

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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CERTIORARI TO RICHLAND COUNTY S.C. SUPREME COURT
Court of Common Pleas
Honorable Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2018-000145
Lower Case No. 2015CP4001658

Ricky Bowman Petitioner,

vs.

The State of South Carolina Respondent.

APPENDIX
VOLUME I

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State of South Carolina)
County of Richland)

In the Court of Common Pleas
Fifth Judicial Circuit
2015-CP-40-1658

Ricky Bowman,)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)
_____)

Transcript of Record

January 30, 2017
Columbia, South Carolina

B E F O R E:

The Honorable Jocelyn Newman, Judge

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

Anna R. Good, Esquire
Attorney for the Applicant

Jessica E. Kinard, Esquire, Assistant Attorney General
Attorney for the Respondent

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

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1 MS. KINARD: May it please the court?

2 THE COURT: Yes, ma'am.

3 MS. KINARD: This is the matter of *Ricky Bowman vs.*
4 *The State of South Carolina*. This is case number
5 2015-CP-40-01658. Mr. Bowman filed his application for
6 post-conviction relief on March 17, 2015. It was later
7 amended by and through his counsel, Anna Good, on September
8 21, 2015, I believe. Mr. Bowman is presently confined in
9 the Department of Corrections pursuant to orders of
10 commitment of the clerk of county for Richland County --
11 excuse me, clerk of court for Richland County.

12 He was indicted at the April 2010 term of the general
13 sessions -- excuse me. He was indicted at the April 2010
14 term of the grand jury for Richland County for assault and
15 battery of a high in a aggravated nature, possession of a
16 weapon during the commission of a violent crime, armed
17 robbery, kidnapping, and burglary first degree. He was
18 represented at his trial by Mark Schnee, and this trial was
19 conducted from November 7th through 9th, 2011 before the
20 Honorable G. Thomas, Jr. Mr. Bowman was convicted as
21 indicted and sentenced to twenty years' imprisonment for
22 burglary first, armed robbery, and kidnapping; ten years
23 for assault and battery of a high and aggravated nature;
24 five years for possession of a weapon during the commission
25 of a violent crime. These sentences are to be served

1 concurrently.

2 Timely notice of appeal was filed on his behalf, and
3 an appeal was perfected by Benjamin Tripp of the Office of
4 Appellate Defense. Following the submission of briefs by
5 both sides, the Court of Appeals dismissed the appeal. The
6 request for rehearings was filed and denied on June 2,
7 2014. A subsequent and timely petition for writ of
8 certiorari was filed to the Supreme Court of South
9 Carolina, which denied the petition January 15, 2015. A
10 remittitur was returned February 17, 2015.

11 The state is present and ready to proceed. Mr. Bowman
12 is present and represented by Anna Good.

13 THE COURT: All right, Ms. Good.

14 MS. GOOD: Thank you. At this time, call Ricky
15 Bowman.

16 THE COURT: Come up here, sir. Ms. Good will get that
17 for you and, in fact, you can probably go ahead and set
18 down those other papers so that you can place your left
19 hand on the Bible, raise your right hand, and face me.

20 RICKY BOWMAN, BEING DULY SWORN,
21 TESTIFIES AS FOLLOWS:

22 THE COURT: All right, have a seat in the witness
23 stand there.

24 DIRECT EXAMINATION BY MS. GOOD:

25 Q. Mr. Bowman, when were you originally arrested on these

1 charges?

2 A. I can't hear you.

3 Q. When were you originally arrested on these charges?

4 A. 2009. Like, October.

5 Q. Okay, and at what point did your attorney Mark Schnee
6 become your attorney?

7 A. Like, five, six months, something after that.

8 Q. Okay. So, the beginning of 2010 about?

9 A. Give or take.

10 A. Okay, and your trial was in November 2011, correct?

11 A. (NO AUDIBLE RESPONSE.)

12 Q. Okay. Between the time Mr. Schnee was -- or became
13 your attorney until the trial in 2011, approximately how
14 many times do you recall meeting with him?

15 A. Meeting with him?

16 Q. Uh-huh.

17 A. Met with him about maybe four times.

18 Q. Okay, and were you incarcerated or on bond?

19 A. I was incarcerated. I met with him four times, but I
20 was incarcerated, but he came to the jail, but after the
21 fourth time I never met with him again. He had just come,
22 drop his ID in here, give me a piece of paper to sign
23 because I was paying him off my books.

24 Q. Okay. When was the last time you met him before the
25 trial? Do you remember?

1 A. Yeah. I was supposed to -- I signed paperwork to take
2 a plea to seven years nonviolent, but my family wasn't in
3 the courtroom. So, I talked with Mr. Schnee, and he say
4 he'll bring me back up next day to take the plea.

5 Q. Okay. Let me back you up. When was that?

6 A. That was, like, a couple of months before they took me
7 to trial.

8 Q. Okay. So with the plea offer, you received a plea
9 offer from the solicitor's office?

10 A. I received two plea offers.

11 Q. What was the first plea offer?

12 A. First plea offer was seven years nonviolent.

13 Q. Okay, and what happened with that plea offer?

14 A. I ain't take it that day. So, my lawyer, Mr. Schnee,
15 came back and told me the plea had been taken off the
16 table even though I signed paperwork on it. I'm trying to
17 ask why they took all the paper ---

18 Q. All right.

19 A. --- off table if I signed paperwork.

20 Q. Okay. So, you got the plea offer of seven years
21 nonviolent?

22 A. Yeah. He brought me ---

23 Q. And he was ---

24 A. --- the paperwork to sign.

25 Q. Okay. It's, like, sentencing and stuff of that

1 nature?

2 A. Yeah.

3 Q. Okay. So, you signed that paperwork?

4 A. Yeah. I signed three pieces of those papers.

5 Q. Okay, and you were -- at that point, were you
6 expecting to go to plead to that plea offer?

7 A. Yeah. I was supposed to go plead the next day, but
8 they ain't never called me to court. He came to the county
9 jail. This was, this was the last time I seen him. He
10 came to county jail. He told me they came off my plea
11 because my codefendant, so they say, agreed to testify.

12 Q. Okay ---

13 A. So, then my plea was ten years, eighty-five.

14 Q. Okay. So, go back to the original plea offer, though,
15 the seven years nonviolent.

16 A. Uh-huh.

17 Q. You signed the paperwork. You were supposed to go to
18 court the next day to plead.

19 A. Uh-huh.

20 Q. And when did Mr. Schnee come back to you to tell you
21 that that plea offer was no longer on the table?

22 A. The next day.

23 Q. Okay. So, the day you were supposed to go to court?

24 A. Yeah. The day he was supposed to take me up, he came
25 to see me.

1 Q. Okay, and at that point, did he make a motion or file
2 anything for the solicitor's office to uphold that plea
3 offer?

4 A. No, nothing.

5 Q. Okay.

6 A. It just went from seven years nonviolent to ten,
7 eighty-five.

8 Q. Okay, and did he bring paper back, paperwork back with
9 him that second day with the plea offer for you to sign?

10 A. Not that I know of.

11 Q. Okay.

12 A. I wasn't really, I wasn't really interested in ten
13 years, eighty-five.

14 Q. Okay.

15 A. I was going to take the seven years nonviolent just to
16 get the situation over with.

17 Q. Okay, and when he came back with that second plea
18 offer, you said it was because the codefendant decided to
19 testify, correct?

20 A. Uh-huh.

21 Q. And who was the codefendant?

22 A. Sean Toran.

23 Q. Okay, and at that time, did you discuss the
24 codefendant and what he would testify to?

25 A. No. That was another issue. It was never -- I never

1 seen a statement or anything that codefendant supposed to
2 have said.

3 Q. So when y'all were originally arrested, did Sean Toran
4 give a statement?

5 A. No. He was locked up ---

6 A. Okay.

7 A. --- before me. He did, like -- he, he ain't give a
8 statement until the day of my trial.

9 Q. Okay.

10 A. He was in the county jail for three years.

11 Q. Well, that's where I'm going, but when y'all were
12 arrested, he didn't give a statement to law enforcement?

13 A. He was arrested before me.

14 Q. Okay, but he didn't give a statement to law
15 enforcement?

16 A. No. He...

17 Q. So, when Mr. Schnee came back saying that Sean Toran
18 was going to testify.

19 A. Uh-huh.

20 Q. At that time, did you know what he was going to
21 testify to?

22 A. No.. Mr. Schnee never presented me with a statement.

23 Q. Okay.

24 A. So.

25 Q. At what point did you see a statement by Sean Toran

1 about what he was going to testify to?

2 A. I never seen a statement, but the day of trial, my
3 first day of the trial, they were saying something about --
4 the solicitor said she sent Mr. Schnee synopsis 12:00
5 midnight that night. I go to trial the next day.

6 Q. Okay. So ---

7 A. A synopsis is not a statement.

8 Q. All right. So, your trial started November 7, 2011,
9 correct?

10 A. Uh-huh.

11 Q. And from what you are aware from what happened in
12 court, you heard that Mr. Schnee got a synopsis of what
13 Sean Toran was going to testify to the night before at
14 midnight, correct?

15 A. Yes, ma'am.

16 Q. Did you ever see that synopsis?

17 A. No, but right at ---

18 Q. You didn't. If you had seen that synopsis, would your
19 decision as to going to trial or taking the plea offer have
20 changed?

21 A. Soon as I heard about the synopsis, I asked Mr. Schnee
22 to ask the solicitor was ten years, eighty-five, still on
23 the, on the table because I ain't never know nothing about
24 this statement or this synopsis.

25 Q. Okay.

1 A. Instead of him going to ask, he told me he don't think
2 so and basically proceeded with the trial.

3 Q. Okay. So, when you made the decision not to take the
4 ten years, eighty-five percent, at that point you had not
5 seen any statement or given all the information that the
6 solicitors had regarding what Sean Toran was going to say?

7 A. No. That was just my point of going to trial, but
8 when I got to trial and they spoke of this synopsis that I
9 ain't never heard of until the first day of my trial, I'm,
10 like, I might as well take the ten, eighty-five, but ---

11 Q. So, you didn't have all the information to make your
12 decision as to the ten-year offer?

13 A. No.

14 Q. Okay. You didn't get that until ---

15 A. I ain't never ---

16 Q. --- the morning of trial essentially?

17 A. I ain't never get that. I just heard them speak on it
18 the day of trial. It was never presented to me this is the
19 synopsis or this is the statement from your codefendant.
20 That was never presented me.

21 Q. Okay.

22 A. Which would make him ---

23 Q. Now, to get ---

24 A. --- ineffective.

25 Q. Now, to get to the trial, to begin with, I guess there

1 was pretrial hearings, correct?

2 A. Uh-huh.

3 Q. During the pretrial hearings, there is what's called a
4 *Neil vs. Biggers* hearing. Are you aware of what that is?

5 A. Yes, ma'am.

6 Q. Okay, and during the *Neil vs. Biggers* hearing, did
7 anything unusual happen?

8 A. *Neil vs. Biggers* hearing? Yes.

9 Q. And what ---

10 A. The *Neil vs.* ---

11 Q. --- was that?

12 A. During the *Neil vs. Biggers* hearing, the solicitor
13 asked the judge to clear the courtroom for victims to
14 testify against me due to the fact they -- the solicitor
15 said they received threats and bribes through email and
16 Facebook. Wasn't -- my lawyer objected to it and he
17 objected to it, saying he hasn't received any, any type of
18 threats, emails, bribes, and none of that which they say
19 they received. The judge never asked for this evidence of
20 these threats and these bribes from email, and Facebook I'm
21 pretty sure you can get copies of that. So, none of that
22 was asked for.

23 Q. But he had -- what, what was the basis he objected to
24 it on?

25 A. Clearing the -- he cleared the whole courtroom for the

1 victims testify against me.

2 Q. And why did Mr. Schnee object to it?

3 A. He objected to it. His objection was I object because
4 it wouldn't be fair to my client's parents and -- or
5 singling out my client's parents, something in that nature,
6 but ---

7 Q. Okay, and so that was his specific objection to it,
8 correct?

9 A. Yeah. That was his ---

10 Q. All right.

11 A. --- specific objection in black and white.

12 Q. When it came to the appeal ---

13 A. Well, he had two ---

14 Q. --- as to that issue ---

15 A. Pardon me.

16 Q. Sorry.

17 A. He had two objections. He said there was insufficient
18 proof of threats saying -- of threats by petitioner or his
19 family members.

20 Q. Okay.

21 A. His second objection was the closure of the courtroom
22 was prejudice to petitioner because if done in presence of
23 the jury, it would reinforce the notion that the witnesses
24 were afraid of petitioner.

25 Q. Okay, and so that issue was -- that specific issue

1 about the closure of the courtroom was brought up during
2 your appeal, correct?

3 A. Yes, ma'am.

4 Q. Okay, and ---

5 MS. KINARD: Objection, Your Honor. There's been no
6 allegation of ineffective assistance of appellate counsel.

7 MS. GOOD: We're not saying it's for appellate
8 counsel. It still is Mr. Schnee.

9 MS. KINARD: Okay. Thank you.

10 BY MS. GOOD:

11 Q. All right, and during your appeal, your appellate
12 attorney brought up this issue, correct?

13 A. (NO AUDIBLE RESPONSE.)

14 Q. Did the Court of Appeals grant that issue?

15 A. No, ma'am.

16 Q. And why not?

17 A. The court of -- my lawyer of Court of Appeals brought
18 up the issue of my constitutional amendment rights being
19 violated, my Sixth Amendment of fair trial, Fourteenth
20 Amendment due process. He brought up this issue in
21 appellate court, but it was denied due to the fact the
22 state said my trial lawyer, Mark Schnee, was specific was
23 it -- with his objection.

24 Q. So, they said it wasn't preserved for appeal
25 correctly?

1 A. Yeah. It, it was preserved ---

2 Q. Okay.

3 A. --- for appeal. He was specific with his objection.
4 He never said nothing about my constitutional rights being
5 violated due the clearing of the courtroom.

6 Q. Okay.

7 A. With no type of evidence.

8 Q. Okay. So, he did it just on the specific things that
9 you mentioned, not as to your constitutional rights to a
10 public trial?

11 A. I can't hear you.

12 Q. He objected purely on the specific issues of ---

13 A. Clearing the courtroom ---

14 Q. --- the courtroom?

15 A. --- in front of my family.

16 Q. Family, but not as to your constitutional ---

17 A. Yeah.

18 Q. --- rights to a public trial and fair trial?

19 A. Which should have been his objection.

20 Q. Right, which is why the ---

21 A. The outcome of the trial would have been a totally
22 different outcome if you ---

23 Q. Which is why the Court of Appeals denied it as to that
24 issue, because he didn't probably preserve that issue?

25 A. That's why they denied my direct appeal, my ---

1 Q. Right.

2 A. --- writ of certiorari. That's why all my, all my
3 other issues was denied.

4 Q. Okay.

5 A. Due to him failing to object properly.

6 Q. All right. Now to get to the trial, just to kind of
7 give a little background, there's a man as part of the
8 discovery and the evidence, a witness by the name of
9 Torrell Johnson, correct? Correct?

10 A. Yes, ma'am.

11 Q. And can you tell the judge initially Torrell Johnson's
12 role in this case according to the police officers?

13 A. All through my transcript, Investigator Pegram and the
14 solicitor was stating...

15 Q. Basically, Torrell Johnson was a witness that gave law
16 enforcement ---

17 A. I mean, she got ---

18 Q. --- your name?

19 A. --- a transcript?

20 Q. Yes. She has the transcript.

21 WITNESS: I'm trying to make sure she got the pages to
22 see it yourself. I don't want to leave nothing out; I
23 caught twenty years for leaving stuff out. I'll make sure
24 you get everything.

25 THE COURT: I have the transcript.

1 WITNESS: Okay.

2 BY MS. GOOD:

3 Q. I'm trying to break it down a little bit. Torrell
4 Johnson was a witness who originally gave your name to law
5 enforcement, correct?

6 A. So, so it was said.

7 Q. Right, according to law enforcement.

8 A. Uh-huh.

9 Q. Okay, and that's how anybody ever got to you as a
10 suspect, correct?

11 A. Uh-huh. All they kept, kept ---

12 Q. Okay.

13 A. --- saying all this got started because Torrell
14 Johnson indicated my name in the crime, okay?

15 Q. Okay.

16 A. During my pretrial ---

17 Q. Okay, I'm getting there. Hold on.

18 A. Oh. Okay.

19 Q. Let me break it down for you. All right. So.

20 A. Okay.

21 Q. He was a witness that got this whole thing started?

22 A. Yes, ma'am.

23 Q. And he was not part of any alleged armed robbery or
24 anything of that nature. He was just someone randomly on
25 scene that said -- had an ID of yours and gave it to law

1 enforcement and said I think it's this guy, correct?

2 A. No. He had a ID of one of the supposed victims.

3 Q. Okay.

4 A. And ---

5 Q. He said he got it from you?

6 A. No. He say he got it from Sean Toran.

7 Q. Okay, the codefendant?

8 A. Yeah.

9 Q. Okay. So, he didn't necessarily identify you, but
10 Sean Toran came up and then it kind of went from there as
11 -- because of Torrell Johnson?

12 A. Uh-huh.

13 Q. Correct? Okay. So, Torrell Johnson testified in a
14 pretrial hearing, correct, as to all of this?

15 A. Uh-huh.

16 Q. And what does he testify to in the pretrial hearing?

17 A. Trying to find the paper so she'll know the page.

18 (A PAUSE.)

19 Q. And I know there was some issue as to whether he had a
20 written ---

21 A. I think it's ---

22 Q. --- statement or not.

23 A. I think it's transcript page 61, line 12 through -- 4.

24 The solicitor states: Mr. Johnson. No, that's not it.

25 Q. Well.

1 A. It's, it's transcript page 77, 15 through 16. Mr.
2 Johnson states on record he told investigator he didn't
3 know who I was. Transcript page 130, lines 7 and 11,
4 Pegram states: The only suspect that I'm sure of is Sean
5 Toran and the defendant based on Torrell Johnson's
6 statement.

7 Q. Okay.

8 A. Torrell.

9 Q. So, Torrell Johnson gave this initial statement to law
10 enforcement, and he testified to it in pretrial hearing,
11 correct?

12 A. Uh-huh.

13 Q. But did Torrell Johnson testify during the actual
14 trial?

15 A. No. He was never put back on the stand due to the
16 fact they wanted him to say he gave them my name, but by
17 him saying he ain't never know my name would have impeached
18 the investigator's testimony on how all this ---

19 Q. Right.

20 A. --- came about, which is probable cause.

21 Q. But my point ---

22 A. He never had probable cause to lock me up for ---

23 Q. But my point is ---

24 MS. KINARD: Your Honor.

25 Q. --- he didn't testify during ---

1 THE COURT: Hold on.

2 Q. During ---

3 MS. KINARD: Objection to any legal conclusions drawn
4 by ---

5 WITNESS: I can't hear you.

6 MS. KINARD: Objection to any legal conclusions drawn
7 by the witness.

8 WITNESS: No conclusion.

9 THE COURT: Sustained.

10 MS. KINARD: Thank you.

11 WITNESS: It's in black and white, black and white
12 facts.

13 MS. GOOD: Hey, Ricky.

14 THE COURT: All right.

15 MS. GOOD: Stay with me.

16 THE COURT: Mr. Bowman, couple things. Your lawyer is
17 trying to help guide you through this, right?

18 WITNESS: Oh, I got it.

19 THE COURT: One thing, you can't talk at the same time
20 that she's talking or at the same time that anybody else is
21 talking.

22 WITNESS: All right.

23 THE COURT: I want to hear everything you have to say,
24 but I need to hear her questions, too. So, you've got to
25 wait for her to finish the question before you start to

1 answer.

2 WITNESS: I gotcha.

3 THE COURT: When someone objects, you have to wait for
4 me to decide on the objection before you proceed, all of
5 that, okay?

6 WITNESS: I gotcha.

7 THE COURT: So, make sure only one person is talking
8 at a time because I need to be able to hear everything you
9 say.

10 WITNESS: All right.

11 THE COURT: And I can't hear two people talking at
12 once. Okay.

13 BY MS. GOOD:

14 Q. Okay. So, Mr. Johnson testifies during the pretrial,
15 correct?

16 A. Uh-huh.

17 Q. But he does not testify during the actual trial,
18 correct?

19 A. No, ma'am.

20 Q. All right, and during the trial in opening statements,
21 was Torrell Johnson's testimony mentioned?

22 A. In opening statement?

23 Q. Yes.

24 A. His testimony was mentioned all through.

25 Q. But it was mentioned in opening statements by the

1 solicitor's office ---

2 A. Yes.

3 Q. --- correct? Okay, and then again at that point, did
4 Mr. Schnee object to anything?

5 A. No.

6 Q. Okay, and later during Investigator Pegram's testimony
7 or Pegram's testimony, did -- was Torrell Johnson again
8 mentioned?

9 A. Yes.

10 Q. And was his testimony as to who he said did this and
11 gave him things mentioned?

12 A. Yes.

13 Q. Okay, and at that point, did Mr. Schnee object to
14 hearsay?

15 A. No, ma'am.

16 Q. Okay. At one point on page 366 of the transcript,
17 Investigator Pegram, again still talking about Mr. Johnson,
18 Torrell Johnson, mentions that he believed Torrell Johnson,
19 correct?

20 (A PAUSE.)

21 Q. I'm sorry, page 364, line 22, he mentions: Did you
22 believe Torrell Johnson. Correct?

23 A. Uh-huh.

24 Q. Okay, and Investigator Pegram testified:

25 I believe Torrell simply because we have evidence

1 from the robbery in his apartment. We could
2 connect Sean Toran and Rick Bowman to that
3 complex. We were corroborating information.

4 So, he states on the record all this hearsay that
5 Torrell Johnson gave him that stated this whole case, as
6 well as the fact that he believed him, correct?

7 A. (NO AUDIBLE RESPONSE.)

8 Q. Did Mr. Schnee object to any of this?

9 A. No.

10 Q. Okay, and at any point -- I guess you said Mr. Torrell
11 Johnson, he was incarcerated, correct?

12 A. When it was time for me to go to trial, yes.

13 Q. Okay, and so he was brought over by the solicitor's
14 office?

15 A. Yes.

16 Q. Was he present in the holding cell the day that your
17 trial started after pretrial? Do you remember?

18 A. Yeah.

19 Q. Okay.

20 A. Couple of doors down from me.

21 Q. Okay, and at what point was it realized that Mr.
22 Johnson was not going to be testifying at the trial?

23 A. At the pretrial and the trial continued. Mark Schnee
24 told me he wasn't going to be put back on the stand in
25 reference of how my name came about because he'd been

1 threatened that he'd be charged with other charge and
2 things of that nature if he got back on the stand to let it
3 be known in front of the jury he never knew my name.

4 Q. And when did he inform you that he was not going to be
5 testifying?

6 A. This was, like, when trial -- after the pretrial
7 but ---

8 Q. But ---

9 A. --- people started ---

10 Q. But ---

11 A. --- like after bringing in the jury and all that.

12 Q. Okay. So, prior to the opening statements?

13 A. Yeah.

14 Q. Okay. So, he was aware at that point Mr. Johnson was
15 not going to be testifying in the trial?

16 A. He was aware he wasn't going to testify because he was
17 threatened, but ---

18 Q. Right, but I'm saying -- but he was aware at that
19 point he wasn't going to testify?

20 A. Yeah, he was aware.

21 Q. Okay. So, when his name was mentioned during opening
22 statements, as well as throughout the testimony, Mark, Mr.
23 Schnee, was aware that Torrell Johnson was never going to
24 testify, yet he never objected ---

25 A. Never.

1 Q. --- to any of that? Okay.

2 MS. GOOD: Beg the court's indulgence.

3 THE COURT: Yes, ma'am.

4 BY MS. GOOD:

5 Q. And at any point, did Mr. Schnee move for a mistrial
6 regarding the issue of Torrell Johnson testifying or
7 bolstering of his testimony or anything of that nature
8 throughout the trial?

9 A. No.

10 Q. All right. So, then at that point during the trial,
11 the testimony of Sean Toran came about, and as we mentioned
12 before, you were not given the contents of that information
13 until pretty much the day of trial. You weren't able to
14 make an intelligent, knowing waiver of your plea offer
15 because you didn't have that information, correct?

16 A. No. To this day, I still never seen this synopsis,
17 this so-called synopsis.

18 Q. Okay, and when Sean Toran testified, can you inform
19 the court how you believed Mr. Schnee should have impeached
20 Mr. Toran, which he didn't?

21 A. Yes.

22 Q. Go ahead.

23 A. During, during the time -- when I got arrested, at the
24 county jail Sean Toran was in, like, another dorm, but he
25 sent me a letter, and I gave it to my lawyer when I find

1 out he's supposed to testify. The letter specifically say
2 the person who they think you is, they don't have nothing,
3 no. Be quiet. Don't say nothing.

4 Okay, I get a letter. Told my lawyer. Told him to
5 present it at trial to impeach Mr. Toran's statement when
6 he get up here lying with this synopsis or whatever. So, I
7 get a letter to my lawyer. My lawyer say, well, the jury
8 is not going to look at it, how you see. How? That letter
9 specific, word for word, the person who they think you is.
10 How else could the jury see it?

11 Q. So, did he present that letter?

12 A. No.

13 Q. On cross-examination?

14 A. No. The letter was never presented, nor was -- I done
15 wrote Mr. Schnee. I've been locked up eight years. Me, my
16 mother, everybody done went to see this man trying to get
17 this letter so when I came to PCR, I could present this
18 letter. To this date, I still don't have this letter.
19 Ineffective.

20 Q. And at the end of the trial once you were convicted,
21 there were motions for mistrials and directed verdicts and
22 to renew any objections. At that point, did Mr. Schnee
23 ever bring up the testimony of Sean -- I mean, of Torrell
24 Johnson or ---

25 A. No.

1 Q. --- asking for the plea offer to be enforced?

2 A. No.

3 Q. Okay, and once you were convicted, was the jury
4 polled?

5 A. Yes.

6 Q. And in the transcript when the jury was polled, how
7 many jurors were actually polled?

8 A. Eleven.

9 Q. Okay. So, there were never twelve jurors polled?

10 A. My trial lasted three days. At the end of my trial,
11 my lawyer asked for a jury poll. Each jury member stand
12 up. I count eleven jury members. I picked twelve at the
13 beginning of trial. To my knowledge, in order for a jury
14 member to be excused, it have to be noted on record and
15 explain why that jury member was excused, as well as
16 substitute that jury member.. None of this happened.

17 Q. And in the transcript, when the jurors were polled,
18 how many jurors were polled?

19 A. Say again?

20 Q. In the transcript, once the jurors were polled, how
21 many jurors were polled?

22 A. Just eleven.

23 Q. Okay.

24 A. I can show you that at the back on the transcript. I
25 can show you twelve at the front of the transcript. So

1 within those three days, we don't know when this jury
2 member got missing.

3 Q. Okay. So, that's on page 518 of the transcript?

4 A. Which would be a direct error.

5 Q. Okay. Is there anything else that you believe --
6 we've gone over Torrell Johnson, gone over the courtroom
7 closure, and any statement regarding Torrell Johnson, as
8 well as your plea offer. Is there anything else that you
9 think is important for the judge to know regarding your
10 PCR?

11 A. Yes. Just give me a minute.

12 (A PAUSE.)

13 A. The issue with the constitutional rights being
14 violated, Sixth and Fourteenth.

15 Q. And that's as to the court closure?

16 A. I can't hear you.

17 Q. That's as to courtroom closure?

18 A. Yeah.

19 Q. Okay.

20 A. Basically. I'm just speaking of the amendments that
21 was violated. The Sixth Amendment, public trial guaranteed
22 the defendant should not be required to prove specific
23 prejudice in order to obtain relief for a violation of
24 public trial guarantee. See *Waller vs. Georgia*, 104 South
25 Circuit, 2210.

1 *Presley vs. Georgia*, 558 U.S. 209 2010 explains how
2 you close the courtroom, the rules of doing so. Under the
3 Sixth Amendment, any closure of a suppression hearing over
4 the objection of the accused must meet the following test.
5 The party seeking to close the hearing must advance and
6 override there is likely to be prejudice. And closure must
7 not be broad but be necessary to protect their interest.
8 The trial court must consider reasonable alternatives to
9 closing, to closing the hearing, and it must make findings
10 adequate.

11 Q. And so it's your belief if Mr. Schnee had properly
12 objected to that specific issue, that you could have
13 potentially won on appeal?

14 A. Yeah.

15 Q. And you ---

16 A. Precisely.

17 Q. Okay, and ---

18 A. That would be *Press Enterprise Seal vs. Pew* ---

19 Q. And you're saying ---

20 A. --- court of California.

21 Q. --- that he was ineffective for not properly ---

22 A. Yeah, he was very ---

23 Q. --- preserving ---

24 A. He was very -- my whole trial he was very ineffective.

25 Q. Okay.

1 MS. GOOD: No further questions, Your Honor.

2 A. I would have took the plea of, of either/or than
3 receive twenty years at trial if I'd have known about this
4 so-called synopsis my codefendant was supposed to give, so
5 yeah, pretty much.

6 THE COURT: Okay.. Now Ms. Kinard is going to have the
7 chance to ask you some questions, okay?

8 WITNESS: Uh-huh.

9 CROSS-EXAMINATION BY MS. KINARD:

10 Q. Mr. Bowman, both Mr. Johnson and Mr. Toran are your
11 codefendants. Is that correct?

12 A. I can't hear you.

13 Q. Both Mr. Johnson and Mr. Toran are your codefendants?

14 A. No, ma'am.

15 Q. No?

16 A. Toran was supposed to be a codefendant.

17 Q. But not Mr. Johnson?

18 A. Mr. Johnson was the one they claim indicated me and
19 Toran in all this.

20 Q. Thank you for clearing that up, but Mr. Johnson was
21 incarcerated at the time of trial on unrelated charges?

22 A. Uh-huh.

23 Q. And he provided a statement to law enforcement?

24 A. Now, that's what law enforcement say. And speaking of
25 that, I, I got exhibits, notarized affidavits that was sent

1 to me from Torrell Johnson also indicating he never knew my
2 name. So, my question is the probable cause, how was I
3 indicated in this crime period if y'all are saying all this
4 got started by him but I can show you exhibits in black and
5 white this man never knew my name?

6 Y'all don't have a statement. He ain't on no
7 recording saying my name. Y'all ain't got nothing with him
8 saying he know my name, but I got exhibits that I can
9 provide you with now as well as the pretrial with him
10 saying he never knew my name.

11 THE COURT: Okay.

12 A. Okay. So ---

13 THE COURT: And look. Before you're finished, I'm
14 going to let you tell me everything you want to tell me.

15 WITNESS: Okay.

16 THE COURT: But right now I need you to answer Ms.
17 Kinard's questions, okay?

18 WITNESS: All right.

19 BY MS. KINARD:

20 Q. You talked about a letter that you received while you
21 were incarcerated.

22 A. Uh-huh.

23 Q. Who wrote that?

24 A. Sean Toran.

25 Q. And he gave it to you?

1 A. Yeah.

2 Q. And you gave it to Mr. Schnee?

3 A. Yes.

4 Q. And you said you still haven't seen it?

5 A. No.

6 Q. Okay. Did you ---

7 A. Nor was, nor was it presented at trial.

8 Q. Did you present a defense at trial?

9 A. Yeah, the best of my ability.

10 Q. Did you testify at trial?

11 A. No, ma'am.

12 Q. Did anybody testify on your behalf at trial?

13 A. My mother.

14 Q. Are you certain?

15 (A PAUSE.)

16 THE COURT: Tell me your mother's name.

17 WITNESS: Wanda Brown.

18 THE COURT: Okay.

19 BY MS. KINARD:

20 Q. Yes, I apologize. So, you did present a defense on
21 your behalf, but you didn't testify. Did you talk to Mr.
22 Schnee about whether you should testify?

23 A. No. It wasn't really a conversation.

24 Q. Did you want to testify?

25 A. No.

1 Q. Okay.

2 A. I was kind of ignorant to the law at the time.

3 Q. Now, all these issues that you have brought up today,
4 did you discuss any of them with Mr. Schnee at the time of
5 trial?

6 A. Yes. I discussed a lot of those issues with him.
7 I discussed the, the constitutional right issue. I
8 discussed ---

9 Q. Well, let's stop there. Did -- why -- what did you
10 say to him? Why did you want the courtroom to remain open?

11 A. Why did I want it to remain?

12 Q. Uh-huh.

13 Q. Because I know it's a violation, violation -- the
14 court is for the public. Any -- everybody can be in it, so
15 it was no point in clearing it. You cleared it on false
16 allegations.

17 Q. Was the gallery or the audience brought back in at the
18 conclusion of that specific hearing?

19 A. I actually had to tap a bailiff and get him to go get
20 my family and whoever else that went out. They, they said
21 afterwards, after the victims testified they was going to
22 bring them back in, whatever, but almost a hour done
23 passed. So, I'm sitting in front of the jury and all my
24 people gone.

25 Q. What else did you have a problem with that you told

1 Mr. Schnee about?

2 A. Two jury members were sleep. I pointed out to him.
3 He said, he said it wasn't -- it was nothing he could do
4 about it. They could have been sub.

5 Q. Did you tell him you wanted Mr. Johnson to testify?

6 A. Did I tell him? I mean, he knew that from pretrial
7 when he heard him say he never knew my name. Why wouldn't
8 you put him on the stand in front of the jury so he could
9 tell them the same thing to impeach what the solicitor, as
10 well as the investigator, saying? That's -- you know, I
11 mean, he the lawyer. He don't know that?

12 MS. KINARD: Beg the court's indulgence.

13 (A PAUSE.)

14 Q. Did you have a good relationship with Mr. Schnee?

15 A. I thought I did until I got to prison and started
16 studying law for the last eight years and see how I was
17 basically, you know, sold to the Department of Corrections.

18 Q. Do you feel like you could have asked him any
19 questions that you had while he was representing you?

20 A. No. I feel like if he would have presented that
21 letter and everything else I told him to do, I would have
22 never been in the Department of Corrections.

23 Q. That's not the question I asked, though. Did you ---

24 A. Say it again.

25 Q. Did you feel like you could ask him any questions or

1 express your concerns to him?

2 A. No. Not, not really. I mean, I tried that, but it,
3 it wasn't, it wasn't too much working.

4 MS. KINARD: All right. No further questions at this
5 time.

6 THE COURT: Anything else, Ms. Good?

7 MS. GOOD: Just have one.

8 REDIRECT EXAMINATION BY MS. GOOD:

9 Q. Your relationship with Mr. Schnee, does that affect
10 whether or not he is effective or ineffective as it comes
11 to the law?

12 A. No. No.

13 Q. Okay. So, you still depended on him as your attorney
14 despite any relationship you may or may not have with him
15 to properly defend you?

16 A. Yeah.

17 MS. GOOD: No further questions, Your Honor.

18 THE COURT: All right, Mr. Bowman, ordinarily I would
19 tell you to step down and sit back next to your lawyer, but
20 I want to make sure that I know everything that you're
21 complaining about. So, it's a little unconventional,
22 unconventional, but right now I'm going to let you just
23 tell me anything that you want me to know that maybe your
24 lawyer didn't ask you about or Ms. Kinard didn't ask you
25 about.

1 WITNESS: I just want to present the affidavits wrote
2 by Mr. Torrell Johnson on how he never knew my name and all
3 through my transcript. This is how all this got started.
4 This is how Ricky Bowman got brought into this incident
5 because Torrell Johnson supposedly said my name, yet it's
6 no statement or nothing from him saying he ever knew my
7 name, but everything saying he did not know my name. I
8 received twenty years, eighty-five, due to this.

9 THE COURT: Okay.

10 WITNESS: So, you know, I wanted to present the
11 affidavits to you that he sent to me, as well as I gave to
12 Mark Schnee during trial and everything else. I want you
13 to see them for yourself.

14 THE COURT: Okay.

15 WITNESS: I also would still like to know the letter
16 that Sean Toran sent me, where is that letter? I never got
17 this letter. I have been -- asked for this letter. He has
18 not sent to me yet. So, if you could answer that for me.

19 THE COURT: Unfortunately, I can't answer any
20 questions for you, and I certainly don't know where the
21 letter went.

22 WITNESS: Well, I mean, we can't ask? I'm indigent.

23 THE COURT: Well, he's going to testify in a little
24 bit, and your lawyer will probably ask him about that.

25 WITNESS: Okay.

1 THE COURT: But I just wanted to make sure before you
2 went and sat back down I heard everything you wanted to
3 tell me.

4 So, basically you want her to ask him about the letter
5 and ---

6 WITNESS: I got ---

7 THE COURT: --- you want me to see these affidavits,
8 right?

9 WITNESS: Yes, ma'am, but ---

10 THE COURT: Anything else?

11 WITNESS: Yes, it is. My kidnapping indictment, I
12 have it with me. Ineffective assistance. Counsel, counsel
13 failed to squash to kidnap indictment where the indictment
14 did not allege the essential elements of kidnapping,
15 specifically that they acted knowingly. Due to counsel
16 failing to squash indictment prejudiced applicant, and if
17 not for trial counsel error, the outcome of trial would
18 have been different. The existence of evidence of material
19 facts not presented or heard requires vacation of the
20 kidnapping indictment.

21 The applicant next moves to vacate the indictment of
22 kidnapping as insufficient. Applicant argues that the
23 indictment is defective for failing to allege essential
24 elements of the offense knowingly. See *Floyd vs. State*,
25 not reported.

1 See also *Tate vs. State*, 549 S.E. 2d 601. It is the
2 body of the indictment rather than the caption that is
3 important. If the body specifically states that essential
4 element of the crime and it -- and it is otherwise free
5 from defect, defect of the caption would not cause it to be
6 invalid.

7 I got a copy of this kidnapping indictment without
8 this element in it.

9 THE COURT: Okay. I have the indictment.

10 WITNESS: Okay.

11 THE COURT: So, you want me take a look at the
12 kidnapping indictment?

13 WITNESS: Yes, ma'am.

14 THE COURT: Anything else? You want to go down your
15 list?

16 (A PAUSE.)

17 WITNESS: We also spoke on the synopsis, but I just
18 want to put it on the record. This synopsis that my trial
19 lawyer received 12:00 midnight before my trial started the
20 next day, counsel failed to put in a motion for testimony
21 of codefendant to be excluded due to the fact that a
22 synopsis from the state regarding the codefendant testimony
23 for the state was in violation of defendant's rights of
24 having document of testimony when a synopsis is clearly not
25 a document. Counsel ineffectiveness prejudiced, prejudiced

1 petitioner and was, and was it not for counsel error,
2 there's a possibility the outcome of the trial would have
3 been different.

4 *Strickland vs. Washington*, Court, courts also erred by
5 allowing this synopsis, but -- yeah, *Strickland vs.*
6 *Washington*, I'm pretty sure you're aware of that. It's two
7 prongs you satisfy on ineffective assistance of counsel.

8 THE COURT: Yes, sir. Okay. So, I've got the
9 synopsis, those affidavits, the letter from Toran, and the
10 kidnapping indictment. That sound like it?

11 WITNESS: As well as the probable cause on the whole
12 case.

13 THE COURT: Okay.

14 WITNESS: Of my name, how my name came up.

15 THE COURT: Gotcha.

16 WITNESS: That's pretty much it.

17 THE COURT: Okay. So, you want me to see those
18 indictments. I'm going to go ahead and have you sit back
19 next your lawyer. Pull out whatever -- not indictments,
20 affidavits, whatever affidavits you think I need to see.

21 WITNESS: You said you already -- you said you got the
22 kidnapping indictment.

23 THE COURT: Yeah, I have it. I meant to say
24 affidavits.

25 WITNESS: Okay.

1 THE COURT: So when you go back and sit next to your
2 lawyer, pull out those affidavits and hand them to her, and
3 she'll make sure that I see them, okay?

4 WITNESS: Okay.

5 THE COURT: All right.

6 (THE WITNESS EXITS THE STAND.)

7 THE COURT: Ms. Good, are you going to have any other
8 witnesses?

9 MS. GOOD: No, ma'am.

10 THE COURT: Okay. While y'all are working on that,
11 I'm going to have Ms. Kinard go ahead and call her first
12 witness.

13 MS. KINARD: State calls Mark Schnee.

14 MARK SCHNEE, BEING DULY SWORN,
15 TESTIFIES AS FOLLOWS:

16 THE COURT: Yes, sir, have a seat.

17 If you'd give Ms. Good one second? I don't want her
18 to miss any of the testimony.

19 (A PAUSE.)

20 THE COURT: And, frankly, y'all can do that at the end
21 if necessary.

22 (A PAUSE.)

23 THE COURT: Okay, what we're going to do is I'm taking
24 these two affidavits. I want Mr. Bowman to be able to keep
25 his papers, so I'm going to send my clerk out to make

1 copies of these, and we're going to mark the copies
2 collectively as one exhibit.

3 All right, Ms. Kinard, your witness.

4 MS. KINARD: Thank you, Your Honor.

5 DIRECT EXAMINATION BY MS. KINARD:

6 Q. Good morning, Mr. Schnee. Thank you for being here.

7 I'm going to start with some basics about your
8 practice. How long have you been practicing criminal law?

9 A. I started as a public defender in 2006.

10 Q. Is that the bulk of your case, criminal defense?

11 A. That's the bulk of what I do, yes, ma'am.

12 Q. Thank you. Were you retained on this case or
13 appointed?

14 A. I was retained.

15 Q. Do you recall approximately how many times you met
16 with Mr. Bowman?

17 A. I, I, I couldn't say for sure. It was a number of
18 times. Most of those conversations lasted a very long
19 time. When I was originally hired, Mr. Bowman had a full
20 copy of the discovery from the state. I actually talked to
21 him before he retained me. He, he wanted to retain me
22 specifically for the purpose of trial.

23 Q. So, the intent was always to go to trial?

24 A. Yes.

25 Q. And he -- I'm sorry, you stated he had a copy of

1 discovery before you were retained?

2 A. He had already had a public defender. He had gotten a
3 copy of his discovery, so he had a lot to go through with
4 me and talk to me about. Once I was retained, I obviously
5 got my own copy.

6 Q. So, you went into these first meetings with Mr. Bowman
7 kind of -- Mr. Bowman having a lot of questions for you out
8 of the gate?

9 A. Absolutely, yes. He did have a lot of questions.

10 Q. Did he have a lot of theories and ideas about how he
11 wanted his case presented?

12 A. Well, at the time there was absolutely no offer in the
13 case. He knew what that -- I mean, it was just for the
14 burglary it was fifteen to life. He, he wasn't going to
15 take that as a -- he wasn't going to plead guilty to that.
16 He had a lot of issues with discovery and, and, and things
17 that he thought were missing. Some that I agreed, some
18 that I obviously didn't. Normal conversations for -- as,
19 as you can tell, an intelligent man who had a lot of time
20 to go through the materials he had.

21 Q. Did he explain to you his version of the facts of the
22 case?

23 A. Didn't really talk too much about the, the, the facts
24 in the sense other than that he wasn't there and had
25 nothing to do with it. Other than that, I mean, there

1 really wasn't much talking about that. It was much more
2 what the problems were with the state's case.

3 Q. So, is it fair to say that your strategy was more to
4 poke holes in the state's case rather than to prevent any
5 affirmative defensive strategy?

6 A. Well, say ---

7 MS. GOOD: Your Honor, sorry. Could I just ask that
8 Mr. Schnee move up a little bit? My client's having
9 trouble hearing him.

10 THE COURT: Move closer to the microphone.

11 WITNESS: First time I've ever ---

12 THE COURT: Pull the microphone a little bit closer to
13 you.

14 WITNESS: Is this little better?

15 APPLICANT: Yeah.

16 WITNESS: Okay.

17 BY MS. KINARD:

18 A. Could you repeat your question?

19 Q. Yes, and I'll rephrase. I was not very artful in
20 that. Did you present any defenses or come up with any
21 defensive strategies, or was the idea of the case more to
22 poke holes in the state's evidence?

23 A. The main aspect of the defense was to show that they
24 had no physical evidence that Mr. Bowman was there.

25 Q. How ---

1 A. I guess that's probably best way to answer your
2 question.

3 Q. Yes. Thank you. Did you feel that would be an
4 effective strategy?

5 A. Considering the, the complete lack of physical
6 evidence, the reliability of witnesses that either did or
7 did not even show up, yeah, I thought that was the best
8 strategy.

9 Q. Okay. Let's talk about your investigation. Did Mr.
10 Bowman give you any names of witnesses that he wanted you
11 to investigate?

12 A. He did, and I did have an investigator. The, the
13 names that were given were -- I don't even remember what
14 they were to be -- off the top of my head. They, they were
15 -- they didn't pan out essentially. There was very little
16 information. It was a -- it was not a, not a full
17 government name, not really any idea of location of where
18 they are at the time where I could --- where my
19 investigator could find them. They, they didn't pan -- it
20 was minimal information.

21 Q. Okay. So, continuing on in your preparation, you
22 stated you reviewed the discovery with Mr. Bowman. Is that
23 correct?

24 A. Yes.

25 Q. Do you review the indictments and discuss the elements

1 of each of the offenses?

2 A. I know we talked generally about what the charges
3 were. I certainly wouldn't have sat down with the
4 indictments and gone through each part of it; I never do
5 that, to be honest.

6 Q. But he knew what he was facing when he went to court?

7 A. Yes.

8 Q. And he knew what he was facing punishment wise, time
9 wise?

10 A. Yes.

11 Q. And you felt that you had ample time to prepare for
12 trial?

13 A. I thought there was, there was more than enough time
14 to prepare for the trial, yes.

15 Q. Do you ---

16 A. There were obviously a few curveballs that were thrown
17 to us.

18 Q. Let's talk about those. What do you mean?

19 A. Well, one of the biggest ones obviously would be the
20 issue with the closed courtroom aspect. When the solicitor
21 asked to do that during pretrial, I had absolutely zero
22 information from the state that they had any intention or
23 idea of doing that.

24 Q. And did you present the best objections that you knew
25 of?

1 A. I thought I, I, I objected to what I needed to,
2 especially in pretrial. Even looking at the transcript, I
3 thought it was pretty clear that the, the objections to
4 removing people from the courtroom during trial in front of
5 the jury was -- would be more than sufficient. I, I didn't
6 have any time to research it. It was something that the
7 judge made a decision on virtually instantly. I knew there
8 had to be more that the judge would have to rule on, but I
9 -- that was just an issue I did not have time to research
10 in the middle of trial the way it happened.

11 Q. Do you believe that the objections as you worded them
12 encompassed a constitutional argument?

13 A. I certainly thought they did. If not, that is
14 absolutely a failure on my part.

15 Q. What's another curveball?

16 A. The fact that Mr. Johnson decided not to testify. It
17 was certainly represented to, to me from the state that he
18 was going to testify the entire time.

19 Q. So, you disagree with the applicant's characterization
20 that you knew after the pretrial he would not testify?

21 A. Mr. Bowman had told me that he, he -- that he had
22 heard in holding that he was not going to testify. My
23 recollection from the state is they still had every
24 intention of calling him.

25 Q. And you said Mr. Johnson decided not to testify. Was

1 he not under subpoena, or do you believe that was the
2 state's decision? Can ---

3 A. I, I ---

4 Q. --- you elaborate?

5 A. --- honestly don't know whose decision it was or what
6 it was ultimately.

7 Q. Did you ever consider calling Mr. Johnson as part of
8 the defense case?

9 A. No, I, I really didn't.

10 Q. All right. Referring again to Mr. Johnson, let's talk
11 about any plea offers. Can you please testify regarding
12 your memory of plea offers that were given Mr. Bowman?

13 A. I'm honestly not sure exactly what plea offers were
14 given. I know Mr. Bowman rejected all of them. I know I
15 tried to convince him that he might want to seriously
16 consider it based on the, the potential of, of testimony.
17 He rejected that idea always.

18 Q. Do you recall Mr. Bowman's testimony about signing an
19 agreement to the plea offer for seven years nonviolent?

20 A. I have -- I do not remember anything of the sort.

21 Q. Do you recall him ---

22 A. I remember -- I'm sorry, I remember Mr. Bowman
23 testifying about it today. I don't remember anything like
24 that happening back in 2010.

25 Q. So, to your knowledge ---

1 A. Or 2011.

2 Q. --- he never accepted a plea agreement in writing?

3 A. I do not remember him ever accepting any plea
4 agreement at all.

5 Q. Do you recall him asking you if you could get the ten
6 year, eighty-five percent plea agreement back on the table?

7 A. I honestly don't remember specific conversations about
8 what the plea agreements were. I know at -- I seem to
9 recall at some point he did want a plea offer, but that was
10 not anything the state was giving. I, I, I don't recall
11 the specifics. It's been quite a number of years now.

12 Q. To perhaps help clarify on that, did he ask for a plea
13 agreement during the trial?

14 A. During the trial, no. Would -- it would have been
15 before the trial.

16 Q. I'm trying to recall best I can his testimony that at
17 some point during the trial, and I could be wrong, he asked
18 you to see if you could get the ten years back, but you
19 don't, you don't recall that?

20 A. It may have been during the pretrial, jury
21 selection-type day. I honestly don't recall. If he, if he
22 says that he asked me to get it back, I certainly would
23 have talked to the solicitor, but that, I honestly don't
24 recall one way or the other.

25 Q. And again, the goal of this case from Mr. Bowman's

1 perspective was always to go to trial?

2 A. That was the anticipation; that was my expectation,
3 yes.

4 Q. And you were prepared to go forward with trial as you
5 did?

6 A. Yes.

7 Q. Okay. Did you have a good relationship with Mr.
8 Bowman? Do you communicate with him well?

9 A. Mr. Bowman is very communicative. I, when I had
10 conversations with him, they were quite lengthy; they were
11 very detailed. I, I -- he's a very intelligent man. I
12 certainly would consider that a good relationship in terms
13 of being able to deal with him.

14 He wanted to bring up a lot of things that had -- were
15 completely irrelevant. There were, there were a lot of
16 things that he wanted to keep bringing up, but that's,
17 that's something that I deal with on a regular basis with a
18 lot of people. So, it -- I wouldn't call it a, a problem
19 as much as it -- more of a time waster.

20 Q. Was the letter from Mr. Toran one of those things?

21 A. The letter really didn't say anything specific. I
22 believe the letter is either in the file or is actually
23 part of the court record. I know there was something that
24 was introduced as an exhibit. It really did not say
25 anything specifically about this case or anything else.

1 Q. Do you recall if Mr. Bowman saw that letter? I'm
2 sorry, he provided it to you.

3 A. He provided it to me, yes.

4 Q. So, you felt it was, is it fair to say, not credible?

5 A. I would -- it's not a matter of credibility. It's a
6 matter of interpretation of the letter. There was nothing
7 in that letter that was specific enough to identify that it
8 had anything to do with this crime at all.

9 Q. Now, let's talk about Mr. Johnson's statement. So
10 when he was arrested, he did not initially provide a
11 statement. Is that correct?

12 A. He may or may not. I don't, I don't recall if Mr.
13 Johnson did. I know he talked to law enforcement. He's
14 the one that turned ---

15 Q. I'm sorry.

16 A. --- the investigation to Toran and Mr. Bowman.

17 Q. I keep getting then backwards and I apologize; that's
18 the second time I've done that. Mr. Toran didn't initially
19 provide a statement, and later he did agree to testify. Is
20 that correct?

21 A. Yes.

22 Q. Okay. So, he essentially was a codefendant that
23 rolled?

24 A. He agreed to testify, yes.

25 Q. Okay, and you did not find out about that until right

1 before trial, correct?

2 A. I, I don't know if it was the week before or when it
3 was as to when I heard that Mr. Toran was likely to testify
4 or certainly knew he was asked to testify. But I didn't
5 get any really real information about what his testimony
6 would be until, as Mr. Bowman says, the day before.

7 Q. Did you share the contents of that communication from
8 the state with Mr. Bowman?

9 A. The communication that I got from the state was an
10 email, and it simply said in terms of a summary of Sean
11 Toran is going to testify and identify Ricky Bowman as a
12 codefendant. It really did not have anything to it; there
13 wasn't any substance in it. There was never a written
14 statement.

15 Q. Nonetheless, you relayed that information to Mr.
16 Bowman, as brief as it was, the content of that email?

17 A. Yes.

18 Q. And he was aware of that?

19 A. I'm sure he was, yes.

20 Q. And you made him aware of that as soon as you became
21 aware of it and had a chance to talk to him?

22 A. Correct, yes.

23 Q. Okay. I'm questioning because of his allegation
24 regarding taking a plea, but you felt that you conveyed
25 that information as soon as possible to him?

1 A. As soon as I received that information, yes, I
2 certainly would've told him.

3 Q. Let's talk about the eleven juror issue. Do you
4 recall polling the jury?

5 A. I, I, I do as a matter of practice. I poll every
6 jury.

7 Q. Do you recall only eleven responding?

8 A. No. Honestly, I don't keep track. The only thing I'm
9 listening to -- I'm watching and listening. I'm paying
10 attention to see if they're hesitating and, and what their
11 answers are. I'm honestly not keeping track.

12 Q. At any time during the trial, was a juror excused?

13 A. No. There were twelve jurors sitting in that box when
14 the jury was sent away to deliberate and when they came
15 back. There was simply when the clerk of court was
16 apparently reading the juror list, skipped over one of the
17 juror numbers and simply did not call someone to ask if it
18 was their verdict and if it were still their verdict.

19 Q. So, it was merely an error by the clerk of court?

20 A. It seems to be, yes.

21 Q. Did you believe that that was grounds for a mistrial?

22 A. I had no idea that she only polled eleven. I, I, as I
23 said, I did not count at the time.

24 Q. But you had no suspicion that anything was awry or
25 that anything out of the ordinary had happened regarding

1 the jury in the deliberation?

2 A. I had no reason to believe there was anything awry
3 from the jury or how they deliberated. I, I, I still
4 don't.

5 Q. Is there anything else that you'd like the court to
6 know about your representation of Mr. Bowman, anything you
7 believe I haven't covered based on the allegations
8 presented here?

9 A. Nothing that I can think of.

10 MS. KINARD: Thank you. I have no further questions
11 at this time.

12 THE COURT: All right, Ms. Good.

13 MS. GOOD: Thank you.

14 CROSS-EXAMINATION BY MS. GOOD:

15 Q. Going to start with the plea offers. You have no --
16 based on your testimony just now, you said you don't
17 remember what the plea offers were, correct?

18 A. Correct.

19 Q. Do you not take notes of the plea offers to document
20 for your file exactly what they were and when you gave it
21 to a defendant and when they rejected it?

22 A. I -- if there, if there was an email, an offer emailed
23 to me or given to me, I would certainly -- obviously I
24 would have the email or write, write down what the offer
25 was.

1 Q. Okay.

2 A. I would maybe document the fact that I talked about
3 it. Sometimes I don't honestly. I know if any offer was
4 extended, I certainly brought it to Mr. Bowman.

5 Q. And so you don't remember if there was an offer of
6 seven nonviolent or not?

7 A. I don't recall there ever being an offer of seven
8 nonviolent.

9 Q. Okay. So, you don't recall going down to the jail,
10 having him sign paperwork, and having him agree to that
11 offer?

12 A. I do not recall that offer at all.

13 Q. Okay. So, you're just saying you don't recall whether
14 -- it could have happened. You just don't remember?

15 A. I don't think it did, but it could have.

16 Q. Okay.

17 Q. I, I, I, I honestly just cannot remember right now. I
18 just don't believe that was ever an offer that ---

19 Q. Okay.

20 A. --- was made to him.

21 Q. And then the second offer, the ten years, eighty-five
22 percent, do you recall that offer?

23 A. That does sound familiar, and I think that was his
24 offer for quite some time, and he had constantly rejected
25 that offer.

1 Q. And when he rejected that offer, did he have the
2 information that Sean Toran was going to be testifying
3 against him?

4 A. At the time, no, he wouldn't. We didn't have that
5 test -- we didn't have that information until either the
6 week before trial is an indication that I got from Mr.
7 Toran's lawyer, and realistically until the very day of
8 trial after the state had talked to him.

9 Q. Okay, and at what point did you tell Mr. Bowman about
10 Sean Toran testifying?

11 A. The morning Mr. Bowman was brought back to the
12 courtroom.

13 Q. Okay. So ---

14 A. Or brought back to the courthouse.

15 Q. So, it wasn't the week before when you heard it maybe?
16 It was the day of trial?

17 A. In terms of that he was definitely going to testify,
18 it would have been that Tuesday or so morning. I believe I
19 would have talked to Mr. Bowman the week prior about the --
20 this is a real possibility that he might testify.

21 Q. Okay.

22 A. And that's obviously one of our biggest concerns was
23 Sean Toran's testimony.

24 Q. But he did not find out until the morning of that Sean
25 Toran was definitely going to testify and what he was going

1 to say?

2 A. Mr. Bowman found out within about fifteen business
3 minutes of me finding out. I just happened to find out off
4 hours late at night. That's when it was emailed to me.

5 Q. Okay. Regarding the closed courtroom. I'll start
6 there since that's pretrial. The closed courtroom, you
7 made an objection specifically as to his family should be
8 allowed to be in there, correct?

9 A. Yes.

10 Q. Okay, and that you didn't have any information
11 regarding threats or anything of that nature?

12 A. Correct, and I've still never been given any, and I,
13 I'd -- I have specifically asked for it, and it has never
14 been turned over to me.

15 Q. But at that time, you did not make an objection as to
16 his constitutional rights for due process and right to a
17 public trial?

18 A. At the term -- the time of the pretrial hearing, I
19 probably did not, no.

20 Q. Okay, and that was the only time that it was being
21 closed, correct, or was it being closed also during the
22 trial?

23 A. It was essentially closed during trial, too, in front
24 of the jury and -- well, the ruling at, at first was that
25 it was just for pretrial at that point. So, there was not

1 much to fight over because it obviously was just for the
2 purpose of the pretrial hearing.

3 I had a huge problem with it. I -- it was thrown at
4 me, and I had never dealt with that issue. I've honestly
5 never even dealt with that issue since. Even if there are
6 threats or other things, I've, I've never dealt with a
7 judge clearing the court.

8 Q. Okay, but at that time you didn't make any objections
9 regarding his constitutional rights to a public trial?

10 A. No. The, the trial judge made that decision,
11 instantly saying it was going to be closed and remove
12 everyone. I was trying to put something on the record, and
13 I put on the record what I thought I could.

14 Q. Okay. Regarding Torrell Johnson, essentially Torrell
15 Johnson is the witness that starts this entire thing,
16 correct?

17 A. Yes.

18 Q. Okay, and he testified during pretrial, and what did
19 he testify to during pretrial?

20 A. I, I can't recall exactly. He -- essentially there
21 was some other unrelated drug search warrant or something
22 that was being served, and they found some IDs or something
23 else that belonged to the victim, and then they went and
24 questioned him, and he said where he got them.

25 Q. Okay, and I'll kind of do this in two ways. It's your

1 testimony that you were under the impression he was going
2 to testify the entire time during the actual trial,
3 correct?

4 A. Yes. That's the representation I had from the state.

5 Q. Okay.

6 A. I'll put it that way.

7 Q. Okay, and I'm going to go with this track first. I'll
8 get to the fact Mr. Bowman had heard something, but as to
9 that track, with you under the impression that he was going
10 to testify, at what point did you realize he wasn't going
11 to testify?

12 A. I'm not really sure, to be honest. I, I, I just can't
13 remember.

14 Q. Okay, and isn't it true that during the trial, during
15 the opening statements, Torrell Johnson's name was brought
16 up regarding he started this whole thing, Investigator
17 Pegram testified as to what Torrell Johnson told him and
18 stated he believed him and all that, correct?

19 A. Yes.

20 Q. And at no point did you object to any of that
21 information coming in as hearsay or bolstering, or being
22 given to the jury despite the fact Mr. Johnson was not
23 going to testify?

24 A. Apparently not, no.

25 Q. Okay, and say you were under the impression the entire

1 time he was going to testify. Once you realized when the
2 state closed their case that he did not testify, at any
3 point did you ask for a mistrial based on information that
4 they allowed, information to the jury regarding Torrell
5 Johnson when he did not testify?

6 A. Apparently I did not.

7 Q. Now, if -- let me take the second track of that. You
8 stated that Mr. Bowman had told you that he had heard in
9 the holding cell that Mr. Torrell Johnson was not going to
10 testify in the actual trial, correct?

