

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

CHRISTOPHER BROADNAX,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-001270

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) COURT OF GENERAL SESSIONS
)
2009-GS-40-4539-4542

State of South Carolina

vs.

Christopher Broadnax,

Defendant.

)
)
) TRANSCRIPT OF RECORD
) (Trial)
)
)

June 10, 14 - 16, 2010
Columbia, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE

APPEARANCES:

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18	1	Photograph	119	303
19	2	911 Report	119	
20	3	Photograph	119	498
21	4	Gun	159	567
22	4A	Ammunition	567	567
23	5	Money	161	567
24	6	Video	167	456
25	7	Photograph	238	306

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24
25

Thursday, June 10, 2010

THE COURT: All right, Ms. Campbell. Call your case.

MS. CAMPBELL: May it please the Court. The State calls The State vs. Christopher Broadnax. He is charged one count of armed robbery and three counts of kidnapping.

THE COURT: Recite the indictment numbers just for the record.

MS. CAMPBELL: Beg the Court's indulgence. It's indictment numbers 09-GS-42-4539, 4540, 4541 and 4542.

THE COURT: Is the State ready to proceed with pre-trial motions?

MS. CAMPBELL: The State is ready to proceed, Your Honor.

THE COURT: Defense ready to proceed with pre-trial motions?

MR. MAY: Yes, Your Honor.

THE COURT: All right. Mr. May, you may begin.

MR. MAY: Yes, sir. May it please the Court, Your Honor. For the record, Your Honor, we'd like to renew our Rule 5 as well as Brady motions. We just want to make sure that there was no additional videotapes. Both Church's Chicken as well as I

1 imagine the other police cruisers at least have the
2 ability to be equipped with video cameras. Church's
3 Chicken has video cameras in place. I just want to
4 make sure the State never obtained them or has them
5 in their possession.

6 **MS. CAMPBELL:** Your Honor, the only videotape we
7 obtained we have reviewed with the defense. And it's
8 a video of the first car that actually made the stop
9 on the truck after it left the scene of the armed
10 robbery. That has been provided to the defense.
11 Other than that we are not aware of any videotapes.
12 Let me check to make sure. There is no other
13 videotape.

14 **THE COURT:** All right. Now, let me factually
15 orient myself here. The indictment says on May 24th,
16 2009. When you start talking about Church's
17 Chicken --

18 **MR. MAY:** I apologize, Your Honor.

19 **THE COURT:** Tell me what's --

20 **MR. MAY:** The allegations?

21 **THE COURT:** Yes.

22 **MR. MAY:** The allegations are --

23 **THE COURT:** The indictment doesn't give me too
24 much information.

25 **MS. CAMPBELL:** Basically on that date, Your

1 Honor, there is a man who entered the Church's Fried
2 Chicken.

3 **THE COURT:** What time of day?

4 **MR. MAY:** About 5:00.

5 **MS. CAMPBELL:** 5:00 in the afternoon. There
6 were four people inside the Church's. There were
7 three --

8 **THE COURT:** Customers?

9 **MS. CAMPBELL:** No. Three people that were
10 employed there. Four people that were employed
11 there. Three of them were out in the area where
12 people actually eat. At that point he pointed the
13 gun at them. That caused them to stay in that area.
14 One of them actually tried to use his phone, and he
15 told him not to use the phone. Then one of the three
16 jumped over the counter, got back to where the
17 register was, got the money out. The man had a bag,
18 put it in the bag I believe, and then he fled the
19 scene.

20 One of the three people inside the Church's
21 followed him outside, saw him get into a truck, saw
22 the truck run away. In the meantime the police
23 responded. A BOLO or information was put out over
24 the radio about the truck. They were able to fall in
25 behind the truck several blocks down Two Notch; it

1 was Two Notch, on Chestnut Street, and made a stop.

2 **THE COURT:** Where is this establishment? Where
3 is the Church's?

4 **MR. MAY:** It is on the corner of Taylor and
5 where Millwood and Two Notch start, right there at
6 Gonzales Gardens.

7 **THE COURT:** And then the escaping truck went
8 which way?

9 **MS. CAMPBELL:** Down Two Notch, outbound Two
10 Notch.

11 **THE COURT:** Outbound?

12 **MR. MAY:** Yes, sir.

13 **MS. CAMPBELL:** And went several blocks down.

14 **THE COURT:** All right.

15 **MS. CAMPBELL:** It was stopped shortly, within
16 minutes.

17 **MR. MAY:** I mean, believe that's almost -- the
18 only thing I'd say --

19 **MS. CAMPBELL:** Once they stopped the truck, just
20 to give you the full thing, they got the driver out.
21 They then found this defendant crouched down in the
22 passenger's seat and then removed him. At that point
23 they noticed the gun and a bag of clothing sticking
24 out from under the seat.

25 **THE COURT:** Where is the -- is there a

1 co-defendant?

2 **MS. CAMPBELL:** There is a co-defendant, Your
3 Honor.

4 **MR. MAY:** He is testifying.

5 **THE COURT:** You have a testifying co-defendant?

6 **MS. CAMPBELL:** Yes, sir.

7 **THE COURT:** Okay.

8 **MS. CAMPBELL:** He was charged as an accessory.

9 **THE COURT:** All right. Fine. Okay. Now let's
10 proceed with your motions. I understand now.

11 **MS. CAMPBELL:** Your Honor, he has handed up a
12 list of motions. I think we can go through and
13 eliminate several that we don't need to hear any
14 testimony.

15 **THE COURT:** Well, let's just start at the top.

16 **MR. MAY:** Yes, sir. Again, just for the record,
17 I renew Rule 5 and Brady.

18 **MS. CAMPBELL:** And Ms. Simpson in my office has
19 met with the defense team on numerous occasions. We
20 aren't aware of anything that hasn't been turned over
21 I don't think.

22 **MR. MAY:** I don't know of anything except for
23 possible videotapes. And if the State has presented
24 to the Court there are none, then there are none.

25 **THE COURT:** Okay. Move on to number 2.

1 **MR. MAY:** We'd ask for Riddle, for any
2 conversations that the State has had with witnesses
3 that differed from the witness statements that have
4 been provided.

5 **MS. CAMPBELL:** We did go to the scene and met
6 with three of the witnesses I told you about.
7 Basically they showed us where things were.
8 Everything is consistent with what their statements
9 say.

10 **MR. MAY:** I believe the only thing that we did
11 receive was email from Ms. Simpson stating that one
12 of the witnesses saw Mr. Broadnax at the Columbia
13 Police Department.

14 **MS. CAMPBELL:** Correct. That's not included in
15 the statement.

16 **MR. MAY:** Correct. And we just want to make
17 sure there was no other issues regarding changes in
18 statements.

19 **MS. CAMPBELL:** I'll doublecheck with them today
20 obviously.

21 **MR. MAY:** Okay. As long as everything is still
22 consistent, there is no impeachment or potential
23 impeachment evidence as laid out by Riddle, then
24 we're just trying to preserve the record for that,
25 Your Honor.

1 **THE COURT:** Okay. Number 3?

2 **MR. MAY:** Yes, sir. May I approach, Your Honor?

3 **THE COURT:** Yes.

4 **MR. MAY:** Your Honor, at this time we would ask
5 to have the Court make or to rule on the
6 Constitutionality of South Carolina Code of Laws
7 Section 1-7-330.

8 **THE COURT:** All right.

9 **MR. MAY:** It is the solicitor controlled docket.
10 It is the defense's position that, as South Carolina
11 is an anomaly with the solicitor controlled docket
12 that it prejudices the defense in virtually all
13 cases. As the solicitor decides when and how they
14 call their cases, your Honor, we believe this is
15 arguably an issue of separation of powers.

16 Also while we do concede that it is the
17 executive branch's duty to call and prosecute
18 criminal cases, there is not the duty to control the
19 judiciary. When they have the ability to control the
20 judiciary in the form they have in this state of
21 being able to call the defendant at their whim, you
22 lead to defense attorneys having numerous cases where
23 they cannot provide adequate assistance to all their
24 defendants. You lead to the point where the
25 defendant never really gets a fair trial, because the

1 solicitor can decide when she is full and ready to
2 try a case and then just gives the defendant a week
3 or two notice.

4 The background of this case is that the defense
5 always let Ms. Campbell know of their intention to
6 plead. It wasn't until a status conference sometime
7 in late May I believe when Ms. Campbell informed the
8 defense that she was going to call the case. I was
9 actually taking the week that she planned to call and
10 then the subsequent week which is this week.

11 Ms. Campbell always did say that this was an
12 LWOP issue, but the defense always told her, as well
13 as the investigator, their intention and their desire
14 to plead. And it went from the defense telling the
15 prosecution that they wanted to plead to this being a
16 trial in roughly three weeks. Your Honor, I believe
17 that this is --

18 **THE COURT:** When was the LWOP notice served?

19 **MR. MAY:** The LWOP notice was served about a
20 month ago?

21 **MS. CAMPBELL:** It was filed on May the 18th.

22 **MR. MAY:** May the 18th. But until that point it
23 was the defense's contention the entire time and the
24 defense's intention to plead until --

25 **THE COURT:** Until the notice.

1 **MR. MAY:** Yes, sir. And now ethically we can't.
2 Ethically we must go forward. And we'll address the
3 issues with the LWOP later in the motions. But, Your
4 Honor, with the solicitor controlling the docket, she
5 has the ability to decide when and how all cases are
6 called. We believe this is an infringement on my
7 client's due process rights.

8 **THE COURT:** Is there not some South Carolina
9 case law on this?

10 **MS. CAMPBELL:** Yes, sir. This has been
11 addressed. In addition to that, Your Honor, I'd
12 respectfully disagree with some of his
13 characterization of how this case was called. It was
14 scheduled by a judge; and I believe it was you, back
15 in either January or February. And I can get the
16 scheduling, the time that the status conference took
17 place.

18 In addition to that, it was scheduled for last
19 week. Subsequent to that Mr. May then made a motion
20 for a continuance from last week because he had
21 sought protection from the court, and then you set it
22 for this week.

23 **THE COURT:** That's fine. I'm not so concerned
24 about scheduling issues.

25 **MS. CAMPBELL:** Your Honor, as you know, we are

1 under guidance of the judiciary in scheduling all our
2 cases now, and I believe they're actually set that
3 way.

4 **THE COURT:** I understand. I know. This issue
5 has --

6 **MS. CAMPBELL:** Not an issue.

7 **THE COURT:** -- come up in a case a year or two
8 ago --

9 **MS. CAMPBELL:** Yes, sir.

10 **THE COURT:** -- here in Richland County. It's
11 been addressed. Mr. Harpootlian represented the
12 defendant.

13 **MS. CAMPBELL:** Yes, sir.

14 **THE COURT:** I can't remember the name of the
15 defendant and whether there was any appellate -- I'll
16 have to look.

17 **MS. CAMPBELL:** I can get that case, Your Honor.
18 I think that was my case.

19 **THE COURT:** Well, most of them are. All right.
20 I'm going to read your brief.

21 **MR. MAY:** Thank you, Your Honor.

22 **THE COURT:** I think there's some settled law on
23 that.

24 **MR. MAY:** Yes, sir.

25 **THE COURT:** But let's move on.

1 **MR. MAY:** Yes, sir. Number 4. Your Honor, may
2 I approach?

3 **THE COURT:** Yeah.

4 **MR. MAY:** I believe that Ms. Campbell and I have
5 reached an agreement on number 4. I just want it on
6 the record that she is not intending to Lyle in any
7 evidence. And at the point if and when Mr. Broadnax
8 decides to testify, the 609 previous convictions,
9 what and what cannot be entered in as probative for
10 truthfulness. Is that correct?

11 **MS. CAMPBELL:** Yes. Your Honor, we don't intend
12 to go into any Lyle evidence unless he opens the
13 door.

14 **THE COURT:** Are you aware of his prior record,
15 if he has one?

16 **MR. MAY:** Oh, yes, sir.

17 **THE COURT:** Okay. Well, at the appropriate time
18 I would rule on the admissibility for impeachment
19 purposes of whatever is on that record.

20 **MR. MAY:** Yes, sir. And just that we do not
21 anticipate opening the door. But the defense is
22 fully aware if we open the door, Ms. Campbell is
23 likely to go into the other pending armed robberies
24 and kidnappings that the defendant is currently
25 charged with.

1 **MS. CAMPBELL:** And possibly all of his prior
2 kidnappings and armed robberies.

3 **MR. MAY:** Depending on that, yes.

4 **MS. CAMPBELL:** Yes, depending on that.

5 **MR. MAY:** I think just now for the record, Your
6 Honor, --

7 **THE COURT:** This is the next one?

8 **MR. MAY:** Yes, sir.

9 **THE COURT:** Bargains?

10 **MR. MAY:** Yes, sir. Now, the State has made it
11 clear to the defense there are no bargains or deals
12 that have been reached with the testifying
13 co-defendant as of this point.

14 **MS. CAMPBELL:** Except that he hopes of course
15 that this will help him down the road. And I want to
16 be clear that that's the language.

17 **THE COURT:** Ms. Campbell, (A) speak to the
18 Court. And the court reporter is having -- what did
19 you just say? I need to be able to hear it.

20 **MS. CAMPBELL:** At this point, Your Honor, the
21 co-defendant is charged with accessory after the fact
22 of these crimes. He is testifying. There have been
23 no deals other than he hopes of course to have some
24 reward either in a reduction of sentence or reduction
25 of charge, a reduced sentence or something like that

1 down the road.

2 **THE COURT:** I'm sure he'll say that.

3 **MS. CAMPBELL:** Yes, sir.

4 **MR. MAY:** Yes, sir. We just want to make it
5 clear that there has been no deals reached with
6 either him or Danny Weaver.

7 **THE COURT:** From the State, there have been no
8 offers of any particular charge or sentence?

9 **MS. CAMPBELL:** No, sir. And Mr. Thompson, his
10 lawyer, is here today and can confirm that as far as
11 the testifying co-defendant. There is one of the
12 victims in the case who is currently incarcerated.
13 However, I'm not aware of any pending charges. We
14 haven't done anything about his sentence.

15 **MR. MAY:** I just know that he's got a CSC with a
16 minor. I just want to make sure there has been no
17 promise of reconsideration of a sentence or anything
18 of that nature. I just want to make sure that's all
19 on the record; and that the testifying co-defendant,
20 the only deal that I can see is that he was never
21 charged with the original armed robbery. He is just
22 charged with accessory after the fact. And that's
23 the only issue we have.

24 **THE COURT:** All right. Charlie.

25 **MR. COCHRAN:** Your Honor, the next motion would

1 be motion number 6.

2 **THE COURT:** 6.

3 **MR. COCHRAN:** It deals with the search of the
4 Dodge Ram after they -- oh. And we would ask to call
5 Officer Baire.

6 (Pause - attorneys conferring)

7 **MS. SIMPSON:** Your Honor, before that though,
8 with respect to their challenge to the search, the
9 State would ask that the defense clarify on what
10 basis they're challenging the search of the Dodge
11 pickup.

12 **THE COURT:** Well, have you read the motion?

13 **MS. SIMPSON:** Your Honor, we just received this
14 today.

15 **MR. COCHRAN:** Yes, Your Honor. The motion is,
16 essentially, there was a traffic stop based on
17 reasonable suspicion based on a call. There was
18 subsequently a search of the vehicle without a
19 warrant. We would move to exclude or suppress any of
20 the evidence that was found in the truck based on
21 lack of probable cause for the search.

22 **THE COURT:** This is the truck that your client
23 was found in?

24 **MR. COCHRAN:** The truck the defendant was found
25 in when he was arrested.

1 **MS. SIMPSON:** And, Your Honor, with respect to
2 that, the State would argue that the defense does not
3 have standing to even challenge the search. The
4 truck belonged to the co-defendant. The co-defendant
5 was driving the truck and it's registered to the
6 co-defendant.

7 And under the Fourth Amendment, which I believe
8 is what they're challenging the search on, the
9 defendant has to demonstrate a reasonable expectation
10 of privacy, his own reasonable expectation of
11 privacy. He has to demonstrate that those rights
12 were violated.

13 **THE COURT:** How about that?

14 **MR. COCHRAN:** Your Honor, to that I would say
15 that essentially we would argue that Mr. Broadnax did
16 have a reasonable expectation of privacy in his
17 personal area in the automobile. Now, obviously,
18 just as a --

19 **THE COURT:** Automobile or truck?

20 **MR. COCHRAN:** Truck. I'm sorry. Now, just as a
21 person who is in a car or truck can be charged with
22 constructive possession of the things that are under
23 their seat, the entire search or the evidence that
24 we're asking Your Honor to exclude was found
25 underneath the seat that Mr. Broadnax was sitting in.

1 As Ms. Campbell said, you know, he was crouched down.
2 I'm guessing that they're suggesting that he was
3 doing something with the things that were under the
4 seat.

5 **THE COURT:** All right. Well, give me some more
6 factual background. Let's go back to the facts.
7 This truck was in front of the Church's Fried
8 Chicken?

9 **MR. COCHRAN:** Your Honor, it was -- if I may.
10 The robbery took place at the Church's Fried Chicken.
11 One of the employees went outside, saw a gray pick-up
12 truck pull away, then --

13 **THE COURT:** From the Church's Fried Chicken.

14 **MR. COCHRAN:** From the Church's. Pull away from
15 Church's and saw it take a right turn, came back over
16 to Two Notch and saw the same gray pick-up truck, as
17 he will testify I'm guessing, coming at him and
18 driving away down Two Notch. Now, --

19 **THE COURT:** Okay. Now, did he see the defendant
20 in the truck?

21 **MR. COCHRAN:** That remains to be seen based
22 on --

23 **THE COURT:** You don't know?

24 **MR. COCHRAN:** We don't know. It's not in the
25 statement. He doesn't say that in the statement.

1 **THE COURT:** Is that the only truck that took off
2 from the Kentucky Fried -- I mean the Church's Fried
3 Chicken?

4 **MR. COCHRAN:** He said -- he identified it in his
5 statement later, the written statement, that it was a
6 Dodge, a gray Dodge pick-up truck that he saw outside
7 the Church's Chicken. It was a gray Dodge pick-up
8 truck that was stopped.

9 **THE COURT:** Now, how did it get stopped?

10 **MS. SIMPSON:** Your Honor, if I may. The call,
11 there is a 911 call from Trentius Tucker at the point
12 of the armed robbery. The dispatch goes out. The
13 victims at that point are able to identify the truck
14 as a Dodge gray Ram truck, older model as well.

15 Immediately it goes out. Like I said, all this
16 is within a matter of minutes. And at that point
17 officers received the dispatch and see the Dodge
18 truck or see a truck consistent with the description
19 that went out over the 911 call. And at that point
20 the stop was made.

21 **THE COURT:** Okay. But there's no traffic
22 violation. Or somebody said there was a traffic
23 violation and that's why he was stopped.

24 **MR. COCHRAN:** No, Your Honor. I believe the
25 reasonable suspicion was based solely on the

1 connection with that truck and the call and them
2 seeing a car that matched that description on Two
3 Notch.

4 **THE COURT:** Okay.

5 **MS. SIMPSON:** And, Your Honor, the witnesses
6 were able to identify not only the truck itself but
7 the direction that it was headed. All those things
8 were consistent. Officers detained them until they
9 could get further information regarding whether this
10 was the actual truck.

11 **THE COURT:** Somebody identified the truck?

12 **MS. SIMPSON:** Yes, Your Honor. There actually
13 is a show-up ID by the witness who followed the
14 defendant as he fled from the Church's Chicken, saw
15 the defendant get into the Dodge gray pickup truck
16 and saw the direction that the truck headed out.
17 That witness later comes by the scene and is able to
18 identify the truck as well as the defendant as the
19 person that robbed him.

20 **MR. COCHRAN:** After the search.

21 **MS. SIMPSON:** Well, Your Honor, with respect to
22 the search, I think we can get to that. I am just
23 trying to clarify exactly what grounds the defense is
24 arguing under, because at this point the defendant
25 doesn't have standing to even make this argument.

1 **THE COURT:** Okay.

2 **MR. COCHRAN:** And, Your Honor, we would say that
3 he has standing. He has a reasonable expectation of
4 privacy in his personal area within that truck.
5 Which obviously he's charged with the things that are
6 in that truck. I would say that he has a reasonable
7 expectation of privacy in that seat in his personal
8 area where he's crouching down, as the solicitor
9 said. And under --

10 **THE COURT:** He's crouching down?

11 **MR. COCHRAN:** I'm sorry?

12 **THE COURT:** He's crouching down?

13 **MR. COCHRAN:** Ms. Campbell said that earlier.
14 And, Your Honor, I would cite cases that are
15 analogous, not necessarily controlling here. But
16 Minnesota v. Olsen is of course the case that rules
17 that an overnight guest can have a reasonable
18 expectation of privacy in a home where they haven't
19 lived, that they have no real, you know, lease
20 relationship with or ownership of; but they can still
21 develop after a short period of time a reasonable
22 expectation of privacy. And now that's what we would
23 argue Mr. Broadnax has.

24 Also, Your Honor, we would -- Mr. May just
25 reminded me. Ms. Simpson did say that this gray

1 Dodge pick-up truck in terms of the reasonable
2 suspicion for the stop, that the witness saw Mr.
3 Broadnax get in the car. That is nowhere in any of
4 the discovery. That is not in any written statement
5 from the witness.

6 **THE COURT:** Does the witness say he got into a
7 truck?

8 **MR. COCHRAN:** The witness says that he saw him
9 leave the Church's Chicken and then he loses sight of
10 him and then he sees a gray Dodge pick-up truck pull
11 away.

12 **THE COURT:** He didn't see him get into anything?

13 **MR. COCHRAN:** No, Your Honor. He doesn't --
14 well, I'll stop there.

15 **THE COURT:** All right.

16 **MS. SIMPSON:** Your Honor, if I may, with respect
17 to the defense's argument, and I'm assuming based on
18 what they're saying they're initially challenging the
19 stop and then also challenging the search. With
20 respect to the search, I would reiterate that he had
21 no reasonable expectation of privacy as a passenger
22 in that Dodge Ram pickup.

23 There is case law on point. The stuff was found
24 under the seat but not stuffed up under the seat.
25 It's actually in the floorboard of the open area of

1 the truck. The gun and the money are seen in plain
2 view in a plastic bag which is sticking out from the
3 seat. We have several grounds that we'll be arguing
4 with respect to the search if we get that far.

5 But as to the reasonable expectation of privacy,
6 it was in the floorboard while he was crouched down.
7 I don't think it's relevant to the issue. It's not a
8 locked glove compartment to which the defendant had a
9 key. He didn't possess the keys to the car. And the
10 car was actually registered to the co-defendant who
11 was driving at the time. So under no circumstance do
12 we find that the defendant had a reasonable
13 expectation of privacy in that truck.

14 **THE COURT:** Okay.

15 **MR. COCHRAN:** And, Your Honor, I would take
16 issue with some of the things Ms. Simpson says.
17 Obviously we won't know until we hear any testimony
18 from the officers who conducted the search. The only
19 indication from my record --

20 **THE COURT:** They're not here?

21 **MR. COCHRAN:** I'm sorry?

22 **THE COURT:** They're not here?

23 **MR. COCHRAN:** They're not here yet. My only
24 recollection from the discovery of any mention of
25 plain view is from the follow-up investigation

1 written by someone who was not even there. Every
2 other indication from the discovery based on the
3 writings done by the officers who were there is that
4 everything was underneath the seat and there is never
5 any mention of plain view or anything.

6 And, Your Honor, I would also like to say that
7 in the video it is clearly audible that --

8 **THE COURT:** What video?

9 **MR. COCHRAN:** The video of the traffic stop.
10 There is a dash cam video. When the patrol car pulls
11 up, they essentially cut the gray pick-up truck off
12 at a dead end road. They cut them off. And both
13 officers get out. And it's clearly audible on the
14 videotape. One officer says: This ain't going to be
15 him, is it? And the other officer says: I doubt it.
16 They then walk up to the truck, interact with them,
17 draw their guns and take them out of the car. Then
18 they search the car.

19 So, Your Honor, based on that statement, that
20 utterance from the officer in the video, that would
21 be the basis of our argument that there was not
22 reasonable suspicion that a crime had been committed,
23 which is the law in South Carolina, to justify a
24 traffic stop, much less the then greater reason for
25 the search without a warrant.

1 **THE COURT:** Okay.

2 **MS. SIMPSON:** Your Honor, if I may ask, and my
3 apologies for the defense, to restate what statement
4 they're referring to.

5 **THE COURT:** Something on the videotape where the
6 cop, one policeman says to the other: This ain't
7 him, or it's not going to be him, or something like
8 that.

9 **MR. COCHRAN:** Yes. Right when they -- right
10 before they get out of their car you can hear them on
11 their microphones. One officer says: This ain't
12 going to be him, is it? And then the other officer
13 responds: I doubt it.

14 **THE COURT:** Okay.

15 **MR. COCHRAN:** And we would ask to introduce that
16 video into evidence once it's available. I didn't
17 think they're going to play it right now.

18 **MS. SIMPSON:** Well, Your Honor, and I'll go
19 ahead with respect to the case law on point regarding
20 standing. State vs. McKnight, and the case cite is
21 291 SC 110.

22 **THE COURT:** Do you want to hand it up?

23 **MS. SIMPSON:** Yes, Your Honor. State vs.
24 McKnight.

25 **MR. COCHRAN:** Do you have a cite for it?

1 **MS. SIMPSON:** And there are several other cases
2 as well. My apologies, Your Honor. It is 291 SC
3 110, 352 SC2d 471. Also, Your Honor, the U.S.
4 Supreme Court has issued an opinion, *Rockis v.*
5 *Illinois*, which stated that under -- under *Rockis*, a
6 passenger will virtually never have standing to
7 challenge the search of a vehicle absent the claim of
8 ownership. However, there may be certain
9 circumstances under which a non-owner can demonstrate
10 the requisite expectation of privacy to gain
11 standing. I do not think that we have those here. I
12 won't reiterate my previous points in the interest of
13 time. However, Your Honor, I'll be happy to address
14 whatever you feel needs to be addressed.

15 **THE COURT:** Well, I think in order to address
16 this issue fully, I'm not going to throw it out at
17 this point on standing alone. I think the defense
18 wants testimony about the probable cause issue and
19 the privacy issue; that being, you claim that the
20 officers say it's in plain view; they say it's not.
21 I don't know about this "ain't going to be him"
22 conversation. I think that's all got to be fleshed
23 out.

24 **MR. COCHRAN:** Your Honor, if I may also add, in
25 terms of the standing issue, we would argue that that

1 is not relevant to the reasonable suspicion issue for
2 the stop because the stop is conducted and Mr.
3 Broadnax is almost immediately taken out of the car
4 at gunpoint. We would say that his rights were
5 violated at that point. There was no reasonable
6 suspicion. And standing wouldn't have anything to do
7 with that.

8 **MS. SIMPSON:** Your Honor, with respect to the
9 stop of the vehicle, I would argue that the
10 defendant, the co-defendant, Mr. Green, would have
11 standing to argue that.

12 **THE COURT:** Okay. Move on. Next motion.

13 **MR. MAY:** Yes, sir.

14 **MR. COCHRAN:** Your Honor, this is reiterating
15 what we went over in chambers, a motion that Mr.
16 Broadnax be physically present at all conferences,
17 including --

18 **MR. MAY:** May I approach, Your Honor?

19 **THE COURT:** Sure.

20 **MR. COCHRAN:** -- bench conferences during the
21 trial, Your Honor. Mr. Broadnax has been quite
22 involved in his defense, the development of his case.
23 He's a very sharp individual and has always expressed
24 an interest to be very involved with what goes on
25 during the trial. We would ask that he be present

1 for anything other than housekeeping, scheduling type
2 things.

3 **THE COURT:** For example?

4 **MR. COCHRAN:** I'm sorry, Your Honor?

5 **THE COURT:** For example?

6 **MR. COCHRAN:** Any bench conferences that we
7 have, anything that just comes up during the trial.

8 **THE COURT:** Show me some basis for that motion.

9 **MR. COCHRAN:** Your Honor, I don't think we have
10 any case law on point for that. This is based on,
11 you know, a Sixth Amendment right. We would say --
12 Mr. May just reminded me -- you know, Mr. Broadnax
13 has expressed this interest to us, and he has been so
14 involved in his own defense that in his right to
15 raise a proper defense, we would ask that he be
16 involved in these conferences.

17 **THE COURT:** Denied.

18 **MR. COCHRAN:** Thank you, Your Honor.

19 **MR. MAY:** Number 8, seeing as we're not dealing
20 with Neil v. Biggers, I believe it's a moot issue.

21 **MS. CAMPBELL:** Yes, sir.

22 **THE COURT:** What do you mean it's a moot issue?

23 **MR. MAY:** We were going to ask that Jenny if she
24 could provide the defense with a transcript if we had
25 taken testimony in Neil v. Biggers significantly

1 beforehand.

2 **THE COURT:** Are you saying there is no Neil v.
3 Biggers?

4 **MR. MAY:** Well, the Neil v. Biggers I believe
5 from our conversations will be on Monday. So there
6 won't be time.

7 **THE COURT:** I understand. Number 8 is moot?

8 **MR. MAY:** Yes, sir. It's moot as we don't have
9 time for her to do it.

10 **COURT REPORTER:** Yes, you do. I'll do it,
11 overnight.

12 **THE COURT:** 9. No.

13 **MR. MAY:** Motion to preclude shackling, Your
14 Honor. Just as the Supreme Court has said that the
15 jury draws naked inferences when they see a defendant
16 not dressed in prison garb, the same inferences can
17 be drawn from shackling either the hands and/or the
18 feet. I believe it's Decking/Missouri states this is
19 an unconstitutional violation of due process as the
20 jury members will draw a negative inference.

21 **THE COURT:** The jury members will never know
22 he's shackled.

23 **MR. MAY:** Your Honor, we would ask that at least
24 if and when he decides to testify that he has no
25 shackles, he is allowed to walk up to the witness

1 stand as every other witness is allowed to do in
2 front of the jury.

3 **THE COURT:** He will be allowed to do that.

4 **MR. MAY:** He will? Thank you.

5 **THE COURT:** Yes, sir. To testify.

6 **MR. MAY:** Yes, sir.

7 **THE COURT:** Unless something happens during the
8 course of the trial which indicates that he is a
9 danger to either the community or --

10 **MR. MAY:** Understandable.

11 **THE COURT:** -- to disrupt the trial or anything
12 like that. I don't want to make a broad statement
13 and then say you said so later on.

14 **MR. MAY:** I understand.

15 **THE COURT:** But I defer to security on that
16 issue; always have, always will. And he will not be
17 cuffed but he will be shackled.

18 **MR. MAY:** Thank you, Your Honor. This again is
19 just for procedure. Your Honor, I'm asking -- may I
20 approach again?

21 **THE COURT:** So just for the record, I deny that
22 motion.

23 **MR. MAY:** I got you.

24 **THE COURT:** Subject to my earlier ruling.

25 **MR. MAY:** Yes, sir.

1 **THE COURT:** Photographic line-ups?

2 **MR. MAY:** Yes, sir. I just want to make sure
3 that no photographic line-ups were shown to any
4 witnesses. There were numerous photographic line-ups
5 provided in discovery. The State has made the
6 showing that none of these were actually shown to any
7 witnesses. We just want to make sure to have it said
8 on the record indicating that.

9 **MS. CAMPBELL:** There were no photographic
10 line-ups shown to witnesses.

11 **THE COURT:** No photographic line-up shown to any
12 witness.

13 **MS. CAMPBELL:** No photographic line-ups shown to
14 any witness, yes.

15 **THE COURT:** Was there a show-up?

16 **MS. CAMPBELL:** There was one show-up I.D.

17 **THE COURT:** One show-up I.D.

18 **MS. CAMPBELL:** Yes, sir. Which we are taking up
19 Monday.

20 **THE COURT:** Photographic line-ups were prepared?

21 **MS. CAMPBELL:** Were prepared. But based on the
22 witnesses' ability and the mask and everything, they
23 were never shown.

24 **THE COURT:** They were never shown. Okay. And
25 you've produced all those?

1 **MS. CAMPBELL:** We produced everything in our
2 file, Your Honor.

3 **MR. MAY:** Your Honor, I believe number 11 will
4 be addressed on Monday.

5 **THE COURT:** Okay.

6 **MR. COCHRAN:** Your Honor, if I may approach.
7 Number 12 here.

8 (Document handed to the Court)

9 **MR. COCHRAN:** This is a motion to preclude the
10 use of any terms involving "innocence", "guilt",
11 "guilty", "not guilty".

12 **MR. MAY:** I apologize, Your Honor. Our next
13 motion, our next motion is regarding the use of the
14 words "innocent" or "innocence". The defense would
15 maintain that innocence and innocent are not any
16 things that we address in this court. We address
17 guilty or not guilty. There is no verb form for
18 "innocence" or "innocent". Therefore, it can lead
19 the jury to mis-rely upon the wording of the
20 solicitor, or if the defense uses it improperly, the
21 defense; and, therefore, detrimentally impact the
22 defendant. We're not here for innocence or if he's
23 innocent. We're here if he's guilty or he's not
24 guilty.

25 By confusing innocence with the State's burden,

1 it reduces their burden to show the defendant guilty
2 beyond all reasonable doubt. Innocence is something
3 that the jury has nothing to decide with. And by the
4 State interjecting that in their case in chief or in
5 rebuttal, it can go nowhere but to prejudice the
6 defendant's due process rights. The issue is not his
7 innocence in this case. It's his guilt or lack
8 thereof.

9 **THE COURT:** Does the State have a position?

10 **MS. CAMPBELL:** Your Honor, respectfully, I mean,
11 I think your charge adequately addresses the whole
12 issue as to what the burden is on the State.

13 **THE COURT:** I just don't know if I've ever used
14 the word "innocent" in my charge. But I will look at
15 it. And the State may choose to do the same thing.

16 **MS. CAMPBELL:** I believe that in your charge
17 it's "presumed innocent". I don't mean to mis --

18 **MR. MAY:** The defense's only contention --

19 **MS. CAMPBELL:** He doesn't care if you say it.
20 He cares if I say it.

21 **MR. MAY:** Yes. I care about her telling the
22 jury that this is not an innocent man because that's
23 nothing for the jury to determine.

24 **THE COURT:** If I use --

25 **MS. CAMPBELL:** It's part of his charge.

1 **THE COURT:** I give them "presumption of
2 innocence".

3 **MR. MAY:** Yes, sir.

4 **THE COURT:** And you object to that?

5 **MR. MAY:** No, sir. I believe presumption of
6 innocence is correct. What I'm just saying is I
7 don't want the State to intersperse not guilty with
8 innocent. While there's a presumption of innocence
9 on the defendant and he is cloaked in that, I am
10 asking that the State in their arguing or any
11 presentation the jury does not go into: This is not
12 an innocent man, because arguably it taints the --

13 **THE COURT:** I understand what you're saying.

14 **MR. MAY:** Okay.

15 **THE COURT:** I'll leave it up to the Solicitor's
16 Office whether they choose to use that phrase or not.

17 **MS. CAMPBELL:** Thank you.

18 **THE COURT:** They do so at their own risk if you
19 say that there is case law to support the fact that
20 if they use that term it's a reversible error.

21 **MS. CAMPBELL:** I'm sorry, Your Honor. What was
22 that?

23 **THE COURT:** I said if you -- the State must make
24 the decision whether to use the term or not and
25 considering whatever case law the defense has

1 presented whether or not the use of that word would
2 result in some sort of appellate reversal.

3 **MS. CAMPBELL:** And I'm just curious. They don't
4 have anything that I have seen in this memo they've
5 handed up that says it's reversible.

6 **THE COURT:** Well, you use it at your own peril.
7 Next motion.

8 **MR. MAY:** Yes, sir. At this time the defense
9 would call Mr. Christopher Broadnax.

10 CHRISTOPHER BROADNAX, after being duly sworn,
11 testifies as follows:

12 **THE CLERK:** Thank you. Please have a seat in
13 the witness stand and state your full name for the
14 record.

15 **THE WITNESS:** Christopher Broadnax.

16 **MR. MAY:** May it please the Court, Your Honor?

17 DIRECT EXAMINATION

18 **BY MR. MAY**

19 **Q** Chris, tell the judge, have you ever been convicted
20 of armed robbery before?

21 **A** Yes, I have.

22 **Q** Can you please tell him when?

23 **A** I believe it was 1979 and again in 1990.

24 **Q** All right.

25 **THE COURT:** 19 what? 70?

1 **A** '79 and '90.

2 **Q** All right. And you did get active sentences for both
3 those? For the 1990/91, you had a couple of charges,
4 correct?

5 **A** Correct.

6 **Q** And then in 1979, did you get -- how many charges did
7 you plead guilty to?

8 **A** Just one.

9 **Q** All right. So you have several armed robberies on
10 your record?

11 **A** Yes, I do.

12 **Q** And now, can you tell us, has the State served LWOP
13 notice on you?

14 **A** Yes, they have.

15 **Q** Okay. Referring back to the 1979 and the 1990/91
16 charges that you had that they used to serve LWOP,
17 can you please tell us; in your conversations with
18 your attorneys, were they informing you about LWOP?

19 **A** No, they didn't.

20 **Q** Did the judge at your sentencing?

21 **A** No, sir.

22 **Q** When was the first time you heard anything about life
23 without parole due to a continued pattern of armed
24 robberies?

25 **A** I believe it was our first meeting, yours and mine.

1 Q So the first time you ever heard about this was when
2 you and I met?

3 A Yes.

4 Q All right. The last question real quick for this.
5 Now, can you tell us; had you known this, would you
6 have pled guilty to those other charges?

7 A No, I wouldn't.

8 MR. COCHRAN: No further questions.

9 THE COURT: Any questions?

10 MR. MAY: Do you want to question him?

11 MS. CAMPBELL: No.

12 THE COURT: All right. You may come down.

13 MS. CAMPBELL: Your Honor, if I may approach
14 with the actual notice itself for purposes of these
15 next several ...

16 (Document handed to the Court)

17 THE COURT: Have they been served?

18 MS. CAMPBELL: Yes, sir.

19 MR. MAY: Yes, sir. I believe on May the 18th.

20 THE COURT: In a timely fashion?

21 MS. CAMPBELL: I know it was filed May 18th.

22 MR. MAY: Yes, sir. It was done in a timely
23 fashion.

24 THE COURT: All right.

25 MR. MAY: Your Honor, the defense at this time,

1 the motion I just handed to you and to the solicitor
2 would say that we move to have the State withdraw
3 LWOP as the defendant was not adequately informed of
4 the possibility of LWOP at the other times he has
5 pled guilty to armed robberies in the 1979 and the
6 early '90's convictions. He was not informed. We
7 believe that's a violation of the Sixth Amendment
8 right.

9 Additionally, when he gives up the right to go
10 to trial in reliance on the representation and the
11 assurance of his attorney and the lack thereof that
12 any notice of potential LWOP runs afoul of the Fifth
13 and Fourteenth Amendments as well as all South
14 Carolina Constitution equivalent provisions.

15 **THE COURT:** The State's position.

16 **MS. SIMPSON:** Thank you, Your Honor. May it
17 please the Court. With respect to the defendant's
18 attack on his convictions for purposes of LWOP, the
19 defendant does bear the burden of proof. The law
20 requires that once the State has proven a conviction,
21 which we have via four certified copies of the
22 defendant's prior convictions, then the defendant
23 must prove by a preponderance of the evidence that
24 either those convictions were Constitutionally
25 defective or otherwise invalid.

1 I initially would submit to the Court that the
2 defendant's testimony that he was not advised,
3 without more, doesn't meet their burden. In addition
4 to that, I think this is the improper point in the
5 legal process to be arguing against the State's
6 notice of intention to seek LWOP. And it's already
7 been addressed by the courts, Your Honor.

8 **THE COURT:** And what?

9 **MS. CAMPBELL:** This issue has been addressed.

10 **MS. SIMPSON:** This issue has been addressed by
11 the courts, Your Honor..

12 **THE COURT:** The issue of whether or not counsel
13 at his prior pleas had the responsibility to inform
14 him that his plea could result in a most serious,
15 that it was a most serious offense and could result
16 at a subsequent time if he were ever convicted again
17 that he could be subject to life without parole. I
18 think Mr. May's argument is that he wasn't properly
19 advised of that. I don't think he's questioning the
20 fact that he has these charges, I mean, these prior
21 convictions.

22 I think he's -- it's sort of a novel argument,
23 although we say see it in -- we've seen it recently
24 in the Supreme Court case about advising a defendant
25 that a plea could result in deportation. I think

1 it's similar to that argument that he's making.

2 And perhaps, I know it's customary to advise
3 sexually oriented defendants in cases involving
4 defendants that they may be subject to the Sexually
5 Violent Predator Act. And I think what he's arguing
6 is that he should have been informed about his
7 potential for life without parole should he be
8 convicted at a later date. Is that your argument?

9 **MR. MAY:** Yes, sir. That's exactly my argument.

10 **THE COURT:** It's not supported by any case law
11 though. That's Darby. Except his Florida case law,
12 whatever that is.

13 **MR. MAY:** Yes, sir. That's just the recent one
14 just going to how punitive this punishment is.

15 **MS. SIMPSON:** Your Honor, with respect to the
16 defense's argument, the State would ask for a brief
17 period of time. There is case law that we would
18 submit addressing this issue.

19 **THE COURT:** What counsel's responsibility is in
20 terms of advising his client before he pleads?

21 **MS. SIMPSON:** Correct, Your Honor.

22 **THE COURT:** The consequences of his plea.

23 **MS. SIMPSON:** Correct, Your Honor.

24 **THE COURT:** If you've got case law, you can
25 submit it. That's fine.

1 **MS. SIMPSON:** Shall we wait?

2 **THE COURT:** Well, I'll withhold ruling on it.

3 **MS. SIMPSON:** We can go forward now?

4 **THE COURT:** I'm not familiar with any case law
5 that says counsel must.

6 **MS. SIMPSON:** Oh, Your Honor, with respect to --
7 thank you, Your Honor.

8 **THE COURT:** Okay. I'll let you submit anything
9 you have on that issue. But my initial -- I will
10 tell you my initial impression is I don't know of any
11 case law or statutory law that requires plea counsel
12 to advise him of all potential consequences of his
13 plea. I don't think there's any case law that says
14 they must. Go ahead.

15 **MR. MAY:** Yes, sir. Shall we proceed with the
16 next one?

17 **THE COURT:** Yes, sir. Keep going.

18 **MR. MAY:** Okay. Now, this next issue arguably,
19 Your Honor, is moot, but we'd like just to preserve
20 it for the record.

21 **THE COURT:** Yes, sir.

22 **MR. MAY:** With respect --

23 **THE COURT:** Which one are we on? 14?

24 **MR. MAY:** Yes, sir. I believe so. Isn't it?

25 **MR. COCHRAN:** Yes, Your Honor. 14.

1 **MR. MAY:** That recently with *Graham v. Florida*,
2 the United States Supreme Court addressed giving
3 juveniles life without parole. This we would -- the
4 defense recognizes that Mr. Broadnax has convictions
5 from when he was not a juvenile, but one of the
6 convictions that the State is relying upon in its
7 LWOP notice came from when Mr. Broadnax was a
8 juvenile.

9 Now, the defense urges that *Graham* does not say,
10 does not go as far as the defense is asking. We're
11 not trying to mislead the Court in any means, but we
12 are just asking that the defendant's conviction from
13 1979 not be used for the LWOP. And the defense fully
14 understands that there is a 1990/91 conviction that
15 can be used; but the 1979 one, we would ask that it
16 is not.

17 **MS. SIMPSON:** Thank you, Your Honor. The State
18 would first I guess clarify the defendant's exact
19 birthday. Because according to his rap sheet, one of
20 his birth dates is listed as January the 27th of
21 1961, which would make him 18 at the time, not under
22 18.

23 **THE COURT:** All right. Well, maybe he'll have
24 to produce his birth certificate. I mean, it may
25 rise and fall on that --

1 **MR. MAY:** Yes, sir.

2 **THE COURT:** -- factual determination.

3 **MR. MAY:** And we'll try to produce one by
4 Monday.

5 **THE COURT:** All right. I'm sure it's available
6 from the health department.

7 **MR. MAY:** Yes, sir.

8 **THE COURT:** If in fact you are earnest in your
9 belief that he was under the age of 18.

10 **MR. MAY:** I do, Your Honor. He tells us that he
11 was born on September 27th, 1961. I have nothing to
12 go on but his word.

13 **THE COURT:** Well, his rap sheet says otherwise.
14 All right.

15 **MR. MAY:** Yes, sir. As in chambers you said
16 that -- if I may approach again?

17 **THE COURT:** Sure.

18 **MR. MAY:** As you said that this is one of your
19 favorite issues, we would move to declare the -- we
20 move to ask the State to withdraw the LWOP notice as
21 it is a violation of separation of powers.

22 Your Honor, both the South Carolina Constitution
23 and the federal Constitution enumerate there needs to
24 be three separate powers. The solicitor works in
25 executive branch. Your Honor sits as the judiciary.

1 We believe that the solicitor when they served LWOP
2 notice limits your discretion and, therefore, is in
3 fact usurping the role of the judiciary and,
4 therefore, a violation of the separation of powers.

5 Just as Your Honor is fully aware that you
6 yourself do not like negotiated pleas because when
7 you search your discretion, this does the exact same
8 thing. The defendant through his counsel has always
9 maintained to the State that they would be willing to
10 plead or arguably assert his right to go to trial but
11 for the statutory defined amount of time as is given
12 in the South Carolina code.

13 **THE COURT:** Well, I mean, you can't just address
14 two branches of government.

15 **MR. MAY:** That's correct. Well, the Legislature
16 who enacted the laws I believe overstepped their
17 bounds and allowed the executive branch to infringe
18 upon the judiciary. The judiciary's hands are tied.
19 If Your Honor does not believe this is a life or
20 should be a life sentence, your hands are tied by the
21 actions of the Solicitor's Office. This is a clear
22 violation of the separation of powers. The
23 Legislature has enacted a range of sentence that they
24 deem appropriate for the charge of armed robbery.

25 **THE COURT:** Has the statute never been

1 contested?

2 **MR. MAY:** Your Honor, give me one minute. The
3 statute was tested but -- and my -- Mr. Bell, my law
4 clerk, will pull it up for me. It was tested. And
5 there's a 1999 opinion that talks about that at that
6 time they did not feel it was a violation of
7 separation of powers. But we believe it's --

8 **THE COURT:** What's the name of that case?

9 **MR. MAY:** He's pulling it up.

10 **THE COURT:** Okay.

11 **MR. MAY:** They do not believe it's a separation
12 of powers. But I believe the analysis was not
13 looking at what the defense is arguing at this point.
14 The analysis from that case was whether or not the
15 executive branch was hogtied by the actions of the
16 Legislature, for lack of a better term. I beg the
17 Court's indulgence. He's pulling the case.

18 **THE COURT:** All right.

19 **MR. MAY:** Your Honor, if we could pull this up.
20 My client has informed me that he really needs to use
21 the head real bad. Is this a good time do if you
22 think?

23 **THE COURT:** We'll take ten minutes.

24 **MR. MAY:** Thank you.

25 **THE COURT:** He can use the jury room, that one,

1 the one in the corner. Officer, that one down there?

2 **DEPUTY:** Yes, sir.

3 **THE COURT:** Ten minutes.

4 (Whereupon, a break is taken)

5 **THE COURT:** All right, Mr. May.

6 **MR. MAY:** Yes, sir. The cite is State vs.
7 Burdette.

8 **THE COURT:** Vs. what?

9 **MR. MAY:** Burdette.

10 **THE COURT:** Burdette.

11 **MR. MAY:** Yes, sir. It's 335 SC 34. It's a
12 case that actually Your Honor sat on.

13 **THE COURT:** SC 335 what?

14 **MR. MAY:** 335 SC 34.

15 **THE COURT:** What's it say?

16 **MR. MAY:** It says that it -- it talks about in
17 that case the argument was raised by the separation
18 of powers and the LWOP. And in that case they said
19 that it's not violation of separation of powers due
20 to the fact the solicitor had the discretion whether
21 or not to activate LWOP. And so, therefore, the
22 Legislature did not overstep their bounds in
23 curtailing the actions of the solicitor.

24 The cases as well as Delacruz go further saying
25 that judicial -- or that sentencing is determined by

1 the Legislature. Your Honor, that is all I
2 understand what the precedent is. It is Mr. Broadnax
3 through his attorneys' position that this is a clear
4 violation of due process, of the separation of
5 powers, just as Your Honor will not accept a
6 negotiated plea because it unnecessarily controls
7 your discretion, this is the exact same thing.

8 And while the Legislature has enacted a
9 sentencing range for all most serious crimes, they
10 have overstepped their bounds with respect to LWOP as
11 they allow both the Legislature as well as at the
12 discretion, complete arbitrary discretion of the
13 Solicitor's Office or independent defendants the
14 decision whether or not to go after an LWOP.

15 (Pause)

16 **THE COURT:** I didn't sit on that case.

17 **MR. MAY:** Pardon me, sir?

18 **THE COURT:** I didn't sit on that case. It's an
19 appeal from the other Judge Cooper. He was the trial
20 judge.

21 **MR. MAY:** I apologize. I saw Judge Cooper.

22 **THE COURT:** Yeah. Well, I tend to remember the
23 ones I sat on. All right. I'll read that. And
24 that's it?

25 **MR. MAY:** Yes, sir. Our argument would just be

1 that that was an analysis for --

2 **THE COURT:** That's that Supreme Court case.

3 **MR. MAY:** Yes, sir. That an analysis that does
4 not go to the solicitor or the executive branch
5 overstepping its separation of powers and then
6 thereby influencing the judiciary as to what they
7 must and must not do.

8 **THE COURT:** Of course the operative language of
9 Burdette says if the defendant is convicted of one of
10 the triggering offenses, the matter of sentencing
11 becomes the province of the Legislature.

12 This is Judge Toal writing for the Court. We
13 have held in the past that a defendant being assessed
14 for a particular offense is, except in the rarest of
15 cases, purely a matter of Legislature prerogative,
16 and the Legislature's judgment will not be disturbed.

17 In the current case the Legislature has
18 designated life in prison without parole as the
19 appropriate sentence for the defendant based on his
20 criminal convictions. Imposition of that sentence
21 does not violate the separation of powers doctrine.
22 And that's what our Supreme Court says. And that's
23 from a full court, a unanimous court written by Judge
24 Toal. But I'll let you appeal it. Your motion is
25 denied.

1 **MR. MAY:** Thank you, Your Honor. At this time
2 the defense would call Investigator A. L. Thomas.

3 **MS. SIMPSON:** Your Honor, briefly. The State
4 would just like to make sure that the record is full
5 for purposes of appeal. So if we may be allowed just
6 to respond on the record.

7 **THE COURT:** On number 15?

8 **MS. CAMPBELL:** Yes.

9 **MS. SIMPSON:** Yes, Your Honor.

10 **THE COURT:** Well, I might change my mind.

11 **MS. SIMPSON:** Okay, Your Honor. With respect to
12 the cases applicable that the State would be relying
13 on for the separation of powers argument, State v.
14 Jones is directly on point. The case site is 344 SC
15 48, 543 SC2d 541. I also have a copy to hand up to
16 the Court.

17 **THE COURT:** I don't need it.

18 **MS. SIMPSON:** Okay. Thank you, Your Honor. And
19 the State would also offer up State v. Standard which
20 actually reiterated and emphasized the Court's prior
21 finding in State/Delacruz with respect to the
22 defendant's claim that the two strikes law intrudes
23 upon the judicial discretion. We would just give you
24 that case cite as well.

25 Beg the Court's indulgence. We'll offer that up

1 momentarily. With respect to Delacruz, the case cite
2 is 302 SC 13, 393 SC2d 184. And, Your Honor, the
3 State believes there is clear precedent on this
4 issue, that there is no violation in the separation
5 of powers with respect to the Legislature or the
6 judiciary. Thank you.

7 **THE COURT:** 16.

8 **MR. MAY:** Yes, sir. May it please the Court,
9 may I approach, Your Honor?

10 **THE COURT:** Sure.

11 (Document handed to the Court)

12 **MR. MAY:** At this time the defense would call
13 Investigator A. L. Thomas.

14 **THE COURT:** For what purpose?

15 **MR. MAY:** I'd proffer testimony, if you'd
16 rather, Your Honor.

17 **MS. CAMPBELL:** His version.

18 **MR. MAY:** Or we have other people who are here.
19 Your Honor, --

20 **THE COURT:** On number 16?

21 **MR. MAY:** Yes, sir.

22 **THE COURT:** Tell me why I need testimony.

23 **MR. MAY:** Yes, sir. Throughout this entire
24 process, as the defense has informed the Court, the
25 defense has been seeking to plea this case. At one

1 point last week we went to the evidence locker with
2 Charlie and Taylor Bell. And at that meeting we saw
3 Investigator A. L. Thomas who again said that he'd be
4 perfectly okay with the defendant pleading to 20 to
5 25 years but that Luck had it out for him.

6 **THE COURT:** That Luck had it out for Mr. Thomas?

7 **MR. MAY:** The defendant, Mr. Broadnax. Having
8 it out for you I would say would be arbitrary and
9 capricious as far as which defendants get served LWOP
10 notice. If you'd rather me put up the law clerk who
11 heard it, but --

12 **THE COURT:** Well, you certainly can do that. I
13 mean, I'm running privileged matters through my mind
14 at this point. I don't know, if Ms. Campbell had
15 conversations with Mr. Thomas, if there's not some
16 protection.

17 **MR. MAY:** Yes, sir. I'm not aware of any
18 police/state privilege.

19 **THE COURT:** Well, go ahead and put your witness
20 up.

21 **MR. MAY:** All right. The defense calls Taylor
22 Bell.

23 JACOB T. BELL, after being duly sworn, testifies
24 as follows:

25 **THE CLERK:** Please have a seat in the witness

1 stand and state your full name for the record.

2 **THE WITNESS:** Jacob Taylor Bell.

3 DIRECT EXAMINATION

4 **BY MR. MAY**

5 **Q** Mr. Taylor, can you please tell Your Honor, the
6 judge, where you're employed?

7 **A** Public Defender's Office.

8 **Q** Are you a law student?

9 **A** Yes, I am.

10 **Q** What year are you going into?

11 **A** Third year.

12 **Q** Now, did you have the occasion to go with Charlie
13 Cochran and myself to go view evidence at the
14 Columbia Police Department?

15 **A** Yes, I did.

16 **Q** Do you remember running into Investigator Thomas?

17 **A** I do.

18 **Q** Can you just tell the Court what conversation
19 occurred with Investigator Thomas with us three?

20 **A** A conversation involved a plea offer. Broadnax we
21 said -- or it was said he'd take 20 years right now.

22 **THE COURT:** Wait. Who said what?

23 **A** Attorney Jim May.

24 **THE COURT:** Said what?

25 **A** Broadnax will take 20 years right now.

1 **THE COURT:** To Mr. Thomas? To who?

2 **A** To Mr. Thomas. To Investigator Thomas. Investigator
3 Thomas explicitly said Luck had her fangs out for
4 Broadnax, Chris.

5 **THE COURT:** All right.

6 **MR. MAY:** No further questions.

7 **THE COURT:** You can come down, sir. Thank you.

8 **MR. MAY:** Your Honor.

9 **THE COURT:** What?

10 **MR. MAY:** I'm sorry. I apologize.

11 **THE COURT:** Well, even if he said it --

12 **MR. MAY:** Yes, sir.

13 **THE COURT:** -- I'm not going to -- I assume he
14 said it in some -- assume he said it. I don't know
15 the circumstances other than what your witness just
16 said. But I'm not going to grant your motion
17 regardless of whether you call him or not. I don't
18 think it's -- I'm not going to require the State to
19 produce -- I mean to require Mr. Thomas to testify.

20 **MR. MAY:** Yes, sir. All right, Your Honor. I
21 think this actually goes hand-in-hand with the
22 following motion, Your Honor.

23 **THE COURT:** Besides that, I mean, when you've
24 got the notice that lists three or four different
25 armed robbery offenses, I fail to see that there is

1 any arbitrariness in the use of the life without
2 parole notice.

3 **MR. MAY:** Yes, sir.

4 **THE COURT:** I mean notice to the defendant.

5 **MR. MAY:** Yes, sir. May I approach?

6 **THE COURT:** Yes, sir.

7 **MR. MAY:** I believe that this next motion
8 dovetails nice with that. This is a motion that
9 addresses Bush v. Gore.

10 **THE COURT:** Okay.

11 **MR. MAY:** Or Bush v. -- pardon me?

12 **THE COURT:** I said okay.

13 **MR. MAY:** Yes, sir. Of course Bush v. Gore is
14 the one dealing with the presidential election of
15 2000. In Bush v. Gore the Supreme Court takes a look
16 and says that the Fourteenth Amendment's equal
17 protection clause was violated as there are problems
18 when there is not a standard for the entire state.

19 Of course this was with the hanging chads. When
20 there is no express standard for the entire state,
21 then you have problems with some people are
22 desperately or are treated differently depending on
23 where they are. I believe the testimony of "Ms.
24 Campbell has her fangs out for the defendant" shows
25 that he's being treated differently than somebody

1 else. Why? Because it goes directly to the
2 capricious, arbitrary nature of LWOP, that when she
3 acts in her discretion as it is now allowed with no
4 guidelines, then he has just as much chance of being
5 struck by lightning as getting LWOP. We don't know
6 what's going to happen. I believe that's exactly
7 what this motion goes to show, that in Bush v. Gore
8 some people's votes were counted. Some people's
9 votes weren't. It just was dependent on the precinct
10 where they cast their votes.

11 Here it depends on the county. Or even less, it
12 depends on which solicitor a defendant draws as to
13 whether or not they will get LWOP when they are
14 willing to plead to something, that there is not a
15 defined standard. And in Bush v. Gore they said that
16 there has to be a defined standard. And the remedy
17 was they couldn't keep going with the recount because
18 there is not a defined standard for the entire state.

19 Here there is not a defined standard. The
20 remedy I believe was to, one, either withdraw LWOP;
21 or, two, we'd ask for a continuance so that we can
22 survey all prosecutorial circuits to see what
23 standards they use for LWOP's and which standards
24 they do not.

25 Mr. Broadnax could or could not be prosecuted

1 for his crimes in Beaufort or in Oconee County. We
2 don't know because there's not a standard set of when
3 they must apply and when they must not. There is
4 even further complicated by the Legislature's new
5 passing of the LWOP law which makes it completely
6 discretionary.

7 With no standard as to directing people, then
8 you have people like Mr. Broadnax who are caught in
9 the crosshairs who would like to plead but are
10 precluded due to the fact that there is no standard
11 for guidance and you just may get the solicitor who
12 does not want to offer a plea regardless of what a
13 defendant will take.

14 **THE COURT:** So your argument would be much more
15 cogent --

16 **MR. MAY:** Yes, sir.

17 **THE COURT:** -- under the new statute --

18 **MR. MAY:** Yes, sir.

19 **THE COURT:** -- than it is under the old statute.

20 **MR. MAY:** I believe that Burdette actually
21 addresses that the solicitor as their discretion if
22 they ever serve LWOP. There is no requirement for
23 her to serve LWOP. It happened, and that's why we're
24 here today.

25 **THE COURT:** All right. What's the State's

1 position?

2 **MS. CAMPBELL:** Your Honor, the LWOP notice was
3 signed by the solicitor himself. In the new
4 statute -- in the old statute it said we shall serve
5 it if there is a triggering offense. In the new
6 statute it says it's discretionary, which he is just
7 arguing that we shouldn't have discretion which is
8 enumerated even in the new law that just passed last
9 week that it should be discretionary.

10 I believe some of the case law also talks about
11 how prosecutors have discretion to do these things.
12 So he's kind of arguing in a circle as far as what
13 goes on.

14 In this case, as you have already noted on the
15 record, this defendant doesn't have one triggering
16 offense in his prior record; he has four different
17 armed robbery convictions which he has gotten on the
18 stand and testified he pled to and he was convicted
19 of.

20 As far as this arbitrary and capricious, I
21 believe the case law that you're familiar with has
22 basically talked about how the solicitor does have
23 discretion to some extent, the tools available to the
24 solicitor. And even in the old statute which said we
25 should and will serve whenever there is a prior

1 conviction that triggers; in the new statute it says
2 it's discretionary, which is what he's arguing we
3 shouldn't have discretion to do.

4 **THE COURT:** I think he's arguing you've got too
5 much discretion.

6 **MR. MAY:** Yes, sir. We need guided discretion,
7 is what the defense would argue.

8 **MS. CAMPBELL:** And the Legislature basically
9 outlines the discretion we have.

10 **THE COURT:** Mr. May, have you looked at -- and
11 I'm sure you have -- 17-25-45?

12 **MR. MAY:** Yes, sir, I have. I have it right
13 here somewhere. Yes, sir.

14 **THE COURT:** It seems to me that's a mandatory
15 motion. Do you disagree with that?

16 **MR. MAY:** I believe Burdette would show that
17 it's not mandatory language. Burdette was just
18 saying that it's discretionary whether or not they
19 ever served. If they never serve the papers, then
20 there is no LWOP.

21 **THE COURT:** Well, the word "must" is contained
22 in the first line of the statute: Must be sentenced
23 to a term of imprisonment without the possibility of
24 parole. How do I get around that?

25 **MR. MAY:** Well, I believe, Your Honor, we look

1 at the actual practice, that numerous times, I've
2 had -- most people in my office have numerous times
3 when you have a client who could easily be LWOP'd and
4 an offer extended so that way for judicial economy,
5 which we are -- right now, I mean, we're just wasting
6 the judicial resources when we have a client who
7 would plea. With that being said, I believe that the
8 practice is that they do not go forward on every LWOP
9 when there are triggering offenses. And a lot of
10 times LWOP is used as a method to induce a plea.

