



Appendix B. Moderate certainty transcript.

**THE COURT:** Good morning, ladies and gentlemen. My name is Craig Johnson. I'm a Superior Court judge from New Hanover County. I have been assigned for this session of court. I want to welcome those of you who are jurors to this courtroom. Jury duty is a very important responsibility. It is a duty that everyone must perform if called upon to do so in the State of North Carolina. Are you gentlemen ready to proceed?

**MR. HICKS** (prosecutor): Yes, sir.

**MR. IVARSSON** (defense attorney): Yes, sir.

**THE COURT:** Madam Clerk, would you impanel the jury, please.

**THE CLERK:** Members of the jury, you have been duly sworn and are now impaneled to try this action between the State of North Carolina and David Riley. Sit together, hear the evidence and render your verdict accordingly.

**THE COURT:** Ladies and gentlemen, the attorneys are first going to have an opportunity to make an opening statement to you if they desire to. These statements are not evidence in the case and should be considered by you only as a preview of what they expect the evidence to be. Following the opening statements, witnesses will be called to testify and they'll be placed under oath and questioned by the attorneys. When the evidence has been completed, the attorneys will then have an opportunity to make a final argument to you. The final arguments are not evidence in the case nor are they instructions in the law, but they are given to assist you in evaluating the evidence and at that time the attorneys will be permitted to argue to you, to characterize the evidence, and to attempt to persuade you to a particular verdict. And finally, just before you retire to consider your verdict in this case, I will give you further instructions in the law which do apply to this particular case. Will there be an opening statement for the state?

**MR. HICKS:** Yes, your Honor.

**THE COURT:** You may proceed.

**MR. HICKS:** Thank you, your Honor. May it please the court and counsel. And I want to be brief because the evidence in these cases is really pretty straightforward. We're here because in August, late summer, 2003, the defendant went to an establishment here within our community, armed, and committed an armed robbery of the clerk who was present and working, minding the store. He did this robbery after coming to the register under the ruse of buying a product, gum, and when the cashier was in the process of making change, he pulled out his weapon. It was a gun that he sat down on the counter and he got the money and left. And at the end of this case, we'll come back and argue before you -- it won't be long from now, and I'm going to ask you to find him guilty.

**THE COURT:** Thank you, sir. Mr. Ivarsson, will there be an opening statement for the defendant?

**MR. IVARSSON:** Yes, sir. Members of the jury, I too will be brief. When you listen to the state's evidence, there are certain fact theories that I want you to look for and think about. And just in broad general form, those fact theories might include the description that the witnesses give about what the perpetrator was wearing, okay? Listen carefully to the descriptions that each witness gives about how the crime was committed. Consider how long each victim had to actually observe the robber or the perpetrator's face as opposed to were there other things going on that distracted the clerk's attention from the perpetrator? Was the clerk looking at the weapon? Was the clerk looking at the register? Was the clerk looking at the robber's hands? Was the clerk looking at any of the voluminous merchandise that was surrounding the area? And I suggest to you that when you take all of these variables and add them up and you'll see them develop as the case goes on, you will conclude that the state has not proven that the defendant, David Riley, committed the armed robbery that you're here to hear about today. Thank you.

**THE COURT:** Thank you, sir. You may call your first witness for the state.

**MR. HICKS:** James Stevens is called to the stand.

JAMES STEVENS, being first duly sworn, testified as follows during DIRECT EXAMINATION by MR. HICKS:

**THE COURT:** Mr. Hicks, you may proceed.

**MR. HICKS:** Thank you, your Honor.

**MR. HICKS: Q.** All right. Did you ever work for the Quick Stop Food Mart, Incorporated at 405 South Bragg Boulevard, here in New Hanover County?

**MR. STEVENS: A.** Yes, I have. For two years. 2002 through 2003.

**Q.** Okay. Were you working on or about August the 5th of 2003?

**A.** Yes, I was.

**Q.** Okay. Let me draw your attention to around 7:30 or so in the evening. Were you working at that time?

**A.** Yes, I was.

**Q.** All right. Did anything unusual happen to you about that time?

**A.** Well, I was robbed at that time.

Q. All right. Why don't you tell us about what happened.

A. Ok. A gentleman walked in the store. He was just waiting for the person in front of him to leave. As I proceeded to ring him up for his gum, I opened the register so I can give him his change back. Then he went to his back and pulled out a gun.

Q. Okay. Now, the person that you're talking about, could you describe the person?

A. It was a male with a striped shirt, blue, white, blue. He was medium build. Close to my height.

Q. Okay. What can you tell us about the shirt. You said it was different colors. What do you mean?

A. It was a striped colored shirt, not pinstripe, but larger stripes. It was just one solid color here and one solid color here and one solid color here (indicating).

Q. Now, you motioned on your chest. The court reporter is writing down what you say, not what you do.

A. Right.

Q. Can you describe that for us?

A. Solid vertical stripes, straight up and down, you know.

Q. You motioned three patterns?

A. Right.

Q. Well, what happened when he pulled the gun on you?

A. When he pulled the gun it didn't really register to me because I wasn't expecting it.

Q. Um-hum.

A. When he said, while the drawer was open, "Hand me the rest of the money". I didn't really hear him until he touched me with the gun and then he yelled.

Q. Okay. What happened?

A. Well, when he touched me with the gun, I immediately knew what to do and he yelled for me to hurry or he would shoot me. And, you know, my thing was to go ahead and give him what he wanted so I don't get hurt.

Q. So what did you do?

A. I gave him the rest of the money that was in the drawer.

Q. Okay. Do you recall how much money he got from you?

A. I had made a drop prior to. So there couldn't have been anymore than 100 dollars.

Q. After he got the money, what did he do?

A. He told me to lay down on the floor and he left.

Q. What happened next?

A. I got up after he ran out, locked the store, and called the police.

Q. All right. Did the police come out?

A. Well, yeah, they did.

Q. Now, did you give anyone in particular a statement about what happened?

A. Yes. Just to what happened.

Q. All right. Now, Mr. Stevens, do you see the person in court today that robbed you back on August the 5th of 2003 and took the money from the Quick Stop?

A. Yes, I do.

Q. Can you identify him for the jury, for the court?

A. Mr. Riley, the defendant.

Q. All right.

**MR. HICKS:** Your Honor, if the record will reflect the witness identified the defendant.

**THE COURT:** Let the record so reflect.

**MR. HICKS:** All right.

Q. Did you have occasion to look at photographs in a line -- an array to see if you recognized anybody?

A. Yes, I did.

Q. And when did that occur?

A. Well, as a matter of fact that night, I had looked at some. But I didn't identify him until I got some more photos in, and I picked him out pretty easy.

Q. Okay. So you had seen some other photographs that were not the person?

A. I seen about a thousand of 'em.

Q. Where?

A. At the police department.

Q. But sometime later you were able to select a photograph of the defendant?

A. Yes, I was.

**MR. HICKS:** Your Honor, may I approach the witness.

**THE COURT:** Yes, sir.

(Mr. Hicks showed exhibits to Mr. Ivarsson.)

(State's exhibits 1 and 2 were marked.)

Q. I'm going to hand you what has been marked state's exhibit number 1. Do you recognize this one-page document?

A. Yes, I do.

Q. First of all, how do you recognize state's exhibit number 1?

A. It's my handwriting.

Q. Okay. And what is state's exhibit number 1?

A. A statement that I made to the police after I was robbed.

Q. The robbery you just talked about?

A. Right.

**MR. HICKS:** I'll move state's exhibit number 1 into evidence, your Honor.

**THE COURT:** Let it be received.

(State's exhibit 1 was admitted.)

Q. Now, I'll also have you look at two pages here, state's exhibit number 2. Two pages. Take a look at it. Do you recognize state's exhibit number 2?

A. Yes, I do.

Q. All right. Now, how do you recognize this two-page document, state's exhibit 2?

A. Well, these are the pictures that I was shown and this is my handwriting.

Q. Okay. Going first to state's exhibit 2, do you see the photograph of the person in there that you picked out?

A. Yes, I do.

Q. Okay. Whose photograph is that?

A. Mr. Riley.

Q. The defendant?

A. Yes.

Q. Now you indicated that you were about 95 percent sure that was the person that robbed you? Why 95 percent?

A. I can explain. Because, a long time ago my grandfather was very strict on me, and I always would turn away when he would loud talk to me. So he was, like, "Look at me when I'm talking to you," so I would look directly at him. And what sparked me to look directly at the robber, I didn't hear him when he said, "Give me the rest of the money out the drawer." When I didn't hear him the first time he yelled so I just looked at him and I stopped and I stared and got a good look at his face.

Q. Was there anything unusual about what you saw in his face?

A. Well, when he was yelling, I noticed that his upper teeth were crooked.

Q. Okay.

A. It sticks out like a sore thumb.

Q. Okay. Why don't you read to the jury your statement that you wrote about what happened to you that night.

A. The whole thing?

Q. Yes, sir, start from the top and go down to the bottom.

**A.** "At approximately 7:30 pm the subject entered the store and purchased an item. As I keyed up his item I opened the drawer. When the drawer was opened he demanded the rest of the money in the cash register. Subject was very quiet about asking for the money until he yelled. When he pulled out the gun he yelled, 'Give me the rest of the money in the drawer and hurry up or I will shoot you.' When he yelled I noticed his upper teeth were crooked. After I gave him the money, he put the gun away and told me to lay on the floor. I stooped down, but got back to my feet in time to see which direction he exited the store. He walked out of the store. The subject was wearing a dark-colored hat with a white-trimmed bill around -- a solid two-color striped shirt vertical, blue – white – blue with a collar. He was approximately five seven, weighing about 145 pounds. He was a white man, not clean shaven. I've been working with this company for 13 months and I have seen him in the store a few times before."

**Q.** Now you wrote that on August the 5th, 2003, didn't you?

**A.** Yes, I did.

**Q.** All right.

**MR. HICKS:** I'll move state's exhibit number 2 into evidence, your Honor.

**THE COURT:** Let it be received.

(State's exhibit 2 was admitted.)

