

RECEIVED

Jan 20 2023

SC Court of Appeals
RECEIVED

MAR 05 2019

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenwood County

J. Mark Hayes, II, Circuit Court Judge

JAMAL HAKEEM,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001116

APPENDIX

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JANELL GREGORY
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JULY 13-14, 2015.....	1
<u>ANDERS BRIEF OF APPELLANT</u>	232
<u>STATE V. HAKEEM</u> , 2017-UP-075 (S.C. CT. APP. FILED FEB. 8, 2017)	245
REMITTITUR	247
APPLICATION FOR POST-CONVICTION RELIEF	248
RETURN.....	260
AMENDED POST-CONVICTION RELIEF APPLICATION.....	268
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED FEB. 27, 2018.....	271
ORDER OF DISMISSAL.....	309
INDICTMENTS AND SENTENCE SHEETS.....	325

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

EIGHTH JUDICIAL CIRCUIT
IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 JAMAL HAKEEM,)
)
)
 DEFENDANT.)
 _____)

TRANSCRIPT OF RECORD
2015-GS-24-00855
2015-GS-24-00856

JULY 13-14, 2015
GREENWOOD, SOUTH CAROLINA

BEFORE:

THE HONORABLE EDWARD W. MILLER, JUDGE

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

C. YATES BROWN, ASSISTANT SOLICITOR
WADE DOWTN, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

GEDDES ANDERSON, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.

Scott: Russ (In-camera)	
Direct Examination by Mr. Brown.....	23
Cross Examination by Mr. Anderson.....	28
Redirect Examination by Mr. Brown.....	33
Whitfield Brooks(In-camera)	
Direct Examination by Mr. Brown.....	35
Cross Examination by Mr. Anderson.....	43
Bird Hakeem (In-Camera)	
Direct Examination by Mr. Anderson.....	51
Cross Examination by Mr. Brown.....	62
Jamal Hakeem (In-camera)	
Direct Examination by Mr. Anderson.....	67
Cross Examination by Mr. Brown.....	70
Whitfield Brooks (In-camera)	
Direct Examination by Mr. Brown.....	74
Cross Examination by Mr. Anderson.....	76
Shkuntula Smith (In-camera)	
Direct Examination by Mr. Brown.....	77
Cross Examination by Mr. Anderson.....	83
Opening Statements.....	90
Jill Boland	
Direct Examination by Mr. Brown.....	95
Tealee Keeno	

Direct Examination by Mr. Brown.....	98
Shkuntula Smith	
Direct Examination by Mr. Brown.....	102
Cross Examination by Mr. Anderson.....	112
Redirect Examination by Mr. Brown.....	116
Mary Katherine Constant	
Direct Examination by Mr. Brown.....	118
Scott Russ	
Direct Examination by Mr. Brown.....	121
Cross Examination by Mr. Anderson.....	126
Redirect Examination by Mr. Brown.....	131
Whitfield Brooks	
Direct Examination by Mr. Brown.....	133
Cross Examination by Mr. Anderson.....	152
Redirect Examination by Mr. Brown.....	158
Bird Hakeem	
Direct Examination by Mr. Anderson.....	165
Cross Examination by Mr. Brown.....	176
Closing Arguments.....	188
Jury Charge.....	205
Verdict.....	221
Sentence.....	225
Certificate of Reporter.....	231

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
S1	Consent to search		124
S2	Photo lineup	75	110
S3	Photo of Jamal Hakeem	110	111
S4	911 Call CD	96	97
S5	Video surveillance video	99	100
S6	Photo	106	106
S7	Photo	106	106
S8	Photo	106	106
S9	Photo	106	106
S10	Photo		138
S11	Photo		138
S12	Photo		139
S13	Photo		141
S14	Photo		141
S15	Photo		141
S16	Photo		143
S17	Photo		143
S18	Photo		143
S19	Photo		143
S20	Photo		144
S21	Photo		148
S22	Photo		148
S23	Photo		148

S24	Photo	148
S25	Bag with jeans	150
S26	Bag with jacket	151
C-1	Defendant requested voir dire	22
C-2	Jury foreman name	118
C-3	Jury note	216
C-4	Jury note	218
C-5	Jury note	221
C-6	Jury note	

1 TRIAL DAY 1-07/13/15

2 THE COURT: The first trial that we're going to have is
3 The State of South Carolina vs Jamal Hakeem. First
4 indictment is 2015-GS-24-0855, it's an indictment for armed
5 robbery. This indictment alleges that Jamal Hakeem in
6 Greenwood County on or about April 11, 2013 did willfully
7 and unlawfully while armed with a deadly weapon feloniously
8 take from the person or presence of Shkuntula Lenecia Smith
9 by means of force or intimidation goods or money described
10 as U.S. currency with the intent to deprive the owner of
11 Greenwood Petroleum Company/Shell Station number 105
12 permanently of such property in violation of the statutes
13 and laws of this state. The next indictment, 2015-0856 is
14 an indictment for the possession of a firearm or knife
15 during the commission of a crime. This indictment alleges
16 that Jamal Hakeem in Greenwood County on or about April 11,
17 2013 did possess a firearm or visibly displayed what
18 appeared to be a firearm or visibly displayed a knife during
19 the commission of a violent offense, that is armed robbery.
20 Now, Ladies and Gentlemen, to these offenses Mr. Hakeem has
21 pled not guilty. With that plea certain rights apply to him
22 and to every person who is charged with a crime in this
23 country and that is that he is presumed to be innocent
24 unless and until the State, who is the charging body, can
25 prove to a jury beyond any reasonable doubt, each and every

1 element of each offense that he is charged with. Please
2 keep that in mind throughout the course of these
3 proceedings. I would also tell you that these indictment
4 which I have published to you and read to you are just what
5 they appear to be and that is pieces of paper. You are to
6 take no inference or make any presumption from the fact that
7 those indictments were issued. They are just the formal
8 documents which allow the case to wind its way through our
9 justice system to arrive here in court for a resolution.

10 Before I go any further I would ask the lawyers to stand and
11 introduce themselves and their client. From the State?

12 MR. BROWN: Yes, Your Honor. Thank you. My name is
13 Yates Brown and I am a Deputy Solicitor here in Greenwood
14 and Abbeville County. We are in the Eighth Circuit which is
15 Greenwood, Abbeville, Laurens, and Newberry. Seated to my
16 left is Wade Downtin, also here in the Eighth Circuit with
17 our office, and also Whitfield Brooks. He is with the
18 Sheriff's Department in Greenwood County. Also with us is
19 Shay Smith who is the victim.

20 THE COURT: Thank you very much. Yes, sir, Mr.
21 Anderson.

22 MR. ANDERSON: My name is Geddes D. Anderson, lawyer in
23 Greenwood and I have been for a number of years. I am
24 representing today Jamal Hakeem.

25 THE COURT: Thank you very much. Is there any member of

1 the jury panel who is related by blood or marriage or has a
2 business, personal, or social relationship with any of the
3 attorneys involved in this case or any member of the Eighth
4 Circuit Solicitor's Office. If so, please stand.

5 (WHEREUPON NO POTENTIAL JUROR STOOD.)

6 Is there any member of the jury panel related by blood
7 or marriage or have a business, personal, or social
8 relationship with Mr. Jamal Hakeem? If so, please stand.

9 (WHEREUPON NO POTENTIAL JUROR STOOD.)

10 I'm going to read a list of potential witnesses in the
11 case and I'll need to know the same about these people.
12 Brandon Strickland, Whitfield Brooks, Shkuntula Lanisha
13 Smith, Bird Hakeem, Greg Allison, Wes Love, Scott Russ,
14 Tealee Keeno, Jill Bolen, Travis Anderson, Mary Katherine
15 Constant, Ken Downing. Is there any member of the jury
16 panel related by blood or marriage or who has a business,
17 personal, or social relationship with any of those potential
18 witnesses I've just read? If so, please stand.

19 (WHEREUPON NO POTENTIAL JUROR STOOD.)

20 Is there any member of the jury panel who is aware or
21 have any knowledge about any of the events that are alleged
22 in the indictments? If so, please stand.

23 All right, sir. Hang on one second. Your name, sir?

24 JUROR: Robert Simmons, Juror 126. I am employee of the
25 Index Journal.

1 THE COURT: Okay, thank you very much. Is there any
2 member of the jury panel who has ever been a victim of or
3 charged with this type of an offense? If so, please stand.

4 (WHEREUPON NO POTENTIAL JUROR STOOD.)

5 Is there any member of the jury panel who is a member
6 of or contributor to any group who's primary concern is the
7 promotion of law enforcement or victim's rights such as
8 MADD, SADD, or CAVE. If so, please stand.

9 (Whereupon, no potential juror stood.)

10 Is there any juror who knows of any reason whatsoever
11 why you shouldn't serve on this jury, with particular
12 emphasis on your ability to be fair and impartial and to
13 judge this case solely on the merits of the evidence
14 presented here in court and the law as I will give it to
15 you. If you can't do that, then please stand now.

16 (Whereupon, no potential juror stood.)

17 Let me see the lawyers up here for one second.

18 Whereupon, a sidebar was held.)

19 I have one last question. Is there any member of the
20 jury panel or immediate family member who is now employed or
21 ever been employed at a convenience store. If so, please
22 stand.

23 (Whereupon, a potential juror stood.)

24 THE COURT: Yes, ma'am. Your name and number?

25 JUROR: Number 83.

1 THE COURT: And your name and number?

2 JUROR: Latoya Jackson, number 68.

3 THE COURT: Okay. Would the fact that you had that
4 connection with a convenience store impair your ability to
5 be fair and impartial in this case? In other words, can you
6 judge this case solely on the merits of the evidence
7 presented in court and the law as I give it to you? Can you
8 do that, number 83?

9 JUROR: Yes.

10 THE COURT: Number 63?

11 JUROR: Yes, sir.

12 THE COURT: Thank you very much. Ladies and gentlemen,
13 we are preparing to pick a jury.

14 (Off the record briefly.)

15 THE CLERK: Juror 69, David Johnson. What say the
16 State?

17 MR. BROWN: Please present Mr. Johnson.

18 THE CLERK: What say the Defense?

19 MR. ANDERSON: Swear the juror.

20 THE CLERK: Bring your belongings. If they pick you,
21 bring your belongings and come down and have a seat in one
22 of the chairs.

23 (Whereupon, Juror takes a seat in the jury box.)

24 THE CLERK: Juror number 99, Susan Pate. What say the
25 State?

1 MR. BROWN: Please present Ms. Pate.

2 THE CLERK: What say the Defense?

3 MR. ANDERSON: Swear the juror.

4 THE CLERK: Ms. Pate, if you'll bring your belongings
5 and come have a seat.

6 (Whereupon, Juror takes a seat in the jury box.)

7 THE CLERK: Juror number 82, Teleathia Logan. What say
8 the State?

9 MR. BROWN: Please present Ms. Logan.

10 THE CLERK: What say the Defense?

11 MR. BROWN: Swear the juror.

12 (Whereupon, Juror takes a seat in the jury box.)

13 THE CLERK: Juror number 58, Gregory Griffin. What
14 says the State?

15 MR. BROWN: Please present Mr. Griffin.

16 THE CLERK: What say the Defense?

17 MR. ANDERSON: Swear the juror.

18 THE CLERK: Mr. Griffin, if you'll come down.

19 (Whereupon, Juror takes a seat in the jury box.)

20 THE CLERK: Juror number 32, Maria Creswell. What say
21 the State?

22 MR. BROWN: Please present Ms. Creswell.

23 MR. ANDERSON: Swear Ms. Creswell.

24 THE CLERK: Ms. Creswell, if you'll come on down.

25 (Whereupon, Juror takes a seat in the jury box.)

1 THE CLERK: Juror number 56, Casey George. What say
2 the State?

3 MR. BROWN: Please present Mr. George.

4 THE CLERK: What say the Defense?

5 MR. ANDERSON: Please excuse Mr. George.

6 THE CLERK: Have a seat, Mr. George. Juror number 121,
7 Nancy Saxon. What say the State?

8 MR. BROWN: Please excuse Ms. Saxon from the trial of
9 this case.

10 THE CLERK: Have a seat, Ms. Saxon. Juror number 132,
11 David Sutter. What say the State?

12 MR. BROWN: Please present Mr. Sutter.

13 THE CLERK: What say the Defense?

14 MR. ANDERSON: Swear Mr. Sutter.

15 THE CLERK: Mr. Sutter, if you'll come here.

16 (Whereupon, Juror takes a seat in the jury box.)

17 THE CLERK: Juror number 54, Thomas Gary. What say the
18 State?

19 MR. BROWN: Please excuse Mr. Gary from the trial of
20 this case.

21 THE CLERK: Have a seat, Mr. Gary. Juror number 66,
22 Sheri Hill. What say the State?

23 MR. BROWN: Please present Ms. Hill.

24 THE CLERK: What say the Defense?

25 MR. ANDERSON: Swear Ms. Hill.

1 THE CLERK: Ms. Hill, come down and have a seat.

2 (Whereupon, Juror takes a seat in the jury box.)

3 THE CLERK: Juror number 13, Kevin Smith. What say the
4 State?

5 MR. BROWN: Please excuse Mr. Smith from the trial of
6 this case.

7 THE CLERK: Have a seat Mr. Smith. Thank you. Juror
8 number 106, Keba Posley. What say the State?

9 MR. BROWN: Please present Ms. Posley.

10 THE CLERK: What say the Defense?

11 MR. ANDERSON: Swear Ms. Posley.

12 THE CLERK: Ms. Posley, if you'll come here.

13 (Whereupon, Juror takes a seat in the jury box.)

14 THE CLERK: Juror number 87, Donald Martin. What say
15 the State?

16 MR. BROWN: Please present Mr. Martin.

17 THE CLERK: What say the Defense?

18 MR. ANDERSON: Swear Mr. Martin.

19 THE CLERK: Mr. Martin, come down and have a seat.

20 (Whereupon, Juror takes a seat in the jury box.)

21 THE CLERK: Juror number 74, Robert Kilgore. What say
22 the State?

23 MR. BROWN: Please present Mr. Kilgore.

24 THE CLERK: What say the Defense?

25 MR. ANDERSON: Please excuse Mr. Kilgore.

1 THE CLERK: Have a seat, Mr. Kilgore. Juror number 83,
2 Amanda Loggins. What say the State?

3 MR. BROWN: Please excuse Ms. Loggins from the trial of
4 this case.

5 THE CLERK: Juror number 68, Latoya Jackson. What say
6 the State?

7 MR. BROWN: Please present Ms. Jackson.

8 THE CLERK: What say the Defense?

9 MR. ANDERSON: Swear Ms. Jackson.

10 THE CLERK: Ms. Jackson, have a seat..

11 (Whereupon, Juror takes a seat in the jury box.)

12 THE CLERK: Juror number 105, Tara Ponder. What say
13 the State?

14 MR.. BROWN: Please present Ms. Ponder.

15 THE CLERK: What say the Defense?

16 MR. ANDERSON: Swear Ms. Ponder.

17 THE CLERK: Ms. Ponder, if you'd come down..

18 (Whereupon, Juror takes a seat in the jury box.)

19 THE CLERK: Juror number 140, Aretha Thompkins. What
20 say the State?

21 MR. BROWN: Please present Ms. Thompkins.

22 THE CLERK: What say the Defense?

23 MR. ANDERSON: Swear Ms. Thompkins.

24 THE CLERK: Ms. Thompkins, come have a seat.

25 (Whereupon, Juror takes a seat in the jury box.)

1 THE CLERK: And this is for an alternate.

2 THE COURT: Two and one. One and two, I mean.

3 THE CLERK: Juror number 110, Aaron Quarels.

4 THE COURT: No, he was --

5 THE CLERK: No? Okay.

6 THE COURT: Yeah, I transferred him.

7 THE CLERK: Juror number 30, Tyler Conner. What say
8 the State?

9 MR. BROWN: Please present Mr. Conner.

10 THE CLERK: What say the Defense?

11 MR. ANDERSON: Please excuse him from the trial of this
12 case.

13 THE CLERK: Juror number 21, Lori Calloway. Laurie
14 Calloway. What say the State?

15 MR. BROWN: Please present Ms. Calloway.

16 THE CLERK: What say the Defense?

17 MR. ANDERSON: Swear Ms. Calloway.

18 THE CLERK: Ms. Calloway, if you'll come have a seat.

19 (Whereupon, Juror takes a seat in the jury box.)

20 THE COURT: All right. Any exception or objection to
21 the jury's impanelment pursuant to Batson or J.E.B.?

22 MR. ANDERSON: Your Honor, may we approach?

23 THE COURT: Yeah, come on up.

24 (Whereupon, a sidebar was held.)

25 THE COURT: Okay. I get to sit up here and watch the

1 happy expressions of everyone who is selected to serve as
2 they approach the jury box. I will tell you, Ladies and
3 Gentlemen, that I know they're probably wishing they could
4 trade seats with you, but I think they're the lucky ones.
5 It is rare to be invited or called -- not invited
6 necessarily, up to the courthouse to sit in the jury pool,
7 and it is much rarer to ever be selected to serve. I can't
8 emphasize the importance of our jury system in maintaining
9 an orderly society in our country. And it is a small price
10 that we all pay as part of our citizenship. And it may not
11 be something you would elect to do, choose to do, ask to do,
12 but I believe if you are selected to serve at the end of
13 your service you will have a deep sense of pride and civic
14 reward for the work that you've done for your fellow
15 citizens.

16 With that, Ladies and Gentlemen, I'm going to excuse
17 you all and ask you to call back after 6:00 tonight to find
18 out when you next need to call back or report. Okay? Thank
19 you.

20 (Whereupon, remainder of jury pool was excused.)

21 THE COURT: Okay, Ladies and Gentlemen, I'm serious
22 about what I said about you all should feel like you're the
23 lucky ones. And I hope that you will find at the conclusion
24 of your service that what I've said about deep sense of
25 satisfaction and reward will be true. And it's not

1 something that many people ever get an opportunity to do,
2 but this is where the rubber meets the road. And this is
3 where justice is done. It's vital and it's very important
4 and it sounds corny, but I don't think I'm overstating the
5 importance of jury service in our country.

6 We have a dispute about the facts in this case which
7 can't be resolved in any fashion other than to ask you all
8 to come service as jurors, sit in the courtroom, listen to
9 the evidence as it's presented to you, and make a decision
10 which will resolve this dispute. I would remind you that
11 every person who is charged with a crime is presumed to be
12 innocent unless and until the charging body, in this case
13 the State of South Carolina, can prove to you all beyond any
14 reasonable doubt each and every element of each offense that
15 that person is charged with. And I also remind you that
16 these indictments that I read to you are not evidence. And
17 you should take no presumption or make any -- or any
18 inference from the fact that they've issued. They are just
19 the pieces of paper, the formal documents which allow the
20 case to wind its way through our system to come here to
21 court to be resolved.

22 Now, I break a trial down into five parts, so you all
23 have an idea, a procedural roadmap about where you're going
24 and what's next and all that. The first part we'll engage
25 in after we break for lunch. And I guess we're kind of

1 doing it now. The opening statements. The opening
2 statements to you by the lawyers. They're brief and they're
3 not argumentative. The second part of the trial is the meat
4 and potatoes of every case, and that is the presentation of
5 the testimony and the evidence in the case. And evidence
6 will come to you generally in one of three ways. I don't
7 know in this case how they'll come to you, but one of three
8 ways is usual. The first way we all -- as we all think
9 about it is oral testimony from this witness chair. Second
10 most common way is through the introduction of tangible
11 items or documents. And the third most common way is when
12 the lawyers and the parties all agree that some fact is so
13 beyond dispute that you should accept it as being true, or
14 what we call a stipulation of the parties. So it'll come to
15 you in one of those three ways. Third part of the trial,
16 after all the evidence is presented the lawyers make their
17 closing arguments to you and they argue the facts to you and
18 they advocate on behalf of their position and urge you to
19 resolve this dispute in their favor. The fourth part of the
20 trial will be my charge to you on what the law is as it
21 applies to this case. And the fifth part of the trial will
22 be when you all retire to the jury room and make your
23 decision. You talk about it and you resolve this dispute.
24 So those are the five parts. They're not of equal length,
25 but you'll know sort of where you are and what's coming

1 next.

2 Now, I'm sure I'll ask you to do a lot of things
3 throughout the course of this trial. First thing that I ask
4 you to do is to keep an open mind. We go through all the
5 questioning to qualify you all to serve so that we ensure we
6 have a fair and impartial jury that's not -- it doesn't come
7 in here with a preset idea about how the case should be
8 resolved. So keep that open mind throughout the course of
9 the trial, through all the evidence and through the law and
10 -- just keep an open mind.

11 The second thing I ask you to do, which is very
12 important but may not seem so simple, and we've all been
13 hearing it all our lives, pay attention. It's easy to let
14 your mind drift off, daydream a little bit, and if you do
15 that you may miss the way a witness responds to a question,
16 which we call a witness' demeanor. And that might become
17 important when you're in your deliberations at the
18 conclusion of the trial and then you'd be at a disadvantage
19 with your fellow jurors if you had missed it.

20 The third thing that I ask you to do, and instruct you
21 to do, is not to discuss this with anyone until you are in
22 your deliberations with your fellow jurors. That means if
23 it goes overnight don't talk about it with your family.
24 Don't talk about it with people you trust. When you break
25 for lunch don't talk about it with anybody. Don't talk

1 about it with the bailiffs and don't talk about it among
2 yourselves. Because even an innocent comment from someone
3 who you like and trust might impact your state of mind in
4 this matter. And we don't care what anybody out there on
5 the street thinks. They're not making the sacrifices that
6 you're making to be here. We're interested only in what you
7 all think because you all are here listening to the evidence
8 and the law. So doing that wouldn't be fair to these people
9 involved in the case, it wouldn't be fair to your fellow
10 jurors, and most importantly it wouldn't be fair to yourself
11 to let someone who's not making the sacrifices that each of
12 you are making to have any input in the outcome of this
13 case. So you can't talk about, and that includes you can't
14 go visit the scene. You can't go on the Internet and look
15 something up. You can't get on some social media and talk
16 about it. If something like that happens we have to through
17 the whole thing out and start over. So just don't talk
18 about it.

19 The other thing -- a couple things I'll tell you is you
20 might expect, you'll see -- the lawyers came up and spoke
21 with me out of your presence. There may be from time to
22 time -- I'll ask you to step out of a courtroom, back to
23 your jury room, so we can discuss some matter. We are not
24 trying to deceive you in any way, but we may be trying to
25 keep something from you. If it's a piece of evidence that

1 should not be admitted, then I think you can understand why
2 you shouldn't hear it. And many times when I'm speaking
3 with them, when they came up here we're talking about
4 logistics and timing and all that sort of thing. We do have
5 to handle matters outside of your presence, and that's to
6 ensure that what you do hear is constitutionally proper.

7 So I would tell you that finally you all are the sole
8 judges of the facts in this and every case. A trial judge
9 is not allowed by law to have an opinion about the truth of
10 these matters. It's entirely up to you to decide that.
11 You're the sole judges of the facts. That same law makes me
12 the sole judge of the law. So if you think that you have
13 any idea as to what the law is or what the law should be and
14 it differs from what I tell you the law is throughout the
15 case and at the end of the case, you're going to swear an
16 oath when you come back from lunch to set aside your own
17 opinion and apply the law precisely as I state it to you,
18 and that ensures that each and every person in the court of
19 law is tried by the same law. Okay?

20 With that, I'm going to excuse you to be back at about
21 2:00. We've got some work we've got to do out of your
22 presence. And I hope you have a pleasant lunch and we'll
23 see you at two. The bailiff will show you where to go.

24 (Whereupon, the jury exited the courtroom at 12:03
25 p.m.)

DIRECT EXAMINATION: SCOTT RUSS

22

1 THE COURT: For the record, I'm going to hand my copy
2 of the Defendant's voir dire requests and make it a Court's
3 exhibit. I don't think I asked all of them over Mr.
4 Anderson's objection, so it's part of the record. Anything
5 else?

6 MR. ANDERSON: Your Honor, I take exception to
7 particularly didn't charge -- I mean, didn't make inquiry on
8 what -- request number three, four and eight.

9 THE COURT: Okay. Since I've given my copy away I
10 don't know what they are.

11 MR. ANDERSON: Your Honor, I'll read it for the record,
12 but they've got it up there.

13 THE COURT: I got it. Let me just take a look at it.
14 Three -- okay.

15 MR. ANDERSON: And four, and number eight, which we
16 have previously discussed.

17 THE COURT: Yes, sir. Okay. Very good. What do we
18 need to do now?

19 MR. ANDERSON: Your Honor, I have a motion. It's
20 entitled Notice of Motion and Motion to Suppress Evidence
21 from a Warrantless Search of Home of Jamal Hakeem.

22 THE COURT: All right. Shifts the burden to the State.
23 Is it a warrantless search?

24 MR. BROWN: Judge, this case -- it was -- they did not
25 get a search warrant in this case, but they were able to

DIRECT EXAMINATION: SCOTT RUSS.

23

1 speak to the wife of Mr. Hakeem, her name is Bird Hakeem,
2 there at the house on April 11th, 2013. Their house located
3 -- was located at here in Greenwood. I have
4 the officer here, Scott Russ who is actually -- was a
5 witness to Ms. Bird Hakeem signing the consent to search,
6 and also Whit Brooks who is the lead investigator on this
7 case who was also there when this consent to search was
8 signed by Ms. Hakeem.

9 THE COURT: Okay.

10 MR. BROWN: And I can pass forward if Your Honor would
11 like to look at it prior or I can call on the witnesses.

12 THE COURT: Well, let's put them up as witnesses. This
13 is a serious case.

14 MR. BROWN: Yes, sir. The State calls Scott Russ.

15 THE COURT: With serious consequences.

16 SCOTT RUSS, having been first duly
17 sworn, testified as follows:

18 EXAMINATION IN CAMERA

19 DIRECT EXAMINATION

20 BY MR. BROWN:

21 Q Mr. Russ, where do you work?

22 A Greenwood Sheriff's Office.

23 Q How long have you been with the Greenwood Sheriff's
24 Office?

25 A A little over 18 years.

DIRECT EXAMINATION: SCOTT RUSS

24

1 Q What are your duties with the Sheriff's Department?

2 A My duties in the Sheriff's Office, my main priorities
3 are to investigate any type of crimes.

4 Q And in particular on April 11, 2013 did you become
5 involved in an investigation of an armed robbery at the
6 Shell Station at the corner of Bypass -- 757 Bypass 225
7 South?

8 A I did.

9 Q And what was your involvement in the investigation?

10 A My involvement was to assist the other investigators
11 there on the scene at the time, and to assist with the
12 interactions in the house.

13 Q Now, Mr. Russ, at the time were you part of the Drug
14 Enforcement Unit with Greenwood Sheriff's Department and the
15 Greenwood PD?

16 A I think during that time was the transition period
17 where I had left the Drug Enforcement Unit and was
18 transitioning over to the criminal investigation division.

19 Q Now, in this case, when you went to the house at
20 , whose house was that?

21 A That would be the Hakeem residence.

22 Q And did you speak with Mr. Hakeem?

23 A No; I did not.

24 Q Who did you speak with that day?

25 A That would be Ms. Hakeem.

DIRECT EXAMINATION: SCOTT RUSS

25

1 Q Bird Hakeem?

2 A That's correct.

3 Q And what did you understand her to be? What was her
4 relationship with Jamal Hakeem?

5 A I understood her to be the wife of Mr. Hakeem.

6 Q And she led you to believe that was true; is that
7 correct?

8 A That's correct.

9 Q And when speaking with her, to the best of your
10 recollection, how did that conversation go if you can
11 remember? If you don't --

12 A I don't remember a whole lot of detail about the
13 conversation there at the residence. Like I said, it's been
14 two years ago. I had such a small part in it at that
15 particular point in time.

16 Q Now, when you did speak with Ms. Hakeem did you provide
17 her a consent to search warrant?

18 A That I did, yes.

19 Q Mr. Russ, I'm going to show you what's been marked for
20 identification as State's Exhibit 1. Can you take a look at
21 this and tell me what that is.

22 A This would be the consent to search residence form for
23 dated 4/11 that I provided to Ms. Hakeem.

24 Q And is that a form prepared by the Greenwood County
25 Sheriff's Office?

DIRECT EXAMINATION: SCOTT RUSS

26

1 A It is.

2 Q And can you from the top -- beginning reading at the
3 top just what's on that form.

4 A It's a Greenwood Drug Enforcement Unit consent to
5 search residence. It has the date of April 11th, 2013. The
6 location is , , South Carolina. It
7 says, "I, Bird Hakeem, having been informed of my
8 constitutional rights not to have a search made of my
9 residence/property hereinafter mentioned with a search
10 warrant, and of my right to refuse consent to such -- a
11 search, do hereby authorize Staff Sergeant Scott Russ with
12 the Greenwood Drug Enforcement Unit to conduct a complete
13 search of my residence/property located at ,
14 , South Carolina. These agents are authorized by
15 me to take my -- take from my residence/property any papers,
16 letters, materials, photos, impressions or other property
17 which may be necessary for their investigation. This
18 written permission is being given by me to the above named
19 DEU agent voluntarily and without threats or promises of any
20 kind." The signature below of Bird Hakeem and witnessed by
21 myself.

22 Q Now, when you presented that to Ms. Hakeem did you make
23 any threats?

24 A No..

25 Q Did you coerce her in any way to get her to sign this

CROSS-EXAMINATION: SCOTT RUSS

27

1 consent to search form?

2 A No.

3 Q Were there any other investigators there that were
4 around you when you were having Ms. Hakeem read over the
5 consent to search form and also while she was signing it?

6 A There were other investigators there. The only one
7 that I can remember at the time was Brooks. Whitfield
8 Brooks.

9 Q But in your recollection --

10 A Just in the general area.

11 Q In your recollection there was never any threats or any
12 type of coercion there?

13 A To my recollection, no. It's just not my practice.

14 Q And after she signed the consent to search form, the
15 first page of it, tell me what the second page of that
16 State's ID 1 is.

17 A Second page is basically the same thing as a return on
18 the search warrant, which was -- it listed what we removed
19 from the residence. Actually crossed out the blank area.
20 Nothing further removed. It's initialed by Ms. Hakeem and
21 dated same by me.

22 Q What was taken from the house as part of that consent
23 to search?

24 A Multicolored with gray hooded jacket from the closet
25 containing two unopened boxes of Newport cigarettes, which

CROSS-EXAMINATION: SCOTT RUSS

28

1 was item A. Item B would be Arizona size 44 jeans from the
2 closet.

3 Q And on that second page where Ms. Bird Hakeem signed it
4 did she make any mention of being threatened or coerced?

5 A No, she didn't.

6 Q Was there any mention of that on the front page?

7 A No, she didn't. There's no mention.

8 Q To the best of your recollection was Ms. Hakeem
9 volunteering to let you all come in? Was she being helpful
10 through the investigation up to that point?

11 A Yes. Up to that point she had been totally cooperative
12 with everything, even to the point of making phone calls to
13 Mr. Hakeem to get him to come back to the residence.

14 MR. BROWN: No further questions for Mr. Russ.

15 CROSS-EXAMINATION

16 BY MR. ANDERSON:

17 Q Mr. Russ, I think you said you don't remember a lot
18 about the details, it being about two years ago?

19 A That's correct.

20 Q And that's understandable. I think it's been about two
21 years and three months, thereabouts. Do you recollect
22 though that there were at least in excess of six or seven
23 officers there?

24 A There were several investigators on scene at the time,
25 but she, I, and one other investigator were in the house

CROSS-EXAMINATION: SCOTT RUSS

29

1 with her when the investigation was taking place.

2 Q In fact, the first thing that you perhaps did, or some
3 of the officers there did, was go into the house to see if
4 Mr. Hakeem was there; isn't that correct?

5 A I wasn't part of that part.

6 Q So you don't know whether that happened or not?

7 A No, sir.

8 Q But it is normal procedure perhaps for the officers to
9 search -- do a quick search inside. I'm not saying there's
10 not necessarily anything wrong with it, because there was a
11 gun reported that was being used.

12 A Right.

13 Q Alleged. So it wouldn't surprise you that when they
14 came to the residence that immediately the officers went
15 into the home, of course, to search for the -- for who they
16 felt to be the individual who was the perpetrator of the
17 crime; is that right?

18 A It wouldn't surprise me for them to secure the scene.
19 But as I said, I wasn't there for that particular part.

20 Q And you got there, though -- now, you are with the
21 county?

22 A That's correct.

23 Q Do you know what agency, what county or city got there
24 first, or do you know?

25 A I do not know.

CROSS-EXAMINATION: SCOTT RUSS

30

1 Q Now, in fact, Ms. Hakeem certainly was an individual --
2 and I'll ask you to try to remember. There you are looking
3 for her husband and she is an individual that would be --
4 understandable, of course, that she would be somewhat
5 distressed and with a degree of anxiety, wouldn't you think?

6 A I can't speak for her.

7 Q Well, but you could view her. I know it's been two
8 years. I understand that. But you could understand if she
9 was somewhat in a state of anxiety.

10 A Again, I don't -- you know, I can't answer for her
11 state at that particular time.

12 Q I know you can't. But you can also know that it had
13 been more than six or seven officers there, too, with the
14 guns drawn when they -- when you pulled up there?

15 A No..

16 Q Would they been drawn -- of course, this lady is going
17 to testify later on. But would they have been drawn when
18 the first unit of officers got there? Wouldn't they have
19 been drawn to go into the house, and she'd been there by
20 herself?

21 A Sir, I don't know what happened prior to my arrival.

22 Q Okay. Now, I believe that she was summoned out of the
23 house and you went down -- and I think the consent itself --
24 we admit that it was her signature on the consent. There's
25 no problem there. She says she signed it. But rather than

CROSS-EXAMINATION: SCOTT RUSS

31

1 being in her home you -- she's summoned outside, and you're
2 sitting at some picnic table of some sort; is that right?

3 A My recollection was inside the house. She and I had
4 stepped inside the house.

5 Q So you're sitting inside the house? That's your
6 recollection of it?

7 A That's my recollection of it.

8 Q And was she ever summoned outside to a picnic area
9 where a picnic table was? You recollect anything about a
10 picnic table?

11 A No, sir. I don't.

12 Q Now, I'll ask you this question. Was it you, or did
13 you hear anybody say this to this lady right here, Ms.
14 Hakeem -- again, going back two years. A little over two
15 years. I understand that. But words -- not necessarily the
16 exact words that I'm about to say, but words to the effect
17 of, "We can go back and get a search warrant and mess up
18 your belongings or we can be more careful." Not necessarily
19 exact words, but words to that effect?

20 A No, sir. I don't recall those.

21 Q You didn't say that?

22 A No, sir.

23 Q And you didn't hear that?

24 A No, sir.

25 Q But let me -- just a few more questions with you, Mr.

CROSS-EXAMINATION: SCOTT RUSS

32

1 Russ. Were you present when Mr. Hakeem drove up, after
2 being summoned by his wife that law enforcement people were
3 at the residence. To come on home. And he came on home a
4 short time later. Were you there when he arrived home?

5 A I don't remember if I was there at that point in time
6 or not. Not -- you know, I don't know where they dealt with
7 him, but I don't remember seeing him.

8 Q But you do -- besides Mr. Brooks -- besides Mr. Brooks,
9 who's here in the courtroom, do you recollect whether Mr.
10 Brandon Strickland, Officer Strickland, was he there?

11 A I do remember Mr. Strickland there.

12 Q And you don't recollect whether or not you were there
13 when Mr. Hakeem drove up in his SUV, I believe it was?

14 A No, sir. I don't recollect.

15 Q So you can't answer any questions about -- on that
16 issue?

17 A That's correct.

18 Q So obviously you were not part of the party of officers
19 who took him, Mr. Hakeem, down to the county jail and had
20 him processed?

21 A I was not part of that.

22 MR. ANDERSON: All right. That's all the questions I
23 have.

24 THE COURT: Redirect?

25 MR. BROWN: Just a few, Your Honor.

REDIRECT EXAMINATION: SCOTT RUSS

33

1 REDIRECT EXAMINATION

2 BY MR. BROWN:

3 Q Mr. Russ, was Ms. Hakeem under arrest during this time?

4 A She was not.

5 Q And actually when you had Ms. Hakeem sign State's ID

6 Number 1, that was after Jamal Hakeem had already been

7 arrested, right?

8 A To my knowledge it was, yes.

9 Q So he was not even on the premises at that time?

10 A I don't recall ever seeing him.

11 Q And as Mr. Anderson stated, or part of his questioning,

12 did you understand that Ms. Hakeem actually called --

13 cooperated and called Jamal Hakeem to have him come to the

14 house; is that right?

15 A That was correct.

16 Q Was she threatened or coerced to do that?

17 A That was what I was being told at the time.

18 Q That she had just called and cooperated?

19 A She did cooperate.

20 Q And again, that's her signature on the State's ID

21 Number 1 consenting to the search of her home at 16 -- or

22 ... ?

23 A That's my signature, yes. The document I provided her.

24 Q And also Bird Hakeem's initials also dated 4/11/13?

25 A Right. I always get them to initial it.

DIRECT EXAMINATION: WHITFIELD BROOKS

34

1 MR. BROWN: No further questions.

2 THE COURT: Let me just ask. What time of day was
3 this? Do you remember, approximately?

4 THE WITNESS: Early to mid-afternoon maybe.

5 THE COURT: So it was in the daylight hours?

6 THE WITNESS: Yes, sir.

7 THE COURT: And do I understand that you had a
8 conversation with her. She called the Defendant. He came
9 to the house. He was -- wait a minute. He was arrested,
10 and then the consent to search was signed? How did that
11 work? I'm -- tell me.

12 THE WITNESS: Okay. I see where your confusion is.
13 Apparently everything had kind of taken place with Mr.
14 Hakeem being arrested at that point in time, and I was being
15 told that she had made phone calls to try to get him back
16 there to the residence, getting my information together.
17 And that she was a cooperating individual at this point, so
18 -- which is what led us to a consent to search.

19 THE COURT: Okay.

20 MR. BROWN: Judge, our next witness can clarify the
21 timeline a little bit better.

22 THE COURT: All right. Thank you, Officer. Thank you
23 very much.

24 THE WITNESS: Yes, sir.

25 (Whereupon, the Witness stepped down from the witness

DIRECT EXAMINATION: WHITFIELD BROOKS

35

1 stand.)

2 MR. BROWN: The State calls Mr. Brooks.

3 WHITFIELD BROOKS, having been first

4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BROWN:

7 Q Mr. Brooks, state your full name.

8 A Whitfield Brooks.

9 Q And where do you work?

10 A The Greenwood County Sheriff's Office.

11 Q How long have you worked there?

12 A This is my seventh year. My ninth year in law
13 enforcement total, but seven with Greenwood County.

14 Q And what are your job -- what's your job description
15 there?

16 A Criminal investigations. Specifically at this point in
17 time drug and narcotic investigations.

18 Q In 2013 what was your job or your duty there?

19 A I was a detective with the criminal investigations
20 division of the Sheriff's Office.

21 Q And on April 11th, 2013 did you investigate an armed
22 robbery to the Shell gas station over on the Bypass, over on
23 225 South? Bypass 225 South?

24 A I did.

25 Q And just to lay out a timeline so everybody is familiar

DIRECT EXAMINATION: WHITFIELD BROOKS

36

1 with how it went down. What time did that armed robbery
2 occur, or around what time?

3 A To my recollection, the armed robbery actually occurred
4 midday, possibly as late as early afternoon. But somewhere
5 in the middle of the day.

6 Q Around 2:30 --

7 A That sounds correct.

8 Q -- in the afternoon? After -- when that armed robbery
9 happened what happened after that? How did you get
10 involved?

11 A I was on duty at the time as a detective when I heard
12 the call go out over the radio. I was not too far away and
13 responded. I ended up being the first officer on scene, and
14 then subsequently became the lead investigator on the case.

15 Q And when you were on scene what did you do during your
16 investigation?

17 A Initially upon my arrival I made contact with the
18 victim, Ms. Smith, who was the clerk. She was inside the
19 store with the doors locked. Once she saw me, saw that I
20 was a member of law enforcement, she opened the door. I
21 went in and spoke with her. First made sure that she was
22 okay. Made sure the suspect was not still on scene. I then
23 began getting information from her regarding the physical
24 description of the suspect. His direction of travel once he
25 left, to the best of her knowledge. I then began relaying

DIRECT EXAMINATION: WHITFIELD BROOKS

37

1 that information over county radio to all other responding
2 units, securing the crime scene. Stuff of that nature.

3 Q And were you able to get a good idea pretty -- you
4 know, early -- fairly early in your investigation of who
5 might have done this?

6 A Yes, sir. I was.

7 Q How did you do that?

8 A By speaking to Ms. Smith in the store. Asking her what
9 happened in detail. She told me that when the suspect
10 approached the counter he had picked up a couple of
11 alcoholic beverages that he sat on the counter and then
12 asked her for three packs of Newport cigarettes. She then
13 asked him for his date of birth. He told her his date of
14 birth. When she turned around to retrieve the cigarettes
15 and turned back around, that's when he had presented the
16 firearm.

17 Q Were you also able to see in-store video?

18 A Yes, sir. I was.

19 Q And that's when one of the video custodians of Shell
20 arrived while you were on scene?

21 A Yes, sir.

22 Q With that birth date that Ms. Smith gave you that Mr.
23 Hakeem had given her, did you run that through a database,
24 or have somebody run it through the database?

25 A I did. While I was on scene after I received that

DIRECT EXAMINATION: WHITFIELD BROOKS

38

1 information from Ms. Smith. A short time later Lieutenant
2 Anderson of the Greenwood Police Department pulled up on
3 scene to offer any assistance from the Greenwood Police
4 Department. At that time I asked him to run that date of
5 birth through RMS, which is like our local database.

6 Q And what did you find out with that date of birth?

7 A That there was -- at that time there was only one
8 person in RMS with that date of birth and that was Mr. Jamal
9 Hakeem.

10 Q After you found out -- got a name with the date of
11 birth, looked at -- pulled a picture of Mr. Hakeem, was Ms.
12 Smith able to identify him?

13 A We had a -- based off that information we had a six
14 person photo lineup generated and she identified him from
15 the photo lineup.

16 Q After you had an ID of the alleged armed robber what
17 did you do next?

18 A We then proceeded to the residence that was on record
19 as being the Hakeem residence on

20 Q And once you got there who did you meet?

21 A I did not personally speak with Ms. Bird Hakeem, but
22 she was the only person at the residence at that time, to my
23 recollection.

24 Q And was Mr. Hakeem there?

25 A He was not.

DIRECT EXAMINATION: WHITFIELD BROOKS

39

1 Q How did Mr. Hakeem get there, or when did he get there?

2 A Again, I did not personally speak to Ms. Hakeem. But
3 the first officers on scene at the residence spoke with Ms.
4 Hakeem, explained to her what was going on, and she placed a
5 phone call to Mr. Hakeem telling him that law enforcement
6 was at the residence and he needed to come -- to come back
7 to the residence.

