

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

Honorable Michael G. Nettles, Circuit Court Judge

JONATHON PHILLIPS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000275

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) SIXTEENTH JUDICIAL CIRCUIT
 COUNTY OF YORK) CASE NO.: 2015-GS-46-3438

STATE OF SOUTH CAROLINA)
)
)
 VS) (DAY 1 - VOLUME I)
)
 JONATHAN ALEXANDER) (PAGES 1 - 138)
 PHILLIPS)

FEBRUARY 10, 2016
 YORK, SOUTH CAROLINA

BEFORE THE HONORABLE DANIEL D. HALL

APPEARANCES:

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 YORK, SOUTH CAROLINA

DANIEL PORTER, ASSISTANT SOLICITOR
 YORK, SOUTH CAROLINA

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 16TH Circuit Court Reporter

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1 (WHEREUPON, DOCUMENTS MARKED AS STATE'S EXHIBITS
2 1 THROUGH 14 FOR IDENTIFICATION.)

3 THE COURT - All right, solicitor, call your next
4 case.

5 MR. PLEMING - Thank you, Your Honor. At this
6 time the State calls for trial the State vs. Jonathan
7 Phillips charged with armed robbery under Indictment Number
8 2015-GS-46-3438.

9 THE COURT - Defense ready?

10 MS. INZERILLO - Yes, Your Honor.

11 THE COURT - Anything we need to take up -- well,
12 let me -- what is the status of the jury?

13 DEPUTY CLERK - I'll have to ---

14 THE COURT - My question is how long have they
15 been sitting there ---

16 (WHEREUPON, DEPUTY CLERK MAKES A CALL TO CHECK ON
17 THE STATUS OF THE JURY.)

18 (WHEREUPON, DISCUSSION IS HELD BETWEEN THE COURT
19 AND THE DEPUTY CLERK WHICH IS NOT REPORTED.)

20 THE COURT - All right, are there any pre-trial
21 issues we need to deal with from the State?

22 MR. PLEMING - Your Honor, the only matter that
23 the State would bring up at this time would be -- we -- we
24 do intend to introduce a photograph of the defendant
25 through an officer that interviewed him after his arrest.

1 The photograph was taken during the booking process on
2 August 17th when he was arrested, and subsequent to -- or
3 pursuant to State v. Green, 412 SC 65 2015, the State would
4 just like to put on the record our basis for entering that
5 photograph. If Your Honor would like, I would like to just
6 place a few things on the record at this time.

7 THE COURT - That's fine.

8 MR. PLEMING - Thank you, Your Honor. State v.
9 Green outlined a three-pronged test for the admission of a
10 mug shot to be used for identification purposes at trial.
11 The first prong of that test, the State must have a
12 demonstrable need to introduce the photo. In our case,
13 Your Honor, the store clerk of this armed robbery described
14 the suspect as having a bloodshot left eye, stating that it
15 looked like he had a busted blood vessel in his left eye.
16 The defendant's mug shot taken just days after the incident
17 does clearly show his left eye is bloodshot, and Detective
18 Strait who interviewed him after his arrest can
19 authenticate the photo because his appearance in that photo
20 is fair and accurate as to how he looked on that day. The
21 second prong of the test requires -- the photograph shown
22 to the jury does not suggest the defendant has a criminal
23 record at -- we'll, of course, address as a finding
24 objection during the trial, but the State's position would
25 be that we took reasonable steps to insure that the

1 defendant would not be prejudiced by the photo by cropping
2 out the orange jumpsuit from the photo, also removing the
3 side profile photo that was with the headshot, and also we
4 just make the point, the photo looks as if it could've been
5 taken by the DMV or any other -- other circumstances. The
6 photo also under the third prong must not be introduced in
7 such a way as to draw attention to its origin or
8 implication, and we intend to make no reference as to how
9 the picture was taken. We'll introduce the photo in such a
10 way the officer will need only testify that it is fairly
11 and accurately depicting how he looked four days after the
12 incident. And if Your Honor -- and in order to make a
13 finding on the record, Your Honor, the State would hand up
14 State's Exhibit Number 13 at this time.

15 THE COURT - All right, anything else?

16 MR. PLEMING - No, sir, Your Honor.

17 THE COURT - Does defense wish to be heard?

18 MS. INZERILLO - Yes, Your Honor, on two points,
19 the first being that according to the timeline in this
20 case, the alleged robbery took place on the 13th of August,
21 and Mr. Phillips was not interviewed by Detective Strait
22 until the 18th, which was five days later. I think that
23 could -- and then that photograph was taken either
24 immediately before or after that interview. Certainly we
25 don't have any idea as to whether that is the accurate view

1 of the person that the clerk saw. Secondly, Your Honor, I
2 would ask the Court to reserve ruling on this until the
3 Court hears any clerk's testimony under the Neil v. Biggers
4 hearing, as that may become relevant to my argument against
5 this.

6 THE COURT - All right, thank you. All right, I
7 appreciate the -- what you've put on the record. Mr.
8 Fleming, I will -- I will reserve the ruling after we've
9 heard more testimony regarding that.

10 MR. PLEMING - Thank you, Your Honor.

11 THE COURT - Anything else?

12 MR. PLEMING - Nothing from the State, Your Honor.

13 THE COURT - Anything from the defense?

14 MS. INZERILLO - Yes, Your Honor. May it please
15 the Court. Your Honor, the defense has submitted both to
16 the Court and to the State a list of motions in limine.
17 With the Court's permission I can address each one of
18 those. The first one, Your Honor, is a motion for the
19 Court to determine if the State has complied with all
20 discovery requests with Rule 5 and Brady. I have been in
21 constant contact with Mr. Fleming about this case about
22 anything they intend to introduce. The only thing I did
23 wish to place on the record was about 10 -- well, maybe
24 about 20 minutes ago the State -- the defense was made
25 aware of the video that was sent out by the sheriff's

1 office, a CrimeStopper's video that was sent to various
2 news outlets showing surveillance video of this case with
3 the intention of getting the general public to identify Mr.
4 Phillips. The defense was not aware that that was -- had
5 been found. We had had conversations with the State about
6 our concern about the -- what was sent to the news outlets
7 as that would impact any identification process in this
8 case. I have had a chance to view that video. I have
9 gotten a copy of that video and reviewed it with Mr.
10 Phillips. I have explained to Mr. Phillips the case law
11 and the prongs regarding identification, how that could
12 impact any potential defense arguments in this case and my
13 concern about having that turned over so late, and I did
14 wish to place on the record that Mr. Phillips understanding
15 this does wish for me to go forward today; he does not wish
16 for me to make any motions, that he has seen the video; we
17 have discussed and it is his wish to go forward.

18 THE COURT - All right, thank you. Now, anything
19 -- so in other words, as far as that under -- the question
20 under your first motion about Rule 5 and Brady, you, in
21 fact, do not have a motion.

22 MS. INZERILLO - I just want to make sure that
23 there is nothing else, whether the State intends to
24 introduce it or not, that is in the State's or law
25 enforcement's possession.

1 THE COURT - Mr. Fleming?

2 MR. PLEMING - Your Honor, the State has complied
3 with Rule 5 and Brady. As to the video that she brought
4 up, the State has never and we do not intend to introduce
5 that particular footage in Court. Also, just for the
6 record, it's the State's position that the footage on that
7 particular video is the -- is the same footage from the
8 same camera, does not contain any additional images or --
9 or footage that Ms. Inzerillo has not already received,
10 that she already had received that video and also that --
11 the only difference is that on that video it was edited so
12 that it was slowed down to slow motion, that it was zoomed
13 in -- the image was zoomed in on the suspect's face, but
14 even where it was zoomed in and there was a pause in the
15 video, there are still shots of those precise images that
16 the State has already and previously turned over to the
17 defense, and so it's the State's position that there is no
18 additional evidence under Rule 5 or Brady that the defense
19 does not already have.

20 THE COURT - All right, thank you, Mr. Fleming.

21 All right, Ms. Inzerillo?

22 MS. INZERILLO - Your Honor, the defense's second
23 motion is to determine the prior record of the defendant
24 the State would intend to choose if -- and that's if he
25 should choose to testify. I have -- just want to confirm

1 on the record the State's intention to use three prior
2 convictions of Mr. Phillips, the first being a failure to
3 stop where he pled pro se, a second being a giving false
4 information that was related to the failure to stop, and a
5 third being a larceny by employee, which is a North
6 Carolina charge for which he did, I believe, eight to 12
7 months.

8 MR. PLEMING - That's correct. Those were the
9 only three convictions that the State would seek introduce
10 should he testify.

11 THE COURT - All right. And we'll revisit that
12 issue at the appropriate time, Ms. Inzerillo. All right,
13 next.

14 MS. INZERILLO - Thank you, Your Honor. The third
15 one is the list of any witnesses -- I mean criminal
16 histories of any witnesses. I have received criminal
17 histories of I believe three witnesses. It was my
18 understanding from the State that that information has not
19 changed as of this morning, and um that that would be all
20 of the criminal histories that would be turned over.

21 THE COURT - Is that correct?

22 MR. PLEMING - Yes, sir, Your Honor, that's
23 correct.

24 THE COURT - All right.

1 MS. INZERILLO - Your Honor, the fourth motion is
2 one of the defense as a request to sequester all of the
3 witnesses for the State?

4 THE COURT - Any position, Mr. Fleming?

5 MR. PLEMING - Yes, Your Honor, we -- only that
6 the case agent, Eddie Strait, and the victim in the case,
7 Jeremy Felker, would be permitted to remain in the
8 courtroom.

9 THE COURT - All right, that's fine. We'll allow
10 them to be in the courtroom. All the other witnesses, if
11 we have -- or -- they will need to be sequestered, which
12 means if we have a hearing, a Lyle hearing or a Neil v.
13 Biggers hearing, they will need to be out of the courtroom
14 at that particular time.

15 MR. PLEMING - Yes, sir, Your Honor.

16 THE COURT - All right.

17 MS. INZERILLO - Your Honor, the fifth motion is
18 to determine any bad acts the State intends to use as Lyle
19 testimony. In the case file in my discussion with Mr.
20 Fleming it would appear that one witness came forward to
21 identify Mr. Phillips but also expressed a belief that he
22 had burglarized her house earlier in the day. I do think
23 that would fall under a prior bad act. He was never
24 arrested for that; I do believe he was questioned about
25 that, and after questioning was not arrested for it. My

1 understanding from our last conversation with Mr. Fleming
2 is they do not intend to go into that, but I just wanted to
3 make sure that was still the case.

4 THE COURT - Mr. Fleming?

5 MR. PLEMING - That's correct, Your Honor, and
6 we've instructed the witness to not mention that during her
7 testimony.

8 THE COURT - All right. All right, thank you.

9 MS. INZERILLO - And I just wanted to make sure
10 there would be no other prior bad acts the State wishes to
11 ---

12 MR. PLEMING - The State does not intend to
13 introduce any other Lyle.

14 THE COURT - All right, thank you.

15 MS. INZERILLO - Your Honor, the two remaining
16 motions, the first is a Jackson v. Denno regarding the
17 statement Mr. Phillips made in this case and the seventh -
18 the seventh one is a request for the Court to hear any
19 testimony of identification in a Neil v. Biggers.

20 THE COURT - Well, let's --- are you ready to
21 proceed with your Jackson v. Denno hearing, Mr. Fleming?

22 MR. PLEMING - Yes, sir, Your Honor.

23 THE COURT - All right, let's call your first
24 witness.

EDDIE STRAIT - DIRECT BY MR. PORTER

14

1 MR. PLEMING - Thank you, Your Honor. The State
2 calls Eddie Strait.

3 MS. INZERILLO - Your Honor, at this time can we
4 ask the Court to please sequester those witnesses?

5 THE COURT - Yeah, any -- anybody else that's a
6 witness in the case, y'all need to be out in the hall.

7 (WHEREUPON, WITNESSES EXIT THE COURTROOM)

8 EDDIE STRAIT, AFTER BEING FIRST DULY SWORN,
9 TESTIFIES AS FOLLOWS -

10 THE COURT - All right, solicitor.

11 MR. PORTER - Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. PORTER -

14 Q Detective Strait, would you please state your name and
15 then spell your last name for the court reporter, please?

16 A Eddie Strait, S-t-r-a-i-t.

17 Q And what is your occupation?

18 A I work for the York County Sheriff's office.

19 Q Did you have the opportunity to interview the
20 Defendant, Jonathan Phillips in this case?

21 A I did.

22 Q Do you recall the time and date of that?

23 A The date, August 18th; I'm not sure of the time.

24 Q Do you remember where that statement was taken?

EDDIE STRAIT - DIRECT BY MR. PORTER

15

1 A Yes, it was at the Moss Justice Center Detention
2 Center.

3 Q Who were the persons present at that -- when that
4 statement was taken?

5 A Just myself and the defendant.

6 Q Did you have any -- did you detect any indication that
7 the defendant was under the influence of any drugs to the
8 extent that his ability to understand your questions was
9 impaired?

10 A No, sir.

11 Q Did you detect that the defendant may have any had
12 physical or mental disability to the extent that he would
13 be impaired?

14 A No, sir.

15 Q Could you please describe the physical surroundings of
16 the room in which you interrogated the defendant?

17 A It's an interview room in our booking area of the
18 detention. It's about a ten by ten room, has a table and
19 four chairs.

20 Q And what -- what was the -- how long did this
21 conversation last?

22 A It was pretty short; I'd say 15 minutes.

23 Q Was he denied access to phones, bathroom, anything
24 during this timeframe?

25 A No.

1 Q Were there any threats or promises made in exchange
2 for his statement?

3 A No.

4 Q Was he under -- was the defendant under arrest at that
5 time?

6 A Yes.

7 Q And was he responding to your interrogating questions?

8 A Yes.

9 Q Did you advise him of the nature of the investigation?

10 A I did.

11 Q And what was the nature of that investigation?

12 A An armed robbery.

13 Q Did you advise him of his Miranda Rights prior to
14 initiating the questioning?

15 A Yes, I did.

16 (WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT
17 NUMBER 1.)

18 Q I approach you with what's -- what we've marked as
19 Court's Exhibit 1. Could you please tell the Court what
20 that is?

21 A It's a standard form from the York County Sheriff's
22 office. The top portion is advising your rights; the
23 bottom portion is the waiver of those rights.

24 Q And could you please -- could we please -- could you
25 please read the advisements that you read to the defendant?

EDDIE STRAIT - DIRECT BY MR. PORTER

17

1 A The top portions starts... your rights, before I ask
2 you any questions I want to advise you of your rights. You
3 have the right to remain silent, anything you say, can and
4 will be used against in a Court of law; you have the right
5 to talk to an attorney and have him or her present with you
6 while you're being questioned. If you cannot afford to
7 hire an attorney, one will be appointed to represent you
8 before any questioning if you wish. If you decide at any
9 time to exercise these rights and not answer any questions
10 or make any statements... and the final line is... do you
11 understand each of these rights I've explained to you...
12 where you have an opportunity to check yes or no.

13 Q Did you read those to the defendant before you
14 initiated any questioning?

15 A I did.

16 Q And did he make any acknowledgement that he understood
17 those as you had mentioned?

18 A Yes.

19 Q How did he indicate that he understood them?

20 A He signed the top portion and dated.

21 Q What is detailed on the bottom portion of that
22 statement?

23 A The bottom portion is a waiver of those rights,
24 says... I'm willing to talk to police and answer questions,
25 do not want an attorney at this time, I understand and know

1 what I'm doing, no promises or threats have been made to me
2 and no pressure of any kind have been placed upon me...

3 Again, signed and dated by Mr. Phillips.

4 Q Who were the signatories on that?

5 A Mr. Phillips and myself.

6 Q Did he appear to have any trouble understanding those
7 rights as you know?

8 A No, sir.

9 Q Did he ask you any questions?

10 A No, sir.

11 Q Did you or anyone present any threats or coercion of
12 him in order or ask him -- give any promises to waive those
13 rights?

14 A No, sir.

15 Q Did he at any time request an attorney prior to your
16 initiation of questioning?

17 A No.

18 Q Did he -- did he change his mind later and ask to stop
19 questioning because he wanted an attorney?

20 A No.

21 Q To the best of your knowledge, was the defendant's
22 statement freely and voluntarily given?

23 A Yes.

24 Q Were there any audio or video recordings taken of this
25 statement?

EDDIE STRAIT - DIRECT BY MR. PORTER

19

1 A No, there were not.

2 Q And was that statement reduced to a writing?

3 A Yes.

4 Q All right, do -- has that writing been provided to the
5 State?

6 A Yes.

7 Q Who wrote that statement?

8 A I did. I actually typed it up.

9 Q Was it a statement or a memorandum of interview?

10 A It's an interview.

11 Q So the defendant did not sign -- did the defendant
12 sign that statement?

13 A No.

14 Q Now, at that time what questions did you ask of the
15 defendant?

16 A I asked him was he at the Murphy gas station and did
17 he rob it?

18 Q Did he -- what were his answers to those questions?

19 A He stated he was at the store, but he was buying a
20 drink just like the video showed on TV.

21 Q Did you go further to ask him about the investigation
22 of the armed robbery?

23 A Yes, I told him that the video showed more than what
24 was on the TV that he had seen.

25 Q And what was his response to that question?

1 A He said that would be between the lawyer and the
2 judges to decide.

3 Q What did you take that statement to mean?

4 A I took it as him invoking for a lawyer, and I
5 terminated the interview.

6 Q At this point how long had Jonathan Phillips been
7 incarcerated? Do you recall?

8 A He came in the day before, 17th; I think the interview
9 was the 18th, the morning of.

10 Q And during this interview process, did you show him
11 any videos or still shots of the surveillance video the
12 sheriff's office had in custody?

13 A Some printed out still shots from the surveillance
14 video.

15 Q Was that statement prior to his invoking -- what you
16 determined to be his invoking his right to counsel, ---

17 A We looked at the pictures ---

18 Q --- the showing the video, the ---

19 A Right. We looked at the pictures prior to that.

20 Q How did he respond to those photos?

21 A Oh, I showed him the photos after he -- you know, he
22 said he'd been in the store to buy a drink. I showed him
23 the photos and he said, yes, I was in -- that's me in the
24 store buying a drink just like was on TV.

EDDIE STRAIT - CROSS BY MS. INZERILLO

21

1 MR. PORTER - Thank you. Please answer any
2 questions the defense may have.

3 THE COURT - Ms. Inzerillo?

4 MS. INZERILLO - Thank you, Your Honor. May it
5 please the Court.

6 CROSS EXAMINATION

7 BY MS. INZERILLO -

8 Q Detective Strait, this record -- this interview was
9 not recorded. Is that right?

10 A Was not recorded; correct.

11 Q Okay. And it was you and another officer in the room
12 speaking to Mr. Phillips. Is that right?

13 A I don't recall another officer there, um ---

14 Q Do you recall questioning Mr. Phillips about a
15 burglary of Ardella Bigger's house during this interview?

16 A I did not.

17 Q Okay. Did the other officer question him about that?

18 A No.

19 Q Do you recall questioning him about his knowledge of
20 her son being involved in drugs during this interview?

21 A Of whose son?

22 Q Ms. Bigger's son.

23 A I don't recall speaking with Mr. Biggers. If I ever
24 did, I don't remember it.

25 Q Did you ask those questions of Mr. Phillips ---

1 A No.

2 Q --- in this interview?

3 A No.

4 Q Okay. Did the other officer?

5 A I don't recall another officer being there at that
6 time.

7 Q Okay. When Mr. Phillips met with you, it was on the
8 18th. Is that right?

9 A That's correct.

10 Q And the day before he had been appointed a public
11 defender; were you aware of that?

12 A I was not.

13 Q The -- when you read him rights to him, you read them
14 exactly as you read to the Court?

15 A Yes.

16 Q The -- so you did not make him aware of the fact that
17 he already, in fact, had an attorney, that he could invoke
18 to request to see?

19 A Did he make me aware?

20 Q Did you make him aware?

21 A That he already had an attorney? I had no idea he had
22 an attorney.

23 Q Okay. Did you instigate the meeting with the Mr.
24 Phillips in this case?

25 A Yes.

EDDIE STRAIT - RE-DIRECT BY MR. PORTER

23

1 Q Okay. By the time you met with him he was already in
2 custody?

3 A Yes.

4 Q Was he already actually in detention, like orange, or
5 was he just still in street clothes?

6 A I don't recall a hundred percent. He came in the day
7 before. I would assume that he would be in jail clothes at
8 that time.

9 MS. INZERILLO - Beg the Court's indulgence for
10 one moment. (Pause) Your Honor, I have no further
11 questions.

12 THE COURT - Anything further from this witness,
13 Mr. Fleming (sic)?

14 RE-DIRECT EXAMINATION

15 BY MR. PORTER -

16 Q You said you were -- you read that form as it is read
17 out to the Court. Correct?

18 A Yes.

19 Q And that included his right to counsel. Correct?

20 A Yes.

21 Q Now, did you -- did he knowingly and intelligently
22 waive that right to counsel in front of your presence?

23 A Yes.

24 MR. PORTER - Thank you.

1 THE COURT - Anything further from this witness,
2 Ms. Inzerillo?

3 MS. INZERILLO - Yes, I'm sorry, just briefly.

4 RE-CROSS EXAMINATION

5 BY MS. INZERILLO -

6 Q So everything that's in this memorandum is what he
7 said prior to invoking his right to counsel. Is that what
8 you're saying?

9 A Yes.

10 Q Is this the entirety of the conversation?

11 A As far as I remember; it was pretty short.

12 Q Okay. And when you say as far as you remember, is
13 there a chance there are things in here that are not in
14 here that were said, discussed between you and Mr.
15 Phillips?

16 A No, ma'am, I was just taking notes; I went back and
17 typed up the interview portion.

18 Q Okay, so these are just your notes of the
19 conversation, not direct quotes or anything like that?

20 A Correct.

21 MS. INZERILLO - Your Honor, that's all I have.

22 THE COURT - All right, thank you. Mr. Strait,
23 you can step down. All right, call your -- do you have any
24 other witnesses on this issue, Mr. Fleming, Mr. Porter?

25 MR. PORTER - No, sir, Your Honor.

1 THE COURT - All right. All right, anything from
2 defense?

3 MS. INZERILLO - No, Your Honor. I would just ask
4 the Court to make a finding as to the voluntariness of
5 this. I will state for the record and bring to the Court's
6 attention that Mr. Phillips was, in fact, appointed an
7 attorney August 17th, which would be the date of his arrest
8 and the day before this interview.

9 THE COURT - All right, the Court is in a position
10 of determining the voluntariness of the -- of the
11 statement, and I find that it was voluntarily given and it
12 is admissible. I will allow it into evidence. The --
13 there appears to be that he was properly advised of his
14 Miranda Rights prior to questioning, there appeared to be
15 no threats, no coercion prior to the statement given.
16 There appears to be no request for an attorney. He did
17 indicate at one point that when he was questioned that he
18 intended some of the issues to be determined by his lawyer
19 and the Court. I find that that is not a request to invoke
20 his right to an attorney, and so therefore, I find that the
21 statement was freely and voluntarily given, and I'll allow
22 it in. All right, anything else?

23 MS. INZERILLO - No, Your Honor, nothing from the
24 defense.

1 THE COURT - All right, on that issue, so is that
2 all we have as far as the statements?

3 MR. PORTER - Yes, sir, Your Honor, from the
4 State.

5 THE COURT - Anything further as far as the
6 statements, Ms. Inzerillo?

7 MS. INZERILLO - Your Honor, those are the only
8 statements I've been made aware of that were made to the
9 detective. I'm not sure if there's any other testimony
10 that may come out regarding any other statements he made to
11 someone else, but that's all I've been made aware of of
12 statements.

13 THE COURT - Anything else, Mr. Fleming?

14 MR. FLEMING - Those are the only statements that
15 he made to law enforcement, which we would seek to
16 introduce. There are statements that he was alleged to
17 have made to one of the other lay witnesses that the State
18 would ask about.

19 THE COURT - All right. Well, we'll deal with
20 those at the trial. Certainly that's not a -- that is not
21 -- the other rules that may or may not govern that.

22 All right, let's move to your next motion, Ms.
23 Inzerillo?

24 MS. INZERILLO - Your Honor, at this time the
25 defense would ask the Court to make findings as to

1 identification of Mr. Phillips. The -- this case has taken
2 a little bit of an unusual turn than normal cases. My
3 understanding, and certainly the State can explain or
4 correct me if I'm wrong, is that the clerk was unable to
5 identify the robber by name or give any leads, and so the
6 officers put out the surveillance video to the general
7 public, and based upon that, they received two phone calls,
8 one from Ms. Biggers identifying Mr. Phillips as the person
9 in the video and one from his mother, Ms. Wright,
10 identifying him as being in the video. It's my -- and
11 there's another officer that's a relation of Ms. Wright,
12 who I think she called directly, and that my understanding
13 is that he would also come in and testify as to knowledge
14 of what Mr. Phillips looks like. It's my understanding
15 that he would base that knowledge of Mr. Phillips based on
16 prior interactions or prior knowledge of Mr. Phillips, and
17 so that would also be an out-of-court identification as
18 well, so we would ask the Court to hear testimony and make
19 findings as to those.

20 THE COURT - All right, you prepared to go forward
21 with the Neil v. Biggers hearing, Mr. Fleming?

22 MR. PLEMING - Yes, sir, Your Honor. The State
23 would call Juanita Wright as the first witness.

24 JUANITA WRIGHT, AFTER BEING FIRST DULY SWORN,
25 TESTIFIES AS FOLLOWS -

1 DEPUTY CLERK - Thank you. You may have a seat.

2 THE COURT - All right, Solicitor.

3 MR. PLEMING - Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. PLEMING -

6 Q Good morning, ma'am. Would you please state your name
7 for the record.

8 A Juanita Wright.

9 Q Ms. Wright, do you know the defendant in this case,
10 Jonathan Phillips?

11 A I do.

12 Q And what is your relationship to the defendant?

13 A My son.

14 Q And did you raise Jonathan?

15 A I did.

16 Q How old is your son?

17 A 24.

18 Q How old was he when he moved out of your house?

19 A Probably between 18 and 19.

20 Q Okay. Do you see your son, Mr. Phillips, in the
21 courtroom today?

22 A Yes, I do.

23 Q Will you for the record describe what he's wearing and
24 point to where he is sitting?

JUANITA WRIGHT - DIRECT BY MR. PLEMING

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1 A He's wearing a blue and white striped shirt and he's
2 sitting right here.

3 MR. PLEMING - Let the record reflect that Ms.
4 Wright has identified her son, the defendant.

5 Q Prior to the date of Thursday, August 13, 2015, when
6 was the last time that you had seen Jonathan?

7 A Probably two weeks or more prior to that.

8 Q Okay. Did you speak with any officers on that day,
9 Thursday, August 13th?

10 A I did.

11 Q And with whom did you speak?

12 A I spoke to Lieutenant Thomasson and two other officers
13 that I don't know -- recall their names.

14 Q Okay. And did you call Officer Thomasson?

15 A I did.

16 Q And what did you tell him when you called him?

17 A I told him that I received a call my daughter saying
18 that she thought her brother was on the news for supposedly
19 robbing a store and I wanted him to come and talk to me.

20 MS. INZERILLO - Your Honor, I object to the
21 hearsay.

22 THE COURT - Overruled.

23 Q Please continue.

1 A And I told him I needed -- or wanted him to come and
2 talk to me because I didn't want my son to get hurt by any
3 police officers if he had done something.

4 Q Thank you. Had you actually seen any pictures or
5 videos of the alleged incident prior to calling Officer
6 Thomasson?

7 A No.

8 Q And after you spoke with Officer Thomasson, what
9 happened?

10 A Two detectives came to my house and questioned me.

11 Q Okay. And do you recall how many officers were there?

12 A It was two.

13 Q And did you invite them inside?

14 A I did.

15 Q And did either of those officers show you any
16 photographs while at your house?

17 A Yes.

18 Q Describe the photo that they showed you?

19 A It was a picture of Jonathan in a convenience store.

20 MR. PLEMING - Beg the Court's indulgence just one
21 moment. (Pause) At this time the State has shown State's
22 Exhibit Number 2 as previously marked to defense counsel.

23 Q Ms. Wright, I'm showing you a now a photograph that's
24 been previously marked for identification as State's

JUANITA WRIGHT - DIRECT BY MR. PLEMING

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1 Exhibit Number 2. Do you recognize that photo or the image
2 depicted in it?

3 A Yes.

4 Q And how are you able to recognize this photo?

5 A What do you mean how am I able to recognize it?

6 Q When have you seen this photograph?

7 A I think that's the same photograph they showed me.

8 Q Okay. Does it appear to be the same scene and image
9 that was depicted in the photograph that was shown to you?

10 A I think it is.

11 MR. PLEMING - If it please the Court, I'd like to
12 show the photograph to the Court at this time.

13 THE COURT - All right.

14 (WHEREUPON, PHOTO IS PRESENTED TO THE COURT.)

15 Q Ms. Wright, do you recognize the man in that
16 photograph?

17 A I do.

18 Q And who is depicted in that photo?

19 A That's my son, Jonathan Phillips.

20 MR. PLEMING - No further questions.

21 THE COURT - All right, just for the record, the
22 State -- the Court was handed State's Exhibit 2, and I
23 believe that's the photo to which your last questions
24 referred to with Ms. Wright.

1 MR. PLEMING - That's correct, Your Honor. Thank
2 you.

3 THE COURT - Okay, thank you. Ms. Inzerillo?

4 MS. INZERILLO - Thank you, Your Honor. May it
5 please the Court.

6 CROSS EXAMINATION

7 BY MS. INZERILLO -

8 Q Ms. Wright, you got word from your daughter about what
9 was on TV. Is that right?

10 A Yes.

11 Q So you didn't see it yourself?

12 A No.

13 Q Okay. And then you called Lieutenant Thomasson,
14 because he's your cousin, ---

15 A (Indicating yes)

16 Q --- and you were concerned about ---

17 A For the safety ---

18 Q --- what was being said.

19 A --- of my child, exactly.

20 Q Okay. And then when you called Lieutenant Thomasson,
21 you told him that my daughter said it's him on there and
22 I'm concerned about his safety. Is that right?

23 A Right.

24 Q Okay. And so it was Lieutenant Thomasson and another
25 officer came to your house?

1 A Two other officers.

2 Q Okay. Did they first ask you if you had seen what was
3 on TV ---

4 A Yes.

5 Q --- and you told them that you didn't. And then they
6 um -- they pulled up a picture. Is that right?

7 A (Indicating yes)

8 Q Did they pull up a picture on a phone or did they
9 print out a picture?

10 A I think it was on a cell phone.

11 Q Okay. Do you recall exactly what the picture was that
12 they showed you?

13 A No, I can't exactly. Like I say, I'm assuming it --
14 think it was the same picture that he showed me, the one
15 with -- in the convenience, but I'm not sure.

16 Q But you're not sure. Okay. And when they showed you
17 the picture, did they ask if it was your son in the
18 picture?

19 A Yes.

20 Q Okay. By that point did you know that Mr. Phillips
21 was accused or suspected in robbing a convenience store?

22 A Not on -- only by what I heard.

23 Q Okay. Not -- but from what you had heard, ---

24 A Right.

25 Q --- you knew that's why they were looking for him.

1 A Yes.

2 Q Okay. So the picture ---

3 MS. INZERILLO - Your Honor, may I retrieve
4 State's 2?

5 THE COURT - Mr. Fleming has that.

6 MS. INZERILLO - May I approach the witness, Your
7 Honor?

8 THE COURT - Yes, you may.

9 Q Ms. Wright, so the picture that you were shown of
10 State's Exhibit 2, you are not exactly sure if that was the
11 same photograph that was on the phone.

12 A No, I'm not sure.

13 Q And um in this -- and -- and in this picture that
14 you've been shown, you indicated with Mr. Fleming that you
15 thought it was your son in that picture. Is that right?

16 A (Indicating yes)

17 Q In that picture can you ---

18 COURT REPORTER - She needs to answer verbally.

19 A Yes.

20 MS. INZERILLO - I'm sorry.

21 Q And in that picture you can't see his eyes?

22 A No.

23 Q You can't determine the person's height?

24 A No.

25 Q That person's wearing a black shirt. Is that correct?

JUANITA WRIGHT - CROSS BY MS. INZERILLO

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1 A That's what it looks like, yes.

2 Q And um you can't determine any facial features or
3 facial hair of the person in that picture.

4 A No.

5 Q All right. Ms. Wright, this is going to be a really
6 stupid question, so I apologize, ---

7 A That's okay.

8 Q --- but you weren't in the convenience store the night
9 that this happened.

10 A No, ma'am.

11 Q Okay. So you didn't see anything that went down that
12 evening.

13 A No.

14 Q Okay. And you didn't see Jonathan that evening.

15 A No.

16 MS. INZERILLO - Okay. Your Honor, I have -- Your
17 Honor, I have no further questions.

18 THE COURT - Thank you. Anything further, Mr.
19 Fleming?

20 MR. PLEMING - Beg the Court's indulgence for just
21 one moment. (Pause) Nothing from this witness, Your
22 Honor.

23 THE COURT - All right, you can step down, Ms.
24 Wright. Thank you. Anything further as far as -- I assume

1 we're talking about the introduction and admissibility of
2 State's Exhibit 2. Is that correct?

3 MR. PLEMING - Yes, sir, Your Honor.

4 THE COURT - Anything further on this issue from
5 the State?

6 MR. PLEMING - Your Honor, the State would call
7 Jeremy Felker.

8 THE COURT - All right.

9 JEREMY FELKER, AFTER BEING FIRST DULY SWORN,
10 TESTIFIES AS FOLLOWS -

11 DEPUTY CLERK - Thank you.

12 DIRECT EXAMINATION

13 BY MR. PLEMING -

14 Q Will you please state your name and occupation?

15 A Jeremy Felker. I work at the Murphy Express as an
16 assistant manager.

17 Q Okay. And where is that Murphy Express located?

18 A In Lake Wylie, South Carolina.

19 Q Were you working there on the night or early morning
20 hours of August 13th, 2015?

21 A I was.

22 Q And will you please now tell the Court what happened
23 that night while you were working?

24 A Well, I was just doing my regular stuff at night; I
25 was cleaning and helping out customers and noticed a dark-

JEREMY FELKER - DIRECT BY MR. PLEMING

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1 color car pull up on the left side of the building where I
2 couldn't really see it very well, and uh was helping a lady
3 get gas and one of my regular paper route guys came in to
4 get his fuel. After I got done with him and the other
5 lady, the guy came up to the counter, placed the beer on
6 the counter; I said, hey, how you doing, rang it up and
7 told him the total and when I got the five dollar bill from
8 him, I cashed my register out to pay for it, and at that
9 point in time he slid a note across the counter that said
10 give me all the money, and at that point I was just like,
11 is this really happening, and I looked up at him and asked
12 him really and he proceeded to lift his shirt tail up on
13 the right side of his body and show me a pistol, and at
14 that time I started getting the cash out of the register.
15 He asked me if there was any hundreds underneath the
16 drawer; I lifted my drawer up out of the -- or the till out
17 of the drawer and showed him that there was nothing there
18 and uh proceeded to hand -- hand him the money and the beer
19 back and he took off out the door. Once he got into the
20 vehicle, I grabbed the store phone and dialed 9-1-1 and,
21 you know, told them I'd just been robbed.

22 Q Okay. And did police respond to the scene after you
23 called 9-1-1?

24 A Yes, they did.

1 Q And were you able to access the store's video camera
2 footage?

3 A Yes, I was.

4 Q And did you show that footage to police the officers?

5 A Yes.

6 Q Okay. And are you familiar with the -- still today
7 with the footage that the cameras got you that night?

8 A Yes, I am.

9 Q Okay.

10 MR. PLEMING - At this time the State is showing
11 defense counsel State's Exhibit Number 2.

12 Q I'm having you the photograph marked as State's
13 Exhibit Number 2 for you. Will you please take a moment to
14 look at it and tell me if you recognize what's depicted in
15 that photograph?

16 A It's the back slide (sic) store -- in-store view, and
17 it shows Mr. Phillips looking at the cooler doors.

18 Q Okay. Have you seen this photograph before?

19 A Yes, I have.

20 Q Okay. And can you tell the Court from which that
21 photograph is derived?

22 A Uh ---

23 Q Is that -- does that fairly and accurately depict the
24 scene that night at the store?

25 A Yes, that is -- that is correct.

JEREMY FELKER - CROSS BY MS. INZERILLO

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1 Q And does it fairly and accurately depict the scene as
2 it was captured on the video cameras?

3 A Yes, it does.

4 Q Okay. And lastly, the man in State's Exhibit Number
5 2, does that fairly and accurately depict the suspect who
6 you claim robbed you?

7 A Yes.

8 MR. PLEMING - Nothing further from this witness,
9 Your Honor.

10 THE COURT - Ms. Inzerillo?

11 MS. INZERILLO - May it please the Court, Your
12 Honor.

13 CROSS EXAMINATION

14 BY MS. INZERILLO -

15 Q Mr. Felker, you -- as you testified this was kind of a
16 normal night for you working and doing what you normally
17 do?

18 A Yes, ma'am.

19 Q And the -- you didn't know anything about the person
20 when he was standing at the beer cooler?

21 A No, ma'am.

22 MS. INZERILLO - I think that was a no, Madam
23 Court Reporter.

1 Q And then when he walks up to the counter and bought
2 the beer, that's when you interacted with him. Is that
3 right?

4 A Yes, ma'am.

5 Q So you didn't have any other interactions with him
6 prior to that?

7 A No, ma'am.

8 Q Okay. The -- have you seen the surveillance video in
9 this case?

10 A Yes, I have.

11 Q Okay. Have you seen it since you've talked to the
12 officers in this case?

13 A Yes, I have.

14 Q Okay. The entirety of the interaction between you and
15 the person in the store was about two seconds. Is that
16 right?

17 A No, ma'am.

18 Q Okay. How long do you think it was?

19 A I believe it was about 30 to 45 seconds.

20 Q Okay. You indicated that you called poli -- or 9-1-1
21 as the car drove away. Is that right?

22 A (Indicating yes) Yes, ma'am.

23 Q And when you called 9-1-1, your description was black
24 male, brown shirt. Is that right?

25 A Yes.

1 Q Okay. And you indicated that his face was not
2 covered.

3 A Yes.

4 Q Okay. The -- then when you spoke to the officers when
5 they got there, do you remember speaking to a Deputy
6 Robinson or a Deputy Clark?

7 A I do not recall the names, ---

8 Q Okay.

9 A --- but I spoke to -- about five officers showed up, -
10 --

11 Q Okay.

12 A --- so I talked to a few of them.

13 Q Do you recall describing the person as black male,
14 mid-20s, short-shaved hair, ---

15 A Yes.

16 Q Five nine and one forty-five -- hundred and forty-five
17 pounds?

18 A Yes.

19 Q And wearing a brown shirt and camo shorts.

20 A Yes.

21 Q Okay. The next statement that you gave in this case
22 when you spoke to officers was August 15th. Is that right?

23 A I believe it was.

24 Q Okay. Actually it was August 18th. Do you recall?
25 At 8:00 o'clock that night? Is that right?

1 A Yes.

2 Q And that is a short typewritten statement. Do you
3 recall seeing that statement?

4 A Yes.

5 Q And that is the statement which you note something in
6 particular about the person's eye. Is that right?

7 A Yes, ma'am.

8 Q Okay. Do you recall what you told officers that night
9 or what's in that statement about the eye?

10 A Yes, that it -- his left eye appeared to be bloodshot
11 or possibly a busted blood vessel, just severely red.

12 Q And they had shown you a picture at that point. Is
13 that right?

14 A Yes.

15 Q Okay. And ---

16 MS. INZERILLO - Your Honor, I'm not sure if you
17 still have the picture ---

18 THE COURT - I do not.

19 (WHEREUPON, DISCUSSION HELD BETWEEN COUNSEL WHICH
20 WAS NOT REPORTED.)

21 MS. INZERILLO - Your Honor, may I approach the
22 witness?

23 THE COURT - Yes.

24 MS. INZERILLO - Your Honor, I'm showing Mr.
25 Felker what's been marked as State's Exhibit 13.

1 Q Mr. Felker, does that -- is that the photograph that
2 you were shown by officers?

3 A Yes, it is

4 Q Okay. And do you notice anything about that picture?

5 A His left eye is bloodshot.

6 Q Okay. And was this the only photograph that they
7 showed you?

8 A Yes, it was.

9 Q Okay. And I believe that evening the statement that -
10 - well, actually let me show you.

11 MS. INZERILLO - May I approach the witness, Your
12 Honor?

13 THE COURT - Yes, you may.

14 Q Mr. Felker, I'm going to show you this typewritten
15 statement. Is that the -- that scribble underneath it, is
16 that your signature?

17 A Yes, it is.

18 Q Okay. And that statement says essentially the only
19 thing you remember about his is you thought it was really
20 bloodshot or a ruptured vessel or something, is that right?

21 A That was the prominent feature I remembered.

22 Q Okay. Prior to this evening, the evening of the
23 robbery, did you know Mr. Phillips?

24 A No.

1 Q Okay. So you know Mr. Phillips by name through either
2 the police investigation or any conversations with the
3 solicitor. Is that right?

4 A Yes.

5 Q Okay. The testimony as well, was that the person that
6 walks up to the counter, lifted his shirt and showed a gun.
7 Is that right?

8 A Yes.

9 Q Okay. And then immediately based when you saw that,
10 that's when you hand over the cash.

11 A That's when I proceeded to clear out the till.

12 Q Okay. Are you guys trained to just comply whenever --
13 -

14 A Yes.

15 Q --- a robbery request is made? Okay.

16 A Yes, ma'am.

17 Q So really that's going through your head even before
18 you see the gun. You just are not sure if this is real or
19 not.

20 A Like I stated earlier, I was a bit shocked and
21 thinking this can't be real, but once he, you know, showed
22 me the pistol in this waistband, that's when I knew it was
23 real and proceeded to clear out the register.

24 Q Okay. And you just doing what they tell you to do at
25 these ---

JEREMY FELKER - RE-DIRECT BY MR. PLEMING

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1 A Yes.

2 Q Okay.

3 MS. INZERILLO - Your Honor, I have no other
4 questions.

5 THE COURT - Anything further, Mr. Fleming?

6 MR. PLEMING - Just one question, Your Honor.

7 RE-DIRECT EXAMINATION

8 BY MR. PLEMING -

9 Q Mr. Felker, on the night -- or the early morning of
10 August 13th when you spoke to officers there at the scene
11 at Murphy's, did you describe his eye to them that night?

12 A Yes, I did.

13 Q Okay, so you had already given that information to
14 them on August 13th.

15 A Yes.

16 MR. PLEMING - Thank you.

17 THE COURT - Anything further, Ms. Inzerillo?

18 MS. INZERILLO - No, Your Honor, I just have a ---

19 THE COURT - All right, thank you. You can step
20 down, Mr. Felkner.

21 All right, Mr. Fleming, anything else?

22 MR. PLEMING - We also have Ms. -- well, at this
23 time -- address -- excuse me, Your Honor. We would call
24 Lieutenant Thomasson to the stand.

1 THE COURT - All right, let's do this, I mean --
2 are we -- do we still have testimony as far as State's
3 Exhibit 2? That is the photo of him in front of the beer
4 cooler?

