

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
G. Thomas Cooper, Circuit Court Judge

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Opinion No. 2010-UP-552 (S.C. Ct. App. filed 12/21/2010) S.C. Supreme Court
07-GS-40-04668, 4518, and 5451.

THE STATE,

RESPONDENT,

V.

EMMITH ALLEN WILLIAMS,

PETITIONER

APPENDIX

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INDEX

INDEX	i
OPINION NO. 2010-UP-552, FILED DECEMBER 21, 2010	1
PETITION FOR REHEARING	3
RESPONDENT’S RETURN TO PETITION FOR REHEARING	10
ORDER DENYING PETITION FOR REHEARING.....	17

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.

Emmith Allen Williams,

Appellant.

Appeal From Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2010-UP-552
Submitted December 1, 2010 – Filed December 21, 2010

AFFIRMED

Appellate Defender Kathrine H. Hudgins, of
Columbia, for Appellant.

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Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
Senior Assistant Attorney General Norman M.

Rapoport, and Solicitor Warren Blair Giese, all of Columbia, for Respondent.

PER CURIAM: Emmith Allen Williams appeals his convictions for first-degree burglary and two counts of armed robbery, arguing the trial court erred in denying his directed verdict motions. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Zeigler, 364 S.C. 94, 103, 610 S.E.2d 859, 863 (Ct. App. 2005) ("The appellate court may reverse the trial judge's denial of a motion for a directed verdict only if there is no evidence to support the judge's ruling."); State v. Dodd, 354 S.C. 13, 17, 579 S.E.2d 331, 333 (Ct. App. 2003) ("The State may prove the corpus delicti of armed robbery by establishing that a robbery was committed and either one of two additional elements: (1) that the robber was armed with a deadly weapon or (2) that the robber alleged he was armed with a deadly weapon, either by action or words, while using a representation of a deadly weapon or any object.").

AFFIRMED.

FEW, C.J., and SHORT and WILLIAMS, JJ., concur.

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

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

EMMITH ALLEN WILLIAMS,

APPELLANT

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

Opinion No. 2010-UP-552

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for Emmith Allen Williams petitions the Court for rehearing. Counsel respectfully submits that the Court overlooked the fact that the State failed to present any evidence that Williams alleged either by action or words that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon as required for armed robbery. Counsel also respectfully submits that the Court failed to address the fact that the State failed to establish that Williams used or threatened to use a dangerous weapon during the course of the burglary and the State failed to establish that Williams displayed what appeared to be a dangerous weapon as required for burglary in the first degree.

The jury convicted Williams of two separate counts of armed robbery. One count involved taking money and keys from Sabrina Monsanto as she was working at the Shoe Department shoe store. The other count involved the taking of car keys and a car belonging to Mitchell and Martha Darnell. The witnesses testified that they thought Williams had a weapon because he had his hand in his pocket. Importantly, none of the witnesses testified that Williams pretended to have a weapon in his pocket.

Ms. Monsanto testified, "He came up to the counter and he had his hand in his pocket. It was like bulged out like he had a weapon. And he came up on me and he said, 'Give me all the money' very softly." (R. p. 18, lines 6-9). Upon cross examination Ms. Monsanto admitted that she never saw a weapon and admitted that Williams never said he had a weapon. (R. p. 40, lines 19 – p. 41, lines 1-5). Upon redirect examination Ms. Monsanto testified that she thought he had a gun, "Because he had his hand in his pocket." (R. p. 46, lines 8-15).

Rickey Johnson, another employee of the Shoe Department who was present at the time of the incident testified, "He had his hands in his pocket. So that's one of the reasons why I didn't go forth to try to do anything because he had his hands in his pocket." (R. p. 53, lines 2-4). When questioned on cross examination Mr. Johnson testified, "He had his hands in his pockets. So whether he had a weapon or not, I was not going toward him. I wasn't going to do anything." (R. p. 59, lines 21-23). Upon re-direct examination Mr. Johnson was asked how Williams acted like he had a weapon and he testified, "With his hand in his pocket, I suspected that he had something because when he was walking out the store he still had his hands in his pocket. So that's really the reason why I didn't do anything. When he was walking out he was I guess trying to rush to get out." (R. p. 62, lines 8-17). Mr. Johnson admitted that he never saw a weapon. (R. p. 59, lines 13-16).

The other armed robbery charge involved Mitchell and Martha Darnell. Ms. Darnell testified that when Williams approached her outside of her house and mumbled something. (R. p. 71, lines 4-10). Ms. Darnell testified, "He had his hand in his pocket like he had a weapon." (R. p. 72, lines 1-7). Ms. Darnell admitted that she never saw a gun or any other weapons. (R. p. 88, lines 1-8).

William Lorimar, who was working across the street from the Darnells testified, "The homeowner, I can't remember her name across the street, she said, 'He's got a gun or a knife.'" (R. p. 103, lines 19-20). When asked if he saw a weapon, Mr. Lorimar testified, "Just his hand in his pocket." (R. p. 103, lines 23-24). Francisco Chacon, another worker who was across the street at the time of the incident also admitted that he never saw a weapon but instead simply saw that Williams had his hands in his pocket. (R. p. 108, lines 7-23).

Mr. Darnell testified that once inside the house, "He – as he approached me and got about arm's length from me, he reached out his left hand and said, 'Give me your car keys now.'" (R. p. 218, lines 4-6). Mr. Darnell testified, "But he had his hand in his right pocket, and something was protruding from that right pocket or pushing out on the right pocket I guess." (R. p. 218, lines 11-14). Upon cross examination Mr. Darnell admitted that he never saw a weapon and Williams never threatened to shoot him. (R. p. 233, lines 14 – p. 234, lines 1-13).

At the close of the State's case Williams moved for a directed verdict as to the armed robbery charges based on the fact that the State failed to establish that Williams was armed and the State failed to establish that by action or words he used a representation of a deadly weapon or any object which a person present during the commission of a robbery reasonably believed to be a deadly weapon. (R. pp. 378 – 400). The judge denied the motion stating that the victim's perception is significant and stating, "And so they in 1996 added the language that the person

present during the commission of a robbery reasonably believed to be a deadly weapon.” (R. p. 400, lines 22-25). The judge erred.

The armed robbery statute was amended in 1996 to require that the defendant “while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon . . .” S.C. Code §16-11-330. “The primary significance of the amendment is to explicitly provide that one who purports to be armed with a deadly weapon, and who is armed with something reasonably perceived to be a deadly weapon, is guilty of armed robbery even if not actually armed with a deadly weapon.” McAninch, Fairey, and Coggiola, *THE CRIMINAL LAW OF SOUTH CAROLINA* (5th Ed. 2007) p. 290. Importantly, one has to purport to be armed with something reasonably perceived to be a deadly weapon. The act of having one’s hand in his pocket is not, without more, purporting to be armed with something reasonably perceived to be a deadly weapon. The statute requires the defendant to allege being armed. There is nothing in the record to establish that Williams ever alleged that he was armed. The victim’s unsubstantiated belief that Williams was armed because he had his hands in his pocket is not sufficient for purposes of the armed robbery statute.

As to the burglary first degree charge, the State failed to establish that Williams used or threatened to use a dangerous weapon during the course of the burglary and the State failed to establish that Williams displayed what appeared to be a dangerous weapon. Pursuant to the statute, the two elements of aggravation alleged in Williams’ indictment for burglary first degree are that he used or threatened the use of a dangerous weapon or that he displayed what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm. S.C. Code §16-11-311(A)(1)(c)(d).

Mr. Darnell admitted that Williams never threatened to shoot him. (R. p. 233, lines 14 – p. 243, lines 1-13). Ms. Darnell did not testify that Williams threatened to shoot her. Simply keeping your hand in your pocket is not threatening the use of a dangerous weapon.

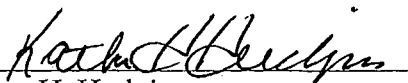
Williams never displayed what appeared to be a dangerous weapon. During the directed verdict motion the State argued, “We believe that when his hand was in his pocket was a display of a knife, a gun, pistol or other weapon.” (R. p. 395, lines 1-3). The judge noted, “That’s pretty much of a stretch.” (R. p. 395, line 4). In denying the motion for a directed verdict as to the burglary charge, the judge likened the “uses or threatens to use” a dangerous weapon to the “reasonably believed” language contained in the armed robbery statute. (R. p. 401, lines 1-13). The judge stated, “I think it’s in the minds of the victims.” (R. p. 401, line 7). The judge erred. The threat must be reasonable and not just perceived from what may be an understandably anxious strong armed robbery victim. The record clearly establishes that Williams’ hand remained in his pocket during the entire course of the incident. He simply entered their home and demanded the car keys. Williams never threatened the use of a deadly weapon and he never displayed what appeared to be a dangerous weapon. The judge erred in refusing to direct a verdict of acquittal on the burglary first degree charge. The charge should have been submitted to the jury as burglary second degree.

On appeal from the trial court’s denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court’s ruling. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002). In ruling on a directed verdict motion, the trial court is concerned with the existence of evidence, not its weight. Id. On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. State v. Burdette, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999). If there is any direct or circumstantial reasonably tending to prove the guilt of the accused, we must find the case was

properly submitted to the jury. State v. Pinckney, 339 S.C. 346, 529 S.E.2d 526 (2000). Viewing the evidence in the light most favorable to the State, there is no direct or circumstantial evidence to establish that Williams threatened the use of a deadly weapon or that he displayed a dangerous weapon or what appeared to be a dangerous weapon during the course of the burglary. The uncorroborated suspicion of the victim is not sufficient to satisfy the element of the burglary first degree statute.

Based on the above arguments, counsel seeks rehearing.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

This 5th day of January, 2011.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

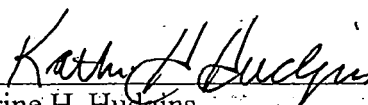
V.

EMMITH ALLEN WILLIAMS,

APPELLANT

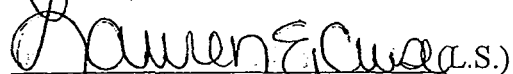
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Norman Mark Rapoport, Esquire, this 5th day of January, 2011.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 5th day
of January, 2011.

 (N. E. Cua)

Notary Public for South Carolina

My Commission Expires: August 23, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Richland County
Honorable G. Thomas Cooper, Circuit Court Judge

THE STATE,

Respondent,

vs.

EMMITH ALLEN WILLIAMS,

Appellant.

RESPONDENT'S RETURN TO PETITION FOR REHEARING

On December 18, 2008, Petitioner Emmith Allen Williams was convicted of two counts of armed robbery and one count of first-degree burglary. Subsequent to his convictions, Petitioner timely filed and perfected an appeal. On December 21, 2010, this Court issued an unpublished opinion in which it affirmed the convictions of Petitioner. State v. Williams, Op. No. 2010-UP-552 (S.C. Ct. App. filed Dec. 21, 2010). Pursuant to Rule 221(a), SCACR, Petitioner has petitioned for rehearing on several issues he believes this Court misapprehended or overlooked. Respondent ("the State") contends Petitioner's convictions were properly affirmed and rehearing is unnecessary. Petitioner's petition for rehearing should be denied.

A. Armed Robbery Convictions

Petitioner asserts this Court erred in affirming his armed robbery convictions by overlooking the fact the State allegedly failed to present any evidence he alleged he was armed

during the robbery. Petitioner contends there is nothing in the record to establish he ever alleged he was armed during his crimes. Petitioner's contention is incorrect.

Under S.C. Code Ann. § 16-11-330, a person is guilty of the offense of armed robbery when he commits robbery "while alleging, **either by actions or words**, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon[.]" (emphasis added). In the case sub judice, Petitioner committed two armed robberies while alleging he was armed by keeping his right hand hidden in his pocket. All of the witnesses to the robberies testified Petitioner maintained his right hand in one of his pockets during the crimes and there was something either "bulging" or "protruding" from his pocket that appeared to be a weapon. (R. p. 18; p. 19; p. 48; p. 53; p. 60; p. 62; pp. 72-73; p. 76; p. 87; p. 91; pp. 94-95; p. 99; p. 106). Petitioner's actions reasonably created the appearance he was armed with a deadly weapon and commanded compliance from his victims who were in fear for their safety.

Critically, Petitioner kept his right hand in his pocket while he was grabbing the money from the register at the store, while he was fleeing from the store, while he was unlawfully entering the Darnells' home, while he was taking their car, and while he was attempting to dissuade Francisco Chacon from trying to stop him from stealing the Darnells' car. Petitioner performed each of his crimes with one hand entirely concealed from view. The fact Petitioner kept his hand in his pocket with something bulging or protruding from inside throughout the crimes was clearly designed to convey the presence of a weapon, and each of the witnesses perceived his actions in this fashion. The evidence of Appellant's actions created a jury question as to whether he committed the offense of armed robbery, and the trial judge properly denied his directed verdict motion for this reason. See State v. Nix, 288 S.C. 492, 496, 343

S.E.2d 627, 629 (Ct. App. 1986) (“[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge’s ruling upon a motion for a directed verdict must stand absent an error of law.”).

Although Petitioner has alleged his victims were merely making assumptions he was armed, his victims were drawing this conclusion based on his actions designed to produce that exact belief. By keeping his right hand shoved into his pocket and hidden from sight with something protruding or bulging inside his pocket, Petitioner committed a robbery while alleging through his actions he was armed while using a representation of a deadly weapon. See Id. at 497, n. 2, 343 S.E.2d at 630 (“This statute does not require display of the deadly weapon; and it should not, we think, because a robber would be thus encouraged to hide his deadly weapon to escape the increased punishment for armed robbery.”). Therefore, Petitioner’s actions satisfied the requirements of the armed robbery statute. See State v. Jones, 342 S.C. 248, 253, 536 S.E.2d 396, 398 (Ct. App. 2000) (“[A] defendant may now be convicted of armed robbery . . . if the jury concludes that the robber alleged he was armed under the requisite circumstances without having to conclude that he was, in fact, so armed.”); Nix, 288 S.C. at 497, 343 S.E.2d at 630 (finding a directed verdict was properly denied in an armed robbery case where the co-defendant pointed something under his shirt during two robberies). Accordingly, this Court properly affirmed the trial judge’s decision to submit the case to the jury, and Petitioner has presented no compelling grounds to reverse the decision. Petitioner’s petition for rehearing should be denied.

B. First-Degree Burglary Convictions

Petitioner also maintains this Court erred in affirming his conviction for first-degree burglary. Petitioner argues the State failed to prove he used or threatened to use a dangerous

weapon or displayed what appeared to be a dangerous weapon during the commission of the burglary of the Darnells' home. Petitioner's contentions are incorrect.

Under S.C. Code Ann. § 16-11-311, a person is guilty of first-degree burglary if a person enters a dwelling without consent and with intent to commit a crime within and there is at least one aggravating circumstance present. One such aggravating circumstance is "when, in effecting entry or while in the dwelling or in immediate flight, [the person]" either "is armed with a deadly weapon or explosive[,] "uses or threatens the use of a dangerous instrument[,] or "displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm." Id. In the case at bar, Petitioner forced his way into the Darnells' home while keeping his right hand hidden in his pocket with something protruding inside. (R. pp. 72-73). He then continued to keep his hand concealed in his pocket in a threatening manner when he demanded the keys from Mitchell Darnell. (R. p. 218). Mitchell took no action to stop Petitioner and complied with his demands because Mitchell observed an object protruding in Petitioner's pocket that appeared to be a snub-nosed revolver. (R. pp. 218-219). Afterwards, Petitioner left the house, got into the Darnells' car to flee, was confronted by Chacon, put his hand in his pocket, and "threatened [Chacon] like this, have a weapon in there or something like that." (R. p. 106). Petitioner's actions constituted substantial circumstantial evidence of the commission of the crime of first-degree burglary, and the case was properly submitted to the jury.

Viewing the evidence in a light most favorable to the State, Petitioner entered the Darnells' dwelling admittedly without consent and with the intent to commit a crime by robbing them and stealing their vehicle. Based on the testimony regarding Petitioner concealing his hand during the crimes and an object appearing to be a revolver protruding inside his pocket,

the jury could have reasonably found he either was armed with a deadly weapon, threatened the use of a dangerous instrument while committing or immediately fleeing from the crime, or displayed what reasonably appeared to be a revolver. Therefore, the trial judge properly denied the directed verdict motion as to the first-degree burglary charge. See State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992) ("The case should be submitted to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly or logically deduced."). Accordingly, this Court properly affirmed Petitioner's convictions based on the evidence and testimony presented. Petitioner's petition for rehearing should be denied.

C. Conclusion

Based on the foregoing, Respondent respectfully requests the Petition for Rehearing be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

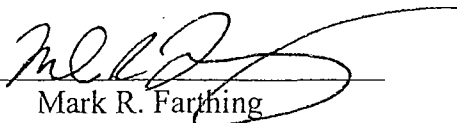
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January 13, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Richland County
Honorable G. Thomas Cooper, Circuit Court Judge

THE STATE,

Respondent,

vs.

EMMITH ALLEN WILLIAMS,

Appellant.

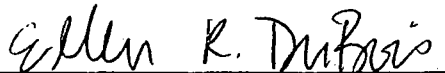
PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the Respondent's Return to Petition for Rehearing on Appellant by depositing two copies of same in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, Esquire
South Carolina Commission on Indigent Defense
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I further certify that all parties required by Rule to be served have been served.

This 13th day of January, 2011.



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The South Carolina Court of Appeals

The State,

Respondent,

v.

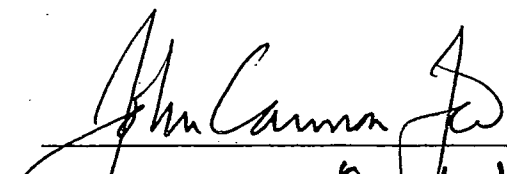
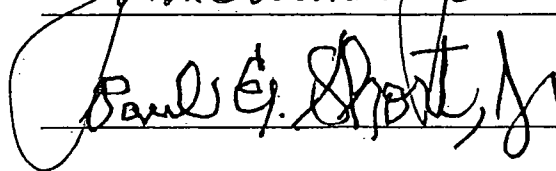
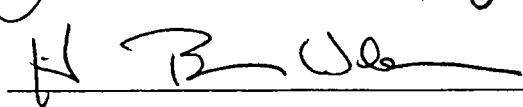
Emmith Allen Williams,

Appellant.

The Honorable G. Thomas Cooper, Jr.
Richland County
Trial Court Case No. 2007-GS-40-04518
2007-GS-40-04668
2007-GS-40-05451

ORDER DENYING PETITION FOR REHEARING

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

 Few, C.J.
 Short, J.
 Williams, J.

Columbia, South Carolina

cc: Emmith Allen Williams
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FILED

February 25, 2011

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Circuit Court Judge

RECEIVED

MAY 26 2011

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

EMMITH ALLEN WILLIAMS,

APPELLANT

RECORD ON APPEAL

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT.....	1
OPENING STATEMENTS.....	1
TESTIMONY	
SABRINA MONSANTO	11
RICKEY JOHNSON.....	49
MARTHA DARNELL.....	68
WILLIAM R. LORIMER.....	98
FRANCISCO CHACON	105
ANN ELSEY	110
KRISTEN MORROW-POLIS.....	139
GAVIN WALMSLEY	143
MATTHEW ELLIS.....	149
MARGARET D. FOUTY.....	178
JOHN SMITH	181
LINDA BRYANT	199
CYNTHIA PARIS.....	208
MITHCHELL DARNELL	216
JOHN SMITH	236
JOEL B. GOODWIN	240
PHILLIP V. FLOOD	244
STAN RICHARDS	255
CLARK NEWTON.....	262
ERIC BARNES	263
SCOTT BOOTH	272
DR. GRAY AMICK.....	284
KEVIN ISENHOWARD	320
CLOSING ARGUMENT.....	380
INDICTMENTS.....	403
SENTENCING SHEETS.....	409
MOTION FOR DIRECTED VERDICT	412
CERTIFICATE OF COUNSEL	422

1 Mrs. Darnell's residence, Your Honor.

2 **THE COURT:** On what basis?

3 **MS. SINGLETARY:** And, Your Honor, if I may
4 approach and also make this a part of the Court's
5 record.

6 (WHEREUPON, Court's Exhibit No. 2 is marked for
7 identification.)

8 **MS. SINGLETARY:** Your Honor, what I'm handing to
9 you is a written motion by the defense. Basically
10 this motion is to sever the charges. As we all are
11 aware, that in order for joinder to actually be
12 proper, the crimes must arise out of a single chain
13 of circumstances. It must also be proven by the same
14 evidence and are of the same general nature, and no
15 real right of the defendant would be prejudiced.

16 We would first like to start off by saying that
17 these crimes do not arise out of a single chain of
18 circumstances, Your Honor. The case law that's on
19 point in this jurisdiction is State v. Tate. In the
20 State v. Tate case, Your Honor, the court had before
21 them one individual who was charged with two counts
22 of forgery. Even though that individual was charged
23 with two counts of forgery, the court held that it
24 was improper for the State to actually try both
25 forgeries at the same time.

1 It says that there must be -- it requires a
2 connection beyond factual similarities, although all
3 forgeries have elements in common. But these two
4 forgeries were not related. And if you look on the
5 second page of our written motion, it goes into that.

6 In addition, Your Honor, in May of this year in
7 the Caldwell case -- and we would argue that our case
8 is distinguishable from the Caldwell case because in
9 the Caldwell case it was an individual who actually
10 was charged with peeping Tom for three individuals on
11 the same day and the same location.

12 Now, in that case the court held that there were
13 so many numerous similarities that because it
14 happened in the same day, even though it had
15 different victims, that that was the connection that
16 is needed, Your Honor.

17 In our case it's distinguishable because of the
18 fact you have one armed robbery that they're alleging
19 that happened at a business which is The Shoe Dept.
20 on Two Notch Road. Then you have the second armed
21 robbery that they're alleging actually happened in a
22 residential development, Your Honor, where there is
23 actually two separate victims and an additional
24 charge of burglary in the first degree, Your Honor.

25 In addition, we actually rely on State v. Rice.

1 We would say that State v. Rice is distinguishable
2 from this case also because in Rice the facts
3 basically entailed a convicted -- he was convicted of
4 selling drugs but he was also convicted of actually
5 murder.

6 But like the opinion of the case basically says
7 that the murder occurred because of the relationship
8 that the victim and the defendant had. The only
9 relationship that they had prior was the fact that
10 they would sell drugs with each other and the fact
11 that the victim, that the defendant in that case
12 thought that the victim stole his car. And even
13 though he thought that he stole his car with the
14 drugs and the money in it, he still met with him and
15 did additional drugs transactions, Your Honor. And
16 in that case what the court was saying was that one
17 crime actually caused the other.

18 Now, in our facts, it cannot be said that the
19 armed robbery of Shoe Dept. actually has the link
20 that is so interconnected to the armed robbery and
21 the burglary first that actually occurred at the
22 Darnells' home. That's why we would say that our
23 case is distinguishable.

24 **THE COURT:** Allegedly what occurred first?

25 **MS. SINGLETARY:** Allegedly The Shoe Dept.

1 robbery occurred first, Your Honor. So, according to
2 our facts, the way that we would say the facts went,
3 was that allegedly our client goes into The Shoe
4 Dept. He commits a robbery there. Then he leaves
5 The Shoe Dept. And I'm leaving some facts out, Your
6 Honor, but not important facts to this argument.

7 **THE COURT:** Just whatever they allege.

8 **MS. SINGLETARY:** Yes. And then he goes through
9 a trail and then he sees Ms. Darnell outside and then
10 he asks her or demanded keys to her car and he takes
11 the car, Your Honor.

12 So these two are not interconnected, as what the
13 courts in South Carolina have actually demanded in
14 the past.

15 If you look at our motion, we also have State v.
16 Middleton, Your Honor. We have State v. Smith and
17 State v. Anderson and several other cases that we
18 actually rely on, Your Honor.

19 In addition to that, same evidence, general
20 nature, Your Honor. The two crimes cannot be proven
21 by the same evidence. You will have evidence in the
22 armed robbery that would come from the testimony of
23 Rickey Johnson as far as Sabrina Monsanto. Those are
24 the witnesses. That's the victims in that Shoe Dept.
25 armed robbery.

1 Then you have the armed robbery of the Darnells
2 where you will actually have Mitchell Darnell and you
3 will have Martha Darnell. Now, in both cases you
4 have investigators who worked both offenses, Your
5 Honor, but that connection isn't enough to say that
6 these cases should actually be joined together.

7 Your Honor, as I said, there is no such
8 relationship among the allegations that the State is
9 intending to join to actually properly have these
10 cases joined.

11 Your Honor, then I will actually go to the
12 prejudice that would actually occur if these cases
13 were allowed to be joined. Just the number of
14 indictments in itself could lead the jury to say,
15 well, because he has all these indictments, well,
16 we're going to convict him. So we think that that
17 would certainly prejudice our client, Your Honor.
18 And --

19 **THE COURT:** They'd think if he did it once he'd
20 do it twice.

21 **MS. SINGLETARY:** Yes. Yes, Your Honor. That's
22 the exact argument that I'm making. Your Honor, and
23 it would be our argument that if the state were
24 allowed to try one armed robbery but not obtain a
25 conviction, then they have another chance. They have

1 the other armed robbery and they have the other
2 burglary first in which they could actually try it or
3 they could call the case in order to try to convict
4 my client, Your Honor.

5 **THE COURT:** All right. Is that it?

6 **MS. SINGLETARY:** Yes, Your Honor.

7 **THE COURT:** All right. Let me hear from the
8 State.

9 **MS. CAMPBELL:** The parts that she did leave out
10 about the factual basis is these both occurred within
11 minutes of each other. Basically investigators
12 responded to the first scene. When the information
13 comes out about the second crime which is
14 approximately less than a half mile away as you run
15 through the woods.

16 The dogs were actually called out to the scene.
17 They actually tracked to the front door where he goes
18 to the Darnells' house where he takes the car in
19 order to make his escape. In his own statement he
20 says --

21 **THE COURT:** Wait a minute. He took the car? Or
22 in this statement he went in the house.

23 **MS. CAMPBELL:** He commits the first armed
24 robbery at The Shoe Dept.

25 **THE COURT:** Right.

1 Tuesday, December 16, 2008

2 **THE COURT:** All right, counsel. We have a sick
3 juror who will not be with us today or the remainder
4 of the week. That is juror number 231, West.

5 **THE CLERK:** No.

6 **THE COURT:** Okay. Wait a minute. Well, who is
7 sick?

8 **THE CLERK:** Number 16, Brandie Bracy.

9 **THE COURT:** Oh. All right. I beg your pardon.
10 It's juror number 16, Brandy Bracy. So we are going
11 to draw an alternate pursuant to the statute. Any
12 objection?

13 **MS. SINGLETARY:** None, Your Honor.

14 **MS. CAMPBELL:** No, sir.

15 **THE COURT:** We don't take them in order. We
16 draw them out of a hat. Do we have a little boy or a
17 blind person? That's what the statute says. I'll
18 allow the clerk to draw a name.

19 **THE CLERK:** Number 170.

20 **THE COURT:** Number 170 who was the first
21 alternate drawn will now become a member of the jury.

22 With regard to the defense motion to sever, Ms.
23 Singletary, I have reviewed your memorandum, reviewed
24 the case law. All of the cases that allow joinder
25 have pretty common elements in that the crimes are of

1 the same general nature involving connected
2 transaction closely related in time, place and
3 character and arise out of a single chain of
4 circumstances.

5 I feel that this case is proper for joinder and
6 will not sever it based on the facts as I understand
7 them, that both armed robberies took place, if indeed
8 they did take place, these are allegations that they
9 took place on the same day within a matter of
10 minutes, not even hours of each other, in close
11 proximity to each other.

12 They are the same type of case in that they're
13 both armed robberies. They have different witnesses
14 but they also have similar witnesses in persons of
15 the police officers, the investigating officers that
16 worked on this case. So those witnesses are common
17 to both cases.

18 There is the single chain of circumstances in
19 here in that the first robbery occurred and the
20 second robbery facilitated the escape. I mean, it's
21 as though -- I mean, it's similar to if the defendant
22 had gotten Ms. Monsanto's car keys and driven out of
23 the parking lot and killed somebody, I mean, it's
24 similar in -- I mean, it's very similar in the fact
25 that the taking of the car facilitated the first

1 robbery and that facilitated the escape from the
2 first robbery.

3 And there is clearly a common goal, at least as
4 the facts are alleged; and that is the common goal
5 being to get money and return to North Carolina. The
6 defendant -- I'm not sure he said it, but maybe Ms.
7 Singletary said it -- that at some point in time --
8 it's in the record -- that his object or his intent
9 in this whole series of events was to get back to
10 North Carolina because he had become homeless or
11 without means to support himself here in South
12 Carolina.

13 So, I mean, if you put all of those factors
14 together, I think it -- and not even considering the
15 issue of judicial economy, it leans in favor of
16 joinder; and, therefore, I must respectfully deny
17 your motion to sever.

18 All right. Is there anything else of a
19 pre-trial nature before we bring the jury? From the
20 State?

21 **MS. CAMPBELL:** No, sir.

22 **THE COURT:** The defense?

23 **MS. SINGLETARY:** Your Honor, I believe that you
24 were going to make a determination on whether or not
25 my client's prior conviction --

1 every conceivable reasonable doubt of guilt in your
2 mind. And in this case, ladies and gentlemen, they
3 can't do that. There will be doubt. Because Emmith
4 Williams made no threats. He had no weapon. He did
5 not commit any armed robbery or burglary in the first
6 degree.

7 Now, at this table, this is law enforcement.
8 Investigators, officers, the solicitors; it's law
9 enforcement. And sometimes people want to believe
10 that at our table it must be the opposite. And
11 that's not true. As a lawyer, as a defense attorney,
12 I consider myself law enforcement. I enforce the
13 most important laws, the Constitution and the Bill of
14 Rights. And at the end of this case you will see
15 that Emmith Williams is not guilty of armed robbery
16 or of burglary in the first degree. Thank you.

17 **THE COURT:** All right, Solicitor. Call your
18 first witness.

19 **MS. CAMPBELL:** May it please the Court, Your
20 Honor. The State calls Sabrina Monsanto.

21 SABRINA MONSANTO, after being duly sworn,
22 testifies as follows:

23 **THE CLERK:** Thank you. Have a seat on the
24 witness stand and give the court reporter your name.

25 **THE WITNESS:** Sabrina Monsanto.

DIRECT EXAMINATION

BY MS. CAMPBELL

Q Ms. Monsanto, where are you employed?

A The Shoe Dept.

Q And how long have you been working with The Shoe Dept.?

A Two and a half years.

Q Do you live here in the Columbia area?

A Kershaw county.

Q Kershaw County?

A Yes.

Q And do you have any children?

A Yes.

Q And how many children do you have now?

A Three.

Q I want to turn your attention back to May the 7th of 2007. Were you working at one of The Shoe Dept. stores that day?

A Yes.

Q And which Shoe Dept. store were you working at that day?

A Two Notch road, Spring Valley.

Q What time of day was it that you were supposed to go to work that day?

A It was the day I was supposed to work all day. I was

1 going to Wal-Mart to get something to eat because I
2 was five months pregnant. So it was going to be a
3 long day.

4 Q And what time of day was it when you got to The Shoe
5 Dept.?

6 A It was early. It was 10 in the morning.

7 Q When you got there that day, was part of your duties
8 including the fact that you were supposed to open the
9 store?

10 A Yes.

11 Q Was there anybody else that was assigned or was
12 supposed to be working that day?

13 A Rickey Johnson.

14 Q And did he also show up about the same time you did
15 to help you open the store?

16 A Yes.

17 Q And when you all go in to open the store, tell the
18 jury generally what you do and what your respective
19 jobs would have been?

20 A When we go in when we open the store in the morning,
21 we come in and unlock the doors. And we have two
22 tables that we bring out. And Rickey was the one
23 that brang (sic) the two tables out in the morning.

24 Q And those tables actually go out in the front of the
25 store?

1 **A** Yes.

2 **Q** And the store itself, the front of it, can you see
3 through it?

4 **A** It's glass front.

5 **Q** That day when you pulled up at The Shoe Dept., you
6 mentioned that you'd already gone to Wal-Mart to get
7 some food?

8 **A** Yes.

9 **Q** And you pulled up at The Shoe Dept. somewhere around
10 10:00 in the morning?

11 **A** Yes.

12 **Q** Did you notice anyone that morning as you pulled into
13 the parking lot?

14 **A** Yes.

15 **Q** And where did you see someone that caught your
16 attention?

17 **A** They were walking in front of Goody's.

18 **Q** In front of Goody's?

19 **A** Yes.

20 **Q** And where is the Goody's store in relation to The
21 Shoe Dept.?

22 **A** It's on the same strip mall.

23 **Q** There is a strip mall?

24 **A** Yes.

25 **Q** And is this the strip mall that's actually in front

- 1 of a separate area that's the Wal-Mart?
- 2 A Yes.
- 3 Q When you saw the person walking, were there many
- 4 people in the parking lot that morning when you
- 5 pulled up?
- 6 A No.
- 7 Q And what time do those businesses typically open?
- 8 A 10:00.
- 9 Q So there weren't any real customers out there other
- 10 than the one man you observed?
- 11 A No.
- 12 Q Did you park your car in the parking lot?
- 13 A Yes, right in front of the store.
- 14 Q And as you walked in and opened up The Shoe Dept.,
- 15 did you see the man again?
- 16 A Yes.
- 17 Q And where was he at this point?
- 18 A Well, after I opened the door, he was walking past
- 19 the store.
- 20 Q Past your store?
- 21 A Yes.
- 22 Q And did you continue to go into The Shoe Dept.?
- 23 A Yes.
- 24 Q Mr. Johnson, was he there yet?
- 25 A Yes, he was.

1 Q And did he walk in with you?

2 A Yes.

3 Q Once you made entry into the store, what did you do?

4 A I walked into the store and walked behind the counter
5 and I was about to start my day as Rickey was pulling
6 the first table out the front door.

7 Q And what did you observe after you saw Rickey pulling
8 the table out the front door?

9 A The defendant came in the store.

10 Q Had you ever seen him before?

11 A No.

12 Q And when he came in the store, what was going through
13 your mind?

14 A Well, before I even got in the store when I seen him
15 as he was walking up past Goody's, he gave me an
16 eerie feeling as he was walking up. So as I went in
17 the store I went behind the counter. Like I said, he
18 came in the store and Rickey was pulling the first
19 table out.

20 Q And at that point where did he go?

21 A I guess he went -- he passed the store. So he must
22 have went on -- well, in the store?

23 Q Around the store, he passed it and then he came in?

24 A Yes, he came in the store.

25 Q What did he do once he came in the store?

1 **A** He went on in the back of the store like he was
2 observing to see if anybody else was in the store.

3 **MS. SINGLETARY:** Objection, Your Honor.
4 Speculation.

5 **THE COURT:** I'll allow it.

6 **MS. CAMPBELL:** Thank you.

7 **Q** Was there anyone else in the store?

8 **A** No.

9 **Q** So at the time when the defendant made his entry, the
10 only other two people that were in or around the
11 store were you and Rickey Johnson?

12 **A** Correct.

13 **Q** Where were you at this point in the store?

14 **A** I was still at the front of the store behind the
15 counter.

16 **Q** And was part of your duties also to like open up the
17 cash register and do things like that?

18 **A** Yes.

19 **Q** And is there a certain amount of cash that you all
20 maintain in the cash register?

21 **A** Yes.

22 **Q** Once he went towards the back of the store, did you
23 see where he went next?

24 **A** I didn't see where he was at the time. So he was out
25 of my eyesight. So he had to be in the back of the

1 store.

2 Q When did you next observe the defendant in the store?

3 A When he walked up to the counter and asked a
4 question.

5 Q And what kind of question was he asking you?

6 A I'm not sure. I don't remember.

7 Q And when he walked up to the counter and asked the
8 question, did he actually get face-to-face with you?

9 A Yes.

10 Q And at that point would he have been able to look
11 around the entire store to see if anybody else was
12 there?

13 A Yes.

14 Q Did he then go back into the back part of the store
15 again?

16 A Yes.

17 Q And what happened next?

18 A He went back and like middle ways into the store.
19 And Rickey was going at the next table. And as I
20 looked around again, he just seemed very odd to me.
21 So I said if this guy is going to rob me, he's going
22 to take my car. So I took my car key off my ring and
23 threw it under the counter.

24 Q And threw it under the counter?

25 A Yes.

1 Q You've never been robbed before?

2 A No.

3 Q Did the defendant approach you again?

4 A Yes.

5 Q And what happened when he approached this time?

6 A He came up to the counter and he had his hand in his
7 pocket. It was like bulged out like he had a weapon.
8 And he came up on me and he said, "Give me all the
9 money", very softly. So I knew that Rickey didn't
10 hear him. So I said it loudly. I said, "What? Give
11 you all of my money?" He said, "Yes."

12 Q Okay. You mentioned that he had his hand in his
13 pocket and it bulged out?

14 A Yes.

15 Q Which pocket was it? Do you remember?

16 A It was his right pocket.

17 Q And was it in his pants pocket or in his jacket, or
18 do you recall?

19 A His jacket pocket.

20 Q What was he wearing that day? Do you remember?

21 A It was a red jacket and some black pants and a black
22 dew rag.

23 Q What went through your mind when he said, "Give me
24 all the money" and you saw where his hand was?

25 A The first thing I thought about, I didn't want him to

1 harm my baby. So I just went and opened the register
2 to give him the money.

3 Q What was his demeanor like?

4 A Very strange, very eerie.

5 Q You said that you repeated it so Rickey could hear
6 what was going on?

7 A Yes.

8 Q Where was Rickey in the store at this point? Do you
9 remember?

10 A He was over next to the counter but over by the
11 table.

12 Q Once you repeated that after he had asked you to do
13 it, did you do what he told you to?

14 A Yes.

15 Q Why was that?

16 A Because I didn't want him to harm my baby.

17 Q When you opened the register, what happened?

18 A I was taking the money out slowly and I guess I was
19 taking it out too slow. So he took his left hand and
20 he started grabbing the rest of the money.

21 Q Were you behind the counter at this point?

22 A Yes.

23 Q Was he behind the counter with you?

24 A Yes.

25 Q What happened next?

1 **A** He took the money. He took the rest of the money out
2 the counter and he turned around and he said, "Now
3 give me your car keys." So I handed him the store
4 keys. And he said, "No. I said your car keys." So
5 the one key that I had left on my ring I handed to
6 him. So he turned around and he brushed off past
7 Rickey and he went out the door.

8 When he went out the door, I told Rickey hurry
9 up and lock the door. So we went middle ways in the
10 store so that he wouldn't shoot back in the store.
11 And we looked out the door watching him go to my car.
12 He couldn't get in, so he walked off and went behind
13 the building.

14 **Q** So first you handed him the store keys?

15 **A** Yes.

16 **Q** And he didn't want those?

17 **A** Right.

18 **Q** And that's when he again demanded your car keys?

19 **A** Yes.

20 **Q** And that's when you gave him the ring with the one
21 key you had left on it?

22 **A** Yes.

23 **Q** Did Rickey lock the door when you told him to?

24 **A** Yes.

25 **Q** And you mentioned at that point, where did you all go

1 in the store?

2 A In the middle of the store.

3 Q And why did you all go back there?

4 A Because we didn't want to take the chance of him
5 shooting back in the store.

6 Q Because you knew he wasn't going to be able to get in
7 your car?

8 A Right.

9 Q Did you all call 911 immediately?

10 A Yes.

11 Q Before or after you went to the middle of the store?

12 A After.

13 Q Why didn't you call 911 before you went back and hid
14 in the store?

15 A Because the phone was at the front and we didn't want
16 to go back up to the front, thinking he would shoot
17 back in or something.

18 Q And in fact, when did you feel safe enough to go back
19 to the front to call?

20 A After he went behind the building.

21 Q Did the police respond?

22 A Yes.

23 Q And do you remember talking to police officers that
24 day?

25 A Yes.

1 Q Do you remember talking to Sergeant Isenhoward who is
2 sitting right here?

3 A Yes.

4 Q And did you tell him all of what happened that day?

5 A Yes.

6 Q Did they also ask you a series of questions about
7 getting a description of the defendant?

8 A Yes.

9 Q And were you able to give them a description of the
10 defendant?

11 A Yes.

12 Q Later that day, after giving a description of the
13 defendant to the police, did they make contact with
14 you that day again?

15 A Yes.

16 Q And on that occasion did they show you a photo
17 line-up?

18 A Yes.

19 Q Beg the Court's indulgence. And I want to show you
20 what's been marked as State's Exhibit No. 1 and just
21 ask you first, do you recognize that?

22 A Yes.

23 Q And that afternoon, several hours after this robbery
24 occurred, did the police show you those photographs?

25 A Yes.

1 Q And did they show you -- were you by yourself or with
2 anybody when they showed them to you?

3 A By myself.

4 Q And was it Investigator -- excuse me -- Sergeant
5 Isenhoward who showed them to you?

6 A Yes.

7 Q And when he showed them to you, did he tell you
8 anything or tell you who to pick or anything?

9 A No.

10 Q And when you looked at those series of photographs,
11 were you able to pick out anyone that actually did
12 this to you?

13 A Yes.

14 Q Were you able to narrow it down to what they looked
15 like?

16 A To two of them.

17 Q But you weren't able to make a positive
18 identification?

19 A No.

20 Q And which two were you able to narrow it down to that
21 you thought that he looked the most like?

22 A 3 or 4.

23 Q And did you tell that to the investigators?

24 A Yes.

25 Q And did they write that down here at the top?

1 **A** Yes.

2 **Q** And are those your initials by it?

3 **A** Yes.

4 **Q** And just for the record, when he showed you State's
5 Exhibit 1, did it have any handwriting on it?

6 **A** No.

7 **Q** And that was your initials right here after you said
8 you narrowed it down?

9 **A** Yes.

10 **MS. CAMPBELL:** Your Honor, at this time we'd
11 offer State's Exhibit 1 into evidence.

12 **MS. SINGLETARY:** Without objection, Your Honor,
13 but renewing the previous objections we had.

14 **THE COURT:** I'll admit it subject to your
15 objection.

16 (WHEREUPON, State's Exhibit No. 1 is admitted
17 into evidence.)

18 **Q** Several days later did the police make contact with
19 you again?

20 **A** Yes.

21 **Q** And this time Sergeant Isenhoward made contact with
22 you and showed you some more photographs. Is that
23 correct?

24 **A** Yes.

25 **Q** And when he showed you these photographs, were you by

1 yourself or were you with Rickey or anybody?

2 **A** By myself.

3 **Q** And specifically on May the 10th of 2007, did he show
4 you State's Exhibit No. 2?

5 **A** Yes.

6 **Q** And for the record, when he showed this to you, it
7 didn't have any of the writing on it?

8 **A** No.

9 **Q** The handwriting?

10 **A** No..

11 **Q** Just the typed part?

12 **A** Yes.

13 **Q** And the photographs?

14 **A** Yes.

15 **Q** And what, if anything, did Sergeant Isenhoward tell
16 you prior to showing you this series of photographs?

17 **A** Nothing.

18 **Q** And when you looked at this series of photographs,
19 tell the jury what you observed?

20 **A** I observed the defendant on the second picture.

21 **Q** And the person that you recognized in this, who was
22 that?

23 **A** Emmith Williams.

24 **Q** Did you know his name at the time?

25 **A** No.

1 Q Did you know his face?

2 A Yes.

3 Q Will you ever forget it?

4 A No.

5 Q And did you tell Investigator Isenhoward who you
6 recognized?

7 A Yes.

8 Q And did you circle it?

9 A Yes.

10 Q And initial it?

11 A (Nods head affirmatively).

12 Q Is that the person that robbed you?

13 A Yes.

14 Q The person you thought had a gun?

15 A Yes.

16 Q And I believe this is your signature down here
17 indicating you recognized number 2?

18 A Yes.

19 MS. CAMPBELL: Your Honor, at this time we'd
20 offer State's Exhibit No. 2.

21 THE COURT: Subject to the defense objection,
22 it's admitted.

23 MS. SINGLETARY: Yes, Your Honor.

24 MS. CAMPBELL: Thank you.

25

1 (WHEREUPON, State's Exhibit No. 2 is admitted
2 into evidence.)

3 Q Ms. Monsanto, when this happened, you talked to the
4 police that day and you told them what happened?

5 A Yes.

6 Q And you have told this jury what happened?

7 A Yes.

8 Q Will you ever forget this?

9 A No.

10 Q You mentioned that you've been employed by The Shoe
11 Dept. for about two and a half years now?

12 A Yes.

13 Q So at the time it was about a year?

14 A Yes.

15 Q Do you still work at the Two Notch Road store?

16 A No.

17 Q Why not?

18 A I can't even go back in there.

19 (WHEREUPON, State's Exhibit No. 9 is marked for
20 identification.)

21 (WHEREUPON, State's Exhibit No. 10 is marked for
22 identification.)

23 (WHEREUPON, State's Exhibit No. 11 is marked for
24 identification.)

25

1 (WHEREUPON, State's Exhibit No. 12 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 13 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 14 is marked for
6 identification.)

7 (WHEREUPON, State's Exhibit No. 15 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 16 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 17 is marked for
12 identification.)

13 (WHEREUPON, State's Exhibit No. 18 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 19 is marked for
16 identification.)

17 (WHEREUPON, State's Exhibit No. 20 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 21 is marked for
20 identification.)

21 (WHEREUPON, State's Exhibit No. 22 is marked for
22 identification.)

23 (WHEREUPON, State's Exhibit No. 23 is marked for
24 identification.)

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1 (WHEREUPON, State's Exhibit No. 24 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 25 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 26 is marked for
6 identification.)

7 (WHEREUPON, State's Exhibit No. 27 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 28 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 29 is marked for
12 identification.)

13 Q Ms. Monsanto, I want to show you what's been marked
14 as State's Exhibit Nos. 9 and 11. Does this show the
15 front of your store?

16 A Yes.

17 Q And State's Exhibit No. 11, does that show part of
18 the inside?

19 A Yes.

20 Q And do those fairly and accurately represent how your
21 store looked that day when the police came?

22 A Yes.

23 MS. CAMPBELL: Your Honor, at this time we'd
24 offer State's Exhibits 9 and 11.

25 MS. SINGLETARY: No objection.

1 **THE COURT:** Have you seen them? Without
2 objection.

3 (WHEREUPON, State's Exhibit No. 9 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 11 is admitted
6 into evidence.)

7 **Q** You mentioned that the front your store had plate
8 glass windows. Is that correct?

9 **A** Yes.

10 **Q** And you also mentioned that Rickey was supposed to be
11 putting out some tables that morning?

12 **A** Yes.

13 **Q** Are those shown in State's Exhibit No. 9?

14 **A** Yes.

15 **Q** And is that looking directly into your store?

16 **A** Yes.

17 **Q** You also mentioned an area of the store where the
18 cash register was. I show you State's Exhibit No.
19 11.

20 **A** Yes.

21 **Q** And where in here were you standing when you opened
22 the register?

23 **A** Right here behind the paper.

24 **Q** Behind the paper?

25 **A** Yes.

1 Q And where was the defendant standing when he had his
2 hand in his pocket demanding the money?

3 A Right there beside me.

4 Q Beside you here?

5 A Yes.

6 Q So do I accurately show where the two of you were
7 standing?

8 A Yes.

9 Q And that's how close together you were when you got
10 an opportunity to observe his face?

11 A Yes.

12 Q And the register was open. Is that how he left it
13 that day?

14 A Yes. Yes.

15 Q I show you just a couple more photographs. Okay?
16 Coming to court and testifying today, has this kind
17 of brought it all back?

18 A Yes.

19 Q I want to show you State's Exhibit No. 10. Is that
20 another photograph in the store looking out?

21 A Yes.

22 Q And State's Exhibits No. 16, 17 and 18, are those
23 photographs showing your car and where it was
24 positioned in the parking lot?

25 A Yes.

1 Q And could you see where your car was clearly from
2 inside the store?

3 A Yes.

4 Q And from the area where you all went back to hide,
5 you could still see that?

6 A Yes.

7 Q And that's when you saw the defendant run off?

8 A Yes.

9 MS. CAMPBELL: Your Honor, at this time we'd
10 offer State's Exhibits 10, 16, 17 and 18.

11 MS. SINGLETARY: Without objection, Your Honor.

12 (WHEREUPON, State's Exhibit No. 10 is admitted
13 into evidence.)

14 (WHEREUPON, State's Exhibit No. 16 is admitted
15 into evidence.)

16 (WHEREUPON, State's Exhibit No. 17 is admitted
17 into evidence.)

18 (WHEREUPON, State's Exhibit No. 18 is admitted
19 into evidence.)

20 THE COURT: Without objection.

21 Q Can you see generally -- what area of the store does
22 that show?

23 A The front right behind the cash register.

24 Q Right behind the cash register? And you can see some
25 automobiles actually in the parking lot from that

1 vantage point, correct?

2 A Yes.

3 Q And State's Exhibit No. 18, what does that show?

4 A Out where my car is parked in front.

5 Q Is your car the white car that's shown in the corner
6 of the photograph?

7 A Yes.

8 Q Again, what's shown in State's Exhibit No. 17?

9 A Where my car is parked.

10 Q From inside the store?

11 A Yes.

12 Q And State's Exhibit No. 16?

13 A My car.

14 Q And for the record, when the defendant left, he
15 couldn't get in your car, so he left on foot?

16 A Right.

17 Q Beg the Court's indulgence. Ms. Monsanto, the person
18 that robbed you that you thought had a gun that day,

19 --

20 A Yes.

21 Q -- do you see him here in the courtroom?

22 A Yes.

23 Q Will you identify him for the jury, please?

24 A (Witness points).

25 Q Where is he sitting?

1 **A** By the lady right there.

2 **Q** The lady with the blonde hair?

3 **A** Yes.

4 **MS. CAMPBELL:** Your Honor, may the record
5 reflect she's identified the defendant?

6 **THE COURT:** The record will so reflect the
7 witness identified the defendant.

8 **Q** And, Ms. Monsanto, you never knew him prior to any of
9 this?

10 **A** No.

11 **Q** Thank you.

12 **THE COURT:** Cross examination.

13 **MS. SINGLETARY:** Thank you, Your Honor. If it
14 pleases the Court.

15 CROSS EXAMINATION

16 **BY MS. SINGLETARY**

17 **Q** Good morning, Ms. Monsanto.

18 **A** Good morning.

19 **Q** I know that you said that this is very difficult for
20 you today.

21 **A** Yes.

22 **Q** So I'm going to try to ask you as brief amount of
23 questions as I can and be as clear as I can be.

24 Okay?

25 **A** Okay.

1 Q Now, you testified that when you first came to Shoe
2 Dept. on that day, before you entered into the actual
3 store that you noticed Emmith Williams?

4 A Yes.

5 Q And you said that at that point you got an eerie
6 feeling?

7 A Yes.

8 Q You also testified that there was about four
9 different occasions in which you were able to
10 actually view my client either face-to-face or at a
11 small distance from him?

12 A Yes.

13 Q And you also testified that when my client came into
14 The Shoe Dept. that at that point that eerie feeling
15 was still there?

16 A Yes.

17 Q It may have gotten even stronger?

18 A Yes.

19 Q And the first thing that you thought to do was to
20 take your car keys from off of your key ring?

21 A Right.

22 Q Okay. Now, when Mr. Williams first came in you said
23 he went to the back of the store?

24 A Yes.

25 Q And when he was at the back of the store, you weren't

1 able to view him at that point?

2 **A** No.

3 **Q** Now, let me backtrack to him first walking into the
4 store. When he first walked into the store, did he
5 have his hands in his pocket?

6 **A** I'm not sure.

7 **Q** Thank you. But you still had an eerie feeling about
8 him walking in?

9 **A** Yes.

10 **Q** Now, when he walked to the back of the store, did he
11 have his hands in his pocket at that point?

12 **A** I'm not sure.

13 **Q** So my client, Mr. Williams, goes to the back of the
14 store, and you testified that he brings -- well, he
15 comes up and he asks you a question?

16 **A** Yes.

17 **Q** But you don't remember the question he asked?

18 **A** No.

19 **Q** And at that point does he have his hand in his pocket
20 right then when he asked you a question?

21 **A** I'm not sure.

22 **Q** And at some point my client actually brings a pair of
23 shoes in a box to the counter that you're at,
24 correct?

25 **A** Yes.

1 Q Now, when he brought the shoes to the counter, did he
2 have his hands in his pocket at that point?

3 A I'm not sure.

4 Q Okay. And when he comes up to the counter with the
5 shoes, at this point had you already thrown the keys
6 to your car underneath the counter?

7 A When he brought the box of shoes to the counter?

8 Q Yes, ma'am.

9 A No.

10 Q Okay. You hadn't thrown them underneath there yet?

11 A No.

12 Q And that was about the fourth time that you had
13 encountered my client on that morning?

14 A Probably about the second or third.

15 Q It's about the second or third?

16 A (Nods head affirmatively).

17 Q And the whole time my client was in there you had an
18 eerie feeling about him though?

19 A Yes.

20 Q Could you have called the police since you had that
21 eerie feeling from the point that you first saw my
22 client? Couldn't you have called the police
23 inbetween these different times that you had actually
24 seen him?

25 A No.

1 Q You weren't right beside a telephone?

2 A Yes.

3 Q Okay. Now, I'm kind of unclear. I'm trying to
4 figure out at what point did my client actually put
5 his hand in his pocket? Do you remember?

6 A I assume as he was approaching the counter asking me
7 for the money.

8 Q Okay. So that's the point that he put his hands in
9 his pocket. And when my client came up there as you
10 testified asking for the money, did he scream at you?

11 A Did he scream at me?

12 Q Yeah. Did he shout at you?

13 A No.

14 Q Did he physically assault you?

15 A No.

16 Q Didn't push you?

17 A No.

18 Q Didn't say, I have a gun?

19 A He didn't have to.

20 Q Well, did he say he had a gun?

21 A No.

22 Q Did he say, I have a knife?

23 A No.

24 Q He said, "Give me the money"?

25 A Yes.

1 Q And you said that at that point he said, "Give me the
2 money" he has his hands in his jacket?

3 A Yes.

4 Q Okay. Now, the jacket that he had on, could you
5 describe that jacket for the jury?

6 A It was like a wind jacket.

7 Q It was a wind jacket. Now, was this the type of
8 jacket that actually had the pockets from the side,
9 or were the pockets up front?

10 A It had to be from the side.

11 Q It was from the side?

12 A Yes.

13 Q So in this wind jacket my client has -- and I believe
14 you said his right hand --

15 A Yes.

16 Q -- in this wind jacket?

17 A Yes.

18 Q And was his entire hand in that wind jacket?

19 A Yes.

20 Q His entire hand?

21 A Yes.

22 Q So you can see nothing but his wrist?

23 A Right.

24 Q And at that point it was balled up?

25 A His hand?

1 Q Yes.

2 A I guess.

3 Q You guess it was balled up?

4 A Yes.

5 Q Well, you said that you testified that there was a
6 bulge. I'm trying to figure out how was there a
7 bulge in that jacket. You would assume that his hand
8 had to be balled up in that jacket?

9 A I don't know. I just seen a bulge.

10 Q You saw a bulge. Was it a big bulge or was it a
11 small bulge?

12 A Big.

13 Q It was a big bulge?

14 A Yes.

15 Q In that wind jacket?

16 A Yes.

17 Q And from the side?

18 A Yes.

19 Q So you never actually saw a weapon?

20 A No.

21 Q Never actually saw a knife?

22 A No.

23 Q Never actually saw a gun?

24 A No.

25 Q He never said he had a knife?

1 **A** No.

2 **Q** Never said he had a gun?

3 **A** No.

4 **Q** Had his hands in his pocket?

5 **A** Yes.

6 **Q** And because his hands was in his pocket, you believed
7 that it had to be a weapon?

8 **A** Yes.

9 **Q** Because when you first saw him outside you had
10 already had an eerie feeling about him before you
11 even opened up the store?

12 **A** Yes.

13 **Q** Okay. Beg the Court's indulgence, Your Honor. Now,
14 the first assistant solicitor, Ms. Campbell, asked
15 you about speaking to officers on that day?

16 **A** Yes.

17 **Q** And you said that you spoke to Sergeant Isenhoward?

18 **A** Yes.

19 **Q** That day? Didn't you also speak to Deputy George
20 Poulin or Pollen (phonetic)? I'm probably saying his
21 name incorrectly. On that day?

22 **A** I don't remember.

23 **Q** Wasn't there like -- Investigator Isenhoward wasn't
24 the only police officer that was there on that day,
25 was he?

1 **A** No.

2 **Q** And did you ever tell Investigator Isenhoward or
3 Detective Poulin that my client when he had his hand
4 in his pocket that you saw a bulge?

5 **A** I don't remember.

6 **Q** So you may not have told him that on that day?

7 **A** I don't remember.

8 **Q** Do you remember when you speak to Deputy Poulin on
9 that day that you actually told Deputy Poulin that
10 there was no weapon?

11 **A** I don't remember that.

12 **Q** You don't remember telling the police officer that
13 there was no weapon. You also -- and you talked
14 about this briefly on direct examination, talked
15 about a robbery questionnaire that you had to fill
16 out. And, Your Honor, if I may approach?

17 **THE COURT:** Yes, ma'am.

18 **Q** I'm giving you what is a copy of the Richland County
19 Sheriff's Department robbery questionnaire. Now I
20 would like to direct your attention on this
21 questionnaire to the middle part of the questionnaire
22 where it says "type of weapon". What's written down
23 right beside where it says "type of weapon"?

24 **A** Nothing.

25 **Q** Nothing? What's written down where it says "weapon

1 was held in"? And beside that it has R for right, L
2 for left or both hands. Is anything circled there?

3 **A** No.

4 **Q** It's not circled. Now, you were shown several
5 pictures. And I want to bring your attention to
6 State's Exhibit 10 as well as State's Exhibit 11.
7 And, Your Honor, may I approach the witness?

8 **THE COURT:** Yes, ma'am.

9 **Q** Now, ma'am, you previously identified both of these
10 diagrams as the store that you worked at on that day,
11 The Shoe Dept.?

12 **A** Yes.