11 **THE COURT:** All right. Anything further from
12 the State?

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

14 **THE COURT:** Well, it's good appellate argument,
15 Mr. May. Your motion is denied.

16 **MR. MAY:** Thank you, Your Honor.

17 **THE COURT:** 18.

18 **MR. COCHRAN:** Yes, Your Honor. The next motion
19 would be number 18. And it goes to the
20 disproportionality of the life without parole
21 sentence or potential sentence in this case.

22 Your Honor, we are dealing with an alleged armed
23 robbery that does not involve any physical injury or
24 death but a potential sentence that can only result
25 in the death during imprisonment of Mr. Broadnax for

1 the rest of his life. He'll have to be in prison for
2 the rest of his life.

3 Now, the Supreme Court has made rulings in terms
4 of life without parole as to juveniles, which is not
5 controlling here. However, it gives an indication of
6 the way that the Supreme Court views life without
7 parole sentences. They're irrevocable nature is
8 almost analogous to the death penalty in a way in
9 that it is being handed down; like in those cases,
10 the juvenile cases, it is being handed down in a case
11 where there was no physical harm and no death
12 involved.

13 And now this is not something that will have
14 lasting consequences for anybody but Mr. Broadnax.
15 Now, I understand that the prosecution will say that
16 victims of a violent crime will carry that with them
17 the rest of their life, but the victim of almost any
18 crime can carry that for the rest of their life, and
19 it doesn't affect what sentence is handed down to the
20 defendant.

21 Now, if somebody steals a family heirloom out of
22 my car, there is no potential life sentence for auto
23 breaking but that could affect me for the rest of my
24 life. So I don't think that argument would
25 necessarily hold water here.

1 Because there was no -- there was not death and
2 there was not any physical harm or injury, we would
3 say that this is disproportionate. The LWOP
4 possibility is disproportionate to the alleged act.

5 **THE COURT:** The State's position?

6 **MS. CAMPBELL:** Your Honor, we would just cite
7 State v. Williams, and it's 669 SE2d 640.

8 **THE COURT:** 66 what?

9 **MS. CAMPBELL:** 669 SE2d 640, a 2008 case, when
10 cert was denied in 2009.

11 **THE COURT:** What's it say?

12 **MS. CAMPBELL:** It says basically that there is
13 no issue as to number 18 as far as
14 disproportionality.

15 **THE COURT:** So we can do disproportionality on a
16 death penalty but we can't do it on life without
17 parole?

18 **MS. CAMPBELL:** As far as argument? I'm just
19 saying they've ruled on it. Can I hand up a case?

20 **THE COURT:** Sure. Or read it.

21 **MS. CAMPBELL:** He argues that in this case there
22 was an LWOP sentence for distribution of less than
23 half a gram of controlled substance is inconsistent
24 with evolving standards of --

25 **COURT REPORTER:** Wait a minute. Wait. It's

1 inconsistent with what? Could you slow down, please?

2 **MS. CAMPBELL:** It's inconsistent with evolving
3 standards of contemporary values. Williams further
4 asserts LWOP sentence under the recidivist statute is
5 grossly disproportionate to the punishment reserved
6 for distribution of less than half a gram of cocaine,
7 especially when the first conviction to qualify him
8 for LWOP was committed as a juvenile. In that case
9 they disagreed, and in that case there was only one
10 triggering event which actually came up on LWOP.
11 They then go in and quote the statute itself, Section
12 17-25-45(b).

13 **THE COURT:** That's a minor?

14 **MS. CAMPBELL:** They then go into an Eighth
15 Amendment analysis. And it's a two or three-page --
16 I will be glad to read it out loud. But if the Court
17 would just review it, I believe it addresses this
18 issue.

19 **THE COURT:** All right. Glad to.

20 (Document handed to the Court)

21 **MS. CAMPBELL:** May I approach?

22 (Document handed to the Court)

23 **THE COURT:** Did you say cert was denied?

24 **MS. CAMPBELL:** Cert was denied in 2009. Your
25 Honor, they also referred to the recent court

1 holdings that a life sentence was disproportionate
2 for juveniles. And that only applied the court
3 limited it to when the act actually occurred by a
4 juvenile.

5 **THE COURT:** All right.

6 **MS. CAMPBELL:** It wasn't the triggering event is
7 my point.

8 **THE COURT:** All right. I'll look at it.

9 **MS. CAMPBELL:** Thank you, Your Honor.

10 **MR. COCHRAN:** Thank you, Your Honor.

11 **THE COURT:** 19.

12 **MR. MAY:** We withdraw it.

13 **MS. CAMPBELL:** You're withdrawing 20?

14 **MR. MAY:** 19 we're withdrawing. I told you
15 that.

16 **THE COURT:** 20.

17 **MR. MAY:** Beg the Court's indulgence for one
18 second. Your Honor, I believe that we can wait for
19 20 and 21 until Your Honor rules on all the motions.

20 **MS. CAMPBELL:** We'd like to go ahead and hear 20
21 and 21, Your Honor.

22 **THE COURT:** Let's go ahead. We're not going to
23 be able to reconvene before Monday. So --

24 **MR. MAY:** We can hear it. Then if you just want
25 to defer sentencing [sic] until afterwards, because I

1 don't think it's ripe.

2 **MS. CAMPBELL:** Defer sentencing?

3 **MR. MAY:** May I approach, Your Honor?

4 **THE COURT:** Yes, sir.

5 (Document handed to the Court)

6 **MR. MAY:** Yes, sir. In a District Court in New
7 York they recently ruled that it is a violation of
8 due process rights of the defendant not to inform the
9 jury of a minimum sentence when the minimum sentence
10 is great. Your Honor, analogously, we believe it's a
11 violation of due process rights not to inform the
12 jury that the defendant is facing life without
13 parole. It's an important factor for the defendant.

14 **THE COURT:** Why is that?

15 **MR. MAY:** Why is it important? Well, it's his
16 life. The due process argument?

17 **THE COURT:** I understand.

18 **MR. MAY:** Yes, sir. We'd say that --

19 **THE COURT:** I thought you said it was important
20 that the jury know that.

21 **MR. MAY:** Your Honor, I believe it is important
22 for the jury to know, as their sentence has -- to
23 know what their sentence means before they give it.

24 **THE COURT:** Do you think that's true of all
25 criminal cases?

1 **MR. MAY:** When there is a -- when the punishment
2 is so Draconian as to --

3 **THE COURT:** What about all mandatory minimums?

4 **MR. MAY:** The U.S. v. Polsey analysis, only a
5 District Court case, for other reasons says that it's
6 a violation of due process rights of the defendant
7 not to have the jury informed of the potential
8 minimums. Or I'm sorry. When there is mandatory
9 minimums.

10 **THE COURT:** Okay.

11 **MR. MAY:** I know that of course is the second
12 cert which Ms. Campbell so much likes. But it's -- I
13 believe that we're all under one banner of due
14 process, be it in the Eastern District of New York or
15 the Fifth Circuit of the Court of General Sessions in
16 Columbia, South Carolina.

17 **THE COURT:** You say the jury should be informed
18 of the State's intent to seek a sentence of life
19 imprisonment without the possibility of parole in
20 order to protect Christopher Broadnax's
21 Constitutional rights. And that being his right to
22 due process?

23 **MR. MAY:** That's his due process rights. That's
24 the analysis from the U.S. v. --

25 **THE COURT:** Is there any other -- is there any

1 other expression of that position anywhere in the
2 country?

3 **MR. MAY:** Your Honor, U.S. v. Polsey is the case
4 that I found. It has not been overruled on that
5 issue. So, therefore, I believe at least in --

6 **THE COURT:** In New York.

7 **MR. MAY:** In the Federal District of New York,
8 that is the appropriate standard as of this time.

9 **THE COURT:** All right. Well, let's just put
10 that one as denied.

11 **MR. MAY:** Now, the last motion would be that as
12 the Supreme Court has -- if I may approach, Your
13 Honor?

14 **THE COURT:** Sure.

15 **MR. MAY:** As the Supreme Court recently in
16 Graham vs. Florida has spoken of the severity and the
17 Draconian nature of life without parole, analogous --
18 it is comparable to the death penalty, that it steals
19 life. Now, the life is stolen through incarceration.
20 Mr. Broadnax if found guilty and if his conviction
21 stands will never walk out a free man. Therefore, he
22 is never going to have a life outside of bars. Your
23 Honor.

24 **THE COURT:** He'll have a life.

25 **MR. MAY:** He will never have any freedom.

1 **THE COURT:** He'll have a life.

2 **MR. MAY:** Inside prison.

3 **THE COURT:** He'll have freedom inside the
4 prison. Limited.

5 **MR. MAY:** Your Honor, I'd --

6 **THE COURT:** If convicted.

7 **MR. MAY:** Yes, sir. If convicted. And again,
8 we'd move -- seeing as it's such a Draconian, such a
9 harsh, harsh punishment, we would make it
10 analogous -- we'd ask the Court to make it analogous
11 to a death penalty issue where it can have separate
12 sentencing done by the jury. As the State is seeking
13 to, in my personal opinion, end Mr. Broadnax's life
14 for any future, as I don't believe a life in prison
15 would qualify for a life, that this is --

16 **THE COURT:** Why do you say that?

17 **MR. MAY:** It -- my personal position, I believe,
18 Your Honor, that freedom is without "Give me liberty
19 or give me death", and that --

20 **THE COURT:** I understand.

21 **MR. MAY:** -- when you trample on somebody's
22 liberty from them -- not necessarily trample. But if
23 the State can prove its case to a jury, then it's up
24 to a jury of his peers, we'd ask for separate
25 sentencing and have a jury of his peers determine

1 whether or not this is an appropriate sentence.

2 When Gregg v. Georgia came out, the decency of
3 the United States had evolved from Furman. At least
4 that's what the Supreme Court said. And we started
5 having post Gray types of death penalty trials which
6 are bifurcated now in all the Circuits. I believe
7 that this is an appropriate --

8 **THE COURT:** Wait a minute. You say --

9 **MR. MAY:** Bifurcated.

10 **THE COURT:** On life without parole cases?

11 **MR. MAY:** Death penalty cases are bifurcated.

12 **THE COURT:** I know.

13 **MR. MAY:** And I'm saying that, analogously --

14 **THE COURT:** Does any state bifurcate life
15 without parole that you know of?

16 **MR. MAY:** We could be the first.

17 **THE COURT:** I could be the first. All right.

18 The motion is denied.

19 **MR. MAY:** Thank you, Your Honor.

20 **THE COURT:** I don't need any --

21 **MR. MAY:** Yes, sir. If I may approach and hand
22 up to you as well as opposing counsel case law from
23 the motion that is under advisement. Your Honor, may
24 I approach?

25 **THE COURT:** Yeah.

1 (Document handed to the Court)

2 **THE COURT:** All right. I've got as
3 outstanding -- and correct me if I'm wrong -- 6?

4 **MR. MAY:** Yes, sir.

5 **THE COURT:** 11?

6 **MR. MAY:** Yes, sir.

7 **THE COURT:** 13?

8 **MR. MAY:** Yes, sir.

9 **THE COURT:** 14, depending on his age.

10 **MR. MAY:** Yes, sir.

11 **THE COURT:** I'm not sure that that's going to
12 make a lot of difference because of the subsequent
13 convictions.

14 **MR. MAY:** I agree.

15 **MS. CAMPBELL:** Your Honor, I believe that's
16 addressed in the case I just handed up as well, the
17 Williams case. That was a juvenile.

18 **THE COURT:** I've got a stack of them. Williams.
19 You say that addresses that issue?

20 **MS. CAMPBELL:** I think so, Your Honor.

21 **THE COURT:** Well, then I'll let you know. And
22 18. I'll read the -- that's Williams again?

23 **MS. CAMPBELL:** Yes, sir, Your Honor. And could
24 I hand up some additional cases on 13 that
25 Ms. McDuffie has just brought me?

1 **THE COURT:** Yes.

2 **MS. CAMPBELL:** It would be State vs. Burdette,
3 State vs. Standard, State v. Spratt, State vs. Payne,
4 State vs. Rogers. I've already handed up Williams.
5 State vs. Jones, and then the Supreme Court of the
6 U.S. vs. -- Ricks vs. California.

7 **COURT REPORTER:** Ricks vs. who?

8 **MS. SIMPSON:** California.

9 **COURT REPORTER:** California? Thank you.

10 **MS. CAMPBELL:** Yes, ma'am.

11 **THE COURT:** Anything further?

12 **MR. MAY:** No, sir.

13 **MS. CAMPBELL:** No, Your Honor. May we approach
14 just about scheduling on Monday?

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

16 (Whereupon, a bench conference is had)

17 **THE COURT:** Oh.

18 **MR. MAY:** And, Your Honor.

19 **MS. CAMPBELL:** That's all we have today.

20 (Pause)

21 **THE COURT:** All right. Anything further?

22 **MR. MAY:** No, sir. No, Your Honor.

23 **THE COURT:** All right.

24 **MR. MAY:** Thank you, sir.

25 **THE COURT:** We'll stand at ease until Monday

1 morning.

2 (Whereupon, the proceedings are concluded, to be
3 reconvened Monday morning)

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Monday, June 14, 2010

1 **THE COURT:** Witness lists?

2 **MR. MAY:** Ours is the same as theirs, with the
3 addition of the defendant.
4

5 **MS. CAMPBELL:** Except the defendant. Permission
6 to approach?

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

8 **MS. CAMPBELL:** Your Honor, may we take up the
9 voir dire questions?

10 **THE COURT:** Certainly.

11 **MS. CAMPBELL:** As far as the defendant's -- and
12 I think it's reflected in ours -- make it reciprocal,
13 not just the victim of a violent crime, --

14 **THE COURT:** Right.

15 **MS. CAMPBELL:** -- charged or accused of a
16 violent crime.

17 **THE COURT:** I do that anyway.

18 **MS. CAMPBELL:** And number 2, we have no problem.
19 Number 3, ever testified in any criminal prosecution
20 for the State or the defense; if you choose to do
21 that one, Your Honor.

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

23 **MS. CAMPBELL:** I have no problem with 5 as long
24 as you add in victim's rights groups, Innocense
25 Project, things of that nature. And I believe

1 that --

2 **MR. MAY:** I believe 6 and 7 are the same.

3 **MS. CAMPBELL:** Yes.

4 **MR. MAY:** So --

5 **MS. CAMPBELL:** And I believe you're withdrawing
6 7?

7 **MR. MAY:** Well, I mean, 6 and 7 are virtually
8 the same thing.

9 **MS. CAMPBELL:** And I think 6 and 7 are in your
10 general charge anyway, Your Honor.

11 **THE COURT:** Right.

12 **MR. MAY:** As far as their -- I mean, theirs is
13 pretty much the reciprocal of ours.

14 **THE COURT:** Right. My standard voir dire is
15 pretty much along these lines. Look over the list.

16 (Pause)

17 **THE COURT:** All right. The State ready to
18 proceed?

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

20 **THE COURT:** Defense ready to proceed?

21 **MR. MAY:** Yes, Your Honor.

22 **THE COURT:** All right. Bring the jury, please.
23 Solicitor, where did these events allegedly take
24 place?

25 **MS. CAMPBELL:** Church's Fried Chicken right on

1 the corner of --

2 **MR. MAY:** Taylor and Forest and Millwood and Two
3 Notch.

4 **THE COURT:** I recall that.

5 **MS. CAMPBELL:** Technically, I guess it's
6 Millwood and Taylor.

7 **MR. MAY:** I don't know. I think it's probably
8 Forest. Forest Drive.

9 **MS. CAMPBELL:** Okay. Forest and Millwood. It's
10 that point where they all change.

11 **THE COURT:** I know.

12 **MS. CAMPBELL:** The address is Taylor Street.

13 (Pause)

14 **THE BAILIFF:** The jury panel is all present,
15 Your Honor.

16 **THE COURT:** All right. Thank you very much.
17 Good afternoon, ladies and gentlemen. We are --
18 well, let me say first, welcome to the Court of
19 General Sessions. This is the criminal division of
20 our court system. So those of you who are selected
21 on the jury today will be sitting on a criminal case.
22 And I'm going to tell you something about it in just
23 a few minutes and introduce the parties to you so
24 that you will know, and we need to know if you know
25 any of the people involved or know anything about

1 this case, because it's important that we have an
2 impartial jury that's not familiar with the facts or
3 familiar with the people involved, that sort of
4 thing, before we start.

5 Now, we're going to go through a series of
6 questions very similar to what you went through this
7 morning when you were qualified. But these questions
8 are more specific as to the case that you're about to
9 hear. If you answer or respond to any of my
10 questions, I'm going to ask you to stand and give me
11 your juror number.

12 The reason for that is I've found over the years
13 that in criminal cases particularly jurors; not
14 everybody, but generally speaking, prefer to be
15 identified by their number and not by their name. I
16 think jurors generally feel more comfortable just
17 being identified by their juror number as opposed to
18 their name. So at this point you may want to check,
19 know what your juror number is. All right.

20 Now, as in any case, any criminal case, the
21 cases are presented in South Carolina by the State
22 Solicitor's Office. Some states they call it the
23 District Attorney. Some places they call it the
24 State's Attorney. But in South Carolina we have a
25 system of solicitors who actually try and present the

1 cases to a jury.

2 As you know, you may have been introduced this
3 morning to your Fifth Judicial Circuit elected
4 solicitor named Barney Giese. He may have been down
5 there this morning. I need to know if any member of
6 the jury panel or any member of your family is
7 related to Mr. Barney Giese. Anybody know Mr. Giese,
8 have any relationship with Mr. Giese? All right.

9 Mr. Giese will not actually be doing the
10 presentation today or not conducting the trial. That
11 will be done by Deputy Solicitor Luck Campbell and
12 Assistant Solicitor Nicole Simpson. If you two will
13 rise, please.

14 Any member of the jury panel related by blood,
15 connected by marriage or employment or a close
16 personal acquaintance of either Ms. Luck Campbell or
17 Ms. Nicole Simpson? If so, please stand. Anybody
18 know either of these two attorneys, work in the
19 office of the solicitor?

20 Any member of the jury panel know any member,
21 have any relationship with any member of the staff of
22 the Fifth Judicial Circuit Solicitor's Office? All
23 right.

24 Now, because the Solicitor's Office works very
25 closely with law enforcement, law enforcement

1 generally brings the cases to the Solicitor's Office
2 for presentation or for trial, I do need to know if
3 any member of the jury panel is related by blood or
4 connected by marriage to anybody that works in law
5 enforcement?

6 For example, anybody that works for the Richland
7 County Sheriff's Department or the City of Columbia
8 Police Department, any police agency, Forest Acres
9 Police, the SLED, State Law Enforcement Division, any
10 military police force or any other law enforcement
11 agency. Any member of the jury panel or any member
12 of your family work for a law enforcement agency? If
13 so, please stand. Yes, ma'am. And give me your
14 juror number, please.

15 **JUROR:** 24.

16 **THE COURT:** 44?

17 **JUROR:** 24.

18 **THE COURT:** 24. All right. I've got a list up
19 here. So it takes me just a minute to find you on my
20 list. Yes, ma'am, Ms. 24. And who is it?

21 **JUROR:** I have a niece that works with the
22 federal --

23 **THE COURT:** Ma'am?

24 **JUROR:** A niece that works with the federal
25 judges.

1 **THE COURT:** Oh. Federal police force?

2 **JUROR:** Yeah.

3 **THE COURT:** Okay. In Columbia?

4 **JUROR:** Yeah. Mm-hmm (affirmative).

5 **THE COURT:** Okay. Ma'am -- and I'm going to ask
6 this question of everybody that responds -- would
7 that fact in any way interfere with your ability to
8 give both the State and the defendant a fair and
9 impartial trial in this case?

10 **JUROR:** No.

11 **THE COURT:** Thank you very much. Yes, sir, on
12 the front row. Your number, please?

13 **JUROR:** 8.

14 **THE COURT:** Number 8? Yes, sir.

15 **JUROR:** Columbia Care, Just Care.

16 **THE COURT:** Who works there?

17 **JUROR:** I do.

18 **THE COURT:** Oh, you do. All right. I'm just
19 writing it down. Mr. 8 -- I know it sounds funny --
20 but would that fact in any way interfere with your
21 ability to give both the State and the defendant a
22 fair and impartial trial?

23 **JUROR:** No.

24 **THE COURT:** Thank you very much. The lady with
25 the green blouse on. Number?

1 **JUROR:** 137.

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

3 **JUROR:** I have a first cousin that works with
4 law enforcement. He's in Orangeburg County though.

5 **THE COURT:** In Orangeburg County?

6 **JUROR:** Yes.

7 **THE COURT:** Would that fact in any way interfere
8 with your ability to give both the State and the
9 defendant a fair and impartial?

10 **JUROR:** No.

11 **THE COURT:** Thank you very much. The lady with
12 the blue blouse.

13 **JUROR:** 293.

14 **THE COURT:** 293. Yes, ma'am.

15 **JUROR:** Son-in-law, the police department, City.

16 **THE COURT:** With the City?

17 **JUROR:** Yes, sir.

18 **THE COURT:** Son-in-law works for -- solicitor,
19 is this a City case?

20 **MS. CAMPBELL:** Yes, sir.

21 **THE COURT:** All right. Ma'am, you're going to
22 have to give me that person's name.

23 **JUROR:** Robert Fair.

24 **THE COURT:** Robert Fair. Solicitor, is Mr. Fair
25 or Officer Fair involved in this case?

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

2 **THE COURT:** All right. Thank you very much.

3 Ms. 293, would that fact in any way interfere with
4 your ability to give both the State and the defendant
5 a fair and impartial trial?

6 **JUROR:** No, sir.

7 **THE COURT:** Thank you very much. The lady with
8 the --

9 **JUROR:** I am 256.

10 **THE COURT:** Wait a minute. 256. Yes, ma'am.

11 **JUROR:** Joyce Speaks, she works with Richland
12 County.

13 **THE COURT:** You're who?

14 **JUROR:** Joyce Speaks.

15 **THE COURT:** How is she related to you?

16 **JUROR:** Second cousin.

17 **THE COURT:** Second cousins works for --

18 **JUROR:** Richland County.

19 **THE COURT:** Richland County Sheriff's
20 Department?

21 **JUROR:** Yes.

22 **THE COURT:** Ma'am, would that fact in any way
23 interfere with your ability to give both the State
24 and the defendant a fair and impartial trial?

25 **JUROR:** No, sir.

1 **THE COURT:** Thank you very much. The lady in
2 the black blouse.

3 **JUROR:** 291.

4 **THE COURT:** 291. Yes, ma'am.

5 **JUROR:** My dad is a police officer in Hampton
6 County.

7 **THE COURT:** Hampton County?

8 **JUROR:** Yes, sir.

9 **THE COURT:** Ma'am, would that fact in any way
10 interfere with your ability to give both the State
11 and the defendant a fair and impartial trial in this
12 case?

13 **JUROR:** No, sir.

14 **THE COURT:** Thank you very much. Anybody else?
15 All right.

16 I'm going to take that one step further. Any
17 member of the jury panel a regular contributor to or
18 supporter of, either financially or as a volunteer,
19 for any of the groups which have as their primary
20 function the support of law enforcement?

21 For example, groups such as Mothers Against
22 Drunk Driving or Students Against Drunk Driving or
23 the Trooper's Association or the Sheriff's
24 Association or Citizens Against Violence. I'm not
25 sure the exact name of that group. I even would

1 extend that to groups such as -- that you may
2 volunteer for, things like Sister Care, working with
3 inmates or prisoners who are returning to society,
4 the Austin Wilkes Society, something called an
5 Innocence Project.

6 Any member of the jury panel support these
7 groups either financially or with your time? Just
8 leave it at that. Any member of the jury panel?
9 Yes, ma'am. All I need you to do is to tell me --
10 give me your number and tell me the name of the group
11 that you -- you don't have to do it all the time.
12 But just, you can stand up. Yes, ma'am. Your
13 number, please?

14 **JUROR:** 127.

15 **THE COURT:** 127. Yes, ma'am.

16 **JUROR:** Palmetto Place Emergency Shelter.

17 **THE COURT:** It's called --

18 **JUROR:** Palmetto Place Emergency Shelter.

19 **THE COURT:** All right. Thank you, ma'am. And,
20 yes, ma'am.

21 **JUROR:** 308.

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

23 **JUROR:** Troopers Association.

24 **THE COURT:** All right. I always ask this
25 question, ma'am. Did you get a sticker to put on the

1 back of your car?

2 **JUROR:** Not yet. I just volunteered to
3 contribute a financial --

4 **THE COURT:** Okay. But you don't have the
5 sticker yet?

6 **JUROR:** No, sir.

7 **THE COURT:** Put it on your car.

8 **JUROR:** I will when I can receive it. They are
9 supposed to be mailing it to me.

10 **THE COURT:** Have you ever got a ticket?

11 **JUROR:** No, sir.

12 **THE COURT:** Well, you won't either.

13 **JUROR:** I hope not. Trooper -- number 12. And
14 Troopers Association. And, yeah, I got my sticker on
15 my car.

16 **THE COURT:** You've got it on your car?

17 **JUROR:** Yes, sir.

18 **THE COURT:** Good. Never got a ticket?

19 **JUROR:** Oh, yeah.

20 **THE COURT:** You did?

21 **JUROR:** Yes.

22 **THE COURT:** You just shot my theory down. Thank
23 you very much, ma'am. Sister care. Anybody
24 volunteer for any -- what do you all -- neighborhood
25 watch groups, things of that nature? Anybody work

1 with -- I think the Sheriff's Office has volunteer
2 groups. Does anybody work with any of these groups?
3 All right.

4 All right, ladies and gentlemen. The defendant
5 in this case today is Mr. Christopher Broadnax. Mr.
6 Broadnax, will you stand and face the jury, please.
7 This is Mr. Broadnax. Any member of the jury panel
8 related by blood or marriage, connected by marriage
9 or employment or a close personal acquaintance or an
10 acquaintance at all of Mr. Christopher Broadnax?
11 Anybody know Mr. Broadnax? All right. Thank you
12 very much.

13 Mr. Broadnax is represented in this matter today
14 by Mr. James May or Jim May and Mr. Charles Cochran.
15 These two attorneys represent Mr. Broadnax. Anybody
16 of the jury panel related by blood or marriage, close
17 personal acquaintance of either Mr. James May or
18 Mr. Charlie Cochran or have been represented by them
19 or any member of the public defender staff now or in
20 the past? Any member of the jury panel know either
21 of these attorneys? Thank you.

22 All right, ladies and gentlemen. What I hold in
23 my hands are four documents. They're known as
24 indictments and they are the normal process by which
25 the case is brought into court. They're not evidence

1 of anything. They're not evidence of anything about
2 Mr. Broadnax. They are what we call the charging
3 documents.

4 Any individual in this county, in this state, in
5 this nation is presumed innocent of the charges
6 brought by the State until such time as the State
7 proves those charges to a jury beyond a reasonable
8 doubt. So you are not to assume or presume anything
9 by the fact that the defendant has been indicted. As
10 I say, these merely set forth the facts as the State
11 believes are true and believes they can prove; but as
12 I say, the jury is not to infer or presume anything
13 about the defendant. The defendant is, as I say,
14 presumed innocent until proven guilty.

15 But these charges, as I say, charge the
16 defendant on May 24th 2009, just a little over a year
17 ago, with armed robbery and kidnapping. I'm going to
18 tell you a little bit about what these indictments
19 say. To begin with, the armed robbery is alleged to
20 have occurred at Church's Fried Chicken.

21 As you're going out Taylor Street where it hits
22 Forest Drive, just as you pass Benedict and before
23 you get to the Providence Hospital, there's a
24 Church's Fried Chicken on the right side. I guess it
25 sort of fronts on Millwood where it turns into Two

1 Notch, if you are with me in terms of location of
2 this business.

3 The armed robbery is alleged to have occurred
4 there on May 24th, 2009. And allegedly, as I say,
5 during that alleged armed robbery or associated with
6 the armed robbery three kidnapping charges, in that
7 Mr. Broadnax on or about May 24th did kidnap and hold
8 Donald Kirby, Gracious Tucker and Danny Weaver
9 against their will.

10 So those are the four allegations, first that on
11 May 24th the defendant was armed and robbed the
12 Church's Fried Chicken store and held three people
13 against their will.

14 Any member of the jury panel know anything about
15 this case, heard anything about it, read anything
16 about it just a year ago? I don't know if it was on
17 the news. I don't know if it was in the paper. It
18 might just jog your memory. Anybody live in that
19 vicinity that might have some knowledge? Anybody?

20 All right, ma'am. If you'll come forward. I'm
21 going to ask you, if you will, to come forward and
22 tell me your number. What was your number again?

23 **JUROR:** 308.

24 **THE COURT:** 308. And I'm going to speak with
25 you privately about this because I don't want to -- I

1 don't know what you know. So I'm going to ask you to
2 just tell me privately so that -- yes, ma'am.

3 Ms. 308, just come on up.

4 **JUROR:** Just come on up?

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

6 (Whereupon, a bench conference is had)

7 **THE CLERK:** Number 138.

8 (Whereupon, a bench conference is had)

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

10 **THE CLERK:** Number 214.

11 (Whereupon, a bench conference is had)

12 **THE COURT:** All right. All right, ladies and
13 gentlemen. I'm going to call out a list of names
14 that may be witnesses in this case. And the question
15 is the same as to all witnesses. Is any member of
16 the jury panel related by blood, connected by
17 marriage or employment or a close personal
18 acquaintance of any one of the following. Now, I
19 didn't ask this, but I'll do it again.

20 As the persons who were allegedly at the store
21 and who were allegedly kidnapped, Donald Kirby, any
22 member of the jury panel know that individual or that
23 name? Mr. Kirby is -- and I should have said this.
24 Any witness who is present, if you'll stand so the
25 jury can identify you if they can. Anybody know Mr.

1 Kirby? Whoa. Donald Kirby. Yes, sir. And how do
2 you know Mr. Kirby?

3 **JUROR:** I ran the Dollar General and Mr. Kirby
4 used to come into the store quite often.

5 **THE COURT:** Can you tell me --

6 **JUROR:** As a customer. And we developed like a
7 friendship. So I've known him and would talk to him.
8 And I know his father, some of his family.

9 **THE COURT:** Okay. Well, let me ask you this,
10 Mr. -- what was your number again?

11 **JUROR:** 138.

12 **THE COURT:** 138.

13 **JUROR:** Yes, sir.

14 **THE COURT:** The fact that you know this witness,
15 do you think you could be fair and impartial in this
16 case? Do you still feel you could be?

17 **JUROR:** To be honest with you, I mean, I like
18 the young man, I like his family and I did not know
19 that this had happened to him. So to be honest, to
20 be fair and impartial, I don't know.

21 **THE COURT:** Okay.

22 **JUROR:** It would be difficult.

23 **THE COURT:** Okay. Thank you very much, Mr. 138.

24 **JUROR:** Mm-hmm (affirmative).

25 **THE COURT:** Anybody else know this gentleman?

1 Gracious Tucker. She is not here right now. Anybody
2 know that name? Now, to save you from cricking your
3 neck, if any witnesses are here, I'll tell you so you
4 can look. Every time I mention a name, you go turn
5 all the way around. I'll tell you.

6 Danny Weaver. Danny Weaver is not here right
7 now. Anybody know that name? Charles Green. Arthur
8 Haynes. That's Mr. Haynes. Anybody know Mr. Haynes?
9 Thank you, sir. Timothy Baire with the Columbia
10 Police Department. Is he here? Anybody know
11 Mr. Baire?

12 John Walker, Columbia Police Department. Oh,
13 I'm sorry. This is Ms. Tucker that just walked in.
14 Ms. Gracious Tucker. Anybody know Ms. Tucker? John
15 Walker, Columbia Police Department. Michael
16 Ridgeway, Columbia Police Department. This is
17 Mr. Ridgeway. Anybody know Mr. Ridgeway?

18 Mark Spires, the Columbia Police Department.
19 Jonathan Brayboy, Columbia Police Department. Daniel
20 Labonte, Columbia Police Department. Harry Delage,
21 Columbia Police Department. Arthur Thomas, Columbia
22 Police Department. Investigator Thomas. Anybody
23 know Mr. Thomas? James Evans, Columbia Police
24 Department. Investigator Walter Rose, Columbia
25 Police Department. Steve Rice, Columbia Police

1 Department.

2 Jennifer Blair, 911 operator. Rosalind Glover
3 with Alvin S. Glenn Detention Center. Captain Bryan
4 Redmond with the Alvin S. Glenn Detention Center.
5 Yes, sir. Your number, please?

6 **JUROR:** Number 51.

7 **THE COURT:** Yes, sir. And how do you know
8 Captain Redmond?

9 **JUROR:** I'm familiar with the detention center.
10 I used to work there years ago.

11 **THE COURT:** You did used to work there?

12 **JUROR:** Yes, sir.

13 **THE COURT:** All right. Mr. 51, would the fact
14 that you -- I mean, other than that, do you have any
15 other relationship with him outside the work
16 environment?

17 **JUROR:** No, sir. I haven't seen him in 15
18 years.

19 **THE COURT:** Okay. Would the fact that you at
20 one time worked with Captain Redmond, would that in
21 any way interfere with your ability to give both the
22 State and the defendant a fair and impartial trial?

23 **JUROR:** No, sir.

24 **THE COURT:** Thank you very much. Anybody else?
25 Veronica Williams. All right.

1 Now, any member of the jury panel or any member
2 of your family ever been the victim of a violent
3 crime? And that doesn't have to be armed robbery.
4 It could be any violent crime. Any member of the --
5 if they have, I'm going to ask you to stand, give me
6 your number. I'm just going to ask you one or two
7 questions. I'm not going to ask you a lot of
8 questions about it. Any member of the jury panel?
9 Yes, sir. And your number again, please?

10 **JUROR:** I'm sorry. Number 8.

11 **THE COURT:** 8. And can you tell me about it or
12 would you rather approach the bench?

13 **JUROR:** I can tell you about it.

14 **THE COURT:** All right.

15 **JUROR:** It was armed robbery.

16 **THE COURT:** How long ago?

17 **JUROR:** Seven years ago.

18 **THE COURT:** And was it you or a member of your
19 family?

20 **JUROR:** My aunt. My aunt.

21 **THE COURT:** Your aunt. Okay. Was that in
22 Richland County?

23 **JUROR:** No. It was in Clarendon County.

24 **THE COURT:** All right. Would that fact in any
25 way interfere with your ability, sir, number 8, to

1 give both the State and the defendant a fair and
2 impartial trial?

3 **JUROR:** No.

4 **THE COURT:** Thank you very much, sir. Yes,
5 ma'am. Would you like to come forward and tell me
6 about it?

7 **JUROR:** Sir?

8 **THE COURT:** I said would you prefer to come
9 forward and tell me about it or can you tell me about
10 it from your seat?

11 **JUROR:** I can do it from here.

12 **THE COURT:** All right. How long ago?

13 **JUROR:** It's been over ten years I think.

14 **THE COURT:** Are you the victim or a member of
15 your family?

16 **JUROR:** A member of my family.

17 **THE COURT:** All right. Did it take place in
18 Richland County?

19 **JUROR:** Yes, sir.

20 **THE COURT:** Will you tell me what kind of crime
21 it was?

22 **JUROR:** Robbery and I believe attempted murder.

23 **THE COURT:** Okay. And what was your number
24 again, please?

25 **JUROR:** 204.

1 **THE COURT:** 204. Ms. 204, would that fact in
2 any way interfere with your ability to give both the
3 State and the defendant a fair and impartial trial?

4 **JUROR:** No, sir.

5 **THE COURT:** Thank you very much, ma'am. I was
6 going to say you're 214. 214.

7 **JUROR:** Yes, sir.

8 **THE COURT:** Okay. I thought I heard you say
9 204. All right. Yes, ma'am. And your number?

10 **JUROR:** 236.

11 **THE COURT:** 236. Yes, ma'am.

12 **JUROR:** It was a member of my family and me.

13 **THE COURT:** A neighbor?

14 **JUROR:** A member of the family.

15 **THE COURT:** A neighbor of the family.

16 **JUROR:** And me.

17 **THE COURT:** Oh, a member of the family. And can
18 you tell me what it was?

19 **JUROR:** Can I approach the bench?

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

21 **JUROR:** Okay.

22 (Whereupon, a bench conference is had)

23 **THE COURT:** Anybody else? All right. I'm going
24 to turn that around. Any member of the jury panel or
25 any member of your family been accused of committing

1 a violent crime? Any member of the jury panel or any
2 member of your family been accused, and to the point
3 of involving law enforcement, of committing a violent
4 crime? And your number, please?

5 **JUROR:** 16.

6 **THE COURT:** 16?

7 **JUROR:** Mm-hmm (affirmative).

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

9 **JUROR:** Actually I'm not sure if I shouldn't
10 have stood up the last time. But my cousin actually
11 was -- he's accused. He's in jail for robbery.

12 **THE COURT:** Okay. Your cousin?

13 **JUROR:** First cousin.

14 **THE COURT:** First cousin.

15 **JUROR:** Mm-hmm (affirmative).

16 **THE COURT:** Okay. And is that all you wanted to
17 tell me?

18 **JUROR:** Oh, yeah. That's it.

19 **THE COURT:** Okay. Ms. 16, do you think you
20 could be fair and impartial to both parties?

21 **JUROR:** Yes.

22 **THE COURT:** Thank you very much, ma'am. 214.

23 **JUROR:** Yes, sir.

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

25 **JUROR:** I had a brother convicted, well, I guess

1 convicted of attempted murder.

2 **THE COURT:** How long ago?

3 **JUROR:** About seven years.

4 **THE COURT:** All right. I ask you the same
5 question. Do you still feel like you could be fair
6 and impartial to both parties now?

7 **JUROR:** Yes, sir.

8 **THE COURT:** Thank you very much. The gentleman
9 with the blue shirt.

10 **JUROR:** 306.

11 **THE COURT:** 306. Yes, sir.

12 **JUROR:** I had a brother. He went to jail. I'm
13 not sure of the charges. I believe assault was the
14 charges.

15 **THE COURT:** How long ago?

16 **JUROR:** Like nine or ten years ago.

17 **THE COURT:** That obviously has been finished by
18 now.

19 **JUROR:** Yes, sir.

20 **THE COURT:** Would that fact in any way interfere
21 with your ability to give both the State and the
22 defendant a fair and impartial trial?

23 **JUROR:** No, sir.

24 **THE COURT:** Thank you very much, sir. Yes, sir.

25 **JUROR:** 305.

1 **THE COURT:** 305?

2 **JUROR:** Yes, sir.

3 **THE COURT:** Yes, sir.

4 **JUROR:** Son -- well, stepson, convicted of
5 reckless driving.

6 **THE COURT:** How long ago?

7 **JUROR:** It has been about maybe five years ago.

8 **THE COURT:** Five years ago.

9 **JUROR:** He'd been out five years.

10 **THE COURT:** Okay. Some time before that?

11 **JUROR:** Right.

12 **THE COURT:** Mr. 305, would that fact in any way
13 interfere with your ability to give both the State
14 and the defendant a fair and impartial trial?

15 **JUROR:** No, Your Honor.

16 **THE COURT:** Thank you very much, sir. Yes, sir.

17 **JUROR:** 253.

18 **THE COURT:** 253. Yes, sir.

19 **JUROR:** I have a first cousin. He was convicted
20 of armed robbery.

21 **THE COURT:** Okay. How long ago?

22 **JUROR:** Probably about eight years ago.

23 **THE COURT:** In Richland County?

24 **JUROR:** No. It was Lee County.

25 **THE COURT:** Okay. Would that fact in any way

1 interfere with your ability to give both the State
2 and the defendant a fair and impartial trial?

3 **JUROR:** No, sir.

4 **THE COURT:** Thank you very much. Anybody else?

5 **JUROR:** It's 16 again. And my father was
6 actually accused of assault last year.

7 **THE COURT:** Okay. Has that matter been
8 resolved?

9 **JUROR:** I'm not sure. I don't think so.

10 **THE COURT:** Okay. Was that in Richland County?

11 **JUROR:** Yes.

12 **THE COURT:** All right. Again, would that fact,
13 that fact in any way interfere with your ability to
14 give both the State and the defendant a fair and
15 impartial trial?

16 **JUROR:** No.

17 **THE COURT:** Thank you very much, Ms. 16. All
18 right. All right. Ladies and gentlemen, I've
19 introduced the parties to you. I have told you about
20 the case, introduced the witnesses to you. I've
21 asked you questions about your personal life. I need
22 to know if any member -- based on all of that, if any
23 member of the jury panel feels that they could not
24 sit impartially, listen to the facts in this case,
25 listen to the attorneys, listen to the Court; that

1 is, what instructions I would give you with regard to
2 the law of South Carolina as it applies in this case,
3 and feel they could not sit and fairly determine the
4 guilt or innocence of the defendant? Any member of
5 the jury panel feel for any reason that they could
6 not sit and make such a decision in this case? Other
7 than the gentleman who has already told me that he
8 would have a problem. Anything further from the
9 State?

10 **MS. CAMPBELL:** Nothing from the State, Your
11 Honor.

12 **THE COURT:** From the defense?

13 **MR. MAY:** No, sir.

14 **THE COURT:** All right. Approach the bench just
15 one second.

16 (Whereupon, a bench conference is had)

17 **THE COURT:** Juror 170.

18 **JUROR:** 170?

19 **THE COURT:** Yeah. 1-7-0. Are you 170?

20 **JUROR:** Yes, sir, I am.

21 **THE COURT:** Okay. Stand up. Defense counsel is
22 named James May.

23 **JUROR:** I know that. I noticed that. I'm not
24 related to him.

25 **THE COURT:** You're not related?

1 **JUROR:** Not that I know of.

2 **THE COURT:** Okay. Any other connection with
3 this gentleman that you know of?

4 **JUROR:** No, sir.

5 **THE COURT:** All right. And what's the name?

6 **JUROR:** Frankie Varn. Yes.

7 **THE COURT:** Okay. Barnum as you say?

8 **MR. MAY:** Varn, V-A-R-N.

9 **THE COURT:** You know Mr. Varn?

10 **MR. MAY:** Yes, sir.

11 **JUROR:** Yes, sir.

12 **THE COURT:** Apparently he's a close friend of
13 Mr. May.

14 **JUROR:** Oh. I just realized who he is. I am,
15 yes. Sorry. I didn't realize who he was.

16 **THE COURT:** He's a forgettable character.

17 **JUROR:** No, he's not. He's not. I was just
18 preoccupied.

19 **THE COURT:** All right. Ms. 170, now that I've
20 jogged your memory, would that fact in any way
21 interfere with your ability to give both the state
22 and the defendant a fair and impartial trial?

23 **JUROR:** No.

24 **THE COURT:** You still feel comfortable?

25 **JUROR:** Yes, sir.

1 **THE COURT:** All right. Thank you very much,
2 ma'am. See, we know a lot about you. Anybody else
3 feel that they could not sit and be fair and
4 impartial?

5 All right, Madam Clerk. Give us a jury. Now,
6 what we're going to do at this time, ladies and
7 gentlemen, is draw 12 names for the primary jury, two
8 alternates. The clerk is going to tell you how we're
9 going to do that after which I am going to release
10 the remaining panel for lunch and I'll tell you more
11 about it after that. Some of you look like you're
12 getting hungry. Madam Clerk.

13 **THE CLERK:** Yes, Your Honor. Ladies and
14 gentlemen of the jury, as I call your number, please
15 come down and stand in front of the microphone here
16 facing the State and the defense and give us your
17 occupation only. All right? Bring all your
18 belongings with you. Okay? Number 275.

19 (White male)

20 **JUROR:** Where do I stand?

21 **THE CLERK:** Right here. Face that way. Give us
22 your occupation.

23 **JUROR:** I work at Pizza Hut.

24 **THE CLERK:** What says the State?

25 **MS. CAMPBELL:** Please present the juror.

1 **THE CLERK:** What says the defense?

2 **MR. MAY:** Please excuse this juror.

3 **THE CLERK:** Have a seat in the back of the
4 courtroom, please.

5 **THE COURT:** What did he say his occupation was?

6 **THE CLERK:** Pardon me?

7 **THE COURT:** What was his occupation?

8 **THE CLERK:** Pizza Hut. Number 241.

9 (Black male)

10 **THE CLERK:** Just give us your occupation,
11 please.

12 **JUROR:** Transportation coordinator, DMV.

13 **THE CLERK:** What says the defense?

14 **MS. CAMPBELL:** Please present this juror.

15 **THE CLERK:** What says the defense?

16 **MR. MAY:** Please seat this juror.

17 **THE CLERK:** Please have a seat in the jury box.
18 Number 96.

19 (White male)

20 **JUROR:** I'm a consulting engineer.

21 **THE CLERK:** What says the State?

22 **MS. CAMPBELL:** Please present the juror.

23 **THE CLERK:** What says the defense?

24 **MR. MAY:** Please seat the juror.

25 **THE CLERK:** Have a seat in the jury box, please.

1 Number 236.

2 (White female)

3 **JUROR:** I'm a server.

4 **THE CLERK:** What says the State?

5 **MS. CAMPBELL:** Please present the juror.

6 **THE CLERK:** What says the defense?

7 **MR. MAY:** Please excuse this juror.

8 **THE CLERK:** Have a seat in the back of the
9 courtroom. Number 26.

10 (White female)

11 **JUROR:** I'm a homemaker and home school
12 educator.

13 **THE CLERK:** What says the State?

14 **MS. CAMPBELL:** Please present the juror.

15 **THE CLERK:** What says the defense?

16 **MR. MAY:** Please excuse this juror.

17 **THE CLERK:** Have a seat in the back of the
18 courtroom, please. Number 210.

19 (Black male)

20 **JUROR:** I'm a brick mason.

21 **THE CLERK:** What says the State?

22 **MS. CAMPBELL:** Please excuse the juror.

23 **THE CLERK:** Have a seat in the back of the
24 courtroom, please. Number 121.

25 (White male)

1 **JUROR:** I'm a teacher.

2 **THE CLERK:** What says the State?

3 **MS. CAMPBELL:** Please present the juror.

4 **MR. MAY:** Please seat this juror.

5 **THE CLERK:** Seat in the jury box, please.

6 **COURT REPORTER:** I didn't hear his employment,

7 Your Honor.

8 **THE COURT:** Teacher.

9 **COURT REPORTER:** Oh. Thank you.

10 **JUROR:** Number 305.

11 (Black male)

12 **JUROR:** I'm retired.

13 **THE CLERK:** What says the State?

14 **MS. CAMPBELL:** Please excuse this juror.

15 **THE CLERK:** Have a seat in the back of the

16 courtroom, please. Number 1.

17 (White male)

18 **JUROR:** Middle school teacher.

19 **THE CLERK:** What says the State?

20 **MS. CAMPBELL:** Please present the juror.

21 **THE CLERK:** What says the defense?

22 **MR. MAY:** Please seat this juror.

23 **THE CLERK:** Have a seat in the jury box, please.

24 Number 167.

25 (White female)

1 **JUROR:** I'm a student.

2 **THE CLERK:** What says the State?

3 **MS. CAMPBELL:** Please present the juror.

4 **THE CLERK:** What says the defense?

5 **MR. MAY:** Please seat this juror.

6 **THE CLERK:** Have a seat in the jury box, please.

7 Number 127.

8 (White female)

9 **JUROR:** I'm a realtor.

10 **THE CLERK:** What says the State?

11 **MS. CAMPBELL:** Please present the juror.

12 **THE CLERK:** What says the defense?

13 **MR. MAY:** Please excuse this juror.

14 **THE CLERK:** Have a seat in the back of the

15 courtroom, please. Number 159.

16 (White female)

17 **JUROR:** I'm a teacher.

18 **THE CLERK:** What says the State?

19 **MS. CAMPBELL:** Please present the juror.

20 **THE CLERK:** What says the defense?

21 **MR. MAY:** Please seat this juror.

22 **THE CLERK:** Have a seat in the jury box, please.

23 Number 291.

24 (Black female)

25 **JUROR:** School counselor.

1 **THE CLERK:** What says the State?

2 **MS. CAMPBELL:** Please present the juror.

3 **THE CLERK:** What says the defense?

4 **MR. MAY:** Please excuse this juror.

5 **THE CLERK:** Have a seat in the back of the
6 courtroom. Number 12.

7 (White female)

8 **THE CLERK:** Occupation, please?

9 **JUROR:** Oh. I'm unemployed.

10 **THE CLERK:** What says the State?

11 **MS. CAMPBELL:** Please present the juror.

12 **THE CLERK:** What says the defense?

13 **MR. MAY:** Please excuse this juror.

14 **THE CLERK:** Have a seat in the back of the
15 courtroom, please. Number 166.

16 (White male)

17 **JUROR:** I'm a finance manager.

18 **THE CLERK:** What says the State?

19 **MS. CAMPBELL:** Please present the juror.

20 **THE CLERK:** What says the defense?

21 **MR. MAY:** Please seat this juror.

22 **THE CLERK:** Have a seat in the jury box, please.
23 Number 53.

24 (White male)

25 **JUROR:** I'm a city planner.

1 **THE CLERK:** What says the State?

2 **MS. CAMPBELL:** Please present the juror.

3 **THE CLERK:** What says the defense?

4 **MR. MAY:** Please seat this juror.

5 **THE CLERK:** Have a seat in the jury box, please.

6 Number 308.

7 (Black female)

8 **JUROR:** Occupation, customer service, currently
9 unemployed.

10 **THE CLERK:** What says the State?

11 **MS. CAMPBELL:** Please present the juror.

12 **THE CLERK:** What says the defense?

13 **MR. MAY:** Please excuse this juror.

14 **THE CLERK:** Have a seat in the back of the
15 courtroom, please. Number 59.

16 (White female)

17 **JUROR:** A student.

18 **THE CLERK:** What says the State?

19 **MS. CAMPBELL:** Please present the juror.

20 **THE CLERK:** What says the defense?

21 **MR. MAY:** Please seat this juror.

22 **THE CLERK:** Have a seat in the jury box, please.

23 Number 253.

24 (Black male)

25 **JUROR:** I'm a truck driver.

1 **THE CLERK:** What says the State?

2 **MS. CAMPBELL:** Please present the juror.

3 **THE CLERK:** What says the defense?

4 **MR. MAY:** Please seat this juror.

5 **THE CLERK:** Have a seat in the jury box.

6 **MS. CAMPBELL:** Your Honor, may I approach?

7 (Whereupon, a bench conference is had)

8 **THE COURT:** Mr. 253, just have a seat back in
9 the back of the courtroom, please. The State
10 exercised a strike with regard to 253.

11 **MS. CAMPBELL:** Thank you, Your Honor.

12 **THE CLERK:** Yes, Your Honor.

13 **THE COURT:** Sorry about that, Mr. 253.

14 **THE CLERK:** Number 24.

15 (Black female)

16 **JUROR:** I am disabled. I am unemployed right
17 now.

18 **THE CLERK:** What says the State?

19 **MS. CAMPBELL:** Please present the juror.

20 **THE CLERK:** What says the defense?

21 **MR. MAY:** Please seat the juror.

22 **THE CLERK:** Have a seat in the jury box, please.
23 Number 17.

24 (White male)

25 **JUROR:** I am a vocational rehabilitation

1 counselor.

2 **THE CLERK:** What says the State?

3 **MS. CAMPBELL:** Please present the juror.

4 **THE CLERK:** What says the defense?

5 **MR. MAY:** Please seat this juror.

6 **THE CLERK:** Have a seat in the jury box, please.

7 Number 101.

8 **JUROR:** Sales.

9 **THE CLERK:** What says the State?

10 **MS. CAMPBELL:** Please present the juror.

11 **THE CLERK:** What says the defense?

12 **MR. MAY:** Please seat this juror.

13 **THE CLERK:** Have a seat in the jury box, please.

14 Number 193.

15 (White male)

16 **THE COURT:** Just hold on a minute. Hold on.

17 **MR. MAY:** Two?

18 **THE CLERK:** Two.

19 **JUROR:** Security technician.

20 **THE CLERK:** What says the State?

21 **MS. CAMPBELL:** Please present the juror.

22 **THE CLERK:** What says the defense?

23 **MR. MAY:** Please excuse this juror.

24 **THE CLERK:** Have a seat in the back of the
25 courtroom.

1 **THE COURT:** Just hold on one minute.

2 **THE CLERK:** Pardon me?

3 **THE COURT:** Approach the bench, counsel.

4 (Whereupon, a bench conference is had)

5 **THE COURT:** You may continue.

6 **THE CLERK:** Thank you, Your Honor. Number 205.

7 (White female)

8 **JUROR:** Retired school teacher.

9 **THE CLERK:** What says the State?

10 **MS. CAMPBELL:** Please present the juror.

11 **THE CLERK:** What says the defense?

12 **MR. MAY:** Please seat this juror.

13 **THE CLERK:** Have a seat in the jury box, please.

14 Number 306.

15 (Black male)

16 **JUROR:** I'm a real estate agent.

17 **THE CLERK:** What says the State?

18 **MS. CAMPBELL:** Please excuse the juror.

19 **THE CLERK:** Have a seat in the back of the
20 courtroom. Number 256.

21 (Black female)

22 **JUROR:** Social worker.

23 **THE CLERK:** Does the State challenge for cause?

24 **MS. CAMPBELL:** This is the second.

25 **THE CLERK:** I'm sorry. I'm sorry. What says

1 the State? I apologize.

2 **MS. CAMPBELL:** Please present the juror.

3 **THE CLERK:** What says the defense?

4 **MR. MAY:** Please seat this juror.

5 **THE CLERK:** Have a seat in the jury box, please.

6 **THE COURT:** Any objections to the jury selection
7 process?

8 **MS. CAMPBELL:** None from the State, Your Honor.

9 **MR. MAY:** None from the defense, Your Honor.

10 **THE COURT:** All right. Thank you very much.

11 All right. Remaining members of the jury panel who
12 were not selected on this jury, I'm going to ask you
13 to return to the jury assembly room. I think what
14 they're going to do is release you for lunch. And
15 the lady down there knows whether we are going to
16 need you any more today or later this week. But for
17 now you're excused.

18 But I do want to take this opportunity before
19 you leave to thank you very much for coming. I will
20 tell you that your service on a jury, even though you
21 didn't get selected, is important. It's important
22 that we have people, citizens who are willing to come
23 sit and hear these matters, resolve these matters in
24 our community.

25 Your participation in this process is essential

1 to the justice system that we have in this county and
2 in this state and in this nation. I want you to know
3 that and I want to thank you for coming. You're now
4 excused. Just return by the jury assembly room.
5 They'll give you further instructions. Thank you.

6 (Pause)

7 **THE COURT:** All right, ladies and gentlemen of
8 the jury. I am going to excuse you now until 9:30 in
9 the morning at which time we'll actually start the
10 trial. The reason for this is there are a number of
11 matters I need to take up with the attorneys, and I
12 think by doing that this afternoon, we'll continue to
13 work, it will make the process of the trial a lot
14 smoother when we begin tomorrow. So I'm going to
15 excuse you now.

16 The bailiffs, the gentlemen with the maroon
17 jackets, are going to show you where your jury room
18 is. So when you return to the courthouse in the
19 morning, I'm going to ask you to come to the third
20 floor for your jury room. If you go back downstairs
21 to the jury assembly room, I'll just have to send out
22 a posse to see if we can find you.

23 Now, there are a couple of things that I do need
24 for you to do. First off I'm going to caution you
25 not to try to find out something about this case on

1 the Internet or anything like that. You're going to
2 be asked to decide this case based on the evidence
3 that you hear in the courtroom during the next day or
4 two. I don't think it will last the entire week but
5 it may. I doubt it.

6 But, nevertheless, it would be highly improper
7 to say, well, maybe I'll just ride out there to
8 Church's Fried Chicken and have me a drumstick and
9 see if I can see where this thing took place. That
10 would be improper. You're going to hear all the
11 evidence in this case right here in the courtroom.
12 So I'm going to ask you, please do not do that.
13 Please do not try to do any Internet search or
14 anything about the case or the people involved.
15 That's my first request.

16 Actually it's almost in the form of an order,
17 but I'll tell you more about that tomorrow. Because
18 we've been ordered; that is, myself by the Supreme
19 Court to caution jurors about doing independent
20 research.

21 The second thing I'm going to ask you to do is
22 when you return to the jury room in the morning,
23 select one of your members. It cannot be the last
24 two ladies who were selected but one of your members
25 to serve as foreperson of the jury. That person will

1 take the seat where the gentleman is seated on the
2 front row with the white shirt and will continue to
3 maintain that seat throughout the trial. The rest of
4 the seats don't have any numbers or names in them. I
5 just want you to sit where you're most comfortable.
6 If you have a hearing problem, for example, you may
7 want to sit close to the front of the jury. All the
8 witnesses are going to testify right here from this
9 stand and most of the other trial activities will
10 take place right here in front of you. So I'll ask
11 you to do that.

12 I'll ask you not to discuss this case with
13 anyone over the evening hours also. It is very easy
14 to maybe tell your friends or family that you've been
15 selected on an armed robbery case; and somebody will
16 say, oh, I know all about that, you ought to do this,
17 you ought to do that. It would be improper.

18 People don't really intentionally try to
19 interfere with your judgment or anything like that,
20 but you just never know what people are going to say.
21 So I'll ask you to -- certainly you can tell people
22 you're on a jury, but just tell them that the judge
23 instructed you not talk about it.

24 And the final thing I'm going to ask you to do
25 is just have a pleasant evening. Be back at 9:30 in

1 the morning at which time we'll commence the trial.

2 Thank you very much.

3 (Jury out at 2:00 p.m.)

4 **THE COURT:** All right. We'll stand at ease
5 until 3:00.

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

7 **MR. MAY:** Thank you, Your Honor.

8 (Whereupon, a lunch break is taken)

9 (WHEREUPON, State's Exhibit No. 1 is marked for
10 identification.)

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

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

15 **THE COURT:** All right. The State ready to
16 proceed?

17 **MS. CAMPBELL:** The State's ready, Your Honor.

18 **THE COURT:** Defense ready to proceed?

19 **MR. MAY:** Yes, Your Honor.

20 **THE COURT:** In terms of the order of these
21 motions, number 6 is the first -- as I recall, the
22 first motion that needs evidence to be presented, and
23 no decision has been made. Is that correct?

24 **MS. CAMPBELL:** I've lost my list, Your Honor.
25 I'm sorry.

1 **MR. MAY:** That's correct.

2 **THE COURT:** All right.

3 **MR. MAY:** Your Honor, just for procedures sake,
4 if I may do this before we start out?

5 **THE COURT:** Yeah.

6 **MR. MAY:** Your Honor, as I informed you and the
7 solicitor, Mr. Broadnax is also pursuing PCR issues
8 against the other convictions. And at this time the
9 defense would ask for a continuance during the
10 pendency of those PCR's to see if this is truly an
11 LWOP case or not.

12 **THE COURT:** Do you have any support for that
13 position?

14 **MR. MAY:** No, sir. Judicial economy.

15 **THE COURT:** I understand. The motion is denied.
16 How do you wish to proceed? You're moving to exclude
17 all evidence seized from the Dodge Ram pick-up truck,
18 correct?

19 **MR. COCHRAN:** That's correct, Your Honor.

20 **THE COURT:** All right. Is the State ready to
21 proceed? Call your first witness.

22 **MS. CAMPBELL:** The State would call Michael
23 Ridgeway.

24 **MICHAEL RIDGEWAY,** after being duly sworn,
25 testifies as follows:

1 **THE CLERK:** Thank you. Have a seat in the
2 witness stand, please. Give your name to the court
3 reporter.

4 **THE WITNESS:** My name is Officer Michael
5 Ridgeway.

6 **MS. CAMPBELL:** Your Honor, may we approach?

7 **THE COURT:** Sure.

8 (Whereupon, a bench conference is had)

9 **MS. CAMPBELL:** Well, proceed.

10 **MR. MAY:** Your Honor, we would object at this
11 time. Seeing as these are all issues of credibility
12 as far as sequentially what occurred, we would ask
13 that everybody be sequestered during this testimony
14 so that way the testimony does not match up.

15 **THE COURT:** All right.

16 **MS. CAMPBELL:** Your Honor, typically we don't
17 have a problem sequestering lay witnesses. I believe
18 the only witness in the courtroom at this time is
19 Mr. Haynes if you want me to have him leave.

20 **THE COURT:** Well, I think he's moving on behalf
21 of the officers as well.

22 **MR. MAY:** I'd ask the officers as well.

23 **MS. CAMPBELL:** It's been done before, Your
24 Honor, and you've denied that request on numerous
25 occasions.

1 **THE COURT:** Well, this issue -- let's put it
2 this way. Anybody, any officer that was involved
3 with the chase if there was one, the stop if there
4 was one, the search if there was one, since that all
5 ties into the evidence, I'll grant his motion. Now,
6 officers who were involved some other way, I mean,
7 that may be all of them --

8 **MS. CAMPBELL:** That's every officer I have.

9 **THE COURT:** Okay. Except Mr. Thomas.

10 **MS. CAMPBELL:** He was there at the search also,
11 Your Honor.

12 **THE COURT:** Well, he obviously is your
13 investigating officer, isn't he?

14 **MS. CAMPBELL:** Yes, sir.

15 **THE COURT:** All right. The motion is granted.

16 **MR. MAY:** Thank you, Your Honor.

17 **MS. CAMPBELL:** For purposes of this hearing?

18 **THE COURT:** For purposes of this hearing.

19 **MS. CAMPBELL:** Thank you.

20 **THE COURT:** You may proceed.

21 **MS. CAMPBELL:** Thank you.

22 DIRECT EXAMINATION

23 **BY MS. CAMPBELL**

24 **Q** Officer, where are you employed?