5 MR. PLEMING - Yes, sir, Your Honor, uh ---

6 THE COURT - All right, I -- okay, I'm -- I see
7 what you're doing. Are we going to cover -- are we going
8 to cover -- is it your intent to cover -- introduce all
9 your testimony as far as the State's Exhibit 2 and the mug
10 shot as well?

11 MR. PLEMING - I wasn't going to discuss the mug
12 shot at all during this hearing, but the State's Exhibit
13 Number 2, which is the -- is the subject of the show, for
14 lack of a better term ---

15 THE COURT - Right. Okay, all right, go ahead.
16 Call your next witness.

17 MR. PLEMING - State calls Lieutenant Thomasson.

18 JAMES (RICK) THOMASSON, AFTER BEING FIRST DULY
19 SWORN, TESTIFIES AS FOLLOWS -

20 THE COURT - Lieutenant, how are you doing?

21 MR. THOMASSON - Good, Judge. How are ---

22 THE COURT - Good to see you.

23 MR. THOMASSON - Good seeing you.

24 THE COURT - All right, Mr. Fleming.

25 MR. PLEMING - Thank you, Your Honor.

RICK THOMASSON - DIRECT BY MR. PLEMING

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1 DIRECT EXAMINATION

2 BY MR. PLEMING -

3 Q Will you please state your name and occupation for the
4 record?

5 A James R. Thomasson, York City Police Department,
6 Lieutenant.

7 Q And, Lieutenant Thomasson, did you have the
8 opportunity to become involved in an armed robbery
9 investigation with York County Sheriff's office on August
10 13th of last year?

11 A Yes, sir, I did.

12 Q How'd you become involved with that?

13 A I received information from individual that a robbery
14 was -- had taken place in the Lake Wylie area, and that I
15 may know the individual that did the robbery, so I -- I
16 received information, got the name, went back and looked at
17 the video that -- I think it was The Herald Online,
18 Crimestoppers -- myself and Detective Mumaw and I
19 identified the individual from the video.

20 Q Okay, and -- and who did you speak with prior to
21 looking up that video, without saying what that person told
22 you?

23 A Ms. Wright.

24 Q Okay. And did you know her?

25 A Yes, I did.

1 Q Okay. And what did you do after you pulled up the
2 video and viewed it for yourself?

3 A What did I do afterwards?

4 Q Yes, sir.

5 A Myself and Detective Mumaw went to Ms. Wright's
6 residence there in the City of York and speak with her in
7 reference to that individual that we seen on the video.

8 Q Okay, was anyone else present with you and Detective
9 Mumaw?

10 A Myself, Detective Mumaw and also Ms. Wright.

11 Q Okay. And did anyone from York County come to the
12 scene while y'all were there?

13 A Later on I think Detective Mumaw got in contact with
14 the investigator from York County, and I met with the
15 investigator from York County at Ms. Wright's residence.

16 Q Okay. And when you met with Ms. Wright, tell us what
17 -- what you did?

18 A We met with Ms. Wright; we show her (sic) a --
19 Detective Mumaw had a shot of the individual on his phone,
20 so he showed it to Ms. Wright, and Ms. Wright identified
21 the individual as being her son.

22 Q Okay, and did you see the picture which Detective
23 Mumaw showed to her?

24 A Yes, sir, I did.

1 Q Okay. And would you recognize that photograph if you
2 saw it?

3 A Yes, sir, I would.

4 Q Okay. At this time I'm handing up to you State's
5 Exhibit Number 2. Do you recognize that photograph?

6 A Yes, sir, I do.

7 Q And what is it?

8 A It's a photograph of the individual that's the
9 defendant here in Court today.

10 Q Okay, and is that the photograph that Detective Mumaw
11 showed to Ms. Wright?

12 A Yes, sir, it is.

13 Q Okay. And are there -- how many people are depicted
14 in that photograph?

15 A Just one.

16 Q Okay. And is that the photograph in which she
17 identified her son?

18 A Yes, sir.

19 Q Okay. Did you talk to the defendant in the days -- or
20 did you talk to Jonathan Phillips in the days that followed
21 this incident?

22 A During that time Jonathan and I -- well, Jonathan's
23 girlfriend, one of the young ladies there, she called me.
24 We was talking back and forth. I was talking to her in
25 reference to trying to get him to go ahead and turn his

1 self in to the police so we could get this matter taken
2 care of. During that time I think he was a little scared.

3 Q Okay, did you -- did he eventually turn himself in?

4 A Yes, sir, he did.

5 Q Okay, and when he turned himself in, who did he turn
6 himself into?

7 A To myself.

8 Q Okay, and so -- on what day was that?

9 A I can't remember the date. It was a couple of days
10 after we had spoke with Ms. Wright in reference to the
11 picture.

12 Q Do you know if it was less than one week?

13 A I think so.

14 Q Okay. And what, if anything, did you notice about
15 him?

16 A The first thing I noticed about him when he exited the
17 vehicle that he -- one of his eyes needed some medical
18 attention and I advised him, I said you need to get your
19 eye taken care, what happened to your eye, and I don't
20 think he responded.

21 Q Okay, how -- how would you describe how -- how his eye
22 appeared?

23 A His eye was very, very red. It was bloodshot and had
24 some bruising in his eye.

RICK THOMASSON - CROSS BY MS. INZERILLO

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1 MR. PLEMING - Okay. Thank you. I have nothing
2 further.

3 MS. INZERILLO - May it please the Court, Your
4 Honor.

5 THE COURT - Yes.

6 CROSS EXAMINATION

7 BY MS. INZERILLO -

8 Q Lieutenant Thomasson, Jonathan Phillips' mama is your
9 cousin. Is that right?

10 A No, Jon -- his mother's husband is my cousin.

11 Q Is your cousin. Okay.

12 A Yes.

13 Q And she called you because she was concerned about
14 Jonathan's safety.

15 A Yes, she was.

16 Q Okay. And she told you that she had heard that they
17 were looking for him because he had robbed a convenience
18 store.

19 A No, not in that sense; she did not tell me that.

20 Q Okay. Do you recall what she told you?

21 A She told me that Jonathan had been in -- that he had
22 been -- she had received word that he had been involved in
23 an incident, a robbery there in Lake Wylie and she was
24 concerned for his safety.

1 Q Okay. And based on that phone call is when you pulled
2 up the video, I think on Herald Online or something like
3 that. Is that ---

4 A Yes, ma'am, I did.

5 Q Do you recall exactly what that video was?

6 A It was a picture of Jonathan standing there at --
7 looked like a beer cooler ---

8 Q Okay.

9 A --- inside of a what appeared to me to be the
10 convenience store.

11 Q Okay. Do you still have a copy of that picture, save
12 it in anyway?

13 A No, ma'am, I don't.

14 Q Okay. The -- and that picture was not printed out; it
15 was digital -- is that right? -- that you looked at?

16 A Yes.

17 Q Okay. And based on that and based on Ms. Wright's
18 phone call, you and Detective Mumaw went out to speak with
19 her.

20 A Yes.

21 Q Okay. And you told her that -- did you tell her you
22 had taken a look at the picture and you thought it was
23 Jonathan?

24 A Yes, ma'am, I did.

1 Q Okay. And then did she tell you that she hadn't seen
2 anything, she'd just heard from her daughter?

3 A Yes, she did.

4 Q Okay. And so based on that, Detective Mumaw pulled up
5 a picture on his phone.

6 A Yes.

7 Q Okay. Was it the same Herald Online picture that you
8 had seen or was it a different picture?

9 A It was the same picture that we both looked at.

10 Q Okay. And it was pulled up on his phone -- right? --
11 so it was printed out or anything like that?

12 A No, ma'am.

13 Q Okay. The picture --

14 MS. INZERILLO - Your Honor, may I approach the
15 witness?

16 THE COURT - Yes, you may.

17 Q So State's Exhibit 2 that you were shown, that's a
18 printed out version of a still shot from the video. Is
19 that right?

20 A Yes, ma'am.

21 Q Okay. And that printed out version is a lot more,
22 essentially pixelated or not as clear as if you were to
23 bring in the TV or the computer and pull it up. Is that
24 right?

25 A Yes, ma'am.

1 Q Okay. Is this the exact shot that you looked at the
2 day that you identified Mr. Phillips?

3 A This is the -- one of the exact shots, yes, this is
4 the picture that I looked at the day. (sic)

5 Q Okay. But not in this format; it wasn't printed out.

6 A No, ma'am, it wasn't printed out.

7 Q Okay. So you can look at this and based on what you
8 saw on the Herald Online picture, you know you identified
9 him from that, this is a printed out version of it, so
10 that's what you're ---

11 A (Indicating yes) Yes, ma'am.

12 Q Okay. When was the last time you had seen Jonathan
13 prior to this identification?

14 A Let me think. I think I seen Jonathan maybe a week or
15 two before that that incident happened. I have seen him a
16 lot in and out of the city, but I think I had seen him --
17 he was at a resident off of 321 By-Pass there, and then I
18 saw him standing on the front porch going inside in his
19 house.

20 Q Okay. And you said you were talking to a girlfriend
21 of his about getting him to turn him self in?

22 A Yes.

23 Q Okay, what was that girlfriend's name?

24 A I can't -- I can't think of her name at this time.

25 Q Was it Fallon? Was it Fallon Kendrick?

1 A No.

2 Q No?

3 A I can't think of her name.

4 Q That's all right. But he ultimately does make contact
5 with you and turn himself in. Is that right?

6 A Yes. Uh, it -- it took a while for him actually to
7 come in. She and I kept talking back and forth and, you
8 know, I kept telling her, you know, just have him to, you
9 know, come to me and I will take care of him, make sure he
10 get to the right place and everything, and ---

11 Q Okay.

12 A --- I think that she told that she would be around
13 there around 5:00 p.m., and sure enough, a little after
14 5:00 she shows up with him.

15 Q With him?

16 A (Indicating yes)

17 Q And that's when you noticed his eye?

18 A Yes, ma'am, I did.

19 Q And it's pretty obvious, that -- it was pretty red ---

20 A Yeah.

21 Q --- when he came in, so ---

22 A It was pretty bad.

23 Q Yeah. Did you have any conversations with him about
24 robbery or anything when he turned himself in?

1 A I didn't have any conversation with him about what
2 took place out there, no, I didn't.

3 Q Okay.

4 A If I'm not mistaken, I had one of my officers to come
5 out and -- I think he wanted to say some goodbyes to some
6 people and we did, we let him do that. I think I had one
7 of my officers to come out and cuff him and we took him
8 inside the police department.

9 MS. INZERILLO - Okay. Thank you, Lieutenant.

10 MR. THOMASSON - Thank you.

11 THE COURT - Anything further for this witness,
12 Mr. Fleming?

13 MR. PLEMING - No, sir, Your Honor.

14 THE COURT - Lieutenant, you can step down.

15 MR. THOMASSON - Thank you, sir.

16 THE COURT - Mr. Fleming, call your next witness?

17 MR. PLEMING - Your Honor, defense -- it appears
18 that there's two separate motions in this case regarding ID
19 evidence. The only other evidence we would have would be
20 Ardella Biggers and since that would basically be on a
21 separate motion, I would rather go ahead and hear the
22 motion and have arguments ---

23 THE COURT - When you say separate motions,
24 obviously -- I assume that there's two pieces of evidence
25 you want to get in, the State's Exhibit 2, which is the

1 photo of him in front of the beer cooler that night, and
2 then I assume the mug shot which has not been identified
3 yet. Is that the other -- is that the two pieces of -- is
4 that what -- I need to determine the reliability on those
5 two photos?

6 MR. PLEMING - From my understanding for the
7 purpose of a Biggers hearing, we'd really be dealing with
8 the admissibility of an in-court identification, which in
9 this case so far you've heard from Lieutenant Thomasson and
10 Ms. Wright who have identified the defendant, and according
11 to Ardella Biggers who is the -- is another witness, she
12 also identified the defendant, but it was not based on any
13 officers showing her anything. There was no show-up
14 identification there, so I think those are two separate
15 issues --

16 THE COURT - Well, I mean they're both out-of-
17 court identification, so let's deal with the -- I think in
18 my mind, one, I need to deal with the State's Exhibit 2.

19 MR. PLEMING - Yes, sir.

20 THE COURT - So is there anything you want to be
21 heard as far as allowing -- is there anybody else that's
22 going to testify to State's Exhibit 2 besides Lieutenant
23 Thomasson and Ms. Wright?

24 MR. PLEMING - No, sir, Your Honor.

1 THE COURT - All right, let me hear you on that
2 then, Ms. Inzerillo.

3 MS. INZERILLO - Your Honor, my objection to
4 State's Exhibit 2 is firstly that it is -- has not been
5 shown that it is an accurate representation of what these
6 witnesses were shown that day. I want to be clear, in any
7 of arguments involving the best identification in this
8 case, we're not disputing that his own mother knows him,
9 and that by extension, Lieutenant Thomasson as a family
10 member knows him. The defense's issue with State's Exhibit
11 2 with the other testimony is that we are not aware of what
12 was actually used to identify Mr. Phillips at the scene.
13 The -- and I think this might be where the law enforcement
14 video becomes a little more relevant. If you see that, it
15 is I think arguably a little bit -- I don't want to say
16 clear -- but it does not look the same as State's Exhibit
17 2. State's Exhibit 2 was much more pixelated. As the
18 mother indicated, she cannot make out any distinguishable
19 features about the person in the video, I mean in that
20 picture, as has been presented by the State to Court. In
21 using that picture, even though the State may maintain it's
22 just a printed out version of it, in printing it out, it
23 distorts whatever was shown to them, and since we actually
24 don't know what was shown to them, then we don't -- I do
25 not believe that the prongs can be met by the State in

1 terms of any accuracy of the description of the suspect,
2 the level of certainty, the length of time that they looked
3 at it to determine, because we don't have that underlying -
4 -- we don't have that underlying identification or picture
5 that was used to identify them, (sic) and so because of
6 that, the prongs can't be -- with what's been submitted I
7 can argue that that photograph is more pixelated and,
8 therefore, the features are not clear, but I believe the
9 testimony has been that's not what they looked at at the
10 scene, and because there's a disparity between the two,
11 Your Honor, I would ask that State's Exhibit 2 be excluded
12 and that the witnesses not be allowed to identify Mr.
13 Phillips from that.

14 THE COURT - All right, thank you. Mr. Fleming?

15 MR. PLEMING - Yes, sir, Your Honor. Well, Your
16 Honor, I would first note that each of the witnesses
17 described the photograph that they observed out-of-court.
18 They then after seeing State's Exhibit Number 2 stated that
19 it was the same photo, that it was the same image, the same
20 scene depicted, and that from that they stated on -- in
21 their testimony, each of them, that -- that it was -- that
22 it was the -- Mr. Phillips, that it was the person that
23 they had previously identified out-of-court. And, Your
24 Honor, the fact that an ID witness knows the accused
25 remains a extremely significant factor in determining its

1 reliability. We have reliability of an out-of-court
2 identification, and basically the fact that both of these
3 witnesses, Detective -- or Lieutenant Thomasson and Ms.
4 Wright had prior familiarity sufficient that they could
5 identify Mr. Phillips immediately upon viewing the out-of-
6 court photograph and confirming that it was the same photo
7 here, and the State would just argue that any distortion
8 from printing the photo out was minimal, and I think that
9 that is supported by the fact that they can say that's the
10 same picture, and it doesn't distort it enough to change
11 their identification. I mean they saw the picture today;
12 each of those witnesses could've said, well, I can't say
13 for sure that's the same picture, because it's too
14 distorted, and image is, you know, too pixelated, but they
15 didn't. They said that's the same photograph and we're
16 still able to identify the defendant. Also, Your Honor,
17 our Supreme Court in State v. Liverman, 398 South Carolina
18 130 a 2012 case, if I might just bring the Court's
19 attention to some of the language in that opinion, the
20 Court stated that it was -- it was concurring with those
21 jurisdictions that consider show-up identification
22 procedures, which could be normally considered unduly
23 suggestive as merely confirmatory in instances where there
24 -- the witnesses have prior familiarity. In this case
25 that's a perfect example of that where you have the -- Ms.

1 Wright coming forward with information and they bring the
2 photograph to her just to confirm that what she has -- what
3 she has suggested to them is, in fact, the case, the
4 officers had not even identified Mr. Phillips until Ms.
5 Wright brought it to their attention, and so if there's any
6 unduly suggestive showing of photographs -- or -- if
7 anything was suggested, the suggestion came from his
8 mother, not the officer in the case.

9 THE COURT - All right ---

10 MS. INZERILLO - Your Honor -- I'm sorry, if I
11 could respond, because I don't think I addressed the actual
12 identification by Ms. Wright. I only the addressed the
13 admissibility of that picture from the defense's
14 perspective. Your Honor, I would add that my notes from
15 Ms. Wright's testimony is that she was not sure what
16 State's Number 2 -- if that -- she could not remember the
17 picture she was shown at the time and she was not sure that
18 the State's Number 2 was that picture, and clearly
19 testified under my cross examination that she can't
20 identify her son from that picture, so I do think that is
21 relevant. Your Honor, if the Court wishes to take into
22 consideration the circumstances and the context surrounding
23 the identification of Ms. Wright's contact towards
24 Lieutenant Thomasson regarding her identification, I do
25 wish to also place on the record that -- that Ms. Wright

1 has heard through a third party that it could be him, so
2 the -- the information that's been provided to me is that
3 there were some still shots and some surveillance video put
4 out by the sheriff's office, but we don't know the audio
5 and I think, as I mentioned at the beginning of this case,
6 this is a little bit unusual because it does seem the
7 testimony to be that everybody watched something on TV and
8 knew he was charged with an armed robbery or knew they were
9 looking for this person and something to an armed robbery.
10 When she's interviewed she is told this is what they're
11 looking for and is this -- you know, is this him. I -- my
12 argument and my analogy would be that that would be
13 improper if she -- if they just brought her into a room and
14 sat down and told her that... this is the person we're
15 looking for in an armed robbery, do you recognize him...
16 and whether that comes from a news outlet which I think a
17 plain reading does seem to show, that would -- that
18 heightens the suggestibility because they already know --
19 the potential witness already knows more about the case I
20 think that would be allowed under law had the officers just
21 interacted with her in a room, that -- as I indicated I --
22 the defense's issue is not does the mother knowing her son;
23 the issue is the context and the suggestibility around the
24 identification and that, again, I would reiterate, because
25 we don't know what was said, but clearly something was said

1 about an armed robbery, clearly something was told to her
2 that gave her a concern about his safety so we don't know,
3 the public was informed that he was armed and dangerous,
4 not to interact with him, anything like that that is
5 customary for CrimeStopper videos, because that audio was
6 not overlayed on the clip I believe that the State
7 received, and so since we don't know -- we don't know what
8 was put in the Herald Online article, I think that
9 heightens the suggestibility in this case, and therefore,
10 the -- that picture and her identification of him should be
11 excluded.

12 THE COURT - All right, we don't -- I don't need
13 to hear anymore. I'm going to deny your motion, Ms.
14 Inzerillo. I find that - (1) the Court finds that the out-
15 of-court identification was not unduly suggestive. It
16 appears that it is a -- by even his mother's testimony a
17 photo of him standing in a convenience store, so what I had
18 is that she testified that State's Exhibit 2 was a picture
19 of Jonathan in a convenience store; that is her son; he's
20 24 years old, certainty -- even if there was an argument
21 made that it was unduly suggestive, that the second prong
22 of reliability is that it, never-the-less, if the
23 identification was so reliable that there was no
24 substantial likelihood of misidentification existed, this
25 is his mother who testified when she saw the picture, that

1 that was him, and so even as far as the other factors, as
2 far as the degree of attention, what she saw -- that's her
3 son. The testimony from Lieutenant Thomasson was that the
4 defendant is his -- is -- that he is a cousin of the
5 family, in fact, a cousin of the husband of the mother. He
6 testified that he had seen him in and around town, and that
7 he, in fact, had seen him on a porch some time earlier, a
8 few weeks earlier, he obviously knows him as a family
9 member and also someone who lives in town, and so,
10 therefore, Lieutenant Thomasson's identification of State's
11 Exhibit 2 is also reliable, and I find that there appears
12 to be no substantial likelihood of any misidentification
13 from those two witnesses as far as State's Exhibit 2, so
14 I'll allow the State to present that evidence to the jury.

15 All right, what's the next?

16 (WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL
17 WHICH WAS NOT REPORTED.)

18 MS. INZERILLO - Your Honor, may we approach?

19 THE COURT - Yes.

20 (WHEREUPON, BENCH CONFERENCE WAS HELD WHICH WAS
21 NOT REPORTED.)

22 THE COURT - All right, for purposes of the
23 record, I met with counsel at bar and we discussed some
24 issues concerning a potential witness, and it appears we're
25 at the point where the State would like to also offer

EDDIE STRAIT - DIRECT BY MR. PORTER

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1 during the course of the trial the mug shot -- well, for
2 better -- lack of a better term, a photo that was generated
3 from a mug shot and so we need to put some -- we need to
4 proffer that testimony now, so Mr. Fleming or are you, Mr.
5 Porter going to ---

6 MR. PLEMING - Mr. Porter.

7 THE COURT - Mr. Porter, if you would call your
8 first witness on this issue.

9 MR. PORTER - State calls Detective Eddie Strait.

10 EDDIE STRAIT, AFTER BEING PREVIOUSLY SWORN

11 TESTIFIES AS FOLLOWS -

12 DIRECT EXAMINATION

13 BY MR. PORTER -

14 Q Detective Strait, you've previously testified. The
15 questions that I have regarding your meeting with
16 defendant, you -- did you meet with him on August 18th?

17 A Yes, I did.

18 Q And that -- where was that meeting?

19 A In the detention center here at Moss Justice.

20 Q How long did you meet with him?

21 A Approximately 15 minutes.

22 Q Did you -- do you recall what he looked like at that
23 meeting?

24 A Yes.

1 Q Would you be able to identify a picture of him as he
2 appeared that day during your interview?

3 A Yes.

4 Q I'm going to approach and show you what's been marked
5 -- what we've marked as State's Exhibit 13. Could you
6 please tell the Court what that is -- if you recognize the
7 person depicted in that photo?

8 A Yes.

9 Q Who is that a photo of?

10 A Defendant.

11 Q How do you know that that's a picture of the
12 defendant?

13 A I mean the day that I met with him I recognized him,
14 the eye injury or whatever to his left eye.

15 Q Excuse me. Could you repeat that?

16 A I just recognized him from the interview I had with
17 him and also the injury or whatever issue he had with his
18 left eye.

19 Q Is that a fair and accurate depiction of the defendant
20 you met with ---

21 A Yes.

22 Q --- as you met with him on August 18th?

23 A Yes, it is.

24 MR. PORTER - Thank you. No further questions.

25 THE COURT - Ms. Inzerillo?

EDDIE STRAIT - CROSS BY MS. INZERILLO

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1 CROSS EXAMINATION

2 BY MS. INZERILLO -

3 Q Detective, you didn't see Mr. Phillips prior to your
4 interview with him?

5 A No, that's correct.

6 Q Okay. And that booking photo was taken before you
7 interviewed him. Is that right?

8 A Yes.

9 MS. INZERILLO - Your Honor, I have no further
10 questions.

11 THE COURT - All right, let me see the -- let me
12 see the photo. Anything further, Mr. Porter?

13 MR. PORTER - No, sir, Your Honor.

14 THE COURT - Ms. Inzerillo, anything you want to
15 put on the record as far as admissibility of State's
16 Exhibit 13?

17 MS. INZERILLO - Your Honor, my concern about
18 exhibit this is the introduction through Mr. Felker. I
19 believe his testimony has been consistent through his
20 numerous statements in this case that that description of
21 Mr. Phillips's eye was -- it was not written down; it was
22 not even conveyed to the initial responding officer. It
23 was only -- he only made a statement of it after he was
24 shown that picture by law enforcement, and as the Court can
25 see in that picture, it is very pronounced. The -- the

1 injury to his eye -- I think Lieutenant Thomasson also said
2 it was very pronounced when you see him, and I would also
3 point out to the Court that there was a five-day time lag
4 between the robbery and the second statement given by Mr.
5 Felker where he does finally make note of the eye.
6 Certainly with this type of injury there's been no
7 testimony by anyone else that they saw Mr. Phillips on that
8 day and that that is what he looked like on that day. I
9 think Lieutenant -- Detective Strait has testified that the
10 person in that picture of how he appeared on that day,
11 which I've not -- I'm sorry -- on the day of the 18th when
12 he interviewed Mr. Phillips, I'm not sure without more that
13 that makes that mug shot relevant to the identification of
14 the person that went into the convenience store on the 13th
15 and robbed it.

16 THE COURT - All right, thank you. I'm going to
17 deny your motion. One, I find that Mr. Felker's
18 identification of the defendant in State's Exhibit 13, one,
19 is reliable. He did indicate that he spent 30 to 45
20 seconds of interaction with the defendant while he was at
21 the counter, that he -- that he -- that had details about
22 him coming to the counter with beer, that he received a
23 note from the defendant to give up -- give all the money,
24 he indicated that he looked up at the defendant and said,
25 really; he saw him lift up his shirt, saw the pistol; he

1 saw the defendant ask for any hundred bills that are under
2 the drawer. He testified that he handed the defendant what
3 money he had and the beer and that during that time he was
4 able to get a -- was able to -- those are circumstances in
5 which his identification is reliable. I find that State's
6 Exhibit 13, that the testimony is that it was taken from a
7 mug shot, however, State's Exhibit 13 is simply a picture
8 of the defendant from just below the chin up. There is no
9 indication of any type of clothing in the photo, other than
10 there is just a tad bit of white that likely -- well, I'm
11 not sure what that is. There is no indication it was taken
12 from -- and -- by law enforcement, and so I find that that
13 photo is not suggestive and is relevant and makes no --
14 there is a need to introduce the photo based on
15 identification issues. It is not suggestive in any way
16 that he has a criminal record, and there is nothing as far
17 as any testimony that's been presented so far or that would
18 be presented to the jury that would draw attention to how
19 it originated or what it implies, so I'm going to allow it
20 in.

21 All right, anything else?

22 MS. INZERILLO - No, Your Honor. Thank you.

23 MR. PLEMING - No, sir, Your Honor.

24 THE COURT - All right, any other pre-trial
25 issues?

1 MS. INZERILLO - No, Your Honor.

2 THE COURT - All right, we can do this: The
3 jury's been sitting for an hour. We can let them go to
4 lunch and have everybody back at 1:30, or we could go ahead
5 and pull a jury -- what are they doing with the jury panel?
6 What's going on in the other courtroom?

7 MR. PORTER - Your Honor, my understanding is ---

8 THE COURT - I mean here's -- my question is,
9 maybe we need to just go ahead and just pull the jury for
10 this case so everybody's released for the rest of the day
11 if they're not needed anymore, but if they're going to pull
12 a jury for Judge Hayes's courtroom, then we can maybe just
13 send everybody to lunch and come back. Do y'all have any
14 idea what's ---

15 MR. HAGER (SECURITY PERSONNEL) - I think the
16 jury's out and they're thinking about starting another
17 trial next door, but I don't know the timeframe.

18 DEPUTY CLERK - I just asked Melissa. She said
19 her dilemma was that they want 35 at 3:30 for Hayes, and
20 they are calling at 1:00 and I need the extras from this
21 one to go with that ---

22 THE COURT - Okay, let's do this. Let's let the
23 jury go, have the jury panel come back at 1:30 and then
24 that way we can start and go as far as we can this
25 afternoon. All right?

1 MS. INZERILLO - Thank you, Your Honor.

2 MR. PLEMING - Thank you, Your Honor.

3 THE COURT - All right, we'll be at ease til 1:30.

4 (WHEREUPON, COURT IN RECESS FOR LUNCH)

5 THE COURT - All right, the State ready to
6 proceed?

7 MR. PLEMING - Yes, sir, Your Honor.

8 THE COURT - Defense?

9 MS. INZERILLO - Yes, Your Honor.

10 THE COURT - All right, let's get us a jury.

11 (WHEREUPON, DISCUSSION IS HELD BETWEEN THE COURT
12 AND THE DEPUTY CLERK WHICH WAS NOT REPORTED.)

13 (WHEREUPON, JURY PANEL ENTERS THE COURTROOM)

14 THE COURT - Mr. Pleming, Ms. Inzerillo, would
15 y'all come forward just a just a second.

16 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
17 PRESENCE OF THE JURY PANEL BUT OUT OF THE HEARING OF THE
18 JURY PANEL WHICH WAS NOT REPORTED.)

19 THE COURT - Good afternoon, ladies and gentlemen.
20 I apologize -- well, in some ways I apologize, some ways I
21 don't -- for having you to sit a lot this morning. That's
22 the nature of Court. I can assure you we were working and
23 doing things and you're going to hear later on there's a
24 lot of things that we do and are necessary for us to do
25 outside of your presence, and so we've been doing those

1 kind of things all morning. We were just not ready to have
2 you here for this trial until -- until after lunch.

3 We're about to begin the trial in this case.

4 This is the State of South Carolina versus Jonathan
5 Alexander Phillips. And so what we're going to do -- this
6 is -- as I told you Monday, we're going to ask you a series
7 of questions. This is called voir dire. This is --
8 remember I told you there are three parts to jury -- the
9 jury process. One is the role call which the clerk did,
10 and then I read the statutory qualifications when I was
11 down there. Now we are talking about a particular trial
12 and we have very particular questions that we're going to
13 ask you before -- before our panel/jury is chosen. So I'm
14 going to ask that you listen very closely to these
15 questions, and if you -- when I ask the question, if you
16 need to respond, I'll ask you to stand and then we will
17 talk to you at that point.

18 Again, as I stated, this is the trial of the
19 State vs. Jonathan Alexander Phillips. Is there anyone on
20 the jury panel related by blood or marriage to Jonathan
21 Alexander Phillips? If so, please stand.

22 (WHEREUPON NO REPSONSE)

23 THE COURT - No one stands.

1 Is there anyone on the jury panel have a close
2 business or personal or social relationship with Jonathan
3 Alexander Phillips, then please stand.

4 (WHEREUPON NO REPONSE)

5 THE COURT - The lawyers in this case representing
6 the State of South Carolina is Blaine Fleming and Dan
7 Porter. If y'all will stand, please and introduce
8 yourselves.

9 MR. PLEMING - My name is Blaine Fleming; I am
10 assistant solicitor here at the Moss Justice.

11 MR. PORTER - I'm Dan Porter; I'm also an
12 assistant solicitor here in the solicitor's office.

13 THE COURT - Representing the defendant in this
14 case is Melissa Inzerillo. Ms. Inzerillo is an attorney
15 here in York. Would you like to introduce yourself, Ms.
16 Inzerillo?

17 MS. INZERILLO - Good afternoon. I'm Melissa
18 Inzerillo; I'm an attorney with the public defender's
19 office.

20 THE COURT - The potential witnesses in this case
21 -- I'm going to ask that you listen very carefully as I
22 read these names, because at the end of asking those
23 questions, I'm going to ask if you -- either -- or if any
24 member of the jury panel is related by blood or marriage or
25 have a close business or personal or social relationship

1 with any of these individuals, and I'm going to ask you to
2 stand. So listen to these names. These are the potential
3 witnesses: Jeremy Lee Felker, Detective J.R. Yager of the
4 York County Sheriff's Department, Detective Eddie Strait of
5 the York County Sheriff's Department, Juanita Wright,
6 Kendrick Fallon, Sergeant John Clark of the York County
7 Sheriff's Department, Ardella Biggers, Sergeant M.L. Wilson
8 of the Clover Police Department, Lieutenant Rick Thomasson
9 of the York Police Department, Detective Billy Mumaw of the
10 York Police Department. Is there any member of the jury
11 panel related by blood or marriage or have a close business
12 or personal relationship with any of the people that I have
13 just called? If so, please stand.

14 (WHEREUPON, NO RESPONSE)

15 THE COURT - No one stands.

16 The lawyers have introduced themselves to you in
17 this case. Is there anyone on the jury panel related by
18 blood or marriage or have a close business or personal
19 relationship or either been represented by any of the
20 attorneys in this case? If so, please stand.

21 (WHEREUPON, NO RESPONSE)

22 THE COURT - No one stands.

23 The defendant in this case is charged on
24 Indictment 2015-GS-46-3438 with armed robbery that
25 allegedly took place on or about August the 13th, 2015 at a

1 Murphy's Express here in York County out at the Lake Wylie
2 area. Is there anyone on the jury panel who has any
3 knowledge whatsoever about this case? If so, please stand.

4 (WHEREUPON, NO RESPONSE)

5 THE COURT - No one stands.

6 Is there any member of the jury panel ever been
7 prosecuted by the Sixteenth Circuit Solicitor's office,
8 either you or a member of your immediate family or a close
9 personal friend being prosecuted by the Sixteenth Circuit
10 Solicitor's office, please stand.

11 (WHEREUPON NO RESPONSE)

12 THE COURT - No one stands.

13 CLERK - Judge, ---

14 (WHEREUPON, JUROR STANDS)

15 THE COURT - I'm sorry.

16 If you'll come forward, sir, right here.

17 (WHEREUPON, JUROR APPROACHES THE COURT)

18 THE COURT - Stand right here. This is Mr.

19 Hooker.

20 COURT REPORTER - What's his number?

21 THE COURT - Number 102.

22 What's your situation?

23 JUROR - My brother had a PCR against her.

24 COURT REPORTER - He needs to speak up just a
25 little bit.

1 THE COURT - Was your brother prosecuted by the
2 solicitor's office here in York County?

3 JUROR - Yes.

4 THE COURT - What is his name?

5 JUROR - Robert Hooker.

6 THE COURT - The fact that your brother was
7 prosecuted by the solicitor's office here in York County,
8 would that affect your ability to be fair and impartial to
9 either the State or the defense in this case?

10 JUROR - Yes.

11 THE COURT - All right, we're going to excuse Mr.
12 Hooker in this case. You can return to your seat.

13 (WHEREUPON, JUROR RETURNS TO THE GALLERY)

14 THE COURT - Is there any member of the jury panel
15 who has an immediate family member or a close family friend
16 or a close friend who's ever been charged with the crime of
17 robbery or armed robbery? If so, please stand.

18 (WHEREUPON, NO RESPONSE)

19 THE COURT - No one stands.

20 Is there any member of the jury panel either have
21 in the past ever been employed by or volunteered with any
22 city, county, state or federal law enforcement agency or
23 law enforcement's victim witness assistance program? What
24 that means if you have a spouse or a child or a family
25 member or close friend, they may work in law enforcement or

1 work in a prosecutor's office and the particular question I
2 asked about victim witness, but if you have any type of
3 close family or friends that work in those environments I
4 ask that you please stand.

5 (WHEREUPON JUROR RESPONDS)

6 THE COURT - Yes, ma'am, your name and number?

7 JUROR - I'm Courtney Clanton. My number is 38.

8 THE COURT - All right, Ms. Clanton, what is your
9 situation?

10 JUROR - My sister is a Colleton county sheriff's
11 deputy. Is that what you're asking?

12 THE COURT - Yes. She's a Colleton County
13 sheriff's deputy?

14 JUROR - Yes, sir.

15 THE COURT - The fact that your sister is a
16 Colleton County sheriff's deputy, would that affect your
17 ability to be fair and impartial to both the State and the
18 defense in this case?

19 JUROR - No, sir.

20 THE COURT - All right, thank you. You can be
21 seated.

22 Has any member of the jury panel contributed to
23 or volunteered time with any organization that lobbies for
24 gun rights, such as the National Rifle Association? If so,
25 please stand.

1 (WHEREUPON, JUROR STANDS)

2 THE COURT - Yes, sir, your name and number?

3 JUROR - Jeff Becker, number 14.

4 THE COURT - Mr. Becker, the fact that you have
5 answered this question that you have contributed or
6 volunteered to organization lobbying for gun rights, would
7 that affect your ability to be fair and impartial to either
8 the State or the defense in this case?

9 JUROR - No, sir.

10 THE COURT - Thank you; you can be seated.

11 Has any member of the jury panel ever contributed
12 money to The Fraternal Order of Police, The South Carolina
13 Law Enforcement Officer's Association or any law
14 enforcement organization or organization which supports
15 police or law enforcement? If so, please stand.

16 (WHEREUPON JURORS STAND)

17 THE COURT - All right, Mr. Becker, we have talked
18 to you earlier. Does that fact affect your ability to be
19 fair and impartial to both the State and the defense in
20 this case?

21 JUROR - No, sir.

22 THE COURT - You can be seated.

23 Your name and number, sir?

24 JUROR - Number 30, Michael Capozzi.

25 THE COURT - Mr. Capozzi, would you be able to be

1 fair and impartial to both the defense and the State in
2 this case?

3 JUROR - Yes.

4 THE COURT - Thank you; be seated.

5 Your name and number?

6 JUROR - Number 24, Jill Burleson.

7 THE COURT - Ms. Burleson, the fact -- would you
8 be able to listen to the evidence in this case and be fair
9 and impartial to both the defendant and the State in this
10 case?

11 JUROR - Yes, sir.

12 THE COURT - Thank you; you may be seated.

13 Has any member of the jury panel ever been
14 charged with a crime of violence including theft, or do you
15 have a family member or a friend who's been charged with a
16 crime of violence? If so, please stand.

17 (WHEREUPON, JURORS STAND)

18 THE COURT - Yes, ma'am, your name and number?

19 JUROR - Kimberly Sloan, number 204.

20 THE COURT - Hold on just a second. Ms. Sloan,
21 tell me what -- what is your situation?

22 JUROR - My son was charged with theft.

23 THE COURT - Would the fact that your son has been
24 charged with theft, would that affect your ability to be

1 fair and impartial to both the State and the defense in
2 this case?

3 JUROR - No, sir.

4 THE COURT - Thank you; you may be seated.

5 Has any member of the jury panel been a victim of
6 a crime of violence including theft or do you have a friend
7 or a family member who has been a victim of a crime of
8 violence such as shooting or assault? If so, please stand.

9 (WHEREUPON, NO RESPONSE)

10 THE COURT - No one stands.

11 Is there any member of the jury panel that has
12 any familiarity with this case either through news media,
13 social media postings, things you may or may not have read
14 on the internet? If so, please stand. Any knowledge about
15 this case whatsoever.

16 (WHEREUPON, NO RESPONSE)

17 THE COURT - Thank you. No one stands.

18 Is there any member of the jury panel who is a
19 customer of Murphy's Express located at 138 Highway 274 in
20 Lake Wylie? If so, please stand.

21 (WHEREUPON, JURORS STAND)

22 THE COURT - All right, let me start here on my
23 left up here on the front. Your name and number, ma'am? I
24 know I've already asked you this before, but we've got to
25 do that again.

1 JUROR - That's all right. Number 24, Jill
2 Burleson.

3 THE COURT - Ms. Burleson, would that fact affect
4 your ability to be fair and impartial to both the defense
5 and the State in this case?

6 JUROR - No, sir.

7 THE COURT - Thank you. Your name and number?

8 JUROR - John Mehanna, 140.

9 THE COURT - Mr. Mehanna, would that fact affect
10 your ability to be fair and impartial to both the State and
11 the defense in this case?

12 JUROR - No, sir.

13 THE COURT - Thank you; you may be seated.

14 Yes, ma'am, your name and number?

15 JUROR - Terri Deese, 54.

16 THE COURT - Ms. Deese, would that fact affect
17 your ability to be fair and impartial to the State and the
18 defense in this case?

19 JUROR - No, sir.

20 THE COURT - Thank you; you may be seated.

21 Yes, ma'am?

22 JUROR - Karen Timmons Ellison, number 223.

23 THE COURT - Ms. Ellison, would that fact affect
24 your ability to be fair and impartial to both the State and
25 the defense in this case?

1 JUROR - No, sir.

2 THE COURT - Thank you. You may be seated.

3 Yes, sir?

4 JUROR - Jeff Becker, number 14.

5 THE COURT - Mr. Becker, would that fact affect
6 your ability to be fair and impartial to both the State and
7 the defense in this case?

8 JUROR - No, sir.

9 THE COURT - Thank you; you may be seated.

10 Yes, sir?

11 JUROR - Brian Humphries, number 110.

12 THE COURT - Mr. Humphries, would that fact affect
13 your ability to be fair and impartial to both the State and
14 the defense in this case?

15 JUROR - No, sir.

16 THE COURT - Thank you; you may be seated.

17 Is there any member of the jury panel who knows
18 of any reason why he or she feels that they cannot render a
19 true and just verdict in this case, any reason? If so,
20 please stand.

21 (WHEREUPON, NO RESPONSE)

22 THE COURT - Thank you. No one stands.

23 Anything further from the State?

24 MR. PLEMING - Nothing further, Your Honor.

25 THE COURT - Anything further from the defense?

1 MS. INZERILLO - No, Your Honor.

2 THE COURT - All right, Madam Clerk, give us a
3 jury.

4 DEPUTY CLERK - When I call your name, if you
5 would come and stand ---

6 THE COURT - Well, we're going to do it a little
7 bit different this morning. I'm sorry. I didn't inform
8 the clerk. When the clerk calls your name and number, you
9 can stand. We're not going to require you to come forward.
10 The lawyers will -- they'll turn around in their chairs to
11 be able to see you, but I'm just going to ask that you can
12 remain standing where you are. If you are selected to be a
13 juror on this case, you will be asked to come forward and
14 bring any belongings that you have, and the bailiff will
15 instruct you where to sit in the jury box. Thank you.