8 Q Did Jamal Hakeem arrive back at the home?

9 A He did a short time later.

10 Q And when he arrived at the home what happened next?

11 A When he arrived in the driveway at that point we
12 immediately placed him under arrest. And again, immediately
13 without speaking -- due to the severity and violent nature
14 of the crime, at that point we weren't sure if he was still
15 armed, but we placed him under arrest shortly after turning
16 into the driveway of the residence.

17 Q And at that time you did search the vehicle? His
18 vehicle?

19 A Correct.

20 Q After you placed him under arrest, was the consent to
21 search done then or was that done later? What happened with
22 Mr. Hakeem at that time?

23 A Mr. Hakeem was placed under arrest, the vehicle was
24 searched, and Mr. Hakeem was transported to the law
25 enforcement center.

DIRECT EXAMINATION: WHITFIELD BROOKS

40

1 Q And when he was at the law enforcement center what took
2 place there?

3 A He was interviewed after being advised of his Miranda
4 rights by myself and Detective Strickland. That lasted
5 maybe -- I don't know. Somewhere between an hour, two
6 hours. At the conclusion of that interview he was booked
7 into the detention center.

8 Q And at the conclusion of that interview what did you do
9 next?

10 A Myself, Detective Strickland, along with Scott Russ;
11 and if memory serves me correctly, I believe Lieutenant
12 Kenny Downing -- Captain Kenny Downing now, returned to the
13 residence on

14 Q And at that time when you returned to the residence who
15 was at the home?

16 A Ms. Bird Hakeem, possibly one or two children. That
17 seems to stand out in my memory, but I'm not certain.

18 Q And when you all -- after you interviewed him -- after
19 you interviewed Jamal Hakeem and went back to
20 is that when the consent to search form was signed by Bird
21 Hakeem?

22 A Yes, sir.

23 Q And were you there in the presence of Bird Hakeem and
24 also Scott Russ when this was signed?

25 A Yes, sir. To my recollection. Scott Russ and Ms.

DIRECT EXAMINATION: WHITFIELD BROOKS

41

1 Hakeem were seated. I don't remember if it was on a couch
2 in the livingroom or like at the kitchen table. But Scott
3 Russ was talking to Ms. Hakeem about the consent and
4 explaining all of that. And I was -- I was not seated with
5 them but I was in close proximity in the residence.

6 Q Did you ever hear Mr. Russ, or did you or anybody else
7 from the Sheriff's Department, or any other law enforcement
8 agency ever make threats to Ms. Hakeem?

9 A Not that I heard or recall.

10 Q Did you ever coerce her in any way?

11 A No, sir.

12 Q Was Ms. Hakeem ever threatened to be arrested if she
13 didn't cooperate?

14 A No, sir. Not -- not that I ever heard.

15 Q Based on what you -- what you saw and your recollection
16 did Ms. Hakeem freely and voluntarily sign the consent form?

17 A Yes, sir. She was completely cooperative at that point
18 in time.

19 Q And I'm going to show you what's been marked as State's
20 ID 1. Do you see any markings on that which show that she
21 did not consent?

22 A No, sir.

23 Q After Ms. Hakeem signed the consent to search form did
24 you participate in the search of the home?

25 A I did, sir.

DIRECT EXAMINATION: WHITFIELD BROOKS

42

1 Q And was the house ransacked?

2 A No, sir.

3 Q What did you find during your search?

4 A In the closet in the bedroom shared by Mr. and Ms.
5 Hakeem we located -- or I located clothing consistent with
6 what Mr. Hakeem was seen on video wearing during the
7 commission of the robbery. In the pocket of a hoodie type
8 jacket were two unopened packs of Newport cigarettes.

9 Q Now, showing you again State's ID Number 1. Are the
10 items taken from the house at , are those
11 documented on that form?

12 A Yes, sir. They are.

13 Q Was there anything else taken from that house?

14 A No, sir.

15 Q Was any damage done to the house?

16 A No, sir.

17 Q Was Ms. Hakeem arrested after the search of this house?

18 A No, sir.

19 Q Has Ms. Hakeem ever been arrested as a result or in
20 investigation of this crime?

21 A No, sir.

22 Q To the best of your recollection Ms. Hakeem freely and
23 voluntarily signed the consent to search warrant?

24 A Yes, sir.

25 MR. BROWN: No further questions.

CROSS-EXAMINATION-WHITFIELD BROOKS

43

1 THE COURT: Cross?

2 CROSS-EXAMINATION

3 BY MR. ANDERSON:

4 Q Are you related to the Chief of Police?

5 A I am, sir.

6 Q What's your relationship?

7 A I am his son.

8 Q That's what I thought.

9 A Yes, sir.

10 Q All right, Mr. Brooks. So you were there at the
11 outset?

12 A At the residence on ? If I remember correctly,
13 one or two officers had arrived at that residence prior to
14 me, but I was there before Mr. Hakeem returned.

15 Q How many officers do you recollect being there when you
16 got there?

17 A When I arrived at the residence, this is before Mr.
18 Hakeem had arrived and was taken into custody, I remember
19 possibly as many as two officers being on scene. After I
20 arrived maybe two or three more arrived.

21 Q And with you? Did somebody come with you?

22 A I don't recall if anyone else was riding in the vehicle
23 with me. As I said, shortly after I arrived, like I said,
24 at least two or three other officers did arrive.

25 Q Did you see them go in the house perhaps looking for

CROSS-EXAMINATION-WHITFIELD BROOKS

44

1 Mr. Hakeem? Was that done while you were there initially,
2 that precaution taken?

3 A Not that I recall. It could have been happening right
4 as I arrived. My first memory -- the first thing I recall
5 upon arriving at the residence was the officers that had
6 arrived before me speaking with Ms. Hakeem near the door to
7 the residence.

8 Q Now, of course again, Ms. Hakeem will testify later.
9 But let's get down to -- the Judge wanted to know something
10 about the timing. We're talking about broad daylight,
11 aren't we?

12 A Yes, sir. As far as when we were at the residence
13 prior to Mr. Hakeem being arrested.

14 Q So you get there around probably the -- according to
15 what I know about it, it happened about -- the robbery
16 happened about 2:30. So you would have gotten to the
17 convenience store about 2:45 or something like that?

18 A I was -- I was on scene at the convenience store within
19 minutes of the call being dispatched. Like I said --

20 Q So you were already --

21 A -- I was real close. Yes, sir. I was.

22 Q So that puts you on then about -- after the
23 convenience store, had a pretty good distance to go to
24 . So you got there a little before 3:00, something
25 like that?

CROSS-EXAMINATION-WHITFIELD BROOKS

45

1 A I was on scene at the convenience store for probably at
2 least a half hour. I would -- again, it's been a little
3 while. But I would estimate that we arrived at
4 in the neighborhood of 3:30 possibly.

5 Q All right. This was on a Thursday afternoon, or do you
6 recollect that?

7 A I don't -- I know it was during the work week. I don't
8 recall the specific --

9 Q All right. Now, I think you've testified that you were
10 present when Mr. Hakeem arrives at the home.

11 A I was.

12 Q And you were present -- or do you recollect -- I think
13 one of the officers, maybe Mr. Strickland, asked her to call
14 him. Isn't that -- or did you hear anything?

15 A I know that Ms. Hakeem did place a phone call to Mr.
16 Hakeem asking him to return to the residence. I don't
17 recall which officer asked her to do that or spoke to her
18 about that.

19 Q But you agreed that shortly thereafter he did arrive on
20 the scene?

21 A I'd say within 15 minutes.

22 Q And you're prepared to testify, of course, that there
23 was no -- outside of them -- the initial officers going
24 there to -- which is a precaution -- reasonable precaution
25 to take, going inside the house? That no article was taken

CROSS-EXAMINATION-WHITFIELD BROOKS

46

- 1 then; is that right?
- 2 A During that initial period. Yes, sir. That's correct.
- 3 Q Now, so eventually during the afternoon Mr. Hakeem
- 4 arrives and everybody at the scene of the home there
- 5 understands that he is the focal point, the prime suspect --
- 6 more than a person of interest, but the prime suspect in
- 7 this armed robbery; is that right?
- 8 A Yes, sir.
- 9 Q He is at his home. Did he ever go inside his home or
- 10 was he simply arrested outside out of his -- when he got out
- 11 of his car?
- 12 A He was arrested outside at his vehicle.
- 13 Q All right. I'll ask you to recollect whether you
- 14 remember -- I know it's been over two years ago. Do you
- 15 remember any discussion with him about a search warrant?
- 16 A No, sir. I don't recall that.
- 17 Q You've been down yonder to the -- to the Criminal
- 18 Justice Academy.
- 19 A I have, sir.
- 20 Q And you've studied search warrants.
- 21 A I have, sir.
- 22 Q All right. You know what the procedure is, don't you?
- 23 A Regarding obtaining a search warrant?
- 24 Q Yes, sir.
- 25 A I do, sir.

CROSS-EXAMINATION-WHITFIELD BROOKS

47

1 Q And are you -- I'm trying to remember what you -- are
2 you the lead investigator in this case?

3 A Yes, sir. I was.

4 Q Did it occur to you to talk to him while he was at his
5 home about getting a search warrant?

6 A No, sir. It didn't.

7 Q And I think you've testified that you were part of the
8 interrogation that Mirandized -- Mirandizing Mr. Hakeem down
9 at the police station?

10 A I was present for him being given his Miranda rights in
11 the interview. Yes, sir.

12 Q Did anybody during that interrogation, that you
13 recollect, discuss with him a consent about getting a search
14 -- getting permission to search his home?

15 A During the interview?

16 Q That's right.

17 A Not that I recall. I'm certainly not saying it didn't
18 happen, but not that I recall. I believe there would be a
19 record of that.

20 Q I appreciate that. I appreciate that. I know it's --
21 I know it's been over two years. But you don't recollect
22 anybody -- you got a prime suspect, Mr. Brooks. Now you got
23 a prime suspect. You got somebody you believe is probably
24 guilty of this crime. And you've got the Magistrate's Court
25 just about next door. You understand that? You're back

CROSS-EXAMINATION-WHITFIELD BROOKS

48

1 here right behind the --

2 A Yes, sir.

3 Q -- on . Right here in the afternoon.

4 Afternoon now. The Magistrate is still there. You know

5 that, don't you? He's still in his office. I'm just

6 asking. You might not even remember that. I don't know.

7 I'm just asking the question.

8 A May I speak to -- perhaps provide a little bit of

9 clarity to the --

10 Q Go ahead.

11 A To the best of my recollection, the armed robbery

12 occurred around 2:30. We arrived at the Hakeem residence in

13 the neighborhood of 3:30. Somewhere between 15 and 30

14 minutes after that Mr. Hakeem returned, was placed under

15 arrest. At that point in time we had no indication that Mr.

16 Hakeem had ever been back into his residence subsequent to

17 the armed robbery. Again, when we arrived he was not there.

18 He was transported to the Law Enforcement Center,

19 Mirandized, interviewed, booked in. At that point in time,

20 as time had progressed, it was after business hours, after

21 5:00. I think as you were speaking about the Magistrate's

22 office. It was at that point in time subsequent to Mr.

23 Hakeem's arrest and interview that information came together

24 and developed that he had potentially returned to the

25 residence at some point and then left the residence again

CROSS-EXAMINATION-WHITFIELD BROOKS

49

1 prior to our arrival and that implements, or tools, or
2 fruits of this crime could be located at the residence. At
3 that point in time the Magistrate's office was closed for
4 that day. And that was after -- some point after 5:00.

5 Q I just mentioned the fact that it may or may not have
6 been -- the Magistrate may or may not have been -- but that
7 doesn't stop you from going to see the Magistrate and
8 getting the search warrant, does it?

9 A No, sir. It doesn't. I was trying to answer your
10 question more thoroughly, Mr. Anderson.

11 Q I understand. I appreciate you explaining that.

12 A Yes, sir.

13 Q That's your version of what you remember of whether or
14 not the Magistrate was still in the office. I'm just
15 bringing that up that you still, Mr. Brooks -- now, you
16 still could -- had reason to see a Magistrate, and they are
17 very accommodating, needless to say.

18 A Certainly.

19 Q And you know that.

20 A Yeah.

21 Q I just mentioned that perhaps the place of business was
22 open. I mean, the place of getting the warrant was open.
23 But even if it wasn't open you could have got a warrant.

24 A Sure. I could have.

25 Q That's what this hearing is all about, whether or not

CROSS-EXAMINATION-WHITFIELD BROOKS

50

1 there's reason. But more important, when they've got
2 somebody pointed out as being the prime suspect to discuss
3 it with him, and if he says no you know you got to get a
4 warrant. That's what this witness -- this hearing, this
5 little part of the trial is all about. And you know as a
6 matter of law that here's the prime suspect. All kind of
7 constitution rights begin to get triggered particularly when
8 he's been arrested. The man's been arrested. He's locked
9 in a jail cell.

10 A Yes, sir.

11 Q And you all are going back out yonder to the house and
12 talking to the little unsuspecting wife.. That's what the
13 point of this hearing is, whether or not that's reasonable.

14 THE COURT: Well; don't argue the law with him. Just
15 ask him the questions.

16 MR. ANDERSON: All right. That's all I have.

17 THE WITNESS: Thank you, sir.

18 THE COURT: Is there anything else?

19 MR. BROWN: Not right now.

20 THE COURT: All right. Thank you. You can step down.
21 Thank you very much.

22 THE WITNESS: Yes.

23 (Whereupon, the Witness stepped down from the witness
24 stand.)

25 THE COURT: Anything else?

DIRECT EXAMINATION: BIRD HAKEEM

51

1 MR. BROWN: Judge, not from the State on this.

2 BIRD HAKEEM, having been first duly

3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. ANDERSON:

6 Q Ms. Hakeem, your full name, please.

7 A Bird Hakeem.

8 Q And you are married to Jamal Hakeem?

9 A Yes.

10 Q All right. Now, going back in time to April the 11th,

11 2013. You recollect that date?

12 A Yes.

13 Q All right. Now, I think you have given a statement to

14 the authorities about that particular date and what happened

15 on that afternoon; is that right?

16 A Yes, sir.

17 Q You understand the purpose of this hearing. All right.

18 Now I'll ask you to go forward and recollect what you were

19 doing when the authorities, law enforcement arrived at your

20 home on that date. Try to remember the time that you first

21 saw the officers come upon your premises.

22 A I made it home from work around 3:00.

23 Q Where are you employed, by the way?

24 A Lakewood -- I was -- I'm employed at Lakewood

25 Elementary School in Greenwood, South Carolina.

DIRECT EXAMINATION: BIRD HAKEEM

52

1 Q And how long had you been employed there?

2 A Almost two years.

3 Q So you get home from school and what happens?

4 A A little before 3:00. I was getting ready to -- when I
5 come in I kind of clean up my house a little, because I
6 leave at like 5:45 in the morning times. So when I come in
7 --

8 Q Let me interrupt you. When you left at 5:45 to go to
9 your job was your husband still at home?

10 A Yes, sir.

11 Q So he was not there when you returned?

12 A Right.

13 Q All right. And what happened then?

14 A I was opening door -- opening the door and I saw all of
15 these officers with rifles and they were pointed towards the
16 house, and when I pulled the door open it was like -- he
17 wasn't close up to me but it was like in my face. And I
18 almost like dropped. And --

19 Q Wait. When you opened the door?

20 A When I opened the door.

21 Q And was there a knock on the door?

22 A No.

23 Q Well, what summoned you to go outside?

24 A No. What happened was, I always open up the doors and
25 everything when I get ready to clean my house. Let the

DIRECT EXAMINATION: BIRD HAKEEM

53

1 sunshine in and air the house out and stuff like that.

2 Q I got you. And all of a sudden you saw these officers?

3 A All these officers all around my house.

4 Q And what's your best recollection as to how many

5 officers were there?

6 A Anywhere from seven to --

7 Q If you don't remember --

8 A It was a lot. I don't remember the exact number, but

9 it was a lot of them.

10 Q When you say a lot, would you say five or six, or eight

11 or 10, or --

12 A It was like from seven to 10, something like that.

13 Q Something like that. All right. Go forward with the -

14 -

15 A And when I saw the officer, like I said, I almost

16 dropped, and then they hollered come out, come out. So I

17 went out and I was standing on the steps.

18 Q Let me interrupt. Now, at that point in time when you

19 were summoned outside to come out, guns -- were they drawn?

20 A Yes, they were.

21 Q All right. And was it something about people being --

22 officers being behind trees, or up in the trees or something

23 like that, or what -- what happened about that?

24 A I saw them -- I saw them behind the trees and behind

25 the -- on the side of the house. They were on the other

DIRECT EXAMINATION: BIRD HAKEEM

54

1 people's property all behind the trees. And then there was
2 one in our front yard with the gun pointed directly at the
3 door, and another fellow on the -- at the next tree right
4 beside him.

5 Q Once they saw you were obviously a woman, what happened
6 then?

7 A They hollered come out.

8 Q And then what happened when you came out?

9 A They started questioning me when I came out on the
10 steps and they asked was anyone in the house and I said no.
11 And quickly they -- I went out to the picnic table, which is
12 probably about 10 or 12 steps from the door. And I sat on
13 the picnic table, because I was like weak. I was like -- my
14 legs were weak. And they started questioning me about my
15 son. And I said my son is not here. He's not even a
16 resident of South Carolina. And they asked me, well, who's
17 Hakeem. I said, I don't know a Hakeem. I said, the only --
18 I said my last name is Hakeem. My name is Bird Hakeem. And
19 he said who else here name Hakeem. I said my husband's name
20 is Jamal Hakeem. And then they wanted to know did he have a
21 black truck, did he have a hat, did he have a red plaid
22 jacket, and where was he. And when they said where was he I
23 said, well, let me call him. So I called him on the phone,
24 and I gave them the phone when I told --

25 Q Wait a minute. Let me interrupt you. Did you see

DIRECT EXAMINATION: BIRD HAKEEM

55

1 officers go in the house when they called you out or --

2 A They went in and did a quick check.

3 Q I got you.

4 A Yeah.

5 Q All right. So they did go in.

6 A They went in.

7 Q As a precaution.

8 A I would think so.

9 Q All right. Go ahead.

10 A Well, when I got -- I called him on the phone and I

11 told him what was going on he said give him the phone, so I

12 gave him the phone. And they asked him where was he, and

13 they wanted to come pick him up. He said no, I'm coming to

14 you. He said, I'm on my way back to you now. So when he

15 got there, they had pulled me around -- I went back through

16 the livingroom to the outside carport, and officers stood in

17 the carport with me for my safety. That's what he told me.

18 Because it was like -- they didn't know what might happen.

19 And I didn't see any of the arrest. Then they left. And

20 they came --

21 Q Now, of course, you've heard testimony this morning

22 about this consent to search. Now, are you saying you

23 didn't see him getting arrested?

24 A No.

25 Q And then you were outside -- or at this point at the

DIRECT EXAMINATION: BIRD HAKEEM

56

1 carport?

2 A Yes.

3 Q And is that close to a picnic table?

4 A No. That's in a -- I had to go back through my
5 livingroom to go back out the back door to the back carport.
6 To the back. It's in the back.

7 Q And up to this point in time there's been some
8 discussion, testimony about sitting in the livingroom, or
9 sitting on the couch, or something like that. Up to this
10 point there was nobody sitting in the livingroom, or was
11 there?

12 A No.

13 Q So you were outside by the table and then in the
14 carport?

15 A Right.

16 Q So you didn't see the officers arrest your husband.
17 Did you know when they left -- or did you know he had pulled
18 up at least?

19 A I knew he had pulled up. That's when they told me,
20 they said, well, he'll be here in a few minutes. We need
21 you in the back area.

22 Q So all that took place, and then what happens then
23 after they tote him off to jail?

24 A I asked for information so I could get in contact with
25 him, or what should I do. I called down there to see if I -

DIRECT EXAMINATION: BIRD HAKEEM

57

1 - so I know what to do, because I've never been in any kind
2 of situation like this.

3 Q Of course, Mr. Brooks is talking about that certain
4 times of the day he remembers. Let me ask you this. You
5 recollect after they had taken him down to the county jail,
6 and they kind of got back focused in on your about whatever,
7 about what time was that, that you recollect?

8 A A little after 6:00.

9 Q A little after --

10 A A little after 6:00. Yes, sir.

11 Q And what happens then?

12 A Officer Strickland, I thought that's who it was, called
13 me back --

14 Q We can describe, because Officer Strickland is taller
15 than me.

16 A Right.

17 Q Was he taller than me --

18 A Yes.

19 Q -- the person you were talking to?

20 A Officer Strickland, yes.

21 Q You know Officer Strickland?

22 A I know Officer Strickland. Just from that meeting I
23 remember him, because he was the one that stayed in close
24 contact talking with me.

25 Q He did most of the talking initially?

DIRECT EXAMINATION: BIRD HAKEEM

58

1 A Right.

2 Q So what transpires then about -- getting right into
3 signing this consent that he shoved in front of you. What
4 happened about it?

5 A Okay. When the call came in he said he wanted to ask
6 me -- when he called me he said he wanted to ask me a couple
7 more questions. So he came out to the house. And when he
8 came out he had more officers with him. And he like --

9 Q Now, about what time was this about?

10 A A little after 6:00. It was a little after 6:00. And
11 Officer Strickland pulled me to the side and we were
12 talking. He said, now, I have some officers here. He said,
13 we'd like to do a search. He said, I don't have a search
14 warrant. He said, but if you go on and let us do it, he
15 said, they won't rough up your furniture. He said but me,
16 myself, I won't do it. He said, but some of the other
17 officers might be upset that they have to go back and get a
18 search warrant. So I signed.

19 Q Of course, I don't want to get into all the drama of it
20 all. But nobody had guns --

21 A No.

22 Q -- out then.

23 A No.

24 Q But you had just experienced a lot of revelation about
25 -- being revealed to you about weapons that were brandished

DIRECT EXAMINATION: BIRD HAKEEM

59

1 at your home; is that right?

2 A Yes.

3 Q Now, let's try to remember now about this -- of course,
4 Mr. Russ is the one who has testified that he got you to
5 sign. Was Mr. Strickland present when that happened?

6 A Mr. Russ didn't get me to sign. Mr. Strickland got me
7 to sign. He was sitting on the -- of the couch beside me.
8 I don't know where he got that -- other gentleman got the
9 table from. We were on the couch in the livingroom the
10 whole time.

11 Q You and --

12 A Mr. Strickland.

13 Q And you're confident it was Mr. Strickland?

14 A It was Mr. Strickland. Because he broke the ice with
15 me because I couldn't half concentrate. He broke the ice
16 with me about talking about his children go to the same
17 school that I work at. So that's what kind of, you know,
18 broke the ice and we started talking a little bit. Because
19 I was like -- I couldn't think.

20 Q You couldn't think?

21 A I couldn't think that clearly, no. No one was ever
22 rude except for that -- the statement what he made about
23 searching the house. They were never ugly to me or
24 anything. They were -- I mean, no more than that statement,
25 what they said about searching the house. No one ever said

DIRECT EXAMINATION: BIRD HAKEEM

60

1 anything about arresting me, none of that.

2 Q Now, did you -- were you in the house when they
3 actually searched the house?

4 A Yes.

5 Q Where were you in the house?

6 A I was sitting on the couch talking to Mr. Strickland.

7 Q Now, I know this is difficult to remember, too, but are
8 you saying that during the process of the search of the home
9 that you and Mr. Strickland were talking about -- discussing
10 about this consent to search or -- was there any kind of
11 clear cut line, so to speak, that you could say sign this
12 consent and then they started to search or was it kind of a
13 confused set of affairs?

14 A No. When he -- when they went in to search, after he
15 asked me for permission, they went on in and searched, and -
16 -

17 Q Well, what about the signing? The signing --

18 A That came after they came out with a brown bag. They
19 didn't show me what was in the bag. I never seen anything.
20 But I had searched that room and I didn't -- those jackets
21 and stuff. I searched all the pockets. I searched my
22 dressers. I searched the beds. I searched everything.
23 Because what they were claiming that they had, that he was
24 supposed to had, if he had had anything it would probably
25 been in there, but it wasn't. Now, where they came from

DIRECT EXAMINATION: BIRD HAKEEM

61

1 with the cigarettes, I don't know. But we -- I signed that
2 statement when they were getting ready to leave out. I was
3 signing it when they were taking the brown bag by me. They
4 never let me see anything in that bag. And I didn't talk to
5 him. He was -- he was in there, but I didn't have a
6 conversation with him.

7 Q So you're saying that you might have orally said I
8 guess so, or whatever you said, which triggered their
9 response to go search before you signed the document?

10 A Well, I didn't -- at that point I didn't even know that
11 I was supposed to sign.

12 Q So you're saying you orally --

13 A I did. I told them they could -- I told them they
14 could search. Because when he asked me I told them they
15 could.

16 Q Let me ask you this with regard to any kind of scope of
17 what they were going to look for. You said they did say
18 they were looking for some kind of checkered hoodie or
19 something like that?

20 A Or red -- they told me they were looking for a red
21 plaid jacket. But when they left they had a black and
22 yellow jacket. That's what they said. I never saw it.
23 That's what was on the paper.

24 MR. ANDERSON: All right. That's all I have.

25 THE COURT: Cross?

CROSS-EXAMINATION: BIRD HAKEEM

62

1 MR. BROWN: Very brief, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. BROWN:

4 Q Ms. Hakeem, did you say you worked at Lakewood?

5 A Lakeview.

6 Q Lakeview Elementary?

7 A Yes, sir.

8 Q Over here behind the Walmart?

9 A Yes, sir.

10 Q And you got home a little bit before 3:00?

11 A Yes, sir.

12 Q And when you got home Mr. Hakeem was not there?

13 A No.

14 Q But a short time later officers arrived. You saw guns
15 drawn and then they brought you out of the house? Summoned
16 you out of the house?

17 A Yes, sir.

18 Q After you came out of the house did they arrest you?

19 A No, sir.

20 Q Did they put cuffs on you?

21 A They never said anything about arresting me or putting
22 cuffs on me. None of that. They were never ugly to me in
23 any way.

24 Q Never ugly?

25 A No, sir. Except for that statement.

CROSS-EXAMINATION: BIRD HAKEEM

63

1 Q They were never ugly to you when they --

2 A No. They were kind.

3 Q -- first arrived?

4 A Excuse me?

5 Q When they first arrived a little after -- sometime in

6 the 3:00, 3:30 range?

7 A They were never -- they weren't ugly to me. They even

8 apologized for pulling the rifle.

9 Q Did they -- when they came back a little after 6:00

10 were they ugly to you then?

11 A Their words -- they weren't ugly to me. The words that

12 he said about roughing up my furniture and stuff. Now, that

13 was -- I didn't really know how to take that, but that was

14 it. Never anything else.

15 Q And right around the same time you're saying they said

16 that you said Mr. Strickland was kind of breaking the ice

17 trying to calm you back down --

18 A Yeah.

19 Q -- trying to get your mind back on --

20 A Yeah. Because they told me I didn't seem like I was

21 thinking clearly.

22 Q So they wanted you to think clearly before they talked

23 to you about the consent to search?

24 A Well, I don't know, but they didn't -- no, I had

25 already -- they had already talked to me. Talked to me

CROSS-EXAMINATION: BIRD HAKEEM

64

1 first -- when he first walked in he mentioned to me about
2 the consent search. And later I signed, when they were
3 walking out.

4 Q But you did consent to the search? You told them it
5 was fine to search the house?

6 A I told them they could search the house.

7 Q And while they were looking at through the house did
8 you ever tell them to stop searching the house?

9 A No. I just -- I was sitting on the couch. I wasn't
10 saying much of anything, because I was still kind of like --
11 I was out. Kind of like, you know -- and I wasn't saying.
12 He was trying to get me where I would talk some.

13 Q And that's when he was trying to break the ice talking
14 about --

15 A Yes..

16 Q -- your kids going to the same school and all?

17 A Yes.

18 Q Ms. Hakeem, did you -- on State's ID Number 1, are
19 those your initials on the back --

20 A Yes, sir.

21 Q -- BH --

22 A Yes, sir.

23 Q -- 4/11/13?

24 A Yes, sir.

25 Q And on the top of it it says what was taken from the

CROSS-EXAMINATION: BIRD HAKEEM

65

- 1 house?
- 2 A Yes. That's what they told me, but I never seen it.
- 3 Q Never saw it?
- 4 A I never saw anything.
- 5 Q They just came out with -- it was in a brown bag?
- 6 A That's what they had. They had a brown bag.
- 7 Q Very similar to this brown bag?
- 8 A Something that looks similar to that. Yes, sir.
- 9 Q And again, Ms. Hakeem, how far did you go in school?
- 10 A I graduated.
- 11 Q Graduated. So you can read and write?
- 12 A Yes, sir.
- 13 Q And is that your signature?
- 14 A Yes, sir.
- 15 Q Up on the front page of State's ID 1?
- 16 A Yes, sir. I have bad handwriting, but that's my
- 17 handwriting.
- 18 Q I do, too. But with your signature there. Did you
- 19 read all that or have somebody read that to you? Your
- 20 rights?
- 21 A No. I can't really say I read it. I just wanted them
- 22 to go. I was just -- I was out of it. I did. That's my
- 23 signature.
- 24 Q That's your signature?
- 25 A That's my signature. I never had any trouble with the

CROSS-EXAMINATION: BIRD HAKEEM

66

1 law, not even a traffic ticket, and I just -- stay away from
2 them and they stay away from me. We don't bother each
3 other.

4 Q And again, you said in this incident, from the time
5 they got there around 3:30 all the way through the time they
6 left nobody was ugly to you --

7 A No.

8 Q -- except for you're saying what Mr. Strickland said?

9 A Yes, that's it.

10 Q And again, you signed the consent search for them?

11 A I signed it.

12 Q You never told them to stop searching?

13 A I never did.

14 MR. BROWN: No further questions.

15 THE COURT: All right. Thank you. You can set down
16 now.

17 THE WITNESS: Thank you.

18 (Whereupon, the witness stepped down from the witness
19 stand.)

20 THE COURT: Anything else?

21 MR. ANDERSON: Your Honor, Mr. Hakeem can testify
22 briefly.

23 THE COURT: All right. Just to the matters with
24 respect to the consent to search. We're not on a fishing
25 expedition here.

DIRECT EXAMINATION: JAMAL HAKEEM

67

1 JAMAL HAKEEM, having first been
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. ANDERSON:

5 Q Mr. Hakeem, could you state for the record your name
6 and where you were working at the time this occurred.

7 A My name is Jamal Hakeem. I was working for a company
8 called Rusche And Associates in Greenwood.

9 Q Briefly say, just to get a little bit of background,
10 what were you involved in doing? What were your duties?

11 A I was installing medical equipment around the country.

12 Q All right. Now, you got up about what time that
13 morning, April the 11th, 2013. What time did you get up?

14 A Somewhere around about 9:00-ish.

15 Q About 9:00-ish?

16 A Yeah.

17 Q All right. What did you do then?

18 A I went to a friend's house. Picked her up and brought
19 her to work. And went to the warehouse and started working.
20 Trying to get my tools back together for the next job.

21 Q Just for this hearing though let's kind of skip
22 forward. So in the afternoon -- in the afternoon of that
23 particular day what happened, son?

24 A Well, I got a call from my wife saying that --

25 Q About what time?

DIRECT EXAMINATION: JAMAL HAKEEM

68

1 A That was around about 3:00 -- a little after 3:00.

2 Q All right. And then what happened?

3 A She told me it was a bunch of officers around the
4 house.

5 Q What did you do? What did you say and what did you do?

6 A I was still on the phone with her and I heard them
7 talking, and I said to her, I said, well, put him on the
8 phone, because they were talking about armed robbery. And
9 he said where are you. I said I'm on my way home to you to
10 see what this is all about. He said mind you, when you come
11 here, have your hands visible because we have recollection
12 that you have a weapon in your presence. So when I got
13 there I put both hands out the window, got out of the
14 vehicle. This officer here -- what's the officer's name?

15 Q You're pointing to Mr. Brooks.

16 A Mr. Brooks. And he handcuffed me. And the first thing
17 he did when he handcuffed me, he took my cell phone. He
18 took my cell phone. He went to the back of his vehicle and
19 he started going through my cell phone, after he read me my
20 rights.

21 Q Did you give him permission to go through your cell
22 phone?

23 A No, I did not.

24 Q Go forward. What happened?

25 A We got downtown. They started questioning me. I

DIRECT EXAMINATION: JAMAL HAKEEM

69

1 remember these exact words that Officer Brooks told me.

2 Q Let's back up. Let's back up to at the house, first of
3 all. Did they discuss anything about a search warrant with
4 you?

5 A No, sir.

6 Q Whereabouts were you on the premises? Inside the house
7 or outside the house?

8 A I was outside in the driveway.

9 Q And you were being put on the ground?

10 A Yes, sir.

11 Q Then put in a police car, right?

12 A Yes, sir.

13 Q About how long was the period of time that you were out
14 there at your residence?

15 A At that particular time it had been a while because --

16 Q No. I'm talking about the space of time that you were
17 out there before they took you off to jail.

18 A Around 4:00-ish, I believe.

19 Q All right. But how many minutes are we talking about?

20 A That I was on my premises?

21 Q Yeah.

22 A I was there for a while. They kept me there for at
23 least about 20 or 30 minutes.

24 Q No discussion of a search warrant to you at all?

25 A No discussion a search warrant with me at all.

CROSS-EXAMINATION: JAMAL HAKEEM

70

1 Q And you went down -- they took you down to the county

2 jail?

3 A Yeah.

4 Q What happened down there?

5 A Then they began interrogating me there. And --

6 Q About what time do you recollect that they --

7 A That be a little after 4:00 or 5:00.

8 Q That took about how long while they had you back there

9 talking to you in the office down there. How long?

10 A I'd say about an hour.

11 Q Any discussion about you giving consent --

12 A No, sir.

13 Q -- to search your home?

14 A No, sir.

15 Q None whatsoever?

16 A None.

17 MR. ANDERSON: All right. Answer any questions.

18 CROSS-EXAMINATION

19 BY MR. BROWN:

20 Q Mr. Hakeem.

21 A Yes, sir.

22 Q How is Ms. Bird Hakeem related to you?

23 A That's my wife.

24 Q You all live at -- or ?

25 A Yes.

CROSS-EXAMINATION: JAMAL HAKEEM

71

1 Q. You both live there?

2 A. Yes.

3 Q. Joint custody of the house?

4 A. Yes.

5 MR. BROWN: No further question.

6 THE COURT: All right. Thank you. You can step down.

7 (Whereupon, the Defendant stepped down from the witness
8 stand.)

9 MR. ANDERSON: Your Honor, if you don't mind doing
10 this, I would move that we break for lunch and let me get
11 some material so I can appropriately argue.

12 THE COURT: You can get the material at lunch if you
13 want to, but I'm going to find that in the totality of the
14 circumstances that Ms. Hakeem lives there. She has custody
15 of the house. She has testified she gave free and voluntary
16 consent. I don't find from the totality of the
17 circumstances that this search should -- any of the fruits
18 from the search should be suppressed. If you find something
19 powerful to the -- otherwise, bring it back. But I --

20 MR. ANDERSON: But it's not going to be that brief.
21 Let me just say this, may it please the Court.

22 THE COURT: Yeah.

23 MR. ANDERSON: I have found no case law whatsoever that
24 even comes close to this kind of case where you've got the
25 unique situation, and the Appellate Courts, you know,

CROSS-EXAMINATION: JAMAL HAKEEM

72

1 there's no set requirements about what's an unreasonable
2 search and seizure, but I can see no case law whatsoever
3 that describes a person that's arrested at his home, taken
4 to jail, with every reason to get -- to properly follow the
5 principal of search and seizure procedure in the law on
6 search and seizure, constitutionally speaking, where you
7 don't discuss that with the person who's being arrested.
8 And don't even think about getting a search warrant, which
9 is the --

10 THE COURT: Well, I think that they would have gotten a
11 search warrant had not Ms. Hakeem consented to the search.
12 I don't find that her will was overborne. I find that she's
13 educated.. She is a resident of the house with the authority
14 to grant consent. She never limited the scope. And so I am
15 going to -- I deny your motion.

16 MR. BROWN: Thank you, Judge.

17 THE COURT: All right.

18 MR. BROWN: Judge, we do have -- and as we said back --
19 mentioned back in chambers, there was the statement.
20 Miranda was read to Mr. Hakeem. I'm not planning to play
21 that video. We're just going to touch on that. They didn't
22 admit anything. So I don't know if a *Jackson vs. Denno*
23 hearing is necessary for that.

24 THE COURT: I don't think it is. You know, I could
25 admit it into evidence. He doesn't admit anything. There's

DIRECT EXAMINATION: WHITFIELD BROOKS

73

1 nothing incriminatory.

2 MR. BROWN: Yes, sir.

3 THE COURT: Incriminating in it.

4 MR. BROWN: The other thing, we do have a photo lineup,
5 a six pack, that was generated and presented to the -- Shay
6 Smith in this case. So Neil v. Biggers hearing?

7 THE COURT: Very briefly.

8 MR. BROWN: Yes, sir. The State calls Whit Brooks.

9 THE COURT: Okay. Come on back. You're still under
10 oath.

11 MR. ANDERSON: Your Honor, may it please the Court. I
12 don't know when they're going to show the video. But part
13 of that motion about the ID -- in Court ID, I guess that's
14 what he's trying to get now. I think you need to see the
15 video. It shows plainly what -- well, I won't say plainly.
16 But you can see that she is distracted. I think the video
17 should be shown before you make a decision on that.

18 THE COURT: I haven't heard anything about it. We
19 talked about this in chambers, whether or not that's
20 necessary. We're just talking about --

21 MR. ANDERSON: I don't see any reason why we can't --
22 it's just 1:15. We can break for lunch, come back and 2:00
23 and maybe keep the jury out and see the video. I think you
24 need to see that before you make your --

25 THE COURT: Well, maybe we'll do that. But let's go

DIRECT EXAMINATION: WHITFIELD BROOKS

74

1 ahead.

2 DIRECT EXAMINATION

3 BY MR. BROWN:

4 Q Mr. Brooks.

5 A Yes, sir.

6 Q We've already gone through on the testimony on the
7 suppression hearing on the timeline of what occurred as a
8 result of Ms. Smith at the Shell station being robbed.
9 After you arrived at the Shell station and talked with Ms.
10 Smith were you able to get an idea of who this possibly was?

11 A Yes, sir.

12 Q And were you able to get a name for this individual?

13 A Yes, sir.

14 Q And who was that?

15 A Jamal Hakeem.

16 Q Based on getting his name, birth date, other
17 identifying characteristics, did you see a picture of him
18 initially?

19 A Yes, sir.

20 Q After you saw the picture of Jamal Hakeem what did you
21 request from SLED, or have one of the other officers request
22 from SLED?

23 A A six person photo lineup containing a picture of Mr.
24 Hakeem.

25 (Whereupon, State's Exhibit Number 2 was marked for

DIRECT EXAMINATION: WHITFIELD BROOKS

75

1 identification.)

2 Q I want to show you -- I'm going to show you what's been
3 marked State's ID Number 2. Tell me what this is.

4 A The front page is the six person photo lineup generated
5 by SLED containing the picture of Mr. Hakeem. The back page
6 is a phot lineup sheet that we have the person who's making
7 the identification fill out.

8 Q And in this case who did the person -- who did Ms.
9 Smith pick out as the person who robbed her that day?

10 A Number five, which is a picture of Mr. Hakeem.

11 Q Jamal Hakeem?

12 A Yes, sir.

13 Q And was that document on the photo lineup, the second
14 page of State's ID Number 2, by Shkuntula Smith?

15 A Yes, sir.

16 Q Read what that says.

17 A It says "Photo lineup, date 4/11/13. I, Shkuntula
18 Smith, have been shown a group of six photographs and have
19 identified the picture of Jamal Hakeem, photograph number
20 five, as being the person who robbed the Shell station with
21 a gun on 4/11/13. I am willing to testify in court the
22 subject identified above is the person who robbed the Shell
23 station. I make this statement of my own free will and
24 without hope of reward of any kind." And then her signature
25 is below.

CROSS-EXAMINATION: WHITFIELD BROOKS

76

1 Q When these six pack photo lineups are done what is the
2 general idea of putting six different people. Do you try to
3 get them -- what age range of these people that are usually
4 in these six packs?

5 A They're to be within the -- the goal is for them to be
6 within the same age range as the suspect. Same basic
7 physical features. And that particular one is really just a
8 facial shot. So again, it's supposed to be people with
9 similar facial features, skin tone, hair cut. Everything
10 like that.

11 Q And she did pick number five --

12 A Yes, sir.

13 Q -- Jamal Hakeem?

14 MR. BROWN: No further questions for Mr. Brooks.

15 CROSS-EXAMINATION

16 BY MR. ANDERSON:

17 Q Mr. Brooks, where did all this take place? At the
18 convenience store?

19 A Yes, sir.

20 Q In other words, SLED sent you that immediately? That
21 picture?

22 A It takes a short period of time. I relayed the
23 information to our other investigators who were at the
24 Sheriff's Office. They submitted the request. It's
25 typically done by -- via email with a phone call to ensure

DIRECT EXAMINATION: SHKUNTULA SMITH

77

1 that they received it. A short time later SLED sends what
2 they generated back, and one of those officers delivered it
3 to me on the scene at the Shell station.

4 Q So you were already out there?

5 A I'm sorry, sir?

6 Q You were already at the convenience store?

7 A To my recollection. Yes, sir.

8 MR. ANDERSON: Nothing further.

9 MR. BROWN: Judge, at this time I call Ms. Smith.

10 THE COURT: All right. You can step down. Thank you.

11 THE WITNESS: Yes, sir.

12 (Whereupon, the Witness stepped down from the witness
13 stand.)

14 SHKUNTULA LANISHA SMITH, having
15 first been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. BROWN:

18 Q Good afternoon, Ms. Smith.

19 A Good afternoon.

20 Q Ms. Smith, we're going to go through this rather
21 quickly. Ms. Smith, what's your full name?

22 A Shkuntula Lanisha Smith.

23 Q And do you go by anything else?

24 A Shea.

25 Q Ms. Smith, were you working back at the Shell gas

DIRECT EXAMINATION: SHKUNTULA SMITH

78

1 station 105 back on April 11th, 2013?