**MR HICKS:** Mr. Stevens, would you please stand down and come over and look at the defendant's teeth for me.

**THE COURT:** Yes, sir. You may step over there.

(Witness left the stand.)

**MR. HICKS:** Right over there.

**THE COURT:** Mr. Riley please open your mouth in order for the witness to see your teeth.

(The defendant, Mr. Riley, opens his mouth and the witness, Mr. Stevens, examines his teeth. The witness then returned to the stand.)

**Q.** Mr. Stevens, having now had an opportunity to see the defendant's teeth here in the courtroom, do you recognize what you've seen?

**A.** Yes, I do.

Q. How?

A. By the pattern of it.

Q. Explain what you mean, sir. When you saw the defendant's teeth, did you recognize them?

A. Yes, I did.

Q. And tell the jury how.

A. I recognized them because they were similar to mine. And I know how my teeth are, and they're like all out of sequence and they're up and down and maybe some pushed back, maybe one or two, but you'll recognize 'em if you see 'em.

Q. Now, you described in your statement, state's exhibit number 1, as well as your testimony, crooked teeth?

A. Right.

Q. What do you mean by the defendant having crooked teeth when he robbed you?

A. Well, I come across a lot of smiles. I've been in the public eye for awhile and I look at generally every customer, they smile, maybe they don't, but when they do smile I notice their teeth. That's like how I mostly identify most of the people and some people smile a lot, some people don't. What I call crooked is maybe they're not all in sequence. That is crooked to me.

Q. So that's what you described in your statement, the defendant's teeth?

A. Yes.

**MR. HICKS:** May I approach the witness one more time?

**THE COURT:** Yes, sir.

(State's exhibit 4 was marked.)

**MR HICKS:** Lastly I am going to show you State's exhibit 4. It is a blue and white striped shirt just like the one you described earlier. It was found at Mr. Riley's house the day of his arrest.

(Mr. Hicks shows the witness the shirt found at the defendant's house.)

**MR HICKS:** Mr. Stevens, does this look like the shirt Mr. Riley was wearing the night of the robbery?

**MR. STEVENS:** It looks exactly like the shirt he was wearing.

**Q:** And how do you know this?

**A:** By the stripes and the collar. They are the same.

**MR. HICKS:** I'll move state's exhibit number 3 into evidence, your Honor.

**THE COURT:** Let it be received.

(State's exhibit 3 was admitted.)

**MR. HICKS:** Thank you, sir. If you would please answer Mr. Ivarsson's questions he may have for you.

**THE COURT:** Mr. Ivarsson you may cross examine the witness.

**CROSS EXAMINATION by MR. IVARSSON:**

**Q.** Mr. Stevens, prior to that evening, you never saw the person that robbed you before, is that right?

**A.** No, I had seen him in the store before.

**Q.** Okay. The person that robbed you, about how much time do you think he spent in the store total on that evening when this robbery occurred?

**A.** Inside the store, maybe two minutes.

**Q.** Okay, right? Okay. Of that two minutes, how much time would you say that the person that robbed you spent at the counter where you were working?

**A.** About one minute.

**Q.** How long after the robbery occurred did a police officer show up at your store to talk to you about this?

**A.** About 5, 10 minutes later Officer Soto showed up.

**Q.** To the best of your recollection, at that time did you give him a description of what you saw and what happened?

**A.** Yes, I did.

Q. Okay. Do you recall telling Officer Soto that the suspect had a blue and white button-down shirt with another shirt underneath it?

A. Not button down and I said it was striped with a collar.

Q. Do you recall telling Officer Soto that the suspect was wearing blue jeans and a blue and white baseball cap?

A. Mostly dark. Blue with a light blue check. With white trim.

Q. Okay. So you do recall telling Officer Soto that, right?

A. Yes, I do.

Q. Okay. And you recall telling Officer Soto that the suspect was five seven, around 145?

A. Right.

Q. Okay. How long have you worked as a convenience store clerk at that store?

A. Two years total.

Q. And did you have any experience as a convenience store clerk prior to working there?

A. Yes, I have.

Q. And when you looked at the photo lineup, you were 95 percent sure it was the defendant?

A. Right.

Q. So you're 5 percent sure it was not the defendant?

A. Well, I didn't see any teeth.

Q. Okay. You said that the suspect spent probably about one minute at the counter. When the suspect walked up, did he put a piece of gum on the counter?

A. Well, a pack of Winter Fresh gum.

Q. Okay. And when he put the gum on the counter, did you reach down and pick it up, to look at the price?

A. Nah, I already know the price.

**Q.** And you then turned to look at the cash register to ring it up, right?

**A.** Right.

**Q.** Okay. And is when you were ringing it up that you say the suspect pulled out a firearm?

**A.** Yes.

**Q.** Okay. And then you noticed the gun because you were looking it, right?

**A.** Yeah, it would be hard not to notice. I mean, I noticed everything that was happening at the time and then he put it down on the counter.

**Q.** Okay. And then did your attention turn back to the cash register so you could start getting money out of it?

**A.** No, I already know what I had in my drawer so I was looking at his face at that point.

**Q.** Did you look at the cash register as you were getting the money out?

**A.** I might have glanced to it, but it didn't take long. I was looking at his face so I could remember it.

**Q.** Okay. About how long did you look at the register?

**A.** Just a glance, I was mainly looking at his face like I was trained by management.

**Q.** And the suspect immediately fled?

**A.** Yes.

**MR. IVARSSON:** Okay. That's all the questions I have, your Honor, thank you.

**THE COURT:** Mr. Hicks.

**MR. HICKS:** Just briefly, your Honor.

**REDIRECT EXAMINATION by MR. HICKS:**

**Q.** When you looked at state's exhibit number 2, photographs, you indicated your percentage as 95 percent certain?

**A.** Yes.

**Q.** Having now seen the defendant in open court and having looked at his teeth like you have, because you mentioned something about that on cross examination, the teeth. How sure are you that's the man that pulled that gun on you?

**A.** 100 percent.

**Q.** Thank you, sir.

**MR. HICKS:** I have nothing further.

**THE COURT:** Thank you, sir. You may return to your seat.

(Witness, Mr. Stevens, was excused.)

**MR. HICKS:** May I call the next witness your honor.

**THE COURT:** You may proceed.

**MR. HICKS:** The prosecution calls Detective Oats.

(Detective Oats approaches and takes a seat on the witness stand. He is then sworn in by the judge).

**MR. HICKS:** Good morning Detective Oats. I have a few questions to ask you about the robbery in question.

**DETECTIVE OATS:** Ok. Sounds good to me.

**MR HICKS: Q:** Detective Oats, were you able to take fingerprint samples at the crime scene?

**A:** Yes, I was. That is my main duty when the police force examines a crime scene.

**Q:** Then let's cut to the chase. Did you find fingerprints at the crime scene that matched Mr. Riley, the defendant's?

**A:** Yes, I found two sets of fingerprints in the convenience store that our forensic lab later determined to be the defendant's- uh, Mr. Riley.

**Q:** And where were the fingerprints taken from?

**A:** From the door frame in which one exits and enters the store. There were also some at the front of the store, near the cash register.

**MR. HICKS:** Thank you. No more questions your honor.

**THE COURT:** Mr. Ivarsson you may cross examine the witness.

**CROSS EXAMINATION by MR. IVARSSON:**

**MR. IVARSSON:** Mr. Oats, how long will fingerprints appear on a surface?

**MR. OATS:** For a long time. Usually a month or so.

**Q:** So these fingerprint could have been there for as long as a month?

**A:** Yes sir.

**Q:** From the sample you took, how old do you think these fingerprints were?

**A:** That is hard to tell. They could have been a few hours old or a few weeks. There is so much traffic in and out of that store that it was hard enough to find any prints that I was able to use.

**MR. IVARSSON:** No more questions your honor.

(Detective Oats is excused from the witness stand).

**THE COURT:** Mr. Hicks do you have anymore witnesses to call?

**MR. HICKS:** Yes, I would like for Mrs. Pamela Vaughn to approach the stand.

(Mrs. Vaughn sits in the witness stand and is sworn in by the judge).

**MR. HICKS:** Mrs. Vaughn were you working at the Quick Stop Food Mart, Incorporated at 405 South Bragg Boulevard, here in New Hanover County, on the night of the robbery?

**MRS, VAUGHN:** Yes I was.

**Q:** Were you in the store at the time of the robbery?

**A:** No I was not. I was out back taking out the trash.

**Q:** Were you aware that a robbery was taking place while you were taking out the trash?

**A:** No, I had no idea.

**Q:** Did you see anyone go into or come out of the store while you were taking out the trash?

**A:** Yes, I saw a man walk in and then a few minutes later I was smoking a cigarette and he come running back out again.

**Q:** Did you get to see his face?

**A:** Not when he went in. But when he ran out he ran right past me.

**Q:** What color of shirt was he wearing?

**A:** It was blue and white striped. Just the same as the one you put into the evidence earlier.

**Q:** Do you see the man, who ran out of the store that night, in the courtroom?

**A:** Yes, it was him. (Mrs. Vaughn points to the defendant David Riley).

**Q:** Now are you sure?

**A:** Pretty sure. Like I said he had been in there a few times before and I have only been working there a couple of months so I recognized his face.

**Q:** And you also picked him out of a lineup, correct?

**A:** Yeah, a few days later they had me come to the police station and I picked him out.

**MR. HICKS:** Thank you Mrs. Vaughn. That is all I have your honor.

**THE COURT:** Mr. Ivarsson you may cross examine the witness?

**CROSS EXAMINATION by MR. IVARSSON:**

**MR. IVARSSON:** Mrs. Vaughn, did the robber look at you the night the store was robbed?

**MRS. VAUGHN:** No, he did not look directly at me.

**Q:** So if he did not look at you how could you see his face?

**A:** He ran past me and I saw his face. Just because he did not look at me doesn't mean I still couldn't see his face.

**Q:** But you only looked for a few seconds, right?

**A:** Yes, a few seconds.

**MR. IVARSSON:** Thank you, Mrs. Vaughn. No more questions your honor.

(Mrs. Vaughn is excused from the witness stand).