11 A. That was the indication.

12 Q. Okay, and at any point did you ask the solicitor's
13 office is he going to testify or not at that point?

14 A. I probably did and they, they said they were planning
15 to call him, and they had transported him after that.

16 Q. Okay, and even with the information that Mr. Bowman
17 had told you regarding the fact that Mr. Torrell Johnson
18 was not going to testify, did you ever object to hearsay or
19 anything at that point during the trial when his name came
20 up and statements that he had made?

21 A. I thought I did. Apparently I didn't.

22 Q. Moving on to Sean Toran, okay, you found out, I guess
23 you said a week before, and you got this synopsis the night
24 before, correct?

25 A. I wouldn't even call it a synopsis.

1 Q. Or I guess ---

2 A. It, it, it ---

3 Q. He was going to testify?

4 A. It was pretty much a statement he's going to testify.
5 He's going to identify your client as a -- as the
6 participant in this crime.

7 Q. And when Mr. Toran testified, you cross-examined him,
8 correct?

9 A. Yes.

10 Q. Okay, and there was one thing. I'm going to show what
11 was marked as Defendant, Defendant's Exhibit 6. Do you
12 recall that being presented during cross-examination?

13 A. Yes.

14 MS. GOOD: Mark this as Applicant's 1, Your Honor.

15 THE COURT: Actually, let's go ahead and let's mark
16 these affidavits as Applicant's 1, that copy, and make
17 whatever you just had Applicant's 2.

18 (COPY OF AFFIDAVITS MARKED INTO EVIDENCE AS
19 APPLICANT'S EXHIBIT NUMBER 1.)

20 (AFFIDAVIT MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT
21 NUMBER 2.)

22 BY MS. GOOD:

23 Q. And this Applicant's 2, what is it?

24 A. This is an affidavit that was done by Sean Toran down
25 at the jail on March 28, 2011.

1 Q. Okay, and what did that affidavit state?

2 A. It says:

3 I, Sean Toran, know nothing about the charges
4 pending against Ricky Bowman and myself.

5 Therefore, I cannot and will not be able to
6 testify. I was not threatened, bribed, or asked
7 to write this statement.

8 Q. And you cross-examined him as to this affidavit,
9 correct?

10 A. Yes.

11 Q. And you've heard Mr. Bowman testify there was another
12 letter that he gave you from Mr. Toran regarding this
13 situation, correct?

14 A. As far as I know, there's really only one letter that
15 there was. There, there might have been another one. I, I
16 know the, the references that Mr. Bowman had made on the
17 stand in terms of the content.

18 Q. Well, what is the letter you remember?

19 A. I know there was that affidavit that was obviously as
20 useful as you could imagine it was. I -- there was a
21 letter that was written. It -- the content of it is --
22 when Mr. Bowman said keep quiet in terms of Sean Toran
23 writing all you have to do is keep quiet, but it didn't
24 specify anything about particular crimes or anything else.
25 I do remember reading that.

1 Q. And do you know where that letter is today?

2 A. It should be in my file.

3 Q. Okay. Did you bring your file with you?

4 A. I thought I gave my entire file to you.

5 Q. You haven't. I came and looked at that one in your
6 office.

7 A. Oh. Did you?

8 Q. Yes.

9 A. I thought you had my file, so no, I, I, I did not
10 bring it.

11 Q. Okay.

12 A. Because I know you had taken some of my other files in
13 ---

14 Q. Right.

15 A. --- in the completeness.

16 Q. Yeah, but you do remember that there was a letter?

17 A. There was a letter, yes. It just simply did not say
18 anything particularly useful.

19 Q. Okay, and did Mr. Bowman ask you to use that letter
20 during the cross-examination of Sean Toran?

21 A. I'm sure he did.

22 Q. Okay, and you did not listen to him and follow his
23 wishes as to that letter?

24 A. I did not believe it would be an effective use of
25 cross-examination.

1 Q. Okay. Regarding the juror issue, you stated it's your
2 practice to poll the jury, correct?

3 A. Yes.

4 Q. And why is that your practice to poll the jury?

5 A. Because some people that -- it has happened in the
6 past and I've seen it, that some people will get pressured
7 into agreeing to something in the jury room. And when
8 they're brought out in front of the judge and everyone else
9 and they actually have to stand up and answer a question
10 will actually react differently.

11 Q. Okay, and so it's important to you to poll the jury
12 because you think it might affect the outcome of the trial,
13 correct?

14 A. Yes.

15 Q. Okay, and in this case, you testified that you didn't
16 count the number of jurors polled, correct?

17 A. I didn't count the number of people that were called
18 in terms of while they were being polled.

19 Q. And so ---

20 A. There were absolutely twelve jurors sitting in that
21 box. Let me be clear about that.

22 A. But -- and -- but it's clear from the transcript that
23 only eleven were polled.

24 A. Apparently, yes.

25 Q. And you have no idea what that twelfth juror would

1 have said, correct?

2 A. No, ma'am.

3 Q. And based on what you just testified to, you've seen
4 it happen where that twelfth juror, or whether it's the
5 third that was polled, whatever, but there would be one
6 juror that says this is actually not what I wanted?

7 A. That is possible, correct.

8 Q. Okay, and in this case, you have no idea if that
9 twelfth juror would have still agreed to that verdict?

10 A. None whatsoever.

11 MS. GOOD: Court's indulgence.

12 THE COURT: Yes, ma'am.

13 (A PAUSE.)

14 MS. GOOD: No further questions, Your Honor.

15 THE COURT: Anything else, Ms. Kinard?

16 MS. KINARD: No, Your Honor. No redirect. Thank you.

17 THE COURT: All right, Mr. Schnee, where is your
18 office? Nearby?

19 WITNESS: It is across the street.

20 THE COURT: Okay.

21 Is this Toran letter very important? Do you want to
22 give Mr. Schnee time to run across and grab his file and
23 see if he can find that Toran letter? I think your client
24 wants ---

25 MS. GOOD: My client ---

1 THE COURT: --- the letter.

2 MS. GOOD: --- would like that, Your Honor.

3 THE COURT: Yes.

4 WITNESS: Sure. What, what time? It might take a
5 while.

6 THE COURT: Okay.

7 Actually, is this your last witness, Ms. Kinard?

8 MS. KINARD: Yes, Your Honor.

9 THE COURT: Okay, and this is the last case of the
10 day, right?

11 MS. KINARD: Yes, Your Honor.

12 THE COURT: So, there is no rush but you need to, I
13 mean, just get it to me today.

14 WITNESS: Okay. I, I -- all I know is that file has
15 been -- it is sitting somewhere. I'm just not sure exactly
16 where it is.

17 THE COURT: Okay. Well ---

18 WITNESS: But I will certainly...

19 THE COURT: Okay.

20 WITNESS: I know Ms. Good has found -- has looked
21 through the files. So, I mean, it is in my office.

22 THE COURT: All right. Well, I'm going to take this
23 one under advisement anyway. So, Ms. Good, if you find it
24 to be important, I'm going to have you follow up with Mr.
25 Schnee.

1 MS. GOOD: Yes, ma'am.

2 THE COURT: Within the next of couple days or so.

3 MS. GOOD: Okay.

4 THE COURT: Just to make sure that that is sent to me.

5 MS. GOOD: Yes, ma'am.

6 THE COURT: You can scan it and email it, copy Ms.
7 Kinard on it, and it will sort of be an unofficial exhibit.
8 It won't be marked, of course, because we're about to shut
9 down for the day.

10 MS. GOOD: Yes, ma'am.

11 THE COURT: But I assume your client wants me to see
12 it.

13 MS. GOOD: Yes, ma'am, and I can walk over with him to
14 try to find it with him.

15 THE COURT: That's fine. I'm just saying I'm about to
16 leave the bench for the day except for these folks in the
17 back anyway, so there's no real rush.

18 WITNESS: Yes, ma'am.

19 THE COURT: Just so I have it in the next day or two.

20 WITNESS: Yes, ma'am. Absolutely.

21 THE COURT: Or three.

22 MS. GOOD: Yes, ma'am.

23 THE COURT: Okay, and you can step down.

24 WITNESS: Thank you.

25 (THE WITNESS EXITS THE STAND.)

1 THE COURT: I don't know if y'all want to make
2 arguments.

3 Ms. Good?

4 MS. GOOD: Your Honor, I mean, based on the testimony,
5 I believe we put everything up. It's very straightforward.
6 We believe that Mr. Schnee was ineffective on several
7 fronts. The first was regarding to the closing of the
8 courtroom. It's clear on the appeal record that that issue
9 was denied because he did not properly preserve that issue
10 by objecting to the constitutional rights.

11 Regarding Torrell Johnson, Your Honor, it's our
12 position that there should have been a mistrial, at the
13 very least objections to the hearsay, as the fact that when
14 those witnesses testified, Mr. Johnson had not testified at
15 that point. But ultimately as to a mistrial as to that,
16 which the objections would have had to have been brought at
17 that time because he never testified, and all this evidence
18 regarding his statements and the investigator's belief of
19 his statements were given to the jury in both opening
20 arguments, as well as through Pegram's testimony.

21 And also, Your Honor, it's our position that Mr.
22 Bowman should have been allowed to have the benefit of the
23 plea offer. He did not knowingly reject that as he was not
24 aware of Mr. Toran testifying at the time, or that he was
25 going to be testifying. If he had had that information,

1 his testimony was he would have taken that plea offer.

2 And finally, Your Honor, as to the eleven jurors that
3 were polled, Mr. Schnee's testimony there himself saying
4 that he believed it's very important. He's seen where it's
5 happened before where that twelfth juror says no, this is
6 not my verdict. It's clear in the transcript there were
7 only eleven jurors that were polled. So, we do believe
8 that that is an issue.

9 And taking all of these together, Your Honor, we
10 believe that we've presented more than enough for his PCR
11 to be granted.

12 THE COURT: Let me ask you. Before you said ---

13 MS. GOOD: Yes, ma'am.

14 THE COURT: --- just so that I haven't missed
15 anything. On the amended application, 11(b):

16 Ineffective assistance of trial counsel in that
17 trial counsel failed to request a hearing
18 quashing the indictments as a result of Torrell
19 Johnson failing to testify.

20 And tell me what you mean there.

21 MS. GOOD: Your Honor, I'm withdrawing that one
22 because at the time, he did not know Torrell Johnson was
23 going to be testifying. There's things he should have done
24 throughout the trial with hearsay objections and then
25 ultimately at the end a mistrial. But at the time they had

1 the hearing to quash, he, at that time, he was under the
2 impression that he was testifying.

3 THE COURT: Okay.

4 MS. GOOD: But there were other things that, regarding
5 Torrell Johnson, he should have, in our position, certainly
6 should have done that he did not do.

7 THE COURT: Understood.

8 Ms. Kinard.

9 MS. KINARD: Thank you, Your Honor. To briefly go
10 through these issues from the state's perspective,
11 regarding Torrell Johnson and his testimony and statements
12 as a whole, just because Mr. Johnson didn't testify does
13 not mean that he could not be referenced, and that's the
14 bulk of -- if -- any time you see his name in the
15 transcript is there's this gentleman, Torrell Johnson. I
16 think there might have been one small instance where it
17 says Johnson said something.

18 Regardless of this being allowed in, this, we allege,
19 does not rise to the level of being deficient performance
20 on Schnee's behalf as this doesn't in itself prejudice Mr.
21 Bowman in any way. This certainly doesn't satisfy the
22 requirements of *Strickland vs. Washington* when it comes to
23 evaluating an attorney's performance. Torrell Johnson
24 certainly was involved in the case. He testified at the
25 pretrial, and any information that may have come out kind

1 of surrounding him is not necessarily inadmissible nor
2 grounds for a re -- a mistrial motion.

3 When it comes to the letter from Mr. Toran to Mr.
4 Bowman, I believe Mr. Schnee testified very credibly that,
5 yes, he saw the letter. He did not believe that it was
6 essentially worth the time to go over that in court. That
7 it was not credible. That it was -- excuse me, it was not
8 specific enough to necessarily relate to the characters in
9 this case and the specific crimes that were at hand.

10 As for the plea agreements, Mr. Schnee also testified
11 credibly that he did not recall, first of all, the seven
12 year nonviolent offer. That he certainly, if it was
13 received, would have taken it to Mr. Bowman, but he did not
14 recall or have any signed paperwork such as Mr. Bowman
15 testified to. Regarding the ten-year offer, he stated that
16 it did seem familiar and that he certainly would have taken
17 it to Mr. Bowman, and he remembered it being on the table
18 for a while.

19 But as far as Mr. Bowman not being able to make an
20 informed decision not to plead because of the lack of
21 information, that -- I believe that that is kind of a red
22 herring because nobody had that information except for the
23 state. It was not turned over. There's no way that Mr.
24 Schnee was ineffective by not giving that information to
25 Mr. Bowman because he didn't have it to give. So, I don't

1 believe that that in any way affects Mr. Bowman's ability
2 to plead.

3 And lastly the eleven juror issue, Mr. Schnee did
4 testify that it is his practice to poll jurors, that
5 sometimes one juror can be different. However, there's
6 case law on point, *Green vs. State*, that says polling a
7 jury is only to ensure that the verdict is unanimous. That
8 case specifically says even a foreman saying the verdict
9 was reached reluctantly doesn't indicate error. So, the
10 fact that one juror was essentially had -- there was a
11 scrivener's error but orally is how I'm viewing it with the
12 clerk of court. It was just accidentally overlooked. One
13 didn't testify -- or one didn't state their verdict for the
14 record does not mean anything as far as the validity of the
15 verdict as a whole.

16 Lastly, Ms. Good alluded to we think these errors are
17 more than enough. To me, that signifies the possible
18 consideration of cumulative error, which I just want to
19 state for the record the state does not recognize in PCRs.
20 And, therefore, any of these errors by themselves certainly
21 do not rise to the level of deficient performance by Mr.
22 Schnee. Nor can the -- we don't believe the court can find
23 that anything rose to the level of prejudicing Mr. Bowman
24 in his trial. And for that reason, we respectfully request
25 that the court deny his application.

1 RULING OF THE COURT:

2 THE COURT: All right. The Green case does also talk
3 about, just with respect to polling the jurors, that there
4 can't be any speculation as to what the jurors would have
5 said if they were polled, and I think the same applies to
6 the twelfth juror in this case. Because you can't
7 speculate, then there can be no showing of prejudice in
8 that regard. So, as to subsection G on the amended PCR
9 application, it's denied on those grounds.

10 As to the remaining grounds, I told you I'll take it
11 under advisement. I certainly can't rule on anything with
12 respect to Mr. Toran, not having seen the letter, and I
13 would like to review portions of the transcript.

14 Let me ask both of you. Do you have a word index on
15 your transcript, either one of you?

16 MS. KINARD: No, Your Honor.

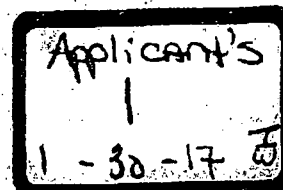
17 THE COURT: It just isn't part of the transcript. I
18 thought maybe it wasn't copied for me.

19 MS. KINARD: Your Honor, for some reason a lot of ours
20 don't come with word indexes. I don't know. I'll double
21 check the files when I get back to the office.

22 THE COURT: Okay. Good enough.

23 I'll let y'all know something. Thank you.

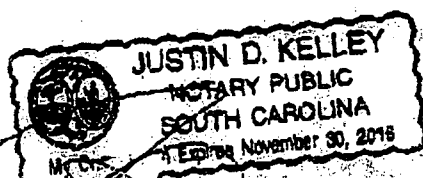
24 --- END OF TRANSCRIPT OF RECORD ---



To whom it may concern.

I Torrell Johnson am retracting my statement that shaun Toran and others accused robbed someones house out of revenge. I was told to say that by Investigator Pergram or else I would be going to jail for gun charges and other robberies in the area. So I do not know who robbed that house and I do not know for a fact that Shaun and others accused robbed a house out of revenge.

Recantation



Witness & Notary Signature

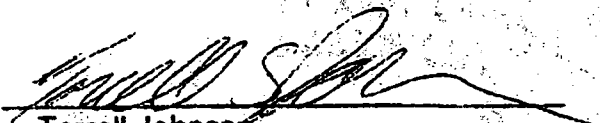
All of this came about. Do to the fact detective said Mr. Johnson said MY NAME. Insuanted me in a crime. Yet it Pretrial he ~~ad~~ amitted he never new my name.

AFFIDAVIT OF TORRELL JOHNSON

I was living at 110 or 112 Washington Street, Columbia, SC in December 2008. On or about December 5, 2008, my roommate shot a girl in the neck inside our apartment. This happened at approximately 5:00 am. At around 9:00 am, police raided our apartment. They separated me and my roommate and told me that someone who fit my description had been committing robberies in a parking lot. They also told me that all the guns in the house belonged to me and that they had recovered gun shells from the scene of a crime that matched one of my guns. I told them that the guns had already been reported stolen, but they wanted me to say that I had been involved in a robbery.

Investigators asked me about Ricky Bowman, but I did not know who he was. His cousin, Marcus, said that Ricky's street name is "Slick". I did not really know Ricky. I signed a statement, but I thought I said that Sean Toran committed the robberies. The police told me what to say and told me to say they were the ones who went in the house. I was high at the time. I had been on a two day binge at the time because I had access to dope. I had been smoking and drinking liquor and beer and popping pills. I had been up all night smoking before the police got there. They told me "you're either going to write this down or go to jail". They also told me there was a bench warrant they would take care of, but I still sat in jail for six days.

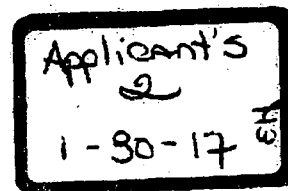
I give this affidavit without any threat or coercion from anyone at any time. I give this statement based on the truth contained herein and for no other reason.


Torrell Johnson

Sworn to before me this
4th day of December, 2009

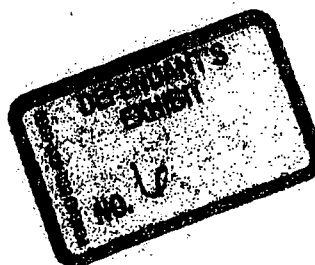

Sidney R. Graham
Notary Public for South Carolina
My Commission Expires August 11, 2013

I Sean Toran know nothing about the charges pending against Ricky Bowmen and myself.
Therefore I cannot and will not be able to testify. I was not threatened, bribed, or asked to write this statement.



Sean Toran

born before me this 31 day
March 2011
no Halliburton (Seal)
tary Public for South Carolina
commission expires: Sept 17, 2018



CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 30TH DAY OF JANUARY, 2017.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JULY 6TH, 2018

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICKY S. BOWMAN,

APPELLANT

APPELLATE CASE NO. 2011-202926

RECORD ON APPEAL

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RECEIVED

JUL 9 1 2013

SC Court of Appeals

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STATE'S EXHIBIT #36 (PHOTO LINEUP)

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	)	
County of Richland	)	2010-GS-40-1108
		2010-GS-40-1109
		2010-GS-40-1111
		2010-GS-40-1112
	)	
	)	
THE STATE,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
RICKY BOWMAN,	)	
	)	
DEFENDANT,	)	

November 7-9, 2011
Columbia, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE; and a jury.

APPEARANCES:

APRIL SAMPSON, ASSISTANT SOLICITOR
BRITTON ALL, ASSISTANT SOLICITOR
Attorneys for the State

MARK SCHNEE, ESQ.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

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1 THE COURT: All right. Solicitor, call your case.

2 MS. SAMPSON: Thank you, Your Honor. The State at
3 this time would call the State vs. Ricky Bowman on the
4 charges of assault and battery of a high and aggravated
5 nature, armed robbery, burglary in the first degree,
6 possession of a weapon during the commission of a violent
7 crime, and kidnapping.

8 THE COURT: All right. You said something in
9 chambers about amending the --

10 MS. SAMPSON: Yes, Your Honor.

11 THE COURT: -- indictments?

12 MS. SAMPSON: At this time, the State would move to
13 amend two of the indictments on --

14 THE COURT: Which one?

15 MS. SAMPSON: On the assault and battery of a high
16 and aggravated nature, which is indictment
17 2010-GS-40-1108.

18 At the end of the indictment, it says that -- it
19 alleges that Ricky Bowman did beat the victim with a
20 pistol and break her finger in front of her child while
21 committing other crimes.

22 The portion "in front of her child" needs to be taken
23 out. I do not feel that that is one of the elements of
24 the crime, so I don't feel like it changes the nature of
25 the indictment enough so that it's any prejudicial effect

1 to the defendant for striking that portion.

2 THE COURT: What's the defense's position?

3 MR. SCHNEE: Judge, just for those scrivener's
4 errors, we have no objection to amending the indictments.

5 THE COURT: All right.

6 MS. SAMPSON: The other one that needs to be -- I'm
7 assuming that's to both of them?

8 MR. SCHNEE: To both, Your Honor, yeah.

9 MS. SAMPSON: Then the other one is on the burglary
10 first indictment, which is indictment 2010-GS-40-1112. It
11 alleges that this occurred on November 11th, 2008, but it
12 occurred on November 25th, 2008.

13 THE COURT: All right. Both indictments are amend
14 without objection by agreement.

15 MS. SAMPSON: As far as -- do you want to do the
16 pretrials now? It won't take but a minute, but I don't
17 know if you want to do them now or after we pick the jury.

18 THE COURT: Well, the jury is ready to be picked.

19 MS. SAMPSON: Okay.

20 THE COURT: I mean, if they involve jury selection,
21 we can take them up.

22 MS. SAMPSON: I don't think so, Your Honor. We've
23 handed them to you, Your Honor, our requested voir dire.
24 I don't know if the defendants have any.

25 MR. SCHNEE: I handed one up, as well.

1 THE COURT: I'll find out.

2 MS. SAMPSON: Okay. I don't believe there is. I
3 have looked at his witness list, Your Honor. The State
4 has no -- no objections to any of the questions submitted
5 by Mr. Schnee.

6 THE COURT: No objection to the defendant's requested
7 voir dire?

8 MS. SAMPSON: That's correct, Your Honor.

9 THE COURT: All right. Otherwise, the State is ready
10 to proceed?

11 MS. SAMPSON: Yes, sir, Your Honor.

12 THE COURT: Defense ready to proceed?

13 MR. SCHNEE: Yes, Your Honor. In terms of jury
14 selection, there's only going to be one motion. I would
15 request to do that beforehand. That would be to have my
16 client's shackles removed, at least as far as the jury
17 selection so they don't see or hear his shackles under the
18 table, just to not prejudice him in that respect pursuant
19 to Deck v. -- (unintelligible).

20 THE COURT: Pursuant to what?

21 MR. SCHNEE: Deck v. Missouri.

22 THE COURT: Oh.

23 MR. SCHNEE: It's a US Supreme Court case that says
24 the defendant cannot be shown to the jury in shackles.

25 THE COURT: I understand. I think he can stand and

1 face the jury without making it obvious that he has
2 shackles on. If you want me to, I'll move them an extra
3 row deep if you want me to do that.

4 MR. SCHNEE: Yes, Your Honor.

5 MS. SAMPSON: I'm sorry, I didn't understand you.

6 THE COURT: I'm sorry?

7 MS. SAMPSON: I didn't understand you.

8 THE COURT: I said I denied his motion, but I will
9 instruct the bailiffs to seat the potential jurors one row
10 back in order to minimize any possible viewing of his
11 shackles.

12 MS. SAMPSON: Yes, sir.

13 THE COURT: All right.

14 MR. SCHNEE: Yes, sir.

15 THE COURT: All right. Now, Mr. Schnee, does the
16 defendant have any objections to the State's requested
17 voir dire?

18 MR. SCHNEE: I read through them, and they look very
19 similar to what I have. Your Honor can go through them,
20 pick which one you like better, but I have no objection to
21 any of them.

22 THE COURT: Well, I'll let you know, I'll probably do
23 my own, and then we'll cover most of these questions
24 anyway.

25 All right. Go ahead and provide counsel with strike

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Did you put it on your car?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Did you ever get a ticket?

5 PROSPECTIVE JUROR: I've had tickets, yes.

6 THE COURT: Since you put it on there?

7 PROSPECTIVE JUROR: Yeah.

8 THE COURT: You just destroyed my theory. I knew, I
9 knew if I put it on the back of my car, I wouldn't get a
10 ticket.

11 Thank you, Mr. 174. I didn't mean to get too
12 personal with you.

13 PROSPECTIVE JUROR: That's okay.

14 THE COURT: A anybody else?

15 (There was no response.)

16 Anybody support a group known as the Innocence
17 Project? There are a number of groups out there. I need
18 know if you have any connection with them one way or the
19 other.

20 (There was no response).

21 All right. The defendant in this matter today is
22 Mr. Ricky S. Bowman.

23 Mr. Bowman, will you -- Ricky Sherod Bowman.

24 Mr. Bowman, will you stand and face the jury, please?

25 (Complies.)

1 Mr. -- just Mr. Bowman.

2 Any member of the jury panel related by blood,
3 connected by marriage or employment or a close personal
4 acquaintance of Mr. Ricky Sherod Bowman? Anybody know
5 Mr. Bowman?

6 (There was no response).

7 All right. Mr. Bowman is represented in this matter
8 today by Mr. Mark Schnee, who is an attorney practicing
9 law here in Richland County. You may stand and face the
10 jury.

11 Any member of the jury panel related by blood,
12 connected by marriage or employment or a close personal
13 acquaintance of Mr. Mark Schnee or perhaps have been
14 represented by him at some time in the past or may even be
15 represented by him at the present time? Anybody have any
16 connection with him, know Mr. Schnee?

17 (There was no response.)

18 Now, ladies and gentlemen, what I hold in my hand are
19 what are known as the indictments in this case. These are
20 the formal legal documents by which a case is brought into
21 court. They're not evidence of anything. They are just
22 the charging documents so the process moves forward with
23 prosecution. As I say, they are not evidence of anything.

24 I remind you before I even discuss this with you that
25 any individual in this county, this state, and this United

1 THE CLERK: What says the State?
2 MS. SAMPSON: Please accept the juror.
3 THE CLERK: What says the defense?
4 MR. SCHNEE: Please excuse the juror.
5 THE CLERK: Have a seat in the back of the courtroom,
6 please.
7 Number 204.
8 (White male.)
9 PROSPECTIVE JUROR: I am retired.
10 THE CLERK: What says the State?
11 MS. SAMPSON: Please present the juror.
12 THE CLERK: What says the defense?
13 MR. SCHNEE: Present the juror.
14 THE CLERK: Have a seat in the jury box, please.
15 Number 176.
16 (White male.)
17 PROSPECTIVE JUROR: I'm an officer.
18 THE CLERK: What says the State?
19 MS. SAMPSON: Please seat the juror.
20 THE CLERK: What says the defense?
21 MR. SCHNEE: Please seat the juror.
22 THE CLERK: Have a seat in the jury box.
23 THE BAILIFF: Watch your step.
24 The panel is seated.
25 THE COURT: Any objection to the jury selection

1 process from the State?

2 MS. SAMPSON: No, sir.

3 THE COURT: From the defense?

4 MR. SCHNEE: The Court's indulgence.

5 (Pause.)

6 No, Your Honor.

7 THE COURT: All right. Thank you very much.

8 All right. Ladies and gentlemen of the jury panel
9 that were not selected on this case, I'm going to ask you
10 to return to the jury assembly room. They're probably
11 going to be send you to lunch at this point.

12 But I do -- before you leave, I do want to take this
13 opportunity to thank you for being here, being willing to
14 serve and sit on these cases.

15 These are difficult cases, and they must be decided
16 in our community under the laws that our founding fathers
17 established some 250 years ago.

18 I tell jurors all the time this system can do without
19 me. It can do without you, but it cannot do -- it could
20 do without these attorneys, but it cannot do without you.

21 You're such an essential part of the judicial system
22 of this nation, this county, and this state that your role
23 as jurors was written into the constitution some 250 years
24 ago by our founding fathers. It's a system that's worked
25 well for many, many years.

1 for identification only.)

2 THE COURT: All right. Mr. Schnee, you have some
3 motions in this case?

4 MR. SCHNEE: Yes, Your Honor. The first motion I
5 would make is for a Neil vs. Biggers hearing.

6 THE COURT: Do you want to make your Brady motion
7 first? It's first on the list.

8 MR. SCHNEE: I certainly could do that. That would
9 involve in particular a number of items and also one
10 witness that I believe is down in holding.

11 Looking at those items first, there is a mention of a
12 car shooting that -- directly after the robbery within --
13 it's described as one to five minutes afterwards.

14 There is apparently a witness that was interviewed
15 with regard to that shooting incident, had some
16 information. It's under a different CPD case number.

17 I don't have any information about the witness, what
18 they saw or how it was involved. Up until last week, I
19 was informed the State is going to introduce that there
20 was a shooting of some sort, not blaming my client, but
21 saying that was the basis for the fear from the victims
22 for why they didn't call the police.

23 At that point, I believe it becomes relevant, and I
24 would like to know what was in that police report and what
25 this witness said and saw.

1 THE COURT: There is an incident report of a
2 shooting?

3 MR. SCHNEE: There is an entire case number of it,
4 yes.

5 THE COURT: In the vicinity of this -- where this
6 took place, it allegedly took place?

7 MR. SCHNEE: The outside. It was in the same parking
8 lot of an apartment complex.

9 THE COURT: You don't know whether it's related to
10 this case or not?

11 MR. SCHNEE: The accusation is that it's somewhat
12 related. It's allegedly a car that belongs to the person,
13 the suspects of the robbery, were there to find and/or
14 shoot, kill, rob.

15 THE COURT: How about it, Ms. Sampson?

16 MS. SAMPSON: I think it's better to give you an idea
17 of what the case is about, not looking at it in a vacuum.

18 Our allegations are that Mr. Bowman, along with three
19 other individuals, broke into the home of Delores Dennis.
20 There is Delores Dennis, three other adults and a child in
21 the house.

22 Once inside the home, there are allegations made by
23 one of the suspects that they had the wrong house. They
24 are looking for a person named Black Shawn.

25 At some point, they allegedly take one of the

1 suspects -- one of the victims out onto a balcony and ask
2 that person who is the driver of a car and point out a
3 silver car in the parking lot.

4 When the victim said, "I don't know who that is," at
5 some point, the suspect leaves. Shots are heard after
6 that.

7 Our victims are never going to say what was shot, who
8 was shot, just that there were shots, but they did hear
9 shots fired. They are alleging that the suspects said,
10 "Don't call the police. We know where you live. We'll
11 kill you if you do." Then they hear shots fired.

12 So they don't call the police immediately. They
13 don't call the police until the next day.

14 THE COURT: Do you know who shired the thoughts
15 [sic]? Fired the shots.

16 MS. SAMPSON: They don't know who fired the shots.
17 They didn't see them. They only heard what they were
18 doing when the shots were fired.

19 THE COURT: By the same --

20 MS. SAMPSON: They don't know who --

21 THE COURT: -- assailants?

22 MS. SAMPSON: They will tell you -- and I've already
23 told Mr. Schnee this -- they don't know who fired the
24 shots. They heard gunfire. They duck, lay down.

25 When they think it's safe, they leave and take the

1 victim who was hit in the head to the hospital. They
2 don't call the police, and I do think that I can get to
3 what their present-sense impression was of what they
4 heard.

5 I couldn't get into whether he shot in the car, or if
6 a car was shot or any of that. I don't have any
7 information that Mr. Bowman did that, nor that that car
8 shot was the person they were looking for.

9 THE COURT: Was there a codefendant?

10 MS. SAMPSON: The codefendant is Sean Toran. There
11 were two others that were never charged. No matter --
12 Sean Toran is not going to say Ricky Bowman shot -- that
13 any shots were fired afterwards.

14 There is not going to be any discussion that this
15 defendant firing any shots afterwards, but I do think my
16 victims can say they heard a gunshot afterwards as the
17 basis for why they don't call the police.

18 Without having to give him a file I don't have -- my
19 office did not get that file. There was no charges found
20 against anyone on that incident. Neighbors called when
21 they heard shots. There is --

22 THE COURT: Is there an incident report?

23 MS. SAMPSON: I -- to be honest, Your Honor, I assume
24 that there is. I don't know because they didn't arrest
25 anybody, nor charge anyone in that particular -- with the

1 car shooting. So I don't --

2 THE COURT: Well, if there is an incident report,
3 it's contemporaneous in time with the alleged crime.. It's
4 in the same vicinity as the alleged crime.

5 The defendants -- this defendant is alleged to have a
6 weapon and a firearm, I assume, who -- according to the
7 indictments, I assume, left the house after he is -- has
8 allegedly assaulted and robbed these people with a
9 firearm.

10 If they -- if your witnesses say immediately after
11 the defendant left our house, there was firearms, there
12 was shooting, there is a problem -- in my mind, there is
13 somewhat of a natural presumption that this defendant
14 did -- which it goes to his potential guilt or innocence.

15 It's just another fact that -- that a jury might rely
16 on to convict him of these crimes. So I think if there is
17 an incident report, it ought to be -- it ought to be
18 produced to defendant's counsel.

19 MS. SAMPSON: Your Honor, I have it. Sergeant Hair
20 was better than I am. He actually brought it with him. I
21 am going to have my paralegal make a copy because that is
22 his only copy, and I'll provide it to the defense.

23 THE COURT: All right.

24 MS. SAMPSON: But it doesn't say that this defendant
25 did anything. I'm just letting the Court know it doesn't

1 say anything about --

2 THE COURT: Well, if your witnesses are going to
3 testify that there were shots, then they need to know what
4 the State knows about those shots, if anything.

5 Next?

6 MR. SCHNEE: Next, Your Honor, as of last week, the
7 codefendant who was arrested, he has decided to testify
8 for the State.

9 He was originally arrested pursuant to a search
10 warrant for drugs. That was a completely separate
11 incident but very close in time.

12 Part of the investigation of that drug offense
13 involved the codefendant in this case selling drugs on
14 video. My intention is to ask him in terms of just his
15 pending charges.

16 However, in the event that he says something on the
17 stand about yeah, the charges are bogus or anything like
18 that, I'm requesting a copy of the actual video to be used
19 for impeachment if he's going to say that, not to use in
20 my case in chief but should impeachment become an issue.

21 THE COURT: Ms. Sampson?

22 MS. SAMPSON: Your Honor, at this time, he has only
23 been charged with that crime. He has not been convicted,
24 so he can't say they're bogus at this point.

25 The tape shouldn't be used to impeach him because he

1 hasn't been convicted yet. The tape was part of his
2 arrest for drug offenses, not for this case at all.

3 They were searching and following him on a drug case,
4 not this case at all at any point in time. He had a
5 pending charge for this case, so once he gets arrested on
6 the drugs, they served him, but that was not why they were
7 looking for him. They were looking for him on a drug
8 case.

9 I do think he can question about him pending charges,
10 if he testifies, but I don't think he can get into the
11 validity of them or anything like that. I don't think he
12 was charged. I --

13 THE COURT: All right. I'll just hold that like a
14 motion in limine. I'll take it up if it -- if it becomes
15 relevant, when and if this codefendant testifies. I've
16 made a note of it, Your Honor.

17 MS. SAMPSON: For the record, Your Honor, my
18 paralegal is giving the defendant, Mr. Schnee, a copy of
19 the report that he has.

20 THE COURT: All right. Next motion?

21 MR. SCHNEE: Yes, Your Honor. At this time, I would
22 just renew my motion in general in terms of any
23 handwritten notes that were taken by any law enforcement
24 officers or if there have been any changes or updates
25 pursuant to Riddle that I've not been made aware of in

1 terms of any testimony from other witnesses.

2 THE COURT: Anything since the date of arrest or
3 since the discovery was turned over to the defendant's
4 counsel?

5 MS. SAMPSON: Your Honor, as best I can tell, I have
6 given Mr. Schnee everything that we have. There has
7 been -- and I think he is quite aware of issues mainly
8 because when I got this case, it was not my case.

9 I did not know what had been turned over and what had
10 not. I'm trying to piece together. As far as I know,
11 I've given him everything.

12 He asked if Sergeant Pegram has taken any handwritten
13 notes. Sergeant Pegram has told me that he has not, only
14 occasionally are there handwritten notes, but that was his
15 only notes. Mr. Schnee has those.

16 We did interview -- not this -- I did not interview,
17 a person from my office interviewed Sean Toran last week
18 to get what he was going to say.

19 I gave Mr. Schnee a synopsis of that interview. I
20 gave it to him verbally the day it happened. I gave him a
21 typed up version last night. It was 11:45 last night when
22 I did it, but I emailed it to him last night.

23 I did not do that interview. I had to read somebody
24 else's notes in order to do that to give it to him. Those
25 also had stuff that we needed to do on them. I feel that

1 was work product because that was someone in our office
2 who had done that. I did give him a synopsis of what the
3 testimony was.

4 THE COURT: Any problem with that, Mr. Schnee?

5 MR. SCHNEE: No, sir.

6 THE COURT: Number three, or was there anything else
7 on --

8 MR. SCHNEE: Yes, Your Honor.

9 THE COURT: -- Brady and Riddle?

10 MR. SCHNEE: Yes, Your Honor. For that, I would need
11 testimony from Torrell Johnson. I think he is --

12 MS. SAMPSON: Your Honor --

13 MR. SCHNEE: -- being held downstairs.

14 MS. SAMPSON: If I may, I think Torrell Johnson -- I
15 think I can cut to the chase without bringing Mr. Johnson
16 up here, but if he wants to, we can.

17 Mr. Johnson has alleged in an earlier statement that
18 Mr. Schnee had that Sergeant Pegram in this meeting with
19 him had him do a written statement, and he -- Mr. Schnee
20 is alleging we have not provided that written statement to
21 him.

22 Investigator Pegram is here. I've asked him if he
23 would testify to some of those things. He didn't do a
24 written statement; that Torrell --

25 THE COURT: Who is Torrell Johnson?

1 MS. SAMPSON: Torrell Johnson is -- he is a witness.
2 They are doing -- unrelated to this, again, a search
3 warrant on an apartment at

4 When they search that apartment, the ID of our victim
5 is found in that apartment. Korey Coit's ID is found.
6 Upon finding that, Investigator Pegram -- or he can come
7 up here.

8 Sergeant Pegram asked -- I'm sorry Sergeant Pegram
9 asked Torrell Johnson about the ID. Torrell Johnson
10 implicates the defendant and codefendant. That's how this
11 process gets started.

12 He does all of this orally with Mr. Johnson. When he
13 asked Mr. Johnson about doing a written statement,
14 Mr. Johnson refused.

15 Mr. Johnson is alleging that he did do a written
16 statement. I cannot give him what the State doesn't have.

17 He is going to call Torrell Johnson to say he
18 didn't -- Torrell Johnson is going to testify there isn't
19 a statement.

20 Investigate Pegram would be called to say he didn't
21 do a statement. I'm just trying to cut to the chase and
22 not waste the Court's time. I'll do what I'm --

23 THE COURT: He's in holding?

24 MS. SAMPSON: He's downstairs in holding, and I've
25 seen the written statement, and I guarantee you he's going

1 to say that.

2 THE COURT: What --

3 MS. SAMPSON: I've seen the written statement that
4 Mr. Schnee has. That was done by Mr. Johnson that says he
5 did a written statement with Sergeant Pegram. Pegram
6 tells me he never did a written statement. He will
7 testify to that.

8 So if we want to bring him up to say I did it, then
9 we can --

10 THE COURT: What does Mr. Schnee have?

11 MR. SCHNEE: I have an affidavit.

12 THE COURT: Affidavit, okay.

13 MS. SAMPSON: That he did at the jail or did
14 somewhere, and he is alleging that at the time, back in
15 December of 2008, he did a written statement with
16 investigator -- Sergeant Pegram is saying that never
17 occurred. He doesn't have a written statement to give --

18 THE COURT: Well, Johnson --

19 MS. SAMPSON: He didn't give him --

20 THE COURT: Was Johnson arrested in connection with
21 this --

22 MS. SAMPSON: No.

23 THE COURT: -- home invasion?

24 MS. SAMPSON: No. He was arrested for a bench
25 warrant that he had outstanding at the time. He is not

1 charged in this offense at all.

2 THE COURT: And he is still in jail on a bench
3 warrant?

4 MS. SAMPSON: He is on a different charge. He is in
5 jail on a new charge now.

6 THE COURT: A drug charge?

7 MS. SAMPSON: That has, again, nothing to do with
8 this case.

9 THE COURT: All I can do is get testimony from both,
10 make a decision.

11 MR. SCHNEE: Yes, Your Honor. I understand. I just
12 want to proffer the testimony.

13 THE COURT: All right. You just want to proffer the
14 affidavit?

15 MR. SCHNEE: I want to proffer the testimony of
16 Mr. Johnson.

17 THE COURT: All right. Well, he's a witness in your
18 case?

19 MS. SAMPSON: Well, he's listed on the witness list,
20 Your Honor, because of his involvement with Investigator
21 Pegram as far as getting the ID.

22 THE COURT: Well, yeah, that's -- I mean, that's why.

23 MS. SAMPSON: I haven't made the decision yet whether
24 to call him as a witness or not, but he is on the witness
25 list as a potential witness.

1 MR. SCHNEE: For the record, he is also under
2 subpoena from me and on my witness list, as well.

3 THE COURT: I don't want to try the whole case before
4 we ever get started, but I'll address that. Are they
5 going to bring him up?

6 MS. SAMPSON: They're on the way. While they are
7 bringing him up, can we address one other issue? I think
8 we can have it done before he gets up here.

9 THE COURT: Yes.

10 MS. SAMPSON: I know one of Mr. Schnee's motions is a
11 Neil vs. Biggers hearing, Your Honor.

12 THE COURT: What?

13 MS. SAMPSON: The Neil vs. Biggers hearing, we would
14 ask that there be no one in the courtroom but neither
15 personnel nor the defendant.

16 My victims have gotten some contact from Mr. Bowman's
17 family members, and specifically, Mr. Torran received
18 threats all weekend.

19 My victims, Regina -- excuse me, Delores Dennis and
20 Korey Coit have received e-mails from the victim's -- the
21 defendant's sister, Joanna Washington, if I remember the
22 name correctly, offering money for them not to testify,
23 contact about, "Don't send my brother to jail," that kind
24 of thing.

25 Due to that, my victims are in fear of seeing him, so

1 I would ask that the court be cleared just while they
2 testify.

3 MR. SCHNEE: Judge, I would object to any clearing of
4 the court. While there have been some allegations, my
5 client and his family maintain they have not done anything
6 of the sort.

7 There is no proof that I've seen, no evidence of
8 e-mails. I certainly haven't been provided copies of any.
9 I believe it's unfair to clear the courtroom, particularly
10 in front of the jury.

11 THE COURT: Why is --

12 MR. SCHNEE: In terms of singling out my client's
13 family, not anyone else.

14 THE COURT: Why is that different from normal
15 sequestration?

16 MR. SCHNEE: Well, no one is asking for
17 sequestration.

18 THE COURT: What?

19 MS. SAMPSON: We haven't got there yet.

20 THE COURT: I say what is the difference between what
21 the solicitor is asking and the normal sequestration
22 order?

23 MR. SCHNEE: Well, Your Honor, other than my client's
24 mother, the rest of his family members are not witnesses,
25 are not on the witness list. Even under sequestration,

1 they would normally be allowed to be present for the
2 entire trial.

3 THE COURT: I don't know who is making all of these
4 alleged threats, but I'll grant the State's motion.

5 MS. SAMPSON: Thank you, Your Honor.

6 THE COURT: During the Biggers hearing?

7 MS. SAMPSON: Only when my witnesses are testifying.
8 It would be specifically when -- Shamael Coit. She would
9 be doing the Biggers hearing, and she would be testifying
10 in the morning.

11 If we can have that ready to make sure the jury
12 doesn't see people leaving the room, if that's how you
13 want to do it. I'll do it the best I can.

14 THE COURT: Is she going to testify in the Biggers
15 hearing?

16 MS. SAMPSON: Yes. She is in my office waiting.
17 I'll get her whatever we do that.

18 THE COURT: Are these two people part of the request
19 that you're asking to clear the courtroom?

20 MS. SAMPSON: I know that that's Mr. Bowman's mother.
21 I don't know who the other person is. Only Mr. Schnee
22 would know that.

23 MR. SCHNEE: That's another family member, Your
24 Honor, of my client.

25 THE COURT: Okay.

1 MR. SCHNEE: Obviously, in front of the jury, I would
2 object to having anyone removed on the basis that it
3 appears that people are leaving from my client's side. If
4 they have any inclination that they're in fear, that
5 prejudices my clients. He has been incarcerated, so it's
6 certainly not from my client himself.

7 THE COURT: Well, I don't know that. We're not
8 talking about people getting up and walking out with the
9 jury present?

10 MS. SAMPSON: No. I would make it clear that we
11 don't do it in front of the jury.

12 THE COURT: Okay.

13 MS. SAMPSON: It's when we're getting ready to do the
14 testimony. Then they can come back in.

15 THE COURT: How about -- you're talking about the
16 Biggers hearing today?

17 MS. SAMPSON: The Biggers hearing today.

18 THE COURT: All right.

19 MS. SAMPSON: And when Shamael Coit testifies in the
20 morning. We can cross that bridge when we get there, if
21 we need to.

22 THE COURT: Who is going to testify at the Biggers
23 hearing?

24 MS. SAMPSON: This afternoon, Shamael Coit and
25 Delores Dennis.

1 THE COURT: And Delores Dennis?

2 MS. SAMPSON: Yes, sir.

3 THE COURT: All right. Next motion?

4 MR. SCHNEE: I would -- I know I've already received
5 updated rap sheets, but I'd just move to settle the record
6 of all witnesses. My client today would be testifying, or
7 whoever would be testifying.

8 MS. SAMPSON: I've provided the rap sheets of all my
9 witnesses to Mr. Schnee.

10 THE COURT: Including the defendant?

11 MS. SAMPSON: He should have the defendant's, but
12 I'll give it to him again if he doesn't have it.

13 I don't see any -- I will state for the record, the
14 only thing I think I might be able to see is I believe he
15 has an unlawful possession of a weapon. I don't know
16 that. I'd have to look again, but we can cross that
17 bridge when we get to it. He has an unlawful carrying of
18 a pistol --

19 THE COURT: Okay.

20 MS. SAMPSON: -- in 2007.

21 THE COURT: All right. Well, we'll deal with it.

22 MS. SAMPSON: But all of the other witnesses, I've
23 already provided their rap sheets to Mr. Schnee.

24 THE COURT: All right. Next motion?

25 MS. SAMPSON: And --

1 MR. SCHNEE: Judge --

2 MS. SAMPSON: Well, I --

3 MR. SCHNEE: -- I would like to settle what
4 convictions are impeachable for these witnesses.

5 MS. SAMPSON: For the ones I gave you this morning?

6 THE COURT: Witnesses?

7 MR. SCHNEE: Yes, for the State's witnesses,
8 particularly for Sean Toran.

9 MS. SAMPSON: Oh, Sean Toran. I'm sorry. He's not
10 testifying today. I was giving you the ones for today.
11 Sean Toran does have, I believe, an assault that might be
12 impeachable.

13 THE COURT: Do you have --

14 MS. SAMPSON: That would be it.

15 THE COURT: Do you have it? Do you have a record of
16 the rap sheet?

17 MS. SAMPSON: Yes, Your Honor. He has a public
18 disorderly conduct from 2006 that wouldn't come in. I had
19 a resisting arrest in 2006. He had a simple possession of
20 marijuana in 2006 and a driving without a license in 2007,
21 and then he had --

22 THE COURT: This is Sean Toran?

23 MS. SAMPSON: This is Sean Toran, the codefendant.
24 He had a juvenile, which I will again argue --

25 THE COURT: Is there any dispute about what's

1 admissible and what's not admissible?

2 MS. SAMPSON: I don't know what he's saying is
3 admissible. I don't know.

4 MR. SCHNEE: I don't even have a juvenile record for
5 him.

6 THE COURT: Well, we're not going to get into it
7 anyway.

8 MS. SAMPSON: That's because you don't need a
9 juvenile record.

10 THE COURT: What's the issue?

11 MR. SCHNEE: He has a number of pending charges which
12 we've briefly discussed. There is also something out of
13 New York for some sort of assault with intent to kill.
14 That's from 2006. I'm not sure by reading this what the
15 disposition is.

16 THE COURT: Well, we're talking about convictions.

17 MR. SCHNEE: But I have no way of knowing if it's a
18 conviction at this point. I don't know if the State has
19 any knowledge of that.

20 MS. SAMPSON: I don't have any that he's been charged
21 with anything other than what I read out loud. I only
22 told you about the charges I see that --

23 THE COURT: That he's been convicted of?

24 MS. SAMPSON: Your Honor, I went to trial with
25 Mr. Toran a month ago, and this didn't show a conviction.

1 He took the stand, and no priors came in. He didn't have
2 any that came in.

3 THE COURT: All right.

4 MR. SCHNEE: Then that's fine, Your Honor.

5 Judge, there are a number of statements from the
6 victims in this case; they are written statements. They
7 claim that there are four suspects that come into the
8 house.

9 There are general allegations of they said they would
10 kill us if we call the police. At no time in any of those
11 statements do they identify my client saying anything in
12 particular.

13 I would move to exclude any such references to
14 codefendants saying anything that are not here under the
15 rules of hearsay and under Rule 403.

16 They're not being provided in any way or identified
17 to say what -- making -- they are making some very serious
18 threats and allegations, which I think is incredibly
19 prejudicial to my client since I can't cross-examine
20 anyone who is a declarant of those statements.

21 THE COURT: Let me get this straight. You say that
22 one of the four, not your client, says to the victims,
23 "We're going to kill you," and you want the victims not to
24 be able to say that because it implicates your client?

25 MR. SCHNEE: Correct.

1 THE COURT: How about that?

2 MS. SAMPSON: I would say, Your Honor, it goes under
3 all the -- I can give you several hearsay exceptions, but
4 I can give you present-sense impression, excited
5 utterance.

6 THE COURT: Are there guns showing?

7 MS. SAMPSON: Yes. During -- all of this occurs
8 during -- all of the -- my witnesses are going to say all
9 of the suspects were armed and --

10 THE COURT: All the suspects?

11 MS. SAMPSON: All the suspects are armed. None of
12 the comments come from -- they're going to allege some
13 come from Mr. Bowman and others come from others that are
14 involved in the robbery, so I think it goes to all of
15 that. I don't think it's on that.

16 MR. SCHNEE: Judge, if I may.

17 THE COURT: Sure.

18 MR. SCHNEE: The exceptions that Ms. Sampson cites
19 under Rule 803 apply to the present-sense impression.
20 It's the declarant's present-sense impression. It would
21 be an excited utterance of the declarant.

22 There would be no evidence, there will be no or were
23 anything for --

24 THE COURT: Well, the declarants are the witnesses.

25 MR. SCHNEE: Under the rules of this hearsay, the

1 declarant would be the third person not to testify.

2 THE COURT: I'm a witness. I say your client said,
3 "I'm going to kill you." Defendant B said I'm going to
4 kill you. Defendant C. said I'm going to kill you. Is
5 that what your -- you're saying that because you don't
6 have the other witness to say I'm going to kill you, they
7 shouldn't be able to say it?

8 MR. SCHNEE: They shouldn't be able to say that
9 anyone that my client. Under the Rules 801 the definition
10 of declarant is the one who makes a statement. The
11 statement I'm going to kill you doesn't fall under any of
12 these exceptions unless it comes from my client.

13 THE COURT: Went, we'll take that up. You know. I
14 don't know what the facts are going to be. We'll just
15 have to take those statements up when they testify. You
16 can object. If you're right, I'll rule with you.

17 MR. SCHNEE: They were never identified by anyone.

18 THE COURT: I thought everyone.

19 MS. SAMPSON: Part of the evidence is Torrell Johnson
20 actually gives off names but they're covers because the
21 victims can only pick one of the two.

22 THE COURT: They have masks on?

23 MS. SAMPSON: They wearing bandannas over their face.

24 THE COURT: All right. I'm learning a little bit
25 more about the facts.

1 All right. We've already talked about the gunshots
2 outside the apartment and the shoplifting.

3 MR. SCHNEE: Yes, Your Honor.

4 THE COURT: Anything else?

5 MR. SCHNEE: The only other thing I would have other
6 than the Neil v. Biggers is the statement of Torrell
7 Johnson. I believe he should be up here by now.

8 THE COURT: All right.

9 MS. SAMPSON: The officers are telling me he is in D
10 Cell whatever we're ready.

11 THE COURT: D Cell. All right. Are you ready to
12 prod with Neil v. Biggers?

13 MS. SAMPSON: I don't know. I thought he wanted to
14 do the statement with Torrell Johnson first.

15 MR. SCHNEE: If he's up here, yes.

16 MS. SAMPSON: He's in -- he's right there in D Cell.

17 THE COURT: All right. Do we need to clear the
18 courtroom for that?

19 MS. SAMPSON: No. That's why I thought we could do
20 it first.

21 THE COURT: All right, fine. Bring Torrell Johnson.
22 And this is with regard only to a statement that he says
23 he gave to law enforcement.

24 MR. SCHNEE: Yes, Your Honor.

25 THE COURT: Just have a seat in the witness box.

1 THE CLERK: Raise your right hand, please.

2 TORRELL JOHNSON, after being duly
3 sworn, testified as follows:

4 THE CLERK: Thank you. Have a seat, please. State
5 your name for the record.

6 THE WITNESS: Torrell Johnson.

7 THE COURT: You have to speak up a little bit.

8 THE WITNESS: Torrell Johnson.

9 THE COURT: Pull up that microphone so I can hear
10 you.

11 THE WITNESS: Torrell Johnson.

12 DIRECT EXAMINATION:

13 BY MR. SCHNEE:

14 Q Good afternoon, Mr. Johnson. I know we've never met.
15 My name is Mark Schnee. I represent Ricky Bowman. Do you
16 remember back in December, December 4th or 5th of 2008,
17 you were arrested by Columbia Police Department?

18 A (Nods in the affirmative.)

19 Q I'm sorry, you have to say yes or no.

20 A Yes.

21 Q Okay. At the time, were you questioned about a
22 robbery, a home invasion?

23 A Yes.

24 Q Okay. Did you give -- do you recognize this man over
25 here?

- 1 A No.
- 2 Q You've never seen this man sitting right over here,
- 3 Investigator Pegram, Pegram?
- 4 A Yeah, I've probably seen him.
- 5 Q Okay. Did you talk to him about that robbery?
- 6 A Yes, sir.
- 7 Q Okay. Did you -- at any time, did you give a written
- 8 statement regarding that robbery?
- 9 A Yes.
- 10 Q Do you remember where that was?
- 11 A Downtown somewhere.
- 12 Q Would it -- police headquarters, would that sound
- 13 right to you?
- 14 A I guess.
- 15 Q Okay. Now, is that statement the truth that you gave
- 16 him?
- 17 A Yes.
- 18 Q Okay. What exactly was in the written statement?
- 19 A I'm not sure. They asked me if I knew about the
- 20 burglary, and if it was my gun and my -- some stuff about
- 21 some IDs.
- 22 Q Okay. Did they ask you who committed the burglary?
- 23 A Yeah.
- 24 Q Did you tell them the truth about that?
- 25 A Yeah. I told them what I knew, yeah.

1 Q Okay. And all of that was written down?

2 A Yes.

3 MR. SCHNEE: Okay. Judge, I think that's all the
4 questions I have on this issue?

5 THE COURT: Ms. Sampson?

6 CROSS-EXAMINATION:

7 BY MS. SAMPSON:

8 Q Mr. Johnson -- and I was having some trouble hearing
9 you -- did you say you did tell him who did it in that
10 written statement?

11 A Yes.

12 Q And who did you say you did it in the written
13 statement?

14 A Shawn Toran.

15 Q Did you tell him about Ricky Bowman?

16 A I told him I didn't know who he was.

17 Q Did you remember what date you did this on?

18 A No.

19 Q Do you remember what time you did it at?

20 A No, the morning time.

21 Q The morning time. Did you -- you've said you -- do
22 you remember where you were when you gave a statement?

23 A Like the police -- I guess the police headquarters
24 downtown.

25 Q You guess. And he didn't give you a copy of it. Did

1 he Mirandize you?

2 A What do you mean by that?

3 Q Did he read you your rights and tell you you didn't
4 have to give a statement?

5 A Yes.

6 Q And you said you can't remember what was in your
7 statement?

8 A I mean, I know what was in the statement. He just
9 asked me who committed the crime. I told him what I knew,
10 as far as what I knew.

11 Q And he -- did -- who wrote it?

12 A I wrote it.

13 Q You wrote it. You wrote down questions and answers?

14 A No. He wrote down questions and answers.

15 Q Okay. So you didn't write it?

16 A No.

17 Q He just --

18 A I signed it, yeah.

19 Q You just signed it?

20 A Yes.

21 Q Did he read it to you before you signed it?

22 A Yes.

23 Q He did. So whatever was in that statement was true?

24 A Yes.

25 Q And you don't have a copy of it?

1 A No.

2 Q And you don't remember what time it was done?

3 A In the morning time right after, after they picked me
4 up.

5 Q You don't remember what day that was?

6 A I'm guessing like four -- maybe the 4th, 5th of
7 December, somewhere around in there.

8 Q December, what year?

9 A 2008.

10 Q Okay. And earlier Mr. Schnee asked you, did you
11 remember Investigator Pegram. Did you remember him before
12 Mr. Schnee asked you?

13 A I mean, I know who -- I know who was questioning me
14 but as far as his face, I don't remember his face.

15 MS. SAMPSON: Don't remember his face, okay.

16 No further questions, Your Honor.

17 MR. SCHNEE: I don't have anything else on this
18 issue.

19 THE COURT: All right. Is this witness -- do we need
20 him any further today?

21 MS. SAMPSON: No, sir.

22 MR. SCHNEE: No, sir.

23 THE COURT: Is he -- all right. He's released to go
24 back to Alvin S. Glenn.

25 Anything further?

1 MR. SCHNEE: On this issue, I have nothing further,
2 not anything further.

3 THE COURT: All right. The State?

4 MS. SAMPSON: Yes, Your Honor. We'd call Sergeant
5 Pegram to the stand.

6 THE COURT: Come around, sir.

7 WILLIAM PEGRAM, after being duly
8 sworn, testified as follows:

9 THE CLERK: Thank you. Have a seat in the witness
10 stand. State your name for the record.

11 THE WITNESS: William Pegram.

12 DIRECT EXAMINATION:

13 BY MS. SAMPSON:

14 Q Investigator Pegram, I'm not going to go through the
15 normal what have you done and all those questions. I'm
16 just going to get down to this. When did you meet with
17 Torrell Johnson?

18 A In the parking lot of where the raid was being
19 conducted.

20 Q And do you remember what day of the week?

21 THE COURT: The parking lot where?

22 THE WITNESS: The parking lot where the drug warrant
23 was -- where we did the search warrant on the apartment.

24 BY MS. SAMPSON:

25 Q Do you remember what apartment, the street address?

1 A I believe it's

2 Q And you stated you just -- you talked to him in the
3 parking lot?

4 A I did.

5 Q And at that time, what did he tell you?

6 A In the parking lot, he told me who committed the
7 burglaries. He was asked about it because we found the ID
8 from one of our victims. He named the four people
9 involved in the burglaries and he said that they actually
10 tried to give him property taken from -- from that
11 burglary.

12 Q Okay. And did he tell you any particulars about the
13 burglary?

14 A He did. I -- if memory serves correctly, I think he
15 said that one of the individuals had -- had struck a
16 female in the head with a gun.

17 Q Okay. And what, if any, written statement was done
18 with Mr. Johnson?

19 A He didn't give a written statement.

20 Q Did he give a reason he wouldn't give a written
21 statement?

22 A He didn't want to go -- he didn't want anything in
23 writing that someone else could see.

24 Q So he gave you an oral statement but no written
25 statement?

1 A It was a verbal statement.

2 Q Okay. And he was given the opportunity to give a
3 written statement but chose not to?

4 A That's correct.

5 MS. SAMPSON: No further questions, Your Honor.

6 THE COURT: Mr. Schnee?

7 CROSS-EXAMINATION:

8 BY MR. SCHNEE:

9 Q May it please the Court.

10 You met with Mr. Johnson in the parking lot, you
11 said?

12 A Uh-huh.

13 Q Is that where you talked to him?

14 A Yes.

15 Q Okay. Did you bring him back to headquarters?

16 A Yeah. We brought him back for processing because he
17 had an outstanding bench warrant.

18 Q All right. But you didn't interview him at
19 headquarters?

20 A I talked to him at headquarters but he would not give
21 a statement at headquarters.

22 Q All right. So you talked to him in the parking lot
23 and at headquarters?

24 A Yes.

25 Q Okay. Well, what did he say in the parking lot?

1 A He told me that he named the individuals involved in
2 the burglary, the robbery. He said that they tried to
3 give him some of the property that was taken, and he
4 mentioned the female being struck in the head.

