he indicate he might be willing to write out
19 what he had to say?

20 A Just verbal.

21 Q Just verbal?

22 A Yes, sir.

23 Q Just like he did on January the 5th?

24 A That's correct.

25 Q With all that in mind, on January 7, 2005, did you

1 ask Mr. McCants if he committed the armed robbery
2 at the Li'l Cricket on November 7, 2004?

3 A I did.

4 Q What was his response?

5 A He said he did not remember doing the robbery.

6 Q Did not remember. On the 5th what was his
7 response?

8 A He denied it.

9 Q So he goes from denying to not remembering?

10 A That's his statement, yes, sir.

11 Q Did you ask him about the fingerprints on the
12 potato chip bags that you now had?

13 A I did.

14 Q What was his response to that?

15 A He didn't know how they got on there.

16 Q One final thing. During your interviews with
17 Mr. McCants, did you notice anything about his
18 physical characteristics that stuck out to you?

19 A He had some scarring to the back of his head.

20 Q Whereabout on the back of the head?

21 A The neck area, right in here (indicating).

22 Q At the time when you were talking to him, was his
23 hair much shorter than that?

24 A Yes, sir, it was shaved.

25 Q Much as it is in this booking photo, which is

1 Defense Exhibit Number 2?

2 A Yes, sir, that's correct.

3 Q That scarring, is that what you call right around
4 the nape of the neck?

5 A Yes, sir.

6 Q Based on your viewing of that scarring, if you were
7 to have a baseball hat on, would that scarring be
8 visible?

9 A Probably so.

10 Q If he were to have a hat on like the one we saw in
11 the video, could you see that scarring?

12 A Possibly not.

13 MR. HUBBARD: That's all I have right now,
14 Your Honor. Thank you.

15 THE COURT: Thank you, Solicitor. Mr. Harvey.

16 MR. HARVEY: Thank you, Your Honor.

17 THE COURT: You may cross examine.

18 MR. HARVEY: May it please the Court.

19 THE COURT: Yes, sir.

20 **CROSS EXAMINATION**

21 BY MR. HARVEY:

22 Q Good morning, Mr. Sims.

23 A Good morning, sir.

24 Q It's good to talk to you again. Mr. Sims, on
25 January 7, 2005, you were still the lead

1 investigator on this major crime; correct?

2 A Yes, sir.

3 Q You had received information about an alleged
4 fingerprint identification, correct?

5 A Yes, sir.

6 Q You had undertaken to interrogate a suspect for the
7 second time, correct?

8 A Yes, sir.

9 Q And yet you will agree with me on this second
10 interview, you did not take contemporaneous notes
11 of what was said; did you?

12 A I don't recall.

13 Q But you did prepare an investigative report
14 because that's the one thing y'all do sometime
15 after you undertake an official activity, it is
16 documented?

17 A Yes, sir.

18 Q And since you don't have contemporaneous notes,
19 your recollection would have been documented in
20 your report; right?

21 A Yes, sir.

22 Q And the date of your report was the 13th of
23 January, correct?

24 A That's correct.

25 Q So when the prosecutor asked you questions today

1 about this conversation which took place on
2 January 7th, you aren't able to recall it from
3 looking at notes, like maybe you put the time you
4 started the conversation. You don't have notes
5 that say actually where the conversation took
6 place, and you don't have notes of what exactly was
7 said; do you?

8 A It's in my report.

9 Q But your report, sir, was done a week later;
10 correct?

11 A On the 13th.

12 Q Six days later. You agree with me the 13th is six
13 days later?

14 A Sure.

15 Q And you will agree with me that your report is your
16 recollection of what transpired on the 7th;
17 correct? It not a verbatim report -- it's not a
18 verbatim transcript of what happened, is it? You
19 remember -- it's your recollection? That's all I'm
20 asking?

21 A It's my report.

22 Q But your report is based upon your recollection a
23 week later, correct?

24 A Correct.

25 Q That's all I'm asking. Now, it's a major crime.

1 You are the chief investigator in a major crime.
2 We don't have any standard operating procedure, do
3 we? There is no protocol the Sheriff's Office
4 says: Hey, date, time, what was said,
5 contemporaneously done, do we? There is no
6 standard operating procedure, is there?

7 A There is an investigative report.

8 Q I understand it's an investigative report, but
9 that's an investigative report you did on your own
10 a week later, right?

11 A Six days.

12 Q Six days. There is an old song, Eight Days a Week,
13 have you ever heard that song?

14 A Yes, sir.

15 Q We are talking about six days later. After you
16 talked to Quincy McCants and had this opportunity
17 to look at him and you made this description of a
18 characteristic about Mr. McCants, you never did
19 any follow-up investigation with Ms. Wright; did
20 you?

21 A No, sir.

22 Q So then basically your investigation was done,
23 right?

24 A Yes, sir.

25 Q After you had a suspect, you questioned the

1 suspect. Did you ever go back to Li'l Cricket and
2 say: Hey, Li'l Cricket, have you got the cash
3 register receipt from the transaction with the
4 first bag of potato chips?

5 A No, sir.

6 Q Did you go back and say: How about the transaction
7 receipt for the second bag of potato chips and the
8 bottle?

9 A No, sir.

10 Q And did you ever discuss with Mr. Hickman what he
11 observed at the scene?

12 A We have had discussions, sure.

13 Q Sure. Did Mr. Hickman ever tell you that
14 Ms. Wright told him --

15 MR. HUBBARD: Your Honor, this sound like it's
16 going to be hearsay. I don't like injecting, but if he
17 could rephrase it, I'll be happy.

18 BY MR. HARVEY:

19 Q As a result of your conversation with Mr. Hickman
20 about what he learned that transpired in the
21 incident, did you ever instruct Mr. Hickman to go
22 back to the scene and try and find any evidence on
23 the sidewalk?

24 A No, sir.

25 Q And when was the first time you talked with

1 Mr. Hickman?

2 A I don't recall the date.

3 Q Would it have been in close proximity to the
4 incident?

5 A Sure.

6 Q Now, you had an opportunity -- I withdraw that.

7 MR. HARVEY: Beg the Court's indulgence one
8 moment if I may, Your Honor.

9 THE COURT: Yes, sir. Certainly, Mr. Harvey.
10 (Pause).

11 MR. HARVEY: May I approach the witness, Your
12 Honor?

13 THE COURT: Yes, sir.

14 BY MR. HARVEY:

15 Q Mr. Sims, part of your duties as the chief
16 investigating officer is to review the original
17 incident reports? In other words -- sometimes I
18 don't ask the question in the most artful way. Let
19 me back up. In this incident there are initial
20 responders, deputies, who get dispatched to a
21 scene; correct?

22 A Yes, sir.

23 Q The deputies who get dispatched to the scene, they
24 are the ones that take information from witnesses
25 or victims or people who have information to give

1 the Sheriff's Department about a particular
2 incident; right?

3 A Yes, sir.

4 Q And that information is tried to -- the goal is get
5 that information while it's the freshest in the
6 witness' minds; correct?

7 A Sure.

8 Q One of the things that the Sheriff's Department
9 does in a standard fashion is that it uses a
10 document known as an incident report; is that
11 correct?

12 A Yes, sir.

13 Q And an incident report is just what it says, it's a
14 report of an incident?

15 A Yes, sir.

16 Q And it is pretty much a standardized type of form?

17 A Correct.

18 Q It enables someone like you, who comes in after the
19 initial incident. to have an overview of what
20 transpired?

21 A Yes, sir.

22 Q Correct?

23 A Yes, sir.

24 MR. HARVEY: May I approach the witness, Your
25 Honor?

1 THE COURT: Yes, sir.

2 BY MR. HARVEY:

3 Q I have in my hand a copy of an incident report that
4 was taken either by Deputy Poplin or Deputy Hinz on
5 11/7/2004.

6 A Uh-huh. (Indicating affirmative response).

7 Q You will agree with me that in the middle of the
8 report there is a space in the margin called
9 subject?

10 MR. HUBBARD: Your Honor, if he wants to put
11 the witness up that wrote this report, I don't have any
12 problem, but I think this is not the proper witness to
13 do that.

14 THE COURT: He hasn't asked him the substance
15 of what that says. He is just directing him to a
16 particular part of the incident report.

17 MR. HUBBARD: Your Honor, maybe if he just
18 rephrases his question, I won't have an objection.

19 BY MR. HARVEY:

20 Q Please tell us or just tell me if am reading
21 correctly from the incident report. Subject number
22 one or suspect area -- I apologize, suspect area --
23 there is a space and it goes: Facial hair, scars,
24 tattoos, glasses, clothing, physical peculiarities,
25 et cetera; correct?

1 A Correct.

2 Q All that is depicted in the incident report as a
3 description of clothing, correct?

4 A That is correct.

5 MR. HARVEY: That's all I have, Your Honor.

6 THE COURT: Anything in redirect, Solicitor?

7 MR. HUBBARD: No, sir, Your Honor.

8 THE COURT: Thank you. Thank you, detective
9 Sims, you may step down.

10 THE WITNESS: Yes, sir.

11 THE COURT: Solicitor, you may call your next
12 witness.

13 MR. HUBBARD: Your Honor, at this time the
14 State rests.

15 THE COURT: Mr. Foreman, ladies and gentlemen
16 of the jury, at this point the State has rested its case
17 in chief. I have some legal matters that I have to take
18 up in this trial and every trial at this particular
19 point.

20 So I will ask you to momentarily step to your
21 jury room. Do not discuss the case amongst yourselves
22 during the break. Thank you very much. You may go with
23 our bailiff.

24 (The jury retires to the jury room).

25 THE COURT: Mr. Harvey.

1 MR. HARVEY: If please the Court, Your Honor.
2 We are at the close of the State's case, and on behalf
3 of Mr. McCants, I would like to make a motion for a
4 directed verdict.

5 We believe that the proof offered by the State
6 does not rise to the requisite standard of proof. I
7 know the Court is fully aware of what is in the record,
8 as am I. I would just pose that motion at this time
9 unless the Court wishes to hear more from me.

10 THE COURT: All right. Thank you, Mr. Harvey.
11 At this point in light of the standard that I must apply
12 on both direct and circumstantial evidence and the
13 reasonable inferences therefrom, in the light most
14 favorable to the State, I would respectfully deny your
15 motions at this time.

16 MR. HARVEY: Thank you, Your Honor.

17 THE COURT: Yes, sir. Are you going to offer
18 any testimony?

19 MR. HARVEY: Yes, Your Honor.

20 THE COURT: Do you wish me to question the
21 Defendant concerning his right to testify?

22 MR. HARVEY: Yes, Your Honor, out of an
23 abundance of caution, I would.

24 THE COURT: Mr. McCants, would you please
25 stand, sir.

1 Madame Clerk, would you place the Defendant
2 under oath, please.

3 QUINCY ANDRE McCANTS is first
4 duly sworn.

5 THE COURT: Mr. McCants, would you state your
6 full name for me, please.

7 THE DEFENDANT: Quincy Andre McCants.

8 THE COURT: At this time, Mr. McCants, I am
9 going to explain to you certain of your rights. If you
10 do not understand anything I say, please let me know.
11 If you want me to explain anything in more detail,
12 please let me know. Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: We have now reached the stage of
15 the trial where you may present your defense. You have
16 the right to claim the protections given to you by the
17 Fifth Amendment to the Constitution of the United
18 States.

19 This amendment states in part: No person
20 shall be compelled in any criminal case to be a witness
21 against himself. That means that you cannot be required
22 to testify in this case.

23 You have a right to testify on your own
24 behalf; however, no one can make you testify. This is a
25 personal right, and no one can waive that right except

1 you, Mr. McCants.

2 If you decide to testify, you will be subject
3 to the same rules that govern other witnesses. You may
4 be examined and cross examined on any relevant issue in
5 this case.

6 In addition, if you have any convictions
7 involving dishonesty or false statement or for crimes
8 punishable by imprisonment for more than one year, and
9 this Court determines that the probative value of
10 admitting this evidence outweighs its prejudicial effect
11 to you, the solicitor will be able to introduce your
12 record to attack your credibility.

13 Solicitor, does Mr. McCants have any prior
14 record for dishonesty or false statement or for crimes
15 punishable by imprisonment for more than one year?

16 MR. HUBBARD: Yes, sir. In 1990, he's got a
17 possession of crack cocaine. In 1993, he has a
18 temporary use of vehicle without consent. We would
19 allege or argue that that shows dishonesty.

20 In the year 2000, he has a breach of trust
21 with fraudulent intent. In the year 2001 -- excuse me,
22 2004 -- he has a purse snatching, which we would also
23 argue shows dishonesty.

24 THE COURT: I have not ruled on those charges
25 at this point, Mr. McCants, as far as a 1990 possession

1 of crack cocaine, a 1993 temporary use of vehicle
2 without consent, a 2000 breach of trust with fraudulent
3 intent, and a 2004 purse snatching.

4 If you decide to testify, this decision on
5 your part must be freely, voluntarily, and intelligently
6 made with knowledge of the protection given to you by
7 the Fifth Amendment and the consequences of your
8 decision to testify.

9 If you decide not to testify, I will instruct
10 the jurors that they cannot give the fact that you did
11 not testify any consideration whatsoever and that there
12 is to be absolutely no prejudice to you because you did
13 not testify.

14 It is left entirely up to you whether or not
15 you wish to testify. You may talk with your attorneys,
16 your family, your friends or anyone else, but the final
17 decision will be left entirely up to you.

18 Mr. Harvey, do you have any position as far as
19 his prior record is concerned?

20 MR. HARVEY: Your Honor, I would respectfully
21 submit that the possession of crack may be too remote.
22 It's a '93 charge. I'm not sure if it's been ten years
23 from the discharge of that penalty associated with the
24 case.

25 THE COURT: With the breach of trust -- excuse

1 me -- with the temporary use of vehicle?

2 MR. HARVEY: Yes, sir. But the breach of
3 trust, as much as I'd like to argue, I think falls
4 within the rule if he were to testify. Purse snatching,
5 as much as I would like to argue, does have elements
6 that are akin, I believe, to larceny or robbery, and
7 that would qualify.

8 THE COURT: I would allow the solicitor under
9 Rule 609 to use the 2000 breach of trust with fraudulent
10 intent and the 2004 purse snatching. I would not allow
11 the 1993 temporary use without consent and the 1990
12 possession of crack cocaine. I would analyze that on a
13 403 analysis as far as the remoteness under a 403
14 analysis.

15 MR. HARVEY: Thank you, Your Honor.

16 THE COURT: Do you understand that ruling,
17 Solicitor?

18 MR. HUBBARD: Yes, sir, Your Honor. That's
19 not a problem.

20 THE COURT: So that would settle your record,
21 Mr. McCants. The solicitor would be allowed to impeach
22 you as to the -- as it goes to the issue of your
23 credibility, on the 2000 breach of trust with fraudulent
24 intent and the 2004 purse snatching.

25 I would not allow the solicitor to impeach

1 your credibility on the 1990 possession of crack
2 cocaine or the 1993 temporary use of vehicle without
3 consent.

4 If you were to testify and the solicitor did
5 use those two prior convictions, I would tell the jury
6 that they could only consider that evidence against you,
7 if at all, on the issue of whether your testimony is
8 believable and for no other purpose. Do you understand
9 that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Do you understand what I have
12 explained to you concerning your right to testify or
13 your right not to testify?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And do you have any questions that
16 you would like to ask me about what I have explained to
17 you?

18 THE DEFENDANT: No, sir, Your Honor.

19 THE COURT: Have you discussed with your
20 lawyers, Mr. Harvey and Mr. Myers, whether you should or
21 should not testify in this case?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Do you need anymore time to talk
24 with your lawyers about your decision?

25 THE DEFENDANT: No, sir, Your Honor.

1 THE COURT: Has anyone exercised any undue
2 influence over you to get you to choose to testify or
3 not to testify?

4 THE DEFENDANT: No, sir, Your Honor.

5 THE COURT: Today are you under the influence
6 of any drugs, alcohol, medication or anything that
7 adversely affects your thinking?

8 THE DEFENDANT: No, sir.

9 THE COURT: Mr. McCants, do you suffer from
10 any physical or mental problems that affects your
11 thinking today?

12 THE DEFENDANT: No, sir, Your Honor.

13 THE COURT: Whatever decision you have made
14 about whether to testify or not to testify, is it your
15 decision made of your own free will and accord?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: What is your decision?

18 THE DEFENDANT: Not to testify.

19 THE COURT: Your decision is you do not wish
20 to testify, correct?

21 THE DEFENDANT: Yes, Your Honor, correct.

22 THE COURT: You do not need anymore time to
23 talk to your lawyer about that decision?

24 THE DEFENDANT: Correct, Your Honor.

25 THE COURT: I would find that the decision of

1 Mr. McCants to not testify is his own decision, made
2 freely, knowingly, and voluntarily. Thank you,
3 Mr. McCants. You may be seated.

4 THE DEFENDANT: Thank you, Your Honor.

5 THE COURT: Anything else, Mr. Harvey,
6 Mr. Myers, that you would like me to inquire of
7 Mr. McCants?

8 MR. HARVEY: No, Your Honor.

9 MR. MYERS: No, sir, Your Honor.

10 THE COURT: I understand you do intend to
11 offer a witness.

12 MR. HARVEY: A witness, Your Honor.

13 THE COURT: About how long would this witness
14 take? I understand good trial lawyers can't estimate
15 time. I don't hold you to it. A good judge told me
16 that one time by the way.

17 MR. MYERS: Your Honor, I would anticipate no
18 longer than ten minutes on my part. I only have 12 or
19 15 questions.

20 THE COURT: Then perhaps we would give the
21 jury, after cross examination if there is no reply
22 testimony, we can certainly rehear the motions and give
23 the jury a break. Anything further before we bring the
24 jury back?

25 MR. HUBBARD: Not from the State, Your Honor.

MAXINE BROWN -- DIRECT -- MR. MYERS

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1 MR. HARVEY: Nothing, Your Honor.

2 THE COURT: Mr. Corley.

3 (The jury returns to the courtroom).

4 THE COURT: It appears our jury is back
5 present in the courtroom. Mr. Harvey, Mr. Myers, you
6 may proceed.

7 MR. HARVEY: Thank you, Your Honor.

8 MR. MYERS: Thank you, Your Honor. We would
9 call Ms. Maxine Brown.

10 MAXINE BROWN, being
11 first duly sworn, testified as follows:

12 CLERK: State your name for the record.

13 THE WITNESS: My name is Maxine Brown. I live
14 at 1820 Heyward Brockington Road, Columbia, South
15 Carolina. I am employed with the Department of Social
16 Services.

17 **DIRECT EXAMINATION**

18 BY MR. MYERS:

19 Q What is your role at the Department of Social
20 Services?

21 A I work with -- we do applications for day cares for
22 children for foster care and parents in need of
23 help.

24 Q How long have you worked there?

25 A I've been there four years.

1 Q And how long have been at your current position?

2 A Four years.

3 Q Do you know Quincy McCants?

4 A Yes.

5 Q How do you know Mr. McCants?

6 A Quincy is my nephew.

7 Q So you've known him basically all your life?

8 A All my life.

9 Q Or all his life?

10 A All his life.

11 Q You are aware that Quincy is here on trial for an
12 armed robbery that allegedly occurred on
13 November 7, 2004; correct?

14 A Yes.

15 Q Have you had an opportunity to view the video that
16 is in evidence?

17 A Yes, I have.

18 Q When did you view that video?

19 A About a week or so ago.

20 Q Where did you view it?

21 A In Mr. Harvey's office.

22 Q Did you have an opportunity to look at the
23 individual who robbed the Li'l Cricket?

24 A Yes, I did.

25 Q Based on your relationship with Quincy, do you

1 believe that the individual in that video was
2 Quincy McCants?

3 A No, I don't.

4 Q Can you tell the jury what distinguishes or what
5 distinguished that individual on that video from
6 Mr. McCants?

7 A Quincy is a large built person, young man, and also
8 Quincy has a very distinct limp. He had an injury
9 that took place some years ago. Also, Quincy has a
10 gold tooth that he -- that was put in his mouth at
11 the age of 16 by my mother. My mother had one and
12 he wanted one. So she had one put in his mouth as
13 well.