2 A Yes, sir.

3 Q And that was the Shell station at Bypass 225 South?

4 A Correct.

5 Q Ms. Smith, what happened on that day?

6 A On that day I had a few people in the store. I notice
7 -- I notice him walking in the door and I acknowledged that
8 by speaking to him. Walked around the counter. Behind me,
9 which I couldn't see behind me, I heard the cooler door open
10 in the back and I heard it close. Then as I was ringing up
11 a few customers -- I'm trying to multitask. I ring up a few
12 customers. After the store was empty he walked back around
13 in front of the counter in line, because there was a few
14 people in there still. But after they left he ended up
15 asking -- he put -- placed the beer on the counter and he
16 asked for three packs of Newport short in the box. And so,
17 prior to me getting the Newport short in the box, if I'm not
18 mistaken I asked for a date of birth. He provided me with
19 his date of birth, for the Malt Liquor. High Gravity 24
20 ounce can of beer. Turned around to get the cigarettes,
21 turned back around, that's when I seen the weapon.

22 Q Where was the gun?

23 A About mid-waist to me. As you'll see in the video I
24 went to the right of me so I could get away from the front
25 of the barrel. And then after -- after I seen it and I

DIRECT EXAMINATION: SHKUNTULA SMITH

79

1 gasped and I was like -- you know, just standing there
2 shocked. I didn't really say much after that. And he said
3 don't say anything. Give me everything out of the register.
4 And so I did.

5 Q During this time did you get -- did he have a mask on?

6 A I don't remember if it was shades. I believe it was
7 shades.

8 Q Or did he have a baseball cap on?

9 A It was something. A hoodie or shades. Something like
10 that. I can't remember exactly what.

11 Q But you could see his face?

12 A Yeah, I could. I could see bare skin.

13 Q You could see what?

14 A His bare skin on his face.

15 Q And based on him standing there -- how close was he to
16 you? A couple of feet?

17 A Probably -- yeah, just a few feet. He was up against
18 the counter, because you couldn't -- if somebody was to come
19 behind him you couldn't see what he was doing in front of
20 him, because the weapon was like directly in front of him
21 and the counter is here. So it's almost like he was holding
22 his hand -- his arm clinging to him to where you couldn't --
23 I don't know. You couldn't see from behind what it was.

24 Q But at that time you were able to get a good idea, a
25 good visualization of what he looked like in his face --

DIRECT EXAMINATION: SHKUNTULA SMITH

80

- 1 A Yeah.
- 2 Q -- and the clothes he was wearing?
- 3 A Uh-huh.
- 4 Q And after -- and, in fact, you did -- when you called
- 5 911 you gave a description to the 911 caller, or the person
- 6 you were talking to on 911, right?
- 7 A Right, uh-huh.
- 8 Q And you actually gave a statement, a written statement
- 9 the day after this occurred, right?
- 10 A Right.
- 11 Q And describing what he looked like. That day do you
- 12 remember Mr. Brooks coming and investigating?
- 13 A Yeah, I remember him coming in. But as far as what all
- 14 happened right after -- because I was shook.
- 15 Q Yeah.
- 16 A I just had a gun pointed in my face, so...
- 17 Q Later on though were you presented a photo lineup?
- 18 A Uh-huh.
- 19 Q I'm going to show you what's been marked as State's ID
- 20 Number 2. Do you recognize this photo lineup?
- 21 A Yeah, I recognize it.
- 22 Q Were you able to pick out the person who robbed you at
- 23 gunpoint that day?
- 24 A Yes, sir.
- 25 Q What number was that?

DIRECT EXAMINATION: SHKUNTULA SMITH

81

1 A Number five.

2 Q And on the second page of State's ID 2 did you
3 memorialize that by writing in that lineup form?

4 A Uh-huh. Yes, sir.

5 Q And again, what's the date on that?

6 A 4/11/13.

7 Q And how -- how short -- what was the timeframe after
8 the robbery occurred that Mr. Brooks was able to provide you
9 with a photo lineup? Was it --

10 A Moments, yeah. Immediately. It was probably about --
11 the robbery probably took place around 2:30, 2:40, and I had
12 the lineup about -- it couldn't been no later than 3:00.

13 Q So it was fast?

14 A Yeah.

15 Q So it's fresh on your brain --

16 A Uh-huh.

17 Q -- what he looked like?

18 A Oh, yeah.

19 Q Was there any hesitation when you saw this picture and
20 who it was?

21 A No, sir. No, sir. Yeah.

22 Q You were definite who it was?

23 A Uh-huh.

24 Q And did you sign your name on here saying that's who it
25 was, "I, Ms. Smith, have been shown a group of six

DIRECT EXAMINATION: SHKUNTULA SMITH

82

1 photographs," and you documented it was number five?

2 A Correct.

3 Q And Mr. Brooks is the one that witnessed on it, right?

4 A Yes, sir.

5 Q I'm also going to show you State's ID --, that's been
6 marked for identification purposes as State's ID Number 3.

7 What is that?

8 A A picture of Hakeem.

9 Q Just a blown up picture?

10 A Uh-huh.

11 Q And is the person who robbed you back on that date
12 sitting in the courtroom?

13 A Yeah. He's right there.

14 Q Is there any doubt in your mind that's the same person?

15 A No. He got a mustache still in some pictures I
16 remember.

17 Q No doubt in your mind --

18 A Nope.

19 Q -- that the same person who's sitting at counsel table
20 --

21 A No doubt.

22 Q -- is the same person marked as number five in the
23 photo lineup?

24 A That's him.

25 Q And the same person that sits before you again today?

CROSS-EXAMINATION: SHKUNTULA SMITH

83

1 A Yes, sir.

2 MR. BROWN: No further questions.

3 THE COURT: Any cross?

4 CROSS-EXAMINATION

5 BY MR. ANDERSON:

6 Q Yeah. Ms. Smith, when they got the photo lineup from
7 SLED and let you look at it was it simply Mr. Brooks present
8 or was there some other officers present with him?

9 A It was Mr. Brooks present, as far as I remember.

10 Q And he had been out there at the convenience store how
11 long? Did he come out there with the photo lineup?

12 A I was asked to come out there and look at the photo
13 lineup.

14 Q Now, you understand that Judge Miller intends to play
15 the video, hopefully before he makes the decision, to see
16 this and I want to quiz you a little bit about that. I
17 don't guess I'll get to ask you any more questions regarding
18 this hearing. But you remember -- you remember seeing the
19 video, don't you? And you were dealing with some other
20 customers. I think two other customers.

21 A Uh-huh.

22 Q And he walks in.

23 A Correct.

24 Q And you say hey.

25 A Correct.

CROSS-EXAMINATION: SHKUNTULA SMITH

84

1 Q And you were dealing with these other customers. And
2 you're not saying you saw his face then are you, or are you?

3 A I seen him walk in the door.

4 Q I understand that.

5 A I didn't look directly in his face when he walked in
6 the door, but I did acknowledge that he came in the
7 door. So he --

8 Q Did he go back out of the store?

9 A When?

10 Q During that time. Was he --

11 A He didn't leave out of the store while the other --

12 Q So he's back there -- he goes beyond you at the cash
13 register. And there'll be pictures of the store there. But
14 --

15 A He went --

16 Q -- beyond, I guess, the beer and liquor, or the wine in
17 the back there somewhere?

18 A Correct.

19 Q And you were dealing with these other customers and he
20 comes around finally after they leave out the door, right?

21 A Correct.

22 MR. ANDERSON: Again, Judge, you can see on the video
23 when it's shown. That's why I'm urging you to delay your --

24 Q But you're saying that you were awfully scared. And
25 I'm not trying to intimidate you at all. I understand that.

1 It's a very scary situation, needless to say. But you're
2 riveted obviously on the pistol, aren't you? Are you
3 looking at the pistol when you wheel back around? Because
4 I've seen the video many times. You wheel back around.
5 There's the things on the counter. At least he's got -- and
6 I agree, there's some problem about the video I saw with
7 regard to what's on the face. It looks to me like -- I
8 think you're right. It looks like there are shades simply
9 on the -- on his eyes. Dark glasses, so to speak. But
10 you're saying you don't even recollect whether or not he had
11 a mask on?

12 A He didn't have a mask on.

13 Q But you have some confusion as to what was on the upper
14 part of his head?

15 A Could have been some shades on. I do believe there
16 were some shades on.

17- Q And you don't really -- anyway, you wheel around and
18 there he is and he says I want some -- I want to pay for the
19 beer. I want you to get some cigarettes. And you wheel
20 around and then you see the pistol. And then he -- you give
21 him the money. You have to look into the cash register, of
22 course, to get the money, in other words. You're positive
23 with regard to the momentary look into his face that you can
24 pinpoint, without any suggestiveness -- I guess you're going
25 to say that Mr. Brooks gave you no suggestion whatsoever

1 about who's who?

2 A No, he didn't.

3 MR. ANDERSON: All right. That's all I have, Judge.

4 But I would urge you to wait until you see the video to make
5 a determination.

6 THE COURT: All right. Do you have any redirect?

7 MR. BROWN: No, sir. I think she's covered everything.

8 And, Judge, during lunch or anything like that I can provide
9 you the 911 tape of the video if you want to look at it.

10 THE COURT: I don't know if I need the 911 tape, but
11 I'll -- you can step down. Thank you.

12 (Whereupon, the Witness stepped down from the witness
13 stand.)

14 THE COURT: All right. Well, let's break. I'll ask
15 you all to be -- is 30 minutes enough for lunch for
16 everybody?

17 MR. BROWN: Yes, sir.

18 THE COURT: All right. I tell you what. Two reasons
19 to go to a jury trial. One is if you've got nothing to
20 lose, and the other is if you've got a dead sure winner. So
21 I urge everybody to think about that over lunch. See you
22 all at 2:00, shortly thereafter. Do you have that video?
23 What is it, a CD?

24 MR. BROWN: Yes, sir. I do.

25 THE COURT: You got a copy of it?

1 MR. ANDERSON: I'll get a copy of it.

2 THE COURT: Do you all object to me borrowing his, if
3 your all's is the --

4 MR. BROWN: No, sir. There's a -- I believe he's got
5 it. There's one that's a full 20 minutes that just shows
6 all the angles, and then one that's broke down to eight
7 minutes that shows most of the angles. So if you'd like to
8 see that --

9 THE COURT: Show me the eight minutes.

10 MR. ANDERSON: The jury hasn't been sworn. I think he
11 can go to lunch with his wife. He's still on bond, Judge.

12 THE COURT: All right. As a matter of fact, we'll stay
13 -- we'll allow you to stay on your bond, but you need to
14 talk to your wife about this. Good luck.

15 (Whereupon, a lunch break was taken from 2:27 p.m. to
16 2:48 p.m.)

17 THE COURT: I've reviewed the disk. Anything else?

18 MR. BROWN: Not from the State, Your Honor.

19 THE COURT: All right. Yes, sir. Anything?

20 MR. ANDERSON: Your Honor, just briefly that it's plain
21 to me from the video that there were some basic issue with
22 regard to her momentary glimpse at the Defendant and I don't
23 see how, from the standpoint of what's on the video, that
24 she could have had any kind of period of time to make out
25 any distinctive features in his face, describe him perhaps.

1 THE COURT: All right. Well, that's a matter of
2 weight, not admissibility. In any event, I don't find that
3 the out of court identification process was unduly
4 suggestive, and I would say that she had an opportunity to
5 view him. She was paying close attention from all I could
6 see. Her descriptions are spot on. She's certain about her
7 identification and there wasn't a lot of time between the
8 event and the photo lineup. So I'm going to allow the out
9 of Court identification.

10 Anything else?

11 MR. ANDERSON: No, sir.

12 THE COURT: You ready to go forward?

13 MR. ANDERSON: Yes, sir. Well, Your Honor, on that
14 issue about proceeding in some other fashion as we -- as
15 discussed. I had discussed it with my client and he
16 maintains his innocence and wants to go forward.

17 THE COURT: Okay. Very good. Let's go.

18 (Whereupon, the jury entered the courtroom at 2:29
19 p.m.).

20 THE COURT: Madam Clerk, you can swear the jury,
21 please.

22 (Whereupon, the Jury was sworn at 2:30 p.m.)

23 THE COURT: All right. Ladies and gentlemen, I want to
24 thank you very much for your patience. If you're upset
25 about having to wait, please blame me. We had matters we

1 had to deal with before we could get you all out here, and
2 then we broke for lunch. And I went out on my own to go buy
3 some lunch. So I've been touring Greenwood. So forgive me.
4 Blame me if you're upset. We're ready to begin the trial.

5 MR. DOWTIN: May it please the Court?

6 THE COURT: Yes, sir.

7 OPENING STATEMENT

8 BY MR. DOWTIN: Put the money in the bag, all of it.
9 Get it. Get it. Get it. And don't do shit until I get
10 out. Those were the words of that man right there, Mr.
11 Jamal Hakeem. And we're here today because on April 11,
12 2013, here in Greenwood County at the Shell station on 225
13 Bypass, right across from the big CPW building, Mr. Hakeem
14 walked into that gas station with a pistol and he robbed it.
15 Shkuntula Smith, also known as Shea, was the cashier that
16 day around 2:30 p.m. The Defendant has been charged with
17 armed robbery and possession of a weapon during the
18 commission of a violent crime. Now, the burden is on us as
19 the State to prove to you beyond a reasonable doubt the
20 elements of each of those crimes. And I'm not going to
21 stand up here and go into a bunch of depth about beyond a
22 reasonable doubt right now because you're going to hear
23 plenty about it later, specifically from Judge Miller up
24 here. But it basically means -- beyond a reasonable doubt
25 basically means you're firmly convinced of the Defendant's

1 guilt. So what do we have to prove? What are the elements
2 for armed robbery? It's pretty straightforward. Basically
3 we have to show that the Defendant, he committed a robbery.
4 What's a robbery? He took something that wasn't his, in
5 this case money, and three packs of Newport cigarettes, by
6 force or intimidation. How is it armed robbery? That's
7 also pretty straightforward. He robbed a place while using
8 a deadly weapon. In this case a pistol, which you're going
9 to hear about. What do we have to prove for possession of a
10 weapon during the commission of a violent crime? Also :
11 pretty straightforward. That's what he possessed a weapon,
12 in this case a pistol, during the commission of a violent
13 crime. Armed robbery is a violent crime.

14 Now, how are we going to prove our case? We're going
15 to call witnesses up to this stand to testify to prove those
16 elements of our case. And we're going to present exhibits
17 to you all, a video that you'll get to see of the robbery,
18 armed robbery, and of a 911 call from Ms. Smith to dispatch.
19 You're going to get to hear that. You're going to get to
20 hear the video and see the video. You're going to get to
21 hear from Ms. Smith. She's going to tell you how she was
22 working on April 11th, 2013 around 2:30 p.m. She noticed
23 the Defendant walk in and greeted him just like any other
24 customer that day. Said hey. She noticed he walked over to
25 the cooler, grabbed himself a 24 ounce Schlitz malt

1 beverage, walked to the register. He then asked for three
2 packs of Newport cigarettes. He gave his date of birth.
3 His accurate date of birth, . Now, briefly Ms.
4 Smith took her eyes off the Defendant, turned around to get
5 the cigarettes, and she comes back and she's got a gun
6 pointed at her. And that's when Mr. Hakeem asked -- did not
7 ask. He demands all the money in the register. So Ms.
8 Smith complies. She gives him the money. The Defendant
9 runs out of the store. Immediately Ms. Smith hits her
10 button near the register that locks the door. And you'll
11 get to see all that. And she calls the police and tells
12 them what happened. You're also going to get to hear from
13 Ms. Mary Constant. She was on the scene at the gas station
14 that day right before this robbery happened. You'll get to
15 hear about a dark color SUV she saw and what was suspicious
16 about that vehicle. You're also going to hear from
17 investigators. A couple of investigators about how they
18 built their case and what evidence pointed to Mr. Hakeem.
19 You're going to get to hear how the clerk gave -- told them
20 -- gave a description of the Defendant. Gave the date of
21 birth of the Defendant as stated to her, . That's
22 how they started -- the investigators started to get the
23 lineup together. They ran that name in their database. One
24 name came back. One name. Mr. Jamal Hakeem. So they
25 noticed it matched the description that the clerk gave them.

1 Matched the description on the video. They put his face in
2 a six person lineup and take it to the clerk. Who does she
3 pick out? Jamal Hakeem.

4 Now, you're also going to get -- and you're also going
5 to get to hear about how this investigator ended up at Jamal
6 Hakeem's house where he lives with his wife, Ms. Bird
7 Hakeem. You'll hear how they ultimately went into the home
8 -- or the common home. They find a plaid colored jacket,
9 hoodie type deal. They find a white shirt. What do they
10 find inside that plaid hoodie? Two packs of Newport
11 cigarettes. Ms. Hakeem gave officers permission to go in
12 the house.

13 I want to go back a little bit. Before they went into
14 the house Mr. Hakeem actually drove up to his home.
15 Investigators at that time had already had enough to say
16 this is our guy. He had already been pointed -- picked out
17 of a lineup. They arrested him. They take him to the
18 police station. In plain view of his car what do they find?
19 Another pack of cigarettes. An open pack of cigarettes.
20 Two of them gone. And as I said, they ultimately got to
21 search the house and found two other packs of cigarettes.
22 That's three packs of cigarettes. They found the plaid
23 hoodie that's on video, and they found a white tee shirt.

24 You'll also, as I said earlier, you're going to get to
25 see the video. So the video speaks for itself. You'll get

1 to watch the video. You'll get to hear what was said. I
2 hate to yell at y'all. You'll get to hear what the
3 Defendant said to Ms. Smith. You'll also get to hear her
4 description when she called 911 dispatch. You'll get to
5 hear how she described the Defendant and what he looked
6 like, when he ran out of the store. And just look at
7 everything closely.

8 And ladies and gentlemen, after we have presented all
9 the testimony here today and you've seen all the exhibits
10 we'll be asking you to find Mr. Hakeem guilty of armed
11 robbery, as well as possession of a weapon during a violent
12 crime. Thank you.

13 OPENING STATEMENT

14 BY MR. ANDERSON: Good afternoon. Welcome to the Court
15 of General Session for Greenwood County. As previously
16 revealed to you, I'm Geddes D. Anderson of Greenwood, SC,
17 and needless to say I represent Mr. Jamal Hakeem who has a
18 constitutional right to a trial by jury, who can maintain
19 his innocence and has so chosen.

20 Now, let me say this at the outset. Whatever I say, or
21 whatever Mr. Brown says, or Mr. Downtin who is the prosecutor
22 who just spoke to you, ain't evidence. We can't personally
23 assure you of who's telling the truth because that's your
24 job. That's why you're sitting there. To judge the
25 credibility of everybody. That's why it's so important.

1 Besides risking your life for your country, the next most
2 important thing in this country is to serve on a jury.
3 That's why Judge Miller was saying to you, you're lucky. I
4 know it's hard. He knows it's hard. There ain't nothing
5 easy about life. But that's why we're here. He has a
6 constitutional right to demand a trial. And I will
7 reiterate also with regard to what Judge Miller said at the
8 outset is the format of the trial is we -- the lawyers,
9 trained lawyers standing up here and advocate the case.
10 That's our job, with zeal. And most do it with zeal. Then
11 following our opening remarks, and I'm going to sit down in
12 just a moment, we get into the testimony and that's where
13 your job is triggered. Looking, watching. Looking at
14 movement of the witness. See what's what. And I can tell
15 you this right now. When you get back in the jury room at
16 the end of this trial, one thing about this country is
17 everybody is equal back yonder. It has to be a unanimous
18 verdict. I'll talk about that later. I won't get into
19 that. And all about reasonable doubt. Judge Miller will
20 charge you about reasonable doubt. And what Mr. Downtin has
21 said, or what Mr. Brown will say about reasonable doubt, if
22 it ain't consistent with what Judge Miller said, you have to
23 go by what Judge Miller said. And I'll get to that later
24 myself, because we'll come back at the end of the trial and
25 submit our -- what we call closing arguments. So that's the

DIRECT EXAMINATION: JILL BOLAND

95

1 format of the trial. So the central issue is who's telling
2 what. So I'll ask you to be attentive and listen. We
3 appreciate your participation. It's hard. And I'll ask you
4 to pay attention.

5 MR. DOWTIN: Your Honor, at this time the State calls
6 Jill Boland.

7 THE COURT: Okay.

8 JILL BOLAND, having first been duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. DOWTIN:

12 Q Ms. Boland, could you please state your full name for
13 the record.

14 A Jill Boland.

15 Q Where do you work?

16 A Greenwood 911.

17 Q And how long have you worked there?

18 A Five years.

19 Q And can you tell the jury some of your day-to-day
20 responsibilities?

21 A Yes. I'm the assistant director and the operations
22 manager. I oversee the day-to-day operations of the 911
23 center. Keep all the records, the 911 recordings. You
24 know, we answer 911. Dispatch it to the agencies.

25 Q So you receive calls?

DIRECT EXAMINATION: JILL BOLAND

96

- 1 A We do.
- 2 Q Do you record all those calls?
- 3 A We do.
- 4 Q How do you record those calls?
- 5 A They're on an audio log on the server.
- 6 Q Do you remember a call that came in April 11th, 2013
- 7 from the Shell gas station over on 225 Bypass right across
- 8 from the big CPW building?
- 9 A Yes.
- 10 Q How do you remember that one?
- 11 A I had to make a recording of it.
- 12 Q Was that call recorded? You said it was recorded?
- 13 A Yes.
- 14 Q Have you had a chance to review this?
- 15 A I have.
- 16 Q What is it?
- 17 A It's the 911 call from the clerk at the 7-11.
- 18 Q And it's a fair and accurate depiction of the call you
- 19 received that day?
- 20 A Yeah.
- 21 MR. DOWTIN: Just for the record, Your Honor. This is
- 22 State's Exhibit 4 for ID purposes.
- 23 MR. ANDERSON: I don't have any objection.
- 24 Q You did have a chance to review this?
- 25 A Yes, I have.

DIRECT EXAMINATION: JILL BOLAND

1 Q And this represents that 911 call that day?

2 A Yes, it does.

3 Q And you haven't edited it in any way?

4 A No, sir.

5 Q And it's kept in the ordinary course of business?

6 A Yes.

7 MR. DOWTIN: Your Honor, at this time I'd like to
8 publish -- or submit State's Exhibit 4 into evidence and
9 publish it to the jury.

10 THE COURT: I think without objection; is that right?

11 MR. ANDERSON: Yes.

12 THE COURT: All right.

13 (Whereupon, State's Exhibit No. 4 was admitted into
14 evidence.)

15 (Audio of 911 call was published to the jury.)

16 MR. DOWTIN: No further questions, Your Honor. Ms.
17 Boland, please answer any questions Mr. Anderson may have.

18 MR. ANDERSON: No questions.

19 THE COURT: Thank you, ma'am. You may stand down.

20 (Whereupon, the Witness stepped down from the witness
21 stand.)

22 MR. BROWN: The State calls Tealee Keeno.

23 TEALEE KEENO, having first been
24 duly sworn, testified as follows:

25 DIRECT EXAMINATION

DIRECT EXAMINATION: TEALEE KEENO

98

- 1 BY MR. BROWN:
- 2 Q Ms. Keeno, please state your full name for the record.
- 3 A Tealee Keeno.
- 4 Q Ms. Keeno, where do you work?
- 5 A Greenwood Petroleum.
- 6 Q What is your position there?
- 7 A Manager.
- 8 Q As part of being manager what are your day-to-day
- 9 activities?
- 10 A I do recaps. I count money. I manage all seven
- 11 stores. Do the scheduling.
- 12 Q Are you also the video custodian of the different
- 13 stores?
- 14 A Yes, I am.
- 15 Q And what does that entail? Like tell me about how the
- 16 stores have their surveillance.
- 17 A Our surveillance tape shows when the cashiers pops the
- 18 draw, what she rings up. It shows movement going to the
- 19 bathrooms and the back rooms inside the cooler.
- 20 Q On the day of April 11th, 2013 was one of the Shell gas
- 21 stations -- or the Shell gas stations owned by Greenwood
- 22 Petroleum, was it robbed?
- 23 A Yes, it was.
- 24 Q And which Shell station was that?
- 25 A The one over here by CPW on 225 South.

DIRECT EXAMINATION: TEALEE KEENO

..99

- 1 Q Is that address 757 Bypass 225 South?
- 2 A Yes, sir.
- 3 Q What Shell stations -- are they individually numbered?
- 4 A Yes, sir.
- 5 Q What do you refer to this Shell station --
- 6 A Number 105.
- 7 Q Shell station number 105?
- 8 A Yes, sir.
- 9 Q And on April 11, 2013 did you download or make a copy
- 10 of the in store surveillance cameras --
- 11 A Yes, sir.
- 12 Q -- of the armed robbery?
- 13 A Yes, sir.
- 14 Q I want to show you what's been marked for ID purposes
- 15 as State's ID Number 5. If you can take a look at that and
- 16 tell me what that is.
- 17 A This is a DVD that I made.
- 18 Q How can you tell that's the DVD you made?
- 19 A Because we make them on a DVD on our file system that
- 20 we have.
- 21 Q Is there any identifying information on there?
- 22 A Yes, it is. Shell station store video April 11, 2013.
- 23 TK is on it. That's my initials.
- 24 Q So you had the opportunity to make sure that is what it
- 25 purports to be?

DIRECT EXAMINATION: TEALEE KEENO

100

1 A Yes, sir.

2 Q And was this video kept in the ordinary course of
3 business?

4 A Yes.

5 Q And does it clearly and accurately reflect what
6 happened that day?

7 A Yes, sir.

8 MR. BROWN: Judge, at this time we move State's ID
9 Number 5 into evidence.

10 MR. ANDERSON: No objection.

11 THE COURT: All right. Without objection.

12 (Whereupon, State's Exhibit Number 5 was admitted into
13 evidence.)

14 Q And while I'm getting it ready to play. Ms. Keeno, how
15 many cameras are in that store?

16 A We have nine at that location, sir.

17 Q And they all are at different angles?

18 A Yes, sir.

19 Q So this video would show multiple angles?

20 A Yes, sir.

21 Q Even though it happened at a relatively quick
22 timeframe, it'll take a little bit to show all the angles,
23 right?

24 A Yes.

25 THE COURT: Pause it one second. If you all need to

DIRECT EXAMINATION: TEALEE KEENO

101

1 reposition yourselves so you can see it, please feel free to
2 do that, but stay in the jury box. Okay? Thank you.

3 (Whereupon, State's Exhibit Number 5 was published for
4 the jury.)

5 Q Right now it's backing up as it's going to another
6 angle, Ms. Keeno?

7 A Yes.

8 (Whereupon, State's Exhibit Number 5 was published for
9 the jury.)

10 Q Now, Ms. Keeno, again, where's that Shell gas station
11 located?

12 A It's on 757 225 South.

13 Q And that's also -- what Shell number is that?

14 A Store 105.

15 Q 105. How much does cigarettes -- how much are the
16 cigarettes and the malt beer add up to?

17 A \$5.39 for the Newports at that time, and the beer was
18 like 2.99.

19 Q So roughly \$16, \$17 for all of it?

20 A Yeah.

21 Q How much cash -- do you remember how much cash was
22 taken out?

23 A If I'm not mistaken, it was over four something.

24 Q Four something?

25 A Uh-huh.

DIRECT EXAMINATION: SHKUNTULA SMITH

102

1 Q And again, that gas station is in what county?

2 A Greenwood County.

3 Q And South Carolina?

4 A Yeah.

5 MR. BROWN: No further questions.

6 MR. ANDERSON: No questions.

7 THE COURT: All right. Thank you, ma'am. You may step
8 down.

9 (Whereupon, the Witness stepped down from the witness
10 stand.)

11 MR. BROWN: The State calls Shkuntula Smith.

12 SHKUNTULA SMITH, having been first
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BROWN:

16 Q Ms. Smith, please state your full name.

17 A Shkuntula Smith.

18 Q And do you go by any other name?

19 A Shea.

20 Q Ms. Smith, where were you working on April 11, 2013?

21 A Shell store 105, across Alexander and Florida Avenue.

22 Q And across the street diagonal from the Shell station
23 is what?

24 A CPW.

25 Q Now, you don't work there anymore, do you?

DIRECT EXAMINATION: SHKUNTULA SMITH

103

1 A No, sir.

2 Q When did you leave the Shell station?

3 A I left the position about a year ago.

4 Q About a year ago. Now, Ms. Smith, how long had you
5 been working at the Shell gas station?

6 A Prior to that happening about three years.

7 Q Now, on that date, April 11th, 2013 was anybody else
8 working there with you?

9 A No, sir.

10 Q And tell me what your day had been up to that point?

11 A My day was fine. At that particular time of midday
12 children get out of school. A lot of parents send their
13 kids in the store to purchase things during school let out.
14 Just an average day. People taking small breaks. Because
15 you got Tower Point right behind the store, so a lot of
16 nurses come in from there. And, of course, from CPW.
17 Workers from there, and the school district.

18 Q Now, what schools are around that Shell gas station?

19 A Springfield Elementary School and Westview Middle
20 School.

21 Q Do you have any children that go to those schools?

22 A Yes. Springfield Elementary School. I have a child
23 attending that school.

24 Q And how far away is that from the gas station?

25 A Approximately two miles, if that.

DIRECT EXAMINATION: SHKUNTULA SMITH

104

1 Q If that. Now, what time did this occur?

2 A About 2:30 p.m.

3 Q And this is at a gas station here in Greenwood, South
4 Carolina?

5 A Correct..

6 Q And we've already played the video. But again, what
7 were you doing?

8 A Greeting my customers as they were coming in the store,
9 and making sure that everybody that came in knew that I was
10 acknowledging them coming in. Just my regular checking in,
11 checking out. Meet and greet. Just trying to multitask.

12 Q At that time around -- this occurred right around 2:30,
13 a little after in the afternoon. The video shows there's
14 two other folks in there?

15 A Correct.

16 Q And was there anybody else in the store other than the
17 man that robbed you when this happened?

18 A At the time that the robbery took place no one else was
19 in the store.

20 Q And during the -- during that robbery tell me what
21 happened when he approached the counter. What was -- what
22 happened? Just tell me.

23 A Well, as he approached the counter he placed the 24
24 ounce High Gravity beer can on the counter from which he
25 retrieved from the cooler when he walked back there. I

DIRECT EXAMINATION: SHKUNTULA SMITH

105

1 heard the cooler open and I heard it close. When he walked
2 to the counter, of course he put that on the counter. Then
3 he asked for three packs of Newport short in a box. I
4 turned around to get the Newport short in the box, and I
5 turn back around to get his date of birth which -- I'm
6 thinking I got it before I turned around and got the
7 cigarettes. But apparently it was right after I turned
8 around and got the cigarettes. And he gave me the correct
9 date of birth; . . . I don't remember the year.
10 At the time I remembered the year but I don't remember right
11 now. But anyway. After I turned back -- getting his date
12 of birth, that's when at some point I seen a pistol, a gun
13 barrel pointed at me. And of course I gasped, as you seen
14 in the video; and I jumped back and proceeded to the right
15 side of me, because from that angle the barrel was right in
16 my abdominal area and I didn't want to get shot in my
17 abdominal area, so I stepped to the side. I didn't want to
18 get shot period. But anyway, I stepped to the side. And
19 when I did that he asked me to get him all the money out of
20 the register, and so I did.

21 Q And there's no doubt in your mind -- it was difficult
22 to see the weapon on video, but there's no doubt in your
23 mind what he presented to you?

24 A Oh, yeah. It was a gun. That's why I jumped.

25 Q And I want --

DIRECT EXAMINATION: SHKUNTULA SMITH

106

1 (Whereupon, State's Exhibit Numbers 6, 7, 8 and 9 were
2 marked for identification purposes.)

3 Q I'm going to show you what's been marked for
4 identification purposes as State's ID 6, 7, 8 and 9. Take a
5 look at these and tell me if you recognize these pictures.

6 A Yes, sir. I recognize each one of them.

7 Q And what do those pictures depict?

8 A The malt liquor beer sitting on the counter. Officer
9 Strickland at the time.

10 Q What else is in that picture?

11 A The address 757 Bypass 225 South. The address of which
12 the robbery took place at the Shell convenience store. And
13 the other ones are the officers' vehicles outside of --
14 outside of the Shell gas station, along with my vehicle, and
15 yellow tape. And also just what was around the counter.
16 Newport shorts in the box. All Newports, for that matter.

17 Q Do these -- all these pictures clearly and accurately
18 reflect the Shell gas station that day?

19 A From what I -- yeah.

20 MR. BROWN: Judge, at this time I move 6 through 9 into
21 evidence.

22 MR. ANDERSON: No objection.

23 THE COURT: Without objection.

24 (Whereupon, State's Exhibit Numbers 6, 7, 8, and 9 were
25 admitted into evidence.)

DIRECT EXAMINATION: SHKUNTULA SMITH

107

1 Q Again I'm going to show you State's Evidence 6. That's
2 the Shell gas station?

3 A Correct.

4 Q And that picture shows -- what does that show?

5 A Where I was working that day. The address.

6 Q State's Evidence 8.

7 A The cans that he had. That's the beer.

8 Q And then State's Evidence 9.

9 A Those are Newports, the whole rack.

10 Q And where's that Newport rack?

11 A In the right center behind me of the -- not of the
12 register, but down from the register. So as I was turning
13 around in front of the register, I guess that was to my
14 right turn around.

15 Q Now, Ms. Smith, after -- after he left the Shell gas
16 station -- but while he was actually in there did you get a
17 good look at him?

18 A I did.

19 Q You were able to notice identifying characteristics of
20 the armed robber?

21 A Right.

22 Q After you called 911 -- we've heard the 911 tape, and
23 law enforcement got there -- how soon after did the law
24 enforcement agent get there?

25 A They were there in a matter of minutes. Maybe five, 10

DIRECT EXAMINATION: SHKUNTULA SMITH

108

1 minutes.

2 Q Now, is Mr. Whit Brooks one of the main officers that
3 arrived there at the Shell gas station?

4 A Yes.

5 Q When he arrived you had already said a lot of -- a lot
6 of the information to the 911 dispatcher, right?

7 A Correct.

8 Q After he arrived and you talked with him a little bit
9 more about what the armed robber said -- again, the armed
10 robber told you his date of birth?

11 A Correct. The correct date of birth.

12 Q A short time later did you -- were you presented with a
13 photo lineup?

14 A Yes.

15 Q Who showed you the photo lineup?

16 A Officer Brooks.

17 Q Officer Brooks. And how -- what was the time period
18 from the time the robbery occurred to the time you saw the
19 photo lineup?

20 A A matter of minutes. Less than 30 minutes. But in
21 between, like the timeframe of them getting there, me
22 getting the lineup, it was probably -- it might have been
23 10. 10 minutes or something. 10, 15 minutes.

24 Q When you saw the photo lineup was there any doubt in
25 your mind when you picked out the person on this lineup who

DIRECT EXAMINATION: SHKUNTULA SMITH

109

1 did this?

2 A No. It only took me a few seconds.

3 Q I want to show you what's been previously marked for
4 identification purposes as State's ID Number 2. If you can
5 take a look at this and tell me what that is.

6 A That's Hakeem, number five.

7 Q Number --

8 A Yeah, number five.

9 Q Picture number five in that photo lineup is the person
10 that robbed the store?

11 A Yes.

12 Q Now, on the second page of this -- also, what's the
13 date of that picture?

14 A 4/11/13.

15 Q And did you initial that?

16 A I did.

17 Q On the second page did you memorialize or write down
18 the person, the photo that you said was the man that robbed
19 you that day?

20 A Yes.

21 Q And what photo did you say that was again?

22 A Number five, Hakeem.

23 Q Did you end up signing that form?

24 A I did.

25 MR. BROWN: Judge, at this time State moves State's ID

DIRECT EXAMINATION: SHKUNTULA SMITH

110

1 Number 2 into evidence.

2 THE COURT: Subject --

3 MR. ANDERSON: Subject to my objection previously
4 stated.

5 THE COURT: All right.

6 (Whereupon, State's Exhibit Number 2 was admitted into
7 evidence.)

8 Q I'll show you what's been marked State's Evidence
9 Number 2. Again, what picture in that photo lineup did you
10 pick?

11 A Picture number five.

12 Q And again, that shows the date of April 11, 2013?

13 A Correct.

14 Q And it's got your signature down at the bottom?

15 A Yes, sir.

16 Q Now, Ms. Smith, I'm going to show you what's been
17 marked for ID purposes State's ID Number 3. Do you
18 recognize that picture?

19 A Yes, sir.

20 Q And what does that show?

21 A Jamal Hakeem.

22 Q Is that the person who robbed you in the gas station?

23 A Yes, sir.

24 Q The person that had the pistol pointed at you?

25 A That's the person..

CROSS-EXAMINATION: SHKUNTULA SMITH

111

1 MR. BROWN: Judge, at this time I move State's ID 3
2 into evidence.

3 MR. ANDERSON: Subject to my objection.

4 THE COURT: All right.

5 (Whereupon, State's Exhibit Number 3 was admitted into
6 evidence.)

7 Q Ms. Smith, is this just a blown up version of the
8 original photo lineup?

9 A Yes, sir.

10 Q Again, is that the person who robbed you?

11 A Yes, sir.

12 Q Ms. Smith, is the person who robbed you on April 11th,
13 2013, pointed the gun at you, is he in the courtroom today?

14 A Yes, sir.

15 Q Where is he sitting?

16 A Right there, with the glasses on.

17 Q What color shirt does he have on?

18 A Tan.

19 MR. BROWN: Let the record reflect she's identified
20 Jamal Hakeem as the person who robbed her at the gas
21 station.

22 Q Ms. Smith, going back to the robbery. What color and
23 how -- what color of gun and how high did he have it up?

24 A He only had it at waist level. You could hardly see
25 it. If anybody was to come up behind him you -- they

CROSS-EXAMINATION: SHKUNTULA SMITH

112

1 wouldn't know what was going on other than them hearing it.
2 But he had it -- he had his armed clinged to his waist or
3 side, or whatever, to where you couldn't see it. So that's
4 why I stepped away the way that I did to the right so -- so
5 I couldn't get injured.

6 Q And, Ms. Smith, in addition to the three packs of
7 cigarettes and the beer can, how much money was taken?

8 A Approximately three something. It was about \$200 in
9 20s, it was x-amount in 10s and some fives.

10 Q But it was over 300?

11 A Yeah.

12 Q Now, after Mr. Brooks and other investigators got to
13 the Shell gas station and roped it off and talked to you, is
14 that pretty much the extent of what happened during that
15 armed robbery?

16 A Yes, sir.

17 Q But there's no doubt in your mind the person who robbed
18 you is in the courtroom today?

19 A No doubt in my mind.

20 MR. BROWN: No further questions.

21 THE COURT: Cross.

22 CROSS-EXAMINATION

23 BY MR. ANDERSON:

24 Q Of course, I sympathize with you about your predicament
25 on that day, so don't get me wrong. But the video is rather

CROSS-EXAMINATION: SHKUNTULA SMITH

113

1 clear in showing that when he rounded back from getting the
2 beer he comes up and immediately talks about getting some
3 cigarettes and you wheel around toward the rack where the
4 Newports are.

5 A Uh-huh.

6 Q And me counting the seconds, it would be one-1,000,
7 two-2,000, three, would you estimate from looking at that
8 video how many seconds that was while you turned around to
9 secure the packages of cigarettes before you turned back
10 around? Of course, he's -- he's standing -- you've got your
11 back to him, is that correct, getting the cigarettes?

12 A Correct.

13 Q According to the video. And when he initially came
14 into the store, as I recollect the video, was it -- you were
15 still dealing with two customers when he walked by?

16 A Yes.

17 Q You were still dealing with the two customers, and they
18 paid \$15 or something like that for the products that they
19 had.

20 A He didn't pay anything.

21 Q All right, whatever. But he comes by the counter there
22 and goes in the back, I reckon to get whatever was back
23 there. The beer. Whoever the perpetrator was. And let me
24 say this. Of course, you described to the 911 individual
25 that just testified a moment or so ago that what he had --

CROSS-EXAMINATION: SHKUNTULA SMITH

114

1 : what the perpetrator had on. I think you said something
2 like a black hat or a checkered --

3 A A plaid shirt.

4 Q Something like that. Of course, you know, a picture is
5 worth a thousand words. But also as I recollect, I might be
6 mistaken, but it could be played back, I guess, at some
7 point, that the 911 operator wanted to know if you had a
8 facial description of something and you didn't respond to
9 that, as I recollect, or said you didn't quite know, or
10 something like that that I heard; is that right?

11 A He had on shades. So as far as facial I just knew dark
12 skin. Something was going on --

13 Q Later on you now -- later on, Ms. Smith, now you get
14 more accurate as far as what we know about the case. But
15 the initial -- the 911 is what I'm talking about where there
16 was some question as to distinctive facial characteristics.
17 I think that's what the 911 operator asked you. But that
18 can be played back if they want to do it.

19 Now, it goes without saying, of course, in this high
20 tech age that we live in now, you know, a picture is taken
21 just about everywhere you go. So that's spelled out fairly
22 plain. But Mr. Brooks comes to the store with the picture.
23 Did he actually -- I can't remember. Did he actually have
24 it with him when he came to the store?

25 A No, sir.

REDIRECT EXAMINATION: SHKUNTULA SMITH

115

1 Q So he stayed there with you a while before he got the
2 lineup? The photo lineup.

3 A Yeah. Of course he asked me what happened once he got
4 there and asked me was I okay. This was moments later,
5 after I gave him the information that I gave him, we were at
6 -- he asked me to --

7 Q And I can understand you were very fearful, and I
8 understand that. You certainly have a right to be. But at
9 that point he begins to ask you about the description of
10 what -- when he started asking you questions about
11 describing this individual did he have the photo lineup at
12 that point?

13 A No, sir.

14 Q Did you see any fingerprints being taken for any reason
15 at the store?

16 A I seen they were dusting for fingerprints.

17 Q They were?

18 A Uh-huh.

19 Q Do you know whether or not they had any -- got any?

20 A I'm not sure. I'm sure there was. I mean,
21 fingerprints are everywhere in the store.

22 Q I understand. Just in your estimation, before I sit
23 down, how many seconds would you say elapsed -- well, that
24 can be seen by the video. But you would have to admit that
25 any glimpse of him would have to be momentary? You would

REDIRECT EXAMINATION: SHKUNTULA SMITH

116

1 agree with that, wouldn't you?

2 A No, huh-uh. It happened fast, but --

3 Q But you see the gun -- you turn around from the
4 cigarettes, Ms. Smith, and viewed the gun, as I understand
5 your testimony. And he said get the register and you went
6 into the register to get the money and then he turns and
7 goes. Like I said, a picture is worth a thousand words.

8 MR. ANDERSON: That's all I have.

9 THE COURT: Any redirect?

10 MR. BROWN: Yes, Your Honor, briefly.

11 REDIRECT EXAMINATION

12 BY MR. BROWN:

13 Q Ms. Smith, have you ever been robbed before?

14 A No.

15 Q How many times have you had a gun pulled on you?

16 A Once.

17 Q So with that one time that it's ever happened is it
18 burned in your image? The image of the person that did that
19 burned in your mind?