5 Q Okay. And that's in the parking lot?

6 A That's in the parking lot.

7 Q And three of those four people were being arrested
8 were at the same apartment complex that night, right?

9 A Two were, I believe.

10 Q Okay. That's Mr. Toran and who else?

11 A I can't remember if Mr. Toran was there or not. I
12 don't -- I was dealing with -- with the individual that
13 was giving me the information. Narcotics, we're dealing
14 with everybody else.

15 Q Okay. But you have received and reviewed all of
16 those reports for who was there during the search warrant
17 service?

18 A No.

19 Q You never looked at this?

20 A No. It had nothing to do with me. It had nothing to
21 do with my case.

22 Q Okay. Well --

23 A It was something totally different.

24 Q Then why were you there to begin with?

25 A Probably -- I couldn't tell you the exact time, but I

1 had information that a guy named Black Shawn had robbed an
2 individual at that complex.

3 Q And that's why you went with the search warrant --

4 A Yes.

5 Q -- for drugs?

6 A Yes.

7 Q So you were looking for Black Shawn or you were --

8 A Yes. I was there -- one, I was there as -- as back
9 up. On the second floor in investigations, when a warrant
10 like that is served and they will recruit people as back
11 up to go out with -- along with SWAT, but yeah, I was -- I
12 was actually searching for more information on Black
13 Shawn.

14 Q Okay. When you took Mr. Johnson to headquarters,
15 what did you discuss there?

16 A Everything that he has told me in the parking lot,
17 but he statute down.

18 Q Okay. So you just repeated the same information?

19 A Yes.

20 Q The Court's indulgence.

21 (Pause).

22 In terms of the other two names that you were given,
23 what have you done with those two names? Did you ever
24 interview them?

25 A No, I have not.

- 1 Q Have you ever tried to find them?
- 2 A No, because when we got to the point of the
- 3 identification, they couldn't be identified.
- 4 Q I'm talking about the victims couldn't identify them?
- 5 A Right.
- 6 Q And how do you know they couldn't identify them?
- 7 A Because we asked them.
- 8 Q Did you show them the lineups?
- 9 A I don't know that we showed them lineups of the two
- 10 that were not arrested.
- 11 Q You're aware that Sean Toran is now testifying for
- 12 the State?
- 13 A Uh-huh.
- 14 Q In this trial?
- 15 A Yes.
- 16 Q Have you ever talked to him?
- 17 A I don't recall whether I interviewed Sean Toran or
- 18 not. I don't believe I did.
- 19 Q All right. Since last week, did you make any attempt
- 20 to contact him --
- 21 A No.
- 22 Q -- about this?
- 23 MR. SCHNEE: Judge, that's all I have.
- 24 THE COURT: Anything further?
- 25 MS. SAMPSON: No. Nothing further, Your Honor.

1 THE COURT: All right, sir. You may come down.

2 Yes.

3 MS. SAMPSON: Your Honor, from my perspective, we
4 don't have a statement to give Mr. Schnee on this
5 particular witness.

6 We have turned over all the other statements that we
7 have. I understand there's a direct statement. I can't
8 really give you the particulars on it.

9 Investigator Pegram tells me there was no written
10 statement. He shut down once he was asked to provide a
11 written statement. I cannot provide what we don't have.

12 THE COURT: All right. Anything further?

13 MR. SCHNEE: No, Judge.

14 THE COURT: All right. Well, I -- although it's not
15 in the form of a motion, it makes sense to me once an
16 inmate is charged with a crime, to implicate others who
17 may have knowledge of it by giving a written statement is
18 unlikely in fear of retribution or -- unless there is
19 some, you know, some incentive to do so that it's not
20 likely the defendant would give a written statement
21 implicating others in a different crime than his own.

22 So I find that based on the State's position or
23 statement, there is no statement, I cannot do anything but
24 deny your motion to produce that statement if that's what
25 your motion is.

1 All right. Are you ready to proceed with the Neil v.
2 Biggers hearing?

3 MS. SAMPSON: I am except for I think you granted my
4 request that the room be --

5 THE COURT: I'll do that. All right. I'm going to
6 clear the courtroom of all nonessential personnel. You're
7 going to have to step outside.

8 (The courtroom was cleared.)

9 MS. SAMPSON: The State calls Delores Dennis.

10 DELORIS DENNIS, after being duly
11 sworn, testified as follows:

12 THE COURT: All right. Have a seat in the witness
13 box. State your full name for the record.

14 THE WITNESS: My name is Delores Dennis.

15 DIRECT EXAMINATION:

16 BY MS. SAMPSON:

17 Q Ms. Dennis, could you spell your first name?

18 A D-E-L-O-R-E-S.

19 Q It's spelled differently occasionally so I just
20 wanted to make sure.

21 Now, Ms. Dennis, I'm going to go through some -- skip
22 some preliminary matters and straight to what we're here
23 for, okay.

24 A Uh-huh.

25 Q Can you tell me what happened on November 25, 2008?

- 1 A I was at my apartment with my two cousins, my
2 cousins, my friend, and her brother.
- 3 Q Now, give me their names.
- 4 A Shamael Coit, Regina Dennis, and Korey Coit.
- 5 Q Did -- who lived with you at that time?
- 6 A Shamael stayed with me for like two weeks until her
7 apartment got ready.
- 8 Q And did she have anyone else that lived there with
9 her?
- 10 A My Goddaughter, Minor
- 11 Q How old is Minor
- 12 A She was two-and-a-half, three at that time.
- 13 Q Okay.
- 14 A Two-and-a-half, three.
- 15 Q So you all are all there?
- 16 A Uh-huh.
- 17 Q Okay. And what -- what were you doing at the time
18 this incident started?
- 19 A I came out the bathroom and went and sat on my bed.
- 20 Q Okay. And was anybody else in the bedroom at that
21 time?
- 22 A Korey was on the computer.
- 23 Q And where was Shamael?
- 24 A She was in the front.
- 25 Q In where?

1 A In the front.

2 Q Okay. And where was Regina?

3 A Regina was -- she was in the front, too.

4 Q Okay. And so what happened?

5 A I heard a big boom, so I got up to go -- I thought my
6 goddaughter had fell, so I got up to go and see what it
7 was. I seen Regina coming down the hallway saying they
8 got guns. They got guns.

9 Q So she was yelling somebody had guns?

10 A Uh-huh.

11 Q So what did you see at that time?

12 A I looked down the hall. I saw guys come in with
13 guns. They told me to sit back down on the bed, so I sat
14 back down.

15 Q How many guys did you see?

16 A I saw three.

17 Q You saw three?

18 A Uh-huh.

19 Q And what did -- what were they wearing?

20 A They had masks on.

21 Q And you say masks, was it like a Halloween mask?

22 A No, like a bandanna across their face.

23 Q Could you see any part of their face?

24 A Yes, their eyes.

25 Q Okay. So then what happened?

1 A Ma'am?

2 Q What happened after she yelled they've got guns?

3 A Oh, they came in asking where Black Shawn is at and
4 looking around my apartment.

5 Q What did you do at that time?

6 A I just sat there because they had a gun to my head.

7 Q And what --

8 A I told them.

9 Q What did the person look like who had a gun to your
10 head? What was he wearing?

11 A He had on dark clothes and a bandanna across his
12 face.

13 Q Okay. And what, if anything, did you say to him?

14 A I couldn't hear you.

15 Q I said what did you say to them? You said that they
16 were looking for Black Shawn and you --

17 A I said I don't know a Black Shawn.

18 Q Okay.

19 A And I don't know who that is.

20 Q Did that person say anything to you?

21 A They were saying, "Where is he at? Where are the
22 guns and drugs" and stuff like that.

23 Q And where was Korey during this?

24 A Korey was -- he was in his room.

25 Q He was in a room?

1 A Uh-huh.

2 Q Right beside you or where?

3 A Yeah. He was sitting by the computer.

4 Q Okay. So then what happened?

5 A Then they -- they kept looking around talking about
6 where is the guns and the drugs and the weeds at and all
7 that, and they took Korey out of the room asking him, took
8 him up front. So I stayed in the room, and one of them
9 stayed in there with me.

10 Q One of them stayed with you?

11 A Uh-huh.

12 Q And the others went out with Korey?

13 A Uh-huh.

14 Q Okay. And then what happened?

15 A They kept looking around trying to find stuff. They
16 took my pocketbook, took my phone. They took Korey
17 from -- I heard them talking in there, but I didn't
18 exactly hear everything they was saying or some of the
19 stuff that they were saying.

20 Q Okay. Did they ever come back in the room where you
21 were?

22 A Yeah.

23 Q And what happened then?

24 A The one that stayed in the room, they just kept the
25 gun to my head telling me to stay down, and I think -- the

1 guy with the light skin, when he was walking through, they
2 just kept looking around.

3 Q Now, the one that was holding the gun to your head,
4 how close was he to you?

5 A Right in my face.

6 Q Did you see -- what part of him could you see?

7 A His eyes.

8 Q Okay. And did you look at him or look away or what
9 did you do?

10 A I kept looking at him, and I looked away sometimes.

11 Q Okay. So then what happened, after they -- you said
12 the light skinned guy came in?

13 A Uh-huh.

14 Q Then what happened?

15 A He came in just looking around. They took Korey to
16 the -- to the front, and I seen them take him to the back
17 room.

18 Q Okay. What, if anything, ever happened to you?

19 A Ma'am?

20 Q Did they ever do anything to you?

21 A Oh, yeah. They hit me upside my head twice with a
22 gun.

23 Q Which one hit -- hit you upside the head, the tall
24 one?

25 A No.

1 Q Which one hit you upside the head?

2 A The short one with the bandanna across his eyes.

3 Q And, now, you said the tall one was light skinned.

4 What color would you say the one who hit you was?

5 A Brown skin.

6 Q Brown skin. What do you mean by brown skin, your
7 color, my color?

8 A About my color, yeah.

9 Q So your colorish?

10 A Uh-huh.

11 Q All right. And he hit you upside the head. How many
12 times did he hit you?

13 A Twice.

14 Q Now, what did -- what did you do or say while he was
15 out --

16 A He hit me with the gun. I told him if it's my time
17 to die, then I die tonight.

18 Q And did he say something to you that made you say
19 that?

20 A Because he kept -- I heard him arguing. Whenever I
21 told him to hush up -- with my goddaughter -- so I go
22 getting mad. I was getting mad at that point.

23 Q And so you said if it's my time to die --

24 A If it's my time to die, then I die tonight.

25 Q And is that when he hit you?

- 1 A Uh-huh.
- 2 Q I think you said he hit you twice?
- 3 A Yeah.
- 4 Q Where did he hit you?
- 5 A In my head, and then when I put my hand up to block
- 6 it, he broke my pinky.
- 7 Q Where in your hand? When you say your hand, where,
- 8 at the top?
- 9 A At the top, yeah.
- 10 Q And you said he hit your pinky?
- 11 A Yeah. He fractured my pinky the second time because
- 12 I put my hand up.
- 13 Q And what happened after he hit you?
- 14 A I saw blood started rushing down my face, and
- 15 somebody handed me a towel. I stayed on the floor.
- 16 Q Okay. And did they stay or leave or what happened
- 17 after that?
- 18 A They went up front for a little while longer. Then I
- 19 heard them going out the door.
- 20 Q Okay.
- 21 A And then --
- 22 Q Go ahead.
- 23 A Oh, and then everybody came in there where I was at,
- 24 and we heard gunshots, all of us.
- 25 Q And when you say everybody came in, do you mean the

1 suspects or do you mean --

2 A Oh no, Shamael and Korey and Regina.

3 Q They all came in to where you were?

4 A Yes, ma'am.

5 Q Okay. So then you heard gunshots.

6 A Uh-huh.

7 Q What did you do after you heard the gunshots?

8 A We stayed on the floor, then after that, we left.

9 Q Where did you go?

10 A We went and dropped my goddaughter off, and then I
11 went to Richland.

12 Q And how long were you at Richland, do you remember?

13 A I know it was over an hour.

14 Q Okay. And when did you call the police about this?

15 A We came back the next day.

16 Q The next day?

17 A Uh-huh.

18 Q And why did you wait in between?

19 A Because I didn't know they was coming back. Then my
20 family came and took me to my mom's house and made us
21 breakfast.

22 Q Okay. And you did at some point call the police?

23 A Uh-huh. I came back, and we did the report.

24 Q That was the next day?

25 A Uh-huh.

1 Q And when you -- you have to say yes or no.

2 A Oh, I'm sorry, yes.

3 Q And when you called the police, did you give a
4 description of the people who had done this?

5 A Yes, ma'am.

6 Q What did you tell them?

7 A I told them it was a tall light-skinned guy with
8 braids, and the other guys had bandannas on across their
9 face.

10 Q Did you describe their clothing at all?

11 A Had on dark clothes.

12 Q At some point, you're contacted by Investigator
13 Pegram?

14 A Uh-huh.

15 Q What did he tell you?

16 A He asked me would I come and see if I could identify
17 them.

18 Q Okay. I'm going to show you some things that have
19 been previously marked. That's Defense Exhibit 34 and 35.

20 MR. SCHNEE: State's.

21 MS. SAMPSON: Huh?

22 MR. SCHNEE: State's.

23 MS. SAMPSON: Yeah, State's. They're marked as
24 State's Exhibit's 34 and 35.

25 May I approach the witness, Your Honor?

1 THE COURT: You may.

2 BY MS. SAMPSON:

3 Q I want to ask you if you recognize State's Exhibit

4 Number 34.

5 A Uh-huh.

6 Q You've got to say yes?

7 A Oh, yes.

8 Q And what is that?

9 A That's the photo lineup.

10 Q And what -- how did you get shown that photo lineup?

11 A Just like this.

12 Q Did he -- did Investigator Pegram say anything to

13 you?

14 A No.

15 Q Was anybody else in the room with you?

16 A No, ma'am.

17 Q Did he in any way tell you anybody to pick?

18 A No.

19 Q Did he, in fact, tell you that the person that did

20 this to you was in the photos?

21 A No, ma'am.

22 Q Okay. So what did you do when you saw this?

23 A I put a piece of paper across each one of their faces

24 so I can --

25 Q Can you demonstrate what you did?

1 A I put across each one of their eyes like that.

2 Q Okay.

3 A So that I could pick it out by the eyes.

4 Q Which one did you pick?

5 A Right here.

6 Q I'm sorry. I need to say which.

7 A Oh, the one at the bottom, 64474.

8 Q And how did you pick that one? Did you circle it?

9 What did you do?

10 A I initialed it.

11 Q Is that your initials on that document?

12 A Yes, ma'am, uh-huh.

13 Q And as best you know, is that a fair and accurate
14 copy of what you saw and what you did?

15 A Same one, yeah. Same one.

16 MS. SAMPSON: I guess I have to -- I'm not going to
17 introduce it at this time, Your Honor. I'd have to do
18 that in front of the jury, but I'd just like the record to
19 reflect she has identified her photo lineup, the one that
20 she notated.

21 I can proceed?

22 THE COURT: You may.

23 BY MS. SAMPSON:

24 Q I'm going to a hand you what's been marked for
25 identification as State's Exhibit 35 and ask you if you

1 recognize that..

2 A Yes, ma'am.

3 Q And what is that?

4 A This is what I signed.

5 Q And what did Mr. Pegram ask -- Sergeant Pegram ask
6 you to do when he gave you that? Did you fill that out or
7 did he fill that out?

8 A He filled out the top part, and I signed it.

9 Q And why was he filling it out for you?

10 A I asked him to.

11 Q You asked him to. And who did he say you identified
12 on that, on that form?

13 A 64474.

14 Q The same photograph?

15 A Uh-huh, same picture, yes, sir -- I mean, yes, ma'am.

16 Q May I show you this, Your Honor?

17 Again, I'd like to record to reflect this is her
18 signed statement of which photograph she picked.

19 Now, I just want to be clear, at any time, was
20 anybody else in the room with you other than Sergeant
21 Pegram when you made that identification?

22 A I think it was just me and him.

23 Q Okay. And did he at any point tell you which one to
24 pick?

25 A No, ma'am.

1 Q And did he tell you that for sure that a person was
2 in there that you would recognize?

3 A No, ma'am.

4 MS. SAMPSON: Okay. Beg the Court's indulgence.

5 (Pause.)

6 No further questions at this time. Please answer any
7 questions that Mr. Schnee has.

8 THE COURT: Mr. Schnee?

9 MR. SCHNEE: May it please the Court.

10 CROSS-EXAMINATION:

11 BY MR. SCHNEE:

12 Q Deloris?

13 A How are you doing.

14 Q I think I missed a couple of things. You said there
15 you saw a total of three guys or four guys?

16 A I saw three when I peeked down the hallway.

17 Q Okay. And one you described as light skinned?

18 A Tall and light skinned, yes.

19 Q Tall. What was he wearing?

20 A He had on dark clothes.

21 Q Any particular kind of clothing, do you remember?

22 A Just baggy clothes, dark baggy clothes.

23 Q Was he wearing a mask of any kind?

24 A When I saw them, he didn't have one, no.

25 Q So you could see his whole face?

- 1 A I saw his whole face.
- 2 Q Was there anything on his face or neck that you
- 3 looked at specifically?
- 4 A No.
- 5 Q Did he have any scars or tattoos that you remember?
- 6 A Huh-uh, no.
- 7 Q He didn't have them, or you just don't remember?
- 8 A No, I don't remember.
- 9 Q Okay. I'm not trying to insult you. I just want to
- 10 make sure I understand the answer.
- 11 A Uh-huh.
- 12 Q Now, the other two, could you describe them for me?
- 13 A One had a -- both of them had masks on with bandannas
- 14 across their faces, and the other one had dreads.
- 15 Q Which one had dreads?
- 16 A The third one that I saw.
- 17 Q The tall one, the tall light skinned?
- 18 A The other one.
- 19 Q Okay.
- 20 A The other one. He came in like maybe one time and
- 21 then went back out, so I didn't really see his face.
- 22 Q Okay. So the -- well, the two darker-skinned guys,
- 23 one had dreads, and the other stayed in the room with you?
- 24 A Uh-huh.
- 25 Q The guy that stayed in the room with you, you said

1 you recognized his eyes?

2 A Uh-huh.

3 Q What about them?

4 A What about them? I just remembered them.

5 Q Okay. Were there any particular scars or marks or
6 anything like that?

7 A No, they were dilated.

8 Q Dilated eyes, uh-huh. Do you know how many photo
9 lineups you were shown?

10 A Two.

11 Q You were shown two?

12 A Uh-huh.

13 Q One of them for the light-skinned guy?

14 A Yes.

15 Q Okay.

16 A No. Actually, I was shown three.

17 Q You were shown three?

18 A Yeah, three.

19 Q All right. Could I approach the witness, Your Honor?

20 (WHEREUPON, Defendant's Exhibits Nos. 1, 2 were
21 marked for identification only.)

22 BY MR. SCHNEE:

23 Q This is Defense 1 and 2. Do you recognize either one
24 of these?

25 A No.

1 Q Okay. So you were shown three lineups, though?

2 A I think it was three at the time.

3 Q And these aren't the two that you were shown?

4 A I can't remember.

5 Q You can't remember?

6 A No.

7 Q But it could have been one of these?

8 A It could have, I don't remember.

9 Q Okay. And just so -- I want to make sure I'm clear
10 about this, you selected the guys on -- the dark-skinned
11 guy with the gun at you. You selected his photo based
12 entirely on looking at his eyes?

13 A Yes.

14 Q And you covered everything else?

15 A Uh-huh.

16 MR. SCHNEE: Okay. No further questions, Judge.

17 MS. SAMPSON: Just very briefly, Your Honor.

18 (WHEREUPON, State's Exhibits Nos. 38, 39, 40, 41 were
19 marked for identification only.)

20 REDIRECT EXAMINATION:

21 BY MS. SAMPSON:

22 Q Okay. Deloris, Ms. Dennis, sorry. I'm going to show
23 you what's being marked as State's Exhibit Number 38. Do
24 you recognize that?

25 A Yes, I do.

- 1 Q Well, what is that?
- 2 A The picture that I identified the guy at 99856.
- 3 Q And who is -- which one of the suspects is that that
- 4 you described earlier?
- 5 A His name?
- 6 Q Which one of them? You said there was a tall --
- 7 A Oh, the tall light skinned.
- 8 Q Is that -- that's the tall light skinned?
- 9 A Yeah.
- 10 Q And is this -- what is State's Exhibit Number 39?
- 11 A Me saying that I picked him out, 99856.
- 12 Q And that's -- you're saying this one is the light
- 13 skinned one?
- 14 A Yeah.
- 15 Q The tall one. And --
- 16 A That I remember.
- 17 Q -- the other one that you identified, who is -- which
- 18 one is that? What did he do?
- 19 A That was the one that hit me upside the head with the
- 20 gun, twice.
- 21 THE COURT: I didn't hear what she said.
- 22 BY MS. SAMPSON:
- 23 Q Repeat it again for us.
- 24 A Which one? Which part?
- 25 Q I'm sorry, the -- the one -- not the black-skinned

1 one, the other one that you identified.

2 A That was the one that hit me upside my head.

3 Q That's the one that hit you upside --

4 A Twice.

5 Q -- your head twice?

6 A Yes.

7 Q And how were you able to identify him again?

8 A I put a piece of paper across his eyes on the lineup.

9 Q And how sure are you that's the same person?

10 A 100 percent.

11 MS. SAMPSON: No further questions, Your Honor.

12 MR. SCHNEE: Nothing, Your Honor.

13 THE COURT: All right. You may come down, ma'am.

14 Does she need to stay?

15 MS. SAMPSON: No. If -- she can -- she is free to
16 go.

17 THE COURT: All right. You're free to go, ma'am,
18 until -- probably until you hear further notice from the
19 State.

20 MS. SAMPSON: She'll be here tomorrow. She knows to
21 be here tomorrow. This is a witness we may have some time
22 problems, Your Honor. She is pregnant, very pregnant. I
23 asked her to change her doctor's appointment. So she may
24 not be able to be here at 10:30 tomorrow. So we're going
25 to try to work around that, but we may have to take a

1 break. She is the only witness I have left in the
2 morning.

3 THE COURT: All right.

4 MS. SAMPSON: The State now calls Shamael Coit.

5 SHAMAEL COIT, after being duly sworn,
6 testified as follows:

7 THE CLERK: Thank you. Have a seat in the witness
8 stand, please. State your name for the record.

9 THE WITNESS: My name is Shamael Coit.

10 DIRECT EXAMINATION:

11 BY MS. SAMPSON:

12 Q All right, Shamael. Can you spell your first name?
13 I want to make sure we spelled it right.

14 A It's S-H-A-M-A-E-L.

15 Q Now, I'm going to kind of go through the same thing.
16 You were staying with Ms. Dennis on the night of November
17 25, 2008?

18 A Yes, ma'am.

19 Q And how come you were staying with her at that time?

20 A Because my new apartment wasn't ready for me to move
21 in yet, so I was staying with her for two weeks.

22 Q And was your new apartment in Brookpines, as well?

23 A No, ma'am.

24 Q It was somewhere different?

25 A Yes, ma'am.

1 Q And who else was staying at the apartment at the time
2 with you?

3 A Me and my daughter.

4 Q And how old was your daughter at the time?

5 A She was three.

6 Q Okay. So where were you when the incident started?

7 A I was in the living room. I just put my daughter's
8 plate down to eat dinner.

9 Q And do you remember what time it was?

10 A It had to be around ten because we were watching the
11 season finale of Desperate Housewives of Atlanta.

12 Q You mean the Real Housewives of Atlanta?

13 A Oh, yeah. I mean, the real one.

14 Q They may be desperate.

15 A So true.

16 Q So what happened while y'all were eating dinner?

17 A Well, she was eating. We were watching TV, then all
18 of the sudden I heard this loud boom. When I realized
19 what was going on, I ran and I grabbed her because I was
20 on the couch.

21 She was on the other side of the coffee table eating.
22 So I grabbed her, and I put her in my lap. I told her to
23 put her face in my chest and don't look at nothing and
24 don't say nothing, and it will be over in a little bit.

25 Q And what did you hear -- or what did you see?

1 A I saw four guys coming in the house. All of them had
2 guns.

3 Q All of them had guns?

4 A All of them had guns.

5 Q Okay. And what were they wearing?

6 A Baggy clothes, dark clothes. All of them had like a
7 bandanna type thing to cover the bottom of their faces.

8 Q Okay. What did they say?

9 A They were basically coming in asking where Black
10 Shawn was, who Black Shawn is, where the drugs and the
11 guns at.

12 Q Do you know who they were talking about?

13 A No.

14 Q Did you know somebody named Black Shawn?

15 A No, ma'am.

16 Q Okay. Did you make any response?

17 A We said we didn't know what you were talking about.

18 Q Okay. And what did they do when you said you don't
19 know Shawn?

20 A Well, Sean went back into the back where everybody
21 else was, and then I had one gentleman who stood in front
22 of me and pointed the gun at me and my daughter and asked
23 me did I want my daughter to see me bleed that night, and
24 I told him no. He was like, "You need to tell me who he
25 is." I said, "I don't know who you're talking about."

1 Q Okay. So then what happened?

2 A So then my brother was -- walked from the back of the
3 apartment out to the balcony.

4 Q And what's your brother's name?

5 A Korey Coit.

6 Q Okay.

7 A The gun is in the back of his head at that point, and
8 they were out there for -- I don't know how long. It
9 could have been a couple of minutes. It felt like more
10 than that, and then they walked him back towards the back
11 of the apartment again.

12 Then I heard tussling in the back, and once I heard
13 that and that went on for a little bit, then a guy came
14 out, too, and said -- asked me, you know, was the baby
15 okay, no disrespect.

16 Q Now, I want you to describe that particular person to
17 me. What did he look like?

18 A He was tall and light skinned.

19 Q Okay. And could you see his hair?

20 A Yeah, it was in braids. He had light pretty eyes.

21 Q Was he wearing a mask?

22 A At that point, no.

23 Q At some point, he took his mask off or it came off?

24 A Uh-huh.

25 Q Okay. You were able to see his whole face?

1 A Uh-huh.

2 Q I'm sorry, you need to say yes.

3 A Oh sorry, yes.

4 Q Okay. And he said, "Sorry, no disrespect"?

5 A Uh-huh, yes.

6 Q Okay. So then what did you do?

7 A So then, he just looked at me. He said, "We hit the
8 wrong spot. Keep the baby quiet. Sit right here. I'm
9 going to round everybody up, and then we're going to
10 leave."

11 Then he was trying to do that, the other guy who
12 pointed the gun at me said -- which he didn't have a gun
13 at me at that point, he was like, "Do we need to stay here
14 and see who is on the third, is on the top floor?"

15 They were trying to tell him there is no third floor.
16 There is no top floor, and that's when they had gotten up
17 and they had left.

18 Q Okay.

19 A That's when the other guy told us to lock the door.

20 Q Who told you to lock the door?

21 A The light-skinned guy.

22 Q Okay. Now, were you ever able to see the face of any
23 of the other individuals?

24 A Not really because they were more -- they were quiet.
25 One just stood at the door to make sure nobody got out.

1 The other one was rummaging through people's purses and
2 whatever he could get his fingers on.

3 Q And were you able to see the face of the one who held
4 the gun to you?

5 A Yeah. He was right in front of my face.

6 Q How far?

7 A He was closer than you.

8 Q Why don't you tell me to stop when you tell me how
9 close he was to you.

10 (There was no response).

11 Okay. Now, I have can't climb in the jury box.

12 A Okay.

13 Q So he was this far from you, a couple of feet?

14 A Yeah, because the only thing that really separated us
15 a little bit was the space from my knees from the table.

16 Q And so he got pretty close in your face?

17 A Uh-huh.

18 Q So what part of your face could you see at that time?

19 A His eyes.

20 Q Okay. And how long did you look at him, do you
21 think?

22 A The whole time he sat there and asked me did I want
23 my daughter to see me bleed that night.

24 Q Okay. Did he at any point come back and stand in
25 front of you?

1 A Not really.

2 Q The whole time he's asking you that, you're staring
3 at him?

4 A Uh-huh.

5 Q Okay. So did you go to the hospital with Deloris?

6 A I did. I drove her.

7 Q And when the police came after y'all called the next
8 day, were you there?

9 A I came later.

10 Q You came later?

11 A Uh-huh.

12 Q Did you tell -- did you give a description at that
13 time?

14 A Kind of a vague one, I guess.

15 Q Do you remember what you told them?

16 A I don't remember what. I mean, this was three years
17 ago.

18 Q That's fine. And when you -- were you ever called to
19 the police station?

20 A Yes.

21 Q And what did you do when you were called?

22 A I was asked what was -- what happened, and I told
23 them, and they asked me if I could identify anyone.

24 Q And what did you say?

25 A I said yes.

1 Q I'm going to be hand you what's marked as State's
2 Exhibit number 36 and ask do you recognize it.

3 A Yes.

4 Q And what is it?

5 A That's the one.

6 Q Okay. And who did -- which one? Which one did you
7 pick out of this lineup?

8 A 64474.

9 Q And is that your initials on it?

10 A Yes, it is.

11 Q And you circled it?

12 A I did.

13 Q Why did you do that?

14 A Because those were the same eyes I saw that night.

15 Q And how did you make that determination?

16 A I had to cover their faces up.

17 Q Now, you just held your hands like this. How did --
18 did you take your hands and do it, or show me exactly how
19 you did it.

20 A Can I look at paper?

21 Q Sure. Do you need two sheets or just one?

22 A (Indicating).

23 Q Okay.

24 A I can cover it from the bottom.

25 Q Did you use another sheet of paper?

1 A And the top, and I just put them side by side like
2 that. That was the one that --
3 Q Did you do it on all six pictures or just --
4 A I did.
5 Q Okay. And after you did that, you picked number six?
6 A I did.
7 Q And State's Exhibit Number 37, what is that?
8 A That's the paper I signed.
9 Q And what does it -- which one does it say you picked?
10 A 64474.
11 Q And are you -- how sure are you that that is the same
12 person that was in the house that night?
13 A 110 percent sure.
14 Q So the lights were on?
15 A Yes.
16 Q Could you see everything clearly?
17 A Yes.
18 Q And do you -- I think we talked about this. You wear
19 glasses.
20 A I do.
21 Q But can you see near in front of your face?
22 A I can -- I can see. I only need glasses at night
23 while I'm driving.
24 Q Okay.
25 A Because I have an astigmatism.

1 Q This didn't happen at night while you were driving?

2 A No.

3 Q Okay.

4 A And I wasn't even prescribed glasses at that time.

5 Q Okay. I'm going to show you State's Exhibit

6 Number 40. Do you recognize that?

7 A Uh-huh.

8 Q And what is this?

9 A That's the other lineup I saw.

10 Q And did you pick one on the -- who did you pick?

11 Which one did you pick?

12 A 99856.

13 Q And did you initial and circle that one?

14 A I did.

15 Q And how do you know that's the person that you saw

16 that night?

17 A Because that was the one who told me to be quiet;

18 that he was going to get everybody out.

19 Q And did this particular one have a mask on the whole

20 time?

21 A Not the whole time.

22 Q Okay. And State's Exhibit Number 41, what is that?

23 A That's the one he and I identified, 99856.

24 Q Okay. And you did that on the 5th of December? Do

25 you remember what date that was on? But it was shortly

1 after the incident?

2 A Uh-huh.

3 Q And how sure are you about the picking of the second
4 individual?

5 A Just as sure as the first one.

6 Q Beg the Court's indulgence.

7 (Pause).

8 You said -- I just want to make sure I have something
9 clear. With the shorter one that you remember his eyes.
10 Is there anything distinctive you remember about them or
11 you just -- how --

12 A I just remember -- I don't know how I remembered them
13 from then. I just -- I just looked at his eyes, and I
14 studied his eyes. I've been working with eyes for eight
15 years. I know people's eyes.

16 Q You say you work with eyes. What do you mean by
17 that?

18 A That's what I do.

19 Q What do you do for a living?

20 A I'm an opthamological--- ophthalmological assistant.
21 I work with an ophthalmologist.

22 Q In an eye clinic?

23 A Yes.

24 Q No further questions, Your Honor.

25 THE COURT: Mr. Schnee?

1 MR. SCHNEE: May it please the Court.

2 CROSS-EXAMINATION:

3 BY MR. SCHNEE:

4 Q Good afternoon.

5 A Hi.

6 Q I just have a few questions, mostly centered about
7 the guy that pointed a gun in your face.

8 A Okay.

9 Q How long was he in front of you?

10 A For a few minutes.

11 Q A few minutes?

12 A Uh-huh.

13 Q You said the -- him along with -- well, everyone had
14 masks on at some point?

15 A Right.

16 Q And the lighter skinned guy at some point took it
17 off?

18 A Yes.

19 Q Okay. Can you describe anything about -- anything
20 else about the three that kept their masks on?

21 A You could tell that the one at the door and the one
22 who went rummaging in purses were thicker than the other
23 ones.

24 Q Okay. Do you recognize any tattoos or any scars or
25 anything on their faces?

- 1 A I didn't look at anyone's body.
- 2 Q Okay. Not on any faces or necks or anything like
- 3 that.
- 4 A Huh-uh.
- 5 Q Okay. And specifically dealing with the eyes in
- 6 general, you say you just recognize the eyes.
- 7 A Yes.
- 8 Q You can't point to anything specific about this?
- 9 A Huh-uh, not really.
- 10 Q Okay. Were they --
- 11 A I just knew that those were the eyes that I saw.
- 12 When you look at somebody's eyes, you can tell like --
- 13 some people eyes sit further apart than the other ones.
- 14 Some people's eyes sit closer together.
- 15 You know when you look at somebody's eyes and when
- 16 they're familiar. I can look at my -- my daughter's eyes
- 17 and tell them different from another kid's eyes.
- 18 Q Okay. Were there any scars or marks or anything
- 19 around the eyes that you remember?
- 20 A Huh-uh.
- 21 Q Okay. How many lineups were you shown?
- 22 A I don't know.
- 23 Q Two, three, four, five?
- 24 A Possibly two, possibly three, I don't know.
- 25 Q Okay. May I approach?

1 Take a look at these for me.. Do you recognize either
2 of those?

3 A Yeah, these look familiar.

4 Q Okay. So you think you were shown those at some
5 point?

6 A Uh-huh.

7 Q Is that the same time you were looking at the other
8 photographs?

9 A Uh-huh. Yes, I'm sorry.

10 Q Okay. So you're sure you were shown those?

11 A I didn't say I was sure. I said I was familiar.
12 They look familiar.

13 Q Okay. That's fine. Now, the investigator that was
14 showing the lineups, he was in the room with you the whole
15 time?

16 A Uh-huh.

17 Q Okay. Did you have to ask him for a piece of the
18 paper just like you did with Ms. Sampson to cover up?

19 A Yes.

20 Q Okay. Did he ask why you were doing that?

21 A No.

22 Q Had you told him that's all you could recognize with
23 the eyes at any point?

24 A Huh-uh. Well, I don't remember.

25 Q Okay. You just -- but you do remember asking?

1 A I do remember asking him for the paper.

2 Q Okay.

3 A Because I remember how I looked at him.

4 MR. SCHNEE: Okay. That's all I have. Thank you.

5 THE WITNESS: Thank you.

6 MS. SAMPSON: Just briefly, Your Honor.

7 REDIRECT EXAMINATION:

8 BY MS. SAMPSON:

9 Q I just need to clarify. You said Investigator Pegram
10 was in the room with you. Was anyone else in the room
11 when you did your ID?

12 A No.

13 Q Did you and Deloris discuss identifying the person?

14 A No.

15 Q And did Investigator Pegram suggest you should pick
16 someone out?

17 A No.

18 Q Did he suggest to you any particular person you
19 should pick out?

20 A No. If that happened, I would have picked all four.

21 MS. SAMPSON: Thank you. All right. No further
22 questions.

23 THE COURT: You may come down, ma'am.

24 THE WITNESS: Thank you.

25 MS. SAMPSON: State would call Investigator Pegram.

1 WILLIAM PEGRAM, after being previously
2 duly sworn, testified as follows:

3 THE COURT: You were sworn to tell the truth. I'm
4 not going to swear you again.

5 THE WITNESS: Oh.

6 DIRECT EXAMINATION:

7 BY MS. SAMPSON:

8 Q Sergeant -- it's Sergeant, right?

9 A Yes, ma'am.

10 Q I keep promoting you.

11 How did you become involved in this case?

12 A Well, the case was assigned to me.

13 Q It was assigned to you. Do you remember what date it
14 was assigned to you on?

15 A I can tell you quickly.

16 (Pause).

17 December 4, 2008.

18 Q Okay. And I'm just going to speed this up a little
19 bit. How did you determine that Ricky Bowman or Sean
20 Toran were suspects in this case?

21 A Well, that came from the initial -- during the search
22 warrant when the individual named them.

23 Q And what individual named them?

24 A I want to make sure I can read those notes.

25 Q Okay. That's -- who told you the name?

1 A The individual I interviewed in the parking lot that
2 was --

3 Q And who was that?

4 A That's what I'm looking for.

5 Q Okay.

6 A It's been three years.

7 (Pause).

8 Torrell Johnson.

9 Q Okay. And Torrell Johnson initially gave you those
10 names?

11 A He did.

12 Q And why were you involved? I believe you said this
13 earlier but just to make the record clear, you were
14 involved because the name Black Shawn came up in the
15 investigation?

16 A That's -- well, Black Shawn's name came up when Sean
17 Toran was robbed.

18 Q And Sean Toran is --

19 A Is --

20 Q -- who in this case?

21 A One of the suspects.

22 Q Okay. And he was alleged to have been robbed at some
23 point prior to this incident?

24 A He was robbed. I actually -- I actually responded
25 out to that apartment complex. He had an injury where an

1 individual approached him, hit him with a gun. I spoke to
2 him. He brought up the name Black Shawn.

3 Q Okay.

4 A Of course, in this investigation, Black Shawn's name
5 was brought up. That put the two together. That was one
6 reason for being there. The second reason was on the
7 second floor, they recruit people to go off the search
8 warrants that involve guns and drugs, and I was there also
9 as back up.

10 Q Okay. So when you received the name -- let me just
11 back up. Torrell Johnson gives you four names, if I
12 remember correctly.

13 A That's correct.

14 Q Who did he -- which names did he give you?

15 A He gave me Roy Foster, Marcus Williams, Sean Toran
16 and Ricky Bowman.

17 Q And based on that information, what did you do?

18 A Well, based on that information, I created lineups of
19 the two individuals that I believed they would be able to
20 pick out.

21 Q And why did you just do those two individuals?

22 A One, Shawn's face was uncovered. I mean, during the
23 robbery and the second was -- the second lineup the
24 individual who had -- was distinctive. So I created those
25 two, and I spoke to Deloris on the phone, and she

1 described the individuals. So those are the two I showed
2 the lineups.

3 Q What description did she give to you?

4 A One description was the individual was tall, light
5 skinned. I believe she said he had dreads. The second
6 individual she described as short. They're all wearing
7 dark clothes that's what I remember.

8 Q Did she describe the color of skin of the other
9 individual?

10 A She did.

11 Q What color did she?

12 A Brown skin.

13 Q Okay. And based on that, you decided to just do
14 photo lineups with Ricky Bowman and Sean Toran?

15 A That's correct.

16 Q Did you have photographs of the other two
17 individuals?

18 A I did have another lineup. I wasn't sure, but that
19 was actually the first one.

20 Q Did Deloris and Shamael Coit come together or
21 separately?

22 A I believe they came together.

23 Q Okay. Did you show them the lineups together?

24 A No.

25 Q How did you do that?

1 A We separated them. They have four interview rooms.
2 They were put in their own individual interview room.

3 Q And then that was -- you did this with all four
4 victims, correct?

5 A I believe so.

6 Q Okay. But you did them in separate rooms?

7 A Yes.

8 Q Okay. So what did you do when you showed Delores
9 Dennis the photographic lineup with Ricky Bowman in it?

10 A What I do with all of them. I go in. I say I have
11 six individuals, six pictures, and that suspect may not be
12 in those pictures.

13 Q So you specifically tell them he may not be in there?

14 A Every time, yes.

15 Q And did you do that in this case?

16 A Yes.

17 Q And what -- who did she -- may I approach, Your
18 Honor?

19 THE COURT: Yes.

20 BY MS. SAMPSON:

21 Q I think you have all of mine.

22 Let me start with Deloris. State's Exhibit 38 and
23 39. Did you show Delores Dennis this photo lineup?

24 A I did.

25 Q And how did you show that to her?

1 A I presented it to her, made the comment that the
2 suspect may not be in there. She viewed the photos and
3 identified Sean Toran.
4 Q Okay. And how did you do that? Did you just lay it
5 in front of her? Did you hold it? What did you do?
6 A I laid it down in front of her so she has control
7 over it.
8 Q And how quickly does she pick out Sean Toran?
9 A I couldn't tell you. It was quick. It wasn't -- it
10 wasn't a lot of -- like several minutes. It was quick.
11 Q Okay. And I'm going to show you State's Exhibit
12 Number 34. Do you recognize that one?
13 A I do.
14 Q And what's that?
15 A That's the lineup of Ricky Bowman.
16 Q And did you show that to Delores Dennis?
17 A I did.
18 Q And how did you show her that?
19 A Same way, presented it to her, advised her the
20 individual may not be in there, took control of it.
21 Q And did she seem -- how did she seem to you, certain,
22 uncertain?
23 A She seemed certain on both, both of these lineups.
24 Q Okay. I'm going to ask you the same about Shamael.
25 I show you State's Exhibit Number 36. What is that?

1 A That's the lineup that she viewed of Ricky Bowman.

2 Q And did you do the same thing with her on that one,
3 lay it down or identify anyone?

4 A She did. She identified 64474.

5 Q On State's Exhibit 40, which one is that?

6 A The identification of 99856, and that would be Sean
7 Toran.

8 Q And what do you have the witnesses do when they
9 identify someone?

10 A Have them circle the -- either the number or the
11 whole picture, initial it and put a timestamp on it.

12 Q What would have happen if they had not identified
13 anyone?

14 A We would have indicated that in the notes.

15 Q You wouldn't force her to pick anyone, would you?

16 A No, absolutely not.

17 Q And how certain did Shamael Coit seem when she picked
18 out Mr. Bowman?

19 A Very certain.

20 Q Beg the Court's indulgence.

21 (Pause).

22 And when they were looking at these lineups, are
23 they -- you said -- I think you said this already, but are
24 they in separate rooms?

25 A Yes. They're in separate rooms.

1 Q Do they have time to go back and forth and compare
2 with each other?

3 A No. They didn't have -- we wouldn't allow them to
4 have contact with each other.

5 Q So while they're making identification, they are kept
6 separate?

7 A Yes.

8 Q Are they told that either one has made an
9 identification?

10 A No.

11 Q And those State's Exhibits 35, 37, 41, and 39, these
12 are all written forms. What do you use those for?

13 A These are the lineup sheets showing the
14 identification, time, date, who they identify. What the
15 charge is, and they sign and date it.

16 Q And that's what you do. Is that done every time that
17 you have that an identification is made?

18 A Yes.

19 Q Okay. And in this case, the other two witnesses,
20 Korey Coit and Regina Dennis, did they also identify Sean
21 Toran?

22 A I believe they did, but let me make sure.

23 (Pause).

24 Yes.

25 Q Okay. Were they shown the lineup with Ricky Bowman

1 in it?

2 A I don't see a lineup.

3 Q I know they didn't identify one. I'm just wondering
4 did you show them Ricky Bowman's lineup?

5 A Yeah. We showed all the victims the lineup of the
6 two.

7 Q Okay.

8 A But I believe we only have two identifications.

9 MS. SAMPSON: No further questions, Your Honor.

10 THE COURT: Mr. Schnee?

11 MR. SCHNEE: May it please the Court.

12 CROSS-EXAMINATION:

13 BY MR. SCHNEE:

14 Q Let's start right where you left off. When you
15 showed both of those lineups, the one Toran and the one
16 with Bowman to all four of the victims?

17 A I believe so, yes.

18 Q Did you show them any other lineups?

19 A Not that I recall.

20 Q Okay. You have somewhere up there should be Defense
21 1 and 2.

22 A Exhibits 1 and 2?

23 Q Yeah.

24 A That's correct.

25 Q Okay. Do you recognize those?

- 1 A They were two of the lineups that I put together.
- 2 Q Okay. So you did put those together in this case?
- 3 A That's correct.
- 4 Q Okay. One of them is Roy Foster?
- 5 A See, that's what I'm not sure of. That's why we
- 6 didn't show these.
- 7 Q You're not sure who is in the photos?
- 8 A No. I'm not sure of the suspects. The only suspects
- 9 that I'm sure of are Sean Toran and Ricky Bowman.
- 10 Q And that's based on Torrell Johnson's statement.
- 11 A Yes.
- 12 Q Okay. But based on the statement, you created a
- 13 lineup involving Roy Foster?
- 14 A Yeah; but what I'm saying is I don't know if this is
- 15 the right guy.
- 16 Q You think there's a different Roy Foster?
- 17 A I don't know. That's what I'm saying. I don't know.
- 18 I don't know that the individual here is going to be a
- 19 suspect.
- 20 Q Okay. There is an individual in one of those lineups
- 21 by the name of Roy Foster, yes or no?
- 22 A I would assume. I don't see a name under any of the
- 23 photos.
- 24 MR. SCHNEE: Okay. If I could approach the witness?
- 25 THE COURT: Okay.

1 BY MR. SCHNEE:

2 Q Do you recognize this document?

3 A Oh, that's helpful. I do.

4 Q Okay. That's the booking photo from Roy Foster?

5 A That's correct.

6 Q The other one from Mr. Marcus Williams -- if I can
7 approach the witness again?

8 THE COURT: Yes.

9 THE WITNESS: Okay.

10 BY MR. SCHNEE:

11 Q He is in the other photo lineup?

12 A Yes, sir.

13 Q Those are the ones that you created?

14 A That's right.

15 Q For this case, for the robbery?

16 A That's correct.

17 Q All right. Now, Delores Dennis testified a few
18 minutes ago that she was shown three lineups that she
19 remembered.

20 A I think she said that she wasn't sure if it was three
21 or not.

22 Q Okay. Do you know which one you showed her?

23 A I showed her Sean Toran and Ricky Bowman.

24 Q But you didn't show her another one?

25 A No.

1 Q Okay. What about Shamael Coit? She said she
2 recognized those documents. They look familiar to her.

3 A Well, the same, the same thing. I showed her the two
4 photo lineups, not of any of these individuals.

5 Q Well, the ones that I showed her being Defense 1 and
6 2.

7 A Okay.

8 Q You heard her testify they looked familiar to her,
9 right?

10 A Yes, I heard that.

11 Q Okay. But you didn't show them to her?

12 A No.

13 Q Okay. The other two victims, the Regina Dennis and
14 Korey Coit.

15 A Okay.

16 Q How many lineups did you show them?

17 A I would assume I just showed the two.

18 Q Okay. Now, you said you -- when you talked with
19 Deloris over the phone --

20 A Uh-huh.

21 Q -- is that right?

22 A Yes.

23 Q It was after you were assigned the case?

24 A The day I was assigned the case.

25 Q Okay. That would be on December 4?

1 A Right.

2 Q One of the first things you did was contact the
3 victim?

4 A That's right.

5 Q Okay. Now, she told you that Sean uncovered his face
6 at some point or the light-skinned male uncovered his
7 face?

8 A I couldn't tell you the -- exactly what she told me
9 about that.

10 Q You mentioned it a few minutes ago on direct.

11 A Yeah, when they came in. We never interviewed them
12 once they came in.

13 Q Oh, okay.

14 A But the initial contact was just a brief contact to
15 set up a time and day for her to come in.

16 Q Okay. So you were told by Delores Dennis that Sean
17 Toran uncovered his face while you were interviewing her
18 at headquarters.

19 A Actually, I don't think it was Deloris. I think it
20 was other young lady that testified up here, not the lady
21 who got hit in the head, the other lady that came with
22 her.

23 Q Okay. You did the question and answer for all of
24 those witnesses, the interviews?

25 A Yes.

1 Q Okay. Now, I believe you mentioned that Deloris
2 described the men to you.

3 A They all described the individuals.

4 Q Okay. What were the descriptions given by each of
5 them?

6 A The two -- the two that stick out are Sean Toran and
7 Ricky Bowman, the two descriptions that stand out.

8 Q Sorry, I'll rephrase that. What did each victim
9 describe as the four suspects?

10 A They described clothing, height. Of course, with
11 Sean being tall and light skinned and Ricky Bowman being
12 short, brown skinned, also wearing dark clothing.

13 Q You mentioned their clothing. Exactly what did
14 Deloris say about the clothing?

15 A I can't tell you exactly what she said.

16 Q Well, did you write it down?

17 A I'll have to read her statement again.

18 Q Please do.

19 A No. She did not put a description in her written
20 statement.

21 Q Okay. I'll move on from this. How about that? You
22 heard today that both Deloris and Shamael covered the
23 faces with a piece of paper --

24 A Yes.

25 Q -- to look at the eyes?

1 A Yes.

2 Q Okay. Do you remember seeing that?

3 A Yes.

4 Q Do you remember writing an investigative follow up?

5 A Yeah.

6 Q Do you have it in front of you?

7 A What exactly is your question?

8 Q Okay. Did you ever write that down anywhere that
9 they all recognized the eyes?

10 A I don't know if I did or not.

11 (Pause).

12 No, actually I did not indicate that.

13 Q Okay. Did any of the four victims write anything in
14 their statements describing only remembering eyes of
15 anyone?

16 A No.

17 Q Okay. That was just a detail you left out?

18 A Well, if you look at the facts of the case, we had
19 information that would corroborate an identification
20 without initial information naming the suspects. That
21 would be a big thing.

22 In fact, we probably would not use an ID like that
23 based on just that, but because we have a person who named
24 all four individuals, we were corroborating that
25 information. So that would lead to that type of line up.

1 Q Okay. When they were doing these lineups and
2 covering their faces, did you tell them that they were
3 allowed to do that?

4 A I didn't tell them anything.

5 Q You just -- they asked for the paper, and you just
6 handed it to them?

7 A Yes.

8 Q Okay. And you watched them cover-up except for a
9 tiny section of the eyes?

10 A Yes.

11 Q Okay.

12 A And one thing I don't do is instruct them how to look
13 at a lineup.

14 Q Do you think it's okay for them to completely
15 cover --

16 A It's okay for them to do anything they want when
17 they're looking at the lineup. That's for them. It's not
18 my job to stop them or try to correct them to tell them
19 what's best. You know, it's their lineup. They're
20 looking at it. They're making the identification.

21 Q Okay. But it's your testimony today that you only
22 showed them those two lineups and not the two with Foster
23 or Will?

24 A That's correct.

25 MR. SCHNEE: Okay. No further questions right now,

1 Judge.

2 THE COURT: Redirect?

3 MS. SAMPSON: Just briefly, Your Honor.

4 REDIRECT EXAMINATION:

5 BY MS. SAMPSON:

6 Q I don't know if you still have it. I'm going to
7 bring it up to you, the statements of Delores Dennis and
8 Shamael Coit.

9 Now, these statements -- I want you to review really
10 quick --

11 A Yeah.

12 Q -- and tell me, were they done before or after they
13 do the photo lineup?

14 A These statements were done after the photo lineup.

15 Q So it was after they had already picked whoever they
16 were picking?

17 A That's correct.

18 Q So they were describing people they had already seen
19 in the photo lineups?

20 A That would be fair to say, yeah.

21 MS. SAMPSON: No further questions, Your Honor.

22 THE COURT: Come on down. You may come down, sir.

23 Thank you very much.

24 Next witness?

25 MS. SAMPSON: That would be all from the State, Your

1 Honor.

2 THE COURT: Any witnesses on this issue from the
3 defense?

4 MR. SCHNEE: Your Honor, I would ask at this time
5 this issue be held in abeyance until tomorrow. I would
6 like to question the other two victims in this incident
7 about the lineup procedures.

8 And honestly, I also would like to have the night to
9 do a little bit of research on covering all of the faces
10 except the eyes. This is the first I've ever heard of it
11 today, and I'd like to look and see whatever case law
12 there is about that.

13 THE COURT: You might look at State v. Jimmy Causey.

14 MS. SAMPSON: I was going to say, Your Honor, I
15 remember you sitting on that one with myself.

16 THE COURT: I think it was reported, and I ruled -- I
17 allowed just eye testimony from a ski mask. A witness
18 identified Mr. Causey from his eyes as she saw them
19 through the ski mask. That case was appealed, and I
20 believe the Supreme Court -- I know they affirmed. I
21 think they addressed the issue.

22 MS. SAMPSON: They did, Your Honor. I don't remember
23 it -- just for your spelling, C-A-U-S-E-Y, and it's the
24 first Causey hearing, not the second one. There's two.
25 There's a trial where he was the bank robber, and the

1 second was Jack Swerling was the victim in a home
2 invasion."

3 I was at that time the defense attorney for
4 Mr. Causey, but I do remember that case. It did go up on
5 appeal. That issue was affirmed.

6 THE COURT: You might look at that, see what language
7 is in there.

8 MR. SCHNEE: Yes, sir.

9 MS. SAMPSON: Your Honor, just on that one issue of
10 the witnesses, I would argue it would be improper for them
11 to testify in this Biggers hearing, Your Honor.

12 THE COURT: Who?

13 MS. SAMPSON: The two witnesses he asked for, Regina
14 Dennis and Korey Coit. They did not identify Mr. Bowman.

15 THE COURT: Right.

16 MS. SAMPSON: So, therefore, there would be a Biggers
17 motion and hearing only on the identification done by
18 those two witnesses.

19 It's very clear they can't do an in court -- those
20 two witnesses can't come in here and identify
21 Mr. Bowman --

22 THE COURT: I understand that.

23 MS. SAMPSON: -- nor have they ever been done out of
24 court. I don't see how we're getting --

25 THE COURT: What about the guaranteeing

1 constitutionality of the procedure used by the State?

2 MS. SAMPSON: If they didn't pick him, then there is
3 no constitutionality procedure.

4 THE COURT: Well, maybe you're right.--

5 MS. SAMPSON: I mean, they --

6 THE COURT: But if they came in and said, "Well, he
7 suggested to me that I pick number three," or you know,
8 some other irregular procedure, it may somehow affect
9 the...

10 MS. SAMPSON: Well, I will have Ms. -- I will tell
11 the court now Ms. Regina Dennis is intending to be here.
12 I do not know if Mr. Coit is intending to be here or not.

13 THE COURT: Okay. Well, I don't either.

14 MS. SAMPSON: He is not under Mr. Schnee's subpoena,
15 so if he is not here...

16 THE COURT: Who did you subpoena, Mr. Schnee?

17 MR. SCHNEE: The only witness I've had to subpoena
18 was Torrell Johnson. It's certainly never my practice to
19 subpoena victims in a case when I know the State has them
20 under subpoena and very clearly says they intend to call
21 him in to testify.

22 MS. SAMPSON: I actually don't have a subpoena on
23 Korey Coit.

24 THE COURT: And you --

25 MS. SAMPSON: We had some difficulty with Mr. Coit.

1 THE COURT: I didn't hear what you said.

2 MS. SAMPSON: I do not -- I'm not planning to
3 subpoena. I'm not saying Mr. Bowman has done anything to
4 Mr. Coit, but due to this issue of retaliation.

5 This might have been done in retaliation, and his
6 fear of being a witness, he has not been very cooperative
7 as far as wanting to come to court.

8 I've talked to him several times, but as far as
9 coming in here and being a witness against Bowman, he is
10 terrified and, therefore, is insisting that he not be
11 involved.

12 I had significant trouble getting most of my
13 witnesses to testify, I will say, in this particular case.
14 Mr. Coit has been -- I've spoken with him yesterday about
15 10:30, and he was still saying he was not going to come.

16 THE COURT: Okay. All right.

17 MR. SCHNEE: Judge, there are a couple of other
18 issues. If I can go back, actually, to my Rule 5 motion.

19 THE COURT: Yes.

20 MR. SCHNEE: I had a chance to look through the
21 shooting incident. What I do have is a two-page incident
22 report.

23 I don't have the entire case file, but what it does
24 say is they recovered a large number of nine millimeter
25 brass shells, along with at least a couple of bullet.

1 fragments they recovered during a search warrant that
2 we've heard many times involving Sean Toran, Torrell
3 Johnson, Mr. Foster, Mr. Williams.

4 They recovered a number of nine millimeters and
5 actually compared them to several other aspects. I'd like
6 to entire case jacket following that to see if they even
7 compared that from the shooting incident, the day the guns
8 were recovered.

9 THE COURT: What does that have to do with this case?
10 I mean, no weapons were fired at the scene of the crime,
11 at this incident scene.

12 MR. SCHNEE: Well, the incident of the shooting is in
13 the parking lot directly outside. The main issue for me,
14 Your Honor, is there are five or six black males arrested
15 at where the search warrant is
16 served. Guns are recovered. The IDs from the victims are
17 recovered.

18 THE COURT: Okay.

19 MR. SCHNEE: My client is not there. Torrell
20 Johnson --

21 THE COURT: Okay.

22 MR. SCHNEE: A gun that was used that same night,
23 that kind of present some kinds of insinuation it might
24 actually not be my client there. One of the other issues,
25 I'd like to see if any of the police officers has any --

1 THE COURT: Well, did they ever recover his gun, if
2 he had a gun?

3 MR. SCHNEE: No, Your Honor. They recovered guns
4 from Sean Toran and everyone else at the apartment. That
5 would be the search warrant.

6 THE COURT: I still don't see the relevance in this
7 case of a shooting in a parking lot for -- for --

8 MR. SCHNEE: Because I --

9 THE COURT: -- for whatever purpose when those guns
10 were recovered at a different place where all -- some of
11 these other people were located. No weapons were fired in
12 the apartment --

13 MR. SCHNEE: No.

14 THE COURT: -- where this allegedly took place.

15 MR. SCHNEE: No, sir.

16 THE COURT: So we've got no shells. We've got no
17 fragments. We've got no gun. So I'm -- how does it
18 exclude -- how is it exculpatory to your client?

19 MR. SCHNEE: Well, I'm not sure.

20 THE COURT: If it's --

21 MR. SCHNEE: I'm not sure if it is or not, but it
22 certainly can be inculpatory towards others, which can
23 certainly rise to the level of reasonable doubt as it
24 comes to my client as to whether --

25 THE COURT: Have you got a third-party guilt theory

1 in this case?

2 MR. SCHNEE: Judge, this has been a very developing
3 case since last week when the codefendant decided to
4 testify and created a brand new story that no one has ever
5 told before.

6 The other aspect about this report that's interesting
7 is that the police officers go to the scene to find out if
8 there are any witnesses.

9 I'd like to see if they've actually made contact with
10 anyone, because at least from what I can tell, this is
11 within minutes of the alleged burglary and robbery and
12 their -- the apartment complex is swarmed by police
13 officers.

14 Yet, the victims in this case are afraid to talk to
15 the police, and there are cops everywhere. Now, I'd like
16 to know if any of them contacted them or went to the
17 apartment or which apartment they went to. This report
18 itself isn't detailed enough. I'd like to see the full
19 file on that.

20 THE COURT: What's the State's position?

21 MS. SAMPSON: Your Honor, I can see what I can do
22 about locating any witnesses that they may have talked to,
23 but as to the guns, I agree with Your Honor that it
24 doesn't inculcate -- inculcate or exculpate because their
25 guns were found on Sean Toran because the codefendant and

1 this defendant are charged with these crimes.

2 So even if the guns matched -- I'm not saying they do
3 -- but even if they matched, he is admitting that he had
4 guns.

5 I mean, it doesn't excluded his client in any way
6 whatsoever because Sean Toran is charged, as well, in this
7 crime.

8 We have the hand of one is the hand of all, so even
9 if somehow the ballistics match, it just goes to further
10 inculcate Sean Toran who is going to come in and admit his
11 guilt and his charge in this case.

12 So I agree with Your Honor that the shell casing and
13 all of that information does nothing to do anything for
14 his client. I don't think knowing the witnesses does
15 either, but out of an abundance of caution, I'll do what I
16 can to get that in time.