14 Q You said he had that gold tooth since the age of
15 16?

16 A Since the age of 16.

17 Q The gold tooth in your opinion is pretty apparent?

18 A Yes.

19 Q Noticeable?

20 A Yes.

21 Q Why did Quincy have the gold tooth, do you know?

22 A My mother had one and he wanted one, too. So
23 therefore she had it done for him.

24 MR. MYERS: Your Honor, at this time with the
25 Court's permission, I would actually ask that

1 Mr. McCants be allowed to show the jury his gold tooth.

2 THE COURT: Solicitor, any objections?

3 MR. HUBBARD: No, sir. Is he going to stand
4 in front of the jury?

5 THE COURT: Mr. Foreman, and ladies and
6 gentlemen of the jury, if you would step very
7 momentarily to your jury room with our bailiff. Do not
8 discuss the case.

9 (The jury retires to the jury room).

10 THE COURT: I didn't mean to break your stride
11 at all, Mr. Myers, but I didn't want to bring up the
12 issue of security in front of the jury.

13 MR. MYERS: Yes, sir.

14 THE COURT: The Defendant is currently
15 incarcerated in the Lexington County Detention Center?

16 MR. MYERS: Yes, Your Honor, and I apologize.

17 THE COURT: No apology necessary. I think an
18 officer should be back over at this location, perhaps
19 either outside of this door, however y'all want to do
20 it. I think there should be security when he moves
21 about the courtroom with the jury in the courtroom.

22 MR. HUBBARD: Your Honor, whereabout, just so
23 I know -- I do have an objection if they are going to
24 parade him around so he can walk in front of the jury.
25 That's kind of like testifying without taking the

1 stand.

2 If he wants to stand up -- because a walk
3 can be altered, a tooth can't. I don't mind him
4 smiling in front of the jury. He can do that from over
5 there.

6 MR. MYERS: Your Honor, I think the tooth is
7 noticeable. I don't have a problem with him standing if
8 the jury can decide or can acknowledge that they can see
9 the gold tooth from where they are, I wouldn't have any
10 objection to that.

11 THE COURT: If they can't see any better,
12 Mr. Myers, than I can, they will not see a gold tooth
13 from there.

14 MR. HARVEY: If Your Honor please. Would it
15 work if a deputy and I stood right here with Mr. McCants
16 when the jury came, a deputy and I on either side of
17 him?

18 THE COURT: I don't have a problem with that,
19 Mr. Harvey. I don't want to prejudice your client by
20 security. However, I want security maintained in the
21 courtroom.

22 MR. HARVEY: I will be next to him as well.

23 THE COURT: Why don't we just have him up here
24 then, Mr. Myers?

25 MR. MYERS: Your Honor, that's fine. I was

1 going to suggest if Mr. Harvey would do that and if you
2 ask Mr. McCants to step up with Mr. Harvey and if
3 Mr. Harvey accompanies him up there.

4 Again, Your Honor, I think the only issue with
5 having a deputy, the jury has never seen that deputy
6 there. All of sudden when they come back, they will see
7 that deputy, and they are going to assume that he is a
8 pretty bad man. That would certainly in my opinion
9 prejudice him.

10 THE COURT: I'm not making any opinion about
11 Mr. McCants one way or the other. I just don't want to
12 read about it in the paper where any inmate has escaped
13 from the Lexington County courthouse on my watch.

14 MR. HARVEY: If Your Honor please. Should we
15 get Mr. McCants to come here now.

16 THE COURT: All right.

17 (Pause).

18 THE COURT: Can you see him from there,
19 Mr. Myers?

20 MR. MYERS: Yes, sir, Your Honor.

21 THE COURT: All right.

22 MR. MYERS: Your Honor, I guess the only other
23 issue is once that is done, getting him back to the
24 table.

25 MR. HARVEY: We will turn around and walk

1 together. I know how to tackle someone, Your Honor.

2 THE COURT: I think the solicitor is more
3 concerned about his limp at that point.

4 MR. HUBBARD: I am. I will leave that to Your
5 Honor.

6 MR. MYERS: Your Honor, I believe at that time
7 it would be a credibility issue on the jury. I think
8 these are reasonable people. If we were to leave the
9 decision to the common sense of these jurors, they can
10 perhaps make a decision as to whether or not someone is
11 altering their step or whether or not it's something
12 that has been since birth.

13 THE COURT: Where I have heard that type of
14 language before, Mr. Myers?

15 MR. MYERS: Your Honor, it was case law that
16 was cited in this courtroom, Your Honor.

17 THE COURT: Solicitor.

18 MR. HUBBARD: I'm just saying it's testimonial
19 because it can be altered, unlike a tattoo or gold
20 teeth. I don't have a problem with the teeth. If he
21 wants to take the gold off and show it to the jury, I
22 don't have a problem. You can fake a limp. That is
23 kind of like testifying without being under oath and
24 without me getting to cross him.

25 MR. MYERS: Your Honor, the only thing I would

1 say is we acknowledge we are putting evidence in. I
2 believe Mr. Hubbard can make those arguments before the
3 jury.

4 THE COURT: I will allow it under these
5 circumstances. Afterwards if Mr. McCants would just
6 turn, and Mr. Harvey can follow him. Anything further?

7 MR. HUBBARD: No, sir, Your Honor.

8 THE COURT: Mr. Corley, if you would bring us
9 our jury please.

10 (The jury returns to the courtroom).

11 THE COURT: It appears our jury has returned
12 to the courtroom.

13 Mr. Myers, you may proceed.

14 MR. MYERS: Thank you, Your Honor.

15 **DIRECT EXAMINATION**

16 BY MR. MYERS:

17 Q Ms. Brown, I think where we left off is you stated
18 that Quincy has a gold tooth in his mouth since the
19 age of 13?

20 A Sixteen.

21 Q I'm sorry. Thank you.

22 MR. MYERS: Your Honor, at this time I would
23 actually ask Mr. McCants to smile so the jury can
24 actually see his gold tooth.

25 (Defendant indicating).

1 THE COURT: Thank you.

2 MR. HUBBARD: Your Honor, I don't mean to
3 interrupt, before they take him back, can they also turn
4 him around so they can see the back of his head.

5 THE COURT: Do you have any objection to that,
6 Mr. Myers?

7 MR. MYERS: No, sir, Your Honor. I think the
8 jury -- he has turned around so the jury can certainly
9 see.

10 MR. HUBBARD: Thank you.

11 THE COURT: Thank you, Mr. Myers and
12 Solicitor. You may proceed, Mr. Myers.

13 MR. MYERS: Thank you, Your Honor.

14 BY MR. MYERS:

15 Q Maxine, other than the build, were there any
16 other -- or the limp -- were there any other
17 noticeable differences from the gentleman you saw
18 on the video and your nephew Quincy McCants?

19 A This guy was smaller. He was smaller and he was
20 lighter. His complexion was lighter.

21 Q Have you ever been arrested, Ms. Brown?

22 A No, I haven't.

23 Q Have you ever gotten a speeding ticket?

24 A I have got that.

25 Q As Quincy McCants' aunt, would you lie for him?

1 A No, I would not.

2 Q Thank you.

3 MR. MYERS: No further questions, Your Honor.

4 THE COURT: Thank you, Mr. Myers. Solicitor.

5 CROSS EXAMINATION

6 BY MR. HUBBARD:

7 Q One question, are you related to Quincy's mother?

8 A Yes, sir.

9 Q What is your relationship to her?

10 A She is my older sister.

11 Q Is she in the courtroom?

12 A Yes, she is.

13 Q Would you point her out for me, please.

14 A (Indicating).

15 Q Right here (indicating) on this row?

16 A She's on the front row.

17 Q Thank you.

18 MR. HUBBARD: That's all I have.

19 THE COURT: Thank you, Ms. Brown. Anything on
20 redirect?

21 MR. MYERS: No, sir, Your Honor.

22 THE COURT: Ms. Brown, you may step down.

23 THE WITNESS: Thank you.

24 MR. MYERS: That would be our case, Your
25 Honor.

1 THE COURT: Solicitor, do you have any
2 witnesses in reply?

3 MR. HUBBARD: No, sir, Your Honor.

4 THE COURT: Mr. Foreman, ladies and gentlemen
5 of the jury, we have now come to the point in the trial
6 that all the evidence, both by way of witness testimony
7 and by way of any exhibits that are going to be
8 presented has been presented to for your consideration.

9 Shortly the attorneys will have the
10 opportunity to make closing arguments to you. These are
11 different from opening statements. These are actually
12 true arguments, in which they can argue the facts, the
13 reasonable inferences to be drawn from the facts, and
14 they can advise you of their position as to the law
15 relative to the facts in the case as they perceive the
16 facts to be.

17 I have just a very brief matter to take up
18 with the attorneys before the closing arguments. After
19 the closing arguments by the attorneys, I will charge
20 you on the law that you must apply to the facts of the
21 case as you and you alone will find the facts to be.

22 Then it will be up to you to render a true and
23 just verdict in this case. So I will ask you again to
24 momentarily step to your jury room as I take up this
25 final matter of law. Do not discuss the case amongst

1 yourselves during this break.

2 (The jury retires to the jury room).

3 THE COURT: I just wanted to get clear on the
4 order of the closings and any additional charges y'all
5 may request. Solicitor, are you going to open on the
6 law?

7 MR. HUBBARD: No, sir, Your Honor.

8 THE COURT: You would waive opening. Is there
9 one closing by the defense?

10 MR. HARVEY: I will make that closing, Your
11 Honor.

12 THE COURT: And Mr. Myers is not going to
13 close; is that correct?

14 MR. HARVEY: Correct Your Honor.

15 THE COURT: I don't hold you to any particular
16 time, Mr. Harvey, but just can you give me a
17 guesstimate.

18 MR. HARVEY: I would hope between 20 and 30
19 minutes at the most.

20 THE COURT: That's fine. Solicitor.

21 MR. HUBBARD: Your Honor, hopefully mine would
22 be shorter than that. I would ask if it goes over 20,
23 can we maybe just have a stretch break for the jury if
24 it does.

25 THE COURT: Yes, sir, that will be fine. I

1 have a number of charges that were presented by the
2 defense. Did you receive a copy of these charges,
3 Solicitor?

4 MR. HUBBARD: Yes, sir, I did.

5 THE COURT: I believe defense requested number
6 one. That would be covered by my general charge.
7 That's the definition of armed robbery and the deadly
8 weapon.

9 The indictment, I do charge that the
10 indictment is not proof I start off with that. I think
11 that would be covered by my general charge. That's
12 defense requested instruction number two.

13 I do charge the burden of proof on the State
14 beyond a reasonable doubt, and we went over that
15 language prior to Mr. Myers' opening.

16 MR. HARVEY: Right. If I may, Your Honor, I
17 withdraw that request. As I understand it, Your Honor
18 is going to charge the reasonable certainty.

19 THE COURT: Yes, sir. That would also be as
20 to defense instruction number four.

21 MR. MYERS: I'm sorry, Your Honor, was it
22 reasonable certainty or firmly convincing?

23 MR. HARVEY: I apologize, Your Honor. Do you
24 use the language firmly convinced?

25 THE COURT: Proof beyond a reasonable doubt is

1 proof that leaves you firmly convinced of the
2 Defendant's guilt. There is more before and more after
3 that, Mr. Myers.

4 MR. MYERS: Yes, sir, thank you.

5 THE COURT: I do charge if you find reasonable
6 doubt -- I'm not sure I charge it in exactly the
7 language of defense request number five. I charge: If,
8 on the other hand, you think there is a real possibility
9 that the Defendant is not guilty, you must give the
10 Defendant the benefit of that doubt and find him not
11 guilty. That is part of my general charge.

12 I do charge the Defendant's right not to
13 testify, and they may not discuss it in the jury room.
14 He is never required to prove his innocence and such as
15 that as to request number six. I do not charge and will
16 not charge number seven based on my understanding of
17 State versus Hammond which is cited therein.

18 MR. HARVEY: All right, Your Honor.

19 THE COURT: I do charge direct and
20 circumstantial evidence under Salisbury and Grippon. I
21 do not charge this language of number nine. I do charge
22 a direct and circumstantial general charge.

23 I will charge eyewitness identification. I
24 charge: An issue in the case is the identification of
25 the Defendant as the person who committed the crime

1 charged.

2 The State has the burden of proving identity
3 beyond a reasonable doubt. You must be satisfied beyond
4 a reasonable doubt of the accuracy of the identification
5 of the Defendant before you may convict the Defendant.

6 I then go into identification testimony is an
7 expression of belief or impression by a witness. The
8 various factors one may consider: How far or how close,
9 how long, such like that.

10 I do not charge Telfaire, particularly under
11 the circumstances where an African-American witness has
12 identified an African-American suspect. I do charge
13 some of the factors in my general identification charge.
14 You can certainly argue those, but I do not charge as to
15 your request number 11.

16 I do not charge number 12 as far as the
17 testimony of the police officer. I actually consider
18 that a comment on the facts. You are obviously welcome
19 to argue that. There was another one spoliation; is
20 that correct?

21 MR. HARVEY: Your Honor, that was number 13.

22 THE COURT: I think I pulled that out and I
23 looked at -- I'm not aware that that is a charge given
24 in a criminal matter.

25 I analogize State versus Hammond, which is a

1 material witness case, and I analogize it to guilt. I
2 think you can argue that. I think it's a comment on the
3 facts. I think you can argue it, but I will not charge
4 the jury that.

5 MR. HARVEY: Thank you, Your Honor. Your
6 Honor, I had for some reason -- I remember preparing it,
7 and I don't know. I thought it was included, but I had
8 prepared a charge.

9 I am confident the Court has the charge with
10 respect to expert testimony, what weight the jury may
11 give it. I thought I had submitted one. I apologize,
12 Your Honor.

13 THE COURT: I do charge expert testimony and
14 just because a person is an expert -- it's more complete
15 and fuller than what I charged at the time Mr. Johnson
16 testified.

17 The rules of evidence ordinarily don't permit
18 a witness to testify -- to give an opinion, except as an
19 expert. I further go on to say an expert witness'
20 testimony is to be given no greater weight than that of
21 other witnesses simply because the witness is an expert.
22 Further, you are not required to accept an expert's
23 opinion even though it is not contradicted.

24 MR. HARVEY: Yes, Your Honor.

25 THE COURT: I give that general charge. There

1 may have been one. I did not see that.

2 MR. HARVEY: I neglected to include that in
3 the batch.

4 THE COURT: All right.

5 MR. HARVEY: Your Honor, just as a matter of
6 housekeeping, I am sure there will be charges with
7 respect to statements.

8 THE COURT: Yes, sir. The statement, failure
9 to testify, and all of that. I didn't cover those
10 because you didn't request particular charges.

11 MR. HARVEY: Right. I had a check list. I
12 wanted to make sure.

13 THE COURT: I do not send the indictment in.
14 I use these forms of verdicts. Y'all are welcome to
15 look at them. It's just guilty or not guilty on armed
16 robbery. I assume there is no lesser-included offenses.
17 Anything further?

18 MR. HARVEY: No, Your Honor.

19 THE COURT: If you will give me about ten
20 minutes. Court will be in recess for about ten minutes.

21 (Whereupon there was a recess).

22 THE COURT: Are we ready for the jury,
23 Solicitor?

24 MR. HUBBARD: Yes, sir, Your Honor.

25 THE COURT: Mr. Harvey?

1 MR. HARVEY: Yes, sir.

2 THE COURT: Mr. Corley, if you would bring us
3 our jury.

4 (The jury returns to the courtroom).

5 THE COURT: It appears our jury is back in the
6 courtroom.

7 Ladies and gentlemen, we are now at the point
8 of the trial where the attorneys will be allowed to
9 present their closing arguments to you.

10 I would remind those in the audience that I do
11 not allow any movement when the attorneys are addressing
12 the jury, nor when the Court is addressing the jury. If
13 anyone wants to leave between the arguments of the
14 attorneys, I will allow them to do so.

15 I'm not sure who that is peering in the back
16 window either. I really don't care for that. If you
17 would take care of that for me, Mr. Corley.

18 BAILIFF: Yes, sir.

19 THE COURT: I would ask you, as I did in our
20 openings, to please give the attorneys your complete and
21 undivided attention. After the closing arguments by the
22 attorneys, I will charge you the law.

23 I will then advise you when to begin your
24 deliberations. Then you will render a true and just
25 verdict based upon the facts as you find them to be and

1 the law as I tell you the law is.

2 Mr. Harvey, let's wait on Mr. Corley so he can
3 get back in place before you begin. I don't want that
4 to disrupt you.

5 MR. HARVEY: Yes, sir.

6 (Pause).

7 THE COURT: With that being said, Mr. Harvey,
8 you may address the jury.

9 MR. HARVEY: May it please the Court.

10 THE COURT: Yes, sir.

11 **CLOSING ARGUMENT**

12 MR. HARVEY: Good morning. Traditionally this
13 is the part of the case when lawyers thank the jurors
14 for being on jury duty. Of course, I will thank you for
15 being on jury duty.

16 Also, I want to tell you in advance, I would
17 like to be very brief. But this case is so important to
18 my client that I feel as though he deserves my very best
19 efforts because it is that important to him.

20 Now, I just mentioned a minute ago
21 traditionally this is when we thank jurors for being on
22 jury duty. One thing I know several weeks ago when you
23 got a notice from Ms. Carrigg, your very fine Clerk of
24 Court, you didn't say:

25 Great, I wanted to volunteer to be on jury

1 duty. I don't have enough to do at home. I don't have
2 enough to do at work. My life isn't tough enough. I
3 want to leave my job. I want to leave my family. I
4 want to leave my home, and I really want to be placed on
5 jury duty. I really want to come here and take a
6 substantial period of time out of my life to have to sit
7 in judgment on a fellow citizen.

8 I know you don't want to be here, but I
9 implore you and I beg you on behalf of Quincy McCants,
10 as I am confident that you have done because I have
11 watched you during the trial of this case, you cast
12 aside your displeasure about being on jury duty, and I
13 am confident we are going to work together to make this
14 happen.

15 I'm a former assistant solicitor, former
16 assistant attorney general, and I have been a lawyer for
17 longer than I care to admit. I know how important this
18 case and this day in your deliberations are to the State
19 of South Carolina, but I don't need to remind you how
20 important your deliberations are to my client.

21 I don't need to remind you, as His Honor will
22 charge you, you have taken a sworn obligation to see if
23 the State has met its burden of proof. What we have
24 endured over the trial is what I call a shotgun
25 marriage.

1 What I mean by that is I know you didn't
2 volunteer to be here. You know Quincy didn't volunteer
3 to be here. But like all relationships we are going to
4 make it work.

5 How are we going to make it work? By now you
6 know each of us in this case has a role to play. His
7 Honor clearly runs the court. His Honor clearly is the
8 judge of the law.

9 Over the course of my argument and over the
10 course of the solicitor's argument, if we give you what
11 we contend the law to be, and it's different from what
12 His Honor says, His Honor is the judge of the law. You
13 have to take the law as His Honor gives it to you.

14 You as jurors decide the facts. That's your
15 role. The role of the lawyers is to represent their
16 parties, represent their clients. My colleague from the
17 Solicitor's Office, it's his job to represent the State.
18 Mr. Myers and I, it's our obligation, it's our solemn
19 duty to represent Quincy McCants.

20 But remember your role is to decide the facts.
21 Your role is to decide what happened. Your role is to
22 follow your oath. Your role is to cast aside any
23 prejudice, and what I mean by that is prejudgment.

24 You can't let any prejudice, any passion or
25 frustration over the serious social issue of crime and

1 punishment which we deal with in our society make you
2 not abide by your oath.

3 This case and your role as a juror is not a
4 referendum on the serious issue of crime and punishment.
5 This case, as I said, is not a referendum on that issue.
6 It's just not that simple.

7 If we took a vote -- if we took a vote --
8 there would be unanimity. We would agree. No one is in
9 favor of crime. This isn't about that. It's not a
10 referendum. We wouldn't need to have a trial, would we?

11 I don't think so little of you, think so
12 little of your service, so little of your time away from
13 your families, homes, and jobs that I would ask you to
14 condone criminal behavior.

15 I wouldn't demean your presence here today by
16 asking you to follow that proposition. That isn't what
17 this case is about. This case and your sworn duty and
18 your sworn role is to decide if the State has met its
19 burden of proof and proved to you beyond a reasonable
20 doubt that this Defendant is the person who committed
21 this particular crime.