**THE COURT:** Mr. Hicks, do you have anymore witnesses?

**MR. HICKS:** No, your honor.

**THE COURT:** Mr. Ivarsson you may call your first witness.

**MR. IVARSSON:** I would like to call Jacob Reid.

(Jacob Reid sits in the witness stand and is sworn in).

**MR. IVARSSON:** Mr. Reid, how do you know the defendant, David Riley?

**MR. REID:** He is my next door neighbor.

**Q:** How long has he been your neighbor?

**A:** For about eight or nine years.

**Q:** And in this time has he ever stolen anything from you?

**A:** No sir. He has always been a good friend to me.

**Q:** And was he with you on the night of the robbery?

**A:** Yes, we were watching the Atlanta Braves play baseball.

**Q:** And he was there the whole night?

**A:** Well, from about 7:30 pm until 11:00 pm or so.

**Q:** And did he ever leave or act unusual?

**A:** No, we had a good time watching the game and drinking beer.

**Q:** Did you see Mr. Riley anytime earlier in the evening?

**A:** Well, now that you mention it, I noticed he was outside cutting his grass when I got home from work.

**Q:** And what time was this?

**A:** I usually get home from work around 6:45 pm, so I guess it was around then.

**Q:** And when did you hear the lawnmower stop?

**A:** Shortly before he came over to watch the game. So maybe around 7 or 7:15 pm.

**MR. IVARSSON:** No more questions your honor.

**THE COURT:** Mr. Hicks you may cross examine the witness.

**CROSS EXAMINATION by MR. HICKS:**

**MR. HICKS:** Mr. Reid, you say you didn't notice anything unusual about the defendant David Riley the evening of the robbery?

**MR. REID:** Well, like I said, he came in sweating and when I joked about it he said that he had just finished cutting the grass.

**Q:** So around the time the robbery was committed he came into your house sweating and you didn't think that was unusual.

**A:** No, he has never given me a reason to think he was like that, I mean a robber.

**Q:** And you heard a lawnmower before he came over to watch the game?

**A:** I saw it and heard it.

**MR. HICKS:** No more questions your honor.

(Mr. Reid is excused from the witness stand).

**MR. HICKS:** I'll move state's exhibit number 5 into evidence, your Honor.

**THE COURT:** Let it be received.

(State's exhibit 5 was admitted.)

**MR. HICKS:** Let it be known that State's exhibit 5 is a copy of a court document confirming that the defendant, David Riley, was arrested and convicted of a similar crime in 1998, also an armed robbery. I am talking about a previous robbery. One in which the defendant used a gun and robbed a store much in the same way he did on the night of August 5, 2003.

**STATE V DAVID RILEY**

## **CLOSING ARGUMENT -- MR. HICKS**

**MR. HICKS:** Folks, we're at the point of the trial where Mr. Ivarsson and I will have an opportunity to argue what we contend to you to be the evidence in the case. What we contend to you to be the believable facts throughout the case. And it's those facts which, when applied with the law will drive your verdict. The real issue in this case is not whether robberies were committed. The question really is whodunit. Like the old murder mystery, whodunit.

Well, it's my contention to you, folks, that the evidence points to the conclusion that there was but one robber who committed this robbery. First, we know on August 5th that we have a convenience store robbery. Second, we know the person who did it was a white male. Third, we know he's of a similar height and weight as described in the testimony today.

Now, look at what James did. He looked at over 1,000 pictures and it wasn't until he got to that one that he said, "That's the guy." And you're not talking about just this one dimensional thing. He sees him in person, he sees the whole picture, "That's the guy." Was he honest about it? Was it believable? Was it consistent? Absolutely, folks. He's even seen the guy in the store before, so he is no stranger.

Also, I'll give you a word that volumes, and the word is "teeth." We identify people by teeth. Dead bodies, sad to say. But when they can't be identified any other way, teeth are that reliable an instrument to identify people. He was clear when it happened. And he was clear in court. It is a distinctive feature of a person. And when he had to show the teeth, they're the same. James said they were the same. Folks, teeth are the identifier, one word, that's all you need in this case.

We know that the defendant has been in the store because his fingerprints were found there. That puts him at the crime scene. And his own neighbor has even said that he came into the house sweating around the time of the crime. Most because he was running since no one heard a lawn mower.

Lastly, we have another store employee who recognized Mr. Riley as being in the store before. So it was easier to pick him out as he ran past after committing the robbery. So we have not one but two eyewitnesses who separately agree that this is the perpetrator of the crime. They also identified his shirt that was found at his house. What more do we need?

So you have many strong pieces of evidence: teeth, two eyewitness identifications, fingerprints, and a shirt. These put together are not coincidence. They are indicative of the guilt of the defendant. Thus, the state has proven to you that David Riley committed this robbery. I'll grant you we can't say for sure if he did this crime, but we know for sure he's done other crimes, and we have good reason to suspect he may do more in the future. For that reason, I encourage you to find him guilty. Do your job. Thank you.

## **STATE V DAVID RILEY CLOSING ARGUMENT -- MR. IVARSSON**

**MR. IVARSSON:** Members of the jury, it would be foolish for me to stand here before you and argue to you that those people weren't robbed. They were robbed. But there is

doubt about the identity of David Riley, the young man sitting over there, as being the perpetrator of these crimes.

Mr. Stevens was probably focused on what he was doing during the robbery. As I recall, the entire encounter took just a couple of minutes. There was a gun and he looked at the register also. He was doing a transaction.

I suggest to you that he probably looked at the defendant's face fifteen to twenty to thirty seconds during that entire one minute transaction, probably thirty seconds, max. I believe on cross examination, he said that the total encounter was only two minutes. Not a very long time. Mr. Stevens also told you that he was only 95 percent sure when he looked at a photo lineup. 95 percent sure. That means he was 5 percent not sure.

Next you have these fingerprints which are not conclusive. They could be up to a month old. And Mr. Riley, the defendant, has visited the store before. So he could have left them at anytime.

You also have another eyewitness who did not see the robber's face for more than a few seconds- while he was running and it was night. Not a very good glance if you ask me.

Finally, a neighbor of David Riley's can provide for his whereabouts around the time of the robbery. He also provides support for the character of Mr. Riley. He has no reason to lie.

As far as hard evidence, the defense has a shirt which I might add anyone could own. And where was the gun that helped rob the store. That wasn't found at the defendant's house.

Each of you has the ability to return a verdict of not guilty. And that's what we ask you to do. Thank you very much.

### **JUDGE JOHNSON'S CHARGE TO THE JURY.**

Members of the jury, all the evidence has been presented, it is now your duty to decide from the evidence what the facts are. You must then apply the law which I'm about to give you to those facts. It is absolutely necessary that you understand and apply the law as I give it to you; not as think it is or as you might like for it to be. And this is important because justice requires that everyone tried for the same crime be treated in the same way and have the same law applied to him.

The defendant has entered a plea of not guilty to the charge. The fact that he has been charged is no evidence of guilt. Under our system of justice, when a defendant pleads not guilty, he is not required to prove his innocence; he is presumed to be innocent.

You're the sole judges of the weight to be given to any evidence. And by this I mean if you decide that certain evidence is believable, then you must determine the importance of that evidence in light of all the other believable evidence in the case. You should also weigh all the evidence in the case. In this case, the defendant has not testified. The law of North Carolina gives him this privilege. This same law also assures him that his decision not to testify creates no presumption against him; therefore his silence is not to influence your decision in any way.

For you to find the defendant guilty of robbery with a dangerous weapon, the state must prove from the evidence that on August the 5th, 2003, the defendant took and

carried away property from the person or in the presence of James Stevens without his voluntary consent by endangering or threatening his life with the use or threatened use of a dangerous weapon, the defendant knowing he was not entitled to take the property and intending to deprive that person of its use permanently, it would be your duty to return a verdict of guilty of robbery with a dangerous weapon of James Stevens.

Now, members of the jury, you've heard the evidence and the arguments of the counsel for the state and the defendant. The court has not summarized the evidence in this case. It is your duty to remember the evidence whether it has been called to your attention or not and if your recollection of the evidence differs from that of the district attorney or of Mr. Ivarsson, you are to rely solely upon your recollection of the evidence in your deliberations.

It is your exclusive province to find the true facts of the case and to render a verdict reflecting the truth as you find it. I instruct you that a verdict is not a verdict until all 6 jurors agree unanimously as to what your decision shall be. You may not render a verdict by majority vote.

Appendix C. High certainty transcript.

**THE COURT:** Good morning, ladies and gentlemen. My name is Craig Johnson. I'm a Superior Court judge from New Hanover County. I have been assigned for this session of court. I want to welcome those of you who are jurors to this courtroom. Jury duty is a very important responsibility. It is a duty that everyone must perform if called upon to do so in the State of North Carolina. Are you gentlemen ready to proceed?

**MR. HICKS** (prosecutor): Yes, sir.

**MR. IVARSSON** (defense attorney): Yes, sir.

**THE COURT:** Madam Clerk, would you impanel the jury, please.

**THE CLERK:** Members of the jury, you have been duly sworn and are now impaneled to try this action between the State of North Carolina and David Riley. Sit together, hear the evidence and render your verdict accordingly.

**THE COURT:** Ladies and gentlemen, the attorneys are first going to have an opportunity to make an opening statement to you if they desire to. These statements are not evidence in the case and should be considered by you only as a preview of what they expect the evidence to be. Following the opening statements, witnesses will be called to testify and they'll be placed under oath and questioned by the attorneys. When the evidence has been completed, the attorneys will then have an opportunity to make a final argument to you. The final arguments are not evidence in the case nor are they instructions in the law, but they are given to assist you in evaluating the evidence and at that time the attorneys will be permitted to argue to you, to characterize the evidence, and to attempt to persuade you to a particular verdict. And finally, just before you retire to consider your verdict in this case, I will give you further instructions in the law which do apply to this particular case. Will there be an opening statement for the state?

