

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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THE STATE,

RESPONDENT,

S.C. Supreme Court

V.

NORMAN LEE MITCHELL,

PETITIONER

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

Opinion No. 2012-UP-010

APPENDIX

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INDEX

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OPINION FILED JANUARY 25, 2012, Op. No.2012-UP-010 1

PETITION FOR REHEARING4

ORDER DENYING PETITION FOR REHEARING.....9

1

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.

Norman Lee Mitchell,

Appellant.

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

Unpublished Opinion No. 2012-UP-010
Submitted November 1, 2011 – Filed January 25, 2012

AFFIRMED

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

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, Assistant

Attorney General Deborah R. J. Shupe, and Solicitor
Daniel E. Johnson, all of Columbia, for Respondent.

PER CURIAM: Norman Lee Mitchell appeals his conviction of carjacking.¹ He argues the circuit court erred in admitting the victim's single person show-up identification and subsequent in-court identification. We affirm.²

"The admission or exclusion of evidence is left to the sound discretion of the [circuit] court, and the court's decision will not be reversed absent an abuse of discretion." State v. Liverman, 386 S.C. 223, 233, 687 S.E.2d 70, 75 (Ct. App. 2009). "An abuse of discretion occurs when the decision of the [circuit] court is based upon an error of law or upon factual findings that are without evidentiary support." Id. "[W]hether an eyewitness identification is sufficiently reliable is a mixed question of law and fact." State v. Moore, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000). "In reviewing mixed questions of law and fact, where the evidence supports but one reasonable inference, the question becomes a matter of law for the court." Id.

When assessing the admissibility of an eyewitness identification "the primary evil to be avoided is 'a very substantial likelihood of irreparable misidentification.'" Neil v. Biggers, 409 U.S. 188, 198 (1972) (quoting Simmons v. United States, 390 U.S. 377, 384 (1968)). An unduly or unnecessarily suggestive confrontation procedure may deprive a defendant of due process of law. State v. Turner, 373 S.C. 121, 127, 644 S.E.2d 693, 696 (2007). However, "the admission of evidence of [an unnecessarily suggestive procedure] without more does not violate due process." Biggers, 409 U.S. at 198.

Single person show-ups are "particularly disfavored in the law" and are suggestive. Moore, 343 S.C. at 287, 540 S.E.2d at 448. If a confrontation procedure is deemed unduly suggestive, a court must determine whether

¹ Although Mitchell was also convicted of failure to stop for a blue light, he does not appeal this conviction.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

"under [the totality of] the circumstances the identification was reliable notwithstanding any suggestive procedure." Id. at 287, S.E.2d at 447-48 (citation and internal quotation marks omitted). Factors to consider in "evaluating the likelihood of a misidentification" include the following:

[T]he opportunity of the witness to view the criminal at the time of the crime, the witness'[s] degree of attention, the accuracy of the witness'[s] prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation.

Biggers, 409 U.S. at 199-200.

Here, the circuit court did not err in admitting the victim's initial show-up identification and subsequent in-court identification. Although the single-person show-up procedure used in the instant case has been disfavored as suggestive, the circuit court properly found the victim's identification was sufficiently reliable pursuant to the Biggers factors. The victim was able to view Mitchell's face very closely during the carjacking, which took place outside during the day. In addition, the victim demonstrated a high degree of certainty that Mitchell was perpetrator, and both witnesses to her initial identification of Mitchell testified she demonstrated no hesitation or doubt. Finally, she identified Mitchell within minutes after the crime. Accordingly, Mitchell's carjacking conviction is affirmed.

AFFIRMED.

FEW, C.J., THOMAS and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

NORMAN LEE MITCHELL,

APPELLANT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

Opinion No. 2012-UP-010

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for Norman Lee Mitchell petitions the Court for rehearing. Counsel respectfully submits that the Court overlooked the fact that the identification procedure used was unduly suggestive in two distinct ways creating a substantial likelihood of irreparable misidentification in violation of due process. First, the identification was a show-up identification. Shortly after the carjacking incident, the victim, Nola Gilmore, was taken by the police to the Gonzalez Gardens neighborhood to identify the man police had arrested after he was seen driving her car. (R. p. 48, lines 6-18). When asked if she knew why the police were taking her to Gonzalez Gardens, Ms. Gilmore testified, "Yes, I was going there to identify the gentleman because they told me he was - - they had him and they - - that lady taking [sic] taking my son and I

down there.” (R. p. 48, lines 9-11). Norman Mitchell was the only black man on the scene who was handcuffed. (R. p. 48, lines 22 - . p. 49, lines 1-8). Unsurprisingly, Ms. Gilmore identified Mitchell as the carjacker.

Second, just prior to the show-up identification, Ms. Gilmore heard over the police radio that a car matching the description of her car, a blue Intrepid, had been involved in a police chase and the individual driving the car had been arrested. (R. p. 37, lines 5-22). Ms. Gilmore was asked, “And when you heard that they recently found that blue Intrepid that matched your car, you were pretty sure that was him?” Ms. Gilmore replied, “Yeah.” (R. p. 38, lines 1-4). At the time Ms. Gilmore was asked to identify the carjacker, Mitchell was the only handcuffed black male to be identified and Ms. Gilmore knew that Mitchell had been arrested driving a blue Intrepid car that was later identified as belonging to Ms. Gilmore. These combined circumstances create a substantial likelihood of irreparable misidentification.

In affirming the trial court’s decision to admit the identification testimony, this Court wrote:

Here, the circuit court did not err in admitting the victim's initial show-up identification and subsequent in-court identification. Although the single-person show-up procedure used in the instant case has been disfavored as suggestive, the circuit court properly found the victim's identification was sufficiently reliable pursuant to the Biggers factors. The victim was able to view Mitchell's face very closely during the carjacking, which took place outside during the day. In addition, the victim demonstrated a high degree of certainty that Mitchell was perpetrator, and both witnesses to her initial identification of Mitchell testified she demonstrated no hesitation or doubt. Finally, she identified Mitchell within minutes after the crime. Accordingly, Mitchell's carjacking conviction is affirmed.

Respectfully, counsel submits the Court erred in failing to address the fact that at the time of the show-up identification, the victim knew that Mitchell had been arrested driving a car matching her car. The Court’s reliance on the fact that the victim demonstrated a high degree of certainty that Mitchell was the perpetrator is misplaced because the certainty was based in part

on the fact that she knew Mitchell had been caught driving her car, the police advised her that “they had him” and he was the only black male present in handcuffs .

Mitchell testified at trial that once he learned that his friend was not going to be able to pick him up from the bus station at the corner of Gervais and Harden streets, he went outside to look for a ride. He testified that at first a guy offered him a ride and then offered to “rent” the car to Mitchell for an extra ten dollars. (R. p. 156, lines 16 – p. 157, 158, lines 1-23). Mitchell testified that he dropped the guy off at a house on Cherokee Street and agreed to bring the car back later. (R. p. 159, lines 9 – p. 160, lines 1-19). Mitchell testified that almost as soon as he turned onto the street leaving Cherokee Street, a police officer initiated a traffic stop with blue lights and siren. (R. p. 161, lines 1-14). Mitchell admitted to the failure to stop for a blue light charge and testified that he did not stop because did not have a license. (R. p. 161, lines 25 – p. 162, lines 1-23). Mitchell denied the carjacking. (R. p. 150, lines 24-25).

To determine the admissibility of an out-of-court identification, the trial court must first consider whether the identification process was unduly suggestive; if so, the court "must decide whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed." State v. Roach, 364 S.C. 422, 429-430, 613 S.E.2d 791, 795 (2005), citing Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375 (1972); State v. Moore, 343 S.C. 282, 540 S.E.2d 445 (2000); State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257 (Ct. App. 2000); State v. Blassingame, 338 S.C. 240, 525 S.E.2d 535 (Ct. App. 1999).


Single person show-ups are particularly disfavored in the law. Stovall v. Denno, 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed.2d. 1199 (1967) (practice of showing suspects singly to persons for the purpose of identification, and not as part of a lineup, has been widely condemned); see also State v. Johnson, 311 S.C. 132, 134, 427 S.E.2d 718, 719 (Ct.App.1993) (single person

show-ups are particularly disfavored in the law); In the Interest of Jamal Rashee A., 308 S.C. 392, 418 S.E.2d 326 (Ct.App.1992) (taking witness to location where suspects, but no other individuals, are being detained is suggestive).

In considering whether an identification is reliable, based on the totality of the circumstances and despite the use of an unduly suggestive process, the court should consider the following factors: (1) the opportunity of the witness to view the offender at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation. Moore, 343 S.C. at 289, 540 S.E.2d at 448-449.

This Court failed to consider the fact that the only description Ms. Gilmore gave of the carjacker was a black male. (R. p. 46, lines 5 – p. 47, lines 1 – 15; p. 94, lines 20-22). Based on the totality of the circumstances, including the unduly suggestive show-up identification, the fact that Ms. Gilmore's certainty in identifying Mitchell as the carjacker was based in part on the fact that she knew he had been arrested driving her car and her extremely vague description of the carjacker there is a substantial likelihood of irreparable misidentification. The trial court's refusal to suppress the identification testimony constitutes a prejudicial abuse of discretion requiring reversal. Counsel seeks rehearing.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

This 9th day of February, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE,

RESPONDENT,

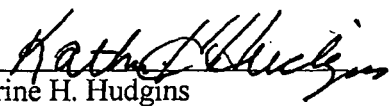
V.

NORMAN LEE MITCHELL,

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 Deborah R.J. Shupe, Esquire, this 9th day of February, 2012.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 9th day
of February, 2012.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.

The South Carolina Court of Appeals

The State,

Respondent,

v.

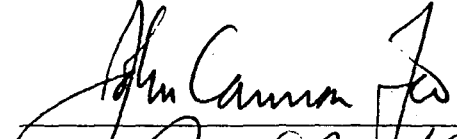
Norman Lee Mitchell,

Appellant.


The Honorable L. Casey Manning
Richland County
Trial Court Case No. 2008-GS-40-01238
2008-GS-40-01239

ORDER DENYING PETITION FOR REHEARING

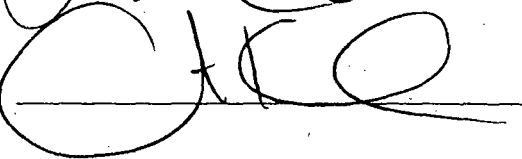
PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing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



C.J.



J.



J.

Columbia, South Carolina

FILED

2 March 2012

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NORMAN LEE MITCHELL,

APPELLANT

RECORD ON APPEAL

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INDEX

INDEX	i
TRIAL TRANSCRIPT	1
TESTIMONY	
CASHA CALLOWAY	
Direct Examination by Mr. Cathcart	1
Cross Examination by Mr. Shealey	7
WILLIAM GILMORE	
Direct Examination by Mr. Cathcart	16
Cross Examination by Mr. Shealey	22
NORMA GILMORE	
Direct Examination by Mr. Cathcart	29
Cross Examination by Mr. Shealey	36
NORMAN MITCHELL	
Direct Examination by Mr. Cathcart	51
Cross Examination by Mr. Shealey	55
NOLA GILMORE	
Direct Examination by Mr. Cathcart	72
Cross Examination by Mr. Shealey	87
Redirect Examination by Mr. Cathcart	101
GINGER SANDERS	
Direct Examination by Ms. Hendrick	104
Cross Examination by Mr. May	114
Redirect Examination by Ms. Hendrick	118
BARRY SMALL	
Direct Examination by Mr. Cathcart	122
Cross Examination by Mr. Shealey	125
BRIAN VANHOUTEN	
Direct Examination by Ms. Hendrick	126

CASHA CALLOWAY	
Direct Examination by Mr. Cathcart	131
Cross Examination by Mr. Shealey	138
Redirect by Mr. Cathcart	141
MOTION FOR DIRECTED VERDICT	148
TESTIMONY	
NORMAN MITCHELL	
Direct Examination by Mr. May	150
Cross Examination by Mr. Cathcart	164
VERDICT	199
SENTENCING	202
DEFENSE MOTION TO SUPPRESS	203
HEARING TRANSCRIPT ON POST-TRIAL MOTIONS – March 3, 2009	210
INDICTMENTS	221
SENTENCING SHEETS	225
CERTIFICATE OF COUNSEL	227

1 (Pause.)

2 THE COURT: All right, Solicitor.

3 MR. CATHCART: Your Honor, at this time the State
4 calls Officer Calloway.

5 THE COURT: It's Casta (sic) Calloway?

6 MR. CATHCART: Casha.

7 THE COURT: Casha. You've got to learn how to
8 say it right.

9 (CASHA N. CALLOWAY, after being duly sworn,
10 testified as follows:)

11 THE CLERK: Please have a seat and state your
12 full name for the record.

13 THE WITNESS: My name is Officer Casha Nicole
14 Calloway.

15 THE COURT: All right, Ms. Calloway, I'm going to
16 ask you to speak up a little bit.

17 DIRECT EXAMINATION

18 BY MR. CATHCART:

19 Q Where are you employed?

20 A For the City of Columbia Police Department.

21 Q In what capacity?

22 A I'm a police officer.

23 Q And was that your job back on October -- excuse me,
24 February 1st of 2008?

25 A Yes.

1 Q Okay. And on that date did you have an opportunity
2 to go to the Time Warner Building on Harden Street
3 here in Columbia?

4 A Yes, I did.

5 Q Okay. What brought you to the Time Warner Building?

6 A What brought me to the Time Warner Building was we
7 received a call, an emergency call. At that time
8 that was my current area that I was assigned to
9 patrol. They dispatched me as well as any other --
10 any other units that could respond to that location
11 in regards to a possible armed robbery.

12 Upon my arrival, myself as well as ---

13 Q Well, let me slow you down real quick. How long did
14 it take you to get there?

15 A Approximately three minutes.

16 Q Okay. And upon your arrival?

17 A Upon my arrival, when I arrived there, I went inside
18 to make contact with the -- with the victim and I was
19 stopped at the door by her. Another officer was
20 there. He went inside and found out that it was not
21 an armed robbery but in fact it was a carjacking.

22 At that time we began to get the description of
23 the vehicle ---

24 Q Uh-huh.

25 A --- we began to transmit that over the radio to tell

1 all of the other officers that were in the located --
2 in the -- within the area to be on the lookout for
3 that vehicle.

4 Q Okay. When y'all transmitted the description of the
5 vehicle, what occurred?

6 A At the time that we transmitted the description of
7 the vehicle, we advised them at which possible
8 direction that the subject was headed in. We also
9 gave a brief description of what he looked like. She
10 did state that he was a male, the victim did. And at
11 that time that's when Corporal Ginger Rogers (sic)
12 came across the radio and stated that she was behind
13 a vehicle that matched that description.

14 Q Okay. So, as you're putting out a description of the
15 -- how long after you put out the description of the
16 car and get out that it's a black male did she come
17 back?

18 A Probably less than 90 seconds.

19 Q Okay. So the initial description, somebody had
20 already come in with -- saying we have the -- we're
21 behind a car?

22 A Exactly. As soon as we gave out the description,
23 apparently Corporal Sanders was already behind the
24 vehicle located on Heidt Street.

25 Q Okay. And what occurred after that?

1 A To my knowledge, I was still at the location ---

2 Q Uh-huh.

3 A --- with the victim trying get her information. I
4 was advised over the radio that Corporal Sanders was
5 actually behind the subject. He was fleeing on foot.
6 He wasn't stopping for blue lights and sirens. He
7 was beginning to flee on foot. At that time they
8 went ahead and placed that no transmitting on the
9 radio because we lost contact ---

10 THE COURT: I'm sorry, you've got to slow down a
11 little bit, okay. You're talking too fast. I'm having
12 trouble understanding you. It's nothing personal but
13 just slow down a little bit.

14 THE WITNESS: Okay.

15 THE COURT: All right, continue.

16 Q They were transmitting that she was behind the
17 subject running on foot and then what?

18 A At that time we lost contact with her. I'm not sure
19 exactly what happened at that time but we could not
20 raise her on the radio.

21 At that time, Lieutenant Evans came across the
22 radio and placed a non-transmitting. He didn't want
23 anybody to transmit anything until we could actually
24 get her location because we had put out in the
25 description that he was armed.

1 Q Okay. And how long did that last?

2 A That approximately lasted about three minutes, three
3 to four minutes. At that time I was still at the
4 Time Warner Cable Building with the victim and
5 apparently some other officers then came in and went
6 ahead and he was captured over at 1505 Garden
7 Plaza.

8 Q Okay. And what if anything did you do at that time
9 when you found out he was captured?

10 A Once he was captured I was advised by my supervisor
11 to go ahead and get the victim, as well as her son,
12 bring her to the location to see if we could get a
13 possible identification.

14 Q Okay. And did you do so?

15 A Yes, I did.

16 Q Could you please describe how that went about?

17 A I placed the victim, as well as her son, in the back
18 of my patrol car. I have a cage that's in the back
19 of my patrol car. When I pulled up to the location
20 where the Defendant was supposed to be at, at that
21 time that's when the victim stated that she was
22 unable to see him. She asked me could I possibly get
23 a little bit closer because the cage that's in my car
24 was obstructing her view.

25 Q Okay. And did you do so?

1 A I did.

2 Q And what occurred at that point?

3 A As I moved closer, she went ahead and she looked
4 forward and that's when she stated, that's the man,
5 that's the man.

6 Q Did she seem that she was unsure in any way as to her
7 identification?

8 A No, not at all.

9 Q Did you point out to her who you wanted to pick in
10 this identification ---

11 A No, I didn't.

12 Q Okay. How long after the initial -- you got to the
13 Time Warner Cable Building to her pointing to him and
14 saying, that's the man, that's the man who did this?
15 How long was that?

16 A I would give it approximately 10 minutes from start
17 to finish.

18 Q Okay. Is the person that she pointed out, did he
19 match the description that she gave you?

20 A Yes, he did.

21 MR. CATHCART: Beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 (Pause.)

24 MR. CATHCART: Please answer any questions from
25 Defense counsel.

CROSS-EXAMINATION

1
2 BY MR. SHEALEY:

3 Q Officer Calloway, so you dispatched -- were
4 dispatched for an emergency?

5 A Yes, I was.

6 Q You said you got there within three minutes of being
7 dispatched?

8 A Approximately within three minutes.

9 Q Ms. Gilmore was there?

10 A Yes, she was.

11 Q And were you traveling alone or was another officer
12 with you?

13 A I was traveling alone.

14 Q But you testified there as another officer that
15 responded?

16 A Yes. Me and Officer Edwards were at the same
17 location handling a call off of 25 -- at the 2500
18 block of Cherry Street. And that is approximately
19 three minutes from the location especially when we're
20 blue lights and sirens, everybody pretty much gets
21 out your way.

22 Q Okay.

23 A So he was responded in his patrol car and I responded
24 in mine.

25 Q The two of you?

1 A Affirmative.

2 Q And after determining it wasn't an armed robbery, you
3 put -- the radio was on and you put out the
4 description as you know it of a black male, that's
5 what you were told?

6 A Officer Edwards was the person that actually went
7 inside and made contact with the business to verify
8 if it was indeed an armed robbery. At that time I
9 was still standing at the doorway with the victim and
10 he went ahead and advised that it was a carjacking
11 and not an armed robbery.

12 At that time I began speaking with the -- with
13 the victim and she began to go ahead and tell us what
14 type of car it was, what color the car was and also a
15 brief description of what the individual looked at --
16 looked like.

17 Q So you put that out there on the radio in case any
18 patrol cars might see someone that fit the
19 description. Now, the description of the car was an
20 Intrepid, right?

21 A Correct.

22 Q The description of the suspect was a black man?

23 A Yes.

24 Q Okay. So that was out on the radio so people could
25 look for the Intrepid?

- 1 A A blue ---
- 2 Q With a black man in it?
- 3 A Correct.
- 4 Q Okay. Now, at some point you testified that it was
5 Corporal Ginger Sanders got behind this Intrepid and
6 you found out about that? That was on the radio?
- 7 A At the time she came across the radio and she stated
8 that she was behind the vehicle that matched the
9 description that the victim had stated that was --
10 that was taken from her. And at that time Corporal
11 Sanders came across the radio and stated that she was
12 behind a vehicle that matched that description and
13 the individual in it that was driving the vehicle
14 matched the description.
- 15 Q And while this is going on, I imagine you were
16 interviewing Ms. Gilmore, assessing the injuries,
17 that kind of thing, she was there with you guys?
- 18 A Correct.
- 19 Q You and the other officer?
- 20 A Correct. Just -- actually, Officer Edwards had went
21 ahead and exited the scene once Ginger Sanders came
22 across the radio.
- 23 Q So you were taking her statement -- at that time you
24 were taking ---
- 25 A I was taking her statement. I was talking to the

1 victim.

2 Q You testified that you learned that the suspect had
3 fled on foot. It was your understanding, based on
4 the radio communication, that he was running from
5 Officer Sanders at this time, correct? I mean,
6 that's how you kind of find out that the suspect was
7 being chased?

8 A Correct.

9 Q And you found out the suspect had been caught at
10 least, apprehended?

11 A Yes, I had.

12 Q And that was through the radio?

13 A Through the radio.

14 Q Okay. And at some point when you determine that he
15 was caught and the perpetrator was in custody, I
16 guess, you were told to bring Ms. Gilmore over?

17 A I was advised by my supervisor to go ahead and bring
18 the victim to the scene and she if she could possibly
19 identify him.

20 Q Who's your supervisor?

21 A Sergeant Deidre Priester.

22 Q Priester. And you said that was through your radio?

23 A Through my radio.

24 Q Okay. So you loaded up Ms. Gilmore and her son
25 William ---

1 A Yes ---

2 Q --- in the back?

3 A In the back seat of my patrol car.

4 Q Okay. And it took you a couple of minutes to get
5 over to the Gonzales Apartments?

6 A Just -- just a couple of minutes just to get over to
7 the location.

8 Q Now, y'all had Mr. Gilmore (sic) cuffed at this time?
9 When you pulled up he was cuffed? He wasn't just --
10 he wasn't still running or ---

11 A No, he was in handcuffs. He was being detained.

12 Q And you said you pulled up and Ms. Gilmore asked you
13 to pull up a little closer because there was a grate
14 in front of her view and she wanted to make sure she
15 could see?

16 A Yes, correct.

17 Q Now, when you pulled up, Mr. Mitchell was in a
18 cruiser?

19 A No, he was not.

20 Q He was outside?

21 A Yes, he was standing outside the vehicle.

22 Q And the officer that reported to Time Warner with
23 you, he was at the scene now?

24 A I believe Officer Edwards, it was quite a few that
25 were out there at the time at the scene.

1 Q Six, seven, eight, how many is quite a few?

2 A I couldn't speculate.

3 Q Okay. How many other suspects were there out there
4 at the time?

5 a There wasn't any other suspects out there. There were
6 other people in the area.

7 Q Were any of them cuffed?

8 A No.

9 Q So Mr. Mitchell was the only one cuffed?

10 A Yes.

11 Q And there were a number of -- quite a few officers
12 out there?

13 A Yes.

14 Q And they were, I imagine, around Mr. Mitchell?

15 A No, the only person that -- there wasn't a group of
16 officers around him. I believe some of the other
17 officers had exited the scene and began to canvas the
18 area to see if they could possibly see potential
19 witnesses or try to locate a weapon.

20 Q There were at least enough to make sure he wasn't
21 running anywhere?

22 A That's correct.

23 Q And quite a few officers, you said that you came in
24 one patrol car. And I'm not sure of the practice but
25 I imagine officers, there are quite a few number of

1 them, quite a few patrol cars out there as well?

2 A Actually there were probably about three to four
3 marked patrol cars and the rest were unmarked because
4 we do have investigators in narcotics that responded
5 to the scene and they in fact did not have marked
6 patrol cars.

7 Q Ms. Gilmore's blue Intrepid was at the scene, right?

8 A No, it was not at the scene. It was recovered from a
9 different location.

10 Q Okay. But when you were being communicated by -- via
11 radio, Corporal Sanders said she was behind a blue
12 Intrepid and you heard that?

13 A I heard that.

14 Q And Ms. Gilmore heard that too?

15 A No, she did not hear it. Ms. Gilmore was very upset
16 and in fact we almost had to call EMS for her because
17 she had just had surgery and she was complaining of
18 chest pains.

19 Q And how can you be certain that she didn't hear that
20 when you were tending to her?

21 A I was -- I'm just -- as far as the radio call goes,
22 normally it's very hard to decipher unless you know
23 what you're listening for.

24 Q And as far as the description of the alleged
25 perpetrator of this crime, it was black man with a

1 gun and that was the description that you
2 transmitted. And combine that with an Intrepid,
3 that's why this chase began?

4 A The chase began because the vehicle that Corporal
5 Sanders saw matched the description that was given to
6 us by the victim when I arrived on the scene.

7 Q A black male.

8 A That's what the description was.

9 MR. SHEALEY: Beg the Court's indulgence.

10 THE COURT: All right.

11 (Pause.)

12 Q Ms. Calloway, part of your work involves your radio
13 and that's how you're communicating with your fellow
14 officers. And you testified that that was on, that
15 was functioning, that's part of the reason Ms.
16 Sanders got behind this Intrepid in the first place.
17 You also testified previously that you had been
18 attending Ms. Gilmore at the time. So, you know,
19 when it came through that someone had gotten behind
20 -- and that Officer Sanders had gotten behind this
21 Intrepid, Ms. Gilmore heard all that. And she -- the
22 radio is on, it's not a headphone or anything, it's a
23 radio?

24 A (The witness nodded head.)

25 Q And she heard that?

1 MR. CATHCART: Your Honor, I would just point
2 out, it's asked and answered or now he's asking for
3 speculation.

4 THE COURT: What now?

5 MR. CATHCART: Asked and answered or speculation,
6 either way.

7 MR. SHEALEY: Your Honor, it's not speculation

8 ---

9 THE COURT: Stop. Go ahead and ask your
10 question. This is non-jury. I can sort it out, go ahead.

11 MR. SHEALEY: Thank you, Your Honor.

12 Q Do you mind answering the question?

13 A I'm assuming that she didn't -- I didn't ask her if
14 she actually heard the transmission. I'm assuming
15 that she didn't.

16 MS. SHEALEY: Okay. Nothing further.

17 THE COURT: Anything further of witness?

18 MR. CATHCART: No, sir.

19 THE COURT: You may step down.

20 (The witness leaves the witness stand.)

21 THE COURT: Call your next witness.

22 MR. CATHCART: The State calls William Gilmore.

23 (Pause.)

24 MR. CATHCART: Your Honor, while we wait for
25 Mr. Gilmore, can we approach real quick.

1 THE COURT: Yes, sir.

2 (Whereupon, a bench conference was held off the
3 record.)

4 (WILLIAM GALLOWAY, after being duly sworn,
5 testified as follows:)

6 THE CLERK: Please have seat and state your full
7 name for the record.

8 THE WITNESS: William Gilmore.

9 DIRECT EXAMINATION

10 BY MR. CATHCART:

11 Q Mr. Gilmore, you were at the Time Warner Cable on
12 Harden Street in Columbia for what purpose on
13 February the 1st of '08?

14 A To pay the cable bill.

15 Q Was anybody with you?

16 A My mother.

17 THE COURT: Stop, you've got to speak up a little
18 bit.

19 THE WITNESS: I'm sorry.

20 THE COURT: I just can't hear you.

21 THE WITNESS: My mother.

22 THE COURT: Thank you, that's better.

23 Q And when you went to the Time Warner Cable Building
24 with your mother, what did you do?

25 A I -- it was real busy. I pulled into a parking

1 place. Took the first one when somebody pulled out.
2 I went in. At first I saw there was a big long line,
3 I thought about leaving. But I didn't, I stayed and
4 ---

5 Q All right. When you went in, did you go in with
6 anyone?

7 A No, by myself.

8 Q Okay. And where was your mother at this time?

9 A Sitting in the car.

10 Q Okay. Can you describe the day, was it daytime,
11 nighttime?

12 A It was afternoon. It was beautiful. It was about 70
13 some degrees. I had the car window down.

14 Q Where was your mother when you left her?

15 A In the passenger seat.

16 Q Was the keys still in the car?

17 A Yes, sir.

18 Q Was the car running?

19 A No, sir.

20 Q What occurred as you're paying your bill or in there?

21 A I was standing in line and just waiting like
22 everybody else. And I happened to look over and I
23 just see my mom standing there. And she said, can
24 somebody help me, call the police, a man just put a
25 gun to my head and stole my car.

1 Q Okay. How did she appear at that time?

2 A Like she was about to faint.

3 Q What did do you at that point?

4 A I reached for my cell phone but I realized I left it
5 on the dash of the car. And I asked, can somebody
6 let me use the phone and they told there was one
7 right there on the wall. I picked it up and I called
8 911.

9 Q Okay. How long after you called 911 did it take the
10 police to a arrive?

11 A It seemed like minutes.

12 Q Okay.

13 A Quick.

14 Q Seemed really quick?

15 A I started hearing the sirens, yeah.

16 Q And what if anything happened when the police
17 arrived?

18 A I could hear on the officer's radio, I could hear
19 them -- I don't know who I was hearing but I could
20 hear them, they had the car in sight and ---

21 Q Okay. How did they know what was the car? Did you
22 that get a description of the car?

23 A Yes, I did on my 911 call.

24 Q Okay. Did your mother give the description of the
25 car?

1 A I can't remember.

2 Q Okay. How was -- how she reacting? What was her
3 demeanor and what was her condition when you were
4 talking to the police?

5 A If I had to describe, probably weak, probably
6 couldn't believe it just happened.

7 Q Was she being real talkative?

8 A No.

9 Q But you were the one that gave the description of the
10 car to the police?

11 A Yes.

12 Q Okay. And how long after you gave the description of
13 the car to the police that your hear about this,
14 they're right behind the car?

15 A Oh. I heard immediately when she came in to the Time
16 Warner place. I mean, she was trying to ask me
17 questions and I was like, they've got it, they've got
18 the car, you know, because -- I mean, it's just
19 commonsense, I could hear it.

20 Q Okay. And how long after they said they had the car
21 did y'all do anything outside of the Time Warner
22 Building?

23 A There was -- the officer took us, I remember -- it
24 wasn't very long. I mean, the whole process wasn't
25 very long. I mean, we just ---

1 THE COURT: Wait, hold on.

2 (Pause.)

3 GENTLEMEN: It's maintenance ---

4 THE COURT: The ghost of Gene Cooper, what was
5 that? You know who Gene Cooper is, don't you?

6 MR. CATHCART: No, sir, I don't.

7 THE COURT: Billy Hollis, tell them who Gene
8 Cooper is.

9 MR. HOLLIS: He's probably one of the greatest
10 drummers that ever lived.

11 THE COURT: Thank you. Go ahead, Solicitor. You
12 learn something new everyday, Solicitor, continue.

13 MR. CATHCART: Yes, sir.

14 Q You indicated y'all left the Time Warner Building how
15 long after you heard all this?

16 A Not long. She put us -- we got in the back of the
17 police car.

18 Q Okay. And then what occurred at that time?

19 A She just took us to this apartment complex.

20 Q Okay. And did she indicate to you that y'all were
21 going to pick out any suspect or pick out anybody in
22 particular?

23 A No.

24 Q Okay. What did she do, the officer?

25 A She took us to the apartment complex an it took a

1 while to get in there. And they said that they -- I
2 believe they had somebody arrested or something and
3 they wanted us to see if it was the person or see --
4 for my mom to see.

5 Q What did your mom do or what had happened?

6 A Well, we were in the back of a police car. My mom
7 was sitting by the window. I was kind of in the
8 middle of the hump. And we were like in the middle
9 of the road, you know, the paved road of the
10 apartment complex. And they brought him to like the
11 front of the car but we couldn't see because the
12 front seat's so high. And my mom asked them to bring
13 him a little bit closer so that we could see and then
14 she identified him.

15 Q Okay. You were there when she identified him?

16 A Yes, I was.

17 Q Would -- how would you characterize her
18 identification? Was she sure ---

19 A Oh, yeah, she was sure.

20 Q Had no doubt in her mind?

21 A No doubt. No doubt in my mind.

22 Q Did you have an opportunity to see the Defendant when
23 this all occurred?

24 A No.

25 Q I mean, I'm talking about the carjacking?

1 A No, no.

2 Q But you did see your mom's identification?

3 A Uh-huh.

4 Q What was her demeanor in the car? Was she still
5 faint and weak at that point?

6 A No, no, no. She was ready to get her car back
7 because she kept asking the officer, when could we
8 get our car, when can we get our car. That's what
9 she was asking, I want my car back, I want my car
10 back.