22 As you may remember and you may have heard and
23 I am confident His Honor will instruct you, the burden
24 of proof is always on the State of South Carolina. What
25 it means is, as His Honor will tell you, it means beyond

1 a reasonable doubt.

2 It doesn't mean: Well, I'm not sure. It
3 doesn't mean: Well... It doesn't mean maybe. What it
4 does mean, as His Honor will have instructed you, is
5 that you are firmly convinced of the guilt of my client.

6 Beyond a reasonable doubt doesn't mean: I
7 think so. Pay close attention to His Honor's charge.
8 Listen to what His Honor will tell you is meant by
9 beyond a reasonable doubt.

10 I submit to you that His Honor will instruct
11 you that if, as a reasonable person from the evidence
12 you are not firmly convinced of my client's guilt, then
13 it's your sworn duty to find Mr. McCants not guilty.

14 I am asking you to pay close attention to His
15 Honor. I am asking you to listen to what His Honor will
16 tell you about your sworn duties. Listen to what His
17 Honor will tell you that you have sworn to do. If there
18 is a doubt, your sworn duty is to resolve that doubt in
19 favor of my client.

20 Listen to what His Honor will tell you about
21 if there are reasons that leave you not firmly convinced
22 of his guilt, what you have sworn to do. If you have a
23 doubt about any point the prosecutor is trying to prove,
24 then you have a doubt.

25 From the start when you first met Mr. Myers

1 and heard from the Defendant, my client was not asking
2 you to be a doubting Thomas. What is not in doubt?
3 Was it ever in doubt when? 11/7/04. Where? Has it
4 ever been in doubt it happened at the Li'l Cricket at
5 4990 Sunset Boulevard. What happened? It was a
6 robbery.

7 That's never been in doubt. Mr. McCants
8 didn't ask you to doubt that. But what is the salient
9 issue in this case? What is the issue as you listen to
10 what His Honor will charge you about this offense, about
11 the offense of armed robbery?

12 His Honor is going to submit to you what the
13 State must prove beyond a reasonable doubt for each and
14 every element of the offense. His Honor will instruct
15 you.

16 I submit to you, ladies and gentlemen of the
17 jury, one of the elements is: Is the Defendant the
18 person who perpetrated this particular crime? Listen to
19 what His Honor will tell you -- excuse me -- what His
20 Honor will instruct you.

21 I submit His Honor will charge you about the
22 elements of armed robbery. He will tell you what a
23 person must have done to be found guilty of armed
24 robbery. But before you get to what a person has done
25 to be guilty of armed robbery, you as jurors have to

1 decide whether this is the right person.

2 Now, where are the reasons to leave you not
3 firmly convinced that Mr. McCants is the right person?
4 Where are those reasons? Let's start with the physical
5 evidence.

6 The first thing you might ask is: What
7 physical evidence? Where are the potato chip bags?
8 What physical evidence? Potato chip bags, for starters.
9 How about a cash register receipt?

10 We heard testimony from Chandra Wright about
11 ringing him up the first time. We heard Chandra Wright
12 give testimony about ringing him up the second time.
13 Look at the State's exhibits ladies and gentlemen.

14 May I approach the jury, Your Honor?

15 THE COURT: Yes, sir.

16 MR. HARVEY: State's Exhibit 4. When you go
17 back to the jury room, take a good look at it. There is
18 a box of cash register receipts -- cash register
19 receipts.

20 How can we conclusively show that bag of
21 potato chips was bought in the store? A cash register
22 receipt might have been nice. It might have been nice
23 to hear from Mr. Galloway, the man who Mr. Hickman
24 thought was the regional manager. We don't even know
25 how much was taken. Are you firmly convinced?

1 Remember my question about the bar code?

2 Remember the testimony we heard about bar codes? What
3 do we know about bar codes? I submit to you, ladies and
4 gentlemen of the jury, if the Lexington County Sheriff's
5 Department had kept the bag, it could have been traced
6 via the bar code via the bag, back to the manufacturer,
7 back to the wholesaler, back to the distributor, back to
8 this store.

9 How many stores sell Lay's potato chips?

10 Don't most companies have shipping and delivery
11 invoices? What has not been shown to you beyond a
12 reasonable doubt is that the bag that was brought back
13 into the store was the same bag that was taken out.

14 Why weren't the bags kept? Why were you not
15 told when the bags were delivered to the store.

16 Remember my questions about being able to determine the
17 age of a fingerprint?

18 It's been shown to you. You heard from
19 Mr. Johnson. They can't tell you the age of a
20 fingerprint. If the store location and the bag of
21 potato chips can't be determined and if you are not
22 shown a cash register document from 11/7/04 at the time
23 the chips were bought, how can you be certain beyond a
24 reasonable doubt that whenever the perpetrator, whomever
25 the perpetrator was, didn't get a bag of potato chips

1 from another location or from another person?

2 Remember the testimony from the fingerprint
3 experts and when they were talking about how
4 fingerprints could be left on many surfaces. Chandra
5 Wright said she didn't know if Quincy McCants had ever
6 been in that store.

7 Are you firmly convinced? Ask yourselves why
8 were you, as triers of fact, deprived of what I contend
9 to have been crucial evidence? What are other reasons
10 for you not to feel firmly convinced? What other
11 reasons are there for you not to be firmly convinced
12 because of what is missing from evidence?

13 This is an armed robbery case, a robbery of a
14 convenience store, a case with a surveillance C.D., a
15 case with a witness, a case with what you want to
16 believe was thorough and determined investigators.

17 Does not being able to tell you the amount
18 taken lead you to believe this was thorough? Does not
19 looking for -- remember my questions to Mr. Sims. He is
20 a nice man. This isn't about how nice Mr. Sims is.
21 This isn't about how I feel about Mr. Sims. It
22 shouldn't be how you feel about Mr. Sims.

23 But Mr. Sims is the lead investigator in what
24 the Sheriff's Department determined to be a major crime.
25 How many times did they ever go back and talk to Chandra

1 Wright? What other police investigative work was shown
2 to you after they got a fingerprint I.D.? None.

3 You heard the colloquy between my colleague
4 from the Solicitor's Office and Mr. Sims about: Well,
5 people sometimes right after an event, they are a little
6 shook up. I like to go back and talk to them later.

7 He went back and talked to Ms. Wright a little
8 bit later. No more details. Got the fingerprints, said
9 he even got a warrant against Mr. McCants. Did he go
10 back and talk to Ms. Wright?

11 Did he go back and talk to Ms. Wright, follow
12 it up, make sure you could be firmly convinced based
13 upon what you said -- excuse me -- what was said to you
14 in court that Mr. McCants is the man beyond a reasonable
15 doubt?

16 It doesn't matter what Mr. Hubbard says after
17 I sit down. It wasn't done. It isn't in evidence. It
18 doesn't matter what spin he puts on it. It wasn't done.
19 No matter what spin he puts on it --

20 MR. HUBBARD: Your Honor, I will object to
21 characterizing what I will do with the evidence. I
22 don't spin evidence. I do object to that.

23 THE COURT: All right. Ladies and gentlemen,
24 what the attorneys say is not evidence in the case. The
25 evidence in the case is what is presented to you by the

1 witnesses testifying under oath from this witness stand
2 and any exhibits that may be presented to you or that
3 have been presented to you.

4 It will be for you to determine what the facts
5 of the case are. Again, what the attorneys say is not
6 evidence. They are entitled to make a closing argument,
7 but they are not witnesses before you. Thank you.

8 You may proceed, Mr. Harvey.

9 MR. HARVEY: Thank you, Your Honor. Thank you
10 Mr. Hubbard. No matter how Mr. Hubbard chooses to
11 articulate the absence of investigative activity by the
12 Sheriff's Department, it does not obviate the fact that
13 it was never done -- never done.

14 It does not obviate the fact that Chandra
15 Wright says she saw Mr. McCants, was looking at his
16 face, looking at him two times. They went through the
17 demonstration of how close they were to the other, and
18 it does not change the fact that in evidence Chandra
19 Wright, who happens to be a very nice, sincere person,
20 unequivocally says she didn't see the gold tooth that
21 you saw today.

22 Another thing about Chandra Wright's testimony
23 is that she talked about whomever the perpetrator was
24 wearing a tan suit. Look at the video. It's a light
25 suit. Remember my questions to Mr. McCants -- excuse

1 me -- to Mr. Sims because he said he was in narcotics
2 and he dealt with all kinds of people.

3 We talked about the description of some of our
4 fellow citizens who happen to be African-American and
5 sometimes they are described as dark skinned or light
6 skinned. Wouldn't that suit that was light have
7 exacerbated the contrast between dark skinned, dark
8 skin on a light suit? No comment on that. No comment.

9 Recall the on-site investigation details
10 presented by the State. You know, were you ever told
11 exactly when Mr. Hickman arrived? Were you ever told
12 about the weather? Were you even told about the
13 conditions of the parking lot?

14 Sure, there were pictures, but were you ever
15 informed about any contemporaneous note taking, any
16 contemporaneous activity about the details in the
17 State's investigation?

18 Were you told about a crime scene sketch? No.
19 Were you told about measuring the height from the
20 information given on the night of 11/7/04 in the doorway
21 shown in the C.D. and in the doorway shown on State's
22 Exhibit 3 to help you determine the height of the
23 perpetrator?

24 Because the testimony was if the cap was
25 pulled down, the testimony was, it would have been, if

1 the cap was pulled down, close to his head. It's 2004,
2 2005, 2006.

3 We have a C.D. You heard my questions about
4 the capability of extracting a still from a C.D. as
5 someone walked through this door about the height. You
6 are entitled to look at the entire C.D. It's in
7 evidence.

8 Remember my question, I believe, to Mr. Sims
9 about the entire C.D. being in evidence? Look at the
10 perpetrator or the person dressed as the perpetrator
11 when they first exit the first transaction. Look how
12 close the top of his head is to this doorway in that
13 C.D.

14 Look at that. Look at that C.D. Could they
15 have stopped it and taken that picture? Look at that.
16 It matches this height. No, it wasn't done. Can you be
17 firmly convinced?

18 It is important that you weigh all the
19 evidence. It's important that you understand that His
20 Honor will instruct you -- I submit as His Honor will
21 instruct you -- that each of you has sworn to make your
22 own individual assessment of the reliability of the
23 evidence.

24 It is important for you to understand that, as
25 I submit to you His Honor will instruct you, that each

1 of you have sworn to make your own assessment of what
2 the witness has said.

3 You can believe all of it, some of it or none
4 of it. You must decide what weight or believability you
5 want to give to the evidence. His Honor will even
6 instruct you that the fact that someone has been allowed
7 to testify as an expert means you don't have to give any
8 greater weight to that testimony. Listen to what His
9 Honor will tell you.

10 Frankly, recall what Mr. Johnson said. He is
11 qualified, got some experience. I expected them to come
12 in here with charts. You know, there was that red light
13 that the solicitor used when they showed the C.D. I
14 thought we were going to have pictures of fingerprints
15 showing us swirls and showing us loops and showing us
16 numbers.

17 He basically testified: Yeah, I've been doing
18 it for awhile. There is no standard operating procedure
19 over at the Sheriff's Department. I had a feeling this
20 was it. This was it. Are you firmly convinced?

21 Because His Honor is going to instruct you
22 that you don't have to give that testimony anymore
23 testimony (sic) than the testimony of another witness.
24 Are you firmly convinced? No standard operating
25 procedure at all existed in this case.

1 Are you firmly convinced of what Mr. McCants
2 has purported to say on the 5th? No contemporaneous
3 notes. No contemporaneous notes in a robbery of a
4 business that they classified as a major crime to be
5 able to come in and say:

6 I know this is what this guy said, and I know
7 you can be firmly convinced because as it was said, I
8 wrote it down. Because look, here is the date. Here's
9 the time. Here's where I was. This is what was said.
10 Are you firmly convinced?

11 Mr. Sims said: Yeah, I talked to Mr. McCants
12 on the 5th. Then I talked to Mr. McCants on the 7th.
13 But if you recall my cross examination of Mr. Sims, he
14 didn't make contemporaneous notes. He said he did, in
15 fact, write a report on the 13th, and that report
16 reflects his recollection of what Mr. McCants said.

17 And a lot of times it's kind of funny.
18 Mr. Sims said the same thing Mr. McCants said: I can't
19 remember. I can't remember. How many times did you
20 hear that from a State's own witness he couldn't
21 remember?

22 How many times was the gist of an answer why
23 you didn't do something when I asked Mr. Hickman or
24 Mr. Sims: Why didn't you follow up or why didn't you do
25 this? I don't know. It's the same answer Mr. McCants

1 gave. I said: Do you know how these fingerprints got
2 there? He said: I don't know. I don't know.

3 You know what is the interesting thing in this
4 case is as you go back and look at the exhibits, and you
5 look at the exhibits concerning the fingerprints on the
6 potato chip bags, the one bag that they can conclusively
7 show you came from the incident location is in State's
8 Exhibit 5, right here.

9 Interestingly enough that's the one bag they
10 don't have prints from. So what they can firmly
11 convince you of is this the bag that is left, but they
12 can't firmly convince you that they made an
13 identification of the person the State contends to be
14 the perpetrator. A reason to doubt, a reason to leave
15 you not firmly convinced.

16 The fingerprint they do have is of an unknown
17 date on a bag that, because the State failed to keep it,
18 is from an unknown origin in an unknown store with an
19 unknown manufacturing date on a bag that the State
20 certainty cannot say it was the bag purchased in the
21 video.

22 Listen to what His Honor will charge you about
23 the number of witnesses. I submit His Honor will charge
24 you it's not the number of witnesses that matters. It's
25 what the witnesses said or more importantly in this case

1 what was not said. I submit that no one doubts the
2 sincerity of the efforts or the beliefs of the
3 witnesses.

4 Listen to what His Honor will instruct you the
5 law is about identification testimony and the factors
6 related to identification testimony. Listen to what His
7 Honor will instruct you the law is, and listen to what
8 His Honor will tell you about the sincerity of someone's
9 belief. But I submit to you, ladies and gentlemen, the
10 sincerity of a belief is different than the existence of
11 a fact beyond a reasonable doubt.

12 Listen to what His Honor will tell you you are
13 entitled to consider when assessing the eyewitness
14 testimony in this case because the only interaction with
15 law enforcement was on the incident date, two days
16 later, with no more details. Then it's October -- I
17 think she testified on the 17th -- almost two years
18 later. I can't remember what I did two weeks ago. Two
19 years later?

20 His Honor is going to tell you how much you
21 can or want to, and if you want to at all, to rely on
22 eyewitness identification. Again, I urge you to listen
23 to the many factors His Honor will tell you to
24 consider.

25 Other factors to consider. You heard about or

1 you have to take back in the jury room the booking
2 report. The booking report says Mr. McCants is
3 210-pounds -- 210-pounds. That's a 50 to 60-pound
4 variance.

5 No matter how Mr. Hubbard chooses to
6 articulate, no matter how Mr. Hubbard chooses to have
7 you recall the colloquy between he and Mr. Sims with
8 respect to identification by cross gender, it's 50 to
9 60-pounds.

10 And what did the jail notice? Dark skinned, a
11 50 to 60-pound difference and dark skin. Those are
12 reasons not to leave you firmly convinced of
13 Mr. McCants' guilt.

14 What are some themes that ran through this
15 case? Every witness -- Mr. Hickman, Mr. Sims,
16 Mr. Johnson, Ms. Wright -- no potato chip bag.
17 Mr. Hickman, Mr. Sims, Ms. Wright can't say why the
18 store's video was cut off so you could have a viewing of
19 where the bags were between the time of the incident and
20 the time they were recovered.

21 Mr. Hickman, Mr. Sims, Mr. Johnson, and
22 Ms. Wright, no receipt. Mr. Hickman, Mr. Sims
23 Mr. Johnson, no S.O.P., no standard operating procedure.
24 My late father was an Army veteran. I asked him: What
25 was it like to be in the war? He said: Well, it was

1 difficult. There are a lot of things. But one thing I
2 learned when I was in the Army, you do it the right way,
3 the wrong way or the Army way.

4 . In our daily lives and our daily endeavors, we
5 all know when we have a vocation and a place that we
6 work, there is standard operating procedure. There is
7 no standard operating procedure in this case.

8 Mr. Hickman can't tell you when he did it. He
9 can just say he arrived and left. He did not photograph
10 up close the bag, the potato chip bag. Can't show you
11 the bag as it was on 11/7/04.

12 Remember my questions about supergluing. I
13 asked Mr. Johnson, the F.B.I. technician, I asked
14 Mr. Hickman: Was the superglue method available? Yes.
15 We did not see superglue. Why is that important?
16 Because you would have the fingerprint, and you would
17 have the bag here today.

18 From this investigation are you certain? Are
19 you firmly convinced? As you look at the video, look at
20 the transactions in the video. I can't remember if it's
21 camera three or camera four. There is a digital image
22 that comes up with every transaction.

23 Why weren't you informed of the contents of
24 that transaction? Why couldn't the State have made a
25 still, gotten in touch with Mr. Galloway who Mr. Hickman

1 said he thought was the manager and say: Hey, let's tie
2 down these transactions to what is depicted in this
3 video. It wasn't done. Are you firmly convinced?

4 For you jurors the good news is I'm about to
5 sit down. Before I sit down, I want to make sure that
6 all of you understand that during the trial, if
7 Mr. Myers and I have done anything that has caused you
8 to think of Mr. McCants in a negative light, do not hold
9 that against Mr. McCants. Do not hold our zealouslyness
10 on his behalf against him.

11 This case poses a difficult task, not only for
12 me as his lawyer because I want to make sure I address
13 every issue, and yet I have to do that without
14 alienating you. I'm walking a tightrope and it's a
15 difficult tightrope, and it's a task that I gladly
16 accept.

17 I have to be forceful for Mr. McCants. I have
18 to point out to you the reasons why you can't be firmly
19 convinced. Yet, I've got to do so without alienating
20 you. So if we've done anything on behalf of Mr. McCants
21 that, as the saying goes, rubbed you the wrong way, do
22 not take it out on him. Do not take it out on
23 Mr. McCants.

24 This is a difficult task for you. Why is
25 that? Because you have sworn to follow your oath.

1 You have sworn to find the facts. The difficulty for
2 you guys is this is a very difficult test. This is a
3 test of your courage. You know why? Because what you
4 want to do may be different than what you have sworn to
5 do.

6 So if what you have sworn to do is different
7 than maybe what you want to do, you've got to hold onto
8 your oath. There is no question -- there is no
9 question -- this is a serious case. There is no
10 question it's very serious for my client.

11 Because as your oath as jurors, you've sworn
12 to give Quincy McCants your individual deliberation.
13 Listen to what His Honor will tell you. Listen to what
14 His Honor will tell you about your individual
15 deliberation and how you are not to be swayed within
16 your heart and in your mind if you believe the truth is
17 that he is not guilty.

18 Under your oath as jurors, you have sworn to
19 take the law as His Honor will instruct you. I urge you
20 to pay careful attention to what His Honor will tell you
21 about the law and your duty.

22 Now, before I sit down, I ask you to remember
23 the important factor that has permeated the State's
24 case. That factor should not have been there, but it
25 was there because of what the State did or rather in

1 this instance what it should have done.

2 That factor is D.I.D.: Doubt in the detail.
3 What the State didn't do or in this case what it did do,
4 it left doubt in the details -- doubt in the details.
5 Remember as I time with my watch what Mr. McCants must
6 prove.

7 (Pause).

8 MR. HARVEY: Mr. McCants has nothing to prove.
9 Listen to what His Honor will instruct you the law is.
10 Listen to what His Honor will tell you the only
11 presumption in this case is the presumption of his
12 innocence. Doubt in the details comes from what was not
13 reported, not recorded, not looked for, and not
14 detailed.

15 After having the opportunity to learn
16 something about you during the jury selection process
17 and watching you during the trial, I am confident that
18 your diligence will make sure that justice is served.

19 I am thanking you again on behalf of my client
20 and his family. His family, his aunt who knows him
21 better than anyone in this courtroom, other than maybe
22 the fact of his mother, who the solicitor pointed out,
23 knows who she saw better than anyone in this courtroom.

24 Because Ms. Wright said she didn't know if
25 Mr. McCants had ever been in that store. And what did

1 his aunt tell you? About the gold tooth and about the
2 appearance of the individual in the video.