**MR. HICKS:** Yes, your Honor.

**THE COURT:** You may proceed.

**MR. HICKS:** Thank you, your Honor. And I want to be brief because the evidence in these cases is really pretty straightforward. We're here because in August, late summer, 2003, the defendant went to an establishment here within our community, armed, and committed an armed robbery of the clerk who was present and working, minding the store. He did this robbery after coming to the register under the ruse of buying a product, gum, and when the cashier was in the process of making change, he pulled out his weapon. It was a gun that he sat down on the counter and he got the money and left. We will describe it in the store security video. And at the end of this case, we'll come back and argue before you and I'm going to ask you to find him guilty.

**THE COURT:** Thank you, sir. Mr. Ivarsson, will there be an opening statement for the defendant?

**MR. IVARSSON:** Yes, sir. Members of the jury, I too will be brief. When you listen to the state's evidence, there are certain fact theories that I want you to look for and think about. And just in broad general form, those fact theories might include the description that the witnesses give about what the perpetrator was wearing, okay? Listen carefully to the descriptions that each witness gives about how the crime was committed. Consider how long each victim had to actually observe the robber or the perpetrator's face as opposed to were there other things going on that distracted the clerk's attention from the perpetrator? Was the clerk looking at the weapon? Was the clerk looking at the register? Was the clerk looking at the robber's hands? Was the clerk looking at any of the voluminous merchandise that was surrounding the area? And I suggest to you that when you take all of these variables and add them up and you'll see them develop as the case goes on, you will conclude that the state has not proven that the defendant, David Riley, committed the armed robbery that you're here to hear about today. Thank you.

**THE COURT:** Thank you, sir. You may call your first witness for the state.

**MR. HICKS:** James Stevens is called to the stand.

JAMES STEVENS, being first duly sworn, testified as follows during DIRECT EXAMINATION by MR. HICKS:

**THE COURT:** Mr. Hicks, you may proceed.

**MR. HICKS:** Thank you, your Honor.

**MR. HICKS: Q.** All right. Did you ever work for the Quick Stop Food Mart, Incorporated at 405 South Bragg Boulevard, here in New Hanover County?

**MR. STEVENS: A.** Yes, I have. For two years. 2002 through 2003.

**Q.** Okay. Were you working on or about August the 5th of 2003?

**A.** Yes, I was.

**Q.** Okay. Let me draw your attention to around 7:30 or so in the evening. Were you working at that time?

**A.** Yes, I was.

**Q.** All right. Did anything unusual happen to you about that time?

**A.** Well, I was robbed at that time.

Q. All right. Why don't you tell us about what happened.

A. Ok. A gentleman walked in the store. He was just waiting for the person in front of him to leave. As I proceeded to ring him up for his gum, I opened the register so I can give him his change back. Then he went to his back and pulled out a gun.

Q. Okay. Now, the person that you're talking about, could you describe the person?

A. It was a male with a striped shirt, blue, white, blue. He was medium build. Close to my height.

Q. Okay. Could you tell what race he was?

A. He was white.

Q. Okay. What can you tell us about the shirt. You said it was different colors. What do you mean?

A. It was a striped colored shirt, not pinstripe, but larger stripes. It was just one solid color here and one solid color here and one solid color here (indicating).

Q. Now, you motioned on your chest. The court reporter is writing down what you say, not what you do.

A. Right.

Q. Can you describe that for us?

A. Solid vertical stripes, straight up and down, you know.

Q. Well, what happened when he pulled the gun on you?

A. When he pulled the gun it didn't really register to me because I wasn't expecting it.

Q. Um-hum.

A. When he said, while the drawer was open, "Hand me the rest of the money". I didn't really hear him until he touched me with the gun and then he yelled.

Q. Okay. What happened?

A. Well, when he touched me with the gun, I immediately knew what to do and he yelled for me to hurry or he would shoot me. And, you know, my thing was to go ahead and give him what he wanted so I don't get hurt.

Q. So what did you do?

- A. I gave him the rest of the money that was in the drawer.
- Q. Okay. Do you recall how much money he got from you?
- A. I had made a drop prior to. So there couldn't have been anymore than 100 dollars.
- Q. After he got the money, what did he do?
- A. He told me to lay down on the floor and he left.
- Q. What happened next?
- A. I got up after he left, locked the store, and called the police.
- Q. All right. Did the police come out?
- A. Well, yeah, they did.
- Q. Now, did you give anyone in particular a statement about what happened?
- A. Yes. Just to what happened.
- Q. Okay. Did your business have any sort of video equipment at the time this robbery occurred?
- A. Yes, it did.
- Q. Was it working that day?
- A. Yes.
- Q. Was there a tape going while this happened?
- A. Yes.
- Q. Did you have an opportunity after the robbery to look at the tape?
- A. Yes, I had to cue it up so the police could see what it was.
- Q. Okay. And did you look at it as well?
- A. Yes, I did.
- Q. Did it accurately and fairly show what happened to you on this particular day, the robbery you've just described for the jury?

A. Yes, it did.

Q. All right. Now, Mr. Stevens, do you see the person in court today that robbed you back on August the 5th of 2003 and took the money from the Quick Stop?

A. Yes, I do.

Q. Can you identify him for the jury, for the court?

A. Mr. Riley, the defendant.

Q. All right.

**MR. HICKS:** Your Honor, if the record will reflect the witness identified the defendant.

**THE COURT:** Let the record so reflect.

**MR. HICKS:** All right.

Q. Did you have occasion to look at photographs in a line -- an array to see if you recognized anybody?

A. Yes, I did.

Q. And when did that occur?

A. Well, as a matter of fact that night, I had looked at some. But I didn't identify him until I got some more photos in, and I picked him out pretty easy.

Q. Okay. So you had seen some other photographs that were not the person?

A. I seen about a thousand of 'em.

Q. Where?

A. At the police department.

Q. But sometime later you were able to select a photograph of the defendant?

A. Yes, I was.

**MR. HICKS:** Your Honor, may I approach the witness.

**THE COURT:** Yes, sir.

(Mr. Hicks showed exhibits to Mr. Ivarsson.)

(State's exhibits 1 and 2 were marked.)

**Q.** I'm going to hand you what has been marked state's exhibit number 1. Do you recognize this one-page document?

**A.** Yes, I do.

**Q.** First of all, how do you recognize state's exhibit number 1?

**A.** It is a statement that I made to the police after I was robbed.

**Q.** This tells the same story as the robbery you just talked about?

**A.** Right.

**MR. HICKS:** I'll move state's 1 into evidence, your Honor.

**THE COURT:** Let it be received.

(State's exhibit 1 was admitted.)

**Q.** Now, I'll also have you look at two pages here, state's exhibit number 2. Two pages. Take a look at it. Do you recognize state's exhibit number 2?

**A.** Yes, I do. These are the pictures that I was shown and this is my handwriting.

**Q.** Okay. Going first to state's exhibit 2, do you see the photograph of the person in there that you picked out?

**A.** Yes, I do.

**Q.** Where is it?

**A.** Right here in the middle on the bottom.

**Q.** Okay. Whose photograph is that?

**A.** Mr. Riley.

**Q.** The defendant?

**A.** Yes.

**Q.** Now you indicated that you were 100 percent sure that was the person that robbed you. Why 100 percent?

**A.** I can explain. Because, a long time ago my grandfather was very strict on me, and I always would turn away when he would loud talk to me. So he was, like, "Look at me when I'm talking to you," so I would look directly at him. And what sparked me to look directly at the robber, I didn't hear him when he said, "Give me the rest of the money out the drawer." When I didn't hear him the first time he yelled so I just looked at him and I stopped and I stared and got a good look at his face.

**Q.** Was there anything unusual about what you saw in his face?

**A.** Well, when he was yelling, I noticed that his upper teeth were crooked.

**Q.** Okay.

**A.** It sticks out like a sore thumb.

**MR HICKS:** Mr. Stevens, would you please stand down and come over and look at the defendant's teeth for me.

**THE COURT:** Yes, sir. You may step over there.

(Witness left the stand.)

**MR. HICKS:** Right over there.

**THE COURT:** Mr. Riley please open your mouth in order for the witness to see your teeth.

(The defendant, Mr. Riley, opens his mouth and the witness, Mr. Stevens, examines his teeth. The witness then returned to the stand.)

**Q.** Mr. Stevens, having now had an opportunity to see the defendant's teeth here in the courtroom, do you recognize what you've seen?

**A.** Yes, I do.

**Q.** How?

**A.** By the pattern of it.

**Q.** Explain what you mean, sir. When you saw the defendant's teeth, did you recognize them?

**A.** Yes, I did.

**Q.** And tell the jury how.

A. I recognized them because they were similar to mine. And I know how my teeth are, and they're like all out of sequence and they're up and down and maybe some pushed back, maybe one or two, but you'll recognize 'em if you see 'em.

Q. Now, you described in your statement, state's exhibit number 1, as well as your testimony, crooked teeth?

A. Right.

Q. What do you mean by the defendant having crooked teeth when he robbed you?

A. Well, I come across a lot of smiles. I've been in the public eye for awhile and I look at generally every customer, they smile, maybe they don't, but when they do smile I notice their teeth. That's like how I mostly identify most of the people and some people smile a lot, some people don't. What I call crooked is they're not all in sequence. That is crooked to me.

Q. So that's what you described in your statement, the defendant's teeth?

A. Yes.

**MR. HICKS:** May I approach the witness.

**THE COURT:** Yes, sir.

(State's exhibit 3 was marked.)

**MR HICKS:** I'm going to hand you what has been marked now state's exhibit number 3, a videotape. Do you recognize this particular tape?