13 **Q** Now, I'm sorry. I didn't run over here fast enough,
14 so I couldn't tell where you said that you were
15 standing versus where you're saying that my client
16 was standing. Could you show that to me again in
17 this diagram? Where exactly were you standing?

18 **A** Right here.

19 **Q** You were standing right here?

20 **A** Yes.

21 **Q** And where did you say Mr. Williams was standing?

22 **A** Right here.

23 **Q** He was standing right here. So that would mean that
24 your right side of your body was on Mr. Williams'
25 left side of the board?

1 A No. He was facing me.

2 Q Oh, he was facing you. So you guys were
3 face-to-face?

4 A No. I was standing here. He was standing facing me
5 like.

6 Q Oh, he was facing you?

7 A Yes.

8 Q So you were standing this way?

9 A Yes.

10 Q And my client was actually standing this way?

11 A Yes.

12 Q Okay. And at some point you go over to this cash
13 register?

14 A Right.

15 Q And Mr. Williams didn't push you out of the way. You
16 said you were going too slow getting the money out?

17 A Yes.

18 Q Did he push you out of the way?

19 A No.

20 Q He stuck his -- and you say left hand?

21 A Yes.

22 Q -- in the register. So he has his right hand right
23 here. You're right there at the register and he
24 takes his left hand. Does he reach over you?

25 A Yes.

1 Q He reaches over you and he takes the money out?

2 A Yes.

3 Q Now, you said that you went -- after Mr. Williams
4 left the store, you went to the middle of the store?

5 A Yes.

6 Q Because you thought he was going to shoot inside the
7 store?

8 A Yes.

9 Q You didn't see a gun, did you?

10 A No.

11 Q So why would you think he's going to shoot inside the
12 store?

13 A I didn't know what he had.

14 Q You didn't know what he had. Okay. Beg the Court's
15 indulgence, Your Honor. And again, I just want to
16 make it clear. When my client, Mr. Williams, first
17 approached you, he didn't scream at you, "Give me the
18 money"?

19 A No.

20 Q Did he?

21 A No.

22 Q You actually testified that, you know, that Rickey
23 Johnson was there on that day?

24 A Yes.

25 Q And you had to speak loud in order for Rickey Johnson

1 to figure out what was going on, correct?

2 A Yes.

3 Q Okay. Your Honor, I have no further questions.

4 MS. CAMPBELL: Just briefly, Your Honor.

5 THE COURT: Redirect.

6 REDIRECT EXAMINATION

7 BY MS. CAMPBELL

8 Q Ms. Monsanto, just a couple more questions. Let's
9 get one thing straight. You've never told anyone
10 that you saw the actual gun?

11 A No.

12 Q Did you think he had a gun?

13 A Yes.

14 Q And why was that?

15 A Because he had his hand in his pocket.

16 Q Did you just want to give away the money that day?

17 A No.

18 Q Why did you give him the money?

19 A Because I didn't want to be harmed.

20 Q And from day one you've never told the police, just
21 like you haven't told this jury, that you actually
22 saw the gun?

23 A No.

24 Q But you saw him with his hand in his pocket?

25 A Yes.

1 Q And she kept saying "hands" in the pocket. There was
2 one hand in the pocket?

3 A Right.

4 Q And the time you noticed that was when he approached
5 you at the counter and said, "Give me the money"?

6 A Yes.

7 Q She asked you about the windbreaker. I'm going to
8 show you this item. Do you recognize that?

9 A Yes.

10 Q Does that look like the windbreaker?

11 A Yes.

12 MS. CAMPBELL: Your Honor, at this time we'd
13 mark it for I.D. purposes State's Exhibit -- beg the
14 Court's indulgence -- 30.

15 (WHEREUPON, State's Exhibit No. 30 is marked for
16 identification.)

17 MS. CAMPBELL: I'll go ahead and offer it into
18 evidence. Any objection?

19 MS. SINGLETARY: At this time we would have an
20 objection, Your Honor, until the proper chain is
21 established.

22 THE COURT: All right. Mark it for I.D.

23 MS. CAMPBELL: I'll mark it for I.D.

24 Q You mentioned that he had his right hand in the
25 pocket?

1 **A** Yes.

2 **Q** If I put my hand in the pocket, like this?

3 **A** Yes.

4 **Q** And he was wearing it at the time?

5 **A** Yes.

6 **Q** And did he have it like he had a gun it?

7 **A** Yes.

8 **MS. CAMPBELL:** Thank you, Your Honor. I have
9 nothing further.

10 **THE COURT:** Anything further?

11 **MS. SINGLETARY:** Your Honor, I have no questions
12 for this witness.

13 **THE COURT:** All right. Thank you very much.
14 You may come down. May this witness be excused?

15 **MS. SINGLETARY:** Yes, Your Honor. We have no
16 objection.

17 **THE COURT:** Without objection. You're free to
18 go, ma'am. Thank you very much. Next witness.

19 **MS. MCDUFFIE:** The State calls Rickey Johnson.
20 RICKEY JOHNSON, after being duly sworn,
21 testifies as follows:

22 **THE CLERK:** Thank you. Have a seat in the
23 witness stand. Give the court reporter your name.

24 **THE WITNESS:** It's Rickey Johnson.

25 DIRECT EXAMINATION

1 **BY MS. MCDUFFIE**

2 **Q** Good morning, Mr. Johnson.

3 **A** How you doing?

4 **Q** Mr. Johnson, where are you currently employed?

5 **A** Right now I'm a musician at Zion Canaan Baptist
6 Church.

7 **Q** And in May of 2007 where were you employed?

8 **A** At The Shoe Dept.

9 **Q** And which location of The Shoe Dept.?

10 **A** The Two Notch location near the Wal-Mart.

11 **Q** And what were your duties at The Shoe Dept.?

12 **A** I was a sales associate.

13 **Q** And I'm going to take you to May 7th of 2007, the
14 incident that we're here for today. Do you remember
15 what time you arrived to work that morning?

16 **A** It was a little bit before 10.

17 **Q** And what time did the store open?

18 **A** 10:00.

19 **Q** And how did you get to work that morning?

20 **A** I drove.

21 **Q** And did you drive your own car?

22 **A** It was my sister's car.

23 **Q** And do you have your own car?

24 **A** No. Not at that time I didn't.

25 **Q** And how did you get to court here today?

- 1 **A** I drove my sister's car.
- 2 **Q** And that morning when you arrived at work, did you
3 see anyone outside?
- 4 **A** Yes, I did. I did see someone.
- 5 **Q** And describe the person you saw outside your store
6 that morning?
- 7 **A** The person I saw was about -- maybe about five-six.
8 He had on like a black, either black and blue jeans.
9 I'm not sure which one it was. But a red jacket and
10 a dew rag, a black dew rag.
- 11 **Q** And where did you see this person?
- 12 **A** He was walking up towards the store. But at the time
13 he was walking up towards -- from Goody's.
- 14 **Q** From Goody's. And why did you notice him?
- 15 **A** He was the only one out there at the time.
- 16 **Q** And after you saw him, what did you then do?
- 17 **A** I waited on my boss to come in for us to open up.
18 And I just waited out there.
- 19 **Q** And who was your boss?
- 20 **A** Sabrina Monsanto.
- 21 **Q** And after Sabrina got there, what did you then do?
- 22 **A** Clocked in and did my duties, take out the tables
23 that we are supposed to have outside.
- 24 **Q** Who was in the store at that point in time?
- 25 **A** At the time it was me and her, but then the gentleman

1 walked in, the guy.

2 Q And had any other customers come in the store that
3 morning?

4 A No, ma'am.

5 Q Was there anyone else even outside?

6 A Not that I saw.

7 Q The only person you saw outside that morning was the
8 person wearing the red windbreaker and the black or
9 blue jeans?

10 A Yes, ma'am.

11 Q And when that person entered the store, what happened
12 next?

13 A I was taking out the tables at the time and I finally
14 realized that something was going on when I heard
15 Sabrina yell out, "What? Give you the money", or
16 something like that. Then I stopped what I was doing
17 and I turned around.

18 Q Where were you when she yelled at him?

19 A The register is like sort of standing right here. I
20 was on this side where the tables were.

21 Q Beg the Court's indulgence. I'm going to show you
22 what's been marked or in evidence as State's Exhibit
23 11. Can you show the jury where you were standing?

24 A On this side back over here.

25 Q So back towards the racks of the shoes?

1 **A** Mm-hmm (affirmative).

2 **Q** And could you see Sabrina and the person at the
3 register?

4 **A** Mm-hmm (affirmative). I could see them.

5 **Q** And did you have an opportunity to observe the
6 individual in the red windbreaker?

7 **A** At the time his back was turned, so I really couldn't
8 see his face at that time.

9 **Q** And what did you then do?

10 **A** I just stopped what I was doing and just tried to
11 stay calm because I didn't know what to do actually.
12 So I just stood there.

13 **Q** Did you start moving towards Sabrina's direction?

14 **A** No, I didn't. I stayed where I was.

15 **Q** And then what happened?

16 **A** After that I guess he was getting ready, prepared to
17 leave. He was asking for her car keys. And then
18 once he got whatever he had got, he came -- in order
19 for him to get out, he had to pass my me. So once he
20 got out, he went throughout the door and went to her
21 car. That's when Sabrina told me to lock the door
22 behind me, and that's when we went to stand in the
23 middle of the store.

24 **Q** And when he passed by you, how close was he to you?

25 **A** Close enough if I wanted to I could have touched him.

1 Q And did you notice him doing anything?

2 A He had his hands in his pocket. So that's one of the
3 reasons why I didn't go forth to try to do anything
4 because he had his hands in his pocket.

5 Q Did he just have his hand in his pocket like this,
6 just casually hanging out?

7 A It wasn't casually hanging. He had it tucked in his
8 pocket like there was something in there.

9 Q And what did you think based on the defendant's
10 actions?

11 A Stay where I was and don't do anything because he
12 might have a weapon and if I tried anything that
13 could have been my life.

14 Q And so that's why even though you were close enough
15 to touch him you didn't?

16 A Right.

17 Q And when the defendant passed by you, did you get a
18 good look at his face?

19 A At that time, yes, I did.

20 Q I show you what's been marked as State's Exhibit 4.
21 Did you have the chance to talk to the police on May
22 the 7th?

23 A Yes, I did.

24 Q And did they show you a line-up?

25 A They did that day.

1 Q I show you what's been marked as State's Exhibit 4.

2 Do you recognize that?

3 A Mm-hmm (affirmative).

4 Q And is that what the police showed you on May the 7th
5 of 2007?

6 A Yes, ma'am.

7 **MS. MCDUFFIE:** Your Honor, at this time we'd
8 offer State's Exhibit 4 into evidence.

9 **THE COURT:** Over the defendant's objection.

10 (WHEREUPON, State's Exhibit No. 4 is admitted
11 into evidence.)

12 Q And were you able to identify anyone in this line-up
13 the police showed you on May the 7th, 2007?

14 A Not at that time.

15 Q You were able to give the police a description of the
16 person you saw?

17 A Mm-hmm (affirmative).

18 Q And on May the 10th of 2007, did the police come back
19 and show you another photo line-up?

20 A They did.

21 Q I show you what's been marked as State's Exhibit 3.
22 Do you recognize this?

23 A Yes, ma'am.

24 Q Is that the photo line-up the police showed you on
25 May the 10th of 2007?

1 **A** Yes, ma'am.

2 **MS. MCDUFFIE:** Your Honor, at this time we'd
3 offer State's Exhibit 3.

4 **THE COURT:** Over the defendant's objection.

5 (WHEREUPON, State's Exhibit No. 3 is admitted
6 into evidence.)

7 **Q** Rickey, at the time the police showed this line-up to
8 you, did it have any writing on it?

9 **A** None at all.

10 **Q** When Sergeant Isenhoward showed this line-up to you,
11 did he tell you anything?

12 **A** He didn't tell me anything.

13 **Q** Did he say, the person who did it is in here, pick
14 him out?

15 **A** No, ma'am.

16 **Q** And did you in fact pick out the second person?

17 **A** Yes, ma'am.

18 **Q** And did you -- are those your initials under his
19 picture?

20 **A** Yes, ma'am.

21 **Q** And why did you pick out this person, number 2 in
22 this line-up?

23 **A** Because he had a familiar face of what I remembered
24 on that day.

25 **Q** And you remember him from where?

1 **A** From The Shoe Dept. on that day.

2 **Q** And specifically from May the 7th, 2007?

3 **A** Yes.

4 **Q** After the defendant left The Shoe Dept., what did you
5 and Sabrina do?

6 **A** We -- I locked the door and then we went back to
7 standing in the middle of the store just in case he
8 tried to come back. Because she didn't give him the
9 correct key to her car. So just in case he tried to
10 come back and tried to attack or her or do whatever
11 he wanted to do because she didn't give him the right
12 key, we stood in the middle of the store. And then
13 once we saw him leave we called the police.

14 **Q** And the police showed up?

15 **A** Yes, they did.

16 **Q** They asked you a lot of questions?

17 **A** Yeah, they did.

18 **Q** Took a description?

19 **A** Mm-hmm (affirmative) a.

20 **Q** A robbery questionnaire?

21 **A** Yes, ma'am.

22 **Q** Did you answer all of the police questions?

23 **A** Yes, I did.

24 **Q** And the person that you saw wearing the red
25 windbreaker and either black or blue jeans that

1 entered The Shoe Dept. who you believed to have a gun
2 and took the money from Sabrina and the keys, do you
3 see that person in the courtroom today?

4 **A** Yes, ma'am.

5 **Q** Can you please point that person out?

6 **A** That's the gentleman right there.

7 **Q** And can you describe what he's wearing or who he is
8 sitting next to?

9 **A** He has the striped tie, the white shirt and suit
10 jacket, braids.

11 **MS. MCDUFFIE:** Your Honor, I'd like the record
12 to reflect that he has identified the defendant.

13 **THE COURT:** Let the record reflect the witness
14 identified the defendant.

15 **MS. MCDUFFIE:** Nothing further.

16 **THE COURT:** Cross examination.

17 **MS. DAVIS:** Thank you, Your Honor.

18 CROSS EXAMINATION

19 **BY MS. DAVIS**

20 **Q** Good morning, Mr. Johnson.

21 **A** Good morning.

22 **Q** How you doing?

23 **A** All right.

24 **Q** Now, when you first got to work that day, you
25 testified that one of your jobs was to set up the

1 tables?

2 A Yes, ma'am.

3 Q So you were actually in the process of -- were the
4 tables inside?

5 A Yeah.

6 Q And you had to take them outside?

7 A Yes, ma'am.

8 Q Okay. So when you first got there, that's what you
9 started to do?

10 A Yes, ma'am.

11 Q So when Emmith came, my client came in the door, were
12 you already starting to take the tables outside?

13 A I had one table out. I was getting ready to take out
14 the second table.

15 Q So did he come in as you were going out?

16 A No.

17 Q When you came back in, that's when he was in the
18 store?

19 A Yes, ma'am.

20 Q Okay. And then you continued to try and set up the
21 tables?

22 A Yes, ma'am.

23 Q You didn't know anything was going on at that time?

24 A Not at that time.

25 Q You thought he was just another customer?

1 **A** Correct.

2 **Q** Looking around the store?

3 **A** Correct.

4 **Q** Okay. In fact, he never really said anything to you?

5 **A** He didn't.

6 **Q** He didn't make any motions to you? I mean, he didn't
7 do anything to you?

8 **A** As far as ...?

9 **Q** He didn't physically touch you. He didn't push you?

10 **A** (Witness shakes head negatively).

11 **Q** You really had no contact with him?

12 **A** No.

13 **Q** Okay. You never saw a weapon?

14 **A** I didn't see a weapon.

15 **Q** You certainly never saw a gun?

16 **A** I never saw a gun.

17 **Q** On direct I think you just testified that you thought
18 he might have a gun?

19 **A** He might have a weapon, yes.

20 **Q** Equally, he might not have had a weapon, right?

21 **A** He had his hands in his pockets. So whether he had a
22 weapon or not, I was not going toward him. I wasn't
23 going to do anything.

24 **Q** Right. Because you didn't know?

25 **A** He could have.

- 1 Q Right. He could have had something?
- 2 A Mm-hmm (affirmative).
- 3 Q But he might not have?
- 4 A Correct.
- 5 Q Okay. He never made any threats to you?
- 6 A No, ma'am.
- 7 Q In fact, the first time you realized anything was
8 going on, you said you heard Sabrina say something
9 loud?
- 10 A Yes, ma'am.
- 11 Q Something about money?
- 12 A Yeah.
- 13 Q And at that time you were how far away from her and
14 my client? How far away were you standing?
- 15 A It was maybe about three feet, three or four feet.
- 16 Q Okay. And you said when he was leaving he still had
17 his hand in his pocket?
- 18 A Yes, ma'am.
- 19 Q His right hand?
- 20 A I'm not sure which hand. I know he had one of his
21 hands in his pocket.
- 22 Q One of his hands in his pocket. As it relates to
23 that, you filled out a robbery questionnaire, right?
- 24 A Yes, ma'am.
- 25 Q An officer asked you about what happened that day?

1 A Yes, ma'am.

2 Q Next to the weapon or type of weapon you wrote "none
3 seen"?

4 A Right.

5 Q Which is what you're saying today. You never saw a
6 weapon?

7 A Right.

8 Q And next to "weapon was held in", it gives you a spot
9 to circle right, left or both hands?

10 A Mm-hmm (affirmative).

11 Q And you didn't circle anything there, right?

12 A (Nods head affirmatively).

13 Q You didn't circle something in his pocket, his right
14 hand?

15 A I didn't know I had to say something that was in his
16 hand.

17 Q But you didn't answer that question at all, right?

18 A (Nods head affirmatively).

19 Q After he left the store, that's when Sabrina told you
20 what happened?

21 A Yeah.

22 Q That's when you really knew what had happened?

23 A Yeah. I had --

24 Q Up to that -- I'm sorry.

25 A Go ahead.

1 Q Up to that point you didn't know what had occurred?

2 A Right.

3 MS. DAVIS: Beg the Court's indulgence. No
4 further questions, Your Honor.

5 THE COURT: Ms. McDuffie. Solicitor.

6 REDIRECT EXAMINATION

7 BY MS. MCDUFFIE

8 Q Mr. Johnson, did the defendant act like he had a
9 weapon?

10 A Yes, ma'am.

11 Q How?

12 A With his hand in his pocket, I suspected that he had
13 something because when he was walking out the store
14 he still had his hands in his pocket. So that's
15 really the reason why I didn't do anything. When he
16 was walking out he was I guess trying to rush to get
17 out.

18 Q And you couldn't see through his jacket pocket, could
19 you?

20 A I couldn't see through it.

21 Q You couldn't tell if it was his gun, his hand, a
22 knife? You couldn't tell what it was?

23 A No, ma'am.

24 Q What did you believe it was?

25 A A weapon. I'm not really sure what type of weapon,

1 but it didn't really matter at that point in time
2 because either way I could have got hurt if I tried
3 anything.

4 Q And you told the police that you didn't see a weapon,
5 but did you tell them that you thought he had one?

6 A Yes, ma'am.

7 Q Based on what?

8 A Based on his hands being in his pocket.

9 Q And after he left the store, why did you lock the
10 door and hide in the middle of the store?

11 A Just in case he tried to come back.

12 Q To do -- to --

13 A To do anything.

14 Q And you believed that the defendant had a weapon?

15 A Yes, ma'am.

16 Q Based on ...?

17 A His hands being in his pocket.

18 MS. MCDUFFIE: Nothing further, Your Honor.

19 THE COURT: Anything further?

20 MS. DAVIS: Nothing further, Your Honor.

21 THE COURT: You may come down, sir. Thank you
22 very much. May this witness be excused? Without
23 objection. You're free to go, sir. Thank you very
24 much. All right, ladies and gentlemen of the jury.
25 Let's take a short break. It's time for our morning

1 break. Again, don't discuss the case while you're in
2 the jury room. And just relax for a few minutes.
3 We'll call you when we're ready. Thank you very
4 much. Just have a short break.

5 (Jury out at 11:13 a.m.)

6 **THE COURT:** We'll stand at ease for about ten
7 minutes. Or fifteen.

8 (Whereupon, a break is taken)

9 (WHEREUPON, State's Exhibit No. 31 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 32 is marked for
12 identification.)

13 (WHEREUPON, State's Exhibit No. 33 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 34 is marked for
16 identification.)

17 (WHEREUPON, State's Exhibit No. 35 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 36 is marked for
20 identification.)

21 (WHEREUPON, State's Exhibit No. 37 is marked for
22 identification.)

23 (WHEREUPON, State's Exhibit No. 38 is marked for
24 identification.)
25

1 (WHEREUPON, State's Exhibit No. 39 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 40 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 41 is marked for
6 identification.)

7 (WHEREUPON, State's Exhibit No. 42 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 43 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 44 is marked for
12 identification.)

13 (WHEREUPON, State's Exhibit No. 45 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 46 is marked for
16 identification.)

17 (WHEREUPON, State's Exhibit No. 47 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 48 is marked for
20 identification.)

21 (WHEREUPON, State's Exhibit No. 49 is marked for
22 identification.)

23 (WHEREUPON, State's Exhibit No. 50 is marked for
24 identification.)

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1 (WHEREUPON, State's Exhibit No. 51 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 52 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 53 is marked for
6 identification.)

7 (WHEREUPON, State's Exhibit No. 54 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 55 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 56 is marked for
12 identification.)

13 (WHEREUPON, State's Exhibit No. 57 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 58 is marked for
16 identification.)

17 (WHEREUPON, State's Exhibit No. 59 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 60 is marked for
20 identification.)

21 (WHEREUPON, State's Exhibit No. 61 is marked for
22 identification.)

23 (WHEREUPON, State's Exhibit No. 62 is marked for
24 identification.)

25

1 (WHEREUPON, State's Exhibit No. 63 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 64 is marked for
4 identification.)

5 **THE COURT:** Ready for the jury, counsel?

6 **MS. CAMPBELL:** The State's ready.

7 **THE COURT:** Bring the jury, please. Bring the
8 jury, please. Counsel, approach the bench, please.

9 (Jury in at 11:32 a.m.)

10 **THE COURT:** All right, Solicitor. Call your
11 next witness.

12 **THE BAILIFF:** The jury is all present.

13 **MS. CAMPBELL:** The State calls Martha Darnell.

14 MARTHA DARNELL, after being duly sworn,
15 testifies as follows:

16 **THE CLERK:** Thank you. Have a seat in the
17 witness stand. Give the court reporter your name.

18 DIRECT EXAMINATION

19 **BY MS. CAMPBELL**

20 **Q** Can you just say your name for the record?

21 **A** Martha Darnell.

22 **Q** And, Ms. Darnell, where are you employed?

23 **A** Fairfield County School District as a school nurse.

24 **Q** As a school nurse? And do you live here in the
25 Columbia area?

1 **A** Yes, I do.

2 **Q** And back in May of 2007, were you living at

3 ?

4 **A** I was.

5 **Q** And who all lived there with you back then?

6 **A** My husband, Mitchell Darnell, and my daughter.

7 **Q** And how old was your daughter back then?

8 **A** Seventeen.

9 **Q** I want to turn your attention to May the 7th of 2007.

10 Were you home that morning?

11 **A** Was I what?

12 **Q** Were you at home that morning?

13 **A** I was.

14 **Q** Do you have a little bit of a hard time hearing?

15 **A** Sometimes.

16 **Q** Okay. And that morning what were you doing?

17 **A** I had gone out of my house to take the trash out to
18 the front curb, and I was coming back in I had
19 stooped down to shake off, clean off my doormat
20 before I reentered the house. And I was stooped
21 down, and all of a sudden out of my peripheral vision
22 I saw this person standing there. And I looked up
23 and there was a black man there. And he -- you know,
24 he looked -- his eyes were real glazed over and he
25 was very frightening looking. And I asked him, I

1 said, "What are you doing here?" And he mumbled
2 something and I could not understand him.

3 Q Let me slow you down a little bit.

4 A Okay.

5 Q Are you a little nervous today?

6 A A little bit.

7 Q You said that you'd gone out in the front yard. Was
8 it light that day?

9 A Yes.

10 Q And you went out to take the trash out. Was it trash
11 day?

12 A Yes.

13 Q What day of the week was it?

14 A Monday.

15 Q And as you were coming back inside the house, in the
16 front of your house, did you go to the front door?

17 A Yes.

18 Q And how big is your front yard?

19 A Oh, it's not very big.

20 Q In fact, where in your yard do you all park your
21 cars?

22 A There is a doubled paved area right in front of the
23 house, and that's where we park our cars.

24 Q And that day did you all have any cars parked in
25 front of your house?

- 1 **A** Yes. The Toyota van and the Toyota Camry.
- 2 **Q** And who all was at home that morning?
- 3 **A** My husband, Mitchell Darnell, myself, and my
- 4 daughter.
- 5 **Q** And where was your husband when you went out to take
- 6 the trash out?
- 7 **A** He was sitting at the dining room table.
- 8 **Q** And where was your daughter?
- 9 **A** She was in her bedroom asleep.
- 10 **Q** And about what time of the morning was it when you
- 11 went out there? Do you recall?
- 12 **A** Shortly after 10.
- 13 **Q** You mentioned that you went out and put the Herbie --
- 14 whatever they're called -- Herbie Curbie?
- 15 **A** Put the trash in the trash can.
- 16 **Q** Trash out on the street. And then you came back up
- 17 to your front door step. Is that correct?
- 18 **A** Correct.
- 19 **Q** And then you did what?
- 20 **A** I stooped down to -- you know, squatted down, stooped
- 21 down and picked up my doormat and was shaking it. I
- 22 stood back up and was shaking it off and put it back
- 23 down.
- 24 **Q** And that's when you noticed a man beside you?
- 25 **A** When I was down, yes; putting it back down.

1 Q And at that point you stood up?

2 A Correct.

3 Q And tell this jury again what you observed?

4 A Okay. There's a man standing there. His eyes looked
5 kind of wild and he was very frightening looking.
6 And I became scared and I asked him what he was doing
7 there. And he mumbled something. I couldn't
8 understand him. And then he started approaching me
9 and I put my arm out. I said, "You need to leave
10 now." And he pushed my arm aside.

11 And I knew my husband was sitting at the dining
12 room table. And it's not too far on the other side
13 of our front door. And so I reached for my front
14 storm door and opened the door to try to go in to try
15 to lock it. And at the same time I was calling for
16 my husband. I said, "Mitch, I need help." And he
17 started toward the front, but in the meantime the
18 man --

19 Q Who started towards the front?

20 A My husband --

21 Q Started walking down the hall towards you?

22 A -- started walking down the hallway toward the front
23 door.

24 Q And at this point are you in the front doorway?

25 A No. I've opened the door and I've called for help

1 from him, and I'm starting to go in the house. And
2 the man pushes me aside and goes in ahead of me. And
3 at that point -- and he was outside. He had his hand
4 in his pocket like he had a weapon. And so when I
5 went inside -- I mean, when he went inside, he
6 demanded the keys from my husband. He said, "I want
7 the keys."

8 **MS. SINGLETARY:** Objection.

9 **A** "Give me to keys to your car now." He had his hand
10 in his pocket..

11 **MS. CAMPBELL:** Wait just a second. She
12 objected.

13 **THE COURT:** Hold on just a second. That was the
14 defendant's statement, wasn't it? What's the
15 objection?

16 **MS. SINGLETARY:** The objection is hearsay.

17 **THE COURT:** But if the defendant said it, it's
18 not hearsay.

19 **MS. SINGLETARY:** Your Honor, I understand.

20 **THE COURT:** Okay. Overruled.

21 **Q** Let me stop you for a second. You said that you're
22 out. And you mentioned that you saw that he had a
23 hand in his pocket?

24 **A** Yes. He had on black jeans and he had his hand in
25 his pocket, and there was an object protruding from

1 his pocket.

2 Q Okay. And you said he had his hand -- was it one
3 hand or both hands?

4 A His right hand was in the jeans of his black pocket.

5 Q And you said --

6 A Black jeans pocket, yeah.

7 Q And you said that you saw something protruding?

8 A Yes.

9 Q Could you tell what it was?

10 A No.

11 Q What did you think it was?

12 A I thought he was armed.

13 Q And did you see that before he actually pushed his
14 way past you?

15 A Yes.

16 Q So he is standing next to you. You're out and you go
17 and you open the door and you yell for your husband?

18 A Right.

19 Q And you yell "Help me"?

20 A Yeah. I said, "Mitch, I need your help."

21 Q And then at that point what was your intention?

22 A To go in the house and lock the door.

23 Q Were you able to do that?

24 A No. He pushed me --

25 Q Why not?

1 **A** He pushed me aside and he entered my home. And he
2 still had his hand in his pocket. And his back was
3 to me and my husband was facing him. And he demanded
4 the keys from my husband.

5 **Q** And --

6 **A** He said, "Give me your car keys now."

7 **Q** -- what did your husband do?

8 **A** He promptly gave him the car key.

9 **Q** What were you doing at this point?

10 **A** I was still standing at the storm door with the door
11 open. And my husband said, you know, "Call for
12 help." And so there were two men across the street
13 working on a retaining wall. And I said -- you know,
14 I screamed "help" and for someone to call 911.

15 **Q** What was going through your mind as he entered your
16 house?

17 **A** I didn't know what was going to happen once he got in
18 the house. I was much more frightened, you know,
19 because I knew he had something in his pocket. And
20 I -- it appeared he had a gun because he kept, you
21 know, demanding things.

22 **Q** And where was your daughter sleeping at that point?

23 **A** In her bedroom which is just a -- the entrance to her
24 bedroom was just a few feet past where Mitch had
25 stopped. And her door was open.

1 Q When the man said, "Give me the keys" to your
2 husband --

3 A He said, "Give me your car keys now."

4 Q "Now". And did your husband comply?

5 A He did.

6 Q Immediately?

7 A Yes. He gave him his whole set of keys.

8 Q And at that point what did the man do?

9 A He turned around and walked back past me and went out
10 the door and said, "Which car?" And Mitch told him
11 the Camry. And he proceeded to go over to the
12 driver's side of the Camry and got in the car.

13 Q And then what happened?

14 A He -- once he got in, he sped out. He backed out,
15 you know, floored it, backed out, and then did the
16 same thing and took off the opposite direction.

17 Q You mentioned that Mitch had told you to yell for
18 help?

19 A Yes.

20 Q And did you do that when you were standing in the
21 doorway?

22 A Yes.

23 Q Was the door still open at that point?

24 A Yes.

25 Q And why didn't you close the door after the man went

1 inside?

2 **A** Because I was afraid of what might happen. I mean,
3 he was standing there with his hand in his pocket
4 like he had a weapon and he was facing my husband and
5 demanding the keys to our car. And, you know, I
6 didn't know what was going to happen at that point.

7 **Q** As he exited and started towards the car, you
8 mentioned that you yelled to the men across the
9 street?

10 **A** I yelled and they heard.

11 **Q** Okay.

12 **A** I knew they were there in my subconscious. I knew
13 they were there; but, I mean, I didn't specifically
14 look at them and yell. I just yelled and they heard.
15 And the man started coming across the street. About
16 the time he was about in the middle of the road, he
17 had a shovel and --

18 **Q** And that's the man who had been working across the
19 street?

20 **A** Correct.

21 **Q** And the person that was robbing you --

22 **A** Had come out and was going around to get into the
23 Camry. And he still had his hand in his pocket. And
24 I told the man, I said, "You'd better stop." I said,
25 "I don't know if he's armed." I said, "You need to

1 stop." Because I didn't want him to come over and be
2 faced with danger that we were already in.

3 Q And you thought he was armed?

4 A Yes. I mean, there was no doubt in my mind that he
5 was armed, the way he was acting.

6 Q Once he got in the car and sped off, what did you do?

7 A Well, my daughter came out. And she had been on the
8 call with 911. She had called 911. She had woken up
9 during the commotion and heard, and she got up and
10 got in her closet; she didn't come out, and called
11 911. And so when they left, when he left and she
12 knew he was gone, we told her, you know, he's gone.
13 And then she came out. And I had to talk with the
14 people on 911. And then after all that was over, I
15 collapsed and my husband caught me in the hallway.

16 Q Were you frightened?

17 A Yes.

18 Q That day did you make contact with Investigator Ellis
19 from the Sheriff's Department?

20 A Yes.

21 Q This is Investigator Ellis here?

22 A Mm-hmm (affirmative).

23 Q And did you give him the information about what had
24 happened to you?

25 A Yes.

1 Q Did you also give him a physical description of the
2 defendant?

3 A Yes.

4 Q Had you ever seen him before?

5 A No.

6 Q That afternoon did Investigator Ellis come back to
7 your house after getting your initial information?

8 A He did.

9 Q And when he came back, did he show you some
10 photographs?

11 A He did.

12 Q And I'm going to show you what's been marked as
13 State's Exhibit No. 4. Do you recognize that?

14 A Yes.

15 Q And on May the 7th, on the afternoon of May the 7th,
16 are those the photographs that he showed you that
17 day?

18 A That is correct.

19 Q And were you able to recognize anyone at that point?

20 A Not make a positive identification, no.

21 Q And did you give that information to him?

22 A I did.

23 Q At any time did he tell you who to pick?

24 A No.

25 Q At any time afterwards did he tell you you should

1 have picked anyone?

2 **A** No.

3 **Q** Several days later, on May the 10th -- Your Honor, at
4 this time we'd offer State's Exhibit 4 into evidence.

5 **COURT REPORTER:** It's already in.

6 **Q** Oh. Thanks then. Several days later did Sergeant
7 Isenhoward come and show you some photographs?

8 **A** He did.

9 **Q** And where did that take place?

10 **A** At my home in my kitchen.

11 **Q** And who was home that day when he came by to show you
12 some more photographs?

13 **A** Who was home?

14 **Q** (Nods head affirmatively)

15 **A** Myself and my husband.

16 **Q** And was your husband present when you were shown the
17 photographs?

18 **A** No. He was taken to another room.

19 **Q** And, in fact, were you present when your husband was
20 shown any photographs?

21 **A** No.

22 **Q** And when Sergeant Isenhoward showed you these
23 photographs -- I show you State's Exhibit No. 5 --
24 when you first saw this that day, did it have any
25 writing on it, any handwriting?

- 1 **A** No.
- 2 **Q** Just the printed part?
- 3 **A** Just the photos.
- 4 **Q** The photos?
- 5 **A** And the printing, the typed printing.
- 6 **Q** And when he showed you those photos, did he indicate
- 7 to you whether or not you had to pick somebody out?
- 8 **A** Did he what?
- 9 **Q** Did he tell you you had to pick someone?
- 10 **A** No.
- 11 **Q** Did he tell you which one to pick?
- 12 **A** No.
- 13 **Q** And, in fact, when you looked at those six
- 14 photographs, did you recognize anyone?
- 15 **A** Yes.
- 16 **Q** And who did you recognize?
- 17 **A** The second photo on the top.
- 18 **Q** And at that point did you then circle it and put your
- 19 initials there?
- 20 **A** I did.
- 21 **Q** And why did you recognize that person?
- 22 **A** Because he's the man that came to my house and acted
- 23 like he had a weapon and entered my home and stole
- 24 our vehicle.
- 25 **Q** And then you signed off down here after this was

1 filled out?

2 **A** Correct.

3 **Q** And did anyone influence your decision in any part
4 about who you recognized?

5 **A** No. Definitely not.

6 **MS. CAMPBELL:** Your Honor, at this time we'd
7 offer State's Exhibit No. 5.

8 **THE COURT:** Over the defendant's objection.

9 (WHEREUPON, State's Exhibit No. 5 is admitted
10 into evidence.)

11 **Q** Several days after this occurred, did you all recover
12 your vehicle?

13 **A** The next day.

14 **Q** The next day?

15 **A** (Witness nods head affirmatively).

16 **Q** And where did your vehicle have to be recovered from?

17 **A** It was impounded in Raleigh.

18 **Q** North Carolina?

19 **A** North Carolina.

20 **Q** And when your vehicle was returned to you, what shape
21 was it in?

22 **A** The right passenger window was not operating, and
23 the -- all of our identification and registration and
24 all those type of things had been -- everything in
25 our glove compartment had been cleaned out and thrown

1 away, maps and everything. And there were cigarette
2 burns in several places on the seats, back and front.
3 And there was like lots of socks, bags, a bag with
4 four or five pair of socks and odd and end stuff in
5 the car. Just kind of trashed out.

6 Q I'm going to show you what's been marked as State's
7 Exhibit No. 21. Does that show your front door?

8 A That is.

9 Q State's Exhibit No. 22, what does that show?

10 A It shows my front door and my doormat where I was
11 stooping down.

12 Q State's Exhibit No. 23?

13 A That's our entranceway into our home and our hall.
14 And you can see the chair at the dining room table
15 Mitch had pushed back to ...

16 Q I'll go back to that. And state's Exhibit 24 and 25?

17 A This is the 1998 Toyota Camry. It was parked there
18 in our drive. And that's the one that the defendant
19 stole that day.

20 Q And just for the record, these were taken recently of
21 the Camry where it would have been parked?

22 A Yes.

23 Q Okay.

24 MS. CAMPBELL: Your Honor, at this time we'd
25 offer them into evidence.

1 **MS. SINGLETARY:** Without objection, Your Honor.

2 **THE COURT:** Without objection.

3 (WHEREUPON, State's Exhibit No. 22 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 23 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 24 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 25 is admitted
10 into evidence.)

11 **Q** And State's Exhibit No. 22, does that show the front
12 stoop where you were working with the mat that
13 morning?

14 **A** Yes.

15 **Q** And where is it that you would have been stooping?

16 **A** Right there at the doormat. Right in front of the
17 doormat.

18 **Q** Right there?

19 **A** Mm-hmm (affirmative).

20 **Q** And where would he have been standing?

21 **A** He was standing, you know, --

22 **Q** In front of the bush?

23 **A** -- within arm's length away. Yeah. Right there on
24 the concrete.

25 **Q** And that's when you first came in contact with the

1 man that robbed you that day?

2 A That is correct.

3 Q Was it out there that you first noticed he had his
4 hand in his pocket and something protruding?

5 A Yes.

6 Q And this is the actual storm door?

7 A That is.

8 Q And can you see through that?

9 A Yes.

10 Q I want to show you State's Exhibit No. 23. What does
11 that show?

12 A That's our hallway, our foyer and out hallway. And
13 then that's the door to my daughter's bedroom. And
14 my husband got a little bit further than that outlet
15 in the hallway, and he was standing here facing him.

16 Q Okay.

17 A The guy that stole the car.

18 Q So they came face-to-face before they got to your
19 daughter's bedroom door?

20 A Yes.

21 Q And you can actually see the chair that Mitch was
22 sitting in that morning?

23 A Yes. He pushed back that chair.

24 Q And then State's Exhibit No. 25, what does that show?

25 A It shows the front of the house with both the

1 vehicles parked on the driveway and --

2 Q And is that how the vehicles were parked that day?

3 A Mm-hmm (affirmative).

4 Q Do you all still have the Toyota vehicle?

5 A We have both. We have all three. My daughter drives
6 the Camry, but ...

7 Q And is that how they were parked that day?

8 A Or two. We have a third vehicle now because she
9 keeps the Camry.

10 Q Is she in school?

11 A Not at the present time.

12 Q Okay. Beg the Court's indulgence. The person that
13 robbed you, that you thought had a gun, do you see
14 him here in the courtroom?

15 A Yes.

16 Q Can you point him out for the jury?

17 A Yeah. He's sitting over at the defendant's table
18 with -- to the left of the defense attorney.

19 MS. CAMPBELL: Your Honor, may the record
20 reflect she's identified the defendant?

21 THE COURT: The record will so reflect the
22 witness identified the defendant. Cross examination.

23 MS. SINGLETARY: Thank you, Your Honor.

24 CROSS EXAMINATION

25 BY MS. SINGLETARY

- 1 Q Good morning, Ms. Darnell.
- 2 A Good morning.
- 3 Q Now, if I'm not talking loud enough, make sure you
- 4 let me know. But I've pretty much got a loud voice.
- 5 Okay?
- 6 A Thank you.
- 7 Q Okay. You testified a few minutes ago that you were
- 8 outside of your home on May the 7th?
- 9 A Correct.
- 10 Q And that while you were outside of your home a black
- 11 gentleman walked up beside you?
- 12 A A black man walked up. Yes.
- 13 Q And at that point when he walked up, you're saying he
- 14 had his hands in his pocket?
- 15 A Yes.
- 16 Q Okay. And at that point you told him, "What are you
- 17 doing here? Get away."
- 18 A No. I asked him, "What are you doing here?"
- 19 Q But you asked him, "What are you doing here?"
- 20 A Well, when I stood up from my doormat, because he --
- 21 I mean, he wasn't there one second; the next second
- 22 he was there in my peripheral vision, and it was
- 23 frightening. And I stood up and said, "What are you
- 24 doing here?"
- 25 Q So your exact words were, "What are you doing here?"

1 **A** And he had a wild look in his eye. And he was
2 frightening looking.

3 **Q** Your exact words was, "What are you doing here?"

4 **A** Right. But that's what I observed, that he was
5 frightening looking.

6 **Q** I just want a simple yes or no answer, whether or not
7 those were your exact words. Okay?

8 **A** Those are my words.

9 **Q** Okay. And at that point you also testified -- and I
10 want to get this right -- that you testified that you
11 saw something protruding out of his pocket?

12 **A** His -- his hand was in his black jeans pocket and
13 there was an object protruding.

14 **Q** What color was that object?

15 **A** I couldn't see inside his pocket. But ...

16 **Q** But would you agree if an object is protruding out of
17 someone's pocket that object is coming; maybe
18 halfway, but it's coming out of that person's pocket?

19 **A** No. No. It was protruding. It wasn't -- it had not
20 broken the cloth on the jean pocket. It was just
21 protruding and it was covered with his jean pocket.
22 There was nothing showing.

23 **Q** Okay. There was nothing showing. So you didn't see
24 a gun or anything?

25 **A** No. But I believed he had one.

1 Q But my question is, did you see a gun?

2 A I did not see a gun.

3 Q Okay.

4 A But I believed he had one.

5 Q And you didn't see any other weapons in his pocket,
6 did you?

7 A I didn't see anything inside his pocket.

8 Q Yes. You didn't see anything inside his pocket.

9 Now, when you saw my client, what type of shirt did
10 he have on?

11 A Like a navy knit jersey with some type of gold on it.

12 Q So he had on a --

13 A And it was sleeveless.

14 Q I'm sorry for interrupting you. He had on a jersey?

15 A It was a knit shirt.

16 Q He had on a knit shirt?

17 A Yes.

18 Q Okay. He didn't have on a jacket?

19 A No.

20 Q Okay. Now, you said when Mr. Williams walked up to
21 you he mumbled something to you?

22 A I could not understand what he said. He said
23 something. I could not understand what he said.
24 That is correct.

25 Q Was it in a low voice?

1 **A** It was a mumble to me.

2 **Q** Okay. It was a mumble. And let's go back to
3 something protruding out of his pocket. You
4 testified that you could not tell what it was. Is
5 that correct?

6 **A** I believed it was a gun.

7 **Q** But you just testified on direct that you could not
8 tell what it was?

9 **A** I couldn't see inside his pocket.

10 **Q** So you couldn't tell what it was?

11 **A** No. I mean, I couldn't see inside his pocket, you
12 know. But I know I believed it was.

13 **Q** Okay. But you --

14 **A** And I know that, you know -- that's all.

15 **Q** You couldn't see inside his pocket. And you said
16 that my client -- you were going to the screen door.
17 My client --

18 **A** It's a storm door, a glass storm door.

19 **Q** I'm sorry. Glass storm door. He pushed you to the
20 side?

21 **A** Well, before that, he -- when I told him -- you know,
22 I asked him what he was doing here, he started coming
23 toward me and I put out my left hand to -- you know,
24 to me that indicates stop, don't come any closer. He
25 kept coming. He pushed my hand down. And then I

1 reached with my right hand to my front storm door to
2 open it because I knew my husband was sitting right
3 in there at the dining room table to call for help
4 and to try to get inside my house and lock the door.
5 And when I tried to go inside my home, he pushed me
6 aside and entered in ahead of me.

7 Q He pushed you aside?

8 A Yes, he did. Shoved me more like.

9 Q More frankly, he shoved you to the side. And you
10 also stated at that point that he went inside the
11 home at that point?

12 A He did.

13 Q And you actually -- and, Your Honor, if I may
14 approach?

15 **THE COURT:** Yes, ma'am.

16 Q You were actually shown several pictures. But I
17 would like to direct your attention to State's
18 Exhibit No. 23. And you stated that this is the
19 front door of your home?

20 A Correct.

21 Q And --

22 A But it's got -- there is a glass door before you
23 enter that. Glass storm door.

24 Q Okay. And where are you located at at this point?

25 A I am out on the -- beyond the -- I have got the storm

1 door opened, standing out here with the storm door
2 open.

3 Q Okay. So you have the storm door open. And --

4 A Because I was trying to go in ahead of him; but he,
5 you know, shoved me aside.

6 Q And so where is my client at at this point?

7 A My husband is just beyond this outlet right here, and
8 he is standing right in here.

9 Q So --

10 A And your client is standing here. My husband is on
11 the other side. And your client is facing my
12 husband.

13 Q Okay.

14 A And my husband is looking -- like he would be looking
15 out the front door.

16 Q So he's looking at you. Now, at this point did my
17 client attempt to go throughout your home?

18 A No. He demanded -- he had his hand in his pocket
19 like he had a gun and he demanded the car keys from
20 my husband. He said, "Give me the keys to your car
21 now."

22 Q Now, did he --

23 A He had a purpose for being there. He wanted to steal
24 our car.

25 Q Ma'am, did he go throughout your entire home?

- 1 **A** No, he did not.
- 2 **Q** You said that when my client came in he demanded the
3 keys?
- 4 **A** He did.
- 5 **Q** And you gave him the keys?
- 6 **A** No. My husband gave him the keys.
- 7 **Q** Well, your husband gave him the keys?
- 8 **A** Yes.
- 9 **Q** And at that point my client leaves?
- 10 **A** He gets the keys, he turned around and he leaves.
11 Correct.
- 12 **Q** But before he leaves he stops and asks you which car
13 the keys belong to?
- 14 **A** No. He asked my husband which car the key -- which
15 car the keys belonged to.
- 16 **Q** But you were standing right there?
- 17 **A** Right. But my husband responded, the Toyota Camry.
- 18 **Q** Okay. Now, the actual solicitor reminded you that
19 you spoke to Investigator Ellis on that day?
- 20 **A** Yes.
- 21 **Q** And that you also spoke to Investigator Isenhoward?
- 22 **A** Correct.
- 23 **Q** Now, when you spoke to them, did you ever tell them
24 that you saw a protruding object in my client's
25 pocket?

1 **A** I told him -- I told them that he had his hand in his
2 pocket like it was a gun.

3 **Q** Did you tell them that my client had a protruding
4 object in his pocket?

5 **A** I don't know that I used the word "protruding", but I
6 told them he had his hand in his pocket, jean pocket
7 like it was a gun.

8 **Q** You told them that he had his hands in his pocket
9 like it was a gun. Let me refer to your
10 questionnaire that you actually gave the police
11 officers on that day. Do you remember the
12 questionnaire --

13 **A** Yes.

14 **Q** -- and some of the questions that were on there?

15 **A** Well, they asked them to us and they wrote the
16 answers down. We didn't actually see the
17 questionnaire.

18 **Q** Do you need to see the questionnaire today?

19 **A** It's fine. I'll look at it.

20 **MS. SINGLETARY:** Your Honor, may I approach?

21 **THE COURT:** Sure.

22 **Q** Now, you just testified that you told the police
23 officers that my client had his hands in his pocket
24 like he had a gun?

25 **A** Right.

1 Q Now, on that questionnaire where it says "type of
2 weapon", what's written down right there?

3 A "Unknown".

4 Q And if you look further down -- and, Your Honor, if I
5 may approach again?

6 **THE COURT:** Sure.

7 Q And I want to direct you right here.

8 A Mm-hmm (affirmative).

9 Q Where it says "miscellaneous info", what does it say?

10 A "Put right hand in pocket as if he had a weapon."

11 Q "Put right hand in pocket as if he had a weapon."

12 Thank you. It doesn't say anything about a specific
13 weapon, like a gun, does it?

14 A No. But, I mean, I just -- you know, he appeared he
15 had a weapon in his pocket.

16 Q Beg the Court's indulgence, Your Honor. So you made
17 an assumption that a gun was in my client's pocket?

18 A No. It appeared that he had a weapon or -- of some
19 type. A gun. I don't know what it was, but it
20 appeared he had a weapon in his pocket. I didn't
21 care if it was a gun, a knife. I didn't care what it
22 was. He came to us as if he were armed and entered
23 our home and demanded our car.

24 Q But --

25 A He presented himself as being armed. It doesn't

1 matter what type of weapon it was. He appeared to be
2 armed.

3 **Q** But you know that according to the law --

4 **MS. CAMPBELL:** Objection, Your Honor.

5 **MS. SINGLETARY:** All I said was "according to
6 the law".

7 **THE COURT:** I haven't even heard the question.

8 **MS. CAMPBELL:** "According to the law?"

9 **THE COURT:** I have not heard the question.

10 **Q** That you know that according to a law that there are
11 certain things that have to be proven?

12 **A** All I can say is that he appeared --

13 **Q** It's a simple yes or no.

14 **A** He appeared to be armed and --

15 **MS. SINGLETARY:** Your Honor.

16 **A** -- he was very frightening.

17 **MS. SINGLETARY:** Your Honor, I withdraw my last
18 question.

19 **THE COURT:** All right. Thank you. Redirect.

20 **MS. CAMPBELL:** Thank you.

21 REDIRECT EXAMINATION

22 **BY MS. CAMPBELL**

23 **Q** Back when you were being robbed and you thought that
24 he had a weapon or a gun or whatever, did you know
25 what the law was?

1 **A** Not particularly. I wasn't thinking about the law.
2 I was frightened.

3 **Q** And --

4 **A** I mean, I was reacting to the situation.

5 **Q** And when you talked to the police, you specifically
6 told them about his hand in his pocket as if he had a
7 weapon?

8 **A** Yes.

9 **Q** And in your --

10 **A** Because I believed he had a weapon.

11 **Q** Yes, ma'am. And a gun, is that a weapon?

12 **A** Yes.

13 **Q** And --

14 **A** A knife is a weapon.

15 **Q** -- a type of weapon is a gun, correct?

16 **A** Correct.

17 **Q** And you're telling this jury what you thought and
18 what you told the police?

19 **A** I'm telling them what happened that day and it
20 appeared he had a gun, a weapon in his pocket,
21 something. Just the way he presented himself.

22 **Q** Thank you.

23 **THE COURT:** Anything else?

24 **MS. SINGLETARY:** Your Honor, I have no further
25 questions of this witness.

1 **THE COURT:** Thank you. You may come down,
2 ma'am. Is this witness free to go?

3 **MS. SINGLETARY:** Yes, Your Honor.

4 **THE COURT:** Without objection. Next witness.

5 **MS. MCDUFFIE:** The State calls Billy Lorimer.

6 WILLIAM R. LORIMER, after being duly sworn,

7 testifies as follows:

8 **THE CLERK:** Thank you. Have a seat in the
9 witness stand and give the court reporter your name.

10 **THE WITNESS:** William Rodney Lorimer.

11 DIRECT EXAMINATION

12 **BY MS. MCDUFFIE**

13 **Q** Good afternoon, Mr. Lorimer.

14 **A** Hey.

15 **Q** Mr. Lorimer, where are you currently employed?

16 **A** Currently I'm employed with Palmetto Design
17 Associates.

18 **Q** And where were you employed in May of 2007?

19 **A** I was self-employed, Decks & Such, Incorporated.

20 **Q** And what did you do?

21 **A** I did repairs, remodeling, building, construction.

22 **Q** And did you employ a man by the name of Francisco
23 Chacon?

24 **A** Yes, ma'am.

25 **Q** And on May the 7th of 2007, where you working?

1 **A** I don't remember the exact location. It was in
2 Northeast Columbia off Polo Road, small duplexes.
3 There was a house that had some damages to the
4 outside. I repaired it. Then I went back and
5 repaired the retaining wall on the side of the road.

6 **Q** On Deer Hound Trail?

7 **A** Yes, ma'am.

8 **Q** And on May the 7th of 2007, who was working with you?

9 **A** Francisco.

10 **Q** Was anyone else working with you?

11 **A** No, ma'am.

12 **Q** And what did you observe around 10:30 in the morning
13 on May the 7th, 2007?

14 **A** Well, we were working on the retaining wall and not
15 really paying a whole lot of attention to anything
16 else. But I happened to hear -- first I thought it
17 was laughing very loud across the street. And I just
18 kind of glanced. And I saw the lady that lived in
19 the house and another fellow, gentleman, walking in
20 the house. And then I realized, you know, was she
21 laughing? And shortly after that she ran out and she
22 said, "Somebody call the police." And so I picked up
23 my cellphone and I started to dial 911 and tried
24 to -- went to go get the license plate number. She
25 said, "He's stealing my car." And so, you know,

1 shortly after that the guy got in the car and drove
2 off. I didn't really have a chance to do a lot more.

3 **Q** Did you have an opportunity to observe him, his
4 physical traits, characteristics?

5 **A** Yeah. He was a -- he was a black fellow, probably,
6 you know, fairly young. I don't know how old. Tall,
7 slender.

8 **Q** Did you have an opportunity to get a good look at
9 him?

10 **A** Not really. No.

11 **Q** And were you able to pick him out of a photo line-up?

12 **A** No, ma'am.

13 **Q** And when she yelled for help, what did you do?

14 **A** I was trying to call the police.

15 **Q** And did you observe Francisco do anything?

16 **A** Yeah. Francisco went over there and confronted the
17 man and, you know, asked him if he knew what he was
18 doing. The man reached in his pocket like he may
19 have had a weapon of some sort; gun, knife. I don't
20 know. Francisco backed off.

21 **Q** And why did Francisco back off?

22 **A** He was in fear of his life.

23 **Q** And this is what you observed on the morning of
24 May 7th, 2007?

25 **A** Yes, ma'am.

1 Q And did you know the Darnells, the people who lived
2 across the street?

3 A No, ma'am.

4 Q And had you ever seen the defendant before?

5 A No, ma'am.

6 Q Or the person you saw?

7 A No. I never have.

8 Q I show you what's been marked as State's Exhibits 26
9 and 27. Do you recognize these?

10 A Yes. This is the house -- this is the house that we
11 were working on. That's the retaining wall. And
12 their house was right across the street. Sorry.

13 **MS. MCDUFFIE:** Your Honor, at this time the
14 State would offer 26 and 27 into evidence.

15 **MS. SINGLETARY:** Without objection, Your Honor.

16 **THE COURT:** Without objection.

17 (WHEREUPON, State's Exhibit No. 26 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 27 is admitted
20 into evidence.)

21 Q I hold up State's Exhibit 27. Can you show the jury
22 where you were and where you saw the defendant?

23 A We were right in here. This whole wall had been
24 pushed over and we dug it out and rebuilt it. And
25 the defendant was in this area walking, going into

1 this -- going into this house, a duplex, whatever you
2 call it, with the lady.

3 Q And after the defendant left in the vehicle, what
4 happened next?

5 A Well, the police came and we told them what happened.
6 Not a whole lot.

7 Q And you provided them contact information, told them
8 what happened?

9 A Right. Right.

10 Q No further questions.

11 MS. SINGLETARY: Thank you, Your Honor. Just
12 briefly.

13 CROSS EXAMINATION

14 BY MS. SINGLETARY

15 Q On the date of May the 7th, 2007, you -- is it your
16 testimony that you told the police officer -- can you
17 hear me?

18 A Yes, ma'am.

19 Q Okay.

20 A I'm sorry. I'm just making sure I see you.

21 Q No. That's fine. Did you tell the policeman who
22 arrived on that day that you saw Emmith Williams
23 reach into his pocket?

24 A Yes.

25 Q You did?

1 **A** I'm pretty sure I did.

2 **Q** You provided them with a statement?

3 **A** I'm -- I don't remember.

4 **Q** You don't remember?

5 **A** I don't remember.

6 **Q** But it's your testimony that you told the police
7 officers this on this day?

8 **A** Ma'am?

9 **Q** I'm sorry. It's your testimony -- may I approach
10 closer, Your Honor?

11 **THE COURT:** Yes, ma'am.

12 **Q** It's your testimony that you told the police officers
13 on this day that my client reached into his pocket as
14 if he had a weapon?

15 **A** I don't fully remember, to be honest with you.

16 **Q** All right. Because it happened a long time ago?

17 **A** It did happen a long time ago.

18 **Q** Yeah.

19 **A** I remember what I was doing and I remember what I
20 saw, but I don't remember everything I said.

21 **Q** Okay. And you stated that there was another
22 gentleman that was actually working with you?

23 **A** Yes, ma'am.

24 **Q** And you said that that gentleman's name was what?

25 **A** Francisco Chacon.

1 Q And Francisco approached Mr. Williams, correct?

2 A Yes, ma'am.

3 Q And at that point when Francisco approached Mr.
4 Williams, how far were you away from them?

5 A I was across the street.

6 Q You were across the street?

7 A Yes, ma'am.

8 Q And you were able to hear the conversation between
9 Mr. Williams and Francisco?

10 A Yes, ma'am.

11 Q Were they talking really, really loud?

12 A Francisco was. I didn't hear -- Mr. Williams? Is
13 that it?

14 Q Yes.

15 A I didn't hear him say anything.

16 Q You didn't hear Mr. Williams say anything?

17 A No, ma'am. But -- can I say?

18 Q Yeah. Go ahead.

19 A The homeowner, I can't remember her name across the
20 street, she said, "He's got a gun or a knife."

21 Q And she said that?

22 A Yes, ma'am.

23 Q But you didn't witness any weapon for yourself?

24 A Just his hand in his pocket.

25 MS. SINGLETARY: Okay. I have no questions,

1 Your Honor.

2 **THE COURT:** Anything further?

3 REDIRECT EXAMINATION

4 **BY MS. MCDUFFIE**

5 **Q** Any doubt in your mind that you saw his hand in his
6 pocket?

7 **A** No, ma'am.

8 **Q** And what did you believe based on that?

