

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Roger M. Young, Circuit Court Judge

MARVIN BOWENS-GREEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001755

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JUNE 11-12, 2015.....	1
APPLICATION FOR POST-CONVICTION RELIEF	783
RETURN AND MOTION TO DISMISS.....	793
CONDITIONAL ORDER OF DISMISSAL	799
RESPONSE TO CONDITIONAL ORDER OF DISMISSAL.....	804
AMENDED RETURN AND MOTION TO VACATE CONDITIONAL ORDER OF DISMISSAL	807
ORDER VACATING CONDITIONAL ORDER OF DISMISSAL.....	814
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MAY 21, 2018.....	817
COURT'S EXHIBIT #1 (EMAIL)	867
COURT'S EXHIBIT #2 (INVESTIGATIVE REPORT).....	869
ORDER OF DISMISSAL.....	872
INDICTMENTS	899

State of South Carolina) In the Court of Common Pleas
County of Charleston) Ninth Judicial Circuit

State of South Carolina) Transcript of Record
 V. 2011-GS-10-2338 & 2339
Marvin Bowens Green,) * Volume I *
 Defendant.)

June 11 & 12, 2012

Charleston, South Carolina

B E F O R E:

The Honorable Kristi L. Harrington, Judge; and a Jury.

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CIRCUIT COURT REPORTER

I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

* Volume I *

Monday, June 11, 2012

Pretrial motions.....	9
Jury voir dire.....	17
Jury selection.....	45
Pretrial motions.....	59
<u>(SW) Natubhai Patel (IC):</u>	
Direct examination by Mr. Rutledge Durant.....	61
<u>(SW) Vasandika Isadas (IC):</u>	
Direct examination by Mr. Rutledge Durant.....	63
Cross-examination by Mr. Groeber.....	67
Redirect-examination by Mr. Rutledge Durant.....	69
<u>(SW) Detective Charles Lawrence (IC):</u>	
Direct examination by Mr. Rutledge Durant.....	75
Cross-examination by Mr. Grimes.....	98
Redirect-examination by Mr. Rutledge Durant.....	128
<u>(SW) Detective James Perkins (IC):</u>	
Direct examination by Mr. Rutledge Durant.....	135
Cross-examination by Mr. Groeber.....	145
Redirect-examination by Mr. Rutledge Durant.....	158
Recross-examination by Mr. Groeber.....	159

I N D E X

(SW) Natubhai Patel (IC):

Direct examination by Mr. Rutledge Durant.....161

(SW) Deputy Dustin Luckadoo (IC):

Direct examination by Mr. Rutledge Durant.....172

Cross-examination by Mr. Groeber.....175

(SW) Dhruval Patel (IC):

Direct examination by Mr. Rutledge Durant.....182

Cross-examination by Mr. Groeber.....188

Redirect-examination by Mr. Rutledge Durant.....194

(SW) Natubhai Patel (IC):

Direct examination by Mr. Rutledge Durant.....199

Tuesday, June 12, 2012

(SW) Natubhai Patel (IC):

Direct examination by Mr. Rutledge Durant.....201

Cross-examination by Mr. Groeber.....212

Redirect-examination by Mr. Rutledge Durant.....234

(DW) Detective Charles Lawrence (IC):

Direct examination by Mr. Grimes.....237

Opening Statement by Mr. Rutledge Durant.....280

Opening Statement by Mr. Groeber.....282

I N D E X

(SW) Natubhai Patel:

Direct examination by Mr. Rutledge Durant.....287

Cross-examination by Mr. Groeber.....307

(SW) Dhruval Patel:

Direct examination by Mr. Rutledge Durant.....313

Cross-examination by Mr. Groeber.....321

Redirect-examination by Mr. Rutledge Durant.....324

(SW) Deputy Dustin Luckadoo:

Direct examination by Mr. Rutledge Durant.....327

Cross-examination by Mr. Groeber.....337

Redirect examination by Mr. Rutledge Durant.....343

(SW) Detective Charles Lawrence:

Direct examination by Mr. Rutledge Durant.....346

Cross-examination by Mr. Grimes.....362

Redirect-examination by Mr. Rutledge Durant.....406

* Volume II *

Wednesday, June 13, 2012

(SW) Jagruti Patel (IC):

Direct examination by Mr. Rutledge Durant.....433

Cross-examination by Mr. Groeber.....441

Redirect-examination by Mr. Rutledge Durant.....448

(SW) Investigator Joseph L. West:

Direct examination by Mr. Rutledge Durant.....450

I N D E X

(SW) Investigator James T. Milz:

Direct examination by Mr. Rutledge Durant.....	459
Cross-examination by Mr. Groeber.....	482
Redirect-examination by Mr. Rutledge Durant.....	488

(SW) Detective James Perkins:

Direct examination by Mr. Rutledge Durant.....	504
Cross-examination by Mr. Groeber.....	517
Redirect-examination by Mr. Rutledge Durant.....	530

(SW) Jagruti Patel:

Direct examination by Mr. Rutledge Durant.....	532
Cross-examination by Mr. Groeber.....	540
Redirect-examination by Mr. Rutledge Durant.....	548

State rests - motions.....	549

(DW) Detective Charles Lawrence:

Direct examination by Mr. Grimes.....	565
Cross-examination by Mr. Rutledge Durant.....	585

(DW) Dr. Jennifer Beaudry:

Direct examination by Mr. Groeber.....	593
Cross-examination by Mr. Rutledge Durant.....	652
Redirect examination by Mr. Groeber.....	680
Recross-examination by Mr. Rutledge Durant.....	683

I N D E XThursday, June 14, 2012(DW) Tonya V. Green (IC):

Direct examination by Mr. Grimes.....	686
Motions.....	702
Closing Argument by Mr. Groeber.....	710
Closing Argument by MR. Rutledge Durant.....	724
Jury Charge.....	741
Verdict.....	771
Sentencing.....	773
Certificate of Reporter.....	782

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.

FOR THE STATE:

1 - DVD		292	293
2 - Report of Lineup		296	302
3 - Photo Lineup		296	302
4 - Incident Report		332	
5 - Photo		361	362
5A- Photo			559
6 - Photographs		455	494
7 - Investigative Report		463	
8 - Photograph		476	477
9 - Photograph		476	477
10 - Photograph		476	477
11 - Photograph		476	477
12 - Photograph		476	477
13 - Photograph		476	477
14 - Photograph		476	477

FOR THE DEFENDANT:

1 - Curriculum Vitae of Dr. Beaudry	59	599
2 - Policy Manual	59	
3 - Map	59	
4 - Map	59	

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.

FOR THE DEFENDANT:

5 - Map	59	
6 - Incident Report	220	
7 - Photograph	368	
8 - Incident Report	567	
9 - Copy of Indictment	569	
10 - Affidavit	580	
11 - Incident Report	582	
12 - Document	646	
12A - Document	741	

FOR THE COURT:

1 - Motion Memo	59	
2 - Motion to Suppress	59	
3 - Notice of Motion to Suppress	59	
4 - Translator Affidavit	66	
5 - Photo Lineup	88	
6 - Report of Lineup	88	
7 - Incident Report	131	
8 - Photograph	233	
9 - Jury Charge Request	702	
10 - Note from Jury	766	

1 Monday, June 11, 2012

2 THE COURT: All right. The jurors are on their way
3 up so I need us to speed up a little bit. We're going to
4 pick the Green case first, and then just the way the
5 procedure works then the remaining jurors will go
6 downstairs, then they have to be re-picked to come back
7 upstairs. So there will be a slight shift. That will
8 give us time to get the defendant in and out, all those
9 other things, so that's procedural. So that will give
10 you time, then we'll go into -- depending on where lunch
11 falls I'm just going to go ahead, based upon what I
12 understand the issues to be, we'll start in the morning;
13 is that correct?

14 MR. RUTLEDGE DURANT: That's correct, Your Honor.

15 THE COURT: Start the trial in the morning. So I'm
16 going to release the jurors until in the morning.

17 MR. RUTLEDGE DURANT: Right.

18 THE COURT: 9:30?

19 MR. RUTLEDGE DURANT: Sounds good.

20 MR. GROEBER: Sounds greet.

21 MR. RUTLEDGE DURANT: As far as scheduling of the
22 witnesses who will testify in pretrial, should I tell my
23 witnesses to be here at 1:30, 2:00?

24 THE COURT: Let's see how we're going, Mr. Durant.
25 How long do we think that pretrial is going to take?

1 MR. RUTLEDGE DURANT: Probably will take the
2 afternoon. I was just thinking if we pick two juries
3 maybe hour, hour and 30 minutes.

4 THE COURT: I'm faster than that, Mr. Durant.
5 We'll start back at 1:30. Well, let's say 2:00.

6 MR. RUTLEDGE DURANT: Two o'clock. I'll have them
7 here at two o'clock.

8 THE COURT: For your witnesses. All right.

9 MR. RUTLEDGE DURANT: And one other scheduling
10 matter. The Kashaun Banks trial, I don't know exactly
11 what is going on in civil court this week. If somebody
12 wanted to try the case it would need to be picked either
13 today or tomorrow. There's a witness --

14 THE COURT: Is that your case, Mr. Grimes?

15 MR. GRIMES: Yes, Your Honor.

16 MR. RUTLEDGE DURANT: I guess that will be
17 difficult.

18 THE COURT: All right. So we'll address those
19 matters when they come up. My plan is to pick Mr. Green
20 and then Mr. Williams.

21 MR. RUTLEDGE DURANT: All right. I'm going to go
22 let the people who need to know about the witnesses being
23 here at 2:00.

24 THE COURT: All right. Well, let me get ready
25 because once the jury comes in we can't talk. The

1 indictment, there's issues with the indictment; is that
2 correct, Mr. Groeber?

3 MR. GROEBER: They are asking for certain things to
4 be stricken.

5 MR. RUTLEDGE DURANT: In regard to the indictment,
6 the victim's name, there's a letter -- scrivener's error
7 I'd like to change.

8 MR. GROEBER: No objection to that.

9 MR. RUTLEDGE DURANT: His name is Natubhai Patel.
10 He spells it N-a-t-u-b-h-a-i.

11 THE COURT: All right. So the B is -- the second B
12 just needs to be changed to an H; is that correct?

13 MR. RUTLEDGE DURANT: To an H. That's correct.

14 THE COURT: And where is the original indictment?

15 Any objection to making that correction on the
16 indictment?

17 MR. GROEBER: I'm sorry, Your Honor.

18 THE COURT: I need you guys to stay focussed. We
19 are on a very tight frame to not inconvenience the
20 jurors. So I need you to stay focussed. You know,
21 Mr. Groeber, I'll give you all the time you need to get
22 prepared but I need you to stay with me about these two
23 indictments.

24 MR. GROEBER: Yes, ma'am.

25 THE COURT: Any objection to changing the second B

1 of the victim's name to an H?

2 MR. GROEBER: No, Your Honor.

3 THE COURT: Then as to the second indictment,
4 someone wants to strike the -- on that same indictment
5 you want to strike the reference to the Colt?

6 MR. RUTLEDGE DURANT: The specific gun.

7 THE COURT: Specific serial number or you want to
8 strike --

9 MR. RUTLEDGE DURANT: We think it's sufficient to
10 allege that --

11 THE COURT: It was a deadly weapon. So you want to
12 strike everything after weapon. So you want to strike,
13 to wit, a 38 Colt revolver?

14 MR. RUTLEDGE DURANT: We'd like to substitute a
15 gun, a pistol, a handgun. Just that.

16 THE COURT: Mr. Groeber?

17 MR. GROEBER: The concern that I have with that,
18 Your Honor, is that we would like to anticipate asking
19 the detective who testified during the indictment
20 procedure about that weapon and that he testified under
21 oath about that weapon.

22 THE COURT: You may do so. The purpose, what we're
23 doing here is I read the indictment to the jury, and so
24 any objection to striking on the indictment? Since I
25 have made the amendments on the indictment I will not

1 send these indictments back --

2 MR. GROEBER: Thank you, Your Honor.

3 THE COURT: -- to the jury during the
4 deliberations. Any objection to striking a 38 Colt,
5 serial number 82846.

6 MR. GROEBER: No, Your Honor.

7 THE COURT: Which just remains a revolver. Or you
8 wish it just to say a gun, Mr. Durant?

9 MR. RUTLEDGE DURANT: A revolver. As long as the
10 implication of handgun is there a revolver is sufficient.

11 THE COURT: All right. Thank you. I will make the
12 deletion. Anything further before we bring in the jury?
13 Again, we will pick 12 with one alternate. Strikes are?

14 MR. RUTLEDGE DURANT: Five and ten.

15 THE COURT: Do you agree, Mr. Groeber?

16 MR. GROEBER: Yes, Your Honor.

17 THE COURT: Does your client waive formal
18 arraignment?

19 MR. GROEBER: Yes, Your Honor.

20 MR. RUTLEDGE DURANT: Just a second to step out and
21 tell my investigator to have my witnesses here at 2:00?

22 THE COURT: Hold on one second. Anything before we
23 begin jury selection? Do you have any objections to any
24 of the voir dire?

25 MR. RUTLEDGE DURANT: There are a couple objections

1 I think to the defense's voir dire number five. I think
2 we're very specific on the crime here that we're seeking
3 to ask information about. It says have you ever -- you
4 or has any member of your family, and it goes into --

5 THE COURT: I see it. So you object to that,
6 Mr. Durant?

7 MR. RUTLEDGE DURANT: That's correct, Your Honor.

8 THE COURT: All right. Anything else?

9 MR. RUTLEDGE DURANT: Number six. I think these
10 are all sufficient inquiries that could be handled with a
11 general question that I prefer to use most often, victim
12 of a violent crime, if so you may approach.

13 THE COURT: All right.

14 MR. RUTLEDGE DURANT: Number six and -- just five
15 and sixth.

16 THE COURT: All right. Thank you.

17 And the defense objects to three, four and eight;
18 is that correct, Mr. Groeber?

19 MR. GROEBER: I'll remove my objection to three.
20 And four and eight, really what I guess what I would
21 ask --

22 THE COURT: I'm not going to ask four.

23 MR. GROEBER: Okay. I object then to four.

24 THE COURT: All right. Do you object to eight?

25 MR. GROEBER: Yes, Your Honor, four and eight.

1 THE COURT: Thank you.

2 Okay. With that, let me see your witness list.

3 Any objections to anyone placed on the witness list, from
4 the State?

5 MR. RUTLEDGE DURANT: No, Your Honor.

6 THE COURT: From the defendant?

7 MR. GROEBER: No, Your Honor.

8 THE COURT: Anyone -- I have 16 on a combined
9 witness list. Are there any additional? And the rule of
10 sequestration, are you requesting the rule of
11 sequestration?

12 MR. RUTLEDGE DURANT: I'm not requesting it.

13 MR. GROEBER: We would request it except for I have
14 an expert witness. Her ability to hear some of the
15 testimony will be important for her testimony.

16 THE COURT: And her name is Dr. Beaudry?

17 MR. GROEBER: Correct, Your Honor.

18 THE COURT: The rule has been invoked, please
19 advise your witnesses accordingly. That does not just
20 mean that they can't be here but they can't discuss their
21 testimony once they have testified. All right.

22 MR. RUTLEDGE DURANT: And, Your Honor.

23 THE COURT: Yes.

24 MR. RUTLEDGE DURANT: And just so you know,
25 Detective Charles Lawrence, the case agent on this case,

1 I plan to have him in the courtroom, and also the victim,
2 Mr. Patel.

3 THE COURT: All right. Thank you.

4 Now you may step outside. Thank you, Mr. Durant.

5 MR. RUTLEDGE DURANT: Thank you, Your Honor.

6 (PAUSE.)

7 MR. RUTLEDGE DURANT: Your Honor, just for
8 clarification. I'm sorry this slipped my mind but would
9 you like to deal with the matter of the interpreter at
10 2:00 or now?

11 THE COURT: I don't think we need to deal with the
12 matter of the interpreter now. We'll deal with it when
13 it becomes an issue. It's not an issue. Thank you.

14 MR. RUTLEDGE DURANT: Oh, later?

15 THE COURT: There's no need. She's
16 not interpreting anything.

17 MR. RUTLEDGE DURANT: Right. I'll tell her to be
18 back at 2:00.

19 THE COURT: Well, if your victim is here is he
20 going to need to have an interpreter throughout these
21 proceedings as well?

22 MR. RUTLEDGE DURANT: It's mostly important for the
23 jury to understand his testimony. He speaks well enough
24 and he's -- I've advised him we'll pick a jury without
25 him. He'll be back at 2:00.

1 THE COURT: Okay. All right. Thank you. And 2:00
2 means we start at 2:00, Mr. Durant.

3 Are they here?

4 THE BAILIFF: Yes, ma'am.

5 THE COURT: All right. Bring them on in.

6 (WHEREUPON, the jury panel enters the courtroom at
7 approximately 11:40 a.m.)

8 THE COURT: All right. We're all here. I'm going
9 to go ahead and get started. So if we're not all here, I
10 think we're pretty close, but don't let anybody sneak in.
11 All right?

12 THE BAILIFF: All right.

13 THE COURT: Good morning, ladies and gentlemen, I
14 am Judge Kristi Harrington. I am a resident judge for
15 the Ninth Circuit, which is Charleston and Berkeley, and
16 I have the pleasure this week of presiding over General
17 Sessions Court. Most of you may know that more commonly
18 by criminal court..

19 We are selecting a jury for the first case on the
20 docket which is the State vs. Marvin Bowens Green.
21 Mr. Green has been charged through an indictment which is
22 simply a piece of paper that brings us to court here
23 today. He has been charged for armed robbery and for
24 possession of a firearm during the commission of a
25 violent crime. Mr. Green has pled not guilty to these

1 two indictments.

2 Ladies and gentlemen, the State alleges that on or
3 about December 24th, 2010 in Charleston County at 5737
4 Savannah Highway, which is Charleston County, South
5 Carolina, by use of force, threats or intimidation and
6 while armed with a deadly weapon, to wit, a revolver the
7 defendant, Marvin Bowens Green, did take and carry away
8 goods and/or monies from the person or immediate presence
9 of Natubhai Patel with the intent to deprive him
10 permanently of his possessions thereof in violation of
11 Section 16-11-330(a) of the South Carolina Code of Laws,
12 1976 as amended.

13 The State further alleges that in Charleston County
14 on or about December 24th, 2010, the defendant, Marvin
15 Bowens Green, did possess a revolver or visibly display
16 what appeared to be a firearm during the commission or
17 attempted commission of armed robbery, a violent crime.
18 This is in violation of 16-23-490 of the South Carolina
19 Code of Laws, 1976 as amended.

20 Is there any member of the jury panel that knows
21 anything about this case other than what I have just read
22 to you? If so, please stand.

23 (There was no response.)

24 THE COURT: Thank you. There were none.

25 Ladies and gentlemen, I have a series of questions

1 to ask you and these are going to be likely more personal
2 to you than some of the questions that the previous judge
3 asked you and going to be very specific to this case.

4 I'm going to give you an opportunity to come
5 forward and speak with me at the end of my questions, so
6 if there's something that you do not wish to share in
7 front of your 49 other new best friends at this time I
8 will give you an opportunity to come forward and speak
9 with me. But it is important that we have your complete
10 and truthful information. So at that time, please
11 remember that you need to come forward and share that
12 information.

13 Ladies and gentlemen, I'm now going to introduce
14 the attorneys and the parties they represent.

15 Mr. Groeber, if you would please stand, introduce
16 yourself, your client and any persons who may be
17 assisting you throughout this trial.

18 MR. GROEBER: Thank you, Your Honor.

19 My name is Cody Groeber, and I represent, along
20 with Andrew Grimes, Marvin Green. Mr. Grimes and I both
21 work at the Public Defender's Office, and it is our
22 pleasure to represent Mr. Green.

23 You may see any investigator come in and out of
24 courtroom. His name is Lee Ginn, and he's got a white
25 beard, and he's been helping with the case as well.

1 Thank you.

2 THE COURT: Is there any member of the jury panel
3 related by blood, marriage, close personal friend, ever
4 have any business, personal, professional dealings with
5 Marvin Bowens Green? If so, please stand.

6 Yes, ma'am, your jury number and name?

7 POTENTIAL JUROR: 298, Dominique Wright. I work at
8 a convenience store and I've seen him multiple times, and
9 I don't want it to have any -- you know.

10 THE COURT: And your jury number, ma'am?

11 POTENTIAL JUROR: 298.

12 THE COURT: And your employment and you knowing
13 Mr. Green, will that affect your ability to be fair and
14 impartial in this case?

15 POTENTIAL JUROR: I'm not sure, and that's why I'm
16 standing.

17 THE COURT: All right. And, ma'am, I do it the
18 same. A lot of times I say, you know, I think so, or I
19 believe so, or maybe. I need a yes or no. Will you be
20 able to listen from the facts -- to the facts from the
21 witness stand, apply the law as the Court gives it and
22 render a verdict based solely upon those things?

23 POTENTIAL JUROR: Yes.

24 THE COURT: And your jury number and name?

25 POTENTIAL JUROR: 298, Dominique Wright.

1 THE COURT: All right. Thank you.

2 Ladies and gentlemen, is there any member of the
3 jury panel related by blood, marriage, close personal
4 friend, ever have any business, personal, professional
5 dealings, ever been employed or a close family member
6 employed at the Public Defender's Office, or you know
7 Mr. Groeber or Mr. Grimes? If so, please stand.

8 (There was no response.)

9 THE COURT: Thank you. There are none.

10 Anyone related by blood, marriage, close personal
11 friends to Mr. Ginn? If so, please stand.

12 (There was no response.)

13 THE COURT: Thank you. There are none.

14 Mr. Durant, if you would please stand, introduce
15 yourself, any persons who will be seated with you
16 throughout this trial, a little bit about your office.
17 Thank you.

18 MR. RUTLEDGE DURANT: My name is Rutledge Durant.
19 I'm an assistant solicitor here in Charleston. I work
20 for Scarlet Wilson, the elected Solicitor of the Ninth
21 Circuit, which is Berkeley and Charleston Counties.

22 Trying this case for the State with me is the Chief
23 Deputy Solicitor, Bruce Durant, and Jennifer McCoy, who
24 is also an assistant solicitor. And just to put it out
25 there, because other juries have asked, Bruce and I are

1 not related.

2 Sherry Niblock is my investigator who will be
3 assisting me with the case and you may see me communicate
4 with her from time to time; as well as sitting at the
5 table with us is Detective Charles Lawrence from the
6 Charleston County Sheriff's Office.

7 THE COURT: Is there any member of the jury panel
8 related by blood, marriage, close personal friend, ever
9 have any business, personal, professional dealings with
10 either Mr. Durant, Mr. Durant or Ms. McCoy? If so,
11 please stand.

12 (There was no response.)

13 THE COURT: Thank you. There are none. Any
14 members of the jury panel ever been employed by, or a
15 family member employed by, or close friend with the Ninth
16 Circuit Solicitor's Office, either in Charleston or
17 Berkeley Counties? If so, please stand.

18 (There was no response.)

19 THE COURT: Thank you. There are none.

20 Ladies and gentlemen, I'm now going to call a list
21 of potential witnesses who may be called to testify in
22 this case. If you are related by blood, marriage, close
23 personal friends, ever have any business, personal,
24 professional dealings or know these individuals in any
25 way please stand when I call their name.

1 Natubhai Patel; Dhruval Patel; Jagruti Patel;
2 Deputy Dustin Luckadoo with the Charleston County
3 Sheriff's Office; Detective Charles Lawrence, Charleston
4 County Sheriff's Office; Detective James Perkins,
5 Charleston County Sheriff's Office; Investigator Kathy
6 Kjellman, Charleston County Sheriff's Office; Special
7 Agent Joe West, South Carolina Law Enforcement Division,
8 otherwise known as SLED; Deputy Donald Kjellman,
9 Charleston County Sheriff's Office; investigator James,
10 Jim Milz, Charleston County Sheriff's Office; MPO Andrew
11 Coker, North Charleston Police Department; FTI Candy
12 Logan, Charleston County Sheriff's Office Detention
13 Center; Richard Peirsol, former deputy with Charleston
14 County Sheriff's Office; Cecil Bradstreet, South Carolina
15 Law Enforcement Division; Dr. Jennifer Beaudry, Ph.D.;
16 Melvin Bowens, Sr. Any member of the jury panel related
17 by blood, marriage, close personal friends with any of
18 those individuals, please stand.

19 (There was no response.)

20 THE COURT: Thank you. There are none.

21 Any member of the jury panel ever been employed by
22 or a close family member, friend ever been employed with
23 Charleston County Sheriff's Office, State Law Enforcement
24 Division, otherwise known as SLED, North Charleston
25 Police Department? If so, please stand.

1 (There was no response.)

2 THE COURT: Thank you. There are none.

3 Any member of the jury panel ever been a previous
4 law enforcement officer of any kind in any jurisdiction,
5 please stand.

6 (There was no response.)

7 THE COURT: Thank you. There are none.

8 Ladies and gentlemen, is there any member of the
9 jury panel that is affiliated with a group that supports
10 law enforcement such as Mothers Against Drunk Driving,
11 Students Against Drunk Driving, Citizens Against
12 Violence, anything of that nature? If so, please stand.

13 (There was no response.)

14 THE COURT: Thank you. There are none.

15 Is there any member of the jury panel that is a
16 member of the National Rifle Association? In so, please
17 stand.

18 (There was no response.)

19 THE COURT: Thank you. There are none.

20 Is there any member of the jury panel who has ever
21 served as a witness in either a civil or a criminal case?
22 You were a witness in a civil or criminal case and you
23 testified, came into court and testified. If so, please
24 stand.

25 (There was no response.)

1 THE COURT: Thank you. There are none.

2 Ladies and gentlemen, everyone can hear me?

3 (LAUGHTER.)

4 THE COURT: Thank you. All right. Ladies and
5 gentlemen, is there any member of the jury panel that has
6 ever worked at a gas station or a convenience store? If
7 so, please stand. If you've ever worked gas station or a
8 convenience store, or maybe close family member or a
9 friend has worked in some capacity.

10 We're going to start on the front row. I need your
11 jury number and name.

12 POTENTIAL JUROR: 54, Quinnisha Clark.

13 THE COURT: And, Ms. Clark, you've worked at a
14 convenience store previously?

15 POTENTIAL JUROR: Yes.

16 THE COURT: And what was your position in that
17 convenience store?

18 POTENTIAL JUROR: Sales associate, cashier.

19 THE COURT: And do you currently have that
20 employment?

21 POTENTIAL JUROR: No, ma'am, I do not.

22 THE COURT: And how long were you at that
23 convenience store in that position?

24 POTENTIAL JUROR: Two years.

25 THE COURT: And how long ago has it been since

1 you've left that position?

2 POTENTIAL JUROR: A year.

3 THE COURT: All right. And your jury number and
4 name one more time?

5 POTENTIAL JUROR: 54, Quinnisha Clark.

6 THE COURT: Thank you, Ms. Clark.

7 I'm going to ask you to give me your jury number
8 and name when I first address you and at the end, and the
9 reason for that is each of the attorneys are making notes
10 because they want a juror who is fair and impartial to
11 listen to the testimony from the witness stand and apply
12 the law as the Court gives it. So they will be taking
13 notes as to what you say and so that just gives us each
14 an opportunity to make sure we accurately write down what
15 you say.

16 Yes, ma'am?

17 POTENTIAL JUROR: 204, Ashley Pinckney. About
18 three years ago my sister worked at a convenience store.

19 THE COURT: And was that convenience store here in
20 Charleston?

21 POTENTIAL JUROR: Yes, on Savannah Highway.

22 THE COURT: And she was a cashier or something
23 else?

24 POTENTIAL JUROR: Cashier.

25 THE COURT: And how long did she work there?

1 POTENTIAL JUROR: About two years.

2 THE COURT: All right. And she's currently doing
3 something else?

4 POTENTIAL JUROR: Yes.

5 THE COURT: And your jury number and name?

6 POTENTIAL JUROR: 204, Ashley Pinckney.

7 THE COURT: Thank you.

8 Yes, sir?

9 POTENTIAL JUROR: 202, George Phillips. I worked
10 for 7-Eleven back in the 70's.

11 THE COURT: And how long did you work at 7-Eleven?

12 POTENTIAL JUROR: About a year as I was going to
13 college.

14 THE COURT: All right. And your jury number and
15 name one more time?

16 POTENTIAL JUROR: 202, George Phillips.

17 THE COURT: Thank you.

18 Yes, ma'am. Once again.

19 POTENTIAL JUROR: Dominique Wright, 298.

20 THE COURT: Yes, ma'am.

21 POTENTIAL JUROR: I still work at a convenience
22 store and been doing it for five years.

23 THE COURT: All right. And what area of Charleston
24 is it? Is it the Charleston area?

25 POTENTIAL JUROR: West Ashley area.

1 THE COURT: West Ashley area. All right. And what
2 do you do, work as a cashier?

3 POTENTIAL JUROR: Senior sales associate.

4 THE COURT: One more time.

5 POTENTIAL JUROR: A senior sales associate.

6 THE COURT: All right. And you've been there how
7 long? I'm sorry.

8 POTENTIAL JUROR: Five years.

9 THE COURT: And, Ms. Wright, your jury number?

10 POTENTIAL JUROR: 298.

11 THE COURT: Thank you.

12 Is there anyone else?

13 (There was no response.)

14 THE COURT: Thank you. There are none.

15 Is there any member of the jury panel that worked
16 as a cashier in any capacity; grocery store, fast food,
17 anything of that nature that you haven't previously stood
18 up? Thank you. If you've already told us you worked at
19 a convenience store and you feel like you're going to
20 give -- we don't need to hear it again. We'll start at
21 this and just kind of move down the line.

22 Yes, sir?

23 POTENTIAL JUROR: John Dewitt, 70. I worked at MP
24 Grocery Store in high school.

25 THE COURT: And that was not here in Charleston?

1 POTENTIAL JUROR: No.

2 THE COURT: And how long ago was that, sir,
3 approximately?

4 POTENTIAL JUROR: It was '92 through '94.

5 THE COURT: Thank you. And your jury number and
6 name before you sit down, Mr. Dewitt?

7 POTENTIAL JUROR: Number 70, John Dewitt.

8 THE COURT: Thank you.

9 Yes, ma'am?

10 POTENTIAL JUROR: Jury number 103, Laretta Geddis.
11 We're talking about 35 years ago, Service Merchandise on
12 East Bay Street. Juror 103, Laretta Geddis.

13 THE COURT: Thank you.

14 Yes, ma'am?

15 POTENTIAL JUROR: Tammy Johnson, juror 130. I
16 worked as a cashier 30 years ago at Eagles in North
17 Carolina.

18 THE COURT: And your jury number and name one more
19 time?

20 POTENTIAL JUROR: Number 130, Tammy Johnson.

21 THE COURT: All right. Thank you.

22 Yes, ma'am?

23 POTENTIAL JUROR: Number 142, Sara Krawjewski, a
24 grocery store about 20 years ago in Massachusetts.

25 THE COURT: All right.

1 POTENTIAL JUROR: 142, Sara Krawjewski.

2 THE COURT: Thank you.

3 POTENTIAL JUROR: I'm Karen Lamar, 144. I worked
4 at Brooks Fashions in Citadel Mall probably about 20
5 years ago. And 144, Karen Lamar.

6 THE COURT: Thank you, Ms. Lamar.

7 POTENTIAL JUROR: 148, Danielle Ledwell. I worked
8 at Moe's for five years, and I quit my job about a year
9 ago.

10 THE COURT: And, Ms. Ledwell, your jury number
11 because there's two Ms. Ledwells.

12 POTENTIAL JUROR: 148, Danielle Ledwell.

13 THE COURT: Thank you.

14 POTENTIAL JUROR: 153, Kimberlee Lisicki. I worked
15 at Piggly Wiggly from 2005 until 2009. I also worked as
16 a cashier at James Island County Park for six
17 Christmases, 2004 to 2009.

18 THE COURT: All right. And your jury number and
19 name?

20 POTENTIAL JUROR: 153, Kimberlee Lisicki.

21 THE COURT: Thank you.

22 Yes, ma'am?

23 POTENTIAL JUROR: Elisa Mason, 164. I worked as a
24 cashier at a grocery store in the 80's, and last summer I
25 worked as a cashier at Lowe's here in Charleston.

1 THE COURT: All right. Your jury number and name?

2 POTENTIAL JUROR: 164, Elisa Mason.

3 THE COURT: Thank you.

4 And we'll start back over here. Yes, ma'am?

5 POTENTIAL JUROR: I'm Nancy Farnsworth, juror
6 number 79. I worked at Jordan Marsh when I was in
7 college, and that was back in the 70's, and I currently
8 as a second job work at Barnes and Noble and do
9 cashiering. I've been there for five years.

10 THE COURT: And your jury number and name?

11 POTENTIAL JUROR: Jury number 79, Nancy Farnsworth.

12 THE COURT: Thank you, Ms. Farnsworth.

13 Yes, ma'am?

14 POTENTIAL JUROR: I'm Lisa Fike. My number is 81.
15 And I grew up behind a cash register. My father owns
16 stores.

17 THE COURT: Here in Charleston?

18 POTENTIAL JUROR: No, in Ohio.

19 THE COURT: And what type of store?

20 POTENTIAL JUROR: They are pharmacies.

21 THE COURT: All right. And your jury number and
22 name?

23 POTENTIAL JUROR: 81, Lisa Fike.

24 THE COURT: Thank you.

25 Yes, sir?

1 POTENTIAL JUROR: Joel Flores, jury number 86.

2 THE COURT: Yes, sir.

3 POTENTIAL JUROR: For the past six years I've been
4 working at a super market on Folly Beach, Bert's Market,
5 and then during the summer season I do the retail work at
6 beach stores on Folly Beach.

7 THE COURT: All right. Your jury number and name?

8 POTENTIAL JUROR: 86, Joel Flores.

9 THE COURT: Thank you.

10 Yes?

11 POTENTIAL JUROR: Valerie Garrison. My jury number
12 is 99. I currently work at a small boutique in West
13 Ashley.

14 THE COURT: Your jury number and name one more
15 time?

16 POTENTIAL JUROR: 99, and Valerie Garrison.

17 THE COURT: Thank you.

18 Yes?

19 POTENTIAL JUROR: Shelia Gathers. I'm jury number
20 101. In college back in the 80's I briefly worked at
21 Dunkin Donuts as a cashier. Shelia Gathers, 101.

22 THE COURT: Thank you.

23 POTENTIAL JUROR: 204, Ashley Pinckney. About
24 seven years ago I worked at Burger King, McDonald's and a
25 parking garage. And about three years ago I worked at

1 the Mills House hotel. 204, Ashley Pinckney.

2 THE COURT: Thank you, Ms. Pinckney.

3 Yes, ma'am?

4 POTENTIAL JUROR: Madelaine Murden, 187. I worked
5 at McDonald's in college.

6 THE COURT: All right. And once again, before you
7 sit down.

8 POTENTIAL JUROR: 187, Madelaine Murden.

9 THE COURT: Thank you.

10 POTENTIAL JUROR: I'm 237, Donna Schnupp. I worked
11 at an old five and dime store when I was in high school
12 and college for probably about three years, and I worked
13 at a B. Dalton bookseller when I was in graduate school.

14 THE COURT: All right. And your jury number and
15 name before you sit.

16 POTENTIAL JUROR: 237, Donna Schnupp.

17 THE COURT: Thank you.

18 POTENTIAL JUROR: 171, Gwendolyn McCullough. I did
19 a short stint at Burger King while in college in the
20 80's. 171, Gwendolyn McCullough.

21 THE COURT: Thank you, Ms. McCullough.

22 POTENTIAL JUROR: I'm Lisa Pinckney, 141. I
23 believe back in the 80's, J.C. Penneys. And I'm 141,
24 Lisa Pinckney.

25 THE COURT: 141, Ms. Pinckney. Thank you.

1 POTENTIAL JUROR: Meghan Rife, 223, and I worked at
2 a Party City in 2003 and 2004, and then I worked at
3 Eastern Michigan University at the Student Center as a
4 cashier from 2004 to 2007. It's 223, Meghan Rife.

5 THE COURT: Thank you, Ms. Rife.

6 POTENTIAL JUROR: I'm 269, Tabitha Tillman. I
7 worked as a cashier for three years in high school at a
8 home decor store, and worked for four years as a cashier
9 at Papa John's through college. It's Tabitha Tillman,
10 269.

11 THE COURT: Thank you, Ms. Tillman.

12 POTENTIAL JUROR: 275, Kristie Turbeville. I
13 worked as a cashier at Piggly Wiggly in high school, and
14 also Belk's.

15 THE COURT: Is there anyone else?

16 (There was no response.)

17 THE COURT: Thank you. There are none.

18 Ladies and gentlemen, I'm now going to ask you a
19 series of questions that I have determined that are a bit
20 personal and you will need to come forward and speak with
21 me in private.

22 Now, what private means in Circuit Court, since we
23 are a court of record, we are going to be standing up
24 here in front of my court reporter. She is typing down
25 everything that I say as well as everything that you all

1 have been saying. But it will be a little less public
2 than if you were just to stand up and give your responses
3 out in front of the entire panel.

4 Is there any member of the jury panel that has, or
5 a member of your immediate family that has ever been the
6 victim of a violent crime, whatever violent crime, but
7 you or a member of your immediate family has been the
8 victim of a violent crime? If you have, please come
9 forward at the appropriate time.

10 Is there any member of the jury panel that's ever
11 been an eyewitness to a crime? If so we'll come forward
12 at the end.

13 All right, Ms. Wright? Thank you.

14 That way we'll just do it one time because I have
15 to come down off the bench. So we just do it one time.
16 That's what we'll do. So we'll do it right at the end.
17 So I'm going to ask you about four more questions and
18 then we'll come forward.

19 Back to if you have ever been the eyewitness to a
20 crime, any sort of crime, I would like for you to come at
21 the end.

22 Is there any member of the jury panel or a member
23 of your family that has been convicted of a crime that
24 carries less than one year in prison, less than one year
25 in prison? And at that point I would like at the

1 appropriate time for you to come forward and speak with
2 me.

3 Ladies and gentlemen, I have just read the
4 indictments to you and I've asked you a series of
5 questions so you do not know the facts in this case, but
6 is there any reason that what I have shared with you so
7 far that you feel, for whatever political, religious,
8 moral beliefs that you may have that you would be unable
9 to listen to the facts from the witness stand, apply the
10 law as the Court gives it to you and render a verdict
11 based only upon those things?

12 If you feel that you cannot be a fair and impartial
13 juror for whatever reasons, please, now is the time. If
14 you need to answer any of those other questions or if you
15 just need to speak with me about a matter in private,
16 please come forward at the appropriate time. Thank you.
17 The bailiffs will assist you.

18 THE BAILIFF: Juror 298.

19 (WHEREUPON, Juror 298 approaches, and the following
20 sidebar took place.)

21 THE COURT: Yes, ma'am?

22 POTENTIAL JUROR: I don't think I would be fit to
23 rule because, I mean, I've been abused all my life and
24 I've been assaulted from my son's father, and I just
25 won't feel comfortable with this case.

1 THE COURT: All right. And the same question that
2 I asked you earlier, based upon what you have shared with
3 me do you believe that you can set those things aside,
4 listen to the facts from the witness stand, the law the
5 Court gives and render a verdict based upon those things?

6 POTENTIAL JUROR: At this moment, no.

7 THE COURT: And juror 298?

8 POTENTIAL JUROR: Yes, ma'am.

9 THE COURT: I'm going to excuse you from the trial
10 of this case. You don't have to answer any further
11 questions but I need you to stay with us. All right.
12 Thank you.

13 298 is excused.

14 (WHEREUPON, the sidebar with Juror 298 was
15 concluded.)

16 THE BAILIFF: Juror 272.

17 (WHEREUPON, Juror 272 approaches, and the following
18 sidebar took place.)

19 THE COURT: Yes. Thank you.

20 POTENTIAL JUROR: My father was shot in my house
21 when I was probably 18.

22 THE COURT: And was there charges brought as a
23 result of that?

24 POTENTIAL JUROR: The guy that did it ran off a
25 bridge and died the same night.

1 THE COURT: Is there anything about what you've
2 shared with us that would affect your ability to be fair
3 and impartial in this case?

4 POTENTIAL JUROR: I don't think so.

5 THE COURT: All right. Remember what I said. I
6 just need a yes or a no. Both the defendant and the
7 State deserve a juror that can be fair and impartial.
8 Will you be able to listen to the facts from the witness
9 stand, apply the law as the Court gives it and render a
10 verdict based on all those things?

11 POTENTIAL JUROR: Yes.

12 THE COURT: And your juror number?

13 POTENTIAL JUROR: 272.

14 MR. BRUCE DURANT: Your Honor, before he sits down,
15 we were just told that he might know an attorney in our
16 office, Chip Cannon, and I just wanted to make sure
17 everyone was aware.

18 THE COURT: All right. What's the last name? Jim
19 Cannon?

20 MR. BRUCE DURANT: Chip Cannon, C-h-i-p.

21 THE COURT: Chip. I'm sorry.

22 Do you know Chip Cannon?

23 POTENTIAL JUROR: Yes.

24 THE COURT: And how do you know Mr. Cannon?

25 POTENTIAL JUROR: Two years ago we went to the same

1 gym.

2 THE COURT: And when is the last time you've seen
3 Mr. Cannon?

4 POTENTIAL JUROR: The first time in 18 months
5 probably.

6 THE COURT: And if you are selected for the jury
7 I'm going to instruct you that you cannot discuss this
8 case at all. Will that be a difficult situation for you
9 considering your relationship with Mr. Cannon?

10 POTENTIAL JUROR: No.

11 THE COURT: All right. Thank you.

12 (WHEREUPON, the sidebar with Juror 272 was
13 concluded.)

14 THE BAILIFF: Juror number 86.

15 (WHEREUPON, Juror 86 approaches, and the following
16 sidebar took place.)

17 THE COURT: Yes, sir?

18 POTENTIAL JUROR: I worked at Sonic and we were
19 held up and I was --

20 THE COURT: Is that here in the Charleston area?

21 POTENTIAL JUROR: Austin, Texas.

22 THE COURT: And did you have to testify? Was he
23 prosecuted?

24 POTENTIAL JUROR: I had to go to court, give my
25 statement and so forth. I was the one that had the gun

1 -- that was being held up. He had everybody else on the
2 floor. I was working the register. He had me empty the
3 register so...

4 THE COURT: Is there anything about what you have
5 shared with us that will affect your ability to be fair
6 and impartial in this case?

7 POTENTIAL JUROR: I don't think so.

8 THE COURT: Now, remember what I said. I just need
9 a yes or no.

10 POTENTIAL JUROR: No. No.

11 THE COURT: See, I don't think so doesn't give us
12 -- both the State and the defense deserves a juror that
13 can listen to the facts from the witness stand, apply the
14 law as the Court gives it and render a verdict based on
15 all those things. Can you be that juror?

16 POTENTIAL JUROR: Yes, I can.

17 THE COURT: All right. Your juror number?

18 POTENTIAL JUROR: 86.

19 (WHEREUPON, the sidebar with Juror 86 was
20 concluded.)

21 THE COURT: Juror 86 will remain. Thank you.

22 THE BAILIFF: Juror number 269.

23 (WHEREUPON, Juror 269 approaches, and the following
24 sidebar took place.)

25 THE COURT: Good afternoon, Ms. Tillman. How are

1 you?

2 POTENTIAL JUROR: Good. My brother was struck by a
3 car, by a hit and run, and that later contributed to his
4 death.

5 THE COURT: And was that here in Charleston or
6 somewhere else?

7 POTENTIAL JUROR: It was in Lancaster County, in
8 South Carolina.

9 THE COURT: And was that individual prosecuted?

10 POTENTIAL JUROR: They were never found.

11 THE COURT: And is there anything about what you've
12 shared with us that will affect your ability to be fair
13 and impartial in this case?

14 POTENTIAL JUROR: No.

15 THE COURT: All right. Thank you, Ms. Tillman.
16 You will remain.

17 Ask me.

18 MR. GRIMES: I think Ms. Tillman said shot by a
19 car, hit and run and drive-by shooting?

20 THE COURT: Struck. Struck by a car.

21 MR. GRIMES: Thank you.

22 THE COURT: All right. Thank you, Ms. Tillman.

23 (WHEREUPON, the sidebar with Juror 269 was
24 concluded.)

25 THE BAILIFF: Number 38.

1 (WHEREUPON, Juror 38 approaches, and the following
2 sidebar took place.)

3 POTENTIAL JUROR: Hey, how are you? I guess a lot
4 of those things apply to me. I wasn't ever a witness or
5 not -- I guess I wasn't a witness in a jury trial but I
6 witnessed pretty regularly -- I live in North Charleston
7 and called the cops constantly. I witness all kind of
8 awful things.

9 THE COURT: Just a few questions. Once again, we
10 need to know your jury number.

11 POTENTIAL JUROR: 38.

12 THE COURT: Thank you. And is there anything about
13 your contact with the police department -- there's one
14 officer from North Charleston?

15 POTENTIAL JUROR: I've contacted many.

16 MR. RUTLEDGE DURANT: Andrew Coker?

17 THE COURT: All right. Do you know Andrew Coker?

18 POTENTIAL JUROR: Not that I'm aware of.

19 THE COURT: Is there anything about what you shared
20 with us concerning that that will affect your ability to
21 be fair and impartial in this case?

22 POTENTIAL JUROR: I would say yes.

23 THE COURT: All right. You're juror number 38?

24 POTENTIAL JUROR: Yes, ma'am.

25 THE COURT: I will excuse you from the trial of

1 this case. All right. You need to have a seat back in
2 the audience. You don't have to answer any further
3 questions related to this case but I need you to stay
4 with us so that we can get your further information.

5 (WHEREUPON, the sidebar with Juror 38 was
6 concluded.)

7 THE COURT: 38 is excused. Thank you.

8 THE BAILIFF: Juror number 99.

9 (WHEREUPON, Juror 99 approaches, and the following
10 sidebar took place.)

11 THE COURT: Yes, ma'am?

12 POTENTIAL JUROR: I am having morning sickness
13 really bad. I'm trying all I can to not throw up.

14 THE COURT: Well, congratulations.

15 POTENTIAL JUROR: Twins.

16 THE COURT: I can take the breaks as long as we
17 need to but the problem is that if I transfer you --

18 POTENTIAL JUROR: I don't want to be transferred.
19 I just need to know when I need to leave.

20 THE COURT: All right. Are you vomiting or --

21 POTENTIAL JUROR: On and off.

22 THE COURT: Okay.

23 POTENTIAL JUROR: Just feeling sick.

24 THE COURT: So how many weeks along are you?

25 POTENTIAL JUROR: Ten.

1 THE COURT: Let me transfer you to how about later
2 in the summer to your second trimester when you may be
3 feeling better.

4 POTENTIAL JUROR: I teach so I will be working.

5 THE COURT: Do you have children?

6 POTENTIAL JUROR: No.

7 THE COURT: Oh, you're having twins.

8 POTENTIAL JUROR: Right. I mean, as long as you
9 don't care if I'm leaving.

10 THE COURT: Well, I do care because I can't
11 typically -- I can stop fairly quickly but if you start
12 vomiting I just can't let you get up.

13 POTENTIAL JUROR: This is so embarrassing.

14 THE COURT: I'm going to excuse you from the trial
15 of this case. Let me do it this way, because this is
16 going to be my longer case this week. I'm going to
17 excuse you from the trial of this case. So go back in
18 the audience and you will given instructions. If you
19 need to go to the bathroom feel free to do so. If you
20 come back in here then you need to go back to the
21 qualification room on the second floor.

22 POTENTIAL JUROR: Okay.

23 THE COURT: Like if you came back and nobody else
24 was in here, but don't leave without checking with
25 somebody.

1 POTENTIAL JUROR: Okay.

2 THE COURT: Juror?

3 POTENTIAL JUROR: 99.

4 (WHEREUPON, the sidebar with Juror 99 was
5 concluded.)

6 THE COURT: Juror 99 is excused from the trial of
7 this case. Thank you.

8 All right. Ladies and gentlemen, that is all the
9 questions I have for you. We will begin the jury
10 selection process. Thank you.

11 The State ready to proceed?

12 MR. RUTLEDGE DURANT: The State is ready to
13 proceed.

14 THE COURT: The defendant ready to proceed?

15 MR. GROEBER: Yes, Your Honor.

16 THE CLERK: Ladies and gentlemen, if I call your
17 name would you please gather your belongings, come up to
18 this podium, turn and face the parties. I'll ask the
19 parties questions, then I'll direct you to either have a
20 seat in the jury box or have a seat back in the audience.

21 Juror number 187, Madelaine Murden.

22 (A white female came forward.)

23 THE CLERK: What say you for the State?

24 MR. RUTLEDGE DURANT: Please present the juror.

25 THE CLERK: What say you for the defendant?

1 MR. GROEBER: Please seat this juror.

2 THE CLERK: Ms. Murden, please have a seat in the
3 jury box. You have been selected as a juror in this
4 case.

5 Juror number 141, Lisa Pinckney.

6 (A black female came forward.)

7 THE CLERK: What say you for the State?

8 MR. RUTLEDGE DURANT: Please present the juror.

9 THE COURT: What say you for the defendant?

10 MR. GROEBER: Please seat this juror.

11 THE CLERK: Ms. Pinckney, please have a seat in the
12 jury box. You have been selected as a juror in this
13 case.

14 Juror number 223, Meghan Rife.

15 (A white female came forward.)

16 THE CLERK: What say you for the State?

17 MR. RUTLEDGE DURANT: Please present the juror.

18 THE CLERK: What say you for the defendant?

19 MR. GROEBER: Please seat this juror.

20 THE CLERK: Ms. Rife, please have a seat in the
21 jury box. You've been selected as a juror in this case.

22 Juror number 256, Shannon Smith.

23 (A white female came forward.)

24 THE CLERK: What say you for the State?

25 MR. RUTLEDGE DURANT: Please present the juror.

1 THE CLERK: What say you for the defendant?

2 MR. GROEBER: Please seat this juror.

3 THE COURT: Ms. Smith, please have a seat in the
4 jury box. You've been selected as a juror in this case.

5 Juror number 204, Ashley Pinckney.

6 (A black female came forward.)

7 THE CLERK: What say you for the State?

8 MR. RUTLEDGE DURANT: Please present the juror.

9 THE CLERK: What say you for the defendant?

10 MR. GROEBER: Please excuse this juror.

11 THE CLERK: Ms. Pinckney, please have a seat back
12 in the audience. You've been excused from the trial of
13 this case.

14 Juror number 148, Danielle Ledwell.

15 (A white female came forward.)

16 THE CLERK: What say you for the State?

17 MR. RUTLEDGE DURANT: Please excuse the juror.

18 THE CLERK: Ms. Ledwell, please have a seat back in
19 the audience. You've been excused from the trial of this
20 case.

21 Juror number 144, Karen Lamar.

22 (A white female came forward.)

23 THE CLERK: What say you for the State?

24 MR. RUTLEDGE DURANT: Please present the juror.

25 THE CLERK: What say you for the defendant?

1 MR. GROEBER: Please seat this juror.

2 THE CLERK: Ms. Lamar, please have a seat in the
3 jury box. You've been selected as a juror in this case.

4 Juror number 268, Tanya Thompson.

5 (A white female came forward.)

6 THE CLERK: What say you for the State?

7 MR. RUTLEDGE DURANT: Please present the juror.

8 THE CLERK: What say you for the defendant?

9 MR. GROEBER: Please seat this juror.

10 THE CLERK: Ms. Thompson, please have a seat in the
11 jury box. You've been selected as a juror in this case.

12 Juror number 181, Bruce Miller.

13 (A white male came forward.)

14 THE CLERK: What say you for the State?

15 MR. RUTLEDGE DURANT: Please present the juror.

16 THE CLERK: What say you for the defendant?

17 MR. GROEBER: Please excuse this juror.

18 THE CLERK: Mr. Miller, please have a seat back in
19 the audience. You've been excused from the trial of this
20 case.

21 Juror number 269, Tabitha Tillman.

22 (A white female came forward.)

23 THE CLERK: What say you for the State?

24 MR. RUTLEDGE DURANT: Please present the juror.

25 THE CLERK: What say you for the defendant?

1 MR. GROEBER: Please excuse this juror.

2 THE CLERK: Ms. Tillman, please have a seat back in
3 the audience. You've been excused from the trial of this
4 case.

5 Juror number 76, Christopher Dugan.

6 (A black male came forward.)

7 What say you for the State?

8 MR. RUTLEDGE DURANT: Please present the juror.

9 THE CLERK: What say you for the defendant?

10 MR. GROEBER: Please seat this juror.

11 THE CLERK: Mr. Dugan, please have a seat in the
12 jury box. You've been selected as a juror in this case.

13 Juror number 180, Nancy Metzler.

14 (A white female came forward.)

15 THE CLERK: What say you for the State?

16 MR. RUTLEDGE DURANT: Please present this juror.

17 THE CLERK: What say you for the defendant?

18 MR. GROEBER: Please excuse this juror.

19 THE CLERK: Ms. Metzler, please have a seat back in
20 the audience. You've been excused from the trial of this
21 case.

22 That's four strikes for the defendant.

23 Juror number 149, Joy Ledwell.

24 (A white female came forward.)

25 THE CLERK: What say you for the State?

1 MR. RUTLEDGE DURANT: Please present the juror.

2 THE CLERK: What say you for the defendant?

3 MR. GROEBER: Please excuse this juror.

4 THE CLERK: Ms. Ledwell, please have a seat back in
5 the audience. You have been excused from the trial of
6 this case.

7 Juror number 63, Angela Craw.

8 (A white female came forward.)

9 THE CLERK: What say you for the State?

10 MR. RUTLEDGE DURANT: Please present the juror.

11 THE CLERK: What say you for the defendant?

12 MR. GROEBER: Please excuse this juror.

13 THE CLERK: Ms. Craw, please have a seat back in
14 the audience. You've been excused from the trial of this
15 case.

16 Juror 86, Joel Flores.

17 (A Hispanic male came forward.)

18 THE CLERK: What say you for the State?

19 MR. RUTLEDGE DURANT: Please present this juror.

20 THE CLERK: What say you for the defendant?

21 MR. GROEBER: Please excuse this juror.

22 THE CLERK: Mr. Flores, please have a seat back in
23 the audience. You've been excused from the trial of this
24 case.

25 Seven strikes for the defendant.

1 Juror number 95, Susan Gallo.

2 (A white female came forward.)

3 THE CLERK: What say you for the State?

4 MR. RUTLEDGE DURANT: Please present the juror.

5 THE CLERK: What say you for the defendant?

6 MR. GROEBER: Please seat this juror.

7 THE CLERK: Ms. Gallo, please have a seat in the
8 jury box. You've been selected as a juror in this case.

9 Juror number 142, Sara Krawjewski.

10 (A white female came forward.)

11 THE CLERK: What say you for the State?

12 MR. RUTLEDGE DURANT: Please present the juror.

13 THE CLERK: What say you for the defendant?

14 MR. GROEBER: Please seat this juror.

15 THE CLERK: Madam juror, please have a seat in the
16 jury box. You've been selected as a juror in this case.

17 Juror number 184, Paula Moorelee.

18 (A black female came forward.)

19 THE CLERK: What say you for the State?

20 MR. RUTLEDGE DURANT: Please excuse the juror from
21 the trial.

22 THE CLERK: Madam juror, please have a seat back in
23 the audience. You've been excused from the trial of this
24 case.

25 Juror number 237, Donna Schnupp.

1 (A white female came forward.)

2 THE CLERK: What say you for the State?

3 MR. RUTLEDGE DURANT: Please present the juror.

4 THE CLERK: What say you for the defendant?

5 MR. GROEBER: Please seat this juror.

6 THE CLERK: Madam juror, please have a seat in the
7 jury box. You've been selected as a juror in this case.

8 Juror number 14, Christopher Barrett.

9 (A white male came forward.)

10 THE CLERK: What say you for the State?

11 MR. RUTLEDGE DURANT: Please present the juror.

12 THE CLERK: What say you for the defendant?

13 MR. GROEBER: Please seat this juror.

14 THE CLERK: Mr. Barrett, please have a seat in the
15 jury box. You've been selected as a juror in this case.

16 Juror number 4, Eric Anderson.

17 (A black male came forward.)

18 THE CLERK: What say you for the State?

19 MR. RUTLEDGE DURANT: Please seat him.

20 THE CLERK: What say you for the defendant?

21 MR. GROEBER: Please seat this juror.

22 THE CLERK: Mr. Anderson, please have a seat in the
23 jury box. You have been selected as a juror in this
24 case.

25 Now picking for an alternate. Strikes are one and

1 two.

2 Juror number 179, Monique Merritt.

3 (A black female came forward.)

4 THE CLERK: What say you for the State?

5 MR. RUTLEDGE DURANT: Please present the juror.

6 THE CLERK: What say you for the defendant?

7 MR. GROEBER: Please seat this juror.

8 THE CLERK: Ms. Merritt, please have a seat in the
9 jury box. You have been selected as a juror in this
10 case.

11 Your Honor, the jury has been selected and are
12 seated.

13 THE COURT: Thank you.

14 Any motions or matters pertaining to the jury as
15 selected, from the State?

16 MR. RUTLEDGE DURANT: Not from the State, Your
17 Honor.

18 THE COURT: From the defendant?

19 MR. GRIMES: May we have a moment, Your Honor?

20 THE COURT: You may.

21 (PAUSE.)

22 THE COURT: All right. Mr. Bailiff, if you will
23 escort the jury to the jury room and we'll bring them
24 back in in just a few moments.

25 (WHEREUPON, the jury leaves the courtroom at

1 approximately 12:30 p.m.)

2 THE COURT: Ladies and gentlemen, you were not
3 selected as the jury in this case but I will need you to
4 be back downstairs to the jury qualification room.

5 We are very aware that we are eating into your
6 lunch hour, pardon the pun, but we are attempting to
7 minimize your inconvenience and get as much done this
8 morning so that there is the potential that you won't
9 have to keep returning every day.

10 So if you'll please stay with us for just a little
11 bit longer. We do know what we're doing. All right. So
12 please go back downstairs and I may see some of you back
13 up in just a few moments.

14 (WHEREUPON, the jury panel was excused.)

15 THE COURT: All right. Outside the presence of the
16 jury, any motions or matters pertaining to the jury as
17 selected, Mr. Durant?

18 MR. RUTLEDGE DURANT: No, Your Honor.

19 THE COURT: Mr. Groeber?

20 MR. GROEBER: No, Your Honor.

21 THE COURT: I am going to release this jury until
22 9:30 in the morning. Any objection, Mr. Durant?

23 MR. RUTLEDGE DURANT: No, Your Honor.

24 THE COURT: Mr. Groeber?

25 MR. GROEBER: No, Your Honor.

1 THE COURT: All right. Let's bring in the jury.
2 If you would have them go ahead and tell me who their
3 foreperson is going to be, select a foreperson and let
4 you know when they are ready.

5 (PAUSE.)

6 THE COURT: Mr. Anderson has been selected as the
7 foreperson. Thank you.

8 (WHEREUPON, the jury enters the courtroom at
9 approximately 12:35 p.m.)

10 THE BAILIFF: The jury is present, Your Honor.

11 THE COURT: Thank you. Please be seated.

12 Ladies and gentlemen, out of respect for your new
13 position as judges of the facts when you come into the
14 courtroom all the members, the parties involved, and all
15 the members of the audience will stand and remain
16 standing until all 13 of you are seated. So please come
17 in and take your seat.

18 Mr. Anderson, I understand that you have been
19 selected as the foreperson in this case. Thank you for
20 accepting that important responsibility. What that means
21 is you are the jury's spokesperson here in court.

22 So if at any time you need an additional break or
23 anything of that nature, please alert your foreperson and
24 he will alert the bailiff and we will address the concern
25 as soon as possible.

1 In this day and age of technology this is how we
2 communicate with the jury, so please remember that we are
3 going to have to communicate via notes. And so,
4 Mr. Anderson, that will be your task. You are also
5 responsible for writing the verdict, but I will give you
6 further instructions regarding that matter as we
7 progress.

8 Ladies and gentlemen, we've reached an appropriate
9 time for us to break for lunch. We've also -- there's
10 some matters unrelated to this case that I need to
11 continue, and as such I have determined it is best for us
12 to continue this case until in the morning.

13 So I will need you to be back in your jury room at
14 9:30 in the morning. We will begin promptly once all 13
15 of you are here. Please be respectful. As you know we
16 cannot begin until all of you are here, so please be
17 respectful of each other's time.

18 Ladies and gentlemen, I'm going to give you some
19 preliminary instructions. Please understand that I have
20 to give these instructions as part of my job to ensure
21 that fairness is done between the parties.

22 Ladies and gentlemen, until you have been
23 discharged from service in this case, until I tell you
24 otherwise you may not perform any investigation, research
25 or experiment of any kind on your own or as a group about

1 this case.

2 You may not consult any dictionaries for the
3 meaning of words or any encyclopedias for information on
4 this subject of this trial. You may not look up anything
5 on the internet concerning this case or any of the people
6 involved including the defendant, the witnesses that I
7 have listed, the attorneys involved, as well as the
8 Judge.

9 You may not go to the scene where any of the events
10 that are the subject of this trial are alleged to have
11 taken place. You may not use internet maps or Google
12 Earth or any other program or device to search for or
13 view any place that is discussed in this case.

14 You must not have any discussions about this case
15 or make any entry on My face -- excuse me, Myspace,
16 Facebook -- it's lunchtime, or any other social media
17 sites, and that includes all other forms of oral,
18 written, electronic communications not limited to
19 Twitter, email, blogging and texting.

20 So simply put, you may not discuss this case at all
21 in any form or fashion. I don't want you to go home and
22 say, you know, the Judge said I could do it on this one
23 but not on that one. You may not discuss this case at
24 all with anyone, that includes your fellow jurors, until
25 I tell you that you may do so.

1 Again, please understand that I'm giving these
2 directions as part of my responsibility to ensure that
3 fairness to all the parties in this case, and that
4 fairness could be compromised and your actions could
5 jeopardize the results of this trial if you violate my
6 instructions.

7 Ladies and gentlemen, I'm simply, when we take
8 breaks, going to say please remember all of my
9 instructions, and that's pretty much all of my
10 instructions.

11 Please have a wonderful afternoon. We will see you
12 back at 9:30, and the bailiff will instruct you on where
13 and how to report, accordingly. Have a wonderful
14 afternoon.

15 Please rise for the jury.

16 (WHEREUPON, the jury leaves the courtroom at
17 approximately 12:40 p.m.)

18 THE COURT: Thank you. Please be seated.

19 Any other matters before we begin our pretrial
20 motion at 2:00?

21 MR. RUTLEDGE DURANT: No, Your Honor.

22 THE COURT: All right. Mr. Groeber?

23 MR. GROEBER: No, Your Honor.

24 THE COURT: All right. See you at 2:00. Let's get
25 ready for the next case.

1 (WHEREUPON, the trial of this case was recessed for
2 lunch.)

3 (WHEREUPON, Defendant's Exhibit Numbers 1 through 5
4 were marked for identification only.)