20 A It certainly is. I won't ever forget it.

21 Q No question he had a gun?

22 A No, there's no question he had a gun.

23 Q Were you in fear, intimidated by him pulling out that
24 gun?

25 A Yes.

DIRECT EXAMINATION: MARY CATHERINE CONSTANT

117

1 Q Is there any question as to who pulled that gun on you?

2 A No.

3 Q Again, who is the one that pulled that gun on you?

4 A The man right there.

5 Q Jamal Hakeem?

6 A Jamal Hakeem. He's in the glasses and the tan shirt.

7 MR. BROWN: No further questions.

8 THE COURT: All right. You can step down.

9 (Whereupon, the Witness stepped down from the witness
10 stand.)

11 THE COURT: Why don't we just take a short afternoon
12 break. You all don't discuss the case. We'll get back with
13 you in about 10 minutes.

14 (Whereupon, the jury exited the courtroom at 3:41 p.m.)

15 THE COURT: Anything before we break?

16 MR. BROWN: Not from the State.

17 (Whereupon, a recess was taken from 3:41 p.m. to 3:52
18 p.m.)

19 THE COURT: Okay. What we got next?

20 MR. BROWN: Judge we have a witness from the gas
21 station.

22 THE COURT: How many more do you --

23 MR. BROWN: Three.

24 THE COURT: Okay.

25 (Whereupon, the jury entered the courtroom at 3:52

DIRECT EXAMINATION: MARY CATHERINE CONSTANT

118

1 p.m.)

2 (Whereupon, the Judge receives a note from the Jury.)

3 THE COURT: Greg Griffin, number 58, is the foreperson.

4 You lost the vote or you won the vote? Don't answer that

5 question. Make that a Court's Exhibit.

6 (Whereupon, Court's Exhibit Number 2 was marked for

7 identification.)

8 THE COURT: Call your next witness.

9 MR. DOWTIN: The State calls Mary Constant, Your Honor.

10 MARY KATHERINE CONSTANT, having

11 been first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. DOWTIN:

14 Q Ms. Constant, could you state your full name for the
15 record, please.

16 A Mary Katherine Constant.

17 Q Ms. Constant, do you remember where you were on April
18 11th, 2013?

19 A Yes, I do.

20 Q And where were you -- around 2:30 p.m. where were you
21 at?

22 A I was at the Shell gas station over near CPW and
23 Westview Middle School.

24 Q And how do you remember that's where you were at?

25 A Well, that particular day it was robbed, but I go by

DIRECT EXAMINATION: MARY CATHERINE CONSTANT

119

1 there -- I would go there at that time every day at 2:30,
2 around there, on my way to get in the pickup line.

3 Q So this wasn't your first time?

4 A No.

5 Q And where is that gas station located?

6 A It's on the corner of the highway right there at the
7 red light at the big CPW building.

8 Q And that's in Greenwood County?

9 A In Greenwood County. Yes, sorry.

10 Q Was there anything in particular that stood out to you
11 that day when you made your visit to the Shell station?

12 A There was a car that was parked at an angle, and it was
13 odd because usually at that time a lot of the same people
14 were there, because we all would stop and get drinks for our
15 kids before we picked them up from school, or either we
16 would go by there afterwards. But most of the time I went
17 by before. And the car was parked so that I pulled in front
18 of it and they didn't have to back out.

19 Q What side of the store was it on?

20 A If you're looking at the store it was on the right-hand
21 side.

22 Q Let's go back to the car. Can you describe a little
23 bit what type of car it was?

24 A It was either a truck with an extended cab cover or an
25 SUV type vehicle and it was a dark color -- color

DIRECT EXAMINATION: SCOTT RUSS

120

1 automobile.

2 Q Did you happen to see who was driving that car?

3 A I did not happen to see anybody in the car, but I know
4 when I was in the store there was -- when I was leaving the
5 store there was just one person in the store, and it was a
6 person about my age. What I thought was middle-aged. And
7 he had a mustache and he was a black man.

8 Q Did you ultimately find out that the store was robbed?

9 A I did. When I got home that day that's when I heard
10 that the store had been robbed. And I called my husband and
11 I was like, oh, my gosh. That was right when I was there.
12 And I told him about what I saw, and the only person that
13 was in there, other than the lady who was working at the
14 register, and he told me that I needed to call 911 and
15 report that I had been there.

16 Q And do you remember what you told your husband and what
17 you saw?

18 A Well, I told my husband that while I was there there
19 was a car parked on the side of the building so that they
20 didn't have to back out of the parking place, that they were
21 just at an angle, and that I had parked in front of them.
22 And that was the main thing that really triggered me that it
23 was parked in front. That most people park there. And the
24 man was a black man. He had a mustache. And that I felt
25 like that was who it was that may have robbed the store.

DIRECT EXAMINATION: SCOTT RUSS

121

1 And that was when he told me that I needed to call.

2 Q Did you describe the vehicle you saw?

3 A I told him it was a dark car, because he asked me. He
4 was like, well, did you notice anything about the car. And
5 I told him, I said, it was dark in color, and I said I
6 didn't get a license plate because it was parked at an odd -
7 - odd way, so I wasn't behind it. I was in front of it.

8 Q And did you ultimately call the police and tell them
9 what you saw that day?

10 A Yes, I did, uh-huh.

11 MR. DOWTIN: All right. No further questions. Please
12 answer any questions Mr. Anderson may have.

13 THE WITNESS: Okay.

14 MR. ANDERSON: I don't have any questions.

15 THE COURT: Okay. Thank you, ma'am. You may step
16 down.

17 (Whereupon, the Witness stepped down from the witness
18 stand.)

19 MR. BROWN: The State calls Scott Russ.

20 SCOTT RUSS, having first been duly
21 sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. BROWN:

24 Q Mr. Russ, would you state your full name.

25 A Scott Russ.

DIRECT EXAMINATION: SCOTT RUSS

122

1 Q And where were you employed?

2 A Greenwood Sheriff's Office.

3 Q How long had you been employed there?

4 A Eighteen years.

5 Q And what are your current duties in Greenwood Sheriff's
6 Department?

7 A I'm currently assigned to the criminal investigation
8 division.

9 Q And in 2013 were you in an investigations?

10 A Yes.

11 Q And kind of taking you out of turn. When did you
12 become -- did you become involved in this case on April
13 11th, 2013?

14 A I did.

15 Q And when did you become involved in it?

16 A I became involved in it after the arrest of Mr. Hakeem,
17 and getting ready to go back and speak with his wife about
18 doing a search of the house.

19 Q Now, is this pretty much the limited scope that you had
20 during this investigation?

21 A Yes, sir. That's correct.

22 Q And you said you went back -- you were at the house
23 after Mr. Hakeem was arrested to do a search of the
24 residence?

25 A Right.

DIRECT EXAMINATION: SCOTT RUSS

123

1 Q I'm going to show you what's been marked for
2 identification purposes as State's ID Number 1. Please tell
3 me what that is.

4 A This is a consent to search residence form.

5 Q And who signed that consent order?

6 A It was signed by myself and Bird Hakeem.

7 Q Who is Bird Hakeem?

8 A That is the wife of Mr. Hakeem.

9 Q And where did they live?

10 A The address where they reside is

11 Q Is that in Greenwood County?

12 A That is in Greenwood County.

13 Q Now, is the front -- what all is in this packet, or
14 this State's ID 1? What's on the back page?

15 A The back page would be your -- basically a return,
16 which is an inventory of whatever property was removed from
17 the house during the search.

18 Q And again, was this consent to search form signed by
19 yourself?

20 A That's correct.

21 Q Or witnessed by yourself?

22 A Right.

23 Q And who signed the form consenting to the search?

24 A Consenting to the search is Bird Hakeem.

25 MR. BROWN: Judge, at this time the State moves State's

DIRECT EXAMINATION: SCOTT RUSS

124

1 ID into State's Evidence.

2 THE COURT: Subject to the previous rulings.

3 (Whereupon, State's Exhibit Number 1 was admitted into
4 evidence.)

5 Q Now, Mr. Russ, when you got to the house who was there
6 at the home at ?

7 A There at the home when I arrived would have been Ms.
8 Bird Hakeem and a couple of -- maybe a couple of
9 investigators from the Sheriff's Office.

10 Q Now, this consent to search residence, what all does it
11 say in this? What does this -- what is this basically
12 consenting to? What is she consenting to?

13
14 A Basically what she is consenting to is a search of the
15 property that is listed in the location on that consent to
16 search, being the residence. The home itself.

17 Q And again, she was the wife of Mr. Hakeem?

18 A That is correct.

19 Q And did she freely and voluntarily give you consent,
20 you and the Sheriff's Office, any other law enforcement
21 there at that time, consent to search her residence for any
22 type of evidence that might be involved in this case at the
23 Shell gas station?

24 A She did.

25 Q And that was freely and voluntarily given?

DIRECT EXAMINATION: SCOTT RUSS

125

1 A Yes.

2 Q Did you coerce her or threaten her in any way?

3 A In no way.

4 Q Did anybody else there in your presence, did you hear
5 of them threatening her in any way?

6 A Not that I'm aware of.

7 Q So her signature was freely and voluntarily given?

8 A To me, yes.

9 Q Again, you said on the back, second page, is basically
10 a return of what was found in the home?

11 A That is correct.

12 Q And on here it says multicolored with gray hooded
13 jacket; is that right?

14 A Yes, that's correct.

15 Q I have to zoom it in more.

16 A Yeah. It's just a bad angle from here.

17 Q If you want to you can step down, with the Judge's
18 permission.

19 THE COURT: Uh-huh.

20 (Whereupon, Witness steps down from the witness stand
21 and approaches State's Exhibit Number 1.)

22 Q And what was the second, or B of what was taken?

23 A B is Arizona size 44 jeans from the closet. And out to
24 the side would be the officer that collected it, which would
25 be Brooks.

CROSS-EXAMINATION: SCOTT RUSS

126

1 Q That would be Brooks?

2 A Uh-huh.

3 Q Then what is that?

4 A That is a mark that we make of the remaining space on
5 return showing that nothing was added or removed beyond what
6 is written. And that says, "Nothing further removed," my
7 initials, the date. And the opposing line is the initials
8 of Ms. Bird Hakeem on that same date.

9 Q Again, that's the same date that the Shell gas station
10 was robbed?

11 A Yes, sir.

12 (Whereupon, Witness returns to the witness stand.)

13 Q And do you remember who was there right around that
14 area when you witnessed Ms. Hakeem sign this consent form?

15 A Besides she and myself, the only other one that I
16 remember in the immediate area was Whitfield Brooks.

17 Q Whitfield Brooks?

18 A Uh-huh.

19 Q The lead investigator on this case?

20 A Correct.

21 MR. BROWN: No further questions.

22 CROSS-EXAMINATION.

23 BY MR. ANDERSON:

24 Q When you got to the home of the Hakeems, Mr. Russ, who
25 all was there?

CROSS-EXAMINATION: SCOTT RUSS

127

1 A The only people I can attest to or remember being there
2 were myself -- of course, I arrived there. So it was
3 myself, Whitfield Brooks, and Ms. Bird Hakeem.

4 Q About what time of the day was that?

5 A I was thinking it was mid-afternoon, somewhere in
6 there.

7 Q Now, you heard the testimony with regard to timing of
8 the robbery which was about 2:30 p.m.; is that right?
9 You've been in the courtroom listening to it, hadn't you?

10 A To my recollection, yes.

11 Q Yeah, okay. To be exact, 2:33 as I read the video.
12 2:33 was the time of the robbery.

13 A Okay.

14 Q You get to the home trying to outline and framework the
15 situation here. You get to the home about what time, sir?

16 A I have no idea what time I actually got there.

17 Q Because it's been two and a half -- I mean, not two and
18 a half, but two years and three months?

19 A It's been some time.

20 Q And I assume you've had other investigations since
21 then, so I'm not trying to -- I understand you have your job
22 to do. But what I'm driving at is, when you got there had
23 other officers, whether they be city or county, were they
24 there? Had they been there?

25 A I'm sure they'd been there, because to my knowledge.

CROSS-EXAMINATION: SCOTT RUSS

128

1 they had arrested him at that point.

2 Q All right. So the person that is -- that you're faced
3 with confronting at this point in time, was she a person who
4 appeared to be suffering from anxiety of any kind because of
5 this situation or was she just someone who wanted to sign a
6 consent to search?

7 A I'm sure she was a little concerned, but I don't
8 remember any anxiety.

9 Q But you don't -- you don't know whether when they first
10 arrived the officers -- you don't know whether or not they
11 went into the home with guns drawn or not, do you?

12 A No, sir. I would have no way of knowing.

13 Q Did you call Ms. Bird Hakeem to come out of the house?
14 Were you the one who called her to come out?

15 A No, sir.

16 Q Who did?

17 A I wasn't there at that point in time.

18 Q Well, when they had this signed consent to search it
19 says here that, "These agents are authorized by me to take
20 from my residence property, any papers, letters, materials,
21 photos, impressions or other property which may be necessary
22 for the investigation." That's more or less about anything
23 they wanted in the house; is that right?

24 A That's correct.

25 Q Did you go down to SLED headquarters for training? The

CROSS-EXAMINATION: SCOTT RUSS

129

1 Justice Academy? Criminal Justice Academy?

2 A Yes. I did attend the Criminal Justice Academy.

3 Q You know about search warrants and the limitations of
4 search warrants?

5 A That's correct.

6 Q And they have to have specificity, right?

7 A Correct..

8 Q And is there some inclination that it's easy to get the
9 consent so you won't have to go down and specify what you
10 want from the Magistrate?

11 A Not necessarily.

12 Q Now, when you say that, "Do hereby authorize Sergeant
13 Scott Russ," does that mean you go into the house and
14 search?

15 A Does that mean me there?

16 Q Yeah.

17 A Of course authorizes me, yes.

18 Q And you're the one who went into the house?

19 A I went in and gained the consent to search, yes.

20 Q But the other officers actually did the search?

21 A That's correct.

22 Q And who were those officers?

23 A The only --

24 Q I don't mean to be trying. I understand about time
25 lapse. I'm not trying to pin you to the wall or nothing

CROSS-EXAMINATION: SCOTT RUSS

130

1 like that. I know it's two and a half years... You've had a
2 lot of investigations. But it's extremely important, sir,
3 to try to remember. So somebody besides you did at least
4 some of the searching?

5 A Correct.

6 Q And they don't put on here -- they just put the date.
7 They don't put the time -- the hour of the day. And you
8 don't remember exactly the hour of the day that --

9 A No, sir. I don't.

10 Q -- this woman signed this consent?

11 A I do not.

12 Q Can you recollect whether it was still daytime? April
13 would have been, I reckon, right around the time of daylight
14 savings.

15 A If I was -- like I said, to my recollection I thought
16 it was around mid-afternoon somewhere, so I'm sure it had to
17 have still been daylight to some extent.

18 Q I think that makes sense. So you didn't see them --
19 when Mr. Hakeem drove up you didn't see them take him off to
20 jail?

21 A You're speaking about the officers?

22 Q Yeah.

23 A No, sir.

24 Q So you apparently got there after he had been --

25 A That is correct.

REDIRECT EXAMINATION: SCOTT RUSS

131

1 Q So you didn't see Mr. Hakeem all day?

2 A That is correct. I had not seen him.

3 MR. ANDERSON: That's all I have.

4 THE COURT: Any redirect?

5 MR. BROWN: Just briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. BROWN:

8 Q Mr. Anderson asked you -- he read the part out of the
9 consent basically that you could get papers, letters,
10 materials or anything part of the investigation. He asked
11 that you could pretty much get anything out of the house you
12 wanted to, correct? Is that what he said?

13 A Yes.

14 Q But, in fact, the only things that were taken from the
15 house were two items; is that correct?

16 A That is correct.

17 Q And those were found by Investigator Brooks?

18 A Right. Both items have Brooks' name next to them as
19 the person who discovered them.

20 Q Again, Ms. Hakeem signed it? Her initials are on the
21 back page?

22 A Yes.

23 Q She also signed the front page consenting to the
24 search?

25 A That is correct.

RECROSS-EXAMINATION: SCOTT RUSS

132

1 MR. BROWN: No further questions.

2 MR. ANDERSON: Your Honor, may I --

3 THE COURT: Yeah.

4 RECROSS-EXAMINATION

5 BY MR. ANDERSON:

6 Q Let me ask you one thing.

7 A Yes, sir.

8 Q During the process of her signing the consent, do you
9 recollect anything to the effect -- not necessarily the
10 exact words, but some statement to the effect being said to
11 Ms. Hakeem during the process of getting her consent, "We
12 can go back and get a search warrant and mess up your
13 belongings or we can be more careful if you consent." Did
14 you hear any words like that?

15 A No, sir. I did not.

16 MR. ANDERSON: Thank you.

17 THE COURT: Okay. Thank you. You can step down.

18 (Whereupon, the Witness stepped down from the witness
19 stand.)

20 MR. BROWN: The State calls Whit Brooks.

21 WHITFIELD BROOKS, having first been
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. BROWN:

25 Q Mr. Brooks, please state your full name.

DIRECT EXAMINATION: WHITFIELD BROOKS.

133

- 1 A Whitfield Brooks.
- 2 Q And what's your position? Where do you work?
- 3 A Greenwood County Sheriff's Office.
- 4 Q And how long have you been there?
- 5 A Seven years.
- 6 Q What is your position there?
- 7 A I'm currently assigned to the drug enforcement unit.
- 8 Q In 2013 where were you assigned?
- 9 A The criminal investigation division.
- 10 Q And in 2013, more specifically April 11th, 2013, did
- 11 you respond to an armed robbery?
- 12 A Yes, sir. I did.
- 13 Q And where was that armed robbery taking place, or where
- 14 had it occurred?
- 15 A The Shell station located at the corner of Bypass 225
- 16 and Alexander Avenue.
- 17 Q And that's here in Greenwood County?
- 18 A It is.
- 19 Q What time of day did you get the call?
- 20 A Mid-afternoon. Early, mid-afternoon. I believe it was
- 21 around the neighborhood of 2:30 in the afternoon.
- 22 Q And once the call came out over your radio how long did
- 23 it take you to get to that Shell gas station?
- 24 A I was probably there within about five minutes. I
- 25 wasn't too far away.

DIRECT EXAMINATION: WHITFIELD BROOKS

134

1 Q And once you got to the Shell gas station what did you
2 do? What did you observe?

3 A I observed -- at the time I arrived I observed there
4 were no other vehicles in the parking lot. I parked kind of
5 towards the side of the building. Approached the front
6 door, on the lookout for any potential suspects or anyone
7 that may still be on the scene. I saw the clerk, Ms. Smith,
8 was in the store. I believe she was standing behind the
9 counter at that point. I approached the front door to where
10 she could see me through the glass trying to indicate to her
11 that I was law enforcement. She had the doors locked to the
12 store. At that point once she saw me, realized who I was,
13 she let me in the store. Unlocked the door. I think first
14 checked her welfare to make sure she was okay and not
15 injured, and then began trying to get information from her
16 about what had happened, a description of the suspect,
17 everything like that.

18 Q And did she give you a description of the suspect?

19 A She did.

20 Q What else -- descriptive information did she give you
21 during her encounter with the suspect?

22 A She told me that when he approached the register he was
23 carrying an alcohol beverage that he sat down on the counter
24 and that he then asked for three packs of Newport
25 cigarettes. She told me that, as was customer for her, she

DIRECT EXAMINATION: WHITFIELD BROOKS

135

1 asked for his date of birth. He gave the date of birth.

2 And she actually handed me a piece of paper. It appeared to
3 be like a printed receipt from the store where she had
4 entered the date of birth into the register computer system.

5 Q Do you remember what that date of birth was?

6 A

7 Q And after you got that date of birth what did you do
8 next?

9 A At that point I got on county radio and began giving
10 out information to other responding units advising them of
11 the physical description of the suspect, potential direction
12 of travel. All that sort of info. During that timeframe
13 Lieutenant Anderson of the Greenville Police Department
14 pulled up on scene to offer his assistance. At that point,
15 as he was a patrol officer in a marked car and had a mobile
16 computer there in the car with him, I asked for him to run
17 that date of birth, , through RMS.

18 Q And once the date of birth was run -- this is the
19 database that anybody's -- any kind of birth date can be in?

20 A RMS. It's just our local database.

21 Q Who's name came back with that date of birth?

22 A Jamal Hakeem.

23 Q How many other names came back with that date of birth?

24 A None.

25 Q Now, after you got that date of birth what did you do

DIRECT EXAMINATION: WHITFIELD BROOKS.

136

1 next?

2 A We continued the investigation on the scene for a short
3 period of time, to include dusting for fingerprints, taking
4 photos. Also, I communicated that information by phone to
5 other investigators who were at the Sheriff's Office. I
6 asked them to contact SLED and request a six person photo
7 lineup containing a picture of Mr. Hakeem.

8 Q Now, did SLED send you a six pack photo?

9 A They did. They sent it to a computer at the Sheriff's
10 Office and one of those investigators brought it out to me.

11 Q How long did that take to get all this?

12 A Maybe 15, 20 minutes.

13 Q Not very long after you got there?

14 A No, sir.

15 Q And when they do with the age , roughly
16 years-old at that time, what is the goal in getting a six
17 pack?

18 A They try and take the photo of the suspect and then
19 find five photos of other people of similar skin tone,
20 facial features, haircut style that essentially would look
21 similar. Not identical, but similar to the person in
22 question and then assemble them on a page.

23 Q Would facial hair also be included?

24 A Yes, sir.

25 Q I'll show you what's been marked as evidence as State's

DIRECT EXAMINATION: WHITFIELD BROOKS

137

- 1 -- or entered into evidence as State's Evidence Number 2.
- 2 What is that?
- 3 A It's the six person photo lineup contained in the
- 4 picture of Jamal Hakeem.
- 5 Q And when you presented that, who did you present that
- 6 six pack photo lineup to?
- 7 A Ms. Shea Smith, the store cashier.
- 8 Q And was she able to pick out the person who robbed her?
- 9 A She was.
- 10 Q And who did she circle?
- 11 A Number five, Jamal Hakeem.
- 12 Q And that is Jamal Hakeem?
- 13 A That is.
- 14 Q And she documented that on the second page?
- 15 A Yes, sir. She did.
- 16 Q And again, I'm showing you State's Evidence Number 3.
- 17 What is that?
- 18 A That's a photo of Jamal Hakeem. Just a larger version
- 19 of the one that's included in the lineup.
- 20 Q Now, based on your investigation, is Jamal Hakeem in
- 21 this courtroom?
- 22 A He is.
- 23 Q And again, where is he sitting?
- 24 A He is seated to Mr. Anderson's left at the defense
- 25 table.

DIRECT EXAMINATION: WHITFIELD BROOKS

138

1 Q Now, you said once you got to that gas station you did
2 take photos?

3 A Yes, sir.

4 Q I'm going to show you what's been marked for
5 identification purposes as State's ID 10. Tell me what that
6 picture is.

7 A It's a photo of the front of the Shell station at
8 Bypass 225 and Alexander.

9 Q Also State's ID Number 11.

10 A It is a photo of the -- a little bit of the front,
11 mostly the right side of that same business.

12 Q And that's if you were looking -- if you were standing
13 in front of the gas station it would be the right side of
14 the building?

15 A Correct.

16 Q Would that be similar to -- strike that question.

17 MR. BROWN: Judge, at this time I'd like to move
18 State's ID 10 and 11 into evidence as State's Evidence 10
19 and 11.

20 MR. ANDERSON: No objection.

21 THE COURT: Okay.

22 (Whereupon, State's Exhibit Numbers 10 and 11 were
23 admitted into evidence.)

24 Q I'm also going to show you what's been marked for
25 identification purposes as State's ID 12. What does that

DIRECT EXAMINATION: WHITFIELD BROOKS

139

1 picture show?

2 A It is the counter and cash register area of that Shell
3 station. Ms. Smith is behind the counter on the telephone.

4 MR. BROWN: Judge, at this time I move State's ID 12
5 into Evidence 12.

6 MR. ANDERSON: No objection.

7 THE COURT: Okay.

8 (Whereupon, State's Exhibit Number 12 was admitted into
9 evidence.)

10 Q State's Evidence 12. That's, again, if you come to the
11 front door of the Shell gas station where you've got the
12 checkout counter?

13 A Yes, sir.

14 Q Beer cooler in the back left?

15 A Yes, sir.

16 Q And the cigarette packs right behind the clerk --

17 A Correct.

18 Q -- to the right of the clerk, looking at it?

19 A Yes, sir.

20 Q Now, Investigator Brooks, after you -- after you were
21 able to identify a suspect by the name of Jamal Hakeem and
22 Ms. Smith picked him out of the phone lineup, what did you
23 next -- what was the next move you did?

24 A We load that information that we had identified Mr.
25 Hakeem as a suspect to our other Sheriff's Office members

DIRECT EXAMINATION: WHITFIELD BROOKS

140

1 that were in the area. I then met with other officers at
2 the Hakeem residence on

3 Q And at that time was Jamal Hakeem at that location?

4 A No, sir. He wasn't.

5 Q Who was there?

6 A When I arrived there were, I believe, maybe two other
7 members of the Sheriff's Office. Also, Ms. Hakeem -- Bird
8 Hakeem, Jamal Hakeem's wife, was present at the residence.

9 Q And when you arrived was she already outside the home
10 or did she come out a little later?

11 A To the best of my recollection, she was speaking with
12 some of the officers already on scene somewhere near the
13 door area to the residence.

14 Q And when those other officers first arrived, to your
15 knowledge did they come and think potentially Mr. Hakeem was
16 inside the residence where they had their guns drawn?

17 A It's -- I don't recall being there for a part like
18 that. Having said, based on the serious violent nature of
19 the offense, and that being his residence, it's certainly
20 possible the officers could have had weapons drawn.

21 Q But at the time you remember Ms. Hakeem outside the
22 door were any guns out?

23 A Not that I recall. No, sir.

24 Q And what happened once you got there and Mr. Hakeem
25 came outside? What did she do?

DIRECT EXAMINATION: WHITFIELD BROOKS

141

1 A I don't believe I spoke to her personally. She was
2 speaking with other officers on scene. She made -- she
3 placed a phone call to Mr. Hakeem and spoke on the phone
4 with him and actually asked for him to come back to the
5 house. Told him that the police were there and he needed to
6 return.

7 Q And did he return?

8 A He did.

9 Q When he returned did he walk up to the house, or how
10 did he return?

11 A By vehicle. He turned in the driveway driving the
12 vehicle.

13 Q I'll show you what's been marked for identification
14 purposes as State's ID 13, 14 and 15. Take a look at those
15 and tell me what those look like.

16 A They are pictures of the front passenger side, front
17 driver's side and rear of the vehicle Mr. Hakeem drove back
18 into the driveway, which is a dark green Chevrolet Suburban.

19 MR. BROWN: Judge, at this time we move State's ID 13,
20 14 and 15 as Evidence State's 13, 14 and 15.

21 MR. ANDERSON: No objection.

22 THE COURT: Okay.

23 (Whereupon, State's Exhibit Numbers 13, 14 and 15 were
24 admitted into evidence.)

25 Q Investigator Brooks, I want to show you State's

DIRECT EXAMINATION: WHITFIELD BROOKS

142

1 Evidence 13. Again, whose vehicle is that?

2 A Mr. Hakeem's.

3 Q What color is that?

4 A I call it dark, maybe forest or hunter green.

5 Q But a dark colored SUV?

6 A Yes, sir.

7 Q State's Evidence 14, the same vehicle?

8 A Driver's side of the same vehicle.

9 Q Is that you in the back in that picture?

10 A Yes, sir.

11 Q State's Evidence 15.

12 A That is the rear of the same vehicle.

13 Q What is that, a Chevrolet Suburban?

14 A Yes, sir.

15 Q After Mr. Hakeem arrived at his home on

16 when he pulled up to the driveway what did law enforcement

17 do?

18 A Instructed him to put his hands up where we could see

19 his hands, step out of the vehicle. If I remember

20 correctly, I instructed him onto his knees, at which time I

21 approached him and placed him in handcuffs.

22 Q I'll show you what's been marked State's ID 16, 17, 18

23 and 19. If you'd take a look at these photos and tell me

24 what they are.

25 A The first one is a photo of the front of the Hakeem

DIRECT EXAMINATION: WHITFIELD BROOKS

143

1 residence. The second photo is a shot looking inside the --
2 through the driver's side door of that green Suburban. The
3 third photo is a closer up picture of the center console
4 area. And the final one is even closer of the center
5 console area where you can see a freshly opened pack of
6 Newport cigarettes.

7 MR. BROWN: Judge, at this time the State moves State's
8 ID 16 through 19 as State's Evidence 16 through 19.

9 MR. ANDERSON: No objection.

10 THE COURT: Okay.

11 (Whereupon, State's Exhibit Numbers 16, 17, 18 and 19
12 were admitted into evidence.)

13 Q And I want to show you what's marked as State's
14 Evidence 16.

15 A Yes, sir.

16 Q What's that a picture of?

17 A The Hakeem residence on

18 Q And that is State's Evidence 17.

19 A That is a shot looking through the driver's side door
20 into that vehicle.

21 Q Who's that on the other side of the car door?

22 A That's myself, I believe.

23 Q State's Evidence 18?

24 A The center console. You can see the Newport -- pack of
25 Newports.

DIRECT EXAMINATION: WHITFIELD BROOKS

144

1 Q State's Evidence 19.

2 A A closeup on that pack.

3 Q Why are those pictures of that Newport -- box of
4 Newport cigarettes important?

5 A Our information from the victim at the scene, which was
6 corroborated by the video of the incident, showed the
7 suspect asking for and then subsequently taking three packs
8 of Newport cigarettes.

9 Q Investigator Brooks, I want to show you what's been
10 marked for identification purposes as State's ID 20. Feel
11 free to open that pack and tell me what that is.

12 A It's the pack of Newport cigarettes. The open pack of
13 Newport cigarettes.

14 Q Now, was this pack of Newport cigarettes taken out of
15 the center console of that SUV?

16 A Yes, sir. It was.

17 Q The same SUV that Mr. Jamal Hakeem drove up in?

18 A Yes, sir.

19 MR. BROWN: Judge, at this time I move State's ID 20 as
20 State's Evidence 20.

21 MR. ANDERSON: No objection.

22 THE COURT: Okay. Without objection.

23 (Whereupon, State's Exhibit Number 20 was admitted into
24 evidence.)

25 Q Investigator Brooks, how many, does it appear,

DIRECT EXAMINATION: WHITFIELD BROOKS

145

1 cigarettes are out of that pack?

2 A It's pretty full. Two or three maybe.

3 Q Now, Investigator Brooks, after Mr. Hakeem was in
4 custody at the Greenwood County Sheriff's Office, and
5 searching his vehicle after subsequent to his arrest and
6 retrieving that pack of cigarettes, what did you do next
7 with regard to Mr. Hakeem?

8 A I transported Mr. Hakeem to the Greenwood Law
9 Enforcement Center where myself and Investigator Strickland
10 conducted an interview of Mr. Hakeem after advising him of
11 his Miranda rights.

12 Q And while you all were interviewing him did he ever
13 give any kind of admission?

14 A No, sir.

15 Q After talking with him -- roughly how long did you talk
16 with him?

17 A I don't remember exactly. Approximately an hour.
18 Maybe a little more than an hour.

19 Q After you got down talking with him what did you do
20 next?

21 A I escorted him upstairs and booked him into the
22 Greenwood Detention Center on the charges of armed robbery
23 and possession of a weapon during a violent crime.

24 Q Now, after you -- Mr. Hakeem was at the Detention
25 Center, he was arrested, you read him his Miranda rights,

DIRECT EXAMINATION: WHITFIELD BROOKS

146

1 what did you do next? Where did you go after that?

2 A After I left the Detention Center, myself -- to the
3 best of my recollection, myself, Investigator Strickland,
4 Investigator Russ and Lieutenant Kenny Downing, returned to

5
6 Q And once you were back at , which is Mr.
7 Hakeem's residence, what did you all do?

8 A We made contact with Mr. Hakeem's wife, Bird Hakeem.
9 Scott Russ spoke with her and obtained written consent to
10 search the residence from her.

11 Q Now, were you there in the room when this consent to
12 search was obtained?

13 A Yes, sir. To the best of my recollection, Scott Russ
14 was actually seated maybe on the couch or kitchen -- at the
15 kitchen table with her and I was standing a short distance
16 away.

17 Q Now, if this arrest -- if this armed robbery took place
18 around 2:30, a little after 2:30 in the afternoon on April
19 11th, 2013, then the investigation of the Shell station, and
20 then taking -- going to his house, back to the law
21 enforcement center, and then back to , is this
22 later on in the afternoon now?

23 A I would estimate it was around maybe 5:30 or 6:00.

24 Q And that's when yourself, or in particular Scott Russ
25 was able to get the consent to search?

DIRECT EXAMINATION: WHITFIELD BROOKS

147

1 A Yes, sir.

2 Q I'll show you what's been marked State's Evidence 1.

3 What is that?

4 A It is a consent to search residence form.

5 Q And did you observe Ms. Bird Hakeem sign that consent
6 to search?

7 A Yes, sir.

8 Q Was she forced or coerced into signing that form?

9 A No, sir.

10 Q And after you got consent to search that -- at
11 did you all go ahead and search it?

12 A We did.

13 Q Who searched that residence?

14 A I did specifically. I believe the other officers on
15 the scene, including Strickland and Downing participated in
16 the search as well.

17 Q And when you searched did you find anything?

18 A I did, sir.

19 Q What did you find?

20 A In the closet of the bedroom shared by -- I guess you'd
21 call it the master bedroom shared by Mr. and Ms. Hakeem,
22 found a hooded plaid sweatshirt type garment that was
23 consistent with the one being worn in the video by the
24 perpetrator. Also found a pair of blue jeans that were
25 consistent with what was being worn in the video. In one of

DIRECT EXAMINATION: WHITFIELD BROOKS

148

1 the pockets of the plaid hoodie were two unopened packs of
2 Newport cigarettes.

3 Q I'll show you what's been marked State's ID 21 through
4 24. Do you recognize these photos?

5 A Yes, sir.

6 Q What are they?

7 A The first one is a photograph. You can see my hand
8 holding the pair of blue jeans. You can also see the plaid
9 hoodie. The second photo is me holding the plaid hoodie,
10 and I've kind of got the pocket turned inside out where you
11 can see the Newport cigarettes, and I'm pointing to it with
12 one finger. The third photo is a picture of a white tee
13 shirt consistent with what he was wearing in the video. And
14 the fourth picture is a closeup of me holding the hoodie
15 with the pocket open where you can see the Newports.

16 MR. BROWN: At times time I move State's ID 21 through
17 24 as evidence 21 through 24.

18 MR. ANDERSON: Subject to my objection.

19 THE COURT: All right.

20 (Whereupon, State's Exhibit Numbers 21, 22, 23 and 24
21 were admitted into evidence.)

22 Q I'll show you what's been marked as State's Evidence
23 21.

24 A Yes, sir.

25 Q Can you tell me what that picture shows?

DIRECT EXAMINATION: WHITFIELD BROOKS

149

1 A That's my hand holding the blue jeans that were found,
2 and behind those you can see the plaid hoodie.

3 Q And where was that found?

4 A In the closet of the master bedroom.

5 Q Of whose house?

6 A Jamal Hakeem and Bird Hakeem.

7 Q I'll show you what's been marked as State's Evidence
8 22. What is that?

9 A I'd say a picture of myself holding that hoodie where
10 the cigarettes were visible and pointing to it. To the
11 cigarettes.

12 Q State's Evidence 23.

13 A White tee shirt. Again, it looks like what he was
14 wearing under the hoodie on the video.

15 Q State's Evidence 24.

16 A A closeup of those Newport cigarettes in the pocket of
17 the hoodie.

18 Q And again, why did you take that picture?

19 A That was the -- like I talked about earlier, in
20 addition to the money, three things he took from the store
21 were the three packs of Newport cigarettes. We found one in
22 the center console of the vehicle that was open, and those
23 were the remaining two packs, adding up to three.

24 Q Investigator Brooks, I'm going to show you what's been
25 marked for identification purposes as State's ID 25.

DIRECT EXAMINATION: WHITFIELD BROOKS

150

1 A Yes, sir.

2 Q You can feel free to put on gloves, if you like.

3 A These are the Arizona size 44 blue jeans that we found
4 in the bedroom of the residence in the closet.

5 MR. BROWN: Judge, at this time the State moves State's
6 ID 25 in as Evidence 25.

7 MR. ANDERSON: Subject to my objections already stated.

8 THE COURT: All right.

9 (Whereupon, State's Exhibit Number 25 was admitted into
10 evidence.)

11 Q Investigator Brooks, I show you State's Evidence 21.
12 Are those the same blue jeans that is in that picture?

13 A Yes, sir.

14 Q Investigator Brooks, I want to show you what's been
15 marked for identification purposes as State's ID 26.

16 A Yes, sir.

17 Q Take a look at that and tell me what that is.

18 A It is the hoodie found in that bedroom. The plaid
19 hoodie.

20 Q Is there anything else along with that plaid hoodie?

21 A I believe the cigarettes are still in the pocket. I'm
22 just trying to find my way into it.

23 Q And again, is that the same jacket, or hoodie, as in
24 State's Evidence 22?

25 A Yes, sir. That's it.

DIRECT EXAMINATION: WHITFIELD BROOKS

151

1 Q Found at ?

2 A Yes, sir.

3 Q Again, is that Jamal Hakeem's residence?

4 A It is.

5 MR. BROWN: Your Honor, at this time the State moves in
6 State's ID 26 as Evidence 26.

7 MR. ANDERSON: Without objection.

8 (Whereupon, State's Exhibit Number 26 was admitted into
9 evidence.)

10 Q Investigator Brooks, after you searched the house was
11 anything else taken from the house?

12 A No, sir.

13 Q And that is documented on the consent to search?

14 A Yes, sir. The sheet behind it, it was filled out like
15 a return.

16 Q Signed by Ms. Hakeem?

17 A Yes, sir.

18 Q After securing these items into your custody at the
19 Sheriff's Department did that conclude your investigation on
20 this case?

21 A Yes, sir.

22 MR. BROWN: No further questions.

23 THE COURT: Cross.

24 CROSS-EXAMINATION

25 BY MR. ANDERSON:

CROSS-EXAMINATION: WHITFIELD BROOKS

152

1 Q Any gun found, Mr. Brooks?

2 A No, sir.

3 Q Any money found, Mr. Brooks?

4 A No, sir.

5 Q I don't mean to belabor the subject but let's go back
6 over some of the testimony without reiterating too many of
7 the facts that's been elicited. You get to the home at
8 about what time?

9 A Are we speaking about the first time or the second
10 time?

11 Q First time.

12 A The first time. It would probably be in the
13 neighborhood of 3:30 or so in the afternoon.

14 Q Did you see the initial officers on the scene that may
15 have had their guns drawn when Ms. Hakeem came out the --
16 came to the doorway?

17 A Not that I recall. To the best of my recollection
18 there were already maybe two or three officers on scene when
19 I got there.

20 Q But you won't deny that that might have happened?

21 A No. That -- when searching for an armed robbery
22 suspect I can certainly see other officers drawing their
23 weapons. I may have done the same thing if I was in their
24 shoes.

25 Q And not only that, but perhaps the initial officers

CROSS-EXAMINATION: WHITFIELD BROOKS

153

1 went inside the house, of course, to search for whoever the
2 perpetrator they believed to be might be in the house?

3 A Again, I don't specifically recall that, but I
4 certainly could see that being the case.

5 Q Now, of course, Jamal Hakeem is a -- not only a person
6 of interest but the prime suspect, correct?

7 A Correct, yes. That's why we arrested him.

8 Q And by virtue of being the prime suspect you had
9 probable cause, of course, to make the arrest?

10 A I did. Yes, sir.

11 Q And you won't deny that down there at the criminal
12 justice academy, which you went to -- not only that, but you
13 are the Chief of Police, Gerald's, son who I know very well.

14 A I did go to the academy and I am his son, yes.

15 Q And you are well trained, and have been an officer
16 about, what, 10 years now?

17 A About nine years. Yes, sir.

18 Q Good. That's good. And have you personally ever had
19 to get a search warrant?

20 A Numerous times.

21 Q Plenty of times?

22 A Yes, sir.

23 Q And you know the involvement of it?

24 A I certainly do.

25 Q More trouble than a consent, right?

CROSS-EXAMINATION: WHITFIELD BROOKS

154

1 A A little bit.

2 Q Now, there's been some talk about when the officers got
3 there, and I understand there's been a time lapse and all
4 that. But the Magistrate's Court, of course, is in this
5 building, and I think there's one -- there's a courtroom at
6 the county jail, isn't there?

7 A There is now. I can't remember if it was that way --

8 Q That's right.

9 A -- two years ago.

10 Q It has been recent. But, of course, it's the prisoner
11 that is taken down to the county jail after you arrested
12 him?

13 A Yes, sir.

14 Q And his constitutional rights are triggered at that
15 point. You will agree with that?

16 A I will.

17 Q You have to Mirandize him. Did you do that?

18 A I did advise Mr. Hakeem of his Miranda rights prior to
19 interviewing him.

20 Q Down at the county jail -- I mean, at your office down
21 there?

22 A I -- the second time. I believe I read him his rights
23 as soon as I arrested him. I also did it at the law
24 enforcement center before interviewing him.

25 Q Which is a safe thing to do, right?

CROSS-EXAMINATION: WHITFIELD BROOKS

155

1 A Yes, sir.

2 Q And at that point in time, after he's focused in as
3 being the person to be arrested, did you talk to him -- not
4 the wife, but to him about the necessity of getting a search
5 warrant, or in the alternative to get a consent from him,
6 Mr. Brooks? Not the wife, but him. Did you think about
7 that?

8 A I did not speak to him about a search warrant or did I
9 attempt to obtain consent from him that I recall.

10 Q There has been some testimony about Brandon -- do you
11 remember Brandon Strickland being down there?

12 A I remember him at several points during this
13 investigation. Yes.

14 Q And he was out there at the home, wasn't he?

15 A On . Yes, sir.

16 Q And he is the head man with regard to the county, as I
17 understand it, the drug enforcement unit.

18 A He is the commander of the drug enforcement unit. I've
19 only been in the drug enforcement unit just a few short
20 months myself. I was in criminal investigations up until
21 that point.

22 Q Okay. But Brandon is the chief of that particular
23 unit; is that right?

24 A The drug enforcement unit. Yes, sir.

25 Q Yeah, that's what I mean.

CROSS-EXAMINATION: WHITFIELD BROOKS

156

1 A Yes, sir.

2 Q And so, with regard to this consent that is the central
3 point here, did he get involved in that? Did you see him
4 talking to Ms. Hakeem there inside the house?

5 A He may have spoken to her. I don't specifically
6 remember an in-depth conversation. But he -- in fact, at
7 some point I probably spoke to her very briefly and just,
8 hey, how you doing. Something like that.