9 **A** I believed that he had a weapon.

10 **MS. MCDUFFIE:** No further questions, Your Honor.

11 **MS. SINGLETARY:** Your Honor, we have no
12 questions.

13 **THE COURT:** All right. Thank you very much.
14 You may come down. May this witness be excused?

15 **MS. MCDUFFIE:** Please, Your Honor.

16 **THE COURT:** Without objection.

17 **MS. CAMPBELL:** The State calls Francisco Chacon.

18 FRANCISCO CHACON, after being duly sworn,
19 testifies as follows:

20 **THE CLERK:** Thank you. Have a seat in the
21 witness stand and give the court reporter your name.

22 DIRECT EXAMINATION

23 **BY MS. MCDUFFIE**

24 **Q** Good morning, Mr. Chacon. Where are you currently
25 employed?

1 **A** At Wentworth Printing.

2 **Q** And where were you employed on May the 7th of 2007?

3 **A** I working for Mr. Billy.

4 **Q** And what were you doing for Billy?

5 **A** We did kind of construction like.

6 **Q** And did you have the opportunity to be on Deer Hound
7 Trail on May the 7th of 2007?

8 **A** Yes.

9 **Q** And what were you doing on Deer Hound Trail that day?

10 **A** Well, we was on the job because we fixing some wall.
11 And we saw what happened. Well, we hear a noise and
12 turned like that.

13 **Q** So you were fixing the wall and you heard a noise?

14 **A** (Nods head affirmatively).

15 **Q** And when you heard a noise, what did you then do?

16 **A** Well, I turning and I saw this guy running to the
17 car.

18 **Q** You saw an individual running to a car?

19 **A** Yes.

20 **Q** And what did he look like?

21 **A** A black boy.

22 **Q** And then what happened?

23 **A** Well, I have shovel in my hand. And I walk to him,
24 and I told him, "Don't do that", several times.

25 **Q** And why did you tell --

- 1 **A** But he don't listen.
- 2 **Q** And why did you tell him not to do it?
- 3 **A** Well, he got -- I think he got a key in the car for
4 the car. And -- but he run into the car and try
5 open. And I told him, "Don't do that." And I
6 thought don't take the car.
- 7 **Q** And did you hear Ms. Darnell calling for help?
- 8 **A** Yeah, I hear her.
- 9 **Q** And when you approached him, what did you have in
10 your hands?
- 11 **A** A shovel.
- 12 **Q** A shovel?
- 13 **A** (Nods head affirmatively).
- 14 **Q** And what did he do?
- 15 **A** He didn't do nothing, just open door. And he put --
16 he had, I think it's -- let me see -- his right
17 hands -- I think he had right hands on the jacket and
18 he threatened me like this, have a weapon in there or
19 something like that. I don't know sure. Is when I
20 go back.
- 21 **Q** So he had his hand in his pocket?
- 22 **A** Right.
- 23 **Q** And when you noticed that --
- 24 **A** Yeah. I didn't know what it is.
- 25 **Q** You didn't know what it was?

1 **A** No. Because I don't see it. He do it like this.

2 Well, he do it like this. And he tried to open the
3 car. But he really don't listen to when I tell him,
4 "Don't do that."

5 **Q** And when you saw his hand in his pocket, what did you
6 then do?

7 **A** Walk back.

8 **Q** Why did you walk backwards?

9 **A** Well, because really I scared that he have some gun,
10 something like that. I said, well ...

11 **Q** And based on his actions, did you believe he was
12 armed?

13 **A** I do.

14 **Q** And you backed up?

15 **A** Yes.

16 **Q** And then what happened?

17 **A** Well, he is in the car and he left.

18 **Q** And at some point in time did the police show up
19 after that?

20 **A** Well, not at that moment. They take a little while
21 to come.

22 **Q** And when the police got there, did you talk to the
23 police and tell them what you saw?

24 **A** Yes, we did.

25 **MS. MCDUFFIE:** Nothing further from this

1 witness, Your Honor.

2 **THE COURT:** Cross.

3 **MS. SINGLETARY:** Thank you, Your Honor. Just
4 briefly.

5 CROSS EXAMINATION

6 **BY MS. SINGLETARY**

7 **Q** You just testified that the person who was taking the
8 car on that day had his hands in his jacket. So
9 you're saying that that person had on a jacket on
10 that day?

11 **A** Well, I -- yeah. He do. But I don't know what kind
12 of jacket. But I think it's like a blue jacket,
13 something like that.

14 **Q** Okay. A blue jacket. Okay. And you stated that the
15 person had their right hand in that jacket and was
16 opening the car with their left hand?

17 **A** I guess. Yes.

18 **Q** Did you actually see a weapon?

19 **A** No.

20 **Q** All you saw was the --

21 **A** The hands.

22 **Q** All you saw was the hands in the pocket?

23 **A** His hands in the pocket.

24 **Q** Okay. Your Honor, I have no further questions.

25 **THE COURT:** Anything further?

1 **MS. MCDUFFIE:** No, sir, Your Honor. We'd ask
2 the witness be excused.

3 **THE COURT:** All right. The witness will be
4 excused.

5 **MS. SINGLETARY:** Objection.

6 **THE COURT:** Can come down, sir. Thank you very
7 much. You're free to go. Next witness.

8 **MS. CAMPBELL:** Thank you, Your Honor. The State
9 calls Lieutenant Elsey.

10 ANNA ELSEY, after being duly sworn, testifies as
11 follows:

12 **THE CLERK:** Thank you. Have a seat in the
13 witness stand and give the court reporter your name.

14 **THE WITNESS:** Anna Elsey, E-L-S-E-Y.

15 DIRECT EXAMINATION

16 **BY MS. CAMPBELL**

17 **Q** Lieutenant Elsey, where are you employed?

18 **A** Richland County Sheriff's Department.

19 **Q** What do you do there?

20 **A** I supervise the crime scene latent print section.

21 **Q** Can you tell this jury a little bit about your
22 qualifications and your expertise in crime scene
23 investigation?

24 **A** I graduated from the College of Charleston with a
25 Bachelor of Science in biology and psychology and

1 then received my Master's from the University of
2 Florida in forensic DNA and serology. I started with
3 the Sheriff's Department in July of 1996. I worked
4 on the road for a couple of years and was promoted to
5 the laboratory in October of '98 where I've been ever
6 since.

7 Since I've been with that unit I have had
8 several different types of formal training -- excuse
9 me -- such as basic fingerprint, basic palm print,
10 crime scene reconstruction, blood pattern analysis,
11 foot and tire examinations, and complex latent print
12 examination.

13 Q Have you ever been qualified before as an expert in
14 crime scene investigation?

15 A I have.

16 Q Including collection of fingerprints?

17 A I have.

18 Q And general investigation of crime scenes?

19 A Yes, ma'am.

20 **MS. CAMPBELL:** Your Honor, at this time we'd
21 offer her as an expert in crime scene investigation.

22 **THE COURT:** Any voir dire or objection?

23 **MS. SINGLETARY:** Without objection.

24 **THE COURT:** All right.

25 Q Lieutenant Elsey, I want to turn your attention to

1 the morning of May the 7th, 2007. Did you respond to
2 an armed robbery at The Shoe Dept. on Two Notch Road?

3 A I did.

4 Q And is that here in Richland County?

5 A It is.

6 Q And when you responded, what was your purpose in
7 responding that day?

8 A I was responding to process the scene for any
9 physical evidence.

10 Q And can you tell this jury generally in this case, as
11 in every case, what you do when you process a scene?

12 A First I make contact with either the investigator or
13 officer on the scene or the employees and determine
14 what actually occurred, what possibly could have been
15 handled by the suspect. Then I take initial
16 photographs and begin to process for any type of
17 fingerprints or DNA.

18 Q And in every case, is it better for you to process
19 more items than less items in case the person may
20 have touched anything?

21 A Yes.

22 Q And in this case, prior to doing any processing that
23 might disturb how the scene appears, did you
24 photograph it?

25 A I did.

1 Q And initially did you photograph the interior of The
2 Shoe Dept. and the exterior?

3 A I did.

4 Q I want to show you some photographs that are already
5 in evidence. Was the scene secured when you got
6 there?

7 A Actually the officer was not on the scene when I got
8 there, but the store employees were.

9 Q Okay. And I want to show you what are already into
10 evidence as State's Exhibits 11, 10, 18, 9, 16 and 17
11 and just ask you to review those and see if you
12 recognize those?

13 A Yes. Those are photographs I took when I arrived on
14 the scene.

15 Q I'm going to show you additional photographs from the
16 interior of the store which are State's Exhibits 12,
17 14 and 15 and ask if you recognize those?

18 A I do. They're additional photographs of the interior
19 and a couple of items that were processed and
20 collected.

21 MS. CAMPBELL: Your Honor, at this time we'd
22 offer these additional photographs into evidence.

23 MS. SINGLETARY: Your Honor, may we see the
24 photographs?

25 MS. CAMPBELL: Sure. You've got copies of them.

1 **MS. SINGLETARY:** Without objection, Your Honor.

2 (WHEREUPON, State's Exhibit No. 12 is admitted
3 into evidence.)

4 (WHEREUPON, State's Exhibit No. 14 is admitted
5 into evidence.)

6 (WHEREUPON, State's Exhibit No. 15 is admitted
7 into evidence.)

8 **Q** What's the purpose in photographing the crime scene
9 when you get there?

10 **A** Just to preserve it in the state that it was when I
11 arrived and to document any evidence that is present
12 at the crime.

13 **Q** And in this case, in one of those photographs I
14 notice that the cash drawer was actually open?

15 **A** It was.

16 **Q** And are you aware of whether or not the defendant had
17 actually taken U.S. currency out of that cash
18 register?

19 **A** I don't know. I was advised I believe that he had
20 touched it at some point, which is why I processed
21 it.

22 **Q** I'm going to show you State's Exhibit No. 11. Do you
23 recognize that?

24 **A** Yes. That's the interior of the cash drawer open.

25 **Q** And does that show the cash drawer as it appeared

1 when you got there?

2 **A** It does.

3 **Q** I show you in addition other areas. State's Exhibit
4 10 and 12, do you recognize those?

5 **A** Yes. Those are just additional photographs from
6 inside.

7 **Q** And, in fact, these are only some of the photographs
8 you actually took that day. Is that correct?

9 **A** I'm sorry. Say it again?

10 **Q** Those are only some of the photographs you took that
11 day?

12 **A** Yes. That's correct.

13 **Q** Because when you're processing a crime scene you are
14 not completely sure absolutely of what may or may not
15 be significant down the road?

16 **A** That's correct.

17 **Q** I'm going to show you what's been marked as State's
18 Exhibits No. 14 and 15. What does that show?

19 **A** That's the counter with a shoebox I was advised the
20 suspect had touched and a piece of plastic that was
21 knocked off the counter or around the area.

22 **Q** And as in every case, if the suspect may have touched
23 something, are you going to process that?

24 **A** Yes.

25 **Q** For both DNA and fingerprints?

1 **A** Yes.

2 **Q** And are you necessarily going to be able to get a
3 result if someone just touches something or moves
4 something with their hand?

5 **A** No. It depends on the type of surface that you're
6 dealing with. Your hands kind of -- if you look at
7 the palms of your hands, you've got lines on your
8 hands. And it's kind of like a stamp. You put ink
9 and put it on a piece of paper; sometimes that
10 transfers very good and sometimes it doesn't. So it
11 depends on the type of texture that you're touching
12 and how much sweat might be on your hands as to
13 whether or not that is actually transferred over, in
14 addition to if the hand is moving. There are several
15 different factors that come into play as to whether
16 or not a fingerprint is actually left.

17 **Q** Or if DNA itself may be left?

18 **A** Correct.

19 **Q** And are you familiar with the term "smudge" when it
20 comes to fingerprints?

21 **A** Yeah. That generally refers to if the surface that's
22 touched, maybe the hand is in motion or there might
23 be something on that surface. And we can tell that
24 it's been touched but there's not that detail of the
25 lines and the fingerprints that we're looking for.

1 Q After you photographed the interior of the store, did
2 you also photograph the exterior as well as a certain
3 automobile in the parking lot?

4 A I did.

5 Q And State's Exhibit 16 shows an automobile?

6 A It does.

7 Q And what was the significance of that as far as you
8 knew?

9 A I believe I was advised that the suspect may have
10 touched the door handle to try to get into that
11 vehicle.

12 Q And State's Exhibits Nos. 9 and 18 just generally
13 show outside the store?

14 A Yes.

15 Q And then State's Exhibit No. 17 shows --

16 A That's just an angle from inside of the store looking
17 at the vehicle.

18 Q Once you had photographed the crime scene, did you
19 then go through and process certain items?

20 A I did. I processed the items that the employees told
21 me that they thought may have been touched, such as
22 the interior and exterior of the front doors, the
23 countertop, the inside of the cash register and then
24 the door to the vehicle in the parking lot. In
25 addition to that I collected the shoebox that was

1 handled and the piece of plastic that was knocked
2 over. And I collected several swabs for possible DNA
3 off the door handles and off of the counter, the cash
4 register and the door of the car.

5 Q And when you processed the driver's door to the white
6 vehicle in the parking lot, --

7 A Mm-hmm (affirmative).

8 Q -- were you able to get any usable prints?

9 A No.

10 Q And tell the jury why that is again?

11 A Again, several different factors could have come into
12 play. There could have been dirt on the outside of
13 the vehicle, not enough transfer from the hand onto
14 the vehicle, the hand in motion. There's just
15 several different factors that can come into play.

16 Q And you also I believe processed inside the cash
17 register drawer?

18 A I did.

19 Q Were you able to get any results from that?

20 A That is negative.

21 Q And when it says negative, that means you weren't
22 able to get any usable prints?

23 A That's correct.

24 Q And the countertop where the actual robbery took
25 place, did you process that?

1 **A** I did. That was negative also.

2 **Q** That was negative?

3 **A** Yes.

4 **Q** And the interior and exterior of the front doors?

5 **A** Prints were recovered from the interior of the front
6 door.

7 **Q** And how many usable prints were you actually able to
8 get from the interior front door?

9 **A** I believe there were two.

10 **Q** And were those later analyzed and compared to the
11 defendant?

12 **A** They were.

13 **Q** And were those the defendant's prints?

14 **A** They were not.

15 **Q** When you process a front door, such as a place where
16 people come in and out frequently, can multiple
17 people leave fingerprints there?

18 **A** Yes.

19 **Q** And can you even when you get a positive match for a
20 fingerprint tell how long that fingerprint has been
21 there?

22 **A** Generally, no.

23 **Q** So, say, the people that worked there would touch the
24 same door?

25 **A** Yes.

1 Q And all the customers?

2 A Yes.

3 Q And in this case the only two usable fingerprints you
4 were able to get from that crime scene were not the
5 defendant's?

6 A That's correct.

7 Q Does that mean that the defendant has not been there?

8 A It means that his fingerprints were not left on the
9 door in a manner where they could be retrieved and
10 identified as him.

11 Q Thank you. Did you become aware as you were at the
12 scene or maybe even before you started processing the
13 scene that there had been another robbery close by?

14 A I believe Investigator Polis was processing another
15 scene.

16 Q And is Investigator Polis one of the crime scene
17 investigators as well?

18 A Yes.

19 Q Later on that same day, shortly after -- or after you
20 finished processing the initial crime scene you
21 responded to, did you go to a wooded area behind The
22 Shoe Dept. store?

23 A I did. While I was there Investigator Ellis and
24 Investigator Polis advised me that K-9 needed me to
25 respond to an area right behind the business for some

1 possible shoe tracks.

2 Q And did you respond to the wooded area to photograph
3 some shoe tracks?

4 A I did.

5 Q And where was this located?

6 A It was behind the business of The Shoe Dept. on 10050
7 Two Notch Road.

8 Q I want to show you a series of photographs which are
9 State's Exhibits No. 47 through 57 and first just ask
10 if those are the photographs you took that day?

11 A They are.

12 Q And was it important for you to go ahead and try to
13 photograph those shoe prints as quickly as possible
14 that day?

15 A Yeah. It was a period of time before I could respond
16 because I was processing the business. But it was
17 windy that day and it was in light sand.

18 Q Okay. And in every case you always want to collect
19 as much as evidence as you can that may or may not be
20 able to be used down the road?

21 A Correct.

22 Q And in this case you actually photographed I believe
23 some ten different prints?

24 A I think there were eight.

25 Q Excuse me. Eight. And are some of them better

1 quality than others?

2 **A** Yes.

3 **Q** And tell the jury, in order to even make a comparison
4 to say a shoe may be consistent with something, does
5 it have to be a certain quality?

6 **A** Yes.

7 **Q** And in this case were some of these shoe prints
8 better than others?

9 **A** Yes.

10 **MS. CAMPBELL:** Your Honor, at this time we'd
11 offer State's Exhibit Nos. 47 through 57 into
12 evidence.

13 **MS. SINGLETARY:** Without objection, Your Honor.

14 **THE COURT:** Without objection.

15 (WHEREUPON, State's Exhibit No. 47 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 48 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 49 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 50 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 51 is admitted
24 into evidence.)

25

1 (WHEREUPON, State's Exhibit No. 52 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 53 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 54 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 55 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 56 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 57 is admitted
12 into evidence.)

13 Q Were you ever able to get -- were any shoes ever
14 provided to you that you were later able to compare
15 to these tracks?

16 A No.

17 Q And is that unusual?

18 A No.

19 Q While you were there did you also make contact with
20 Investigator Ellis and were asked to photograph an
21 area, a pathway with some clothing that was
22 recovered?

23 A Yes. While I was documenting, determining what
24 needed to be photographed as far as shoe wear
25 impressions, Investigator Ellis arrived on the scene

1 and began searching the area beside the path and
2 located some clothing.

3 Q And I want to show you a series of photographs which
4 is going to be State's Exhibits 31 through 46, first
5 just ask you to review those and see if those are
6 photographs you took that day?

7 A They are.

8 Q And do those fairly and accurately depict the area as
9 you photographed it?

10 A Yes.

11 MS. CAMPBELL: Your Honor, at this time we'd
12 offer them into evidence.

13 MS. SINGLETARY: Without objection, Your Honor.

14 THE COURT: Without objection.

15 (WHEREUPON, State's Exhibit No. 31 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 32 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 33 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 34 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 35 is admitted
24 into evidence.)
25

1 (WHEREUPON, State's Exhibit No. 36 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 37 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 38 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 39 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 40 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 41 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 42 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 43 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 44 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 45 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 46 is admitted
22 into evidence.)

23 Q Were there certain items in the wooded area that you
24 collected and later took back to headquarters and
25 examined further?

1 **A** Yes.

2 **Q** And I want to show you some photographs that were
3 taken at headquarters which are going to be 58
4 through 64, first ask if those are the photographs
5 you took of certain clothing that was collected that
6 day?

7 **A** Yes.

8 **MS. CAMPBELL:** Your Honor, at this time we offer
9 58 through 64 into evidence.

10 **MS. SINGLETARY:** No objection, Your Honor.

11 **THE COURT:** Without objection.

12 (WHEREUPON, State's Exhibit No. 58 is admitted
13 into evidence.)

14 (WHEREUPON, State's Exhibit No. 59 is admitted
15 into evidence.)

16 (WHEREUPON, State's Exhibit No. 60 is admitted
17 into evidence.)

18 (WHEREUPON, State's Exhibit No. 61 is admitted
19 into evidence.)

20 (WHEREUPON, State's Exhibit No. 62 is admitted
21 into evidence.)

22 (WHEREUPON, State's Exhibit No. 63 is admitted
23 into evidence.)

24 (WHEREUPON, State's Exhibit No. 64 is admitted
25 into evidence.)

1 **MS. CAMPBELL:** Your Honor, may the witness step
2 down?

3 **THE COURT:** Yes, ma'am.

4 **MS. CAMPBELL:** Thank you.

5 **Q** Would you come over here because I think the court
6 reporter can hear you better. Kind of face her. I'm
7 going to show you first what's been marked as State's
8 Exhibit No. 31. What does that show?

9 **A** That's the pathway leading from behind The Shoe Dept.
10 away from The Shoe Dept.

11 **Q** And would that be towards the Polo Road area?

12 **A** I believe so.

13 **Q** Okay. And I notice that there is a yellow marker
14 here in the foreground. What letter is that?

15 **A** That's an A.

16 **Q** And who put that there?

17 **A** I did.

18 **Q** And what significance is that to you?

19 **A** That was the first shoe impression that we marked to
20 document it.

21 **Q** And so the shoe impression that you would have
22 documented, that's shown here on State's Exhibit 47?

23 **A** Yeah. Here's a little bit better one here. But,
24 yes. A.

25 **Q** And were you ever provided any shoes that you could

1 later make a comparison to?

2 A No.

3 Q But at the time you don't know whether or not that's
4 going to be recovered?

5 A That's correct.

6 Q I show you State's Exhibit No. 32.

7 A That's -- again you can see A here, and that's
8 looking towards The Shoe Dept. there.

9 Q So that's looking back in the opposite direction?

10 A Yes.

11 Q And again State's Exhibit No. 33, what does that
12 show?

13 A Again that's just little bit further back. You can
14 see marker C here again looking towards A in the back
15 of the business.

16 Q And is this shoe print a little further away from The
17 Shoe Dept. going down the path?

18 A Yes.

19 Q And again, State's Exhibit 34 documents ...?

20 A A little further. This is D.

21 Q State's Exhibit 35?

22 A A little bit further.

23 Q What letter is on that?

24 A It's F.

25 Q State's Exhibit No. 36?

1 **A** A little bit further there. You can see H.

2 **Q** And State's Exhibit No. 37 shows a different area I
3 believe?

4 **A** Yeah. Again that's just looking -- there's a B
5 there -- looking towards the back of the business.

6 **Q** And this is a close up of State's Exhibit No. 38.
7 Does that show an area where something was found that
8 day?

9 **A** Yeah. That's the clothing that was located right
10 there from I believe that's marker 1 by that
11 clothing.

12 **Q** And this building in the background, it is located
13 behind The Shoe Dept.?

14 **A** Yes. Here is this path. Right here is the path
15 leading towards the back of The Shoe Dept.

16 **Q** And State's Exhibit 39 is a closer up?

17 **A** Yes.

18 **Q** As is State's Exhibit 40?

19 **A** Correct.

20 **Q** And finally, the items in State's Exhibit No. 41,
21 what are those items?

22 **A** That's the red jacket and a Polo shirt.

23 **Q** After you photographed these items, this is how they
24 were found?

25 **A** Yes.

1 Q Did you then have an opportunity -- you and I believe
2 Investigator Isenhoward and Ellis?

3 A Yes.

4 Q And 42 and 43 to actually look into the pockets while
5 you there at the scene?

6 A We did.

7 Q And you pulled out what's in them. But did you put
8 them back in?

9 A Yes.

10 Q And are these the items that you actually pulled out
11 of the red jacket pockets that day?

12 A They are.

13 Q And on this one specifically, State's Exhibit No. 43,
14 --

15 A Yes.

16 Q -- what does that show?

17 A It's a statement with the name of Emmith Williams on
18 it.

19 Q With the name Emmith Williams?

20 A Yes.

21 Q And it's an earnings statement?

22 A Yes.

23 Q And does it say the pay date on that?

24 A Pay date is May 4th, 2007.

25 Q And what was the date you actually responded to the

1 scene?

2 A I believe it was May 7th.

3 Q State's Exhibit Nos. 44 and 45, and I believe you
4 marked those with an A. Is that correct? I mean
5 with a 1?

6 A 1 and 2.

7 Q 1 and 2. And then State's Exhibits 44 and 45, what
8 does that show?

9 A That's just an overview of the area where they were
10 located. This one here.

11 Q The item that was located at number 2 ...?

12 A That would be the red -- I mean the black head rag.

13 Q Where was that located in relation to the jacket and
14 the shirt?

15 A Oh, just a few feet away.

16 Q And once you got back to headquarters you were able
17 to actually lay out the jacket?

18 A Yes.

19 Q And is that the jacket you collected that day?

20 A It is.

21 Q State's Exhibit No. 61, what is that?

22 A That's the red shirt that was with the red jacket.

23 Q And State's Exhibit No. 62?

24 A And the black head rag that was a little bit further
25 down.

1 Q And then here the items were found, I believe State's
2 Exhibits 58, in which pocket?

3 A The left jacket pocket.

4 Q And again, in the left jack pocket was?

5 A The statement with Emmith Williams.

6 Q And finally, State's Exhibit No. 63?

7 A The items from the right jacket pocket.

8 Q And in this is there included a receipt?

9 A Yes.

10 Q You can take the stand.

11 A Okay.

12 Q While you were out at the scene, and I want to go
13 back to there, did you also take some measurements
14 that day as far as where you found the clothing
15 items?

16 A Actually Investigator Polis took measurements from
17 the back of the business to each marker.

18 Q Okay. And are those included in your report?

19 A They are.

20 Q And from the red jacket and shirt, how many feet was
21 it from the back of The Shoe Dept. business?

22 A The red jacket is 584 feet and one inch
23 approximately.

24 Q Once you collected the items such as the jacket and
25 the head rag, the shirt and things of that nature, I

1 think you also collected a box and other things?

2 A Yes.

3 Q The Timberland shoebox. Were those later processed
4 back at headquarters by you?

5 A Yes.

6 Q And during the time period when they were kept in
7 your possession, did anyone tamper with them, alter
8 them in any way?

9 A No. They're secured in a laboratory that has limited
10 access and then in a locker that I have access to.

11 Q And I believe from the scene itself you actually
12 collected the Timberland shoebox and a clear piece of
13 plastic that had been knocked off the counter?

14 A Yes.

15 Q And were you able to get any results as far as
16 fingerprints on it?

17 A There were no useful fingerprints, only smudges on
18 those items.

19 Q Did you then swab them for possible DNA?

20 A Yes, I did.

21 Q Once you took all these items, specifically as far
22 as -- I want to get back to something. I want to
23 show you what's been marked as State's Exhibit
24 No. 30. Was this the jacket that you recovered as
25 shown in those photographs we've already gone over?

1 **A** Let me see the packaging. Yes. It appears to be.

2 **Q** And this was one of the items you actually collected
3 out on the trail that day?

4 **A** That's correct.

5 **MS. CAMPBELL:** Your Honor, at this time we'd
6 offer State's Exhibit 30 into evidence.

7 **MS. SINGLETARY:** Without objection, Your Honor.

8 **THE COURT:** Without objection.

9 (WHEREUPON, State's Exhibit No. 30 is admitted
10 into evidence.)

11 **Q** I want to show you what's been marked as State's
12 Exhibits 29 and 28. Were these the other two items
13 of clothing that you collected that day?

14 **A** Yeah. That's the red Polo shirt.

15 **COURT REPORTER:** What number is that one?

16 **MS. CAMPBELL:** 29.

17 **A** And this is the black head rag.

18 **MS. CAMPBELL:** It would be 28. Your Honor, at
19 this time we'd offer those into evidence.

20 **MS. SINGLETARY:** Without objection, Your Honor.

21 **THE COURT:** Without objection.

22 (WHEREUPON, State's Exhibit No. 28 is admitted
23 into evidence.)

24 (WHEREUPON, State's Exhibit No. 29 is admitted
25 into evidence.)

1 (WHEREUPON, State's Exhibit No. 65 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 66 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 67 is marked for
6 identification.)

7 Q Finally, State's Exhibit Nos. 67 and 66, after you
8 had collected those out of the pockets, did you then
9 package them?

10 A Yes.

11 Q And seal them up?

12 A Yes.

13 Q And those are the actual items from within the
14 pockets that are shown in the photographs?

15 A Right. From the right and the left jacket pockets.

16 MS. CAMPBELL: Your Honor, at this time we'd
17 offer them into evidence.

18 MS. SINGLETARY: Your Honor, with objection
19 until a proper chain has been established.

20 THE COURT: On which?

21 MS. SINGLETARY: On the last two items.

22 THE COURT: All right. What are they?

23 MS. CAMPBELL: These are the contents of the
24 pockets. There was no DNA testing done on these and
25 they are what they are.

1 **THE COURT:** Well, she objects to the chain. So
2 I will sustain the objection.

3 **MS. CAMPBELL:** Let me lay a foundation.

4 **Q** Are these the items that were collected by you?

5 **A** Yes.

6 **Q** Was any further testing ever done on these items?

7 **A** No. It appears to still be sealed with my seal from
8 May 25th.

9 **Q** So you would have collected these and put them into
10 evidence?

11 **A** That's correct.

12 **Q** And there was no further testing done on these items?

13 **A** That's right.

14 **MS. CAMPBELL:** Your Honor, they'd be
15 non-fungible. So they would be admissible.

16 **THE COURT:** Still objection?

17 **MS. SINGLETARY:** Yes, Your Honor.

18 **THE COURT:** Well, let's find out where they've
19 been. I'll sustain the objection.

20 **Q** Once these items were collected, did you then place
21 them into evidence?

22 **A** I did.

23 **Q** Along with the jacket?

24 **A** Yes.

25 **Q** And the head rag?

1 **A** Correct. They were placed at the same time.

2 **Q** And the shirt?

3 **A** Yes.

4 **Q** And to your knowledge some of those items were later
5 swabbed and tested for DNA?

6 **A** Some of the other items as far as I know.

7 **Q** But you wouldn't have been involved in that process?

8 **A** No.

9 **Q** And again for the record, while these items were all
10 in your custody, no one tampered with them or altered
11 them any way?

12 **A** That's correct.

13 **MS. CAMPBELL:** Beg the Court's indulgence.
14 Thank you.

15 **MS. SINGLETARY:** Your Honor, we have no
16 questions for this witness.

17 **THE COURT:** All right. Thank you very much.
18 You may come down. May this witness be excused?
19 Without objection. You're free to go. All right,
20 ladies and gentlemen. Let's take our lunch break at
21 this time. I'm going to ask to be back in the jury
22 room at 2:30. There's a matter we need to take up.
23 We'll take 20 or 30 minutes. So I'm going to ask you
24 to be back in the jury room at 2:30. Again, don't
25 discuss the case amongst yourselves when you return

1 to the jury room or with anyone else over the lunch
2 hour. Have a pleasant lunch. We'll see you at 2:30.
3 Thank you.

4 (Jury out at 12:43 p.m.)

5 **THE COURT:** We'll stand at ease until 2:30.

6 (Whereupon, a lunch break is taken)

7 (WHEREUPON, State's Exhibit No. 68 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 69 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 70 is marked for
12 identification.)

13 **THE COURT:** Is the State ready to proceed?

14 **MS. CAMPBELL:** The State's ready.

15 **THE COURT:** Is the defense ready to proceed?

16 **MS. SINGLETARY:** Yes, Your Honor.

17 **THE COURT:** Call your next witness, please. I'm
18 sorry. Call the jury and then bring the next
19 witness. If you want to look at this note you're
20 welcome to do so.

21 **MS. SINGLETARY:** Is that note about Rickey
22 Johnson, Your Honor? We'll approach, Your Honor.

23 (Whereupon, a bench conference is had)

24 (Jury in at 2:40 p.m.)

25

1 (WHEREUPON, Court's Exhibit No. 5 is marked for
2 identification.)

3 **THE BAILIFF:** The jury is all present, Your
4 Honor.

5 **THE COURT:** Thank you very much. I hope you had
6 a pleasant lunch, ladies and gentlemen. We're now
7 ready to continue with the trial. Solicitor, call
8 your next witness.

9 **MS. MCDUFFIE:** The State calls Kristen Polis.
10 KRISTEN MORROW-POLIS, after being duly sworn,
11 testifies as follows:

12 **THE CLERK:** Thank you. Have a seat in the
13 witness stand and give the court reporter your name.

14 **THE WITNESS:** My name is Kristen Morrow-Polis.

15 DIRECT EXAMINATION

16 **BY MS. MCDUFFIE**

17 **Q** Investigator Polis, where are you employed?

18 **A** Richland County Sheriff's Department.

19 **Q** And what are your duties with the Richland County
20 Sheriff's Department?

21 **A** I'm an investigator in the crime scene unit. So I
22 respond to all crime scenes, all types of crime
23 scenes that occur in Richland County. And at those
24 crime scenes we identify physical evidence. We
25 preserve and collect that evidence and process it.

1 And then if we're able to, we analyze and interpret
2 the crime scene based on the physical evidence that
3 we gather.

4 Q And were these your duties in May of 2007?

5 A They are.

6 Q And on May the 7th of 2007, did you have the occasion
7 to respond to ?

8 A I did.

9 Q And what was that in reference to?

10 A I was called to go to the location. I was advised
11 that a subject went to a residence, robbed an
12 individual at that residence, took their car keys
13 after entering their home.

14 Q And is that in Richland County?

15 A It is.

16 Q And when you first arrived at
17 what did you do?

18 A I spoke to the investigators that were on the scene.
19 I believe it was Investigator Ellis. And I also
20 spoke with the residents there to find out what their
21 account of the story was.

22 Q And why do you do that?

23 A We just want to gather information about exactly what
24 happened and have the homeowners tell us what items
25 in their house may have potentially been touched or

1 tampered with so we know where to look for evidence.

2 **Q** And based on these discussions, what did you then do?

3 **A** I fingerprinted the exterior of the front door and
4 the door handles and collected some DNA swabs.

5 **Q** I show you what's already been entered into evidence
6 as State's Exhibits 21 and 23. Can you hold them up
7 to the jury and describe what you did?

8 **A** This is the glass storm door. And I processed the
9 area around the door handle and the glass in that
10 approximate area for fingerprints using black
11 fingerprint powder. And I also collected DNA swabs
12 from the exterior handle and interior door handle.
13 And this is just a photograph of the inside, the
14 foyer area of the home.

15 **Q** And how far into the home did you process?

16 **A** Just -- literally just that front door. The area
17 that was right -- as the door opened was covered with
18 a rug which would have prevented us from having any
19 type of shoe impressions because they would have gone
20 onto like a carpeted surface which was a rug. So
21 there was nothing on the interior to process.

22 **Q** And was there anything making your ability to
23 fingerprint the front door more difficult?

24 **A** I was advised by Mr. Darnell that he observed some
25 smudges on the interior of the door but cleaned those

1 off prior to my arrival. So I was unable to process
2 that area as it had already been cleaned.

3 Q And you mentioned earlier you took some swabs from
4 the storm door?

5 A Yes.

6 Q I show you what's been marked as State's Exhibit 68.
7 Do you recognize this?

8 A This is the packaging from the swabs that I
9 collected.

10 Q And inside that package are the swabs that you
11 collected?

12 A I presume.

13 Q And once you collected those swabs, what did you then
14 do?

15 A These would be turned into our evidence section. The
16 evidence section would forward this to the DNA
17 section who would take these swabs and try to extract
18 DNA from them.

19 Q After you finished processing
20 what did you then do?

21 A I went over to assist Lieutenant Elsey who at that
22 time was in the wooded area behind The Shoe Dept.
23 photographing shoe impressions and collecting some
24 clothing.

25 Q Did you take measurements of shoe impressions?

1 **A** I did.

2 **Q** Were you present when the clothing was collected?

3 **A** I was.

4 **Q** And who collected that clothing?

5 **A** Investigator Elsey. Or Lieutenant Elsey.

6 **MS. MCDUFFIE:** Beg the Court's indulgence.

7 Nothing further questions from this witness, Your
8 Honor.

9 **THE COURT:** Cross examination.

10 **MS. DAVIS:** No questions for this witness, Your
11 Honor.

12 **THE COURT:** Thank you very much. You may come
13 down. This witness may be excused?

14 **MS. DAVIS:** Please, Your Honor.

15 **THE COURT:** Without objection. Next witness.

16 **MS. MCDUFFIE:** The State calls Deputy Walmsley.

17 GAVIN WALMSLEY, after being duly sworn,
18 testifies as follows:

19 **THE CLERK:** Thank you. Have a seat in the
20 witness stand and give the court reporter your name.

21 **THE WITNESS:** Senior Deputy Gavin Walmsley.

22 DIRECT EXAMINATION

23 **BY MS. MCDUFFIE**

24 **Q** Deputy Walmsley, where are you currently employed?

25 **A** Richland County Sheriff's Department.

1 **THE COURT:** Just hold on a minute. Let's get
2 everybody situated so we can -- it's distracting.

3 **Q** Deputy Walmsley, where are you currently employed?

4 **A** Richland County Sheriff's Department.

5 **Q** What are your duties with the Richland County
6 Sheriff's Department?

7 **A** I am a K-9 handler.

8 **Q** And describe for the jury what a K-9 handler does?

9 **A** Mainly you work with your dog. He is a full-service
10 police dog, meaning that he is trained in narcotics
11 tracking and apprehension.

12 **Q** And what is your dog's name?

13 **A** Iron.

14 **Q** And were you partners with Iron in May of 2007?

15 **A** I was.

16 **Q** And how long have you been partners with him?

17 **A** A little over two years.

18 **Q** Describe for the jury some of the training that you
19 two have undergone together?

20 **A** Everything is done in-house. It is, just like I
21 said, full-service, meaning that we train in drugs,
22 apprehension and handle protection and tracking.

23 **Q** And about how many hours of training have you all
24 undergone together?

25 **A** A lot.

1 Q Do you have any idea?

2 A On the average, we train every week. It is probably
3 anywhere from eight to fifteen hours a week.

4 Q And on May the 7th of 2007, were you called out to
5 10050 Two Notch Road?

6 A I was.

7 Q And why were you called out there?

8 A For an armed robbery.

9 Q And what is at that location?

10 A That would be the Wal-Mart and another strip mall
11 that was there, The Shoe Dept.

12 Q And when you first arrived on the scene, what you do
13 you first do with Iron?

14 A I first assess to see if the subject leaves any
15 vehicle or flees on foot. Once we found out that the
16 individual has fled on foot, we try to determine the
17 last place, where was he, to help begin the track if
18 he has left on foot.

19 Q And once you determined that the defendant had left
20 on foot, where did you then go?

21 A He was last seen going to the back side of the
22 building. That was where I did point Iron. We
23 worked the area behind The Shoe Dept. And this is
24 where we found a fresh shoe print, and Iron began
25 tracking from that point.

1 Q I show you what's been marked as State's 70. Do you
2 recognize that?

3 A Yes, ma'am.

4 Q And is this a map of the track that you and Iron took
5 that day?

6 A Yes.

7 MS. MCDUFFIE: Your Honor, at this time we'd
8 offer State's Exhibit 70 into evidence.

9 MS. SINGLETARY: Your Honor, without objection.

10 THE COURT: All right. Thank you.

11 (WHEREUPON, State's Exhibit No. 70 is admitted
12 into evidence.)

13 Q Deputy, if I could have you step down. And please
14 keep your voice up so the court reporter can still
15 hear you.

16 A Okay.

17 Q If you'll stand over there so she can see you.

18 A That is a little blurry. Basically this is the
19 Wal-Mart here. The strip mall is here. We went
20 behind the strip mall and came into this area here.
21 With the dog finding a shoe print, we cast the dog
22 off from that point. Because there was some
23 disturbance and ground disturbance, the dog was able
24 to track.

25 And if I could have the exhibit, I can -- it was

1 really easy to determine coming down this pathway
2 because it is some very soft sand. However, there
3 was heavy wind that day. And we were able to
4 determine that it was fresh because even by the time
5 we came back the majority of the shoe prints when we
6 came back were blown away.

7 So we continued on. Let's see if I can -- we
8 continued on this path right here to a gravel road
9 where we came down. And we cut back into the wood
10 line, coming into another road. This road is where
11 it came back around to a house here where we lost the
12 track initially.

13 There is a -- you can barely see it, but there
14 is a pond that sits right here. There's only two
15 ways to get around the pond. And because we were
16 pretty confident we lost it here, we continued on
17 seeing if we can't pick up another shoe print that
18 was similar to the one that was up near the scene
19 there.

20 When we came back then around, we actually
21 entered into another subdivision. We didn't find
22 anything. We came back onto the other side of this
23 pond here. This is where we ran into a similar shoe
24 print and continued to track. Iron was cast off
25 again. Ending up inside this subdivision here, we

1 entered in around here, this is where we saw the
2 deputies with the other victims.

3 Q And so the dog, Iron, tracked into this subdivision
4 and into Deer Hound Trail?

5 A Correct.

6 Q And when you entered Deer Hound Trail with Iron, what
7 did you observe?

8 A We had deputies on the scene at a residence there.

9 Q And that is where the tracking ended?

10 A Correct.

11 Q Just to be clear, the track ended once you entered
12 Deer Hound Trail?

13 A Correct?

14 MS. MCDUFFIE: Beg the Court's indulgence. No
15 further questions for this witness, Your Honor.

16 MS. SINGLETARY: We have no questions for this
17 witness, Your Honor.

18 THE COURT: All right. You may come down, sir.
19 Thank you very much. May this witness be excused?

20 MS. MCDUFFIE: Please, Your Honor.

21 MS. SINGLETARY: Yes, Your Honor.

22 THE COURT: Without objection. Next witness.

23 MS. CAMPBELL: May it please the Court. The
24 State calls Matt Ellis.

25 MATTHEW ELLIS, after being duly sworn, testifies

1 as follows:

2 **THE CLERK:** Thank you. Have a seat in the
3 witness stand and give the court reporter your name.

4 **THE WITNESS:** Matthew Ellis.

5 DIRECT EXAMINATION

6 **BY MS. CAMPBELL**

7 **Q** Investigator Ellis, where are you employed?

8 **A** Richland County Sheriff's Office.

9 **Q** What do you do there, sir?

10 **A** I'm an investigator assigned to the major crimes
11 division, particularly the robbery unit.

12 **Q** And can you tell this jury a little bit about your
13 duties as a major crime investigator?

14 **A** We are assigned cases after the line units or
15 uniformed units respond to calls. They generate an
16 incident report most times. That incident report is
17 then forwarded to us and we conduct the investigation
18 from that point, interviewing witnesses and tracking
19 suspects after they've been developed. And we're
20 responsible for arresting those individuals also.

21 **Q** And in some cases do you actually respond to the
22 crime scene yourself after the crime has been
23 committed?

24 **A** Correct.

25 **Q** And I want to turn your attention back to May the 7th

1 of 2008. Were you working that morning?

2 A I was.

3 Q 2007. Excuse me. And did you have an opportunity or
4 were you called to a crime scene at

5

6 A I responded to that location, yes, after I had
7 originally heard a report of an incident at
8 ...d. I was in the area after that incident
9 occurred, conducting a perimeter type patrol for the
10 individual that had committed a robbery at
11 ...d, at which time I heard the call go out or
12 a call that was pending at ...d. So
13 I immediately responded to that location.

14 Q So you had already been activated and were in the
15 area because of the armed robbery at The Shoe Dept.?

16 A Correct.

17 Q And that's the Two Notch Road address you're
18 referring to?

19 A That's correct.

20 Q And when the second call came out, you actually
21 responded to

22 A

23 Q Thank you.

24 A Correct.

25 Q And both of those are in Richland County, aren't

1 they?

2 **A** They are.

3 **Q** And in this case you actually generated the incident
4 report for the second armed robbery yourself?

5 **A** That's correct. There was -- nobody was on the scene
6 when I arrived at the location. I believe they were
7 all on the perimeter for the original robbery.

8 **Q** When you arrived at the Deer Hound Trail residence,
9 who did you make contact with?

10 **A** Martha and Mitchell Darnell.

11 **Q** And did you actually speak to both of those
12 individuals?

13 **A** I did.

14 **Q** And were they able to relate certain information to
15 you about what had happened that morning?

16 **A** They did.

17 **Q** And as a result of their information, did you put out
18 a BOLO for a vehicle that had been stolen?

19 **A** I did.

20 **Q** And what vehicle was that?

21 **A** It was a 1998 Toyota Camry.

22 **Q** And who did that vehicle belong to?

23 **A** The Darnells.

24 **Q** Pursuant to protocol, did you also fill out a robbery
25 questionnaire?

1 **A** I did.

2 **Q** Did you take formal written statements from them at
3 that point?

4 **A** Written? No ma'am.

5 **Q** Is that unusual?

6 **A** No, ma'am.

7 **Q** But you did memorialize the information they gave you
8 in your incident report, in your notes, and in the
9 robbery questionnaire?

10 **A** That's correct.

11 **Q** There has been some question about the questionnaires
12 as filled out. Are those questions? You go through
13 a series of questions such as height, weight,
14 description, things of that nature?

15 **A** There is.

16 **Q** And then the information that's actually filled out
17 on the robbery questionnaire, who actually writes
18 that in?

19 **A** I do.

20 **Q** In this case there has been some question about the
21 robbery questionnaire that you filled out for both
22 Mr. and Mrs. Darnell, information about that he put
23 his hand in his pocket as if he had a weapon. Did
24 they actually communicate that information as well as
25 some more to you?

1 **A** They did.

2 **Q** And what information did they communicate to you?

3 **A** They told me that they thought he had a weapon or
4 some type of gun in his pocket. They were unsure
5 what it was. What I wrote down was that both of them
6 advised me that he had his hand in his pocket or he
7 reached in his pocket as if he had a weapon, is what
8 I put in both robbery questionnaires and in the
9 incident report that I generated.

10 **Q** And they indicated to you they thought it was a gun?

11 **A** Correct. But that they were unsure. They never saw
12 it.

13 **Q** They didn't see it?

14 **A** Right.

15 **Q** They never said they saw the weapon itself?

16 **A** Right.

17 **Q** When you put out a BOLO, explain to the jury what
18 that is, what databases it's entered into?

19 **A** Whenever this car had been stolen from them, it was
20 entered into a nationwide computer as stolen. If any
21 other law enforcement officer ran the tag or the VIN
22 that was associated with that vehicle, it would come
23 back as stolen out of the Richland County
24 jurisdiction. It would have the case number where
25 we'd be able to identify which case it's involved in

1 **A** They were actually relating it to Investigator
2 Isenhoward but I was present and was listening.
3 Correct.

4 **Q** Okay. You had initially responded to The Shoe Dept.
5 robbery and then you were also able to get a
6 description from the Darnells. Based on those two
7 descriptions, what did you and Investigator
8 Isenhoward think was prudent at that point to do?

9 **A** To conduct a search of the area.

10 **Q** Explain that to the jury?

11 **A** These locations are not too far away from each other
12 and the timeframe that they happened was fairly
13 close. And then the descriptions we were receiving
14 were very familiar except for some clothing that
15 could have been discarded. So we thought it was
16 prudent to go back and look for that clothing between
17 the two locations in an attempt to locate it.

18 **Q** And who actually assisted you and Sergeant Isenhoward
19 in you all's search?

20 **A** I had actually been notified by the K-9 division that
21 they had some shoe impressions in some sandy area.
22 So we had them stand by with those until we could get
23 to that location. Once those were pointed out to us,
24 we had Lieutenant Elsey and Investigator Morrow who
25 were crime scene division respond there to

1 photograph, collect whatever evidence that we had.

2 Q And just for clarification, you said Investigator
3 Morrow. Is that now Investigator Polis? She is
4 married?

5 A Excuse me. She is married. I am sorry.

6 Q She was just up here?

7 A Correct.

8 Q Did you all find any clothing?

9 A We did.

10 Q And what clothing did you all find in the woods
11 between the Shoe Dept. and the neighborhood where the
12 car was stolen?

13 A There was a sandy area that had shoe impressions or
14 shoe prints in this area. Just off to the right of
15 that heading from The Shoe Dept. towards the Deer
16 Hound Trail address, just off of that pathway on the
17 right-hand side was a jacket that appeared to have
18 been discarded. It didn't appear to have been there
19 long at all. There was also a black nylon cap.

20 Q And I show you what's been marked as State's Exhibit
21 No. 40. Do you recognize that?

22 A I do.

23 Q State's Exhibit 41?

24 A Correct.

25 Q And what do those show?

1 **A** Those are showing the jacket and the Polo style
2 striped shirt with the marker number 1.

3 **Q** And you and Sergeant Isenhoward actually found these
4 items?

5 **A** Correct.

6 **Q** And I believe it would be Lieutenant Elsey that
7 collected them?

8 **A** That's right.

9 **Q** I want to show you what's been marked as State's
10 Exhibits 45 and 46. Do you recognize those?

11 **A** I recognize the area, and I believe number 2 is
12 marking the black -- yes, the black cap, nylon type
13 cap with the long tie strings in it.

14 **Q** And why were those significant in your investigation,
15 that you found those in the wooded area between these
16 two incident locations?

17 **A** It was part of the description from the previous
18 robbery that Sergeant Isenhoward had responded to at
19 The Shoe Dept., 10050 Two Notch.

20 **Q** Once Lieutenant Elsey was alerted and she was able to
21 photograph those items, did you all look,
22 specifically you and Sergeant Isenhoward and
23 Lieutenant Elsey, for any further information out of
24 the pockets of the --

25 **A** We did. After she had photographed them in place

1 where they were originally found, we thought we
2 needed to look into the pockets to see if there was
3 any kind of information in them.

4 Q Specifically, I show you State's Exhibit No. 30. Is
5 this the jacket that you all recovered with the
6 shirt?

7 A That appears to be the jacket.

8 Q And did you all actually go through these pockets?

9 A We did.

10 Q And there at the scene were you able to get
11 information that could possibly be a lead for you in
12 your case?

13 A That's right.

14 Q I show you what's been marked as State's Exhibit
15 No. 43. Do you recognize that?

16 A I do. It's an earnings statement that came out of
17 one of the pockets of the jacket. The statement is
18 for Emmith Williams out of Raleigh, North Carolina.
19 The pay date on this statement was May the 4th, 2007.
20 I thought it was significant since this occurred
21 three days later.

22 Q And I want to show you the items that were collected
23 as State's Exhibit 66 for ID purposes at this point.
24 Were these the items that were collected and later
25 sealed in that envelope by Lieutenant Elsey? You can

1 open it to look.

2 **A** Yes.

3 **Q** And significantly, are those the items that are
4 displayed in State's Exhibit 58?

5 **A** They are. It's the two batteries, the envelope and
6 the earnings statement.

7 **Q** And that's the statement you've got in your hand now?

8 **A** That's correct.

9 **MS. CAMPBELL:** Beg the Court's indulgence. Your
10 Honor, at this time we'd offer it into evidence.

11 **MS. DAVIS:** Without objection, Your Honor.

12 **THE COURT:** Without objection.

13 **COURT REPORTER:** Is that 66 or 7?

14 **MS. CAMPBELL:** That's 66.

15 (WHEREUPON, State's Exhibit No. 66 is admitted
16 into evidence.)

17 **Q** I want to show you now State's Exhibit 67. And what
18 does that envelope contain?

19 **A** It's the contents from the right pocket of the jacket
20 that was collected at the scene.

21 **Q** And I want to show you State's Exhibit No. 63. Is
22 that a photograph of the contents of that pocket?

23 **A** It appears to be, yes. Do you want me to pull all
24 the items out?

25 **Q** No. Just confirm that's the same.

1 **A** Yes. It appears to be all the items that are listed
2 in that picture.

3 **MS. CAMPBELL:** We'd offer this. I think they
4 want to look at it.

5 (Pause)

6 **MS. CAMPBELL:** Your Honor, we'd offer these as
7 State's Exhibit 67.

8 **MS. DAVIS:** Without objection, Your Honor.

9 **THE COURT:** Without objection.

10 (WHEREUPON, State's Exhibit No. 67 is admitted
11 into evidence.)

12 **Q** And without going through everything that was in the
13 right jacket pocket, I want to just hand you this
14 card. Do you recognize that?

15 **A** I do. It's part of the property that was found in
16 that pocket.

17 **Q** And what name is that reflected on that card?

18 **A** Emmith Williams.

19 **Q** Finally I'm going to show you a receipt.

20 **A** This is a receipt for the 5th of May, 2007.

21 **Q** May the 5th of 2007?

22 **A** Correct.

23 **Q** And does it list where the receipt is from?

24 **A** Smoker Friendly, I believe, in Raleigh, North
25 Carolina.

1 Q In Raleigh, North Carolina?

2 A Correct.

3 Q And that was again found in the right pocket?

4 A Correct.

5 Q Based on the information that you found in the
6 jacket, did you or Sergeant Isenhoward follow up
7 on -- don't say what you did -- but did you follow up
8 as far as a suspect named Emmith Williams?

9 A We did.

10 Q And did Investigator Isenhoward actually put together
11 a photo line-up later that day?

12 A He prepared one. Correct.

13 Q And I want to show you State's Exhibit No. 4 I
14 believe. State's Exhibit No. 4, is that the line-up
15 that was prepared?

16 A That is the one.

17 Q And in that line-up, is there a photograph with the
18 person known as Emmith Williams?

19 A Correct.

20 Q And where is it on those photographs?

21 A It was placed in photo number 4.

22 Q Number 4? And Investigator Isenhoward actually got
23 this photo?

24 A Correct.

25 Q Later, a number of days later, did it come to your

1 attention that there was a more recent photograph of
2 the defendant?

3 A That was correct.

4 Q And I show you what's been in State's Exhibit 6 as
5 well as other exhibits. Was that a more recent
6 picture of the defendant?

7 A That is.

8 Q At a later date did you have an occasion to collect
9 what's called a buccal swab from the defendant in
10 this case?

11 A I was -- yes. I was present when that was collected.

12 Q And what's the purpose of doing that? Explain it to
13 the jury. What do you do with that?

14 A It's a swab. Actually we start with a sterile, it
15 looks like a long Q-tip, cotton on the end, a cotton
16 swab. And we do an oral swab. It's placed in their
17 mouth. They rub it between like their teeth and gum
18 area. And then it is packaged in a carton once it is
19 dried. And then that is submitted to evidence for
20 the DNA lab to compare to any DNA that has been
21 collected from the crime scene or other place.

22 (WHEREUPON, State's Exhibit No. 71 is marked for
23 identification.)

24 Q I show you what's been marked as State's Exhibit No.
25 71. Is that the actual swab you collected and put

1 into evidence yourself or that was collected in your
2 presence and you put it in evidence?

3 **A** That's correct.

4 **Q** During the time period you had that swab or that
5 known DNA sample, did anyone alter it, tamper with it
6 or do anything to it?

7 **A** No, ma'am.

8 **Q** And when was that actually collected?

9 **A** This was collected on November the 12th, 2008, at
10 approximately 10:24 hours.

11 **Q** And when did you submit it into evidence?

12 **A** 13:55. 1:55 the same day.

13 **Q** The same day? And again, while you had it no one
14 altered it?

15 **A** It was in my possession and control.

16 **Q** What's the purpose of getting a known DNA sample from
17 a defendant?

18 **A** To compare to any DNA evidence that we have from a
19 crime scene.

20 **Q** Or from items taken from a crime scene?

21 **A** Correct.

22 **Q** When you showed the photo line-ups, the photo
23 line-up, the original one you had to Mr. and
24 Mrs. Darnell, were they able to pick anyone out?

25 **A** They were not.

1 Q Did you indicate to them they should pick someone or
2 anything of that nature?

3 A No.

4 Q And at the time you showed that photo line-up, at
5 that point, had Mr. Williams been apprehended yet?

6 A No, ma'am.

7 Q We've been talking about this area off Two Notch
8 Road, off Polo Road. I'm going to show you what's
9 been marked as State's Exhibit No. 69. Are you
10 familiar with this diagram? Well, I guess it's an
11 aerial.

12 A Yes.

13 Q And does it actually show the areas we've been
14 talking about here today?

15 A It does.

16 MS. CAMPBELL: Your Honor, at this time we'd
17 offer State's Exhibit No. 69.

18 MS. DAVIS: Without objection.

19 THE COURT: Without objection.

20 (WHEREUPON, State's Exhibit No. 69 is admitted
21 into evidence.)

22 MS. CAMPBELL: Your Honor, may the witness step
23 down?

24 THE COURT: Yes.

25 MS. CAMPBELL: Thank you, sir.

1 Q Where do you like it better?

2 A It doesn't matter.

3 Q Can you come over on this side? Speak loudly so the
4 court reporter can hear you. Use the pointer. The
5 Shoe Dept. is located, I think it's a strip mall in
6 front of the Wal-Mart?

7 A This is the strip mall that we've been referring to
8 at 10050 Two Notch Road right here.

9 Q And where would the actual Wal-Mart be? You can see
10 part of it on here.

11 A This is the Wal-Mart top. This would be the south
12 corner of Wal-Mart which is 10062.

13 Q And where is Two Notch Road on this map?

14 A Two Notch is right here. This is North Brickyard, if
15 you're familiar with that, and two Notch Road going
16 out towards Pontiac.

17 Q And I notice that there are a number of different
18 stores here in the strip mall where The Shoe Dept. is
19 located. Do you know which one was The Shoe Dept.
20 itself?

21 A I'm not sure. I didn't actually go to -- I know it's
22 in this strip, but I didn't respond to that scene.

23 Q So Sergeant Isenhoward would know that?

24 A That's correct.

25 Q And the residence where you responded to on Deer

1 Hound Trail, is it located on here?

2 A This is Deer Hound Trail right here, a circle road or
3 a curve in the road. And I believe Deer Hound Trail
4 is going to come down. Musket dead ends at 148.

5 Q It's right here?

6 A Correct.

7 Q At the end of Musket?

8 A Correct.

9 Q And to get from this area to this area, what is
10 actually the fastest route?

11 A Well, it would be the straight line across.

12 Q There are trails back there that can be followed?

13 A There are.

14 Q And when you were referring to when you all went back
15 and followed where the footsteps were located and all
16 that, can you show the jury what area you were
17 talking about?

18 A Like I stated, the K-9 officer told us that they had
19 found shoe impressions in the sand. This road that
20 comes down off of Two Notch behind The Shoe Dept.,
21 this is like an old -- I believe I called it either a
22 fire break or a gas line that runs right here. And
23 as you can see the white area, it's very sandy
24 through here. The shoe impressions, I believe you
25 all have seen them already, are right here in this

1 area. And I believe the jacket was found about right
2 in here.

3 Q In this area?

4 A Yeah.

5 Q And this would be the building --

6 A It was behind this building right here.

7 Q Beg the Court's indulgence. Behind that building as
8 is reflected in some of the photos?

9 A It was in this general area.

10 Q Okay. And are you able to get through these woods
11 and to the houses back here?

12 A Yes. As you can see, this comes all the way up.

13 Q And there are other trails within here, too, that
14 come in here?

15 A There's a road that goes down to a house here. And
16 as you can see, it's very thin in spots where you
17 could get through there. There's trails. This is
18 the area I was when the call originally came out. I
19 was on Old Steel Road. As you can see, this dirt
20 portion comes all the way down. And I thought the
21 subject might be fleeing and there might be a car, a
22 get away car down here. So this is where I was prior
23 to hearing this call, over here.