3 To reach a verdict is not an easy task. You
4 have to sit in judgment and deliberate on a fellow
5 citizen. Actually the word verdict comes from Latin.
6 It comes from the Latin word or the Latin verb -- I was
7 never good at this, verb, adjective -- veredicto, which
8 means to seek the truth.

9 As you seek the truth, keep in mind the
10 passage from the Book of Proverbs that seems to capture
11 the essence of what we have all sworn to do in this
12 case. Its message provides all of us with insight as we
13 finish our roles.

14 Chapter 18, verse 17, says this: He who
15 states his case first seems right until the other comes
16 and questions him. He who states his case first seems
17 right until the other comes and questions him.

18 It is my duty to my client to question, and it
19 is your duty based upon your oath, if you have a
20 question and you are not firmly convinced, then you have
21 to question the evidence because that is what you have
22 sworn to do.

23 The State has the last argument. That's just
24 how it is in our system of justice. I kind of analogize
25 it to baseball. The State is the home team. They get

1 the last bat.

2 As you listen to Mr. Hubbard, I want you to
3 pay attention to Mr. Hubbard because you should. It's
4 the fair and right thing to do. But as you listen to
5 Mr. Hubbard, I want you to think: How would Mr. Myers
6 or Mr. Harvey have responded if they had the opportunity
7 to speak?

8 And as you listen to Mr. Hubbard and as you
9 listen to Mr. Hubbard articulate on what was done and
10 what wasn't done, I would submit he's certainly going to
11 talk about some fingerprints.

12 He is going to talk about a C.D. He's going
13 to talk about some statements. He's going to talk about
14 someone saying: I didn't do it or I can't remember.
15 Think about the doubt in the details that came from the
16 State's case.

17 Think about how many times Mr. Sims couldn't
18 remember. Give what weight you want to those
19 statements. I would respectfully submit, don't give
20 them much weight.

21 I respectfully submit His Honor will tell you
22 about the fingerprint expert, what weight you want to
23 give his testimony. Give what weight you want to to the
24 underlying circumstances of him reaching that opinion
25 without standard operating procedure, what weight you

1 want to give it, if any at all.

2 As you sit through the judge's instruction,
3 please keep in mind the passage from Proverbs. On
4 behalf of Mr. Myers, Mr. McCants, again I want to thank
5 you for your sacrifice because jury duty is a sacrifice.
6 You are taken out your daily lives to be here.

7 I want to thank you for your attention. You
8 paid close attention to me. I am sure you are thinking:
9 Mr. Harvey, you promised you would sit down ten minutes
10 ago. This time I am.

11 But again I want to impress upon you the
12 enormity of the task that I have for Mr. McCants and the
13 enormity of your task and the enormity of what you have
14 sworn to do on behalf of Mr. McCants.

15 I am confident that you have seen and heard
16 the reasons to doubt my client's guilt. I am confident
17 that you will let justice be served here today and let
18 Mr. McCants exit the courtroom as he entered the
19 courtroom, an innocent man. Thank you very much.

20 THE COURT: Thank you, Mr. Harvey.

21 Mr. Foreman, ladies and gentlemen of the jury,
22 the solicitor will now get the opportunity to present
23 his closing argument to you. Then I will charge you on
24 the law.

25 Rather than take a recess at this time, it is

1 still going to be some period of time of sitting. All
2 of you are welcome to stand and stretch in place
3 momentarily. If you would do that for me, please. Just
4 stretch for a moment, and we will get started
5 immediately back.

6 (Pause).

7 THE COURT: Thank you. Thank you very much,
8 ladies and gentlemen. Again, I would ask you to give
9 the attorneys your complete and undivided attention
10 during the closing argument to you.

11 Solicitor, you may address the jury.

12 **CLOSING ARGUMENT**

13 MR. HUBBARD: Thank you, Your Honor. Ladies
14 and gentlemen, I will start by saying I agree with
15 Mr. Harvey. I have got to prove one thing, this man's
16 guilt, Mr. McCants. You must be firmly convinced.

17 I want you to think about that for a moment.
18 I want you to think back, go back in human history if
19 you will, and think of all the people that have ever
20 walked the face of this earth.

21 Go all the way back to the beginning of time
22 to the first man who ever walked this earth, and I want
23 you to think of all the people that followed, the
24 billions of people that followed, all the way up to the
25 present, and I want you to think about all the people

1 that will come in the future, the billions more who are
2 yet to come, all the way to the last man drawing his
3 last breath.

4 The billions and billions and billions of
5 people that have tread this earth, I want you to try to
6 comprehend the volume of humanity you would be looking
7 at. And if you were to do that, there is one thing you
8 can be firmly convinced of in looking at all those
9 people.

10 These fingerprints came from one man, one,
11 Quincy Andre McCants. You can be firmly convinced of
12 that. No two are alike, even a twin brother or sister.
13 Everybody has their own. These are Quincy's, firmly
14 convinced.

15 I want you to consider the testimony of
16 Chandra. She got up there and told you what happened,
17 started off just telling you the details of what
18 happened, how this man she had never met before and
19 never seen before comes into the store her first day
20 alone.

21 He comes in there, walks by her, and gets a
22 bag of chips, walks out, comes in ten minutes later,
23 talks to her, holds those chips up, goes -- and I think
24 you will remember from the video -- puts them back with
25 his left hand.

1 Then he goes back, gets a drink, and then
2 comes up to the counter for a second time and purchases
3 or begins to purchase those chips. Then she told you
4 about the armed robbery, the gun. She described the
5 hat, the clothes.

6 You got to see the video that showed exactly
7 what she said. Her testimony and that video blended
8 right together because it was the truth. You heard
9 testimony that an officer came to that scene. He dusted
10 for prints.

11 He found not only these latents, but he found
12 a third. You heard he sent those into evidence and that
13 Detective Brett Sims picked up the case. He pursued
14 vehicle information that you heard about. The next
15 thing you know he's knocking on the door of Ms. Hall,
16 Gloria Hall, January 3rd, 2005.

17 Her son, Quincy McCants, Quincy is now in the
18 picture. He interviews Quincy and you heard the rights
19 he gave. Quincy knew what he was doing when he said: I
20 didn't do it. I didn't do it.

21 Then you heard Detective Sims requested a
22 fingerprint analysis and those prints, these latents,
23 went to Duane Johnson. You heard him. You know what?
24 You know why you can believe Duane Johnson?

25 If he just wanted -- if he had a feeling that

1 all these prints came from one man, why did he say he
2 couldn't read this one? Because it's the truth. He's a
3 professional. He is being honest. Two prints he could
4 read, one he couldn't.

5 Following those fingerprints, ladies and
6 gentlemen, you heard how he described fingerprints, how
7 he described no two are alike. You heard how it was
8 Quincy McCants. For an I.D. that's pretty solid, isn't
9 it? Pretty solid? How do you fake a fingerprint?

10 You don't just have fingerprints. Chandra
11 Wright, who sits here today, summoned the courage after
12 this armed robbery to go back to work, to make a living,
13 after somebody who didn't want to make an honest living
14 came in and put a gun in her face, took the easy way
15 out, took money rather than earning it.

16 She summoned the courage to come into this
17 courtroom, a place she is not familiar with. She
18 summoned the courage to take that stand before 12 people
19 she has never met. She summoned the courage to answer
20 questions from a man she barely knew and from an
21 attorney who wanted to question her memory, maybe even
22 her truthfulness.

23 She summoned the courage to go through all of
24 that, and she summoned the courage to look out across
25 this courtroom and point out that man as the

1 perpetrator, that man as being the man that stuck a gun
2 in her face, Quincy Andre McCants.

3 You say to yourself. It's been a while and it
4 has. But you see when Quincy McCants pulled that gun
5 out and stuck it in her face, he didn't just take money.
6 You know what? We don't care how much. It's clear he
7 took money. It's an armed robbery. It's a red herring.
8 I don't care how much.

9 But the main crime with an armed robbery is
10 what he takes from the person, your dignity, your sense
11 of security. No one -- no one -- should have to go
12 through that. That is why it's a major crime.

13 But he did something else with that gun, and I
14 don't think he meant to do this. With that pistol he
15 forever etched his face in her memory, and that's why
16 that woman, Chandra Wright, can sit up here on this
17 stand under oath before everyone and say: I have no
18 doubt.

19 Firmly convinced, fingerprints, Chandra
20 Wright, no doubt. She looked at that man. We didn't.
21 She was this close to the man. None of us were. She
22 knows.

23 Now, we heard a lot about potato chips.
24 Frankly if I could go back in time, I would have them
25 here and we would have been done by yesterday. But you

1 know what? What would you do with a bag of potato chips
2 if I gave it to you in evidence?

3 You would look at it and see it's a Lay's bag
4 of chips. There's no fingerprints on it anymore. You
5 can't eat it. I know you wouldn't. Why do you want it?
6 Why do they want to keep it over there in evidence for
7 two years or however long you are supposed to keep it?
8 Why?

9 I will tell you and maybe see if y'all are
10 going the similar direction or if y'all understand
11 Mr. Harvey's argument the same way I did. It seems like
12 he's trying to say there may be a mysterious third bag
13 of potato chips out there.

14 For some reason this mysterious figure walks
15 into this store, buys a bag of potato chips. He walks
16 out, and for some reason he brings a mysterious bag of
17 potato chips in, brings them into the store, puts it
18 back on the shelf. That bag, that mysterious bag, has
19 Quincy McCants' fingerprints.

20 MR. HARVEY: Your Honor.

21 MR. HUBBARD: Your Honor, I am characterizing
22 the evidence, arguing, too.

23 MR. HARVEY: There is no -- he's arguing facts
24 that aren't in evidence. I would object to that.

25 THE COURT: Yes, sir. He can argue the facts

1 and the reasonable inferences therefrom. You may
2 proceed, Solicitor. Thank you, Mr. Harvey.

3 MR. HUBBARD: This mysterious bag, Quincy
4 McCants' fingerprints ends up on the shelf. Then this
5 man robs the store, and he's got it covered. Quincy
6 McCants is now the guy who's going to take the fall.
7 That's the only thing I can come up with for this
8 pursuit for the potato chip bag. Otherwise what are you
9 going to do with them?

10 Let me ask you this. If there is somebody out
11 there that is bright enough to sneak some fingerprints
12 on a bag, to get somebody to touch a bag so he can
13 commit an armed robbery, don't you think that person
14 that you saw on that video would be wearing gloves when
15 he strolls in the store and puts it up with his own
16 hand?

17 And don't you think that person would be smart
18 enough when he takes the second bag off the shelf and
19 buys it, to take it with him when he leaves? What an
20 unbelievable story and I do mean unbelievable.

21 Ladies and gentlemen, no case is perfect.
22 This isn't C.S.I. We don't have flashy Hollywood types
23 sitting on the stand. I've got Jim Hickman, old fellow,
24 gray hair, balding, wearing the same suit he has been
25 wearing 20 years. He is here to tell the truth.

1 I don't have flashy evidence. You saw that
2 video we showed you. You know, he talks about taking
3 frames. At one point in question, he talks about
4 enhancing it. Just ask yourself this. Do you think if
5 we could, we would?

6 This isn't T.V. This isn't flashy T.V. You
7 have got to turn the T.V. off, just like you tell your
8 kids, and focus. I know y'all have been focusing the
9 whole time, every single one of you. You never left the
10 courtroom. You paid attention.

11 I am convinced and I know you will be and you
12 are even now that although Quincy McCants, when he was
13 questioned on January 5th and said he didn't do it, and
14 although on January the 7th when he was questioned and
15 couldn't remember committing an armed robbery, I know
16 you know the truth.

17 Why couldn't he remember? What was different
18 there from the 5th to the 7th? I know you can figure
19 that out. How believable though is it for a man to not
20 remember putting a gun in someone's face? How do you
21 forget that?

22 It's one thing to say: I made hundreds of
23 cases. I've got hundreds of files. Let me see, dates,
24 things like that, I can't remember. It's another thing
25 if you go out and rob somebody, you plan it, you stick a

1 gun in somebody's face, how do you forget that? Is that
2 believable?

3 Firmly convinced: Fingerprints, the I.D. by
4 Ms. Wright, and Mr. McCants' own statements. You can
5 consider what he didn't say. He didn't say anything
6 about the potato chip bag, like: I've been in that
7 store a million times. He didn't say anything like
8 that.

9 You can consider all of that. I want to leave
10 you with this. Although the truth, as I said in the
11 beginning of this trial, may be foggy in the mind of
12 Mr. McCants, I know it's not in yours.

13 I know you are firmly convinced. When you
14 look at all of this evidence that we have laid in front
15 of you, I know you are, even now, firmly convinced of
16 what is true. All I ask of you and all anyone can ask
17 of you is that when you write your verdict out, you
18 speak the truth. Thank you.

19 THE COURT: Thank you, Solicitor.

20 (Whereupon the Court charged the jury as
21 follows).

22 THE COURT: Mr. Foreman, ladies and gentlemen
23 of the jury, it now becomes my duty to charge you the
24 law that you must apply in this case. At the onset, I
25 want to inform you that you will not get a copy of what

1 I now tell you the law is.

2 So, again, I ask for your complete and
3 undivided attention. It is quite a number of pages that
4 I have to cover. I usually think it takes about a
5 minute a page. It about 20 pages. So just keep that in
6 mind. It is all very important.

7 By Indictment 2005-GS-32-4674, the Defendant,
8 Quincy Andre McCants, is charged with armed robbery, an
9 armed robbery which allegedly occurred on November 7,
10 2004, at the Li'l Cricket, 2900 Sunset Boulevard, West
11 Columbia, to an individual working there, Chandra
12 Wright.

13 I remind you that the fact that the Defendant
14 was arrested, charged, and indicted in this case is not
15 evidence in this case and cannot be considered by you as
16 evidence of guilt in this case, nor does it create any
17 presumption or inference of guilt.

18 This document, this indictment, is simply the
19 formal written instrument which contains the charge made
20 against the Defendant. It is the formal document by
21 which the case is brought into court.

22 The Defendant has pled not guilty to this
23 indictment, and that puts the burden on the State to
24 prove the Defendant guilty. A person charged with
25 committing a criminal offense in South Carolina is never

1 required to prove himself innocent.

2 I charge you that it is an important rule of
3 the law that the Defendant in a criminal trial, no
4 matter what the seriousness of the charge may be, will
5 always be presumed to be innocent of the crime for which
6 the indictment was issued unless guilt has been proven
7 by evidence satisfying you of that guilt beyond a
8 reasonable doubt.

9 This presumption of innocence does not end
10 when you begin your deliberations, but it accompanies
11 the Defendant throughout the trial until you reach a
12 verdict of guilt based on evidence satisfying you of
13 that guilt beyond a reasonable doubt.

14 The presumption of innocence is like a robe of
15 righteousness placed about the shoulders of the
16 Defendant which remains with the Defendant until it has
17 been stripped from the Defendant by evidence satisfying
18 you of the Defendant's guilt beyond a reasonable doubt.

19 The presumption of innocence is not mere legal
20 theory. It is not just a legal phrase. It is a
21 substantial right to which every defendant is entitled
22 unless the jury is satisfied from the evidence of the
23 Defendant's guilt beyond a reasonable doubt.

24 The State has the burden of proving the
25 Defendant guilty beyond a reasonable doubt. Some of you

1 may have served as jurors in civil cases where you were
2 told that it is only necessary to prove that a fact is
3 more likely true than not true, such as by the greater
4 weight or preponderance of the evidence.

5 In criminal cases the State's proof must be
6 more powerful than that. It must be beyond a reasonable
7 doubt. Proof beyond a reasonable doubt is proof that
8 leaves you firmly convinced of the Defendant's guilt.
9 There are very few things in this world that we know
10 with absolute certainty, and in criminal cases the law
11 does not require prove that overcomes every possible
12 doubt.

13 If based on your consideration of the
14 evidence, you are firmly convinced that the Defendant is
15 guilty of the crime charged, you must find the Defendant
16 guilty. If, on the other hand, you think there is a
17 real possibility that the Defendant is not guilty, you
18 must give the Defendant the benefit of the doubt and
19 find him not guilty.

20 I remind you during this trial, you and I have
21 certain duties to perform. As the trial judge, it is my
22 responsibility to preside over the trial of this case,
23 and I also have the duty to rule on the admissibility of
24 the evidence offered during the trial.

25 You are to consider only the competent

1 evidence before you. You are to consider only the
2 testimony which has been presented from the witness
3 stand and any exhibits which have been made a part of
4 the record in this case.

5 I have the additional duty to charge you the
6 law applicable to this case. As the presiding judge, I
7 am the sole judge of the law of this case, and it is
8 your duty as jurors to accept and apply the law as I now
9 state it to you.

10 If you already have any idea as to what the
11 law is or what the law ought to be, and it does not
12 agree with what I now tell you the law is, you must
13 abandon this idea because you are sworn to accept and
14 apply the law exactly as I state it to you.

15 In every case tried in this courtroom before a
16 jury, the jury becomes the sole and exclusive judge of
17 the facts in a case. A trial judge cannot intimate,
18 state, comment on or make any statement to a trial jury
19 about the facts in a case.

20 Since you the jury are the sole judge of the
21 facts in this case, you are not to infer from what I
22 have said during the progress of this trial, in ruling
23 upon the admissibility of evidence or otherwise, or
24 anything that I say now during the course of this
25 instruction to you that I have any opinion about the

1 facts in this case.

2 The law does not allow me to have an opinion
3 about the facts in this case. This is a matter solely
4 for you the jury to determine. As jurors it is your
5 duty to determine the effect, the value, the weight, and
6 the truth of the evidence presented during this trial.

7 There are two types of evidence which are
8 generally presented during a trial, direct evidence and
9 circumstantial evidence. Direct evidence is the
10 testimony of a person who claims to have actual
11 knowledge of a fact, such as an eyewitness. It is
12 evidence which immediately establishes the main fact to
13 be proven.

14 Circumstantial evidence is proof of a chain of
15 facts and circumstances indicating the existence of a
16 fact. It is evidence which immediately establishes
17 collateral facts from which the main fact may be
18 inferred.

19 Circumstantial evidence is based on inference
20 and not on personal knowledge or observation. The law
21 makes absolutely no distinction between the weight or
22 value to be given to either direct or circumstantial
23 evidence, nor is a greater degree of certainty required
24 for circumstantial evidence than of direct evidence.

25 You should weigh all of the evidence in the

1 case. After weighing all of the evidence, if you are
2 not convinced of the guilt of the Defendant beyond a
3 reasonable doubt, you must find the Defendant not
4 guilty.

5 Necessarily you must determine the credibility
6 of witnesses who have testified in this case.

7 Credibility simply means believability. It becomes your
8 duty as jurors to analyze and to evaluate the evidence
9 and determine which evidence convinces you of its truth.

10 In determining the believability of witnesses
11 who have testified in this case, you may believe one
12 witness over several witnesses or several witnesses over
13 one witness. You may believe a part of the testimony of
14 a witness and reject the remaining part of the testimony
15 of that same witness.

16 You may believe the testimony of a witness in
17 its entirety or reject the testimony of a witness in its
18 entirety. You may consider whether any witness has
19 exhibited to you any interest, bias, prejudice or other
20 motive in this case. You may also consider the
21 appearance and manner of a witness while on the witness
22 stand.

23 The rules of evidence ordinarily do not permit
24 witnesses to testify to opinions or conclusions. An
25 exception to this rule exists for witnesses we call

1 expert witnesses.

2 A witness, who by education and experience has
3 become an expert in some art, science, profession or
4 calling may state an opinion as to relevant and material
5 matters in which the witness claims to be an expert and
6 may also state the reasons for the opinion.

7 You should consider any expert opinion
8 received in evidence in this case and like any other
9 evidence, give it the weight you think it deserves. If
10 you decide that the opinion of an expert is not based
11 upon sufficient education and experience or if you
12 conclude that the reasons given in support of the
13 opinion are not sound or that that the opinion is
14 outweighed by other evidence, you may disregard the
15 opinion entirely.

16 An expert witness is to be given no greater
17 weight than that of other witnesses simply because the
18 witness is an expert. Further, you are not required to
19 accept an expert's opinion even though it is not
20 contradicted.

21 I instruct you and emphasize that the fact the
22 Defendant did not testify is not a factor to be
23 considered by you in any way in your deliberation and in
24 your consideration on the question of the guilt or
25 innocence of the Defendant. It must not be considered

1 by you in any manner whatsoever.