9 Q So just to get the timeline again, and I'll ask you
10 these questions. So you have Mr. Jamal Hakeem. He has
11 cooperated. Come back to the residence in his SUV. Now,
12 was it you that talked to him or Brandon talked to him to
13 come on in and we want to talk to you, on the telephone?

14 A I didn't speak to him on the phone. My recollection was
15 that only Ms. Hakeem spoke to him on the phone. I could be
16 mistaken about that.

17 Q But anyway, he was summoned by somebody. Some
18 officers, or some officer, or Ms. Hakeem summoned him to
19 come on home and he -- shortly thereafter he showed up.

20 A He did.

21 Q And that's when you arrested him personally?

22 A I did.

23 Q All right. And again, I get a little bit mixed up
24 about the time. That's about -- you say about, what, 4:30
25 or something did you say?

CROSS-EXAMINATION: WHITFIELD BROOKS

157

1 A I think we probably arrived at the residence in the
2 neighborhood of 3:30. By the time he got there and all that
3 took place it was probably in the neighborhood of 4:00.
4 Somewhere in there.

5 Q And all that took place in his yard?

6 A Front yard driveway. Yes, sir.

7 Q And you all take him down to the county jail. That's
8 when the interrogation took place, right?

9 A Yes, sir.

10 Q No consent, according to at least Mr. Russ, I don't
11 believe remembered some of the things. And I can understand
12 that. But as far as anybody is concerned in trying to get
13 to the nitty gritty here, the consent was not signed until
14 you all locked him up and went back to to discuss
15 this search warrant situation with Ms. Hakeem rather than
16 Mr. Jamal Hakeem who was the person, the focal point of this
17 scenario. So the consent was going to be taken to search
18 his home and get the consent from Ms. Hakeem; is that right?

19 A Yes, sir.

20 Q So that was the decision made?

21 A The consent was obtained from Ms. Hakeem after Mr.
22 Hakeem's arrest, correct.

23 Q You left -- you left Mr. Hakeem out of the situation
24 altogether, right?

25 A I didn't obtain -- attempt to obtain consent from him.

REDIRECT EXAMINATION: WHITFIELD BROOKS

158

1 Q I appreciate that. You all were looking for a gun,
2 weren't you?

3 A Yes, sir. Among other things. But yes, sir.

4 Q That was probably -- probably the significant object of
5 what you wanted to find, wasn't it?

6 A Gun, money, cigarettes, clothes.

7 MR. ANDERSON: All right. That's all I have.

8 REDIRECT EXAMINATION

9 BY MR. BROWN:

10 Q Investigator Brooks, if you could have found a gun you
11 would have found a gun, right?

12 A I'd certainly like to think so. Yes, sir.

13 Q And is there a distance between and that
14 Shell station?

15 A It is not too terribly far. Maybe five minute ride or
16 so.

17 Q But by the time you all got there to the home when he
18 pulled up between 3:30 and 4:00 that was almost an hour
19 after the armed robbery occurred?

20 A Yes, sir.

21 Q So there's no telling where he went during that time.

22 A Correct.

23 Q But you all were able to find clothing he wore during
24 an armed robbery?

25 A Yeah, in his closet. Yes, sir.

1 Q Cigarettes --

2 A Yes, sir.

3 Q -- that came from the store that's on the --

4 A Yes, sir.

5 Q And Mr. Anderson keeps asking about the consent to
6 search. Ms. Hakeem is Mr. Hakeem's wife, right?

7 A She is. Yes, sir.

8 Q They both live in that location, right?

9 A They do.

10 Q Whose bedroom was that that these clothes were found?

11 A Mr. and Ms. Hakeem's.

12 Q Both their bedrooms?

13 A Yes, sir.

14 Q So she can consent to a search of her home?

15 A Yes, sir. It was her bedroom just as much as it was
16 his.

17 Q And she freely and voluntarily did that?

18 A She did.

19 MR. BROWN: No further questions.

20 THE COURT: All right. Thank you, sir. You may step
21 down.

22 (Whereupon, the Witness stepped down from the witness
23 stand.)

24 MR. BROWN: Judge, at this time the State rests.

25 THE COURT: Okay. I told you we didn't punch a time

1 clock, but that's about as close to 5:00 as I've ever come
2 for a good -- good time to break for the day. We're going
3 to do that. We have some things we have to discuss out of
4 your presence, and we'll come back in the morning and resume
5 the trial.

6 I want to emphasize to you the importance of not
7 talking about this case with anyone. And we all know it's
8 human nature when you go home, or go anywhere and you see
9 someone who you know, they're going to ask about you and ask
10 what you're doing and all that. You go home -- I know I
11 can't decide what to have for dinner without talking about
12 it with my management committee. You all can't do that
13 about this case. If they ask you about it, tell them why.
14 These rights belong to not only the parties involved in this
15 case today but they belong to each and every one of us and
16 we have to protect them, and you're going to protect them
17 today by not talking about it, by not visiting the scene, by
18 not doing any research on the Internet or any other way, and
19 don't get on some social media thing and discuss it.

20 With that, you all have a good night and I ask you all
21 to be back at 10:00 in the morning. Thank you very much.

22 (Whereupon, the jury exited the courtroom at 4:59 p.m.)

23 THE COURT: All right. We got any motions?

24 MR. ANDERSON: Your Honor, I would respectfully request
25 that I be allowed in the morning, first thing, early if you

1 want to, to restate with clarity my motions. In the
2 overnight get together my thoughts. I've been up since 3:30
3 this morning. I had a bag of potato chips for lunch and a
4 Coca-Cola.

5 THE COURT: That's not enough. No wonder you're so
6 thin. That will be fine. But I do want to do this. Mr.
7 Hakeem, if you would, stand and raise your right hand for
8 me.

9 (Whereupon, the Defendant stands.)

10 THE COURT: Do you swear and affirm to tell the truth?

11 MR. HAKEEM: Yes, sir.

12 THE COURT: Okay. I want you to -- you can put your
13 hand down. I want you to understand that you have an
14 absolute constitutional right to testify in your own
15 defense. You have an equal absolute constitutional right
16 not to testify and it cannot be held against you. And I
17 would -- if you so desire, you and your attorney, I'll
18 instruct the jury that they are not to consider it in any
19 fashion whatsoever. There are a lot of strategic decisions
20 which come into play when you're making a decision about
21 whether or not you want to testify and those are things you
22 need to talk with your lawyer about. But the choice -- and
23 he will make recommendations to you about what to do and
24 what not to do. It is my understanding from our pretrial
25 discussions that if you do testify the State can impeach

1 your credibility with a prior conviction that you have for a
2 forgery charge. I don't think that's contested by -- I
3 don't think your attorney contested that.

4 MR. ANDERSON: I think that -- I think that's a valid -
5 -

6 THE COURT: You think about all those things overnight,
7 and in the morning we're going to want to know whether or
8 not you're going to testify or not. And I'll tell you, your
9 lawyer will make recommendations to you, but it is your
10 constitutional right. It belongs to you and no one else.
11 And the final decision about what to do is up to you. Do
12 you understand?

13 THE HAKEEM: Yes, sir.

14 THE COURT: Okay.

15 MR. ANDERSON: Appreciate it. And I've already advised
16 him that he's -- I understand he's going to spend the night
17 in the county jail and think about his decision.

18 THE COURT: Yes, sir. That's correct. All right.
19 Thank you very much.

20 MR. BROWN: Thank you, Your Honor.

21 * * * * *

22 TRIAL DAY 2-07/14/15

23 THE COURT: Mr., Geddes.

24 MR. ANDERSON: Good morning, Judge Miller. Your Honor,
25 at this time the Defense would move for a directed verdict

1 of not guilty to the indictment charging armed robbery on
2 the following grounds that the State has not introduced into
3 evidence the pistol itself. Consequently there is a
4 significant lack of competent evidence tending to prove the
5 corpus delicti of armed robbery.

6 Additionally, the Defendant moves for a directed
7 verdict of not guilty from the indictment charging use of a
8 weapon in the commission of a violent crime based upon the
9 same grounds. In the alternative, a mistrial based on the
10 following grounds. That the -- on the following grounds
11 that the warrantless arrest -- warrantless search of the
12 Defendant's home and resulting seizure of the evidence which
13 was subsequently admitted into this trial constituted an
14 egregious example of unreasonable conduct by law enforcement
15 both procedurally and substantively, in violation of his
16 Fourth Amendment Right of the U.S. Constitution and Article
17 1, Section 10 of the South Carolina Constitution. That to
18 deny the motion for a mistrial is tantamount to denying the
19 Defendant's constitutional right to a fair trial.

20 THE COURT: Okay. I see it a differently than you do,
21 sir, and I'm going to deny your motions. Has your client
22 made a determination about what he wants to do?

23 MR. ANDERSON: Your Honor, at this point in time he
24 wants to not testify.

25 THE COURT: Okay. Mr. Hakeem, stand, please.

DIRECT EXAMINATION: BIRD HAKEEM

164

1 (Whereupon, the Defendant stands.)

2 THE COURT: Please consider yourself still under oath.
3 Please tell me in your own words what it is you want to do.

4 MR. HAKEEM: I will not testify.

5 THE COURT: Okay. Have you ample time to consider
6 that?

7 MR. HAKEEM: Yes, sir.

8 THE COURT: And do you have any questions you want to
9 ask me about it, or do you think you fully understand it?

10 THE DEFENDANT: Yes.

11 THE COURT: All right. Do you have anything else
12 you're going to put up?

13 MR. ANDERSON: No. I've got -- yeah, Ms. Hakeem.

14 THE COURT: All right. Well, you all ready to go?

15 MR. ANDERSON: Yes, sir.

16 MR. BROWN: Yes, Your Honor.

17 THE COURT: All right.

18 (Whereupon, the jury entered the courtroom at 10:20
19 a.m.)

20 THE COURT: All right. Ladies and gentlemen, welcome
21 back. You all look healthy and happy and ready to go. All
22 right. Mr. Anderson.

23 MR. ANDERSON: Defense calls Ms. Jamal Hakeem.

24 BIRD HAKEEM, having first been duly
25 sworn, testified as follows:

DIRECT EXAMINATION: BIRD HAKEEM

165

1 DIRECT EXAMINATION

2 BY MR. ANDERSON:

3 Q Ms. Hakeem, kind of throw your voice over toward me so
4 that the Court and jury can hear you plainly. Your full
5 name is what, ma'am?

6 A Bird Hakeem.

7 Q And to whom are you married?

8 A Jamal Hakeem.

9 Q How long have you and Mr. Hakeem been married?

10 A Five years.

11 Q You recollect the events on April the 11th, 2013, do
12 you not?

13 A Yes, I do.

14 Q You were at the time employed where?

15 A At Lakeview Elementary School, District 50.

16 Q And how long had you been employed there?

17 A Two years.

18 Q What was your duty -- what were your duties at the
19 school?

20 A I worked cashier in the cafeteria.

21 Q Now, what time did you go to work on April the 11th,
22 2013?

23 A We have to report to work at 5:45 a.m.

24 Q You got off on that date about what time?

25 A We usually get off roughly about 1:30 but I didn't make

DIRECT EXAMINATION: BIRD HAKEEM

166

1 it home until about 10 minutes until 3:00.

2 Q Now, what happened after you got home that day?

3 A I was in the house. And I usually clean up because me
4 going to work so early I don't have a chance to do it in the
5 mornings. And I was cleaning my house and I started opening
6 the doors to let the sunshine in. When I opened the door
7 the policemen were surrounding the house and they had rifles
8 and they were pointed towards the door.

9 Q About how many officers did you see approximately? I
10 know you probably didn't count them, but about how many
11 officers do you recollect being present with guns drawn?

12 A About probably seven to 10.

13 Q And you're saying they more or less surrounded the
14 house?

15 A They did.

16 Q And what happened at that point in time?

17 A When I opened the door and the rifle was pointed
18 towards the door I almost dropped. And then they told me,
19 they said come out, and I came out the door. And then they
20 told me that they were -- they asked me for my son and I
21 told them my son doesn't live here. He's not even a
22 resident of South Carolina. And --

23 Q Let me ask you this. I think we can all understand why
24 they had their guns drawn. But were they pointed at you at
25 that point when you --

DIRECT EXAMINATION: BIRD HAKEEM

167

1 A When I opened the door the guns were pointed at the
2 door. They were pointed -- when I opened the door it was
3 pointed at me.

4 Q And what was your state of mind at that point in time?

5 A I was just there. I just -- you know, I didn't --

6 Q Well, were you upset or nervous?

7 A Yes, I was very nervous. I mean, I almost dropped to
8 the -- to the --

9 Q And then after, some officers approached you, I assume;
10 is that right?

11 A Yes.

12 Q And you remember who it was?

13 A No.

14 Q Can you describe who --

15 A It was like three or four come around me. And I ended
16 up sitting -- I walked down two or three steps and sat on
17 the bench that was outside the door, and they were talking
18 to me. And while they were talking to me the other officers
19 did a quick sweep in the house. Checked the house out.

20 Q And apparently looking for whomever they were --
21 thought might be present; is that correct?

22 A Yes, sir.

23 Q All right. So you're sitting outside at your home
24 there and you said by a picnic table or something?

25 A Yes, sir.

DIRECT EXAMINATION: BIRD HAKEEM

168

1 Q And who's talking to you there?

2 A It was -- like I say, it was about three or four
3 officers standing there. I can't remember who it was. I do
4 know Mr. Strickland, he was there. I'm not sure about
5 anyone else, because he was the main one that talked to me.

6 Q Do you recognize Mr. Russ who testified yesterday?

7 A I think so. I think so. I haven't --

8 Q So he was one of the officers out there?

9 A I think so. Now, which one is Mr. Russ? Yes. Yes. I
10 don't really remember the other guy.

11 Q I understand we're going back a little over two years.
12 But was the issue of the search warrant being discussed with
13 you by the picnic table --

14 A No, sir.

15 Q -- initially?

16 A No, sir.

17 Q So as far as the initial visit, so to speak, of the
18 police officers there at your home, before the telephone
19 call to Mr. Hakeem you don't necessarily remember exactly,
20 besides Mr. Strickland, who was out there?

21 A Correct.

22 Q Is that right?

23 A Correct.

24 Q So after that initial shock, so to speak, with regard
25 to the weapons being drawn and that sort of thing, and the

DIRECT EXAMINATION: BIRD HAKEEM

169

1 conversation -- brief conversation at the picnic table, try
2 to explain the events later on.

3 A Okay. They asked a bunch of questions about what kind
4 of vehicle -- does he drive a black truck, and I said no.
5 Does he own a hat, and I said no, because he sweats so bad.
6 Does he own a red plaid jacket, and I said yes. Where is
7 he. I said, let me call him. And I got on the phone and I
8 called him and I told him what was going on and he said let
9 me speak to the officer. I gave the phone to one of the
10 officers, and he told him to -- he wanted -- asked him where
11 was he. They were going to come get him. And he told him
12 that he was on the way home. He didn't have to come looking
13 for him. He was coming home. He was on the way. And the
14 office said, well, when you get here make sure we see your
15 hands because we hear you have a weapon.

16 Q Now, again, and I know it's difficult to remember
17 specifically, but was this about 30, 40, 50 minutes after
18 they came that you had the discussion on the telephone with
19 your husband?

20 A It was probably like maybe 10 minutes into it, if that
21 much. It was right away.

22 Q So in other words, according to your recollection,
23 after they initially -- you opened the door to air the house
24 out and there they are. And then about 10 minutes later a
25 telephone call is made to Mr. Hakeem; is that right?

DIRECT EXAMINATION: BIRD HAKEEM

170

1 A Correct.

2 Q And you said to come home immediately?

3 A Yes.

4 Q And then how many -- approximately how many minutes
5 later did he, in fact, arrive?

6 A It wasn't 10 minutes. It wasn't 10 minutes.

7 Q Time-wise would this have been about what time? Time-
8 wise -- it would be daylight, of course. Probably not
9 daylight savings at that point in time. It may have been.

10 A Probably about 3:45.

11 Q All right. When they -- when he got there, I think
12 you -- well, go ahead and tell the Court and the jury what
13 you did. You didn't see them arrest him, did you?

14 A No, sir.

15 Q Where were you at that point?

16 A They had -- they told me to follow them around to the
17 back carport. We went through the livingroom and one of the
18 officers took me to the back carport and he watched me
19 there. He said that was for safety precaution, so I
20 wouldn't get hurt or anything.

21 Q All right. And again trying to put the framework on
22 that afternoon. They take him off.

23 A Yes, sir.

24 Q Did you ever -- in other words, did you see him at all
25 after --

DIRECT EXAMINATION: BIRD HAKEEM

171

1 A No, sir.

2 Q What officers, or how many officers were left with you,
3 if any, when they toted him off to jail?

4 A I don't remember any officers then. I think they all
5 left. We talked -- we talked -- I did talk to an officer
6 and we exchanged numbers, but after that they all left. If
7 I -- they said if I had any more information or anything.

8 Q Then later on then they come back, and describe that
9 event.

10 A I guess it was -- I got a call like 6:00 saying they
11 want to come back out and talk with me. Ask me some more
12 questions. And when they got there Mr. Strickland came in
13 and he talked to me and asked me could they search the
14 house. And he said that he didn't have a search warrant,
15 but if we let -- if I let him search the house they wouldn't
16 ruff up anything in the house. If they had to go back and
17 get a search warrant, he said not me myself, personally, but
18 he said the guys will probably be upset that they have to go
19 back and get a search warrant since they're already here.
20 So I consented for the search.

21 Q Let me ask you this question. --

22 is how close to that convenience store that has been
23 described as the convenience store which was robbed on April
24 11th, 2013? How close is it?

25 A Anywhere from like five, 10 minutes. It's not that far

DIRECT EXAMINATION: BIRD HAKEEM

172

1 at all.

2 Q Have you ever been in that store?

3 A Yes, I have been in the store. A couple of times.

4 Q Have you and your husband been in that store?

5 A Yes, sir. We did. We have been in that store.

6 Q Have you seen your husband go in that store?

7 A Yes, I have.

8 Q Is it frequent or unfrequent -- infrequent?

9 A Frequent. We go buy lottery tickets. We buy
10 cigarettes. We would get gas. It was a convenience store.

11 Q Of course, you were in the courtroom yesterday and saw
12 some of that clothing. You recognized that clothing, didn't
13 you?

14 A Yes. Yes, sir.

15 Q You see any baseball hat --

16 A No, sir.

17 Q -- in the clothing?

18 A No, sir.

19 Q Did you see any sunshades, or dark glasses, or whatever
20 you want to call them?

21 A No, sir.

22 Q Is he a heavy smoker?

23 A He smokes.

24 Q Smokes Newports?

25 A Yes, sir. May I speak?

DIRECT EXAMINATION: BIRD HAKEEM

173

1 THE COURT: No ma'am. You respond to questions.

2 Q You just answer my questions.

3 A Yes, sir.

4 Q I'm going to talk about that in a moment.

5 A Okay.

6 Q Let's try to get specific about the signature on this
7 so called consent to search. Now, try to recollect where
8 you were in the house, or if in the house, when you signed
9 this document. Where were you? Livingroom?

10 A Sitting in the livingroom on the couch.

11 Q On the couch. And who was with him?

12 A Mr. Strickland.

13 Q Was Mr. Russ with you?

14 A No.

15 Q What was the conversation then?

16 A He was talking -- he started talking about -- he was
17 asking questions, and I wasn't saying that much because I
18 was still kind of in shock. And he started talking about
19 his -- what school did I work at, and his children went to
20 the school that I worked at. And that kind of broke the ice
21 and we could talk a few minutes on that. And that's what we
22 talked about. And he asked -- you know, asked a bunch of
23 questions about my husband.

24 Q And as you recollect, how long did that conversation
25 last with him on the couch, approximately?

DIRECT EXAMINATION: BIRD HAKEEM

174

1 A About probably 15, 20 minutes, if that much. They were
2 searching everywhere, so he was, I guess, trying to keep me
3 --

4 Q Well now, wait a minute. Let's talk about that.
5 You're talking about they were searching. Did you sign any
6 consent at that point?

7 A No. I hadn't signed any consent at that point.

8 Q And as you recollect, about how many officers were
9 searching your home?

10 A It was three or four. And I could see the flashes.
11 going off. I could see them taking pictures.

12 Q And that home is not very large, is it?

13 A No, sir.

14 Q How many bedrooms?

15 A It's three, but it's -- yeah, it was three.

16 Q And do you know as a matter of fact they went through
17 every room, or do you know that?

18 A They didn't go through every room, because they didn't
19 go through the -- I had a room on the back that they did not
20 go through. They went through everything else.

21 Q What's kept in the room in the back?

22 A That was my daughter's room.

23 Q She was not living there at the time?

24 A She was, but I informed them of what was going on so
25 the children wouldn't be around or be involved. I didn't

CROSS-EXAMINATION: BIRD HAKEEM

175

1 want them to see any of that.

2 Q In the normal course of, say, a week or two, somewhat a
3 limited framework of time, about how many times were you or
4 Mr. Hakeem, or both of you, go by and go into that
5 convenience store for that period of time, say --

6 A I would probably say about three, four times a week.

7 Q The lady who testified as being the clerk of court -- I
8 mean, the clerk of the convenience store, do you know her?
9 Do you see her there?

10 A No. I don't know her.

11 Q You didn't recognize her?

12 A No.

13 Q Getting back to the consent to search the residence.
14 Did he tell you -- did Mr. Strickland or any officer tell
15 you what they were looking for?

16 A No.

17 Q Did they narrow the scope of the search or tell you
18 what -- or give you any indication as to the scope of what
19 they wanted to find there, or search for?

20 A I did. They asked me had I seen any money, and I told
21 them no. But that was really about it.

22 Q Did they ask you about a pistol?

23 A They did. At the beginning, yes, they did. When they
24 first -- when they first approached. When the shotgun was
25 in my -- the rifle was in my face, when I went out they did

CROSS-EXAMINATION: BIRD HAKEEM

176

1 ask me did we own any weapons, and I told them no.

2 Q Have you ever seen your husband, who you live with,

3 with a pistol?

4 A No, sir. Not a one.

5 Q Is it like him in any manner whatsoever to lay a pistol

6 on the counter of a convenience store?

7 A I don't think so. I don't think so.

8 MR. ANDERSON: That's all I have.

9 THE COURT: Cross.

10 MR. BROWN: Yes, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. BROWN:

13 Q Ms. Hakeem.

14 A Yes, sir.

15 Q You don't want to be here today.

16 A No.

17 Q To start off with one last question Mr. Anderson asked

18 you. He asked you had you ever seen Mr. Hakeem with a gun,

19 or did he own a gun, and you said?

20 A No.

21 Q Do you know what Mr. Hakeem does when you're at work

22 all day?

23 A No.

24 Q Can you account for everywhere he goes when you're at

25 work?

CROSS-EXAMINATION: BIRD HAKEEM

177

1 A No.

2 Q You don't have a GPS tracker on him, do you?

3 A No.

4 Q So you really don't know where he is or what he has in
5 his possession at that time, right?

6 A No.

7 Q Ms. Hakeem, you stated you worked at Lakeview
8 Elementary?

9 A Yes, sir.

10 Q And you were a cash register -- or cashier in the
11 cafeteria?

12 A Yes, sir.

13 Q And on that particular day back on April 11th of 2013
14 you went to work that day?

15 A Yes, sir.

16 Q Do you remember what day that was? Was that a
17 Thursday?

18 A Yes, sir.

19 Q And so, you went in roughly 5:45, 6:00 in the morning?

20 A Yes, sir.

21 Q And got home 10 minutes until 3:00 or right at 3:00?

22 A Yes, sir.

23 Q Now, do you remember making -- writing a statement to
24 law enforcement about your day that day?

25 A Yes, sir.

CROSS-EXAMINATION: BIRD HAKEEM

178

1 Q And in your statement to law enforcement did you ever
2 say anything about law enforcement coercing you or
3 threatening you with -- to try to get consent to search your
4 house?

5 A No, sir. At that time I didn't know what it was.

6 Q And, Ms. Hakeem, this has been offered as State's
7 Evidence Number 1. Would you take a look at that and tell
8 me what that is.

9 A Consent to search residence.

10 Q Ms. Hakeem, is this your signature?

11 A Yes, sir.

12 Q Ms. Hakeem, when law enforcement got there to your
13 house a little after 3:00, as you said, and law enforcement
14 surrounded your house and had their guns drawn, after you
15 came to the door were you ever placed under arrest?

16 A No, sir.

17 Q They just talked to you, didn't they?

18 A No one ever said anything about arresting me. They
19 just talked.

20 Q Went out to the outside table and talked to you about
21 what had happened and asked you where your husband was?

22 A Yes, sir.

23 Q And then you actually called your husband, Jamal
24 Hakeem, on his phone, right?

25 A Yes, sir.

CROSS-EXAMINATION: BIRD HAKEEM

179

1 Q You made that call?

2 A I made that call.

3 Q And as a result of that call Mr. Hakeem came back to
4 the house?

5 A Yes, after he spoke with the officer.

6 Q Did law enforcement make any -- did they coerce you or
7 threaten you to make that call?

8 A No, sir.

9 Q In fact, law enforcement, they weren't rude at all
10 during the whole time they were there from the first time,
11 and then as you said after they -- Mr. Hakeem got home he
12 was subsequently arrested and taken away, right?

13 A They were never rude to me except for the -- it wasn't
14 even -- it wasn't even said in a rude way, but it did kind
15 of intimidate me, but I didn't know it at the time because I
16 was really stressed.

17 Q Mr. Strickland -- you've heard Mr. Strickland was the
18 one that was talking to you. You said that he kind of broke
19 the ice.

20 A Yes, sir.

21 Q Why do you think he tried to break the ice?

22 A Because I wasn't thinking clearly and he knew that.

23 Q So he wanted -- he wanted to try to calm you down?

24 A Yes. Trying to get my head together so I could talk.

25 Q And then after he calmed you down talking about where

CROSS-EXAMINATION: BIRD HAKEEM

180

1 his children went to school and where you worked, that's
2 when the idea of the consent to search --

3 A That was later, after they had searched.

4 Q It was after you had calmed down a little bit?

5 A Yes, sir.

6 Q After you kind of -- your stress level had kind of been
7 reduced?

8 A Well, it wasn't --

9 Q To some degree.

10 A To some degree.

11 Q Try to get you clear minded?

12 A Try to. Yes, sir.

13 Q And, in fact, later on you did sign the consent to
14 search?

15 A Yes. I signed the consent to search.

16 Q And so, you don't remember Mr. Russ?

17 A I remember him being there. I don't remember him being
18 there when I signed it. Mr. Strickland had that. We were
19 sitting on the couch. He was sitting beside me on the right
20 side. He was not in there at that time. He was walking
21 back and forth. But Mr. Strickland orchestrated that.
22 That's why I don't understand why he is not here.

23 Q Now, in any event, you were talked about your rights?

24 A Yeah, I signed it. I didn't read it, but I did sign
25 it.

CROSS-EXAMINATION: BIRD HAKEEM

181

1 Q And on the second page of the consent to search is that
2 your -- are those your initials?

3 A Same thing. I signed it. I didn't read it, but I did
4 sign it. I just wanted them to go.

5 Q Ma'am, how far in school did you go?

6 A I graduated.

7 Q And can you read and write well? Can you read and
8 write?

9 A Yes, sir.

10 Q Now, Ms. Hakeem, you stated that gas station really is
11 only about five to 10 minutes away --

12 A Yes, sir.

13 Q -- from your house. How long had you lived in that
14 house?

15 A Eighteen months.

16 Q Eighteen months. And again, how are you related to Mr.
17 Hakeem?

18 A He's my husband.

19 Q Did you all own that house together?

20 A Yes.

21 Q So you had just as much say-so what happened-or who
22 searched that house as he did?

23 A Yes, sir.

24 Q And that's at ?

25 A Yes, sir.

CROSS-EXAMINATION: BIRD HAKEEM

182

1 Q Ms. Hakeem, you stated -- or Mr. Anderson asked you if
2 your husband smoked cigarettes.

3 A Yes, sir.

4 Q And does he?

5 A Yes, sir.

6 Q And what type of cigarettes does he smoke?

7 A Newports.

8 Q I'll show you what's been marked as State's Evidence
9 24. And actually, I don't know if you can see that that
10 well. I can bring it to you. Can you tell me what State's
11 Evidence 24 is?

12 A That's a pack of Newport. Two packs of Newport
13 cigarettes. And I checked those jackets in that room and
14 those cigarettes were not there.

15 Q Whose jacket is that?

16 A That's his jacket.

17 Q That's Jamal's jacket?

18 A I checked all the jackets. He owns four. I checked my
19 room. They were not there.

20 Q His jacket wasn't there?

21 A No. The cigarettes were not there.

22 Q But the jacket was in his room?

23 A The jacket was there.

24 Q There's no doubt that's your husband's jacket?

25 A That's his jacket.

CROSS-EXAMINATION: BIRD HAKEEM

183

- 1 Q And he likes to smoke Newport cigarettes?
- 2 A Sir, he smokes Newports.
- 3 Q Ms. Hakeem, what type of car does your husband drive or
- 4 own?
- 5 A Suburban.
- 6 Q I'll show you what's been marked State's Evidence 14.
- 7 Is that the car?
- 8 A Yes, sir.
- 9 Q How did you describe the color of that car?
- 10 A It's a hunter green.
- 11 Q Dark color?
- 12 A It's a hunter green.
- 13 Q And, ma'am, you say -- stated that you and Mr. Hakeem
- 14 would go to that Shell gas station on a regular basis?
- 15 A Pretty much. Yes, sir.
- 16 Q So Mr. Hakeem was familiar with that convenience store?
- 17 A Yes, sir.
- 18 Q Knew where everything was located in that store?
- 19 A Well, I don't know all of that.
- 20 Q But you all went there a good bit.
- 21 A We've been there a couple times a week. Yes.
- 22 Q And, ma'am, just touching base back on that consent
- 23 search. Law enforcement was -- they were there at your
- 24 house earlier in the afternoon when your husband was
- 25 ultimately arrested?

CROSS-EXAMINATION: BIRD HAKEEM

184

1 A Yes, sir.

2 Q And then law enforcement left your home?

3 A Yes, sir.

4 Q There was nobody else at your home?

5 A It was just me.

6 Q And then they ultimately came back to your home --

7 A Yes, sir.

8 Q -- around 6:00 or sometime thereafter?

9 A Yes, sir.

10 Q And that's when Mr. Strickland and Mr. Brooks, Mr.

11 Russ, maybe a few other folks were there?

12 A Some other guys. Yes, sir. Some other officers, yeah.

13 Q And that's when you signed the consent to search?

14 A Yes, sir.

15 Q And that's when they found the jacket that you
16 described as Mr. Hakeem's jacket in the back bedroom?

17 A That's when they found the jacket.

18 MR. BROWN: No further questions.

19 THE COURT: Any redirect?

20 MR. ANDERSON: That's all, Your Honor.

21 THE COURT: All right. Thank you. You may step down.

22 THE WITNESS: Thank you.

23 (Whereupon, the Witness stepped down from the witness
24 stand.)

25 MR. ANDERSON: The Defense rests.

1 THE COURT: Are you going to have anything?

2 MR. BROWN: No.

3 THE COURT: Okay. Ladies and gentlemen, as I told you
4 yesterday, I divide a trial into five parts. The first part
5 opening statement, the second part testimony and evidence.
6 All of the testimony and all of the evidence that's going to
7 be presented in this case is now before you. The next part
8 will be when we move to the closing arguments of these
9 attorneys. I do need to discuss a few things with the
10 lawyers before we jump into that part. It's probably not a
11 bad time to take a short morning break. So don't discuss
12 the case yet. It's going to be yours very shortly. But
13 we'll take a break and get back with you very soon.

14 (Whereupon, the jury exited the courtroom at 9:55 a.m.)

15 THE COURT: Anything?

16 MR. BROWN: Not from the State, Your Honor.

17 MR. ANDERSON: Your Honor, I want to renew the motions
18 for a directed verdict on both indictments on the same
19 grounds.

20 THE COURT: Okay.

21 MR. ANDERSON: And the motion for a new trial -- for a
22 mistrial on the same grounds.

23 THE COURT: All right. Same ruling. Do you all have
24 any request for charge that you're interested in?

25 MR. BROWN: Judge, on request charge regarding

1 reasonable doubt, the State would request a affirmative
2 defense language with regard to the reasonable doubt.

3 THE COURT: Well, I give -- you all heard it. You all
4 know what I give. I don't change it.

5 MR. BROWN: Yes, sir.

6 THE COURT: The same every time.

7 MR. ANDERSON: Your Honor, I would like to be able to
8 touch on the fact that -- well, let me put it this way.
9 There was no pistol produced. And what I would request as a
10 charge would be a charge relating to strong armed robbery,
11 because there was no pistol produced. And I think it might
12 be appropriate to allow me to argue that to the jury. And
13 then -- and make it admissible depending on whether or not
14 you would -- on your charge as to whether or not you charge
15 -- anyway, I didn't specify the request for charge. I
16 should have, I guess. But --

17 THE COURT: He wants the lesser included. The only
18 evidence testimony presented is that there was a gun. I'm
19 not inclined. It's all or nothing. Would you agree?

20 MR. BROWN: I would, Your Honor.

21 THE COURT: All right. I tend to charge the duties of
22 the judge and jury. The indictment is not evidence,
23 multiple charges, credibility of witnesses. Would you like
24 a charge on the failure of the Defendant to testify?

25 MR. ANDERSON: Oh, yeah. I want that constitutionally

1 understood.

2 THE COURT: Okay. Direct and circumstantial evidence.

3 Any -- yes? You want circumstantial evidence?

4 MR. ANDERSON: I take exception if I don't get
5 something --

6 THE COURT: Okay. I think there's probably a
7 circumstantial evidence charge that's warranted in this
8 case. You want something on identification, correct?

9 MR. ANDERSON: Yes, sir.

10 THE COURT: Presumption of innocence, reasonable doubt,
11 armed robbery, possession of a weapon during the commission
12 of a violent crime.

13 MR. BROWN: Yes, sir.

14 MR. ANDERSON: And I'll probably take exception about
15 the --

16 THE COURT: You're -- the denial of your motion for a
17 lesser included is noted for the record. You don't have to
18 renew that.

19 MR. ANDERSON: Thank you.

20 THE COURT: Anything else?

21 MR. BROWN: Judge, as I understood, that Mr. Anderson
22 will close first and the State will follow.

23 THE COURT: Yeah, okay. Why don't we just take about
24 five, 10 minutes.

25 (Whereupon, a recess was held from 10:05 a.m. to 10:10

1 a.m.)

2 THE COURT: You all need a little more time or are you
3 good?

4 MR. ANDERSON: Ready.

5 THE COURT: You're ready. Okay.

6 (Whereupon, the jury entered the courtroom at 10:10
7 a.m.)

8 THE COURT: All right. We're ready to move into the
9 closing arguments of these attorneys. You all have paid
10 great attention so far and I ask you to continue to do so
11 through the arguments of these fine attorneys.

12 MR. ANDERSON: May it please the Court.

13 THE COURT: Yes, sir.

14 CLOSING ARGUMENT

15 BY MR. ANDERSON: Mr. Foreman and ladies and gentlemen.
16 I reiterate what Judge Miller just said. I appreciate your
17 attention and appreciate your being willing to serve. As I
18 mentioned yesterday, outside of risking your life in the
19 Army or in the military service for your country, the next
20 most important thing is sitting on a jury. And I appreciate
21 your being willing to do that and pay attention to the trial
22 of this case. You're looking at the nitty gritty of the
23 criminal justice system. What I say is not evidence. What
24 Mr. Brown or Mr. Downtin says in closing, whoever may make
25 their closing argument, whatever they say is not evidence.

1. That's why we've got 12 jurors to listen attentively to what
2 comes forward from that stand. We can only advocate our
3 causes, as I said yesterday.

4 Now, let me say this. I don't mean to bring up
5 something that has nothing to do with the trial, but I have
6 a full set of dentures that get loose and slinging around
7 and it's hard sometimes for me to prevent myself from
8 spitting and carrying on and sloughing my words. But I got
9 some age on me and I've had that done and that's just a fact
10 of life, and it does interfere with my speech sometimes.

11 Now, let me say this. Again talking about personal
12 characteristics. We all have personal characteristics. I
13 can't help being tall. I can't help being gawky looking and
14 skinny and that kind of thing, and the way I talk. I can't
15 help that. So whatever I do, or whatever you find might be
16 offense to you from me personally, don't hold it against Mr.
17 Hakeem. We all have our personal idiosyncracies, so to
18 speak. And that's just a fact of life. We're all down here
19 trying to do the best we can with the short period of time
20 we've got on this planet and we try to do it the best we
21 physically and mentally are able to do.

22 Another thing I want to bring up to you. You recollect
23 what I said yesterday about everybody's got the equal vote.
24 Everybody -- obviously we don't all think alike. We all
25 look at things different. You look at the video different.

1 You're look at the testimony differently. That's why we
2 have a cross-section of people to come in and judge another
3 fellow citizen. We all view it differently. And I'll tell
4 you this at the outset. If you find yourself with a firmly
5 held belief about some aspect about some testimony, about
6 your opinion, and 11 others think it's something else but
7 you've got that firmly held belief about it, you have a duty
8 to (?). But you've got a duty to go into your jury room and
9 discuss the jury trial. You have a duty to do that.
10 Exchange ideas about what you feel. You have a duty to do
11 that. So I'm just saying that in the final outcome of the
12 situation you have a duty to hang on to any belief that you
13 feel firmly and believe that is your position.

14 Now, there's a lot of things that jump out at me about
15 this case. And what your duty is, of course, is listen to
16 Judge Miller's charge -- what we call as lawyers, the charge
17 to the jury. In other words, getting back to the format of
18 a jury trial. We lawyers talk and advocate our positions,
19 and the judge at the end of the trial gives you the law. He
20 can't judge facts. He's not judging the facts. He listens
21 to the facts, of course. He's listening too. But you judge
22 the facts of the case. He gives you the law and you apply
23 the law to the facts of the case and try to come to a
24 decision, and what we call a unanimous decision. It should
25 be unanimous. And thereby get a verdict which is a Latin

1 term for veredictum which means speaking the truth of this
2 case. That's what that word means, verdict. To speak the
3 truth: So that's the result that you will firmly come to.

4 Now, we all have to admit that the -- at least from my
5 standpoint, and again talking about my physical - I can't
6 see out of this eye either. But what I saw in the video was
7 somewhat fuzzy. I think we will have to admit that it was
8 fuzzy, at least for me, in terms of depicting the
9 perpetrator. I could see -- I could see perhaps he had on
10 dark glasses. That looked like something he had on, too. I
11 could see a baseball type hat. I could see the clothing.
12 But I could not, in all candor, see any features of the
13 face. You might be -- you might have been able to; but I
14 couldn't. And again, each one of you might have seen it
15 different. So that's what you have to remember. What I saw
16 was the clerk dealing with the customers. The perpetrator
17 walks in. Walks around the counter. Goes to get a beer.
18 As I recollect, one of the officers said that they tried to
19 -- they got fingerprints, I think. I've forgotten. Do you
20 remember what he said? He said something about fingerprints
21 on the beer can, which was never produced. I don't know
22 whether they were what we call prints that you could lift or
23 not, but there wasn't any testimony on that. Something for
24 you to think about. Comes back around. You could see this
25 pointing to the cigarettes. She turns. And you all -- I

1 don't know whether you all counted the seconds or not. I'll
2 leave that up to you.' Turns around. A number of seconds to
3 get the cigarettes. Obviously her back turned to the
4 perpetrator. After the number of seconds, switches back
5 around, then she says the weapon is on the -- and she gasps
6 and sees -- looks at the weapon. You know, we all take our
7 everyday life's experiences back to the jury room when
8 you're a juror. And you might think, well, who's going to
9 be looking at the face when you got to looking at the
10 pistol. You all think about that. So you can judge.
11 That's one of the benefits -- when I first started
12 practicing law there was no such thing as all this high tech
13 cyberspace kind of high tech equipment we have now. It was
14 just a swearing contest about who's telling the truth. But
15 you've got the video just about everywhere we go now. We've
16 got video. We've got the benefit of it which, in fact, is a
17 valuable assistance. So that's another thing you take back
18 into your jury room. Wait a minute. Wait just a minute.
19 Did she have time to look at that man's face? He got on --
20 it appeared to me he had on dark glasses. I think she
21 indicated he had on dark glasses. She wasn't really sure
22 about that. But after the -- Mr. Brooks comes out with the
23 photo lineup all that conversation taken place and pictures
24 being shown and whose who and what's all this going on and
25 come up with pointing out, according to what he said. You

1 have to put yourself in that position. That's why it's
2 important to pay attention and use your experiences to try
3 to come to a decision that is reasonable.

4 The reason I'm bringing up all this, and I'm not going
5 to sit down quite yet, but you're going to hear about
6 reasonable doubt, and it's been going on for years and years
7 and years about how to describe reasonable doubt. It's case
8 after case from way back yonder the courts have tried to
9 explain about what's reasonable doubt. And it's just
10 commonsense. And Judge Miller will charge you about the
11 definition of reasonable doubt. You have to take his word
12 for it. Mr. Brown or Mr. Downtin, whoever is going to make
13 the closing argument, they might try to touch on it, too.
14 But just like me, I'll touch on it a minute or two maybe.
15 But you listen to what Judge Miller says about it, because
16 it's not just some fanciful phrase. It's the very
17 fundamental killer of the criminal law system. It's not
18 whether it's a technicality. More than a -- it's not really
19 a technicality. It's the substantive principal in the
20 criminal jurisprudence system. It's important. And you
21 have to find anybody that's accused of a criminal act and
22 comes to a jury trial, you have to find -- if you're going
23 to find him guilty you got to find him guilty beyond a
24 reasonable doubt. And Judge Miller might say it might be a
25 doubt for you to hesitate before you make a decision. We

1 all can have a doubt about something. It has to be a
2 substantial doubt in your mind as to who committed this act
3 of armed robbery. So listen carefully to the definition as
4 Judge Miller gives it about reasonable doubt.

5 Of course, again, we get into the other areas of the
6 testimony, and I'll try to remind you of some of the things
7 that should be assessed by you. What doesn't make a lot of
8 sense to me, who would go -- it's been testified to by Ms.
9 Hakeem that they went into the store frequently, and would
10 it make sense to you for a man who goes in there frequently
11 to be the one who goes in there to rob the place. It
12 doesn't make sense to me and it's something for you to think
13 about. Who would go into a store who goes in there
14 frequently and end up robbing the store, not even wearing a
15 mask. Is that a reasonable doubt. See, questions like
16 that. Is that a reasonable doubt. Wait a minute. Is that
17 -- did I hesitate about convicting somebody about that.
18 That's something for you to think about. Where are the
19 fingerprints. Something for you to think about. Where's
20 the gun. Something for you to think about. Where's the
21 hat. Where's the shades. Where's that evidence. There are
22 certain things that went on during the trial while you were
23 in your jury room that were raised that is not appropriate
24 for me to talk about. But certain objections being made.
25 Think about him coming home immediately. Wait a minute.