25 **A** I am employed with the University of South Carolina,

1 Division of Law Enforcement Safety.

2 Q And how long have you been working there, sir?

3 A I've been working there since September of last year.

4 Q September of 2009?

5 A That's correct.

6 Q And prior to that where were you employed?

7 A I was employed with the Columbia Police Department.

8 Q And what did you do there?

9 A I was a patrolman in the Metro Region.

10 Q And you said you were a patrolman in the Metro
11 Region. What part of town does the Metro Region
12 cover?

13 A Metro Region covers basically the downtown area of
14 Columbia which would be everything from Heyward
15 Street north to Calhoun Street and everything from
16 the river all the way back to where Forest Acres and
17 Richland County pick up in the Two Notch Road area.

18 Q Are you familiar with the Church's Fried Chicken on
19 Taylor Street?

20 A I am.

21 Q And is that located kind of where Metro Region I
22 think meets South Region?

23 A It is. It's right on the line as a matter of fact.

24 Q I'm going to turn your attention back to May 24th of
25 last year. Were you -- in the late afternoon, did

1 you get a call concerning an armed robbery at the
2 Church's Fried Chicken?

3 **A** Yes, we did.

4 **Q** And in fact was there actually information put
5 across? Tell the judge what information you
6 received?

7 **A** We received information that there was an armed
8 robbery at the Church's Chicken on Taylor Street.

9 **Q** If you'd move a little closer to this. It's hard to
10 hear.

11 **A** Sorry about that. Sorry about that. And we
12 proceeded to head toward that location. As we were
13 responding to the location --

14 **THE COURT:** Who is we?

15 **A** Myself and Officer Mark Spires. As we were moving
16 towards that location, it was put out across the
17 radio that the suspect was leaving in a gray Dodge
18 Ram pick-up truck.

19 **Q** Was it described as an older or newer model gray
20 Dodge Ram pick-up truck?

21 **A** At the time it was not given if it was older or
22 newer. It was just given gray Dodge pick-up truck.

23 **Q** And when that information came out over the radio,
24 how far away from the Church's were you?

25 **A** At that point we were approximately half to three

1 quarters of a mile. We were on Two Notch heading
2 southbound passing the Benedict football stadium.

3 Q Did you proceed towards the Church's Fried Chicken?

4 A We did.

5 Q And did you activate anything within your patrol car?
6 Did either one of you?

7 A Yeah. Officer Spires activated his blue lights and
8 his siren while we were responding.

9 Q And in fact when you activate the blue lights and
10 siren, does the actual video camera automatically
11 come on somehow?

12 A It does. Whenever you activate the blue lights, the
13 video camera automatically starts recording audio and
14 video at that point.

15 Q And at that point tell the judge specifically where
16 you all went and what made you turn around?

17 A As we were -- as the description was put out and
18 about the time we were passing the football stadium,
19 we were still proceeding southbound. Right at Two
20 Notch and Laurel Street, there's an intersection
21 there. The light had just turned green for Two Notch
22 Road. And I noticed that in the northbound lanes
23 there was an older model gray Dodge pick-up truck
24 occupied by one black male. We proceeded past just a
25 little ways so that we could -- it would be safe for

1 us to turn around. At that time we turned around and
2 attempted to catch up to the pick-up truck going
3 northbound on Two Notch.

4 Q And at that point did you then fall in behind the
5 pick-up truck going northbound on Two Notch?

6 A We were behind him. We were approximately two to
7 three blocks behind him at that point. By the time
8 we could get turned around due to traffic he had
9 already opened up that much distance between us.

10 Q Tell the judge what, if anything, next you saw about
11 the gray pick-up?

12 A What I next noticed was as we were proceeding
13 northbound again on Two Notch, about the same point
14 where we initially got the call for the gray Dodge
15 pick-up truck which is in the area of the Benedict
16 football stadium, I could see ahead that the gray
17 Dodge was turning into the parking lot of, I believe
18 it's A-1 Tire Company. There is a tire -- a business
19 that sells used tires near the intersection of
20 Chestnut Street and Two Notch Road. And he was
21 turning left off of Two Notch into that parking lot.
22 After that --

23 Q What did you all do?

24 A I lost sight of the vehicle at that point. I advised
25 Officer Spires who was driving the patrol car that he

1 had just turned into that parking lot. And I knew
2 from previous experience working that area that the
3 parking lot cuts around and actually exits onto
4 Chestnut Street behind a little Mini Mart that sits
5 right there. And so I advised Officer Spires that we
6 needed to turn left onto Chestnut and try to get into
7 that parking lot behind the little convenience store
8 that sits there on the corner.

9 Q And did you do that?

10 A As we turned left onto Chestnut Street we saw the
11 gray Dodge pick-up truck, and it was just about to
12 pull out of the parking lot onto Chestnut at that
13 point. And we stopped right in front of the vehicle,
14 almost head-to-head with it.

15 Q And at that point did both of you exit the car?

16 A We did. Officer Spires was able to get out a little
17 bit ahead of me. I was sitting in the back seat at
18 that point. So I had to roll my window down and
19 reach through and open the door from the outside
20 because the child locks were engaged on the rear
21 doors of the vehicle.

22 Q They were working?

23 A They were working.

24 Q Then once you got out of the car, what happened?

25 A After we got out of the car, Officer Spires had

1 already made it to the driver's door and had called
2 back to me and said that there was another person
3 laying down in the passenger's seat floorboard. I
4 passed between the patrol car and the pick-up truck
5 and went around to the passenger's side of the
6 pick-up, approached from what we call level two and a
7 half position which is from basically the rear tire,
8 the passenger's side rear tire forward towards the
9 door post that separates the rear of the cab and the
10 bed of the pick-up truck. When I did that I opened
11 the door and I saw a man in the floorboard of the
12 pick-up truck kind of curled up into a little ball.

13 Q At that point what did you do?

14 A At that point I drew my weapon and ordered him to
15 show his hands. He showed his hands. And I ordered
16 him out of the pick-up truck and against the bed so I
17 could do a pat-down search of him for any weapons.

18 Q And did the man exit the vehicle?

19 A He did. He complied.

20 Q And based on the information that had been provided
21 to you as the suspect being in the gray Dodge, did
22 you then detain him there?

23 A We did.

24 Q Were you at that point then occupied with detaining
25 the person that came out of the passenger floorboard?

1 **A** I was.

2 **Q** And did you yourself actually do any kind of search
3 of the car?

4 **A** No, I did not.

5 **Q** And were there other officers that then responded to
6 the scene where you stopped the truck?

7 **A** Yes, ma'am. Other officers then began arriving after
8 that point.

9 **Q** And the chase as you went down Two Notch and came
10 back and actually stopped, and that was actually
11 recorded on videotape?

12 **A** It was.

13 **Q** Parts of it? And can you actually see in the
14 video -- once you stopped the car, can you actually
15 see the truck itself that was stopped?

16 **A** You can see most of the truck that was stopped.

17 **Q** Can you see the side of the truck though where you
18 got the defendant out of the car?

19 **A** No. You can't see that on the video due to the angle
20 of the car while we were stopped.

21 **Q** But are you able to see at least through part of the
22 video where Officer Spires approaches the driver's
23 side?

24 **A** Yes. You can see where Officer Spires approaches the
25 driver's side.

1 Q Once you got the defendant out of the passenger's
2 side of the car where he was basically curled up, I
3 believe is how you described him?

4 A Yes, ma'am.

5 Q Did you notice what, if any, clothing he had on?

6 A At that point I cannot recall exactly what he was
7 wearing.

8 Q So you don't recall what he was wearing?

9 A Not exactly. No, ma'am.

10 Q And your attention was basically on ensuring -- and
11 in an armed robbery call, is there certain protocol
12 that you would take in order to assure everyone's
13 safety?

14 A Yes, ma'am. Absolutely. If we have a person that we
15 believe is a suspect in an armed robbery, the first
16 thing that we want to do is make sure that they are
17 secured as far as not being able to access any
18 weapons that might be on their person. And we also
19 want to conduct a Terry frisk of that person to make
20 sure that there are no weapons of opportunity
21 available at that point.

22 Q And were you able to recover any weapon from the
23 defendant's person itself?

24 A No, ma'am; no weapons on the defendant's person.

25 Q But you didn't actually search the car?

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

2 **Q** And you didn't stick around to just see what was in
3 the floorboard of the car once you got the defendant
4 out?

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

6 **Q** And did you remain with the defendant while other
7 officers responded?

8 **A** I did. Yes, ma'am.

9 **Q** Beg the Court's indulgence. The defense has asked --
10 and have you had an opportunity to review the video?

11 **A** I have.

12 **Q** And in the video I believe there are some comments
13 that are made by either you or Officer Spires about:
14 This may not be the right guy, something to that
15 affect?

16 **A** Yes, ma'am. There is something to that effect in the
17 video.

18 **Q** Explain to the judge what your intent was, what it
19 meant whenever those comments were made and who you
20 were referring to?

21 **A** When the comments were made, the comments were made,
22 whenever we actually stopped the vehicle, we were
23 head-to-head. And we could see an elder black
24 gentleman behind the wheel. At that point, you know,
25 I believe it was Officer Spires who made the comment

1 to the effect that: I don't know if this is going to
2 be him. As I believe you could hear on the video, I
3 say: I don't know, or something to that effect.

4 And in saying that, we -- we proceeded, the way
5 we proceeded, due to the fact that the vehicle did at
6 least match the description of what was given out,
7 the limited information we had at that point, we felt
8 that it was still our duty to investigate that
9 situation regardless of whether or not the gentleman
10 we could see at that point that was driving the
11 vehicle was going to be our suspect or not.

12 Q So it was in reference to the person that was driving
13 the vehicle?

14 A That's right.

15 Q And ultimately the person you got out who was curled
16 up in a ball on the side of the vehicle was down in
17 the passenger's side and you couldn't see him at that
18 point?

19 A That's correct.

20 Q And would that have been based on a clothing
21 description as well as a physical description?

22 A That's correct.

23 Q Finally, you mentioned the information came across
24 the radio. How long was it between the time the
25 information came across the radio and the point where

1 you spotted the gray truck? Do you know?

2 **A** From the time the description of the gray truck was
3 given until the time that I actually spotted it was
4 probably a matter of 15 or 20 seconds, would be my
5 best guess.

6 **Q** And the person that you pulled out of the passenger's
7 seat from the floorboard, do you see him here in the
8 courtroom?

9 **A** I do.

10 **Q** And can you point him out for the judge?

11 **A** Yes, sir. It's the gentleman in the blue shirt
12 sitting behind the defense table.

13 **Q** In the blue shirt?

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

15 **MS. CAMPBELL:** Your Honor, may the record
16 reflect he's identified the defendant?

17 **THE COURT:** The record will so reflect.

18 **Q** As far as any further search of the car, you weren't
19 involved in that?

20 **A** No, ma'am, I was not.

21 **Q** And were you there when one of the witnesses was
22 actually brought to the scene and shown or observed
23 the defendant?

24 **A** Yes, ma'am, I was.

25 **Q** And did you in any way influence his decision or his

1 ability to recognize the person that had robbed him?

2 **A** No, ma'am. Not at all.

3 **Q** And you didn't actually participate in that show-up
4 I.D.?

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

6 **MS. CAMPBELL:** I don't have anything further,
7 Your Honor.

8 **THE COURT:** Cross examination.

9 **MR. COCHRAN:** Thank you, Your Honor. May it
10 please the Court.

11 CROSS EXAMINATION

12 **BY MR. COCHRAN**

13 **Q** Officer, you said that -- was the videotape in your
14 patrol car, was it on before the blue lights?

15 **A** Well, the video cameras that the City of Columbia put
16 in their vehicles have what's called pre-event
17 recording, which means basically any time the engine
18 is on, the camera is on and it is recording video
19 only. And what it does, I'm not sure exactly how to
20 explain it, but it's always recording to a small hard
21 drive inside there. And the minute the blue lights
22 are activated it goes back into the memory
23 approximately one minute and starts actually burning
24 to the DVD from that point. And it does actually
25 pick up audio until you activate the blue lights.

1 And it starts hard recording I guess is what you
2 would call it.

3 Q And you estimated about 15 to 20 seconds from the
4 time you got the call 'til the time where you saw the
5 gray pickup truck in the opposite lane?

6 A 15 to 20 seconds from the time they put out the
7 description of the gray pick-up truck.

8 Q Okay. And now, when you were going down Two Notch,
9 how long had you -- since you received the call, you
10 received the call in your car about the armed
11 robbery, how long from that time to the time when you
12 see the vehicle going down? That was about 15 to 20
13 seconds?

14 A No. That was 45 seconds to maybe a minute.

15 Q To maybe a minute. Okay. So now you're going down
16 Two Notch and you see a gray Dodge pick-up truck.
17 You see one person in the truck, correct?

18 A That's correct.

19 Q And you drive a little ways down? How many blocks do
20 you drive down before you make a u-turn?

21 A It was probably a block and a half, maybe two blocks.

22 Q Okay. And that gray pickup truck wasn't speeding
23 down the road, was it?

24 A No, it was not.

25 Q And it actually idled on the side of the road with

1 the other cars who were idling for the blue lights
2 presumably from your car, correct?

3 **A** I can't really answer that question for sure. All I
4 know is whenever I saw it, it was rolling. But I
5 never saw it a stand-still, no.

6 **Q** But this was not a great big old truck that came
7 screaming down the other end?

8 **A** No. It was not anything like that.

9 **Q** And I'm sorry. Could you tell me again how long you
10 drove after you saw it 'til before you made the
11 u-turn?

12 **A** It's about a block and a half, maybe two blocks.

13 **Q** Okay. Why didn't you turn immediately right when you
14 saw it?

15 **A** Well, I wasn't driving. So I can't say for sure.
16 But there was traffic coming in the other direction.
17 In the interest of safety, it was not best to do a
18 quick u-turn.

19 **Q** And then in the time when you kept driving and then
20 made the u-turn, when you made the u-turn, the
21 vehicle was not in your sight, correct, at that
22 point?

23 **A** Not at that point, no.

24 **Q** You had to drive for a ways, probably back to where
25 you had seen the gray pickup truck before you could

1 see it again?

2 A Thereabouts, yes, sir.

3 Q Now, when you got there, you had cut them off
4 essentially and were in front of them, right?

5 A That's right.

6 Q And when you got out, after Officer Spires told you
7 there was somebody in the passenger's seat, you got
8 out and drew your weapon?

9 A No. He'd said that there was somebody in the
10 passenger's seat right as I was able to exit the
11 vehicle. I proceeded around the front inbetween the
12 two. And as I did what they call -- well, what they
13 call basically or what has been described as a banana
14 route where you --

15 Q Okay.

16 A Where you --

17 Q Kind of go around?

18 A -- kind of make a semi circle around the suspect
19 vehicle. You approach from what we call a level two
20 and a half which is from the rear flank basically.

21 Q Okay. Was your gun drawn when you were doing that?

22 A Not at that point, no.

23 Q Did you draw your gun when you saw him in the truck?

24 A I drew my gun as I opened the passenger door.

25 Q As you opened the passenger door?

- 1 **A** Correct. Right.
- 2 **Q** Had him step out?
- 3 **A** That's right.
- 4 **Q** And he got out of the truck at that point, correct?
- 5 **A** He did.
- 6 **Q** And then you took him to the back of the truck?
- 7 **A** I took him to the -- let's call it the rear of the
8 vehicle. It was near the rear tire on the
9 passenger's side and along the bed.
- 10 **Q** And of course when he got out of the truck the door
11 was open, right?
- 12 **A** That's right.
- 13 **Q** And you could see into the truck, right?
- 14 **A** Partially. I never made it close to the cab. I
15 wanted to keep a certain degree of separation between
16 myself and the suspect at that time.
- 17 **Q** But you had him get out of the car. The door is
18 open. You're standing here. And you didn't see any
19 contraband, any gun or anything like that in the
20 floorboard, correct?
- 21 **A** No. I was not at an angle that I could really see
22 the floorboard.
- 23 **Q** But you didn't see a gun, correct?
- 24 **A** No. I could not see anything in the floorboard. No,
25 sir.

1 Q And you would want to know if there was a gun within
2 his reach, right?

3 A Well, once I removed him from the cab of the pick-up
4 truck, I was not concerned with anything that would
5 have been in his reach right there.

6 Q You were not concerned at that point once he was out
7 of the truck with anything that would be in the truck
8 at that point?

9 A Not personally; no, sir. Not as far as my personal
10 safety is concerned.

11 Q Correct. There was no officer safety concern in
12 terms of things that were in the truck once he was
13 taken out?

14 A No.

15 Q So you take him to the back of the truck and then you
16 frisked him. Correct?

17 A That's right.

18 Q Nothing was found on him, right?

19 A Nothing was found on him.

20 Q Did you cuff him at that point?

21 A I did.

22 Q Okay. Beg the Court's indulgence. Now, based on my
23 notes from my watching the video from your patrol car
24 or from Officer Spires's patrol car, when you all
25 pull up, I believe it's right before you get out of

1 the truck; it might have been right after and we
2 could still hear you on the mike, it was my
3 impression Officer Spires said: This ain't going to
4 be him, is it? And you said: I doubt it?

5 A Mm-hmm (affirmative).

6 Q Is that correct?

7 A That's correct. Yes, sir.

8 Q So he made the statement to you and then you respond
9 with: I doubt it?

10 A Mm-hmm (affirmative). That's right.

11 Q So at that point you doubted that this was the gray
12 pick-up truck that was involved in an armed robbery
13 at Church's Chicken?

14 A Well, I doubted that that was the suspect driving it.

15 Q You doubted that that was the suspect driving the
16 truck?

17 A Correct.

18 Q So wouldn't the logical conclusion from that
19 statement be that you doubted that that was the truck
20 that was involved in the armed robbery at the
21 Church's Chicken?

22 A Not necessarily.

23 Q Not necessarily?

24 A No.

25 Q So you thought maybe the car had gotten switched?

1 **A** There is any number of possibilities that it could
2 have been. It could have been a situation where
3 there was another person hiding inside the vehicle.
4 It could have been a situation where we were
5 completely wrong and that that truck had nothing to
6 do with incident we responded to. There is really
7 any number of possibilities.

8 **Q** Any number of possibilities. And as to what Officer
9 Spires said to you in terms of that being the person
10 or that being the truck, whatever he was referring
11 to, you said you doubted it, correct?

12 **A** Right.

13 **Q** And, I mean, you guys weren't rushing out of your car
14 with your guns drawn thinking that you had just
15 caught the armed robber red-handed, correct?

16 **A** No. Not at that point.

17 **Q** Now, from my observation on the video and based on
18 the incident report, the reports that we've received,
19 there was no traffic violation, correct, that the
20 gray Dodge pick-up truck committed?

21 **A** No, sir.

22 **Q** So the stop was purely from the call from the
23 Church's Chicken, correct?

24 **A** That's correct.

25 **Q** But once again, when Officer Spires is saying this

1 ain't going to be him, is it, he's referring to that
2 robbery, correct?

3 **A** I believe he was referring to the driver. I took it
4 that he was referring to the driver of the pick-up
5 truck.

6 **Q** But in relation to the robbery, correct?

7 **A** Correct.

8 **Q** And you did say: I doubt it's going to be him?

9 **A** I did say: I doubt it's going to be him.

10 **Q** At that point you all did immediately have everybody
11 exit the car, cuff them. And then, like you said,
12 there was no officer safety at that point with what
13 was in the truck, correct?

14 **A** Correct. After they got out of the vehicle, there
15 was no officer safety concern with whatever was in
16 the cab of the truck at that point.

17 **Q** When you had immediately gotten out of your car, you
18 had both of them exit the car and Terry frisked them.
19 But when you were in front of the car, you were
20 cutting them off from exiting, coming forward,
21 correct?

22 **A** That's correct.

23 **Q** So they were not free to go at that point?

24 **A** No, sir. They were not.

25 **MR. COCHRAN:** I have no more questions, Your

1 Honor.

2 **THE COURT:** Redirect.

3 **MS. CAMPBELL:** Just a couple of questions.

4 REDIRECT EXAMINATION

5 **BY MS. CAMPBELL**

6 **Q** He keeps asking you about what you were doubting.
7 You were doubting that the driver fit the
8 description. Is that correct?

9 **A** That's correct.

10 **Q** And at that point you hadn't seen the passenger?

11 **A** No, ma'am. You could not see the passenger.

12 **Q** And at that point you aren't doubting that's the
13 truck because you don't know who else is in the
14 truck?

15 **A** That's correct.

16 **Q** And, lo and behold, there's someone hiding in the
17 floorboard of the truck on the passenger's side?

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

19 **Q** And also this information was put out over the radio,
20 that it was a gray Dodge pickup, right?

21 **A** That's correct.

22 **Q** And was the vehicle that you observed coming from the
23 direction of the Church's Fried Chicken?

24 **A** It was.

25 **Q** When you first observed it?

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

2 **Q** And did it proceed to go away from the Church's Fried
3 Chicken?

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

5 **Q** And was that also the direction that would have been
6 put out over the radio, which way the truck had last
7 been seen going?

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

9 **MR. COCHRAN:** I object, Your Honor, at this
10 point to the leading.

11 **MS. CAMPBELL:** At this hearing?

12 **THE COURT:** Overruled. Ask your question.

13 **Q** And, lo and behold, when you made the stop on the
14 truck, you found --

15 **MR. COCHRAN:** Objection. Leading.

16 **THE COURT:** That's fine. Let her ask the
17 question.

18 **Q** What did you find in the floorboard?

19 **A** I did not find -- well, I found the suspect, Mr.
20 Broadnax, in the floorboard of the truck.

21 **Q** He also asked you on whether or not you personally
22 observed anything in the floorboard. What was your
23 attention on as you approached from the rear of that
24 vehicle?

25 **A** My attention was on the defendant, Mr. Broadnax, at

1 that time.

2 **Q** And he also made some comment about how you weren't
3 concerned about officer safety. What was your focus
4 on once you got him out of the vehicle?

5 **A** My focus upon getting him out of the vehicle was
6 getting him away from the cab of the truck where
7 there might be a weapon of opportunity.

8 **Q** And also making sure there wasn't one on him?

9 **MR. COCHRAN:** Objection. Leading.

10 **THE COURT:** I'm going to allow a certain amount
11 of it. Go ahead. Put it in the form of a question.
12 The jury is not here.

13 **Q** Once the defendant was in your custody, did you
14 remain with him?

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

16 **Q** And you didn't conduct any searches on that vehicle?

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

18 **Q** Thank you.

19 **MS. CAMPBELL:** I don't have anything further,
20 Your Honor.

21 **THE COURT:** All right. Anything further, Mr.
22 Cochran?

23 **MR. COCHRAN:** Nothing more, Your Honor.

24 **THE COURT:** You may come down, sir. Thank you
25 very much.

1 **THE WITNESS:** Yes, sir.

2 **THE COURT:** Next witness.

3 **MS. CAMPBELL:** Your Honor, may he stay in now
4 that he's testified?

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

6 **MS. CAMPBELL:** Thank you. Your Honor, at this
7 point our position would be that there's a reasonable
8 suspicion to stop the truck at that point. Do you
9 want us to go ahead and go into the search itself for
10 purposes of the record?

11 **THE COURT:** Well, he has moved to exclude the
12 evidence. So I think that's where you've got to go.

13 **MS. CAMPBELL:** The State would call Officer
14 Delage.

15 **MR. COCHRAN:** And, Your Honor, before he does
16 take the stand, we would just for the record that
17 we're not conceding there was reasonable suspicion at
18 this point.

19 **THE COURT:** I'll let you argue that. Get all
20 the evidence in the record.

21 HARRY F. DELAGE, III, after being duly sworn,
22 testifies as follows:

23 **THE CLERK:** Thank you. Have a seat in the
24 witness stand, please. And give the court reporter
25 your name.

1 **THE WITNESS:** Harry F. Delage, III.

2 DIRECT EXAMINATION

3 **BY MS. CAMPBELL**

4 **Q** Officer Delage, where are you employed?

5 **A** The City of Columbia Police Department.

6 **Q** And how long have you been working there, sir?

7 **A** Almost eight years.

8 **Q** And what do you do for the City of Columbia Police
9 Department?

10 **A** Routine patrol.

11 **Q** What region are you working in?

12 **A** The South Region.

13 **Q** And how long have you been working in the South
14 Region?

15 **A** Four and a half years.

16 **Q** I want to turn your attention back to May the 24th of
17 last year. Did you respond to a truck being stopped
18 after an armed robbery at the Church's Fried Chicken?

19 **A** I did.

20 **Q** And who was there when you got there, sir?

21 **A** Officer Ridgeway and Officer Spires.

22 **Q** And did they have actually a truck that they had
23 stopped there? What area of town was it that you
24 went to that day? Where did they have the truck
25 stopped?

1 **A** Just off Two Notch Road I believe.

2 **Q** On Chestnut?

3 **A** I believe Two Notch and Chestnut.

4 **Q** And when you got there, what did you observe?

5 **A** I observed Officer Ridgeway and Officer Spires have
6 two gentlemen outside of the vehicle already
7 detained.

8 **Q** And at that point what was your -- what did you do?

9 **A** At that time I proceeded in an officer safety manner
10 to make sure they didn't need any assistance, at
11 which time we deducted one of the gentleman out of
12 the situation, placed him in the back of my patrol
13 car.

14 **Q** At some point did you have an opportunity to go by
15 the actual vehicle that had been stopped?

16 **A** I did.

17 **Q** And what did you observe when you were going past the
18 vehicle? Explain that to the judge.

19 **A** As I went past the vehicle, the passenger door was
20 still open. And you could see in plain view a
21 clear -- not clear. Excuse me. A white plastic bag
22 just inside the passenger's side of the vehicle
23 partially under the seat where the passenger would
24 have been sitting. And you could see through the bag
25 a silver in color handgun along with currency.

1 Q And where was the bag actually located?

2 A The passenger's side of the vehicle.

3 Q And I want to show you what's been marked as State's
4 Exhibit No. 3. This is kind of a backwards angle.
5 But does that show part of what you observed?

6 A That is correct.

7 Q And you said you could see through the bag actually?

8 A You could see through the bag.

9 Q And what were you able to see?

10 A I could see the silver in color, I believe when I say
11 silver, like a brushed nickel, in color handgun.

12 Q Yes.

13 A Along with you could see a little bit of currency.

14 MS. CAMPBELL: Your Honor, at this time I'd hand
15 up State's Exhibit No. 3.

16 THE COURT: Show it to counsel. Have these been
17 pre-marked? Number?

18 MS. CAMPBELL: This is State's Exhibit 3, Your
19 Honor. We're making a list.

20 COURT REPORTER: Ms. Outen is marking them now
21 as we go.

22 MS. CAMPBELL: And we'll have them marked before
23 trial, Your Honor, all of them.

24 THE COURT: I just didn't see the sticker. I'm
25 sorry.

1 Q And at that point what, if anything, did you do to
2 secure the gun?

3 A I did nothing at the time.

4 Q Okay. And what happened next?

5 A Next I believe Investigator Thomas actually arrived
6 on the scene along with crime scene Officer Rose.
7 And at that time based on what we had in front of us,
8 no way to go inside the vehicle as far as that goes.
9 And I believe at that time Investigator Thomas and
10 Investigator Rose secured the vehicle as far as
11 closing the the doors to have it transported to
12 headquarters.

13 Q So you weren't there when Officer Rose actually
14 removed the gun or the money?

15 A No.

16 Q Or you didn't actually observe him do that?

17 A No.

18 Q And as far as, were you there when a witness was
19 brought from the Church's and a show-up ID was done?

20 A Yes, I was.

21 Q But did you participate in that in any way?

22 A No.

23 Q Were the two suspects ultimately detained and
24 transported downtown I believe that afternoon?

25 A They were.

1 Q And ultimately was the truck impounded?

2 A Yes, it was.

3 Q And towed from the scene?

4 A Yes.

5 Q And it would be Officer Rose, as far as what he did
6 with the gun and money, you just don't know what he
7 did?

8 A No, ma'am.

9 Q Thank you. But you did relate -- excuse me. For the
10 record, you did relate to him what you observed when
11 you looked inside the vehicle?

12 A I did.

13 MS. CAMPBELL: That's all I have for this
14 witness, Your Honor.

15 MR. COCHRAN: Your Honor, may I approach to see
16 the picture?

17 CROSS EXAMINATION

18 BY MR. COCHRAN

19 Q So you saw it. This picture is a fair and accurate
20 depiction of what you saw?

21 A I'm sorry. I couldn't hear you.

22 Q Is this picture a fair and accurate representation of
23 what you saw?

24 A Of the location, yes.

25 Q Of the inside of the truck?

- 1 **A** Yeah.
- 2 **Q** And you could see through that bag?
- 3 **A** Mm-hmm (affirmative).
- 4 **Q** Okay. So you didn't go into the truck and remove
- 5 anything?
- 6 **A** No, sir.
- 7 **Q** You were not the officer that searched it. Okay.
- 8 Officer, in terms of this photograph here, what can
- 9 you see in that photograph there?
- 10 **A** Well, I can't see anything in the photograph.
- 11 **Q** You can't see anything in the photograph?
- 12 **A** Not in this photograph.
- 13 **Q** But this photograph is a fair and accurate
- 14 representation of what you could see when you were
- 15 there at the scene, correct?
- 16 **A** Yes. Mm-hmm (affirmative).
- 17 **Q** But you can't see the gun and you can't see the money
- 18 in this photograph?
- 19 **A** Not in that picture, no.
- 20 **Q** You can't see through the bag in this picture,
- 21 correct?
- 22 **A** Not through that bag right there, no.
- 23 **Q** But it's a fair and accurate representation of what
- 24 you saw that day?
- 25 **A** It is.

1 Q Did you fill out an inventory sheet from the truck?

2 A No.

3 Q Are you aware of anybody filling out an inventory
4 sheet from the truck?

5 A Not that I'm aware of.

6 Q It seems like that's a pretty cluttered up car.
7 There might have been a lot of items in there. Was
8 everything in the truck listed?

9 A I'm sorry?

10 Q Was everything in the truck listed on an inventory
11 report?

12 A I do not know.

13 Q Who wrote -- are you aware of who wrote the incident
14 report?

15 A I believe that was Officer Baire.

16 Q Did you talk to Officer Baire about what had happened
17 in terms of what you had seen in the car?

18 A No.

19 Q You didn't tell him that you saw a handgun in the
20 car?

21 A He was not on the scene.

22 Q He was not on the scene?

23 A No. He was at the scene of the incident.

24 Q I'm sorry? Oh. The Church's Chicken?

25 A Yes, sir.

1 Q When you were looking in the car, both the suspects
2 were in custody at that point?

3 A One suspect was already in my car, and the other
4 suspect was being placed in the back of another
5 patrol vehicle.

6 Q So they were both cuffed and in patrol cars at that
7 point when you were looking in the car?

8 A Yeah.

9 Q And you had no plans on searching the car, correct?

10 A No, sir.

11 Q And you didn't go through anything in the car?

12 A No, sir.

13 Q But you were looking in it?

14 A (Nods head affirmatively).

15 Q Correct?

16 A Yeah.

17 Q You have to answer out loud.

18 A Yeah. The passenger door was open.

19 Q Okay. I'm sorry. So who actually pulled the bag out
20 of the car?

21 A I couldn't answer that.

22 MR. COCHRAN: Nothing further, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. CAMPBELL

25 Q Just a couple. He asked you about the photograph,

1 State's Exhibit No. 3, which shows the actual part of
2 the bag?

3 A Mm-hmm (affirmative).

4 Q And that's from a certain angle looking in that car?

5 A Correct.

6 Q When you went by the car, were you able to see more
7 than is actually reflected in this photograph?

8 A That is correct.

9 Q And explain that to the judge?

10 A Well, based on the bag, Your Honor, it being a white
11 clear plastic bag, if you're familiar with most
12 grocery store bags, a lot of them are fairly
13 transparent; you could see the outline of the
14 handgun. I could make out that it was not a black
15 handgun. So, therefore, it led me to believe it was
16 a grayer, a matte finish type silver color. And you
17 could actually see some currency through the bag in
18 that area.

19 Q And that's the information you related to
20 Investigator Thomas?

21 A That is correct.

22 Q And did you also relate that information to
23 Investigator Rose?

24 A That is correct.

25 Q And you didn't pull anything out, go searching in the

1 car or touch anything in the car?

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

3 **Q** That's what you observed from looking inside the
4 vehicle from the outside?

5 **A** That is correct.

6 **Q** With the door open. And the door was already open
7 when you got there, was it not?

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

9 **Q** Thank you. I don't have anything further.

10 **MR. COCHRAN:** Your Honor, beg the Court's
11 indulgence one moment. Briefly, Your Honor.

12 RECROSS EXAMINATION

13 **BY MR. COCHRAN**

14 **Q** Officer, so you just testified it was a silver gun,
15 correct?

16 **A** Appeared to be silver in color, yes.

17 **Q** So you could see silver shining through this bag when
18 you were standing there but you can't see it in this
19 picture. Correct?

20 **A** That's correct.

21 **Q** Okay. And you can't see any money in this picture,
22 correct?

23 **A** That is correct.

24 **Q** And you would agree with me that a majority of the
25 bag that's visible in this picture is the loop of the

1 handle from the bag, correct; what appears to be a
2 loose area of the bag, just hanging on?

3 A I guess that would be a loop, yeah.

4 Q And, I mean, there is nothing in that space, correct?

5 A That's correct.

6 Q Okay. But you could see the outline of an entire
7 handgun in this space of the bag?

8 A You could see the outline of what appeared to be a
9 gun, yes.

10 Q Was it silver or was it brushed nickel?

11 A Well, I know it wasn't black.

12 Q You know it wasn't black?

13 A Simply because you could see that it appeared to be
14 either a gray or matte color.

15 Q And in this area of the bag you could see money and a
16 gun?

17 A You could see some currency, yes.

18 Q What kind of currency could you see?

19 A It appeared to be some denominations of currency.

20 Q Cash? Change?

21 A Cash.

22 Q Cash. Okay. But you can't see anything in this
23 photograph, correct?

24 A I can't see anything in that photograph, no.

25 Q Did you take this photograph?

1 **A** No, I did not.

2 **MR. COCHRAN:** I have nothing else, Your Honor.

3 Thank you.

4 **THE COURT:** You may come down, sir. Thank you
5 very much.

6 **MS. CAMPBELL:** The State would call Investigator
7 Rose.

8 WALTER ROSE, after being duly sworn, testifies
9 as follows:

10 **THE CLERK:** Thank you. Have seat in the witness
11 stand, please. Give the court reporter your name.

12 DIRECT EXAMINATION

13 **BY MS. CAMPBELL**

14 **Q** Investigator Rose, where are you employed?

15 **A** The City of Columbia.

16 **Q** What do you do there, sir?

17 **A** I work in the crime scene unit.

18 **Q** And how long have you been working in the crime scene
19 unit?

20 **A** Since 2005.

21 **Q** I want to turn your attention back to May the 24th of
22 last year. Did you respond to the Church's Fried
23 Chicken there on Taylor Street?

24 **A** I did.

25 **Q** And what type of call were you responding to that

1 day?

2 A To an armed robbery.

3 Q At some point that afternoon did you have a chance to
4 go down to a location several blocks down Two Notch
5 at Chestnut Street?

6 A Yes.

7 Q And what was the purpose of you going to the Chestnut
8 Street location?

9 A Officers had the vehicle stopped that was involved in
10 an armed robbery.

11 Q And when you went down to where the vehicle was
12 stopped, were the two occupants of the vehicle in
13 custody at that point?

14 A Yes, ma'am. There were security police cars.

15 Q And did you make contact with Investigator Thomas as
16 well as other officers there at the scene?

17 A Yes.

18 (WHEREUPON, State's Exhibit No. 4 is marked for
19 identification.)

20 Q And during the time you were there, were you given
21 any information about the location of possible
22 weapons and/or money that had been taken during the
23 robbery?

24 A Yes, ma'am.

25 Q What information did you get from the officer?

1 **A** When I arrived the officer said there was a white bag
2 with a gun and money in it right at the front part of
3 the passenger's seat of the vehicle. Both doors were
4 open on the truck, and you can see it right there.

5 **Q** I show you what's been marked as State's Exhibit
6 No. 3. Is that a photograph that you actually took
7 that day?

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

9 **Q** And that was prior to the gun or the money being
10 removed?

11 **A** Yes.

12 **Q** And this was from one angle. But when you looked in
13 and saw the bag, this bag sticking out from under the
14 seat, were you able to observe anything in the bag --

15 **A** Yes. You could see it.

16 **Q** -- when you looked in? Without touching anything or
17 moving anything --

18 **A** Yes.

19 **Q** -- were you able in plain sight able to see anything?

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

21 **Q** And what were you able to observe through the bag?

22 **A** You could see the handle of the weapon and some
23 change.

24 **Q** And I'm going to show you what's been marked as
25 State's Exhibit No. 4. And I'll get to it in a

1 minute. Do you recognize this gun?

2 A Yes.

3 Q And is that the gun you collected that day? I'll get
4 to how you collected it in a minute.

5 A It is.

6 Q Was there also some money that was located in the
7 bag?

8 A Yes, ma'am.

9 (WHEREUPON, State's Exhibit No. 5 is marked for
10 identification.)

11 Q And I show you what's been marked as State's Exhibit
12 No. 5. Do you recognize this?

13 A Yes, ma'am.

14 Q And is that money you collected that day?

15 A It is.

16 Q And does this money in State's Exhibit 5 have some
17 coins, but mostly it's made up of what kind of money?

18 A Paper money.

19 Q Paper money?

20 A Yes.

21 Q Currency?

22 A Currency.

23 Q Once you were able to confirm what the officers
24 related to you as far as being able to see the gun
25 and some currency in plain sight; what, if anything,

1 did you do prior to the automobile being towed from
2 the scene?

3 **A** I went ahead and collected the weapon, the bag.
4 Well, the white bag with the contents. And it had
5 the money and the weapon in it.

6 **Q** And why did you do that, sir?

7 **A** To secure that weapon. I didn't know if it was a
8 loaded weapon or not. And it was going to be towed
9 with a -- the tow company was going to tow it to the
10 police department. The windows were down on the car.
11 The safekeeping of that evidence.

12 **Q** And in fact when you ultimately retrieved the gun and
13 the bag from underneath the seat, was it in fact
14 loaded?

15 **A** Yeah. It had seven rounds in it.

16 **Q** And was that done as a precaution?

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

18 **Q** Why was the truck being towed to the police
19 department?

20 **A** To be processed and a search warrant done on it.

21 **Q** But you took these items prior to the search warrant
22 being secured?

23 **A** I did.

24 **Q** And again, what was the reason for that?

25 **A** For safekeeping of the evidence that was in plain

1 view and to keep it from being damaged also.

2 Q And after a search warrant was later secured and
3 everything, did you participate in a further search
4 of the car?

5 A I did.

6 Q But these items you wanted to go ahead and collect to
7 preserve them for safety issues?

8 A For safety issues.

9 Q As well as the fact you could see them clearly
10 without moving anything?

11 A Yes, ma'am.

12 Q That's all I have, Your Honor.

13 CROSS EXAMINATION

14 **BY MR. COCHRAN**

15 Q So when you got there, both defendants were not in
16 the car. They were secured. They were in custody,
17 correct?

18 A They were in the back of police cars. Yes, sir.

19 Q There was no officer safety issue at this point?

20 A For the suspects; no, sir.

21 Q And you could see in the bag? You could see the bag
22 in the truck, correct, from standing outside?

23 A Yes, sir.

24 Q And this is a fair and accurate representation of
25 what you could see?

- 1 **A** Yes, sir.
- 2 **Q** Okay. And you could see the handle of the gun you
- 3 just said, correct?
- 4 **A** Yes, sir.
- 5 **Q** And you could see change, currency? Correct?
- 6 **A** Yes, sir.
- 7 **Q** Okay. What color is the handle of the gun?
- 8 **A** It's black and silver.
- 9 **Q** The handle is black and silver?
- 10 **A** Yes, sir.
- 11 **Q** Okay. So you could see the black part of the handle
- 12 on the gun?
- 13 **A** You could see the black side of the gun; yes, sir.
- 14 **Q** The handle on it?
- 15 **A** The black and silver of the weapon right here.
- 16 **Q** Yes.
- 17 **A** This side here. It's black.
- 18 **Q** You can see this part of it. So you could see this
- 19 plastic black part of it, correct?
- 20 **A** Yes, sir.
- 21 **Q** And you could see this little sliver of silver on the
- 22 back part of the handle?
- 23 **A** Yes, sir.
- 24 **Q** And you could determine that that was a gun?
- 25 **A** Oh, yeah.

1 Q So before you opened this, was the bag tied shut?

2 A No. No. The bag was just like that.

3 Q The bag was just like this. Okay. And you could see
4 the handle, the black handle through the bag,
5 correct?

6 A Yes, sir.

7 Q And you could also see change, currency through the
8 bag?

9 A Yes, sir.

10 Q Like rolls of change? Loose change?

11 A No. It was some loose change. And I don't know what
12 denomination it is, but there is rolled coins and
13 paper money, too. The paper money was further back
14 in it. You didn't realize it until you pulled the
15 bag out.

16 Q Okay. And then at that point you took the bag out of
17 the car?

18 A Yes, sir.

19 Q You couldn't get a search warrant for the car at that
20 point?

21 A That is not -- I do not get the search warrants for
22 the vehicle. The investigator does.

23 Q Did you attempt to get a search warrant?

24 A I did not. It was being towed before the search
25 warrant.

1 Q But you took it out of the car before it was towed,
2 correct?

3 A Yes, sir.

4 Q And you were not inventorying the car, correct?

5 A No, sir.

6 Q You were not concerned about, you know, later being
7 accused of taking his gun and money, correct?

8 A No, sir.

9 Q Or taking that plastic bag, correct?

10 A No, sir.

11 MR. COCHRAN: Nothing more, Your Honor. Thank
12 you.

13 THE COURT: Redirect?

14 MS. CAMPBELL: No, sir.

15 THE COURT: You may come down.

16 MS. CAMPBELL: Beg the Court's indulgence one
17 second. Your Honor, at this time we'd make the
18 search warrant a Court's Exhibit.

19 COURT REPORTER: Make what?

20 MS. CAMPBELL: The search warrant a State's
21 Exhibit, or I guess a Court's Exhibit.

22 (WHEREUPON, Court's Exhibit No. 1 is marked for
23 identification.)

24 MS. CAMPBELL: Your Honor, at this time, with
25 the Court's permission, I'd approach with Court's

1 Exhibit No. 1. Your Honor, for purposes of this
2 hearing, too, we'd also put in State's Exhibit No. 2
3 which is the 911 closed incident report.

4 **THE COURT:** 9 what?

5 **MS. CAMPBELL:** 911 closed incident report. May
6 I approach?

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

8 (Whereupon, a bench conference is had)

9 (WHEREUPON, State's Exhibit No. 6 is marked for
10 identification.)

11 **MS. CAMPBELL:** Then finally, Your Honor, for
12 purposes of this motion, State's Exhibit No. 6 is the
13 video that was referenced by Officer Ridgeway; I
14 would hand this up to the Court. And, Your Honor,
15 that is the only copy that's in existence.

16 **THE COURT:** Well, I'm trying to find some
17 equipment that will play it.

18 **MS. CAMPBELL:** That would be helpful.

19 **THE COURT:** Can I borrow the Solicitor's Office
20 video equipment?

21 **MS. CAMPBELL:** You can borrow anything you want
22 from the Solicitor's Office; but as you're aware,
23 it's not always the best.

24 **MR. MAY:** Right. Just for the record's sake and
25 so that my mind is at ease, all right, we're

1 conceding so that we don't have to put up
2 Investigator Thomas that a search warrant was
3 obtained, and you are conceding that a search warrant
4 was obtained in part because of what was found in the
5 white bag?

6 **MS. CAMPBELL:** We're conceding it's obtained
7 based on what is in the search warrant itself.

8 **THE COURT:** Are you stipulating the legality,
9 for lack of a better word, of the search warrant?

10 **MR. MAY:** Well, Your Honor, I --

11 **MS. CAMPBELL:** Maybe I'm misunderstanding.
12 Because, I mean, the defendant has been by this time,
13 by the time the search warrant is done, the defendant
14 has been identified by a witness as the person who
15 perpetrated the robbery.

16 **THE COURT:** I understand that.

17 **MS. CAMPBELL:** In addition to that, at that
18 point they had found the gun and the money.

19 **THE COURT:** So somebody goes to the magistrate.

20 **MS. CAMPBELL:** To get a search warrant, which
21 you have included --

22 **THE COURT:** Based on that information.

23 **MS. CAMPBELL:** Yeah. It's all outlined I
24 believe in the affidavit.

25 **MR. MAY:** Yes, sir. And the search warrant was

1 obtained 13 to 15 days post the arrest I believe.

2 Take a look at it.

3 **MS. CAMPBELL:** I believe it was on the 8th.

4 **MR. MAY:** Of June.

5 **MS. CAMPBELL:** The dates are on the search
6 warrant.

7 **THE COURT:** The vehicle had been impounded.

8 **MS. CAMPBELL:** Correct. It had been impounded
9 and was in custody.

10 **THE COURT:** All right. So there's no challenge
11 to the search warrant as I understand it except from
12 the underlying stop and confiscation of the
13 contraband.

14 **MR. MAY:** Well, if I can beg the Court's
15 indulgence. Yes, sir. We're challenging the
16 underlying search to get to the eventual search
17 warrant.

18 **THE COURT:** But the actual obtaining of the
19 search warrant, the process is not challenged.

20 **MR. MAY:** Correct. Assuming arguendo that
21 everything was properly done, then the search warrant
22 is proper.

23 **THE COURT:** All right. Are you prepared to
24 argue this now; and I will withhold any ruling until
25 after I view the video, just for the sake of time?

1 **MR. COCHRAN:** Yes, Your Honor.

2 **THE COURT:** All right. Go ahead.

3 **MR. COCHRAN:** Well, your Honor, we would argue
4 that, you know, prior to --

5 **THE COURT:** Yes, sir. I'm sorry.

6 **MR. COCHRAN:** We would argue that prior to
7 issues involving probable cause, whether or not there
8 was probable cause, we would argue that there was no
9 reasonable suspicion to detain and frisk and search
10 the immediate area surrounding Mr. Broadnax.

11 I would cite to Your Honor U.S. vs. Jaquez.
12 That's 421 F.3d 338. Now, essentially that case has
13 a basic description of an automobile, a vehicle
14 stopped soon thereafter. And the court ruled in that
15 case that there was no reasonable suspicion.

16 Now, in this case we've got a gray Dodge pick-up
17 truck. In that case we had a red car. So this is
18 slightly more detailed but not detailed to the point
19 where we have tags, model number, things like that;
20 the year the car was made, you know, anything else
21 besides the gray Dodge pick-up truck. I believe they
22 did say gray Dodge pick-up truck.

23 When Mr. Broadnax was -- or when his
24 co-defendant was pulled over, as Your Honor heard
25 from the testimony, they were taken out of the car

1 immediately at gunpoint. Now, this is right after
2 both officers at the scene expressed skepticism --
3 and Your Honor will be able to hear that on video --
4 expressed skepticism as to whether or not this is the
5 guy who did it. They then proceed to pull them out
6 of the car at gunpoint and later searched the car
7 without a warrant.

8 Now, the officer who testified to seeing the
9 things in the bag and the officer who actually took
10 the bag out and opened it, the officer who took the
11 bag out of it, out of the car I believe is the one
12 who testified that this was not an inventory search.
13 This was not, you know, a search for housekeeping
14 purposes, if you will. This was a search for
15 criminal evidence without a warrant.

16 And it was after a stop where the officers
17 expressed on video that they don't believe that this
18 is the guy who did it, or at least they have strong
19 doubts as to this is the guy who did it. But they
20 then proceed to take extreme action against Mr.
21 Broadnax, search him.

22 We would argue that his rights were violated at
23 that point based on a lack of reasonable suspicion,
24 based in large part because of the conduct of the
25 officers and in part because of this case law that

1 says that that may not be sufficient in terms of
2 whether or not this description of the vehicle was
3 sufficient without a tag number, without a year,
4 without any defining characteristics besides being a
5 gray Dodge pick-up truck. That's a relatively common
6 car we would argue and would not arise in and of
7 itself to a reasonable suspicion that this truck was
8 involved in a crime that had just been committed, as
9 is the standard for a reasonable suspicion in South
10 Carolina.

11 Given that general description and the fact that
12 that general description clearly led to the officers
13 having skepticism themselves that this was not the
14 person or the truck that was involved, we would say
15 that Mr. Broadnax's rights were violated at that
16 point when he was taken out of the car and Terry
17 frisked. And because that was not justified, the
18 items seized without a warrant in his immediate area
19 we would also challenge as unconstitutional.

20 And one brief point. If Your Honor does rule
21 that there was reasonable suspicion, I understand
22 that the case law is generally against me in this
23 position, that the passenger of a car typically will
24 not have the rights of the driver or the owner of the
25 car in the things in it. However, I would cite to

1 Your Honor Minnesota vs. Olsen. I don't have a cite
2 for that case handy.

3 That's the case that is a relatively landmark
4 decision in terms of the law. It says that an
5 overnight guest does have a privacy interest in the
6 home or at least in their area of the home.

7 Your Honor, since these cases and since it so
8 often happens that the passenger or passengers of a
9 car -- and the cite for that is 495 US 91; that's
10 Minnesota vs. Olsen -- since it is so often happening
11 to people who are a passenger or passengers in a car
12 getting charged with constructive possession of items
13 seized in the car, since Mr. Broadnax it was
14 testified to was down in that area, they're clearly
15 thinking in terms of this having been his reaching
16 area, his items, he is the one that's charged with
17 all these things, we would say that he does have a
18 privacy interest in that automobile or at least
19 within his area of the automobile; we would ask that
20 that case law extend to this case.

21 And I do understand that the State will have
22 case law that says that a passenger almost never has
23 rights in the car. I would ask Your Honor to rule
24 otherwise in this case. And, Your Honor, beg the
25 Court's indulgence.

1 And, Your Honor, as Mr. May just pointed out to
2 me, State vs. Austin says that South Carolina does --
3 it could be argued that South Carolina has an even
4 greater privacy interest than would have been noted
5 in the United States Supreme Court because in our
6 Constitution, unlike famously, the United States
7 Constitution, there is no enumerated right to
8 privacy, in the South Carolina Constitution there is
9 in fact an explicit privacy right. We would argue
10 that it would be South Carolina's right to extend
11 that protection further than what the United States
12 Constitution has. We would argue that --

13 **THE COURT:** What's the Constitution's cite?

14 **MR. COCHRAN:** Beg the Court's indulgence. And,
15 Your Honor, what the case is discussing there is
16 Article 1, Section 10. And there is a slight
17 difference, I'm looking at it right now, between the
18 federal Fourth Amendment. It does say there is --
19 that people are to be protected in their houses,
20 paper and effects, just like the Fourth Amendment.
21 But then it also goes on to say "and unreasonable
22 expectation of privacy", which from my recollection
23 is not in the Fourth Amendment of the United States
24 Constitution. And for State vs. Austin, that's 306
25 SC 9.

1 **THE COURT:** The State's position.

2 **MS. SIMPSON:** Thank you, Your Honor. May it
3 please the Court. The State has addressed I believe
4 most of these arguments in its memo to the Court in
5 opposition of the defendant's motion. I'll begin
6 with respect to the stop, arguing that there existed
7 reasonable suspicion. I actually believe that it
8 goes over and above what was required. The standard
9 requires a particularized and objective basis that
10 would lead one to suspect another of criminal
11 activity.

12 This information, Your Honor, can come from a
13 variety of sources. The other police agencies,
14 things, objective intentions of the officers,
15 numerous things. The Court is supposed to consider
16 the totality of the circumstances.

17 Here before you, Your Honor, the officers
18 received a BOLO, be-on-the-lookout for a gray Dodge
19 pick-up truck. They were within a mile of the
20 incident location. This pick-up truck that they
21 observed was coming from the direction. They could
22 see one person. There are subjective beliefs as to
23 what the outcome of this investigation would be or
24 how certain it was that this was the defendant or the
25 suspect that committed the armed robbery does not

1 negate any of the reasonable suspicion that existed
2 at the time.

3 They made the stop. In I believe a short
4 distance they received the BOLO about 5:41, five
5 minutes from the robbery. The Dodge truck clearly
6 matched the description based on what was given out.
7 They observed it within minutes of it being sent out.
8 Your Honor, arguably, the officers --

9 **THE COURT:** He said 15 to 20 seconds.

10 **MS. SIMPSON:** Well, a matter of seconds,
11 minutes. However you look at it, a very short period
12 of time. This is not one where days went by or even
13 hours. I mean, they were within the location of the
14 armed robbery.

15 Your Honor, once the stop was made, they were
16 justified in ordering both the defendant and Green
17 out of the car. The BOLO did refer to an armed
18 robbery. So they had more than enough reason to
19 believe that the suspects may be armed. Any frisk of
20 the defendant's person was justified. Officer
21 Ridgeway testified that no further search of the
22 vehicle was conducted.

23 And I believe defense counsel mischaracterized
24 some of the statements of the officers with respect
25 to this testimony and their subjective intentions

1 regarding: I doubt this is the guy.

2 So, Your Honor, with respect to that, if you do
3 find -- well, we would just ask that you find
4 reasonable suspicion existed. The standard is much
5 less than probable cause or preponderance of the
6 evidence. I believe it's clearly met. And anything
7 further goes to the credibility and the weight of
8 that evidence, not its admissibility in court.

9 Your Honor, I'll move on at this time with
10 respect to the search of the vehicle. Your Honor,
11 it's the State's position that the defendant
12 absolutely lacks standing to challenge this vehicle.
13 I believe that's clearly set forth in our memo to the
14 Court. I'll be happy to expand briefly since you do
15 have the case law before you. But the defendant has
16 the burden in this case of establishing that he has a
17 legitimate expectation of privacy. He has not done
18 that. The defendant asks Mr. Green for a ride. This
19 was a temporary ride. He didn't ask to borrow the
20 car.

21 **THE COURT:** Wait a minute. Wait a minute. Say
22 what?

23 **MS. SIMPSON:** Your Honor, with respect to how
24 the defendant became in the car --

25 **THE COURT:** Well, there's no evidence of that.

1 Borrowing the car --

2 **MS. SIMPSON:** Well, he was merely a passenger in
3 the car and the car was registered to Mr. Green which
4 clearly comes back on --

5 **MR. COCHRAN:** Your Honor, we object to that.

6 **MS. SIMPSON:** -- the tape that is in evidence.

7 **THE COURT:** That's not in evidence at this
8 point. That's not in evidence at this point.

9 **MS. SIMPSON:** Your Honor, with respect to the
10 registration, the videotape that we submitted from
11 the officer clearly contains Officer Spires's
12 statements radioing in the tag which comes back
13 registered to Mr. Green. So for purposes of this
14 hearing, the car --

15 **THE COURT:** Okay. You're saying there's
16 something on here that I have not heard.

17 **MS. SIMPSON:** Yes, Your Honor.

18 **THE COURT:** Okay.

19 **MS. SIMPSON:** So the defendant did not own the
20 car. He was a passenger in the car. There's no
21 evidence that he had a key or that this was found in
22 any locked compartment belonging to him.

23 **MR. COCHRAN:** Objection. Your Honor, these were
24 not things that were testified to by the police in
25 terms of what --

1 **THE COURT:** Well, you both want me to look at
2 this and she says it's on here.

3 **MR. COCHRAN:** Yes, Your Honor.

4 **MS. SIMPSON:** Well, Your Honor, with respect to
5 my recent comment about there has been no evidence;
6 arguably, it is the defendant's burden to produce a
7 legitimate expectation of privacy. Your Honor, I'm
8 stating what was not testified to. There is no
9 evidence that there was a key or that these items
10 were contained in any locked compartment or that the
11 defendant had any possessory or proprietary interest
12 within that vehicle or the area which was searched.

13 But, Your Honor, all that aside, if you do
14 find -- and we argue that there absolutely is no
15 reasonable expectation of privacy, there are other
16 doctrines that apply in this case, numerous
17 exceptions to the search warrant requirement that we
18 can go under, and I'll address each of those in turn.

19 First we have plain view. Secondly would be the
20 automobile exception and inevitable discovery based
21 on the inventory of the vehicle. I'll be happy to
22 address it now on the record, Your Honor. However, I
23 will leave that in Your Honor's discretion with
24 respect to giving time to look at the standing issue.
25 And, Your Honor, the defense has conceded on the

1 standing issue that much of the case law is in the
2 State's favor.

3 **THE COURT:** I've read it. All right. Anything
4 further?

5 **MR. COCHRAN:** Not by the defense at this time,
6 Your Honor.

7 **MS. CAMPBELL:** Oh, Your Honor.

8 **MS. SIMPSON:** Oh, Your Honor, just for purposes
9 of the record, we would rely on the memo in support
10 of our arguments which was provided to the defense
11 and Your Honor as well as the applicable case law.

12 **THE COURT:** Thank you. I'll let you know in the
13 morning. Show up.

14 **MS. CAMPBELL:** The State would call Arthur
15 Haynes.

16 ARTHUR HAYNES, after being duly sworn, testifies
17 as follows:

18 **THE CLERK:** Have a seat in the witness stand,
19 please. Give the court reporter your name..

20 **THE WITNESS:** My name is Arthur Haynes.

21 **THE COURT:** Move that, please.

22 DIRECT EXAMINATION

23 **BY MS. CAMPBELL**

24 **Q** Hey, Mr. Haynes. Do you live here in the Columbia
25 area?

- 1 **A** Yes, ma'am.
- 2 **Q** How long have you been living in Columbia?
- 3 **A** Four years now.
- 4 **Q** And I'm going to turn your attention back to May of
- 5 last year. Were you working back then?
- 6 **A** Yes, ma'am.
- 7 **Q** Where were you working?
- 8 **A** At Church's.
- 9 **Q** And is that the Church's right there at the corner of
- 10 Taylor and Millwood?
- 11 **A** Yes, ma'am.
- 12 **Q** And what was your job at the Church's Fried Chicken?
- 13 **A** Cook.
- 14 **Q** I'm going to turn your attention to the afternoon of
- 15 May the 24th when you all got robbed. Where were you
- 16 when the robber came in?
- 17 **A** I was just coming in from the back door emptying the
- 18 trash.
- 19 **Q** You were emptying the trash?
- 20 **A** Washed my hands. I already had my chicken dropped.
- 21 **Q** You already had the chicken dropped?
- 22 **A** Yeah. I washed my hands. So after that I walked
- 23 back up to the fryer. Then I saw a gentleman come
- 24 walking towards the door.
- 25 **Q** So you were back in the back behind the counter?

1 **A** Yeah. I was the only one back there.

2 **Q** And where were the rest of the employees in the
3 store? Do you know?

4 **A** In the lobby.

5 **Q** And that would have been in the area where the door
6 was when you come in?

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

8 **Q** So you were behind the counter and the other three
9 employees were out there in the front?

10 **A** Yeah. Behind the fryer.

11 **Q** And you said you observed a gentleman come in?

12 **A** Yeah. He was like to my left corner. I went to take
13 a lunge at him and then went back and continued
14 pulling my chicken.

15 **Q** At that point you didn't know anything was going on
16 and you were busy working?

17 **A** Until I heard someone mumbling something.

18 **COURT REPORTER:** Until you heard what?

19 **A** I heard him mumbling something.

20 **COURT REPORTER:** Y'all need to slow down a
21 little bit. Ya'll are just way too fast today.

22 **A** Oh, okay.

23 **Q** And you heard somebody mumbling something?

24 **A** Yeah.

25 **Q** And who was it that was mumbling? Could you tell?

- 1 **A** Yeah. The guy had a mask over his face.
- 2 **Q** He had something over his face?
- 3 **A** When I turned around, he had a gun and said: Give me
4 all your money out your register.
- 5 **Q** And what did you do?
- 6 **A** And I said: Say what? He said: You heard me. Give
7 me all the money out the register. I said: You've
8 got to be f'g joking. Then he walked off into the
9 lobby.
- 10 **Q** Okay. And at some point did somebody come across the
11 counter?
- 12 **A** Everything got quiet.
- 13 **Q** Okay. What happened?
- 14 **A** I locked the door when I realized it's like a
15 robbery.
- 16 **Q** This is like a what?
- 17 **A** I think we're being robbed. So I locked the door. I
18 locked my other employees out.
- 19 **Q** So you locked the employees out in the lobby area?
- 20 **A** Yeah. I was afraid he would have forced them in to
21 open the safe. And they were beating on the door
22 calling my name.
- 23 **Q** And at this point you weren't able to see the robber
24 himself, were you?
- 25 **A** No, not then. Until like two, I mean, probably a

1 minute and a half later. And he came back to the
2 front with Danny.

3 Q With Danny?

4 A And he pointed the gun at Danny, made him jump across
5 the counter.

6 Q Do you remember what the gun looked like?

7 A It was an automatic.

8 Q Once Danny came across the counter, could you see
9 what happened?

10 A He made him empty the register and open it up.

11 Q And did he have anything with him to put the money
12 in?

13 A He had a bag and a handgun.

14 Q And was Danny actually putting the money in the bag?

15 A Yeah. He was nervous, shaking it.

16 Q And at that point were you able to get a good look at
17 his face?

18 A Well, he still had the mask on him.

19 Q He still had the mask on?

20 A Yeah. But I noticed his eyes.

21 Q What did you notice about his eyes?

22 A One of his eyes was kind of like screwed up, messed
23 up. His left eye was.

24 Q And you saw that about him. And at that point after
25 he got the money, what did the person, the robber do?

1 **A** He put the money in the bag and he exited the store.

2 **Q** Out the front door?