24 Q Okay. Thank you. Investigator, you ultimately
25 charged Mr. Williams in your case?

1 **A** We did.

2 **Q** And what was he charged with?

3 **A** Burglary first and armed robbery.

4 **Q** Thank you.

5 **THE COURT:** Cross examination.

6 **MS. DAVIS:** Thank you, Your Honor. May it
7 please the Court.

8 CROSS EXAMINATION

9 **BY MS. DAVIS**

10 **Q** Good afternoon, Investigator Ellis.

11 **A** Good afternoon.

12 **Q** The call that you responded to to Martha and Mitch
13 Darnells', that was around 10:30 in the morning?

14 **A** I believe the incident occurred around 10:30 in the
15 morning. Correct.

16 **Q** It was daytime?

17 **A** It was.

18 **Q** And the first person you came into contact with was
19 Martha Darnell?

20 **A** I believe so. I mean, they were both there together
21 when I got there.

22 **Q** And her account -- well, you wrote an incident report
23 about this, right?

24 **A** I did.

25 **Q** You also did a follow-up report?

1 **A** Mm-hmm (affirmative).

2 **Q** In the incident report Martha basically stated that
3 all of a sudden Emmith was standing next to her
4 outside?

5 **A** You're referring to what's in the incident report?

6 **Q** Yes, sir. That while she was standing at the -- I'm
7 sorry. That he walked up to her while she was
8 standing there?

9 **A** "Subject walked up to her while she was standing at
10 her front door."

11 **Q** Yes, sir. And at that point, at some point he then
12 walked past her into the house or pushed past her
13 into the house?

14 **A** I believe she said she opened the door and --

15 **Q** Yes, sir.

16 **A** -- he pushed past. Yes.

17 **Q** And then he walked in the house?

18 **A** Correct.

19 **Q** Once he got inside, she says -- or he says, "Give me
20 the keys"? That's what she testified to today?

21 **A** Yes.

22 **Q** You also did -- or I'm sorry. On direct just now you
23 testified that both Martha and Mitch were unsure what
24 was in his right pocket?

25 **A** That's correct. It was a weapon or a gun. They were

1 unsure, but that's what they thought.

2 **Q** They assumed it was a gun?

3 **A** That's right.

4 **Q** They indicated they were unsure because they didn't
5 see a weapon though?

6 **A** They didn't see the actual weapon. No.

7 **Q** So they're just assuming it was a gun?

8 **A** Well, if somebody was asking for their keys and had
9 his hand in his pocket, I believe they'd assume that
10 he had a weapon.

11 **Q** Yes, sir. I'm just saying it was an assumption
12 though, correct?

13 **A** Sure.

14 **Q** And I think on direct Ms. Campbell went through with
15 you evidence marked State's 67. This was all the --
16 I'm sorry, Your Honor. If I might approach. This
17 was the stuff that was found in his pocket?

18 **A** The right pocket.

19 **Q** In his right pocket. In his jacket pocket?

20 **A** Mm-hmm (affirmative).

21 **Q** Okay. And that was on the right side?

22 **A** Right.

23 **Q** Okay. All the items that are in that bag, correct?

24 **A** Yeah. These items were found inbetween. He didn't
25 actually have these items when he was at that

1 location.

2 Q Okay. But I'm saying that was in his right jacket
3 pocket?

4 A Where we found it.

5 Q Yes, sir.

6 A Yes.

7 Q The follow-up report that you wrote is a little more
8 detailed than the incident report. Is that fair to
9 say? Longer?

10 A It's longer. Sure.

11 Q Well, I mean, it's more detailed, right?

12 A I guess if you call it more detailed, it is. Yes.

13 Q Well, your incident report is only about six lines
14 long, right?

15 A Yes. But it has more blocks in it and everything
16 else is typed out. It's bigger typing on the other
17 one, on my follow-up.

18 Q Yes, sir. But your follow-up report, that is a page
19 and a half?

20 A Sure.

21 Q I'm simply saying there's more information in the
22 follow-up report.

23 A Yes.

24 Q In the follow-up report -- and do you have a copy of
25 that? I'm sorry.

1 **A** I do.

2 **Q** Okay. In the follow-up report, nowhere in that
3 statement -- or I'm sorry -- in that report does it
4 mention anything about the hand being in the pocket.
5 Is that fair to say?

6 **A** It doesn't actually say their hands in their pocket.
7 But, I mean, it refers to -- I completed a robbery
8 questionnaire. And if you refer to the robbery
9 questionnaires, both them and the incident report
10 refer to them saying the hands were in the pocket and
11 that they thought it was a weapon.

12 **Q** Yes, sir. And that's a separate document, correct;
13 the robbery questionnaire that you're referring to?

14 **A** Correct.

15 **Q** And on that questionnaire, since we're there, there
16 is a spot where you can write type of weapon?

17 **A** Correct.

18 **Q** Correct? And that's marked unknown?

19 **A** Correct. And just below it they both state what they
20 thought was a weapon.

21 **Q** Yes, sir. And that robbery questionnaire, that's
22 something that you wrote out?

23 **A** I asked the questions and filled in the blanks.

24 **Q** Martha and Mitch gave you some information and then
25 you wrote it down?

1 **A** Yeah. Separate.

2 **Q** You also spoke with Billy Lorimer, the construction
3 worker?

4 **A** I was present when Sergeant Isenhoward was
5 interviewing him. I didn't actually speak to them
6 myself. I knew that they were witnesses from talking
7 to the Darnells. And when I -- as I was finishing up
8 my interviewing of them, Sergeant Isenhoward arrived
9 and I told him that they were over there. I finished
10 my stuff and I proceeded over there and I heard some
11 of what they were saying.

12 **Q** Okay. But nothing of what they testified to today,
13 or nothing I guess in general about their testimony
14 is anywhere in your incident report or follow-up
15 report?

16 **A** No. It was all -- well, in my follow-up, it refers
17 that Sergeant Isenhoward interviewed both of the guys
18 that Ms. Darnell saw across the street.

19 **Q** Yes, sir.

20 **A** So that would refresh my memory to know that it would
21 all be in his notes as to the interview.

22 **Q** Yes, sir. I'm simply saying there is nothing that
23 you documented as to what they said happened that
24 day?

25 **A** No.

1 Q I believe Ms. Campbell also mentioned that you got a
2 buccal swab from Emmith?

3 A Correct.

4 Q He consented to that, correct?

5 A There was a -- I guess there was a court hearing. I
6 wasn't present at that. I'm not sure.

7 Q You're not sure?

8 A I know we had an order from the court to go get it.

9 Q You don't know whether or not he actually just
10 consented to that?

11 A I was not present for that. I don't know.

12 Q And your incident report, follow-up report, robbery
13 questionnaire; nowhere in there is it stated that
14 anyone actually saw a weapon, correct?

15 A They never saw the actual weapon.

16 Q Right. In fact, in your warrant, you took out the
17 warrants for the armed robbery, correct, on Mr. and
18 Mrs. Darnell?

19 A I would have to say -- I'm not sure if I actually
20 signed them or if Investigator Isenhoward did. I
21 would have to see them.

22 Q If I approached and showed you a copy of that, will
23 that refresh your memory?

24 A Sure.

25 MS. DAVIS: Your Honor, may I approach?

1 **THE COURT:** Yes, ma'am.

2 **A** Yes. I signed the warrants for the Deer Hound Trail
3 incident.

4 **Q** And in that warrant you actually wrote that there
5 was -- you didn't indicate any specific weapon? You
6 said there was a weapon, correct?

7 **A** Correct.

8 **Q** But you didn't indicate what type of weapon?

9 **A** The weapon would be the physical representation that
10 they gave us.

11 **Q** Yes, sir. I understand that. I'm just simply
12 saying, the warrant is vague as to what type of
13 weapon it was?

14 **A** Well, we were just trying to establish probable
15 cause. I would have to read it to be exact. But as
16 far as, you know, the actual weapon, as long as, you
17 know, they thought it was a deadly weapon at the
18 time, that's probably what I put in there.

19 **Q** Yes, sir. I understand the elements of the armed
20 robbery. I'm simply saying, in your warrant the
21 language you put in didn't refer to -- it didn't say
22 he robbed them with a gun, correct?

23 **A** I don't have a copy of it. I'm sorry.

24 **Q** I'm sorry. I'll hand this up to you again.

25 **A** No, ma'am. I used the term "physical representation"

1 in the warrant.

2 Q Yes, sir. And you've been in here all day today for
3 testimony, correct?

4 A Correct.

5 Q So you heard that Martha Darnell's --

6 MS. CAMPBELL: Objection, Your Honor, to pitting
7 witnesses.

8 THE COURT: Sustained.

9 Q In your warrant which I understand is establishing
10 probable cause, you simply said a weapon, correct?
11 You didn't say it was a gun?

12 A Correct.

13 Q And nowhere in the incident report or your follow-up
14 report did you write anything about a protruding
15 object --

16 A No.

17 Q -- in the pocket? Beg the Court's indulgence. I
18 have no further questions, Your Honor.

19 THE COURT: Redirect?

20 MS. CAMPBELL: May it please the Court.

21 REDIRECT EXAMINATION

22 BY MS. CAMPBELL

23 Q You still got the warrant?

24 A Yes.

25 Q Referring down three lines, starting with "the

1 defendant demanded car keys"?

2 **A** This is the robbery warrant?

3 **Q** Either the burglary first degree or the armed robbery
4 warrant.

5 **A** Okay. "The defendant" --

6 **Q** What does that say?

7 **A** "The defendant demanded car keys with physical
8 representation that he had a weapon in his pocket."

9 **Q** If he had physically represented he had a gun, would
10 that make it armed robbery?

11 **A** Yes.

12 **Q** If he physically represented he had a knife, would
13 that make it armed robbery?

14 **A** Correct.

15 **Q** And in certain instances, can even a fist constitute
16 armed robbery?

17 **A** It can.

18 **Q** Is a gun a weapon?

19 **A** Is a gun a weapon? Yes.

20 **Q** Is a knife a weapon?

21 **A** Yes.

22 **Q** And in certain instances, a fist can be a weapon?

23 **A** Correct.

24 **Q** Thank you, sir. Nothing further, Your Honor.

25 **MS. DAVIS:** Nothing further.

1 **THE COURT:** All right, sir. You may come down.
2 May this witness be excused? Without objection.

3 **MS. CAMPBELL:** The State calls Ms. Fouty.

4 MARGARET D. FOUTY, after being duly sworn,
5 testifies as follows:

6 **THE CLERK:** Thank you. Have a seat in the
7 witness stand and give the court reporter your name.

8 **THE WITNESS:** My name is Margaret DuPuis Fouty.

9 DIRECT EXAMINATION

10 **BY MS. CAMPBELL**

11 **Q** Ms. Fouty, where are you employed?

12 **A** The South Carolina Department of Motor Vehicles.

13 **Q** And what do you do there, ma'am?

14 **A** I'm the titles and registration manager.

15 **Q** And as part of your duties as the title and
16 registration manager, do you all keep certain
17 business records?

18 **A** We do.

19 **Q** Does that also include registrations of vehicles?

20 **A** That's correct.

21 **Q** I want to turn your attention to a vehicle with a
22 plate number 8685 AZ. Did you pull some documents at
23 my request?

24 **A** I did.

25 **Q** And are those kept in the normal course of business?

1 **A** They are.

2 **Q** And who is that automobile registered to?

3 **A** 8685 AZ?

4 **Q** Yes, ma'am.

5 **A** That was registered to Mitchell Darnell, Ellen -- I'm
6 sorry. Yes. That plate was registered to Mitchell
7 Darnell.

8 **Q** And what kind of vehicle does that indicate it is?

9 **A** It's a 1998 Toyota.

10 **Q** And does it indicate an address where it was
11 registered?

12 **A** Yes, it does.

13

14 **Q** And was that registered to them back in the year of
15 2007?

16 **A** Yes, it was.

17 **MS. CAMPBELL:** Thank you. That's all I'd have.

18 **MS. SINGLETARY:** No questions, Your Honor.

19 **THE COURT:** You may come down, ma'am. Thank you
20 very much for coming. You're free to go.

21 **MS. CAMPBELL:** Is she excused?

22 **MS. SINGLETARY:** Yes, Your Honor. She can be
23 excused.

24 **MS. MCDUFFIE:** Your Honor, may we approach?

25 **THE COURT:** Sure.

1 (Whereupon, a bench conference is had)

2 **THE COURT:** Ladies and gentlemen, there's a
3 matter of law I need to take up with the attorneys.
4 So if you'll just go to the jury room for a few
5 minutes. Relax. We'll call you when I get this
6 matter resolved. Again, don't discuss the case among
7 yourselves while you're in the jury room. Just relax
8 for a few minutes.

9 (Jury out at 3:33 p.m.)

10 **THE COURT:** Ms. McDuffie.

11 **MS. MCDUFFIE:** The State would call Deputy
12 Smith.

13 **THE COURT:** Why don't you explain -- come on
14 around, sir. Just have a seat for a minute. I'll
15 swear you in just a minute. What is the purpose of
16 this witness's testimony?

17 **MS. MCDUFFIE:** Your Honor, this witness and
18 Deputy Goodwin are from the Wake County Sheriff's
19 Department in North Carolina. This deputy is the
20 first one to make contact with the defendant in North
21 Carolina. Once the deputy made contact with the
22 defendant, the defendant made several volunteered
23 statements to this deputy admitting that he had
24 stolen the car from South Carolina, things of that
25 nature, Your Honor.

1 **THE COURT:** All right. Deputy, raise your right
2 hand, please.

3 JOHN SMITH, after being duly sworn, testifies as
4 follows:

5 **THE COURT:** All right. Thank you very much. Go
6 ahead, Ms. McDuffie. Just confine your proffer to
7 the significant issues. In other words, you don't
8 need to go through a lot detail.

9 DIRECT EXAMINATION

10 **BY MS. MCDUFFIE**

11 **Q** Deputy, on May the 8th of 2007, did you have a chance
12 to come in contact with the defendant?

13 **A** Yes. Mr. Williams. I did. I was circulating the
14 area looking for a possible suspect in a stolen car
15 case that Deputy Goodwin was responding to. And I
16 was circulating the area.

17 **Q** And when you approached Mr. Williams, what happened?

18 **A** As I was driving up I seen Mr. Williams. He's
19 walking down Falls Moose Road. He was on the
20 sidewalk.

21 **THE COURT:** He was walking?

22 **A** He was walking at the time; yes, sir. He had on a
23 gray t-shirt, green shorts and I believe black house
24 slippers. He may have had on white socks or not.
25 I'm not real sure about that. It's been a while

1 since this happened.

2 As I pulled up in my patrol car, it's a marked
3 unit with blue lights, marked Sheriff on the side,
4 Mr. Williams started to cross the street. So I
5 blocked his path sort of at an angle. At that point
6 in time I had knowledge that the car was stolen. I
7 did not know who Mr. Williams was. He fit the
8 description of who I was -- we were looking for.

9 I stepped out of the car, drew my service
10 weapon, told him to stop, ordered him down to his
11 knees, walked around the car. As I was walking
12 around the car I called for backup. Another deputy
13 arrived, got him up, brought him around to the front
14 of the car. Mind you, we're still in the road in
15 front of Rabon's Croft School.

16 I started to do a Terry frisk for weapons. I
17 found a key in his, I believe his front pocket, which
18 was a Toyota key, some other things, asked him who he
19 was. He was a little evasive, seemed agitated; just
20 general questions: Who you are, what you doing in
21 the area. He told me he was going to his
22 girlfriend's house.

23 And I explained to him what was going on. He
24 was still agitated. I told him I was going to take
25 him back to where the stolen car was. At that point

1 in time I placed his right arm behind his back. He
2 resisted a little bit. I had another deputy there
3 with him. I told him I wasn't playing with him, put
4 him in the handcuffs, put him in the front seat of my
5 police car. As we were riding, he just was moving
6 back and forth. I still didn't know who he was. I
7 was asking him his name. At first he told me
8 Williams. And I was like, "Is that your first name,
9 last name?" And then I said, "Is that your car at
10 the school?" You know, things just -- he says, "I
11 stole the car." You know, I'm going along with some
12 expletives. And then --

13 **THE COURT:** Do what?

14 **A** -- I said, "What is your name?"

15 **THE COURT:** What did you say?

16 **A** I said I was taking him back to the school. And I
17 said, "Is that your Camry at the school?" I was
18 trying to tell him where I was taking him and why we
19 were going there and why I was moving him from one
20 spot to the other. And I said, "Is that your Camry
21 at the school?" I said, "I want to take you back,
22 got some people who want to talk to you." He was in
23 handcuffs at that time.

24 He was agitated. I had a hard time
25 understanding what he was saying. I says, "You know,

1 what's your name?" He said, "Williams." And I said,
2 "Is that your Camry", and things like that. Just
3 general information questions. I did not know what
4 was going on in South Carolina. I had no idea. I
5 did not have any knowledge what had happened down
6 here.

7 At that point in time he said some -- mumbled
8 some stuff, and I asked him names again. And I
9 didn't understand his first name. And then that's
10 when he blurted out, "I stole a car. You know who I
11 am. I'm going away for a long time." But he had
12 some expletives, you know, F word in there, things of
13 that nature.

14 **Q** So you asked him his name, and in response to that he
15 said what?

16 **A** He said, "You know who I am. I stole the car. I'm
17 going away for a long time." And I just -- it kind
18 of shocked me because I didn't know what was going on
19 down here.

20 **Q** And is that the extent of the conversations you had
21 with him?

22 **A** Right. He pretty much didn't have a lot of
23 conversation with me or interaction with me. He was
24 pretty much, you know, agitated but docile at the
25 same time.

1 **MS. MCDUFFIE:** Nothing further from this
2 witness, Your Honor.

3 **THE COURT:** Cross examination.

4 **MS. SINGLETARY:** Yes, Your Honor.

5 CROSS EXAMINATION

6 **BY MS. SINGLETARY**

7 **Q** Deputy Smith, once you placed my client in handcuffs,
8 he was under arrest, wasn't he?

9 **A** I explained to Mr. Williams why I was moving him from
10 point A to point B. I never told him he was under
11 arrest. Okay? When I am dealing with a stolen car,
12 and the reason I placed him there, is for my safety.
13 Okay? I want to go home to my family at night.
14 Okay? It's an investigative stop. Okay? I can let
15 him go at any time.

16 **Q** I understand what you're saying. But my question
17 was, was he under arrest at that point?

18 **A** Not in my mind. No, ma'am.

19 **Q** Now, at that point did you read my client his rights?

20 **A** He wasn't under arrest.

21 **Q** Okay. So you didn't read him his rights?

22 **A** No, ma'am.

23 **Q** So you said that it was an investigatory stop. So
24 did my client know that he was free to go at any
25 point? Or was my client free go at any point?

1 **A** Not at that time for me. My investigatory stop, I
2 had to find out what was going on.

3 **Q** And as a result of you actually placing my client
4 under arrest -- well, at what point did my client get
5 placed under arrest?

6 **A** I transported him back to Brassfield Elementary
7 School, to the school. I turned him over to Deputy
8 Goodwin. My interaction with your client was very
9 limited. Okay? He had very limited -- I mean, to
10 anything I asked him, he acted like he didn't want to
11 be around me. So rather than agitate him any more, I
12 just shut up and told him I was taking him back to
13 the school.

14 **Q** So you were asking him a lot of questions but then
15 you weren't asking him a lot of questions? Because
16 on direct you said that you were trying -- because he
17 was agitated you were trying to tell him where you
18 were going, what you were doing, like the fact that
19 he fit a description to an actual possible stolen
20 vehicle.

21 **A** I think you're taking what I'm saying out of context.

22 **Q** Okay. Well, please explain it to me.

23 **A** Okay. Your client fit the description of a person
24 who had stolen a car. Okay. Under law, North
25 Carolina law, I can do an investigative stop. And

1 that's what it was. It was purely investigative.
2 Okay. I had to determine who he was. He was not
3 helping me determine who he was. I asked him his
4 name, where he was going. I asked him his name
5 was -- and at first when I asked him he didn't want
6 to tell me. And then from there it just went
7 downhill. It wasn't on my part. It was on your
8 client's part.

9 **Q** And explain to me, how did it go downhill?

10 **A** You will have to ask Mr. Williams that. I was doing
11 my job.

12 **Q** Well, what I'm trying to figure out is, you said that
13 he kept mumbling stuff?

14 **A** Right. I couldn't understand what he was saying. He
15 had his head -- like this is the doorpost to the car.
16 I'll demonstrate to you. He had his head against the
17 door like this talking into the door.

18 **Q** Okay. So he was talking into the door?

19 **A** Right. He was talking toward the window. I'm in a
20 car. I have a radio between me. I have people
21 screaming about what's going on or talking. I'm
22 trying to listen to that. I'm trying to listen to
23 him for my safety. I try to watch his actions and
24 drive. I'm multitasking as I'm driving down the
25 road.

1 Q Okay. And so how long from the time that you
2 actually detained my client in the middle of the road
3 did you take to put him into handcuffs?

4 A He was not placed -- my first interaction with him,
5 probably 15 minutes.

6 Q Okay.. 15 minutes?

7 A Right.

8 Q And then at some point you put him -- you placed him
9 inside of the patrol car?

10 A Right.

11 Q And how long was my client in the patrol car from the
12 time you placed him in handcuffs and placed him in
13 that patrol car?

14 A Maybe five minutes.

15 Q Then five minutes. And so you make it to the
16 elementary school. Do you immediately take my client
17 out of the car?

18 A While I was in route to the elementary school I
19 contacted Senior Deputy Goodwin. I let him know that
20 I was bringing Mr. Williams to him and that I would
21 be turning him over to him. It was not my call. It
22 was Deputy -- Senior Deputy Goodwin's call.

23 Q Okay. And I just want to clarify this. You said
24 that you, I guess third or fourth time or whatever
25 you were asking my client his name, he just

1 spontaneously blurted out, "You know who I am"?

2 **A** The conversation, if you can call it a conversation,
3 I was trying to determine who he was. Okay? I was
4 talking to him like I'm talking to you now. It
5 wasn't in a -- I don't know how many times I asked
6 him his name. He told me Williams. I wanted to know
7 if it was his first or his last name. I was just
8 trying to determine your client's name. Just like if
9 I walked up to you on the street, hey, how are you
10 doing? And if I needed to ask you a question, what's
11 your name. He didn't want to tell me.

12 **Q** So could you take me back to when he spontaneously
13 blurted out "You know who I am. I'm going to jail
14 for a long time"?

15 **A** It's been two years. And if my memory serves me
16 right, and I've rode back to the scene and looked
17 trying to refresh my memory, he had his head on the
18 door jamb. He was leaned like this, had his seatbelt
19 on him. He looked at me like, pretty much told me,
20 "You know who I am. I stole the car. And I'm going
21 away for a long time." That's pretty much how it
22 was. He was laid back like this looking at me with
23 the back of his head on his door jamb.

24 **Q** And you wrote a brief incident report?

25 **A** Correct.

1 Q And in that incident report -- and do you need copy
2 of it, or do you have a copy of your incident report?

3 A I have a copy of it. Not here in front of me.

4 Q So you remember what's in your incident report?

5 A Correct.

6 Q Is there anywhere in your incident report where you
7 write that my client made these statements to you?

8 A I put in there where he basically told me he stole
9 the car. But I didn't word it as I am telling you
10 now. No.

11 Q And is there anywhere in there that you said that you
12 actually was holding him for an investigatory
13 detention?

14 A No.

15 Q Is there anywhere in there that you actually talk
16 about the resisting arrest or the agitation?

17 A No. His resisting, there is resisting; then there is
18 resisting. Okay? His didn't rise to the fact of
19 being criminal. Okay? He just wasn't answering my
20 questions, just general, normal, everyday questions
21 like who you are, what you doing in the area type
22 deal when I get called to a call. I mean, it
23 wasn't -- it wasn't criminal what he was doing at
24 that time. No.

25 **MS. SINGLETARY:** Your Honor, I have no further

1 questions.

2 **THE COURT:** Anything further?

3 REDIRECT EXAMINATION

4 **BY MS. MCDUFFIE**

5 **Q** Deputy Smith, you asked the defendant his name?

6 **A** Yes, ma'am.

7 **Q** His response was what?

8 **A** I asked him his name several -- the only time that I
9 could clearly understand him the first time was
10 Williams.

11 **Q** And then later when you asked him his name again to
12 try and get his first name, he said what?

13 **A** Right. He basically went off and told me, "you know
14 who I am. I stole the car." I mean. And at that
15 point in time I just shut up. I'm like, okay, what's
16 going on here?

17 **MS. MCDUFFIE:** Nothing further, Your Honor.

18 **THE COURT:** That's it?

19 **MS. SINGLETARY:** Yes, Your Honor.

20 **THE COURT:** Okay. All right, sir. You can come
21 down.

22 **MS. SINGLETARY:** Your Honor, I do have a motion,
23 Your Honor.

24 **THE COURT:** All right.

25 **MS. SINGLETARY:** I would have to say that my

1 motion is somewhat two-fold. Number one, I think
2 that this officer went beyond the scope of an
3 investigatory detention, Your Honor. The
4 investigator testified that he knew that my client
5 fit the description of someone who walked away from
6 the car. However, he didn't know what was going on
7 in South Carolina.

8 He did not read the rights to my client. In
9 essence, as he said, he was just having a normal
10 conversation with my client, not really telling my
11 client why he's actually being detained, that at any
12 point if he -- whether or not he -- my client does
13 not know at any point that he is free to go.

14 Your Honor, in addition to that, I would say
15 that the testimony by the officer, any testimony by
16 the officer other than the fact that he heard a call,
17 he picked up my client and he transported, turned my
18 client over to Goodwin is irrelevant, Your Honor. I
19 mean, my client is not here for a stolen vehicle. My
20 client is here for the armed robberies and the
21 burglaries. So anything other than establishing the
22 fact that any client was apprehended in North
23 Carolina, I would state that it's irrelevant to this
24 case at hand. I mean, there is no material element
25 to the offenses that he's charged with which this

1 testimony benefits.

2 **THE COURT:** All right. Yes, ma'am.

3 **MS. MCDUFFIE:** Your Honor, we would argue that
4 while the defendant was in custody at the time that
5 he was with Deputy Smith that these were not -- this
6 was not police interrogation. These were merely
7 routine booking questions. Asking him his name is
8 not a question that is likely to elicit the response
9 which he got. The question asked to the defendant
10 is, what's your name? Granted, it was asked multiple
11 times. And the defendant stated, you know, the
12 response that the deputy just told you.

13 Furthermore, Your Honor, I believe that not only
14 is that part of the testimony relevant, but the fact
15 that the deputy found someone matching the very
16 unique description that is given to him by Deputy
17 Goodwin, and then when he Terry frisked him found the
18 key to the car in his pocket, the same car that was
19 stolen from the Darnells in Columbia is absolutely
20 relevant to the case.

21 And, Your Honor, on the issue of booking
22 questions and volunteered statements, we would rely
23 on State v. Sullivan, that standard booking questions
24 are not interrogation and Miranda is not required,
25 277 SC 35, and that volunteered statements are also

1 not interrogation, State v. Howard, 296 S.C. 481.

2 **THE COURT:** Let me see those cases.

3 **MS. MCDUFFIE:** Your Honor, I'll hand up State
4 v. --

5 **THE COURT:** I think there's it clearly custody.

6 **MS. MCDUFFIE:** Your Honor, I'll hand up State
7 v. --

8 **THE COURT:** I think it's clearly custody,
9 according to the officer's testimony. Well, not
10 according to the defendant's testimony. But in my
11 opinion it's not likely that any individual that's
12 placed in handcuffs in front of a drawn weapon would
13 feel free to leave. That's just a little too
14 incomprehensible to me.

15 So, I mean, the first element as to the elements
16 that trigger Miranda is met in that the defendant is
17 in custody. And then the next question is was he
18 interrogated. And voluntary statements are
19 admissible and statements made for the purpose of
20 booking an individual or statements made during the
21 course of a booking is not interrogation.

22 This sounds like it's a more confrontational
23 conversation than just a normal, what's your name,
24 what's your address type of a question, which could
25 be considered interrogation. And if it's

1 interrogation it invokes the protections of the Fifth
2 Amendment. So let me look at these cases and I'll --
3 let's take a rest stop.

4 **MS. MCDUFFIE:** Your Honor, if we may bring State
5 v. Howard, I cannot find my copy, I will print it out
6 and bring it to your chambers.

7 **THE COURT:** You got anything?

8 **MS. SINGLETARY:** And if we could please get a
9 copy of the law that you're passing up to the Court.

10 **THE COURT:** Well, we'll print our own State v.
11 Howard. But it's a close question. I'm going to
12 look at it, because it's significant evidence.

13 (Whereupon, a break is taken)

14 **THE COURT:** All right. With regard to the
15 deputy's testimony, as I said before we broke, I
16 believe the circumstances are such that the defendant
17 could not have felt that he was not in custody as a
18 result of actions of the officer. And that is the
19 test for custody. At least that's a general test for
20 custody.

21 The question then becomes whether or not there
22 was an interrogation; and, if so, did that invoke the
23 protections of the Miranda warnings. And I believe
24 that he was interrogated. And let me tell you why.

25 I realize that standard booking questions or

1 "what's your name", that type of questioning is
2 allowable without invoking the protections of
3 Miranda. But this seems to have gone beyond that in
4 that the officer said he explained to the defendant
5 what was going on. He said he asked him general
6 questions. He said he was going to take him back to
7 where the Camry was located.

8 After he told him his name, he kept asking him
9 his name. He sounded as though he sort of prodded
10 him, maybe not to intentionally aggravate him, but he
11 kept asking him his first name, his first name. He
12 tells him, "I'm not playing with you." After he
13 asked him -- here is where he goes beyond name, rank
14 and serial number.

15 He asked him if that's your Camry at the school.
16 I'm going to see if I can quote it exactly because we
17 do have it here. All right. "There were two
18 deputies at one point. I was trying to get his first
19 name, last name, and I said, "Is that your car at the
20 school?" I mean, that's not what's your name. You
21 know, things just -- and then he says he stole the
22 car. I'm not sure what the question was here, but
23 the answer was: "I said I was taking him back to
24 school and I said, 'Is that your Camry at the school?
25 I was trying to tell him where I was taking him and

1 why we were going there and why I was moving him from
2 one spot to the other.' I said" -- this is a dirty
3 disk, if you know what I mean. And said I want to --
4 "We've got some people that want to talk to you." I
5 mean, all of that is not just what is your name.

6 He was getting agitated, had a hard time
7 understanding what I was saying. He says, you know,
8 "What's your name?" He said, "Williams." And I
9 said, "Is that your Camry and things like that, just
10 general information questions."

11 Well, they are general information questions,
12 but the officer testified he knew that the car was
13 stolen. And, I mean, he's interrogating him about
14 whether or not the Camry belongs to him when he says
15 he knows the car was stolen. He says he had no idea
16 what was going on in South Carolina. Well, that's
17 fine. But he says he knows that he had a stolen car.

18 I mean, I'm just scrolling through the -- he
19 says, "He didn't have a lot of conversation or
20 interaction with me. He was just agitated." So, you
21 know, at that point in time it would be reasonable
22 for the officer to have ended his questioning of the
23 defendant, or at least to have examined him if he
24 told him anything he'd have a right to remain silent.

25 So I find that the defendant was in custody and

1 this was a custodial interrogation without being
2 properly warned or given his Miranda warnings, and I
3 will exclude the testimony. Next witness.

4 **MS. CAMPBELL:** Your Honor, we have two witnesses
5 we need to put up today so they can go back to North
6 Carolina.

7 **THE COURT:** Let's go.

8 **MS. CAMPBELL:** One of those is Ms. Bryant who is
9 the witness we talked about from the Caval Corp
10 Corporation where he was staying.

11 **THE COURT:** The what?

12 **MS. CAMPBELL:** The Caval Corp. It's the place
13 where he was being housed.

14 **THE COURT:** Just remind me. Oh, oh, oh, oh.
15 Sure. All right.

16 **MS. CAMPBELL:** And I just wanted to basically go
17 through with her real quick, the questions I plan
18 to --

19 **THE COURT:** That's fine. Go ahead and put her
20 up.

21 **MS. CAMPBELL:** Go through with her so we don't
22 mess anything up. She just needs to leave this
23 evening.

24 **THE COURT:** That's fine.

25 LINDA BRYANT, after being duly sworn, testifies

1 as follows:

2 **THE CLERK:** Thank you. Have a seat in the
3 witness stand and give the court reporter your name.

4 **THE COURT:** You may proceed.

5 **MS. CAMPBELL:** Your Honor, may I explore the
6 whole thing and then you can tell me what I can go
7 into?

8 **THE COURT:** Go ahead. I'm sure you've talked to
9 her about it.

10 **MS. CAMPBELL:** I've talked to her some. But I
11 told her, too, that we would ask you specifically
12 what all we could get into.

13 **THE COURT:** Sure.

14 DIRECT EXAMINATION

15 **BY MS. CAMPBELL**

16 **Q** Ms. Bryant, where are you employed?

17 **A** Caval Corp. Limited.

18 **Q** And what is that company?

19 **A** It's a residential re-entry center.

20 **Q** And are you familiar with a man named Emmith
21 Williams?

22 **A** Yes, I am.

23 **Q** And was he a resident at that facility in the spring
24 of 2007?

25 **A** Yes, he was.

1 Q And was he supposed to stay there until I believe it
2 was August of 2007?

3 A Correct.

4 Q What's the maximum amount of time anyone can stay in
5 your facility?

6 A The maximum is six months.

7 Q Are there certain rules and regulations that are
8 applied at your facility?

9 A Yes.

10 Q Did Mr. Williams -- or up until May I guess the 4th
11 or 5th, had he complied with those?

12 A Yes, he had.

13 Q Was he employed as of May the 4th of 2007?

14 A Yes.

15 Q And where was he employed?

16 A Jerry's Autorama.

17 Q When was the last time you had that he was actually
18 at your facility?

19 A May 5th.

20 Q Of 2007?

21 A 2007.

22 Q And at the request of Sergeant Isenhoward and other
23 investigators, did you go back and review some
24 security cameras as far as the last time he was seen
25 on your security tapes?

1 **A** Yes, I did.

2 **Q** And were you able to provide information to the
3 police about what he was wearing when he left?

4 **A** Yes.

5 **Q** And can you remember the description you gave the
6 police?

7 **A** It was blue jeans and a Polo shirt with, I think it
8 was red stripes in the shirt.

9 **Q** And that was information you were able to get off
10 your security system?

11 **A** That's correct.

12 **Q** Once he showed up missing after May the 5th of 2007,
13 was he put on escape status?

14 **A** Yes, he was.

15 **Q** Were there certain -- is he supposed to check in with
16 you all at certain times of every day?

17 **A** Yes. They're not allowed to leave the facility
18 without the permission of staff.

19 **Q** And, in fact, the last time he had checked in with
20 you was on the evening or afternoon of May the 4th of
21 2007?

22 **A** May the 4th. Correct.

23 **Q** And then he showed up missing the last time he seen
24 in the facility which was the next day?

25 **A** That's correct.

1 **THE COURT:** What was the question?

2 **MS. CAMPBELL:** I just need some guidance on how
3 to clean it up.

4 **THE COURT:** Well, it's obviously a somewhat
5 regimented facility. I thought we had that sort of
6 cleared up when --

7 **MS. CAMPBELL:** That he was living at this
8 facility and the last time he was seen and this is
9 what he was wearing?

10 **THE COURT:** Well, that's the truth. I mean,
11 that's the facts.

12 **MS. CAMPBELL:** That's pretty true. Kind of
13 true.

14 **THE COURT:** And she either knows he was working
15 or not working. When we redacted his statement, we
16 redacted the reference to a federal halfway house
17 which implies to the jury that he had been
18 incarcerated in a federal institution.

19 **MS. CAMPBELL:** If I just refer to it as he was
20 living at this facility that you supervise?

21 **THE COURT:** Why don't you say where you
22 supervise. All right. Ms. Singletary, what's your
23 objection?

24 **MS. SINGLETARY:** Your Honor, my objection is to
25 the entire testimony. When we talked about this in

1 chambers, the State stated that the only reason why
2 they wanted to call this witness was for them to
3 identify the clothing that my client had on. The
4 fact that my client is supervised, whether it's in a
5 halfway house or whether it's in prison or it's in a
6 jail, it's highly prejudicial to our case in front of
7 the jury.

8 Another thing is, we don't need her to verify
9 his employment, Your Honor. They have already placed
10 in evidence the paycheck, a picture of the paycheck
11 stub and the paycheck. So I would say that it would
12 be cumulative. Your Honor, if this -- I mean, the
13 security system, it goes again to the fact that my
14 client is --

15 **MS. CAMPBELL:** We aren't going to refer to the
16 security system. We're just going to say the last
17 time he was seen he was wearing these clothes.

18 **MS. SINGLETARY:** If this witness says --

19 **THE COURT:** Well, if that's all she's going to
20 say --

21 **MS. SINGLETARY:** Yes. If this witness does not
22 say where she works at, what type of facility it is,
23 if she says that she knows Emmith Williams, the last
24 time she saw Emmith Williams was on May the 5th and
25 this is the clothing that he had on --

1 **THE COURT:** Do you live there, ma'am?

2 **THE WITNESS:** I work there.

3 **THE COURT:** Do you live there?

4 **THE WITNESS:** No.

5 **THE COURT:** Okay. I didn't know.

6 **MS. SINGLETARY:** Nothing about it, Your Honor,
7 being a re-entry program, because that basically
8 just --

9 **THE COURT:** Why don't we say his home.

10 **MS. SINGLETARY:** Yeah. If they say --

11 **MS. CAMPBELL:** I'm just going to say this is
12 where he was staying at 312 Tryon Road and she works
13 there, the last time he was seen he was in these
14 clothes.

15 **THE COURT:** They're just going to object to the
16 word "facility". I think you can do it. I have all
17 the confidence that you can get through this.

18 **MS. SINGLETARY:** And you are going to say that
19 she works there, and the last time --

20 **MS. CAMPBELL:** She works there. The last time
21 he was seen -- I'm going to make it as generic as
22 possible.

23 **MS. SINGLETARY:** Okay.

24 **THE COURT:** Good.

25 **MS. CAMPBELL:** But can I lead her through it?

1 **MS. SINGLETARY:** If not -- yeah. Go ahead and
2 run through it.

3 **THE COURT:** You'll probably lead her through it.

4 **MS. CAMPBELL:** And it will take three minutes.

5 **MS. SINGLETARY:** Okay.

6 **THE COURT:** Ma'am, if you'll just step down, and
7 then they're going to call you when the jury comes
8 in.

9 **THE WITNESS:** Okay.

10 **THE COURT:** Ma'am, do you understand what this
11 discussion was all about?

12 **THE WITNESS:** Yes, sir.

13 **THE COURT:** Okay. Fine. As long as you
14 understand, then I think we'll be all right. Bring
15 the jury, please.

16 That prior ruling of mine on the custodial
17 interrogation that based on Rhode Island v. Innis
18 where the court -- on the Howard case they cite it
19 and say that "the court expanded the term
20 interrogation to include any words or actions on the
21 part of the police other than those normally
22 attendant to arrest the custody, that the police
23 should know or reasonably likely to elicit an
24 incriminating response from the suspect." That's
25 some of the language I referred to or relied on.

1 (Jury in at 4:37 p.m.)

2 **THE BAILIFF:** The jury is all present, Your
3 Honor.

4 **THE COURT:** All right. Thank you very much.
5 All right, ladies and gentlemen. We're now ready to
6 con. Solicitor, call your next witness.

7 **MS. CAMPBELL:** May it please the Court. The
8 State calls Linda Bryant.

9 LINDA BRYANT, after being duly sworn, testifies
10 as follows:

11 **THE CLERK:** Thank you. Have a seat in the
12 witness stand. Give the court reporter your name.

13 **THE WITNESS:** Linda Bryant.

14 DIRECT EXAMINATION

15 **BY MS. CAMPBELL**

16 **Q** Good afternoon, Ms. Bryant.

17 **A** Good afternoon.

18 **Q** Ms. Bryant, are you from Raleigh, North Carolina?

19 **A** Yes I am.

20 **Q** And are you familiar with Mr. Emmith Williams?

21 **A** Yes, I am.

22 **Q** Turning your attention back to May of 2007, was
23 Mr. Emmith Williams living at 312 Tryon Road in
24 Raleigh, North Carolina?

25 **A** Yes.

1 Q Do you work there?

2 A Yes.

3 Q When was the last time Mr. Williams was seen at 312
4 Tryon Road?

5 A The 5th. It was April 5th, 2007.

6 Q Was it April or May the 5th?

7 A May. Excuse me. May.

8 Q May the 5th of 2007?

9 A Yes.

10 Q And do you remember if it was in the morning or in
11 the afternoon?

12 A In the afternoon.

13 Q Do you recall what clothing he was last seen in on
14 May the 5th of 2007?

15 A Blue jeans and a Polo shirt with red stripes.

16 Q Blue jeans and a Polo shirt with red stripes such as
17 seen in State's Exhibit No. 29?

18 A Yes.

19 Q And on May the 8th of 2007, did you relate this
20 information to Sergeant Isenhoward with the Sheriff's
21 Department here in Columbia?

22 A Yes, I did.

23 Q Thank you, ma'am.

24 **THE COURT:** Any cross examination?

25 **MS. SINGLETARY:** Your Honor, we have no

1 questions for this witness. She may be excused.

2 **THE COURT:** Thank you very much. Ma'am, you may
3 come down. This witness may be excused.

4 **MS. CAMPBELL:** Thank you, Your Honor. The State
5 calls Cindy Paris. Your Honor, I apologize for
6 having to call some witnesses out of order. It's
7 because of scheduling.

8 **THE COURT:** That's all right.

9 (WHEREUPON, State's Exhibit No. 72 is marked for
10 identification.)

11 CYNTHIA PARIS, after being duly sworn, testifies
12 as follows:

13 **THE CLERK:** Thank you. Have a seat in the
14 witness stand. Give the court reporter your name.

15 **THE WITNESS:** Cynthia Paris.

16 DIRECT EXAMINATION

17 **BY MS. CAMPBELL**

18 **Q** Good afternoon, Ms. Paris. Where are you employed?

19 **A** Smoker Friendly.

20 **Q** Smoker Friendly?

21 **A** Mm-hmm (affirmative).

22 **Q** Where is that located?

23 **A** We have several locations. It's in North Carolina.

24 **Q** In North Carolina?

25 **A** (Nods head affirmatively).

1 Q Specifically, do you all have any locations in
2 Raleigh, North Carolina?

3 A Yes, we do.

4 Q And do you remember back in May of 2007 being
5 contacted by the Sheriff's Department from Columbia,
6 South Carolina, about some videotape?

7 A Yes, ma'am.

8 Q And did they also show you -- I'm showing you a
9 document from State's Exhibit 67 -- a receipt that
10 would have come from one of your locations?

11 A Yes, ma'am.

12 Q And which location did that come from?

13 A Garner store, 1436 Garner Station Boulevard.

14 Q And is that in Raleigh, North Carolina?

15 A Yes, it is.

16 Q And is that near Tryon Road?

17 A Yes, it is.

18 Q At their request did you go back -- and what's your
19 position at this company?

20 A I'm a supervisor.

21 Q You're a supervisor? And as a supervisor, do you all
22 keep certain videotape in the normal course of
23 business?

24 A Yes, ma'am.

25 Q And at the investigator's request did you go back and

1 pull some videotape for them?

2 A Yes, ma'am.

3 Q And I notice that there is a time, a date and a time
4 on this receipt?

5 A Mm-hmm (affirmative).

6 Q And what's the date, ma'am?

7 A 5-5-2007.

8 Q And what's the time?

9 A 2:57.

10 Q 2:57?

11 A Mm-hmm (affirmative).

12 Q Would that have been in the morning or the afternoon?

13 Do you know?

14 A The afternoon.

15 Q The afternoon?

16 A Mm-hmm (affirmative).

17 Q So that would have been close to 3:00 in the
18 afternoon?

19 A Mm-hmm (affirmative).

20 Q At the investigator's request, did you actually pull
21 video in and around that time?

22 A Yes, ma'am.

23 Q And, in fact, did you actually burn that to a CD and
24 turn it over to them?

25 A I didn't physically burn it. I had it burnt for

1 them.

2 **Q** But you were actually able to review that video?

3 **A** Yes.

4 **Q** And was that accurate video from the afternoon of May
5 the 5th of 2007 in your place of employment?

6 **A** Yes, ma'am.

7 **Q** Does the time correspond exactly to the time on this
8 receipt?

9 **A** It might be like a minute or two off.

10 **Q** But other than that, the time period is the same time
11 period; it just may be a few minutes off?

12 **A** Right.

13 **Q** Have you had an opportunity to review, or did you
14 with the investigators, the video that you turned
15 over to them?

16 **A** Yes.

17 **Q** What's this marked? State's Exhibit No. 72, that's
18 the actual video that was burned and turned over to
19 the investigators by you?

20 **A** Yes.

21 **MS. CAMPBELL:** Your Honor, at this time we'd
22 offer State's Exhibit 72 into evidence.

23 **MS. SINGLETARY:** No objection, Your Honor.

24 (WHEREUPON, State's Exhibit No. 72 is admitted
25 into evidence.)

1 **MS. CAMPBELL:** Your Honor, permission to publish
2 the exhibit?

3 **THE COURT:** Yes, ma'am.

4 **Q** Is this actual video from inside the store?

5 **A** I can't see it.

6 **MS. CAMPBELL:** Your Honor, may she step down?

7 **THE COURT:** Sure. Just step down.

8 **Q** You can come over and stand next to me so we aren't
9 blocking the jurors. Be careful of all those steps.

10 **A** Yes, it is.

11 **Q** Can you come over on this side so that the court
12 reporter can hear you. And what area of the store
13 does this depict?

14 **A** This is the front door.

15 **Q** Okay. Can you play it? There you just saw someone
16 cross the screen?

17 **A** Mm-hmm (affirmative).

18 **Q** Could you tell what they were wearing?

19 **A** A red shirt with stripes, jeans.

20 **Q** And that's another angle?

21 **A** Yes.

22 **Q** The cameras are set up so they come from different
23 angles?

24 **A** Mm-hmm (affirmative). We have four cameras.

25 **Q** Does this show a different angle?

- 1 **A** Yes. This is at the counter where you check out.
- 2 **Q** Where you actually pay for things?
- 3 **A** Mm-hmm (affirmative).
- 4 **Q** Do you see the person with the red shirt?
- 5 **A** Yes.
- 6 **Q** What part of the store are they in right there?
- 7 **A** They're in the roll-your-own section.
- 8 **Q** And that person is now approaching the counter?
- 9 **A** Yes, ma'am.
- 10 **Q** And you can't tell from the video what items he's
11 purchasing, can you?
- 12 **A** No, ma'am. But I can tell from the receipt it was
13 rolling papers.
- 14 **Q** Let me let it go for just a second.
- 15 **A** Okay.
- 16 **Q** And the time is reflected on the screen?
- 17 **A** Mm-hmm (affirmative).
- 18 **Q** Is 14:53?
- 19 **A** Mm-hmm (affirmative). Yes.
- 20 **Q** Thank you. Please take your seat. Thank you. The
21 receipt that I showed you earlier that came out of
22 State's Exhibit 67, it does show what items were
23 purchased?
- 24 **A** Yes.
- 25 **Q** And what are those items?

1 **A** Vanilla rolling papers and pack of Newports.

2 **Q** And that was the information, the video that you
3 turned over?

4 **A** Yes, ma'am.

5 **Q** Thank you. I appreciate it.

6 **THE COURT:** Any cross examination?

7 **MS. DAVIS:** No questions, Your Honor.

8 **THE COURT:** Thank you very much, ma'am. May
9 this witness be excused?

10 **MS. CAMPBELL:** Thank you, Your Honor.

11 **THE COURT:** Without objection. Just approach
12 the bench, counsel.

13 (Whereupon, a bench conference is had)

14 **THE COURT:** All right, ladies and gentlemen of
15 the jury. I'm just checking for scheduling purposes.
16 Counsel tells me the next witness may be somewhat
17 lengthy. So it's ten minutes 'til five. I know we
18 just got off a break but that was based on some legal
19 matters I had to take up with the attorneys. We'll
20 go ahead and adjourn for the day now. We're on
21 track. We're on schedule. Hopefully we're not going
22 to run over schedule. But we'll get cranking in the
23 morning at 9:30 and we'll be ready to move. So have
24 a pleasant evening. And again don't discuss the case
25 among yourselves when you return to the jury room or

1 with anyone else over the evening hours. Have a
2 pleasant evening. We'll see you at 9:30.

3 (Jury out at 4:53 p.m.)

4 **THE COURT:** All right. We'll stand at ease
5 until 9:30.

6 (Whereupon, the proceedings are concluded for
7 the day, to be reconvened tomorrow morning)

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1 Wednesday, December 17, 2008

2 **THE COURT:** The State ready to proceed?

3 **MS. CAMPBELL:** The State's ready.

4 **THE COURT:** Defense ready to proceed?

5 **MS. SINGLETARY:** Yes, Your Honor.

6 **THE COURT:** Bring the jury, please.

7 (Jury in at 9:48 a.m.)

8 **THE BAILIFF:** Your Honor, the jury is present.

9 **THE COURT:** All right. Thank you very much.

10 Good morning, ladies and gentlemen. We're about
11 ready to continue with the trial. Solicitor, call
12 your next witness.

13 **MS. CAMPBELL:** May it please the Court. The
14 State calls Mitchell Darnell.

15 MITCHELL DARNELL, after being duly sworn,
16 testifies as follows:

17 **THE CLERK:** Have a seat in the witness box and
18 state your full name for the record, please.

19 **THE WITNESS:** Mitchell Darnell.

20 DIRECT EXAMINATION

21 **BY MS. CAMPBELL**

22 **Q** Mr. Darnell, where are you employed?

23 **A** I am a self-employed certified public accountant.

24 **Q** And you weren't here in court yesterday. Where were
25 you?

1 **A** I was at a mandatory continuing professional
2 education course.

3 **Q** And was that necessary for you to keep your CPA
4 license?

5 **A** Yes, it was.

6 **Q** I want to turn your attention back to May of 2007.
7 Where were you living at the time?

8 **A**

9 **Q** And who lived there with you?

10 **A** My wife and my daughter.

11 **Q** The morning of May the 7th of 2007, were you at your
12 home?

13 **A** Yes, I was.

14 **Q** And what were you doing there that morning?

15 **A** I was actually working at home, working at the
16 kitchen table or the dining room table in fact.

17 **Q** And that morning around 10:30, do you recall your
18 wife, Martha, going outside?

19 **A** Yes. She went out to take the trash. It was the
20 trash day I believe. And she said, "I'm going to go
21 out and take the trash." And I remember that, yes.

22 **Q** After she went outside, did you continue to work at
23 the table in the dining room area?

24 **A** Yes, I did.

25 **Q** And what's the next thing that caught your attention?

1 **A** The next thing, a couple, maybe a couple of minutes
2 later, she said, "Mitch, help." And I pushed back in
3 my chair and started down the hallway that leads to
4 the front door.

5 **Q** What was her tone of voice when she said that?

6 **A** She was frightened. She was -- you know, she
7 normally wouldn't say help. But, I mean, she was
8 frightened.

9 **Q** So at that point you got up, and where did proceed?

10 **A** Directly down the hallway. It was probably two or
11 three steps to the beginning of the hallway, and the
12 hallway is about ten feet long.

13 **Q** Could you tell where she was yelling from?

14 **A** It was the front door. Yes.

15 **Q** And was the door opened or closed when she was
16 yelling at you?

17 **A** I didn't see her when she yelled. When I pushed back
18 and first saw her, the door was open.

19 **Q** And was she actually holding the door open?

20 **A** She was holding the door open.

21 **Q** What's the next thing you observed as you walked the
22 two steps down the hall?

23 **A** The defendant pushed by her, pushed her to the side
24 and started the hallway, and I was about halfway down
25 the hallway.

1 Q And had you ever seen that person before?

2 A No, I had not.

3 Q What's the next thing that happened?

4 A He -- as he approached me and got about arm's length
5 from me, he reached out his left hand and said, "Give
6 me your car keys now."

7 Q And what was going through your mind at this point?

8 A Well, initially -- well, Martha was still at the door
9 area and he was between she and I. And initially he
10 was following me. I thought, well, you know, maybe I
11 could tackle him or something. But he had his hand
12 in his right pocket, and something was protruding
13 from that right pocket or pushing out on the right
14 pocket I guess.

15 Q So it looked like there was something in the right
16 pocket?

17 A Yes. It appeared to be a gun. But --

18 Q A gun?

19 A Yes. And he commanded, "Give me your car keys now."

20 Q And are you familiar with guns?

21 A Yes.

22 Q And when he said that and you looked and the saw what
23 appeared to you to be a gun in his pocket, in fact
24 was it an appropriate size to be a gun?

25 A Yes. Years ago I owned a 32, .32 caliber snub nosed

1 revolver. And, you know, appeared to be that it
2 could be that because it was protruding.

3 Q Was anyone else home besides you and your wife that
4 day?

5 A Our daughter was home. She was in her bedroom which
6 is just to the -- you know, it would have been two or
7 three steps behind me, the door into that bedroom.

8 Q So what was the defendant's tone of voice when he
9 said to you, "Give me your keys now"?

10 A He was commanding. His eyes were very glazed, I
11 would describe as glazed or wild eyed I mean. So he
12 appeared aggressive.

13 Q So what went through your mind was you might tackle
14 him; you decided not to do?

15 A No. I immediately thought what if he turns around
16 and grabs my wife. You know, he doesn't know my
17 daughter is in the bedroom. But, you know, I began
18 to think about my family, and I just reached in my
19 pocket, gave him my whole set of keys, office key,
20 everything. I just gave him the whole house key,
21 everything. I just gave him my whole set of keys.

22 Q And what happened then?

23 A He turned around and walked to the door. I think he
24 stepped out. And then he turned around and said,
25 "Which car?" Because there were two cars in the

1 drive area.

2 Q And as he walked out, how many steps did he have to
3 take to even get out the door?

4 A Four or five.

5 Q And did you follow him down the hall?

6 A Yes.

7 Q And whose safety at that point were you concerned
8 about?

9 A My wife's.

10 Q You said he got to the doorway and then he turned
11 around?

12 A Right.

13 Q Was he outside the house at that point?

14 A I believe he had just stepped out the house.

15 Q And he turned around and said what to you?

16 A "Which car?" Because there were two, two vehicles in.
17 the driveway.

18 Q And which car did you indicate to him he should take?

19 A I indicated the Toyota Camry.

20 Q And were the keys in the Toyota Camry on the key ring
21 you had just given him?

22 A Yes, they were.

23 Q At that point did you see where the defendant went?

24 A Yes. He got into the car, started it up, backed out
25 rapidly and went to the -- to my left.

1 Q At some point during the course of this as you were
2 confronted with the defendant and he is standing
3 face-to-face to you and I believe you said he was
4 between you and your wife?

5 A Yes.

6 Q Did you tell your wife to do anything?

7 A Yes. I -- and I can't remember exactly when. But I
8 told her, call for help or call 911.

9 Q And could you actually hear your wife calling for
10 help?

11 A Yes. Because there were some workmen across the
12 street and she called for them. She called help.
13 And then I saw one of them or both -- I know one of
14 them -- coming our way.

15 Q And could you see what that man had in his hands?

16 A He had a shovel.

17 Q And who was he approaching as he came your way?

18 A He was approaching our vehicle. He was coming -- he
19 was -- I don't know if he had reached the street
20 that's behind us or not. But he was coming that
21 direction toward us and toward our vehicle.

22 Q And at some point did you see him back off?

23 A Yes.

24 Q And that was just before the defendant got in the
25 car?

1 **A** Yes.

2 **Q** Did you ever actually see the weapon in his pocket?

3 **A** I -- he never showed a weapon.

4 **Q** You said that he backed the car out and then he left.

5 Did you see which direction he went?

6 **A** Yes. He went to my left. Which Deer Hound Trail is
7 a -- there's a street that dead ends at Deer Hound
8 Trail at our home. And it -- if he went to the left
9 of our home, it circles around back onto that street
10 which is called Musket Lane.

11 **Q** And that's the direction he went?

12 **A** Yes.

13 **Q** And actually did you see the car again as it left the
14 neighborhood?

15 **A** Yes, we did. As soon as he left, my wife came in.
16 We locked the door. But it's a glass front, glass
17 storm door. And so we saw it leave the neighborhood
18 or leave onto Musket Lane.

19 **Q** And did you see the defendant or your car any more
20 that day?

21 **A** No.

22 **Q** And after he backed out the driveway and went off to
23 the left, what did you and your wife do?

24 **A** Like I said, we locked the door. I went and called
25 911.

1 Q Were you aware that your daughter had called 911?

2 A No, I wasn't.

3 Q Did you later become aware of that?

4 A Yes, I did.

5 Q And do you recall what happened to your wife right
6 after he left?

7 A Yes. We -- you know, after we got the 911 call in,
8 they said that, you know, the Sheriff's Department
9 was on the way. Then we were standing there. We
10 took a moment, you know, sort of like we were real
11 hyper already. And she -- she almost -- well, she
12 got weak kneed and almost passed out. So I grabbed
13 her and sat her on the floor.

14 Q The police responded. And I think you met with an
15 Investigator Matt Ellis. Is that correct?

16 A That's correct.

17 Q And were you able to give him a description of the
18 person that you saw that day?

19 A Yes, I was.

20 Q And the whole time that you were face-to-face with
21 him, can you say how long that was? Seconds?
22 Minutes? Hours?

23 A Maybe a couple of minutes.

24 Q But you got so close to him as far as I believe you
25 said you were within an arm's length. Is that

1 correct?