5 THE COURT: Is the State ready?

6 MR. RUTLEDGE DURANT: The State is ready, Your
7 Honor.

8 THE COURT: The defendant ready?

9 MR. GROEBER: Yes, Your Honor.

10 THE COURT: What motions are pending?

11 MR. GROEBER: Your Honor, I filed two motions. One
12 is a motion to suppress in-court identification of the
13 defendant by witnesses who were not present at the scene
14 of the crime. I filed that on June 7th. I also filed a
15 motion for a Biggers hearing notice and motion to
16 suppress identification of the defendant. That would
17 apply to the eyewitness, Natubhai Patel, and I've filed
18 and passed up and I'd like to make all three of those
19 court's exhibit memos in support of those two motions.

20 THE COURT: All right. And you may approach the
21 court reporter.

22 MR. GROEBER: Thank you, Your Honor.

23 (WHEREUPON, Court's Exhibit Numbers 1 through 3
24 were marked and made a part of the record.)

25 THE COURT: Did the State have any motions?

1 MR. RUTLEDGE DURANT: We would only just respond to
2 the defense's motion, Your Honor.

3 THE COURT: All right. Call your first witness.

4 MR. RUTLEDGE DURANT: And I think preliminarily we
5 need to probably get into the translator.

6 THE COURT: All right. Call your first witness.
7 If there will be the translator then we'll have to deal
8 with the translation.

9 MR. RUTLEDGE DURANT: And, Your Honor, would you
10 like to question the translator or would you like the
11 State to?

12 THE COURT: Well, first of all, Mr. Durant, I have
13 to make a finding that the translator is necessary. So I
14 need to see the victim and make a determination whether
15 or not the victim is able to understand.

16 MR. RUTLEDGE DURANT: Sure.

17 THE COURT: To that extent, Mr. Durant, you may
18 question.

19 Sir, please come forward and be sworn.

20 NATUBHAI PATEL, after having been duly
21 sworn, testified as follows:

22 THE CLERK: State your name then spell your last
23 name.

24 THE WITNESS: Okay. I'm Natubhai Patel. The
25 spelling of the last name, P-a-t-e-l.

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1 THE COURT: Could you say it again?

2 THE WITNESS: English understand.

3 THE COURT: One more time.

4 THE WITNESS: English language, understand.

5 THE COURT: And do you think that you understand it
6 very well?

7 THE WITNESS: Like Dhruval?

8 BY MR. RUTLEDGE DURANT:

9 Q. Like Dhruval?

10 A. Yes.

11 Q. Dhruval is your son?

12 A. Yes, my son, Dhruval.

13 Q. Does Dhruval understand English better than you?

14 A. My son is better in this.

15 THE COURT: All right. I think -- Mr. Groeber, do
16 you agree that it would be helpful to have an
17 interpreter --

18 MR. GROEBER: Absolutely.

19 THE COURT: -- for this witness?

20 MR. GROEBER: Absolutely.

21 THE COURT: Mr. Patel, you may step down. Thank
22 you. You may step down. Thank you.

23 THE WITNESS: Okay.

24 THE COURT: Your challenge to the use of the
25 interpreter, Mr. Groeber, is the difference between a

VASANDIKA ISADAS (IC) - DIRECT BY MR. DURANT 63

1 qualified and a certificated; is that what I understand?

2 MR. GROEBER: I think that might be -- that's going
3 the way I'd like to argue. I think she doesn't meet the
4 standard -- or I'm not satisfied that she meets the
5 standard of a qualified interpreter. I know the Court
6 can find her qualified.

7 THE COURT: All right, Mr. Durant. I make a
8 finding that an interpreter is going to be necessary so
9 let's -- then there is no certified interpreter that
10 speaks Hindi. So my understanding is you have made an
11 effort to locate a Hindi speaking interpreter, and I have
12 an affidavit and her name Isadas, Ms. Isadas?

13 MR. RUTLEDGE DURANT: Isadas.

14 THE COURT: All right. Let's hear from Ms. Isadas.
15 Please come forward and be sworn. Thank you.

16 VASANDIKA ISADAS, after having been duly
17 sworn, testified as follows:

18 THE COURT: Thank you.

19 Mr. Durant?

20 MR. RUTLEDGE DURANT: Thank you.

21 DIRECT EXAMINATION

22 BY MR. RUTLEDGE DURANT:

23 Q. And it's Vasandika Isadas?

24 A. Yes.

25 Q. And if you would just spell that for the record.

- 1 A. V-a-s-a-n-d-i-k-a I-s-a-d-a-s.
- 2 Q. And, Ms. Isadas, how old are you?
- 3 A. I'm 23 years old.
- 4 Q. And where were you born?
- 5 A. I was born in India, Nagpur, in the State of
- 6 Maharashtra.
- 7 Q. Do you now live in the United States?
- 8 A. I do.
- 9 Q. How long did you live in India?
- 10 A. I was born and raised there. I stayed there until
- 11 the age of 17.
- 12 Q. And then did you come to the United States?
- 13 A. I did. In the year 2006.
- 14 Q. What is your native tongue?
- 15 A. Hindi.
- 16 Q. How long have you spoken Hindi?
- 17 A. Since I could speak.
- 18 Q. How long have you -- do you speak English?
- 19 A. I do.
- 20 Q. That's silly to ask but how long have you spoken
- 21 English?
- 22 A. Since I could speak, too.
- 23 Q. Are you fluent in Hindi?
- 24 A. I am.
- 25 Q. Are you fluent in English?

1 A. Yes, I am.

2 Q. Are you capable of accurate translation from Hindi
3 to English?

4 A. Yes, sir.

5 Q. And vice versa?

6 A. Yes, sir.

7 Q. Can you interpret the oral word as it is spoken?

8 A. I can.

9 Q. Can you interpret the written word as it is
10 written?

11 A. Yes.

12 Q. And both from Hindi to English, and English to
13 Hindi?

14 A. Yes, I can.

15 Q. What is your level of education?

16 A. I just completed my bachelor's in science with a
17 major in psychology.

18 Q. And where did you complete that?

19 A. From the College of Charleston.

20 Q. And what are your -- do you have any future
21 academic plans?

22 A. I hope to go to medical school for psychiatry.

23 Q. And have you studied for the MCAT yet?

24 A. I am.

25 Q. In college did you have any duties as it related to

1 the language of Hindi?

2 A. I did. I was the only tutor for Hindi in the whole
3 -- the college and the only one to place out of foreign
4 language requirement by taking the Hindi placement test.

5 Q. And as a tutor you helped students understand the
6 Hindi language?

7 A. Read, write and speak.

8 MR. RUTLEDGE DURANT: Your Honor, at this time if I
9 can approach. We'd just like to mark the affidavit as a
10 court's exhibit in this regard.

11 THE COURT: You may.

12 (WHEREUPON, Court's Exhibit Number 4, an Affidavit,
13 was marked and made a part of the record.)

14 MR. RUTLEDGE DURANT: And this is the actual
15 notarized affidavit from Ms. Isadas.

16 BY MR. RUTLEDGE DURANT:

17 Q. And I believe we are stipulating that this is the
18 affidavit that was signed in front of myself by you and
19 the defense counsel; is that correct?

20 A. Yes, it is.

21 Q. Last week. And I think listed on there you have
22 signed, first of all, what your name is. I think I have
23 a copy as well. Can you just tell us what's on the
24 affidavit, what you've stated there?

25 A. It states my name, my age, when and where I was

VASANDIKA ISADAS (IC) - CROSS BY MR. GROEBER 67

1 born, when I came to the United States, stated that Hindi
2 is my native language. I've completed my bachelor's
3 degree in psychology at the College of Charleston. I've
4 served as a Hindi tutor, and I'm neither related to nor
5 do I have any personal knowledge of Natubhai Patel,
6 Dhruval Patel or Jagruti Patel, and I have not been
7 confined to an institution.

8 Q. And all that is true?

9 A. It is.

10 MR. RUTLEDGE DURANT: I think I have no further
11 questions for this witness.

12 THE COURT: Mr. Groeber?

13 MR. GROEBER: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. GROEBER:

16 Q. Ms. Isadas, are there different dialects of Hindi?

17 A. There are.

18 Q. How many different dialects are there?

19 A. Since there are 28 states in India every state kind
20 of has a different dialect.

21 Q. And would that affect -- which particular dialect
22 are you fluent in?

23 A. I'm fluent with the dialect of Maharashtra, where I
24 was born, and Gujarati, and neighboring states --

25 THE COURT REPORTER: I'm sorry?

1 Q. So you are familiar with the particular dialect
2 that Mr. Patel is from?

3 A. Yes.

4 MR. GROEBER: May I have one moment, Your Honor?

5 THE COURT: You may.

6 (PAUSE.)

7 BY MR. GROEBER:

8 Q. Ms. Isadas, you're not certified as an interpreter
9 in South Carolina, are you?

10 A. No, I'm not.

11 Q. And that means that you've never taken the two-day
12 class that's required to be certified --

13 A. I have not.

14 Q. -- or the oral test that's required to be
15 certified, or the written test that's required to be
16 certified?

17 A. I have not.

18 Q. Okay. Are you able to interpret simultaneously and
19 consecutively and to site translate from English to
20 Hindi?

21 A. I can.

22 Q. And from Hindi to English?

23 A. I can.

24 MR. GROEBER: I have no further questions at this
25 time. Thank you.

VASANDIKA ISADAS (IC) - REDIRECT BY MR. DURANT 69

1 REDIRECT EXAMINATION

2 BY MR. RUTLEDGE DURANT:

3 Q. What is the official state language of India?

4 A. Hindi.

5 Q. And are there requirements -- what language
6 requirements are required in India of students in their
7 schools?8 A. Depending on the state you live in, every student
9 from grade one has to know how to speak, read and write
10 Hindi as the national language, and whatever language
11 pertains to their state. Since I was born in the state
12 of Maharashtra I have to learn Marathi, which is my
13 mother tongue which we speak at home. So Hindi, English,
14 and Marathi are the three languages we learn from first
15 grade until the 12th.

16 Q. Now, is Marathi, is that a dialect of Hindi?

17 A. No, it's not really a dialect. It's written the
18 same way, the same letters are used but it's spoken
19 differently.

20 Q. But nevertheless, the national language is Hindi?

21 A. It is Hindi. Everybody learns Hindi.

22 Q. In all 28 states?

23 A. They do. Yes.

24 MR. RUTLEDGE DURANT: No further questions.

25 THE COURT: Mr. Groeber?

1 MR. GROEBER: I have no further questions.

2 EXAMINATION

3 BY THE COURT:

4 Q. Ms. Isadas, I have a question. Is this your first
5 time being in court? Have you ever been to a court
6 proceeding before?

7 A. I have, Your Honor.

8 Q. Have you ever translated for anyone before in
9 court?

10 A. No, I have not.

11 Q. Do you understand how the process is going to work
12 should I qualify you as an interpreter?

13 A. Yes.

14 Q. Can you explain to me how you will be able to
15 translate?

16 A. I will repeat with complete understanding whatever
17 the -- whatever Natubhai is going to say and translate
18 that exactly how he has said it without adding my
19 personal variations to it, I believe.

20 Q. Okay. You will translate word for word; is that
21 correct?

22 A. Word for word.

23 Q. And you will translate word for word what the Court
24 says, if the Court is questioning him, or Mr. Durant, or
25 Mr. Groeber; is that your understanding?

1 A. Yes.

2 Q. Can you do that?

3 A. I can.

4 Q. Will you have any difficulty being able to

5 understand what the attorneys are saying?

6 A. I don't think so, no.

7 Q. Are you comfortable indicating to the Court or to

8 the attorney that you would need them to repeat their

9 question?

10 A. I will be.

11 Q. Have you been able to understand what we are doing

12 here so far?

13 A. To some extent, yes.

14 Q. And tell me what you mean by to some extent.

15 A. I was not disclosed anything regarding the case or

16 the victim. I haven't even spoken to him so --

17 Q. My question was not clear. Have you understood

18 everything Mr. Durant has asked you?

19 A. Oh, yes.

20 Q. Have you understood everything Mr. Groeber has

21 asked you?

22 A. Absolutely, yes.

23 Q. And have you understood everything I've asked you?

24 A. Yes.

25 Q. This is my court reporter. It is very important,

1 because it's going to be extremely important that no one
2 speak over each other, so I need you to practice that. I
3 see that you have a tendency to do that. So you're going
4 to have to wait until a question is asked.

5 A. Okay.

6 Q. Can you do that?

7 A. I can.

8 THE COURT: All right. Based upon my questions,
9 any further questions, Mr. Durant?

10 MR. RUTLEDGE DURANT: No, Your Honor.

11 THE COURT: Mr. Groeber?

12 MR. GROEBER: No, Your Honor.

13 THE COURT: And you may step down. Thank you.
14 Please remain with us.

15 Mr. Groeber, you are objecting to her being
16 qualified by the Court. I'll be happy to hear from you.

17 MR. GROEBER: Thank you, Your Honor. I think, you
18 know, after questioning she probably does meet the one
19 objection I've raised that's under A(4)(d) of Statute
20 17-1-50; however, I would renew my objection or state my
21 objections that -- a couple.

22 First of all, in a trial as serious as this one,
23 including life without parole, which is on the table, we
24 would had hoped for and requested someone with some
25 training in court interpretation or at the very least

1 some kind of professional degree in the language that is
2 at issue, a master's degree in Hindi, or a professor who
3 teaches Hindi. We think those types of people would be
4 more qualified, especially in a case like this.

5 We also have concerns that it was not the Clerk's
6 Office but the Solicitor's Office who contacted
7 Ms. Isadas. It is not because I think they did anything
8 wrong but because they are such nice people and don't
9 want her to have some kind of bias based on her
10 conversations with them and not with me. Thank you, Your
11 Honor. That's all.

12 THE COURT: All right. Mr. Durant, do I need to
13 hear from you?

14 MR. RUTLEDGE DURANT: I don't think so, Your Honor.
15 I would just say that we did reach out to the language
16 department at College of Charleston when it was found
17 that it was difficult to find a Hindi interpreter in the
18 State, and we did make contact via the department with
19 Ms. Isadas who came in to speak with us the next day. We
20 told her nothing about the case, and as soon as she
21 arrived notified Mr. Groeber who came down to my office
22 and we both talked with her about what we were concerned
23 with for this trial.

24 Certainly don't believe that there's any bias in
25 that encounter, and we certainly believe that the statute

1 does not speak to the higher qualifications and desires
2 of the defense counsel for an interpreter.

3 I think she certainly meets the criteria as
4 outlined in the statute. She's qualified. She's spoken
5 the language for 23 years, it's her native tongue, and
6 also English for the same amount of time. And she's told
7 the Court that she's capable and willing to make
8 simultaneous interpretations to this victim in this case.
9 We'd ask that you find her qualified and that's what we'd
10 like.

11 THE COURT: All right. The Court is going to find
12 Ms. Isadas to be a qualified interpreter. I find that
13 she is over 18 years of age. She is not a family member
14 of any party or witness. She is not confined to an
15 institution, and I do find that she has the education,
16 training and experience that enables her to speak English
17 and Hindi fluently.

18 She has indicated she is readily able to interpret
19 simultaneously and consecutively. She is able to sight
20 translate documents into the language of Hindi. She
21 indicates that she was given and has no independent
22 knowledge of the case and that she can follow the Court's
23 rules. I find her to be a qualified interpreter. All
24 right. Thank you.

25 MR. RUTLEDGE DURANT: And just so the Court is

CHARLES LAWRENCE (IC) - DIRECT BY MR. DURANT 75

1 aware, I think we made Your Honor aware last Friday, we
2 believe that her services will be needed in translation
3 for Mrs. Patel as well who is not here today but expected
4 to be here tomorrow, and that was because Mr. and
5 Mrs. Patel own the store on Savannah Highway in Ravenel.
6 They are the only employees of it and somebody needs to
7 be there while somebody can be here.

8 THE COURT: Whenever you are ready. We have three
9 ID motions.

10 MR. RUTLEDGE DURANT: The State will first call
11 Detective Charles Lawrence.

12 CHARLES LAWRENCE, after having been duly
13 sworn, testified as follows:

14 THE CLERK: Please state your full name and spell
15 your last name.

16 THE WITNESS: Charles Lawrence, L-a-w-r-e-n-c-e.

17 THE COURT: Your witness.

18 DIRECT EXAMINATION

19 BY MR. RUTLEDGE DURANT:

20 Q. Good afternoon, Detective Lawrence.

21 A. Good afternoon.

22 Q. Will you please tell the Judge where you were
23 employed.

24 A. Charleston County Sheriff's Office.

25 Q. And in what capacity?

1 A. Crimes against persons, violent crimes against
2 persons.

3 Q. Now, we're not going to go over your whole
4 testimony here. We're concerned with mostly the
5 identifications that you were involved with in this case.
6 Do you recall being brought into this case that occurred
7 at the Sunoco convenience store at 5737 Savannah Highway
8 in Charleston on December the 24th, 2010?

9 A. That's correct.

10 Q. How were you brought into the case?

11 A. The cases are assigned by a supervisor and my area
12 is Hollywood to Edisto Island. Being that the case
13 happened in that area, I'm the detective for that -- the
14 persons crime detective in that area, I was assigned the
15 case.

16 Q. And what kind of incident are we talking about
17 here?

18 A. Armed robbery.

19 Q. When were you brought in?

20 A. The 24th of December 2010, and I was brought in
21 after the event happened, sometime after the 24th of
22 December 2010. I didn't respond to the scene; however,
23 once my sergeant got the case it was assigned to me, at
24 which point in time I read the incident report, spoke
25 with the lab, our lab personnel, inquired about the

1 video. It wasn't in yet.

2 On the 29th of December I was advised that the
3 video from the scene was in place and we had it in our
4 custody, at which time I reviewed the video and I saw the
5 defendant point the handgun at Mr. Patel, at which time I
6 knew who he was, that was him before --

7 Q. Let's just take this step by step here.

8 A. Sure.

9 Q. So the incident happened on the 24th; is that
10 correct?

11 A. Yes, that's correct.

12 Q. And you did not go to the scene that day; is that
13 right?

14 A. That is correct.

15 Q. You were assigned this case at a later date?

16 A. Yes, sir.

17 Q. And do you know what date? This is right over
18 Christmas.

19 A. Yes, sir, right after Christmas. Maybe the -- I'm
20 uncertain of the date. It might be the 26th, 27th.

21 Q. And how did you begin to investigate this case?

22 A. Whenever we get a case we read the incident report,
23 see all the parties involved, to include the victims,
24 witness, possible suspect. Once I read the incident
25 report, the incident report, I contacted our lab, our

1 forensic service unit. I inquired about the video. They
2 advised that they weren't able to retrieve the video at
3 that time, and I asked that once they do receive the
4 video, video surveillance from the scene that I be
5 contacted. And on December 29th, 2010, I was informed by
6 Investigator Kjellman that the evidence was in our -- the
7 video was in our custody, at which time I reviewed it and
8 I saw the activity as they occurred.

9 Q. Was the video helpful in your investigation of this
10 case?

11 A. Yes, sir, very.

12 Q. Why is that?

13 A. As I saw the defendant enter the building and
14 present the handgun at the victim I saw the -- I could
15 see his mannerisms, his face as he looked at the camera,
16 looked away to see if anyone else was coming in. I saw a
17 good side view of him as well as a good facial view, and
18 I saw him walk in and out of the store with the handgun
19 and I knew him to be the defendant that's present today.

20 Q. And how do you know that?

21 A. Well, working in the Ravenel, Hollywood to Edisto
22 area I've had the -- I've dealt with him before. And
23 December of 2010 I had the opportunity to sit down,
24 interview --

25 Q. You mean 2008?

1 A. I'm sorry. Yes, sir. Correction, 2008 of
2 December, of 2008, had the opportunity to sit down and
3 meet with him in reference to two other armed robberies
4 that occurred in -- one occurred in Hollywood, the Town
5 of Hollywood, and another one occurred in the Town of
6 Ravenel, at which time I -- we had a conference maybe two
7 or three hours in which time I spoke to him, talked to
8 him, observed his mannerisms, I. E., everything else.

9 Q. Do you recall the exact date that you had this
10 conversation with the person you say was in the video?

11 A. In 2008 or 2010?

12 Q. 2008.

13 A. It was near Christmas, December the 20 -- it was
14 near Christmastime, I know. The exact date I'm not
15 certain. Somewhere -- it wasn't Christmas yet but it was
16 a day or two, a couple days before Christmas. I know it
17 was around Christmastime.

18 Q. Okay. And where did this conversation take place?

19 A. Charleston County Criminal Investigations Division
20 located at 3505 Pine Haven Drive.

21 Q. And why were you talking to him again, at that
22 time?

23 A. At that time, he was a suspect of one of the armed
24 robberies that occurred December of 2008.

25 Q. He was a suspect in one of them?

1 A. Actually, both of them. I stand corrected.

2 Q. So your testimony is you were in an interview room
3 with him for two to three hours?

4 A. Yes, sir.

5 Q. How was he brought into your custody in that
6 interview room at this time?

7 A. He was transported by --

8 Q. If you recall.

9 A. Yes, sir. He was transported from Colleton County
10 by myself -- from Colleton County right by Old
11 Jacksonboro. I think it was Old Jacksonboro Road,

12 somewhere near that, and he was transported by me to our
13 3505 Pine Haven Drive, North Charleston, South Carolina.

14 Q. All right. And so he's in your custody for two to
15 three hours; that's your testimony?

16 A. Yes, sir.

17 Q. During that time did you have the opportunity to
18 observe his face?

19 A. Yes, sir.

20 Q. Did you have the opportunity to observe his body
21 language?

22 A. Yes, sir.

23 Q. Did you ever look him in the eye?

24 A. I did.

25 Q. And you had the opportunity to hear him speak?

1 A. Yes, sir.

2 Q. What about an opportunity to see him walk?

3 A. Yes, sir.

4 Q. Can you tell the Court how he walks? Is it

5 noticeable to you?

6 A. Very, very distinguished walk. It's maybe like

7 somewhat -- some people will say a pair-toe, so to say,

8 if that makes any sense.

9 Q. What's that term again?

10 A. Like pair-toe or, you know, like one left foot goes

11 and the right foot is almost in that direction. Somewhat

12 like a duck.

13 Q. A pigeon toe?

14 A. A pigeon toe. Yes, sir.

15 Q. A pigeon toe. Okay. And did you have the

16 opportunity to observe his height?

17 A. Yes, sir.

18 Q. And what did you estimate that to be?

19 A. Maybe five-eight. About five-eight.

20 Q. All right. And what about his weight?

21 A. 145 to 155.

22 Q. And this may seem silly, but did he acknowledge at

23 that time when you had him in the interview room what his

24 name was?

25 A. Yes, sir.

1 Q. And what was his name?

2 A. Marvin Bowens Green.

3 Q. And before that time did you have any other
4 encounters with Mr. Marvin Bowens Green?

5 A. Just in general patrol. When I was on patrol in
6 the area I've seen him before. You know, it's a
7 Hollywood area to Edisto. It's a lot of area, however
8 you kind of see, like, the same people a lot, and he was
9 one of the people that I did see. So I saw him on
10 general patrol duties.

11 Q. Well, let me ask you this very simply. Did you
12 know him before that day that you interviewed him?

13 A. I knew him as one of the Bowens.

14 Q. Did you know him before he was in your interview
15 room?

16 A. Yes, sir.

17 Q. Did you know his name?

18 A. I know him as Bowen, yes, sir. As a Bowens.

19 Q. All right. So the first time you really met him
20 was in your interview room?

21 A. Yes, sir.

22 Q. We just want to know how you know him.

23 A. That particular date?

24 Q. Yeah. If you knew him before the time you
25 interviewed him in 2008 just tell us how.

CHARLES LAWRENCE (IC) - DIRECT BY MR. DURANT 83

1 A. Just general patrol duties. You know, just seeing
2 when you're out you see people. I'll give you a little
3 history, if I could, but it may be relevant, it may not
4 be. Anyway, when you are out in the area you have to get
5 out and know the people because other than that they
6 won't speak to you, they won't interact with you.

7 So by interacting with the people who are in
8 Hollywood all the way to Edisto is how you get a little
9 rapport and that's how you -- a lot of times because of
10 that that's how you are able to solve cases because they
11 feel that people can talk to you if they know you. If
12 they don't know you then they won't speak to you.

13 Q. So building a rapport with people in the community
14 is helpful to you in law enforcement?

15 A. Yes, sir.

16 Q. And while you built rapport with people in that
17 community, Hollywood and Ravenel area, did one of the
18 persons that you'd come to know or recognize, was that
19 Marvin Bowens Green?

20 A. Yes, sir.

21 Q. Did you have personal interaction with him before
22 that time?

23 A. Yes, sir. Well, he's a younger guy, yes, sir, more
24 so than one of the juveniles in the area at that time,
25 younger kids.

1 Q. Did you have opportunities to speak with him?

2 A. Yes, sir.

3 Q. And they were or were not in the relation to
4 crimes?

5 A. No, sir, not related to any crimes being committed.

6 Q. He would simply be just somebody you would
7 encounter?

8 A. Yes, sir.

9 Q. And at that time when you encountered him did you
10 know his name?

11 A. I didn't know his full name. I knew him to be one
12 of the Bowens. I knew his father, and I just knew him as
13 one of his kids.

14 Q. So when you got to see this video from the robbery
15 at Sunoco on December the 24th, you said you saw it on
16 December 29th?

17 A. Yes, sir.

18 Q. Did you recognize the man with the gun in that
19 video?

20 A. Yes, sir, I did.

21 Q. How sure are you of that person's identity?

22 A. In 2010, December 24th?

23 Q. That's right.

24 A. I was one hundred percent positive that that was
25 Marvin Bowens Green.

1 Q. And were you one hundred percent positive from the
2 first time you saw that video?

3 A. Yes, sir.

4 Q. And what about that video caused you to be so
5 positive?

6 A. The walk, his walk, his facial features, his facial
7 features. It's kind of -- well, his walk and his facial
8 features.

9 Q. Anything about his mannerisms?

10 MR. GRIMES: Objection. Asked and answered.

11 THE COURT: Overruled. You may answer.

12 A. Okay.

13 Q. Was it any one thing or was it just everything?

14 A. All of the above, yes, sir.

15 Q. Okay. Then tell it. Tell it to the Court. What
16 did you recognize? Why were you so confident?

17 A. Dealing with him before, you know. As I said
18 before, I've had a chance to deal with him on occasions.
19 Like I said, we spent hours together in 2008. I know the
20 way he -- the gestures that he makes with his hand, and
21 as he turned sideways I think it's in his nose or I know
22 his facial -- I know his facial -- he's the person when
23 you see you know him. I mean, that's the simplest way I
24 can put it to you to understand.

25 Q. So did you know it was him?

- 1 A. I did.
- 2 Q. Do you see him in the courtroom today?
- 3 A. Yes, sir.
- 4 Q. Point to him.
- 5 A. (Indicated).
- 6 Q. Describe what he's wearing.
- 7 A. Young man with a white shirt, burgundy tie maybe,
8 gray pants, black shoes.
- 9 Q. You certain that's the man that you saw in the
10 video?
- 11 A. Oh, I'm one hundred percent, sir.
- 12 Q. You certain that's the man that sat across from you
13 in an interview room in 2008?
- 14 A. That's correct.
- 15 Q. One hundred percent sure?
- 16 A. One hundred percent.
- 17 Q. What did you do based on your identification of
18 Marvin Bowens Green in that video?
- 19 A. Okay. The one night when I saw the video I
20 immediately knew who he was, and at that point in time I
21 conducted a six-man photographic lineup to SLED, State
22 Law Enforcement Division, in which I sent to them, and it
23 was a six-man photographic lineup. I sent it to them via
24 email. I got within a matter of hours. I got a response
25 from them which showed the defendant along with five

CHARLES LAWRENCE (IC) - DIRECT BY MR. DURANT 87

1 other similar parties that they responded back with, at
2 which time I contacted the victim, Mr. Patel, and I
3 arranged to meet with him so that I can show him the
4 six-man photo lineup.

5 Q. Okay. So the first thing you did is you wanted to
6 put the defendant's picture in a six-pack photo lineup?

7 A. That's correct.

8 Q. And you went about doing that by requesting SLED to
9 assemble it for you?

10 A. Yes, sir.

11 Q. And you did that on the same day that you
12 recognized the defendant from the video?

13 A. Yes, sir.

14 Q. And why did you want to do that?

15 A. Wanted to further -- at the sheriff's office I knew
16 who he was. I wanted to give a fair trial and ensure
17 that the victim could positively identify this defendant
18 from a six-man photo lineup, and that's the policy. We
19 take the extra step to ensure that we have the right
20 person.

21 Q. All right. So did you receive a six-pack photo
22 lineup containing this defendant's picture?

23 A. I did.

24 Q. Back from SLED?

25 A. Yes, sir.

1 Q. And how did that arrive to you?

2 A. Via email.

3 Q. And what did the pictures try to depict? I mean,
4 how many people are in that photo lineup?

5 A. It's a total of six.

6 Q. Are you looking for people with similar
7 characteristics?

8 A. Yes, sir.

9 Q. Try to get people to kind of resemble the
10 defendant?

11 A. Yes, sir. That's correct.

12 Q. And why do you do that?

13 A. That's -- the reason why that's done is to -- so
14 that the defendant will not just stand out. It's not
15 something that we do. It's done by SLED, but however,
16 it's always the defendants and five similar photos, and
17 that's the way it's always been.

18 (WHEREUPON, Court's Exhibit Numbers 5 and 6,
19 Documents, were marked for identification only.)

20 BY MR. RUTLEDGE DURANT:

21 Q. Showing you what's labeled State's 5 for
22 identification. I'd ask you to take a look at that. Do
23 you recognize that?

24 A. Yes, sir, I do.

25 Q. And how do you recognize that?

1 A. I recognize Mr. Bowen being number four on this
2 six-person photo lineup.

3 Q. Well, where did it come from?

4 A. This came from State Law Enforcement Division, one
5 of their employees sent it. They responded to my email.
6 They process it and reply back to me.

7 Q. All right. And what, if anything, did you do with
8 it when you received it back from SLED?

9 A. Once I retrieved the email back from SLED I
10 conducted -- actually, I contacted a detective who had no
11 knowledge of this case. Once I -- after I met with the
12 -- after I contacted the victim -- let me start this
13 over. After I got this back, the photographic lineup, I
14 first of all confirmed that A, Mr. Bowen was on here.

15 Once I did that I contacted the victim and arranged
16 to meet with him, and he informed -- advised me that he
17 was at the Citadel Mall, at which time I met with him at
18 the Citadel Mall. I had Detective Perkins go along with
19 me because he had no knowledge of this case whatsoever.

20 Q. What's Detective Perkins' full name?

21 A. James Perkins.

22 Q. So you wanted to show this to the victim; is that
23 correct?

24 A. That's correct.

25 Q. And how did you arrange to do it?

1 A. Contacted him via cell phone or landline -- cell
2 phone, at which time we met at the Sears at Citadel Mall?

3 Q. Who did you go with?

4 A. Detective Perkins.

5 Q. Did you all ride in one car or ride separate?

6 A. We rode in one car.

7 Q. Where did you go at Citadel Mall?

8 A. Well, met him inside the store but we came --
9 walked out of the store and this is where the business
10 was conducted, into the parking lot area.

11 Q. Okay. Who did you meet?

12 A. Mr. Patel and his son.

13 Q. If you don't know the exact age can you guess about
14 how old his son was.

15 A. Yes, sir. I remember his son was 12 years old at
16 the time.

17 Q. All right. Now, did you, yourself, administer the
18 lineup?

19 A. No, sir.

20 Q. Who did?

21 A. Detective James Perkins.

22 Q. Why did you not do it?

23 A. Because I knew who the defendant was and, again, I
24 want to keep it fair and that's --

25 Q. What was the first thing you just said?

CHARLES LAWRENCE (IC) - DIRECT BY MR. DURANT 91

- 1 A. I knew who the defendant was.
- 2 Q. Okay. And --
- 3 A. I had knowledge of the defendant.
- 4 Q. Well, did Detective Perkins have knowledge of the
5 defendant?
- 6 A. He had none.
- 7 Q. You didn't tell him?
- 8 A. That's correct.
- 9 Q. So what was Detective Perkins' role in coming out
10 there?
- 11 A. Administer the six-man photo -- six-person photo
12 lineup to the victim.
- 13 Q. And again, why didn't you do it?
- 14 A. Again, because I had knowledge of who the defendant
15 was.
- 16 Q. And was it important for you to have somebody who
17 did not have knowledge of who the defendant was?
- 18 A. Essentially.
- 19 Q. And why?
- 20 A. Actually, we have a standard operating procedure
21 which forbids that.
- 22 Q. Where were you when the procedure was administered?
- 23 A. I was in proximity of everything else going on.
- 24 Q. Was does that mean?
- 25 A. I was within --

1 Q. Did you see him administer it?

2 A. I did.

3 Q. Were you involved in any way?

4 A. None at all.

5 Q. Do you know how the procedure was administered?

6 A. Detective Perkins read off a list of things to him,
7 had him to initial, at which time he showed him the
8 lineup and Mr. Patel, the adult Mr. Patel, obviously he
9 saw someone in there who resembles the defendant and he
10 circled and put a date and time and he signed off on it
11 and he initialled -- I mean, he printed his name as well
12 as Detective Perkins.

13 Q. Now, words are very important, right?

14 A. Yes, sir.

15 Q. Now, you didn't administer the procedure, right?

16 A. Correct.

17 Q. Now, did Mr. Patel ever tell you that he circled
18 somebody who resembled the defendant?

19 A. No, sir.

20 MR. GRIMES: Asked and answered. He's already
21 testified --

22 MR. RUTLEDGE DURANT: We're just trying --

23 THE COURT: Hold on just one second, Counsel.

24 MR. GRIMES: I'm sorry.

25 THE COURT: Could you repeat what you just said?

CHARLES LAWRENCE (IC) - DIRECT BY MR. DURANT 93

1 MR. GRIMES: Yes, ma'am. I apologize. The
2 objection is asked and answered. Detective Lawrence
3 already testified that Mr. Patel picked out someone who
4 resembled the person in the store, and I believe the
5 State should move along.

6 THE COURT: Overruled. Thank you. You may answer.
7 Thank you.

8 MR. RUTLEDGE DURANT: Thank you, Your Honor.

9 BY MR. RUTLEDGE DURANT:

10 Q. Did Mr. Patel ever tell you that he picked out
11 somebody who merely resembled the defendant?

12 A. No, sir. For the record, Mr. Patel -- I didn't
13 have any interactions with him whatsoever during this
14 time. I was sitting back. Once Detective Perkins
15 completed this I looked at the lineup and I saw that he
16 had the correct person.

17 So he didn't say anything to me about resembling.
18 What I say was once Detective Perkins explained -- once
19 he finished with him he gave me the paperwork. I looked
20 at it and I saw that he had the right person.

21 Q. So for Mr. Patel's exact reaction we would have to
22 ask Detective Perkins?

23 A. Yeah, that's correct.

24 Q. As the case agent what was your understanding of
25 how positive Mr. Patel was that he had circled the man

1 who robbed him at the store --

2 A. Again --

3 Q. -- as the case agent?

4 A. As the case agent --

5 Q. What was your understanding?

6 A. My understanding that he positively -- what I can
7 see is he positively identified the correct person but
8 when this was going on I was there but I didn't partake
9 in it. I wasn't looking at what was going on. I was
10 there. I didn't -- you know, I was closer than you are
11 but my job is not to get into it because that was --

12 Q. So as the case agent you were depending upon
13 Detective Perkins?

14 A. That's correct.

15 Q. Did you talk to Detective Perkins about this
16 procedure after you all left the victims at Citadel Mall?

17 A. No, sir. We went back to the station.

18 Q. Detective Perkins, you never had a conversation
19 with him regarding if the victim was positive this was
20 the robber or not?

21 A. As part of the statement -- I mean, as part of the
22 portion that he reads to him we can't tell the victim
23 whether he has a positive identification or not.

24 Q. You can't tell him that.

25 A. Correct.

1 Q. But did he tell you? Did he tell Perkins?

2 A. Yes.

3 Q. Did he?

4 A. Obviously.

5 Q. Okay. Good. Did you mention that -- you said you
6 didn't say anything to Mr. Patel after he circled this
7 photo?

8 A. Correct.

9 Q. I mean, you didn't confirm that he had circled who
10 you thought might be the suspect was?

11 A. That's correct.

12 Q. And why did you tell him that?

13 A. It's in the literature that's on that whether you
14 made a positive identification or not you will not be --
15 I don't remember verbatim, but in short whether you
16 identified him or not you will not be advised of this,
17 and it further states not to talk about it with any other
18 witnesses.

19 Q. And so you abide by the policy?

20 A. Yes, sir.

21 Q. And so nobody told Mr. Patel that there were going
22 to be any consequences at that point from circling that
23 photo?

24 A. No, sir. What it is, I told him I'd be getting
25 back with him. I said, I'll get back with you.

1 Q. That's all you told him?

2 A. I'll get back to you when an arrest is made, I
3 think. Yes, sir. Something of that nature, but I didn't
4 let him know that he positively identified the right
5 person. I said he will be notified when an arrest is
6 made?

7 Q. Did you indicate to him that an arrest was going to
8 be made based on his circling that photo?

9 A. I advised Mr. Patel that when an arrest is made he
10 will be notified.

11 Q. What did you do based on Mr. Patel's circling that
12 picture?

13 A. We went back to 3505 Pine Haven Drive, at which
14 time I generated an arrest warrant for Mr. Marvin Bowens
15 Green for armed robbery and possession of a handgun
16 during the commission of a violent crime.

17 Q. All right. And was he arrested?

18 A. Yes, sir.

19 Q. Do you know when?

20 A. I do not.

21 Q. Are you positive the man you saw in that video is
22 Marvin Bowens Green?

23 A. I'm very positive. Yes, sir.

24 Q. Could anything sway you from that conviction?

25 A. No, sir, nothing whatsoever.

CHARLES LAWRENCE (IC) - DIRECT BY MR. DURANT 97

1 Q. And you made that identification because you knew
2 him?

3 A. Because I knew him, along with the positive
4 identification of the victim.

5 Q. I'm just asking about your identification.

6 A. Yes, sir.

7 Q. Of him in that video.

8 A. Yes, sir.

9 Q. Are you positive of your identification of him in
10 that video?

11 A. I'm absolutely positive, yes.

12 Q. And you've made that identification because you
13 knew him?

14 A. Because I knew him, yes, sir.

15 Q. And you had known him for?

16 A. Some years.

17 Q. Years?

18 A. Yes, sir.

19 Q. Personal experience with him?

20 A. Yes, sir.

21 MR. RUTLEDGE DURANT: Thank you.

22 THE COURT: Mr. Grimes.

23 MR. GRIMES: Thank you, Your Honor. Please the
24 Court.

25 CROSS-EXAMINATION

1 BY MR. GRIMES:

2 Q. Detective Lawrence, I want you to watch this video.

3 (WHEREUPON, a surveillance video was played.)

4 Q. I believe there's different angles of this, too.

5 A. Yes, sir.

6 Q. I'm going to pause it there. I apologize. And I

7 believe on direct you testified that you were a hundred

8 percent sure the person who walked in there was

9 Mr. Bowens Green?

10 A. Yes, sir.

11 Q. And you testified it was his mannerisms?

12 A. Yes, sir.

13 Q. What mannerism in there made you pick him, did you

14 recognize that from Mr. Green?

15 A. Well, the first video that I saw was him at the

16 register. That was the first one I saw. When I saw the

17 video it was him at the register pointing the handgun at

18 Mr. Patel, and based on that is how I made my

19 identification of who he was. Not this right here, but

20 that is his walk. That is his walk.

21 Q. And you're sure that's his walk?

22 A. Yes, sir.

23 Q. And he walked pigeon-toed there?

24 A. Yes, sir.

25 Q. And he's the only one that you know that walks

1 pigeon-toed?

2 A. I'm not going to say he's the one I know but I know
3 his walk.

4 Q. Well, what about his walk makes him different from
5 other walks?

6 A. Again, I dealt with him before. He's walked with
7 me to and from our substation, from our headquarters to
8 the detention center. I mean, that's height and weight,
9 that's him, and the walk and all.

10 Q. And can you tell -- you talk about height. Can
11 you tell from the video how tall the person in that video
12 was?

13 A. Again, the video that I was shown was him at the
14 register pointing his handgun in Mr. Patel's face,
15 robbing him. Can we show that one?

16 Q. Let me try to see if I can find that. I apologize.

17 A. Thank you.

18 (PAUSE.)

19 Q. While that's getting set up let me see if I can ask
20 you some other questions.

21 A. Yes, sir.

22 Q. You said his face stood out?

23 A. Yes, sir.

24 Q. You ever get a good look at his face?

25 A. In the video?

1 Q. Yes, sir.

2 A. Yes, sir. He turned and looked at the camera a
3 couple times.

4 Q. And the person in the video, was he wearing
5 anything over his head?

6 A. He did have a hood on and there were some shades,
7 some black eyeglasses shades.

8 Q. And that didn't prevent you from recognizing the
9 person?

10 A. No, sir, not at all.

11 Q. Now, I'll ask you a few questions about how you
12 first got involved in this case, okay?

13 A. Yes, sir.

14 Q. You said that initially you read the incident
15 report?

16 A. Yes, sir.

17 Q. And after you read the incident report you called
18 to see when the video would be in?

19 A. Yes, sir.

20 Q. And you watched the video?

21 A. Yes, sir.

22 Q. And you were able to pick out Mr. Green from
23 watching the video?

24 A. That's correct.

25 Q. At the time you watched the video you already knew

CHARLES LAWRENCE (IC) - CROSS BY MR. GRIMES 101

1 who the suspect was, correct?

2 A. Well, it was implicated by the responding deputy
3 that it was Mr. Marvin Bowens Green, that's correct.

4 Q. And was Detective Luckadoo the responding deputy?

5 A. He was.

6 Q. And so you already had some knowledge in your mind
7 when you were watching the video as who this could be,
8 correct?

9 A. Again, I didn't see the video. Once I saw the
10 video I confirmed with what I saw, whom I saw.

11 Q. All right. But you had Mr. Green -- you knew he
12 was a suspect when you watched the video, correct?

13 A. Again, I didn't read [sic] the video. Prior to
14 that I read the incident report, contacted the victim and
15 I contacted our forensic unit, and the 29th when I saw
16 the video my eyes saw it to be Marvin Bowens Green.

17 Q. Let me try to rephrase this question.

18 A. Yes, sir.

19 Q. When you watched the video you already knew who the
20 suspect was, correct?

21 A. It was written -- he was listed as a suspect,
22 potentially.

23 Q. He was the only suspect listed on there, correct?

24 A. Yes, sir.

25 Q. And not by detective -- I mean Deputy Luckadoo,

1 also by Mr. Patel, correct?

2 A. I'm sorry?

3 Q. Mr. Patel also gave the name of Mr. Green, correct?

4 A. Mr. Patel, if anything, said he knows him from
5 being a regular customer in the store.

6 Q. I'm going to ask you a few questions about the
7 lineup procedure.

8 A. Yes, sir.

9 Q. You said it was important not to give Mr. Patel or
10 anyone else who you asked them to do a lineup the names
11 of a person, correct?

12 A. Yes, sir.

13 Q. And that would apply to any eyewitness, correct?

14 A. Yes, sir.

15 Q. And in this case you are an eyewitness, correct, or
16 a witness to the video?

17 A. A witness to the video, yes.

18 Q. So same policy should be followed with you as
19 opposed -- as with Mr. Patel, correct?

20 A. Give me that another way.

21 Q. I mean, if you're going to be testifying as to
22 identification of a suspect based upon the video you
23 should follow the same precautions as a regular witness,
24 correct?

25 MR. RUTLEDGE DURANT: Objection. It's confusing,

CHARLES LAWRENCE (IC) - CROSS BY MR. GRIMES 103

1 first of all, and it's having this witness testify to
2 legal issues.

3 THE COURT: Counsel, rephrase your question. I was
4 confused by your question. So if you could rephrase your
5 question. I think maybe break it down.

6 MR. GRIMES: Thank you, Your Honor.

7 THE COURT: Thank you.

8 BY MR. GRIMES:

9 Q. You've talked to me -- talked about the policies as
10 to policy 806; is that correct?

11 A. I'm not sure of the number. We have so many
12 policies.

13 Q. If I showed you a copy of the policy would that
14 refresh your memory?

15 A. Yes, sir.

16 MR. GRIMES: May I approach the witness, Your
17 Honor?

18 THE COURT: You may.

19 MR. GRIMES: Thank you.

20 BY MR. GRIMES:

21 Q. I'll show you what's marked as Defendant's Exhibit
22 2 for identification, premarked as Defense 2. And what
23 is that policy for?

24 A. Show-ups, photo identification and lineups.

25 Q. And one reason you have the policies, to prevent

1 misidentification of people, correct?

2 A. That's correct.

3 Q. You've worked cases where you've received
4 eyewitness ID's that have turned out to be incorrect,
5 correct?

6 A. Yes, sir.

7 Q. All right. And so it's very important not to give
8 a suggestive lineup to someone. It's important not to
9 have a lineup that's suggestive to a witness, correct?

10 A. Well, suggestive meaning?

11 Q. Well, if you look at paragraph two of your policy
12 doesn't it say, In order to ensure reliable and accurate
13 identifications it is the policy of Charleston County
14 Sheriff's Office to prepare a lineup in a non suggestive
15 manner so the suspect in a case does not unduly stand
16 out.

17 A. That's correct.

18 Q. And the reason for that you is, as you stated, you
19 want to be fair?

20 A. Yes, sir.

21 Q. You want to take the extra step?

22 A. Yes, sir.

23 Q. And if you tell the witness, like, Well, we believe
24 John Doe did this crime, and you show him a lineup with
25 John Doe in there that could be suggestive, correct?

CHARLES LAWRENCE (IC) - CROSS BY MR. GRIMES 105

1 A. Are you implying that I told someone?

2 Q. No, sir, just general procedures.

3 A. I'm the case agent. As me being the case agent I
4 only read the incident report. You know, I understand
5 what Deputy Luckadoo puts in there but what my eyes saw
6 on the 29th is what I went by, okay? That's what I'm
7 saying. I generate the paperwork, I generated the photo
8 lineup. Deputy Luckadoo, he just -- he did the initial
9 incident report, and that was all he did.

10 Q. Again, it would be important when you're showing a
11 lineup to somebody not to tell the person who you are
12 showing the lineup to the name of the suspect in there?

13 A. Yes, sir, that's correct.

14 MR. RUTLEDGE DURANT: Your Honor, for the sake of
15 brevity, if point is that this detective --

16 THE COURT: I gave you lots of leeway, Mr. Durant.
17 I'm going to let Mr. Grimes have all he needs so that he
18 can ask all the questions of this witness he needs to.
19 Thank you.

20 BY MR. GRIMES:

21 Q. And in this case you knew the name of the suspect
22 when you read the incident report?

23 A. It was in there. I didn't confirm it until the
24 29th of December 2010.

25 Q. All right. I understand you didn't confirm it but

1 it was in the incident report, you read that. That was
2 in your mind when you were watching the video.

3 A. It's not -- it's like you're trying to catch me
4 into something and I'm being honest with you as I can.
5 Regardless of what Detective Luckadoo said, until I saw
6 it, I'm the one that has to be here for court, until I
7 saw with my own eyes, confirmed the identity of him that
8 I know who he was. You know, just like you said, that
9 could have been a mistaken identity on his behalf. I
10 don't know.

11 Unless I saw it, with my past dealings with him I
12 generated a six-man photographic lineup, contacted the
13 victim, met with the victim. Had someone that had no
14 knowledge of it, and once it was confirmed by myself and
15 the victim that's when I generated the arrest warrant for
16 Mr. Green, Bowens Green.

17 Q. I want to follow up with something you just said.
18 You said it could have been a case of mistaken identity.
19 Are you basically saying Deputy Luckadoo may have made a
20 mistake?

21 A. I'm not saying that. That's what he put in the
22 there, but he doesn't take this case to court. This is
23 my case. And when you are the detective assigned to the
24 case you have to go by -- you know, it's good to have
25 someone say who they think it was, or whomever, that's

CHARLES LAWRENCE (IC) - CROSS BY MR. GRIMES 107

1 nice, but once I confirm it with my eyes I then sent off
2 for the photo lineup to SLED.

3 Q. And if it's confirmed to your eyes you really don't
4 need a lineup, do you?

5 A. It's not like that, Mr. Grimes. Mine alone doesn't
6 do it.

7 Q. Okay. So are you saying that when you watch the
8 video and you come and say I identified that person, that
9 alone is not enough?

10 A. No, sir.

11 Q. You're saying it is enough?

12 A. No. No. Just me saying alone, no, sir. You know
13 the rules. No victim, no crime. So that's why I went to
14 the victim, and the victim positively identified him.

15 Q. Now, I'm going to ask you some questions about
16 Mr. Patel.

17 A. Yes, sir.

18 Q. As case agent you are responsible for reviewing all
19 the paperwork in the case?

20 A. Yes, sir.

21 Q. Including the initial incident report?

22 A. Yes, sir.

23 Q. You do your own supplemental reports, if needed?

24 A. Yes, sir.

25 Q. You talk to witnesses?

1 A. Yes, sir.

2 Q. Talk to anyone who may have watched the video and
3 recognized who the robber may have been?

4 A. Yes, sir.

5 Q. In the initial incident report Mr. Patel said the
6 person who robbed him is a stranger, correct?

7 A. Yes, sir, he did.

8 Q. And he didn't give a height of the person?

9 A. You said he did give a height?

10 Q. No. I don't believe there's anything in there
11 about the height of the robber from Mr. Patel, is there?

12 A. That's correct.

13 Q. Nothing about the robber's weight?

14 A. If I'm -- yes, sir. That's correct.

15 Q. Nothing in there about the robber walking
16 pigeon-toed?

17 A. He's the owner of the store. The victim -- I don't
18 know if he would -- he's not trained to pay attention to
19 stuff like that. He did say stranger, however stranger
20 means that he didn't know him by name but he knows him as
21 a customer, a regular customer being inside the store.

22 Q. But he didn't say anything about the person walking
23 pigeon-toed, did he?

24 A. No, sir. That's my observation.

25 Q. Didn't say anything about any unique facial

CHARLES LAWRENCE (IC) - CROSS BY MR. GRIMES 109

1 characteristics?

2 A. I guess it's kind of hard to pay attention to all
3 that, Mr. Grimes, if you got a gun in your face. I don't
4 know.

5 Q. Because he might be looking at the gun, right?

6 A. Exactly.

7 Q. And not looking at the person who was robbing him?

8 A. Correct.

9 Q. And that can cause someone to be under stress,
10 correct?

11 A. Yes, sir.

12 Q. And he might not be paying attention to the person
13 because so much is going on; you're scared, emotional?

14 A. Yes, sir.

15 Q. And would affect their ability to make a reliable
16 identification if they are looking at the gun while they
17 are scared, under stress and emotional, correct?

18 A. The victim made a reliable identification, positive
19 identification.

20 Q. But if someone is under those type of emotions that
21 could affect their ability?

22 A. Maybe to give a description of the person. You
23 know, they may forget particulars, some particulars that
24 are important, but ultimately, subsequently, he was able
25 to identify him.

1 Q. Well, that's what we're here for today, right?

2 A. Yes, sir, Mr. Grimes.

3 Q. Now, I believe there is some allegation that
4 Mr. Patel stated that Mr. Green had robbed him before?

5 A. Yes, sir.

6 Q. And that after that robbery Mr. Green had come in
7 there as a customer before --

8 A. Yes, sir.

9 Q. -- or again?

10 A. Yes, sir.

11 Q. And there's no indication that Mr. Patel ever
12 called the police to say the man who robbed me before is
13 now back in the store as a customer, is there?

14 A. I'm not sure of that Mr. Grimes but he did -- he
15 did make mention of it. So I don't know if he told
16 Deputy Luckadoo that or not.

17 Q. And Deputy Luckadoo responded on December 24th,
18 2010?

19 A. Yes, sir.

20 Q. And took a report?

21 A. Yes, sir.

22 Q. And it looks like you and Deputy Perkins went out
23 on December 29th to talk to Mr. Patel?

24 A. Yes, sir.

25 Q. I'm going to ask you a little bit about that

CHARLES LAWRENCE (IC) - CROSS BY MR. GRIMES 111

1 incident, okay?

2 A. Yes, sir.

3 Q. Or experience. So when you get the lineup from
4 SLED how do you choose someone to go out with you as the
5 independent administering?

6 A. He's independent; however, the way it works is
7 Detective Perkins is a persons crime, along with me,
8 okay. I'm Ravenel to Hollywood. I'm sorry. Ravenel to
9 Edisto. That's my area. His area is a whole different
10 area. It may be James Island to Johns Island, okay.
11 Now, he's a person to crime detective, so I grabbed him.
12 And once I made arrangements to meet with the victim, at
13 which point in time I gave him the paperwork, I
14 introduced him to the victim and his son, and I backed up
15 from there.

16 Q. Now, what paperwork did you give to Detective
17 Perkins?

18 A. A six-person photo lineup as well as the advisement
19 form where it says, you know, all of that; you'll be
20 shown a six-person lineup or array of six different
21 people, etcetera, etcetera, etcetera, at which point he
22 initialled, signed, identified -- positively identified
23 him and etcetera, etcetera, etcetera.

24 Q. Did you give Deputy Perkins a copy of the incident
25 report?

- 1 A. I don't recall.
- 2 Q. Did you give him any of your sort of emails,
3 exchanges to SLED?
- 4 A. Detective Perkins?
- 5 Q. Yes, sir.
- 6 A. No, sir.
- 7 Q. When you are riding out from station, I guess off
8 Pine Haven to Citadel Mall?
- 9 A. Right.
- 10 Q. You and Detective Perkins rode in the same car?
- 11 A. Yes, sir, pretty sure.
- 12 Q. So about a 20-minute drive?
- 13 A. Not that long.
- 14 Q. Were you talking about the case in the car?
- 15 A. No, sir.
- 16 Q. What were you guys talking about?
- 17 A. On the way there?
- 18 Q. Yes, sir.
- 19 A. I just advised that we got to meet him, show a
20 six-person photo lineup of an armed robbery that
21 occurred, and that was it.
- 22 Q. And you and Deputy Perkins didn't have any small
23 talk, or talk about the case, or anything at all?
- 24 A. Not as it relates to the case, no.
- 25 Q. Now, at the Citadel Mall you said there's Mr. Patel

CHARLES LAWRENCE (IC) - CROSS BY MR. GRIMES 113

1 and his son?

2 A. Yes, sir.

3 Q. And so Deputy Perkins met with Mr. Patel or both
4 him and his son?

5 A. Both. I didn't know his son by name. I still
6 don't know. His name, I still don't know his first name.
7 It's something that starts with an N, okay. It's a long
8 name. But I know the last name was a common name. It's
9 Patel. I introduced him, him and his son -- well,

10 Detective Perkins to Mr. Patel, and which he introduced
11 us to his son, and which time we walked out of the store
12 because we had this official paperwork there.

13 So we walked out of the store where everyone
14 wouldn't be in our business, into the parking lot area,
15 and Detective Perkins took over from there. I was in the
16 proximity but I did not get into anything that was done.

17 Q. All right. What was the son doing?

18 A. He was interpreting for his father at that time.

19 Q. Okay. So would it be fair to say Deputy Perkins
20 would have read him sort of the advisement of rights or
21 photographic admonition and his son translated?

22 A. Yes, sir. His son was definitely translating. His
23 son was there for the reading. It was read to the
24 father. The son understood it and he interpreted it to
25 his father.

1 Q. You know if there were any problems with the
2 translation?

3 A. It took a while. It took him maybe close to 10
4 minutes. I don't know. It took a while, longer than
5 normal though.

6 Q. Okay. And was it 10 minutes to read the rights
7 form?

8 A. Yes, sir. I guess to -- not only so as to read it
9 but to make sure that he thoroughly understands it. You
10 know, before you put your initials on we want to make
11 sure that you understand, and his son was -- his son
12 speaks fluent English as well and he was -- his son is a
13 good interpreter as well.

14 Q. All right. And after he read him the rights what
15 did Detective -- Deputy Perkins do?

16 A. Once he did that he gave him the lineup, the
17 six-persons photo lineup here that I have.

18 Q. Yes, sir.

19 A. And Mr. Patel looked at it, and when he looked at
20 it he immediately circled -- I think he said, like,
21 That's him, or that's him, or something like that, and
22 that's when he was instructed to circle the photograph,
23 circle the whole picture, put today's date, his initials,
24 and the time.

25 Q. And you said he immediately circled. Did you know

CHARLES LAWRENCE (IC) - CROSS BY MR. GRIMES 115

1 how long he looked at the lineup --

2 A. Once he got it he didn't ponder on it at all. Once
3 he saw the photo lineup he automatically knew.

4 Q. And after that Deputy Perkins said, Good job?

5 A. He didn't say anything. He had him to sign his
6 name. On the cover sheet you have to sign your name and
7 print your name as the witness, then he has to sign his
8 name as the deputy who showed him the photo lineup.

9 Q. Okay. Did he say anything else to him?

10 A. No, sir. I advised Mr. Patel -- once I looked at
11 it, I saw that he had a positive identification, I let
12 him know that we will inform him when an arrest is made.

13 Q. So by informing him that when an arrest is made you
14 are basically saying you've got the right guy, we'll let
15 you know when we arrest him?

16 A. I never uttered those words.

17 Q. Maybe not that way but that's -- you can infer
18 that. Say -- well, you know, under these circumstances
19 Mr. Patel just circled somebody, according to you, right
20 away?

21 A. Yes, sir.

22 Q. And then you say, All right, we're going to let you
23 know when we make the arrest?

24 A. Yes, sir.

25 Q. And he could infer from that that well, I got the

1 right guy. They are going to go arrest him. Is that
2 fair to say?

3 A. He could say I don't know if I got the right guy or
4 not because they didn't tell me.

5 Q. Then I believe you swore out the warrant the next
6 day, on December 30th?

7 A. Yes, sir. Um -- yes, sir.

8 Q. Looks like the next action you took in the case was
9 you prepared a supplemental report on January 11th?

10 A. Yes, sir.

11 Q. And in that report you don't say anything about
12 Mr. Patel immediately picking out Mr. Green, do you?

13 A. No, sir, I did not.

14 Q. And there's nothing in that report about Mr. Patel
15 saying that the person had been a prior customer, or
16 Mr. Green had been a prior customer?

17 A. That may be in his statement but it did come out of
18 his mouth, yes, sir.

19 Q. But I understand we're talking about your report of
20 January 11th, 2011.

21 A. Okay. I stand corrected. On my report I did not.
22 You're correct.

23 Q. There's nothing in there about Mrs. Patel
24 identifying the person in the video as being Mr. Green,
25 is there?

CHARLES LAWRENCE (IC) - CROSS BY MR. GRIMES 117

1 A. No, sir.

2 Q. And that was about 16 days, 17, 18 days after the
3 incident?

4 A. I guess so.

5 Q. And you had more than adequate time to write a full
6 report?

7 A. Yes, sir.

8 Q. Wasn't rushed or anything when you were writing
9 this report?

10 A. No, sir.

11 Q. That's what you use to do your grand jury summary,
12 correct?

13 A. That's correct.

14 Q. And I believe you created your grand jury summary
15 on December 14 -- excuse me, January 14th?

16 A. January, yes, sir. That sounds about right.

17 Q. Okay. And that's where you swear before -- you go
18 before a grand jury and they are sworn -- I mean, you're
19 sworn under oath?

20 A. That's correct.

21 Q. About you went before the grand jury in this case?

22 A. I'm not going to say that I did. Whoever did it,
23 we have a different detective do it monthly.

24 Q. Your name is on the indictment, isn't it, as being
25 the testifying officer?

1 A. Monthly we have a different detective assigned to
2 grand jury.

3 Q. But your name is on the indictment as the
4 testifying officer.

5 A. Okay. Well, maybe that was mine. Maybe I did do
6 it in that month. I'm saying that was 2000 -- what 2010,
7 2011? I don't know who did the grand jury that --

8 Q. If I showed you a copy of the indictment would that
9 refresh your memory?

10 A. Yeah, that would help but --

11 MR. RUTLEDGE DURANT: Your Honor, I just fail to
12 see how this is relevant, the indictment.

13 THE COURT: Move on, Mr. Grimes. Thank you.

14 BY MR. GRIMES:

15 Q. And in the grand jury summary you didn't say
16 anything in there about Mr. Green being a prior customer
17 at the store?

18 A. Correct.

19 Q. Or you didn't say anything about Mr. Patel's wife
20 being able to pick out Mr. Green from the video?

21 A. Mr. Patel picked him out, sir.

22 Q. It's my understanding the State plans to call
23 Ms. Patel as a witness, correct?

24 A. That's correct.

25 Q. Have you talked to her about this case?

CHARLES LAWRENCE (IC) - CROSS BY MR. GRIMES 119

- 1 A. To who?
- 2 Q. Ms. Patel?
- 3 A. I dealt strictly with Mr. Patel.
- 4 Q. Okay. Do you know who showed her the video?
- 5 A. Showed who?
- 6 Q. Ms. Patel.
- 7 A. I didn't. No, sir.
- 8 Q. Do you know who did?
- 9 A. I don't know.
- 10 Q. I'm going to ask you just a couple follow-up
- 11 questions. Between the indictment and preparing this
- 12 case for trial have you spoken to Mr. Patel about this
- 13 case?
- 14 A. No, sir.
- 15 Q. You didn't speak the him in the hallway this
- 16 morning?
- 17 A. Not about this case, no, sir.
- 18 Q. Just talk in general?
- 19 A. Yes, sir.
- 20 Q. Didn't talk to him anything about him picking out
- 21 the right person or how the trial is going to go?
- 22 A. No, sir.
- 23 Q. And is it fair to say you have a pretty good eye
- 24 for detail?
- 25 A. I do pretty good, yes, sir.

1 Q. And you're able to pick out the serial number of
2 the gun used in this case?

3 A. If I had known if that was the gun or not.

4 Q. You testified before the grand jury a specific
5 serial number, didn't you?

6 MR. RUTLEDGE DURANT: Objection. This is not
7 relevant and it's not bearing on the identifications in
8 this case.

9 THE COURT: Mr. Grimes, your response?

10 MR. GRIMES: Detective Lawrence testified he's sort
11 of trained, he observed mannerisms, how he could tell by
12 the store video that he walked pigeon-toed, and this
13 identification is the defense in this case. He testified
14 before the grand jury that it was a specific gun used.
15 If we can show he misidentified the gun it may lead to
16 inference he's misidentified Mr. Green. We believe it's
17 relevant to that, Your Honor.

18 THE COURT: Sustained. Move on, Mr. Grimes. Thank
19 you.

20 BY MR. GRIMES:

21 Q. Now, during your testimony you testified about sort
22 of being proactive in the community?

23 A. Yes, sir.

24 Q. Now, you knew Mr. Green as being one of the Bowens
25 children?

CHARLES LAWRENCE (IC) - CROSS BY MR. GRIMES 121

1 A. Yes, sir.

2 Q. And you know his father?

3 A. Yes, sir.

4 Q. You worked with his father on, I guess cases, or
5 he's given you information on cases?

6 A. Yes, sir, he has.

7 Q. And how long have you known his father?

8 A. Maybe since 2004. The latter part of 2003, 2004.

9 Q. And have you known Mr. Green that long, too?

10 A. He came in the picture somewhat after, after that,
11 maybe like -- I don't know. It was after -- it was after
12 that. I knew the father first though.

13 Q. Okay. Apart from, I guess the interrogation of
14 Mr. Green you had in 2008, you've testified you started
15 seeing him in the Hollywood area?