17 THE COURT: All right... See what you can --

18 MR. SCHNEE: There is -- I'm sorry.

19 THE COURT: Yes. She volunteered to do it.

20 MR. SCHNEE: Yes, sir. There is also another issue,
21 if I may.

22 THE COURT: The record is open.

23 MR. SCHNEE: During the testimony by Sergeant Pegram,
24 he mentioned that he was involved in this investigation
25 much earlier because Sean Toran was robbed by a man named

1 || Black Shawn.

2 Apparently, he was the investigator in that case, but
3 apparently, there is a case file. I would like to see
4 that, as well, since that is apparently the motive for
5 this whole thing.

6 MS. SAMPSON: Your Honor, if I may.

7 THE COURT: Yeah.

8 MS. SAMPSON: I just spoke with Sergeant Pegram. We
9 have discussed this before. Sean Toran refused to
10 cooperate in the investigation, so there is no
11 investigative report.

12 There was a call made that he was robbed. When they
13 got there, he had been hit in the head, but he refused to
14 give any other information so they couldn't go any
15 further.

16 There is no case jacket report or anything to give
17 Mr. Schnee other than I think probably the initial call
18 made, but since we didn't hold it because he didn't want
19 to go forward, you have to ask for those within 90 days of
20 the incident or they destroy them. So I don't even have
21 that. There would be no way to have that.

22 MR. SCHNEE: Judge, the testimony was that Sergeant
23 Pegram went into based on
24 information that Black Shawn might be there.

25 MS. SAMPSON: He --

1 MR. SCHNEE: There must be some basis for that
2 belief.

3 MS. SAMPSON: Again, he can testify to why he went
4 there, but as far as there being a report, there is one
5 where Shawn --

6 THE COURT: Well, put him back on the stand.

7 MS. SAMPSON: I'll put him back on the stand, Your
8 Honor.

9 THE COURT: Just let Mr. Schnee inquire with the
10 officer, from the officer.

11 MR. SCHNEE: Yes, sir.

12 BY MR. SCHNEE:

13 Q Sergeant, what led you to believe that Black Shawn
14 would be at

15 A Nothing led me to believe he was going to be at
16 I was looking for information about
17 Black Shawn.

18 Q Okay. Why did you think that you were going to find
19 information about Black Shawn there?

20 A Because Black Shawn robbed Sean Toran there.

21 Q And when was that?

22 A That was -- I couldn't give you the exact date. It
23 was prior to all of this.

24 Q Okay. Why did you think -- who were you going to
25 talk to then?

1 A Anybody there in the complex.

2 Q Okay. But you went on 12/4/08?

3 A Yes.

4 Q You agree that would be at least three weeks after
5 that alleged robbery?

6 A I couldn't tell you when the robbery was. I don't
7 know the date of that robbery.

8 Q Okay. And why do you think anyone at that apartment
9 complex would have information?

10 A Because Black Shawn is a drug dealer, and Black Shawn
11 goes to that complex. People there know Black Shawn, so I
12 was trying to get a real name for Black Shawn. I know
13 that Black Shawn robbed Sean there.

14 Q Well, how do you know he is a drug dealer that sells
15 drugs in that apartment complex?

16 A Because I've talked to people there.

17 Q Okay. Who have you talked to that told you that?

18 A I couldn't tell you the names of the people I talked
19 to. You want me to give you a government name for
20 somebody. They don't give you those there. You go and
21 you talk to people there. They'll give you information,
22 but no one could give me his real name.

23 Q Okay. You never written down any information you
24 receive about Black Shawn from anyone?

25 A I haven't received any information that would do me

1 any good.

2 Q So you've been to that apartment complex before?

3 A Yes.

4 Q Trying to find out information about Black Shawn?

5 A I went to that complex to look for information on
6 Black Shawn after Sean Toran was robbed. That's what led
7 me back to that -- back to complex when they had the drug
8 search warrant. That's one reason I went out there.

9 Q Because you thought people that were being arrested
10 for the drug search warrant would be useful for you?

11 A Absolutely.

12 Q You thought they would give you that information?

13 A Yes.

14 Q So who did you talk to about Black Shawn while you
15 were there?

16 A I talked to Sean. Sean couldn't give me his real
17 name. I talked to the individual in the parking lot that
18 was giving us information about Ricky and Shawn in the
19 burglary.

20 Q Okay. Did you talk to anyone else?

21 A I talked with a lot of people; a lot of people are
22 crack heads that I talked to.

23 Q Okay. Do you remember who they were?

24 A No.

25 Q Was a case number ever opened or assigned to the Sean

1 Toran robbery?

2 A No. He refused.

3 Q So you went out to talk to him, but he refused to
4 talk to you?

5 A That's not what I said. I said he refused to do an
6 incident report.

7 Q Okay. Then how is anyone called to begin with?

8 A The call came out through 9-1-1 about a robbery.
9 That's how it came out. We don't -- I don't know who
10 called. I don't know anything about that.

11 I happened to be working that night, and I was about
12 two blocks away. So I go to the apartment complex. I
13 meet with Sean. Sean has an injury to his face where he
14 was struck either with a fist or a handgun.

15 He told me that Black Shawn robbed him, but as far as
16 when the uniform people got there, Sean shut down. He
17 wasn't going to cooperate with the police.

18 Q So you never took any notes about Black Shawn at all,
19 no incident reports, anything?

20 A No.

21 Q You just went there on a hunch on 12/4 with a search
22 warrant hoping that the drug dealers you were arresting,
23 the police department was arresting, will give you
24 information?

25 A That's correct.

1 MR. SCHNEE: All right.

2 MS. SAMPSON: Nothing from me, Your Honor.

3 THE COURT: All right. You may come down. All
4 right. Mr. Schnee, that resolves the issue. I'm not
5 going to --

6 MR. SCHNEE: Yes, Your Honor.

7 THE COURT: -- require the State to produce something
8 they don't have.

9 All right. Anything further?

10 MR. SCHNEE: No, sir. I think we're good for today.

11 THE COURT: Well, we've got a jury coming at 9:30
12 now. I don't want this going on all morning.

13 MS. SAMPSON: The only thing that we would have is
14 the whole clearing-the-room business when Shamael Coit
15 testifies. We can figure out -- I'll call her after a
16 break or something away from the jury. That way it will
17 be clear and they won't see it happen.

18 THE COURT: Well --

19 MS. SAMPSON: I mean, his family -- I'm not going to
20 say his family --

21 THE COURT: Well, let's talk what about needs to be
22 done first thing in the morning. You've got -- what's her
23 name?

24 MR. SCHNEE: Regina Dennis.

25 MS. SAMPSON: Regina Dennis if he wants to do that.

1 THE COURT: Regina Dennis?

2 MR. SCHNEE: Yes, for the Biggers issue.

3 MS. SAMPSON: And if Korey Coit comes, Your Honor,
4 I'll call him again the only time and try to get him here.
5 I just don't know that he will.

6 THE COURT: Okay. So that, Regina Dennis, is the
7 only testimony left on the Biggers issue?

8 MR. SCHNEE: Yes, Your Honor.

9 THE COURT: Can we do that at nine o'clock?

10 MS. SAMPSON: That's fine with me, Your Honor. I can
11 be here.

12 MR. SCHNEE: I can be here, Your Honor.

13 THE COURT: Nine o'clock. And -- but you're going
14 to -- you're going to need a ruling on the Biggers issue
15 before you start, won't you?

16 MS. SAMPSON: Correct.

17 THE COURT: And your opening statement or whatever?

18 MS. SAMPSON: Correct.

19 THE COURT: All right. Nine o'clock.

20 MR. SCHNEE: Thank you, Your Honor.

21 (Whereupon, There was an overnight recess).

22 (WHEREUPON, State's Exhibits Nos. 42, 43 were marked
23 for identification only.)

24 MS. SAMPSON: I'm not sure what order you want to do
25 this in. Mr. Schnee had two issues. I know we haven't

1 finished the Biggers. He had wanted to hear from -- know
2 if we had any other information on the investigation of
3 the shooting of the car.

4 THE COURT: Yes.

5 MS. SAMPSON: We do have the officer here who dealt
6 with that, Officer -- are you an investigator?

7 THE WITNESS: Police officer.

8 MS. SAMPSON: I didn't want to call him by the wrong
9 name. He is here. I don't know how you wanted to do
10 this, if you wanted to use him first and then do the
11 Biggers or continue with the Biggers. I didn't know how
12 you wanted to do it.

13 THE COURT: Well, I don't have any preference. Are
14 you satisfied?

15 Mr. Schnee, what's your position?

16 MR. SCHNEE: Your Honor, I mean, I'm satisfied that
17 the officer -- I mean, I just talked to him for a minute
18 in terms of what he did.

19 My only contention at this point is -- I mean, he
20 says he doesn't remember which apartments anyone knocked
21 on. Apparently, they were -- they felt they were missing
22 a bullet by looking at the cars. They wanted to see if
23 anyone was hit. This is immediately outside the victim's
24 apartment, and they're there for what looks like a few
25 minutes shy of an hour.

1 THE COURT: Do what?

2 MR. SCHNEE: They're there at the scene for almost an
3 hour.

4 THE COURT: Okay.

5 MR. SCHNEE: It's 57 minutes.

6 THE COURT: Okay.

7 MR. SCHNEE: And the fact that the victims are going
8 to get up and testify that they were afraid to contact the
9 police, and that's why they didn't call the police until
10 the next day, but there are four or five police officers
11 sitting out there knocking on doors.

12 THE COURT: So? I mean, it is what it is.

13 MR. SCHNEE: But -- I agree. At this point, I would
14 just ask that I be allowed to add him to my witness list.

15 THE COURT: Any objection?

16 MS. SAMPSON: No objection, just to let the officer
17 know when he needs him here, all that, but I don't have
18 any objection.

19 THE COURT: All right.

20 MR. SCHNEE: I would assume sometime this afternoon.

21 THE COURT: What's the officer's name?

22 MS. SAMPSON: Officer Hamee, H-A-M-E-E.

23 THE WITNESS: That's correct.

24 THE COURT: Officer Hamee, are you on duty?

25 THE WITNESS: I am today, sir.

1 THE COURT: Is your duty stationed anywhere near the
2 Richland County courthouse?

3 THE WITNESS: It is, sir.

4 THE COURT: All right. If you'll just leave a phone
5 number where we can reach you. If that becomes necessary,
6 during the course of this trial, we'll call you.

7 THE WITNESS: That would be fine. Thank you.

8 THE COURT: You're free to go, sir. Thank you very
9 much.

10 MS. SAMPSON: The other matter, is our -- you asked
11 us to have -- I did contact Korey Coit. He actually
12 didn't even answer when I called him to try to get him to
13 come today.

14 Regina Dennis is here and prepared to finish the
15 Biggers motion, the Neil vs. Biggers hearing. However,
16 she requested the same request that Ms. Coit did that the
17 courtroom be cleared when she testified.

18 THE COURT: All right. Is that the only thing
19 remaining?

20 MS. SAMPSON: That's the only thing remaining. She
21 is sitting back there. I can go get her.

22 THE COURT: Okay. Are you ready to proceed?

23 MR. SCHNEE: Yes, sir.

24 THE COURT: All right. Clear the courtroom, please,
25 until the matter is over. Then the courtroom will be

1 opened during the course of the trial.

2 (Whereupon, the courtroom was cleared.)

3 All right. Bring the witness.

4 MS. SAMPSON: She is coming. Ms. All went to get
5 her.

6 THE COURT: Oh, I'm sorry.

7 (Pause.)

8 REGINA DENNIS, after being duly sworn,
9 testified as follows:

10 THE CLERK: Thank you. Have a seat in the witness
11 stand, please. State your name for the record.

12 THE WITNESS: Regina Dennis.

13 DIRECT EXAMINATION:

14 BY MS. SAMPSON:

15 Q Good morning, Ms. Dennis.

16 A Good morning.

17 Q Okay. You weren't here before, so I'm just going to
18 take you straight to the incident with real preliminary
19 questions, okay.

20 A Okay.

21 Q Where were you on November 25, 2008?

22 A At my cousin's apartments in Brook Pines.

23 Q Okay. And what were you -- why were you there?

24 A I just was over there for business. She cooked
25 dinner and invited me over.

1 Q Okay. And what happened that brought us all here
2 today?

3 A We was sitting there, and then four guys busted in
4 the door.

5 Q Where were you when the four guys came in?

6 A I was in the hallway heading to the bathroom.

7 Q Okay. So what happened when they came in?

8 A They came in, pointed the guns, asking everybody to
9 get down, then asking for this guy that we didn't know.

10 Q Do you remember who they asked for?

11 A A Black Shawn.

12 Q And did you get down?

13 A I did.

14 Q Where were you when you got --

15 A I got down on the floor where I was at because when
16 they -- when I was on the bathroom, I heard the door open.
17 I walked back out to see what happened. That's when they
18 told everybody to get down, and I dropped where I was at.

19 Q Did you sit? Were you laying? How were you?

20 A I was sitting.

21 Q Sitting?

22 A Uh-huh.

23 Q So you were sitting up?

24 A Yeah, against the wall. My back was against the
25 wall.

1 Q Okay. So you sat with your back against the wall and
2 then what happened?

3 A They came in, asking for the guy, had guns, everybody
4 on the head -- well, I know they had it to my head, and
5 then I remember there was another guy in the living room
6 where my friend was at with her daughter.

7 Another guy was just looking through stuff, had one
8 of my friends in the closet. One guy was on him. Then
9 the other -- somebody -- the same person that was with me
10 was talking with my cousin dealing with her also.

11 Q Okay. And did these -- what were these people
12 wearing?

13 A One of them came without a mask, and then the other
14 ones had on hoodies and a bandanna tied around their face.

15 Q Okay. I was about to say, you said one of them came
16 in without a mask?

17 A Without a mask.

18 Q What did he look like?

19 A He was tall, and he had braids.

20 Q Okay. Could you tell what any of the other ones
21 looked like?

22 A I couldn't.

23 Q Okay. So they were going back and forth in the
24 apartment?

25 A Well, once they went in the front, one guy was

1 looking through stuff.

2 Q Okay.

3 A One guy stayed with my friend that was in the closet.

4 He had him on the ground and on the floor, and then the

5 tall light-skinned guy, he was just standing. He wasn't

6 really doing anything, and then the guy who was back and

7 forth from me and my cousin, he was -- had the gun to my

8 head asking for the purse then, and then he had the gun to

9 my cousin's head. He was saying a few words, you know,,

10 arguing back and forth.

11 Q And your cousin being?

12 A Deloris.

13 Q Deloris. And then what happened?

14 A They realized they had the wrong place, but before

15 that happened, they actually hit my cousin.

16 Q Okay. They hit your cousin. Did you see them hit

17 your cousin?

18 A I did.

19 Q And let me ask you, are the lights on in the

20 apartment?

21 A They were.

22 Q And this whole time, about how long were they in the

23 apartment, do you remember?

24 A Maybe ten, 15 minutes.

25 Q Okay. And during that time period, you could see the

1 tall light-skinned face?

2 A Uh-huh.

3 Q Could you see the face of anybody else?

4 A I couldn't.

5 Q Okay. And when one of them hit your cousin, did you
6 see his face?

7 A I didn't.

8 Q Okay. And so then what happened?

9 A After they hit her, the light-skinned guy picked up
10 the towel. My cousin was really bleeding bad. They asked
11 for who they were looking for. They pushed him out of the
12 door.

13 Q Okay. Then what happened?

14 A Then they left because they actually took my purse
15 and my cell phone, and they took -- my friend, they took
16 his cell phone, and I think they took Deloris' cell phone.

17 Q And you say your friend, him?

18 A That's Korey?

19 Q Okay.

20 A Yes. And they told us that's why they took it,
21 because if the police get called, they'll know who did it.

22 Q All right. So they took your phones and said they
23 did it --

24 A If someone called the police, they knew who did it.
25 They was going to come back. So we -- after they left,

1 they went outside and started shooting. We didn't know if
2 they were shooting back in that alley, so we just hit the
3 floor.

4 Q Okay. I want you to slow down --

5 A I'm sorry.

6 Q -- just a little bit.

7 A I'm nervous.

8 Q I know you are. I just want to break it down a
9 little bit.

10 A Okay.

11 Q You said -- I just want to break it down a little
12 bit. You heard shots?

13 A We heard shots fired.

14 Q Did you know what they were shooting at?

15 A I didn't -- we didn't know if they were shooting back
16 up at us or what. We just heard shots fired, and we just
17 hit the floor.

18 Q Okay. And then what did you do after that?

19 A After we waited for a few minutes to make sure they
20 were home, and then we just left.

21 Q How long do you think you waited?

22 A Maybe a minute or two. I'm not sure. Everything was
23 happening so fast.

24 Q So would it be fair to say you left pretty quickly
25 after?

1 A We left pretty quickly, and we took Deloris to the
2 emergency room.

3 Q When you left, were there police in the parking lot?

4 A I didn't see any police.

5 Q Okay.

6 A No.

7 Q So you went to -- you took Delores to the hospital?

8 A To the emergency room, uh-huh.

9 Q And at some point, did you come back to the
10 apartment?

11 A We came back the next day.

12 Q Okay. And were you there when Deloris called the
13 police?

14 A I was.

15 Q Okay. Did you speak to any police officers at that
16 time?

17 A I did.

18 Q Did you give a description of anybody?

19 A The only one I could give was the tall light-skinned
20 guy with braids.

21 Q And that's the description you gave?

22 A Uh-huh.

23 Q I need you to say yes or no.

24 A Yes, I'm sorry.

25 Q Okay. At some point, you were contacted by police?

- 1 A Yes.
- 2 Q And what did you do when they contacted you?
- 3 A Well, when they contacted me, they wanted me to come
4 in to give them my written statement, and then they told
5 me at that time they might have the person.
- 6 Q Okay. And so what did you --
- 7 A They asked me to come do the photo lineup.
- 8 Q And how did that happen? Did they put you and
9 Deloris in a room or what happened?
- 10 A No. I went by myself.
- 11 Q Okay. You went by yourself?
- 12 A I was by myself.
- 13 Q And did you talk to Investigator Pegram? Do you
14 remember if it was him?
- 15 A Pegram, yes.
- 16 Q And what did he do when he showed you the photo
17 lineup?
- 18 A Well, he gave me the lineup. He said to look at it,
19 see if I recognized anybody that was in that photo lineup.
- 20 Q I'm going to show you -- it's not over there. I'm
21 going to show you what's been marked as 42 and 43. I'm
22 going to ask you if you recognize Exhibit 42.
- 23 A Yes.
- 24 Q And what is it?
- 25 A That's guy that was there, and I circled it and

1 initialed it.

2 Q Now, did -- were you shown a black and white or were

3 you shown a color?

4 A Color.

5 Q Okay. So you were shown something similar to State's

6 Exhibit 40?

7 A Yes.

8 Q Okay. But this right here, the one I showed you, 42,

9 is with your signature on it?

10 A It is.

11 Q But the one you saw was actually in color?

12 A It was.

13 Q And this would be a copy of what you saw?

14 A Yes.

15 Q Okay. Is that your initials and circled?

16 A Yes.

17 Q And you picked only the light skinned one?

18 A Yes.

19 Q Okay. And State's Exhibit 43, do you recognize that?

20 A Yes.

21 Q And what is this?

22 A My observation that it was me. I did it and nobody

23 else forced me. I did it.

24 Q Okay. And I want to ask you a little bit about that.

25 When Investigator -- Sergeant Pegram showed you the

1 pictures, did he say anything like you need pick a certain
2 person or anything like that?

3 A No.

4 Q Did he tell you who to pick?

5 A No.

6 Q Did he, in fact, tell you the person who did this was
7 in those photos?

8 A No.

9 Q And once you looked at it, how long did it take you
10 to pick Mr. Toran?

11 A Not long at all.

12 Q Okay. And how sure are you that was the person?

13 A I'm pretty sure.

14 Q And did you see anybody else's face?

15 A No, I didn't.

16 Q Would you have been -- do you feel like you would
17 have been able to pick anyone else out?

18 A No, because I was on the floor. I couldn't see
19 anybody. I just knew what they had on. As far as trying
20 to, you know, get any features from him, I couldn't.

21 Q And did Investigator Pegram ask you or force you to
22 pick anyone other than Mr. -- the one that you picked?

23 A No.

24 MS. SAMPSON: I have no further questions, Your
25 Honor.

1 THE COURT: Cross-examination?

2 CROSS-EXAMINATION:

3 BY MR. SCHNEE:

4 Q Good morning.

5 A Good morning.

6 Q I only have a few questions for you. The four men
7 that came in, you said the tall light-skinned one, he was
8 not wearing a mask?

9 A No.

10 Q Never?

11 A No.

12 Q Okay. Was there anything in particular you remember
13 about him?

14 A Which one, the light-skinned guy?

15 Q Yeah.

16 A I mean, I knew he had braids. He had the little
17 funny eyes I called them, different color. You know, they
18 were hazel, I believe, or something. It was light-colored
19 eyes.

20 Q Okay.

21 A And just tall, light skinned.

22 Q Okay. Any scars or any tattoos or anything else?

23 A I don't remember.

24 Q And as far as the other three, you have -- you can't
25 describe them at all?

1 A I couldn't.

2 Q Okay. I believe you said the police called you --

3 A Yes.

4 Q -- and said they think they have one of them?

5 A Uh-huh.

6 Q Okay. And after that, you went to the police
7 station?

8 A I did.

9 Q Okay. And that's when they showed you the lineup?

10 A Yes.

11 Q And that's the only lineup they showed you?

12 A Yes.

13 MR. SCHNEE: No further questions. Thank you.

14 THE COURT: Anything further?

15 MS. SAMPSON: Not from Ms. Dennis, Your Honor.

16 THE COURT: All right. You may come down.

17 MS. SAMPSON: Your Honor, at this point, that would
18 be it from the State.

19 THE COURT: Do you want her --

20 MS. SAMPSON: She is going to take her back.

21 At this time, Your Honor, that would be it from the
22 State in ways of the Neil vs. Biggers. I think Mr. Schnee
23 had asked us to have all of the witnesses present here.
24 As I stated to the Court, Korey Coit is not under subpoena
25 and did not want to participate in this due to his fear.

1 THE COURT: All right. Mr. Schnee, do you have
2 anything?

3 MR. SCHNEE: Yes, Your Honor. I did what I could
4 last night in terms of research. I know Your Honor
5 mentioned State v. Causey.

6 The only Causeys I could find that had your name
7 attached to it are articles or opinions that were Anders
8 briefs, so there was no guidance on that.

9 I researched and could not find anything dealing with
10 identification based only on eyeballing it. Mainly due to
11 characteristic.

12 My argument would be just based on the five factors
13 that the Court must determine under Neil v. Biggers.
14 Number three, the accuracy of the witness' prior
15 description.

16 So far we heard nothing about Mr. Bowman's
17 description other than, "I recognized the eyes," but there
18 is no description of what aspect of his eyes anybody
19 recognizes, and that's the entirety of it.

20 There is nothing on the record that shows that based
21 on the description of eyes that lineups were done in order
22 to show anything of similar eyes for any possible
23 suspects. I believe the out-of-court lineup has been
24 tainted.

25 Additionally, under the fifth factor for the amount

1 of time and the showing of the lineup, it's -- I believe
2 it's 11 days for the two witnesses that picked Mr. Bowman.

3 THE COURT: It's ten or 11?

4 MS. SAMPSON: Depending on which witness, it's ten or
5 11.

6 MR. SCHNEE: My argument would be that the -- that
7 the procedure is unreliable based on covering the majority
8 of the face only looking at eyes when that's not how the
9 lineups were originally set up.

10 There is no description of my client's eyes. I think
11 that it is tainted, and they should be excluded.

12 THE COURT: What is the State's position?

13 MS. SAMPSON: Your Honor, the State's position is
14 that Mr. -- first of all, Mr. Schnee skipped a step.

15 THE COURT: He what?

16 MS. SAMPSON: He skipped a step. Under Biggers, you
17 don't even get to the five prongs unless you first find
18 that the lineup was unduly suggestive.

19 He didn't mention that it's not. They've all --
20 you've seen the color versions. I'll hand them back up to
21 the court if you need to see them. They describe the
22 person who hits Deloris as being brown skinned, medium
23 brown.

24 All of the pictures in that six pack are the same
25 color. He has not mentioned anything that makes that six

1 pack identification unduly suggestive.

2 They have been satisfied by this court and by other
3 courts for decades at this point. You don't move to the
4 five prongs unless you make a finding that this pattern is
5 unduly suggestive.

6 He has not even made any argument that it was, so I
7 don't think we can get to the five prongs. However, if
8 they do then get to the five prongs, they do give a
9 description, the best that they can.

10 And also, Ms. -- he talks about the eyes not being
11 specific or I'm not exactly sure what his wording was.
12 Ms. Coit is an ophthalmologist's assistant.

13 She looks at eyes all day, and she talks about how
14 they can be different. That was part of the reason why
15 she could be sure that this is why -- that this the person
16 that did it.

17 Both of them didn't look at the totality of the faces
18 because they didn't see the whole thing. They looked at
19 the eyes in the manner in which they saw them, which is to
20 cover-up the parts they didn't see.

21 As Your Honor knows, that has been accepted by the
22 courts. I would hand up State vs. Simmons. If we are
23 getting to the five prongs, again, Your Honor, that case
24 was decided in 2009.

25 It was actually a case that you preside over. The

1 Court had allowed any identifications in that case, even
2 though they were months after.

3 In this particular case, ours was just a few days
4 after. Your Honor noted, ten or 11 days after the ID. I
5 mean, after the incident, the identification is done.
6 That's a short time period, not a long time period.

7 The courts have allowed identification when they were
8 seven months later... Here they told -- both witnesses
9 explained why they were looking at him particularly.

10 Ms. Dennis says she -- Delores Dennis said she was
11 looking at him particularly because he hit her in the
12 head. He is only a few inches in front of her. Ms. Coit
13 says the same thing.

14 I almost had to get into the witness box with her to
15 get as close as the person was to her when he held the gun
16 to her, and she said the whole time she is looking at his
17 face, in particular his eyes.

18 Therefore, they meet all of the five prongs. We
19 don't have a very good description that they gave to
20 police initially. I will give him that, but as the court
21 looks at the totality of the circumstances -- you don't
22 just look at one prong and throw it out. You look at all
23 of them, even if you get to that.

24 Again, I don't think we get that to that. I don't
25 think the six pack was unduly suggestive, so I don't think

1 we get to whether it's reliable, I think we have gone
2 through the factors, given the totality of the
3 circumstances. The two identifications, I believe, are
4 reliable and, therefore, should come in.

5 THE COURT: Anything further?

6 MR. SCHNEE: No, Your Honor.

7 THE COURT: All right. Well, I find that the -- I
8 have reviewed the photo lineups, don't find that they were
9 unduly suggestive. Let me have the --

10 MS. SAMPSON: Which ones?

11 THE COURT: Just give me the ones that identify the
12 defendant.

13 MS. SAMPSON: I have some that are blank if -- that
14 don't have their signatures, if you'd like those to be
15 marked.

16 THE COURT: I just want to see the pictures again.

17 MS. SAMPSON: This is -- this is the one of the
18 defendant, Mr. Bowman. This is the one of the
19 codefendant, Mr. Toran.

20 THE COURT: I want Dennis and Coit.

21 MS. SAMPSON: Okay. That is Coit's. That is Delores
22 Dennis --

23 THE COURT: Well.

24 MS. SAMPSON: Sorry.

25 THE COURT: Give me both of them.

1 MS. SAMPSON: This is Shamael Coit, and this is
2 Delores Dennis that has Shawn.

3 THE COURT: All right. Well, whether it's
4 coincidental or not, in both the Dennis and Coit
5 identifications of the defendant, the defendant seems to
6 have eyes that are somewhat different from the rest or at
7 least in their positioning appears to be wider open than
8 any of the other. That may be just a coincidence of the
9 photographs that were taken.

10 Had there been some testimony that these two
11 witnesses told the police, Sergeant Pegram, that they
12 could identify the defendant by his eyes, I would think
13 these photo lineups could be suggestive because the
14 photograph of the defendant in these lineups, there is
15 definitely a difference in the structure and openness of
16 the eyes, but since the officer was not given that
17 information in order to create a photo pack, six-pack
18 lineup.

19 Based on the identification of the eyes, I think it's
20 probably more -- or it's less likely to be suggestive than
21 if -- if he had said, "I could identify him by those eyes
22 because these eyes are somewhat different than the other
23 five," but anyway, so I do -- I don't find that they
24 are -- this is an unduly suggestive lineup.

25 In fact, he's got a red shirt. The others have white

1 or black clothing, differentiates these pictures, but I
2 don't know if he had a red shift on when these -- mugshot
3 was taken or not or the photograph was taken or not. That
4 in itself, perhaps, could be suggestive but it's not been
5 argued.

6 I find that they were not unduly suggestive, and even
7 if they were, both Ms. Dennis, Ms. Coit certainly had the
8 opportunity at the incident location to view the accused,
9 particularly Ms. Coit who was very certain that she had a
10 sufficient opportunity to observe him that made her
11 identification, even though it was ten days later.

12 In Officer Pegram's testimony, she was very certain.
13 I can't remember whether she said that or he said that,
14 but she was undeniably, she believed that the
15 identification was positive as to defendant.

16 I think it goes without saying that any time a --
17 unless there is testimony to the opposite, that any time
18 during a situation like this where guns are being held and
19 pointed at people in fear of their lives, then there is
20 a -- there is a pretty oddly common reaction that the
21 attention is drawn to the victim -- I mean, to the
22 perpetrators that have the guns.

23 I think the witness's degree of attention is such
24 that would allow them to fix in their mind some
25 distinguishing characteristic, particularly with regard to

1 Mr. Toran. There just doesn't seem to be any doubt that
2 Mr. Toran is identified by all three of the witnesses as
3 one of the three invaders.

4 Both witnesses exhibited a level of certainty at
5 the -- when the photo lineup was done, and I don't feel
6 that the length of time between the two, between the ten
7 days was that significant.

8 The Court says counsel said that proved -- this time
9 is much greater than that. So I find that the
10 identification of the defendant by the witnesses Dennis
11 and Coit will be allowed that their out-of-court
12 identification was legal and constitutional and that their
13 in-court identification would be -- would not be
14 objectionable.

15 All right. Anything further?

16 MS. SAMPSON: The only thing we have, Your Honor, is
17 I believe Mr. Schnee -- and we said we would revisit it at
18 the time we needed to -- had an objection to any mention
19 of shots outside -- I'm sorry, of anyone saying what was
20 said within the apartment by different suspects. I don't
21 know if you gave a ruling on that.

22 THE COURT: I didn't. I said when it comes up, we'll
23 deal with it if there is an objection.

24 MS. SAMPSON: Well, I wanted to bring that up, what
25 was said in opening. So, of course, we can't

1 contribute -- it's opening argument. I think we're
2 allowed to say whatever we want in opening argument, but I
3 don't want there to be an issue later about that. I
4 didn't know if it would be best to bring it up now or
5 later.

6 THE COURT: Well, but we don't have the testimony --

7 MS. SAMPSON: Right.

8 THE COURT: -- on which to rule.

9 MS. SAMPSON: And I didn't want -- if he was going to
10 object to Ms. All saying during the incident these things
11 were said.

12 She can't attribute any of it to a particular person
13 and won't, but he objected to it being mentioned at all.
14 I didn't want him to object, and we have to send the jury
15 out.

16 THE COURT: What is your position, Mr. Schnee?

17 MR. SCHNEE: My position, Your Honor, is without
18 those statements being attributed to my client
19 specifically, they should not be admissible.

20 In terms of opening statements, I certainly dislike
21 the constantly objecting to another attorney's opening.
22 That, of course, under the law is not technically
23 evidence, but once the jury hears those statements that
24 it's just as problematic as if they heard it from a
25 witness on the stand.

1 THE COURT: Well, two people go in to rob a bank and
2 one says, "Everybody get down on the floor or we'll shoot
3 you," and he's not on trial, but there is a -- is not the
4 act of one, the act of all? In other words, is not that
5 testimony coming from a victim? Why is that hearsay
6 because it cannot be attributed specifically to the
7 defendant who is on trial?

8 MR. SCHNEE: It's hearsay, Your Honor, because the
9 declarant is an unknown codefendant, and it's -- it's not
10 a general statement I'm concerned about of, "Everyone get
11 down on the ground." That's the last thing I'm worried
12 about.

13 THE COURT: The statement is apparently we're going
14 to kill you.

15 MR. SCHNEE: We're --

16 THE COURT: I don't know what the statement is.

17 MR. SCHNEE: They're statements of, "If you call the
18 police, we're going to kill you." Probably the most
19 problematic one was from -- from Regina Dennis.
20 Apparently, one guy said in front of her daughter, "Do you
21 want your daughter to see you bleed tonight?"

22 THE COURT: I thought she identified the defendant as
23 saying that.

24 MR. SCHNEE: I don't believe she specifically said
25 that.

1 THE COURT: I thought that was the person she
2 identified in the photo lineup.

3 MR. SCHNEE: She identified the person in the photo
4 lineup. She didn't identify if that was the person who
5 said it.

6 THE COURT: That's what I thought she said.

7 MS. SAMPSON: And, Your Honor, I -- I don't know
8 that -- in opening, we're not attributing certain
9 statements to any particular person. That would have to
10 come from the witness stand.

11 I would hand up to Your Honor and to Mr. Schnee State
12 vs. Pressler, which is a 2005 case, Your Honor, in which
13 the court allowed under the res gestae belief that in
14 order for us to give the totality of events, we were
15 allowed to discuss what happened, in particular what was
16 said.

17 You can't talk about whether an armed robbery
18 occurred and there was fear unless you talk about why they
19 were afraid... I don't know how we would get around that in
20 this particular case.

21 Otherwise, you don't have an armed robbery. You
22 don't have a burglary first. We have to show that they
23 didn't allow them in. We have to get into all of that in
24 order to prove the elements of the case. So under res
25 gestae, the courts have allowed it.

1 In that particular case in Pressler, they talk about
2 a pending CSC charge in an intimidation of a witness case.
3 So it -- I mean, that was -- talk about prejudicial.

4 In this case, this is just the event, the whole event
5 itself. I think they have to talk about it under res
6 gestae to get to where we have to -- the elements we have
7 to prove. So I don't think he can piecemeal on that and
8 not talk about what they said as far as the case that
9 we're here to prosecute.

10 THE COURT: Mr. Schnee?

11 MR. SCHNEE: Judge, I think it's certainly easy for
12 both witnesses and the jury to understand that when people
13 come into an apartment by kicking in a door, they're going
14 to be in fear.

15 I'll even stipulate that they were in fear in
16 general. I have no problem with that. My problem are
17 specific statements that are incredibly prejudicial
18 which --

19 THE COURT: It created fear.

20 MR. SCHNEE: Yes, but under 403, it -- the probative
21 value has to be -- the prejudicial impact of it is
22 substantially outweighed, the probative value in that
23 aspect. There are many other aspects that create fear. I
24 think certain statements within that just are incredibly
25 prejudicial.

1 THE COURT: Well, I think they're probative. I'm
2 going to overrule your objection.

3 MR. SCHNEE: Yes, Your Honor.

4 THE COURT: Are you ready for the jury?

5 MS. SAMPSON: Yes, Your Honor. The only other issue
6 is my first witness will be Regina Dennis, so it goes back
7 to the clearing. Are -- can we agree to excuse the jury
8 after openings so we can clear the courtroom so they're
9 not here when the court gets cleared.

10 THE COURT: Say that.

11 MS. SAMPSON: My first witness would be Regina
12 Dennis, which is one of the witnesses you said we could
13 clear the courtroom for.

14 I don't want to have to clear the courtroom in front
15 of the jury. Can we just agree after openings to send
16 them back, or how do you want us to handle that?

17 THE COURT: Approach the bench.

18 (Whereupon, there was a bench conference.)

19 THE COURT: All right. Stand at ease for about ten
20 minutes.

21 (WHEREUPON, a short break was taken.)

22 (WHEREUPON, Court's Exhibits Nos. 1, 2 were marked
23 for identification only.)

24 THE COURT: All right. Is the State ready for the
25 jury?

1 MS. SAMPSON: Your Honor, I don't know if we have a
2 ruling yet on clearing the courtroom. I did have the
3 affidavits of Shamael Coit and Regina Dennis marked as
4 Court's Exhibits 1 and 2.

5 THE COURT: All right.

6 MS. SAMPSON: I still would ask for their testimony
7 that the court be cleared due to the fears that they had.

8 THE COURT: All right, over the objection of the
9 defendant.

10 MS. SAMPSON: So that would mean that my only issue
11 is how do you want us to handle that?

12 THE COURT: I'm handling it.

13 MS. SAMPSON: Then, we're ready to proceed.

14 THE COURT: Are you ready?

15 MR. SCHNEE: Judge, if I could just put on the
16 record --

17 THE COURT: Sure.

18 MR. SCHNEE: -- in terms of these affidavits, there
19 is nothing in here saying that there is any threats or
20 that there's any fear or any reason for them to believe
21 that there are threats or a reasonable fear from either my
22 client or his family, and I would object to clearing the
23 courtroom on that basis.

24 THE COURT: All right. Well, I'll do it for those
25 two witnesses, two witnesses only.

1 Bring the jury.

2 (WHEREUPON, the jury came into open court at

3 approximately 10:33 a.m.)

4 THE BAILIFF: The jury is present, Your Honor.

5 THE COURT: Mr. Crumpton, let me see you.

6 (Pause.)

7 Good morning.

8 THE JUROR: Good morning.

9 THE COURT: Sorry for the delay. Any time we get
10 started in a trial, there are a number of matters that
11 need to be taken up hopefully so that the trial will go
12 more smoothly if we address issues in advance rather than
13 wait until they come up during the course of the trial.
14 So I appreciate your patience this morning. We're now
15 ready to begin the trial.

16 Madam clerk, will you swear the jury, please?

17 THE CLERK: Yes, Your Honor.

18 (Whereupon, the jury was sworn.)

19 PRETRIAL CHARGE:

20 THE COURT: All right. Ladies and gentlemen, before
21 we begin the trial, I want to tell you a little bit, talk
22 to you a little bit about what the procedure will be.

23 I want to tell you that this trial may be different
24 from what you might expect. Many people do not have a
25 chance to attend actual court sessions as you're now doing

1 and may think from watching television or movies or
2 reading books that trials are always full of a lot of
3 action and drama and things of that nature and that it
4 will be over in 30 minutes.

5 Now, while all these things may be true at times,
6 this trial is not for entertainment. It's a fundamental
7 part of our democracy, a search for the truth in an effort
8 to make sure that justice is done between the parties for
9 the court.

10 In searching for the truth and making sure that
11 justice is done is often a slow, deliberate and repetitive
12 process, the opposite of what you may have seen on
13 television, or in movies or read in books.

14 This courtroom is a place of honor dedicated to the
15 protection and preservation of citizen's rights through
16 what many have called the greatest justice system ever
17 devised.

18 The attorneys appearing before you are advocates for
19 the parties they represent, but first and foremost, they
20 are officers of this court sworn to uphold the integrity
21 and fairness of our judicial system and to help you in a
22 search for the truth.

23 You should expect them to be professional and
24 competent and ethical in their representation of their
25 clients, and remember that you have taken an oath to try

1 this case and reach a fair and just verdict, and you are
2 also expected to be professional, reasonable and ethical.

3 So with that introduction, let me go on and tell you
4 a little about how this case will unfold. What I say now
5 is not a charge on the law of this case.

6 I'll talk to you about the law when I instruct you at
7 the end of the case and before you retire to decide the
8 case, but before the trial begins, as I said, I want to
9 explain the procedure so that you can better understand
10 what's happening during the course of the trial.

11 Now, I'm going to allow you to take notes during the
12 course of the trial. The bailiff, in a few minutes, will
13 hand you the notepads and paper so that you can.

14 I will tell you that -- caution you that the notes
15 are for your own personal recollection of the testimony.
16 They're not to be used to try to convince somebody else of
17 what you may or may not have heard, but they are -- but
18 you can use them for your own recollection at such time as
19 you may need them during your deliberations.

20 Now, as I told you, or as I told the full jury panel,
21 the defendant is charged with several crimes. Let me just
22 go through them again.

23 He is charged with burglary, and they are all --
24 these charges all revolve around an event that took place
25 November 25th, 2008 at the Brook Pines apartments.

1 He is charged with burglary. He is charged with
2 armed robbery. He is charged with kidnapping. He is
3 charged with assault and battery of a high and aggravated
4 nature, and he's charged with possession of a weapon
5 during the commission of a violent crime.

6 I'll explain the elements of each of these charges to
7 you later in the trial, but that's just to give you an
8 idea as to what you should be listening for during the
9 course of the trial. Keep in mind that there are five
10 different charges, and the State must prove each charge to
11 you beyond a reasonable doubt.

12 Now, you have been selected as fair and impartial
13 jurors whose purpose it is to find and determine the
14 facts. You are the sole judges of the facts in this case.

15 At any time I make any comment about the facts, you
16 must disregard those comments. I'll remind you again that
17 the indictment is simply the charge or the charges by
18 which the case is brought into court.

19 It's not in any sense evidence of the allegations
20 that they contain, and the defendant has pled not guilty
21 to all of these indictments.

22 The State, as I said, therefore has the burden of
23 proving each of the elements of each indictment beyond a
24 reasonable doubt. It will be your duty, ladies and
25 gentlemen, to decide whether the State has met that burden

1 and proved it to you beyond a reasonable doubt.

2 You are to determine the facts from the testimony you
3 hear and any other evidence in the form of exhibits,
4 things of that nature, that may be presented during the
5 course of the trial.

6 It's especially important that you perform your duty
7 diligently and contentiously, because ordinarily, there is
8 no way to correct an erroneous determination of the facts
9 by a jury.

10 When you comply with your oath to impartially
11 determine the facts of the case, no one will have a right
12 to criticize your verdict, and you will have fulfilled
13 your duty as jurors.

14 On the other hand and with equal emphasis, the same
15 law that makes you the judges of the facts makes me the
16 judge of the law. You must accept and follow the law even
17 though you may disagree with it.

18 I cannot tell you what the facts are. You should not
19 disagree with me about what the law is or what the law
20 should be. Your job is to take the law as I explain it to
21 you, apply it to the facts as you find them from the
22 testimony of the witnesses and the other evidence and
23 after doing that, you will render a verdict, a solemn and
24 true and just verdict under the solemn oath you just took
25 as jurors.

1 The procedure that we'll follow is basically that the
2 State will present its evidence first in the form of
3 witness's testimony and any other exhibits that may be
4 part of the record.

5 The defendant will then have an opportunity to
6 present his case. Bear in mind, there is absolutely no
7 burden on the defendant to present any evidence at all.

8 Following that, the attorneys will be allowed to sum
9 up their case. I'll instruct you on the law as it applies
10 to this case. After that, the case will be turned over to
11 you for a decision.

12 Now, let me explain to you two legal principles that
13 guide all of our criminal trials. First is a legal
14 yardstick you will use when judging or measuring the
15 evidence in this case.

16 That legal yardstick is known as the burden of proof
17 or in other words, the responsibility for proving the case
18 to you and in a criminal case the burden is on the State
19 to prove guilt beyond a reasonable doubt.

20 Should the State fail to meet that burden of proof,
21 it would be your duty to find the defendant not guilty.
22 There is absolutely no burden whatsoever on the defendant
23 to prove or disprove anything. There is no burden on the
24 defendant to testify or present any evidence, because as I
25 said, the burden is and remains on the State to prove

1 guilt beyond a reasonable doubt.

2 Second, I ask you to recall my earlier comment to the
3 full jury panel concerning the presumption of innocence.
4 This is a cardinal and fundamental rule of law that a
5 defendant will always be presumed innocent of the crime or
6 crimes for which he is indicted, and this presumption of
7 innocence is not just a simple legal theory or a legal
8 phrase. It is a substantial right to which any accused,
9 including this defendant, is entitled.

10 Now, until I advise you to begin your deliberations,
11 I'll ask you, as I asked you last night, not to discuss
12 this case with anyone, including your fellow jurors,
13 friends, family members or anyone involved in the case.

14 After the case is submitted to you, you must discuss
15 it only in the jury room with your fellow jurors. It's
16 important that you keep an open mind, not decide any issue
17 of this case until all of the evidence has been presented,
18 the parties have made their closing arguments, and I have
19 instructed you on the law of South Carolina as it applies
20 to this case.

21 Now, in just a moment, the attorney for the State
22 will make what is called an opening statement. The
23 attorney will explain to you what the issues in the case
24 are or at least what the attorney thinks the issues are
25 and what the evidence will prove.

1 The attorney for the defendant will also make an
2 opening statement. I remind you that what the attorneys
3 tell you during their opening statements is not evidence
4 in this case. It's only their contention as to what the
5 issues are.

6 The evidence in this case will be presented to you by
7 the testimony of sworn witnesses from this witness stand
8 and any exhibits that may be made a part of the record.

9 Now, ladies and gentlemen, from time to time during
10 the trial, you may hear one of the lawyers say something
11 like, "May we approach the bench," or "May we have a
12 discussion with you?"

13 Sometimes that -- it might be necessary for me to
14 excuse you from the courtroom for a short period of time
15 while the attorneys and I discuss a matter of law.

16 The reason for this is you are the judges of the
17 facts. Sometimes when I'm discussing matters of law with
18 the attorneys, it may be necessary for me to make some
19 comment as to the facts in connection with -- with a
20 ruling and whether a particular law applies or it doesn't
21 apply.

22 I'm not supposed to tell you what I think about the
23 facts, so I will excuse you from the courtroom while these
24 discussions take place so that you will not be influenced
25 by anything that I might say or do in connection with the

1 facts.

2 In determining what the true facts are in this case,
3 you must decide whether or not the testimony of the
4 witnesses is believable.

5 In deciding whether to believe a witness, you have a
6 right to consider whether the witness has any interest in
7 the outcome of the trial, whether the witness is
8 prejudiced towards either the State or the defendant and
9 the opportunity for the witness to have seen the matters
10 and things about which the witness may testify and the way
11 the witness acts on the witness stand.

12 Now, ladies and gentlemen, you and I do not ask
13 questions of the witnesses, and we don't offer any
14 exhibits. This is not CSI.

15 It's your duty to listen openly and honestly, keep an
16 open mind. Do not form any conclusions or judgments until
17 you have received and considered all the evidence in this
18 case, the arguments of the attorneys, and my final
19 instructions.

20 If you cannot hear a particular witness or myself or
21 one of the attorneys, please let me know so we can have
22 them speak up more clearly or the witnesses sometimes
23 speak -- don't speak loud enough for the jury to hear,
24 I'll caution them. I'll ask them to speak up. If your
25 view of an exhibit is obstructed for any reason, let me

1 know. We can correct that.

2 If you need to bring anything to my attention during
3 the course of this trial, please notify one of the
4 bailiffs. If you do need to contact me, it may be
5 necessary for the bailiff to require you to put a question
6 or such question or concern in writing so that we can have
7 a record of it, and I will respond to you as quickly as I
8 can to the law -- the extent the law permits me to do so.

9 All right. Ladies and gentlemen, thank you for your
10 kind attention, I trust you'll give the same kind and
11 undivided attention to the attorneys and parties in this
12 case. We'll now begin with the open statements.

13 Ms. All?

14 MS. ALL: May it please the Court.

15 OPENING STATEMENT:

16 MS. ALL: We all have that one great fear, that one
17 worst nightmare, we're standing in Time Square naked or
18 show up for an exam in class, and you haven't studied at
19 all, or falling and never hitting the ground.

20 For most of us, that nightmare leaves us waking up in
21 a cold sweat sweating in the dark and then calming our
22 breath as we go back to sleep in the safety and comfort in
23 our own home.

24 For Delores Dennis, her cousin Regina Dennis,
25 Deloris' friend Shamael Coit, and Shamael's brother Korey

1 Coit, that nightmare was real. They lived it.

2 When it was over, they were more than just
3 disoriented and in a cold sweat. They were left with gun
4 imprints on their foreheads, stolen wallets and purses,
5 pistol whipped gashes and terrible images they'll never
6 been able to shake. That moment of relief when you wake
7 up and realize none of it was real, they're still waiting
8 for that moment.

9 On November 25th, 2008 four masked men carrying guns
10 kicked in the apartment door of Delores Dennis. They held
11 Deloris, Regina, Shamael, Korey and Shamael's
12 three-year-old daughter at gunpoint, robbed them of their
13 valuables, assaulted them and then left.

14 The defendant, Ricky Bowman, was one of those men.
15 My name is Britton All, and I, along with my co-counsel
16 April Sampson, represent the State of South Carolina for
17 the Fifth Judicial Circuit. We prosecute all crimes that
18 occur in Richland and Kershaw Counties.

19 As a result of his actions on November 25th, 2008, he
20 has been charged with armed robbery, burglary first,
21 assault and battery of a high and aggravated nature,
22 kidnapping and possession of a weapon during the
23 commission of a violent crime.

24 It's the State's burden to prove that Ricky Bowman is
25 guilty of each and every element of those crimes. In this

1 case, the State welcomes that burden.

2 Proof is not absolute certainty of guilt, and we are
3 not required to produce proof that overcomes every
4 possible doubt.

5 If at the conclusion of this trial, you are firmly
6 convinced of Mr. Bowman's guilt, then it is your
7 responsibility to find him guilty.

8 Now, do you determine his guilt? As the jury, you
9 weigh the evidence. In this trial, you'll hear from two
10 different kinds of evidence: The testimony from the
11 witness stand and the physical evidence.

12 It will tell you the following story: November 25,
13 2008 was two nights before Thanksgiving. Delores Dennis
14 was living in a one bedroom apartment in Brook Pines out
15 near St. Andrews.

16 Her friend Shamael and Shamael's three-year-old
17 daughter, who is also Deloris' goddaughter, were staying
18 with Deloris just for two weeks until Shamael's apartment
19 was ready. Shamael was sleeping on a blow-up mattress in
20 her living room.

21 That night, Deloris' cousin Regina had come over.
22 Regina and Delores Dennis were really close, were really
23 good friends. Regina hung out at her apartment all the
24 time.

25 Shamael's brother, Korey Coit, had also came over

1 because he having a Thanksgiving work party the next day,
2 and Shamael was baking cookies for him to take.

3 It was close to 11 p.m. and Shamael was sitting on
4 the couch in the front of the apartment in the living room
5 with Minor her daughter.

6 She was getting ready to feed her, and everybody else
7 was toward the back of the apartment when all of the
8 sudden, they heard an extremely loud bang.

9 Shamael grabbed her daughter to her chest as four
10 masked men with guns flew into the apartment and filled it
11 with their violence and voices.

12 One stayed at the front door, and the others ran
13 toward the back. They told Deloris and Korey Coit and
14 Regina Dennis to get down on the ground.

15 They pointed their guns at them, and Ricky Bowman
16 pointed his gun at Delores Dennis' head and said, "Where
17 is Black Shawn?"

18 Now, let's stop a minute because this is where things
19 get interesting. First of all, Ricky Bowman was one of
20 those four men, and his friend, Sean Toran, was another of
21 the four.

22 You see, right before this, Sean Toran had been
23 robbed by this guy named Black Shawn. Toran and Bowman
24 were sometimes friends and sometimes neighbors, so when
25 Toran got his revenge on Black Shawn, Bowman was ready to

1 help.

2 He chilled with Black Shawn before. He had been over
3 to Black Shawn's apartment before with him, and he said
4 that he knew where Black Shawn lived.

5 So on November 25th, Toran, the defendant, Ricky
6 Bowman, two other guys they hung out with, they all set
7 out to get revenge on Black Shawn.

8 Toran was the only one not wearing a mask that night.
9 He wanted him to see his face and own his revenge, but the
10 other three wore bandannas covering their faces and
11 hoodies so that all could see was their eyes and their
12 forehead.

13 But all four of them had guns. All the men got in
14 the car, and they all rode to Brook Pines apartments
15 together. Bowman led them to apartment number .

16 He was at the door. He was sure this was it. He
17 could see Black Shawn's car right out in the parking lot.
18 He mustered his courage, and He kicked in the door.

19 They all charged inside following with their pointed
20 guns. They had the masks. They had the guns, and they
21 had the right apartment complex, but there was one problem
22 with the scenario. Ricky Bowman got the wrong apartment.

23 Instead of breaking down Black Shawn's apartment door
24 to steal guns and drugs, Ricky Bowman broke down the
25 apartment of Delores Dennis and charged into an apartment

1 littered with baby toys, home cooking, and hair products.

2 It didn't take them long to realize their mistake.

3 Shawn Toran knew right away. He could smell the food

4 cooking, the furniture was clean. There weren't any

5 normal signs of men: Video games and beer cans.

6 He knew this wasn't Black Shawn's apartment, but

7 Ricky Bowman wasn't convinced. Ricky Bowman went into

8 Deloris' bedroom and demanded to know about Black Shawn.

9 He held a gun to her head while Deloris told him the

10 truth; that she didn't know Black Shawn. Deloris Dennis

11 had never heard of Black Shawn, neither had Regina, Korey

12 or Shamael, but Ricky didn't believe Deloris.

13 He pushed the gun against her forehead even harder

14 and said that he could take her breath right there, and

15 Deloris returned his gaze, made eye contact with him and

16 stared right into his uncovered eyes from her position on

17 the floor and said that if it was her time, she was ready.

18 Ricky Bowman didn't appreciate that. See, he wasn't

19 just out for revenge anymore on Black Shawn. He had a

20 gun. He was hungry for the violence, and he liked the

21 control.

22 So when Deloris wasn't afraid, he was infuriated. He

23 brought his gun down on the top of her head so hard that

24 her scalp slit open, and so much blood poured down her

25 face that she couldn't see.

1 She put her hands over her head to protect herself.
2 When he brought the gun down the second time so hard that
3 the clip fell out of the gun, and it broke her finger.

4 As she sat in a pool of her own blood, he moved on to
5 Korey Coit. He pulled Korey up off the ground and pushed
6 him toward the front of the apartment.

7 When Korey got into the living room, he saw his
8 sister sitting on the couch clutching his three-year-old
9 niece to her chest while a man had a gun trained on them.

10 The men pushed Korey past his sister onto the balcony
11 and pointed what they thought was Black Shawn's car and
12 asked about it.

13 Korey told him the truth. He had never seen that
14 car. He didn't know Black Shawn, and he didn't recognize
15 that car at all.

16 These men made a mistake of epic proportion when they
17 decided to commit a robbery, but also when they robbed the
18 wrong apartment. As a result, Sean Toran is facing the
19 same charges as Ricky Bowman.

20 However, the similar end there because it is their
21 choices in addressing that mistake that they were so
22 different.

23 As Bowman was pistol whipping Delores Dennis, Toran
24 tried to grab them and pull them away, but Bowman brushed
25 him off and moved on to Korey.

1 At some point, Toran seeing the blood spewing from
2 Deloris' head brought her a piece of cloth, a t-shirt or a
3 towel or something to hold against it.

4 He also was in the living room with Shamael and told
5 her that there had been a mistake; that nothing would
6 happen to her and her child and just to be quiet, and they
7 would leave soon.

8 By this time, the mistake was clear to all the men,
9 that nobody knew Black Shawn. Black Shawn didn't live
10 there, but Bowman didn't care. He gave up on Korey and
11 the car.

12 He came back into the living room, and now he pointed
13 his gun about Shamael and Minor looked at Shamael and
14 said, "Put down the baby."

15 Minor was only three years old, but she knew what
16 those words meant, and she started screaming. Bowman's
17 gun waived between Shamael and Minor as he demanded again
18 that she relinquish her child.

19 Finally, Toran had had enough. He yanked Bowman away
20 from them and pushed them toward the door. As they left,
21 they turned back around to tell the victims that if they
22 contacted police, they would kill them. And then it was
23 over, or at least they thought it was, because just as
24 they were beginning to exhale, they heard gunshots ring
25 out into the clear night, and they hit the ground all over

1 again.

2 Bowman and Toran both made mistake, but it was their
3 choices afterward that define them. Toran chose to try to
4 make amends and clean up his mess as soon as he realized
5 the error, but Bowman hid his face behind a mask and
6 pointed a gun at an unarmed man, three cowering women, and
7 a screaming toddler.

8 He was completely indifferent to their fear, their
9 ignorance about Black Shawn, but worst of all, he was
10 completely indifferent to his own mistake.

11 As soon as they were sure the men left, Deloris,
12 Regina, Shamael, and Korey got out of the apartment,
13 turned off the oven with Shamael's food still in it.

14 They snatched up the baby, and they took her
15 somewhere safe. Then they took Deloris to the hospital
16 where she got three staples in her head and treatment for
17 her broken finger. Nobody was brave enough to return to
18 Deloris' apartment that night.

19 The next day, the women swallowed their fear and
20 their contacted police, but Korey, Shamael's brother, was
21 more weary of the threats. He waited another three days.

22 The Columbia Police Department assigned this case to
23 Sergeant Pegram, and Pegram was there as back up when a
24 few days later the police department executed a search
25 warrant on an apartment complex for a completely unrelated

1 incident.

2 Guess what they found? Korey Coit's ID in the
3 apartment of one Torrell Johnson, so when Sergeant Pegram
4 asked Torrell Johnson, "Where did you get this ID?"
5 Torrell Johnson sang like a canary.

6 He talked about how they hit the wrong apartment. He
7 was friends with these two guys, and he heard them talking
8 about it. He knew all these details. He knew Ricky
9 Bowman. He knew Sean Toran.

10 He talked about how a woman had been pistol whipped,
11 and then he gave Sergeant Pegram the names of Ricky Bowman
12 and Shawn Toran.

13 That same day, later, Sergeant Pegram made a lineup
14 that showed the victims, the six pack. Deloris and
15 Shamael at different times in different rooms with only
16 Sergeant Pegram in the room with them picked out Ricky
17 Bowman.

18 Because they hadn't seen the bottom half of Ricky
19 Bowman's face, he was wearing that bandanna and the
20 hoodie, they used their hands to cover the mouths and
21 noses of the people in the photo lineup.

22 They looked at the eyes, the eyebrows, the foreheads.
23 Both of them were absolutely positive in their
24 identification of Ricky Bowman, because see, even though
25 Ricky Bowman hid behind a mask, he couldn't hide from his

1 victims.

2 Deloris stared death in the face as she looked into
3 Ricky Bowman's eyes and felt the cold metal of that gun
4 against her forehead.

5 Shamael stared at Bowman in disbelief and terror as
6 he pointed a gun at her howling child, and she had to
7 refuse to put her down. A mother doesn't forget those
8 eyes.

9 Do you know why else Shamael Coit remembers Ricky
10 Bowman's eyes? Because she has been an ophthalmologist's
11 assistant for eight years. Eyes are her business. Eyes
12 are literally all she sees every day.

13 Ricky Bowman was their nightmare, November 25th, 2008
14 and they still haven't woken up. The nightmares keep
15 coming. Shamael's daughter, now six, still wakes up in
16 the middle of the night crying, screaming for her mother,
17 reliving the moments when those four men broke into the
18 apartment.

19 The adults haven't fared much better. They're still
20 scared now, only in a different way. They worry for their
21 families, their reputations, their jobs.

22 They're only here because they're under subpoena.
23 They worry that this time, it will happen again. What
24 happened before will happen to them again, except that
25 this time, it will be in retaliation instead of just the

1 unlucky recipient.

2 Korey Coit, he felt he had too much on the line. He
3 plain out thought it was too risky for him --

4 MR. SCHNEE: Your Honor --

5 MS. ALL: -- and him family to testify.

6 MR. SCHNEE: Judge, I hate to do this, but I have to
7 object. May we approach?

8 THE COURT: Just confine your argument -- I mean your
9 opening statement to the facts in the case.

10 MS. ALL: Thank you, Your Honor.

11 THE COURT: Not speculation.

12 MS. ALL: As I was preparing for this trial, I
13 Googled the word "terror", and this quote came up that
14 said terror is a tactic of demanding the impossible and
15 demanding it at gunpoint. I can't say it better myself.

16 On November 25th, 2008, Ricky Bowman broke into
17 Delores Dennis' home armed with a gun, pistol whipped her,
18 slit her scalp, broke her fingers, and held her prisoner
19 in her own home at gunpoint.

20 We submit to you that Ricky Bowman is guilty of
21 burglary first, armed robbery, assault and battery of a
22 high and aggravated nature, kidnapping, and the possession
23 of a weapon during the commission of a violent crime.