2 A Right. I could have tackled him. I could have tried
3 to hit him. But I didn't because fear for my family.

4 Q And you were able to give Investigator Ellis a
5 description of the man?

6 A Yes, I was.

7 Q Do you recall what he was wearing when you saw him?

8 A He was wearing black jeans and a dark I think it was
9 navy shirt. It was short sleeved.

10 Q And when you said that you observed his hand in the
11 pocket, do you recall which pocket that was?

12 A It was the right pocket.

13 Q Of his pants or his shirt? Do you recall?

14 A His pants.

15 Q After you initially met with Investigator Ellis and I
16 believe Investigator Sergeant Isenhoward had actually
17 come over, later that afternoon did Investigator
18 Ellis return to your house and show you some
19 photographs?

20 A Yes, he did.

21 Q And I'm going to show you what's been marked as
22 State's Exhibit No. 4. Do you recall looking at that
23 line-up?

24 A Yes, I do.

25 Q Or a copy of that line-up? And were you able to pick

1 out anybody?

2 A No. I was not at that time.

3 Q And what if any information did you give the
4 investigator about the person you actually saw that
5 day?

6 A He was a black male with short hair, had dark brown
7 eyes and was slight build, like about five-five,
8 five-nine, five-ten because he was shorter than I am.
9 I'm five-eleven and a half. And he was I thought
10 about 130 pounds.

11 Q And when you observed these photographs, did you make
12 any comments about these people appeared --

13 A I said it could have been, because I -- the facial
14 features didn't look that much alike. But I looked
15 at the eyes and through here. And I said it could
16 have been 2 or 4 but I wasn't sure. I could not
17 positively identify anybody.

18 Q Three days later, on May the 10th -- and during that
19 time period, did Investigator Ellis tell you who to
20 pick out?

21 A No, he didn't.

22 Q Did he even afterwards tell you you should have
23 picked out one of these people?

24 A No.

25 Q Did he indicate in any way that the person that

1 robbed you had to be in this line-up?

2 **A** No.

3 **Q** Three days later, on May the 10th, I'm going to show
4 you State's Exhibit 6. Do you recognize that?

5 **A** Yes, I do.

6 **Q** And did you meet with Sergeant Isenhoward on May the
7 10th?

8 **A** Yes, we did.

9 **Q** And tell the jury where you all met and who all was
10 there?

11 **A** We met at our home, and I know my wife and I were
12 there. I don't remember if our daughter was there or
13 not.

14 **Q** And did Sergeant Isenhoward show you these
15 photographs while you were with your wife, or were
16 you separate or what?

17 **A** No. We were separated. He said, "We need each of
18 you to look at this separately." So we went to
19 different parts of the house.

20 **Q** And when you actually saw State's Exhibit 10, did it
21 have any handwriting on it?

22 **A** No. There was nothing on it. Just the pictures as
23 far as I know.

24 **Q** When Sergeant Isenhoward showed you this line-up, did
25 in any way suggest to you who you should recognize or

1 who you should pick?

2 **A** No.

3 **Q** Did he influence your decision in any way?

4 **A** No.

5 **Q** And when you saw State's Exhibit No. 6, when you
6 looked at those six pictures, did you recognize
7 someone?

8 **A** Yes. I immediately recognized the person in the
9 center of the top row.

10 **Q** And did you indicate that to Sergeant Isenhoward?

11 **A** Yes. He asked us to circle or asked me to circle the
12 person and to initial that.

13 **Q** And the person that you circled and initialed, did
14 you recognize him from what you had seen on May the
15 7th when someone was robbing you?

16 **A** Yes, I did.

17 **Q** And down here then he filled out that part and you
18 signed it?

19 **A** Correct.

20 **MS. CAMPBELL:** Your Honor, at this time we'd
21 offer State's Exhibit 6.

22 **MS. DAVIS:** Without objection.

23 **THE COURT:** Without objection.

24 (WHEREUPON, State's Exhibit No. 6 is admitted
25 into evidence.)

1 **MS. CAMPBELL:** Subject to previous objection.

2 **MS. DAVIS:** Sorry, Your Honor. Other than our
3 previous objection.

4 **THE COURT:** Subject to the defendant's prior
5 objection.

6 **Q** The hallway where you confronted -- were confronted;
7 excuse me -- I show you State's Exhibit No. 22. What
8 does that show?

9 **A** That's the front of our home at

10 **Q** And that day do you remember how many cars were in
11 the driveway?

12 **A** Two.

13 **Q** And I show you State's Exhibit No. 25. This picture
14 was taken more recently. But does that accurately
15 show how the cars were parked that day?

16 **A** Yes.

17 **Q** And which one did you indicate to the defendant that
18 he should take?

19 **A** The Toyota Camry. It's sort of a grayish color.

20 **Q** It's the sedan?

21 **A** The sedan, yes.

22 **Q** I show you State's Exhibit No. 23. Do you recognize
23 that?

24 **A** Yes. That's the front hallway of our home.

25 **Q** And is that where you were actually confronted by the

1 defendant?

2 A Yes.

3 Q When he had his hand in his pocket?

4 A Yes. Probably approximately one to two feet past the
5 area rug.

6 Q And does this photograph show the doorway to your
7 daughter's bedroom?

8 A Yes, it does.

9 Q And where is that?

10 A Just to the right, the first doorway on the right,
11 just past the picture.

12 Q Where my finger is?

13 A Yes. Your finger is at the doorway.

14 Q And that's where she was that morning?

15 A Yes.

16 Q The police actually put out a thing about your car
17 being stolen. Have you ever heard of a man named
18 Bradford Cash?

19 A No, I have not.

20 Q Or do you have any ties to anyone that lives in
21 Morganton, North Carolina?

22 A No, I do not.

23 Q And did you or anyone in your family allowed a man
24 named Bradford Cash in your automobile?

25 A No.

1 Q I believe you've already testified you had never seen
2 the man that robbed you before?

3 A I had never seen him before.

4 Q And for the record, he didn't have permission to come
5 in your house that day?

6 A No. He pushed past my wife.

7 Q Several days later, or I believe one or two days
8 later actually, did you all get the vehicle back?

9 A Yes. The vehicle was recovered.

10 Q And where did it come from?

11 A We were told it was recovered in Raleigh, North
12 Carolina.

13 Q And when you got it back, what was its condition
14 like?

15 A It was dirty on the inside. But, I mean, basically
16 it was still -- it had not been wrecked or anything
17 of that nature.

18 Q And the person that robbed you that you thought had a
19 gun, --

20 A Yes.

21 Q -- do you see him here in the courtroom?

22 A Yes, I do.

23 Q And can you point him out for the jury?

24 A Yes. It's the defendant at the defense table.

25 Q Is there any doubt in your mind that you thought he

1 had a weapon that day?

2 **A** No doubt in my mind at all.

3 **Q** Thank you.

4 **THE COURT:** Let the record reflect the fact that
5 the witness identified the defendant. Cross
6 examination.

7 **MS. CAMPBELL:** Thank you, Your Honor.

8 **MS. DAVIS:** Thank you, Your Honor.

9 CROSS EXAMINATION

10 **BY MS. DAVIS**

11 **Q** Good morning, Mr. Darnell.

12 **A** Good morning.

13 **Q** Now, you've never given a written statement in this
14 case, right?

15 **A** Other than the statements that were taken in the
16 interview.

17 **Q** Right. But, I mean, you never wrote anything down
18 and signed a statement?

19 **A** That I wrote down and signed? On the identification,
20 the officer wrote it down and then I signed that
21 statement.

22 **Q** Yes, sir. But I'm saying you never wrote down an
23 account of what happened that day?

24 **A** No, I have not.

25 **Q** So the only thing we have of what you told them what

1 happened that day is from what the officers wrote
2 down as a summary, right?

3 **A** As a summary of what I saw that day, yes.

4 **Q** Right. This incident happened over a year and a half
5 ago, right?

6 **A** Correct.

7 **Q** And today you mentioned that you saw a protruding
8 object?

9 **A** Yes.

10 **Q** Right? That's what you testified to on direct?

11 **A** Yes.

12 **Q** You never told that to Investigator Ellis, did you?

13 **A** I believe I did. I am not absolutely sure.

14 **Q** Would it surprise you then if that wasn't in his
15 report?

16 **A** It would surprise me. But at that time we were still
17 very shaken up over the whole incident.

18 **Q** Today you mentioned not only you thought he had a
19 weapon, but it looked like a gun, correct?

20 **A** Correct. It looked like a gun, yes. There was a
21 protrusion out of the right pocket that stuck out. I
22 don't know how else to describe it.

23 **Q** Yes, sir. He had his hand in his pocket, right?

24 **A** Yes.

25 **Q** Okay. And you couldn't see the through the pocket,

1 right?

2 A No, I could not.

3 Q So you're assuming -- first of all, you're assuming
4 there was a weapon. Right? You thought there was a
5 weapon?

6 A I believe there to be a weapon, yes.

7 Q Okay. And not only that, you're actually going so
8 far as to say there was a gun?

9 A I believe there was gun.

10 Q Emmith never threatened you that day, did he?
11 Verbally?

12 A He pushed past my wife entering my home without
13 permission. That's -- I consider that threatening.

14 Q Yes, sir. I'm saying verbal threats. He never said,
15 give me the keys or I'll shoot you?

16 A No.

17 Q He never said that?

18 A No. He commanded me to give him the keys.

19 Q Yes, sir. He said, "Give me the keys now"?

20 A Correct.

21 Q But he never threatened you and said, if you don't
22 give me the keys I'll shoot you?

23 A No, he did not say that.

24 Q He never said, if you don't give me the keys I'll
25 kill you?

1 **A** No, he did not say that.

2 **Q** He said, "Give me the keys now"?

3 **A** Correct.

4 **Q** And you did?

5 **A** And I did.

6 **Q** And he left?

7 **A** Correct.

8 **Q** He actually walked out of the house, correct?

9 **A** Yes.

10 **Q** And then he turned around and said, "Which car?"

11 **A** Correct.

12 **Q** You never saw a weapon that day?

13 **A** I never saw a weapon.

14 **MS. DAVIS:** Beg the Court's indulgence. No
15 further questions, Your Honor.

16 **THE COURT:** Anything further?

17 **MS. CAMPBELL:** Just a couple of questions.

18 REDIRECT EXAMINATION

19 **BY MS. CAMPBELL**

20 **Q** She asked you about what you told the police back
21 then. You told the police, just as you've told
22 today, about him having his hand in his pocket like
23 he had a weapon?

24 **A** I believe I did. I should have.

25 **Q** And it's right there in the questionnaire?

1 **A** Yes. Yes, it is on the questionnaire. I'm sorry.

2 It is right there.

3 **Q** And it's right here in his incident report?

4 **A** Okay. All right. I knew that -- I mean, I knew that
5 the hand was there. In fact, he asked me did I see
6 him reach into the pocket. I said no, his hand was
7 in the pocket the whole time I saw him.

8 **Q** She asked you about giving a statement, a written
9 statement. Will you ever forget what happened to you
10 on May the 7th?

11 **A** No. Not a hundred years from now.

12 **Q** Thank you.

13 **THE COURT:** Anything further?

14 **MS. DAVIS:** No. Nothing further, Your Honor.

15 **THE COURT:** All right. You may come down.

16 Thank you very much. May this witness be excused?

17 Without objection. Next witness.

18 **MS. MCDUFFIE:** The State calls Deputy John
19 Smith.

20 JOHN SMITH, after being duly sworn, testifies as
21 follows:

22 **THE CLERK:** Have a seat in the witness box.

23 State your name for the record, please.

24 **THE WITNESS:** John Smith.

25 DIRECT EXAMINATION

1 **BY MS. MCDUFFIE**

2 **Q** Good morning, Deputy Smith. Where are you currently
3 employed?

4 **A** I am a senior patrol deputy with the Wake County
5 Sheriff's Department in Raleigh, North Carolina.

6 **Q** And were you employed by the Wake County Sheriff's
7 Office in May of 2007?

8 **A** Yes, ma'am.

9 **Q** And were you working the morning of May the 8th of
10 2007?

11 **A** Yes, ma'am.

12 **Q** Did you get dispatched out to Falls Moose Road by
13 Deputy Goodwin?

14 **A** Yes. He had called out. He gave a general
15 description of the individual, and we started looking
16 for him.

17 **Q** So Deputy Goodwin gave you a description of an
18 individual that they were looking for?

19 **A** Yes, ma'am.

20 **Q** And what was that description that was given to you?

21 **A** Black male, gray t-shirt and green shorts.

22 **Q** And you began to patrol the area looking for that
23 person?

24 **A** Yes, ma'am. My normal patrol area. I was riding
25 around just circulating the immediate area, maybe

1 five to six miles in a range. Yes, ma'am.

2 Q And approximately what time was this on May the 8th
3 of 2007?

4 A I would say between 8 and 9 a.m., in the morning.

5 Q And did you encounter someone wearing a gray t-shirt
6 and green shorts?

7 A I encountered a black male, probably 130 pounds, had
8 on a gray sweatshirt, green shorts and black house
9 slippers.

10 Q And based on the description of the individual you
11 were looking for, did this individual fit that
12 description?

13 A Yes, ma'am, he did.

14 Q And what did you then do?

15 A Stopped him, spoke with him, patted him down.

16 Q Why did you pat him down?

17 A For officer safety.

18 Q And did you find anything when you patted the
19 defendant down?

20 A In one of his front pockets I found a key to a Toyota
21 and maybe some money in the other pocket.

22 Q And did you then place the person in your patrol car?

23 A Yes, ma'am, I did.

24 Q And where did you go?

25 A I took him to Deputy Goodwin's location. And at that

1 point in time I released him or left him with Deputy
2 Goodwin.

3 Q And the person that you found the key in their pocket
4 and transported to Deputy Goodwin, do you see that
5 person in the courtroom today?

6 A Yes, ma'am, I do.

7 Q And can you please identify him?

8 A He is the individual sitting with the striped tie,
9 blue suit and cropped hair.

10 MS. MCDUFFIE: No further questions, Your Honor.

11 THE COURT: Let the record reflect the witness
12 identified the defendant. Any questions?

13 MS. SINGLETARY: Your Honor, we have no
14 questions.

15 THE COURT: All right. You may come down.
16 Thank you very much. May this witness be excused?

17 MS. SINGLETARY: Yes, Your Honor.

18 THE COURT: Without objection?

19 MS. MCDUFFIE: Yes, Your Honor.

20 THE COURT: Next witness.

21 MS. MCDUFFIE: The State calls Deputy Joel
22 Goodwin.

23 JOEL B. GOODWIN, after being duly sworn,
24 testifies as follows:

25 THE CLERK: Have a seat in the witness box and

1 state your name for the record, please.

2 **THE WITNESS:** Joel B. Goodwin.

3 DIRECT EXAMINATION

4 **BY MS. MCDUFFIE**

5 **Q** Good morning, Deputy Goodwin.

6 **A** Good morning.

7 **Q** Where are you employed?

8 **A** I'm employed for the Wake County Sheriff's Office,
9 Raleigh, North Carolina.

10 **Q** And what are your duties with the Wake County
11 Sheriff's Office?

12 **A** At the time I was on the uniform patrol division. We
13 are responsible for answering 911 calls for service,
14 you know, vehicle stops; just general police work.

15 **Q** And were you working on the morning of May the 8th,
16 2007?

17 **A** Yes, ma'am, I was.

18 **Q** And were you called -- were you -- did you answer a
19 call at around 8:00 that morning?

20 **A** Yes, ma'am.

21 **Q** And what was that in reference to?

22 **A** We received a call from some of the faculty at
23 Brassville Elementary School about a suspicious
24 vehicle that had been left unattended in the bus
25 parking lot at the rear of the school, was told that

1 the occupant of the vehicle had --

2 **MS. SINGLETARY:** Objection, Your Honor.
3 Hearsay.

4 **THE COURT:** Well, I'm going to allow it. It's
5 police investigation work. They come by evidence all
6 different kinds of ways. He just can't say exactly
7 what the person told him. What he learned from that
8 conversation.

9 **Q** Deputy Goodwin, what did you learn from that
10 conversation?

11 **A** That the occupant had left on foot. And I learned a
12 description of what the occupant of the vehicle was
13 wearing.

14 **Q** And did you then dispatch other officers to search
15 for that individual?

16 **A** I did. I had two other zone partners working with me
17 that morning. And I felt that the occupant of the
18 vehicle was still on foot in the area. And I asked
19 two other deputies to circulate the immediate area
20 and look for a subject fitting that description.

21 **Q** And one of those being Deputy Smith?

22 **A** Yes, ma'am.

23 **Q** And what was the description of the individual you
24 were looking for that had been seen driving the
25 vehicle?

1 **A** I was given the description of a black male wearing a
2 gray sweatshirt and green shorts and possibly had a
3 white dew rag, kind of skull cap on his head.

4 **Q** And at some point in time did Deputy Smith bring back
5 an individual matching that description to you?

6 **A** He did.

7 **Q** And before that individual was brought back to you,
8 did you have a chance to inspect the vehicle in any
9 way or do anything further with the vehicle?

10 **A** I did. I checked the -- ran the plates through our
11 database system and did receive a hit that from South
12 Carolina that the vehicle had been stolen.

13 **Q** And what were the plates that you ran through your
14 system?

15 **A** The plate number?

16 **Q** Yes, please.

17 **A** I believe it was a as in Adam, Z as in Zebra, 8986.

18 **Q** When the plates came back stolen, was it from where
19 in South Carolina?

20 **A** The hit said Columbia, South Carolina.

21 **Q** When Deputy Smith brought back the individual, what
22 did you observe that person wearing?

23 **A** He had on a gray sweatshirt, green shorts, white tube
24 socks and black bedroom slippers I guess they were.

25 **Q** And did Deputy Smith give you a key that he had

1 recovered from the defendant?

2 **A** He did.

3 **Q** What did you then do or observe being done with that
4 key?

5 **A** I noticed that the key did open the trunk to the
6 vehicle and did start the ignition on the car.

7 **Q** And I asked you this before. About what time in the
8 morning was this?

9 **A** I believe the initial call was received at about five
10 minutes until 8 roughly, and I would have been
11 dispatched about 8:00.

12 **Q** And what happened after you saw the key open the
13 trunk of the vehicle?

14 **A** I placed the defendant under arrest and transported
15 him to the Wake County jail.

16 **Q** While you were transporting him to the Wake County
17 jail, was there another officer left to secure the
18 car?

19 **A** Yes, there was.

20 **Q** Beg the Court's indulgence. Your Honor, may I
21 approach?

22 **THE COURT:** Yes, ma'am.

23 **Q** And, Deputy Goodwin, if you could just tell the jury
24 the license plate number of the vehicle that was
25 parked in the school parking lot that the key

1 unlocked one more time?

2 **A** It was 8685 Adam Zebra, South Carolina registration;
3 A as in Adam, Z as in Zebra.

4 **Q** And it was what make and model of the car?

5 **A** It was a Toyota Camry. It would have been a 1998.

6 **MS. MCDUFFIE:** Nothing further.

7 **MS. SINGLETARY:** Your Honor, we have no
8 questions for this witness.

9 **THE COURT:** All right. Thank you very much.
10 You may come down, sir. May this witness be excused?

11 **MS. SINGLETARY:** Yes, Your Honor. Without
12 objection.

13 **THE COURT:** Without objection.

14 **MS. CAMPBELL:** The State calls Phillip Flood.

15 (WHEREUPON, State's Exhibit No. 73 is marked for
16 identification.)

17 PHILLIP V. FLOOD, after being duly sworn,
18 testifies as follows:

19 **THE CLERK:** Have a seat in the witness box.

20 State your name for the record, please.

21 **THE WITNESS:** Phillip Vance Flood.

22 DIRECT EXAMINATION

23 **BY MS. CAMPBELL**

24 **Q** Investigator Flood, where are you employed?

25 **A** At the City/County Bureau of Identification in

1 Raleigh, North Carolina.

2 Q And what do you do there, sir?

3 A I'm a crime scene agent, a field agent.

4 Q Can you tell this jury a little bit about what your
5 duties include?

6 A Particularly processing, examining, locating evidence
7 in criminal cases.

8 Q I want to turn your attention back to May the 8th of
9 2007, around 9:53 a.m.

10 A Yes, ma'am.

11 Q Did you respond to process an automobile?

12 A Yes, ma'am.

13 Q And that would have been a Toyota Camry?

14 A Yes, ma'am.

15 Q And I believe the plate number would be 8685 AZ?

16 A Yes, ma'am.

17 Q And what kind of evidence were you looking for that
18 day when you processed that car?

19 A At the time, typically on a recovered stolen motor
20 vehicle, we typically just process it for latent
21 evidence, such as fingerprints and so forth.

22 Q Fingerprints?

23 A Yes, ma'am.

24 Q And did you respond actually out to the scene where
25 it was found in the school parking lot?

1 **A** Yes, ma'am.

2 **Q** And when you got there, did you process the car?

3 **A** Yes, ma'am.

4 **Q** Were you able to collect any unidentified prints from
5 inside the car?

6 **A** Yes, ma'am. Several.

7 **Q** And tell this jury how you go about doing that and
8 what you did in this case?

9 **A** Typically we observe how people get in and out of
10 vehicles, where they would touch to get in and out of
11 vehicles to occupy, to drive the vehicle. Those
12 surfaces, we then examine the surfaces to see if
13 those surfaces were conducive to transfer
14 fingerprints, such as a smooth, flat surface that's
15 nonporous that fingerprints would be easily
16 transferred to. At that point we process those
17 surfaces with -- in this case I processed those with
18 magnetic fingerprint powder to reveal any obvious
19 latent evidence that would be revealed.

20 **Q** So when you say you dust a car for fingerprints, --

21 **A** Yes, ma'am.

22 **Q** -- how do you do that?

23 **A** Just run some powder over the top of the surface and
24 they pop out like magic basically.

25 **Q** Once you see that there is a -- and explain this to

1 the jury, too. Just because I go up -- and even if a
2 surface is suitable and if I touch something, am I
3 necessarily going to leave a fingerprint?

4 A No, ma'am.

5 Q Are you familiar with the term smudges?

6 A Yes, ma'am.

7 Q And tell the jury how it can be difficult sometimes
8 to recover fingerprints?

9 A Yes, ma'am. It's somewhat simple and it's sometimes
10 complicated. But say this surface here, and I'm
11 laying my hand on top of this surface, if I lay my
12 hand on top of that surface and pick it straight up,
13 there is typically going to be, you know, latent
14 evidence there if the surface is not porous and rough
15 and so forth. But if the surface is slick and smooth
16 and if I laid my hand on it and rub it across,
17 obviously the latent ridges and so forth are going to
18 be -- there is going to be evidence there of contact
19 obviously, but there is not going to be any latent --
20 typically is not going to be any latent evidence
21 lifted from that area.

22 Q Before I go any further, too; have you had any
23 training in the identification in the field of crime
24 scene investigation, specifically as to fingerprint
25 collection?

1 **A** Yes, ma'am. I've received over 3,000 hours of
2 specialized crime scene investigation, latent
3 evidence recovery, chemistry and light surface
4 recovery of latent evidence.

5 **Q** Have you been qualified before as an expert in those
6 areas?

7 **A** Yes, ma'am.

8 **MS. CAMPBELL:** Your Honor, at this time we'd
9 offer him as an expert in crime scene investigation.

10 **THE COURT:** Any voir dire or objection?

11 **MS. SINGLETARY:** No, Your Honor. Without
12 objection.

13 **THE COURT:** You may proceed.

14 **Q** In this case were you able to collect what are known
15 as identifiable unknown latents?

16 **A** Yes, ma'am. Several.

17 **Q** And when I'm saying identifiable, what does that
18 mean?

19 **A** That means you can look within the print that's
20 collected. Basically the print itself just turns a
21 slightly dark shade of gray or black. And within
22 those prints you can see the little loops and ridges
23 and so forth that make up a fingerprint.

24 **Q** And are fingerprints unique to each individual?

25 **A** Yes, ma'am.

1 Q And in this case were you able to collect any
2 identifiable prints from the driver's side of the
3 automobile?

4 A Yes, ma'am. Several.

5 Q And what areas were you able to collect those?

6 A Primarily the exterior portion of the door itself.
7 Typically the interior door has the plastic panels
8 and plastic pieces and felt pieces for comfort, and
9 those areas are not very indicative of being able to
10 lift prints off of because they're not smooth and
11 flat and good surfaces for that.

12 Q Did you also attempt to collect fingerprints from the
13 passenger area?

14 A Yes, ma'am, I did.

15 Q And what area of those were you able to find anything
16 identifiable?

17 A Again the exterior, mainly the exterior portions.
18 But within those exterior portions, based on the
19 directionality of those prints, we were able to
20 determine that most of the prints on the interior,
21 both the passenger and the driver's door were left
22 from the inside of the vehicle. Well, actually where
23 the door opened and not in a shut position, just from
24 the sheer position of placement of the print itself
25 on the door.

1 Q And you were able to get what's known as identifiable
2 unknown prints from the passenger and the driver's
3 side in this case?

4 A Yes, ma'am.

5 Q And what I keep referring to as an unknown print,
6 when you collect them you don't know who they belong
7 to?

8 A No, ma'am.

9 Q It could belong to the owner of the car?

10 A Yes, ma'am.

11 Q Anyone that's been in the car?

12 A Yes, ma'am.

13 Q Or if they're on the exterior of the car, anyone
14 that's just walked by the car and touched it?

15 A Absolutely.

16 Q I want to show you what been marked as State's
17 Exhibit No. 73. Do you recognize that?

18 A Yes, ma'am, I do.

19 Q And what are those?

20 A This is actually just a latent envelope. When we
21 collect prints at a scene, we basically put the time,
22 date, offense, the case number, our case number and
23 the victim's name on this basically just as a
24 tracking method for these prints that we insert into
25 the envelope.

1 Q And what's inside there?

2 A The latent evidence that I collected from the vehicle
3 that day.

4 MS. CAMPBELL: Your Honor, at this time we'd
5 offer State's Exhibit 73.

6 MS. SINGLETARY: Objection, Your Honor.

7 THE COURT: Without objection.

8 (WHEREUPON, State's Exhibit No. 73 is admitted
9 into evidence.)

10 Q In this case can you just pull out one -- and it
11 doesn't matter which one -- and just show generally
12 the jury?

13 A Yes, ma'am. Basically when we observe an
14 identifiable print or a print that we perceive as
15 identifiable, we take packing tape. It's not
16 forensic tape. It's just packing tape. It's clear
17 packing tape. Basically what that packing tape does,
18 we run that tape over the top of the latent print
19 that we've just dusted for. Then we just simply pick
20 that piece of tape up and place it on a shiny backing
21 card such as this.

22 And then we indicate on that backing card from a
23 drawing that you can see here as a door and we place
24 it on the backing card, indicate the directionality
25 that it was recovered from and then put obviously the

1 the case number and the date on the card. Then we
2 refer back to the card in our report as to where we
3 recovered that latent print from.

4 Q And in this case it appears that on the one side
5 that's marked 2 and 3, those would be fingerprints?

6 A Yes, ma'am.

7 Q And then down here, what's that?

8 A That's a palm print.

9 Q And this is the actual evidence that you recovered
10 from the car?

11 A Yes, ma'am.

12 Q And in this case, this is from the -- where?

13 A Front passenger door.

14 Q So there were multiple prints you were actually able
15 to retrieve from the passenger door?

16 A Yes, ma'am.

17 Q As well as from the driver's door?

18 A Yes, ma'am.

19 Q And that evidence is on yet another piece of paper?

20 A Yes.

21 Q Once you collect these prints; and in this case, did
22 you run them through a computer database?

23 A Yes, ma'am.

24 Q Of people's known fingerprints?

25 A Yes, ma'am.

1 Q And were you able to get -- were you able to identify
2 any of these prints?

3 A Yes, ma'am.

4 Q And starting with the front driver's door, I believe
5 you took two cards from that?

6 A Yes, ma'am.

7 Q And how many prints total were you able to identify
8 from the front passenger's -- from the front driver's
9 door? Excuse me.

10 A Twelve latent prints.

11 Q And whose prints were those?

12 A They were -- let's see -- Emmith Allen Williams.

13 Q Emmith Allen Williams?

14 A Yes, ma'am.

15 Q Did you also -- were you also able to identify some
16 of the fingerprints from the passenger door?

17 A Yes, ma'am.

18 Q And who did those belong to?

19 A They belonged to a Bradford Lydel Cash.

20 Q Bradford Lydel Cash?

21 A Yes, ma'am.

22 Q And again, when you're running these fingerprints,
23 you don't know if you'll be able to identify them or
24 who they'll come up with?

25 A No, ma'am. We have no idea who these people are at

1 the time.

2 Q A total of how many prints were identified to Emmith
3 Williams?

4 A Twelve.

5 Q And a total of how many were identified to Bradford
6 Lydel Cash?

7 A Five.

8 Q And those were all the fingerprints that were
9 identified?

10 A Yes, ma'am.

11 MS. CAMPBELL: Beg the Court's indulgence.
12 That's all I have.

13 THE COURT: Cross examination.

14 MS. SINGLETARY: Your Honor, we have no
15 questions.

16 THE COURT: All right, sir. You may come down.
17 Thank you very much. May this witness be excused?

18 MS. CAMPBELL: Yes, sir.

19 THE COURT: Without objection. Next witness.

20 MS. MCDUFFIE: The State calls Investigator Stan
21 Richards.

22 (WHEREUPON, State's Exhibit No. 74 is marked for
23 identification.)

24 (WHEREUPON, State's Exhibit No. 75 is marked for
25 identification.)

1 (WHEREUPON, State's Exhibit No. 76 is marked for
2 identification.)

3 STAN RICHARDS, after being duly sworn, testifies
4 as follows:

5 **THE CLERK:** Have a seat in the witness box and
6 state your name for the record, please.

7 **THE WITNESS:** Stan Richards.

8 DIRECT EXAMINATION

9 **BY MS. MCDUFFIE**

10 **Q** Investigator Richards, where are you currently
11 employed?

12 **A** With the Richland County Sheriff's Department crime
13 scene unit.

14 **Q** What are your duties with the crime scene unit?

15 **A** As previously discussed, I am part of the crime scene
16 unit that goes to major or any type of crime scene.
17 What I do is to identify, collect and preserve
18 physical evidence at a scene.

19 **Q** And did you ever respond to either incident location
20 in this case, Deer Hound Trail or the Shoe Dept. on
21 Two Notch Road?

22 **A** I did not.

23 **Q** And what were you asked to do in this case, or what
24 was your role in this case?

25 **A** On May the 10th of 2007 I received two properly

1 sealed packages from our evidence room. One of those
2 packages contained a Mountain Dew bottle and one
3 contained an Icehouse beer can. I was requested to
4 process both of these items for possible latent
5 prints and possible DNA.

6 Q I show you what's been marked as State's Exhibit 75.
7 Do you recognize this?

8 A Yes. This is an Icehouse beer can. It has a seal
9 under my initials.

10 Q And is this the beer can that you were asked to
11 process on May the 10th of 2007?

12 A It is.

13 Q I show you what's been marked as State's Exhibit 76.
14 Do you recognize that?

15 A This is the package under my seal and initials that I
16 received from the evidence room. Would you like for
17 me to open it?

18 Q Yes, please.

19 A This package contains the Mountain Dew bottle that I
20 processed at that time.

21 MS. MCDUFFIE: Your Honor, the State would offer
22 State's Exhibits 75 and 76.

23 MS. DAVIS: Without objection.

24 THE COURT: Without objection.

25

1 (WHEREUPON, State's Exhibit No. 75 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 76 is admitted
4 into evidence.)

5 Q When you say process, can you explain to the jury
6 what you did?

7 A Yes. I processed it first for latent prints. And
8 that's the process that we go through. Of course
9 it's already been described to you about how you can
10 obtain a latent print from an item. What I do is
11 take the item and put it in a chamber, so to speak.
12 And it's called a cyanoacrylate chamber. What that
13 does, the oils that comes from the pores and the
14 ridges on a person's fingers when it's deposited to
15 an item may or may not be left there.

16 We put it in a chamber and we use what is in
17 essence a superglue. That heated up and mixed with a
18 moisture becomes an aerosol and can adhere to those
19 oils that may have been placed on the item enhancing
20 it so we can see it. After that we use powders to
21 further enhance and even further alternate light
22 sources to see those latent prints and then lift them
23 off the item.

24 Q And the beer can, State's Exhibit 75, what is this
25 black substance that's on the can?

1 **A** The black substance is the powder that I would have
2 used after coming out of the chamber of the
3 cyanoacrylate.

4 **Q** And were you able to obtain any identifiable
5 fingerprints from these two items?

6 **A** These two items I was not able to get any
7 identifiable. Of course you can see with the black
8 powder a lot of smudges. And that certainly would be
9 expected. But there was no identifiable prints on
10 either item.

11 **Q** And did you further process these items?

12 **A** Yes. I processed them for possible DNA. That's done
13 by using a sterile cotton swab moistened with
14 distilled water, and you just run the swab across the
15 item that you're trying to process, that you are
16 processing for DNA.

17 **Q** I show you what's been marked as State's Exhibits 74.
18 Is this what you were describing, and do you
19 recognize that item?

20 **A** Yes, it is. These are my two swabs, one from each
21 item. After a swab is used to run across the item
22 that you're processing, it's placed into a paper
23 carton and the carton is annotated with a case
24 number, my name and where it came from, placed in a
25 sealed package such as this. I would have placed

1 this and did place this into our evidence room. And
2 I sent a casting to our DNA section requesting them
3 to process this for DNA.

4 **MS. MCDUFFIE:** Your Honor, at this time we'd
5 offer State's Exhibit 74 into evidence.

6 **MS. DAVIS:** Without objection.

7 **THE COURT:** Without objection.

8 (WHEREUPON, State's Exhibit No. 74 is admitted
9 into evidence.)

10 **Q** And when you finished with those swabs, where did you
11 turn them over to?

12 **A** I placed them into our evidence room.

13 **MS. MCDUFFIE:** Beg the Court's indulgence. No
14 further questions, Your Honor.

15 **THE COURT:** Cross.

16 **MS. DAVIS:** We have no questions, Your Honor.

17 **THE COURT:** No questions. May the witness be
18 excused?

19 **MS. MCDUFFIE:** Please, Your Honor.

20 **THE COURT:** Without objection.

21 **MS. MCDUFFIE:** Your Honor, may we approach?

22 **THE COURT:** Certainly.

23 (Whereupon, a bench conference is had)

24 **THE COURT:** All right. Ladies and gentlemen of
25 the jury, apparently our next witness is on the road,

1 is an officer, and he's been held up just for a few
2 minutes. They think he'll be here shortly, just in a
3 very few minutes. So let's just take a short break
4 while we wait for him. I think we're right on
5 schedule in terms of this case moving along. So just
6 relax in the jury room for a few minutes and we'll
7 call you when he arrives. Again, don't discuss the
8 case among yourselves while you're in the jury room.
9 Thank you very much.

10 (Jury out at 10:37 a.m.)

11 **THE COURT:** All right. We'll stand at ease
12 until 10 or 15 minutes.

13 (Whereupon, a break is taken)

14 (WHEREUPON, State's Exhibit No. 77 is marked for
15 identification.)

16 (WHEREUPON, State's Exhibit No. 78 is marked for
17 identification.)

18 (WHEREUPON, State's Exhibit No. 79 is marked for
19 identification.)

20 (WHEREUPON, State's Exhibit No. 80 is marked for
21 identification.)

22 **THE COURT:** The State ready to proceed?

23 **MS. CAMPBELL:** Your Honor, I believe they're
24 bringing Mr. Clark up. You might want to take that
25 up.

1 **THE COURT:** Mr. -- oh. Oh.

2 **MS. SINGLETARY:** Your Honor, we just called down
3 to our office and they're checking to see whether or
4 not he's still down there because he had to go to
5 class. So, I mean, he should still be here.

6 **THE COURT:** Do you know if he's still here?

7 **MS. SINGLETARY:** No, Your Honor. Ms. Davis said
8 that she was actually going to page him to let him
9 know that the judge needs to see him ASAP.

10 **THE COURT:** You can't call down. Can you call
11 down?

12 (Pause)

13 **MS. SINGLETARY:** Here he is.

14 **THE COURT:** What's his name? Come around. Your
15 name again?

16 **MR. NEWTON:** Clark Newton.

17 **THE COURT:** Clark Newton?

18 **MR. NEWTON:** Yes, sir.

19 **THE COURT:** Mr. Newton, I'm just going to ask
20 you a couple of questions. Just have a seat over
21 there in the witness box.

22 **THE CLERK:** Do you want me to swear him?

23 **THE COURT:** No. Do you want him sworn? I don't
24 think so.

25 CLARK NEWTON answers the Court's questions as

1 follows:

2 EXAMINATION

3 **BY THE COURT**

4 **Q** Mr. Newton, Ms. Singletary has disclosed to the Court
5 that a juror may have approached you last night and
6 had some conversation with you. Is that correct?

7 **A** Yes.

8 **Q** Just for the record, just tell us what it was?

9 **A** I was at Food Lion and getting groceries and I was on
10 the telephone. And a woman came up to me and was
11 like, "Hey. I recognize you from the courthouse.
12 Are you an attorney at the courthouse?" And I was on
13 the phone. And I go, "Oh, no, ma'am, I'm not an
14 attorney", and I kept talking on the telephone. And
15 she kind of just stood there. I could tell that she
16 wanted to continue. So I was like, "Hold on a
17 second." And I was like, "I'm sorry. No, I'm not an
18 attorney." She's like, "No. You're like a
19 solicitor, an attorney at the courthouse." I go,
20 "No, ma'am. I work at the courthouse but I am not an
21 attorney at all." She was like, "Okay. Well, I'll
22 see you later." And then I was like, "Okay." And
23 that was it.

24 And I didn't think anything of it. So I assumed
25 since I do work at the Public Defender's Office, I

1 assumed it was a client or somebody that just had
2 seen me in the courthouse. And like I was telling
3 Ms. Singletary and Ms. Davis, I am not sure at all,
4 but one of the jurors looks very familiar and I think
5 it's that woman.

6 **THE COURT:** Okay. Any questions from the State?

7 **MS. CAMPBELL:** No.

8 **THE COURT:** All right. Anything further?

9 **MS. SINGLETARY:** No, Your Honor.

10 **THE COURT:** All right. Thank you very much.

11 Thank you very much, Mr. Newton. Ready for the jury?

12 **MS. SINGLETARY:** Yes, Your Honor.

13 **THE COURT:** Bring the jury.

14 (Jury in at 11:15 a.m.)

15 **THE BAILIFF:** Your Honor, the jury is present.

16 **THE COURT:** Thank you. All right, Solicitor.

17 Call your next witness.

18 **MS. MCDUFFIE:** The State calls Eric Barnes.

19 ERIC BARNES, after being duly sworn, testifies
20 as follows:

21 **THE CLERK:** Have a seat in the witness box.

22 State your name from the record, please.

23 **THE WITNESS:** Sergeant Eric Barnes.

24 DIRECT EXAMINATION

25 **BY MS. MCDUFFIE**

1 Q Sergeant Barnes, where are you employed?

2 A The Richland County Sheriff's Office.

3 Q What are your duties with the Richland County
4 Sheriff's Department?

5 A I'm currently a sergeant in investigations over the
6 burglary team.

7 Q And were those your duties in May of 2007?

8 A They were.

9 Q How did you become involved in the matter that we are
10 here for today?

11 A Sergeant Isenhoward had asked me to accompany him to
12 Raleigh to follow up on an armed robbery case with
13 him.

14 Q And what date was that on?

15 A Bear with me for one second. It was around May 8th.

16 Q And on May the 8th of 2007, did you in fact go to
17 Raleigh, North Carolina, with Sergeant Isenhoward?

18 A I did.

19 Q And when you arrived in Raleigh, North Carolina, did
20 you have the occasion to meet with Linda Bryant?

21 A I did.

22 Q And based on your conversations with Linda Bryant,
23 what clothing did you believe the defendant was
24 wearing the last time he was seen in North Carolina?

25 A She said he was wearing a Polo shirt, red and blue

1 horizontal stripes.

2 Q And did you also have the occasion to visit Cindy
3 Paris at Smokers Friendly in Raleigh, North Carolina?

4 A I did.

5 Q And did she turn over a video to you and Investigator
6 Isenhoward?

7 A She did.

8 Q Did you observe the defendant on that video?

9 A Yes, ma'am.

10 Q And what was the defendant wearing on that video?

11 A A Polo shirt, red and blue horizontal stripes.

12 Q Did you also have the occasion to visit the impound
13 lot in Raleigh, North Carolina?

14 A Yes, ma'am.

15 Q And why did you go there?

16 A Because that was where we understood the vehicle that
17 Mr. Williams had been driving had been impounded.

18 Q And the vehicle which was the Darnells' vehicle was
19 in Raleigh, North Carolina?

20 A Correct.

21 Q And did you and Investigator Isenhoward have the
22 opportunity to look inside the vehicle?

23 A We did.

24 Q Did you all remove some items from the vehicle?

25 A We did. We removed I believe a Mountain Dew can and

1 I believe several cigarette butts.

2 **Q** I show you what's been marked as State's Exhibits 77
3 and 78. Do you recognize those?

4 **A** I do. 77 and 78 are the cigarette butts that we
5 recovered from the victim's vehicle and we logged
6 into evidence.

7 **MS. MCDUFFIE:** Your Honor, at this time we would
8 offer State's Exhibits 77 and 78.

9 **MS. SINGLETARY:** Without objection.

10 **THE COURT:** Without objection.

11 (WHEREUPON, State's Exhibit No. 77 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 78 is admitted
14 into evidence.)

15 **Q** And you said you retrieved some other items. State's
16 76 and 75, do you recognize these?

17 **A** State's 76 is the Mountain Dew bottle. It's the
18 bottle that we recovered. And State's 75 is an
19 Icehouse beer can that we recovered.

20 **Q** And the vehicle was secured when you had the
21 opportunity to go to it?

22 **A** It was.

23 **Q** And those items were in either you or Sergeant
24 Isenhoward's custody until you turned them over to
25 property and evidence here in Richland County?

1 **A** That is correct.

2 **Q** Did you also have the opportunity to speak with the
3 defendant, Emmith Williams?

4 **A** Yes, ma'am.

5 **Q** And when did that take place?

6 **A** The next day.

7 **Q** May the 9th?

8 **A** Yes, ma'am.

9 **Q** And where did you have the opportunity to meet with
10 him?

11 **A** At the Wake County Sheriff's Office.

12 **Q** When you met with him, what was the first thing that
13 was done?

14 **A** We introduced ourselves and then we advised him of
15 his rights.

16 **Q** And please explain to the jury how he was advised of
17 his rights or how you advise some of their rights?

18 **A** Well, there are two ways to advise someone of your
19 rights. You can advise them verbally, and that is
20 often the case. In this particular case when we're
21 in the room that we were at and it was a secure
22 environment and we were hoping to get a formal
23 statement from him, we took a formal -- or filled out
24 a formal advice of rights which is --

25 **Q** And I want to direct you to State's Exhibit 8. Do

1 you recognize that?

2 **A** This is our form that we use at the Sheriff's Office,
3 a Richland County Sheriff's Department
4 Interrogation/Advice of Rights form.

5 **Q** And is that your signature on the form?

6 **A** That is my signature. Yes, ma'am.

7 **MS. MCDUFFIE:** Your Honor, at this time we'd
8 offer State's Exhibit No. 8 into evidence.

9 **MS. SINGLETARY:** Without objection.

10 **THE COURT:** Without objection.

11 (WHEREUPON, State's Exhibit No. 8 is admitted
12 into evidence.)

13 **Q** Please explain for jury how Mr. Williams was advised
14 of his rights on May the 9th of 2007?

15 **A** Sergeant Isenhoward explained the rights to him, went
16 through the form to him. On each line he would --
17 Sergeant Isenhoward would check off as he read that
18 line and got an acknowledgment from Mr. Williams that
19 he understood those advice statements. And he went
20 through the form, checked them off, receiving an
21 acknowledgment from Mr. Williams that he understood
22 what we were talking to him about.

23 And then this last one is a waiver of your
24 rights, meaning Mr. Williams -- we read the statement
25 to Mr. Williams, he acknowledged he understood that,

1 and then he signed on both lines the advice of rights
2 and his waiver of rights, meaning he was willing to
3 talk to us at that time.

4 **Q** And please demonstrate to the jury how Mr. Williams'
5 rights were read to him?

6 **A** Sergeant Isenhoward read this to him. "Before we ask
7 you any questions, you must understand your rights."
8 And Mr. Williams acknowledged that. Sergeant
9 Isenhoward checked that particular block. "You have
10 the right to remain silent." He acknowledged it,
11 checked the block. "Anything you say can be used
12 against you in court." Obviously the acknowledgment,
13 checking again of the block. "You have the right to
14 talk to a lawyer for advice before we ask you any
15 questions and to have a lawyer with you during any
16 questioning. If you cannot afford a lawyer, one will
17 be appointed for you before any questioning if you
18 wish. If you decide to answer questions now without
19 a lawyer present, you still have the right to stop
20 answering at any time. You also have the right to
21 stop answering at any time until you talk to a
22 lawyer." After each one of those he acknowledged,
23 checked the block.

24 "I have read this statement of my rights." This
25 is a waiver of the rights part down here. "I have

1 read this statement of my rights. I understand what
2 my rights are. I am willing to talk and answer
3 questions. I understand and know what I am doing.
4 No promises have been made to me, and no pressure or
5 coercion of any kind has been used against me."
6 Again an acknowledgment of checking of the block and
7 then Mr. Williams' signature.

8 Q And based on your experience and training, did you
9 believe that Mr. Williams understood the rights as he
10 was advised?

11 A Most definitely.

12 Q And why?

13 A He acknowledged them. He did not show any signs that
14 he did not understand what we were talking about. In
15 fact, we had a very cordial conversation, and there
16 was no indication on my part that he was high in any
17 way, that he didn't understand. If he had -- there
18 was no indication that he had limited capacity for
19 understanding. So his acknowledgments were real in
20 my experience.

21 Q And is that your signature on the bottom of the page
22 indicating that you witnessed the rights being read
23 and the defendant's signature of waiving those
24 rights?

25 A It is.

1 Q And whose signature is that?

2 A That is Mr. Williams'.

3 Q And the top signature?

4 A That is Sergeant Kevin Isenhoward's signature.

5 Q At any point in time did you threaten Mr. Williams,
6 coerce him to make him sign this?

7 A Absolutely not.

8 Q Any pressure put on him?

9 A No, ma'am.

10 Q No threats or coercion?

11 A No, ma'am.

12 Q And Mr. Williams waived his rights?

13 A He did.

14 Q At any point in time did he tell you that he did not
15 want to talk to you or ask for an attorney?

16 A No, ma'am.

17 Q If he would have done that, what would you have then
18 done?

19 A We would have stopped at that point.

20 Q And the person who was read his rights and who then
21 subsequently waived them in your presence, do you see
22 him in the courtroom today?

23 A I do. I do. He is sitting between his defense
24 counsel at the defense counsel's table, Mr. Emmith
25 Williams.

1 **MS. MCDUFFIE:** Your Honor, please let the record
2 reflect he's identified the defendant.

3 **THE COURT:** The record will reflect the witness
4 identified the defendant.

5 **Q** And did you in fact take a written statement from the
6 defendant on May the 9th of 2007?

7 **A** We did.

8 **MS. MCDUFFIE:** No further questions, Your Honor.

9 **THE COURT:** Cross examination.

10 **MS. SINGLETARY:** None, Your Honor.

11 **THE COURT:** All right. You may come down. May
12 this witness be excused?

13 **MS. MCDUFFIE:** Please, Your Honor.

14 **THE COURT:** Without objection.

15 **MS. CAMPBELL:** The state calls Investigator
16 Booth.

17 SCOTT BOOTH, after being duly sworn, testifies
18 as follows:

19 **THE CLERK:** Have a seat in the witness box.

20 State your name for the record, please.

21 **THE WITNESS:** Scott Booth.

22 DIRECT EXAMINATION

23 **BY MS. CAMPBELL**

24 **Q** Investigator Booth, where are you employed?

25 **A** The Wake County Sheriff's Office in Raleigh, North

1 Carolina.

2 Q What do you do there, sir?

3 A I'm a senior investigator currently assigned to the
4 property crime unit and investigate break-in's,
5 damaged properties, larcenies, those type of crimes.

6 Q I want to turn your attention back to May the 8th of
7 2007. Did you -- you actually weren't the one that
8 made initial contact with the investigators from
9 Columbia, South Carolina, that day?

10 A No, ma'am. That was Investigator Brent David.

11 Q In fact, it wasn't until May the 9th, the next
12 morning, that you made contact?

13 A Yes, ma'am.

14 Q And were assisting them?

15 A Yes, ma'am.

16 Q And tell this jury basically what you were helping
17 those investigators do the morning of May the 9th?

18 A At that time I was assigned to the personal crime
19 unit which is located in our main office in downtown
20 Raleigh. My sergeant approached me and said there
21 were two investigators from South Carolina, and he
22 requested that I assist them in setting up an
23 interview with Mr. Williams.

24 Q And did you in fact help them make contact with Mr.
25 Williams?

1 **A** Yes, ma'am.

2 **Q** How did you do that, sir?

3 **A** I escorted Mr. Williams to an interview room. It was
4 one of our juvenile interview rooms. It's a larger
5 room with a long table and several chairs.

6 **Q** And when you say you escorted him, did you actually
7 go and get him --

8 **A** Yes, ma'am.

9 **Q** -- and bring him to be interviewed?

10 **A** Yes, ma'am.

11 **Q** And that morning do you remember which two detectives
12 from South Carolina you met with?

13 **A** It was Sergeant Barnes and Sergeant Isenhoward.

14 **Q** Once you all -- and describe this interview room you
15 went to? What is it like?

16 **A** It is a -- I would as I remember, it's an
17 eight-by-ten. It's actually a room that you can
18 actually lock the door. It has a lock with a large
19 key. But it's a large interview room.

20 **Q** And who all was in the room that day when you all
21 were interviewing Mr. Williams?

22 **A** It was Sergeant Isenhoward, Sergeant Barnes, myself,
23 and Mr. Williams.

24 **Q** Prior to any questioning going on, what happened?

25 **A** As I remember, I actually -- I keep -- in my folder I

1 keep all the proper documents, Fifth Amendment rights
2 forms. And I offered Sergeant Isenhoward a rights
3 form. And he said at that time, "I would prefer to
4 use our rights form." And I said, "Fine." And he
5 proceeded to read Mr. Williams his rights.

6 Q I want to show you what's been marked as State's
7 Exhibit No. 8. Do you recognize that?

8 A Yes, ma'am.

9 Q And is that the actual form that was used that day?

10 A Yes, ma'am.

11 Q And why is it important to advise someone of their
12 rights prior to interviewing them or to questioning
13 them?

14 A Well, it's important so they understand that they do
15 not have to speak with you if they wish. They are
16 also entitled to an attorney. And also at any point
17 if they do decide to talk to you at any point within
18 that, their talking, that they feel uncomfortable and
19 want to stop, they can do so.

20 Q And who actually went through the rights with Mr.
21 Williams on that day?

22 A Sergeant Isenhoward.

23 Q And you were present when this occurred?

24 A Yes, ma'am.

25 Q As well as Sergeant Barnes?

1 **A** Yes, ma'am.

2 **Q** And just briefly for the jury, for the record, go
3 through the rights that were explained to him that
4 day?

5 **A** Okay. It starts with: "Before we ask you any
6 questions, you must understand your rights." And
7 that box is checked. "You have the right to remain
8 silent." That box is checked. "Anything you say can
9 be used against you in court." That is also checked.
10 "You have the right to talk to a lawyer for advice
11 before we ask you any questions and to have a lawyer
12 with you during any questioning." That box is
13 checked. "If you cannot afford a lawyer, one will be
14 appointed for you before questioning if you wish."
15 That box is checked. "If you decide to answer
16 questions now without a lawyer present, you still
17 have the right to stop answering at any time. You
18 also have the right to stop answering at any time
19 until you talk to a lawyer." That box is also
20 checked.

21 **Q** And were those the rights that are actually explained
22 to him by Investigator or Sergeant Isenhoward that
23 day --

24 **A** Yes, ma'am.

25 **Q** -- in your presence?

1 **A** Yes, ma'am.

2 **Q** And after he had been advised of his rights, did the
3 defendant acknowledge his rights in any way?

4 **A** Yes, ma'am.

5 **Q** And is that actually his signature on there?

6 **A** Yes, ma'am.

7 **Q** And you actually were there when he signed that form?

8 **A** Yes, ma'am, I was.

9 **Q** In addition to that, after being advised of what his
10 rights are, is there an additional part that was gone
11 through with him, what's called a waiver of rights?

12 **A** Yes, ma'am.

13 **Q** And what was that?

14 **A** It states: "I have read this statement of my rights
15 and understand what my rights are. I am willing to
16 talk and answer questions. I understand and know
17 what I am doing. No promises have been made to me,
18 and no pressure or coercion of any kind has been used
19 against me."

20 **Q** So he's verbally advised of his rights by Sergeant
21 Isenhoward as well as he's had the opportunity to
22 review those rights in writing as it appeared on that
23 form?

24 **A** Yes, ma'am.

25 **Q** And at that point did the defendant acknowledge that

1 he wanted to waive his rights and talk to you all?

2 A Yes, ma'am, he did.

3 Q At any time did anybody promise him anything to make
4 him talk?

5 A No, ma'am.

6 Q Did anybody threaten him in any way?

7 A No.

8 Q Was any coercion used?

9 A No, ma'am.

10 Q Was he deprived of any creature comforts?

11 A No.

12 Q Did he appear to be coherent and acknowledge the
13 questions appropriately?

14 A Yes, ma'am, he did.

15 Q And, in fact, in your opinion did he waive his rights
16 voluntarily?

17 A Yes, ma'am.

18 Q Once he had been advised of his rights and he had
19 chosen to waive those rights, at that point did he
20 want to tell you all his version?

21 A Yes, he did.

22 Q And in fact, was he pretty forthcoming with his
23 version of the facts?

24 A Yes, he was.

25 Q And who actually did the questioning that day?

- 1 **A** As I remember, Sergeant Isenhoward began questioning
2 Mr. Williams. And what stands out in my mind about
3 that is Sergeant Isenhoward began questioning him and
4 he wasn't taking notes. And everybody has different
5 ways of doing things, but I'm just -- I take notes.
6 If they're saying something I take notes. So I began
7 writing notes as he started initially talking with
8 Mr. Williams.
- 9 **Q** And I believe that you have on here that your note
10 taking, he was actually advised of his rights right
11 around 11:00?
- 12 **A** Yes, ma'am.
- 13 **Q** And the interview lasted for a little over an hour?
- 14 **A** Yes, ma'am.
- 15 **Q** And at that point -- initially you mentioned that
16 Sergeant Isenhoward started talking to him. So
17 nothing was immediately reduced to writing from Mr.
18 Williams at first?
- 19 **A** No.
- 20 **Q** But you were taking some notes?
- 21 **A** Yes, I was taking notes.
- 22 **Q** Sometime after the interview began, once he had told
23 his initial version, was there then a written
24 statement that was actually taken once he got his
25 story across?

1 **A** Yes, ma'am. As I recall, once he pretty much told
2 his story, I remember Sergeant Isenhoward pulled out
3 some forms and as I remember said, "I would like to
4 write your statement for you now." And then as I
5 remember, I believe I exited the interview room at
6 that time. I'm not certain, but I believe I did.

7 **Q** Okay. And the substance of the notes that you took
8 on that day, they aren't detailed as in that
9 statement?

10 **A** No, ma'am. I can tell by looking at them that I was
11 hurrying to try to keep up.

12 **Q** And in taking these notes, you do have in your notes
13 that he initially indicated in his statement that he
14 may have had his --

15 **MS. SINGLETARY:** Objection, Your Honor, if she
16 is going to go into anything that's written in the
17 statement that my client said.

18 **THE COURT:** Overruled. Go ahead.

19 **Q** Did he indicate whether or not when he was robbing
20 these people that he may have had his hand in his
21 pocket?

22 **A** Yes, ma'am, he did.

23 **Q** Did he indicate that he didn't want to get arrested
24 when he took the car?

25 **A** Yes.

1 Q Did you also get some background information on him
2 about where he worked and things of that nature?

3 A Yes. He did -- he did mention some places where he
4 worked.

5 Q Did he also indicate why he was -- he had parked at
6 the school?

7 A He stated that he was trying to find Millbrook Road
8 which is in the northern part of the City of Raleigh
9 to catch a bus.

10 Q And you are familiar with where the school is, where
11 he left the car?

12 A Yes. It's in the northern part of Wake County just
13 roughly -- I believe it's about five miles north
14 of -- maybe northwest. I'm not positive. But it's
15 probably about five miles from Millbrook Road. It's
16 up in the northern part of Wake County.

17 Q So Millbrook Road is about five miles or more from
18 where he parked the car?

19 A It would be five miles back into the city. Yes.

20 Q Beg the Court's indulgence. And other than that, the
21 actual written statement was taken by Sergeant
22 Isenhoward?

23 A Yes, ma'am.

24 Q Prior to all this, had you ever met Emmith Williams
25 before?

1 **A** No, ma'am.

2 **Q** Had you ever seen Sergeant Isenhoward or Sergeant
3 Barnes before?

4 **A** No, ma'am.

5 **Q** The person that you took your notes from and you were
6 there when he was advised of his rights, do you see
7 him here in the courtroom?

8 **A** Yes, ma'am, I do.

9 **Q** Can you identify him for the jury?

10 **A** Yes, ma'am. He's seated between his defense counsel
11 with the blue sports coat and a blue and gold, what
12 appears to be blue and gold tie.

13 **Q** Thank you.

14 **THE COURT:** The record will reflect that the
15 witness identified the defendant.

16 **MS. CAMPBELL:** Thank you, Your Honor.

17 **THE COURT:** Cross examination.

18 **MS. DAVIS:** Just briefly, Your Honor.

19 CROSS EXAMINATION

20 **BY MS. DAVIS**

21 **Q** Investigator Booth, the notes you took that day, you
22 also included in there that Emmith said he didn't
23 threaten anyone?

24 **A** Yes, ma'am.

25 **Q** He also said he just wanted the car so he wouldn't

1 get arrested?

2 **A** Yes, ma'am.

3 **Q** He said things like, "I just wanted to take a bath"?