16 DEPUTY CLERK - Number 202, Justin A. Silver.

17 JUROR - Justin Silver.

18 DEPUTY CLERK - What say you for the State.

19 MR. PLEMING - Please present Mr. Silver.

20 DEPUTY CLERK - And the defense?

21 MS. INZERILLO - Please swear the juror.

22 DEPUTY CLERK - Please have a seat in the jury
23 box. Number 30, Michael Capozzi.

24 JUROR - Michael Capozzi.

25 DEPUTY CLERK - What say you for the State?

1 MR. PLEMING - Please present Mr. Capozzi.

2 DEPUTY CLERK - And the defense?

3 MS. INZERILLO - Please excuse the juror.

4 DEPUTY CLERK - You're excused from this case.

5 Number 249, Christina Zimmerman Barnosky. What say you for
6 the State?

7 MR. PLEMING - Please present Ms. Zimmerman
8 Bernoski.

9 DEPUTY CLERK - And the defense?

10 MS. INZERILLO - Please swear the juror.

11 DEPUTY CLERK - Please have a seat in the jury
12 box. Number 213, Melissa Stinnette. What say you for the
13 State?

14 MR. PLEMING - Please present Ms. Stinnette.

15 DEPUTY CLERK - And the defense?

16 MS. INZERILLO - Please excuse the juror.

17 DEPUTY CLERK - You're excused from this case.

18 Number 120, Robert Lechner. What say you for the State?

19 MR. PLEMING - Please excuse Mr. Lechner.

20 DEPUTY CLERK - You're excused from this case.

21 Number 60, Melissa Doull . What say you for the State?

22 MR. PLEMING - Please present Ms. Doull.

23 DEPUTY CLERK - And the defense?

24 MS. INZERILLO - Please swear the juror.

1 DEPUTY CLERK - Please have a seat in the jury
2 box. Number 164, James Orr. What say you for the State?

3 MR. PLEMING - Please present Mr. Orr.

4 DEPUTY CLERK - And the defense?

5 MS. INZERILLO - Please swear the juror.

6 DEPUTY CLERK - Please have a seat in the jury
7 box. Number 7, Sandra Avery. What say you for the State?

8 MR. PLEMING - Please present Ms. Avery.

9 DEPUTY CLERK - And the defense?

10 MS. INZERILLO - Please excuse this juror.

11 DEPUTY CLERK - You're excused from this case.

12 Number 72, Sara Frazier. What say you for the State?

13 MR. PLEMING - Please present Ms. Frazier.

14 DEPUTY CLERK - And the defense?

15 MS. INZERILLO - Please swear the juror.

16 DEPUTY CLERK - Please have a seat in the jury
17 box. Number 238, Shawna West. What say you for the State?

18 MR. PLEMING - Please present Ms. West.

19 DEPUTY CLERK - And the defense?

20 MS. INZERILLO - Please excuse the juror.

21 DEPUTY CLERK - You're excused from this case.

22 Number 23, Lavinia Burch. What say you for the State?

23 MR. PLEMING - Please present Ms. Burch.

24 DEPUTY CLERK - And the defense?

25 MS. INZERILLO - Please swear the juror.

1 DEPUTY CLERK - Please have a seat in the jury
2 box. Number 184, Clarence Roddey. What say you for the
3 State?

4 MR. PLEMING - Please present Mr. Roddey.

5 DEPUTY CLERK - And the defense?

6 MS. INZERILLO - Please excuse this juror.

7 DEPUTY CLERK - You're excused from this case.

8 Number 140, John Mehanna. What say you for the State?

9 MR. PLEMING - Please present Mr. Mehanna.

10 DEPUTY CLERK - And the defense?

11 MS. INZERILLO - Please excuse this juror.

12 DEPUTY CLERK - You're excused from this case.

13 Number 77, Kristin Garback. What say you for the State?

14 MR. PLEMING - Please present Ms. Garback.

15 DEPUTY CLERK - And the defense?

16 MS. INZERILLO - Please swear the juror.

17 DEPUTY CLERK - Please have a seat in the jury

18 box. Number 223, Karen Timmons Ellison. What way you for
19 the State?

20 MR. PLEMING - Please present Ms. Timmons Ellison.

21 DEPUTY CLERK - And the defense?

22 MS. INZERILLO - Please excuse this juror.

23 DEPUTY CLERK - You're excused from this case.

24 Number 29, Kevin Campbell. What say you for the State?

25 MR. PLEMING - Please excuse Ms. (sic) Campbell.

1 DEPUTY CLERK - You're excused from this case.
2 Number 200, Shirley Shillinglaw. What say you for the
3 State?

4 MR. PLEMING - Please present Ms. Shillinglaw.
5 DEPUTY CLERK - And the defense?

6 MS. INZERILLO - Please swear the juror.

7 DEPUTY CLERK - Please have a seat in the jury
8 box. Number 199, Sherry Shellouff. What say you for the
9 State?

10 MR. PLEMING - Please present Ms. Shellouff.

11 DEPUTY CLERK - And the defense?

12 MS. INZERILLO - Please swear the juror.

13 DEPUTY CLERK - Please have a seat in the jury
14 box. Number 182, Charles Robbins. What say you for the
15 State?

16 MR. PLEMING - Please present Mr. Robbins.

17 DEPUTY CLERK - And the defense?

18 MS. INZERILLO - Please swear the juror.

19 DEPUTY CLERK - Please have a seat in the jury
20 box. Number 196, Jennifer Seay. What say you for the
21 State?

22 MR. PLEMING - Please present the juror.

23 DEPUTY CLERK - And the defense?

24 MS. INZERILLO - Please swear the juror.

1 DEPUTY CLERK - Please have a seat in the jury
2 box. Number 211, Angela Steinhubel. What say you for the
3 State?

4 MR. PLEMING - Please present Ms. Steinhubel.

5 DEPUTY CLERK - And the defense?

6 MS. INZERILLO - Please swear the juror.

7 DEPUTY CLERK - Please have a seat in the jury
8 box. This will be for the alternate. Number 54, Terri
9 Deese. What say you for the State?

10 MR. PLEMING - Please present Ms. Deese.

11 DEPUTY CLERK - And the defense?

12 MS. INZERILLO - Please swear the juror.

13 DEPUTY CLERK - Please have a seat in the jury
14 box.

15 THE COURT - I'm going to - let's do one more
16 alternate.

17 DEPUTY CLERK - Okay. Number 204, Kim Sloan.
18 What say you for the State?

19 MR. PLEMING - Please excuse Ms. Sloan.

20 DEPUTY CLERK - You're excused from this case.
21 Number 24, Jill Burleson. What say you for the State?

22 MR. PLEMING - Please present Ms. Burleson.

23 DEPUTY CLERK - And the defense?

24 MS. INZERILLO - Please excuse this juror.

1 DEPUTY CLERK - You're excused from this case.
2 Number 25, Charlie Burnette. What say you for the State?

3 MR. PLEMING - Please excuse Mr. Burnette.

4 DEPUTY CLERK - You're excused from this case.
5 Number 225, Laura Trovinger. What say you for the State?

6 MR. PLEMING - Please present Ms. Trovinger.

7 DEPUTY CLERK - And the defense?

8 MS. INZERILLO - Please swear the juror.

9 DEPUTY CLERK - Please have a seat in the jury
10 box.

11 (WHEREUPON, JURY PANEL IS SEATED)

12 THE COURT - Thank you, ladies and gentlemen of
13 the jury. Those of you who have not been selected for this
14 particular jury, we're going to ask that you follow the
15 bailiff; they will take you back downstairs to the jury
16 room, and I think that your services may be needed on
17 another trial in the other courtroom, so at this time those
18 of you who were not selected for jury service, we'll ask
19 that you be excused. Everyone else remain seated.

20 (WHEREUPON, REMAINING JURY PANEL EXITS THE
21 COURTROOM.)

22 THE COURT - All right, madam clerk, would you
23 swear this jury.

24 (WHEREUPON, JURY PANEL IS DULY SWORN BY THE
25 DEPUTY CLERK.)

1 DEPUTY CLERK - Let the record show all affirm.

2 THE COURT - Thank you. Y'all can be seated.

3 Ladies and gentlemen, I'm going to give you some
4 preliminary instructions in this case and this is intended
5 to be an introduction of the case and will give you an idea
6 of where we -- of what you can expect over the next few
7 days. This is not a charge on the law of the case. I will
8 talk to you about that later at the appropriate time.

9 In this case this defendant is charged by an
10 indictment filed in this Court with the crime of armed
11 robbery. The elements of that offense are going to be
12 explained to you later. The indictment is simply the
13 charge by which the case is brought into the Court, and it
14 is not in any sense evidence of any of the allegations it
15 contains. The defendant has pled not guilty to this
16 indictment, and the State, therefore, has the burden of
17 proving each of the elements of the indictment or the
18 particular charge beyond a reasonable doubt, and it's going
19 to be y'all's duty, ladies and gentlemen, to determine or
20 to decide if the State -- or whether the State has met that
21 burden. Your purpose as jurors is to find and determine
22 what you believe to be the facts in the case. You're the
23 sole Judges of the facts in this case. If at any time I
24 make a comment regarding the facts, you must disregard it.
25 You're to determine the facts from the testimony that you

1 hear and any other evidence that's introduced in the Court.
2 It's up to you to determine any inferences which you feel
3 may be properly drawn from the evidence. It's especially
4 important that you perform your duty of determining the
5 facts diligently and conscientiously, because ordinarily
6 there is no way to correct an erroneous determination of
7 the facts by a jury. If on the other hand with equal
8 emphasis, the same law that makes you the Judges of the
9 facts makes me the Judge of the law. The law as given by
10 the Court is the only law that you may consider. You must
11 accept and follow the law as I give it to you even if you
12 disagree with it. I cannot tell you what the facts are in
13 the case, because that's your responsibility and you cannot
14 disagree with me about what the law is or should be. Your
15 job is to take the law as I give it to you at the
16 conclusion of this case and apply it to the facts as you
17 find them from the testimony of witnesses and any other
18 evidence that is introduced. After you do that you will
19 render your verdict and a verdict under the solemn oath
20 that you just took as jurors.

21 The instruction that you're going to hear from me
22 a lot throughout the trial is a -- I'm going to be
23 constantly reminding you of it -- is that you're not to
24 discuss this case at all, even among yourselves, until all
25 the evidence is in at the conclusion of the trial. You got

1 home tonight, don't -- my children fuss at me for saying
2 this, but don't google stuff; don't google names; don't
3 google lawyers; don't google facts; don't google -- don't
4 look at aerial photos. You're not to consider anything
5 about this case except what you hear in the courtroom, and
6 that is the way we can insure that your verdict will be
7 fair and impartial to both the defense and the State. So
8 no electronic media. If there's any news about it, don't
9 listen to it, but you are not to discuss the case with your
10 spouses, your -- folks you live with, your friends. You're
11 not even supposed to discuss the case. You can tell them
12 the Judge told you you couldn't do it. Even among
13 yourselves when you go back in the jury room you're not to
14 discuss the case until the appropriate time and you've
15 heard all the evidence, then I'll give you complete
16 instructions and you'll be able to discuss it very freely
17 and openly as you see fit at that time. So I hope you
18 understand the serious nature of the instruction about not
19 discussing the case at all with anyone until all the
20 evidence has been given to you and I have given you the law
21 that applies in this case.

22 What we will try to do over the next day or so --
23 we anticipate this trial may finish tomorrow, if it does --
24 if carries over into Friday -- we don't anticipate that it
25 will take all day, but we never know. Court's not an exact

1 science and so I tell you that we will try to go til
2 somewhere around 5:00 or 5:30 today. We should start
3 around 9:00 or 9:30 in the morning. Depending on how far
4 we go tomorrow, we may need to keep you later than 5:00
5 tomorrow. So I tell you that if you have -- arran -- make
6 any arrangements -- if you have children that need picking
7 up or carrying for, we may be here later tomorrow, so be
8 sure and make arrangements for that ahead of time. If at
9 any time you believe that you cannot continue to serve
10 because of some emergency or some health issue, things come
11 up, let one of the bailiffs know immediately and we will
12 deal with that. If and when you go home tonight, tomorrow
13 morning if you're having difficulty getting here on time --
14 we hope you'll be here on time -- you must - or there's
15 some emergency, you need to call and let the clerks know
16 immediately. As you come in and out of the courthouse, you
17 may see some of the lawyers in the case and they're not
18 being rude to you, or lawyers even here in the court
19 building, they're not here in this case (sic), no one's
20 supposed to have any contact with you, even the appearance
21 of contact about this case; no one is supposed to discuss
22 it with you. If anybody tries to discuss this case with
23 you during the course of trial, you need to let me know
24 immediately.

1 It's important that you keep an open mind and not
2 decide any issue in this case until all the evidence has
3 been presented, the lawyers have made their closing
4 arguments and I've instructed you on the law of the case.
5 It is your solemn responsibility to determine the guilt or
6 innocence of the defendant and your verdict must be based
7 solely on the evidence as it's presented to you in this
8 trial and again on the law as I instruct you during the
9 trial and at the close of the trial. In just a moment the
10 lawyers will be given an opportunity to make opening
11 statements if they desire. In opening statement they'll
12 give you a brief roadmap of what they believe the evidence
13 is going to show and then we will start taking testimony of
14 the witnesses. After all the testimony is in, then at the
15 end of the trial the lawyers will then again address you
16 individually and have an opportunity to make closing
17 statements and what we call closing arguments. Once
18 they've done that then I will instruct you on the law in
19 the case and then you'll be able to go to your jury room
20 and deliberate about -- about the case and about the
21 verdict. If during the trial you hear one of the lawyers
22 object or state something like, Your Honor, I have a
23 question of law that we need to take up, they're not be
24 rude; they're doing their job. We may send you out to the
25 jury room, because there may be issues that we have to deal

1 with and take up on questions of law that are outside of
2 your presence, because again your role is to be finders of
3 fact; mine is to determine questions of law, so I ask you
4 not to hold that against the lawyers. They are doing their
5 job and protecting their particular positions as attorneys.
6 Sometimes those breaks might be longer than others; they
7 may be very short, but just be patient with us on that.
8 Generally, I like to go an hour, an hour and a half or so
9 before we take a break, but if any time while we're in here
10 you have the -- you need to take a break, raise your hand
11 and make sure that -- if I don't see it, one of the
12 bailiffs sees you and then we'll take that break if that's
13 a particular need. Bring -- you can bring something to
14 drink in and out of the courtroom with you if you wish,
15 just ask you to be careful and try not to spill it. You
16 know, certainly the lawyers have water; I have water up
17 here; we want to extend that same courtesy to you as well.

18 Your job is, as I stated, is to determine what
19 the true facts are in the case and you have to decide
20 whether or not the testimony or particular witnesses is
21 believable. In deciding whether to believe a witness, you
22 have a right to consider the interest of any witness, the
23 bias of any witness, the prejudice of any witness, the
24 opportunity for which the witness had to have seen the
25 matters and things about which that witness may testify and

1 the way the witness acts on the witness stand. You have a
2 right to consider anything that is in the record that will
3 help you to evaluate the testimony of witnesses. That
4 means it's your duty to pay close attention to them and ask
5 that you give it your strict attention. At the appropriate
6 time I will ask you or even -- and my advice is -- I think
7 I would wait til tomorrow, but at the appropriate time I'm
8 going to ask that y'all select a foreperson from among
9 yourselves. I say that, maybe by tomorrow you'll have a
10 little better idea of who all of you are, but you elect a
11 foreperson during one of the breaks or when you come in in
12 the morning. Just write that name on a note, whoever's
13 elected, and hand that to the bailiff and he will hand it
14 up to me. So when you come in and out of the courtroom
15 after that time I'm going to ask the foreperson, once
16 you've selected a foreperson, always take this end seat on
17 the front row. The two alternates, you will always keep
18 those two seats throughout the trial. Everybody else is
19 free to sit where you are. The foreperson has no more
20 authority in a jury trial than anyone else. Their -- their
21 opinions and their discussions carry no more weight than
22 any other individual juror; the foreperson is simply
23 someone that is to assist the Court in making sure that
24 we're communicating properly with the Court and their
25 responsibility is to make sure that whatever verdict is

1 reached is properly recorded and given to the -- and given
2 to the Court at the end of the trial.

3 Anything further from the State?

4 MR. PLEMING - No, sir, Your Honor.

5 THE COURT - Anything further from the defense?

6 MS. INZERILLO - No, Your Honor.

7 THE COURT - Well, at this point now we're going
8 to begin the trial. So you can begin your opening
9 statements. Mr. Porter?

10 MR. PORTER - Thank you, Your Honor. May it
11 please the Court. Counsel.

12 Ladies and gentlemen of the jury, be calm, is
13 normally a statement that makes people be at ease, but
14 that's not what happened on August 13th in the early morning
15 hours at the Murphy's Express in Clover to Jeremy Felkner.
16 That's not how that statement was presented to him. It was
17 presented to him while Jonathan Phillips was standing in
18 front of him and after he had handed him a note. Jeremy
19 Felker will tell you about the contents of that note, all
20 the money. That's what that note said, and that's what
21 Jeremy Felker will testify to.

22 Now, ladies and gentlemen, Jeremy Felker was the
23 clerk that night. He had just come on shift at 12:00
24 o'clock, just gotten done ringing up a regular, paper man,
25 and another woman in front of him who had rung up another

1 item. Jonathan Phillips entered the store; Mr. Felker at
2 first didn't take much notice of him, and as he approached
3 the register, he put a beer on the counter, handed him a
4 five dollar bill, Mr. Felker, as he had done so many times
5 before, opened the till. That's when the note came out.
6 He looked up, read the note; Really? That was his
7 response; this is how my night's going to start, be calm.
8 Right after he said that, right after the defendant said
9 that, guess what? Silver pistol tucked in his waist band.
10 Ladies and gentlemen, it did not take too long for Jeremy
11 Felker to understand the message that was being sent, and
12 you will see -- not only will you hear from Jeremy Felker,
13 but you will see on the store surveillance how long it took
14 him to realize the significance of what happened, what was
15 happening to him and what he had to do next. Money out of
16 the till. The defendant leaves. He immediately calls 9-1-
17 1. Now, ladies and gentlemen, not only are you going to
18 hear testimony from Mr. Felker, but you're going to see --
19 you're going to have his eyes and ears; the surveillance
20 video from the store will be played for you in this
21 courtroom. The 9-1-1 call will be played. You will hear
22 the defendant's voice as he says this too, as he says be
23 calm, as he says, the hundreds under the till as well.
24 Now, if that were all we had, I could sit down, but that's
25 not all. Ladies and gentlemen, the defendant's own mother

1 will testify. She notified a lieutenant with the York
2 Police Department. She made an identification from the
3 store surveillance videos of her own son in that store from
4 the store surveillance video that she was shown by one of
5 the officers from York PD. You will hear her testimony as
6 well as the testimony from Lieutenant Thomasson who knew --
7 who knows Jonathan Phillips. He viewed the video, straight
8 dead-away, that's Jonathan.

9 Now, ladies and gentlemen, the defendant because
10 of these actions was charged with armed robbery, and that
11 requires the State to prove that he took property from the
12 presence of another person while armed with a deadly
13 weapon. Well, ladies and gentlemen, the testimony that we
14 will produce here today will prove all of those elements
15 and after you watch the video and you hear the testimony
16 and you hear the 9-1-1 call, after you hear Detective Eddie
17 Strait testify about his investigation and after you hear
18 the confession -- the statement, not confession, but the
19 statement of the defendant that he was there that night,
20 recognizing that he's portrayed on that video, that same
21 surveillance video that we'll show you, that's me. Ladies
22 and gentlemen, after you've heard all that evidence Mr.
23 Fleming will address you, will ask you to find him guilty
24 of the offense of armed robbery. Thank you.

25 THE COURT - Thank you. Ms. Inzerillo?

1 MS. INZERILLO - Thank you, Your Honor. May it
2 please the Court.

3 How many times in life have you been asked about
4 an event or something that you did, and you can say with
5 utmost certainty what happened, but it's not correct? That
6 happens a lot. Our memories fade over time, change over
7 time; details come in and out of our brains that -- that
8 are substituted.

9 Ladies and gentlemen, Jonathan Phillips is
10 charged with armed robbery in this case, and he's charged
11 with walking into a convenience store in Lake Wylie and
12 stealing goods by force. And the State told you in their
13 presentation that you're going to hear testimony and you're
14 going to see videos, and a lot of times in these cases it's
15 presented as a nice, neat package, but the reason that we
16 ask 12 or 14 separate and distinct people to come in here
17 is because it's not always a nice, neat package. You will
18 see surveillance video in this case. You may hear
19 statements being said, but you're not going to see
20 everything that they're claiming about a statement. You
21 will, I would assume since they mentioned it, hear from Mr.
22 Phillips's mother, but you will also not hear her say with
23 absolute certainty that it was Mr. Phillips. The beauty of
24 this case is Mr. Felker's recollection may not match what
25 you see on the video. We live in an age where things are

1 recorded, audio-recorded, video-recorded. We have the
2 ability to push rewind and see what happens, which is an
3 unusual thing. We take it for granted, but it's unusual.
4 There is surveillance video in this case, so you'll see
5 video. There's a statement in this case which you won't
6 hear. All of these things I ask for you to take into
7 consideration, because it's not a nice, neat package. Mr.
8 Phillips is not charged with being in a convenience store
9 that evening; he's charged with robbing it with a deadly
10 weapon, and he's charged with possession of that deadly
11 weapon while committing a violent crime. That is why
12 you're here, ladies and gentlemen, to listen to the
13 evidence, to look at the package and to see if he's guilty
14 of those charges. At the conclusion of this case, once you
15 hear Mr. Felker's recollection, once you hear the testimony
16 even by his mother and once you see the surveillance video,
17 I would argue that you will find him not guilty. Thank
18 you.

19 THE COURT - Would the lawyers approach?

20 (WHEREUPON, BENCH CONFERENCE HELD IN THE PRESENCE
21 OF THE JURY BUT OUT OF THE HEARING OF THE JURY WHICH WAS
22 NOT REPORTED.)

23 THE COURT - Ladies and gentlemen, I just talked
24 with the lawyers a little bit about logistics, and we
25 anticipate that the next -- the first witness may be very

1 lengthy, so we're going to take an opportunity to let you -
2 - let the bailiff take you back to your jury room, let you
3 get situated back there and then -- so we're going to take
4 a break before that witness. We'll take about 10 or 15
5 minutes. Again, do not discuss the case at all. Thank
6 you.

7 (WHEREUPON, JURY EXITS THE COURTROOM)

8 THE COURT - All right, we'll be at ease for about
9 10 or 15 minutes.

10 (WHEREUPON, RECESS TAKEN)

11 THE COURT - State ready?

12 MR. PLEMING - Yes, sir, Your Honor.

13 THE COURT - Defense ready?

14 MS. INZERILLO - Yes, Your Honor.

15 THE COURT - All right, let's bring the jury in.

16 (WHEREUPON, JURY ENTERS THE COURTROOM)

17 THE COURT - All right, Mr. Fleming, call your
18 first witness.

19 MR. PLEMING - Thank you, Your Honor. At this
20 time the State calls Jeremy Felker.

21 JEREMY FELKER, AFTER BEING FIRST DULY SWORN,

22 TESTIFIES AS FOLLOWS -

23 DEPUTY CLERK - You may be seated.

24 DIRECT EXAMINATION

25 BY MR. PLEMING -

1 Q Please state your full name for the jury.

2 A Jeremy Lee Felker.

3 Q Mr. Felker, where are you from?

4 A Tampa, Florida.

5 Q And how long have you -- do you live in this area now?

6 A Yes.

7 Q And how long have you been here?

8 A About four years.

9 Q Where did you attend high school?

10 A Union County, North Carolina.

11 Q And where do you currently live?

12 A Clover, South Carolina.

13 Q Please tell the jury where you work.

14 A I work at the Murphy Express on Lake Wylie.

15 Q And where is that located, more specific?

16 A In the Publix parking lot off of 274.

17 Q Is that in York County?

18 A Yes.

19 Q What is your current position at Murphy's?

20 A Assistant manager.

21 Q And how long have you been working there at that
22 position?

23 A Going on two years now.

24 Q As an assistant manager, do you have access to the
25 store's security camera footage?

1 A Yes, I do.

2 Q And did you report an armed robbery during your shift
3 on the morning of August 13th, 2015?

4 A Yes, sir.

5 Q What were the hours of your shift that morning?

6 A I believe it was 12:00 to 7:00.

7 Q Were you working alone that night?

8 A Yes, I was.

9 Q And how long had you been on your shift when this
10 alleged robbery occurred?

11 A Approximately 20 minutes.

12 Q At this time I'd like you to tell the jury how this
13 incident began.

14 A Well, I was cleaning and helping customers. I had
15 just got done with one of my usual customers -- he's a
16 paper route driver -- there was a lady behind him and we
17 were counting out here change to get -- get some gas and
18 noticed the car pull up on the left side of the store, but
19 I couldn't see the whole vehicle, which, you know, kind of
20 always watch out for that kind of stuff, but the guy walked
21 into the store, but I wasn't really paying him any
22 attention. Once I got done with the lady and her change,
23 the gentleman approached and put a beer on the counter; I
24 said, hey, how are you doing today, and he didn't really
25 say nothing. So I asked him if that was going to be it for

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1 him, didn't say nothing, so I took the five dollar bill
2 from him, rang out the register, went to, you know, bag
3 everything up and give him his change and a piece of
4 cardboard I believe it was, was put onto the table or the
5 counter and I picked it up and it said, give me all the
6 money, and at that time I looked up at the customer and --
7 from the note and was like, really, and I was thinking is
8 this really happening right now, because it, you know, just
9 caught be off guard, and that's when he proceeded to lift
10 up his shirt and show me the pistol tucked in his waist
11 band and told me to be calm, and I said okay, and I
12 proceeded to start grabbing the money out of the till and
13 he told me to give him all the hundreds underneath the
14 drawer, which I grabbed the drawer and lifted it up to show
15 him that there was nothing in the drawer and put it back
16 down and handed him over the money that I'd given him or
17 that I had, and he proceeded to take off out the store and
18 jumped into the car. Once he got into the car, picked up
19 the phone, called 9-1-1 and, you know, I reported the
20 robbery.

21 Q Thank you. Mr. Felker, at this time I'd like you to
22 back up just a little bit in that story and tell us --
23 well, actually demonstrate for the jury, if you will, how
24 he -- well, excuse me, let me back up a little bit. When
25 he showed you the piece of cardboard that said all the

1 money and you looked up, describe what he did at that
2 moment?

3 A Said he -- he looked at me and that's when he took his
4 waist -- or his shirt, lifted it up like this and said, --
5 and showed me the gun and said, be calm, be calm, or we
6 cool.

7 Q Okay. And describe the gun that you saw in his
8 waistband.

9 A Was a silver color, probably polished nickel, small
10 caliber. It was a semi-automatic, not a revolver.

11 Q Okay. Is there anything else that you remember about
12 it?

13 A The -- said it was on his right side with the butt of
14 the pistol pointing towards his right side. The hammer was
15 not cocked, so it wasn't, you know, ready to go.

16 Q Okay. How much of that gun was visible to you as it
17 was tucked in his waistband?

18 A From the back of the trigger guard to the hammer, so
19 the whole handle and everything, rear sights.

20 Q Okay. After you handed him the cash and you stated
21 that he left, you stated that you called 9-1-1 at that
22 time?

23 A Yes.

24 Q How soon after he left did you dial 9-1-1?

1 A He was maybe out of the store 10 seconds when I picked
2 up the phone and, you know, dialed and so maybe about 20
3 seconds altogether, 20 or 30.

4 Q And how would you describe the man that you stated
5 robbed you again?

6 A That he was a black male approximately five eight, a
7 hundred and forty-five pounds, beard, close-cut hair and
8 red left eye.

9 Q You say a red left eye. What do you mean by that?

10 A Bloodshot, possibly a busted blood vessel.

11 Q Okay. To your recollection, had you ever seen that
12 man before?

13 A No.

14 Q So you did not recognize him?

15 A (Indicating no)

16 Q Do you see the man who robbed you in this courtroom
17 today?

18 A Yes, I do.

19 Q At this time will you please indicate where he is
20 sitting and point and describe what he is wearing?

21 A Sitting to ---

22 MS. INZERILLO - Your Honor, at this time I would
23 renew previous objections to this ---

24 THE COURT - Your previous objections are noted.
25 Go ahead.

1 A Sitting to the left of the courtroom wearing a blue
2 and white striped shirt.

3 Q To your left?

4 A Yeah, to my left, sorry.

5 MR. PLEMING - Please let the record reflect that
6 the witness has identified the defendant.

7 Q Do you know how much money the defendant got from the
8 register that night?

9 A I believed it to be approximately a hundred and sixty
10 dollars when I was, you know, counting in my head, but it
11 was closer to like a hundred and ninety I think.

12 Q Okay. When you say you believed it to be, when did
13 you -- when are you referring to?

14 A Well, when I first thought about it, when I was
15 counting it out or just grabbing it out of the till I
16 thought I told the police it was probably about two twenty,
17 but, you know, things are happening so quickly.

18 Q That's fine. Were you able to later make a better
19 summation?

20 A Me and my manager, you know, did all the paperwork and
21 it was about a -- it was a -- like a hundred and ninety-
22 eight dollars.

23 Q Okay. Was anyone with the defendant that night?

24 A I believe there was somebody else in the car with him
25 that night, but as for in the store, no.

1 Q Let's talk about the 9-1-1 call that you made.

2 MR. PLEMING - For the record I'm showing what's
3 been previously marked for identification as State's
4 Exhibit Number 1 to defense counsel.

5 Q Mr. Felker, I'm going to hand up to you a disk marked
6 State's Exhibit Number 1. Can you please take a moment to
7 examine that?

8 A (Indicating yes)

9 Q Do you recognize what I've just handed you?

10 A Yes, I do.

11 Q And how are you able to recognize it?

12 A It has my initials and the date I wrote on it.

13 Q Okay. So have you listened to the contents of this
14 disk before?

15 A Yes.

16 Q And how do you know that this is the same disk that
17 you listened to?

18 A Because I signed it with my initials.

19 Q Okay. And what is contained on this disk?

20 A It's a 9-1-1 call where I called in the robbery,
21 speaking with the dispatcher.

22 Q And having listened to this disk previously, is the
23 conversation that's recorded here a fair and accurate
24 depiction of the conversation that took place between you
25 and the 9-1-1 dispatcher that night?

1 A Yes.

2 MR. PLEMING - Your Honor, at this time the State
3 moves to introduce State's Exhibit Number 1 into evidence.

4 MS. INZERILLO - Your Honor, our only objection
5 would be that this witness cannot lay the proper foundation
6 for the care and custody of this piece of evidence.

7 THE COURT - I deny your objection and -- overrule
8 your objection and we'll allow State's Exhibit 1 to be
9 entered into evidence.

10 MR. PLEMING - Thank you, Your Honor. If the
11 please the Court will be published at this time.

12 (WHEREUPON, DISK IS MARKED INTO EVIDENCE AS
13 STATE'S EXHIBIT NUMBER 1.)

14 (WHEREUPON, DISK IS PLAYED FOR THE JURY)

15 Q Mr. Felker, after you called 9-1-1 how long did it
16 take for officers to respond?

17 A Probably about 45 seconds or so.

18 Q And do you recall any of the names of the officers
19 that arrived at Murphy's that night?

20 A No, I do not.

21 Q What happened when they arrived?

22 A I told them, you know, what happened at first, and
23 then there was like three or four of them took off back in
24 their cars to go search around for the vehicle, and then
25 one of -- one or two stayed with me and we uh -- they took

1 my statement after I got calmed down and we re-watched the
2 videos to see what we could tell and all.

3 Q Okay. So you were able to pull the video for the
4 officers that were there?

5 A Yes.

6 Q And did you watch that video, the in-store footage
7 with them?

8 A (Indicating yes) Yes.

9 Q Did you see the incident in full?

10 A Yes, I did.

11 MR. PLEMING - At this time I'm showing defense
12 counsel some photographs previously marked as State's
13 Exhibits numbered 2 through 11.

14 Q Mr. Felker, I'm now showing you State's Exhibits 2
15 through 11 to you. Please take just a moment to flip
16 through those and take a look at each one.

17 A (Witness complies)

18 Q Are you familiar with the scene depicted in each of
19 those ten photos?

20 A Yes, I am

21 Q And what -- what is the scene that's depicted in each
22 of these photographs?

23 A It's the back walkway of my store by the drink
24 coolers.

1 Q And is the scene depicted in each of these ten
2 photographs a fair and accurate depiction of inside the
3 store as it would've appeared on the early morning hours of
4 August 13th of last year?

5 A Yes, sir.

6 MR. PLEMING - At this time the State moves
7 State's Exhibits Number 2 through 11 into evidence.

8 MS. INZERILLO - Your Honor, defense would renew
9 previous objection to State's 2 and make similar objections
10 to the remainder of them.

11 THE COURT - All right, the objections prior made
12 are noted -- States -- under the Court rule; they are
13 admitted into evidence.

14 MR. PLEMING - Thank you, Your Honor.

15 (WHEREUPON, PHOTOGRAPHS ENTERED INTO EVIDENCE AS
16 STATE'S EXHIBITS 2 THROUGH 11.)

17 MR. PLEMING - At this time I'd like to publish
18 just State's Exhibit Number 2 for the jury, Your Honor.

19 (WHEREUPON, STATE'S EXHIBIT NUMBER 2 PUBLISHED TO
20 THE JURY)

21 Q Mr. Felker, now you said that you were able to pull
22 the video for the officers that night. Were you actually
23 able to make a copy of the video for them that night?

24 A No, I wasn't. It -- it was a newer video system that
25 I hadn't been fully trained on yet, but I was able to bring

1 up the video to show them; I just couldn't make a copy of
2 it yet.

3 Q Okay. And were you able replay the entire incident
4 for them?

5 A Yes.

6 Q Did you give a written statement of the incident that
7 night?

8 A Yes, I did.

9 Q And have you since been able to view the video that
10 was captured from your cameras at Murphy's that night?

11 A Yes.

12 Q And where did you watch this video again?

13 A I've watched it at the store, and I've watched it
14 here.

15 Q Okay.

16 MR. PLEMING - At this time I'm showing State's
17 Exhibit Number 12 as previously marked to defense counsel.

18 Q Mr. Felker, I'm showing you a disk previously marked
19 as State's Exhibit Number 12. Do you recognize this disk?

20 A Yes.

21 Q And have you watched what's recorded on this disk?

22 A Yes, I have.

23 Q Please tell the jury what's on this disk.

1 A It shows a few different camera angles of the
2 defendant in the store and shows me, you know, getting the
3 note and handing him the cash.

4 Q Okay. And how do you know that all of those images of
5 that scene is depicted on that disk?

6 A Because it's the same disk I watched; it's got my
7 initials and the date on it ---

8 Q You marked it ---

9 A --- where I signed it.

10 Q Is that the date that you watched it again?

11 A Yes.

12 Q And what is the date?

13 A 2/4/16.

14 Q Okay. Is the art of the images in the scene that's
15 depicted on this disk a fair and accurate depiction of the
16 scene at Murphy's and the events that transpired that night
17 on August 13th, 2015?

18 A Yes, sir.

19 MR. PLEMING - At this time, Your Honor, the State
20 would move to introduce State's Exhibit Number 12 into
21 evidence.

22
23 THE COURT - Defense?

24 MS. INZERILLO - Same objection as the 9-1-1.

25 THE COURT - All right, objection's noted.

Exhibit 12 is introduced into evidence.

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1 MR. PLEMING - Thank you, Your Honor.

2 (WHEREUPON, STATE'S EXHIBIT 12 IS ENTERED INTO
3 EVIDENCE.)

4 Q Before I publish State's Exhibit Number 12, let me ask
5 you a couple more questions, Mr. Felker. Having viewed the
6 contents of this disk, State's 12, the footage from this
7 disk is from how many different camera angles?

8 A Um, I believe we had three or four camera angles of
9 him.

10 Q Three or four?

11 A (Indicating yes)

12 Q Did you watch the footage from all of the camera
13 angles that are recorded on this disk?

14 A Yes.

15 Q Okay. And for the record, are each of the scenes
16 depicted from each of those four camera angles fairly and
17 accurately depicting the scene of the incident that night?

18 A Yes.

19 Q Is the sound audible on the footage from all four
20 cameras?

21 A No, it's not. There's only two microphones in the
22 store that actually record sound.

23 Q Okay, and do both of those microphones record sound as
24 well as the other?

1 A I don't believe they do. Usually the microphone over
2 register two has the better sound quality.

3 Q Okay. And that's register two?

4 A Yes.

5 Q Okay.

6 MR. PLEMING - If it pleases the Court, the State
7 would publish State's Exhibit 12 at this time.

8 THE COURT - All right, you may publish it.

9 (WHEREUPON, STATE'S EXHIBIT 12 IS PUBLISHED TO
10 THE JURY.)

11 Q Mr. Felker, as assistant manager, are you basically
12 familiar with how the cameras work at the store?

13 A Yes.

14 Q And do they record continuously around the clock or
15 must they be activated?

16 A They um -- they turn them self off if -- no -- or they
17 don't turn them self off. They pause if there's no motion
18 in front of them after a couple seconds.

19 Q Okay. And once there is motion in front of them ---

20 A They automatically start recording.

21 Q All right. Do you know how many seconds of there
22 being no motion in front of the camera it takes before it
23 pauses?

24 A It's one to two seconds. It's almost instantaneously
25 cutting itself off.

1 Q Okay. And when that happens, does the screen go
2 black?

3 A It freeze -- it's a freeze frame of the last scene it
4 recorded.

5 Q Okay. All right, at this time we're going to play
6 those videos; I'm going to hand you a laser pointer, which
7 you -- I will just ask you to use this to explain to the
8 jury what we're seeing on the video. We'll begin by
9 playing kiosk video at approximately 35 seconds in this
10 frame.

11 A This is the left side of my store, outside view of
12 pump A. That's one of my usual customers. He comes in
13 every night about the same time to get drinks and gas. He
14 delivers papers. (Pause) And as you can see, it was fairly
15 quickly that he went in, filled up two cups of drink and
16 paid for gas. What had happened was, like I said, the --
17 the camera actually froze on that last image until there
18 was more movement, so it looks like it's almost -- you
19 know, he walks in and walks back out.

20 Q Do you recall how long he was actually inside the
21 store?

22 A He's usually in there for about a minute or two. We,
23 you know, say, hey, how you doing, talk about, you know,
24 different things. And then this is the defendant's vehicle

1 pulling up. (Pause) We (sic) waits for them to pull off
2 and gets out.

3 MS. INZERILLO - Objection to the speculation.

4 THE COURT - All right, he can -- sustained.

5 A (Pause) Looking in the store and we (sic) go into the
6 bathroom, which is the door that opens up in the very
7 bottom corner.

8 Q So that's the bathroom door that ---

9 A Yes. (Pause) And comes back out with the beer and
10 money in his hand and gets in the car.

11 Q At this time we'll move to the next frame, the store
12 video. And begin this frame of the video at 2 minutes 35
13 seconds into the frame.

14 A Okay, this is the interior view of the store. This is
15 the defendant walking in.

16 Q Okay.

17 A And you'll see the way the camera pauses right here.

18 Q And how long would you estimate that it took him once
19 he approached the counter to hand you the beer, give you
20 the note, show you the gun, take the money and leave?

21 A Um, 45 seconds.

22 Q Okay, and how do you explain the brevity of what we
23 just watched?

24 A Like I stated earlier, the camera freezes when there's
25 no motion, so he was off screen, which that's the whole

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1 view of the camera right there, so once he walked off
2 screen, that camera froze on the last scene it recorded
3 until he started moving across the front of the store and
4 it started back up again.

5 Q Okay. At this time we'll play the next frame,
6 register one, beginning at 3 minutes, 48 seconds into the
7 frame.

8 MR. PLEMING - Beg the Court's indulgence for just
9 a moment. Appears the camera -- the computer's taking a
10 little bit of time. (Pause) All right, I -- we believe we
11 can get it going now.

12 Q All right, Mr. Felker, provide for us what's going on
13 once the camera resumes.

14 A So that's the lady ---

15 COURT REPORTER - I won't be able to get a record
16 unless you pause it.

17 A This is just a lady who's getting gas or counting out
18 change.

19 Q Do you recall what the suspect was doing at this time?
20 Was he in the store at this time?

21 A I believe so, but I wasn't paying attention to him at
22 this point in time until he actually walked up to the
23 counter. That's him right there.

24 Q Okay. Use the laser point if you would.

25 A See the logo on his shirt right there is the same.

1 Q Okay.

2 A And he just handed me the money, so I will open my
3 drawer ---

4 Q All right, let's stop it for just a moment. What have
5 we just seen before we paused it?

6 A He started to hand me the note.

7 Q Okay. Go ahead.

8 A He says, and this too, and he hands me the note; I
9 look up at him, I say really, and then if you watch his
10 shirt, it moves where he's lifting it up showing me the
11 pistol. Unfortunately, the way they have our cameras set
12 up they're more worried about us stealing money than
13 anything else, so that's why it's straight down.

14 Q All right, so what's -- what's blocking our view from
15 ---

16 A That right there would be a cigarette lighter rack,
17 and then that's our poll sign for the register, tells the
18 price of, you know, whatever they're getting.

19 Q Okay, but you said that he -- you can see him lift his
20 shirt?

21 A Yeah, if you watch closely right here in this area,
22 you can see his shirt move up like he's, you know, pulling
23 it up.

24 Q Okay, let's back it up just a couple of seconds and
25 watch that again.

1 A (Pause) There's the note; I look up to say, really,
2 and he lifts the shirt up and puts it down real quick
3 showing me the pistol.

4 Q Okay. And what are you doing now?

5 A I'm getting -- collecting all the money; he's asking
6 me to show him underneath the drawer to make sure there's
7 no hundreds underneath there, and, you know, I lift it up
8 saying there's none under there, put it back down, he leans
9 over to look and I hand him the cash.

10 Q Okay. All right.

11 A I'm standing there telling -- he's saying, be cool, be
12 cool -- or be calm, I'm not doing anything, I'm staying
13 right there, and I'm watching them in the camera -- there's
14 a monitor above my register where I can watch the cameras
15 and I'm waiting to see if he gets in it -- once he gets in
16 the car, and then I reach for the phone and dial 9-1-1.

17 Q All right, thank you. Now play the next frame from
18 register two. And before we do so, while we're queuing it
19 up, have you watched the footage from all these frames on
20 the video?

21 A Yes.

22 Q And what are you able to hear on the camera from
23 register two?

24 A Register two you're actually able to hear mine and his
25 conversation where he's handing me the note telling me

1 this, too, and he keeps telling me to be calm and
2 everything else.

3 Q Okay. When he said be calm, how did you respond?

4 A I'm -- I'm calm.

5 Q And after he asked you all the hundreds from the
6 bottom, how did you respond?

7 A I told him we don't keep hundreds underneath the
8 drawer.

9 Q All right. All right, let's play that at this time
10 and we won't need any additional commentary here; we'll
11 just listen. (Pause) Mr. Felker, just to be sure we all
12 heard it correctly, what's the first thing that you heard
13 him say, the first thing that he said to you after ---

14 A First thing he ever said to me was, and this, when he
15 handed me the note.

16 Q And what's the next thing that he said to you?

17 A He said uh, be calm.

18 Q Okay. Back it up to 6:22. (Pause)

19 MR. PLEMING - All right, I have no further
20 questions. Please answer any questions Ms. Inzerillo may
21 have for you.

22 MS. INZERILLO - May it please the Court.

23 THE COURT - Ms. Inzerillo?

24 CROSS EXAMINATION

25 BY MS. INZERILLO -

1 Q Mr. Felker, you testified today about what you recall
2 happened on that night and then what was through the videos
3 that we saw. Is that right?

4 A Yes.

5 Q Okay. And that night you called 9-1-1.

6 A (Indicating yes)

7 Q Right?

8 A Yes.

9 Q And we heard that phone call played. Right?

10 A Yes.

11 Q And that was the same phone call, the information was
12 the same.

13 A Yes.

14 Q Okay. So, on that phone call you described the person
15 as a black male wearing a brown shirt.

16 A Yes.

17 Q Okay. I'm going to show you the same picture ---

18 MS. INZERILLO - May I approach the witness, Your
19 Honor?

20 THE COURT - Yes, you may.

21 Q --- of State's Number 2 that was shown to you by the
22 solicitor. Is that the same State's Number 2?

23 A Yes.

24 Q And that person is wearing a black shirt. Is that
25 right?

1 A No, that's a brown shirt.

2 Q Okay. You see that shirt in the picture, that's a
3 black shirt?

4 A No, that is a brown shirt. It's the camera angle and
5 lighting.

6 Q So the same camera angle on the video, that looks like
7 a black shirt, that's also makes it a brown shirt.

8 A I saw a black -- brown shirt.

9 Q Okay. The -- when you talked to 9-1-1, the
10 description that you give is black male, brown shirt. Is
11 that right?