11 (Laughter.)

12 MR. CATHCART: Okay. Please answer any questions
13 from the Defense counsel.

14 CROSS-EXAMINATION

15 BY MR. SHEALEY:

16 Q How are you, Mr. Gilmore?

17 A All right.

18 Q You were helping your mom pay your cable bill that
19 day, right?

20 A I was paying my cable bill that day.

21 Q Okay and she was along with you ---

22 A Right. Actually we were going to buy a bulldog,
23 English bulldog. And we were going to the pet store
24 in Five Points, to get a crate and get stuff to bring
25 the dog home. And I didn't know there was a Time

1 Warner place there and I actually seen it and I said,
2 you know, the cable bill, I'm going to go in here and
3 pay it, a last minute thought.

4 Q On the way to get the bulldog, you realize you can
5 pay your bill and you can do it all in one location?

6 A Right.

7 Q Okay. But you had gone inside?

8 A I had gone inside.

9 Q Okay. And your mother was with you there just to
10 accompany you?

11 A Right.

12 Q Okay. Going to get the puppy?

13 A Uh-huh.

14 Q Okay. So you said the first time you saw her was
15 when she was kind of coming up to Time Warner and
16 that's when you learned what's happened?

17 A The first time I saw her she was actually just
18 standing there.

19 Q Just standing there?

20 A I mean, it was such a long line, I was probably half
21 way between their door and where you get to the check
22 out.

23 Q She didn't come inside the building?

24 A Right. I looked over and she was already standing
25 there.

1 Q You didn't have your phone but you borrowed a phone
2 from someone to call ---

3 A No, I used the phone, Time Warner phone that's right
4 there on the wall.

5 Q On the wall?

6 A Uh-huh.

7 Q Okay. So you used the Time Warner phone to call 911?

8 A Yes, sir.

9 Q And you said your mom was a little shook-up at that
10 time. Did she faint -- feel faint ---

11 A Well, I mean, she was just a little shook-up, I mean,
12 like you would be if you just had somebody rob you,
13 take your ---

14 Q And you called and I've got the 911 dispatch. And
15 you told them that she about passed out?

16 A Well, I -- you know, I was like probably as far we
17 are apart from each other and, you know, someone was
18 helping her and she sat down. I didn't know if she
19 was going to pass out, I thought.

20 Q You told them she was going to pass out?

21 A Right.

22 Q She was faint and didn't look too good. You said
23 soon after the Columbia units arrived. How many
24 units were there at Time Warner?

25 A There was none there at the time but as soon as I

1 hung up the phone and went over to my mom you could
2 almost hear the sirens already. And then an officer
3 got there and she was trying to ask us more questions
4 but I could -- you know, all we were concerned then
5 -- by that time my mom was fighting mad. She, you
6 know, wanted her car back and she came to and ---

7 Q She came to?

8 A Well, not came to. You know, got her senses
9 together, I mean ---

10 Q She didn't ---

11 A If you fell down on the ground, you know, she brushed
12 herself off and she wanted her car back.

13 Q Sure, sure.

14 A It was obvious, I mean, you could hear it, you know.

15 Q Okay. How many officers were there at Time Warner?

16 A I just remember the one lady because that's the one
17 that was questioning us.

18 Q She was tending to your mom?

19 A No, she wasn't tending to her. She was just trying
20 to get more information so they could help us.

21 Q You called in 911, you were giving the description of
22 the vehicle?

23 A Yes, sir.

24 Q And so when the officer arrived and questioned you
25 and your mother, she put that on the radio and let --

1 let the officer know what was going on?

2 A I -- I ---

3 Q Well, they knew and you and your mom were able to
4 hear when the officer -- Officer Sanders got behind
5 this vehicle?

6 A Excuse me?

7 Q You testified that you were able to hear when they
8 located the vehicle, the officer?

9 A Right, right. I don't know what officer ---

10 Q Right.

11 A I could -- you know, it's commonsense ---

12 Q You heard on the radio ---

13 A Uh-huh.

14 Q --- that they've got the car, they're following it?

15 A They were following it, uh-huh.

16 Q Okay. And then you were able to determine based on
17 the radio and the cops putting you in -- these
18 officers putting you in their vehicle to take you
19 over to the location, you knew they had someone?

20 A No, I didn't even know if they had the car for sure.
21 It just -- you know, because we kept asking, did you
22 find our car and she wouldn't tell us, the officer
23 wouldn't tell us.

24 Q You didn't know where you were going?

25 A No.

1 Q Okay. Eventually you figured out, you were at
2 Gonzales Gardens Apartments, they brought you over
3 for the purpose of trying to identify a suspect?

4 A Uh-huh.

5 Q You and your mother, you didn't see anything but your
6 mother ---

7 A Right.

8 Q -- you were there with her?

9 A Uh-huh.

10 Q You testified that you were in the back seat of the
11 officer's cruiser?

12 A Uh-huh.

13 Q There was a grate?

14 A No, there wasn't a grill, there was just a high seat,
15 back seat.

16 Q So there wasn't a grate?

17 A No.

18 Q Okay, it was high seat then?

19 A Right. But there was a clear view.

20 Q You were in the middle, she was on the right?

21 A She was on my left.

22 Q Okay. You're in the middle, she was on the left?

23 A Uh-huh.

24 Q How many officers did you see there?

25 A It seemed like a bunch of police cars. I didn't

1 count. Lots of residents coming out of their
2 apartments.

3 Q A lot of flashing lights and police cars?

4 A I heard a lot of sirens, not so many flashing lights.

5 Q And they had a suspect and he was in handcuffs?

6 A I believe he was.

7 Q Okay. Did they -- I mean, they had to bring him to
8 the front of your vehicle, you testified. Where did
9 they get him from? Did you see where they got him
10 from?

11 A No.

12 Q How many officers were with him when they brought him
13 in front of the vehicle?

14 A I don't remember.

15 Q A couple?

16 A Yeah, it's hard to remember that, I mean.

17 Q Okay.

18 A There was a bunch of law there.

19 Q Okay. Did you at any time ever see the blue Intrepid
20 when you pulled up?

21 A No. At this time we still didn't know where the car
22 was.

23 MR. SHEALEY: Beg the Court's indulgence.

24 THE COURT: Yes, sir.

25 MR. SHEALEY: No further questions, Your Honor.

1 THE COURT: Anything further of this witness?

2 MR. CATHCART: Nothing else.

3 THE COURT: You may step down, sir.

4 (The witness leaves the witness stand.)

5 MR. CATHCART: Your Honor, the State calls Norma
6 Gilmore.

7 THE COURT: Yes, I think she's got it.

8 Well, we're going to have to swear her, I do
9 believe, before she testifies.

10 MR. CATHCART: Yes, sir.

11 (NORMA GILMORE, after being duly sworn,
12 testified as follows:)

13 THE CLERK: Okay ---

14 THE COURT: And Solicitor, she's going to have to
15 speak so I can hear her. I had trouble hearing the first
16 two witnesses. Put the microphone closer to her.

17 DIRECT EXAMINATION

18 BY MR. CATHCART:

19 Q Ms. Gilmore, you're going to have to talk louder,
20 okay?

21 A Okay, I'll try.

22 Q Speak into these microphones.

23 A Yes, sir.

24 Q Ms. Gilmore, when you went with your son to the Time
25 Warner Cable place, did you stay in the car?

- 1 A No, I did not stay -- yes, I did stay in the car.
- 2 Q Okay.
- 3 A Yes.
- 4 Q Where did your son go?
- 5 A He went in to Time Warner to pay the cable bill.
- 6 Q Okay. And where were you situated? Where were you?
- 7 A I was situated in the front seat in the passenger
- 8 side, on the right hand side?
- 9 Q Okay. Was it a clear day?
- 10 A Yes it was, very clear.
- 11 Q Okay. What if anything unusual happened while you
- 12 were sitting in that car?
- 13 A Well, I was sitting in the car and all of a sudden
- 14 this gentleman came and pulled the door open on the
- 15 driver's -- the driver's door.
- 16 Q The door -- not your door but the other one?
- 17 A No, he didn't pull my door. He did pull it up later
- 18 but ---
- 19 Q Okay.
- 20 A He had -- I was sitting there and he said -- kept
- 21 saying to me, he said, get out of the car, get out of
- 22 the car. If you don't get out of the car I'm going
- 23 to shoot you, I've got a gun. And he -- at that time
- 24 he had put the gun right there (indicating) in my
- 25 ear.

1 Q Okay, did you hop out of the car right then?

2 A No, sir. I could not hop out of the car because I
3 had just -- was trying to recover from back surgery.
4 I had back surgery, I had a broken back.

5 Q So you were stuck right there in that seat?

6 A Yeah. I was sitting in the passengers side on the
7 seat.

8 Q Were you looking at him while he was doing all this
9 to you?

10 A Yes. Yes, I was looking at him.

11 Q How far away from him were you?

12 A Well, the car seat ---

13 Q Yes.

14 A And he had -- my son had left the keys in the car.
15 He said, mamma, you might need to shut it off or
16 something and he left the keys in the car for me.

17 Q Okay. So how close is the Defendant or the person
18 who did this to you, how close was he to you when he
19 had a gun to your face?

20 A He wasn't very -- I don't know the feet or -- but I
21 know he come in and put the gun to my -- he hit me
22 then the next time he put it in my ear.

23 Q And you were looking at his face during that entire
24 time?

25 A I was looking at his face and then I turned my head

1 to look to see where my son was. I thought perhaps
2 he would have been out by now, so ---

3 Q And when you noticed your son wasn't there, what
4 occurred next?

5 A He -- he ran around the car.

6 Q Who ran around the car?

7 A The man that put the gun to my ear.

8 Q Okay.

9 A And he opened my door and he pulled me by my -- this
10 arm (indicating) -- he pulled me by this arm. He
11 pulled me out of the car. And he -- the door was
12 open. He left the door open and I couldn't turn
13 around ---

14 Q Wait, wait. When he grabbed you by the arm, what did
15 he do then?

16 A He went back around the car and he got in the car.

17 Q When he grabbed you by the arm, did he pull you out
18 of the car?

19 A Yes, sir.

20 Q Okay. And he left you standing right there by the
21 door?

22 A I was standing right there, yes, sir.

23 Q Okay. Did you -- were you able to see his face at
24 that time?

25 A Yes, I was, sir.

- 1 Q Did get a good clear look at him?
- 2 A I certainly did.
- 3 Q Okay. And then what occurred after he left you there
4 in the open door?
- 5 A He opened -- well, he went back around the car and
6 got in the -- driver's car (sic) and he went off very
7 fast.
- 8 Q Okay.
- 9 A I mean, he was very fast.
- 10 Q And what happened when he went back really fast?
- 11 A Well, he -- after he -- I was trying to get into Time
12 Warner to get some help and -- because I knew my son
13 was in there.
- 14 Q Okay. Now when he backed up the car, did the car hit
15 you in any way?
- 16 A Yes, it hit -- the car door hit me in the back.
- 17 Q Okay, did it knock you to the ground or did it just
18 bump you?
- 19 A He bumped me. You know, I never did fall or anything
20 like that. He just bumped me hard.
- 21 Q Okay. And the man that did all this, you were able
22 to see him clearly inside the car?
- 23 A Yes, sir.
- 24 Q And you saw him clearly outside of the car?
- 25 A Yes, sir.

1 Q And then you went to the Time Warner Building?

2 A Yes, sir.

3 Q Okay. And what did do you in there?

4 A Well, I hollered for help. There was somebody, I
5 can't tell you whether it was a man or a woman,
6 opened the door and I was dirty and all -- I had
7 blood coming out of my ear and everything.

8 Q Okay. And did -- what happened when you got in
9 there?

10 A When I got in there I hollered and Bill said, that's
11 my mom. I could hear him hollering, that's my mom.
12 And some of the ladies in Time Warner helped me in a
13 chair.

14 Q Okay.

15 A And Bill called on the house phone. They let him
16 have the courtesy phone and he called the police at
17 that point.

18 Q And did the police come and ---

19 A Immediately.

20 Q They were there quickly?

21 A Very quickly.

22 Q Okay. And how long was it until you were able to see
23 the man who did this to you again? How long did it
24 take for them -- for you to see the man who took your
25 car again?

1 A Well, it wasn't too long because they caught him and
2 they put my son and I in the back seat of the car.

3 Q Okay.

4 A Of the police car and took me over to -- I think they
5 said it Gonzales Gardens or some place over there. I
6 had never heard or seen the place before.

7 Q Okay.

8 A And they brought him up to the car for me to see who
9 it was and it was definitely him.

10 Q Were you able to see him clearly at first?

11 A Yes, I was.

12 Q Did you ask them to move the car at all?

13 A Yeah, I asked them to bring him up a little closer
14 because I wanted to make sure. The seats on the
15 police car was real high, the back -- you know, the
16 front seat, we was in the back seat. And they
17 brought him up there and it was definitely the same
18 man that took my car.

19 Q And you're positive of that?

20 A I am very, very, very, positive.

21 Q A hundred percent positive?

22 A One hundred.

23 Q Did you have an ample opportunity to see him there
24 when they had him at the scene? I mean, when they
25 asked you -- when you looked at the guy this time,

1 did you have a good opportunity to see him then?

2 A Yes, sir, I did.

3 MR. CATHCART: Okay. Please answer any questions
4 from the Defense counsel.

5 CROSS-EXAMINATION

6 BY MR. SHEALEY:

7 Q Hi, Ms. Gilmore. I'm going to bring this a little
8 closer so we can hear each other, okay?

9 A That will be fine.

10 Q Okay. Ms. Gilmore, you just testified to Mr.
11 Cathcart that they caught him. When did you know
12 they caught him?

13 A I can't hear you, sir.

14 Q I said, Ms. Gilmore, you just testified to Mr.
15 Cathcart that they caught him. When did you hear
16 that they caught him?

17 A When did I see the car again?

18 Q I'm sorry, no. When you realized they had caught
19 him, when did you realize -- when did you hear that
20 they had caught the man who took your car?

21 A Just a few minutes after my son had went into -- oh,
22 I guess it was less than five minutes, maybe five
23 minutes or more, I wasn't exact on that. And all of
24 a sudden the door opened on the driver's side and I
25 looked ---

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Q Yes, ma'am.

A I said to myself, I said ---

Q Let me ask you one question.

A Yes, sir.

Q Who did you hear, who told you they caught the man?
Who told you they caught the man? Who did you hear
that from?

A Oh, I heard it from -- oh, there was so many people
around there at that moment. They -- everybody knew
-- everybody told me he caught. And then the police
officer, there was a lady police officer, put us in
the car and took us down to Gonzales Gardens.

Q Did you hear the police officer that she put you in
her car, did you hear her radio? Did you hear about
the chase that happened?

A Huh?

Q Did you hear about the chase that happened on the
radio, the police officer's radio, they wear radios?

A I heard -- I heard it, yes.

Q And you heard they got behind a blue Intrepid that
you thought was your car?

A Yeah.

Q And you were sure they got him?

A They -- they took the car down to Gonzales, that's
where they brought him up for me to identify him.

1 Q And when you heard that they had recently found that
2 blue Intrepid that matched your car, you were pretty
3 sure that was him?

4 A Yeah.

5 Q Okay. Ms. Gilmore, how old are you?

6 A (No response.)

7 Q How old are you?

8 A 75.

9 Q Were you 75 at the time of this incident or ---

10 A Yeah, I was 75..

11 Q Okay. And you mentioned that you had recently had
12 back surgery, you had broken your back?

13 A I had broken my back. I had back surgery. I went
14 into a diabetic comma and fell and broke my back.

15 Q Okay, I'm sorry about that. What was the date of
16 that back surgery? What date did you have back
17 surgery, do you remember?

18 A I can't remember the exact date I had the back
19 surgery.

20 Q How far before this incident, the carjacking was that
21 surgery?

22 A It was -- it was maybe a month -- a month or
23 something like that.

24 Q You had a back surgery about a month before the
25 carjacking happened?

1 A Yeah, yeah ---

2 Q Okay.

3 A --- about a month.

4 Q Are you prescribed any medication to deal with the
5 pain of the back surgery?

6 A No, I don't.

7 Q You don't take any medications?

8 A No.

9 Q Were you prescribed any medication after --
10 immediately after the surgery?

11 A I had -- if I need it. I have the pain medicine if I
12 need it but I don't need it right -- all -- everyday.

13 Q Right but I imagine like immediately after the
14 surgery, if you had broken your back, it probably was
15 very painful?

16 A (No response.)

17 Q I'm asking you, after the back surgery, I would
18 imagine -- it sounds pretty painful?

19 A Back surgery is painful.

20 Q What medication were you prescribed for that?

21 A I wasn't sure what it was. They just said it was my
22 pain pills and I took it. The doctor gave it to me
23 and I took it.

24 Q How many times a day did you take that?

25 A Maybe one time, two times, it depends on ---

- 1 Q So it was as needed, it was as needed, whenever ---
- 2 A As needed, yes.
- 3 Q As needed?
- 4 A As needed.
- 5 Q Okay. And how was your back feeling that day?
- 6 A How was my back feeling that day?
- 7 Q Uh-huh.
- 8 A I was feeling real well.
- 9 Q That's good, that's good. Because of your surgery,
- 10 are you allowed to drive?
- 11 A Oh, of course I am. I have my driver's license.
- 12 Q Right. So that didn't affect your driving? That
- 13 wasn't why you were in the passenger seat?
- 14 A No.
- 15 Q Okay. So you can drive?
- 16 A Yes, I can drive.
- 17 Q I notice you're wearing glasses.
- 18 A Well, of course I do.
- 19 Q I do too. Today I'm wearing contacts. But were you
- 20 wearing your glasses that day?
- 21 A Yes, I was.
- 22 Q Okay. Do you keep your glasses on or do you take
- 23 them off? Is it for all time vision correction or
- 24 just sometime?
- 25 A I take them off sometimes and do the cleaning and put

1. them back on.

2 Q Okay. But you definitely had them on that day?

3 A I definitely had my glasses on. I wear my glasses.

4 Q Okay. When you take them off, do you put them in
5 your purse and kind of leave them with you or?

6 A I do.

7 Q I said when you do happen to take your glasses off do
8 you take them off and put them in your purse or
9 anything, when you travel around?

10 A No, I don't take my glasses off very often.

11 Q Okay, very good. Do you remember giving a statement
12 to Investigator Pegram? This would have been at the
13 Columbia Police Headquarters after this incident.

14 A Yes, I did.

15 Q And it's important to give a statement kind of after
16 these things because your memory is more fresh at
17 that time as opposed to what it would be today, is
18 that safe to say?

19 A Are you trying to think -- are you trying to make me
20 think I'm crazy?

21 Q No, ma'am. I am asking you if your memory would be
22 fresher on the day you gave the statement, that's
23 when your memory was the most fresh, when you gave
24 the statement?

25 A Yes.

1 Q Okay. And you remember giving a statement, is that

2 ---

3 A I remember the day from ---

4 Q You remember -- okay.

5 MR. SHEALEY: May I approach, Your Honor?

6 THE COURT: Yes, sir.

7 Q Ms. Gilmore, I'm going to show you what is your
8 statement. Do you recognize this? Now I've
9 highlighted it a little bit but is that your
10 statement? Is that the statement you gave to
11 Investigator Pegram?

12 A Let's see, this is my signature. Yes, sir, that is.

13 Q Okay.

14 A And here.

15 Q And you see the date?

16 A Okay, and here it is again.

17 Q Okay. So you recognize that to be your statement?
18 It's not anyone else's but yours?

19 A That is the statement that he wrote.

20 Q Okay.

21 A Because I was too upset to write it.

22 Q Okay, I'll just take that.

23 A And that is my son, William Gilmore is my son.

24 Q Yes, ma'am. Yes, ma'am. I just want to confirm
25 that. Before I -- before I talk to you about this

1 though, your son did mention that you passed out, you
2 were feeling faint. How did you feel immediately
3 after this carjacking? You said ---

4 A Well I didn't feel wonderful.

5 Q You didn't feel wonderful. Did you faint for a
6 little bit there after that? You were on the ground,
7 you had to get up, did you faint at all?

8 A I didn't feel wonderful. I didn't wonderful. I went
9 home after that and...

10 Q Yes, ma'am, at Time Warner there, did you have to sit
11 down, were you feeling like you were going to faint
12 after ---

13 A Yeah, I still have the pain in my ear here.

14 Q Okay. You said blood was coming out of your ear?

15 A It was this ear (indicating).

16 Q Is that from the gun?

17 A That's where he put the -- this one here (indicating)
18 is the ear he put the gun in.

19 Q Uh-huh and that's where you were bleeding from?

20 A Bleeding here?

21 Q You were bleeding from your left ear, is that what
22 you're showing me?

23 A No, he was on my right -- the left ear.

24 Q Okay.

25 A That's what I'm showing. Well he put -- this is

1 where he put the gun (indicating), in my right --
2 left ear.

3 Q From the driver's side?

4 A Yes because I was in the front seat -- in the front
5 seat, yes.

6 Q Yes, ma'am. And what I'm trying to ask you is, after
7 this ordeal, you felt a little faint, didn't you?

8 A Well, yeah, of course, you do.

9 Q I'm just trying to get all the details, yes, ma'am.

10 A Okay. I'm just telling you the details.

11 THE COURT: Just ask the question, don't argue
12 with the witness. Just ask the question

13 MR. SHEALEY: I wasn't.

14 THE COURT: You can ---

15 THE WITNESS: I'm not arguing.

16 THE COURT: No, No, no, ma'am. I'm telling him
17 not to argue with you. Relax. Just ask a question.

18 Don't go back and forth with the witness.

19 MR. SHEALEY: Certainly, Judge.

20 THE WITNESS: Oh.

21 Q You gave a statement and in that statement you
22 described the man that carjacked you. And I'll read
23 this to you.

24 A I have one of them.

25 Q Yes, ma'am, I'm sure you do.

1 THE COURT: Give her a copy of it.

2 (Pause.)

3 THE COURT: Do you have a copy?

4 MR. CATHCART: Yes, sir, but I would like to
5 follow along with it. They have an extra copy as well, if
6 I may.

7 MR. SHEALEY: May I approach the witness, Your
8 Honor?

9 THE COURT: Yes.

10 THE WITNESS: I have mine. Sir, I have mine.

11 MR. SHEALEY: The Judge just wants you to follow
12 along with it.

13 THE COURT: That's a copy of your statement.

14 THE WITNESS: Oh, that will be fine. I will.

15 Q Okay. I'm just going to read you a portion of this
16 statement ---

17 A Yes, sir.

18 Q --- related to this incident.

19 (Reading) I waited outside and was sitting in the
20 front passenger -- passenger's while I was waiting
21 for William to return. A black man snaps the
22 driver's door open. He put a gun to the side of my
23 head -- and pardon my language -- told me, bitch, get
24 out of the car or I'll shoot you. He said this many
25 times as I was getting out of the car. I was having

1 trouble getting out of the car because I had had back
2 surgery. The black man didn't wait for me to get out
3 before he started backing up. He almost knocked me
4 down. He drove away very fast.

5 That's all I -- do you remember giving that
6 statement to Investigator Pegram?

7 A Yes, sir.

8 Q Okay. Now, you testified that he came around the
9 other side of the car?

10 A He did. He went round the -- he got -- he run around
11 the front of car, opened my door and pulled on me.

12 Q Yes, ma'am?

13 A Because I couldn't get out of the car very fast
14 because I had my cane and all of that.

15 Q But you didn't put that in your statement to
16 Investigator Pegram?

17 A Well, I did, I couldn't get out of the car fast.

18 Q But it wasn't in your statement. Now, when this man
19 approached you ---

20 A Yes, sir.

21 Q --- did you notice what he looked like other than a
22 black man?

23 A Yes, he was.

24 Q He was a black man?

25 A Yes, sir.

1 Q Did you notice his hair?

2 A I'm sorry, I didn't hear you.

3 Q Did you notice his hair?

4 A Yes, I did.

5 Q Did you notice how tall or short he was?

6 A (No response.)

7 Q I'm sorry, did you notice how tall or short he was?

8 A I can't hear you, son.

9 Q Did you notice how tall or short he was?

10 A Yes -- yes, I did.

11 Q Did you notice the clothes he was wearing?

12 A Yes, I did.

13 Q But that's not in your statement to Investigator

14 Pegram?

15 A Well, I -- I'm telling you though.

16 Q Yes, ma'am. Yes, ma'am. And you saw this gun when

17 he put it to your ear?

18 A He put it in my ear.

19 Q In your left ear. So coming from the driver's side,

20 he put it in your left ear?

21 A Yes.

22 Q And you weren't able to really describe the gun, were

23 you? I'm sorry, you weren't ever able to describe

24 the gun, were you, Ms. Gilmore?

25 A Drive again?

1 Q Were you able to describe the gun to anyone?

2 A No. I'm sorry, I can't -- I don't know one gun from
3 the other one.

4 Q Okay. Okay.

5 A But I know it was a gun.

6 Q Yes, ma'am. Now, when they took you to Gonzales
7 Gardens, you knew why you were going there, right,
8 Ms. Gilmore?

9 A Yes, I was going there to identify the gentleman
10 because they told me he was -- they had him and they
11 -- that lady taking my son and I down there.

12 Q Okay. And the seat was high?

13 A The seat, the front seat back was high, yes.

14 Q Did you see your vehicle when you came in there?
15 Were you able to see your Intrepid when you came in
16 there?

17 A No. When I came in there, no, sir, I didn't. They
18 brought it up to me. They brought it up.

19 Q Okay.

20 A And they took it down to I think it was the city
21 garage or something.

22 Q Okay. Now, when they brought you in there, you were
23 in the back seat and they brought a man to your
24 window ---

25 A They brought the man that hit me and taken my car to

1 the window.

2 Q And he was handcuffed?

3 A Huh?

4 Q He was handcuffed?

5 A Yes, he was.

6 Q And were there any other men handcuffed there other
7 than him?

8 A I didn't see any other man handcuffed.

9 Q And there were a number of officers there with him?

10 A I couldn't tell you how many officers was there.

11 There was lots of people gathered around. Why, I
12 don't know.

13 Q Okay. And you looked at him through the window of
14 the vehicle?

15 A I looked at him, yes, I did very clearly and I could
16 see him very good.

17 Q Okay.

18 A 100 percent good.

19 Q Yes, ma'am. Do you remember giving a statement to
20 Investigator McDougall from the Richland County
21 Public Defender's office at any time?

22 A Well...

23 Q This would have been on August the 11th, 2008, a man
24 would have come and said, I'm from -- I'm an
25 investigator for the Richland County Public

1 Defender's office. Do you remember that?

2 A He was -- I think he was at the house or something.

3 I don't know where I was at, I couldn't tell you.

4 Q Yes, ma'am?

5 A Or whether I did or not.

6 Q Yes, ma'am. And you told him that this made the
7 news, this carjacking made the news?

8 A Oh, did it?

9 Q I'm asking you, that's what you told him, that it
10 made the news?

11 A Well, I didn't know it made the news.

12 Q You don't remember watching it on the news at all?

13 A I do watch the news, yes, I do.

14 Q You remember the story about this carjacking on the
15 news?

16 A Yes, I remember but I didn't...

17 Q And how long did that story run, do you remember?

18 A I have no idea ---

19 Q Okay.

20 A --- how long it run.

21 MR. SHEALEY: Beg the Court's indulgence.

22 (Pause.)

23 MR. SHEALEY: Thank you, Ms. Gilmore, no further
24 questions.

25 THE COURT: Anything further of this witness?

1 MR. CATHCART: No, sir.

2 THE COURT: All right. You may step down, Ms.
3 Gilmore, help her down.

4 (The witness leaves the witness stand.)

5 MR. CATHCART: That's all the State has as to
6 identification on this point, Your Honor.

7 THE COURT: All right. Any motions?

8 MR. SHEALEY: Your Honor, we'd like to call
9 Mr. Mitchell.

10 THE COURT: All right.

11 (NORMAN MITCHELL, after being duly sworn,
12 testified as follows:)

13 THE CLERK: Please have a seat and state your
14 full name for the record.

15 THE DEFENDANT: Actually my name is Norman Carol
16 (phonetic) Mitchell, Jr.

17 DIRECT EXAMINATION

18 BY MR. SHEALEY:

19 Q Norman, February 1st, 2008, when you were arrested,
20 they brought Ms. Gilmore to ID you. When they
21 brought her up, where were you? Tell me where you
22 were.

23 A I was in the back seat of the police car.

24 Q You were in the back seat of the police car. Were
25 there any officers in the car with you?

1 A The transportation officer was in the front seat.

2 Q Okay. How many officers did you see at Gonzales
3 Gardens Apartments?

4 A Around -- I know for a fact, it was at least six
5 because I remember the faces along with the K-9
6 officer who snatched me out the car.

7 Q Okay. Did they tell you someone was coming to look
8 at you? Did you know why you were being taken from
9 the car?

10 A I could hear on the front seat on the radio they said
11 that they're bringing the victim around right now.

12 Q Okay. Did you see her approaching?

13 A No, sir.

14 Q Okay. How many officers escorted you from the
15 vehicle?

16 A I told them I wasn't getting out of the car because I
17 didn't do anything wrong. I said, you have the wrong
18 man. So they said, yes, you are getting out the car.
19 The K-9 investigator works for the state police and I
20 recognized his face frankly because he used to work
21 in the Eau Claire area. He was the one that snatched
22 me out of the car along with Mr. Smalls, he was
23 standing there.

24 Q So you were in handcuffs, the two officers ---

25 A Yes, sir.

1 Q --- as you say, snatched you out of the car?

2 A Yes, sir.

3 Q And you said there were about eight other officers,
4 six to eight?

5 A Maybe from five to eight officers.

6 Q Okay. Now, Ms. Gilmore came up, where was she? Did
7 they bring her to you or you to her?

8 A Actually it was a car, they told me to get out the
9 car, as I got out the car, the car was coming -- they
10 told me to look this way (indicating) and I had to
11 look behind me because our car was parked like this,
12 this way (indicating). And I was in the back seat.
13 So they told me to turn around.

14 So when then they snatched me out of the car
15 still I didn't have any shirt on, he said -- I heard
16 on the radio, I said, well, I'm sorry, y'all got the
17 wrong man and ---

18 Q I'm sorry, who said that?

19 A I was telling -- I was telling the investigators, I'm
20 sorry, y'all got the wrong man, we can just get this
21 over with now. And he took my jacket because my
22 jacket was on the back seat of the car. I didn't
23 have no shirt on. They took my shirt and put my
24 shirt on the back seat of the car.

25 And I was handcuffed when he told me, look this

1 way. So I had to turn around and look. When I
2 looked this way (indicating) someone came on the
3 radio and said, I'm not sure if that's him. And I
4 could hear on the radio because the officers -- the
5 transportation officer was standing there along with
6 Mr. Smalls and maybe about four or five other
7 officers and along with the K-9 officer. And they
8 told me to turn to the side, so I had to look behind
9 me and then I turned to the side and they told me to
10 turn around this way (indicating). So I was in two
11 positions.

12 Q So at first you heard someone say, that's not him.
13 And did you turn around and show the other side?

14 A Yes, sir.

15 Q Okay. Now, Ms. Gilmore, the victim, did she ever get
16 out of the car?

17 A No, sir.

18 Q She was always in the car?

19 A I could barely see her, like this right here to the
20 door, but I could look up and see someone grabbing or
21 holding her up to the back -- back of the window, the
22 back seat to sliding part of the window.

23 Q Excuse me. Was anyone else handcuffed other than
24 you?

25 A No, sir.

1 Q No other black man handcuffed other than you?

2 A No, sir.

3 MR. SHEALEY: Nothing further.

4 THE COURT: Mr. Cathcart.

5 MR. CATHCART: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. CATHCART:

8 Q Mr. Mitchell, when you ran from the Intrepid, you ran
9 across this way (indicating) towards Gonzales
10 Gardens, is that correct?