4 **A** Yes, ma'am.

5 **Q** "I was trying to survive"?

6 **A** Yes, ma'am.

7 **Q** "I stayed in the woods the entire time"?

8 **A** Yes, ma'am.

9 **Q** And that -- I'm sorry. But he did include that he
10 hadn't threatened anyone, right?

11 **A** Yes, ma'am.

12 **Q** Thank you.

13 **THE COURT:** Anything further?

14 **MS. CAMPBELL:** No, sir.

15 **THE COURT:** All right, sir. You may come on,
16 sir. Thank you very much. May this witness be
17 excused?

18 **MS. DAVIS:** Yes, sir.

19 **THE COURT:** Without objection.

20 **MS. CAMPBELL:** May it please the Court?

21 **THE COURT:** Next witness.

22 **MS. CAMPBELL:** The State would call Gray Amick.
23 DR. GRAY AMICK, after being duly sworn,
24 testifies as follows:

25 **THE CLERK:** Have a seat in the witness box.

1 State your name for the record, please.

2 **THE WITNESS:** My name is Gray Amick.

3 DIRECT EXAMINATION

4 **BY MS. CAMPBELL**

5 **Q** Investigator Amick, where are you employed?

6 **A** Richland County Sheriff's Department.

7 **Q** What do you do there, sir?

8 **A** I am the DNA technical leader. I run the DNA,
9 forensic DNA laboratory.

10 **Q** Can you tell this jury a little bit about your
11 education and your training in the field of DNA?

12 **A** Yeah. In 1989 I received a B.S. in biology. Four
13 years later, in 1993, I got a Ph.D in biochemistry
14 from USC. I at that point was employed by the South
15 Carolina law Enforcement Division laboratory commonly
16 known as SLED. I worked there for 11 years. In 2004
17 I was hired to start up the DNA laboratory at
18 Richland County. I've been trained by court
19 qualified experts in the field of forensic DNA and
20 serology, and I've attended annual continuing
21 education in the field.

22 **Q** Recently has your laboratory become accredited?

23 **A** Yeah. Actually in 2006 the DNA laboratory was
24 accredited nationally and reaccreditation is this
25 year.

1 Q And that's the laboratory that you actually helped
2 develop. Is that correct?

3 A That's correct.

4 Q And how long have you been at Richland County?

5 A Since March of 2004.

6 Q Have you ever been qualified before as an expert in
7 DNA analysis?

8 A I have.

9 Q And approximately how many times have you been
10 qualified as an expert in DNA analysis?

11 A Over 50 times.

12 MS. CAMPBELL: Your Honor, at this time we'd
13 offer him as an expert in DNA analysis.

14 THE COURT: Any voir dire or objection?

15 MS. SINGLETARY: None, Your Honor.

16 THE COURT: All right. You may proceed.

17 Q I want to turn your attention to the case at hand.
18 Actually there are two case numbers. Did you do some
19 DNA analysis in these cases?

20 A I did.

21 Q Turning your attention first to case number
22 07-05-059807. Were there certain items that were
23 submitted to you for DNA analysis in this case?

24 A Yes, there was.

25 Q And when you received all those items, were they

1 packaged properly? Was there any evidence of any
2 tampering in this case?

3 **A** There was no evidence of tampering.

4 **Q** Tell this jury when you get swabs and/or clothing or
5 whatever what kind of testing you do and what your
6 goal is?

7 **A** Well, basically what we do is I do some basic
8 serology. And that means identifying the body
9 fluids. Is there blood present in this case?
10 Usually blood. Or we looking for touch DNA, who is
11 wearing a piece of clothing or semen if it's present
12 in a rape case. And then we will attempt to develop
13 a DNA profile from the items of evidence and the
14 standards submitted in the case and compare the two.

15 **Q** You mentioned something you referred to as touch DNA.
16 What does that mean?

17 **A** That means if I touch something with my mouth or
18 fingers, we are at the point in this field to be able
19 to retrieve a DNA profile from that. So on cigarette
20 butts, drinking cans and bottles, those are referred
21 to now as touch DNA.

22 **Q** And are you always going to retrieve DNA from
23 something that's been touched, say, by my fingers?

24 **A** No. Not always.

25 **Q** Is it similar to fingerprints? Sometimes you may

1 leave something and sometimes you may not depending
2 on circumstances?

3 **A** Right. That's exactly what it's like.

4 **Q** And in DNA you can't say how long the DNA has been
5 present there, can you?

6 **A** No, you cannot.

7 **Q** Just like with fingerprints, you can't date them?

8 **A** That's right.

9 **Q** However, if I am to go up and, well, say I'm wearing
10 this jacket; is there at least a likelihood that I
11 may leave my DNA on this?

12 **A** It is a likelihood, especially like on a collar of a
13 jacket or a shirt if it's touching your skin. That's
14 where we would sample that item.

15 **Q** But again not in all cases. It depends on who wears
16 it, how long it's worn, things of that nature?

17 **A** Correct.

18 **Q** And even if there was DNA on there at one point
19 depending on how it's handled, it could get rid of
20 the DNA?

21 **A** That's correct.

22 **Q** In this case did you also receive a known standard
23 from the defendant, Emmith Williams?

24 **A** I did under the other case number.

25 **Q** But actually you used it in both cases?

1 **A** That's correct.

2 **Q** I show you State's Exhibit 74. Was that properly
3 submitted for you to do your DNA analysis?

4 **A** It was.

5 **Q** And I notice your DNA analysis was done sometime
6 after these samples were collected. As long as they
7 are stored properly, does that in any way affect your
8 results?

9 **A** If they're stored properly it should not affect the
10 results.

11 **Q** And again in this case there is no evidence of any
12 tampering or anything wasn't stored properly?

13 **A** That's correct.

14 **MS. CAMPBELL:** Your Honor, at this time we'd
15 offer State's Exhibit 74 into evidence.

16 **MS. SINGLETARY:** Without objection, Your Honor.

17 **THE COURT:** Without objection.

18 (WHEREUPON, State's Exhibit No. 74 is admitted
19 into evidence.)

20 **Q** Once have you a known standard, then are you able to
21 actually run your DNA and do comparisons?

22 **A** We can run it before that. But we can do the
23 comparisons at that point, yes.

24 **Q** And in this case did you compare certain items from
25 the shoe department store that were collected during

1 that investigation?

2 **A** I did.

3 **Q** And quickly, did you get I believe four swabs from
4 door handles from a car that was located at The Shoe
5 Dept.?

6 **A** I did.

7 **Q** As well as a swab from the counter at The Shoe Dept.?

8 **A** Yes.

9 **Q** And a swab from the cash register at The Shoe Dept.?

10 **A** Yes.

11 **Q** And a swab from the exterior driver's door which
12 would be a car?

13 **A** Yes.

14 **Q** At The Shoe Dept. A swab from a piece of plastic?

15 **A** Yes.

16 **Q** A shoebox?

17 **A** Yes.

18 **Q** And then finally you also received an item of
19 clothing, a red and gray jacket?

20 **A** That's correct.

21 **Q** A black head rag?

22 **A** Correct.

23 **Q** And a red and blue Polo shirt?

24 **A** That's right.

25 **Q** As well as some items that were found inside the

1 jacket?

2 A Yes.

3 Q I want to show you what's been marked as State's
4 Exhibit No. 30 which hasn't been in the bag lately.
5 Is this the red and gray jacket you referred to?

6 A It appears to be. Yes. It bears my initials.

7 Q It's got your initials on it when it was in the bag.
8 I show you State's Exhibit No. 29.

9 A Again red and blue striped shirt with my initials on
10 it.

11 Q And finally State's Exhibit 28.

12 A Again my initials on this packaging, a black rag of
13 some type.

14 Q And again, when you received these items they were
15 sealed in the manner in which -- I believe it would
16 be Lieutenant Elsey who would have sealed them?

17 A That's correct.

18 Q I believe back then her name was Clemens. I show
19 you -- I want to show you what's been marked as
20 State's Exhibit No. 79 and first ask for you to
21 review that.

22 A That appears to be a summary of my report results.

23 Q And does this accurately reflect what your results
24 were in this case?

25 A It does appear to accurately reflect that.

1 Q Without all the -- it's more complicated than this,
2 but --

3 A It's a summary. Correct.

4 MS. CAMPBELL: Your Honor, we'd offer State's
5 Exhibit 79.

6 MS. SINGLETARY: Without objection, Your Honor.

7 THE COURT: Without objection.

8 (WHEREUPON, State's Exhibit No. 79 is admitted
9 into evidence.)

10 MS. CAMPBELL: And, Your Honor, may the witness
11 step down?

12 THE COURT: Yes.

13 Q Prior to doing any kind of testing, do you always
14 consult with investigators in the case?

15 A On this type of case we would usually consult, yes.

16 Q Okay. You want to come on this side so the court
17 reporter can hear you better. And sometimes they
18 will tell you what may be the more probative evidence
19 than other evidence?

20 A That's right. That's why we consult, to ask them
21 from cases that have lots of evidence, okay, what's
22 the most probative here. Because they know the
23 specifics of the case what we need to analyze.

24 Q Okay. In this case I notice the first item is items
25 number 2 through 5. There was no analysis done in

1 this case?

2 **A** That's correct.

3 **Q** And was that based on the information that was
4 provided to you by investigators?

5 **A** That would be the reason we would not do analysis on
6 some cases, yes.

7 **Q** But in the rest of the -- other than these swabs from
8 the items inside the jacket pocket, you analyzed all
9 this evidence?

10 **A** That's correct.

11 **Q** In the first item which is item number 6, the swab
12 from the counter, were you able to get a DNA profile
13 from that?

14 **A** No. My report would have said -- what my report
15 says, it's too weak to reliably interpret. So it
16 would be a scenario where there is not enough DNA to
17 get a profile that I can make a determination about.

18 **Q** And explain to this jury again, when you're doing DNA
19 analysis, you say you get a profile. What does that
20 mean?

21 **A** It's a series of numbers. I mean, it's -- we look at
22 several different sites on the DNA molecule. And
23 it's a unique series of numbers to every individual
24 except for identical twins. So it's basically a bar
25 code, a molecular bar code for each individual.

1 Q And in this case the first thing you have to do is
2 have enough DNA present to get a -- how did you put
3 it?

4 A An interpretable profile.

5 Q Okay. So there's got to be enough DNA there to
6 actually match or not to match with someone?

7 A That's correct.

8 Q And the first item that you tested, item number 6,
9 was a swab from the counter, there just simply wasn't
10 enough DNA to do any kind of analysis?

11 A That's right. Well, let me correct that. There was
12 enough to do analysis; but when we got a result,
13 there's not enough there to do an interpretation.

14 Q So you were able to analyze it. There was enough DNA
15 there but there wasn't enough to do an
16 interpretation?

17 A That's correct.

18 Q Item number 7 which is a swab from inside the cash
19 register, were you able to even find the presence of
20 any DNA?

21 A That's another scenario. There was no DNA there that
22 I developed when I did my analysis.

23 Q Please correct me. I get this confused. Item number
24 8 which is a swab from the exterior driver's door,
25 again what were your results?

1 **A** Again it's too weak to reliably interpret.

2 **Q** So there was DNA there but just not enough?

3 **A** Not enough. Correct.

4 **Q** And item number 9, a swab from the piece of plastic
5 at the store, were you able to get any DNA from that?

6 **A** No. No DNA was developed.

7 **Q** Item number 10 which is a swab from the shoebox, were
8 you able to get any DNA from that?

9 **A** Again no DNA was extracted from that sample.

10 **Q** And again, even if I were to, say, handle that shoe
11 box, if it comes up with no DNA, it doesn't mean I
12 didn't handle it, does it?

13 **A** That's correct. It just means you didn't leave any
14 DNA evidence.

15 **Q** Let's get to items number 11, a red and gray jacket.
16 Did you actually swab the jacket yourself?

17 **A** No. That would have been a technician that works
18 with me under my supervision would have helped
19 process that evidence.

20 **Q** And again, what areas of the jacket would have been
21 swabbed?

22 **A** From the information from the investigators, they
23 were asking who was wearing the jacket. So, like I
24 said before, I'd swab the collar of the jacket and
25 sometimes the cuffs but primarily the collar of the

1 jacket.

2 Q And in this case were you able to get DNA?

3 A Yes. We did develop a DNA profile from item 11.

4 Q And tell this jury what your results were when you
5 developed the DNA profile?

6 A If I could read from the report and then I could
7 refer to it here as well.

8 Q Sure.

9 A So a DNA profile was developed from item 11. It was
10 a mixture. The major contributor matched Emmith
11 Williams.

12 Q What does that mean when you say you got a mixture?

13 A That means there was more than one person's DNA on
14 that item.

15 Q Is that unusual?

16 A No. I mean, it depends on the item. Clothing, it's
17 not all that unusual, especially jackets and stuff.
18 I mean, it's not that unusual.

19 Q You mentioned that you had a major contributor. Does
20 that mean you also have a minor contributor?

21 A Yes.

22 Q What does that mean, if you put it in terms I can
23 understand?

24 A That means if you mix two things together, one, you
25 can see there's a lot more of one than the other. So

1 the DNA profile that I matched to Emmith Williams
2 was -- the amount of it was a lot more than the minor
3 contributor. So I could pick those characteristics
4 out of my profile and match it to that individual.

5 Q Were you able to match the minor contributor to
6 anyone?

7 A No. The minor contributor was too weak to rely on to
8 interpret. So it would be similar to these other
9 items up here.

10 Q So there simply wasn't enough DNA?

11 A That's correct.

12 Q But the major contributor. Once you were able to
13 match someone's DNA, and that means that they
14 definitely left the DNA there, do you then do a
15 statistical analysis in each case?

16 A That's correct.

17 Q And in this case what is the statistics of anyone
18 else on earth having a DNA profile that could match
19 this?

20 A Based on these genetic results that I obtained, the
21 frequency of seeing this profile in the Caucasian
22 population is approximately 1 in 1.8 quintillion; and
23 in the African-American population, 1 in
24 480 quadrillion.

25 Q What was it in the African-American population?

1 **A** 1 in 480 quadrillion.

2 **Q** 480. And how many zeroes are in quadrillion?

3 **A** Fifteen.

4 **Q** Fifteen after the 480?

5 **A** Correct. Three more.

6 **Q** How many people are there?

7 **A** Over 6 billion.

8 **Q** Billion?

9 **A** Yeah. Just over 6 billion.

10 **Q** And how many zeroes are in six billion?

11 **A** Billion is going to be three, six, nine.

12 **Q** So that would be significantly more people than are
13 on earth?

14 **A** That's correct.

15 **Q** And the probability that it could match this
16 480 quadrillion, 1 in 480?

17 **A** The frequency is 1 in 480 quadrillion.

18 **Q** Based on this number and the strength of this DNA
19 profile, are you able to say whose DNA that was?

20 **A** Yeah. In my opinion Emmith Williams left the DNA on
21 that item.

22 **Q** Moving on to the next item which you did not do any
23 testing on 12 and 13, the items from the jacket
24 pocket?

25 **COURT REPORTER:** I'm sorry. I didn't hear your

1 question.

2 Q Items 12 and 13, the items from the jacket pocket
3 that were swabbed, did you do any analysis on those?

4 A No, I did not.

5 Q However, on item 14, the swab from the black head
6 rag, were you able to get DNA?

7 A Again too weak to get a profile.

8 Q And finally the swab from the red and blue Polo
9 shirt, again that would have been done by your
10 technician?

11 A Correct.

12 Q And were you able to get a match on that?

13 A I was. Item 15 also matched Emmith Williams. I gave
14 no statistic on that.

15 Q Why didn't you give a statistic on that?

16 A When we have multiple items matching one individual,
17 we will publish the statistic on one of them and
18 usually by reporting convention say that the other
19 ones also matched. There's no --

20 Q Is that the way you all do it in the DNA world?

21 A It's basically a reported image. That's correct.

22 Q But there is no doubt that that was also Emmith
23 Williams' DNA?

24 A That's correct.

25 Q The second case that you received evidence in

1 involved a burglary, armed robbery at the Darnells.

2 Did you receive actually some items that were
3 submitted from the automobile in that case?

4 **A** Yes.

5 **Q** And again, did you use the same standard you used in
6 the other case for Emmith Williams?

7 **A** Actually the standard was submitted under this case.
8 Yes.

9 **Q** And I show you State's Exhibit No. 71. Is that the
10 standard?

11 **A** Yes, it is.

12 **MS. CAMPBELL:** We would move State's Exhibit
13 No. 71 in, Your Honor.

14 **MS. SINGLETARY:** Without objection, Your Honor.

15 **THE COURT:** Without objection.

16 (WHEREUPON, State's Exhibit No. 71 is admitted
17 into evidence.)

18 **Q** The first item that you analyzed in this case and
19 compared to Emmith Williams' DNA was a swab from the
20 front door handle of the interior?

21 **A** Correct.

22 **Q** And the second item was a swab from the front door
23 handle exterior. As much as you're able to match DNA
24 to someone, is it also an exculpatory tool? It can
25 exclude DNA?

1 **A** That's correct.

2 **Q** And in this case from the automobile there was a mix,
3 and you were able to exclude Emmith Williams as a
4 contributor?

5 **A** Right. Both those items, item 1 and 2, are mixtures,
6 and my report says Emmith Williams was excluded from
7 being a contributor to this mixture. So I didn't
8 find his characteristics in those items.

9 **Q** And does that mean he necessarily wasn't in the car?

10 **A** No. It just means there was none of his DNA present
11 on those particular items.

12 **Q** And if personnel such as police and different people
13 came up afterwards and were looking in the car and
14 things of that nature, could it be their DNA as well?

15 **A** It could be.

16 **Q** Item number 5 which was a swab from the cigarette
17 butt, were you able to get any DNA from that?

18 **A** No. No DNA was extracted from item 5.

19 **Q** Item number 6 which I believe was three cigarette
20 butts, were those packaged together?

21 **A** Yes.

22 **Q** And did you do swabs from each of those individual
23 cigarettes butts?

24 **A** We did cuttings from cigarette butts, yes.

25 **Q** I'm sorry. Item 6.1 which was a Newport cigarette

1 butt, were you able to analyze that?

2 A I was.

3 Q What were the results?

4 A The DNA profile developed from item 6.1 was from an
5 unknown male.

6 Q And the only known DNA that was submitted to you for
7 analysis in this case was Emmith Williams?

8 A That's correct.

9 Q Item 6.2, were you able to get any results from that?

10 A No DNA was extracted from 6.2.

11 Q And finally item 6.3, which was another -- and I've
12 got these as swabs. It's actually cuttings?

13 A Yeah.

14 Q Those were actually cuttings. What were the results?

15 A 6.3, it also matched Emmith Williams.

16 Q And did you do a statistical analysis on that?

17 A Not on that one.

18 Q Because you did do one on item number 7?

19 A That's correct.

20 Q And item number 7 was a swab from the Icehouse beer
21 can?

22 A Yes.

23 Q And what were your results from that?

24 A The DNA profile developed from item 7 matched Emmith
25 Williams. And based on the genetic results I

1 obtained, the frequency of seeing this profile in the
2 Caucasian population is 1 in 570 quadrillion; in the
3 African-American, 1 in 100 quintillion.

4 **Q** I have quadrillion. So it should be quintillion?

5 **A** That's correct.

6 **Q** And is quintillion more or less than quadrillion?

7 **A** Quintillion is more.

8 **Q** So it would be less likely to see this profile with
9 anyone else?

10 **A** It's a more rare occurrence. Correct.

11 **Q** And based on your experience and your expertise, can
12 you say whether or not that this was Emmith Williams'
13 DNA?

14 **A** Yeah. My opinion is that he left his DNA on that
15 item.

16 **Q** As he did on item 6.3?

17 **A** That's correct.

18 **Q** And finally item number 8 which was a swab from the
19 Mountain Dew bottle, State's Exhibit No. 76, what
20 were the results on that?

21 **A** The same as 6.3. The DNA profile developed from 8
22 also matched Emmith Williams.

23 **Q** And in your opinion ...?

24 **A** Again he was the person who left that DNA on that
25 item.

1 **MS. CAMPBELL:** Your Honor, I don't know. Did I
2 move State's Exhibit 80 in?

3 **COURT REPORTER:** No, you didn't.

4 **MS. SINGLETARY:** Without objection, Your Honor.

5 **MS. CAMPBELL:** Thank you.

6 (WHEREUPON, State's Exhibit No. 80 is admitted
7 into evidence.)

8 **Q** You are submitted evidence from different kinds of
9 cases, be it murder, armed robbery, burglary,
10 whatever?

11 **A** Yes.

12 **Q** And certain items, are you always able to get a
13 result matching someone?

14 **A** No.

15 **Q** And in doing your DNA analysis, DNA evidence can
16 point to the guilt of the defendant. Can it also
17 exonerate a defendant?

18 **A** It can include and exclude individuals. So we
19 don't -- guilt is never anywhere in our report. We
20 would say either they're included or excluded in that
21 item.

22 **Q** Thank you, sir.

23 **MS. SINGLETARY:** Your Honor, I have no further
24 questions or I have no questions.

25 **THE COURT:** All right, sir. You may come down.

1 Thank you very much. May this witness be excused?

2 **MS. SINGLETARY:** Yes, Your Honor.

3 **THE COURT:** Without objection.

4 **MS. CAMPBELL:** May we approach?

5 **THE COURT:** Certainly.

6 (Whereupon, a bench conference is had)

7 **THE COURT:** All right, ladies and gentlemen of
8 the jury. The State solicitor advises me the next
9 witness is going to be somewhat lengthy and there are
10 probably some legal issues that I need to discuss
11 with the attorneys before that testimony takes place.
12 So I think the most efficient use of our time,
13 although this is going to result in an extended lunch
14 hour, would be -- because there's no sense in keeping
15 you here while we discuss those matters -- would be
16 to go ahead and let you go for lunch at this time.

17 I'm going to ask you to be back in the jury room
18 at 2:30. As I say, that will be a little extended
19 lunch hour. We may finish this case today. We may
20 finish it in the morning. But I need to take this
21 matter up with the attorneys before we go any
22 further. So I'm going to excuse you now for lunch,
23 our lunch break, and I'll ask you to reconvene in the
24 jury room at 2:30 at which time we'll continue the
25 trial. Again, don't discuss the case among

1 yourselves when you return to the jury room or with
2 anyone else over the lunch hour. Have a pleasant
3 lunch. We'll see you at 2:30.

4 (Jury out at 12:00 p.m.)

5 **THE COURT:** All right. Ms. Singletary, you
6 raised the issue at the beginning of this trial as to
7 whether or not the defendant's -- well, let me just
8 get from Ms. Campbell or Ms. McDuffie, what is the
9 defendant's prior record, to be specific?

10 **MS. MCDUFFIE:** Your Honor, the defendant's prior
11 record is an armed bank robbery. The date of the
12 offense is June the 21st of 2001. He was --

13 **THE COURT:** June 21st.

14 **MS. MCDUFFIE:** 2001.

15 **THE COURT:** And from where?

16 **MS. MCDUFFIE:** Your Honor, this is a federal
17 conviction from, I believe it's the Eastern District
18 of North Carolina. He was sentenced on June the 4th
19 of 2002. Your Honor, he was on escape status from
20 serving that sentence at the time he committed these
21 crimes.

22 **THE COURT:** All right. There's actually an
23 escape from parole or a violation of parole?

24 **MS. MCDUFFIE:** No, sir, Your Honor, he was not
25 on parole. He was transitioned into a federal

1 halfway house where he was to serve the remainder of
2 his sentence before he was actually to be released.
3 So it's escape from federal prison.

4 **THE COURT:** That's the extent of his entire
5 record?

6 **MS. MCDUFFIE:** Yes, sir, Your Honor. Well, --
7 yes, sir, Your Honor. It is.

8 **THE COURT:** All right. And given that that's
9 his prior record, does the State plan to offer that
10 for impeachment purposes if the defendant takes the
11 stand?

12 **MS. MCDUFFIE:** Yes, Your Honor.

13 **THE COURT:** What's the defendant's position?

14 **MS. SINGLETARY:** Your Honor, as we previously
15 brought up and brought to the Court's attention, that
16 we feel that State v. Bryant would prohibit the State
17 from actually bringing up the federal bank armed
18 robbery. Your Honor, as I previously stated, that in
19 this case it alludes to the fact that when a
20 defendant is on trial for a charge that is
21 substantially similar to the offense that he is
22 actually charged with, that it heightens the
23 prejudicial effect that the defendant would actually
24 endure if the jury members were able to hear that he
25 had this prior conviction that was so substantially

1 similar to this offense.

2 Your Honor, and as I previously stated, that
3 armed robbery as a crime of dishonesty is varied
4 throughout the different jurisdictions. And Your
5 Honor referred to the Al-amin case. And in the
6 Al-amin case the court went through a lengthy
7 discussion on the fact of whether or not the crime of
8 armed robbery is a crime of dishonesty. It went to
9 the actual federal jurisdictions. Then it went to
10 some of the surrounding states. And, Your Honor,
11 there is no hard, fast rule to say in all the courts,
12 in all the states to say that armed robbery is a
13 crime of dishonesty.

14 And even if the State was to consider armed
15 robbery as a crime of dishonesty, then we would fall
16 back on State v. Bryant and say that the State should
17 not be allowed to admit this evidence to impeach my
18 client because the prejudicial effect will outweigh
19 the probative value that the jury knowing that he was
20 convicted of a prior armed robbery would bring about,
21 Your Honor.

22 **THE COURT:** Do you -- well, as I read Al-amin,
23 Judge Anderson says that this type of a crime falls
24 under 609(a)(2) and Bryant talks about having to
25 conduct a balancing test under 609(a)(1). Now, I

1 hope we all agree, I think we all agree that were
2 this a drug crime or a shooting crime or something of
3 that nature, it would be subject to 609(a)(1), and in
4 that case the court should do a balancing test which
5 was done in Bryant. I think it was done in Bryant.
6 It was not done.

7 But in any event, that was a firearms prior
8 charge in a murder case. And the court said that the
9 balancing test should have been done under 609(a)(1).
10 But what Anderson says in Al-amin is that this is a
11 609(a)(2) case which involves dishonesty or false
12 statement. And even Judge Toal in Bryant on page 6
13 says under 609(a)(2): "If a crime is viewed as one
14 involving dishonesty, the Court must admit the prior
15 conviction because prior convictions involving
16 dishonesty or false statement must be admitted
17 regardless of their probative value or prejudicial
18 effect."

19 Now, she's talking in the abstract there. And
20 she says if it is viewed as a crime involving
21 dishonesty, then it must be admitted. And that's
22 what Anderson goes to great lengths to say in
23 Al-amin, that armed robbery -- I mean, his bottom
24 line is that armed robbery is a crime of dishonesty
25 and, therefore, he thinks it should be admitted.

1 Armed robbery should be admitted in any case as a
2 crime of dishonesty if it's a prior conviction if it
3 meets the other criteria of 609. So it leaves us
4 somewhat at odds between, as I see it, between the
5 Supreme Court and the Court of Appeals.

6 Now, I will say in support of your argument that
7 there is only one line in Bryant which indicates that
8 there may be a difference of opinion as to whether
9 armed robbery is a crime of dishonesty or not. That
10 is following that paragraph on page 6. She says:
11 "Furthermore, a conviction for robbery, burglary,
12 theft and drug possession, beyond the basic crime
13 itself, is not probative of truthfulness; and,
14 therefore, it should not be admitted because it
15 doesn't go to truthfulness." But she cites a federal
16 case in the Northern District of Illinois for that
17 proposition.

18 So it appears that either Al-amin was not
19 considered in the Bryant decision or that the Supreme
20 Court elected not to address the Al-amin decision. I
21 mean, it seems that there is a conflict there, but I
22 am not on either one of those courts. So let me hear
23 the State's position.

24 **MS. MCDUFFIE:** Your Honor, we would argue that
25 under armed robbery, according to the Court of

1 Appeals in State v. Al-amin, is a crime of
2 dishonesty. And the Supreme Court has denied cert on
3 that case. We believe that is the current law in
4 South Carolina.

5 We do not believe that the balancing test even
6 should be addressed because it is a crime of
7 dishonesty. We do not get to 609(a)(1), nor do we
8 have the balancing test that could have occurred had
9 he gone outside the ten-year time limit.

10 If you look back at 601 when you are talking
11 about impeachment of a competent witness, you can
12 impeach a witness based on -- attack their
13 credibility based on truthfulness or untruthfulness.
14 I do believe that there is a distinction between
15 dishonesty and truthfulness in the definition of
16 words. In State v. Al-amin, they defined dishonesty
17 as to deceive, defraud or to steal. It is the
18 element of larceny that is in the armed robbery which
19 makes it a crime of dishonesty, the stealing itself.

20 Whether or not armed robbery is probative to
21 truthfulness has not been addressed, nor should it be
22 addressed I believe, Your Honor, because it is not
23 necessary to do that analysis as it is a crime of
24 dishonesty.

25 **THE COURT:** It's interesting that in Bryant in

1 paragraph 5 she uses the word "dishonesty" twice and
2 in paragraph 6 she uses the word "truthfulness"
3 twice.

4 **MS. MCDUFFIE:** I think that's because you have
5 to go back to 608 where you can impeach a witness
6 based on their credibility for truthfulness and
7 untruthfulness. And so that's why the analysis is
8 the impeachment --

9 **THE COURT:** You think she intended to use those
10 words?

11 **MS. MCDUFFIE:** Yes, sir, Your Honor, I do.

12 **THE COURT:** In that sense.

13 **MS. MCDUFFIE:** If you go back to State v. Cough
14 which I had in front of me.

15 **THE COURT:** We've got Cough.

16 **MS. MCDUFFIE:** Your Honor, it's --

17 **THE COURT:** What page?

18 **JUROR:** 545 s.e.2d 236.

19 **THE COURT:** I've got it. Give me the page.

20 **MS. MCDUFFIE:** Your Honor, page 5 of 7 where
21 it's listing the five factors.

22 **THE COURT:** Yes. I've got it.

23 **MS. MCDUFFIE:** The first factor is the
24 impeachment value of the prior crime I think is a
25 direct reference back to 608, the impeachment values

1 to truthfulness and untruthfulness which would be why
2 Justice Toal used those words in State v. Vincent.
3 If you look at the impeachment for truthfulness,
4 there is no impeachment value as to truthful inherent
5 in that conviction.

6 Furthermore, if you look at a conviction for
7 robbery, I think it can be argued that that not
8 necessarily has bearing on truthfulness. However, it
9 does have bearing on dishonesty, which is what the
10 rule specifies, especially as defined by our Court of
11 Appeals, as to deceive, defraud or to steal.
12 Truthfulness in stealing and dishonesty don't
13 necessarily mean the same thing. I think it's
14 important to note the distinction that Justice Toal
15 made in Bryant.

16 **THE COURT:** Okay. Yes, ma'am.

17 **MS. SINGLETARY:** Your Honor, if I may. Again, I
18 would say that in this case that 601 is truly not
19 applicable. When we are actually talking about the
20 impeachment of a defendant who is actually on trial,
21 as I said, for a similar offense to the charge,
22 indicted offense, the cases have said in Bryant it
23 says that there is heightened prejudice. I don't
24 think that in paragraph 5 where it says dishonesty
25 and that in paragraph 6 where it says truthfulness

1 that that was done intentionally for a point. I feel
2 that if you look at the --

3 **THE COURT:** I'll tell her you said that.

4 **MS. SINGLETARY:** Your Honor, if you look at the
5 fact that it says violation of narcotics laws are
6 generally not probative of trustworthiness, you have
7 to go exactly back to what the assistant solicitor
8 said. We're dealing with two type of crimes. What
9 if it was possession of stolen guns? I mean not
10 stolen guns but possession of stolen marijuana or
11 stolen cocaine or so forth? So does it then take it
12 out of the realm that narcotic laws don't go to
13 truthfulness?

14 And I'm not saying that there are such laws as
15 possession of stolen narcotics, but I'm saying if we
16 are going to broaden the meaning of truthfulness and
17 broaden the meaning of dishonesty and actually
18 juxtapose ourself into the Justice's heads, then
19 where does it end?

20 Going back to the factors that she was actually
21 going into, number one, the impeachment value of the
22 prior crime. Again, we talked about or she talked
23 about a gun. Crimes involving firearms don't
24 typically have to do with truthfulness. However,
25 what about possession of a stolen firearm? It's

1 stolen. It goes to larceny. Then it brings it into
2 truthfulness, Your Honor. And then the point in time
3 that the conviction and the witness's subsequent
4 history, we don't care about that, Your Honor.

5 **THE COURT:** Yeah. But if it's stolen, isn't
6 that dishonesty? And isn't dishonesty what 609(a)(2)
7 says you can bring in? It says if it's dishonest, if
8 it's a crime of dishonesty, and that's what Anderson
9 focuses on, he goes to great lengths to say it's a
10 crime of dishonesty. So any time you talk about
11 stolen something, it seems to me that you just put
12 yourself under(a)(2).

13 I guess I'm more concerned, even though the
14 cases seem to say it doesn't make any difference,
15 even she says that regardless of the probative or
16 prejudicial effect. I mean, I know, you know,
17 everybody in this room knows, the introduction of
18 that prior record is extremely prejudicial. As a
19 matter of fact, it may be absolutely -- they may not
20 need any other evidence in the case. Not that -- we
21 won't comment on that.

22 Or so, you know, I'd like to be able to do a
23 balancing act, a balancing test. If it was under 609
24 (a), if the crime were something different, I would
25 do a balancing test and probably find that it was

1 certainly more prejudicial than probative. It's not
2 probative of much of anything, but it's extremely
3 prejudicial.

4 But I don't think I can do that under(a) (2).
5 And I think if the Supreme Court had chosen to
6 address this issue, they certainly could have done
7 so. Bryant is three years after Al-amin. And I
8 certainly don't -- I certainly believe that when they
9 write they write specifically and they consider all
10 the factors.

11 Anything further? Go ahead.

12 **MS. SINGLETARY:** No, Your Honor.

13 **THE COURT:** From the State?

14 **MS. MCDUFFIE:** No, Your Honor.

15 **THE COURT:** All right. Well, I think the clear
16 language of both Bryant and Al-amin put this prior
17 conviction squarely under 609(a) (2) and I'll admit
18 it. And if the appellate courts want to address this
19 issue and tell me that I'm wrong, I've been wrong
20 before. So you may just have to consult with your
21 client at the appropriate time.

22 Oh. We broke for lunch, didn't we? Anything
23 further before -- it's my understanding the State has
24 one more witness?

25 **MS. CAMPBELL:** Yes, sir; at least one more.

1 Then we'll be through. I just need to look -- I need
2 to check with my employer to make sure.

3 **THE COURT:** You always leave yourself a little
4 room, don't you?

5 **MS. CAMPBELL:** Your Honor, may we approach about
6 scheduling?

7 **THE COURT:** I'm sorry?

8 **MS. CAMPBELL:** May we approach about scheduling?

9 **THE COURT:** Oh, sure.

10 (Whereupon, a bench conference is had)

11 **THE COURT:** We'll stand at ease until 2:30.

12 (Whereupon, a lunch break is taken).

13 **THE COURT:** The State ready to proceed?

14 **MS. CAMPBELL:** The State's ready, Your Honor.

15 **THE COURT:** Defense ready to proceed?

16 **MS. SINGLETARY:** No, Your Honor. We have a
17 matter that we need to address.

18 **THE COURT:** All right.

19 **MS. SINGLETARY:** Your Honor, at this time the
20 State respectfully -- the defense respectfully moves
21 for a mistrial in this matter, Your Honor. The State
22 was placed on notice that my co-counsel, Ms. Jennifer
23 Davis, needed to leave tomorrow morning at 7 a.m.
24 She had a previous engagement that has been booked
25 for a considerable amount of time. On the first day

1 of this trial we made the Court aware of that issue.

2 Your Honor, we just feel that at this late date
3 that the jury has seen Ms. Davis question witnesses.
4 They've seen her in her opening statement say
5 information about our client, about this case. And
6 then for tomorrow during closing for them not to see
7 her and see an empty chair right there, we think that
8 it may be prejudicial to our client, Your Honor. So,
9 therefore, that's why we're moving for a mistrial.

10 **THE COURT:** State's position --

11 **MS. CAMPBELL:** Your Honor, it's my understanding
12 that --

13 **THE COURT:** -- on the mistrial?

14 **MS. CAMPBELL:** -- on the mistrial motion that
15 Ms. Davis is not going to participate in the closing.
16 We will finish with testimony today. As I spoke to
17 everyone earlier, it was very important that her part
18 be resolved by today, and I think it will be resolved
19 by today. We do anticipate finishing the case today.

20 As far as arguments, Your Honor, I've had to
21 leave before. I've had co-counsel that's had to
22 leave before because of a death in the family.
23 Because of illness I have had to leave before. And
24 it can be explained to the jury without prejudicing
25 anyone involved.

1 **THE COURT:** The point is --

2 **MS. CAMPBELL:** In our case, even our victim
3 couldn't attend yesterday because he had a mandatory
4 CLE.

5 **THE COURT:** Right. The question is, is it
6 grounds for mistrial?

7 **MS. CAMPBELL:** No, sir.

8 **THE COURT:** Ms. Singletary and Ms. Davis, I
9 regret that fact also. But in one sense your office,
10 (A), you've had two counsel; and (B), your office
11 does have other personnel that could perhaps be
12 present if you need somebody else in that seat. I
13 realize they can't take Ms. Davis' place. I realize
14 Ms. Davis has prepared this case. But at this stage
15 I can't grant a mistrial and have to try this case
16 all over again because your co-counsel has to go home
17 for Christmas.

18 And I don't minimize that. And I realize it's
19 an important thing to your co-counsel. But this
20 is -- things happen. Trials cause inconvenience to
21 people. I just don't believe that's grounds for a
22 mistrial. I mean, I appreciate the fact you put it
23 on the record. And I've been wrong before, so ...

24 **MS. SINGLETARY:** Your Honor, we just want to put
25 it on the record because we addressed this, as we

1 said, with you in chambers.

2 **THE COURT:** I know. But even if you said on
3 Monday I absolutely am not going to be here on
4 Thursday, I can't control -- I mean, the only thing I
5 could have done if you had asked me to maybe is to
6 make this jury stay late every night so that we could
7 get it through. And maybe we should have done that.
8 But we've gone at a rather steady pace. We haven't
9 gone at breakneck speed to try to get through. But I
10 can't control how long these witnesses testify.

11 I know you've limited your cross examination,
12 maybe for that purpose. I don't know. I hope not.
13 I hope you have limited your cross examination for
14 strategy reasons and not necessarily to try to speed
15 up the trial. But I respectfully deny your motions.

16 **MS. SINGLETARY:** And, Your Honor, just briefly,
17 we have not limited our cross examination to speed up
18 the trial. We understand that you denied my motion,
19 but we respectfully ask for you to consider, too,
20 when we are doing the closing arguments and before
21 anything starts tomorrow morning to actually give a
22 statement to the jury.

23 **THE COURT:** Regarding what?

24 **MS. SINGLETARY:** As to --

25 **THE COURT:** Ms. Davis? Okay.

1 **MS. SINGLETARY:** Yes.

2 **THE COURT:** All right. You may want to have
3 somebody at least in that seat so the jury thinks
4 you're fully staffed. But I'll be glad to do that.
5 All right.

6 **MS. SINGLETARY:** Thank you, Your Honor.

7 **THE COURT:** Ready? Bring the jury, please.

8 (Jury in at 2:47 p.m.)

9 **THE BAILIFF:** Your Honor, the jury is present.

10 **THE COURT:** All right. Thank you very much.
11 All right, Solicitor. Call your next witness.

12 **MS. CAMPBELL:** May it please the Court. The
13 State calls Sergeant Isenhoward.

14 KEVIN ISENHOWARD, after being duly sworn,
15 testifies as follows:

16 **THE CLERK:** Have a seat in the witness box and
17 state your name for the record, please.

18 **THE WITNESS:** Kevin Isenhoward.

19 DIRECT EXAMINATION

20 **BY MS. CAMPBELL**

21 **Q** Sergeant, where are you employed?

22 **A** The Richland County Sheriff's Department.

23 **Q** And what do you do there, sir?

24 **A** I am a sergeant in the major crimes unit. I
25 supervise the armed -- the robbery division.

1 Q I want to turn your attention back to May the 7th of
2 2007. Did you become one of the primary
3 investigators in the case involving The Shoe Dept.
4 and also the armed robbery and burglary at the
5 Darnells'?

6 A Yes, I did.

7 Q And when were you first notified that the robbery had
8 taken place at The Shoe Dept.?

9 A I was notified about The Shoe Dept. robbery. It had
10 occurred at 10:19 that morning. I responded out
11 there I guess about 10:45 or so.

12 Q And when you responded to The Shoe Dept., did you
13 make contact with anybody there?

14 A Yeah. I spoke with the clerks who were there, and
15 Lieutenant Elsey was on the scene.

16 Q And when you say you spoke to, did you speak to Ms.
17 Monsanto specifically?

18 A Yes.

19 Q As well as Mr. Johnson?

20 A That's correct.

21 Q And when you spoke to them, did you try to gather
22 information such as a description of the person that
23 had robbed them, information about that?

24 A Yes. A description of the person involved and a
25 basic summary of what happened, what was going on.

1 Q And during the course of this, did you become aware
2 of whether or not any money had actually been taken
3 during the armed robbery?

4 A Yes. It was reported that approximately \$130 I
5 believe was taken from the cash register.

6 Q While you were there getting information from Ms.
7 Monsanto and Mr. Johnson, did you become aware of
8 another armed robbery that had occurred nearby?

9 A Yes. I heard over our Sheriff's Department radios
10 that there was another robbery in the neighborhood
11 off of Polo Road and that officers were responding
12 there. I knew that Investigator Ellis was actually
13 coming out to assist me and check on me, and he went
14 over there and took that to see if there was any kind
15 of relationship there.

16 Q While you were at The Shoe Dept. did you become aware
17 also that the dog, one of the dogs had been called
18 out to try to pick up any scent or any track?

19 A Yes.

20 Q And did you make contact with those people?

21 A I did. I spoke with the K-9 handlers and was advised
22 of their progress as they were tracking.

23 Q While you were there speaking to Ms. Monsanto and
24 Mr. Johnson, did you fill out what's known as a
25 robbery questionnaire?

1 **A** Yes, I did.

2 **Q** Tell the jury, what's the purpose of you doing that?

3 **A** While it's fresh in their minds we try and prompt
4 them with questions that we know would elicit
5 information that's valuable to us in the
6 investigation. It's a pre-planned form. We ask the
7 questions, fill it out. Frequently people can't
8 answer all the questions. They're just shaken up and
9 they don't remember things. But what they do
10 remember we put down on the forms, fill those out to
11 use those in the investigation.

12 **Q** During the course of talking to both of the people
13 that were actually present or witnesses to the
14 robbery, Ms. Monsanto and Mr. Johnson, did they
15 indicate whether or not they actually saw the weapon?

16 **A** No, they didn't. They said that the robber had his
17 hand in his pocket and they believed that he was
18 armed.

19 **Q** Okay. Did you take any formalized statement that
20 they had to sign off on?

21 **A** No. We memorialize the victims' reports and the
22 incident report and the robbery questionnaires.
23 Sometimes on occasion I do take statements. That's
24 usually when there is a complicated matter, usually a
25 known involvement between the victim and suspect,

1 muddied waters that I need to sort out in written
2 form. But in this situation it was a clearcut
3 robbery and they didn't know the suspect.

4 Q After getting the information from Mr. Johnson and
5 Ms. Monsanto at The Shoe Dept., did you then proceed
6 to 148 Deer Hound Trail?

7 A I did. I met Investigator Ellis there.

8 Q And did you make contact with a Martha Darnell there?

9 A I did.

10 Q And did you get some information again from her?

11 A I did.

12 Q Had Investigator Ellis however already, or was he in
13 the process of getting the robbery questionnaire
14 information?

15 A He was completing it. And I basically came up and
16 met with him as he was speaking with him and was
17 filled in, caught up on what was going on.

18 Q And again in that case was Ms. Darnell able to give
19 you any information about whether or not the person
20 was robbed or she thought they were robbed? I mean,
21 armed or thought they were armed?

22 A Yes. She also, both Mr. and Mrs. Darnell indicated
23 that the man had his hand in his pocket and was
24 presenting it as if he had a weapon.

25 Q After speaking to her did you also become aware that

1 in addition to her husband there were two other
2 possible witnesses in this case?

3 **A** Yes, I was.

4 **Q** And did you make contact with them?

5 **A** I did.

6 **Q** And who were those witnesses?

7 **A** Give me one second to get the names here. Billy
8 Lorimer and Francisco Chacon.

9 **Q** And did you actually interview them that day as well?

10 **A** I did. I spoke with them.

11 **Q** And were they able to give you information?

12 **A** They were. And I took some notes about what they
13 did. Just give me one brief second.

14 **Q** Did they indicate to you whether or not they thought
15 he was armed?

16 **A** Yes. Specifically Mr. Chacon, he told me that he had
17 attempted to render some aid to Mrs. Darnell, had
18 went over to try and interrupt the situation and took
19 a shovel with him to arm himself. And when he saw
20 that the man had his hand in his pocket, he too
21 believed that he had a firearm and he obviously had
22 to stop.

23 **Q** After interviewing, I believe you interviewed
24 everybody but Mr. Darnell there at the scene, did you
25 and Investigator Ellis make any attempts or did you

1 all compare some notes as far as what the clothing
2 description was?

3 **A** Yeah. We noticed -- I took the description from the
4 robbery at the shoe store and the robbery at the
5 Darnells' residence. The physical description was
6 the same. What we were missing was some of the
7 clothing that was different in the second robbery.
8 That indicated to us that somewhere inbetween there
9 had to be some clothing discarded. And again I was
10 aware of the K-9 track. So myself and Investigator
11 Ellis backtracked through this area looking for
12 clothing.

13 **Q** Prior to backtracking through the area, did you
14 search some certain canisters that were on the
15 street?

16 **A** Yeah. It was trash day. We also entertained the
17 possible that the robber had thrown the clothing in
18 the trashcans that were out on the curb. So we
19 searched the trashcans in the neighborhood there.

20 **Q** And upon searching the trashcans there in the
21 neighborhood on the street, were you able to find any
22 clothing that matched the description from the first
23 robbery?

24 **A** No, we were not able to.

25 **Q** And at that point did you then backtrack to where the

1 dog had actually seen some tracks that could have
2 been from the defendant?

3 **A** That's correct. Some shoe impressions.

4 **Q** And when you started searching that area, who was
5 actually assisting you?

6 **A** It was me, Investigator Ellis, Investigator Morrow I
7 believe was there, and Investigator Elsey.

8 **Q** And without going through the pictures and everything
9 again, were you all able to locate some of the
10 clothing?

11 **A** Yes.

12 **Q** And I believe in two separate spots?

13 **A** Yes.

14 **Q** And I show you State's Exhibit No. 30 and State's
15 Exhibit No. 23. Oops. Did you find these two items
16 together there on the pathway?

17 **A** Yes.

18 **Q** And then a few feet away, I show you State's Exhibit
19 No. 28, did you also find that?

20 **A** Is that the dew rag? Let's see. Yes.

21 **Q** And were those significant to you all when you found
22 them?

23 **A** Yes. For two reasons. Obviously they were described
24 I believe in the first robbery. And we also
25 entertained the possibility they may contain DNA

1 evidence as well as any evidence obviously in the
2 clothing itself.

3 Q And while there at the scene, did you all actually
4 look into the pockets of the jacket?

5 A Initially we held it for it to be properly documented
6 where it was.

7 Q Until Lieutenant Elsey could --

8 A She photographed it. Yes.

9 Q Thank you.

10 A And then we looked inside. And obviously we found
11 some paperwork inside which had some names and a
12 location.

13 Q Specifically, you found paperwork that had whose
14 name?

15 A The defendant, Mr. Williams.

16 Q Emmith Williams?

17 A Emmith Allen Williams. Correct.

18 Q Of particular significance, was there a pay stub in
19 there?

20 A Yes, there was.

21 Q And do you recall the date on the pay stub?

22 A I don't recall off the top of my head.

23 Q I hand you what's been marked as State's Exhibit
24 No. 66 which is the left pocket contents.

25 A Okay. The date was May 4th of 2007.

1 Q May 4th of 2007?

2 A Yes.

3 Q So that was just three days before this?

4 A Yes. Very fresh.

5 Q And the actual check that would have been attached to
6 the pay stub, it was not attached?

7 A No.

8 Q Did you also in the other pocket find a receipt which
9 later became significant?

10 A Yes. We found a receipt.

11 Q For the record, what receipt was that?

12 A It was a receipt for a Raleigh, North Carolina,
13 convenience store called Smokers Friendly.

14 Q At that point you all didn't collect the evidence
15 yourself. Lieutenant Elsey would have done that?

16 A Yes. She would have collected it.

17 Q At that point did you return to headquarters?

18 A We did.

19 Q Don't go into what you did right there. But that day
20 did you formulate a photographic line-up that had a
21 photo that you were able to obtain of the defendant?

22 A Yes, I did.

23 Q I show you what's been marked as State's Exhibit 4.

24 Is that the photo line-up you formulated?

25 A Yes. This is it. This is the first photo line-up I

1 formulated.

2 Q And the photograph that's in that line-up of the
3 defendant, which one is it on that line-up?

4 A It's photo number 4, listed as photo number 4.

5 Q And you were aware at the time that it was an older
6 photograph?

7 A I was aware, yes.

8 Q When formulating a photo line-up, tell this jury
9 exactly what characteristics you do in making sure
10 that it's a fair line-up?

11 A At the Sheriff's Department we construct photo
12 line-ups from six pictures. We take these six
13 pictures. And we have to make sure that obviously we
14 have a person we're interested in. But we have to
15 make this line-up fair, fair to this person we're
16 putting in this line-up. We make sure that the
17 physical characteristics are all similar; race
18 obviously, even skin tone, hair, whether or not
19 there's facial hair and the shape and size of the
20 face which indicates weight basically.

21 Q And in this case do you base that based on the
22 description that's given to by the witnesses or the
23 photograph you're actually making fair?

24 A The photograph I'm using.

25 Q So, say, if someone at the time a photograph was

1 taken is quite a bit heavier than they may have been
2 at a later date, you would still use the photographs
3 that would more fairly put that in context here?

4 **A** That's correct.

5 **Q** In the description that had been given to you of the
6 defendant by all the victims and the witnesses in the
7 case described him as a slender, medium heavy build?
8 How?

9 **A** They described him as a slightly built or slender
10 black male, light skinned. Weights ranged from I
11 believe 130 to 160, which is not unusual; anywhere
12 from five-seven to five-nine I believe.

13 **Q** And we'll get back to this in a minute. But at a
14 later date were you able to find a more recent
15 picture of the defendant which more accurately
16 reflected how he appeared when you came into contact
17 with him?

18 **A** Yes, I was.

19 **Q** That afternoon did you meet with Sabrina Monsanto and
20 show her one of the photo line-ups?

21 **A** Yes, I did.

22 **Q** And I'm going to show you what's been marked as
23 State's Exhibit No. 1. Do you recognize that?

24 **A** Yes, I do.

25 **Q** And is that -- and for the record, like this State's

1 Exhibit 4 is a copy of one of the ones you prepared?

2 A Yes.

3 Q But they all look alike?

4 A Yes. These.

5 Q But you prepare multiple ones if you're showing
6 multiple witnesses?

7 A That's correct.

8 Q And in this case, State's Exhibit No. 1 and State's
9 Exhibit No. 4 are the same thing. It's just this one
10 has writing on it?

11 A Yes.

12 Q And whose writing is that when you showed it to Ms.
13 Monsanto?

14 A The writing is mine. It's initialed by her, has the
15 date.

16 Q And when Ms. Monsanto looked at that photo line-up,
17 was she able to positively identify anyone?

18 A No.

19 Q However, was she able to give you some information
20 which you --

21 A Noted.

22 Q -- noted on that piece of paper?

23 A Yes. I put she indicated to me that she was -- she
24 believed it was either the person, the robber was
25 either number 3 or number 4. She could not be 100

1 percent certain. So I documented that, had her
2 initial what she told me.

3 Q Did she tell you the reason that she couldn't be
4 sure?

5 A She said that from the picture she was looking at
6 those two looked familiar but the person who robbed
7 her had a skinnier face than what she's seeing on the
8 photographs.

9 Q That day did you also meet -- and after you showed
10 her that line-up, did you tell her which one she
11 should have picked?

12 A No.

13 Q Did you tell her that she narrowed it down to the
14 right person or anything of that nature?

15 A I didn't tell her anything.

16 Q And prior to showing her this line-up, did you
17 influence her decision in any way?

18 A No.

19 Q Next did you meet with Mr. Johnson?

20 A Yes.

21 Q And again you met with Ms. Monsanto and Mr. Johnson
22 separately. Is that correct?

23 A That's correct.

24 Q And when you met with Mr. Johnson and showed him --
25 it may not be this exact one -- but a copy of State's

1 Exhibit No. 4, was he able to identify anyone that
2 day?

3 **A** No.

4 **Q** I want to turn your attention to the next morning, on
5 May the 8th of 2007. Did you receive a phone call
6 about a vehicle that was recovered in North Carolina?

7 **A** Yes. I was contacted by the Sheriff's Department's
8 desk sergeant who is in control of our terminal, our
9 NCIC terminal which is a nationwide computer system
10 law enforcement uses, and I was told that the vehicle
11 from the robbery of the Darnells, their vehicle had
12 been recovered by the Wake County Sheriff's Office in
13 North Carolina. And it provides a phone number that
14 I can follow up on and contact them.

15 **Q** At that point, the day before, had a BOLO been put
16 out about the vehicle that had been stolen?

17 **A** Yes. We issued a BOLO throughout our department and
18 local agencies describing the vehicle usually
19 containing a photo or a photo of a like vehicle.

20 **Q** And that goes nationwide?

21 **A** The NCIC, yes.

22 **Q** After receiving the information from your desk
23 sergeant, did you then make contact with
24 investigators from North Carolina?

25 **A** Yes. I initially contacted the responding deputy who

1 recovered the car.

2 Q That would be Deputy Goodwin?

3 A Yes.

4 Q And was he able to give you some information?

5 A Yes, he was.

6 Q And at that point did he indicate whether or not they
7 had a suspect in custody?

8 A They did have a man in custody.

9 Q Was he able to identify the person they had in
10 custody at that point?

11 A No.

12 Q However, they were able to positively tell you that
13 that was the Darnells' car --

14 A Yes, they were.

15 Q -- and the person who had been associated with it?

16 A Yes.

17 Q I believe through the key --

18 A Yes.

19 Q -- to the vehicle? At that point did you make
20 arrangements to go to North Carolina?

21 A I did. I spoke with my supervisors. And when we
22 leave town we take another officer with us obviously
23 in case of emergencies. And Sergeant Barnes
24 volunteered to help me.

25 Q While in route to Raleigh, did you receive a phone

1 call again from Deputy Goodwin from North Carolina?

2 **A** Yeah. We actually spoke several times on the trip.

3 Yes, I spoke to him.

4 **Q** And was he able to give you information about the
5 identity of the person he had in custody?

6 **A** Yes. He told us that he had positively identified
7 the man as Emmith Allen Williams.

8 **Q** Emmith Williams?

9 **A** Yes.

10 **MS. CAMPBELL:** Your Honor, may we approach?

11 **THE COURT:** Yes, ma'am.

12 (Whereupon, a bench conference is had)

13 **MS. CAMPBELL:** Thank you, Your Honor.

14 **Q** When you got to Raleigh, you actually went to the
15 Wake County Sheriff's Office?

16 **A** Yes.

17 **Q** And you met Deputy Goodwin and other officers?

18 **A** And an Investigator David, yes.

19 **Q** That evening did you make arrangements to interview
20 the defendant the next day?

21 **A** Yes, we did.

22 **Q** And did you also at that point place a hold on the
23 defendant for Richland County for the armed robberies
24 and a burglary first?

25 **A** Yes. At that point we had obtained a warrant.

1 Q That evening were you able to do some follow-up
2 investigation while you were in Raleigh?

3 A Yes. We decided to follow up on some of the items
4 we'd found, obviously take a look at the Darnells'
5 vehicle and check that out for any additional
6 evidence, as well as follow up on the receipt for
7 Smokers Friendly.

8 Q At that point did you proceed to Smokers Friendly
9 which is located there in Raleigh?

10 A Yes, we did.

11 Q Did you make contact with Cindy Paris?

12 A I did.

13 Q Was she able to give you any information about the
14 receipt and whether or not there might be video
15 associated with that?

16 A She was. We went back and actually started searching
17 the video system they had.

18 Q And were you able to actually locate a video that was
19 pertinent to your investigation?

20 A We did locate it, yes.

21 Q And what did that video show?

22 A It showed initially a black male fitting the
23 description of Emmith Allen Williams entering wearing
24 a shirt which matched in my opinion the one we found
25 at the scene. He was in an area in the store which

1 she had described to me matched the items purchased
2 on the receipt. And he -- you see him browse in that
3 area, make a purchase, then leave the store. A
4 second imagine would clearly show his face.

5 Q And do you recall the date that was on the receipt?

6 A I believe it was the 5th.

7 Q May the 5th?

8 A Yes.

9 Q Were you able to obtain a copy of that video?

10 A We were at a later time. She had to get some help
11 burning the video. So we came back later and picked
12 it up.

13 Q And that would be the video that was shown here in
14 court?

15 A It would be the same, yes.

16 Q Did you then make contact with Linda Bryant at 312
17 Tryon Road in Raleigh?

18 A Yes, I did.

19 Q And without going any further, was she able to give
20 you some information about Mr. Williams?

21 A Yes. Told us the last time she had seen him and gave
22 a description of the clothes he was wearing when she
23 had seen him last. And also that description was a
24 Polo style shirt with red and blue stripes which
25 matched the one we had found on the trail, on the

1 track.

2 Q And when had he last been seen at the Tryon Road
3 place?

4 A I believe it was the 5th as well.

5 Q Were you also able to get some information about
6 where he had been employed?

7 A I did. We learned that he had worked at a -- I
8 believe it was Jerry's Autorama. And we were told --
9 she told us or informed us about a job with Two Men
10 and a Truck he was supposed to be starting.