16 A. Actually, the Adams Run. My area of patrol is
17 Hollywood to Edisto. I was just giving you my whole
18 area. However, his father resides in the Adams Run area,
19 or his mother. One of the two. One of them is in
20 Colleton County and the other one is in Charleston
21 County, yes, sir, in the Adams Run area.

22 Q. Do you know if Mr. Green lives in Colleton County
23 in Jacksonboro or in Charleston County?

24 A. He's back and forth.

25 Q. And you said you've kind of seen him, I guess and

1 talked to him, sort of generally?

2 A. Right. Right. But it's never been at him being in
3 any trouble or anything. Correct.

4 Q. Prior to that 2008 incident?

5 A. Yeah. Well, that was really the first, yes, sir.

6 Q. And so when you were interviewing him was he
7 sitting down? In 2008, let me ask you questions about
8 that interview.

9 A. Yes, sir.

10 Q. He was in an interview room or an interrogation
11 room?

12 A. Yes, sir.

13 Q. And was he sitting down at a table?

14 A. Yes, sir.

15 Q. And you said I think you walked with him a few
16 places?

17 A. You know, once we parked the cruiser you have to
18 walk from the parking lot upstairs into the interview
19 room.

20 Q. And you're handcuffed generally when you're walked
21 up there?

22 A. Yes, sir, handcuffed and shackled.

23 Q. And that can affect the way you walk, correct?

24 A. Sir?

25 Q. Being shackled and handcuffed could affect your

CHARLES LAWRENCE (IC) - CROSS BY MR. GRIMES 123

1 balance and the way you walk, correct?

2 A. I guess, Mr. Grimes.

3 Q. Well, I mean, if you are shackled would that affect
4 your walk?

5 A. Well, I'm sure it will restrict but not affect.

6 Q. Well, that's the purpose of it, too, to restrict
7 him from running, right?

8 A. Exactly.

9 Q. And then when you saw him sort of in the area what
10 was he doing?

11 A. You talking about prior to?

12 Q. Yes. When you just talked to him generally about
13 stuff.

14 A. You know, I know people in Adams Run area, okay,
15 and it's important that you know the citizens.

16 Q. I understand that. I guess I'm trying -- did you
17 see him, get a good chance to watch him walk around when
18 you were talking to him or was he just like me and you
19 right now talking?

20 A. As knowing him over the years and he just has a
21 distinctive walk and I know the walk. It's like I know
22 you, and when I know Mr. Grimes I know Mr. Grimes.
23 Whether it's in this courtroom or in the parking lot I
24 know Mr. Grimes. I may not -- I know your walk. I just
25 pay attention to stuff like that.

1 Q. If I'm walking down East Bay at midnight and you
2 are a hundred feet away you can tell it's me?

3 A. Your height and your -- yes, sir, I know you,
4 Mr. Grimes.

5 Q. You wouldn't get me and Mr. Groeber mixed up?

6 A. No, not at all.

7 MR. GRIMES: And, Your Honor, would I be allowed to
8 proffer evidence about the gun and serial number given?
9 His testimony now --

10 THE COURT: What are you going to proffer,
11 Mr. Grimes?

12 MR. GRIMES: I'd like to ask him if he could
13 recognize the serial number.

14 THE COURT: He said no.

15 MR. GRIMES: I thought he didn't answer because the
16 State objected.

17 THE COURT: You answered no, correct?

18 THE WITNESS: That's correct, Your Honor.

19 THE COURT: Then the State objected, and I didn't
20 see the relevance past the point of beyond no because
21 we're not here about the gun. We're here about your
22 client.

23 MR. GRIMES: And I guess the one proffer question I
24 would have is how he testified before a grand jury under
25 oath that the gun had a certain serial number if he

CHARLES LAWRENCE (IC) - CROSS BY MR. GRIMES 125

1 doesn't know what the serial number was.

2 THE COURT: Just for the record, can you please
3 answer.

4 THE WITNESS: Please the Court, Your Honor. This
5 weapon that he's talking about was recovered on December
6 the 26th. Prior to the 29th I hadn't seen the gun nor
7 the video. When the gun was received, once the gun was
8 found it was put into evidence and I was informed that it
9 was very similar to the gun that was -- the gun that was
10 committed on the armed robbery on the 24th. Okay.

11 And once I saw the video on the 29th I looked at
12 the gun then and said that's very, very like
13 similarities. I mean, it's the type of gun that's -- I
14 mean, it's -- we don't have a gun that was used to commit
15 the crime but that gun that was found on the 26th is
16 very, very, very similar and we have photos of it, color
17 photos, and if you look at it and you do a still shot of
18 the video with the defendant holding the gun and see the
19 gun that was found you'll see that they have very like
20 similarities, and that's what I was saying.

21 THE COURT: Thank you, Mr. Grimes.

22 MR. GRIMES: Thank you, Your Honor.

23 BY MR. GRIMES:

24 Q. Now, you testified it was similar?

25 A. Yes. Yes, sir.

1 Q. In your report December 11th you said identical.

2 A. Okay. Identical then.

3 MR. GRIMES: May I have one moment, Your Honor.

4 THE COURT: You may.

5 MR. GRIMES: Thank you.

6 (PAUSE.)

7 BY MR. GRIMES:

8 Q. Let me ask you questions on two more topics.

9 A. Yes, sir.

10 Q. On the lineup, there's not a place there for a
11 witness to say that the defendant or robber is not there;
12 is that correct?

13 A. It's a yes or no. It says -- I forgot what it
14 says, the exact word that is says, but yes or no
15 verification, or something like that, identification.
16 Yes or no -- should be a yes or no box on the right and
17 you check that. Do you see that on it?

18 Q. I see a yes or no box.

19 A. Okay. That's what I'm saying.

20 Q. And there are no comments on the lineup saying that
21 Mr. Patel is a hundred percent sure this is Mr. Bowens.
22 On the witness identification statements there's a line
23 where he could make comments, correct?

24 A. It is a line on it now. I don't know if it was a
25 line on it then, okay.

CHARLES LAWRENCE (IC) - CROSS BY MR. GRIMES 127

1 Q. If I show you --

2 A. Yeah.

3 Q. Let me show you --

4 MR. GRIMES: May I approach, Your Honor?

5 THE COURT: You may.

6 MR. GRIMES: Thank you. I apologize.

7 BY MR. GRIMES:

8 Q. Is that the copy of the identification admonitions
9 warnings that were shown to Mr. Patel?

10 A. Yes, sir, that is it.

11 Q. And is there a place for a witness to make comments
12 as to the identification?

13 A. Yes, sir.

14 Q. And there are no comments made there, are there?

15 A. None at all.

16 Q. The last thing I want to ask you about is if you
17 can be a little more specific about the time and dates
18 and places that you've seen Mr. Green apart from the
19 interrogation, if you're able to.

20 A. Wow. Time and dates I can't give, okay. I started
21 at Charleston County Sheriff's Office in July of 2003,
22 okay, at which time I worked West Ashley, James Island
23 area. The latter part of 2003, maybe October, December,
24 from October, December 2003 until now I've worked in
25 Hollywood to Edisto and that's my -- that's how long I've

CHARLES LAWRENCE (IC) - REDIRECT BY MR. DURANT 128

1 been down in that area and I know a lot of people there.

2 So the times, time and dates I can't give you but it was
3 somewhere during that time frame.

4 Again, I didn't meet his dad until maybe '04, at
5 his club, all the stuff like that but that's when --
6 sometime it was 2004 I can safely say. Once I met his
7 dad then you know family and everything else.

8 Q. And do you know why you don't do a sequential
9 lineup as opposed to a simultaneous lineup?

10 A. This is the order that SLED does it. I didn't ask
11 for anything. I sent it off to them and asked for a
12 six-person photo lineup, and this is the protocol that
13 they use.

14 MR. GRIMES: Thank you, Your Honor. No further
15 questions at this time.

16 THE COURT: Redirect?

17 MR. RUTLEDGE DURANT: Briefly.

18 REDIRECT EXAMINATION

19 BY MR. RUTLEDGE DURANT:

20 Q. Do you know what the Jack Town Boys are?

21 A. Jack Town Boys?

22 Q. Yes.

23 A. Yes, sir.

24 Q. What's the Jack Town Boys?

25 A. That's the name of some little guys that are from

CHARLES LAWRENCE (IC) - REDIRECT BY MR. DURANT 129

1 Jacksonboro. They have a tendency there to do this and
2 that, but they call themselves the Jack Town Boys.

3 Q. You know any members of the Jack Down Boys?

4 A. I was told or I know the defendant to call himself
5 -- to associate with them.

6 MR. GRIMES: Objection. Improper foundation, lack
7 of personal knowledge.

8 THE COURT: I'm going allow it. Go ahead.

9 BY MR. RUTLEDGE DURANT:

10 Q. So I've asked you about the Jack Down Boys and if
11 you know who they are.

12 A. Yes, sir.

13 Q. And I asked you if you know anybody who's in the
14 Jack Town Boys?

15 A. Yes, sir.

16 Q. All right. And is there anybody here today who you
17 know to be in the Jack Town Boys?

18 A. Mr. Bowens, Marvin Bowens Green.

19 Q. All right. Now, was there -- do you know this
20 defendant from the Jack Town Boys for any particular
21 reason?

22 A. I guess maybe the nature of the crime. That's the
23 nature of the crime they commit so they call themselves
24 jacking somebody. They are from Jacksonboro so I'm
25 assuming that the short -- I'm on the assumption that

CHARLES LAWRENCE (IC) - REDIRECT BY MR. DURANT 130

1 it's short for Jacksonboro, but the crimes that he has a
2 history of committing are related to armed robbery, armed
3 robbery. So if you put that together I guess it's under
4 an assumption that they, you know, somebody said the
5 terminology they got jacked before. I don't know but I
6 just know I know that he associated with them in some
7 kind of shape, or form, or fashion.

8 Q. This case agent from the initial reports came into
9 your custody as the case agent?

10 A. Yes.

11 Q. Was there anything in any of those reports that
12 ever said that the victim had identified a suspect by
13 name?

14 A. No, sir. It didn't say by name. It just said he
15 knows him as being a regular customer.

16 Q. So is there anything in any of the reports that
17 ever stated that the victim said that the man who robbed
18 him was a stranger?

19 A. Can you ask me that one more time, please.

20 Q. Is there anywhere in any of the reports that stated
21 the victim said he was robbed by a stranger?

22 A. That was in the original incident report taken by
23 Deputy Luckadoo. Well, I think --- I don't know if the
24 terminology was a stranger or unknown and I think I asked
25 Mr. Patel about that and that's where it came in as he

CHARLES LAWRENCE (IC) - REDIRECT BY MR. DURANT 131

1 didn't know him by name and that's where --

2 Q. Do you have your case file with you?

3 A. It's back there, yes, sir.

4 Q. Well, let me show you what --

5 MR. RUTLEDGE DURANT: Let me mark this.

6 (WHEREUPON, Court's Exhibit Number 7, a Document,
7 was marked and made a part of the record.)

8 BY MR. RUTLEDGE DURANT:

9 Q. So showing you what labeled State's [sic] Exhibit 7
10 for identification in this pretrial hearing only. Do you
11 recognize that?

12 A. Yes, sir.

13 Q. And what is that?

14 A. This is the incident report that was written by
15 investigator -- I'm sorry, Deputy Kjellman and Deputy
16 Luckadoo.

17 Q. All right. Would that report refresh your
18 recollection of whether the victim ever said that the
19 person who robbed him was a stranger?

20 A. Okay.

21 Q. Would it refresh your recollection?

22 A. Yes, sir, it would.

23 Q. And I'd ask you to review it.

24 A. And what was your question again, sir?

25 Q. Are you sufficiently refreshed?

1 A. Yes, sir.

2 Q. Okay. Let me see it. Let me see the report. All
3 right. Now, to your knowledge did the victim ever
4 mention that the person who robbed him was a stranger?

5 A. No, sir, not to my knowledge.

6 Q. What is your understanding of what the victim said
7 he knew about the identity of the person who robbed him?

8 A. Is that he recognized the suspect as an individual
9 who robbed him previously or prior to this one, and that
10 the suspect demanded the money. Mr. Patel gave him all
11 the money he had and he demanded more money, and he
12 advised him that's all he had because he just opened.
13 The suspect asked for a pack of Newport cigarettes, which
14 the victim knows him to come in and purchase.

15 Q. And that the suspect had also been a customer on
16 prior occasions?

17 A. Correct.

18 Q. That is right?

19 A. That's correct.

20 Q. That's what the victim said?

21 A. That's what the victim said.

22 Q. And this is what was in your possession?

23 A. Yes, sir.

24 Q. This was the initial officer's responding report?

25 A. Yes, sir.

CHARLES LAWRENCE (IC) - REDIRECT BY MR. DURANT 133

1 Q. Never said that it was a stranger?

2 A. That's correct.

3 Q. Was a customer?

4 A. A customer.

5 Q. On prior occasions?

6 A. On prior occasions.

7 Q. All right. With regard to this gun, you did list
8 in your report that you said they were identical?

9 A. Yes, sir.

10 Q. To the one used in the robbery?

11 A. Yes, sir.

12 Q. Were you ever able to link that gun up that was
13 found two days after this incident with this defendant?

14 A. No, sir.

15 Q. Was that gun ever processed?

16 A. No, sir.

17 Q. To your knowledge it wasn't processed?

18 A. To my knowledge it wasn't.

19 Q. All right. Just answer what you know.

20 A. Yes, sir. To my knowledge it wasn't.

21 Q. On that video were you ever able to see the serial
22 number?

23 A. No, sir.

24 Q. But when the gun was collected on the 26th you were
25 able to lift the serial number?

CHARLES LAWRENCE(IC) - REDIRECT BY MR. DURANT 134

1 A. Yes, sir.

2 Q. And you viewed that gun?

3 A. Yes, sir.

4 Q. It was the one collected on the 26th?

5 A. Correct.

6 Q. And in your opinion, you wrote in your report that
7 it was identical to the gun used in this robbery?

8 A. That is correct, yes, sir.

9 Q. All right. And identical twins are also called
10 identical but they are different people; isn't that
11 correct?

12 A. Yes, sir.

13 MR. RUTLEDGE DURANT: Thank you.

14 THE COURT: You may step down.

15 Who else are you calling?

16 MR. RUTLEDGE DURANT: The State would call Dhruval
17 Patel.

18 THE COURT: All right. Let's take a break. Take
19 10 minutes. Thank you.

20 (WHEREUPON, a brief recess was taken.)

21 THE COURT: All right. You ready, Mr. Durant?

22 MR. RUTLEDGE DURANT: Yes. Yes, Your Honor. We
23 call James Perkins.

24 JAMES PERKINS, after having been duly sworn,
25 testified as follows:

1 THE CLERK: Please state your full name and spell
2 your last name for the record.

3 THE WITNESS: James Perkins, P-e-r-k-i-n-s.

4 THE COURT: Mr. Durant.

5 DIRECT EXAMINATION

6 BY MR. RUTLEDGE DURANT:

7 Q. Detective Perkins, where are you employed?

8 A. I'm an employee at the Charleston County Sheriff's
9 Office, sir.

10 Q. And what capacity?

11 A. Violent crimes detective.

12 Q. Was that your position in December of 2010?

13 A. Yes, sir.

14 Q. And I want to -- were you brought into a case to
15 investigate a case that occurred, an armed robbery at
16 5737 Savannah Highway in Charleston?

17 A. Detective Lawrence was assigned that case. He
18 asked me to assist him with a photographic lineup.

19 Q. Do you recall what day that occurred?

20 A. December the 29th.

21 Q. And how did Detective Lawrence enlist your help in
22 that case?

23 A. Well, as detectives, violent crime detectives, we
24 have them and they are assigned the districts. Detective
25 Lawrence is assigned to the district to where the armed

1 robbery occurred. I'm not assigned to that area and I
2 don't investigate any crimes or any cases in that area.
3 So I was a neutral party. I had no information on it or
4 anything about the case.

5 Q. All right. Well, what was asked of you?

6 A. He asked me to complete a photo lineup for him.

7 Q. And if you would, just explain what you mean by
8 that.

9 A. It's an array of six photographs, including the
10 person of interest, along with, you know, a cover sheet
11 that you would go and explain with the victim and then
12 you will have him either identify or not identify.

13 Q. And you say this occurred on December 29th?

14 A. Yes, sir.

15 Q. And do you recall about what time?

16 A. If I'm not mistaken it was around three o'clock or
17 so.

18 Q. Okay. And where were you asked -- who were you
19 asked to show this to?

20 A. The victim, Mr. Patel.

21 Q. Did you show it to him?

22 A. Yes, sir.

23 Q. Where did this take place?

24 A. At the Citadel Mall in West Ashley.

25 Q. How did you get there?

1 A. I rode with Detective Lawrence.

2 Q. Did you know anything about the suspect in the case
3 that Detective Lawrence was investigating?

4 A. No, sir. We didn't even talk about the case. We
5 were just talking about different things.

6 Q. So let me show you what's been marked, I think
7 State's [sic] 7 for identification. State's [sic] 5 for
8 identification, do you recognize that?

9 A. Yes, sir.

10 Q. And what is that?

11 A. That is a photographic lineup, a photo array.

12 Q. Is that the exact photo array that you took with
13 you to show to Mr. Patel on the 29th?

14 A. Yes, sir.

15 Q. How can you tell?

16 A. Because I require that you circle the picture, you
17 put your initials, the date and the time.

18 Q. All right. And I'm showing you what's labeled
19 State's [sic] 6 for identification in pretrial, and ask
20 you to take a look at that. Do you recognize it?

21 A. Yes, sir.

22 Q. And what is it?

23 A. This is the photographic lineup that I explained
24 and read to Mr. Patel.

25 Q. So this is the admonition?

1 A. Yes, sir.

2 Q. And is it the exact admonition that you used to go
3 over the photo array --

4 A. Yes, sir..

5 Q. -- with Mr. Patel that day?

6 MR. RUTLEDGE DURANT: At this time for purposes of
7 this hearing the State moves for the admission of
8 State's [sic] 5 and 6.

9 THE COURT: All right, State's 5.

10 BY MR. RUTLEDGE DURANT:

11 Q. And in regard to State's [sic] 6. If you would,
12 please tell the Judge how you went about admonishing
13 Mr. Patel before you showed him these photos.

14 A. Pretty much I introduced myself to the victim,
15 which in this case is Mr. Patel. I explained to him that
16 I have no knowledge of the case at all.

17 Q. And let me back you up just real quick. Where did
18 this take place exactly?

19 A. Out at the parking lot of Citadel Mall near Sears.

20 Q. And who all was with you when you did this?

21 A. It was myself, Mr. Patel, and Mr. Patel's son.

22 Detective Lawrence was there but he was not with me. He
23 was, you know, somewhat away, so he couldn't really
24 tell --

25 Q. So you were the only one administering the

1 procedure?

2 A. Yes. Uh-huh.

3 Q. Now, I'm sorry I interrupted you. If you would,
4 just continue and tell us how you use this admonition to
5 begin the procedure of showing Mr. Patel these photos.

6 A. Okay. I pretty much -- of course, if you look at
7 it the O-C-A and the date is the different because that
8 was written by Detective Lawrence, but below that the
9 time, which states 3:01, and the location. I put the
10 actual location that I'm showing the lineup, too.

11 Q. And what's the location?

12 A. I have 2068 Sam Rittenburg Boulevard. I then go
13 from one through seven. I read one and then I ask him or
14 her, and I make them verbally say that I understand each
15 one. For instance, I'll read number one and then when I
16 get done I'll go, Do you understand, and they would have
17 to verbally acknowledge that they understood, then they
18 will put their initials on it.

19 Q. All right. Now, did you need some assistance in
20 being able to make sure that Mr. Patel understood what
21 you were saying?

22 A. Yes, sir. His son, Dhruval, I think that's how --

23 Q. Dhruval?

24 A. Dhruval, yeah. He helped explain it to his dad.

25 Q. And how did he do that?

- 1 A. He was speaking --
- 2 Q. A language that you don't speak?
- 3 A. Yeah. Hindi. I don't speak it. So he was
- 4 speaking that language to him but he did understand
- 5 English for the most part, and I would make him verbalize
- 6 with a yes that he understood what I was saying to him,
- 7 and then he would initial it.
- 8 Q. And did you go through each of those -- how many
- 9 are there?
- 10 A. Seven.
- 11 Q. Each of those seven admonitions with Mr. Patel and
- 12 his son?
- 13 A. Yes. Uh-huh.
- 14 Q. And did he understood what you were telling him?
- 15 A. Yes.
- 16 Q. And how did he indicate this?
- 17 A. By acknowledging, yes. I said, Do you understand?
- 18 He goes, Yes, and then he put his initials.
- 19 Q. Beside each of the admonitions?
- 20 A. Acknowledging that he understood.
- 21 Q. Okay. And what are the admonitions?
- 22 A. That I'm going to pretty much show you photographs
- 23 of six individuals. Circle the appropriate one, if there
- 24 is an appropriate one. These photographs may or may not,
- 25 you know, contain the person that actually committed the

1 crime.

2 Q. And if you would, just tell the Court exactly how
3 you told the victim, exactly as it's laid there.

4 A. Okay. I'll do it. I looked at him and I told him,
5 I'm going to read these to you, and I read them. I said
6 number one, I'm going to show you a series of
7 photographs, physical lineup of individuals in an array
8 of six photographs of individuals. Circle one -- circle
9 the appropriate one. These photographs that I'm about to
10 show you are placed in no specific order.

11 Then I will say, Do you understand that, and I will
12 wait for him to verbally say yes. Then I will say, Put
13 your initials on it.

14 And then I will go to number two and I will read
15 number two. These photographs may or may not be the
16 person who committed the crime. It is just as important
17 to clear innocent people as it is to identify possible
18 suspects. Whether or not you identify someone the police
19 will continue to investigate. And I would ask him, Do
20 you understand that, and he would verbally advice yes,
21 and I would ask him to put his initials on that.

22 Continue?

23 Q. Yeah.

24 A. I would go to number three and I would go, After
25 you are done I will not be able to provide you any

1 feedback or comment on the results of this process. Do
2 you understand that? And he would verbalize yes and
3 initial that.

4 Number four, do not discuss the identification
5 procedure or the results with other witnesses in this
6 case. He would verbalize yes, and he would initial that.

7 Number five, focus on the events, the place, view,
8 lighting, your frame of mind, etcetera. Take as much
9 time as you need. He verbalized yes, and he initialled
10 it.

11 People may not appear exactly as they did at the
12 time of the event because of features such as clothing,
13 style -- clothing style, hair color, hairstyle, etcetera
14 may change even in a short period of time. He verbalized
15 yes, and initialled that.

16 And the final one is seven. As you look at the
17 photographs tell me if you recognize the person in them.
18 If you do, please tell me how you know the person, in
19 your own words, how sure you are of the identification.
20 He acknowledged yes and he initialled that one as well.

21 Q. And that was the last one?

22 A. Yes, sir.

23 Q. And after being admonished about all seven did he
24 again indicate that he understood all seven?

25 A. Yes.

1 Q. And how did he indicate that?

2 A. Well, down here you have to sign that you
3 understand everything that I just read to you, and he
4 explained that he understood everything. I said, Do you
5 understand everything? And went on to tell him that, you
6 know, people don't always -- in photographs they may not
7 look exactly the way they looked at the time of the
8 crime. I just reiterated what was in here, and he said
9 he understood. And then I showed him the photographs.

10 Q. All right. And how did you show him the
11 photographs?

12 A. I took them (indicated) pretty much gave it to him.

13 Q. And you're holding State's [sic] 6 or 5?

14 A. This is five.

15 Q. So you just gave it right there to him?

16 A. Yes, sir.

17 Q. What was his reaction upon viewing the photographs?

18 A. He immediately pointed at number four and said,
19 That's him.

20 Q. And what, if anything, did he do after pointing at
21 number four?

22 A. He said, That's him. That's him.

23 And I told him, I said, Well, if that's him circle
24 it, initially it, put the time, put the date.

25 If you look here you see the time that I began was

1 at 3:01 and the time that he signed it was at 3:05, so
2 that was the time frame that it took for me to finish
3 completing and reading everything, him seeing and
4 initialling it.

5 Q. And again, how long was that time frame?

6 A. It was four minutes.

7 Q. Four minutes?

8 A. Yes, sir.

9 Q. All the way through?

10 A. Yes, sir.

11 Q. Okay. Was he certain of this identification?

12 A. Yes.

13 Q. And how do you know that?

14 A. Well, he was adamant. He was like, That's him.

15 That's him.

16 Of course, I didn't know because I didn't --

17 Q. Did you know who number four was?

18 A. No, I still don't.

19 Q. So I guess in light of that did you do anything to
20 influence him to make an identification?

21 A. No.

22 Q. Did you do anything to influence him to make this
23 identification?

24 A. No, sir.

25 Q. Did you tell him that he needed to choose somebody?

1 A. No. No, sir.

2 Q. Was he told that if he did not recognize the person
3 that he should not make an identification?

4 A. Well, of course, like it states, the photographs in
5 number two, the photographs may or may not be the person
6 who committed the crime. So he was well aware of that,
7 the person may not even be on the photograph or on the
8 six pack, as we call it.

9 MR. RUTLEDGE DURANT: Thank you.

10 THE COURT: Mr. Groeber, your witness.

11 MR. GROEBER: Thank you, Your Honor. May it please
12 the Court.

13 CROSS-EXAMINATION

14 BY MR. GROEBER:

15 Q. How you doing, Detective?

16 A. Hey, how are you?

17 Q. Pretty good. A little tired. I think you said
18 Detective Lawrence called you and that's kind of how you
19 found out that he needed your help, right?

20 A. Yeah. If I'm not mistaken the way -- he's yelling
21 through the office, Perkins, come on with me.

22 I'm like, What this time?

23 Q. Okay.

24 A. So, yeah.

25 Q. What did he say to you when he came to the office?

1 A. He said, Man, come on, get in the car. I need you.
2 I need you to do something. I need you to show a six
3 pack.

4 I'm like, All right.

5 Q. Okay. Do you know why he called you particularly?

6 A. Well, because nobody else was in the office, pretty
7 much.

8 Q. And had you heard about this particular robbery
9 before?

10 A. No, sir. I'm assigned to another district, and of
11 course it's only a certain amount of us that actually do
12 violent crimes. So I'm up to my neck in my own cases.
13 So I really don't need to hear his pity party.

14 Q. The people at the office don't share, talk about
15 cases in the office at all?

16 A. At times we do but I do remember that it was the
17 end of the year and, of course, you know at the end of
18 the year we're pretty busy.

19 Q. There's a lot going on then?

20 A. Yes, sir.

21 Q. Had you ever heard the name Marvin Green before?

22 A. No, sir, uh-uh.

23 Q. So you had no idea what he looked like?

24 A. No, sir.

25 Q. When did detective -- do you remember exactly when

1 Detective Lawrence gave you State's 5, which is the six
2 pack?

3 A. Um, he gave it to me when we got -- if I'm not
4 mistaken, when we got to Sears right before I showed him,
5 right before I showed it to him and explained everything
6 to him.

7 Q. Okay. Did you take a look at it, study it or
8 anything like that?

9 A. No.

10 Q. So you think you all were still in the car when he
11 handed it to you?

12 A. If I'm not mistaken I think we was outside the car
13 because I was more like, Come on, man, let's get this
14 done because I need to get back to the office to get my
15 cases done.

16 Q. Okay. And would Mr. Patel have been able to see
17 Detective Lawrence hand it to you?

18 A. No. Oh, no.

19 Q. If it was outside of the car and you all were in
20 the parking lot was Mr. Patel out there yet?

21 A. Well, we walked -- initially we walked in.
22 Initially we walked -- we -- from the parking lot, you
23 walk inside.

24 Q. Okay.

25 A. At Sears.

1 Q. Okay.

2 A. Then we walked back outside.

3 Q. So you didn't see him right at first, outside,
4 right?

5 A. No. He was inside. We went inside and got him.

6 Q. Okay. And Detective Lawrence gave it to you, gave
7 you the lineup --

8 A. When we got out of the car.

9 Q. And Mr. Patel was inside?

10 A. Yes.

11 Q. Okay. Did you speak to Mr. Patel first or did
12 Detective Lawrence?

13 A. Detective Lawrence spoke with him first.

14 Q. Were you there for that conversation?

15 A. I don't recall being there. I remember him saying
16 something to him about, this is what -- you know, a
17 partner of mine. He's going to show you photographs. It
18 wasn't a long conversation, that I can remember.

19 Q. Okay. Do you think he said something about, this
20 is detective -- just introducing you and he's going to
21 show you some photographs?

22 A. Pretty much letting me know that I'm with him.

23 Q. What did you say to Mr. Patel? What was the first
24 thing you said to him?

25 A. I'm pretty sure it was hello. I'm Detective

1 Perkins.

2 Q. Okay.

3 A. That's pretty standard.

4 Q. What about after that?

5 A. I'm about to read this to you and show you an array
6 of photographs. If I'm not mistaken I was pretty -- the
7 reason that he called on me was because I'm pretty -- I
8 like to get it done and --

9 Q. Get in and out?

10 A. In and out.

11 Q. Okay. What time of day was it? I think it's three
12 in the afternoon?

13 A. Yes, sir.

14 Q. Do you remember why you all met at the Citadel
15 Mall?

16 A. I don't. I don't. Detective Lawrence could
17 probably answer that. I just jumped in the car and
18 that's where he took me.

19 Q. How far was Detective Lawrence standing away when
20 you began to speak to Mr. Patel?

21 A. I'm not exactly sure but he was far enough away
22 that I felt comfortable to talk to him.

23 Q. I mean, far enough away that he could overhear or
24 not overhear?

25 A. It was far enough away where I felt comfortable to

1 talk to Mr. Patel.

2 Q. Did you ask Mr. Patel if it was far -- if he
3 thought -- well, I guess he probably didn't understand.

4 And then Dhruval Patel was there also, right?

5 A. Yes, sir.

6 Q. And do you recall how old he was at the time?

7 A. I think he was 12, if I'm not mistaken.

8 Q. And did he translate the introductions as well,

9 when you very first introduced yourself? Did Dhruval
10 translate them?

11 A. No. Not that I can recall, no.

12 Q. Did you start to try to read the instructions and
13 then realize that you needed a translator, or how did you
14 know that you needed a translator?

15 A. Pretty much I asked him when I introduced myself
16 and I heard him and I started speaking with him. I heard
17 that there may have been somewhat of a language barrier
18 and I asked his son, and his son had spoke fluent
19 English. And I said -- well, and his son actually as I
20 read everything to him his son actually explained it.

21 I mean, you can see his dad -- as I'm reading dad
22 is shaking his head. Like when I say circle the
23 appropriate one if there is one you could see dad shaking
24 his head, that type of thing. The son would translate.
25 Of course, I don't speak Hindi so I don't know exactly

1 what he told him. And after that, like I told Mr.

2 Rutledge, I made him verbalize that he understood it.

3 Q. Okay.

4 A. And when he did that's when we went to the next
5 one.

6 Q. But you don't -- I mean, you really don't know if
7 he understood it or not because you are operating through
8 a translator?

9 A. If that's what is you want to call it, yes, I
10 don't.

11 Q. Okay. Well, what do you mean if that's what you
12 want to call it?

13 A. I mean, I understand what the question is.

14 Q. Okay. I mean, you don't speak Hindi, right?

15 A. No.

16 Q. So you don't know what the two of them were
17 speaking about in Hindi, correct?

18 A. Correct.

19 Q. Did you ever think about getting a translator who
20 might be trained in translation or anything like that?

21 A. No.

22 Q. Can you tell us where exactly you were standing
23 when you were having a conversation with them, with
24 Mr. Patel. Where were you standing in the parking lot?

25 A. Outside. I don't know. I was outside of the

1 parking lot of the Sears mall. I don't know exactly

2 like --

3 Q. I mean, it's a pretty big parking lot.

4 A. Yeah.

5 Q. Close to the building, far away from the building,

6 in between?

7 A. Well, it was --

8 Q. Next to the police car?

9 A. No, we weren't near the police car. No.

10 Q. Did you ask Mr. Patel if he had spoken with anyone
11 about who he thought was in the video and who robbed him?

12 A. No.

13 Q. And State's 5, you still have the lineup with you,
14 the six pack? That's the one you presented to him?

15 A. Yes.

16 Q. And when you presented it to him did you hold on to
17 it or did you let go so he could look at it, or how did
18 that kind of happen?

19 A. Like that (indicated). Let him have it.

20 Q. And he took it from you physically?

21 A. He did this and went (indicated).

22 THE COURT: Mr. Groeber, just for the record,
23 that's Court's 5, the six pack.

24 MR. GROEBER: Oh. I'm sorry, Your Honor.

25 BY MR. GROEBER:

1 Q. Court's 5, which is the six pack?

2 A. Yes.

3 MR. GROEBER: Thank you, Your Honor.

4 BY MR. GROEBER:

5 Q. And that particular lineup, it's in black and
6 white, correct?

7 A. Yes.

8 Q. Did you ever see a color six pack lineup in this
9 case?

10 A. That is what Detective Lawrence handed me.

11 Q. Did you ask Dhruval Patel if he had heard his
12 parents talking about it or did he have any knowledge
13 about the case?

14 A. Oh, no.

15 Q. So you didn't ask him any questions pertaining to
16 the case other than he was just your translator?

17 A. Yeah, I didn't. Uh-uh.

18 Q. Did you ask Mr. Patel for him to rank or tell you
19 how confident that he was in his identification?

20 A. Pretty much after I showed him, after I showed him
21 the lineup and he initialled and pointed (indicated)
22 indicating that that was him I didn't. I didn't.

23 Q. So you did not ask for how confident are you?

24 A. No. Well, by his expression I could tell he was
25 pretty adamant that that was the individual.

1 Q. But you didn't ask him that question?

2 A. No, not that I remember.

3 Q. Now, you told him beforehand that he did not have
4 to choose one of the people on the lineup, the person
5 there may not be on there?

6 A. You asking a question? Yes.

7 Q. Yeah. I mean, you told him that, right?

8 A. Yes.

9 Q. The standard thing. Where on the six pack is there
10 somewhere that you could write not here? Is there a
11 little box that says, Not here, on the six pack?

12 A. Well, there is a box that says statement, which you
13 can put not on there.

14 Q. Okay. But right now I'm talking about Court's 5,
15 which is just the six pack itself. Is there anything on
16 the six pack that says where you can check not here?

17 A. Oh, no. Uh-uh.

18 Q. Did you warn Mr. Patel not to speak to anyone else
19 about the identification?

20 A. Yes.

21 Q. And did you write a report that would articulate
22 that?

23 A. This is the report but, no, I did not write a
24 report articulating for him not to speak to anyone. When
25 he signed it that's him acknowledging that he would not

JAMES PERKINS (IC) - CROSS BY MR. GROEBER 155

1 speak to anyone else.

2 MR. GROEBER: Court's indulgence, Your Honor?

3 THE COURT: Yes.

4 (PAUSE.)

5 BY MR. GROEBER:

6 Q. Did you warn Dhruval the same thing about speaking
7 to other people about the case?

8 A. Yes.

9 Q. Now, you are familiar with the policy for
10 Charleston County Sheriff's Office on photo lineups,
11 aren't you?

12 A. Yes.

13 Q. And I think that's 8-06 --

14 A. Yeah, I know it by working there. You probably
15 know it by looking at it.

16 Q. Okay. All right. But you're familiar with it?

17 A. Yes.

18 Q. Do you remember that 8-06 asks you to write a
19 report about how the photo lineup was presented?

20 A. Like I said, you're probably a little more familiar
21 because you actually looked at it.

22 Q. Okay.

23 A. This pretty much with my signature explaining that
24 I done it.

25 Q. Okay.

1 A. The time.

2 Q. Okay.

3 A. The fact that he made an identification.

4 Q. So you consider the questions that you tell
5 beforehand, the form that you're supposed to do for every
6 photo lineup your report?

7 A. With this particular because this is the only
8 interaction that I had. I done this and I was done.

9 Q. Okay. But have you ever done reports on other --
10 have you ever done any other photo lineup?

11 A. When I was more involved.

12 Q. Okay. And did you ever write any other reports --

13 A. When I was more involved.

14 Q. -- to describe --

15 A. Uh-huh.

16 Q. So in the past you've written reports about the
17 procedures for photo lineups?

18 A. When I was more involved --

19 Q. More involved with what? With the particular case?

20 A. Yes.

21 Q. Okay. Okay. So if you were maybe the case agent
22 or something like that?

23 A. Yes.

24 Q. All right. So you didn't video or audio, take
25 video or audio of the identification procedure itself?

1 A. I didn't have one out there in the parking lot,
2 sir.

3 Q. Does Charleston County have a video camera,
4 Charleston County Sheriff's Office?

5 A. Not that I'm aware of.

6 Q. How about a recording device?

7 A. They have some recording devices.

8 Q. Okay. And do you have a cell phone?

9 A. Yes.

10 Q. Did you have a cell phone that day?

11 A. I'm pretty sure I did.

12 Q. Do you know if it has a recording device or video
13 capability?

14 A. So you wanted me to record the circle, or you
15 wanted me to record me reading him the statement?

16 Q. The whole procedure.

17 A. Oh, okay. No, I didn't.

18 Q. Okay. Well, did you have a phone that was capable
19 or doing video or audio?

20 A. My phone did not.

21 MR. GROEBER: Okay. Thank you, Your Honor. No
22 further questions.

23 Q. Thank you, Detective.

24 A. Thank you, sir.

25 THE COURT: Mr. Durant?

1 MR. RUTLEDGE DURANT: Briefly.

2 REDIRECT EXAMINATION

3 BY MR. RUTLEDGE DURANT:

4 Q. Detective Perkins, in regard to State's 6, which is
5 the admonition form; before this date have you
6 administered admonitions on photographic lineups before?

7 A. Yes.

8 Q. And have you ever encountered someone who has
9 failed to make an identification?

10 A. Oh, numerous.

11 Q. And what do you do in that event?

12 A. Right here it says, Identification made, you put
13 no. It's a box right there.

14 Q. They check no?

15 A. Yeah.

16 Q. And so do you say anything on the comments?

17 A. Yeah. They was not able to make an identification.

18 Q. Have you ever had people say maybe one of them
19 looked like the guy but they couldn't be sure?

20 A. Yes.

21 Q. And did they write that on the comments?

22 A. Yes.

23 Q. But that didn't have happen in this case, did it?

24 A. No, sir.

25 Q. Because Mr. Patel was positive he told you that

JAMES PERKINS (IC) - RECROSS BY MR. GROEBER 159

1 number four is the person --

2 A. Yes, sir.

3 Q. -- who did it?

4 A. Uh-huh.

5 Q. And so you checked identification made?

6 A. Yes, sir.

7 MR. RUTLEDGE DURANT: Thank you.

8 MR. GROEBER: Just brief follow up.

9 RECROSS EXAMINATION

10 BY MR. GROEBER:

11 Q. I guess I'm a little confused. Did he say his
12 level of confidence or not?

13 A. He pointed -- this is -- If I'm not mistaken this
14 is what he said, That's him. That's him.

15 Q. Okay. But he didn't say I'm a hundred percent
16 sure?

17 A. That's him. That's him.

18 Q. And there's all he said?

19 A. That's him. That's him. From my understanding,
20 sir.

21 MR. GROEBER: Okay. No further questions, Your
22 Honor.

23 THE COURT: You may step down. Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: Call your next witness.

1 MR. RUTLEDGE DURANT: The State calls Natubhai
2 Patel.

3 THE COURT: Ms. Isadas, we have to swear you in
4 first then you will help administer the oath; do you
5 understand?

6 THE INTERPRETER: Yes, I do.

7 THE COURT: All right. Thank you.

8 (WHEREUPON, the interpreter, Vasandika Isadas, was
9 duly sworn.)

10 NATUBHAI PATEL, after having been duly
11 sworn, testified as follows:

12 THE CLERK: Please state your name and spell your
13 name for the record.

14 THE INTERPRETER: Natubhai Patel. P-a-t-e-l is how
15 he spells his last name.

16 THE COURT: Mr. Patel, I need you to be very
17 careful and allow your interpreter to translate for you.
18 It becomes very difficult if you speak and answer
19 sometimes and then don't use the interpreter sometimes.
20 So you need to make sure that you always use the
21 interpreter; do you understand?

22 THE WITNESS: Yes.

23 THE COURT: Mr. Durant?

24 MR. GROEBER: Your Honor, I'm sorry. I mean, this
25 is part of the concern we have with the translator. I

1 believe it should be -- she should be continuously --

2 THE COURT: I understand that, Counsel, but as we
3 have noticed, Mr. Patel is able to speak a little
4 English.

5 MR. GROEBER: Sure.

6 THE COURT: And so I was cautioning him, as you
7 observed, during the administering of the oath. He
8 understands enough and he had already been administered
9 the oath so he knew the procedure. But I just want it to
10 be clear, and I consider this somewhat of a practice run
11 for the jury so that I'm not constantly admonishing
12 because I'm not going to do that. All right? And I
13 don't think your challenge was ever to -- this doesn't
14 have to do with the interpreter. She hasn't had an
15 opportunity to do anything.

16 MR. GROEBER: No. And my concern, Your Honor, is
17 that he answered your two questions in English, whereas I
18 believe the proper procedure is she translates, he
19 answers --

20 THE COURT: I understand that, Mr. Groeber. All
21 right. And I believe that I have addressed the issue.

22 MR. GROEBER: Thank you.

23 THE COURT: Mr. Durant.

24 DIRECT EXAMINATION

25 BY MR. RUTLEDGE DURANT:

1 (Through the interpreter.)

2 Q. Mr. Patel, how old are you?

3 A. He's 52 years old.

4 Q. Do you live in Charleston?

5 A. He does live in Charleston.

6 Q. Where were you born?

7 THE COURT: All right. Ma'am, I need you to come
8 forward.

9 Counsel.

10 (WHEREUPON, the following bench conference was
11 reported.)

12 THE COURT: Ma'am, when you interpret you in
13 essence are merely a tape recorder as to what he says.
14 You don't explain it, you don't make it pretty, you use
15 incorrect grammar if that's what he does but you don't
16 say he is unless he says he is. I don't think that he
17 did, did he?

18 THE INTERPRETER: He did.

19 THE COURT: He said he is 54?

20 THE INTERPRETER: He said, Yes, I am 54.

21 THE COURT: Okay. Then you need to say, I am 54.

22 All right. You are the recorder. You are merely, merely
23 what he says. Any questions?

24 THE INTERPRETER: No, ma'am.

25 THE COURT: Thank you.

NATUBHAI PATEL(IC) - DIRECT BY MR. DURANT 163

1 (WHEREUPON, the bench conference was concluded.)

2 THE COURT: Let's start over.

3 BY MR. RUTLEDGE DURANT:

4 (Through the interpreter.)

5 Q. How old are you?

6 A. Fifty-two.

7 Q. Do you live in Charleston?

8 A. Yes, I live in Charleston.

9 Q. Where were you born?

10 A. India.

11 Q. When did you come to the United States?

12 A. January 11th, 2003. October, 10-11-2003.

13 MR. RUTLEDGE DURANT: Your Honor, if I could just
14 interject. I think he needs to respond to her in Hindi
15 as well. Just a suggestion.

16 THE COURT: All right. Continue.

17 BY MR. RUTLEDGE DURANT:

18 (Through the interpreter.)

19 Q. Could you instruct him to respond to you in Hindi.

20 A. (The Interpreter complied.)

21 Q. When did you come to the United States?

22 A. October 11th, 2003.

23 Q. Why?

24 A. I came to work and I came for my family.

25 Q. Are you married?

1 A. I am married.

2 Q. Who is your wife?

3 A. Jagruti Patel.

4 Q. How long have you been married to Mrs. Patel?

5 THE COURT: All right. Hold on. Let me explain
6 this one more time. All right. She is here to translate
7 for you, and I understand that you have a very -- an
8 understanding of the English language but this is outside
9 the presence of the jury so I am also going to treat this
10 as a practice run so-to-speak so that I don't have to
11 keep sending the jury out next time.

12 It is very important that you only speak through
13 her in Hindi, but she has to speak to you and do not
14 interrupt her so that you get the complete -- I'm
15 assuming there's going to be a time you do not understand
16 what Mr. Durant says; is that correct? Is that correct,
17 sir?

18 THE WITNESS: Yes. Okay.

19 THE COURT: All right.

20 (WHEREUPON, the following questions were answered
21 by Mr. Patel, without the assistance of the interpreter.)

22 BY MR. RUTLEDGE DURANT:

23 Q. And, Mr. Patel, don't listen to me.

24 A. Okay.

25 Q. Just listen to her.

1 A. Okay. I'm sorry.

2 THE COURT: Mr. Durant, at this point I'm not sure
3 -- he seems to have been able to answer all of your
4 questions.

5 MR. RUTLEDGE DURANT: Well, Your Honor, I can
6 assure you from meeting with him that he is not able to
7 answer all my questions in English, that there is --

8 THE COURT: Well, let's do this. Mr. Patel?

9 THE WITNESS: Yes.

10 THE COURT: I want you to answer Mr. Durant's
11 questions. If you cannot answer his questions then I'm
12 going to then --

13 THE WITNESS: (Unintelligible).

14 THE COURT: I'm sorry?

15 THE WITNESS: I'm right answer --

16 THE COURT: No. We're going to attempt to see if
17 you can answer Mr. Durant's questions here outside the
18 presence of the jury without the use of an interpreter;
19 do you understand? If you do not understand the question
20 then you need to say I don't understand and we'll use the
21 interpreter.

22 We're going to try this, Mr. Groeber, and see what
23 happens outside the presence of the jury. All right?

24 MR. GROEBER: Yes, Your Honor.

25 THE COURT: All right. You can have a seat next to

1 the bailiff. Thank you.

2 (WHEREUPON, the interpreter stepped down from the
3 witness stand.)

4 THE COURT: All right. Let's try this, Mr. Durant.

5 BY MR. RUTLEDGE DURANT:

6 Q. Do you have any children?

7 A. Yes.

8 Q. How old are they?

9 A. One 14 years old.

10 Q. Do you have any other children?

11 A. Two children. One six years and one 14 years old.

12 Q. Are they boys or girls?

13 A. Two boy.

14 Q. What do you do for a living?

15 A. Charleston.

16 Q. What do you do for a living?

17 A. I live 5727 Savannah Highway.

18 Q. What do you do for a living?

19 A. Living?

20 Q. Yes.

21 THE COURT: What kind of work do you do, sir?

22 A. Register working. Okay.

23 Q. How do you make money?

24 A. Make money, everything. I make money.

25 Q. Do you have money?

1 A. Yes.

2 Q. Do you accumulate more?

3 A. No.

4 Q. Do you work?

5 A. Yes.

6 Q. What kind of work do you do?

7 A. I'm register working. Store management and
8 register working.

9 Q. You work at a store?

10 A. Yes.

11 Q. What store?

12 A. 5737 Savannah Highway.

13 THE COURT: Could you repeat what you just said.

14 A. 5737 Savannah Highway (unintelligible).

15 THE COURT: What was the last thing after you said
16 Savannah Highway? What was the last thing you said?

17 A. Ravenel. 5737 Savannah Highway.

18 MR. RUTLEDGE DURANT: The interpreter knows, Your
19 Honor.

20 THE INTERPRETER: May I? Ravenel.

21 THE COURT: Ravenel.

22 THE WITNESS: Yes, sir, Your Honor.

23 THE COURT: Thank you. All right. We're going to
24 have to go back because my court reporter cannot
25 understand, all right, clearly, so we're going to have to

1 go back.

2 Mr. Patel, I'm trying to make it as convenient for
3 everyone. We're going to have to go back to the use of
4 the interpreter. Thank you.

5 THE WITNESS: Okay.

6 THE COURT: Which means that you listen only to
7 her. Don't listen to Mr. Durant. Listen only to the
8 Court and don't speak until she tells you that -- until
9 she's done speaking. All right?

10 THE WITNESS: All right.

11 THE COURT: Mr. Durant?

12 MR. RUTLEDGE DURANT: Thank you.

13 BY MR. RUTLEDGE DURANT:

14 (Through the interpreter.)

15 Q. What do you do for a living?

16 A. I work at my store, at the register, and I also do
17 paperwork for my store.

18 Q. What store do you work at?

19 A. Quick Stop.

20 Q. Where is that located?

21 A. 5737 Savannah Highway, Ravenel.

22 Q. 5737 Savannah Highway, Ravenel. Is that a
23 convenience store?

24 A. You can call it a gas station or a convenience
25 store, whichever.

1 Q. Do you own that store?

2 A. I am the owner of the store.

3 Q. How long have you owned the store?

4 A. Since the past four years.

5 Q. Do you have any employees at your store?

6 A. Only me and my wife.

7 Q. No other employees?

8 A. No, nobody else.

9 Q. All right. I want to take you back to December the
10 24th of 2010. Do you recall what you were doing around
11 7:45 that morning?

12 A. I was standing behind the register doing my work.

13 Q. And what happened?

14 A. (The interpreter and witness spoke to each other.)

15 THE COURT: All right. It may be better for you to
16 break it up into very small chunks, which is fine, and if
17 people ask very long questions it may be broken up, but
18 there is to be no dialogue. The only thing that you can
19 ask him is to repeat it. All right. There is to be no
20 dialogue.

21 THE INTERPRETER: May I ask him again?

22 BY MR. RUTLEDGE DURANT:

23 (Through the interpreter.)

24 Q. Ask him what is the next thing he remembers
25 happening as he's behind the register at 7:45?

1 A. A man entered with a gun.

2 Q. Do you recall what the man was wearing?

3 A. He was wearing sunglasses, a red colored hat, Khaki
4 pants and a jacket, black-colored jacket.

5 Q. Were you able to see the man's face?

6 A. Oh, I have seen his face. He's my regular
7 customer.

8 Q. Had you ever seen the man before?

9 A. I have been seeing him since the past one year,
10 year before the incident. He comes twice or twice in a
11 week.

12 Q. Two or three times in a week for the past year
13 before this incident?

14 A. Since the past one year he has visited once or
15 twice in one week.

16 Q. Before this incident when was the last time you had
17 seen him?

18 A. I had seen him three or four weeks before that.

19 Q. Do you recall when you saw him the last time before
20 this incident?

21 A. I'm sorry. I didn't understand the question. I'm
22 sorry. I didn't understand the question.

23 Q. What was going on the last time you saw him before
24 this?

25 A. (The interpreter and witness spoke to each other.)

NATUBHAI PATEL (IC) - DIRECT BY MR. DURANT 171

1 MR. GROEBER: Objection, Your Honor.

2 THE COURT: What's the basis?

3 MR. GROEBER: Objection.

4 THE COURT: You need to -- don't answer.

5 What's the objection?

6 MR. GROEBER: They are now conversing in Hindi.

7 The other thing I'd like to put on the record is that she
8 continues to nod while speaking to him as if encouraging
9 him.

10 THE COURT: And I don't mean to be indelicate. Do
11 you speak Hindi? Do you know what they are --

12 MR. GROEBER: Absolutely not, Your Honor.

13 THE COURT: All right. All right. Is this your
14 last witness, Mr. Durant?

15 MR. RUTLEDGE DURANT: No, Your Honor.

16 THE COURT: All right. I'm going to take a
17 10-minute break. You all don't need to discuss anything
18 with the interpreter. Thank you. We're at ease.

19 (WHEREUPON, a brief recess was taken.)

20 THE COURT: Mr. Patel, we're going to come back to
21 you. So I need you to -- you all both go outside. We're
22 going move on to another witness. All right. Thank you.

23 Call your next witness.

24 MR. GROEBER: And, Your Honor?

25 THE COURT: Yes.

1 MR. GROEBER: For the record, I will be able to
2 cross-examine him tomorrow?

3 THE COURT: You'll be able to cross-examine him at
4 a later date. I'm just attempting to move witnesses that
5 have been sitting here, at some other point. Thank you.

6 MR. RUTLEDGE DURANT: And, Your Honor, for today
7 can we excuse Ms. Isadas and Mr. Patel?

8 THE COURT: I'm sorry?

9 MR. RUTLEDGE DURANT: Can we excuse the interpreter
10 and Mr. Patel for today?

11 THE COURT: No, because if I have time to get to
12 them I'm going to get to them.

13 MR. RUTLEDGE DURANT: Okay.

14 THE COURT: All right. Call your next witness.

15 MR. RUTLEDGE DURANT: The State calls Dustin
16 Luckadoo.

17 DUSTIN LUCKADOO, after having been duly
18 sworn, testified as follows:

19 THE CLERK: Speak into the mic and state your full
20 and spell your last name for the record.

21 THE WITNESS: My name is Dustin Luckadoo. It's
22 L-u-c-k-a-d-o-o.

23 DIRECT EXAMINATION

24 BY MR. RUTLEDGE DURANT:

25 Q. All right. Deputy Luckadoo, I'm going to try to

DUSTIN LUCKADOO(IC) - DIRECT BY MR. DURANT 173

1 speed this up for the second time. You've been sitting
2 here out in the hallway a few hours now or longer, right?

3 A. Yes, sir.

4 Q. All right. You work with the sheriff's office?

5 A. Yes, sir, I do.

6 Q. And you are a deputy?

7 A. Yes, sir.

8 Q. And you patrol the area out there near Ravenel as
9 well?

10 A. I do.

11 Q. And as a deputy did you respond to 5737 Savannah
12 Highway on the morning of December 24th, 2010?

13 A. I did.

14 Q. And you responded in reference to an armed robbery;
15 is that correct?

16 A. Yes, sir.

17 Q. Did you meet up with the victim, Mr. Patel?

18 A. I did.

19 Q. And you responded, I believe, with Master Deputy
20 Donald Kjellman?

21 A. I did.

22 Q. Did you view a video from the incident at that
23 location?

24 A. Yes, sir, I did.

25 Q. And based on that video were you able to identify

1 the gunman?

2 A. Yes, sir, I was.

3 Q. And who did you recognize the gunman to be?

4 A. Marvin Bowens.

5 Q. And did you tell Deputy Kjellman that?

6 A. Yes, sir, I did.

7 Q. And did you and Deputy Kjellman write a report as
8 the first responding officers?

9 A. Yes, sir.

10 Q. And was Mr. Marvin Bowens Green, is this the man
11 you recognized?

12 A. Yes, sir.

13 Q. In that video?

14 A. In the video, yes, sir.

15 Q. And did you note -- was his name noted by you in
16 that first incident report?

17 A. Yes, sir, it was.

18 Q. And how do you know or how are you familiar with
19 Mr. Marvin Bowens Green?

20 A. I worked out in that area quite a few years. I've
21 seen his picture on the news, seen his picture in the
22 paper, familiar with wanted posters with his picture on
23 it that we have, just general knowledge of Mr. Bowens.

24 Q. Was there any question in your mind about who that
25 -- who the man with the gun was?

DUSTIN LUCKADOO(IC) - CROSS BY MR. GROEBER 175

1 A. No, sir.

2 MR. RUTLEDGE DURANT: Thank you, sir. Please
3 answer any questions the defense may have.

4 THE COURT: Mr. Groeber?

5 MR. GROEBER: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. GROEBER:

8 Q. Deputy Luckadoo, were you and Kjellman -- I guess
9 it's Deputy Kjellman, you all were riding together or in
10 separate cars?

11 A. Separate cars.

12 Q. You got noticed through dispatch of the armed
13 robbery?

14 A. Actually through our supervisor that responded to
15 the scene.

16 Q. What was the first thing that you did when you got
17 there?

18 A. Walked to the back room with the victim. He was
19 trying to pull the video up so we could look at it.

20 Q. Was he successful in pulling the video up?

21 A. Yes, sir.

22 Q. Who all was in the room watching the video?

23 A. When I first got there it was myself, Deputy
24 Kjellman and the victim.

25 Q. Did you have any trouble communicating with the

1 victim?

2 A. No, sir.

3 Q. He didn't seem to speak English poorly to you?

4 A. I've had dealings with him before so, I mean, I
5 understand him pretty well.

6 Q. How would you have dealing with him before?

7 A. Just calls for service at the gas station.

8 Q. About how many times you think you met and talked
9 with him?

10 A. At least four or five.

11 Q. And when you watched the video you said that you
12 recognized Mr. Green --

13 A. Yes, I did.

14 Q. -- Marvin Bowens Green? And did you say that out
15 loud?

16 A. To Deputy Kjellman, yes. I pulled him aside.

17 Q. Where did that conversation take place?

18 A. In the little carriageway between the office and
19 the gas -- not gas station, the counter out front.
20 There's a little hallway right there.

21 Q. So you're watching the -- the robbery happens at
22 the cashier, there's a hallway -- or the cash register.
23 There's a hallway that kind of goes behind there back to
24 an office?

25 A. Uh-huh.

DUSTIN LUCKADOO (IC) - CROSS BY MR. GROEBER 177

1 Q. And you and Kjellman were in the office?

2 A. We were --

3 Q. Or, I'm sorry. You were in the hallway between the
4 two?

5 A. Yeah. I asked him to step out there to the side in
6 the hallway and I told him about it.

7 Q. Okay. And where was Mr. Patel at this time?

8 A. Sitting in the chair viewing the video.

9 Q. How many times did you all watch the video? How
10 many times did you watch it?

11 A. I would say at least three or four different times.

12 Q. Why did you watch it three or four times?

13 A. Just trying to get better views of it and see if
14 there was any better angles from all the cameras. There
15 was like 12 or 13 different angles.

16 Q. Now, you said that you recognized the defendant
17 from just your -- from being a deputy?

18 A. General knowledge, yes, sir.

19 Q. Have you ever met him in person?

20 A. I believe I have had a couple dealings with him.

21 Q. Okay. And when were those times?

22 A. I don't know if it's been traffic stops or calls
23 for service. I'm not one hundred percent sure on that.

24 Q. So you really can't -- I mean, you can't say for
25 sure when or how many times you met him?

- 1 A. That I've met him?
- 2 Q. Mr. Green.
- 3 A. Yeah. I can't say how many times I've met him, no.
- 4 Q. How many times have you seen his picture before
- 5 this, you responded to this scene?
- 6 A. Several occasions.
- 7 Q. What were those occasions?
- 8 A. He's been in the Post and Courier, been on the
- 9 news, and like I said, general wanted posters that we
- 10 have throughout the sheriff's office.
- 11 Q. What is it that you recognize about him?
- 12 A. His facial features.
- 13 Q. Which parts?
- 14 A. His eyes, his cheeks.
- 15 Q. Okay. Anything else?
- 16 A. Not really.
- 17 Q. Just those two things?
- 18 A. Yeah, stand out.
- 19 Q. Those are the two things how you recognize him?
- 20 A. Uh-huh.
- 21 Q. So you told Deputy Kjellman that you recognized
- 22 him?
- 23 A. Uh-huh.
- 24 Q. Did you ever tell the victim?
- 25 A. No.

DUSTIN LUCKADOO(IC) - CROSS BY MR. GROEBER 179

- 1 Q. Did you ever tell Deputy Lawrence?
- 2 A. Yes, I did.
- 3 Q. When did you do that?
- 4 A. I believe a phone call afterwards.
- 5 Q. And what did you say in that phone call? You
- 6 called him?
- 7 A. Pretty sure I did.
- 8 Q. And what did you say to him?
- 9 A. Just that I -- pretty sure I've identified the
- 10 suspect of this armed robbery, and gave him the name.
- 11 Q. Did you talk to anybody else at the Charleston
- 12 County Sheriff's Office and tell them that you recognized
- 13 the suspect?
- 14 A. The supervisor, yeah, that was on the scene.
- 15 Q. And who would that be?
- 16 A. Sergeant York.
- 17 Q. Anyone else?
- 18 A. The other responding deputy that was there with us,
- 19 Deputy Roberson.
- 20 Q. When did Deputy Roberson get there?
- 21 A. He was part of the initial call from dispatch to go
- 22 to the armed robbery.
- 23 Q. Was he riding with y'all?
- 24 A. No. We don't ride together.
- 25 Q. And you wrote in your report that Marvin Green was

1 a suspect?

2 A. I didn't write the report.

3 Q. Oh, you didn't? But you told Kjellman and he wrote
4 it in the record?

5 A. (Nodded).

6 THE COURT: Is that a yes?

7 A. Yes. I'm sorry.

8 Q. Thank you. You didn't do your own report?

9 A. No, sir.

10 Q. Why not?

11 A. It wasn't necessary. I was not the investigating
12 deputy -- or reporting deputy. Excuse me.

13 Q. Are you familiar with the Charleston County
14 Sheriff's Office policy manual?

15 A. Somewhat, yes.

16 Q. Are you familiar with procedure for -- I think it's
17 8-06, for photograph lineups?

18 A. No, sir.

19 Q. You've never done a photo lineup?

20 A. No, sir.

21 Q. You all have any training that requires you to
22 understand the policy manual?

23 A. We get updates on policies. That's about it.

24 Q. And do you read those updates?

25 A. Uh-huh. Yes, sir.

DUSTIN LUCKADOO(IC) - CROSS BY MR. GROEBER 181

1 Q. And you don't remember -- or when did you --

2 MR. RUTLEDGE DURANT: Your Honor, just for the sake
3 of relevance in this, the policy is already out there.
4 What he actually did is before the Court, just in the
5 interest of time.

6 THE COURT: I'll give a little bit of latitude,
7 Mr. Groeber, but he said he didn't do the lineup. You
8 all know that SLED did it, so move on.

9 MR. GROEBER: Okay.

10 BY MR. GROEBER:

11 Q. Why did you not do the lineup or request a lineup
12 that day?

13 A. That's up to the detectives to do the lineup.

14 Q. You know the lineup is important, don't you?

15 A. Yes.

16 MR. GROEBER: May I have one moment, Your Honor?

17 THE COURT: Yes, sir.

18 (PAUSE.)

19 MR. GROEBER: Thank you.

20 BY MR. GROEBER:

21 Q. Did you discuss or interview any other witnesses
22 other than Mr. Patel?

23 A. I didn't interview Mr. Patel.

24 Q. Well, did you ever see or talk to any other
25 witnesses in this case other than Mr. Patel?

1 A. No.

2 MR. GROEBER: No further questions. Thank you.

3 MR. RUTLEDGE DURANT: No questions, Your Honor.

4 THE COURT: You may step down. Thank you.

5 Call your next witness.

6 MR. RUTLEDGE DURANT: The State calls Dhruval

7 Patel.

8 DHRUVAL PATEL, after having been duly sworn,
9 testified as follows:

10 THE CLERK: Say your name and then spell your last
11 name.

12 THE WITNESS: Dhruval Patel.

13 THE COURT: Hold on one second. I'm sorry.

14 Mr. Durant?

15 MR. RUTLEDGE DURANT: I just want to make sure that
16 Deputy Luckadoo can be excused for today.

17 THE COURT: Any objection?

18 MR. GROEBER: No, Your Honor.

19 THE COURT: He came back in and I was signalling
20 that he needed to leave because of sequestration.

21 Can you spell your last name for me.

22 THE WITNESS: P-a-t-e-l.

23 THE COURT: All right. Mr. Durant, your witness.

24 DIRECT EXAMINATION

25 BY MR. RUTLEDGE DURANT:

- 1 Q. Dhruval, good afternoon.
- 2 A. Good afternoon.
- 3 Q. You been here all day, haven't you?
- 4 A. Yes.
- 5 Q. All right. Tell the Court how old you are.
- 6 A. Fourteen.
- 7 Q. And who is your father?
- 8 A. Natubhai Patel.
- 9 Q. And who is your mom?
- 10 A. Jagruti Patel.
- 11 Q. And how far have you gone in school?
- 12 A. Nine years -- or ninth grade now.
- 13 Q. You are in ninth grade now?
- 14 A. Yeah.
- 15 Q. Just finished eighth grade, so you're going to high
- 16 school next year, right? All right. And you've spoken
- 17 to me before, right?
- 18 A. Yes.
- 19 Q. I've come out to the store and talked to you and
- 20 your parents?
- 21 A. Yes.
- 22 Q. All right. I'm going to move forward to a time
- 23 when you and your dad went to go meet some detectives at
- 24 the Citadel Mall, okay? Do you remember doing that
- 25 back --

1 A. Yes.

2 Q. -- in December of 2010?

3 A. Uh-huh.

4 THE COURT: Is that a yes?

5 A. Yes.

6 THE COURT: She can only write down yes and no, so

7 I need you to always answer yes or no, if that's

8 appropriate, because she can't write down uh-huh, or

9 anything like that, or head shaking, okay?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Thank you.