11 MR. SHEALEY: Objection, Your Honor, this is ---

12 THE COURT: Basis of the objection?

13 MR. SHEALEY: It's an evidentiary hearing about
14 the ID. He's getting into the chase, factual matters ---

15 THE COURT: Overruled. This is nonjury,
16 gentlemen, calm down. Ask the question.

17 Q When you ran out of the Intrepid, you ran across,
18 passed this Harley's Barber Shop into the Gardens,
19 correct?

20 (Pause.)

21 A Yes, sir, that's correct.

22 Q That's correct?

23 A (The witness nodded head.)

24 Q And when you ran that way you were taking off your
25 jacket, taking off your shirt, correct?

1 A No, sir, that's not correct.

2 Q That's not correct. And you dropped the victim's
3 cell phone right beside the barber shop, correct?

4 A Yes, sir.

5 Q You did do that?

6 A (The witness nodded head.)

7 Q Okay. And they found you hiding behind the storm
8 door behind C-3 in building C in Gonzales Gardens,
9 correct?

10 A I'm not sure of the building, sir.

11 Q But you were hiding behind the storm door?

12 A I was standing in the doorway.

13 Q Standing in the doorway. And did you know the people
14 in C-3?

15 A The building next door, the house next door to it --
16 the apartment building next door to it.

17 Q But you were hiding -- you were standing this way in
18 -- you weren't hiding from anybody, you were just
19 standing there?

20 A Yes, sir. I was hiding from someone.

21 Q Who were you hiding from?

22 A The Columbia Police Department.

23 Q Okay. And they caught you there, correct?

24 A Yes, sir.

25 Q Okay. How long after they placed you in custody did

1 the victim come up and take a look at you, about five
2 minutes or so, right?

3 A Maybe, so.

4 Q They were pretty quick, right?

5 A Yes, sir.

6 Q Okay. Were the cops pointing at you like this
7 (indicating)?

8 A No, sir.

9 Q Did they give you any indication that they wanted to
10 pick you out? They didn't, did they? They just had
11 you standing there, correct?

12 A No, sir. I refused to get out of the car repeatedly
13 the first time.

14 Q But they didn't drag you out in front of the victim,
15 they had you out the car, correct?

16 A The K-9 officer actually pulled -- snatched me out of
17 the car, Mr. Cathcart.

18 Q Before the victim came in?

19 A I was ---

20 Q Or what's your story, or was it after the victim came
21 in?

22 A The car was behind me. I couldn't see where the car
23 was. I told them I wasn't getting out the car.

24 Q Okay. But so you have no idea where the victim was
25 when you were taken out of the car, is what you're

1 saying?

2 A No, sir.

3 Q Did you have your jacket back on at that point?

4 A No, sir.

5 Q Okay. And you heard Ms. Gilmore on the radio -- or
6 a -- who did you hear on the radio?

7 A I heard somebody questioning, somebody saying, is
8 that him?

9 Q And all that's on the radio, the questioning and the
10 answering on a police radio?

11 A I don't know whether it was answering. I just heard
12 somebody say, I'm not sure. I'm not -- the guy, the
13 transportation officer in the front seat.

14 Q A man saying that, woman saying that?

15 A It was a woman response.

16 Q Old woman?

17 A I'm not sure.

18 Q You were running from the police -- from the police
19 why, Mr. Gil -- Mr. Mitchell? Why were you running
20 from the Intrepid all the way across this thing
21 (indicating) taking your clothes off, dropping the
22 victim's phone and hiding in the Gonzales Gardens,
23 why were you doing that?

24 A I was scared, sir.

25 Q Scared of what?

1 A I knew I'd be going to jail for driving under
2 suspension if I was caught.

3 Q So you gave all this entire chase for driving under
4 suspension?

5 A Yes, sir.

6 Q The victim's cell phone was just on your person
7 because you were driving under suspension?

8 A Actually while I was in the car the phone was
9 ringing. When I got into the car, I decided to slow
10 down because I was scared I might hurt somebody or
11 kill myself so I said, let me stop.

12 Q And then put the phone in your pocket and ran?

13 A No, sir. It wasn't in my pocket. I grabbed the
14 phone and just ---

15 MR. SHEALEY: Your Honor, I would object. Again
16 beyond the scope of the identification.

17 THE COURT: All right.

18 Q Mr. Gilmore, your record goes back as to 1988, auto
19 breaking ---

20 MR. SHEALEY: Objection, Your Honor, again beyond
21 the scope of the record for ID here.

22 THE COURT: This is cross-examination. This is
23 non-jury, gentlemen, do you understand that?

24 MR. SHEALEY: Yes, Your Honor.

25 THE COURT: Continue, Solicitor.

1 MR. CATHCART: Thank you, Your Honor.

2 Q April 14th, 1988, you have three counts of pointing
3 and presenting a firearm, carrying a pistol
4 unlawfully, three counts of burglary first, four
5 counts of burglary second, six counts of grand
6 larceny and an attempted burglary second, correct?

7 A Yes, sir.

8 Q 1998 ---

9 MR. SHEALEY: Your Honor, I'm sorry --

10 THE COURT: If do you that again you're going to
11 regret it. Don't you ever do that again, do you
12 understand, Mr. Shealey?

13 MR. SHEALEY: Yes, sir.

14 THE COURT: Sit down. Now, you do that again and
15 you're going to have a trip to Alvin S. Glenn Detention
16 Center ---

17 MR. SHEALEY: I apologize ---

18 THE COURT: You listen to me. If you have an
19 objection you politely stand up and you make it but if you
20 slam -- let me take a break. Let's take a break.

21 MR. CATHCART: Yes, sir.

22 THE COURT: Don't you ever do that again.

23 MR. SHEALEY: Yes, Your Honor. I apologize.

24 (The Court was in recess.)

25 THE COURT: All right. Continue, Solicitor.

1 MR. CATHCART: Thank you, Your Honor.

2 DIRECT EXAMINATION CONTINUES

3 BY MR. CATHCART:

4 Q 1998 convicted of attempted strong armed robbery,
5 correct?

6 A Yes, sir.

7 Q '99 petty larceny, correct?

8 A Yes, sir.

9 Q '99 auto breaking, petty larceny -- excuse me, 2001
10 auto breaking, petty larceny, correct? In 2003, you
11 got 10 separate counts of bank fraud, correct?

12 A Yes, sir.

13 Q 2004 petty larceny?

14 A Yes, sir.

15 Q 2005 another petty larceny?

16 A Yes, sir.

17 Q 2005 -- excuse me, 2007 shoplifting under a thousand
18 and on August 13th of 2007, you're also charged with
19 and being convicted of possession of a stolen motor
20 vehicle before this incident occurring, correct?

21 A Yes, sir.

22 Q Basically, the only time that you have not committed
23 a crime that's been -- of dishonesty is when you've
24 been in the Department of Corrections, correct?

25 A Can you say the again, Mr. Cathcart?

1 Q The only time you spent one year without committing a
2 crime of dishonesty is when you were housed in the
3 Department of Corrections, correct?

4 A No, sir, that's not correct.

5 MR. CATHCART: No further questions, Your Honor.

6 THE COURT: All right. Anything on redirect?

7 MR. SHEALEY: No, Your Honor.

8 THE COURT: You may step down, sir.

9 (The witness leaves the witness stand.)

10 THE COURT: Be happy to here any motions now.

11 MR. SHEALEY: Thank you, Your Honor. May it
12 please the Court. You know, Biggers and its progeny, as
13 you know, deal with suggestive identifications. At this
14 time I am moving to suppress the unduly suggestive show-up
15 identification as well as moving to suppress any in-court
16 identification that may happen later on.

17 Basically, Biggers and its progeny speak to the
18 fact that unnecessary suggestive ID procedures create a
19 harm of irreparable misidentification. Our juris prudence
20 in the State of South Carolina says show-up ID's in The
21 State v. Moore, a 2000 Supreme Court case, are disfavored
22 in the law, Your Honor. Our United States Supreme Court
23 says the practice of showing a suspect singly the persons
24 for the purpose of ID as opposed to using a line-up has
25 been widely condemned.

1 Our Court of Appeals in 1996, In the Interest of
2 Rashee, this was a case where the victim was taken to the
3 detention center. The young man was there in handcuffs
4 and he was the only person there. They found that to be
5 patently unduly suggestive, Your Honor. And Moore also
6 suggests the show-up ID's are just generally disfavored.

7 Now Biggers is a two prong test. The first prong
8 is, is this identification unduly suggestive? I would
9 argue, yes, Your Honor, it is based on the fact that it's
10 a show-up ID. I think the law is very clear on that.

11 After the first prong is satisfied, Biggers and
12 its progeny say, all right, we've got a suggestive ID, is
13 it nevertheless so reliable based on these five factors
14 considering them in their totality?

15 And, Your Honor, as in what's in the brief, the
16 five factors are: the witness's opportunity to view the
17 perpetrator at the time of the crime; the witness's degree
18 of attention; the accuracy of the witness's prior
19 description of the perpetrator; the level of certainty
20 demonstrated at the confrontation; and, finally, the
21 length of time between the crime and the confrontation.
22 I'd like to go into these a little bit, if you wouldn't
23 mind.

24 These are all considered in the totality of the
25 circumstances and if you consider the totality, if they

1 make this so reliable, this already inherently suggestive
2 ID, show-up ID, which our courts say is, you know,
3 suggestive and creates a problem of irreparable
4 misidentification. If you consider these factors in their
5 totality and if you can deem them to make that inherently
6 suggestive show-up ID reliable, then so be it. And I
7 would argue, they don't make it reliable.

8 The witness's opportunity to view the perpetrator
9 at the time of the crime. It's her testimony that it
10 happened -- everyone said it happened very very quickly.
11 As Ms. Gilmore testified to, it was a black man that
12 snatched the driver's door open. There was a gun to her
13 head. I'm quoting her -- her statement, the black man
14 didn't wait for me to get out before he started backing
15 up. He almost knocked me down. He drove away very fast.

16 Our juris prudence says that when things happen
17 very very quickly, they're inherently unreliable. This is
18 In the Interest of Rashee which is the 1996 Court of
19 Appeals. The Court said, when things happen quickly, it's
20 unreliable. Our Court -- Court of Appeals here, of
21 notable importance in this case is the fact that the
22 witness's opportunity to view the accused was poor.
23 Although Mr. McKnight (phonetic) was within approximately
24 four feet of the individuals, his observation was of no
25 significant duration and Mr. McKnight indicated, things

1 were happening very quickly, things were happening very
2 quickly, Your Honor.

3 And in contrast to State v. Scipio, a South
4 Carolina Supreme Court from '84, where they found that
5 when you have a long chance to view the perpetrator, that
6 would make it more reliable. The Court found that
7 identification to be reliable and they placed great
8 emphasis on the fact that the victim observed the
9 perpetrator standing within arm's length for four to four
10 and a half minutes. That is in contrast to what we have
11 here. I believe that factor considered in its totality
12 would be going for the move to suppress, Your Honor.

13 Number two, the witness's degree of attention.
14 We know from the testimony the suspect had a gun to her
15 left ear as she was sitting in the passenger side. Enough
16 -- enough pressure there to make it bleed. I would
17 suggest that she didn't get a good look at him with a gun
18 pointing to her. She can't describe the gun. She
19 mentioned that she had back surgery, she was taking pain
20 medication for that surgery. And at the time she only
21 described the perpetrator as a black man. She never
22 described him as anything else until today, as anything
23 else other than a black man. Your Honor, this vague
24 description, I would argue, would indicate a small level
25 of attention. It happened quickly, it was vague. The

1 problem too, the witness's degree of attention, I would
2 suggest, was extremely limited.

3 Then prong three, the accuracy of the witness's
4 prior description of the perpetrator. Well, Your Honor,
5 inaccurate vague descriptions of the perpetrator are held
6 to be unreliable as a matter of law by our courts. This
7 is a vague description. This is -- and again, I'll quote
8 to you the court case In the Interest of Rashee, in the
9 Court of Appeals, and show a case where the Court found
10 the identification unreliable and they recognized, and I'm
11 quoting, McKnight's prior description was vague, and as
12 previously noted, somewhat inaccurate. Again, here we had
13 a vague description, a black man with a gun.

14 The State v. Moore, our Supreme Court case here
15 in this state in 2000, the Court found, and I'll quote,
16 substantial likelihood of irreparable misidentification
17 such that the identifications are unreliable as a matter
18 of law where the victim, and I'll quote, gave no
19 description of him other than the fact that he was shorter
20 and wore a black hat. We did not have that in the
21 statement. We had a black man with a gun, Your Honor.
22 And our courts, our Supreme Court and our Court of Appeals
23 have held the inaccuracy of the witness. It was vague,
24 it's unreliable as a matter of law.

25 Finally -- or not finally, the next to the last,

1 the fourth prong to be considered is the level of
2 certainty demonstrated by the witness at the
3 confrontation. Now, she testified here that she was
4 certain and you can't get past that. But in her
5 testimony, she admitted to hearing on the radio they had
6 -- they apprehended the suspect. And I asked her, I said,
7 and when did you know they had that suspect? She told us,
8 are you sure, and she said, yeah, I'm sure, before she
9 even viewed him.

10 And I would also bring to the attention of the
11 Court, it happened so quickly that it would take away from
12 the level of certainty. Now she can tell you that she was
13 certain but yet it was a vague description. And she knew
14 when she heard on the radio, Officer Calloway's radio, you
15 know, they got him and bring them over for the ID. She
16 was -- she was certain they had the guy as she testified.

17 Your Honor, finally the length of time between
18 the crime and confrontation. Typically our courts
19 consider short amounts of time to be favorable for
20 reliability. Ms. Gilmore, as she indicated, was in -- in
21 my terms, a disoriented stated. She said she didn't feel
22 very well. Her son as she -- asked her if she felt like
23 she was going to pass out. She didn't exactly say passed
24 out but she didn't feel too well. You know, her son did
25 on the 911 call say, you know, my mom is passed out.

1 That combined with the pain medications -- and
2 she's an elderly lady that just had back surgery. And
3 this happened so quickly, I would suggest that the
4 timeframe would almost do her a disservice because she
5 didn't have time to recognize what was going on as far as
6 pulling herself together. And the disoriented state of
7 the victim would lead to an inaccurate ID, given the fact
8 that she went up there and there were no other suspects
9 handcuffed. There was a black man. She knew they had
10 been chasing her vehicle. She went up there to ID him,
11 the only man they had in custody.

12 And, Your Honor, I would argue that considering
13 those five factors, given that the show-up ID under our
14 law is apparently suggestive, those five factors would
15 lead not to a more reliable ID, even though it's already
16 inherently reliable, they would, in this county, suggest
17 definitely, definitely unreliable ID, you know, which
18 could cause some serious problems.

19 And what I'm asking for, Your Honor, is to
20 suppress the show-up identification. And *The State v.*
21 *Moore* makes it clear what happens. And any in-court
22 identification of an accused, is inadmissible if a
23 suggested out-of-court ID procedure played a very
24 substantial likelihood of irreparable misidentification.
25 Our courts say these show-up ID's lend themselves to be,

1 you know, irreparable misidentification.

2 And based on our Supreme Court in South Carolina
3 in Moore, I'd ask that you not -- that you suppress that
4 show-up ID and also in this Court, any potential in-court
5 ID based on these facts, Your Honor.

6 THE COURT: Thank you, sir. Solicitor, I will be
7 happy to hear from you.

8 MR. CATHCART: May it please the Court, Your
9 Honor. The South Carolina Supreme Court does not say that
10 a show-up ID is ---

11 THE COURT: Unconstitutional.

12 MR. CATHCART: Unconstitutional or in fact that
13 it's improper. It specifically states in State v. --
14 excuse me, State v. Brown, a 2003 case, that it is the
15 proper way to do a procedure in certain cases, cases like
16 this where -- a show-up is proper where it occurs shortly
17 after the alleged crime, near the scene of the crime, and
18 if the memory -- the witness's memory is still fresh, the
19 subject had not had time to alter his looks and dispose of
20 evidence, and the show-up may expedite the release of an
21 innocent suspect.

22 This happened, this show-up was within 10 minutes
23 of the crime. The victim gave an indication that she had
24 an ample opportunity to see him, not as in relying on the
25 Defendant's memo which talks about her -- relies on her

1 statement as to the description but what she said to the
2 officers. His memo continues to talk about this -- a
3 description that was listed in a statement she gave after
4 the identification as to what happened as opposed to what
5 she told the officers at the scene. Officer Calloway
6 indicated that her description was -- she found her at the
7 scene, the victim said that she was able to see him, not
8 only in the car but outside of the car. She had ample
9 opportunity to see him and that she was unable to leave
10 the car when he ordered her to do so.

11 She indicated the only time she took her eyes off
12 of him was when she looked for her son to help her. And
13 the Defendant then went around the car where he pulled her
14 out of the car. And again, she had an ample opportunity
15 to see his face once more, again, 10 minutes before the
16 identification with the police.

17 She -- the police indicated that there was no
18 improper suggestion as to who they wanted her to pick out.
19 She identified -- also indicated that she was not given
20 any improper prodding as to who she should pick out.

21 I would also point out when they got there she
22 asked, could they move up closer because she could not see
23 over the headrest, again showing that she wished to make
24 the proper identification. She said that she was 100
25 percent positive as to identification of this man.

1 I think under the totality of the circumstances
2 and under the five prongs of Neil v. Biggers, this is a
3 proper identification of this Defendant.

4 THE COURT: Thank you, sir. Looking at the prong
5 where the witness's opportunity to view the perpetrator at
6 the time of the crime, she was in the passenger seat when
7 some gentleman opened up the driver's side door. She was
8 looking at him the whole time. He sticks a gun in her
9 left ear. She's looking at him the whole time. She
10 wouldn't get out of the car soon enough. He walks around
11 in front of the vehicle, comes and opens the door. She
12 testified that she had an opportunity to observe the
13 perpetrator at the time. So her -- she had an ample
14 opportunity to view the perpetrator at the time of the
15 crime. Her degree of attention that she's testified was
16 specific and direct. A little bit weak maybe, the
17 accuracy of the witness's prior description. But the
18 level of certainty she demonstrated at the confrontation
19 was high and the length of time between the crime and the
20 confrontation was very little.

21 So considering the totality of the circumstances,
22 especially in view of the light of the Defendant's
23 testimony, in camera, I find and conclude that the ID was
24 proper. I'm going to allow it.

25 See y'all at 2:00.

1 THE CLERK: Please have a seat. State your full
2 name for the record.

3 THE WITNESS: Nola Gilmore.

4 DIRECT EXAMINATION

5 BY MR. CATHCART:

6 Q Ms. Gilmore?

7 A Yes, sir.

8 Q Where are you from?

9 A Huh?

10 Q Where you are from?

11 A West Virginia.

12 Q When did you move down to Columbia, South Carolina?

13 A 10 years ago.

14 Q What brought you down here?

15 A My son. He was telling me the good things about the
16 weather and all the work and the stores and all that
17 good stuff and I immediately got a job.

18 Q Doing what?

19 A I'm a nurse.

20 Q Okay. And what kind of nurse?

21 A I'm a regular R.N.

22 Q And you do what as an R.N.?

23 A Well, I just do everything that needs to be done with
24 my patients.

25 Q Okay. And you moved in with your son?

1 A I moved in with my son, yes, I did.

2 Q And that was 10 years ago?

3 A About 10 years ago. That's the only family I have is
4 that one son.

5 Q And in your -- other than you and your son, do y'all
6 have any other animals living in that house?

7 A Yeah, I have two babies.

8 Q Two babies?

9 A Uh-huh, two baby dogs.

10 (Laughter.)

11 Q What kind of dogs are they?

12 A English Bulls.

13 Q English bulldogs?

14 A English bulldogs. One of them is a year old, the
15 other one is two years old. And they're big old
16 couch potatoes.

17 Q Now, back in last year, back in February ---

18 A Yes, sir.

19 Q How many dogs did you have?

20 A At that time I had just one dog and I was on my way
21 down to the pet store in Five Points and Bill says,
22 Mother, I forgot to pay our cable. I said, you
23 better stop and get in there and get it.

24 Q Now, but you were going to the pet store to do what?

25 A To get a crate for the other one.

- 1 Q What other one?
- 2 A The second dog that I bought.
- 3 Q Y'all were getting a puppy?
- 4 A Yeah, we got a puppy. When we got him he was six
- 5 weeks old.
- 6 Q How much did he weigh then?
- 7 A 17 pounds.
- 8 Q How much does he weigh now?
- 9 A 83.
- 10 Q And this is an English bulldog?
- 11 A It's an English bulldog.
- 12 Q Is it related to Uga?
- 13 A I'm sorry?
- 14 Q It's related to Uga, the Georgia mascot?
- 15 A No, I just got the two.
- 16 Q Okay.
- 17 (Laughter.)
- 18 A I just got them to play with. I just got them to
- 19 play with.
- 20 Q Yes, ma'am. Y'all went to the Time Warner Cable that
- 21 was located where?
- 22 A It was there -- Time Warner is there on that street
- 23 going down towards the pet store.
- 24 Q Okay. And that's in Five Points?
- 25 A Yes, sir.

1 Q Okay. On Harden Street.

2 A Yes, sir.

3 Q Okay. I'm going to show you what's been marked
4 Exhibit Number 14. Is that the Time Warner Cable
5 we're talking about?

6 A Yes, sir, and right here (indicating) is where I was
7 parked.

8 Q Okay. If you would, please show me.

9 A Right here, sir (indicating). See my car was headed
10 right in this way right here (indicating), see these
11 spaces marked off?

12 Q Let me get you better picture so you can show it
13 better, okay?

14 A Okay.

15 (Pause.)

16 Q I'm going to show you what's been marked as State's
17 Exhibit Number 9. Does that show a close-up about
18 where you were parked?

19 A Right here is the exact spot (indicating).

20 Q Okay. Hold on a second. But that is a picture that
21 shows the exact spot. Wait please.

22 A That spot.

23 Q This picture shows that exact spot?

24 A The exact spot.

25 MR. CATHCART: Your Honor, at this time the State

1 seeks to introduce State's Exhibit Number 9.

2 THE COURT: Any objection?

3 MR. MAY: Without objection, Your Honor.

4 THE COURT: All right.

5 (WHEREUPON, State's Exhibit Number 9, Photograph,
6 was moved into evidence.)

7 Q Now, if you would show the jury the exact spot where
8 y'all were parked?

9 A Right -- right there (indicating).

10 Q Where that silver car is?

11 A Right over -- the car right there and he picked --
12 there was no car sitting here in this spot. This
13 spot was empty when I was there and it was this --
14 there was no car parked there. But now there was
15 other cars down in this area (indicating).

16 Q Now, when y'all went to the Time Warner Cable?

17 A Yes, sir.

18 Q Who else was in the car besides you and your son?

19 A That was it.

20 Q That was it?

21 A That was it.

22 Q And your son -- who was driving?

23 A My son was driving.

24 Q Okay. Can you drive?

25 A Oh, yes, I can.

1 Q You have a driver's license?

2 A Yes, I do.

3 Q Okay. But that day he was?

4 A That was my car.

5 Q But he driving your car?

6 A He was driving my car. That is my car.

7 Q And after he parked in that spot, did you go with him
8 or where did you stay?

9 A No, I stayed in the car because it was a nice day and
10 the sun, I was enjoying that.

11 Q Okay.

12 A And that's why I stayed in the car. He just run in
13 to pay his bill.

14 Q Okay. Were the keys still in the car?

15 A Yes. Yes, sir, they was.

16 Q Were your windows up or windows down?

17 A A window -- the windows on the driver's side was down
18 and the driver and over on the passenger side was
19 also down.

20 Q Okay. Enjoying the weather?

21 A Sir?

22 Q Enjoying the day, enjoying the weather?

23 A Yeah, uh-huh. Yes, sir.

24 Q What if anything occurred while you were sitting
25 there in the car?

1 A The only thing that occurred was the gentleman -- my
2 son hadn't been gone maybe three to five minutes, in
3 that area, and somebody just grabbed my door open on
4 the driver's side.

5 Q Okay.

6 A And they started yelling at me, get out of the car,
7 get out of the car, I'm gonna shoot you, I'm gonna
8 shoot you. I mean, about that time he put a gun ---

9 Q Okay.

10 A --- right, there, in my left ear ---

11 Q Did you jump out the car right then?

12 A No, I didn't -- I couldn't do it because I was just
13 getting out of the hospital. I'd been out of the
14 hospital a short time with surgery on my back and I
15 fell and broke my back.

16 Q So you were stuck there?

17 A Yes, sir.

18 Q Were you looking at the man telling you to get out of
19 the car?

20 A Yes, I did and he called me a...

21 Q He called you some pro -- some bad names?

22 A He called me -- I could tell the people what he
23 called me. He called me a bitch.

24 Q And you were able to see his face clearly?

25 A Yes.

1 Q How far away were you from him when he was doing this
2 to you?

3 A From the -- I was sitting in the passenger side of
4 the car and he came up and jerked the door open on
5 the driver's side. I was trying to get out as fast
6 as I could but I -- as you can see, I still can't
7 walk well.

8 Q Uh-huh.

9 A And ---

10 Q And he -- when he put the gun to your head, was
11 actually this close touching you, were you looking at
12 him?

13 A I looking at him, yes. I was looking at him and I was
14 remembering every bit of it.

15 Q What happened when you couldn't get out the car fast
16 enough for him?

17 A Well, he just ran around the car. He ran around the
18 front of the car and yanked the passenger side door
19 open and he pulled this arm and said, get out of the
20 car, get out of the car, get out of the car, real
21 loud. And just like it was a song. And he pulled me
22 out and the car door almost got me down. He didn't
23 check the door.

24 Q Okay. Now when it almost knocked you down, where was
25 that?

- 1 A Well, I was out there at the door.
- 2 Q After he pulled you out the car, you were standing
3 there with the door still open?
- 4 A Yeah, he hadn't shut the door.
- 5 Q Uh-huh.
- 6 A And when he pulled out he hit me in the back here.
- 7 Q Did he run back around the other side getting into
8 the driver's side?
- 9 A Yeah and took off -- he took off real real real fast
10 like you -- when I was a teenager, spinning tires.
- 11 Q Okay. And the car door did what to you now?
- 12 A It hit me in the back and I still got bruises and
13 bangs on it.
- 14 Q Now, did that happen -- did it knock you to the
15 ground?
- 16 A He knocked -- yes he almost knocked me to the ground.
- 17 Q Almost but you ---
- 18 A But I -- I finally got myself straightened out that I
19 could stand up and that's when I went into Time
20 Warner.
- 21 Q Okay.
- 22 A And someone opened the door for me because I had a
23 bloody face and blood coming out of my ear and he --
24 he -- then after he spinned off real fast I went in
25 to holler -- and hollered for my son and he said, oh,

1 God, that's my mom. And the ladies from Time Warner
2 gave me a hand. They came, washed my face and got me
3 a glass of water.

4 Q Okay.

5 A I still haven't seen them ladies since and I wouldn't
6 know them if is seen them. I would love to meet them
7 though. They was so good to me.

8 Q Okay. Now, were the police called?

9 A I'm sorry? Yes, the police was called and he had my
10 son's cell phone in the car.

11 Q But were the police called to your location?

12 A Yes.

13 Q Okay. How long did it take the police to get there?

14 A Oh, just -- just seconds. It just seemed like they
15 all of just come down on us right good.

16 Q Okay. And what if anything happened after the police
17 got there and talked to you for a bit?

18 A Well, I heard them talking on the radios, you know.
19 And they -- they was talking and one said, they're
20 goes that Intrepid now, says it's a flying. And I
21 guess it was still -- so then somebody -- the next
22 thing I could hear on the radio was they've -- I've
23 got him, I've got him, he's -- I'm on his bumper.
24 And they said -- she was hollering saying, give me
25 back up. And so I -- we just stood there because

1 people -- the press was there ---

2 Q How long after you were assaulted ---

3 A Uh-huh.

4 Q --- did you hear the police, the person on the radio
5 say, I'm behind the car, was it a few minutes or ---

6 A Just a few minutes.

7 Q Okay.

8 A And they really was -- I mean, they ---

9 Q And at some point did they -- did they take you
10 somewhere?

11 A Yes, they did.

12 Q Okay, where?

13 A At some point that lady police officer took us down,
14 said that -- to Gonzales Gardens. I never heard of
15 it or seen or know anything about it but I smelled
16 it. Anyway, they took us down there and they -- the
17 lady police officer that had pursuit of him, she
18 brought him out and I -- she said, the lady police
19 officer -- another lady police officer had took us
20 down there. And I asked her to -- can you bring him
21 up just a little bit closer because of that headboard
22 by the police car, the back seat head -- you know.
23 And I said, oh, that's him, that's him. And I ---

24 Q Were you sure that was him?

25 A I was 110 percent sure.

- 1 Q How -- was it more than 10 minutes from the time that
2 you saw him when he assaulted you to when you picked
3 him out for the police, about that much time or how
4 much time
- 5 A Oh, it was not very long.
- 6 Q Okay.
- 7 A Just -- just a very short time.
- 8 Q It was very fresh in your mind what he just did to
9 you?
- 10 A I'm sorry?
- 11 Q Was it very fresh in your mind what he ---
- 12 A Yes, I did -- yes, it was still fresh in my mind. I
13 dream of it now.
- 14 Q No doubt in your mind that the person that you
15 pointed out to as the guy who did it was the guy who
16 did this to you?
- 17 A 110 percent sure.
- 18 Q Do you see that person present in the courtroom
19 today?
- 20 A Yes, I do.
- 21 Q Would you please point him out?
- 22 A Will I please point him out?
- 23 Q Yes, ma'am.
- 24 A May I stand up?.
- 25 Q You may.

1 A Oh he's ---

2 Q There you go.

3 A He's the gentleman sitting right there. He's got the
4 green stripes around his shirt.

5 MR. SHEALEY: Objection, Your Honor ---

6 THE COURT: Overruled.

7 MR. CATHCART: Let the record reflect she's
8 identified the Defendant.

9 Q Does he look exactly as he looked the day he did this
10 to you?

11 A Well, he has changed his looks some, but not ---

12 Q In what way?

13 A Well, he -- he looks like he's put on maybe a little
14 weight.

15 Q Okay.

16 A And another reason, he put a little -- his hair is
17 differently.

18 Q Is his longer or ---

19 A He doesn't have as much as he did.

20 Q He has more hair now or less hair now?

21 A He has less hair.

22 Q Okay. And that would be the person that you picked
23 out on the lineup -- I mean, excuse me. The person
24 you saw at Gonzales Gardens?

25 A Uh-huh.

1 Q Correct?

2 A Yes, sir.

3 MR. CATHCART: Beg the Court's indulgence.

4 Q After the identification, did you go to the Columbia
5 Police Department?

6 A Yes, I did.

7 Q Okay. And did you subsequently finally get to see
8 your car again?

9 A No, they -- they took it down to -- I think they --
10 they pulled it down to a garage and they had a lot of
11 cars in there. And they let us in the gate and we
12 opened the car door and it was definitely our car.
13 They had fingerprinted all over -- the powder and
14 stuff that you fingerprint with was all over it.
15 That was the only thing that was done to it wrong.

16 Q And was there any items in the car that were not
17 yours?

18 A Yes, sir.

19 Q What was that?

20 A Well, there was two -- I'm sure there's two duffel
21 bags, you know duffel bags?

22 Q Uh-huh.

23 A And they was in -- I don't know how they got in
24 there, wasn't ours.

25 Q Okay.

1 A And there was a pillowcase in there and the
2 pillowcase had -- it looked like it had clothes or
3 something in it. We didn't examine it, we just saw
4 what was on the top.

5 Q And did they also return your son's phone to you at
6 some point?

7 A Yes, they did.

8 Q And you identified that as his phone?

9 A Yes, that was his phone.

10 Q Okay. Let me show you what's been marked as Exhibit
11 Number 25. Do you recognize what this is?

12 A Oh, that's my telephone.

13 Q Is that the picture -- is that the phone ---

14 A That's -- that's ---

15 Q --- that was recovered by the police?

16 A Uh-huh, that is -- that's his telephone.

17 Q Okay.

18 MR. CATHCART: Let the record -- excuse me, at
19 this time the State seeks to introduce State's Exhibit
20 Number 25.

21 MR. SHEALEY: Without objection.

22 THE COURT: All right, without objection.

23 (WHEREUPON, State's Exhibit Number 25,

24 Photograph, was moved into evidence.)

25 Q You gave a statement to the police, did you not?

1 A I did.

2 Q And that was after all this occurred?

3 A All this occurred, I just gave him the statement.

4 Q So a year ago was when this happened, right ---

5 A Yes, sir.

6 Q Almost to the day?

7 A Yes, sir.

8 Q And just within a few minutes after your assault, you
9 had no doubt who -- that the man that was before you
10 was the man who did this, correct?