1 I'll be right there. I want to know what's going on. Let's
2 get into this a little bit, thinking about him being the
3 primary suspect in this -- in being not as -- at all at his
4 home about a consent to search. Getting into that aspect of
5 the trial a little bit. Let me say this to you. As
6 citizens in this country we have a constitutional right to
7 be secure in our belongings and in our homes is a high
8 priority. That's the highest expectation of privacy, your
9 home. You heard what they did. Told him nothing. Never
10 discuss it with him. Had him out there at his home. Could
11 have got the consent from him if he wanted to give it. He's
12 the one charged, not the wife, even though she had common
13 authority. I'll admit that. She had authority over the
14 home.

15 THE COURT: Yes, sir.

16 MR. BROWN: I object to talking about law that's been -
17 -

18 THE COURT: Yeah. Ladies and gentlemen, as I told you
19 at the beginning of the case, I'm the sole judge of the law.
20 And so, just keep that in mind throughout the course of
21 this, and the search was ruled to be constitutional.

22 MR. ANDERSON: And the reason I brought that up briefly
23 is with the other areas that weren't followed in this
24 investigation. But the other areas not followed from a
25 constitutional standpoint, with regard to the other areas of

1 investigation in this case. That's the reason I brought it
2 up. That was overlooked, in my opinion. The testimony --
3 again, you decide about the testimony. The credibility of
4 it.

5 I also recollect in the 911 operator's testimony that
6 she couldn't -- when 911 asked her -- and again, this is the
7 way I remember it. You may have remembered it differently,
8 but I want you to think about it. She asked the store clerk
9 about what facial characteristics, as I recollect, and she
10 said I couldn't tell. Something like that. That's what I
11 heard. If you want to watch it again the judge will bring
12 you -- that is if you vote to watch it again, or listen to
13 it -- that tape again, you'll have an opportunity, if you
14 wanted to do that. And any other portion of the video. If
15 you want to vote to do that you'll have that opportunity, if
16 you want to see that. Any other thing that I might say that
17 you say, well, I don't think that lawyer said it right.
18 You'll have an opportunity to be heard if you so desire.

19 Another thing you might want to think about was where
20 was Mr. Brandon Strickland who was the chief investigator in
21 terms of the hierarchy of that particular unit of law
22 enforcement. The one that was described as -- by Ms. Hakeem
23 as being the one most involved, according -- at least that's
24 what I got from her testimony. He didn't even show up at
25 trial. What went on there. What's going on. You know,

1 we're not all -- you know, it's very difficult to -- for any
2 human being to do anything perfect. There might be some
3 things I left out. Why did the lawyer bring that. Why did
4 the lawyer say that. Why did he say this. But I want to
5 tell you this. That this man here, Mr. Hakeem, denied it
6 down there when he was interrogated for about an hour, after
7 he was toted off after he came home voluntarily.
8 Interrogated for about an hour, denied it time and again.
9 That was testified to. They didn't run that tape. But that
10 was testified to that he denied it, denied it, denied it.
11 And the crux -- again as I see it, the crux of the matter is
12 that video. Is the scene portrayed in that video. I
13 couldn't see anything was in the -- in terms of any kind of
14 facial characteristics. Frequently goes in there. Has
15 denied it from day one.

16 Again, let me remind you that this is the part of the
17 trial where we said the lawyers make their closing remarks
18 to you, and the State has the advantage of submitting their
19 argument to you following my argument to you, which I will
20 sit down momentarily. But I ask you again to remember the
21 charge to be given by Judge Miller with regard to reasonable
22 doubt. I ask you to listen carefully to his definition to
23 reasonable doubt. Follow the precepts that he gives you.
24 If any of you have the firmly held belief about your opinion
25 about this case your duty -- again, prefacing my remarks by

1 saying that you have a duty to talk about the case that you
2 feel securing your thought process about the guilt or
3 innocence of Mr. Hakeem. You have the duty. If you feel
4 like this case is -- hesitant with you with regard to
5 whether or not you want to quickly get into a situation of
6 finding him guilty, in other words hesitating. You have a
7 duty to hold onto that whether or not you've been -- feel
8 that there's a reasonable doubt. And your duty is to
9 maintain your position. Whether it's 11 to one against you,
10 or whatever the ratio might be.

11 THE COURT: Mr. Anderson, you're going -- stepping
12 across the line.

13 MR. ANDERSON: But that's what you have the right to do
14 though. Because I submit to you there's many aspects of
15 this case that calls for reasonable doubt and I ask you to
16 find him not guilty.

17 THE COURT: Mr. Brown.

18 MR. BROWN: May it please the Court.

19 THE COURT: Yes, sir.

20 CLOSING ARGUMENT

21 BY MR. BROWN: Ladies and gentlemen, I'll reiterate
22 what Mr. Anderson said. We appreciate you being here. I
23 know you'd rather be doing something else besides being in a
24 courtroom, but we appreciate it.

25 Folks, this is armed robbery. Also possession of a

1 weapon during the commission of a violent crime. And again,
2 anything I say is contradictory to what the Judge says, the
3 Judge is going to charge you on the law and also charge you
4 on what reasonable doubt is.

5 Ladies and gentlemen, think about what you heard from
6 the stand and what you've seen submitted into evidence in
7 this case. What you have to look at is -- first of all, let
8 me just go through it. What is armed robbery. Armed
9 robbery is defined as robbery committed while armed with a
10 pistol or some other type of deadly weapon. In this case,
11 an alleged pistol. And that is a pistol in a robbery is
12 done to put another person -- intimidate that person or
13 cause that person immense fear. What is robbery. It's
14 essentially the aggravated form of larceny. Larceny is
15 stealing. Taking a thing away from the use of somebody
16 else; money, cigarettes, beer, from that person to attempt
17 to permanently deprive that person of those goods. They're
18 not going to give them back. They're stealing them. In
19 this case, armed with a pistol, makes it armed robbery. A
20 possession of a weapon in the commission of a violent crime,
21 armed robbery. Self-explanatory. He was armed with a
22 pistol.

23 And again, what does the State have to prove to you
24 behind a reasonable doubt. A reasonable doubt, as the Judge
25 will instruct, is doubt that would cause a reasonable person

1 to hesitate. I'll also say proof beyond a reasonable doubt
2 is the proof that leaves you firmly convinced of the
3 Defendant's guilt. Of Mr. Jamal Hakeem's guilt. It's not
4 all doubt. It's not every doubt. It's not any doubt. It's
5 proof beyond a reasonable doubt. So what have you seen in
6 this trial. What have you heard in this trial. The start
7 of the trial you heard from Jill Boland. She's a 911
8 records custodian here in Greenwood County. She testified
9 on April 11, 2013, sometime right after 2:30 in the
10 afternoon, a call was made to dispatch. A call was made to
11 911 dispatch. Who did that call come from. It came from
12 Shea Smith. Shea Smith is a clerk at that Shell gas station
13 over there on the corner across from CPW, on Alexander and
14 225 Bypass South. The call came in. What was said. You
15 heard it. "I've just been robbed." "What?" "I've just
16 been robbed." "Where?" "Shell gas station." "Did he have
17 a gun?" "Yeah, he had a big black -- he had a big one.
18 Black one. It looked like a 9 millimeter." "What did he
19 look like?" "Dark skinned." The 911 dispatcher says,
20 "black male?" "Yes, black male." "What did he have on?"
21 "He had a plaid jacket." "What did he get?" "Well, he
22 walked in. Went to the cooler and got a beer. Came up to
23 the counter and asked for cigarettes. Three packs of
24 Newport short cigarettes. I asked for his date of birth."
25 Messed up. He gave his date of birth, . She turns

1 around to get his cigarettes and takes her eyes off of him.
2 She was looking at him. She was from me to you from each
3 other. She got a good look at him. She's not sitting up
4 there in the corner of the Shell gas station in a camper
5 looking at him. She's right there face to face with him.
6 She turns back around and what's he presented to her? He's
7 got a gun pointed at her. She backs up. She gasps. She
8 backs up. Somebody doesn't gasp like that when they're
9 looking at a finger. He had a gun pointed at her: "Get it.
10 Get it. Get it. The money." And then he continues on,
11 "and don't do anything. Don't do shit until I get out of
12 here," and then he leaves. You've seen the video.

13 Again, what does he have on? He's got on a distinctive
14 colored jacket. Some jacket that can be picked out like a
15 sore thumb. The jacket is plaid. It's got a hoodie on it.
16 It's got a white shirt underneath it. As Ms. Smith stated,
17 he had some shades on or something like that. She could
18 tell. She was standing face to face with him. He comes in,
19 points a gun at her and she gives a description. A short
20 time later, after she calls dispatch, law enforcement
21 arrives. Mr. Whit Brooks shows up. He's the closest one
22 there. So he pulls in and starts talking to her, gathering
23 information. What does he find out? We've got the date of
24 birth, . . . And then he then goes and runs through the
25 database, or has somebody else run through the database.

1 Low and behold, Mr. Hakeem -- Mr. Hakeem is the only one
2 that's got that date of birth that fits that. He gets a
3 picture. He looks at it and compares it to what he's seen
4 in the video. What you saw earlier. What you can see a
5 little later if you choose to. Same physical description.
6 So then they get SLED to make a six pack. And you heard Ms.
7 Smith testify. Again, you'll be able to take this back. It
8 didn't take her long. She looked at this six pack and what
9 she said was number five. Number five turned out to be
10 Jamal Hakeem. Now, what do we have? We've got a man come
11 in the store with a jacket on. Goes to the cash register
12 and asks for cigarettes. Three packs. Gives his date of
13 birth. Where's it pointing right now? Jamal Hakeem. His
14 own wife said this is his jacket. His own wife says he
15 likes to smoke Newports. His own wife says he drives a dark
16 in color Suburban.

17 If you remember, Mary Katherine Constant came up here
18 and testified she'd just been in the store prior to Mr.
19 Hakeem robbing it. She goes here about every day. Her kids
20 go to school right across the street at Springfield
21 Elementary. She walks out and finds something a little odd.
22 She looks over to the left of the store and there's this
23 large SUV, truck, something like that, dark in color that's
24 parked in an odd position. It's not parked in a normal
25 parking spot. It's parked at an angle. Parked in a way

1 that causes Ms. Constant to remember that. She thinks to
2 herself that doesn't look right. Later on she finds out the
3 store had been robbed. She comes forth to law enforcement.

4 Now, this is State's Evidence 11. That's a picture of
5 the gas station with a car parked in a position next to the
6 gas station parking spots. Ms. Constant testifies that it
7 was a dark colored SUV. Low and behold when law enforcement
8 gets out there at , as testified to as being
9 the home of Hakeem -- Jamal Hakeem and Bird Hakeem, you
10 heard law enforcement talk, Mr. Brooks. They get out there.
11 Ms. Hakeem gets on the phone. She calls her husband and he
12 comes home. What's he driving? An SUV. Dark colored SUV.
13 And what is in the center console of that SUV. I'll show
14 you State's Evidence 19. The center console of that SUV is
15 the third pack of cigarettes that was taken from that Shell
16 gas station. A couple have been smoked out of it. After he
17 shows up they do arrest him. They leave. As testified to,
18 no -- he didn't admit anything. But they end up going back
19 to the house. As Ms. Hakeem stated, there was nobody there
20 after they first arrived and they left there was nobody
21 there with her. It was just her at the house. They come
22 back around 6:00 that night. Brooks, Russ, Strickland, they
23 come there. Anderson wants you to put emphasis on the
24 consent to search. Folks, Ms. Hakeem testified in her own
25 words they are husband and wife. They've lived there about

1 18 months before this happened. They own it together. She
2 gave consent. It's her handwriting. You can take this
3 back. This is Evidence 1, the signed consent to search.
4 They went in and found the jacket. Found the same jacket
5 Ms. Hakeem says belonged to her husband. Same jacket that's
6 on the video from the inside of the Shell gas station, and
7 it's the same jacket that had been burned in the back of the
8 memory of Shea Smith when he put that gun at her -- pointed
9 that gun at her. Same way his image is burned in the back
10 of her memory. She testified yes, that's who I picked out.
11 Number five, Jamal Hakeem. Ms. Smith, is this the person
12 that robbed you at gunpoint at the Shell gas station, is he
13 in this courtroom today. This was yesterday. Yes. Where
14 is he. Sitting at counsel table, glasses on, off white
15 shirt. There's no doubt. She knows who robbed her. I
16 asked her how times you been robbed. One time. How many
17 times you had a gun pointed at you. One time. Burned in
18 the back of her memory. She knows who robbed her, and she
19 admitted it. She said it. She pointed to him and said
20 that's who it is.

21 Ladies and gentlemen, this is a clear cut case. You
22 could almost call it a slam dunk. We have a video of a man
23 wearing that jacket at the Shell gas station. Same build.
24 Same look, been identified by the clerk who was there. What
25 did he ask for? Three packs of cigarettes, cash. You can

1 see her jump back and she says he was armed with a gun.
2 Folks, armed robbery. Don't check your common sense at the
3 door. Use your common sense to look at the evidence. It's
4 there. Clear cut case.

5 The Judge, again, he'll instruct you on the law in this
6 case. We'll go over reasonable doubt again. Go over what
7 armed robbery and possession of a weapon during the
8 commission of a violent crime. Folks, it's clear cut.

9 The wife of the man who robbed Shea Smith said that's
10 his jacket. That's his car. She doesn't know what he's
11 doing when she's at work. She don't know where he was.
12 While she was at work he's robbing Shea Smith at the gas
13 station. She don't want to be up on that stand either, but
14 can't deny that's his jacket. That's his car. That's his
15 face and he's the armed robber.

16 In a few moments the Judge will instruct you on the law
17 and he'll ask you to go back and deliberate it. He'll ask
18 you to go back and deliberate and find him guilty of armed
19 robbery and possession of a weapon during the commission of
20 a violent crime.

21 THE COURT: Okay. Ladies and gentlemen, during this
22 trial you and I have certain duties to perform, and as the
23 trial Judge it is my duty -- my responsibility to preside
24 over the trial of the case and to rule on the admissibility
25 of the evidence offered during the trial. It's also my duty

1 to charge you the law applicable to the case, and it is your
2 duty as jurors to accept and apply the law as I now state it
3 to you. As I told you in my opening comments, if you think
4 you have any idea as to what the law is or what it should be
5 and it differs from what I now tell you the law is, you have
6 sworn an oath to set aside your own opinion and apply the
7 law precisely as I state it to you. I also remind you that
8 in every case tried in this court before a jury, the jury is
9 the sole and exclusive judge of the facts. A trial judge is
10 not allowed to have an opinion about the facts of the case,
11 so please don't think by anything I have said or done
12 throughout the course of the trial that I have such an
13 opinion. You all are the sole judges of the facts.

14 I remind you that the fact that the Defendant was
15 arrested, charged and indicted in this case is not evidence
16 of guilt, nor does it create any presumption or inference of
17 guilt. These documents are simply the formal written
18 instruments which allow the case to be presented here in
19 court for resolution. The indictments in this case allege
20 two separate offenses. The first one is for armed robbery.
21 The second is for possession of a weapon during the
22 commission of a violent crime. Each indictment charges a
23 separate and a distinct offense. You must decide each
24 indictment separately on the evidence and in the law
25 applicable to it uninfluenced by your decision as to any

1 other indictment. The Defendant may be convicted or
2 acquitted or any -- of any or all offenses for which he is
3 charged and you will be asked to write a separate verdict of
4 either guilty or not guilty for each indictment.

5 Now, necessarily, you must determine the credibility or
6 believability of the witnesses who have testified, and it
7 becomes your duty as jurors to evaluate the evidence and
8 determine which evidence convinces you it is true. In
9 determining the believability of the witnesses you may
10 believe one witness over several, or several over one. You
11 may believe a part of the testimony of a witness and reject
12 the remaining part. You may believe the testimony of a
13 witness in its entirety or reject that testimony in its
14 entirety. And you may consider whether the witness has an
15 interest in the result of the trial whether the witness is
16 prejudiced towards either the State or the Defendant. The
17 opportunity for the witness to have seen the matters and
18 things about which that witness has testified, and the way
19 the witness acts on the witness stand, or what we call a
20 witness' demeanor.

21 I instruct you and I emphasize that the fact that the
22 Defendant did not testify is not a factor to be considered
23 by you in any way in your deliberations on the question of
24 guilt or innocence. It must not be considered by you in any
25 manner whatsoever. Every citizen has the constitutional

1 right to remain silent and the assertion of this right must
2 not be considered by you in your deliberations.

3 There are generally two types of evidence presented
4 during a trial. They are direct evidence and circumstantial
5 evidence. Direct evidence directly proves the existence of
6 a fact and does not require deduction. Circumstantial
7 evidence is proof of a chain of facts and circumstances
8 indicating the existence of a fact, and crimes may be proven
9 by circumstantial evidence. The law makes no distinction
10 between the weight or value to be given to either direct or
11 circumstantial evidence. However, to the extent that the
12 State relies on circumstantial evidence, all of the
13 circumstances must be consistent with each other and when
14 taken together point conclusively to the guilt of the
15 accused beyond a reasonable doubt. If these circumstances
16 merely portray that the Defendant's behavior was suspicious,
17 the proof will have failed. The State has the burden of
18 proving the Defendant guilty beyond a reasonable doubt, and
19 the burden rests with the State regardless of whether they
20 rely on direct evidence, circumstantial evidence, or some
21 combination of the two.

22 Now, at issue in this case is the identification of the
23 Defendant as the person who committed the crimes charged.
24 The State has the burden of proving identity beyond a
25 reasonable doubt. You must be satisfied beyond a reasonable

1 doubt of the accuracy of the identification of the Defendant.
2 before you may convict the Defendant. Identification
3 testimony is an expression of belief or impression by a
4 witness. You must determine the accuracy of the
5 identification of the Defendant. You must consider the
6 believability of each identification witness in the same way
7 as any other witness, and you may consider whether the
8 witness had an adequate opportunity to observe the offender
9 at the time of the offense. And this will be effected by
10 things like how long or how short a time was available, how
11 far or close the witness was, the lighting conditions, and
12 whether the witness had a chance to see or know the person
13 in the past. Once again, I instruct you the burden of proof
14 on the State extends to every element of the crime charged,
15 and this includes the burden of proving beyond a reasonable
16 doubt the identity of the Defendant as the person who
17 committed the crimes.

18 The Defendant has pled not guilty to these indictments
19 and that plea puts the burden on the State to prove the
20 Defendant guilty. The person charged with committing a
21 criminal offense in South Carolina is never required to
22 prove themselves innocent. And I charge you that it is a
23 cardinal and a signal rule of our law that a Defendant in a
24 criminal trial will always be presumed innocent of the crime
25 for which an indictment has issued unless and until guilt

1 has been proven by evidence satisfying you, the jury, of
2 guilt beyond a reasonable doubt.

3 A reasonable doubt is the kind of doubt which would
4 cause a reasonable person to hesitate to act. It may arise
5 from the evidence in the case or from the lack or absence of
6 evidence in the case and you, the jury, must determine
7 whether or not reasonable doubt exists as to the guilt of
8 the Defendant. The State, I remind you, has the burden of
9 proving each and every element of a crime beyond a
10 reasonable doubt.

11 Now, the Defendant is charged with armed robbery. In
12 order to prove this offense the State must prove beyond a
13 reasonable doubt that the Defendant took personal property
14 from the person or presence of another person. Property is
15 in the present of a presence of a person if it is within the
16 person's reach, inspection, observation or control so that
17 the person could, if not overcome with violence or prevented
18 by fear, keep possession of the property. The State must
19 prove beyond a reasonable doubt that the Defendant carried
20 the property away intending to permanently deprive the owner
21 of the property and to keep the property for the Defendant's
22 own use. The slightest removal of the property or the
23 complete possession of the property even for an instance by
24 the Defendant is sufficient to show a carrying and taking
25 away of the property. And the taking and carrying away of

1 the property must have been done with violence or by putting
2 the owner of the property in fear of violence. And finally,
3 in armed robbery, the State must prove beyond a reasonable
4 doubt that the Defendant was armed with a deadly weapon
5 during the robbery or alleged either by action or words he
6 was armed while using a representation of a deadly weapon or
7 any object which a person present during the commission of a
8 robbery reasonably believed to be a deadly weapon. A deadly
9 weapon is any article, instrument or substance which is
10 likely to cause death or great bodily harm, and whether an
11 instrument has been used as a deadly weapon depends on the
12 facts and circumstances of each case. The following are
13 examples of instruments which may be deadly weapons. A
14 pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a
15 slingshot, metal knuckles, a razor, gasoline, a fire bomb or
16 Molotov cocktail. And a gun may be a deadly weapon even if
17 it is not operating.

18 The Defendant is also indicted for possession of a
19 weapon during the commission of or attempt to commit a
20 violent crime. The State must prove beyond a reasonable
21 doubt that the Defendant was in possession of a firearm or
22 visibly displayed what appeared to be a firearm during the
23 commission of a violent crime. A firearm means any machine
24 gun, automatic rifle, revolver, pistol, or any weapon which
25 will is designed to or may be readily converted to expel a

1 projectile. In order to find the Defendant guilty of
2 possession of a weapon during the commission of a violent
3 crime you must first find the Defendant guilty of either
4 committing a violent crime or attempting to commit the
5 violent crime. Under our law, armed robbery is a violent
6 crime.

7 Now, there are two possible verdicts which you may
8 reach on each separate indictment. There's no importance to
9 the order in which I state them. One's got to be said
10 first. And those two possible verdicts are guilty or not
11 guilty. I will tell you that your verdict must be
12 unanimous. All 12 of you must agree. The verdict can't be
13 based on sympathy, passion, prejudice, emotion, or any other
14 consideration which is not in evidence in the case. And
15 remember, you have no friends to reward and you have no
16 enemies to punish.

17 Now, I've prepared a verdict form which I'm going to
18 send back in with you. I think it's self-explanatory, but
19 if you have a problem with it just let me know and I'll get
20 that cleared up for you. When you have reached a unanimous
21 decision on each of the two indictments, Mr. Foreman, I
22 would ask you to indicate in the appropriate space, sign it
23 and date it, and then we will receive you back into the
24 courtroom to take your verdict.

25 I'm going to excuse you all now to your jury room and

1 ask you all not to being discussing the case just yet. I
2 need to go over my charge on the law with the lawyers to
3 make sure I haven't misstated something or omitted
4 something. When the verdict form comes back with all of the
5 evidence then you may begin your deliberations. All right?
6 Thank you very much.

7 And, Ms. Calloway, I need to ask you to remain in the
8 courtroom.

9 (Whereupon, the jury exited the courtroom to begin
10 deliberations at 12:06 p.m.)

11 THE COURT: I hate to single you out, and this is the
12 hardest part for me. You've sat through this trial.
13 You've been just as qualified, just as good as each of those
14 12 people. I can't let you go back in there. The law only
15 allows 12 to deliberate. So -- and I hope you understand,
16 someone could have been taken ill last night, and so we
17 needed you. And you've done a great job. I wish I could
18 say you're done for the week, but I can't just yet. I have
19 to -- you're excused now. You can stay or go, whatever
20 you'd like to do. And call back after 6:00.

21 MS. CALLOWAY: May I stay?

22 THE COURT: Ma'am?

23 MS. CALLOWAY: May I stay?

24 THE COURT: Yes, ma'am. You certainly may. Thank you
25 very much.

1 All right. Any exception or objection to the charge
2 from the State?

3 MR. BROWN: Not from the State.

4 THE COURT: From the Defense, other than your
5 previously stated objection?

6 MR. ANDERSON: None other than that.

7 THE COURT: Okay. Here's the verdict form. You all
8 look at it. Check out the other ones.

9 (Whereupon, a recess was held from 12:06 p.m. to 1:21
10 p.m. while the jury deliberated.)

11 THE COURT: Okay. I've got two questions. One, what
12 agency did they get the date of birth. Two, what system did
13 the photo lineup come from. I think what I would reply --

14 MR. ANDERSON: Your Honor, may I say this.

15 THE COURT: Yeah.

16 MR. ANDERSON: The date has been a huge concern with
17 regard to our representation. Mr. Hakeem has asked me time
18 and again why don't you bring up the fact that many people
19 have obviously in the area -- the whole area a lot of people
20 have -- that were born on perhaps

21 THE COURT: Well, all that's past. We're talking now
22 about what's in the record.

23 MR. ANDERSON: I know that. But what I'm driving at is
24 I didn't want to get into that in my jury argument, number
25 one, because -- basically because of this reason. That it

1 comes from some kind of law enforcement database. No
2 question about that. And they probably know what.

3 THE COURT: My memory of the testimony was that they
4 ran the birth date through our database, and he might have
5 said RMS.

6 MR. ANDERSON: Yes, sir.

7 THE COURT: But I don't -- we can agree on an answer,
8 otherwise the jury is entitled to hear the testimony.

9 MR. ANDERSON: Does anybody know the --

10 THE COURT: I don't know --

11 MR. BROWN: I think he said SLED generated the photo
12 lineup. Are they asking where did the photo come from?

13 THE COURT: Well, I know. What's in evidence -- I know
14 where it came from. But what's in evidence with respect to
15 the photo lineup?

16 MR. BROWN: I believe we stated that they called down
17 to SLED -- SLED Fusion Center.

18 THE COURT: That was in evidence?

19 MR. BROWN: I believe it was. Yes, sir.

20 MR. ANDERSON: I don't recollect SLED being used, but -

21 THE COURT: Just a minute. Who would have testified to
22 that?

23 MR. BROWN: Can you check it out?

24 THE COURT: When -- do you remember when in your
25 testimony?

1 MR. BROOKS: Roughly, Your Honor, if you remember the
2 point, I think Mr. Anderson maybe had question regarding --
3 I think I said something to the effective of it took about
4 20 minutes to get it from SLED. I think he questioned the
5 quickness of getting it from SLED. I said that it would be
6 an email. To my recollection, I stated that after obtaining
7 that information and comparing the picture in RMS to the in-
8 store video I relayed that information to my phone to
9 another investigator at the Sheriff's Office who put in the
10 request to the SLED Fusion Center. That they then returned
11 it via email and the investigator brought it to me at the
12 scene. That may not be verbatim, I believe that's roughly
13 what I testified to.

14 THE COURT: Well, let's see if we can find the
15 testimony. So everybody just stand at ease and we'll see
16 what's in the record.

17 (Whereupon, a recess was held.)

18 THE COURT: Mr. Foreman, ladies and gentlemen of the
19 jury, I am in possession of both of your notes. We are
20 queuing up so we can play the DVD and the CD for you. With
21 respect to your questions, "What agency did they get the
22 date of birth and what system did the photo lineup come
23 from?" I would just tell you that everything -- you all
24 have heard all the testimony and all the evidence. It's all
25 in there. But that the system referred to is the State of

1 South Carolina database. Okay? All right. Go ahead and
2 play it for them. If y'all need to step back, get
3 yourselves comfortable.

4 (Whereupon, 911 audio was replayed for the jury)

5 (Whereupon, the video recording was replayed for the
6 jury)

7 JUROR: Can we stop it and run it back just a little
8 bit, please? Pause. Pause, please. Continue.

9 THE COURT: Yeah, let me just interrupt. We're having
10 a hard time getting the sound to play. Does that make a
11 difference to you?

12 JUROR: No. We're looking for something in the --

13 THE COURT: Okay. All right.

14 JUROR: Can you back it up just a bit?

15 THE COURT: You tell us where to stop it and we'll try
16 and stop it for you.

17 (Whereupon, the video surveillance was replayed for the
18 jury. Jury returned to jury room to resume deliberation.)

19 THE COURT: Okay. We just completed playing the 911
20 DVD -- or CD and the in-store security camera DVDs. Prior
21 to that we had a bench conference with the attorneys and a
22 concern was stated with respect to how to answer the
23 questions from the jury about the databases. We conferred
24 about it and everyone agreed that the most neutral way to
25 describe it was how I described it to the jury. And this

1 was after we had reviewed the testimony where it was
2 mentioned during cross-examination of Officer Brooks that
3 the photo lineup came from SLED. We did not --
4 intentionally did not say that to avoid any sort of
5 character evidence being introduced or emphasized. Is that
6 a correct statement?

7 MR. BROWN: Yes, Your Honor.

8 MR. ANDERSON: That's correct.

9 (Whereupon, a recess was taken until 2:29 p.m.)

10 (Whereupon, Court's Exhibit Number 4 was marked for
11 identification.)

12 THE COURT: I have a question request from the jury
13 that reads, "Request. Definition of armed robbery and
14 definition of lethal weapon from Judge." So I'm going to
15 recharge them.

16 (Whereupon, the jury entered the courtroom at 2:30
17 p.m.)

18 THE COURT: I have your note and I understand you have
19 requested a definition of armed robbery and a definition of
20 lethal weapon. So what I intend to do is recharge you on
21 armed robbery and possession of a weapon during the
22 commission of a violent crime. If you need more, let me
23 know and we'll -- all right.

24 The Defendant is charged with armed robbery. In order
25 to prove this offense the State must first prove beyond a

1 reasonable doubt that the Defendant took personal property
2 from the person or presence of another person. Property is
3 in the presence of a person if it is within the person's
4 reach, inspection, observation or control so that the person
5 could, if not overcome with violence or prevented by fear,
6 keep possession of the property. The State must also prove
7 beyond a reasonable doubt that the Defendant carried the
8 property away intending to permanently deprive the owner of
9 the property and to keep the property for the Defendant's
10 own use. The slightest removal of the property or the
11 complete possession of the property, even for an instance by
12 the Defendant, is sufficient to show a taking and carrying
13 away of the property. The taking and carrying away of the
14 property must have been done with violence or by putting the
15 owner of the property in fear of violence. Finally, the
16 State must prove beyond a reasonable doubt that the
17 Defendant was armed with a deadly weapon during the robbery
18 or alleged, either by action or words, he was armed while
19 using a representation of a deadly weapon or any object
20 which a person present during the commission of the robbery
21 reasonably believed to be a deadly weapon. A deadly weapon
22 is any article, instrument or substance which is likely to
23 cause death or great bodily injury. Whether an instrument
24 has been used as a deadly weapon depends on the facts and
25 circumstances of each case. The following are examples of

1 instruments which may be deadly weapons; a pistol, a
2 shotgun, a rifle, a dirk, a dagger, a knife, a slingshot,
3 metal knuckles, a razor, gasoline, fire bomb, a Molotov
4 cocktail. And a gun may be a deadly weapon even if it is
5 not operating.

6 The Defendant is also charged with possession of a
7 weapon during the commission of or attempt to commit a
8 violent crime. The State must prove beyond a reasonable
9 doubt that the Defendant was in possession of a firearm, or
10 visibly displayed what appeared to be a firearm, during the
11 commission of a violent crime. A firearm means any machine
12 gun, automatic rifle, revolver, pistol or any weapon which
13 will, is designed to, or may be readily converted to expel a
14 projectile. In order to find the Defendant guilty of
15 possession of a weapon during the commission of a violent
16 crime you must first find the Defendant guilty of either
17 committing a violent crime or attempting to commit a violent
18 crime. Armed robbery is a violent crime under South
19 Carolina law.

20 (Whereupon, the jury exited the courtroom to resume
21 deliberations at 2:34 p.m.)

22 THE COURT: Anything from the State?

23 MR. BROWN: Not from the State, Your Honor.

24 THE COURT: From the Defense?

25 MR. ANDERSON: Nothing from the Defense, Your Honor.

1 THE COURT: All right. Thank you.

2 (Whereupon, a recess was held until 3:14 p.m.)

3 THE COURT: For the record, I have a note from the
4 jury, "Please show video. Not sure exact point. Just start
5 from the beginning. Do not need 911 audio."

6 (Whereupon, the jury entered the courtroom at 3:14
7 p.m.)

8 MR. BROWN: Judge, we're probably going to swap out the
9 computer, or try to, to get the volume.

10 (Whereupon, the video surveillance DVD was replayed for
11 the jury.)

12 (Whereupon, the jury exited the courtroom at to resume
13 deliberations at 3:20 p.m.)

14 THE COURT: Okay. Let's be at ease.

15 (Whereupon, a recess was held until 3:33 p.m.)

16 (Whereupon, the jury entered the courtroom at 3:33
17 p.m.)

18 THE COURT: Mr. Foreman, I understand you have a
19 verdict.

20 THE FOREMAN: Yes.

21 THE COURT: Would you hand it to the bailiff for me.
22 Thank you, sir. Madam Clerk, publish the verdict.

23 THE CLERK: "State of South Carolina, the County of
24 Greenwood, the Court the General Sessions. Indictments
25 numbers 2015-GS-24-0855, 2015-GS-24-0856. The State vs

1 Jamal Hakeem. As to the charge of armed robbery, indictment
2 2015-GS-24-0855, we the jury find the Defendant guilty. As
3 to the charge of a possession of a weapon during the
4 commission of a crime, indictment 2015-GS-24-0856, we the
5 jury find the Defendant guilty. July 14, 2015."

6 THE COURT: If this is your verdict, so say you all,
7 please indicate by raising your right hand.

8 (Whereupon, all jury members raised their right hands.)

9 THE COURT: Thank you very much. Anything further for
10 the jury from the State?

11 MR. BROWN: Not from the State, Your Honor.

12 THE COURT: From the Defense?

13 MR. ANDERSON: Move to poll the jury, please.

14 THE COURT: Okay. Poll them.

15 THE CLERK: I'm going to read this to you and you can
16 stay seated. I'll call your name.

17 Ladies and gentlemen, the verdict that I have just
18 published was the verdict --

19 THE COURT: You want me to --

20 THE CLERK: Read it for me.

21 THE COURT: Ladies and gentlemen of the jury. The
22 verdict that has just been published was the verdict you
23 reached in the jury room. I ask you, was it your verdict
24 then and is it your verdict now. As I call your name,
25 please answer yes or no.

1 Can you read them?
2 THE CLERK: Yes, sir.
3 THE COURT: All right.
4 THE CLERK: David Johnson.
5 JUROR: Yes.
6 THE CLERK: Susan Pate.
7 JUROR: Yes.
8 THE CLERK: Teleathia Logan.
9 JUROR: Yes.
10 THE CLERK: Gregory Griffin.
11 JUROR: Yes.
12 THE CLERK: Maria Creswell.
13 JUROR: Yes.
14 THE CLERK: David Sutter.
15 JUROR: Yes.
16 THE CLERK: Sheri Hill.
17 JUROR: Yes.
18 THE CLERK: Keba Posley.
19 JUROR: Yes.
20 THE CLERK: Donald Martin.
21 JUROR: Yes.
22 THE CLERK: Latoya Jackson.
23 JUROR: Yes.
24 THE CLERK: Tara Ponder.
25 JUROR: Yes.

1 THE CLERK: Aretha Thompkins.

2 JUROR: Yes.

3 THE CLERK: All right. Mr. Foreman, ladies and
4 gentlemen of the jury, I want to thank you very much for
5 your service. I want to thank you very much for your work.
6 Nobody said being a juror was an easy job. It's a great
7 responsibility. It's a privilege but it's a lot of work,
8 and you all have performed way beyond and -- above and
9 beyond the call of duty. I just found out that we have one
10 trial left this week. Unless you just want to come back and
11 serve you're free for the rest of the week. You have
12 completed your duty. And we welcome you back if you want to
13 come back, but you all have earned the right to take the
14 rest of the week off, so I'll leave that entirely up to you.
15 And with that, Thank you. Thank you very much. And, Mr.
16 Griffin, we need to get your signature on a couple of
17 documents.

18 BAILIFF: How about Ms. Calloway, will she have to come
19 back?

20 THE COURT: No, she's paid the price. I think she's
21 part of the group. She didn't want to leave you all.

22 BAILIFF: She didn't want to leave. No, sir.

23 THE COURT: No. All right. Thank you all very much.
24 You can all stay, go, whatever you'd like.

25 (Whereupon, the jury was excused.)

1 THE COURT: You all got the paperwork?

2 MR. BROWN: Yes, sir.

3 THE COURT: Mr. Geddes, bring him around.

4 MR. ANDERSON: Your Honor, let me make a motion first
5 of all for a new trial based upon the same grounds as
6 asserted in the motion for -- the motions for directed
7 verdict and the same grounds asserted for a motion for
8 mistrial.

9 THE COURT: Okay. Same ruling.

10 MR. BROWN: Your Honor, starting off -- I'm not going
11 to go through the facts again. I think you've seen it and
12 heard it the last two days pretty clearly what occurred back
13 on April 11th, 2013. We'll read off Mr. Hakeem's record.
14 Mr. Hakeem -- just so the record is clear, Mr. Hakeem has
15 not always gone by the name of Jamal Hakeem. He also went
16 by Mr. Stonewall -- James Stonewall. And he does have a
17 criminal history that covers both names.

18 Back on December 4th, 1989 he had a possession of
19 cocaine charge out of Louisiana. It looks like in 2009 he
20 had a attempted possession of stolen property charge and
21 conviction. Vandalism charge believed to be in California
22 in 2001. And a forgery charge in 2005. A conviction for
23 that. I've looked through his record and that appears to be
24 the extent of his record.

25 Your Honor, Ms. Smith, Shea Smith, she is standing here

1 next to me. She would like to add -- tell Your Honor what's
2 on her -- how this has affected her. How this has affected
3 her children. She couldn't go into that obviously
4 testifying in front of the jury, but she would like to
5 address the Court.

6 THE COURT: Yes, ma'am. Go ahead.

7 MS. SMITH: Yes. I wanted to say how destructive it
8 was for me. I never experienced anything like it and I
9 don't think it's a moment I'll forget. You know, I stayed
10 on that job a year later after that incident due to me not
11 having anything to go to as far as trying to provide for my
12 child and I, who attends the school up the street from which
13 the incident happened. The school was about to let out.
14 And, of course, it got back to her, of course, from hearing
15 adults talk. She knew I worked at that gas station and she
16 didn't know what was going on. She later came home and told
17 me, Momma, are you okay. You know, I heard the store had
18 been robbed. Little did he know -- he knows nothing about
19 me, but for him to come and take something from me that
20 didn't even belong to me, you know, there's no coming back
21 from that. It did damage me in the sense as to if anybody
22 was to come in the store, they didn't know it as a customer,
23 but I had a reaction. Heart would get to beating real fast.
24 Hot flashing like when people would come in and reach in
25 their pocket, me not knowing what they were going to do.

1 But just because when I returned back to the register, I
2 looked at the register. I didn't look back at him from
3 returning from the cigarette. I asked for a date of birth
4 and begin typing and I look over to grab the beer to put it
5 in the bag and that's when I seen the weapon. That did
6 something to me. And for that I think he needs to serve
7 maximum time, whatever you give him, because the action
8 wasn't called for. Especially for me. I didn't do anything
9 to that man for him to come in the store and take something
10 away from me that day.

11 MR. BROWN: Your Honor, she has, as she stated, has
12 since left Greenwood Petroleum who owns the Shell gas
13 station. She has another job here in Greenwood, doing quite
14 well, and she has tried to put this behind her; but she has
15 asked our victim's advocate, Marian Stroup, to help her get
16 back into more counseling. She was in counseling. SOVA
17 only paid up through so many, and she still would like to
18 have further counseling based on the traumatic nature of
19 this event. You know, since two years after it's happened
20 it's still following her and haunting her to this day. And
21 also, she's -- being here the last two days she's been out
22 of work, and also she's furthering her education, taking
23 classes this summer, and it's putting her behind that as
24 well. So it's just -- even two years later it's still
25 haunting her.

1 THE COURT: All right. Thank you very much. All
2 right. Mr. Anderson.

3 MR. ANDERSON: Thank you, Judge. Initially let me say,
4 Judge, that personally I am very puzzled by this predicament
5 that Mr. Hakeem finds himself in. He appears to be someone
6 who has been productive throughout his life. He lost his
7 job as a security installation expert in some of the
8 hospitals around the country when this happened. When he
9 was arrested. He had responsible employment in that regard.
10 When he got fired from that job he immediately got a job
11 with what is known around here as the Savannah Lakes down
12 there at Clarke's Hill which is a retirement area down
13 there. It's a gated kind of community. He got a job as a
14 chef there. Worked there for about a year. And it's just
15 been puzzling to me. Married to certainly a nice pleasant
16 woman here and I'm sure -- although I don't know him that
17 well, I think he's got some character traits that perhaps in
18 the future, if you don't lay too heavy with regard to the
19 sentence you will impose. I told him that I believe that
20 carrying a pistol unlawfully in the commission of a crime, I
21 believe that's a limit of 10 years. I believe I'm correct
22 on that. What I would urge and plead with you today is in
23 view of the fact that his record is not like some
24 individuals that come before you in this kind of case, which
25 is a very serious felony case, we plead with you to at least

1 give him some midrange kind of treatment and run the
2 concurrent sentence of the use of a firearm with a violent
3 crime. Run that in together as a concurrent type treatment
4 and give him -- even though he appears -- I know throughout
5 the trial he appears to be someone who -- and the times he
6 testified in the pretrial hearing, may have appeared to be
7 somewhat obstinate, or whatever you might feel. But he is a
8 good man. He's got some good character traits. And I plead
9 with you to at least give him something that won't take him
10 down the drain of the penitentiary for the rest of his life.
11 I think that -

12 THE COURT: What do you want done?

13 THE DEFENDANT: Excuse me?

14 THE COURT: Have you got anything you want to say?

15 THE DEFENDANT: What I want to say is I don't think I
16 was judged right. I mean, I didn't do the crime. I didn't.
17 I didn't do the crime. And all the evidence that you had
18 towards me was not sufficient. You didn't have any
19 fingerprints. You didn't have any video. No good video of
20 me. This lady said that I -- she never seen me before. I
21 went in that store quite frequently, ma'am, and I've seen
22 you a couple of times --

23 THE COURT: Sir, you will address me. You will not
24 address her. Is that clear?

25 THE DEFENDANT: Got you.

1 THE COURT: Anything else you want to say?

2 THE DEFENDANT: No, sir. I'm done.

3 THE COURT: I want you to know you have an absolute
4 right to appeal the verdict.. You have 10 days from today to
5 file a notice of appeal. You're 49-years-old. I'm going to
6 sentence you to 25 years and five years. Good luck.

7 - - - END OF TRANSCRIPT OF RECORD - - -

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Certificate of Reporter

2
3 I, the undersigned, Tara T. Scott, Official Court
4 Reporter for the Eighth Judicial Circuit of the State of
5 South Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of all the
7 proceedings had and evidence introduced in the trial/hearing
8 of the captioned case, relative to appeal, in the Circuit
9 Court for Greenwood County, South Carolina, on the 13th and
10 14th day of July, 2015.