11 Q I'll get back to that in a minute. At that point did
12 you then go and -- at that point that's all you did
13 that day?

14 A Yes.

15 Q The next day did you -- on the 9th did you go to the
16 Spears Towing Service on Ponderosa Service Road?

17 A Both myself and Investigator Barnes, Sergeant Barnes
18 went there, yes.

19 Q And what was the purpose of you going to see the
20 actual automobile as it had been impounded?

21 A It was two-fold actually. Obviously we wanted to
22 look at it for any evidence. I also wanted to see
23 what condition that vehicle was in because I had been
24 in contact with them and they were concerned about
25 their vehicle. And I told them that they could drive

1 it home and take it back or it would have to be
2 towed. We went there and searched the vehicle and
3 located some items which we deemed as evidence.

4 **Q** I'm going to show you what's been marked as State's
5 Exhibit Nos. 75, 76, 77 and finally 78. Were those
6 all items that you collected from the car?

7 **A** Yes, they were.

8 **Q** And why did you collect those items?

9 **A** Obviously I had spoken to Mr. Darnell and he was able
10 to identify items that should have been in his car.
11 All of these he said should not be in his car. They
12 were not his, did not belong in that car. Obviously
13 we wanted to check them for any kind of DNA or
14 fingerprint, latent fingerprint evidence. So we -- I
15 collected those, stored them separately in bags and
16 then brought them back with me --

17 **Q** And --

18 **A** -- to the Sheriff's Office.

19 **Q** -- had you also been aware that the outside of the
20 vehicle had been processed for any possible prints?

21 **A** Yes. We had had the CCBI, City/County Bureau of
22 Identification in Raleigh process that for us.

23 **Q** That morning did you also attempt to follow up on the
24 defendant's employment at Two Men and a Truck?

25 **A** Yes. I made some phone calls. I used a local

1 telephone directory, located several different
2 locations for Two Men and a Truck. And none of them
3 had ever heard of Mr. Williams.

4 Q At that point, that morning on the 9th, did you then
5 return to the Wake County Sheriff's Office?

6 A I did.

7 Q And why were you going there that morning?

8 A We had scheduled an interview with Mr. Williams.

9 Q And did you meet up with Investigator Booth there?

10 A I did.

11 Q And did he actually facilitate your ability to
12 interview the defendant?

13 A Yes, he did.

14 Q Where did the interview take place?

15 A In the Wake County Sheriff's Office. It was an
16 interview room which they had set up and made
17 available to us.

18 Q And how was the defendant actually transported so
19 that you could interview him? Or who did it?

20 A Investigator Booth brought him to us and he sat with
21 us while we conducted the interview.

22 Q Prior to asking him any questions, did you do what's
23 called an advice of rights form?

24 A I did.

25 Q What's the reason you would advise someone of their

1 rights before questioning them about a possible
2 crime?

3 A Because you want them to know and understand their
4 rights and make an informed decision on whether or
5 not they want to talk to you about what happened.

6 Q I show you what's been marked State's Exhibit 8 which
7 is already into evidence. Do you recognize that
8 form?

9 A I recognize it.

10 Q Is that actually your handwriting on the form?

11 A It is.

12 Q And are you the one that was principally questioning
13 the defendant that morning or planning on it?

14 A Yes.

15 Q And are you the one that actually advised him of what
16 his rights are?

17 A Yes.

18 Q Tell this jury exactly how you went through advising
19 Mr. Williams of his rights that morning?

20 A Okay. When I read someone their rights, I explain
21 this is a form we use at the Sheriff's Department.
22 It's called an Interrogation/Advice of Rights form.
23 The person's name is up top, the location where we're
24 doing this interview, and anyone's names who were, at
25 least officers who were involved in this who are

1 present. The date and time are included.

2 I go through the rights like this. After each
3 sentence I check off a block which indicates that I
4 have asked and it has been acknowledged that they
5 understand what I just read to them. And it reads as
6 such.

7 "Before we ask you any questions, you must
8 understand your rights." It's checked. "You have
9 the right to remain silent." That block is checked.
10 "Anything you say can be used against you in court."
11 That block is checked. "You have the right to talk
12 to a lawyer for advice before we ask you any
13 questions and to have a lawyer present with you
14 during any questioning." That block is checked.

15 "If you cannot afford a lawyer, one will be
16 appointed to you before any questioning if you wish."
17 That block is checked. "If you decide to answer
18 questions now without a lawyer present, you still
19 have the right to stop answering at any time. You
20 also have the right to stop answering at any time
21 until you talk to a lawyer." That block is checked.
22 Mr. Williams signed and acknowledged this. It was
23 witnessed by both me and Investigator or Sergeant
24 Barnes.

25 The second portion of this is what's known as

1 the waiver of rights. After I've gone through the
2 first part I read this. It also has a block for me
3 to check. It says: "I have read this statement of
4 my rights and understand what my rights are. I am
5 willing to talk and answer questions. I understand
6 and know what I am doing. No promises have been made
7 to me, and no pressure or coercion of any kind has
8 been used against me." That block is checked.

9 And I'd like to point out, quite frequently
10 people don't understand the word "coercion", what it
11 means. And I ask them, "Do you understand that?"
12 And if they tell me no, they don't, I underline that
13 word and then I define it to them in a way they can
14 understand. It's not underlined here. So he
15 indicated that he understood this part. He signed
16 it. I signed it, as well as Sergeant Barnes.

17 Q Did the defendant seem coherent when you were talking
18 to him that morning?

19 A Yes.

20 Q Did he respond appropriately to questions?

21 A Yes. In fact, he was eager to speak with us.

22 Q Did you promise him anything to make him talk to you?

23 A No.

24 Q Did you threaten him in any way?

25 A No.

1 Q Did you use any coercion?

2 A No.

3 Q Did you withhold any creature comforts such as water
4 or food to make him talk to you?

5 A No, ma'am.

6 Q And in your opinion was his choice to talk to you
7 voluntary?

8 A Absolutely.

9 Q At any time did he tell you he didn't want to talk
10 any more?

11 A No.

12 Q At any time did he tell you he wanted to talk to a
13 lawyer?

14 A No.

15 Q And in fact, as you just mentioned, he wanted to tell
16 you his story?

17 A Yes. He was eager. He said he wanted to explain
18 what had happened.

19 Q Once you had advised him of his rights and once he
20 had waived those rights and indicated he understood,
21 at that point did you start asking him questions
22 about what had happened back in South Carolina?

23 A Yes.

24 Q And the day after that?

25 A Yes.

1 Q When you were interviewing Mr. Williams, did you
2 immediately start writing down what he was saying, or
3 how did that process work?

4 A No. I've been an investigator for about eight years.
5 And I find for me at least it's difficult for me to
6 speak with someone, explain the situation, obtain an
7 answer from them and write it all at the same time
8 and flow correctly and keep it moving along without
9 breaks and pauses.

10 So my style is to talk to a person, just like
11 I'm talking in any conversation, explain what I know
12 and what I believe and then hear what they have to
13 say about it. Once they tell me their story, there
14 may be parts that I would like them to better define
15 or explain.

16 Once they do that, when everyone feels
17 comfortable that it's been explained as best it can,
18 I give them an opportunity to make any changes, or if
19 they want to explain something further, then we
20 reduce their statement into writing --

21 Q And did that happen --

22 A -- once they're comfortable.

23 Q And did that happen in this case?

24 A It did.

25 Q I notice that the advice of rights looks like it was

1 filled out it says at 11 a.m. Is that correct?

2 **A** That's correct.

3 **Q** And I notice that your statement, it indicates that
4 you started it at 11:35?

5 **A** Yes.

6 **Q** So the time period, the time between when you advised
7 him of his rights and then at 11:35 when you started
8 taking the statement, you would have been doing what
9 you just said?

10 **A** Yes.

11 **Q** And at that point when it's reduced to writing, who
12 actually does the writing?

13 **A** I do.

14 **Q** And whose words are you writing down?

15 **A** The person who is giving the statement, in this case
16 Mr. Williams.

17 **Q** I want to show you what's been marked for
18 identification purposes as State's Exhibit No. 7. Do
19 you recognize that?

20 **A** Yes, I do.

21 **Q** And is that a copy of the statement that you all did
22 that day while you were in Raleigh, North Carolina?

23 **A** Yes, it is.

24 **Q** And that was after he had been advised of his rights?

25 **A** Yes.

1 **MS. CAMPBELL:** Your Honor, at this time we'd
2 offer State's Exhibit 7 into evidence.

3 **THE COURT:** All right. Subject to defendant's
4 prior objection --

5 **MS. CAMPBELL:** Thank you, Your Honor.

6 **THE COURT:** -- it is so admitted.

7 (WHEREUPON, State's Exhibit No. 7 is admitted
8 into evidence.)

9 **MS. CAMPBELL:** Your Honor, may I approach?

10 **THE COURT:** Yeah.

11 (Whereupon, a bench conference is had)

12 **Q** This is a five-page document. And is that your
13 handwriting?

14 **A** Yes, it is.

15 **Q** And at the bottom, whose signature?

16 **A** Both Mr. Williams', Emmith Williams; it's witnessed
17 by Sergeant Eric Barnes and notarized by myself.

18 **Q** Just to go through some procedure before we publish;
19 once his statement had been reduced to writing, did
20 he have the opportunity to review it?

21 **A** Yes.

22 **Q** And how was that done?

23 **A** What I do is I -- anyone I took a statement from, I'd
24 confirm it. You don't need glasses. You don't have
25 any problems reading. You can read and understand

1 this. If they acknowledge that they can, I let them
2 read it. In this case that's what's done. If they
3 were to say no, I would actually read to it them and
4 try and help them through it if they can read just a
5 little bit. But I actually read it out loud to them.
6 In this case Mr. Williams said he could read, he had
7 no problems with his eyesight; and he read the
8 statement that I had written.

9 Q And once he'd had the opportunity to read through the
10 statement that you had written, did he then sign off
11 on it?

12 A He did.

13 Q Indicating this was his statement?

14 A Yes.

15 Q I notice that this is done in question and answer
16 form?

17 A Yes.

18 Q I think it's Q and R is what you have, right?

19 A Question and response.

20 Q Okay. Can you publish the statement made by Emmith
21 Allen Williams for the jury?

22 A Yes. The statement, it's obviously got his name,
23 Emmith Allen Williams, and his address and date of
24 birth at the top. It was made the 9th day of May,
25 2007 at 11:35 hours, presence of Kevin Isenhoward and

1 Eric Barnes.

2 It also has a disclaimer, a second advice of
3 rights at the top of this form. It says: "I, Emmith
4 Williams, understand that I have the right to remain
5 silent. Anything I say can be used against me in
6 court. I have the right to talk to a lawyer for
7 advice before you ask me any questions and to have a
8 lawyer present with me during any questioning. If I
9 cannot afford a lawyer, one will be appointed to me
10 before any questioning if I wish. If I decide to
11 answer questions now without a lawyer present, I
12 still have the right to stop answering at any time.
13 I also have the right to stop answering at any time
14 until I talk to a lawyer." And it says: "Do make
15 the following statement."

16 It's represented as basically a guide, that Q
17 would be question asked by Kevin Isenhoward and R
18 would be response for E. Williams, in this case
19 Emmith Williams.

20 Question: "Were you involved in a robbery at
21 The Shoe Dept. store in Columbia, South Carolina on
22 Monday?"

23 Response: "Yes."

24 Question: "Did you rob a woman and take her
25 gray Toyota Camry shortly after the shoe store

1 robbery?"

2 The response: "Yes."

3 This is the second page the same date.

4 Question: "What happened?"

5 Response: "I was staying in Raleigh, North
6 Carolina. On Thursday, May 3rd, I walked up to a
7 tobacco shop nearby and bought some Newport
8 cigarettes. Shortly after that I called a friend of
9 mine and he drove up from Columbia and picked me up.
10 He took me back to Columbia and dropped me off in the
11 area of the store. I stayed in the woods through the
12 weekend. I got rained on that weekend and it was
13 cold. I was desperate. So Monday morning I walked
14 up to the Wal-Mart shopping center. I watched a lady
15 there as she got out of her car and opened the store,
16 Shoe Dept. When she got it open I went inside and
17 looked at some Timberland shoes. I took the shoes up
18 to the counter and told her to give me all of the
19 money out of the register. I may have had my hand in
20 my pocket but I didn't have any weapons."

21 Page 3.

22 "She opened the register and I took the money
23 out. I told her to give me her car keys. She gave
24 me some keys and I went out to the car she got out
25 of. When I got there I realized that she didn't give

1 me the car key. I ran behind the store into the
2 woods. While I was running I took off my jacket
3 which was red and a black skull cap. I just threw
4 them down. I also took off a red Polo shirt that had
5 stripes. I ran through the woods and up into a
6 neighborhood. I was looking for a car to take
7 because I wanted to get away. I saw a lady standing
8 in her driveway. I went up to her and I" -- it
9 should be -- it says: "I went up to her, that I
10 needed the car." I told her I needed the car I
11 believe.

12 "Again, I may have had my hand in my pocket
13 again but I wasn't armed. She stepped inside her
14 house and got the keys. She also told her husband
15 who walked up with her. I opened the glass door to
16 the house and waited on her to bring me the keys.
17 She gave me the keys and I was walking back toward
18 the car when a Hispanic man came up to me. He was
19 holding" -- we're at page 4 -- "a shovel, but all he
20 did was say, 'think about what you are doing.' I got
21 into the car and drove off. When I left I was lost.
22 I drove until I found an interstate. I saw a sign
23 that said Greenville and I figured that was North
24 Carolina. So I went that way. I drove for about
25 three or four hours. I saw a store, a Family Dollar.

1 So I went inside and bought some clothes. I drove
2 all night but I was still lost. I know I drove
3 through Tennessee and Virginia. Finally I made my
4 way back to North Carolina. I drove until I got
5 close to places I knew. I got off the interstate and
6 stopped at a school. I parked the car and got out to
7 walk. That's when the police officer stopped me and
8 arrested me."

9 Question: "What were you wearing when you took
10 off the red shirt and red jacket?"

11 Response: "A blue tank top and blue jeans."

12 Page 5.

13 Question: "Did you ever grab or hit anyone
14 during the robberies?"

15 The response: "No."

16 Question: "How much money do you think you got
17 when you robbed The Shoe Dept.?"

18 Response: "100 to \$200."

19 Question: "Did you commit any other crimes
20 after you left the house?"

21 Response: "No."

22 Question: "Do you have anything else to add?"

23 Response: "No. That's it."

24 It's marked: "End of statement, May 9th, 2007
25 at 12:05 hours." It's initialed by both myself and

1 Mr. Williams to mark the end on this narrative. It's
2 then signed by Mr. Williams, acknowledged by or
3 witnessed by Eric Barnes and it's notarized by me.

4 Q Once you had reduced his statement to writing and he
5 had signed off on it, did you then return to Richland
6 County?

7 A I did.

8 Q Turning your attention to May 10th of 2007, did you
9 then generate a second photo line-up including this
10 defendant's picture?

11 A Yes.

12 Q And at that point had you been able to find a more
13 recent photograph of the defendant?

14 A Yes, I was.

15 Q Once you had gotten those photographs, did you then
16 put it in another line-up?

17 A Yes.

18 Q And did you use different photographs in this
19 line-up, including the defendant's newer photograph?

20 A Yes.

21 Q And why were the other people also different in this
22 photo line-up? And I'll show you State's Exhibit 6
23 for an example.

24 A Yes. Again when you're creating a line-up, you
25 wouldn't want it to be unduly suggestive. And that

1 means having the basic characteristics, size, shape
2 of the face and like I described before to match. So
3 in this situation the photograph of Mr. Williams, he
4 appeared thinner. And so I had to find thinner faces
5 to go in the line-up.

6 Q And, in fact, State's Exhibits No. 2, 3, 5 and 6, are
7 those all the same line-up?

8 A They are the same line-up.

9 Q Containing the defendant's picture?

10 A Yes.

11 Q In which position?

12 A In the second picture from the left on the top row.

13 Q Once you had created this line-up with a more recent
14 picture of the defendant, did you then go and show it
15 to any of the victims?

16 A Yes, I did.

17 Q First I would show you State's Exhibit No. 2. Do you
18 recognize that?

19 A Yes, I do.

20 Q Who did you make contact with and show that
21 photographic line-up to?

22 A I believe this is Sabrina Monsanto's. Yes.

23 Q And when you made contact with her that day, was
24 anyone else such as Mr. Johnson present when you
25 showed her the line-up?

1 **A** No.

2 **Q** And again, up until this point had you ever told her
3 who she should pick or anything of that nature?

4 **A** No.

5 **Q** Did you tell her who to pick in this line-up?

6 **A** No.

7 **Q** Did you influence her decision in any way?

8 **A** No.

9 **Q** When you showed her that line-up, who all was
10 present?

11 **A** Just two of us.

12 **Q** And when you showed her the line-up, tell the jury
13 what happened?

14 **A** She identified the photograph of Mr. Williams and
15 told me that that was the man that robbed her.

16 **Q** And at that point did she memorialize that in any
17 way?

18 **A** Yes. I requested she circle the photograph, place
19 her initials inside of the circle identifying the
20 photograph that she'd selected. She did that in this
21 case. I then filled out the form basically that's
22 attached that identifies the date, my name, which
23 photograph she picked, and then it's signed by her
24 and notarized by myself.

25 **Q** I show you what's been marked as State's Exhibit

1 No. 3. Did you also make contact with Mr. Johnson
2 that day?

3 **A** Yes, I did.

4 **Q** And when you made contact with Mr. Johnson, who else
5 was present?

6 **A** It was just the two of us.

7 **Q** Prior to showing him that photo line-up, did you in
8 any way suggest or influence his decision?

9 **A** No.

10 **Q** And when he was shown the line-up, did he recognize
11 anyone?

12 **A** Yes.

13 **Q** Who did he recognize?

14 **A** Again, he identified the photograph of Mr. Williams
15 just like the first one. I had him circle it to
16 identify the photograph, placed his initials inside.
17 Then he signed and I notarized it.

18 **Q** I show you State's Exhibit No. 5. Do you recognize
19 that?

20 **A** Yes, I do.

21 **Q** And is that another photo line-up you showed on May
22 the 10th?

23 **A** It is. This is a line-up I showed to Martha Darnell.

24 **Q** When you showed Ms. Darnell that line-up, was any one
25 else present?

- 1 **A** Her husband was in another room.
- 2 **Q** And did you intentionally separate them?
- 3 **A** Yes.
- 4 **Q** In order to make sure that there was no taint if any
5 identification was made?
- 6 **A** That's correct.
- 7 **Q** When you showed her that line-up, what if anything
8 did she indicate to you?
- 9 **A** She also identified the photograph of Mr. Williams
10 and told me that was the man that robbed her. She
11 circled it, placed her initials inside of the circle
12 and signed it and it was notarized. I notarized it.
- 13 **Q** Finally I show you State's Exhibit No. 6. Do you
14 recognize this?
- 15 **A** Yes. This is another line-up. This one was shown to
16 Mitchell Darnell.
- 17 **Q** And did you do anything to influence him or tell him
18 who to pick or anything of that nature?
- 19 **A** No.
- 20 **Q** What if anything occurred when you showed him --
21 again, were you and Mr. Darnell separated from
22 Mrs. Darnell when you showed him?
- 23 **A** Yeah. After she looked at the line-up they switched
24 places.
- 25 **Q** And what if anything did he indicate when he viewed

1 those photographs?

2 **A** He also selected the second picture on the top from
3 the left identifying Mr. Williams as the man who
4 robbed him. He circled the photograph, placed his
5 initials inside, signed it, and I notarized it.

6 **Q** Let me back up for a second. I skipped something.
7 Prior to the 10th, basically on the 8th, had you all
8 already made a determination as to what the proper
9 charges were in these two cases?

10 **A** Yes.

11 **Q** And what were the charges?

12 **A** We charged Mr. Williams with armed robbery of The
13 Shoe Dept. In the case of Mr. and Mrs. Darnell we
14 charged him with armed robbery and burglary first
15 degree.

16 **Q** And that was based on the information you got from
17 all the victims and witnesses?

18 **A** That's correct.

19 **Q** Let me go back as far as what was recovered in this
20 case. In the statement that he gave to you, Mr.
21 Williams indicated that at some point when he was
22 driving and he was lost he stopped at a Family Dollar
23 store?

24 **A** That's correct.

25 **Q** And purchased new clothing?

1 **A** Yes.

2 **Q** Were you ever able to recover the clothing that Mr.
3 Williams was still wearing when he got Mr. and
4 Mrs. Darnell's car?

5 **A** No.

6 **Q** Were you ever able to recover the shoes that he was
7 wearing when he took Mr. and Mrs. Darnells' car?

8 **A** No.

9 **Q** Were you ever able to recover any of the money from
10 the armed robbery at The Shoe Dept.?

11 **A** No. He told me that he had spent most of it on fuel
12 for the vehicle and his driving all night and the
13 clothes he had purchased from the Family Dollar.

14 **Q** And, in fact, when he was booked in, how much cash
15 did he actually have on his person approximately?

16 **A** \$17.14 according to this sheet.

17 **Q** Did you ever recover a gun in this case?

18 **A** No. We did not recover the gun.

19 **Q** Or the shoes?

20 **A** No.

21 **Q** Or the money?

22 **A** No.

23 **Q** Or the clothing?

24 **A** No.

25 **Q** He also mentioned that a friend of his had

1 transported him from where he was living in Raleigh,
2 North Carolina, down to Columbia, South Carolina?

3 A Yes.

4 Q Did you make any attempts to identify that person?

5 A I did. And he was very protective of that. He
6 didn't want to talk about that. I think he was
7 scared I was going to get someone else in trouble. I
8 tried to explain to him I wasn't, we're just going to
9 verify what he was telling me; but he would not tell
10 me who that person was.

11 Q And in his statement he indicated that he had just
12 spent the weekend in the woods?

13 A Yes.

14 Q In your investigation did you determine whether or
15 not the defendant had any ties to South Carolina?

16 A Everything we learned about the defendant was that he
17 was a lifelong resident of the state of North
18 Carolina.

19 Q And, in fact, was his family also in North Carolina?

20 A Yes, they were.

21 Q Including his parents and his sister?

22 A Yes.

23 Q In this case you didn't take any written statements
24 from the witnesses and/or the victims in the case.

25 Is that customary?

1 **A** Yes. It's normal.

2 **Q** And you followed your procedure in that?

3 **A** Yes.

4 **Q** Did you do anything -- once the defendant had been
5 apprehended when you got up there and actually made
6 contact with him, I believe it would be on the 9th,
7 was there any way you could test to see if he had
8 handled a gun?

9 **A** There is no test for just handling a gun.

10 **Q** So if he'd gotten rid of the gun, you couldn't test
11 for it?

12 **A** No, we couldn't.

13 **Q** Were the keys -- other than the single key to the
14 actual Toyota, were the rest of the key ring that was
15 taken from Mr. Darnell, was that ever recovered?

16 **A** No, it wasn't. As a matter of fact, several items
17 apparently had been discarded from the vehicle,
18 registration, that sort of thing.

19 **Q** Had all been discarded?

20 **A** Yes.

21 **Q** Finally, there was also some evidence that came back
22 from North Carolina, fingerprints from a Mr. Bradford
23 Cash?

24 **A** Yes.

25 **Q** Were you ever able to determine whether or not

1 Mr. Cash had any ties to anyone in South Carolina?

2 **A** We did some research on Mr. Cash. We learned that he
3 was on probation in the state of North Carolina. I
4 spoke with his probation officer. I was provided an
5 address and phone number which we tried to explore.
6 We were unable to make contact with Mr. Cash. But as
7 far as our research, all of his history is in the
8 state of North Carolina, primarily western -- or
9 excuse me. Yeah. Western North Carolina.

10 **Q** The times of these incidents, the first occurred I
11 believe you testified at what time?

12 **A** The Shoe Dept., the call was made at 10:19 a.m. on
13 May the 7th, 2007. The Darnells' called and said
14 someone had stolen their vehicle at 10:33 a.m. on May
15 the 7th of 2007.

16 **Q** And you are familiar with the area where these
17 occurred?

18 **A** Yes. Very familiar.

19 **Q** They're both in Richland County?

20 **A** Yes, they are.

21 **Q** And would it be possible or reasonable for a person
22 to either walk and/or run from that one location to
23 the other in that time period?

24 **A** Oh, absolutely. You might be able to walk faster
25 than you can drive on some days.

1 Q Beg the Court's indulgence. The person that you
2 interviewed and that admitted to some culpability in
3 these robberies, do you see him here in the
4 courtroom?

5 A Yes, I do.

6 Q Can you point him out for the jury?

7 A Mr. Williams, Emmith Williams. He's sitting at the
8 table to my right wearing a blue sport coat and a tan
9 and blue striped shirt. Or excuse me. Tie, white
10 shirt.

11 Q Thank you. I don't have anything further.

12 THE COURT: The record will reflect the witness
13 identified the defendant. Cross examination.

14 MS. SINGLETARY: Yes, Your Honor.

15 CROSS EXAMINATION

16 BY MS. SINGLETARY

17 Q Good afternoon, Investigator Isenhoward.

18 A Hey.

19 Q All right. You testified that you responded to both
20 robberies?

21 A Yes.

22 Q And let me get this exactly right. From what you
23 said in your direct testimony, you said that when you
24 respond to scenes you try to get as much information
25 as possible from any witnesses?

1 **A** Yes.

2 **Q** From any possible victims?

3 **A** Yes.

4 **Q** And you do that because you want it while it's fresh
5 and first thing in their mind?

6 **A** Yes.

7 **Q** And you said that in this case what you did with the
8 information that you received, you placed it in your
9 incident report?

10 **A** It was placed in the incident report as well as the
11 robbery questionnaire.

12 **Q** And that's exactly what I was going to ask you next.
13 Also in the robbery questionnaires?

14 **A** Mm-hmm (affirmative).

15 **Q** Okay. And now, you said you've been a police officer
16 for eight years?

17 **A** I've been a police officer for eleven years. I've
18 been a detective for eight years.

19 **Q** Okay. So you've been a detective for eight years?

20 **A** Yes.

21 **Q** But a police officer for 11 years?

22 **A** Yes.

23 **Q** We all have to start somewhere. You went to the
24 police academy, didn't you?

25 **A** I actually worked as a corporal and officer before I

1 went to the police academy.

2 **Q** But you went to the police academy?

3 **A** Yep.

4 **Q** And when you went to the police academy, they thought
5 you how to write reports, right?

6 **A** Yes, they did.

7 **Q** And they taught that you these reports need to be
8 detailed?

9 **A** Yes.

10 **Q** That they need to be accurate?

11 **A** Yes.

12 **Q** They need to be very specific?

13 **A** Actually they tell you that it should be a brief
14 synopsis in an area of the event, as it's been
15 described to you. Our state incident forms have
16 blocks. A lot of information can be contained in
17 just checking blocks. It doesn't need to be spelled
18 out in words or sentences, which is easier for the
19 officers to do. In this case we checked blocks and
20 certain numbers and certain things. We have keys
21 that it takes to read an incident report even. But
22 basically they tell you a brief what, where, when and
23 how in the narrative form.

24 **Q** And I was about to get to the blocks shortly. Yeah.
25 On those incident reports, they have a whole lot of

1 blocks. Those blocks are there for like what day it
2 was?

3 **A** Yes.

4 **Q** The time that you were actually dispatched out there?

5 **A** Yes.

6 **Q** The time you actually arrived?

7 **A** Yes.

8 **Q** The time that you departed?

9 **A** Yes.

10 **Q** It asks you the name of any possible witnesses?

11 **A** Yes.

12 **Q** Possible subjects, if known?

13 **A** Yes.

14 **Q** Asks you about the victims in the case, their
15 information?

16 **A** Yes.

17 **Q** And so with those boxes, that helps to make that
18 report very -- well, try to make it accurate, doesn't
19 it?

20 **A** Oh, it should be accurate.

21 **Q** Yeah, it should be accurate. And you know that cases
22 don't automatically go to trial like this case?

23 **A** No.

24 **Q** Sometimes it takes like a year and a half in order
25 for a case to go to trial?

1 **A** Yeah. You all work real hard on getting them to
2 trial.

3 **Q** And you're in a lot of trials, aren't you?

4 **A** Yes.

5 **Q** And you respond to a lot of calls?

6 **A** Yes.

7 **Q** And there is no way for us to expect you to remember
8 what happened a year and a half ago today?

9 **A** Well, I'd hope that I'd have some kind of notes,
10 investigative follow-up.

11 **Q** Yeah. And that's what I was going to say. Off the
12 top of your head you wouldn't just know everything
13 that happened on that date?

14 **A** Not everything, no.

15 **Q** You would have to rely on those notes?

16 **A** Yes.

17 **Q** And that's why it's so important for them to be
18 specific and accurate?

19 **A** Yes.

20 **Q** Now, you also said that in this case you didn't do
21 any formalized statement. But you did the summaries
22 on your incident report?

23 **A** Yes.

24 **Q** And in the robbery questionnaire?

25 **A** Well, let me clarify. I didn't write the incident

1 report. But the robbery questionnaire I did fill
2 out.

3 Q Yeah. But your incident report was typed?

4 A The incident report was typed, but I didn't write it.

5 Q Well, your follow-up?

6 A Yes. My follow-up, yes.

7 Q Okay. All right. And you said that when you spoke
8 to Mitchell Darnell he told you that the person who
9 robbed them had their hand in their pocket?

10 A Yes.

11 Q And that's what you put on that report?

12 A In my follow-up.

13 Q In your follow-up report?

14 A Yes.

15 Q Yes. And you talked to Martha Darnell?

16 A Yes.

17 Q She said the same thing. They had -- that the
18 subject had his hand in his pocket?

19 A Yes.

20 Q And you just read for the jury a few minutes ago the
21 statement by Mr. Williams.

22 A Yes.

23 Q He again said he had his hand in his pocket?

24 A Yes, he did.

25 Q But he said he -- but he didn't have a weapon?

1 **A** That's what he said.

2 **Q** That's what he said. Thank you. And you also talked
3 to Ms. Monsanto?

4 **A** Yes.

5 **Q** And she said that the subject had his hand in his
6 pocket?

7 **A** Yes.

8 **Q** You also spoke to Rickey Johnson?

9 **A** Yes, I did.

10 **Q** And he said the same thing?

11 **A** Yes, he did.

12 **Q** So all five people are talking about the hand in the
13 pocket?

14 **A** Yes.

15 **Q** Okay. Now, let's go back to the Darnells. You said
16 that you wrote: "Had hand in his pocket and
17 presented it as if he had a weapon." Now,
18 "presented", that's more like a legal term, isn't it?

19 **A** I don't think so.

20 **Q** In that context of the word?

21 **A** I mean, that's a word in the English language people
22 use. I don't know if I'd characterize it as a legal
23 term. I see what you're saying, but I wouldn't
24 characterize it as such.

25 **Q** All right. So did the Darnells actually use that

1 specific language? Did they say "presented", or did
2 you summarize that?

3 **A** Well, these are my words.

4 **Q** Okay.

5 **A** But what the Darnells told me was a man robbed them.
6 He had a gun. He had his hand in his pocket like he
7 had a gun. And they complied because they were
8 scared.

9 **Q** Okay. I'm glad you cleared that up because at first
10 you said they said he had a gun. But he had his hand
11 in his pocket like it was a gun?

12 **A** Yes.

13 **Q** Okay. That's what they told you?

14 **A** And that's what they believed.

15 **Q** Okay. And that's what they told you?

16 **A** Yes.

17 **Q** Okay. All right. And you said that at some point
18 you and Sergeant Ellis, you guys compared notes?

19 **A** Yes.

20 **Q** From the description of the subject in the first
21 robbery --

22 **A** Yes.

23 **Q** -- that was given out?

24 **A** Yes.

25 **Q** And the description from the person in the second

1 robbery?

2 A Yes.

3 Q And it just didn't add up to you, did it?

4 A Explain.

5 Q The descriptions. It just didn't add up?

6 A What didn't add up is that the clothes were
7 different.

8 Q Yes. That the clothes were different.

9 A Yes.

10 Q Yes. And you guys went along this trail that
11 basically led from back behind where The Shoe Dept.
12 was at into this subdivision where the Darnells lived
13 at?

14 A Yes.

15 Q And that's where you said you found these clothes?

16 A Yes.

17 Q Okay. And again let's go back to Mr. Williams'
18 statement. In mr. Williams statement he told you
19 that he walked behind The Shoe Dept.?

20 A Yes.

21 Q And that he took off his jacket?

22 A Yes.

23 Q He took off that striped Polo shirt?

24 A Yes.

25 Q And he dropped it down?

- 1 **A** Yes.
- 2 **Q** So he wasn't trying to hide that fact?
- 3 **A** When he talked to me?
- 4 **Q** Yeah. Well, let me rephrase that. He was
- 5 forthcoming with that information?
- 6 **A** When I talked to him, yes.
- 7 **Q** Okay. Now, let's go to Mr. Williams' statement
- 8 again. You testified on direct that he was eager to
- 9 speak with you?
- 10 **A** Yes.
- 11 **Q** Is that correct?
- 12 **A** Yes.
- 13 **Q** He absolutely volunteered to talk to you?
- 14 **A** Yes.
- 15 **Q** That he wanted to explain his side of the story?
- 16 **A** Yes.
- 17 **Q** And you read his side of the story in here today?
- 18 **A** Yes.
- 19 **Q** And Mr. Williams again told you he wasn't armed?
- 20 **A** That's what he said.
- 21 **Q** And would you characterize your meeting with Mr.
- 22 Williams -- and I'm putting the word "meeting"
- 23 loosely -- would you characterize that as being
- 24 cordial?
- 25 **A** As much as it can be. Yes.

1 Q Okay. Would you say that he was -- he appeared to
2 want to cooperate?

3 A Yes.

4 Q He appeared to want to talk?

5 A Yes.

6 Q Would you say that you felt that he was honest?

7 A I can tell you that that's the statement he gave me.
8 Some parts of the statement match the evidence. Some
9 don't.

10 Q Okay. Well, and that's not -- and that's really not
11 the question that I'm asking. But I'll take that
12 response. But do you remember testifying -- Your
13 Honor, may we approach?

14 **THE COURT:** Sure.

15 (Whereupon, a bench conference is had)

16 Q Do you remember previously saying that you felt that
17 Mr. Williams was open and honest?

18 A I may have used the term. But it's really the same.
19 It's to indicate how someone is wanting to talk to
20 me. I may have used it.

21 Q Okay. Beg the Court's indulgence, Your Honor. And
22 just briefly. According to the description that you
23 got from the Darnells, did Mr. Williams have on a
24 jacket when he was at their home?

25 A They told me he had on a blue shirt I believe,

1 short-sleeved shirt.

2 Q And let's go back to your reports and the robbery
3 questions that you filled out. And do you have that
4 information in front of you?

5 A What are you asking about?

6 Q I want you to look through the robbery questionnaires
7 and look through the reports. Could you tell me
8 where in there, if anywhere, do you put that a
9 protruding object was seen from Mr. Williams' pants?

10 A It says, the statement of Martha Darnell in the
11 robbery questionnaire taken by Investigator Ellis,
12 "put right hand in pocket as if he had a weapon."

13 Q No protruding object though?

14 A It doesn't say that.

15 MS. SINGLETARY: Okay. Thank you, Your Honor.

16 THE COURT: Any redirect?

17 REDIRECT EXAMINATION

18 BY MS. CAMPBELL

19 Q And it also talks in your follow-up about the hand in
20 the pocket?

21 A Yes.

22 Q As told to you by Sabrina Monsanto?

23 A Everyone.

24 Q Rickey Johnson?

25 A Yes.

1 Q Martha, Mitchell Darnell and the two guys across the
2 street?

3 A That's correct.

4 Q And when you talked to Mr. Johnson or Ms. Monsanto,
5 you had no idea what Mr. Darnell and Mrs. Darnell
6 were going to say?

7 A No.

8 Q And when you talked to Mrs. Darnell and Mr. Darnell,
9 you had no idea what the people across the street
10 were going to say?

11 A No.

12 Q And, in fact, the Darnells didn't know what Ms.
13 Monsanto said?

14 A No, they didn't.

15 Q And they didn't know what Mr. Johnson said?

16 A No, they didn't.

17 Q And they didn't know what the two guys across the
18 street said?

19 A No, they didn't.

20 Q She asked you if he was forthcoming. He didn't stick
21 around after committing these armed robberies to talk
22 to you, did he?

23 A No.

24 Q She also asked you about the clothing in the woods,
25 that he just took it off. And in your experience --

1 you're head of the armed robbery team?

2 **A** Yes, ma'am.

3 **Q** In your experience, is it unusual for a person after
4 they've committed an armed robbery to try and change
5 their appearance immediately?

6 **A** No. In fact, it happens oftentimes.

7 **Q** And why is that?

8 **A** Because they're trying to escape and they know if the
9 victims have given the police a description it's
10 usually clothing, primarily tops or shirts, hats. So
11 they immediately discard those items. And oftentimes
12 they layer their clothes so they can do that.

13 **Q** She also asked you about the defendant wanting to
14 talk to you, being eager?

15 **A** Yes.

16 **Q** Have you taken statements from more than just Mr.
17 Williams?

18 **MS. SINGLETARY:** Objection, Your Honor.

19 **THE COURT:** I'll allow that question. I don't
20 know about what the follow-up is though.

21 **Q** During the course of your career, have you taken
22 statements from multiple defendants?

23 **A** Yes.

24 **Q** Hundreds?

25 **A** Yes. Easy.

1 Q Is it unusual for a defendant to minimize his role of
2 the crime actually itself?

3 A No.

4 MS. SINGLETARY: Objection, Your Honor.

5 THE COURT: All right. I'll sustain that.

6 Sustain that. Strike that from the record.

7 Q Did he want to get his version on the record?

8 A Yes.

9 Q She asked you about whether or not he was truthful,
10 and you mentioned that parts of his story don't match
11 the evidence?

12 A That's correct.

13 Q And that's from all the witnesses independently?

14 A That's correct.

15 Q As to what happened?

16 A That's right.

17 Q And to how he actually put his hand in his pocket?

18 A That's right.

19 Q Even when you're summarizing in your follow-up, if
20 someone had said he put his hand in his pocket and it
21 protruded --

22 A Yes.

23 Q -- or it looked like a gun, --

24 A Yes.

25 Q -- would you maybe characterize that differently in

1 your notes?

2 **A** Yes. I could.

3 **Q** In your notes every single witness indicates they
4 thought he had a gun?

5 **A** That's right.

6 **Q** Thank you.

7 **THE COURT:** Yes, ma'am. Go ahead.

8 **MS. SINGLETARY:** Your Honor, just briefly.

9 RE CROSS EXAMINATION

10 **BY MS. SINGLETARY**

11 **Q** According to your notes, you were just asked that
12 according to your notes every witness indicated that
13 Mr. Williams had a gun. Isn't it more accurate to
14 say that they -- according to your notes, they
15 assumed he had a weapon?

16 **A** It's accurate to say that they believed he had a gun.

17 **Q** In your notes in the robbery questionnaire, in your
18 follow-up notes, you have: "He had his hand in his
19 pocket as if he had a weapon"?

20 **A** Yes. A gun is a weapon.

21 **Q** My exact question is, does your wording say: "He had
22 his hand in his right pocket as if he had a weapon"?

23 **A** Oh. Where? Where are you referring to?

24 **Q** Look at Mitchell Darnell's robbery questionnaire.

25 You can also look at Martha Darnell's robbery

1 questionnaire. And you can look at Sabrina
2 Monsanto's robbery questionnaire. And it's actually
3 in your incident reports; well, your follow-up,
4 investigative report.

5 **A** Okay.

6 **Q** All right. And beg the Court's indulgence, Your
7 Honor. And you said that -- now, were you the
8 officer to actually swear out the warrant for The
9 Shoe Dept.?

10 **A** I believe so.

11 **Q** Do you have a copy of your warrant up there?

12 **A** Yeah. I believe so.

13 **Q** On the warrant does it say a gun anywhere?

14 **A** We use the term "weapon".

15 **Q** So it doesn't say a gun?

16 **A** No. That's not what I wrote.

17 **MS. SINGLETARY:** Okay. I have no further
18 questions.

19 **THE COURT:** All right. Thank you very much.
20 You may come down. Next witness.

21 **MS. MCDUFFIE:** Your Honor, at this time the
22 State of South Carolina rests.

23 **THE COURT:** All right. All right, ladies and
24 gentlemen of the jury. That concludes the State's
25 case. In other words, you'll hear no more evidence

1 from the State. And at this time I need to take up a
2 matter of law with the attorneys after which the
3 defendant will have -- it's his opportunity to
4 present a defense. But as I told you at the
5 beginning of the trial, he's under no obligation to
6 do so. Again, it's the burden of the State to prove
7 beyond a reasonable doubt the allegations of the
8 indictment.

9 And the State has rested their case at this
10 point, so I do need to discuss scheduling right now
11 with the attorneys and take up a couple of legal
12 matters. So I'm going to ask you to go to the jury
13 room. Approach the bench, counsel.

14 (Whereupon, a bench conference is had)

15 **THE COURT:** All right, ladies and gentlemen.
16 Just go to the jury room for a few minutes. Let me
17 try to work out some matters with the attorneys and
18 I'll call you when we're ready. Don't discuss the
19 case among yourselves while you're in the jury room.

20 (Jury out at 4:05 p.m.)

21 **THE COURT:** Any motions?

22 **MS. SINGLETARY:** Yes, Your Honor. Your Honor,
23 at this time the defense respectfully moves for a
24 directed verdict. And if I may hand up a written
25 motion?

1 **THE COURT:** Certainly.

2 **MS. SINGLETARY:** And I'm going to give a copy to
3 the Court reporter to mark. And for the State.

4 (WHEREUPON, Court's Exhibit No. 6 is marked for
5 identification.)

6 **MS. SINGLETARY:** And, Your Honor, I do have the
7 appropriate case law that goes along with our
8 directed verdict motion.

9 **THE COURT:** Go ahead.

10 **MS. SINGLETARY:** Your Honor, we all know that
11 the standard for directed verdict is viewed in the
12 light most favorable to the State. And, Your Honor,
13 even based on that, in support of the defense's
14 directed verdict motion, we argue on several specific
15 grounds. One is that the testimony elicited from the
16 State's witnesses in their case in chief combined
17 with statutory interpretations of the statutes that
18 are relevant in this case, the governing case law
19 which has actually reviewed the statutory
20 interpretation and the relevant statutes, and the
21 sufficiency of the charged indictments; if all of
22 that is viewed in conjunction, Your Honor, we feel
23 that directed verdict should be granted against -- as
24 a matter of fact in favor of my client.

25 Your Honor, firstly I would like to actually

1 address the testimony elicited at trial. Your Honor,
2 my client is charged with two counts of armed robbery
3 and a charge of burglary in the first degree. All
4 the testimony that has been elicited at trial through
5 who we would consider the State's key witnesses,
6 which would be Sabrina Monsanto, which would be
7 Rickey Johnson, which would be Mitchell and Martha
8 Darnell; in all of their testimony, and if you would
9 refer to page 3 of my written motion, I actually
10 summarize and do my best to summarize the testimony
11 that was given.

12 Martha Darnell states the following. She was
13 worried about what was in Mr. Williams' pocket. She
14 thought he was armed but could not see inside his
15 pocket. He might have a weapon. He appeared to have
16 a weapon. He may have had a weapon. I assume he had
17 a weapon. I don't know if he was armed, and he had
18 his hands in his right front pocket. And because he
19 demanded things, I just thought that he had a weapon.
20 She also talks about a protruding object out of his
21 right front pocket.

22 If we turn to Ms. Monsanto's testimony -- and I
23 would like to note again that Ms. Martha Darnell says
24 that she actually never sees a weapon. Then we turn
25 to Ms. Monsanto. In her testimony she says, I never

1 saw a weapon. He never said he had a weapon. I just
2 had an eerie feeling from the first time I saw him
3 outside. I assume he had a weapon. He had his right
4 hand in a right jacket pocket as if he had a weapon.
5 Because he demanded the money I thought he may have
6 had a weapon. I thought that because I gave him the
7 wrong keys he would shoot inside the store. He was
8 not forceful. And she doesn't remember at what point
9 she actually sees my client with his hands in his
10 pocket for the first time.

11 Let's look at Mr. Johnson's testimony. And he
12 says he noticed the defendant's hand in the right
13 pocket as Mr. Williams was leaving. He was told by
14 Ms. Monsanto what had happened because he was
15 actually not paying that much attention or close
16 attention. Noticed Williams when he was leaving the
17 store, never saw a weapon, assumed he was armed.

18 Now, at the time that I actually wrote this
19 memo, Your Honor, Mr. Mitchell Darnell hadn't
20 testified. But I think the record is clear as to
21 what he testified to. His testimony was consistent
22 to what Martha Darnell testified to, is that he never
23 saw that he never saw a weapon, that it was never
24 threatened that he had the weapon. But he went
25 further today to say that, oh, he had a .38 gun and I

1 guess the protruding object kind of through the pants
2 pocket, he could tell that's what it was, Your Honor.

3 As it relates to Officer Ellis and Officer
4 Isenhoward, their testimony is based on the
5 information that they got from the key witnesses that
6 I went through, Your Honor.

7 The record is not clear -- I mean, the record is
8 clear that no one saw that Mr. Williams had a weapon.
9 No claims were made that Mr. Williams actually had a
10 weapon. There is no evidence that he was armed in
11 any way. The evidence is that he had his hand in his
12 pocket as if he had a weapon. And it would be our
13 argument that that's not a reasonable assumption,
14 Your Honor.

15 Now let's go to the interpretation of the armed
16 robbery statute and the case laws that have actually
17 addressed this. If you look in State v. Jones on
18 page 1, and I actually went through some of the facts
19 of it, but the facts are as follows.

20 The defendant entered a convenience store and
21 handed the clerk a hold-up note stating: "This is a
22 stick up, give me all the money." The testimony
23 presented at trial level was that the clerk initially
24 thought that it was a joke and then noticed that
25 Jones kept his left hand in his jacket pocket.

1 Now, after noticing the accompanying verbal
2 threat and the fact that Jones had his hand in his
3 left jacket pocket, that's when the clerk realized
4 that Mr. Jones was being serious and as a result of
5 that gave Mr. Jones the \$200.

6 And in that case, just as in this case, the
7 clerk testified that he never actually saw a weapon
8 but believed that Mr. Jones had one and feared of
9 being shot, just as what Ms. Monsanto said, that she
10 believed that he had a weapon and that's why she went
11 to the middle of the store, because she was scared
12 that when he realized that he didn't have the proper
13 key that he would shoot inside of the actual Shoe
14 Dept.

15 Your Honor, it's our argument that the proffered
16 testimony, as what the Court in this trial, as what
17 the Supreme Court of South Carolina held in Jones was
18 not sufficient to sustain a conviction for the
19 offense of armed robbery. They looked at the armed
20 robbery statute and they said that a defendant may be
21 convicted of an armed robbery. That's if the jury
22 concludes that the robbery alleged when he was armed
23 under requisite circumstances without having to
24 conclude that he was in fact so armed.

25 We all know the elements of armed robbery. It's

1 whether the victims alleged that he or she was armed
2 with a deadly weapon. Number one, there is no
3 testimony that my client was actually armed. Number
4 two, there is no testimony that my client alleged
5 that he was armed. Now, it is the defense's argument
6 that the State is relying on the either by action or
7 words while using a representation of a deadly weapon
8 or any object which a person present during the
9 commission reasonably believed to be a deadly weapon.

10 Your Honor, it would be our argument that just
11 having your hand in your pocket is not enough to say
12 that my client actually represented himself as having
13 a weapon, Your Honor. From the evidence that the
14 State actually admitted into evidence that was in my
15 client's jacket, in his right pocket of the jacket,
16 it was several things. That could have created the
17 bulge that Ms. Monsanto actually speaks of, Your
18 Honor.

19 Now, at the trial level in the Jones case they
20 actually moved for a directed verdict. It wasn't
21 granted. However, it was overturned. And the reason
22 why it was overturned was the court held that the
23 evidence at trial was at variance with the indictment
24 and that failure to grant the appellant's directed
25 verdict motion was in error. They concluded that

1 there was a material variance between the charge and
2 the proof. And that's that we're arguing right now,
3 Your Honor, that there is a material variance between
4 the charge and the proof. And they held that the
5 appellant in that case should have been granted a
6 directed verdict as a matter of law.

7 Additionally, Your Honor, we rely on State v.
8 Muldrow. The court once again addressed this issue.
9 Now, in Muldrow the defendant entered the store and
10 asked the sales clerk for a pack of cigarettes while
11 handing her a note that said: "Give me all your cash
12 or I'll shoot you." When the clerk asked him whether
13 or not he was serious, he said yes and told her to
14 hurry up before he shot her.

15 We have no indications in this actual case that
16 Mr. Williams gave a note, verbalizing a threat. We
17 have no indication that he orally gave a threat to
18 any of the victims in this case. But in that case
19 again, even though no weapon was shown to the clerk,
20 the clerk believed that he had a weapon.

21 The court again looked at the armed robbery
22 statute. And in addition to looking at the armed
23 robbery statute, the court went through a statutory
24 interpretation of statutes, Your Honor. It said:
25 "In addition to examining the language of the statute

1 the court looked to the Legislative intent
2 encompassing the pertinent statute. The court came
3 to the conclusions that follow. Words alone are not
4 sufficient under the first prong."

5 Your Honor, we're not arguing that there were
6 any words in this case. "It was bound to construe
7 penal statutes strictly against the State and in
8 favor of the defendant." And that's exactly what
9 we're asking the Court to do by granting this
10 directed verdict.

11 Thirdly, it said: "Plain meaning of the statute
12 indicates words alone are not sufficient under the
13 second prong to support a conviction of armed
14 robbery." The court found it was not the intent of
15 the Legislature in adding the second prong, which is
16 the one that we are arguing that the State is relying
17 on, the representation, to preclude the need for
18 evidence corroborating the allegation of being armed.

19 And lastly I have in here that the amendment
20 simply ensures that the use of an object which is in
21 fact not deadly will support a conviction for armed
22 robbery. Again the State must still show evidence
23 corroborating the allegation of being arm robbed,
24 Your Honor.

25 And lastly the issue that I would like to

1 address is the burglary in the first degree, Your
2 Honor. In the charged indictment against Emmith
3 Williams for burglary in the first degree, the
4 indictment reads this. "Emmith Williams did in
5 Richland County on or about May the 7th, 2007,
6 unlawfully enter the dwelling of Mitchell and Martha
7 Darnell at _____ without consent and
8 with intent to commit a crime therein. To wit: The
9 defendant did use or threatened the use of a
10 dangerous weapon and/or displayed what appeared to be
11 a knife, pistol, revolver, rifle, shotgun, machine
12 gun or other firearm, all in violations of code
13 section 16-11-311, code sections of law, South
14 Carolina, 1976, as amended."

15 Your Honor, the State has presented no evidence,
16 no evidence to satisfy the indictment that my client
17 was indicted for, for the burglary first, Your Honor.
18 Even given -- even on a directed verdict, Your Honor,
19 in the light most favorable to the State, yes, he
20 entered without consent, Your Honor. But did he
21 display a weapon? Did he threaten to have a weapon?
22 Did he actually brandish a weapon? There is no
23 testimony that he did.

24 And, Your Honor, the State cannot make the
25 argument that the burglary first degree statute is

1 comparable to the armed robbery statute. We go back
2 to statutory interpretation, that this statute must
3 be given its plain meaning, Your Honor. It's not
4 ambiguous at all. As it relates to this burglary,
5 the burglary first, as the State has indicted my
6 client, my client had to have a weapon. He had to be
7 armed or he had to threaten that he was armed and/or
8 he had to display any one of them: A knife, a
9 pistol, a revolver, whatever. There has been no
10 testimony, Your Honor, that my client has actually
11 done any of those things.

12 And if you look in my memo, I actually go even
13 further on page 9 and put in it some other parts of
14 the burglary in the first degree statute. But, Your
15 Honor, that's not what they indicted my client for.
16 It's plain what they indicted my client for. And
17 it's plain that they cannot prove what they indicted
18 him for. And for the foregoing reasons we
19 respectfully ask for a directed verdict, Your Honor.

20 **THE COURT:** All right. The State's position.

21 **MS. MCDUFFIE:** Your Honor, taking the evidence
22 in the light most favorable to the State, the State
23 asks is the appropriate standard for this motion, we
24 respectfully submit that the State, we have presented
25 enough proof for this to go to the jury.

1 Relying on State v. Jones, as Ms. Singletary
2 discussed, in State v. Jones, the issue in that case
3 was a problem with the indictment, which we do not
4 have in this case, Your Honor. In that case the
5 State indicted Mr. Jones for armed robbery, simply
6 stating that he was armed with a deadly weapon.
7 However, the proof at trial came out that he
8 displayed what was reasonably believed to be a deadly
9 weapon and not in fact that he was actually armed
10 with a deadly weapon.

11 The court there said that because the indictment
12 only stated "was armed with a deadly weapon", it did
13 not have the second part of the statute where "was
14 armed with a deadly weapon" or the defendant
15 represented that he was armed and the victims
16 reasonably believed that he was armed. Their
17 indictment did not contain that.

18 Therefore, the reasoning in Jones we would also
19 rely on where the court said that because the
20 indictment did not contain that the State could move
21 to amend the indictment and cure the problem and have
22 the offense of armed robbery be submitted to the
23 jury; or since the jury was not sworn under the
24 statute, reindict, I believe was the Court of Appeals
25 language.

1 In Muldrow the person passed a note up to the
2 clerk. They never represented that they had a
3 weapon. They never made any physical gesture, no
4 hand in the pocket, no anything as required by the
5 statute. Here we have a person representing that
6 they had a deadly weapon. They had their hand in
7 their pocket and gave the victims --

8 **THE COURT:** How are they representing it?

9 **MS. MCDUFFIE:** In the manner in which he had his
10 hand in his pocket, the witnesses testified it was
11 not just his hand in his pocket; it was in his pocket
12 pointed at them, gave them the appearance that it was
13 a deadly weapon.

14 **THE COURT:** What was pointed at them? What was
15 pointed at them?

16 **MS. MCDUFFIE:** Your Honor, I believe -- or I
17 know that Mr. Johnson testified and the rest of the
18 witnesses said that the way his hands were in his
19 pocket, and I know Mr. Johnson testified that it was
20 in his direction.

21 **THE COURT:** Like a balled up fist?

22 **MS. MCDUFFIE:** Your Honor, I don't believe any
23 of them testified that he had a balled up fist.

24 **THE COURT:** I said like.

25 **MS. MCDUFFIE:** They all testified that the way

1 his hand was in his pocket they all believed that he
2 had a weapon.

3 **THE COURT:** I understand that. But you used the
4 word "pointed". And I just wondered what was
5 pointed.

6 **MS. MCDUFFIE:** I believe Mr. Johnson was
7 specifically asked, was it just in his pocket; and he
8 said, no, it was in his pocket like he had a gun,
9 Your Honor. This wasn't someone casually having
10 their hand in their pocket. All of the witnesses
11 testified that he had his hand in his pocket and they
12 believed that he had a weapon.

13 Those are the same facts in Jones where the
14 court said that they could re-indict, however,
15 because of the indictment problem. Those are the
16 same facts they said would be sufficient to submit
17 had the indictment been proper, which it was not in
18 that case, Your Honor.

19 Your Honor, and in terms of the burglary first
20 statute, the statute says -- and he has --

21 **THE COURT:** Well, let's don't leave the robbery
22 for a minute. There is no allegations either by
23 actions or words that he was armed.

24 **MS. MCDUFFIE:** Your Honor, there are absolutely
25 allegations that by actions he was armed.

1 **THE COURT:** Did he allege? I mean, your
2 allegations. I mean, did he allege?

3 **MS. MCDUFFIE:** Your Honor, he admitted that he
4 had his hand in his pocket. He said he was not
5 armed, but he did say he had his hand in his pocket.

6 **THE COURT:** Right. Well, the statute says that
7 the defendant alleged either by action or words; in
8 other words, alleged by actions or words that he was
9 armed while using a representation.

10 **MS. MCDUFFIE:** Your Honor, we submit that he
11 absolutely alleged by his actions that he was armed.
12 The manner in which he had his hand in his pocket,
13 his demeanor, his representations that were made with
14 his hand in his pocket were his actions alleging to
15 the victims that he was armed.

16 **THE COURT:** All right. What about burglary?

17 **MS. MCDUFFIE:** Your Honor, the defendant is
18 indicted under the burglary first statute.

19 **THE COURT:** It's a little bit different than the
20 robbery statute.

21 **MS. MCDUFFIE:** Yes, sir, it is. The burglary
22 statute requires, and as he is indicted, for him to
23 display what is or appears to be a knife, pistol,
24 revolver, shotgun.

25 **THE COURT:** So what was displayed?

1 **MS. MCDUFFIE:** We believe that when his hand was
2 in his pocket was a display of a knife, a gun, pistol
3 or other weapon.

4 **THE COURT:** That's pretty much of a stretch.

5 **MS. MCDUFFIE:** No, sir, Your Honor. I do not
6 believe so. Every single witness --

7 **THE COURT:** Well, I do. I mean, the word
8 "display" means -- and we'll go look it up in a
9 dictionary. But I assume it means shown or somehow
10 created a visual representation.

11 **MS. MCDUFFIE:** Further, Your Honor, there is use
12 or a threatened use of a dangerous weapon. We
13 believe that this also falls under this. In the
14 light most favorable to the State, we believe that
15 because of the defendant's actions, his
16 representation of a weapon, and the context of the
17 entire act, the victims had a reasonable belief that
18 the defendant was armed --

19 **THE COURT:** Oh. There ain't no question that
20 the defendant -- I mean the victims had a reasonable
21 belief; or a belief, whether it's reasonable or not.
22 But they certainly -- to the litany, every witness
23 said that. And I believe every witness believed
24 that. The question is, what does the evidence
25 support?

1 **MS. MCDUFFIE:** Your Honor, I believe the
2 evidence supports that because of his actions, his
3 actions were conveying a threat of --

4 **THE COURT:** What if he didn't have his hand in
5 his pocket?