11 A I had no doubt. I still don't have any doubt, it's
12 the man that did it and I'm 110 percent sure.

13 MR. CATHCART: Thank you. Please answer in
14 questions from Defense counsel.

15 THE COURT: Mr. Shealey.

16 CROSS-EXAMINATION

17 BY MR. SHEALEY:

18 Q Hi, Ms. Gilmore?

19 A Hi.

20 Q Now you testified that you heard they got your guy on
21 the radio, the police radio, they got behind the
22 Intrepid, is that correct?

23 A I can't hear you, sir.

24 Q I'm sorry, I'll speak a little louder. You testified
25 a moment ago that you heard them on the police radio

1 say, we got behind the vehicle, the Intrepid, you
2 heard that, correct?

3 A Yes.

4 Q I'm sorry?

5 A I heard -- thank you, sir, for moving up.

6 Q You heard that on the radio, on the officers' ---

7 A Yes, the officers, there was many officers out there.

8 I can't tell you how many because they was moving

9 around. And I heard ---

10 Q And you knew they got him?

11 A Yeah.

12 Q And you heard that?

13 A Well, at the moment I didn't know for sure so I just
14 kept quiet. Then I listened again and it was -- they
15 said, I've got him, I'm on his bumper.

16 Q Uh-huh.

17 A And she asked for backup. So therefore they caught
18 him -- well, it wasn't very long until they caught
19 him. He never -- he never bumped my car against a
20 tree or nothing. He just took the car.

21 Q Yes, ma'am. Now, Ms. Gilmore, how old are you, about
22 75?

23 A I am 75.

24 Q Okay. And you were 75 years of age at the time of
25 this?

- 1 A Yes, I was 75 at the time that that was happening.
- 2 Q Okay. And you mentioned you had some back surgery?
- 3 A I had back surgery not since then but I had it
- 4 before, yes, I did.
- 5 Q You had it about a month prior?
- 6 A Something like that.
- 7 Q Okay.
- 8 A I'm not exactly sure on that but it was before that
- 9 and about that, yes.
- 10 Q What was wrong with your back, what happened ---
- 11 A It was broke.
- 12 Q It was a broken back?
- 13 A I had a broke -- I fell and Dr. Gunter operated on me
- 14 over at Lexington Hospital for it.
- 15 Q And why did you fall, what was the occasion?
- 16 A I just fell down.
- 17 Q Okay. And how is your health ---
- 18 A How's my health, I'm fine.
- 19 Q Are you a diabetic?
- 20 A I'm fine.
- 21 Q Are you diabetic, Ms. Gilmore?
- 22 A I'm a diabetic, yes.
- 23 Q Okay. Now, after this surgery, I imagine that was
- 24 pretty painful?
- 25 A (No response.)

1 Q The back surgery?

2 A Yes.

3 Q Yes, ma'am. Did Dr. Gunter -- Dr. Gunter, you said?

4 A Yeah, my surgeon was Dr. Gunter. He had two more
5 helping him, Dr. -- I forgot the other two but I --
6 he had two more doctors helping him. He had -- I had
7 13 hours of surgery.

8 Q I'm sorry?

9 A I had 13 hours of back surgery.

10 Q 13 hours, okay. And for this 13 hour surgery, when
11 you were done, and you said it occurred about a month
12 prior to this incident?

13 A About that, yes.

14 Q Yes, ma'am.

15 A I couldn't tell you the day but I know it happened.

16 Q And Dr. Gunter and those other officers -- excuse me,
17 other doctors prescribed you some medication?

18 A Holbrook was one of the them. Dr. Gunter was the
19 main surgeon and Holbrook was the helper and there
20 was another one and I could have looked it up for you
21 but.

22 Q Yes, ma'am. And they prescribed you some pain
23 medication for that surgery?

24 A No, he -- he didn't. He told me that he didn't think
25 I was going to need any medication but if I did, give

1 him a call. And I did, I gave him a call. He called
2 me in some pills which -- he called me in some. He
3 said take as needed.

4 Q How many times ---

5 MR. CATHCART: Your Honor, if I may object as to

6 ---

7 THE COURT: What's the relevancy?

8 MR. CATHCART: --- relevance of ---

9 THE COURT: Relax. What's the relevancy, Mr.
10 Shealey?

11 MR. SHEALEY: You Honor, the relevance is to the
12 medication that she may have been taking during --during
13 the incident. It goes to her state of mind, Your Honor.
14 It goes to any type of confusion, identification. That's
15 pretty relevant, Your Honor. It's an ID case.

16 MR. CATHCART: And, Your Honor, the question
17 would be, were you under the influence of any drugs ---

18 THE COURT: Had you taken any medication the day
19 that you were robbed or the car was jacked and that --
20 whether she was under medication and had back surgery?

21 So narrow it down to the day in question.

22 A Yeah, and the medication bottles said take as needed.
23 I think I had taken two in all that time.

24 Q Did you take any of that as needed medication on
25 February 1st, 2008?

1 A I'm sorry?

2 Q Did you take any of the as needed medication, that
3 pain medication, on February 1st, 2008?

4 A No, I don't take any medicine.

5 Q Okay. Now, Ms. Gilmore, I see you're wearing
6 glasses?

7 A Yes.

8 Q Were you wearing glasses on February 1st, 2008?

9 A Yeah, I wear glasses all the time.

10 Q You wear them all the time?

11 A Yeah.

12 Q Okay. So not like reading glasses but all the time
13 glasses?

14 A I wear my -- they're prescription glasses.

15 Q Yes, ma'am. Now, you described the perpetrator in a
16 statement to Investigator Pegram on February 1st,
17 2008, do you remember that?

18 A I what now?

19 Q I'm saying, Ms. Gilmore, you described the alleged
20 perpetrator in a statement to Investigator Pegram at
21 the Columbia Headquarters after this incident ---

22 A Yeah, I did?

23 Q Yes, ma'am. Do you remember doing that?

24 MR. SHEALEY: Your Honor, may I approach?

25 THE COURT: Yes, sir.

1 MR. SHEALEY: Thank you, Your Honor.

2 Q Do you recognize this, Ms. Gilmore? Do you recognize
3 that as your statement?

4 A That is my signature right there, right there, and
5 right there.

6 Q Thank you. And you gave the statement on
7 February 1st, 2008 because, like you said, it would
8 have been fresh in your mind right after this
9 happened, correct?

10 A It's still fresh in my mind?

11 Q Yes, ma'am, of course it is. Now, I'm going to read
12 you ---

13 MR. SHEALEY: Actually, before I do that, can
14 I mark this for identification purposes as Defendant's
15 ID?

16 (WHEREUPON, Defendant's Exhibit Number 1,
17 Victim's Statement, was marked for
18 identification.)

19 Q Now, Ms. Gilmore, do you remember this statement,
20 you just identified as your statement. I'm going to
21 read you a portion of this statement:

22 (Reading) I waited outside and was sitting in the
23 front passenger's while I was waiting for William to
24 return. A black man snatched the driver's door open.
25 He put a gun to the side of my head and he told me --

1 and I apologize for this language -- bitch, get out
2 of the car or I'll shoot you. He said that many
3 times as was getting out of the car. I was having
4 trouble getting out of the car because had back
5 surgery. The black man didn't wait for me to get out
6 before he started backing up. He almost knocked me
7 down. He drove away very fast and I went inside to
8 get help.

9 Do you agree with that statement?

10 A What part do you think -- you want me to tell whether
11 I agree with it or not?

12 Q Just the portion I read, do remember ---

13 A Yeah.

14 Q --- writing that ---

15 A I agree with it. He did, he drove away very fast and
16 the car door was not shut. I don't know when the car
17 door did get shut. But when he left there, the car
18 door was a swinging, in and out like it was trying to
19 shut.

20 Q Yes, ma'am. But on that day, February 1st, 2008, you
21 only identified the alleged suspect as a black man?

22 A Yes, sir.

23 Q But today you're saying something a little different?

24 A He's still a black man, isn't he?

25 (Laughter.)

1 Q He is, you're right. In fact there a lot of black
2 men in this room, you're correct.

3 Now, I'm going to bring you back to what
4 happened. You testified that you were on the
5 passenger side because William had been driving?

6 A Yeah, I was a passenger.

7 Q And the man that carjacked you, opened up the
8 driver's side door. And you testified that he put a
9 gun to your left ear?

10 A He put a -- the point of the gun went into my ear.

11 Q Uh-huh. Was he pressing it pretty hard?

12 A Pretty hard. And he -- he pulled out and pushed it
13 in I think two times.

14 Q Uh-huh. And even though you didn't describe what he
15 looked like in your statement to the officer, other
16 than a black man, what did he look like? What did --
17 what did his facial features look like?

18 A You mean the black man ---

19 Q Did he have a mustache?

20 A You want me to identify the black man? I just did.

21 Q Right. And I remember you said that -- and you
22 identified the Defendant.

23 Now, you testified that his hair is shorter now
24 than it was then. He's changed, you said he's put on
25 some weight and his hair's shorter now than it was

1 then?

2 A Yeah, his head -- when I -- when he had -- I saw his
3 hair, it was long and it was -- well, it was longer
4 than what I have and it was gummy looking.

5 Q Gummy? Was it like ---

6 A Gummy looking. Looked like it was -- needed a good
7 shampoo.

8 Q So it was -- I mean, I don't -- was it kind of long
9 and nappy?

10 A Yeah, it was nappy like.

11 Q Was it braids or was it just ---

12 A No, no, it was not braided.

13 Q Uncombed, maybe uncombed? Was it uncombed?

14 A It was uncombed for sure.

15 Q Okay. Okay. Now, other than the gun that was
16 pointed to your left ear as you were on the passenger
17 side, did he have anything else in his hands?

18 A I didn't see anything else but a gun. But when I
19 went over -- when we went over to that garage to get
20 our car, there was two duffle bags in the trunk and
21 they was a pillowcase in there with some -- looked
22 like clothes.

23 Q Yes, ma'am. Now but other than -- he had a gun in
24 his hand for sure, you're certain of that?

25 A I'm a hundred percent sure I seen a gun.

1 Q Yes, ma'am.

2 A And I felt it in my ear.

3 Q Now you weren't able to really describe the weapon,
4 were you?

5 A No, I couldn't tell it enough to -- and I wouldn't
6 know what to -- how to describe a gun anyway.

7 Q Yes, ma'am.

8 A By name.

9 Q Now, after this happened, you went into Time Warner,
10 didn't you?

11 A Sir?

12 Q Sorry, Ms. Gilmore. After this thing happened, you
13 went to the Time Warner to let them know something
14 happened right, something happened to you?

15 A Me, happened to me?

16 Q After this incident, you went into the Time Warner to
17 let them -- to let people know something happened to
18 you, right?

19 A No, my son might have but I ---

20 Q You never went inside Time Warner?

21 A I never entered Time Warner. I don't pay bills. My
22 son pays them.

23 Q Okay. Ms. Gilmore, after this incident, you felt a
24 little faint, didn't you?

25 A I felt a little bit what?

- 1 Q You felt a little bit faint?
- 2 A No, I ain't faint.
- 3 Q Okay.
- 4 A I'm too mean to faint.
- 5 Q You're too mean to faint? Okay. So you would
6 disagree with some of the earlier testimony when they
7 said you looked a little faint? You were fine? You
8 think you were fine?
- 9 A Not one.
- 10 Q Okay.
- 11 A I don't have a pain one.
- 12 Q Yes, ma'am. Now, eventually the officers took you to
13 the area where they had a suspect. And you -- you
14 knew this because they told you where they were
15 taking you and to look at somebody and you had heard
16 on the radio that they had -- they were on someone
17 and they had apprehended someone, isn't that right?
- 18 A Yeah, they said they had apprehended but they didn't
19 say who. I'm not sure they knowed how but they had
20 -- they ---
- 21 Q Yes, ma'am and they took you -- they took you to the
22 Gonzales Gardens Apartment Complex, didn't they?
- 23 A You know, I don't know what that is down there. We
24 just went inside and I was trying to get out of there
25 fast because it was making me sick, the smell.

- 1 Q The smell, you didn't like the smell of the place?
- 2 A The smell ---
- 3 Q It smelled dirty, didn't it, dirty?
- 4 A Yeah. My son was saying, hurry, get out of here,
5 let's just -- because it stunk.
- 6 Q Now, you identified a man in handcuffs, didn't you?
- 7 A Yes he -- yes, he did, he had handcuffs on.
- 8 Q And he was the only man in handcuffs?
- 9 A He was the only one I seen in handcuffs.
- 10 Q There were no other black men in handcuffs there with
11 the officers?
- 12 A I didn't see nobody else in handcuffs, black or white
13 or pink or pokie dots. That was the only one I seen.
- 14 Q Yes, ma'am. Now, after this thing happened, it was
15 covered in the news a little bit. And you were on
16 the news a little bit and the incident ---
- 17 A Yeah, I was on the news. I was on the news. They
18 didn't use my name in the newspaper.
- 19 Q Of course, not.
- 20 A They didn't use my name in the newspaper but it came
21 out on TV when it came out on TV.
- 22 Q You saw -- you saw Mr. Mitchell own TV, they showed
23 him on TV?
- 24 A Yes. I didn't see him on TV, just myself.
- 25 Q Your picture was on TV?

1 A Huh?

2 Q I'm sorry. You said your picture was on television?

3 A Yes, it was -- it was on 6 in the morning and 11 at
4 night.

5 Q Okay. Okay.

6 A It was on the WL -- you know, what is it, WLTX or
7 something, something like that.

8 Q And you've known this trial has been coming for a
9 while, correct?

10 A (No response.)

11 Q You've known this trial has been coming for a couple
12 of weeks now?

13 A Uh-huh.

14 Q And Mr. Cathcart's been out to your house a couple of
15 times before this trial?

16 A Who?

17 Q Mr. Cathcart has been out to your house a couple of
18 times before this trial?

19 A I think he was. I'm pretty sure he was.

20 MR. SHEALEY: Beg the Court's indulgence.

21 (Pause.)

22 THE COURT: Yes, sir.

23 MR. SHEALEY: No further questions at this time?

24 THE COURT: All right. Anything on redirect?

25 MR. CATHCART: Just a couple of questions.

1 MR. CATHCART: Okay.

2 THE COURT: Move on to something else.

3 Q You've been here all day today, right?

4 A Yes, sir.

5 Q And you're not doing the best of health as you were
6 last year, were you?

7 A I couldn't hear you.

8 Q I'm sorry. You're not doing as well as you were last
9 year?

10 A I was doing better than I was, you know, last year.
11 I think probably that helped me to go down, all of
12 that, because I hear things at night. That's still
13 bearing on my mind.

14 Q Okay. But the person who attacked you is the same
15 person you saw 10 minutes later, correct?

16 A Uh-huh.

17 Q Yes, ma'am?

18 A (The witness nodded head.)

19 Q You have to answer out loud?

20 A Uh-huh, yeah, I did.

21 MR. CATHCART: No further questions?

22 THE COURT: Anything on recross?

23 MR. SHEALEY: No, Your Honor, nothing.

24 THE COURT: You may step down now, Ms. Gilmore.

25 Help Ms. Gilmore step down, please.

1 (The witness leaves the witness stand.)

2 THE COURT: Ms. Hendrick.

3 MS. HENDRICK: Yes, sir.

4 MR. CATHCART: Your Honor, actually if I may.

5 THE COURT: Yes, sir.

6 (Pause.)

7 THE COURT: I'm going to give y'all a short
8 break, members of the jury. Don't talk about this case,
9 okay. We'll bring you right back and try to work in a
10 couple more witnesses before I let you go get your
11 daughter, all right. Fair enough?

12 JUROR: I'm sorry?

13 THE COURT: I'm going to give you a short break.
14 We're going to try and work in a couple more witnesses
15 before I let you go get your daughter.

16 JUROR: Thank you very much.

17 (The jury retires from the courtroom at
18 3:47 p.m.)

19 THE COURT: We'll be at ease. Not very
20 long, not very long.

21 (The Court was in recess.)

22 THE COURT: Is everybody ready?

23 MR. CATHCART: Yes, Your Honor.

24 THE COURT: Bring the jury in.

25 MR. CATHCART: Your Honor, I ask as to the

1 BY MS. HENDRICK:

2 Q Good afternoon, Corporal Sanders. Where are you
3 currently employed?

4 A The City of Columbia Police Department.

5 Q And what do you do for the City of Columbia?

6 A I'm an acting sergeant. Actually I run a squad out
7 of the downtown metro region area.

8 Q And why do I have to call you Corporal?

9 A I'm technically just a corporal. They're just having
10 me do a sergeant's job.

11 Q Okay. How long have you been in law enforcement?

12 A This summer will make 20 years with the City of
13 Columbia Police Department.

14 Q If you would, just briefly describe for the jury what
15 your duties are as an acting sergeant for the
16 Columbia Police Department.

17 A I'm basically responsible for eight patrolmen to be
18 sure they cover their territories that they are
19 assigned and be sure they carry out their day to day
20 activities as far as police work, patrolling,
21 providing community services for the citizens of
22 Columbia.

23 Q And part of your job is to respond to any emergency
24 calls that go out?

25 A That is correct.

1 Q And did you have the opportunity to respond to an
2 emergency call February 1st, 2008?

3 A I did.

4 Q Can you explain to the Court how that happened?

5 A Actually, I had gone in that day to work an overtime
6 assignment and over the police radio they gave our a
7 in-progress robbery at the Time Warner Cable that's
8 located on Harden Street in the Five Points area.

9 Q What other information came out over the radio about
10 this call?

11 A The information that came out over the radio was that
12 the suspect had left the Time Warner Cable in a blue
13 four door Intrepid vehicle. And that was the vehicle
14 we were looking for.

15 Q And where were you in Columbia when this call came
16 out?

17 A I had just left my offices over on the Two Notch Road
18 area, so I was coming down Two Notch Road. I had
19 turned on to Taylor Street and then when the call
20 went out on Harden Street, I started making my way
21 over to the Five Points area via Taylor Street to I
22 believe it was Hampton.

23 MS. HENDRICK: Permission to approach the
24 witness.

25 THE COURT: Yes, ma'am.

1 Q I'm going to show you what's been marked as State's
2 Exhibit Number 27. Do you recognize that?

3 A I do. It's a downtown map of Columbia, part of it.

4 Q And is this the area where you were headed towards or
5 that you were in?

6 A Yes.

7 Q You said you were coming from Taylor Street?

8 A I was coming down Taylor Street. I had just come off
9 of Two Notch to Taylor right by the Providence
10 Hospital. I turned, I was trying to make my way over
11 to the Five Points area.

12 MS. HENDRICK: Your Honor, permission for the
13 witness to step down.

14 THE COURT: Yes, ma'am.

15 (The witness steps down from the witness stand.)

16 Q And while you're driving in this area, did you happen
17 to see a blue Intrepid?

18 A I did about the 1200 block of Laurens Street.

19 Q And can you use this marker and just show us where
20 you first spotted the blue Intrepid?

21 A Okay.

22 Q Take your time ---

23 A This is Laurens Street right here and this is Harden
24 Street and I'm assuming this is going to be Gervais
25 (indicating). It's not marked.

1 Q Uh-huh.

2 A This is Laurens Street. It was about somewhere right
3 in this area (indicating).

4 Q Okay. And who was in that blue Intrepid?

5 A The Defendant.

6 Q And how were you able to see that?

7 A I was actually headed towards Gervais Street. See my
8 little arrow, it's coming down Laurens Street this
9 way. And the blue Intrepid was headed on Laurens
10 Street coming towards me (indicating). Everybody see
11 that?

12 When I actually saw the car coming towards me, I
13 noticed it was a blue Intrepid so I looked over into
14 the car and the driver actually looked at me and his
15 eyes got kind of big like, oh, police.

16 Q What happened after you made eye contact with the
17 driver?

18 A Once I made eye contact with the driver, the driver
19 proceeded on Laurens Street. I came down Laurens
20 Street and made a right on to Gervais Street, made a
21 right on to Gregg Street trying to hurry up because I
22 knew the only place for him to come out would be on
23 Hampton Street up here. So I was basically right
24 here (indicating) and I made a right hand turn and
25 the blue Intrepid once again was coming towards me.

1 So at this point I do a u-turn and I get behind
2 the car and they had already given out the tag on the
3 radio. So I confirmed with our dispatch, I read out
4 the tag and told everybody to give me the channel
5 because I was behind the vehicle.

6 He proceeded up Hampton Street to Barnwell. I
7 was still behind him the whole time giving radio
8 transmission. We made a right on to Taylor Street,
9 went all the way down to Taylor Street. I was still
10 giving transmissions on our metro channel.

11 He made a right on to Heidt Street and we
12 actually came to a final rest right here at Hampton
13 and Washington.

14 Q Okay. And at what point during this did you put on
15 your blue lights and siren?

16 A Right here when I made the initial u-turn and got
17 behind the Defendant is when I confirmed that that
18 was the tag, this was the car and I turned my -- I
19 activated my blue lights and my siren and my
20 headlights in the flashing mode.

21 Q Okay. So it was not until right there (indicating).

22 A Right here (indicating) when I made this actual u-
23 turn on him.

24 Q And did he ever stop during this?

25 A He never stopped. He kept proceeding on down this

1 path (indicating), kept proceeding on down the path
2 until we came to the intersection of Hampton and
3 Heidt and that's where he stopped the car right in
4 the middle of the intersection.

5 Q And was there traffic on these roads?

6 A There was traffic. It seemed like it was around
7 lunchtime, 12:30'ish, during the day.

8 Q Was there opportunity for him to pull over and stop?

9 A Oh, yeah. There's not very much traffic right here
10 on Hampton Street or Barnwell. This would have been
11 actually -- this would have been the most appropriate
12 opportunity for him to have stopped right here
13 (indicating) because there was no traffic there. It
14 was before we reached a major intersection and a
15 major ---

16 Q And your blue lights were on the entire time you're
17 driving down Taylor?

18 A The entire time.

19 Q Okay. What happened when you came to the
20 intersection of Hampton and Heidt Street?

21 A When we got to Hampton and Heidt Street, he stopped
22 the car right here. I stopped behind him. I got on
23 my PA and told him to stop. At this point -- and the
24 PA is the loud speaker, the police radio over the
25 police vehicle. He actually exited the vehicle,

1 jumped out and began to run on foot.

2 At this time I exited my police car and pursued
3 after him on foot headed toward Gonzales Gardens.

4 Q Okay. And where is Gonzales Gardens on this map?

5 A It's going to be on -- up in this area (indicating).

6 Q Okay.

7 MS. HENDRICK: Your Honor, at this time the State
8 moves to enter State's Exhibit Number 27 into evidence.

9 THE COURT: I think it's already without
10 objection, was it not?

11 MR. MAY: That's correct, Your Honor.

12 THE COURT: All right, just needs to be marked.

13 MS. HENDRICK: It's been marked.

14 THE COURT: All right, it's in then.

15 (WHEREUPON, State's Exhibit Number 27, Map of
16 City of Columbia, was moved into evidence.)

17 (The witness returns to the witness stand.)

18 Q Okay. I'm going to show you some other pictures.

19 This is what's been marked as State's Exhibit 5. Let
20 me show them all to Defense counsel first.

21 (Pause.)

22 Q I'm going to show you what's been marked as State's
23 Exhibit 10.

24 MS. HENDRICK: Permission to approach again.

25 THE COURT: Did you see this?

1 MR. MAY: Yes, sir.

2 THE COURT: All right.

3 Q I'm going to show you what's been marked as State's
4 Exhibit 10. Is this the area that you chased him
5 through?

6 A Yes, that's the -- it's a little dirt field right
7 there. I believe there's a Church's Chicken and a
8 barber shop right there and that's Gonzales Gardens,
9 these apartments.

10 Q And can you kind of -- maybe it would be helpful if
11 you held it.

12 A Okay.

13 Q Can you show the jury maybe the path you took?

14 A This street is actually Millwood Avenue right here.
15 I ran across Millwood Avenue and up through this --
16 this field right here (indicating) going up toward
17 Gonzales Gardens, these apartments.

18 Q Okay. And was he in your line of sight the entire
19 time?

20 A He was in my line of sight the entire time going
21 across this field and across this roadway, from the
22 time we exited the vehicle back here, he was in my
23 sight the whole time.

24 Q And did you ever lose him in your line of sight?

25 A I lost him briefly when he rounded the corner of one

1 of the apartment buildings. But is was just briefly.

2 Q Okay.

3 MS. HENDRICK: The State moves to enter this,
4 State's Exhibit 10.

5 MR. MAY: No objection, Your Honor.

6 THE COURT: Without objection.

7 (WHEREUPON, State's Exhibit Number 10,
8 Photograph, was moved into evidence.)

9 Q And did you eventually catch back up with him?

10 A I did. There were other officers in the area also
11 because we had given the general area that we were
12 at, so there were other officers. And once I rounded
13 that -- that apartment building, I looked over and in
14 between the door and the screen door he had wedged
15 his self up in there trying to hide. And at that
16 point Officer Smalls was coming down here and I'm
17 like, that's him, that's him. And at that point we
18 went in and got him.

19 Q And then you were able to place him under arrest at
20 that point?

21 A Uh-huh.

22 Q And was that the same person, the person you had been
23 chasing, the same person you saw in the blue
24 Intrepid?

25 A Yes, indeed it was.

1 Q Okay. And after he was apprehended, what else did you
2 do?

3 A That was it. Well, I -- actually -- I had saw him
4 throw something when we were running across that
5 field, he had dropped something, threw something
6 down. So I went and backtracked my steps, the path
7 that we ran, and we ended up finding a, I believe it
8 was black cell phone that he had dropped or thrown
9 down.

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

11 (Pause.)

12 Q I'm going to show you what's been marked State's
13 24. Do you recognize this?

14 A That's the blue Intrepid he was driving and that's my
15 patrol car behind it.

16 Q And so is that the intersection of Hampton and Heidt?

17 A That is.

18 Q Does that fairly and accurately represent your cars
19 -- those cars that day?

20 A Yes.

21 MS. HENDRICK: Your Honor, the State moves to
22 enter State's Exhibit 24 into evidence.

23 MR. MAY: No objection, Your Honor.

24 THE COURT: All right, without objection.

25 (WHEREUPON, State's Exhibit Number 24,

1 Photograph, was moved into evidence.)

2 MS. HENDRICK: Please answer any questions that
3 Defense counsel may have for you.

4 CROSS-EXAMINATION

5 BY MR. MAY:

6 Q How you doing, Officer -- I mean, Corporal.

7 A That's okay.

8 Q I apologize.

9 A That's all right.

10 Q Okay. Just real quick. Help me orientate myself to
11 this, all right?

12 A Okay.

13 MR. MAY: If I may approach, Your Honor.

14 THE COURT: Yes, sir.

15 Q So we're assuming this is Gervais, this is 378,
16 correct?

17 A Right.

18 Q And this is the train tracks that run behind and
19 these are county buildings, right?

20 A (No response.)

21 Q Those are the county buildings?

22 A The county buildings -- can I -- permission to step
23 down?

24 THE COURT: Yes.

25 (The witness steps down from the witness stand.)

1 A These right here -- this is Gervais Street right
2 here. This is Laurens Street. This is where the bus
3 station is at. There's like a paint and body shop
4 right here (indicating).

5 And these are the state (sic) buildings, 2020
6 Hampton Street where you pay your taxes and some kind
7 of EMS building right there (indicating).

8 Q Okay. And where would the Greyhound Bus Station be?

9 A The Greyhound Station would be right here
10 (indicating) on the corner or semi-on the corner of
11 Harden -- in between Harden and Laurens and Gervais
12 Street. It's like right ---

13 Q It's about right there?

14 A Right there (indicating) where my finger's at.

15 Q Okay. And this little street right here, do you know
16 the name of that? Is that Cherokee (phonetic)
17 Street?

18 A I believe that is Cherokee Street right there.

19 Q And you started seeing the Defendant, okay, after you
20 came back. You came back down here and right about
21 in this area (indicating) ---

22 A Uh-huh.

23 Q --- is where you saw the Defendant, is that correct?

24 A That is correct.

25 Q And you can get back -- take your seat.

1 A Thank you.

2 (The witness returns to the witness stand.)

3 Q And where we ended up and the place where he took a
4 right and you took a right following him, there's a
5 Kentucky Fried Chicken right there as -- after you
6 pass Benedict and Allen, isn't that right?

7 A There's a Kentucky Fried Chicken on your left on
8 Taylor Street and on your right there's actually a
9 Church's Chicken.

10 Q Okay. But you said you take a right. It's right
11 there in that -- in that vicinity ---

12 A Right.

13 Q --- where -- where the vehicle was eventually stopped
14 -- I mean stopped.

15 A Right.

16 Q And then you gave foot chase and I have to tell you
17 it makes me feel better living in Columbia that you
18 caught him, that you had the speed to catch him while
19 he was running, I mean. And you caught him in
20 Gonzales Gardens?

21 A (The witness nodded head.)

22 Q And it was this man who was running?

23 A Yes, yes.

24 Q Okay. And you saw him drop the cell phone?

25 A Uh-huh.

1 Q And that was recovered?

2 A Yes.

3 Q And you pretty much kept up with him the entire time,
4 right?

5 A He had a little bit of a jump on me but I could still
6 see him in sight. And then when he rounded that
7 building, I briefly -- he was out of my sight for
8 just a brief moment. And then when I turned around
9 and then I saw him wedged in that doorway.

10 Q About that time the -- weren't there some narcotics
11 agents coming from the other direction?

12 A That is correct. They were coming from like the
13 Providence Hospital street side up there on the
14 Gardens.

15 Q And you came together and you got Norman somewhere --
16 somewhere on the building kind of like in between the
17 screen door and the main door?

18 A It wasn't kind of, he was. He had tried to wedge his
19 self in between a locked door and a screen door of
20 somebody's apartment.

21 Q I can't do that so I'm just ---
22 (Laughter.)

23 MR. MAY: Beg the Court's indulgence for one
24 second.

25 (Pause.)

1 THE COURT: Yes, sir.

2 Q You were present when he was placed in handcuffs,
3 correct?

4 A Yes.

5 Q And did y'all do -- like you patted him down to see
6 what was in his pockets?

7 A Officer Smalls is the one that actually handcuffed
8 him because we both got in there together and I'm
9 like, that's him, that's him, that's him.

10 Q Yes, ma'am.

11 A So Smalls actually and someone else actually took him
12 into custody right there.

13 A But you were there looking at it?

14 A I was there watching it.

15 Q Okay, did they find a gun?

16 A I'm not aware that they did.

17 MR. MAY: No further questions at this time, Your
18 Honor.

19 MS. HENDRICK: Beg the Court's indulgence. Very
20 briefly. May I approach the witness?

21 THE COURT: Yes, ma'am.

22 REDIRECT EXAMINATION

23 BY MS. HENDRICK:

24 Q Just to clarify, the first time you actually saw the
25 Defendant in the blue Intrepid was where?

1 THE WITNESS: Can I step down?

2 THE COURT: Yes, ma'am.

3 (The witness leaves the witness stand.)

4 A It was there on Laurens Street, right here
5 (indicating) about mid ---

6 Q Where you made ---

7 A --- Laurens Street. That's where I made eye contact
8 with him. He was driving the blue Intrepid. I was
9 driving the police car, basically came and I saw the
10 blue Intrepid and I looked right over there looking
11 dead in the eye and saw him.

12 Q And this area where Hampton and you said that's
13 Cherokee?

14 A That's Cherokee right here (indicating) because it
15 dead ends.

16 Q And right where that is is where you actually just
17 activated the blue lights.

18 A Right. Because I made a right right here because I
19 knew when he came off of Laurens Street he would have
20 either had to have taken a right or taken a left. So
21 I obviously made the right to go back down here to
22 try to catch back up with him to see where he was at.
23 And at this time he was coming towards me again. So
24 that's when I did the u-turn and got behind him and
25 verified that was the car and that was the tag.

1 Q Okay. So that was the second time you actually saw
2 him in the blue Intrepid? The first time was on
3 Laurens Street?