11 I do further certify that I am neither of kin, counsel,
12 nor interest to any party hereto.

13
14
15 Tara T. Scott

16 Tara T. Scott, CVR
17 Circuit Court Reporter
18 Abbeville, South Carolina
19 November 9, 2015
20
21
22
23
24
25

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County

Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMAL HAKEEM,

APPELLANT

APPELLATE CASE NO. 2015-001542

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUE ON APPEAL.....	3
STATEMENT OF THE CASE.....	4
ARGUMENT	5
CONCLUSION	9
PETITION TO BE RELIEVED AS COUNSEL.....	10

TABLE OF AUTHORITIES**Cases**

<u>Schneckloth v. Bustamonte</u> , 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973)).....	7
<u>State v. Greene</u> , 330 S.C. 551, 499 S.E.2d 817, (Ct. App. 1997),.....	7,8
<u>State v. Rochester</u> , 301 S.C. 196, 391 S.E.2d 244 (1990)	7,8
<u>State v. Wallace</u> , 269 S.C. 547, 238 S.E.2d 675 (1977)	7

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to suppress photos of clothing and cigarettes found pursuant to a coerced consent to search Appellant's home given by Appellant's wife?

STATEMENT OF THE CASE

In June of 2015, the Greenwood County Grand Jury indicted Appellant Hakeem for armed robbery and possession of a firearm during the commission of a violent crime, indictments #15-GS-24-855, 856. On July 13, 2015, Appellant proceeded to jury trial before the honorable Edward W. Miller. Geddes Anderson represented Appellant at trial. C. Yates Brown and Wade Downtin prosecuted the case. The jury returned verdicts of guilty. Judge Miller sentenced Appellant to twenty five (25) years for armed robbery and five (5) years for the weapon charge. A timely notice of intent to appeal was served on July 18, 2015. This appeal follows.

ARGUMENT

The trial judge erred in refusing to suppress photos of clothing and cigarettes found pursuant to a coerced consent to search Appellant's home given by Appellant's wife.

On April 11, 2013, an individual robbed the Shell Station in Greenwood. The clerk working at the Shell Station at the time of the robbery, Shkuntula "Shea" Smith, testified that the robber took a beer from the back cooler, placed it on the counter and asked for three packs of Newport cigarettes. (R. p. 104, line 20 – p. 105, lines 1-24). Smith testified that she turned to get the cigarettes and asked for a date of birth. (R. p. 105, lines 3-13). The clerk testified that the individual gave a date of birth of November 26th. (R. p. 105, lines 8-9). The clerk testified that when she turned around the individual pointed a gun at her and asked for all of the money from the register. (R. p. 105, lines 11-20). Both the store video surveillance and a copy of the 911 call placed by the clerk after the robbery were introduced in evidence.

Whitfield Brooks with the Greenwood County Sheriff's Office testified that when he arrived at the Shell Station pursuant to a 911 call from the clerk, the clerk handed him a printed receipt where she had entered the full date of birth, including the year, given by the robber. (R. p. 134, line 22 – p. 135, lines 1-6). A database search of names with the birth date given by the robber produced Appellant's name. (R. p. 135, lines 18-24). As a result, Appellant's photograph was placed in a photo line up and shown to the clerk. (R. pp. 136-137). The clerk identified Appellant as the robber.

After the clerk identified Appellant, members of the Greenwood Sheriff's Office went to Appellant's house where they spoke with his wife, Bird Hakeem. (R. p. 140, lines 1-25). Mrs. Hakeem testified that officers surrounded the house with guns drawn. (R. p. 53, line 1 – p. 54, lines 1-25). The Appellant was not at home when the officers arrived but his wife called him and

asked him to come home. (R. p. 141, lines 1-6). When Appellant voluntarily returned home in his truck, he was arrested. (R. p. 142, lines 15-21). Officers photographed a pack of Newport cigarettes in the center console of Appellant's truck. (R. p. 143, lines 19-25).

After Appellant's arrest, officers returned to the Hakeem house and obtained a consent to search from Appellant's wife. (R. p. 146, lines 2-10). The consent to search was introduced, over objection, as State's Exhibit #1. (R. p. 123, line 1 – p. 124, lines 1-4). Pursuant to the consent to search, officers found a hooded plaid sweatshirt, consistent with what the robber was wearing, with two packs of Newports in the pocket, a pair of jeans and a white T-shirt. (R. p. 147, lines 20 – p. 148, 149, lines 1-24). Trial counsel objected to the photos of the items, State's Exhibits #21 through #24, (R. p. 148, lines 16-19) and objected to State's Exhibit #25, the blue jeans, (R. p. 150, lines 2-8) but told the trial judge that State's Exhibit #26, the hooded plaid sweatshirt, was without objection¹. (R. p. 151, lines 5-9).

Prior to trial Appellant moved to suppress the items seized pursuant to a warrantless search of Appellant's home. (R. p. 22, lines 19-21). During the pre-trial hearing Appellant's wife testified:

A little after 6:00. It was a little after 6:00. And Officer Strickland pulled me to the side and we were talking. He said, now, I have some officers here. He said, we'd like to do a search. He said, I don't have a search warrant. He said, but if you go on and let us do it, he said, they won't rough up your furniture. He said but me, myself, I won't do it. He said, but some of the other officers might be upset that they have to go back and get a search warrant. So I signed.

(R. p. 58, lines 10-18). Officer Strickland did not testify at the pre-trial hearing and did not testify at trial.

The trial judge denied the motion to suppress stating:

¹ Trial counsel's failure to object to the introduction of the hooded plaid sweatshirt may need to be addressed in post conviction relief.

You can get the material at lunch if you want to, but I'm going to find that in the totality of the circumstances that Ms. Hakeem lives there. She has custody of the house. She has testified she gave free and voluntary consent. I don't find from the totality of the circumstances that this search should – any of the fruits from the search should be suppressed.

(R. p. 71, lines 13-18). The judge additionally stated, “Well, I think that they would have gotten a search warrant had not Ms. Hakeem consented to the search. I don't find that her will was overborne. I find that she's educated. She is a resident of the house with the authority to grant consent. She never limited the scope. And so I am going to – I deny your motion.” (R. p. 72, lines 10-15). The trial judge erred.

Whether the consent to search was voluntary or the product of duress or coercion, express or implied, is a question of fact to be determined by the totality of the circumstances. State v. Wallace, 269 S.C. 547, 238 S.E.2d 675 (1977) (citing Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973)). The burden is on the State to show voluntariness. Wallace, supra. The issue of voluntary consent, when contested by contradicting testimony, is an issue of credibility to be determined by the trial judge. Id. A trial judge's conclusions on issues of fact regarding voluntariness will not be disturbed on appeal unless so manifestly erroneous as to be an abuse of discretion. State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990) (dealing with voluntariness of a statement).

In State v. Greene, 330 S.C. 551, 499 S.E.2d 817, (Ct. App. 1997), this Court found that the trial judge did not abuse her discretion in finding that the defendant's wife voluntarily consented to the search of her mother's home where police had been told that the defendant stored drugs. In Greene the wife testified that an Officer Reyes told her she could consent to the search of her mother's home or the officers could obtain a search warrant. The wife testified that Officer Reyes told her she could prolong the ordeal by not consenting or consent and the officers

would get out of her way. Officer Reyes did not testify at trial. This Court wrote, "... [W]hile a threat to obtain a warrant is a factor to be considered in determining the voluntariness of consent, it does not necessarily vitiate that consent. State v. Wallace, 269 S.C. 547, 238 S.E.2d 675 (1977) (per curiam). Reyes's statement alone does not make Pamela's [wife's] consent involuntary as a matter of law, but rather is simply one of the factors to consider in the totality of the circumstances." State v. Greene, 330 S.C. 551, 558, 499 S.E.2d 817, 820 (Ct. App. 1997).

In contrast, the threat in the present case was more than just a threat to obtain a search warrant. In the present case the officer implied that if the wife did not consent to the search, other officers would be upset about having to obtain a search warrant and would "rough up her furniture." In not calling Officer Strickland to testify as to what he told Appellant's wife, the State failed to meet its burden of proving the consent was voluntary. Under the totality of the circumstances in the present case where police surrounded the house with guns drawn and threatened to rough up furniture inside the house if the wife did not consent, the wife's consent was involuntary as a matter of law. The trial judge erred in refusing to suppress photographs taken and items seized as a result of the involuntary coerced consent to search.

CONCLUSION

Based on the above argument, Appellant's convictions and sentences should be reversed and the case remanded for a new trial.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of May, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMAL HAKEEM,

APPELLANT

APPELLATE CASE NO. 2015-001542

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jamal Hakeem states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Edward W. Miller, which was held on July 14, 2015, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Jamal Hakeem.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of May, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMAL HAKEEM,

APPELLANT

APPELLATE CASE NO. 2015-001542

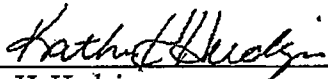
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments;
- (2) Trial transcript;
- (3) State's Exhibit #1 Consent to Search;
- (4) State's Exhibit #2 Photo Lineup – to be transported;
- (5) State's Exhibit #3 Photo of Jamal Hakeem – to be transported;
- (6) State's Exhibit #5 Video Surveillance Video – to be transported;
- (7) State's Exhibits #21 through #24 Photos- to be transported.

I certify that this designation contains no matter which is irrelevant to this appeal.

May 11th, 2016


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

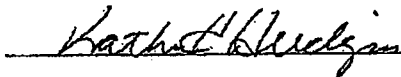
JAMAL HAKEEM,

APPELLANT

APPELLATE CASE NO. 2015-001542

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Jamal Hakeem, #364712 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 11th day of May, 2016.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
This 11th day of May, 2016.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Jamal Hakeem, Appellant.

Appellate Case No. 2015-001542

Appeal From Greenwood County
Edward W. Miller, Circuit Court Judge

Unpublished Opinion No. 2017-UP-075
Submitted December 1, 2016 – Filed February 8, 2017

APPEAL DISMISSED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, and Jamal Hakeem, pro se, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General John Benjamin Aplin,
both of Columbia; and Solicitor David Matthew Stumbo,
of Greenwood, all for Respondent.

PER CURIAM: Dismissed after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

LOCKEMY, C.J., and KONDUROS and MCDONALD, JJ., concur.

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



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1690
FAX: (803) 734-1639
www.sccourts.org

February 24, 2017

The Honorable Chastity Knight Copeland
528 Monument Street Rm #114
Greenwood SC 29646

REMITTITUR

Re: The State v. Jamal Hakeem
Lower Court Case No. 2015GS2400855, 2015GS2400856
Appellate Case No. 2015-001542

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Jamal Hakeem, 364712
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
Kathrine Haggard Hudgins, Esquire
David Matthew Stumbo, Esquire
The Honorable Edward W. Miller

STATE OF SOUTH CAROLINA)

County of Greenwood)TAMAR HAKKEEM 364712)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.
2017 MAY 16 AM 10:14

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution

2. Name and location of Court which imposed sentence Greenwood

3. Name(s) of co-defendant(s) (if any) N/A

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 15C 924-08 55

(b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 7-14-15

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒ _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. The State of South Carolinaii. Court of Appeals

iii. _____

(b) the result in each such Court to which you appealed:

i. Dismiss

ii. _____

iii. _____

(c) the date of each such result:

i. (Dec 1-2016) Submitted (2-8-2017) Filed

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) _____
- (c) (SEE ATTACHED)
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attached.
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? YES
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? YES
- (d) any other petitions, motions or applications in this or any other Court? YES
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. APPEAL
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. GREENWOOD SOUTH CAROLINA
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. APPEAL
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. 2-8-2016
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. APPEAL COURT DECISION
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. COURT OF APPEALS
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Geddes D. Anderson Attorney At Law
P.O. Box 700 Greenwood S.C. 29648

ii. _____

 iii. _____

(b) the proceedings at which each such attorney represented you:

i. TRIAL
Sentencing
 ii. Filed Appellate

iii. _____

19. State clearly the relief you seek in filing this application:

Reduced Sentencing
OR NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

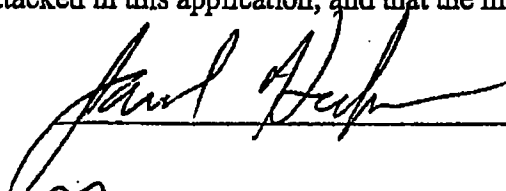
No

STATE OF SOUTH CAROLINA)

County of Greenwood)

VERIFICATION

I, JAMAL HAKIEM, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 27
day of April, 2017.

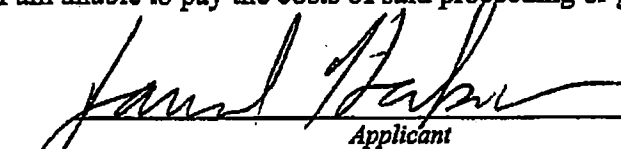
 (L.S.)
Notary Public

My Commission Expires: 3/3/2024

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, TAMAL Hakeem, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

27 day of April, 2017.


Notary Public

My Commission Expires: 3/3/2020

10(b) Applicant was denied the right to effective assistance of counsel guaranteed by the 6TH and 14TH Amendments to the United States Constitution during trial. And Article I §§ 3 and 14 of the South Carolina Constitution during trial.

11(b) Supporting facts: Again, defense counsel failed to object to the search being illegal. In transcript it states that Mo. Hakeem called the applicant and told him that the police were there and needed to talk to him. The applicant said that he was on his way and he was there in minutes. But, the police said that they needed to search for him without a warrant. She stated that she had already checked the pockets like she always did while cleaning up the house and there was nothing in the clothes. She also stated that the applicant indeed smoked NEWPORT cigarettes like millions of others. Even though there were no cigarettes in the jacket or pants before the officers went into the house without a warrant, cigarettes were found later by the police.

10(c) Applicant was denied the right to effective assistance of counsel guaranteed by the 6TH and 14TH Amendments to the United States Constitution and Article I §§ 3 and 14 of the South Carolina Constitution during testimony of Officer Strickland's statement of intimidation.

11(c) Mo. Hakeem stated Officer Strickland said he did not have a warrant, but he could get one. He told Mo. Hakeem that if they could search the house at that time without the warrant, they would not tear up her house. Again the police used "quiet intimidation" to search the residence illegally. Mo. Hakeem stated that the police were not "ugly" to her, but this statement by Strickland bothered her. She signed the consent to search while the police were LEAVING, not before the search.

10(d) Applicant was denied the right to effective assistance of counsel guaranteed by the 6TH and 14TH Amendments to the United States Constitution during trial by not objecting to Officer Strickland not being at the trial.

11(d) Officer Strickland was at the scene and at the applicant's residence. Mo. Hakeem stated that she was scared, nervous and did not know what to do. She stated Strickland "broke the ice" by talking about his kids going to the same school where she worked. He was the main one talking to her. Strickland was not at trial and was not available for defense counsel to question him. This is a clear violation of DUE

Applicant contends that his conviction and sentence was in violation of the United States Constitution and the South Carolina Constitution and laws of this state.

The applicant is asserting a 5TH, 6TH and 14TH Amendment violation which sets forth prima facie of his constitutional rights.

Grounds are constitutional violations. The fundamental defects alleged are standards that require establishment of complete miscarriage of justice and an omission consistent with the rudimentary demand of fair procedure.

The following acts and omissions by counsel constituted ineffective assistance of counsel.

It would be a denial of due process not to give the applicant an evidentiary hearing on the applicant's constitutional claims.

Argument:

10(a) Applicant was denied the right to effective assistance of counsel - guaranteed by the 6TH and 14TH Amendments to the United States Constitution during the preparation phase of his trial

11(a) Supporting facts: Defense counsel's failure to object to the introduction to the hooded jacket by State. The jacket was obtained by an illegal search. When the police arrived, the hall guns drawn and she was admittedly scared to death - knees weak, she almost dropped ect...

The police did not have a search warrant, but asked her to sign a consent to search. Her husband, the applicant, was arrested in the driveway and taken away. She never saw or spoke to him. The never asked the applicant to search. She had stated she had already checked the pockets of the applicant's clothes and they were all empty.

Transcript pg 57 - LINES 1 and 2 - "I DID NOT KNOW WHAT TO DO"

During officer Brooks testimony, he stated that they could have obtained a search warrant, but a consent was easier. It is clear that the police used Mr. Hakeem's emotional distress and naivete to search the house illegally. The applicant was never asked either.

Transcript pg 49 - LINES 23-24 / pg. 60 LINES 17-25 / pg. 61 - LINES 1-23. The entire search was illegal. The jacket was said to be red and they took a yellow jacket. They took a brown bag out and did not have Mr. Hakeem sign the consent to search until they were leaving.

PROCESS. The defendant has the right to question his accuser and he never had this chance. A clear violation.

10)(e) Applicant was denied the right to effective assistance of counsel guaranteed by the 6TH and 14TH Amendments to the United States Constitution and Article I §§ 3 and 14 of the SOUTH CAROLINA Constitution during trial, testimony of Officer Brooks.

11)(e) Defense counsel did not object to the search of the applicant's cell phone when he was arrested, without a warrant. Officer Brooks took the applicant's cell phone and went into the phone illegally. The same illegal search that was done during this entire case.

TRANSCRIPT: Pg 69 - LINES 3-5 and LINES 24-25. A search warrant of any kind was never mentioned to the applicant.

10)(f) Applicant was denied the right to effective assistance of counsel guaranteed by the 6TH and 14TH Amendments to the United States Constitution and Article I §§ 3 and 14 of the South Carolina Constitution during trial, testimony of Officer Brooks.

11)(f) Officer Brooks stated that the consent was signed and then they searched and Ms. Hakeem stated that she signed the consent while the police were leaving. This is a direct conflict and makes all the difference in this case. The defense counsel did not raise this conflict of testimony to the court.

10)(g) Applicant was denied the right to effective assistance of counsel guaranteed by the 6TH and 14TH Amendments of the UNITED STATES CONSTITUTION and ARTICLES I §§ 3 and 14 of the SOUTH CAROLINA CONSTITUTION during trial, testimony of Ms. Smith, the victim.

11)(g) Supporting facts: Ms. Smith had testified that she had been robbed and never before, but she had had a gun pointed at her. She stated later in her closing that nothing had ever happened to her like this. She could not give a clear description to the 911 operator. She saw facial skin. She never gave a definite description until a 6 photo picture was brought to her, sent by SLED. This picture was presented to the court with the number 5 and the applicant's picture on it. The number 5 was circled and it prejudiced the jury. Ms. Smith stated the assailant had a "DEFECTIVE LIP", which the applicant did not have. During her testimony, Ms. Smith was asked if the person had on a baseball cap. She never really answered. She said, "IT WAS SOMETHING. A HOOD OR SHADES." - "SOMETHING LIKE THAT." - "I CAN'T REMEMBER EXACTLY WHAT."

but, ~~not~~ definitely true during trial. During direct examination, she was clearly being lead by Mr. Brown.

10)(h) Applicant was denied the right to effective assistance of counsel - guaranteed by the 6TH and 14TH Amendments of the UNITED STATES CONSTITUTION and Articles I §§ 3 and 14 of the SOUTH CAROLINA CONSTITUTION during the trial phase.

11)(h) Counsel should have objected to the States reference to SLED bringing in the "SIX PERSON PHOTO." This was a clear violation of the applicant's Constitutional rights.

10)(I) Applicant was denied the right to effective assistance of counsel - guaranteed by the 6TH and 14TH Amendments of the UNITED STATES CONSTITUTION and Article I §§ 3 and 14 of the SOUTH CAROLINA CONSTITUTION during the trial phase - during deliberation of the jury.

11)(I) During jury deliberation, Judge Miller approached the applicant, with his counsel present and asked the applicant if he would take 15 years - "TAKE IT OR LEAVE," STRICKLAND V. WASHINGTON - Government shall not interfere with the defense in certain ways.....

10)(J) Applicant was denied the right to effective assistance of counsel - guaranteed by the 6TH and 14TH Amendments of the UNITED STATES CONSTITUTION and Articles I §§ 3 and 14 of the SOUTH CAROLINA CONSTITUTION during trial preparation.

11)(J) The applicant and his attorney met with the first solicitor assigned to this case. This solicitor stated this case is very "strange". He stated he could not understand this case and that something was wrong. The applicant feels that his attorney should be questioned about this meet- and the solicitor's name. The applicant can not recall

In establishing an ineffective assistance of counsel claim, the applicant must prove that counsel was ineffective. Using the facts stated, there are numerous deficiencies and prejudice that was done throughout this case and are clearly presented. There is clearly errors that are made. Illegal search, intimidation, scare tactics, circumstantial evidence. The victim could not clearly identify the assailant. The 911 call also showed this. The police played on the applicant's wife to do an illegal search. Officers entered the house, knowing the applicant had been contacted and was minutes away. The presentation of the 6 person photo sent by SLED was a violation. Even the "DEFECTED LIP" description by Mo. Smith was not an accurate description of the applicant.

The judge approaching the applicant during jury deliberation was a violation.

Wherefore, for the foregoing reasons, the Honorable Court should reverse the conviction and sentence on behalf of the applicant.

Applicant also reserves the right to amend this application at a later date, after appointed counsel.

Respectfully Submitted:

Bl James H. Hester

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

Jamal Hakeem,
S.C.D.C. # 364712,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
OF THE EIGHTH JUDICIAL CIRCUIT

2017-CP-24-0592

RETURN

Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed on May 16, 2017, would respectfully show this Court:

I.

Procedural History

Applicant is presently in the South Carolina Department of Corrections. Applicant was indicted at the June 2015 term of the Greenwood County Grand Jury for armed robbery (2015-GS-24-855) and possession of a weapon during the commission of a violent crime (2015-GS-24-856). Geddes Anderson, Esquire, represented Applicant. Assistant Solicitor Yates Brown, Esquire, prosecuted the case. On July 13-14, 2015, Applicant underwent a jury trial before the Honorable Edward Miller. He was subsequently found guilty as indicted and sentenced to imprisonment for twenty-five years for armed robbery and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal and an Anders Brief was filed by Appellate Defender Katherine Hudgins. On February 8, 2017, the South Carolina Court of Appeals dismissed the appeal. State v. Jamal Hakeem, Op. No. 2017-UP-075 (Ct. App. filed February 8, 2017). The Remittitur was sent on February 24, 2017.

Relevant Factual History

On April 11, 2013, an individual robbed the Shell Station in Greenwood. The clerk working at the Shell Station at the time of the robbery testified that the robber took a beer from the back cooler, placed it on the counter and asked for three packs of Newport cigarettes. Transcript p. 104, line 20 - p. 105, lines 1-24. The clerk testified that she turned to get the cigarettes and asked for a date of birth. Transcript p. 105, lines 3-13. The clerk testified that the individual gave a specific date of birth. Transcript p. 105, lines 8-9. The clerk testified that when she turned around the individual pointed a gun at her and asked for all of the money from the register. Transcript p. 105, lines 11-20. Both the store video surveillance and a copy of the 911 call placed by the clerk after the robbery were introduced in evidence.

Whitfield Brooks with the Greenwood County Sheriff's Office testified that when he arrived at the Shell Station pursuant to a 911 call from the clerk, the clerk handed him a printed receipt where she had entered the full date of birth, including the year, given by the robber. Transcript p. 134, line 22 - p. 135, lines 1-6. A database search of names with the birth date given by the robber produced Applicant's name. Transcript p. 135, lines 18-24. As a result, Applicant's photograph was placed in a photo lineup and shown to the clerk. Transcript pp. 136-137. The clerk identified Applicant as the robber.

After the clerk identified Applicant, members of the Greenwood Sheriff's Office went to Applicant's house where they spoke with his wife. Transcript p. 140, lines 1-25. Mrs. Hakeem testified that officers surrounded the house with guns drawn. Transcript p. 53, line 1 - p. 54, lines 1-25. Applicant was not at home when the officers arrived but his wife called him and asked him to come home. Transcript p. 141, lines 1-6. When Applicant voluntarily returned home in his

truck, he was arrested. Transcript p. 142, lines 15-21. Officers photographed a pack of Newport cigarettes in the center console of Applicant's truck. Transcript p. 143, lines 19-25.

After Applicant's arrest, officers returned to the Hakeem house and obtained consent to search from Applicant's wife. Transcript p. 146, lines 2-10. The consent to search was introduced, over objection, as State's Exhibit #1. Transcript p. 123, line 1 - p. 124, lines 1-4. Pursuant to the consent to search, officers found a hooded plaid sweatshirt, consistent with what the robber was wearing, with two packs of Newports in the pocket, a pair of jeans and a white T-shirt. Transcript p. 147, lines 20 - p. 148, 149, lines 1-24.

II.

In his application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. "Failure to object to the introduction of the hooded jacket by State. The jacket was obtained by an illegal search."
- b. Failed to object to the search being illegal.
- c. "Ms. Hakeem stated Officer Strickland said he did not have a search warrant, but he could get one. He told Ms. Hakeem that if they could search the house at the time without the warrant, they would not tear up her house. Again the police used 'quiet intimidation' to search the residence illegally. Ms. Hakeem stated that the police were not 'ugly' to her, but this statement by Strickland bothered her. She signed the consent to search while the police were LEAVING, not before the search."
- d. Failure to object to Officer Strickland not being at the trial.
- e. Failure to object to the search of the applicant's cell phone when he was arrested, without a warrant.
- f. "Officer Brooks stated that the consent was signed and then they searched and Ms. Hakeem stated that she signed the consent while the police were leaving. This is a direct conflict and makes all the different in this case. The defense counsel did not raise this conflict of testimony to the court."
- g. Ineffective assistance of counsel during the testimony of Ms. Smith, the victim.

- h. "Counsel should have objected to the State's reference to SLED bringing in the 'six person photo.' This was a clear violation of the applicant's constitutional rights."
- i. "During jury deliberation, Judge Miller approached the applicant with his counsel present and asked the applicant if he would take 15 years – 'take it or leave.' Strickland v. Washington – Government shall not interfere with the defense in certain ways."
- j. "The applicant and his attorney met with the first solicitor assigned to this case. This solicitor state this case is very 'strange.' He stated he could not understand this case and that something was wrong. The applicant feels that his attorney should be questioned about this meet and the solicitor's name. The applicant cannot recall."

Attached herewith and incorporated herein by reference are the records of the Greenwood County Clerk of Court regarding the subject convictions, the records from the South Carolina Department of Corrections, the appellate records, and the transcript from Applicant's trial. Respondent reserves the right to amend its return upon the receipt of other relevant records.

Additionally, Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests

that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

III.

Respondent contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Id. 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Second, counsel's deficient performance must have prejudiced the applicant such that there is a reasonable probability that, but for counsel's unprofessional errors,

the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

[Signature on following page]

V.

WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held.

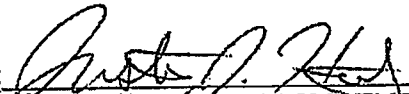
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

October 2, 2017

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

JAMAL HAKEEM, #364712,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

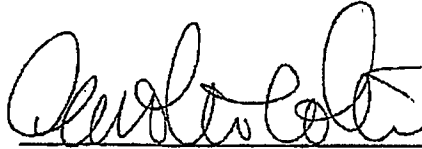
2017-CP-24-0592

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ashley A. McMahan, Esquire
 Mae | Vance Attorneys, LLC
 Post Office Box 5501
 West Columbia, South Carolina 29169

DATED this the 2nd day of October, 2017.



Caroline Collins, Administrative Coordinator
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 8 th JUDICIAL CIRCUIT
COUNTY OF GREENWOOD	)	Case No.: 2017-CP-24-00592
Jamal Hakeem , #364712,	)	
	)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.	)	
	)	
State of South Carolina.	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on May 16, 2017, to add the following allegation:

1. Newly Discovered Evidence – Greenwood officer Strickland has since been arrested and indicted for Misconduct in Office. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

Officer Strickland resigned as part of an ongoing SLED probe in late October 2015. He pled guilty in December 2017 to Misconduct in Office. The veracity of the statements made by Officer Strickland regarding the search warrant process has come into question since his arrest and conviction and the interests of justice would require that the Applicant's conviction be vacated accordingly. *See attachment.*

Applicant provides additional information on the following allegations:

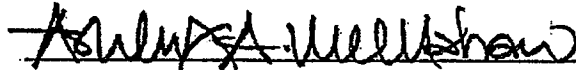
10 & 11(g): *See State v. Hart*, 403 SE2d 144, 304 SC 99, (SC Ct. App. 1991)

10 & 11(I): Counsel did not move to request a reconsideration of the sentence. Judge punished the Applicant in sentencing because the Applicant exercised his right to a trial. *See Castro v. State*, 417 SC 77, 789 SE2d 44 (2016).

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been

specifically addressed in the Application and this Amended Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



ASHLEY A. McMAHAN, ESQUIRE

MAC | VANCE ATTORNEYS, LLC

PO Box 5501

West Columbia, SC 29171

803-219-1110

ashley@macvance.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

February 20, 2018

CERTIFICATE OF SERVICE

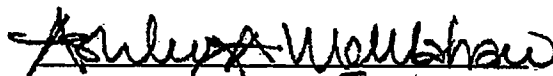
I certify that I have served this document via email to:

Justin J. Hunter

Assistant Attorney General

Jhunter2@scag.gov and eightcircuitpcr@scag.gov

This 20th Day of February, 2018.



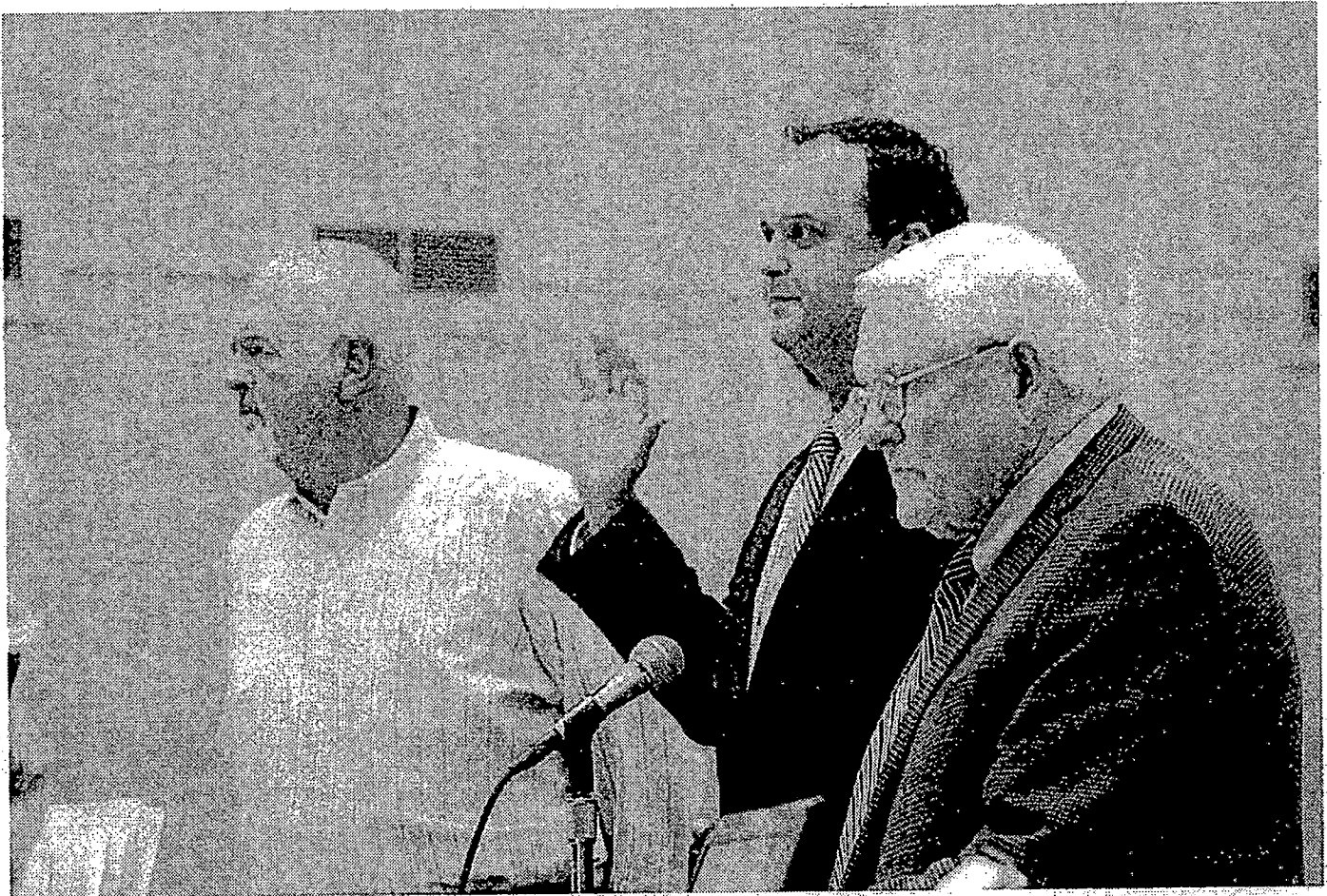
ASHLEY A. McMAHAN, ESQUIRE

Attorney for Applicant

http://www.indexjournal.com/news/crime/strickland-pleads-to-misconduct-in-office-sentenced-to-year-probation/article_0efe01d3-3ab6-5d26-8515-f8dc57588ba.html

Strickland pleads to misconduct in office, sentenced to 1 year probation

By DAMIAN DOMINGUEZ ddominguez@indexjournal.com Dec 13, 2017



Former Greenwood deputy Brandon Strickland raises his hand to be sworn in before pleading guilty to misconduct in office, with his father Dusty Strickland, left, and attorney John O'Leary, DAMIAN DOMINGUEZ | INDEX-JOURNAL

A former Greenwood County deputy pleaded guilty Wednesday to misconduct in office, and was sentenced to 1 year probation.

Brandon Strickland, 41, was one of two deputies indicted in July 2016 on charges of misconduct in office and embezzlement. Strickland and Robbie Byrd were put on leave and later resigned amid a State Law Enforcement Division investigation in October 2015.

Then-Sheriff Tony Davis said in a news release that the two were put on leave after Davis discovered "financial transactions" that led to an internal investigation into possible policy violations.

On Wednesday, before Circuit Judge Alexander Macaulay, Strickland pleaded guilty to a charge of misconduct in office. After discussion between his attorney John O'Leary and Assistant Attorney General Brian Petrano, Macaulay sentenced Strickland to 1 year of probation, and deferred any restitution payments.

Macaulay also signed a sentencing agreement that would have Strickland forfeit any authority as a law enforcement officer, and that he would not work in law enforcement any longer.

Byrd, who was also charged in connection to the investigation, is still awaiting trial.

This is a developing story. Check indexjournal.com for updates or read tomorrow's Index-Journal for a full story.

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF COMMON PLEAS

JAMAL HAKEEM,

PLAINTIFF,

-VS-

STATE OF SOUTH CAROLINA,

DEFENDANT.

CASE NO.: 2017-CP-24-00592

TRANSCRIPT OF RECORD

FEBRUARY 27, 2018
LAURENS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. MARK HAYES, JUDGE

A P P E A R A N C E S:

ATTORNEY FOR PLAINTIFF:

ASHLEY MCMAHAN, ESQUIRE

ATTORNEY FOR DEFENDANT:

JUSTIN HUNTER, ASSISTANT ATTORNEY GENERAL

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.

Jamal Hakeem

Direct Examination by Ms. McMahan.....3

Cross Examination by Mr. Hunter.....16

Redirect Examination by Ms. McMahan.....22

Bird Hakeem

Direct Examination by Ms. McMahan.....23

Cross Examination by Mr. Hunter.....24

Geddes Anderson

Direct Examination by Mr. Hunter.....26

Cross Examination by Ms. McMahan.....34

Certificate of Reporter.....38

(NO EXHIBITS WERE INTRODUCED)

Jamal Hakeem: Direct Examination

3

1 THE COURT: Mr. Hunter?

2 MR. HUNTER: May it please the Court. The first case
3 today is *Jamal Hakeem vs the State of South Carolina*. It's
4 2017-CP-24-592. Your Honor, he was indicted in June 2015 in
5 Greenville County for armed robbery and the possession of a
6 weapon during the commission of a violent crime. He was
7 represented by Mr. Geddes Anderson. On July 13-14, 2015 he
8 proceeded to a jury trial before Judge Miller, and was found
9 guilty as indicted. He was sentenced to 25 years for armed
10 robbery and five years for the weapons charge. A direct
11 appeal was filed and an Anders Brief was filed. The Court
12 of Appeals dismissed the appeal and the remittitur was sent
13 February 24, 2017. He filed this current action on May 16,
14 2017. He is present today represented by Ms. Ashley
15 McMahan.

16 MS. MCMAHAN: Your Honor, if it pleases the Court, the
17 applicant would call Mr. Hakeem to the stand.

18 JAMAL HAKEEM, having first been
19 duly sworn, testifies as follows:

20 DIRECT EXAMINATION

21 BY MS. MCMAHAN:

22 Q Mr. Hakeem, did you file this PCR application?

23 A Yes. I did.

24 Q Okay. We have an amended one as well, I believe, that

Jamal Hakeem: Direct Examination

4

1 just clarifies some of the issues that you brought up in
2 your original application, but let's just start with your
3 original application and your issues with that. So, one of
4 the first issues that you brought up was that defense
5 counsel failed to object to the search being illegal. Can
6 you tell the Court today about that?

7 A Yes. I can. I feel my that if my attorney would have
8 objected to the illegal search, I believe the outcome of my
9 trial would be totally different today.

10 Q And how should he -- you had a trial, correct?

11 A Yes.

12 Q And was the search brought up in the trial?

13 A Yes.

14 Q And there was testimony given about the search.

15 A Correct.

16 Q Did you feel that Mr. Anderson adequately cross-
17 examined and objected to that testimony?

18 A No.

19 Q Any particular thing that sticks out in your mind as to
20 why --

21 A Well, the search, it was -- to me, was illegal because
22 the search -- consent to search was signed after the
23 officers were leaving the house with their so called
24 evidence. I believe if he were to have objected to that, I
25 think my case would have been thrown out.

Jamal Hakeem: Direct Examination

5

1 Q So your wife didn't -- your wife signed the consent to
2 search, but she didn't sign it until after they had already
3 gotten the evidence?

4 A Correct.

5 Q And do you recall the officer's name that was asking
6 her to sign that consent?

7 A Brandon Strickland.

8 Q Okay. And so, the second part of your allegation sort
9 of segues into the issues with Officer Strickland being
10 intimidating?

11 A Correct.

12 Q And how so? Describe that for me.

13 A He intimidated my wife, because they had guns drawn on
14 my wife and she told me that she was nervous and she was
15 scared and she was about to drop. But he made a statement
16 of, "If you let us search the house without the search then
17 we'll leave everything intact. If we have to go back and
18 get a search warrant, we're going to rough your furniture
19 up. Not me personally, but the guys will rough your
20 furniture up."

21 Q And that was Strickland saying that?

22 A Yes, ma'am.

23 Q And was Officer Strickland at your trial?

24 A No, ma'am.

25 Q Did you ask Mr. Anderson why?

Jamal Hakeem: Direct Examination

6

1 A Yes, ma'am.

2 Q What did he say?

3 A I didn't get an answer. But he also asked that
4 question in court, why wasn't Strickland there. He didn't
5 get an answer either.

6 Q So nobody could answer --

7 A No.

8 Q -- y'all's question as to why Officer Strickland wasn't
9 there?

10 A Even my wife asked that question.

11 Q Okay. So, also you have an allegation that Mr.
12 Anderson didn't object to the hoodie being introduced by the
13 State. Would you describe that for the Judge, please?

14 A He objected to the pants not being admitted, but he
15 didn't object to the hooded jacket being admitted and it was
16 obtained in the illegal search.

17 Q Were the pants left out --

18 A Yes.

19 Q -- or were they allowed in?

20 A He objected to the pants and they threw the pants out.

21 Q So you felt like if he had objected to the hoodie, it
22 would have gotten thrown out as well?

23 A Correct.

24 Q And then, these -- the pants and the hoodie kind of
25 also go back to the search of your house, right?

Jamal Hakeem: Direct Examination

7

1 A Correct.

2 Q And is that because they were claiming they didn't have
3 a search warrant and had sort of manipulated her into
4 allowing them in there?

5 A Correct.

6 Q Okay. So did you feel like they were a fruit of the
7 poisonous tree, so to speak?

8 A Yes.

9 Q Okay. So you had an issue about the right to question
10 the accuser. Would that have been Mr. Strickland?

11 A Correct.

12 Q Okay. So you didn't get to question Mr. Strickland?

13 A No. I didn't.

14 Q Do you know if Mr. Anderson subpoenaed him?

15 A No. He didn't.

16 Q Do you know if he subpoenaed anybody to be there?

17 A No.

18 Q Did you guys ever talk about witnesses and stuff that
19 you guys would call for your trial?

20 A He never did any investigation.

21 Q Okay. Did you tell him things that you felt should be
22 looked into?

23 A Yes.

24 Q Like what?

25 A The guys at the M&M Tire Shop up there in front of my -

1 - in front of the business I was working for. They knew my
2 truck, and they knew I was at work at a certain time, and he
3 didn't investigate. He didn't try to find out what was
4 going on with that.

5 Q What? To show that you were -- that you were in the
6 warehouse behind it?

7 A Yes.

8 Q And that the M&M guys could have said, well --

9 A Yes.

10 Q -- his truck was here, so he was here?

11 A Yes.

12 Q Okay. But he -- as far as you know, Mr. Anderson never
13 spoke to them?

14 A No.

15 Q Okay. You have another issue with Officer Brooks.
16 What was your issue with Officer Brooks?

17 A Officer Brooks went into my search -- the police
18 searched my cell phone without a search warrant. That's
19 basically about it for him.

20 Q So they seized your cell phone from you, but then they
21 didn't --

22 A Yeah.

23 Q -- get a separate warrant to search it?

24 A No. The first thing they took off me was my cell
25 phone.

Jamal Hakeem: Direct Examination

9

- 1 Q Did you talk about that with Mr. Anderson?
- 2 A Yes.
- 3 Q What did Mr. Anderson tell you about that?
- 4 A I really -- I can't remember. That's too far back.
- 5 Q Was any of that search from your cell phone entered
- 6 into the trial?
- 7 A No, ma'am.
- 8 Q Okay. What was the issue with the testimony of Ms.
- 9 Smith? She's the victim, correct?
- 10 A Correct. According to the police report that she gave
- 11 Officer Brooks, it was totally different. She identified
- 12 the assailant with a defective lip and scars on his face,
- 13 which I have neither, and the six-pack that they got from
- 14 SLED.
- 15 Q The six -- the six pictures that they used for the
- 16 lineup?
- 17 A Correct.
- 18 Q What was wrong with that?
- 19 A None of them had a person with a defective lip in it or
- 20 scars on their face.
- 21 Q Okay. And did Mr. Anderson asked her about that at
- 22 trial?
- 23 A No.
- 24 Q So he never asked her about her statement with --
- 25 A No.