24 THE COURT: Mr. Schnee?

25 MR. SCHNEE: May it please the Court.

1 THE COURT: Yes.

2 OPENING STATEMENT:

3 MR. SCHNEE: Good morning. A few minutes ago, the
4 judge told you that this was a real trial, not a
5 television show. He's right about that.

6 If this was on television, you'd be hearing about
7 fingerprints. You'd be hearing about DNA, and you'd be
8 hearing about extensive investigations. You're not going
9 to have any of that here. There is reason for that.
10 There really wasn't any investigation at all.

11 You're going to hear, or not hear, quite a lot of
12 details. I want you to focus on just a few things right
13 now.

14 I'm going to make this really easy for you. Your job
15 is to decide two things, and really, only two things.
16 Now, there are four victims in this case. There was no
17 question. They were robbed, not by Ricky Bowman.

18 What you need to decide is first of all,
19 identification. That's going to be your main issue. How
20 are they attempting to identify Ricky Bowman?

21 They're going to say, "We recognize his eyes."
22 That's interesting. You heard one of these witnesses
23 works for an ophthalmologist for eight years, looks at
24 eyes all day.

25 When she is on the stand and she is testifying, she

1 will be sitting right up there and describing this, what
2 details about those eyes does she remember? Keep that in
3 mind. What details does anyone remember about eyes? And
4 then you're going to have to reconcile that with the real
5 facts.

6 Now, Sean Toran, you're going to hear from him.
7 They're going to put him on the stand. You're going to
8 hear about how he has -- he was charged originally almost
9 three years ago.

10 Ask yourself why he's testifying. Ask yourself why
11 all of the sudden now he has decided to come up with his
12 version of events.

13 Pay attention to the details. That's the important
14 part. Anyone can look at the police reports for three
15 years and then have a story that matches the police
16 report. It's the details that matter.

17 Now, the solicitor tries to paint Sean Toran as this
18 wonderful guy, and he has all of these charges. Well,
19 what she doesn't mention is he has other charges, also
20 being prosecuted by their office. You're going to hear
21 what he's facing and what he does and does not want to do.
22 That's motivation.

23 He has a motive to get up here and lie, and you're
24 going to hear about that, because he doesn't want to go to
25 prison. That's his motivation. Why would he change his

1 story? And he has changed his story, and you're going to
2 hear about that.

3 You're going to hear from the police officers or a
4 police officer, maybe two. What did they do and what
5 didn't they do?

6 By the way, who are these other two unknown people?
7 Are you going to hear about that? I don't think so. Not
8 much about them, anyway. Is there any attempt to even
9 find these people? Keep that in mind. See where they can
10 draw their stories and draw the lines to make any
11 corroboration, make anything.

12 There are real victims here, but the reality is there
13 is a fifth victim, and that's Ricky Bowman. Because there
14 is no evidence in this case that's going to convince you
15 that he's guilty.

16 He is identified incorrectly based on eyeballs, and
17 you're going to hear the lack of a description of that,
18 and then Sean Toran deciding three years later deciding,
19 "You know what, I want a better deal. I don't mean to go
20 to prison as much time as I'm facing," and he's going to
21 point the finger. That's their entire case. There really
22 isn't very much to it.

23 He's not guilty. By the ended of this trial, which
24 will be relatively short, you're going to see that. Thank
25 you.

1 THE COURT: All right. Ladies and gentlemen, there
2 is one matter I need to take up with the attorneys before
3 the testimony starts.

4 I'm going to ask you to retire to the jury room for
5 just a minute. We'll make sure we're straight, and I'll
6 call you. It will be just a minute. At which time, the
7 bailiff is going to give you your pads and pencils when
8 you return to the jury box. Just step out for a minute.

9 (WHEREUPON, the jury left open court at approximately
10 11:07 a.m.)

11 THE COURT: All right. Does the State have a
12 request?

13 MS. SAMPSON: Yes, Your Honor. I would request at
14 this time that the courtroom be cleared solely for the
15 testimony of Shamael Coit and Deloris Dennis. They are my
16 first two witnesses, and then anyone can be here after
17 that.

18 THE COURT: All right.

19 MS. SAMPSON: Although, I don't know that we ever
20 settled on sequestering witnesses. We would -- I would
21 ask -- if there is a line between staying and not, I would
22 ask to sequester the witnesses on the questioning we have.

23 THE COURT: Mr. Schnee?

24 MR. SCHNEE: Judge, there is -- up until right now,
25 there was no written motion to sequester witnesses. The

1 only witness that I have that would be present would be my
2 client's mother.

3 I would ask that she be allowed to stay. They have
4 her story. I do have a couple of issues regarding
5 clearing the courtroom.

6 THE COURT: Have you not already put them on the
7 record?

8 MR. SCHNEE: There are some new issues at this point,
9 Your Honor.

10 THE COURT: New issues? Go ahead.

11 MR. SCHNEE: First of all, based on the solicitor's
12 opening statement, I would move for a mistrial at this
13 point.

14 She has brought in the fact that there is an alleged
15 fear of retaliation, including for a witness who is now so
16 scared to even show up, and there's not going to be any
17 testimony about that.

18 At this point, if Your Honor clears the courtroom,
19 all that is doing is validating the arguments to the jury
20 that my client and his family are somehow a threat. I
21 think the prejudicial value of that is now incredibly
22 enhanced based on those arguments in the opening
23 statement.

24 I would move that we need to pick a new jury as a
25 result and move for a mistrial.

1 THE COURT: What's the State's position?

2 MS. SAMPSON: Your Honor, it's opening argument, and
3 I think there will be testimony. If there's not, there
4 can be a curative instruction, but there will be testimony
5 as to why they're here, not here.

6 He was going to go into whether they're being
7 truthful or not. They can get and their fear and why
8 they're in fear and why they don't want to be here. It
9 goes to their truthfulness and their credibility.

10 THE COURT: All right. The motion is overruled.

11 All right. Clear the courtroom, please, just for
12 these first two witnesses.

13 (Whereupon, the courtroom was cleared.)

14 I don't know who that is.

15 MS. SAMPSON: He's a 403.

16 THE COURT: The 403 can stay.

17 I don't know who this lady is.

18 MS. SAMPSON: She is my victim's advocate.

19 THE COURT: She works for your office?

20 MS. SAMPSON: Yes.

21 THE COURT: Ready for the jury? Bring the jury.

22 (WHEREUPON, the jury came into open court at
23 approximately 11:11 a.m.)

24 THE BAILIFF: The jury is present, Your Honor.

25 THE COURT: All right. Solicitor, call your first

1 witness.

2 MS. SAMPSON: Thank you, Your Honor. The State would
3 call Regina Dennis.

4 REGINA DENNIS, after being duly sworn,
5 testified as follows:

6 THE CLERK: Thank you. Have a seat in the witness
7 stand, please. State your name for the record.

8 THE WITNESS: Regina Dennis.

9 DIRECT EXAMINATION:

10 BY MS. SAMPSON:

11 Q Good morning, Ms. Dennis.

12 A Good morning.

13 Q How old are you?

14 A Twenty.

15 Q What do you do for a living?

16 A I work in retail.

17 Q And have you lived in South Carolina your whole life?

18 A I have.

19 Q Now, I want to kind of speed you up a little built to
20 what we're here for. How do you know Delores Dennis?

21 A She is my cousin.

22 Q And how long have you known her?

23 A My entire life.

24 Q And how would you characterize your relationship?

25 A It's pretty good.

- 1 Q Are y'all friends?
- 2 A Oh, yeah, like sisters.
- 3 Q Okay. And back in 2008, were you in that, friends,
- 4 then?
- 5 A Yes.
- 6 Q And how often would you see her back then?
- 7 A Once a week, maybe, sometimes twice.
- 8 Q And did you live in Columbia at that time?
- 9 A I did not.
- 10 Q Okay. So you would come to Columbia --
- 11 A Yes.
- 12 Q -- to see her?
- 13 A Uh-huh.
- 14 Q And on November 25th, 2008, did you go to her
- 15 apartment?
- 16 A Yes.
- 17 Q Do you remember what complex she lived in?
- 18 A The number or...
- 19 Q The name of it.
- 20 A Oh, Brook Pines.
- 21 Q Is that where you went that night?
- 22 A Yes.
- 23 Q About what time did you get there?
- 24 A I got there 7:30, 8:00.
- 25 Q And why were you there?

- 1 A She called. She cooked dinner, and asked if I wanted
2 to come over, and I was like yes.
- 3 Q Okay. Do you went over there. What were y'all
4 doing?
- 5 A We sat around, watched TV.
- 6 Q Okay. And who else was there?
- 7 A It was Deloris, Shamael, her daughter, and then
8 Shamael brother was there.
- 9 Q And how do you know Shamael?
- 10 A Through Deloris. I met her about a year or two
11 prior.
- 12 Q Okay. So you met her in 2006 or 2007?
- 13 A Yes.
- 14 Q Okay. And did you see her often or just when you
15 were with Deloris?
- 16 A Just when I was with Deloris.
- 17 Q All right. What about -- you mentioned Korey Coit.
- 18 A Uh-huh.
- 19 Q How did you know him?
- 20 A I met him one time through Shamael. That was -- that
21 night that happened was actually the second time I saw
22 him.
- 23 Q So you didn't know him well?
- 24 A No.
- 25 Q And that night, did you eat dinner with Deloris?

1 A I did.

2 Q And when this incident began, where were you?

3 A Going -- I was in the hallway heading to the
4 bathroom.

5 Q Now, can you describe to us how the apartment is?

6 A Okay. Once you come in, to your left is the living
7 area and to the right is the kitchen. You go down the
8 hall is her bedroom. Then the bath is right across from
9 the bedroom.

10 Q So you were in the hallway?

11 A Yeah.

12 Q And what happened while you were in the hallway, tell
13 the jury.

14 A I was coming out of her bedroom actually heading to
15 the bathroom, and then I heard a loud noise up front.
16 Then when I stepped back to see what happened, it was four
17 guys coming in with guns ordering everybody to get down.

18 Q And you saw all four or how many did you see?

19 A I saw four coming up. The tall light-skinned guy
20 came in first. He was the first one in, and then the
21 other four came in. They had on hoodies and bandannas.

22 Q Okay. Could you see their faces at that time?

23 A No.

24 Q Okay. And so what did they say?

25 A "Get down" and they were looking for a Black Shawn.

1 Q Could you tell who was saying what?

2 A Everybody was talking, so I don't know -- all of them
3 was talking asking for a Black Shawn.

4 Q And did you know a Black Shawn?

5 A I did not.

6 Q Did you say that?

7 A Yes. I told them that.

8 Q Okay. And what did they ask you to do?

9 A They told me to get down, so I got -- I dropped where
10 I was sitting on the floor and had my back against the
11 wall in the hallway.

12 Q So you were -- were you laying down or sitting up?

13 A I was sitting up.

14 Q And your back was to the --

15 A To the wall.

16 Q Could you see anyone at that time?

17 A The only one I could see was the guy that came into
18 the bedroom. It was actually two, two in the bed --
19 three, I'm sorry, because one had Korey in the closet.

20 The one was going back and forth between me and
21 Deloris, and then the tall light-skinned guy was looking
22 around also.

23 Q Now, you said that Korey was in the closet. Could
24 you see Korey in the closet?

25 A I couldn't see him in the closet, but he -- they told

1 him to get down. I'm assuming he was in a closet. He was
2 actually right at the computer desk that was right at the
3 closet.

4 Q So at some point, he got down?

5 A Yes.

6 Q And I'm going to show you some photographs.

7 MS. SAMPSON: May I approach the bench, Your Honor?

8 THE COURT: Sure.

9 BY MS. SAMPSON:

10 Q I'm showing you what's been marked as State's
11 Exhibit 12 and 13. I'm going to ask if you recognize
12 these.

13 A Yes.

14 Q And what are they?

15 A That is a pictures of the bedroom.

16 Q And whose bedroom is that?

17 A Deloris.

18 Q And where -- in the apartment, is that the bedroom in
19 the apartment you were just talking about?

20 A Yes.

21 Q And do these photographs fairly and accurately depict
22 what the bedroom looked like on November 25th, 2008?

23 A Yes.

24 Q At this time, Your Honor, the State would move to
25 introduce 12 and 13 as exhibits.

1 MR. SCHNEE: No objection.

2 THE COURT: Without objection.

3 (WHEREUPON, State's Exhibits Nos. 12, 13 were
4 admitted into evidence.)

5 BY MS. SAMPSON:

6 Q Can you explain to us what this is?

7 A This is a picture of the bedroom.

8 Q And where was everyone when this incident occurred?

9 A When I walked out of the bedroom, Korey was sitting
10 here on the -- at the computer.

11 Q Okay. And Deloris was sitting on her bed?

12 A On her bed.

13 Q And this was her bed?

14 A This was her bed where she was sitting right in this
15 area.

16 Q Okay. And -- so Deloris was sitting on the bed, and
17 Korey was in the chair?

18 A Yes.

19 Q And I think you said at some point they must have put
20 him in the closet?

21 A Yes.

22 Q Why did you believe that?

23 A Because I'm assuming the way he laid down, he just
24 went towards the closets.

25 Q Okay. So after he laid down, you're sitting in the

1 hallway. Then what happened?

2 A They kept asking for Black Shawn. I'm like, "I don't
3 know him." Then the same person that was talking with my
4 cousin had the gun to my head. I'm like, "I'm not from
5 the area," and then he told me that he didn't give an F
6 where I was from because --

7 Q I'm assuming he didn't use F?

8 A Yeah.

9 Q I'm assuming he didn't use F?

10 A Yeah. I don't -- yeah.

11 Q And could you see any of his face?

12 A I could not because I didn't look. I was scared. I
13 just...

14 Q Did you -- I think you said you didn't look up?

15 A No.

16 Q What were you doing? How were you looking?

17 A I was looking at the wall.

18 Q Okay.

19 A I was just scared to move.

20 Q Where -- are they above you?

21 A Yeah, he's above me.

22 Q All right. And so then what happened?

23 A I heard a guy in the living room tell my friend
24 Shamael, "Do you want your daughter to see you bleed
25 tonight?"

1 MR. SCHNEE: Object to that, Your Honor, pretrial
2 objection.

3 THE COURT: Overruled, go ahead.

4 BY MS. SAMPSON:

5 Q And you heard someone say, "Do you want your daughter
6 to see you bleed tonight"?

7 A Yes.

8 Q Do you know who said that?

9 A I don't know which one. It was -- whoever was in the
10 living room.

11 Q Okay. You couldn't see it?

12 A I could just hear.

13 Q Okay. And what happened after that?

14 A They kept asking for him. He was like, "We don't
15 know." The one guy that was with Deloris, like the guy
16 had disrespected his mom. That's why he was looking for
17 him.

18 Q Somebody said that somebody had disrespected --

19 A Their mom. That's why they're looking for Black
20 Shawn. We kept telling -- everybody kept telling him we
21 didn't know who he is.

22 Q Okay. What, if anything, did they do with Korey?

23 A After -- they kept saying they picked him up. They
24 got him up. They still had the guns on him. They took
25 him to the bathroom. They was like, "Whoever we're

1 looking for is driving this car." I'm not sure what car
2 they pointed to.

3 Q Were you on the balcony?

4 A No. I could just hear him.

5 Q Okay.

6 A And they were saying -- they pointed -- that whoever
7 was driving that car was who they were looking for.

8 Q Okay.

9 A They brought him to the bathroom and left him in
10 there.

11 Q Are you still in hallway?

12 A I'm still in the hall on the floor.

13 Q What, if anything, did they do to Deloris?

14 A The guy was arguing back and forth with her. His
15 clip actually fell out of the gun.

16 Q Okay.

17 A Then the tall light-skinned guy picked it up, handed
18 it to him, and I'm not sure why he hit her, but he
19 actually hit her on top of the head with the butt of the
20 gun.

21 Q Did you see him hit her?

22 A I did.

23 Q What happened?

24 A He hit her. He went to hit her again, but she put
25 her hand up. He actually hit her hand.

1 Q Did you hear any of the conversation between Deloris
2 and the person who hit her?

3 A She was saying stuff like, "If it's my time to die,"
4 you know, "she was ready" because they kept also saying
5 that somebody was going to die that night. She said,
6 "Well, if it's my time to go, it's my time to go."

7 Q And let me ask you how, were -- how did you feel
8 while this was going on? Were you upset, scared?

9 A I was scared. All I could do was think about getting
10 home to my baby.

11 Q You have a baby. How old was your child at that
12 time?

13 A Five.

14 Q And so was everybody excited or how was everybody's
15 demeanor?

16 A We was pretty much all scared. We -- they asked
17 about Black Shawn. We don't know him. We pretty much got
18 everything that he said.

19 Q And how about the suspects, were they calm or were
20 they also...

21 A They were just -- I don't -- they was looking for the
22 guy. They wanted the person they was looking for.

23 Q So after they hit Deloris, their took Korey on the
24 balcony. Then what happened?

25 A The tall light-skinned guy came in, picked up a towel

1 and handed it to her. Then he kept telling the guy they
2 don't know who they're looking for.

3 Q Now and you talked about -- you keep saying the tall
4 lighted-skinned guy. Could you see him well?

5 A Yes. He didn't have a mask on.

6 Q And how was the lights in the apartment? Were the
7 lights on?

8 A All the lights was on.

9 Q And this was dark outside?

10 A Yeah.

11 Q But everything happened inside?

12 A Yes.

13 Q And could you see him?

14 A Yes.

15 Q What did -- was there anything distinctive about his
16 face?

17 A All I remember, he had light colored eyes and he
18 was --

19 Q I'm sorry.

20 A Light colored eyes.

21 Q Light colored eyes?

22 A Yes. Braids and tall, light skinned.

23 Q All right. And he was doing what?

24 A He wasn't doing much as far as holing a gun to
25 anybody, but he was just standing around looking. Then he

1 realized that we had -- he had the wrong place, pretty
2 much.

3 Q And how do you know he realized that?

4 A Because once he hit Deloris, he had a towel. The
5 gentleman he was looking for, he thought --

6 Q He hit Deloris?

7 A No. When the other guy hit her. When he saw that,
8 he was like, "That's the one we're looking for." He
9 handed her a towel like, "We got to go," and he started
10 pushing them out the door.

11 Q He tried to push everybody out the door?

12 A Yes, said it's time to go. Then one guy had my
13 pocketbook.

14 Q Okay.

15 A Because he actually got a grocery bag out of the
16 kitchen, put my purse in. He was like, "No. Leave it,
17 man; leave it."

18 Q Who said that?

19 A The light-skinned guy.

20 Q He said...

21 A Leave my purse.

22 Q Okay. And did they?

23 A No, because the guy got it out, evidence.

24 Q Evidence?

25 A Yeah, that's all he had, walked out with my...

1 Q Your purse?

2 A My purse.

3 Q And what happened after they left?

4 A After they left, we heard shots fired. I didn't know
5 if there was a shooting at the apartment or what, so we
6 just -- everybody hit the floor. I was like, "Everybody
7 get down."

8 Q Okay.

9 A Then after that, we waited for a few minutes, waited
10 a minute or two, then we all just left.

11 Q And when you left, everybody left?

12 A Everybody left.

13 Q And were there any police or anything in the parking
14 lot at that point?

15 A No.

16 Q So what did you all do once you left?

17 A We rushed Deloris to the emergency room.

18 Q What did you do with Minor

19 A I think we -- Shamael dropped her off at her parents'
20 or grandparents' house. I'm not sure which one.

21 Q And then you all went to the hospital?

22 A We all went. Me, Deloris, Shamael went to the house,
23 yes.

24 Q And how long -- do you remember how long y'all were
25 at the hospital?

1 A Three hours maybe.

2 Q Okay. And did you immediately return back to the
3 apartment or what did you do?

4 A I went home.

5 Q You went home?

6 A Yeah.

7 Q Okay. And when was the next time you had any contact
8 with police officers?

9 A The very next day.

10 Q What happened the very next day?

11 A We all went to the apartment complex. You know, we
12 reported to the management what happened, but we had to
13 call the police and statements about what happened.

14 Q Why did you have to call the police?

15 A Because -- well, we was scared to call that night
16 because they took our phones and said if the police are
17 called, they were going to come back and kill us because
18 they knew who did it. So the next day, we went to the
19 apartment complex. In order for Deloris not to pay for
20 everything, they told her she had to do it.

21 Q You say pay for everything. Pay for what?

22 A The damage to the door that was caused to the
23 apartment.

24 Q So that's why you all called?

25 A Pretty much.

1 Q Did you want to get involved?

2 A I didn't want -- I just wanted to get home.

3 Q But you did talk to the police?

4 A I did.

5 Q And what did you tell them, to the best of your
6 remembrance?

7 A The four guys came in. Three of them wore hoodies
8 and a bandanna, and then one didn't have one.

9 Q Okay. Did you give a description of any of them?

10 A Just the tall light-skinned guys with braids is what
11 I told them.

12 Q And when is the next time you were contacted or you
13 contacted the police?

14 A It might have been two weeks later.

15 Q Okay. And what happened then?

16 A I got phone call, and they wanted me to do a written
17 statement. They also said that we may have the suspects,
18 to come in and do a photo lineup.

19 Q Did they tell you which one or anything like that?

20 A No.

21 Q So what did you do?

22 A I -- it suddenly -- after the two weeks, they called
23 me, told me -- probably took me another week or so to go
24 get the nerve up to go do that.

25 Q Why would you -- why was that a problem?

- 1 A Because my pocketbook was stolen.
- 2 Q Okay. Why --
- 3 A It had my ID, my home address.
- 4 Q And how did that affect you?
- 5 A I was scared because I have a child at home.
- 6 Q Okay.
- 7 A I'm sorry.
- 8 Q It's okay. Take your time. I know this is all
- 9 emotional for you. Have you had to talk about it like
- 10 this since this has happened?
- 11 A I try to forgot about it.
- 12 Q And just to be clear, have you and I gone over it
- 13 like we're going over it now?
- 14 A Not like this, no.
- 15 Q And have I told you what to say?
- 16 A No.
- 17 Q Have I asked you to do anything but tell the truth?
- 18 A That's it.
- 19 Q And so you were able to go to the police station?
- 20 A Yes.
- 21 Q Okay. Are you okay?
- 22 A (Nods in the affirmative.)
- 23 Q And what happened when you went to the police
- 24 station?
- 25 A I did my written statement, and then he showed me the

1 photo lineup and asked me if I recognized anybody in that
2 lineup.

3 Q Okay. I'm going to show you what's been marked as
4 State's Exhibits No. 42 and 43. Do you recognize State's
5 Exhibit 42?

6 A Yes.

7 Q What is that?

8 A That's the photo that I identified the first --

9 Q Now, this is in black and white. Is that what you
10 were shown?

11 A No, I was shown a color copy.

12 Q So you could see the skin tone?

13 A Yes.

14 Q Okay. And which one did you pick?

15 A This one right here.

16 Q And how do you know that's the one you picked?

17 A Because I circled it. That's my initials beside it.

18 Q Does this fairly and accurately depict what you were
19 given the day that you made the identification?

20 A Yes.

21 Q And it has a date on it. What date is on there?

22 A December 8th.

23 Q And is that the day that you did it?

24 A Yes.

25 Q At this time, Your Honor, we'd ask to introduce

1 State's Exhibit Number 42 into evidence.

2 MR. SCHNEE: Subject to pretrial.

3 THE COURT: Over the defendant's objection, it's
4 admitted.

5 (WHEREUPON, State's Exhibit No. 42 was admitted into
6 evidence.)

7 BY MS. SAMPSON:

8 Q I'm also going to now show you what's been marked as
9 State's Exhibit Number 43 and ask you do you recognize
10 that?

11 A Yes.

12 Q What is this?

13 A That's showing that I was going to pick up the lineup
14 in this photo.

15 Q And it has your name and your information on it?

16 A Yes.

17 Q And does this fairly and accurately depict the form
18 that you filled out that day on December 8th?

19 A Yes.

20 MS. SAMPSON: At this time, we'd ask that introduce
21 State's Exhibit Number 43 into evidence.

22 THE COURT: Same objection?

23 MR. SCHNEE: Yes, sir.

24 THE COURT: Overruled. It's admitted.

25

1 (WHEREUPON, State's Exhibit No. 43 was admitted into
2 evidence.)

3 BY MS. SAMPSON:

4 Q Is there any doubt in your mind that the person that
5 you picked that day is the person that was in Deloris'
6 house?

7 A No. There's no doubt.

8 Q And he is not the one that hit Deloris on the head?

9 A No.

10 Q Which one was he?

11 A I couldn't -- I don't know. I wouldn't identify him.

12 Q No. The one that you picked. What --

13 A Oh, that was tall light-skinned guy that came in.

14 Q Okay. And when you made that identification, who was
15 in the room with you?

16 A I was by myself with the police officers.

17 Q And had you talked to Deloris or Shamael or anybody
18 else about identifying anyone?

19 A No, I didn't.

20 Q Did anybody suggest to you who you should pick out?

21 A No.

22 Q Did Investigator Pegram tell you who you should pick
23 out?

24 A No.

25 Q Was there any suggestion at all that you pick

1 anybody?

2 A No.

3 Q Okay. And how quickly were you able to identify the
4 person you picked?

5 A Pretty quickly.

6 MS. SAMPSON: Okay. Beg the Court's indulgence.

7 (Pause).

8 I have no further questions at this time, Your Honor.

9 Please answer whatever questions Mr. Schnee has.

10 THE COURT: Mr. Schnee.

11 MR. SCHNEE: May it please the Court.

12 CROSS-EXAMINATION:

13 BY MR. SCHNEE:

14 Q Good morning.

15 A Good morning.

16 Q I don't have too many questions for you. If you need
17 to take a break, just let me know, okay.

18 A Okay.

19 Q I just want to go over stuff, a few brief things.

20 There were four guys that came in the apartment that
21 morning or that night?

22 A Yes.

23 Q Okay. And I believe you just said a few minutes ago
24 the tall light-skinned guy. He was the first one?

25 A Yes.

- 1 Q That's the one you picked out of the photo lineup?
- 2 A Yes.
- 3 Q Okay. That's not -- he's not sitting over there, is
- 4 he?
- 5 A No.
- 6 Q Was he wearing a mask?
- 7 A Who was that?
- 8 Q The tall light-skinned guy?
- 9 A No.
- 10 Q Never wearing a mask?
- 11 A No.
- 12 Q Are you sure about that?
- 13 A Yes.
- 14 Q Do you think your memory is better now or is it
- 15 better three years ago as far as when it happened?
- 16 A As far as IDing anybody?
- 17 Q Just your memory of the whole incident.
- 18 A That night is embedded in my head forever.
- 19 Q And it was embedded in your head when you gave a
- 20 written statement?
- 21 A Yes.
- 22 Q Have you looked at your statement recently?
- 23 A I did.
- 24 Q Okay. Do you have a copy with you?
- 25 A I don't.

1 MR. SCHNEE: If I could approach the witness, Your
2 Honor, marking Defendant's 3.

3 (WHEREUPON, Defendant's Exhibit No. 3 was marked for
4 identification only.)

5 BY MR. SCHNEE:

6 Q And if you could just take a look at this. Is that
7 the statement you gave to Investigator Pegram?

8 A It is.

9 Q Okay. Is that in your handwriting?

10 A It is.

11 Q Okay. You were told -- and I'm sure you were told --
12 you wanted to give as much detail as possible, right?

13 A Uh-huh.

14 Q Because you wanted to make sure this crime gets
15 solved?

16 A Yes.

17 Q Okay. Now, the first sentence or two, does it say
18 that there were four armed men wearing hoodies and
19 bandannas?

20 A It does.

21 Q Does it mention anything about one not wearing a
22 mask?

23 A Not in this one, no.

24 Q Did you give a different statement at any point?

25 A No. It's not in here.

1 Q Okay. Now, you mentioned that whoever it was that
2 hit Deloris in the head hit Deloris twice, right?

3 A Yes.

4 Q And you said the clip fell out of the gun?

5 A (Nods in the affirmative.)

6 Q And the light-skinned guy picked it up and handed it
7 back to him?

8 A Yes.

9 Q Okay. You don't know who that was?

10 A Which one?

11 Q The guy that was hitting Deloris.

12 A I don't.

13 Q Okay. And the only person you have you really saw in
14 any way was the light-skinned guy?

15 A Yes.

16 Q They took your purse, you said?

17 A Yes, and my cell phone.

18 Q And your cell phone?

19 A Uh-huh.

20 Q And I'm sure you told that to law enforcement?

21 A I did.

22 Q Did you give them the phone number for it?

23 A I did.

24 Q Okay. And what carrier is that on, do you remember?

25 A Verizon.

1 Q Verizon. Did the police ever ask you to get your
2 phone records to see if it was used?

3 A They did.

4 Q Did you give it to them?

5 A But it wasn't used, and then my friend actually had
6 cut it off that night, so nobody was actually able to make
7 a phone call on it.

8 Q So you called Verizon to turn it off?

9 A To just to disconnect it altogether.

10 Q Did you do that? Did you have it turned off after
11 you got home after the hospital or...

12 A Yeah.

13 Q Okay. Did you ever give him the records or did
14 you --

15 A It wasn't nothing -- there were no phone calls
16 actually made between the time that it was taken and we
17 had it cut off. No calls were made on my phone.

18 Q Okay. Now, after the four robbers left, you heard
19 shots outside. How long were you in the apartment after
20 that?

21 A Maybe a minute or two. It wasn't much longer.

22 Q Okay.

23 A Everything was going so fast. I couldn't give you
24 a...

25 Q So you left one or two minutes after the shots or

1 that's what happened?

2 A After the shoots.

3 Q After the shots?

4 A Yeah the shots, we left.

5 Q Okay. And you said there were no police in the area?

6 A No.

7 Q All right. Do you know what time any of this
8 happened or...

9 A It was around nine o'clock.

10 Q Nine o'clock?

11 A Uh-huh.

12 Q At night?

13 A I believe it was, yeah.

14 MR. SCHNEE: I don't have any more questions for you
15 right now. Thank you.

16 THE COURT: Redirect?

17 MS. SAMPSON: Just briefly, Your Honor.

18 REDIRECT EXAMINATION:

19 BY MS. SAMPSON:

20 Q Mr. Schnee asked you whether four men were wearing
21 hoodies or bandannas.

22 A Uh-huh.

23 Q Were all four wearing them?

24 A They were only three of them.

25 Q Okay. In your statement -- do you still have it?

1 A I do.

2 Q It's about two pages long, is that true?

3 A Yeah.

4 Q And in your statement, did you tell them that you
5 saw -- that they came in and asked for Black Shawn?

6 A Yes.

7 Q Did you tell them that you were sitting in the --
8 that they asked Deloris to get down? You heard them tell
9 Deloris to get down; they had guns?

10 A Yes.

11 Q Did that happen?

12 A Yes.

13 Q Okay. Did you tell them that Shamael was sitting in
14 the living room with your daughter -- with her daughter?

15 A Yes.

16 Q And is that what happened?

17 A Yes.

18 Q Okay. What about the quote about wanting to see your
19 daughter bleed tonight, is that in your statement?

20 A Yes.

21 Q Did that happen?

22 A It did.

23 Q Did they get -- did the person in your statement, do
24 you talk about the person getting upset was Deloris said
25 she didn't know where Black Shawn was?

1 A Yes.

2 Q And did that happen?

3 A Yes.

4 Q And in your statement, you talk about the clip
5 falling out, don't you?

6 A Yes.

7 Q And did that happen?

8 A Yes, it did.

9 Q And in your statement, you talk about Deloris getting
10 hit in the head?

11 A Yes.

12 Q Did that happen?

13 A Yes.

14 Q What about the disrespect of his mother. Was that in
15 your statement?

16 A Yes.

17 Q And did that happen?

18 A It did.

19 Q And in your statement, you talk about gunshots being
20 fired after they left?

21 A Yes.

22 Q Did that happen?

23 A It did.

24 Q Okay. And in your statement, do you say they took
25 your cell phones, and they had a comment about that?

1 A Yes.

2 Q Did that happen?

3 A It did.

4 Q Also in your statement, you talk about identifying a
5 person in the photo lineup.

6 A Yes.

7 Q And did that happen?

8 A Yeah.

9 MS. SAMPSON: I have no further questions, Your
10 Honor.

11 MR. SCHNEE: No questions.

12 THE COURT: All right. Can this witness can come
13 down?

14 (There was no response).

15 May this witness be excused? Without objection?

16 MS. SAMPSON: As far as the State is concerned, Your
17 Honor.

18 THE COURT: All right. You're free to go.

19 Thank you very much.

20 MS. SAMPSON: At this time, the State would call
21 Shamael Coit.

22 SHAMAEL COIT, after being duly sworn,
23 testified as follows:

24 THE CLERK: Thank you. Have a seat in the witness
25 stand, please. State your name for the record.

1 THE WITNESS: My name is Shamael Coit.

2 DIRECT EXAMINATION:

3 BY MS. SAMPSON:

4 Q All right. Shamael, how are you doing today?

5 A I'm good. How are you?

6 Q Good. Shamael, how old are you?

7 A Thirty-one.

8 Q And what do you do for a living?

9 A I'm an optometric assistant.

10 Q Yesterday we had some issues. Could you say that for
11 me?

12 A I'm an optometric assistant.

13 Q What does that entail?

14 A I work with an eye doctor in an office of an
15 optometrist.

16 Q And part of your job is to look at people's eyes?

17 A Yes, ma'am. That's all I work with is eyes.

18 Q Okay. And you have a daughter?

19 A I do.

20 Q How old is she?

21 A She is six.

22 Q And what's her name?

23 A Minor

24 Q All right. And you have -- she stays with you?

25 A Yes.

- 1 Q Okay. Now, how do you know Delores Dennis?
- 2 A She is one of my best friends.
- 3 Q How long have you known her?
- 4 A Since -- it has to be the end of 2003 because I met
- 5 her when I got home from the service.
- 6 Q Oh, so you've been in the service?
- 7 A Yes, ma'am.
- 8 Q What were you in the service?
- 9 A Air Force.
- 10 Q Okay. And you got in 2000 and...
- 11 A Three.
- 12 Q Okay. So when you got out, you met Deloris?
- 13 A I did.
- 14 Q And you all have been friends?
- 15 A Yes.
- 16 Q How often do you see Deloris?
- 17 A At that time, we saw each other just about every day.
- 18 Q Okay. You say at that time. You don't see her as
- 19 often anymore?
- 20 A No, ma'am.
- 21 Q All right. And why is that?
- 22 A Because we're in separate cities and stuff. Well,
- 23 not really cities but separate places now.
- 24 Q She moved after this incident?
- 25 A Yes, ma'am.

1 Q Okay. But you still stayed in the area?

2 A Kind of, not really.

3 Q Okay. Not in the area of the incident, in Columbia?

4 A Oh, yes, ma'am.

5 Q Okay. So the night in question, November 25th, you
6 were staying with Deloris?

7 A Yes, ma'am.

8 Q Why?

9 A Because the lease was up in the townhouse that I was
10 in previously, and the new apartment that I was getting
11 was not ready for me to move in yet. So she said that we
12 could stay there with her for two weeks until that was
13 ready for us to move into.

14 Q Okay. So you and who were staying with Deloris?

15 A Me and my daughter.

16 Q Okay. And on the 25th, you're -- who is Korey Coit?

17 A He is my brother.

18 Q And he was at the apartment?

19 A Yes.

20 Q Why?

21 A Because I was supposed to be baking Thanksgiving
22 cookies for his job's Thanksgiving party.

23 Q Okay. And were you doing that when this occurred?

24 A We were starting to.

25 Q Okay. So what time did Korey get over to the house,

1 do you remember?

2 A Probably about 8:30, nine o'clock, somewhere in
3 there.

4 Q And do you remember about what time this happened?

5 A About -- it was some time after ten.

6 Q Okay. And how can you be sure it was after ten?

7 A Because we were watching the season finale of the
8 Housewives of Atlanta.

9 Q And what were you doing at that time?

10 A I was feeding my daughter dinner, actually.

11 Q Okay. Do you remember what you cooked?

12 A No, Deloris cooked.

13 Q Deloris cooked. You didn't cook?

14 A Right.

15 Q All right. So you were eating dinner?

16 A I don't think I was eating. I think I just ate,
17 fixed her a plate and sat her down.

18 Q Minor

19 A Uh-huh.

20 Q So she was eating?

21 A Yes.

22 Q And where was she sitting?

23 A She was sitting like there is a couch; there is
24 coffee table, and then she was sitting on the other side
25 of the coffee table.

1 Q Okay. I'm going to show, Your Honor, what's being
2 marked as State's Exhibit 6, 7, and 8.

3 All right. I'm going to ask you if you recognize
4 these?

5 A Yes.

6 Q And what are they pictures of?

7 A The apartment.

8 Q And what are in it -- what does that picture show,
9 what part of the apartment?

10 A This is the living room, dining room, kitchen,
11 bathroom.

12 Q Okay. And do those pictures accurately reflect what
13 the apartment looked like on November 25th, 2008?

14 A Yes.

15 Q At this time, we'd ask to introduce photographs 6, 7
16 and 8 into evidence, Your Honor.

17 MR. SCHNEE: Without objection.

18 THE COURT: Without objection.

19 (WHEREUPON, State's Exhibits Nos. 6, 7, 8 were
20 admitted into evidence.)

21 BY MS. SAMPSON:

22 Q I'm going to stand here next to you and ask you.

23 Okay. You said that your daughter was sitting -- where
24 was she sitting?

25 A She was right there.

1 Q Okay. And in this photograph, there is a -- what is
2 that?

3 A That's her chair.

4 Q Was she sitting in this chair, or was she sitting in
5 something else?

6 A Actually, the chair was more over by the table but
7 she was near it. Minor is not the type of kid to sit
8 still.

9 Q Okay. And so she was sitting at the table?

10 A Uh-huh.

11 Q And when she was sitting there, what happened?

12 A She was sitting there, and she had just started to
13 eat. The next thing you hear is just a big loud boom.
14 That's when they came in.

15 Q Did you see them come in? Where were you sitting?

16 A On the couch.

17 Q And you saw them come in?

18 A Yes.

19 Q What did they have on?

20 A The bandannas, hoodies, dark clothes.

21 Q When they all -- when you saw them, were they all
22 wearing them or who had on what?

23 A Well, it was more like three of them had it like on,
24 on, and one just had -- held up over his face.

25 Q Okay. Were they armed?

1 A Yes.

2 Q What did they have in their hands?

3 A I mean, it wasn't one particular kind. It was
4 shotguns; it was nine millimeters.

5 Q They all had a gun?

6 A Yes.

7 Q Okay. And what happened when they came in?

8 A They came in. They were pretty much asking who Black
9 Shawn was, where were the guns and the drugs at, and you
10 know, all of that. We're trying to tell them we have no
11 clue. You know, we don't know.

12 It was like when I heard the boom, like at first, it,
13 you know, it was going to jar you. So the first thing I
14 did was I jumped up, and I grabbed my daughter. I put her
15 in my lap. I put her face in my chest. I said, "Keep
16 your eyes closed. Don't move. Stay right here. It will
17 be over in a little bit."

18 So they went down the hall. That's where everybody
19 else was.

20 Q Now, I just want to stop you. At that point, is she
21 quiet?

22 A Kind of. She was kind of whispering. She was going,
23 "Mommy, I'm so scared. I'm so scared." I said, "It's
24 okay. it's going to be over in a little bit." So I
25 started humming You are My Sunshine to her.

- 1 Q And could -- even though you were doing that, can you
2 hear what other people are saying?
- 3 A I can hear basically them asking where are the guns
4 and the drugs at, where is Black Shawn, this and that.
- 5 Q Could you tell who was saying what?
- 6 A Not really.
- 7 Q So is anybody in the room with you?
- 8 A Well, there was always a guy at the door.
- 9 Q Okay. And the door is where in relation to the
10 living room?
- 11 A Like if I'm the couch, the door is there.
- 12 Q And is it far away or close?
- 13 A I mean, me.
- 14 Q Let me see if we can get -- how far?
- 15 A The door.
- 16 Q I'm here. Is the door --
- 17 A Right.
- 18 Q So is there somebody in front of the door?
- 19 A Yes.
- 20 Q Can you see that person's case?
- 21 A Huh-uh.
- 22 Q I'm sorry, you need to say yes or no.
- 23 A I'm sorry, no. No, no, no.
- 24 Q Okay. So you could not see that person's face?
- 25 A You could see like part of it. He had the bandanna

1 on, but he was --

2 Q Further away?

3 A Yes.

4 Q Did he have a gun?

5 A He did.

6 Q Okay. So you could hear the others asking about
7 Black Shawn?

8 A Black Shawn.

9 Q And so what happened?

10 A So I saw them walk my brother in front of me with a
11 gun to the back of his head out to the balcony, which
12 scared the be-jesus out of me because that's the only
13 brother I've got.

14 Q Is he your older or younger brother?

15 A You let him tell it, he is the oldest, but he really
16 is the youngest.

17 Q All right. So they take him outside on the balcony?

18 A Uh-huh.

19 Q Can you hear them?

20 A I can hear them talking, but I can't really make it
21 out because at that time I'm still kind of humming to
22 Minor to keep her calm.

23 Q So they take him on the balcony at some point?

24 A Uh-huh.

25 Q Then what happened?

1 A Once he passed like the couch area, I couldn't really
2 see what was going on.

3 Q Did you hear anything go on with Delores?

4 A I did. I heard tussling back there. I couldn't
5 really hear all that was said, but I heard tussling going
6 on. You heard a loud smack and then an "awe" and then it
7 was -- you know, from that, it was another smack. After
8 that it was kind of -- it kind of got quiet.

9 Q Okay. And did you ever see anybody do anything for
10 Deloris? Did you see that?

11 A No.

12 Q Okay. What happened after you heard the smacking and
13 the tussling?

14 A At that point, that's when someone stood in front of
15 me and had the gun to me and asking me who Black Shawn was
16 and did I want my child to see me bleed that night.

17 Q And I'm going to stop you here. We're going through
18 this. You said somebody at some point comes up to you?

19 A Uh-huh.

20 Q Now, where are you sitting?

21 A On the couch.

22 Q And you're sitting -- your daughter is in your lap?

23 A She's in my lap when that happened.

24 Q Okay. And this person comes up to you and says --

25 A Uh-huh, to ask me who Black Shawn was.

1 Q When he asked you that, how close is he?
2 A He's pretty close.
3 Q I'm going to walk up to you. You tell me when to
4 stop.
5 (Pause).
6 Now, I can't climb in the jury box with you.
7 A You're good.
8 Q Okay. So when you're -- he's about this far from
9 you?
10 A Uh-huh.
11 Q And he says, "Where is Black Shawn?"
12 A Uh-huh.
13 Q Then what happens?
14 A Then he has the gun pointed at me.
15 Q Where is it point at you at?
16 A More up here.
17 Q So he has a gun pointed in your face?
18 A Uh-huh.
19 Q Is it like in your face or further away?
20 A Like further away, but it's not like it touched me.
21 Q So he has a gun pointed at you?
22 A Uh-huh.
23 Q And he says what?
24 A He asked me where Black Shawn was, and he asked me
25 did I want my daughter to see me bleed tonight.

1 Q And when the person is saying that, what are you
2 doing?

3 A I'm answering him no, I don't know who this is. Then
4 he wanted me to put her down, and then she screamed.
5 That's when the light-skinned guy came and he was like,
6 "Don't bother that baby."

7 Q Okay. I want to stop you. You said he was saying,
8 "Do you want your daughter to see you bleed tonight?"

9 A Uh-huh.

10 Q How close -- was he this far away from you when he
11 was saying that? Were you looking at him in any
12 particular area?

13 A I sure was.

14 Q Where?

15 A Here (indicating).

16 Q And why were you looking at him in his face?

17 A I don't know. I mean, you're sitting here and you're
18 threatening me with my kid in my arms. I'm going to look
19 at you.

20 Q And what part of his face could you see?

21 A His eyes.

22 Q Could you see just his eyes? Could you see his
23 eyebrows?

24 A You could see his eyes, his eyebrows.

25 Q Okay. And how long do you think you were looking at

1 him in the face?

2 A Two, maybe three minutes.

3 Q And all that time, he's asking you about Black Shawn?

4 A Yes.

5 Q Okay. And he tells you -- I want to make sure I
6 understand, to put your child down?

7 A Uh-huh.

8 Q And what happens when he does that?

9 A She screamed.

10 Q So what did you do?

11 A She stayed -- by that time, the light-skinned guy
12 came around and said, "Don't bother that baby."

13 Q Now, we're talking about the light-skinned guy for a
14 little bit.

15 A Uh-huh.

16 Q How close did he get to you? I'll do the same thing.

17 A I mean, it depends on what part of the night.

18 Q When he comes -- okay. You just said it depends
19 on/what parts of the night?

20 A Yeah, when he first came in, he wasn't that close.

21 Q Okay.

22 A And then it was -- after that with the baby and then
23 the guy who was front of me, he done went back. So the
24 light-skinned guy comes up. He tells me, "No disrespect.
25 My fault. We hit the wrong spot. Just sit here. Keep

1 the baby quiet. I'm going to round them up, and we're
2 going to leave."

3 Q Did you see his face at that point?

4 A Uh-huh.

5 Q I'm sorry?

6 A Yes.

7 Q Did he have a mask on at that point?

8 A No.

9 Q Okay. So you could see his whole face?

10 A Yes.

11 Q And he was, I think you said, light skinned?

12 A Yes.

13 Q Could you see his eyes?

14 A Yes.

15 Q What did they look like?

16 A They were bluish green.

17 Q They were blue?

18 A Ish green.

19 Q Okay. What does that mean?

20 A They were light.

21 Q They were light. You realized that that night.

22 That's not something you're just now thinking about?

23 A Oh no.

24 Q And he tells you that they had the wrong place.

25 A Yes.

1 Q And what else?

2 A No disrespect and for me to sit there, keep the baby
3 quiet. He was going to go round up everybody, and they
4 were going to leave.

5 Q And what did you do?

6 A I sat there, kept the baby quiet, and he went, he
7 rounded up everybody and they left.

8 Q Okay. And they left right after that?

9 A Yeah, they pretty much left then.

10 Q Anything that was said as they were leaving?

11 A Well, one of them asked should they -- should they
12 stay there while they go check upstairs. We were like,
13 "This is the third floor. There is no upstairs." They
14 left. The light-skinned guy said, "Lock the door." I was
15 like "how?"

16 Q Why couldn't you lock the door?

17 A The frame was off the door.

18 Q But he told you to lock it anyway?

19 A Yes.

20 Q All right.

21 A Okay.

22 Q So what happens once they leave?

23 A Once they leave, that's when my brother comes from
24 the back, and we all just kind of get together. We just
25 hug for a second. Then we just hear gunshots, and we all

1 hit the floor.

2 Q Okay. After that, after you hear the gunshots, then
3 what do you do?

4 A We give it a little bit of time, like maybe seconds,
5 if a minute, and then we get out of there. We leave.

6 Q And when you left, were there any police in the
7 parking lot?

8 A No.

9 Q Okay. And when you leave, where do you go?

10 A I went and took my daughter to my grandparents'
11 house.

12 Q Then what did you do?

13 A I drove Deloris to Richland Memorial.

14 Q And how long were you at the hospital?

15 A Hours. I don't know. Richland is never quick.

16 Q So you were there for a few hours?

17 A Yes.

18 Q And then what did you do?

19 A Then I went to my parents' house.

20 Q Okay. Were you there when the police were contacted
21 by Deloris?

22 A No.

23 Q Okay. So you weren't there when they came to your
24 home?

25 A No.

1 Q All right. When was your next contact?

2 A Well, I came later. Like when they originally came
3 to her house, I came later.

4 Q You came later?

5 A Right.

6 Q Did you give them a description of what you saw?

7 A Yes.

8 Q Okay. And were you -- I mean, who did you see
9 better, the light skinned one or the one that pointed the
10 gun in your face?

11 A I mean, I seemed about the same.

12 Q Okay. That's fair. Now, when you talked to the
13 police, you said you hadn't contacted -- why didn't you
14 contact them when you got home?

15 A Because they said if you called any cops, we'll kill
16 you.

17 Q Did you believe them?

18 A Uh yeah.

19 Q Okay. So when you -- after that date, you report it
20 eventually, and after that day, when did you next speak to
21 the police? Do you remember the date?

22 A When -- not the date. I don't remember when the day
23 was. We had to go down to look at the lineups.

24 Q And who did you go to look at the lineups with?

25 A Nobody.

- 1 Q You went by yourself?
- 2 A Uh-huh.
- 3 Q Okay. Was anybody else in the room with you when you
- 4 looked at the lineup?
- 5 A Just the officer.
- 6 Q Okay. And how many lineups did he show you, do you
- 7 remember?
- 8 A Not really.
- 9 Q Okay. Did he -- when he was showing you the lineups,
- 10 did he tell you who to pick?
- 11 A No.
- 12 Q Did he, in fact, tell you that anybody was in the
- 13 photographs that you would recognize?
- 14 A No.
- 15 Q I want to show you what's been marked as State's
- 16 Exhibit Number 36. I'm going to ask you if you recognize
- 17 it.
- 18 A Yeah.
- 19 Q And what is it?
- 20 A It's a photo lineup.
- 21 Q And is it in black and white or color?
- 22 A Color.
- 23 Q And is that what you were shown?
- 24 A Yes.
- 25 Q And which one did you identify on this?

1 A 64474.

2 Q How do you know that's the one you identified?

3 A Because I circled it and initialed it.

4 Q Okay. Did you date it, as well?

5 A I did.

6 Q And what date is on there?

7 A December 5th, 2008.

8 Q And how do you know that this is the person that was
9 in the apartment on November 25th?

10 A Because I knew the eyes.

11 Q And how did you show -- how did you make that
12 determination when looking at these photographs?

13 A I had to take two pieces of paper and put one on the
14 bottom and one on the top and put it up to each one to see
15 which one I recognized.

16 Q And does this fairly and accurately depict what you
17 were shown in your signature and initials?

18 A Yes.

19 Q At this time, we'd ask to introduce 36 into evidence.

20 MR. SCHNEE: Subject to pretrial.

21 THE COURT: Over the defendant's objection, it's
22 admitted.

23 (WHEREUPON, State's Exhibit No. 36 was admitted into
24 evidence.)

25

1 BY MS. SAMPSON:

2 Q And who -- do you now know the name of the person
3 that you picked?

4 A I do.

5 Q Who is that?

6 A Ricky Bowman.

7 Q Is there any doubt in your mind that that is the
8 person who was in the apartment?

9 A No.

10 Q And how do you know that's the right person if you
11 only saw those eyes.

12 A I'm not going to forget those eyes.

13 Q And I'm going to show you what's marked as State's
14 Exhibit 37 and ask do you recognize that?

15 A Yes.

16 Q What is that?

17 A That is the form I signed saying that I identified
18 him.

19 Q Okay. And it has your information on it?

20 A Yes.

21 Q And does this accurately reflect the form you filled
22 out on December 5th, 2008?

23 A Yes.

24 MS. SAMPSON: At this time, we'd ask to introduce
25 State's Exhibit Number 37 into evidence.

1 MR. SCHNEE: Same objection.

2 THE COURT: Over the defendant's objection.

3 (WHEREUPON, State's Exhibit No. 37 was admitted into
4 evidence.)

5 BY MS. SAMPSON:

6 Q All right. I'm also going to show you what's marked
7 as State's Exhibit Number 40 and ask if you recognize
8 that.

9 A Yes.

10 Q And what is that?

11 A That is the other lineup.

12 Q And which one did you pick in this lineup?

13 A 98556.

14 Q And how do you know that's the one you picked?

15 A Because I circled it and initiated it, too.

16 Q And was it in color or black and white when you say
17 it?

18 A Color.

19 Q And is that the person that was in the house that
20 apologized and said "No disrespect"?

21 A Yes.

22 Q That was the person you said was the light skinned,
23 tall guy?

24 A Yes.

25 Q And he was not wearing a mask?

1 A No.

2 Q Okay. And does this lineup accurately reflect what
3 you saw that day?

4 A Yes.

5 MS. SAMPSON: At this time, we'd move to introduce
6 number 40 into evidence.

7 THE COURT: Over the defendant's objection.

8 MR. SCHNEE: I didn't object anyway.

9 (WHEREUPON, State's Exhibit No. 40 was admitted into
10 evidence.)

11 BY MS. SAMPSON:

12 Q And I'm going to show you've State's Exhibit
13 Number 41. Do you recognize that?

14 A Yes.

15 Q And what is that?

16 A That's the form that I signed saying I identified
17 98556.

18 Q And is that your information on here?

19 A It is.

20 Q And does that accurately reflect what you signed on
21 December 5th, 2008?

22 A Yes.

23 MS. SAMPSON: We'd ask that introduce number 41 into
24 evidence.

25 THE COURT: Over the defendant's objection.

1 (WHEREUPON, State's Exhibit No. 41 was admitted into
2 evidence.)

3 BY MS. SAMPSON:

4 Q And Shamael, I just want to be sure about this.
5 You're positive that -- well, let me ask you this: Do you
6 see the person that was in Delores Dennis' house that
7 night that held the gun to you?

8 A Yes.

9 Q Where is he?

10 A Sitting right over there by the lawyer.

11 Q Can you tell me what he has on?

12 A It looks like a green striped shirt with a white
13 t-shirt.

14 Q Over it or under it?

15 A Over it.

16 Q How sure are you that was the person in Deloris'
17 apartment that night?

18 A Sure.

19 MS. SAMPSON: At this time, Your Honor, I'd ask the
20 record to reflect the witness has identified the
21 defendant.

22 THE COURT: The record reflects the witness has
23 identified the defendant.

24 MS. SAMPSON: That's all the questions I have, Your
25 Honor.

1 Please answer any questions that Mr. Schnee has.

2 THE COURT: Mr. Schnee?

3 MR. SCHNEE: May it please the Court, Your Honor.

4 CROSS-EXAMINATION:

5 BY MR. SCHNEE:

6 Q Good morning.

7 A Good morning.

8 Q I just want to go through a few things with you,
9 okay.

10 A Okay.

11 Q First, I'll start right where the solicitor left off.
12 The photo lineup with the light-skinned guy --

13 A Uh-huh.

14 Q Do you know his name now?

15 A I do.

16 Q What is that?

17 A Sean Toran.

18 Q Okay. I believe you said the robbery was sometime
19 after ten o'clock?

20 A Uh-huh.

21 Q Do you know what time?

22 A No.

23 Q Would it be closer to 11, or you really just don't
24 know?

25 A No. It had to have been -- it wasn't too close to 11

1 because the show wasn't almost over at that point.

2 Q But you're just not sure of the exact time?

3 A No.

4 Q How long did this whole thing take place, I mean, the
5 whole robbery?

6 A Probably -- I don't know. I mean, it was like it
7 feels like it was forever, but it can only be just a few
8 minutes, probably just a few minutes.

9 Q Okay. Who was the first person that came in the
10 door?

11 A The light-skinned guy.

12 Q Okay. I believe you said the light-skinned guy, he
13 was just holding his bandanna over his head?

14 A Uh-huh.

15 Q Did you ever tell the investigator that?

16 A I don't remember.

17 Q The person that took your brother out on the balcony,
18 do you know who that was?

19 A I believe it was the same person who was in front of
20 me.

21 Q Okay. But you're not sure?

22 A Not completely.

23 Q Okay. Now, you described the person in front of you,
24 and you say you remember his eyes.

25 A Yes.

1 Q Okay. What about his eyes do you remember?

2 A I mean, there was nothing in particular that you can
3 point out and say this is why or that is why. I mean, I
4 know, you know, they were brown eyes. They sat a little
5 further apart than mine do. I mean, I just remember his
6 eyes.

7 Q Okay. And you work with eyes every day, right?

8 A I do.

9 Q And you look at them very, very closely?

10 A I do.

11 Q And that's -- you said eight years?

12 A Uh-huh, yes.

13 Q Okay. You didn't see any spots in his eyes?

14 A No. I didn't pay attention to that.

15 Q Okay. Did you see any scars on the sides of his
16 eyes?

17 A Didn't pay attention to that either.

18 Q So that's the person you're deciding based on the
19 space between the eyes?

20 A Just the way they looked. I mean, I can't put a
21 finger on exactly what it is, but I do know what I saw.

22 Q Okay. The light-skinned guy --

23 A Uh-huh.

24 Q -- when he had his bandanna off, what do you remember
25 about him?

1 A As far as?

2 Q What he looked like, his face.

3 A I can't pinpoint anything. It's like when you see
4 it, it's like, you know what song you want to sing but you
5 don't know the words until you listen to it on the radio
6 and you hear that song and you can sing along with it.
7 It's not like I can tell you exactly what it was. I knew
8 his face when I saw it again.

9 Q Okay. Did you see any tattoos?

10 A Didn't pay attention.

11 Q No scars or anything else?

12 A I didn't pay attention to that either.

13 Q How many lineups were you shown by the police?

14 A I don't remember.

15 Q Well, obviously those two. Were you shown any
16 others?

17 A I don't know. There were four of them before that we
18 were supposed to be identifying. I don't remember if it
19 was two, three or what.

20 Q Okay. If I could approach the witness, Your Honor.

21 I'm showing what has been premarked as Defense No. 1
22 and 2. Do you recognize those?

23 A They look familiar.

24 Q Okay. Do you believe that those are probably the
25 ones that were shown to you by the police department?

- 1 A Possibly.
- 2 Q Okay. Would you have any other reason to see those
- 3 other than at the police department?
- 4 A No.
- 5 Q All right. When they stole the purses from people,
- 6 what did they do with them?
- 7 A Put them in a grocery bag.
- 8 Q Okay. What kind of bag?
- 9 A Probably Wal-Mart.
- 10 Q Wal-Mart bag?
- 11 A Uh-huh.
- 12 Q Okay.
- 13 A The blue plastic big with writing on it.
- 14 Q Okay. I believe you said a little while ago that you
- 15 heard the shots outside and then left one minute later?
- 16 A Could be.
- 17 Q Okay. Do you remember what you wrote down in your
- 18 statement about that? Could it have been longer?
- 19 A It could have been. I mean, it was just long enough
- 20 to sit there, breathe for a second, say okay, they're gone
- 21 and then leave.
- 22 Q Did you do anything before you left?
- 23 A I grabbed a few things.
- 24 Q Okay.
- 25 A Maybe like a blanket or toiletry items or something

1 like that, maybe something for Minor

2 Q Okay. So that would be for your child, pick up some
3 of her stuff?

4 A Yes.

5 Q Okay. So could it have been a few minutes that you
6 were sitting there?

7 A It depends on what you mean a few. Like, it wasn't
8 long, I know that.

9 (WHEREUPON, Defendant's Exhibit No. 4 was marked for
10 identification only.)

11 MR. SCHNEE: I'm like to approach the witness, Your
12 Honor.

13 THE COURT: Sure.

14 BY MR. SCHNEE:

15 Q I'm showing you what's been marked as Defense No. 4.
16 Do you recognize that document?

17 A Yes, let me look at it.

18 Q Take a look at all three pages just for a second.

19 A Okay.

20 Q Is that the statement you gave to Sergeant Pegram?

21 A Uh-huh, yes.

22 Q Is that your handwriting?

23 A Yes, it is.

24 Q Okay. If you could, turn to the third page, and you
25 signed all three pages, right?

1 A I did.

2 Q Okay. And you were told that you should be as

3 specific as possible about everything, right?

4 A Yes.

5 Q Give as much detail as possible?

6 A Yes.

7 Q Try to remember everything accurately?

8 A Yes.

9 Q Okay. And you wanted to do that, right?

10 A Yeah.

11 Q Because you want to make sure the people got caught?

12 A They messed with my baby.

13 Q I understand.

14 A So yes.

15 Q The next page about halfway down, let me show you.

16 A Okay.

17 Q So after you got on the ground when you heard the

18 shots --

19 A Uh-huh.

20 Q --- what do you put in your statement after that?

21 A I put, "After a few minutes, we got up, grabbed a

22 couple of things and dropped Minor off at my

23 grandparents'".