12 BY MR. RUTLEDGE DURANT:

13 Q. And you speak English very well, don't you?

14 A. Yes.

15 Q. And a little bit better than your parents, right?

16 A. Yes.

17 Q. Or maybe a lot better. And you've always helped me

18 in talking with them; is that correct?

19 A. Yes.

20 Q. And you've also helped the detectives and the

21 police who came to investigate this incident, didn't you?

22 A. Yes.

23 Q. All right. And what I want to talk to you about is

24 a photographic lineup procedure that was shown to your

25 father on December 29th, 2010 out at the Citadel Mall.

1 You were there for that, weren't you?

2 A. Yes.

3 Q. And I'm going to show you what's labeled as Court's
4 Exhibit 5 and 6. And specifically we are going to talk
5 about number 6 first, and do you recognize that?

6 A. Yes.

7 Q. And is that because that was the form that was used
8 to advise your father before he looked at some pictures?

9 A. Yes.

10 Q. Do you recall the detective doing that?

11 A. Yes.

12 Q. Going over it with you and your father?

13 A. Yes.

14 Q. And were you helping your father to understand what
15 the detective was saying?

16 A. Yes.

17 Q. And there's some -- they are called admonitions.
18 There's seven of them. Were you able to help your father
19 understand what was written on this page?

20 A. Yes.

21 Q. And how did you do that?

22 A. I read it myself and then translated it to my
23 father.

24 Q. And did he understand what was written?

25 A. Yes.

1 Q. And how did he indicate that he knew? Did he write
2 his initials there?

3 A. Yes.

4 Q. Did you see him write his initials?

5 A. Yes.

6 Q. And would he only write his initials after you
7 would explain to him what the paper said?

8 A. Yes.

9 Q. And then did he sign his name at the bottom of this
10 page?

11 A. Yes.

12 Q. Did you see him do that?

13 A. Yes.

14 Q. And after going over this did the detectives
15 present your father with some photos?

16 A. Yes.

17 Q. And who was around when the detective handed your
18 father the photos?

19 A. I was.

20 Q. Just you, and the detective, and your father?

21 A. Two detectives, me, and my father.

22 Q. So there were two detectives out there?

23 A. Yeah.

24 Q. Was it both of them who were administering this
25 thing, that you remember, or just one of them doing most

1 of the work?

2 A. I think it was one of them.

3 Q. You think it was just one of them?

4 A. Yes.

5 Q. Did you see the detective hand your father the
6 photos?

7 A. Yes.

8 Q. And did you observe your father's reaction upon
9 viewing the photos?

10 A. Yes.

11 Q. And what did he do when he looked at the photos?

12 A. He immediately circled one.

13 Q. He immediately circled one?

14 A. Yes.

15 Q. Did any of the detectives tell him which one to
16 circle?

17 A. No.

18 Q. Did you tell him which one to circle?

19 A. No.

20 Q. So it's your testimony that he just circled one of
21 the photos on his own?

22 A. Yes.

23 MR. RUTLEDGE DURANT: Thanks, Dhruval. Answer any
24 questions the defense may have.

25 THE COURT: Mr. Groeber?

1 MR. GROEBER: Thank you.

2 CROSS-EXAMINATION

3 BY MR. GROEBER:

4 Q. Hi, Dhruval. How are you?

5 A. Good.

6 Q. When did you first hear about the robbery?

7 A. The morning that it happened.

8 Q. How did that happen? How did you hear about it?

9 A. My dad called me and my mom.

10 Q. And did they show you the video?

11 A. Yes.

12 Q. How many times have you watched it?

13 A. About every time that we had to watch it.

14 Q. You said you had to watch it. What do you mean by
15 that?

16 A. Like when somebody wanted to view it.

17 Q. Okay. Someone like who?

18 A. Police, and maybe my parents.

19 Q. Okay. About how many times you think you seen it?

20 Did every time you see it you were with your parents?

21 A. Yes.

22 Q. How many times do you think you seen it?

23 A. Maybe five, six times.

24 Q. When was the first time that you heard that the
25 police had a suspect?

- 1 A. At the Citadel Mall when they came up with the
2 pictures.
- 3 Q. Did your dad ever tell you that he knew who it was?
- 4 A. Yes.
- 5 Q. When did he tell you that?
- 6 A. The morning that I came over there.
- 7 Q. The same morning that it happened?
- 8 A. Yes.
- 9 Q. Okay. I want to ask you about the day of the
10 lineup procedures, just a few questions, okay?
- 11 A. Yes.
- 12 Q. Do you remember how the meeting got set up between
13 the police officers and your dad?
- 14 A. I think they called my mom and they -- or she said
15 that we were at the mall, and they came to get us.
- 16 Q. What were you all doing at the mall that day?
- 17 A. We were at Sears.
- 18 Q. What were you all doing at Sears?
- 19 A. I don't remember right now.
- 20 Q. Okay. Did you talk on the phone with the
21 detectives about setting up the meeting?
- 22 A. No.
- 23 Q. Your dad talked to them?
- 24 A. No. My mom did.
- 25 Q. Okay. So how did you end up -- so when you all

1 went to Sears you didn't know you were going to meet with
2 the police then, did you?

3 A. No.

4 Q. Where did the lineup procedure take place?

5 A. At the parking lot at Sears.

6 Q. And you said there were two detectives there?

7 A. Yes.

8 Q. What was the first thing that happened when you met
9 the police to see the lineup?

10 A. They told us what they were -- they were there to
11 do.

12 Q. And what was that?

13 A. They were there to show us the lineup.

14 Q. Did you know that you were going to be translating
15 when they first showed up?

16 A. Yes.

17 Q. How did you know that?

18 A. I always translate for my parents.

19 Q. Had you translated for them before with the police
20 in this case?

21 A. Yes.

22 Q. When was that?

23 A. The morning the robbery happened.

24 Q. Okay. And you've talked about they gave your dad
25 the instructions before they gave him the lineup.

- 1 A. Yes.
- 2 Q. And you translated for him?
- 3 A. Yes.
- 4 Q. From English the Hindi? Was it Hindi or was it a
- 5 dialect?
- 6 A. It was a dialect.
- 7 Q. Okay. Does your dad have the ability to read
- 8 English?
- 9 A. Yes.
- 10 Q. Did he read those?
- 11 A. I think he did but I'm not too sure right now.
- 12 Q. How well do you read English?
- 13 A. How well do I read?
- 14 Q. Yeah. You making good grades in English at school?
- 15 A. Yes.
- 16 Q. Did you understand the prelineup instructions?
- 17 A. Yes.
- 18 Q. Okay. And did you think -- do you think your dad
- 19 understood that he could choose no one from the lineup?
- 20 A. Yes.
- 21 Q. Now, once your dad had pointed out the one person
- 22 did anybody say anything to your dad about his choice?
- 23 A. No.
- 24 Q. Did they say that they were going to make an arrest
- 25 in the case?

1 A. No.

2 Q. Did either of them say that your dad did a good
3 job?

4 A. No.

5 Q. Did they tell you you did a good job?

6 A. No.

7 Q. Did you say anything to your dad after he pointed
8 them out?

9 A. No.

10 Q. Did they tell your dad not to talk about the
11 identification with anyone?

12 A. Yes.

13 Q. Did they tell you the same thing?

14 A. Yes.

15 Q. But you have talked with some other people about
16 it, haven't you?

17 A. No.

18 Q. You talked to your mom and dad about it --

19 A. Yeah.

20 Q. -- since then? Okay. Have you talked to any other
21 family, uncles or cousins or anything about it?

22 A. No.

23 Q. Have you talked to any of your friends about it,
24 told them kind of what happened?

25 A. No.

1 Q. Okay. But you have talked to the solicitor about
2 it a few times?

3 A. Yes.

4 Q. And you heard your dad talking to other people
5 about the case, too?

6 A. Only my mom.

7 Q. Okay. Do they talk about it a lot?

8 A. Not really.

9 Q. But they watched the video several times, right,
10 five or six times --

11 A. Yeah --

12 Q. -- with you, that you know of?

13 A. Yes.

14 Q. And they obviously were talking about it during
15 that time?

16 A. Yes.

17 Q. When was the last time that y'all watched the video
18 together?

19 A. Last week.

20 MR. GROEBER: Okay. One moment, Your Honor?

21 THE COURT: Yes, sir.

22 (PAUSE.)

23 BY MR. GROEBER:

24 Q. Did you watch the video with Rutledge, with the
25 prosecutor?

1 A. Yes.

2 Q. Okay. And did they say anything about the video?

3 A. No.

4 Q. How did you explain what the paper said to your
5 dad?

6 A. I read it and translated to my dad.

7 Q. Okay. And did you ask him if he understood every
8 single one of them?

9 A. He did, since he did reply to it.

10 Q. I don't know what you mean by that. Could you try
11 to explain?

12 A. Like he initialled it.

13 Q. Okay.

14 A. Saying that he understood it.

15 Q. Okay.

16 A. So I knew that he knew what it meant.

17 Q. Okay. Did you ask -- did you say the words, Do you
18 understand it, to your dad?

19 A. No.

20 MR. GROEBER: No further questions, Your Honor.

21 THE COURT: Okay. Mr. Durant?

22 MR. RUTLEDGE DURANT: Briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. RUTLEDGE DURANT:

25 Q. And we did watch the video, didn't we?

DHURVAL PATEL (IC) - REDIRECT BY MR. DURANT 195

1 A. Yes.

2 Q. And that's because I wanted to get clear on the
3 testimony about how this video came to be at the
4 sheriff's office, and that was you. You helped with
5 that, didn't you?

6 A. Yes.

7 Q. Because who runs the surveillance system at the
8 store?

9 A. I do.

10 Q. And who helped set it up?

11 A. I did.

12 Q. But you didn't run the wires, did you?

13 A. No.

14 Q. But I think you said you set the cameras in focus
15 and set the date and time?

16 A. Yes.

17 Q. And then you helped the officer actually download
18 the video so that she could take it with her?

19 A. Yes.

20 Q. So we watched that video to determine that this was
21 in fact the video from this robbery?

22 A. Yes.

23 MR. RUTLEDGE DURANT: Okay. Thanks.

24 MR. GROEBER: Nothing, Your Honor.

25 THE COURT: You may step down. Thank you.

1 MR. RUTLEDGE DURANT: The State calls Natubhai
2 Patel.

3 THE COURT: All right. Counsel, I'd like to get as
4 much done of this witness we can before we break. I know
5 it's getting late but I did not plan accordingly and I
6 don't want the jury to wait in the morning, so I'd like
7 to get as much testimony today. All right.

8 All right. Mr. Patel, Please come forward.

9 Counsel, we're waiting. Let's go.

10 MR. RUTLEDGE DURANT: And, Your Honor, counsel and
11 I have talked about a different little procedure that
12 we're going to use for Ms. Isadas. She's going to stand
13 behind the witness.

14 THE COURT: Please come forward. And please
15 remember as the translator you must translate what the
16 Court says to Mr. Patel as well; do you understand that?

17 THE INTERPRETER: Yes.

18 THE COURT: Go ahead and tell him.

19 (The interpreter translated to the witness.)

20 THE COURT: So you are going to stand behind
21 Mr. Patel and so I need you to translate.

22 (The interpreter translated to the witness.)

23 THE INTERPRETER: Okay.

24 THE COURT: Well, I'm not going to be pleased with
25 this back and forth. You either stand there or you stand

1 -- this movement is not acceptable.

2 THE INTERPRETER: Okay.

3 MR. RUTLEDGE DURANT: Just behind him, and then you
4 just talk behind him.

5 THE INTERPRETER: Okay. Can I tell him to speak
6 louder, as I will have a hard time hearing him?

7 THE COURT: It is important that both of you speak
8 loudly, so I am telling you to speak loudly.

9 THE INTERPRETER: Okay. Yes, ma'am.

10 MR. RUTLEDGE DURANT: And if you don't hear him for
11 some reason we need to know that, I guess somehow. Could
12 we have a signal that you don't hear him?

13 THE COURT: Ma'am, you've got to translate
14 everything that is going on in the courtroom, everything
15 that I say, everything that Mr. Durant says, everything
16 that Mr. Groeber says; do you understand?

17 THE INTERPRETER: I do.

18 THE COURT: And you cannot paraphrase. You must
19 translate word for word. Do you understand?

20 THE INTERPRETER: I do.

21 THE COURT: All right. Please know I'm trying to
22 work with you, ma'am, and I'm sorry. It is very
23 frustrating and I know it must be frustrating for you but
24 I'm attempting to slow my speech down so that you can
25 translate as you have promised the Court that you would

1 do when you took your oath.

2 THE INTERPRETER: Yes, ma'am.

3 THE COURT: It is important that if you need
4 something repeated, Mr. Patel, that you will ask it to be
5 repeated. It is important that both of you -- can you
6 remember all this?

7 THE INTERPRETER: I will try my best. If I don't
8 understand I will ask.

9 THE COURT: All right. If you need to -- and
10 that's why I'm talking slowly. If you want to break the
11 sentences up, once you start speaking we all know to stop
12 speaking. All right.

13 THE INTERPRET: Yes, ma'am.

14 THE COURT: So I need you to tell him that if he
15 needs to repeat something or doesn't understand then he
16 just looks at Mr. Durant and says please repeat that and
17 then you'll translate it. All right.

18 (The interpreter translated to the witness.)

19 THE INTERPRET: He understands, he says.

20 THE COURT: Okay. That's not acceptable
21 translation. He said, Okay, I'm assuming.

22 THE INTERPRETER: He did.

23 THE COURT: All right. Then you need to say what?

24 THE INTERPRETER: Okay.

25 THE COURT: All right, Mr. Durant.

NATUBHAI PATEL (IC) - DIRECT BY MR. DURANT 199

1 DIRECT EXAMINATION

2 BY MR. RUTLEDGE DURANT:

3 (Through the interpreter.)

4 Q. All right. Mr. Patel, you need speak up, okay?

5 THE WITNESS: Yes.

6 THE INTERPRETER: Huh? Yes.

7 THE COURT: Okay. We're going to break for the
8 evening. Do not discuss your --

9 THE INTERPRETER: Yes, ma'am?

10 THE COURT: Step down. Step down. Step down.

11 All right. We're going to attempt -- Mr. Patel, I
12 need you to step down. You're done today. Thank you.

13 THE WITNESS: Okay.

14 THE COURT: All right. Counsel, I need you to come
15 up with something creative tomorrow. We will begin --
16 let me see you all in chambers. Let me see you all in
17 chambers. Thank you. 9:30.

18 (WHEREUPON the trial of this case was recessed for
19 the day.)

20 Tuesday, June 12, 2012

21 THE COURT: Just for the record, I have released
22 the jury for this morning and we will continue with the
23 hearings.

24 Yesterday afternoon after you left, Madam Court
25 Reporter, we had an in-chambers conference and had some

1 discussions about the interpreter and how to better
2 utilize her services. We had Mr. Patel and the
3 interpreter come back in the courtroom and we had
4 discussions.

5 Mr. Groeber, I know there was some things that you
6 wish to put on the record concerning that. Is there
7 anything further that we need to address?

8 MR. GROEBER: No, Your Honor. It was just that we
9 were all in the courtroom. We practiced. My client was
10 not present at that time because he had already been
11 transported but all of our counsel was present and
12 observed that and did not talk about the case when we
13 were practicing, only talked about other things.

14 THE COURT: I'm going to rephrase it. It wasn't
15 practice. It was just so that we may utilize her
16 services to their full extent.

17 MR. GROEBER: Thank you.

18 THE COURT: All right. Thank you.

19 Anything further from the State?

20 MR. RUTLEDGE DURANT: No, Your Honor.

21 THE COURT: All right. Let's put Mr. Patel back on
22 the stand.

23 And, Madam Interpreter, please come forward.

24 Mr. Patel, I need you to have a seat.

25 (The witness was seated.)

NATUBHAI PATEL(IC) - DIRECT BY MR. DURANT 201

1 THE COURT: Mr. Patel, I remind you that you are
2 still under oath.

3 THE WITNESS: Yes, I understand.

4 THE COURT: Thank you. Madam Interpreter, I remind
5 you that you are still under oath; do you understand?

6 THE INTERPRETER: Yes, I do.

7 THE COURT: Mr. Durant, your witness.

8 MR. RUTLEDGE DURANT: Thank you, Your Honor. May
9 it please the Court.

10 DIRECT EXAMINATION

11 BY MR. RUTLEDGE DURANT:

12 (Through the interpreter.)

13 Q. Mr. Patel, how old are you?

14 A. Fifty-two years.

15 Q. Do you live in Charleston?

16 A. Yes, I live in Charleston.

17 Q. Where were you born?

18 A. India.

19 Q. Do you recall the date of December 24th, 2010?

20 A. I don't understand.

21 THE INTERPRETER: May I please repeat the question
22 to him?

23 Q. Do you remember the date of December 24th, 2010?

24 A. Yes.

25 Q. Where were you that morning at approximately 7:45?

- 1 A. I was in my store near the register.
- 2 Q. What is the next thing you remember happening at
- 3 7:45 that morning?
- 4 A. Yes. A man walked into the store with a gun.
- 5 Q. Do you recall what that man was wearing?
- 6 A. Yes.
- 7 Q. What was he wearing?
- 8 A. He was wearing a red cap, a black jacket, khaki
- 9 pants and sunglasses.
- 10 Q. What did the man do?
- 11 A. The man pointed a gun at me.
- 12 Q. Did he take anything from you?
- 13 A. He took \$60 from me then asked me to open up my
- 14 wallet, and he asked for Newport cigarettes.
- 15 Q. Did the man then leave?
- 16 A. He left but before going he said, Don't call the
- 17 police.
- 18 Q. Had you ever seen this man before?
- 19 A. Yes, I had seen him.
- 20 Q. Where had you seen him?
- 21 A. In my store.
- 22 Q. For approximately how long before this incident had
- 23 you known him?
- 24 A. Since one year.
- 25 Q. Approximately how many times a week would you see

1 him?

2 A. At least three times.

3 Q. Had you had the opportunity to speak with him
4 before?

5 A. Yes. I have spoken to him a few times and he used
6 to say I have an ID from President Obama, signed from
7 President Obama.

8 Q. Do you know if he would buy anything in your store?

9 A. He used to buy cigarettes, 10-dollar tickets, and
10 gas.

11 Q. What type of cigarettes?

12 A. Newport.

13 Q. Did you recognize the man who was pointing the gun
14 at you?

15 A. Yes. I recognize him.

16 Q. Was he a regular customer in your store?

17 A. Yes, he would come.

18 Q. Did you report this incident to the police?

19 A. Yes, I did.

20 Q. Did the police respond quickly?

21 A. Yes, in 10 minutes.

22 Q. Did you tell the police that you recognized the
23 man?

24 A. I did -- I told the police that he was a regular
25 customer and I recognized him.

1 Q. Did you recognize his voice?

2 A. I recognized his voice and his face.

3 Q. Did you again meet with the police after the day of
4 the robbery?

5 THE INTERPRETER: May I say the date to him again?

6 Q. Did you meet with the police after the day of the
7 robbery?

8 A. October 29th --

9 THE INTERPRETER: I don't think he understands the
10 question. Could I repeat the date of the robbery to him
11 so he understands?

12 THE COURT: Rephrase your question, Mr. Durant.

13 BY MR. RUTLEDGE DURANT:

14 (Through the interpreter.)

15 Q. After December 24th, 2010, did you meet with the
16 police again about this case?

17 A. Yes, at the Citadel Mall, outside parking lot.

18 Q. When was the last time you remember seeing the man
19 before December 24th, 2010?

20 A. A month before that.

21 Q. What was he doing at that time?

22 THE INTERPRETER: I'm sorry. He just asked me one
23 month before that? He asked me a question.

24 THE COURT: It's as if he responded and asked you
25 to clarify your answer, Mr. Durant -- or your question.

1 Could you rephrase that?

2 MR. RUTLEDGE DURANT: I understand that, Your
3 Honor, but he just said an additional thing to the
4 translator.

5 THE COURT: Again, we're in a difficult situation.
6 She indicated, the interpreter indicated to you that he
7 asked for clarification. So it's as if he asked you to
8 please re -- please answer his question.

9 And, Madam Interpreter, when I address the
10 attorneys you need to be telling him what I'm saying.

11 THE INTERPRETER: Yes, ma'am.

12 BY MR. RUTLEDGE DURANT:

13 (Through the interpreter.)

14 Q. What happened one month before this robbery?

15 A. He would come to the store to buy gas, cigarettes,
16 Newport light -- Newport.

17 Q. Do you see the man who robbed you on December 24th,
18 2010, in this courtroom today?

19 A. Yes.

20 Q. Please point to him and describe what he is
21 wearing.

22 A. (Indicated) the one in the white who is sitting.

23 MR. RUTLEDGE DURANT: Let the report reflect the
24 witness has identified the defendant in court.

25 THE COURT: For the purposes of this hearing the

1 record will reflect.

2 BY MR. RUTLEDGE DURANT:

3 (Through the interpreter.)

4 Q. Had this man ever robbed you before?

5 A. There was a robbery but the face was covered.

6 Q. Did you recognize the man with the face covered?

7 A. I recognized his voice.

8 Q. Was it the same man in your store on December 24th,
9 2010?

10 A. Yes. It was the same voice because he's my regular
11 customer. He talks to me every time so I recognize his
12 voice.

13 Q. Did you report that robbery to the police?

14 A. Yes, I did.

15 Q. And when did that robbery occur?

16 A. I don't remember the date but I think it was three
17 weeks before that.

18 Q. I'm showing you Court's Exhibit Number 6. I ask
19 you to take a look at it and let me know if you recognize
20 it.

21 A. Okay. I will let you know.

22 Q. Do you recognize it?

23 A. Yes, I do.

24 Q. Have you seen this document before?

25 A. Yes, I have. That is my signature.

1 Q. Is that the document that the police used before
2 they showed you some photographs?

3 A. I did see it and my son explained what is on it
4 here for me and then I signed it.

5 Q. Did you understand that document?

6 A. Yes. I understood. He explained well and then I
7 signed.

8 Q. How many officers were present when you saw that
9 document the first time?

10 A. Two.

11 Q. How many officers actually presented you with this
12 document?

13 A. One of them. He's here. Yesterday he had come.

14 Q. And after this document was explained to you did
15 you then view some photographs?

16 A. He says -- I'm sorry. I saw a picture of six
17 people on a sheet and I circled one of them.

18 Q. I'm showing you what's labeled Court's Exhibit
19 Number 5. I ask you to take a look at it.

20 A. I will see it.

21 Q. Let me know if you recognize it.

22 A. Okay. I will tell you.

23 Q. Do you recognize that?

24 A. I only recognize one face on there.

25 Q. Are those the photos that were presented to you by

1 the officer?

2 A. Yes, and as soon as I saw them I circled one.

3 Q. Why did you circle one?

4 A. Because I recognized him as he was my regular
5 customer. I would see him two or three times a week.

6 Q. Was that also the man who you -- who robbed you on
7 December 24th?

8 MR. GROEBER: Objection. Leading.

9 THE COURT: I'm going to allow it.

10 BY MR. RUTLEDGE DURANT:

11 (Through the interpreter.)

12 Q. Was that also the man who robbed you on December
13 24th?

14 A. Yes.

15 Q. Is that why you circled the picture?

16 A. Yes. That's why I circled his picture.

17 Q. Did the officer tell you who to circle?

18 A. He did not say anything. I made my own decision.

19 Q. Did the officers do anything to influence you to
20 circle a picture?

21 A. He did not say anything to me. I circled it on my
22 own.

23 Q. Did the officers tell you that you had done a good
24 job?

25 A. He said, Okay, after I circled it, and then he

NATUBHAI PATEL (IC) - DIRECT BY MR. DURANT 209

1 signed it.

2 MR. GROEBER: Your Honor, objection. It sounded
3 like he said yes at some point during his answer. So I
4 would ask the translator if he at any point actually said
5 the word yes during that last sentence.

6 THE COURT: Madam Interpreter, did he say yes at
7 any point during the last translation?

8 THE INTERPRETER: He did say yes to indicate he
9 understood my question.

10 MR. GROEBER: And again, then she needs to be
11 translating exactly what he says without explaining and
12 I'd ask that he stop talking while I'm speaking, the
13 witness. And I also notice that she's not interpreting
14 what I'm saying to the Court to him, which she should be
15 doing.

16 THE COURT: All right. Mr. Groeber, I think that
17 she is but she waits for everybody to stop talking until
18 she translates it, which we're talking a lot.

19 So again, everything that is being said needs to be
20 translated to Mr. Patel in Hindi.

21 THE INTERPRETER: He's saying I was just saying yes
22 to indicate that I had circled this picture and I gave it
23 to the officer.

24 THE COURT: And remember, you must translate word
25 for word what he says.

1 THE INTERPRETER: Yes, ma'am.

2 THE COURT: And if there is any clarification
3 needed or anything to be repeated you need to let us know
4 that's what he's requesting.

5 THE INTERPRETER: Yes, ma'am.

6 THE COURT: All right. Thank you.

7 Mr. Groeber?

8 MR. GROEBER: I would just say she's watching while
9 she should have been translating what you and I spoke
10 about and it took about 10 seconds, and I know your and
11 I's [sic] conversation was probably about 30 seconds.

12 THE COURT: Again, you've got to -- and if you need
13 us to stop I just need you to let us know that we're
14 speaking too fast for you to translate it. But
15 everything that all the attorneys say as well as the
16 Court says needs to be translated to Mr. Patel; do you
17 understand?

18 THE INTERPRETER: Yes, I do.

19 THE COURT: Mr. Groeber, one more time.

20 MR. GROEBER: And again, she has not translated
21 what you and I just spoke about for 30 seconds, to the
22 witness.

23 (The interpreter translated to the witness.)

24 THE COURT: All right, Mr. Durant. You may
25 continue.

1 BY MR. RUTLEDGE DURANT:

2 (Through the interpreter.)

3 Q. After you made this identification did you leave?

4 A. Yes. I left and went to my store.

5 Q. Are you certain that the man that you circled is

6 the man that came into your store and robbed you on

7 December 24th, 2010?

8 A. I say a hundred percent this is that man.

9 Q. Are you certain that that is the same man who had

10 robbed you approximately three weeks before December

11 24th, 2010?

12 A. Yes. I'm pretty certain of the voice of this man.

13 Q. Do you have a lot of African American customers who

14 come to your store?

15 A. I get a lot of customers in my store; Americans,

16 African Americans, and Mexicans.

17 Q. What percentage of African Americans would you say

18 are customers at your store?

19 A. Eighty percent.

20 Q. Do you interact with African Americans on a daily

21 basis?

22 A. Yes, every day.

23 MR. RUTLEDGE DURANT: Thank you.

24 THE COURT: Mr. Groeber, your witness.

25 MR. GROEBER: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. GROEBER:

3 (Through the interpreter.)

4 Q. Good morning, Mr. Patel.

5 A. Good morning.

6 Q. I have a few questions.

7 A. I will answer them.

8 Q. Thank you. I will try to keep them short.

9 A. I will answer them.

10 Q. What time did you open the store the morning of
11 December 24th?

12 THE INTERPRETER: I did not repeat the question.

13 Could I --

14 Q. I would ask you to say what he said.

15 A. He said 6:30.

16 Q. Let's try again. What time, Mr. Patel, did you
17 open the store on December 24th, 2010?

18 A. Monday through Friday I opened it at 6:30.

19 Q. What day of the week was it that day?

20 A. I don't remember the day but I remember the date,
21 December 24th, in the morning.

22 Q. How long had you been awake that morning?

23 A. I wake up at 5:00 every morning.

24 Q. And that morning a man came in?

25 A. Yes.

NATUBHAI PATEL(IC) - CROSS BY MR. GROEBER 213

- 1 Q. He had a hat on?
- 2 A. Red hat, yes.
- 3 Q. He had sunglasses on?
- 4 A. Sunglasses, yes.
- 5 Q. They were large sunglasses?
- 6 A. They were this big (indicated).
- 7 Q. And they covered his whole eyes?
- 8 A. Yes. He wore sunglasses, so his eyes were hidden.
- 9 Q. He was also wearing a black jacket?
- 10 A. Yes.
- 11 Q. It had a hood?
- 12 A. There was a hood and he did not wear it. He was
- 13 with a gun.
- 14 Q. And it's your testimony that the hood was not on?
- 15 A. He walked in with a gun so I got scared, but he was
- 16 wearing a hat.
- 17 Q. Do you remember if the hood was on?
- 18 A. I don't remember very clearly because the gun was
- 19 pointed at me, so I don't remember.
- 20 Q. And you were scared because he had the gun pointed
- 21 at you?
- 22 A. Yes, he was pointing at me.
- 23 Q. And you were scared?
- 24 A. Yes. I was scared when he said, Give me the money
- 25 fast.

1 Q. And you stared at the gun?

2 A. Yes, I saw the gun in his hand.

3 Q. When was the first time you think you recognized
4 the robber?

5 A. I know him since the past one year.

6 Q. I'll ask my question again. When was the first
7 time you think you recognized the robber?

8 A. I recognized his voice.

9 Q. At what exact moment did you recognize his voice?

10 A. He's used to come all the time and joke about an ID
11 so that's why I recognized his voice.

12 Q. Did you recognize his voice the first moment he
13 spoke?

14 A. Yes, I did.

15 Q. Other than his voice was there anything else that
16 helped you recognize him?

17 A. Yes, I recognized. I recognized his nose and I
18 remembered the man.

19 Q. Who was the first person that you told, I recognize
20 that man?

21 A. I called home. I spoke to my wife and told her
22 that that was that man. First I called the police and
23 then I called home.

24 Q. I want to ask you about when you called the police.

25 A. One or two minutes after he left. After he left I

1 called the police.

2 Q. Did you tell the police that you recognized the man
3 on the phone?

4 A. Not on the phone. I saw the video when my son came
5 to the store.

6 Q. Now I want to ask you about when you called your
7 wife.

8 A. I called my wife immediately to come to the store
9 with my son for the video.

10 Q. And when you say your son you mean Dhruval?

11 A. Yes. My son's name is Dhruval.

12 Q. When did you tell your wife that you recognized the
13 robber?

14 A. I told her over the phone it's the same man who
15 talks about Obama all the time.

16 Q. Did you tell her anything else on the phone?

17 A. To come to the store immediately with the son.

18 Q. Anything else?

19 A. Anything else you ask I will answer. Other than
20 that nothing else.

21 Q. Just to be clear, did you tell your wife anything
22 other than, Come to the store, and it was the man who
23 talks about Obama?

24 A. I told my wife that he took \$60. He checked my
25 wallet, and he took Newport cigarettes. And also that

1 the man said, Don't call the police otherwise there will
2 be bad consequences.

3 Q. I want to ask you now about the prior robbery one
4 month before December 24th.

5 A. I will answer you.

6 MR. GROEBER: May I have one moment, Your Honor?

7 THE COURT: You may.

8 THE INTERPRETER: I'm sorry, I didn't --

9 THE COURT: Mr. Groeber?

10 MR. GROEBER: Yes, Your Honor.

11 THE COURT: She didn't get, May I have one moment,
12 so I need you to repeat that.

13 MR. GROEBER: May I have one moment, Your Honor.

14 THE COURT: You may.

15 BY MR. GROEBER:

16 Q. That robbery happened November 20th of 2010?

17 A. Yes, in the night.

18 Q. Around 8:14?

19 A. Between 8:14 and 8:30.

20 Q. And in that robbery there were two people there?

21 A. Yes, two.

22 Q. Both had masks over their faces?

23 A. One man had his whole face covered. There was a
24 man with his whole face covered, and the man who is
25 sitting here, he wore a black cloth but it would keep

NATUBHAI PATEL(IC) - CROSS BY MR. GROEBER 217

1 slipping. It would keep slipping and he would try to
2 pull it up.

3 Q. You said it was a black cloth?

4 A. Yes, it was black.

5 THE INTERPRETER: He's describing the clothes.

6 A. I saw a white top and he pointed the gun at me and
7 held it at me for two or three minutes, which was very
8 scary. He said, Come out from behind the counter, but I
9 didn't go. If you want to kill me kill me but I will not
10 come out from behind the counter.

11 Q. One of the men pointed a gun at you?

12 A. Yes. The one who's sitting here pointed the gun at
13 me.

14 Q. It was a silver gun?

15 THE INTERPRETER: I'm sorry. I have to ask him
16 when he said black did he mean the gun or --

17 Q. You don't have to ask him anything. You should
18 just say exactly what he said.

19 THE COURT: Mr. Groeber.

20 Q. And if I need clarification I will ask for
21 clarification.

22 THE COURT: All right. Thank you.

23 A. He said -- I'm sorry. I don't think I saw the gun
24 I was very, very scared. If the gun is pointed at your
25 chest who's going to look at the gun.

1 THE INTERPRETER: Then he said the word black.

2 Q. When you say black, do you mean the gun was black?

3 A. He was wearing gloves.

4 Q. When you said black to my question a minute ago

5 were you speaking -- what were you speaking of?

6 A. About the gun.

7 Q. The gloves were black?

8 A. Yes, black.

9 Q. You said that both -- you said that one of the

10 robbers was taller than the other?

11 A. Yes, tall. And there was a big towel covering his

12 whole face.

13 Q. And it was the shorter man that had the gun?

14 A. The man who's sitting in front of me held a gun.

15 Q. And I'm asking you, was it the shorter man or the

16 taller man who held the gun?

17 A. Yes, the short man. The smaller man held the gun.

18 Q. You told the police you thought one might be a

19 regular customer?

20 A. Yes, one of them. The other one I was not sure

21 about because his whole face was covered with a towel.

22 Q. You told the police that you thought it was a

23 regular customer because they knew where the cash was

24 kept?

25 A. In the night I keep only 50, 60 dollars, and I keep

NATUBHAI PATEL(IC) - CROSS BY MR. GROEBER 219

1 the cash in a drawer.

2 Q. And you told the police you thought that one of the
3 people were a regular customer?

4 A. I saw him and I recognized his voice and I told the
5 police.

6 Q. So you are testifying today that you told the
7 police that you recognized his voice?

8 A. I'm a hundred percent sure it was that man.

9 Q. And, Mr. Patel, that wasn't my question. My
10 question was that you told the police that you recognized
11 the voice.

12 A. Yes, I recognized his voice.

13 Q. And my question is did you tell the police that?

14 A. I told the police that I recognized his voice, that
15 he is a regular customer and I am sure that it is that
16 guy.

17 Q. You told the police that you were sure it was what
18 guy?

19 A. I didn't know his name but I told the police that I
20 recognized him from the times he talked about Obama and
21 ID, a signed ID.

22 MR. GROEBER: May I have one moment, Your Honor?

23 THE COURT: You may have all the time you need.

24 (PAUSE.)

25 MR. GROEBER: Your Honor, may I approach the

1 witness?

2 THE COURT: You may.

3 (WHEREUPON, Defendant's Exhibit Number 6, an
4 Incident Report, marked for identification only.)

5 MR. GROEBER: May I approach?

6 THE COURT: You may.

7 BY MR. GROEBER:

8 (Through the interpreter.)

9 Q. I'm going to show you what's been marked as
10 Defendant's Exhibit 6. And let me back up. If you
11 looked at the report from the responding officer from
12 November 10th 2010 --

13 A. (Interpreter interpreting).

14 MR. GROEBER: Your Honor, I'd ask that you --

15 THE COURT: Counsel.

16 A. I don't have a copy from the December -- from
17 November 20th. I only know about the report December
18 24th.

19 THE COURT: Mr. Groeber, that was in response to
20 your question?

21 MR. GROEBER: Well, I had not finished my question,
22 Your Honor. That was my problem.

23 THE COURT: If you would let me finish, which is
24 probably the same situation that -- Mr. Patel, you
25 interrupted Mr. Patel. He was answering and you need to

NATUBHAI PATEL(IC) - CROSS BY MR. GROEBER 221

1 remember that there are witnesses who do not wait for you
2 to finish your question with or without an interpreter,
3 Mr. Groeber, and so he was merely responding and she was
4 doing what she was instructed to do, which was to
5 interpret.

6 MR. GROEBER: And I was going --

7 THE COURT: I'm not arguing with you, Mr. Groeber.
8 He's answered that question. If you wish to rephrase
9 your question you may.

10 MR. GROEBER: Thank you.

11 BY MR. GROEBER:

12 (Through the interpreter.)

13 Q. If you looked at a copy of the incident report from
14 November 10th, 2010 would that refresh your recollection
15 -- excuse me. Let me rephrase one more time. If you
16 looked at an incident report from November 20th, 2010
17 would that refresh your recollection about what you told
18 the police that day?

19 A. I told him what I told you. I did not tell him
20 anything else.

21 MR. GROEBER: One moment, Your Honor.

22 THE COURT: Take all the time you need,
23 Mr. Groeber.

24 BY MR. GROEBER:

25 (Through the interpreter.)

1 Q. Okay, Mr. Patel. I'd like to move back to the
2 robbery from December 24th of 2010.

3 A. I will answer you.

4 Q. When did you watch the video for the first time?

5 A. I saw a video on November 20th, and then on the day
6 of the robbery, December 24th.

7 Q. And right now I'm asking you about the robbery on
8 December 24th.

9 A. Yes, I will answer you.

10 Q. When was the first time that you watched that
11 video?

12 A. As soon as my son came to the store I saw it
13 immediately. The cops were there, too.

14 Q. How many police officers were with you when you
15 watched it?

16 A. I don't remember how many police officers were
17 there. I did not count. Two or three.

18 Q. Where did you watch the video?

19 A. I saw the video in my store not in my house.

20 Q. Where in the store?

21 A. There is a room in the store in the back. That is
22 where I keep the video.

23 Q. Did either -- was Dhruval there to watch the video?

24 A. Yes, he was there. He helped the police officers
25 with the video.

NATUBHAI PATEL(IC) - CROSS BY MR. GROEBER 223

1 Q. Was your wife there when you watched the video?

2 A. Yes, my wife was there. My son cannot come to the
3 store on his own.

4 Q. And my question is did she watch the video with you
5 that night?

6 A. All of us saw it; the police officers, my son, and
7 my wife, and myself.

8 Q. Did any of the police officers say, I recognize
9 him?

10 A. If the police officer recognized he would have
11 arrested him immediately.

12 Q. And does that mean that no police officer said they
13 recognized him, in your presence?

14 A. At that time I did not know whether the police
15 officer recognized or did not recognize the man.

16 Q. How many times did you watch the video that morning
17 with the police?

18 A. The police officers were there for 30 or 40
19 minutes. My store was closed for two hours and we were
20 watching the video.

21 Q. So you watched it several times that morning?

22 A. Yes, several times. Even after the police left we
23 saw.

24 Q. Every time you watched it was your wife and son
25 watching it, too?

1 A. She saw it, my wife, and my son saw it with me in
2 the morning. Then they went home, she had to cook, then
3 they came back after two o'clock.

4 Q. Did you watch it when they came back with them
5 after two o'clock?

6 A. Why would we watch it again and again? I
7 recognized the man and I knew him.

8 Q. Have you ever shown it to any friends?

9 A. I don't have any Indian friends. I only have my
10 family. I'm by myself. I have family only in Georgia.

11 Q. Did you show it to any of your family members other
12 than --

13 MR. RUTLEDGE DURANT: Objection. I just fail to
14 see how this is relevant to his identification.

15 THE COURT: Sustained.

16 BY MR. GROEBER:

17 (Through the interpreter.)

18 Q. Who have you talked with about the robbery from
19 when it took place to the time you were shown the photo
20 lineup?

21 A. Only with my family. Nobody else.

22 Q. I'd like to focus with you now on the lineup
23 itself, when you were presented the lineup.

24 A. Yes, I will answer you.

25 Q. What did you think was your job when you were asked

1 to look at the lineup?

2 A. My job was to catch him.

3 Q. Did you think that the police had a suspect when
4 you were shown the lineup? I'm sorry. Let he rephrase.

5 A. All right.

6 Q. Before you looked at the lineup did you think that
7 the police had a suspect?

8 A. I did not know.

9 Q. Who called you to get you to do the lineup?

10 A. The police officers called my store. I was not at
11 the store. I was at the Citadel Mall, then they called
12 my wife while we were at the Citadel Mall.

13 Q. And who called you?

14 A. I didn't have the police officer's number, so my
15 wife called.

16 Q. And she told you the police were coming to speak
17 with you?

18 A. Yes. My wife told the police officers, My husband
19 is at the Citadel Mall. If you need to speak to him,
20 please go there.

21 Q. What was the first thing that happened when you met
22 the police to see the lineup?

23 A. We went to the parking lot and my son read and
24 helped me understand.

25 Q. Were you given a chance -- can you read English?

1 A. I can read a little bit, some understanding I have.

2 Some words I do understand what they are called.

3 Q. Did you understand all of the instructions that

4 Dhruval translated for you?

5 A. He went one by one through each of the

6 instructions. I understood and I signed.

7 Q. Did you understand that you could choose no one

8 from the lineup?

9 THE INTERPRETER: He didn't understand. Could I
10 ask him again?

11 Q. Let me try to rephrase it a little better. Did you

12 understand that you did not have to choose someone from

13 the lineup?

14 A. As soon as I saw it I knew he was the man. I was

15 hundred percent sure.

16 Q. Okay. My question is about before you saw the

17 lineup. Did you understand that you did not have to

18 choose someone?

19 A. I did not know. I had not seen the lineup before.

20 MR. GROEBER: One moment, Your Honor.

21 THE COURT: Yes, sir.

22 (PAUSE.)

23 BY MR. GROEBER:

24 (Through the interpreter.)

25 Q. What happened -- I'd like to focus about what

NATUBHAI PATEL (IC) - CROSS BY MR. GROEBER 227

1 happened after you picked out my client from the lineup.

2 A. I will answer you.

3 Q. Did anyone say anything to you about your decision?

4 A. Nobody said anything to me. I did it on my own.

5 Q. Do you remember Detective Lawrence telling you that
6 he would notify you when he made an arrest?

7 A. I don't know the laws very well. After circling I
8 did not know what was going to happen.

9 MR. GROEBER: May I have one moment, Your Honor?

10 THE COURT: Yes, you may.

11 MR. GROEBER: May I approach, Your Honor?

12 THE COURT: You may.

13 (PAUSE.)

14 THE COURT: Madam Interpreter, is this a good time
15 for you to break?

16 THE INTERPRETER: It doesn't matter.

17 THE COURT: Do you need a break?

18 THE INTERPRETER: No, I'm fine. Thank you.

19 MR. GROEBER: And I'm 10 minutes or so.

20 THE COURT: Okay. All right. Thank you.

21 A. I will give you 30 minutes.

22 Q. Thank you.

23 MR. GROEBER: May I approach again, Your Honor?

24 THE COURT: You may.

25 BY MR. GROEBER:

1 (Through the interpreter.)

2 Q. I'm going to hand you Court's 6, and you've already
3 said that you recognize that as the form with the
4 instructions about the photo lineup.

5 A. Yes. My son explained everything and I signed on
6 it.

7 Q. And did you understand at that time that there was
8 a section that you could write comments in?

9 A. I understood.

10 Q. And you did not write any comments?

11 A. I didn't writing anything. I signed.

12 Q. Why did you not write any comments?

13 A. They didn't tell me to write anything. They said
14 sign it, and I signed it.

15 MR. GROEBER: May I have one moment, Your Honor?

16 THE COURT: Yes, sir.

17 (PAUSE.)

18 BY MR. GROEBER:

19 (Through the interpreter.)

20 Q. Mr. Patel, you have testified that you can
21 recognize the defendant as the robber?

22 A. I'm a hundred percent sure that is the man.

23 Q. And the video shows the robber as a black male?

24 A. Yes. In the video I saw him to be a black man.

25 Q. And he was wearing glasses?

NATUBHAI PATEL(IC) - CROSS BY MR. GROEBER 229

1 A. Yes. He was wearing glasses.

2 Q. With something over his head?

3 A. Yes, there was a hat.

4 Q. Are you sure that you can pick him out from other
5 pictures?

6 A. Now?

7 Q. In general.

8 A. Even if you show me a hundred pictures I can
9 recognize.

10 MR. GROEBER: One moment, Your Honor.

11 (PAUSE.)

12 MR. GROEBER: Your Honor, we probably need to
13 discuss something out of the presence of Mr. Patel.

14 THE COURT: Why don't you approach and I'll make
15 that decision.

16 MR. GROEBER: Thank you.

17 (WHEREUPON, a bench conference was had, not on the
18 record.)

19 MR. GROEBER: May I have one moment, Your Honor?

20 THE COURT: Yes.

21 BY MR. GROEBER:

22 (Through the interpreter.)

23 Q. Mr. Patel, do you know any of Mr. Green's brothers?

24 A. I know his brother. He used to come with him to
25 the store.

1 Q. Do you know which brother that was?

2 A. I remember his face.

3 MR. GROEBER: One moment, Your Honor.

4 (PAUSE.)

5 BY MR. GROEBER:

6 (Through the interpreter.)

7 Q. If his brother that you know was wearing glasses
8 and a hood would you be able to recognize him?

9 THE INTERPRETER: He's saying. I have a question
10 for you. I don't have anything to do with the brother.
11 My focus is only with the robber.

12 MR. GROEBER: Your Honor, I would ask that you ask
13 him to answer my questions.

14 MR. RUTLEDGE DURANT: Your Honor, at this time --

15 THE COURT: All right, Counsel. He answered your
16 question. All right. Let's move on.

17 MR. GROEBER: Your Honor, I would contend that he
18 argued with me rather than answering the question.

19 THE COURT: Counsel. I'm not going to allow you to
20 argue with me. You may rephrase your question. You may
21 move on or you may end. Let's go.

22 MR. GROEBER: May I have one moment, please?

23 THE COURT: You may.

24 (PAUSE.)

25 BY MR. GROEBER:

NATUBHAI PATEL(IC) - CROSS BY MR. GROEBER 231

1 (Through the interpreter.)

2 Q. If you looked at a photograph would you be able to
3 tell which brother it was if there was a disguise?

4 MR. RUTLEDGE DURANT: Objection.

5 THE COURT: What's your basis?

6 MR. RUTLEDGE DURANT: We're talking about strictly
7 his identification in this hearing of this defendant and
8 nobody else.

9 THE COURT: I'm going to allow that question.
10 Overruled.

11 You may answer.

12 THE INTERPRETER: Could you please ask the question
13 again?

14 BY MR. GROEBER:

15 (Through the interpreter.)

16 Q. Would you be able to tell from a picture the
17 difference between the two brothers if there was a
18 disguise?

19 A. I only want to talk about the brother who robbed my
20 store. I have nothing to do with the other brother. He
21 has not robbed my store. This man has robbed my store.

22 MR. GROEBER: Your Honor, I would also ask you to
23 instruct him to answer my question again. I believe he's
24 arguing rather than answering.

25 THE COURT: Well, Mr. Groeber, after hearing that

1 question repeated once again I'm going to sustain the
2 State's objection as to any disguise of the other
3 brother, so sustained.

4 You do not have to answer the question.

5 Mr. Groeber?

6 MR. GROEBER: Thank you, Your Honor. I would ask
7 that he answer the question and it be proffered -- the
8 answer be proffered as part of the record.

9 THE COURT: I deny your request at this time. Just
10 move on, Mr. Groeber. Let's focus on this hearing and
11 what occurred at this hearing. Any disguise, your
12 question about any disguise was more than a little vague.

13 BY MR. GROEBER:

14 Q. Could you tell brothers apart if the disguise did
15 not cover the nose?

16 MR. RUTLEDGE DURANT: Your Honor, this is asked and
17 answered.

18 THE COURT: All right.

19 MR. RUTLEDGE DURANT: It's the same question.

20 THE COURT: I don't need a response to that
21 question. I just needed Mr. Patel to hear what
22 Mr. Durant said.

23 THE WITNESS: Okay.

24 THE COURT: Mr. Durant was making a legal objection
25 which does not call for your input, Mr. Patel. When

NATUBHAI PATEL(IC) - CROSS BY MR. GROEBER 233

1 either of the attorneys object I need you to stop
2 talking, with all due respect. Mr. Patel, we are going
3 to take a break. Do not discuss your testimony.

4 (Through the interpreter.)

5 A. I don't want to take a break. I just want to
6 finish this. Once I get hungry I get dizzy.

7 THE COURT: Mr. Patel, we are taking a break. Do
8 not discuss your testimony with anyone. We are going to
9 take 10 minutes.

10 Thank you. Ten minutes.

11 (WHEREUPON, a brief recess was taken.)

12 THE COURT: And we're marking that photograph
13 Court's 8; is that correct?

14 MR. GROEBER: Yes, Your Honor, and also it's a
15 photograph that's taken from an armed robbery that
16 occurred in Walterboro. The article discusses that it's
17 a brother of the defendant who was arrested. So I've
18 attached to the picture and the article as a court's
19 exhibit.

20 THE COURT: All right. Thank you.

21 (WHEREUPON, Court's Exhibit Number 8, a Photograph
22 and Article, was marked and made a part of the record.)

23 THE COURT: Mr. Patel, I remind you that you are
24 still under oath.

25 Mr. Groeber, you may continue.

1 MR. GROEBER: Thank you, Your Honor. Your Honor, I
2 just want to be clear where we left off, that you ruled
3 the line of questions regarding Court's Exhibit -- I
4 believe 7 -- 8 --

5 THE COURT: The photograph?

6 MR. GROEBER: Correct.

7 THE COURT: Yes.

8 MR. GROEBER: That you ruled that that is
9 inappropriate for me to continue that line questioning?

10 THE COURT: You have not laid a foundation as to --
11 as to who is in the picture, where the picture came from,
12 and this line of questioning for this hearing is
13 inappropriate. That was my ruling.

14 MR. GROEBER: Thank you, Your Honor.

15 Thank you, Your Honor. No further questions at
16 this time.

17 (Through the interpreter.)

18 A. ✓ Even if you have questions I will answer them.

19 THE COURT: Mr. Durant, your witness.

20 MR. RUTLEDGE DURANT: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. RUTLEDGE DURANT:

23 (Through the interpreter.)

24 Q. Mr. Patel, are you certain that this is the man
25 that came into your store on December 24th, 2010, and

NATUBHAI PATEL(IC) - REDIRECT BY MR. DURANT 235

1 robbed you --

2 MR. GROEBER: Objection, Your Honor.

3 Q. Once hundred percent --

4 THE COURT: Hold on one second. When someone makes
5 an objection I need you to stop talking until I rule on
6 the objection. You may not have to answer the question.

7 THE INTERPRETER: Okay.

8 THE COURT: All right, Mr. Groeber. I heard you
9 say objection but I did not hear the objection.

10 MR. GROEBER: It's been asked, it's been answered
11 and it's leading.

12 THE COURT: It's redirect. Overruled.

13 You may answer.

14 BY MR. RUTLEDGE DURANT:

15 (Through the interpreter.)

16 Q. Are you certain that this is the man that robbed
17 you?

18 A. A hundred percent sure.

19 Q. And if this man's photo had not been in this lineup
20 what would you have done?

21 A. If his picture was not there I would not have said
22 there is a man in that picture that I recognize, but his
23 picture is there and I recognized him.

24 Q. Were any of the officers who responded to your
25 store for either of these armed robberies, did they speak

1 Hindi?

2 A. Nobody.

3 Q. Were you able to see this man's face on December
4 24th, 2010, when he came in with sunglasses on and a hat?

5 A. Even with the sunglasses I could clearly see his
6 face.

7 MR. RUTLEDGE DURANT: Thank you.

8 THE COURT: Mr. Groeber, recross?

9 MR. GROEBER: No, Your Honor. Thank you.

10 THE COURT: You may step down. Thank you.

11 THE INTERPRETER: Can he ask you a question?

12 THE COURT: You may. I may not be able to answer
13 it.

14 THE INTERPRETER: He wants to know if or if not,
15 whether or not the person who robbed him is sentenced, if
16 he's not sentenced will he be protected.

17 THE COURT: I cannot answer that question at this
18 time. That is an appropriate question at a later time.

19 THE INTERPRETER: Thank you.

20 THE COURT: Thank you.

21 Call your next witness.

22 MR. RUTLEDGE DURANT: Your Honor, for purposes of
23 these pretrial motions I think that's all the witnesses
24 the State is going to call, except for the wife who we
25 will do in-camera, Mrs. Jagruti Patel.

CHARLES LAWRENCE (IC) - DIRECT BY MR. GRIMES 237

1 THE COURT: All right. Mr. Groeber, do you have
2 witnesses?

3 MR. GROEBER: Can I have one moment, Your Honor.

4 (PAUSE.)

5 MR. GRIMES: Briefly, Your Honor, we would recall
6 Detective Lawrence.

7 THE COURT: All right, Detective Lawrence. I
8 remind you that you are still under oath.

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Thank you.

11 Mr. Grimes, your witness.

12 MR. GRIMES: Thank you, Your Honor. May it please
13 the Court. May I approach the court reporter?

14 THE COURT: You may.

15 MR. GRIMES: Thank you.

16 MR. RUTLEDGE DURANT: Your Honor, I've been advised
17 by counsel he's going to attempt with this witness to get
18 in the same picture that we talked about with Mr. Patel.

19 THE COURT: I'll handle it when it happens,
20 Mr. Durant. Thanks for the warning.

21 MR. RUTLEDGE DURANT: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. GRIMES.

24 Q. Detective Lawrence, I want to show you what's been
25 marked as Court's Exhibit Number 8?

1 MR. RUTLEDGE DURANT: Your Honor?

2 THE COURT: Hold on one second, Mr. Durant.

3 Nothing prevents him from handing him the picture. So
4 it's what comes next that you may want to object to.

5 MR. GRIMES: And, Your Honor, I'm showing the
6 witness what's been marked as Court's Exhibit Number 8.

7 THE COURT: Yes, sir.

8 BY MR. GRIMES:

9 Q. Detective Lawrence, do you recognize what that is?

10 MR. RUTLEDGE DURANT: Objection.

11 THE COURT: What's your objection?

12 MR. RUTLEDGE DURANT: This is not relevant. This
13 is speculation. This is not the defendant.

14 THE COURT: Well, let me see if he knows what that
15 picture is or if he knows what Court's 8 is.

16 A. It's a blurred photo of a black male.

17 Q. Are you familiar with the person who's in that
18 photo?

19 A. By looking at the photo?

20 Q. Yes, sir.

21 A. It's blurred. It's not a good photo, so I can't
22 say that I am because it's blurred.

23 Q. I believe on direct you testified that you knew
24 Marvin Green from your activities, community policing
25 activities; is that correct?

CHARLES LAWRENCE (IC) - DIRECT BY MR. GRIMES 239

1 A. One more time, please.

2 Q. On your direct testimony yesterday I believe you
3 testified that you knew Marvin Green from community
4 policing and being active in Hollywood, Jacksonboro
5 community?

6 A. That's correct.

7 Q. And you knew he was the son of Marvin Bowens?

8 A. That's correct.

9 Q. Do you know any of Marvin Green's brothers from
10 your patrol duties out there?

11 A. I know him to have, I think two other siblings, if
12 I'm correct.

13 Q. Do you know the names of those two other siblings?

14 A. I know one of them is younger, one of them is
15 taller than him, and the other one is a little lighter
16 than him.

17 Q. Okay. And you don't recognize the person in that
18 picture?

19 A. This is not a good photo.

20 Q. Well, I'm going to ask you if you can read the
21 article.

22 MR. RUTLEDGE DURANT: Objection.

23 THE COURT: All right.

24 MR. GRIMES may I finish my question, Your Honor?

25 THE COURT: Let him finish his question then you

1 may object.

2 Do not answer. There is an objection coming.

3 Q. I'd ask you if you could read the rest of Court's
4 Exhibit 8, the article, and see if that will refresh your
5 memory and provide you any insight whether you recognize
6 the person in the picture as one of Marvin Green's
7 brothers.

8 MR. RUTLEDGE DURANT: Objection, Your Honor.

9 THE COURT: What's your basis?

10 MR. RUTLEDGE DURANT: This is not relevant. He
11 hasn't laid a proper foundation. He's never seen this
12 article or elicited testimony that he's seen it before.

13 THE COURT: Sustained.

14 BY MR. GRIMES:

15 Q. And your testimony today, you know Marvin only
16 having two brothers?

17 A. And a sister. He had a sister as well.

18 Q. Two brothers and one sister?

19 A. To my knowledge.

20 MR. GRIMES: Thank you, Your Honor. I have no
21 further questions.

22 THE COURT: All right. Do you have any cross of
23 this witness at this time?

24 MR. RUTLEDGE DURANT: Nothing from the State.

25 Thank you.

1 THE COURT: You may step down. Thank you.

2 Any additional witnesses?

3 MR. GROEBER: No, Your Honor. Not at this time.

4 THE COURT: So I have heard all of the testimony
5 that I need to hear with the exception of Ms. Patel; is
6 that correct?

7 MR. GROEBER: That is correct.

8 THE COURT: That is correct, Mr. Durant?

9 MR. RUTLEDGE DURANT: That's correct, Your Honor.

10 THE COURT: Do you need a few moments, because we
11 have a few moments, to gather your thoughts, Mr. Groeber?

12 MR. GROEBER: Sure. If we could have a very quick
13 break.

14 THE COURT: All right. Five minutes. Thank you.

15 (WHEREUPON, a brief recess was taken.)

16 THE COURT: Mr. Groeber, did you have enough time?

17 MR. GROEBER: Yes, Your Honor.

18 THE COURT: And, Mr. Durant, did you have enough
19 time?

20 MR. RUTLEDGE DURANT: Yes, Your Honor.

21 THE COURT: All right. Thank you.

22 All right, Mr. Groeber. Whenever you are ready
23 I'll be happy to hear from you.

24 MR. GROEBER: Thank you, Your Honor. And just for
25 clarity I'll be arguing strictly only the Biggers

1 analysis right now on Mr. Patel's out-of-court
2 identification --

3 THE COURT: You trailed off right at the end so --

4 MR. GROEBER: And possible in-court identification
5 during the trial.

6 THE COURT: Based upon his use of his being shown
7 the lineup, correct?

8 MR. GROEBER: Correct, Your Honor. As Your Honor
9 knows a criminal defendant can be deprived due process by
10 a law -- an identification procedure which is
11 unnecessarily suggestive and conducive to irreparable
12 mistaken identification. And the defense must articulate
13 specifically why it was suggestive, and there are several
14 reasons that we would argue that this particular
15 identification was suggestive.

16 First, if you'll look at the six-pack photo lineup
17 you'll notice that --

18 THE COURT: All right. Hold one second. My court
19 reporter is handing it up to me.

20 All right. You may continue.

21 MR. GROEBER: Thank you. In all of those pictures,
22 except for my client, you can see a collar part of the
23 T-shirt. My client is the only one in the lineup that
24 you are not able to -- you can't see any kind of a shirt,
25 so that makes him unique in one way.

1 Another way when you look at the lineup there's a
2 much lighter sheen to his face. I don't know if it's
3 just the way the photograph was taken but it also, we
4 think, makes the lineup suggestible.

5 THE COURT: Do we have the color?

6 MR. RUTLEDGE DURANT: That's the original, Your
7 Honor.

8 THE COURT: They showed black and white?

9 MR. RUTLEDGE DURANT: They showed black and white.

10 THE COURT: All right. Thank you.

11 MR. GROEBER: And I believe Your Honor is looking
12 at the exact one that they showed.

13 Is that correct?

14 MR. RUTLEDGE DURANT: That's correct.

15 MR. GROEBER: We'd also argue the fact that it was
16 a simultaneous identification procedure. A six pack like
17 that rather than a sequential identification procedure
18 makes it more suggestive. It allows the person to look
19 and pick whoever looks best rather than looking carefully
20 at each one and then looking through them and then
21 deciding which one is best.

22 We also would argue that there is no option on the
23 particular six pack for him to mark not here, and we
24 think that is suggestive. That should be on the six
25 pack.

1 We think that we have a lot of problems with the
2 translation issue in this case, and I'm speaking
3 specifically about a 12-year-old son translating between
4 police officer and his father. We've had no testimony
5 about how reliable that is and we think that that should
6 cause -- it should provide some caution for the Court,
7 and it goes to really whether or not Mr. Patel truly
8 understood those instructions.

9 We also believe that Deputy Lawrence's statement to
10 Mr. Patel where he said, I'll get back with you when an
11 arrest is made, provides some confirmation to Mr. Patel
12 that he had made the right identification, and that kind
13 of confirmation helps form and strengthen his belief that
14 he has identified the correct person. For all those
15 reasons we would ask the Court to find that it's
16 suggestive.

17 I'd like to talk now about why the other factors
18 the Court should consider which focuses on the totality
19 of the circumstances there's a substantial likelihood of
20 misidentification.

21 As Your Honor I'm sure knows, the first factor that
22 you should consider is witness's opportunity to view the
23 perpetrator at the time of the crime, and I'm citing from
24 State V. Turner, 644 S.E. 2d 693, and that's a 2007 case,
25 South Carolina Supreme Court.

1 The first factor that Your Honor should consider is
2 the witness's opportunity to view the perpetrator at the
3 time of the crime. Now, we actually had -- I don't
4 believe there's any testimony elicited about how long the
5 robbery took place. I don't believe Mr. Patel testified
6 about any length of time that it took, and I don't
7 believe anyone submitted any evidence about the exact
8 length of time, so Your Honor has no way to determine
9 whether or not how long he did have to look at that.

10 We also would say that there has been testimony
11 about a disguise, sunglasses that covered the eyes, the
12 totality of the eyes, a hat that would have covered the
13 hairline and the top of the head. So those would cut
14 against the witness's opportunity to view the perpetrator
15 at the time of the robbery.

16 The second factor that Your Honor must look at
17 according to Turner is the witness's degree of attention,
18 and one of the things that Mr. Patel spoke about during
19 cross-examination, and I believe direct as well, was how
20 much he focussed on the weapon during that robbery, and
21 how scared he was and that he was looking at the weapon.

22 As Your Honor may know, weapon focus is something
23 that's studied by scientists in the realm of eyewitness
24 identification and basically it affects a person's
25 ability to look at the face and encode what that person's

1 face looks like because you're looking at the weapon and
2 not the face.

3 The third factor Your Honor must consider is
4 accuracy of the witness's prior description of the
5 perpetrator. In this case there was none given. I don't
6 believe there's any description in the reports taken by
7 the officers. Mr. Patel did not give an actual statement
8 the day the armed robbery occurred. So in this case I
9 don't think there's any description given to be able to
10 evaluate.