2 A defendant has the constitutional right to
3 remain silent and the assertion of this right must not
4 be considered by you in your deliberations. I repeat,
5 under your oath you are to draw no conclusion whatsoever
6 from the fact that the Defendant in this case did not
7 testify.

8 The fact that this Defendant did not testify
9 should not even be discussed in the jury room. The
10 burden of proof, as I have stated to you, is on the
11 State. The Defendant is not required to prove his
12 innocence. The burden of proof remains on the State to
13 prove guilt beyond a reasonable doubt.

14 An issue in this case is the identification of
15 the Defendant as the person who committed the crime
16 charged. The State has the burden of proving identity
17 beyond a reasonable doubt. You must be satisfied beyond
18 a reasonable doubt of the accuracy of the identification
19 of the Defendant before you may convict the Defendant.

20 Identification testimony is an expression of
21 belief or impression by a witness. You must determine
22 the accuracy of the identification of the Defendant.
23 You must consider the believability of each
24 identification witness in the same way as any other
25 witness.

1 You may consider whether the witness had an
2 adequate opportunity to observe the offender at the time
3 of the offense. This will be affected by things like
4 how long or how short a time was available, how far or
5 close the witness was, the lighting conditions, and
6 whether the witness had the chance to see or know the
7 person in the past.

8 Once again, I instruct you the burden of proof
9 on the State extends to every element of the crime
10 charged. This specifically includes the burden of
11 proving beyond a reasonable doubt the identity of the
12 Defendant as the person who committed the crime. If
13 after examining the testimony you have a reasonable
14 doubt as to the accuracy of the identification, you must
15 find the Defendant not guilty.

16 A statement alleged to have been made by the
17 Defendant has been admitted into evidence in this case.
18 While the Court has determined that the statement is
19 admissible, I instruct you that you make the ultimate
20 decision of whether or not the Defendant made the
21 statement.

22 If the Defendant did make the statement, you
23 must determine whether the statement was made by the
24 Defendant voluntarily and of his own free will. This
25 means that the statement was not caused by pressure,

1 force, fear, threats, coercion or intimidation or by
2 hope or a promise of leniency or a reward of any kind.

3 In determining whether the statement was
4 voluntary, you should consider both the characteristics
5 of the Defendant and the details of the questioning.
6 Some of the factors that you must consider are: One,
7 the age of the Defendant. Two, the Defendant's
8 education or lack of education.

9 Three, the Defendant's mental ability or
10 capacity. Four, the Defendant's I.Q. or intelligence.
11 Five, the Defendant's background and environment. Six,
12 the place and length of detention. Seven, the nature of
13 the questioning.

14 Eight, the advice or lack thereof to the
15 Defendant of his constitutional rights, including but
16 not limited to the right to remain silent, that any
17 statement could be used against him in a court of law,
18 the right to have a lawyer present, that if he could not
19 afford a lawyer, a lawyer would be appointed to
20 represent him without any cost, and that he could stop
21 making a statement at any time.

22 You must carefully consider all the
23 surrounding circumstances before you give any weight to
24 an alleged statement. The State has the burden of
25 proving beyond a reasonable doubt that the alleged

1 statement was voluntary. If you determine it was, you
2 may give the statement any further consideration that
3 you deem proper.

4 You must decide what weight, if any, should be
5 given to the alleged statement. If you determine the
6 alleged statement was not the free and voluntary
7 statement of the Defendant, you should not consider the
8 statement at all.

9 In order to establish criminal liability,
10 criminal intent is required. For example, the mental
11 state required to be proven by the State for a
12 particular crime might be purpose, intent, knowledge,
13 recklessness or criminal negligence.

14 Criminal intent must be proven by the State
15 beyond a reasonable doubt. Criminal intent is always a
16 matter that must be determined by the jury from the
17 circumstances surrounding the situation.

18 There is no way to prove intent to a
19 mathematical certainty. There is no way medical science
20 can dissect a person's brain and determine what the
21 person had in mind. So the law says that criminal
22 intent may be inferred from the circumstances shown to
23 have existed.

24 This is how you make a determination of
25 whether or not the element requiring intent was present.

1 It is not necessary to establish intent by direct and
2 positive evidence, but intent may be established by
3 inference in the same way as any other fact, by taking
4 into consideration the acts of the parties and all the
5 facts and circumstances of the case.

6 Criminal intent is a mental state, a conscious
7 wrongdoing. It is up to you to determine what the
8 Defendant intended to do based on the circumstances
9 shown to have existed.

10 Criminal intent can arise from action or a
11 failure to act. It may arise from negligence,
12 recklessness or indifference to duty or to consequences
13 that are considered by the law to be the equivalent of
14 criminal intent.

15 The Defendant is charged with armed robbery.
16 In order to prove this offense, the State must first
17 prove beyond a reasonable doubt that the Defendant took
18 personal property from the person or presence of
19 another.

20 Property is in the presence of a person if it
21 is within the person's reach, inspection, observation or
22 control so that the person could, if not overcome with
23 violence or prevented by fear, keep possession of the
24 property.

25 The State must also prove beyond a reasonable

1 doubt that the Defendant carried the property away,
2 intending to permanently deprive the owner of the
3 property and to keep the property for the Defendant's
4 own use.

5 The slightest removal of the property or the
6 complete possession of the property, even for an instant
7 by the Defendant, is sufficient to show a taking and
8 carrying away of the property. The taking and carrying
9 away of the property must have been done with violence
10 or by putting the owner of the property in fear of
11 violence.

12 Finally, the State must prove beyond a
13 reasonable doubt that the Defendant was armed with a
14 deadly weapon during the robbery. A deadly weapon is
15 any article, instrument or substance which is likely to
16 cause death or great bodily harm.

17 Whether an instrument has been used as a
18 deadly weapon depends on the facts and circumstances of
19 each case. The following are examples of instruments
20 which may be deadly weapons: A pistol, a shotgun, a
21 rifle, a dirk, a dagger, a knife, a slingshot, metal
22 knuckles, a razor, gasoline, a fire bomb or Molotov
23 cocktail, and lighter fluid. A gun may be a deadly
24 weapon even if it is not operating.

25 Mr. Corley, would you hand this to our

1 foreman, please. I am handing you or our bailiff is
2 handing you this form as I explain it to you so you will
3 have the opportunity to view it at the same time.

4 There are two possible verdicts which you may
5 find in this case. I have handed you, Mr. Foreman, a
6 verdict form. The top of the form is the caption of the
7 case: The State of South Carolina versus Quincy Andre
8 McCants. It has the court and the judicial circuit
9 number, the indictment number, and it is entitled
10 verdict form.

11 There is no significance whatsoever in the
12 order in which I state or have listed the possible
13 verdicts. It is simply that one must be stated first.
14 You will note it says: Please check and circle the
15 appropriate verdict below and follow the accompanying
16 instructions carefully.

17 If after your consideration of the evidence
18 and your finding of the facts and applying the law as I
19 have told you the law is in this case, under your oath
20 if the jury finds by unanimous consent that the
21 Defendant is guilty of armed robbery, I would ask you,
22 Mr. Foreman, to check to the left of the word guilty and
23 then circle that entire word and your check.

24 If after your view of the evidence and the
25 application of the law as I have explained it to you,

1 under your oath as jurors you by unanimous consent find
2 the Defendant not guilty, you would then check to the
3 left of not guilty and then circle that check and not
4 guilty.

5 Again, there is no significance whatsoever in
6 the order in which I have listed the possible forms of
7 verdict. It is only that one must be stated first.
8 After you have reached a unanimous verdict, Mr. Foreman,
9 if you would date it today's date, the 18th, I believe,
10 and sign your name as foreperson.

11 Ladies and gentlemen, your verdict must be a
12 unanimous one. All 12 of you must agree on the verdict.
13 Your verdict cannot be based on sympathy, passion,
14 prejudice, emotion or any other consideration not in
15 evidence in this case.

16 Mr. Foreman, once the jury has reached the
17 unanimous verdict and you have followed the instructions
18 that I told you, you have dated and signed the form, you
19 would then knock on the jury room door and inform the
20 bailiff that you have reached a unanimous verdict, and
21 at that time we would receive you back into the
22 courtroom.

23 I am going to ask you momentarily to return to
24 your jury room, but do not begin your deliberations
25 until you are told to do so. What will happen is if you

1 would leave that form on the rail at this time, the
2 verdict form would be presented to you, along with any
3 exhibits that have been introduced into evidence, and
4 the bailiff or the clerk will advise you to begin your
5 deliberations.

6 If you have any questions during the course of
7 your deliberations, Mr. Foreman, if you would write
8 those questions out, knock on the door, give it to our
9 bailiff. He or she will bring them to the attention of
10 the Court.

11 There is I think what they call a C.D. that
12 was introduced into evidence in this case. If you want
13 to view the C.D. again, write out a note, let me know,
14 and we will make arrangements.

15 I don't know whether you would have to come
16 back out here to view it or if there would be equipment
17 whereby you could view it in the jury room or if you
18 want to rehear any testimony, that can certainly be set
19 up also. Do that all by notes.

20 Believe it or not, I have some matters I must
21 discuss with the attorneys before you would be advised
22 to begin your deliberations. So I will ask you to
23 please step to your jury room. Do not begin your
24 deliberations until you are informed to do so by the
25 bailiff. Thank you very much.

1 (The jury retires to the jury room).

2 THE COURT: Any exceptions or additions from
3 the State?

4 MR. HUBBARD: No, sir, Your Honor.

5 THE COURT: Mr. Harvey?

6 MR. HARVEY: No, Your Honor.

7 THE COURT: If y'all would please check the
8 verdict form, check the exhibits. I think it's 1
9 through 10 for the State and 1 and 2 for the defense.
10 When you deliver that, if you would remove the
11 alternate, please.

12 (Pause).

13 THE COURT: Subject to all previous
14 objections, of course, do you agree there is State's 1
15 through 10 and Defense 1 and 2?

16 MR. HARVEY: Yes, Your Honor.

17 MR. HUBBARD: Yes, sir, Your Honor.

18 (The alternate returns to the courtroom and is
19 excused).

20 (The jury commences its deliberation at
21 12:35 p.m.)

22 (The following occurred at 12:50 p.m.)

23 THE COURT: It appears that the jury requests
24 the opportunity to view the surveillance video again.
25 Do y'all have suggestions on how to accomplish that?

1 MR. HUBBARD: Your Honor, they can either come
2 in here and watch it. The only issue there is they
3 can't -- it's difficult for them to discuss what is
4 going on. I know there's four frames. They'd have to
5 let us know or somebody know what they want to focus on
6 or if they want to pause on something.

7 Another option is this. David Reynolds is
8 from our office. Since we do have the capability of
9 sending a system back there if you want to give them a
10 tutorial real quick on how to operate it. I was able to
11 operate it, and I'm not computer literate at all.

12 THE COURT: I have noticed that, Mr. Hubbard.

13 MR. HUBBARD: That's why Mr. Reynolds is back
14 up here again. I was not even sure how to cut it on.
15 He can operate it in here. If you want, he can tell
16 them how to operate it and send it back. Whatever they
17 are comfortable with, we will do whatever.

18 THE COURT: Mr. Harvey, do y'all have a
19 position?

20 MR. HARVEY: Beg the Court's indulgence.

21 (Pause).

22 MR. HARVEY: Your Honor, after discussing it
23 with my client, he does not express a preference, other
24 than what can make the jury deliberations the most
25 effective and efficient. We want to accommodate the

1 jury. However the jury wants to view it is fine with
2 us.

3 THE COURT: Why don't I bring them out real
4 quick, and I will advise the jury foreman of that, and
5 they can go back and give me an answer. Let me ask you
6 this. Would you have a problem with Mr. Reynolds taking
7 the equipment into the jury room with the tutorial if he
8 is under oath just for the tutorial or do you want that
9 out here?

10 MR. HARVEY: That certainly sounds reasonable.
11 Let me just inquire with my client.

12 THE COURT: All right.

13 (Pause).

14 THE COURT: You know, Mr. Harvey, that's all
15 right. I think I will have them do it out here. I just
16 thought about State versus Elmore. I better do it in
17 the courtroom.

18 MR. HARVEY: Thank you, Your Honor.

19 THE COURT: Thank you. If you would bring us
20 our jury, please.

21 Mr. Reynolds, you can give them a tutorial in
22 here now if they request it. Then you can get the
23 equipment back there.

24 MR. REYNOLDS: Yes, sir, it will take a moment
25 for me to set it up back there.

1 (The jury returns to the courtroom at
2 12:54 p.m.)

3 FOREMAN: Your Honor?

4 THE COURT: Yes, sir.

5 FOREMAN: Are we going to be able to get a
6 little closer to view the video, closer in the jury box?

7 THE COURT: Yes, sir, I was just going to
8 respond to your question. The jury requests the
9 opportunity to view the surveillance video again. We
10 have discussed the issue, myself and Mr. Hubbard and
11 Mr. Harvey and Mr. Myers.

12 We can do one of several things. First, I
13 have Mr. Reynolds in the green shirt, David Reynolds,
14 who is employed with Lexington County who is competent
15 at running the equipment.

16 He can give you a tutorial here in the
17 courtroom. Then we can get equipment in the jury room,
18 and you can have the equipment in the jury room with the
19 tape.

20 FOREMAN: Okay.

21 THE COURT: If that would suit you, I will
22 have him do the tutorial here, and then it will take him
23 a few minutes to get the equipment set up. He would not
24 be in the jury room when you viewed the video.

25 That way you would be able to continue your

1 deliberations and have the equipment in there with you
2 if that would suit you and other members of the jury,
3 Mr. Foreman.

4 FOREMAN: I have got a dozen years in I.T.
5 software development. I don't need the tutorial. I am
6 familiar with the software if that will speed up time.

7 THE COURT: If he doesn't need a tutorial, I
8 am all right with that, too. We can just get the
9 equipment in there, Solicitor.

10 MR. HUBBARD: Your Honor, if they are
11 comfortable, I have absolutely no objection.

12 MR. HARVEY: We may not agree about much, but
13 I do agree with that.

14 MR. HUBBARD: Your Honor, if they do end up
15 having a question, I will get a hold of Mr. Reynolds.

16 THE COURT: If you have a question, you
17 obviously know how to do that.

18 Mr. Reynolds, would you make arrangements to
19 get the equipment in for me, sir?

20 MR. REYNOLDS: Yes, sir.

21 THE COURT: Don't say anything to the jury.
22 If you will get it in there and thereafter leave the
23 jury room.

24 MR. REYNOLDS: Yes, sir. If I may on the
25 computer that we have, we have a regular monitor or I

1 can also bring in a L.C.D. projector with maybe a larger
2 screen.

3 THE COURT: Do you have a preference,
4 Mr. Foreman?

5 FOREMAN: The monitor should be fine. It
6 should be hooked up, correct?

7 MR. REYNOLDS: Yes, sir.

8 FOREMAN: The monitor should be fine. I think
9 we can all get around it.

10 THE COURT: Does that answer your question,
11 Mr. Reynolds?

12 MR. REYNOLDS: Yes, sir.

13 THE COURT: If you would go take care of that
14 for me, now.

15 MR. REYNOLDS: I will sir.

16 THE COURT: Do y'all have any objection to
17 them returning to the jury room solely for the delivery
18 of the equipment, and the bailiff will certainly be
19 there also when the equipment is delivered?

20 MR. HUBBARD: No, sir, I certainly don't.

21 MR. HARVEY: No, Your Honor.

22 THE COURT: With that, Mr. Foreman, you may
23 return to your jury room. The bailiff will be present
24 when Mr. Reynolds delivers the equipment. If you have
25 any other questions or concerns, just please let me

1 know. Thank you very much.

2 (The jury retires to the jury room).

3 (Court's Exhibit Number 1 is marked for
4 purposes of the record).

5 (The following occurred at 2:00 p.m).

6 THE COURT: I understand we have a verdict; is
7 that correct?

8 BAILIFF: Yes, sir.

9 THE COURT: If you would bring us our jury,
10 please.

11 (The jury returns to open court to report its
12 verdict).

13 THE COURT: Mr. Foreman, has the jury reached
14 a verdict?

15 FOREMAN: We have, Your Honor.

16 THE COURT: Is that verdict unanimous?

17 FOREMAN: It is, Your Honor.

18 THE COURT: Would you hand it to the bailiff.

19 (Hands to Court).

20 THE COURT: The verdict appears to be in the
21 proper form.

22 Madame Clerk, would you publish the verdict,
23 please.

24 You may stand, Mr. McCants, and face the jury.

25 (Whereupon the verdict of the jury is

1 published as follows).

2 CLERK: Indictment 2005-GS-32-4674, the State
3 versus Quincy Andre McCants, indicted for armed robbery,
4 we the jury by unanimous consent find the Defendant
5 guilty, and it is properly attested to by the foreperson
6 on October 18th.

7 THE COURT: Thank you, Madame Clerk. You may
8 be seated, Mr. McCants.

9 Anything further from the State for the jury?

10 MR. HUBBARD: Not for the jury, Your Honor.

11 THE COURT: From the defense?

12 MR. HARVEY: Yes, Your Honor, we like to have
13 the jury polled.

14 THE COURT: Madame Clerk, would you poll our
15 jury, please.

16 CLERK: As I call your name, please stand, and
17 I will ask you: Was this your verdict and is it still
18 your verdict?

19 Robert Laffoday, was this your verdict, and is
20 it still your verdict?

21 FOREMAN: That was and is my verdict.

22 CLERK: David Peterson, was this your verdict
23 and is it still your verdict?

24 JUROR: Yes.

25 CLERK: Tony Parker, was this your verdict and

1 is it still your verdict?

2 JUROR: Yes, ma'am.

3 CLERK: Danny Driggers, was this your verdict
4 and is it still your verdict?

5 JUROR: Yes.

6 CLERK: Danny Suggs, was this your verdict and
7 is it still your verdict?

8 JUROR: Yes, it is.

9 CLERK: Kimberly Smith, was this your verdict
10 and is it still your verdict?

11 JUROR: Yes, ma'am.

12 CLERK: Carolyn Green, was this your verdict
13 and is it still your verdict?

14 JUROR: Yes, ma'am.

15 CLERK: Kelly Gardner, was this your verdict
16 and is it still your verdict?

17 JUROR: (Nods head). (Indicating affirmative
18 response).

19 THE COURT: Did she respond, Madame Clerk?

20 CLERK: Not out loud.

21 JUROR: Yes.

22 THE COURT: Thank you.

23 CLERK: Jack Thacker, was this your verdict
24 and is it still your verdict?

25 JUROR: Yes, ma'am.

1 CLERK: Kathy Heirs, was this your verdict and
2 is it still your verdict?

3 JUROR: Yes, ma'am.

4 CLERK: Cynthia Boone, was this your verdict
5 and is it still your verdict?

6 JUROR: Yes, it is.

7 CLERK: Doris Leaphart, was this your verdict
8 and is it still your verdict?

9 JUROR: Yes, ma'am.

10 CLERK: Thank you.

11 THE COURT: Thank you, Madame Clerk.

12 Mr. Harvey, the jury has now been polled.
13 Anything further for the jury?

14 MR. HARVEY: No, Your Honor.

15 THE COURT: Solicitor, Mr. Harvey, would you
16 approach the bench, please.

17 (Whereupon there was a bench conference off
18 the record in the presence of the jury but out of the
19 hearing of the jury).

20 THE COURT: Mr. Foreman, ladies and gentlemen
21 of the jury, momentarily I am going to release you, this
22 panel, from your jury service for the remainder of the
23 week.

24 I will tell you that I never compliment nor
25 criticize a jury on whatever verdict they may render.

1 However, if you ever find yourself part of the system by
2 way of a victim or a witness or otherwise, you would
3 serve yourself well if you have jurors of your caliber,
4 that focus, that pay attention, that take their oaths
5 very seriously, that follow the law and decide what the
6 facts are and render a true and just verdict according
7 to the oath that they took.

8 Quite frankly it's what keeps us all free as
9 Americans. With that being said, again, I am going to
10 allow this panel to be released from their jury service
11 for the remainder of the week.

12 You are now excused. You may remain in the
13 courtroom if you choose to do so during sentencing of
14 Mr. McCants. You do not have to. Several other things,
15 and the other panel will hear this later. The check is
16 in the mail.