24 Q Okay. Thank you.

25 A You're welcome.

1 THE COURT: Redirect?

2 MS. SAMPSON: Briefly, Your Honor.

3 REDIRECT EXAMINATION:

4 BY MS. SAMPSON:

5 Q Just now, we had some questions. You show Sean Toran
6 and Ricky Bowman's names?

7 A Yes.

8 Q Did you know them back in 2008?

9 A No.

10 Q Did you know Ricky Bowman or Sean Toran at all?

11 A No.

12 Q And you know their names now?

13 A Yes.

14 Q Okay. How?

15 A After we identified them and stuff, we were told what
16 their names were.

17 Q All right. So it wasn't -- you didn't get to know
18 them or anything afterwards?

19 A No.

20 Q All right. There's been some -- he asked you about
21 how you know it's the right person. I just want you to be
22 clear. How do you know Ricky Bowman sitting over there at
23 the table is the same person that came into Delores
24 Dennis' house?

25 A Because it was the same eyes that looked at me that

1 night. That's why I know.

2 Q Is there any doubt in your mind that Ricky Bowman is
3 the person that broke in and put a gun in your face?

4 A No.

5 Q Any doubt that Ricky Bowman was the person that was
6 in there with your sister -- Deloris, Regina?

7 A My friend Deloris, no.

8 Q Sorry about that.

9 A It's okay.

10 Q I keep doing that.

11 A I know.

12 Q And you talked about -- and I don't want to
13 overstep -- looking at some photographs, are you again the
14 same -- as clear as you are about Ricky Bowman as you are
15 about Sean Toran?

16 A Yes.

17 Q And that's the same person that was there?

18 A Yes.

19 Q And you are here today under subpoena?

20 A Yes.

21 Q Did you want to be here?

22 A No.

23 Q Did I have some trouble finding you?

24 A You did.

25 Q Is there a reason for that?

1 A Well, I mean, they kicked --

2 MR. SCHNEE: Judge, I'm going to object to that.

3 THE COURT: It calls for a yes or no answer. That's
4 as far as you can go.

5 BY MS. SAMPSON:

6 Q Why was that a problem?

7 MR. SCHNEE: I thought that was the objection.

8 THE COURT: Sir?

9 MR. SCHNEE: That was my objection. It's too -- if
10 we could approach.

11 THE COURT: Approach the bench.

12 (WHEREUPON, a bench conference was held in the
13 presence but not within the hearing of the jury).

14 BY MS. SAMPSON:

15 Q Ms. Coit, so because of the difficulties, you and I
16 have not really talked about what happened.

17 A No.

18 Q Did I, in any way, tell you what you should say?

19 A No.

20 Q Have I gone over your statement or any of these
21 questions with you?

22 A No.

23 MS. SAMPSON: No further questions, Your Honor.

24 THE COURT: Anything further?

25 MR. SCHNEE: No, Judge.

1 THE COURT: All right. You may come down, ma'am.

2 May this witness be excused?

3 MS. SAMPSON: Yes. If we may approach.

4 THE COURT: All right.

5 All right. Ladies and gentlemen, I'm just trying to
6 work on a schedule. The -- we've got one witness who had
7 a doctor's appointment this morning, and the lawyers need
8 to find out if that witness is back from the doctor's
9 appointment.

10 We're going to take a lunch break shortly, but just
11 go to your jury room for just a minute while they try to
12 locate this witness. If the witness is here, we'll here
13 the witness. If not, we'll just take an early lunch hour.

14 All right. Please retire to your jury room. Don't
15 discuss the case among yourselves while you're in the jury
16 room, please. Just relax a few minutes.

17 You can leave the notepads in the chair. You can
18 pick them up when you get back.

19 (WHEREUPON, the jury left open court at approximately
20 12:11 p.m.)

21 THE COURT: All right. We'll stand at ease for a few
22 minutes.

23 MS. SAMPSON: Thank you, Your Honor.

24 (WHEREUPON, a short break was taken.)

25 THE COURT: State ready to proceed?

1 MS. SAMPSON: Yes, Your Honor.

2 THE COURT: Bring the jury, please.

3 (WHEREUPON, the jury came into open court at
4 approximately 12:29 p.m.)

5 THE BAILIFF: The jury is present, Your Honor.

6 THE COURT: All right. Solicitor, call your next
7 witness.

8 MS. SAMPSON: Thank you, Your Honor. The State calls
9 Delores Dennis.

10 DELORIS DENNIS, after being duly
11 sworn, testified as follows:

12 THE CLERK: Thank you. Have a seat in the witness
13 stand, please. State your name for the record.

14 THE WITNESS: Delores Dennis.

15 DIRECT EXAMINATION:

16 BY MS. SAMPSON:

17 Q Good afternoon.

18 A Good afternoon.

19 Q How are you doing?

20 A Good.

21 Q How old are you?

22 A I'm 28.

23 Q How long have you lived in South Carolina?

24 A My whole life.

25 Q I know you're moving a little slow today. What's up.

1 with your condition?

2 A I went to the doctor.

3 Q So you are pregnant?

4 A Ma'am?

5 Q What are you?

6 A I'm pregnant.

7 Q I'm not allowed to give you the answers. So you look
8 a little bit different today than you did in 2008, would
9 that be fair to say?

10 A Yes.

11 Q I want to take you back to November of 2008. Where
12 did you live at that apartment?

13 A Brook Pines apartments, apartments.

14 Q What was your apartment number, do you know?

15 A or .

16 Q It's been awhile. Who was staying with you in
17 November of 2008?

18 A My friend, Shamael Coit, and her daughter.

19 Q Why were they staying there?

20 A Because her apartment wasn't going to be ready until
21 like two weeks.

22 Q Did they normally live there?

23 A No.

24 Q Okay. So on that day, who else was in your
25 apartment?

1. A Regina Dennis and Korey Coit.
2. Q And Regina, how is she related to you?
3. A She is my cousin.
4. Q How often did you see her back then?
5. A She would come see me at least once a week.
6. Q So you saw her fairly often?
7. A Yes.
8. Q And that night she came over?
9. A Uh-huh.
10. Q And you said Korey was there?
11. A Korey was there, yes.
12. Q And Korey was related to who?
13. A Shamael Coit.
14. Q And how do you know Korey?
15. A Through Shamael.
16. Q All of you were in the apartment?
17. A Yes.
18. Q Where were you when the incident started?
19. A I was in the bathroom, and I went into my room.
20. Q So you were in the bathroom, and you went in your
21. bedroom?
22. A Uh-huh, yes.
23. Q How many rooms are in the apartment?
24. A It's a one bedroom.
25. Q And then the bathroom?

1 A Yes. And a little kitchen area and space for a
2 dining room.

3 Q And that's pretty much it?

4 A And a bedroom.

5 Q It's not a big apartment.

6 A No.

7 Q I want to show you some pictures. I want to show you
8 what's been marked as State's Exhibit 2, 3 and 4 and ask
9 you if you recognize it. What is State's Exhibit No. 2?

10 A The apartment complex, Brook Pines.

11 Q Does that reflect your apartment complex at the time?

12 A Yes.

13 MS. SAMPSON: I would ask that State's No. 2 be moved
14 into evidence.

15 THE COURT: Without objection.

16 (WHEREUPON, State's Exhibit No. 2 was admitted into
17 evidence.)

18 BY MS. SAMPSON:

19 Q And State's Exhibit No. 3, what is that?

20 A My apartment door.

21 Q And does that -- this picture fairly depict what your
22 apartment door looked like on November 25th?

23 A Yes.

24 MS. SAMPSON: I'd ask to move State's Exhibit No. 3
25 into evidence.

1 MR. SCHNEE: None.

2 THE COURT: Without objection.

3 (WHEREUPON, State's Exhibit No. 3 was admitted into
4 evidence.)

5 BY MS. SAMPSON:

6 Q And State's Exhibit No. 4, what is that?

7 A My apartment number,

8 Q , does that reflect what your apartment looked
9 like that day?

10 A Yes.

11 MS. SAMPSON: I'd ask to move number 4 into evidence.

12 MR. SCHNEE: No objection.

13 MS. SAMPSON: Your Honor, can I move it?

14 THE COURT: (Nods in the affirmative.)

15 (WHEREUPON, State's Exhibit No. 4 was admitted into
16 evidence.)

17 BY MS. SAMPSON:

18 Q I'm going to show you, just go over the pictures with
19 you. It's probably easier to do it this way than what I
20 just said.

21 A Okay.

22 MR. SCHNEE: Judge, I'll stipulate to the
23 admissibility of the photos.

24 MS. SAMPSON: I believe it's 9, 10, 11 through 21.

25 MR. SCHNEE: Without objection.

1 MS. SAMPSON: I'll come up there as I talk to you.

2 THE WITNESS: Okay.

3 (WHEREUPON, State's Exhibits Nos. 9-21 were admitted
4 into evidence.)

5 BY MS. SAMPSON:

6 Q So I'm going to show you number 9. What is this?

7 A My kitchen.

8 Q So this is what your kitchen looked like that day?

9 A Uh-huh.

10 Q That's pretty much what it looked like that night?

11 A Yes, I just finished cooking.

12 Q And so when the incident occurred, you're in your
13 bedroom?

14 A Uh-huh, yes, ma'am.

15 Q And what happens when you're in your bedroom?

16 A I heard a big boom. I thought my goddaughter had
17 fell. I seen Regina coming down the hallway hollering,
18 "They have guns."

19 Q She was hollering what?

20 A "They have guns."

21 Q What did you do when you heard her say that?

22 A I seen them coming with the guns.

23 Q Did you get back in the room?

24 A Yes.

25 Q What happened once you were in the room?

1 A I sat back down in the bed, came in the room where I
2 was at.

3 Q And could you -- at that point, was anybody in the
4 room with you?

5 A Korey was in there on the computer.

6 Q On the computer, and what was he doing?

7 A I think he was on the internet or something.

8 Q Okay.

9 A Or either downloading music or something.

10 Q And what happened once y'all were in the room, could
11 you hear what was going on in the living room?

12 A I heard guys talking.

13 Q Could you hear what they were saying?

14 A Yeah, "Where is Black Shawn? Where is Black Shawn."

15 Q And did you know anybody named Black Shawn?

16 A No, ma'am.

17 Q What did you say?

18 A I told them I didn't know anybody named Black Shawn.

19 Q What were they wearing?

20 A Baggy clothes.

21 Q Do you remember whether they had on long sleeves or
22 short sleeves?

23 A No.

24 Q Could you see their faces?

25 A No. I could see their eyes up here.

1. Q From where to where could you see?
2. A From here up (indicating).
3. Q Could you see their eyebrows?
4. A Uh-huh.
5. Q And their eyes?
6. A Uh-huh.
7. Q I'm sorry?
8. A Yes, ma'am.
9. Q And did you see all of them or just --
10. A I saw three.
11. Q Three?
12. A Three.
13. Q So what happened while you were in the room in your
14. bedroom?
15. A They came in, asked where the guns and drugs and weed
16. were at and Black Shawn.
17. Q What did you say?
18. A I told them I didn't know Black Shawn. I didn't have
19. any of that.
20. Q Then what happened?
21. A Then they were looking around my apartment, I guess
22. trying to see if they could find anything. They kept
23. asking, "Where is Black Shawn?"
24. Q What did you say?
25. A I told them I didn't know Black Shawn. I didn't know

1 what they were talking about.

2 Q Then what happened?

3 A I heard them in there talking.

4 Q Okay.

5 A They took Korey either in the bathroom or up front

6 first.

7 THE COURT: Could she speak up?

8 BY MS. SAMPSON:

9 Q I'm sorry, speak up a little bit.

10 A Okay.

11 Q I think you said they took Korey up front or in the

12 bedroom?

13 A Yes.

14 Q Could you see where they went?

15 A They went towards the front. I couldn't see exactly

16 where.

17 Q Could you hear what they were saying?

18 A I heard them in the door.

19 Q You couldn't hear everything that was said?

20 A Not everything, no.

21 Q Could you hear them?

22 A One always stayed in there in the hallway watching

23 me. They kept asking me where Black Shawn is. I said I

24 don't know Black Shawn.

25 Q What, if anything, happened to your forehead?

- 1 A To my forehead? A gun was pointed at my forehead.
- 2 Q Which one of them did that?
- 3 A The short black skinned or brown skin.
- 4 Q Brown skin?
- 5 A Yes.
- 6 Q Was the gun to your head or pointed at you?
- 7 A To me and my forehead.
- 8 Q What was he saying to you while pointing the gun to
- 9 your forehead?
- 10 A Asking me the same thing, "Where is Black Shawn?" I
- 11 told him I don't know.
- 12 Q At any point did you get struck?
- 13 A Oh, yes.
- 14 Q What happened?
- 15 A Twice.
- 16 Q What happened at that point?
- 17 A I was struck twice beside my head. He said he could
- 18 take my breath away. I said if it was my time to die,
- 19 then I would die tonight.
- 20 He struck me twice. The second time I put my hand
- 21 up, it fractured my pinky.
- 22 Q How many times did he hit you?
- 23 A Twice.
- 24 Q How many of these hit you?
- 25 A The short brown skinned.

- 1 Q What part of him could you see?
- 2 A Eyebrows.
- 3 Q And how long -- how close to you did he get? I want
- 4 you to stop me when I'm as close to you as he got to you.
- 5 A Okay.
- 6 Q Now, I can't climb in the box.
- 7 A Closer.
- 8 Q He was about this close (indicating)?
- 9 A A little closer.
- 10 Q This close?
- 11 A Yes.
- 12 Q Saw you face-to-face?
- 13 A Uh-huh, yes, ma'am.
- 14 Q Was there anything obstructing your view of him?
- 15 A No.
- 16 Q Anything between the two of you all?
- 17 A The gun.
- 18 Q The gun. Could you see his eyes?
- 19 A Yes, ma'am.
- 20 Q All right. How long were you all that close
- 21 together, do you think?
- 22 A To me, it seemed like a long time, maybe like a
- 23 minute or more, two.
- 24 Q Did you have an attitude with him?
- 25 A Yes. I was mad because I heard him yelling at my

1 goddaughter telling her to shut up.

2 Q What did you think?

3 A I was mad. Don't talk to her like that.

4 Q That was your goddaughter?

5 A Yes.

6 Q So you were not being the nicest with him, is that
7 fair to say?

8 A Well, I didn't say that.

9 Q So he --

10 A I didn't say too much to him because he had a gun to
11 my head.

12 Q After he hit you, what happened?

13 A Someone gave me a towel because all I could see was
14 blood rushing down my head. I sat on the side of the bed.

15 Q Were you able to see the whole face of anyone?

16 A Yes, the tall light-skinned dude.

17 Q When did you see his face?

18 A When he came in the room.

19 Q When he came in the first time, the second time?

20 A I'm not sure. They came, was coming in and out, so
21 maybe the second, third time.

22 Q Okay. Before you got hit in the head or after?

23 A After.

24 Q Okay. But you could see?

25 A No, no, before and after.

1 Q You saw him before and after?

2 A Yes.

3 Q Did he have a mask on?

4 A No. He didn't have a mask on.

5 Q So you could see his whole face?

6 A Tall and light skinned.

7 Q Could you see his hair at all?

8 A It was braided.

9 Q And after you were hit, did the tall light skinned

10 one say anything?

11 A He was telling them to come on, "Let's go." I heard

12 him saying everything will be straight in two weeks.

13 Q Two weeks?

14 A Yes, ma'am. Then he said he was sorry.

15 Q Sorry?

16 A He said, "Sorry, everything will be straight in two

17 weeks for you."

18 Q Who said that?

19 A The tall light-skinned dude.

20 Q And then what happened?

21 A Then I heard him go out the door, and my friends came

22 in the door where I was at. We heard gunshots, and we all

23 heard hit the floor. After a while, we waited. We heard

24 the car drive off.

25 I got some stuff together, and we went and left and

1 dropped my goddaughter off at her great grandparent's
2 house, and I went to Richland hospital.

3 Q State's 19, 16 and 15 which have already been
4 admitted, what is that a picture of, do you remember?

5 A Oh, my floor.

6 Q And the towel, what is that? What's that from?

7 A From my head.

8 Q Is there blood on that?

9 A Yes, ma'am.

10 Q What is this a picture of, Exhibit 5?

11 A Blood on my floor.

12 Q And Exhibit 19, what is that?

13 A That was a shirt that had blood on it from me, too.

14 Q Okay.

15 A In my bathroom.

16 Q In your bathroom?

17 A Yes, ma'am.

18 Q That all happened -- those are from that night?

19 A Yes, ma'am.

20 Q So you all -- how long do you think after -- let me
21 show you one more, Exhibit 14. What is that?

22 A The bloody towel.

23 Q And that's in your bedroom?

24 A Yes, that is.

25 Q How long were you all in the apartment after you

1 heard the shots, do you think?

2 A It was no more than five minutes. It wasn't that
3 long.

4 Q When you all left, were there police in the parking
5 lot?

6 A No, ma'am. I didn't see any.

7 Q And once you all left, where did you go?

8 A Ma'am?

9 Q After you left the apartment, where did you go?

10 A Oh, we went and dropped my goddaughter off at her
11 great grandparent's house, and I went to Richland.

12 Q How long do you think you were at Richland?

13 A Over an hour.

14 Q As a result of your injuries, what did they do to
15 you?

16 A I had to get three staples on the top of my head, and
17 they gave me a splint for my fractured pinky.

18 MS. SAMPSON: I'd offer two.

19 MR. SCHNEE: I'll stipulate to those.

20 THE COURT: Without objection.

21 (WHEREUPON, State's Exhibits Nos. 22, 23 were
22 admitted into evidence.)

23 BY MS. SAMPSON:

24 Q I'm going to ask you, what is 22 a picture of?

25 A This was me.

1 Q When was this taken?

2 A The next day.

3 Q The next day on the 26th?

4 A Yes, ma'am.

5 Q Okay. And what about number 23?

6 A That's me.

7 Q And when was this picture taken?

8 A The next day, also.

9 Q Who took these pictures?

10 A The police officers.

11 Q And 24, what does that show?

12 A My fractured pinky and my wrist, the wrist from the
13 hospital.

14 Q Are you right handed or left handed?

15 A I'm right handed.

16 Q And number 25, what is that? It's got all your
17 information?

18 A Yes, ma'am.

19 Q You went to the hospital on the 25th?

20 A Yes.

21 Q But you weren't released until the 26th?

22 A Yeah, it was after.

23 Q And what does 26 show?

24 A The three scrapes that were on my head.

25 Q And what about 28?

- 1 A The staples again.
- 2 Q Twenty-nine and 30, what do they show?
- 3 A They show my face and my forehead.
- 4 Q Why was your forehead red?
- 5 A From the imprints of the gun.
- 6 Q From the gun being pressed against your forehead?
- 7 A Yes, ma'am.
- 8 Q What does 41 show?
- 9 A The inside of my hand and my fractured pinky.
- 10 Q How long did you have to wear that splint?
- 11 A At least three weeks, three to four weeks.
- 12 Q Now, when you -- you returned to your apartment on
- 13 the 26th at some point?
- 14 A Yes, ma'am.
- 15 Q What did you do when you got back to your apartment?
- 16 A I went there, and then I called the police to do the
- 17 report.
- 18 Q And the photographs that were taken, did you all go
- 19 in, clean up or make more of a mess to your apartment?
- 20 A No, ma'am. We really didn't go in until the police
- 21 came.
- 22 Q So when you say you returned to your apartment, you
- 23 didn't go inside?
- 24 A No. We waited outside for the police.
- 25 Q Why did you call the police?

- 1 A Because I needed to do a report.
- 2 Q You needed to do a report?
- 3 A Yes.
- 4 Q Why did you need to do a report?
- 5 A The door.
- 6 Q Why did you do a report?
- 7 A I felt I needed to do a report and for the apartment
- 8 complex.
- 9 Q So you called the police?
- 10 A Yes, ma'am.
- 11 Q And they came?
- 12 A Yes.
- 13 Q And they took those photographs?
- 14 A Yes, ma'am.
- 15 Q Did you describe to them what had happened?
- 16 A Yes, ma'am.
- 17 Q What did you tell them?
- 18 A About everything that happened when the guys came in
- 19 and they busted the apartment, busted the door down.
- 20 Q Did tell them about the Black Shawn?
- 21 A Yes, ma'am.
- 22 Q Did you describe the individuals the best you could?
- 23 A Yes, ma'am.
- 24 Q Now, at some point, you were contacted by
- 25 Investigator Pegram?

1 A Yes, ma'am.

2 Q What happened when he contacted you?

3 A He asked if I would come by the office and write a
4 statement.

5 Q Did you do that?

6 A Yes, ma'am.

7 Q Did he ask you to look at any photographs?

8 A Yes, ma'am.

9 Q Did you do that?

10 A Yes, ma'am.

11 Q I want to show you what's being marked as State's
12 Exhibit Number 38 and ask if you recognize it.

13 A That's just one of the lineups they showed.

14 Q And what did you do when you saw that lineup?

15 A I picked out the person that I saw, the tall
16 light-skinned guy.

17 Q And which one was that?

18 A 99856.

19 Q And how do you know that's the one you picked?

20 A Because I put my initials on there.

21 Q Does this accurately reflect what you saw that day?

22 A Yes, ma'am.

23 MS. SAMPSON: At this time, we'd ask to introduce
24 number 38 into evidence.

25 MR. SCHNEE: Same objection.

1 THE COURT: Over the defense's objection.

2 (WHEREUPON, State's Exhibit No. 38 was admitted into
3 evidence.)

4 BY MS. SAMPSON:

5 Q That would be the tall light-skinned one?

6 A Yes, ma'am.

7 Q Not the one that hit you?

8 A No, ma'am.

9 Q Number 39, what's that?

10 A That's me signing saying that was the one I picked
11 out, 99856.

12 Q And it has your information on it?

13 A Yes, ma'am.

14 Q Does it accurately reflect what you signed that day?

15 A Yes, ma'am.

16 MS. SAMPSON: We'd ask to move number 39 into
17 evidence.

18 MR. SCHNEE: Same objection.

19 THE COURT: Over the defense's objection.

20 (WHEREUPON, State's Exhibit No. 39 was admitted into
21 evidence.)

22 BY MS. SAMPSON:

23 Q Number 34, what is that?

24 A Another lineup they showed me.

25 Q Which one -- were you able to pick one out?

- 1 A Yes, 64474.
- 2 Q How do you know that's the one you picked out?
- 3 A I put my initials on it.
- 4 Q Now, when you looked at those photographs, did you
- 5 look at it like we're looking at it?
- 6 A No. I put a piece of paper across it.
- 7 Q Can you show me how you put it?
- 8 A I put it across each person from the nose.
- 9 Q And you did that with each picture?
- 10 A Yes, ma'am.
- 11 Q Why did you do that?
- 12 A Because that's the only part that I saw during that.
- 13 Q Were you able to pick out anyone?
- 14 A Yes, ma'am.
- 15 Q Was that positive?
- 16 A Yes, ma'am.
- 17 Q Are you positive that's the person that hit you in
- 18 the head?
- 19 A Yes, ma'am, I am.
- 20 Q How certain are you of that?
- 21 A I'm 100 percent sure.
- 22 Q Does this accurately reflect this six-pack lineup
- 23 that you looked at?
- 24 A Yes, ma'am.
- 25 MS. SAMPSON: We'd ask that No. 34 be introduced into

1 evidence.

2 MR. SCHNEE: Same objection.

3 THE COURT: Over the defense's objection.

4 (WHEREUPON, State's Exhibit No. 34 was admitted into
5 evidence.)

6 BY MS. SAMPSON:

7 Q And number 35, what is that?

8 A The paper saying that I picked out 6474 -- 6474.

9 Q And it has all your information in it?

10 A Yes, ma'am.

11 Q Does this accurately reflect what you filled out that
12 day?

13 A Yes, ma'am.

14 MS. SAMPSON: We'd ask to move number 35 into
15 evidence.

16 THE COURT: Over the Defendant's objection, it's
17 admitted.

18 (WHEREUPON, State's Exhibit No. 35 was admitted into
19 evidence.)

20 BY MS. SAMPSON:

21 Q Now, Ms. Dennis, you said that you were 100 percent
22 sure when you picked out that photograph, that's the
23 person that did it.

24 A Yes, ma'am.

25 Q Do you see that person in the courtroom?

- 1 A Yes, ma'am.
- 2 Q Could you point him out for us, please?
- 3 A Yes, ma'am.
- 4 Q What does he have on?
- 5 A A black shirt.
- 6 Q How sure are you that's the same person?
- 7 A 100 percent sure.
- 8 Q Are you sure that's the person?
- 9 A I am positive.
- 10 Q That is the person that broke into your house?
- 11 A Yes, ma'am.
- 12 Q That is the person that hit you in the head?
- 13 A Yes, ma'am.
- 14 Q And you can tell that solely based on his eyes?
- 15 A Yes, ma'am.
- 16 Q Do you have any doubt about that?
- 17 A Not at all.
- 18 Q Beg the Court's indulgence.
- 19 (Pause.)
- 20 Just to be clear, did you know Black Shawn?
- 21 A No, ma'am.
- 22 Q At all?
- 23 A I don't know a Black Shawn.
- 24 Q We may use the name Sean Toran or Ricky Bowman. Did
- 25 you know those individuals before this?

1 A I had never seen them before this.

2 Q Did you know their names after the incident?

3 A When I got the papers.

4 MS. SAMPSON: No further questions.

5 THE COURT: The record reflects this witness
6 identified the defendant.

7 MS. SAMPSON: Thank you, Your Honor.

8 MR. SCHNEE: May it please the Court.

9 CROSS-EXAMINATION:

10 BY MR. SCHNEE:

11 Q Good afternoon.

12 A How are you?

13 Q Doing fine. Just want to clear up a few things, if I
14 could.

15 A Uh-huh, yes.

16 Q Do you remember what time this happened?

17 A It was at night. I don't know the exact time.

18 Q Okay. Did you remember back then what time it was?

19 A Maybe around ten.

20 Q Okay. Do you remember giving a statement to
21 Investigator Pegram at the police department?

22 A Yes.

23 (WHEREUPON, Defendant's Exhibit No. 5 was marked for
24 identification only.)
25

1 BY MR. SCHNEE:

2 Q If I could approach the witness, Your Honor.

3 Do you recognize this?

4 A Yes, this is my statement.

5 Q Okay. I know it's been almost three years ago now.

6 On the very first line, could you read what it says about
7 the date and time?

8 A 12:50.

9 Q I mean, on the actual date?

10 A Oh, 11/25.

11 Q What time does it say?

12 A Approximately 22:45.

13 Q That's not your handwriting is it?

14 A No.

15 Q Do you know what time that is for normal people?

16 A No, ma'am -- no, sir.

17 Q Did you tell the investigator what time to put down,
18 though?

19 A I told him around the time.

20 Q Okay. How many people goes in the apartment, that
21 broke in?

22 A Oh, three.

23 Q Okay. You're sure you only saw three?

24 A I only saw three.

25 Q Okay. In your statement, does it say you saw four, a

1 couple lines down?

2 A Yeah, it says four.

3 Q Did you tell the investigator four, or did he just
4 write that down wrong?

5 A I may have told him four.

6 Q Okay.

7 A But I know I remember seeing three.

8 Q Okay.

9 A When I saw something, I couldn't tell what it was.

10 Q The lighter skinned guy, was he wearing a mask at
11 all?

12 A When I seen him, no.

13 Q Okay. Did he ever come in the bedroom is that how
14 you seen him?

15 A Yeah, he came in the bedroom.

16 Q What was he doing?

17 A Looking around.

18 Q Is that near the beginning or the end?

19 A Both. He kept coming in back and forth, moving
20 around.

21 Q Okay. Now, when the -- you said the police came the
22 next day when you called them?

23 A Yes.

24 Q And they took pictures?

25 A Yes.

1 Q Did you give them a statement at that time?
2 A The police, I told them what happened.
3 Q Okay. Do you know who you talked to?
4 A I don't remember the name. I know it was a lady.
5 Q It was a lady?
6 A Uh-huh, yes.
7 Q Did they ever ask you to come to the police station
8 to do a written statement then?
9 A Yes but they took it right then. They did a police
10 report.
11 Q Okay. So they just wrote down what was said?
12 A Yes.
13 Q They didn't ask you to do a formal written statement?
14 A I think they did it later on their own and sent it to
15 me.
16 Q So they sent you a copy of the incident report?
17 A Yes, yes.
18 Q But they never asked you to sign a statement that
19 day?
20 A That day, I don't think so.
21 Q When you were at the hospital, did you tell the
22 doctors what happened?
23 A Yes.
24 Q They didn't ask you to stay there and talk to the
25 police?

1 A They asked me if I wanted to. I told them not at
2 that time.

3 Q So you didn't want to tell the police at the
4 hospital?

5 A I didn't want to tell them.

6 Q I'm asking did you want to tell them?

7 A No, not at that time. I was just wanting to get home
8 to my mother.

9 Q Okay. So you stayed in the hospital for how long?

10 A I know it was overnight.

11 Q And you left there and went where?

12 A Back to my mother's house.

13 Q Back to your mother's house?

14 A Yes.

15 Q When did you go back to your apartment?

16 A The next day.

17 Q The next day. When you left, you knew your apartment
18 was unlocked?

19 A Yeah, the door was busted through. It was unlocked.

20 Q You didn't think it was necessary to do anything
21 about that until the next day?

22 A I was in a rush. I wanted to leave and go to the
23 hospital, so I wasn't thinking about that.

24 Q Okay. What about after the hospital?

25 A I didn't go back there at all. I didn't know if I

1 was followed or not.

2 Q Okay.

3 A I wanted someone to be with me.

4 Q And when you went to the Columbia Police Department,
5 they showed you some lineups?

6 A Yes.

7 Q I believe two of them have already been shown to the
8 jury.

9 A Yes.

10 Q You saw other lineups, didn't you?

11 A Yes.

12 Q If I could approach, Judge.

13 Defense No. 1 and 2, do you recognize these?

14 A They may have been shown, too, yes.

15 Q Those were the ones that were shown to you?

16 A I think, I'm not for sure.

17 Q Okay. I'd like to ask you a little bit about the
18 description you gave of the person that had the guns in
19 your face.

20 A Uh-huh.

21 Q You saw his eyes and his eyebrows?

22 A Yes.

23 Q What was unique about his eyes that you remember?

24 A I just remember those eyes.

25 Q Were there any scars?

1 A No.

2 Q You don't remember them, or you didn't see any?

3 A I don't remember any scars. They were dilated.

4 Q Okay. Did you see any spots?

5 A Spots, no.

6 Q So you just remember they were dilated?

7 A Yes. I don't remember any spots, no.

8 Q Okay. Were there any issues with the eyebrows? Was
9 there a part missing, was there a scar there or anything?

10 A They were a little bushy.

11 Q A little bushy?

12 A Yeah.

13 Q How long after the robbers left, did you hear the
14 gunshots?

15 A Maybe a minute or so after. It wasn't long after.

16 Q Okay. Could you turn to the second page of your
17 statement for me. See if that refreshes your memory about
18 that. I know it's been a long time.

19 A It said about maybe five minutes after.

20 Q Five minutes after they left, you heard the shots?

21 A Yes.

22 Q Okay. Do you agree that your memory is probably
23 better about some of those details back then?

24 A Yes.

25 MR. SCHNEE: Okay. No further questions. Thank you.

1 THE WITNESS: You're welcome.

2 THE COURT: Any redirect?

3 MS. SAMPSON: Yes, Your Honor.

4 REDIRECT EXAMINATION:

5 BY MS. SAMPSON:

6 Q Ms. Dennis, you talked a little bit in your
7 statement. Do you still have it up there?

8 A Yes, ma'am.

9 Q You told him that he wasn't in the house, didn't you?
10 In your statement, did you tell them who was in the house?

11 A Oh yes.

12 Q Did you tell them the people came in and did stuff to
13 your house?

14 A Yes.

15 Q Did you come in and tell them about Black Shawn?

16 A Oh yes.

17 Q You told them that you got an attitude with the guy.

18 A Yes.

19 Q And that happened?

20 A Yes.

21 Q They hit you in the head?

22 A Yes, ma'am.

23 Q You told them in your statement they hit you twice,
24 and on the second time, you broke your finger?

25 A Yes, ma'am.

1 Q And you told them that the light-skinned guy started
2 apologizing?

3 A Yes, ma'am.

4 Q And that they'd return everything in two weeks?

5 A Yes, ma'am.

6 Q Is that what happened?

7 A Yes, ma'am.

8 Q "Before they left, they told us they would kill us if
9 we called the police"?

10 A Yes, ma'am.

11 Q Did you say that?

12 A Yes.

13 Q You said in your statement, "The guy that hit me came
14 back and pulled the slide back on his silver and black
15 pistol"?

16 A Yes.

17 Q Did that happen?

18 A Yes, ma'am.

19 Q He told me that he could stop my breathing?

20 A Yes, he did.

21 Q And that you were afraid to call the police?

22 A Yes.

23 Q You told them that back then. And you -- now, the
24 investigator wrote this statement for you?

25 A I asked him to.

1 Q Why?

2 A Because I couldn't write, and I was crying.

3 Q Why couldn't you write?

4 A Because I was crying at the same time, too, and
5 because of my finger.

6 Q And he asked you about going home to check on your
7 door. I show you what's been marked as State's Exhibit
8 No. 5. What is this a picture of?

9 A My busted door.

10 Q And is that what it looked like after the robbery?

11 A Yes, ma'am.

12 Q Does that accurately reflect the way it looked on
13 November 25th?

14 A After I busted in, yes, ma'am.

15 MS. SAMPSON: I'd ask to introduce number 5 into
16 evidence, Your Honor.

17 MR. SCHNEE: I'll stipulate to it.

18 THE COURT: Without objection.

19 (WHEREUPON, State's Exhibit No. 5 was admitted into
20 evidence.)

21 BY MS. SAMPSON:

22 Q Is that about right there (indicating)?

23 A Yes.

24 Q Could you lock your door when you left?

25 A No, I couldn't.

1 Q Were you concerned about that when you were in the
2 hospital?

3 A At that time, no.

4 Q What were you concerned about?

5 A Myself.

6 Q Okay. And just to be clear, who hit you in the head?

7 A Do you want me to say his name and point to him?

8 Q Yeah.

9 A Ricky Bowman.

10 MS. SAMPSON: Thank you. No further questions, Your
11 Honor.

12 THE COURT: Redirect?

13 MR. SCHNEE: Very briefly.

14 REXCROSS-EXAMINATION:

15 BY MR. SCHNEE:

16 Q The solicitor just went through all the details you
17 put in your statement, right?

18 A Yes.

19 Q You talked about the silver and black handgun.

20 A Yes.

21 Q Anywhere in your statement does it describe that you
22 only recognized eyes?

23 A Anywhere what?

24 Q In your statement, does it talk about the eyes?

25 A No.

1 Q Does it say the eyes are dilated?

2 A No.

3 Q Does it say anything about remembering the eyes in
4 any way, shape or form?

5 A On my statement, no.

6 MR. SCHNEE: All right. Thank you.

7 THE COURT: All right, ma'am. You may come down.
8 May this witness be excused?

9 MS. SAMPSON: Without objection, Your Honor.

10 THE COURT: Without objection.

11 THE BAILIFF: Watch your step right here. Watch your
12 step over there. Be careful.

13 THE WITNESS: Do you want me to leave these here?

14 THE COURT: Leave it there, yes, ma'am.

15 All right.

16 Ladies and gentlemen of the jury, we're going to take
17 our lunch break at this time. I'm going to ask you to be
18 back in the jury room at 2:15. That will give you about
19 an hour and 15 minutes.

20 Again, don't discuss the case among yourselves when
21 you return to this jury room or anywhere else over the
22 lunch break.

23 Thank you very much. We'll see you at 2:15.

24 (WHEREUPON, the jury left open court at approximately
25 1:06 p.m.)

1 THE COURT: All right. Stand at ease until 2:15.

2 Counsel, let me see you for just one second before
3 you leave the room.

4 (WHEREUPON, a lunch break was taken.)

5 Approach the bench.

6 (WHEREUPON, Defendant's Exhibit No. 6 was marked for
7 identification only.)

8 (Whereupon, there was a bench conference.)

9 MS. SAMPSON: Your Honor, we have another matter.
10 Sean Toran is our next witness. Apparently, he has some
11 issues with having a room full of people. I told them
12 based on your ruling --

13 THE COURT: He is a codefendant?

14 MS. SAMPSON: He is a codefendant and is about to
15 testify. Based and your prior rulings and asking us to do
16 affidavits of any threats that they had received, he has
17 done that with -- Mr. Li did that with Mr. Toran. It's
18 not notarized because he did it just five seconds ago.

19 THE COURT: He says he has been threatened?

20 MS. SAMPSON: He has received phone calls where
21 someone hangs up or yells at him, calls him "snitch" and
22 "faggot" and hang up.

23 THE COURT: He's in custody?

24 MS. SAMPSON: He's on bond. Because of that -- it's
25 the same thing that we did with Shamael and Deloris. I

1 have just found out about it five minutes ago so -- as far
2 as his request.

3 THE COURT: I understand this is not a case of
4 seeking anonymity as were the first two, correct?

5 MS. SAMPSON: I agree. I mean --

6 THE COURT: I know you can't. You don't take a
7 position in that. He has indicated that he has been
8 threatened, but he is a defendant. He is a codefendant.
9 He -- it's not like his identity needs to be protected or
10 his face needs to be protected. I see it as a different
11 situation.

12 MS. SAMPSON: And I understand that, Your Honor. I
13 bring it up because of the defense -- of Mr. Li's concern
14 and Mr. Toran's concern about his safety and that he would
15 feel more free in his testimony if they weren't here
16 staring him down, and I understand that.

17 THE COURT: I mean, I'm not going to close the
18 courtroom. He is a different -- in a different situation
19 than the previous two women, and you know, we've got women
20 with children and here we have a codefendant.

21 I just see them as different situations, and you
22 know, I assume you've talked to him. You know what he's
23 going to testify to. If he changes his mind, you'll just
24 have to deal with it.

25 MS. SAMPSON: That's fine, Your Honor. I was just

1 making a request for him.

2 THE COURT: I understand. All right. Are you ready
3 for the jury? Is the State ready for the jury?

4 MS. SAMPSON: Yes, Your Honor.

5 THE COURT: Ready for the jury?

6 MR. SCHNEE: Yes, Your Honor.

7 THE COURT: Bring the jury, please.

8 (WHEREUPON, the jury came into open court at
9 approximately 2:29 p.m.)

10 THE BAILIFF: The jurors are all present, Your Honor.

11 THE COURT: All right. Thank you very much.

12 All right. Solicitor, call your next witness.

13 MS. SAMPSON: The State would call Sean Toran. He is
14 coming in as we speak.

15 MR. LI: He's in the bathroom, Your Honor.

16 (Pause.)

17 THE BAILIFF: Place your left hand on the Bible.

18 MS. SAMPSON: He'll affirm.

19 SEAN TORAN, after duly affirming, testified as
20 follows:

21 THE CLERK: Thank you. Have a seat in the witness
22 stand. State your name for the record.

23 THE WITNESS: Sean Toran.

24 DIRECT EXAMINATION:

25

1 BY MS. SAMPSON:

2 Q Mr. Toran, can you spell your first name for us?

3 A It's S-E-A-N.

4 Q Where are you from?

5 A New Jersey.

6 Q New Jersey. How long have you been in South

7 Carolina?

8 A Probably about 2006 I came here.

9 Q Okay. Now, I'm going to talk to you a little bit

10 about how we know each other. All right. Have I ever

11 spoken to you about this incident?

12 A No.

13 Q You've talked to people in my office, though?

14 A Yes.

15 Q And let's just get this straight. You're charged

16 just like Ricky Bowman is, correct?

17 A Correct.

18 Q And you're charged with burglary first degree?

19 A Yes.

20 Q You're charged with armed robbery?

21 A Yes.

22 Q And you're charged with kidnapping?

23 A Yes.

24 Q And you're charged with possession of a pistol during

25 the commission of a crime?

- 1 A Yes.
- 2 Q All right. And that's for this case?
- 3 A Yes.
- 4 Q And you also have some other charges for some other
- 5 cases?
- 6 A Yes.
- 7 Q You have got an assault and battery with intent to
- 8 kill.
- 9 A Yes..
- 10 Q And you have some drug charges.
- 11 A Yes.
- 12 Q And an unlawful carrying charge.
- 13 A Yes.
- 14 Q All of those are pending?
- 15 A Yes.
- 16 Q And you're here today testifying.
- 17 A Yes.
- 18 Q Did I offer you any deal in order to get you to sit
- 19 there?
- 20 A No, you didn't.
- 21 Q Did I tell you what to say?
- 22 A No.
- 23 Q Did I tell you to come in here and say Ricky Bowman
- 24 did anything?
- 25 A No..

1 Q And did I tell you if you did that, that you would
2 get a deal?

3 A No.

4 Q Have I offered you anything to get you here today?

5 A No.

6 Q In fact, we never talked about this.

7 A No.

8 Q Has anybody in my office promised you anything in
9 order to get you to testify?

10 A No.

11 Q Now, let's be hones, you're hoping that you get
12 something out of this, right?

13 A Naturally, yes.

14 Q All right. But I haven't promised you anything.

15 A No.

16 Q All right. Now, do you know Ricky Bowman?

17 A Yes.

18 Q How do you know Ricky?

19 A Well, he stayed close to where I lived at.

20 Q And where was that?

21 A

22 Q And can you point him out for us?

23 A Right there (indicating).

24 Q What does he have on?

25 A A black shirt.

1 Q Okay. Let the record reflect the defendant has
2 identified -- I'm sorry --

3 THE COURT: The witness identified the defendant.
4 BY MS. SAMPSON:

5 Q Thank you.

6 How long have you known Ricky Bowman?

7 A Maybe a year, year-and-a-half, if that.

8 Q Before 2008, or you're saying a year-and-a-half now?

9 A Well, probably about a year, year-and-a-half. All
10 together like, you know, I knew him since 2008 probably.

11 Q So you met him right before this incident, would that
12 be fair to say?

13 A Yeah. I mean, I knew him a little bit before the
14 incident. We wasn't like buddy, buddy or nothing like
15 that.

16 Q Okay. Do your mothers know each other?

17 A Yes.

18 Q How do they know each other?

19 A They stay next door to each other.

20 Q Okay. Is that how you met Ricky, through your
21 mother?

22 A Yes.

23 Q Now, at some point, it's my understanding that you
24 were robbed.

25 A Yes.

1 Q Who robbed you?

2 A Well, I don't know the dude's name. Everybody just
3 calls him Black.

4 Q Everybody calls him Black?

5 A Yes.

6 Q And that happened before this breaking in of the
7 apartment?

8 A Yes.

9 Q Okay. And so on November 25th, were you with Ricky
10 Bowman?

11 A Yes, I was.

12 Q And what were y'all doing?

13 A We was going to the apartment.

14 Q Before then, what were you doing?

15 A Sitting around drinking.

16 Q Where were you at?

17 A

18 Q Whose apartment? Which apartment? That's an
19 apartment complex, right?

20 A Yes.

21 Q Which apartment were you in?

22 A Apartment .

23 Q And who is apartment ?

24 A Who lives in apartment ?

25 Q Yes.

- 1 A Rodney.
- 2 Q Rodney. Okay. So you all were in Rodney's
- 3 apartment?
- 4 A Yes.
- 5 Q And who all was there?
- 6 A It was me, Rodney, Bowman, and I don't know the other
- 7 guy's name.
- 8 Q Okay. And y'all were sitting around drinking?
- 9 A Yes.
- 10 Q What were you drinking?
- 11 A Gin.
- 12 Q Everybody was drinking gin?
- 13 A Yes.
- 14 Q And so you -- what happened? Did y'all -- was it
- 15 your idea to go do this or what happened?
- 16 A No. I mean, he said that he had some past -- prior
- 17 dealings with him that wasn't good, and he knew where he
- 18 stayed.
- 19 Q Who said that?
- 20 A Bowman.
- 21 Q Okay. And he said he knew where Black stayed?
- 22 A Yes.
- 23 Q Okay. Where did he tell you -- or did he tell you
- 24 where he stayed?
- 25 A He didn't -- I mean, he didn't tell us. He just said

- 1 he knew where to go.
- 2 Q So y'all agreed to go do what?
- 3 A I wanted to go and, you know, hit his -- get his head
- 4 split like I got mine split.
- 5 Q So he split your head?
- 6 A Yes.
- 7 Q Where, like on your head?
- 8 A Right there (indicating).
- 9 Q Okay. Was there a big old scar then, or was there
- 10 any scar or anything like that?
- 11 A Yeah. I had to get staples, stitches.
- 12 Q At the time of this incident, could you see your
- 13 stitches and stuff?
- 14 A I mean, the stitches was out, but you could still see
- 15 the scar.
- 16 Q Okay. So you wanted to go get him back?
- 17 A Yeah.
- 18 Q All right. So you agreed to go with Ricky to where
- 19 Ricky thought he was?
- 20 A Yeah.
- 21 Q And who drove?
- 22 A Rodney.
- 23 Q Who?
- 24 A Rodney.
- 25 Q Rodney drove. Whose car did he drive?

1 A His girlfriend's car.

2 Q Okay. So y'all went to where?

3 A To Broad River, complex.

4 Q Okay. Do you remember the name of the complex?

5 A Pine Brook, Oak Brook, something.

6 Q Okay. Did you live over there?

7 A No.

8 Q So are you familiar with that area?

9 A No.

10 Q Okay. So you go over there. What happens when you
11 get there?

12 A When we get there, he said basically he knows the
13 guy. He had dealings with him, and he believed that his
14 baby's mama and his girlfriend stayed in the apartment.

15 Q Okay. I'm going to slow you a down a little. You
16 talk a little fast.

17 A Oh. He stayed he believed that his baby mama,
18 girlfriend, I'm not sure which --

19 Q And at that apartment complex?

20 A Yeah.

21 Q And he picked the apartment that y'all went into?

22 A Yes.

23 Q Okay. And what was everybody wearing? Do you
24 remember?

25 A Hoods, masks. I had a zipper that came up here and a

1 hood. Everybody else had bandannas and hoods.

2 Q So you didn't have a bandanna?

3 A I had a zip up.

4 Q Okay. So what happened? Did y'all -- how did y'all
5 get in?

6 A On three, he kicked the door. He went in. I
7 followed him. The other two stayed in the living room.

8 Q What did you all say when you went in?

9 A When we first went in, it was like, "Everybody get
10 down".

11 Q And when you went in, what did you -- what, if
12 anything, did you realize when you got in?

13 A I mean, when I first -- you know, looked around the
14 apartment, it didn't seem like, you know, the apartment
15 that I would be -- that -- it didn't fit the description
16 of the person we were looking for.

17 Q Why did you say that?

18 A Because it looked more like a home instead of, you
19 know, like a pad that a grown man lived in.

20 Q What would you have expected? I think you said a pad
21 that a grown man lived in. What would you expect?

22 A I mean, PlayStation, dishes in the sink.

23 Q And you didn't see that?

24 A No.

25 Q What did you see?

1 A I mean, I seen a woman sitting down with a kid in a
2 quiet home.

3 Q Now, you did say that he thought it was the baby's
4 mama or the girlfriend. So were you surprised when there
5 was a kid there?

6 A Yeah, I mean, I was.

7 Q So you go in, and what happens once y'all get in?

8 A Well, first we went in, you know, he shot right to
9 the back room. I followed him. I went in there. He told
10 me a couple of the guys already told him to get on the
11 ground. He was questioning one of the females.

12 Q What was he asking her?

13 A If she knew Black.

14 Q And what did she say?

15 A She was saying she didn't know him.

16 Q So then what happened?

17 A I mean, I'm pretty sure she didn't know him. I mean,
18 you have a gun in your face, and I mean, there's other
19 things you could have said like, "He's not here" or
20 something of that nature. I told him, you know, "I think
21 we're in the wrong house. Let's go."

22 Q So you believed them when they said they didn't know
23 Black?

24 A Yeah.

25 Q Okay. And was everybody armed?

1 A Yes.

2 Q Everybody got a weapon?

3 A Yes.

4 Q Including yourself?

5 A Yes.

6 Q What were you carrying?

7 A I had a black pistol, probably a .380 or a nine
8 millimeter, I'm not sure.

9 Q Okay. And what was Ricky Bowman carrying, do you
10 know?

11 A I believe he had a .22.

12 Q Okay. And the other two, what were they carrying?

13 A A shotgun and a nine.

14 Q Let's get this straight. Who were the other two?

15 A Well, I don't know the other guy. I only know
16 Rodney.

17 Q So Rodney was with you guys?

18 A Yeah, but I don't know the other guy's name.

19 Q You didn't know the other guy. How did the other guy
20 get involved?

21 A I mean, he deals with Bowman, but I don't know his
22 name.

23 Q So he was -- would you say he's a friend of Ricky's?

24 A Yeah.

25 Q So you all are in there, and all of you have guns.

- 1 At any point, does your face become uncovered?
- 2 A I mean, not to my knowledge, but it could have.
- 3 Q It could have?
- 4 A Possibly.
- 5 Q And what did you say while you were in there?
- 6 A Well, I told him, you know, "Let's go".
- 7 Q Did you ever apologize to everybody?
- 8 A I mean, after the girl was struck, you know, that
- 9 wasn't part of the plan or that wasn't supposed to happen.
- 10 Q That wasn't supposed to happen. Was it your idea to
- 11 hit her?
- 12 A No.
- 13 Q Who hit her?
- 14 A Bowman.
- 15 Q Did he say why he hit her?
- 16 A No.
- 17 Q Did he tell you --
- 18 A Maybe he didn't like the answer, or he thought she
- 19 was lying. I'm not sure.
- 20 Q Okay. But he hit her?
- 21 A Yeah.
- 22 Q What did he hit her with?
- 23 A The gun.
- 24 Q Okay. And after that, did you have a problem with
- 25 that?

- 1 A Yes, I did.
- 2 Q So what did you do?
- 3 A I mean, after the first impact I heard, I turned
4 around. That's when I seen him about to strike her again,
5 and he hit her. You know, the clip fell out of the gun,
6 so you know, I picked it up. I grabbed him so we could
7 go.
- 8 Q Okay. And I think -- I just want to make sure I
9 understand. You said you didn't see him hit her the first
10 time, but you saw it the second time?
- 11 A Yeah.
- 12 Q So after he hit her, what happened?
- 13 A Well, he went and he grabbed the gun that was laying
14 on the closet floor, picked it up and brought it out to
15 the living room.
- 16 Q Okay. And then what happened?
- 17 A He brought him out to the balcony.
- 18 Q Could you hear what was going on in the balcony?
- 19 A No.
- 20 Q Okay. So did you hear this conversation between
21 Ricky and the guy on the balcony?
- 22 A No.
- 23 Q And let he just be clear. Did you know any of the
24 people in the room?
- 25 A No, I did not.

1 Q You knew none of the victims?

2 A No.

3 Q Okay. So after they took them off the balcony, what
4 happened?

5 A Well, he brought him in. He brought him back towards
6 the other end of the living room, told him to get down.
7 Then we went over to the other female and told her to put
8 her baby down.

9 Q And did she?

10 A No.

11 Q Okay. What did you do when he told her that?

12 A Well, I grabbed him and pushed him out of the
13 apartment.

14 Q Okay. Did you ever apologize about what was going on
15 to them?

16 A Yeah. I mean, I'm not sure what the exact words I
17 said, but you know, I was -- you know, that wasn't
18 supposed to happen.

19 Q And you all left?

20 A Yes.

21 Q Were any shots fired after you left?

22 A Yes.

23 Q Okay. And -- but you weren't shooting at anyone?

24 A Excuse me?

25 Q No one was shot that night?

1 A No.

2 Q Okay. And when the shots were fired, you didn't
3 shoot at anybody, any person?

4 A No.

5 Q Okay. After you left the apartment, where did y'all
6 go?

7 A Back to

8 Q Okay. Which apartment? Did you go back to Rodney's
9 or did you --

10 A Yeah.

11 Q Because you lived in that apartment complex, too,
12 right?

13 A Yes.

14 Q Okay. What happened to the item -- what had you
15 taken from the apartment?

16 A Well, I didn't take anything. From my knowledge,
17 Bowman didn't take anything either.

18 Q Okay.

19 A The other guys took it.

20 Q The other guys took stuff?

21 A We told him to leave it, but he still took it.

22 Q He still took it. All right. You didn't make him
23 give it back before you left?

24 A I mean, I told him to put it down, but his
25 fingerprints were on it.

- 1 Q Okay. And do you know Torrell Johnson?
- 2 A Yes.
- 3 Q Who is Torrell Johnson?
- 4 A He was -- for lack of a better word, he was a junkie
- 5 that stayed in that apartment.
- 6 Q He stayed in that same complex at
- 7
- 8 A Yes.
- 9 Q And you say he stays in apartments ?
- 10 A Yes.
- 11 Q Do you know if he was ever told about this robbery?
- 12 A Probably so. Yeah, him and Rodney had a good deal
- 13 with each other.
- 14 Q Him and Rodney knew each other well?
- 15 A Yeah.
- 16 Q What, if anything, do you know about Torrell having
- 17 ID?
- 18 A I mean, he likes to do identity theft. He likes to
- 19 get IDs, put them in people's names, go to Rent-a-Center,
- 20 get stuff and sell it.
- 21 Q It wouldn't be unusual for him to have an ID that's
- 22 not his?
- 23 A Yes.
- 24 Q I'm sorry, you have to say it.
- 25 A Yes.

1 Q Now, you were arrested in connection with this,
2 correct?

3 A Yes.

4 Q Okay. And you were charged, as we already went over.

5 A Yes.

6 Q And at some point, you were arrested right after this
7 happened, a couple of weeks right after, correct?

8 A Huh?

9 Q You were arrested just a couple of weeks after the
10 incident.

11 A Probably 7:30, something like that.

12 Q At some point, you found out that Ricky was arrested.

13 A Yes.

14 Q Did you at any point tell or relay to him that you
15 weren't going to testify?

16 A Yes.

17 Q And why did you do that?

18 A Because I have a mother on the street.

19 Q You had a mother. What does that have to do with you
20 testifying?

21 A Huh?

22 Q What does your mother being on the street have to do
23 with you testifying against Ricky?

24 A I mean, that's her well being. I mean, people
25 probably can't get to me, but they can get to a family

1 member.

2 Q So were -- I feel can't put words in your mouth.

3 Were you scared for your mother or were you -- I need to
4 understand.

5 A Of course, I wouldn't want anything to happen to my
6 mother in my name.

7 Q And so you said that you would not testify?

8 A Yes.

9 Q In fact, you wrote a statement that said, "I know
10 nothing about the charges pending against Ricky Bowman and
11 myself. Therefore, I cannot and will not be able to
12 testify. I was not threatened, bribed or asked to write
13 this statement"?

14 A Yes.

15 Q And you signed it?

16 A Yes, I did.

17 Q Was that true?

18 A No.

19 Q Was it true that you know nothing about this?

20 A I know everything about this.

21 Q Okay. And why did you sign this?

22 A Same good reason.

23 Q I need you to say why did you do it.

24 A For safety reasons, my family.

25 Q Safety reasons. I'm sorry. I thought you said for

1 the same reason.

2 A No.

3 Q And you said for your family. Do you have any
4 children?

5 A Yes, I have a daughter.

6 Q How old is she?

7 A Three.

8 Q Three, all right. And you also -- you actually
9 talked to Ricky about this, correct?

10 A What?

11 Q You talked about whether you were going to testify or
12 not.

13 A Probably so. I mean...

14 Q And did you tell him you were not going to testify?

15 A Yes.

16 Q And why were you telling him that?

17 A I mean, that way he couldn't tell somebody else
18 something.

19 Q In fact, you wrote a letter to him about your case
20 and the evidence in your case, didn't you?

21 A Probably so, yes.

22 Q Okay. And you said then you weren't going to
23 testify?

24 A Yeah.

25 Q But you're here today?

1 A Yeah.

2 Q Why are you here today?

3 A Like I said, a lot of things that happened that night
4 wasn't supposed to happen. I don't agree with what
5 happened that night. It was just a mistake that should
6 have never got bigger than it was.

7 Q And today, are you telling the truth about what
8 happened?

9 A Yes.

10 Q So when you denied knowing anything, was that a truth
11 or a lie?

12 A A lie.

13 Q Today are you telling me the truth?

14 A Yes.

15 Q And today you are telling me Ricky Bowman hit that
16 woman on the head?

17 A Yes.

18 Q And that you and Ricky Bowman and Rodney and a third,
19 fourth person, took stuff from their house?

20 A Yes.

21 Q Is there any doubt in your mind that you and Ricky
22 did that?

23 A No.

24 Q Beg the Court's indulgence.

25 (Pause.)

1 I just want to be clear. When you all went back to
2 the apartment after all of this had happened, when you
3 went back to , did Ricky go with you?

4 A Yes.

5 Q How long did y'all stay together afterwards?

6 A An hour, two hours.

7 Q And so he would have left around one or two in the
8 morning?

9 A Possibly. I don't keep tabs on him.

10 Q You weren't looking at a watch, is that fair to say?

11 A Yes.

12 MS. SAMPSON: No further questions, Your Honor.

13 THE COURT: Cross-examination?

14 MR. SCHNEE: May it please the Court.

15 CROSS-EXAMINATION:

16 BY MR. SCHNEE:

17 Q Good afternoon. So you're here testifying because
18 you don't agree with what happened?

19 A Excuse me?

20 Q You're here testifying today because you don't agree
21 with what happened three years ago, right?

22 A Yes..

23 Q Okay. Because you want justice, right?

24 A Not so much justice. I'd say more like forgiveness.

25 Q You want forgiveness?

1 A Yes.

2 Q Okay. When did you meet with the solicitors to
3 discuss your version of the story?

4 A I didn't meet with her.

5 Q Anyone from her office?

6 A Last week or something like that. I'm not sure what
7 day it was.

8 Q Okay. So for three full years, you say nothing.
9 Then last week, you decide you want to come clean.

10 A Yeah.

11 MR. SCHNEE: Okay. Approach the witness, Your Honor?

12 THE COURT: Sure.

13 BY MR. SCHNEE:

14 Q Defense number 6. Do you recognize this?

15 A Yep.

16 Q That's your affidavit?

17 A Yeah.

18 Q With your signature?

19 A Yes.

20 Q That says you don't know anything about the charges.

21 A Yes.

22 Q And it says you're not going to testify because you
23 don't know anything.

24 A Yes.

25 Q That's a sworn statement?

- 1 A Yes, it is.
- 2 Q And you knew you had to tell the truth then, right?
- 3 A Yes.
- 4 Q But now you're saying it's a lie?
- 5 A Yes.
- 6 Q But you're telling the truth today?
- 7 A Yes.
- 8 Q Okay. Let's talk about December of 2008. You were
- 9 arrested for drug charges, right?
- 10 A Yes.
- 11 Q Distribution of crack?
- 12 A No possession of crack.
- 13 Q Possession with intent to distribute crack.
- 14 A No. I believe it was just possession.
- 15 Q Okay. You were charged with a second offense
- 16 possession?
- 17 A No. That's a first offense possession of marijuana
- 18 and cocaine.
- 19 Q First offense, okay. And you're also charged with
- 20 possession of a sawed off shotgun, right?
- 21 A Correct.
- 22 Q Okay. Also possession of crack within proximity of a
- 23 school?
- 24 A Yes.
- 25 Q Okay. Let's start with this, the shotgun charge.

1 Now, your lawyer is sitting in the courtroom right over
2 there, right?

3 A Yes.

4 Q You talked extensively about your case with him?

5 A Yes.

6 Q Okay. He has explained what you're facing on each
7 charge, right?

8 A Yes.

9 Q You know you're facing up to ten years for that,
10 right?

11 A For what?

12 Q The sawed off shotgun charge.

13 A Yeah, basically, yes.

14 Q Okay.

15 A If convicted, yes.

16 Q Now, your drug charge, he told you you're facing up
17 to 30 years, right?

18 A For possession of cocaine.

19 Q You're charged with, according to the police reports,
20 possession with intent to distribute. Are you disputing
21 that now?

22 A I don't remember that. I'm not sure when. It says
23 possession of cocaine.

24 Q Okay. Let's just move on. The burglary charge,
25 you're charged with burglary first, right?

- 1 A Yes.
- 2 Q You know you're facing up to life on that.
- 3 A Yes.
- 4 Q A minimum of 15 years.
- 5 A Yes.
- 6 Q You know that 15 years is a mandatory minimum, right?
- 7 A Yes.
- 8 Q So no matter what happens, you have to spend 15 years
- 9 in prison for that?
- 10 A Correct.
- 11 Q Okay. You're charged with armed robbery?
- 12 A Yes.
- 13 Q And you were told that is ten to 30 years, right?
- 14 A Yes.
- 15 Q A minimum of ten?
- 16 A Yes.
- 17 Q You're charged with kidnapping?
- 18 A Yeah.
- 19 Q And you're facing up to 30 years in prison for that?
- 20 A Correct.
- 21 Q You also have a possession of a firearm during the
- 22 commission of a violent crime?
- 23 A Yes.
- 24 Q Okay. Another five years?
- 25 A Yes.