11 The forth factor that Your Honor must consider when
12 examining the totality of the circumstances is the level
13 of certainty demonstrated by the witness at the
14 confrontation, and the confrontation is the presentation
15 of the photo lineup, and what we would argue, Your Honor,
16 is that no level of certainty was recorded.

17 Detective Perkins discussed that. He said that he
18 didn't write down, that he didn't ask Mr. Patel how
19 certain he was of his identification so that none was
20 ever recorded.

21 Finally, Your Honor, you are to consider the length
22 of time between the crime and the confrontation, and we
23 believe that five days between the time of the armed
24 robbery and the identification is too long because
25 memories fade quickly and we think that that cuts against

1 and find that there is a substantial likelihood for a
2 irreparable misidentification.

3 That's all I have on the Biggers analysis only. I
4 have other objections I can address now if you'd like or
5 we can address after.

6 THE COURT: Let me hear from you, Mr. Durant.

7 MR. RUTLEDGE DURANT: Thank you, Your Honor. In
8 responding to defense counsel's motion to exclude the
9 identification of Mr. Patel, both out of court, that
10 testimony in court, the State would first remind the
11 Court that the context of this identification occurred
12 because as a man who is identifying someone he knew and
13 in that respect the research by experts even suggest that
14 there is a higher degree of reliability when somebody
15 identifies somebody that they know as opposed to somebody
16 they had never seen before in making that identification.

17 There was testimony elicited about the opportunity
18 to view the man with the gun. A specific time, I agree,
19 was not elicited. It will be introduced to the Court
20 later. That's not for the Court now. It was a minute
21 and 32 seconds.

22 However, Mr. Patel did testify that he saw the
23 defendant's face. He recognized the defendant's nose.
24 He recognized the defendant 's voice. He knew him as a
25 previous customer and he was specific.

1 He told the Court that he knew him because he
2 always came in for approximately a year before this
3 incident, two to three times a week, sometimes every day,
4 always purchased Newport cigarettes, usually a lottery
5 ticket, sometimes gasoline.

6 And he went further than that. He said he knew him
7 because there was sort of an ongoing joke about this
8 defendant saying that President Obama had signed his
9 license whenever he carded him for the cigarettes.

10 He testified that he was absolutely positive, one
11 hundred percent were his exact words, that he picked out
12 the man in the photograph as being the man who robbed him
13 at the store on December 24th, and he said he was certain
14 of it. This identification procedure occurred five days
15 later, a relatively short amount of time.

16 The State submits that there is plenty of evidence
17 to submit this identification, both the out-of-court
18 identification and the in-court identification to the
19 jury because we have met our burden in this pretrial by a
20 preponderance of the evidence. And the weight should be
21 for the jury to decide if Mr. Patel is correct in his
22 identification.

23 THE COURT: Your response, Mr. Groeber?

24 MR. GROEBER: Just a couple things. I think
25 Mr. Durant mentioned the testimony that he had heard his

1 voice, but there was no testimony elicited from Mr. Patel
2 about anything distinctive about the voice or anything
3 like that that would lead him to recognize it. I don't
4 think he even testified that he did hear his voice that
5 day. I would also --

6 THE COURT: Didn't he say that -- just off the top
7 of my head without flipping back, didn't he say, Don't
8 call the police?

9 MR. GROEBER: You're right, Your Honor. Well, was
10 that the November 20th robbery or --

11 THE COURT: All right. That's just the first thing
12 but I think he said, Give me your money, and then told
13 him to open the wallet.

14 MR. GROEBER: I think you're right, Your Honor.
15 I'm sorry.

16 THE COURT: All right. Thank you.

17 MR. GROEBER: I think you're right, Your Honor.
18 Also, you know, there was testimony that he recognized
19 his nose. No testimony about why he recognized his nose,
20 how it was distinctive, he had some kind of tattoo on his
21 nose, or a nose ring, or whatever, nothing about why his
22 nose is unique. And I think that's it, Your Honor.
23 Thank you.

24 MR. RUTLEDGE DURANT: And, Your Honor, if I may
25 briefly just respond.

1 THE COURT: Mr. Durant, I get it. Thank you.

2 MR. RUTLEDGE DURANT: Got you.

3 THE COURT: All right. So in this stage,
4 Mr. Groeber, and I'm inquiring hopefully also to allow
5 some of the 403s to get a better understanding of what
6 we're doing in this procedure, you are asking me to do
7 what at this stage?

8 MR. GROEBER: Thank you. I'm asking you to
9 suppress both the out-of-court identification from
10 Mr. Patel and any in-court identification at trial the
11 State would seek to admit.

12 THE COURT: And just so I understand, you are
13 basing that position and wish for me to find that the
14 police procedures were unnecessary and unduly suggestive;
15 is that correct?

16 MR. GROEBER: Yes, Your Honor.

17 THE COURT: And is it your position that if I find
18 that they were not unnecessary and unduly suggestive that
19 I don't have to go on to the next prong or do you think
20 that I have to have the next prong analysis?

21 MR. GROEBER: I think that you should undergo the
22 next prong analysis, Your Honor, and I need to look at
23 the case, Turner, for that.

24 THE COURT: All right. Based upon my reading, and
25 we have had several discussions at the bench and in

1 chambers over the last -- I believe Friday we had a brief
2 conversation, so I have thoroughly reviewed your brief
3 and the, as we have been calling it, Lieberman two
4 decision that came down last week as well.

5 It's my understanding that due process does require
6 me to assess and it is on a case-by-case basis, and it's
7 very fact specific whether the identification is based
8 upon unnecessary and unduly suggestive police procedures,
9 and if so, whether that identification was nevertheless
10 so reliable that that identification overcomes any
11 unnecessary and unduly suggestive police procedures.

12 I have reviewed the six pack that was provided and
13 prepared by SLED pursuant Charleston County policy
14 manuals, as testified to by two separate officers that
15 testified, if not all three that testified. I do not,
16 based upon my review, find that the six pack of itself is
17 unduly suggestive or was as a result of any unnecessary
18 police procedure.

19 The photographs are all of what appears to me to be
20 similarly aged African Americans males with similar nose,
21 and lip, and eye shapes, as well as very similar
22 hairlines. Assuming even under the analysis that the
23 police procedure used was unduly suggestive I would then
24 need to consider whether or not the out-of-court
25 identification was nevertheless so reliable that no

1 substantial likelihood of misidentification existed.

2 Out of an abundance of caution and just to
3 articulate to you the factors that I need to consider to
4 assess the reliability of an otherwise unduly suggestive
5 identification procedure are the witness's opportunity to
6 view the perpetrator at the time of the crime.

7 Mr. Patel was able to articulate the color of the
8 cap. He said that there was a hoodie; although, he did
9 say he could not recall whether or not the hoodie was on
10 or off because he was looking at the weapon.

11 The witness's degree of attention; I find that
12 based upon the testimony elicited today and yesterday
13 from Mr. Patel he was very attentive to what was going
14 on. The accuracy of his prior description of the
15 perpetrator, Mr. Patel was very clear that the individual
16 that he picked to be number four, the person that he
17 identified to be the defendant not only at that time but
18 in court today -- no, perhaps yesterday.

19 He indicated that he had known him. He knew what
20 type of cigarettes he smoked. He knew that there was
21 some sort of relationship with President Obama, and that
22 on occasion he would purchase gas.

23 The level of certainty demonstrated by the witness
24 at the confrontation and the length of time between the
25 crime and the confrontation; I believe it was less than

1 four days between the time the robbery occurred and the
2 time that he was met by detectives in the Sears parking
3 lot at Citadel Mall.

4 For all of those reasons I do not find, first, that
5 the police procedure was unduly suggestive, but even
6 assuming for sake of argument that it was I do find that
7 the out-of-court identification given to Mr. Patel as to
8 his circling of the defendant was nevertheless so
9 reliable that there was no substantial likelihood of
10 misidentification. I deny your motion to suppress the
11 out-of-court ID.

12 All right. Next motion?

13 MR. GROEBER: Thank you, Your Honor. We would move
14 to suppress -- I'm still dealing with Mr. Patel at this
15 moment.

16 THE COURT: You're still dealing with Mr. Patel?

17 MR. GROEBER: Mr. Patel. Yes, Your Honor.

18 THE COURT: All right. Thank you.

19 MR. GROEBER: And I'll talk about the specific
20 statements he made, but any statements about the prior
21 robbery that he says that my client perpetrated on
22 November 20th, 2010.

23 THE COURT: All right. Let me hear, Mr. Durant, do
24 you plan to elicit testimony as to the prior robbery on
25 November 20th?

1 MR. RUTLEDGE DURANT: Your Honor, in accordance
2 with what we talked about back in chambers we agreed to
3 eliminate that testimony unless the door is opened.

4 THE COURT: All right. Mr. Groeber, does that
5 satisfy your motion to have those statements suppressed?

6 MR. GROEBER: Yes, Your Honor.

7 THE COURT: All right. Thank you.

8 Thank you, Mr. Durant.

9 Mr. Groeber, your next one?

10 MR. GROEBER: Thank you, Your Honor. I'll move on
11 to Deputy Luckadoo. We would move to suppress his
12 testimony specifically -- well, first of all, we'd move
13 to suppress all of his testimony.

14 THE COURT: All right, on what basis, Counsel?

15 MR. GROEBER: That his opinion testimony would
16 introduce lay opinion testimony about a material issue of
17 fact. I've discussed the case law in South Carolina in
18 my brief and I would refer you to Section B of Jagruti
19 Patel's testimony for those cases.

20 It's our position that when a person is allowed to
21 testify and give lay opinion testimony that's
22 determinative of the ultimate issue of fact in the case
23 that such testimony violates my client's due process
24 right under the Fifth Amendment of the United States
25 Constitution.

1 We also don't think that it's contemplated. I
2 think rules -- South Carolina Rule 701 and 704 do attempt
3 to address this issue, and I have discussed in the memo
4 two cases that handle this issue differently.

5 The first is State V. Blurton, which is 537 S.E.2d
6 291. That's a South Carolina appellate court decision
7 from 2000. And the essential holding is that, the trial
8 court did not abuse discretion when it refused to permit
9 lay opinion testimony. In other words, the Court is
10 allowed to deny lay opinion testimony under the analysis
11 of the due process analysis of the Fifth Amendment, and
12 according to the rules of evidence.

13 Now, the problem with Blurton is when you run up
14 against Rule 704, if Your Honor will give me one moment,
15 704 specifically says, quote, testimony -- and I'm
16 referring to South Carolina Rules of Evidence, testimony
17 in the form of an opinion or inference otherwise
18 admissible is not objectionable because it embraces an
19 ultimate issue to be decided by a trier of fact.

20 That rule was published in 1995, and Blurton came
21 down in 2000, and so I think that that case and that rule
22 seem to be at odds.

23 What we would argue is that -- and in Blurton, just
24 for the facts so that Your Honor can see how it is
25 similar to our case, Blurton was charged with two armed

1 robberies and a kidnapping. And his whole defense was
2 that he thought he was part of a secret CIA sting, and
3 the defense was it negates my criminal intent because I
4 did not actually intend to commit a crime.

5 And what the defense wanted to present was
6 testimony by a detective, and Detective Coleman in the
7 case testified at a preliminary hearing that he thought
8 Mr. Blurton was convinced that he was operating for a
9 CIA. And the Court in that case would not allow the
10 detective to testify and give his lay opinion testimony
11 because, quote, it was the province of the jury to
12 determine whether Blurton believed he was working for the
13 CIA when he committed the crimes.

14 And we believe that our case is similar, and for
15 that reason we would ask for the suppression of Deputy
16 Luckadoo's entire testimony because the only reason he's
17 call -- well, I guess he could be called about how he
18 responded, but his testimony identifying my client as
19 being in the video we would argue is lay opinion
20 testimony.

21 THE COURT: All right. Mr. Durant?

22 MR. RUTLEDGE DURANT: Your Honor, may it please the
23 Court. Your Honor, this year, January of 2012, the South
24 Carolina appellate court ruled in a cases identical to
25 this case.

1 THE COURT: Fripp?

2 MR. RUTLEDGE DURANT: It is the Fripp case; blurry
3 video, a man with a hoodie over his head recognized on
4 the video by two people who knew him well. The Court
5 went into full analysis under Rule 701. Testimony in the
6 form of opinion evidence otherwise admissible is not
7 objectionable because it raises an ultimate issue --

8 THE COURT: My court reporter is fabulous but I
9 can't even understand you as fast as you are speaking.

10 MR. RUTLEDGE DURANT: I apologize, Your Honor.

11 THE COURT: Slow down because if I'm having a hard
12 time she is as well.

13 MR. RUTLEDGE DURANT: Well, according to this case
14 and Rule 701 which states, Testimony in the form of an
15 opinion or inference otherwise admissible is not
16 objectionable because it embraces an ultimate issue to be
17 decided by the trier of fact. In that case, the ultimate
18 issue to be decided by the trier of fact was the identity
19 of the person on that video.

20 The Court stated Brown and Young's opinions, the
21 witnesses who identified him on the video, were helpful
22 in determining a key fact in issue, whether Fripp was the
23 person depicted on the video.

24 Not only that, they elicited what basis for those
25 identifications were and how those witnesses knew him

1 before they viewed him on the video, and one of the
2 witnesses indicated that she knew the defendant very
3 well, quote, and also saw him all the time, quote, and
4 once a day, sometimes twice a day; and therefore, her
5 testimony in that form on an ultimate issue to be decided
6 in that trial, as we have here, was relevant and
7 admissible in that case, which is identical to our case.

8 In regard to Deputy Luckadoo, he was one of the
9 first responders and he is the person who told this Court
10 he was positive that this was the defendant he saw on the
11 video. That is --

12 THE COURT: Remind my how he knows the defendant.

13 MR. RUTLEDGE DURANT: He had met him twice,
14 according to the testimony. He knew the defendant's
15 pictures were on wanted posters from previous robberies,
16 previous incidents, and he was familiar with him. That
17 is the first time his name even surfaced in the
18 investigation was because of Deputy Luckadoo's
19 recognition of him. That got the whole ball rolling. He
20 had seen his picture and was able to identify him on the
21 TV and in the newspaper.

22 THE COURT: Anything further?

23 MR. RUTLEDGE DURANT: And he had personal
24 involvement with him. We argue that it's relevant, it
25 should be before the jury. It's really how the whole

1 case began from Deputy Luckadoo.

2 THE COURT: All right.

3 MR. GROEBER: Thank you, Your Honor. And I guess I
4 would argue a little bit about how this is exact to
5 Fripp. I don't think it is. The level of knowledge in
6 Fripp of the people at the store was extensive of the
7 defendant in that case. He shopped at the store almost
8 every day, they had seen him that very day wearing the
9 same clothes. He lived near there. One of the witnesses
10 that was allowed to testify said that she knew his family
11 and knew him through that.

12 I think now when we talk about Mrs. Patel they are
13 going to have some -- it's a much stronger case, but when
14 we're talking about Deputy Luckadoo he doesn't have any
15 real knowledge of the defendant, any personal interaction
16 with the defendant.

17 Two times he says that -- maybe two times, he
18 couldn't really articulate how many times that he may
19 have come across him in the community. He couldn't give
20 dates or times about when that happened. We don't know
21 how long ago that happened.

22 We don't know how old my client was at that time.
23 Maybe it was eight years ago when he was 12 years old.
24 So I think that the distinction between Fripp and this
25 case is pretty significant especially when it comes to

1 Deputy Luckadoo.

2 THE COURT: And again, you are requesting that
3 based upon that, his perception, his viewing of the
4 video, and his statement, under 701 that his entire
5 testimony be stricken -- or suppressed? I'm sorry.

6 MR. GROEBER: His identification of the client as
7 the person -- of my client as the person in the video. I
8 mean, I think he can come and testify that he responded
9 to the scene but there's really not much point in calling
10 him to say that if he's not going to be able to testify
11 about the video.

12 THE COURT: Just so I'm clear. You're really just
13 asking the Court to suppress his identification based
14 upon his identification of the defendant in the video of
15 your client as the person in the video?

16 MR. GROEBER: Yes, Your Honor. And again, just for
17 the record, the grounds are the due process violation to
18 rely on it and that it's lay opinion testimony. Of
19 course, he can come testify that he responded and that
20 maybe -- I guess he did collect the video. I don't know
21 that the State would call him if Your Honor suppressed
22 him, but his identification at that time and subsequent
23 in-court identification.

24 THE COURT: Is it your position, Mr. Groeber, that
25 identification requires special knowledge, skills,

1 experience or training?

2 MR. GROEBER: No.

3 THE COURT: All right.

4 MR. GROEBER: Well, I guess yes in the extent
5 you're going to have to have some kind of interaction and
6 knowledge of this person and then you would have to have
7 something more than just a, Well, I've seen him a couple
8 times around or seen his picture before. So maybe that's
9 special knowledge, but that would be the argument. Thank
10 you.

11 THE COURT: All right. Well, Mr. Groeber, I think
12 that your last statement was exactly the purpose of why
13 the video and the testimony was permitted in Fripp,
14 because we gain the ability to learn and observe the more
15 we have interactions with people and we're asking the
16 jury as the finder of fact to make the ultimate decision
17 on whether or not the person that you are representing is
18 the person in the video. I deny your request to suppress
19 Deputy Luckadoo's statement under Rule 701.

20 Next issue?

21 MR. GROEBER: Thank you, Your Honor. And it be
22 denied also because under the due process analysis as
23 well?

24 THE COURT: I believe that I have already
25 articulated a fairly substantial basis under due process

1 but, yes.

2 MR. GROEBER: Thank you.

3 THE COURT: Thank you.

4 MR. GROEBER: Next we would move to strike
5 particular statements by Deputy Luckadoo, specifically
6 anything that would have to do with the Jack Town Boys
7 and also his --

8 THE COURT: Are you going to inquire as to the Jack
9 Town Boys?

10 MR. RUTLEDGE DURANT: Your Honor, same as we've
11 agreed to not get into the armed robbery, I think we need
12 to limit his testimony to that which would indicate that
13 the he had a knowledge and knew this defendant before
14 viewing him on the video, excluding the posters as well,
15 then, of course, if the door is opened then we walk
16 through it.

17 THE COURT: Right.

18 Mr. Groeber, they are not going to discuss any
19 testimony and you are allowed, again you will need to
20 have discussions with the witnesses so they know what
21 they cannot say and should not say, but there is not
22 going to be any testimony elicited about Jack Town Boys
23 or any mention of wanted posters.

24 MR. RUTLEDGE DURANT: Thank, Your Honor.

25 MR. GROEBER: Thank you.

1 THE COURT: And did not mean to interrupt you,
2 Mr. Groeber, I just thought that I knew how I would
3 likely rule on that issue so I thought we would go ahead
4 and short circuit the process. Thank you.

5 MR. GROEBER: Thank you.

6 THE COURT: We are going to stop at 12:30 so that
7 everyone has lunch. Thank you.

8 MR. GROEBER: I appreciate that. Next we would
9 move on to -- oh, still with Deputy Luckadoo, I'm sorry,
10 Your Honor. I think he -- and just for clarity, he also
11 mentioned that he'd seen stuff on the television and in
12 the paper about my client's legal troubles. I would ask
13 that be included in the agreed not to talk about.

14 MR. RUTLEDGE DURANT: That's agreed, Your Honor.
15 Anything that's -- we believe is possibly construed as a
16 prior bad act we are attempting to stay away from and
17 we'll instruct the witness in that regard.

18 THE COURT: All right. Thank you.

19 (PAUSE.)

20 MR. RUTLEDGE DURANT: We're fine, Your Honor.

21 THE COURT: All right. Thank you.

22 Mr. Groeber?

23 MR. GROEBER: I guess was the ultimate resolution
24 that that was agreed upon?

25 THE COURT: Yes.

1 MR. GROEBER: Thank you.

2 THE COURT: Thank you.

3 MR. GROEBER: We'd also object that his
4 identification procedure or for identifying is
5 bolstering. Mr. Patel's testimony shouldn't be allowed
6 for that reason.

7 THE COURT: And based upon my previous ruling under
8 the analysis in Fripp that motion is denied.

9 MR. GROEBER: Thank you. And the final one would
10 be that he lacks personal knowledge of the matter.
11 Watching the video doesn't mean he has personal knowledge
12 of the crime itself.

13 THE COURT: Mr. Durant?

14 MR. RUTLEDGE DURANT: Just as Fripp reminds us,
15 there is no requirement that he actually be at the scene
16 when the robbery is committed. The whole purpose of
17 having video cameras is so that we can watch them after
18 the event. That what's required is the foundation of
19 knowing him beforehand.

20 THE COURT: Mr. Groeber, that was an interesting
21 argument. Anything further that you wish to expound
22 upon?

23 MR. GROEBER: Not for Deputy Luckadoo.

24 THE COURT: All right. Based upon all of my
25 previous rulings I deny your motion to suppress based

1 upon personal knowledge. Thank you.

2 MR. GROEBER: Thank you, Your Honor. I'd like to
3 move to Detective Lawrence now. We would move to
4 suppress for the same reason as Deputy Luckadoo on any
5 in-court identifications that he would make. We believe
6 it violates the due process rights of my client and
7 because it was his identification of my client in the
8 video was suggested because someone had already told him
9 who the suspect was.

10 So just as in an eyewitness, just as a normal lay
11 eyewitness could be influenced by knowing who the suspect
12 is ahead of time Detective Lawrence is susceptible to
13 that suggestibility when he views the video already
14 knowing who the suspect is.

15 THE COURT: But didn't he testify that he already
16 knew who he was before he had dealt with him before?

17 MR. GROEBER: Yes, and I think Lieberman --

18 THE COURT: So even if they had said, just for
19 example, that it was Mr. Grimes on the video and he
20 looked and he knew that it wasn't Mr. Grimes, because he
21 hadn't dealt with Mr. Grimes before, then the analysis
22 would change, correct?

23 MR. GROEBER: Well, I guess -- I mean, I think it's
24 exactly -- the analysis should be the same as an
25 eyewitness because there is suggestibility when he

1 already knows who the suspect is. And Lieberman
2 addresses, I think this might be what Your Honor is
3 talking about, when people already know.

4 THE COURT: But he was told and then he viewed the
5 video. So is it your ascertain that if somebody is
6 incorrectly identified that then once the individual
7 views the video and recognizes the individual on the
8 video that that is going to be excluded because they were
9 told incorrect information from the beginning?

10 MR. GROEBER: I don't understand Your Honor's
11 question. I'm sorry.

12 THE COURT: All right. What I understand your
13 position to be is that the reason he identified your
14 client and put him in a lineup was because he was given
15 information that it was your client that committed the
16 robbery, correct?

17 MR. GROEBER: Correct. Yes.

18 THE COURT: Assuming then, Mr. Groeber, that -- I'm
19 assuming that you want the Court to say that because he
20 was or was not given incorrect information on who was the
21 perpetrator that everything that flows from that ID
22 should be excluded?

23 MR. GROEBER: His identification should be excluded
24 under a Biggers analysis because he was -- the
25 identification procedure used by Detective Lawrence when

1 he looks at the video that's the identification procedure
2 and his prior knowledge of who the suspect is makes that
3 a suggestible identification.

4 THE COURT: But, Mr. Groeber, is the video -- do I
5 even need to have an analysis about the video because it
6 wasn't procured through government activity.

7 MR. GROEBER: Well, it was.

8 THE COURT: The video was procured by government
9 activity? You are telling me that the police officers
10 put the video in?

11 MR. GROEBER: No, the police officers collected the
12 video.

13 THE COURT: Okay. Perhaps I'm confusing where you
14 want me to start the analysis.

15 MR. GROEBER: Okay. I want you to engage in a
16 Biggers type analysis for Detective Lawrence, and I would
17 argue that the procedure of him watching the video is a
18 police procedure.

19 THE COURT: How so?

20 MR. GROEBER: It is a police procedure because
21 another officer brought him -- collected him, brought him
22 the video, and he viewed that while he was at the police
23 station and because of -- and he should be treated just
24 like normal witnesses when it comes to eyewitness
25 identification. There's nothing that says that police

1 officers are exempt from the restrictions of Biggers, or
2 the procedures that Biggers seeks to address.

3 THE COURT: Just so I understand. The relief that
4 you are seeking as to Detective Lawrence is for the Court
5 to suppress his identification of your client based upon
6 prior knowledge?

7 MR. GROEBER: Based --

8 THE COURT: Based upon the video and based upon the
9 lineup?

10 MR. GROEBER: Yes, Your Honor.

11 THE COURT: All three?

12 MR. GROEBER: Yes. That's the one grounds -- all
13 that would be relevant for Biggers.

14 THE COURT: All right.

15 MR. GROEBER: I have other reasons to object.

16 THE COURT: Okay. Go ahead.

17 MR. GROEBER: I'd also object for the same reason
18 as Deputy Luckadoo, that it's lay opinion testimony and
19 don't believe it should be allowed for the same reasons
20 as in Luckadoo.

21 Arguably, he has more of a foundation than Deputy
22 Luckadoo because he testified that he did have an
23 interview with him. Again, it's squarely on time, but at
24 least a couple hours that he had also known him in and
25 about the county just as his work as a deputy, we don't

1 think that rises to the level of knowledge that he would
2 need and does not rise to the level that Fripp has.

3 We'd also object to, and I think the State would
4 agree to this, based on the prior agreements that we've
5 made no references to the Jack Town Boys, no references
6 to --

7 THE COURT: All of those references go for every
8 witness. I thought that was understood. I'm sorry.

9 MR. GROEBER: And just for clarity --

10 THE COURT: Yes. Thank you.

11 MR. GROEBER: -- for the record. We'd add that any
12 testimony by Detective Lawrence, again, it's bolstering
13 of Mr. Patel, and that he lacks personal knowledge of the
14 matter. I believe those are all my grounds in regard to
15 Detective Lawrence. Thank you.

16 THE COURT: I don't need to -- Mr. Durant, is there
17 anything you wish to add? These are very similar
18 analyses as to the previous witnesses and the Court
19 incorporates all of the previous arguments, and
20 statements, and rulings as to how they applied to
21 Detective Lawrence. So your motions to suppress the
22 statements and identifications of Detective Lawrence are
23 denied. And again, all of the issues that the State has
24 agreed not go into apply to Detective Lawrence.

25 Detective Lawrence, you understand what the ruling

1 is? You may not discuss certain areas and if you need
2 further clarification you may ask either one of the
3 Durants. Thank you.

4 MR. BRUCE DURANT: We'll get with him over lunch,
5 Your Honor.

6 THE COURT: Anything further, Mr. Groeber?

7 MR. GROEBER: If you'll give me one moment to
8 double check.

9 THE COURT: I will. I will.

10 Do you have a copy of you LWOP notice?

11 MR. RUTLEDGE DURANT: I do, Your Honor.

12 THE COURT: I don't have a copy. Never mind, we've
13 got it coming out of the file.

14 MR. GROEBER: No more argument from the defense.
15 Thank you.

16 THE COURT: And the jury will be back at 1:30, so
17 we have ended at an appropriate time. And so is there
18 anything before we break for our lunch period and come
19 back with opening statements?

20 MR. RUTLEDGE DURANT: Nothing from the State.

21 MR. GROEBER: Nothing from the defense, Your Honor.

22 THE COURT: I have informed the jury that we will
23 go until 6:00 p.m. So I need the State to plan
24 accordingly with witnesses.

25 And, Mr. Groeber, I have asked you just to make

1 sure, just for the record, my understanding is the State
2 has filed a notice of intention to seek a sentence of
3 live without parole; is that correct?

4 MR. GROEBER: Yes, Your Honor.

5 THE COURT: And just for purposes of the hearing
6 going forward are there any objections to the notice
7 portion? I understand that there may be some issues as
8 to sentencing if that becomes applicable after the jury
9 has reached their verdict but do you agree that the State
10 has complied with all aspects of the notice portion of
11 this LWOP notice?

12 MR. GROEBER: Yes, Your Honor.

13 THE COURT: And do we need to address any other
14 matters except for the sentencing issues at a later time,
15 Mr. Groeber, reserving all of those motions and matters?

16 MR. GROEBER: Not to my knowledge right now, Your
17 Honor.

18 THE COURT: Anything from the State regarding the
19 LWOP notice?

20 MR. RUTLEDGE DURANT: Not regarding the notice
21 portion of it, Your Honor.

22 THE COURT: All right. Counsel, please be back --
23 I told the jury to be back at 1:30 so please be back here
24 -- look at that clock. That clock is a little different
25 from every other one that I have access to, so please

1 make sure this is the clock that we will be using. So
2 please be back at an appropriate time for us to begin
3 promptly at 1:30. Thank you. We're at ease.

4 (WHEREUPON, a lunch break was taken.)

5 THE COURT: All right. Let's go ahead and bring in
6 the jury.

7 (WHEREUPON, the jury enters the courtroom at
8 approximately 1:30 p.m.)

9 THE COURT: If you will administer the oath.

10 THE CLERK: Yes, ma'am.

11 THE COURT: If all the members of jury will remain
12 standing.

13 Members of the audience and parties may be seated.

14 Please administer the oath.

15 (WHEREUPON, the jury was given their oath.)

16 THE COURT: Let the record reflect that all members
17 of the jury have taken the oath and are seated.

18 Good afternoon, ladies and gentlemen. It's a
19 pleasure having you back in the courtroom, and thank you
20 for accommodating our schedule.

21 Ladies and gentlemen, you have been handed
22 notepads, and so what that means is you may take notes
23 throughout the progress of this trial.

24 We will gather your notepads at the end of the
25 evening and lock them up. They will be secured. No one

1 will have an opportunity to review them, and then we he -
2 give them back to you in the morning, and then we will do
3 the same procedure during lunch breaks. Please remember
4 that your notes are just that. Those are your notes. No
5 other juror's notes are more accurate or correct than
6 yours. Those are for your own use.

7 Throughout the trial there will be some exhibits
8 admitted into evidence in this case. Those exhibits will
9 go back with you during your deliberations.

10 Ladies and gentlemen, also please remember, and I
11 do it myself, while you are taking notes sometimes you
12 have a tendency to look down. So you will be allowed to
13 take notes but please remember all of those caveats.

14 Ladies and gentlemen, out of respect for your
15 position as judges of the facts in this case when you
16 come in and when you exit the courtroom the members of
17 the audience will remain standing until all 13 of you are
18 seated. So please come in now and take a seat during our
19 breaks.

20 As you are aware, Mr. Anderson is the foreperson in
21 this case and is the spokesperson for you, so if at any
22 time if you are too hot, too cold, you need an additional
23 break, anything of that nature if you will let
24 Mr. Anderson know and he will alert the bailiffs and
25 we'll take care of it just as quickly as we can.

1 Ms. Merritt, you are the alternate so I need you to
2 sit right there, and the two of you are the only ones
3 with assigned seats. The rest of you may sit in whatever
4 seats are left except for those two.

5 Ladies and gentlemen, what I say now is just simply
6 an introduction to the trial of this case. You've heard
7 very, very briefly, I read the indictments to you
8 yesterday, but what I wanted to give you the
9 opportunity -- because most people don't have the
10 opportunity to come to court as you are doing now.

11 The case that we are about to try is the case of
12 the State vs. Marvin Bowens Green, Defendant. This is an
13 opportunity for you to attend an actual court session,
14 and as I indicated to you, most people may think from
15 watching television, a Law and Order type show, or
16 reading books, or movies that trials are always full of
17 high drama, intense action and riveting circumstances.

18 While all of those things may be true at times this
19 trial is not for your entertainment. It is a fundamental
20 part of our democracy. It is a search for the truth in
21 an effort to make sure that justice is done between the
22 parties before the Court.

23 In searching for the truth and making sure that
24 justice is done is often slow, repetitive and deliberate.
25 The opposite of what you probably have seen on

1 television, or in movies, or read in books.

2 This courtroom is a place of honor. It is
3 desiccated to the protection and preservation of
4 citizens's rights through what many have called the
5 greatest justice system ever created.

6 The attorneys appearing before you are advocates
7 for the party that they represent but first and foremost
8 they are officers of this Court. They are sworn to
9 uphold the integrity and the fairness of our judicial
10 system and to help you in the search for the truth. You
11 should expect them to be professional, competent and
12 ethical in the representation of their client's interest.

13 You have just taken an oath to try this case and to
14 reach a fair and just verdict, and you are also expected
15 to be professional, reasonable and ethical. Thank you
16 again for accepting the most important responsibility of
17 jury service and in your contribution today to our
18 justice system.

19 Please remember the remarks that I am giving you
20 now are not a charge on the law in this case. I will
21 instruct you on the law applicable to this case,
22 sometimes throughout the trial, but definitely at the end
23 of the trial before you can retire to consider your
24 verdict.

25 Ladies and gentlemen, the defendant is charged by

1 an indictment filed in this Court. He is charged with
2 the crimes of armed robbery and possession of a firearm
3 during the commission of a violent crime. I will explain
4 the elements of those crimes to you at a later time.

5 The indictment, as I have explained in jury
6 selection, is simply the charge by which the case is
7 brought into this Court. It is not in any sense evidence
8 of the allegations it contains.

9 The defendant has pled not guilty to each
10 indictment and the State therefore has the burden of
11 proving each of the elements of the indictment beyond a
12 reasonable doubt. It is your duty, ladies and gentlemen,
13 to decide whether the State had met its burden.

14 Your purpose as jurors is to find and determine the
15 facts. You are the sole judges of the facts in this
16 case, and please remember if at any time I make any
17 comments regarding the facts you must disregard it.

18 You are to determine the facts from the testimony
19 you hear and other evidence introduced in court. It is
20 up to you to determine the inferences which you feel may
21 be properly drawn from the evidence.

22 It is important that you perform your duty of
23 determining the facts diligently and conscientiously
24 because ordinarily there is no way to correct an
25 erroneous determination of facts by the jury.

1 On the other hand and with equal emphasis the same
2 law that makes you the judges of the facts makes me the
3 judge of the law. The law as given by this Court is the
4 only law that you may consider. You must accept it and
5 follow it even though you may disagree with it. I cannot
6 tell you what the facts are and you cannot disagree with
7 me about what the law is or what the law should be.

8 Your job is to take the law as I give it to you,
9 apply it to the facts as you find them from the testimony
10 of the witnesses, and after doing that you will render
11 your verdict, a true and just verdict under the solemn
12 oath you just took as jurors.

13 Please remember, until I advise you to begin your
14 deliberations you must not discuss this case with anyone.
15 Again, that includes your fellow jurors, your friends,
16 your family members. It includes face-to-face
17 discussions but it also includes any electronic or other
18 written discussions as well.

19 During this trial you may not read, watch, listen
20 to any news accounts regarding this case should there be
21 any. This includes anything that may be in the
22 newspaper, radios, television, anything of that nature,
23 and you also may not do any independent investigation.

24 It is important that you keep an open mind and not
25 decide any issue in this case until all of the arguments

1 have been presented, the evidence has been presented, the
2 parties have made their closing arguments and I have
3 instructed you on the law applicable to this case.

4 It is your solemn responsibility to determine the
5 guilt or innocence of the defendant and your verdict must
6 be based solely on the evidence as it is presented to you
7 in this trial and on the law as I instruct you during and
8 at the close of the trial.

9 In just a moment the solicitor will make what is
10 called an opening statement in which the solicitor will
11 explain to you the issues in the case or at least what
12 the solicitor thinks the issues are. The attorney for
13 the defendant may also make an opening statement,
14 although he is not required to do so.

15 Please remember, what the attorneys tell you during
16 their opening statements is not evidence in this case.
17 It is only their contention as to what the evidence will
18 show. The evidence in this case will be presented to you
19 by the testimony of sworn witnesses from that witness
20 stand, as well as any exhibits that may be introduced
21 into evidence.

22 Please remember, you may hear one of the attorneys
23 saying, Your Honor, we have a question of law, may we
24 approach the bench, or I might find it necessary to
25 excuse you from the courtroom for a short while. If we

1 are at the bench, please do not try to read our lips or
2 overhear what we are doing. Please do not think we are
3 hiding anything from you.

4 The reason for this is because, as I indicated to
5 you, the law does not allow me to have an opinion about
6 the facts in this case. Sometimes it's necessary for me
7 to make an opinion or to comment on the facts when I'm
8 issuing a ruling regarding the law and so I will excuse
9 you so that in no way will I influence you as to what the
10 facts are.

11 Ladies and gentlemen, in determining what the true
12 facts are you must decide whether or not the testimony of
13 the witness is believable. It is my responsibility to
14 rule as a matter of law as to whether certain testimony
15 is admissible but once the testimony is admitted whether
16 or not you believe it is solely for you to determine.

17 In deciding whether to believe a witness you have
18 the right to consider the interest of a witness, the bias
19 of the witness, the opportunity for the witness to have
20 seen the matters and things about which the witness
21 testifies, as well as the way the witness acts on the
22 witness stand.

23 You have a right to consider anything in the record
24 that will help you evaluate the testimony of the
25 witnesses. That means it's your duty to pay close

1 attention. Please do not let your thoughts wander so at
2 the end of trial, after arguments of counsel, and I have
3 instructed you on the law applicable to this case you
4 will be in a position to determine what the true facts
5 are and to apply the law to those facts.

6 Ladies and gentlemen, please give your attention to
7 Mr. Durant.

8 MR. RUTLEDGE DURANT: Thank you, Your Honor. May
9 it please the Court?

10 THE COURT: Yes, sir.

11 MR. RUTLEDGE DURANT: Ladies and gentlemen, the
12 victim in this case is a husband, and he's a father of
13 two young boys, ages six and 14. He's an immigrant. He
14 came to this Country from India, and his native tongue is
15 Hindi or Gujarati; and although he speaks English well
16 enough to communicate and get by he is going to testify
17 in this trial by use of an interpreter for the sake of
18 certainty and clarity.

19 And he will tell you, when asked, When did you come
20 to this Country, he doesn't hesitate, doesn't even think
21 about it, he says not just a year, he says October 11th,
22 2003. He is certain and he is specific.

23 And as certain and specific as he is about that big
24 day in his life he is just as certain about the identity
25 of the man who came into his store on December the 24th

1 of 2010 at 5737 Savannah Highway in Ravenel to Sunoco gas
2 station, a convenience store that Mr. Patel has owned for
3 about four years now. His name is Natubhai Patel. He
4 has a wife, Jagruti Patel. His son, Dhruval Patel, who
5 is now 14, was 12 at this time, will also testify.

6 And the reason Mr. Patel is so certain about the
7 identity of the man who came into his store wearing a
8 sweatshirt with a hoodie up over his head, which also had
9 on a hat on his head and sunglasses, is because he knew
10 him. He knew him as a regular customer who had come to
11 his store for a year before this incident two to three
12 times a week, sometimes every day.

13 He would also buy a pack of Newport cigarettes. He
14 would sometimes buy a lottery ticket -- or usually buy a
15 lottery ticket, and sometimes gasoline. And he also had
16 kind of an ongoing joke that he would tell to Mr. Patel
17 or say to Mr. Patel when he was carded for cigarettes,
18 and he would show his license to Mr. Patel and say, just
19 kind of jokingly, that President Obama had signed his
20 license.

21 And that is not all, because there is a video
22 surveillance system in the convenience store, and it
23 captured this incident on video, and you'll see it, just
24 as the officers who investigated this case saw it, just
25 as the first responding officer, Dustin Luckadoo, saw.

1 And Dustin Luckadoo, Deputy Dustin Luckadoo knew
2 this man and recognized him that day on the video
3 surveillance, and so did Detective Charles Lawrence,
4 because they knew him.

5 His face is obscured. You can see some of it.
6 You'll see all of it. He has on sunglasses and has on a
7 hoodie, but this case is presented to you based on the
8 identification of people who knew him.

9 And at the end of this case I'll address you again
10 and I will ask you to render a verdict that speaks the
11 truth and I will ask you to believe an immigrant, to
12 believe a father and a husband who knew the man who put a
13 gun in his face for a minute and 32 seconds with the
14 hammer pulled back and I'll ask you for a verdict of
15 guilt.

16 THE COURT: Mr. Groeber?

17 MR. GROEBER: Thank you, Your Honor. May it please
18 the Court. There's only one thing worse than a guilty
19 man going free and that's a guilty man going free and an
20 innocent man taking his place.

21 Some cases in this trial court are about what
22 happened. In some cases there might be issues and the
23 person may say, Well, I acted in self defense, and that
24 would be the issue the jury would determine, were they
25 acting in self defense or were they acting with malice.

1 That's not in case. This case is a who done it, and
2 you're going to be asked to determine if who done it is
3 Marvin Green.

4 There's no doubt that Mr. Patel, who is sitting in
5 the courtroom over here, was robbed on December 24th,
6 2010. There's no doubt that a young black man came in,
7 pointed a gun at him, pointed at him for more than a
8 minute. The gun was cocked. It looked like a real gun.

9 That young black man had a hat on that covered his
10 hair and his hairline. He had sunglasses on that
11 covered his eyes, and he had a hoodie on that covered
12 his ears. Mr. Patel was scared, and no one would blame
13 him. He was looking down the barrel of a gun and his
14 heart was racing.

15 Finally, the young man left and Mr. Patel, as
16 Mr. Durant told you, has video cameras in his store, and
17 he watched those video cameras and he gave it to the
18 police. And we're here today because Mr. Patel, and the
19 police officers, and the solicitor's office all think
20 that the person on that video is Marvin Green. There's
21 only one problem, Marvin Green says it's not.

22 It will be up to you to determine if the State can
23 prove its case, and the way that they are going to try to
24 prove its case is to parade in front of you witnesses who
25 will testify about what they believe, who they believe it

1 was on the video, and Mr. Patel will say he believes that
2 it was him from his experience. But you will have no
3 hard evidence to corroborate that.

4 They will have witnesses that will testify that he
5 resembled the person on the video but they have no
6 evidence that proves an identity of the person on the
7 video. They will have no fingerprints, they will have no
8 DNA. They will not have the gun that was used in the
9 robbery. They will not have the clothes that were worn
10 when the crime was committed. They will not have the
11 hat, they will not have the hoodie, they will not have
12 the sunglasses, and you'll find out the reason why,
13 because they believed they knew who was on the video.
14 They didn't want to do any more evidence -- any more
15 search for evidence.

16 What they have are two faces, one on a video and
17 one on my client. But you will hear expert testimony in
18 this case by Dr. Jennifer Beaudry. She is a professor of
19 psychology at the University of South Carolina in
20 Beaufort. Dr. Beaudry's specialty is the study of human
21 memory and of eyewitness identifications and how the two
22 interact. She's a scientist. And what she will do is
23 educate you about what science says about how her memory
24 works, and especially how it works in the context of
25 eyewitness identifications.

1 She will explain to you that there are three parts
2 of memory, three phases. There's an accusation phase,
3 and that's the moment when we grab a memory. There's a
4 retention phase. That's the moment that we hang onto the
5 memory, and that there is a retrieval phase, and that's
6 when we bring that memory back up in our mind.

7 Some people think and might think that memory is
8 like a video recorder, that all your memory does is
9 report, hold, and then replay, but Dr. Beaudry will tell
10 you that science tells us that memory is nothing like a
11 video recorder and that it's much more susceptible to
12 manipulation than a video recorder.

13 She'll tell you about factors that affect how we
14 receive memories, how stress can affect how we receive a
15 memory, how a weapon's presence can affect the way we
16 receive memory, and how disguises can affect the way we
17 receive memory.

18 She'll also tell you about factors that affect how
19 we store memories, how memories fade, how they change.
20 She'll tell you factors that affect our ability to
21 recall, and she'll even talk to you about how police
22 procedures can affect our memories.

23 She'll tell you how reliable confidence is as an
24 indicator of accuracy with a correlation between
25 confidence and accuracy in eyewitness identifications.

1 Mr. Patel will testify he's sure that it's Marvin Green,
2 and Dr. Beaudry will give you the ability to understand
3 what science says about confidence.

4 She'll also tell you how we can transfer familiar
5 faces from one memory to the next. And she'll educate
6 you about lineup procedures and the best practices that
7 the police should use when they do them.

8 Now, she will not testify about her opinion on a
9 certain witness's memory in this case. That is not her
10 role. That is your role, to evaluate the witnesses, to
11 evaluate their memories, to evaluate the factors that
12 would affect their memories, and she will tell you what
13 you need to be looking out for in evaluating those
14 memories.

15 At the end of the day we're confident that after
16 you hear all the evidence that you will find Marvin Green
17 not guilty. Thank you.

18 THE COURT: Call your first witness.

19 MR. RUTLEDGE DURANT: Thank you, Your Honor. May
20 it please the Court. The State calls Natubhai Patel.

21 (WHEREUPON, the interpreter, Vasandika Isadas, was
22 duly sworn.)

23 THE CLERK: Please state your full name.

24 THE INTERPRETER: Vasandika Isadas.

25 NATUBHAI PATEL, after having been duly

1 sworn, testified as follows:

2 THE CLERK: Please state your full name and spell
3 your name.

4 THE WITNESS: Natubhai Patel. Spelling, P-a-t-e-l.

5 THE CLERK: Please have a seat.

6 DIRECT EXAMINATION

7 BY MR. RUTLEDGE DURANT:

8 (Through the interpreter.)

9 Q. Mr. Patel, good afternoon.

10 A. Good afternoon.

11 Q. Will you please tell the jury how old you are.

12 A. Fifty-two years.

13 Q. Do you live in Charleston?

14 A. Yes, I live in Charleston.

15 Q. Where were you born?

16 A. India.

17 Q. When did you come to the United States?

18 A. October 11th, 2003.

19 Q. Why?

20 A. I came here to work and for my family.

21 Q. Are you married?

22 A. Yes, I'm married.

23 Q. Who is your wife?

24 A. Jagruti Patel.

25 Q. How long have you been married?

- 1 A. Seventeen years.
- 2 Q. Do you have any children?
- 3 A. Yes, I have children.
- 4 Q. How many?
- 5 A. Two.
- 6 Q. How old are they?
- 7 A. The older one is 14.
- 8 Q. What about the younger one?
- 9 A. The younger one is six.
- 10 Q. What do you do for a living?
- 11 A. I work behind a register at my store.
- 12 Q. What is the name of your store?
- 13 A. 5737 Savannah Highway, Ravenel town.
- 14 Q. Is it called the Quick Stop?
- 15 A. Quick Stop convenience store and gas station.
- 16 Q. And you manage the store?
- 17 A. I own the store.
- 18 Q. How many employees do you have?
- 19 A. Just me and my wife.
- 20 Q. And where is your wife right now?
- 21 A. She's at the store working.
- 22 Q. So both of you cannot be here at the same time?
- 23 A. No, we cannot.
- 24 Q. Because somebody needs to be at the store?
- 25 A. No.

1 THE INTERPRETER: I don't think he understood your
2 question.

3 Q. Are you and your wife the only people who work at
4 your store?

5 A. Yes, me and my wife.

6 Q. And if neither of you are at the store the store
7 cannot be open; is that right?

8 A. Yes. If both of us are not there we have to close
9 the store.

10 Q. Do you recall the morning of December 24th, 2010?

11 A. Yes. A man had entered with a gun.

12 Q. Was that at approximately 7:45 that morning?

13 A. Yes, 7:45 in the morning.

14 Q. What time did you open the store that morning?

15 A. I open my store Monday through Friday 6:30 in the
16 morning.

17 Q. If you would, please describe to the jury what the
18 man with the gun was wearing.

19 A. He was wearing sunglasses, a red hat, a black
20 jacket, and khaki pants.

21 Q. Were you able to see the man's face?

22 A. Yes. I saw his complete face. There was only
23 sunglasses there but the rest of the face was open.

24 Q. Had you ever seen that man before?

25 A. Yes. I know him since the past one year.

1 Q. And how do you know him for the past one year?

2 A. He used to come to my store to buy cigarettes, gas,
3 and lottery tickets.

4 Q. How often would he come to your store?

5 A. He would come at least three times a week.

6 Q. Did you ever speak with the man?

7 A. We always spoke and he would joke around about an
8 ID with President Obama's signature on it.

9 Q. Do you see the man who came into your store with
10 the gun on December 24th, 2010, in the courtroom today?

11 MR. GROEBER: Objection, Your Honor.

12 THE COURT: Basis?

13 MR. GROEBER: Previously made.

14 THE COURT: Overruled. You may answer.

15 A. (Indicated). He's the one in the white.

16 Q. This man sitting over here (indicated)?

17 A. The one who's sitting by his lawyer.

18 Q. The man in the middle?

19 A. The man in the middle, yes.

20 Q. Are you certain that that's the man who had come to
21 your store for approximately a year before this incident?

22 A. I'm a hundred percent sure.

23 Q. Are you certain that he is the man who came into
24 your store and robbed you at gunpoint?

25 A. I'm completely certain.

1 MR. RUTLEDGE DURANT: Let the record reflect that
2 the victim has identified the defendant.

3 THE COURT: It will.

4 Note your objection.

5 BY MR. RUTLEDGE DURANT:

6 (Through the interpreter.)

7 Q. What did the man do when he came into your store
8 with a gun that morning?

9 A. He walked in and asked me to give the cash. I gave
10 him \$60. He asked me to give him my wallet. There was
11 no money in the wallet, and then he asked for cigarettes.
12 And before leaving he said, Don't call the police.

13 Q. And did he take money from you?

14 A. Yes, \$60, he took from me.

15 Q. And did he take the cigarettes from you?

16 A. Yes, Newport cigarettes.

17 Q. What did you do when the man left?

18 A. I called the police right after he left.

19 Q. Did the police respond to your store?

20 A. The police responded to my call and they stayed at
21 my store for two hours. I had closed the store at that
22 time. We were checking the video.

23 Q. Is your store equipped with a video surveillance
24 system?

25 A. Yes, it is.

1 Q. Was your video surveillance system able to capture
2 the robbery on video?

3 A. Yes. It captured everything. He was standing by
4 my register for a minute and a half.

5 (WHEREUPON, State's Exhibit Number 1, a
6 Surveillance Video of the Robbery, was marked for
7 identification only.)

8 BY MR. RUTLEDGE DURANT:

9 (Through the interpreter.)

10 Q. Mr. Patel, I'm showing you what the State has
11 labeled State's Exhibit 1 for identification.

12 A. Yes. Okay.

13 Q. I ask you to take a look at it and let me know if
14 you recognize it.

15 A. Yes, he will tell you.

16 That is my signature. That is my son's signature.

17 Q. And have you had an opportunity to view this disc?

18 A. Yes. Yes, I have seen it.

19 Q. And what does it depict?

20 A. It has the robbery on it, how the man came and how
21 I gave him money. I've seen that.

22 Q. Does this disc fairly and accurately depict the
23 robbery as it occurred in your store on December 24th,
24 2010?

25 A. Yes, very clearly.

1 MR. RUTLEDGE DURANT: Your Honor, at this time the
2 State moves for the admission of State's 1.

3 THE COURT: Any objection?

4 MR. GROEBER: No, Your Honor.

5 THE COURT: State's 1 into evidence without
6 objection.

7 (WHEREUPON, State's Exhibit Number 1, a
8 Surveillance Video of the Robbery, was admitted into
9 evidence.)

10 MR. RUTLEDGE DURANT: Your Honor, may we approach?

11 THE COURT: You may.

12 (WHEREUPON, the following bench conference was
13 reported.)

14 MR. RUTLEDGE DURANT: I'd like just a second to set
15 up the TV to play it for the jury.

16 THE COURT: All right.

17 (WHEREUPON, the bench conference was concluded.)

18 (PAUSE.)

19 MR. RUTLEDGE DURANT: Your Honor, if the witness
20 could step down to explain what's on the video.

21 (The witness stepped down from the witness stand.)

22 THE COURT: Mr. Patel, you're going to have you
23 speak very loudly because you're away from the
24 microphone.

25 THE INTERPRETER: Yes, ma'am.

1 MR. RUTLEDGE DURANT: On second thought, maybe the
2 witness should take the stand while we play the video.

3 (The witness returned to the witness stand.)

4 MR. RUTLEDGE DURANT: And, Your Honor, at this time
5 the State requests to publish State's 1.

6 THE COURT: You have permission to publish State's
7 1.

8 MR. RUTLEDGE DURANT: Thank you.

9 (WHEREUPON, State's Exhibit Number 1, a
10 Surveillance Video of the Robbery, was played for the
11 jury.)

12 BY MR. RUTLEDGE DURANT:

13 (Through the interpreter)

14 Q. Mr. Patel, did you recognize the man with the gun
15 as a regular customer in your store?

16 A. Yes. I completely recognized him as a regular
17 customer.

18 Q. Did you know the man's name?

19 A. I never asked him his name, ever. He would always
20 joke around with me.

21 Q. Did you tell the responding officers that you
22 recognized him as a customer?

23 A. Yes, I did.

24 Q. After the robbery who did you call?

25 A. I called the police.

1 Q. Did you call anybody else?

2 A. Yes. I called my wife and my son.

3 Q. Which son?

4 A. Dhruval Patel.

5 Q. How old was Dhruval at the time?

6 A. He was 12 at that time.

7 Q. Who was the person in the store who knew how to
8 operate the video surveillance system?

9 A. My son.

10 Q. Dhruval was the person who operated it?

11 A. Dhruval Patel, yes.

12 Q. Is that why you wanted Dhruval to come to the
13 store?

14 A. Yes. That's why I had called my wife to bring my
15 son with her when she came.

16 Q. And how long was the store closed that morning?

17 A. Around two hours.

18 Q. After you met with the police that day, December
19 24th, 2010, did you meet with them again on a later date?

20 A. December 29th, two cops came.

21 Q. You met with two police officers on December 29th?

22 MR. GROEBER: Objection.

23 THE COURT: Hold on one second. What's your
24 objection?

25 MR. GROEBER: Prior. Previously raised.

1 THE COURT: Overruled. You may answer.

2 Mr. Durant, you may need to repeat your question.

3 BY MR. RUTLEDGE DURANT:

4 (Through the interpreter.)

5 Q. Did you meet with two police officers on December
6 29th 2010?

7 A. Yes. I met with two police officers on December
8 29th 2010, at Citadel Mall outside of Sears parking lot.

9 Q. Who were you with?

10 A. With my son.

11 Q. And do you know what the purpose in meeting with
12 those officers was?

13 A. The officers had called my wife, and she called me
14 to let me know that two officers were coming to meet me
15 at the Citadel Mall outside in the parking lot.

16 (WHEREUPON, State's Exhibit Numbers 2 and 3,
17 previously Court's Exhibit Numbers 5 and 6, were marked
18 for identification only.)

19 Q. Mr. Patel, I'm showing you what the State has
20 labeled State's Exhibit 2 for identification. I ask that
21 you take a look at it.

22 A. Yes. I will look at it.

23 Q. And let me know if you recognize it.

24 A. I will see.

25 This is my signature.

1 Q. Do you recognize that document?

2 A. Yes, I do recognize.

3 Q. Where have you seen it before?

4 A. When I had seen it --

5 THE INTERPRETER: I'm sorry.

6 A. -- I had seen it outside of the parking lot at the
7 Citadel Mall.

8 Q. Who presented this document to you?

9 A. Two police officers give it to me. My son read it,
10 explained it to me and then I signed.

11 Q. Do your initials appear on this document?

12 A. Yes, they are mine.

13 Q. Are you able to read English well?

14 A. I don't read it well. That's why my son had to
15 read it and explain it to me.

16 Q. This is obvious, but does your son read English
17 well?

18 A. Yes, my son reads English.

19 Q. And was he able to help you understand what this
20 document said?

21 A. Yes. I only signed after he clearly explained what
22 is written in this document.

23 Q. And what happened after you went over this document
24 with the police officer?

25 A. They showed me some pictures and I circled one.

1 Q. Mr. Patel, I'm showing you what the State has
2 labeled State's Exhibit 3 for identification. I ask that
3 you take a look at it.

4 A. I will see.

5 Q. And please let me know if you recognize it.

6 A. I will tell you.

7 Q. Do you recognize State's 3?

8 A. Yes, I recognize it.

9 Q. How do you recognize it?

10 A. I've seen this man at my store. I don't know
11 anybody else.

12 Q. Were these the pictures that were presented to you
13 by the officers?

14 A. Yes. This was the same thing and I signed it, too.

15 Q. Why did you circle the photograph that you circled?

16 A. Because he's my regular customer. I know for a
17 fact. I am a hundred percent sure that that was the same
18 man.

19 Q. Is that the same man that robbed you at the store
20 on December 24th?

21 A. Yes, he's that same man.

22 Q. Are you positive?

23 A. I'm a hundred percent positive.

24 Q. Is there any doubt in your mind?

25 A. There is no doubt in my mind, and that was the only

1 one I saw.

2 Q. Did the police do anything -- did the police tell
3 you to circle this picture?

4 A. The police didn't ask me to circle anything. They
5 just gave me the paper and immediately I circled around
6 that picture.

7 Q. Did the police do anything to influence you to
8 circle anyone's picture?

9 A. The police officer did not say anything to me. He
10 just handed me the sheet and as soon as I saw I circled
11 it.

12 Q. How many officers actually went over the form and
13 showed you the pictures?

14 A. Two had come.

15 Q. You met two police officers there that day; is that
16 correct?

17 A. Yes, I met two.

18 Q. Did both of those officers administer this
19 photographic identification procedure with you?

20 A. They were not together when they went over the
21 document and the pictures with me.

22 Q. So was it just one person who did this with you?

23 A. The police officer explained it to me but I did not
24 understand so my son helped me, and then as soon as I saw
25 the picture I circled it. He did not say anything else

1 to me.

2 Q. After you circled the man's photograph did the
3 police tell you that you had done a good job?

4 A. They did not say anything. After I was done I left
5 to go to my store.

6 Q. Did the police tell you that you had picked the
7 right guy?

8 A. They did not say anything to me. After the work
9 was done I went to go -- I left to go to my store.

10 Q. How quickly were you able to identify the defendant
11 when the photos were shown to you?

12 A. Within a half second. As soon as I saw it I
13 recognized the face and I circled it.

14 MR. RUTLEDGE DURANT: Your Honor, permission to
15 publish to the jury?

16 THE COURT: You may.

17 MR. GROEBER: Your Honor, I don't believe they've
18 been admitted.

19 THE COURT: Oh, that's correct.

20 Mr. Durant, you need to admit them.

21 MR. RUTLEDGE DURANT: State moves for the admission
22 of State's 2 and 3.

23 MR. GROEBER: Objection previously raised.

24 THE COURT: Let me see 2. Counsel, approach and
25 bring 3.

1 (WHEREUPON, the following bench conference was
2 reported.)

3 THE COURT: You object and don't think it's
4 admissive. I need to know what the reason for your
5 objection is. Are you admitting -- are you objecting to
6 the foundation of this?

7 MR. GROEBER: No. I think the foundation has been
8 laid.

9 THE COURT: Just as to the use and to how we got to
10 the production of the lineup, correct?

11 MR. GROEBER: Yes. I mean, it's part of the lineup
12 and it's part of the procedures.

13 THE COURT: Are you going to have the SLED guy?

14 MR. RUTLEDGE DURANT: I mean, we can but I don't
15 think it's necessary to say who assembled the
16 photographic lineup.

17 THE COURT: You're not challenging the lineup
18 itself. You're challenging how he got there, right? I
19 just want to make -- we need to put that on the record
20 because I think if you're challenging the preparation of
21 the lineup I may not have done it. All right.

22 (WHEREUPON, the bench conference was concluded.)

23 THE COURT: Two and 3 admitted over your objection.
24 I'm going to allow you outside the presence of the jury
25 to articulate your objection on the record, Mr. Groeber.

1 (WHEREUPON, State's Exhibit Numbers 2 and 3 were
2 admitted into evidence.)

3 MR. RUTLEDGE DURANT: Thank you, Your Honor.

4 THE COURT: Mr. Durant, Mr. Groeber, just for
5 scheduling.

6 (WHEREUPON, a bench conference was had, not on the
7 record.)

8 BY MR. RUTLEDGE DURANT:

9 Q. Mr. Patel, how close were you to the gunman during
10 the robbery?

11 A. Around two feet (indicated). He was very close to
12 the register and I was standing behind the counter.

13 Q. Is it well lit inside your store?

14 A. Yes, it is well lit.

15 Q. What did the defendant say to you during the
16 robbery?

17 MR. GROEBER: Objection, Your Honor. Assuming
18 facts not in evidence.

19 THE COURT: I'm going to allow it. Thank you.
20 Overruled.

21 A. He asked for money, then asked for my wallet, and
22 asked for cigarettes, then said, Don't call the police,
23 and then left.

24 Q. Were you able to recognize his voice?

25 A. Yes. I could completely recognize his voice. He

1 is a regular customer.

2 Q. Were you able to get a clear look at his face?

3 A. Yes. I could clearly see his face even if he was
4 wearing sunglasses. I'm used to it. So many customers
5 wear sunglasses in my store all the time.

6 Q. And were you able to get a look at his face even
7 though he had a gun pointed at you for a minute and a
8 half?

9 A. Yes. I could clearly see his face. He was
10 standing very close to me and he was asking me to give
11 him the money quickly.

12 Q. What percentage of your customers would you say are
13 African Americans?

14 A. Eighty percent African Americans, 20 percent white
15 people, and 2 or 3 percent Mexicans.

16 Q. So do you interact with African American people on
17 a daily basis?

18 A. Yeah. The African Americans provide me with my
19 business. There is a lot of African American customers I
20 deal with every day.

21 Q. And again, are you positive that this is the man
22 who robbed you?

23 MR. GROEBER: Objection, Your Honor. Asked and
24 answered.

25 THE COURT: Sustained.

1 BY MR. RUTLEDGE DURANT:

2 Q. Do you have any problem recognizing your normal
3 African American customers?

4 A. If it's the dead of the night and very dark and
5 there are no lights then I may have a problem recognizing
6 my African American customers but otherwise I don't.

7 Q. And is that because you are not able to see them
8 well?

9 A. I can't see in the dark.

10 Q. So you would have the same problem recognizing an
11 Indian customer?

12 A. If I see Indian people I recognize them instantly
13 because of the hair and the way they have a mark on their
14 forehead.

15 Q. And how about Caucasian people? Are you able to
16 recognize your Caucasian customers?

17 MR. GROEBER: Objection, Your Honor, leading.

18 THE COURT: Overruled. You may answer.

19 A. Yes, I can recognize them.

20 Q. Do you know whether or not your store is located in
21 Charleston County?

22 A. Yes, it is in Charleston County.

23 Q. Thank you, sir. Please answer any questions the
24 defense may have.

25 A. Yes, I will.

1 THE COURT: Ladies and gentlemen, we've reached an
2 appropriate time for us to take our mid afternoon break.
3 Do not begin your deliberation. Do not discuss this case
4 amongst yourselves. We typically take about 10 minutes
5 but if you'll just let the bailiff know if you need any
6 additional time because there's two restrooms in there so
7 sometimes it takes a little longer.

8 Please rise for the jury.

9 (WHEREUPON, the jury leaves the courtroom at
10 approximately 2:30 p.m.)

11 THE COURT: Thank you. Be seated. Anything before
12 we take our break?

13 MR. RUTLEDGE DURANT: Not from the State.

14 MR. GROEBER: Do you want to put the objections on
15 the record?

16 THE COURT: You may.

17 You may step down and take your break.

18 (WHEREUPON, the witness stepped down from the
19 witness stand.)

20 THE COURT: Go ahead.

21 MR. GROEBER: Okay. Thank you. We would object to
22 State's 2 and 3 being introduced because they were part
23 of the lineup procedure and out-of-court identification.
24 No new basis for our objection other than those raised at
25 pretrial.