A. Yes, I do.

Q. Now, what tape is it?

A. It's the tape from the Quick Stop.

Q. Have you seen it earlier today?

A. Yes, I have.

Q. Has it been altered or changed in any way since it was made back on August the 5th of 2003?

A. No.

**MR. HICKS:** Move state's 3 into evidence.

**THE COURT:** Let it be received.

(State's exhibit 3 was admitted.)

**MR. HICKS:** May I be allowed to publish it.

**THE COURT:** You may.

(At this point in the trial Mr. Hicks, the prosecutor plays the videotape of the robbery for the witness- Mr. Stevens, the judge, the defendant, and the prosecutor. The jury was not able to see the video but Mr. Stevens describes what happens as the tape plays. He explains that the defendant walks up to the register with a pack of gum wearing the same shirt described earlier in the testimony. He further explains that the video then shows the man pull out a gun and Mr. Stevens gives the man money out of the register. The man then leaves the store. Mr. Stevens then identifies the man as the defendant David Riley.)

**Q.** Mr. Stevens, do you recognize the man in the video who has just robbed the store?

**A.** Yes. He is sitting over there. (Mr. Stevens points to the defendant, David Riley)

**MR. HICKS:** May I approach the witness one more time?

**THE COURT:** Yes, sir.

(State's exhibit 4 was marked.)

**MR HICKS:** Lastly I am going to show you State's exhibit 4. It is a blue and white striped shirt just like the one you described earlier. It was found at Mr. Riley's house the day of his arrest.

(Mr. Hicks shows the witness the shirt found at the defendant's house.)

**MR HICKS:** Mr. Stevens, does this look like the shirt Mr. Riley was wearing the night of the robbery?

**MR. STEVENS:** It looks exactly like the shirt he was wearing.

**Q:** And how do you know this?

**A:** By the stripes and the collar. They are the same.

**MR. HICKS:** Thank you, sir. If you would please answer Mr. Ivarsson's questions he may have for you.

**THE COURT:** Mr. Ivarsson you may cross examine the witness.

**CROSS EXAMINATION by MR. IVARSSON:**

**Q.** Mr. Stevens, prior to that evening, you never saw the person that robbed you before, is that right?

**A.** No, I had seen him in the store a few times before, that is how I noticed him so easy.

**Q.** Okay. The person that robbed you, about how much time do you think he spent in the store total on that evening when this robbery occurred?

**A.** Inside the store, maybe two minutes.

**Q.** Okay, right? Okay. Of that two minutes, how much time would you say that the person that robbed you spent at the counter where you were working?

**A.** About one minute.

**Q.** How long after the robbery occurred did a police officer show up at your store to talk to you about this?

**A.** About 5, 10 minutes.

**Q.** Would that have been Officer Soto of the Police Department?

**A.** Yes, that was his name.

**Q.** To the best of your recollection, at that time did you give him a description of what you saw and what happened?

**A.** Yes, I did.

**Q.** Okay. Do you recall telling Officer Soto that the suspect had a blue and white button-down shirt with another shirt underneath it?

**A.** Not button down and I said it was striped with a collar.

**A.** Right.

**Q.** Okay. How long have you worked as a convenience store clerk at that store?

**A.** Two years total.

Q. And did you have any experience as a convenience store clerk prior to working there?

A. Yes, I have.

Q. And when you looked at the photo lineup, you were 100 percent sure it was the defendant?

A. Right.

Q. Why so sure?

A. Well, I had seen him before so it was pretty easy.

Q. Okay. You said that the suspect spent probably about one minute at the counter. When the suspect walked up, did he put a piece of gum on the counter?

A. Well, a pack of Winter Fresh gum.

Q. Okay. And when he put the gum on the counter, did you reach down and pick it up, to look at the price?

A. Nah, I already know the price.

Q. And you then turned to look at the cash register to ring it up, right?

A. Right.

Q. Okay. And is when you were ringing it up that you say the suspect pulled out a firearm?

A. Yes.

Q. Okay. And then you noticed the gun because you were looking at it, right?

A. Yeah, it would be hard not to notice. I mean, I noticed everything that was happening at the time and then he put it down on the counter.

Q. Okay. And then did your attention turn back to the cash register so you could start getting money out of it?

A. No, I already know what I had in my drawer so I was looking at his face at that point.

Q. Did you look at the cash register as you were getting the money out?

A. I might have glanced to it, but it didn't take long. I was looking at his face so I could remember it.

Q. Okay. About how long did you look at the register?

A. Just a glance, I was mainly looking at his face like I was trained by management.

Q. And the suspect immediately fled?

A. Yes.

**MR. IVARSSON:** Okay. That's all the questions I have, your Honor, thank you.

**THE COURT:** Mr. Hicks.

**MR. HICKS:** Just briefly, your Honor.

**REDIRECT EXAMINATION by MR. HICKS:**

Q. When you looked at state's exhibit number 2, photographs, you indicated your percentage as 100 percent certain?

A. Yes.

Q. Having now seen the defendant in open court and having looked at his teeth, the video, and seeing the shirt in court, how sure are you that's the man that pulled that gun on you?

A. 110 percent.

Q. Thank you, sir.

**MR. HICKS:** I have nothing further.

**THE COURT:** Mr. Ivarsson, any other questions?

**MR. IVARSSON:** That's all the questions I have, your Honor.

**THE COURT:** Thank you, sir. You may return to your seat.

(Prosecution eyewitness, Mr. Stevens, was excused.)

**MR. HICKS:** May I call the next witness your honor.

**THE COURT:** You may proceed.

**MR. HICKS:** The prosecution calls Detective Oats.

(Detective Oats approaches and takes a seat on the witness stand. He is then sworn in by the judge).

**MR. HICKS:** Good morning Detective Oats. I have a few questions to ask you about the robbery in question.

**DETECTIVE OATS:** Ok. Sounds good to me.

**MR HICKS: Q:** Detective Oats, were you able to take fingerprint samples at the crime scene?

**A:** Yes, I was. That is my main duty when the police force examines a crime scene.

**Q:** Then let's cut to the chase. Did you find fingerprints at the crime scene that matched Mr. Riley, the defendant's?

**A:** Yes, I found two sets of fingerprints in the convenience store that our forensic lab later determined to be the defendant's, Mr. Riley.

**Q:** And where were the fingerprints taken from?

**A:** From the door frame in which one exits and enters the store. There were also some at the front of the store, near the cash register.

**Q:** From the sample you took, how old do you think these fingerprints were?

**A:** Not very old. From the amount of traffic in and out of the store fingerprints get erased often. These were very fresh and stood out against any others.

**MR. HICKS:** Thank you. No more questions your honor.

**THE COURT:** Mr. Ivarsson you may cross examine the witness.

**CROSS EXAMINATION by MR. IVARSSON:**

**MR. IVARSSON:** Mr. Oats, how long will fingerprints appear on a surface?

**MR. OATS:** For a long time. Usually a month or longer just depending on the surface and if there are a lot of people touching the area.

**Q:** So these fingerprint could have been there for as long as a month?

**A:** Yes sir.

**Q:** So these fingerprints could have been a month old?

**A:** No. Like I said there is so much traffic in and out of the store that these were the freshest fingerprints in the store.

**MR. IVARSSON:** No more questions your honor.

(Detective Oats is excused from the witness stand).

**THE COURT:** Mr. Hicks do you have anymore witnesses to call?

**MR. HICKS:** Yes, I would like for Mrs. Pamela Vaughn to approach the stand.

(Mrs. Vaughn sits in the witness stand and is sworn in by the judge).

**MR. HICKS:** Mrs. Vaughn were you working at the Quick Stop Food Mart, Incorporated at 405 South Bragg Boulevard, here in New Hanover County, on the night of the robbery?

**MRS, VAUGHN:** Yes I was.

**Q:** Were you in the store at the time of the robbery?

**A:** No I was not. I was out back taking out the trash.

**Q:** Were you aware that a robbery was taking place while you were taking out the trash?

**A:** No, I had no idea.

**Q:** Did you see anyone go into or come out of the store while you were taking out the trash?

**A:** Yes, I saw a man walk in and then a few minutes later I was smoking a cigarette and he come running back out again.

**Q:** Did you get to see his face?

**A:** Not when he went in. But when he ran out he ran right past me.

**Q:** What color of shirt was he wearing?

**A:** It was blue and white striped. Just the same as the one you put into the evidence earlier.

**Q:** Do you see the man, who ran out of the store that night, in the courtroom?

**A:** Yes, it was him. (Mrs. Vaughn points to the defendant David Riley).

**Q:** Now are you sure?

**A:** Extremely sure. I had seen him in there a few times before and I have only been working there a couple of months so I recognized his face as soon as I saw him that night.

**Q:** And you also picked him out of a lineup, correct?

**A:** Yeah, a few days later they had me come to the police station and I picked him out pretty easy.

**MR. HICKS:** Thank you Mrs. Vaughn. That is all I have your honor.

**THE COURT:** Mr. Ivarsson you may cross examine the witness?

**CROSS EXAMINATION by MR. IVARSSON:**

**MR. IVARSSON:** Mrs. Vaughn, did the robber look at you the night the store was robbed?

**MRS. VAUGHN:** No, he did not look directly at me.

**Q:** And you only looked for a few seconds, right?

**A:** Yes, a few seconds.

**MR. IVARSSON:** Thank you, Mrs. Vaughn. No more questions your honor.

(Mrs. Vaughn is excused from the witness stand).

**MR. HICKS:** I'll move state's exhibit number 5 into evidence, your Honor.

**THE COURT:** Let it be received.

(State's exhibit 5 was admitted.)

**MR. HICKS:** Let it be known that State's exhibit 5 is a copy of a court document confirming that the defendant, David Riley, was arrested and convicted of a similar crime in 1998, also an armed robbery. I am talking about a previous robbery. One in which the defendant used a gun and robbed a store much in the same way he did on the night of August 5, 2003.