4 A That's correct.

5 MS. HENDRICK: Beg the Court's indulgence.

6 (The witness returns to the witness stand.)

7 MS. HENDRICK: I have no further questions for
8 the witness.

9 THE COURT: Anything on recross?

10 MR. MAY: No, sir.

11 MS. HENDRICK: Your Honor, may this witness be
12 excused?

13 MR. MAY: Without objection, Your Honor.

14 (The witness leaves the witness stand.)

15 (Whereupon, a bench conference was held off the
16 record, in the presence of the jury, but out of the
17 hearing of the jury.)

18 THE COURT: I've got good news and I've got bad
19 news for you, members of the jury. What would y'all like
20 to hear first?

21 JURORS: Good -- bad.

22 THE COURT: I'm going to stop a little bit early,
23 okay. - I want to make sure you go get your daughter. And
24 this is long night for me and I'm going to take a little
25 break myself. I'm going to save myself a little bit just

1 from a personal standpoint.

2 So, once again, don't talk about this case in any
3 way, shape or form. I ask you to be back in the jury room
4 tomorrow morning at 9:30. I trust and hope you all have a
5 pleasant and restful evening.

6 I'll see you at 9:30. Thank you all so very
7 much.

8 JURORS: What's the bad news?

9 THE COURT: There is no bad news.

10 (The jury retires from the courtroom at
11 4:20 p.m.)

12 THE COURT: See y'all at 9:30 in the morning.

13 (The Court was in recess.)

14 THURSDAY, FEBRUARY 5, 2009:

15 THE COURT: We all ready?

16 MR. CATHCART: Yes, sir.

17 THE COURT: Ready, Mr. May?

18 MR. MAY: Yes, Your Honor.

19 THE COURT: Bring them in.

20 (The jury returned to the courtroom at
21 10:11 a.m.)

22 THE BAILIFF: Jury's all present, Your Honor.

23 THE COURT: Welcome back, Mr. Foreperson and
24 members of the jury. We'll see how this thing goes.

25 Solicitor, you may call your next witness.

1 MR. CATHCART: Your Honor, at this time the State
2 calls Officer Smalls.

3 (BARRY SMALLS, after being duly sworn,
4 testified as follows:)

5 THE CLERK: Please have a seat and state your
6 full name for the record.

7 THE WITNESS: My name is Barry Smalls, Columbia
8 Police Department

9 DIRECT EXAMINATION

10 BY MR. CATHCART:

11 Q Where are you employed?

12 A Columbia Police Department.

13 Q And what do you do there?

14 A Narcotic -- officer for organized crime and
15 narcotics.

16 Q And were you doing that back on February the 1st of
17 '08?

18 A Yes, I was.

19 Q Okay. Were you working on February the 1st of '08?

20 A I was.

21 Q Did something bring you to Gonzales Gardens on
22 February the 1st of '08?

23 A Yes.

24 Q What was that?

25 A Was scanning radio channels and we heard a call go

1 out about an armed robbery in progress, just
2 happened. And myself and my supervisor, Sergeant
3 Kelly, was in the same vehicle and we started in the
4 direction of Gonzales Gardens. They said that the
5 person was heading that way.

6 Q Okay. And what if anything did you observe when y'all
7 were heading that way?

8 A There were other officers in route going to the call.
9 Pretty much when we got on scene pretty much in the
10 area we saw people starting to set up a perimeter and
11 they was shouting out descriptions of the guy saying
12 that he was on foot at the time running.

13 Q Okay. And what if anything did y'all observe?

14 A When I got near Gonzales Gardens I observed a guy
15 that they were describing on the radio at the time
16 around about the A-B building of Gonzales Gardens,
17 going around the corner. At that time I exited the
18 vehicle and began to pursue on foot.

19 Q What occurred after that?

20 A As I got around the A-B building side, I noticed
21 Office Sanders coming around the Gonzales Gardens
22 side and she was stating that the guy was running
23 that way. I went to the Forest Drive side of the A-B
24 building and we noticed that the guy was going --
25 looked like he went inside of a apartment.

1 At that time I moved up and she was like, there
2 he is, there he is. He was wedged between the door
3 and like the aluminum screen door part of the
4 apartment. And she was stating, that was him, that
5 was him. At that time we apprehended him and placed
6 him under arrest at that time.

7 Q And did -- what did y'all do after that?

8 A After that I moved with my sergeant, Sergeant Kelly,
9 and some other officers, we went and backtracked the
10 area looking for a gun because during the pat down at
11 that time we didn't find a gun that they were saying
12 that he had. So we did a backtrail going back from
13 the route that he ran and tried to recover any items
14 that they were saying that he was taking off clothes
15 and throwing things. At that time we tried to canvas
16 the area to see if we could find any of the things
17 that he was throwing away.

18 Q Were you able to recover the gun?

19 A No, I didn't retrieve a gun at that time.

20 Q And how much -- how far did you backtrack?

21 A Probably about -- about a half a mile total distance.

22 Q The distance that he was on foot?

23 A About what he was on foot from where I saw him at
24 that time.

25 MR. CATHCART: Okay. Please answer any question

1 from Defense counsel.

2 MR. SHEALEY: May it please the Court.

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. SHEALEY:

6 Q How you doing, Officer Smalls?

7 A How you doing?

8 Q You never saw who carjacked Ms. Gilmore, did you?

9 A Excuse me?

10 A You never saw who carjacked Ms. Gilmore? You
11 personally never observed the carjacking?

12 A No, I didn't see the carjacking, no.

13 Q And you never saw Norman with a gun?

14 A I saw him that day.

15 Q You never saw Norman with a gun?

16 A No, I never seen him with a gun.

17 Q You never found a gun?

18 A No, I didn't find a gun.

19 MR. SHEALEY: Thank you.

20 THE COURT: Anything further of this witness?

21 MR. CATHCART: No, sir.

22 THE COURT: You may step down, sir.

23 (The witness leaves the witness stand.)

24 MR. CATHCART: May he be excused, Your Honor?

25 THE COURT: Yes, sir.

1 MR. SHEALEY: Without objection.

2 MS. HENDRICK: The State calls Investigator
3 Vanhouten.

4 (BRIAN VANHOUTEN, after being duly sworn,
5 testified as follows:)

6 THE CLERK: Please have a seat and state your
7 full name for the record.

8 THE WITNESS: Investigator Brian Vanhouten,
9 Columbia Police Department.

10 DIRECT EXAMINATION

11 BY MS. HENDRICK:

12 Q Good morning.

13 A Good morning.

14 Q Are you currently still employed with the Columbia
15 Police Department?

16 A Yes.

17 Q How long have been employed there?

18 A Approximately nine years.

19 Q And what do you do for the Columbia Police
20 Department?

21 A I'm assigned to the gangs and narcotics division.

22 Q And what did you do back in February of 2008 for CPD?

23 A I was attached to the gang task force and narcotics.

24 Q And did you happen to respond to a call on February
25 1st of 2008?

1 A Yes.

2 Q Can you explain to the Court how you respond to the
3 call?

4 A We got a call that was toned out. When it's toned
5 out it means that a serious crime has been committed
6 or is possibly being committed. Responded to the
7 Gonzales Gardens area at 1505 Garden Plaza in
8 reference to Corporal Ginger Sanders in a foot
9 pursuit of a possible carjacking that occurred at
10 Timer Warner Cable.

11 Q And where did you actually respond to?

12 A At Harley's Barber Shop, I was flagged down as I
13 responding to the call. Michael Murphy I think is
14 the gentleman's name who flagged me down saying that
15 a gentleman had ran through the parking lot and
16 dropped a cell phone.

17 Q And were you able to actually recover the cell phone?

18 A Yes.

19 MS. HENDRICK: Permission to approach the
20 witness, Your Honor?

21 THE COURT: Yes.

22 A I want to show you what's been marked as State's
23 Exhibit 5. Can you show the jury exactly -- orient
24 to the jury using this picture what is in this
25 picture, where you actually recovered the cell

1 phone?

2 A Right here (indicating) where this little white dot
3 is.

4 Q Okay. And what is this building right here?

5 A That's the apartment complex Gonzales Gardens.

6 Q And where was Mr. Murphy?

7 A Right up here (indicating) from my understanding. Yu
8 talking about flagging me down?

9 Q Yes, flagging you down.

10 A Standing right over here.

11 Q Right over there. And then where was he when he saw
12 the person throw the item?

13 A I think right over here (indicating).

14 Q And what is this back here?

15 A That is Lyon (phonetic) Street and that's Gonzales
16 Gardens which is 1505 Gonzales.

17 Q And why were you in -- was this the street, Lyon
18 Street that you were driving down?

19 A Yes.

20 Q And he was just waving you down?

21 A Yes.

22 Q Okay. And when you got to that location -- I'm going
23 to show you what's been marked as State's Exhibit 25.
24 Is that the cell phone you recovered?

25 A Yes.

1 Q And what did you do, how did you recover the cell
2 phone?

3 A I put it in a evidence bag, a brown evidence bag, and
4 took it to headquarters at 811 Washington Street.

5 Q And did you open the cell phone or anything?

6 A No, I never touched it.

7 Q And who did you give the cell phone to?

8 A I took it back to the conference room, opened it up
9 and the victim stated that that was her cell phone,
10 that belonged to her.

11 Q And can you read the name that's on the inside of the
12 cell phone?

13 A Bill.

14 Q Okay. After you collected the cell phone, did you
15 have anything else to do with this case?

16 A Yes, I had went to City Garage to get some items out
17 of the victim's vehicle. I think it was a Dodge
18 Intrepid.

19 Q Did you go with the victim?

20 A Yes, both the elderly lady and her son.

21 Q And how did the car actually get to the garage?

22 A It was towed by the City of Columbia.

23 Q Do you know where it was towed from?

24 A I think to the best of my knowledge somewhere in the
25 Hampton and Heidt Street area.

1 Q And when you got to the City Garage, were the victims
2 able to identify that as their car?

3 A Yes.

4 Q And did y'all go into the car?

5 A Yes.

6 Q What was in that car?

7 A There were two pillowcases that contained some
8 clothing and a large duffle bag that had multiple
9 tennis shoes, dress shoes and hygiene products
10 inside.

11 Q And did you turn those items back over to the victims
12 or did you put them into evidence?

13 A Put them into evidence.

14 Q And why is that?

15 A Because the victim had pointed out that those items
16 that were in the back seat did not belong to her or
17 her son.

18 Q Okay. And are those some of the items right there
19 that were there?

20 A Yes, they are.

21 Q And then was the car returned to the victims?

22 A Yes.

23 MS. HENDRICK: Beg the Court's indulgence.

24 (Pause.)

25 MS. HENDRICK: Permission for the witness to step

1 I'm employed by the City of Columbia Police Department.

2 DIRECT EXAMINATION

3 BY MR. CATHCART:

4 Q In what capacity are you employed there?

5 A I am a police officer.

6 Q Okay. Were you a police officer there back on
7 February 1st of 2008?

8 A Yes, I was.

9 Q What if anything drew your attention to the Time
10 Warner Building on Harden Street back on that date?

11 A At that time an emergency call came out. I was
12 dispatched as well as several other officers that
13 were available to that location in response to an
14 armed robbery.

15 Q Okay. And when you say you responded to the armed
16 robbery, did you respond in what way?

17 A In Code 3 which is blue lights and sirens.

18 Q Were you the only person going out there with blue
19 lights and sirens?

20 A No, I was not.

21 Q Was there -- how many ---

22 A It was all the officers that were available. It was
23 Officer Edwards, myself that actually responded on
24 the scene. Several other officers, Officer Huggins
25 (phonetic) ---

1 Q Did you hear other officers out -- with their sirens
2 and blue lights going while you were at the scene?

3 A I did.

4 Q So it was very apparent that something was going on?

5 A Yes.

6 Q At that location?

7 A Yes.

8 Q And what did you find when you got there?

9 A Upon our arrival, we -- I -- I went inside as well as
10 Officer Edwards went inside. He made contact with
11 the actual customer service representative who
12 advised that it was not an armed robbery but it
13 actually had been a carjacking.

14 Q And what did he do at the point?

15 A At the time we began to get the description of the
16 vehicle from the victim, as well as her son. We went
17 ahead and bolo'd it out which we went ahead and put
18 the information out over the radio to let all the
19 other officers within the area to be on the lookout
20 for that vehicle as well as the subject's
21 description.

22 Q And when you put out a description of the vehicle,
23 how long did it take for something to happen?

24 A Probably about -- maybe about two minutes. At that
25 time that's when Officer -- Corporal Sanders came

1 across the radio and she stated that she was behind a
2 vehicle that matched that description.

3 Q Okay. What did you do at that point?

4 A At that point while she was doing her transmission, I
5 went ahead -- and Officer Edwards left the scene to
6 go and be of assistance to Corporal Sanders. And at
7 that time I remained on the scene and -- to get the
8 information and get the statements from the victims.

9 Q Okay. And were you able to talk with the victim in
10 this case?

11 A I was.

12 Q Did you interrogate her as to what occurred to her at
13 this point?

14 A I did.

15 Q And what way did you do that?

16 A I began to speak with her and asked her actually what
17 took place. At that time she was very upset. She
18 started to complain of chest pains. At that time I
19 went ahead and stopped talking to her and I asked her
20 did she need EMS, to give her a chance to calm down.
21 Once she regained her composure, that's when she
22 stated -- she made the statement that a black male
23 came up to her vehicle, pressed a gun up to her head
24 and told her to get out.

25 Q Okay. And what occurred after she told that you?

1 A After she told me that, I went ahead and got a better
2 description of him and advised them, you know, this
3 is what we're looking for right here. And at that
4 time, like I said, Corporal Sanders was already
5 behind that vehicle.

6 Q Okay. And at some point what occurred? Did somebody
7 -- did Sanders report something else or?

8 A Corporal Sanders actually reported that she attempted
9 to blue light him to get him to stop. At that time
10 he failed to stop. Corporal Sanders stated on the
11 radio that she -- he -- she was running on foot
12 chasing behind him. At that time she gave her
13 location where she was actually running towards --
14 behind the subject.

15 At that time we lost contact with Corporal
16 Sanders. And our Lieutenant, which is our Duty
17 Lieutenant, came across the radio and stated, stop
18 all transmission until we can locate the officer for
19 her safety.

20 Q Okay. And how long did that last?

21 A That probably last probably about -- maybe about two
22 minutes because at that time several other officers
23 had come in and had stated that they had a visual on
24 her gave out her location on the radio and
25 transmission resumed.

1 Q Okay. And at some point were you asked to do
2 something?

3 A Yes. I was advised by my supervisor to go ahead and
4 bring the victim over to the location where they had
5 detained the suspect.

6 Q Okay. Some -- how long after when you first got
7 there did they call you and say they detained the
8 subject?

9 A Probably about five to six minutes, within that
10 timeframe.

11 Q So when you called out a description of the car, a
12 description of the subject, it was about five to six
13 minutes till they say, we've got him in custody?

14 A Yeah, about that timeframe because the chase lasted
15 probably about anywhere from two to three minutes, I
16 was on the scene with her, for about two to three
17 minutes while we were giving out the description. So
18 I would say anywhere from six -- to six minutes.

19 Q Okay. And what did do when you were asked to take
20 her to the scene?

21 A As I arrived on the scene, I was advised to bring her
22 over to 1505 Garden Plaza. I arrived over there.
23 She was in the back seat of my patrol vehicle, her as
24 well as her son was in the back seat of the car. I
25 drove up to the scene where I had noticed where they

1 had a subject that was detained out there. And I
2 advised her, is there anybody over here that you
3 recognize.

4 Q Okay. Did you tell her who you wanted her to pick
5 out?

6 A No, I did not.

7 Q Did you or any other officers or anybody give any
8 indication who they wanted her to pick out?

9 A Nobody made contact with her other than myself at
10 that time.

11 Q Okay. And what if anything did she do at that point
12 when you asked is there anybody you recognize?

13 A When I asked her did she recognize anyone, she was
14 looking into the Plexiglas like with the cage in my
15 car. She stated that it was blurry, that she
16 couldn't actually see him, could I get a little bit
17 closer.

18 Q Okay. So she said that she couldn't see well through
19 the ---

20 A Through the cage.

21 Q --- the cage?

22 A The Plexi -- our cage contains Plexiglas.

23 Q And asked to be able to get closer so she would be
24 able to see the person ---

25 A To get a better visual.

1 Q And what occurred when you moved a little bit closer
2 so she could actually see?

3 A When I actually moved a little bit closer, that's
4 when she was very adamant that that was the
5 individual that had put the gun to her head and had
6 taken her vehicle.

7 Q She seemed positive of that?

8 A She seemed very positive.

9 Q And what did you do at that point?

10 A At that point I went ahead and backed up, left the
11 scene, did not go past the individuals or anybody. I
12 backed up, left the scene. Took her back to the Time
13 Warner Cable Building where we resumed the actual
14 interview and then I went ahead and took her up to
15 Investigations where she finished her statement.

16 Q Is it a normal procedure for -- actually, never mind.
17 When you heard the chase going on, do you recall
18 where the chase took place?

19 A I believe the chase took place, it's going to be at
20 Heidt -- I believe it was Heidt and Washington, I'm
21 not sure. I know the vehicle -- she stated that she
22 was on Heidt Street when she actually blue lighted
23 him, when he got out. But I don't really recall
24 exactly where it began because I was involved with
25 trying to assist the victim.

1 Q That area is in Richland County?

2 A It is.

3 Q The Time Warner Cable Building on Harden Street is in
4 Richland County as well?

5 A It is.

6 MR. CATHCART: Please answer any questions from
7 Defense counsel.

8 (Pause.)

9 CROSS-EXAMINATION

10 BY MR. SHEALEY:

11 Q Ms. Calloway, do you have a copy of your incident
12 report in front of you?

13 A No, I do not.

14 MR. SHEALEY: Permission to approach, Your
15 Honor?

16 THE COURT: Yes.

17 A Thank you.

18 Q Do you recognize that to be the incident report you
19 filled out on February 1st, 2008?

20 A It is.

21 Q Now you never saw who carjacked Ms. Gilmore?

22 A No, I did not.

23 Q You responded after -- after it happened?

24 A Yes, that is correct.

25 Q And this incident, you agree, you write it so a year

1 later when you come to court you want it to be as
2 accurate as possible? That way you look at it, your
3 memory is right back to that date, right?

4 A That is correct.

5 Q And you wrote this report as accurately as you
6 possibly could on that date because you were going to
7 be in court later on?

8 A Yes.

9 Q So you know when you come here, even if you weren't
10 sure a month ago, you could come into court today and
11 say this thing happened on 1030 Harden Street,
12 because you have got a box there that says 1030
13 Harden Street?

14 A That would be correct.

15 Q And you can look at your report and say the incident
16 date was February 1st, 2008 because you have a box
17 that says it happened on February 1st, 2008?

18 A That's correct.

19 Q And you also know the incident time because you wrote
20 in there at 12:45?

21 A That's correct.

22 Q And you can tell exactly when you arrived because
23 it's there in that box?

24 A That's an estimated time, but yes.

25 Q And that box says 12:55, correct?

1 A Yes.

2 Q And you know exactly when you departed Time Warner
3 because it's there as an estimate as 1300 hours?

4 A That's correct.

5 Q We'll say that's 1:00, correct?

6 A (The witness nodded head.)

7 Q And according to your report which is as accurate as
8 it possibly can be, the time of arrest was 13:25,
9 that's 1:25. And that's approximately 40 minutes
10 from the time of the incident?-

11 A Yes.

12 Q Now, you never saw a gun on Norman?

13 A The only time that I ever saw the Defendant was when
14 he was actually standing up by the vehicle. I never
15 saw him prior to the situation, I haven't seen him
16 afterward, this is the first time.

17 Q So you never saw a gun on Norman?

18 A No, I have not.

19 Q And you personally never recovered a gun?

20 A No, I did not.

21 Q And you testified that when Ms. Gilmore -- when you
22 were taking her to view the suspect in custody at
23 that time, which was Norman, she viewed through the
24 Plexiglas?

25 A Correct.

1 MR. SHEALEY: Beg the Court's indulgence.

2 (Pause.)

3 Q And as you testified on direct, the first time Ms.
4 Gilmore viewed the suspect, it was through a
5 Plexiglas?

6 A That's when I took her to scene ---

7 Q Right.

8 A --- of the crime -- I mean, at the location he was
9 actually at.

10 Q And she asked you to move a little bit closer?

11 A So she could get a better view.

12 Q And as you testified on direct, at that time you
13 moved a little bit closer she was viewing him through
14 the Plexiglas?

15 A Yes.

16 Q Just closer?

17 A Yes.

18 MR. SHEALEY: No further questions.

19 THE COURT: Anything on redirect?

20 MR. CATHCART: Yes, Your Honor.

21 (WHEREUPON, State's Exhibit Number 32, Closed
22 Incident Report, was marked for identification.)

23 REDIRECT EXAMINATION

24 BY MR. CATHCART:

25 Q I show you what's been marked as State's Exhibit

1 Number 32. Do you recognize what this is?

2 A Yes, I do. This is our actual call log of all the --
3 whenever we phone the dispatch.

4 Q And that is kept in y'all's business records for
5 dispatch 911?

6 A Yes.

7 Q This is something that y'all refer to to get times as
8 to what occurred and who called and that kind of
9 thing?

10 A Yes.

11 Q Is this one from this incident at this time?

12 (Pause..)

13 A Yes, it is.

14 Q Okay. According to this, what time did the call come
15 out for -- from Time Warner Cable?

16 A According to the call it was at 12:45.

17 Q Okay. So incident came out at 12:45, correct?

18 A Correct.

19 Q And according to this, what time did you arrive at
20 the scene and call in?

21 A (No response.)

22 Q According to the same watch that said 12:45 has you
23 indicating ---

24 A It appears that I arrived along with Officer Edwards
25 and he's 314, we arrived approximately at the same

1 exact time.

2 Q Okay.

3 A And that's showing 12:47 but I actually didn't speak
4 out up on the radio to give out the description until
5 12:48. But we arrived on the scene at the same time.

6 Q So it was at 12:47?

7 A That's correct.

8 Q According to the log on this?

9 A That's correct.

10 Q Okay. And when did y'all tell -- inform the radio
11 dispatcher and everybody else, this isn't an armed
12 robbery, this is a carjacking?

13 (Pause.)

14 A It appears that it's going to be at 12:47, within the
15 same timeframe.

16 Q Look at -- turn to page 2 of this. There's a call
17 out at what time -- notified of carjacking?

18 A That -- correction, that would be at 12:50.

19 Q Okay. At 12:50 there's a statement, negative to it,
20 this would be a carjacking, correct?

21 A Correct.

22 Q So you were already there by 12:47. You already
23 informed that by 12:50 that this is a carjacking,
24 correct?

25 A Correct.

1 Q This is all on the same watch, the same time that --
2 when the first call came out, the same person's
3 watch, correct?

4 A That's correct.

5 Q Okay. When, according to this same log, did the call
6 come out that somebody's behind the blue Intrepid?

7 A 236 called out which was Corporal Sanders called out
8 at 12:50 that she was behind the blue Intrepid.

9 Q So in the same minute that y'all said this is
10 actually a carjacking, she says, oh, I'm behind that
11 car?

12 A Correct.

13 Q In fact, so we start at 12:47, 12:50 carjacked, 12:50
14 I'm behind the car, correct?

15 A Correct.

16 Q At what time does Corporal Sanders say, I see him
17 running towards Gonzales Gardens?

18 A 12:52.

19 Q And I think we saw -- it indicated that the call for
20 help from Time Warner Cable was at 12:45, correct?

21 A Correct.

22 Q So five minutes after they're calling for help, she's
23 behind his car, correct?

24 A Correct.

25 Q Two minutes, he's on the run?

1 A Correct.

2 Q So that chase with the blue lights was about two
3 minutes. At that same time they indicate he's taking
4 his shirt off?

5 A Correct.

6 Q And at what time do they ask you to come over and you
7 indicated, the victim's on the way for
8 identification, at what time?

9 A (No response.)

10 Q I bring you to...

11 A Okay.

12 Q Is that ---

13 A That's correct.

14 Q Okay.

15 A At 12 ---

16 Q What time is that?

17 A --- 57.

18 Q And so at 12:57, you're on the way with ID?

19 A Correct.

20 Q Did it take you a long time to get there?

21 A It took me one minute showing my arrival.

22 Q So one minute, you're there?

23 A Correct.

24 Q On this map where is the Time Warner Cable Building?

25 THE COURT: What's the exhibit number, Solicitor?

1 MR. CATHCART: I'm sorry, Your Honor, this is on
2 State's Exhibit Number 27.

3 THE COURT: All right, sir.

4 A Okay.

5 Q You've got Harden Street here, Senate Street here.

6 A Harden Street, which side?

7 Q I understand, I've got you coming on the map quickly.

8 This would be Gervais Street, this is Harden Street.

9 A Okay. Okay, I went down Harden Street, went down
10 Gervais, went down Washington, and it took me up to
11 -- went down, came up on Forest Drive.

12 Q And Taylor Street turns into Forest Drive?

13 A Yeah. Yeah, it turns into Forest Drive.

14 Q But you started out down here on the corner of ---

15 A Harden.

16 Q --- Harden and Senate?

17 A Uh-huh.

18 Q Okay. So from here to here was the length of time it
19 took you to take the victim up there?

20 A Correct.

21 Q Then you went back where?

22 A Back to the Time Warner Cable Building.

23 Q So from your arrival to her ID was exactly 11
24 minutes, correct?

25 A Correct.

1 Q From your arrival to you're on your way toward
2 Gonzales Gardens, 10 minutes, correct?

3 A Correct.

4 Q During that time you put out what the car looked
5 like?

6 A What the car looked like.

7 Q You had to calm down Ms. Gilmore?

8 A Yes, I did.

9 Q You almost had to call EMS because you thought she
10 was going to have a heart attack?

11 A Correct.

12 Q And at that -- and from that time -- during that
13 whole time were you able to fill out a robbery
14 questionnaire?

15 A No.

16 Q Get a full length description of everything that
17 happened to her that day?

18 A No.

19 Q And when she got there 11 minutes after you were
20 there, was she positive as to who did this to her?

21 A She was very positive.

22 Q Was she trying to get the guy that did it to her?

23 A She pointed to him in the -- against the Plexiglas
24 but she was very adamant that he was the person that
25 did that to her.

1 that the jury is the ultimate determiners of fact. He had
2 Mr. Pegram -- Investigator Pegram commenting on the state
3 of the witness and thereby was bolstering the witness.

4 THE COURT: All right.

5 MR. MAY: Again I would object to that and move
6 for another mistrial.

7 THE COURT: Objection overruled. Request for a
8 mistrial denied.

9 MR. MAY: The other one was on the record,
10 hearsay.

11 THE COURT: You're just doing your job. It's all
12 right, relax.

13 MR. MAY: Your Honor, at this time, we move for a
14 directed verdict on -- only on the carjacking. We are
15 consenting that he did break the law on failure to stop
16 for blue light. As far as the carjacking, taking in the
17 light most favorable to the State, we don't believe
18 they've met the substantial circumstantial evidence as the
19 only witness to the carjacking clearly identified the man
20 who carjacked her as having long nappy hair, looked like
21 it hadn't been combed. The Defendant, through the
22 evidence that was introduced has -- is bald.

23 We'd ask the Court to -- respectfully request a
24 directed verdict.

25 THE COURT: Your request is denied. The lady

1 says she saw this man. She identified him directly. Did
2 he have a hat on, did he not have a hat on, I don't know
3 but as you look at the totality of the surrounding
4 circumstances, the timeline and everything else, your man
5 is in the car. Did he have time to go up, as he says, to
6 pick up somebody else? I think they are all issues of
7 fact. I can't rule as a matter of law and -- we're just
8 going to have to let 12 people here from Richland County
9 decide these issues and the guilt or innocence of Mr.
10 Mitchell.

11 Now, I think you've done a good job but I think
12 it's a matter for the jury to resolve.

13 MR. MAY: Yes, sir. The one thing that we would
14 respectfully request is if before -- before we dismiss
15 them for lunch, can we have Captain Redmond testify.

16 THE COURT: That's fine, that's fine. All right,
17 and I'll let you revisit all of your motions again later
18 on, Mr. May. Relax a little bit. Is Captain Redmond
19 here?

20 MR. MAY: Yes, sir.

21 THE COURT: All right. Anything further,
22 Solicitor?

23 MR. CATHCART: No, sir, waiting for Captain
24 Redmond.

25 THE COURT: All right, bring the jury in. So we

1 ready? Bring the jury in.

2 (The jury returned to the courtroom at
3 2:03 p.m.)

4 THE BAILIFF: Jurors are all present, Your Honor.

5 THE COURT: All right. Welcome back, members of
6 the jury. I hope y'all had a pleasant lunch.

7 JURORS: We did.

8 THE COURT: Okay. The Defense will continue with
9 the presentation of evidence. Mr. May is going to examine
10 Mr. Mitchell.

11 Go ahead, Mr. May.

12 MR. MAY: The Defense calls Norman Lee Mitchell.

13 (NORMAN MITCHELL, after being duly sworn,
14 testified as follows:)

15 THE CLERK: Please state your full name for the
16 record.

17 THE WITNESS: My name is Norman Mitchell.

18 DIRECT EXAMINATION

19 BY MR. MAY:

20 Q Hey, Norman, how you doing?

21 A Doing fine, Mr. May.

22 Q You know why we're here?

23 A Yes, sir.

24 Q Point blank, did you carjack Nola Gilmore?

25 A No, sir.

1 Q All right. We're going to go through this in depth
2 in a little bit.

3 How did you get that car?

4 A I rented the car from a guy whose face I recognized
5 outside the Greyhound Bus Station named John.

6 Q All right. We'll get in more detail about that in
7 the future. I just wanted to go ahead and put it out
8 there while we're here.

9 Norman, where were you born?

10 A I was born in Jersey City, New Jersey. And I was
11 raised in Charleston and Columbia.

12 Q Okay. When did you move down here?

13 A I moved to Columbia like 1984. I moved to Charleston
14 when I was actually five and then I moved to Columbia
15 when I was -- 1984, '85.

16 Q Okay. You moved to Columbia why?

17 A Because my brother was living at DJJ -- my brother
18 was in DJJ and my mother wanted to be closer to my
19 brother.

20 Q Where did you go to high school?

21 A I went to Columbia High School.

22 Q Did you graduate?

23 A No, sir.

24 Q Did you get a GED or something like that?

25 A No, sir, I got kicked out of Columbia High School and

1 I went to Mansfield Business College for business
2 management and accounting and I got my GED.

3 Q You got your GED with Mansfield Business College?

4 A Yes, sir.

5 Q Okay. I mean, this isn't your normal demeanor. Are
6 you scared right now?

7 A Yes, sir, Mr. May.

8 Q Why are you scared?

9 A Because I'm on trial ---

10 MR. CATHCART: Objection, Your Honor ---

11 A --- for a crime I didn't commit.

12 THE COURT: Wait, stop. There's an objection.

13 Yes, sir.

14 MR. CATHCART: Your Honor, the Defendant is going
15 into the potential -- actually maybe ---

16 THE COURT: I beg your pardon?

17 MR. CATHCART: May we approach, Your Honor?

18 THE COURT: Yes.

19 (Whereupon, a bench conference was held off the
20 record, in the presence of the jury, but out of the
21 hearing of the jury.)

22 Q Why are you scared, Norman?

23 A Because I am on trial for a charge I did not commit.

24 Q Okay. And I understand how that can be scary. Now,
25 you've done some bad things in your past, haven't

1 you?

2 A Yes, sir, Mr. May.

3 Q Specifically, you have four petty larcenies, correct?

4 A Yes, sir. I did those and I pled guilty, Mr. May.

5 Q You have an attempted strong armed?

6 A I did that and I pled guilty, Mr. May.

7 Q Auto breaking?

8 A I did that and I pled guilty, Mr. May.

9 Q You have a bank fraud, that's 10 counts of bank
10 fraud?

11 A Yes, sir. I did that and I pled guilty.

12 Q And you have possession of stolen ---

13 THE COURT: I'm sorry. You're you need
14 to speak up, back up a little bit. Some of the
15 jurors have trouble hearing. And you just need to
16 take your time and talk loud, okay? Talk loud and
17 slow.