12 A Yes.

13 Q You don't mention anything about a gun until they ask
14 about a gun.

15 A They asked for a description of the person, not the
16 gun.

17 Q Okay. In fact, they say -- you say I just got robbed,
18 and they say, okay, did you see a gun. Is that right?

19 A Yes.

20 Q Okay. The -- do you recall talking to officers that
21 night when they responded?

22 A Yes.

23 Q Okay. And when they responded that night, they also
24 asked you about who -- the person that allegedly robbed the
25 store. Right?

1 A (Indicating yes)

2 Q And about the gun.

3 A Yes.

4 Q Okay. And that night you told them that it was a
5 black male, brown shirt. Right?

6 A Yes.

7 Q I want to make sure I get this right now. Black male,
8 brown shirt and um you gave a -- a height/weight
9 description. Is that right?

10 A Yes.

11 Q You also said, short shaved hair, mid-20s.

12 A Yes.

13 Q Okay. So nothing about a beard in that description.

14 A Might've forgotten about that.

15 Q Okay. But it's not in that description.

16 A No, it's not.

17 Q Okay. You also described a gun that evening. Is that
18 right?

19 A Um, I might have.

20 Q Okay. Do you recall describing a pistol as a silver
21 and black pistol?

22 A That sounds about what I said that night.

23 Q But today when you were asked the color of the gun you
24 said it was silver and nickel-polished. Is that right?

1 A Well, nickel-polished, silver color is the frame of
2 the gun, yes.

3 Q Okay. So is nickel the same as black, the same way as
4 brown is the same as black?

5 A That could've been the inlay in the handle that I was
6 describing. It happened six months ago. I'm not going to
7 remember everything today.

8 Q Today you can remember everything about it though.

9 A No, I said I'm not going to be able to remember
10 everything from back then.

11 Q Okay. Today your description describes the person as
12 coming in and having a beer. Is that right?

13 A Yes.

14 Q And that's what you just testified to under direct.

15 A Yes.

16 Q That description you don't tell 9-1-1. Right?

17 A Apparently I didn't. I was under a lot of duress at
18 that point in time.

19 Q You didn't tell the officers that initially responded.
20 Is that right?

21 A I don't remember at this time.

22 Q Okay. But since -- in between that time and today
23 you've seen this video.

24 A Yes.

25 Q Okay, and you've seen these pictures.

1 A Yes.

2 Q Okay. Now, you indicated that you talked to the
3 officers and then once you calmed down a little bit you
4 gave a statement. Is that right?

5 A Yes.

6 Q And you actually hand-wrote that statement. Is that
7 right?

8 A Yes.

9 Q And in that statement -- it's a signed statement where
10 you tell the truth, the whole truth and nothing but the
11 truth.

12 A Yes.

13 Q Okay. So in that statement you don't mention anything
14 about a beard. Is that right?

15 A Yes.

16 Q Okay. You don't describe the gun at all?

17 A That I was under a lot of stress and they told me to
18 write down what happened and I wrote down a short
19 description of what happened.

20 Q Okay. And -- but they told you to say the whole truth
21 -- Right? -- everything that you knew.

22 A Well, at that time that's all I could remember.

23 Q Okay. That statement was given at 1:10 that morning.
24 Right?

25 A Yes.

1 Q That was probably what, 30, 40 minutes after it
2 happened?

3 A Yes.

4 Q Okay. You mentioned today something about his eye?

5 A Yes, his left eye.

6 Q You mentioned that his eye was red.

7 A Yes.

8 Q When you talked to 9-1-1 you don't mention anything
9 about a person's eye being red, do you?

10 A No.

11 Q When you talked to the initial responding officers who
12 get there 45 seconds later you don't mention anything about
13 his eye being red.

14 A I mentioned it to them later on after everything had -
15 ---

16 Q Later after everything what?

17 A Later on that night after I had written my statement.

18 Q Okay. So the -- you told them, they just didn't put
19 that very important piece of information in the description
20 that you gave.

21 A What they do with it is ---

22 Q And you don't put that in your written statement given
23 half an hour later.

24 A I -- I asked them if I needed to and I can't remember
25 if they told me I did or not.

1 Q So you didn't.

2 A I didn't.

3 Q You do, however, give a second statement about a week
4 later. Is that right?

5 A Yes.

6 Q And you meet with -- did you meet with this detective
7 right here?

8 A I typed that statement out at night because I got a
9 note from my manager telling me that a detective had called
10 ---

11 Q Okay.

12 A --- and wanted a -- they said they had read the police
13 report and read the officer's reports and all and wanted me
14 to actually type out or write a description about the eye,
15 because I had mentioned it.

16 Q And they showed you a picture of someone with a bloody
17 eye. Is that right?

18 A Um eventually they did, yeah.

19 Q Okay. And then ---

20 A But ---

21 Q --- they showed you that picture and then you wrote
22 that statement.

23 A No.

24 Q Do you recall testifying in a hearing prior to this?

25 A I do, but I got mixed up.

1 Q Okay. So in that testimony you said that they showed
2 you the picture and then you wrote that statement.

3 A I have seen the picture, yes.

4 Q Okay.

5 A But it wasn't in congruence with writing out or typing
6 out that statement.

7 Q And that statement was given about a week later, six
8 days later.

9 A That's -- I had a few -- they gave me a few days off,
10 and said the detective had said that I had mentioned it to
11 one of the cops, and they wanted a statement written on it.

12 Q Now, the video that we just saw, you indicated that
13 that is an accurate view of what happened that evening.

14 A Yes.

15 Q Okay. So your testimony was that you were kind of
16 doing your normal things at the store and you don't really
17 notice the guy walk in at first.

18 A I was standing at my register and where you're
19 standing at register one, there's a small beer cooler here
20 to your side, which is directly behind register one, and
21 then there's a big lotto box, so if someone walks in from
22 that door on that side of the store, if you're not actually
23 paying attention, you really don't notice them.

24 Q Okay. And on top of that you're working. I mean
25 you're doing your job.

1 A Yes.

2 Q Right?

3 A Yes, ma'am.

4 Q Because there are parts of these clips that we don't
5 see where you're kind of mopping and your straightening up
6 the area and you're doing what you normally do.

7 A (Indicating yes)

8 Q Right? And prior to this, that person that walks in
9 is just the normal customer; he was not really ---

10 A Yes.

11 Q So he didn't get your attention, do anything odd.

12 A No.

13 Q Okay. On this video that we showed with the person
14 standing there and spotting the note, we don't see a gun.
15 Would you agree with that?

16 A Yes.

17 Q Okay. The -- I think you had kind of walked us
18 through some of the conversation back and forth. Is that
19 right?

20 A Yes.

21 Q And the only thing the person said was, be cool, be
22 cool, give me the hundreds or let me see if there's
23 hundreds, something about that.

24 A Yes.

1 Q Okay. Nothing threatening in terms of I'm going to
2 take this gun and shoot you, nothing like that.

3 A Correct.

4 Q Okay. The interaction between you and the person on
5 the other side of the counter takes about 18 seconds.
6 Would you agree with that?

7 A About there, yes.

8 Q Okay. That's about how much time this -- I mean from
9 the time you ring him up and the time you see the note and
10 all of that. Okay.

11 A (No response)

12 Q Now, you're aware as an employee that you're trained
13 to, whenever there is a robbery, to comply.

14 A Yes.

15 Q Okay. And you had testified that when you saw the
16 note that now you think is written on cardboard, that you
17 are like, really, like why is this happening to me.

18 A I just first thought it was a joke or something, ---

19 Q Okay.

20 A --- honestly.

21 Q Immediately you turn to the till though and start
22 giving him money.

23 A After he showed me the gun, yes.

24 Q Okay. Because that's what you're trained to do is to
25 comply with the request for money.

1 A If there is a weapon involved. If someone just walks
2 up to the counter and says, give me all the money, I'm
3 going to laugh at them.

4 Q Okay. So if someone tries to rob you and there's no
5 weapon, you won't take that very seriously at all.

6 A No, ma'am.

7 Q Okay. The only description that you could -- you
8 remarked that you see the car pull up to the left side and
9 then you see him get back in the car. Is that right?

10 A Yes.

11 Q Okay. And you're not ever able to get a tag number or
12 anything to the car?

13 A No, ma'am.

14 Q All right. And I think you had indicated there was
15 nothing prior to this about the person that walked in the
16 store that was unusual, drew your attention.

17 A No.

18 MS. INZERILLO - Your Honor, I have no further
19 questions.

20 THE COURT - Any re-direct?

21 MR. PLEMING - Just briefly, Your Honor.

22 RE-DIRECT EXAMINATION

23 BY MR. PLEMING -

24 Q Mr. Felker, how would you describe your stress level
25 that night when the defendant showed you the gun?

1 A Pretty high. I've not really been through a situation
2 like that before, so -- I mean at first I was okay, but,
3 you know, after it all happened and I got off the phone
4 with 9-1-1, I was just sitting there shaking, you know, and
5 it took me a while to calm down.

6 Q All right. And just so we can clear the air on this,
7 when did you first mention that the defendant had a red
8 left eye, bloodshot left eye?

9 A When I was standing outside with officers smoking a
10 cigarette.

11 Q And you said you'd -- Ms. Inzerillo asked you if they
12 showed you a photograph later of the defendant with a red
13 eye, how many days later was that?

14 A I don't recall. It was after I gave the typed out
15 statement.

16 Q It was after you gave the typed out statement.

17 A Yeah. Well, it was when they actually came and picked
18 it up, because I was working late that night.

19 Q Okay. Do you recall how many lines that written
20 statement was?

21 A The original written statement that night or that
22 morning it happened? Maybe eight or nine at the most. I
23 said I was shaken up and couldn't remember my own name.

24 Q Okay. And in that statement did you say how many
25 seconds it all took?

1 A I might have.

2 Q Did you say what color shoes the guy was wearing?

3 A I don't think I commented on shoes.

4 Q So did you include what you considered to be all the
5 important things about what had just happened to you?

6 A The robbery, the amount of money, the description of
7 him; I believe I put the color of the car on there, so the
8 things I found important at the moment, yes.

9 Q Did you include the fact that he showed you a gun?

10 A I believe I did.

11 Q Okay.

12 MR. PLEMING - I have no further questions.

13 THE COURT - Any re-cross?

14 MS. INZERILLO - Just briefly, Your Honor.

15 RE-CROSS EXAMINATION

16 BY MS. INZERILLO -

17 Q Mr. Felker, in your statement that night you indicated
18 that you wrote out all of the things that you thought were
19 important.

20 A Yes.

21 Q Like the description -- I'm sorry. I don't want to
22 put words in your mouth. Let's see here, the description,
23 the amount of money and the robbery. Is that right?

24 A Yes.

1 Q Okay. I'm going to show you a copy of this, because I
2 want to make sure we're clear.

3 MS. INZERILLO - May I approach the witness, Your
4 Honor?

5 THE COURT - Yes, you may.

6 Q I want you to read in that statement where you
7 described the person.

8 A (Witness complies) Maybe I didn't describe him in this
9 statement.

10 Q And will you read the section of that where you say
11 how much money is missing?

12 A I didn't. Like I said, I don't remember what I wrote
13 that night. It was six months ago. I gave all that
14 information to the actual cop while we were standing there.

15 Q Okay. But you did testify earlier that this statement
16 was given after you had calmed down. Is that right?

17 A Calmed down enough to write, yes. At first I was
18 shaking so bad I couldn't even -- wouldn't been able to
19 write.

20 MS. INZERILLO - Your Honor, I have no further
21 questions.

22 THE COURT - All right, thank you. Mr. Felker,
23 you can step down.

24 Would the lawyers approach?

1 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
2 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
3 WHICH WAS NOT REPORTED.)

4 THE COURT - Ladies and gentlemen, I was
5 discussing with the lawyers some logistics, and I -- we
6 also have some matters that we have to take up outside of
7 your presence this afternoon, so I'm going to allow you to
8 leave a little bit early today. We're going to stop and I
9 need you back in your jury room ready to go at 10:00 in the
10 morning. Be ready to go at 10:00 in the morning. Again,
11 we have some other matters that we're going to be taking up
12 tomorrow morning before you get here, but the bailiffs will
13 give you instructions about reporting, but I need you in
14 the jury room ready to go at 10:00 in the morning. I
15 instruct you again, do not discuss the case; don't talk to
16 your spouses or folks you live with; don't look on the
17 internet and look things up; do not discuss the case with
18 anyone, again, even among yourselves at all. So we will
19 see y'all tomorrow morning at 10:00 o'clock. Thank you.

20 (WHEREUPON, JURY EXITS THE COURTROOM)

21 THE COURT - All right, anything further from the
22 State at this point?

23 MR. PLEMING - No, sir, Your Honor.

24 THE COURT - From the defense?

25 MS. INZERILLO - No, Your Honor.

1 THE COURT - All right, well, we'll start back at
2 10:00 in the morning with this, and we'll be at ease until
3 then.

4 (WHEREUPON, COURT IN RECESS FOR THE DAY AT 4:02
5 P.M.)

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) SIXTEENTH JUDICIAL CIRCUIT
 COUNTY OF YORK) CASE NO.: 2015-GS-46-3438

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
)
 VS) (DAY 2 - VOLUME II)
)
 JONATHAN ALEXANDER) (PAGES 139 - 237)
 PHILLIPS)

FEBRUARY 11, 2016
 YORK, SOUTH CAROLINA

BEFORE THE HONORABLE DANIEL D. HALL

APPEARANCES:

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 YORK, SOUTH CAROLINA

DANIEL PORTER, ASSISTANT SOLICITOR
 YORK, SOUTH CAROLINA

ATTORNEYS FOR THE STATE

MELISSA INZERILLO, ASSISTANT PUBLIC DEFENDER
 YORK, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
 16TH Circuit Court Reporter

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1 (WHEREUPON, COURT RESUMES 2/11/2016 AT 10:37
2 A.M.)

3 (WHEREUPON, STATE'S EXHIBIT MARKED AS 12(A))

4 THE COURT - Duty, if you would ask Juror Number
5 249, if you would get her and bring here in the courtroom,
6 Ms. Barnosky.

7 COURT REPORTER - 249?

8 DEPUTY CLERK - 249.

9 (WHEREUPON, JUROR ENTERS THE COURTROOM)

10 THE COURT - Ms. Barnosky, if you would come
11 forward just a little bit. I need to put -- this needs to
12 be on the record. I had received information from the
13 clerk that you had a family emergency that you believe that
14 you needed to attend to today and are asking to be excused.
15 Is that correct?

16 JUROR - It is, yes.

17 THE COURT - All right, I'm going to need you to
18 tell me what that emergency is.

19 JUROR - Well, and that's what I had asked her if
20 that was considered an emergency. I have a 17 year old son
21 who last night -- I'm probably going to cry -- he just is
22 getting into trouble and I am -- have so much ---

23 THE COURT - You don't need to say anymore.

24 JUROR - All right.

1 THE COURT - Okay, you're excused. You can --
2 we're going to excuse you from this trial and we'll excuse
3 you from service for the rest of the week.

4 JUROR - Thank you.

5 THE COURT - All right, thank you. That'll be
6 249. We will -- when the jury comes back in -- the first
7 alternate ----

8 DEPUTY CLERK - Terri Deese.

9 THE COURT - --- Ms. Deese will now be seated as a
10 normal juror. All right.

11 All right, the State ready to proceed?

12 MR. PLEMING - Your Honor, we have one matter we
13 need to bring up and put on the record before we proceed.

14 THE COURT - All right.

15 MR. PLEMING - It was brought to my attention by
16 Mr. Porter this morning that the Exhibit Number 12 which is
17 the surveillance video in the case, on that disk there were
18 a couple additional files that were still shots from that
19 surveillance video, and of course, we did not authenticate
20 those still shots through the witness. To remedy that, we
21 discussed with Ms. Inzerillo, we made an additional copy of
22 the video onto a new disk that does not contain the
23 additional files; it's only the four camera -- the footage
24 from the four cameras that was on the original. We've
25 marked it already as State's Exhibit 12(A), and the State

1 would move to admit it into evidence without objection from
2 the defense.

3 THE COURT - Well, what we need to do -- the
4 State's Exhibit 12 when it was introduced was purported to
5 be the video, the four shots, and there was no indication
6 at all that there was anything contained on State's Exhibit
7 12, and so that's what was admitted into evidence. It
8 appears to me like we just -- can we do this, Shirley? --
9 is just renumber -- put State's Exhibit 12 on the corrected
10 one that they've agreed as State's Exhibit 12, and we don't
11 have to worry about 12(A) and all that?

12 COURT REPORTER - That's fine if that's what you
13 want to do.

14 THE COURT - Yes.

15 COURT REPORTER - I don't see a problem with it.

16 THE COURT - There's no use having -- there's no
17 use having two videos, a 12 and a 12(A) introduced into
18 evidence. I think that that potentially could create ---

19 MR. PLEMING - Yes, sir.

20 THE COURT - --- issue, so let's just put another
21 sticker on what is now the real 12. That's what's
22 introduced evidence, and then y'all take the -- the one
23 that was first introduced, remove that sticker from it and
24 take it back in your possession.

25 MR. PLEMING - Yes, sir.

1 THE COURT - Ms. Inzerillo, does that -- do you
2 have any objections to that?

3 MS. INZERILLO - I don't. I don't know if -- did
4 the initial the outside, the casing, or the CD?

5 MR. PLEMING - I was just about to say, he
6 initialed the CD. Way (sic) that would confuse the jury
7 since they heard testimony that that disk is initialed,
8 might be something he could initial now.

9 MS. INZERILLO - I don't have an issue, Your
10 Honor, with what you're proposing and if -- the question --
11 I don't think they'll have an issue with the initialing,
12 but it was my understanding ---

13 THE COURT - Well, the potential if we leave the
14 first number 12 in, that's in evidence, and it -- and they
15 could ---

16 MS. INZERILLO - They could see the still shots,
17 and my understanding from my discussion with the State, as
18 well as from the testimony I heard yesterday, was that the
19 intention was to show just the surveillance video and it
20 was an oversight by the State that the still shots ---

21 THE COURT - Yeah, I'm not ---

22 MS. INZERILLO - -- so I don't ---

23 THE COURT - Yeah, I agree with that. Let's just
24 -- let's not worry about the initials and the record's
25 clear what we're doing, get the old number 12, take it out,

1 and just put the new -- for better -- lack of a better term
2 - the new 12 sticker on there.

3 MR. PLEMING - Yes, sir.

4 (WHEREUPON, STATE'S EXHIBIT NUMBER 12 IS
5 SUBSTITUTED FOR THE NEW EXHIBIT 12 INTO EVIDENCE.)

6 THE COURT - Well, let's do this. This probably
7 ought to be part of the record too we just had. Let's call
8 the number 12 with the other shots on it -- that's all
9 right. Leave it like it is.

10 MR. PLEMING - Yes, sir.

11 THE COURT - Yeah. Just leave it like it is. All
12 right. And then we also have -- I've been notified that
13 Juror Number 77 is -- they've elected as the foreperson.
14 I'm going to have a little conversation when she comes in.

15 MR. PLEMING - Thank you, Your Honor.

16 THE COURT - All right, anything else from the
17 State?

18 MR. PLEMING - No, sir, Your Honor.

19 THE COURT - Anything else from the defense?

20 MS. INZERILLO - No, Your Honor.

21 THE COURT - All right, let's bring the jury in.

22 (WHEREUPON, JURY ENTERS THE COURTROOM)

23 THE COURT - All right, thank you, ladies and
24 gentlemen. We have -- I assure you we have been working
25 hard outside of your presence. In fact, just for your

1 information we have done about four guilty pleas already
2 this morning, handles some other matters outside of your
3 presence.

4 Two things for information, Juror 249, Christina
5 Zimmerman Barnosky had an emergency that needed to be taken
6 care of, and she was excused from serving on the jury and
7 for the rest of the week, and so that means, Ms. Deese, you
8 are now a -- you're not the alternate anymore which means
9 you can sit wherever you want except in our new
10 foreperson's chair and the first -- next alternate's chair.
11 And I believe -- is it Ms. Garback?

12 JUROR - (Indicating yes)

13 THE COURT - You have been selected as the
14 foreperson?

15 JUROR - (Indicating yes)

16 THE COURT - All right, you will serve in that
17 capacity. I'll give you instructions later on about when
18 we get to that point of the trial about deliberating that
19 will be necessary for you, but I do just ask that you
20 maintain that seat for the rest of the trial, and if
21 there's any communication anybody needs to make with the
22 Court, then they need to talk to you and you would write
23 that down and send a note out. All right.

24 All right, State call your next witness.

JUANITA WRIGHT - DIRECT BY MR. PLEMING

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1 MR. PLEMING - Thank you, Your Honor. The State
2 calls Juanita Wright.

3 JUANITA WRIGHT, AFTER BEING FIRST DULY SWORN,
4 TESTIFIED AS FOLLOWS -

5 DIRECT EXAMINATION

6 BY MR. PLEMING -

7 Q Good morning, ma'am.

8 A Good morning.

9 Q Thank you for being here. Will you please introduce
10 yourself to the jury by stating your name?

11 A I'm Juanita Wright.

12 Q And Ms. Wright, do you know the defendant in this
13 case, Jonathan Phillips?

14 A Yes, I do.

15 Q And what is your relationship to the defendant?

16 A That's my son.

17 Q Did you raise Jonathan?

18 A Yes, I did.

19 Q And how old is your son?

20 A 24.

21 Q Do you see your son in this courtroom today?

22 A Yes.

23 Q Will you please for the record describe what he's
24 wearing and point to where he's sitting?

1 A He's wearing a blue shirt, and he's sitting right
2 there.

3 Q Thank you.

4 MR. PLEMING - Please let the record reflect that
5 Ms. Wright has identified her son, the defendant.

6 Q Ms. Wright, prior to the date of Thursday, August 13th,
7 2015, when was the last time that you had seen Jonathan?

8 A Probably two weeks or more prior to that day.

9 Q And on that day, August 13th, did you speak with him?

10 A On the day of August 13th?

11 Q Yes, ma'am.

12 A Yes, I did.

13 Q Okay. And did you call him or did he call you?

14 A I called him.

15 Q And on that day did you talk to any police officers?

16 A Yes, I did.

17 Q And with whom did you speak from the police
18 department?

19 A Lieutenant Rick Thomasson.

20 Q And did -- you called him?

21 A Yes, I did.

22 Q Did you know him already personally?

23 A Yes.

24 Q And how did you know Lieutenant Thomasson?

25 A He's a cousin of mine.

JUANITA WRIGHT - DIRECT BY MR. PLEMING

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1 Q Okay. After you talked to Officer Thomasson on the
2 phone, did you speak with any other officers?

3 A Yes.

4 Q And where did that take place?

5 A At my house.

6 Q Do you recall how many officers were at your house?

7 A Two.

8 Q Did you invite them inside?

9 A Yes.

10 Q And did they talk to you about why they were there?

11 A Yes.

12 Q And was this after you had already spoke with

13 Lieutenant Thomasson?

14 A Yes.

15 Q Did -- the officers present, do you recall their
16 names?

17 A No, I don't.

18 Q Did they show you any photographs that day?

19 A Yes.

20 Q And ---

21 MS. INZERILLO - Your Honor, I'm going to ask
22 permission to renew previous objection to this line of
23 testimony and as it relates to the prior ---

24 THE COURT - All right, your objection is noted;
25 the Court's ruling is the same.

1 MS. INZERILLO - Thank you, Your Honor.

2 MR. PLEMING - Thank you, Your Honor.

3 Q And were you able to identify anybody in the photo
4 that they showed you?

5 A Yes.

6 MR. PLEMING - At this time I'm going to retrieve
7 State's Exhibit Number 2 which has been previously admitted
8 into evidence.

9 Q Ms. Wright, will you please take a look at State's
10 Exhibit 2 which I'm handing to you now. Do you recognize
11 this photo?

12 A Yes.

13 Q And how do you recognize it?

14 A I think this is the photo that they showed me the day
15 that they came to my house.

16 Q Okay. Does that photo depict the same scene and the
17 same person that you identified on the day that they showed
18 you the photograph?

19 A Yes.

20 Q Okay. And who is the man that's featured in State's
21 Exhibit Number 2?

22 A Jonathan Phillips.

23 MR. PLEMING - At this time I'm publishing State's
24 Exhibit Number 2 for the jury. If we could dim the lights.

1 MS. INZERILLO - And, Your Honor, I apologize,
2 again, but for completeness of the record, I would also
3 renew my previous objections to this testimony as it
4 relates to this particular exhibit.

5 THE COURT - Thank you, Ms. Inzerillo. Your
6 objection is noted.

7 MS. INZERILLO - Thank you, Your Honor.

8 MR. PLEMING - If we could dim the lights in the
9 courtroom, please.

10 (WHEREUPON, EXHIBIT IS PUBLISHED TO THE JURY)

11 MR. PLEMING - All right, we can bring the lights
12 back up.

13 Q I have just a couple more questions, Ms. Wright. You
14 stated that you did talk to your son, Jonathan, that day.
15 What was the reason for that call?

16 A I called him to ask him had he gotten his self into
17 some trouble.

18 Q Okay. And did you talk to him about the -- about
19 anything involving Murphy's Express gas station?

20 A I just asked him did he get his self into some
21 trouble.

22 Q Okay. How did he respond to that?

23 A He asked me no (sic) -- he told me, no, he didn't.

24 Q Okay. Did you tell the officers that day at your
25 house that you had spoken with Jonathan?

1 A Yes, but I don't know if I had talked to him before I
2 talked to them; I'm not sure.

3 Q Okay. So you don't remember ---

4 A No.

5 Q --- if you had talked to him or not?

6 A No.

7 Q Okay. So you do not recall telling them that Jonathan
8 admitted to you that he had been at Murphy's that day?

9 A No, I didn't tell them that.

10 Q But that he denied robbing the store?

11 A I said -- he said -- well, yes, he did tell me that he
12 had been to the store, but that he didn't rob the store,
13 yes.

14 Q He did not rob it?

15 A Right.

16 MR. PLEMING - Okay. All right, I have no further
17 questions. Thank you for your time.

18 THE COURT - Ms. Inzerillo?

19 MS. INZERILLO - Thank you, Your Honor. May it
20 please the Court.

21 CROSS EXAMINATION

22 BY MS. INZERILLO -

23 Q Ms. Wright, is it fair to say you really don't want to
24 be here today?

25 A It is. It is.

- 1 Q And you're Jonathan's mama. Right?
- 2 A Yes, ma'am.
- 3 Q Okay. And way back on August 13th when you contacted
- 4 Lieutenant Thomasson, that was out of concern for Jonathan.
- 5 Is that right?
- 6 A Yes.
- 7 Q And you knew Lieutenant Thomasson was your cousin.
- 8 A (Indicating yes)
- 9 Q And he's in law enforcement.
- 10 A Right.
- 11 Q And so you called him for help.
- 12 A Yes.
- 13 Q Okay. As mamas do.
- 14 A Right.
- 15 Q Worry about your son.
- 16 A (Indicating yes)
- 17 Q Because you didn't know what was going on.
- 18 A Right.
- 19 Q So after you called Lieutenant Thomasson, the next
- 20 thing that happens is, Lieutenant Thomasson and some other
- 21 officers showed up to your house, and they asked you if it
- 22 was your son in a picture.
- 23 A Yes.
- 24 Q That's how they responded to your concern.
- 25 A Yes.

1 Q Okay. And this picture -- I'm going to show you
2 State's Exhibit 2.

3 MS. INZERILLO - May I approach the witness, Your
4 Honor?

5 THE COURT - Yes, you may.

6 Q I'm going to show you the same picture, State's
7 Exhibit 2, that the State showed you. Are you sure that
8 that's the exact same picture they showed you on day?

9 A I can't be exactly sure.

10 Q Okay. Did they show you a picture on a piece of
11 paper, or they show you something on a cell phone?

12 A On a cell phone.

13 Q Okay. Now, -- I'm going take this back and we're
14 going to put it up on the screen. Okay? All right, so
15 this is the picture that the State just showed you. Right?

16 A Yes.

17 Q And in this picture you can't see the color of the
18 person's eyes, can you?

19 A No, ma'am.

20 Q And it's really hard to tell if he's got facial hair
21 or not?

22 A It is hard to tell.

23 Q Okay. And you can kind of tell he's wearing a black
24 shirt. Right?

25 A Right.

1 Q And he's wearing some sort of shorts or pants or
2 something like that.

3 A Yes.

4 Q Okay. But if I were to ask you to give me a specific
5 description of the person in this picture, could you do it?

6 A No.

7 Q Okay. You couldn't tell me how tall he was, how much
8 he weighed, anything like that.

9 A No, I couldn't.

10 Q Now, the State also -- the State also asked you about
11 some conversation that you had with Jonathan that day or
12 some time around this time.

13 A Right.

14 COURT REPORTER - Could I ask that she speak up a
15 little bit, please.

16 MS. INZERILLO - Just say yes or no so everybody
17 can hear you. Okay?

18 MS. WRIGHT - Okay.

19 Q And is it fair to say that you relayed that
20 conversation because you were concerned about Jonathan?

21 A Yes.

22 Q And you called Jonathan that day as a mama concerned
23 about what was going on, what you were hearing.

24 A Yes.

1 Q Okay. So you didn't go to the police that day with
2 the intention of ratting out your son or throwing him under
3 the bus or anything.

4 A No, ma'am, I didn't.

5 Q All you wanted as a mama was to find your son and to
6 help him.

7 A Right.

8 Q Okay.

9 MS. INZERILLO - Your Honor, I have no further
10 questions.

11 THE COURT - Thank you. Anything further, Mr.
12 Fleming?

13 MR. PLEMING - Just one or two questions, Your
14 Honor.

15 RE-DIRECT EXAMINATION

16 BY MR. PLEMING -

17 Q In State's Exhibit Number 2, whether or not this is
18 the exact same photo from the same point in time as the one
19 that they showed you, does the store to the best of your
20 memory pictured in this photo look any different from the
21 photo that they showed you?

22 A I mean it's just a picture of a person in a store; I
23 mean I can't say that.

24 Q Okay. And the person that's in this photograph you
25 stated today that you still recognize him to be your son.

RICK THOMASSON - DIRECT BY MR. PLEMING

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1 A Yes.

2 MR. PLEMING - No further questions.

3 THE COURT - Any re-cross?

4 MS. INZERILLO - No, Your Honor.

5 THE COURT - All right, thank you, Ms. Wright; you
6 can step down. Thank you for being here.

7 State call your next witness.

8 MR. PLEMING - The State at this time calls
9 Lieutenant Rick Thomasson to the stand.

10 LIEUTENANT RICK THOMASSON, AFTER BEING FIRST DULY

11 SWORN, TESTIFIES AS FOLLOWS -

12 DIRECT EXAMINATION

13 BY MR. PLEMING -

14 Q Good morning, sir.

15 A Good morning.

16 Q Will you please state your name and occupation?

17 A I'm James Thomasson, Lieutenant, York City Police
18 Department.

19 Q And how long have you worked for York City Police
20 Department?

21 A About 33 years.

22 Q Did you become involved in an armed robbery
23 investigation with the York County Sheriff's office on
24 August 13th of last year?

25 A Yes, sir, I did.

1 Q Please tell the jury, explain to them how you became
2 involved in that investigation.

3 A I received a phone call from Ms. Wright stating that
4 she had received some information about a possibly ---

5 MS. INZERILLO - Your Honor, I object to the
6 hearsay.

7 THE COURT - All right. Sustained.

8 Q Lieutenant Thomasson, will you tell us how you became
9 involved without stating anything that anybody told you but
10 just what it is that caused you to become involved in the
11 investigation.

12 A I received some information to look at a -- The Herald
13 On-line CrimeStoppers and see can I identify a subject that
14 may have been involved in an armed robbery.

15 Q Thank you. And what did you do after you received
16 that information?

17 A I went to the police department and Detective Mumaw
18 and myself we pulled it up on Herald On-line and looked at
19 a still photo of the subject.

20 Q Okay. And before we get to that photo, let me back up
21 just a moment, you said you received a phone call from Ms.
22 Wright. Is that Juanita Wright?

23 A Yes, sir.

24 Q And did you know Ms. Wright personally?

25 A Yes, sir.

1 Q And how do you know Ms. Wright?

2 A She's married to my cousin.

3 Q Okay. And once you saw this still photo from this
4 alleged incident, did you recognize anyone in that
5 photograph?

6 MS. INZERILLO - Your Honor, I would renew my
7 previously objections to this testimony.

8 THE COURT - Your objections are noted.

9 MS. INZERILLO - Thank you, Your Honor.

10 MR. PLEMING - Thank you, Your Honor.

11 Q And who did you recognize in that photo?

12 A The defendant.

13 Q Would that be Jonathan Phillips?

14 A Yes, sir.

15 Q Okay. Were you familiar with Mr. Phillips personally
16 prior to this incident?

17 A Yes, I see Mr. Phillips.

18 Q And do you see Mr. Phillips in this courtroom today?

19 A Yes, sir.

20 Q Please point out for the Court and describe what he's
21 wearing at this time?

22 A He's the gentleman that's sitting at the defense table
23 with the blue shirt on.

24 Q Thank you.

1 MR. PLEMING - And for the record this witness has
2 identified the defendant.

3 Q When do you believe the last time was that you saw Mr.
4 Phillips prior to August 13th of last year?

5 A It may have been like a couple of weeks before that I
6 saw him a resident off of 321.

7 Q Okay. And where did you see him at that residence?

8 A It was on the porch and actually he was going back
9 inside the resident.

10 Q Okay. And after you spoke with Ms. Wright on the
11 phone and then pulled that photograph, what did you do?

12 A Detective Mumaw and myself, we went to Ms. Wright's
13 resident and Detective Mumaw showed her the photo what we
14 had downloaded to his phone.

15 Q Okay. And who were the other officers present?

16 A Myself and Detective Mumaw.

17 Q Okay. And did any other officers ever arrive at the
18 residence while you were there?

19 A Later on Detective Mumaw he contact uh one of the
20 investigators from the sheriff's department that was
21 working on that case.

22 Q Okay. And do you recall who that was?

23 A Detective Strait.

24 Q And when you and Detective Mumaw met with Ms. Wright
25 at her residence, tell us what took place?

1 A I think that we showed her the photo and I think that
2 she also identified the person in the photo.

3 Q And where did that conversation take place?

4 A Its at her resident.

5 Q Okay. Who showed her the actual photo and in what
6 form was that photo on?

7 A Detective Mumaw showed it to her on his cell phone.

8 Q Okay. And were you present there when he showed her
9 the picture on his cell phone?

10 A Yes. Yes, sir, I was.

11 Q And did you see the photograph on his cell phone that
12 you showed to her -- that he showed to her?

13 A Yes, sir, I did.

14 Q And did she recognize the man in that photo?

15 A Yes, sir, she did.

16 Q Okay. When she -- who did she recognize in that
17 photo?

18 A The defendant.

19 MS. INZERILLO - Your Honor, I would object to the
20 hearsay.

21 THE COURT - Overruled.

22 MR. PLEMING - Thank you, Your Honor.

23 Q Did she say how certain she was that was him?

24 A She just advised that was her son.

1 Q Okay. Did she show you any doubt or hesitation when
2 identifying him?

3 A No, sir, she didn't, not to my knowledge.

4 Q Thank you. I'm showing you and the jury what's been
5 already introduced as State's Exhibit Number 2. Is this
6 the photograph that you or Detective Mumaw showed to her
7 that day?

8 A Yes, sir, it is.

9 Q Okay.

10 MS. INZERILLO - Your Honor, may I have permission
11 to make any objections to State's 2 a standing objection?

12 THE COURT - Yes, you may.

13 MS. INZERILLO - Thank you, Your Honor. And I
14 would ask for that -- I would object to this and any
15 further testimony of this.

16 THE COURT - All right. Your objection's noted.

17 MR. PLEMING - Thank you, Your Honor.

18 Q I just have a couple more questions, Lieutenant
19 Thomasson. Did you talk to the Defendant, Jonathan
20 Phillips in the days following this incident?

21 A I spoke with a young lady that Mr. Phillips was with;
22 they called me and I spoke with her on several occasions.

23 Q What was your reason for talking to her?

24 A Our concern was for Mr. Phillips' safety. We wanted
25 him to go ahead and come in, turn his self in, and I asked

1 the young lady to just bring him to me and I'll make sure
2 that he get to the proper place.

3 Q Okay. And did you see Mr. Phillips in the days
4 following this incident?

5 A She did. I don't -- I don't recall the exact date
6 that she bring him to me to the police department out in
7 the parking lot, but we met there around 5:00 o'clock in
8 the afternoon.

9 Q And what did you do when he came in?

10 A He came in and he asked us to give him a few minutes
11 to say goodbye, and we stood outside the vehicle, myself
12 and another officer did, and he said his goodbyes and he
13 exit the vehicle, and we hand-cuffed him and took him
14 inside the police department.

15 Q Okay. Can you describe his appearance when he turned
16 himself in to you?

17 A I don't know exact clothing that he had on but one
18 thing that really that stood out that his -- one of his
19 eyes, I think his left eye was badly bloodshot and swollen,
20 so I asked him what happened, that he needed to get some
21 type medical attention to his eye.

22 MR. PLEMING - Thank you. I have no further
23 questions.

24 THE COURT - Ms. Inzerillo?

1 MS. INZERILLO - May it please the Court, Your
2 Honor.

3 CROSS EXAMINATION

4 BY MS. INZERILLO -

5 Q Lieutenant Thomasson, you indicated that Ms. Wright is
6 a family relation of yours, married to your cousin?

7 A Yes.

8 Q Okay. And this case was not in your agency. Is that
9 right? Because you ---

10 A That's -- that's right.

11 Q --- it's a county case.

12 A That's right.

13 Q So you wouldn't normally get involved because it
14 didn't happen in the City of York.

15 A That's right. I wouldn't normally.

16 Q The -- when you -- you testified that you looked at
17 something on Herald On-line or something like that and saw
18 a picture, ---

19 A (Indicating yes)

20 Q --- and it was from that picture that you knew that it
21 was Jonathan.

22 A (Indicating yes)

23 Q Okay. Did -- you didn't do any reports or submit any
24 of that as to that identification?

25 A No, ma'am, I didn't.

1 Q Okay. The -- you indicated that when he came and
2 turned himself in that one of the most prominent things you
3 noticed was his eye.

4 A Yes.

5 Q Okay. And because it was kind of red, ---

6 A (Indicating yes)

7 Q --- all the whites of his eye was red.

8 A Well, one of his eyes was red and kind of swollen, but
9 the other one was, you know, clear.

10 Q Was clear. Okay.

11 A Yes.

12 Q But it was enough for you to notice.

13 A Yes, it was.

14 Q Okay. In fact, it was enough for you to even ask him
15 if he needed some medical attention.

16 A Right.

17 Q Okay. Now, Lieutenant, I know this is a stupid
18 question, but you weren't at the Murphy's Express that
19 night ---

20 A No, ma'am.

21 Q --- when this robbery allegedly happened.

22 A No, ma'am, I wasn't.

23 Q So the first time outside of any pictures or anything
24 that you see Jonathan, you see him on the day he turned
25 himself in and you noticed the eye.

1 A Yes, ma'am.

2 Q Okay.

3 MS. INZERILLO - All right. Your Honor, I have no
4 further questions.

5 THE COURT - Thank you. Anything further, Mr.
6 Fleming?

7 MR. PLEMING - No, sir, Your Honor.

8 THE COURT - All right, Lieutenant, you can step
9 down. Thank you. All right, call your next witness.

10 MR. PORTER - State calls Detective Eddie Strait.

11 EDDIE STRAIT, AFTER BEING FIRST DULY SWORN,

12 TESTIFIES AS FOLLOWS -

13 DIRECT EXAMINATION

14 BY MR. PORTER -

15 Q Good morning.

16 A Good morning.

17 Q Would you please state your name and spell your last
18 name for the record?

19 A It's Eddie Strait, S-t-r-a-i-t.

20 Q Are you from York County?

21 A Yes.

22 Q How long have you lived here?

23 A 54 years.

24 Q And where are you currently employed?

25 A York County Sheriff's office.

1 Q How long have you been with the sheriff's office?

2 A Little over 22 years.

3 Q And what is your rank or occupation with the sheriff's
4 office?

5 A I'm a detective assigned to the violent crimes unit.

6 Q How long have you been in that position?

7 A 14 years.

8 Q What are your duties -- seems pretty obvious. What
9 are your duties in that position?

10 A We investigate violent crimes, whether homicide, armed
11 robberies, aggravated assaults.

12 Q In that capacity, on August 13th of 2015, did you have
13 occasion to work an armed robbery investigation out of a
14 Murphy's Express in Clover?

15 A I did.

16 Q Is that in York County?

17 A It is.

18 Q How did you come to work on that case?

19 A It was assigned to me the -- actually the morning of
20 the 13th. I think it happened just after midnight on the
21 13th and I got it the next morning.

22 Q When you received that case, did you have anyone
23 identify the suspect?

24 A No, there was none.

1 Q Did you receive any potential information about a
2 suspect?

3 A I noticed the fact that the video surveillance from
4 the store had been collected.

5 Q After the video had been collected, did you receive
6 any tips or identifica -- or potential identifications of a
7 suspect?

8 A Not at the time I was assigned the case, no.

9 Q After you had been assigned the case.

10 A Yes, after we released a portion of the video.

11 Q Do you recall when that identification came in?

12 A I received a call after 3:00 o'clock, between 3:00 and
13 3:30 that York Police Department had some information.

14 Q Do you recall the exact person from York PD that
15 contacted you?

16 A Billy Mumaw, Detective Billy Mumaw.

17 Q And where were you when you received this information?

18 A I was between York and Rock Hill on Highway 5.

19 Q What did you do based upon receiving that information?

20 A I turned around and went back to the City of York and
21 met Detective Mumaw and Lieutenant Thomasson.

22 Q With whom did you meet in addition to those officers?

23 A We went to Ms. Juanita Wright's residence.

24 Q Did anyone show a portion of the surveillance video or
25 any photos to Ms. Wright that day?

1 A Detective Mumaw did.

2 Q To your knowledge, did she identify anyone in those
3 videos?

4 MS. INZERILLO - Your Honor, I apologize, but
5 again I would object and ask the Court consider a standing
6 objection.

7 THE COURT - Your objection is noted.

8 MS. INZERILLO - Thank you, Your Honor.

9 A She did. She identified her son in there.

10 Q Did she state what her relationship with that person
11 was?

12 A She said it was her son.

13 Q Did she hesitate at all?

14 A No.

15 Q Did she say at any point she was unsure of that
16 identification?

17 A No.

18 Q Did you threaten, force or coerce her to view the
19 photo or to make an identification?

20 A No.

21 Q Now, after the identification was made, what did you
22 do?

23 A At that point we got warrants for the armed robbery on
24 Mr. Phillips?

1 Q Did you happen to meet with Mr. Phillips after the
2 warrants had been served?

3 A Yes.

4 Q Did he agree to meet with you?

5 A Yes, he did.

6 Q Did you make any threats or offer him anything in
7 order to meet with you?

8 A No, I did not.

9 Q Where did you meet with him?

10 A In our detention center in an interview room that's
11 adjacent to our booking.

12 Q And, approximately, what's the size of the room?
13 Could you describe the setting of that interview to the
14 jury?