**THE COURT:** Mr. Ivarsson you may call your first witness.

**MR. IVARSSON:** I would like to call Jacob Reid.

(Jacob Reid sits in the witness stand and is sworn in).

**MR. IVARSSON:** Mr. Reid, how do you know the defendant, David Riley?

**MR. REID:** He is my next door neighbor and brother in law.

**Q:** How long has he been your neighbor?

**A:** For about eight or nine years.

**Q:** And was he with you on the night of the robbery?

**A:** Yes, we were watching the Atlanta Braves play baseball.

**Q:** And he was there the whole night?

**A:** Well, from about 7:45 pm until 11:00 pm or so.

**Q:** And did he ever leave or act unusual?

**A:** No, we had a good time watching the game and drinking beer.

**Q:** Did you see Mr. Riley anytime earlier in the evening?

**A:** No, I got home from work around 6 pm and didn't see him until the game started.

**Q:** But you can account for him being at your house around the time of the robbery, around 7:30 pm?

**A:** Well, he was at my house watching the game around then at 7:45 or so.

**MR. IVARSSON:** No more questions your honor.

**THE COURT:** Mr. Hicks you may cross examine the witness.

**CROSS EXAMINATION by MR. HICKS:**

**MR. HICKS:** Mr. Reid, you say you didn't notice anything unusual about the defendant David Riley the evening of the robbery?

**MR. REID:** Well, now that you mention it. I guess it was unusual that he came in sweating and when I joked about it he said that he had just finished cutting the grass.

**Q:** And you heard a lawnmower before he came over to watch the game?

**A:** No I did not hear a lawn mower.

**Q:** You say that he arrived at your house around 7:45 pm?

**A:** Yes, it was around then or a little later.

**Q:** So you can't account for his whereabouts at the time of the robbery, 7:30 pm?

**A:** No, sir.

**MR. HICKS:** No more questions your honor.

(Mr. Reid is excused from the witness stand).

**STATE V DAVID RILEY  
PROSECUTION CLOSING ARGUMENT -- MR. HICKS**

**MR. HICKS:** Folks, we're at the point of the trial where Mr. Ivarsson and I will have an opportunity to argue what we contend to you to be the evidence in the case. What we contend to you to be the believable facts throughout the case. And it's those facts which, when applied with the law will drive your verdict.

Well, it's my contention to you, folks, that the evidence points unerringly to the conclusion that there was but one robber who committed this robbery. First, we know on August 5th that we have a convenience store robbery. Second, we know the person who did it was a white male. Third, we know he's of a similar height and weight as described in the testimony today.

Now, look at what James did. He looked at over 1,000 pictures and it wasn't until he got to that one that he said, "That's the guy." And you're not talking about just this one dimensional thing. He sees him in person, he sees the whole picture, "That's the guy." He's even seen the guy in the store before, so he is no stranger.

Also, I'll give you a word that volumes, and the word is "teeth." We identify people by teeth. Dead bodies, sad to say. But when they can't be identified any other way, teeth are that reliable an instrument to identify people. He was clear when it happened. And he was clear in court. It is a distinctive feature of a person. And when he had to show the teeth, they're the same. James said they were the same. Folks, teeth are a key identifier in this case.

We know that the defendant has been in the store because his fresh fingerprints were found there. That puts him at the crime scene. The store videotape also puts him at the scene of the crime. And we also have more evidence that puts the defendant at the scene of the crime. We have a second store employee who recognized Mr. Riley as being

in the store before. So it was easier to pick him out as he ran past after committing the robbery. So we have not one but two eyewitnesses who separately agree that this is the perpetrator of the crime. They also identified his shirt that was found at his house. What more do we need?

Some may say that Mr. Riley has an alibi. But his alibi is weak to nonexistent. He is not accounted for at the time of the robbery, he comes into his brother in law's house, who is also his neighbor, sweating and no one heard a lawn mower. Pretty weak indeed considering that his friend is accounting for him.

In contrast to a weak alibi, you have many strong pieces of evidence: teeth, two eyewitness identifications, fingerprints, a videotape, and a shirt. These put together are not coincidence. They are indicative of the guilt of the defendant. Thus, the state has proven to you that David Riley committed this robbery. I ask you to use the evidence presented and find him guilty. The evidence points that he did this crime, and we know he's done other similar crimes, and we have good reason to suspect he may do more in the future. For that reason, I encourage you to find him guilty. Thank you.

### **STATE V DAVID RILEY DEFENSE CLOSING ARGUMENT -- MR. IVARSSON**

**MR. IVARSSON:** Members of the jury, it would be foolish for me to stand here before you and argue to you that those people weren't robbed. They were robbed. But there is doubt about the identity of David Riley, the young man sitting over there, as being the perpetrator of these crimes.

Mr. Stevens was probably focused on what he was doing during the robbery. As I recall, the entire encounter took just a couple of minutes. There was a gun and he looked at the register also. He was doing a transaction.

I suggest to you that he probably looked at the defendant's face fifteen to twenty to thirty seconds during that entire one minute transaction, probably thirty seconds, max. I believe on cross examination, he said that the total encounter was only two minutes. Not a very long time.

You also have another eyewitness who did not see the robber's face for more than a few seconds- while he was running and it was night. Not a very good glance if you ask me. Each of you has the ability to return a verdict of not guilty. And that's what we ask you to do. Thank you very much.

### **JUDGE JOHNSON'S CHARGE TO THE JURY.**

Members of the jury, all the evidence has been presented, it is now your duty to decide from the evidence what the facts are. You must then apply the law which I'm about to give you to those facts. It is absolutely necessary that you understand and apply the law as I give it to you; not as think it is or as you might like for it to be. And this is important because justice requires that everyone tried for the same crime be treated in the same way and have the same law applied to him.

The defendant has entered a plea of not guilty to the charge. You're the sole judges of the weight to be given to any evidence. And by this I mean if you decide that certain evidence is believable, then you must determine the importance of that evidence in light of all the other believable evidence in the case. You should also weigh all the evidence in the case. For you to find the defendant guilty of robbery with a dangerous weapon, the state must prove from the evidence that on August the 5th, 2003, the defendant took and carried away property from the person or in the presence of James Stevens without his voluntary consent by endangering or threatening his life with the use or threatened use of a dangerous weapon, the defendant knowing he was not entitled to take the property and intending to deprive that person of its use permanently, it would be your duty to return a verdict of guilty of robbery with a dangerous weapon of James Stevens.

Now, members of the jury, you've heard the evidence and the arguments of the counsel for the state and the defendant. The court has not summarized the evidence in this case. It is your duty to remember the evidence whether it has been called to your attention or not and if your recollection of the evidence differs from that of the district attorney or of Mr. Ivarsson, you are to rely solely upon your recollection of the evidence in your deliberations.

It is your exclusive province to find the true facts of the case and to render a verdict reflecting the truth as you find it. I instruct you that a verdict is not a verdict until all 6 jurors agree unanimously as to what your decision shall be. You may not render a verdict by majority vote.

Appendix D. Juror selection questionnaire.

**Please complete this juror selection questionnaire. Please be as honest as possible.**

**Age:** \_\_\_\_\_

**Gender:** Male \_\_\_\_\_ Female \_\_\_\_\_

**Are you a U.S. citizen?** Yes \_\_\_\_\_ No \_\_\_\_\_

**Ethnicity:**

\_\_\_\_ African American

\_\_\_\_ Asian American

\_\_\_\_ Caucasian

\_\_\_\_ Hispanic

\_\_\_\_ Native American

\_\_\_\_ Other

**Do you have a valid North Carolina Driver's License?** Yes \_\_\_\_\_ No \_\_\_\_\_

### **Juror Selection Questionnaire**

**Directions:**

Please rate your agreement with the following items according to the 5-point scale below. Please try to make a clear choice for each item (that is, only pick the middle option if you have absolutely no opinion one way or the other). Pick only one option for each item. Please read each item carefully and be as honest as possible.