1 THE COURT: All right. Any response?

2 MR. RUTLEDGE DURANT: Your Honor, we just stick by
3 the State's argument from the pretrials.

4 THE COURT: Thank you. Anything before we take our
5 break?

6 MR. RUTLEDGE DURANT: Not from the State.

7 MR. GROEBER: No, Your Honor. Thank you.

8 THE COURT: Thank you. Ten minutes.

9 (WHEREUPON, a brief recess was taken.)

10 THE COURT: All right. Anything before we bring in
11 the jury?

12 MR. RUTLEDGE DURANT: Not from the State.

13 THE COURT: Mr. Patel, have a seat and please
14 remain seated when the jury comes in.

15 Madam Interpreter, they are going to bring you a
16 chair so that during the breaks you can at lease have a
17 seat, okay?

18 THE INTERPRETER: Thank you.

19 THE COURT: All right. We're going to go ahead and
20 bring the jury in.

21 All right. Let's bring in the jury. Thank you.

22 (WHEREUPON, the jury enters the courtroom at
23 approximately 2:55 p.m.)

24 THE BAILIFF: All jurors are present, Your Honor.

25 THE COURT: Thank you. Please be seated.

1 Mr. Groeber, your witness.

2 MR. GROEBER: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. GROEBER:

5 (Through the interpreter.)

6 Q. Good afternoon, Mr. Patel.

7 A. Good afternoon.

8 Q. I will try to ask my questions so that you can give
9 a yes or no answer for simplicity sake.

10 A. Does that mean you will only ask me questions that
11 I don't need to explain?

12 Q. If you need to explain you will be allowed to.

13 A. Okay.

14 Q. But I will try to keep it simple.

15 A. All right.

16 Q. Mr. Patel, you opened the store that morning at
17 6:30?

18 A. Monday through Friday I open at 6:30.

19 Q. And around 7:45 a young black man came in the
20 store?

21 A. Yes, with a gun.

22 Q. And he pointed that gun at you?

23 A. Yes, he pointed it at me.

24 Q. And you were scared?

25 A. Everybody will get scared when there is a gun.

- 1 Q. And you were very scared?
- 2 A. Yes. I was scared but I was standing right there
- 3 and I gave him the money.
- 4 Q. The robber was wearing a hat?
- 5 A. Yes.
- 6 Q. And it covered his hair?
- 7 A. It was a small hat so I could see the hair, not a
- 8 big hat. It stopped right here (indicated).
- 9 Q. You were not able to see his hairline in the front
- 10 because of the hat?
- 11 A. I could see his face. The cap was pushed slightly
- 12 back.
- 13 Q. He was wearing a black jacket?
- 14 A. Yes.
- 15 Q. And the jacket had a hood on it?
- 16 A. A gun was pointed at me for one and a half minutes.
- 17 I don't remember the details about how the hood was,
- 18 where it was. I just remember the color of the jacket
- 19 and that he had worn a red hat.
- 20 Q. You could not see the robber's ears?
- 21 A. I could see his ears.
- 22 Q. The robber was wearing sunglasses?
- 23 A. Yes, he was wearing sunglasses.
- 24 Q. And they were big enough to cover all of his eyes?
- 25 A. That is why people wear sunglasses, to cover their

1 eyes.

2 Q. And my question to you, Mr. Patel, and I'm not
3 trying to be difficult, is did they cover all of his
4 eyes?

5 A. His eyes were covered but he was looking at me from
6 on top of the sunglasses so I could see his eyes from
7 time to time (indicated).

8 Q. Now, the robber had a gun?

9 A. Yes.

10 Q. And you thought it was a real gun?

11 A. He didn't give it in my hand to inspect whether it
12 was a real or a fake gun. I just saw the gun and that
13 was it.

14 Q. And I'm asking if you thought it was a real gun?

15 A. Yes.

16 Q. It was black?

17 A. Yes, it was black.

18 Q. Was it a revolver?

19 A. I've never seen guns before in my life so I can't
20 tell them apart. Whether it's a gun or a revolver, it's
21 all same to me. I don't know what is a gun or a
22 revolver.

23 Q. And when the gun was pointed at you, you were very
24 scared?

25 A. Yes, I was scared. Everybody will be scared.

1 Q. All right. I would like to speak with you now
2 about who you talked about the robbery with.

3 A. I've spoken to my wife and my son about the
4 robbery.

5 Q. You talked with your wife the morning it happened?

6 A. Yes, I told her. She came to the store. We
7 watched the video and I told her that this was the same
8 man.

9 Q. And you talked with her the days between the
10 robbery and the photo lineup?

11 A. Whenever anybody sees the gun they are bound to
12 talk about it.

13 Q. And so you talked with your wife about this for
14 several days?

15 A. For a week we talked about it and then we tried to
16 forget it.

17 Q. You've watched the -- I'd like to talk to you about
18 the video now. You've watched the video several times?

19 A. Yes.

20 Q. You watched it a few times the day it happened?

21 A. I even have the video on my cell phone. So I had
22 seen it a number of times.

23 Q. I want to talk to you about the lineup procedure
24 now. That happened at the mall?

25 A. All right. I'll answer you.

1 Q. Your wife -- it happened at the mall?

2 THE INTERPRETER: I'm sorry?

3 Q. The lineup happened at the mall?

4 A. Not inside the mall, outside the mall.

5 Q. And you knew that the police were coming because
6 your wife called you to tell you?

7 A. I had no idea that the police were coming to speak
8 to me. So my wife called and told me that they were
9 looking for me, and she had informed them that I was at
10 the Citadel Mall.

11 Q. And when they came they told you they had some
12 pictures they wanted you look at?

13 A. They didn't say anything to me.

14 Q. They told you they wanted you to look at pictures,
15 correct?

16 A. They told me about the pictures but they did not
17 tell me to circle anyone. I saw them myself and I
18 circled it on my own.

19 Q. Before you looked at the pictures they read you
20 some instructions?

21 A. They showed me this document. My son read it,
22 explained it to me and I signed it (indicated).

23 Q. You couldn't read it yourself, could you?

24 A. I could read it but I could not understand some of
25 the words. They were difficult words.

1 Q. And when you looked at the photographs you felt it
2 was your job to help the police catch the robber?

3 A. Yes. I wanted to work with the police to help
4 catch the robber so I could put him in.

5 Q. And the photo lineup had six pictures on one page?

6 A. Yes.

7 MR. GROEBER: May I have one moment, Your Honor.

8 THE COURT: You may.

9 (PAUSE.)

10 MR. GROEBER: No further questions at this time.

11 Thank you, Your Honor.

12 Thank you, Mr. Patel.

13 THE WITNESS: Okay.

14 THE COURT: Redirect?

15 MR. RUTLEDGE DURANT: The State has no more
16 questions.

17 THE COURT: You may step down. Thank you.

18 Call your next witness.

19 MR. RUTLEDGE DURANT: The State calls Dhruval
20 Patel.

21 DHRUVAL PATEL, after having been duly sworn,
22 testified as follows:

23 THE CLERK: Say your full name and then spell your
24 last name.

25 THE WITNESS: Dhruval Patel, P-a-t-e-l.

25 Q. Does she work?

- 1 A. Yes.
- 2 Q. What does she do?
- 3 A. She also owns a gas station.
- 4 Q. Do you ever help your father at the store?
- 5 A. Yes.
- 6 Q. What kind of things do you do?
- 7 A. Anything that they ask me to.
- 8 Q. What language is your father most comfortable
- 9 speaking?
- 10 A. Gujarati.
- 11 Q. And is that a dialect of Hindi?
- 12 A. Yes.
- 13 Q. Do you speak Gujarati as well?
- 14 A. Yes.
- 15 Q. And do you speak Hindi?
- 16 A. No.
- 17 Q. What about your mother? What does she speak the
- 18 best?
- 19 A. Gujarati.
- 20 Q. Does she speak English?
- 21 A. About the same level as my mother -- or my father.
- 22 Q. And I think you obviously speak English pretty
- 23 good, right?
- 24 A. Yes.
- 25 Q. At the store, does the store have a video

1 surveillance system?

2 A. Yes.

3 Q. And who operates that system mostly?

4 A. I do.

5 Q. Did you help install it?

6 A. Yes.

7 Q. And what kind of things did you do to help get that
8 system installed at the store?

9 A. I set the time, date, set the focuses on the
10 camera.

11 Q. And does the system accurately capture what goes on
12 in the store?

13 A. Yes.

14 Q. And you've had an opportunity to look at what it
15 actually captures from the store --

16 A. Yes.

17 Q. -- and determine that?

18 Do you recall going to the store on the morning of
19 December 24th, 2010?

20 A. Yes.

21 Q. What do you remember about that?

22 A. My dad called my mom and said that there was a
23 robbery, so me and my mom rushed to the store.

24 Q. Why did you go?

25 A. The police needed to view the incident, and to help

1 my father communicate with the police.

2 Q. And did you go help your father communicate with
3 the police that day?

4 A. Yes.

5 Q. Did you also help the officers to be able to view
6 the video?

7 A. Yes.

8 Q. And after that day, did you interact with the
9 police again after the day of the robbery?

10 A. Yes.

11 Q. And if you would, tell the jury where that took
12 place.

13 A. Citadel Mall at Sears.

14 Q. Who were you with?

15 A. My father.

16 Q. And what do you recall about meeting with the
17 police that day? How many police officers did you meet
18 with?

19 A. Two.

20 Q. Do you know what they wanted to meet with you
21 about?

22 A. They wanted to show my father a lineup.

23 Q. I'm showing you -- and it's already in evidence as
24 State's Number 2. I'm going to ask you to take a look at
25 that and let me know if you recognize that.

1 A. Yes.

2 Q. And why do you recognize State's Number 2?

3 A. I helped my father -- I interpreted this for my
4 father so he could know what they wanted.

5 Q. And did you read these items to your father?

6 A. Yes.

7 Q. And did you interpret to him what is said there in
8 English in Gujarati for your father?

9 A. Yes.

10 Q. And if you could, could you read those seven
11 admonitions to the jury so they know what you helped your
12 father understand.

13 A. I am going to show you a series of photographs or
14 physical lineups of individuals or an array of six
15 photographs of individuals. Circle the appropriate one.
16 The photograph that I am about to show you are placed in
17 no special order.

18 These photographs may or may not contain the person
19 who committed the crime. It is just as important to
20 clear innocent people as it is to identify the possible
21 suspects. Whether or not you identify someone the police
22 will not continue -- will continue the investigation.

23 After you are done I will not be able to provide
24 you with any feedback or comment on the results of the
25 process. Do not discuss this identification procedure or

1 the results with other witnesses in this case.

2 Focus on the event, the place, viewing, lighting,
3 your frame of memory, etcetera. Take as much time as you
4 need. People may not appear exactly as they did at the
5 time of the event because features such as clothing
6 style, hair color, hairstyle, etcetera may change even in
7 a short period of time.

8 As you look at the photographs tell me if you
9 recognize the person in -- if you recognize the person in
10 them. If you do not, please tell me how you know the
11 person -- or if you do, please tell me how you know the
12 person, in your own words how sure are you of the
13 identification.

14 Q. And did your father understand everything that you
15 just read to the Court?

16 A. Yes.

17 Q. And how did he indicate that he understood that?

18 A. Usually he asked me a question if he does not
19 understand or if he wants me to repeat, and we've had
20 that for years since I interpret mostly everything.

21 Q. And did he initial beside each of those admonitions
22 that you read?

23 A. Yes.

24 Q. Indicating that he understood?

25 A. Yes.

1 Q. And how many officers -- you testified that you met
2 two out there at the mall, right?

3 A. Yes.

4 Q. How many officers actually went over this form with
5 you and your father?

6 A. One of them.

7 Q. Just one?

8 A. Yes.

9 Q. And the other one was somewhere close by?

10 A. Yes.

11 Q. But he wasn't actually administering this --

12 A. Yes.

13 Q. -- is that right? And what happened after the
14 officer went over this form with your father?

15 A. He showed my father the lineup.

16 Q. What was your father's reaction when he viewed the
17 lineup?

18 A. He immediately circled one person.

19 Q. Did the officer tell your father who to circle?

20 A. No.

21 Q. Did he do anything to indicate that he should
22 circle any of the pictures there?

23 A. No.

24 Q. Did your father just do it on his own?

25 A. Yes.

1 Q. And do you recall an officer, I think earlier that
2 day, who had come out to the store, a female officer?

3 A. Yes.

4 Q. And that's December 29th?

5 A. Yes.

6 Q. Did you help that officer download the video from
7 the system that day?

8 A. Yes.

9 Q. It was just one officer who came out there?

10 A. Yes.

11 Q. Did she bring her own equipment?

12 A. Yes.

13 Q. And did you help her get the video off of y'all's
14 system and onto her system?

15 A. Yes.

16 Q. Were you able to do it on the first try?

17 A. No.

18 Q. What about the second try?

19 A. Yes.

20 Q. And in regard to your system, how long -- how long
21 does your system keep video -- how long does it keep a
22 video on it?

23 A. Ten days.

24 Q. And then what happens?

25 A. It tapes over it.

1 Q. So if you want to get it off of there you need to
2 get it off within 10 days; is that right?

3 A. Yes.

4 Q. Did you suggest to your father which photo to pick
5 out?

6 A. No.

7 Q. Or influence him in any way which photo to pick
8 out?

9 A. No.

10 MR. RUTLEDGE DURANT: Thanks, Dhruval. Answer any
11 questions defense may have.

12 THE COURT: Mr. Groeber?

13 CROSS-EXAMINATION

14 BY MR. GROEBER:

15 Q. Good afternoon, Dhruval.

16 A. Goods afternoon.

17 Q. You remember when the robbery happened?

18 A. Yes.

19 Q. You were 12 at the time?

20 A. Yes.

21 Q. And your parents called you that morning -- or your
22 dad called?

23 A. Yes.

24 Q. And you went to the store?

25 A. Yes.

1 Q. And you watched the video that morning?

2 A. Yes.

3 Q. You were the one who actually booted it up?

4 A. Yes.

5 Q. And you spoke -- you watched the video that day
6 with your father?

7 A. Yes.

8 Q. And a couple police officers?

9 A. Yes.

10 Q. And your mother?

11 A. She also watched it.

12 Q. And you watched it with your mom and your dad
13 several times that day?

14 A. About two.

15 Q. You've watched the video with them after that day?

16 A. Yeah.

17 Q. And about five or six times you've seen it?

18 A. Yes.

19 Q. And every time that you've watched it you were
20 watching it with your parents?

21 A. Yes.

22 Q. It's fair to say that your dad understands some
23 English, right?

24 A. Yes.

25 Q. And enough to kind of deal with customers in his

1 store?

2 A. Yes.

3 Q. But he does struggle with more complicated English?

4 A. Yes.

5 Q. And the same is true for your mom?

6 A. Yes.

7 Q. And that's why you don't translate for them
8 sometimes?

9 A. Yes.

10 Q. Dhruval, what is the Hindi word for array?

11 A. I don't speak Hindi.

12 Q. What is the -- I'm sorry. What's the language that
13 you speak?

14 A. Gujarati.

15 Q. What is the Hindi word -- Gujarati, is that
16 correct?

17 A. Gujarati.

18 Q. What is the Gujarati word for array?

19 A. I don't know.

20 Q. Okay.

21 MR. GROEBER: May I have one moment, Your Honor?

22 THE COURT: You may.

23 (PAUSE.)

24 MR. GROEBER: No further questions. Thank you,

25 Your Honor.

1 THE COURT: Redirect?

2 MR. RUTLEDGE DURANT: Just briefly.

3 REDIRECT EXAMINATION

4 BY MR. RUTLEDGE DURANT:

5 Q. Dhruval, you've also watched the video with me,
6 haven't you?

7 A. Yes.

8 Q. And I've come out to visit you and your mom and dad
9 at the store; isn't that right?

10 A. Yes.

11 Q. And you've helped me in talking with your
12 parents --

13 MR. GROEBER: Objection, Your Honor.

14 Q. -- is that correct?

15 THE COURT: Hold on one second. What's the basis?

16 MR. GROEBER: Outside the scope of redirect.

17 THE COURT: Overruled. You may answer.

18 BY MR. RUTLEDGE DURANT:

19 (Through the interpreter.)

20 Q. And you've helped me in talking with your parents;
21 is that right?

22 MR. GROEBER: Objection, Your Honor.

23 THE COURT: Basis?

24 MR. GROEBER: Bolstering and the prosecutor is
25 possibly making himself a witness.

1 THE COURT: Overruled. You may answer.

2 MR. RUTLEDGE DURANT: Thank you, Your Honor.

3 BY MR. RUTLEDGE DURANT:

4 (Through the interpreter.)

5 Q. Because we've gone over your testimony; is that
6 right?

7 A. Yes.

8 Q. And in so doing it was important for us to watch
9 that video, wasn't it?

10 A. Yes.

11 Q. All right. With this admonition, and this is
12 State's 2 -- well, just for number one. If you would,
13 read number one to the jury.

14 A. I am going to show you a series of photographs or
15 physical lineups of individuals or an array of six
16 photographs of individuals. Circle the appropriate one.
17 The photographs that I am about to show you are placed in
18 no special order.

19 Q. All right. And you just read the word array in
20 that sentence, right?

21 A. Yes.

22 Q. So if you would, could you speak in Gujarati the
23 same words that you were able to tell your father what
24 number one meant.

25 A. (The witness complied).

1 Q. Now, is there an exact translation word for word
2 for everything that there's a word for in English and
3 everything that there is a word for in Gujarati?

4 A. No.

5 Q. But nevertheless, you can capture the essence of
6 what is intended; is that correct?

7 A. Yes.

8 Q. And were you able to tell your father the essence
9 of what number one said?

10 A. Yes.

11 MR. RUTLEDGE DURANT: Thank you.

12 THE COURT: Mr. Groeber?

13 MR. GROEBER: No, Your Honor. Thank you.

14 THE COURT: You may step down. Thank you.

15 Call your next witness.

16 MR. RUTLEDGE DURANT: Your Honor, can we ask that
17 Mr. Patel and his son can be excused for the day?

18 THE COURT: Any objection?

19 MR. GROEBER: No, Your Honor.

20 THE COURT: They may be excused. Thank you.

21 MR. RUTLEDGE DURANT: The State calls Deputy Dustin
22 Luckadoo.

23 DUSTIN LUCKADOO, after having been duly
24 sworn, testified as follows:

25 THE CLERK: Be seated. Please state your full name

1 and spell your last name for the record.

2 THE WITNESS: My name is Dustin Luckadoo,

3 L-u-c-k-a-d-o-o.

4 DIRECT EXAMINATION

5 BY MR. RUTLEDGE DURANT:

6 Q. Good afternoon, Deputy Luckadoo. Will you please

7 tell the jury where you are employed.

8 A. Charleston County Sheriff's Office.

9 Q. And how long have you been employed with the
10 Charleston County Sheriff's Office?

11 A. Eight years.

12 Q. What is your current position?

13 A. Patrol deputy in the South District.

14 Q. What are your duties and responsibilities as a
15 patrol deputy in the South District?

16 A. Handle calls, patrol neighborhoods, and just
17 general duties.

18 Q. And how long has that been your position?

19 A. Eight years.

20 Q. You write traffic tickets?

21 A. Yes, sir.

22 Q. Respond to 9-1-1 calls?

23 A. I do.

24 Q. And that was your position in December of 2010?

25 A. Yes, sir.

1 Q. And in that capacity did you become involved in the
2 investigation of an armed robbery that occurred at the
3 convenience store located at 5737 Savannah Highway in
4 Ravenel?

5 A. Yes, sir.

6 Q. How did you become involved in this case?

7 A. The supervisors on duty sent me over there to
8 assist.

9 Q. Do you recall approximately what time you arrived?

10 A. Shortly after eight o'clock in the morning.

11 Q. And what county is that convenience store located
12 in?

13 A. Charleston County.

14 Q. What did you observe upon arrival?

15 A. Observed the victim who told us that, you know, he
16 had been robbed and had a video surveillance that he was
17 trying to get pulled up when I arrived.

18 Q. Was Mr. Patel able to tell you any details about
19 the robbery?

20 A. Just that he --

21 MR. GROEBER: Objection, Your Honor, hearsay and
22 bolstering.

23 THE COURT: Rephrase your question. Thank you.

24 BY MR. RUTLEDGE DURANT:

25 Q. What was Mr. Patel's demeanor when you arrived?

1 A. He had calmed down from the initial shock of the
2 robbery.

3 Q. But nevertheless, did he still appear to be a
4 little shocked?

5 MR. GROEBER: Objection, Your Honor, leading.

6 THE COURT: Rephrase your question. Sustained as
7 to leading.

8 BY MR. RUTLEDGE DURANT:

9 Q. So his demeanor, what was his demeanor at that
10 time?

11 A. Like I said, he was calm. He was able to give us a
12 good description of the individual and let us know that
13 he thought the individual to be a prior customer of his.

14 MR. GROEBER: Objection, Your Honor. He's
15 beginning to testify as to hearsay.

16 THE COURT: All right. Counsel approach.

17 (WHEREUPON, the following bench conference was
18 reported.)

19 MR. RUTLEDGE DURANT: This is all information
20 that's pertinent to his investigation from the very
21 get-go. It's a description, something the officers used
22 to go on in their investigation and it takes place right
23 after an initial excited event, initial excited event to
24 an armed robbery that happened minutes before, and he
25 said in that time, right after the robbery. And there's

1 no argument that that just happened, and that's when
2 Mr. Patel said that it was a regular customer, and it is
3 absolutely relevant.

4 MR. GROEBER: It's both hearsay and bolstering.
5 Mr. Patel has already testified. The State has already
6 gotten that fact out. Nobody challenged, you know,
7 whether or not he said he was a regular customer so...

8 MR. RUTLEDGE DURANT: It is not.

9 MR. GRIMES: Sanchez vs. State --

10 MR. RUTLEDGE DURANT: It is the very essence of an
11 excited utterance right after an armed robbery.

12 THE COURT: If you're going to do this you need to
13 lay a foundation because you said he had calmed down by
14 the time they had gotten there.

15 MR. RUTLEDGE DURANT: From the time frame was
16 important right there.

17 THE COURT: All right. Well, you're going to need
18 to lay -- because I can't -- I don't make a ruling on
19 excited utterance if he said he had calmed down. All
20 right?

21 MR. RUTLEDGE DURANT: He said he had initially
22 calmed down but the truth of the matter is he needs to
23 elaborate on --

24 THE COURT: If he can say that, otherwise then --

25 MR. RUTLEDGE DURANT: Okay.

1 THE COURT: What's the exception to hearsay?

2 MR. RUTLEDGE DURANT: State of mind, present sense
3 impression.

4 MR. GROEBER: He's not talking about his state of
5 mind or his present sense impression. He's trying to
6 testify what he said.

7 MR. RUTLEDGE DURANT: And it's offered for the
8 identity.

9 THE COURT: Offered for what?

10 MR. RUTLEDGE DURANT: Offered for his identity, and
11 the description. It's relevant to the investigation.

12 THE COURT: See if you can lay a better foundation.
13 Thank you.

14 (WHEREUPON, the bench conference was concluded.)

15 BY MR. RUTLEDGE DURANT:

16 Q. All right. Detective Luckadoo, you said that he
17 appeared to have calmed down from the initial shock of
18 being robbed?

19 A. Yes, sir.

20 Q. Was he completely calm as a cucumber?

21 A. No.

22 MR. GROEBER: Objection, Your Honor, leading.

23 THE COURT: Overruled.

24 Q. What was your understanding of the amount of time
25 that took place between this robbery that was called in

1 and your arrival?

2 A. My arrival was probably 30 minutes afterwards.

3 (WHEREUPON, State's Exhibit Number 4, an Incident

4 Report, was marked for identification only.)

5 BY MR. RUTLEDGE DURANT:

6 Q. Did you write a report in this case?

7 A. No, sir, I did not.

8 Q. Who did you respond to the store with?

9 A. Deputy Kjellman was already on the scene and Deputy
10 Roberson was on the scene.

11 Q. Are you aware of whether either of those officers
12 wrote an initial report in that case -- in this case?

13 A. Deputy Kjellman did.

14 Q. And so why did you not write a report in the case?

15 A. Because I was not responding -- the first
16 responding deputy.

17 Q. If you viewed Deputy Kjellman's report would that
18 refresh your recollection as to how quickly you responded
19 to the scene after it was called in?

20 A. Sure.

21 Q. Showing you what the State has labeled State's 4
22 for identification only. Do you recognize it?

23 A. Yes, sir.

24 Q. And is that Deputy Kjellman's report?

25 A. Yes, sir, it is.

1 Q. If you would, I'd ask that you read that and let me
2 know if you are sufficiently refreshed.

3 A. Read it out loud?

4 Q. No. Just read it to yourself.

5 (PAUSE.)

6 Q. All right. Now are you refreshed?

7 A. Yes, sir.

8 Q. All right. Now having looked over the initial
9 responding report, can you now tell the jury
10 approximately how long after the robbery was called in
11 that you arrived?

12 A. Thirty minutes, I arrived.

13 Q. That you arrived?

14 A. Yes.

15 Q. All right. And you did speak to the victim at that
16 time; is that correct?

17 A. Yes, sir.

18 Q. Did you have any trouble talking to him?

19 A. No, sir.

20 Q. Do you speak Hindi?

21 A. No, sir.

22 Q. Was he able to talk perfectly fluent English to
23 you?

24 A. Not perfectly fluent.

25 Q. Were you able to understand the essence of what he

1 was saying?

2 A. Yes, sir.

3 Q. What did you do after talking to the victim?

4 A. Walked back into the back office to review the tape
5 with him.

6 Q. And the tape of what?

7 A. Tape of the incident, the armed robbery.

8 Q. Do you recall who was around when you did that?

9 A. Myself, Deputy Kjellman and Mr. Patel.

10 Q. And did you view the tape?

11 A. Yes, sir, I did.

12 Q. And at that time, viewing that tape, was there
13 anything about that tape that was helpful to you and the
14 investigation of this case?

15 MR. GROEBER: Objection, Your Honor.

16 THE COURT: Basis?

17 MR. GROEBER: Prior made objections at pretrial.

18 THE COURT: Overruled. You may answer.

19 A. Upon looking at the videotape, seeing the suspect I
20 recognized --

21 THE COURT: I need you to speak up again. Thank
22 you.

23 A. After reviewing the tape I recognized the suspect.

24 Q. You recognized the man with a gun?

25 A. Man with a gun, yes.

- 1 Q. Who did you recognize him to be?
- 2 A. I recognized him to be Marvin Bowens.
- 3 Q. And how were you certain that it was Marvin Bowens?
- 4 A. Just through general dealings with Mr. Bowens.
- 5 Q. Had you ever had personal contact with him before?
- 6 A. Yes.
- 7 Q. Had you?
- 8 A. Yes, on a traffic stop.
- 9 Q. Did you let any of the other officers at the scene
- 10 know that you had recognized the man in the video?
- 11 A. Yes, sir, I did.
- 12 Q. And did you let Deputy Kjellman know that?
- 13 A. Yes, sir, I did.
- 14 Q. And is that noted in his report?
- 15 A. Yes, sir, it is.
- 16 Q. And do you see Marvin Bowens or Marvin Bowens Green
- 17 in this courtroom today?
- 18 MR. GROEBER: Objection, Your Honor.
- 19 THE COURT: Basis?
- 20 MR. GROEBER: Mischaracterization of the facts in
- 21 evidence.
- 22 THE COURT: Overruled. You may answer.
- 23 A. Can you repeat the question?
- 24 Q. Do you see the man that you recognize in the video
- 25 in this court today?

1 A. Yes, sir, I do.

2 Q. Where is he?

3 A. Sitting right there in the white shirt (indicated).

4 Q. If you would, point to him and identify him.

5 A. (Indicated) right there, Mr. Marvin Bowens Green.

6 Q. It's just a procedure we have to do.

7 MR. RUTLEDGE DURANT: Let the record reflect the
8 witness has identified the defendant.

9 THE COURT: The record will reflect. Thank you.

10 BY MR. RUTLEDGE DURANT:

11 Q. How certain are you of this identification?

12 A. A hundred percent.

13 Q. And again, just so the jury knows, if you would
14 just tell them again what area of the county you are
15 assigned to.

16 A. I'm assigned to what they call District Eight,
17 which was the South District; Ravenel, Hollywood, Edisto,
18 those general areas.

19 Q. So the south end of the county?

20 A. South end of the county, yes, sir.

21 Q. Now, is that just primarily or is that all the
22 time?

23 A. All the time.

24 Q. And the North District would be what, Mount
25 Pleasant and above?

1 A. Mount Pleasant, North Charleston, Ladson,
2 Lincolnville.

3 Q. And there's another area. Is West Ashley in your
4 district?

5 A. That's known as District Seven.

6 Q. And that's not your district?

7 A. That's not where I work, no sir.

8 Q. What about James Island?

9 A. No, sir.

10 Q. Johns Island?

11 A. No, sir.

12 Q. So primarily the Ravenel, Edisto, that kind of
13 area?

14 A. Yes, sir, that's the area I work.

15 Q. And you've worked that area for eight years?

16 A. Yes, sir.

17 MR. RUTLEDGE DURANT: Thank you, sir. Please
18 answer any questions the defense may have.

19 THE COURT: Mr. Groeber?

20 MR. GROEBER: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. GROEBER:

23 Q. Good afternoon, Mr. -- Deputy Luckadoo. Excuse me.

24 I want to talk to you first about when you watched the
25 video and where you watched it. You arrived on the scene

1 and when you arrived was Mr. Patel watching the video?

2 A. He was trying to get it pulled up when I arrived.

3 Q. Okay. And he was successful at doing that?

4 A. Yes, sir.

5 Q. And you were in the room with him watching the
6 video?

7 A. Yes, sir.

8 Q. And I believe you testified that a couple of
9 deputies were at the scene. Were they in the room
10 watching the video?

11 A. I can recall Deputy Kjellman being beside me
12 watching the video.

13 Q. And was Dhruval Patel there watching the video with
14 you?

15 A. Not at the time, no.

16 Q. And you watched it several times?

17 A. Yes.

18 Q. That day, that morning?

19 A. Yes, sir.

20 Q. And you say that you recognize Marvin Bowens as the
21 person in the video?

22 A. Yes, sir.

23 Q. You also testified about the communication of

24 Mr. Patel. You said that you had no problem

25 communicating with him.

- 1 A. No, sir. He understood me, I understood him.
- 2 Q. So he understood the English that he spoke to you
- 3 -- or that you spoke to him rather?
- 4 A. Yes.
- 5 Q. And you had no problems conversing with him?
- 6 A. No, sir.
- 7 Q. When you reviewed the tape did you say, Oh, look, I
- 8 recognize that person?
- 9 A. To Deputy Kjellman, yes. That's why I walked him/
- 10 into the hallway and told him.
- 11 Q. So let's talk a little bit about the store.
- 12 There's a cash register kind of in the middle of the
- 13 store, right?
- 14 A. Right.
- 15 Q. And there's a hallway behind the cash register and
- 16 it goes to an office?
- 17 A. Directly behind the cash register, yes.
- 18 Q. And y'all watched the videos in the office?
- 19 A. Yes.
- 20 Q. And fair to say it's probably -- the hallway is 15
- 21 to 20 feet long?
- 22 A. No, it's not very long at all. Probably from this
- 23 over here to the desk (indicated). Probably six, seven
- 24 feet, maybe.
- 25 Q. Six or seven feet?

1 A. Uh-huh.

2 Q. And the office is a small office?

3 A. Yes.

4 Q. And you were speaking with Deputy Kjellman telling
5 him that you recognized the person in the video when you
6 were in the hallway?

7 A. Yes.

8 Q. And Mr. Patel was in the office at that time?

9 A. Yes.

10 Q. Now, after you had identified Mr. Bowens you said
11 -- you told other people that you recognized him, right?
12 You told Deputy Kjellman?

13 A. Uh-huh.

14 Q. And you also told Detective Lawrence?

15 A. Yes.

16 Q. And you told him specifically who you recognized?

17 A. Yes, sir.

18 Q. Each -- well, Charleston County Sheriff's Office is
19 a pretty big organization, you would agree?

20 A. Yes.

21 Q. And just like other big organizations they have a
22 policy manual?

23 A. Right.

24 Q. And you all get training on that policy manual when
25 you become deputies?

1 A. Yes.

2 Q. And you have to read the whole thing?

3 A. Yes.

4 Q. Do you have a test on it?

5 A. No.

6 Q. No, test, okay. And periodically you get updates
7 about that?

8 A. Yes.

9 Q. And you read those?

10 A. Yes, sir.

11 Q. And part of being a good deputy is keeping up with
12 the policy manual?

13 A. Yes.

14 Q. And you try to do that?

15 A. I try to do that, yes.

16 Q. And so you are familiar that the Charleston County
17 Sheriff's Office has a policy on photo lineup
18 identifications?

19 A. Yes, I am.

20 Q. And you're familiar that there's -- that the policy
21 talks about the difference between simultaneous and
22 sequential lineups?

23 A. Yes.

24 Q. Well, you had some hesitation. Are you familiar
25 with that or not?

1 A. It's been a while since I've glanced at the lineup
2 policy so...

3 Q. You know that in -- but you know that in
4 identification cases it's important to do a photo lineup?

5 A. Sure.

6 Q. And that's part of good police work?

7 A. Right.

8 Q. And you didn't ask for Detective Lawrence to
9 prepare a photo lineup with Mr. Bowens in the picture,
10 did you?

11 A. That was his decision to do that.

12 Q. But you didn't ask him to, did you?

13 A. I don't have to ask him to do that.

14 Q. I'm sorry?

15 A. I don't have to ask him to do that.

16 Q. Okay.

17 MR. GROEBER: May I have one moment, Your Honor?

18 THE COURT: You may.

19 (PAUSE.)

20 MR. GROEBER: Thank you, Your Honor. No further
21 questions.

22 Thank you, Deputy.

23 MR. RUTLEDGE DURANT: Briefly, Your Honor.

24 REDIRECT-EXAMINATION

25 BY MR. RUTLEDGE DURANT:

1 Q. At the store that day you said there were two other
2 officers in there were you?

3 A. Yes.

4 Q. And, again, who were they?

5 A. Deputy Kjellman and Deputy Roberson.

6 Q. And I think your testimony is that you told both of
7 those officers that you identified the man in the video?

8 A. Yes, I did.

9 Q. Did they also view the video?

10 A. Yes.

11 Q. Did they recognize the man?

12 MR. GROEBER: Objection, Your Honor.

13 THE COURT: Basis?

14 MR. GROEBER: Withdrawn.

15 A. No, sir.

16 Q. So you were the only one?

17 A. Yes, sir.

18 Q. And in talking about the organization of the
19 sheriff's office there are different departments, right?

20 A. Right.

21 Q. You are a road deputy, right?

22 A. Yes.

23 Q. And there's also a detective division?

24 A. Yes, sir.

25 Q. And the detective division's job is to investigate

1 cases like this; is that right?

2 A. Yes, sir, it is.

3 Q. And even though often times is the case you may be

4 a first responder on a scene like this; is that right?

5 A. That's correct.

6 Q. And then there are other divisions of the sheriff's

7 office as well, right?

8 A. Yes.

9 Q. They have divisions that handle crime on the water?

10 A. Right.

11 Q. And there's a crime scene unit?

12 A. Yes.

13 Q. And even further inside the detectives division

14 they operate on a particular kind of crime basis?

15 A. Right.

16 Q. There's a division for sex crimes?

17 A. Right.

18 Q. There's a division for violent crimes?

19 A. Right.

20 Q. There's a division for property crimes?

21 A. (There was no audible response).

22 THE COURT: Was that a response deputy?

23 A. Yes.

24 THE COURT: I'm sorry. I'm having a hard time

25 hearing you which means to me that half the jurors can't.

1 So you're going to have to speak up.

2 A. Yes, ma'am.

3 Q. And, you know, as part of your duties and
4 responsibilities how often do you present photographic
5 lineups?

6 A. Very little, if any.

7 Q. How many times have you done it in the past year?

8 A. None.

9 Q. Past two years?

10 A. None.

11 Q. Whose responsibility does that fall to to do
12 something like that?

13 A. Usually the detective's office.

14 Q. And is your understanding that the detective's
15 office was notified about this case?

16 A. Yes, sir.

17 Q. And so any identification procedure would be done
18 by them; is that right?

19 A. Yes, sir, it would.

20 Q. And are you positive that this is the man that you
21 recognized as the gunman?

22 A. A hundred percent positive.

23 Q. Look at the jury and tell them.

24 A. A hundred percent positive.

25 MR. GROEBER: Objection, Your Honor. Asked and

1 answered.

2 THE COURT: Sustained.

3 MR. RUTLEDGE DURANT: Thank you.

4 THE COURT: Recross?

5 MR. GROEBER: No, Your Honor.

6 THE COURT: You may step down. Thank you.

7 Call your next witness.

8 MR. RUTLEDGE DURANT: The State calls Detective
9 Charles Lawrence.

10 CHARLES LAWRENCE, after having been duly
11 sworn, testified as follows:

12 THE CLERK: State your full name and spell your
13 last name for the record.

14 THE WITNESS: Yes, sir. Charles Lawrence,
15 L-a-w-r-e-n-c-e.

16 DIRECT EXAMINATION

17 BY MR. RUTLEDGE DURANT:

18 Q. Good afternoon, Detective Lawrence.

19 A. Good afternoon.

20 Q. Will you please tell the jury where you are
21 employed.

22 A. Yes, sir. Charleston County Sheriff's Office.

23 Q. And how long have you been employed at Charleston
24 County Sheriff's Office?

25 A. A little over eight years. Since 2003.

1 Q. What is your current position?

2 A. Violent crimes detective in the South District,
3 Hollywood to Edisto Island.

4 Q. How long has that been your position?

5 A. Since July 25th, 2007.

6 Q. Fairly specific date?

7 A. That's my birthday. That's the only reason I
8 remember.

9 Q. Before you were a detective in the violent crimes
10 unit at the Sheriff's Office --

11 A. Yes, sir.

12 Q. -- you were employed with the sheriff as well?

13 A. That's correct.

14 Q. And what was your position at that time?

15 A. I was a road deputy in the same district.

16 Q. And if you would, tell the jury what district that
17 is.

18 A. Again, that's South District, the south end of
19 Charleston County, which goes from Hollywood almost
20 across Reynolds Ridge (verbatim), from Hollywood to
21 Colleton County on 17, and at Colleton County on Highway
22 174.

23 Q. Does that include Edisto?

24 A. Edisto, Megget, Youngs Island, Adams Run,
25 Hollywood, Ravenel, and anything else that I may have

1 missed, but I believe I got it all.

2 Q. And what are your duties and responsibilities as a
3 detective in the violent crimes unit?

4 A. Initially, we get incident reports. We get
5 assigned cases from our supervisor, which would be my
6 sergeant. Once we get the case we review the incident
7 report that we are assigned, at which time we ascertain a
8 victim witness and possible suspect.

9 Q. What kind of crimes do you investigate?

10 A. Violent crimes of persons. All the violent crimes
11 to include from stabbings to homicides.

12 Q. Murders?

13 A. Murders, yes, yes. Homicides, suicides, armed
14 robberies. Anything that you can do to a person I
15 investigate.

16 Q. And that was your position in December of 2010?

17 A. Yes, sir. That's correct.

18 Q. And in that capacity did you become involved in the
19 investigation of an armed robbery that occurred at 5737
20 Savannah Highway in Ravenel?

21 A. I did.

22 Q. How were you brought into this case?

23 A. I was assigned the case by my sergeant. It was
24 right around December -- right around Christmastime
25 July -- I'm sorry, Christmas in 2010.

1 Q. Did you actually respond to the scene?

2 A. No, sir, I did not.

3 Q. And you said you were assigned the case.

4 A. That's correct.

5 Q. And what does that mean?

6 A. Okay. The crime occurred in Ravenel, South
7 Carolina, which is in the area that I cover, in the South
8 District. Again, when I was a road deputy I was from
9 Hollywood to Edisto and now that I'm in detective
10 division I'm still in that area. I'm still a detective
11 in that same district, and Ravenel is included in my
12 district. Since I'm familiar with the persons that are
13 there, I built a rapport with them, I was assigned that
14 case.

15 Q. And does that mean that you are the case agent?

16 A. That's correct.

17 Q. And what does it mean to be the case agent for a
18 particular case?

19 A. The case agent means you are totally exclusively
20 assigned that case from the moment you are assigned to it
21 to the disposition of it.

22 Q. So you are the kind of manager for the case?

23 A. Yes, sir.

24 Q. And is that the situation even though other
25 detectives may assist you on the case?

1 A. Yes, sir.

2 Q. And do you assist other detectives in your office
3 when they are the case agent?

4 A. I do.

5 Q. It's just that one person is assigned to be the
6 case agent on a case?

7 A. That is correct.

8 Q. And you are the case agent on this case?

9 A. Yes, sir, that's correct.

10 Q. So how did you begin to investigate this case?

11 A. Once it was assigned to me, again, it was around
12 Christmastime in 2010, I think we were maybe off for
13 Christmas and maybe the day after, I got assigned the
14 case. I read the narrative from the responding officers
15 with responding deputies which revealed that it was an
16 armed robbery that occurred at 5737 Savannah Highway. In
17 fact, we had a victim, which is Mr. Patel. The first
18 name started with an N. Okay. And in the statement
19 advised -- Mr. Patel advised the responding deputy --

20 MR. GRIMES: Objection. Hearsay. Confrontation
21 clause.

22 THE COURT: Sustained.

23 BY MR. RUTLEDGE DURANT:

24 Q. Did you review the initial incident report?

25 A. I did.

1 Q. And was there anything about the case that you were
2 waiting on?

3 A. Yes. There was in fact a video footage, video
4 surveillance was -- it captured the armed robbery,
5 however it wasn't available at that time.

6 Q. Did you want to see that?

7 A. I did.

8 Q. Did you eventually see it?

9 A. Yes, sir, I did.

10 Q. And do you recall when you saw it?

11 A. Yes, sir. It was December 29th, 2010.

12 Q. And how did that video come into your custody?

13 A. Investigator Kjellman from Forensic Service Unit
14 was able to retrieve the video surveillance from 5737
15 Savannah Highway, and at which time she contacted me.
16 And I met with her at the lab, and that's where all of
17 our videos are kept in evidence and reviewed first, then
18 put in evidence for cases.

19 Q. And you testified that this was December 29th,
20 2010?

21 A. Yes, sir, December 29th, 2010.

22 Q. And so that's five days after this armed robbery?

23 A. That's correct.

24 Q. And did you view the video surveillance tape at
25 that time?

1 A. I did.

2 Q. And was that video helpful to you in the
3 investigation of this case?

4 A. Absolutely.

5 Q. Why?

6 MR. GRIMES: I apologize, Your Honor. Per the
7 pretrial motions we made, and Mr. Groeber's brief we
8 renew our objections.

9 THE COURT: Overruled.

10 Q. Why was that video helpful to you in investigation
11 of this case?

12 A. The video was helpful because it allowed me to see
13 the subject that was committing the armed robbery. As I
14 reviewed the video I saw him and knew him to be Marvin
15 Bowens Green.

16 Q. And now why do you know that the man in the video
17 was Marvin Bowens Green?

18 A. Well, I know him and I've had the opportunity to
19 talk with him for hours at a time while patrolling the
20 South District area when I was on patrol. I've had
21 interactions with him, not because he was in trouble or
22 anything. He was a young juvenile then. So I've known
23 him for quite sometime, I'd say from 2004 to the present.

24 Q. And so you've had a lot of opportunity to have
25 personal time with him one on one?

1 A. Yes, sir, that's correct.

2 Q. And in those encounters have you had the
3 opportunity to view his face?

4 A. Yes, sir, I have.

5 Q. Have you had the opportunity to not only hear him
6 talk but to watch him talk?

7 A. Yes, sir, all of his mannerisms. I'm very, very,
8 very familiar with him.

9 Q. Have you had the opportunity to watch him walk?

10 A. Yes, sir, I have.

11 Q. How would you characterize how well you knew him?

12 A. I know him very well. Again, I've had the
13 opportunity to sit down and talk with him for hours at a
14 time, okay, and during that discussion I observed his
15 behavior, his walks, the way he talks, the way he acts,
16 all of his mannerisms, for what all of that's worth.

17 Q. Now, you are aware that the man on the video has a
18 hoodie pulled up over his head?

19 A. Yes, sir.

20 Q. Has on sunglasses?

21 A. That's correct.

22 Q. - So what about that video were you able to look at
23 and make your determination that you knew who that man
24 was?

25 A. Okay. After viewing the video I observed the walk,

1 his walk. He has a distinctive walk which confirmed --
2 while looking at the video when he was pointing the
3 handgun at the victim, Mr. Patel, he glanced to the right
4 a couple of occasions at which time displayed his face.

5 He has a distinctive nose as well as his height and
6 weight. Watching him come in the -- watching him come in
7 it's a match for his height. However, once he turned to
8 the right he looked at the mirror and that just confirmed
9 the identity of him.

10 So the totality of the circumstance between his
11 walk, height, weight and the structure of his face
12 concluded that I knew him and I was positive. And I've
13 talked to him on, like again, many times, and we talked
14 for hours at time so I've known him and know him and I'm
15 one hundred percent positive that that was him.

16 Q. Was there any one thing or was it just everything?

17 A. It's a total of everything.

18 Q. How quickly were you able to look at this video and
19 recognize that the man you were seeing was Marvin Bowens
20 Green?

21 A. Once I saw him, the up close at the register
22 pointing the handgun, I could see his face then, but once
23 he turned and looked to the right that confirmed his
24 identity. And once he walked in and out of the
25 convenience store located in Ravenel that confirmed his

1 walk as well.

2 Q. Is there any doubt in your mind that the man you
3 saw on that video is that man (indicated)?

4 A. None whatsoever. I am absolutely positive --

5 MR. GRIMES: Objection.

6 THE COURT: When there's an objection I need you to
7 stop.

8 THE WITNESS: I'm sorry. I didn't hear.

9 THE COURT: What's the basis?

10 MR. GRIMES: Asked and answered.

11 THE COURT: Overruled. You may answer.

12 BY MR. RUTLEDGE DURANT:

13 Q. Is there any doubt in your mind that you can tell
14 this jury that you have a doubt that that is the man that
15 you saw on the video?

16 A. There is no doubt in my mind. I'm one hundred
17 percent absolutely, positively sure that that's the man
18 that committed this crime, Marvin Bowens Green.

19 Q. And is that because you knew him?

20 A. Yes, sir, that's correct.

21 Q. After you viewed that video that morning what did
22 you do?

23 A. After reviewing the video I generated a six-person
24 photo lineup. I did that through SLED, State Law
25 Enforcement Division. I sent them an email with his

1 pertinent information and they responded back with a
2 photo of him with five other similar persons.

3 Q. Why did you request that photo ID through SLED?

4 A. It's to confirm the identity of him. That's a tool
5 that we use at the sheriff's office to confirm the
6 identity of a subject. Not me seeing him alone isn't
7 going to do, so I wanted to further my investigation at
8 which time I requested the photo lineup. And once SLED
9 sent it back, once I got it back from State law
10 enforcement I then contacted the victim and arranged to
11 meet with him at the Citadel Mall to show him the photo
12 lineup.

13 Q. Is it because you wanted to see if the victim could
14 pick him out of the lineup?

15 A. That's correct.

16 Q. Did you, yourself, administer this photo lineup?

17 A. No, sir, I did not.

18 Q. Did anybody go with you?

19 A. Detective Perkins from the investigations division
20 went with me.

21 Q. And what was his job?

22 A. His job was to provide the photo lineup to
23 Mr. Patel, which is what he did.

24 Q. Now, why didn't you do it?

25 A. Because I knew the victim -- correction. I knew

1 who the suspect was and the policy prohibits us from --
2 law enforcement officer knowing who the suspect is to
3 administer the six-person photo lineup, whether it be an
4 array or six individuals.

5 Q. Did you tell Detective Perkins who the suspect was?

6 A. No, sir never.

7 Q. Did you talk to Detective Perkins about this case?

8 A. No, sir, not about the case.

9 Q. What did you tell him you wanted him to do?

10 A. That I needed him to show a six-person photo lineup
11 to a victim of a crime.

12 Q. And was that done?

13 A. Yes, sir, it was done.

14 Q. What day was that done?

15 A. The same day. It was December 29th, 2010.

16 Q. Where was it done?

17 A. It was conducted at the Citadel Mall, Charleston,
18 South Carolina, in the parking lot outside of the Sears.

19 Q. Did you arrive with Detective Perkins out there?

20 A. As a matter of fact, I drove and he rode with me.

21 Q. Who did you meet?

22 A. I met Mr. Patel and his son, the younger Mr. Patel.

23 Q. Where did you meet them?

24 A. Initially met on the inside of the store. To
25 conduct business we walked outside of the store and the

1 photo lineup was showed by Detective Perkins in the
2 parking lot area.

3 Q. And we're talking about the Sears?

4 A. The Sears, yes, sir, outside of the Sears.

5 Q. And so you said you went outside to the parking lot
6 to conduct the photo lineup?

7 A. Yes, sir, that's correct.

8 Q. Who conducted the photographic lineup?

9 A. Detective James Perkins.

10 Q. And where were you when it was administered?

11 A. I was within proximity but I was away from the
12 procedure that was going on.

13 Q. So you, yourself, did not conduct the lineup
14 procedure?

15 A. That is correct.

16 Q. And is it your understanding that the procedure was
17 conducted?

18 A. Yes, sir.

19 Q. Are you aware of whether Mr. Patel was able to make
20 an identification?

21 A. At the time, no.

22 Q. Did there come a time when you became aware of
23 whether or not he was able to make an identification?

24 A. Once I gathered the paperwork from Detective
25 Perkins I did.

1 Q. And did he in fact make an identification?

2 A. He did.

3 Q. And based on his identification what did you do?

4 A. Okay. Based on the totality of circumstances being
5 positive identification from Mr. Patel from the
6 six-person photo lineup and my positive recognition of
7 Mr. Bowens Green I generated an arrest warrant for his
8 arrest.

9 MR. RUTLEDGE DURANT: Your Honor, may we approach?

10 THE COURT: You may.

11 (WHEREUPON, the following bench conference was
12 reported.)

13 MR. RUTLEDGE DURANT: I think we probably are going
14 to have a matter of law outside the presence of the jury
15 on the booking photo.

16 THE COURT: On the booking photo? Why?

17 MR. RUTLEDGE DURANT: Because we want to put the
18 booking photo in because it's relevant. It shows his
19 side profile, it's from when he was arrested from this
20 instance so it's not a prior incident. It has nothing to
21 do with 404(b) but it's relevant so the jury can see him
22 and be able to look at this and look at the video.

23 THE COURT: Let me see.

24 What's your objection?

25 MR. GRIMES: The booking photo. I was researching

1 lineups last night --

2 THE COURT: Which is different --

3 MR. GRIMES: I understand, and I was going through
4 some South Carolina cases on booking photos --

5 THE COURT: You can't use booking photos if it
6 looks like a booking photo. Is that what this is?

7 MR. RUTLEDGE DURANT: No, that is not the one from
8 the lineup. That is when he was arrested for this
9 incident.

10 MR. GRIMES: I think it's a reversible error. I
11 think it's an error to admit a booking photo.

12 THE COURT: You think it's an error to admit a
13 booking photo?

14 MR. GRIMES: Yes, ma'am.

15 THE COURT: All right. Do you have a case for me
16 on this?

17 MR. GRIMES: If I get five or ten minutes I'll have
18 Cody look through Lexis real fast.

19 THE COURT: Okay.

20 MR. RUTLEDGE: I don't have a problem if you want
21 me to cut those photos, cut the top half off.

22 MR. GRIMES: Yeah, but, I mean, it still shows it's
23 a booking photo.

24 THE COURT: Let's just mark it for identification.

25 MR. RUTLEDGE DURANT: That's fine.

1 THE COURT: We can do this later.

2 Let's move it on, Mr. Durant.

3 (WHEREUPON, State's Exhibit Number 5, a Photograph
4 of the Defendant, was marked for identification only.)

5 BY MR. RUTLEDGE DURANT:

6 Q. Detective, you said based on Mr. Patel's
7 identification of the defendant you prepared an arrest
8 warrant?

9 A. That's correct.

10 Q. And was the defendant arrested?

11 A. Yes, sir.

12 Q. And were you, yourself, involved in that arrest?

13 A. Yes, sir.

14 Q. I'm showing you what the State has labeled State's
15 Exhibit 5 for identification and ask you to take a look
16 at it. Do you recognize it?

17 A. I do.

18 Q. Does that picture fairly and accurately depict the
19 defendant on the day that he was arrested?

20 A. Yes, sir, it does.

21 Q. At this time, the State moves for the admission of
22 State's 5?

23 MR. GRIMES: We object under Rule 404(b).

24 THE COURT: Overruled. You may not publish at this
25 time though, Mr. Durant.

1 Five into evidence over defense objection.

2 MR. RUTLEDGE DURANT: Thank you.

3 (WHEREUPON, State's Exhibit Number 5, a Photograph
4 of the Defendant, was admitted into evidence.)

5 BY MR. RUTLEDGE DURANT:

6 Q. Detective, please answer any questions the defense
7 may have for you.

8 A. Yes, sir.

9 THE COURT: This would be an appropriate time for
10 us to stop if you all need another break, just let me
11 know.

12 (WHEREUPON, the jurors discussed taking a break
13 among themselves.)

14 THE FOREMAN: Keep going, Judge.

15 THE COURT: All right. Mr. Grimes?

16 CROSS-EXAMINATION

17 BY MR. GRIMES:

18 Q. Good afternoon. Good afternoon, Detective
19 Lawrence.

20 A. Good afternoon, Mr. Grimes.

21 Q. I imagine there's a few things we can agree on
22 today, correct?

23 A. Yes, sir.

24 Q. One of those things we can agree on is that Deputy
25 Luckadoo described Mr. Green, said his name was Marvin

1 Bowens when he said he viewed the video of the person who
2 robbed the store on December 24th, 2010, correct?

3 A. That's correct.

4 Q. And this is Marvin Bowens Green, the gentleman
5 here, correct?

6 A. That's correct.

7 MR. RUTLEDGE DURANT: Objection, Your Honor. May
8 we approach?

9 THE COURT: You may.

10 (WHEREUPON, the following bench conference was
11 reported.)

12 MR. RUTLEDGE DURANT: I don't want to use too
13 strong of a language but this defendant has commonly and
14 people knew him as Marvin Bowens Green, Marvin Bowens,
15 and Marvin Green. So I don't want a fraud to be
16 perpetrated on this Court in that somebody doesn't know
17 somebody because of their name, and that is common and I
18 think you know that.

19 THE COURT: Okay. So what's your objection?

20 MR. RUTLEDGE DURANT: That there's a
21 mischaracterization about Deputy Luckadoo and that he
22 didn't know him as the same person, and that's just
23 false. That is not accurate.

24 THE COURT: What do you want me to do? What's the
25 basis of your objection?

1 MR. RUTLEDGE DURANT: Well, I think he's pursuing
2 him and created it as fraudulent.

3 MR. GRIMES: He's definitely testified as Marvin
4 Bowens.

5 THE COURT: Okay.

6 MR. GRIMES: I don't appreciate your calling it a
7 fraud.

8 MR. RUTLEDGE DURANT: I'm not saying --

9 THE COURT: The both of you can go outside of the
10 courtroom and take care of this issue, but right now I
11 need you to address the Court.

12 MR. GRIMES: Well, he hasn't stated a ground for an
13 objection, as far as I know.

14 THE COURT: I listen with a grain of salt, all
15 right, and if I felt there was an issue with fraud I
16 would have directly addressed it, all right. Now, let me
17 hear from you, as to the issue.

18 MR. GRIMES: The issue? I'm not sure what the
19 issue is.

20 THE COURT: What I assume the issue is going to be
21 is that you are going to twist it and make it seem
22 because he didn't know his full name that he didn't know
23 who this individual was.

24 Is that what you're saying?

25 MR. GRIMES: I mean, the question is ID.

1 THE COURT: I think you need to be careful --

2 MR. GRIMES: I'm sorry.

3 THE COURT: All right. As of now I don't even know
4 what the objection is.

5 MR. RUTLEDGE DURANT: And I don't want to accuse.
6 I just want to bring to the Court's attention that if he
7 didn't know then that is very common that people know him
8 as both. You can ask this detective as well, and if it
9 was an overreaction -- I'll say this, maybe it was an
10 overreaction for me to come up here but I felt strong
11 about it.

12 THE COURT: All right. Thank you.

13 (WHEREUPON, the bench conference was concluded.)

14 THE COURT: Mr. Grimes, your witness.

15 MR. GRIMES: Thank you, Your Honor.

16 BY MR. GRIMES:

17 Q. And this is Marvin Bowens Green, correct?

18 A. That's correct.

19 Q. And he has a brother named Marvin Bowens, doesn't
20 he?

21 A. I'm not correct on the name. Something similar,
22 yes, sir.

23 Q. Okay. You say you've known Marvin since 2004?

24 A. Correct.

25 Q. Approximately eight years, correct?

1 A. Correct.

2 Q. Know him well?

3 A. Yes, sir.

4 Q. You know Marvin's father?

5 A. I do.

6 Q. In fact, he's -- some may describe him as a

7 community leader in Ravenel, Jacksonboro area?

8 A. Yes, sir.

9 Q. Sometimes when you are investigating crimes you

10 talk to him, Mr. Bowens, Marvin's father?

11 A. That's correct.

12 Q. In the past he's given you some helpful

13 information?

14 A. That's correct.

15 Q. In the past he's given you information that would

16 help clear people?

17 A. That's correct.

18 Q. And you know the family well, don't you?

19 A. I do.

20 Q. But you're not certain Marvin Green has a brother

21 named Marvin Bowens?

22 A. All their names are similar, like Marvin, Melvin.

23 All of them are similar. As far as Marvin Bowens Green,

24 I'm certain of him.

25 Q. All right. I understand. And being brothers they

1 look similar, too, don't they?

2 A. Which one you referring to now?

3 Q. The brothers that you know.

4 A. Yeah, the younger brother looks taller and bigger.

5 Q. Okay. And he apparently has 12 brothers and
6 sisters, correct?

7 A. I'm sorry?

8 Q. He has 12 brothers and sisters, correct?

9 A. I don't know about that many.

10 Q. But if I could show you Court's Exhibit 8 would
11 that help you refresh your memory as to what Marvin
12 Bowens looks like?

13 A. Marvin Bowens Green or Marvin --

14 Q. Marvin Bowens.

15 A. Sure.

16 MR. RUTLEDGE DURANT: Objection, Your Honor. The
17 witness has no idea what Court's Exhibit whatever it was
18 is called.

19 THE COURT: Could you clarify that for him.

20 MR. GRIMES: Yes, ma'am.

21 THE COURT: State's Exhibit; is that correct?
22 State's Exhibit 1.

23 MR. GRIMES: I believe it's Court's Exhibit 8, at
24 this point.

25 THE COURT: No, no, no, no. Counsel, approach.

1 (WHEREUPON, the following bench conference was
2 reported.)

3 THE COURT: You moved on to a different hearing so
4 everything is renumbered.

5 MR. GRIMES: Okay.

6 THE COURT: So if you need to refer to it those are
7 all marked from a previous hearing, and we're going to
8 keep them marked. And the Court's Exhibits, I reserve
9 them for different things. So that's a Court's Exhibit.

10 MR. GRIMES: Would it be okay if I make it a
11 defense exhibit.

12 THE COURT: You can do that if that's what you
13 choose to do, Mr. Grimes, but unless you can lay a better
14 foundation you're going to get the same result.

15 MR. GRIMES: May I at least see if I can ask him
16 while he's under oath in front of the jury?

17 THE COURT: Don't start flashing it around.

18 MR. GRIMES: I'm not flashing it around.

19 THE COURT: All right. Thank you.

20 (WHEREUPON, the bench conference was concluded.)

21 MR. GRIMES: I'd like to mark this as a defense
22 exhibit.

23 (WHEREUPON, Defendant's Exhibit Number 7, a
24 Photograph, was marked for identification only.)

25 BY MR. GRIMES:

1 Q. I'll show you what's been marked Defendant's
2 Exhibit 7. So if you could review that and see if that
3 refreshes your memory as to what Marvin Bowens, Marvin
4 Green's brother looks like?

5 MR. RUTLEDGE DURANT: Objection, Your Honor.

6 THE COURT: Basis?

7 MR. RUTLEDGE DURANT: You want me to state it right
8 here or approach?

9 THE COURT: Can you just give me the foundation
10 without any speaking objection?

11 MR. RUTLEDGE DURANT: No foundation.

12 THE COURT: All right, Counsel. Counsel.

13 (WHEREUPON, a bench conference was had, not on the
14 record.)

15 BY MR. GRIMES:

16 Q. Let me see if I can rephrase my question, Detective
17 Lawrence.

18 THE COURT: Thank you, Mr. Grimes.

19 MR. GRIMES: Thank you, Your Honor.

20 BY MR. GRIMES:

21 Q. Do you recognize who's in the picture, Number 7 --
22 or Defense Exhibit Number 7?

23 A. Well, this picture is a blur, Attorney Grimes, so
24 it's hard to recognize because it's a big blur. No, sir,
25 I can't.

1 Q. Okay. Thank you.

2 THE COURT: Thank you.

3 Q. I'm going to ask you a few questions about
4 eyewitnesses, okay?

5 A. Yes, sir.

6 Q. Eyewitnesses do make mistakes, correct?

7 A. Yes, sir.

8 Q. And you investigated cases where you've had an
9 eyewitness and it turns out that person had an alibi or
10 the person who was identified was being cleared, correct?

11 A. Yes, sir.

12 Q. Now, I want to ask you a few questions about some
13 of your training -- well, a lot of questions about your
14 training, okay?

15 A. Yes, sir.

16 Q. To become a certified sheriff, deputy sheriff with
17 arrest powers you have to go through the South Carolina
18 Criminal Justice Academy?

19 A. Yes, sir. That's correct.

20 Q. And I know the elective courses have changed but it
21 used to be eight weeks?

22 A. Yes, sir.

23 Q. When you went through was it eight weeks or 12
24 weeks?

25 A. It was eight weeks when I went through, yes, sir.

1 Q. And at the Criminal Justice Academy they kind of
2 teach you the basics of being a police officer or a
3 deputy?

4 A. That's correct.

5 Q. They teach you some of the summaries of law, like
6 probable causes, how to get a search warrant?

7 A. Yes, sir.

8 Q. How to make arrests, how to conduct proper
9 interviews?

10 A. Yes, sir.

11 Q. And then when you become -- when you pass the
12 Criminal Justice Academy you work with some deputies in
13 the field, field training officers?

14 A. That's correct.

15 Q. And they teach you sort of more hands-on
16 experience?

17 A. Yes, sir.

18 Q. And then you get training -- you go to training
19 every year, correct?

20 A. That's correct.

21 Q. To become a better police officer?

22 A. To keep your certification.

23 Q. And you also want to become better, correct?

24 A. That's correct.

25 Q. Solve more crimes?

1 A. Yes, sir.

2 Q. Protect the public?

3 A. Yes, sir.

4 Q. And I'm going to ask you a few questions about
5 report writing. Is that an important part of being a
6 police officer?