17 Don't get exited about that. Like I tell
18 people, don't go book a cruise this afternoon, not even
19 to Shull Island. We could not pay you for the service
20 that you render to your community, for your time and
21 your focus and your attention that you bring to bear.

22 We wouldn't be able to continue with the
23 important work of both our criminal and civil justice
24 system without citizens from the community down here
25 following their oath.

1 With that being said, you are now excused for
2 the remainder of the week. Thank you very much,
3 Mr. Foreman, and ladies and gentlemen of the jury.

4 (The jury is excused).

5 THE COURT: I will sentence Mr. McCants
6 momentarily. If you would go with the officers to this
7 room over here, please.

8 (Whereupon there was a recess).

9 THE COURT: Mr. Harvey, Mr. Myers, is there
10 any reason why sentence should not be imposed at this
11 time?

12 MR. HARVEY: No, Your Honor.

13 THE COURT: Do you have any motions?

14 MR. HARVEY: Your Honor, we would
15 respectfully, with respect to the motions I had made
16 previously, renew those motions and ask for the Court to
17 consider the cumulative weight of the evidence and the
18 cumulative weight that was presented.

19 I would move based upon that for a mistrial at
20 this time. We've talked with our client and, of course,
21 there may be -- we will explain to him his rights
22 post-trial, and that's really all we have with respect
23 to the trial, Your Honor.

24 THE COURT: Thank you, Mr. Harvey. Anything
25 you would like to add, Mr. Myers?

1 MR. MYERS: No, sir, not at this point, Your
2 Honor, but I asked Mr. Hubbard if his family could come
3 up. I believe he has four members.

4 THE COURT: Certainly. The sheriff has no
5 objections?

6 DEPUTY: Certainly, Your Honor.

7 (Pause).

8 THE COURT: As to your motions, Mr. Harvey, I
9 will reaffirm all my rulings at trial, evidentiary and
10 pretrial. As to your motion for a new trial, I would
11 respectfully deny that motion.

12 Solicitor, is there anything further prior to
13 sentencing from the State?

14 MR. HUBBARD: Yes, sir, Your Honor. Your
15 Honor, I would like to put on the record the prior
16 convictions. In 1990, he has a possession of crack
17 cocaine. 1993, he has a conviction for temporary use of
18 a vehicle without consent.

19 1997, he has a breach of trust with fraudulent
20 intent. 1999, he has an A.B.C. violation. In the year
21 2000, he has a conviction for resisting arrest and also
22 for D.U.I. Then in 2001 he has got a criminal domestic
23 violence conviction. Finally, in 2004 he has a purse
24 snatching.

25 In addition to that, Your Honor, I would say

1 to begin with that purse snatching, the facts are very
2 similar to what occurred in this case, without a weapon.
3 We have also three other pending armed robberies on
4 Mr. McCants and two strong arm robberies, all out of the
5 same time frame, the first one coming from October of
6 2004, October 9th, a month before this one. That was a
7 strong arm robbery.

8 Just four days later after the Li'l Cricket
9 robbery, we have a charge on him for robbing the Hess
10 station here in Lexington County. Three days after
11 that, we have a charge on him for robbing a Subway in
12 Lexington County.

13 On November 23rd, he robbed another Li'l
14 Cricket in Lexington County. We have a charge on him
15 for doing that. Then we have a charge for strong arm
16 robbery of a Citgo. That was January 3rd, 2005.

17 That's where we really began to put the pieces
18 together and found out it was Mr. McCants. Your Honor,
19 he was known to law enforcement by a nickname that they
20 gave him, the leopard hat bandit. Because so many times
21 when he would commit these robberies, he would wear a
22 hat very much like the one the jury saw in this case,
23 covering up the back of his head.

24 In several cases it was a leopard-skin type
25 hat. Sometimes it was a black hat. In this case this

1 was the only one where he wore a blue hat. Every time
2 he went to the stores, he would pick up an item, go to
3 the counter to purchase it. When the cashier would open
4 that register, a gun would come out or he would grab
5 cash and run.

6 He also has pending charges in Richland
7 County, a number of armed robbery cases and strong arm
8 robbery charges there as well. He has given a
9 confession on our strong arm robbery at the Citgo. He
10 has given a confession on another strong arm robbery in
11 Richland County. He has made no admission at all on the
12 armed robberies. That's all I have, Your Honor.

13 THE COURT: Is Ms. Wright present? Did she
14 wish to be present?

15 MR. HUBBARD: She asked that I call her. She
16 has missed a lot of work. As much as she wanted to be
17 here, she gets paid by the hour. I told her I would
18 certainly give her a call.

19 THE COURT: Thank you, Solicitor. Mr. Harvey,
20 Mr. Myers.

21 MR. HARVEY: If it please the Court, Your
22 Honor. With respect to the allegations brought to the
23 Court's attention by the Solicitor's Office,
24 Mr. McCants -- in the trial of this case, there was
25 discussions of a debriefing of an interview in Richland

1 County and in Lexington County.

2 Mr. McCants has from the outset not denied his
3 involvement in two other incidents, Your Honor. Also
4 what didn't come out in the case, as you may recall, was
5 subject to some lengthy pretrial litigation was the fact
6 this young man suffered from a serious drug problem in
7 close proximity to the conduct which he has admitted to.

8 I understand this is sentencing. I would ask
9 the Court to take into consideration that the other
10 cases have yet to have been founded. He has
11 acknowledged responsibility for some of his conduct.

12 Mr. McCants' position was this is one of a
13 series of allegations that his position was he denied
14 doing it. As Your Honor heard, he denied it on one
15 occasion, and the evidence said he couldn't remember
16 doing it on another occasion. There are other instances
17 of conduct which he has admitted.

18 Your Honor, Quincy has three children, a son
19 Dominic McCormick who is 17, Quincy, Jr. who is nine and
20 Chandra who is eight -- Jamil. I can't read my own
21 handwriting again.

22 THE COURT: What was the youngest child's
23 name?

24 MR. HARVEY: The youngest child is Jamil. I
25 apologize, all three of them are boys. Your Honor, with

1 him is his mother, Gloria Hall. You had heard from his
2 Aunt Maxine today.

3 What we didn't bring out - and lawyers always
4 try a case, and there is a case that they wish they had
5 tried. Gloria actually suffers from lupus. Gloria was
6 actually on the State's witness list. If you remember,
7 we had addressed that issue.

8 I think if Detective Sims is still here,
9 Detective Sims, I think, will corroborate that Quincy's
10 family was cooperative throughout this whole ordeal.
11 Detective Sims tells me that his family, any time law
12 enforcement asked them for anything, they complied.

13 Your Honor, his significant friend, Ms. Kim
14 Graves, is here. She's employed in Richland County.
15 She is a professional cosmetologist and hairdresser.
16 Your Honor, his mother Gloria Hall had work for Allied
17 Chemical in excess of 25 years.

18 His sister Yvonne is here. I met this young
19 lady and his Aunt Phyllis is here, Your Honor. They are
20 from the Richland County area. The family had attended
21 Little Zion Baptist Church, and Quincy had been
22 gainfully employed with Peter's air conditioning and
23 heating.

24 In my conversations with the family, Quincy's
25 grandmother passed away after a long illness in 2003.

1 As Your Honor can see, there seems to be a nucleus of
2 conduct concerning Quincy, and it really accelerated
3 after the demise of his grandmother.

4 Again, Your Honor, we don't offer this as an
5 excuse but a way to help the Court gain some insight
6 into Quincy. Quincy has had longstanding substance
7 abuse issues. Quincy is well aware, as we have gone
8 over with him on multiple occasions, the sentencing
9 range that the Court has.

10 Your Honor, Quincy exercised, as is his
11 privilege, his right to go to trial. Just so the Court
12 will understand, Quincy had acknowledged responsibility
13 in several instances. He felt as though this was one
14 that he did not do. We understand the jury has spoken,
15 Your Honor.

16 I don't know if his mother wants to briefly
17 address the Court or his aunt. I know that if they
18 don't, they have told me throughout the trial they felt
19 Your Honor has been deliberate, given everyone as fair a
20 trial as the law allows.

21 They would ask that Your Honor dispense
22 justice but temper it with mercy. As Your Honor knows,
23 Quincy is going to suffer, but so is that 17 year old,
24 nine year old, and eight year old child who need a
25 father.

1 Quincy, we hope at some point in time, given
2 his mother's condition and the Lord willing her health
3 holds out, at some time in the future, Quincy will be
4 able to be reunited with his family and be able to enter
5 his children's life before they are full grown adults.

6 THE COURT: How old is Mr. McCants?

7 MR. HARVEY: Mr. McCants is 32 years old.

8 THE COURT: Thirty-two?

9 MR. MYERS: Thirty-three, Your Honor.

10 MR. HARVEY: He is a graduate of Eau Claire
11 High School.

12 THE COURT: I remember Eau Claire High School.

13 MR. HARVEY: Your Honor, Quincy stands before
14 the Court. He understands that the jury has spoken.
15 His family wants the Court to take into consideration
16 its support. I know Quincy would like to briefly
17 address the Court before Your Honor imposes sentence.

18 MR. MYERS: Your Honor, if I may very briefly.

19 THE COURT: Yes, sir, certainly, Mr. Myers.

20 MR. MYERS: May it please the Court. Your
21 Honor as the Court very well knows, I was appointed to
22 represent Mr. McCants, and it was an appointment which I
23 certainly agreed to and was happy to do freely.

24 Certainly even as we stand here today, I am
25 even more happy to say I represented Mr. McCants. My

1 first encounter after my appointment was actually at the
2 Lexington County Detention Center. We spoke.

3 Your Honor, this young man, while a jury of
4 his peers has convicted him, I would ask that the Court
5 not punish him for deciding to go to trial. Your Honor,
6 prior to us actually starting this trial, we tried to
7 enter into negotiations with the solicitor.

8 To his credit he was kind of unsure as to what
9 type of sentence to propose to us. At that time, Your
10 Honor, the only offer he was actually given was a
11 straight-up plea before, Your Honor.

12 Obviously not necessarily having a number to
13 give to Quincy and not basically being able to tell him
14 exactly how much time he would receive, he elected to go
15 to trial.

16 He basically decided that he would put his
17 fate in the hands of those 12 individuals. They have
18 spoken. But, again, Your Honor, we would ask -- the
19 Court certainly can impose a sentence of 30 years.

20 We would ask that the Court not look to that,
21 look at the mitigating factors. He has standing behind
22 him his family members. I know they would like to
23 speak. They want to address the Court. They will
24 certainly be brief.

25 But, Your Honor, the fact that we didn't have

1 necessarily real negotiations or a real number, I would
2 respectfully ask that the Court not hold that against
3 Mr. McCants or for his right of exercising his right to
4 a jury trial.

5 THE COURT: Certainly, I would not do that,
6 Mr. Myers. I would like to thank you, both you and
7 Mr. Harvey, for your representation of Mr. McCants. I
8 know you were appointed to the case at a difficult time
9 in the case.

10 It's very important that you and many other
11 members of the bar that are in private practice will
12 represent these clients with little and many times no
13 compensation whatsoever. Both you and Mr. Harvey have
14 done a very fine job on Mr. McCants' behalf. The Court
15 thanks you for that.

16 MR. MYERS: Thank you, Your Honor.

17 THE COURT: I would be glad to hear from any
18 of his family members that would like to address the
19 Court and from Mr. McCants.

20 MR. MYERS: Ms. Maxine Brown.

21 MS. BROWN: Your Honor, I beg the Court that
22 you have mercy on my nephew Quincy and the fact that the
23 family has been through so much ordeal. As Mr. Harvey
24 said, their mother died of a long illness. My parents
25 died in a car accident, head on car accident, two and a

1 half years ago. We have been through so much.

2 THE COURT: Thank you very much, Ms. Brown.
3 Thank you for being here.

4 MR. HARVEY: Your Honor, I got confused with
5 the lupus and the accident, I apologize.

6 THE COURT: That's quite all right. Ms. Hall,
7 I would be glad to hear from you.

8 MS. HALL: I'm standing here on behalf of my
9 son. I ask for mercy for him. He's a good child. I
10 love him, and I have had no --

11 THE COURT: I couldn't quite understand you,
12 Ms. Hall.

13 MS. HALL: I have had no problems. On behalf
14 of me when I was sick, he has carried me from bed to
15 bed. I am going to miss him. Then his children is
16 crying out for him, for their dad.

17 It just hurts to know that this was brought
18 upon him and it happened to him, and I ask you please be
19 merciful to him with the charges and stuff, and he will
20 be able to come home and help with his children.

21 THE COURT: Thank you, Ms. Hall. Where are
22 his children, Mr. Myers, Mr. Harvey?

23 MR. HARVEY: Your Honor, the children, one son
24 goes to Ridgeview school, and he is in high school.
25 They reside with their mother.

1 THE COURT: The children are with the mother
2 or with his mother?

3 MR. HARVEY: They are with the respective
4 mothers, Your Honor.

5 THE COURT: His children are not by the same
6 mother?

7 MR. HARVEY: No, sir.

8 THE COURT: Where is this young man's father?

9 MR. HARVEY: Your Honor, Quincy's family, his
10 mother and father don't stay together. I principally
11 dealt with Quincy's extended family through Ms. Hall's
12 family. They have been steadfast in their support.

13 THE COURT: I have noticed that. I have
14 noticed that throughout the trial. I was just curious
15 where the young man's father was, if he was local, if he
16 was in Eau Claire. Is he part of Mr. McCants' life?

17 MR. HARVEY: He was here Monday, Your Honor.

18 THE COURT: He was?

19 MR. HARVEY: It's my understanding he had
20 fallen and suffered some sort of injury, and he had a
21 doctor's appointment with respect to that injury. He
22 had hoped to be here today, but he was here earlier in
23 the week.

24 As Your Honor may recall, all day Monday the
25 family and I and Mr. Myers counseled with Mr. McCants

1 with respect to resolving the case. We want to again
2 thank Mr. Bryan and the sheriff's deputies for
3 accommodating us.

4 We were able to meet with Quincy at length,
5 and his family participated in those deliberations. His
6 mother has been to my office on several occasions. You
7 heard from Ms. Brown. They actually came back and
8 looked at the video.

9 Mr. Myers and I met with Quincy's family a
10 couple of weeks ago. I have told Ms. Hall -- and Kim is
11 Mamie Graves' daughter. I know Mamie. Mamie has worked
12 in Richland County in various capacities. It's a good
13 family.

14 Again, their position with Your Honor is to be
15 merciful. They understand the sentence is going to be
16 dispensed. Also, you have Mr. McCants. When Your Honor
17 instructed the jury that evidence comes in many
18 fashions, how someone acts and how someone looks, you
19 see Mr. McCants here today, Your Honor.

20 Hopefully he will be able to address the Court,
21 but he is demonstrably upset, and I think that
22 accelerated during the time his mother was addressing
23 the Court. I ask the Court to note that. Thank you
24 very much, Your Honor.

25 THE COURT: Yes, sir, thank you. Anything you

1 would like to say Mr. McCants?

2 THE DEFENDANT: Yes, Your Honor. I first want
3 to say I still thank God for being a healing in my life.
4 You know, I understand the jury found me guilty, which
5 that is their decision, you know. I can't do nothing
6 about that.

7 I just want to thank my lawyers for doing
8 their best. They put up a fight. I also want to thank
9 you, Your Honor, for the quality time you put in my
10 case. You know, I just want to thank everybody, you
11 know.

12 Right now I am just upset and, you know, I
13 understand I am going to be away from my family. I just
14 ask Your Honor to be as merciful as you can so I can get
15 back to my kids and my family, you know.

16 THE COURT: If I do my arithmetic right,
17 Mr. McCants, in 1990 you would have been 17 years old;
18 is that correct?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: You were in Eau Claire High School?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Did you have a drug problem for 16
23 years from the possession of crack cocaine? I'm not
24 asking you about this trial because you may appeal this
25 trial. You have exercised your right. I will protect

1 that right, the jury trial and your right to remain
2 silent. But have you had a drug problem for many years,
3 Mr. McCants?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Sir?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: How could you be a father to your
8 children?

9 THE DEFENDANT: I didn't hear, understand what
10 you had said.

11 THE COURT: You had a drug problem. You have
12 a conviction from 1990 for possession of crack cocaine.

13 THE DEFENDANT: No, sir, I was actually around
14 at the wrong time when that occurred. I actually
15 started with drugs in 2003.

16 THE COURT: In 2003?

17 THE DEFENDANT: Yes, sir. Yes, Your Honor.
18 That's when my grandparents passed, not using that for
19 an excuse, you know, that's just when.

20 THE COURT: And you had a crack cocaine
21 problem?

22 THE DEFENDANT: No, sir. No, Your Honor.

23 THE COURT: What type of drug problem do you
24 have, Mr. McCants?

25 THE DEFENDANT: Cocaine.

1 THE COURT: Cocaine?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Is being put in jail what got you
4 off of cocaine?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: You have been in jail since
7 January 3rd of 2005?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: You have a very fine family. I
10 noticed your aunt worked for the Department of Social
11 Services and foster care, I believe, and placed infants
12 and such. Your mother has been very dedicated to you.

13 I'm certainly not going to take into account
14 that you have pending charges. However, based on your
15 prior record and the facts and circumstances of this
16 case and the jury verdict, it is the duty of this Court
17 to impose sentence upon you.

18 On 2005-GS-32-4674, the State versus Quincy
19 Andre McCants, the Defendant is committed to the State
20 Department of Corrections for a determinate term of 22
21 years. Good luck to you, Mr. McCants.

22 MR. MYERS: Thank you, Your Honor.

23 THE COURT: Thank you, Mr. Myers and
24 Mr. Harvey.

25 MR. HUBBARD: Thank you, Your Honor.

1 MR. MYERS: Your Honor, for the record I would
2 certainly be more than happy to do what I need to
3 continue doing on this case, but I just wanted some type
4 of clarity as to when my appointment would terminate and
5 what my obligations obviously are from this point
6 forward.

7 THE COURT: I will take that under advisement.

8 MR. MYERS: Thank you, Your Honor.

9 THE COURT: Thank you. Thank you, Mr. Harvey.

10 MR. HARVEY: Thank you, Your Honor.

11 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal, in the Criminal Court for Lexington County, South Carolina on the 16th through the 18th days of October, 2006.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 14, 2007

L Coconut Pantsari

Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Quincy McCants, 318280,
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

FILED
) IN THE COURT OF COMMON PLEAS
2009 SEP 18 A 10:17
)
) BETH A. CARRIGG
) CLERK OF COURT
) LEXINGTON SC
)
) APPLICATION FOR
)
) POST-CONVICTION RELIEF
)

2009CP3204236

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210
2. Name and location of Court which imposed sentence Lexington County Court of General Sessions, 205 E. Main Street, Lexington, SC 29072
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2005-GS-32-4674: Armed Robbery
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:

(a) October 18, 2006; 22 years

(b) _____

(c) _____

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6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty X

(c) after a plea of nolo contendere _____

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes.

8. If you answered "yes" to (7), list:

2009CP3204236

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Conviction Affirmed.

ii. _____

iii. _____

(c) the date of each such result:

i. May 6, 2009

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished Opinion No. 2009-UP-194

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel.

FILED

(b) _____

2009 SEP 18 A 10:17

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

DELLA GARDNER
CLERK OF COURT
LEXINGTON SC

(a) Failure to properly prepare for trial and conduct an independent investigation of the case.

2009CP3204236

(b) Failure to raise contemporaneous trial objections.

(c) Failure to properly address the forensic evidence and SLED report regarding that evidence.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No.

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.

(d) any other petitions, motions or applications in this or any other Court? No.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

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2009 SEP 18 A 10:17

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2009CP3204236

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____

(b) your trial, if any? Yes.

(c) your sentencing? Yes.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Jonathon M. Harvey, 1804 Bull Street, Columbia, SC 29201

ii. Stanley L. Myers, PO Box 5709, West Columbia, SC 29171

iii. Wanda H. Carter, 1330 Lady Street, Suite 401, Columbia, SC 29211

(b) the proceedings at which each such attorney represented you:

i. Trial & Sentencing.

ii. Trial & Sentencing.

iii. Direct Appeal.

19. State clearly the relief you seek in filing this application:

A new trial.

20. Are you now under sentence from any other court that you have not challenged?

No.