15 A Probably ten by ten, has a table with four chairs.

16 Q Were there any recordings made of your conversation
17 with him?

18 A No.

19 Q And about how long was that conversation?

20 A It was brief, maybe 15 minutes.

21 Q Did you offer him any deals or any kind of -- did you
22 make any offers to him as a result of giving you any
23 information?

24 A No.

1 Q When you began speaking with him, did you advise him
2 of his Miranda Rights?

3 A I did.

4 MS. INZERILLO - Your Honor, I apologize again,
5 but I would renew again the previous objection to this.

6 THE COURT - Your objections are noted.

7 Q Did he appear to understand those warnings?

8 A He did.

9 Q Was he coherent and alert?

10 A Yes.

11 Q Did he have any questions about them?

12 A No, sir.

13 Q Did he refuse to waive any of the rights as you read
14 them to him?

15 A No, he did not.

16 Q Did you show him a written copy of those rights?

17 A I did.

18 Q And what is the standard operating procedure for the
19 sheriff's office when interviewing a potential suspect with
20 respect to Miranda waivers?

21 A We have a standard printed form. The top portion is
22 advising of your rights where we have them sign and date.
23 At the bottom portion is a waiver of those rights. Again,
24 they sign and date it.

1 Q If I showed you a copy of that form, would you
2 recognize it?

3 A Yeah.

4 Q I'm handing you what's been marked as State's Exhibit
5 14. If you would, tell the jury what it is that I've just
6 handed you?

7 A It's actually a form from the sheriff's office, York
8 County Sheriff's office, Waiver of Rights form.

9 Q Is that the actual form that you went over with the
10 defendant that day?

11 A It is.

12 Q Did you read the rights from that form?

13 A Did I?

14 Q Did you read the rights from that form?

15 A Yes, I did.

16 Q Would you please read those Miranda advisements to the
17 jury as you would have that day?

18 A Okay. It says... Before I ask you any questions I
19 want to advise you of your rights. You have the right to
20 remain silent; anything you say can and will be used
21 against you in a Court of Law. You have the right to talk
22 to an attorney and have him or her present with you while
23 you're being questioned. If you cannot afford to hire an
24 attorney, one will be appointed to represent you before any
25 questioning if you wish. You can decide at any time to

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1 excise these rights and not answer any questions or make
2 any statements. Do you understand each of these rights
3 that I've explained to you, followed by a yes or no, which
4 he checked yes, signed and dated.

5 Q Thank you. Detective Strait, does that appear to be a
6 true -- in the same condition and appearance as it was on
7 the day that you read it to the defendant?

8 A It does.

9 MR. PORTER - At this point, Your Honor, we ask to
10 move State's Exhibit 14 into evidence.

11 THE COURT - Ms. Inzerillo?

12 MS. INZERILLO - Your Honor, just subject to
13 previous objections.

14 THE COURT - All right. Objections are noted;
15 State's Exhibit 14 is admitted into evidence.

16 (WHEREUPON, STATE'S EXHIBIT NUMBER 14 ADMITTED
17 INTO EVIDENCE.)

18 Q Now, did the defendant sign anything on that waiver
19 form?

20 A Yes, he first signed the -- that he understood his
21 rights and dated it and also signed a waiver of rights
22 below it.

23 Q At that point did you begin your questions?

24 A I did.

25 Q What was your first question to the defendant?

1 A I asked him had he been into the Murphy gas station in
2 Lake Wylie and did he rob it.

3 Q And what was his response to the first question?

4 A He said, yes, he had been in the store, he had bought
5 a drink just like it showed on TV.

6 Q Now, with respect to the second question.

7 A He said -- he repeated again that he had been in store
8 but just to buy a drink, just like it showed on the video
9 on TV, he didn't rob it.

10 Q Did he see -- did he state that he had seen this video
11 surveillance on any local broadcast?

12 A He didn't say that specifically, no.

13 Q Okay. But he did -- did he identify himself as being
14 on that surveillance video?

15 A Yeah, he stated it was just like the video on TV had,
16 that he was inside the store to buy a drink.

17 Q After you asked him about the -- you asked him a
18 question about the investigation, did you proceed with any
19 further questioning?

20 A Yes, I actually -- I had a still photo in my working
21 folder that I showed him and asked him was that him in the
22 store; he stated that it was.

23 Q If I showed you a copy of that photo, would you
24 recognize it?

25 A Yes.

1 Q Is that a -- is that a copy of the photo that you
2 showed to the defendant?

3 A Yes, it is.

4 Q Did he identify himself on that photo?

5 A He did.

6 Q Would you please tell the jury if that is an exhibit
7 that's been entered into evidence?

8 A It is.

9 Q Which -- which exhibit is it?

10 A 2.

11 Q Thank you. Just a few more questions, Detective
12 Strait. After he showed you the video -- I mean the photo
13 that you've just mentioned, did you proceed with any other
14 questions?

15 A I explained to him that there was more video than what
16 was released to the press that actually showed the robbery
17 in the store. He stated that would be between the Judge
18 and his lawyers. At that time I terminated the interview.

19 Q And why did you terminate the interview?

20 A At first I didn't think I would get much more out of
21 him at that point and didn't want to cross the line with
22 him invoking for an attorney.

23 Q Thank you. Do you recall what the defendant looked
24 like when you met with him?

25 A I do.

1 Q Would you be able to authenticate a photo if a photo
2 of him is a true and accurate depiction of the defendant as
3 he appeared the day you met with him?

4 A Yes.

5 Q And what day was it that you met with him?

6 A The 18th.

7 Q Okay. I show you -- could you please tell the jury if
8 you recognize what that appears to be?

9 A It's a picture of the defendant.

10 Q Is it a true and accurate depiction of the defendant
11 as he appeared that day?

12 A It is.

13 MR. PORTER - Your Honor, at this point we move
14 this photo into ---

15 THE COURT - Let's put on the record what -- how
16 it's identified, what exhibit -- State's Exhibit what?

17 MR. PORTER - State's Exhibit 13, Your Honor.

18 THE COURT - Any objection to State's Exhibit 13,
19 Ms. Inzerillo? The Court is taking consideration your
20 prior objections.

21 MS. INZERILLO - Just that, Your Honor.

22 THE COURT - All right, those objections are
23 noted. State's Exhibit -- I'm sorry, is it 14? ---

24 MR. PORTER - 13.

25 THE COURT - --- 13 is admitted into evidence.

EDDIE STRAIT - CROSS BY MS. INZERILLO

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1 MR. PORTER - Thank you, Your Honor.

2 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
3 STATE'S EXHIBIT NUMBER 13.

4 MR. PORTER - Your Honor, at this point I would
5 move to publish that photo to the jury.

6 THE COURT - All right.

7 (WHEREUPON, PHOTO IS PUBLISHED TO THE JURY.)

8 MR. PORTER - Thank you. No further questions.
9 Please answer any questions the defense may have.

10 THE COURT - All right, Ms. Inzerillo?

11 MS. INZERILLO - Thank you, Your Honor. May it
12 please the Court.

13 CROSS EXAMINATION

14 BY MS. INZERILLO -

15 Q Detective Strait, first I want to talk with you a
16 little bit about how investigations work. Is that fair?

17 A Sure.

18 Q Because as a detective you kind of oversee
19 investigations once you're assigned to the case. Is that
20 right?

21 A Yes.

22 Q So generally -- and I know there are exceptions -- but
23 generally what happens is someone reports that a crime may
24 or may not have been committed. Right?

25 A (No response)

- 1 Q And then responding officers actually come out first.
- 2 A Correct.
- 3 Q Okay. Then if the responding -- the responding
- 4 officers might talk to witnesses, might look at the scene
- 5 and determine if they need any more help. So, for example,
- 6 they might call forensics; they might call in a detective;
- 7 they might call in canine and they make the determination.
- 8 A Right.
- 9 Q Okay. So I start here to show that when something is
- 10 called in, you as a detective may not really be the first
- 11 person on the scene.
- 12 A Rarely would be, yes.
- 13 Q Okay. In this case, for example, the robbery
- 14 allegedly happened at 12:30 in the morning, little after
- 15 midnight?
- 16 A Right.
- 17 Q And you were assigned to the case the next morning.
- 18 A Correct.
- 19 Q And that's pretty typical for how investigations work.
- 20 A Right.
- 21 Q All right. So because, obviously you weren't there
- 22 when any crime was being committed. Right?
- 23 A Correct.
- 24 Q So you're not an eye-witness to anything.
- 25 A Correct.

1 Q And because you sort of get assigned to it later on
2 you weren't there when the responding deputies came.

3 Right?

4 A Right.

5 Q You -- when you get a file, when you get a case, you
6 look over what's already been done.

7 A That's correct.

8 Q Okay. And you kind of touched on this a little bit
9 when the State was questioning you, but part of what you do
10 is, for example, you noticed there was surveillance video
11 in this case.

12 A That's right.

13 Q And so it's pretty typical, and as a detective you
14 would pull the video and see what it showed.

15 A Correct.

16 Q Okay. You might also determine if or see what had
17 been done before you got on the case, for example, were
18 there any fingerprints collected.

19 A Correct.

20 Q Okay. And were there -- what did any of the witnesses
21 say.

22 A Correct.

23 Q Okay. And sometimes in cases DNA might be swabbed or
24 collected and then you would follow that up as well.

25 A Correct.

1 Q The -- and in this case there might be a 9-1-1 call or
2 something like that, so you listen to that as well.

3 A Correct.

4 Q So we're going to kind of break those things down a
5 little bit. When you got on the case you knew there were
6 no fingerprints taken.

7 A I would not have known it that morning.

8 Q Okay.

9 A We would get a forensics report later.

10 Q Okay. But you never got a forensics report saying any
11 fingerprints were taken.

12 A That's correct.

13 Q Okay. And no DNA found.

14 A No.

15 Q Okay. And you were aware that canine was not called
16 out to track anyone.

17 A Correct, which is typical when they know they left in
18 a car.

19 Q Absolutely. Okay. And you knew or you had
20 information or you saw in the video that someone did drive
21 away in a car.

22 A Correct.

23 Q Okay. And there was a description of a car being like
24 a late model Honda or something like that.

25 A (No response)

1 Q And you can see on the video when you watch it that a
2 car pulls up, person gets out, gets back in, drives away.

3 A Correct.

4 Q Okay. At that point though early on you didn't know a
5 tag number for the car.

6 A That's correct.

7 Q Okay. The clerk couldn't get a tag number.

8 A Correct.

9 Q But you could clearly see from the video that someone
10 else was in the car.

11 A Correct.

12 Q Okay. And so as a detective you are accessing the
13 case sort of as you see. There's no fingerprints; there's
14 no DNA; there's no tag when you initially come in.

15 A Correct.

16 Q Okay. The clerk could not give any identification as
17 to name of the person that robbed the store.

18 A That's right.

19 Q Okay. So as a detective, what you have to then do is
20 try to find some leads or follow-up on anything that you
21 can.

22 A Correct.

23 Q So in this case, for example, you sent out stuff to
24 the media, like CrimeStoppers video.

25 A Right.

1 Q And that was hoping that someone would call in with a
2 tip or something that you could follow-up on.

3 A Correct.

4 Q All right. You also at some point in the
5 investigation -- I'm not saying right when you got it --
6 but at some point in the investigation did talk to the
7 person that was in the car.

8 A Correct.

9 Q Okay. And that person indicated to you in a statement
10 that she didn't see anything unusual about Jonathan getting
11 out or coming in the car.

12 A Didn't see anything unusual as far as him getting in
13 and out of the car?

14 Q Right.

15 A Correct.

16 Q She never indicated she saw him with a gun or anything
17 like that.

18 A Right.

19 Q The -- so then the first real sort of tip that you get
20 is the call from York PD.

21 A Right.

22 Q Because that could in your mind lead to a possible
23 identification. Right?

24 A Correct.

- 1 Q And the reason that's important is because
2 fingerprints can identify someone.
- 3 A Right.
- 4 Q And DNA can identify someone.
- 5 A Correct.
- 6 Q But you didn't have that in this case so far.
- 7 A Correct.
- 8 Q And no one -- and sometimes this happens too in your
9 experience -- sometimes the person's arrested near the
10 scene or at the scene.
- 11 A Correct.
- 12 Q Okay. And that did not happen in this case.
- 13 A Right.
- 14 Q There was no essentially hard evidence recovered like
15 a gun recovered that you can link back to someone.
- 16 A Correct.
- 17 Q And no money was recovered that you can link back to
18 someone.
- 19 A Correct.
- 20 Q Okay. So from where you're standing sort of the next
21 morning into the afternoon, really what you have is the
22 surveillance video.
- 23 A Right.
- 24 Q So when you get this call, you guys follow-up with Ms.
25 Wright.

- 1 A Correct.
- 2 Q And based on your conversation with her, you had
- 3 testified that you got the warrants in this case.
- 4 A Yes, based on her identification.
- 5 Q Okay. So at that point what you have is the clerk's -
- 6 - the 9-1-1 call, the clerk's statements and his mama's
- 7 identification.
- 8 A And the video.
- 9 Q And the video.
- 10 A Correct.
- 11 Q After that -- so the warrants were issued on the 13th,
- 12 do you recall?
- 13 A Right.
- 14 Q Okay. And the first time that you see Jonathan is on
- 15 the 18th.
- 16 A Correct.
- 17 Q All right. And when you see Jonathan, is it fair to
- 18 say you kind of immediately noticed that eye?
- 19 A Yes.
- 20 Q I mean there's a lot of red in that eye. Am I -- am I
- 21 right on that?
- 22 A Yes.
- 23 Q And I'm going to hold up and show you State's Number
- 24 13. I mean the entire white of his eye is red.
- 25 A Correct.

- 1 Q Okay. This part right here in his mouth, were they
2 gold teeth? You recall?
- 3 A It's cap, yes.
- 4 Q Okay. I think sometimes they're called grills or
5 something like that? I might be showing my age there.
- 6 A (No response)
- 7 Q But you recall something like that; he had something
8 covering his teeth that was gold.
- 9 A I don't -- don't recall that, no.
- 10 Q Okay. Do you recall seeing that in your conversation
11 with him, the 15 minutes you were in the room?
- 12 A Do I recall seeing that during the ---
- 13 Q Yes, when you talked.
- 14 A No, I don't.
- 15 Q Okay. So the -- at the -- from the time between the
16 13th and the 18th when you had an identification and the name
17 of Jonathan Phillips, did you put his picture in a six-pack
18 ID and take it back to the clerk?
- 19 A No.
- 20 Q Okay. The second statement got -- that the clerk gave
21 was on August 18th. Is that right?
- 22 A Uh, statement, you referring to the typed ---
- 23 Q The typed ---
- 24 A Yes.

1 Q Okay. Mr. Phillips, Jonathan, was arrested on the
2 17th.

3 A Correct.

4 Q Okay. And it was in that statement that Mr. Felkner
5 mentions the eye. Is that correct?

6 A He ---

7 Q That's in his statement.

8 A He did mention it in there, yes.

9 Q Okay. When you're a detective -- I think we talked
10 about -- you also review -- well, let me back up. It's
11 very important to you coming onto the case when you come,
12 that the information that responding officers or eye-
13 witnesses give is clear and as much information as they can
14 give. Is that right?

15 A Would be nice, yes.

16 Q Because essentially with you coming on board, that's
17 what you're looking at to develop for a case.

18 A Correct.

19 Q Okay. So, for example, this case would be a lot
20 different if the description of the perpetrator was a white
21 male, blond hair, blue-eyed. That would take it a
22 completely different direction than the description that you
23 received.

24 A No.

1 Q Well, if the description was white male, blond hair,
2 blue-eyed and Ms. Wright called and said Jonathan Wright's
3 (sic) the one in that picture, you would think, well,
4 there's something not right here.

5 A Right.

6 Q Right. Okay.

7 A I thought you meant from the very beginning from what
8 you said.

9 Q No, no. Right. But that's why when the responding
10 officers come out and all that information is given, it's
11 important that they take full and complete information.

12 A Correct.

13 Q And any information that you had about a gun in this
14 case was a description of a silver and black pistol. Is
15 that right?

16 A Uh, I think actually semi-automatic in one -- one
17 statement.

18 Q Okay. Silver and black?

19 A Yes.

20 Q All right. And again, a gun was never recovered?

21 A No.

22 Q Okay. And money was never recovered.

23 A No.

24 MS. INZERILLO - Okay. Your Honor, I have no
25 further questions.

1 THE COURT - Anything further, Mr. Porter?

2 MR. PORTER - Just one question, Your Honor.

3 RE-DIRECT EXAMINATION

4 BY MR. PORTER -

5 Q Detective Strait, are you familiar with firearms?

6 A Yes.

7 Q A nickel-plated firearm, would that be what's commonly
8 known as silver?

9 A It could be nickel-plated, stainless, several
10 different types of metal would be silver.

11 Q If someone were to say to you a silver gun, you would
12 think could be nickel?

13 A Right.

14 MR. PORTER - Thank you. No further questions.

15 THE COURT - Any re-cross?

16 MS. INZERILLO - No, Your Honor.

17 THE COURT - Thank you. Detective Strait, you can
18 step down. Would the lawyers approach?

19 (WHEREUPON, BENCH CONFERENCE IS HELD IN THE
20 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
21 WHICH WAS NOT REPORTED.)

22 THE COURT - All right, Mr. Fleming, you can call
23 your next witness.

24 MR. FLEMING - Your Honor, at this time the State
25 rests.

1 THE COURT - Ladies and gentlemen, the State has
2 indicated now that they are resting their case. That means
3 that they have presented all of the evidence that they
4 intend to present to you in this matter. What that means
5 is that we're now going to take a break and have some more
6 issues that we'll take up outside of your present. So I
7 anticipate -- we'll take a break for about 15 or 20 minutes
8 and then we'll have you back in the jury (sic) room after
9 that. Thank you. I'm sorry. We'll have you back in the
10 courtroom after that. I do instruct you again, do not
11 discuss the case. Don't talk about the case at all. Thank
12 you.

13 (WHEREUPON, JURY EXITS THE COURTROOM)

14 THE COURT - Anything further at this time from
15 the State?

16 MR. PLEMING - Not at this time, Your Honor.

17 THE COURT - And, Ms. Inzerillo, other than the
18 normal motions and I'm going -- we'll do those after we
19 take a break -- is there anything you need to bring up or
20 take up before we take a break?

21 MS. INZERILLO - No, Your Honor.

22 THE COURT - All right, we'll be at ease for about
23 15 minutes.

24 MS. INZERILLO - Thank you, Your Honor.

25 MR. PLEMING - Thank you, Your Honor.

1 (WHEREUPON, RECESS TAKEN)

2 THE COURT - All right, back on the record.

3 Before the jury comes in, is there anything from the State?

4 MR. PLEMING - Nothing from the State.

5 THE COURT - Anything from the defense?

6 MS. INZERILLO - Yes, Your Honor. At this time
7 the defense would renew all previous motions and objections
8 and we would move for a finding of a directed verdict by
9 the Court.

10 THE COURT - All right, all the Court's ruling
11 remains the same on all prior motions and particularly
12 those motions that were brought up about the introduction
13 of the -- the identification and then the photos. All
14 right, as far as a directed verdict, there is sufficient
15 evidence by which in taking the light most favorable to the
16 non-moving party, the State, there is direct testimony from
17 the victim in the case that the defendant is the person who
18 came in armed with a pistol, even though he didn't present
19 the pistol, he -- or he didn't -- he didn't point the
20 pistol, his direct testimony is that the pistol was
21 presented by way of lifting his shirt where the pistol was
22 shown to the victim, the store clerk in the case, along
23 with other testimony about identification of the defendant
24 as being the one in the store, being at the counter, and so
25 there is that, along with other evidence that's in the

1 record, and there is sufficient evidence for it to go to
2 the jury, so I'm going to deny the motion for a directed
3 verdict. Anything else?

4 MS. INZERILLO - Your Honor, I would ask the Court
5 to voir dire Mr. Phillips about his intention to testify.

6 THE COURT - All right. All right, Mr. Phillips,
7 if you would please stand.

8 (WHEREUPON, MR. PHILLIPS COMPLIES)

9 THE COURT - Mr. Phillips, we're at the point of
10 the trial now where you have an opportunity to present any
11 testimony or any evidence on your behalf in your case. You
12 also have an opportunity to testify yourself if you wish at
13 trial. You're not required to do that. You may want to
14 exercise your right to not testify. So I'm going to ask
15 you some questions about that, and so to do that I need to
16 place you under oath. I'm only going to talk to you about
17 your right to testify at trial or not. So if you would
18 raise your right hand, please.

19 Madam Clerk, if you would place him under oath.

20 (WHEREUPON, JONATHAN PHILLIPS IS DULY SWORN BY
21 THE DEPUTY CLERK)

22 THE COURT - Let me ask you, Mr. Phillips, have
23 you and your attorney already discussed about whether you
24 intend to testify or not?

25 MR. PHILLIPS - Yes, sir.

1 THE COURT - And has she talked to you about your
2 rights to not testify, not present a case?

3 MR. PHILLIPS - Yes, sir.

4 THE COURT - Well, at this time I'm going to
5 explain those rights to you, and if there anything that I
6 say that you don't understand, then you need to please let
7 me know. If you want me to explain it any detail, you can
8 ask me. You understand that?

9 MR. PHILLIPS - Yes, sir.

10 THE COURT - We've now reached the stage of the
11 trial where you may present your defense. You have a right
12 to claim the protections given to you by the Fifth
13 Amendment to the Constitution of the United States, and
14 that Amendment states that no person shall be compelled in
15 any criminal case to be a witness against himself. That is
16 your right, your constitutional right. This means that you
17 cannot be required to testify in this case. You have the
18 right to testify on your own behalf, however, no one can
19 make you testify. This is a personal right and no one can
20 waive this right except you. If you decide to testify,
21 you'd be subject to the same rules that govern other
22 witnesses, and you may be examined and cross-examined on
23 any relevant issue in the case. In addition, if you have
24 any convictions involving dishonesty or false statements or
25 for crimes punishable by imprisonment for more than one

1 year and this Court determines that the probative value of
2 admitting that evidence outweighs any prejudicial affect,
3 the solicitor would be able to introduce your record to
4 attack your credibility. We talked about that during pre-
5 trial where your lawyer had a motion to ask the State to
6 tell the Court what -- and you -- what offenses that are on
7 your record that they would attempt to use to impeach you.
8 You remember us going over that?

9 MR. PHILLIPS - Yes, sir.

10 THE COURT - If you decide to testify, this
11 decision on your part must be freely, voluntarily,
12 intelligently made with a knowledge of protections given to
13 you by the Fifth Amendment and the consequences of your
14 decision to testify. If you decide not to testify, I will
15 instruct the jurors that they cannot give the fact that you
16 did not testify any consideration whatsoever, and that
17 there is to be absolutely no prejudice to you because you
18 did not testify. It is left entirely up to you whether or
19 not you testify. You may talk with your attorney, your
20 family and friends or anyone else, but the final decision
21 will be left entirely up to you. Do you understand what
22 I've explained to you?

23 MR. PHILLIPS - Yes, sir.

24 THE COURT - Do you have any questions about what
25 I've explained to you?

1 MR. PHILLIPS - No, sir.

2 THE COURT - Again I asked have you discussed with
3 your lawyer whether you should or should not testify?

4 MR. PHILLIPS - Yes, sir.

5 THE COURT - Do you need anymore time to talk to
6 your lawyer about whether to testify or not testify?

7 MR. PHILLIPS - No, sir.

8 THE COURT - Do you wish to testify?

9 MR. PHILLIPS - No, sir.

10 THE COURT - Ms. Inzerillo, do you have any
11 witnesses or any evidence that you intend to introduce?

12 MS. INZERILLO - No, Your Honor, and I've
13 discussed that decision with Mr. Phillips as well.

14 THE COURT - Is that correct, Mr. Phillips?

15 MR. PHILLIPS - Yes, sir.

16 THE COURT - All right, thank you. You can be
17 seated.

18 All right, what we'll do is we're going to bring
19 the jury in; I'm going to instruct them and tell them that
20 all the evidence that they are to consider has been
21 presented in the case. I'm going to excuse them for lunch,
22 and we will -- I have a conference call at 1:30. We will
23 instruct them to be back at 2:00 o'clock, and we will do
24 our -- I'm going to tell them that we will give them their
25 instructions with y'all's closings at that time. So I'm

1 going to bring them and do that with them and then -- and
2 then we will -- we'll talk about instructions up here at
3 the bench. I do have a plea to do as soon as they go out.
4 All right? Anything further from the State?

5 MR. PLEMING - Nothing from the State, Your Honor.

6 THE COURT - Anything further from the defense?

7 MS. INZERILLO - No, Your Honor.

8 THE COURT - All right, let's bring the jury in.

9 (WHEREUPON, JURY ENTERS THE COURTROOM)

10 THE COURT - Thank you, ladies and gentlemen for
11 your patience. We have now reached the point of the trial
12 where the Court has been informed that you have heard all
13 of the evidence and testimony that you're going to receive
14 in this case, which means that the next step we will take
15 is that the lawyers will have an opportunity to give their
16 closing statements to you and then I will give you the
17 charge. We anticipate that that's probably about an hour,
18 hour and a half long process. So what we're going to do is
19 we're going to let you go to lunch and be back in your jury
20 room ready to go at 2:00 o'clock, and once you come back to
21 your jury room at 2:00 o'clock, you'll come back in here
22 and the lawyers will make their closing statements to you
23 and then I will read you the law and give you some other
24 instructions. So I'm going to allow you to go to lunch.
25 Be back in your jury room at 2:00 o'clock. I instruct you

1 again, do not discuss the case; do not discuss it among
2 yourselves; don't talk to anybody at lunch about it; don't
3 use any personal devices, electronic devices to research
4 issues, people, places or anything related to this trial,
5 and be back ready to go at 2:00 o'clock. Thank you.

6 (WHEREUPON, JURY EXITS THE COURTROOM AT 12:10
7 P.M.)

8 THE COURT - All right, anything further from the
9 State at this point?

10 MR. PLEMING - No, sir, Your Honor.

11 THE COURT - From the defense?

12 MS. INZERILLO - No, Your Honor.

13 THE COURT - And I believe -- Mr. Belton, did he
14 give y'all copies of our proposed charge, or did y'all go
15 over that?

16 MS. INZERILLO - We did review it, Your Honor.

17 MR. PLEMING - Yes, sir.

18 THE COURT - All right. Well, let's do this, let
19 me take a plea and then let's meet back in chambers and
20 talk about the charge when I get through with this plea.

21 MR. PLEMING - Yes, sir.

22 MS. INZERILLO - Thank you, Your Honor.

23 (WHEREUPON, RECESS TAKEN -- PLEA TAKEN IN ANOTHER
24 MATTER)

25 (WHEREUPON, LUNCH RECESS TAKEN)

1 THE COURT - All right, we're back on the record
2 in our trial. Mr. Fleming, is the State ready to proceed?

3 MR. PLEMING - Yes, sir, Your Honor.

4 THE COURT - Ms. Inzerillo?

5 MS. INZERILLO - Your Honor, just waiting for my
6 client to get in here.

7 THE COURT - Okay. Y'all come forward -- approach
8 -- would the lawyers approach?

9 (WHEREUPON, BENCH CONFERENCE WAS HELD WHICH WAS
10 NOT REPORTED.)

11 THE COURT - All right, we're back on the record
12 again. Mr. Phillips is present in the courtroom with his
13 lawyer and the State. Again, I ask, is the State ready to
14 proceed?

15 MR. PLEMING - Yes, sir, Your Honor.

16 THE COURT - And the defense?

17 MS. INZERILLO - Yes, Your Honor.

18 THE COURT - All right, let's bring the jury in.

19 (WHEREUPON, JURY ENTERS THE COURTROOM)

20 THE COURT - Thank you, ladies and gentlemen; I
21 appreciate your patience. We're now at the point of the
22 trial where the attorneys can make their closing arguments
23 or statements to you, and we will begin by the State
24 presenting their closing argument. Mr. Fleming?

1 MR. PLEMING - Thank you, Your Honor. May it
2 please the Court.

3 Good afternoon, ladies and gentlemen. State's
4 Exhibit Number 12. This contains all the evidence that you
5 need in this case to find the Defendant, Jonathan Phillips,
6 guilty of armed robbery. State's Exhibit 12 is the
7 surveillance footage from Murphy's Express of Lake Wylie
8 from August 13th, 2015, and it shows the defendant, as you
9 know, enter that store armed with a deadly weapon, get a
10 beer, approach the counter, have the store clerk ring him
11 up, and as that cash register is opened, he robs him of all
12 the cash in the register. You know that it is the
13 defendant that's on this video because his own mother
14 identifies him; Lieutenant Thomasson of the York Public --
15 I mean excuse me -- the York Police Department identifies
16 him; Jeremy Felker, the store clerk that night, was
17 standing two feet away from the man that robbed him
18 identified him in this courtroom. And most importantly,
19 the defendant admitted to you -- well, not to you, but to
20 Detective Strait that he was the person that's seen in this
21 footage. And now that the 12 of you have seen this video,
22 each of you are now able to identify him as well. He's
23 been sitting in this courtroom throughout the entire trial;
24 you've been able to look at him; you know what he looks
25 like; you've seen the man on this video; you'll have this

1 video; you'll have ten photographs that were taken from
2 this same footage that you can look at while you're
3 deliberating and I submit to you that once you do that,
4 there will be no question that the man that was in that
5 store that night that robbed Jeremy Felker, that walked out
6 of there with the cash in hand as clearly seen by all of
7 you is Jonathan Phillips.

8 I don't know what Ms. Inzerillo is going to say
9 to you during her closing argument, but I expect that she
10 may try to make a great deal out of the fact that you don't
11 see a gun in that video. And that's right; you don't. You
12 can't, because where the gun was located in Mr. Phillips'
13 waistband was blocked from view on camera that night. But
14 you don't need to see the gun in that video to know that
15 the defendant had a gun, because you can see on that video
16 -- if you look closely -- it happens very quickly, but it's
17 there, and it's obvious that he lifts his shirt and lowers
18 his shirt, and you can see the way that Jeremy Felker
19 reacts to that, that immediately after he lifts his shirt
20 he begins pulling cash out of the register, hands it over
21 to the defendant.

22 Now, Abraham Lincoln when he was an attorney once
23 said that one can better know that there is a fire once he
24 sees smoke arising than by the testimony of one or two
25 witnesses to it. For those witnesses they may perjure

1 themselves, but the smoke cannot, and I submit to you that
2 there is plenty of smoke where the defendant raises his
3 shirt and then Mr. Felker hands over the cash to know that
4 the defendant had a gun in his waistband just like Mr.
5 Felker testified. I submit to you that it was not -- it
6 was not his stomach, his belly button or his belt buckle
7 that intimidated Mr. Felker into just handing over all the
8 cash in the register that night. That is all that you need
9 to know, that what Mr. Felker told the police, what he told
10 the 9-1-1 dispatcher, what he told you in this courtroom is
11 the truth. But let's note a few other things that prove
12 this defendant had a gun that night. Consider Mr. Felker's
13 precise description that he gave of the gun, having only
14 one -- a quick second to view it, that memory stayed locked
15 in his mind. He told you -- we'll get to the description
16 of the gun in just a moment. Let's also consider the 9-1-1
17 call that you've heard, which is also in evidence and you
18 can review again. Hear Mr. Felker's voice; it's the voice
19 of someone who has just been the victim of an armed
20 robbery. He's nervous. But when the dispatcher asked him
21 about it he answers immediately, quickly without
22 hesitation. He calls and says I've just been robbed; I
23 need police at this location, gives the address; she asks
24 him for a description of the suspect; he gives it. She
25 immediately says, did he have a weapon, and did he

1 hesitate? No, not for a second. He says, yes, yeah, he
2 had a pistol in his waistband. He didn't take a moment to
3 go, oh, let me conjure up this lie and make up a story
4 about how he had a gun; that didn't happen. Notice that
5 when the defendant first walks up to the counter and he
6 puts that note in front of him and says, all the money, or
7 give me all the money, Mr. Felker doesn't immediately start
8 handing over cash. He doesn't start giving the cash to the
9 defendant until he sees the gun. Notice when -- when you
10 watch the video on register two, you can clearly hear the
11 defendant state, be calm, be calm, right as he shows him
12 the gun. If he didn't have a gun, why would he need to
13 warn Mr. Felker to be calm? If he did not have a weapon,
14 what would be the need for that warning? Notice the body
15 language of Mr. Felker as the defendant walks out. He's a
16 little shaky, a little hesitant, and notice that he does
17 not call 9-1-1 until he noticed the defendant has
18 completely left the store. He stands there for a moment
19 watching the monitor that he told you was in the store, and
20 why would someone do that right after an armed robbery?
21 Because, a person may be concerned, I would submit to you,
22 that the guy that just robbed him looks back in the window
23 and sees him on the phone, what might he do? So he waits;
24 he waits until the defendant's gone and then he calls 9-1-
25 1. And lastly, Mr. Felker has no reason to make this up,

1 and the defense cannot give you any reasonable reason for
2 why he would make up the part about the gun if there wasn't
3 a gun. Now, we played this video and we played the part
4 with him right -- raising up his shirt a couple of times,
5 but as I mentioned, it's quick, and it's at just the top of
6 the frame, and just in case any of you didn't see it the
7 first time, I want to play it once more before you return
8 to deliberate.

9 Would you dim the lights, please?

10 Now, if we could just pause it for just a moment
11 -- I don't have the pointer with me, but if you'll please
12 draw your attention to the very top of the frame where you
13 can see the suspect's -- the defendant's t-shirt and the
14 emblem that's on the front of that t-shirt, and I submit to
15 you that in just a few moments after he hands the note up
16 and Mr. Felker looks up, you will see his hand. You will
17 see it come into the frame, lifting up, rising up and
18 you'll see it come down, and that is exactly what Mr.
19 Felker testified that he did in lifting his shirt and
20 revealing that gun.

21 (WHEREUPON, VIDEO IS PLAYED FOR THE JURY)

22 MR. PLEMING - Right there. In case anyone missed
23 it, show it one more time.

24 (WHEREUPON, VIDEO IS PLAYED FOR THE JURY)

1 MR. PLEMING - At 04:52 his hand is -- is visible
2 there; he's just barely lifted the shirt up and drops it
3 down. Now, if y'all need to review that some more it will
4 be available to you in the deliberation room; you can take
5 as much time as you need. According to Mr. Felker's
6 testimony, the defendant robbed him of approximately
7 anywhere from a hundred and sixty to a hundred and ninety
8 dollars that night from the register. But this case is not
9 about the money that he took that night; this case is about
10 the fear that he inflicted and the threat that he created.
11 This is a serious and important matter, ladies and
12 gentlemen. This defendant brought a deadly weapon into
13 convenience store, a gas station, a place where ordinary
14 men and women must go every single day to go about their
15 ordinary daily affairs. It's right next door to a Publix
16 grocery store. His Honor will instruct you on the law in
17 this case, will go over the elements of armed robbery, and
18 I submit to you that once he does so and you consider the
19 evidence in this case, you will be firmly convinced that
20 this defendant -- that the evidence in this case proves
21 this defendant's guilt on every element of the offense.
22 This defendant is guilty of an armed robbery, because he
23 took money from Mr. Felker by putting him in fear of
24 violence, and he was armed with a deadly weapon while he
25 did so. A deadly weapon also defined -- and his Honor will

1 give you instruction on that. A deadly weapon is any
2 instrument or article that's likely to cause great bodily
3 injury or death. A pistol certainly is a deadly weapon.
4 It's the quintessential deadly weapon I would submit. The
5 gun doesn't have to be operable to be a deadly weapon. It
6 doesn't -- the defendant didn't have to pull it out, point
7 it or shoot it for it to be a deadly weapon. We don't have
8 to prove that it was even capable of firing. The fact that
9 the gun that Mr. Felker described in defendant's waistband
10 was -- looked like a gun enough that it reasonably caused
11 him to fear -- to be fearful enough to hand over the money;
12 that is enough. It's a deadly weapon, because the
13 defendant -- Mr. Felker reasonably believed that it was
14 likely to cause great bodily injury or death. Now, Mr.
15 Felker, he presented himself confidently, as if he held it
16 together pretty well and on the video he did, but that
17 doesn't mean that he wasn't in fear that night, because if
18 he had not been in fear he wouldn't have turned that money
19 over. That gun placed him in fear. Ms. Inzerillo, during
20 her cross examination of Mr. Felker said -- she asked him
21 rather, -- isn't it -- aren't you required to comply with a
22 robber that come into the store, and he said, if they have
23 a weapon. And she said, well, you mean if someone just
24 walks up to the store and hands you a note that says give
25 me all the money or says, give me all the money you

1 wouldn't you do it? And he said, no, I'd laugh at them.
2 Well, Mr. Felker wasn't laughing that morning, because he
3 saw a gun, and he handed over the money because he saw a
4 gun. He knew exactly what he saw. He described it as a
5 silver nickel-plated pistol. Those two terms don't
6 conflict with one another. Don't allow Ms. Inzerillo to
7 confuse you into thinking that he gave two conflicting
8 descriptions of the gun. He stated that it was a semi-
9 automatic pistol and that it was not a revolver. Said it
10 looked to be a small caliber pistol. He described it
11 tucked in the defendant's waistband on the right side of
12 his stomach with the handle pointing towards the left side
13 of the defendant's body, and when he saw that gun, he acted
14 as any reasonable person would under those circumstances,
15 he handed over the money. As the defendant said, be calm,
16 be calm; he said, okay, I'm calm. The threat of serious
17 bodily injury of death, that's what these laws are made to
18 protect us from. And in a few moments you're going to be
19 deliberating over the verdict that you should reach in this
20 case, and the term verdict is from Latin, and it means to
21 speak the truth, and so I'm asking you to return a verdict
22 that does that, that speaks the truth. I ask you to return
23 a verdict that speaks the truth to Jonathan Phillips and to
24 anyone else out there who would bring a deadly weapon into

1 a place of business threatening the safety and lives of
2 store clerks and customers.

3 MS. INZERILLO - Your Honor, I'm going to object
4 to this argument.

5 THE COURT - Lawyers approach.

6 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
7 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
8 WHICH WAS NOT REPORTED.)

9 THE COURT - Thank you. The Court denies the
10 objection.

11 MR. PLEMING - Ladies and gentlemen, I'll wrap it
12 up here. I -- I ask you to take the time that you need,
13 apply your common sense to the evidence in this case. I
14 submit that it's clear to you what happened here. I
15 believe it's clear. I just ask that you return a verdict
16 that -- a verdict of guilty to the charge of armed robbery,
17 because that is the only verdict that the truth calls for
18 in this case and which justice demands.

19 Thank you very much for your time.

20 THE COURT - Thank you, Mr. Fleming. Ms.
21 Inzerillo?

22 MS. INZERILLO - Thank you, Your Honor. May it
23 please the Court. Counselor.

24 When I stood before you yesterday and I was
25 debating what to say in my opening, I debated whether to

1 tell you a story from my youth about something that
2 happened between me and my sister, but in that story I
3 would have to admit that I was obsessed with a certain 80s
4 pop-star and I wasn't quite sure if I was able to do that,
5 but the point of the story was going to be that her
6 perception of the event and my perception of the event are
7 two different things. In fact, she'll swear to you to this
8 day that she never did scratch that record, and I would
9 swear to you today that she did. And I found that
10 incredibly relevant to this case because the idea of
11 perception goes through this case. You've now heard all
12 the testimony; you've now heard the State's case, and you
13 heard testimony on two main points, (1) was Jonathan
14 Phillips in the store, and (2) did he have a gun. And this
15 becomes important because the Judge is going to charge you
16 not only as to armed robbery but what's called strong-armed
17 robbery, which is in its essence robbing someone with force
18 but not with a deadly weapon. It's the equivalent of
19 threatening someone verbally or threatening someone with a
20 fist perhaps, but not with a gun. And so both of those
21 pieces of evidence are very important. Now, you've heard
22 not only from each witness, but you've heard them outline
23 in their own way their piece of this puzzle. You heard
24 Detective Strait kind of walk you through how a normal
25 investigation goes, how this investigation went, what they

1 knew at what point and then what they did as a result of
2 that. And what you heard was, when this robbery or this
3 taking took place, they had no idea who did it. In fact,
4 they had so little idea they had to put it out on the news,
5 and as a result of that, a concerned mama called, not the
6 news, not the sheriff's office, but she called her cousin,
7 because she was concerned for her son. She didn't know
8 what was going on. And instead of sitting down with her
9 and addressing the concerns of the mama, they pulled her
10 into this case as a witness. They sat down with her and
11 showed her something on the cell phone or something and had
12 her identify her son and then used that in order to get
13 warrants against Jonathan Phillips. And you heard at the
14 beginning of this case and you heard again in the State's
15 closing that even this man's own mama came in and testified
16 against him, that even she came in and identified him. The
17 Judge is going to tell you that you can look at the
18 demeanor of the people that took this stand and I would
19 submit to you this was not a woman that wanted to testify
20 against her son, and I think if she had a time machine and
21 could go back, she might think twice about making that
22 phone call. What it comes down to is who is the best
23 person to make that identification. This woman knows her
24 son; there's no doubt about that. Lieutenant Thomasson
25 who's also a family member, knows his cousin, his second

1 cousin. But what is the one -- who is the one person in
2 this case whose perception and identification counts the
3 most? It's the clerk. He's the only person that was at
4 the store that night; he was the only person that was
5 arguably within two or three feet of Mr. Phillips, and he
6 was the only person that interacted with him for I would
7 contend about 18 seconds that evening.