1 Q Mandatory consecutive.

2 A Yes.

3 Q So even ignoring those -- oh, I'm sorry. We have got
4 one more. You have a separate arrest for assault and
5 battery with intent to kill.

6 A Something unrelated to this.

7 Q All right. That's still pending, right?

8 A Yeah.

9 Q That's another 20-year sentence you're looking at.

10 A If convicted.

11 Q If you're convicted.

12 A Yeah.

13 Q So it looks like you're -- assuming you get convicted
14 of all of those, and you already admitted to guilt for
15 burglary, armed robbery, kidnapping of possession of a gun
16 during a violent crime, you're looking at -- let's see.
17 Is that -- life plus 95 years?

18 A Yes.

19 Q Okay. Do you want to spend life plus 95 years in
20 jail?

21 A I don't think anybody does.

22 Q Okay. You're just going to do anything you can to
23 get that reduced, aren't you?

24 A No.

25 Q Oh, you mean you're not going to lie.

1 A I'm not lying.

2 Q Okay. Well, but were lying before when you signed an
3 affidavit, right?

4 A Anybody would for the safety of their family.

5 THE COURT REPORTER: I'm sorry, I didn't hear your
6 response.

7 THE WITNESS: Anybody would for the safety of their
8 family.

9 BY MR. SCHNEE:

10 Q Okay. Safety of your family. Are you not concerned
11 about your family now?

12 A Well, my family has arrangements with people.

13 Q Oh and now you're moving. That happened last week,
14 too?

15 A Arrangements are being made, yes.

16 Q Okay. Just all of the sudden last week?

17 A Not all of the sudden.

18 Q All right. When you were robbed by Black Shawn, you
19 talked to the police about that?

20 A I talked to them about that. They came to the scene.

21 Q Okay. What did you tell them?

22 A I didn't know the guy.

23 Q You didn't know the guy?

24 A Yes.

25 Q Did you ever try to cooperate and try to give any

1 information about that?

2 A I didn't have any information to give.

3 Q You never described what he looks like?

4 A Yes.

5 Q Oh, what was your description?

6 A When he asked me, I told him he was a dark-skinned
7 guy, kind of heavy set.

8 Q Dark-skinned guy, kind of heavy set. Okay. Did you
9 ever refuse to give a written statement about it?

10 A I never had to, went to the hospital.

11 Q So the police never asked you to do a written
12 statement?

13 A I don't remember, sir.

14 Q All right. Let's start with what happened that
15 night, according to your version. So you're at Rodney's
16 apartment?

17 A Yes.

18 Q Were you at your apartment before that?

19 A I don't know where I was before that.

20 Q You don't know where you were before that. You just
21 remember at Rodney's apartment?

22 A Yes.

23 Q Okay. You were with him alone or other people there?

24 A I mean, there's always people in and out.

25 Q Who was there?

- 1 A It was me, Rodney, Bowman and the other guy.
- 2 Q Okay. The other guy?
- 3 A Yeah.
- 4 Q You don't know who that is?
- 5 A I don't know.
- 6 Q Okay. Did you ever talk to the police about who the
- 7 other guy could have been, ever tried to do a lineup?
- 8 A What do you mean, photo lineup?
- 9 Q For the fourth guy.
- 10 A Oh, no.
- 11 Q Okay. In fact, you never talked to any law
- 12 enforcement officer about this. You just talked to staff
- 13 at the solicitor's office last week, right?
- 14 A Yes.
- 15 Q Well, so you got to Rodney's apartment and they were
- 16 all there or you were there first?
- 17 A I'm not sure who was there first. We was playing
- 18 cards.
- 19 Q Okay. You don't know if you got there before or
- 20 after them?
- 21 A I'm not sure.
- 22 Q You said you left and Rodney drove?
- 23 A Excuse me?
- 24 Q When you left the apartment, you said Rodney drove.
- 25 A Yes.

- 1 Q Okay. In his girlfriend's car?
- 2 A Uh-huh.
- 3 Q What kind of car is that?
- 4 A I don't know.
- 5 Q What color is it?
- 6 A Black.
- 7 Q Black car. Now you know that.
- 8 A I know it was black. What kind of car it was, I felt
- 9 wasn't too important then.
- 10 Q Okay. Where were you sitting?
- 11 A Passenger's seat.
- 12 Q Front passenger?
- 13 A Yes.
- 14 Q All right. Where is everybody else sitting?
- 15 A Driver's seat and the backseat.
- 16 Q Driver's seat and backseat. All right. Who was
- 17 sitting where?
- 18 A I was sitting in the passenger's seat. I'm not sure
- 19 what the arrangement was in the back but --
- 20 Q Okay. Well, there is Ricky Bowman, according to you,
- 21 and another guy. Was he on the left or the right side of
- 22 the car?
- 23 A It was three years. I don't remember who was on
- 24 which side of the car.
- 25 Q You don't remember?

- 1 A No.
- 2 Q Okay. When you got there, the other three were
- 3 wearing bandannas?
- 4 A Yes.
- 5 Q Okay. Were they wearing bandannas the whole night?
- 6 A I'm not sure.
- 7 Q Where were you keeping the bandannas?
- 8 A They kept them in the back pocket.
- 9 Q They kept them in the back pocket?
- 10 A Yeah.
- 11 Q Okay. And they put them on at what point?
- 12 A Going in.
- 13 Q Going upstairs, when you're kicking in the door?
- 14 Where are they putting on?
- 15 A When they get out of the car, going towards the
- 16 stairs. I mean, none of them put them on at the same
- 17 time.
- 18 Q Okay. Well, who put it on first?
- 19 A I don't know.
- 20 Q Who put it on second?
- 21 A Not me.
- 22 Q So you just don't remember any of these little
- 23 details?
- 24 A I mean, when they put the bandanna on, no.
- 25 Q Yeah.

1 A I mean, when they got to the door, their bandannas
2 was on. My man was there.

3 Q Okay. What color bandannas were they wearing?

4 A Two -- two black. I'm pretty sure one was burgundy,
5 though.

6 Q Okay. Who kicked in the door?

7 A Bowman.

8 Q And he is the first one to go in then?

9 A Yes.

10 Q Okay. You said -- you said Ricky is the one that
11 starts asking people about Black Shawn, right?

12 A Yes.

13 Q You're the one who has a problem with Black Shawn,
14 though, isn't it?

15 A He had a problem with him, too, is my understanding.

16 Q Well, you're the one that got hid in the head with a
17 gun by him, right?

18 A But I don't know his name.

19 Q But you went there with the intent to find him,
20 didn't you?

21 A Yeah.

22 Q Because you wanted to do the same to him?

23 A Yes.

24 Q So the other guys took purses?

25 A Yes.

- 1 Q All right. What did you do with them?
- 2 A They took them. I didn't.
- 3 Q Okay. Well, did you have them in the car with you?
- 4 A I mean, they had them, yeah.
- 5 Q Are you sure? Where did they put the purses in?
- 6 A They put them in -- I don't know where they put them.
- 7 They took them.
- 8 Q So they grabbed the purses and left?
- 9 A Yeah. That's why I said, "Put them down." They
- 10 didn't want to leave fingerprints.
- 11 Q Okay. Did they put them in a bag of any kind?
- 12 A I wasn't paying any attention to that.
- 13 Q So you're in the wrong apartment. You're apologizing
- 14 and you're not paying attention to what the other people
- 15 are doing?
- 16 A Yes.
- 17 Q That's your testimony?
- 18 A Yes.
- 19 Q When you left the apartment that you're breaking
- 20 into, where did you go again?
- 21 A
- 22 Q Okay. All four of you?
- 23 A Yes.
- 24 Q What did you do?
- 25 A I don't remember.

1 Q You don't remember what you did when you got back to
2 the apartment?

3 A Huh-uh, just hung around.

4 Q You just hung around?

5 A Yeah.

6 Q Did you yell at anyone? Did you yell at Ricky for
7 hitting someone in the head?

8 A I spoke about it on the way.

9 Q Okay. Now you remember that, but you didn't a second
10 ago?

11 A I spoke about that in the house. I don't tell they
12 was bleeding, you know, man?

13 Q No. I'm talking about back at Washington Street or
14 in the car. You didn't talk about any of that?

15 A I mean, we talked. It was almost three years ago.
16 I'm not sure of the exact conversation.

17 Q Okay. Well, what did you do with the cell phones?

18 A Like I said, I couldn't tell you what happened. I
19 didn't take anything.

20 Q You didn't take anything. You didn't get any of the
21 money afterwards either?

22 A I wasn't the one that took it.

23 Q They just -- okay. When you got back to the car, who
24 was driving?

25 A Rodney.

1 Q Where were you sitting?
2 A I was in the passenger's seat.
3 Q In the front?
4 A Yeah.
5 Q All right. Where was Ricky sitting?
6 A He was behind me.
7 Q Oh. Now you remember he was behind you on the way
8 out?
9 A Of course, I remember that.
10 Q But you don't remember where he was sitting on the
11 way there?
12 A It wasn't significant.
13 Q It's significant knowing where he is when you leave
14 but not when you're going there?
15 A Yes, because we're leaving, when he left, he shot the
16 gun right behind my head.
17 Q Right behind your head. So he shot from inside of
18 the car?
19 A Yes.
20 Q Oh, that's interesting. When did you tell the
21 solicitors that?
22 A Excuse me?
23 Q When did you tell the solicitor's office that?
24 A Well, I spoke to a lady, and she asked me and I said
25 the same thing.

1 Q So you said to the lady in the solicitor's office
2 that he fired from within the car?

3 A Yeah, hanging out the window.

4 Q Okay. How many times did he fire?

5 A I'm not sure.

6 Q Well, what was he shooting at then?

7 A He was shooting at a car.

8 Q Whose car?

9 A A silver car.

10 Q Why?

11 A He thought it was Black Shawn.

12 Q Why would he think it's Black Shawn's?

13 A Because he knows the guy.

14 Q Okay. What did you do when he was shooting? Were
15 you sitting there?

16 A I was putting my head forward. We were driving.
17 What can I do.

18 Q Okay. When did you tell the solicitor's office that
19 you went to -- that you started at

20 A Excuse me?

21 Q You started at that night,
22 right?

23 A Uh-huh.

24 Q When did you tell the solicitor's office that?

25 A Last week, a few days ago.

- 1 Q Well, how many times did you meet with them?
- 2 A Once.
- 3 Q Okay. You told them last week?
- 4 A I'm not sure of the exact date.
- 5 Q Today is Tuesday.
- 6 A Tuesday. I might have spoken like Wednesday,
- 7 Thursday.
- 8 Q Okay. And that's the information you gave her?
- 9 A Yes, sir.
- 10 Q And you told her where everyone was sitting in the
- 11 car?
- 12 A I'm not sure if she asked.
- 13 Q You told her it was Rodney's car?
- 14 A I said his girlfriend's car.
- 15 Q You said what?
- 16 A I said his girlfriend's car.
- 17 Q His girlfriend's car. You said Rodney was driving?
- 18 A Yes.
- 19 Q You said Rodney participated in this?
- 20 A Yes.
- 21 Q Okay. And that there's no doubt it's another guy.
- 22 You just don't know who he is?
- 23 A Yes.
- 24 Q Okay. Did they ever ask you Rodney's last name?
- 25 A Yes, they did.

- 1 Q Oh, they did. What's his last name?
- 2 A Pierre.
- 3 Q Okay. And you just gave them that information last
- 4 week?
- 5 A Yes.
- 6 Q Did you do a written statement with them?
- 7 A No.
- 8 Q Why not?
- 9 A No one asked me to write it.
- 10 Q No one asked you to give a written statement after
- 11 three years when you're finally coming up with all of
- 12 this?
- 13 A No one asked me the first day.
- 14 Q What do you mean no one asked you the first day?
- 15 A No police officer ever came and asked me if I wanted
- 16 to write a statement or anything like that.
- 17 Q Okay. So the police never wanted to question you
- 18 about this burglary?
- 19 A I mean, that's -- I was in jail at the time, and
- 20 nobody ever came to see me.
- 21 Q Did you ever offer?
- 22 A No.
- 23 Q Oh, well, now you're offering three years later.
- 24 A Excuse me?
- 25 Q Now, you're offering three years later.

- 1 A Yes.
- 2 Q When you're facing life plus 95 years.
- 3 A That's not the reason.
- 4 Q Oh, well you mean you want to go to prison for life
- 5 plus 95?
- 6 A No. I'm not saying I have a deal. I have no deal.
- 7 I'm still facing that now after this testimony.
- 8 Q Okay.
- 9 A So nothing has changed.
- 10 Q All right. Do you have any tattoos?
- 11 A Yes.
- 12 Q On your neck?
- 13 A Yes.
- 14 Q If you could, please stand and show the jury.
- 15 A (Complies.)
- 16 Q Beg the Court's indulgence.
- 17 (Pause).
- 18 Why did Black Shawn try to rob you?
- 19 A I'm not sure.
- 20 Q You have no idea?
- 21 A No.
- 22 Q None at all?
- 23 A No.
- 24 Q So some random guy comes and robs you, hits you in
- 25 the head with a gun?

- 1 A Well, it was my understanding it wasn't so much to
2 rob me. They wanted what was in apartment .
- 3 Q I'm sorry?
- 4 A They wanted what was in apartment .
- 5 Q What was that?
- 6 A Guns.
- 7 Q Okay. But you weren't in apartment , were you?
- 8 A No.
- 9 Q Where were you?
- 10 A I was out front.
- 11 Q You were out front?
- 12 A Of apartment , yes.
- 13 Q Okay. So he just randomly came up and hit you in the
14 head with a gun?
- 15 A Yes.
- 16 Q And then broke into apartment ?
- 17 A Yes.
- 18 Q All right. Who else was there?
- 19 A You mean other than him?
- 20 Q Other than him, who else was at apartment ?
- 21 A He was with some other guy I don't know either.
- 22 Q Okay. Well, apartment is Rodney's?
- 23 A Yeah.
- 24 Q All right. Was Rodney home at the time?
- 25 A No. He was down the hall or down the way.

1 Q Are you going to tell Rodney this?

2 A I'm going to tell him. I had a gun pointed at me at
3 the time.

4 Q I mean after they left.

5 A Yeah, after they left, everybody.

6 Q Everybody. Okay. But you just didn't want to file a
7 police report?

8 A Excuse me?

9 Q You just didn't to want to file a police report,
10 though?

11 A I mean, I went to the hospital right after that.

12 Q Okay. And you left. Just to make sure, your
13 testimony is the police never tried to get a written
14 statement from you about that?

15 A Not that I remember.

16 MR. SCHNEE: Not that you remember. Thanks.

17 THE COURT: Redirect?

18 MS. SAMPSON: Yes, Your Honor.

19 REDIRECT EXAMINATION:

20 BY MS. SAMPSON:

21 Q All right. Sean, when Mr. Schnee was asking you, you
22 said you weren't the only one that had a problem with
23 Black Shawn?

24 A Yes..

25 Q So to your knowledge, Mr. Bowman had a problem with

1 him?

2 A Yes.

3 Q Do you know what that problem was?

4 A I mean, he said something about some things they had
5 set up didn't go right.

6 Q But he had problem with Black Shawn?

7 A Yes.

8 Q And did he seem unwilling to do anything to Black
9 Shawn when that came up that night?

10 A No. I mean, he was more agitated than anybody.

11 Q He was more agitated -- was he more agitated than
12 you?

13 A Yes.

14 Q Okay. And let's just talk about this. You are still
15 looking at ten years for the shotgun possession, correct?

16 A Correct.

17 Q You're still looking at 15 years to life?

18 A Yes.

19 Q You're still looking at ten years to 30 years in
20 armed robbery?

21 A More so.

22 Q And you're looking at 30 years for kidnapping?

23 A Yes.

24 Q And you're looking at five for possession of the gun?

25 A Yes.

1 Q And 20 for the assault and battery with intent to
2 kill?

3 A Yes.

4 Q And you've now -- you've now told us all that you did
5 the one, the burglary first degree that carries 15 years
6 to life.

7 A Yes.

8 Q So if you were to go to trial, I could use this
9 against you, couldn't I?

10 A Yes.

11 Q And you told us anyway. You told us what you did
12 anyway.

13 A Oh yes.

14 Q So you told me that you broke into Delores Dennis'
15 apartment, even though now I could convict you easily of
16 15 years to life.

17 A Yes.

18 Q Is that what happened?

19 A Yes.

20 Q And you told us that you committed an armed robbery
21 against Delores Dennis, and now you're looking at ten
22 years to 30 years to life?

23 A Yes.

24 Q And I could easily convict you because you've
25 admitted it.

- 1 A Yes.
- 2 Q Before today, you were looking at kidnapping for 30
- 3 years to life, and you never said you had done anything,
- 4 had you?
- 5 A (Indicating in the negative.)
- 6 Q I'm sorry, you need to say it out loud.
- 7 A No.
- 8 Q Before today, there was no statement from you that
- 9 you had done anything.
- 10 A No.
- 11 Q I couldn't use any statement against you, could I?
- 12 A No.
- 13 Q Today now I can, can't I?
- 14 A Yes.
- 15 Q Now, did you commit these crimes you admitted to
- 16 doing with Ricky Bowman?
- 17 A Yes.
- 18 Q Was he a willing participant?
- 19 A Yes.
- 20 Q Did you make him do it?
- 21 A No.
- 22 Q Are you 100 percent sure he did it with you?
- 23 A Yes.
- 24 Q And are you in here telling the truth today?
- 25 A Yes.

1 Q Even though now you're looking at 90 years plus?

2 A Yes.

3 MS. SAMPSON: No further questions, Your Honor.

4 THE COURT: Recross?

5 MR. SCHNEE: Briefly, Your Honor.

6 RECROSS-EXAMINATION:

7 BY MR. SCHNEE:

8 Q You're aware that this woman right there is the woman
9 who decides whether she gets you a deal, right?

10 A I'm not.

11 Q You never talked about that with your lawyer? She is
12 prosecuting you, right?

13 A Yes.

14 Q So she is obviously the one that decides if you're
15 going to get a deal?

16 A I guess so, yeah.

17 MR. SCHNEE: All right.

18 THE COURT: All right, sir. You may come down.

19 This witness be excused?

20 MS. SAMPSON: Without objection from the State.

21 MR. SCHNEE: Without objection.

22 THE COURT: You may be excused.

23 MS. SAMPSON: Thank you, Your Honor.

24 WILLIAM PEGRAM, after being duly
25 sworn, testified as follows:

1 THE CLERK: State your name for the record.

2 THE WITNESS: William Pegram.

3 DIRECT EXAMINATION:

4 BY MS. ALL:

5 Q Pegram, will you please state your position?

6 A Yeah. I'm currently the supervisor of the violent
7 crimes unit for the City of Columbia.

8 Q And what is your occupation?

9 A Law enforcement.

10 Q And you're a sergeant, you said?

11 A I am.

12 Q And what law enforcement agency are you with?

13 A Columbia Police.

14 Q How long have you been with the Columbia Police
15 Department?

16 A Eighteen years with the city but 28 total.

17 Q And what did you do before that?

18 A Military police assigned to NASA, then when I tested
19 from the military, I came to be in law enforcement. I
20 worked West Columbia. Then I worked Aiken County, and
21 then I came from Aiken County up here.

22 Q Were you a sergeant on November 25th, 2008?

23 A No, I was not.

24 Q In what capacity were you employed on that day?

25 A I was an investigator for the violent crimes unit.

1 Q And now you're a sergeant with the violent crimes
2 unit?

3 A That's correct.

4 Q And what kind of training have you had in your
5 capacity as law enforcement and secondly, in your capacity
6 as violent crimes?

7 A Well, there's a lot. Initially, I began with a thing
8 called BDRA, Basic Data Recovery and Analysis. Then I
9 went into IDRA, which is Intermediate Data Recovery and
10 Acquisition for computer crimes.

11 From there, I was recruited by the FBI. I spent a
12 year as a federal agent with the FBI doing computer crimes
13 investigating the GKB blood gang members.

14 When I finished that investigation, I came back to
15 Columbia as a violent crimes investigator. I attended
16 courses on pathology for death investigation, manner and
17 mechanism of death investigation, crime scene
18 investigation, fingerprints, basic detective. I've been
19 to just about everything that they give us.

20 Q So what does it mean to be sergeant over violent
21 crimes? What are your duties?

22 A I supervise a ten-man unit. I actually have two
23 teams of homicide investigators. Basically, I assign
24 cases. I make sure that their case jackets are together
25 and that they attend court, and I patrol the payroll. I

1 assign their cases to them. .

2 Q And on November 2008, you said you were an
3 investigator with violent crimes. What were your duties
4 at that time?

5 A I investigated everything from armed robberies,
6 aggravated assaults and homicides.

7 Q Did you have the occasion to become involved in an
8 armed robbery that occurred on November 25, 2008?

9 A Yes, I was.

10 Q And on what day did you become involved on that case?

11 A It was actually assigned to me on December 4th.

12 Q When was the original incident report filed?

13 A December -- I'm sorry. Hang on.

14 (Pause).

15 The original report was filed on November 26th.

16 Q Okay. So on December 4th, how did you come to be
17 involved? How did you begin your investigation?

18 A I went in that morning, got my case assignments.

19 This one incident report was one of my case assignments,
20 so I reviewed the report, and then I initiated my case log
21 and made contact with the victim.

22 Q Okay. What was in the initial incident report from
23 November 26th?

24 A The initial incident report was filed by a lady named
25 Delores Dennis. She claimed that four black males kicked

1 in her back door. The door was secured. They entered.
2 They damaged the front door. When they came in, the
3 suspects were looking for a guy named Black Shawn.

4 The individuals had weapons. They put everybody on
5 the floor. Basically that.

6 Q Okay. You can keep going through it if you don't
7 mind.

8 A Okay. She talks about a three-year-old child in the
9 apartment.

10 Q Uh-huh.

11 A Suspect one went into a bedroom where the complainant
12 was. Told victim two to drop down to the floor on the
13 hallway. Suspect one asked several times where Black
14 Shawn was and where the weeds, drugs, and guns were
15 repeatedly, using the butt of a gun striking victim one in
16 the top of the head.

17 It goes on to say that the victim received injuries
18 from being struck by the gun. Her right fourth finger was
19 fractured.

20 The light-skinned male, black male, suspect two,
21 removed from the kitchen area one paper bag placing victim
22 two's purse in and taking it with him as he left the
23 residence.

24 Victim three is stating that as one of the suspects
25 left the area, he stated, "If you call the police, I'll

1 kill you." Also, a comment was made by one of the
2 suspects, "Sorry. We had the wrong apartment."

3 All of the victims are fearful of their lives, did
4 not can call the police and did take complainant victim to
5 Richland Memorial Hospital.

6 After suspects left the area, both victim one and
7 two's cell phones were taken. They are Verizon phones.
8 The numbers are provided. Then it has a list of people
9 who responded to that apartment.

10 Q Okay. So you said you viewed that into the incident
11 report and then you made contact. What does it mean to
12 make contact?

13 A I contacted the person who initially filed the
14 report. The report would be Delores Dennis.

15 Q Okay. And you spoke with Ms. Dennis?

16 A I did.

17 Q What else happened on December 4th?

18 A Well, can we back up?

19 Q Gladly.

20 A Okay. Let me put this in perspective. Prior to
21 this, this robbery, I was the investigator on the night
22 shift. So I was responsible for everything in the city
23 that night.

24 Because of the time of year, we had lot of problems
25 in the Vista. So instead of sitting in my office, I'd get

1 out in my car and I'd ride around. I'd stay close to the
2 Vista, Gervais Street, in that area.

3 A call came out about an individual being robbed at
4 I was like two blocks away, so --
5 and I'm in an unmarked car in plain clothes.

6 I go to the scene. There are no police there. I'm
7 the first one on the scene. I get out of the car, and I
8 actually encounter Sean Toran.

9 Sean Toran is bleeding where he had being struck in
10 the face. He told me he had been struck in the face. A
11 guy robbed him, and the guy -- that he didn't know the
12 guy's name but he did know the guy went by the name Black
13 Shawn.

14 Now, Black Shawn, that's the first time I heard that
15 name, but when I -- on December 4th when this case was
16 actually assigned to me, one of the first things I noticed
17 in the narrative was that the individuals were asking
18 about somebody named Black Shawn. So that, to me, made --
19 there was a connection between and
20 Brook Pines apartments.

21 Q Do you remember what day you got the call about Sean
22 Toran being robbed?

23 A I don't remember the date.

24 Q And is there an incident report about that?

25 A No. When I was talking to Shawn, Shawn was saying --

1 he was very upset, understandably. He was hit by Shawn,
2 by Black Shawn. We called an ambulance. An ambulance was
3 coming on the scene.

4 Well, when the marked units got on the scene, he shut
5 down. He didn't want anything else to do with the police.
6 He certainly didn't want to be seen talking to uniformed
7 cops out there in this apartment complex, so he told me
8 that he wasn't going to file a report. He would not give
9 a statement. He wanted nothing else to do with the
10 police. So we loaded him up in an ambulance and sent him
11 to the hospital.

12 Q Okay. And what was the address that you responded to
13 when he was robbed?

14 A

15 Q And was Sean Toran the same gentleman that was just
16 testifying here?

17 A Yes, he was.

18 Q And do you know where Sean Toran lived?

19 A He lives at

20 Q Okay. So on December 4th there was a search warrant
21 execution. Can you tell us why you were present?

22 A Where my office is on the second floor, we have --
23 that's primarily investigations, so we interact with the
24 narcotics squad, violent crimes unit, everybody interacts.

25 One of the guys came to me and said that -- we were

1 talking about Black Shawn. We were trying to identify who
2 Black Shawn was.

3 He came to me and said that they had a search warrant
4 for It just so happens that's
5 where Shawn was robbed. So I went for two reasons. I
6 went, number one, to actually contact more people.

7 During the day, you would have more contacts out
8 there in an effort to get a true name on Black Shawn and
9 also to back up the SWAT team and narcotics guys going in.

10 Q Were you a part of the reason they were executing the
11 search warrant? Did that have anything to do with this
12 case?

13 A No.

14 Q So you were there solely in the interest of the case
15 you were investigating?

16 A That's correct.

17 Q Okay. And what happened when you got there?

18 A SWAT rolled in first. We protected the perimeter.
19 We went in kicking the door. They were attacked by a pit
20 bull. SWAT killed the pit bull.

21 They used flag bangs to enter the apartments, and it
22 blew the windows out of the apartments going in. Once
23 everything was secure, we made a list of the people on the
24 scene and we initiated the search of the apartments in
25 that area that they had search warrants for.

1 Q Were any items found that were in connection with the
2 robbery at Brook Pines apartments?

3 A In apartment number -- let me make sure I've got
4 this right.

5 I know we went into one apartment. It was the
6 apartment of a guy named Torrell Johnson. When we were
7 searching his apartment, we lifted up the mattress. We
8 found several IDs. One ID was from a guy named Korey
9 Coit. Korey was one of the victims from the Brook Pines
10 robbery. We found his photo ID.

11 Q Had Korey's wallet been stolen in the robbery?

12 A I believe his wallet was stolen.

13 Q Okay. And so what did you do next with that ID?

14 A Located Torrell. Torrell was outside. Because it
15 was his apartment, I began questioning him about his
16 relationship with that ID.

17 Q So can you give a description of where everybody is
18 standing with the execution of this search warrant is
19 happening on December 4th at , who was there and where
20 everybody was standing? You said you talked to Torrell
21 Johnson outside.

22 A Honestly, I couldn't tell you where the list of
23 people were because we had uniformed officers that
24 collected everybody else and separated them.

25 I Took Torrell and actually walked him down through

1 the parking lot between two cars, so we were basically out
2 of the area, out of eyesight with everybody else. We
3 could sit down on the curb in that parking lot.

4 Q Okay. And what did you ask him?

5 A I asked him why the IDs were found in his apartment,
6 and he became -- I mean, he just started giving it up. He
7 was saying that there was a robbery at Brook Pines that he
8 knows who was involved with it because some of the people
9 involved with it were selling him or trying to sell him
10 items that they stole from the apartment.

11 He said that the ID that I had from Korey Coit was
12 actually taken from the robbery, and he identified four
13 people as being involved in that robbery.

14 He also said that one individual that he named was
15 the one that struck Deloris in the head. He didn't say
16 Deloris, but he said the lady in the apartment. He struck
17 her in the head with a gun, and he identified that person
18 as Ricky Bowman.

19 He also went on to identify Sean Toran. He said a
20 guy named Roy Foster was involved, and he also said
21 another guy named Marcus Williams was involved.

22 Q Why did you believe Torrell Johnson?

23 A I believed Torrell simply because we had evidence
24 from the robbery in his apartment. We could connect Sean
25 Toran and Ricky Bowman to that complex. We were

1 corroborating the information that we got, so we could put
2 two and two together.

3 So with him naming people that were involved in a
4 robbery, we can put the property there where they would
5 be, and we could also put them there at that apartment
6 complex. Everything started to make sense. That's why I
7 actually believed they were the same.

8 Q Did Torrell Johnson give you details about the
9 robbery?

10 A He did. He stated that there were four individuals.
11 They went, they kicked in the door. When they were inside
12 the apartment, the female was pistol whipped.

13 They stole the cell phones, the ID's, and then he
14 said they came back and were bragging about it, and they
15 were trying to sell him the cell phones.

16 Q Were those details public?

17 A No.

18 Q How did you learn that information?

19 A Firsthand information from Sean Toran and Ricky
20 Bowman.

21 Q How did he describe his relationship with Sean Toran
22 and Ricky Bowman?

23 A He really didn't say that they were friends. They
24 were just acquaintances. They hung out there together.

25 Q Did all three of those people live at

?

1 A My understanding is they did, yes.

2 Q Okay. Did Torrell Johnson give a statement?

3 A He did not.

4 Q And why is that?

5 A Well, he gave a verbal statement in the parking lot.

6 Then he found out that we had a bench warrant on him. He

7 was transported to the second floor at headquarters. He

8 was arrested on a bench warrant.

9 He -- that in itself shut him down where he wasn't
10 cooperating further. He didn't want his name on a
11 statement where he's basically ratting out people that he
12 hangs out with. So he would not give a written statement.
13 I actually documented that in my case notes.

14 Q So now that you had the names of the suspects, what
15 did you do next?

16 A I created photo lineups of the names that I had. I
17 was sure about Sean Toran and Ricky Bowman. When I spoke
18 to Deloris the day -- just before we did the raid, she
19 described the tall light-skinned male. That was
20 consistent with Sean Toran.

21 She described the shorter individual as brown skin,
22 just based on what she was telling me. I used the photo
23 lineups based off the information I got from Torrell where
24 I got the names, created the photo lineups, and then had
25 her come in and had her view the lineups.

1 Q What day did you prepare the photo lineups?

2 A It would have been on the 4th, I believe, when --
3 right after we received the information.

4 Q So on the same day that you were assigned the cases
5 and the same day that you did the search warrant?

6 A Yeah.

7 Q Okay.

8 A But then Deloris actually came in on the 5th of
9 December, along with Shamael Coit and Korey Coit. All
10 three came in on the 5th, viewed the photo lineups.

11 Delores Dennis was able to pick two people. She
12 picked Sean Toran and Ricky Bowman. Shamael Coit was able
13 to pick Sean Toran and Ricky Bowman. Korey Coit only
14 picked Sean Toran. He was unable to pick out Ricky
15 Bowman. And then on the 8th of December, Regina Dennis
16 came in. She viewed the lineups, and so she was only able
17 to pick out Sean Toran.

18 Q When you administered these photo lineups to the
19 victims, what was your procedure?

20 A The procedure is you have the individual in a room
21 with just me and the person looking at the photo lineup.
22 When I present the lineup to them, I tell them that the
23 person of interest or the suspect may or may not be in the
24 photo lineup.

25 So after I tell them that, they have no idea if the

1 right person is in the lineup or not. I give them the
2 lineup, and I don't interfere with them from that point.
3 They look at the line up and they make an identification
4 if they're able to.

5 Q Are any of them together? Are any of the victims in
6 the same room?

7 A No, they're not allowed to communicate.

8 Q Is anybody --

9 A They're kept separate.

10 Q Is anybody else in the room with them?

11 A Just me.

12 Q Okay. So they're all in separate rooms. You're the
13 only one in the room. Is it all done at the same time?

14 A Well, we separate them, put them in the rooms, and
15 then I go around one at a time showing the lineups.

16 Q Okay. And was there anything different or special
17 about how Delores Dennis made her identification and how
18 Shamael Coit made her identification?

19 A What was -- what was different was there wasn't
20 anything different with Sean Toran. They could look at
21 the photo and say, "Yeah, that's him."

22 With Ricky Bowman, they actually took a piece of
23 paper or their hand and covered up the face on all six
24 pictures, and they made an identification based on his
25 eyes and eyebrows.

1 Q Were you suggestive in any way?

2 A No.

3 Q Did they hesitate once they made an identification?

4 A No.

5 Q Were they sure when they made it?

6 A Yes.

7 Q And how did they mark their surety?

8 A What they did is they circled the number associated
9 with the picture. They put their initials and time and
10 date. Then there is a second form that goes along with
11 the photo lineup that is in more detail. It tells what
12 the crime is, whether it was a male or a female they
13 picked out when they signed it, and it's -- I believe it
14 was notarized.

15 Q At that point, what did you do next?

16 A After the identification was made, I obtained the
17 written statements from everybody, and I believe at that
18 point I issued warrants for Sean Toran and Ricky Bowman.

19 Q Okay. And on what day were those warrants issued?

20 A I have to go back and look. I don't know that they
21 were issued that very day.

22 (Pause).

23 Well, Ricky Bowman's warrant was issued on
24 December 8th, and it looks like Shawn's warrant was issued
25 on the 5th on the day of the photo lineup.

1 Q Do you know when Sean Toran was arrested on this
2 incident?

3 A He was already in jail. He was arrested by
4 narcotics.

5 Q Do you know when Ricky Bowman was arrested on this
6 incident?

7 A Yeah. Ricky Bowman was located in Savannah, Georgia
8 on December 13th, 2009, a year later.

9 Q Can you tell us a little bit about the circumstances
10 surrounding his arrest in Georgia?

11 A He -- when I issued his warrant, I put him in what's
12 called NCIC. It's a national database, so if you run his
13 name in any state, it will come up showing that he's
14 wanted and what he's wanted for, what agency is looking
15 for him.

16 The US Marshals received information that he was in a
17 hotel in Savannah, Georgia. They called me. Then they
18 went to the hotel. They located him and arrested him.

19 Q Was he extradited?

20 A He was.

21 Q Why didn't you make any other arrests in connection
22 with this incident aside from those for Sean Toran and
23 Ricky Bowman?

24 A The only two strong IDs I had, identifications from
25 the victims was Sean Toran and Ricky Bowman.

1 MS. ALL: Beg the Court's indulgence.

2 (Pause.)

3 (WHEREUPON, State's Exhibits Nos. 44, 45 were marked
4 for identification only.)

5 BY MS. ALL:

6 Q Sergeant Pegram, I'm now handing you what's been
7 premarked as State's Exhibit 44. Do you recognize this
8 document?

9 A It's a photo lineup. I prepared with Sean Toran. He
10 was in one of the photos.

11 Q Okay. Does it fairly and accurately depict that
12 document as it was represented on November 25th, 2008?

13 A Yes.

14 Q I'm now handing you what's been premarked and entered
15 as State's Exhibit No. 42. Can you tell us what's
16 different about those two documents?

17 A This is a copy of that same document.. It's a black
18 and white picture or black and white version of that.

19 Q Does State's premarked 44 have any signatures on it?

20 A No, it does not.

21 Q So what specifically does that document represent?

22 A This is -- I create several of these color images,
23 and then when I show them, I take the one that they view.
24 They actually signed, circled down here, put their
25 initials and the date and time when they picked out that

1 person.

2 MS. ALL: Your Honor, the State moves to enter
3 Exhibit No. 44 into evidence.

4 MR. SCHNEE: No objection.

5 THE COURT: Without objection.

6 (WHEREUPON, State's Exhibit No. 44 was admitted into
7 evidence.)

8 BY MS. ALL:

9 Q Sergeant Pegram, I'm now showing you what's being
10 premarked as State's Exhibit Number 45. Can you identify
11 this document?

12 A It's a photo lineup, again, created using Ricky
13 Bowman as one of the photographs. This is not one that
14 was shown but represents what was created.

15 Q Does this fairly and accurately depict the document
16 that you presented to the victims on November 25th, 2008?

17 A Yes.

18 MS. ALL: Your Honor, at this time, the State moves
19 to enter Exhibit No. 45 and evidence.

20 MR. SCHNEE: No objection.

21 THE COURT: No objection.

22 (WHEREUPON, State's Exhibit No. 45 was admitted into
23 evidence.)

24 MS. ALL: Court's indulgence once more.

25 (Pause).

1 Thank you, Your Honor.

2 Please answer any questions that Mr. Schnee has for
3 you.

4 THE WITNESS: All right.

5 THE COURT: Cross-examination?

6 MR. SCHNEE: May it please the Court.

7 CROSS-EXAMINATION:

8 BY MR. SCHNEE:

9 Q Good afternoon.

10 A Good afternoon.

11 Q I want to go into background of being a police
12 officer.

13 A Yes.

14 Q How long have you been a police officer again?

15 A Twenty-eight years.

16 Q You've been through training at numerous different
17 departments?

18 A Yes.

19 Q You've been through training at Columbia Police
20 Department headquarters?

21 A Yes.

22 Q Ever do anything with SLED?

23 A Yes.

24 Q Do you ever teach people how to be a cop in any way?

25 A No.

1 Q Do you ever instruct some of your less experienced
2 officers on the job about how they should be doing things?

3 A Yeah, absolutely.

4 Q Okay. And you would agree with me one of the most
5 important things about being a police officer and going
6 out and talking with people is to fill out reports, right,
7 one of your basic functions.

8 A That would be a basic function of the patrol
9 division.

10 Q Okay. And one of the most important parts about
11 those reports is getting all of the information very, very
12 accurate.

13 A Yes.

14 Q And as detailed as possible.

15 A That's correct.

16 Q And you know how to do that?

17 A I do.

18 Q You do that all the time, right?

19 A No.

20 Q No?

21 A No. I don't fill out incident reports.

22 Q Well, any reports of any kind.

23 A Yeah. My reports I try to fill out as detailed as
24 possible.

25 Q And you know it's important because well, for

1 example, we're three years from the incident, right?

2 A That's correct.

3 Q And the only way you can really remember all of those
4 details is because it's written down.

5 A Yes.

6 Q You want to make sure you write down everything
7 that's important.

8 A Sure.

9 Q Any time you have a less experienced officer, you
10 tell them to do that, right?

11 A When I have that opportunity or I'm in that position,
12 yeah.

13 Q Okay. Well, let's start with the incident report.
14 Now, you didn't fill that one out, right?

15 A No.

16 Q Okay. That is by Pamela Gibson?

17 A Yes.

18 Q Do you have a copy of that with you?

19 A I do.

20 Q And it's -- I believe there are two pages that have a
21 lot of text on them.

22 A There's actually four pages.

23 Q Two pages that are filled out with the narrative.

24 A Yeah, that's correct.

25 Q Okay. Now, that report has a lot of little boxes on

1 it, right?

2 A It does.

3 Q It goes through various information such as names,
4 addresses, descriptions, right?

5 A That's correct.

6 Q And that's a predetermined form to assist officers to
7 make sure they get everything that they're going to need?

8 A Definitely.

9 Q Okay. If you could, please tell me what the incident
10 date and time is.

11 A The incident date and time is November 25th, 2008 at
12 22:45 hours, which would be 10:40 -- I'm blind, 10:45.

13 Q 10:45 p.m.?

14 A P.M., that's correct.

15 Q Okay. Now, the time from dispatch, when is that?

16 A November 26th, 2008 at 14:35, which is 2:35 in the
17 afternoon.

18 Q Okay. But the -- the incident end time, is that
19 listed on there, as well?

20 A What do you mean by end time?

21 Q Well, there's a start time and an end time, right?

22 A Well, you have -- you have a block for the scope or
23 the range of the crime itself.

24 Q Okay.

25 A Is that what you're talking about?

1 Q Yes.

2 A Okay. That would be November 25th, 2008 to November
3 25th, 2008.

4 Q From --

5 A 22:45 to 23:15.

6 Q So 10:45 p.m. to 11:15 p.m.?

7 A Yes.

8 Q And that's based on what your witnesses told Officer
9 Gibson?

10 A I would assume so.

11 Q Okay. You have no reason to believe she would write
12 that down incorrectly, do you?

13 A No.

14 Q Okay. A little bit further down, there is a section
15 that says "physical description of suspects", right?

16 A Yeah.

17 Q What's in there?

18 A Well, first, you have the age of one suspect is
19 between the ages of 36 and 253 years old.

20 Q Between 36?

21 A Uh-huh, yeah.

22 Q And 250 years old?

23 A Right.

24 Q That would be a typo, I'm assuming.

25 A Well, I don't know where you're -- where you're

1 getting -- going with this but --

2 Q How is that --

3 A I can't tell you what she put in this report or how
4 she put or why she put what she did in this report.

5 Q Okay. But she wrote down 36 to 250?

6 A 253.

7 Q 253.

8 A But those are also -- if you can't type very well,
9 you could easily make a mistake. I know that firsthand.

10 Q Okay. What's the height listed for the suspect?

11 A Well, you have listed as suspect one, which would be
12 five foot nine and 180 pounds.

13 Q Okay. Is there a description of clothing?

14 A Yeah, a dark colored hoodie jacket.

15 Q Okay. Anything else in the description on there?

16 A No.

17 Q Now, there is a place to put any --

18 A Actually, let me go back. There is -- it says it's a
19 black male.

20 Q Okay. Is there any description -- there's a place
21 for a description for things like tattoos, scars, other
22 identifying characteristics.

23 A That's where a dark-colored hoodie is listed.

24 Q Well, that's the only thing in there?

25 A Yes..

1 Q If you could, turn to the second page.

2 A Okay.

3 Q In the narrative itself.

4 A All right.

5 Q I believe you read through part of this. There is a
6 section describing the light-skinned male?

7 A Do you know what paragraph it's in?

8 (Pause).

9 Yeah, I got it, light skinned black male, suspect
10 two.

11 Q It listed a suspect two?

12 A Yeah.

13 Q That's the end of the first line. If you could just
14 read that little sentence for me where it starts "light
15 skinned black male", top of the page, middle?

16 A Yeah. "The light-skinned black male, suspect two,
17 removed from kitchen area one paper bag placing victim two
18 [sic] purse inside and taking it with him as he left the
19 residence."

20 Q Okay. Now, you're understanding of the only
21 light-skinned black male would be Sean Toran. That's
22 whoever --

23 A That's my understanding now, yes.

24 Q Okay. And according to the victims at the time, he's
25 the one who went into the kitchen, right, picked up a

1 paper bag, yes?

2 A That's what it looks like.

3 Q Okay. And stole one of the victim's purses and put
4 it in the bag?

5 A That's -- that's the way it's listed.

6 Q That's what victims told Officer Gibson the day after
7 this happened?

8 A Well, you're going back to that. I can't tell you
9 what they told her. I wasn't there.

10 Q That's what she wrote down typed.

11 A Well, you've need to talk to her about it. I
12 can't -- I can't tell you what she was doing or what she
13 was saying or what they were telling her.

14 Q Are you --

15 A Also, if you really want to get into it, there are no
16 other descriptions of any other suspects that I'm looking
17 at.

18 Q We'll get to that in a minute.

19 A Well, that's why we have this issue.

20 Q Well, we'll get to that in a minute, but are you
21 telling me that you think she may have typed this
22 incorrectly and written down something wrong? Is that
23 your testimony now?

24 A I can't tell you what she did. I wasn't there.

25 Q Okay. That's what she wrote down, though, is that a

1 light-skinned black male took the purse and put it in a
2 paper bag?

3 A That's what I'm reading.

4 Q Okay. Well, a little further down, it says there
5 were two cell phones taken?

6 A Yes.

7 Q Okay. And that provides the phone numbers for them?

8 A They do.

9 Q Yes?

10 A Yes.

11 Q Okay. Both Verizon wireless?

12 A Yes.

13 Q Okay. Fourth line from the bottom, there is
14 something in parenthesis. Correct me if I read this
15 incorrectly. It says, "Note, all suspects had their faces
16 covered with bandannas and wore dark-colored hoodies"?

17 A Yes. That's what it says.

18 Q Okay. It says all suspects.

19 A That's what it says.

20 Q Okay. Describe to us after that the shooting
21 incident involving a car, right?

22 A Yes.

23 Q Okay. It says there is a juvenile witness.

24 A That's correct.

25 Q And -- right?

1 A Yes.

2 Q And observed several black male suspects, right?

3 A Yes.

4 Q It says exit a burgundy in color car.

5 A Yes.

6 Q Okay. And then enter an apartment.

7 A Yes.

8 Q And the witness also saw one of them shooting the
9 vehicle before leaving?

10 A Yes.

11 Q Okay. I'd like to talk about your investigative
12 follow up, typed up report. You were assigned this case
13 December 4th, 2008?

14 A Yes.

15 Q The first responding officer went on November 26th?

16 A Yes.

17 Q What happened between those two dates?

18 A I wouldn't know. I wasn't assigned the case until
19 the 4th. I wasn't even aware that it happened until the
20 4th.

21 Q Okay. So eight days go by and no one follows up on
22 any report?

23 A Those computers, when you do one of these reports,
24 you generate a computer copy. That computer copy is
25 transmitted through our RMS system. It has to be approved

1 by two different supervisors.

2 Then it's transferred from RMS back to the heads of
3 the divisions. Then it's disseminated to the units that
4 will handle that case, so you're going to have a time
5 lapse.

6 Especially back in 2008 -- it's a little bit
7 different now -- but in 2008, yes. It took several days
8 to get a report, unless it was hand carried and delivered
9 to you. It took several days to go through RMS and then
10 be generated out to the investigator.

11 Q Nine days?

12 A Yes.

13 Q So you're telling me for a serious crime like this,
14 it took nine days before someone was assigned to actually
15 follow up?

16 A That's what I'm telling you.

17 Q Okay. Now, the first thing you did is you contact
18 Delores Dennis, right?

19 A Yes.

20 Q She is the listed victim number one?

21 A She is.

22 Q Her apartment?

23 A She is the complainant.

24 Q Okay. And when you talked with her over the phone,
25 you discussed cell phones being stolen, right?

1 A I couldn't tell you if we discussed cell phones
2 particularly. I know that cell phones were taken, but my
3 main focus was to ensure that I was going to be able to
4 get her in a position where I could ask her because there
5 again --

6 Q You don't remember if you talked about --

7 A Let me finish with this. When we get these reports,
8 we don't put a whole lot of faith in what we're looking at
9 initially until we talked to people who had firsthand
10 knowledge, which we did.

11 I certainly didn't think she was going to be 253
12 years old. So the main focus is to talk to the person
13 that would actually have the details, bring them in, sit
14 down with them and have a discussion.

15 Q Okay. Well, you called her, right?

16 A Yes.

17 Q On December 4th --

18 A Yes.

19 Q -- you discussed with her coming and giving you a
20 statement.

21 A I did.

22 Q Did you discuss stolen cell phones at that time?

23 A I don't recall if I talked to her about cell phones
24 or not.

25 Q Do you have a copy of your follow-up report with you?

1 A I'm sure I do.

2 (Pause).

3 Yes, I have it.

4 Q Okay. Halfway down it says case summary. Then after
5 that, you begin your narrative, right?

6 A That's correct.

7 Q Okay. The very first sentence that says
8 December 4th, 2008, eleven a.m. You say, "I contacted the
9 complaint", Delores Dennis --

10 A Uh-huh.

11 Q -- "who stated that her cell phone was stolen during
12 this robbery"?

13 A Yeah. Obviously I did talk to her about it.

14 Q Okay. The next sentence, "She will provide the
15 numbers called by the suspects after the cell phone was
16 stolen."

17 A That's correct.

18 Q All right. Did you get those numbers?

19 A I got the numbers, but -- to their cell phones, but
20 there was no numbers that I'm aware of that was called. I
21 believe the phones were shut down. That's another reason
22 we didn't do a telemetry search warrant on the phone.

23 Q Well, this is only on December 4th that you're
24 talking about this, right?

25 A December 4th was when I first was assigned the case.

1 That's when I made first contact with Deloris.

2 Q Right. She said there were no -- she said she will
3 provide the numbers called by the suspects, right?

4 A She never did.

5 Q Okay. Well, did you contact Verizon?

6 A She has contact with Verizon. Verizon will tell her
7 if her phone was used after the date or the time it was
8 stolen.

9 When they tell her that, I can get that information
10 without a subpoena or search warrant. So what I do is I
11 go back in. I issue what's called a telemetry search
12 warrant.

13 We try to get the phone, but in order to do that, you
14 have to have a signal being sent from the cell phone. If
15 the one wasn't used or it was shut down, then you're not
16 going to obtain telemetry.

17 Q My question to you, did you contact Verizon to find
18 out if the phone was used in any way, shape, or form?

19 A No, I did not, because she contacted Verizon.

20 Q But you did not. That's what I'm asking.

21 A No, I did not.

22 Q Okay. Now, a little bit later on, you talked with
23 Regina Dennis.

24 A I believe that would have been on the 8th.

25 (Pause).

1 Yeah. Is that what you're referring to?

2 Q Well, you talked to Regina Dennis.

3 A On the 8th, according to my notes.

4 Q On the 8th?

5 A That's when I actually sat down and talked to her.

6 Q Well, you talked to her on the 4th, though, did you

7 not?

8 A I'll tell you in a second.

9 (Pause).

10 Yes, I did.

11 Q Okay. She said that she had received a message about

12 -- from an unknown person to get her purse back.

13 A That's correct.

14 Q Okay. And pursuant to that, you ended up sending a

15 search warrant out to the Myspace?

16 A Myspace.

17 Q All right. What happened to that?

18 A Myspace never responded to the search warrant.

19 Q Okay. Well, that was three years ago. Have you ever

20 called them?

21 A I've called them several times. Myspace doesn't have

22 to honor a search warrant sent from us.

23 Q Well, what did you do to try to get them to comply

24 with it?

25 A I can't get them to do anything to comply with it.

1 Either they do or they don't.

2 Q You can't do anything in any way, shape or form to
3 force a company to follow the instructions of a law
4 enforcement investigation?

5 A Absolutely. I cannot.

6 Q Really? You never tried to subpoena them?

7 A I work with search warrants. The solicitor works
8 with subpoenas.

9 Q Now, you said -- did you ever tell the solicitors
10 "Hey, I need you to do a subpoena"?

11 A I don't recall if we did a subpoena. I don't believe
12 we did.

13 Q Okay.

14 A And I think the --

15 Q So for three years, you ignored it?

16 A We did -- we did obtain -- I believe we obtained
17 information directly from the victim's account where you
18 have an individual. I think you should have an individual
19 saying that they have a person at an unknown or a
20 disclosed location.

21 Q Okay. You do get a search warrant, though?

22 A I do but they never respond to it, though.

23 Q Okay. And in the search warrant, you are requesting
24 IP addresses.

25 A Yeah.

- 1 Q Any kind of personal identifying information.
- 2 A Yes.
- 3 Q They just choose not to respond.
- 4 A They don't have to respond to a search warrant.
- 5 Q I understand. They choose not to respond.
- 6 A That's correct.
- 7 Q Three years ago.
- 8 A That's correct.
- 9 Q You do not follow up with them?
- 10 A That's correct.
- 11 Q Okay. On December 4th in the afternoon, you go to
- 12
- 13 A I do.
- 14 Q Okay. And you talked about that a little bit on your
- 15 direct. You said whenever you got there, the SWAT team
- 16 forced entry.
- 17 A Okay. Which time are you talking about?
- 18 Q The search warrant.
- 19 A Oh, the search warrant. Say that again.
- 20 Q SWAT team forced entry into the apartment.
- 21 A They did.
- 22 Q Flash bangs, all that kind of stuff.
- 23 A They did.
- 24 Q They took everybody out from the apartments,
- 25 handcuffed them and separated them?

- 1 A I couldn't tell you if they handcuffed them. I know
2 that everybody was separated, but I wasn't involved with
3 that portion of it.
- 4 Q Okay. You mentioned that there was a list of all
5 people that were there?
- 6 A Yes.
- 7 Q As part of their standard procedure?
- 8 A Right.
- 9 Q Okay.
- 10 A Would you like to know who was there?
- 11 Q All right. Now, you met with Mr. Torrell Johnson,
12 right?
- 13 A Yes..
- 14 Q Okay. You met with him in a parking lot?
- 15 A Yes, sir.
- 16 Q And in the parking lot, he told you four names of
17 people that were involved in the robbery that we're here
18 about today.
- 19 A Yes.
- 20 Q Okay. Now, those four people would be Sean Toran?
- 21 A That's one of them.
- 22 Q Roy Foster?
- 23 A Yes.
- 24 Q Marcus Williams?
- 25 A That's correct.

1 Q And Ricky Bowman?

2 A Yes.

3 Q Now, as part of your job, you created lineups of
4 people, right?

5 A Yes.

6 Q Okay. You made a lineup including Roy Foster, didn't
7 you?

8 A I did.

9 Q Okay. You also made one with Marcus Williams?

10 A Yes.

11 Q Okay. Defense No. 1 and 2, do you recognize these?

12 A These are photo -- the first one is a photo lineup I
13 created. The second one is a photo lineup I created.

14 Q Okay. And that would be for Roy Foster and Marcus
15 Williams?

16 A Yes.

17 Q Okay. Did you ever show any of those to any of the
18 victims in this case?

19 A I don't recall showing those to them. I may have but
20 I don't recall, and I didn't note in my case notes
21 anything about these and they couldn't because there was
22 no reaction with these, no identification.

23 What I'm hearing today for the first time, it's a
24 good thing that we don't have an identification on it.

25 Q Okay. Well, according to the -- so your first time,

1 that would be from Sean Toran's testimony?

2 A Yes.

3 Q Okay. And he named Rodney Pierre, right?

4 A He did.

5 Q In fact --

6 A That's quite interesting for me because Rodney Pierre
7 was there, and I have got the list where he was there when
8 SWAT hit the apartment complex.

9 Q So you have a list of everyone that was there?

10 A I asked you if wanted me to read it to you.

11 Q Please do, actually.

12 A Marcus Williams, Sean Toran, Roy Foster, Torrell
13 Johnson, Rodney Pierre, Willie Williams, Robin Swinton,
14 and James Cook.

15 Q May I take a look at that?

16 A Yes. It's in your reports with the FIs, fill in
17 ones.

18 MR. SCHNEE: Judge, can we approach for a second?

19 (Whereupon, there was a bench conference.)

20 BY MR. SCHNEE:

21 Q The typed-up notes you're referring to, you made
22 those last night?

23 A I did.

24 Q All right.

25 A Based on information out of the case jacket.

1 Q Okay. Now, the field contact sheets you're referring
2 to, that's where you got the list of names?

3 A Yes.

4 Q Okay. So Roy Foster, he was at
5 the day you were there for the search warrant?

6 A According to the FIs, the fill ins.

7 Q Okay.

8 A And I did not fill out any of the FIs. The police
9 officers on the scene filled those out.

10 Q They're not going to just make this up, are they?

11 A No, because I actually saw them out.

12 Q Marcus Williams, he was there?

13 A Yes.

14 Q And Rodney Pierre --

15 A Yes.

16 Q -- he was there?

17 A Yes.

18 Q Okay. Well, you were there. Did you ever talk to
19 Roy Foster?

20 A No. I had no reason to talk to Roy Foster at that
21 point.

22 Q Well, Torrell Johnson said he was involved in a
23 robbery. Did you go talk to him?

24 A Well, the first step would be to confirm that
25 information by creating a photo lineup and have him

1 identify the photo lineup.

2 Q So you would rather go do a lineup with somebody than
3 talk and meet with other people and talk to someone who is
4 50 feet away from you?

5 A Yeah. That's the way we generally do it. If you
6 don't want to show your hand at that point, you do what
7 you need to do to get probable cause you need to make an
8 arrest.

9 Q Well, I'm not asking if you want to arrest him. I'm
10 just asking if you wanted to talk to him. I mean, he was
11 right there.

12 A Well, you say he was right there. My thing is, I
13 never saw him right there. These are often FI that was
14 produced by a police officer at the scene. I just got
15 these when I looked through the FIs in the case jacket.
16 That's how I know who was at the scene. My dealing was
17 with Torrell.

18 Q Okay. Well, how did you know that Torrell was there?

19 A Because I actually saw him out.

20 Q So you just recognized him?

21 A No. I said, "Whose apartment is this?"

22 They said, "That's Torrell's apartment."

23 I said, "Where is Torrell?"

24 They said, "That's Torrell."

25 Q Okay. And then you started asking about the robbery?

- 1 A No. I was asking about the ID.
- 2 Q Which came from this robbery?
- 3 A Yes.
- 4 Q Okay.
- 5 A But that -- I didn't approach him in that way.
- 6 Q So you just asked him --
- 7 A I approached him, and I asked him why he had that
- 8 ID --
- 9 Q Okay.
- 10 A -- and then he began to spill everything.
- 11 Q Okay. That's fine. And he told you that Roy Foster
- 12 and Marcus Williams were both involved.
- 13 A That's what he said.
- 14 Q Okay. But now today, when you finally looked at the
- 15 field contact sheets three years later, you learned they
- 16 were at the same apartment at the same day.
- 17 A Yes, along with Pierre.
- 18 Q Okay. Was Ricky Bowman was on that list?
- 19 A Ricky Bowman was not on this list.
- 20 Q Okay. You didn't look at those field contact sheets
- 21 until last night?
- 22 A No. I looked at them prior. I just didn't remember
- 23 them, but I have looked in the case jacket front to back
- 24 last night. Then I realized I had those FIs in there.
- 25 Q So you looked at it front to back to prepare for your

1 testimony today?

2 A Yeah, but the FIs really didn't mean a whole lot to
3 me, because until today, I had no idea that Rodney Pierre
4 had anything to do with anything.

5 Q Well, I'm not asking about Rodney Pierre.

6 A Well, that's --

7 Q I'm asking about Roy Foster and Marcus Williams.
8 You've had their names for three years, right?

9 A That's correct, but I could never develop any
10 information to implicate them.

11 Q So you just decided not to talk to them?

12 A I had no reason to go any further with them.

13 Q Well, you're allowed to talk to any normal citizen on
14 the street, aren't you?

15 A Absolutely.

16 Q So you just chose not to talk to them?

17 A That's correct.

18 Q You mentioned -- well, let's talk about Toran. Have
19 you ever heard the story he told today about Rodney
20 Pierre?

21 A Which guy?

22 Q Sean Toran.

23 A Oh, Toran, yes.

24 Q I'm sorry. Have you ever heard that story before?

25 A I have not.

1 Q Okay. Have you ever heard that this robbery was
2 planned at

3 A I assumed it was planned at
4 but I have never heard that from anyone.

5 Q Okay. Because he refused to talk to you?

6 A That's correct.

7 Q And he refused to talk to you about when he was
8 robbed by Black Shawn.

9 A He told me about Black Shawn, but that was all he
10 would go. That's all he would say. He was robbed by a
11 guy named Black Shawn.

12 Q Okay. And after that, he refused to talk to you
13 anymore?

14 A Yeah. He refused to cooperate as far as an incident
15 report when the traffic unit showed up to do the incident
16 report. He refused to cooperate with that, and he didn't
17 want to give a statement. He just wanted to go to the
18 hospital and get his face sewn.

19 Q Okay. So your recollection of that is refused to
20 cooperate with your investigation?

21 A He did, but I gave him my business card and told him
22 if he changes his mind to call me.

23 Q Okay. Now, in terms of the lineups that you created
24 for Mr. Bowman and Mr. Toran --

25 A Uh-huh.

1 Q -- you showed both of those to all four of the
2 victims, right?

3 A I believe I did.

4 Q Okay. But two of them were not able to pick
5 Mr. Bowman out, right?

6 A That's correct.

7 Q Now, speaking of the lineups themselves, did you talk
8 to these four victims in any way before you created --
9 before you showed them lineups?