3 **A** I unlocked the door. We all went in the front. I
4 said: I've got to find out which way he is going.

5 **Q** So where did you go?

6 **A** He didn't bother to look behind him.

7 **Q** So did you follow him out of the store?

8 **A** Yeah.

9 **Q** And tell the judge where you followed him to?

10 **A** When I exited the store, I made a left and he walked
11 towards -- he was walking towards the back. He
12 didn't look behind him to see if I was following him.
13 As he turned the corner behind our storage shed,
14 well, I was about 15, 20 feet behind him. So once he
15 cleared that corner, then I ran up a little bit,
16 peeped around the corner. I didn't see him. So I
17 moved around the corner again. I still didn't see
18 him. Then when I looked up I saw an old Dodge truck.
19 And I just looked. I said, you know, where is this
20 guy? Then I looked at the truck and the driver of
21 the truck looked at me and spun off. And just I took
22 a hunch; I said that guy was in that truck.

23 **Q** Was that the only vehicle you saw leaving the area?

24 **A** The only vehicle.

25 **Q** And when you last saw the person that robbed you, was

1 he headed towards that vehicle?

2 A Yeah.

3 Q And you didn't see any other vehicles?

4 A No. The truck, after the driver seen me, he went
5 around the blue building. He made a left. And I ran
6 around the building, saw the truck again. The truck
7 went down the street. I made a right. So I ran back
8 toward Two Notch. And here comes the truck coming
9 right beside me and stopped at the red light. I
10 said, yeah, that's that driver right there.

11 Q Did the police respond?

12 A I was hollering at Donald, telling him, said: Call
13 911, telling the officer that they're driving a gray
14 beat up Dodge truck going down Two Notch.

15 Q And was Donald on the phone at that point?

16 A Yeah.

17 Q And do you know whether or not Donald related that
18 information? Or you told him to?

19 A Yeah. I'm pretty sure I told him to.

20 Q And at that point what direction was the truck going?

21 A Headed toward the mall side.

22 Q Down Two Notch?

23 A Yeah.

24 Q That day you said that you couldn't see the bottom
25 half of his face?

1 **A** Yeah.

2 **Q** But you mentioned you got a good look at his eyes?

3 **A** Yeah.

4 **Q** Did you get a look at any other part of his face?

5 **A** Yeah. The eyes. I was still seeing that gun barrel.

6 **Q** But you got a pretty good look at the eyes then. You
7 mentioned the eye that was messed up?

8 **A** Yeah.

9 **Q** That made an impression on you?

10 **A** Yes.

11 **Q** And that was a distinctive characteristic?

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

13 **Q** And do you remember what he was wearing that day?

14 **A** He had on green, light green pants and striped shirt,
15 kind of like a striped shirt.

16 **Q** Shortly after the robbery did the police come?

17 **A** Yeah.

18 **Q** And once the police got there, did you give them the
19 information?

20 **A** Yeah.

21 **Q** And while you were there, did one of the officers
22 come up and ask you to go down the street?

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

24 **Q** And did you get in the car and go somewhere with him?

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

1 Q Where did y'all go?

2 A We went down I think -- we didn't go very far. I
3 know it's by the store on the street. And when we
4 pulled up, I said: That's that s.o.b. right there.

5 Q And he didn't tell you who to pick or anything?

6 A Huh-uh (negative).

7 Q And you just soon as you saw him --

8 A I saw a shirt and pants and the gray truck.

9 Q And did you see his face?

10 A And the guy's face.

11 Q And what was specific about his face that made you
12 recognize him?

13 A Well, he was without the mask and I could see his
14 eyes again.

15 Q So it was the same guy, and you based this on his
16 face as well as --

17 A And his shirt and pants.

18 Q And specifically that one eye. Is that correct?

19 A Yes, ma'am.

20 Q I want to show you what's been marked as State's
21 Exhibit No. 1. Do you recognize that?

22 A Yeah.

23 Q And what does State's Exhibit No. 1 show?

24 A The slanted, messed up eye.

25 Q And is that the specific thing you observed about the

1 defendant that day?

2 A The eye and the gun.

3 Q Because he was covered up from here down?

4 A Yeah.

5 Q And you got a good look at it?

6 A Yes, ma'am.

7 Q Was anything obstructing your view?

8 A No. It was just right there in front of the counter.

9 Q What was the lighting like that day? Could you see
10 inside the Church's?

11 A Oh, perfect. Yeah.

12 Q And how far away were you at different points?

13 A About ten feet.

14 Q About ten feet?

15 A The counter of the store is where I was.

16 Q And were you paying attention to what he looked like?

17 A Yeah. After I looked at the gun, looked at his eye,
18 looked at the gun, back at his eye.

19 Q And there is no doubt that the person you saw later
20 that day was the same person that robbed you?

21 A Yes, ma'am.

22 Q Within a matter of minutes?

23 A Yeah.

24 Q And you recognized him specifically about the eyes?

25 A Yes, ma'am.

1 **THE COURT:** Was this like a bandanna mask?

2 **MS. CAMPBELL:** Excuse me?

3 **THE COURT:** Ask him about the mask. Was it a
4 ski mask, a bandanna mask?

5 **Q** What type of mask was it? Could you tell? What part
6 of the face did it cover?

7 **A** From the mouth on down. It's tied around.

8 **Q** Tied around, like from the nose down?

9 **A** Yeah.

10 **Q** And it just covered the bottom part of his face?

11 **A** Yeah. I'm pretty sure.

12 **Q** Could you see from here up to the eyes? Was he
13 wearing a hat?

14 **A** No. I don't think he was wearing a hat? I'm not for
15 sure.

16 **Q** He wasn't wearing a hat that you remember?

17 **A** Huh-uh (negative).

18 **Q** So you were able to see his face from here to here?

19 **A** Yeah.

20 **Q** And the only other part that was covered up was his
21 mouth?

22 **A** Yeah.

23 **Q** And what color was the mask itself?

24 **A** I can't tell you. Black or dark.

25 **Q** Dark?

- 1 **A** Yeah. It was a dark color.
- 2 **Q** And you described the shirt. Is that correct?
- 3 **A** Yeah.
- 4 **Q** And in State's Exhibit No. 1, is that the shirt he
- 5 was wearing?
- 6 **A** Yeah, the striped shirt.
- 7 **Q** But you got a good look at his eyes?
- 8 **A** Yes, ma'am.
- 9 **Q** And then when you went down the street, as soon as
- 10 you saw that person, you recognized him?
- 11 **A** Yeah.
- 12 **Q** And was that based in his face as well?
- 13 **A** His face and his body.
- 14 **Q** His body build?
- 15 **A** Yeah.
- 16 **Q** And everything?
- 17 **A** Yes, ma'am.
- 18 **Q** And the police didn't suggest to you or influence you
- 19 in any way?
- 20 **A** No.
- 21 **Q** And in fact you just volunteered it as soon as you
- 22 saw him?
- 23 **A** Yes, ma'am.
- 24 **Q** Where was he when you saw him? Do you remember?
- 25 **A** He was standing alongside the truck.

1 Q Alongside the truck?

2 A Yes, ma'am.

3 Q Was he handcuffed or not handcuffed? Could you tell?

4 A I can't remember if he was handcuffed or not.

5 Q But that didn't influence your decision in any way?

6 A No, ma'am.

7 Q And the time period from the time of the robbery to
8 when you actually were taken down the street by the
9 police officer and you observed the defendant, how
10 long a time passed? Do you know?

11 A Anywhere from possibly eight, seven minutes.

12 Q So it was within a few minutes?

13 A Yeah.

14 Q And the person that robbed you, do you see him here
15 in the courtroom?

16 A Yes, ma'am.

17 Q Can you point him out for the defendant? For the
18 judge. Excuse me.

19 A The guy with the blue shirt, the pen in his hand.

20 Q The guy in the blue shirt sitting over at this table?

21 A Yes, ma'am.

22 MS. CAMPBELL: Your Honor, may the record
23 reflect he has identified the defendant?

24 THE COURT: The record will so reflect the
25 witness identified the defendant.

1 **MS. CAMPBELL:** That's all I'd have, Your Honor.

2 **THE COURT:** Cross.

3 **MR. COCHRAN:** Thank you, Your Honor. May it
4 please the Court.

5 CROSS EXAMINATION

6 **BY MR. COCHRAN**

7 **Q** Good afternoon, sir. Did you make any descriptions
8 to the police of the man who robbed you before you
9 went up to see him?

10 **A** No. I described to him the green truck, about the
11 green truck that pulled off.

12 **Q** You mean the gray truck?

13 **A** The gray truck. Right.

14 **Q** And you saw somebody driving the truck, correct?

15 **A** I saw somebody driving the truck?

16 **Q** Yeah.

17 **A** Yeah. That's correct.

18 **Q** Okay. And you made eye contact with him?

19 **A** Yeah. He looked around at me and I looked back at
20 him. And that's when he pulled off.

21 **Q** But he didn't have a lazy eye?

22 **A** Huh?

23 **Q** He didn't have a lazy eye, right?

24 **A** Not that old guy, the older gentleman.

25 **Q** So it wasn't the guy who robbed you that was driving

1 the truck?

2 A No. The guy with the big head.

3 Q He had a bigger head?

4 A Yeah.

5 Q Okay. So you didn't talk to the police about any
6 description of the person prior to going to see the
7 man who was handcuffed with the police after the gray
8 pick-up truck, correct?

9 A No. I told him the guy was wearing green pants and a
10 green shirt who robbed us.

11 Q And within a few minutes after the robbery you were
12 taken up to where he was standing, right?

13 A Yeah.

14 Q And he was standing by the gray Dodge pick-up truck,
15 right?

16 A Yes.

17 Q Now, it was the gray pick-up truck that you had
18 actually identified to the police, right?

19 A Uh-huh (affirmative).

20 Q Okay. And he was standing right by it?

21 A Yeah.

22 Q And you can't remember whether he was cuffed or not,
23 right?

24 A I can't remember.

25 Q But there were police around him?

1 **A** Yeah.

2 **Q** Patrol cars?

3 **A** And a few bystanders from the street.

4 **Q** Who was?

5 **A** A few bystanders.

6 **Q** And a few bystanders. But police were --

7 **A** Yeah.

8 **Q** -- saying: Is this the guy?

9 **A** Huh? No. Before the police said anything, I said:
10 That's that s.o.b. right there.

11 **Q** The guy who was standing with the police by the gray
12 truck?

13 **A** Yeah.

14 **Q** And you were also in a patrol car at this time. Is
15 that correct?

16 **A** Yeah.

17 **Q** Could you hear the dispatch conversation?

18 **A** No.

19 **Q** Like could you hear any noises over the radio?

20 **A** No.

21 **Q** None? Okay. And now, you said when the person was
22 robbing you, you were looking at his face and looking
23 at the gun, right?

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

25 **Q** Now, in terms of what you saw that day, so you saw

1 part of his face, right?

2 A (Nods head affirmatively).

3 Q Okay. Part of it was covered with a mask?

4 A Yeah.

5 Q Now, you just said that just the mouth was covered?

6 A Right. This right here. Nose. Right there.

7 Q Now, do you remember writing a statement out?

8 A I think so.

9 Q You do?

10 A Yeah.

11 Q You do remember writing a statement?

12 A A statement, yeah.

13 Q And sitting down with an officer, you wrote part of
14 the statement, right?

15 A Uh-huh (affirmative).

16 Q And he wrote some things. He asked you questions and
17 he was writing some things as well?

18 A Uh-huh (affirmative).

19 Q Okay. And you described to him what you remembered,
20 correct?

21 A Yeah.

22 Q And when you went to see him and the guy that you saw
23 in the store was wearing green pants and a striped
24 shirt?

25 A Yeah.

- 1 Q Okay. What color was the shirt?
- 2 A Green, dark green like. Well, green pants, the light
3 green beige pants or something. Dickies I think they
4 call them.
- 5 Q Okay. And he was also wearing a black mask, correct?
- 6 A Yeah. I think it was a black mask.
- 7 Q Okay. And you remember in your statement you wrote
8 that it was covering his nose and his mouth?
- 9 A It's just under his nose.
- 10 Q Okay. So it wasn't covering his nose?
- 11 A Not the whole -- not the whole thing.
- 12 Q Okay. You described the clothes he was wearing,
13 right? You described the mask, right? You don't
14 remember whether or not he was wearing a hat?
- 15 A No. My mind was mostly on that gun.
- 16 Q Your mind was mostly on the gun?
- 17 A Yeah.
- 18 Q Okay.
- 19 A Because he already clicked the gun.
- 20 Q Because it was clicking and stuff?
- 21 A He was chambering it back.
- 22 Q Yeah. You wrote in your statement he kept racking
23 the chamber?
- 24 A Yeah.
- 25 Q Did anything ever come out of the gun when he kept

1 racking the chamber?

2 A I don't think so.

3 Q Do you know a lot about guns?

4 A Pretty much.

5 Q Yeah?

6 A (Nods head affirmatively).

7 Q You have to answer out loud. I'm sorry. Because she
8 is -- so you do know a lot about guns?

9 A No. I'm not an expert in guns.

10 Q But you know a lot about guns?

11 A Mostly shotguns, rifles.

12 Q Okay. And you had said actually in your statement
13 that you were certain that it was an automatic gun,
14 right?

15 A Yeah.

16 Q And you didn't use the word "certain" about anything
17 else in your statement, did you?

18 A I don't think it came out.

19 Q Because you're not certain about a lot of stuff,
20 right? I mean, you don't remember it perfectly,
21 right?

22 A I remember that gun.

23 Q You remember that gun?

24 A Right.

25 Q Was that gun out when you went to go point him out to

1 the police?

2 A Was the gun out?

3 Q Yeah. Could you see the gun when you went to go
4 point him out to the police when he was standing by
5 the gray pick-up truck?

6 A No. I didn't see the gun.

7 Q So that gun didn't have anything to do with the
8 show-up ID?

9 A Say it again?

10 Q That gun didn't have anything to do with you going up
11 and pointing him out?

12 A No.

13 Q But that's the thing that you're certain about.
14 That's what you were focused on mostly?

15 A Yeah.

16 Q Was the gun that was being pointed at you, right?

17 A Right inside the restaurant.

18 Q You can't remember whether he was wearing a hat or
19 not?

20 A No. I can't.

21 Q You can't remember whether the mask was covering his
22 nose and his mouth or just his mouth?

23 A I didn't ever get to see the mouth. So I'm pretty
24 sure the mouth was sealed.

25 Q You're pretty sure the mouth was covered?

1 **A** Yeah.

2 **Q** But you're not sure if the nose was covered?

3 **A** I was most concerned with that eye and that gun.

4 **Q** You were mostly concerned with the eye and the gun?

5 **A** Yeah.

6 **Q** So you said you're not very good about guns, right?

7 Do you remember this statement? This is the thing
8 you wrote. Do you remember that?

9 **A** That's my handwriting.

10 **Q** What kind of gun did you say you saw and that you
11 were certain about that day?

12 **A** It looked to me like a .45 automatic.

13 **Q** A .45 automatic?

14 **A** Yeah.

15 **Q** Okay. And you said that that's mostly what you were
16 focused on, right, was the gun?

17 **A** Yeah.

18 **Q** Because you were obviously afraid, right?

19 **A** (Nods head affirmatively).

20 **Q** Okay. All right. So, you made these descriptions to
21 the police. You described what he was wearing,
22 right?

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

24 **Q** You had described the mask, right?

25 **A** (Nods head affirmatively).

- 1 Q You had described the gun, right?
- 2 A Mm-hmm (affirmative).
- 3 Q And you had kept looking at him holding the gun,
- 4 right?
- 5 A He had it straight and tilted to the side.
- 6 Q And tilted to the side. You remember that?
- 7 A Mm-hmm (affirmative).
- 8 Q It was in his hand the whole time, right?
- 9 A Yeah.
- 10 Q Okay. So you're focused mostly on the gun because
- 11 that's what you're afraid of and the eye?
- 12 A And the eye.
- 13 Q Okay. Besides the shirt, the pants and the gun, did
- 14 you say anything else to the police about what he had
- 15 on?
- 16 A No. I think that's about it.
- 17 Q That's about it?
- 18 A Yeah. He didn't speak to me that much. When I told
- 19 him, when I said: You've got to be joking, then he
- 20 walked off.
- 21 Q He didn't really say anything else to you after that?
- 22 A No. He walked off.
- 23 Q And you said he was kind of mumbling, too?
- 24 A Yes.
- 25 Q So you're saying you don't remember the voice?

1 **A** He mumbled something. I was still pulling my chicken
2 off. Then I focused all my attention to him. He
3 said: Let me have the money in the register. That's
4 when I said: You've got to be joking.

5 **Q** But definitely the only things you remember about him
6 were the green pants, a striped shirt. You can't
7 necessarily remember what color it was. Correct?

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

9 **Q** You have to answer out loud.

10 **A** Yeah.

11 **Q** So what you're certain about is the green pants,
12 correct?

13 **A** Yeah.

14 **Q** A striped shirt?

15 **A** A striped shirt.

16 **Q** You're not certain about the color, right?

17 **A** Kind of greenish/blackish I think.

18 **Q** Greenish/blackish?

19 **A** Yeah.

20 **Q** Okay. A mask, right?

21 **A** Yeah.

22 **Q** Not quite certain if it's just the nose -- or I'm
23 sorry. Just the mouth. It might have been both the
24 mouth, the nose and the mouth?

25 **A** I know I could barely see the shining part of --

1 Q And you're motioning underneath the nose. So you
2 don't think the nose was covered. You're not sure if
3 he was wearing a hat or not?

4 A No. I'm not sure if he was wearing a hat or not.

5 Q But you know he was holding a gun, right?

6 A Yeah.

7 Q You know he was holding a gun and you know he had on
8 green pants, right?

9 A Yeah.

10 Q You know he had on a shirt, right?

11 A (Nods head affirmatively).

12 Q Nothing else?

13 A I can tell if the mask was black or blue from the
14 distance.

15 Q In terms of what he was wearing, nothing else though?

16 A No. I don't think he had any gloves on.

17 Q Okay. So you remember the pants, the shirt, the
18 mask, the gun, no gloves?

19 A Right.

20 Q Okay.

21 A I couldn't see his sneakers because --

22 Q You couldn't see his sneakers.

23 A Because of the counter I couldn't tell what he was
24 wearing on his feet. Yeah.

25 MR. COCHRAN: Okay. No more questions, Your

1 Honor.

2 **THE COURT:** Anything further?

3 REDIRECT EXAMINATION

4 **BY MS. CAMPBELL**

5 **Q** He asked you about what you were certain about. What
6 you were referring to there is in your statement.
7 You were trying to tell them your description of the
8 gun, right?

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

10 **Q** Silver gun, .45 automatic. But then you say: But
11 I'm certain it was an automatic?

12 **A** Yeah.

13 **Q** So you were not sure it was a .45, but you were sure
14 it was an automatic?

15 **A** It was an automatic where you pull the thing.

16 **Q** And they talked about how you got a good look at the
17 gun. Did they also ask you did you get a good look
18 at the guy's face?

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

20 **Q** And did you tell them yes?

21 (No response)

22 **Q** And is that when --

23 **MR. COCHRAN:** Your Honor, I would object to her
24 showing him and pointing at a piece of paper with his
25 answers and response.

1 **THE COURT:** Do it the other way.

2 **MS. CAMPBELL:** I'm just trying to expedite
3 things.

4 **THE COURT:** Do it the other way.

5 **Q** Is that your statement?

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

7 **Q** And would you just review that first part of that top
8 page right there about your description of the
9 defendant?

10 **A** I don't have my reading glasses.

11 **Q** You don't have your reading glasses?

12 **A** Yeah. The eyes and the face and a piece of the nose.

13 **Q** And so you told the police about the eyes and
14 everything?

15 **A** Yeah.

16 **Q** And that he had something over the bottom of his
17 face?

18 **A** Yeah.

19 **Q** And also in this he asked you about the description
20 of the clothing and everything. You included all
21 that in your statement to the police, didn't you?

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

23 **Q** And when the police asked you about whether or not
24 you got a good look at his face, and we're not
25 talking about the gun but his face, you told them

1 what?

2 **A** About his eyes, there was a distinct thing about his
3 eyes.

4 **Q** So you did get a good look at his face?

5 **A** Yeah. I'm saying there was a slanted eye, like
6 something was wrong with his eye obviously.

7 **Q** Is there any doubt in your mind that the person you
8 saw standing down on Chestnut Street was the same guy
9 that robbed you?

10 **A** That's the same guy.

11 **MS. CAMPBELL:** Thank you, Your Honor.

12 **MR. COCHRAN:** Briefly, Your Honor, because he
13 did mention something.

14 RE CROSS EXAMINATION

15 **BY MR. COCHRAN**

16 **Q** You wear glasses?

17 **A** No. Reading glasses. I don't wear glasses. I wear
18 the glasses in certain places. It depends on the
19 lighting.

20 **Q** Okay.

21 **THE COURT:** All right, sir. You may come down.
22 Thank you very much.

23 **MR. COCHRAN:** Thank you, Your Honor.

24 **MS. CAMPBELL:** The State would call Officer
25 Brayboy.

1 JONATHAN BRAYBOY, after being duly sworn,
2 testifies as follows:

3 **THE CLERK:** Thank you. Have a seat in the
4 witness stand, please. Give the court reporter your
5 name.

6 **THE WITNESS:** Jonathan Brayboy.

7 DIRECT EXAMINATION

8 **BY MS. CAMPBELL**

9 **Q** Officer Brayboy, where are you employed?

10 **A** The City of Columbia Police Department.

11 **Q** What region do you work there, sir?

12 **A** Metro Region.

13 **Q** Back in May of last year, did you also work the Metro
14 Region?

15 **A** Yes, ma'am, I did.

16 **Q** Did you have an opportunity to respond to an armed
17 robbery at the Church's Fried Chicken on the corner
18 of Taylor and Millwood?

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

20 **Q** And when you got there, did you make contact with an
21 Arthur Haynes, the guy that was just up here?

22 **A** Yes, ma'am, I did.

23 **Q** And did you actually transport him to another area of
24 town after the robbery occurred?

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

1 Q Can you tell the judge just what you did?

2 A I heard a call go out. And I knew it was in South
3 Region but I was fairly close to it. So I proceeded
4 southbound on Two Notch Road towards the Church's
5 Chicken. And I passed an older model gray pick-up
6 truck. And I called out over the radio to ask them
7 was it a newer model or older model. They never
8 responded to me. So I got to the scene. I made
9 contact with Mr. Arthur. And he described it
10 exactly. You know, it was an older model pick-up
11 truck. I relayed that information over the radio.

12 He gave me a description. The guy was wearing a
13 striped shirt. And I also relayed that. He also
14 took me outside and told me exactly, you know, he
15 followed the gentleman around the building and saw
16 the gray Dodge pick-up truck leaving and going
17 northbound on Two Notch Road.

18 Q And did he indicate whether or not he had gotten a
19 good look at the person's face?

20 A He said he seen the driver but he didn't see anybody
21 else in the vehicle with him.

22 Q When he was leaving the scene?

23 A Correct.

24 Q But did he indicate whether or not he'd seen the
25 robber himself?

1 **A** Yes, he did.

2 **Q** Okay. At some point did officers contact you about
3 transporting Mr. Haynes down to the scene?

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

5 **Q** And where did you transport Mr. Haynes to?

6 **A** I took him to the Mini Mart right there at the corner
7 of Chestnut and Two Notch Road.

8 **Q** And what was the purpose of you taking him down to
9 that scene?

10 **A** To see if he could identify the two individuals that
11 Officer Ridgeway and Corporal Spires had stopped.

12 **Q** And when you took him to the scene, tell the judge
13 what, if anything, happened?

14 **A** I placed him in the back of my car and I explained to
15 him, I said: I'm going to take you down the street,
16 see if you can identify some individuals. I took him
17 down the street. I told him: Don't say anything.
18 Don't yell out the window. Because I had rolled the
19 window down because it was hot that day so he could
20 get some air.

21 I immediately pulled up to the intersection of
22 Two Notch Road and Chestnut, and Mr. Arthur in the
23 back said: Yeah, yeah. That's the truck. That's
24 the truck. I said: Are you sure? He said: Yes.

25 So then I made a left-hand turn onto Chestnut

1 and they had the two -- the defendant and the other
2 driver of the vehicle out of the vehicle and were
3 standing there. I can't remember if they were
4 handcuffed or not. And I said: Do you recognize
5 either one of them? He said: Yeah. He said:
6 That's the guy who was driving, the one with the hat.
7 I said: Do you recognize the other one? He said:
8 Yeah, that's the guy that robbed us. I said: Are
9 you sure again? He said: Yes.

10 **Q** I show you what's been marked as State's Exhibit
11 No. 1. Would that be -- actually it's the booking
12 photo of the person that he identified as the actual
13 robber?

14 **A** Yes, it is.

15 **Q** And did you do anything to suggest to him who he
16 should identify or which person should have done what
17 or anything?

18 **A** No, ma'am, I did not.

19 **Q** And then the person that was the driver, was he older
20 or younger than the one that he said was the robber?
21 Do you recall?

22 **A** I really wasn't paying attention to --

23 **Q** Okay.

24 **A** -- the individuals. I was paying more attention to
25 the witness that I had and the oncoming traffic.

1 Q And did anyone suggest to him or in any way influence
2 his decision as to what role each one took?

3 A No, ma'am. He was in the car completely separated
4 from me with a cage.

5 Q And the person in State's Exhibit No. 1 is the person
6 he identified as the robber?

7 A Yes, ma'am.

8 Q Not as the driver. And about how far away from him
9 were y'all when he was able to identify him? Was he
10 close enough for you to be able to see him clearly?

11 A Yes.

12 Q Was there anything obstructing his view?

13 A No.

14 Q And again, the lighting and everything was such that
15 he would be able to make an identification?

16 A Yes, ma'am.

17 Q And he was actually able to specify that point, which
18 one was the driver and which one was the robber?

19 A Correct.

20 MS. CAMPBELL: I don't have anything further,
21 Your Honor.

22 THE COURT: Cross.

23 MR. COCHRAN: Thank you, Your Honor. May it
24 please the Court.

25 CROSS EXAMINATION

1 **BY MR. COCHRAN**

2 **Q** So how far away were you when you drove up?

3 **A** He was able to see the defendant and the pick-up
4 truck from the intersection of Two Notch Road and
5 Chestnut. That's a good -- I think it's 30 feet
6 maybe.

7 **Q** 30 feet?

8 **A** The initial observation that he got. The second time
9 he actually saw him, he was actually closer. He was
10 approximately maybe 10, 20 feet away.

11 **Q** And you said that there was a separate partition
12 between you all?

13 **A** Correct.

14 **Q** That's a screen. But he could hear through it,
15 right?

16 **A** Right.

17 **Q** Was your radio on?

18 **A** I have an earpiece that I wear. So I had my car
19 radio turned off and I had my earpiece in my ear. So
20 he couldn't hear the radio at all.

21 **Q** And you were called over there for him to ID the
22 truck, right?

23 **A** Correct. No. The suspects and the vehicle.

24 **Q** Okay. And was there a video camera in your car, a
25 dash cam?

- 1 **A** Yes, sir, there is.
- 2 **Q** Okay. Was it working that day?
- 3 **A** No, sir, it was not.
- 4 **Q** Okay. So you didn't activate it?
- 5 **A** No, sir. It was not operational. I didn't even have
6 the actual camera hanging up in the dash. I had the
7 monitor but no camera was in the car.
- 8 **Q** Okay. Anything that records the audio?
- 9 **A** No, sir.
- 10 **Q** So you took him up there to identify the truck and
11 the suspects?
- 12 **A** Yes, sir.
- 13 **Q** So you didn't get a call that just said: Come bring
14 him up here to identify the truck?
- 15 **A** No. They said: Bring him up here and see if this is
16 the vehicle and the two suspects.
- 17 **Q** So, that day, on any recordings from that day, it
18 would say -- it would request an ID of the truck and
19 the suspects?
- 20 **A** I do not recollect what it would have said on the
21 recording. But I know I was told to bring him, Mr.
22 Haynes, up there to see if he could identify the
23 suspect and the vehicle.
- 24 **Q** By who?
- 25 **A** By my supervisor.

1 Q Who is that?

2 A Sergeant Akaboochi (ph).

3 Q And you told him you were going to go up there. I
4 think before you said -- I'm paraphrasing here -- you
5 said: We're going to go up there and ask you to
6 identify the truck and the suspects?

7 A To see if you could identify this vehicle and the two
8 gentlemen in the vehicle.

9 Q To see if you could identify the vehicle and the two
10 gentlemen in the vehicle?

11 A Yes, sir.

12 Q Okay. And then you drove up the street, right?

13 A Yes, sir.

14 Q And you had already said: We're going to see if you
15 can identify the vehicle and the two subjects in the
16 vehicle?

17 A Correct.

18 Q And you drove up to a big gray Dodge pick-up truck,
19 right?

20 A No, sir, I did not. I pulled up to the intersection.
21 And the door -- the truck was partially blocked from
22 I would say the tail -- the bed of the truck was
23 partially behind the store. And in front of the
24 truck was out where he could see it. So I was
25 sitting at the intersection. And to my left you

1 could see the front of the truck sticking out from
2 behind the store.

3 Q And where were the two people, the two suspects?

4 A I don't recollect where they were at that time.

5 Q You don't remember where they were?

6 A No.

7 Q And you had said -- you said when you were talking to
8 Ms. Campbell that as you were driving up you told
9 him, you know, not to yell anything out the window or
10 anything like that, right?

11 A Right.

12 Q And you had told him we're going to go see if you can
13 identify the two people that were in the truck. And
14 you pulled up. And what you said before was what he
15 said first was: That's the truck, that's the truck?

16 A Correct.

17 Q Correct? So he could see the truck?

18 A Correct.

19 Q And you can't remember where the two suspects were?

20 A I'm not real sure if they had them out of the vehicle
21 or if they were in the back seat of the vehicle at
22 that time.

23 Q So they were either in the back seat or standing
24 outside the vehicle?

25 A Correct.

1 Q Were they handcuffed? You can't remember?

2 A I can't remember.

3 Q Were there squad cars around? Were there squad cars
4 around?

5 A Yes, sir.

6 Q Okay. The squad car that had initially pulled them
7 over was still parked in front of the truck, correct?

8 A Yes, sir.

9 Q So the truck was surrounded by squad cars, correct?

10 A There was only one car in front of the truck. There
11 was another car behind the initial patrol car.

12 Q And it's a marked patrol car, correct?

13 A Yes, sir.

14 Q And there are uniformed police officers outside with
15 the suspects, right?

16 A Yes, sir.

17 Q And they were with the truck, right?

18 A Correct.

19 Q They might have been in the truck; they might have
20 been outside the truck, but they were in the truck,
21 right?

22 A Who was in the truck?

23 Q The suspects.

24 A The suspects were not in the vehicle when I got
25 there.

1 Q So you can't remember?

2 A They were not in the initial, the gray pick-up when I
3 got there. I don't know if they -- I don't recall
4 them being outside of the patrol cars. I don't know
5 whether they were in the patrol cars or standing by
6 the vehicle. I don't know.

7 Q Okay.

8 A I don't recall. But they were not inside the pick-up
9 when I got there.

10 Q They were not inside the pick-up. They might have
11 been inside the patrol car or they might have been
12 standing outside the gray pick-up truck?

13 A Correct.

14 Q Beg the Court's indulgence. Officer, you said you
15 were pretty close to the Church's when you got the
16 call, right?

17 A I was at the district at Two Notch and Covenant Road.

18 Q Two Notch, just ballpark, how far away from the
19 Church's is that?

20 A I'm not real sure. 12, 13 blocks maybe.

21 Q 12, 13 blocks?

22 A Yes, sir.

23 Q On the way to the Church's Chicken you saw a gray
24 Dodge pick-up truck?

25 A Correct. I passed a gray pick-up truck right there

1 just before the intersection of Laurel and Two Notch.

2 Q And you radioed it?

3 A I called and asked was it a newer model or older
4 model pick-up because I had just passed a gray Dodge
5 pick-up. And that's the information that we were
6 given, that it was a pick-up. We didn't know if it
7 was an older model or a newer model. It was a Dodge
8 pick-up.

9 Q Just a gray Dodge pick-up?

10 A Correct.

11 Q But based on that information and based on that car
12 going in the opposite -- was it going in the opposite
13 direction?

14 A It was going the opposite way. I was headed
15 southbound on Two Notch Road and the pick-up was
16 headed northbound.

17 Q Based on that information you did not make a traffic
18 stop at that point?

19 A No, sir. Because I did not know if it was a newer
20 model or older model pick-up.

21 Q Did you ever get radioed in terms of whether it was a
22 newer model or an older model?

23 A Yes. I got that information when I talked -- when I
24 got on -- I was the first one on the scene that made
25 contact with Mr. Haynes.

1 Q Okay.

2 A Mr. Arthur. And that's when he told me it was an
3 older model pick-up. And I put it out on -- I don't
4 know which channel, which radio channel it was.

5 Q Okay. Were Officers Spires and Ridgeway behind you?

6 A Yes.

7 Q They were behind you on the road?

8 A Correct.

9 Q Okay. And you didn't pull around to make that stop
10 because of the -- you weren't sure about the year?

11 A I wasn't sure if it was an older model or newer
12 model. So I went straight to the scene.

13 Q So you went straight to the scene to --

14 A Because I was the first one there.

15 Q Right. So instead of pulling --

16 A So I went straight to the scene to get better
17 information to pass on to them, because I knew they
18 were behind me because I could see them in my
19 rearview mirror.

20 Q To get better information from the Church's before
21 you would make a stop?

22 A Correct.

23 Q Based on that information?

24 A Yes.

25 MR. COCHRAN: No more questions, Your Honor.

1 **THE COURT:** Anything further?

2 REDIRECT EXAMINATION

3 **BY MS. CAMPBELL**

4 **Q** For the record, it was important. You were the first
5 responding officer to the scene?

6 **A** Yes, I was.

7 **Q** So your primary focus was getting to that scene to
8 make sure everything --

9 **A** Yes, ma'am; to make sure the scene was secured and
10 everybody was okay.

11 **Q** And the truck obviously raised your suspicions?

12 **MR. COCHRAN:** Objection. Leading.

13 **Q** Did the truck raise your suspicions?

14 **A** Yes, ma'am. That's why I radioed ahead to see --

15 **Q** Did you then get additional information as soon as
16 you left the scene and relayed it to the --

17 **MR. COCHRAN:** Objection. Leading.

18 **COURT REPORTER:** I can't get everybody talking
19 at once.

20 **THE COURT:** Please.

21 **COURT REPORTER:** Could you repeat your question,
22 please?

23 **Q** What information did you immediately get at the
24 scene?

25 **A** It was an older model gray pick-up.

1 **MS. CAMPBELL:** Thank you.

2 **THE COURT:** Anything further?

3 **MR. COCHRAN:** No, Your Honor.

4 **THE COURT:** All right, sir. You may come down.

5 **MR. COCHRAN:** And, Your Honor, based on this
6 testimony we would also supplement our prior motion
7 based on reasonable suspicion given that the
8 prosecution did argue the idea of objectively versus
9 subjectivity. We have yet another set of testimony
10 from an officer to get an idea of what an objective
11 officer would view this as. He testified that he
12 didn't think that was enough to make the stop. The
13 officers that did make the stop were right behind
14 him. There is a discrepancy there. He did say that
15 he wanted to get to the scene to get more
16 information, more detailed information before he
17 would make a traffic stop.

18 **THE COURT:** Okay. Next witness.

19 **MS. CAMPBELL:** No other witnesses, Your Honor.

20 **THE COURT:** No further witnesses?

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

22 **THE COURT:** All right.

23 **MR. COCHRAN:** Your Honor, based on this, we
24 would move to exclude any in-court identification
25 during the trial. The officer did testify that when

1 he was taking the victim up to the truck, he told
2 him: We're going to see if you can identify the two
3 suspects. Not one. Even though there was no
4 testimony at any time that there were two people in
5 the truck; the two suspects that were in the truck.

6 Now, the victim testified pretty clearly that
7 there was only one person in the truck that he saw.
8 This officer said: We're going to see if you can
9 identify the two suspects that were in the truck.
10 They drive up to a gray Dodge pick-up truck. That's
11 the first thing that the victim notices. He says:
12 That's the truck, that's the truck.

13 At that point it's my understanding -- that
14 officer wasn't sure. It's my understanding that the
15 two suspects were standing outside the truck that he
16 was exclaiming about. He had been told earlier:
17 We're going to see if you can identify the two
18 suspects that were in the truck.

19 They then get to the scene where the truck is.
20 There are two suspects standing outside the truck
21 surrounded by police officers, may have been
22 handcuffed, might not have been handcuffed. And
23 Officer Ridgeway did testify that they were
24 handcuffed. I believe everyone else couldn't
25 remember whether they were or not.

1 Your Honor, the first ID was -- from what my
2 recollection of the testimony, the first ID was of
3 the driver, that that was the driver. And then in a
4 written statement he says: There is the guy, the
5 same shirt, same pants. It doesn't say anything
6 about the lazy eye at that point, doesn't identify
7 any physical attributes about him in terms of his
8 build, his height, his weight, doesn't say anything
9 about any physical personal attributes of him; just
10 says: Same shirt, same pants, that's the guy who had
11 the gun.

12 Your Honor, he hadn't -- there is no real
13 indication that there had been any prior description,
14 which is one of the requirements here. Which we
15 can't really judge necessarily whether or not there
16 was a description prior to this. All his
17 descriptions come from a written statement that was
18 taken after this suggestive show-up ID.

19 Now, in evaluating the level of certainty, Your
20 Honor, this witness uses the word "certain" once in
21 his statement. He says he was certain it was an
22 automatic gun which had nothing to do with the
23 show-up. Now, the officer actually remembered pretty
24 clearly it seemed like that when they pulled up, he
25 said: That's the truck, that's the truck. He could

1 tell immediately that that was the gray pick-up
2 truck. Then he said: That's the guy that was
3 driving the truck. And that was the person who he
4 had made eye contact with. He said: That's the guy
5 that was driving the truck. Then he said: And
6 that's the guy, same shirt, same pants; with no
7 physical descriptions of Mr. Broadnax at the scene.

8 He had been suggested, I would argue, that these
9 were going to be the two suspects that he was
10 supposed to ID at that point. These were two
11 gentlemen standing outside of the gray pick-up truck
12 which was easy for him to identify. He had been
13 told: We're going to go see if you can identify the
14 two guys that were in the truck or the two suspects
15 that were in the truck.

16 It doesn't necessarily show the adequate -- I
17 would say is the adequate level of certainty for an
18 identification in court where we can actually
19 juxtapose it with something where he demonstrates
20 that he was pretty certain. That's the truck, that's
21 the truck. He doesn't say: That's the defendant,
22 that's the defendant. He says: Same shirt, same
23 pants. This is from his written statement. Now, in
24 the testimony I think he said this is his -- that
25 that's the s.o.b. that robbed me, after he identifies

1 the driver that he made eye contact with.

2 Your Honor, we would in terms of the first prong
3 of Biggers, Neil v. Biggers, we would argue that any
4 show-up ID, and especially with all the aggravating
5 factors in this case, we would say that this show-up
6 ID certainly was suggestive, that he did not give a
7 prior statement to be tested for its accuracy.
8 Moving on to the second prong, that his level of
9 certainty was not given and that there was no real
10 level of certainty given to the officers compared to
11 the level of certainty he showed for the other
12 suspect in the case.

13 The time, obviously this was close in proximity
14 to the robbery, within a few minutes. However, you
15 know, I think that that actually goes to show in a
16 way how suggestive this in fact was, because you had
17 an officer come pick him up from the scene of the
18 crime say: Well, let's go see if you can identify
19 the two guys that were in the truck and immediately
20 takes them to a gray pick-up truck with two guys
21 standing outside it.

22 Oh. And, Your Honor, I would before you go see
23 that video point your attention to the dispatched
24 conversation that goes on in terms of setting up the
25 ID. There is an officer who is saying, you know,

1 check -- asking him about his vision, asked him to
2 see how his vision is and bring him up here for an ID
3 of the truck. Now, that's mine and Mr. May's
4 recollection of that video. There never was any
5 indication that he was coming up to ID the suspects
6 but that he was going up to ID the truck. He goes
7 up, identifies the truck and associates the two men
8 standing outside with that truck.

9 And, Your Honor, as Your Honor saw I believe, I
10 did not get a chance to object to it because I was
11 writing something down; when Ms. Campbell was talking
12 to Mr. Haynes asking him if he had seen the clothes
13 or if he remembered what the clothes were like, he
14 was saying: Yeah, that's a green shirt. The green
15 shirt or the striped shirt was being held up in front
16 of his face when he was saying that, when he was
17 giving that an answer. And actually when I
18 questioned him about the shirt, he actually said: I
19 think it might have been a green and black shirt.

20 **THE COURT:** All right. In-court identification.

21 **MS. CAMPBELL:** In-court identification, Your
22 Honor. We would hand up three cases with the Court's
23 permission. State vs. Govan is almost directly on
24 point.

25 **THE COURT:** A 2007 case.

1 **MS. CAMPBELL:** Have you got that, Your Honor?

2 **THE COURT:** I do.

3 **MS. CAMPBELL:** Also, Your Honor, State vs.
4 Mansfield and State vs. Brown.

5 **THE COURT:** I've got that one, too.

6 **MS. CAMPBELL:** You've got both of those? Your
7 Honor, I believe State vs. Govan pretty much is
8 pretty reflective of the facts of this case as to
9 what went on and everything. Some of the factors
10 that -- even though the courts concede that show-up
11 identifications are suggestive to some degree by
12 nature. However, show-ups may be proper where it
13 occurs shortly after the crime, it is near the scene
14 of the crime, the witness's memory is still fresh,
15 the suspect has not had time to alter his looks or
16 dispose of evidence; it may expedite the release of
17 innocent suspects, and it may enable police to
18 determine whether to continue searching; or in this
19 case, to continue to detain the defendants in this
20 case, Your Honor.

21 State vs. Govan, I'm not going to -- you've got
22 the case. The facts are very similar to what we have
23 here. Your Honor, as far as this witness's ability
24 to be certain about his identification, I think he
25 was certain about his identification, as he testified

1 as well as the officer did at the time, that he had
2 identified them. In addition to that, he is certain
3 about his identification here in court. He had no
4 hesitancy and again was certain that was the same
5 person he had seen. Your Honor, without belaboring
6 the issue, you are already familiar with the law.

7 **THE COURT:** Anything further?

8 **MR. COCHRAN:** Beg the Court's indulgence, Your
9 Honor. I'm just looking at this case that was handed
10 up. Your Honor, we would request that you wait to
11 rule on this until you've viewed the tape since that
12 is relevant also to this. It gives -- you can hear
13 clearly a dispatch conversation as related to the ID.

14 **THE COURT:** Well, we're talking about -- you're
15 talking about what the officers are telling each
16 other. Does it matter what they're telling each
17 other?

18 **MR. COCHRAN:** Well, Your Honor, I would say that
19 it --

20 **THE COURT:** We've got a witness who sees the
21 robber close up with a gun in his face, says he has a
22 lazy eye or wandering eye, identifies his clothing
23 and goes to the show-up scene within minutes. In
24 Govan, it's 45 minutes after the robbery. The court
25 said that was not an unreasonable amount of time.

1 The suspect was near the scene of the crime.
2 Certainly the suspect was near the scene of the crime
3 in this case.

4 It says the witness's memory was fresh. This
5 witness was fairly positive. And the clothing was
6 consistent with what the witness said the robber was
7 wearing. And show-ups, I mean, I always try to be
8 careful with show-ups because they can be unduly
9 suggestive.

10 **MR. COCHRAN:** And, Your Honor, if I may. The
11 position we would take in this case is that this was
12 a very suggestive ID in that after it there were
13 steps taken to do a photo line-up. I don't know with
14 one or all of the Church's Chicken employees. And
15 that was never done. No subsequent line-ups were
16 ever done that were less suggestive to give us a
17 more -- or to give us an in-court ID that could be
18 reliable. This is a case where --

19 **THE COURT:** You've only got one -- you know the
20 facts better than I do. You've only got one in-court
21 identification witness?

22 **MR. COCHRAN:** Yes, Your Honor. Correct.

23 **THE COURT:** Okay. I think -- well, I'll look at
24 the video. But I will tell you, I mean, I think the
25 witness was fairly clear and that in my opinion it

1 was a reliable identification under Biggers, Govan
2 and Mansfield. And certainly I'll reserve ruling.

3 But it appears from the information from what
4 I've seen and heard, he had plenty of opportunity to
5 view the accused and said he had a heightened degree
6 of attention because the gun was pointed in his face.
7 And he made a description of the defendant's physical
8 condition; namely, the eye.

9 He certainly didn't demonstrate a certainty at
10 the confrontation, and there was just so little time
11 between the crime and the confrontation. And I do
12 think that officers' presence and blue lights are
13 suggestive, but I think under the totality of the
14 circumstances this identification was proper. But
15 I'll reserve ruling until I have the opportunity to
16 review the video.

17 **MR. COCHRAN:** Thank you, Your Honor.

18 **THE COURT:** Anything further?

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

20 **THE COURT:** Anything further on any other
21 pre-trial issue that has not been ruled upon?

22 **MR. MAY:** I believe there are still two more,
23 Your Honor.

24 **THE COURT:** There was a question about the birth
25 certificate.

1 **MR. MAY:** Yes, sir. We have obtained it.

2 **THE COURT:** And tell me what the consequence of
3 that birth certificate is. Was he under 18 when
4 he --

5 **MR. MAY:** Yes, sir. His birth date is
6 September 27th, 1961.

7 **MS. CAMPBELL:** That's fine.

8 **MR. MAY:** If I may hand it up and mark it?

9 **THE COURT:** Go ahead. It's your position that
10 one of his priors could not be used to enhance.

11 (WHEREUPON, Court's Exhibit No. 2 is marked for
12 identification.)

13 **MS. CAMPBELL:** I'm not aware of any law out
14 there -- and if the defense has some, I'm just not
15 aware of it -- that says that if you are convicted of
16 armed robbery as an adult and if you're under the age
17 of 18 it cannot be used as a triggering offense.

18 In this case, however, Your Honor, for purposes
19 this defendant, he has three other armed robbery
20 convictions that also trigger of which he was
21 definitely over the age of 18.

22 **THE COURT:** I understand that. I understand
23 that.

24 **MS. CAMPBELL:** But I'm not aware of any law; and
25 we've done research and I've got a memorandum if

1 you'd like to review it, that Ms. Simpson of course
2 did, that that would have no effect on whether that
3 would be a triggering event anyway, regardless. Now,
4 if it had been a juvenile adjudication, I think he's
5 got an argument. But this was not a juvenile
6 adjudication. It is attached to the life without
7 parole. He was convicted as an adult. Therefore,
8 there is nothing that I'm aware of --

9 **THE COURT:** So you think you can use just that?

10 **MS. CAMPBELL:** I think I could use just that;
11 yes, sir.

12 **THE COURT:** The underaged conviction?

13 **MS. CAMPBELL:** Under what age?

14 **THE COURT:** 18.

15 **MS. CAMPBELL:** He was 17 at the time?

16 **MR. MAY:** Yes, ma'am.

17 **MS. CAMPBELL:** Yes, Your Honor. I'm not aware
18 of any law that says when you're 17 and get convicted
19 of armed robbery it cannot be later used as a
20 triggering event. However, in this case, Your Honor,
21 as you're aware, there are three other armed
22 robberies.

23 **THE COURT:** I know. But all he wants the State
24 to do is withdraw the notice as to that offense only
25 as I understand it.

1 **MR. MAY:** Yes, sir. That's correct.

2 **THE COURT:** For what purpose I don't know.

3 **MS. CAMPBELL:** I don't either. Maybe he's just
4 preserving this for appeal for hopes of --

5 **THE COURT:** Is that --

6 **MR. MAY:** That's correct, Your Honor. With
7 Graham v. Florida which came out less than two months
8 ago, the Supreme Court takes a look and says that
9 juveniles should not be able to get life without
10 parole for non-homicide offenses.

11 **MS. CAMPBELL:** He is not a juvenile at this
12 point.

13 **MR. MAY:** Well, excuse me, ma'am.

14 **MS. CAMPBELL:** They were not seeking life
15 without parole at that time.

16 **THE COURT:** Don't interrupt him, please.

17 **MR. MAY:** And, Your Honor, we're raising the
18 issue. If this gets legs and the Court of Appeals
19 gets to take a look at it, we would like to preserve
20 the record. We would like to just show that he was
21 17 when he did --

22 **THE COURT:** Well, I'll allow you to do that if
23 he's convicted.

24 **MR. MAY:** Thank you, Your Honor.

25 **THE COURT:** If a sentencing procedure is held, I

1 may rule on it at that point.

2 **MR. MAY:** Okay --

3 **MS. CAMPBELL:** Thank you, Your Honor.

4 **THE COURT:** -- that it would not be used as a
5 triggering event. But at this stage of the
6 proceedings I don't know that I can require them to
7 withdraw it.

8 **MR. MAY:** Yes, Your Honor. Well, then that also
9 might take care of the other issues regarding motions
10 to withdraw the life without parole before the case
11 in an effort for judicial efficiency. Your Honor, we
12 would argue that Medea v. Kentucky addressing
13 immigration issues, that as Mr. Broadnax testified,
14 one, he was not made aware of any kind of recidivism
15 statutes that may be triggered due to a plea, as well
16 as he would not have pled.

17 So, therefore you have both the Strickland test
18 of that he wasn't advised and, secondly, that he was
19 prejudiced due to the fact that he wasn't advised. I
20 believe we fill both prongs of Strickland, unlike
21 Medea. I believe that in Medea there is a very
22 strong language from the court that the Supreme Court
23 has never said that collateral issues cannot be
24 raised due to Sixth Amendment bringing forth
25 inadequate counsel.

1 I believe that that's what the State's entire
2 brief is about, is that indeed this is a collateral
3 issue. Well, Your Honor, I believe that Medea goes
4 forward and makes the argument that if somebody is
5 not advised, which Mr. Broadnax testified he was not,
6 the State has not countered that testimony with any
7 evidence whatsoever. And, two, he was prejudiced,
8 which he -- per the testimony, he was.

9 **THE COURT:** Well.

10 **MR. MAY:** Yes, sir.

11 **THE COURT:** You know, that was really narrowed,
12 entirely tailored to immigration issues and
13 deportation issues.

14 **MR. MAY:** Yes, sir.

15 **THE COURT:** I don't know if I can read it as an
16 across-the-board application to all collateral
17 consequences.

18 **MR. MAY:** Yes, sir. Well, Your Honor, I'd argue
19 that deportation is -- and I think that the court in
20 that opinion looks at deportation and says this is a
21 major issue that affects a defendant's life, that
22 some defendants would give up -- would agree to
23 incarcerations if they're not in the future deported.

24 Here we have a man who is facing life without
25 parole. And I believe on weighing the two, which

1 collateral issue is the more severe and prejudices
2 the defendant more, it's without a doubt the
3 recidivism statutes triggers life without parole.
4 Your Honor, I believe that reading that opinion --

5 **THE COURT:** Who heard it? Kenny?

6 **MR. MAY:** Yes, sir. I believe it's a 7-2
7 opinion.

8 **THE COURT:** You'll have to take that up with
9 him.

10 **MR. MAY:** It's a 7-2 opinion, Rule 54, for
11 certain issues. And this may be those kind of issues
12 that need to be examined at higher courts.

13 **THE COURT:** Well, we're on the record.

14 **MR. MAY:** Thank you.

15 **THE COURT:** Yes, sir.

16 **MS. CAMPBELL:** Your Honor.

17 **MR. MAY:** So you're denying those motions?

18 **THE COURT:** Yes, sir.

19 **MR. MAY:** All right. Thank you, Your Honor.

20 **MS. CAMPBELL:** And again, Your Honor, we would
21 rely on Brown vs. State, Pittman vs. State, and State
22 vs. Hazel which all address the fact that a guilty
23 plea is not rendered an involuntary and
24 unconstitutional sentence if the defendant is not
25 informed of the collateral consequences.

1 **MR. MAY:** And I just note for the record that
2 those are all pre Medea v. Kentucky.

3 **THE COURT:** Okay. All right. I've got a short
4 hearing at 9:00. Say 9:15. The jury is coming in at
5 9:30.

6 **MR. MAY:** Thank you very much, Your Honor.

7 **MR. COCHRAN:** Thank you, Your Honor.

8 **MS. CAMPBELL:** Thank you.

9 (Whereupon, the proceedings are concluded, to be
10 reconvened tomorrow morning)

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Tuesday, June 15, 2010

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

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2 identification.)

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4 identification.)

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10 identification.)

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12 identification.)

13 (WHEREUPON, State's Exhibit No. 25 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 26 is marked for
16 identification.)

17 **THE COURT:** State ready to proceed?

18 **MS. CAMPBELL:** The State's ready, Your Honor.

19 **THE COURT:** Defense ready to proceed?

20 **MR. MAY:** Yes, Your Honor.

21 **THE COURT:** Co-counsel.

22 **MS. CAMPBELL:** I don't know where she is.

23 **THE COURT:** Or second seat I should say.

24 **MS. CAMPBELL:** We can proceed.

25 **THE COURT:** All right. Jenny.

1 **COURT REPORTER:** Mm-hmm (affirmative).

2 **THE COURT:** Over the evening break I reviewed
3 the DVD of the traffic stop and also the closed
4 incident report and the search warrant, those
5 documents which were supplied to the Court yesterday
6 afternoon.

7 With reference to the motion to exclude the
8 evidence seized from the Dodge pick-up truck, the
9 motion is denied. I feel that to begin with,
10 contrary to counsel's representation that an old gray
11 Dodge Ram pick-up truck is a pretty common vehicle, I
12 disagree with that.

13 On the DVD it was pretty easy for me to spot the
14 gray Dodge Ram pick-up truck going in the opposite
15 direction of the patrol car. And it's obvious that
16 he spun around or turned around and pursued that
17 truck to the location; and I forget the name of the
18 street, but where they moved in front of the vehicle
19 and stopped it and made the detentions at that point.

20 Plus the fact that I think there's certainly on
21 the police officer's part a reasonable suspicion,
22 given the description of the car, the time, some ten
23 to -- as I understood it, 15 to 20 seconds after the
24 call came in to spot that very vehicle or a very
25 similar vehicle at the location that the dispatch

1 said it was within close proximity to the scene of
2 the robbery certainly would give -- certainly could
3 give an officer reasonable suspicion that that's the
4 vehicle, regardless of the fact that there was only
5 one allegedly older driver and only one passenger in
6 the car, apparently a passenger in the car.

7 The officer said with regard to the comment
8 about: I don't think this -- this is not likely to
9 be the one, or something like that, that viewing the
10 driver of the car -- and I guess they just would
11 assume that this was an old beat up truck and nobody
12 would even think about using it as an escape vehicle.

13 So, I mean, it seems to me fairly coherent that
14 this series of events took place in a very short
15 period of time in close proximity to the accident; I
16 mean, to the scene of the crime. And given the
17 totality of the circumstances -- I love that term --
18 given the totality of the circumstances, the officers
19 acted properly.

20 The officer who -- Delage arrives on the scene.
21 There is no contrary evidence that he didn't see the
22 weapon and the issue -- I mean, the currency. That's
23 the only evidence I've got to go on except the
24 picture. And he said he looked at it from a
25 different perspective than the picture was taken. I

1 don't think he even took the picture.

2 So, once the vehicle was stopped, based on
3 reasonable suspicion of the officers who had stopped
4 it, Officer Ridgeway and Spires, the next officer on
5 the scene, when the vehicle was opened, the occupants
6 are out of the vehicle, and laying on the front
7 passenger floorboard is what the officer perceives to
8 be a weapon and money. I think the evidence is
9 admissible.

10 With regard to the suppression of the in-court
11 identification, I think I explained yesterday my
12 feeling. I don't feel any different than I did
13 yesterday in terms of his opportunity -- the Biggers
14 factors. His opportunity to view the defendant or
15 the degree of attention, the accuracy of his
16 description, the certainty, the clear certainty when
17 he -- when the show-up occurred that he identified
18 without any prompting to do so. He comes with the
19 officer and immediately states: That's the s.o.b.
20 right there. Or that's that s.o.b. right there. I
21 don't remember his exact language.

22 He identifies the clothing, for lack of a better
23 term, the lazy eye. He says in addition the body
24 build, physique of the defendant. And again, this is
25 less than ten minutes after the robbery. And even in

1 Govan there was a 45-minute gap between the time of
2 the robbery of the restaurant and the witnesses
3 identifying the defendant at a show-up. So I think
4 the in-court identification is proper, and I so rule.
5 I think that's it. Is the State ready for the jury?

6 **MS. CAMPBELL:** Your Honor, one other issue we
7 would like to take up at this time, or it may be
8 prudent to take up this at this time rather than
9 sending them back out, is prior records on the
10 witnesses and the co-defendant.

11 **THE COURT:** Is that not settled?

12 **MS. CAMPBELL:** No, sir. We have a severe
13 disagreement about admissibility of prior records.

14 **THE COURT:** Whose record?

15 **MS. CAMPBELL:** We can start with the
16 co-defendant, Charles Green. He was charged as an
17 accessory after the fact. He also has a pending
18 possession of stolen vehicle in our office which I
19 believe we should be able to get into. We have been
20 able to agree to the rest of his record starting
21 in --

22 **THE COURT:** Slow down. Let me write this down.
23 Green?

24 **MS. CAMPBELL:** Charles Green.

25 **THE COURT:** He is a co-defendant?

1 **MS. CAMPBELL:** He is the person you actually saw
2 in the video as the driver.

3 **THE COURT:** The driver.

4 **MS. CAMPBELL:** He is charged with accessory
5 after the fact to armed robbery.

6 **THE COURT:** In this case?

7 **MS. CAMPBELL:** In this case. And he also has a
8 pending possession of stolen motor vehicle in our
9 office.

10 **THE COURT:** Possession.

11 **MS. CAMPBELL:** And I think Mr. May and I agree
12 that those --

13 **THE COURT:** Is he to testify?

14 **MS. CAMPBELL:** Yes, sir.

15 **MR. MAY:** Yes, sir.

16 **THE COURT:** For ...?

17 **MR. MAY:** For the State, Your Honor.

18 **THE COURT:** Is he in jail?

19 **MR. MAY:** No, sir. I believe the question was:
20 Is he in jail.

21 **MS. CAMPBELL:** No.

22 **THE COURT:** Possession of stolen vehicle. And
23 when was that?

24 **MS. CAMPBELL:** The possession of stolen vehicle
25 is pending now. He was charged with that subsequent

1 to this I believe.

2 **MR. MAY:** That's correct.

3 **MS. CAMPBELL:** Okay.

4 **THE COURT:** Okay. What else?

5 **MS. CAMPBELL:** What we can agree on is that
6 within the last ten years, starting in August of
7 2000, he has a fraudulent check conviction.

8 **THE COURT:** Right.

9 **MS. CAMPBELL:** In 2001 a shoplifting conviction
10 and an obtaining prescription drugs by fraud
11 conviction. In 2003 a breach of trust.

12 **THE COURT:** Okay.

13 **MS. CAMPBELL:** In 2004 a shoplifting, two
14 counts.

15 **THE COURT:** Okay.

16 **MS. CAMPBELL:** Then in 2008 a petit larceny,
17 also two counts of that.

18 **THE COURT:** Okay.

19 **MS. CAMPBELL:** And that would be what we agree
20 on.

21 **MR. MAY:** That's what we agree on.

22 **THE COURT:** What don't you agree on?

23 **MS. CAMPBELL:** Back in 1979 --

24 **THE COURT:** 1979.

25 **MS. CAMPBELL:** -- Mr. Green was charged with

1 assault and battery with intent to kill, and he was
2 convicted of that and received what looks like an
3 18-month sentence.

4 **MR. MAY:** That's correct.

5 **THE COURT:** When was he released?

6 **MS. CAMPBELL:** He was released within 18 months.
7 I mean, I don't think anybody is arguing it's within
8 the ten-year period.

9 **MR. MAY:** No, sir.

10 **MS. CAMPBELL:** And Mr. May would like to get
11 into that prior conviction.

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

13 **MR. MAY:** Yes, sir, Your Honor. I believe that
14 under -- I believe that that goes to 608 -- I'm
15 sorry -- 607(c) of the rules of evidence, as he could
16 easily have been charged with --

17 **THE COURT:** Hold it. Hold it. It's not 607.

18 **MR. MAY:** I'm sorry. 608(c). 608(c). I
19 apologize.

20 **THE COURT:** Okay.

21 **MR. MAY:** It was a 608(c) as evidence of bias,
22 Your Honor. He could easily have been charged with
23 hand of one, hand of all in this case for armed
24 robbery and kidnapping. The 1979 charge would make
25 him eligible for life without parole.

1 **THE COURT:** Wait a minute. Say that again?

2 **MR. MAY:** Yes, sir.

3 **THE COURT:** ABIK.

4 **MR. MAY:** ABIK in 1979.

5 **THE COURT:** '79.

6 **MR. MAY:** Yes, sir. In this case, assuming his
7 story is correct, he could have been charged with
8 kidnapping and armed robbery under hand of one, hand
9 of all.

10 **THE COURT:** In this case.

11 **MR. MAY:** Yes, sir.

12 **THE COURT:** All right.

13 **MR. MAY:** Seeing as that would trigger in the
14 State's position a life without parole possibility,
15 that goes to his bias to why his story conforms to
16 what the State wants him to talk about.

17 **THE COURT:** All right. Say that one more time.
18 I'm just -- I was doublechecking his LWOP
19 eligibility.

20 **MR. MAY:** Yes, sir. In 1979 he was convicted
21 of --

22 **THE COURT:** What's the bias issue?