FILED

2009 SEP 18 A 10:17

BETH A. CARRIGG
CLERK OF COURT

2009CP3204236

2009CP3204236

601 469

STATE OF SOUTH CAROLINA

County of Richland

)
) FILED VERIFICATION
)

I, Quincy McCants, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Quincy McCants

CLERK OF COURT
LEGISLATION SC

SWORN to and subscribed before me this 01
day of Sept, 2009.

Eugene Pettit (L.S.)

Notary Public

My Commission Expires: 2016

2009CH3204236

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

FILED

I, Quincy McCants, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

BETH A. CARRIGG
CLERK OF COURT
WINSTON-SALEM, NC

Quincy McCants
Applicant

SWORN or affirmed to and subscribed before me this
11 day of Sept, 2016

Eugene Beatty
Notary Public

My Commission Expires: 2016

ORIGINAL

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Quincy A. McCants, #318280,	)	2009-CP-32-4236
Applicant,	)	
v.	)	AMMENDMENT TO APPLICATION
	)	FOR POST CONVICTION RELIEF
State of South Carolina,	)	
Respondent.	)	
	)	

The Applicant, by and through his Attorney, Tricia A. Blanchette, Esquire, would amend his Application for Post Conviction Relief filed on September 18, 2009, by adding the following specific allegations to his original allegation of ineffective assistance of counsel and by adding an allegation of ineffective assistance of appellate counsel:

1. Ineffective assistance of trial counsel for failure to properly prepare and investigate, specifically, but not limited to the following claims:
 - a. Failure to review and explain the complete discovery materials to Applicant prior to trial.
 - b. Failure to conduct an independent investigation into the evidence and witnesses that formed the State's case against Applicant.
 - c. Failure to properly prepare and discuss the defense strategy with Applicant prior to trial, specifically the "gold tooth" defense. Failure to properly prepare Applicant for trial.
 - d. Failure to advise Applicant about the use of a private fingerprint expert and that the chip bag was not in evidence for said expert to review.
2. Ineffective assistance of trial counsel for failure to properly advise Applicant on the plea offer and failure to ensure that Applicant knowingly and voluntarily went forward with trial. Specifically, failure to ensure that Applicant was correctly advised as to whether the sentence on the plea offer would be classified as violent or non-violent.
3. Ineffective assistance of counsel for failure to properly handle the Jackson v. Denno hearing, specifically, but not limited to:

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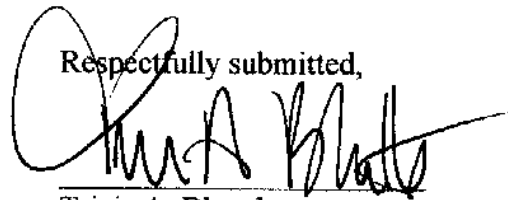
B. J. A. GARRIG
CLERK OF COURT
LEXINGTON, SC

- a. Failure to discuss testifying with Applicant and failure to utilize Applicant as a witness.
 - b. Failure to advise Applicant regarding how his alleged statements would be used at trial.
4. Ineffective assistance of trial counsel for failure to properly handle the motion to suppress the fingerprint evidence. Specifically, but not limited to the following:
 - a. Failure to call the referenced expert as a witness.
 - b. Failure to make a request to review the evidence in a timely manner, as was argued by the State.
 - c. Failure to make a chain of custody argument, as was later attempted during the trial.
 - d. Failure to utilize evidence of prints being analyzed by SLED.
5. Ineffective assistance of counsel for failure to properly handle the fingerprint evidence at trial. Specifically, but not limited to the following:
 - a. Failure to mention the missing bag during chain argument.
 - b. Failure to utilize evidence of prints being analyzed by SLED.
6. Ineffective assistance of counsel for the failure to properly handle the issues involving the identification of Applicant by Chandra Wright both pre-trial and during trial. Specifically, but not limited to the following:
 - a. Failure to advise Applicant regarding Ms. Wright's testimony and identification.
 - b. Failure to raise a notice argument.
 - c. Requesting that show-up be excluded from jury instead of using it as basis for defense argument (not questioning Detective Sims regarding it).
7. Ineffective assistance of counsel for introducing Chandra Wright's statement, which bolstered her testimony.
8. Ineffective assistance of counsel for agreeing to allow State to explain how Applicant was arrested due to vehicle information when inconsistent information regarding the vehicle(s) existed. Failure to question the State's

witnesses or raise an argument to the jury regarding the inconsistent vehicle information.

9. Ineffective assistance of counsel for requesting that the sequestration order be lifted to call witnesses and then failing to utilize those witnesses.
10. Ineffective assistance of counsel for failure to provide the court with a specific request to charge.
11. Ineffective assistance of counsel for failure to object to State's argument, about what Applicant did not say, during closing argument.
12. Ineffective assistance of counsel for failure to make an argument to the jury regarding the video, which was replayed for the jury.
13. Ineffective assistance of appellate counsel for failure to raise all meritorious issues on appeal. Specifically, but not limited to the following:
 - a. Failure to address pre-trial motion and objections regarding identification.
 - b. Failure to address pre-trial motion and objections regarding the admissibility of statements.

Respectfully submitted,



Tricia A. Blanchette
Attorney for the Applicant
Post Office Box 12725
Columbia, South Carolina 29211

November 2, 2012
Columbia, SC

BEITH A. OAKFORD
CLERK OF COURT
LEXINGTON, SC

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)
 Quincy A. McCants, #318280,)
 Applicant,)
 v.)
)
 State of South Carolina,)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT

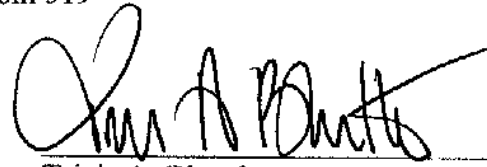
2009-CP-32-4236

CERTIFICATE OF SERVICE

ORIGINAL

I, Tricia A. Blanchette, PCR counsel, hereby certify that I hand delivered this 2nd day of November 2012, a copy of an Amendment to Application for Post Conviction Relief to Salley W. Elliott of the Attorney General's Office, at:

Office of the Attorney General
 Att: Salley W. Elliott, Sr. Ast. Deputy AG
 1000 Assembly Street, Room 519
 Columbia, SC 29201



Tricia A. Blanchette
 PO Box 12725
 Columbia, SC 29211
 (803) 988-0008

November 2, 2012

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 LEXINGTON, SC

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FILED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 11TH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	Case No.: 2009-CP-32-4236
Quincy McCants, #318280	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the application for post conviction relief (PCR) filed September 18, 2009, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at December 2005 term of the Lexington County Grand Jury for armed robbery. Jonathan Harvery, Esquire, and Stanley L. Myers, Esquire, represented the Applicant. On October 16 and 17, Applicant underwent trial, pursuant to which he was found guilty as indicted. The Honorable R. Knox McMahon sentenced him to confinement for a period of twenty-two years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. McCants, Op. No. 2009-UP-194 (S.C. Ct. App. filed May 6, 2009). The Remittitur was issued on May 22, 2009.

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's records from the South

Carolina Department of Corrections, the trial transcript, and Applicant's appellate records.

II.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

- I. Ineffective assistance of counsel.
 - a. Failure to properly prepare for trial and conduct an independent investigation of the case.
 - b. Failure to raise contemporaneous trial objections.
 - c. Failure to properly address the forensic evidence and SLED report regarding that evidence.

III.

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991). Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115 at 117, 386 S.E.2d 624 at 625 (1989), *citing* Strickland.

Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; Alexander, 303 S.C. at 541-42, 402 S.E.2d at 485. The Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, *Id.* Applicant must overcome this presumption in order to receive relief. Cherry, *Id.*

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test.

However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

2/23, 2010.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Quincy McCants,	)	C.A. No. 2009-CP-32-4236
S.C.D.C. No. 318280,	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed September 18, 2009. Respondent subsequently filed its responsive pleadings. An evidentiary hearing into the matter was convened on April 13, 2013 at the Lexington County Courthouse. Applicant was present and was represented by Tricia Blanchette, Esq. Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. Applicant was indicted at the December 2005 term of the Court of General Sessions for Lexington County for armed robbery (2005-GS-32-4674). He was represented by Jonathan Harvey, Esq., and Stanley Myers, Esq. On October 16, 2006, the State called its case for trial where the jury found Applicant guilty as indicted. The Honorable R. Knox McMahon sentenced Applicant to twenty-two (22) year term of imprisonment.

A timely notice of appeal was filed on Applicant's behalf and perfected pursuant to Anders by Wanda Carter, Esq., of the Office of Appellate Defense. The South Carolina Court of

Appeal's affirmed his sentence in conviction in an unpublished opinion. State v. McCants, 2009-UP-194 (S.C. Ct. App. filed May 6, 2009). The Remittitur soon followed.

SUMMARY OF FACTS AND TESTIMONY FROM APPLICANT'S TRIAL

Prior to jury selection, Attorney Harvey made various pre-trial motions. He made a motion pursuant to Rule 403, SCRE, to redact portions of Applicant's statements that concerned his drug use. Attorney Harvey then further challenged the admissibility of the statements based on relevance. Attorney Harvey made an expoliation motion to suppress identification of prints found on a chip bag at the scene as Applicant's prints. The objection was renewed when the State's expert examiner testified on the matter. Attorney Harvey also moved to suppress substitute photographs that the State submitted as evidence in lieu of the presenting the evidence itself. The Trial Judge denied the objection and found the chip bag constituted a fungible food item. A Neil v. Biggers hearing was held regarding the victim's out-of-court identification. The Trial Judge ultimately ruled that the identification procedure was not unduly suggestive. The objection was renewed during the victim's testimony.

The victim clerk identified Applicant and testified that he was the only person in the convenience store during the armed robbery. She recalled the tan cutlass that Applicant had driven. She also witnessed him touch two chip bags during the course of the offense. Detective Simms determined that the vehicle belonged to Applicant's mother, Gloria Hall. The prints on the chip bag were identified as Applicant's prints.

The defense put up a case. Brown, a DSS employee and Applicant's aunt, testified that the suspect captured on tape was not Applicant. She based her opinion on her review of the tape in Attorney Harvey's office prior to trial.

The jury returned a guilty verdict. Applicant confessed to committing a strong armed robbery and thanked his attorneys for their hard work. The trial judge also commended the quality of representation provided to Applicant.

SUMMARY OF TESTIMONY AND EVIDENCE OFFERED AT THE PCR HEARING

Applicant's testimony

Applicant testified counsel that he retained Attorney Harvey in 2006 to represent him on a host of armed robbery charges. He first met with counsel in January that year and met with him numerous times prior to trial. Applicant kept a log of Harvey's visits that detailed twelve meetings prior to trial. See Respondent's Exhibit 16. He claimed that he did not fully understand their conversations but would inform Attorney Harvey of his miscomprehensions. Applicant testified that some of their meetings were bad, but others were not so. Correspondence reflects Applicant's substantial involvement in his case. See Respondent's Exhibit 14. He was unaware if Attorney Harvey knew the extent of his educational attainment.

Applicant testified that Attorney Harvey provided him with the discovery materials but failed to take the time to explain the import of the State's evidence. Applicant stated that he was surprised when the solicitor presented video recording from the convenience store's surveillance system at trial. Applicant stated that he had no knowledge that the State would present the video during its case.

Applicant testified Attorney Harvey was deficient in the manner he investigated, communicated to Applicant, and presented fingerprint evidence at trial. Police lifted latent prints from a bag of chips held by the assailant. Applicant opined that the bag of chips and latent prints were critically important pieces of evidence. In a meeting that occurred in May of 2006, Applicant stated Attorney Harvey told him that there was no identification or 'hit' to the prints in

the State's AFIS database. Applicant stated that SLED issued a report dated November 24, 2005 that he believed established his innocence. See Applicant's Exhibit 2. He stated that he would have wanted Attorney Harvey to present the SLED report at trial and is now dismayed Attorney Harvey did not pursue the strategy. Applicant stated that he only received a copy of the State's latent print examination report after his conviction. Lexington County law enforcement utilized its own expert that identified Applicant as the source of the prints on the chip bag. He stated that the police initially got a 'hit' to Applicant's prints through its own database. See Applicant's Exhibits 5-7. Applicant stated he was upset Attorney Harvey did not introduce the conflicting SLED report that rendered a match 'inconclusive' from its own AFIS database. However, he recalled that Attorney Harvey retained an independent expert, Don Girndt to evaluate the State's expert findings on the matter.

Applicant testified he was surprised when Attorney Harvey made a motion to suppress the fingerprint evidence based on an insufficient chain-of-custody. Applicant opined that there was no need in retaining an independent expert if damaging evidence was inadmissible.

Applicant testified that Attorney Harvey never explained how the solicitor would use his custodial statement against him. He did not recall if he discussed the statement with Attorney Harvey; yet he was certain that Attorney Harvey never explained to him how the solicitor would present his verbal statement. See Applicant's Exhibits 3-5.

Applicant testified Attorney Harvey failed to tell him until the eve of trial that the victim clerk from the convenience store identified him as the perpetrator. The solicitor made a late disclosure that an unknown officer utilized a single photograph and conducted a 'show-up' identification procedure with the victim soon after the armed robbery. See Applicant's Exhibit 10. Applicant stated Harvey ensured him the victim clerk would not be able to testify because

she improperly identified him. He was also surprised that the victim would testify in narrative manner while the surveillance video was played for the jury. The jury requested to view the surveillance video again during its short deliberations.

Applicant testified that Attorney Harvey failed to utilize the investigative bulletin issued by the Lexington County police soon after the armed robbery to locate a suspect. He stated that he discussed the matter with Harvey. He told Harvey that the sketch looked nothing like him and that had no connection to the purported vehicle used by the assailant. See Applicant's Exhibit 9. He recalled that Attorney Myers declined to present evidence on this matter because he was worried about exposing the jury to Applicant's additional pending charges. He stated that he was further unaware that his attorneys would ask him to show his "gold tooth" to the jury at trial.

Prior to trial, Attorney Harvey made a motion to be relieved which was denied but led to second attorney, Attorney Myers, being appointed to his case to assist Harvey. Applicant stated Attorney Harvey remained the primary attorney on the case. Applicant reviewed certain areas of his case and discussed specific issues with Attorney Myers. He was not told how his attorneys would split up his case at trial.

Applicant testified to the extent of plea negotiations in the case. He did not want to plead guilty and only entertained the matter because his mother had pressured him on the matter. He recalled that Attorney Harvey tried to negotiate a plea offer on a non-violent offense with the solicitor. When he learned that the solicitor would not consider an offer for non-violent offense, he insisted on proceeding to trial.

Applicant testified Attorney Harvey filed a post-trial motion for reconsideration of Applicant's sentence. Yet, he stated he never expressed a desire for the post-trial motion to his

attorney. He ultimately requested Attorney Harvey withdraw the motion. He claimed he was misled in this endeavor.

Last, Applicant reasoned that his attorneys fought hard for him but speculated that they could have done more. Applicant did not recall if he told Attorney Harvey that he desired a defense strategy centered on the appellate court's reversing his conviction; although he conceded that he was asking this Court to do just that. Furthermore, Applicant stated Attorney Harvey also represented on a subsequent trial after his conviction on this case. Attorney Harvey's subsequent representation led to an acquittal.

Applicant testified that he was dismayed appellate counsel filed an Anders brief on his behalf. He stated that he believed his case contained two meritorious issues that would have warranted his reversal. First, he alleged appellate counsel should have briefed a Denno argument regarding voluntariness of his statement to police. It was Applicant's opinion that the statement was rendered involuntary by his mental state at the time of the interview because he was purported intoxicated. Second, he alleged appellate counsel should have briefed an actual innocence argument supported by the SLED AFIS report.

Testimony of Stanley Myers, Esq.,

Attorney Myers testified to the circumstances surrounding his appointment to Applicant's case. Attorney Myers recalled that Attorney Harvey moved to be relieved from the representation in 2006. He recalled that Judge McMahon was not inclined to grant Attorney Harvey's motion because the solicitor was adamant on a proximate trial date. As a result, Judge McMahon phoned him and inquired if Attorney Myers would accept an appointment as a second chair attorney in Applicant's case to alleviate Applicant's subjective concerns. Attorney Myers accepted the appointment and opined that Attorney Harvey held an esteemed reputation as an excellent

attorney. Attorney Myers soon met with Attorney Harvey and Applicant and learned that Attorney Harvey had also represented Applicant on past criminal charges. In addition he sent correspondence to Applicant that memorialized their consultations. See Respondent's Exhibit 7-8.¹ Attorney Myers also learned that the solicitor intended to call another armed robbery case against Applicant to trial after the disposition of this case. Based on Attorney Myers initial involvement in Applicant's case, he developed the opinion that Attorney Harvey was exceptionally knowledgeable on the case. As a result, he told Attorney Harvey that he would direct his involvement in the case in any matter that Attorney Harvey saw fit. Ultimately, he opined that he was appointed to assist Attorney Harvey in communicating to Applicant. He recalled his efforts to assist Attorney Harvey in the presentation of Applicant's case.

Attorney Myers testified that Attorney Harvey handled the pre-trial motions. He noted that his chief responsibility was to cross-examine the victim clerk. He identified the solicitor's letter that explained how and when the prosecuting office learned of victim's 2004 identification of Applicant. See Applicant's Exhibit 10. He was uncertain if the matter was in fact a last minute notice. Yet, Attorney Myers testified he and Attorney Harvey discussed the matter and possible suppression strategy with Applicant prior to trial.

Attorney Myers testified his trial strategy was fashioned in a matter to prevent opening the door to Applicant's pending armed robbery charges; it was the defense team's chief concern at trial. Attorney Myers testified that Applicant was thoroughly aware of this matter. Thus, Attorney Myers noted that he refrained from questioning the victim on her 2004 out-of-court identification of Applicant as the assailant. The fear of opening the door to the pending charges

¹ In **Respondent's Exhibit 7**, Attorney Myers explains the defense strategy concerning the finger print evidence. He explained the reason why the SLED electronic fingerprint report came back as inconclusive match. The Introduction of the report would not support a credible argument that Lexington County expert latent print examiner falsely identified Applicant as the source of the prints on the chip bag.

was further heightened regarding testimony concerning the escape vehicle. Thus, the defense team stipulated to allowing limited identification testimony concerning the assailant's vehicle. Attorney Myers asserted Applicant was fully cognizant of the chosen trial strategies and tactics. He was adamant that every aspect of the case was discussed with Applicant, with the exception of proposed jury instructions.

Attorney Myers testified that he prepared and executed his cross-examination of the victim in a matter designed to elicit testimony on the defense theory of mistaken identity. Thus, Attorney Myers moved the victim's statement into evidence during his cross-examination. See Applicant's Exhibit 8. A booking report that contained Applicant's personal information as to his height, weight, etc. was utilized to directly contrast the victim's description of Applicant. Within the ambit the same trial strategy, Applicant was presented as an exhibit of sorts to show his gold tooth. Attorney Myers stated that his representation of Applicant did not extend to the post-trial motion or to Applicant's subsequent trial. In retrospect, Attorney Myers described Attorney Harvey's performance as "outstanding" He did not equivocate in his evaluation of Attorney Harvey.

Agent Abilen

Agent Abilen testified to her experience and qualification. She reviewed the request to run the latent prints recovered from the chip bag through the SLED database. Agent Abilen explained that AFIS is one of many databases that retains prints; yet, it is the only database utilized by SLED. She testified that typically the prints are electronically scanned into the AFIS system. She reviewed the November 15, 2004 report and SLED file on this case and noted that only one submitted print from the chip bag was suitable for examination. She stated that they recovered a print but it did not match prints within the AFIS database. She noted that SLED

agents did not conduct a visual inspection of the recovered print in this case. It was her opinion that inclusive finding in AFIS would not diminish a positive hit within a local county database.

Johnathan Harvey, Esq.,

Attorney Harvey testified that he has practiced law since 1981. He testified to the circumstances that surrounded getting retained on Applicant's cases. Attorney Harvey met with Applicant and his mother where she explained Applicant had numerous pending charges. Attorney Harvey extensively communicated with Applicant regarding the representation. Additionally, he extensively utilized correspondence to further communicate with Applicant. Attorney Harvey testified to the circumstances surrounding his motion to be relieved from Applicant's case. He stated he had disagreements with Applicant concerning "where the case was headed." Harvey explained that "they did not see eye-to-eye." The problem was alleviated subsequent to his unsuccessful motion to be relieved from Applicant's case. Attorney Harvey filed for discovery and independently evaluated the State's evidence against Applicant. He testified that he met with Applicant multiple times where he explained all of the State's evidence to Applicant's satisfaction. Attorney Harvey noted he wrote a letter to Applicant on October 6, 2006 that memorialized their September 29, 2006 conference where the State's latent print identification evidence and Applicant's statement to police were discussed. Several of Attorney Harvey's letters to Applicant concerning his assessment of State's evidence and Applicant's expectations were moved into evidence. See Respondent's Exh. 13; Respondent's Exh. 14²; Applicant's Exh. 7. Attorney Harvey was also adamant he reviewed and discussed the convenience store's surveillance tap with Applicant.