6 **MS. MCDUFFIE:** Had he just been standing there
7 with his hands by his side?

8 **THE COURT:** Well, if he walks in and says, give
9 me your money.

10 **MS. MCDUFFIE:** Well, Your Honor, I believe that
11 then you would fall under Muldrow where the clerk
12 passed a note, which is clearly distinguishable from
13 the present case.

14 **THE COURT:** So you put your hand in your pocket
15 and --

16 **MS. MCDUFFIE:** Your Honor, this isn't casually
17 putting your hand in your pocket. This is an act
18 that was meant to convey a threat to the victims, the
19 threat of a weapon so that they would comply. Not
20 only the four victims, but the two construction
21 workers across the street, all took his actions as
22 are commonly perceived and in the context that he was
23 armed and that because of that they did not try to
24 stop him. They all complied immediately.

25 **THE COURT:** He didn't hit him with a shovel.

1 **MS. MCDUFFIE:** They did not hit him with a
2 shovel because they believed that he was armed.

3 **THE COURT:** All right.

4 **MS. MCDUFFIE:** Further, Your Honor, I'd also
5 rely on State v. Nix that says when a person commits
6 an armed robbery while armed with a deadly weapon
7 does not require display of a deadly weapon. The
8 cite for that is 343 s.e.2d 627.

9 **THE COURT:** Wait. Say that again.

10 **MS. MCDUFFIE:** State v. Nix. Armed robbery
11 which occurs when a person --

12 **THE COURT:** Well, we're talking about burglary.

13 **MS. MCDUFFIE:** Yes, sir, Your Honor. But --

14 **THE COURT:** Okay. The "display" word is used in
15 the burglary statute, not the armed robbery statute.
16 Ms. Singletary.

17 **MS. SINGLETARY:** Just briefly, Your Honor. And
18 I apologize earlier for standing up while the
19 solicitor was actually speaking. But, Your Honor, I
20 would just like to correct something that was said
21 earlier. There -- no witness on that stand, no
22 witness said that my client or alleged that my client
23 had his hand in his pocket and he was pointing.
24 There is -- I mean, there was no witness that said
25 that. Every witness --

1 **THE COURT:** Well, how do you interpret the word
2 "protruding"?

3 **MS. SINGLETARY:** "Protruding", and that's why I
4 tried to --

5 **THE COURT:** Would you not just protrude a
6 representation of something other than your hand?

7 **MS. SINGLETARY:** Well, Your Honor, protruding is
8 actually not -- something is protruding out. I
9 wouldn't take it as being protruding sideways, Your
10 Honor. Like I think it's a logical -- like it's an
11 illogical leap to say that protruding is sticking
12 your finger. Because if that was the case, I believe
13 that these witnesses definitely would have testified
14 to that fact, that it was something pointing out.

15 **THE COURT:** Well, somebody said something about
16 protruding.

17 **MS. SINGLETARY:** Yes. The Darnells said that
18 about protruding. Your Honor, all of the witnesses
19 on the stand, they all said that they assumed. These
20 are assumptions that they're making. And I would beg
21 to differ that putting one's hands in a pocket is a
22 common occurrence that actually does happen, Your
23 Honor. So I don't think that it puts it --

24 **THE COURT:** What if there really had been a gun
25 in there and he didn't display it and he didn't

1 protrude it? Could they have assumed that he had
2 gun?

3 **MS. SINGLETARY:** Well, Your Honor, it's not my
4 call to say whether or not they should assume. But
5 as it relates to directed verdict, the matter of the
6 weight of the evidence isn't what's important. It's
7 the existence or the nonexistence of the evidence.
8 And we would say that that proof does not exist, Your
9 Honor, as it relates to the armed robbery.

10 And just to address the burglary first again,
11 Your Honor, on a motion for a directed verdict, even
12 looking at the evidence in the light most favorable
13 to the State, they did not prove -- they decided, the
14 State decided to indict Mr. Emmith (sic) specifically
15 on these words of the indictment. And Your Honor has
16 to consider the wording of the specific indictment in
17 determining whether or not they meet those elements.

18 **THE COURT:** Well, they cite the statute. And
19 remember that the indictment is a notice
20 instrument --

21 **MS. SINGLETARY:** Mm-hmm (affirmative).

22 **THE COURT:** -- and to put the defendant on
23 notice as to what he's to be tried for. I don't
24 think there's any law that says they have to prove
25 every element of the indictment if they put the

1 statute in there. I mean, it's a statutory
2 allegation. And I'm not disagreeing with you on your
3 interpretation of the evidence. And I think the
4 indictment tracks the indictment. The indictment
5 tracks the statute is what I meant to say. So, all
6 right. Anything further?

7 **MS. SINGLETARY:** No, Your Honor.

8 **THE COURT:** All right. Well, let's take a few
9 minutes and I'll look over your cases.

10 **MS. SINGLETARY:** Thank you, Your Honor.

11 **THE COURT:** We'll stand at ease for about ten
12 minutes.

13 (Whereupon, a break is taken)

14 **THE COURT:** All right. After reviewing the
15 defendant's memorandum and looking at these matters,
16 it appears, in my opinion, the issues of the
17 perception of victims is a pretty significant issue
18 both in the armed robbery statute and in the burglary
19 statute. And I guess that's why they wrote it in
20 there, I mean, why the Legislature put it in there.
21 Because you're always not going to have a videotape
22 of a person with a gun or a deadly weapon. And so
23 they in 1996 added the language that the person
24 present during the commission of a robbery reasonably
25 believed to be a deadly weapon.

1 And although the language is not the same in the
2 burglary statute, it says: "Uses or threatens to use
3 a dangerous instrument." The word "threatens" there
4 seems to connote the same sort of victim belief that
5 the robbery statute says when they say "reasonably
6 believed".

7 I think it's in the minds of the victims. And
8 in this case, in the burglary case, the victims, Mr.
9 and Ms. Darnell, may be more sensitive or more likely
10 to believe that someone is armed than my law clerk or
11 someone of a different temperament and a different
12 perception of what's a threat and what's not a
13 threat.

14 So I think there is evidence from which -- there
15 is some evidence, whether it be real or perceived,
16 from which a jury could find your client guilty on
17 all charges. And I respectfully, therefore, deny
18 both motions as to the armed robbery and to the
19 burglary first degree.

20 Now, this -- I'm not going to tell you how to
21 try your case; but if there were lesser-included
22 offenses, they may not contain the same language as
23 the indictments. But, nevertheless, I need to
24 instruct your client, Ms. Singletary. Mr. Williams,
25 place him under oath, please.

1 **THE CLERK:** Raise your right hand.

2 **MS. SINGLETARY:** Your Honor, remember.

3 **THE COURT:** Or affirm. He can only affirm that
4 the testimony is the truth.

5 **THE CLERK:** Do you affirm the testimony you're
6 about to give will be the truth, the whole truth and
7 nothing but the truth, so help you God?

8 **THE COURT:** No. He's not a Christian. I mean,
9 well, he --

10 **THE CLERK:** So help you? I said affirm.

11 **MR. WILLIAMS:** Yes.

12 **THE COURT:** I want to respect your religion,
13 sir. I want you to understand that.

14 Emmith A. Williams, having affirmed to tell the
15 truth, answers the Court's questions as follows:

16 **THE COURT:** Mr. Williams, I am going to explain
17 certain of your rights to you at this time. If you
18 do not understand anything I say, please let me know.
19 If you want me to explain anything in more detail,
20 please let me know. Do you understand?

21 **MR. WILLIAMS:** So far, yes, sir.

22 **THE COURT:** We have reached the stage of this
23 trial where you may present your defense. You have
24 the right to claim the protections given to you by
25 the Fifth Amendment to the Constitution of the United

WITNESSES

(S) Matthew Ellis - RCSD

ARREST WARRANT NUMBER

1916769

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JUN 20 2007

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-40-04518

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2007

42

THE STATE
vs.

EMITH WILLIAMS

Indictment for

BURGLARY/(AFTER 6/20/85)
1ST DEGREE

SC Code: 16-11-311

CDR Code: 079

Class FEL-EXM(V)

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on June 20, 2007, the Grand Jurors of Richland County present upon their oath:

GT

BURGLARY/(AFTER 6/20/85) - 1ST DEG

EMMITH

That **EMITH WILLIAMS** did in Richland County on or about May 7, 2007, unlawfully enter the dwelling of Mitchell and Martha Darnell at without consent and with the intent to commit a crime therein, To wit: the defendant did use or threaten the use of a dangerous weapon and/or displays what appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm, all in violation of Code Section §16-11-311, Code of Laws of South Carolina (1976, as amended).

AMENDED BY AGREEMENT 12-12-08.

G. Giese

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

Warren B. Giese
Warren B. Giese, SOLICITOR

405

WITNESSES

(S) Matthew Ellis - RCSD

ARREST WARRANT NUMBER

DP07204

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

Date: 6-22-2007

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-40-5451

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2007

42

THE STATE

vs.

EMITH WILLIAMS

Indictment for

ARMED ROBBERY

SC Code: 16-11-330(A)

CDR Code: 0139

Class FEL-A(V)

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

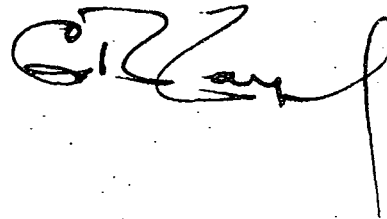
At a Court of General Sessions, convened on June 20, 2007, the Grand Jurors of Richland County present upon their oath:


ARMED ROBBERY

EMMITH

That ~~EMITH~~ WILLIAMS did in Richland County on or about May 7, 2007, commit robbery by feloniously taking from the person or presence of Mitchell and Martha Darnell by means of force or intimidation goods or monies of Mitchell and Martha Darnell, such goods or monies being described as a 1998 Toyota, SC Tag 8685AZ, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330.

Amended by Agreement 12-18-08.



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

Warren B. Giese

WARREN B. GIESE, SOLICITOR

WITNESSES

✓ (S) Inv. Kevin Isenhoward - RCSD

ARREST WARRANT NUMBER

J557315

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: **NOV 14 2008**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-40-4668

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2007

42

**THE STATE
vs.**

EMITH WILLIAMS

Indictment for

AMENDED

ARMED ROBBERY

SC Code: 16-11-330(A)

CDR Code: 0139

Class FEL-A(V)

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

Defendant

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

Defendant

Witness:

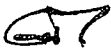
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on June 20, 2007, the Grand Jurors of Richland County present upon their oath:

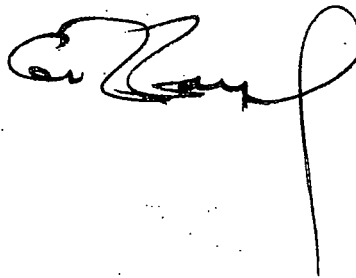
AMENDED
ARMED ROBBERY



EMMITH

That EMMITH WILLIAMS did in Richland County on or about May 7, 2007, commit robbery by feloniously taking from the person or presence of Sabrina Monsanto by means of force or intimidation goods or monies of The Shoe Department, such goods or monies described as US Currency and/or keys, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

AMENDED BY AGREEMENT 12-18-08.



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

W. B. Giese
WARREN B. GIESE, SOLICITOR

COUNTY OF South Carolina
STATE VS.Emith Williams

AKA:

Race: Blk Sex: M Age: ---DOB: ---Address: 187City, State, Zip: Hemlock, NC 27536DL# --- SID# ---

INDICTMENT/CASE#:

2007 - GS - 40 - 4878

AW#:

I916269

Date of Offense:

6/2/07

S.C. Code §:

16-11-311

CDR Code #:

01-01-719☐ CASE RESTORED

SENTENCE SHEET

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Barbara Faye Dayin violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0101719☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC ☒ §17-25-4
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initThe plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] Solicitor Emith Williams Defendant [Signature] Attorney for DefendantWHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☒ County Detention Center,for a determinate term of _____ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of

\$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years

and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-21 1(A)(1) (Conv. Surcharge) \$100 \$ _____

\$14-1-21 1(A)(2) (DUI Surcharge) \$100 \$ _____

\$56-5-29 95 (DUI Assessment) \$12 \$ _____

\$35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-1 14(BUI Breath Test Fee) \$50 \$ _____

\$56-5-29-42(J) (Vehicle Assessment) \$40/ea \$ _____

3% to Co unty (if paid in installments) \$ _____

TOTAL \$ _____

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fu

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

2111216

Sentence Date:

12-18-08

COUNTY OF South Carolina
STATE VS.Emith WilliamsAKA: _____
Race: Black
DOB: _____
Address: 187
City, State, Zip: Wenderson, NC 27536
DL# _____ SID# _____INDICTMENT/CASE#:
2007 - GS - 40 - 5451
AW#: DP07204
Date of Offense: May 7, 2007
S.C. Code §: 16-11-330(A)
CDR Code #: 0 / 1 / 3 / 9
☐ CASE RESTORED
SENTENCE SHEET
☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Armed Robberyin violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0 / 1 / 3 / 9☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC ☐ §17-25-4
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initThe plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Jocanna McDuffie
SolicitorEmith Williams
DefendantReed
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of _____ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of

\$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years

and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient: _____

*Fine: \$ _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____
§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§35.13 (Public Def/Prob) \$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____
§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
§50-21-114(BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ _____
TOTAL \$ _____

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fu

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TF
Requires \$500 be paid to Clerk during probation.Amy McCulloch
Clerk of Court/Deputy ClerkCourt Reporter: J. Williams

PRESIDING JUDGE

Judge Code: 2 / 1 / 2 / 16Sentence Date: 12-18-08

COUNTY OF South Carolina
 STATE VS.
Emith Williams
 AKA:
 Race: Black Sex: Male Age: 29
 DOB:
 Address:
 City, State, Zip Henderson, N - 27530
 DL# SID#

INDICTMENT/CASE#: 2007 - GS - 40 - 4668
 A/W#: J557315
 Date of Offense: May 7, 2007
 S.C. Code §: 16-11-330(A)
 CDR Code #: 0 / 1 / 3 / 9
☐ CASE RESTORED
☐ SENTENCE SHEET
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
 TO: Armed Robbery

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0 / 1 / 3 / 9
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC) ☒ §17-25-4
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant init

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Janna McDuffie Solicitor Emith Williams Defendant Nicolea [Signature] Attorney for Defendant
LIFE WITHOUT PAROLE (LWOP)

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of _____ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of
 \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years
 and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which
 are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the
 State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient: _____

*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fur

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE [Signature]

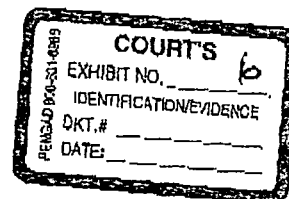
Judge Code: 2 / 1 / 2 / 6

Sentence Date: 12-18-08

Amy McCalloch Clerk of Court/ Deputy Clerk

Court Reporter: S. Williams

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	Indictment Numbers: 2007-GS-40-5451
	)	2007-GS-40-4668, and 4518
THE STATE	)	
	)	
vs.	)	Motion for Directed Verdict
	)	
Emmith Williams,	)	
Defendant	)	



I. ARGUMENT:

A. Directed Verdict Standard

The Defense moves for a directed verdict pursuant to SCRCrimP. Rule 19, in the above-named the case of the State v. Emmith Williams in the above referenced indictments. In deciding whether to grant or deny a directed verdict motion, the trial court is concerned only with the existence or non-existence of evidence. *Corbett v. Weaver*, 4440 (S.C.Ct.App. 10-7-2008). The trial court must view the evidence in the light most favorable to the nonmoving party. *Id.* SCRCrimP. Rule 19, more specifically states that the presiding trial judge shall grant the defense's motion if there is a failure of competent evidence to prove any offense charged in an indictment. Only when the evidence as a whole is susceptible to more than one reasonable inference, should the case should be submitted to the jury. *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 15, 567 S.E.2d 881, 888 (Ct.App. 2002). When the moving party moves before the court for a directed verdict motion the trial judge shall consider only the existence or non-existence of evidence and not its weight. *State v. Ventures*, 300 S.C. 260, 387 S.E.2d 270 (1990).

In support of the Defense's motion for a directed verdict the Defense argues the following specific grounds that: (1) Testimony elicited from the State Witnesses in their

case-in-chief; (2) Statutory interpretation; (3) Governing Case law; and (4) Sufficiency of the Charged Indictments; even when viewed in the light most favorable to the non-moving party is insufficient for the three indictments to the submitted to the jury as a matter of law. When the grounds are viewed in conjunction it becomes apparent that a directed verdict should be granted in this case as a matter of law.

B. Testimony Elicited at Trial from State Witness in Their Case-in-Chief

The State is its prosecution of Emmith Williams for the charges of two counts of armed robbery and one count of burglary in the first degree elicited testimony from several lay witnesses and law enforcement officers. Viewing the testimony elicited and the evidence admitted into evidence in the light most favorable to the State, the Defense argues that the State has not met its burden to have the case submitted to the jury. The Defense will attempt to do its best to accurately summarize the testimony and the evidence that the State introduced in its prosecution of Emmith Williams. The State admitted numerous photographs that were taken by the crime scene investigators in this case. The State also called Mrs. Peggy Fouty, who is employed with the South Carolina Department of Motor Vehicles, whom testified to the fact that the Darnell family owned the Toyota Camry that the it is alleged was taken by Williams. Additionally, the State has admitted two photograph line ups in which Sabrina Monsato, (Monsato); Ricky Johnson, (Johnson); Martha Darnell, (Martha); and Mitchell Darnell (Mitch) has testified to and have indicated that Williams was the alleged suspect in the photographic line up that all four was shown on May 7, 2007 that they picked out. The Defense argues that this evidence goes to the issue of identity, and identity alone is not enough to establish the

essential elements of the charged indictments. It merely goes to the weight of the evidence. The Defense will not in this memorandum attempt to summarize all witness testimony and evidence; the record is clear as to what was elicited by the State in its case-in-chief. The Defense argues the most notable testimony was elicited from Monsato, Johnson, Martha, Mitch, Inv. Ellis and Inv. Insenhoward.

The testimony that was elicited from Martha as it relates to the offenses in which Williams is charged with amounts to the following statements: (1) she was worried about what was in William's pocket; (2) she thought he was armed but could not see inside his pocket; (3) he "might" have a weapon; (4) he appeared to have a weapon; (5) he may have had a weapon; (6) I assumed he had a weapon; (7) I do not know if he was armed; and (8) he had his hand in his right front pocket; and lastly (9) because he was demanding things I thought he had a weapon. Now we turn to the testimony of Monsato. In her testimony she stated the following: (1) I never saw a weapon; (2) he never said he had a weapon; (3) just had an eerie feeling from the first time I saw him outside; (4) I assumed he had a weapon; (4) he had his hand in his right jacket pocket; (5) because he demanded the money I thought he may have had a weapon; (6) thought that because I gave him the wrong keys he would shoot inside the store; (7) he was not forceful; and (8) does not remember at what point he had his hands in his pocket. Johnson testimony was in the form of the following statements: (1) noticed the hands in the right pocket as Williams left; (2) was told by Monsato what happened; (3) was not paying that close of attention; (4) notice Williams when he was leaving the store; (5) never saw a weapon; and (6) assumed he was armed. Mitch Darnell at the time that this memorandum was written had not testified in front of the jury but during pretrial motion his testimony was

parallel to the above mentioned statement made by Martha. We also heard the testimony of two construction workers a Billy Lorimer and Franciso Chacon, who relied on the word of Martha in the form of "I think he may have a weapon" and testified to the fact they saw Williams hands in his pocket. Specifically, Franciso Chacon stated that Williams's hands were in his pocket and the record is clear that at the time that Williams was at the Darnell resident that he was not wearing a jacket.

As it relates to the officer Ellis in his testimony he accounted for the above mentioned statements by the eye witnesses, but obviously had no personal knowledge. He did however, confirm that facts that such statements as a protruding object and a bulge was not told to him at the time of the incident. Investigator Isenhoward had not testified in front of the jury but it is defense opinion that he will conform the above-mentioned statements by Ellis and the lay witnesses.

The record is clear that no one saw a weapon, no claims were made by Williams that he actually had a weapon and there is no evidence that he was armed in anyway [he had his hands in his pocket]. Based on the foregoing conclusion the Defenses argues that the testimony that has been elicited does not raise to the adequate level in which there is a questions for the jury and therefore a directed verdict motion should be granted.

C. Interpretation of Statutes Generally and its Applicability to the to the Governing Case Law in the Present Case

In *State v. Jones* 342 SC 248, (2000), the defendant entered a convenience store and handed the clerk a holdup note, stating "this is a stick up, give me all the money." 3542 SC 248, 251. Testimony presented at the trial level was that the clerk initially thought it was a joke but then noticed that Jones kept his left hand in his jacket pocket.

Id. After noticing this accompanying the verbal threats the clerk determined it was not a joke. *Id.* Therefore, the clerk gave the appellant the money in the register in the amount of \$200, because in the words of the clerk the appellant appeared "deadly serious". *Id.* In this case the clerk testified that he never saw a gun but believed he had one and feared being shot. *Id.*

The South Carolina Supreme Court addressed the issue of whether the testimony proffered at the trial level was sufficient to sustain a conviction for the offense of armed robbery. Relying on S.C. Code Ann. 16-11-311(a), that a defendant may be convicted of armed robbery if jury concludes that robber alleged he was armed under requisite circumstances without having to conclude that he was, in fact, so armed. Armed robbery can be proven by the following:

- 1) that the robber was armed w/ a deadly weapons or
- 2) that the robber alleged that he or she was armed with a deadly weapon, either by action or words, "while using a representation of a deadly weapon or any object which a person present during the commission reasonable believed to be a deadly weapon."

At the trial level the defendant moved on a directed verdict based on the argument that the State did not prove the elements of the armed robbery statute. Also, the Court determined that it was evident from the court record that the directed verdict motion was denied based on the element that Jones, by his deeds, was armed. The indictment charged Jones with committing the robbery while armed with a pistol. The Court held that the evidence at trial was at variance with the indictment, and that failure to grant the appellant's directed verdict motion was in error. Concluding there was a material variance between the charge and the proof, the appellant was entitled to a directed verdict

as a matter of law. This is the exact argument that the Defense makes in this case. There is a very distinct variance between the charges indictment of armed robbery and the testimony that the State has elicited at trial and the tangibles that have been admitted into evidence. The statements that were previously made in this memo referring to the testimony of the key witnesses in the State's case can not prove the elements of the charged indictments. Therefore, as matter of law a directed verdict should be granted in this case.

Additionally, in *State v. Muldrow*, 348 SC 264 (2002), the Court once again addressed the issue of the wording of the armed robbery statute. In Muldrow, the defendant entered the store, and asked the sales clerk for a pack of cigarettes, while handing her a note that read "give me all your cash or I'll shoot you." 348 SC 268 (2002). When clerk asked if he was serious, he said "yes" and told her to hurry up before her shot her. *Id.* No weapon was shown but the clerk believed that the appellant had a weapon and the appellant was convicted at the trial level. *Id.* The Court relied on the language of the armed robbery statute to resolve the issue. 348 SC at 269. In addition to examining the language of the statute, the court looked to the legislative intent encompassing the pertinent statute. The Court came to the conclusion the following: (1) words alone are not sufficient under 1st prong; (2) It was bound to construe penal statute strictly against the State and in favor of the Defendant; (3) Plain meaning of the statute indicates words alone are not sufficient under the 2nd prong to support a conviction of armed robbery; (4) found it was NOT intent of the legislature in adding the 2nd prong, to preclude the need for evidence corroborating the allegation of being armed; and (5) the amendment simply ensures that the use of an object which is in fact

not deadly will support a conviction for armed robbery, under this prong, the State must still show evidence corroborating the allegation of being armed, i.e. the use of physical representation of a deadly weapon, to establish armed robbery. *Id.* at 269- 270.

The issue of interpretation of a statute is a question of law for the court. *University of S. Cal. v. Moran*, 365 S.C. 270, 275, 617 S.E.2d 135, 137 (Ct.App. 2005). The cardinal rule of statutory interpretation is to determine the intent of the legislature. *Bass v. Isochem*, 365 S.C. 454, 459, 617 S.E.2d 369, 377 (Ct.App. 2005). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. *McClanahan v. Richland County Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002). In order for the court to determine the legislature's intent it need look no further than the plain language of the particular statute. *State v. Landis*, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct.App. 2004). When the wording of the statute is considered it must embody the subject matter and the purpose of the statute to ascertain its literal meaning. *Mun. Ass'n of S.C. v. AT & T Commc'ns of S. States, Inc.*, 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004). What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. *Bayle v. S.C. Department of Transportation*, 344 S.C. 115, 122, 542 S.E.2d 736, 740 (Ct.App. 2001). An ambiguity in a statute should be resolved in favor of a just, beneficial, and equitable operation of the law. *State v. Hudson*, 336 S.C. at 247, 519 S.E.2d at 582.

The Court held that the Court of Appeals erred in finding that the elements met of the offense of armed robber. There was no evidence of a deadly weapon or physical

representation of a deadly weapon by the appellant. Ultimately, the Court held that there was no corroborating evidence that there was a weapon in the form of a confession by the appellant stating that he indeed had a weapon. The Court reversed the decision of the lower courts and sentenced the appellant to the lesser included offense of strong armed robbery finding there was insufficient proof to support the greater offense of armed robbery.

The Defense argues that just as in the case of Muldrow the testimony that has been elicited does not raise to the level of a conviction or a matter in which the jury should consider the offenses of armed robbery. There has been no testimony that a weapon brandished. The only testimony that we have is that Williams had his hands in his pocket. There is no evidence that Williams brandished a weapon or represented in anyway that he was armed or ever threaten to use a weapon of any sort or wrote any notes to the alleged victims in the case.

D. Sufficiency of the Burglary in the First Degree Indictment

The language in which is encompassed on indictment 2007-GS-40-04518 states that:

Emmith Williams did in Richland County on or about May 7, 2007, unlawfully enter the dwelling of Mitchell and Martha Darnell at _____, without consent and with intent to commit a crime therein, to wit: the defendant did use or threaten the use of a dangerous weapon and/or displays what appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm, all in violation of Code Section 16-11-311, Codes of Laws of South Carolina (1976, as amended).

The Defenses argues that because the State in its indictment for the offense of Burglary in the first degree included in the wording that Williams did threaten the use which is an element that can not be proven by the testimony that was elicited from its witness the State fails to meet an essential element of the indictment. The State's witnesses stated that they never saw any weapon whether it was a knife or a gun or any other deadly weapon or that at any point is it alleged that Mr. Williams threaten to use a deadly weapon. The State relies on such a deadly weapon as another element of the indictment where the Burglary first degree statute calls for an intent to commit the crime their in. Yet again this is an essential element in the charged indictment in which the State can not met the burden. As previously stated, SCRCrimP. Rule 19 specifically states that the presiding trial judge shall grant the defense's motion if there is a failure of competent evidence to prove any offense charged in an indictment.

In addition the State would argue that the testimony that has been elicited by the State does not squarely fit within the meaning of any of the enumerated prongs or elements of S.C. Code Ann. 16-11-311 (Supp. 1990). The statute follows:

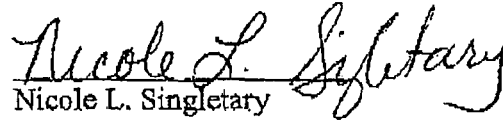
- (A) A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either: (1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime: (a) is armed with a deadly weapon or explosive; or (b) causes physical injury to a person who is not a participant in the crime; or (c) uses or threatens the use of a dangerous instrument; or (d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or (2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or (3) the entering or remaining occurs in the nighttime. *Id.*

Therefore, the Defenses Directed Verdict should be granted as a matter of law as it relates to the indicted charge of Burglary in the First Degree.

E. CONCLUSION

Based on the foregoing argument a directed verdict should be granted as matter of law for all three indictments in the State's prosecution of Emmith Williams.

Respectfully Submitted,



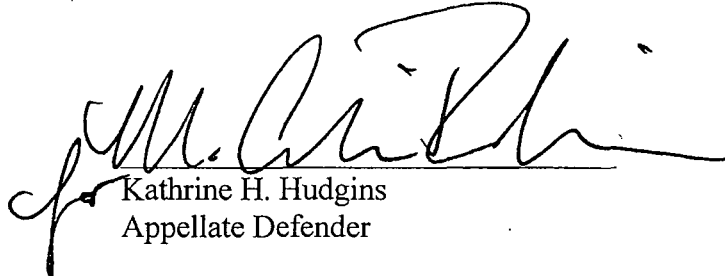
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Columbia, South Carolina
This 17 day of December 2008

CERTIFICATE OF COUNSEL FOR APPELLANT

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

November 17th, 2009



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EMMITH ALLEN WILLIAMS,

APPELLANT

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUES ON APPEAL.....	3
STATEMENT OF THE CASE	4
ARGUMENT	5
CONCLUSION.....	12

TABLE OF AUTHORITIES

Cases

S.C. Code §16-11-311(A)(1)(c)(d)	9
<u>State v. Burdette</u> , 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999)	10
<u>State v. Gaster</u> , 349 S.C. 545, 564 S.E.2d 87 (2002)	10
<u>State v. Muldrow</u> , 348 S.C. 264, 559 S.E.2d 847 (2002)	8
<u>State v. Nix</u> , 288 S.C. 492, 343 S.E.2d 627 (1986)	8
<u>State v. Pinckney</u> , 339 S.C. 346, 529 S.E.2d 526 (2000)	11

Statutes

Code Section §16-11-311, Code of Laws of South Carolina (1976, as amended)	9
S.C. Code §16-11-330	7

STATEMENT OF ISSUES ON APPEAL

1. Did the judge err in refusing to direct a verdict of acquittal on the two armed robbery charges when the State failed to establish that Williams was armed or by action or words used a representation of a deadly weapon or any object which a person present during the commission reasonably believed to be a deadly weapon?
2. Did the judge err in refusing to direct a verdict of acquittal on the burglary first degree charge when the State failed to establish that Williams threatened the use of a deadly weapon or displayed what appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm?

STATEMENT OF THE CASE

In June of 2007, the Richland County Grand Jury indicted Williams for two counts of armed robbery and one count of burglary first degree, indictments #07-GS-40-4518, 4668, 5451. On December 15, 2008, Williams proceeded to jury trial before the Honorable G. Thomas Cooper. The jury returned verdict of guilty. Pursuant to S.C. Code §17-25-45, Judge Cooper sentenced Williams to life without parole. A timely notice of intent to appeal was filed on December 22, 2008. This appeal follows.

ARGUMENT

1. The judge erred in refusing to direct a verdict of acquittal on the two armed robbery charges when the State failed to establish that Williams was armed or by action or words used a representation of a deadly weapon or any object which a person present during the commission of a robbery reasonably believed to be a deadly weapon.

The jury convicted Williams of the taking money and keys from Sabrina Monsanto as she was working at the Shoe Department shoe store. The jury also convicted Williams of taking the car keys and a car belonging to Mitchell and Martha Darnell. Counsel for Williams moved to sever the charges. (R. pp. 1-6). The judge denied the motion finding that the charges all stemmed from a single chain of circumstances. (R. p. 7, lines 22 – p. 8, 9, lines 1-17).

Ms. Monsanto testified, “He came up to the counter and he had his hand in his pocket. It was like bulged out like he had a weapon. And he came up on me and he said, ‘Give me all the money’ very softly.” (R. p. 18, lines 6-9). Upon cross examination Ms. Monsanto admitted that she never saw a weapon and admitted that Williams never said he had a weapon. (R. p. 40, lines 19 – p. 41, lines 1-5). Upon redirect examination Ms. Monsanto testified that she thought he had a gun, “Because he had his hand in his pocket.” (R. p. 46, lines 8-15).

Rickey Johnson, another employee of the Shoe Department who was present at the time of the incident testified, “He had his hands in his pocket. So that’s one of the reasons why I didn’t go forth to try to do anything because he had his hands in his pocket.” (R. p. 53, lines 2-4). When questioned on cross examination Mr. Johnson testified, “He had his hands in his pockets. So whether he had a weapon or not, I was not going toward him. I wasn’t going to do anything.” (R. p. 59, lines 21-23). Upon re-direct examination Mr.

Johnson was asked how Williams acted like he had a weapon and he testified, "With his hand in his pocket, I suspected that he had something because when he was walking out the store he still had his hands in his pocket. So that's really the reason why I didn't do anything. When he was walking out he was I guess trying to rush to get out." (R. p. 62, lines 8-17). Mr. Johnson admitted that he never saw a weapon. (R. p. 59, lines 13-16).

The other armed robbery charge involved Mitchell and Martha Darnell. Ms. Darnell testified that when Williams approached her outside of her house and mumbled something. (R. p. 71, lines 4-10). Ms. Darnell testified, "He had his hand in his pocket like he had a weapon." (R. p. 72, lines 1-7). Ms. Darnell admitted that she never saw a gun or any other weapons. (R. p. 88, lines 1-8).

William Lorimar, who was working across the street from the Darnells testified, "The homeowner, I can't remember her name across the street, she said, 'He's got a gun or a knife.'" (R. p. 103, lines 19-20). When asked if he saw a weapon, Mr. Lorimar testified, "Just his hand in his pocket." (R. p. 103, lines 23-24). Francisco Chacon, another worker who was across the street at the time of the incident also admitted that he never saw a weapon but instead simply saw that Williams had his hands in his pocket. (R. p. 108, lines 7-23).

Mr. Darnell testified that once inside the house, "He -- as he approached me and got about arm's length from me, he reached out his left hand and said, 'Give me your car keys now.'" (R. p. 218, lines 4-6). Mr. Darnell testified, "But he had his hand in his right pocket, and something was protruding from that right pocket or pushing out on the right pocket I guess." (R. p. 218, lines 11-14). Upon cross examination Mr. Darnell admitted that he

never saw a weapon and Williams never threatened to shoot him. (R. p. 233, lines 14 – p. 234, lines 1-13).

At the close of the State's case Williams moved for a directed verdict as to the armed robbery charges based on the fact that the State failed to establish that Williams was armed and the State failed to establish that by action or words he used a representation of a deadly weapon or any object which a person present during the commission of a robbery reasonably believed to be a deadly weapon. (R. pp. 378 – 400). The judge denied the motion stating that the victim's perception is significant and stating, "And so they in 1996 added the language that the person present during the commission of a robbery reasonably believed to be a deadly weapon." (R. p. 400, lines 22-25). The judge erred.

The armed robbery statute was amended in 1996 to require that the defendant "while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon . . ." S.C. Code §16-11-330. "The primary significance of the amendment is to explicitly provide that one who purports to be armed with a deadly weapon, and who is armed with something reasonably perceived to be a deadly weapon, is guilty of armed robbery even if not actually armed with a deadly weapon." McAninch, Fairey, and Coggiola, *THE CRIMINAL LAW OF SOUTH CAROLINA* (5th Ed. 2007) p. 290. Importantly, one has to purport to be armed with something reasonably perceived to be a deadly weapon. The act of having one's hand in his pocket is not, without more, purporting to be armed with something reasonably perceived to be a deadly weapon. The statute requires the defendant to allege being armed. There is nothing in the record to establish that Williams ever alleged that he was armed. The

victim's unsubstantiated belief that Williams was armed because he had his hands in his pocket is not sufficient for purposes of the armed robbery statute.

During the directed verdict motion, the State argued that State v. Nix, 288 S.C. 492, 343 S.E.2d 627 (1986) stood for the proposition that the armed robbery statute does not require display of a deadly weapon. (R. p. 397, lines 4-8). While the deadly weapon need not be displayed, as required for the burglary statute discussed in issue two, the 1996 amendment clearly requires the defendant to allege being armed with something reasonably perceived to be a deadly weapon. In Nix the defendant alleged to be armed by pointing something under his shirt, satisfying the "armed" requirement of the armed robbery statute. Williams never pointed anything alleging that he was armed.

In State v. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002), the Court found that words unaccompanied by any corroborating action are not sufficient to establish the armed element for armed robbery. In Muldrow the defendant handed the store clerk a note that said, "Give me all your cash or I'll shoot you." The court reversed Muldrow's conviction for armed robbery and remanded for sentencing on the lesser included charge of strong armed robbery. There is even less evidence in this case than in Muldrow because the record reflects that Williams never threatened the victims with words either written or verbal **and** there was no corroborating action to indicate that Williams was armed. As in Muldrow, Williams' armed robbery convictions should be reversed and the case remanded for sentencing on strong armed robbery.

2. The judge erred in refusing to direct a verdict of acquittal on the burglary first degree charge when the State failed to establish that Williams threatened the use of a deadly weapon or displayed what appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm.

The jury convicted Williams of burglary first degree for entering the Darnell's home and taking their car keys. The indictment alleges "That Emmith Williams did in Richland County on or about May 7, 2007, unlawfully enter the dwelling of Mitchell and Martha Darnell at [address deleted] without consent and with the intent to commit a crime therein, To wit: the defendant did use or threaten the use of a dangerous weapon and or displays what appears to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm, all in violation of Code Section §16-11-311, Code of Laws of South Carolina (1976, as amended)." (R. p. 404). The State failed to establish that Williams used or threatened to use a dangerous weapon during the course of the burglary and the State failed to establish that Williams displayed what appeared to be a dangerous weapon.

Pursuant to the statute, the two elements of aggravation alleged in Williams' indictment for burglary first degree are that he used or threatened the use of a dangerous weapon or that he displayed what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm. S.C. Code §16-11-311(A)(1)(c)(d). Mr. Darnell admitted that Williams never threatened to shoot him. (R. p. 233, lines 14 – p. 243, lines 1-13). Ms. Darnell did not testify that Williams threatened to shoot her. As discussed in issue one, simply keeping your hand in your pocket is not threatening the use of a dangerous weapon.

Williams never displayed what appeared to be a dangerous weapon. During the directed verdict motion the State argued, “We believe that when his hand was in his pocket was a display of a knife, a gun, pistol or other weapon.” (R. p. 395, lines 1-3). The judge noted, “That’s pretty much of a stretch.” (R. p. 395, line 4). In denying the motion for a directed verdict as to the burglary charge, the judge likened the “uses or threatens to use” a dangerous weapon to the “reasonably believed” language contained in the armed robbery statute. (R. p. 401, lines 1-13). The judge stated, “I think it’s in the minds of the victims.” (R. p. 401, line 7). The judge erred. The threat must be reasonable and not just perceived from what may be an understandably anxious strong armed robbery victim. The record clearly establishes that Williams’ hand remained in his pocket during the entire course of the incident. He simply entered their home and demanded the car keys. Williams never threatened the use of a deadly weapon and he never displayed what appeared to be a dangerous weapon. The judge erred in refusing to direct a verdict of acquittal on the burglary first degree charge. The charge should have been submitted to the jury as burglary second degree.

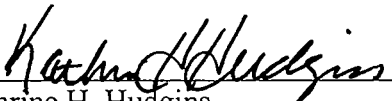
On appeal from the trial court’s denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court’s ruling. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002). In ruling on a directed verdict motion, the trial court is concerned with the existence of evidence, not its weight. Id. On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. State v. Burdette, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999). If there is any direct or circumstantial reasonably tending to prove the guilt of the accused, we must find the case was properly submitted to the jury. State v. Pinckney, 339

S.C. 346, 529 S.E.2d 526 (2000). Viewing the evidence in the light most favorable to the State, there is no direct or circumstantial evidence to establish that Williams threatened the use of a deadly weapon or that he displayed a dangerous weapon or what appeared to be a dangerous weapon during the course of the burglary. The uncorroborated suspicion of the victim is not sufficient to satisfy the element of the burglary first degree statute.

CONCLUSION

Based on the above arguments, Williams' conviction for armed robbery and burglary first degree should be reversed and the case remanded for sentencing on the lesser included charges of strong armed robbery and burglary second degree.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

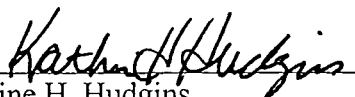
ATTORNEY FOR APPELLANT.

This 6th day of January, 2010.

CERTIFICATE OF COUNSEL

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

January 6, 2010



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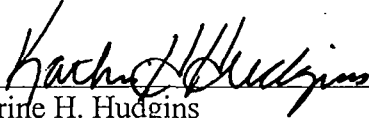
V.

EMMITH ALLEN WILLIAMS,

APPELLANT

CERTIFICATE OF SERVICE

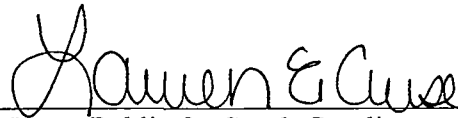
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon N. Mark Rapoport, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 6th day of January, 2010.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 6th day of January, 2010.



Dawn E. Curren (L.S.)

Notary Public for South Carolina

My Commission Expires: August 23, 2014



SCCID

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January 6, 2010

N. Mark Rapoport, Esquire
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Re: The State v. Emmith Allen Williams

Dear Mark:

Enclosed are two copies of the Final Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Kathrine H. Hudgins
Appellate Defender

KHH:lec

Enclosure



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January 6, 2010

Mr. Emmith Allen Williams, # 332423
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina 29669

Re: Your appeal

Dear Mr. Williams:

Enclosed is a copy of the Final Brief of Appellant in your case, which I have filed with the South Carolina Court of Appeals.

Please contact me if you have any questions.

Sincerely,


Kathrine H. Hudgins
Appellate Defender

KHH/khh

Enclosure

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
G. Thomas Cooper, Circuit Court Judge

THE STATE

RESPONDENT

V

EMMITT ALLEN WILLIAMS

APPELLANT

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	3
ARGUMENT	
I. The trial judge properly denied the directed verdict for the charges of armed robbery	8
II. The trial judge properly denied the directed verdict for the charge of first degree burglary	12
CONCLUSION	14

TABLE OF AUTHORITIES

Cases:

<u>State v. Avery</u> , 333 S.C. 284, 509 S.E.2d 476 (1998)	12
<u>State v. Elmore</u> , 368 S.C. 230, 628 S.E.2d 271 (Ct. App. 2006)	12
<u>State v. Jones</u> , 342 S.C. 248, 536 S.E.2d 396 (Ct. App. 2000)	9, 11
<u>State v. McHoney</u> , 344 S.C. 85, 544 S.E.2d 30 (2001)	8, 12
<u>State v. Muldrow</u> , 348 S.C. 264, 559 S.E.2d 847 (2002)	9
<u>State v. Nix</u> , 288 S.C. 492, 343 S.E.2d 627 (Ct. App. 1986)	9, 11
<u>State v. Williams</u> , 303 S.C. 274, 400 S.E.2d 131 (1991)	12

Other Authorities:

S.C. Code Ann. §16-11-311(A) (2003)	12
S.C. Code Ann. §16-11-330(A) (2003)	8

STATEMENT OF ISSUES ON APPEAL

I.

Did the trial judge properly deny the directed verdict for the charges of armed robbery?

II.

Did the trial judge properly deny the directed verdict for the charge of first degree burglary?

STATEMENT OF THE CASE

Respondent concurs with the procedural Statement of the Case of Appellant Emmith

Allen Williams.

STATEMENT OF FACTS

Sabrina Monsanto worked at a Shoe Dept. store in a strip mall near the Wal-Mart on Two Notch Road. On May 7, 2007, she arrived around ten o'clock in the morning to open the store with Rickey Johnson. (R. 11-12). Monsanto testified she noticed Williams walking in front of the nearby Goody's store. There were no other customers outside at the time. (R. 13-14).

When Monsanto opened the door and went inside, Williams came in with her. Johnson was moving display tables outside the store. (R. 14-16). Monsanto said Williams walked to the back of the store and out of her eyesight while she was at the front counter. (R. 16-17, 35-36). Williams returned to the front desk and asked Monsanto a question. (R. 17). He then returned toward the back of the store. Because she had an "eerie feeling" Williams planned to rob her, Monsanto said she removed her car key from the key ring and threw it under the counter. (R. 17, 35).

Williams approached Monsanto at the counter again. Monsanto testified:

[h]e came up to the counter and he had his hand in his [jacket] pocket. It was like bulged out like he had a weapon. And he came up on me and said, "Give me all the money", very softly. So I knew that [Johnson] didn't hear him. So I said it loudly. I said, "What? Give you all the money?" He said, "Yes."

(R. 18). Monsanto said she was scared her baby would get hurt - - she was five months pregnant at the time. (R. 12, 18-19). She opened the cash register and handed over the money. (R. 19). Monsanto testified that she took the money out too slow, and Williams then took his left hand and grabbed the rest of the money. (R. 19, 44-45).

After Williams got the money, he demanded Monsanto's car keys. She gave him the

store keys instead. Williams again demanded car keys, but she gave him the only key on her key ring. (R. 19-20). Williams "brushed off" past Johnson and went out the door. (R. 20). They called 911 and Johnson locked the door. They then fled to the middle of the store, because "we didn't want to take the chance of him shooting back in the store." (R. 20-21, 45). Monsanto admitted she did not see a weapon and that Williams never said he had a weapon. She explained, "he didn't have to." Monsanto testified she thought Williams had a weapon, because of the "big" bulge in his pocket. (R. 2638-40, 46-48).

Rickey Johnson testified he noticed Williams when he approached the store, because he was the only person there at the time. (R. 49-50). Johnson said he took out the display tables while Monsanto was inside the store with Williams. (R. 50-51, 57-59). When Johnson heard Monsanto yell, "What? Give you the money," he turned around and saw Williams at the counter. (R. 51-52, 60). Johnson said he just stood there. (R. 52). Williams then passed him and went out the door. Johnson locked the door and they went to the middle of the store. (R. 52, 56, 60).

Johnson testified Williams kept his hand "tucked in his pocket like there was something in there." (R. 53, 59). Johnson believed Williams had a weapon in his pocket, although he did not see a weapon and Williams never said he had one. (R. 59-63). Johnson explained, "that's one of the reasons why I didn't go forth to try to do anything . . ." He said Williams actions made him think: "Stay where I was and don't do anything because he might have a weapon and if I tried anything that could have been my life." (R. 53).

Martha Darnell lived with her husband and teenaged daughter on Deer Hound Trail. Later that morning, she went outside to take the trash to the front curb. Her daughter was

asleep and her husband sat at the dining room table. When she returned to her house, she shook off her doormat and then saw Williams standing there. Mrs. Darnell recalled, "his eyes were real glazed over and he was very frightening looking." (R. 67-71). She asked him, "What are you doing here?" When Williams approached her, he mumbled something she could not understand. Mrs. Darnell tried to get inside and lock the storm door, and she called out for her husband. Williams then pushed her aside and went inside the house. He demanded the car keys from her husband. (R. 71-74, 89-92). Mrs. Darnell's husband handed over the car keys. (R. 74). He told her to call for help. Mrs. Darnell said she yelled through the open door at two men across the street. (R. 74-75). Williams asked, "Which car?" Mrs. Darnell's husband told him it was the Camry, and he left the house. Williams then sped off in the car. (R. 75, 92).

Mrs. Darnell testified Williams kept his hand in his pocket "like he had a weapon." She saw "an object protruding" from his pocket, and "I didn't care if it was a gun, a knife . . . I was frightened." (R. 72-72, 84, 86-87, 93-96). She explained: ". . . he was standing there like he had a weapon and he was facing my husband and demanding the keys to our car. And, you know, I didn't know what was going to happen at that point." (R. 75-76). Mrs. Darnell testified, "there was no doubt in my mind that he was armed, the way he was acting." (R. 77). Mrs. Darnell testified that one of the men from across the street approached Williams when he got into the Camry. Mrs. Darnell warned him to stop, because she thought he was armed. (R. 76-77).

William Lorimar testified he was working across the street from the Darnells with Francisco Chacon. Mrs. Darnell ran out of her house and said, "Somebody call the police,"

"He's stealing my car." He saw someone get into a car and drive off. (R. 97-99). Mrs. Darnell yelled, "he's got a gun or a knife," although Lorimar only saw "just his hand in his pocket." (R. 103).

Chacon also heard Mrs. Darnell's call for help. He then saw a man run to the car. He approached him with a shovel in his hand and told him not to take the car. (R. 104-06). Chacon testified the individual opened the car door, and he then saw a hand in his pocket "and he threatened me like this, have a weapon in there or something like that." (R. 106). Chacon thought the individual was armed based on his actions, so he backed off. (R. 107). The individual then drove off. (R. 107).

Mitchell Darnell testified he heard his wife call for help and he was halfway down the hallway when "[Williams] approached me and got about arms' length from me, reached out his left hand and said, 'Give me your car keys now.'" (R. 216-18). He said Williams' eyes were "glazed" and he "appeared aggressive." (R. 219). Mr. Darnell thought "maybe I could tackle him or something . . . But he had his right hand in his pocket, and something was protruding from that right pocket or pushing out on the right pocket I guess. " (R. 218, 232-233). Mr. Darnell explained that he was quite familiar with guns, and thought Williams might have a snub-nosed gun in his pocket. (R. 218-19). He admitted Williams never showed him a weapon and he did not verbally threaten him with a weapon. (R. 222, 233).

Mr. Darnell was concerned for the safety of his family, so he handed over the whole set of keys. (R. 219). On his way out the front door, Williams asked Mr. Darnell, "Which car?" He told Williams to take the Camry. (R. 219-20). Mr. Darnell told his wife to call 911. (R. 221).

Williams was arrested in Raleigh the next day. (R. 340). Williams then provided a statement to the police and admitted he robbed the Shoe Dept. store and stole the Darnell's Camry shortly thereafter. Williams claimed, however, "I may have had my hand in my pocket, but I didn't have any weapons" when he committed the crimes. (R. 349-52).

ARGUMENT

I.

The trial judge properly denied the directed verdict for the charges of armed robbery.

(Issue 1).

On appeal, Williams argues the trial judge erred by refusing to direct a verdict on the two armed robbery charges, because the State failed to establish he was armed, or by action or words used a representation of a deadly weapon or any object which the victims reasonably believed to be a deadly weapon. Williams also contends there was no testimony he made a verbal statement that he had a weapon or that he would hurt the victims with a weapon. Williams argues that his armed robbery convictions should be reversed and the case remanded for sentencing on strong-arm robbery.

A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. McHoney, 344 S.C. 85, 544 S.E.2d 30, 36 (2001). In reviewing a motion for a directed verdict, the trial judge is concerned with the existence of the evidence, not with its weight. Id. On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. Id. If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury. Id.

Pursuant to S.C. Code Ann. §16-11-330(A) (2003), the State proves armed robbery by establishing the commission of a robbery, and either one of two additional elements is shown: (1) that the robber was armed with a deadly weapon, or (2) that the robber alleged

that he or she was armed with a deadly weapon, either by action or words, “while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon.” State v. Jones, 342 S.C. 248, 536 S.E.2d 396, 398 (Ct. App. 2000). Therefore, a defendant may be convicted of armed robbery if the jury can conclude the robber alleged that he was armed under the requisite circumstances without having to conclude that he was, in fact, so armed. Id.; State v. Nix, 288 S.C. 492, 343 S.E.2d 627 (Ct. App. 1986).

Williams’ reliance on State v. Muldrow, 348 S.C. 264, 559 S.E.2d 847 (2002) is misplaced. In Muldrow, the defendant entered the store, asked the clerk for a pack of cigarettes, then handed her a note that read: “Give me all your cash or I’ll shoot you.” When the clerk asked if he was serious, the defendant responded “yes” and told her to hurry up before he shot her. Id., 559 S.E.2d at 848-49. On appeal, the defendant argued his motion for a directed verdict should have been granted, because there was no evidence he was armed with a deadly weapon or that he used a representation of a deadly weapon. This Court construed the phrase “representation of a deadly weapon” included “words that convey to a victim the thought that a robber possesses a deadly weapon.” Accordingly, it concluded the note saying “I’ll shoot you” was sufficient evidence to submit the charge of armed robbery to the jury. Id., 559 S.E.2d at 849. The Supreme Court disagreed, and it emphasized the State must still show evidence corroborating the allegation of being armed, *i.e.*, the use of a physical representation of a deadly weapon rather than simply an allegation of being armed, to establish armed robbery. Id., 559 S.E.2d at 849-50.

Here, to the contrary, Williams kept his right hand concealed in his pocket throughout

the two incidents. Monsanto said Williams' pocket was "bulged out" like he had a weapon when he demanded money. Williams grabbed the money from the cash register only with his left hand. Johnson did not confront Williams inside the store, because Williams' actions made him think there was a weapon in his pocket and Johnson feared being killed. Williams then confronted Mrs. Darnell inside her home and demanded the keys to their car. She saw "an object protruding" from Williams' pocket and thought he had a gun. She was very frightened. Mr. Darnell said Williams "appeared aggressive" when he was confronted inside his home. He was afraid to resist Williams and he turned over the keys to his car, because he observed what he thought was a small gun protruding from Williams' pocket and was concerned about the safety of his family. Francisco Chacon walked across the street to confront Williams with a shovel in his hand. When Williams opened the car door and showed his hand in his pocket, he immediately stopped in his tracks. Thus, the testimony showing Williams demanded money and the car, while holding his hand in his pocket to create the appearance that he held a weapon, was sufficient to support the two armed robbery charges. The victims' immediate reactions were to comply with Williams' demands without resistance, a natural reaction of persons who believe they are being confronted by someone with a weapon. The fact the victims neither saw an actual weapon, that Williams never said he had a weapon, nor did any of the victims seek to prove Williams had a weapon by confronting him, fails to negate evidence to support the submission of armed robbery to the jury. The manner in which Williams had his hand in his pocket, his demeanor at the confrontation, and the representations that were made with his hand in his pocket were actions upon which the victims reasonably believed that he possessed a weapon. The trial

judge properly denied the directed verdict motions.

In Nix, evidence of one assailant's statement to another during one robbery to "bring the gun" was sufficient to raise a jury question as to whether a second robbery by the same two defendants a short time later was an armed robbery, when coupled with both robbery victims' testimony that they saw something under the robber's shirt, even though the second robbery victim admitted she did not see a gun. Nix did not reduce the State's burden of proving beyond a reasonable doubt that the robber was armed with a deadly weapon as set forth in §16-11-330. It merely held the evidence was sufficient to raise a jury issue on this question, notwithstanding the fact that no gun was displayed during the robbery. Nix, 343 S.E.2d at 630.

In Jones, the defendant was indicted for armed robbery, where the indictment alleged that "on or about January 26, 1997, while armed with a deadly weapon, to wit: a pistol [the defendant did] feloniously take from the person . . . such goods or monies . . . with the intent to deprive the owner permanently of such property." Jones, 536 S.E.2d at 397. This Court noted that the indictment charged Jones with committing the robbery while possessing a pistol. However, the evidence at trial was that Jones handed the store clerk a note saying "this is a stickup, give me all the money." The clerk never saw a gun but believed Jones had a gun. Consequently, although Jones' actions constituted evidence of armed robbery, there was a material variance between the charge and the proof, and this Court held he was entitled to a directed verdict on that basis. Id., 536 S.E.2d at 398.

Nix and Jones support the trial judge's decision to deny the directed verdict motions based upon the facts presented at trial.

II.

The trial judge properly denied the directed verdict for the charge of first degree burglary. (Issue 2).

Williams argues the trial judge erred by denying his motion for a directed verdict for first degree burglary, because the testimony failed to establish he threatened the use of a deadly weapon or displayed what appeared to be a deadly weapon.

When analyzing the denial of a directed verdict motion, the appellate court must view the evidence in the light most favorable to the State. State v. McHoney, 344 S.C. 85, 544 S.E.2d 30, 36 (2001). “The trial court, in a directed verdict motion, is concerned with the existence or nonexistence of evidence, not with its weight.” State v. Elmore, 368 S.C. 230, 628 S.E.2d 271, 273 (Ct. App. 2006). The trial judge must be affirmed if the record contained any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly and logically deduced. State v. Avery, 333 S.C. 284, 509 S.E.2d 476, 482 (1998); State v. Williams, 303 S.C. 274, 400 S.E.2d 131, 132 (1991).

S.C. Code Ann. §16-11-311(A) (2003) provides, in pertinent part:

A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime therein, and . . .

(1) When, in effecting entry or while in the dwelling or in the immediate flight therefrom, he or another participant in the crime:

(c) uses or threatens the use of a dangerous instrument . . .

(d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm . . .

As previously discussed, the testimony established that Williams kept his right hand in his pocket during the burglary. Mrs. Darnell thought Williams was armed and she saw “an object protruding” from Williams’ pocket when he confronted her husband inside their home. Mr. Darnell was afraid to resist Williams. He turned over the keys to his car as demanded by Williams, because he observed what he thought was a small gun protruding from Williams’ pocket and Mr. Darnell was concerned about the safety of his family. Clearly, the Darnells observed what they believed to be a weapon in Williams’ pocket which, together with his hand in his pocket and his demeanor at the confrontation, the effect on them was that he had a weapon and threatened to use it. When construed most strongly in favor of the State, the evidence provided sufficient evidence from which a rational trier of fact could have found the essential elements of the first degree burglary beyond a reasonable doubt. The trial judge did not err in failing to grant a directed verdict.

CONCLUSION

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

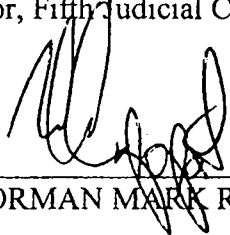
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ATTORNEYS FOR RESPONDENT

November 24, 2009

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Richland County
G. Thomas Cooper, Circuit Court Judge

THE STATE,

Respondent,

vs.

EMMITH ALLEN WILLIAMS,

Appellant.

CERTIFICATE OF COUNSEL

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

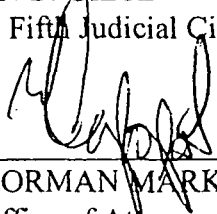
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November 24, 2009

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Richland County
G. Thomas Cooper, Circuit Court Judge

THE STATE,

Respondent,

vs.

EMMITH ALLEN WILLIAMS,

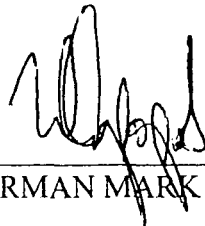
Appellant.

PROOF OF SERVICE

I certify that I have served the within Final Brief of Respondent on Appellant by depositing three copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Kathrine H. Hudgins, Appellate Defender, S.C. Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

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

This 24th day of November, 2009.



NORMAN MARK RAPOPORT

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