23 **MR. MAY:** What's the bias? That he will tailor
24 his testimony to what the State wants so that he does
25 not subsequently get charged with armed robbery and

1 kidnapping. This is per his testimony a hand of one,
2 hand of all case. Per his testimony he is going to
3 say that he drove Mr. Broadnax to the Church's
4 Chicken to rob the Church's Fried Chicken.

5 **THE COURT:** Co-conspirator.

6 **MR. MAY:** Correct. And under hand of one, hand
7 of all I believe that he would be liable for the
8 armed robbery as well as the kidnappings that
9 occurred in the Church's Chicken per his own
10 testimony.

11 **THE COURT:** What's the State's position?

12 **MS. CAMPBELL:** The State's position is he
13 mischaracterizes Mr. Green's testimony somewhat. Mr.
14 Green gave -- and to give you a history as far as
15 when the charges were; the two of them are detained
16 that day. Subsequent to that Mr. Green is advised of
17 his rights and gives a statement. Mr. Broadnax -- of
18 course we won't go into this in front of the jury --
19 was advised of his rights and invokes.

20 Again, in a statement from Mr. Green, they asked
21 him about a series of armed robberies involving this
22 defendant. The only thing he says about the Church's
23 Fried Chicken as far as his knowledge as to what was
24 going on which would make it a hand of one, hand of
25 all as characterized by the defense is did

1 Christopher have a -- and I can hand this up to you,
2 Judge. It also involves testimony about other
3 robberies that occurred.

4 Did Christopher have a silver handgun when he
5 got into your vehicle? I do not know. He had a
6 plastic grocery bag that could have contained a gun.
7 What type of gun have you seen Chris with? I've seen
8 him with an automatic pistol. I have no idea of the
9 type pistol. It's silver and brown in color. Did
10 you know that Chris was going to rob the Church's?

11 Which of course if he answered yes, that would
12 make him a principal. He said: No. I did not know
13 exactly what was planned. I suspected that some
14 place would probably get robbed. What did Chris have
15 when he got back in the truck? The same grocery bag
16 that he got out with.

17 And then he describes the clothing. Then they
18 go on to talk about other robberies where Mr. Green
19 had given him a ride to the place of business, not
20 that he knew that the robberies were going to occur.

21 Your Honor, the State has never charged him as a
22 principal based on the credible evidence and what we
23 could prove. We of course do feel like that we do
24 have enough probable cause, and he has been indicted
25 I believe for accessory after the fact to armed

1 robbery.

2 As far as this defendant having the wherewithal
3 at the time the statement was taken to think that his
4 prior ABIK conviction would affect that, I just don't
5 know how that could have prejudiced him or biased him
6 to give a certain statement; other than of course, I
7 mean, all defendants tend to either minimize or deny
8 culpability.

9 But based on what we have as far as the evidence
10 is, is that the truck was not even parked in the
11 parking lot. It doesn't look like it was around
12 behind a building down the street. You've heard
13 testimony to that. It doesn't look like he was
14 acting as a lookout in any manner which would also
15 make him guilty as a principal. And the only charge
16 the police officers chose to pursue was accessory
17 after the fact. So I don't know that it could go to
18 his bias.

19 **MR. MAY:** Your Honor, if I may respond briefly.
20 Mr. Broadnax is charged with a string of armed
21 robberies, all of which Mr. Green is the alleged
22 get-away driver. That shows that he knew what was
23 happening that day.

24 **THE COURT:** Is he charged in all those charges?

25 **MR. MAY:** I don't believe so. And I believe the

1 reason why he's not is because he immediately
2 confessed to everything.

3 **THE COURT:** You mean if you confess you don't
4 get charged?

5 **MR. MAY:** When you're the get-away driver, I
6 guess not.

7 **THE COURT:** There's a lot of people down in DOC
8 would like to know about that.

9 **MR. MAY:** Yes, sir. Yes, sir. But, Your Honor,
10 I don't believe that the bias stops at the original
11 statement. The bias goes to what he is going to
12 testify on the stand. There has been --

13 **THE COURT:** Let me just interrupt. Where does
14 he fit in in the line of testimony?

15 **MS. CAMPBELL:** He would be after the victims.

16 **THE COURT:** All right. I may proffer his
17 testimony, but I don't want to do it now.

18 **MS. CAMPBELL:** That's fine, Your Honor. There
19 is another issue as to his testimony, too. We need a
20 limiting instruction from the Court because he talks
21 about how the defendant would pay him like \$100 to
22 give him rides to places. So we need to limit that,
23 too.

24 **THE COURT:** Let's do that.

25 **MS. CAMPBELL:** But we also have to settle the

1 record on other people.

2 **THE COURT:** Go ahead. Is there a dispute about
3 it?

4 **MS. CAMPBELL:** Yes, sir. As far as Donald
5 Kirby, his only prior is a conviction for possession
6 of crack from 2000.

7 **MR. MAY:** We don't need to get into that. I
8 don't believe we have a dispute.

9 **MS. CAMPBELL:** No. We do not think -- the
10 Supreme Court has held that crimes involving drugs
11 are not probative as to truthfulness.

12 **MR. MAY:** I agree with that statement when it
13 goes to the defendant. But under the rules, I
14 believe that it says that under 609(a)(1) for
15 witnesses, it's any crime that carries over a
16 potential one year in prison. So I believe that for
17 a witness, the State intends to introduce 609(a)(1),
18 it's controlling.

19 **MS. CAMPBELL:** The Supreme Court has held it is
20 not probative of the truthfulness.

21 **MR. MAY:** And the defense does not disagree with
22 that for the defendant. And I believe that the
23 Supreme Court's analysis is when a defendant takes
24 the stand. It's not for a witness which is codified
25 in 609(a) of the South Carolina Rules of Evidence.

1 **MS. CAMPBELL:** I would cite State vs.
2 Cheeseboro. Evidence of narcotics convictions is
3 generally not probative of truthfulness. And that's
4 when they were talking about the victim. I
5 understand Mr. May's position, but I think that the
6 rulings have been consistent as to the defendant as
7 well as to victims.

8 **THE COURT:** Well, there's a difference between
9 the victim and the defendant.

10 **MS. CAMPBELL:** Yes, Your Honor. And in State
11 vs. Cheeseboro, the trial court excluded crimes of
12 the victim's convictions for grand larceny,
13 housebreaking, unlawful drugs that were more than 25
14 years old and then went on to say evidence of
15 narcotics convictions is generally not probative of
16 truthfulness. In that case --

17 **THE COURT:** Are you sure that's not the victim?

18 **MR. MAY:** It sounds like the victim.

19 **MS. CAMPBELL:** Excuse me?

20 **MR. MAY:** It sounds like a victim.

21 **THE COURT:** I said --

22 **MS. CAMPBELL:** I'll be glad to pull the case.

23 **THE COURT:** Pull the case. At this point I'm --
24 what is the offense? What's the offense?

25 **MS. CAMPBELL:** The offense is possession of

1 crack cocaine.

2 **THE COURT:** Just possession.

3 **MS. CAMPBELL:** Yes, sir.

4 **MR. MAY:** Yes, sir.

5 **MS. CAMPBELL:** From December of 2001. 552 SE2d
6 300.

7 (Pause)

8 **MS. CAMPBELL:** Your Honor, I would also with the
9 Court's permission hand up State vs. Bryant which
10 also quotes Cheeseboro, citing Aleski. Violations of
11 narcotics laws are generally not probative of
12 truthfulness. Again, this is in relation to a
13 defendant. However, I believe it's been --

14 **THE COURT:** No. These are offenses that are
15 over ten years old, too. That's why they're trying
16 to use them because they're more than ten years old.

17 **MS. CAMPBELL:** Yes, Your Honor. But these
18 weren't in Bryan. If I may approach?

19 (Document handed to the Court)

20 **MS. CAMPBELL:** And it quotes Cheeseboro for that
21 very ...

22 (Pause)

23 **THE COURT:** All right. I'll allow it.

24 **MR. MAY:** You'll allow impeachment?

25 **THE COURT:** Yes, sir.

1 **MR. MAY:** Thank you, Your Honor.

2 **THE COURT:** Possession of crack.

3 **MR. MAY:** Yes, sir.

4 **THE COURT:** What year?

5 **MR. MAY:** 2001.

6 **MS. CAMPBELL:** 2001.

7 **THE COURT:** Okay. What's next?

8 **MS. CAMPBELL:** Your Honor, respectfully, we take
9 exception to your ruling on that.

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

11 **MS. CAMPBELL:** Gracious Tucker does not have any
12 record.

13 **MR. MAY:** We agree with that.

14 **MS. CAMPBELL:** Mr. Haynes has a 2005 -- let me
15 check one thing, Your Honor -- a 2005 possession of
16 cocaine. And finally, Your Honor, Mr. Danny Weaver.

17 **THE COURT:** Lever?

18 **MS. CAMPBELL:** Weaver. And we have a couple of
19 issues about him. He was convicted of criminal
20 sexual conduct with a minor second degree.

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

22 **MS. CAMPBELL:** I believe in 2004. Would you
23 agree with that?

24 **MR. MAY:** (Nods head affirmatively).

25 **THE COURT:** All right.

1 **MR. MAY:** Beg the Court's indulgence, Your
2 Honor. 2003 arrest, yes.

3 **MS. CAMPBELL:** I'm sorry. What did you just
4 say?

5 **MR. MAY:** 2003 arrest.

6 **MS. CAMPBELL:** It was a conviction in 2004.

7 **MR. MAY:** Yeah.

8 **MS. CAMPBELL:** Is what I'm showing.

9 **MR. MAY:** I show that also.

10 **MS. CAMPBELL:** I think we agree that he would be
11 able to get into that conviction on that witness.
12 The issue that we have and that we disagree about is
13 Mr. Weaver currently has a parole violation he's
14 serving time on. And I spoke to Mr. May this morning
15 about the fact that he is currently incarcerated.
16 He's downstairs right now. We are asking for an
17 order from the Court to allow him under the victims
18 rights bill to attend this hearing, this thing, and
19 to be allowed to dress out.

20 **THE COURT:** Wait a minute. Attend what? This
21 trial?

22 **MS. CAMPBELL:** This trial. Yes. He's the
23 actual victim in the armed robbery.

24 **THE COURT:** Oh, I see. How do you propose to do
25 that?

1 **MS. CAMPBELL:** My understanding is if you will
2 order the court to turn him over to an investigator
3 from our office's custody that they would allow him
4 to do that. And we would ask that he be allowed to
5 dress in street clothes similar to how the defendant
6 is.

7 **THE COURT:** Is somebody from DOC here?

8 **MS. CAMPBELL:** Yes, sir. I can get him up here
9 right now.

10 **THE COURT:** What's the defense position?

11 **MR. MAY:** Your Honor, the defense position is
12 that, yes, he does have the right under the South
13 Carolina Constitution to attend all proceedings. I
14 do not believe there is any reason for him not to be
15 in the Department of Corrections outfit. I'd ask the
16 State provide any case law that says that one of
17 their witnesses --

18 **THE COURT:** I'm going to allow it.

19 **MR. MAY:** Okay.

20 **THE COURT:** I mean, nobody in here is in
21 custodial dress.

22 **MR. MAY:** Yes, sir.

23 **THE COURT:** So he would certainly stand out.
24 And you're going to ask him about it anyway.

25 **MR. MAY:** Okay. Yes, sir. I'm going to ask

1 him. I believe that we can get --

2 **MS. CAMPBELL:** That would be the next point of
3 contention. He wants to go into the fact that he's
4 currently incarcerated. We don't think under any
5 rule that we're aware of that that would be allowed.
6 I don't see how there's any bias or prejudice under
7 608 or 609 that he could show or should be allowed to
8 go into that.

9 **MR. MAY:** I believe, Your Honor, under State v.
10 Mizell, State v. Sims and Elder v. VanArsdale, it's
11 any potential bias.

12 **MS. CAMPBELL:** And in those cases there were
13 pending charges. There is nothing pending.

14 **MR. MAY:** He is currently in the South Carolina
15 Department of Corrections. As Your Honor informed --
16 as Your Honor and the deputy solicitor told me and
17 told my client yesterday, when you're in the
18 Department of Corrections, you still can work off
19 your time. I can -- I believe that I can ask him
20 about: Do you hope that your testimony here will
21 reduce the amount of time you're currently serving?

22 **THE COURT:** Under what theory?

23 **MR. MAY:** Under what theory?

24 **THE COURT:** Yes.

25 **MR. MAY:** It goes to his potential bias on the

1 stand.

2 **THE COURT:** I know. His testimony here, how is
3 that going to affect his parole, the parole
4 violation?

5 **MR. MAY:** I imagine the Solicitor's Office could
6 petition the Department of Corrections.

7 **THE COURT:** You imagine?

8 **MR. MAY:** And, Your Honor, even if he is
9 mistaken as to that fact, it still goes to his bias
10 and in his testimony upon the stand. He is still
11 currently under the conviction and sentence of
12 that --

13 **THE COURT:** CSC.

14 **MR. MAY:** -- of that CSC with a minor.

15 **THE COURT:** Well, the mere fact that he violated
16 his parole, I'm not going to allow you to get into
17 that. Bring him up, dress him out, sit him in the
18 courtroom like anybody else.

19 **MS. CAMPBELL:** Thank you, Your Honor.

20 **THE COURT:** Go into his prior record, not what's
21 happened subsequent to that.

22 **MS. CAMPBELL:** Can I make a quick phone call?

23 **THE COURT:** Do you want him in for opening
24 statements? The jury has been sitting here half an
25 hour now.

1 **MS. CAMPBELL:** That's fine, Your Honor, if
2 you'll just give me an opportunity to bring him up
3 after opening statements.

4 **THE COURT:** That's fine. That's what your
5 second seat is for.

6 **MS. CAMPBELL:** I have to be able --

7 **THE COURT:** Where are all the paralegals?
8 Somebody can draw that Order.

9 **MS. CAMPBELL:** Can we just write it up on a
10 form?

11 (Pause)

12 **THE COURT:** The State ready for the jury?

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

14 **THE COURT:** Defense ready for the jury?

15 **MR. MAY:** Yes, Your Honor.

16 **THE COURT:** Bring the jury.

17 (Jury in at 10:05 a.m.)

18 **THE BAILIFF:** The jury is all present, Your
19 Honor.

20 **THE COURT:** All right, sir. Mr. Foreman, what
21 is your number, please?

22 **MS. CAMPBELL:** 1.

23 **THE COURT:** You got the number 1 seat, number 1
24 juror. Thank you for agreeing to serve as foreperson
25 of this jury. All right, Madam Clerk. Swear the

1 jury, please.

2 **THE CLERK:** Yes, Your Honor. Mr. Foreman and
3 Ladies and Gentlemen of the Jury, would you please
4 stand and raise your right hand to be sworn.

5 (Whereupon, the jury is sworn)

6 **THE CLERK:** Thank you.

7 **THE COURT:** All right, ladies and gentlemen.
8 Before we actually begin the trial I want to just
9 take a few minutes and talk with you about the
10 proceeding or the procedure that we will use during
11 the course of this trial. This trial may be
12 different from what you might expect. Many people do
13 not have the chance to attend actual court sessions
14 as you're now doing and may think from watching
15 television or watching movies or reading books may
16 think that trials are always full of a lot of action
17 and high drama and riveting circumstances.

18 While all these things may be true at times,
19 this trial is not for entertainment. It's a
20 fundamental part of democracy, a search for the truth
21 in an effort to make sure that justice is done
22 between the parties before the court. Searching for
23 truth and making sure that justice is done is often
24 slow and deliberate and repetitive, the opposite of
25 what you may have seen on television or in movies or

1 read in books.

2 In this court a criminal law violation is
3 presented in a legal document known as an indictment.
4 There are four indictments in this case; if you will
5 recall, one for armed robbery and three for
6 kidnapping. Please remember that these indictments
7 are not evidence. The indictments are merely the
8 documents that bring a specific charge against a
9 particular individual.

10 The defendant has pled not guilty to these
11 indictments and the State, therefore, has the burden
12 of proving each of the elements of the indictments
13 beyond a reasonable doubt. And it will be your duty
14 to decide whether the State has met that burden.

15 Now, you are not to infer from anything that I
16 say or do during course of this trial as to what your
17 verdict should be. You are to determine the
18 innocence or guilt of the defendant based on the
19 evidence that will be introduced during the trial of
20 the case. I have no opinion about the facts in this
21 case. The Constitution of the state of South
22 Carolina does not allow me to have an opinion about
23 the facts in the case.

24 Now, let me talk about two what we call legal
25 principles or legal yardsticks you will use in

1 judging or measuring the evidence in this case. The
2 legal yardstick is known as the burden of proof. And
3 in this case the burden of proof; that is, the burden
4 to prove the case, is on the State to prove guilt
5 beyond a reasonable doubt.

6 Should the State fail to meet that burden of
7 proof, it would be your duty to find the defendant
8 not guilty. There is absolutely no burden whatsoever
9 on the defendant to prove or disprove anything.
10 There is no burden on the defendant to testify or to
11 present any evidence because, as I said, the burden
12 is and remains on the State to prove guilt beyond a
13 reasonable doubt.

14 And, second, I want you to recall my earlier
15 comment to the full jury panel concerning the
16 presumption of innocence. This is a cardinal and
17 fundamental rule of law that a defendant will always
18 be presumed to be innocent of the crime or crimes for
19 which he is indicted until proven guilty beyond a
20 reasonable doubt. In other words, the presumption of
21 innocence is not just a simple legal theory or a
22 simple legal phrase. It is a substantial right to
23 which any accused, including this defendant, is
24 entitled.

25 Now, as the trial judge, I will preside over the

1 trial of the case, rule on the admissibility of
2 evidence and at the end of the case explain to you
3 the law applicable to this case, the law of South
4 Carolina.

5 Now, please understand what I tell you is not
6 evidence in this case; and by the same token, what
7 the attorneys tell you is not evidence. The
8 attorneys may make opening statements and closing
9 statements to you but those statements are not
10 evidence in this case.

11 The attorneys ask questions of the witnesses,
12 and it is the responses of the witnesses to those
13 questions which constitutes the evidence. And you
14 and I do not ask questions. We do not offer any
15 exhibits. Your duty is to listen openly and honestly
16 to the evidence and keep an open mind. Do not form
17 any conclusions or judgments until you've received
18 and considered all of the evidence, the arguments of
19 the attorneys and my final instructions to you on the
20 law as it applies to this case.

21 Consistent with your oath, I'm going to ask you
22 not to discuss this case with your fellow jurors or
23 with anyone else. The first opportunity you will
24 have to discuss this case is at the end of the trial
25 when I authorize you to begin your deliberations.

1 Now, let me just expand on that a little bit,
2 because I told you yesterday about the problem that
3 we have sometimes with jurors doing independent
4 research about a case. I recently presided over a
5 trial in Lexington County where a juror took it upon
6 herself to do independent search. Her fellow jurors
7 reported her for doing so after the trial.

8 I had hearings on that case; and, unfortunately,
9 I found that she had violated my Order. She was held
10 in contempt of court and required to pay to the
11 County of Lexington the entire cost of that trial,
12 because it's probably going to have to be done over
13 again due to her independent research and discussing
14 matters of the case with her fellow jurors prior to
15 the deliberations and during deliberations.

16 I had another case in Richland County just
17 recently where I instructed the jury not to discuss
18 the case until they heard all of the evidence. Well,
19 I think the jury took that instruction as to mean not
20 to discuss the guilt or innocence of the defendant
21 until the final deliberations, because some of the
22 early testimony in the case involved -- I mean, it
23 sounds a little silly -- but it involved a family
24 feud and a woman in the case who happened to have a
25 grapefruit in a grocery bag who hit the defendant on

1 the head with the grapefruit. Well, I say it sounds
2 a little strange.

3 But the first thing that the jury did when they
4 got -- when they took a break was start talking about
5 how the woman hit the lady on the head -- I mean, the
6 man on the head with a grapefruit. So, in other
7 words, they weren't talking about guilt or innocence
8 of the defendant, but they were talking about the
9 facts of the case, discussing the facts of the case.
10 In that case I had to stop the trial and something
11 else was worked out.

12 So I only bring these up to caution you and try
13 to make you understand hopefully that until you hear
14 all the evidence it's just not proper and it's not
15 our system that jurors discuss the case until all the
16 evidence has been presented.

17 Now, another thing I want to caution you about;
18 during the course of this trial, you may, I'm
19 certain, will be handed exhibits. They will be
20 circulated among you. And I will tell you at the end
21 of the trial you will take all of those exhibits to
22 the jury room with you. There may be pictures,
23 things of that nature.

24 And it's very easy while the testimony is being
25 had from the witness stand to start looking at

1 pictures and really get distracted from the
2 testimony. Now, when the case is over you're going
3 to have to basically recall the testimony. And by
4 the way, Mr. Hollis. Mr. Hollis.

5 **THE BAILIFF:** Yes, sir.

6 **THE COURT:** Would you check with my office and
7 get the note pads, please.

8 **THE BAILIFF:** All right, sir.

9 **THE COURT:** I meant to pass them out to the jury
10 this morning. I'm going to allow you to take notes
11 if you wish to do so. I'm not going to require you
12 to. If you wish to take notes. But the point being
13 that if you get distracted by looking at pictures and
14 documents while somebody is testifying, you might
15 miss some of what they testify.

16 I just want to assure you that you will have all
17 that evidence in the jury room when you go to the
18 jury room. So it's not necessary that you spend a
19 lot of time or attention on looking at those
20 documents and those pictures.

21 Now, if the State or the defense wishes you to
22 look at them more clearly and look at some specific
23 item, we'll basically just stop the testimony while
24 that takes place so that you can get a good look at
25 what the attorneys are trying to portray to you. So

1 I trust you will honor my instructions and your oath
2 in this regard.

3 Now let's look briefly at the trial process.
4 Each side may make an opening statement to you. And
5 after the opening statements we'll begin with the
6 receipt of evidence. The State goes first and
7 presents evidence. And the State goes first,
8 logically, because the State brought these charges
9 and has the burden of proof. And after we've heard
10 and received evidence from the State the same
11 opportunity is given to the defendant, bearing in
12 mind, however, that there is absolutely no burden on
13 the defendant to present any evidence at all.

14 Once we have received all the evidence in the
15 case each side is permitted to make a final argument
16 or summation to you after which I will instruct you
17 on the law as it applies to this case, and it will be
18 at that point at the end of the trial when you will
19 be permitted to begin your deliberations.
20 Mr. Foreperson, it will be your duty to preside in
21 the jury room and write the jury verdict if that
22 becomes necessary at the end of the trial.

23 I'll close with just a couple of housekeeping
24 matters. We usually run court for about an hour and
25 a half to two hours between breaks. Things

1 frequently happen during the trial of the case
2 sometimes which require us to deviate from that
3 schedule, but we'll try to be sensitive to your
4 needs.

5 If you need a break, whenever you need a break,
6 just raise your hand, get the attention of either the
7 bailiffs or myself, and we'll take a break. If you
8 cannot hear a particular witness or myself or one of
9 the attorneys, let us know so we can speak up more
10 clearly. And if your view of an exhibit is
11 obstructed for any reason, let us know so that we can
12 correct that. If you need to bring something to my
13 attention during the course of the trial, please
14 notify one of the bailiffs.

15 If you do need to contact me, it may be
16 necessary for the bailiff to require that you put
17 such a question or concern in writing so that we can
18 have a record of it. I'll respond to you as quickly
19 as I can to the extent that the law permits me to do
20 so.

21 All right. In just a minute, ladies and
22 gentlemen, let me get these pads and papers to you,
23 and we'll begin with the opening statements. I don't
24 know what happened to Mr. Hollis.

25 (Pause)

1 **THE COURT:** I'm sorry. It doesn't seem like the
2 hard part.

3 **THE BAILIFF:** I had to sharpen some pencils,
4 Your Honor.

5 **THE COURT:** Well, you should have done that last
6 night. All right. Counsel, you may begin with your
7 opening statement.

8 **MS. SIMPSON:** Thank you, Your Honor. May it
9 please the Court. Some people work for their money.
10 Others inherit it. And even a lucky few win it. But
11 then there are those who will take and steal other
12 people's money. And of those, some will do it by
13 force, threats or intimidation; and some while armed
14 with a deadly weapon, holding a person at gunpoint
15 and demanding the money. And I submit to you,
16 members of the jury, that we are here today because
17 the defendant, Christopher Broadnax, did just that.

18 Now, the evidence will show that on May the 24th
19 of 2009 the defendant committed an armed robbery and
20 three counts of kidnapping at the Church's Chicken
21 located right there at 2436 Taylor Street in
22 Columbia, South Carolina.

23 Now, you will learn that just before this
24 incident occurred the defendant asked his friend,
25 Charles Green, for a ride. Now, Mr. Green was going

1 to receive a pretty substantial sum of money for this
2 ride and he would oblige the defendant. And so
3 around 5:30, just after 5:30, they would go to the
4 Church's Chicken.

5 But Mr. Green wouldn't park in the Church's
6 Fried Chicken parking lot. He would actually pull to
7 the parking lot at a building directly behind the
8 Church's, driving his gray Dodge truck.

9 And the defendant, he would get out of that
10 truck wearing his striped shirt, dark pants and
11 carrying a plastic bag. He would go up to the
12 Church's, not for food. He would enter the Church's.
13 And it was a pretty slow day. Only the employees
14 were there, the victims and witnesses in this case.

15 And he walked in. You will learn that someone
16 didn't pay him too much attention at first, just
17 thought he was a customer coming in, was going to get
18 up and go help him. But the defendant pulled out a
19 gun and pointed it at everyone in the store. This is
20 a stick up. Give me the money out of the registers.

21 He would have a mask covering his nose and his
22 mouth. But they could still see his eyes. And
23 you'll learn that several saw that he had a messed up
24 or a cock eye of some sort. And as he pulled that
25 gun out, they were going to open the door to get to

1 the registers because they were going to follow his
2 orders because he had a gun.

3 But one employee who you'll hear from today,
4 Arthur Haynes, had been in the cooking area. And he
5 locked the door so that they couldn't get to the
6 safe. But they also couldn't get to the registers.
7 In an effort to hurry up, the defendant pointed the
8 gun at Danny Weaver and ordered that he jump over the
9 counter and get the money from the registers. And
10 Danny did just that. But he would have to go to the
11 drive-thru register first because that was the only
12 register that he could open with a key.

13 That wasn't enough for the defendant. Give me
14 the money from the front register. And so Gracious
15 Tucker who had the key was ordered at gunpoint to
16 bring the key to Danny. And he opened the register
17 for the defendant, put the money in the bag. Hurry
18 up. Because Danny was just moving too slow.

19 So Danny did as he was told. And the defendant
20 would walk out the Church's and then flee the scene.
21 But Arthur Haynes, he was going to follow the
22 defendant. And you'll hear today how he went out of
23 the Church's, went down the side of the building,
24 staying a safe distance behind the defendant. And he
25 lost sight just briefly. But as he looked behind the

1 wall, there was a gray Dodge truck. And the driver
2 of that truck would look directly at Mr. Haynes,
3 Arthur, and then speed off.

4 Well, Arthur would see what direction they were
5 going and he would run back. And Gracious Tucker,
6 she had called 911 at this point, scared. An armed
7 robbery had just occurred. She would report that. A
8 gray Dodge truck, stuff that she learned, the
9 information that she learned from her co-workers, a
10 gray Dodge truck heading down Millwood towards Two
11 Notch.

12 The call went out, dispatched to officers. And
13 within a matter of minutes, seconds, Officer Spires
14 and Officer Ridgeway who were coming down Two Notch
15 saw a gray Dodge truck matching the description that
16 they received. So they would turn around, follow the
17 truck to where it was stopped at Two Notch and
18 Chestnut just down the street, minutes from the
19 incident location.

20 And they would stop that truck and they would
21 walk up. But all they could see at first was the
22 driver, Mr. Green. And as Officer Spires walked up
23 to the car he noticed and pointed to Officer
24 Ridgeway: There's someone else. And Officer
25 Ridgeway comes to the side to find the defendant

1 crouching down in the floorboard hiding in the
2 passenger's side of the truck. At that point they
3 were brought out and detained.

4 However, that's not the end of our story,
5 because an officer would bring Arthur to where the
6 truck was stopped. And as they pulled up, Arthur
7 would say: That's the truck, that's the truck I saw.
8 And before they could even completely finish the
9 turn: That's the guy that robbed us, the guy in the
10 striped shirt and pants. The defendant.

11 Now, officers recovered from the plastic bag
12 that the defendant had been carrying the gun and the
13 money. It was found in the passenger's side where he
14 had been crouched hiding. You will also learn that
15 they recovered a black rag, a mask, consistent with
16 that used by the perpetrator. The evidence will show
17 that the defendant is the one who committed that
18 armed robbery.

19 Good afternoon [sic], members of the jury. My
20 name is Nicole Simpson, and I along with my
21 co-counsel, Deputy Solicitor Luck Campbell, together
22 we represent the State in this matter. And as
23 solicitors it is our job to prosecute all crimes that
24 occur here in Richland County. And as a result of
25 his actions on May the 24th of 2009, the defendant is

1 charged with one count of armed robbery and three
2 counts of kidnapping.

3 Now, in all criminal cases the defendant is
4 presumed innocent until proven guilty. And as the
5 State, we bear the burden of proof in this case. And
6 what that means is that we must prove to you beyond a
7 reasonable doubt each element of the crimes for which
8 the defendant has been charged. And I submit to you
9 and can tell you that we welcome that burden here
10 today.

11 Now, in South Carolina a person is guilty of
12 armed robbery if he takes or attempts to take and
13 carries away the personal property of another by use
14 of force, threats and intimidation and while armed
15 with a deadly weapon or even the representation of a
16 deadly weapon that a person would reasonably believe
17 to be a deadly weapon.

18 Now, kidnapping, a person is guilty of
19 kidnapping if he unlawfully seizes, abducts, takes
20 away, confines, et cetera, any person by any means
21 without the lawful authority of the law.

22 Now, we must prove to you each of these elements
23 beyond a reasonable doubt. So what is proof beyond a
24 reasonable doubt? What is proof that leaves you
25 firmly convinced of the defendant's guilt? Now,

1 there are very few things that we know in this world
2 with absolute certainty. And the law does not
3 require the State to produce proof that overcomes all
4 possible doubt or every doubt, only that reasonable
5 doubt.

6 Now, Judge Cooper is the judge of the law in
7 this case, and he is going to instruct you on the law
8 as you are to apply it to the facts of this case.
9 And his instructions and rulings to you should be
10 followed if ever there is a discrepancy between what
11 he says and what the attorneys in this case say.

12 Now, with that said, you members of the jury are
13 the sole finders of fact. And that means that each
14 of you here today is wearing a black robe. Because
15 individually and collectively you must decide and
16 only you can decide if the defendant is guilty of
17 armed robbery and kidnapping.

18 But we do not expect you to solve a mystery.
19 You're not here to solve a mystery. And it is our
20 job as the State to give you the tools that you need
21 to do your job. And we plan to do just that through
22 the evidence produced during this trial.

23 Now, that evidence is going to come in two
24 forms, physical evidence, evidence that you can see,
25 that you can hear, that you can touch. But much of

1 that evidence is going to come from right here on
2 this witness stand.

3 You're going to hear from several witnesses
4 today, including the victims in this case, Donald
5 Kirby, Gracious Tucker and Danny Weaver. And they're
6 going to tell you about what happened and they're
7 going to describe the defendant to you or what the
8 defendant was wearing. And Arthur Haynes, you're
9 going to hear from him, the witness, an employee who
10 followed the defendant and was able to point both the
11 truck and the defendant out as the perpetrator of
12 this crime.

13 And you're going to hear from Mr. Green who gave
14 the defendant the ride that day. He is going to tell
15 you what happened. You're going to hear from the
16 responding officers on the scene as well as the
17 officers who conducted the stop. You're going to
18 hear from the lead investigator in this case,
19 Investigator Thomas, as well as Investigator Rose who
20 processed the scene.

21 Now, members of the jury, it is up to you to
22 judge the credibility of these witnesses. And in
23 doing that, based on your decision, you can believe
24 some of what a witness says, you can believe none of
25 what a witness says, or you can believe all of what a

1 witness says.

2 And in making that determination, we just ask
3 that you judge his or her demeanor on the stand. Was
4 that witness hesitant or forthright when testifying?
5 Was the testimony of the witness consistent? And,
6 importantly, is the testimony of that witness, did
7 that witness have any reason to be biased or
8 prejudiced in this case?

9 And I can tell you that there are two witnesses
10 who will not be testifying here today. And that's
11 common sense and human nature. And while we ask that
12 you check your sympathies and your prejudice at the
13 door when you decide this case, we expect that you
14 will use your common sense and what you know about
15 human nature when doing your job.

16 It is said that truth is the mother of justice;
17 and it is your job, your duty here today to find the
18 truth and to seek justice. And I submit to you that
19 after you've heard all the evidence there will be
20 only one just verdict.

21 And at the close of this case my co-counsel, Ms.
22 Campbell, is going to come before you and she is
23 going to ask you for the verdict that the evidence
24 will support and that justice will demand. She is
25 going to ask that you find the defendant, Christopher

1 Broadnax, guilty of armed robbery and three counts of
2 kidnapping. Guilty. Thank you.

3 **THE COURT:** All right, Mr. Cochran.

4 **MR. COCHRAN:** Thank you, Your Honor. May it
5 please the Court. Good morning. A couple of weeks
6 ago I was standing outside; rather, sitting outside
7 this courtroom. And there is a long bench that goes
8 along the wall. And as I was sitting there I was
9 going over a file and there was a family close by.
10 And as I was going over my file I could hear them
11 start to explain about something. They were
12 laughing. They were talking. They were very excited
13 about something. So I looked up to see what they
14 were looking at and I saw all of them had their
15 cellphones out with cameras and videos taking
16 pictures.

17 I looked out the window to see what they were
18 looking at. And out on the ledge of this floor there
19 is an owl perched out on the ledge. And now, in the
20 middle of the city in the afternoon this would be a
21 pretty fantastic event but for the fact that the owl
22 is fake. It's a statute of an owl that's out on the
23 ledge. And they thought it was real.

24 And I didn't want to ruin their fun, so I didn't
25 say anything to them. But another woman who was in

1 the hallway saw them all looking at this owl taking
2 pictures of it. And she said: You know, you all
3 know that that's a fake owl, right? And one of the
4 girls in the family, she was, you know, probably 12
5 or 13, something like that, looked at the woman and
6 said: No, I just saw it turn its head. It's a real
7 owl. And the woman said: Really? And she started
8 looking out. And before you knew it we were all
9 looking outside at this fake owl, and they were still
10 taking pictures of it.

11 So why do I tell this story? Because I think
12 it's a good example of what Ms. Simpson was talking
13 about, human nature, the fallibility of human
14 perceptions.

15 And when the State gives you a case today, when
16 they give you their evidence, like she said, it's
17 going to be in the form of testimony, normal people,
18 just like you and me, people who are fallible, people
19 who are subject to make mistakes, and that testimony
20 is going to be from people who are convinced of
21 something. They are convinced of something that just
22 isn't true.

23 They are convinced. They have convinced
24 themselves that Christopher Broadnax committed this
25 crime. They have convinced themselves of something

1 this isn't true, just like that girl who swore to
2 that woman: No, I saw it turn its head. It's a real
3 owl. Just like that girl swore to her, they're going
4 to swear to you what they saw that day, or rather
5 what they remember they saw that day, what they
6 perceived that day.

7 And I would ask you throughout this trial to
8 scrutinize every piece of evidence that comes before
9 you, every fact, every accusation, because that is
10 what's required in this case.

11 And, you know, what do we do given the
12 fallibility of human nature? What do we do when
13 we're not talking about whether an owl out on the
14 ledge is real? What do we do when we're talking
15 about something that is as tremendously important as
16 this trial is here today? What do we do to get
17 around that fallibility of human nature? What do we
18 do to try to supplement the cases so that we're more
19 certain of about what is happening, so that we can be
20 certain about who committed a crime? What can we use
21 besides the fallibility of human perception?

22 We can use fingerprints. We can use video
23 surveillance evidence. We can use DNA evidence. And
24 now, the State is going to say to you: Well, this
25 isn't TV. This isn't CSI or Law & Order. Don't

1 think about that stuff. Don't think about the
2 evidence that we can't show you. Don't think about
3 the evidence that we didn't collect, the things that
4 would make you certain about who committed this
5 crime. Don't think about that stuff. Just take our
6 word for it. Take our witnesses' words for it.

7 Ladies and gentlemen, this isn't TV. This is
8 Chris's life. This is his life. And the State did
9 not collect any fingerprint, DNA or forensic evidence
10 in this case. They saw a man in a situation, they
11 assumed he was guilty, and they stopped their
12 investigation right there.

13 Not only does the State want you to rely on the
14 fallibility of human perceptions, they want you to
15 rely on the word of one of their witnesses who is a
16 known liar, who is a criminal. Charles Green is a
17 criminal. He is a liar. And they want you to rely
18 on his testimony in a case as tremendously important
19 as this one here today. That's what they want you to
20 rely on. And they're not going to give you anything
21 that would make you certain about your decision in
22 this case today.

23 When the judge says to you you need to decide
24 this case, you need to presume Mr. Broadnax innocent,
25 you need to presume him innocent and you have to hold

1 the State up to a burden to prove, to give you proof
2 that makes you certain beyond any reasonable doubt in
3 this case, you are not going to have any of that kind
4 of evidence in front of you. You're not going to
5 have any of that kind of proof in front of you. And
6 the reason that you're not going to have any evidence
7 of that or proof in front of you is because
8 Christopher Broadnax is not guilty. He is not guilty
9 of this crime. Thank you.

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

12 **MS. CAMPBELL:** May it please the Court. The
13 State calls Arthur Haynes.

14 ARTHUR HAYNES, after being duly sworn, testifies
15 as follows:

16 **THE CLERK:** Thank you. Have a seat in the
17 witness stand, please. And give the court reporter
18 your name.

19 **THE WITNESS:** My name is Arthur Haynes.

20 DIRECT EXAMINATION

21 **BY MS. CAMPBELL**

22 **Q** Mr. Haynes, how old are you?

23 **A** Forty-seven.

24 **Q** And you live here in the Columbia area?

25 **A** For four years now.

- 1 Q And what part of town do you live in, sir?
- 2 A Richland County.
- 3 Q In Richland County?
- 4 A Yes, ma'am.
- 5 Q Here in the City of Columbia?
- 6 A Yes. Off of Two Notch, Cushman Drive.
- 7 Q Off of Two Notch. And I want to turn your attention
- 8 back to May of last year, specifically May the 24th.
- 9 Where were you working last year during the month of
- 10 May?
- 11 A Right at Church's Chicken.
- 12 Q And where is the Church's Chicken located where you
- 13 worked?
- 14 A That's off of Taylor and Two Notch.
- 15 Q Taylor and Two Notch?
- 16 A Yes, ma'am.
- 17 Q And what was your job at the Church's Fried Chicken?
- 18 A Cook.
- 19 Q And typically what would you do during the day as a
- 20 cook?
- 21 A I would cook, clean, take out the trash when we had
- 22 nothing do, as I was doing that day.
- 23 Q On May the 24th who all was working with you at the
- 24 Church's that afternoon?
- 25 A Me, Gracious and Danny.

- 1 Q You, Gracious and Danny?
- 2 A And Don was waiting in his ride.
- 3 Q Donald Kirby?
- 4 A Yeah.
- 5 Q And as part of your duties as a cook, do you
- 6 generally stay behind the counter?
- 7 A Yes, ma'am.
- 8 Q And that evening around 5:30, what were you doing?
- 9 A Frying some spicy chicken at that time.
- 10 Q And did you have an occasion to actually go outside
- 11 the Church's Chicken that afternoon?
- 12 A Yes. As soon as I dropped the chicken I went out the
- 13 back door to dump the trash, came back in, washed my
- 14 hands.
- 15 Q And what shift were you working that day?
- 16 A The second shift.
- 17 Q And what time does that start?
- 18 A 4:30.
- 19 Q 4:30?
- 20 A Yeah.
- 21 Q So you had just been there for a short while?
- 22 A Mm-hmm (affirmative).
- 23 Q You mentioned that Gracious and Danny were also
- 24 working that day?
- 25 A Yes, ma'am.

1 Q And where were they in the store when you were
2 dropping the chicken to cook it when you went outside
3 to take the trash?

4 A Gracious and Danny and Donald were sitting out in the
5 lobby.

6 Q And the lobby, what's actually out in the lobby area?

7 A It's kind of like to my left but I can't see them. I
8 can only hear them.

9 Q And are there some tables and things out there?

10 A Yes, ma'am.

11 Q And is that where customers typically would eat after
12 they ordered food?

13 A Yes, ma'am.

14 Q That afternoon around 5:30 did you see someone come
15 in the front door?

16 A Yeah. I glimpsed to my left and thought it was a
17 customer. But obviously it wasn't.

18 Q And so you were able to see him from back in the area
19 where you were at the time?

20 A Yeah.

21 Q And when he first came in, was there anything that
22 alarmed you?

23 A No, not at the time.

24 Q And were there any other customers in the store at
25 that time?

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

2 **Q** Once he came inside the store, did you see what area
3 he went to?

4 **A** He came straight toward the counter where I was. I
5 mean, I was behind the fryer. Then I looked at him
6 and he had a mask on his face.

7 **Q** And what went through your mind at that point?

8 **A** Well, he mumbled something. At first I didn't hear
9 him. Then I turned back around again. I said: What
10 you say? He said: Give me all the money out the
11 register.

12 **Q** He said what? I'm sorry.

13 **A** Give me all the money out the register.

14 **Q** Give you all of the money out of the register?

15 **A** Yeah. And I said: Say what? He said: You heard
16 me. Give me all the money out of the register. I
17 said: You've got to be joking. And he walked off to
18 the lobby.

19 **Q** And was that the area of the lobby where everybody
20 else was?

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

22 **Q** What was going through your mind at that point?

23 **A** Stunned for a while after I seen the gun.

24 **Q** And let me get back to that. When he said that at
25 first, when he first walked in, did you see the gun?

1 **A** Yeah.

2 **Q** After he started talking to you?

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

4 **Q** And what kind of gun was it?

5 **A** It was an automatic.

6 **Q** Do you remember what color it was?

7 **A** Silver.

8 **Q** Silver?

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

10 **Q** And where did he have the gun when you saw it first?

11 **A** Doing like that at first, then pointed it and then

12 straight up.

13 **Q** When was it when you first saw the gun?

14 **A** I think just about four feet after he walked into the

15 door, because I glanced back at him again.

16 **Q** And at that point is that when he started mumbling?

17 **A** Yeah. That's when I said I thought he was joking. I

18 saw the gun. I said: No, this cat's for real.

19 **Q** Once he started walking over towards the lobby area,

20 what did you do?

21 **A** I locked the door.

22 **Q** And what door was that, sir?

23 **A** That's the door that comes into the kitchen from

24 the -- it's by the two bathrooms. It locks everybody

25 out.

1 Q And why did you lock the door?

2 A I was afraid that he would have probably made us come
3 in there, made the rest of them come in and open the
4 safe.

5 Q And is that what part of your training was, was to
6 lock the door? Or is that just something you did
7 instinctively?

8 A Instinct.

9 Q Once he'd gone in the lobby area, then you locked the
10 door, what happened?

11 A Oh, Gracious and them were beating on the door.

12 Q Who was beating on the door?

13 A Gracious.

14 Q Gracious?

15 A Yeah.

16 Q Was she trying to get back in the area where you
17 were?

18 A Yeah. She was begging me to open the door.

19 Q Where is the safe located in that store?

20 A In the office behind the fryer where I was.

21 Q And where are the registers located in the business?

22 A Up front, one at the drive-thru and one at the front
23 counter. They're about five, six feet apart.

24 Q What were you doing while Gracious was banging on the
25 door?

- 1 **A** I was trying to debate should I open the door or just
2 keep it locked. So I finally decided, yeah. I did
3 open the door. Gracious and Donald came in, but
4 Danny was out front with the gunman.
- 5 **Q** And at that point what happened?
- 6 **A** Danny jumped across the counter.
- 7 **Q** Danny jumped across the counter?
- 8 **A** Yeah.
- 9 **Q** And where was the gunman at that point?
- 10 **A** Right behind him.
- 11 **Q** So you saw the man when he first came in, right?
- 12 **A** Uh-huh (affirmative).
- 13 **Q** And then you saw him again when he started talking to
14 you?
- 15 **A** Well, after he finished talking to me, that was it.
16 He went to Gracious and them. They were beating on
17 the door. I mean, things had got quiet for a moment.
18 Then they started beating on the door.
- 19 **Q** And then you mentioned that Danny came across the
20 counter?
- 21 **A** Yeah. He was right behind Danny with the gun.
- 22 **Q** And could you see him then, too?
- 23 **A** Yeah.
- 24 **Q** And describe to the jury what you were able to see?
- 25 **A** Mr. Broadnax had the gun pointed behind Danny's back

1 right there by the register, made him jump across the
2 counter. Danny was kind of nervous at first,
3 couldn't get the register open.

4 Q And were you able to get a look at his face?

5 A Well, from the side during that time because I was
6 behind the fryer and looking at him like that while
7 he was waving the gun around.

8 Q And you mentioned that after he entered, at some
9 point he had on what was a mask. Is that correct?

10 A Yeah. Tied on.

11 Q How was the mask -- what part of his face did the
12 mask cover?

13 A About like that much. I think it kept falling down.
14 He had to tie it. He tied it up when he came in.

15 Q And were you able to see any part of his face then?

16 A I noticed his eyes.

17 Q And what was significant about eyes that you noticed?

18 A Kind of messed up, slanted like.

19 Q One or both?

20 A One.

21 Q The one eye?

22 A The left eye.

23 Q And it was kind of messed up?

24 A Yes, ma'am.

25 Q And you noticed that right away?

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

2 **Q** After Danny came across the counter, what happened?

3 **A** He finally got the register open and was dumping the
4 money in the bag.

5 **Q** So Danny was actually pulling the money out and
6 dumping it into the bag?

7 **A** Yeah. He finally got it open.

8 **Q** And do you know where the bag came from?

9 **A** Mr. Broadnax.

10 **Q** He brought it with him?

11 **MR. COCHRAN:** Objection, Your Honor.

12 **A** Yeah. He came with it.

13 **MR. COCHRAN:** Objection, Your Honor.

14 **THE COURT:** What is that?

15 **MR. COCHRAN:** He's saying my client's name when
16 he's talking about what's happening. There hasn't
17 been any sort of in-court identification.

18 **THE COURT:** All right. Refer to him as the
19 defendant.

20 **MR. COCHRAN:** Thank you, Your Honor.

21 **A** The defendant.

22 **Q** The defendant?

23 **A** (Nods head affirmatively).

24 **Q** Had you ever seen that person before?

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

1 Q And at the time did you know his name?

2 A No, ma'am.

3 Q And did you learn about his name after all this
4 happened?

5 A Yes, ma'am.

6 MR. COCHRAN: Objection. Leading.

7 THE COURT: Overruled.

8 Q The gunman that was in there and pointed the gun, he
9 is across the counter; is Danny the one actually
10 putting the money into the bag?

11 A Yes, ma'am.

12 Q And did the defendant actually ever reach in it
13 himself, or did he have Danny do it?

14 A He had Danny do it. He was holding the bag. Danny
15 was dumping it in.

16 Q And at this point while this is going on, are you
17 still looking at this person?

18 A Yes, ma'am.

19 Q Are you getting a good look at his face?

20 A From the side, from the right side.

21 Q But you'd gotten a look at his face straight on when
22 he came in, too?

23 A Yes.

24 MR. COCHRAN: Objection. Leading.

25 THE COURT: Try not to lead your witness.

1 **MS. CAMPBELL:** Thank you.

2 **Q** (By Ms. Campbell) Had you gotten a look at his face?

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

4 **Q** And what was the lighting like in the Church's that
5 day?

6 **A** It was kind of, you know, pretty fair.

7 **Q** Was it as good as it is here?

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

9 **Q** Could you see?

10 **A** Yeah. A little better than this.

11 **Q** A little better than this?

12 **A** Yes.

13 **Q** And did he get close enough to you that you could
14 actually see his face?

15 **A** Close enough. About eight feet.

16 **Q** As far as you and I are?

17 **A** Yeah. About like that.

18 **Q** About like this?

19 **A** (Nods head affirmatively).

20 **Q** So you got a good look at his face?

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

22 **Q** Do you remember what he was wearing?

23 **A** I think green pants, a black and green striped shirt,
24 kind of like what I've got on.

25 **Q** He was wearing a striped shirt?

- 1 **A** Yes, ma'am.
- 2 **Q** Once Danny finished putting -- which register was
- 3 Danny at first putting the money in the bag?
- 4 **A** I think he went to the drive-thru first.
- 5 **Q** And then where did he go?
- 6 **A** When I came from the corner of the fryer, then I
- 7 could see him at the main register.
- 8 **Q** And did Danny also get money out of the main
- 9 register?
- 10 **A** Yes.
- 11 **Q** What were you doing while Danny was doing this?
- 12 **A** Just standing watching.
- 13 **Q** Where were Gracious and Donald?
- 14 **A** I think I already let them in, inside the kitchen
- 15 area, the frying area.
- 16 **Q** Were you able to leave at that point?
- 17 **A** As soon as he left the store and I -- Gracious had
- 18 done -- the front door was locked. And I ran to the
- 19 front door and unlocked it and followed him.
- 20 **Q** Let me back up because I skipped something. Once he
- 21 got the money in the bag from the registers, what did
- 22 the defendant do?
- 23 **A** He grabbed the bag, balled it up, then walked out the
- 24 store slowly, took his time.
- 25 **Q** What did you do?

1 **A** I stood right still -- I was still behind him kind
2 of. When he walked out the door and cleared the side
3 of the building there, that's when I ran outside. I
4 ran in front of the store and stopped.

5 **Q** Why did you run outside the store?

6 **A** To see where he was going.

7 **Q** Which direction did he go once he got out of the
8 front of the store? Did you see that?

9 **A** He went to his left.

10 **Q** To the left?

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

12 **Q** And that would be towards what street?

13 **A** That would be toward the intersection of Two Notch
14 going back toward Millwood.

15 **Q** And did you see what direction he went on Millwood?

16 **A** After he got by our storage shed, when he went and
17 got out of sight, then I eased up behind the edge of
18 the storage shed. I didn't see him. So I eased -- I
19 eased up a little more. And when I got around the
20 corner, I saw the gray truck.

21 **Q** And was that the direction which you last saw the
22 defendant going?

23 **A** Yeah.

24 **Q** And what caught your attention about the gray truck?

25 **A** When the guy, the driver, looked at me and he took

- 1 off quick.
- 2 Q Took off quick?
- 3 A Yeah.
- 4 Q And at that point were there any other vehicles in
- 5 the area?
- 6 A No, ma'am.
- 7 Q Were you able to see the defendant any more?
- 8 A No, ma'am.
- 9 Q And he took off quick, the driver of the truck?
- 10 A Yes. He --
- 11 Q Was the driver of the truck the same person that you
- 12 had seen doing the robbery?
- 13 A The driver?
- 14 Q (Nods head affirmatively).
- 15 A That's the first time I seen him. I saw his gray
- 16 hair. Then he looked around at me. You know, from
- 17 his spot, it's about like 100 feet, 100 yards really.
- 18 Not 100 yards. 50 yards.
- 19 Q But that was a different person from the person who
- 20 committed the robbery?
- 21 A Yes, ma'am. Their head was much bigger.
- 22 Q And you got a good look at his face?
- 23 A Kind of. Yeah. You could say that.
- 24 Q But you could tell it was definitely a different
- 25 person?

1 **A** Yeah.

2 **Q** The driver actually looked at you and then he took
3 off in the truck?

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

5 **Q** And at that point what was going through your head?

6 **A** I said I'm still going to follow the truck. When he
7 went down, he made a left. So I ran back up and I
8 made a left. And he was coming down. I ran to the
9 other side of the street. I don't know the name of
10 the next street, but he came up the same side I was.
11 Then he made a right.

12 **Q** And what road would he be on at that point?

13 **A** I don't know the name of that road. He made a right
14 and went straight down. And when he went to make
15 another right, I ran back toward Two Notch.

16 **Q** And what road would that be on?

17 **A** I think that's the road right in front of Church's.

18 **Q** Right in front of Church's?

19 **A** Yeah.

20 **Q** And could you tell which direction he was going when
21 you last saw the gray truck?

22 **A** He was coming towards me.

23 **Q** Coming towards you?

24 **A** Yeah. I was standing around the sidewalk.

25 **Q** And did he continue to come past you?

1 **A** He stopped at the red light, at the traffic light.

2 **Q** And then what direction did he go?

3 **A** Then he kept continuing towards -- heading north, I
4 mean, toward the mall.

5 **Q** Toward the mall?

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

7 **Q** Would that be Two Notch?

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

9 **Q** At that point where are you in relation to the
10 Church's?

11 **A** I'm on the sidewalk telling Danny -- I mean Donald --
12 to tell the officer that the truck was heading up Two
13 Notch, the gray Dodge old model truck.

14 **Q** And at that point were you able to see the defendant
15 any more? Were there any other cars in the area that
16 left?

17 **A** No. No cars. Nothing left.

18 **Q** Did the police come?

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

20 **Q** And do you know how long it took them to get there?

21 **A** Not long.

22 **Q** Once they got there, did you talk to them?

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

24 **Q** Did you give them a description of the guy?

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

1 Q And the truck?

2 A Yes, ma'am.

3 Q Sometime after that did an officer approach you about
4 going to another area?

5 A Yes, ma'am.

6 Q Were you still at the Church's at that point?

7 A Yeah.

8 Q And did the officer actually ask you to get into his
9 car and go to another location?

10 A Yes, ma'am.

11 Q And did you do that?

12 A Yes, ma'am.

13 Q And what was the purpose of you going to another
14 location?

15 A To make sure that was the truck. They said they
16 had --

17 Q What road did you all go down when the officer was
18 driving?

19 A That's two Notch. Went down Two Notch Road.

20 Q And after you went down Two Notch Road for a certain
21 period of time, tell the jury what happened?

22 A When we got down Two Notch, we made a turn at the
23 intersection, I said: That's the gray truck right
24 there.

25 Q And why did you recognize the gray truck?

1 **A** Because I seen it from the back; I seen the truck
2 from the side and the front.

3 **Q** Was that the same truck you saw that left right after
4 the robbery occurred?

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

6 **Q** And once you told the officer, did the officer say
7 anything to you, or you just told him it was the
8 truck?

9 **A** I just volunteered.

10 **Q** And at that point did you see anybody else in the
11 area around there?

12 **A** Just the officers and two gentlemen.

13 **Q** And two gentlemen?

14 **A** I spotted the driver first. Then I saw the other
15 guy. I said: That's the guy right there that robbed
16 us when I spotted the pants and shirt.

17 **Q** And the shirt, the striped shirt?

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

19 **Q** And the pants?

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

21 **Q** And did you see the person's face?

22 **A** At that time, yeah, kind of glimpsed it. But the
23 body --

24 **Q** Did you recognize the face as well?

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

1 Q And was the build just like the person that had
2 robbed you?

3 A Yes, ma'am.

4 Q At that point did you recognize the person that
5 robbed you?

6 A Yes, ma'am.

7 Q And was there any doubt that was the guy?

8 A There is no doubt it was him.

9 Q And specifically, anything about his eyes that you
10 noticed when you went down to the scene where the
11 truck had been stopped?

12 MR. COCHRAN: Objection. Leading.

13 THE COURT: Overruled.

14 MS. CAMPBELL: Thank you.

15 Q (By Ms. Campbell) Go ahead.

16 A That slanted eye, messed up eye again.

17 Q I'm going to show you what's been marked as State's
18 Exhibit No. 1. First of all, do you recognize that?

19 A Yes, ma'am.

20 Q And who do you recognize this to be?

21 A That's the guy that came in the Church's.

22 Q With the gun?

23 A Yes, ma'am.

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

1 **MR. COCHRAN:** Without objection, Your Honor.

2 **THE COURT:** Without objection.

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

5 **Q** State's Exhibit No. 1, can you actually see that,
6 what you were talking about, the eye?

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

8 **Q** And where is that located? Where is that shown on
9 here?

10 **A** The left eye.

11 **Q** Right here?

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

13 **Q** And you also mentioned that he was wearing a striped
14 shirt?

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

16 **Q** Is this the same striped shirt?

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

18 **Q** The striped shirt the defendant was wearing and the
19 pants, I want to show you what's been marked -- it
20 hasn't. First I want to show you State's Exhibit --
21 beg the Court's indulgence -- No. 25 and State's
22 Exhibit No. 24. Do those look familiar?

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

24 **Q** And is that the clothing of the man that robbed you?

25 **A** I'm pretty sure.

1 Q Does that look like it?

2 A Yes, ma'am.

3 MS. CAMPBELL: Your Honor, at this time we'd
4 offer State's Exhibit 24 and 25.

5 MR. COCHRAN: Your Honor, we would object to
6 that. There has been no chain established.

7 MS. CAMPBELL: There was no testing done in the
8 clothing. He's identified it.

9 MR. COCHRAN: Your Honor, I guess we could take
10 the matter up with the Court.

11 THE COURT: Approach the bench.

12 (Whereupon, a bench conference is had)

13 THE COURT: Overruled. Go ahead.

14 (WHEREUPON, State's Exhibit No. 24 is admitted
15 into evidence.)

16 (WHEREUPON, State's Exhibit No. 25 is admitted
17 into evidence.)

18 Q You described the gun?

19 A It's a silver automatic.

20 Q I want to show you what's been marked as State's
21 Exhibit No. 4.

22 A Yes, ma'am.

23 Q And do you recognize that?

24 A Yes, ma'am.

25 Q And what does that look like?

1 **A** The silver automatic.

2 **Q** And how does that relate to the gun you saw?

3 **A** Because the reason why I can tell it was the
4 automatic, the way he pulled back on the chamber.

5 **Q** And tell me about that. What happened when he did
6 that? When he was in the Church's?

7 **A** Yeah. First -- he did it twice. When he did it the
8 first time after he had loaded.

9 **Q** What do you mean by that? When you say he pulled the
10 chamber, can you demonstrate?

11 **A** That's when he loaded the gun then.

12 **Q** And what was he pulling on?

13 **A** The top.

14 **Q** The top?

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

16 **Q** And he did that twice?

17 **A** Yes.

18 **Q** While he was in the Church's?

19 **A** (Nods head affirmatively).

20 **Q** At what point was he doing that when he was in
21 Church's?

22 **A** He did it -- well, he did it when Danny -- I know he
23 did it when he was in the lobby. I heard him
24 clicking it in the lobby. Then when he came back to
25 the counter, he clicked it again. Usually if you do

1 it twice, a bullet should pop out.

2 **Q** I'm going to show you what's been marked as State's
3 Exhibit No. 7. Do you recognize that?

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

5 **Q** And what does that show, sir?

6 **A** That's the place where I work.

7 **Q** Is that the Church's?

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

9 **Q** And that's showing what part of the Church's?

10 **A** The front part, entrance.

11 **Q** And is that pretty much how it looked on the day when
12 the robbery occurred?

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

14 **MS. CAMPBELL:** Your Honor, at this time we'd
15 offer State's Exhibit No. 7 into evidence.

16 **MR. COCHRAN:** Your Honor, we have no objection
17 to these or to that photo.

18 **THE COURT:** All right. Go ahead.

19 (WHEREUPON, State's Exhibit No. 7 is admitted
20 into evidence.)

21 **MS. CAMPBELL:** Just State's Exhibit No. 7, no
22 objection?

23 **MR. COCHRAN:** Correct.

24 **Q** You've referred to the counter in State's Exhibit 7.
25 Can you actually see the counter from the outside of

1 the Church's?

2 A Yes, ma'am.

3 Q And where is it located?

4 A The white part right there with the diamonds in it.

5 Q Am I pointing to it?

6 A Yes, ma'am.

7 Q And is that the counter you're mentioning that Danny
8 jumped over?

9 A He's further to your -- more to your left. The
10 register was more to your left right there.

11 Q More this area?

12 A Yes.

13 Q But you can actually see the counter from the
14 outside?

15 A Yes, ma'am.

16 Q From the outside of the Church's, can you actually
17 see whether or not there are any customers inside?

18 A Yeah. Basically.

19 Q I want to show you State's Exhibit No. 9. Does that
20 show part of the interior?

21 A Yes, ma'am.

22 Q And State's Exhibit No. 10, what part does that show?

23 A That's the counter to the right and a piece of the
24 lobby.

25 Q State's Exhibit No. 11?

1 **A** That's the counter close to where I was standing.
2 That was close to where I was standing.

3 **Q** State's Exhibit No. 12?

4 **A** That's holding the chicken and the biscuits right
5 there.

6 **Q** State's Exhibit No. 13?

7 **A** That's behind the counter.

8 **Q** State's Exhibit No. 14?

9 **A** That's the front main counter register.

10 **Q** Then State's Exhibits 16 and 17?

11 **A** That's the register for the drive-thru register and
12 the front.

13 **Q** And finally State's Exhibit No. 15?

14 **A** The fryer at the front.

15 **MS. CAMPBELL:** Your Honor, at this time we'd
16 offer 9 through 17 I believe without objection.

17 **MR. COCHRAN:** Yes, Your Honor, without
18 objection.

19 (WHEREUPON, State's Exhibit No. 9 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 10 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 11 is admitted
24 into evidence.)
25

1 (WHEREUPON, State's Exhibit No. 12 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 13 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 14 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 15 is admitted
8 into evidence.)

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

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

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

14 A The front, left side of the front counter.

15 Q And then State's Exhibit No. 10, I kind of put it
16 beside it; what part of the store does that show?

17 A That's the right side of the front counter.

18 Q So if you're inside the store, does this generally
19 show the counter area? And this part over here where
20 you can actually see people sitting, what part is
21 that you referred to?