8 What do we know from Mr. Felker's testimony? We
9 know that yesterday I should say, he came in and distinctly
10 remembers the person in front of him having a beard and
11 having a bloody eye. And that eye is pretty gross, so I'm
12 not going to show you a picture of that again. But at the
13 time he doesn't tell 9-1-1, the responding officers, he
14 doesn't put it in a statement about the bloody eye, and he
15 doesn't say anything about the beard. Now, that may seem
16 silly, and y'all may be thinking I don't understand what
17 that lady's doing, his own mama said he was in there, he
18 said he was in there, what's the point of this? The point
19 of this is, Mr. Felker, what did he notice and what did he
20 not notice? Everyone who saw Mr. Phillip's eye said it was
21 obvious. It's obvious. It -- Lieutenant Thomasson even
22 said it was so bad I thought he might medical attention.
23 And yet Mr. Felker didn't notice that. He didn't say
24 anything that night about the person having a beard. And
25 why is that important? This took place in August. It's

1 now February. Mr. Felker has now looked at the video; he's
2 now, of course, come into Court and seen Mr. Phillips
3 sitting here, and he, I believe, testified that he gave the
4 statement once he saw a picture of someone with a red eye.
5 The perception of things can change, so by the time he
6 comes into Court he would -- distinctly remembers the
7 person having a beard; he remembers the red eye, but no one
8 else testified that they had that information that night.
9 And Detective Strait told you we need as much information
10 as we can get, especially in a case like this they don't
11 know. Mr. Felker does not know Mr. Phillips, can't
12 identify him by name, doesn't say I went to high school
13 with them; they need all the information they can get, but
14 he doesn't see that. And I made a little light of the
15 color of the shirt. It's clear he's wearing a black shirt.
16 Mr. Felker still swore to you it was a brown shirt, because
17 that's what he told them that night. Ladies and gentlemen,
18 I think this is important also as it applies to the gun.
19 We've often heard the devil's in the details. That night
20 only when prompted does he say, oh, yeah, there was a gun.
21 He doesn't get on 9-1-1 and say, oh, my goodness, y'all, I
22 just got robbed, and there was a gun, and then he lifted it
23 up and y'all got to get him because I don't know what's
24 going to happen. It's only when he's prompted does he say,
25 oh, yep, yeah, okay. When he's asked by a responding

1 officer to give a description of the gun, he said it's a
2 black and silver gun. And, again, Detective Strait told us
3 every bit of information is important. When they're out
4 that night and when Detective Strait's looking at a case,
5 if he comes across a purely silver gun and the description
6 he has is of a black and silver gun, is that not going to
7 affect how he treats that evidence? That detail is
8 important. And it's not the same as if he had said that
9 night it's silver or nickel-plated and today he came in and
10 said it was silver, that's -- you got me; there's not much
11 difference there. But black and silver is much different
12 than silver, and when he took the stand yesterday, he swore
13 it was silver and nickel-plated. It is in the detail,
14 because in the surveillance video you do not see Jonathan
15 Phillips with a gun. And I would submit to you outside of
16 the 18 seconds involved in the robbery of this case, you
17 see a lot of Jonathan Phillips; you see him sitting in a
18 car; you see him talking to the person in the car; you see
19 his leg out; you see him walk; you see him go to the
20 bathroom; you see him come into the store; you see him look
21 around, go to a couple of coolers, not just one; you see
22 him walk up to the counter and you see him walk out. At no
23 point is he shifting anything; you see his hand grab
24 something. If you believe Mr. Felker and it was up front,
25 there's nothing here, and yet he is sitting -- I'll mess

1 this up, I'm sure -- he's sitting in a car; he gets out of
2 the car and walks; doesn't adjust anything. Detective
3 Strait said they went so far in this investigation as to
4 find the mystery person that was in the car with them.
5 That person said I never noticed anything unusual; I never
6 noticed a gun. So Mr. Felker is being presented as the
7 main person that's interacted with him that night, but I
8 would submit to you there is a second person in that car
9 who never saw a gun. And you can watch that video and you
10 can see Mr. Phillips walk around, but you don't see him do
11 anything to indicate he's got a gun. A gun -- I think it's
12 uncontroverted in this case -- has never been found.
13 Money's never been found. Mr. Felker's perception of the
14 gun is more important now, because if he only was mistaken
15 or he wasn't sure, he thought what he saw in that quick
16 second was a gun, I would submit to you that's not enough
17 for armed robbery. When they're asked specifically, okay,
18 you say you saw a gun, now describe it. Any reasonable
19 person could think, oh my goodness, I just got threatened
20 with a gun, that's what I'm focused on, that's what I'm
21 seeing. I would be able to describe that gun all day long.
22 That night I would be telling the officers, he had it in
23 here, it was turned this way, this is what it looked like,
24 but that's not what we have here.

1 You're going to be asked to consider strong armed
2 robbery. Like I told you, that can be considered if you
3 believe Jonathan went into the store that night, slid a
4 note across the counter and took the money. If you think
5 the manner that he did it, saying be calm was enough,
6 that's by force. By violent it doesn't have to mean
7 Jonathan reached over and grabbed him by the throat or
8 punched him out; it doesn't have to be that much. Mr.
9 Felker said, after watching the video, if you look at this
10 two second splice of it you'll see his -- the shoulder and
11 the arm go up. He never mentions that at the beginning.
12 That's something he's seen after watching the video. You
13 don't see Mr. Phillips with a gun. Mr. Felker said, upon
14 my questioning, that, yeah, if they just slid a note over
15 to me, I may not follow it, I may laugh, but he's not
16 laughing in that video when he sees that note. In fact,
17 what does he say? Really? He's annoyed. Really? He
18 doesn't laugh it off and throw it back. We don't know what
19 happened after that. You can't see the person's head.
20 Maybe he gave him a look. Maybe he did something that told
21 Mr. Felker he was serious. Maybe he shifted in a way where
22 Mr. Felker thought he saw a gun. But I would ask you to
23 consider that any of the conversation nothing references
24 the gun. There's nothing; I'm going to kill you; look at

1 what I've got; don't make me pull this out; nothing to
2 indicate that Mr. Phillips had a gun.

3 Now, the Judge will tell you that because the
4 burden is on the State to prove Mr. Phillips guilty, they
5 have to prove it to you beyond a reasonable doubt. They
6 also have to prove each and every element to you beyond a
7 reasonable doubt. You may be satisfied that, yes, there
8 was a robbery, yes, goods were taken. Could be you can see
9 in there that money's taken out of the till, it's given
10 they're missing close to two hundred dollars. That may not
11 be an issue for you. They have to prove beyond a
12 reasonable doubt it was Jonathan Phillips that went into
13 the store and did that; that may also not be an issue for
14 you based on what you've heard. They also have to prove
15 beyond a reasonable doubt Jonathan Phillips was armed with
16 a deadly weapon when he did it, and they have not proven
17 that. And if they have not proven that element, then I ask
18 you to consider strong armed robbery with all the other
19 elements in your mind from that. I told you at the
20 beginning that Jonathan Phillips was not guilty of armed
21 robbery, and he's not. There's no gun in this case, and I
22 would ask you to take that into consideration and find Mr.
23 Phillips not guilty or find him guilty of strong armed
24 robbery. Thank you.

1 THE COURT - Ladies and gentlemen, we're now at
2 the part of the trial where I am going to give you
3 instruction on the law. In a few moments when I finish
4 giving you the instructions on the law, you'll take what I
5 tell you back to your jury room and then begin to combine
6 that with the facts that you determine to be to reach a
7 verdict in this case. This next process is going to take
8 about 15 to 20 minutes, and in fact, what I'll be doing is
9 reading a majority of that to you, so I ask that you listen
10 very carefully. I'll tell you and I'll give you
11 instructions a little bit later on, I will also send this
12 written charge with you back to your jury room so you'll
13 have it back there, and I'll give you some instructions on
14 that in just a minute.

15 I remind you that during this trial you and I
16 have certain duties to perform. As the Trial Judge it is
17 my responsibility to preside over the trial of this case,
18 and I also have the duty to rule on the admissibility of
19 evidence offered during this trial. You are to consider
20 only the competent evidence before you. You are to
21 consider only the testimony which has been presented from
22 this witness stand, any exhibits which have been made a
23 part of the record in this case, any stipulations of
24 counsel. I have the additional duty to charge you the law
25 applicable to this case. As the presiding Judge I am the

1 sole Judge of the law of this case, and it is your duty as
2 jurors to accept and apply the law as I now state it to
3 you. If you already have any idea as to what the law is or
4 what the law ought to be and it does not agree with what I
5 now tell you the law is, you must abandon this idea,
6 because you're sworn to accept the law and apply the law
7 exactly as I state it to you. In every case tried in this
8 Court before a jury, the jury becomes the sole and
9 exclusive Judge of the facts in the case. A Trial Judge
10 cannot intimate, state, comment on or make any statement to
11 a trial jury about the facts in a case. Since you the jury
12 are the sole Judge of the facts in this case, you are not
13 to infer from anything that I have said during the progress
14 of this trial in ruling on the admissibility of evidence or
15 otherwise or anything that I say you to you now during the
16 course of this instruction to you that I have any opinion
17 about the facts in the case. The law does not allow me to
18 have an opinion about the facts in this case. That is a
19 matter solely for you the jury to determine.

20 As jurors it is your duty to determine the
21 effect, value, weight and truth of the evidence presented
22 during this trial. The indictment charges the defendant
23 with armed robbery. I remind you that the fact that the
24 defendant was arrested, charged and indicted in this case
25 is not evidence in this case and cannot be considered by

1 you as evidence of guilt in this case, nor does it create
2 any presumption or inference of guilt. This document is
3 simply the formal written instrument which contains the
4 charges made against the defendant. It is the formal
5 document by which this case is brought into this Court. I
6 remind you that the fact that the defendant was arrested,
7 charged and indicted in this case is not evidence in this
8 case and cannot be considered by you as evidence of guilt
9 in this case, nor does it create any presumption or
10 inference of guilt. This document is simply the formal
11 written instrument which contains the charges made against
12 the defendant. It is the formal document by which this
13 case is brought in to this Court. The defendant has pled
14 not guilty to these indictments, and that plea puts the
15 burden on the State to prove the defendant guilty. A
16 person charged with committing a criminal offense in South
17 Carolina is never required to prove his own innocence. I
18 charge you that it is an important rule of the law that the
19 defendant in a criminal trial no matter what the
20 seriousness of the charges may be will always be presumed
21 to be innocent of the crimes for which the indictments were
22 issued unless guilt has been proven by evidence satisfying
23 you of that guilt beyond a reasonable doubt. This
24 presumption of innocence does not end when you begin your
25 deliberation, but it accompanies the defendant throughout

1 the trial until you reach a verdict of guilt based on
2 evidence satisfying you of that guilt beyond a reasonable
3 doubt. The presumption of innocence is like a robe of
4 righteousness placed about the shoulders of the defendant
5 which remains with the defendant until it has been stripped
6 from the defendant by evidence satisfying you of the
7 defendant's guilt beyond a reasonable doubt. The
8 presumption of innocence is not mere legal theory. It is
9 not just a legal phrase. It is a substantial right to
10 which every defendant is entitled unless you the jury are
11 satisfied from the evidence of the defendant's guilt beyond
12 a reasonable doubt. What is a reasonable doubt in the law?
13 A reasonable doubt is the kind of doubt that would cause a
14 reasonable person to hesitate to act. The State has the
15 burden of proving the defendant guilty beyond a reasonable
16 doubt. Some of you may have served as jurors in civil
17 cases where you were told that it is only necessary to
18 prove that a fact is more likely true than not true as by
19 the greater weight or preponderance of the evidence. In
20 criminal cases the State's proof must be more powerful than
21 that. It must be beyond a reasonable doubt. Proof beyond
22 a reasonable doubt is proof that leaves you firmly
23 convinced of the defendant's guilt. There are very view
24 things in this world that we know with absolute certainty,
25 and in criminal cases the law does not require proof that

1 overcomes every possible doubt. If based on your
2 consideration of the evidence you are firmly convinced that
3 the defendant is guilty of the crime charged, you must find
4 the defendant guilty. If on the other hand you think there
5 is a real possibility that the defendant is not guilty, you
6 must give the defendant the benefit of the doubt and find
7 him not guilty.

8 There are two types of evidence which are
9 generally presented during a trial, direct evidence and
10 circumstantial evidence. Direct evidence directly proves
11 the existence of a fact and does not require a deduction.
12 Circumstantial evidence is proof of a chain of facts and
13 circumstances indicating the existence of a fact. Crimes
14 may be proven by circumstantial evidence. The law makes no
15 distinction between the weight or value to be given to
16 either direct or circumstantial evidence. However, to the
17 extent the State relies on circumstantial evidence, all of
18 the circumstances must be consistent with each other, and
19 when taken together point conclusively to the guilt of the
20 accused beyond a reasonable doubt. If these circumstances
21 merely portray the defendant's behavior as suspicious, the
22 proof has failed. The State has the burden of proving the
23 defendant guilty beyond a reasonable doubt. This burden
24 rests with the State regardless of whether the State relies
25 on direct evidence, circumstantial evidence or some

1 combination of the two. Necessarily, you must determine
2 the credibility of the witnesses who have testified in this
3 case. Credibility simply means believability. It becomes
4 your duty as jurors to analyze and to evaluate the evidence
5 and to determine which evidence convinces you of its truth.
6 In determining the believability of witnesses who have
7 testified in this case, you may believe one witness over
8 several witnesses or several witnesses over one witness.
9 You may believe a part of the testimony of the witness and
10 reject the remaining part of the testimony of that same
11 witness. You may believe the testimony of a witness in its
12 entirety or reject the testimony of a witness in its
13 entirety. You may consider whether any witness has
14 exhibited to you any interest, bias, prejudice or other
15 motive in this case. You may also consider the appearance
16 and manner of a witness while on the witness stand.

17 I instruct you and emphasize that the fact that
18 the defendant did not testify is not a factor to be
19 considered by you in any way in your deliberation and in
20 your consideration on the question of the guilt or the
21 innocence of the defendant. It must not be considered by
22 you in any manner whatsoever. A defendant has the
23 constitutional right to remain silent, and the assertion of
24 this right must not be considered by you in your
25 deliberations. I repeat, under your oath you're to draw no

1 conclusion whatsoever from the fact that the defendant in
2 this case did not testify. The fact that this defendant
3 did not testify should not even be discussed in the jury
4 room. The burden of proof as I have stated to you is on
5 the State. The defendant is not required to prove his
6 innocence. The burden of proof remains on the State to
7 prove the defendant's guilt beyond a reasonable doubt. In
8 order to establish criminal liability, criminal intent is
9 required. For example, the mental state required to be
10 proven by the State for a particular crime might be
11 purpose, intent, knowledge, recklessness or criminal
12 negligence. Criminal intent must be proven by the State
13 beyond a reasonable doubt. Criminal intent is always a
14 matter that must be determined by the jury from the
15 circumstances surrounding the situation. There is no way
16 to prove intent to a mathematical certainty. There is no
17 way medical science can dissect a person's brain and
18 determine what the person had in mind, so that the law says
19 that criminal intent may be inferred from the circumstances
20 shown to have existed. This is how you make a
21 determination of whether or not the element requiring
22 intent was present. It is not necessary to establish
23 intent by direct and positive evidence, but intent may be
24 established by inference in the same way as any other fact
25 by taking into consideration the acts of the parties and

1 all the facts and circumstances of the case. Criminal
2 intent is a mental state, a conscious wrong-doing. It is
3 up to you to determine what the defendant intended to do
4 based on the circumstances shown to you to have existed.
5 Criminal intent can arise from action or a failure to act.
6 It may arise from negligence, recklessness or an
7 indifference to duty or to consequences that is considered
8 by the law to be the equivalent of criminal intent.

9 A statement alleged to have been made by the
10 defendant has been admitted into evidence in this case.
11 While the Court has determined the statement is admissible,
12 I instruct you that you make the ultimate decision of
13 whether or not the defendant made the statement. If the
14 defendant did make the statement, you must determine
15 whether the statement was made by the defendant voluntarily
16 and of his own free will. This means that the statement
17 was not caused by pressure, force, fear, threats, coercion
18 or intimidation or by hope or promise of leniency or a
19 reward of any kind. In determining whether the statement
20 was voluntary, you should consider both the characteristics
21 of the defendant and the details of the questioning. Some
22 of the factors that you must consider are, (1) the age of
23 the defendant, (2) the defendant's education or lack of
24 education, (3) the defendant's mental ability or capacity,
25 (4) the defendant's IQ or intelligence, (5) the defendant's

1 background and environment, (6) the place and length of
2 detention, (7) the nature of the questioning and (8) the
3 advice or lack thereof to the defendant of his
4 constitutional rights including, but not limited to, the
5 right to remain silent, that any statement could be used
6 against him in a Court of law, the right to have a lawyer
7 present, that if he could not afford a lawyer, a lawyer
8 would be appointed to represent him without any cost and
9 that he could stop making a statement at any time. You
10 must carefully consider all of the surrounding
11 circumstances before you give any weight to the alleged
12 statement. The State has the burden of proving beyond a
13 reasonable doubt that the alleged statement was voluntary.
14 If you determine it was, you may give the statement any
15 further consideration that you deem proper. You must
16 decide what weight, if any, should be given to the alleged
17 statement. If you determine the alleged statement was not
18 the free and voluntary statement of the defendant, you
19 should not consider the statement at all.

20 An issue in this case is the identification of
21 the defendant as the person who committed the crime
22 charged. The State has the burden of proving identity
23 beyond a reasonable doubt. You must be satisfied beyond a
24 reasonable doubt of the accuracy of the identification of
25 the defendant before you may convict the defendant.

1 Identification testimony is an expression of belief or
2 impression by a witness. You must determine the accuracy
3 of the identification of the defendant. You must consider
4 the believability of each identification of witness in the
5 same way as any other witness. You may consider whether
6 the witness had an adequate opportunity to observe the
7 offender at the time of the offense. This will be affected
8 by things like how long or short a time was available, how
9 far or close the witness was, the lighting conditions and
10 whether the witness had the chance to see or know the
11 person in the past. Once again, I instruct you the burden
12 of proof on the State extends to every element of the crime
13 charged and this specifically includes the burden of
14 proving beyond a reasonable doubt the identity of the
15 defendant as the person who committed the crime. If after
16 examining all the testimony and evidence you have a
17 reasonable doubt as to the accuracy of the identification,
18 you must find the defendant not guilty.

19 The defendant is charged with armed robbery. In
20 order to prove this offense, the State must first prove
21 beyond a reasonable doubt that the defendant took personal
22 property from the person or presence of another person with
23 the felonious intent to steal the property. Property is
24 the presence of a -- property is in the presence of a
25 person if it is within the person's reach, inspection,

1 observation or control so if the person could, if not
2 overcome with violence or prevented by fear, keep
3 possession of the property. The State must also prove
4 beyond a reasonable doubt that the defendant carried the
5 property away intending to permanently deprive the owner of
6 the property and to keep the property for the defendant's
7 own use. The slightest removal of property or the complete
8 possession of the property even for an instant by the
9 defendant is sufficient to show a taking and carrying away
10 of the property. The taking and carrying away of the
11 property must have been done with violence or by putting
12 the owner of the property in fear of violence. Finally,
13 the State must prove beyond a reasonable doubt that the
14 defendant was armed with a deadly weapon during the
15 robbery. A deadly weapon is any article, instrument or
16 substance which is likely to cause death or great bodily
17 harm. Whether an instrument has been used as a deadly
18 weapon depends on the facts and circumstances of each case.
19 The following are examples of instruments which may be
20 deadly weapons: a pistol, a shotgun, a rifle, a razor,
21 gasoline or fire bomb or molotov cocktail and lighter
22 fluid. A gun may be a deadly weapon even if it is not
23 operating. You may find the defendant guilty of the armed
24 robbery even if you find he used a weapon that was
25 inoperable or was, in fact, not a real weapon provided that

1 the appearance of the weapon appeared real and operable to
2 the victim at the time of the offense, and, too, that the
3 victim was put in fear of bodily harm or threat of bodily
4 harm was reasonably apparent to the victim. You may also
5 consider strong-armed robbery or common-law robbery, which
6 is a lesser included offense to armed robbery. Robbery is
7 defined as the felonious taking away of the goods of
8 another against the owner's will and without his consent by
9 force, intimidation or violence. That is essentially
10 larceny by force. Larceny is defined as the felonious
11 taking and carrying away by any person of the personal
12 goods or things of another with the intent to appropriate
13 them to one's own use and to deprive the owner permanently
14 of his property. Therefore, elements of larceny are:
15 there was a taking, the taking was of the personal property
16 of another, the property was carried away after it was
17 taken. This is commonly known as asportation of stolen
18 property. Asportation means the act of carrying away. It
19 can be established by the slightest removal of the property
20 with felonious intent. The taking and carrying away of the
21 property, and then (4) the taking and carrying away of the
22 property was done with the intent to steal.

23 In addition to these four elements of larceny,
24 the crime of robbery additionally requires two more
25 elements. These element are: (1) the property must be

1 taken from the person of another or in his presence;
2 property is considered to be in the presence of a person if
3 it is within the person's reach, inspection, observation or
4 control so that the person could, if not overcome with
5 violence or prevented by fear, retain possession of the
6 property, and (2) the taking must be accomplished by
7 violence or putting the person in fear. This violence must
8 be actual, personal violence or the threat of it. The
9 degree of force used is immaterial so long as force or
10 threat of force is actually sufficient to overcome the
11 victim's resistance. This violence or intimidation must
12 either precede or be contemporaneous with the taking.

13 During your deliberations you may refer to the
14 instructions that I send back with you to guide your
15 decision-making. You must consider the instructions as a
16 whole and not follow some and ignore others. Please return
17 the instructions to the Court when you come back and your
18 verdict is rendered.

19 Under the constitution of this State the jury
20 verdict must be unanimous. Unanimity is mandated. Every
21 single juror must agree on the jury verdict. There cannot
22 be any split or divided vote in any form or fashion such as
23 eleven to one, ten to two, nine to three. The foreperson's
24 required to sign the jury verdict. The form that will be
25 sent back to you states, (1) We the jury find the defendant

1 not guilty of armed robbery. If you find that, you would
2 go to question (3) which is: We the jury find the
3 defendant guilty of strong-armed robbery, or if you answer
4 the defendant guilty -- not guilty of armed robbery, you
5 would then consider: We the jury find the defendant of
6 armed robbery. So there's guilty and not guilty on armed
7 robbery. There's guilty and not guilty of strong-armed
8 robbery. Place no importance in the order in which I said
9 those. We have to say something and so you have to put one
10 in front of the order (sic). There's no -- there's no
11 importance in the way these are put on the -- on the
12 verdict form.

13 Once you reach a verdict, Madam Forelady, I'm
14 going ask that you sign the jury form and date it, you
15 knock on the door and tell the foreperson that you've
16 reached a verdict; you keep the verdict form and bring it
17 with you here in the courtroom when you are seated. I'll
18 ask you if you've reached a verdict; at that time you will
19 hand the verdict form to the bailiff and he will then hand
20 it to the Court. Do not sign the verdict form until every
21 single juror agrees. If when you're in the jury room
22 somebody needs to be excused, go to the restroom, you are -
23 - if some of you smoke -- sometimes if we allow jurors to
24 go out to smoke -- you must stop deliberation. There'll be
25 no deliberations unless all 12 jurors are present in the

1 courtroom. When you go back to the jury room you'll have
2 in addition to the verdict form, you'll have some of the
3 evidence that was introduced -- we'll send that back with
4 you. We will not send the video back with you. If you
5 desire to see that video, just write that on a note, hand
6 it to the bailiff, he'll instruct the Court, we'll bring
7 you back out here and you'll be allowed to see the video
8 here on the equipment that we have here in the courtroom.

9 In just a moment I'm going to allow you to return
10 to your jury room. We will have to take up some matters
11 outside of your presence before you can begin deliberating.
12 Once the bailiff brings the verdict form and the pieces of
13 evidence back to you, you can then begin deliberating. Do
14 not discuss the case until the bailiff brings the verdict
15 form and the evidence back to you. We're going to need to
16 take up a few matters outside of your presence before
17 that's done, but at this point I'm going to allow you to be
18 excused and go to the jury room, that is, now at this point
19 everybody except the alternate, and if you would just come
20 down and wait right here until all of the other jurors are
21 excused. So at this point the jury can return to the jury
22 room.

23 (WHEREUPON, JURY EXITS THE COURTROOM)

24 THE COURT - All right thank you. You are --
25 you're Ms. Trovinger?

1 JUROR - Yes, sir.

2 THE COURT - Ms. Trovinger, you have concluded
3 your service.

4 JUROR - Okay.

5 THE COURT - We will not need you any longer,
6 because thankfully we still have 12 jurors. Often times --
7 sometimes overnight we have emergencies. Certainly we had
8 one emergency, had to move one alternate up. We may --
9 sometimes we have more than those, so you would've
10 continued to serve, but we now reach the point where the
11 jury will have all the evidence and your services will no
12 longer be needed.

13 JUROR - Okay.

14 THE COURT - And I believe she is released for the
15 rest of the week. Is that correct, Cindy?

16 DEPUTY CLERK - That's right.

17 THE COURT - And thank you for your service.

18 JUROR - Thank you.

19 THE COURT - The bailiff will show you where to
20 go.

21 All right, anything further at this point from
22 the State?

23 MR. PLEMING - Nothing from the State.

24 THE COURT - From the defense?

1 MS. INZERILLO - Your Honor, may I take a quick
2 look at that verdict form?

3 THE COURT - Yes. I ---

4 MS. INZERILLO - But nothing as to the charges?

5 THE COURT - Yes, what I did -- okay, nothing as
6 to the charges. Okay, we'll be at ease then while y'all
7 come up and make sure we know what goes back to the jury
8 and look at the verdict.

9 (WHEREUPON, BENCH CONFERENCE IS HELD WHICH WAS
10 NOT REPORTED.)

11 (WHEREUPON, BRIEF RECESS TAKEN)

12 THE COURT - All right, bring the jury back in.

13 (WHEREUPON, JURY RETURNS TO THE COURTROOM)

14 THE COURT - Thank you, ladies and gentlemen. We
15 need one further brief instruction. When you have the jury
16 -- the verdict form back there with you, there are four
17 questions on the jury form: (1) We the jury find the
18 defendant not guilty of armed robbery; (2) We find the
19 defendant guilty of armed robbery; (3) We find the -- we,
20 the jury find the defendant guilty of strong armed robbery;
21 (4) We the jury find the defendant not guilty of strong
22 armed robbery. Obviously he cannot be found guilty of
23 both. You must choose one or the other as far as guilt.
24 He also may be found not guilty on both. That would be the
25 decision that you make and again, place no importance on

1 the order in which I've stated that to you. All right,
2 thank you.

3 (WHEREUPON, JURY EXITS THE COURTROOM)

4 THE COURT - All right, anything further from the
5 State?

6 MR. PLEMING - No, sir, Your Honor.

7 THE COURT - From the defense?

8 MS. INZERILLO - No, Your Honor.

9 THE COURT - All right, Mr. Dunlap, if you'll take
10 what they have assembled there from that and instruct
11 the jury they can begin their deliberations. That pile
12 right there on the corner. Put the verdict form on the top
13 if you don't mind.

14 All right, we're going to take about a five
15 minute break.

16 (WHEREUPON, JURY DELIBERATES AT 3:34 P.M.)

17 (WHEREUPON, COURT IN RECESS AWAITING VERDICT.)

18 THE COURT - All right, back on the record on the
19 trial; I have been handed a note from the bailiff from the
20 jury, says we have a verdict. So let's bring the jury in.

21 (WHEREUPON, JURY RETURNS WITH VERDICT AT 3:51
22 P.M.)

23 THE COURT - Thank you, ladies and gentlemen,
24 Madam Forelady, has the jury reached a verdict?

25 FORELADY - Yes, sir.

1 THE COURT - If you'd hand your verdict form up to
2 the bailiff.

3 (WHEREUPON, VERDICT IS HANDED UP TO THE COURT;
4 WHEREUPON, COURT PASSES THE VERDICT TO THE DEPUTY CLERK.)

5 THE COURT - Madam Clerk, if you'd publish the
6 verdict.

7 DEPUTY CLERK - Indictment Number 2015-GS-46-3438,
8 State of South Carolina versus Jonathan A. Phillips, we the
9 jury find the defendant guilty of armed robbery, signed by
10 the foreperson, dated February the 11th, 2016. If this be
11 your verdict, please say so by raising your right hand.

12 (WHEREUPON, JURORS RAISE THEIR RIGHT HANDS.)

13 DEPUTY CLERK - Let the record reflect all jurors
14 affirm.

15 THE COURT - Thank you, ladies and gentlemen.
16 Anything further from the State?

17 MR. PLEMING - Nothing from the State, Your Honor.

18 THE COURT - Anything further at this point from
19 the defense?

20 MS. INZERILLO - Not at this point, Your Honor.

21 THE COURT - Thank you, ladies and gentlemen.

22 That has concluded your service this week. You won't have
23 to come back any longer. Thank you for your service; thank
24 you for your conscientious, prompt attention, and I think
25 you're free from jury service for at least three more years

1 here in York County, so thank you, and the bailiff will
2 show you your way out.

3 (WHEREUPON, JURY EXITS THE COURTROOM.)

4 THE COURT - Anything further at this point from
5 the State?

6 MR. PLEMING - No, sir.

7 THE COURT - From the defense?

8 MS. INZERILLO - Your Honor, at this time we would
9 renew all previous objections and motions and move for a
10 new trial.

11 THE COURT - All right, that motion is denied.
12 The State -- the Court is -- tried him by all previous
13 rulings, however, your objections are noted for the record.

14 MS. INZERILLO - Thank you, Your Honor.

15 THE COURT - Thank you. Mr. Fleming, you have a
16 sentencing sheet?

17 MR. PLEMING - Yes, sir, Your Honor.

18 (WHEREUPON, DISCUSSION IS HELD BETWEEN THE DEPUTY
19 CLERK AND THE COURT WHICH WAS NOT REPORTED.)

20 THE COURT - Can we check -- see if we can stop
21 the forelady; we need her to sign the indictment.

22 MR. PLEMING - Your Honor, there is one thing that
23 was just brought to my attention. I don't recall whether
24 Your Honor made a factual finding on the record with regard

1 to the State v. Greene issue with admission of the mug shot
2 of the defendant. If we could ---

3 THE COURT - I -- my recollection is that I did
4 admit into evidence and there's sufficient evidence -- I
5 did admit it, but there is sufficient evidence in the
6 record by which it would be admitted, so I'm not going to
7 put anything else on the record.

8 MR. PLEMING - Yes, sir. I do actually think it
9 was during the trial. Someone had reminded me ---

10 THE COURT - That's right.

11 MR. PLEMING - --- that during pre-trial you
12 hadn't and now that I remember, you did. I just wanted to
13 make sure we cover our bases though.

14 THE COURT - Ms. Inzerillo, if you would bring
15 your client around.

16 (WHEREUPON, MS. INZERILLO COMPLIES)

17 THE COURT - All right, solicitor, do you wish to
18 be heard on -- well, give me any prior record and then I'll
19 hear you as far as sentencing.

20 MR. PLEMING - Yes, sir, Your Honor. Your Honor,
21 the defendant does have a prior criminal history. In 2011
22 he was convicted of possession of marijuana in North
23 Carolina, also, 2013, DWI North Carolina, another DWI from
24 that same year in North Carolina. He was also convicted in
25 2014 of larceny by employee in Gastonia, North Carolina.

1 For that he received a sentence of seven to 18 months
2 imprisonment; in 2008 he was convicted of disorderly
3 conduct, 2011, public disorderly conduct, 2012, giving
4 false information to the police, 2013 failure to stop for a
5 blue-light, received a 60 day sentence for that, and in
6 2013 in York County a possession of marijuana.

7 THE COURT - All right, thank you. Does the State
8 wish to be heard as far as sentencing?

9 MR. PLEMING - Your Honor, I would relay to you
10 his plea offer was for attempted armed robbery for a -- of
11 eight years negotiated. Originally I had discussed with
12 Ms. Inzerillo a ten year sentence suspended on five years
13 to attempted armed robbery also, but I withdrew that and
14 the official offer which was conveyed to him which he
15 rejected was attempted armed robbery for eight years
16 negotiated, and the State -- we believe that up to 15 years
17 for this charge would be appropriate under the
18 circumstances.

19 THE COURT - All right, thank you, Mr. Fleming.
20 Ms. Inzerillo, I'll be glad to hear from you and anyone on
21 the defendant's behalf.

22 MS. INZERILLO - Thank you, Your Honor, may it
23 please the Court.

24 Your Honor, I would ask the Court to consider
25 something in the low range, perhaps around ten or eleven in

1 this case, and I don't make that request not recognizing
2 the seriousness of the crime, but just because essentially
3 my discussions with Mr. Phillips he, of course, had always
4 maintained that there was no gun, which is why he had an
5 initial issue with the offer, but also I think more of
6 reality was he does have a record, but he's not served any
7 substantial time, and North Carolina does a little more
8 truth in sentencing than we do, but I think even with that
9 scheme about a year, year and a half was the most time that
10 he had served. There is a notation on the NCIC that he did
11 a little bit of South Carolina SCDC time but that was on
12 consecutive magistrate sentences, so the idea of making a
13 leap to an eighty-five percent sentence was a little hard
14 for him to get his mind around, and I don't say that
15 because I want you to think that he's been resistant to
16 anything. He has conveyed to me that he did wish to trial
17 and certainly abide by the jury's verdict with the evidence
18 that's been presented, but I did wish the Court to know
19 that even though he's got some record, his time in prison
20 has not been extensive, therefore a ten or eleven year
21 eighty-five percent sentence would be a very substantial
22 amount of time for him to serve. Your Honor, from my
23 review of his record, and I know Mr. Fleming just read it
24 out, but there's a lot of charges in a short amount of
25 time. I think the Court heard testimony from his mom. She

1 raised him, which I think he left the house about 18 or 19.
2 He did work at some point, but I think fell into I think an
3 addiction type issue, and if you look at his record, it's a
4 lot of stuff in a short amount of time. I've not been
5 apprised of any juvenile issues or anything like that, and
6 I think the Court has heard the circumstances under which
7 he was arrested in this case and the fact that he did turn
8 himself in once he was aware that they were looking for
9 him, that his mother contacted law enforcement more out of
10 concern for his safety than any concerns that he was a
11 violent individual or would hurt anybody and I know that,
12 you know, that's been some discussion between the two of
13 us, and so I don't wish for Mr. Felker or anyone on the
14 State's side to misinterpret my request to be making light
15 of the situation or that we, you know, disregarded the
16 jury's verdict in any way, but specifically as to Mr.
17 Phillips, a ten year or eleven year eighty-five percent
18 sentence would be a very, very significant sentence for
19 him. I've reviewed his record. It doesn't appear he's got
20 anything else really violent on his record, and so I don't
21 -- I think if anything this was probably very out of
22 character for Mr. Phillips.

23 THE COURT - All right, thank you. Mr. Phillips,
24 anything you want to say?

25 MR. PHILLIPS - No, sir.

1 MS. INZERILLO - Your Honor, I believe he's done
2 176 days in jail.

3 THE COURT - Indictment 2015-GS-46-3438, State vs.
4 Jonathan Alexander Phillips having been found guilty at
5 trial by a jury of his peers here in York County, the
6 sentence of the Court -- to armed robbery -- the sentence
7 of the Court he be committed to the State Department of
8 Corrections for a determinate term of 15 years, credit for
9 176 days.

10 Thank you.

11 MS. INZERILLO - Thank you.

12 MR. PLEMING - Thank you, Your Honor.

13 THE COURT - We'll be at ease just for about five
14 minutes for those of y'all in the courtroom, if you need to
15 leave, this will be a good opportunity for you to be able
16 to leave the courtroom.

17 (WHEREUPON, FORELADY COMES FORWARD TO SIGN
18 INDICMENT)

19 (WHEREUPON, COURT IN RECESS)

20 * * * * *

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22

23

24

25

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 238 pages consisting of Volumes I and II is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of State of South Carolina vs. Jonathan Alexander Phillips as taken by me in the Court of General Sessions for the Sixteenth Judicial Circuit on February 10 and 11, 2016, and provided by me this the 8th day of April, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

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Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable Daniel D. Hall, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JONATHON ALEXANDER PHILLIPS,

APPELLANT

APPELLATE CASE NO. 2016-000324

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the court err by admitting the store clerk's out-of-court and in-court identification of Appellant as the armed robber in violation of Appellant's due process rights when the identification procedure used by law enforcement, specifically showing the clerk a single photograph of Appellant taken after his arrest, was unduly suggestive and tainted the clerk's identification making it so unreliable that a substantial likelihood of irreparable misidentification existed?

STATEMENT OF THE CASE

A York County Grand Jury indicted Appellant on November 12, 2015 for armed robbery.

R. 172. His case was called to trial on February 11, 2016 before the Honorable Daniel D. Hall, and a jury. R. 1. Assistant Solicitors Blaine Fleming and Daniel Porter represented the state, and Melissa Inzerillo represented Appellant. R. 1.

On February 11, 2016, the jury found Appellant guilty. R. 165, ll. 7-14. Judge Hall sentenced him to fifteen years' imprisonment. R. 171, ll. 3-9.

This appeal follows.

STATEMENTS OF THE FACTS

Shortly after midnight on the morning of August 13, 2015, a young black man entered the Murphy Express, a convenience store in Lake Wylie, and allegedly robbed the store. After retrieving a beer from the cooler, the man placed the beer on the counter and handed the store clerk a five dollar bill. When the clerk opened the cash register, the man handed the clerk a note written on cardboard that allegedly read, “Give me all the money.” The clerk claimed that when he looked up, the man lifted his shirt and showed him a pistol “tucked” in his waistband. The clerk collected all of the cash from the till and handed it to the man, who then “took off out the door.” R. 12, l. 14 – 13, l. 19; R. 53, l. 2 – 54, l. 20.

The clerk immediately called the police. R. 54, ll. 18-20. He told the responding officers that the robber was a black male in his mid-twenties with “short-shaved” hair wearing a brown shirt and “camo” shorts. He also described the man as approximately 5’9” and one hundred and forty-five pounds. R. 13, ll. 19-25; R. 17, ll. 4-18. The clerk recorded this description in a written statement he gave to law enforcement that morning. While the clerk later claimed the robber had a beard and a “bloodshot” left eye, he did not tell law enforcement about these details that morning nor did he include them in the written statement he provided. R. 74, ll. 13-16.

Security cameras at the store captured the man getting a beer from the cooler and the interaction between the man and the clerk at the counter. The footage failed to corroborate the clerk’s allegations that the man showed him a pistol. The footage never shows the man with a weapon. R. 80, ll. 13-16; See State’s Exhibit No. 12 (Surveillance Video).

On the afternoon after the robbery, law enforcement released still shots from the surveillance footage to the media in an attempt to identify the robber. Based on a tip from an individual identifying the man in the footage as Appellant, police arrested Appellant on August 17,

2015, four days after the robbery. R. 92, l. 1- 93, l. 16; R. 97, l. 8 – 100, l. 24; R. 107, l. 1 – 108, l. 14.

On August 18, 2015, now five days after the robbery, a detective with the York County Sheriff's Office showed the store clerk the photograph of Appellant taken the previous day when he was booked into the local detention center. The clerk identified Appellant as the man who robbed the Murphy Express. This was the only photograph the officer showed the clerk. R. 17, l. 21 – 19, l. 8. In this picture, which was a headshot, Appellant had a noticeable red or "bloodshot" left eye. R. 174. That very same night after viewing the photograph, the clerk provided law enforcement with a second written statement. In this statement, the clerk *for the first time* claimed the robber had a red left eye. R. 124, l. 20 - 125, l. 8.

***Neil v. Biggers*¹ Hearing and Motion to Suppress**

Appellant moved pretrial to suppress the out-of-court identification of Appellant made by the store clerk and any subsequent in-court identification based on the unduly suggestive procedure used by the detective that tainted the clerk's identification.

The clerk testified *in camera* that on the morning of the robbery he described the robber as a black male in his mid-twenties with a "short-shaved" haircut. He also provided a height, weight, and clothing description. R. 17, ll. 13-20. The clerk gave this description to the 911 operator and included it in the written statement he gave to police that morning. R. 16, l. 20 – 17, l. 20.

Five days after the robbery, Detective Eddie Strait showed the clerk a photograph of Appellant. The clerk admitted that this was the *only* picture he was shown. R. 19, ll. 6-8. In the picture, which is only a headshot, Appellant has a noticeable red or "bloodshot" left eye. R. 18, l. 24 – 19, l. 8; R. 174. The clerk identified Appellant as the robber. That same night, the clerk gave

¹ Neil v. Biggers, 409 U.S. 188, 198 (1972).

the police a second written statement. In this statement, the clerk asserted the robber had a red left eye *for the first time*. In his *in camera* testimony, based on a leading question from the solicitor, the clerk claimed he verbally told the responding officers on the morning of the robbery that the robber had a bloodshot eye. R. 21, ll. 9-15. Despite completely failing to mention the bloodshot left eye to the 911 operator or in his first statement, the clerk maintained that the red left eye “was the prominent feature [he] remembered” about the robber. R. 19, ll. 14-21.

However, the clerk admitted that he “[m]ight’ve forgotten” to mention that the individual also had a beard. The first time he asserted the robber had a beard was at trial. R. 74, ll. 13-16. Significantly, Appellant had a beard in the booking photograph shown to the clerk by Detective Strait five days after the robbery. R. 174.

During his *in camera* testimony, the clerk admitted that he did not pay attention to the robber before he approached the counter. However, he claimed his interaction with the robber at the counter lasted about thirty to forty-five seconds. R. 16, ll. 14-19. Notably, the clerk did not testify about his degree of attention to the robber during the robbery, whether he was able to obtain a good look at the robber’s face or his facial features, or about any of the conditions inside the store that would have affected his ability to view the robber, such as the lighting or whether there were any objects obstructing his view of the robber. The clerk also never testified about his level of certainty regarding his identification.

During arguments, defense counsel challenged the accuracy of the clerk’s prior description of the robber. She emphasized that the clerk did not claim the robber had a red eye until after he was shown the booking photograph of Appellant five days after the robbery. She also argued the clerk did not mention the red eye in his first written statement to the police on the morning of the

robbery or verbally to the responding officers. She concluded that the out-of-court identification was not reliable. R. 43, l. 17 – 44, l. 15.

The court ultimately found the clerk's out-of-court identification of Appellant was reliable.

In support of this ruling, the court said:

He [the store clerk] did indicate that he spent 30 to 45 seconds of interaction with the defendant while he was at the counter, that he . . . had details about him coming to the counter with beer, that he received a note from the defendant to give . . . all the money, he indicated that he looked up at the defendant and said, really; he saw him lift up his shirt, saw the pistol; he saw the defendant ask for any hundred bills that are under the drawer. He testified that he handed the defendant what money he had and the beer and that during that time he was able to get a - - was able to - - those are circumstances in which his identification is reliable.

R. 44, l. 16 – 45, l. 5.

ARGUMENT

The court erred by admitting the store clerk's out-of-court and in-court identification of Appellant as the armed robber in violation of Appellant's due process rights when the identification procedure used by law enforcement, specifically showing the clerk a single photograph of Appellant taken after his arrest, was unduly suggestive and tainted the clerk's identification making it so unreliable that a substantial likelihood of irreparable misidentification existed.

The store clerk's out-of-court and subsequent in-court identification of Appellant as the robber should have been suppressed since the one-photograph identification procedure used by law enforcement was unduly suggestive and tainted the clerk's identification making it so unreliable that a substantial likelihood of irreparable misidentification existed.

"An out-of-court identification of the defendant violates due process and must be suppressed when the identification procedure used by police was impermissibly suggestive and conducive to a substantial likelihood of misidentification." State v. Dukes, 404 S.C. 553, 557, 745 S.E.2d 137, 139 (Ct. App. 2013) (citing State v. Liverman, 398 S.C. 130, 138, 727 S.E.2d 422, 425 (2012)). "A witness' subsequent in-court identification is inadmissible "if a suggestive out-of-court identification procedure created a very substantial likelihood of *irreparable* misidentification." Id. (citing State v. Taylor, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004)) (emphasis in original).

In Neil v. Biggers, 409 U.S. 188, 198 (1972), the United States Supreme Court articulated a set of factors by which a trial court judge should evaluate both out-of-court identifications and their subsequent use by a witness in court. Those factors include: (1) the opportunity of the witness to view the criminal at the time of the crime, (2) the witness' degree of attention, (3) the

accuracy of the witness' prior description of the criminal, (4) the level of certainty demonstrated by the witness at the confrontation, and (5) the length of time between the crime and the confrontation. Id. at 199. The Court said the trial judge should look at the totality of the circumstances when evaluating the likelihood of misidentification. Id. at 196. "Reliability is the linchpin in determining admissibility of identification testimony" and the Biggers factors must be weighed against the "corrupting effect of the suggestive identification itself." Manson v. Braithwaite, 432 U.S. 98, 114 (1977).