18 Q Okay. And you have a possession of a stolen motor
19 vehicle, is that correct?

20 A Yes, sir, I did that and I pled guilty, Mr. May.

21 Q Okay. Now, I want to take you back to February 1st.

22 A Yes, sir.

23 Q You remember February 1st, 2008?

24 A Never forget it.

25 Q How did the day start out?

1 A Actually I was scheduled to attend a party up at
2 Columbia, a Super Bowl party. So I asked my aunt, my
3 mother's best friend, which is like my aunt, Ms. Judy
4 Lindler (phonetic) that lives at 1921 Marchant
5 (phonetic) Street, Charleston. I told her to take me
6 to the bus station on Dorchester Road so I can get a
7 bus ticket to come to Columbia.

8 Q So were you living with this lady?

9 A Yes, ma'am -- yes, sir.

10 Q And you weren't living with your mother anymore. Can
11 you tell the jury why?

12 A My mother passed when I was in prison.

13 Q Okay. So you got a bus ticket. And can you tell us
14 about -- do you remember how much you paid for the
15 bus ticket?

16 A Exactly \$27.00, I believe, no more.

17 Q And did you have a job at this time?

18 A Yes, sir.

19 Q What were you doing?

20 A I was working for a neighbor of mine doing painting.

21 Q Can you explain to these nice ladies and gentlemen
22 what exactly Labor Finders are?

23 A It's a place that you get up at 5:00 in the morning
24 and you go to the job site and they take you during
25 the week and you get paid at the end of the week and

1 they take you to the job site.

2 Q All right, Norman, you've got to speak up a little
3 bit.

4 A It's a place that you go to early in the morning and
5 you ride on the bus with the rest of the people that
6 attends the same job site that you do and you get
7 paid at the end of the week.

8 Q Okay. So it's just day labor and sometimes you have
9 a job, sometimes you don't, is that fair?

10 A The situation I did, I had a job.

11 Q You had the job?

12 A Yes, sir.

13 Q Did you get paid well for that?

14 A During the time, it was well for me, sir.

15 Q Okay. So you got a bus ticket. What did you take on
16 this bus?

17 A I take my bags and my clothes because I was going to
18 stay for a week because I promised my mother to bring
19 her some flowers to her grave because I didn't see
20 her flowers in prison. I didn't get a chance to
21 attend the funeral.

22 Q Okay. I'm going to show you these things. Do you
23 recognize all this?

24 A Yes, sir.

25 Q What is this?

1 A Those are my bags and my clothes.

2 Q And is this the clothes that you owned?

3 A Yes, sir, Mr. May.

4 Q So did you take these on the bus with you?

5 A Yes, sir.

6 Q Do you know how long that bus ride was?

7 A From an hour and a half to two hours probably.

8 Q When you got to Columbia, where did the bus stop?

9 A The bus stopped on Gervais Street.

10 Q Is that at the Greyhound Bus Station?

11 A Yes, sir, at the Greyhound Bus Station on Gervais
12 Street.

13 Q All right.

14 MR. MAY: May I approach, Your Honor?

15 THE COURT: Yes, sir.

16 Q So is it right here (indicating) about where the
17 corner of Harden Street and Gervais Streets?

18 A Yes, sir.

19 Q Okay. So you got left off there. What happened once
20 you got to the bus station?

21 A I went -- I went directly inside and I called my
22 friend who was supposed -- was scheduled to pick me
23 up at the bus station but he didn't answer the phone.
24 So I called back again and I got the answering
25 machine and he told me he was in Lexington at a roll

1 call.

2 Q What's a roll call?

3 A Where you have to report for pending charges that you
4 have. He said he wasn't going to be available to
5 pick me up. So I walked outside with my bags --
6 grabbed my bags and I walked outside to say, let me
7 see could I find a ride.

8 Q Did you have your bags with you the whole time?

9 A The whole time.

10 Q Why would you have these bags with you the whole
11 time?

12 A Because I've got some very nice tennis shoes and very
13 nice clothes in there and a lot of property and I
14 know that people frequents the bus station, they'll
15 take your things.

16 Q Have you ridden buses before?

17 A Yes, sir.

18 Q Okay. So you went outside and what happened?

19 A A guy immediately approached me. He said, hey, you
20 looking for a ride? I said, yeah, I would like to
21 get a ride. He said, where you going? I said, would
22 you take me on Broad River Road to Bonnie (phonetic)
23 Forest to my friend's house at the Super Bowl party.
24 He said, get in. Grabbed in -- got in the car, and
25 he grabbed the bags and put them in the backseat of

1 the car and we drove off.

2 Q So did you get to -- I'm sorry, I don't know the
3 place you're saying. Are you saying Brandon
4 (phonetic) Forest?

5 A Bonnie Forest.

6 Q Did you get there?

7 A No, sir.

8 Q What happened along that ride?

9 A When we got in the car, we immediately made an exit
10 and when we made an exit to the right headed towards
11 those -- those building -- the building ---

12 Q Is this fair? Did you go up the large street behind
13 the county buildings?

14 A Yes, sir.

15 Q Okay. What happened?

16 A And he told me, well, you know, if you give me an
17 extra \$10.00, you can drop me off at my house and
18 bring me the car back later and that will be it. So
19 I said, okay. I gave him 10 -- I went in my pocket
20 and gave him 10 more dollars and said, I'll bring the
21 car back later after I drop my things off.

22 Q Would it be fair to call this a rental?

23 A Yes, sir.

24 Q Can you talk to these ladies and gentlemen about at
25 rental? I mean when -- when I rent a car, I go to

1 Hertz. Is that what this was? Was this Hertz? Was
2 this Alamo? Was this National?

3 A No, sir, it wasn't Hertz or Alamo. A rental is
4 something that you do -- well, I've been doing it
5 most of my life, you know. You go to someone, they
6 rent you a car for a price and you bring it back at a
7 designated area at the proper time. And the charge
8 either money, drugs or sex.

9 Q And on that day you rented the car for what?

10 A Money, cash money. I gave him \$20.

11 Q With the understanding that what would happen?

12 A That I would drop him off on Cherokee Street and
13 bring the car back later to the house that I dropped
14 him off at.

15 MR. MAY: Have these marked.

16 (WHEREUPON, Defendant's Exhibit Number 4,
17 Photograph was marked for identification.)

18 (WHEREUPON, Defendant's Exhibit Number 5,
19 Photograph was marked for identification.)

20 Q All right, Norman, I'm going to show you two
21 pictures. Tell me this one question, do you
22 recognize these pictures that have been taken --
23 taken?

24 A Yes, I do.

25 Q What are those pictures of?

1 A This is Cherokee Street in the area that I turned
2 around when I dropped him off in the driveway.

3 Q Which house did you drop him off -- what was his
4 name?

5 A John.

6 Q What house did you drop off John?

7 A (Indicating.) Here's a better picture.

8 MR. MAY: At this time the Defense would like to
9 move Defense Exhibits 4 and 5 into evidence, Your Honor.

10 MR. CATHCART: No objection.

11 THE COURT: All right, without objection.

12 (WHEREUPON, Defendant's Exhibit Numbers 4
13 and 5 were moved into evidence.)

14 Q Okay. So this house right here, the -- I don't know
15 exactly what color that is but it's bright.

16 A Yes, sir.

17 Q The bright house you dropped him off at?

18 A Yes, sir.

19 Q Okay. You drop him off and then what happened?

20 A And then I watched him go up the steps and I turned
21 around and I proceeded to go back to the main street,
22 whatever -- whatever is the main street, I'm not
23 sure, Mr. May. But I'm thinking it's -- it's Lauren
24 -- the main street that I -- it's the main street
25 right in front of the building. I can point it

1 (indicating).

2 Q So this right here is Cherokee Street (indicating),
3 right?

4 A Yes, sir.

5 Q This little street right here is Cherokee Street?

6 A Yes, sir.

7 Q You come up here, drop him off, you do a U-turn and
8 you come back?

9 A Out to the main entrance, yes, sir.

10 Q All right. And then what happened?

11 A And then I make a left. As soon as I made the left
12 at the corner where near the drive, maybe -- I'm not
13 sure how many feet, maybe 25, 40 feet, the officer
14 put the blue lights on me.

15 Q What did you do?

16 A I got scared.

17 Q Why would you be scared?

18 A Because I knew I didn't have a license and I'd
19 probably be coming back to jail for driving under
20 suspension without a license.

21 Q So you were scared that you would go to jail because
22 you were driving without a license?

23 A Yes, sir.

24 Q So what did you do?

25 A I started speeding up and then I turned another

1 corner. I made a right and I turned another corner
2 and I kept speeding, I kept speeding. And the only
3 thing kept going through my mind is that I'm going to
4 jail because I'm not going to see my mother's grave
5 like I was supposed to. And so I sped past two
6 lights and I said, I better slow down before I kill
7 somebody or kill myself.

8 Q And what did do you?

9 A I made a right at the Kentucky Fried Chicken and
10 turned and I jumped out of the car and ran.

11 Q And you ran?

12 A Yes, sir.

13 Q And did get caught?

14 A Yes, sir.

15 Q So on February the 1st, 2008, did you break the law?

16 A Yes, sir. I evaded the police.

17 Q What did you do?

18 A I evaded the police.

19 Q And that's what we call failure to stop for a blue
20 light?

21 A Yes, sir.

22 Q So you're admitting to that?

23 A Yes, sir.

24 Q Do you remember talking to Investigator Pegram that
25 day?

1 A Yes, sir, I talked to Mr. Pegram and Investigator
2 Thomas.

3 Q Okay, talk to me about that. What happened when you
4 were -- talked to them?

5 A They took me upstairs to the investigator's office
6 and when -- as soon as they sat me down, they
7 immediately sat me down, they started screaming and
8 yelling. I told Mr. Pegram and Mr. Thomas both at
9 the same time that I did not carjack this lady.

10 He read me my rights and I signed off on the
11 waiver for the rights that he showed y'all and I
12 continuously told Mr. Pegram that I did not carjack
13 this lady. He asked me to sign a statement. I told
14 him I wanted to see my lawyer.

15 Q Okay. Now, there's been talk about a gun. Did you
16 have a gun on you?

17 A No, sir.

18 Q Did they ever find a gun on you?

19 A No, sir.

20 Q Can you tell -- can you tell me what a gun would mean
21 to you and the folks you hang around?

22 A Well, a gun represents in my area prestige, power,
23 respect, valuables. It's priceless, you know.

24 Q All right. Norman, you and I have known each other
25 for awhile?

1 A Yes, sir.

2 Q What have I always told you?

3 A Tell the truth.

4 Q And have you been telling the truth right now?

5 A Yes, sir, Mr. May, I did not carjack this lady.

6 MR. MAY: All right. I beg the Court's
7 indulgence for one moment.

8 THE COURT: Yes, sir.

9 (Pause.)

10 MR. MAY: All right, Norman, thank you very much
11 and please answer anything that Mr. Cathcart has for you.

12 THE WITNESS: I sure will.

13 MR. CATHCART: May it please the Court, Your
14 Honor.

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. CATHCART:

18 Q I'm going to get a little bit closer to you, Mr.
19 Mitchell, because I can't hear very well. You came
20 off the bus from Charleston, correct?

21 A Yes, sir.

22 Q And you were going to what neighborhood?

23 A Bonnie Forest on -- off Broad River Road.

24 Q Off Broad River Road. And that would be in this
25 direction (indicating), correct?

1 A I'm not sure, Mr. Cathcart. But you can go to Broad
2 River Road from any area.

3 Q But you wouldn't go back past the bus station, would
4 you?

5 A No, sir.

6 Q You were headed away from the bus station when you
7 were going to wherever -- what was it again?

8 A Broad River Road.

9 Q What was the name of the neighborhood, I'm sorry?

10 A What?

11 Q The neighborhood that you were going to?

12 A You're talking about where was the Super Bowl party
13 at?

14 Q Yes, sir.

15 A On -- it was on Broad River Road.

16 Q Okay. And you were going straight to the Super Bowl
17 party, correct?

18 A Once I got off at the bus station if my ride had a
19 came and got me.

20 Q And the bus -- the Super Bowl party being what, in an
21 hour from then or two hours from then? When does the
22 party start?

23 A The party doesn't start till around 3:30 or 4:00.

24 Q 3:30, 4:00 to watch the Super Bowl, right?

25 A Yes, sir.

1 Q This was Friday, Mr. Mitchell. The Super Bowl don't
2 start till Sunday, does it?

3 A The Super Bowl is on Sunday, sir.

4 Q Yes, sir. You were driving that car and caught and
5 committed this carjacking on a Friday ---

6 A No, sir.

7 Q The 1st?

8 A No, sir.

9 Q No, sir?

10 A No, sir.

11 (Pause.)

12 Q What time did you get in to the bus station? What
13 time did you arrive in Columbia?

14 A It must have been around 11:30, 10:30, 11:30, I'm
15 not sure, Mr. Cathcart.

16 Q Okay. And you said you've lived with who in
17 Charleston?

18 A Judy Lindler.

19 Q Judy what?

20 A Lindler.

21 Q Judy Linder, thank you. And you lived with her a
22 year, six months, how long you been living with Ms.
23 Lindler?

24 A Since January when I was released.

25 Q Since January?

1 A The 10th.

2 Q Okay. When you were released from?

3 A Alvin S. Glenn.

4 Q Okay. So you came from here (indicating). You went
5 straight down to there (indicating).

6 A Yes, sir.

7 Q And within that month, you've already got a job
8 making good money and you're coming back up for the
9 Super Bowl party, correct?

10 A Right.

11 Q And Ms. Lindler, she's still alive, still with us,
12 right?

13 A Yes, sir, I'm pretty sure.

14 Q She will be here in a few minutes to tell us how you
15 were living with her?

16 MR. MAY: Objection, Your Honor.

17 THE COURT: Sustained.

18 MR. MAY: May we approach?

19 THE COURT: Sure, come on.

20 (Whereupon, a bench conference was held off the
21 record, in the presence of the jury, but out of the
22 hearing of the jury.)

23 MR. CATHCART: Beg the Court's indulgence.

24 (Pause.)

25 Q And you indicated that somebody was coming to pick

1 you up, correct?

2 A They was scheduled to come pick me up but they was at
3 roll call in Lexington County.

4 Q What was his name?

5 A His name was Heyward Jackson.

6 Q Heyward Jackson, okay. And when he didn't show up,
7 you indicated that you were just standing round?

8 A No, sir.

9 Q What were you doing?

10 A I said I went outside and I said, I better try and
11 find me a ride.

12 Q Okay. You had money on you, correct?

13 A Yes, sir.

14 Q At least \$20, correct?

15 A Yes, sir.

16 Q How much more money did you have on you?

17 A I had about \$50 on me.

18 Q Okay, you had \$50 on you?

19 A Yes, sir.

20 Q Okay. And did you get a cab or ask for a cab?

21 A I knew that would have took all my money, Mr.
22 Cathcart.

23 Q It cost \$50 to go to Broad River Road from the bus
24 station?

25 A No, I said it would have took quite a percentage of

- 1 my money.
- 2 Q More than \$20.
- 3 A Yes, quite sure.
- 4 Q So you indicated that you paid for this car with
5 cash, correct?
- 6 A Yes, sir.
- 7 Q You bought it from a fellow you recognized, correct?
- 8 A No, sir, I didn't buy it, Mr. Cathcart. I ---
- 9 Q Rented it, I'm sorry, rented it ---
- 10 A There's a difference. I have to bring it back.
- 11 Q Okay. And you were going to bring it back to this
12 guy you recognized?
- 13 A Yes, sir.
- 14 Q Correct? What was his name?
- 15 A John.
- 16 Q John?
- 17 A Yes, sir.
- 18 Q John what?
- 19 A I'm not sure. I just recognized his face, Mr.
20 Cathcart.
- 21 Q And John gave you his car for \$20. Did he know your
22 name?
- 23 A Yes, sir.
- 24 Q John gave you his car with his cell phone in it,
25 correct?

- 1 A I'm not sure, sir. I didn't search the car down or
2 anything. I'm not sure.
- 3 Q You would agree with me when you were running across
4 this field (indicating), you dropped this cell phone,
5 right?
- 6 A Oh, yes, sir, I did.
- 7 Q Is the name John listed on that cell phone?
- 8 A I didn't take time to pay attention, Mr. Cathcart?
- 9 Q I ask you to pay attention now. What's the name on
10 the cell phone?
- 11 A I can't see a name on the cell phone.
- 12 Q Right there?
- 13 A Oh, I thought you was talking about the one up there.
14 Oh, it says Bill.
- 15 Q Bill?
- 16 A Okay.
- 17 THE COURT: That's exhibit number what, Mr. ---
18 MR. CATHCART: Oh, I'm sorry, Your Honor.
19 THE COURT: That all right.
20 MR. CATHCART: State's Exhibit Number 25.
21 THE COURT: All right, sir.
- 22 Q Now, you said you got to the bus station at 11:30,
23 correct?
- 24 A I said around about. I'm not sure of the exact time.
25 I didn't have a watch, Mr. Cathcart.

1 Q Okay. And when you were -- your ride didn't show up?

2 A Yes, sir.

3 Q How long did you wait for your ride?

4 A I just made two or three phone calls, maybe -- maybe
5 two -- two minutes, two or three minutes and I walk
6 directly outside.

7 Q And you agree with me that you would first determine
8 he wasn't there, right?

9 A No, he told me he wasn't there. As I stated to Mr.
10 May, he told me he was going to be at roll call. He
11 wasn't sure what time he was going to get back, so I
12 better try to find me a ride.

13 Q He told you that before you made the phone calls to
14 figure out where he was?

15 A No, sir. I told you, the first two times that I
16 called he didn't answer the phone, I got the
17 answering machine and I proceeded to call back and he
18 answered and told me he was at roll call in Lexington
19 County.

20 Q Right, so ---

21 A And told me he wasn't going to be able to make it, I
22 better find a ride.

23 Q Okay. So, you first went out, after you got there on
24 the bus station. You looked for your friend ---

25 A No, sir, that ain't what I said, Mr. Cathcart.

1 Q You said that you called two times ---

2 A Yes, sir, I said I went inside. You have to go
3 inside to make a phone call, Mr. Cathcart. And then
4 I came back outside to look for a ride.

5 Q Why would you go to the phone to look for -- I mean,
6 to call and find out where he was when he was
7 supposed to meet you there?

8 A No, I have to call him and let him know I arrived in
9 Columbia.

10 Q Oh, okay, okay. And you called two times, correct?

11 A Two or three times.

12 Q And how long did you wait in between those times you
13 were calling?

14 A It wasn't but a second, I just called right back, you
15 get the answering machine when you dial the cell
16 phone so he called right back, Mr. Cathcart.

17 Q Okay. So you called three times?

18 A Maybe two or three times, yes, sir.

19 Q And then you finally got in touch with him?

20 A Yes, sir.

21 Q And then you finally -- you talked to him. How long
22 did you talk to him?

23 A I ain't talked to him long. He told me he was at
24 roll call. He had to hang the phone up because he
25 was in roll call but he wasn't going to be able to

- 1 come back and get me. He was in Lexington County.
- 2 Q Okay. And so said you had that conversation then you
- 3 went outside?
- 4 A Yes, sir, I picked my things up and I walked outside.
- 5 Q Okay. And you went outside looking for somebody you
- 6 knew?
- 7 A No, sir. I looked for the first ride I can get so I
- 8 can get away from the bus station and go to the area
- 9 I was going to on Broad River Road, the cheapest way
- 10 really.
- 11 Q Okay. And you just basically walked out in the
- 12 parking lot ---
- 13 A No, where the buses were coming in and people are
- 14 standing out there, cabs are out there. There's a
- 15 whole bunch of people out there. The peddlers are
- 16 out there.
- 17 Q So there were cabs out there?
- 18 A Yes, sir.
- 19 Q Okay. And you were -- thought about the cabs but
- 20 then this guy who you ---
- 21 A That's not ---
- 22 Q --- Johnny ---
- 23 A Go ahead, proceed.
- 24 Q --- he came up to you, you knew him by name, and he
- 25 was driving this car, correct?

1 A Say that again, Mr. Cathcart.

2 Q This guy named Johnny came up into the Greyhound
3 parking lot driving this car, correct?

4 A Yes, sir.

5 Q Did he tell you why he was going to Greyhound for any
6 reason?

7 A He was out there, Mr. Cathcart.

8 Q So he was just sitting there?

9 A His people are out there, period.

10 Q He was hanging out talking with his people, sitting
11 around in the car?

12 A I didn't observe all that, Mr. Cathcart.

13 Q What did you observe?

14 A I observed a car sitting right there. When you come
15 on the Greyhound bus station and you go up the ramp,
16 there's cabs, cars, right there where the buses park,
17 right there where the buses park.

18 Q So you didn't see him drive up?

19 A No, sir.

20 Q He was just parked?

21 A Right, sir.

22 Q Was he out of his car or in his car?

23 A He was standing outside.

24 Q And he was hanging out with some people?

25 A I didn't pay attention to people out there, you know,

1 who was he talking to. That's what you're -- that's
2 what you're asking me, right?

3 Q Well, I'm only asking you that because you said he
4 was hanging -- he was with his people.

5 A No.

6 Q So he wasn't with his people?

7 A I didn't say he was with no people. I said people
8 were out there. I don't know who he was with. You
9 want me to commit him to somebody. I'm not sure who
10 he was with or beside.

11 Q Okay. So you look around. You see this guy.

12 A No, he approached me. I was looking around ---

13 Q Okay.

14 A --- to see which way I could get to my ride cheaper
15 and he approached me.

16 Q Okay. He approached you and said, would you like a
17 ride?

18 A Yes, sir.

19 Q Okay. Did he help you get your luggage?

20 A Yes, sir.

21 Q And then y'all put it where, the trunk or in the
22 backseat?

23 A In the backseat of the car.

24 Q In the backseat of car. And then y'all proceeded to
25 drive up from the bus station which way, Harden or --

1 I mean, Laurel to Gregg to Barnwell?

2 A When you ask me this question, Mr. Cathcart, I have
3 to answer because I don't know the side street right
4 beside, I don't know what the street is right beside
5 the Greyhound Bus Station is.

6 Q Okay, but it was the one right beside the Greyhound

7
8 A Right, yes, sir.

9 Q And you were in the passenger seat, correct?

10 A Yes, sir.

11 Q And y'all headed up this way, correct?

12 A Yes, sir. That's by the county buildings, the two
13 buildings, the ambulance place, the EMS place,
14 whatever.

15 Q That's way y'all went up?

16 A Where LRADAC used to be at on the side.

17 Q And y'all headed up that road?

18 A Yes, sir.

19 Q Okay. And he was driving, correct?

20 A Yes, sir.

21 Q What's he look like?

22 A He's about 5-7, dark brown complexion, has a -- a
23 Afro.

24 Q So he's bigger, he's about 3 or 4 inches bigger than
25 you?

- 1 A Maybe, 2 or 3 inches, give or take.
- 2 Q Heavier, smaller?
- 3 A No, sir. Maybe a little bit -- maybe a little bit
4 bigger than me, not maybe my weight, not short ---
- 5 Q You're 5-foot-4, correct?
- 6 A No, I'm 5-5 and a half.
- 7 Q Okay. Does he look just like you?
- 8 A No, sir.
- 9 Q Okay. And y'all two were driving up Laurens Street
10 and were you going real fast?
- 11 A Fairly.
- 12 Q Speeding?
- 13 A He probably -- he probably was. I'm not sure at the
14 time, Mr. Cathcart. I wasn't watching the speed
15 limit or paying attention to the speed limit ---
- 16 Q Seem like -- I'm sorry, go ahead. He seemed like he
17 was in a hurry?
- 18 A Yes, sir.
- 19 Q Okay. And then you stopped on Cherokee Street and
20 turned into Cherokee Street, correct?
- 21 A Yes, sir.
- 22 Q Okay. And y'all go -- I missed this because I was
23 way back there. Which house was his?
- 24 A The house that he got off is the aqua blue house.
- 25 Q The aqua blue house.

1 A Right.

2 Q And at that time, you got out of the car with him,
3 correct?

4 a Yes, sir.

5 Q And you walked around and made this deal?

6 A No. The deal was being made on the way there. Like
7 I told you, he told me on the way ---

8 Q On the way ---

9 A On the way he said give him 10 more dollars and drop
10 him off at his house on Cherokee Street because I
11 initially was going to pay him \$10 to take me to
12 Broad River Road.

13 Q Okay.

14 A He said give him 10 more, that makes it 20.

15 Q And you then got out of the car?

16 A Yes, sir.

17 Q Went around to the other side?

18 A Yes, sir.

19 Q After you made arrangement where you were going to
20 bring the car back to. Where are you going to bring
21 the car back to?

22 A Back to this house right here (indicating) where he
23 was at, where he went in.

24 Q Okay. And then what were you going to do when you
25 brought the car back? How long were you having the

1 car?

2 A Well, I was going to have the car for a couple of
3 hours because I was going to visit my mother's grave
4 site, go around and holler at a couple of old
5 friends.

6 Q How were you going to get to the Super Bowl party
7 that was going to happen ---

8 A I was dropping my stuff. The Super Bowl party was
9 after that too, Mr. Cathcart. The Super Bowl's on
10 Sunday.

11 Q It's on Sunday, right?

12 A Yes, sir.

13 Q So you weren't going there that day to the Super Bowl
14 party, correct?

15 A I was going to spend the night at the friend's house
16 prior to the Super Bowl party on Sunday where the New
17 England Patriots and the New York Giants were
18 playing.

19 Q Spend two nights, right?

20 A No, sir, not Two Notch.

21 Q Friday night, Saturday --

22 A Oh, you said two nights. I'm sorry, I thought you
23 said Two Notch, okay.

24 Q Two nights, right?

25 A Right.

1 Q Okay. So the Super Bowl party's going to be two days
2 after you got there, right?

3 A Yes, sir.

4 Q Okay. And the first place that you indicated that
5 you saw any police officers was not down here
6 (indicating) but way over here, correct?

7 A That's the main street if I come out of Cherokee?

8 Q Yeah, off of Cherokee, now the first place that you
9 saw any police officer, had any idea that any police
10 officer was in the area, correct?

11 A Yes, sir.

12 Q Didn't hear any sirens, did you?

13 A I didn't pay attention at the time, Mr. Cathcart.

14 Q You're driving under suspension, you got a car with a
15 phone by the name of Bill on it and you're not paying
16 attention when there's sirens all around you?

17 A Well actually I didn't recognize no phone in the car
18 at the time either, Mr. Cathcart.

19 Q But it was in your pocket when you were running away
20 from the police ---

21 A It was on -- it fell down in the dashboard and I
22 grabbed it simultaneously running out the car.

23 MR. CATHCART: Beg the Court's indulgence.

24 THE COURT: Yes, sir.

25 (Pause.)

1 But if they don't want to stay, I don't want -- I don't
2 want to force them to.

3 (The jury returned to the courtroom at
4 3:00 p.m.)

5 THE BAILIFF: The jurors are all present, Your
6 Honor.

7 THE COURT: Welcome back, members of the jury,
8 Mr. Foreman. May I remind you of one thing I said at the
9 beginning. If I have to send y'all out to take up
10 arguments on the law, don't hold that against either side.
11 That's just the way trials run and you can take no
12 inference one way or another by that or if I rule on an
13 objection one way or the other, okay. I'm sure y'all
14 understand it. I see y'all nodding your heads.

15 With that in mind, Mr. Cathcart, you may proceed,
16 sir.

17 MR. CATHCART: Thank you, Your Honor.

18 CROSS-EXAMINATION CONTINUES BY

19 BY MR. CATHCART:

20 Q You -- I'm sorry, go ahead. Good?

21 A Yes, sir.

22 Q You'd agree with me, wouldn't you, Mr. Mitchell, that
23 if you had a gun or if a person had a gun and the
24 police officer was behind them or saw that a police
25 officer saw him after he did something such as a

1 carjacking, it would incumbent on him to get rid of
2 that gun quickly, wouldn't it

3 MR. MAY: Objection, Your Honor, speculation.

4 THE COURT: I don't think that's speculation.
5 I'm going to let him answer the question.

6 Q The best thing to do is get rid of that gun quick,
7 right?

8 A Yes, sir.

9 Q And in driving up Laurens Street on the way to
10 Cherokee Avenue, I guess all the way up to Gregg
11 Street where Officer Sanders said that she saw you
12 before, all kinds of places to toss a gun, isn't
13 there?

14 A I guess if you say that, Mr. Cathcart.

15 Q Okay. And down there at Heidt Street, all the way
16 across that field where Mr. Murphy saw you run and
17 drop some things, there's a lot of places to throw
18 the gun as well?

19 A That would be bad idea, Mr. Cathcart, because Ms.
20 Sanders was behind me the whole time running.

21 Q So probably good idea to get rid of it beforehand,
22 right?

23 A That might be what you would do if you had a gun but
24 I didn't have a gun, Mr. Cathcart, so I'm not sure.

25 Q But you agree with me, there's plenty of places to

1 get rid of a gun, correct?

2 A I can't agree with you on that, Mr. Cathcart.

3 Q So you're now saying that on Laurens Street, there's
4 not a lot of places to get rid of a gun?

5 A I said if that's what you say, Mr. Cathcart. I'm not
6 sure.

7 Q Now, you agree with me also that when the police
8 arrested you and they took you to the jail and they
9 put you -- and they took your clothes that you had
10 on, gave you stuff -- issued you other stuff,
11 correct?

12 A You talking about ---

13 Q Issued some jail clothes?

14 A Okay, yes, sir, Alvin S. Glenn.

15 Q Put all your stuff in a property room, you looked at
16 it and you signed your name on it, correct?

17 A Right.

18 Q And part of the property that you had on your person
19 was a black cap, correct?

20 A I'd like to say that, yes, sir. It was a red -- red,
21 highly red, over red, with black strips in it.

22 Q A red and black sweat cap and you signed your name,
23 correct?

24 A Yes, sir.

25 Q Okay. And you didn't have a wallet on you, did you?

- 1 A A wallet?
- 2 Q A wallet.
- 3 A No, sir.
- 4 Q Okay. You didn't have \$30 on you, did you?
- 5 A At the time, no, sir. It was in the car, I believe.
- 6 Q You left the \$30 in the car?
- 7 A I believe.
- 8 Q Okay. So that wasn't in your pocket anymore?
- 9 A No, sir.
- 10 Q Just Mr. Gilmore's phone?
- 11 A The phone wasn't in my pocket either.
- 12 Q It was where again, I'm sorry?
- 13 A I threw it down when I was running through the field
- 14 to evade the police.
- 15 Q And why did you throw away the phone when you were
- 16 evading the police for DUS?
- 17 A I was terrified. I was terrified.
- 18 Q The phone was going to do something to you?
- 19 A No, I was scared.
- 20 Q Of the phone?
- 21 A No, I was scared of the police.
- 22 Q So you got rid of the phone?
- 23 A Yes, sir, I threw the phone down.
- 24 Q Wouldn't you agree with me that having a phone that
- 25 belonged to the victim of the carjacking would

1 incriminate you in that case?

2 A Say that again. I'm quite not understanding you, Mr.
3 Cathcart.

4 Q Okay, sorry.

5 A Slow down, could you slow down, please?

6 Q Sure. Wouldn't you agree with me, that you being in
7 possession of the phone that belonged to the victim

8 ---

9 A Right.

10 Q --- of the carjacking that occurred seven minutes of
11 you running across the field is kind of
12 incriminating, right?

13 A I am not sure because I didn't carjack nobody, Mr.
14 Cathcart.

15 Q But it wouldn't be a good thing to be caught with,
16 right?

17 A No, sir.

18 Q Okay. Good idea to throw it away, right?

19 A Yes, sir.

20 Q You threw it away, right?

21 A Yes, sir, I threw the phone down. And I'm guilty of
22 that, Mr. Cathcart.

23 Q You'll agree with me also, want you, that 10 minutes
24 is not that long of a time, is it?

25 A No, sir.

1 Q Especially to remember something out of the ordinary,
2 correct?

3 A I can't really say. It depends on the situation, Mr.
4 Cathcart.

5 Q Okay. I'm going to give you a situation. Like if a
6 person went to a cable place to pay a bill. Paid the
7 bill, walked out ---

8 MR. MAY: Objection, Your Honor, again this is
9 speculation. He's asking the what ---

10 THE COURT: Let him finish the question first.
11 Finish the question, Mr. Cathcart. Then I'll rule on your
12 objection.