22 A That's our lobby.

23 Q That's what you referred to as the lobby?

24 A Yes, ma'am.

25 Q And what's actually in the lobby part?

- 1 **A** You have chairs, tables and chairs. And that doorway
2 right there leads to both bathrooms.
- 3 **Q** Okay. And who all was in the lobby that day?
- 4 **A** Danny, Donald and Gracious.
- 5 **Q** State's Exhibit No. 11, where is that taken from?
- 6 **A** That's taken from the lobby.
- 7 **Q** And what area of the store does that show?
- 8 **A** The front counter shot from the lobby.
- 9 **Q** For the record, did the defendant actually ever come
10 behind the counter?
- 11 **A** No, ma'am.
- 12 **Q** State's Exhibit No. 14 and I think in 15 -- excuse me
13 -- 16 and 17 you see them eventually. But does that
14 show -- what does that show?
- 15 **A** That's the front register, the main register where
16 Danny --
- 17 **Q** Can you also see the other register?
- 18 **A** Yes, ma'am.
- 19 **Q** And is that also in this photograph?
- 20 **A** That's where the registers are.
- 21 **Q** Where I'm pointing are the two register?
- 22 **A** Yes, ma'am.
- 23 **Q** And they're how close in proximity to each other?
- 24 **A** Right about five or six feet.
- 25 **Q** And then the rest of these just show close ups of

1 some of what we talked about as far as the registers.
2 When you went down and you saw the truck, was there
3 any doubt that was the truck you saw leaving the
4 scene?

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

6 **Q** And you also went, and I believe the first person you
7 testified you saw was the actual driver?

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

9 **Q** That's the man you got a look at because he looked at
10 you as he was driving away?

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

12 **Q** I show you State's Exhibit -- it doesn't have an
13 exhibit number on it.

14 (WHEREUPON, State's Exhibit No. 27 is marked for
15 identification.)

16 **Q** 27. First of all, do you recognize this?

17 **A** Yes, ma'am. The gray headed, kind of gray headed,
18 the older gentleman with the beard and everything.

19 **Q** And is this the man you saw as the driver?

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

21 **MS. CAMPBELL:** Your Honor, at this time we'd
22 offer State's Exhibit No. 27 into evidence.

23 **MR. COCHRAN:** Without objection, Your Honor.

24 **THE COURT:** Without objection.
25

1 (WHEREUPON, State's Exhibit No. 27 is admitted
2 into evidence.)

3 Q When you saw -- the first person you saw you
4 mentioned was the driver?

5 A Yes, ma'am.

6 Q Is there any doubt in your mind that's the person you
7 saw driving the gray pick-up away from the scene?

8 A Yes, ma'am.

9 Q When you saw him, you had mentioned you saw him; did
10 you ever see the second person in the truck?

11 A No, ma'am. I said ain't no way he could have
12 disappeared that quick. Because it was just a big
13 walk with a fence there. And I looked down in the
14 ditch. I said he's got to be in that truck.

15 Q But you didn't actually see him in the truck?

16 A No, ma'am.

17 Q The second person, when they took you back down to
18 the scene where the truck was --

19 A Yes, ma'am.

20 Q -- you said you recognized him?

21 A Yes, ma'am.

22 Q And that's the one you've identified in State's
23 Exhibit No. 1. Is that correct?

24 A Yes, ma'am.

25 Q Is there any doubt that that's the person that robbed

1 y'all that day?

2 A That was him.

3 Q After you went to the scene and you identified the
4 truck, the driver and the person that actually did
5 the robbery, did you then go back to the Church's?

6 A Yes, ma'am.

7 Q And later that day did you end up giving a statement
8 to police?

9 A Yes, ma'am.

10 Q And where did you go to do that?

11 A We wrote a statement down at the -- that's Washington
12 Street.

13 Q The police department?

14 A Yes, ma'am.

15 Q Beg the Court's indulgence. You'd never seen that
16 person before?

17 A No, ma'am.

18 Q You don't have anything against him?

19 A No, ma'am.

20 Q And the person that robbed y'all that day that you
21 got to look at from the side and the front, --

22 A Yes, ma'am.

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

24 A Yes, ma'am.

25 Q Can you point him out for the jury?

1 **A** The gentleman in the yellow shirt.

2 **Q** Sitting over next to his lawyers?

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

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

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

8 **Q** Is there any doubt that that's the man that robbed
9 you?

10 **A** That's him.

11 **Q** Mr. Haynes, for the record, back in January of 2006,
12 did you get convicted of a possession of crack
13 charge?

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

15 **Q** Thank you, sir.

16 **THE COURT:** Cross examination.

17 **MR. COCHRAN:** Thank you, Your Honor. May it
18 please the Court.

19 CROSS EXAMINATION

20 **BY MR. COCHRAN**

21 **Q** So you said you saw the man who robbed you come into
22 the store?

23 **A** Yes, sir.

24 **Q** And you got a good look at him you said?

25 **A** Well, when he came in, you know, I looked from the

1 side, I saw him from the right side.

2 Q Okay.

3 A Then I went back to my fryer again and he walked in
4 the door. He didn't put the mask over his face until
5 he walked in inside the store.

6 Q Okay. And at some point however you got a good look
7 at him, right?

8 A Yeah. Up top.

9 Q You said he was wearing a green and black shirt kind
10 of like you're wearing you said?

11 A A green striped shirt.

12 Q A green striped shirt?

13 A Colors of mine. Not striped, because mine goes
14 straight down.

15 Q So horizontal, not vertical?

16 A Yeah.

17 Q But you said it was kind of like yours. It was a
18 green and black striped shirt?

19 A Yeah.

20 Q Okay. So you said that it was a green and black
21 striped shirt, correct?

22 A Kind of light greenish, greenish like that.

23 Q And he had a mask on over his face?

24 A Yeah.

25 Q And in your statement you say the mask was covering

- 1 his nose and his mouth, correct?
- 2 A Kind of like right there.
- 3 Q And now you're saying it's below the nose?
- 4 A Just half, you know, like --
- 5 Q Covering halfway?
- 6 A My best memory.
- 7 Q That's your best memory?
- 8 A Yeah.
- 9 Q But you don't remember for sure?
- 10 A Not for sure.
- 11 Q And you don't remember whether or not he was wearing
- 12 a hat?
- 13 A No.
- 14 Q You can't say for sure whether or not he was wearing
- 15 a hat, right?
- 16 A No, I can't say.
- 17 Q Okay. You said that pretty much during the robbery
- 18 you were focused on that gun that was pointed at you,
- 19 right?
- 20 A The gun and his eyes.
- 21 Q And it was a silver gun you said, right?
- 22 A Yeah.
- 23 Q And you were positive it was an automatic, right?
- 24 A Yes, sir.
- 25 Q You used the word "certain" in your statement once

1 and only once, correct?

2 A (Nods head affirmatively).

3 Q And that was when you were talking about the gun
4 being an automatic, correct?

5 A Yeah.

6 Q And you said this before to Ms. Campbell, that you
7 didn't really understand why; but if he had kept
8 racking the chamber, a bullet should have popped out,
9 right?

10 A Yeah.

11 Q You know a lot about guns?

12 A No. I'm not a gun expert, but --

13 Q But you know enough about a handgun?

14 A Yeah. Yeah.

15 Q And you do have a conviction for possession of crack
16 cocaine, correct?

17 A Mm-hmm (affirmative).

18 Q Okay. After the robbery when you followed the man
19 out of the store, you lost sight of him, correct?

20 A Yeah.

21 Q Okay. Where did you lose sight of him?

22 A Well, when he left the store and then I walked out
23 the store, when he walked, when he got by our storage
24 shed, I lost sight of him then I walked to the
25 storage shed. I peeped around the corner. I didn't

1 see him again. When I peeped around the corner a
2 second time, that's when I saw the truck, the gray
3 truck sitting there. But I looked beside the wall
4 there and I said: Where could he go? I said: He
5 had to have been in that truck.

6 Q Did you go back around the building?

7 A When the truck moved, I followed the truck.

8 Q And did you search around the area for him?

9 A Yeah.

10 Q There are some bushes around there, correct?

11 A Yeah.

12 Q Did you search through the bushes?

13 A Well, I could look by this fence right there and a
14 wall.

15 Q You looked at the fence?

16 A Yeah.

17 Q But you didn't search through the bushes?

18 A No.

19 Q Okay. Did you walk up into Gonzales Gardens?

20 A I ran toward that side of the street right there in
21 front of it. I ran on that side, and then the truck
22 came that side.

23 Q Okay. But you never saw him get into the truck?

24 A No, I didn't.

25 Q You never saw the robber get into the truck, correct?

1 And you never saw the robber in the truck?

2 A No.

3 Q Correct? And you're standing on the block that the
4 Church's is on. The car pulled away and you saw it
5 make a right turn, correct?

6 A When the truck pulled straight, he made a left.

7 Q He made a left?

8 A Around the big blue building.

9 Q Around the big blue building?

10 A Yeah.

11 Q Okay.

12 A And I ran to the side. When the truck moved, I ran
13 this side, too. He came to I think the stop sign.
14 Then he made a right going down the street. And when
15 he made another right, I ran back. He was headed
16 back towards Two Notch. We met up about the same
17 time. He was coming down.

18 Q So you were focused primarily on keeping your eye on
19 that truck, right?

20 A Yeah.

21 Q You weren't focused on looking for a robber out there
22 in the bushes or out there nearby?

23 A No. Just that truck.

24 Q You were just focused on that truck. And when it was
25 coming towards you on Two Notch, could you see into

- 1 the truck?
- 2 **A** No, I couldn't see. Only the driver.
- 3 **Q** You could see the driver?
- 4 **A** Yes.
- 5 **Q** So you could see into the truck?
- 6 **A** Yeah.
- 7 **Q** Okay. You could see the driver?
- 8 **A** Yeah. He stopped at a red light and was talking to
- 9 someone.
- 10 **Q** He stopped at a red light and was --
- 11 **A** Some guy was crossing the street. I think he knowed
- 12 [sic] him and they were talking.
- 13 **Q** He stopped at a red light?
- 14 **A** A traffic light, yeah.
- 15 **Q** He stopped at the traffic light. And he was talking
- 16 to somebody?
- 17 **A** Yeah.
- 18 **Q** Okay. Somebody that was out on the street?
- 19 **A** Yeah. Crossing between the two white lines.
- 20 **Q** Okay. And prior to that when the truck came past
- 21 you, you saw him in the truck. And you actually made
- 22 eye contact with him at one point, right?
- 23 **A** Yeah.
- 24 **Q** And you didn't see a passenger in the truck?
- 25 **A** No passenger.

- 1 Q Okay. You saw this man?
- 2 A Only the driver.
- 3 Q Correct? That's the man? Correct?
- 4 A Yes, sir.
- 5 Q Okay. And you don't remember whether or not the
- 6 robber was wearing a hat, correct?
- 7 A No. I can't remember.
- 8 Q Okay. And this truck who had just robbed you came
- 9 by. You saw the driver. You didn't see a passenger.
- 10 And then you saw the driver stop at the red light?
- 11 A Uh-huh (affirmative).
- 12 Q Did you take down the tag number?
- 13 A No, I didn't get the tag number.
- 14 Q Okay. Could you not see it?
- 15 A It was kind of -- kind of like dirty that day. I
- 16 didn't think -- I was just describing -- focused on
- 17 the truck, the model, how it looked, all beat up.
- 18 Q Okay. But you definitely saw the truck --
- 19 A Yeah.
- 20 Q -- stopped at the intersection at the red light?
- 21 A Yeah.
- 22 Q Did you think that was unusual?
- 23 A Yeah. It's kind of weird if you just -- yeah. I
- 24 just went by a hunch that day.
- 25 Q You were going on a hunch.

1 **A** The guy was in that truck.

2 **Q** Okay. And you said before -- okay. So the truck

3 stops at the red light. Did you watch and wait for

4 the light to turn green?

5 **A** Yeah. I stood there while I was talking to Donald

6 when he was telling the dispatch the truck was

7 heading up Two Notch.

8 **Q** So you're standing there on the sidewalk --

9 **A** Yeah.

10 **Q** -- watching the gray truck stopped at a red light

11 following the rules of traffic and actually talking

12 to another guy who is out there on the street?

13 **A** Yeah. The driver was.

14 **Q** The driver was talking to another guy out there on

15 the street. Do you remember what that guy looked

16 like?

17 **A** I can't -- two homeless face.

18 **Q** They were two homeless guys?

19 **A** Yes, sir.

20 **Q** Were they black or white?

21 **A** Black guys.

22 **Q** You waited for the light to turn green?

23 **A** And --

24 **Q** And then it just pulled straight ahead?

25 **A** It pulled off. All the time I'm telling Donald:

1 Tell the officers which direction the truck is
2 heading.

3 Q How long was it from that moment until the police
4 came to the store?

5 A I think less than five minutes.

6 Q Less than five minutes?

7 A Yeah.

8 Q Okay. How much less than five minutes?

9 A About three and a half, four.

10 Q More than three minutes, less than five; somewhere
11 inbetween there?

12 A (Nods head affirmatively).

13 Q And then the police were at the store?

14 A (Nods head affirmatively).

15 Q And then a police officer put you in his squad car,
16 right?

17 A Yeah.

18 Q Okay. And he told you: We are going to go see if
19 you can identify the two men that were in the truck?

20 A Yeah. He said: Identify the truck.

21 Q He said that to you, right?

22 A Yeah.

23 Q Even though you had only seen one man in the truck?

24 A Yeah.

25 Q And it wasn't the man who robbed you you said?

- 1 **A** Say what?
- 2 **Q** And it was not the man who robbed you you said?
- 3 **A** Say that again now?
- 4 **Q** And the person in the truck that saw you was not the
5 man who robbed you. That's what you've testified to?
- 6 **A** The driver --
- 7 **Q** The driver, correct?
- 8 **A** -- was not the guy who robbed me.
- 9 **Q** So you saw one person in the truck, correct?
- 10 **A** Uh-huh (affirmative).
- 11 **Q** And the police officer put you in a squad car and
12 said: Let's go see if you can identify the two guys
13 that were in the truck. Correct?
- 14 **A** Yeah.
- 15 **Q** You drove down Two Notch in the back seat of the car?
- 16 **A** Yes, sir.
- 17 **Q** Okay. The window was open?
- 18 **A** Yeah.
- 19 **Q** Okay. You drove down Two Notch, correct?
- 20 **A** Yeah.
- 21 **Q** Maybe -- how far?
- 22 **A** It wasn't -- it wasn't quite that far.
- 23 **Q** Not too far?
- 24 **A** No.
- 25 **Q** Okay. And you're pulling up on Two Notch and you're

- 1 going through an intersection, right?
- 2 **A** Yeah.
- 3 **Q** And you see the truck?
- 4 **A** Yeah.
- 5 **Q** You see that gray truck?
- 6 **A** I said: That's the truck right there.
- 7 **Q** You said: That's the truck, that's the truck?
- 8 **A** Yeah.
- 9 **Q** And the police are out, right?
- 10 **A** Yeah.
- 11 **Q** So you said: There's the truck. And police are all
- 12 over. Squad cars?
- 13 **A** Yeah.
- 14 **Q** Police in uniforms?
- 15 **A** Yes, sir.
- 16 **Q** Two men?
- 17 **A** Yeah. When he completed the turn, then I saw the guy
- 18 with the striped shirt and pants. I said: That's
- 19 the guy that robbed me.
- 20 **Q** The clothes that you said you were pretty sure about?
- 21 **A** Yeah.
- 22 **Q** When you were talking to Ms. Campbell, she asked you
- 23 about those clothes?
- 24 **A** Uh-huh (affirmative).
- 25 **Q** And you said you were pretty sure, correct?

- 1 **A** Yeah.
- 2 **Q** And you said that it was a green and black shirt,
3 sort of like yours but with horizontal stripes?
- 4 **A** Right. And light.
- 5 **Q** Light green?
- 6 **A** Light green and black.
- 7 **Q** And black and horizontal stripes?
- 8 **A** Yes, sir.
- 9 **Q** Pretty sure about the green and black shirt. And
10 that was what you identified when you drove up to
11 that truck, right? You said: There is the guy. You
12 didn't say anything about his build, right?
- 13 **A** No. I saw his face, too.
- 14 **Q** You saw his clothes, right?
- 15 **A** Yeah.
- 16 **Q** And you said the same --
- 17 **A** The same pants.
- 18 **Q** Same pants, same shirt that you were pretty sure
19 about. You wrote a statement, correct?
- 20 **A** Yeah.
- 21 **Q** At the police station?
- 22 **A** Mm-hmm (affirmative).
- 23 **Q** Okay. Now, were these two guys standing outside the
24 gray pick-up truck?
- 25 **A** They had two gentlemen standing out there.

1 Q Were they handcuffed?

2 A I couldn't quite tell if they were handcuffed or not.

3 Q So these two men, two black guys, right?

4 A Yeah.

5 Q One in clothes you're pretty sure about and then one
6 that you made eye contact with?

7 A Yes, sir.

8 Q And they're standing outside of the pick-up truck
9 surrounded by police, correct?

10 A Yes.

11 Q The pick-up truck that you saw?

12 A Uh-huh (affirmative).

13 Q So you said: That's him. Correct?

14 A Yeah.

15 Q Beg the Court's indulgence. Now, you did say
16 yesterday before Ms. Campbell pulled out a t-shirt
17 from the bag that this was a dark green shirt,
18 correct? Dark green and black, correct?

19 A Yeah.

20 Q And either way, you're pretty sure about the clothes?
21 You're not sure?

22 A Yeah. It's been about over a year now.

23 Q Okay. When you were being robbed, you were looking
24 at the gun a lot, right?

25 A Yeah. Gun and his eye.

1 Q And you noticed that the man was wearing pants and a
2 shirt, right?

3 A Yeah.

4 Q And a mask?

5 A Yeah.

6 Q Right? Not sure about a hat?

7 A No, I'm not sure about a hat.

8 Q Right? And he wasn't wearing anything else? I think
9 before you said you couldn't remember about the
10 sneakers or you couldn't see his sneakers?

11 A Yeah. I couldn't see his feet from the counter from
12 where I was standing.

13 Q Not wearing anything else, right?

14 A No.

15 Q And you were looking at his hand pointing that gun at
16 you, right?

17 A Yeah.

18 Q And he wasn't wearing anything else?

19 A No. He didn't have any gloves on.

20 Q He didn't have any gloves on. All right. Bailiff,
21 do you have those pictures? Thank you, ma'am.

22 **THE BAILIFF:** Sure.

23 Q These pictures that you went over with Ms. Campbell,
24 these are the store that you work in?

25 A Yes.

- 1 Q Right?
- 2 A Yes.
- 3 Q This is State's Exhibit 11. Would you take a look at
- 4 that for me, please?
- 5 A Uh-huh (affirmative).
- 6 Q What's that?
- 7 A I think that's a camera.
- 8 Q A surveillance camera?
- 9 A Yeah. But it doesn't work.
- 10 Q What's that?
- 11 A It doesn't work.
- 12 Q It doesn't work?
- 13 A No.
- 14 Q So you all have got a surveillance camera in there
- 15 that doesn't work?
- 16 A We've got one now.
- 17 Q You have one now but you didn't have one then?
- 18 A Yeah.
- 19 Q And none of them were working?
- 20 A No.
- 21 Q Were they not working because there wasn't any tape
- 22 in there or was it broken or what?
- 23 A They were just not working.
- 24 Q Okay. When you went to the show-up ID, when you were
- 25 taken by the officer, you were in a squad car, right?

1 **A** Yeah.

2 **Q** Okay. You were in the squad car taken. He said:

3 Let's go see if you can identify the two guys in the

4 truck, right?

5 **A** Yeah. Back in the driveway.

6 **Q** And then you drove up Two Notch and you saw a gray

7 truck, right?

8 **A** Yes, sir.

9 **Q** And there were two men standing outside that truck,

10 right?

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

12 **Q** Okay. And you saw clothes that you were pretty sure

13 about, right?

14 **A** Yeah.

15 **Q** And you saw a lazy eye, correct?

16 **A** Yeah.

17 **Q** How close were you?

18 **A** Well, they were parked right there, and me and the

19 officer rode right by there.

20 **Q** You never got out of the car?

21 **A** No, I didn't get out of the car.

22 **Q** And you saw a lazy eye at that moment?

23 **A** Yeah.

24 **Q** You saw that the man who the police had cuffed in

25 front of a big gray pick-up truck, you saw that that

1 man had a lazy eye, correct?

2 **A** Yeah.

3 **Q** Beg the Court's indulgence. I have no more
4 questions. Thank you, Mr. Haynes.

5 **A** You're welcome.

6 **THE COURT:** Redirect.

7 **MS. CAMPBELL:** Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 **BY MS. CAMPBELL**

10 **Q** He asked you about the man you saw with the lazy eye.
11 Was he wearing this clothing?

12 **A** Yes. Pretty much.

13 **Q** And is there any doubt in your mind from that day or
14 today that that was the guy that robbed you?

15 **A** Yes, ma'am. That's him.

16 **Q** That's him?

17 **A** Yeah.

18 **Q** Any doubt?

19 **A** No doubt.

20 **Q** Do you know who called 911?

21 **A** I think Danny. I mean Donald. Either Donald or
22 Gracious.

23 **Q** And I believe you testified earlier that you were
24 actually giving them a description of the truck to
25 put out?

- 1 **A** Yeah.
- 2 **Q** And he asked you about did you search the bushes or
- 3 anything like that. Did you see anybody? Did you
- 4 see the defendant go anywhere?
- 5 **A** Just around the building. I looked to my left.
- 6 **Q** Around the building?
- 7 **A** There's a big ditch right there, and the fence
- 8 blocked it. So I said he couldn't have gone nowhere.
- 9 **Q** He couldn't have been anywhere else?
- 10 **A** No.
- 11 **Q** And that's when you saw the truck?
- 12 **A** Yes, ma'am.
- 13 **Q** And that's when you got the description of the truck?
- 14 **A** Yes, ma'am.
- 15 **Q** And then, lo and behold, when you get down to --
- 16 **MR. COCHRAN:** Objection. Leading.
- 17 **THE COURT:** Sustained.
- 18 **Q** And what did you see when you got to where the truck
- 19 had been stopped by the police?
- 20 **A** Two guys standing outside the truck.
- 21 **Q** And one of them was the driver?
- 22 **A** Yes, ma'am. The old guy.
- 23 **Q** The old guy. And who is this guy?
- 24 **A** And the younger guy, the guy that came inside
- 25 Church's.

1 (WHEREUPON, State's Exhibit No. 28 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 29 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 30 is marked for
6 identification.)

7 Q He asked you about the truck. I'm going to show you
8 State's Exhibit No. 28.

9 A Yes.

10 Q 29 and 30. Is that how the truck looked that day
11 when you were driven down there?

12 A Yes.

13 MS. CAMPBELL: Your Honor, at this time we'd
14 offer 28 through 30 into evidence.

15 MR. COCHRAN: No objection, Your Honor.

16 MS. CAMPBELL: Without objection?

17 (WHEREUPON, State's Exhibit No. 28 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 29 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 30 is admitted
22 into evidence.)

23 Q And he's asked you about the clothing. Is there any
24 doubt that the guy that robbed you is the one you
25 identified?

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

2 **Q** That's the same guy?

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

4 **Q** He was the one that robbed you?

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

6 **Q** He also asked you about whether or not you were able
7 to see in the truck. If someone had been crouching
8 down in a ball on the passenger's side --

9 **MR. COCHRAN:** Objection. Leading and
10 speculative.

11 **THE COURT:** Overruled.

12 **MS. CAMPBELL:** Thank you.

13 **Q** (By Ms. Campbell) Would you have been able to see
14 him?

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

16 **Q** The person that robbed you, is he here in the
17 courtroom?

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

19 **Q** The person you pointed out earlier?

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

21 **Q** Is there any doubt that's him?

22 **A** That's him.

23 **Q** Thank you.

24 **THE COURT:** Any recross?

25 **MR. COCHRAN:** Nothing.

1 **THE COURT:** Nothing?

2 **MR. COCHRAN:** Nothing.

3 **THE COURT:** The witness may come down. May this
4 witness be excused? Any objection?

5 **MR. MAY:** No, sir.

6 **THE COURT:** Without objection.

7 **MS. CAMPBELL:** The State calls Donald Kirby.
8 I'm sorry.

9 **THE COURT:** All right, ladies and gentlemen.
10 Let's take a short break, morning break. We've been
11 at it about an hour and a half. Just go to your jury
12 room. Don't discuss the case, please. Just relax
13 for about ten or fifteen minutes. We'll call you
14 when we're ready.

15 (Jury out at 11:31 a.m.)

16 **THE COURT:** All right. Stand at ease for about
17 ten minutes.

18 (Whereupon, a break is taken)

19 **THE COURT:** State ready for the jury?

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

21 **THE COURT:** Defense ready?

22 **MR. MAY:** Yes, Your Honor.

23 **THE COURT:** Bring the jury, please.

24 (Jury in at 11:53 a.m.)

25 **THE BAILIFF:** The jury is all present, Your

1 Honor.

2 **THE COURT:** Thank you very much. Solicitor,
3 call your next witness.

4 **MS. CAMPBELL:** May it please the Court. The
5 State calls Donald Kirby.

6 DONALD KIRBY, JR., after being duly sworn,
7 testifies as follows:

8 **THE CLERK:** Thank you. Have a seat in the
9 witness stand and give the court reporter your name.

10 **THE WITNESS:** Donald Kirby, Jr.

11 DIRECT EXAMINATION

12 **BY MS. CAMPBELL**

13 **Q** Mr. Kirby, how old are you?

14 **A** Thirty-one.

15 **Q** You live here in the Columbia area?

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

17 **Q** How long have you been living in the Columbia area?

18 **A** All my life.

19 **Q** All your life?

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

21 **Q** What part of town do you live in?

22 **A** I live over there off of North Main by Columbia
23 College.

24 **Q** And do you work?

25 **A** Columbia College Drive. Yes. Yes, ma'am.

1 Q Where do you work?

2 A I work at Church's Chicken.

3 Q How long have you been working there?

4 A Over two years, going on three.

5 Q What do you do at Church's Chicken?

6 A I'm a cook.

7 Q I want to turn your attention back to May 24th of
8 last year, that afternoon. Were you at the Church's?

9 A Yes, ma'am.

10 Q Had you worked there that day?

11 A Yes, ma'am. I did morning shift.

12 Q And what time does the morning shift work?

13 A On Sundays we come in at 9:30.

14 Q At 9:30?

15 A Yes, ma'am.

16 Q And what time of day did you get off work that day?

17 A I got off at 4:30.

18 Q At 4:30?

19 A Yes, ma'am.

20 Q After you got off work, did you stay at the Church's
21 for a period of time?

22 A Yes, ma'am.

23 Q And why were you still at the Church's if you were
24 off work?

25 A I was waiting on my ride.

1 Q Who else was at the Church's that evening working?
2 A Gracious, Danny and Arthur.
3 Q And Arthur?
4 A Yes, ma'am.
5 Q And that's Arthur Haynes?
6 A Yes, ma'am.
7 Q Where were you sitting when you were waiting for your
8 ride?
9 A I was sitting in the corner right before you get to
10 the way where you go to the bathroom and go into the
11 back.
12 Q And where was Gracious?
13 A She was sitting in front of me.
14 Q Were y'all talking?
15 A Yes, ma'am. We was eating, too.
16 Q You were eating and talking?
17 A Yes, ma'am.
18 Q You mentioned that Danny was also out in that area?
19 A Yes, ma'am.
20 Q In the lobby area?
21 A Yes, ma'am.
22 Q And where was Danny?
23 A He was sitting over there towards the window.
24 Q Towards the window?
25 A Yes, ma'am.

- 1 Q And what was Danny doing that afternoon?
- 2 A He was eating.
- 3 Q Were there any customers in the store at that point?
- 4 A No, ma'am. We had just served our last customer.
- 5 Q And is it unusual when there are no customers in the
- 6 store for y'all to sit out in the front?
- 7 A Yes, ma'am.
- 8 Q Is that normal?
- 9 A Yes, ma'am.
- 10 Q Y'all do that sometimes?
- 11 A Yes, ma'am.
- 12 Q Who was actually cooking that evening?
- 13 A Arthur.
- 14 Q And where was Arthur on that evening while you all
- 15 were sitting out in the lobby area?
- 16 A He was in the back.
- 17 Q I'm going to show you what's been marked as State's
- 18 Exhibit No. 10. Does that show the area where you
- 19 and Gracious were sitting?
- 20 A Yes, ma'am. Right there in that corner area right
- 21 there.
- 22 Q Right here?
- 23 A Yes, ma'am. Where that chair is right there.
- 24 Q Where this chair is right here?
- 25 A Yes, ma'am.

1 Q And what's this doorway right behind that?

2 A It leads to the bathroom and to the employee -- well,
3 to the back.

4 Q And so --

5 A It leads into the back.

6 Q Into the back?

7 A Yes, ma'am.

8 Q And is there a lock on that door that goes into the
9 back of the Church's?

10 A Yes, ma'am.

11 Q Y'all were sitting out there eating and talking?

12 A Yes, ma'am.

13 Q What did you notice about what happened next?

14 A What happened was me and Gracious were sitting there
15 talking. And Danny, he was on the far end. And we
16 all -- all three of us were out there talking, you
17 know. And then the next thing we know, the
18 gentleman, the defendant, he walks in the Church's --

19 MR. COCHRAN: Objection, Your Honor. Your
20 Honor, may we approach?

21 (Whereupon, a bench conference is had)

22 Q I'm sorry. You were talking. You said you saw
23 someone come in?

24 A Yes, ma'am.

25 Q And which door did he come into the Church's?

1 **A** He came into the front door.

2 **Q** And is there any other way for a customer to come in
3 the store?

4 **A** No, ma'am. Nothing but by the front door.

5 **Q** I'm going to show you State's Exhibit No. 7. Does
6 that show the door?

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

8 **Q** And when you're outside looking in, is all this glass
9 all the way across?

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

11 **Q** Can you see whether or not there are any customers in
12 the store from the outside?

13 **A** No, ma'am. There wasn't anybody in there.

14 **Q** There wasn't anybody in there?

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

16 **Q** On that day?

17 **A** On that day.

18 **Q** And then this person came in. Did you see -- where
19 were you? You were still sitting when you first saw
20 him?

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

22 **Q** And at that point did you pay any particular
23 attention to him?

24 **A** No, ma'am, not -- not at first. Because Danny, he
25 was standing there with a -- he was sitting there

1 with his biscuits in his mouth. Because I -- we
2 couldn't really figure out what was wrong at the
3 time. He was just sitting there with the biscuit
4 like this, with his hand like that looking at me and
5 Gracious. And me and Gracious was looking at each
6 other and looking at Danny like, what is wrong?

7 And at that time me and Gracious turned our
8 attention off of Danny and we looked at each other.
9 Then that's when we turned around. And the defendant
10 had a gun. He was leaning on the counter with the
11 gun pointed at us. And we were just looking at him
12 and looking at each other like, is this for real?

13 And then that's when he said: Y'all think this
14 is a joke, and tied the rag around his nose and his
15 mouth. And that's when Danny and Gracious proceeded
16 up to go to the back and was knocking on the door and
17 was telling Arthur to let them in.

18 Q Let me slow down for a minute. So y'all are sitting
19 there. And the first thing you noticed that's wrong
20 was what?

21 A Danny.

22 Q Danny. Because he's sitting there with a --

23 A Yes, ma'am. Danny can see him with the gun pointed
24 at us.

25 Q And at that point you hadn't seen it yet?

- 1 **A** No, ma'am.
- 2 **Q** Then you turned around. And what did you see?
- 3 **A** Right when me and Gracious looked at each other and
- 4 then we turned around to the counter where he was
- 5 standing, and we saw him with the gun pointed at us.
- 6 **Q** How far away from you was he at that point?
- 7 **A** He was like a table right -- it's like a table there,
- 8 and he was at the next table. So I'd say
- 9 approximately -- I'd say about five or six feet away
- 10 from him.
- 11 **Q** You mentioned that he was standing near the counter.
- 12 I show you State's 11. Is that the counter?
- 13 **A** Yes, ma'am. Right here. He was right there.
- 14 **Q** Standing right there?
- 15 **A** He was leaned over on that blue counter. Yes, ma'am.
- 16 **Q** On this part?
- 17 **A** Yes, ma'am.
- 18 **Q** He was over here?
- 19 **A** Yes, ma'am.
- 20 **Q** And did he have the gun in his hand at that point?
- 21 **A** Yes, ma'am.
- 22 **Q** And where was the gun pointed?
- 23 **A** It was pointed at me and Gracious and Danny.
- 24 **Q** And at that point had he put the mask on his face?
- 25 **A** Yes, ma'am.

1 Q So you were able to see what part of his face?

2 A His whole face.

3 Q And then once he put the mask on, what were you able
4 to see?

5 A Just his eyes.

6 Q Did you notice anything about his eyes?

7 A Something wrong with his eye.

8 Q One of his eyes?

9 A Yes, ma'am.

10 Q You mentioned that he said something to you. What
11 did he say?

12 A He said to us: Y'all think this is a joke?

13 Q And then what did he say?

14 A He proceeded to tell us he wanted the money out of
15 the register.

16 Q What was he doing with the gun?

17 A He was pointing it. He still had it pointed towards
18 us.

19 Q And at that point were you free to go? Could you
20 leave?

21 A No, ma'am.

22 Q What was going through your mind?

23 A That I might -- that something might happen, that I
24 might would not make it home.

25 Q So did you -- did he tell you to do anything?

1 **A** No, ma'am. He didn't tell me to do nothing. But he
2 went in the area where the bathrooms at, he had
3 Gracious and Danny go over there with the gun pointed
4 on them. And the phone was sitting in front of me.
5 And I proceeded to get --

6 **Q** What phone?

7 **A** The store phone.

8 **Q** Okay.

9 **A** And I proceeded to get the store phone to call for
10 some help. But he recognized me with the phone in my
11 hand and fixing to mash 911. And he told me not to
12 even think about it. So I threw the phone on the
13 table and I did my hands like that and I went to the
14 other table and did my hands just like that.

15 **Q** Where is Arthur at this point?

16 **A** Arthur is in the back.

17 **Q** Where you cook?

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

19 **Q** And where are Danny and Gracious?

20 **A** They was in the bathroom area. And then he made
21 Danny, he was asking -- he made Danny come and jump
22 over the counter to get the money out of the
23 registers.

24 **Q** And what's the reason you didn't actually call 911
25 that day?

- 1 **A** Because he told me -- he pointed the gun at me and
2 told me not to even think about it.
- 3 **Q** And that's when you threw the phone down?
- 4 **A** That's when I threw the phone down and moved to the
5 other table with my hands like this.
- 6 **Q** So he got Danny to go back through the --
- 7 **A** The lobby and jump over the counter.
- 8 **Q** What was he saying at that point?
- 9 **A** He wanted the money out of the register, out of both
10 registers.
- 11 **Q** Do you remember him doing anything with the gun?
- 12 **A** He clicked it. He clicked it at Danny because I
13 guess Danny was moving too slow or whatever the
14 situation was.
- 15 **Q** Did Danny jump over the counter?
- 16 **A** Yes, ma'am, he did.
- 17 **Q** And did you see what Danny was doing from where you
18 were?
- 19 **A** Yes, ma'am.
- 20 **Q** What was Danny doing?
- 21 **A** Danny was getting the money out of the drive-thru
22 register.
- 23 **Q** And at that point --
- 24 **A** Because you didn't need a key to go in that register.
- 25 **Q** He didn't need a key to go into that register?

1 **A** No, .sir. No, ma'am.

2 **Q** And did Danny have a key to the registers?

3 **A** No, ma'am. He didn't get the key until after
4 Gracious gave them to him to open up the front
5 registers.

6 **Q** And that was my next question. Who would have the
7 key for the front registers?

8 **A** Gracious.

9 **Q** As he is forcing Danny to go into the front of the
10 counter and jump over into the area where two
11 registers are, --

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

13 **Q** -- where is Gracious?

14 **A** Gracious is standing out there middle ways of the
15 lobby right by a trashcan. And she was shaking. She
16 was real nervous.

17 **Q** Did you feel free to leave?

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

19 **Q** Why couldn't you leave?

20 **A** Because he had all of us held there with the gun. I
21 was afraid.

22 **Q** You mentioned that Danny first went to the drive-thru
23 register?

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

25 **Q** Was he able to get it opened?

- 1 **A** Yes, ma'am.
- 2 **Q** Was he able to get money out?
- 3 **A** Yes, ma'am.
- 4 **Q** Could you see him doing that?
- 5 **A** Yes, ma'am.
- 6 **Q** And what did he do with the money he got out?
- 7 **A** He dumped it in the bag the defendant was holding.
- 8 **Q** And did the defendant have the bag?
- 9 **A** Yes, ma'am.
- 10 **Q** Do you know where he got the bag?
- 11 **A** No, ma'am. He came inside the restaurant with the
- 12 bag.
- 13 **Q** And the gun?
- 14 **A** And the gun.
- 15 **Q** After he emptied the -- he poured the one register
- 16 into the bag, what happened then?
- 17 **A** He told him that he wanted the money out of the other
- 18 registers.
- 19 **Q** While this was going on, are there any other
- 20 customers or anybody around?
- 21 **A** No, ma'am. Ain't nobody came inside the store.
- 22 **Q** What happened after he told him he wanted the money
- 23 out of the second register?
- 24 **A** Gracious gave him the key. He told the defendant he
- 25 didn't have the key. And the defendant told him,

1 asked for the key. And Gracious gave Danny the key.
2 And Danny went inside the register and dumped the
3 other register inside the bag that the defendant was
4 holding.

5 Q So the defendant never actually touched the registers
6 or reached in; he got Danny to do that?

7 A No, ma'am.

8 Q Did the defendant ever go across the counter?

9 A No, ma'am.

10 Q And was he always standing at the outside of the
11 counter?

12 A Yes, ma'am.

13 Q After Danny dumped the second register into the bag,
14 what happened?

15 A The defendant proceeded to leave, walk out the door.

16 Q And could you tell which direction he went?

17 A He went to the left on the opposite side of where the
18 bank and Millwood runs into going to Two Notch.

19 Q So he would have taken a left out the front door?

20 A Yes, ma'am.

21 Q And that's Millwood that runs on the side there?

22 A Yes, ma'am.

23 Q Once he got out of the store, did you see which
24 direction he walked?

25 A He was walking down there behind, right directly

1 behind our shed. And then that's when Arthur
2 proceeded to run after him.

3 Q And how did Arthur get out of the store?

4 A He went through the front door.

5 Q What were you doing?

6 A I was standing there at the front door and I left out
7 the door after Arthur got out the door after Gracious
8 had called the police.

9 Q So Gracious called the police?

10 A Yes, ma'am.

11 Q What phone did she use? Do you remember?

12 A I guess she used her cellphone because when he walked
13 out the door, well, I went back to pick up the store
14 phone to call the police, but Gracious had already
15 done called them and I had hung up the phone.

16 Q Did you see which direction Arthur went once he went
17 outside the store?

18 A Yes, ma'am.

19 Q Which way did he go?

20 A He went the same direction following the defendant.

21 Q And could you actually see how far down he went, or
22 were you staying more towards the store?

23 A I was staying more towards the store.

24 Q And did he go actually back behind there, back behind
25 that building?

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

2 **Q** And could you see what happened then?

3 **A** After he had done left out and everything was gone,
4 the polices [sic] had done arrived on the scene. One
5 of the officers was standing next to me, and Arthur
6 ran back up and was like: Donald, Donald, there goes
7 the truck right there. So I looked. Before that --
8 I made a mistake. Before that Arthur had called my
9 name, and I asked: What's up? And he was pointing
10 on the side. So I ran to the side and I looked and I
11 saw the truck going down that little area going
12 towards the barber shop.

13 So when the truck came back up, Arthur called me
14 again and told me, said: There goes the truck right
15 there. So I told the officer that was standing next
16 to me: There goes the truck. And he proceeded to go
17 out on the radio and tell them what kind of truck it
18 was.

19 **Q** Do you remember what the truck looked like?

20 **A** It was a gray old Dodge truck.

21 **Q** And from where you were, you couldn't see who was
22 driving or anything, could you?

23 **A** I glanced at the driver. He was an old man.

24 **Q** Was it the same person that you had seen robbing the
25 store, or was it a different person?

- 1 **A** It was a different person.
- 2 **Q** Which direction did the truck leave? What road?
- 3 **A** It went up towards past the store right across from
- 4 us going up Two Notch.
- 5 **Q** Were you there when the police sometime later got
- 6 Arthur and took him away for a little while?
- 7 **A** Yes, ma'am.
- 8 **Q** And did you -- when the police responded, did y'all
- 9 give them a description of the man that had robbed
- 10 you? Did you tell them about what happened?
- 11 **A** They was asking me a whole bunch of questions at the
- 12 time.
- 13 **Q** And do you remember what he was wearing?
- 14 **A** Yes, ma'am.
- 15 **Q** What was the man that robbed you wearing?
- 16 **A** He was wearing a striped shirt and some pants.
- 17 **Q** And do you remember what the gun looked like?
- 18 **A** Yes, ma'am. It was silver.
- 19 **Q** And I'm going to show you what's been marked as
- 20 State's Exhibit 25 and I believe 26.
- 21 **A** Yes, ma'am.
- 22 **Q** What's this look like?
- 23 **A** The clothes the defendant was wearing.
- 24 **Q** I'm going to show you what's been marked as State's
- 25 Exhibit No. 4 at this point. What's that look like?

- 1 **A** The gun that the defendant had.
- 2 **Q** Do you remember telling the police, giving them a
- 3 physical description of the guy?
- 4 **A** Yes, ma'am.
- 5 **Q** And do you remember what you told them about him?
- 6 **A** I told them he was like tall, dark, dark. And he was
- 7 about five-nine and he had a cock eye.
- 8 **Q** About five-nine?
- 9 **A** Yes, ma'am.
- 10 **Q** And he had a cock eye?
- 11 **A** Yes, ma'am.
- 12 **Q** After the police came to the Church's, did you then
- 13 have to go somewhere else and give a statement?
- 14 **A** No, ma'am.
- 15 **Q** Do you remember seeing this statement? Do you
- 16 remember going to the police station?
- 17 **A** Oh. Yes, ma'am.
- 18 **Q** And I'm going to show you this two-page statement.
- 19 Do you recognize that?
- 20 **A** Yes, ma'am.
- 21 **Q** And is that the statement you gave the police?
- 22 **A** Yes, ma'am.
- 23 **Q** And did you do that later that evening?
- 24 **A** Yes, ma'am. We went to the police station on
- 25 Washington Street to see Investigator Thomas, the

1 lead detective on the case.

2 **MS. CAMPBELL:** Your Honor, may I approach?

3 (Whereupon, a bench conference is had)

4 **Q** The time that the person that was robbing you, while
5 he was in the store, did you get a good look at him?

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

7 **Q** What was the lighting like?

8 **A** It was better than this.

9 **Q** Better than this?

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

11 **Q** And how close did you actually get to him to see him?

12 **A** I was sitting right there. I was -- I could see his
13 face.

14 **Q** And once he left the store and got away however, you
15 didn't see him any more?

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

17 **Q** But you got a good look at his face that day?

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

19 **Q** Were you paying attention to what he looked like?

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

21 **Q** And why was that?

22 **A** Because I wanted to give a good description. If the
23 police asked how he looked, I wanted to be able to
24 give a good description of him.

25 **Q** Do you remember how he looked?

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

2 **Q** Do you still remember what he looked like?

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

4 **Q** Do you see him here in the courtroom?

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

6 **Q** Can you point him out for the jury?

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

8 **MR. COCHRAN:** And, Your Honor, I would put my
9 objection on the record.

10 **THE COURT:** All right. Overruled. Overruled.
11 Go ahead.

12 **Q** You can point him out.

13 **A** Yes, ma'am. The gentleman with the glasses on and
14 the yellow shirt.

15 **Q** Seated at the table with the lawyers?

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

17 **MS. CAMPBELL:** Your Honor, may the record
18 reflect he's identified the defendant?

19 **THE COURT:** The record will reflect the witness
20 identified the defendant.

21 **Q** Is there any doubt that's the guy that robbed you?

22 **A** (Shakes head negatively).

23 **Q** Back in 2001 I believe you had a conviction for
24 possession of crack. Is that correct?

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

1 Q Thank you. I don't have anything further.

2 THE COURT: Cross examination.

3 MR. COCHRAN: Thank you, Your Honor. May it
4 please the Court.

5 CROSS EXAMINATION

6 BY MR. COCHRAN

7 Q So you didn't see the robber come into the store?

8 A I didn't see him until he was -- when he was coming
9 through the front door when he came to the counter.

10 Q You had your back to him and you noticed that Danny
11 had an expression on his face that indicated to you
12 something was wrong?

13 A Yes.

14 Q So you hadn't seen him come in yet?

15 A When he came in, he was just standing at the counter.
16 He was leaning over at the counter. So we were still
17 eating. We wasn't really paying no attention to him,
18 me and Gracious. But when we saw Danny, he must have
19 had done took the gun out. When we took our focus,
20 attention off of whatever, Danny was standing with
21 his biscuit right there fixing to eat like something
22 was wrong. And we just kept looking at each other
23 like what is wrong.

24 Q You were wondering what was wrong?

25 A Yes.

- 1 Q And then you turned around and saw the gun?
- 2 A Then we turned around and we saw him with the gun
- 3 sitting there pointed at us.
- 4 Q And then he said: This isn't a joke?
- 5 A Yes, sir.
- 6 Q And then he took a mask out of his pocket?
- 7 A He had -- whatever he had he had in the bag with him.
- 8 He had everything together. And at that point he
- 9 took it and he tied it around his nose and his mouth.
- 10 Q So he came into the restaurant without the mask on?
- 11 A Yes, sir.
- 12 Q And when he -- when you looked at him, you watched
- 13 him take the mask out of the bag and put it over his
- 14 face?
- 15 A Yes, sir. I watched him tie it around his face.
- 16 Q Around his nose and mouth?
- 17 A Yes, sir.
- 18 Q You wrote a statement with the police, right?
- 19 A Yes, sir, I did.
- 20 Q The police were asking you questions and you were
- 21 writing down your answers. Correct?
- 22 A Yes, sir.
- 23 Q Did you write anything in your statement about him
- 24 tying a mask around his face in the store?
- 25 A No, sir.

- 1 Q And you said that you -- when you were talking to Ms.
2 Campbell, you told her that you wanted to give the
3 police a really accurate description of what happened
4 so that you could give them the best information
5 possible, right?
- 6 A I put in my statement that he had the bandanna around
7 his nose and his mouth, as you can see.
- 8 Q Okay. You did write in your statement --
- 9 A But I didn't really say he tied it down there.
- 10 Q Okay.
- 11 A But I told the police that he had it around his nose
12 and his mouth.
- 13 Q You put in your statement that he had a mask around
14 his nose and his mouth?
- 15 A Yeah.
- 16 Q Not just his mouth?
- 17 A Nose. It was like this.
- 18 Q Oh. It was like this, like up here?
- 19 A Yes. Right here where you can just see --
- 20 Q So it was like right here over his face?
- 21 A Yes.
- 22 Q So it wasn't just a little bit over the nose? It was
23 covering his nose?
- 24 A No. It was hanging down around his mouth, too.
- 25 Q Okay. And you saw him put it on, right?

1 **A** Yes, sir, I did.

2 **Q** Okay. And when you told the police what he looked
3 like, you described his eyes, right?

4 **A** Yes, sir.

5 **Q** And when asked what he was wearing, you said a mask,
6 right? Correct?

7 **A** No. I told them a shirt.

8 **Q** A shirt?

9 **A** A pair of pants and he had the mask.

10 **Q** And a mask over his nose and mouth, correct?

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

12 **Q** And you wanted, like you told Ms. Campbell, to give
13 the police the most accurate description possible,
14 right?

15 **A** Yes, sir.

16 **Q** Okay. But you never told the police that you saw his
17 entire face without the mask?

18 **A** No, sir.

19 **Q** Do you remember if he had facial hair or didn't have
20 facial hair?

21 **A** No, sir.

22 **Q** And you didn't tell the police whether or not he had
23 a beard or not?

24 **A** No, sir.

25 **Q** Whether he had a mustache or not?

1 **A** No, sir, I did not.

2 **Q** Whether he had a goatee or not?

3 **A** No, sir, I didn't.

4 **Q** After the robbery you went out the front door?

5 **A** Yes, sir.

6 **Q** Okay. And the front door of the Church's leads out
7 to the intersection, right?

8 **A** It leads out to the intersection, or you can go down
9 either side to the intersection. You can --

10 **Q** It's the intersection of Millwood and Millwood turns
11 into Two Notch?

12 **A** Yes, sir.

13 **Q** Okay. So you walked out that front door and you were
14 near the intersection, right?

15 **A** I wasn't near the intersection. I was mostly to the
16 store. I was watching Arthur run behind the
17 defendant.

18 **Q** So you're outside. You're outdoors, correct?

19 **A** Yes, sir.

20 **Q** Outside the front door watching Arthur in the back of
21 the store?

22 **A** Yes, sir.

23 **Q** And you see him. Do you see him following anybody,
24 or did you see just him?

25 **A** I saw him following out the defendant.

1 Q Okay. And you saw the gray pick-up truck?

2 A I saw the gray pick-up truck after he turned down the
3 road and Arthur was telling me that was the truck he
4 was in.

5 Q Okay. And had the police arrived at this point?

6 A Yes, sir. The police had done arrived about, I'd say
7 about three, four minutes after Gracious had done
8 called them.

9 Q So while you were standing out there at the front
10 door and Arthur was yelling to you, the police were
11 out there?

12 A Yes, sir.

13 Q Okay. And did you see the gray pick-up truck stop at
14 intersection at the red light?

15 A Yes, sir, I did.

16 Q You did. Okay. And the police were standing there
17 with you?

18 A Yes, sir. And Arthur was calling me and telling me
19 to tell them there was the truck.

20 Q So you were standing in front of the Church's Chicken
21 with the police, right?

22 A Yes, sir.

23 Q And the gray pick-up truck was in front of the store
24 stopped at a red light?

25 A Yes, sir.

- 1 Q And you were standing there with police?
- 2 A Yes, sir. I was telling the police that was the
3 truck. And he presumed to go out on the radio
4 telling them what was the truck.
- 5 Q He was telling on the radio that there is a gray
6 pick-up truck?
- 7 A Yes, sir.
- 8 Q And it was stopped at the red light?
- 9 A Yes, sir.
- 10 Q How far away from the intersection were you?
- 11 A What? Me?
- 12 Q Yeah.
- 13 A I tell you I was standing over there by the front
14 door. I wasn't all the way up to the intersection.
15 I was standing mostly to the store.
- 16 Q Did the policeman -- did you see the driver of the
17 truck when it was stopped at the red light --
- 18 A Yes.
- 19 Q -- when you were standing there with the police?
- 20 A Yes, I did.
- 21 Q Did you see him talk to two homeless people?
- 22 A Yes, I did.
- 23 Q Okay. Did the policeman run away from you?
- 24 A No, sir. He was trying to -- I guess he was
25 protecting us. Because he was on his radio. Because

1 it was more than one polices [sic] there. It was
2 like two seconds, three seconds after the light had
3 done changed, he pulled out on the radio. They
4 followed him.

5 Q So Arthur had followed the man out of the store, the
6 robber, and then yelled to you that the pick-up truck
7 was coming your way?

8 A Yes.

9 Q And then the pick-up truck stopped at the
10 intersection at the red light?

11 A Yes.

12 Q And you were with a police officer at that moment?

13 A Yes. And Arthur was running back up telling us:
14 There's the truck right there.

15 Q And Arthur was running back to you and the police
16 officer saying: That's the truck right there?

17 A That's the truck right there.

18 Q But the police officer stayed standing there with
19 you?

20 A He was there on the radio. He had his radio right
21 here making the call telling which direction the
22 truck was going.

23 Q And you had seen earlier -- backtracking to the
24 store, you had seen the robber with the gun pointing
25 the gun, right?

- 1 **A** Yes.
- 2 **Q** And you had looked at the gun?
- 3 **A** Yes.
- 4 **Q** Okay. And you noticed his hands?
- 5 **A** Yes.
- 6 **Q** And just like Arthur said, he wasn't wearing any
7 gloves, right?
- 8 **A** (Nods head affirmatively).
- 9 **Q** You have to answer out loud.
- 10 **A** No, sir.
- 11 **Q** No, he was not wearing any gloves?
- 12 **A** I did not see any gloves.
- 13 **Q** Okay. You said he was wearing a hat?
- 14 **A** Yes, sir. I -- at that time when we was looking at
15 him, I may have thought I saw a hat on his head.
- 16 **Q** May have thought you saw --
- 17 **A** Yeah. That's why I told the police, that I put down
18 in my statement that I saw a hat.
- 19 **Q** Okay. So you might have seen a hat?
- 20 **A** Yes, sir.
- 21 **Q** You're not sure if you saw a hat?
- 22 **A** I'm not really sure.
- 23 **Q** But in your statement --
- 24 **A** Yes, sir.
- 25 **Q** -- you wrote that you saw a hat?

1 **A** Yes, sir.

2 **Q** You didn't write that you weren't sure but maybe you
3 saw a hat?

4 **A** Yes, sir. Everything was happening so fast and --

5 **Q** Like you were having -- the robbery happens. You're
6 taken to the police station to make this statement.
7 All these things are happening at a --

8 **A** I mean, it was happening so fast, the robbery
9 happened so fast 'til, you know what I'm saying,
10 everybody was trying to collect their self when the
11 police come. And we were scared. I mean, we were
12 scared.

13 **Q** Really scared. Yeah.

14 **A** If you was in my shoes, you would be scared, too.

15 **Q** Absolutely.

16 **A** That's anybody.

17 **Q** Yes, sir. And that fear --

18 **A** That fear.

19 **Q** -- that --

20 **A** That fear that I might not make it home to my mother
21 or my father, I mean, all of that was running through
22 my head.

23 **Q** All that fear and how fast it's happening, all that's
24 going through your head. And it makes it hard to
25 identify the person, right?

- 1 **A** Yes. But I saw him. I had a good look at him.
- 2 **Q** You had a good look at him?
- 3 **A** Yes, sir.
- 4 **Q** You can't remember whether or not he was wearing a
5 hat, right?
- 6 **A** No, sir.
- 7 **Q** Okay. You saw him without the mask, right?
- 8 **A** Yes, I did.
- 9 **Q** And you don't remember if he had a beard?
- 10 **A** No, sir.
- 11 **Q** Or a mustache?
- 12 **A** No, sir.
- 13 **Q** He might have had one?
- 14 **A** He might have.
- 15 **Q** He might not have though?
- 16 **A** Who knows? But when I looked at him, he was tying on
17 a rag around his face.
- 18 **Q** But you did see his full face before he tied the rag
19 on, correct?
- 20 **A** Yes.
- 21 **Q** And you don't remember whether or not he was wearing
22 a hat, right?
- 23 **A** No, sir.
- 24 **Q** And --
- 25 **A** What really got everybody's attention was his eye.

1 He had a bad eye. And that's what really we were
2 focusing on, his eye. Because we ain't knowed [sic]
3 what he was doing. We didn't know what was going
4 through his mind at the time either. So we was [sic]
5 trying to do everything he was trying to tell us to
6 do.

7 Q Okay. And when you described to the police what he's
8 wearing, you said a striped shirt. You didn't quite
9 remember what color the shirt or the pants were?

10 A No, sir. I just told them a striped shirt.

11 Q And you didn't remember if he was wearing pants or
12 shorts?

13 A He was wearing pants.

14 Q Okay. Why didn't you write that in your statement?

15 A I don't know.

16 Q Did you see Arthur get into the squad car of the
17 police?

18 A Yes, sir.

19 Q You did? And then they drove away?

20 A Yes, sir.

21 Q Did Arthur come back to the Church's Chicken then?

22 A Yes, sir. The police brought him back.

23 Q The police brought him back. And then you were with
24 Arthur again?

25 A Yes, sir.

1 Q And then you were taken over to --

2 A Washington Street to make our statement, to
3 Investigator Thomas.

4 Q Were you with Arthur at that point? Did you guys
5 drive in the same car?

6 A Yes, sir. Our manager from another store, when we
7 made the call to the police, at that time we must
8 call our supervisor. So we were trying to call our
9 supervisor. But we didn't. So we called the other
10 stores, and they told us that she was on Devine
11 Street. So we called Devine Street, and our manager
12 on Devine, Ms. Veronica, she answered the phone. And
13 they proceeded to tell her that we'd been robbed,
14 that we was looking for Ms. Kelly. And that's when
15 she jumped in her car and came down there to Church's
16 to check on us.

17 Q And came down to the Church's to check on you?

18 A Yes.

19 Q And then did you say -- I'm sorry. I am repeating
20 myself. Did you say you did ride with Arthur there
21 to police headquarters?

22 A Yes, sir.

23 Q You're in the same car?

24 A We all -- she got all us together to take us to the
25 police station.

- 1 Q So the police didn't drive you there?
- 2 A No, sir.
- 3 Q Your manager drove all of you together?
- 4 A Yes, sir.
- 5 Q And this is after Arthur went off with the police,
- 6 right?
- 7 A Yes, sir.
- 8 Q Okay. And you never got taken anywhere with the
- 9 police, right?
- 10 A No, sir.
- 11 Q Okay. When you were at the police station, were you
- 12 shown any pictures?
- 13 A No, sir.
- 14 Q Okay. Did you see anybody?
- 15 A No, sir. I saw Officer Thomas.
- 16 Q You saw Officer Thomas?
- 17 A Mm-hmm (affirmative). He interviewed me.
- 18 Q You didn't see this picture? They didn't show you
- 19 any pictures?
- 20 A No, sir.
- 21 Q Okay. You just gave him a description?
- 22 A Yes, sir.
- 23 Q And you wrote your statement out and then you went
- 24 home?
- 25 A After -- after everybody got through, yes. We went

1 back to the Church's to clean up.

2 Q Okay. Now, this case was about a year ago, right?

3 A Yes, sir.

4 Q And you've talked with the solicitors about this case
5 and the police about this case, right?

6 A I didn't never -- yes, sir. They came to the
7 Church's to ask us where all this happened. And we
8 took them around to show them where the defendant had
9 left and what door he came into and where he was
10 standing and where this happened at.

11 Q And what all had happened. And before today, you've
12 seen this picture before, right?

13 A No, sir. I saw him. I saw him with that striped
14 shirt on when he was robbing me, when he was robbing
15 Church's.

16 Q And you've seen that picture before today?

17 A That picture?

18 Q Yeah.

19 A Yeah. I've seen it now.

20 Q Have you seen it before today?

21 A Yeah. I saw him personally in Church's robbing
22 Church's.

23 Q But were you shown a photograph of him before today?

24 A No.

25 Q Okay. So before the robbery you saw a gentleman come

1 into the store and you noticed something was wrong,
2 so you turned around. Right?

3 **A** Yes.

4 **Q** And you saw his face. And he said: Do you think I'm
5 playing?

6 **A** He said: You think this is a joke? He didn't say:
7 You think this is playing. He said: You think this
8 is a joke, with the gun pointed at us.

9 **Q** And then he tied the thing around his face?

10 **A** Yes.

11 **Q** Did he still have the gun in his hand when he was
12 tying it on?

13 **A** Yes, he had the gun in his hand.

14 **Q** While he was tying the thing on?

15 **A** Yes. He had the gun tying it around there. And we
16 was in a state of shock. All of us was in a state of
17 shock until we couldn't move at the time. We were
18 just standing there like is this for real, is he for
19 real.

20 **Q** Right.

21 **A** And then that's when Gracious and them proceeded to
22 get up to go inside in the back behind the counter.

23 **Q** And then after someone robbed the store, you did go
24 out the front door. And at some point a police
25 officer came and stood there with you, right?

1 **A** Yes. After the defendant walked out the door with
2 our money and went down there to get away, yes.

3 **Q** Okay. And you saw -- you were standing there with
4 the police officer while Arthur ran up saying:
5 That's the truck, that's the truck. And you and the
6 officer watched the truck stop at the stop light?

7 **A** No. Arthur ran out before the police got there.

8 **Q** Okay. And then you saw it stopped at the red light?

9 **A** Yes.

10 **Q** Okay. And you've never told anyone until today that
11 you saw the robber without the mask, correct?

12 **A** Repeat that? I couldn't quite hear you.

13 **Q** Before today, before you were on the witness stand,
14 you had never told anybody before that you saw the
15 robber without the mask?

16 **A** I can't recall.

17 **Q** You can't recall. I have no more questions, Your
18 Honor.

19 REDIRECT EXAMINATION

20 **BY MS. CAMPBELL**

21 **Q** Prior to the day that you got robbed, had you ever
22 seen him before?

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

24 **Q** Do you have anything against him?

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

1 Q And is that the guy that robbed you?

2 A Yes, ma'am.

3 MS. CAMPBELL: Thank you, Your Honor.

4 MR. COCHRAN: Nothing more, Your Honor.

5 THE COURT: Thank you. You may come down, sir.
6 May this witness be excused?

7 MR. MAY: Without objection, Your Honor.

8 THE COURT: Without objection. Next witness.

9 MS. CAMPBELL: The State would call Gracious
10 Tucker.

11 GRACIOUS TUCKER, after being duly sworn,
12 testifies as follows:

13 THE CLERK: Thank you. Have a seat in the
14 witness stand and give the court reporter your name.

15 THE WITNESS: Gracious Tucker.

16 DIRECT EXAMINATION

17 BY MS. CAMPBELL

18 Q Gracious, how old are you?

19 A Twenty-one.

20 Q You live here in the Columbia area?

21 A Yes, ma'am.

22 Q Can you get a little closer to that microphone,
23 because you're pretty soft-spoken.

24 A Yes, ma'am.

25 Q And how long have you been living in Columbia?

1 **A** All my life.