10 A I'm sure I did. I mean, we have a general
11 conversation when we're putting them in the rooms.

12 Q Okay. Did you ever ask them if they were going to be
13 able to identify anyone?

14 A Yeah, I probably did.

15 Q Okay. Did you ask how they might be able to identify
16 anyone?

17 A Sure.

18 Q Okay. Did any of them tell you that they would be
19 only able to identify them through the eyes?

20 A I don't recall them specifically saying by the eyes.

21 Q Okay.

22 A That's not to say it didn't happen.

23 Q Okay. And when you did show them the lineups, that's
24 how it did happen for two of them, right?

25 A Yes.

1 Q Okay. Now, you're also the one that interviewed them
2 for their written statements?

3 A Yes.

4 Q Okay. Do you have a copy of those written
5 statements? Or actually, I have a copy.

6 (Pause).

7 It's actually Defense No. 4 and 5, if you want these.

8 A Yeah, I will. Who would you like first?

9 Q Well, let's start with Delores Dennis.

10 A Okay.

11 Q Is there anywhere written in there that she only
12 recognized Ricky Bowman through the eyes?

13 (Pause).

14 A I don't see anything about eyes in there.

15 Q You don't see it in there?

16 A No, I don't see anything.

17 Q That's in your handwriting, isn't it?

18 A Yes.

19 Q Now, I believe she testified you wrote it because she
20 was crying, and she had a broken finger.

21 A She had a broken finger.

22 Q Okay. Now, you understand full information is very
23 vital in an investigation, right?

24 A I also understand that I can't tell her what to put
25 in her statement.

1 Q Well, you were asking -- it's a question, answer,
2 isn't it?

3 A No.

4 Q There's no question and answer in there?

5 A The Q and A is -- the only Q and A I had -- I had two
6 things that are Q and A on here. First, "Did you ask me,
7 Investigator Pegram, to write the statement for you?" She
8 responded yes.

9 The last one, "Is there anything that you would like
10 to add or change in the statement?" She said no.

11 Q Okay. So at the end of her doing that whole
12 narrative, you asked her if there was anything she would
13 like to change?

14 A Yes.

15 Q Okay. You have the ability at that point to ask her
16 specifically, "How did you identify Ricky Bowman?"

17 A I could have, yeah.

18 Q Okay. Well, go back to your investigative follow-up
19 notes. This is where you're describing your meetings.

20 A Okay.

21 Q It's a two-page narrative, one-and-a-half pages,
22 whatever it is, right?

23 A Yeah.

24 Q Okay. Is there anywhere in your own narrative that
25 you described Delores Dennis only recognizing eyeballs?

1 A I don't see anything referring to eyeballs.

2 Q You just forget to put it in there?

3 A I probably didn't think it was that important at the
4 time.

5 Q You don't think the method of identification is
6 important?

7 A Not in this case, no. Apparently not with this case
8 note.

9 Q You've been a police officer for 28 years?

10 A That's right.

11 Q Trained by the FBI, by SLED?

12 A Sure.

13 Q And you don't think the method of identification is
14 important?

15 A I didn't say the method of identification wasn't
16 important.

17 Q But the detail --

18 A The fact that I didn't document the fact that she
19 said something about eyeballs, that is not in my case
20 notes.

21 Q Okay. Well, how about the one for Shamael Coit? Did
22 you write anything about that in there?

23 A She wrote her statement.

24 Q I mean, in your notes, in your follow-up report. She
25 said the same thing, that she only recognized eyeballs.

1 A I didn't say anything about that.

2 Q Okay. You just thought it wasn't important for her
3 either?

4 A Apparently not.

5 Q Okay. Now, you mentioned something about having to
6 extradite Ricky Bowman back, right?

7 A That's correct.

8 Q Okay. In fact, he waived extradition, didn't he?

9 A He did.

10 Q In which -- in laymen's terms means he agreed to
11 voluntarily come back to South Carolina.

12 A Yes. He was brought in front of a judge, and he
13 agreed to come back.

14 Q Okay. Now, he doesn't have to do that, does he?

15 A No. He can fight extradition.

16 Q Okay. But he didn't. He just said yes, send me back
17 to South Carolina.

18 A There again, I wasn't there. I do have a form that
19 says he volunteered to come back.

20 Q In fact, you have something in writing saying he --

21 A Absolutely.

22 Q Okay. Now, after you talked -- you did the lineup
23 with Delores Dennis and you saw her doing something with
24 the eyes, right?

25 A Yes.

1 Q Okay. Did you at any point ask her what she was
2 doing?

3 A No.

4 Q Okay. Did you ever ask her specifically to describe
5 the suspect?

6 A Not during the photo lineup.

7 Q Well, at any time, during the statement, during any
8 interview?

9 A Yeah.

10 Q Okay. Well?

11 A And she -- as it states -- as she stated up here that
12 three of them had bandannas on. They had -- the fourth
13 had his face uncovered.

14 Q Okay. Well, I'm asking specifically about Ricky
15 Bowman. Is there any description given of that person
16 that you wrote down anywhere?

17 A No. He's not even listed on my initial page, so no,
18 I did not write his information down.

19 Q Okay. What about Shamael Coit? Did you write down a
20 description that she gave of Ricky Bowman in your report?

21 A No, no.

22 (WHEREUPON, Defendant's Exhibit No. 7 was marked for
23 identification only.)

24 BY MR. SCHNEE:

25 Q Would you take a look at this document for me. It's

1 Defense No. 7.

2 A It's a search warrant for Myspace.

3 Q Okay. Now, on -- I believe on the second or the
4 third page, it describes the reason of why you're
5 requesting a search warrant.

6 A Okay.

7 Q Can you plead read that to the jury?

8 A It says, "November 25th, 2008 at 22:45 hours Eastern
9 daylight savings time, four suspects forced entry into a
10 private residence.

11 "Once inside, the suspects accosted the residents at
12 gunpoint. After beating and robbing the victims, the
13 suspects fled on November 29th, 2008 at 11:21 hours.

14 "One of the suspects contacted the victim via Myspace
15 account 432864692. Myspace maintains data associated with
16 the user ID number. This information is needed to further
17 the investigation and identify the suspect using this
18 account."

19 Q Okay. The very last sentence that you put, "The
20 information is needed to further the investigation and
21 identify the suspects"?

22 A The person generating the information on Myspace,
23 that's correct.

24 Q Whoever sent the message regarding the purse?

25 A Yeah. What I remember of that is somebody named Mike

1 sent that, but there again, you can create a false ID
2 within a matter of seconds.

3 Q Okay. When you're -- further up the page, where it
4 says what they're requesting, you're specifically
5 requesting the IP logs.

6 A All information associated with Myspace account, user
7 profile number. It says, "Information should include
8 basic user identity information, email address, IP logs,
9 private user communications, stored user files and deleted
10 accounts."

11 Q Okay. Now the IP logs, that would be used to track
12 where it was actually sent from?

13 A Yeah. It would depend on whether it was static or --
14 the type of IP address it is.

15 Q Okay. But the reason you're requesting that is to
16 try to find out who sent it and where it was sent from,
17 right?

18 A Absolutely.

19 Q Okay. Showing you what's been marked as Defense
20 Exhibit 6, have you ever seen that before?

21 A No, I don't remember ever seeing this.

22 Q Okay. That would be an affidavit that Sean Toran
23 identified.

24 A Okay.

25 Q You've never seen that before?

1 A I have not.

2 Q You would consider an investigation to be something
3 that's ongoing, would you not?

4 A Yes.

5 Q Okay. And no one has ever showed that to you?

6 A No.

7 MR. SCHNEE: All right. Beg the Court's indulgence.

8 (Pause.)

9 No further questions, Judge.

10 THE COURT: Redirect?

11 MS. ALL: Thank you, Your Honor.

12 MS. SAMPSON: May we approach just briefly, Your
13 Honor.

14 (Whereupon, there was a bench conference.)

15 THE COURT: Redirect?

16 MS. ALL: Thank you, Your Honor.

17 REDIRECT EXAMINATION:

18 BY MS. ALL:

19 Q Sergeant Pegram, let's go back to the incident report
20 from November 26th that you and Mr. Schnee looked through
21 by Officer Gibson.

22 A Okay.

23 (Pause).

24 I got it.

25 Q Okay. Can you read the address, please, for the

1 incident location?

2 A Yeah.

3 MR. SCHNEE: Judge, there's a matter of law we need
4 to discuss.

5 THE COURT: All right.

6 MR. SCHNEE: Very briefly.

7 (Whereupon, there was a bench conference.)

8 THE COURT: You may continue.

9 BY MS. ALL:

10 Q Thank you, Your Honor.

11 The incident report from November 26th, can you read
12 me the address of the incident location, please.

13 A Yes, , Columbia,
14 South Carolina.

15 Q Is that address located in Richland County?

16 A It's in the county, in the City of Columbia.

17 Q And you wouldn't be the investigator on the case if
18 it wasn't within the City of Columbia in Richland County;
19 is that correct?

20 A That's correct.

21 Q Thank you.

22 Mr. Schnee asked you about two Verizon phone numbers
23 that are listed on that report.

24 A Right.

25 Q That report, is Korey Coit listed as a victim?

1 A Yeah. Korey Coit was listed on a separate -- he was
2 actually listed on a supplemental incident report.

3 Q Okay. So the two cell phones numbers that are listed
4 on the November 26th report are for Deloris and Regina,
5 right?

6 A Yes.

7 Q And Korey Coit's cell phone is addressed where?

8 A He -- his number is actually listed on -- as a Sony
9 cell phone on the supplemental report.

10 Q Okay. From November 29th?

11 A That's correct.

12 Q Okay. Accounting for three cell phones total stolen
13 during that incident, right?

14 A That's correct.

15 Q Y'all talked about Myspace and this search warrant.
16 Can you explain to the court why you can't force Myspace
17 to comply with a search warrant, please?

18 A Well, the search warrant is valid here. This -- the
19 address where this warrant would have been served is
20 California. We can't fax them a search warrant from South
21 Carolina and enforce it.

22 Q Okay. What does that mean, that the search warrant
23 would be from South Carolina and Myspace is in California?

24 A That's correct.

25 Q So you can't enforce a South Carolina search warrant

1 is another state? Is that what you're saying?

2 A That's correct.

3 Q Okay.

4 (WHEREUPON, State's Exhibit No. 46 was marked for
5 identification only.)

6 BY MS. ALL:

7 Q Sergeant Pegram, I'm now handing you...

8 (Pause).

9 Sergeant Pegram, I'm now handing you what has been
10 premarked as State's Exhibit Number 46. Do you recognize
11 this document?

12 A I do.

13 Q Can you tell us what it is?

14 A It's a screen shot from Myspace from someone's
15 account.

16 Q Can you tell us who gave it to you?

17 A The only thing listed that I see is the user name or
18 the user address:

19 Q Let's refer back to your investigative notes.

20 A Okay.

21 Q From December 4th, you discussed with Mr. Schnee the
22 contact made on Myspace with Regina Dennis.

23 A Yes. It says, "Regina Dennis said that she received
24 messages through You-tube," and I think that was a typo on
25 my end. I put You-tube instead of Myspace, saying that an

1 unknown person had her purse and was willing to leave it
2 somewhere for her to pick up. I'm referring to Regina
3 Dennis.

4 Q Did Regina Dennis give you that Myspace print out?

5 A Yes.

6 Q And does that fairly and accurately depict the
7 printout that she gave you after the incident date?

8 A It does. This is October 10th, 2011. Well, yeah.

9 It's an October 10th, 2011 printout, so it could have been
10 generated -- it would have been generated anywhere after
11 November 29th because that's the first entry on -- it's
12 like an e-mail back and forth, and it's showing
13 November 29th, 2008 at 11:21 a.m.

14 MS. ALL: Your Honor, at this time the State moves to
15 enter State's Exhibit No. 46 and evidence.

16 MR. SCHNEE: No objection.

17 THE COURT: Without objection.

18 (WHEREUPON, State's Exhibit No. 46 was admitted into
19 evidence.)

20 BY MS. ALL:

21 Q Can you tell us, generally, the contents of that
22 Myspace printout?

23 A The subject referenced, "Hello, found your things."

24 Body of the text is, "I went to the library and didn't see
25 my bag."

1 I think this is coming from Regina.

2 Q I think it starts from the second page.

3 A Oh, okay.

4 Q It's going from new to old.

5 A Yes. Okay. First line, "I don't think I can make it

6 to Columbia tomorrow. I wouldn't want to intrude on y'all

7 [sic] Thanksgiving. If I do, I'm going need a plate."

8 Q I think it starts from the last one.

9 A Oh.

10 Q The very last line.

11 A The very last line. "I don't know what you're

12 talking about."

13 Q Then it goes through a thread.

14 A Okay. The thread -- this is what you're talking

15 about: "Hey, how are you? I found a black bag that

16 belongs to you. I only check [sic] it so I could find out

17 who it belonged to and see if I could help return it.

18 "Please leave me a contact number so I can return

19 what's yours. I know how it is to lose all kinds of IDs

20 and paperwork. It's a pain in the ass to get."

21 Q So is that the item that Regina Dennis was talking to

22 you about on December 4th?

23 A That's correct.

24 Q Okay.

25 A And this is dated November 26th.

1 Q Okay.

2 A At 12:29.

3 Q When you started your investigation on this case on
4 December 4th, you began working with the victim, did
5 Deloris and Shamael tell you that the defendant's face was
6 covered by a mask?

7 A I don't recall exactly what she said about that. I
8 know she said that -- she mentioned bandannas.

9 Q Uh-huh.

10 A Honestly, I can't recall exactly what she said
11 verbatim regarding that.

12 Q And as Mr. Schnee pointed out, you've been in law
13 enforcement for 28 years. Is it your experience that this
14 is the only case you've ever had where a suspect was
15 wearing a mask?

16 A No, it's not.

17 Q Would the wearing of that mask by a suspect determine
18 your administration of a photo lineup to a victim?

19 A No, it does not.

20 Q You've also talked about your contact with Mr. Toran.
21 As a law enforcement officer, I'm sure you can tell us,
22 isn't it true that once defendants are arrested, they have
23 the right to remain silent?

24 A What contact are you talking about, with Toran?

25 Q That there wasn't any.

1 A Yeah.

2 Q Just generally speaking, in your capacity as a law
3 enforcement officer, isn't it true that once a defendant
4 is arrested, they have the right to remain silent?

5 A That is absolutely true.

6 Q And is it also the case that when Mr. Toran was
7 arrested, he was represented by a lawyer?

8 A Yes.

9 Q Did Delores Dennis identify Ricky Bowman as the
10 person who broke into her home and hit her?

11 A Yes.

12 Q Was she positive about her identification?

13 A Yes, she was.

14 Q Did Shamael Coit identify Ricky Bowman as the person
15 who pointed a gun in her face?

16 A Yes.

17 Q And was she positive about her identification?

18 A Yes, she was.

19 MS. ALL: No more questions, Your Honor.

20 THE COURT: Recross?

21 MR. SCHNEE: No questions, Judge.

22 THE COURT: All right. You may come down, sir.

23 THE WITNESS: Thank you, sir.

24 THE COURT: Do you have any more witnesses for today?

25 MS. SAMPSON: At this time, Your Honor, the State

1 would rest.

2 THE COURT: All right. All right. Ladies and
3 gentlemen, that concludes the testimony for today. We'll
4 reconvene tomorrow morning at 9:30 at which time we'll
5 continue with the trial.

6 Again, I'm going to ask you not to discuss the case
7 among yourselves when you return to the jury room or with
8 anyone else over the evening hours. I'm going to ask you
9 not to attempt to do any research of any kind, internet or
10 otherwise, concerning the facts of this case or the people
11 involved in this case. That would be highly improper, and
12 I'm going to instruct you not to do that.

13 Otherwise, have a pleasant evening. We'll see you at
14 9:30 in the morning. Thank you very much.

15 (WHEREUPON, the jury left open court at approximately
16 4:23 p.m.)

17 THE COURT: All right. Has the State checked the
18 evidence?

19 MS. SAMPSON: I think we did it earlier. I'll take
20 them off the table so we don't have to worry about it.
21 Other than that, I think -- we can do that as soon as
22 we're done today.

23 THE COURT: All right. Mr. Schnee, does the
24 defendant plan to offer a defense?

25 MR. SCHNEE: Yes, Your Honor. We have some

1 testimony.

2 THE COURT: All right. Well, let me instruct your
3 client on his right to testify or not to testify.

4 Mr. Bowman, at this time, I'm going to explain to you
5 certain of your rights. If you do not understand anything
6 I say, please let me know. If you want me to explain
7 anything in more detail, please let me know. Do you
8 understand?

9 THE DEFENDANT: Yes, sir.

10 MR. SCHNEE: Speak up.

11 THE COURT: We've now reached the stage of the trial
12 where you may present your defense. You have the right to
13 claim the protections given to you by the 5th Amendment to
14 the Constitution of the United States.

15 This amendment states in part that no person shall be
16 compelled to be a witness against himself. This means
17 that you cannot be required to testify in this case.

18 You have the right to testify on your own behalf.
19 However, no one can make you testify. This is a personal
20 right, and no one can waive this right except you.

21 If you decide to testify, you would be subject to the
22 same rules that govern other witnesses, and you may be
23 examined and cross-examined on any relevant issue in this
24 case.

25 In addition, if you have convictions involving

1 dishonesty or false statement or for crimes punishable by
2 imprisonment for more than one year and this court
3 determines that the probative value of admitting this
4 evidence outweighs its prejudicial effect to you, the
5 solicitor will be able to introduce your record to attack
6 your credibility.

7 If you decide to testify, this decision on your part
8 must be freely, voluntarily and intelligently made and
9 with knowledge of the protections given to you by the 5th
10 Amendment to the Constitution and the consequences of your
11 decision to testify.

12 If you decide not to testify, I will tell the jurors
13 they cannot give the fact that you did not testify any
14 consideration whatsoever and that there is to be
15 absolutely no prejudice to you because you did not
16 testify.

17 It is left entirely up to you whether or not you wish
18 to testify. You may have talk with your attorney, your
19 family and friends or anyone else, but the final decision
20 will be left entirely up to you.

21 Do you understand what I've explained to you?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you have any questions about what I've
24 explained to you?

25 THE DEFENDANT: No, sir.

1 THE COURT: Have you discussed with your lawyer
2 whether you should testify or not testify?

3 THE DEFENDANT: No, sir.

4 THE COURT: You have not talked with him about it?

5 THE DEFENDANT: No, sir. I want to talk to him about
6 it.

7 THE COURT: I just want to know if you've already
8 talked with him.

9 MR. SCHNEE: We discussed some aspects. There are --

10 THE COURT: I want to hear from him.

11 THE DEFENDANT: Briefly, briefly.

12 THE COURT: Okay. You wish to talk with your lawyer
13 more about it?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. I will give you over the
16 evening hours to discuss that with your attorney, and I'll
17 expect an answer from you at 9:30 in the morning. All
18 right?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Thank you very much.
21 Anything further?

22 MR. SCHNEE: Yes, sir, Your Honor, just some brief
23 legal issues.

24 THE COURT: Yes, sir.

25 MR. SCHNEE: First, I would at this time move -- I

1 would renew all my prior motions and objections that have
2 already been denied based on all the same issues.

3 THE COURT: You can be seated, Mr. Bowman.

4 All right. Go ahead.

5 MR. SCHNEE: Second of all, there was a matter of law
6 that we briefly discussed at the bench regarding the last
7 witness, specifically in terms of redirect examination.

8 Up until that point, absolutely no witness had
9 testified in any aspect that any of these crimes took
10 place in Richland County and therefore had not conferred
11 jurisdiction to this court and to this courthouse.

12 While I did ask questions regarding an incident
13 report, I certainly never asked details about an address,
14 and on the incident report, it says nothing about what
15 county any of this takes place on.

16 I believe on redirect, that would be an improper
17 question of the witness. I move to suppress those
18 particular questions and answers, and as a result, I would
19 move for a directed verdict of not guilty and a mistrial
20 with prejudice at that point because there is no
21 jurisdiction in this court.

22 THE COURT: What is the State's position?

23 MS. SAMPSON: Your Honor, I believe that since
24 Mr. Schnee and we had to do it on the other -- with other
25 witnesses, as well when he initially began asking Sergeant

1 Pegram questions, he started asking him specifically what
2 was in the statement incident report and what wasn't, what
3 he did and didn't do based on the incident..

4 I think that because he covered the incident report
5 and what was in it and what wasn't in it, we are then
6 allowed to get back up and ask, "Okay. What is it?" That
7 is what we did.

8 As far as asking about the county, I believe that we
9 could ask on redirect about what county it was. I don't
10 think that that -- since we asked about where it was, we
11 talked about who was there.

12 We talked about where we talked to people, and that
13 was all done on cross, as well. So all of that is still
14 open to discussion.

15 I don't think that simply because he didn't
16 specifically ask him, "Did it occur in Richland County,"
17 we are limited in our questioning of where it happened
18 since he talked about where it happened.

19 He talked about where they went into the apartment
20 and what the witnesses told Investigator Pegram and where
21 the incident occurred. I think we did get into that. He
22 went into the age and everything in the incident report.
23 He asked about what wasn't in there and what was.
24 Therefore, we get to also ask the same questions.

25 MR. SCHNEE: Very briefly, Your Honor.

1 THE COURT: Yes, sir.

2 MR. SCHNEE: The State, obviously, has the burden of
3 proof in this matter, and they have the burden of proving
4 that this court has jurisdiction by showing what county
5 and what circuit it's in.

6 Even if they can go into every single word and letter
7 on this report, there is nothing that says it occurred in
8 Richland County.

9 Asking the question, "Did this occur in Richland
10 County" is something completely outside the scope of the
11 report itself. There is nothing in this report that says
12 Richland County, and I, obviously, certainly don't have to
13 ask that question. That's their responsibility, and they
14 have not done so. I would move to strike those questions
15 and answers.

16 MS. SAMPSON: The only thing I respond, Your Honor,
17 is we're not limited to asking questions about what the
18 incident report said.

19 We're limited to asking questions in redirect to deal
20 with things that were brought up during cross. It's still
21 our case in chief, even redirect.

22 Therefore, we could ask questions that go outside of
23 the incident report. We asked other parts of the incident
24 report. We asked about things he might -- Korey Coit
25 being a victim and the report, and there was no objection

1 to that.

2 So that -- we could have done the same thing with
3 that and asked him that incident that occurred, the one
4 that Korey Coit asked you about, talked about, that
5 occurs.

6 We still could have done it. We wouldn't have been
7 limited to this incident report. The limitation does not
8 apply to the incident report.

9 The limitation applies to what was brought out in
10 cross-examination, and he started questioning him about
11 the accuracy and the details in the incident report and
12 what he did with those details and what all those details
13 mean.

14 I think we're allowed to flesh that out, and one of
15 these questions was, "Is this in Richland County?" There
16 were other questions such as us bringing in the notes from
17 the Myspace account.

18 He asked about him getting the subpoena about the
19 Myspace account, but he didn't go into anything he had
20 that we even had a Myspace account.

21 We introduced that, and that was new. We are not
22 limited to not introducing anything on redirect. We are
23 simply limited to things he brought up in cross, and that
24 was one of the things he brought up in cross.

25 THE COURT: Well, I think that may be true under the

1 federal rule. I think the state rules under 611 are more
2 lenient than that, and I think it's a discretionary matter
3 for the court. I must respectfully deny your motion for a
4 mistrial based on that redirect examination of the
5 officer.

6 Are there any other motions for a directed verdict?

7 MR. SCHNEE: Yes, Your Honor. I would at this time
8 move for a directed verdict based on the totality of all
9 the evidence submitted, particularly with the highly
10 questionable aspects of the lineups.

11 First of all, as far as the gun charge goes, I don't
12 believe they have shown sufficient facts to show that it
13 was actually a firearm of any type.

14 They haven't in anyway really described the firearm
15 as to my client specifically. Even if other people had
16 it, the possession aspect is, as you know, requires
17 dominion and control.

18 I don't know of any credible testimony that's been
19 introduced, whether direct or substantial circumstantial
20 evidence that my client had an actual firearm, which would
21 be the definition under 16-23-10 describing what a firearm
22 is, being a gun that actually functioned by firing a
23 projectile.

24 THE COURT: What about the second part of this
25 statute that says if the witness believes it is a deadly

1 weapon or a firearm or is led to believe that?

2 MR. SCHNEE: That would be in Your Honor's
3 discretion.

4 As for the rest of the charges, I -- based on the
5 totality of the circumstances presented, I would move for
6 a directed verdict.

7 THE COURT: All right. What is the State's position
8 on all five of the indictments?

9 MS. SAMPSON: On all the indictments, Your Honor, I
10 do believe we have presented enough --

11 THE COURT: Just address each one.

12 MS. SAMPSON: Okay. On -- I'll start with the
13 burglary first degree, Your Honor.

14 As you are aware, the elements of burglary first
15 degree are breaking into a dwelling at the hours of
16 darkness. I think that we established or at least put up
17 enough evidence in order for it to go to a jury in the
18 evidence in the light most favorable to the State.

19 Every witness testified that it was dark. It was
20 either nine, ten, 10:30, 10:45 p.m. I don't think that's a
21 question.

22 Another element would be that weapons were involved,
23 either brought before, during or after the commission of
24 the burglary. I think all of our witnesses testified that
25 there were weapons used as part of this crime. So :

1 therefore, I do think we have given enough to go forward
2 on the burglary first degree.

3 On the armed robbery, again, all three witnesses that
4 were in the apartment as victims stated that all of the
5 men were robbed -- were armed.

6 The two witnesses who identified Ricky Bowman as
7 being the witnesses who either hit Deloris or held the gun
8 in front of them stated that he was armed.

9 Sean Toran stated he was armed with a .22 or a -- I
10 forget what type, but there was no doubt he was armed.
11 Not only was he armed, he shot it, according to Sean
12 Toran.

13 I believe that would cover the possession of a weapon
14 during the commission of a violent crime, even under
15 Mr. Schnee evaluation that it has to be a work in
16 progress.

17 The fact that Mr. Toran testified that not only was
18 it -- did it have the ability to work, the clip fell out.
19 Later, he actually used it would be enough to get past
20 directed verdict and present this case to a jury.

21 On the kidnapping, as Your Honor, is aware, they
22 don't have to actually move anyone in the apartment during
23 the crime. They just have to keep them still.

24 Deloris then testified that the gun was pressed up to
25 her forehead enough for her to have bruising on her head

1 and that Ricky Bowman was the person to do that.

2 That should get us past the directed verdict, and
3 then lastly, the assault and battery of a high and
4 aggravated nature charge, Delores Dennis testified that it
5 was Ricky Bowman who hit her with a gun.

6 There's been many different aggravators that could be
7 used toward the high and aggravated nature. One of which
8 is the use of a weapon. Secondly, can be a difference in
9 sexes or a difference in height and weight, and we have
10 those, as well or during the commission of another crime.

11 I think we've covered all of those with their
12 testimony enough to go forward in this case with a jury.
13 So, therefore, I'd ask that you deny his motion for a
14 directed verdict.

15 THE COURT: All right. As to the motion for a
16 directed verdict on all charges, I feel that the evidence
17 goes beyond that of mere conjecture or suspicion and that
18 there is evidence either direct or circumstantial or some
19 combination of both which tends to reasonably prove the
20 guilt of the defendant or from which that guilt might be
21 logically and reasonably deduced if that evidence is taken
22 in the light most favorable to the State. I must
23 respectfully deny your motions for a directed verdict on
24 all charges.

25 All right. Anything further?

1 MS. SAMPSON: The only other matter, did you get your
2 answer that you needed as far as with Ms. Ashton?

3 THE COURT: No.

4 MR. SCHNEE: Judge, I can put on the record, probably
5 about ten minutes after everything was going on, I looked
6 over at the assistant solicitors. I believe it was
7 Katherine Ashton. I looked over at her, and she shook her
8 head no. So I would assume that means that it's someone
9 else.

10 MS. SAMPSON: Do you want me to go get them to
11 just --

12 THE COURT: Well --

13 MS. SAMPSON: -- let you know? I just didn't know.

14 THE COURT: Well, I asked them to tell me whether
15 they could or could not identify the juror, and I'd like
16 an answer from them.

17 MS. SAMPSON: Okay.

18 THE COURT: I mean, I understand what you're telling
19 me.

20 MS. SAMPSON: If you'll give me one minute, they
21 should still be in our office.

22 (Pause.)

23 (There was no response).

24 THE COURT: All right. We'll stand at ease until
25 9:30.

1 (Whereupon, There was an overnight recess).

2 (WHEREUPON, Court's Exhibits Nos. 3, 4 were marked
3 for identification only.)

4 THE COURT: Is the defense ready to proceed?

5 MR. SCHNEE: I am but apparently, there is an issue
6 with Torrell Johnson. His attorney, Mathias Chaplain, is
7 talking to him right now.

8 It's my understanding he might be asserting the fifth
9 in terms of his testimony, but we should know that
10 shortly. So Mathias is with him right now.

11 THE COURT: Present in the building?

12 MR. SCHNEE: Yes, in the building.

13 MS. SAMPSON: They were supposed to be bringing him
14 up from holding straight into --

15 THE COURT: Well, let's put him in D cell.

16 MS. SAMPSON: Okay. I didn't know how. I didn't
17 know if you wanted us to do this before we brought the
18 jury out, how you wanted to do this. We're supposed to be
19 bringing the jury out.

20 THE COURT: Let's not interrupt the jury any more
21 than we have to.

22 MS. SAMPSON: Right.

23 THE COURT: I'd rather bring him up, let Mr. Chaplain
24 talk to him wherever.

25 Is he being brought up?

1 MS. SAMPSON: That is my understanding, Your Honor.

2 THE COURT: All right. Are you ready for the jury?

3 MS. SAMPSON: The State is ready, Your Honor.

4 THE COURT: Defense ready?

5 MR. SCHNEE: Yeah. I thought we wanted to deal with

6 Mr. Chaplain and anything you wants to do on the record.

7 Of course, that's --

8 THE COURT: Well, where is he?

9 MR. SCHNEE: They're on their way up.

10 THE COURT: Ace, make yourself useful.

11 MR. SCHNEE: I mean, my first officer, Officer Hamee
12 is probably a 10-minute witness who will go at the end.

13 THE COURT: I understand.

14 Ready to proceed?

15 MR. SCHNEE: Yes, Your Honor.

16 THE COURT: Have a seat, Mr. Chaplain.

17 MR. CHAPLAIN: Thank you.

18 THE COURT: All right. Bring the jury, please.

19 Mr. Schnee, I told -- I indicated to your client
20 yesterday that I would ask him this morning if he plans to
21 testify.

22 Mr. Bowman, I'll ask you at this time, have you had
23 an opportunity to consult with your counsel whether you
24 should or should not testify?

25 THE DEFENDANT: No, sir.

1 THE COURT: No.

2 THE DEFENDANT: No. I consulted with him, but I do
3 not plan to testify.

4 THE COURT: All right. You do not plan to testify?

5 THE DEFENDANT: No, sir.

6 THE COURT: All right. That's all I need to know.
7 Now, bring the jury.

8 THE BAILIFF: Yes, sir.

9 (WHEREUPON, the jury came into open court at
10 approximately 10:15 a.m.)

11 THE BAILIFF: The jury is seated, Your Honor.

12 THE COURT: Thank you very much.

13 Good morning, ladies and gentlemen of the jury.

14 THE JUROR: Good morning.

15 THE COURT: We're now ready to continue with the
16 trial. Mr. Schnee, you may present your case.

17 MR. SCHNEE: May it please the Court. The defense
18 calls Officer Hamee to the stand.

19 THOMAS HAMEE, after being duly sworn,
20 testified as follows:

21 THE CLERK: State your name for the record.

22 THE WITNESS: Thomas Hamee.

23 DIRECT EXAMINATION:

24 BY MR. SCHNEE:

25 Q Good morning.

1 A Good morning.

2 Q How long have you been with the Columbia Police
3 Department?

4 A Police department, approximately ten years with the
5 City of Columbia Police Department.

6 Q Okay. How long were you in law enforcement before
7 that?

8 A I was with the City of Columbia court system for
9 seven years, in Richland County for one year.

10 Q Okay. Back in November of 2008, what were your
11 duties then?

12 A I was a patrol officer assigned to the west region,
13 which is the Harbison area, Broad River Road area.

14 Q Okay. Specifically on November 25th, were you
15 dispatched anywhere that night?

16 A I was.

17 Q Okay. Could you please describe where you went and
18 why?

19 A On that particular date and time, I was on patrol,
20 and I got a call from dispatch there was a shots fired at
21 168 Brook Pines Drive, and I needed to respond. At that
22 time, I went blue lights and siren, responded to the
23 scene. The dispatch time did come out at 22:23, and
24 according to my records, I reached the incident location
25 two weeks later.

1 Q Okay. 22:23, that's 10:23 p.m.?

2 A Correct, I'm sorry.

3 Q Okay. Now, the address at Brook Pines Drive, that's
4 the Brook Pines apartments?

5 A Yes, it is.

6 Q Okay. How many officers showed up there?

7 A Several.

8 Q Okay.

9 A All jurisdictions. Myself, I was the first officer
10 on the scene. That's why I did the initial report and
11 investigation. The other officer was with me. He was
12 actually -- if I had to take an educated guess, he is not
13 on my squad. It was the holiday season. He was working
14 overtime doing crime suppression.

15 Q Okay. Now, what time did you leave?

16 A I left at 11:25 p.m.

17 Q Okay. So you were there for about an hour?

18 A Yes.

19 Q Okay. And what took you so long while you were
20 there?

21 A When I got there, I went straight to the scene. I
22 found the car immediately because there was -- you know,
23 there was bullets riddled through the back trunk and the
24 back window.

25 Of course, I called out that -- where I was. The

1 other officer was probably a minute or two behind me. At
2 that time, I secured the crime scene, looked around,
3 didn't see anybody. Coming in, I didn't see any vehicles
4 fleeing at a high rate of speed.

5 Of course, my training, if I'm going to a point of
6 crime and I see a car leaving at a high rate of speed
7 going, I'm immediately going to turn around, go back and
8 chase them. I did not see that at that time.

9 Q Okay. And what did you when you got there and got to
10 the scene of the car. What were you looking for?

11 A I was looking to see if there was -- of course, blood
12 anywhere, just anything out of the ordinary. All I saw
13 was brass shells everywhere, a car riddled with bullets.

14 We notified the watch commander and our shift
15 sergeant. I just secured the crime scene for the crime
16 scene investigator to get there.

17 After it was all over with, we couldn't -- I ran the
18 tag of the vehicle, found the person that owned the
19 vehicle, and again, my report says one of them, either
20 myself or Officer Olsen, talked to the person that owned
21 the vehicle. I do not recall which one it was. I really
22 don't.

23 Q Okay.

24 A But in my report, it says that she was in the shower,
25 and she heard gunshots, I believe.

1 Q Okay. Did you and the other officers knock on any
2 other doors that night?

3 A We did. There were several county officers. We all
4 respond. You know, if there's gunshots, we all hear the
5 same stuff and we all respond.

6 I stayed and Officer Olsen and several Richland
7 County deputies, which I don't know which ones were there,
8 but I know, myself, I knocked on two or three doors.

9 In my report, I found eight shell casings on the
10 surrounding area. I could only find -- I counted for
11 seven actual holes where the bullet impacted.

12 So I felt it was my duty for safety to go around and
13 the other officer to knock on every door in the vicinity.
14 Of course, Murphy's law, that stray bullet is going to go
15 somewhere and, you know, do damage to somebody.

16 Q Okay. So if I'm understanding, you get there at
17 10:28; I think it is.

18 A I arrived at the scene at 10:23.

19 Q You arrived at 10:23?

20 A Correct. The incident occurred at 10:20.

21 Q Okay.

22 A Took me approximately, you know, three minutes.

23 Q And you were there until what time?

24 A 11:25.

25 Q Okay. You were there for an hour, you and all the

1 other officers knocking on doors trying to find out what
2 happened?

3 A Yes. Plus I was -- you know, I secured the crime
4 scene. Didn't let me come in. You know, I couldn't touch
5 the car until the investigators were looking at it, took
6 pictures, you know, secured the brass.

7 MR. SCHNEE: Okay. Well, thank you very much. I
8 have no further questions.

9 THE COURT: Cross-examination?

10 CROSS-EXAMINATION:

11 BY MS. SAMPSON:

12 Q Good morning, Officer?

13 A Good morning.

14 Q At the time you went to investigate the shooting, you
15 didn't know about the home invasion.

16 A I did not.

17 Q In fact, and you were not called out there about the
18 home invasion?

19 A I was not.

20 Q And you said you didn't see anyone fleeing, but there
21 were cars coming and going down Broad River Road. They
22 just --

23 A Down Broad River Road, correct.

24 Q Nobody was at a high rate of speed for you to notice?

25 A If they were, I definitely would have turned around.

1 Q Okay. And the knock that you did, you said you
2 talked to a couple of people --

3 A Right.

4 Q -- you were just seeing if anybody was safe?

5 A That's my priority, to make sure everybody was safe.
6 No bullet went astray and shot somebody.

7 Q And you weren't involved in investigation of the home
8 invasion at , that apartment at all.

9 A I have no knowledge of that whatsoever.

10 MS. SAMPSON: No further questions, Your Honor.

11 THE COURT: Any redirect?

12 MR. SCHNEE: No, Your Honor.

13 Thank you, Officer.

14 THE COURT: All right. You may come down.

15 May this officer be excused?

16 MR. SCHNEE: Yes.

17 THE COURT: Without objection.

18 Next witness.

19 MR. SCHNEE: The defense calls Mary Brown.

20 THE COURT: Mary Brown?

21 MR. SCHNEE: Wanda Brown, I apologize.

22 THE COURT: Wanda Brown.

23 MR. SCHNEE: My fault and error.

24 WANDA BROWN, after being duly sworn,
25 testified as follows:

1 THE CLERK: Thank you. Have a seat in the witness
2 stand, please.

3 THE BAILIFF: Watch your step. Speak into the mic.

4 THE CLERK: State your name for the record.

5 THE WITNESS: Wanda Brown.

6 DIRECT EXAMINATION:

7 BY MR. SCHNEE:

8 Q Good morning.

9 A Good morning.

10 Q Since, obviously, everyone is going to want to know,
11 how do you know Ricky Bowman?

12 A He's my son.

13 Q Okay. How many children do you have?

14 A Six.

15 Q Does Ricky have any children?

16 A Yes.

17 Q Okay. On November 25th, 2008, do you remember what
18 you were doing?

19 A Moving.

20 Q Okay. Why were you moving?

21 A I had an eviction notice.

22 Q Okay. Do you know where Ricky was that day?

23 A Yes.

24 Q Where was he?

25 A Helping his mom, me.

1 Q Okay. And when was he there? I mean, what time did
2 all of this start?

3 A He was there from morning helping me pack and get
4 trucks. We did about three loads that we had to take,
5 come back and get until about a quarter to 12.

6 Q A quarter to 12 at night?

7 A Yes.

8 Q Okay. So pretty much the whole day?

9 A Yes.

10 Q All right. Who else was there with you guys?

11 A A few of my other relatives, my in-laws and my
12 brother.

13 Q Okay. Now, you obviously, since you're his mother,
14 know Ricky a long time. Could you describe his eyes to
15 the jury?

16 A Yes, I can. At 15 years old, he was trying to be
17 big, smoked a cigarette and tried to flicked it out a car
18 window. In my son's right eye, he has a brown burn mark,
19 very distinct.

20 Q Okay. Is there anything else distinct?

21 A Very long eye lashes. They're long and shaped.

22 Q Okay. Do you know a man by the name of Torrell
23 Johnson?

24 A Yes, I do.

25 Q Okay. How do you know him?

1 A His mother was my neighbor.

2 Q Okay. You've seen him before?

3 A Yes.

4 Q Many times?

5 A Yes.

6 Q Okay. Do you ever talk to him about this particular
7 incident?

8 A No.

9 Q Okay. Do you ever -- are you aware of if he's ever
10 signed any affidavits?

11 MS. SAMPSON: Objection, Your Honor.

12 THE COURT: Sustained.

13 BY MR. SCHNEE:

14 Q Now, you love your son, don't you?

15 A Yes, I do.

16 Q You obviously don't want to see him get convicted
17 wrongly, right?

18 A I'm sorry these people got hurt, but my son wasn't
19 there.

20 Q Okay. Would you lie for your son?

21 A If he was wrong, no.

22 MR. SCHNEE: I have no further questions.

23 THE COURT: Cross-examination?

24 CROSS-EXAMINATION:

25

1 BY MS. SAMPSON:

2 Q Good morning, Ms. Brown.

3 A Good morning.

4 Q Now, you said you were moving out. Were you moving
5 from?

6 A

7 Q So you lived in that same apartment complex as
8 Torrell Johnson?

9 A Yes.

10 Q The same complex as Sean Toran?

11 A Yes.

12 Q They were your neighbors?

13 A Yes.

14 Q And, in fact, you know Sean Toran's mother?

15 A Yes.

16 Q You all were friends.

17 A Yes.

18 Q And it's fair to say Ricky and Sean hung out
19 together.

20 A No, they never.

21 Q They never hung out together?

22 A They didn't at all. Mr. Toran told you they weren't
23 friends. They didn't get along at all.

24 Q They didn't get along?

25 A At all.

1 Q What about Black Shawn? Do you know him?

2 A I don't know who that is.

3 Q What about Rodney Pierre?

4 A I don't remember him.

5 Q You don't know him?

6 A By that time --

7 THE COURT: Ask her to speak. Would you speak up
8 just a little bit?

9 THE WITNESS: I don't remember him by that name. I
10 can't put a face to it.

11 BY MS. SAMPSON:

12 Q Okay. What about Marcus Wilson?

13 A No.

14 Q Roy Foster?

15 A No.

16 Q Did you see Shawn Torran?

17 A Did I see him?

18 Q In the area.

19 A Yes.

20 Q So you know what he looks like?

21 A Yes.

22 Q You said you got an eviction notice?

23 A Yes.

24 Q When did you get the eviction notice?

25 A They gave him time to get out by the next morning,

1 which would have been the 26th.

2 Q So you received an eviction notice on the 25th?

3 A No. I received it before the 25th. They gave me
4 extra time to get out.

5 Q I thought you said that they only gave you a day's
6 notice. I just want to be clear.

7 A No. I didn't say that.

8 Q Okay. So when did you get the eviction notice?

9 A I got the eviction notice about two weeks prior to
10 the November --

11 Q So what day?

12 A I can't remember what day.

13 Q You don't remember what day?

14 A No.

15 Q Do you have the eviction notice?

16 A They should have a copy of it.

17 Q Do you have the eviction notice?

18 A No. It's three years ago.

19 Q Do you have -- where did you move?

20 A I moved to my other son's house, and it was on -- oh
21 gosh. I've been there since then, moved off of North Main
22 and -- gosh, what's that street? I can't think of the
23 name of the street right now.

24 Q So you moved somewhere off North Main?

25 A Yes.

1 Q And you moved on what day?

2 A November 26th.

3 Q Okay. What time did you start moving?

4 A Earlier in the morning. I was still packing stuff.

5 Q Okay. What time did the truck get there?

6 A We get our first load -- I'm not sure if it was about

7 eight p.m.

8 Q So you didn't start moving until eight p.m.?

9 A I had a lot -- no. I had lot of stuff, so we started

10 loading the truck about eight p.m.

11 Q So you didn't start moving until eight p.m. out of

12 the home?

13 A Around that time.

14 Q Was it dark?

15 A Yes.

16 Q Okay. And who helped you, you said?

17 A My son, Ricky Bowman.

18 Q Who else?

19 A A few friends.

20 Q Who else?

21 A And my brother.

22 Q Names.

23 A My brother is Wallace Johnson.

24 Q Okay. Wallace Johnson.

25 A Uh-huh.

- 1 Q You said friends. Who else?
- 2 A Marcus, a friend of mine named Marcus.
- 3 Q Marcus what?
- 4 A Kelly.
- 5 Q Okay.
- 6 A And he had some friends of his helping, and I don't
- 7 know their names.
- 8 Q So the only people you can tell me were there are
- 9 Ricky Bowman, Wallace Johnson, and Marcus Kelly. You
- 10 don't know the names of the other people?
- 11 A No. They just brought extra big guys to help move
- 12 the furniture.
- 13 Q This went on for how long?
- 14 A Until about a quarter to 12, when we got the load.
- 15 Q Okay. And the entire time you were with original
- 16 Ricky.
- 17 A No. We were all together helping, you know, pack up.
- 18 Q And you were all in that one truck?
- 19 A We were all in the house taking loads, loading the
- 20 truck.
- 21 Q How did you get back and forth between the apartment
- 22 you were staying in and the one you were going to move
- 23 into on Main?
- 24 A A man that lived in that complex and had moved, I
- 25 paid him to use his pickup truck.

1 Q So you had that one truck. What other vehicles did
2 you have?

3 A That was it.

4 Q So you called -- you, Ricky, Wallace, Marcus and the
5 other people that Marcus brought all rode in that pickup
6 truck back and forth?

7 A No.

8 Q Okay. So what other vehicle?

9 A Ricky stayed helping me. We only had the one
10 vehicle.

11 Q So you stayed in the apartment, and you put your
12 stuff in there?

13 A Not all the time, no.

14 Q Okay. So who all would ride in the truck?

15 A Marcus would ride and maybe two of the other guys
16 maybe stayed helping me.

17 Q Okay.

18 A And two other guys.

19 Q Whose names you don't know?

20 A No. They just brought help.

21 Q And you said -- does Ricky smoke?

22 A Yes, he smokes cigarettes, yes.

23 Q Yes. Did he smoke in your hours?

24 A I smoke in my house.

25 Q So he didn't have to go outside to smoke or anything

1 like that?

2 A No.

3 Q That whole time you didn't see that day Sean Toran?

4 A Yeah, I saw him that today.

5 Q You did see him that day. What about Rodney Pierre?

6 You didn't see him?

7 A I don't know which one that is.

8 Q Okay. And you don't have that eviction notice?

9 A No.

10 Q Okay. And your son was arrested, charged with these
11 offenses in December of 2009. You were made aware of that
12 in December of 2009?

13 A (Nods in the affirmative.)

14 Q Did you go tell Investigator Pegram he couldn't have
15 done it. He was with you?

16 A An investigator came and spoke with me and wanted to
17 know what happened that day. I told him.

18 Q That investigator spoke to you?

19 A I don't remember if it was him. I doubt if it was
20 him.

21 Q Did you --

22 A I sat in a truck and talked to this man.

23 Q You don't know his name?

24 A I can't remember his name.

25 Q Was he dressed like this officer with the badge on?

- 1 A No.
- 2 Q Was he in clothes? Was he in a uniform?
- 3 A No, just regular clothes.
- 4 Q Just regular clothes. He talked to you in a truck?
- 5 A Uh-huh.
- 6 Q You didn't go down to headquarters to make a
7 statement?
- 8 A No.
- 9 Q You didn't go tell them and bring them your eviction
10 notice to show he was with you?
- 11 A No.
- 12 Q Did you call -- when we charged him, did you call my
13 office and tell us we had the wrong person?
- 14 A No.
- 15 Q Did you call anybody and tell them we had the wrong
16 person?
- 17 A No.
- 18 Q This is the first time you've told anybody other than
19 his lawyer that they got the wrong person?
- 20 A Ricky has another lawyer.
- 21 Q His other lawyer prior to this you told her?
- 22 A Uh-huh.
- 23 Q But other than that, that's all?
- 24 A Uh-huh.
- 25 MS. SAMPSON: Beg the Court's indulgence, Your Honor.

1 No further questions, Your Honor.

2 THE COURT: Redirect?

3 MR. SCHNEE: Very briefly.

4 REDIRECT EXAMINATION:

5 BY MR. SCHNEE:

6 Q Now, you said Ricky had another lawyer. Do you know
7 when he got that other lawyer?

8 A Probably when this -- when he got arrested.

9 Q Okay.

10 A Yes.

11 Q When did you tell her that he was helping you move?

12 A It was a him.

13 Q It was a him, okay.

14 A As soon as he contacted me.

15 Q Okay.

16 A Uh-huh.

17 Q Have you ever did not -- you told other people,
18 though, not just me?

19 A Yes.

20 Q Okay. From the beginning?

21 A Yes.

22 MR. SCHNEE: No further questions.

23 THE COURT: Anything further?

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

25 THE COURT: You may come down, ma'am. Thank you very

1 much.

2 THE BAILIFF: Watch your steps.

3 THE COURT: Next witness.

4 MR. SCHNEE: Judge, I no longer have any further
5 witnesses. However, I would at this time ask that the
6 jury be allowed to step down.

7 THE COURT: All right.

8 MR. SCHNEE: And take a look at my client's eyes
9 closely.

10 THE COURT: All right.

11 Ladies and gentlemen of the jury, what defense
12 counsel is requesting, because identification is a
13 significant issue in this case -- and I have will tell you
14 that in my jury instructions -- counsel would like for you
15 to walk in front of the counsel table and view Mr. Bowman
16 up close, and they're requesting that you pay specific
17 attention to his eyes, all right, since eyes have been the
18 subject of several witness' testimony about how they
19 identified him.

20 So with that in mind, Madam Forelady, why don't you
21 lead off your jury. We'll just -- you can leave your
22 notes in your seat -- or do it any way you want to.

23 THE FOREMAN: Okay.

24 THE COURT: Just take your time, one at a time. Why
25 don't we just you do it and then circulate around. We'll

1 figure it out.

2 (Whereupon, the jurors complied.)

3 Anything further from the defense?

4 MR. SCHNEE: Your Honor, at this time the defense
5 rests.

6 THE COURT: All right. Any reply?

7 MS. SAMPSON: Your Honor, I believe there may be a
8 motion of law we need to take up before we can do a reply.

9 THE COURT: Does the State plan to --

10 MS. SAMPSON: Are you asking if I plan to?

11 THE COURT: Yes.

12 MS. SAMPSON: Beg the Court's indulgence.

13 (Pause.)

14 Yes, we would have a reply, Your Honor, just one
15 witness.

16 THE COURT: Approach the bench.

17 (WHEREUPON, a bench conference was held in the
18 presence but not within the hearing of the jury)

19 THE COURT: All right. Solicitor, call your witness.

20 MS. SAMPSON: I'd call Investigator Pegram to the
21 stand.

22 THE COURT: You're still under oath.

23 THE WITNESS: Yes, sir.

24 THE COURT: You've been sworn yesterday.

25 WILLIAM PEGRAM, after being previously

1 duly sworn, testified as follows:

2 DIRECT EXAMINATION:

3 BY MS. SAMPSON:

4 Q All right. Sergeant Pegram, we keep demoting you,
5 I'm sorry.

6 All right. I just want to be clear on your
7 procedures. You were the lead investigator in this case.

8 A I was the only investigator on this case.

9 Q And how do you know that?

10 A It was assigned to me. If there was additional
11 investigators, they would have had to come through me.

12 Q So would have -- would it be fair to say if you
13 needed something done, you would have assigned somebody to
14 do that?

15 A Yes.

16 Q Or you would do it yourself?

17 A Yes.

18 Q Did you ever talk to Wanda Bowman?

19 A Never seen her before.

20 Q Did you assign anyone to go talk to her?

21 A I did not.

22 Q Did you ever receive any information from anyone from
23 Ricky Bowman was with his mother moving furniture and not
24 possibly at ?

25 A No.

1 Q So that information today was the first that you
2 heard it?

3 A That's correct.

4 Q Did anyone in your office, to the best of your
5 knowledge, ever talk to her about this case?

6 A No.

7 MS. SAMPSON: No further questions, Your Honor.

8 THE COURT: Cross?

9 MR. SCHNEE: Very briefly.

10 CROSS-EXAMINATION:

11 BY MR. SCHNEE:

12 Q Do you have a copy of your investigative follow up
13 with you?

14 A Back there.

15 MR. SCHNEE: May I approach?

16 THE COURT: Sure.

17 BY MR. SCHNEE:

18 Q In your follow up, you list dates and times of what
19 you're doing?

20 A Yes.

21 Q Okay. On the second page, which is the very end,
22 what is the date of your very last entry?

23 A December 8th, 2008.

24 Q 2008.

25 A Yes, sir.

1 Q Okay. That would be four days after you were
2 assigned?

3 A Yes.

4 Q Okay. And a full year before my client was even
5 arrested?

6 A Yes.

7 MR. SCHNEE: Okay. No further questions.

8 MS. SAMPSON: Just a couple questions.

9 REDIRECT EXAMINATION:

10 BY MS. SAMPSON:

11 Q He asked you about your report as far as your initial
12 report stops four days after.

13 A That's correct.

14 Q You did more after that, though, correct?

15 A Yes.

16 Q What else did you do?

17 A There -- I mean, it was an ongoing thing until he was
18 actually in custody.

19 Q Correct. I'm going to -- I'm going to hand you
20 something and see if you recognize it. What is this?

21 A That is an investigative report that I actually wrote
22 on December 21st of 2009.

23 Q And that's when you arrested Mr. Bowman?

24 A Yes.

25 Q And that is not in the notes that he was talking

1 about but it was done?

2 A Yes.

3 Q So you could do something else and not put it in that
4 initial report? You could do a supplemental?

5 A Yes.

6 Q Any supplementals that anyone talked to Wanda Bowman?

7 A No.

8 Q And would it be procedure to talk to her in a truck?

9 A No. We don't use trucks. I don't -- I've never
10 driven a truck in law enforcement, and the procedure would
11 be that if someone else talked to her by regulation
12 through our department, they would have to contact me
13 immediately either by phone or in person. They would have
14 to come tell me what transpired. I don't know of any
15 investigators assigned to C.I.D. that have a pickup truck.

16 Q If that would have happened, you would have done a
17 supplemental report to add?

18 A If that would have happened, she would have been
19 brought in to headquarters to give a written statement.

20 Q And there is no written statement.

21 A There is not.

22 MS. SAMPSON: No further questions.

23 RE CROSS-EXAMINATION:

24 BY MR. SCHNEE:

25 Q This December 21st, 2009 report --

1 A Yes, sir.

2 Q -- does it say anything other than my client was
3 arrested?

4 A It shouldn't.

5 No. It specifically says that your client was
6 extradited from Savannah, Georgia, and that he was
7 incarcerated at the Alvin S. Glenn Detention Center
8 pending a GSC bond hearing.

9 Q Okay.

10 A Then it lists the charges and the warrants.

11 Q Okay. So all that says is my client was arrested in
12 2009.

13 A Yes.

14 MR. SCHNEE: All right.

15 THE COURT: All right, sir. You may come down.

16 Thank you very much.

17 MS. SAMPSON: That would be the only reply witness
18 for the State, Your Honor.

19 THE COURT: All right. Ladies and gentlemen of the
20 jury, that's all of the evidence. The remaining portion
21 of the trial would consist of the final arguments or
22 statements by counsel summing up their case, and my
23 instructions to you on the law of South Carolina as it
24 applies to this case.

25 Now, before that takes place, there's several legal

1 matters I need to take up with the attorneys, and they
2 need to sort of get their final presentations in order for
3 you.

4 So I'm going to ask you to go to the jury room for a
5 few minutes and just relax. I'm going to send the clerk
6 in and get -- give you some lunch menus.

7 We're going to provide lunch for you today and --
8 because this will be an ongoing process, the final
9 arguments and my instructions to you on the law, at that
10 the point in time, the case will be turned over to you for
11 deliberations.

12 So just relax for a few minutes. We'll be ready to
13 go, and if you'll fill out your lunch menus for the clerk,
14 turn them in. We'll order you lunch. Thank you very
15 much.

16 (WHEREUPON, the jury left open court at approximately
17 10:44 p.m.)

18 THE COURT: All right. Any motions?

19 MR. SCHNEE: Yes, Your Honor. At this time, I would
20 renew all prior motions and objections, typically my
21 motion for a directed verdict, my motions for a mistrial,
22 especially based on the opening statement by the solicitor
23 regarding Korey Coit who was so scared he would not even
24 show up and along with the other fear of the -- I believe
25 Delores Dennis and Shamael Coit. I'm sorry, Regina Dennis

1 and Shamael Coit, couple that with the fact that my
2 client's family was removed. That reinforced that. I
3 would ask for a mistrial on that basis.

4 THE COURT: All right. What is the State's position?

5 MS. SAMPSON: As far as the directed verdict, I'll
6 stand on what I -- the motion I made yesterday. As far as
7 I believe that enough evidence has been presented for the
8 case to go before the jury.

9 The defense seems to be at this point that there is
10 an alibi, but I think there is enough evidence that the
11 jury can disbelieve that and go forward with guilt if
12 they so chose.

13 In looking at the evidence in the light most
14 favorable to the State, I think the case should be given
15 to the jury, as there's been enough evidence provided. I
16 would ask that you stand on any previous rulings that were
17 sustained on our behalf that Mr. Schnee and his motions be
18 overturned.

19 As far as a mistrial, I don't think -- I think that
20 both Deloris and Shamael stated what their fear was on the
21 stand, so I don't think there is any prejudice to that.
22 That was a part of their testimony.

23 We made sure the room was cleared without the jury
24 even knowing what had happened. We didn't make a big
25 showing out of there or anything like that, so I don't

1 think there is any prejudice to the defendant not having
2 that.

3 THE COURT: All right. Well, I think there is
4 sufficient evidence from which the jury could conclude the
5 defendant was guilty of the crimes charged, but as you
6 know, it's not my position to weigh the evidence.

7 The question is whether there is evidence from which
8 the jury could reasonably find guilt or innocence of the
9 defendant. I feel there is enough evidence to go to the
10 jury. As to your mistrial motion, I think my explanation
11 of the mistrial motions is on the record, but I must
12 respectfully deny all motions at this time.

13 All right. Now, how do you plan to close?

14 MS. SAMPSON: We're going to split, Your Honor.
15 Ms. All is going to close on the law. I'll close on the
16 facts.

17 THE COURT: All right. I'll have a set of the jury
18 charges for you in about five minutes. You can review
19 them and let me know if you have any additions or
20 deletions. We'll stand at ease for about ten minutes.

21 MR. SCHNEE: Thank you, Judge.

22 (WHEREUPON, a short break was taken.)

23 THE COURT: Any objections to the charge?

24 MS. SAMPSON: None from the State, Your Honor.

25 MR. SCHNEE: No objections to it, Your Honor.

1 THE COURT: Are you ready for the jury?

2 MS. SAMPSON: Your Honor, if I could have one minute
3 for Britton. I don't know if she is in the bathroom or
4 what. If I could just see if that's where she is.

5 (Pause.)

6 THE COURT: Ready for the jury?

7 MS. SAMPSON: Yes.

8 (WHEREUPON, the jury came into open court at
9 approximately 11:11 a.m.)

10 THE BAILIFF: The jury is seated, Your Honor.

11 THE COURT: Thank you very much.

12 THE BAILIFF: Yes.

13 THE COURT: All right. Ladies and gentlemen, we are
14 now ready to conclude the trial with the final summations
15 of the lawyers.

16 Ms. All.

17 MS. ALL: Thank you, Your Honor.

18 CLOSING STATEMENT:

19 MS. ALL: Ladies and gentlemen, as we discussed at
20 the beginning of this case, Ricky Bowman has been charged
21 with burglary first, assault and battery of a high and
22 aggravated nature, armed robbery, kidnapping and the
23 possession of a weapon during the commission of a violent
24 crime.

25 Again, it's the State's burden to prove every element

1 of that crime beyond a reasonable doubt. It's not the
2 State's responsibility to produce proof that overcomes
3 every possible doubt but only that leaves you firmly
4 convinced.

5 The way that you'll do that, first of all, is by
6 looking at the evidence. There are two different kinds of
7 evidence: There's direct evidence, what the witness saw,
8 heard, touched or smelled, and circumstantial evidence,
9 which is inferring something from the circumstances.

10 Now, the most important form of evidence in this case
11 is the testimony from the witness stand, and in reviewing
12 the testimony from the witness stand, there are different
13 factors you can consider.

14 I know you all can read, but I'll have these,
15 demonstrative, you know.

16 The demeanor of the witnesses, whether they were
17 forthright or hesitant, the consistency of their
18 testimony, whether it was corroborated and whether they
19 had any reason to be biased or prejudice.

20 So think about the State's witnesses when they took
21 the stand, what they said, how they said it and in
22 comparison to the other testimony.

23 Now, we talked about proving beyond a reasonable
24 doubt every element of these crimes, so briefly, we're
25 going to go over the crimes, just so we're all clear on