13 Q And nothing out of the ordinary occurred, it would
14 not be unusual -- I mean, you may still be able to
15 remember a lot from it just 10 minutes from it,
16 correct?

17 A Yes, sir.

18 Q Now, if you were going to the cable place and then
19 suddenly out of the blue something tragic and
20 different happened, 10 minutes later that's going to
21 be fresh in your mind ---

22 MR. MAY: Objection, Your Honor.

23 THE COURT: Basis?

24 MR. MAY: Speculation. He says if you go to a
25 cable place and something ---

1 THE COURT: He's asking whether or not if in a 10
2 minute period of time something would be fresh in your
3 mind. Ask the question that way. That's what it boils
4 down to.

5 A Could you repeat that?

6 Q I'm sorry, I'll be happy to.

7 A Okay.

8 Q If a person was at a cable place, sitting in the
9 parking lot, minding her own business and something
10 tragic happened to them.

11 A Right.

12 Q 10 minutes later that would be fresh in their mind,
13 wouldn't it?

14 A I guess it would, Mr. Cathcart.

15 Q If a person put a gun to your face?

16 A To my ---

17 Q To a person's face?

18 A Okay.

19 Q Not to yours or anyone and threatened that person's
20 life, that would be a tragic thing, wouldn't it?

21 A Yes, sir, it would be.

22 Q It would be something that's pretty scary, wouldn't
23 it?

24 A Yes, sir.

25 Q And in fact when you did that to somebody or somebody

1 did that to someone else, they'd probably remember
2 that person pretty well, wouldn't they, just 10 or 15
3 minutes later?

4 A Well, maybe not me, Mr. Cathcart. If somebody put a
5 gun to my head, I'd be scared to look.

6 Q Okay. But if you weren't scared to look and you did

7 ---

8 A I would be scared.

9 Q If you were -- had -- if a person had a gun put to
10 their face they were told, get out of the car, and
11 they were unable to do so ---

12 THE COURT: You have an objection?

13 MR. MAY: Yes, sir.

14 THE COURT: What is it?

15 MR. MAY: If we may approach?

16 (Whereupon, a bench conference was held off the
17 record, in the presence of the jury, but out of the
18 hearing of the jury.)

19 MR. CATHCART: Thank you, Your Honor.

20 Q You had your hat on that day, correct?

21 A Off and on.

22 Q When you were running from Officer Sanders your hat
23 was on your head, correct?

24 A No, sir.

25 Q It was not on your head?

- 1 A No, sir.
- 2 Q Where was the hat?
- 3 A In my pocket.
- 4 Q Okay. So when you were running from her, you looked
5 like this?
- 6 A Yes, sir.
- 7 Q That's how you appeared that day, correct?
- 8 A Appeared -- that's how -- when I got snatched out of
9 the car, I didn't have the jacket or the hat on,
10 standing in front of the car.
- 11 Q Where was the jacket?
- 12 A The jacket with the police. Mr. Smalls picked the
13 jacket up off the ground, it was in my hand, all my
14 clothes that was in my hand ---
- 15 Q Because you were taking them off while you were
16 running, correct?
- 17 A Yes, sir, while I was evading the police.
- 18 Q Taking your hat off, taking your jacket off, taking
19 your shirt off?
- 20 A No, my hat was in my jacket pocket.
- 21 Q When Ms. Gilmore came and identified you, the car
22 wasn't anywhere near y'all, right? You already ran
23 way over that way (indicating), correct?
- 24 A Yes, sir.
- 25 Q None of the police were pointing at you, were they?

1 A They told me to get out the car. The K-9 officer
2 told me repeatedly, get out the car, and I refused to
3 get out the car several times.

4 Q You didn't want to get out of the car so the person
5 who was going to view you could go find the person
6 who really did it?

7 A Because at the time he was being very absurd. He
8 said, he knows me, your name is Norman Mitchell.
9 You're from Duke (phonetic) Avenue. I know your
10 mother. I know all about you. He was screaming
11 obscenities at me and Officer Smalls had the gun on
12 me while I was on the ground. And I was very
13 traumatized at the time myself because I was scared.
14 I didn't know what was going on.

15 And when they snatched me out the car, my jacket
16 -- my hat was in my -- my hat was balled up in my
17 jacket pocket and my shirt was in my hand. And I was
18 standing out there bare shirted which Mr. Pegram and
19 no one else stated since I been here today or
20 yesterday.

21 Q In fact, you mentioned Duke Avenue. That's where you
22 told the jail that you lived at this point too,
23 correct, not in Charleston? Duke Avenue, that's in
24 Columbia, isn't it?

25 A When you use -- when you go to the county jail you

1 don't ---

2 Q You use -- you don't say Charleston, ---

3 A When you go to the county jail you don't use -- use
4 any address. I mean, I have addresses down there I've
5 been using for years. You know, I might have said
6 anything. I'm not saying I didn't make -- make no
7 mistakes so ---

8 Q But you didn't tell them that you were down in
9 Charleston?

10 A Actually, I asked Ms. Carolyn Gripp who was my
11 attorney the first time to get my Social Security
12 card which has 1921 Marchant Street that I got from
13 the Social Security office for my EBT card down
14 there.

15 Q When you got booked in ---

16 THE COURT: What exhibit is that?

17 MR. CATHCART: I'm sorry, Your Honor. This is
18 Defendant's Exhibit Number 3 and State's Exhibit Number
19 36.

20 THE COURT: All right, sir.

21 Q When you got booked in, you told them Duke Avenue is
22 where you lived, correct?

23 A Well, usually they use the same address from the last
24 time you come. Every time you come in jail they
25 pretty much -- they don't always ask you where you

1 stay. They use the same address all the time, the
2 same age ---

3 Q When you fill out this information, you've got to
4 sign your name to it, correct?

5 A Actually, Mr. Cathcart, as you notice, my name is not
6 Norman Lee Mitchell. So I don't where that Lee comes
7 at. It's been a mistake in that part too. So my name
8 is Norman Carol Mitchell, Junior.

9 Q Is that your signature right there?

10 A Yes, sir, that's my name, Norman Mitchell. But my
11 name is not Lee, so. It's -- they've been using Lee
12 because that's been an alias name I used in the past,
13 so. When they go to the county jail they use
14 different names the whole time. They just give you
15 the same name.

16 Q But you signed the form?

17 A Yes, sir.

18 Q That says Norman Lee Mitchell?

19 A Yes, sir.

20 Q Indicating you?

21 A No, I didn't -- that says Norman Mitchell.

22 Q Okay. Are you familiar with the neighborhood behind
23 the cable company, up in this area (indicating), Pine
24 Street, Oak Avenue?

25 A No, sir, not frequent. I don't frequent -- I know

1 the Green Street area is a little bit down further.

2 I know about that area.

3 Q So you wouldn't know about the abandoned homes in
4 that area?

5 A Say that again, the abandoned ---

6 Q You wouldn't know anything about abandoned homes in
7 that area?

8 A No, sir, I've never.

9 Q And when Investigator Pegram asked for your address
10 at that time, you gave him -- you said you didn't
11 have one, correct?

12 A I might have, I'm not sure.

13 Q In fact, you didn't tell him about Charleston,
14 correct?

15 A I repeatedly told them I came from Charleston on the
16 bus. I repeatedly told them that. That's why I had
17 my bags.

18 Q And these are your bags?

19 A Yes, sir.

20 Q These are the clothes you were going to wear for the
21 Super Bowl party, correct?

22 A No, sir. These were the clothes I was going to have
23 to change out for the week. I was going to be in
24 Columbia visiting my mother's grave.

25 Q Okay. These are your clothes, correct?

- 1 A Yes, sir.
- 2 Q All of your clothes?
- 3 A Yes, sir. Well, I haven't looked in the bag but I
4 know that those are my bags, so, you know ---
- 5 Q Your luggage though, right?
- 6 A Yes, sir. The ones with the garbage bags wasn't on
7 it. I didn't have a garbage full of clothes.
- 8 Q These were clean clothes that you -- basically your
9 luggage that you -- from home, you brought your
10 luggage and you were going to put them on, right?
- 11 A Right, yes, sir.
- 12 Q Clean?
- 13 A Shoot basketball and exercise and stuff like that.
- 14 Q And you packed these bags yourself, correct?
- 15 A Yes, sir.
- 16 Q Okay. Is that your sock?
- 17 A No, that's my little cousin's.
- 18 Q You were going to wear that for the basketball ---
- 19 A No, I wasn't. That must have been stuck up in a bag
20 or something.
- 21 Q And all these shoes, you were going to wear?
- 22 A Yes, sir.
- 23 Q Okay, just one a day, different each time?
- 24 A Well, yes, sir.
- 25 Q This is everything you owned, isn't it?

1 A No, sir.

2 Q Isn't it true that these clothes were all dirty,
3 hasn't been cleaned? All these clothes are dirty?

4 A I know they're not clean now. They've been in
5 property for a year. I know they mildew or whatever.

6 Q And you had them folded up nice, including your --
7 those baby socks, the women's jeans that are in here?

8 A Women's jeans...

9 (Pause.)

10 Q You indicated that when Pegram and Thomas talked with
11 you, they didn't talk with you at all, they screamed
12 at you, correct? That's what you're saying now?

13 A Yes, sir, they kept ---

14 Q They screamed at you ---

15 A Actually, Mr. Thomas interviewed me first and he was
16 waiting on Mr. Pegram to come in so they both could
17 interview me at the same time.

18 Q Interview you or screaming at you?

19 A Well, you said talk, interview. I mean, I didn't say
20 what type of procedure it was, Mr. Cathcart.

21 Q You would agree with me that they read you your
22 rights?

23 A Yes, sir.

24 Q You would agree with me that you wrote down your
25 initials on each right they gave you?

1 A Yes, sir.

2 Q You would agree with me that you signed your name on
3 the Waiver of Rights?

4 A Right.

5 Q And you spoke with them, correct?

6 A Yes, sir.

7 Q And you first said you had nothing to do with the
8 carjacking, correct?

9 A Yes, sir.

10 Q Had no idea what they're talking about, correct?

11 A Right.

12 Q And then you changed the story, correct?

13 A No, sir.

14 Q You changed the story two separate times, correct?

15 A No, sir.

16 Q The one thing that was the same about all these
17 stories is that you never mentioned Charleston,
18 correct?

19 A That's a lie, Mr. Cathcart.

20 Q The first time anyone other than you and perhaps your
21 attorney has ever heard the term Charleston and the
22 bus was yesterday morning, correct?

23 A No, sir.

24 MR. MAY: Objection, Your Honor. If we may

25 approach?

1 THE COURT: Sure.

2 (Whereupon, a bench conference was held off the
3 record, in the presence of the jury, but out of the
4 hearing of the jury.)

5 THE COURT: You may continue, Mr. Cathcart.

6 MR. CATHCART: Thank you, Your Honor.

7 Q Mr. Mitchell, back in 1998, you were convicted of
8 attempted strong armed robbery, correct?

9 A Yes, sir, and I did that.

10 Q Back in 1999, convicted of petty larceny?

11 A And I pled guilty, Mr. Cathcart.

12 Q Back in 2001, you were convicted of auto breaking and
13 petty larceny, correct?

14 A And I pled guilty.

15 Q Back in 2003, you were convicted of 10 separate
16 counts of bank fraud, correct?

17 A Yes, sir.

18 Q Back in 2004, you were convicted of petty larceny, is
19 that not correct?

20 A Yes, sir, and I pled guilty.

21 Q Back in 2005, you were convicted of petty larceny, is
22 that not correct?

23 A Yes, sir, and I pled guilty.

24 Q In 2007, you were convicted of shoplifting, correct?

25 A Yes, sir, and I pled guilty.

1 Q And on 2007, you were also convicted of possession of
2 a stolen motor vehicle, correct?

3 A And I pled guilty, Mr. Cathcart.

4 MR. CATHCART: Thank you. I don't have anything
5 else for you.

6 MR. MAY: Beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 (Pause.)

9 REDIRECT EXAMINATION

10 BY MR. MAY:

11 Q I have two questions for you, Norman. Mr. Cathcart
12 just read your record and you said you pled guilty to
13 all of those?

14 A Yes, sir.

15 Q Have you ever been in a trial before?

16 A No, sir.

17 MR. CATHCART: Objection as to relevance, Your
18 Honor.

19 THE COURT: Sustained.

20 MR. MAY: No further questions.

21 THE COURT: Any further questions?

22 MR. CATHCART: No, sir, thank you.

23 THE COURT: All right. Members of the jury, I've
24 got the send you to the jury room. I'm not sure whether
25 or not we're going to hear anymore evidence today or not.

1 THE COURT: It's probably that velvet. What
2 color is that?

3 THE CLERK: Red.

4 THE COURT: All right. You may publish it.

5 VERDICT OF THE JURY:

6 THE CLERK: Indictment number 2008-GS-40-1239,
7 The State of South Carolina versus Norman Lee Mitchell.
8 It's an indictment for failure to stop for a blue light
9 We the jury by unanimous consent find the
10 Defendant guilty. This is signed Foreperson, Frederick
11 Felder, February 6th, 2009.

12 Indictment number 2008-GS-40-1238. It's an
13 indictment for carjacking. The State of South Carolina
14 versus Norman Lee Mitchell.

15 We the jury by unanimous consent find the
16 Defendant guilty. This is signed Foreperson, Frederick
17 Felder, February 6th, 2009.

18 Mr. Foreman, are these your verdicts and the
19 verdicts of the entire jury?

20 MR. FOREMAN: They are.

21 THE COURT: Anything further from the jury on
22 behalf of the Defense?

23 MR. MAY: Yes, sir. We would ask that the jury be
24 poled.

25 THE COURT: All right. Ms. Pendergrass, now,

1 strike, I believe it is, or something like that?

2 MR. CATHCART: Yes, Your Honor.

3 THE COURT: And so I just want y'all to wait and
4 y'all will find out some things that I couldn't tell you
5 during the trial, the Solicitor couldn't mention or
6 anybody else.

7 Bring Mr. Mitchell around.

8 And the sentence I have to impose is required by
9 law for me to impose.

10 (Pause.)

11 THE COURT: Mr. Cathcart, you may go through Mr.
12 Mitchell's prior record, sir.

13 MR. CATHCART: Your Honor, as to the Defendant's
14 prior record actually dates back not from the past 10
15 years but from 1988.

16 Defendant's prior record from 1988 is three
17 counts of pointing and presenting a firearm, two counts of
18 carrying a pistol unlawfully. He has three convictions of
19 burglary in the first degree, four convictions for
20 burglary in the second degree, six counts of grand larceny
21 over a thousand dollars, and attempted burglary in the
22 second degree. On that -- he got a 15 year sentence on
23 those charges. On 1998, his parole was revoked. He maxed
24 out his time on July 28th of 1998.

25 Within a month he committed the attempted strong

1 armed robbery. He was sentenced again and then as soon as
2 he got back out, another charge for unlawful carrying a
3 pistol. Then another petty larceny. Then an auto
4 breaking, petty larceny. Then as the jury was not able to
5 hear because it's not a crime of dishonesty, he was
6 convicted of trafficking in cocaine.

7 He had -- after he got back out of prison, he was
8 convicted of 10 separate counts of bank fraud, forgeries
9 to banks. While he was incarcerated on that time, he was
10 convicted for assaulting a corrections officer. 2004 --
11 that was in 2003. 2004 again a petty larceny. 2005 petty
12 larceny, 2007 shoplifting and then again August the 13th
13 of 2007, possession of a stolen motor vehicle for which he
14 got out the Alvin S. Glenn Detention Center about three
15 weeks before he put a gun to Ms. Gilmore's head.

16 Your Honor, the prior record as to the three
17 separate counts of burglary in the first degree, those are
18 considered a most serious offense in his prior record as
19 is the carjacking.

20 The sentence is as statutory and as appropriate
21 in this case.

22 THE COURT: All right, Mr. May.

23 MR. MAY: Your Honor, before we -- before you
24 issue the sentence, I would first like to renew all
25 motions and objections to include but not limited to the

1 numerous Doyle violations the Solicitor committed, the
2 numerous bolstering that the Solicitor committed, the Neil
3 v. Biggers motion at the beginning where the ID came in
4 and all other motions that -- and objections which are not
5 specifically stated.

6 THE COURT: All right. What I'm going -- I'm
7 going to deny them all. I'll give you a chance to
8 supplement anything in written form, if you'd like.

9 MR. MAY: Thank you, Your Honor.

10 THE COURT: All right.
11 Anything you'd like to tell me, Mr. Mitchell?

12 THE DEFENDANT: No, sir.

13 SENTENCE OF THE COURT:

14 THE COURT: Very well. On indictment number
15 2008-1239, The State versus Norman Lee Mitchell, the
16 sentence is three years.

17 On indictment number 2008-1238, The State versus
18 Norman Lee Mitchell, carjacking, because this is a third
19 offense, members of the jury, your Legislature requires me
20 to impose a life sentence on Mr. Mitchell.

21 Good luck to you, Mr. Mitchell.

22 MR. MAY: Your Honor, for the record, I would
23 object to the LWOP. Under the Eighth Amendment, it's
24 cruel and unusual punishment. Under the Sixth Amendment,
25 for ineffective assistance of counsel ---

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND)	Warrant Numbers: K332565, K332567
)	
The State of South Carolina,)	
)	
)	
vs.)	<i>NEIL V. BIGGERS</i> MOTION TO SUPPRESS
)	PRE-TRIAL SHOW-UP IDENTIFICATION
)	AND SUBSEQUENT IN-COURT
Norman Lee Mitchell,)	IDENTIFICATION OF DEFENDANT
<u>Defendant.</u>)	

NOW COMES the defendant and respectfully moves to suppress the show-up identification of defendant and any subsequent in-court identification, as the show-up identification was so unduly suggestive as to violate the defendant's 14th Amendment right to due process.

I. INTRODUCTION

As outlined in *Neil v. Biggers*, 409 U.S. 188 (1972) and cases in its progeny, criminal defendants are "deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken identity." *State v. Moore*, 343 S.C. 282, 286 (2000). Specifically, "single person showups are particularly disfavored in the law." *State v. Johnson*, 311 S.C. 132, 134 (Ct. App. 1993). Furthermore, "[a]n in court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification. *Moore*, at 286. Because the facts of this case clearly demonstrate a show-up identification that created a substantial likelihood of irreparable misidentification of the defendant, the pre-trial identification, as well as any subsequent in-court identification of the defendant is inadmissible.

II. FACTS

On February 1st, 2008, Nola Gilmore was carjacked in the parking lot of Time Warner Cable, located at 1030 Harden Street, Columbia, SC at approximately 12:45pm. According to Ms. Gilmore's Statement, provided to Investigator Pegram of the Columbia Police Department on February 1, 2008, a man described only as a "black man" allegedly opened Ms. Gilmore's driver side door, pointed a gun to her head, and told her to get out of the car. This incident happened very quickly as Ms. Gilmore stated "[t]he black man did not wait for me to get out before he started backing up. He almost knocked me down. He drove away very fast." Ms. Gilmore gave no other description of the suspect other than a black man with a gun:

Within approximately twenty minutes from the time of the incident, Ms. Gilmore was transported to the Gonzales Gardens apartment complex where a man, in handcuffs, surrounded by officers, was brought to the front of the police car in which Ms. Gilmore was riding; she identified this suspect as the man that carjacked her. The man she identified is defendant Norman Mitchell.

III. STANDARD FOR DETERMINING THE ADMISABILITY OF AN OUT-OF-COURT IDENTIFICATION

In *Neil v. Biggers*, The United States Supreme Court developed a two-prong test to determine the admissibility of an out-of-court identification:

First, a court must ascertain whether the identification process was unduly suggestive. The court must *next* decide whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misrepresentation existed.

State v. Traylor, 360 S.C. 74, 81 (2004)(emphasis added). "The central question is whether under the totality of the circumstances the identification was reliable even though the confrontation procedure was suggestive." *Id.* The factors for determining the likelihood for misidentification of a suggestive

identification, under the totality of the circumstances, are as follows:

(1) the witness's opportunity to view the perpetrator at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description of the perpetrator, (4) the level of certainty demonstrated by the witness at the confrontation, and (5) the length of time between the crime and the confrontation.

Traylor, 360 S.C. at 82.

A. Prong 1: The Out-of-Court Show Up Identification was Patently, Unduly Suggestive

To satisfy the first prong of the test recognized by *Neil v. Biggers* and its progeny, the first test is to assess whether the out-of-court identification was unduly suggestive. As recognized by our South Carolina Supreme Court, "[s]ingle person show-ups are particularly disfavored in the law." *Moore*, 343 S.C. at 287; *Johnson*, 311 S.C. at 134; *see also Stovall v. Denno*, 388 U.S. 293, 302 (1967)(overruled on other grounds (retroactivity analysis))(practice of showing suspects singly to persons for the purpose of identification, as opposed to using a lineup, has been widely condemned); *In the Interest of Rashee*, 308 S.C. 392, 396 (Ct. App. 1992) (show up identification was clearly suggestive where victim was taken to detention center to view suspect where there were no other individuals being detained); *Moore*, 343 S.C. at 287 (court found it patent that show-up procedure used was unduly suggestive where witness was brought to a location where two individuals, wearing similar clothing to that described by the witness and surrounded by police officers were identified by witness).

On February 1, 2008, Nola Gilmore was escorted to the Gonzales Gardens apartments where Norman Mitchell was detained and placed before the squad car she was in, surrounded by Columbia Police Officers, in handcuffs, and there were no other suspects other than Mr. Mitchell. Based on the above jurisprudence, this show up identification was patently unduly suggestive.

B. Prong 2: Totality of the Circumstances Analysis

Under the second prong of the *Neil v. Biggers* analysis, now that it has been clearly shown that the show-up identification was suggestive under the law, the Court must consider whether “the out-of-court identification was nevertheless so reliable that no substantial likelihood of misrepresentation existed,” using the below factors and considering them under the totality of the circumstance. *Traylor*, 360 S.C. at 81, 82. *Neil v. Biggers*, 409 U.S. 188 (1972).

1. The Witnesses Opportunity to View the Perpetrator at the Time of the Crime

Because the carjacking on February 1, 2008 happened so quickly, there was little time for Ms. Gilmore to view the perpetrator; therefore, this factor must be viewed in favor of showing the inherently unreliable nature of the unduly suggestive show up identification by Ms. Gilmore. Evidence of how the incident happened in a matter of seconds is reflected in Ms. Gilmore’s statement to Investigator Pegram regarding the incident; “a black man snatched the drivers door open. He put a gun to the side of my head... The black man didn’t wait for me to get out before he started backing up. He almost knocked me down. He drove away very fast.”

Ms. Gilmore’s opportunity to view the perpetrator was severely limited as the crime happened in an instant, and our South Carolina jurisprudence considers confrontations that happen quickly to be unreliable. In *In the Interest of Rashee*, 308 S.C. at 396, the Court of Appeals found the show up identification to be unreliable, and “[o]f notable importance in this case is the fact that the witness’ opportunity to view the accused was poor... although McKnight was within approximately four feet of the individuals, his observation was of no significant duration and Mr. McKnight indicated “things were happening rather quickly.”” See also *State v. Scipio*, 283 S.C. 124 (1984)

(distinguishable from the facts at bar, where the Supreme Court, in finding an identification reliable, placed great emphasis on the fact that the victim observed the perpetrator standing within arms length for a period of 4 to 4 ½ minutes in a well lighted store). Because Ms. Gilmore's glimpse of the perpetrator happened for only a matter of seconds, while a gun was pointed to her head, there was not ample enough time for her to view the perpetrator, if at all, and this factor must be considered as making the already inherently suggestive identification unreliable.

2. The Witness's Degree of Attention

Ms. Gilmore's degree of attention was severely limited and this factor must therefore be considered as making the unduly suggestive identification inherently unreliable. In her statement to Investigator Pegram, Ms. Gilmore stated that "[h]e put a gun to the side of my head." The fact that the perpetrator placed a gun to the side of her head would logically suggest that she was unable to be facing the perpetrator. Ms. Gilmore's inability to view the perpetrator, combined with the fact that this incident happened in a matter of seconds, *supra*, the fact that Ms. Gilmore recently had back surgery and was most likely prescribed pain medication which may have had an attenuating effect on her attention, and the fact that Ms. Gilmore's attention was so limited that she could only describe the perpetrator as a "black man", would suggest a limited degree of attention, indicating the unduly suggestive identification must be construed as unreliable.

3. The Accuracy of the Witness's Prior Description of the Perpetrator

Ms. Gilmore's prior description of the perpetrator was inaccurate because it was vague at best, and our South Carolina courts have held vague descriptions to be unreliable. *In the Interest of Rashee*, 308 S.C. at 396 (show up identification case where court found identification unreliable as recognized "McKnight's prior description was vague and, as previously noted, somewhat

inaccurate.”). *See also Moore*, 343 S.C. at 290 (regarding the victims description of the perpetrator, the South Carolina Supreme Court found “a substantial likelihood of irreparable misidentification such that the identifications are unreliable as a matter of law” where the victim “gave no description of him other than the fact that he was shorter and wore a black hat.”). Like *Moore* and *In the Interest of Rashee*, *supra*, Ms. Gilmore gave no physical description of the perpetrator at all other than describing him as a “black man”; as such, this description is vague and makes this unduly suggestive show up identification inherently unreliable.

4. The Level of Certainty Demonstrated by the Witness at the Confrontation

The fact that Ms. Gilmore’s description of the perpetrator was limited at best, as she only described him as a “black man”, would suggest that it would be remote that she would have been able to demonstrate with any certainty her identification of the defendant. It is apparent that the identification of the defendant occurred for the very reasons that make it inherently suggestive under prong one of this analysis: the defendant was a black man that was handcuffed, surrounded by officers, and there were no other suspects around. The vagueness of Ms. Gilmore’s description of the perpetrator, combined with the unduly suggestive nature of the show up identification, makes the identification inherently unreliable.

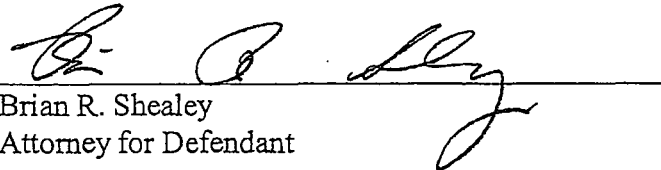
5. The Length of Time Between the Crime and the Confrontation

While noted that our courts typically consider short amounts of time between the crime and confrontation to be generally more reliable, it must be noted that Ms. Gilmore was arguably in a disoriented state due to the incident. The closed incident report as well as the 911 call from her son, William Gilmore, both indicated that Ms. Gilmore “passed out” after the initial incident. The fact that Ms. Gilmore lost consciousness after the incident, combined with any medications she may have

been taking as a result of her recent back surgery, would suggest that she was in a disoriented state when she identified the defendant within approximately twenty minutes from the initial incident. The disoriented state of Ms. Gilmore would certainly make the already unduly suggestive identification of the defendant extremely unreliable.

IV. CONCLUSION

NOW THEREFORE attorney for defendant moves this Court to suppress the show up identification and deem inadmissible any subsequent in-court identification of the defendant based upon the inherently unduly suggestive nature of the identification, absent factors representing its reliability, considered under the totality of the circumstances.



Brian R. Shealey
Attorney for Defendant

Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592

Columbia, South Carolina

This 4th day of February, 2009

1 STATE OF SOUTH CAROLINA) IN GENERAL SESSIONS
 2 COUNTY OF RICHLAND) COURT
 3)
 4 STATE,)
 5)
 6 -V-) TRANSCRIPT OF
 7) RECORD
 8 NORMAN LEE MITCHELL) 2008-GS-40-1238,
 9) 2008-GS-40-1239
 10)
 11 DEFENDANT.)

12
 13 MARCH 3, 2009
 14 RICHLAND, SOUTH CAROLINA
 15

16 B-E-F-O-R-E:
 17 HONORABLE CASEY L. MANNING, JUDGE;

18
 19 A-P-P-E-A-R-A-N-C-E-S:
 20 FOR THE PLAINTIFF:
 21 MR. CATHCART, ESQ.

22
 23 FOR THE DEFENDANT:
 24 MR. MAY, ESQ.

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I-N-D-E-X

PG.

MOTIONS:

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CERTIFICATE OF REPORTER:

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E-X-H-I-B-I-T-S

REPORTER'S NOTE: THERE WERE NO EXHIBITS ENTERED DURING THE
REQUESTED PORTIONS OF THE TRANSCRIPT.

1 (THE FOLLOWING PROCEEDINGS WERE
2 HELD ON MARCH 9, 2009.)

3 THE COURT: This is post-trial motions and -- what
4 case is this?

5 MR. CATHCART: This is --

6 THE COURT: This is the carjacking?

7 MR. CATHCART: That's correct.

8 THE COURT: Mr. May, this is your motion, sir?

9 MR. MAY: Yes, sir. And I'm sure you remember you
10 sat on the case of State v. Norman Mitchell from
11 February the 4th through February 7th. At the end of the
12 trial he was found guilty. We began to make our post-trial
13 motions and we asked that they be submitted to you in
14 writing -- we followed that up within the ten days
15 requirement and filed them on February the tenth. Your
16 Honor, they were provided to you and I'll make them apart of
17 the record once this is done.

18 THE COURT: Okay.

19 MR. MAY: Your Honor, we renew all objects
20 specifically the Dole violations. There were numerous of
21 times when we would -- the solicitor improperly commented on
22 the defense's right to remain silent. We renew our
23 objections to bolstering. They called two additional
24 witnesses to bolstering their eyewitness testimony that
25 her memory is better than it is now. We renew our motion to

1 exclude the lineup. There was a Biggers Motion heard before
2 the trial. As the trial went on evidence came out during
3 the trial that the ID was improper. She stated that the
4 person who robbed her had hair. We presented evidence and
5 entered it into evidence at the time the defendant was bold
6 that goes to our claim that this was an improperly -- an
7 improper suggestive show of ID.

8 Your Honor, we also renew all other motions and
9 objections they're not specifically made right now and we do
10 ask for a new trial as a result of this.

11 THE COURT: All right. Thank you, Mr. May.

12 Mr. Cathcart.

13 MR. CATHCART: Yes, sir. As to defense's motion,
14 Your Honor, as to the life without parole I don't know if he
15 mentioned that --

16 MR. MAY: Well, I was going to do that in the end
17 --

18 MR. CATHCART: Okay.

19 THE COURT: We'll give you a chance to address it
20 at the end.

21 MR. MAY: Yes, sir.

22 THE COURT: Go ahead, Mr. Cathcart.

23 MR. CATHCART: As to the post-trial motion, Your
24 Honor, specifically to the Dole, State v. Dole talks about
25 silence after arrest. In this case it's different in that

1 the defendant did not wish to remain silent, in fact, he
2 gave numerous statements to the police. Defense counsel in,
3 I guess, their strategy as to what they were going to do did
4 not even contest that the voluntariness of the confessions
5 or his statements. He did not wish for Jackson V. Denno
6 because he agreed that these -- that the defendant did give
7 the statements. Based upon that when he gives a statement
8 to the police at the time of trial, and he comes up and
9 gives more statements during that trial something different
10 or something new the state is allowed to comment on them.
11 That is clearly different from Dole. I believe the case
12 that is on point is State V -- beg the Court's indulgence,
13 Kimsey, K-I-M-S-E-Y, Your Honor, which specifically states
14 that if the defendant does give statements he is not invoked
15 his right to remain silent, in fact, he's gone beyond that.
16 And therefor, we can comment on his new stories why it's
17 different than what he said before.

18 As to the other motions, Your Honor, specifically
19 the burden shifting the state put fourth the investigator
20 and her son who are eyewitnesses to these cases. We're not
21 looking for anything specifically as to the victim and also
22 to the identification -- through vigorous Biggers hearing
23 this was an identification made 12 minutes after the actual
24 assault.

25 THE COURT: And they found the defendant in the

1 victim's car?

2 MR. CATHCART: That's correct, Your Honor.

3 THE COURT: Two minutes later. And he got
4 convicted of failure to stop for a blue light?

5 MR. CATHCART: That's correct.

6 THE COURT: All right. Anything further, Mr. May?

7 MR. MAY: Your Honor, I do believe that the Dole
8 is directly on point. And Dole as well as the South
9 Carolina case Jackson V. State the questions asked by the
10 solicitor in Dole the prosecutor it was, Why we never heard
11 this statement before? That was almost verbatim to what Mr.
12 Cathcart said --

13 THE COURT: I think he said this is the first
14 time, maybe, we've ever heard this or something like that
15 but go ahead.