2 **Q** Are you familiar with the Church's Fried Chicken over
3 on Taylor street?

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

5 **Q** And did you used to work there?

6 **A** Yes.

7 **Q** And you don't work there any more, do you?

8 **A** I still work there. I just haven't returned because
9 I've just recently had my baby in --

10 **COURT REPORTER:** I'm sorry. You need to repeat
11 and slow down, please.

12 **Q** I'm sorry.

13 **A** I'm still currently employed there, but I haven't
14 returned yet because I had my baby in January.

15 **Q** So you're still employed at the Church's?

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

17 **Q** But you had a child in January of this year?

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

19 **Q** And you haven't gone back to work yet?

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

21 **Q** Back in May of last year, were you working at
22 Church's Fried Chicken?

23 **A** Yes.

24 **Q** And specifically on May the 24th, what shift were you
25 working?

- 1 **A** The night shift.
- 2 **Q** The night shift?
- 3 **A** Yes.
- 4 **Q** And what time did you show up for work that day?
- 5 **A** I usually get there around 3 because my mother drops
6 me off before she goes to work.
- 7 **Q** Around 3?
- 8 **A** Yes.
- 9 **Q** And that afternoon who all was in the store working?
- 10 **A** At the time of the robbery, it was me, Donald and
11 Danny and Arthur in the store. But the only ones
12 working were Arthur, myself and Danny.
- 13 **Q** And had Donald already gotten off work?
- 14 **A** Yes.
- 15 **Q** That afternoon where were you in the store at the
16 time of the robbery?
- 17 **A** In the lobby.
- 18 **Q** What were you doing there?
- 19 **A** We were sitting there eating because we --
- 20 **Q** Who were you sitting with?
- 21 **A** I was sitting with Donald.
- 22 **Q** With Donald?
- 23 **A** Yes.
- 24 **Q** And who else was in the lobby area?
- 25 **A** Danny.

1 Q Where was he sitting?

2 A He was sitting, when you first walk in the door to
3 your right, the second table closest to the corner
4 window.

5 Q The second table closest to the corner window?

6 A Yes.

7 Q What did you notice when the robbery happened? What
8 did you first see?

9 A When it first occurred, I was sitting across from
10 Donald and he looked over at Danny. And when we
11 looked over at Danny, and he just stopped and looked.
12 And so I turned. I looked at Danny. I looked at
13 Donald. And so Donald was just sitting there staring
14 behind me. And I turned around and I saw the
15 gentleman standing on the mid wall that divided the
16 lobby from the counter.

17 Q The mid wall that divides the lobby from the counter?

18 A Yes.

19 Q And when you looked around, you had already seen
20 Donald staring back there?

21 A Yes.

22 Q And what about the -- what made you turn around and
23 look to where he was staring?

24 A Because of the way his face looked. It was just like
25 this deep lost stare.

1 Q And when you turned around and looked back, you saw a
2 gentleman standing in the divider between the lobby
3 and actually where the counter is?

4 A Yes.

5 Q And what did you see --

6 A I saw the man.

7 Q -- when you turned around?

8 A I saw the gentleman standing with from his nose down
9 covered.

10 Q So at that point you'd already seen Donald staring
11 that way. So that's when you turned around?

12 A Yes.

13 Q What did you notice about the person you saw standing
14 at the divider?

15 A Honestly, I didn't really pay attention to his face.
16 I just saw the mask and I saw the gun. That was my
17 main focus.

18 Q And when you saw the gun, could you tell what color
19 the gun was?

20 A Silver.

21 Q And what was he doing with the gun when you saw it?

22 A When I turned around, he had -- it was -- his hand
23 was here, and then the gun --

24 Q Can you pull it up above so we can see it.

25 A One of his hands was here and the other hand was

1 laying on top with the gun pointed toward the corner
2 where me and Donald were sitting.

3 Q And what happened next? Tell the jury what you
4 remember.

5 A He told us, he said: You think this is a joke? This
6 is a robbery. Give me all the money out of the
7 register. And so I turned and I looked at Donald and
8 then I turned back around. And he was like: Y'all
9 think this is a joke. Get up and give me the money.
10 So I got up. And Danny had got up and he was going
11 toward the back door.

12 So it was Danny in front of me, and then I was
13 right behind Danny. And he had the gun pointed
14 behind in the back of me and Danny, and we were at
15 the side door. And we began to beat on the door
16 telling Arthur to let us in because he had a gun in
17 my back.

18 And so when we couldn't get in, we turned around
19 and faced him. And we were like: It's locked. So
20 he made Danny go around and jump over the counter.
21 And Danny went around because the only one you can
22 get in without a key is the drive-thru register. But
23 when Danny went to open the front register, he
24 couldn't. So --

25 Q Okay. Let me slow you down a little bit. You said

1 at first that the guy had the gun pointed at you?

2 A Mm-hmm (affirmative).

3 Q And then you mentioned that you went back into the
4 back area?

5 A No. We didn't go in the back area. We were at the
6 door to go into the back area, but we couldn't get in
7 because it was blocked.

8 Q I show you State's Exhibit No. 10. Do you see the
9 doorway that you would have had to go through to get
10 to the back area?

11 A We go in through this door here, but then we have to
12 turn because there's another door, it's an actual
13 door, blocking us from getting directly in.

14 Q Back in this hallway?

15 A Yes.

16 Q And in State's Exhibit No. 10, that shows that area.
17 And it was you and Danny at the door?

18 A Yes.

19 Q And y'all were banging on the door I believe you
20 testified?

21 A Yes.

22 Q And no one unlocked the door?

23 A Hmm-mm (negative).

24 Q What happened next that you remember?

25 A Once Danny was over the counter he got to the

1 register, opened the one that he could without the
2 key.

3 Q How did Danny get back around to the register?

4 A The guy, he told Danny to come with him. He had the
5 gun pointed at Danny, told Danny to walk around with
6 him. He then -- Danny then walked around.

7 Q Slow down a little bit. And at that point were you
8 free to go?

9 A No. I was still in the corner by the door.

10 Q And why couldn't you leave?

11 A Because he was like right in front of the door area
12 with the gun.

13 Q What was going through your mind?

14 A That I might not make it home and the fact that I
15 thought I might have been pregnant and I -- I just --
16 I was just standing there.

17 Q And you mentioned earlier that you didn't really
18 focus on his face; you focused on the gun?

19 A Mm-hmm (affirmative).

20 Q When Danny went back, how did he get behind the
21 counter?

22 A He jumped over.

23 Q And where was the gunman?

24 A Behind him.

25 Q What did Danny do once he got behind the counter?

1 **A** He then -- from -- I'm not sure. I'm not saying I
2 was actually there to see him open the drive -- but
3 he had no choice but to open the drive-thru register
4 first because that's the only one where he can get to
5 it without a key.

6 **Q** I show you State's Exhibit No. 9. Do you see the
7 drive-thru register in that one?

8 **A** Yes.

9 **Q** And where is it?

10 **A** Right here.

11 **Q** Right here?

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

13 **Q** And is that the area where you saw Danny go to first?

14 **A** I didn't see him go to it, but he had no choice but
15 to go to that one. When I came around the corner, he
16 had already -- that register was already empty.

17 **Q** So you were standing actually over there in the
18 dining area at that point?

19 **A** In the area of where the door was.

20 **Q** Where the door was?

21 **A** The door to where you to go to the back.

22 **Q** The one that you pointed out in State's Exhibit
23 No. 10?

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

25 **Q** And what made you come around to the front counter?

1 **A** Danny couldn't get in the drawers. He said: Hey,
2 girl. He was asking Danny to open it. He was like:
3 I have no key. So he said: Hey, girl, bring the
4 key. So then I came around. I brought the key.

5 **Q** You're the one that had the key?

6 **A** Yes. And I gave the key to Danny and then Danny
7 opened the drawer. And the guy pointed the gun at
8 me. He goes: Now get back over there. And he waved
9 the gun for me to go back over there, and I went back
10 over there to where Donald was.

11 **Q** And where was that?

12 **A** Over in the lobby.

13 **Q** Where the tables are?

14 **A** Yes.

15 **Q** And what was Donald doing this entire time?

16 **A** He was just standing there because he had already --
17 he made -- he tried to make an attempted call, but he
18 pointed the gun at him and said: Don't you even
19 think about it. So then Donald threw the phone onto
20 the table and threw his hands into the air and just
21 walked across to the next table across from where the
22 phone was at.

23 **Q** Once you'd given the key and then moved back to the
24 dining area where Donald was, you could actually see
25 what was going on still?

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

2 **Q** And what did you see Danny do as far as the second
3 register, the front register?

4 **A** He emptied out the front register into the bag. And
5 then the gentleman walked out the door. And I could
6 still remember it right now today. He looked at us
7 and he goes: Have a nice day. And he walked out the
8 door just as soon as he came in. That's how he
9 walked out, like nothing ever happened.

10 **Q** And did you see -- what did he put the money into?

11 **A** A plastic bag.

12 **Q** And do you know where the plastic bag came from?

13 **A** He brought it when he came in.

14 **Q** So Danny actually removed the money and placed it in
15 the plastic bag. Is that correct?

16 **A** Yes.

17 **Q** Once he left did you see what direction he went in?

18 **A** He went back in the direction that he came, which was
19 up -- he went down Millwood because he came up to our
20 parking lot.

21 **Q** And you didn't follow him down the street?

22 **A** No.

23 **Q** What did you do?

24 **A** I immediately called 911 and called in the robbery.

25 **Q** And you did what? You called 911 and what?

1 **A** And let them know that we were robbed.

2 **Q** Did y'all also attempt to make contact with the
3 manager that day?

4 **A** Well, I -- me personally, I didn't. But the other
5 employees that were there did.

6 **Q** Okay.

7 **A** The first manager that we attempted to call was I
8 believe either our area supervisor or our general
9 manager. But our general manager, at the point in
10 time he was out of town. So we then called our area
11 supervisor but she had her kids. So she didn't come.
12 So then we called Ms. Veronica from Devine Street,
13 and she came down to the store with us.

14 **Q** You said you didn't get a good look at his face but
15 you saw the mask?

16 **A** Yes.

17 **Q** Did you also generally see what kind of clothing he
18 had on?

19 **A** All I remember is he had on a striped shirt. I can't
20 tell you what color the stripes were. I just know it
21 was a striped shirt. And I saw the black mask and
22 the gun.

23 **Q** You didn't actually follow -- did you see Arthur
24 leave after the defendant left?

25 **A** Yes.

1 Q And did you see which direction he went?

2 A Yes.

3 Q But did you stay in the store?

4 A I stayed in the store.

5 Q So you don't know where he went or what he saw down
6 there?

7 A (Shakes head negatively).

8 Q And did the police come?

9 A Yes, they did.

10 Q And did you all give them as much information as you
11 could?

12 A Well, when they first got there, I was like torn up;
13 I mean, crying, shaking, breathing so hard I couldn't
14 hardly catch my breath. I mean, it was -- but when I
15 finally -- they took my blood pressure. The
16 ambulance came and they took my blood pressure. They
17 asked me if I needed to go to the emergency room, and
18 I told them I was fine enough to be able to stay.

19 Q So they actually called an EMT for you?

20 A Yes.

21 Q And took your blood pressure?

22 A Yes. They took all of our blood pressure.

23 Q So once all this was over and it hit you, you kind of
24 got upset?

25 A (Nods head affirmatively).

1 Q And did you later that evening go down to the police
2 station and give them a statement about what you
3 knew?

4 A Yes.

5 Q Do you remember telling them what the gun looked
6 like?

7 A Mm-hmm (affirmative).

8 Q And what color was the gun?

9 A Silver.

10 Q You mentioned earlier that you were focused on the
11 gun. I show you State's Exhibit No. 4 and just ask
12 you to look at that.

13 A Yes.

14 Q And does that look like the gun?

15 A Yes.

16 Q Because that's what you focused on?

17 A (Nods head affirmatively)

18 Q Begging the Court's indulgence. Thank you, Ms.
19 Tucker. Please answer any questions the defense
20 might have.

21 THE COURT: Cross examination.

22 MR. COCHRAN: Thank you, Your Honor. May it
23 please the Court.

24 CROSS EXAMINATION

25 BY MR. COCHRAN

1 Q Good afternoon, Ms. Tucker. So you were sitting with
2 Donald eating when the robber walked into the store?

3 A Yes.

4 Q Did you see the robber's -- you didn't see the
5 robber's whole face?

6 A No. I just saw just from the eyes up, up to around
7 the hair area.

8 Q You didn't see him tie the mask on?

9 A No.

10 Q Take it out of the bag and put it on his face?

11 A No.

12 Q And you don't remember any defining characteristics
13 of his face?

14 A No. Because all I remember is the side as he was
15 walking to come around our store.

16 Q And you remember the gun, right?

17 A (No response)

18 Q And when you went down to the police station -- so
19 you went a little bit later than everybody else to
20 the police station?

21 A No. We all rode in the same car with Ms. Veronica.
22 She took us down there.

23 Q Okay. I misunderstood the testimony. When you went
24 down to talk to the police, you said that he was
25 wearing a white shirt with white stripes, right?

1 **A** No. I said a white shirt with stripes.

2 **Q** Oh. I'm sorry. Wide stripes. A white shirt with
3 wide stripes. Is that right?

4 **A** (Nods head affirmatively).

5 **COURT REPORTER:** You need to answer out loud,
6 please.

7 **Q** And you couldn't remember what color the stripes
8 were, right?

9 **A** No.

10 **Q** And you had called 911, right?

11 **A** Yes.

12 **Q** Okay. And you'd spoke to a 911 operator?

13 **A** Yes.

14 **Q** And they asked you what the guy looked like?

15 **A** Yes.

16 **Q** Okay. And they asked you what he was wearing?

17 **A** Yes.

18 **Q** And you told them that he was wearing a red shirt,
19 correct?

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

21 **Q** You don't remember what you told the 911 operator?

22 **A** No. I know I told them that he was a black male and
23 he left out the store, we had just been robbed, and
24 that a black male had just left out of our store.

25 **Q** You told her that a black male had just robbed the

1 store?

2 A Yeah. I don't remember telling them what he had on
3 though.

4 Q You don't remember telling her, telling the 911
5 operator that he was wearing a red shirt?

6 A No.

7 Q You don't remember that?

8 A No.

9 Q You didn't say anything about his eyes, right?

10 A No.

11 Q When you saw him, you saw the robber walk out of the
12 store, right?

13 A Yes.

14 Q Okay. And he went out of a door, correct?

15 A Yes, sir.

16 Q And beside that door is a measuring stick?

17 A Yes.

18 Q Okay. And you -- and this is for that purpose,
19 right?

20 A Yes.

21 Q To get identifications of people who might have
22 robbed the store?

23 A Yes.

24 Q Or stolen something, something like that. So you
25 used that, right?

1 **A** Yes, sir.

2 **Q** Okay. And when he walked through the door, he was
3 next to that measuring stick, correct?

4 **A** Yes.

5 **Q** Okay. And you put in your statement that seeing him
6 walk past that measuring stick, he was about
7 five-foot-five or five-foot-six, correct?

8 **A** Yes.

9 **Q** About five-five, five-six. And you were using a
10 measuring stick when that happened. That was not a
11 guestimate, correct?

12 **A** Yes.

13 **Q** You were using an actual measuring stick, right?

14 **A** Yes.

15 **Q** And you did write in your statement to the police
16 that he was wearing a white shirt, correct?

17 **A** Yes. A striped shirt.

18 **Q** And you rode with Arthur, Donald and Danny altogether
19 to the police station, right?

20 **A** Yes.

21 **Q** Before you wrote that statement out?

22 **A** (Nods head affirmatively).

23 **Q** And he had was about five-five or five-six based on
24 your judgment from that measuring stick?

25 **A** Yes.

1 **MR. COCHRAN:** No more questions, Your Honor.

2 **THE COURT:** Anything further?

3 **MS. CAMPBELL:** Just a couple of questions.

4 REDIRECT EXAMINATION

5 **BY MS. CAMPBELL**

6 **Q** Gracious, this is an obvious question. Were you
7 pretty upset about what happened?

8 **A** Yes.

9 **Q** And were you trying to sit there and get an accurate
10 measurement on how tall he was?

11 **A** Not a complete accurate but as accurate as I could
12 see from him walking out the store.

13 **Q** And he just asked you about whether you said he had a
14 white shirt on. You actually said he had a white
15 shirt with wide stripes. Is that correct?

16 **A** Yes.

17 **Q** And then did you go on further and tell them about
18 the clothing?

19 **A** Yes.

20 **Q** You couldn't see anything further?

21 **A** No.

22 **Q** And why was that?

23 **A** Because my main focus was the gun and making sure
24 that I did whatever he told me to do so that I could
25 get home and see my little siblings and my mother and

1 my father again.

2 Q Thank you.

3 THE COURT: Anything further?

4 MR. COCHRAN: No, Your Honor. Thank you.

5 THE COURT: You may come down. May this witness
6 be excused?

7 MR. MAY: Without objection, Your Honor.

8 THE COURT: Without objection. Next witness.

9 MS. CAMPBELL: May we approach?

10 THE COURT: You may.

11 (Whereupon, a bench conference is had)

12 THE COURT: All right. Ladies and gentlemen,
13 there's a matter of law I need to take up with the
14 attorneys. And it's about lunchtime. So I think the
15 best thing to do, rather than have you wait in the
16 jury room, is go ahead and let you go to lunch now.
17 I'll ask you to be back in the jury room, oh, let's
18 say 2:15, at which time we'll recommence the trial or
19 continue the trial.

20 Again, don't discuss the case, please, over the
21 lunch hour with anyone else or when you return to the
22 jury room. Have a pleasant lunch. We'll see you at
23 2:15.

24 (Jury out at 12:50 p.m.)

25 THE COURT: All right. Come to order, please.

1 Next witness.

2 **MS. CAMPBELL:** The State calls Danny Weaver.

3 **MR. MAY:** Your Honor, under Riddle, I'd ask for
4 the State to make a representation of what the
5 conversation just was.

6 **MS. CAMPBELL:** The conversation was that he did
7 see a picture of the defendant, that they showed him
8 a book and he saw pictures of that but it wasn't the
9 defendant's picture. He then says that he saw him
10 sitting in --

11 **THE COURT:** Why don't we let him say it.

12 **MS. CAMPBELL:** That's what I was going to do.

13 **THE COURT:** All right. Put him up. Only for
14 identification purposes?

15 **MS. CAMPBELL:** Just for the identification. I
16 think we'll just limit it to what happened.

17 DANNY WEAVER, JR., after being duly sworn,
18 testifies as follows:

19 **THE CLERK:** Thank you. Have a seat in the
20 witness stand, please. Give the court reporter your
21 name.

22 **THE WITNESS:** Danny Weaver, Jr.

23 DIRECT EXAMINATION

24 **BY MS. CAMPBELL**

25 **Q** Mr. Weaver, you were actually the person that

1 actually went in the cash registers, got robbed that
2 day?

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

4 **Q** And did you get a good look at the defendant?

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

6 **Q** Later -- limit this, okay? Later on that evening did
7 you then go down to the police station?

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

9 **Q** And when you got down to the police station, did you
10 ever -- were you ever shown a picture of the
11 defendant?

12 **A** They just, when we went in there, it's like a book.
13 And he was like: Any of these people you see? And I
14 was like: No. And his words were: Well, if you see
15 the person, will you identify him? I said: Oh, yes,
16 I will identify him. They took me and Gracious
17 because Gracious was still crying, they took us
18 around to -- I don't know what they call it, like a
19 little room.

20 He was in the room with handcuffs on. It was an
21 officer in front of him, and he was sitting in a
22 chair. And they asked him to turn around. And I
23 said: That's the guy right there. And we walked on
24 out.

25 **MS. CAMPBELL:** We would concede then no in-court

1 identification.

2 **MR. MAY:** Okay. Right.

3 **MS. CAMPBELL:** We won't go into it.

4 **THE COURT:** All right. Fine. All right, sir.
5 You can come down. That's enough. All right.

6 **MS. CAMPBELL:** Your Honor, may I just instruct
7 the witness not to talk about any identification
8 procedures?

9 **THE COURT:** You certainly can. We're going to
10 take a lunch break anyway. Anything else for the
11 record at this point?

12 **MR. MAY:** Just briefly, Your Honor.

13 **THE COURT:** Yeah. I thought you might have
14 something.

15 **MR. MAY:** Beg the Court's indulgence for a
16 second. Your Honor, the defense would just like to
17 put on the record the objection to describing the
18 robber as the defendant. Furthermore, we'd also
19 object to Donald Kirby identifying the defendant. We
20 specifically asked the State in our Riddle as well as
21 Brady motions if there was any additional
22 information. The State would have had to have known
23 that they were going to ask for an in-court
24 identification. That was never provided to the
25 defense in preparation for trial.

1 As a result, I would say that's a violation of
2 both Brady and possibly Riddle. For that reason at
3 this time, the defense would move for a mistrial,
4 saying that Rule 5 as well as potentially Riddle is
5 violated due to the lack of the State turning over
6 any evidence. The only evidence the State, the
7 defense has --

8 **THE COURT:** This was a witness, wasn't it?

9 **MR. MAY:** Pardon me?

10 **THE COURT:** He was listed as a witness, wasn't
11 he?

12 **MR. MAY:** He was, Your Honor. But I believe
13 that under -- if I may approach and mark it as an
14 exhibit?

15 (WHEREUPON, Court's Exhibit No. 3 is marked for
16 identification.)

17 **MR. MAY:** As Court's Exhibit 3, if I may hand it
18 up, Your Honor. This is Donald Kirby's statement
19 that was provided to the defense. Under Riddle v.
20 State IV, the State has an affirmative duty to turn
21 over any type of impeachment evidence whatsoever.
22 Your Honor, this is impeachment evidence, if nothing
23 else, of that statement as he expands upon it. There
24 is no way the State could have any conversation with
25 Mr. Kirby and not have found out about a potential

1 in-court identification.

2 As a result, it's both impeachment as well as
3 it's Brady material. The defense was not aware of
4 any in-court identification. Furthermore, I believe
5 that was the representation that the defense got from
6 what the statement said, that there is only going to
7 be one in-court identification.

8 The defense knows the law regarding first-time
9 identifications with no out-of-court identification.
10 Your Honor, that's not what I'm arguing here. I'm
11 arguing that this was not turned over to the defense
12 in pre-trial so the defense could be adequately
13 prepared to combat Mr. Kirby's identification. For
14 that reason we'd object to the in-court
15 identification and furthermore move for a mistrial.

16 **THE COURT:** Are you saying that the State told
17 you there would be no in-court identifications?

18 **MR. MAY:** Your Honor, I thought -- I was -- I
19 thought that Ms. Campbell had made it clear that
20 there was only one in-court identification.
21 Furthermore, our first two motions in pre-trial were
22 addressing Brady and Riddle.

23 **THE COURT:** I understand that.

24 **MR. MAY:** So even if, even if the
25 identification, the first identification in court was

1 proper, the defense has been -- was never given any
2 notification of that, that it was coming and that the
3 State had to have known to ask the question: Do you
4 see the man that's robbed you in the court? And that
5 runs afoul of both Brady and potentially Riddle.

6 **THE COURT:** The State's position.

7 **MS. CAMPBELL:** Your Honor, the only out-of-court
8 identifications, we turned over of course the show-up
9 ID information. In addition to that, we did inform
10 him that based on our conversation, although the
11 testimony has changed a little today, that Mr. Weaver
12 had informed us he had seen the defendant at the
13 police station. We turned that over as well.

14 **THE COURT:** Oh. On Weaver. Okay.

15 **MS. CAMPBELL:** On Weaver. As far as any
16 in-court identification, we had no way -- he was
17 never -- as the testimony was, this witness was never
18 shown any pictures or anything. So we had no way of
19 knowing ahead of time whether or not -- until we get
20 to court -- whether or not he can make an
21 identification.

22 **THE COURT:** Okay. The motion is overruled,
23 respectfully.

24 **MR. MAY:** Just one more thing, Your Honor. For
25 the record, I would just state, is it the State's

1 position that he had never had a conversation with
2 Mr. Kirby in preparation for trial that he would make
3 an in-court identification?

4 **THE COURT:** You're not going to cross examine
5 the State. Here. This is yours.

6 **MR. MAY:** All right, Your Honor. I would just
7 move --

8 **THE COURT:** You don't have to -- you can't cross
9 examine the lawyers at this stage of the proceedings.

10 **MR. MAY:** Your Honor, I would agree with that.
11 I would just ask the State to make representation
12 whether or not they had a conversation whether or not
13 Mr. Kirby was going to identify him.

14 **THE COURT:** They're not required to do so.

15 **MR. MAY:** Okay. Thank you, Your Honor.

16 **THE COURT:** We'll stand at ease until 2:15.

17 (Whereupon, a lunch break is taken)

18 (WHEREUPON, State's Exhibit No. 31 is marked for
19 identification.)

20 **THE COURT:** Is the State ready to proceed?

21 **MS. CAMPBELL:** The State's ready, Your Honor. I
22 would just put the Court on notice that we anticipate
23 calling one more witness and then possibly within a
24 witness or two calling Mr. Green, the co-defendant.
25 The defense did ask that I sequester Mr. Green. So

1 he is not in the courtroom.

2 **THE COURT:** Okay. I wondered where he was. I
3 saw him earlier.

4 **MS. CAMPBELL:** Yes, sir. He was here earlier.
5 They asked that he be sequestered, and we're trying
6 to comply.

7 **THE COURT:** All right. Bring the jury, please.
8 (Jury in at 2:53 p.m.)

9 **THE BAILIFF:** The jury is all present, Your
10 Honor.

11 **THE COURT:** All right. Thank you, ladies and
12 gentlemen. I'm sorry we had another short delay, a
13 matter I had to take up with the attorneys. We're
14 now ready to continue the trial. Solicitor, call
15 your next witness.

16 **MS. CAMPBELL:** May it please the Court. The
17 State calls Danny Weaver.

18 DANNY WEAVER, JR., after being duly sworn,
19 testifies as follows:

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

22 **THE WITNESS:** Danny Weaver, Jr.

23 DIRECT EXAMINATION

24 **BY MS. CAMPBELL**

25 **Q** Mr. Weaver, how old are you?

- 1 **A** Twenty-six.
- 2 **Q** I'm going to turn your attention back to May of 2009.
- 3 Were you working at the Church's Fried Chicken?
- 4 **A** Say it again, please?
- 5 **Q** In May of last year were you working at the Church's
- 6 Fried Chicken?
- 7 **A** Yes, ma'am.
- 8 **Q** And what was your job at Church's Fried Chicken?
- 9 **A** Cook/cashier.
- 10 **Q** I want to turn your attention to the evening of May
- 11 the 24th when the robbery occurred. Were you working
- 12 that day?
- 13 **A** Yes, ma'am, I was.
- 14 **Q** And for the record, who all were you working with?
- 15 **A** It was me, Gracious, Donald and Arthur.
- 16 **Q** And tell the jury, where were you sitting when you
- 17 first observed someone coming in shortly after 5:30
- 18 that evening?
- 19 **A** I was sitting on the left-hand side of the table
- 20 where I can see drive-thru and I can see if a
- 21 customer is coming in Church's.
- 22 **Q** And that evening what was your job supposed to be?
- 23 Cashier or cook?
- 24 **A** Cashier.
- 25 **Q** And was your responsibility the drive-thru?

1 **A** Both. It's just both.

2 **Q** And that would be you and Ms. Tucker that shared
3 those duties?

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

5 **Q** And you were sitting over in the dining area at one
6 of those tables?

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

8 **Q** And you were able to see through the drive-thru to
9 make sure if anyone came up?

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

11 **Q** At some point did you notice someone come in the
12 front door?

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

14 **Q** And tell the jury, what he was wearing?

15 **A** He was wearing like these greenish looking pants and
16 this like stripey shirt he had on when he came
17 inside.

18 **Q** And I show you what's been marked as State's Exhibit
19 25 and 26. Do those look consistent with what you
20 saw that day?

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

22 **Q** Once he entered the store, did you see where he went?

23 **A** He went straight to the front counter.

24 **Q** And then what happened?

25 **A** He had put this black thing around his face with his

1 nose and mouth, and he said: This is a robbery. And
2 I thought it was funny really.

3 Q And then where did he go next?

4 A He pulled out the gun. He said: You look like I'm
5 joking. And we jumped up and ran to the back door,
6 which he followed us with the gun.

7 Q Okay. Let me slow you down there. Okay? You said
8 you jumped up?

9 A Yes, ma'am.

10 Q Who else was sitting out in that area at one of the
11 other tables?

12 A It was me, Gracious and Donald.

13 Q And who all ran to what's the back door? Is that the
14 door that enters into the kitchen?

15 A Yes, ma'am.

16 Q And is that located in the same little hallway where
17 the bathrooms are?

18 A Yes, ma'am.

19 Q Who all went back there?

20 A Me and Gracious.

21 Q And where was Donald when you all went back there?

22 A Donald was sitting at the same table him and Gracious
23 was that's near the bathroom area.

24 Q Once you got back to the area, where were you trying
25 to get?

1 **A** We was trying to get inside where the cashier
2 register and everything else is at.

3 **Q** Is there also a safe back there?

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

5 **Q** And do you know who was back there cooking that day?

6 **A** Arthur was.

7 **Q** Were you able to get through the door into the area
8 where the safe and the cooking was going on?

9 **A** No, ma'am, we was not.

10 **Q** And where was the person with the gun at that point?

11 **A** He was behind me and Gracious with the gun.

12 **Q** Did he say anything else to you?

13 **A** Y'all need to get on back there. Give me money. We
14 told him we're trying. We was crying. I am not
15 playing with y'all. We were banging, you know,
16 banging real hard, but he couldn't get in.

17 **Q** Were you ever able to get back to that area through
18 that door?

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

20 **Q** Did the defendant or the person who was robbing you
21 instruct you to go to another area?

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

23 **Q** And where did he instruct you to go?

24 **A** He told me to get across that counter.

25 **Q** Was he nearby you when he said that?

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

2 **Q** Where was the gun?

3 **A** Right in the back of us. If you -- I'm me, I'm right

4 here, Gracious is right here; the gun, he had it on

5 the back of us, in our back area.

6 **Q** At that point were you free to go?

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

8 **Q** And he had the gun on you?

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

10 **Q** How did you make your way back to the front of the

11 store to the front counter?

12 **A** I had to turn around and I had to walk slowly up to

13 the front. Then I had to jump over the counter to

14 get to the registers.

15 **Q** Where was the man with the gun at this point?

16 **A** He was right behind me, dead on me.

17 **Q** Once you got to the front counter, did you then jump

18 into the area where the cooking goes on?

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

20 **Q** Behind the counter?

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

22 **Q** What, if anything, was the person with the gun

23 telling you to do?

24 **A** To get the money out the registers, give him all the

25 money.

1 Q What did you do once you got behind the counter?

2 A I went to the drive-thru and just hit the register
3 and got that money out of there first and put it in
4 his white bag that he had.

5 Q What type of bag was it?

6 A It was like a little small little, like a bag like
7 you get from a little store area. You get little
8 stuff to put in it, like a little small white bag.

9 Q And he instructed you to actually get the money
10 yourself?

11 A Yes, ma'am.

12 Q And did you then place it into his bag?

13 A Yes, ma'am.

14 Q So he didn't touch the register?

15 A No, ma'am.

16 Q Once you had gotten the money out of the first
17 register; what, if anything else, did he want you to
18 do?

19 A He wanted the money out of the front register. If a
20 walk-in like customer like walk in, we put the money
21 in there. And he wanted the money out of there. But
22 I couldn't get the money out of there. He told me I
23 was -- he had the gun. You're moving too slow. I
24 was saying: I can't get it open, I can't get it
25 open. I was shaking. And I said: I need keys. And

1 I said: Gracious got the keys. And he said: Girl,
2 get over here with them keys. She was shaking when
3 she was coming with the keys. She threw it on the
4 counter.

5 Q Were you able to get the key?

6 A Yes, ma'am, I got the keys. And I was fumbling
7 because I forgot which key. I had forgot which key.
8 When I finally got the key to open it up and I was
9 getting the money, he said that I was moving too slow
10 again.

11 Q Once you were able to open the second register; what,
12 if anything, did you do with the money from that
13 register?

14 A I took the twenties and everything else that we had
15 in there and I put it inside his little white bag.
16 Then I put the change inside the white bag.

17 Q So you mentioned that there was both currency and
18 change. I'm going to show you what's been marked as
19 State's Exhibit 5. Is this -- you can't say if this
20 is it, but was this the type of money that you got
21 out of the register?

22 A Yes, ma'am, it was.

23 Q And that's what you placed into his bag?

24 A Yes, ma'am.

25 Q Once you had placed all the money from the second

1 register in his bag -- let me back up. Did he ever
2 come across the counter?

3 A No, ma'am, he did not.

4 Q And did he ever touch either of the registers?

5 A No, ma'am, he did not.

6 Q Once he had gotten his money, where did he go?

7 A Once he got his money, he said: Y'all have good day,
8 and walked out the door.

9 Q And did he go back out the same door he came in to
10 begin with?

11 A Yes, he did.

12 Q Were there any other customers in the store when he
13 came in that day?

14 A No, ma'am.

15 Q At any point while he was in the store with the gun
16 on you, did you feel like you could leave?

17 A No, ma'am.

18 Q In fact, did you see which direction he went in once
19 he left the store?

20 A It's like going towards our shed area which is in the
21 back of the store going towards your left.

22 Q He would have taken a left out of the front of the
23 store?

24 A Yes, ma'am.

25 Q And I believe that's Millwood that runs beside the

1 store?

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

3 **Q** Once he left the store, did you see Arthur actually
4 go behind him?

5 **A** I saw Arthur come from the back area, went through
6 the area to go out the door. He did go out the door.

7 **Q** And did you see anyone else follow out behind him?

8 **A** Donald just stepped out the door.

9 **Q** Did you stay in the store?

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

11 **Q** Once the person with the gun who robbed you had left
12 the store, did anyone call 911?

13 **A** Gracious called 911. We had our cellphones on us,
14 which we wasn't supposed. Gracious called 911. And
15 I tried to reach Ms. Kelly, but I couldn't reach her.
16 So I tried my general manager. I couldn't reach him.
17 So the only person I thought of was Devine Street,
18 Ms. Veronica, and she answered the phone right way.

19 **Q** And the first person you mentioned, the person you
20 were calling, Ms. Kelly, was that one of your
21 managers?

22 **A** She is the district, the lady that goes around to
23 every store.

24 **Q** So while Gracious was calling 911 you were trying to
25 get to one of your managers?

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

2 **Q** And then you tried a second person who is also a
3 manager?

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

5 **Q** Were you able to get Ms. Veronica?

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

7 **Q** And she's from a different store?

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

9 **Q** You can't say what she said to you. Once you made
10 contact with her, did you explain to her what had
11 gone on?

12 **A** Yes, ma'am, I did.

13 **Q** And did she come out to the Church's that day?

14 **A** Right away.

15 **Q** Shortly after the robber left the store, did the
16 police respond?

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

18 **Q** And were you all able to give them a physical
19 description and what information you each had?

20 **A** We told them what we knew. They had come up. We was
21 all shaken up. They had to call the ambulance. We
22 was [sic] all taken up. We told them exactly what we
23 knew.

24 **Q** And who did they call an ambulance for?

25 **A** Gracious mostly. And they just checked our blood

1 pressure, because she was really shaken real bad.

2 Q Were you there when the police came and actually
3 took, I believe it was Arthur down the street? Or
4 did you know about that?

5 A I wasn't even paying no attention when that part
6 happened.

7 Q Later that night did Ms. Veronica take y'all to the
8 police station?

9 A Yes, ma'am, she did.

10 Q Without saying anything else, just answer this one
11 question. Did you then give a statement to the
12 police about what you knew?

13 A Yes, ma'am, I did.

14 Q And were you able to give them a physical description
15 of the person that had robbed you? I show you this
16 item. Is this your statement?

17 A Yes, it is.

18 Q And did you give them a physical description as well
19 as a clothing description?

20 A Yes, ma'am.

21 Q And you indicated earlier he had a mask on. What
22 part of his face did it cover?

23 A Just his nose and his mouth area.

24 Q And then I believe I already showed you the clothing.

25 A Yes, ma'am.

1 Q That's consistent with what you saw?

2 A Yes, ma'am.

3 Q Do you remember what color the gun was?

4 A The gun was like a silver looking gun, long and
5 silver looking.

6 Q I'm going to show you what's been marked as State's
7 Exhibit No. 4 which is not in evidence yet. Do you
8 recognize that?

9 A Yes, ma'am.

10 Q Does that look like the gun he used?

11 A Yes, ma'am.

12 Q When you gave a physical description to the police
13 about the person that had robbed you, how did you
14 describe him?

15 A It was a black fella, kind of a little tall like I
16 am. And that's about it. The short haircut.

17 Q Did you also describe the clothing?

18 A Yes, ma'am, I did.

19 Q And the gun?

20 A Yes, ma'am.

21 Q And to your knowledge, had you ever seen him before?

22 A No, ma'am.

23 Q Do you remember when y'all were back in the area, did
24 you ever see Donald with the telephone?

25 A Yeah. The telephone was sitting on the table where

1 he was at because he was waiting on his ride to pick
2 him up.

3 Q And who was actually sitting at the table with him?

4 A Gracious was.

5 Q And did you actually witness him attempt to use the
6 phone?

7 A I didn't see him. I couldn't see none of that going
8 on.

9 Q Where were you at that point?

10 A I was on the side in the back area where the money
11 was at. That's where I was at.

12 Q Trying to get in the back?

13 A Yes, ma'am.

14 Q Back in 2004 you were convicted of two counts of
15 criminal sexual conduct with a minor second degree?

16 A Yes, ma'am.

17 Q Thank you. I don't have anything further?

18 **THE COURT:** Cross examination.

19 **MR. MAY:** Yes, sir. May it please the Court.

20 CROSS EXAMINATION

21 **BY MR. MAY**

22 Q This was a scary day, wasn't it?

23 A Yes, it was.

24 Q Everybody was terrified. I mean, you have a guy who
25 has a mask on. The guy comes in, points a gun at

1 people and starts demanding them to do things, right?

2 A Mm-hmm (affirmative).

3 Q And it's scary, right?

4 A Yes, it is.

5 Q Somebody has a gun out. Of course any time a gun is
6 out, the first attention is always to the gun, right?
7 Everybody is looking at the gun because that's what
8 can harm you, right?

9 A Mm-hmm (affirmative).

10 Q You've got to speak --

11 A Yes.

12 Q -- yes or no just for the court reporter. All right.
13 So the gun is out, and this man, the robber, starts
14 ordering y'all around, correct?

15 A Yes.

16 Q And everybody is scared. And y'all should have been.
17 Donald is scared. You're scared. Gracious is
18 scared. Because y'all are the ones who are out
19 there. And Arthur locks the door. You try to get to
20 the door, right?

21 A Yes.

22 Q And when you go to the door, all three of y'all kind
23 of get back. I mean, it's kind of like a log jam,
24 right?

25 A Just two of us, me and Gracious.

1 Q And Donald is where?

2 A Sitting in the seat.

3 Q He's still sitting in the seat?

4 A Yes, he is.

5 Q So it's kind of a log jam with you and Gracious.

6 Y'all are banging on the door. Y'all just want to
7 get away from that gun, right?

8 A We had to do what he tells us to do.

9 Q That's fair though, isn't it? You wanted to get away
10 from the gun. You wanted to put something inbetween
11 the gun and you?

12 A Yes.

13 Q So when that didn't work, you were directed by the
14 man with the gun to go to the front of the store?

15 A Yes, I was.

16 Q You're directed to go to the counter. And you and
17 the guy -- and as you testified, the man was behind
18 you, Gracious and Donald, right?

19 A No. He was behind me.

20 Q Okay. And Gracious and Donald are just sitting over
21 there?

22 A Gracious had done moved from -- once he told me to
23 get across that counter --

24 Q Yes, sir.

25 A He was following behind me.

1 Q Okay.

2 A And Gracious was standing in one spot. I had to jump
3 across the counter.

4 Q Okay. And where was Donald at this time?

5 A Donald was still sitting down.

6 Q He was still sitting down. So, if I may, may I
7 approach the witness, Your Honor?

8 **THE COURT:** Yes, sir.

9 Q Just for my own clarification because I wasn't there
10 that day, Donald was somewhere over here?

11 A Yeah. Donald was sitting right there.

12 Q Sitting right there. I'm sorry. He was sitting
13 right there?

14 A Yes.

15 Q Okay. So Donald was sitting there and you went over
16 the counter because you needed to get that money?

17 A Yes.

18 Q Okay. You wanted him to get out of there before
19 anybody got hurt?

20 A Yes.

21 Q So he has a gun. Everybody is looking at the gun.
22 And you're looking at the cash register trying to get
23 everything out, get things out of one cash register.
24 Correct?

25 A Yes, sir.

- 1 Q And then the guy directs you to the other cash
- 2 register?
- 3 A Yes.
- 4 Q Okay. So you're focused on that cash register and it
- 5 can't open because you don't have a key?
- 6 A That's correct.
- 7 Q Gracious finally produces the key, gets the money,
- 8 and then the man with the gun leaves the store after
- 9 getting both registers?
- 10 A Yes.
- 11 Q Now, you testified earlier that at this point you
- 12 began to call the supervisors. And you went down
- 13 your checklist the way you're supposed to?
- 14 A Yes.
- 15 Q And you went and called the first one, the second
- 16 one, the third one. And in the interim Arthur is
- 17 going out the back door?
- 18 A Arthur went out the front door.
- 19 Q Okay. He didn't go out the back door to follow him?
- 20 A You said the back door. The front.
- 21 Q Donald eventually -- the other one, Donald, just kind
- 22 of goes to the front door and watches Arthur follow
- 23 the suspect until he loses sight, correct?
- 24 A He went out the front. Once Donald went out the
- 25 door --

1 Q Yes, sir.

2 A -- my thing was to call, what we supposed to have did
3 [sic]. That's why we go through training -- to call.
4 And as Gracious called the cops, I had to call our
5 managers.

6 Q So Gracious calls the cops. And five, six minutes
7 the cops arrive, correct?

8 A Them cops was there quick.

9 Q Okay. Well, we'll get into that with another person.
10 All right. But the cops get there, I mean, pretty
11 quickly. I mean, it's impressive. A couple of
12 minutes later the police are there. And the whole
13 time other people are doing their jobs. You have
14 Arthur following until he loses sight, and you have
15 Donald sitting at the front door and Gracious is on
16 911, correct?

17 A Correct.

18 Q You testified that the EMS came?

19 A Yes, they did.

20 Q The EMS came because everybody was shaken [sic] up?

21 A That's correct.

22 Q I mean, it's a scary thing. And you're just glad
23 that the robber had left and nobody got hurt?

24 A Yeah. Because I thought I would be next beside my
25 father. We just buried my father.

1 Q Yes, sir. All right. Now, the solicitor said that
2 in 2004 you have a CSC with a minor second degree?

3 A When I was very young, yes.

4 Q And that's child molestation?

5 A Yes. I didn't take a trial.

6 Q Thank you. Beg the Court's indulgence for one
7 second. Thank you, Your Honor. No further questions
8 at this time.

9 THE COURT: Any redirect?

10 MS. CAMPBELL: No, sir.

11 THE COURT: You may come down, sir. Thank you
12 very much. May this witness be excused?

13 MR. MAY: Without objection, Your Honor.

14 THE COURT: Without objection. Next witness.

15 MS. SIMPSON: The State calls Officer Baire.

16 TIMOTHY BAIRE, after being duly sworn, testifies
17 as follows:

18 THE CLERK: Thank you. Have a seat in the
19 witness stand please and give the court reporter your
20 name.

21 THE WITNESS: Officer Baire, Columbia Police
22 Department.

23 COURT REPORTER: What's your first name, please?

24 THE WITNESS: Timothy.

25 DIRECT EXAMINATION

1 **BY MS. SIMPSON**

2 **Q** Good afternoon, Officer Baire.

3 **A** Good afternoon.

4 **Q** Can you please introduce yourself to the jury?

5 **A** My name is Timothy Baire. I work for the Columbia
6 Police Department.

7 **Q** All right. And how long have you been with the
8 Columbia Police Department?

9 **A** I've been with the police department almost four
10 years now.

11 **Q** And as a police officer there, what are some of your
12 duties?

13 **A** On any given day we respond to any calls, any
14 disturbance calls from the residents of Columbia,
15 interact with most of the community throughout our
16 day. I mean, anything you can imagine that any
17 citizen would call about, we respond.

18 **Q** I want to turn your attention to May 24th of 2009.
19 Were you working with the Columbia Police Department
20 at that time?

21 **A** Yes, I was.

22 **Q** And what area were you working in?

23 **A** It's considered South Region. The police, the City
24 of Columbia, it's broken down. It considered South
25 Region. It's from Harden Street to Taylor Street all

1 the way up to Garners Ferry Road. I respond to calls
2 all throughout the South Region.

3 Q And did you have occasion to become involved in this
4 case?

5 A Yes.

6 Q And how did that occur?

7 A I was dispatched. We received a tone which would be
8 pretty much a priority call for the police
9 department. We hear a tone over the radio. Pretty
10 much anybody available would respond. It's a
11 priority call, which this was. And I was pretty much
12 one of the closest units, which I was pretty much
13 first on the scene.

14 Q And where were you dispatched at this time?

15 A I was dispatched to 2436 Taylor Street which is the
16 Church's Chicken.

17 Q Okay. Let the record reflect that I'm showing the
18 witness what has been marked as State's Exhibit 23.

19 Do you recall this area?

20 A Yes, ma'am.

21 Q And when you arrived, where exactly did you report
22 to, were you dispatched to?

23 A The corner of North Millwood and Forest Drive. It
24 also is the corner of Taylor and Two Notch. Right
25 there the four-way intersection changes each

1 direction. It changes names. But for South Region,
2 it's north of Millwood and Forest Drive.

3 Q And is this map a pretty accurate and fair depiction
4 of this area?

5 A Yes, ma'am.

6 Q Which is located in Columbia, South Carolina?

7 A Yes, ma'am.

8 MS. SIMPSON: Your Honor, at this time the State
9 would seek to introduce State's Exhibit 23 into
10 evidence.

11 THE COURT: Any objection?

12 MR. COCHRAN: Your Honor, if we could just look
13 at it. No objection, Your Honor.

14 (WHEREUPON, State's Exhibit No. 23 is admitted
15 into evidence.)

16 Q And when you were originally dispatched and received
17 the call, about how far away were you from the
18 Church's?

19 A Oh, I wasn't far at all. This is -- in the area of
20 Church's Chicken, it's just outside the actual little
21 patrol area that I actually am assigned to which is
22 actually the Gervais Street/Harden Street area. It's
23 only approximately, on any given direction where I
24 ride is two minutes, two or three minutes on average.

25 Q Okay. And once you arrived to the scene, what

1 happened next?

2 **A** I was one of the first on the scene. So pretty much
3 one of the things that the first officer on the scene
4 does is secure the area, make sure everything is
5 under control. I arrived on the scene. The first
6 person I spoke with, one of the witnesses, at that
7 point I knew that the suspect had already left the
8 area. I stayed with the witnesses, pretty much
9 started the whole process of getting the information,
10 you know, as far as the report goes and if I had any
11 other information I could give over the radio for the
12 surrounding units that were circulating for the
13 suspects.

14 **Q** And with respect to the time of your arrival, do you
15 recall about what time you arrived?

16 **A** I was -- like I said, I was one of the first on the
17 scene. And according to our dispatch time, it was
18 approximately 5:42, was the first unit on the scene.
19 I believe I followed in right with another officer
20 that was on the scene before me. So it was
21 approximately 5:42 p.m.

22 **Q** When you arrived did you encounter the employees,
23 victims and witnesses in this case?

24 **A** Yes, ma'am, I did.

25 **Q** And do you recall who all was actually in the store

1 when you arrived?

2 **A** When I arrived in the store there was three
3 individuals that I made contact with right away.
4 That was -- that was -- other than Arthur, was the
5 only one that I didn't make contact with right away.
6 He was actually the last one I spoke with. But the
7 other three were inside.

8 **Q** So you spoke with Gracious Tucker, Donald Kirby and
9 Danny Weaver?

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

11 **Q** And they told you about what happened?

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

13 **Q** And then do you recall essentially some of the facts
14 that they gave you --

15 **A** Yeah.

16 **Q** -- what you learned?

17 **A** It was hectic at first. I know Gracious was very
18 shaken up. She was crying. We actually had to call
19 an ambulance. But the information that I was given
20 was that an individual came in with a silver in color
21 handgun, presented a handgun, you know, asked for the
22 money.

23 Then they went on to explain to me how it went
24 down as far as Danny had to jump the counter in order
25 to get behind it because the door was locked. So he

1 only could get back there. They told me about how
2 they received the money and then the subject, you
3 know, after pointing and presenting the weapon to the
4 three of them, then he ended up proceeding out the
5 front door. And that's when they told me that Arthur
6 followed in behind him.

7 **Q** And were you able to secure the location?

8 **A** Yes. When I got there, there was multiple units
9 behind me also, including our supervisors and
10 everything. So the scene was secured as soon as
11 officers were on the scene.

12 **Q** Do you recall any other officers arriving shortly
13 after you?

14 **A** Oh, yeah. Other than myself and Officer Brayboy,
15 we're the first two officers on the scene, there was
16 multiple units as far as our supervisor, Corporal
17 Walker, at the time was on the scene. We had the
18 sergeant from the other region arrive on the scene.
19 We had our watch commander arrive on the scene.

20 And so it was one of those calls; you know,
21 priority calls go out, everybody responds pretty
22 much. If they're available they're going to respond,
23 especially if they're close by. So there was a
24 number of units on scene. Then there was a number of
25 units just circulating.

1 Q And essentially at some point did you learn that the
2 defendant and another suspect, Mr. Green, had been
3 detained?

4 A Yes, ma'am, I did. They had received a call in the
5 other region that they were making a traffic stop
6 with a vehicle matching the description that was
7 given which was a few blocks away. I never broke
8 off. You know, I don't know what happened as far as
9 the traffic accident or the traffic stop is
10 concerned. But I was given information that there
11 was a traffic stop made. There was two suspects that
12 were detained.

13 Q But you never actually went to the stop, correct?

14 A No, ma'am, I did not. I stayed on scene with the
15 witnesses to get the rest of the information.

16 Q Okay. And so essentially with respect to any of the
17 information that you obtained later on, did you hear
18 anything else about what was recovered?

19 A Oh, yeah. Other officers had advised that there was
20 a weapon --

21 MR. COCHRAN: Objection, Your Honor. I'm going
22 to object to hearsay.

23 THE COURT: Just tell what he did as a result of
24 his -- whatever information he got. He doesn't have
25 to -- I'm not sure it's offered for the truth of the

1 matter, but I'll sustain the objection.

2 Q Okay. Once you received the information from
3 officers at the top, what did you do? Did you
4 compile a report based on this?

5 A As me being the officer, the first officer on the
6 scene, stayed on scene, received all the information
7 from the victims, the witnesses. And of the other
8 information outside of the incident location from the
9 traffic stop and everything else, I received
10 information from the other officers. From them
11 giving me the information, I put it in the report at
12 that point. I'm the one that did the report. I'm
13 the one that has to collect the information from the
14 other officers. If I can't make it on scene, I've
15 got to rely on my other units to receive the
16 information.

17 Q So with respect to your involvement in this case, you
18 never actually saw the defendant?

19 A No.

20 Q Or Mr. Green?

21 A No.

22 Q Or the truck?

23 A No.

24 Q Essentially your duties were to report, secure the
25 scene and gather the initial information from the

1 witnesses?

2 **A** Yes, ma'am. That's correct.

3 **Q** All right. Beg the Court's indulgence. And with
4 respect to the physical descriptions regarding the
5 defendant, is there anything that stood out to you or
6 the assailant, the suspect in the armed robbery?

7 **A** The only -- the thing that stuck out in my mind when
8 they gave me a description right off the bat was they
9 stated a prominent -- a lazy eye. They stated
10 something in reference to the subject had a lazy eye.
11 But that was given to me pretty much by all three of
12 them.

13 **Q** All right. Nothing further. Please answer any
14 questions the defense has.

15 **THE COURT:** Cross examination.

16 **MR. COCHRAN:** Thank you, Your Honor. May it
17 please the Court.

18 CROSS EXAMINATION

19 **BY MR. COCHRAN**

20 **Q** Officer, so you arrived at the Church's Chicken at
21 about 5:42, right?

22 **A** That's correct.

23 **Q** So that's about four minutes after the call?

24 **A** Yep. Yes, sir.

25 **Q** And you were one of the first officers or the first

1 officer there?

2 **A** I followed in with another officer. We
3 approximately -- we arrived at approximately the
4 same -- same time.

5 **Q** Okay. And you said that you were the person who
6 filled out the incident report, correct?

7 **A** Yes, sir.

8 **Q** And you put information that you collected yourself
9 into the report and also got information from other
10 officers, and you put that into the report?

11 **A** Yes, sir.

12 **Q** But, like Ms. Simpson said, you didn't go out to the
13 traffic stop, correct?

14 **A** That's correct.

15 **Q** But you still want the report to be thorough?

16 **A** Of course.

17 **Q** Did you put anything in the report about the lazy
18 eye?

19 **A** I put it as in the description given from the
20 suspect.

21 **Q** In your incident report?

22 **A** If you look on where it says "subject information"
23 and it lists his name --

24 **Q** Yeah.

25 **A** -- if you go down, and it has a facial hair, scars,

1 tattoos, clothes, description of the subject. If you
2 look, if you read through that, it will give you a
3 description of the clothing and including the lazy
4 eye.

5 Q Okay. And you were told that he had a dark hat on,
6 correct?

7 A Yes, sir. That's correct.

8 Q Anything about a mask?

9 A No. Not at that time, no.

10 Q Now, when you got there, all four people were there,
11 right? But you talked to three at first?

12 A Well, as soon as I -- as soon as I arrived on the
13 scene, like I said, there was three individuals
14 inside, and those were the three that I spoke with at
15 first. The fourth one, I did speak with Arthur. I
16 spoke with him later on. But he had went with
17 another officer. He was taken to the incident -- or
18 the traffic stop location. So I wasn't able to speak
19 with him until after he returned.

20 Q Okay. Was he taken before you got there?

21 A No.

22 Q Or just shortly after?

23 A Yeah. Shortly after.

24 Q Before you got a chance to talk to him?

25 A That's correct.

1 Q You said it was pretty hectic. One of the witnesses
2 was pretty shaken up. An ambulance had to be called
3 for her, correct?

4 A That's correct.

5 Q And overall, everybody was shaken up; everybody was
6 scared, right?

7 A I suppose, yes.

8 Q I believe you described the scene as hectic when you
9 got there?

10 A Yes, sir.

11 Q Okay. When did you get the call that the car had
12 been stopped?

13 A It wasn't -- it was just soon after. Probably, if I
14 had -- five minutes maybe.

15 Q So five minutes after you got there?

16 A Yeah. Approximately. It was short. It was shortly
17 after I arrived on scene. At that point my priority
18 was to get the information. There was other units in
19 the area. You know, my priority was to get the
20 information from the suspects so I can give the
21 information out over the radio; or another officer
22 could, you know, relay the information. My priority
23 wasn't, you know, keeping track of how long it took,
24 but it was to make sure everything was okay.

25 Q Okay. And just going back briefly over the

1 descriptions that you were getting, you never got any
2 description in terms of gloves being worn, correct?

3 **A** No. That's correct.

4 **MR. COCHRAN:** Nothing more, Your Honor. Thank
5 you. Thank you, Officer.

6 **THE COURT:** Anything further?

7 **MS. SIMPSON:** Brief redirect, Your Honor.

8 REDIRECT EXAMINATION

9 **BY MS. SIMPSON**

10 **Q** With respect to the description, in addition to the
11 lazy left eye -- well, first of all, you stated that
12 pretty much all the witnesses claimed this?

13 **A** Yes.

14 **Q** And you would have taken that description before they
15 actually left to headquarters, correct?

16 **A** Yes.

17 **Q** So this was actually given to you on scene?

18 **A** Yes. Yes, it was. I had spoke with all three of
19 them independently. All three of them, I got a brief
20 description from all three of them independently, and
21 each of them gave me pretty much the same thing, the
22 same information.

23 **Q** And one of those things would have been the green
24 striped shirt, right?

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

1 Q Striped shirt?

2 A Yes.

3 Q Nothing further.

4 THE COURT: Nothing.

5 MR. COCHRAN: Nothing on recross, Your Honor.

6 Thank you.

7 THE COURT: You may come down, sir. Thank you
8 very much. Next witness.

9 MS. CAMPBELL: The State would call Officer
10 Ridgeway.

11 MICHAEL RIDGEWAY, after being duly sworn,
12 testifies as follows:

13 THE CLERK: Thank you. Have a seat in the
14 witness stand and give the court reporter your name.

15 THE WITNESS: My name is Officer Michael
16 Ridgeway.

17 DIRECT EXAMINATION

18 BY MS. CAMPBELL

19 Q Officer Ridgeway, where are you currently employed?

20 A I'm currently employed with the University of South
21 Carolina Division of Law Enforcement Safety.

22 Q How long have you been with them, sir?

23 A I have been with them since September of 2009.

24 Q Prior to that were you employed by another law
25 enforcement agency?

1 **A** I was.

2 **Q** And what agency was that, sir?

3 **A** The Columbia Police Department.

4 **Q** And how long were you employed at the Columbia Police
5 Department?

6 **A** I was employed with the Columbia Police Department
7 from October of 2006 'til September of 2009.

8 **Q** Turning your attention back to May of 2009,
9 specifically May 24th, what did your duties include
10 at the Columbia Police Department?

11 **A** I was a patrolman in the Metro Region.

12 **Q** What is the Metro Region comprised of? What area?

13 **A** Metro Region is comprised of the downtown area of
14 Columbia which is everything from Heyward Street
15 north all the way to Calhoun Street and basically
16 everything from the Richland County/Lexington County
17 line which would be the river all the way back
18 through the Two Notch area to Forest Acres.

19 **Q** And is the Church's Fried Chicken on Taylor Street,
20 is that actually in the Metro Region?

21 **A** It is not. It is right on the line. It is
22 technically in the South Region.

23 **Q** And when you're saying technically in the South
24 Region, is there an intersection there that's fairly
25 significant as far as separating South Region from

1 Metro Region?

2 A There is. The intersection of Taylor Street and Two
3 Notch Road essentially is the boundary between the
4 two regions. Everything on the north side of Taylor
5 Street is the north side and everything on the south
6 side is in the South Region.

7 Q That day what shift were you working?

8 A I was working day shift.

9 Q And when you work day shift typically what time do
10 you get off?

11 A Typically the sergeant would call end of tour at
12 approximately 6:05, 6:10 in the evening.

13 Q May 24th of -- oh, let me back up. The Church's
14 Fried Chicken we're referring to that's right there
15 on the corner of I believe it's Taylor and Two
16 Notch --

17 A Yes, ma'am.

18 Q -- or Millwood or however you want to put it?

19 A However you want to describe it.

20 Q Is that here in Richland County?

21 A Yes, ma'am.

22 Q That afternoon, who were you actually riding with
23 that afternoon?

24 A That afternoon as the call came out I was actually
25 riding with Officer Mark Spires.

1 Q And explain to the jury how you'd ended up riding
2 with Officer Spires that afternoon?

3 A I ended up with Officer Spires because my car, my
4 patrol car had to go into the shop for maintenance.
5 I don't remember if it was regularly scheduled
6 maintenance or if something had actually broken on
7 it. So typically about 25 to 30 minutes before the
8 end of our tour we will go, any vehicles that need to
9 be placed in the shop for maintenance, we will drive
10 to the city shop which is on Sligh Avenue and leave
11 our vehicles there and then get another officer to
12 take us back to our district office which was on Two
13 Notch Road at the time.

14 Q And approximately what time of day was it when you
15 dropped your car off to be serviced?

16 A It was approximately 5:35, 5:40.

17 Q Something in that range?

18 A In that range.

19 Q Once you had dropped your car off, did you then get
20 into the patrol car with Officer Spires?

21 A I did.

22 Q And where were you seated in the car, sir?

23 A I was seated in the passenger's side rear seat.

24 Q And who else was in the car?

25 A Just Officer Spires driving the vehicle.

1 Q And as you were leaving the actual Sligh Avenue shop,
2 I guess that's the city shop?

3 A Yes, ma'am. It's the city, city shop.

4 Q Tell the jury what happened?

5 A As we were leaving the shop, we turned onto Sligh
6 Avenue and started heading towards the railroad
7 tracks so we could go back to Two Notch Road, and we
8 received a tone over the radio. And a tone indicates
9 a priority call anywhere in the City of Columbia.
10 The tone came across the radio and the dispatcher
11 advised that there was an armed robbery, a confirmed
12 armed robbery that had just occurred at the Church's
13 Chicken on Taylor Street.

14 Q As a result of that call coming over the radio, the
15 tone which means priority; what, if anything, did you
16 and Officer Spires do?

17 A Officer Spires activated his blue lights and siren
18 and we proceeded over to Taylor Street because we
19 were -- as the crow flies, we were within about three
20 quarters of a mile at that time. Road miles is
21 probably about a mile, a mile and a quarter, having
22 to follow the actual roadway.

23 Q Were there any descriptions of any vehicles and/or
24 possible suspects that were given out over the radio
25 as y'all went towards the Church's?