**1= strongly disagree**

**2=disagree**

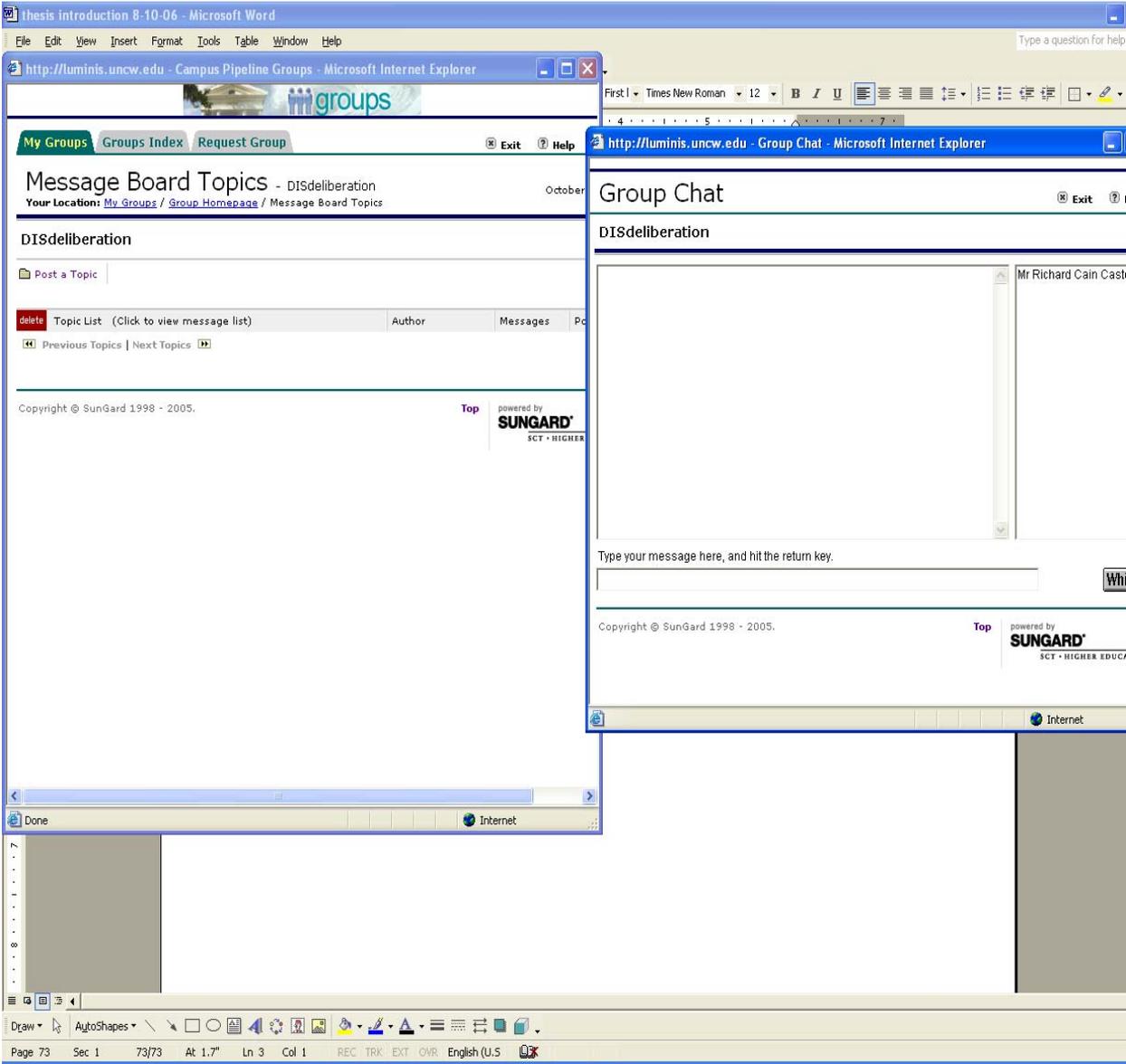
**3=neither agree nor disagree (neutral)**

**4=agree**

**5=strongly agree**

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Appendix E. Message board and chat room for the deliberation.



Appendix F. Scripted statements for the deliberation.

(enter this comment 3 minutes after the participant has posted their verdict on the message board)

**\*\*\*ADMINISTRATOR:** The deliberation session will begin in a few moments. Please wait until I have given you instructions to begin. All of the verdicts have been sent to me and I will now enter each juror's verdict. Please wait for further instructions.

(20 sec delay, then enter as fast as you can)

juror1: not guilty

juror 2: Guilty

juror 3: Not guilty

**ENTER PARTICIPANT VERDICT**

juror 5: guilty

Juror 6: Not Guilty

(10 sec)

**\*\*\*ADMINISTRATOR:** At certain times in the deliberation I will ask for all jurors to enter their verdicts so it is not necessary to call for a vote yourselves. After a period of time I will end the deliberation. Please begin the deliberation.

(20 sec)

Juror 1: I think he is not guilty because there is some doubt in my mind.

(15 sec)

juror 3: me too

(17 sec)

Jur5: How can there be doubt it is pretty obvious he did the robbery.

(17 sec)

juror 2: He was seen by two workers

(15 sec)

juror 1: one worker did not see him for very long.

(15 sec)

juror3: the lady was smoking and when I smoke I don't really pay attention to what is happening around me, especially if I was on break.

(15 sec)

juror 2: Juror 1 what do you think about his fingerprints at the crime scene?

10 sec

juror 3: a lot of people have crooked teeth so that is not good evidence

12 sec

jur 2: his finger prints were at the crime scene

10 sec

Jur 1: Juror 6 what do you think?

18 sec

juror 6: I don't know, it just feels like he didn't do it.

18 sec

juror5: you can't go on what you feel, look at the evidence. it is pretty obvious

15 sec

juror 5: the eyewitness that picked him out of a lineup and then picked him out because of his teeth is very strong for guilt

13 sec

juror 2: I agree

10 sec

juror 6: his neighbor said he was there around the time of the robbery

15 sec

jurr 1: I noticed that too.

10 sec

juror 5: I am 100% sure that he is guilty.

15 sec

juror 1: you are too sure and that is not good. The first eyewitness was not even that sure, he only saw the robber for a couple of minutes and was probably in shock after being robbed.

15 sec

juror3: I agree with juror 1 not guilty all the way, i just can't send an unguilty guy to jail

10 sec

juror 5: juror 1 why are you so certain of not guilty, you really haven't provided any reasons.

20 sec

Juror 1: I just have some doubt. Like I said before the eyewitnesses dont seem like they saw the robber for a long timeframe and that gives me doubt.

15 sec

juror 5: but what about the finger prints in the store

20 sec

Juror 1: well, the detective said that they could have been there for awhile and the guy has been in the store before so it just makes me wonder if he really did it.

12 sec

juror 2: I think they even found the shirt he wore that night which makes me very certain of his guilt.

14 sec

juror 3: anyone could have that shirt

8 sec

juror 5: this is more than coincidence with all the evidence

5 sec

Juror 1: a lot of people could have that shirt.

13 sec

Juror 1: that one witness was smoking so she probably wasn't paying attention

11 sec

juror 2: his alibi stinks his neighbor sounds like he is lying

11 sec

juror 6: that is true

5 sec

juror 5: I agree

12 sec

Juror 3: the other witness had a gun pointed at him I would be freaking out and not be able to do anything

15 sec

Jror 2: the defense hardly had any evidence to convince me of innocence

10 sec

juror 5: the defendant should have testified that might change my mind

12 sec

Juror 1: the eyewitnesses can make mistakes especially after looking at so many photos

10 sec

juror 6: all of the prosecution evidence is not very strong

9 sec

juror 3: I think so too.

13 sec

juror 2: if two workers can both independently identify the same guy then it is hard to argue against that and then you add more evidence on top of that and I have to believe he is guilty

20 sec

juror 6: I can see your point maybe he did do it

15 sec

juror 5: it just seems to me that everyone who is voting not guilty is doing it on the outside chance that he may not have done the crime, but all the evidence points to him. Maybe not one specific piece is very strong but when it all adds up it points to his guilt.

12 sec

juror 1: I still think there is reasonable doubt since they didn't find a gun

13 sec

juror 3: I am about 50-50 right now so I would have to say not guilty

7 sec

juror 5: I am even more certain of my guilt verdict now

15 sec

juror 2: Like the lawyer said there is a lot of evidence against the defendant. I think the strongest is the eyewitnesses. Since ya'll are on my side what do you think juror's 4 and juror 5?

35 sec or until participant answers, which ever comes first  
(do not post a response to Juror 4)

juror 5: finding the shirt and the teeth are strong too. there is just soo much it is hard to think he is innocent

10 sec

juror 3: My boyfriend has a shirt like that and he didn't rob the store.

10 sec

juror 6: that is a lot of evidence

20 sec

juror 6: my problem is that I am not sure, I may switch to guilty if any of you who voted guilty can give me a good reason?

35 sec or until participant answers, which ever comes first  
(do not post a response to Juror 4)

juror 2: well, the fact that there are two eyewitnesses that both identified him is really strong. Then the fingerprints and other stuff I forget all of it

10 sec

juror 5: fingerprints are the strongest for me cause they aren't that old especially if you think about all the people in and out of the store that could have erased them. Then the two eyewitnesses with separate identifications and a bad alibi. it all fits together

10 sec

**\*\*\*ADMINISTRATOR:** At this point it is time for all jurors to enter their verdicts again in order to see if you all have reached a unanimous decision.

15 sec, then enter them as fast as you can, don't forget to copy and paste the participant verdict

juror 2: guilty

juror 1: not guilty

juror 5: guilty

juror 3: not guilty.

Juror 6: not guilty

15 sec

Juror 1: Juror 4 say I've heard a lot from the others, can you convince me he is guilty? I am just having a hard time believing there is not reasonable doubt.

if participant does not post after 3 minutes move on

juror 2: I mean he is on trial it's not like they just pick this guy off the street for no reason

wait 30 sec to see if the participant posts, if the participant does not post continue (do not post a response to Juror 4)

juror 3: I don't know about that.

wait 20 more sec

**\*\*\*ADMINISTRATOR:** At this point in the deliberation I would like for every juror to state why they think the defendant is or is not guilty. This is your last chance before I call for a final vote.

15 sec

juror 2: just way too much evidence against him

12 sec

juror 6: after hearing everything again I change my verdict and I think he did it

5 sec

Juror 1: if you look at everything it just seems that he might not have done it. he has an alibi, the eyewitnesses are not very credible, and the shirt could have been anybody's.

12 sec

juror 5: there is way too much evidence for guilty- the shirt, a bad alibi, two eyewitnesses that picked him out easily, his teeth and more!

5 sec

Juror 3: not enough hard evidence to convict

15 sec

**\*\*\*ADMINISTRATOR:** The deliberation session has ended. Please enter a final verdict.

20 sec then enter as fast as you can

juror 5: Guilty

juror 2: Guilty

juror 3: not guilty

juror 4: ??? don't forget to post participant

juror 1: not guilty

juror 6: Guilty

10 sec

**\*\*\*ADMINISTRATOR:** The jury has not reached a unanimous verdict. Please proceed to packet # 5.

Appendix G. Scripted responses for the deliberation.