16 MR. MAY: Your Honor, that would be our basis.

17 THE COURT: Okay.

18 MR. MAY: That the defendant did give two
19 statements allegedly and he said he gave a third statement.
20 But still that would be 30 minutes of his arrest. There was
21 over a year later which it seemed like the solicitor was
22 intimate that they should have heard something else if this
23 was a true statement. I believe that goes directly on point
24 to Dole as well as Jackson. There was definitely bolstering
25 with Investigator Pegram as well as the victim's son.

1 And the identification for the first time in over
2 a year. They asked her what did the person looked like, who
3 robbed you and she said, Well, he had long nappy hair. The
4 defense entered evidence --

5 THE COURT: I don't think identification would
6 have to be perfect but when you combine the totality of the
7 circumstances he's in her car two minutes later running away
8 from the police; he had a hat on. The totality of the
9 circumstances I think is what puts you in, Mr. May.

10 MR. MAY: Yes, sir. And --

11 THE COURT: I'm allowing you to do your job even
12 though we lost to Vanderbilt I'm still allowing you to make
13 your motions. Go ahead.

14 MR. MAY: Well, thank you, very much, Your Honor.
15 And just for the record I believe the evidence is between
16 five -- four to ten minutes. Regardless of that it's the
17 defense -- that the ID was extremely suggestive and for
18 those, for those, reasons and any of the others I
19 specifically mentioned we'd ask for a new trial.

20 THE COURT: Thank you, Mr. May. I must
21 respectfully decline. How do they say? Deny, yeah, I
22 forget. Deny your motions. I think you preserved the
23 record. You did a good job. I congratulate you on your
24 efforts, this was a tough case. And I don't necessarily
25 agree with the penalty under these circumstances but I

1 didn't decide the penalty. I think you got a fair trial.
2 Someone from appellate defense will be happy to take this
3 matter up for you.

4 MR. MAY: And we also have an additional --

5 THE COURT: Go ahead --

6 MR. MAY: Motion. Which is an objection to the
7 sentence that was imposed. We move respectfully, Your
8 Honor, that 17-225-45(b) of the South Carolina code is
9 unconditional and this specific incidences violates the
10 defendant's, 8th, 6th, 15th and 14th Amendments as well as
11 we believe that this section is a violation of separation of
12 powers. For that very reason, Your Honor, we ask for either
13 a new trial or amend sentences. While I understand that the
14 legislature has handcuffed you in saying that --

15 THE COURT: Well, don't use handcuffed when you
16 talk about a judge, it makes me nervous.

17 MR. MAY: Yes, sir.

18 (Laughter)

19 MR. MAY: I apologize. Well, they aggregated your
20 judicial powers.

21 THE COURT: It's all right. And I don't
22 necessarily disagree with you. The -- I think you did a
23 good job, you made a good record. Once again, Mr. May, you
24 did a good job. But I got to respectfully deny your
25 motions.

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MR. MAY: Thank you, Your Honor.

THE COURT: Good, luck to you, sir.

MR. CATHCART: Thank you, Your Honor.

THE COURT: All right. Thank you all.

END OF PROCEEDINGS

1 COUNTY OF RICHLAND)

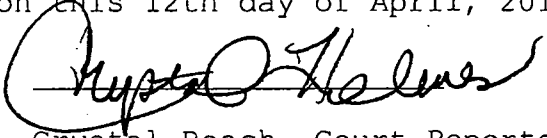
2 CERTIFICATE OF REPORTER

3 I, Crystal Roach, hereby certify that I reported
4 the preceding case entitled The State of South Carolina V.
5 Norman Lee Mitchell, Indictments No. 2008-GS-40-1238 and
6 1239, at the Richland County Courthouse, March 3rd, 2009.

7 I FURTHER CERTIFY that the foregoing pages 1
8 through 10 constitute a true, accurate and full transcript
9 of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of
11 the parties hereto and I have no financial interest in the
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand
14 and seal at Richland County on this 12th day of April, 2010.



16 Crystal Roach, Court Reporter
17 and Notary Public for the
18 State of South Carolina my
Commission Expires:
April 21, 2014

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CRYSTAL M. HOLMES
OFFICIAL COURT REPORTER
P.O. BOX 611 COLUMBIA,
SOUTH CAROLINA 29202-0611

TO: Lauren Cruse, Legal Assistant
PO Box 11589
Columbia, SC 29211

IN RE: State Vs. Norman Lee Mitchell

Case NO: 2008-GS-40-1238, 1239

DATE: April 26th, 2010

INVOICE

TRANSCRIPT OF RECORD.

ORIGINAL 10 @ \$ 3.25 PER PAGE	\$32.50
SHIPPING FEES.....	\$5.65
TOTAL.....	\$38.15

PAYMENT DUE UPON RECEIPT

221

WITNESSES

(S) INV. W. Pegram - CPD

ARREST WARRANT NUMBER
K-332565

ACTION OF GRAND JURY

TRUE BILL

Pamela Brindle
Foreperson of Grand Jury
Date: JUN 19 2008

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-40-1238

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2008

67

THE STATE
vs.

Norman Lee Mitchell

Indictment for

CARJACKING

SC Code: 16-3-1075(B)(2)

CDR Code: 2600

Class: UNC/FELONY

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)

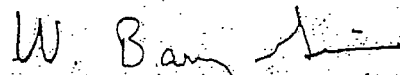
INDICTMENT

At a Court of General Sessions, convened on **June 18, 2008**, the Grand Jurors of Richland County present upon their oath:

CARJACKING

That Norman Lee Mitchell did in Richland County on or about February 1, 2008, take or attempt to take, a motor vehicle from the victim, Nola Gilmore, by force and violence or by intimidation, while the person, Nola Gilmore, was operating the vehicle, or while the person was in the vehicle, to wit: a 1994 Dodge Intrepid. All in violation of SC Code Section 16-3-1075(B)(2).

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



WARREN B. GIESE, SOLICITOR

223

WITNESSES

W/S G. R. Sanders - CPD

DOCKET NO. 2008-GS-40-1239

The State of South Carolina
County of Richland

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

Defendant

COURT OF GENERAL SESSIONS

JUNE TERM 2008

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

67

ARREST WARRANT NUMBER

K-332567

Defendant

THE STATE
vs.

Norman Lee Mitchell

Witness:

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

ACTION OF GRAND JURY

TRUE BILL

Pamela Bourque
Foreperson of Grand Jury
Date: JUN 20 2008

VERDICT

Indictment for

TRAFFIC/FAIL TO STOP FOR BLUE LIGHT

SC Code: 56-5-750(b)(1)
CDR Code: 065
Class: MIS-A

Foreperson of Petit Jury
Date:

COUNTY OF STATE

Richland

VS.

2008

INDICTMENT/CASE#:

- GS - 40 - 1238

AKA:

Norman Lee Mitchell

AW#:

K332565

Race:

Black

Sex:

Male

Age:

Date of Offense:

2-1-08

DOB:

SS#:

S.C. Code §:

16-3-1075(B)(2)

Address:

CDR Code #:

2 / 6 / 0 / 0

City, State, Zip

DL#

SID#

CASE RESTORED

SENTENCE SHEET

PLEA

TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO:

Carjacking

in violation of § 16-3-1075(B)(2) of the S.C. Code of Laws, bearing CDR Code # 2 / 6 / 0 / 0

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

J. E. ...

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of Life (without parole) 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: 1239

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

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 Fund

Other: _____

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 \$ _____

Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

Jeanette McBride
Clerk of Court/ Deputy Clerk

Court Reporter: Roach

PRESIDING JUDGE: [Signature]

Judge Code: 2 / 2 / 28-09

Sentence Date: 2-6-09

COUNTY OF Richland VS. Norman Lee Mitchell
STATE _____
AKA: _____
Race: Black Sex: Male Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip _____
DL# _____ SID# _____

2008 INDICTMENT/CASE#: 1239
- GS - 40 -
A/W#: K332567
Date of Offense: 2-1-08
S.C. Code §: 56-5-750(B)(1)
CDR Code #: 0 / 0 / 6 / 5
 CASE RESTORED
SENTENCE SHEET
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Failure to Stop for Blue Light
in violation of § 56-5-750(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0 / 0 / 6 / 5
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC \$17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
[Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 3 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ 500.00; 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: 1238
 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 _____

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 Fund
Other: _____

Recipient: _____
*Fine: _____ \$
§14-1-206 (Assessments 107.5%) _____ \$
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§50-21-114(BUI Breath Test Fee) \$50 \$
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$
TOTAL \$

Appointed PD or appointed other counsel, §35.13 TP
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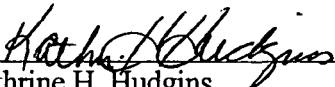
Jeanette McBride Clerk of Court/ Deputy Clerk
Court Reporter: [Signature]

PRESIDING JUDGE [Signature]
Judge Code: 210
Sentence Date: 2-6-08

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."

October 27th, 2010



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NORMAN LEE MITCHELL,

APPELLANT

FINAL BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT.

TABLE OF CONTENTS

TABLE OF CONTENTS.....1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUES ON APPEAL.....3

STATEMENT OF THE CASE4

ARGUMENT.....5

CONCLUSION.....9

TABLE OF AUTHORITIES

Cases

In the Interest of Jamal Rashee A., 308 S.C. 392, 418 S.E.2d 326 (Ct.App.1992) 8

Manson v. Brathwaite, 432 U.S. 98 S.Ct. 2243 L.Ed.2d 14 (1977) 9

Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375 (1972) 6, 7

Simmons v. United States, 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968) 9

State v. Blassingame, 338 S.C. 240, 525 S.E.2d 535 (Ct. App. 1999) 7

State v. Johnson, 311 S.C. 132, 427 S.E.2d 718 (Ct.App.1993)..... 8

State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257 (Ct. App. 2000) 7

State v. Moore, 343 S.C. 282, 540 S.E.2d 445 (2000)..... 6, 8

State v. Roach, 364 S.C. 422, 613 S.E.2d 791 (2005) 6

State v. Stewart, 275 S.C. 477, 272 S.E.2d 628 (1980) 9

Stovall v. Denno, 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed.2d. 1199 (1967)..... 8, 9

STATEMENT OF ISSUES ON APPEAL

Did the trial judge err by denying the motion to suppress the show-up identification of appellant as unduly suggestive and unreliable and the resulting in-court identification as tainted by the prior suggestive procedure?

STATEMENT OF THE CASE

In June of 2008, the Richland County Grand Jury indicted Mitchell for failure to stop for a blue light and carjacking, indictments #2008-GS-40-1238, 1239. On February 4, 2009, Mitchell proceeded to jury trial before the Honorable L. Casey Manning. On February 6, 2009, the jury returned verdicts of guilty. Judge Manning sentenced Mitchell to life without parole pursuant to S.C. Code §17-25-45 for the carjacking and three years concurrent for the failure to stop for a blue light. Timely filed post trial motions were heard and denied on March 3, 2009. A timely notice of intent to appeal was filed on March 4, 2009. This appeal follows.

ARGUMENT

The trial judge erred by denying the motion to suppress the show-up identification of appellant as unduly suggestive and unreliable and the resulting in-court identification as tainted by the prior suggestive procedure.

On February 1, 2008, as Nola Gilmore was sitting in the passenger seat of her blue Intrepid car in the Time Warner Cable Company parking lot in Five Points waiting for her son who went inside to pay the cable bill, a man grabbed the driver's side door of the car open, pointed a gun and demanded that she get out of the car. (R. pp. 74 - 80). When Ms. Gilmore did not get out of the car, the man came around to her side of the car, pulled her out and took off in the car. (R. p. 79, lines 17 – p. 80, lines 1-20). Ms. Gilmore only described the carjacker as a black male. (R. p. 94, lines 20-24). Several officers with the Columbia Police Department arrived at the scene and a BOLO was issued for Ms. Gilmore's vehicle.

Corporal Ginger Sanders with the Columbia Police Department spotted a vehicle on Laurens Street that matched the BOLO description. (R. pp. 104-106). Corporal Sanders testified at trial that, after confirming the tag number, she attempted to stop the car by activating blue lights and siren. (R. p. 108, lines 1-20). The car eventually stopped in the middle of the intersection of Hampton and Heidt streets and the driver fled on foot. (R. p. 109, lines 1 – p. 110, lines 1-6). Corporal Sanders identified the appellant as the driver of the vehicle who fled on foot. The appellant was apprehended in the Gonzalez Gardens apartment complex. (R. p. 115, lines 18 – p. 116, lines 1-25). Corporal Sanders testified that appellant was only out of her sight for a very short time as he rounded a corner. (R. p. 117, lines 3-9). Corporal Sanders saw the appellant drop a cell phone that was later identified as belonging to Ms. Gilmore's son. (R. p. 116, lines 24-25; p. 86, lines 5-9). Corporal Sanders did not see appellant drop a gun and was unaware if a gun had been

recovered. (R. p. 118, lines 7-16). Officer Barry Smalls confirmed that after appellant was arrested, the police searched the area and did not find a gun. (R. p. 124, lines 1-24; p. 125, lines 8 – 18).

Officer Casha Calloway took Ms. Gilmore to Gonzalez Gardens where appellant was in custody. (R. p. 10, lines 14 – p. 11, lines 1-11). Officer Calloway testified, “I was advised by my supervisor to go ahead and bring the victim to the scene and she (sic) if she could possibly identify him.” (R. p. 10, lines 17-19). Ms. Gilmore identified the man in custody as the man who took her car. (R. p. 35, lines 13-18).

Counsel for appellant moved, pre-trial, to suppress the show-up identification of appellant and any in-court identification of appellant resulting from the unduly suggestive show-up identification procedure. (R. pp. 62-71). After hearing testimony, the judge ruled, based on the totality of the circumstances, that the identification was proper and denied the motion to suppress. (R. pp. 7-71). Counsel for appellant objected to the identification at trial. (R. p. 83, lines 14 – p. 84, lines 1-5). The judge overruled the objection. (R. p. 84, line 6). The judge erred.

The show-up identification was impermissibly suggestive and should have been suppressed. To determine the admissibility of an out-of-court identification, the trial court must first consider whether the identification process was unduly suggestive; if so, the court "must decide whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed." State v. Roach, 364 S.C. 422, 429-430, 613 S.E.2d 791, 795 (2005), citing Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375 (1972); State v. Moore, 343 S.C. 282, 540 S.E.2d 445 (2000); State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257 (Ct. App. 2000); State v. Blassingame, 338 S.C. 240, 525 S.E.2d

535 (Ct. App. 1999). The trial judge in the present case failed to specifically find that the show-up identification was unduly suggestive. Instead, the judge went straight to the Neil v. Biggers factors and found the identification proper. The judge erred.

The show-up in the present case is particularly suggestive because Ms. Gilmore knew the police caught appellant driving her car, prior to the show-up. Ms. Gilmore testified that she heard over the police radios that the police were chasing a blue Intrepid that matched the description of her car that was taken. (R. p. 37, lines 5-22). Counsel for appellant asked Ms. Gilmore, “and when you heard that they had recently found the blue Intrepid that matched your car, you were pretty sure that was him?” (R. p. 40, lines 1-3). Ms. Gilmore replied, “Yeah.” (R. p. 38, line 4).

Appellant testified at trial that once he learned that his friend was not going to be able to pick him up from the bus station at the corner of Gervais and Harden streets, he went outside to look for a ride. He testified that at first a guy offered him a ride and then offered to “rent” the car to appellant for an extra ten dollars. (R. p. 156, lines 16 – p. 157, 158, lines 1-23). Appellant testified that he dropped the guy off at a house on Cherokee Street and agreed to bring the car back later. (R. p. 159, lines 9 – p. 160, lines 1-19). Appellant testified that almost as soon as he turned onto the street leaving Cherokee Street, a police officer initiated a traffic stop with blue lights and siren. (R. p. 161, lines 1-14). Appellant admitted to the failure to stop for a blue light charge and testified that he did not stop because did not have a license. (R. p. 161, lines 25 – p. 162, lines 1-23).

The show-up identification made by the victim after she learned that appellant was caught driving her car is unduly suggestive. Appellant was handcuffed at the time of the show-up with other officers around him. (R. p. 49, lines 2-12). Single person

show-ups are particularly disfavored in the law. Stovall v. Denno, 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed.2d. 1199 (1967) (practice of showing suspects singly to persons for the purpose of identification, and not as part of a lineup, has been widely condemned); see also State v. Johnson, 311 S.C. 132, 134, 427 S.E.2d 718, 719 (Ct.App.1993) (single person show-ups are particularly disfavored in the law). Here, the witness was brought to a location where two individuals, wearing clothing similar to that described by the witness, were surrounded by uniformed police officers; it is patent the show-up procedure used was unduly suggestive. Accord In the Interest of Jamal Rashee A., 308 S.C. 392, 418 S.E.2d 326 (Ct.App.1992) (taking witness to location where suspects, but no other individuals, are being detained is suggestive).

In considering whether an identification is reliable, based on the totality of the circumstances and despite the use of an unduly suggestive process, the court should consider the following factors: (1) the opportunity of the witness to view the offender at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation. Moore, 343 S.C. at 289, 540 S.E.2d at 448-449.


Considering the above factors, the out-of-court identification was not so reliable that no substantial likelihood of misidentification existed. Ms. Gilmore's opportunity to view the person who took her car was limited by how quickly the incident took place. (R. p. 45, lines 19 – p. 46, lines 1-4). Ms. Gilmore's only prior description of the man who took her car was a black man with a gun. A criminal defendant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and

conducive to irreparable mistaken identification. Stovall v. Denno 388 U.S. 293, 87 Ct. 1967, 18 L.Ed.2d 1199 (1967). An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification. Manson v. Brathwaite, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 14 (1977) (citing Simmons v. United States, 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968)); State v. Stewart, 275 S.C. 477, 272 S.E.2d 628 (1980). The show-up identification used in the present case created a very substantial likelihood of irreparable misidentification. Both the show-up identification and the in court identification should have been suppressed. As identification of the man who took the car, rather than the man who was found in the car, was a key issue at trial, a new trial is necessary.

CONCLUSION

Based on the above argument, the conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

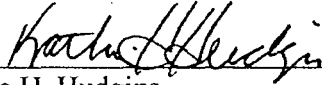
ATTORNEY FOR APPELLANT.

This 16th day of November, 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."

November 16th, 2010



Kathrine H. Hudgins
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

THE STATE,

RESPONDENT,

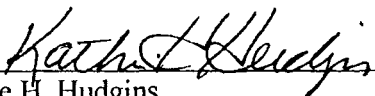
V.

NORMAN LEE MITCHELL,

APPELLANT

CERTIFICATE OF SERVICE

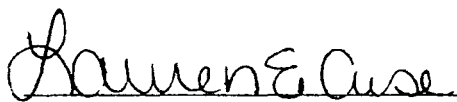
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 16th day of November, 2010.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 16th day of November, 2010.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

November 16, 2010

Deborah R.J. Shupe, Esquire
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Re: The State v. Norman Lee Mitchell

Dear Deborah:

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

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Richland County
The Honorable L. Casey Manning, Circuit Court Judge

THE STATE,

Respondent,

vs.

NORMAN LEE MITCHELL,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
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ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Richland County
The Honorable L. Casey Manning, Circuit Court Judge

THE STATE

Respondent

vs.

NORMAN LEE MITCHELL

Appellant

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DEBORAH R. J. SHUPE
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ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

ARGUMENT 7

**There was ample evidence to support the circuit court’s denial of
Appellant’s motion to suppress the victim’s identification testimony. 7**

CONCLUSION 11

TABLE OF AUTHORITIES

Cases:

<u>In the Interest of Jamal Rashee A.</u> , 308 S.C. 392, 418 S.E.2d 326 (Ct. App. 1992)	9
<u>State v. Brown</u> , 356 S.C. 496, 589 S.E.2d 781 (Ct. App. 2003)	7-9
<u>State v. Carlson</u> , 363 S.C. 586, 611 S.E.2d 283 (Ct. App. 2005)	7, 9
<u>State v. Drayton</u> , 293 S.C. 417, 361 S.E.2d 329 (1987)	9
<u>State v. Ford</u> , 278 S.C. 384, 296 S.E.2d 866 (1982)	9
<u>State v. Govan</u> , 372 S.C. 552, 643 S.E.2d 92 (Ct. App. 2007)	7, 8, 10
<u>State v. Hoyte</u> , 306 S.C. 561, 413 S.E.2d 806 (1992)	8
<u>State v. Patterson</u> , 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999)	7
<u>State v. Scipio</u> , 283 S.C. 124, 322 S.E.2d 15 (1984)	9
<u>State v. Wilson</u> , 345 S.C. 1, 545 S.E.2d 827 (2001)	7

Other Authorities:

22A C.J.S. Criminal Law §803	8
----------------------------------------	---

STATEMENT OF ISSUE ON APPEAL

There was ample evidence to support the circuit court's denial of Appellant's motion to suppress the victim's identification testimony.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On June 20, 2008, the Richland County Grand Jury indicted Appellant Norman Lee Mitchell ("Mitchell") on one count of carjacking and one count of failure to stop for a blue light, in connection with an incident on February 1, 2008. (Indictment Nos. 2008-GS-40-1238 and -1239; Record on Appeal [R.], pp. 221-224). The matter was called for a jury trial on February 4, 2009, before the Honorable L. Casey Manning, Circuit Court Judge.

Prior to trial, Mitchell moved to suppress the victim's out-of-court and in-court identifications of him as the person who stole her car at gunpoint, arguing the identifications were tainted by an unduly suggestive single person show-up. The circuit court then conducted a Neil v. Biggers¹ hearing on the reliability of the victim's identification testimony.

Officer Casha Calloway ("Officer Calloway") of the Columbia Police Department testified she responded to an emergency call of a possible armed robbery at the Time Warner office in downtown Columbia on February 1, 2008. When she arrived at the location, she learned it was a carjacking, and put out a BOLO for the stolen car. (Trial Transcript [TT], pp. 49-51; R., pp.1-3).

Within minutes, another officer reported she spotted the car a few streets away from the Time Warner office and was trying to stop it. The suspect, subsequently identified as Mitchell, was apprehended minutes later, and Officer Calloway transported the victim to the area where officers had him in custody. When they arrived, the victim initially asked Officer Calloway to pull up closer to the group because she could not see the person clearly. When they got closer, the victim immediately identified Mitchell as the man who stole her car. Officer Calloway testified she did not coach the victim in any

¹409 U.S. 188 (1972)

way, the victim was sure of her identification, and the identification occurred approximately ten minutes after she initially arrived at the Time Warner office. (TT, pp. 51-54, 58-62; R., pp. 3-6, 10-14).

The victim testified she was sitting in her car outside the Time Warner office while her son went inside to pay his bill, and a man got in the car, put a gun to her head, and ordered her to get out of the car. Due to recent back surgery, the victim was not able to get out of the car quickly, so the man came around the front of the car, pulled her out by her arm, and then drove away. The victim stated she could see clearly and got a good look at the man's face. (TT, pp. 77-81; R., pp. 29-33).

The victim further testified that when Officer Calloway took her to the scene where Mitchell was apprehended, she immediately recognized him as the man who put a gun to her head and stole her car. She stated she was "very, very, very positive" he was the man. (TT, pp. 82-84; R., pp. 34-36).

The circuit court denied the motion to suppress, finding the totality of the circumstances indicated the victim's identification was reliable. The court specifically found the victim had ample opportunity to see the perpetrator during the carjacking, her degree of attention was specific and direct, the time between the crime and the show-up was small, and the victim's level of certainty was high. (TT, p. 119; R., p. 71).

The victim then testified before the jury about the events of February 1, 2008, including her identification of the perpetrator after he was apprehended. She positively identified Mitchell as the man who held her at gunpoint and stole her car that day, stating she was "110 percent sure." (TT, pp. 157-172; R., pp. 72-87).

The victim's son testified he and the victim were going to pick up a puppy the day of the carjacking, and he was driving. When he went into the Time Warner office, the victim remained in the passenger seat of the car, and he left the driver's window down

and his cell phone on the dash. After Mitchell was apprehended and the victim's car recovered, the police returned the cell phone to him. (TT, pp. 259-272; Supplemental ROA., pp. 7-20).

Police officers testified regarding their investigation of the carjacking and the circumstances leading to Mitchell's apprehension approximately fifteen minutes after the incident. Officer Calloway testified about the initial BOLO, and the victim's identification of Mitchell after he was apprehended. (TT, pp. 195-215, 217-221, 225-241; R., pp. 104-124, 126-130, 131-147). Another witness testified he saw Mitchell running away from the police that day, and observed him throw a cell phone, identified at trial as the victim's son's phone, under a parked car. (TT, pp. 189-194; Supp. ROA., pp. 1-6).

After the circuit court denied his directed verdict motion,² Mitchell testified he came from Charleston to Columbia by bus on February 1, 2008, to attend a Super Bowl party. When he arrived at the bus station at the corner of Harden and Gervais Streets, he called the person who was supposed to pick him up and learned the person was unavailable because he was attending a roll call in Lexington County.

Mitchell stated he then walked outside the bus station to find a ride, and a man walked up to him and offered to give him a ride for \$10. After Mitchell got in the car, the man offered to "rent" him the car for an additional \$10. Mitchell testified he dropped the man off at a house on Cherokee Street, and was driving away when the police got behind him and turned on the blue lights. He stated he got scared because he was driving without a license, so he tried to get away and finally jumped out of the car and ran. (TT, pp. 295-296, 315-345, 358-375; R., pp. 148-149, 150-180, 181-198).

²Mitchell conceded the failure to stop for a blue light, and only moved for directed verdict on the carjacking charge.

The jury convicted Mitchell of both carjacking and failure to stop for a blue light, and the circuit court sentenced him to life imprisonment on the carjacking conviction and three years incarceration on the failure to stop conviction.³ (TT., pp. 428, 432-434; R., pp. 199, 200-202). This appeal followed.⁴

³The State sought the life without parole sentence based on Mitchell's three prior convictions of first degree burglary.

⁴The failure to stop conviction and sentence is not challenged on appeal.

ARGUMENT

There was ample evidence to support the circuit court's denial of Appellant's motion to suppress the victim's identification testimony.

Mitchell contends the circuit court erred in denying his motion to suppress the victim's identification testimony because it was based on an unduly suggestive and unreliable show-up. On the contrary, there was ample evidence supporting the circuit court's findings regarding the reliability of the victim's identification.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827, 829 (2001); State v. Govan, 372 S.C. 552, 643 S.E.2d 92, 94 (Ct. App. 2007). Admissibility of eyewitness identification testimony is committed to the trial judge's discretion, and the trial court's ruling will not be disturbed on appeal absent an abuse of that discretion, or the commission of prejudicial legal error. Govan, 643 S.E.2d at 94; State v. Brown, 356 S.C. 496, 589 S.E.2d 781, 784 (Ct. App. 2003).

A criminal defendant may be deprived of due process of law through an identification procedure that is unnecessarily suggestive and conducive to irreparable mistaken identification. Govan, 643 S.E.2d at 94. The in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a significantly substantial likelihood of irreparable misidentification. *Id.*

There is a two-prong inquiry to determine the admissibility of an out-of-court identification. The court must first ascertain whether the identification process was unduly suggestive, and if so, next decide whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed. *Id.* "The query posited is whether under the totality of the circumstances the identification was reliable even though the confrontation procedure may have been suggestive." State v. Carlson, 363 S.C. 586, 611 S.E.2d 283, 290 (Ct. App. 2005) (*quoting State v. Patterson*,

337 S.C. 215, 522 S.E.2d 845 [Ct. App. 1999]). One-on-one identifications are inherently suggestive and generally disfavored, but may be proper when they occur shortly after, and near the scene of, the alleged crime, as the witness' memory is still fresh, the suspect has not had time to alter his looks or dispose of evidence, and a show-up may expedite the release of innocent suspects and enable the police to determine whether to continue searching. State v. Hoyte, 306 S.C. 561, 413 S.E.2d 806, 807 (1992); Govan, 643 S.E.2d at 95-96; Brown, 589 S.E.2d at 785; 22A C.J.S. Criminal Law §803.

In the instant case, the show-up occurred within fifteen minutes of the carjacking, it was held near the scene of the crime when the victim's memory was still fresh, the police saw Mitchell driving the stolen car, and a witness and a police officer saw him throw the stolen cell phone away while he was trying to run away after abandoning the car. Clearly, he did not have enough time to dispose of the car and cell phone before the police started chasing him. Thus, the show-up was not unduly suggestive under the facts of this case. See Govan, 643 at 95 (show-up was not unduly suggestive because it took place within forty-five minutes of the crime, it was held near the scene of the crime when the witness' memory was still fresh, the suspect was wearing clothing consistent with the clothing described by witnesses, and a police officer saw the suspect, who still had the gun in his possession when he was apprehended, drop the paper bag full of stolen money).⁵

Even if the show-up was unduly suggestive, however, Mitchell's attempt to exclude the in-court identification fails under the second prong of the analysis. An

⁵Mitchell argues the circuit court erred in failing to make a specific finding the show-up at issue was unduly suggestive before considering the relevant factors for reliability. This argument is nonsensical. Arguably, the circuit court presumed the show-up was unduly suggestive for purposes of Mitchell's motion, and simply proceeded to the second step of the required analysis.

in-court identification is admissible if the state can prove the identification is reliable by clear and convincing evidence it was based on information independent of the out-of-court procedure. Carlson, 611 S.E.2d at 290. To determine whether an identification is reliable, the court must consider the following factors: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the witness' level of certainty at the confrontation; and (5) the amount of time between the crime and the confrontation. Brown, 589 S.E.2d at 785; *see also* In the Interest of Jamal Rashee A., 308 S.C. 392, 418 S.E.2d 326, 328 - 329 (Ct. App. 1992).

The reliability of an identification depends on the facts of the case and must be determined by considering the totality of the circumstances. State v. Drayton, 293 S.C. 417, 361 S.E.2d 329 (1987); Rashee A., 418 S.E. 2d at 329. The ultimate question is whether the pretrial identification procedure was so impermissibly suggestive as to create a very substantial likelihood of misidentification. State v. Ford, 278 S.C. 384, 296 S.E.2d 866 (1982).

The carjacking in this case occurred during the daytime, and the victim was immediately next to, and in direct contact with, Mitchell as he put a gun to her head and forced her out of the car. The victim's attention was heightened at the time, and Mitchell's appearance at the time of the show-up, which occurred less than fifteen minutes after the carjacking, was consistent with the victim's description of him. Finally, at both the show-up and trial, the victim stated she was absolutely certain Mitchell was the man who put a gun to her head and stole her car. Therefore, there was clear and convincing evidence the victim's in-court identification was reliable independent of the show-up. *See* State v. Scipio, 283 S.C. 124, 322 S.E.2d 15 (1984) (identification reliable, in part, because the victim observed the perpetrator standing within arms length for a four

to four and a half minutes period in a well-lighted store); Govan, 643 S.E.2d at 96 (no abuse of discretion in admitting restaurant employee's show-up and in-court identifications of defendant because the robbery occurred in a well lit building, the employee was immediately next to and in direct contact with the robber as he held her by the arm and put a gun to her head, her attention would have been heightened, the defendant's appearance at the show-up was consistent with the employee's prior description, and the employee stated she was certain the defendant was the robber).

Under the totality of the circumstances, the victim's pre-trial and in-court identifications were reliable, and the circuit court did not abuse its discretion in denying Mitchell's motion to suppress the identification testimony. Accordingly, Mitchell's carjacking conviction and sentence should be affirmed.

CONCLUSION

Based on the foregoing, Respondent respectfully submits that Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

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November 18, 2010

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Richland County
The Honorable L. Casey Manning, Circuit Court Judge

THE STATE,

Respondent,

vs.

NORMAN LEE MITCHELL,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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."

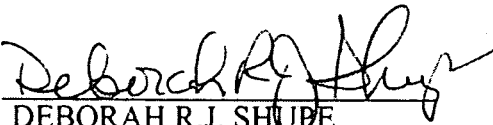
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PROOF OF SERVICE

I, Ellen DuBois, certify I served the within Final Brief of Respondent on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

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

This 18th day of November, 2010.


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