7 A. Report writing?

8 Q. Yes, sir.

9 A. Yes, sir.

10 Q. And one reason it's important is because it may
11 take a while for a case to come to court?

12 A. That's correct.

13 Q. For example, this case happened December 2010?

14 A. That's correct.

15 Q. And you probably investigated a lot of cases since
16 December 2010, haven't you?

17 A. I have.

18 Q. And you probably assisted other deputies in
19 investigating cases?

20 A. That's correct.

21 Q. And names and stuff can run together over time,
22 correct?

23 A. Yes, sir.

24 Q. And if you write a good report then you can refresh
25 your memory, like you've done today?

1 A. Yes, sir.

2 Q. And you want the reports to be written fairly,
3 correct?

4 A. That's correct.

5 Q. You want to make sure that the guilty go to jail
6 and the innocent go free?

7 A. That is correct.

8 Q. Wouldn't want an innocent man to go to jail?

9 A. Correct.

10 Q. As Mr. Groeber said, you have an innocent man in
11 jail and a guilty person still out there doing whatever
12 he was doing, correct?

13 A. That's what he said.

14 Q. And you wouldn't want that, would you?

15 A. I wouldn't want it, no, sir.

16 Q. And you want the reports to be accurate?

17 A. Correct.

18 Q. So if someone was an eyewitness and someone had a
19 scar on their face you would want to include the scar in
20 your report?

21 A. Can you say that again.

22 Q. If an eyewitness gave you a description of a robber
23 and a robber -- he said the robber had a scar over his
24 eye you would put that in your report, correct?

25 A. Are you referring to this case or any case?

- 1 Q. Any case.
- 2 A. Yes, sir.
- 3 Q. Speaking generally right now.
- 4 A. Yes, sir.
- 5 Q. Because that would help you identify the robber?
- 6 A. That's correct.
- 7 Q. And if someone didn't have a scar then he wouldn't
- 8 be the robber, correct?
- 9 A. Now, are you looking at current picture or -- help
- 10 me out, Mr. Grimes.
- 11 Q. I'll move on.
- 12 A. Okay.
- 13 Q. And now you are a case agent, correct?
- 14 A. Yes, sir.
- 15 Q. So report writing would also apply to Deputy
- 16 Luckadoo or Deputy Kjellman, correct?
- 17 A. Yes, sir, that's correct.
- 18 Q. So the initial responding officers try to get as
- 19 much detail as they can from the victims of the crime?
- 20 A. That's correct.
- 21 Q. And that also applies to 9-1-1 operators, correct?
- 22 A. Correct.
- 23 Q. That's when people have first contact with the
- 24 police at that point, right?
- 25 A. Are you talking about the initial responders or --

1 Q. The 9-1-1 call.

2 A. 9-1-1, yes, sir.

3 Q. And at that point if the suspect is unknown you
4 want to get as good a description of the suspect as you
5 can?

6 A. That's common practice, yes, sir.

7 Q. So you know where -- who you are looking for,
8 correct?

9 A. Correct.

10 Q. And you don't waste time on leads that aren't
11 fruitful?

12 A. Correct.

13 Q. Now, I'm going to ask you a few questions about
14 this case. As the case agent on this case part of your
15 job is to review, like, all reports and everything that
16 comes to -- has been done in the case, correct?

17 A. Yes, sir, that's correct.

18 Q. And did you review the 9-1-1 tape?

19 A. I'm sure I did, yes, sir.

20 Q. Okay. And when Mr. Patel called 9-1-1 what
21 description of the robber did he give?

22 A. I haven't heard the tape since maybe 2010. I can't
23 answer that right now.

24 Q. Well, you've had plenty of notice this case was
25 coming up for trial, haven't you?

1 A. I did.

2 Q. Did you listen to it with Mr. Durant or anyone else
3 getting ready for the trial?

4 A. I did not.

5 Q. Did you listen to it in helping you prepare the
6 photographic lineup?

7 A. In reference to the 9-1-1 tape?

8 Q. Yes, sir.

9 A. No, sir. I hadn't heard the 9-1-1 tape since it
10 was requested.

11 Q. Okay. Do you have a copy of it in your case file?

12 A. It should be there, yes, sir.

13 Q. You mind showing me where it is so we could review
14 it and see what's on there?

15 A. If I have it, it will be in the case file. That's
16 what I'm saying, Mr. Grimes. I haven't heard the 9-1-1
17 tape. That's what I'm saying to you merely.

18 Q. Okay. Well, what I'd like to know is what
19 description Mr. Patel gave of the robber on the 9-1-1
20 tape.

21 A. I can't answer that. I can't answer that right now
22 because I haven't heard the tape, Mr. Grimes.

23 Q. Okay. Well, if we call you back tomorrow and give
24 you overnight to listen to it would that be fair?

25 A. I can, yes, sir.

1 Q. Now, we've gone over the incident report, initial
2 incident report, that was prepared by Deputy Kjellman?

3 A. Yes, sir.

4 Q. And I think Deputy Luckadoo responded out there?

5 A. That's his testimony. Yes, sir.

6 Q. And Deputy Roberson?

7 A. That's Deputy Luckadoo's testimony, yes, sir.

8 Again, I didn't respond to the scene. I didn't get this
9 until days later.

10 Q. I understand.

11 A. Okay.

12 Q. And when you -- and that day of the robbery you got
13 a call from Deputy Luckadoo saying Mr. Marvin Bowens is
14 who committed the robbery, correct?

15 A. Yes, sir.

16 Q. And at that point you didn't take out an arrest
17 warrant for Marvin Bowens?

18 A. No, sir.

19 Q. And at that point that was on December 24th?

20 A. Yes, sir.

21 Q. And you didn't go out to the store to watch the
22 video there, did you?

23 A. I did not.

24 Q. So December 25th, did you take out a warrant then?

25 A. I did not.

1 Q. Go to the store to watch the video?

2 A. I did not.

3 Q. You waited several days to do that, correct?

4 A. Not so much as wait. The tape wasn't available
5 until December 29th. That was the first availability for
6 the tape, and that's when I was first informed that it
7 was ready at which date and time I did go and review the
8 tape then.

9 Q. I'm a little confused. Obviously it was available
10 at the store.

11 A. Okay.

12 Q. Deputy Luckadoo watched it there, correct?

13 A. That's his testimony, yes, sir.

14 Q. All right. And I guess you didn't get assigned to
15 the case that day but you got assigned a couple days
16 later?

17 A. Correct. Normally Christmas and the day after
18 Christmas are considered holidays, so days off. So I
19 didn't probably get the case until the 27th, 28th.

20 Q. All right. And then by the 27th had the tape been
21 taken into evidence?

22 A. Had not.

23 Q. So it was still at the store?

24 A. That's correct.

25 Q. On the December 27th when you had the case and you

1 were working did you go out to the store to watch the
2 tape?

3 A. I inquired about the tape and it was not available
4 yet.

5 Q. Was it at the store or was it in evidence?

6 A. It was at the store, sir.

7 Q. And why wasn't it available?

8 A. You have to ask the technician from forensic
9 service, sir.

10 Q. Well, now I'm a little confused again. If it's at
11 the store why would forensic services have the tape?

12 A. Okay. Let me explain this for the record. I did
13 not respond to the scene.

14 Q. I understand.

15 A. Okay. Therefore, I wasn't aware of this case until
16 I got assigned the case. Okay. I got a call from
17 Luckadoo but I had no knowledge of the case, from Deputy
18 Luckadoo, okay, but I had no further knowledge of the
19 case. When I got assigned the case I read the incident
20 report and I went from there.

21 The first time that the tape was available for
22 Detective Lawrence to review was December 29th, early
23 that morning, and that's when I reviewed it, and it was
24 at 3505 Pine Haven Drive, North Charleston, South
25 Carolina, not on 5737 Savannah Highway, Ravenel.

1 Q. Okay.

2 A. Okay.

3 Q. And so you talked to Deputy Luckadoo and he told
4 you it was Marvin Bowens who robbed the store?

5 A. Yes, sir.

6 Q. And you got a copy of the incident report?

7 A. Yes, sir.

8 Q. And on there it had Mr. Bowens' name?

9 A. That's correct.

10 Q. And on there it was actually Marvin Bowens Green,
11 correct?

12 A. Marvin Bowens Green, correct.

13 Q. And then I think you did your own report on January
14 11th, 2012?

15 A. Yes, sir.

16 Q. And in doing your report you would sort of
17 investigate the case when you got it on the 27th,
18 watching the video, interviewing any witnesses, then do
19 your report?

20 A. On the 29th.

21 Q. Yes, sir.

22 A. Yes, sir.

23 Q. And then you requested the case to be closed on
24 December 11th, correct?

25 A. Yes, sir.

- 1 Q. January 11th.
- 2 A. January 11th, yes, sir.
- 3 Q. Because you had finished your investigation?
- 4 A. Yes, sir.
- 5 Q. All right. And your investigation was being done
- 6 fairly, accurately, completely on January 11th?
- 7 A. Yes, sir.
- 8 Q. Now, I'm going to ask you a few questions about
- 9 that. I believe you testified before you like to go the
- 10 extra step?
- 11 A. That is correct.
- 12 Q. And in this case you went the extra step, correct?
- 13 A. Yes, sir.
- 14 Q. You got a search warrant from Mr. Green's house?
- 15 A. That's not correct.
- 16 Q. You didn't get a search warrant to try to find a
- 17 black hooded sweatshirt?
- 18 A. No, sir.
- 19 Q. You didn't get a search warrant to try to find
- 20 khaki cargo pants?
- 21 A. No, sir.
- 22 Q. You didn't get a search warrant to look for dark
- 23 sunglasses?
- 24 A. No, sir.
- 25 Q. Or a red-billed baseball cap?

- 1 A. No, sir.
- 2 Q. Didn't get any -- did you talk to his father?
- 3 A. I did.
- 4 Q. All right. And when did you talk to his father?
- 5 A. Maybe the 30th of December -- or 29th of December
- 6 or the 30th.
- 7 Q. And you made arrangements for him to turn his son
- 8 in?
- 9 A. That's correct.
- 10 Q. And he turned his son in?
- 11 A. He did.
- 12 Q. Cooperatively?
- 13 A. Without incident.
- 14 Q. No problems?
- 15 A. None.
- 16 Q. He didn't try to run or anything, or hide?
- 17 A. No, sir.
- 18 Q. And so you probably didn't need a search warrant.
- 19 His father probably would let you search the house when
- 20 he turned him in, correct?
- 21 A. That's speculation.
- 22 Q. Did you talk to his mother?
- 23 A. I don't recall.
- 24 Q. Okay. Do you remember talking to his girlfriend?
- 25 A. I don't recall that either.

1 Q. In your incident report you didn't make any mention
2 of talking to Ms. Patel, did you?

3 A. I did not. I believe I dealt solely with the
4 husband, the victim.

5 Q. Okay. Because he was basically the eyewitness in
6 the case?

7 A. That's correct.

8 Q. And as far as you know Ms. Patel had no knowledge
9 of the case?

10 A. Correct.

11 Q. And if she had knowledge of the case you would have
12 wanted to talk to her, correct?

13 A. That is correct.

14 Q. And you never got a statement from her?

15 A. No, sir.

16 Q. Have you ever talked to Ms. Patel?

17 A. On the phone when I was inquiring the whereabouts
18 of her husband.

19 Q. Okay. And that was on December 29th, 2010?

20 A. Yes, sir, that's correct.

21 Q. In the approximately a year and a half since then
22 have you talked to her?

23 A. No, sir.

24 Q. Now, you were in here for Mr. Patel's testimony,
25 correct?

1 A. I'm sorry.

2 Q. You were in here for Mr. Patel's testimony,
3 correct?

4 A. Yes, sir.

5 Q. I want to ask you a few questions about that and
6 your report.

7 A. Okay.

8 Q. We heard Mr. Patel testify that Mr. Green was a
9 regular customer?

10 A. He did.

11 Q. And in your report you stated that Mr. Patel told
12 deputies that he had been robbed by an unknown assailant?

13 A. That's correct.

14 Q. And Mr. Patel testified that Mr. Green would joke
15 around about having a license signed by President Obama?

16 A. That is correct.

17 Q. I think we can probably agree that's probably not a
18 very common joke. It's probably something unique, isn't
19 it?

20 A. I guess we can agree to that, Mr. Grimes.

21 Q. And there's no mention of that in your report, is
22 there?

23 A. Not at the time, no, sir.

24 Q. Not on January 11th, 2011?

25 A. No, sir. I had the facts of my case. Once I

1 closed my case upon arrest I had all of the facts met.

2 Q. You had all the facts met?

3 A. That is correct.

4 Q. Okay. You made up your mind then?

5 A. The totality of the circumstances, yes, sir.

6 Q. Case closed, ready to move on?

7 A. Yes, sir.

8 Q. You've done all the extra steps in the case?

9 A. If you will, yes, sir.

10 Q. And we heard Mr. Patel today testify I think on
11 cross-examination, not on direct examination, that he was
12 able to see Mr. Green's eyes when he kind of, like,
13 looked down or looked over the glasses?

14 A. That's correct.

15 Q. That's not in your report, is it?

16 A. No, sir.

17 Q. I think we also heard him testify he was able to
18 recognize Mr. Green's voice?

19 A. That's correct.

20 Q. And there's nothing of that in your report, is
21 there?

22 A. It's not.

23 Q. And I believe you testified you were able to sort
24 of pick out Mr. Green because of the way he walked?

25 A. That's one of the features, yes, sir.

1 Q. Okay. One of the features, part of the totality of
2 the circumstances?

3 A. The walk, the nose, all of the above, yes, sir.

4 Q. Okay. And there's nothing about his walk in your
5 report, is there?

6 A. No, sir.

7 Q. And when you see him in sort of the second view at
8 the cash register on the video you can just basically see
9 waist up, correct?

10 A. That is correct.

11 Q. And you see him kind of walking very briefly at the
12 beginning, very briefly walking out?

13 A. Yes, sir, that's correct.

14 Q. And based upon that you're, I think you said a
15 hundred percent, absolutely, positively --

16 A. One hundred percent. Yes, sir. One hundred
17 percent.

18 Q. And you testified you can tell from his nose it was
19 Mr. Green?

20 A. Yes, sir.

21 Q. Did he have a piercing in his nose?

22 A. No, sir, no piercing. It's somewhat pointed.

23 Again, I've had the opportunity to sit down with him for

24 hours at a time. He and I have talked, I've seen his

25 demeanor, I've seen the way he moves, all of those. You

1 know, I observed that in the video, okay. All the times
2 that we spent together I observed all of those motions in
3 the video surveillance.

4 Q. You said he had a pointy nose?

5 A. Somewhat.

6 Q. And you were able to observe all his motions --

7 A. Yes, sir.

8 Q. So the video shows someone walking into the store,
9 correct?

10 A. Yes, sir, that's correct.

11 Q. And kind of leaning over with a gun and looked back
12 and look around?

13 A. Yes, sir.

14 Q. All right. Now I'm going to change topics a little
15 bit and ask you about some training on some crime scene
16 investigation.

17 A. Yes, sir.

18 Q. Was crime scene called out to the store?

19 A. Crime scene did respond.

20 Q. And they took fingerprints?

21 A. Yes, they did.

22 Q. And no fingerprints matched up with Mr. Green?

23 A. None matched up to Mr. Green, that's correct.

24 Q. And I take it there was no DNA found?

25 A. None.

1 Q. And part of the duty of crime scene is when crime
2 scene is called out you want to prevent the crime scene
3 from being tampered with, correct?

4 A. Yes, sir, that's correct.

5 Q. You wouldn't want fingerprints to get smudged?

6 A. That's correct.

7 Q. DNA to get lost?

8 A. Right, to preserve the scene as much as possible.

9 Yes.

10 Q. And as part of preserving the scene you also like
11 to keep witnesses separated from each other, correct?

12 A. Yes, sir.

13 Q. Because if witnesses start talking they contaminate
14 each other's memories, correct?

15 A. That's correct.

16 Q. Now, in this case the witnesses weren't kept
17 separate from each other, were they?

18 A. There was only one witness.

19 Q. Okay. So who was the one witness?

20 A. Mr. Patel, the older Mr. Patel.

21 Q. Seemed like they called Deputy Luckadoo as a
22 witness.

23 A. He was categorized as a witness; however, he and
24 Mr. Patel -- his findings of the video surveillance he
25 never discussed with Mr. Patel.

1 Q. He did testify to that, they were -- they watched
2 the video together, correct?

3 A. According to his testimony, yes.

4 Q. And then they went -- and Deputy Luckadoo went in
5 the hallway and talked to Deputy Kjellman?

6 A. Yes, sir.

7 Q. And then Mr. Patel was in office, correct?

8 A. Yes, sir.

9 Q. And then Mr. Patel watched the video with his wife,
10 correct?

11 A. According to his -- yes, sir.

12 Q. And my understanding, they are calling his wife as
13 a witness?

14 A. I'm sorry?

15 Q. It's your understanding they were going to call his
16 wife as a witness?

17 A. Is it my understanding that they will call his wife
18 as a witness?

19 Q. As a witness.

20 A. Not to my knowledge.

21 Q. But she's not testifying in this case?

22 A. I'm uncertain.

23 MR. RUTLEDGE DURANT: Objection, Your Honor.

24 THE COURT: Basis?

25 MR. RUTLEDGE DURANT: We've gone down this road of

1 lack of personal knowledge, it seems like long enough.

2 THE COURT: All right. So your objection is lack
3 of personal knowledge?

4 MR. RUTLEDGE DURANT: That's correct.

5 THE COURT: All right. Sustained.

6 BY MR. GRIMES:

7 Q. And you are the case agent in this case?

8 A. I am.

9 Q. And you're supposed to know all the witnesses?

10 A. Directly?

11 Q. You told Mr. Durant you are managing sort of this
12 case, correct?

13 A. That is correct. I don't issue out subpoenas. We
14 receive them.

15 Q. I understand.

16 A. They come from the solicitor.

17 Q. And from us sometimes?

18 A. Yes, sir.

19 Q. So you don't know if -- well, I'll move on. And
20 Mr. Patel has also watched the video with his son,
21 correct?

22 A. That's his testimony, yes, sir.

23 Q. And I want to ask you some questions about lineup
24 procedures.

25 A. Yes, sir.

1 Q. The sheriff's office has procedures for conducting
2 lineups, correct?

3 A. We do.

4 Q. And something you want to follow?

5 A. Yes, sir.

6 Q. Because if a lineup is done improperly it could
7 lead to an innocent person going to jail?

8 A. That's very correct.

9 Q. And I think these guidelines or policies were
10 revised in December of 2009?

11 A. You're more current with it than I am. It's in
12 front of you, sir.

13 Q. Yes, sir.

14 MR. GRIMES: May I approach, Your Honor?

15 THE COURT: You may.

16 BY MR. GRIMES:

17 Q. I'm going to hand you what's been marked as Defense
18 Exhibit 2.

19 A. All right.

20 Q. Do you recognize what that document is?

21 A. I do.

22 Q. Are those procedures we are talking about?

23 A. Yes, sir.

24 Q. And they were revived in December of 2009?

25 A. 12-8-2009, that is correct.

1 Q. Now, are you familiar with the Eyewitness Evidence,
2 the Guide to Law Enforcement published by the Department
3 of Justice?

4 A. The eyewitness? No, sir, I'm not familiar with it.

5 Q. So you don't know if your guidelines are based upon
6 what the Department of Justice wants?

7 A. This is our Bible here. The standard operating
8 procedures. This is what we go by.

9 Q. And do you know what the difference is between a
10 sequential lineup and simultaneous lineup?

11 A. I do.

12 Q. And sequential lineup is when you show one picture
13 at a time and flip it over?

14 A. That's correct.

15 Q. Simultaneous lineup is the one we have here where
16 you have six pictures shown?

17 A. Yes, sir, that's correct.

18 Q. And are you aware of any studies or anything from
19 your training on what produces bad results, sequential
20 lineups or simultaneous lineups?

21 A. Not as far as studies. SLED is considered non
22 biased. That's why I did my photo lineup through them.
23 I could have gotten a six-person photo through Charleston
24 County Detention Center based on his archives, however, I
25 don't know who knows him and I wanted to be non biased,

1 and that's the reason why I took the extra step to go
2 through SLED. They are located in Columbia and they have
3 no knowledge of this case.

4 Q. All right. Now, I'll ask you a few questions about
5 the procedures there, okay?

6 A. Yes, sir.

7 Q. The reason I was asking you before about the 9-1-1
8 tape, reviewing that, I believe the procedures require or
9 ask you to put in people who fit the description given by
10 the victim at the time of the crime, correct?

11 A. Yes, sir, that's correct.

12 Q. As opposed to finding six people who look -- maybe
13 closely resemble the suspect?

14 A. Again, we just -- we request it, and SLED assembles
15 it and they send it back to us.

16 Q. But there's a role for the initial description of
17 the -- it's a factor in making out the lineup, is the
18 initial description of the suspect, correct?

19 A. That's not always so. I didn't see who the -- I
20 didn't confirm the identity until the 29th of December
21 and that's why I'm here standing in front of you guys
22 today, this jury of 13 people and the defense now because
23 once I confirm the identity of Mr. Bowens Green I then
24 requested a six-person photographic lineup, and once it
25 was confirmed and sent back to me I then arranged to meet

1 with the victim, Mr. Patel, the older Mr. Patel --

2 Q. I understand that but I was asking you something
3 different.

4 A. Okay.

5 Q. Now, direct your attention to page three.

6 A. Okay.

7 Q. Subsection -- paragraph five, procedure 83.

8 A. Eighty-three, okay.

9 Q. Is it fair to say as part of that policy the deputy
10 sheriff will select fillers that can only fit the
11 witness's description of the perpetrator?

12 A. They say when there's limited or inadequate
13 description of the perpetrator provided by the witness or
14 when the perpetrator differs significantly from the
15 appearance of the suspect fillers should resemble the
16 suspect and significant features. And the photo, the
17 six-person photo lineup there is consistent with this.

18 Q. Well, I understand but what I'm asking you is a
19 little more precise than that.

20 A. Okay. Can you dumb it down a little bit for me
21 then, Attorney Grimes, so I can understand the answer.

22 Q. I'll try to.

23 A. Thank you.

24 Q. It says the deputy sheriff, which would be you.

25 A. Correct.

1 Q. Will select fillers. Those would be five people
2 who we know could have committed the crime, correct?

3 A. That's correct.

4 Q. Who generally fit the witness's description of the
5 perpetrator, and that would be the witness who called
6 9-1-1 and said he's a five-eight, white male with brown
7 hair. You would try to find white males who are about
8 five-eight with brown hair?

9 A. That's correct. That's correct what you are saying
10 there.

11 Q. And then you don't get a good description of the
12 person or -- and then as soon as you pick up a
13 fingerprint then you may use what you do here, correct?

14 A. So, so.

15 Q. But you didn't get the -- the witness never gave a
16 description of the initial suspect, correct?

17 A. That is correct.

18 Q. So he never said the person who robbed me was
19 five-six, or five-eight, six-foot, did he?

20 A. Well, he gave -- he provided information that he
21 knew as to his relationship with the defendant, okay.
22 That's what he gave. It wasn't confirmed until the video
23 was actually -- the video surveillance actually was seen,
24 and, you know, we can go all day with what you are
25 asking.

1 The fact is, we don't request the photo lineups.
2 It's either done through SLED, which I did because they
3 are non biased, or if I really wanted it that quick I
4 could have sent it off to Charleston County Detention
5 Center, and again, I don't know who he knows at the
6 Detention Center and I didn't want to risk that coming up
7 in court. That's the reason why I went to the non biased
8 agency, based on particulars.

9 Q. All right. Well, let me just ask you one thing
10 sort of about height.

11 A. Yes, sir.

12 Q. Mr. Patel is five-four, correct?

13 A. He's rather short.

14 Q. If I showed you a copy of the incident report would
15 that refresh your memory?

16 A. Yes, sir.

17 (A document was handed to the witness.)

18 Q. He's about five-four?

19 A. Yes, sir. According to the incident report, yes,
20 sir.

21 Q. And according to the incident report Mr. Green is
22 about five-six?

23 A. According to that, yes, sir.

24 Q. So, for example, if he robbed him he'd say, Yeah,
25 this guy is a regular customer, he's just a couple inches

1 taller than me; he could have easily figured out he was
2 five-six, correct?

3 A. In Mr. Patel's testimony he says that 80 percent of
4 his clients are African Americans, you see? So we will
5 be going at this all day long trying to reach your point,
6 Attorney Grimes.

7 Q. Well, I don't mean to be disrespectful but I asked
8 you about height. I didn't ask you about 80 percent of
9 his customers?

10 A. Right. If we were to go into that bank that you
11 are asking we would -- I mean, my thing is we don't know
12 what suspect we're looking for. I can put it in the bank
13 with all the fillers that you are asking but I don't know
14 who the defendant is so I don't know who I'm looking for.
15 That's why I'm merely saying to you based on the
16 description that the victim gave, Mr. Patel, I don't know
17 who I'm looking for.

18 Once I confirm the person that he was talking
19 about, now I know who I'm looking for and that's when I
20 requested it through SLED. But I can go by the fillers
21 that you're saying but I'll be beating a dead horse
22 because I honestly don't know who I'm looking for.

23 Q. Well, so when Deputy Luckadoo told you he saw the
24 person, and called you and told you that, you put it in
25 the incident report?

1 A. Yes, sir.

2 Q. You just discounted that totally?

3 A. I did because he's a road deputy. I appreciate
4 that information but once I confirm who he was that's
5 when I move forward because I knew that I was going to be
6 on the stand. Deputy Luckadoo is going to be here for
7 what he said but I ultimately have the responsibility of
8 this case.

9 Q. All right. So just to be clear, you discount what
10 Deputy Luckadoo testified to?

11 A. Until it was confirmed, yes, sir, by myself.

12 Q. And then you testified earlier that your word alone
13 is enough, that's why you elected to go do the lineup,
14 correct?

15 A. Yes, sir. That's correct.

16 Q. And then we heard Mr. Patel testify that the person
17 in the picture was a regular customer?

18 A. Yes, sir.

19 Q. And there was no one else who was a regular
20 customer in the lineup, correct?

21 A. Yes, sir, according to his testimony.

22 Q. And there's nothing in your incident report about
23 Mr. Patel giving a description saying his nose stood out
24 to him?

25 A. No, sir. Mr. Patel never mentioned that. That was

1 my observation of talking to him and that's one of his
2 mannerisms that I discovered.

3 Q. There's nothing in there about him saying he got a
4 great look at his face, is there?

5 A. According to the statement I believe it says that
6 he recognized him to be a customer, has been a customer
7 on prior occasions, yes, sir.

8 Q. Recognized him to be a customer because of through
9 his voice or face?

10 A. Sir? I'm sorry?

11 Q. He also testified he recognized his voice, correct?
12 Testifying, not in the incident report.

13 A. Yes, sir. Yes, sir. He did testify to his voice,
14 correct, as well as seeing his eyes over -- as he was
15 looking down, over the shades, and him getting the same
16 type of cigarettes.

17 Q. And yet in your incident report you said, Victim
18 advised deputies he had been robbed by unknown assailant.

19 A. Yes, sir, and --

20 Q. Thank you.

21 A. Yes, sir.

22 MR. RUTLEDGE DURANT: Your Honor, I think the
23 witness wanted to explain that answer. He was cut off.

24 THE COURT: All right. You may explain your
25 answer.

1 A. Thank you, Your Honor.

2 An unknown meaning not knowing by name.

3 Q. And in the incident report it says stranger,
4 correct?

5 A. If he doesn't know him by name he would be
6 considered a stranger, yes.

7 Q. That's what's in the incident report as categorized
8 as, correct?

9 A. That's correct. He doesn't know him by name so he
10 wouldn't be considered -- he's not an acquaintance if he
11 doesn't know him.

12 MR. RUTLEDGE DURANT: May we approach?

13 THE COURT: All right. Counsel, you may approach.

14 (WHEREUPON, the following bench conference was
15 reported.)

16 MR. RUTLEDGE DURANT: I thought we covered this in
17 our pretrial hearing, that there is no way that --

18 MR. BRUCE DURANT: And for him to pick out the word
19 stranger that's twice he's mischaracterized what's out.

20 MR. GRIMES: May I?

21 THE COURT: You may.

22 (WHEREUPON, the bench conference was concluded.)

23 BY MR. GRIMES:

24 Q. For clarification.

25 A. Yes, sir.

1 Q. On the first page of the incident report do you
2 guys see the place where it has the box for Marvin Bowens
3 Green?

4 A. Yes, sir.

5 THE COURT REPORTER: I'm sorry, Your Honor. I
6 can't understand him.

7 THE COURT: Mr. Grimes, when you are looking down
8 it's hard for the court reporter because you are talking
9 straight into that podium.

10 Q. In the box you see where it says Marvin Bowens
11 Green?

12 A. Yes, sir, I do.

13 Q. And there's, like, relationship to the subject?

14 A. Yes, sir.

15 Q. And under that it says stranger?

16 A. That's correct.

17 Q. Thank you. Sorry for jumping around a little bit
18 too much. To go back to the lineup procedures, part of
19 the admonition form is not to discuss your identification
20 procedure or what happened afterwards, correct?

21 A. That is correct.

22 Q. And you did the identification on December 29th?

23 A. Yes, sir.

24 Q. And you heard Mr. Patel, the robbery proceeded on
25 December 24th?

1 A. Yes, sir.

2 Q. And you heard Mr. Patel testify he discussed it
3 with his wife about a week?

4 A. I think he said they reviewed the video for about a
5 week then they left it alone because --

6 Q. Tried to forget about it?

7 A. Yes, sir, they tried to forget about it.

8 Q. Then they discussed it with Mr. Durant and his
9 investigators?

10 A. Yes, sir. That was after apprehension was made,
11 yes, sir.

12 Q. Okay. And then the lineup procedures -- or
13 admonition form, it also asked the witness to state how
14 certain he is on the form, correct?

15 A. Yes, sir, that's correct.

16 Q. And this was explained thoroughly to Mr. Patel?

17 A. According to his testimony, yes.

18 Q. And according to his son?

19 A. Yes, sir.

20 Q. And there's a place on the lineup -- or
21 identification form for him to make comments, correct?

22 A. Yes, sir, that is correct.

23 Q. And he didn't state anything as certainty on there,
24 did he?

25 A. He didn't, but according to his testimony as well

1 -- according to his testimony is once he was showed -- as
2 soon as he was showed it he automatically pointed at
3 (indicated) and circled Mr. Marvin Bowens Green.

4 Q. All right.

5 A. Without hesitation.

6 Q. But he didn't say I'm a hundred percent sure this
7 is Marvin Bowens Green?

8 A. He didn't say, however, he implied that as soon as
9 he saw the lineup he knew Mr. Marvin Bowens Green was the
10 subject who had him at gunpoint and robbed him of \$60 and
11 a pack of cigarettes.

12 Q. And the policies also give you the option of sort
13 of recording these -- how these procedures are done,
14 correct?

15 A. I'm sorry, sir?

16 Q. Your policies also give you the option about
17 recording of the lineup procedures, correct?

18 A. Recording this incident in the parking lot?

19 Q. Yes, sir, or wherever you wanted to do it at?

20 A. Well, if it's at the station it's reasonable to do
21 but this is 2010 and I don't know what kind of phone I
22 had back then. I don't know what kind of phone Detective
23 Perkins had back then. He was the person actually
24 administering the admonition.

25 Q. I understand you may not have had a phone out there

1 to do it with.

2 A. Right.

3 Q. That's probably not the best way to record it but

4 Mr. Patel was cooperative with you, correct?

5 A. Yes, sir, he was.

6 Q. And it's, what, a 10, 15-minute ride from Citadel

7 Mall to Pine Haven?

8 A. Yes, sir, it's safe to say.

9 Q. So you could have easily taken him back to Pine

10 Haven where you had facilities to do that?

11 A. We could have, yes, sir.

12 Q. Then there would be really no question about

13 translation whether he understood what arraignment or

14 this was accurately translated to him?

15 A. That's very well true, but once we got a positive

16 identification for him and the nature of the crime we

17 were -- it was essential to obtain an arrest warrant.

18 Q. It may be like taking an extra step to take him

19 back to Pine Haven and record it, correct?

20 A. In your words, Mr. Grimes, yes, sir.

21 Q. I believe you testified you took all the extra

22 steps, correct?

23 A. Yes, sir. I obtained the six-person photo lineup

24 and he positively identified him, and that certainly

25 qualifies for taking the extra step.

1 Q. And your policy gives you the options of recording
2 it, correct?

3 A. He could have merely refused to go.

4 Q. He could have but you really think he would have?

5 A. I don't know. He was trying to get back to his
6 wife.

7 Q. Okay. And in the past when you've had
8 opportunities to record stuff you have -- you've said the
9 solicitor's office has directed you not to, correct?

10 A. Wow. That was the past but we did rectify that.

11 Q. Okay.

12 MR. GRIMES: May I have one moment, Your Honor?

13 THE COURT: You may.

14 (PAUSE.)

15 BY MR. GRIMES:

16 Q. Let me ask you one final comment.

17 A. Yes, sir, Mr. Grimes.

18 Q. Were you aware Mr. Green lived in Jacksonboro at
19 the time of this incident?

20 A. Mr. Green has multiple addresses, and that's the
21 reason why a search warrant wasn't done on him.

22 Q. And the address you had in your arrest warrant was
23 for Jacksonboro, correct?

24 A. That is correct.

25 Q. And that address is about 14 miles from the Sunoco?

1 A. Safe to say that, yes, sir, approximately.

2 Q. There's a fair amount of stores between his address
3 and that Sunoco?

4 A. Yes, sir.

5 MR. GRIMES: Thank you, Your Honor. No further
6 questions.

7 THE COURT: Redirect?

8 MR. RUTLEDGE DURANT: Thank you, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. RUTLEDGE DURANT:

11 Q. Detective, you testified that he lived at an
12 address in Jacksonboro, is one of the addresses that was
13 listed for him?

14 A. Yes, sir, that's correct.

15 Q. And you testified that there were more addresses
16 listed for him?

17 A. Yes, sir.

18 Q. Did you have a firm understanding of where he
19 lived?

20 A. I did not.

21 Q. Would you have liked to have executed a search
22 warrant on this case?

23 A. Yes, sir. I sure would have.

24 Q. And would you have done that if you had a firm
25 address?

1 A. Yes, I would have.

2 Q. Do you know whether or not he lived with his
3 father?

4 A. He was back and forth with his mother and father.

5 Q. And do you know -- well, where did his father live?

6 A. His father stayed in Adams Run. His father stayed
7 in Adams Run or his mother stayed in Colleton County, or
8 vice versa, but I know one of them resided in Colleton
9 County and the other one stayed -- resided in Adams Run,
10 which is located in Charleston County.

11 Q. And were there other addresses as well?

12 A. Yes, sir. I've met his father off of Old
13 Orangeburg -- I mean, Orangegrove, located in the City of
14 Charleston right over the north bridge. I met him at a
15 residence over there. So Mr. Bowens has numerous
16 addresses. That's just some of the few that I know of.

17 Q. Did you ever have any hard information on where he
18 may stay at this time?

19 A. No, sir, not at this time I did not.

20 Q. And if you did, what would you have done?

21 A. I would have executed a search warrant for the hat
22 that he had, the sunglasses that he was wearing, as well
23 as the hoodie and any other clothing, to include the
24 handgun.

25 Q. And you testified about the results of the

1 fingerprints in this case?

2 A. Yes, sir.

3 Q. And you are aware of those results, right?

4 A. I am.

5 Q. And you are aware that the only fingerprints that
6 ever came back came back to a white man?

7 A. That's correct, yes, sir.

8 Q. Was a white man ever a suspect in this case?

9 A. No, sir, never.

10 Q. And in regard to the report that Mr. Grimes had you
11 look at, and you told the Court that stranger was listed
12 beside --

13 A. Yes, sir.

14 Q. -- Marvin Bowens Green's name?

15 A. Yes, sir.

16 Q. Was that the only way he was identified in that
17 report?

18 A. There's not many options that you list in this
19 block. If he's not an acquaintance or he's not a family
20 member he's considered a stranger, and that's just one of
21 the few options that we have, and that's the reason for
22 stranger being in there.

23 MR. DURANT RUTLEDGE: And, Your Honor, at this time
24 the State would move to enter the report under Rule 106?

25 MR. GRIMES: We would object.

1 THE COURT: All right. We'll take that up outside
2 the presence of jury. You may continue.

3 MR. RUTLEDGE DURANT: And, Your Honor, may we
4 approach briefly?

5 THE COURT: You may.

6 (WHEREUPON, the following bench conference was
7 reported.)

8 THE COURT: Do you have any witnesses after this
9 one?

10 MR. RUTLEDGE DURANT: We do.

11 THE COURT: All right, who?

12 MR. RUTLEDGE DURANT: We've got Perkins, we've got
13 Milz, we've got Kjellman, and we've got Joe West. They
14 are all here but, you know, they can come tomorrow as
15 well.

16 If it's all right, I'd like for him to be able to
17 read just parts of it and we'll leave some out, and I'll
18 have to introduce it as long as we can get -- you know,
19 in fairness, he's not identified in this thing as just a
20 stranger. He's identified as a regular customer, but the
21 problem is it also mentions that he had been identified
22 from a prior robbery, and I will instruct the witness not
23 to read that part. But in fairness it would not be right
24 to have this jury understand that he was only a stranger
25 identified by the victim.

1 THE COURT: I think that stranger meant in relation
2 to identifying him.

3 MR. RUTLEDGE DURANT: That was in his report. He
4 had a different report about unknown assailant and he
5 said that that was because he didn't have a name, but to
6 let stranger fall dead in this Court is not accurate, and
7 this would make it fair to have the jury understand this
8 and that at the same time through this report.

9 THE COURT: Why can't you just ask him if he was a
10 stranger to the victim? -

11 MR. RUTLEDGE DURANT: I'll do that and I'll also
12 ask him that he had told him that it was noted in this
13 report that he was a customer on prior occasions.

14 THE COURT: You're objecting to that report going
15 in, correct?

16 MR. GRIMES: Yes, I am.

17 THE COURT: All right.

18 MR. BRUCE DURANT: The whole report, we don't want
19 the whole report but I think that part is fair rebuttal
20 under what he brought out under 106 because he's trying
21 to present -- portray to this jury that the person was a
22 stranger to the victim. Well, the fact of the matter is
23 the victim told the person that he was a regular customer
24 in the store so I think it's fair.

25 He also made a big deal about how there was no

1 description of the suspect but on the first page he gives
2 the same description of the suspect that he gave to the
3 Court.

4 THE COURT: Any response?

5 MR. GRIMES: Basically it's impeachment of their
6 witness, Mr. Patel, when he says regular customer.

7 THE COURT: All right. Is that a copy?

8 MR. BRUCE DURANT: Yeah.

9 MR. GRIMES: And I think Mr. Patel's testimony
10 covers that --

11 THE COURT: Why can't you just cross out the first
12 statement to the person and just have him read that one
13 sentence, if that's what you want? All right.

14 MR. RUTLEDGE DURANT: Where the description was
15 given, all of that; baseball cap, red-billed cap, all of
16 that? Suspect was wearing dark sunglasses. And that was
17 all from Mr. Patel, his description.

18 THE COURT: And again, I understand you have an
19 issue to the stranger issue. How is that --

20 MR. RUTLEDGE DURANT: He made a big deal about the
21 victim didn't give a description.

22 MR. BRUCE DURANT: That there was no description in
23 the incident report from which to compose a photographic
24 lineup was the point he was making except he ignores the
25 fact that they knew who the suspect was.

1 MR. RUTLEDGE DURANT: I promise not to read the
2 danger part.

3 MR. GRIMES: I think this is improper bolstering.

4 THE COURT: I deny it and I will allow you to put
5 in on the record. That statement we'll not have. Let me
6 think about the other statement. Thank you.

7 MR. RUTLEDGE DURANT: Thank you.

8 (WHEREUPON, the bench conference was concluded.)

9 THE COURT: As to the second statement, Mr. Durant,
10 make sure you lay a foundation for me. Thank you.

11 BY MR. RUTLEDGE DURANT:

12 Q. I think we talked about -- Mr. Grimes had elicited
13 from you that Marvin Bowens Green was listed on the
14 record, initial report, as a stranger as well, right?

15 A. Yes, sir, that's correct.

16 Q. And that was not the only characterization of
17 Mr. Bowens Green in the initial responding report, was
18 it?

19 A. That is correct.

20 Q. Because in the narrative it states the suspect had
21 also been a customer on prior occasions?

22 A. That is correct.

23 Q. And that was written in the initial responding
24 report?

25 A. It's on page two, yes, sir, in the narrative.

1 Q. Eyewitness identifications, procedures, they occur
2 in a variety of ways; isn't that right?

3 A. Yes, sir.

4 Q. Sometimes a person who's asked to view a photo has
5 never seen the person before; is that correct?

6 A. That is correct.

7 Q. Sometimes the person has seen the person before?

8 A. Correct.

9 Q. And sometimes they even know them?

10 A. That is correct.

11 Q. And in all those situations have you had the
12 opportunity to administer lineup identifications?

13 A. Yes, sir.

14 Q. And I believe you testified that you have had cases
15 where you have had people mistaken on their
16 identifications?

17 A. Yes, sir.

18 Q. And in what situations -- what do you do, first of
19 all, when there is a mistaken identification?

20 A. Well, wasn't so much as a mistaken it was prior to
21 the case going to trial they -- the terminology is they
22 retracted their statement, okay, and that's what
23 happened. I've had cases like that. They retracted
24 their statement prior to going to court, said, Well, that
25 wasn't the right person or the information they gave

1 wasn't correct. And in an event that someone does that,
2 if they admit that they lied on a document then we charge
3 them for filing a false report, okay.

4 On other hand, if we have someone who's known -- in
5 some cases I get they've known them for life, and if you
6 know someone for a lifetime there's no need to waste time
7 to show you a six-person photo lineup if you are 40 years
8 old and you've known this person 40 years. It's a waste
9 of time to show it. So in that capacity we show them a
10 single person lineup, okay. Does that help?

11 Q. And a single person lineup is different than a six
12 pack --

13 A. Yes, sir. That's one person, photo of one person,
14 and who do you know this person to be, and we see what
15 they state.

16 Q. But Mr. Patel was shown six photos; is that right?

17 A. Yes, sir, he was shown a six person.

18 Q. Detective, concerning Mr. Marvin Bowens Green's
19 name.

20 A. Yes, sir.

21 Q. Does he always go by that exact name, Marvin Bowens
22 Green?

23 A. No, sir.

24 Q. Are you aware of any other names that he goes by?

25 A. Yes, sir, I am.

1 Q. And what are those?

2 A. Chuckie, he's called himself Charles, he would go
3 by Marvin Green, or Marvin Bowens. The correct name is
4 Marvin Bowens Green. Those are all the names I've known
5 him to associate himself and they are also in his rap --

6 MR. GRIMES: Objection.

7 THE COURT: What's -- I'm sorry.

8 MR. GRIMES: 404(b), relevant.

9 THE COURT: All right. Counsel, approach.

10 (WHEREUPON, the following bench conference was
11 reported.)

12 THE COURT: What was he going to say?

13 MR. RUTLEDGE DURANT: I thought he was about to go
14 somewhere bad so I'd like for him to just stop right
15 there with that inquiry.

16 THE COURT: I am just concerned --

17 MR. RUTLEDGE DURANT: Yeah, we're not going any
18 further.

19 THE COURT: All right.

20 MR. RUTLEDGE DURANT: Thank you.

21 (WHEREUPON, the bench conference was concluded.)

22 THE COURT: All right. Mr. Durant, ask your next
23 question. Thank you.

24 MR. RUTLEDGE DURANT: Your Honor, I think that's
25 all the questions I have for the detective. Thank you.

1 THE COURT: All right. And do you have any
2 recross?

3 MR. GRIMES: No, ma'am.

4 THE COURT: All right. You may step down. Thank
5 you.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: All right. We have reached an
8 appropriate time for us to break for the evening but I
9 think the State has at least one more witness we can put
10 on this evening. So, Mr. Foreperson, I will ask you to
11 inquire of your jury if they are ready to go for the
12 evening.

13 (WHEREUPON, the jurors spoke among themselves.)

14 THE FOREPERSON: We're ready to go.

15 THE COURT: It's harder to sit in the box than it
16 looks, isn't it? Ladies and gentlemen, thank you for
17 your understanding and your patience today. Please
18 remember all of my admonitions because now you are going
19 to go home and you're going to have something that you
20 can talk about or investigate or do.

21 Please just go home. It's been a long day and it
22 will be another long day, I anticipate, tomorrow. So
23 just go home, turn your cell phones off. Don't get on
24 the internet, don't watch the news, and just tell whoever
25 asks you, I can't talk about it or the Judge is going to

1 put me -- is going to yell at me. So please, please,
2 please just go home and have a restful evening.

3 We will begin -- if you will be in your jury room
4 at 9:15 we'll begin promptly once all of you are here.
5 Please have a wonderful evening. Thank you.

6 Please rise for the jury.

7 (WHEREUPON, the jury leaves the courtroom at
8 approximately 5:22 p.m.)

9 THE COURT: Thank you. Be seated.

10 MR. RUTLEDGE DURANT: Your Honor?

11 THE COURT: Yes.

12 MR. RUTLEDGE DURANT: I just want to bring it to
13 the Court's attention that we might have that in-camera
14 hearing with Ms. Patel that might last a little bit
15 tomorrow just in case you want to bring the jury back a
16 little later.

17 THE COURT: It's too late now, Counsel. You got to
18 remind me of these things. I'm not going go -- we're on
19 the record. How long do you think it will take?

20 MR. BRUCE DURANT: Hopefully not as long since we
21 worked out the kinks on the last one.

22 THE COURT: All right. Why don't we be -- we'll
23 just do this one at 8:45 then.

24 MR. RUTLEDGE DURANT: That sounds good, Your Honor.

25 THE COURT: All right. You all need to redact

1 State's 5. So go ahead. Here's my scissors.

2 Anything else?

3 MR. GRIMES: Your Honor, I was just referring to
4 Mr. Durant about some information we received from
5 Walterboro that may help lay the foundation for
6 Defendant's Exhibit 7 for identification. So I imagine
7 they are going to have some objections about that.

8 MR. RUTLEDGE DURANT: I have no idea what I'm going
9 to have.

10 THE COURT: Okay. We'll deal with that when it
11 comes up.

12 All right. Anything further from the State?
13 Anything further?

14 MR. RUTLEDGE DURANT: Nothing from the State, Your
15 Honor.

16 THE COURT: Mr. Grimes, anything further?

17 MR. GRIMES: No, ma'am.

18 THE COURT: That's State's 5. If you can just let
19 her mark it.

20 MR. GRIMES: That just seems so obvious.

21 MR. BRUCE DURANT: I mean, we could probably do
22 something a little better overnight.

23 THE COURT: If you all don't object to it, but
24 that's what needs to go back, just those two photos. All
25 right.

1 All right. Mr. Green, please stand. I'm going to
2 go ahead and advise your client of his rights. I
3 anticipate that we probably will reach the close of the
4 State's case by lunchtime, the way we're going.

5 All right. Mr. Green, I'm going to now advise you
6 of certain of your right. Do you understand that, sir?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: And I'm going to place you under oath.
9 Please raise your right hand.

10 MARVIN BOWENS GREEN, after having been duly
11 sworn, testified as follows:

12 THE COURT: Mr. Green, I'm going to go ahead and
13 advise you of your right and I will not inquire as to
14 whether or not you are going to testify until the time
15 becomes appropriate. But I'd like to do it at the
16 evening break so that it gives you an opportunity to kind
17 of think about things over the evening hour and allows
18 you some time to ask your attorneys some questions that
19 you may not have thought of. If you do not understand
20 anything that I say at this time, please let me know.
21 And if you need me to explain anything in further detail,
22 please let me know. Do you understand?

23 THE DEFENDANT: Yes, ma'am. Yes, ma'am.

24 THE COURT: We will reach the stage of the trial
25 where you may present your defense, I anticipate, unless

1 I grant some motions, like a directed verdict. You have
2 the right to claim the protections given to you by the
3 Fifth Amendment to the Constitution of the United States
4 and this amendment states in part that no person shall be
5 compelled in any criminal case to be a witness against
6 themselves.

7 This means you cannot be required to testify in
8 this case. You have the right to testify on your own
9 behalf but no one can make you testify. This is a
10 personal right and no one can waive this right except for
11 you. If you decide to testify you will be subject to the
12 same rules that govern other witnesses, and you may be
13 examined and cross-examined on any relevant issue in this
14 case.

15 If you have any convictions involving dishonesty or
16 false statement, or for crimes punishable by imprisonment
17 for more than one year and I determine that the probative
18 value of admitting this evidence outweighs its
19 prejudicial effect to you the solicitor will be able to
20 introduce your record to attack your credibility.

21 Mr. Durant, do you have convictions that you intend
22 to introduce if he takes the stand?

23 MR. RUTLEDGE DURANT: He has one, Your Honor.

24 THE COURT: All right. Thank you. I have not
25 heard, I do not know what it is you have not had, but you

1 understand that you do have at least one conviction?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: If you decide to testify this decision
4 on your part must be freely, voluntarily and
5 intelligently made with the knowledge of the protections
6 given to you by the Fifth Amendment and the consequences
7 of your decision to testify.

8 If you decide not to testify I will instruct the
9 jurors that they cannot give the fact that you did not
10 testify any consideration whatsoever and there is to be
11 absolutely no prejudice to you because you did not
12 testify. It is left entirely up to you whether you
13 testify or not.

14 You may talk with your attorney, either together or
15 individually, your friends, your family members, or
16 anyone else but the final decision is left entirely up to
17 you. Do you understand what I have explained to you?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you have any questions about what I
20 have explained to you?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: All right. Thank you. Have a nice
23 evening, Mr. Green.

24 Anything further?

25 MR. GROEBER: No, Your Honor.

1 THE COURT: All right. So we will begin at 8:45.
2 I understand that you will need to call your witness and
3 the translator, and I understand also that sometimes it's
4 tricky getting in at that early hour so it maybe a little
5 bit closer but let's get here as quickly as we can and
6 get as much of that hearing done before the jury comes
7 back.

8 Yes, sir?

9 MR. GROEBER: There's a chance I will call an
10 expert to testify with regard to Mrs. Patel's testimony.

11 THE COURT: All right.

12 MR. GROEBER: And I wanted to make the Court aware
13 of that.

14 THE COURT: Okay. Great. But we have several
15 witnesses before you plan to put Ms. Patel up, correct?

16 MR. RUTLEDGE DURANT: We could work it that way.

17 THE COURT: All right. Thank you. Thank you.
18 Everyone have a good evening.

19 (WHEREUPON, the trial of the case was recessed for
20 the day.)

21 ** END OF VOLUME I **

22

23

24

25

State of South Carolina	)	In the Court of Common Pleas
County of Charleston	)	Ninth Judicial Circuit
State of South Carolina	)	Transcript of Record
V.	)	2011-GS-10-2338 & 2339
Marvin Bowens Green,	)	* Volume II *
<u>Defendant.</u>	)	

June 13 & 14, 2012

Charleston, South Carolina

B E F O R E:

The Honorable Kristi L. Harrington, Judge; and a Jury.

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

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SHARON L. VIZER

CIRCUIT COURT REPORTER

I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

* Volume I *

Monday, June 11, 2012

Pretrial motions.....	9
Jury voir dire.....	17
Jury selection.....	45
Pretrial motions.....	59
<u>(SW) Natubhai Patel (IC):</u>	
Direct examination by Mr. Rutledge Durant.....	61
<u>(SW) Vasandika Isadas (IC):</u>	
Direct examination by Mr. Rutledge Durant.....	63
Cross-examination by Mr. Groeber.....	67
Redirect-examination by Mr. Rutledge Durant.....	69
<u>(SW) Detective Charles Lawrence (IC):</u>	
Direct examination by Mr. Rutledge Durant.....	75
Cross-examination by Mr. Grimes.....	98
Redirect-examination by Mr. Rutledge Durant.....	128
<u>(SW) Detective James Perkins (IC):</u>	
Direct examination by Mr. Rutledge Durant.....	135
Cross-examination by Mr. Groeber.....	145
Redirect-examination by Mr. Rutledge Durant.....	158
Recross-examination by Mr. Groeber.....	159

I N D E X(SW) Natubhai Patel (IC):

Direct examination by Mr. Rutledge Durant.....161

(SW) Deputy Dustin Luckadoo (IC):

Direct examination by Mr. Rutledge Durant.....172

Cross-examination by Mr. Groeber.....175

(SW) Dhruval Patel (IC):

Direct examination by Mr. Rutledge Durant.....182

Cross-examination by Mr. Groeber.....188

Redirect-examination by Mr. Rutledge Durant.....194

(SW) Natubhai Patel (IC):

Direct examination by Mr. Rutledge Durant.....199

Tuesday, June 12, 2012(SW) Natubhai Patel (IC):

Direct examination by Mr. Rutledge Durant.....201

Cross-examination by Mr. Groeber.....212

Redirect-examination by Mr. Rutledge Durant.....234

(DW) Detective Charles Lawrence (IC):

Direct examination by Mr. Grimes.....237

Opening Statement by Mr. Rutledge Durant.....280

Opening Statement by Mr. Groeber.....282

I N D E X(SW) Natubhai Patel:

Direct examination by Mr. Rutledge Durant.....287

Cross-examination by Mr. Groeber.....307

(SW) Dhruval Patel:

Direct examination by Mr. Rutledge Durant.....313

Cross-examination by Mr. Groeber.....321

Redirect-examination by Mr. Rutledge Durant.....324

(SW) Deputy Dustin Luckadoo:

Direct examination by Mr. Rutledge Durant.....327

Cross-examination by Mr. Groeber.....337

Redirect examination by Mr. Rutledge Durant.....343

(SW) Detective Charles Lawrence:

Direct examination by Mr. Rutledge Durant.....346

Cross-examination by Mr. Grimes.....362

Redirect-examination by Mr. Rutledge Durant.....406

* Volume II *

Wednesday, June 13, 2012

(SW) Jagruti Patel (IC):

Direct examination by Mr. Rutledge Durant.....433

Cross-examination by Mr. Groeber.....441

Redirect-examination by Mr. Rutledge Durant.....448

(SW) Investigator Joseph L. West:

Direct examination by Mr. Rutledge Durant.....450

I N D E X(SW) Investigator James T. Milz:

Direct examination by Mr. Rutledge Durant.....	459
Cross-examination by Mr. Groeber.....	482
Redirect-examination by Mr. Rutledge Durant.....	488

(SW) Detective James Perkins:

Direct examination by Mr. Rutledge Durant.....	504
Cross-examination by Mr. Groeber.....	517
Redirect-examination by Mr. Rutledge Durant.....	530

(SW) Jagruti Patel:

Direct examination by Mr. Rutledge Durant.....	532
Cross-examination by Mr. Groeber.....	540
Redirect-examination by Mr. Rutledge Durant.....	548

State rests - motions.....	549

(DW) Detective Charles Lawrence:

Direct examination by Mr. Grimes.....	565
Cross-examination by Mr. Rutledge Durant.....	585

(DW) Dr. Jennifer Beaudry:

Direct examination by Mr. Groeber.....	593
Cross-examination by Mr. Rutledge Durant.....	652
Redirect examination by Mr. Groeber.....	680
Recross-examination by Mr. Rutledge Durant.....	683

I N D E XThursday, June 14, 2012(DW) Tonya V. Green (IC):

Direct examination by Mr. Grimes.....	686
Motions.....	702
Closing Argument by Mr. Groeber.....	710
Closing Argument by MR. Rutledge Durant.....	724
Jury Charge.....	741
Verdict.....	771
Sentencing.....	773
Certificate of Reporter.....	782

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.

FOR THE STATE:

1 - DVD		292	293
2 - Report of Lineup		296	302
3 - Photo Lineup		296	302
4 - Incident Report		332	
5 - Photo		361	362
5A- Photo			559
6 - Photographs		455	494
7 - Investigative Report		463	
8 - Photograph		476	477
9 - Photograph		476	477
10 - Photograph		476	477
11 - Photograph		476	477
12 - Photograph		476	477
13 - Photograph		476	477
14 - Photograph		476	477

FOR THE DEFENDANT:

1 - Curriculum Vitae of Dr. Beaudry	59	599
2 - Policy Manual	59	
3 - Map	59	
4 - Map	59	

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
<u>FOR THE DEFENDANT:</u>			
5	- Map	59	
6	- Incident Report	220	
7	- Photograph	368	
8	- Incident Report	567	
9	- Copy of Indictment	569	
10	- Affidavit	580	
11	- Incident Report	582	
12	- Document	646	
12A	- Document	741	
<u>FOR THE COURT:</u>			
1	- Motion Memo	59	
2	- Motion to Suppress	59	
3	- Notice of Motion to Suppress	59	
4	- Translator Affidavit	66	
5	- Photo Lineup	88	
6	- Report of Lineup	88	
7	- Incident Report	131	
8	- Photograph	233	
9	- Jury Charge Request	702	
10	- Note from Jury	766	

1 Wednesday, June 13, 2012

2 THE COURT: All right. Is the State ready on this
3 portion?

4 MR. RUTLEDGE DURANT: The State's ready, Your
5 Honor.

6 THE COURT: Is the defense ready?

7 MR. GROEBER: Yes, Your Honor.

8 THE COURT: Did you bring me a copy of that case?

9 MR. GRIMES: Yes, Your Honor. May I approach?

10 THE COURT: You may.

11 Mr. Durant, just approach briefly. Go ahead and
12 have your witness.

13 Please swear the witness in. Thank you. You do
14 not need to swear the interpreter again.

15 You're still under oath.

16 JAGRUTI PATEL, after having been duly sworn,
17 testified as follows:

18 THE CLERK: Please state your full name then spell
19 your name.

20 THE WITNESS: Jagruti Patel.

21 THE INTERPRETER: Just the last name?

22 THE COURT: Just spell the last name, please.

23 THE WITNESS: P-a-t-e-l.

24 THE COURT: Good morning, Ms. Patel.

25 THE WITNESS: How are you?

1 THE COURT: We are using an interpreter so it is
2 important that you wait for the interpreter to repeat to
3 you what I say or either of the attorneys say; do you
4 understand?

5 THE INTERPRETER: Yes.

6 THE COURT: And then the interpreter will have to
7 interpret back into English for us; do you understand?

8 THE INTERPRETER: Yes, ma'am.

9 THE COURT: This is my court reporter. She is
10 writing down everything that I say as well as everything
11 that happens in the courtroom. So it's important that we
12 not speak over each other.

13 THE INTERPRETER: Yes, ma'am.

14 THE COURT: Any questions?

15 THE INTERPRETER: No, ma'am. Thank you.

16 THE COURT: Mr. Durant, you witness.

17 MR. GROEBER: Your Honor, I'm sorry. One thing I
18 noticed when the oath was read to her it was not actually
19 translated. She responded in English. Out of an
20 abundance of caution and considering how we are
21 proceeding I ask that it be translated for her.

22 THE COURT: Say that one more time. You don't feel
23 that it was --

24 MR. GROEBER: When the clerk read the oath to her
25 it was not translated. It was read in English to her and

1 not translated, and she responded to the English, and out
2 of an abundance of caution I would ask that it be done.

3 THE COURT: Madam Interpreter, remember, everything
4 that is said in the courtroom must be repeated,
5 translated to the witness.

6 THE INTERPRETER: Yes, ma'am.

7 THE COURT: So when Mr. Groeber, or Mr. Durant is
8 saying anything, or when the Court is saying anything you
9 need to translate everything to the witness; do you
10 understand?

11 THE INTERPRETER: Yes, I am.

12 THE COURT: And did you translate the oath?

13 THE INTERPRETER: No, I did. Not she responded
14 before I could even start translating.

15 THE COURT: Out of an abundance of caution you may
16 stand right there. Would you please re-administer the
17 oath.

18 (WHEREUPON, Jagruti Patel was given the oath again
19 with the interpreter interpreting.)

20 THE COURT: Mr. Durant?

21 MR. RUTLEDGE DURANT: Thank you, Your Honor. May
22 it please the Court.

23 DIRECT EXAMINATION

24 BY MR. RUTLEDGE DURANT:

25 (Through the interpreter.)

- 1 Q. Mrs. Patel, how old are you?
- 2 A. Thirty-nine.
- 3 Q. Do you live in Charleston?
- 4 A. Yes.
- 5 Q. Where were you born?
- 6 A. India.
- 7 Q. When did you come to the United States?
- 8 A. October 11th, 2003.
- 9 Q. Why did you come here?
- 10 A. For job and for family.
- 11 Q. Are you married?
- 12 A. Yes.
- 13 Q. Who is your husband?
- 14 A. Natubhai Patel.
- 15 Q. How long have you been married to Mr. Patel?
- 16 A. Seventeen years.
- 17 Q. Do you have any children?
- 18 A. Two.
- 19 Q. How old are they?
- 20 A. The older one is 14, and the younger one is six
- 21 years old.
- 22 Q. What do you do for a living?
- 23 A. I work behind the register at a gas station.
- 24 Q. And where is that gas station located?
- 25 A. 5737 Savannah Highway, Ravenel.

- 1 Q. Do you and your husband own that gas station?
- 2 A. Yes.
- 3 Q. How long have you owned it?
- 4 A. Four years.
- 5 Q. Do you also work in the store?
- 6 A. Yes.
- 7 Q. What kind of work do you do at the store?
- 8 A. Behind the register.
- 9 Q. Do you interact with customers?
- 10 A. Yes.
- 11 Q. And have you always done that since you've owned
- 12 the store?
- 13 A. Yes.
- 14 Q. Do you work at the store on a daily basis?
- 15 A. Yes.
- 16 Q. Do you have white people as customers at your
- 17 store?
- 18 A. There are mixed. There's white people and black
- 19 people.
- 20 Q. And what about Hispanic people?
- 21 A. A few of them.
- 22 Q. Do you deal with African American customers on a
- 23 daily basis?
- 24 A. Yes.
- 25 Q. Do you have people who you would consider are

1 regular customers at your store?

2 A. Yes.

3 Q. I want to take you back to December 24th, 2010. Do
4 you recall going to the store that morning?

5 A. Yes. After my husband had called I had gone there.

6 Q. Why did you go to the store that morning?

7 A. My husband had called to tell us about a robbery
8 taking place at the store, so me and my older son went to
9 the store.

10 Q. Is that Dhruval?

11 A. Yes.

12 Q. Did you go to the store?

13 A. Yes.

14 Q. Is your store equipped with video surveillance?

15 A. Yes.

16 Q. Was there a video of the incident that your husband
17 told you about?

18 A. Yes.

19 Q. Did you view the video?

20 A. Yes.

21 Q. Who were you with when you viewed the video?

22 A. My son and the police.

23 Q. Did you recognize the man in the video?

24 A. Yes.

25 Q. How did you recognize the man in the video?

1 A. He used to come regularly at my store. That's why
2 I recognized him.

3 Q. Before this date, December 24th, how regularly did
4 he come to the store?

5 A. About a month ago I had seen him.

6 Q. About a month ago before this incident was the last
7 time you saw him?

8 A. Something like that.

9 Q. How long before this incident had he been coming to
10 the store?

11 A. At least once a day.

12 Q. For how long, months or years?

13 A. I don't remember very clearly but around six months
14 or so.

15 Q. So just to be clear, do you remember the man as
16 having come to your store for approximately six months
17 before December 24th, 2010?