**SCRIPTED STATEMENTS TO PARTICIPANT FOR HIGH CERTAINTY SCRIPT:**

If the participant makes a statement:

1. **DO NOT RESPOND, IGNORE THE PARTICPANT**
2. juror 2- that is why I think he is guilty
3. jur 6: good point but I am not completely certain
4. juror 2: I agree with you
5. juror 1- true
6. juror 5: good point j4
7. juror 3: I just don't think he did it.
8. juror 6: it sounds like he might be guilty.
9. juror 5- he is so guilty
10. juror 2:that is evidence for guilt
11. juror 1: he has got to be not guilty

If the participant asks a specific question to a juror:

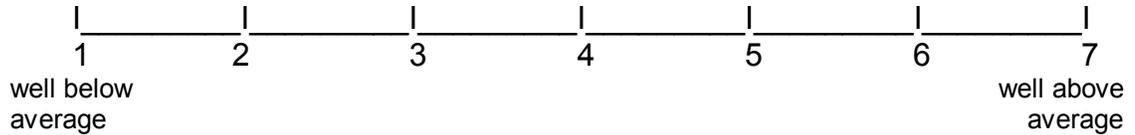
1. **DO NOT RESPOND, IGNORE THE PARTICPANT**
2. juror :I'm not sure.
3. juror :I guess so.

\*\*\*\*(recycle once you have reached the end)

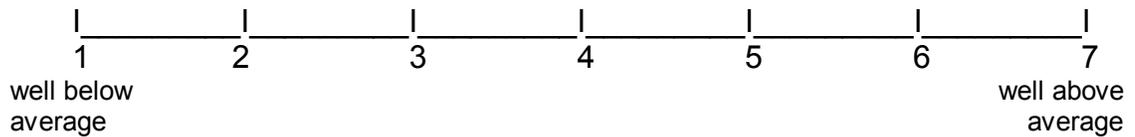
Appendix H. Exit survey.

Please take a few minutes to answer the following questions. There is no right or wrong answer so please be as honest as possible.

1. Compared to the other jurors, please rate the degree of your participation in the deliberation (please circle a number):

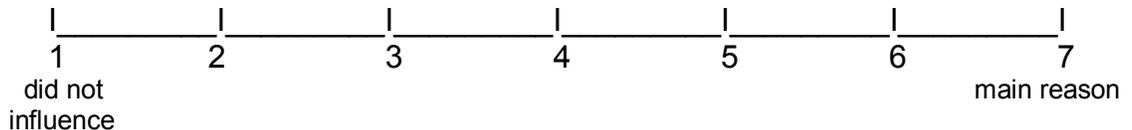


2. Compared to the other jurors how would you rate your attempt(s) to influence the jury to take on your point of view/verdict choice? (please circle a number):

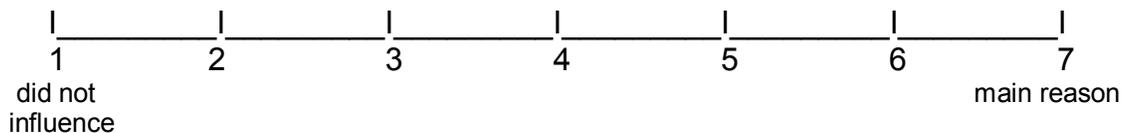


3. Please rate the extent to which your **attempt(s) to influence** the other jurors was related to your degree of :

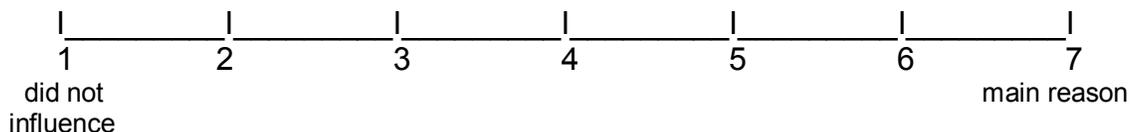
a. you were very certain of your verdict (please circle a number)



b. your duty as a juror (please circle a number)

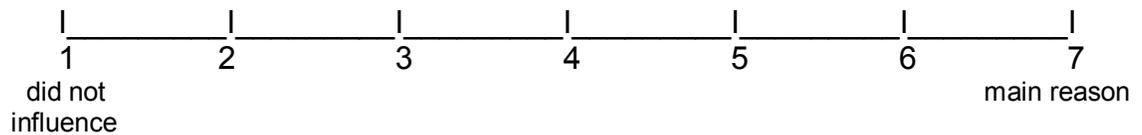


c. you enjoy interacting with others (please circle a number)

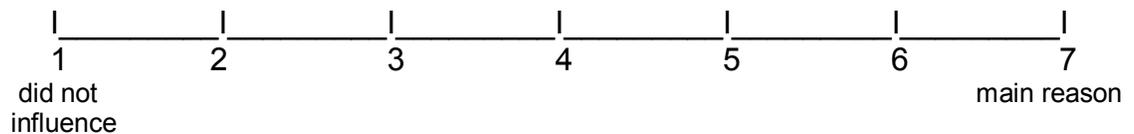


4. Do you feel that the extent to which you **participated in** the deliberation was related to the degree that:

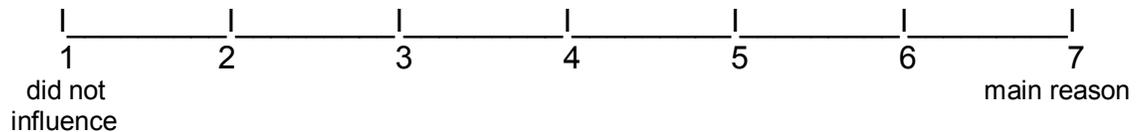
**a. your duty as a juror** (please circle a number)



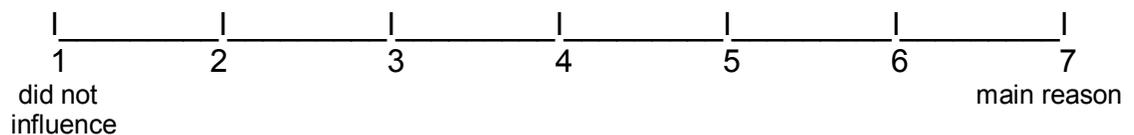
**b. you enjoy interacting with others** (please circle a number)



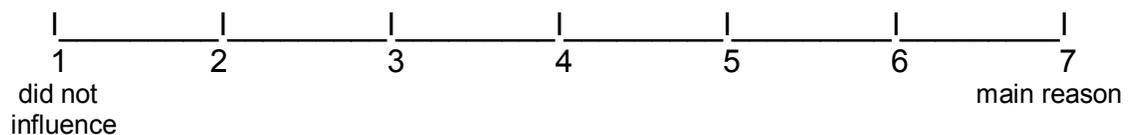
**c. you felt it was the right thing to do (i.e. you felt personally responsible to participate)** (please circle a number)



**d. you were very certain of your verdict** (please circle a number)

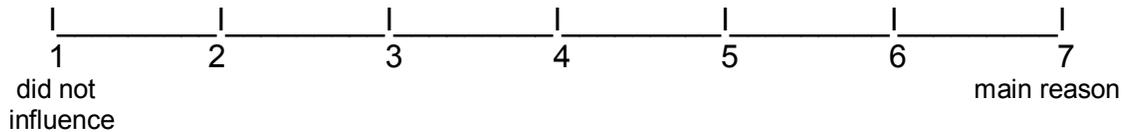


**e. you would do so in most group situations** (please circle a number)

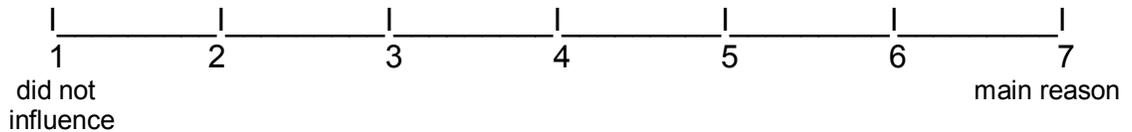


5. Was your actual participation related to:

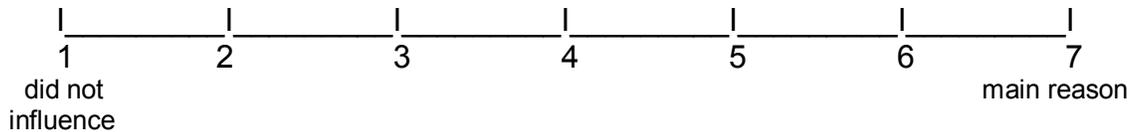
**a. trying to influence the other jurors to accept your verdict**  
(those, if any, opposed to you) (please circle a number)



**b. asking questions to try and figure out the best verdict choice**  
(please circle a number)



**c. listening to other jurors in order to decide the best verdict choice**  
(please circle a number)



6. Out of the following choices what do you think was the strongest piece(s) of evidence that lead to your verdict choice?

- a. they found the gun in the defendant's house
- b. the videotape of the crime
- c. the defendant admitting his guilt
- d. two separate eyewitness identifications
- e. the alibi provided by the defendant's neighbor
- f. the fingerprints at the crime scene



Appendix I. Exit survey results.

**1. Rate your:**

	<b>Degree of participation</b>	<b>Attempt to influence</b>
<b>mean</b>	5.6	5.9
<b>median</b>	6.0	6.0
<b>standard deviation</b>	1.1	1.0

**2. Was your attempt to influence related to:**

	<b>(a) Certainty of verdict</b>	<b>(b) Duty as a juror</b>	<b>(c) Enjoyment of interacting with others</b>
<b>mean</b>	6.2	5.5	4.9
<b>median</b>	6.0	6.0	5.0
<b>standard deviation</b>	0.9	1.3	1.8

**3. Was your participation related to:**

	<b>Duty as a juror</b>	<b>Enjoyment of interacting with others</b>	<b>Feelings of personal responsibility</b>	<b>Certainty of verdict</b>	<b>What you would do in most group situations</b>
<b>mean</b>	5.4	4.8	5.5	6.3	5.4
<b>median</b>	6.0	5.0	6.0	7.0	6.0
<b>standard deviation</b>	1.4	1.7	1.4	1.0	1.4

**4. During the deliberation you mainly tried to:**

	<b>(a) Influence the other jurors</b>	<b>(b) Ask questions to figure out the best verdict choice</b>	<b>(c) Listen to other jurors to decide the best verdict choice</b>
<b>mean</b>	6.0	3.9	4.3
<b>median</b>	6.0	4.0	5.0
<b>standard deviation</b>	1.2	1.8	1.8