1 **A** As we responded we received both a suspect
2 description and a vehicle description. We received
3 the suspect description as a black male with a silver
4 handgun wearing a striped shirt. And the vehicle
5 description we received was a Dodge Ram pick-up
6 truck.

7 **Q** As you're going away from the shop, what road -- is
8 that Sligh Avenue?

9 **A** It's Sligh Avenue until it hits the set of train
10 tracks, and then it turns into Chestnut Street.

11 **Q** And as you were going down Chestnut Street, what
12 street did y'all end up turning down?

13 **A** We came to Chestnut Street. We followed Chestnut
14 Street until we got Two Notch Road. And when we got
15 to Two Notch, we took a right which would be
16 southbound on Two Notch and Chestnut.

17 **Q** As you're going southbound, is that going towards the
18 Church's Fried Chicken on Two Notch?

19 **A** It is.

20 **Q** And approximately how many blocks is Chestnut Street
21 from the Church's Fried Chicken?

22 **A** I would say approximately five to six blocks.

23 **Q** As you were going down Two Notch, what, if anything,
24 caught your eye?

25 **A** As we were going Two Notch, approximately at Laurel

1 Street, where Laurel Street crosses over Two Notch
2 Road, I noticed an older model gray Dodge Ram pick-up
3 truck heading northbound on Two Notch Road.

4 Q So as you're traveling southbound, that would have
5 been coming towards you?

6 A That's correct.

7 Q And would that have been in a manner that would have
8 been leaving the Church's Fried Chicken?

9 A Yes, ma'am. That's correct.

10 Q When you observed the vehicle, what did you and
11 Officer Spires do?

12 A When I observed the vehicle, I pointed out to Officer
13 Spires because I was not sure if he had seen it at
14 that point because he was watching traffic, and I
15 advised him we just passed a gray Dodge pick-up truck
16 going northbound. We proceeded approximately another
17 block and a half to two blocks and made a u-turn in
18 the middle of Two Notch Road. We had to proceed a
19 little bit past the intersection of Laurel Street
20 before we made the turn due to traffic conditions.
21 We didn't want to make a quick turn and possibly
22 cause an accident.

23 Q So you had to keep going a little bit before you were
24 able to make the turn?

25 A That's correct.

1 Q And did you then follow or fall in behind the path of
2 the gray Dodge pick-up?

3 A Yes, ma'am. We then proceeded northbound on Two
4 Notch playing catch-up to the last known location of
5 the Dodge pick-up.

6 Q So that afternoon after you received the priority
7 call, you never actually made to it Church's Fried
8 Chicken because you observed the gray Dodge?

9 A That's correct. We never actually made it to the
10 incident location.

11 Q As you were continuing back down Two Notch, had you
12 lost sight of the gray Dodge?

13 A Momentarily I know we did lose sight of it due to the
14 terrain. There is a hill and a sweeping curve in
15 that location.

16 Q But as you continued down Two Notch, you are now
17 going back towards Chestnut Street, what did you
18 observe?

19 A As we were heading back northbound on Two Notch
20 towards Chestnut, as I said, there is a sweeping
21 curve. But there the terrain actually opens out.
22 It's right near the Benedict football stadium. And
23 you can see a good three or four blocks ahead of you
24 down the road at that point. And I could see the
25 gray Dodge pick-up truck making a left-hand turn off

1 of Two Notch into the business, into a tire business
2 that's located right there at the corner of Chestnut
3 and Two Notch Road.

4 Q So he would have been making the left into the actual
5 business parking lot?

6 A That's correct.

7 Q And that would have been at the corner of Chestnut
8 but right before you get to Chestnut?

9 A Right before you get to Chestnut. Yes, ma'am.

10 Q And were you familiar with this area?

11 A Yes, ma'am.

12 Q And is this the area you actually worked at the time?

13 A At the time I kind of floated all over the place
14 wherever I was needed. One day I worked downtown and
15 the next day I worked the Two Notch areas.

16 Q But you are familiar with this area?

17 A Yes, ma'am. I was familiar with the entire region.

18 Yes, ma'am.

19 Q And specifically this parking lot?

20 A Yes, ma'am.

21 Q Based on what you observed, the Dodge turning into
22 the parking lot, what did y'all do?

23 A We proceeded -- I knew that the parking lot was
24 essentially an L shaped parking lot with an entrance
25 on Two Notch and also an entrance that emptied out

1 onto Chestnut behind a little Mini Mart that sits
2 directly on the corner. So we proceeded to the
3 intersection of Two Notch and Chestnut, made the
4 left-hand turn onto Chestnut and encountered the gray
5 Dodge pick-up truck as it was leaving the other
6 entrance to the parking lot onto Chestnut Street.

7 Q And when you say you encountered the gray Dodge
8 pick-up truck, how did that encounter occur?

9 A We could see the truck just pulling up almost to the
10 sidewalk preparing to make the turn. And Officer
11 Spires pulled his vehicle up directly nose to nose,
12 almost nose to nose with the suspect vehicle.

13 Q And at that point, what, if anything, did you and
14 Officers Spires do?

15 A Officer Spires exited the vehicle and walked between
16 the truck and the patrol car and over to the driver's
17 side door. I was trying to get out of the back seat
18 at that point. The child locks on the rear doors
19 were engaged, so I had to roll my window down first,
20 reach out to the exterior of the vehicle and open the
21 door from the outside handle. So it took me a little
22 bit longer to get out the car than he did.

23 Q Once you exited the vehicle, or as you were exiting
24 the vehicle, as you pulled up to the vehicle, were
25 you able to immediately see whether or not the van

1 had any occupants?

2 A Yes, ma'am. As we pulled up we could see that there
3 was one occupant in the driver's seat of the vehicle.

4 Q And what did that person do as y'all pulled in front
5 of them and kind of cut them off?

6 A As we pulled in front of them and cut them off,
7 immediately upon his vehicle coming to a complete
8 stop, his hands came out of the driver's side window.

9 Q And can you demonstrate how he put his hands out?
10 Was it in a threatening manner or --

11 A No. It was in a submissive manner. His hands
12 directly came out of the window to his left and
13 stayed outside.

14 Q And at that point was Officer Spires outside the car?

15 A He was.

16 Q And was he approaching on the driver's side?

17 A He was.

18 Q And as he approached on the driver's side, as you're
19 still getting out of the car, I guess you may be out
20 at this point; what, if anything, did he indicate to
21 you?

22 A As I'm just getting out of the car, I can hear him
23 call back to me and say: Mike, there's a guy in the
24 passenger's side floorboard.

25 Q Floorboard?

1 **A** Correct.

2 **Q** And with that information, was he already over next
3 to the actual driver's side?

4 **A** He was already at the window, at the driver's side
5 window at that point.

6 **Q** So what did you do?

7 **A** At that point I proceeded inbetween the patrol car
8 and the pick-up truck around to the passenger's side
9 and kind of circled around the vehicle a little bit
10 to keep some distance between myself and the vehicle
11 itself.

12 **Q** Why were you trying to keep distance between you and
13 the vehicle?

14 **A** So I could have a clear field of vision in case I
15 encountered a threat from the passenger's side.

16 **Q** Once you had gotten around to the vehicle, where were
17 you standing in relation to the vehicle?

18 **A** Like I said, I circled. So I sort of circled around
19 the vehicle and ended up standing near the rear wheel
20 on the passenger's side. At that point I then
21 approached towards the door. I drew my service
22 weapon and I opened the passenger's side door and
23 encountered a black male curled up in the floorboard
24 of the truck.

25 **Q** And when you say curled up in the floorboard of the

1 truck, was there a seat that he could have sat in in
2 the truck?

3 A No, ma'am. He was inbetween the seat. His front was
4 pressed up against the seat and his back was directed
5 to where the glove box would be.

6 Q And he was actually down in the floorboard?

7 A And he was actually down in the floorboard.

8 Q And prior to you opening the door, were you able to
9 see him if you were standing outside and looking in?

10 A No, ma'am. I could not see him until I opened the
11 door.

12 Q And as you opened the door, what, if anything, did
13 you tell him to do?

14 A I told him to show me his hands. He complied. He
15 put his hands up palms facing me.

16 Q And I know you -- exactly how was he curled up in the
17 floorboard?

18 A I couldn't tell if he was on his feet or on his knees
19 at that point just because, you know, it was a very
20 confined space. And all I could really see was the
21 top half of his body. And whenever I first
22 encountered him, I could not see his hands. So
23 that's why I gave him the order to let me see his
24 hands at that point. He put his hands up.

25 Q He did put his hands up?

1 **A** He did.

2 **Q** And again, not in a threatening manner?

3 **A** Not a threatening manner, no.

4 **Q** Once his hands were up, did you then instruct him to
5 do anything else?

6 **A** I instructed him to slowly exit the vehicle keeping
7 his hands in my view at all times.

8 **Q** And did he comply?

9 **A** He did.

10 **Q** Once he had -- once he got out of the vehicle, what,
11 if anything, happened?

12 **A** Once he got out of the vehicle, I stayed behind him,
13 had him face away from me and walked him towards the
14 passenger's side rear tire. I then conducted a Terry
15 frisk of his person to see if he had any weapons on
16 him.

17 **Q** What's a Terry frisk, for the jury?

18 **A** A Terry frisk is a pat-down search of the outside of
19 a person's clothing. You're just feeling for any
20 bulges, anything that would be consistent with a
21 weapon that could be used to harm yourself.

22 **Q** And so at that point you're focused totally on the
23 person that's gotten out of the passenger's side from
24 where he's crouched down in there?

25 **A** That's correct.

1 Q And he was able to get out of the vehicle on his own
2 volition?

3 A He was.

4 Q And at that point you then escorted him towards the
5 rear of the vehicle?

6 A That's correct.

7 Q And that's when you conducted the search?

8 A Yes, ma'am.

9 Q Were you able to find any weapons on his person?

10 A No, ma'am. I did find no weapons on his person.

11 Q Based on the information that had been relayed over
12 the radio and everything, did y'all -- well, let me
13 back up. The person that you got out of the vehicle
14 on the passenger's side, do you recall what he was
15 wearing?

16 A I don't recall exactly what he was wearing. I do
17 remember that he was wearing gray pants, but I cannot
18 recall exactly what type of shirt he was wearing at
19 the time.

20 Q Okay. And I'll get to that in a minute.

21 A Okay.

22 Q Once you got him out of the vehicle, did you then
23 detain him there at the scene for a period of time?

24 A Yes, ma'am. Once I got him out of the vehicle, I
25 then patted him down. I did go ahead and place him

1 into handcuffs at that point.

2 **Q** And are you familiar with what's called a show-up
3 identification procedure?

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

5 **Q** And was that conducted in this case to verify whether
6 or not this person could have been involved in this
7 robbery?

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

9 **Q** And were you there when that was happening?

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

11 **Q** Did other officers also respond to the place where
12 y'all had the two people in custody?

13 **A** Yes, ma'am. Other officers did respond.

14 **Q** While you were getting the person out of the
15 passenger's seat that you detained there, what was
16 Officer Spires doing with the actual driver?

17 **A** I can't be exactly sure because I was not watching
18 Officer Spires. I was watching my gentleman that I
19 was dealing with at that point. But at some point
20 while I was getting the guy out of the passenger's
21 seat, Officer Spires also got the driver out of the
22 vehicle and placed him in a similar manner on the
23 driver's side of the vehicle near the rear wheel.

24 **Q** And while you were there other officers I believe you
25 said responded to that scene where you had the

1 traffic stop?

2 A Yes, ma'am.

3 Q And did that include Officer Delage?

4 A Yes, ma'am.

5 Q And I believe some supervisors as well?

6 A Yes, ma'am. And also my supervisor from Metro
7 Region.

8 Q And while you were there, did you do anything to
9 influence any kind of identification procedure that
10 was done in this case?

11 A No, ma'am.

12 Q Ultimately was the person that you got out of the
13 passenger's side as well as the driver taken into
14 custody?

15 A Yes, ma'am. Ultimately they were.

16 Q And were they transported I believe down to
17 headquarters downtown on Washington Street?

18 A At that point I can't tell you.

19 Q Let me ask you this. Did Investigator Thomas come
20 out there that day?

21 A Not while I was there.

22 Q Not while you were there?

23 A No, ma'am.

24 Q So you actually turned custody of the person you got
25 out of the passenger's seat over to somebody else?

1 **A** I did.

2 **Q** And who did you turn him over to?

3 **A** I believe I turned him over to Officer Delage.

4 **Q** And as far as what happened after that?

5 **A** After I turned him over to the South Region officer,
6 I believe, like I said, I believe it was Officer
7 Delage, myself and Officer Spires left the scene of
8 the traffic stop.

9 **Q** You mentioned that you did a search of the
10 defendant's person which I'll get you to identify in
11 a minute. But did you ever do any search, you
12 personally do any search of the truck that day?

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

14 **Q** And as far as that was handled, was that handled by
15 other officers?

16 **A** That was handled by other officers after I left.
17 Yes, ma'am.

18 **Q** The chase that actually ensued and the subsequent
19 stop, was that actually video recorded by a machine
20 in the car that y'all were in?

21 **A** Yes, ma'am. It was recorded on the vehicle's dash
22 cam.

23 **Q** I'm going to show you what's already in evidence as
24 State's Exhibits 28, 29 and 30 and ask you if you
25 recognize those?

1 **A** Yes, ma'am. I do recognize these.

2 **Q** And do those fairly and accurately represent the
3 truck and pretty much where it was stopped that day?

4 **A** Yes, ma'am. That's exactly where it was stopped as a
5 matter of fact.

6 **Q** And the yellow building that's shown in those, what
7 building is that?

8 **A** That's the Mini Mart that I referenced earlier that
9 sits at the corner of Chestnut and Two Notch.

10 **Q** So this would have been behind that actual Mini Mart?

11 **A** That's behind the Mini Mart. That's the Chestnut
12 Street entrance to that L shaped parking lot.

13 **Q** That's what I was getting ready to ask you. This
14 road right here would be Chestnut?

15 **A** That's Chestnut Street. Yes, ma'am.

16 **Q** And then Two Notch would be where the Mini Mart
17 actually faces. Is that correct?

18 **A** That's correct.

19 **Q** And was this the condition of the truck that day when
20 y'all stopped it?

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

22 **MS. CAMPBELL:** Your Honor, may the witness step
23 down?

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

25 **Q** You can come down here. If you'll come over on this

1 side and just talk loudly so the court reporter can
2 hear you. If you want to use that, be careful.

3 A Okay.

4 Q In State's Exhibit 23, what area of town does this
5 show?

6 A This area, this map shows the area of Two Notch Road
7 and Taylor Street extending northbound on Two Notch
8 Road to the old Midlands Shopping Center.

9 Q You mentioned that day that you were in the area
10 because you were dropping off your car. Does this
11 area, is it shown on here approximately where you
12 dropped your car off that day at the stop?

13 A Yes, ma'am, it is.

14 Q Where is it?

15 A It's right over here on Sligh Avenue just off of
16 Harden Street near Colonial Drive.

17 Q The Church's Fried Chicken, you're also familiar with
18 that area?

19 A Yes, ma'am.

20 Q And is it shown on here?

21 A It is.

22 Q Can you show the jury?

23 A The Church's Chicken is located down here near the
24 intersection of Taylor Street and Two Notch Road.

25 Q And there's been a lot of talk about how this

1 intersection, it's got four different roads that kind
2 of go -- in other words, the roads change names
3 there?

4 A Right. They do.

5 Q It's not that there are four different roads; it just
6 changes names?

7 A That's right. They change names.

8 Q And if you're coming from downtown on Taylor Street
9 out to the Church's, is this Taylor Street here?

10 A Yes, ma'am. That's Taylor Street there.

11 Q And then where exactly is it that it changes into
12 Forest Drive?

13 A It changes to Forest Drive right in the area of this
14 road, Lion Street, that comes in running adjacent to
15 Millwood Avenue.

16 Q Millwood Avenue, I think that's got the number one on
17 here?

18 A Yes, ma'am.

19 Q And it actually changes names into what road right
20 here?

21 A Two Notch Road.

22 Q And is Providence Hospital actually shown on here?

23 A Yes, ma'am, it is.

24 Q Where is the Providence Hospital?

25 A Providence Hospital is located right here.

1 Q And so it kind of occupies that whole big corner
2 there?

3 A Yes, ma'am.

4 Q You were on Sligh Avenue. Can you show the jury what
5 route you took that day?

6 A Yes, ma'am. We pulled out of the shop here on Sligh.
7 We proceeded, I guess this would be eastbound on
8 Sligh Avenue. You can see this little dash line
9 right here. This is the train track. It's
10 approximately in this area that we received the call
11 over the radio for the armed robbery. As we crossed
12 the train tracks is whenever Officer Spires activated
13 his blue lights and siren.

14 We proceeded eastbound on Chestnut Street.
15 Chestnut Street has kind of an offset intersection
16 right here, Barnwell Road, and this is next to --
17 what's the high school that sits right there?
18 There's a high school that sits right there. The
19 name is escaping me. It's been several months since
20 I've been over there. I can't believe I forgot the
21 name of it but I did.

22 And we continued on Chestnut Street until we got
23 to Two Notch Road. At Two Notch Road we made a
24 right-hand turn which would be southbound, and we
25 followed it down through this curve. Along in here,

1 we were along the Read Street intersection where we
2 received the description of the green Dodge pick-up
3 truck, and then just two blocks later is where we
4 encountered the gray Dodge pick-up truck at the
5 intersection of Laurel Street.

6 Q And this is the intersection of Laurel Street?

7 A Yes, ma'am.

8 Q And then down here is where the actual Church's Fried
9 Chicken is?

10 A That's correct.

11 Q Once you made your turn, you then proceeded back in
12 the opposite direction on Two Notch. Is that
13 correct?

14 A That's correct. We proceeded, like I said,
15 approximately a block and a half further until right
16 in here. There is a business there called Cullum's
17 Auto Sales or Cullum's Auto Service. This is where
18 we made our u-turn and then proceeded back northbound
19 on Two Notch Road.

20 Q And where is the Mini Mart on the corner of Chestnut
21 and Two Notch that you've referred to?

22 A The Mini Mart is right here at the corner of Chestnut
23 and Two Notch Road.

24 Q And you actually had to make a left-hand turn onto
25 Chestnut?

1 **A** Yes, ma'am. We made a left-hand turn onto Chestnut,
2 and then right here, approximately right here is
3 where we encountered the vehicle behind the Mini
4 Mart.

5 **Q** Okay. Thank you. Have a seat. At my request did
6 you review the actual videotape that was taken by the
7 car that day?

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

9 **Q** Does it fairly and accurately depict at least parts
10 of what your testimony has been here today?

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

12 **Q** And I believe it's been marked as State's Exhibit
13 No. 6. Oh, it's already in? Your Honor, at this
14 time we'd offer State's Exhibit 6 into evidence.

15 **MR. MAY:** That would be the videotape?

16 **MS. CAMPBELL:** The video. Without objection?

17 **MR. COCHRAN:** Without objection.

18 **THE COURT:** Without objection.

19 (WHEREUPON, State's Exhibit No. 6 is admitted
20 into evidence.)

21 **MS. CAMPBELL:** And, Your Honor, permission to
22 show the video to the jury?

23 **THE COURT:** All right. All right, ladies and
24 gentlemen. There's a video that's going to be shown.
25 It will take a minute or two to get the equipment set

1 up. Would you like to take a break? I see a
2 couple -- it's going to take a few minutes anyway.
3 Let's take a short break. As soon as the equipment
4 is set up I'll call you back. All right.

5 **MS. CAMPBELL:** Thank you, Your Honor.

6 **THE COURT:** Go to the jury room. Don't discuss
7 the case among yourselves while you're in the jury
8 room.

9 (Jury out at 3:48 p.m.)

10 **MS. CAMPBELL:** Just for the record, Your Honor,
11 our next two witnesses would be the co-defendant.

12 **THE COURT:** Next witness.

13 **MS. CAMPBELL:** Or the next one, one of the next
14 two.

15 **THE COURT:** That's got to go today?

16 **MS. CAMPBELL:** It's got to go today.

17 **THE COURT:** All right. Okay.

18 **MS. CAMPBELL:** If I could just bring Mr. Green
19 in for you to instruct him. Or do you want to take a
20 break when it's time for him?

21 **THE COURT:** I don't want to take another break.
22 Approach the bench, counsel.

23 (Whereupon, a bench conference is had)

24 **THE COURT:** Mr. Green, would you come to the
25 microphone, please, with your counsel. For the

1 record, it's Charles Green?

2 **MR. GREEN:** Yes, sir.

3 **THE COURT:** Mr. Charles Green is appearing
4 before the Court with his counsel, Tara Don Shurling.
5 Mr. Green is a co-defendant in this case and it's
6 anticipated that he will testify in this case. And I
7 assume he's had the advice of counsel. Is that
8 correct, Ms. Shurling?

9 **MS. SHURLING:** He has, Your Honor.

10 **THE COURT:** All right. Mr. Green, you are
11 called for the purpose of testifying about an armed
12 robbery which allegedly occurred on May 24th, 2009 at
13 Church's Fried Chicken at the intersection of Forest
14 Drive and Two Notch Road. Do you understand that?

15 **MR. GREEN:** Yes, sir.

16 **THE COURT:** Do you understand that's the only
17 purpose for which -- Ace, please. You all hold it
18 down, please. I'm trying to talk to this witness.
19 Do you understand that that's the only purpose you're
20 being called for?

21 **MR. GREEN:** Yes, sir.

22 **THE COURT:** Do you understand that if you were
23 involved in any other cases either with the defendant
24 or somehow at some other times and places that that
25 is something that is not to be mentioned in this

1 case? Do you understand that?

2 **MR. GREEN:** I understand.

3 **THE COURT:** And any reward or any -- I don't
4 even know the facts of this case, I mean, or what
5 you're about to testify to. But you are to confine
6 your testimony solely to the incidents that occurred,
7 as I say, at approximately whatever the time was when
8 this robbery took place. Do understand that?

9 **MR. GREEN:** Yes, I do.

10 **THE COURT:** You've been so advised by your
11 lawyer?

12 **MR. GREEN:** I have.

13 **THE COURT:** All right. Thank you very much.

14 **MS. SHURLING:** Your Honor, for the record, I'd
15 note for the record that there was also some
16 indication that Mr. Green had met the defendant
17 during a previous term of incarceration. I have also
18 discussed with him at length to avoid any reference
19 to their having known each other while incarcerated
20 also.

21 **THE COURT:** You do you understand that, sir?

22 **MR. GREEN:** Yes, I do.

23 **THE COURT:** All right. Thank you very much.
24 Are you ready for the jury?

25 **MS. CAMPBELL:** The State's ready, Your Honor.

1 **THE COURT:** Are you ready for the jury?

2 **MR. COCHRAN:** Your Honor, I don't know where Mr.
3 May went to. Never mind. We're ready.

4 **THE COURT:** Bring the jury, please. Are you
5 queued up on just the chase?

6 **MS. CAMPBELL:** Just the chase, Judge.

7 **MR. MAY:** We'd ask the entire thing be played.

8 **THE COURT:** Just the chase in this case.

9 **MR. MAY:** Yeah. But, I mean, as soon as they
10 get the call.

11 **THE COURT:** That's right.

12 (Jury in at 4:05 p.m.)

13 **THE BAILIFF:** All the jury is present, Your
14 Honor.

15 **THE COURT:** Is the audio connected also?

16 **MS. CAMPBELL:** It should be. Is the audio on?

17 **UNKNOWN PERSON:** It should be.

18 **MS. CAMPBELL:** We'll find out. Sorry. Your
19 Honor, may the witness step down?

20 **THE COURT:** Yes, sir.

21 **Q** (By Ms. Campbell) If you'll come over on this side
22 and speak loudly so that the court reporter can hear
23 you. Before we start playing this, what does this
24 show right here?

25 **A** This camera angle right here is of the city shop on

1 Sligh Avenue.

2 Q Okay. Play it.

3 COURT REPORTER: Ms. Campbell, is there any way
4 he can stand where I can see him? The witness?

5 MS. CAMPBELL: How about over here?

6 COURT REPORTER: Yes. That would be better.
7 Thank you. That's good.

8 Q What road does this show right here?

9 A This is still what's called Sligh Avenue at this
10 point. We're eastbound on Sligh Avenue, having just
11 pulled out of the shop.

12 Q And at this point there is no audio. Is that
13 correct?

14 A That's correct. These cameras have what's called
15 pre-event recording. The camera -- while the vehicle
16 is on, the camera is always recording video. As soon
17 as the blue lights are activated, it actually goes
18 back into the recording approximately one minute
19 prior to the blue light activation and burns that to
20 the disc. It does not start recording audio until
21 the blue lights are activated.

22 Q Coming up right here is what?

23 A This is the railroad tracks where it turns into
24 Chestnut Street at this point.

25 (Whereupon, the videotape is played for the

1 jury)

2 Q At this point what road are you on?

3 A We're southbound on Two Notch Road.

4 Q And that large building up on the left, what would
5 that be?

6 A It's the Providence Hospital parking garage.

7 Q And at that point had you already seen the vehicle?

8 A Yes, sir. Yes, ma'am. That was the gray Dodge Ram
9 we just passed going by.

10 Q And you're now proceeding in what direction?

11 A Northbound on Two Notch Road.

12 Q Whose voice was that?

13 A That was mine.

14 Q What street are you turning on?

15 A Chestnut Street.

16 Q Where is the truck?

17 A Off to the left, right there near the sidewalk.

18 Q Who is that?

19 A That's Officer Spires.

20 Q What's he saying there?

21 A He's saying there's a guy on the floorboard on the
22 passenger's side.

23 Q At this point what are y'all doing?

24 A At this point I had Mr. Broadnax handcuffed and we
25 are just waiting so we can try to get confirmation

1 this vehicle is indeed the suspect vehicle that was
2 involved.

3 **Q** And who is that that just walked up to the screen?

4 **A** That's Sergeant Don Akaboochi, my supervisor from
5 Metro Region.

6 **Q** And do you know who actually moved the vehicle?

7 **A** It was me. Sergeant Akaboochi arrived on the scene
8 and advised me to go ahead and pull the patrol car
9 out of the road as we had both lanes of Chestnut
10 Street blocked at the time.

11 **Q** And so that's the reason you moved it?

12 **A** That's correct.

13 **Q** And does it show anything further as far as --

14 **A** This is the view that the camera has for the duration
15 of the video.

16 **Q** Okay. You can take the stand. You can stop it. We
17 won't actually, but if we were to replay this, can
18 you actually see the truck coming towards you as
19 y'all come past it right before Laurel Street?

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

21 **Q** We've heard some comments made by you and Officer
22 Spires. I believe at one point one of you actually
23 questions whether or not you have the right person?

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

25 **Q** And what was that in reference to, sir?

1 **A** Officer Spires questioned that the driver who was
2 visible at the moment did not match the suspect
3 description.

4 **Q** And what suspect description did you have as far as
5 the person you were looking for that had committed
6 the armed robbery?

7 **A** At that point the suspect description we had was a
8 black male wearing a striped shirt with gray pants.
9 And the driver that we could observe was a black
10 male, older black male with a gray beard and a red
11 shirt.

12 **Q** You just described the driver. I want to show you
13 what's been marked as State's Exhibit No. 27. Is
14 that the person that was removed as the driver?

15 **A** That's the person that was removed as the driver.
16 Yes, ma'am.

17 **Q** And I want to show you what's been marked as State's
18 Exhibit No. 1. Who is that?

19 **A** That's the gentleman that I found in the passenger's
20 side floorboard.

21 **Q** Was there anything about his face that was
22 significant to you as you observed him?

23 **A** As I observed him, I did notice that he -- as far as
24 his face goes, he did have a lazy left eye.

25 **Q** During the course of your chase down Two Notch back

1 up Two Notch over to the corner of Chestnut, did you
2 observe any other gray Dodge pick-ups?

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

4 **Q** I want to show you what's been marked as State's
5 Exhibits 36 and 37. Do you recognize those?

6 **A** Yes, ma'am, I do.

7 **Q** And those in conjunction with State's Exhibits 28
8 through 30, do those show the general area of where
9 the stop was made?

10 **A** Yes, ma'am, they do.

11 **Q** From different angles?

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

13 **MS. CAMPBELL:** Your Honor, at this time we'd
14 offer 36 and 37 into evidence.

15 **MR. COCHRAN:** No objection, Your Honor.

16 **THE COURT:** Without objection.

17 (WHEREUPON, State's Exhibit No. 36 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 37 is admitted
20 into evidence.)

21 **Q** Let me ask you something. You're familiar with South
22 Region?

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

24 **Q** And Metro Region?

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

1 Q And how do those two regions, how are they configured
2 near each other?

3 A Well, south region borders Metro Region along Taylor
4 Street.

5 Q And this occurred around the time the shift changed?

6 A Yes, ma'am.

7 Q And in addition to that, this also occurred at the
8 Church's which is right there on the border between
9 South Region and Metro Region?

10 A That's correct.

11 Q And did officers from both regions respond that day?

12 A They did.

13 Q To both the Church's Fried Chicken as well as the
14 stop?

15 A Yes, ma'am.

16 Q As far as the ability to get information that was put
17 out over the radio, are there different channels the
18 different regions use?

19 A Yes, ma'am.

20 Q Can you explain that to the jury?

21 A The City of Columbia is divided into four regions for
22 the police department. You have a North Region, a
23 South Region, a West Region and a Metro Region. Each
24 one of those regions has its own dedicated radio
25 channel and its own dedicated dispatcher at Columbia

1 Central.

2 Q And that date did you have to go on different
3 channels to get some of the information that was
4 being dispatched on Metro Region vs. South Region?

5 A Yes, ma'am.

6 Q Once you had detained the person and then you
7 ultimately turned him over to the other officers at
8 the scene, did you have anything further to do with
9 this?

10 A No, ma'am.

11 Q And the person that you got out of the car that was
12 crouched down in the passenger's side floorboard, I
13 guess that's right next to the front seat?

14 A Yes, ma'am.

15 Q Do you see him here in the courtroom today?

16 A Yes, ma'am. He is here.

17 Q Can you point him out for the jury?

18 A Yes, ma'am. He is the black gentleman in the yellow
19 shirt sitting behind the defense table.

20 Q Thank you. I don't have any further questions.

21 **THE COURT:** Let the record show the witness
22 identified the defendant.

23 **MR. COCHRAN:** Thank you, Your Honor. May it
24 please the Court.

25 CROSS EXAMINATION

1 **BY MR. COCHRAN**

2 **Q** Officer, so you got the call around four minutes
3 after the alleged robbery. Is that right?

4 **A** I'm not sure exactly when the alleged robbery
5 actually occurred. All I know is that we received
6 the tone call over the radio.

7 **Q** Okay. And let's see if I can find that map. So the
8 Church's Chicken is represented by this big A bubble,
9 right?

10 **A** It is.

11 **Q** And you were up on -- was it Slights Avenue?

12 **A** Sligh Avenue. Yes, sir.

13 **Q** Sligh Avenue. Yeah. So you're up here, correct,
14 when you get the call?

15 **A** That's correct.

16 **Q** Okay. And you drove all the way down Sligh until it
17 turned into Chestnut. You came down and it doglegs
18 there. You come down Chestnut to Two Notch, right?

19 **A** Correct.

20 **Q** So you come all that way down. And then it was at
21 not until Laurel Street that you see a gray Dodge
22 pick-up truck coming in the opposite direction,
23 correct?

24 **A** That's correct.

25 **Q** Okay. And this is about four to five minutes after

1 the call is made from the robbery, correct?

2 **A** I can't be sure what time the actual call was
3 received at dispatch. I don't have that information.

4 **Q** Okay. But either way, after you had made all that
5 distance, that gray pick-up truck had only gone a
6 couple of blocks, right?

7 **A** That's correct.

8 **Q** If they had left from the Church's Chicken, correct?

9 **A** That's correct.

10 **Q** And you got a description of a black male --
11 originally you described the description was for a
12 black male. But it was a black male with a striped
13 shirt?

14 **A** That's correct. As we responded the description was
15 constantly updated as new information was received.

16 **Q** Okay. Actually I put that up. But let me make one
17 more thing clear here.

18 **A** Okay.

19 **Q** You came down Chestnut. And once you saw the gray
20 Dodge pickup truck here at Laurel Street, you
21 actually kept driving pretty close to the Church's,
22 correct?

23 **A** Pretty close to the Church's. Probably close to
24 where the O is for Providence Hospital right there is
25 where the vehicle turned around.

- 1 Q Close to right around there?
- 2 A That's --
- 3 Q So maybe like two to two and a half blocks?
- 4 A It's about two blocks. Yes, sir.
- 5 Q About two blocks. And then you make a u-turn,
- 6 correct?
- 7 A That's correct.
- 8 Q And when you make that u-turn, the Dodge pick-up
- 9 truck is not in your sight once you've turned back
- 10 around, right?
- 11 A Correct.
- 12 Q So it's somewhere up here? It's past this bend by
- 13 that point?
- 14 A That's correct.
- 15 Q And then you don't see it again until they're about
- 16 to make that left onto Chestnut, correct?
- 17 A The next time I picked them up, they were near
- 18 Edgewood Avenue right there.
- 19 Q Near Edgewood?
- 20 A That's correct.
- 21 Q Okay. And you didn't see two people in the truck,
- 22 correct?
- 23 A No, sir. We only saw one person in the truck.
- 24 Q So you could see into the truck?
- 25 A We could.

1 Q And you could see the driver of the truck?

2 A That's correct.

3 Q But you could not see a passenger?

4 A Right.

5 Q Okay. Now, Ms. Campbell before called this a chase.

6 Was this ever really a chase?

7 A It was not a chase in the sense of a pursuit.

8 Q You were pursuing him. You were pursuing that truck?

9 A Yes, sir. We were attempting to get close enough to
10 the truck to make the stop.

11 Q But he was not evading you at any point?

12 A No, sir. It did not appear that he was evading us.

13 Q And he didn't even break any traffic laws at any
14 point, did he?

15 A Not that I observed, no.

16 Q Okay. And in fact, before, when you saw that truck
17 at the Laurel Street intersection before you made the
18 u-turn, when you came, you were going pretty fast.
19 You went past him at the Laurel Street intersection,
20 correct?

21 A Correct.

22 Q And he was not speeding down Two Notch, was he?

23 A No. As a matter of fact, the reason we were able to
24 make it through the intersection so quick is that the
25 light had just turned green and we were able to

1 proceed past the traffic that was going.

2 Q And it looks like from the video he was actually
3 idling in the intersection presumably because there
4 were emergency vehicles coming in the opposite
5 direction and that's what you're supposed to do
6 when --

7 A You could make that assumption; yes, sir.

8 Q That would be a fair assumption?

9 A Yes, sir.

10 Q Okay. Now, you were present when the show-up ID
11 occurred, correct?

12 A I was at the scene of the traffic stop; yes, sir.

13 Q Okay. And you had taken Mr. Broadnax to the back of
14 the truck, correct?

15 A To the rear quarter panel of the truck near the rear
16 tire.

17 Q The rear passenger's side?

18 A That's right.

19 Q So, sort of back there?

20 A In relation to that location on the passenger's side,
21 if you can see it, that's the passenger's side of the
22 truck, yeah.

23 Q So you could see it even farther over there maybe?

24 A I don't know. Do we have a --

25 Q Let's find a better picture up there.

1 **A** Actually, yeah. This is Exhibit 29.

2 **Q** How about this one? Okay. So he was standing right
3 about there?

4 **A** We were standing right about here where this rear
5 tire is.

6 **Q** Okay. And this is Chestnut, correct?

7 **A** That's Chestnut. Yes, sir.

8 **Q** Okay. And the patrol car with the witness in it was
9 coming towards me, correct?

10 **A** I never actually saw the patrol car with the witness
11 in it.

12 **Q** Okay. But when it came by, did Mr. Broadnax ever get
13 taken up to the street?

14 **A** No, sir. I never moved him.

15 **Q** And there is no space for the other patrol car to
16 come around this way, was there?

17 **A** No, sir.

18 **Q** So it came on Chestnut in one direction or the other,
19 correct?

20 **A** Right.

21 **Q** And Mr. Broadnax was on the rear passenger's side of
22 the truck?

23 **A** That's correct.

24 **Q** Okay. Beg the Court's indulgence. Officer, now, he
25 was crouched down on the floorboard, correct?

- 1 **A** Correct.
- 2 **Q** Did it look like he was hiding something from you?
- 3 **A** I can't say that it looked like he was hiding
- 4 something from me, but it was a very tight space and
- 5 his hands were down below the edge of the seat.
- 6 **Q** And when you brought him out, and you escorted him to
- 7 the back of the truck, right?
- 8 **A** Correct.
- 9 **Q** Was he coughing?
- 10 **A** He was.
- 11 **Q** He was coughing, kind of gagging?
- 12 **A** Yes, sir.
- 13 **Q** And spitting?
- 14 **A** Yes, sir.
- 15 **Q** Okay. You do remember that?
- 16 **A** Yes, sir.
- 17 **Q** Also I would like to point out -- I do appreciate
- 18 your honesty -- you said that you did not remember
- 19 what the shirt looked like from that day, correct?
- 20 **A** Correct.
- 21 **Q** Okay. And you are a trained police officer, correct?
- 22 **A** Yes, sir.
- 23 **Q** I mean, you went to the academy, all that kind of
- 24 stuff?
- 25 **A** Oh, yeah.

1 Q And part of the training is to recognize and remember
2 descriptions, correct?

3 A Well, you're not directly trained to do that at the
4 academy, but it's something that you develop as a
5 skill.

6 Q Okay. It's something you develop. And you've been
7 an officer for a few years and had been an officer
8 for I think you said at least three years?

9 A At least three years, yes.

10 Q Okay. At that point. Okay. And you do remember him
11 coughing, gagging and spitting when he got out of the
12 car?

13 A Correct.

14 Q No more questions, Your Honor. Thank you, Officer.

15 REDIRECT EXAMINATION

16 **BY MS. CAMPBELL**

17 Q As far as his clothing, he didn't rob you that day,
18 did he?

19 A No, ma'am.

20 Q Thank you. Nothing further.

21 **MR. COCHRAN:** Nothing further.

22 **THE COURT:** All right. You may come down, sir.
23 Thank you very much. May the witness be excused?
24 Without objection.

25 **MR. MAY:** Without objection, Your Honor.

1 **THE COURT:** Next witness.

2 **MS. CAMPBELL:** The State would call Charles
3 Green.

4 **THE COURT:** Ladies and gentlemen, while we're
5 waiting for this next witness to come in, I meant to
6 ask you earlier if any member of the jury panel has
7 anything like child care problems, will you let me
8 know? We may run on, say, 'til about 5:30. If
9 that's going to cause anybody any problems, I need to
10 know if everything is okay. Good. We'll keep going.

11 **MS. CAMPBELL:** Thank you, Your Honor.

12 **THE COURT:** Mr. Green.

13 CHARLES GREEN, after being duly sworn, testifies
14 as follows:

15 **THE CLERK:** Thank you. Have a seat in the
16 witness stand and give the court reporter your name.

17 DIRECT EXAMINATION

18 **BY MS. CAMPBELL**

19 **Q** What's your name?

20 **A** My name is Charles Green.

21 **Q** How old are you, Mr. Green?

22 **A** Sixty-four.

23 **Q** Where do you live?

24 **A** 3126 Carver Street, Columbia, South Carolina.

25 **Q** How long have you lived there?

1 **A** Off and on for about 60 years.

2 **Q** Off and on for about 60 years?

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

4 **Q** Do you work?

5 **A** No. Not at this time. I have arthritis.

6 **Q** Do you know a man named Christopher Broadnax?

7 **A** Yes, I do.

8 **Q** And did you know him from around the neighborhood?

9 **A** Yes, I did.

10 **Q** And sometimes would he come by your house?

11 **A** Yes, he would.

12 **Q** And sometimes would he actually stay with you?

13 **A** Yes.

14 **Q** Did y'all develop a kind of friendship?

15 **A** Yes, we did.

16 **Q** And sometimes would he ask a favor of you as far as
17 your automobile?

18 **A** As far as my truck. Yes, ma'am.

19 **Q** And what kind of automobile do you have?

20 **A** A 1986 Dodge D-100 pick-up truck.

21 **Q** I'm going to show you what's been marked as State's
22 Exhibit No. 37. Is that your pick-up truck?

23 **A** That's it.

24 **Q** State's Exhibit 30?

25 **A** That's it.

1 Q And how long have you had that truck?

2 A Let's see. I've had that truck since 2008, in
3 January I believe.

4 Q Would you give Mr. Broadnax a ride sometimes?

5 A Yes, ma'am.

6 Q I want to turn your attention back to May the 24th.
7 Did Mr. Broadnax come to your house that day or the
8 day before?

9 A Yes, he did.

10 Q When did he come to your house?

11 A I think he came there that evening.

12 Q And that afternoon around 5 or 5:30, did you give him
13 a ride to go somewhere?

14 A Yes, I did.

15 Q And where did you all go that evening?

16 A We went to West Columbia. We went to Church's on
17 Devine Street and we went to Church's on Taylor
18 Street.

19 Q When you got to the Church's on Taylor Street, do you
20 remember exactly what time of day it was?

21 A It had to be in the afternoon.

22 Q Afternoon?

23 A Yes.

24 Q Once you got to the Church's on Taylor Street, where
25 did you park?

1 **A** I parked -- I was having trouble with my truck. I
2 parked two buildings down behind Church's where I had
3 an incline to start the truck. It's a standard
4 shift.

5 **Q** It's a standard shift?

6 **A** Yes.

7 **Q** And did Mr. Broadnax get out of the truck?

8 **A** Yes, he did.

9 **Q** Do you remember if he had anything with him when he
10 got out of the truck?

11 **A** He had a plastic bag.

12 **Q** Is that all you saw?

13 **A** Yes.

14 **Q** Do you know what was in the plastic bag?

15 **A** No, I do not.

16 **Q** Do you remember what he was wearing that day?

17 **A** I think a striped shirt and light colored pants.

18 **Q** Do you know why he wanted you to take him to the
19 Church's?

20 **A** No.

21 **Q** Once you got to the Church's, you parked you said a
22 couple of buildings behind the Church's?

23 **A** Yes.

24 **Q** And did you see which direction Mr. Broadnax went?

25 **A** He walked towards the Church's.

1 Q Do you remember exactly how long he was gone?

2 A No. I fell asleep in the truck. So I don't know how
3 long he was gone.

4 Q Did Mr. Broadnax come back to the truck?

5 A Yes, he did.

6 Q And which side of the truck did he get in on?

7 A On the passenger's side.

8 Q And once he got into the truck, do you remember what,
9 if anything, he said to you?

10 A He said: Let's go.

11 Q And what did you do?

12 A I let the truck roll off and popped the clutch and
13 started it up and we left.

14 Q And what direction? Which road were you going down?

15 A Back down Millwood out of the driveway and then back
16 towards Forest Drive, back past Church's.

17 Q And did you go back past the Church's?

18 A Yes, I did.

19 Q When you got to the corner there, did you have to
20 wait at the light?

21 A Yes, I did.

22 Q Do you recall whether or not you spoke to anybody
23 while you were waiting at the light?

24 A I saw somebody ask me about doing the windows or
25 something on the truck. And the light changed and I

1 left. I didn't speak to anybody any kind of
2 conversation that I could remember.

3 Q And at that point where was Mr. Broadnax sitting in
4 the truck?

5 A He was sitting in the passenger's seat.

6 Q Was he sitting up or was he sitting down or crouched
7 over?

8 A He was sitting up.

9 Q Once you left once he was in the passenger's seat, at
10 some point did he get down into the floorboard?

11 A Yes, he did.

12 Q And when did that occur?

13 A When we went through the light, a police cruiser came
14 behind the truck, and at that point he got down in
15 the floorboard of the truck.

16 Q Did the police cruiser have his lights activated?

17 A Yes, he did.

18 Q And, in fact, did he go past you first?

19 A He went past me going towards Church's and then he
20 turned around. I saw in the rearview mirror he
21 turned around and came behind the truck.

22 Q And when you saw him coming behind the truck, what
23 did you do?

24 A I kept going up Two Notch Road and I turned into A-1
25 parking lot.

1 Q Mm-hmm (affirmative).

2 A Where I usually turn through there to get on Chestnut
3 Street which is on my way home.

4 Q Once you got in the parking lot, did you go behind
5 the building?

6 A Not behind A-1. There is a little store, fruit stand
7 on the corner. And the driveway has two entrances,
8 one from Two Notch Road, one from Chestnut Street.
9 And I started out of the Chestnut Street drive, and
10 that's when the police cruiser pulled in front of me.

11 Q And what did you do then?

12 A I got out of the truck because that's what the
13 officer instructed me to do.

14 Q Did you know why the officer was stopping you at that
15 point?

16 A Did I know? I beg your pardon?

17 Q Why the officer was stopping you?

18 A Yes. I think I kind of knew.

19 Q You kind of knew?

20 A Yes, ma'am.

21 Q Did you know for sure?

22 A Not for sure. But he, Mr. Broadnax was down in the
23 floorboard of the truck and the police went to
24 Church's and came back and followed me. So I think I
25 knew.

1 Q Had you gone into Church's that day?

2 A No.

3 Q But you gave Mr. Broadnax a ride into the Church's?

4 A Yes.

5 Q Had you ever seen Mr. Broadnax with a gun?

6 A Yes.

7 Q Do you know whether or not he had --

8 MR. MAY: Objection, Your Honor. May we
9 approach?

10 (Whereupon, a bench conference is had)

11 THE COURT: Mr. May.

12 MR. MAY: Yes, sir.

13 THE COURT: Do you have an objection?

14 MR. MAY: Yes, sir; I have an objection. Prior
15 bad acts.

16 THE COURT: Relevance?

17 MS. CAMPBELL: The relevance is --

18 MR. MAY: And relevance.

19 THE COURT: All right, ladies and gentlemen.

20 Just disregard that last comment. It has nothing to
21 do with this case. Strike it from the record.

22 Q That day did you see him with a gun?

23 A No.

24 Q Do you know what was under the passenger's seat of
25 your truck when you got out of the truck?

1 **A** I didn't until a police officer looked at it and said
2 what it was to the other officers.

3 **Q** Okay. The plastic bag that was in the truck that had
4 the things, the items in it that the police officers
5 found, was that yours?

6 **A** No.

7 **Q** Whose was it?

8 **A** Mr. Broadnax's.

9 **Q** Once you were detained at the scene, did you then get
10 arrested?

11 **A** Yes, I did.

12 **Q** Did you go down to the police station?

13 **A** Yes, I did.

14 **Q** You were transported by police officers?

15 **A** Yes, I was.

16 **Q** Once you got down there, were you advised of your
17 rights?

18 **A** Yes, I was.

19 **Q** And did you waive your rights?

20 **A** Yes, I did.

21 **Q** And did you agree to talk to the police?

22 **A** Yes, I did.

23 **Q** And did you give them a statement about what you knew
24 about the Church's that day?

25 **A** Yes, I did.

1 Q In fact, I believe you talked to Investigator Thomas
2 who is sitting right here?

3 A Yes, I did.

4 Q Once you had talked to Investigator Thomas, were you
5 then placed under arrest for being an accessory after
6 the fact to armed robbery in this case?

7 A Yes, I was.

8 Q And you are still charged with that charge?

9 A Yes, I am.

10 Q And right now you also in our office I believe have a
11 pending possession of stolen vehicle?

12 A Yes, I do.

13 Q And on the accessory to armed robbery charge you're
14 facing anywhere from zero to 15 years?

15 A That's what I've been told.

16 Q And on the possession of stolen vehicle charge, I
17 believe you're facing five years?

18 A Yes.

19 Q Is your lawyer here in the courtroom, one of your
20 lawyers here in the courtroom today?

21 A Yes, she is.

22 Q Where is she seated?

23 A Ms. Shurling.

24 Q Right here?

25 A Yes.

1 Q Have you been promised anything in exchange for your
2 testimony today?

3 A As a matter of fact, I've been told emphatically that
4 there is nothing on the table for me.

5 Q But you hope that someone will take it in
6 consideration down the road?

7 A Yes.

8 Q If you testify truthfully?

9 A That's true.

10 Q You also have a prior record?

11 A Yes, I do.

12 Q Back in August of 2000 you were convicted for a
13 fraudulent check?

14 A Yes, I was.

15 Q In August of 2001 you were convicted of shoplifting?

16 A Yes.

17 Q In May of 2004 you were convicted of obtaining
18 prescription drugs by fraud?

19 A Yes, I was.

20 Q In August of 2003 you were convicted of breach of
21 trust?

22 A Yes, I was.

23 Q Then again in 2004 you've had two more shoplifts?

24 A Yes.

25 Q Then in May of 2008, in January of 2009 petty

1 larcenies?

2 **A** Yes.

3 **Q** And then you also have pending charges we just
4 discussed?

5 **A** Yes, I do.

6 **Q** Christopher Broadnax, he was your friend?

7 **A** Yes.

8 **Q** And did you tell the police what you knew about what
9 went on that day at the Church's?

10 **A** Yes, I did.

11 **Q** The person that was crouched down in the bottom of
12 your truck in the passenger's side, do you see him
13 here in the courtroom?

14 **A** Yes, I do.

15 **Q** Will you identify him for the defendant [sic]?

16 **A** Yes.

17 **Q** For the jury. Excuse me.

18 **A** Yes. Mr. Broadnax.

19 **Q** And where is he seated?

20 **A** Yellow shirt right there.

21 **Q** The yellow shirt?

22 **A** Yes.

23 **Q** At the defense table?

24 **A** Yes.

25 **MS. CAMPBELL:** Your Honor, may the record

1 reflect the witness identified the defendant?

2 **THE COURT:** The record will so reflect the
3 witness identified the defendant.

4 **Q** When the defendant, Mr. Broadnax, got back into the
5 truck when you woke up, did he have that plastic
6 wagon bag with him still?

7 **A** Yes, he did.

8 **Q** Could you tell what was in it at that point?

9 **A** No.

10 **Q** Do you know where he placed the plastic bag?

11 **A** On the floorboard.

12 **Q** On the floorboard?

13 **A** (Nods head affirmatively).

14 **Q** Thank you. I don't have anything further.

15 **THE COURT:** Cross examination.

16 **MR. MAY:** Yes, sir. May it please the Court,
17 Your Honor.

18 CROSS EXAMINATION

19 **BY MR. MAY**

20 **Q** All right. We heard your record. It's pretty
21 extensive. Would you agree?

22 **A** Yes.

23 **Q** You've been around the block and you understand that
24 charges such as armed robbery, which is why they
25 originally stopped you, correct? They stopped your

1 truck in relation to an armed robbery, correct?

2 A That's correct.

3 Q And you understand that the charges like that, or
4 even accessory, carries serious prison time?

5 A Yes, I do.

6 Q All right. In fact, you're facing zero to 15 years
7 right now, correct?

8 A Correct.

9 Q And that's being charged only as accessory after the
10 fact?

11 A That's correct.

12 Q That's 15 Christmases in a prison?

13 A Yes.

14 Q And you know that prison is no place to go, don't
15 you?

16 A Yes.

17 Q No freedom. Little rooms?

18 A Yes.

19 Q Stainless steel toilets, bad toilet paper, even worse
20 food?

21 A That's an accurate description.

22 Q It's a place that you will avoid at all possible --
23 you'll avoid at all possible -- you'll just avoid it.
24 Yes?

25 A Not at the expense of the truth in this case.

1 Q Okay. Well, let's start talking about that.

2 A Okay.

3 Q Okay. Because looking at your record, your record
4 does not show a reflection of truthfulness. We have
5 a lot of fraud and breach of trust with fraudulent
6 intent. And you agree that those are not charges
7 that indicate truthfulness, correct?

8 A That's correct.

9 Q So you knew Chris Broadnax because y'all used to get
10 high together. Yes?

11 A Yes.

12 Q So y'all's primary relationship was doing drugs?

13 A No.

14 Q No?

15 A Our primary relationship was playing Scrabble.

16 Q Playing Scrabble?

17 A Yes.

18 Q So the smoking crack was just a by-product of it?

19 A I can't answer that for him.

20 Q You can't answer that. So you're telling us that
21 that wasn't the main relationship that you and Chris
22 had, was doing drugs?

23 A No.

24 Q It wasn't. Okay. But again you're known for your
25 truthfulness. So throughout your entire testimony

1 with Ms. Campbell it appears that you're trying to
2 minimize whatever role you had in a robbery that
3 you're saying that occurred. Yes?

4 A I'm telling the truth about it.

5 Q You're trying to minimize it. You were asleep. You
6 don't know what anything happened. And all of a
7 sudden, hey, you're just getting pulled over; you
8 don't know what's going on. Correct?

9 A No. That's not what I said.

10 Q That's not what you said. You said that --

11 A No. I said I fell asleep in the truck, yes.

12 Q You fell asleep in the truck?

13 A Waiting on Mr. Broadnax. Yes.

14 Q Okay. But what I'm taking you back to is this.

15 You're trying to minimize whatever your role would
16 have been in the robbery. Okay. Now, y'all drove
17 around from West Columbia to Church's on Devine to
18 the Church's on Taylor. Then you parked down there
19 two buildings away. Is that --

20 A I parked on a hill so I could start the truck.

21 Q You mean it's manual and it was having problems with
22 the clutch?

23 A Yes. Mm-hmm (affirmative).

24 Q Beg the Court's indulgence for one second.

25 (Pause)

1 Q All right. I apologize to the Court and to the jury.
2 The fact of the matter is this. Your car is parked
3 on a hill and you've dropped somebody else off. Yes?
4 You dropped somebody else off. Somebody did a
5 robbery, and they put the goods of the robbery in
6 your truck and you took off, correct?

7 A I parked on a hill and started the truck. I dropped
8 Mr. Broadnax off.

9 Q Nobody was in your car when you were at that
10 stoplight talking to those two men. That's the
11 reason why you were able to stop and talk to those
12 two men. You picked up Christopher Broadnax sometime
13 later?

14 A That's not true.

15 Q It's not true?

16 A Not true.

17 Q But you're a man who knows the truth. You're a man
18 who lives your life by the truth. Let's look at your
19 last ten years.

20 A Mm-hmm (affirmative).

21 Q Your last ten years say that you don't know what the
22 truth is but only when it's convenient, when you
23 don't have 15 years, 15 Christmases, 15 birthdays;
24 and a man that's 64, that's a long time. That's a
25 life sentence. You're just like a coyote trying to

1 get out of a trap, aren't you?

2 **A** No, sir.

3 **Q** Beg the Court's indulgence. All right. I'll ask a
4 few questions.

5 **A** Okay.

6 **Q** Contrary to all the testimony that's been taken,
7 you're saying that Chris Broadnax was sitting upright
8 when he passed the Church's Chicken at that
9 stoplight?

10 **A** Yes.

11 **Q** You're saying that he was sitting upright when you
12 passed the police officers. Contrary to all other
13 testimony, that's what you're testifying to right
14 now?

15 **A** Yes, sir.

16 **Q** No further questions.

17 **A** That's my recollection that's what he was doing.

18 **Q** No further questions.

19 **THE COURT:** Any redirect?

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

21 **THE COURT:** You may come down, sir. Thank you
22 very much. May this witness be excused? Call your
23 next witness.

24 **MS. SIMPSON:** The State calls Officer Delage.

25 **HARRY F. DELAGE, III,** after being duly sworn,

1 testifies as follows:

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

4 **THE WITNESS:** Officer Harry Delage, Columbia
5 Police Department.

6 DIRECT EXAMINATION

7 **BY MS. SIMPSON**

8 **Q** Good afternoon, Officer Delage. Where do you
9 currently work?

10 **A** City of Columbia Police Department.

11 **Q** And how long have you been working with the City of
12 Columbia?

13 **A** Almost eight years.

14 **Q** So you were working with them back on May the 24th of
15 2009, correct?

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

17 **Q** And did you have a chance to become involved in this
18 case?

19 **A** I did.

20 **Q** And how did you become involved?

21 **A** We received a call in reference to an armed robbery
22 that had occurred at the Church's Chicken on Taylor
23 Street.

24 **Q** And I know you've been sitting in the courtroom and
25 you've heard the discussion between the different

1 regions. Which region are you with?

2 **A** Currently assigned to the South Region.

3 **Q** And were you assigned to the South Region back on May
4 the 24th?

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

6 **Q** And when you arrived, when you received the BOLO,
7 where exactly were you directed to go?

8 **A** To the general area to circulate for a possible
9 suspect vehicle.

10 **Q** Okay. And at any point did you have to go to Two
11 Notch and Chestnut?

12 **A** I did.

13 **Q** And what did you encounter when you arrived?

14 **A** Once I arrived at Two Notch and Chestnut I observed
15 Officer Spires and Officer Ridgeway had two
16 individuals out of a gray in color Dodge pick-up
17 truck detained.

18 **Q** And once you saw that they had two individuals then
19 detained, what did you do?

20 **A** Exited my vehicle as I approached them and gathered a
21 little information from them; due to their detention,
22 went ahead and placed one of the individuals in my
23 patrol car.

24 **Q** Okay. And do you recall which individual that might
25 have been?

1 **A** I do not recall exactly if it was Mr. Green or Mr.
2 Broadnax. No.

3 **Q** Okay. And at any point did you -- do you recall
4 seeing the truck --

5 **A** I do.

6 **Q** -- when you arrived? And did you ever go over to the
7 truck?

8 **A** I did.

9 **Q** And just describe for us kind of what happened when
10 you went up to the truck?

11 **A** As I approached the vehicle, both I believe the
12 passenger door -- well, the passenger door was open.
13 The driver's door I believe was open as well. You
14 could see into the truck and in plain view a clear
15 plastic, white in color plastic bag, like a shopping
16 bag from a grocery store. And in that you could make
17 out what appeared to be a silver matte finish in
18 color handgun along with some what appeared to be
19 paper currency.

20 **Q** Let the record reflect that I am showing what has
21 been marked State's Exhibit 3 for identification.
22 Without telling me what is in this photo, do you
23 recognize it?

24 **A** I do.

25 **Q** And you didn't actually take this photo, correct?

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

2 **Q** But how were you able to recognize this?

3 **A** It is the bag that was in the floorboard of the
4 vehicle, of the gray Dodge truck.

5 **Q** Well, does it fairly and accurately depict what's in
6 the photograph as you remember it?

7 **A** No. I can't -- in this particular angle of the shot,
8 you cannot make out what could be the weapon or any
9 of the currency, as far as paper currency.

10 **Q** Okay. But do you actually recall -- so you can't
11 see -- let me back up just a moment. Did you observe
12 this at any point when you looked into the truck?

13 **A** I did.

14 **Q** Okay. So it does fairly and accurately depict
15 essentially what you observed?

16 **A** It does.

17 **Q** Although not clearly?

18 **A** Not clearly.

19 **Q** But fairly and accurately?

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

21 **MS. SIMPSON:** Your Honor, at this time the State
22 would introduce State's Exhibit 3 into evidence.

23 **MR. MAY:** Without objection.

24 **THE COURT:** Without objection.

25

1 (WHEREUPON, State's Exhibit No. 3 is admitted
2 into evidence.)

3 Q Okay. Now, earlier -- I'm going to hand this to you.
4 Describe for the jury what you see in that picture?

5 A In this picture you see what appears to be a white in
6 color plastic bag. And this particular angle of this
7 shot of the picture you can make out an outline of a
8 dark object possibly back here near the seat. And
9 then in that general direction, as I recall looking
10 at the bag, you could see what would be the silverish
11 in color matte finish, light gray part of a pistol or
12 handgun. And also a little further back you could
13 see what appeared to be currency, paper money.

14 Q Okay. So when I was asking you earlier with respect
15 to the fairly and accurately depict, you were
16 actually referring to the fact that you could see
17 better, more clearly from your angle --

18 A Yes, ma'am.

19 Q -- that you observed?

20 A Yes, ma'am.

21 Q Now, were you searching in the truck at that time?

22 A No, ma'am.

23 Q And so state to the jury again exactly how you came
24 upon -- how you observed the gun and the money?

25 A Once -- I'm not sure which individual I placed in the

1 back of my patrol car. I had walked up to the
2 vehicle. And due to the nature of the crime, you
3 know, I leaned in in the open door. And in plain
4 view you could see it sitting right there on the
5 floorboard in that state that it's in right there.

6 Q And you're pretty familiar with guns, correct?

7 A Yes, ma'am.

8 Q And once you observed it, did you actually physically
9 collect the gun?

10 A No, ma'am.

11 Q Or the bag?

12 A No, ma'am.

13 Q Did you touch anything in that truck?

14 A No, ma'am.

15 Q At any point?

16 A No, ma'am.

17 Q And what did you do with the information with respect
18 to the bag? Did you relay that information to
19 someone else at the scene?

20 A Yes, ma'am.

21 Q All right. And with respect to your involvement in
22 this case, did you actually transport --

23 A I did.

24 Q -- the occupant in your patrol car?

25 A I did. At this date I cannot recall if it was Mr.

1 Broadnax or Mr. Green that was in my vehicle.

2 Q And where did you transport them?

3 A To our headquarters at 811 Washington Street.

4 Q Okay. Beg the Court's indulgence. Now, are you
5 familiar with Investigator Thomas?

6 A I am.

7 Q And did he conduct the follow-up investigation in
8 this case?

9 A To my knowledge, yes.

10 Q Thank you. Nothing further from the State at this
11 time.

12 MR. MAY: May it please the Court, Your Honor?
13 May I approach the witness?

14 THE COURT: Yes.

15 MR. MAY: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. MAY

18 Q All right. Looking at this picture, it's fair to say
19 that this is pretty much just looking straight down
20 from the door into what appears to be a pick-up
21 truck?

22 A Yes.

23 Q A dirty pick-up truck at that?

24 A I guess you could say that maybe.

25 Q So it's your testimony that you could see through