Attorney Harvey testified to his course of conduct in his investigation and evaluation of the State's latent print report and evidence that identified Applicant's prints on the chip bag.

² Here, Harvey advised Applicant that trying his case to win the appeal is an inauspicious strategy.

Attorney Harvey sought out an independent examination from Don Girndt. Girndt met with LCSD's expert latent prints examiner, Duane Johnson, a former examiner with the FBI, and reviewed all of the evidence referenced in his Johnson's findings. See Respondent's Ex. 9-12. Girndt informed Attorney Harvey that the State no longer had possession of the chip bag in evidence. In an in-camera hearing at trial, Attorney Harvey utilized Girndt's investigation in framing his chain-of-custody suppression argument. Attorney Harvey reasoned that it was unnecessary to produce testimony from Girndt, or Girndt's report in the alternative, to preserve his chain-of-custody argument for appeal. Attorney Harvey further noted that Girndt's findings corroborated Johnson's harmful findings. Attorney Harvey reasoned that he did not want to introduce an adverse report that had the potential to bolster the credibility of key State evidence. Attorney Harvey stated that he preserved his objection to the missing chip bag at the appropriate time.

Attorney Harvey decided to not utilize the SLED latent print report in his case because the evidence was potentially more harmful than beneficial. He stated that the absence of Applicant's prints in the AIFS database was not dispositive on the presence ~~of~~ ^{or} absence of Applicant's prints in the LCSD database. In contrast, Attorney Harvey worried that he risked opening the door to solicitor presenting rebuttal evidence on the origins of Applicant's prints being cataloged into the LCSD database.

Attorney Harvey testified that Applicant did not authorize him to negotiate for a favorable plea agreement until the eve of trial. At this juncture of the representation, Attorney Harvey discussed a comprehensive plea offer regarding all of Applicant's pending charges with the solicitor. The solicitor was open to pleading Applicant down to the lesser-included offense of strong armed robbery. However, because the solicitor was only willing to plead Applicant

“straight-up,” Applicant instructed Attorney Harvey to withdraw from the plea negotiations and proceed to trial. Although Attorney Harvey was adamant he explained the difference between an offense classified as violent compared to a non-violent classification, he opined that the particular advice here did not factor in Applicant’s decision to proceed to trial.

Attorney Harvey testified that he moved to suppress the victim clerk’s out-of-court identification of Applicant based upon the solicitor’s recent discovery and disclosure of the identification procedure. He testified to the circumstances surrounding the identification procedure. Detective Sims did not authorize the photo line-up nor did he know what took place purportedly between an unknown officer and the victim. He recalled being prepared to argue the motion at the start of the trial. Attorney Harvey noted he apprised Applicant of his legal motions and on other salient evidentiary issues at the October 16th consultation prior to trial. The defense team made the decision to not elicit testimony regarding the particular known facts about the victim’s out-of-court identification of Applicant in the presence of the jury because of the continued concern regarding opening the door to Applicant’s six pending armed robbery charges. Furthermore, Attorney Harvey reasoned that this line of questioning would have been cumulative to testimony elicited elsewhere to establish the defense’s theory on the victim’s mistaken identity.

Attorney Harvey made the decision to not present Applicant at the Denno hearing based upon his opinion of Applicant’s ~~unquestionable~~ ^{questionable} credibility. He stated that calling the Applicant as a witness could have been problematic; even in an in camera hearing. Attorney Harvey stated that he reviewed the record of Applicant’s verbal statements to police at length with him prior to trial.

Attorney Harvey testified that he would have made the decision to present Applicant's aunt as a defense witness instead of Applicant's girlfriend and mother solely based upon his credibility assessments of potential defense witnesses. He was adamant that the sequestration complications that occurred at trial would not have impacted his decision here.

Attorney Harvey reasoned that comments made ^{by} ~~the~~ the solicitor in the State's closing argument regarding Applicant's statements to police did not merit an objection. He noted that he made the appropriate admissibility objection when the statements were introduced during the State's case-in-chief. Attorney Harvey explained his general practice in tempering making objections during a solicitor's closing argument unless a particular comment is egregious. He adopts the rationale that an objection accentuates the impact of the questionable comment made during a closing argument.

Attorney Harvey recalled the circumstances surrounding filing and then subsequently withdrawing his post-trial motion for a reconsideration of Applicant's sentence. He made the unilateral decision to file the motion in order to garner additional time to prepare the Applicant's next trial. When Applicant communicated that he did not desire a reconsideration of his sentence, Attorney Harvey immediately withdrew the motion and filed the notice of appeal. Attorney Harvey testified to his prior appellate practice and experience. He believed he adequately preserved his objections to the admissibility of the State's evidence and testimony from its witnesses.

APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must

prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668, 104 S.Ct. at 2064. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, *supra*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, Applicant's appellate records, the transcripts and documents from the prior proceedings, and legal arguments of the attorneys. Pursuant to S.C.

Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

This Court notes finds Attorney Harvey and Attorney Myers' testimonies to be substantially more credible than Applicant's at times illogical and suspect testimony. Further this Court finds Applicant has received the benefit of exemplary representation, noting that this finding extends to PCR counsel's exhaustive efforts to present every conceivable allegation that this forum supports. However, this Court finds Attorney Harvey and Attorney Myers' performance and record keeping in this matter left very little room to speculatively challenge their sound representation, let alone their constitutional efficacy. As a result, Applicant falls well short in meeting his burden on his numerous allegations of ineffective assistance of counsel to necessitate relief.

A.

Applicant failed to meet his burden to prove his attorneys were ineffective for failing to investigate his case. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). This Court is firmly convinced that Attorney Harvey's efforts to independently evaluate the State's evidence and conduct additional investigation was not just sufficient, his representation here was exemplary. Both attorneys provided compelling testimony on the matter. Thus, this Court finds the allegation, couched in general terms, is without merit. The facial basis of the vast majority of Applicant's PCR allegations were not derived from a lack of preparation and investigation, but instead strategic choices employed by the defense team to not take certain actions that included the presentation of defense witnesses

and scope of cross-examination. This Court's review of the strategic choices employed by the defense team are discussed at a latter point in this order. Therefore, this allegation is denied and dismissed. 

This Court also finds Applicant has failed to meet his burden to prove his attorneys were ineffective for allegedly waiting until the eve of trial to inspect the evidence. This Court finds Attorney Harvey's testimony on the matter credible and finds his decision sound in consulting Girndt to also evaluate the particular strength of the State's case. Furthermore, Girndt relayed his investigation of the State's evidence in a timely matter to allow the attorneys to make any necessary adjustments in preparation for trial. The record shows Attorney Harvey executed a well-reasoned and ^{thorough} ~~through~~ suppression defense of the chip bag based on spoliation.  The record shows he submitted memoranda in support of his argument. Regardless, Applicant attempt to show prejudice here was entirely speculative and unconvincing. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result."). Therefore, this allegation is denied and dismissed.

B.

This Court readily denies Applicant's allegation that his attorneys were ineffective for failing to adequately communicate developments in his case to him. "From counsel's function as assistant to the defendant derive the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution." Strickland, 466 U.S. at 688. This Court finds Attorney Harvey's testimony that he reviewed all relevant evidence and aspects of the case to be convincing. In particular, Attorney Harvey testified that on

September 29, 2006, he met with Applicant and discussed the victim's statement and latent prints with him. Prior to trial, Attorney Harvey also apprised Applicant of the substance of suppression motions. Attorney Myers also testified Applicant was well aware of defense team's trial strategy and related constraints. This Court finds Attorney Myers' testimony also convincing here. In contrast, this Court finds Applicant's testimony to be facially suspicious. Even Applicant's personal log of consultations showed his attorneys went above and beyond to communicate with him. In addition, ample irrefutable correspondence was presented at the PCR hearing. Therefore, these allegations are readily denied and dismissed.

Applicant's allegation that his attorneys were ineffective for failing to adequately advise Applicant concerning the terms and consequences in pursuing a possible plea. "To show prejudice where a plea offer has lapsed or been rejected because of counsel's deficient performance, defendants must demonstrate a reasonable probability both that they would have accepted the more favorable plea offer had they been afforded effective assistance of counsel." Missouri v. Frye, 132 S. Ct. 1399, 1402-03, 182 L. Ed. 2d 379 (2012). Notably Applicant still protests his innocence in light of the convincing evidence of his guilt here. He has wholly failed to make a credible showing that his lack of knowledge concerning the sentencing consequences of the indicted offense to the possible lesser-included offenses impacted his decision to proceed trial. This Court finds Attorney Harvey's testimony on the matter convincing. Therefore, this allegation is readily denied and dismissed.

C

Applicant's allegation that Harvey was ineffective for failing to present Applicant as a witness at the Denno hearing is without also merit. "[T]he prosecution must prove ... by a preponderance of the evidence that the confession was voluntary." State v. Smith, 268 S.C. 349,

354, 234 S.E.2d 19, 21 (1977). “Factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion.” State v. Parker, 381 S.C. 68, 74, 671 S.E.2d 619, 622 (Ct. App. 2008). Based on this Court’s observation of Applicant at the PCR hearing, this Court finds counsel’s decision to present Applicant at pre-trial hearing to be sound, if not advisable. Applicant has presented no credible testimony or evidence to disrupt the Trial Judge’s finding that his statements were “given freely and voluntarily.” (Trial Tr. p.59).

Furthermore, this Court finds Attorney Harvey and Myers’ collective performance was effective in light of sound strategy. “[A]s with other assertions of trial strategy, we consider the particular circumstances of the case.” Ingle v. State, 348 S.C. 467, 475, 560 S.E.2d 401, 405 (2002).. The record shows Harvey deftly utilized the Denno hearing to mount a bifurcated Rule 403, SCRE and Rule 401, SCRE, attack on the admissibility of Applicant’s oral statements to police. The Record shows that Applicant gave two short and inconsistent statements to police. In his second oral statement, Applicant claimed he had no memory of his actions during because he was using cocaine. Applicant failed to show how his testimony would have been beneficial here. Therefore, this allegation is denied and dismissed.

Last, Applicant failed to meet his burden to prove appellate counsel was ineffective for not submitting a merits brief for this issue on appeal. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). However, appellate counsel is not required to raise every nonfrivolous issue that is presented by the record. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). This Court finds that ample evidence that shows that the trial judge did not abuse his

discretion in finding Applicant's statement was voluntarily rendered.³ The Record shows Applicant was informed of and ~~this~~ ^{thus}  waived his right to self-incrimination; the record also shows the absence of coercion. Applicant has presented no credible evidence that call into question his competency during the police interviews. In addition the length and circumstances surrounding the police interview and the subsequent interrogation were unremarkable. Therefore, this allegation as to ineffective assistance of appellate counsel is denied and dismissed.

D.

Applicant failed to meet his burden to prove Attorney Harvey was ineffective for making an purported failing to preserve his objection to the admissibility of the latent print. "In order to preserve an evidentiary issue for review on appeal, a contemporaneous objection must be made when the testimony is offered." State v. Johnson, 363 S.C. 53, 609 S.E.2d 520 (2005). "If a party fails to properly object, the party is procedurally barred from raising the issue on appeal." Id., at 58-59, 609 S.E.2d at 523. Attorney Harvey made pre-trial motion to suppress latent print evidence based upon spoliation, followed by an objection to the admissibility of the latent prints based on chain of custody; the Record also shows that Attorney Harvey made his chain-of-custody objection when latent print exhibits were marked for identification. (Trial Tr. pp.230-33). He further detailed the basis of his argument in a subsequent in-camera hearing. (Trial Tr. pp.311-17). At the close of the in-camera hearing, the trial judge immediately ruled that the exhibits were in evidence subject to previous objections. (Trial Tr. pp.318). Therefore the issue was properly preserved for appellate review. See Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d

³ This Court notes that although appellate counsel did not testify at the PCR hearing, there is a strong presumption effective assistance of counsel. See Burt v. Titlow, 134 S. Ct. 10, 17, 187 L. Ed. 2d 348 (2013) ("It should go without saying that the absence of evidence cannot overcome the 'strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance.'").

517, 520 (1993) (“[P]ost-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.”).

In addition, Applicant failed to meet his burden to prove Attorney Harvey was ineffective for failing to preserve his motion to suppress the latent prints based on spoliation of evidence. The trial judge pluralized “objections” when he ruled the latent prints were admissible subject to the previous objections. Regardless, Applicant also failed to prove the issue would have been meritorious on appeal. See Arizona v. Youngblood, 488 U.S. 51 (1988). “To establish a due process violation, a defendant must demonstrate (1) that the State destroyed the evidence in bad faith, or (2) that the evidence possessed an exculpatory value apparent before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means.” State v. Cheeseboro, 346 S.C. 526, 538-39, 552 S.E.2d 300, 307 (2001). Here, the record shows an absence of bad faith in the decision to not preserve the chip bag once the latent prints were retrieved from it. No new credible evidence was presented at the PCR hearing on the matter. Next, Applicant failed to show how the chip bag would have had exculpatory value prior to its abandonment or destruction. At trial, Det. Hickman testified to his general procedure in “making a lift off a bag of potato chips.” (Trial Tr. p.238). He explained the substantial unlikelihood that the print would remain on the plastic bag once the latent print is retrieved. Furthermore, Det. Hickman testified he didn’t collect the chip bag because “it’s a food item. I don’t like to collect food items and turn them in.” (Trial Tr. p.238). Therefore, this allegation is denied and dismissed.

Similarly, Applicant failed to meet his burden to prove Attorney Harvey was ineffective for not presenting an expert to strengthen his spoliation argument. See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (“A PCR applicant cannot show that he was

prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence.”). Regardless, Attorney Harvey’s decision to not present Girndt as defense witness at trial constituted valid trial strategy. This Court agrees that Girndt testimony would have yielded Applicant’s case no benefit while bolstering State expert’s findings. This Court finds its entirely speculative on how Girndt’s testimony could have augment Applicant’s pre-trial suppression argument.

Last, Applicant failed to meet his burden to prove Harvey was ineffective for not subpoenaing a SLED witness to testify concerning its inconclusive finding regarding the print. Again, Attorney Harvey’s decision here constituted valid trial strategy based on a reasonable assessment of the benefits and detriments at play. Simply, because AFIS was not an all-inclusive database, the testimony offered from the Agent at the PCR hearing would not have been beneficial to Applicant’s case. This Court agrees that an inclusive match within the AFIS database would not diminish a positive hit within a local county print database. See State v. Beam, 336 S.C. 45, 518 S.E.2d 297 (Ct.App.1999). Therefore, this allegation is denied and dismissed.

E.

Applicant failed to prove Attorney Harvey was ineffective for failing to make a “notice” argument to the solicitor’s disclosure of victim’s original out-of-court identification of Applicant. “A Brady violation would have occurred only had the evidence been favorable to the defense, the State possessed and withheld it, and it was material to a [defendant]’s guilt or punishment. Evidence is material if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” State v. Geer, 391 S.C. 179,

192, 705 S.E.2d 441, 448 (Ct. App. 2010). “No due process violation occurs as long as Brady material is disclosed to a defendant in time for its effective use at trial.” United States v. Smith Grading & Paving, Inc., 760 F.2d 527, 532 (4th Cir.1985). This Court finds Attorney Myers’ testimony credible and assessments here to be convincing that the defense team had ample time to make necessary pre-trial adjustments. In response to the solicitor’s disclosure, Attorney Harvey preserved his client’s rights when he filed a motion in objection to the impropriety of the out-of-court identification as the merits for his suppression arguments. Attorney Harvey apprised Applicant of the late developed prior to trial; he testified that he was prepared to address the argument at the start of trial. This Court finds Attorney Harvey’s assessment here convincing.  Importantly, this Court takes into account the wealth of criminal litigation experience shared by Attorney Harvey and Myers in disposing of this allegation. Furthermore, the only possible remedy here would have been a continuance. The Record shows Attorney Harvey apprised the trial judge during the pre-trial motions that Applicant was anxious for a speedy disposition of his case. Therefore, this allegation is denied and dismissed.

Concerning the post-trial motion, Attorney Harvey testified Applicant instructed the post-trial motion for reconsideration of Applicant’s sentence ^{be withdrawn } because he desired no further delay in proceeding to next trial. Considering Applicant was acquitted at his subsequent trial and avoided an LWOP sentence, he has very little to complain about here. Therefore, this allegation is denied and dismissed.

Applicant also alleges that appellate counsel was ineffective for failing to brief an issue concerning the admissibility of the victim clerk’s out-of-court identification of Applicant. “A criminal defendant may be deprived of due process of law by an identification procedure arranged by police which is unnecessarily suggestive and conducive to irreparable mistaken

identification.” State v. Traylor, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004). “Generally, the decision to admit eyewitness identification is at the trial judge's discretion and will not be disturbed on appeal absent an abuse of such, or the commission of prejudicial legal error.” State v. Johnson, 311 S.C. 132, 427 S.E.2d 718 (Ct.App.1993). The following factors are to be considered in evaluating the totality of the circumstances as to whether an identification is admissible:

[T]he opportunity of the witness to view the criminal at the time of the crime, the witness's degree of attention, the accuracy of the witness's prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation.

Neil v. Biggers, 409 U.S. at 199. This Court finds Applicant failed to show the merits of the substantive issue. The record shows that the Trial Judge did not abuse his discretion in finding the victim clerk's identification was reliable based upon the totality of circumstances. The victim clerk had clear and sufficiently lengthy confrontation with Applicant during of the commission of the armed robbery. Furthermore, the victim clerk testified that no one else was present during the offense. The victim clerk provided thorough details regarding Applicant's conduct in executing the armed robbery. Therefore, Applicant has failed to persuade of the merits of this argument.

F.

Applicant raises several distinct allegations that all attack the defense team's strategic decision to limit bad character evidence from Applicant's six other pending armed robbery charges. Despite the Trial Judge's comment that evidence other armed robberies was facially admissible to prove identity here, Attorney Harvey's diligent trial preparations yielded a favorable discretionary stipulation agreement with the solicitor. (Trial Tr. p.214). See State v.

Cheeseboro, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001) (“The fact that the same weapon was used in both the barbershop and cab driver murders goes to show appellant's identity as the barbershop killer.”). As a result, evidence and testimony of how the investigation of other crimes linked Applicant to this offense was not presented to the jury. The solicitor was willing and capable of presenting clear and convincing evidence of the prior armed robberies. (Trial Tr. pp.207-17). The Record shows that Applicant was implicated in string of armed robberies of convenience store and fast food eateries in the greater Columbia area where the assailant wore a distinctive hat and traveled in the same vehicle. Several different law enforcement agencies investigated the crimes. This Court notes that the stipulation was a product of Attorney Harvey’s exceptional performance. Thus, this Court finds Applicant’s allegation that Attorney Harvey was deficient for not objecting to testimony that the vehicle used by the assailant in the armed robbery was registered to Applicant’s mother because of the valid strategic decision made by the attorneys. See Lamarca v. Sec’y, Dep’t of Corr., 568 F.3d 929, 937 (11th Cir. 2009) (“[S]trategic decision to limit his cross-examination of Tonya Flynn “to avoid opening the door to potentially incriminating information that would not otherwise have been admissible,” recognized such decisions are “virtually unchallengeable.”).

Similarly, Applicant alleges Attorney Myers performance in cross-examining the victim clerk was deficit. He asserts Attorney Myers should have cross-examined examination on circumstances surrounding her November 4, 2004 out-of-court identification procedure. Attorney Myers testified he fashioned his cross-examination of the victim in manner to prevent opening the door to Applicant’s prior bad acts. This Court agrees with his assessment. An attempt to impeach the credibility of the victim and the police regarding the November 4, 2004 identification procedure would have the door to the introduction of rehabilitative evidence that