The United States Supreme Court recognized that single photographic lineups are inherently suggestive. Simmons v. United States, 390 U.S. 377, 383 (1968). The Court explained that after a suggestive lineup, such as using a single photograph, "the witness thereafter is apt to retain in his memory the image of the photograph rather than of the person actually seen, reducing the trustworthiness of subsequent lineup or courtroom identification." Id. at 383-384.

Here, the detective showing the store clerk a single photograph of Appellant five days after the robbery and less than six months before trial was unduly suggestive because it was a single photograph lineup conducted by a governmental agent. See Simmons, 390 U.S. at 383. This suggestive identification procedure used by Detective Strait tainted the clerk's out-of-court and subsequent in-court identification of Appellant as the man who robbed the Murphy Express. An analysis of the Biggers factors demonstrates the unreliability of the identification.

While the clerk failed to specifically testify about his opportunity to view the robber and his degree of attention, neither factor supports a reliable identification. The clerk admitted that he did not pay attention to the robber in the store until he approached the counter to pay for the beer. R. 53, ll. 18-22. He claimed his interaction with the robber lasted about thirty to forty-five

seconds. R. 16, ll. 14-19. However, once the robber was at the counter, the surveillance footage shows the clerk's view of the robber was obstructed during part of their interaction by the register and what appears to be a lottery ticket display. It also appears from the footage that the clerk did not pay much attention to the man until the man presented the cardboard note and even then, the clerk is looking down and is focused on the register and collecting the cash from the till. See State's Exhibit No. 12 (Surveillance Video).

The clerk's prior description of the robber was also not accurate. On the morning of the robbery when describing the robber to the 911 operator, the clerk never stated the man had a beard or a "bloodshot" left eye despite claiming that the red eye "was the prominent feature [he] remembered." R. 19, ll. 14-21. The clerk also failed to mention the beard or the red left eye in the written statement he gave to law enforcement immediately after the robbery. These are the two main features visible in Appellant's booking photograph, which again is only a headshot, that was shown to the clerk five days after the robbery. Surprisingly, the clerk all of a sudden claimed in the written statement he provided the same day he viewed Appellant's picture that the robber had a "bloodshot" left eye.

Moreover, the clerk wholly failed to testify about his level of certainty in his identification of Appellant as the man who robbed the store. Appellant can only assume the clerk was not overly confident, otherwise the assistant solicitor at trial most certainly would have elicited this testimony. Lastly, as discussed, five days had passed between the robbery and the clerk's identification. During those five days, the clerk was unable to provide a more specific description of the robber besides his race, hairstyle, age-range, and height and weight. More specifically, the clerk never claimed the robber had a beard or a "bloodshot" left eye or recorded these details in a written statement during that period.

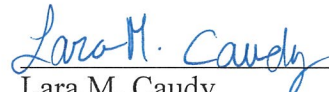
An analysis of the Biggers factors does not overcome the inherently suggestive one-photograph identification procedure employed by law enforcement in this matter. Therefore, the trial court erred in failing to exclude the clerk's out-of-court and in-court identification of Appellant.

Significantly, the trial court did not address the Biggers factors when it refused to suppress the identification. Instead, the court focused on the clerk's recitation of what occurred in the store during the robbery as evidence of reliability. R. 44, l. 16 – 45, l. 5. This was error. The trial judge was required to evaluate the reliability of the identification by utilizing the Biggers factors as articulated by the United States Supreme Court. If the court would have properly weighed the Biggers factors against the "corrupting effect of the suggestive identification," it ultimately would have suppressed the clerk's identification. Manson v. Braithwaite, 432 U.S. 98, 114 (1977).

Respectfully, based on the trial court's error in admitting the clerk's unreliable identification, this Court should reverse Appellant's conviction and sentence and remand for a new trial.

CONCLUSION

Appellant respectfully requests this Court to reverse his conviction and sentence and remand for a new trial.



Lara M. Caudy
Appellate Defender

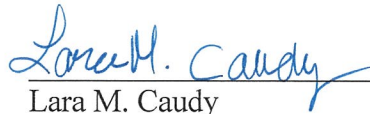
ATTORNEY FOR APPELLANT

This 1st day of March, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

March 1, 2017



Lara M. Caudy
Appellate Defender

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable Daniel D. Hall, Circuit Court Judge

THE STATE,

RESPONDENT,

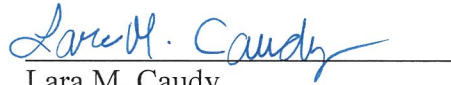
V.

JONATHON ALEXANDER PHILLIPS,

APPELLANT

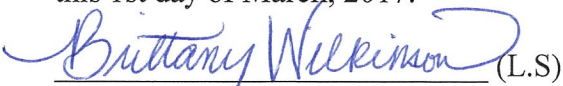
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborah R. J. Shupe, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of March, 2017.


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of March, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: November 3, 2026.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
The Honorable Daniel D. Hall, Circuit Court Judge
Appellate Case No. 2016-000324

THE STATE,

Respondent,

vs.

JONATHON ALEXANDER PHILLIPS,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

The circuit court did not abuse its discretion in admitting the store clerk's out-of-court and in-court identification of Appellant; however, any error in admitting the clerk's identification testimony was harmless beyond a reasonable doubt.

STATEMENT OF THE CASE

The State concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

In November 2015, the York County Grand Jury indicted Appellant Jonathan Alexander Phillips of one count of armed robbery in connection with an August 2015 robbery of a convenience store. The case was called for a jury trial on February 10, 2016, before the Honorable Daniel D. Hall, Circuit Court Judge.

Appellant moved pre-trial to suppress the store clerk's out-of-court and in-court identification of Appellant, arguing the out-of-court identification procedure was unduly suggestive such that it tainted any subsequent in-court identification. The circuit court conducted a hearing on the issue under Neil v. Biggers, 409 U.S. 188 (1972). (Trial Transcript [TT], pp. 26-27; Record on Appeal [R.], pp. 2-3).

At the hearing, Appellant's mother testified she heard Appellant was involved in a robbery, and she contacted a relative who worked with law enforcement. Officers came to her home and showed her a photograph taken from the store surveillance video, and she identified Appellant as the person in the photograph. (TT, pp. 28-35; R., pp. 4-11).

The store clerk testified he was working at the Murphy Express in Lake Wylie, South Carolina, on the evening of August 13, 2015. A man came up to the counter purportedly to buy a beer, but when the clerk opened the cash register to get the man's change, the man slid a note to him demanding all the money. The man showed the clerk a pistol under his shirt, and the clerk gave him all the money from the cash register. After the man left, the clerk called 911, and when police arrived, he showed them the store's surveillance video with images of the robber. (TT, pp. 36-39; R., pp. 12-15).

The clerk testified he interacted with the robber for thirty to forty-five seconds and he saw the man's face. He told the police the man was a black male in his mid-twenties, weighed about 145 pounds, wore a brown shirt and camo shorts, had short shaved hair, and one of his

eyes was bloodshot. Several days after the robbery, a police officer showed him a picture of Appellant's face, and he identified Appellant as the man who robbed the store. (TT, pp. 36-45; R., pp. 12-21).

Lieutenant Rick Thomasson of the York City Police Department testified Appellant's mother, who was married to his cousin, contacted him about the robbery. After speaking with her, Thomasson viewed the store surveillance video and recognized Appellant as the person who robbed the store. He and other officers took a still photograph from the video to Appellant's mother, and she identified Appellant as the person in the photograph. (State's Exhibit 2).¹ Several days later, Appellant turned himself in to Thomasson, who immediately noticed one of Appellant's eyes was very bloodshot. (TT, pp. 46-56; R., pp. 22-32).

After hearing arguments, the circuit court found the out-of-court identifications by Appellant's mother and Thomasson was based on their personal familiarity with Appellant, the video and photograph at issue were not unduly suggestive, and thus, their identification testimony was admissible. The court then heard additional testimony regarding the photograph shown to the store clerk, and found the clerk's out-of-court identification was reliable based on the amount of time he interacted with the robber, and the photograph at issue was not unduly suggestive, so the clerk's identification testimony also admissible. (TT, pp. 56-69; R., pp. 32-45).

The State's witnesses testified before the jury consistent with their pre-trial testimony. (TT, pp. 102-136, 145-186; R., pp. 51-85, 86-127). The jury convicted Appellant as indicted, and the circuit court sentenced him to fifteen years incarceration. (TT, pp. 231-237; R., pp. 165-171). This appeal followed.

¹State's Exhibits 2-11 (Still Shot Photos), State's Exhibit 12 (In-store Video), and State's Exhibit 13 (Defendant's Mug Shot) will be transported to the Court for consideration.

ARGUMENT

The circuit court did not abuse its discretion in admitting the store clerk's out-of-court and in-court identification of Appellant; however, any error in admitting the clerk's identification testimony was harmless beyond a reasonable doubt.

Appellant contends the trial court erred in admitting the store clerk's identification testimony because it was based on a single photograph of Appellant, which was unduly suggestive and so tainted the clerk's identification there was a substantial likelihood of irreparable misidentification. To the contrary, the circuit court acted well within its discretion in admitting the clerk's testimony. Further, any possible error in admitting the testimony was harmless beyond a reasonable doubt.

A. Standard of Review

In criminal cases, the appellate court sits to review errors of law only, and whether an eyewitness identification is sufficiently reliable is a mixed question of law and fact. State v. Moore, 343 S.C. 282, 540 S.E.2d 445, 448 (2000). Generally, the decision to admit an eyewitness identification is within the trial judge's discretion, which will not be disturbed on appeal absent an abuse of discretion. *Id.*

B. Identification Evidence

"A criminal defendant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken identification." State v. Traylor, 360 S.C. 74, 600 S.E.2d 523, 526–27 (2004) (citing Moore). Biggers established a two-prong inquiry to determine the admissibility of an out-of-court identification: 1: the court must ascertain whether the identification process was unduly

suggestive; and 2) then determine whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed. *Id.* If the court determines the confrontation procedure was suggestive, the central question becomes whether under the totality of the circumstances the identification was reliable. *Id.* Those rules do not apply, however, when the identification is based on the witness' personal knowledge of the defendant. State v. Liverman, 398 S.C. 130, 727 S.E.2d 422, 426 (2012).

In this case, immediately after the robbery the clerk gave a fairly detailed and accurate description of the robber, including the robber's very bloodshot eye.² The clerk had ample time to view the robber's face, his attention was acute in part because of the robber's gun, and he showed no hesitation in identifying Appellant as the man who robbed the store. While several days passed between the robbery and the clerk's viewing of Appellant's photograph, the photograph showed only Appellant's face, and as the circuit court found, nothing about the photograph suggested it was connected to any criminal activity by Appellant. (TT, pp. 68-69, State's Exhibit 13; R., pp. 44-45, 174). Therefore, the clerk's identification satisfied the Bigger factors, and the circuit court acted within its discretion in admitting the clerk's identification testimony.

C. Harmless Error

Even assuming error in admitting the clerk's testimony, however, the error was clearly harmless beyond any reasonable doubt. "A harmless error analysis is contextual and specific to the circumstances of the case." No definite rule of law governs the finding that an error was

²There was some confusion regarding when the clerk told police about the bloodshot eye because it was not included in his original written statement. The clerk definitively testified he told police about the eye the night of the robbery, and wrote the additional statement days later just to add that fact. He also testified he wrote the second statement before police showed him Appellant's photograph. (TT, pp. 41-42, 45, 107, 128-130, 134; R., pp. 17-18, 69, 21, 56, 77-79, 83).

harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. In considering whether error is harmless, a case's particular facts must be considered along with various factors including: "the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case." Liverman, 727 S.E.2d at 427 (internal citations omitted). The harmless error analysis centers on whether beyond a reasonable doubt the error did not contribute to the guilty verdict. State v. Tapp, 398 S.C. 376, 728 S.E.2d 468, 475 (2012).

Appellant blatantly ignores the identification testimony of Appellant's mother and Thomasson, which was based on their personal knowledge of, and familial relationship with, Appellant. Their testimony, standing alone, was more than sufficient to support the jury's finding of guilt. Therefore, even if the circuit court erred in admitting the clerk's identification testimony, it was harmless beyond any reasonable doubt.

CONCLUSION

Based on the foregoing reasons, the State submits the judgment and conviction of the lower court should be affirmed.

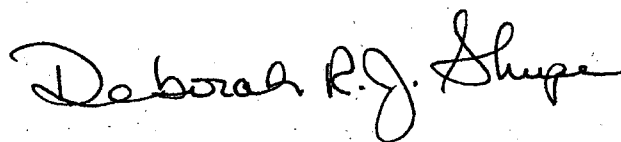
Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

March 3, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
The Honorable Daniel D. Hall, Circuit Court Judge
Appellate Case No. 2016-000324

THE STATE,

Respondent,

vs.

JONATHON ALEXANDER PHILLIPS,

Appellant.

CERTIFICATE OF COUNSEL

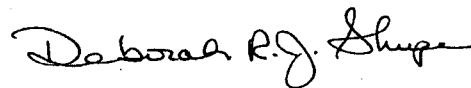
The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled, "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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March 3, 2017

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

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

The State, Respondent,

v.

Jonathon Alexander Phillips, Appellant.

Appellate Case No. 2016-000324

Appeal From York County
Daniel Dewitt Hall, Circuit Court Judge

Unpublished Opinion No. 2017-UP-392
Submitted September 1, 2017 – Filed October 18, 2017

AFFIRMED

Appellate Defender Lara M. Caudy, of Columbia, for
Appellant

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Deborah R.J. Shupe,
both of Columbia; and Solicitor Kevin Scott Brackett, of
York, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) ("In

criminal cases, the appellate court sits to review errors of law only."); *State v. Moore*, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000) ("Generally, the decision to admit an eyewitness identification is at the trial [court's] discretion and will not be disturbed on appeal absent an abuse of such, or the commission of prejudicial legal error."); *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."); *State v. Traylor*, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004) ("A criminal defendant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken identification."); *Moore*, 343 S.C. at 286, 540 S.E.2d at 447 ("An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification."); *Traylor*, 360 S.C. at 81, 600 S.E.2d at 526-27 ("The United States Supreme Court has developed a two-prong inquiry to determine the admissibility of an out-of-court identification. First, a court must ascertain whether the identification process was unduly suggestive. The court must next decide whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed." (citation omitted)); *id.* at 82, 600 S.E.2d at 527 ("Even assuming an identification procedure is suggestive, it need not be excluded so long as, under all the circumstances, the identification was reliable notwithstanding the suggestiveness."); *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972) ("[T]he factors to be considered in evaluating the likelihood of misidentification include the opportunity of the witness to view the criminal at the time of the crime, the witness'[s] degree of attention, the accuracy of the witness'[s] prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation."); *Manson v. Brathwaite*, 432 U.S. 98, 116 (1977) (noting that "identifications arising from single-photograph displays may be viewed in general with suspicion" but holding it could not say that "under all the circumstances of [the] case there [was] 'a very substantial likelihood of irreparable misidentification'" (quoting *Simmons v. United States*, 390 U.S. 377, 384 (1968))).

AFFIRMED.¹

SHORT, KONDUROS, and GEATHERS, JJ., concur.

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OCT 18 2017

APPELLATE DEFENSE

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

FORM 5

STATE OF SOUTH CAROLINA)

County of York, SC)Jonathon A. Phillips IM# 355313)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS)

2018CP4601805

APPLICATION FOR)

POST-CONVICTION RELIEF)

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

2018 JUN 18 PM 1:30

FILED-RECEIVED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee County Correctional Institution
2. Name and location of Court which imposed sentence General Sessions, York, SC 29745 - Moss Justice Center
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-4603438 (Armed Robbery)
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) 2/11/16 (15 years / 85%)
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty _____
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes, I appealed my case after trial
8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. General Sessions / Direct appeal
 ii. Court of Appeals
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. ~~Confirmed~~ Affirmed
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. October 18, 2017
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. Affirmed w/o oral argument pursuant to
rule 215, SCACR
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) _____
 (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) No evidence, verbal or physical pointing to me.
- (b) No evidence of or to convict of Armed Robbery
- (c) The victim failed to identify me / no photo lineup or reliable statement
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) I was not convicted of having or presenting a weapon
- (b) A "Red eye" was the only feature the victim remembered
- (c) No physical or verbal evidence pertaining to Armed Rob.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? only Direct Appeal
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Now filing PCR
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Direct Appeal
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. General Sessions / York SC, 29745
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Affirmed
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes, Direct Appeal

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Lack of Identity
- ii. No evidence of weapon or threats
- iii. _____

(b) the proceedings in which each ground was raised:

- i. Direct Appeal
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Attorney Error
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? Yes, A public Defender
 (c) your sentencing? 15 years
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes, Lara Caudy / Appellate Defender
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Melisa Inzerillo, Assistant Public Defender, York SC, 29745
 ii. Lara Caudy, 1330 Lady Street, Suite 401 Columbia SC 29201-3332
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Melisa Inzerillo / Trial
 ii. Lara M. Caudy / Direct Appeal
 iii. _____

19. State clearly the relief you seek in filing this application:

I would like to be resentenced to either be found not guilty or resentenced under a lesser and non-violent offence.

20. Are you now under sentence from any other court that you have not challenged?

NO, all tho I am being detained under a 9 month post release for NC parole.

STATE OF SOUTH CAROLINA)

County of York)

VERIFICATION

I, Jonathon Phillips, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jonathon Phillips

SWORN to and subscribed before me this 20
day of March, 2018.

Debra Eastridge (L.S.)
Notary Public

My Commission Expires: 3/3/2020

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Jonathon Phillips, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jonathon Phillips
Applicant

SWORN or affirmed to and subscribed before me this

20 day of March, 2018.

Debra Eastridge
Notary Public

My Commission Expires: 3/3/2021

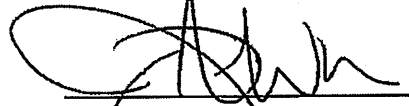
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
Jonathon Phillips, #355313,	)	AMENDMENT TO APPLICATION FOR
	)	POST CONVICTION RELIEF
Applicant,	)	
	)	
Vs.	)	Case No.: 2018-CP-46-01805
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post Conviction Relief filed on June 18, 2018, by adding the claims of ineffective assistance of to question 10 and by adding the following specific prayers for relief to his original allegations:

1. As to representation rendered by Melissa Anne Inzerillo, Esquire:
 - a. Counsel was ineffective for failing to properly investigate the facts and circumstances of his case;
 - b. Counsel was ineffective for failure to request or properly object to the jury charge; and
 - c. Counsel was ineffective for failure to move for a mistrial after impermissible comments made during the solicitor's closing argument.
2. Applicant prays for the relief of this Court ordering Applicant's conviction vacated and his case remanded to the Court of General Sessions for further proceedings.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jonathan D. Waller', written over a horizontal line.

Jonathan D. Waller
Waller Law Group
1116 Blanding Street, Suite 2B
Columbia, South Carolina 29201
ATTORNEY FOR APPLICANT

November 7, 2019

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Jonathon A. Phillips, #355313,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-46-01805

**RETURN, MOTION FOR MORE
DEFINITE STATEMENT, AND
PARTIAL MOTION TO DISMISS**

2018 SEP 28 AM 11:48
DAVID HAMILTON
S.C.C.P. & GS
YORK COUNTY, SC

FILED-RECEIVED

The State (Respondent), making its Return to the application for post-conviction relief filed on June 18, 2018, would respectfully show this Court:

I. Procedural History

Jonathon Phillips (Applicant) was indicted during the November 2015 term of the York County Grand Jury for one count of armed robbery (2015-GS-46-03438). Assistant Public Defender Melissa Inzerillo of the Sixteenth Circuit Public Defender's Office represented Applicant. Assistant Solicitors Blaine Fleming and Daniel Porter of the Sixteenth Circuit Solicitor's Office prosecuted the case.

On February 10, 2016, Applicant proceeded to a jury trial before the Honorable Daniel D. Hall. After a two day trial, the jury convicted Applicant of armed robbery and Judge Hall sentenced Applicant to fifteen years imprisonment. Applicant was given credit for one-hundred and seventy-six days.

Applicant filed a direct appeal after his conviction stating the lower court erred by admitting the store clerk's out-of-court and in-court identification of Applicant and the admission of such evidence was a violation of Applicant's due process rights. The South Carolina Court of

Appeals affirmed the lower court's decision on September 1, 2017. State v. Jonathon Alexander Phillips, Op. No. 2017-UP-392, (S.C. Ct. App. filed October 18, 2017).

II. Factual History

In the early morning hours of August 13, 2015, the suspect entered the Murphy Express – a convenience store located in Lake Wylie – and grabbed a beer from the cooler. The suspect brought the beer to the clerk and handed him five dollars. When the clerk opened the cash register, the suspect handed the clerk a note that stated, “Give me all the money.” The clerk then observed the suspect raise his shirt to reveal a firearm tucked in the waistband of his pants. The clerk complied and handed the suspect all of the money from the till. The suspect then fled the scene. The clerk called the police immediately. (TT. 36-37.)

During the police investigation, the clerk described the suspect as a black male in his mid-twenties, 5’9”, approximately 145 pounds, with “short-shaved” hair wearing a brown shirt and camo shorts. The clerk also noted the suspect had a “bloodshot eye.” The clerk was able to provide law enforcement with surveillance video of the incident. Several days after the robbery, officers showed the clerk a photograph of Applicant and he identified him as the suspect who robbed the store. (TT. 40-43.)

Lieutenant Rick Thomasson of the York City Police Department testified Applicant's mother, who is married to Thomasson's cousin, contacted him after she heard about the robbery. After speaking with her, Thomasson viewed the store surveillance video and recognized Applicant as the suspect. Thomasson and other officers took a still photo from the surveillance video to Applicant's mother and she also identified Applicant as the suspect. Several days later, Applicant turned himself in to Thomasson. At that time, Thomasson noted one of Applicant's eyes was very bloodshot. (TT. 46-56.)

In a pretrial hearing, Applicant moved to suppress the out-of-court identification, and any subsequent in-court identification, made by the store clerk because he believed law enforcement's procedure was unduly suggestive. After hearing arguments, the circuit court found the out-of-court identifications by Applicant's mother and Thomasson were based on their personal familiarity with Applicant, the video and photograph at issue were not unduly suggestive, and their identification testimony was admissible. The court then heard additional testimony regarding the store clerk's identification, and found the clerk's out-of-court identification was reliable based on the amount of time he interacted with the suspect, and the photograph was not unduly suggestive. The clerk's identification testimony was also found to be admissible. (TT. 56-69.)

III. Allegations Raised and Relief Sought

In his application for post-conviction relief, Applicant alleges he was held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "No evidence, verbal or physical[,] pointing to me."
 - b. "No evidence of or to convict or armed robbery."
 - c. "The victim failed to identify me / no photo line-up or reliable statement."

In requested relief, Applicant asks to be "resentenced to either be found not guilty or resentenced under a lesser and non-violent offense."

Attached to this Return and incorporated by reference are the records of the York County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Response to Allegation of Ineffective Assistance of Counsel

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable

probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent has construed two of Applicant's allegations to assert ineffective assistance of trial counsel, however, without more information, Respondent is unable to adequately respond to Applicant's allegations. However, Respondent submits Applicant would not be able satisfy either requirement of the Strickland test as the record shows trial counsel provided effective assistance throughout her representation of Applicant. Based on the record from the trial and direct appeal, and the presumption provided to counsel under Butler, Applicant would not be able to satisfy the burden set forth in Strickland.

However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Motion for More Definite Statement

Applicant has failed to set forth any facts or explain with any specificity the facts upon which his allegations are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the post-conviction relief hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specific grounds on which he is seeking post-conviction relief.

VI. Partial Motion to Dismiss

Applicant's third allegation regarding the victim's identification of him should be summarily dismissed as a direct appeal issue. Applicant has already had the identification issues in his case reviewed and affirmed on direct appeal. An application for post-conviction relief does not serve as a substitute for direct appeal, and an issue that could have been raised at applicant's trial or on appeal is not cognizable in an application for post-conviction relief. S.C. Code Ann § 17-27-20(b); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). Trial court error is not a cognizable claim for PCR. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant's allegations regarding the admissibility of the identification evidence against Applicant should be dismissed as not cognizable under the Uniform Post-Conviction Procedure Act.

VII. Any Future Amendments

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the post-conviction relief hearing. Respondent reserves the right to request any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VIII. Response to All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

IX. Request for an Evidentiary Hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held solely on the claim of ineffective assistance of trial counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. §17-27-45 for failing to timely file.

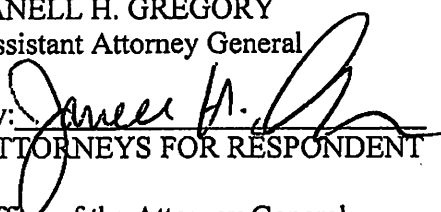
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JANELL H. GREGORY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

Sept 15, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
	)	2018-CP-46-1805
	)	
JONATHON PHILLIPS, #355313,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return, Motion for More Definite Statement, and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire
 Law Office of Leah B. Moody, LLC
 Post Office Box 1015
 Rock Hill, South Carolina 29730

DATED this the 25th day of September, 2018.

Jennifer Jernison
 Jennifer Jernison, Legal Assistant
 For Respondent

FILED-RECEIVED
 2018 SEP 28 AM 11:48
 DAVID HAMILTON
 C.C.P. & GS
 YORK COUNTY, SC

STATE OF SOUTH CAROLINA
YORK COUNTY

IN THE COURT OF GENERAL SESSIONS
CIRCUIT COURT DIVISION
2018-CP-46-01805

-----x
Jonathan Philips, :
 :
 Plaintiff, :
 :
 vs. : TRANSCRIPT HEARING
 :
 :
 :
 The State of South Carolina :
 :
 Defendant. :
-----x

January 7, 2020
York, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge Presiding.

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

Brianna L. Schill, Esquire
Assistant Attorney General
South Carolina Office of the
Attorney General
1000 Assembly Street
Columbia, SC 29201

Jonathan Waller, Esquire
Waller Law Group
1116 Blanding Street #2b
Columbia, SC 29201

Kymberlee M. Williams, CSR/RPR
Official Circuit Court Reporter
P.O. Box 283
Pineville, North Carolina 28134

I N D E X

PROCEEDINGS	3
WITNESS: JONATHAN PHILIPS	6
WITNESS: MELISSA INZERILLO	20
RULING	42
COURT REPORTER CERTIFICATE	47

P R O C E E D I N G S

YORK, SOUTH CAROLINA

(Whereupon, the following proceedings were held in open court. The Defendant was present with her attorney, along with counsel for the State.)

1 THE COURT: I'll recognize the State and ask if
2 you could place the procedural history on the record,
3 and then we'll recognize the applicant.

4 MS. SCHILL: Yes, Your Honor. Thank you. The
5 case is Jonathan Philips versus The State of South
6 Carolina, Case Number 2018-CP-46-01805. Mr. Philips
7 was indicted during the November 2015 term of the York
8 County Grand Jury for one count of armed robbery.
9 Assistant Public Defender Melissa Inzerillo of the
10 16th Circuit Public Defender's Office represented
11 Philips. Assistant Solicitors Blaine Fleming and
12 Daniel Porter of the 16th Circuit Solicitor's Office
13 prosecuted the case. On February 10th, 2016, Philips
14 proceeded to a jury trial before the Honorable Daniel
15 D. Hall. After a two-day jury trial, the jury
16 convicted Philips of armed robbery and Judge Hall
17 sentenced Applicant to 15 years imprisonment. Philips
18 was given credit for 176 days. Philips filed a direct

1 appeal after his conviction.

2 The State -- South Carolina Court of Appeals
3 affirmed the lower court's decision on September 1st,
4 2017. Philips filed a timely PCR application on June
5 18th, 2018.

6 On November 12th, 2019, Philips filed an amended
7 application alleging the following allegation: 1)
8 counsel was ineffective for failing to properly
9 investigate the facts and circumstances of his case;
10 counsel was ineffective for failure to request or
11 properly object to the jury charge; and 3) counsel was
12 ineffective for failure to move for a mistrial after
13 impermissible comments were made during the
14 Solicitor's closing arguments.

15 THE COURT: Mr. Waller, I'll recognize you and
16 ask that you address or delineate the specific areas
17 that you intend to pursue.

18 MR. WALLER: Thank you, Your Honor. May it
19 please the Court? Judge, the -- the allegations
20 contained in the amended application are those filed
21 back in November. What we intend to go forward on,
22 Your Honor. There are three. That counsel was
23 ineffective for failing to properly investigate the
24 facts and circumstances around the charges. That goes
25 to, you know, preparation for trial and presenting a

1 proper defense.

2 There are some issues with the jury charge, Your
3 Honor, and the charge conference.

4 Finally, Your Honor, there were some comments
5 made by the Assistant Solicitor in closing argument,
6 and there were some issues surrounding that. Judge,
7 the applicant -- or in the amended application, the
8 relief requested has been amended as well. Mr.
9 Philips requesting to vacate his conviction and remand
10 the case for a new trial.

11 At this time, I'd like to call Jonathan Philips.

12 THE COURT: Mr. Philips, if you could please come
13 forward?

14 THE COURT: Mr. Philips, please come around. I'm
15 going to ask you if you could to have a seat in that
16 witness chair.

17 THE DEPUTY: The one on the right over there.

18 THE COURT: Take a moment and have a seat in the
19 witness chair. Pull up that microphone, speak loudly,
20 clearly and slowly in order that we can hear
21 everything that you have to say. Mr. Philips, I'm
22 going to ask if you could state your full name?

23 WITNESS: Jonathan Philips.

24 THE COURT: Very good. Mr. Waller?

25 MR. WALLER: Thank you, Your Honor.

* * *

JONATHAN PHILIPS

called as a witness by and on behalf of
the Defendant to testify, being first duly
sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q Good morning, Mr. Philips, how are you today?

A Pretty good.

Q All right. Mr. Philips, I want to take you back
to when you were first arrested on this charge. You
just had the one charge; is that right?

A No, sir.

Q Okay. What were your original charges?

A Armed robbery, possession of a weapon during a
violent crime.

Q Okay. You were only convicted of one charge?

A Yes, sir.

Q Okay. We're going to come back to that in just a
second. When you were first arrested for armed
robbery and then possession of a weapon, who was your
lawyer?

A Ms. Inzerillo.

Q How did she come to be your lawyer? Did you hire
her or was she appointed to represent you?

1 A She was appointed to represent me.

2 Q After you got arrested, about how long was it
3 before you met with her?

4 A I'd say maybe a month or two.

5 Q Were you in the Detention Center or did you bond
6 out?

7 A Detention Center.

8 Q Were you in the Detention Center the entire time
9 these charges were pending?

10 A Yes, sir.

11 Q About how long was that total?

12 A Maybe six months.

13 Q Okay. Ms. Inzerillo is with the Public
14 Defender's Office; is that right?

15 A Yes, sir.

16 Q Now, the first time she came to meet with you,
17 was it at the jail or was it here in the courthouse?

18 A At the jail.

19 Q Okay. Do you remember what you all talked about?

20 A Yes, sir.

21 Q What did you all talk about?

22 A It was a five-year plea. It was put on the table
23 by the Solicitor who was here at the time. I was
24 legally advised not to take it, due to her being able
25 to get something better.

1 Q Okay. Did you all talk about any -- let me back
2 up a little bit. Did you talk about the penalties
3 that the two charges carry?

4 A No, sir.

5 Q Did you all talk about the elements of those
6 charges and what the State would have to prove for you
7 to be convicted of each one of those charges?

8 A No, sir.

9 Q Okay. Did you all -- was there any of the
10 discovery or Rule 5 materials at that time?

11 A Maybe like a little bit of the evidence that she
12 might have already had or something that might be in
13 my motion just basically the things that happened, you
14 know, that I was charged with. Nothing deep into the
15 investigation of advising me what I could be facing or
16 anything like that.

17 Q And your motion, that's what I was talking about,
18 sorry, everybody calls it something a little bit
19 different ---

20 A Yes, sir.

21 Q --- did you have a complete copy or did she have
22 a complete copy at that time?

23 A I'm not sure.

24 Q Did you all go over some of that material?

25 A Maybe once. We had -- when we watched the video

1 she came and got me for an attorney visit, and we
2 watched a video.

3 Q Okay. There was some surveillance video; is that
4 right?

5 A Yes, sir.

6 Q At a convenience store?

7 A Yes, sir.

8 Q Okay. Back to that first meeting, did you all
9 talk about your Constitutional rights?

10 A No, sir.

11 Q Did you talk -- did you discuss your right to a
12 jury trial?

13 A Yes, sir.

14 Q Okay. What did you all talk about as far as that
15 trial goes?

16 A I mean basically, you know, whether I could --
17 they offered me a plea on from Monday through Friday,
18 and I turned it down every time.

19 So when I decided to go to trial, you know, that's
20 when we discussed it, you know, about the jury, we'd
21 have to pick the jury, and, you know, furthermore.

22 Q Let me ask you this. You mentioned a couple
23 times they offered you a plea.

24 Had they offered you a plea by the time you first met
25 with Ms. Inzerillo?

1 A Yes, the five-year plea that she advised me not
2 to take it.

3 Q And that was in the first month or two ---

4 A Possibly, I think. No more than about three
5 months.

6 Q Okay. When you and Ms. Inzerillo were discussing
7 the evidence in your motion, what -- what did you all
8 talk about?

9 A I mean, not a lot.

10 Q Okay.

11 A Just basically just, you know, not too much
12 really. I can't remember recall, you know, but not a
13 lot. It really wasn't, you know, a lot. They was
14 among the information that was given me based on what
15 I may be facing or anything.

16 Q Okay. Now there's no question you were in that
17 gas station at some point; is that right?

18 A No, sir.

19 Q Okay. You were not in the gas station?

20 A Yes.

21 Q All right. You had been in that gas station at
22 some point that day?

23 A Yes, sir.

24 Q And you never questioned that or you never said
25 anything different?

1 A No, sir.

2 Q All right. Did you and Ms. Inzerillo discuss any
3 potential defenses that you might have?

4 A No, sir.

5 Q Did you tell her what happened?

6 A No, I mean yes, in a way, yes.

7 Q Okay. What did you tell her?

8 A That I had been to that store that day. I didn't
9 tell her like, you know, exactly like everything that
10 was being pushed against me, but I told her like
11 everything that she would need to know to represent
12 me.

13 Q And do you -- you told her what you did while you
14 were in that gas station?

15 A. Yes, sir.

16 Q You didn't tell her anything about any sort of
17 robbery?

18 A No, sir.

19 Q You maintained your innocence to this day?

20 A Yes, sir.

21 Q And that's been pretty consistent, right?

22 A Yes, sir.

23 Q Okay. There was -- we talked about some
24 surveillance video?

25 A Yes, sir.

1 Q You had a chance to view that?

2 A Yes, sir.

3 Q The clerk in the convenience store identified you
4 later on; is that right? Is that your understanding?

5 A It was like three days after that I was already
6 booked in and, you know, my picture was on the
7 internet and all of that.

8 Q Did you all have a chance to talk about that
9 identification?

10 A I mean she -- she told me about the statement --
11 I think I was shown the statement that he wrote which
12 was only one sentence. He had said that the victim
13 said that the guy who robbed the store had a red eye
14 and a beard. That was the only thing that he wrote in
15 his statement. And that was a statement that was
16 wrote possibly three days after I was already booked
17 in.

18 Q Okay. Well, we're going to come back to your eye
19 in just a second.

20 A Uh-huh.

21 Q So you all talked about the statement and he had
22 called 911 at some point.

23 A Yes.

24 Q Right? Did you have a chance to hear the 911
25 call?

1 A No.

2 Q Did you all talk about what was in the 911 call?

3 A Yes, I believe so. We had that on a piece of
4 paper, too. I have it now, so I'm pretty sure, you
5 know, she advised me at least about to know what was
6 on the 911 call and what he was - the victim was
7 saying.

8 Q Okay. To your understanding, was there any
9 mention of your eye or a red eye in that 911 call?

10 A No, sir.

11 Q Did you all talk about the difference in his 911
12 call versus his later your statement?

13 A No, sir. I really looked at that, you know,
14 doing a lot of -- you know, certain -- I mean doing a
15 lot of work on it myself. Never really looked into
16 that.

17 Q Okay. Let's talk about your eye for a second.

18 A Yes, sir.

19 Q What -- when you were arrested, was one of your
20 eyes red?

21 A Yes, sir.

22 Q What was going on with your eye?

23 A It was some other things that happened while
24 still being out on the streets.

25 Q So you had some sort of injury to your eye that

1 caused one of your eyes to be -- was it bloodshot?

2 How would you describe it?

3 A Yes, sir, it was messed up pretty bad.

4 Q Okay. You got that taken care of now?

5 A Yes, sir.

6 Q Okay. Good. Did you give Ms. Inzerillo any
7 information you wanted her to investigate?

8 A I mean I'm pretty sure I did, you know.

9 Q Okay. What -- if you recall, what did you tell
10 her?

11 A Really, I mean anything that she really needed to
12 know like, you know, to represent me. Anything that I
13 might have did, I mean like the timing or what I
14 bought in the store or anything that she might have
15 needed to know to fully understand how to represent
16 me.

17 Q Did you give her any people that you wanted her
18 to talk to? Potential witnesses?

19 A No, it was people that were subpoenaed and my
20 son. I didn't give her anyone that I wanted her to
21 talk to specifically.

22 Q Was there anything that you asked her to do that
23 you don't think she did?

24 A Yes. That plea that was offered originally upon
25 her first coming to see me, yes, I asked her to either

1 get that plea again or, you know, something better,
2 which she legally advised me she would do.

3 MS. SCHILL: I think I'm going to object, Your
4 Honor. There's no allegation regarding the guilty
5 plea.

6 THE COURT: Thank you. There's a general
7 allegation she did not prepare properly, and I'll
8 allow him to ask those questions.

9 MR. WALLER: Thank you, Your Honor.

10 BY MR. WALLER:

11 Q As far as any investigation or her getting ready
12 to go to trial, is there anything that you asked her
13 to do that she didn't do?

14 A No, sir, but I mean, really, there's no way
15 possible, we had no time to fully investigate before
16 the trial.

17 They offered me the plea, the eight-year plea, which
18 was the second one. After the two solicitors

19 switched, we had a different solicitor come in, so
20 once they offered me the plea Monday through Friday,

21 They wanted to start the trial immediately, and they
22 did. I believe like the next week, so there was no

23 way possible we had, you know, time to fully prepare
24 for a trial. There's no way possible.

25 Q Okay. Your case went to trial pretty quickly; is

1 that right?

2 A Yes, sir.

3 Q And that was after one of the solicitors left the
4 office or case got reassigned to a new solicitor?

5 A Yes, sir.

6 Q When you all were getting prepared for trial,
7 what did you all do to get ready?

8 A Like I say, we had one visit, we watched the
9 video, and pretty much that was it. I probably seen
10 Ms. Inzerillo maybe three times at the most throughout
11 the whole six months.

12 Q Okay. Did you all talk about how a trial goes as
13 far as witnesses and what the judge and the jury do?
14 Did you all talk about any of that stuff?

15 A No, sir, really, she just pointed out -- it was
16 like what would be happening, I'm going to have to
17 pick out a jury, how we'll go about it. We didn't get
18 into like the depths of the details the way we
19 possibly should have done.

20 Q Had you ever been part of a trial before?

21 A No, sir.

22 Q Had you ever been -- had you ever seen a trial
23 before?

24 A Possibly on television or something like that.

25 Q Okay. During the trial -- how long did your

1 trial last?

2 A Well, we picked a jury on one day, and we
3 actually started one day. We picked a jury on one day
4 and we actually started the same day.

5 Q Okay. And your transcript, you've seen your
6 transcript?

7 A Yes, sir.

8 Q Two hundred and fifty pages, something like that?

9 A Yes, sir.

10 Q And so the relatively -- a relatively quick
11 trial?

12 A Yes, sir.

13 Q Not a whole lot of witnesses; is that right?

14 A No, sir.

15 Q During the trial, did you -- were you able to
16 communicate with Ms. Inzerillo?

17 A We were sitting right beside each other, but like
18 -- but I didn't really ask her too much. I really
19 didn't say too much in trial.

20 Q Okay. How about at break, did you all have a
21 chance to talk? Did you ask her any questions or
22 anything like that?

23 A No.

24 Q Okay. Mr. Philips, I've asked you all the
25 questions that I have for you. Is there anything you

1 think I have left out that the Judge needs to be aware
2 of Ms. Inzerillo's representation of you?

3 A I think that's about it. You know, I feel --
4 another thing I feel about a solicitor's changing, I
5 feel that, you know, if we had of done a proper
6 investigation, we could have known that the solicitor
7 was going to change also, so that would have cut down
8 some of the risks on me, you know, once I agree to
9 terms, like go away with the five-year plea, we could
10 have cut something down or cut some of the risks down
11 because that -- we actually did take the risks.

12 Me not going ahead and, you know, not taking that
13 plea, because once another solicitor came, he was only
14 offering eight years. So once I turned that down, you
15 know, that was the choice. We would take this or go
16 to trial So I went to trial, and we got 15 years.

17 Q So you think if she had investigated the case a
18 little more quickly, it potentially would have helped
19 you out?

20 A Now I'm not going to say "quickly," but just, you
21 know, effectively.

22 Q Okay. Thank you, Mr. Philips. Please answer any
23 questions Ms. Schill has for you.

24 A Yes, sir.

25 THE COURT: Yes, ma'am, cross-examination?

* * *

CROSS-EXAMINATION

BY MS. SCHILL:

Q Hi, Mr. Philips. I just have a few, brief questions just to reiterate a few things.

So did you -- I believe you testified you did not provide Ms. Inzerillo with any witnesses to investigate; is that correct?

A No, ma'am.

Q What about any leads or anything specific you wanted her to investigate that you feel that she didn't investigate?

A Well, like I say, those people that were subpoenaed to court, you know, but only one came which was my mother.

Q Okay. So -- but she did talk to your mother and your mother testified?

A Well, I mean she wasn't -- she didn't testify, you know, on my behalf. You know, they subpoenaed -- the Court subpoenaed her to testify basically against me basically on what, you know, what she said upon them -- when they went to go see her about -- and showing her the pictures -- the still photos that they showed her asking her who they was.

Q And did you testify you met with Ms. Inzerillo

1 three times?

2 A Possibly, maybe about three times at the most.

3 Q At the most?

4 A Yes, ma'am.

5 Q Those are all the questions I have. Thank you
6 for your time.

7 THE COURT: Any redirect?

8 MR. WALLER: None for this witness, Your Honor.

9 THE COURT: Sir, you may step down.

10 Any other witnesses?

11 MR. WALLER: Your Honor, the Applicant will call
12 Melissa Inzerillo.

13 THE COURT: Yes, Ms. Inzerillo, please come
14 forward.

15 THE WITNESS: (Complies.)

16 THE COURT: Take a moment and have a seat in the
17 witness chair. Pull up that microphone, speak loudly,
18 clearly and slowly. I'm going to ask if you could
19 state your full name and let's spell that last one.
20 Most people can't spell it?