18 A. Yes.

19 Q. And during that six months approximately how many
20 times a week would he come to the store?

21 A. Almost on a daily basis. I don't remember very
22 clearly but he would be very regular.

23 Q. Do you recall if he would purchase anything at the
24 store?

25 A. Newport cigarettes, ten-dollar tickets, and gas.

1 Q. What kind of tickets?

2 A. Ten-dollar tickets. I don't remember what kind
3 exactly.

4 Q. Are we talking about the lottery?

5 A. Yes.

6 Q. Lottery tickets. Would you ever have any
7 conversations with the man that you saw in the video when
8 he would come to the store?

9 A. He would come and ask for Newport cigarettes, and I
10 would always ask for his ID to make sure he was old
11 enough and he would joke about Obama having signed the
12 ID.

13 Q. Was that a regular conversation?

14 A. Yes.

15 Q. When he would come into the store and purchase
16 these items was the store -- was the lighting in the
17 store good enough that you could see him?

18 A. Yes.

19 Q. And at those times did you have the opportunity to
20 view his face?

21 A. Yes.

22 Q. And at those times did you have the ability to not
23 only hear him talk but to watch him talk?

24 A. I talked to him like I talk with every regular
25 customer.

1 Q. Did you ever know his name?

2 A. No.

3 Q. When you viewed the video how quickly were you able
4 to determine that you had known the man as your regular
5 customer?

6 A. Me and my husband watched the video a couple of
7 times and I discussed it with him, if he was the same
8 customer who jokes about the ID, and then we finally
9 realized that it was the same man.

10 Q. Did you know it was the same man?

11 A. When I saw the video I realized it.

12 Q. Are you certain that the man in the video was your
13 regular customer?

14 A. Yes.

15 Q. Is there any doubt in your mind?

16 A. No, I don't think so.

17 Q. You don't think so or you know there is no doubt in
18 your mind?

19 A. He is the same man.

20 Q. Are you sure?

21 A. Yes.

22 Q. Did you come to this understanding on your own?

23 A. Yes.

24 Q. Are you telling the Court that you recognized this
25 man on your own?

1 A. Yes.

2 Q. Did your husband tell you to tell the Court that
3 this was y'all's regular customer?

4 A. He didn't tell me anything like that.

5 Q. Did your husband influence you in any way to make
6 you think that this was your regular customer?

7 A. I know this on my own.

8 Q. And that is even though you watched the video with
9 your husband?

10 A. Me and my husband both knew that he was a regular
11 customer.

12 Q. Did you and your husband both know that he was a
13 regular customer independently of each other?

14 A. When we saw the video we talked and we finally
15 realized that this is that same regular customer.

16 Q. So did it take you any length of time to come to
17 that understanding?

18 A. As soon as I saw the video I knew it.

19 Q. Do you see the man who was your regular customer in
20 this courtroom today?

21 A. Yes.

22 Q. Do you see the same man who was your regular
23 customer and who you recognized on the video in this
24 courtroom today?

25 A. Yes.

1 Q. If you would, point to him and describe what he is
2 wearing.

3 A. (Indicated) a white shirt and tie.

4 MR. RUTLEDGE DURANT: Let the record reflect that
5 the witness has identified the defendant.

6 THE COURT: It will for the purposes of this
7 hearing.

8 MR. RUTLEDGE DURANT: Thank you, Your Honor.

9 BY MR. RUTLEDGE DURANT:
10 (Through the interpreter.)

11 Q. Is there any doubt in your mind that this man
12 sitting right here was your regular customer?

13 A. He is the man.

14 Q. Is there any doubt in your mind that this is the
15 man that you saw on the video?

16 A. He the man.

17 Q. Are you certain?

18 A. Yes.

19 MR. RUTLEDGE DURANT: Thank you.

20 THE COURT: Mr. Groeber?

21 MR. GROEBER: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. GROEBER:

24 (Through the interpreter.)

25 Q. Morning, Mrs. Patel.

1 A. Good morning. How are you?

2 Q. I'm good. Your son and husband have been away
3 during the last couple days for the trial, right?

4 THE INTERPRETER: I'm sorry. Could you repeat
5 that?

6 Q. Your son and husband have been away from you for
7 the day for the trial?

8 A. Yes.

9 Q. Have you had any discussions about the trial with
10 them in the last two days?

11 A. No.

12 Q. On December 24th, 2010, you were not at the scene
13 of the robbery?

14 A. No.

15 Q. And you received a call from your husband that
16 morning?

17 A. Yes.

18 Q. He told you that the store had been robbed?

19 A. Yes.

20 Q. And he told you he thought he knew who it was?

21 A. No. We knew it when we saw the video.

22 Q. Okay. So he did not tell you on the phone that he
23 thought he knew who it was?

24 A. No.

25 Q. When you first watched the video who was in the

1 room?

2 A. My son, myself, my husband, and the police.

3 Q. How many police officers were there?

4 A. I think about two.

5 Q. And this was in the office at the gas station?

6 A. Yes.

7 Q. How many times did you watch the video that
8 morning?

9 A. Four or five times.

10 Q. And you and your husband were watching it together
11 those times?

12 A. Yes.

13 Q. And you were talking about the video while you
14 watched it?

15 A. I need to repeat the question.

16 Q. You were talking about the video with your husband
17 while you watched it?

18 A. Yes.

19 Q. And did you talk with anyone else that day about
20 the video?

21 A. No, I did not.

22 Q. You did not tell the police that you recognized the
23 man?

24 A. The police who were with me inside the office.

25 Q. You told them you recognized the man?

1 A. Yes.

2 Q. Have you talked with the police about this case
3 since that day?

4 A. I did not talk.

5 Q. How many times have you talked with the prosecutor
6 or his investigator about this case?

7 A. One or two times.

8 Q. How is it when you watch the video that you can
9 recognize the person as a customer of the store?

10 A. By his voice.

11 Q. Were you able to -- when you watched the video did
12 you have sound?

13 A. The way he walked and talked, that's how I
14 recognized.

15 MR. GROEBER: May I have one moment, Your Honor?

16 THE COURT: You may.

17 (PAUSE.)

18 BY MR. GROEBER:

19 (Through the interpreter.)

20 Q. I think the last question I asked you answered
21 differently. It was a different answer than the question
22 I asked. When you watched the video on December 24th,
23 2010, did it have sound?

24 A. I don't remember very clearly now but I know for a
25 fact that I knew the way he talked and how he walked.

1 Q. How many camera angles did you -- were you watching
2 that day?

3 A. I don't remember very clearly but I watched the one
4 installed at the main door.

5 Q. And what did that camera angle depict?

6 A. He walked into the door with a gun and asked my
7 husband for money.

8 Q. Was this a camera angle that showed the front door?

9 A. Yes.

10 Q. Did you see any other camera angles that depicted
11 anything else?

12 A. I just saw the one from the main door.

13 Q. Now, you testified that you recognized my client --
14 let me strike that. Do you remember which officer you
15 told that you recognized the person in the video?

16 A. It was a long time ago, so I don't remember.

17 Q. Do you remember what he looked like at all?

18 A. It's been a long time.

19 Q. And you've testified that you recognized my client
20 from the video?

21 A. Yes.

22 Q. And in the video the robber is wearing a hat,
23 sunglasses, and a hoodie jacket?

24 A. Yes.

25 Q. Do you believe that you can look at another photo

1 of another young black man wearing sunglasses and a
2 hoodie over his head and tell if it is my client?

3 A. Why should I look at that picture?

4 Q. I'm asking you if you looked at a picture of
5 another young -- or a young black man wearing sunglasses
6 and a hoodie over his head would you be able to tell if
7 it's my client?

8 A. I don't want to look at that picture.

9 Q. You have testified that you looked at a video,
10 correct?

11 MR. RUTLEDGE DURANT: Objection, Your Honor.

12 THE COURT: What's your basis?

13 MR. RUTLEDGE DURANT: Well, I think this is
14 confusing. It's not relevant and, you know, what she
15 looked at was actually a video to make this
16 identification. It wasn't just a still photograph. She
17 used it based on someone who was moving. That's what she
18 testified she recognized him to and not just some random
19 black guy in a hoodie.

20 THE COURT: All right. Overruled. She may answer.
21 Thank you.

22 BY MR. GROEBER:

23 (Through the interpreter.)

24 Q. You have testified that you watched the video and
25 based on your memory you could recognize who that was?

1 A. Yes.

2 Q. And you believe that you can identify my client
3 from that video?

4 A. Yes.

5 Q. And I ask you again, if you look at another
6 photograph of a young black man wearing sunglasses and
7 hoodie would you be able to tell if it's my client or
8 not?

9 A. I don't want to look at it.

10 MR. GROEBER: Your Honor, I would ask that you
11 instruct the witness to answer the question.

12 THE COURT: You need to answer the question that is
13 presented to you.

14 A. When the discussion is about this man why would I
15 talk about another man?

16 MR. GROEBER: Your Honor, I still don't think that
17 answers the question.

18 MR. RUTLEDGE DURANT: But, Your Honor, that's
19 exactly right --

20 THE COURT: All right. Correct. And we're not
21 going to argue about this. Move on, Mr. Groeber. She's
22 answered. She's answered the question.

23 MR. GROEBER: May I have one moment?

24 THE COURT: Just because you don't like that answer
25 doesn't mean it wasn't responsive.

1 MR. GROEBER: Nothing further. Thank you, Your
2 Honor. I'm sorry. Maybe one.

3 THE COURT: Take your time, Counsel.

4 Counsel, all the juror are here, so if you have any
5 direct and recross we'll do that and then I'll hear
6 arguments at an appropriate time.

7 MR. GROEBER: Your Honor, I would like to proffer
8 some expert testimony.

9 THE COURT: All right. We can do that at a later
10 time, Mr. Groeber.

11 MR. GROEBER: Okay.

12 THE COURT: Thank you.

13 MR. RUTLEDGE DURANT: Your Honor, I just have one
14 follow-up.

15 THE COURT: One follow-up. I'm going to hold you
16 to it.

17 REDIRECT EXAMINATION

18 BY MR. RUTLEDGE DURANT:

19 Q. Ms. Patel, did you recognize this man based upon
20 prior experience with him or because your husband told
21 you it was him?

22 A. I knew it based on my own confidence based on my
23 prior experience because he was a regular customer.

24 MR. RUTLEDGE DURANT: Thank you.

25 THE COURT: Mr. Groeber?

1 MR. GROEBER: Nothing further, Your Honor.

2 THE COURT: You may step down. Thank you. And
3 remember, do not discuss your testimony with anyone.

4 All right. Anything before we bring in the jury,
5 Mr. Durant?

6 MR. RUTLEDGE DURANT: Not from the State.

7 MR. GROEBER: No, Your Honor.

8 THE COURT: All right. Just remind me to allow you
9 to proffer that testimony at our next break. Let's take
10 a very short comfort break, about three minutes, get
11 ready for the jury to come in. Thank you. We're at
12 ease.

13 (WHEREUPON, a brief recess was taken.)

14 THE COURT: You ready, Mr. Durant?

15 MR. RUTLEDGE DURANT: The State is ready, Your
16 Honor.

17 THE COURT: Mr. Groeber?

18 MR. GROEBER: Yes, Your Honor.

19 THE COURT: Let's bring in the jury. Thank you.

20 (WHEREUPON, the jury enters the courtroom at
21 approximately 9:38 a.m.)

22 THE BAILIFF: All seated, Your Honor.

23 THE COURT: Thank you. Please be seated.

24 Mr. Durant, call your next witness.

25 MR. RUTLEDGE DURANT: Thank you, Your Honor.

1 Please the Court. The State calls Joe West.

2 JOSEPH L. WEST, after having been duly
3 sworn, testified as follows:

4 THE CLERK: Please state your full name and spell
5 your last name for the record.

6 THE WITNESS: Joseph L. West, W-e-s-t.

7 DIRECT EXAMINATION

8 BY MR. RUTLEDGE DURANT:

9 Q. Mr. West, good morning.

10 A. Morning.

11 Q. Would you please tell the jury where you are
12 employed.

13 A. I am an investigator at the South Carolina Law
14 Enforcement Division. I've been there approximately 21
15 years. I've worked in narcotics in the past five, has
16 been specifically related to technical investigations,
17 that is things that deal with audio, video and pictures.

18 Q. And what are some of your responsibilities and
19 duties in your position right now?

20 A. Well, frequently agencies bring in videos that were
21 obtained during crime scene and during the robbery. If
22 there was a store video, a lot of times we see stolen
23 credit cards are used in different stores and they'll
24 bring the video in. So what we do essentially is try to
25 -- if they have a suspect in the video we try to capture

1 the best image possible, a still shot, if you will, of
2 the subject they're looking for. So basically what we're
3 doing is freezing the video through our software,
4 capturing a picture and providing this picture to law
5 enforcement or prosecution.

6 Q. And in that capacity did you become involved in the
7 investigation of this case?

8 A. Yes, sir.

9 Q. And I believe you were brought the video in this
10 case?

11 A. That's correct.

12 Q. From investigator Matt Cayce?

13 A. Yes, sir.

14 Q. On April 24th of this year?

15 A. Yes, sir.

16 Q. What, if anything, did you do with the video in
17 this case?

18 A. Again, you know, part of my responsibility as an
19 agent is to process videos, and this video related to an
20 armed robbery that occurred at a convenience store. It
21 was a pretty good video. There was a length of time that
22 the robbery did occur. It was probably a minute and a
23 half, couple minutes. It wasn't very long.

24 So what they wanted to obtain through our services
25 that day was to get still photos of the subject who was

1 in the store, who came to rob the store, and then
2 basically that becomes the evidence, that becomes
3 something you can look at versus watching it on TV.

4 So on that day we produced many photographs. I'd
5 say there were 20 or 30 pages of photographs with two
6 pictures per page on there. So many photographs of the
7 subject as he walked in the door and as he conducted the
8 robbery and as he left.

9 We like to get, obviously, the best shot we can for
10 prosecution, but sometimes as the nature of the video is
11 it's not like your home video camera where you have this
12 great resolution and when you freeze the frame it looks
13 like a picture you took with a digital camera.

14 The nature, again, of surveillance store videos is
15 that they want a store often more content on there than
16 they do high quality for different reasons. They'd
17 rather have five days of content versus two days of
18 really good stuff.

19 So what we did with this video was simply, we call
20 it ripping the pictures from there. You freeze the
21 frame, you create an image of the still picture on the
22 screen and then you save that to a DVD or CD-ROM and
23 print off the pictures.

24 Q. Now, is your job to enhance a photograph?

25 A. You know, that is a term, enhancement, that is used

1 often but essentially what we are doing is this. The
2 software is not this thing that -- like you see on TV
3 when they say the tag across the street or here is a
4 picture of a person in somebody's sunglasses. So it's
5 not this really cool magical software where you can bring
6 out these photographs in people's pictures that really
7 aren't there.

8 So what we do, I guess forensically, is just like
9 your TV has a brightness setting and a contrast setting,
10 so we are going to adjust those images with bright, more
11 brighter, darker and the contrast again making it
12 brighter or darker.

13 But as far as enhancing, you can't really put
14 anything that's not there. So another step we do as you
15 may see in the pictures is that you can zoom in onto the
16 picture if you capture it on the screen. And the problem
17 there is that a still picture has so many pixels or dots
18 on the page or on the screen so when you zoom in the
19 small dots become big dots.

20 So again, when you see on TV when they enhance
21 these things they zoom in and they press this button and
22 the picture becomes clear, that just doesn't happen in
23 real life. So more or less we just capture the screen
24 shots versus enhance the photographs.

25 Q. So do you do actually anything to manipulate the

1 picture to show something that would not otherwise
2 naturally be there?

3 A. No, sir. Again, it's just really an issue of, you
4 know, brightness settings and contrast settings and
5 zooming in to get a better picture, but we do not add nor
6 subtract anything to the photograph.

7 Q. And were you able to produce still photos from the
8 video in this case?

9 A. Yes, sir.

10 Q. And on those photos did you pay any particular
11 attention to areas within a particular photograph?

12 A. You know, we like to go for the faces because
13 that's the most identifiable thing and sometimes it's
14 just not going to happen if you have someone who is
15 trying to conceal themselves. You're not going to get
16 that nice driver's license photograph like you want to.

17 So then we focus on other things, as we'll see in
18 the photographs, the build of the person, their stature,
19 you know, what kind of shoes they have on. If they have
20 a weapon what kind of weapon was it? Was it a pistol,
21 was it a shotgun, was it a rifle, was it a revolver?

22 So we will see in the photographs that there's not
23 only pictures of the suspects whole body but we try to go
24 for the head, sometimes the hands, sometimes the feet,
25 just trying to add all these things together to get the

1 best identity possible.

2 Q. And if you would, explain to the jury what a
3 particular circle type area in a photograph that you
4 pulled off this video indicates?

5 A. Well, the software that we use allows us to, you
6 know, if you have a little picture of a screen and we
7 want to say that my interest here on this particular shot
8 is on this hand, you can actually have -- it's a circle
9 around the portion of the screen we're looking at.

10 Perhaps you've seen this on TV when you have four
11 people in a picture and they want to show one of them
12 there will be, you know, the rest of the screen is kind
13 of black or darker and the person of interest has a white
14 circle around them. It's a clear shot.

15 So that's what we do with the pictures, again. We
16 may go for the hands, the face, the weapon that was used
17 and just add the circle on there to say, Hey, this is
18 what we're looking at in this picture.

19 (WHEREUPON, State's Exhibit Number 6, Photographs,
20 were marked for identification only.)

21 MR. RUTLEDGE DURANT: Thank you.

22 BY MR. RUTLEDGE DURANT:

23 Q. Mr. West, I'm handing you what the State has
24 labeled State's Exhibit 6 for identification, and I ask
25 you to take a look at it. And let me know when you are

1 finished doing that.

2 (PAUSE.)

3 A. Yes, sir.

4 Q. Do you recognize State's Exhibit 6?

5 A. Yes, sir.

6 Q. And what is it?

7 A. These are essentially a group of photographs we
8 took of the incident.

9 MR. GROEBER: Objection.

10 MR. RUTLEDGE DURANT: We're not going to show it to
11 the jury yet.

12 MR. GROEBER: He's publishing to the jury and
13 describing the contents.

14 THE COURT: All right. Continue, Mr. Durant.
15 Please do not publish to the jury. It's not been
16 admitted. Thank you.

17 MR. RUTLEDGE DURANT: Yes, ma'am.

18 BY MR. RUTLEDGE DURANT:

19 Q. Are those the photographs that you were able to
20 take from the video in this case?

21 A. Yes, sir.

22 Q. And I believe that there were 31 pages in your hand
23 and 62 photographs?

24 A. Yes, sir.

25 Q. Do these photographs accurately reflect what was

1 taken from the video?

2 A. Yes, sir.

3 Q. And fairly reflect that as well?

4 A. Yes, sir.

5 Q. Are any of these photographs a misrepresentation of
6 anything that was on that video?

7 A. No, sir.

8 Q. And those are your photographs?

9 A. Yes, sir.

10 MR. RUTLEDGE DURANT: Your Honor, at this time the
11 State moves for the introduction of State's 6.

12 MR. GROEBER: We would object, Your Honor.

13 THE COURT: And subject to your previous
14 objections?

15 MR. GROEBER: No.

16 THE COURT: I'm sorry?

17 MR. GROEBER: New objection.

18 THE COURT: All right. Come forward.

19 (WHEREUPON, a bench conference was had, not on the
20 record.)

21 THE COURT: We'll take the objection as to State's
22 6 up outside of the presence of the jury, but my
23 understanding is you may continue, Mr. Durant.

24 MR. RUTLEDGE DURANT: Thank you, Your Honor.

25 BY MR. RUTLEDGE DURANT:

1 Q. And, Mr. West, have you testified in this regard
2 before?

3 A. Related to this case or other cases?

4 Q. Other cases.

5 A. Yes, sir.

6 Q. Have you had that opportunity to create still
7 photographs from crime scene videos?

8 A. Yes, sir.

9 Q. And have you performed the same analysis on those
10 videos as you did in this case?

11 A. Yes, sir.

12 Q. And did you testify in court about those
13 photographs?

14 A. Yes, sir.

15 Q. And did those photographs also include areas with
16 particular concentration that we could observe a circle
17 on?

18 A. Yes, sir.

19 Q. And was that testimony allowed into evidence?

20 A. Yes, sir.

21 MR. RUTLEDGE DURANT: Your Honor, I think that
22 would be the extent of the State's direct examination of
23 Mr. West.

24 THE COURT: All right. Reserving the matter of
25 State's 6, Mr. Groeber?

1 MR. GROEBER: May I have one moment, Your Honor?

2 (PAUSE.)

3 MR. GROEBER: I have no questions for this witness.

4 Thank you.

5 THE COURT: Sir, you may step down. I ask that you
6 remain with us for just a few moments.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Thank you. You may stay in the
9 courtroom if you wish.

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Mr. Durant, call your next witness.

12 MR. RUTLEDGE DURANT: The State calls Jim Milz.

13 JAMES T. MILZ, after having been duly sworn,
14 testified as follows:

15 THE CLERK: Please state your full name and spell
16 your last name for the record.

17 THE WITNESS: My full name is James Thomas Milz,
18 M-i-l-z.

19 THE COURT: Mr. Durant.

20 DIRECT EXAMINATION

21 BY MR. RUTLEDGE DURANT:

22 Q. Mr. Milz, will you please tell the jury where you
23 are employed.

24 A. Sir, Charleston County Sheriff's Office, sir.

25 Q. And what is your position with the Charleston

1 County Sheriff's Office?

2 A. I am presently a forensic investigator.

3 Q. And what are your responsibilities and duties as a
4 forensic investigator?

5 A. As a forensic investigator, sir, I am called out to
6 a scene be it anything from a burglary to a traffic
7 accident, to a homicide. And once there I am there to
8 record and gather evidence to prosecute, bring criminals
9 to justice, sir.

10 Q. And what kind of evidence are you looking for?

11 A. Sir, I'm looking for anything that would go from
12 videotape, latents, blood DNA, anything that would help
13 me in my case, sir.

14 Q. And you just mentioned the word latents.

15 A. Yes, sir.

16 Q. What are latents?

17 A. Sir, latent is a fingerprint that you cannot see to
18 the visible eye. If I was to touch a surface you would
19 leave residue from oils, sweats from your skin on this
20 surface and I through chemical means or mechanical means
21 I will try to enhance that and try to record through a
22 computer program called AFIS for these latent
23 fingerprints, sir.

24 Q. So you're in a unit that processes crime scenes?

25 A. Yes, sir.

1 Q. And you look for -- as part of that processing you
2 try to discover if there are any latent prints that may
3 be at a crime scene?

4 A. Yes, sir.

5 Q. Do you also sometimes collect swabs for DNA?

6 A. Yes, sir.

7 Q. And in cases of shootings do you sometimes collect
8 shell casings?

9 A. Yes, sir.

10 Q. And what kind of precautions do you take when you
11 collect evidence to maintain the integrity of the
12 evidence?

13 A. Very first precaution, sir, is before I handle any
14 evidence is to put on a fresh pair of gloves. Once the
15 evidence is collected it is put into, according to the
16 evidence, what it is, some kind of a fresh or sterile
17 container for transport.

18 Q. And is that secured by you?

19 A. Yes sir, it is secured by me.

20 Q. And is there a facility at the sheriff's office
21 that items of evidence are stored at?

22 A. Yes, sir. We have an evidence compound, secured
23 evidence compound.

24 Q. And is it noted when items are collected?

25 A. Yes, sir. They are logged in by myself or another

1 investigator through our computer system.

2 Q. And are you careful to list who all has handled any
3 items of evidence?

4 A. Yes, sir. It is called the chain, which is
5 everybody that has handled or entered this evidence, yes,
6 sir.

7 Q. And let's talk a little bit about your unit there
8 in the forensic services. How many people are in the
9 forensic services unit?

10 A. One sergeant and five investigators, sir.

11 Q. And who is your sergeant?

12 A. Sergeant Paul McManigal.

13 Q. And he is the person in charge of the forensic
14 services unit?

15 A. He is, sir.

16 Q. In regard to this case, Charleston County Sheriff's
17 Office case number 2010-021305, were you called out in
18 reference to this case?

19 A. I was, sir.

20 Q. Do you recall when you were called out?

21 A. It was in the morning time, sir. I'd have to look
22 at my notes but it was in the morning. I remember that.

23 Q. Did you respond to the scene?

24 A. I did.

25 Q. And that was in the morning of December 24th, 2010?

1 A. Yes, sir.

2 Q. And if we wanted to know an exact time we'd have to
3 look at your report?

4 A. Yes, sir. It should be noted on my field report,
5 sir, the exact time.

6 Q. And your report would refresh your recollection
7 regarding what time you actually arrived?

8 A. Yes, sir.

9 (WHEREUPON, State's Exhibit Number 7, an
10 Investigative Report, was marked for identification
11 only.)

12 BY MR. RUTLEDGE DURANT:

13 Q. All right. Investigator Milz, I'm showing you
14 what's labeled as State's 7. Do you recall what that is?

15 A. Yes, sir. It is my investigative report.

16 Q. I ask you to read it and let me know if you are
17 sufficiently refreshed as to exact time you arrived at
18 the scene.

19 A. Yes, sir. Arrival time was 09:33 in the morning.

20 Q. And do you know when you were called out?

21 A. Yes, sir. I was notified at 08:44.

22 Q. Thank you. Where did you respond from?

23 A. My residence, sir.

24 Q. And it took about 45 minutes to get there?

25 A. Yes, sir.

1 Q. What did you observe upon arrival at the scene that
2 day?

3 A. Pulling up to the incident location, sir, I
4 observed the responding deputies already out front. I
5 got out, started just talking to the responding deputies.
6 I always do that first just to get a lay of the land,
7 what happened.

8 Q. Is it important for you to determine whether a
9 crime scene may be contaminated or not?

10 A. Of course, sir. I always ask them who has been in
11 here, what has happened since I was called, just basic
12 information that would help me in my investigation, if
13 something had been contaminated or what has occurred.

14 Q. And what was your understanding of whether other
15 people had entered that crime scene before you had gotten
16 there?

17 A. My basic understanding, sir, that it was secured by
18 the deputies.

19 Q. Do you know whether anybody else had been able to
20 come to the register of that place before you got there?

21 A. Not that I recall, sir.

22 Q. And what did you do when you got there to process
23 this scene?

24 A. One of the first things I always ask on a business
25 like this, I've learned that there is video surveillance.

1 I talk to a witness. I like to look at the video
2 surveillance, if possible. That helps me know where I
3 can start my investigation. Video surveillance will show
4 me what the person possibly did and did not do, so that's
5 where I can judge where I can start.

6 Q. Did you do that in this case?

7 A. I did, sir.

8 Q. You viewed the video surveillance --

9 A. I did, sir.

10 Q. -- of the incident? And based on that what did you
11 do?

12 A. Based on the video surveillance I could see what
13 he, the suspect did and did not touch, and I started my
14 investigation from what I could judge what he did,
15 possibly touched. So I started to obtain latent prints
16 at that area.

17 Q. Did you see -- did you observe the suspect in the
18 video enter the store?

19 A. I did, sir.

20 Q. And was there anything about that that caused you
21 to believe that he may have touched the door?

22 A. It appeared to me that he was cognisant of the fact
23 of latent prints and he was trying to avoid leaving
24 latent prints on the door surface.

25 Q. Did you see him wiggle his hand out of his

1 sweatshirt?

2 A. Yes, sir.

3 Q. After he touched the door?

4 A. Yes, sir.

5 Q. And what, if anything, did that mean to you?

6 A. Cognisant of the fact of trying to leave latents.

7 Q. So did you believe that he had touched the door
8 after you saw him come in?

9 A. I believe that he did not touch the door, sir.

10 Q. And excuse me, with his hand?

11 A. Yes, sir.

12 Q. Did it look like he had touched the door with his
13 bare hand?

14 A. No, sir, he did not.

15 MR. GROEBER: Objection, Your Honor, leading.

16 THE COURT: Sustained as to leading. Rephrase your
17 question, Mr. Durant.

18 MR. RUTLEDGE DURANT: Thank you, Your Honor.

19 THE COURT: Thank you.

20 BY MR. RUTLEDGE DURANT:

21 Q. So when you saw the suspect come into the door
22 what, if anything, did you do to investigate this crime
23 scene based on that?

24 A. I did not process the door, sir.

25 Q. Why?

1 A. Because from what I could judge from the video
2 evidence he did not leave latent impressions on this
3 surface.

4 Q. And what specifically did you observe that made you
5 think that?

6 A. It appeared to me from the video that he had his
7 hands tucked into the shirt.

8 Q. All right. Did you observe the video of the
9 suspect at the register?

10 A. I did, sir.

11 Q. And what, if anything, did you do based upon that
12 observation?

13 A. I could not observe one of his hands, sir. Of the
14 possible fact that he did touch the surface with that one
15 hand I dusted that surface for latent prints.

16 Q. And did you retrieve any latent prints?

17 A. I did, sir.

18 Q. And do you recall how many latent prints you
19 retrieved?

20 A. I believe eight.

21 Q. Eight?

22 A. Eight latent print cards, yes, sir.

23 Q. And there's already been testimony in this case
24 that none of those prints came back to the defendant; is
25 that correct?

1 A. That is correct, sir.

2 Q. All right. And as crime scene officer are you also
3 tasked with taking photographs of crime scenes?

4 A. Yes, sir.

5 Q. And did you do that in this case?

6 A. Yes, sir.

7 Q. And just in regard to latent prints, are there some
8 surfaces that are more conducive for someone to leave
9 behind their fingerprints?

10 A. Oh, yes, sir.

11 Q. And if you could, can you just tell the jury about
12 what you know about that.

13 A. A smooth surface such as glass, stainless steel are
14 far more conducive to a latent print than something rough
15 like a piece of wood or something very rough textured.
16 It's possible that and very likely smooth surfaces are
17 best. Like I said, a nice smooth varnish surface, far
18 more helpful than a rough surface.

19 Q. And is it possible to touch a surface and not leave
20 a fingerprint?

21 A. Yes, sir.

22 Q. Is it possible to be in a particular area and not
23 leave a fingerprint?

24 MR. GROEBER: Objection, Your Honor, calls for
25 expert testimony.

1 MR. RUTLEDGE DURANT: I'll qualify him as expert if
2 I need to.

3 THE COURT: All right. Mr. Durant, qualify, lay
4 some foundation.

5 MR. RUTLEDGE DURANT: Thank you, Your Honor.

6 BY MR. RUTLEDGE DURANT:

7 Q. In your capacity as a crime scene investigator with
8 the Charleston County Sheriff's Office have you had the
9 opportunity to lift latent fingerprints?

10 A. Yes, sir.

11 Q. Have you been trained in the ability to lift latent
12 fingerprints?

13 A. I have, sir.

14 Q. What kind of training do you have in that area?

15 A. Not only through on-the-job training, sir, but also
16 classes through the State Law Enforcement Division, sir.

17 Q. For how long have you been lifting latent
18 fingerprints?

19 A. I started actually lifting latent fingerprints,
20 sir, when I was just a patrol deputy, and really started
21 doing it more once I started in the crime scene
22 investigation unit.

23 Q. And what length of time are we talking about that
24 you've been doing this?

25 A. About 10 years now, sir.

1 Q. And how often do you have the opportunity to lift
2 latent fingerprints?

3 A. Almost daily, sir.

4 Q. And have you ever been qualified as an expert
5 witness in latent fingerprint lifts before?

6 A. Yes, sir.

7 Q. Approximately how many times?

8 A. I would say about maybe half a dozen, sir.

9 Q. So about six times?

10 A. Yes, sir.

11 Q. In what courts?

12 A. Charleston County courts, sir.

13 Q. In Circuit Court such as this?

14 A. Yes, sir.

15 MR. RUTLEDGE DURANT: Your Honor, at this time the
16 State moves to have Investigator Milz qualified as an
17 expert in lifting latent fingerprints.

18 THE COURT: Just lifting, Mr. Durant?

19 MR. RUTLEDGE DURANT: In latent fingerprint
20 detection, identification.

21 THE COURT: And analysis?

22 MR. RUTLEDGE DURANT: And analysis.

23 THE COURT: Thank you.

24 Mr. Groeber?

25 MR. GROEBER: I think that he's been qualified in

1 the process of lifting, but as to those other things I
2 don't think the qualifications have been made or met.

3 THE COURT: Do you care to voir dire this witness?

4 MR. GROEBER: No, Your Honor.

5 THE COURT: All right. Mr. Durant, a couple more
6 questions. Thank you.

7 (WHEREUPON, the following bench conference was
8 reported.)

9 MR. RUTLEDGE DURANT: You want clarification
10 regarding what? Now he's --

11 THE COURT: The analysis. Are you wanting him to
12 do --

13 MR. RUTLEDGE DURANT: No. He's not doing the
14 side-by-side comparison. He's just lifting. Right,
15 that's it.

16 THE COURT: I got ahead of you. I was trying to do
17 one under analysis. It was just looking at the big
18 picture so I thought -- I got ahead of you.

19 MR. RUTLEDGE DURANT: That's fine.

20 THE COURT: So you are just going to do lifting.
21 And there's no objection as to lifting?

22 MR. GROEBER: Not as to lifting but the question
23 that started us down this road was how do you -- how are
24 fingerprints left. That's different. How are they left
25 and on what surfaces are best.

1 THE COURT: Well, I think that would go into
2 lifting because they have to be left to lift.

3 MR. RUTLEDGE DURANT: Exactly.

4 MR. GROEBER: There's a process when you lift
5 fingerprints and you dust it. He's trained in dusting
6 and detecting but we have no testimony that he's trained
7 in knowledge about how they get there.

8 MR. RUTLEDGE DURANT: He's already said that he's
9 had experience for 10 years in lifting.

10 THE COURT: It's two questions, Mr. Durant. All
11 right.

12 MR. RUTLEDGE DURANT: Okay. All right.

13 THE COURT: You understand the issue? Thank you.

14 (WHEREUPON, the bench conference was concluded.)

15 BY MR. RUTLEDGE DURANT:

16 Q. And as part of this process of lifting latent
17 fingerprints that you've done for 10 years, have you been
18 trained on what surfaces are more conducive for someone
19 to leave behind prints?

20 A. Yes, sir.

21 Q. And is that something that you've also been taught?

22 A. Yes, sir.

23 Q. And is that something that you've also experienced?

24 A. Oh, yes, sir.

25 MR. RUTLEDGE DURANT: Your Honor, at this time the

1 State moves to have him qualified as an expert in latent
2 fingerprints.

3 MR. GROEBER: No objection as to whether or not
4 he's qualified as an expert in lifting them. We don't
5 believe the standard has been met for outside of that
6 scope.

7 THE COURT: Ladies and gentlemen, normally when a
8 person testifies they must testify as to what they either
9 saw, or sensed, or heard by sense or smell or something
10 of that nature. There is an exception. When someone is
11 qualified because of their education and experience they
12 are permitted to give their opinion in certain areas if
13 the Court qualifies them in this way.

14 This witness will be qualified in the area of
15 latent fingerprints to give opinion testimony in that
16 area. That does not mean that you must accept that
17 opinion. It is simply evidence for you to use in any way
18 that you see fit.

19 MR. Durant?

20 MR. RUTLEDGE DURANT: Thank you, Your Honor.

21 THE COURT: Note your exception, Mr. Groeber.

22 MR. GROEBER: Thank you, Your Honor.

23 BY MR. RUTLEDGE DURANT:

24 Q. All right. So are you aware whether there are some
25 surfaces that are more conducive than others to leaving

1 behind a latent fingerprint?

2 A. There are, sir.

3 Q. Are there also -- and give us an example of a good
4 surface, please.

5 A. Glass.

6 Q. And why is that?

7 A. The smooth surface of glass itself.

8 Q. So because it's smooth it's more -- you're more
9 capable of leaving behind a fingerprint on it?

10 A. Yes, sir.

11 Q. And are there surfaces that are not so good?

12 A. Yes, sir.

13 Q. And what are some examples of those?

14 A. Any kind of a rough surface, sir.

15 Q. And why would the texture being rough make a
16 difference?

17 A. It will break up the prints, sir. It might -- the
18 oils, the sweats of your print itself might not stick to
19 that surface.

20 Q. And what is ridge detail?

21 A. Ridge detail, sir, is the -- your skin, sir. If
22 you would look at your fingerprint, sir, the loops, the
23 whirls, the lines, that is ridge detail, sir.

24 Q. And is that what you are looking for when you try
25 to lift a latent fingerprint?

1 A. Yes, sir. It helps me to identify a possible
2 suspect.

3 Q. Okay. And in regard to latents, actual lifts, is
4 there such a thing as a partial latent?

5 A. Yes, sir.

6 Q. What is that?

7 A. A partial latent is the fingertip maybe did not
8 make full contact, only partial. Maybe half of the
9 finger actually made contact with the surface only
10 leaving a partial print.

11 Q. So you are capable of lifting not a whole
12 fingerprint, which will be a whole latent, but just a
13 partial print that somebody may have left?

14 A. Yes, sir.

15 Q. And do you commonly lift those?

16 A. Yes, sir.

17 Q. And is it possible for an individual to be in a
18 particular area, even close to a surface that you would
19 consider conducive for leaving a latent fingerprint and
20 not leave a latent fingerprint?

21 A. Yes, sir.

22 Q. And one of those reasons is because they don't
23 touch the surface?

24 MR. GROEBER: Objection, leading.

25 THE COURT: Sustained as to leading.

1 Mr. Durant, watch those questions.

2 BY MR. RUTLEDGE DURANT:

3 Q. Would one of those reasons be because they don't
4 touch the surface?

5 MR. GROEBER: Objection, leading.

6 THE COURT: Rephrase your question, Mr. Durant.

7 BY MR. RUTLEDGE DURANT:

8 Q. What is one of the ways that somebody could be
9 right next to, almost on top of a surface that you would
10 consider very conducive for leaving behind a latent
11 fingerprint and a print not be there?

12 A. They did not touch or come in contact with that
13 surface, sir.

14 Q. And just as I am standing over this thing.

15 A. Yes, sir.

16 Q. It's possible that my print is not going to be on
17 it?

18 A. That is correct, sir.

19 Q. Because I didn't touch it.

20 A. No, sir.

21 (WHEREUPON, State's Exhibit Numbers 8 through 14,
22 Photographs, were marked for identification only.)

23 BY MR. RUTLEDGE DURANT:

24 Q. Investigator Milz, you said you took pictures at
25 the crime scene out there that day when you responded?

1 A. I did, sir.

2 Q. I'm showing you what the State has labeled State's
3 8 through 14 for identification, and ask that you take a
4 look at it.

5 A. Yes, sir.

6 (PAUSE.)

7 A. Yes, sir.

8 Q. And do you recognize 8 through 14?

9 A. I do, sir.

10 Q. And what are they?

11 A. Sir, they are photographs I took of the incident
12 location.

13 Q. And do they fairly and accurately depict the
14 incident location as you found it when you responded that
15 morning?

16 A. Yes, sir.

17 MR. RUTLEDGE DURANT: Your Honor, at this time the
18 State moves for introduction of State's 8 through 14.

19 MR. GROEBER: No objection, Your Honor.

20 THE COURT: State's 8 through 14 into evidence
21 without objection. You may publish.

22 (WHEREUPON, State's Exhibit Numbers 8 through 14,
23 Photographs, were admitted into evidence.)

24 MR. RUTLEDGE DURANT: Thank you, Your Honor. Your
25 Honor, permission for the witness to step down to view a

1 couple photos and explain to the jury what we're looking
2 at.

3 THE COURT: Are you going to put them on the board?

4 MR. RUTLEDGE DURANT: I'm just going to put them on
5 the board and have the witness stand here.

6 BY MR. RUTLEDGE DURANT:

7 Q. All right. I'm showing you now what's State's
8 Number 8, and if you would, just tell the jury what we
9 are looking at.

10 A. Sir, that is the front of the business.

11 Q. And that's the scene that you responded to?

12 A. Yes, sir, it is.

13 Q. And here is -- let's go with State's 10. Can you
14 tell the jury what we are looking at there.

15 A. Sir, that's an interior shot of the business, the
16 counter area, cash registers.

17 Q. And does that area depict an area that you
18 processed for latent prints?

19 A. Yes, sir. I did process an area of that.

20 Q. And State's Number 9, can you tell jury what we are
21 looking at there.

22 A. The actual area where the suspect stood.

23 Q. Now, what kind of surface is this?

24 A. That appears to be stainless steel, sir.

25 Q. And is that, in your experience, and I guess as an

1 expert, is that a good surface for detecting latent
2 fingerprints?

3 A. It is, sir.

4 Q. And did you dust that surface for prints?

5 A. I did, sir.

6 Q. And tried to lift all the prints you could off of
7 that surface?

8 A. I did, sir.

9 Q. And I believe you testified that you lifted eight
10 prints from this area?

11 A. Yes, sir.

12 Q. And none of those results came back to this
13 defendant?

14 A. Not to that defendant, no, sir.

15 Q. You did have results that came back to a white
16 male, correct?

17 A. Yes, sir, I did.

18 Q. And the last photo I just put up here is State's
19 14, and I believe that that is -- is that the same area
20 of the register just a different angle?

21 A. Correct, sir.

22 Q. And then if you could, just showing you State's 11,
23 12 and 13, and these are just more interior photos of --
24 or 11 and 12 are more interior photos of the business?

25 A. That is correct, sir.

- 1 Q. And 13 is another outside photo?
- 2 A. Yes, sir.
- 3 Q. Thank you. You can resume your seat on the witness
- 4 stand.
- 5 A. (The witness complied).
- 6 Q. Were you able to retrieve the video that day?
- 7 A. No, sir, I was not.
- 8 Q. Did you try?
- 9 A. Yes, sir.
- 10 Q. But you weren't able to get it that day?
- 11 A. No, sir. The system itself I was unfamiliar with.
- 12 Q. Are there other people in your -- in the crime
- 13 scene unit who may have better experience in those kind
- 14 of electronics and downloading these kind of videos?
- 15 A. Most definitely, sir.
- 16 Q. So that's not a strong suit of yours?
- 17 A. No, sir. We all have our pluses and minuses, sir.
- 18 That is my minus.
- 19 Q. And is it your understanding that someone else from
- 20 your unit went out to retrieve this video?
- 21 A. I did. Yes, sir, I asked for another investigator
- 22 to retrieve the video for me.
- 23 Q. And do you know who that was?
- 24 A. It was Investigator Kathy Kjellman.
- 25 (PAUSE.)

1 THE COURT: You need to approach?

2 MR. RUTLEDGE DURANT: We need to approach, Your
3 Honor.

4 (WHEREUPON, the following bench conference was
5 reported.)

6 MR. RUTLEDGE DURANT: I just wanted to let you know
7 I'd like to go through the video with him so he can point
8 out to the jury what about watching that video when he
9 responded was useful to him and going over this scene
10 and he would be able to show that the man didn't touch
11 the door, and that's why he didn't print the door, and
12 that he didn't appear to touch the counter but he did
13 that anyway.

14 MR. GROEBER: I'll argue that he's already
15 testified to that, asked and answered and it would be
16 cumulative.

17 MR. RUTLEDGE DURANT: He has not been shown the
18 video to be able to demonstrate effectively his
19 testimony. That's not an asked and answered. It was
20 never phrased in a form in conjunction with that video.

21 THE COURT: I think he did testify to the video,
22 that based upon that that was where he lifted prints.

23 MR. RUTLEDGE DURANT: Right, and he's able to show
24 on these photographs what he did there and it's just a
25 piece of evidence that speaks very loudly in this case.

1 I think he needs to be able to show exactly why this
2 video was important to him and what he did at that scene.

3 THE COURT: I think he can testify to that without
4 showing the video again.

5 MR. RUTLEDGE DURANT: That's one way but I don't
6 think it's the best way to explain what he did, to the
7 jury.

8 THE COURT: You're just going to show the video
9 again?

10 MR. RUTLEDGE DURANT: Sure, I'd like to.

11 THE COURT: All right. I think that you can go
12 through the pictures. I think he's clearly explained
13 why. Thank you, and thank you for approaching.

14 (WHEREUPON, the bench conference was concluded.)

15 BY MR. RUTLEDGE DURANT:

16 Q. All right. Investigator Milz, please answer any
17 questions the defense may have for you. Thank you.

18 A. Yes, sir.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MR. GROEBER:

22 Q. It's still morning. Good morning, Detective Milz?

23 A. Good morning.

24 Q. I'm sorry. Officer, deputy?

25 A. Fine.

- 1 Q. Which one is right?
- 2 A. Investigator Milz, Deputy Milz.
- 3 Q. Investigator. Thank you. You talked a little bit
- 4 about protecting the scene and that's important because
- 5 as you and the prosecutor discussed you've got to -- you
- 6 want to stop contamination of the scene, correct?
- 7 A. Correct, sir.
- 8 Q. And that includes contamination from other police
- 9 officers?
- 10 A. Yes, sir.
- 11 Q. Because police officers are humans and walking
- 12 through something could contaminate a scene?
- 13 A. It's a possibility, yes, sir.
- 14 Q. Touching things, obviously, could contaminate a
- 15 scene?
- 16 A. Yes, sir.
- 17 Q. Moving things from one place to another could
- 18 contaminate a scene?
- 19 A. Correct, sir.
- 20 Q. And I think you testified you were called at 8:45?
- 21 A. Yes, sir.
- 22 Q. And you arrived around 9:30?
- 23 A. I'd have to look at the sheet again, sir.
- 24 Q. Okay. Would that will refresh your recollection?
- 25 A. Yes, sir.

1 MR. GROEBER: May I approach the witness, Your
2 Honor?

3 THE COURT: You may.

4 BY MR. GROEBER:

5 Q. I'm handing you State's 7. Can you take a look at
6 that and let me know if that refreshes your recollection?

7 A. Yes, sir. I was called at 08:44, and I arrived at
8 09:33.

9 Q. Okay. Thank you.

10 And you were not able to secure the video
11 surveillance that day?

12 A. That is correct, sir.

13 Q. You testified that you called Deputy Kjellman or
14 Investigator Kjellman to do that?

15 A. Yes, sir.

16 Q. What day did you call her?

17 A. I believe I notified her that day.

18 Q. Okay.

19 A. Let me rephrase that, sir. I believe I did.

20 Q. Okay.

21 A. I probably did. I cannot swear to that, but
22 probably that day.

23 Q. You want to take a look at your report and see if
24 that refreshes you again?

25 A. All right.

1 MR. GROEBER: Okay. May I approach, Your Honor?

2 THE COURT: You may.

3 MR. GROEBER: Thank you.

4 A. It does say in my report, sir, that I did notify
5 Investigator Kjellman to retrieve it, which was done. It
6 did not say which specific time I actually notified her.

7 Q. And, well, does that refresh your recollection of
8 the day that you called her?

9 A. Yes, sir.

10 Q. And what day was that?

11 A. I believe it was the actual incident date, the
12 24th.

13 Q. And you testified today that you did not process
14 the door?

15 A. I did not, sir.

16 Q. So you didn't process the handles on the door?

17 A. No, sir.

18 Q. Or the glass around the door?

19 A. That is correct.

20 Q. You also testified that -- about certain surfaces
21 are better than others for receiving and retaining
22 fingerprints?

23 A. That is correct.

24 Q. And you've collected fingerprints from all sorts of
25 objects, haven't you?

1 A. I have.

2 Q. Including guns?

3 A. Yes, sir.

4 Q. Did Detective Lawrence ever submit a gun to you?

5 MR. RUTLEDGE DURANT: Objection.

6 THE COURT: What's the basis?

7 MR. RUTLEDGE DURANT: May we approach?

8 THE COURT: You may.

9 (WHEREUPON, the following bench conference was
10 reported.)

11 MR. RUTLEDGE DURANT: Are you going to argue this
12 or are you bringing in Andrew to argue this?

13 THE COURT: Mr. Grimes. Mr. Grimes is here.

14 MR. GROEBER: I don't know what your objection is.

15 MR. RUTLEDGE DURANT: Well, there's no relevance in
16 getting into a gun that has any connection to this case.
17 There's no gun that's connected to this case, at least
18 through this witness.

19 THE COURT: You're charging him with armed robbery.

20 MR. RUTLEDGE DURANT: Not a found gun. There's a
21 gun in the video.

22 THE COURT: All right, but he gets to inquire. He
23 says he's an investigator. He gets to inquire. We know
24 what the answer is going to be, right?

25 MR. RUTLEDGE DURANT: They are going to try to get

1 into a random gun that was found three days later --

2 MR. GROEBER: That's the only question I have.

3 THE COURT: All right. Thank you.

4 (WHEREUPON, the bench conference was concluded.)

5 THE COURT: Mr. Groeber, please ask your question
6 again. I'm sure the witness has forgotten what it is.

7 MR. GROEBER: Thank you.

8 BY MR. GROEBER:

9 Q. Did Detective Lawrence ever submit a gun to you to
10 fingerprint?

11 A. No, sir.

12 Q. Did you try to collect any DNA at the scene?

13 A. No, sir.

14 Q. You would agree that DNA is very reliable when it
15 comes to trying to identify someone?

16 A. It is a reliable source.

17 MR. GROEBER: May I have one moment, Your Honor.

18 THE COURT: Yes, sir.

19 MR. GROEBER: No further questions. Thank you.

20 Thank you, Investigator.

21 THE COURT: Mr. Durant, do you have any redirect?

22 MR. RUTLEDGE DURANT: I believe I do, Your Honor.

23 Thank you.

24 THE COURT: All right. Take your time, if you
25 need.

1 REDIRECT EXAMINATION

2 BY MR. RUTLEDGE DURANT:

3 Q. After viewing this video was there any indication
4 to you that there would have been any DNA left at the
5 scene?

6 A. No, sir.

7 MR. RUTLEDGE DURANT: Thank you.

8 THE COURT: Mr. Groeber?

9 MR. GROEBER: No, Your Honor. Thank you.

10 THE COURT: Investigator, you may step down. Feel
11 free to remain with us.

12 This would be an appropriate time for a break. Is
13 that yes?

14 THE FOREMAN: Yes, ma'am.

15 THE COURT: All right. I didn't know if that meant
16 to plug on, charge on along like you wanted to yesterday.

17 THE FOREMAN: Yes, ma'am.

18 THE COURT: Please remember all my admonitions.

19 Let the bailiffs know when you are ready. We typically
20 take about 10 minutes. Thank you.

21 Please rise for the jury.

22 (WHEREUPON, the jury leaves the courtroom at
23 approximately 10:34 a.m.)

24 THE COURT: Thank you. Be seated. All right. I
25 think there's some things we need to place on record,

1 Mr. Groeber.

2 MR. GROEBER: I'm trying to remember them all. I
3 know that one was the pictures that the State introduced.

4 THE COURT: All right. I'm going to do those last.
5 So whatever else you need to place on the record.

6 MR. GROEBER: And you are speaking only about --

7 THE COURT: As to State's 6, which is what Mr. West
8 testified to.

9 MR. GROEBER: Okay. Thank you, Your Honor. We
10 would argue that the introduction of those photographs --

11 THE COURT: So that's the only remaining issue,
12 Mr. Groeber?

13 MR. GROEBER: I believe that is.

14 THE COURT: All right. Thank you. Seems like you
15 all were approaching so many times I thought we had
16 something else to put on the record.

17 MR. GROEBER: It did. I mean, maybe --

18 THE COURT: Oh, and then Mr. Grimes does have a
19 proffer. That's what I was thinking of.

20 MR. GROEBER: The proffer of my expert witness, is
21 that what you're talking about?

22 THE COURT: Yes. Yes.

23 MR. GROEBER: When it comes to Mrs. Patel?

24 THE COURT: Yes.

25 MR. GROEBER: Yes, Your Honor, we're ready.

1 THE COURT: So we have that one, too. But let's
2 address the pictures so that Mr. West can go.

3 MR. GROEBER: Thank you, Your Honor. As to the
4 pictures in their entirety we would have two objections.
5 First would be that they were not -- none of them are
6 relevant because the State has introduced testimony from
7 witnesses that they watched the video and then made an
8 identification based on that video. There's been no
9 testimony or evidence that they looked at these
10 individual photographs.

11 We believe that also the introduction of these
12 photographs would be cumulative, and I would point Your
13 Honor to State V. Stokes, which is 339 S.C. 154, which it
14 was a child abuse case, and in that case the Court found
15 that the introduction of the child when photographs of
16 the child had already been introduced into evidence was
17 cumulative.

18 Now, the Court of Appeals did a harmless error
19 analysis after that. That of course is not for Your
20 Honor to consider. So we think this case is similar to
21 State V. Stokes and that introduction of the photographs,
22 60 something of them, would be cumulative.

23 Our third objection would be that in particular
24 some of those photographs have been lightened or there's
25 a circle that's been lightened to focus the looker's

1 attention on certain areas. We think that that is --
2 first of all, that really does not go -- it kind of
3 attacks whether or not it's a fair and accurate picture
4 because it has been altered. And we've heard no
5 testimony about -- from the witness about the software
6 used to do that, its reliability. So we think there is
7 some foundational issues as well with those particular
8 ones that have highlighted circles.

9 And if I may have one moment?

10 THE COURT: You may.

11 (PAUSE.)

12 MR. GROEBER: And as far as cumulative goes,
13 there's a lineup photo that's supposedly been entered
14 into evidence --

15 THE COURT: I'm sorry. What was the last thing?

16 MR. GROEBER: There's been a lineup photo that's
17 been entered into evidence of the defendant, the video
18 obviously is in. Now there are pictures of the scene
19 that are in that accurately depict the scene and the
20 lighting and all that, and we think it would be
21 cumulative. Thank you, Your Honor.

22 THE COURT: Mr. Durant, why are these pictures not
23 cumulative?

24 MR. RUTLEDGE DURANT: Your Honor, if there were
25 more eyewitnesses to this scene we would have called

1 them, too. The fact of the matter is cumulative evidence
2 has nothing to do with what's relevant and what's needed
3 to be before this jury.

4 The defense has made a big attempt to trying to
5 undermine the State's case that they failed to go the
6 extra mile. They elicited that through cross-examination
7 of several witnesses, especially including Detective
8 Lawrence on his perceived failure to execute a search
9 warrant and do other things. And this is another way to
10 show that we are going the extra mile.

11 We've taken this video up to SLED. We've given it
12 to a professional at South Carolina Law Enforcement
13 Division who commonly does exactly what he did in this
14 case, has testified the exact same way in other courts
15 and that was relevant from taking photographs from a
16 crime scene video.

17 It's relevant, it's necessary for the jury to
18 understand that this case is taken serious. They can
19 also use these photographs when they consider all the
20 evidence in this case. It's not overly cumulative.

21 And in regard to the software used, there was
22 testimony about what was done, and the defense had an
23 opportunity to cross-examine for any perceived deficiency
24 for a lack of foundation. But Mr. West testified exactly
25 about what he did, what the result of what he did was,

1 and essentially it was lighting conditions.

2 And he testified that what he did and what he's
3 showing to this jury and what's involved in these
4 pictures does not manipulate the picture to show
5 something that was not ordinarily there, that was
6 directly there as a result of the video taking what
7 actually happened in the robbery. And it's relevant and
8 it needs to be admitted.

9 THE COURT: Mr. Groeber?

10 MR. GROEBER: Thank you, Your Honor. I think the
11 State has shown, at least in this particular instance,
12 that they did go the extra mile. They sent them off and
13 they got the pictures taken.

14 Whether or not the pictures come into evidence
15 doesn't address whether or not they did that and went the
16 extra mile. So it would be foolish for me to argue that
17 they didn't go the extra mile when it comes to the video
18 and having someone from SLED look at it.

19 Secondly, whether or not he's testified before on
20 this is completely different. We don't know what those
21 cases were about, and it's really for the Court to
22 determine whether or not his testimony -- or these
23 pictures should be admitted.

24 Finally, that I had an opportunity to cross on his
25 foundational arguments. It's not my job to lay the

1 foundation for him and I don't need to cross-examine in
2 order to prove that he hasn't laid the foundation. Thank
3 you, Your Honor.

4 THE COURT: All right. I believe the arguments
5 have been thoroughly articulated. I have viewed the
6 photographs, listened to the testimony of Mr. West, and
7 State's 6 will be admitted over the defendant's
8 objection. I do find the testimony was that they were
9 still photos taken in order to assist in the
10 investigation, which is State's Number 1, which was
11 admitted without an objection.

12 I do not find that they are a waste of time,
13 misleading, prejudicial or confusing even given the
14 consideration that there are a few that have the circle,
15 and the testimony from the officer indicated why that
16 was. I note your exception for the record.

17 (WHEREUPON, State's Exhibit Number 6, Photographs,
18 were admitted into evidence.)

19 THE COURT: And let's go ahead and do your profer.

20 MR. GROEBER: Okay. Thank you.

21 THE COURT: How many more witnesses do you have?

22 MR. RUTLEDGE DURANT: Thank you, Your Honor. The
23 State has two witnesses, Your Honor, Detective Perkins
24 and Mrs. Patel.

25 THE COURT: All right. Let's do Perkins and then

1 we'll take a break and do Patel.

2 And then at that point you'll have some
3 understanding of are your witnesses available. Do you
4 have any additional witnesses?

5 MR. GRIMES: We have one witness under subpoena for
6 two o'clock.

7 THE COURT: You need to get them because we're --

8 MR. GRIMES: I think Dr. Beaudry is here.

9 THE COURT: All right. And so you're ready for her
10 to testify?

11 MR. GROEBER: Yes, Your Honor.

12 THE COURT: Okay. Perfect.

13 MR. GROEBER: Thank you.

14 THE COURT: All right. So we need to -- let's take
15 a short break, and do Detective Perkins and then we'll
16 take a break -- well, let's take a short break. When we
17 come back let me hear arguments so we can just go
18 straight on. Thank you. About five minutes. Thank you.

19 (WHEREUPON, a brief recess was taken.)

20 THE COURT: All right. We're back on the record.

21 Let me hear from you. You wish to suppress the
22 identification of the wife; is that correct?

23 MR. GROEBER: That's correct, Your Honor.

24 THE COURT: All right. Let me hear from you on
25 your arguments, and I've read your memo and you had very

1 extensive --

2 MR. GROEBER: Yes.

3 THE COURT: So shorten those because I think they
4 are going to stem basically from the same issues so I
5 know that the facts are more specific to her.

6 MR. GROEBER: Sure, and I guess procedurally would
7 you like to hear from my proffered expert first before I
8 argue? I think I'll elicit this testimony through her
9 direct so I think proffering her now would probably take
10 about 20 minutes.

11 THE COURT: Well, you want to put her on the stand
12 now?

13 MR. GROEBER: Yes, ma'am.

14 THE COURT: All right. Counsel, we've got to do a
15 better job of scheduling this kind of stuff. I had no
16 idea that you had a witness out of order for 20 minutes.
17 All right?

18 MR. GROEBER: Well, I'm sorry, Your Honor. I
19 thought I had expressed that yesterday and it is
20 requested in my memo as well.

21 THE COURT: All right. What you request in your
22 memo sometimes changes as far as scheduling.

23 MR. GROEBER: I understand.

24 THE COURT: Because I really try to just -- that
25 room is very tiny in there and be very aware of what's

1 happening in the jury room. All right. Again, tell me
2 why I need to hear from her.

3 MR. GROEBER: Sure. Specifically as to, let me
4 make sure I say the name right, Jagruti or -- Mrs. Patel.

5 THE COURT: Thank you.

6 MR. GROEBER: We would -- and I guess I'll state my
7 grounds. We would argue that her lack of presence at the
8 scene should disqualify her from testifying in this case
9 and we would ask that her in-court identification be
10 suppressed similar to a Biggers type analysis.

11 Unfortunately for me there is a South Carolina
12 case, which is State V. Lewis, 609 S.E.2d 515, it's a
13 2005 case, which concludes that a Neil V. Biggers
14 analysis does not apply to in-court identifications and
15 that the remedy for any suggestiveness, any alleged
16 suggestiveness of an in-court identification is
17 cross-examination and argument. All right.

18 And I would seek to distinguish this case from
19 Lewis on a few grounds. First, in Lewis there was no
20 expert testimony about the suggestiveness and
21 unreliableness of in-court identifications, and that
22 would be why I would seek to proffer Dr. Jennifer
23 Beaudry's testimony about those things.

24 I would also say that Lewis is distinguishable
25 because in Lewis the in-court identification was done by

1 an eyewitness. In this case the in-court identification
2 is made by someone who watched a video and made an
3 identification. That would be why I needed to proffer
4 testimony. I believe I can elicit that through direct if
5 Your Honor would, for scheduling purposes. If I'm not
6 able to we could proffer it after that.

7 THE COURT: Mr. Durant, what's your position?

8 MR. RUTLEDGE DURANT: Well, I'd say first of all
9 that there is enough evidence to go ahead and argue the
10 motion without hearing from an expert on this because the
11 essential testimony is foundationary under State V.
12 Fripp. She had testified that he recognized the man in
13 the video based on her previous experience with him. So
14 her personal knowledge is rooted in her personal
15 experience.

16 The lack of personal knowledge has nothing to do
17 with whether or not she was at the crime scene. The
18 personal knowledge she brings to the Court is that of
19 knowing him previous to seeing him on the video.

20 So she certainly has testified and laid that
21 foundation. And she said that she is positive that this
22 is her regular customer. She's identified him in a
23 number of ways with specificity about the Newport
24 cigarettes, gasoline and lottery tickets, and also in
25 regard to the ongoing joke about President Obama signing

1 his driver's license.

2 There's more than enough that the Court has before
3 it to go ahead and rule on the issue and allow her
4 testimony to be presented to the jury and let the jury
5 decide, and if the defense would like to proffer any
6 testimony that may try to undercut her liability they can
7 call her in their case.

8 THE COURT: Well, we won't need to proffer if I go
9 forward and hear the motion and she's going to testify,
10 correct?

11 MR. GROEBER: I guess what I'm saying is I'm trying
12 to establish a record and so if --

13 THE COURT: Because you wish for me to hear her
14 before I have made a ruling as to Mrs. Patel; is that
15 what you are saying?

16 MR. GROEBER: Yes. Yes, Your Honor.

17 THE COURT: Specifically as to -- has she met with
18 Mrs. Patel, has she reviewed the testimony, was she
19 sitting in here, have you had a discussion, is that what
20 she's going to testify to?

21 MR. GROEBER: She would testify about four main
22 things. First, her qualifications; second of all, the
23 importance of the influence -- she has been here and
24 heard her pretrial testimony. She would talk about the
25 importance of co-witnesses and the influence that they

1 can have on each other. She'd testify about the ability
2 of people to and our ability to recognize from videos
3 faces; and finally, she would talk about the
4 suggestibility and lack of reliability for in-court --
5 first time in-court identifications. It's essentially a
6 show-up in court.

7 MR. RUTLEDGE DURANT: And, Your Honor, if I may
8 just briefly reply?

9 THE COURT: Mr. Durant, if I need I'll ask for it.
10 Thank you.

11 MR. RUTLEDGE DURANT: Thank you, Your Honor.

12 THE COURT: All right. At this time, based upon
13 the testimony that I have heard, I listened to
14 Mrs. Patel, I have heard all of the arguments yesterday
15 as well as Monday. She indicated several times that she
16 made the identification while Mr. Patel was in the room
17 and was next to her. There was conversation. She made
18 the identification independently and there was no
19 suggestiveness made by Mr. Patel to her.

20 She indicated that she knew the individual, what he
21 had purchased, how he had purchased it and the joke that
22 appears to be a common statement that this particular
23 defendant made when he went into the store. I note your
24 exception for the record and your motion is denied.

25 There's no need at this point, I think record is