21 THE WITNESS: Yes, Your Honor.

22 Melissa Ann Inzerillo, I-N-Z-E-R-I-L-L-O.

23 THE COURT: Very good.

24 * * *

25 MELISSA INZERILLO

1 called as a witness by and on behalf of
2 the Defendant to testify, being first duly
3 sworn was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. WALLER:

6 Q Good morning, Ms. Inzerillo, how are you today?

7 A I'm good. How are you?

8 Q Doing well. Thank you for asking.

9 Ms. Inzerillo, how did you come to represent Mr.
10 Philips?

11 A I was appointed.

12 Q And that's through your position at the Public
13 Defender's Office?

14 A Yes.

15 Q What were the general allegations?

16 A The general allegations were that Mr. Philips
17 went into a convenience store in Lake Wylie and robbed
18 it.

19 Q Okay. There was some surveillance video; is that
20 right?

21 A There was.

22 Q Was there ever -- there was some serious
23 questions about whether a gun was involved in the
24 robbery; is that right?

25 A I think so.

1 Q What -- what did you and Mr. Philips -- what
2 information did he provide to you?

3 A When I met with him, he had -- well, information
4 in regard to what?

5 Q As to what happened, him being in the store -- he
6 never denied being in the store; is that right?

7 A No, he admitted to being in the store. Basically
8 his main focus was there was no gun. And so the bulk
9 of my conversations with the State in terms of an
10 offer was to try to get something on a strong-armed
11 robbery to reflect that there was no gun used in the
12 case.

13 Q Okay. What -- what information did he provide to
14 you -- I mean did he -- did he give you any
15 information he wanted you to investigate, anybody he
16 wanted you to talk to?

17 A Not that I recall. I spoke to him about his eye.
18 He had indicated that he had gotten into a fight while
19 he was out on the street, and -- but he didn't see a
20 doctor for it. I did some investigation. There was
21 an allegation that the car he was riding in had
22 someone else in it. So I spoke to that person and
23 interviewed her and did a phone interview with his
24 mother who was to me another primary witness as
25 identifying him as being on the scene.

1 Q She had identified him by picture; is that right?

2 A She had. Basically she was concerned for his
3 safety, and when she saw the surveillance video of it
4 on the news, she called her cousin or second cousin,
5 who is a Police officer, out of concern that something
6 was going to happen to Jonathan if he were high and
7 interacted with Law Enforcement.

8 Q Okay.

9 A And so in that process, they showed her a
10 picture. She identified I think hoping that she was
11 getting him help and that was one of the piece of
12 evidence they used in his trial.

13 Q When you all were preparing to go to trial, how
14 did -- Mr. Philips testified about some plea
15 negotiations, how quickly, you know, did the case end
16 up going to trial after those negotiations broke down?

17 A It was --

18 THE COURT: Mr. Waller, excuse me, I assume the
19 picture they were showing to the mother was a still
20 photo from the video in the store?

21 THE WITNESS: Yes, Your Honor, I think the
22 testimony was it was a pixelated still.

23 THE COURT: Okay.

24 THE WITNESS: But it was a still photo.

25 THE COURT: Okay, Mr. Waller, go ahead and start.

1 MR. WALLER: I believe that's correct, Your
2 Honor.

3 BY MR. WALLER:

4 Q How soon after plea negotiations kind of broke
5 down did trial -- was the case called for trial?

6 A It was fairly quickly. I think he -- I think we
7 went to trial in February, which was approximately six
8 months after his arrest.

9 Q Okay. What was you all's strategy, defense
10 strategy at trial?

11 A Well, it was a bit two-fold. The main push was
12 to ask for strong-arm. That was what he had always
13 maintained, that he was in the store. You know, in
14 reviewing the case and reviewing the evidence, there
15 were discrepancies in the eyewitness testimony, and so
16 the other general trial tactic was to address that and
17 highlight those for the jury.

18 Q What was the -- what was the evidence they
19 presented or intended to present as far a weapon being
20 used?

21 A There's a part of a video where the --
22 Mr. Philips is at the counter with the clerk. And the
23 testimony in the video showed that there was some
24 interaction, and the clerk -- Mr. Philips asked for
25 money, slid a note or something like that, and the

1 clerk said, "Really?" didn't really believe it, and
2 then after that, there's a quick movement on the video
3 where it appears Mr. Philips' hand goes up and then
4 dropped, and then immediately after that, the clerk's
5 demeanor changes, and he gives them the money.

6 And I think -- then Mr. Philips leaves the store,
7 the clerk waits to call 911 -- he's looking out the
8 window and then calls 911.

9 Q There was no -- no weapon was visible on the
10 video; is that right?

11 A Not that I could see, and you clearly -- you do
12 see the hand go up and down so that -- I think that
13 was fairly clear on the video, but to me, you didn't
14 clearly see a gun, no gun was recovered, and no money
15 was recovered.

16 Q Okay. What was the quality of the video? You
17 testified earlier that it was pixelated, a still
18 picture.

19 A Well, the still picture, my -- from my review of
20 the testimony, I think the officers and the mother
21 testified that she may have been shown a picture on
22 the phone, one that they had possibly sent out to the
23 public, and that that picture was pixelated. The
24 video was -- it was clear enough, I think, to see the
25 hand, but I don't think it was super, super clear.

1 THE COURT: Did the clerk testify that there was
2 a gun?

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: Thank you.

5 BY MR. WALLER:

6 Q Ms. Inzerillo, do you have a copy of the
7 transcript up there with you?

8 A I do.

9 Q If I could, just to look at just one or two
10 things in there, if you could turn to page -- well,
11 let me ask you this first. There was no -- there was
12 no formal charge conference held on the record. Did
13 you all -- did you do that back in January? Was there
14 a charge conference; do you recall?

15 A There probably was some discussions over charges
16 because the judge charged strong-arm which would have
17 been our request. But there wasn't one on the record,
18 no.

19 Q Okay. Other than the request for a charge on
20 strong-armed robbery, did you have any other requests
21 that you made?

22 A I can't recall if I requested the full charge on
23 the identification or if the judge included that on
24 his own in his charges.

25 Q Did you have any objections to any of the judge's

1 proposed charge or the State's proposed charge at the
2 charge conference stage?

3 A Not that I recall.

4 Q Okay.

5 A But if I did have an objection to something, it
6 was not ultimately charged.

7 Q Anything that you think needed to be on the
8 record is my question.

9 A No, sir.

10 Q Okay. If I could get you to turn to page 203 and
11 lines 22 of page 203 in the transcript?

12 A Okay.

13 Q You objected to that comment by the solicitor.

14 A I did.

15 Q Did you consider making a motion for mistrial at
16 that point?

17 A No, I objected, and the judge denied -- or
18 overruled the objection and so I did not make a motion
19 for mistrial that case at that point.

20 Q Okay. One other thing, if you could turn to page
21 205, beginning, I guess, line 16 and kind of
22 continuing through 18.

23 A (Complies.)

24 Q Do you have any reason to disagree with the
25 solicitor's kind of very brief description of strong-

1 armed robbery?

2 A The description on page 205?

3 Q Yes, ma'am. Line 16 through 18.

4 A I think that's my closing, that's my description
5 of it.

6 Q I apologize.

7 A I may be misreading that.

8 Q You are -- you are exactly right. I apologize.
9 Let's see, ---

10 MR. WALLER: I beg the Court's indulgence for a
11 minute?

12 THE COURT: Yes.

13 MR. WALLER: Thank you, Ms. Inzerillo, I have no
14 further questions.

15 THE COURT: Cross-examination?

16 MS. SCHILL: Thank you, Your Honor.

17 BY MS. SCHILL:

18 Q Ms. Inzerillo, thank you for being here. I'm
19 trying not to be too repetitive. How long have you
20 been practicing law?

21 A Since 2001.

22 Q How much of that has been criminal law?

23 A About -- since about 2002 or 2003.

24 Q How many times did you meet with the applicant
25 prior to trial?

1 A It appears I met with him about four to five
2 times, and the case went to month six months after his
3 arrest.

4 Q Okay. Did you ever have any telephone
5 conversations with him or ---

6 A No, apparently at our jail we're not allowed to
7 do that. It has to be an in-person meeting or through
8 the glass at the jail.

9 Q Okay. I know we've had -- you've kind of
10 testified about the facts here and there, and I was
11 wondering if you could just give a summary for the
12 Court?

13 A The allegations were that one evening a man went
14 into a convenience store in Lake Wylie. The -- he
15 walked through the store, walked to the drink area,
16 went to the counter, slid a note to the clerk, the
17 clerk did not respond, that he then presented a gun
18 that was in his waistband, the clerk then gave him the
19 money -- well, that in the note they requested money,
20 the clerk initially did not respond, and then the
21 person basically presented a gun, which made the clerk
22 give the money, the person then left, got into a car,
23 left the scene. There were no leads in the case, so
24 Law Enforcement put the information out on the news.
25 As a result of that, someone who knows Mr. Philips

1 called his mother and said I think I just saw Jonathan
2 on the news, hence the surveillance.

3 His mother, who was concerned for his wellbeing,
4 called her first or second cousin who was an officer
5 with a different department, Police department, and
6 said, you know, "I think that's my son on the
7 surveillance video. I'm worried for his safety."

8 That officer contacted an officer in the
9 department that was investigating the armed robbers.
10 They met with his mother who -- and showed her a
11 picture, a still shot, taken from the video. That
12 still shot was not preserved, but the testimony was
13 that she was shown that basically on the phone. That
14 she identified her son.

15 Mr. Philips was subsequently arrested, and upon
16 speaking to officers, he admitted to being in a store
17 but not to robbing it.

18 Q Thank you. I think you had testified you had
19 discussed the applicant's version of the facts,
20 correct, with him?

21 A Correct.

22 Q And he maintained to you that there was no gun
23 involved in the robbery?

24 A That was -- that's what he maintained, that he
25 did not rob the store, there was no gun.

1 Q Okay. I want to ask you a little bit about -- if
2 you could just go over the plea history.

3 A Sure. My files reflects that Mr. Fleming was the
4 solicitor on that for the duration of the case,
5 including the lead solicitor at trial.

6 Initially he offered attempted armed robbery for ten
7 years suspended on five years active plus probation,
8 restitution of \$190.

9 After discussions with his superior, he was
10 forced to change that offer to eight years active on
11 attempted armed robbery. I met with Mr. Philips
12 regarding that several times. Initially he indicated
13 that he would take two years, but he wanted it to be
14 non-violent.

15 Strong-armed robbery is a non-violent offense,
16 and comported with what he explained to me happened in
17 the store. So I went back to the solicitor at least
18 three times asking for a strong-arm pursuant to what
19 Mr. Philips and I had discussed.

20 When I met with him the first time in October,
21 which was around the time of his initial appearance,
22 he had indicated -- we reviewed the discovery and the
23 offer, and that's when he indicated he wished to have
24 non-violent time. So I asked the solicitor for
25 strong-arm for a few-years, two-year sentence. We had

1 a preliminary hearing on November 3rd. On November
2 6th, I asked the solicitor again for strong-armed
3 robbery, basically for a YOA or equivalent.

4 Mr. Philips at that time was 24. So there may
5 have been an issue with outer limits of a YOA. Mr.
6 Fleming at that point indicated he was not sure if he
7 would change the offer but he would get back to me on
8 that.

9 On December 1st, the solicitor indicated he was
10 not going to change the offer. I met with Mr. Philips
11 again, reviewed the offer. It appeared I reviewed all
12 the offers that had been discussed, and the fact that
13 I had requested strong-armed robbery.

14 At that point, Mr. Philips indicated that he
15 wanted time served and probation, but in order to get
16 the probation, he would be okay with a strike. And he
17 -- at that point is when he indicated he wished to see
18 the video. In November -- November 11th, our office
19 had already sent him the paper discovery, and so in
20 December he had requested to see the video. At that
21 point, trying to work out the case, I went to the
22 solicitor and asked for an offer -- anything on
23 strong-armed robbery just to kind of feel basically
24 where the State was.

25 And in February, I informed the solicitor that

1 Mr. Philips did not wish to have the offer. That was
2 on February the 4th, and there would be no new offers.
3 And so subsequent to that, we tried the case.

4 Q Okay. Is it fair to say that Mr. Philips was not
5 interested in the plea offers given to him because of
6 strong-armed -- the solicitor was not willing to offer
7 anything involving strong-armed robbery as opposed to
8 armed robbery?

9 A Or anything non-violent.

10 Q Okay. So Mr. Philips then wanted to proceed to
11 trial; is that correct?

12 A That was the option, yes.

13 Q Okay. Could you go through your investigation a
14 little bit? I'm sure you heard Mr. Philips' testimony
15 about what he believed you were deficient on as far as
16 your investigation was concerned.

17 A Yes. We reviewed the surveillance video, Mr.
18 Philips and I did. We had previously discussed the
19 situation with the situation with his eye, and I was
20 made aware, and I think the State at some point was
21 made aware, that he had hurt his eye through a fight
22 as a result of the burglary, so he and I had discussed
23 that.

24 As I indicated earlier, the information was that
25 someone was in the car with him. And in his case, in

1 the video what you see is him sitting in the car
2 talking to a person. The person said he gets out of
3 the car, he goes into the store, comes back out, and
4 so I wanted to talk to the person basically to see if
5 they saw a gun on him, since that was his main
6 concern.

7 So I interviewed that person. She really did not
8 want to get involved in the case. She talked to me
9 when I tried to serve her with a subpoena, she was
10 very, very opposed to it. So opposed that I was
11 concerned about if I forced her and I put her on the
12 stand, I was not sure what she was going to say. And
13 so I had interviewed her, but elected not to put her
14 on the stand, and I also had a phone conversation with
15 Mr. Philips' mother, Ms. Wright, in preparation for
16 the case.

17 Q Thank you.

18 A And I believe I -- I'm sorry, I believe I went
19 out to the scene. I can't find those notes in my
20 file, but I seem to have that recollection, that I
21 went out to the convenience store.

22 Q And I'm sure you heard Mr. Philips' testimony but
23 I just want to reiterate he did not give you the name
24 of any other witnesses to investigate; is that
25 correct?

1 A No. I have the name of the witness in the car,
2 but then my note underneath it indicates defendant
3 doesn't know. So I don't know -- I got the name of
4 the person in the car and I followed up on that, but I
5 was unclear whether he gave that to me or I got that
6 through the State.

7 Q Thank you. As far as the jury charge is
8 concerned, did you have any objections to the jury
9 charge at the time; do you recall?

10 A No. I did not have an objection.

11 Q Okay. Do you have a copy of the transcript with
12 you?

13 A I do.

14 Q I was wondering if you could turn to page 229.
15 The conversation I'm looking at is lines 1 through 6,
16 more specifically lines 4 through 6. Just to refresh
17 your recollection, will you just read what your
18 conversation was with the Court briefly?

19 A I had asked the Court to take a look at the
20 verdict form before it was sent back to the jury. He
21 had previous to that asked if there was any further
22 objections from either the State or the defense. So I
23 was responding to that as well, saying but nothing as
24 to the charges. And the Court responded saying,
25 "Okay, nothing as to the charges."

1 Q So it's fair to say at the time you didn't have
2 any issues with the jury charge?

3 A I did not.

4 Q Did you have a chance to review the charge again
5 prior to the final arguments?

6 A I did.

7 Q Sitting here today, do you have any objections or
8 issues with the jury charge?

9 A No.

10 Q Okay. Do you feel that you had adequate time to
11 prepare for the trial?

12 A Yes.

13 Q Did you and Mr. Philips discuss the elements of
14 the charges?

15 A Yes.

16 Q Did you both discuss the possible sentences for
17 the charges?

18 A Yes.

19 Q Did you discuss your trial strategy and the
20 defenses to the charges?

21 A Yes.

22 Q And did you review all discovery with Mr.
23 Philips?

24 A Yes.

25 Q And did you talk about his Constitutional rights?

1 A Yes.

2 Q Just a few last questions. I just want to talk
3 about the solicitor's closing argument. I know Mr.
4 Waller discussed that with you earlier.

5 Do you typically move for a mistrial after an
6 objection is overruled?

7 A No.

8 Q Do you think a mistrial would have been warranted
9 based on that comment from the solicitor?

10 A I don't think so. I don't think it would have
11 been granted based on that statement. I can't speak
12 for Judge Hall, but I know there's a very high
13 standard for a mistrial, and I don't know that he
14 would have granted it.

15 MS. SCHILL: I beg the Court's indulgence, Your
16 Honor.

17 Those are all the questions I have. Thank you.

18 THE COURT: Any redirect?

19 MR. WALLER: I beg the Court's indulgence, Your
20 Honor.

21 Nothing further. Thank you, Ms. Inzerillo.

22

23 BY THE COURT:

24 Q Ms. Inzerillo, the comment that was made in
25 closing argument, could you summarize what the comment

1 was and why the objection?

2 A The comment was along the lines of they -- he
3 brought a gun into a public place, and I -- he had --
4 he had said that once before, I moved on very quickly,
5 and I did not wish to draw the jury's attention to it.
6 But then when he said it again, I was afraid that was
7 going to be more of an argument, and so I objected.

8 I don't know if it crossed the line, but I
9 thought it came very close, and so I just wanted to
10 note my objection.

11 Q Well, was there was evidence that he had a gun,
12 the clerk said he had a gun?

13 A Yes, Your Honor.

14 Q Is it objectionable for him to maintain that that
15 was indeed the fact?

16 A No, Your Honor, I don't think that's
17 objectionable.

18 Q But you objected to it because you firmly
19 believed that he did not have a gun?

20 A Yes, Your Honor.

21 Q All right. You met with him four or five times,
22 and of course you tried the case. This case has been
23 appealed. You prepared your testimony here with PCR.

24 Is there anything else that you could have done
25 in addition with regard to discovery or investigation

1 or discussion with him?

2 A No, Your Honor.

3 Q Apparently there was a great deal of discussion
4 about strikes, discussion about violent offenses, and
5 strong-armed versus armed robbery, and that was one of
6 the reasons why he didn't enter the plea because there
7 was discussions about that; is that correct?

8 A Yes, Your Honor, he had requested a non-violent
9 charge.

10 Q So his assertion that there was no discussion
11 about penalties, potential sentences, is not correct?

12 A That's correct, Your Honor.

13 Q Is there any -- you talked to all the potential
14 witnesses, didn't you?

15 A Yes, Your Honor.

16 Q And looking back on it, there's nobody else that
17 you could have spoken with, is there? Mother, the
18 passenger, or the clerk?

19 A That's correct, Your Honor.

20 Q There's a general allegation that he had an
21 objection to the way you represented him in that you
22 could not get strong-armed robbery. What did you have
23 to say about that?

24 A. I couldn't get strong-armed robbery. It would be
25 up to the State as to reduce the charge from an armed

1 robbery or attempted armed robbery, and they did not
2 want to do that.

3 Q And upon your review of the jury charge here
4 today and during the trial, you had no objection
5 because they did charge strong-armed robbery; is that
6 correct?

7 A That's correct, Your Honor.

8 THE COURT: All right, you may step down.

9 THE WITNESS: Thank you.

10 THE COURT: You may call your next witness.

11 MR. WALLER: Judge, we have no other witnesses.

12 For the record, there's an exact line in the
13 transcript that was made during the solicitor's
14 closing argument. It reads, "I ask you to return a
15 verdict that speaks truth to Jonathan Philips and to
16 anyone else out there who would bring a loaded weapon
17 into a place of business."

18 I think the anyone else is what we consider
19 the most objectionable, and Ms. Inzerillo certainly
20 did object.

21 THE COURT: Are you objecting to the statement
22 about truth and justice or the gun?

23 MR. WALLER: Objecting to the finding a verdict
24 -- truth and justice part would play into "anyone
25 else."

1 THE COURT: Oh, he's talking about public safety
2 rather than whether or not -- instead of the fact
3 whether or not the State has met the evidence?

4 MR. WALLER: Yes, Your Honor. It reads to me as
5 if the solicitor is asking for the jury to send a
6 message, so to speak.

7 THE COURT: Okay. That makes -- that makes
8 sense.

9 I'll be glad to hear some -- any other witnesses
10 from the State?

11 MS. SCHILL: Your Honor, there is no one else
12 subpoenaed.

13 THE COURT: Okay. Mr. Waller, would you like to
14 close with any -- with any summary?

15 MR. WALLER: Your Honor, nothing specific. I
16 have a great deal of notes on the thoughtful portion
17 of some of the witnesses, I would ask that you read
18 the portions of the -- a few portions of the
19 transcript that we have cited to you, consider the
20 allegations, the application as amended and grant
21 post-conviction relief for Mr. Philips.

22 THE COURT: I know that the applicant had an
23 objection with regard to the jury charge. What is the
24 specific objection?

25 MR. WALLER: Your Honor, based on the testimony,

1 I'm not sure -- I'm not sure that has specific
2 objection anymore. There was no jury charge or charge
3 conference on the record. Without knowing what took
4 place in those discussions, as Your Honor is aware, if
5 they're -- if Ms. Inzerillo had any objection or had
6 requested a charge that wasn't charged, that would
7 need to be placed on the record, and preserve that for
8 appeal.

9 Based on her testimony, it doesn't sound
10 like she asked for anything she didn't get or there
11 was anything objectionable, that seems to have worked
12 itself out in the testimony.

13 THE COURT: Very good. All right. Y'all are
14 sitting here, would you point me to the specific page
15 in the closing argument where he talks about truth and
16 safety to the public and that sort of thing?

17 MR. WALLER: Your Honor, page 203 continuing on
18 to 204.

19

20 * * *

21 RULING

22 THE COURT: Upon reviewing the transcript and
23 then the testimony here today, I'm going to deny the
24 motion for post-conviction relief and remind the
25 applicant that he does have an opportunity and a right

1 to appeal my decision.

2 I'm going to ask the Attorney General if
3 they would prepare an order stating that I
4 specifically find that the trial counsel engaged in an
5 extensive investigation in the case. She met with the
6 client four or five times. There was extensive plea
7 negotiations went back and forth.

8 Initially the offer was five years, it was
9 not accepted and later withdrawn. There was
10 discussion about armed robbery being a violent defense
11 and extensive discussion about strong-armed robbery in
12 the alternative. That was never offered. All of
13 those plea negotiations -- there's been no allegations
14 that those offerings were not submitted to the
15 defendant for his consideration.

16 There's uncontroverted testimony from the
17 applicant himself and trial counsel discussion about
18 the difference between a plea and a trial, and trial
19 counsel said there was ample discussion about his
20 constitutional rights. It's clear that she'd gotten
21 the discovery, the discovery was based on testimony
22 presented here in the Court is that the testimony -- I
23 mean the discovery itself, written discovery, was sent
24 to the applicant and they went over it.

25 In addition to that, they viewed the video. All

1 the witnesses that were relevant, the trial counsel
2 discussed that with the defendant, and she had
3 discussions with -- and reviewed the statements of the
4 clerk himself and located the passenger in the car who
5 was not cooperative. Now they're -- although in
6 looking back on it, the trial counsel indicates that
7 she met with him four or five times and, looking back
8 on it, there's -- there's really not anything else
9 that she can do. It was a factual question submitted
10 to the jury.

11 I had reviewed the jury charge itself, and I
12 don't find anything objectionable in there. And most
13 importantly, defense counsel requested and was granted
14 the charge on strong-armed robbery that was submitted
15 to the jury. It was a legitimate question of fact for
16 the jury to resolve. They resolved it in favor of the
17 State against the defendant.

18 But to the jury charge itself, I find no
19 objections to. I think -- I think there's been a rare
20 occasion where I've not conducted a charge conference
21 on the record, but I don't think the law requires that
22 you do that. Ultimately, everybody gets to hear -- to
23 some extent, a jury charge is not very effective
24 because you say essentially the things you're going to
25 talk about, talk about the substance of the charge

1 itself, everybody after the jury charge has been given
2 to the jury, and counsel has an opportunity to object
3 to it at that time and make additional requests. That
4 happens all the time.

5 In this instance, the jury charge was very
6 thorough, everything the defendant wanted was charged
7 to the jury. There was not anything that was charged
8 to the jury that was objectionable, so that is not a
9 grounds for relief.

10 As far as the statement, I think that it was an
11 improper statement for him to talk about the safety of
12 the public in general. And Ms. Inzerillo did indeed
13 object to that. I think the proper strategy for -- at
14 that time, the jury was still going to consider guilt
15 versus innocence, and she made the objection and I do
16 indeed believe that the mistrial would not have been
17 granted given the nature of the statement.

18 The record speaks for itself. In order to get a
19 new trial, you have to show that the error would have
20 affected the outcome of the case, and I don't think
21 that had anything to do with that. I think
22 academically typically lawyers aren't supposed to talk
23 about safety of the public in general, but I don't
24 think that's why they convicted the defendant.

25 I think they convicted the defendant because of

1 the testimony of the victim, the fact that he was
2 identified as being in there, the testimony of the
3 clerk, he said that he had a gun.

4 So based on that testimony, I think the comment
5 of the solicitor was indeed objectionable. Ms.
6 Inzerillo objected to it. I don't think that it rises
7 to the level of affecting the outcome of the trial,
8 and I ask that you prepare an order that accurately
9 reflects that. And I'm going to ask that you provide
10 Mr. Waller a copy on the order before you submit it to
11 me, make sure that it accurately reflects what I've
12 stated here today.

13 Anything further from the State?

14 MS. SCHILL: No, Your Honor. Thank you.

15 THE COURT: Anything further from defense?

16 MR. WALLER: Nothing further, Your Honor.

17 THE COURT: Mr. Philips, good luck to you.

18 * * *

19 - - -END OF TRANSCRIPT- - -

20

21

22

23

24

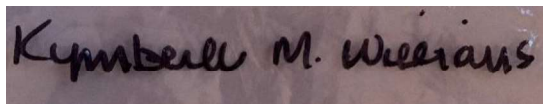
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CERTIFICATE OF REPORTER

I, Kymberlee M. Williams, Certified Shorthand Reporter/Registered Professional Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Beaufort County, South Carolina, on the 7th day of January, 2020.

I do further certify that I am not related, of counsel, or of interest to any party hereto.

This, the 6th day of May, 2020.

A rectangular box containing a handwritten signature in black ink that reads "Kymberlee M. Williams".

Kymberlee M. Williams, CSR/RPR

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Jonathon A. Phillips, #355313,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-46-01805

ORDER OF DISMISSAL

2020 FEB 13 PM 2:06
DAVID HAMILTON
CLERK OF COURT

FILED-RECEIVED

This matter comes before this Court by way of an application for post-conviction relief filed on June 18, 2018, by Jonathon A. Phillips (Applicant). The State (Respondent) filed a Return on September 25, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on Tuesday, January 7, 2020, at the Moss Justice Center. Applicant was present at the hearing and represented by Jonathan Waller, Esquire (PCR Counsel). Assistant Attorney General Brianna L. Schill of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Deputy Public Defender Melissa Inzerillo of the Sixteenth Circuit Public Defender's Office (Counsel) also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted during the November 2015 term of the York County Grand Jury for one count of armed robbery (2015-GS-46-03438). Counsel represented Applicant. Assistant Solicitors Thomas Blaine Fleming and

Daniel Porter of the Sixteenth Circuit Solicitor's Office prosecuted the case.

On February 10, 2016, Applicant proceeded to a jury trial before the Honorable Daniel D. Hall. After a two day trial, the jury convicted Applicant of armed robbery and Judge Hall sentenced Applicant to fifteen years imprisonment. Applicant was given credit for one-hundred and seventy-six days.

Applicant filed a direct appeal after his conviction stating the lower court erred by admitting the store clerk's out-of-court and in-court identification of Applicant and the admission of such evidence was a violation of Applicant's due process rights. The South Carolina Court of Appeals affirmed the lower court's decision on September 1, 2017. *State v. Jonathon Alexander Phillips*, Op. No. 2017-UP-392, (S.C. Ct. App. filed October 18, 2017).

FACTUAL HISTORY

In the early morning hours of August 13, 2015, Applicant entered the Murphy Express – a convenience store located in Lake Wylie – and grabbed a beer from the cooler. Applicant brought the beer to the clerk and handed him five dollars. When the clerk opened the cash register, Applicant handed the clerk a note that stated, "Give me all the money." The clerk then observed Applicant raise his shirt to reveal a firearm tucked in the waistband of his pants. The clerk complied and handed Applicant all of the money from the till. Applicant then fled the scene. The clerk called the police immediately. (TT. 36-37.)

During the police investigation, the clerk described the perpetrator as a black male in his mid-twenties, 5'9", approximately 145 pounds, with "short-shaved" hair wearing a brown shirt and camo shorts. The clerk also noted the perpetrator had a "bloodshot eye." The clerk was able to provide law enforcement with surveillance video of the incident. Several days after the robbery, officers showed the clerk a photograph of Applicant and he identified him as the perpetrator who

robbed the store. (TT. 40-43.)

Lieutenant Rick Thomasson (Thomasson) of the York City Police Department testified Applicant's mother, who is married to Thomasson's cousin, contacted him after she heard about the robbery. After speaking with her, Thomasson viewed the store surveillance video and recognized Applicant as the suspect. Thomasson and other officers took a still photo from the surveillance video to Applicant's mother and she also identified Applicant as the suspect. Several days later, Applicant turned himself in to Thomasson. At that time, Thomasson noted one of Applicant's eyes was very bloodshot. (TT. 46-56.)

In a pretrial hearing, Applicant moved to suppress the out-of-court identification, and any subsequent in-court identification, made by the store clerk because he believed law enforcement's procedure was unduly suggestive. After hearing arguments, the circuit court found the out-of-court identifications by Applicant's mother and Thomasson were based on their personal familiarity with Applicant, the video and photograph at issue were not unduly suggestive, and their identification testimony was admissible. The court then heard additional testimony regarding the store clerk's identification, and found the clerk's out-of-court identification was reliable based on the amount of time he interacted with the suspect, and the photograph was not unduly suggestive. The clerk's identification testimony was also found to be admissible. (TT. 56-69.)

ALLEGATIONS RAISED

In his original application for post-conviction relief, Applicant alleges he was held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "No evidence, verbal or physical[,] pointing to me."
 - b. "No evidence of or to convict or armed robbery."
 - c. "The victim failed to identify me / no photo line-up or reliable statement."

As requested relief, Applicant asked to be "resentenced to either be found not guilty or resentenced under a lesser and non-violent offense."

On November 7, 2019, Applicant filed an amended application asserting the following claims:

- (1) Counsel was ineffective for failing to properly investigate the facts and circumstances of his case;
- (2) Counsel was ineffective for failure to request or properly object to the jury charge; and
- (3) Counsel was ineffective for failure to move for a mistrial after impermissible comments made during the solicitor's closing argument.

An evidentiary hearing was held on January 7, 2020. At the outset of the hearing, PCR Counsel indicated Applicant would be going forward on the allegations set forth in Applicant's amended application.

SUMMARY OF PCR TESTIMONY

Applicant's Testimony

Applicant testified he was held at the local detention center the entire time his charges were pending. Applicant testified he first met with Counsel a month or two after he was arrested. Applicant testified that during his first meeting with Counsel, they discussed a five-year plea offer, but Counsel advised him not to take it because she could obtain a better plea offer.

Applicant testified Counsel did not talk about the possible penalties for his offenses. Applicant testified he and Counsel discussed his right to a jury trial, but did not discuss any of his other constitutional rights. Applicant testified he and Counsel did not discuss defenses to his case. Applicant testified he told Counsel he had been at the store at some point that day, and what he did while in the gas station. Applicant testified he maintained his innocence throughout Counsel's representation of him.

Applicant testified he and Counsel went over some of the evidence, including the surveillance video. Applicant later testified he could not recall specifically what evidence they discussed, but that not a lot of information was given to him. Applicant testified he was shown a written statement from the store clerk. According to Applicant, he did not personally listen to the 911 call, but Counsel discussed the call with him and told him what was contained in the recording. Applicant testified the store clerk did not mention the perpetrator's bloodshot eye in the 911 call, and that he and Counsel did not discuss the differences between what was contained in the store clerk's written statement and the 911 recording.

Applicant testified he gave Counsel information to investigate, but could not specify what he wanted Counsel to investigate that she failed to investigate. Applicant testified he did not give Counsel the name of any witnesses to investigate. When asked if there was anything Applicant wanted Counsel to do but Counsel did not do, Applicant testified he wanted Counsel to get him a plea offer back on the table. Applicant testified Counsel did not have time to prepare for trial because a new solicitor was assigned to the case and wanted to try his case "immediately."

Applicant testified he saw Counsel three times prior to his trial. According to Applicant, Counsel merely viewed the surveillance video with Applicant in preparation for trial. Applicant testified Counsel did not discuss "the ins and outs" of a trial with Applicant. Applicant testified he and Counsel did not talk during the breaks at his trial.

Counsel's Testimony

Counsel testified she was appointed to represent Applicant due to her employment at the Sixteenth Circuit Public Defender's Office. Counsel testified Applicant's charges arose from an alleged armed robbery at a convenience store, but there was a factual issue as to whether there was a gun involved in the robbery. Counsel testified Applicant admitted to being in the store, but

claimed there was no gun. Counsel testified her strategy was to get a charge of strong-armed robbery to reflect that there was no gun involved based on Applicant's claim.

Counsel testified she spoke to Applicant about his bloodshot eye as the store clerk eventually indicated the perpetrator had a bloodshot eye. Counsel testified Applicant told her he got the bloodshot eye from a fight. Counsel testified that as a part of her investigation she interviewed the female passenger in Applicant's vehicle and Applicant's mother. Counsel testified law enforcement used still shots from the robbery and sent them to Crimestoppers to help identify the robbery suspect. Counsel testified Applicant's mother identified Applicant from the media and called law enforcement because she was concerned for his safety. Counsel testified Applicant's mother testified at trial and identified Applicant as the robbery suspect.

Counsel testified the trial began approximately six months after his arrest. Counsel testified her trial strategy was two-fold: (1) get a strong-armed robbery jury instruction, and (2) attack the discrepancy in the store clerk's statements. Counsel testified the State's evidence regarding the weapon consisted of a portion of the surveillance video where Applicant was standing at the counter and made a motion consistent with the State's theory that Applicant revealed a firearm. After this movement, the store clerk's demeanor changed and the store clerk proceeded to open the cash register. Counsel testified the video was "pixelated" but the video was clear enough to see the movement of Applicant's jacket. Counsel testified the store clerk testified to the presence of a gun.

Counsel testified there must have been a charge conference at some point because the judge ultimately charged strong-armed robbery, which is what Counsel wanted for her client. Counsel testified, however, this charge conference was not on the record.

Counsel testified she objected to a comment made by the Assistant Solicitor on page 204 of the trial transcript. Counsel testified the court overruled her objection and she did not move for a mistrial because the court overruled her objection.

On cross-examination, Counsel testified she has been practicing law since 2001, and specifically has been practicing criminal law exclusively since 2002 or 2003. Counsel testified she met with Applicant approximately four-to-five times in person prior to his trial. Counsel testified Fleming was the only solicitor ever assigned to Applicant's case. Counsel testified Fleming initially offered ten-years suspended upon a five year active sentence and restitution, but was forced to change the offer to an eight-year active sentence for attempted armed robbery. Counsel testified she discussed this offer with Applicant several times, but Applicant wanted to plead to a non-violent charge. Counsel testified she asked Fleming for a plea offer involving strong armed robbery, but he would not make such a plea offer. Counsel testified Applicant was not interested in any of the plea offers extended by the State because they all involved violent offenses.

Counsel testified she reviewed all discovery with Applicant. Counsel testified her investigation consisted of reviewing the surveillance video, interviewing the female passenger who was in the car with Applicant, and interviewing Applicant's mother. Counsel testified the female passenger was adamant that she did not want to get involved in Applicant's case and opposed the subpoena to testify in court. Counsel testified she was concerned about what the female passenger would say on the stand based on her opposition to the subpoena, so she opted not to have the female passenger testify at trial. Counsel testified Applicant did not give her any leads to investigate.

Counsel testified she did not have any objections to the jury charge at the time of Applicant's trial or at the time of the PCR hearing. Counsel testified she believed she had adequate

time to prepare for trial. Counsel testified she discussed the elements of the charges and the possible sentence. Counsel testified she discussed her trial strategy and defenses with Applicant at length. Counsel testified she discussed the State's evidence with Applicant as well as his constitutional rights. Counsel testified she does not typically move for a mistrial after the court overrules an objection. Counsel further testified that she did not think a mistrial would have been warranted after the comment made by the solicitor on page 204, and she did not think the Court would have granted a mistrial had she asked for one because the standard for warranting a mistrial is high.

APPLICABLE LAW

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. *Id.* at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's

performance was deficient. *Id.* Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." *Id.* (quoting *Strickland*, 466 U.S. at 688 (1984)). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466 U.S. 668.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

1. Failure to Investigate

Failure to Investigate, Generally

“[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” *Walker v. State*, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (reversed on other grounds by *Walker v. State*, 407 S.C. 400, 756 S.E.2d 144 (2014)). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

Failure to Investigate Applicant's Case

Applicant alleges Counsel was ineffective for failing to sufficiently investigate Applicant's case.

As mentioned above, Counsel testified she reviewed the evidence the State had against Applicant, including but not limited to, witness statements and surveillance video. Counsel also testified she interviewed the applicable witnesses including Applicant's mother and the female passenger. Applicant testified he generally did not think Counsel did an adequate job at investigating his case, but could not identify what specifically Counsel failed to do regarding her investigation.

This Court finds Counsel's testimony on this issue credible, while also finding Applicant's testimony not credible. Counsel credibly testified she investigated Applicant's case. Additionally,

Applicant has not provided any testimony or evidence showing what Counsel would have uncovered by way of additional investigation. Accordingly, Counsel was not deficient.

This Court further finds Applicant failed to meet his burden to show any resulting prejudice, which requires Applicant to show this Court what further information Counsel would have uncovered through additional investigation, and how any additional investigation would have changed the outcome of his trial. Accordingly, this allegation is denied and dismissed with prejudice.

2. Failure to Object to Jury Charge

Applicant alleges Counsel was ineffective for failing to object to the jury charge.

The standard of review for appellate purposes is to consider jury instructions as a whole, and "if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error." *State v. Aleksey*, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000). Counsel testified she did not have any complaints about the jury charge at the time of Applicant's trial, nor did she have any complaints about the jury charge after reviewing them prior to the PCR hearing. Although a charge conference was not held on the record, Counsel testified she received a strong armed robbery charge which is what she ultimately wanted for Applicant.

This Court finds Counsel's testimony on this issue credible. As Counsel testified, the jury charge appears to be a standard jury charge and is legally correct. Counsel was able to obtain the strong armed robbery charge she sought for Applicant. Additionally, there is no legal obligation to hold a jury charge conference on the record. Accordingly, Applicant has failed to show this Court how Counsel was deficient.

This Court further finds Applicant failed to meet his burden to show any resulting prejudice, which requires Applicant to show this Court that an alleged deficiency regarding the

jury charge changed the outcome of his case. Accordingly, this allegation is denied and dismissed with prejudice.

3. *Counsel was ineffective for failure to move for a mistrial after impermissible comments made during the solicitor's closing argument.*

Applicant alleges Counsel was ineffective for failing to move for a mistrial after she objected to the following statement made by Fleming:

"I ask you to return a verdict that speaks the truth to [Applicant] and to anyone else out there who would bring a deadly weapon into a place of business threatening the safety and lives of clerks and customers."

The decision to grant or deny a mistrial is within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. *State v. Cooper*, 334 S.C. 540, 551, 514 S.E.2d 584, 590 (1999). The granting of a motion for mistrial is an extreme measure that should be taken only when the incident is so grievous the prejudicial effect can be removed in no other way. *State v. Beckham*, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999). A mistrial should be granted only when absolutely necessary and a defendant must show both error and resulting prejudice to be entitled to a mistrial. *State v. Harris*, 340 S.C. 59, 63, 530 S.E.2d 626, 628 (2000). "A mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious reasons." *State v. Patterson*, 337 S.C. 215, 227, 522 S.E.2d 845, 851 (Ct.App.1999). "Whether a mistrial is manifestly necessary is a fact specific inquiry. 'It is not a mechanically applied standard, but rather is a determination that must be made in the context of the specific difficulty facing the trial judge.' " *State v. Rowlands*, 343 S.C. 454, 457-58, 539 S.E.2d 717, 719 (Ct.App.2000) (quoting *Gilliam v. Foster*, 75 F.3d 881, 895 (4th Cir.1996)). The trial court should exhaust other methods to cure possible prejudice before aborting a trial. *State v. Council*, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999).

This Court finds Counsel's testimony as to this issue very credible. Counsel testified she objected to the solicitor's statement, but the judge overruled her objection. Counsel testified she typically does not move for a mistrial when the court overrules her objection. Counsel testified she did not believe the comment warranted a mistrial and she did not believe the court would grant a mistrial had she asked for one. This Court finds Counsel was not deficient as she appropriately objected to the solicitor's comment and the court overruled her objection. This Court further agrees with Counsel that the comment did not rise to the high threshold warranting a mistrial. Accordingly, Counsel was not deficient for failing to request a mistrial.

Furthermore, this Court finds Applicant has failed to meet his burden of proof as to prejudice, as Applicant has not shown how any alleged deficiency regarding Counsel's alleged failure to request a mistrial changed the outcome of his trial. Accordingly, this allegation is denied and dismissed with prejudice.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief pursuant to the Uniform Post Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10 to -160. Counsel was not deficient in any manner regarding her performance before or during trial, nor was Applicant prejudiced by Counsel's representation. Accordingly, all allegations are denied and dismissed with prejudice.

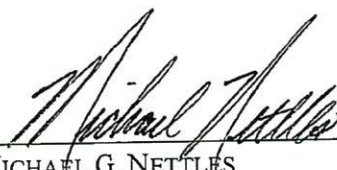
Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance

in seeking review of the denial of post-conviction relief. Further, Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall be remanded to the custody of SCDC.

AND IT IS SO ORDERED.


MICHAEL G. NETTLES
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

2-5-, 2020.

WITNESSES

YCSO

Witnessing Officer: T.Hager

ARREST WARRANT NUMBER

2015A4610201289

ACTION OF GRAND JURY

TRUE BILL

Shirley Sanders
Foreperson of Grand Jury
Date: 11/12/15

VERDICT

Guilty

Kristin Carpaule
Foreperson of Grand Jury
Date: 2-11-16

DOCKET NO. 2015-GS46- 03438

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

NOVEMBER 12, TERM 2015

THE STATE

VS.

**JONATHON ALEXANDER
PHILLIPS**

INDICTMENT FOR

ARMED ROBBERY

SC Code: § 16-11-0330(A)
CDR Code: 0139

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA
COUNTY OF YORK

CERTIFIED TRUE COPY
2018 JUN 20 AM 8:33

INDICTMENT

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on November 12, 2015, the Grand Jurors of York County present upon their oath:

ARMED ROBBERY

The defendant, Jonathon Alexander Phillips, did on or about August 13, 2015 in York County, South Carolina, while armed with a deadly weapon or while displaying what a person present during the robbery would reasonably believe to be a deadly weapon, take by means of force, threats, or intimidation, goods or monies described as a quantity of US currency from the person or presence of Jeremy Lee Felker while Mr. Felker worked as a store clerk at Murphy's Express. All in violation of 16-11-0330(A) of the South Carolina Code of Laws (1976) as amended.

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


T. BLAINE PLEMING
ASSISTANT SOLICITOR