Jamal Hakeem: Direct Examination

10

- 1 Q Okay. Did he challenge the lineup at all -
- 2 A No.
- 3 Q -- at the trial?
- 4 A She couldn't even give a direct description of the
- 5 assailant to the 911 call.
- 6 Q Give a description of what to the 911 call?
- 7 A The assailant.
- 8 Q The assailant?
- 9 A Yeah.
- 10 Q So she couldn't give a description of the assailant to
- 11 the 911 call, but she could later to Officer Brooks?
- 12 A Correct.
- 13 Q And that wasn't adequately cross-examined --
- 14 A No.
- 15 Q -- at the trial? She talked to Officer Brooks after
- 16 she made the 911 call; is that correct?
- 17 A That's what -- that's what he was saying in court.
- 18 Yes, ma'am.
- 19 Q Okay. Did she also state something about having a gun
- 20 pulled on her?
- 21 A That's what she said, but in the video I never seen a
- 22 gun. I don't even own a pistol.
- 23 Q Was there ever a pistol found at your house?
- 24 A No.
- 25 Q Did Mr. Anderson adequately ask her about that at

Jamal Hakeem: Direct Examination

11

1 trial?

2 A I don't recall him asking her about that.

3 Q You have a notation in here that you felt during the
4 direct examination she was clearly being lead by Mr. Brown.

5 What was that?

6 A I think he led her to say things that she said about me
7 that -- I don't think she had any clue of who I was. She
8 gave -- like I said, she gave a total description of someone
9 totally different. I was just wanting to know how he came
10 up with my picture and my date of birth. I've never been
11 arrested in South Carolina.

12 Q So Mr. Brown would've been the Solicitor?

13 A Yes.

14 Q The prosecutor? So you felt like he was leading her to
15 say things --

16 A Yes.

17 Q -- specifically about you?

18 A Yes.

19 Q When her statements had been different up to that
20 point?

21 A I believe so.

22 Q Okay. So, we also have -- so we talked about the
23 lineup, the six person lineup, and how you felt like there
24 wasn't anybody there with facial problems in it. Mr.
25 Anderson didn't adequately object or bring that issue up?

Jamal Hakeem: Direct Examination

12

1 A Correct.

2 Q The other issue you have is -- okay. So during jury
3 deliberation, you have that Officer Miller said that he
4 would offer you 15 years?

5 A The judge?

6 Q I mean, Judge Miller.

7 A Yes.

8 Q Tell me about that.

9 A Well, me, my wife and my attorney was in the back room
10 discussing the case and the judge came in and offered me 15
11 years and he said, "You might want to talk to your wife
12 about this. I'll give you some time to think about." He
13 came back in about 15 or 20 minutes and he said, "Take it or
14 leave it."

15 Q So if you had pled right then during jury deliberation
16 he said he would sentence you to 15 years?

17 A Correct.

18 Q Was it the actual judge that came back there and told
19 you that or was it --

20 A Yes. Judge Miller. Edward Miller.

21 Q Okay. So he personally came back to where you guys
22 were sitting and said that?

23 A Correct.

24 Q Was the solicitor with you when it happened?

25 A No. I believe they have cameras in the back though.

Jamal Hakeem: Direct Examination

13

- 1 Q This was in Greenwood, right?
- 2 A Correct.
- 3 Q And what was your response to that?
- 4 A I told him no.
- 5 Q Why did you tell him no?
- 6 A Because I didn't do the crime and I also thought that
- 7 my attorney should have put that on record when he heard
- 8 that, but he didn't.
- 9 Q So you told Mr. Anderson that you didn't want to take
- 10 that 15 years?
- 11 A Yes.
- 12 Q But then later on you were found guilty, weren't you?
- 13 A Correct.
- 14 Q And what, ultimately, did Judge Miller sentence you to?
- 15 A He gave me 25 plus five.
- 16 Q And you indicated in your application that you felt
- 17 like Mr. -- that Judge Miller was punishing you for going to
- 18 trial?
- 19 A Correct.
- 20 Q Do you still feel that way?
- 21 A Yeah.
- 22 Q Do you feel that if he would have offered you 15, at a
- 23 plea that you should have gotten 15 even if you were found
- 24 guilty?
- 25 A Correct.

1 Q And what was the plea to? Was he saying if he plead to
2 everything you were charged with or was it just one
3 particular charge?

4 A That's all I had was that one particular charge.

5 Q Okay. So what was the 25 and plus five for then?

6 A The five is for the weapon that they never actually
7 discovered.

8 Q So you had some issue with the first Solicitor that you
9 had on your case?

10 A Well, he was -- well, I had some issues with him when I
11 first met him and we kind of got along after that. But he
12 felt as though something was strange about my case and all
13 of a sudden he just disappeared off my case. I just have
14 some concerns about that.

15 Q Do you remember who he was?

16 A I don't remember his name.

17 Q Okay. And then, it got reassigned to somebody else?

18 A Correct.

19 Q Okay. And then, you also wanted to bring up this case
20 on State v. Hart that we -- in your amended application to
21 go -- and that goes towards the --

22 A Identification.

23 Q Yeah. The identification. Which -- that's in your
24 amended application, so the judge does have that citation.

25 And your other amended issue was Mr. Anderson never moved to

Jamal Hakeem: Cross Examination

15

1 reconsider the sentence because of the original 15 year
2 offer, and then the -- when you got 25?

3 A Yeah.

4 Q Did he ever talk to you about requesting a
5 reconsideration?

6 A No.

7 Q So he never came up to you and said, "Hey, I could try
8 to file a motion to reconsider to get the sentence reduced"
9 or anything like that?

10 A No. I ain't heard that. He kept trying to get me to
11 take the plea.

12 Q Okay. But you had said from the beginning that you did
13 not want to plea to this?

14 A Yes.

15 Q So your whole intent all along was to plead not guilty?

16 A Yeah.

17 Q And then, the other issue that you brought up was with
18 Strickland and about how he is -- he pled guilty -- Officer
19 Strickland, he pled guilty to misconduct in office?

20 A Correct.

21 Q And you feel like that the outcome of your case would
22 have been different now that Officer --

23 A Yeah.

24 Q -- Strickland has been convicted?

25 A Yes.

Jamal Hakeem: Cross Examination

16

1 Q Okay. Anything else you want to tell the Court today?

2 A I think we covered about just about everything.

3 MS. MCMAHAN: Okay. Answer any questions Mr. Hunter
4 has for you. Okay?

5 THE WITNESS: Okay. Thank you.

6 MR. HUNTER: May it please the Court.

7 CROSS-EXAMINATION

8 BY MR. HUNTER:

9 Q Now, you allege that he failed to object to the search
10 being illegal. He did, though, didn't he?

11 A Repeat your question again.

12 Q You said in your application that your attorney was
13 ineffective for failing to object to the search?

14 A Yeah.

15 Q He did object though; didn't he?

16 A No.

17 Q He didn't object? There was no hearing beforehand to
18 suppress?

19 A No.

20 Q You're certain of that?

21 A Well, I can't say I am certain of it. It's been a long
22 time.

23 Q Okay. And as far as the items that were found as a
24 result of that search, he did object when they came in;
25 correct?

Jamal Hakeem: Cross Examination

17

1 A I didn't hear him.

2 Q Well, let's go -- you said that the pants were kept out
3 of evidence?

4 A Yeah.

5 Q Are you certain of that?

6 A (Non-verbal response)

7 Q Do you recall the pants and the hoodie being entered
8 into evidence?

9 A It might have been entered, but I didn't see the pants.
10 I seen the jacket. I didn't see the pants at all.

11 MR. HUNTER: Beg the Court's indulgence. May I
12 approach?

13 Q If you could read to yourself from line two to 10 --
14 sorry.

15 THE COURT: What is that?

16 MR. HUNTER: Sorry. Page 150, line two through 10.

17 Q If that refreshes your recollection.

18 A Okay.

19 Q So after reading that, do you recall whether or not the
20 pants were entered into evidence?

21 A Yes. They was entered. He might have entered them.

22 Q Okay. And you talked about the identification. Do you
23 recall having a hearing before the trial started about the
24 identification, about the lineup?

25 A The in-camera hearing?

Jamal Hakeem: Cross Examination

18

1 Q Yes.

2 A Is that what you're speaking of?

3 Q Yes.

4 A Like I said, it's been a long time. I don't really
5 remember all that.

6 Q Okay. And about Mr. -- Officer Strickland being
7 intimidating. I believe you raised that issue. Do you
8 recall Mr. Anderson talking about that during his closing?
9 And asking your wife about that when she was on the stand?

10 A Yeah. I do now.

11 Q Okay. Now, you said that he never did any sort of
12 investigation. These people who supposedly would have seen
13 your truck, did you tell them -- I mean, did you tell Mr.
14 Anderson to call these people? To go out there and talk to
15 them?

16 A Yes. I did.

17 Q Did you give him names and numbers?

18 A No. I didn't.

19 Q Well, how's he supposed to find them?

20 A Because they work for M&M Tires.

21 Q You told him that though; correct?

22 A On that particular day that I was at work it was
23 certain people at work at M&M Tires. I'm quite sure they
24 would have recognize my truck and notice that the warehouse
25 door was open.

Jamal Hakeem: Cross Examination

19

1 Q Okay. You alleged they searched your cell phone
2 without a warrant. Was anything from your cell phone
3 entered into evidence at all?

4 A No.

5 Q Okay. I just want to go over that plea offer. Are you
6 testifying that the judge offered you a plea?

7 A Yes.

8 Q And how -- what were the circumstances around that?
9 Where were you sitting and what happened?

10 A I was in the back room of the courtroom. Me, my wife,
11 and Mr. Anderson was back there talking about my case and he
12 came back and offered me 15 years.

13 Q So he extended a plea offer to you. Is that what
14 you're saying?

15 A Yeah.

16 Q And the Solicitor wasn't there?

17 A No.

18 Q And what did you tell him?

19 A No.

20 Q Okay. And so, are you saying that you would have been
21 not guilty? I don't understand.

22 A I wasn't guilty.

23 Q Well, but how does that plea offer affect the outcome
24 of your trial?

25 A Well, an officer of the Court like that wasn't supposed

Jamal Hakeem: Cross Examination

20

1 to come back and offer me anything. He's supposed to have
2 been -- he wasn't supposed to offer me no 15 years without
3 the Solicitor being there.

4 Q So by him offering that, does that affect your guilt or
5 innocence?

6 A It affected the outcome of my trial.

7 Q Did it affect the jury's verdict?

8 A It affected the outcome of my trial.

9 Q Did it affect the jury's verdict?

10 A I would think it would have.

11 Q How did they know about it?

12 A If my lawyer would have brought it to the record and
13 let it be known that he did this, I think there would have
14 been a totally different outcome of my trial.

15 Q So your attorney should have told the jury about this?

16 A He should have told the Court about it and put it on
17 record.

18 Q Before the jury?

19 A Correct.

20 Q Okay. And your issue with the Solicitor -- I guess,
21 your first Solicitor, you said he said something was strange
22 about your case. How did that affect the outcome of your
23 case?

24 A Well, I think if I'd had him on my case, it would have
25 been a totally different outcome.

Jamal Hakeem: Redirect Examination

21

1 Q You wanted a different Solicitor than you ultimately
2 ended up with?

3 A No. If I'd had him, that particular Solicitor on my
4 case, I think my case would have been a totally different
5 outcome.

6 Q Now, are you -- are you aware of any circumstance where
7 you can choose your Solicitor?

8 A No.

9 Q Okay. Now, after the trial, did you ever -- I believe
10 you testified that Mr. Anderson never told you about a
11 motion to reconsider. Did you know anything about that,
12 that you could do that?

13 A No.

14 Q Okay. Okay. And you also talk about the fact that Mr.
15 Strickland was fired for actions that occurred a few years
16 later. Are you aware of when Mr. Strickland's misconduct
17 took place?

18 A It was in July -- December of 2017.

19 Q That's when he pled guilty? Is that what you're
20 saying?

21 A That's what I -- that's what I heard. Yeah.

22 Q Okay. And your -- well, your indictments alleged that
23 you committed a crime in 2013; correct?

24 A Correct.

25 MR. HUNTER: Okay. That's all I have. Thank you.

Bird Hakeem: Direct Examination

22

1 THE COURT: Any redirect limited to what he went into?

2 MS. MCMAHAN: Yes, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. MCMAHAN:

5 Q So when the Judge and said, "I'll give you 15 years if
6 you go ahead and plead guilty", did that ultimately affect
7 the punishment you got for going to trial?

8 A I believe it did.

9 Q And Officer Strickland ultimately resigned in October
10 of 2015. When were you tried on this case?

11 A This was in July.

12 Q Of 2015?

13 A Of 2015.

14 MS. MCMAHAN: Okay. Nothing further, Your Honor.

15 MR. HUNTER: Nothing else, sir.

16 THE COURT: Thank you, sir. You may step down.

17 (Whereupon, the witness stepped down from the witness
18 stand).

19 MS. MCMAHAN: Your Honor, the applicant would call Bird
20 Hakeem.

21 Bird Hakeem, having first been duly
22 sworn, testifies as follows:

23 DIRECT EXAMINATION

24 BY MS. MCMAHAN:

25 Q Ms. Hakeem, what's your relationship to Mr. Hakeem?

Bird Hakeem: Cross Examination

23

- 1 A My husband.
- 2 Q And were you there at the trial?
- 3 A Yes.
- 4 Q You testified at the trial, didn't you?
- 5 A Yes.
- 6 Q And you heard Mr. Hakeem talk about Judge Miller
- 7 offering 15 years. Could you kind of explain that a little
- 8 bit better for us?
- 9 A I remember being in the little room beside and he --
- 10 well, let me back up just a little bit. The jury went out
- 11 and Mr. Geddes was told to come to where the Judge was and
- 12 they talked a few minutes. Then they went -- we all went in
- 13 the back. He took us -- attorney, Geddes took us in the
- 14 back and he was talking to us about a plea and the Judge
- 15 came and, from what I remember, he put his head inside the
- 16 door and he said, "Yay or nay?" Like that. (Indicating)
- 17 Q Okay.
- 18 A And then he went back. That's what I remember.
- 19 Q Did anybody respond when he asked, "Yay or nay?"
- 20 A I don't....
- 21 Q You don't remember?
- 22 A I don't remember.
- 23 Q Okay. Do you remember what you guys talked about with
- 24 Geddes back there?
- 25 A He wanted him to take -- it was a 10 to 15 year

1 sentence, and he like pleaded with him on it. He said,
2 "Because if you don't, they're going try to bury you". And
3 that's what he wanted. And I don't think that Mr. Geddes is
4 a bad man. I just didn't understand some of what he was
5 saying, but I don't know law either. But he was pretty
6 persistent. He wanted him to take the 10 to 15.

7 Q And Jamal wouldn't.

8 A He said no.

9 Q Okay. Then, after that, did you just go back and wait
10 for the jury to come back out?

11 A Yes.

12 MS. MCMAHAN: Okay. Answer any questions Mr. Hunter
13 may have.

14 CROSS-EXAMINATION

15 BY MR. HUNTER:

16 Q Just to be clear, what exactly did the Judge say when
17 y'all were back in the room?

18 A He stuck his head in the door and he said, "Yay or
19 nay?" That's what I remember.

20 Q Okay. So he didn't -- did he say anything along the
21 lines of, "I'm offering you 15 years"?

22 A I mean, yeah. That's what the conversation was about
23 in the room. About -- he trying to -- attorney Geddes was
24 trying to see if Jamal would take the 10 to 15 years.

25 Q Okay. But as far as, like what the Judge said to y'all

Geddes Anderson: Direct Examination

25

1 in that room, did he say, "I'm offering you a 15 year plea",
2 or anything like that other than, "Yay or nay?"

3 A I can't remember.

4 MR. HUNTER: It's okay. That's all right. No further
5 questions.

6 MS. MCMAHAN: I have no further questions, Your Honor.

7 THE COURT: Thank you, ma'am. You may step down.
8 Watch your step, please.

9 THE WITNESS: Thank you.

10 (Whereupon, the witness stepped down from the witness
11 stand.)

12 MS. MCMAHAN: Your Honor, the applicant rests.

13 MR. HUNTER: Your Honor, the State would call Mr.
14 Geddes Anderson.

15 GEDDES ANDERSON, having first been
16 duly sworn, testifies as follows:

17 DIRECT EXAMINATION

18 BY MR. HUNTER:

19 Q Good morning. Please state your name for the record.

20 A Geddes D. Anderson of Greenwood, South Carolina.

21 Q Can you just explain how you became involved in Mr.
22 Hakeem's case?

23 A As I recollect, Mr. Hakeem, I believe, had the public
24 defender for several months and came to me some time later
25 and employed me to represent him. At that point in time the

1 case was fairly old. From time to time I would have Mr.
2 Hakeem come to my office and, as I recollect, he was
3 employed at a place of business at Hickory Knob State Park,
4 I believe it was. And as I said, from time to time I would
5 have him come in to discuss the case. I had seen -- it was
6 at that point I had seen the evidence they had that was
7 taken from his home and from time to time I would discuss
8 with him -- of course I had seen the video from the
9 convenient store, also, and the distinctive nature of his
10 jersey, hoodie-type of clothing. The clothing that he had
11 on -- allegedly had on -- during the confrontation at the
12 convenient store, which took place in the afternoon at about
13 2:30, as I recollect.

14 Now, of course over the several months that I had the
15 case -- and it wasn't anything that -- in other words, I had
16 the Solicitor's Office hold off on it, because I tried to
17 get him from day one to take the 10 years the Solicitor had
18 offered him. He knows that and his wife knows that. He was
19 right submissive to his wife. I mean, his wife was rather
20 submissive to him. I tried to even get them separate so I
21 could talk with the wife about the serious nature of armed
22 robbery. Low and behold, he was obstinate about it. He
23 wanted a jury trial and he's not guilty of anything. And I
24 kept telling him. I said, the only -- your only shot you
25 have, Mr. Hakeem, is if, for one reason or another, at a

Geddes Anderson: Direct Examination

27

1 pre-trial hearing with regard to suppressing the evidence
2 from his home -- which, as I recollect, it was found in the
3 back of a closet along with cigarettes that would have
4 matched the cigarettes taken from the convenient store. I
5 will admit that they never found a pistol. I tried to argue
6 that to the Court at the appropriate time. But in an event,
7 the only shot he had -- and that was not a very good shot,
8 was to have the evidence suppressed as a result of them
9 executing an illegal search and seizure. And to a degree, I
10 believe, perhaps, that it was unreasonable and feel like it
11 still might may have been. Of course, Judge Miller ruled
12 against it. Allowed the introduction of the evidence.

13 Now, you'll notice on page 151 what he's referring to,
14 that the Solicitor was talking about a photo of the home and
15 apparently I was distracted at something. And, of course,
16 the evidence at that point in time though had already been
17 ruled upon and Judge Miller allowed the search and seizure
18 and declared it to be reasonable. So that was an
19 inadvertent remark on my part, because I thought he was
20 referring to -- you'll notice the sentence before that.
21 Solicitor Brown is talking about a photo of the home.
22 Apparently, it was inadvertent and I say, "No objection" at
23 that point, but that was later on. He had already declared
24 the admissibility of the clothing.

25 The video was very distinctive. Of course, the clerk

Geddes Anderson: Direct Examination

28

1 described him and, of course, the Court and the jury saw the
2 video. Saw the hoodie which was yellow and black in color.
3 I had told Mr. Hakeem all along, once they get that in, I
4 don't see how in the world you're going to come out
5 favorably in this trial. And I'm pretty good about
6 convincing most of my clients to do what I ask them to do if
7 they want some kind of favorable resolution to their
8 problem. But with him, he never flinched.

9 Now, I'll tell you this about this testimony about
10 Judge Miller. I do recollect, the jury, for what reason or
11 another, did hold out. They deliberated, as I recollect,
12 about two hours, which surprised me frankly. And apparently
13 there were one or two, at least, holding out for one reason
14 or another. Of course, we never know the reasons. But I do
15 recollect Judge Miller coming into the door. As I
16 recollect, he didn't come into the room where we were. I
17 remember him coming back there apparently during the course
18 of the jury deliberation. I've too have forgotten exactly
19 what he said. But even at that point in time, because I've
20 been a lawyer for 45 years, most of time the Solicitor will
21 try to go along with what I ask him to do with regard to
22 getting a fair resolution of any case. And I believe Mr.
23 Brown said, "Well, I would probably be okay with a 10 year
24 sentence." This is while the jury deliberated. Because I
25 was confident that, ultimately, they would come back with a

Geddes Anderson: Direct Examination

29

1 verdict. So even at that point in time, I feel like I could
2 have got a 10 year minimum sentence for armed robbery.

3 And then, they know -- Ms. Hakeem knows and Mr. Hakeem
4 knows that I tried for months to get him to take the plea
5 because it all fell apart, of course, when the jury came
6 back with a guilty verdict and Judge Miller was as harsh as
7 he could get about the sentence. And I thought that was a
8 little bit excessive. Which we filed an appeal and here we
9 are.

10 Q Okay. I just want to go over a few things that
11 happened during the trial. The motion to suppress and the
12 evidence. Can you explain what your theory was for why it
13 should be suppressed? The evidence that came from the
14 house.

15 A Well, it was generally a situation where this thing
16 happened in the middle of the afternoon and they could've
17 gotten a warrant. Of course, the Supreme Court, there's
18 never really -- there's no real strict requirements of how
19 they're going to declare something as unreasonably and
20 unconstitutional. But I thought this was an example of
21 where they could have easily gotten a search warrant. But I
22 didn't put any hopes on that, because he had -- Mrs. Hakeem
23 had signed the consent to search and I've been a lawyer long
24 enough to know that most of the time, that if a consent is
25 signed and she had, you know, her legal custody or whatever

1 you want to call it. Being in the house she could have
2 exercised the authority to say that, no, I'm not going to
3 let you search my home.

4 And there was some degree, I thought, of intimidation,
5 according to what she said of what the officers were saying
6 to her, but that's the way -- that's the nature of a trial.
7 You know, that's why we have a trial. They say one thing.
8 We say another thing. So -- but this is a case where I'll
9 be frank and plain with you, it was a slam dunk case for
10 armed robbery once that evidence got in and that's that.

11 Q And why do you say that? Was it because of the nature
12 of the clothing?

13 A I don't know whether you watched video, but it is
14 clearly a person standing there with the exact yellow and
15 black hoodie, or jersey, or whatever you what to call it,
16 shirt, that the person in the video has on. And he had --
17 and apparently he apparently just was not thinking and he
18 gave the clerk his exact birthday and identification to the
19 clerk at the convenient store. He gives it.

20 Q Can you go over that briefly, about the birthday and
21 how that resulted in a photo of him?

22 A No, it's a video camera in the --

23 Q Well, the photo for the lineup. How that photo was
24 generated.

25 A Oh, okay. Well, I tried to argue that. That was

Geddes Anderson: Direct Examination

31

1 suggestive that she didn't have time, that she -- her
2 attraction -- or distraction was -- she kept saying that she
3 was looking at the gun and I think that even the video, as I
4 recollect, reflected that she was distracted and didn't have
5 time to look at his face. But he had on a covering with the
6 shades and had a hat on. And so, it was not a -- I mean, he
7 didn't go into the store. He allegedly didn't go into the
8 store without something covering most of his face. It was
9 not a mask as I remember, but it was some kind of covering
10 with dark glasses or something like that.

11 Q And did he give you any alibi witnesses to investigate?

12 A He never was clear cut about that. He never would -- I
13 don't remember any names he gave me or addresses, and it was
14 all rather vague as to where he was. And so, there wasn't
15 any person specific for me to call, or talk to, or try to
16 offer any kind of alibi.

17 Q Okay. And can you just briefly go over what sort of
18 investigation you did do in this case?

19 A Well, I did a reasonable amount of investigation.
20 There wasn't a whole lot that he gave me to investigate.
21 This is a case where he just didn't want to listen to the
22 lawyer. He wanted a jury trial and no matter what, he was
23 going to -- I think he was fueled by the fact that the jury
24 stayed out so long. It fueled his desire to hold out. I
25 don't know what he was thinking. This is purely an example

1 of a client not wanting to listen to a lawyer who's been a
2 lawyer for 40 something years.

3 Q Okay. And I just want to go back to when -- during the
4 deliberations when the judge -- or where there was sort of a
5 plea deal possibly brewing during the deliberations. What
6 was that time amount? Ten to 15? Ten years?

7 A I don't remember. I don't remember exactly what the
8 Judge said. It was all rather quickly and he didn't --
9 Judge Miller didn't come back there in the room with me. He
10 might have come to the door and I walked to the door or
11 something. But that -- I'll admit that was somewhat usual,
12 but he did not -- as I recollect, did not come into the room
13 in which we were sitting. I was trying to -- even at that
14 point, I was trying to get him to plead guilty under Alford.
15 I explained that. I was thinking about that, too. I
16 explained to him -- I said, "Jamal, you don't have to say
17 you did it. I can say it. You can go down and tell the
18 Judge you didn't say it and that'll be under the Alford
19 case." No, he wanted to go forward and he wanted to go
20 forward all along. He never indicated to me that he would
21 plead to anything.

22 Q After the sentence, did you see any reason to move to
23 reconsider the sentence?

24 A I thought about that, but -- and, of course, you have
25 10 days to do that and perhaps I -- but I'll be frank and

Geddes Anderson: Cross Examination

33

1 plain with you. Maybe the Judge would have softened up
2 some, but he wasn't going to soften up had I done it right
3 then. And I usually do make that motion and that was
4 inadvertent. I will admit. Probably, I should have waited
5 a few days and filed a motion, but I didn't do it and file
6 an appeal. So I will admit that that was inadvertent.
7 Something that perhaps I should have done.

8 Q Well, can you -- I mean, I hate to speculate, but what
9 -- do you know what this motion would have said? Was there
10 any new information that had come to present to the Court?

11 A No. I don't think the judge would have -- he was -- in
12 other words, I know it would have been a case where he would
13 not have changed the sentence at that point. Not at that
14 hour. So I didn't make the motion, nor did I make it
15 several days later. Of course, the rules give you ten days
16 to file a motion to reconsider and I did not do that and
17 maybe -- who knows, maybe Judge Miller would have
18 reconsidered, but that's not for me to speculate upon.

19 MR. HUNTER: Okay. Beg the Court's indulgence. That's
20 all I have. Thank you, sir.

21 CROSS-EXAMINATION

22 BY MS. MCMAHAN:

23 Q Mr. Anderson, what color was the hoodie again?

24 A Pardon me?

25 Q What color was the hoodie again?

Geddes Anderson: Cross Examination

34

1 A It was yellow and black, as I recollect. I think
2 there's something in the transcript that says it was red,
3 but no, it was yellow and black, as I recollect.

4 Q So the transcript says red and plaid, but you recollect
5 it being yellow and black?

6 A Uh-huh, (affirmative).

7 Q And then, the issue at the end where Judge Miller sort
8 of was trying to intervene to get a guilty plea while the
9 jury was out, was that offer less than 25 years?

10 A As I recollect, it was, but I don't -- I forgot exactly
11 what he was suggesting.

12 Q Okay. So if you had made a motion to reconsider, could
13 you have argued that Mr. Hakeem was being punished for his
14 trial by not getting the benefit of what --

15 A I probably could. I could have thought of, you know,
16 many -- not many, but a few reasons why. As I said, I
17 perhaps should have waited a few days and made the motion to
18 reconsider.

19 Q In the description that the victim, that the lady
20 working the counter gave, did she give a description of
21 somebody with like a scar on their face?

22 A I think she said that the -- part of the face was bare.
23 I don't -- I went over -- I went over the transcript report
24 just a few days ago and she said that she could -- I mean,
25 as I recollect the transcript, she makes an immediate --

1 upon the presentation of the six-person lineup, she says she
2 immediately recognized Mr. Hakeem as being the person
3 that...

4 Q Did you recall what she said in the police report,
5 though, about the face?

6 A Not right off.

7 MS. MCMAHAN: Okay. Nothing further, Your Honor.

8 THE COURT: Any redirect limited to what she went into?

9 MR. HUNTER: Nothing else for this witness, Your Honor.

10 THE COURT: Thank you, sir. You may step down.

11 (Whereupon, the witness stepped down from the witness
12 stand).

13 MR. HUNTER: Your Honor, if I may, for the record,
14 speak on the issue of the head investigator being indicted
15 and pleading guilty to misconduct in office later on.

16 THE COURT: Let me ask. Are you have any reply
17 testimony from the applicant. Is the applicant going to
18 have any reply testimony?

19 MS. MCMAHAN: No. We have no reply testimony.

20 MR. HUNTER: I just want to make it a part of the
21 record. And I will -- I didn't print off copies, but I'll
22 supplement the record with the indictments at issue here. If
23 the Court could, I guess, at this point, take judicial
24 notice. Indictment 2016-GS-24-1112. Brandon Richard
25 Strickland was indicted for misconduct in office and that

1 was at the July 2016 term of the Grand Jury in Greenwood
2 County. Your Honor, that misconduct in office charge
3 indictment alleges, essentially, that he mishandled evidence
4 and funds of the Greenwood County Sheriff's Office on or
5 about April 1, 2015 to on or about April 12, 2015. His next
6 indictment, 2016-GS-24-1113. Again, this is the July 2016
7 term of General Sessions in Greenwood County. That's an
8 indictment for embezzlement against Brandon Richard
9 Strickland and that alleges that he embezzled funds from the
10 Sheriff's Office from on or about April 2015 through October
11 12, 2015. I just wanted to bring that to the Court's
12 attention. I can supplement the record -- supplement Your
13 Honor along with Ms. McMahan on copies of those indictments.
14 I have an electronic copy that I can print out for y'all. I
15 can make an argument about that or just withhold.

16 MS. MCMAHAN: Yes, Your Honor. Our issue would be --
17 well, he actually resigned in 2015 as a result of an
18 investigation that was instituted by SLED. While he wasn't
19 indicted until a year plus later, he did plead guilty this
20 past December to misconduct in office. We would just assert
21 that that would go towards the credibility of Officer
22 Strickland and his voracity. That regardless of what he's
23 charged with, you know -- he's charged with -- misconduct
24 goes to basically mishandling funds among other things.
25 Fudging some responses on different warrants and things like

1 that.

2 THE COURT: All right. Okay. I'll let you know.

3 MR. HUNTER: Thank you.

4 - - - END OF REQUESTED TRANSCRIPT OF RECORD - - -

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Certificate of Reporter

I, the undersigned, Tara T. Scott, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Laurens County, South Carolina, on the 27th day of February, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Tara T. Scott

Tara T. Scott, CVR

Circuit Court Reporter

October 17, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

Jamal Hakeem,
SCDC # 364712)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE EIGHTH JUDICIAL CIRCUIT

2017-CP-24-0592

ORDER OF DISMISSAL

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.
2018 MAY -7 AM 9:56

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed May 16, 2017. Respondent made its Return on or about October 2, 2017. Applicant filed an amended PCR application on March 2, 2018. An evidentiary hearing into the matter was convened on Tuesday, February 27, 2018, at the Laurens County Courthouse in Laurens County, South Carolina. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant and his wife, Bird Hakeem, testified. Applicant's trial counsel, Geddes Anderson, Esquire, testified. This Court had before it a copy of Applicant's records from the Greenwood County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application and Amendment, the exhibits introduced at the PCR hearing, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently in the South Carolina Department of Corrections. Applicant was indicted at the June 2015 term of the Greenwood County Grand Jury for armed robbery (2015-GS-24-855) and possession of a weapon during the commission of a violent crime (2015-GS-24-856). Geddes Anderson, Esquire, represented Applicant. Assistant Solicitor Yates Brown,

Esquire, prosecuted the case. On July 13-14, 2015, Applicant underwent a jury trial before the Honorable Edward Miller. He was subsequently found guilty as indicted and sentenced to imprisonment for twenty-five years for armed robbery and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal and an Anders Brief was filed by Appellate Defender Katherine Hudgins. On February 8, 2017, the South Carolina Court of Appeals dismissed the appeal. State v. Jamal Hakeem, Op. No. 2017-UP-075 (Ct. App. filed February 8, 2017). The Remittitur was sent on February 24, 2017.

PCR Application

In his application for post-conviction relief, Applicant alleged the following grounds:

1. Ineffective Assistance of Counsel

- a. "Failure to object to the introduction of the hooded jacket by State. The jacket was obtained by an illegal search."
- b. Failed to object to the search being illegal.
- c. "Ms. Hakeem stated Officer Strickland said he did not have a search warrant, but he could get one. He told Ms. Hakeem that if they could search the house at the time without the warrant, they would not tear up her house. Again the police used 'quiet intimidation' to search the residence illegally. Ms. Hakeem stated that the police were not 'ugly' to her, but this statement by Strickland bothered her. She signed the consent to search while the police were LEAVING, not before the search."
- d. Failure to object to Officer Strickland not being at the trial.
- e. Failure to object to the search of the applicant's cell phone when he was arrested, without a warrant.
- f. "Officer Brooks stated that the consent was signed and then they searched and Ms. Hakeem stated that she signed the consent while the police were leaving. This is a direct conflict and makes all the different in this case. The defense counsel did not raise this conflict of testimony to the court."
- g. Ineffective assistance of counsel during the testimony of Ms. Smith, the victim.
- h. "Counsel should have objected to the State's reference to SLED bringing in the 'six person photo.' This was a clear violation of the applicant's constitutional rights."

- i. "During jury deliberation, Judge Miller approached the applicant with his counsel present and asked the applicant if he would take 15 years – 'take it or leave.' Strickland v. Washington – Government shall not interfere with the defense in certain ways."
- j. "The applicant and his attorney met with the first solicitor assigned to this case. This solicitor state this case is very 'strange.' He stated he could not understand this case and that something was wrong. The applicant feels that his attorney should be questioned about this meet and the solicitor's name. The applicant cannot recall."

Applicant filed an Amended PCR Application, alleging the following grounds of relief:

1. Newly Discovered Evidence - Greenwood officer Strickland has since been arrested and indicted for Misconduct in Office:
 - a. Officer Strickland resigned as part of an ongoing SLED probe in late October 2015. He pled guilty in December 2017 to Misconduct in Office. The veracity of the statements made by Officer Strickland regarding the search warrant process has come into question since his arrest and conviction and the interests of justice would require that the Applicant's conviction be vacated accordingly.
2. Ineffective Assistance of Counsel
 - a. See State v. Hart, 403 SE2d 144, 304 SC 99, (SC Ct. App. 1991)
 - b. Counsel did not move to request a reconsideration of the sentence. Judge punished the Applicant in sentencing because the Applicant exercised his right to a trial. See Castro v. State, 417 SC 77, 789 SE2d 44 (2016).

II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief and amendment, the exhibits received at the PCR hearing, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

Failure to object to the introduction of the hooded jacket by State

Applicant alleged Counsel was ineffective for failing to object to the introduction of the hooded jacket. Applicant maintains the jacket was obtained by an illegal search. Counsel

testified he challenged the search. This Court finds Applicant has failed to meet his burden of proving Counsel was deficient in this regard. The record reflects Counsel challenged this evidence by making a motion to suppress the evidence from a warrantless search prior to trial. Counsel questioned the State's witnesses and called Applicant and his wife as a witness, but the trial judge denied Counsel's motion. When a photograph of this jacket was entered into evidence, Counsel objected. This Court finds Counsel was not ineffective as he did effectively challenge the introduction of the hooded jacket pretrial and contemporaneously as it was entered into evidence. Applicant has failed to meet his burden of proving Counsel's actions were deficient in this regard and that he was prejudiced as a result. Accordingly, this allegation must be dismissed.

Failed to object to the search being illegal

Applicant alleged Counsel was ineffective for failing to object to the search being illegal. Counsel testified he did challenge the search. This Court finds Counsel was not ineffective. This Court finds Counsel made a pretrial motion to suppress the evidence that resulted from a warrantless search, and argued extensively to the trial court that the search was illegal as Applicant did not give consent and Applicant's wife was intimidated by law enforcement. After testimony from witnesses including Applicant and his wife, the trial judge denied Counsel's motion to suppress the results of the search. This Court finds Counsel was not ineffective as he did effectively challenge the search and argue in his motion to suppress. Applicant has failed to meet his burden of proving Counsel's actions were deficient in this regard and that the motion would have been successful had Counsel challenged the search differently. Accordingly, this allegation must be dismissed.

Failure to raise issue of police intimidation of Bird Hakeem

Applicant alleged Counsel was ineffective for failing to raise the issue of the police

intimidating Bird Hakeem to get her to sign a consent to search the residence. Applicant testified Officer Strickland said they would rough up his house if they had to go get a search warrant. Applicant raised the issue that she signed the consent order to search while the police were leaving. Counsel testified he challenged the search, which included challenging the police intimidation of Ms. Hakeem.

This Court finds Applicant has failed to meet his burden of proving Counsel was ineffective for failing to raise this issue. This Court finds Counsel raised the issue during his suppression motion and elicited testimony from Ms. Hakeem about how the police intimidated her prior to the search. Tr. 58. The trial court denied Counsel's motion and specifically found Ms. Hakeem freely and voluntarily gave consent to search and her will was not overborne when she consented to the search of the house. Tr. 71-72. As Counsel did raise this issue during the suppression motion, this Court finds he was not deficient. Furthermore, this Court finds Applicant has failed to meet his burden of proving the motion to suppress would have been granted had Counsel argued differently. Accordingly, this allegation must be dismissed.

Failure to object to Officer Strickland not being at the trial

Applicant alleged Counsel was ineffective for failing to object to Officer Strickland not being present at trial. Applicant testified Counsel did not subpoena Officer Strickland. Applicant testified Counsel asked about Mr. Strickland's absence at trial.

This Court finds Applicant has failed to meet his burden of proving Counsel was ineffective for failing to object to Officer Strickland not being at trial. This Court finds the State has the right to call its witnesses and any objection by Counsel would not have been meritorious. This Court finds it was not unreasonable for Counsel to abstain from subpoenaing and calling Mr. Strickland has a defense witness when his entire testimony would likely not be helpful to

Applicant. The record reflects Counsel made a point during his closing argument to question why Officer Strickland was not at trial, asking:

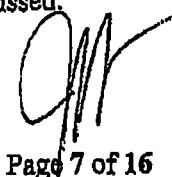
Another thing you might want to think about was where was Mr. Brandon Strickland who was the chief investigator in terms of the hierarchy of that particular unit of law enforcement. The one that was described as -- by Ms. Hakeem as being the one most involved, according -- at least that's what I got from her testimony. He didn't even show up at trial. What went on there. What's going on.

Tr. 196, ll. 19-25. This Court finds Counsel properly brought up Officer Strickland's absence to the jury in criticizing the State's case. This Court finds Counsel was not deficient for failing to object to Officer Strickland's absence and Applicant has failed to show the outcome of his trial would have been otherwise been different. Accordingly, this allegation must be dismissed.

Failure to object to the search of the applicant's cell phone when he was arrested,
without a warrant

Applicant alleged Counsel was ineffective for failing to object to the officers searching his cell phone without a warrant. The record reflects Applicant testified during the suppression hearing that after he was arrested, officers took his cell phone and starting going through it. Tr. 68.

This Court finds Applicant has failed to meet his burden of proving Counsel was ineffective. The record reflects there was no objection to be made, as the only testimony about a cell phone search came from Applicant during the suppression hearing and no evidence from or concerning his cell phone was used in any way at trial. Applicant has failed to meet his burden of proving Counsel was deficient for failing to object to the search of Applicant's cell phone. Furthermore, he has failed to show that such an objection would have been sustained and he has failed to show the outcome of his trial would have been different had he made this objection. Accordingly, this allegation must be dismissed.



Page 7 of 16

Failure to raise issue of conflicting testimony concerning when Ms. Hakeem gave consent to search

Applicant alleged Officer Brooks stated during trial that the consent was signed by Ms. Hakeem prior to the search, and Ms. Hakeem stated that she signed the consent while the police were leaving. He asserts this is a direct conflict and Counsel did not raise this conflict of testimony to the court.

This Court finds Counsel was not deficient regarding Ms. Hakeem's consent to search. This record reflects Officer Brooks testified during the suppression hearing that the officers got Ms. Hakeem's consent to search, and then searched the house. Tr. 41-42. Counsel put up Ms. Hakeem as a defense witness during this hearing. Ms. Hakeem testified the officers "went in to search, after he asked me for permission they went on in and searched..." Tr. 60, ll. 14-15. Ms. Hakeem then testified the officers searched the house and "I signed that statement when they were getting ready to leave out." Tr. 61, ll. 1-2. Counsel questioned her about the timeline and Ms. Hakeem testified she told the officers they could search before she signed the document. Tr. 61. Before the jury, Counsel elicited testimony from Ms. Hakeem that the officers were searching her home before she signed consent. Tr. 174.

This Court finds Counsel was not deficient in his cross-examination on this issue. This Court finds he elicited testimony that seemed to contradict the officer's testimony concerning when Ms. Hakeem signed consent. Her testimony indicates she gave oral consent prior to the search and signed the form during or after the search. Counsel elicited testimony and any contradiction with the State's witness created a question for the jury to decide. This Court further finds Applicant has failed to meet his burden of proving he was prejudiced by Counsel's actions as he has failed to show how Counsel should have addressed this issue. This Court finds he has failed to show the outcome of his trial would have been different and this allegation must be

dismissed.

Ineffective assistance of counsel during the testimony of Ms. Smith

Applicant alleged Counsel was ineffective during the testimony of Ms. Smith, the victim in this case. He alleged Ms. Smith could not give a clear description to the 911 operator and never gave a definite description of the perpetrator until she was shown a six person photo lineup. He alleged Ms. Smith said the perpetrator had a defective lip, which Applicant does not have. He alleged she was answering leading questions when giving her description. Applicant alleged Counsel should have challenged her identification.

Counsel testified he challenged the identification and the ability of Ms. Smith to have seen Applicant. Counsel testified the surveillance video was very clear and distinctive, showing Applicant talking to the clerk while wearing a distinctive hoodie. He testified he told Applicant the hoodie alone would be enough to convict him because it was so unique. He said Applicant gave the victim his exact birthday. During the Biggers¹ hearing, Counsel cross-examined the victim about how exactly she was able or not able to see Applicant as he came in the store. Tr. 83-84. Counsel argued to the judge that Ms. Smith would not have been able to see the perpetrator long enough to be able to identify him. Tr. 87-88. Before the jury, Counsel cross-examined Ms. Smith concerning how long she was able to see the perpetrator, the fact that she did not give a clear facial description to the 911 operator, and what the perpetrator was wearing. Tr. 113-115.

This Court finds Counsel was not deficient. Counsel challenged the identification through a Biggers hearing. He challenged Ms. Smith concerning her ability to see Applicant, what he was wearing, and how she described him to the 911 operator. This Court finds Counsel's elicited testimony that would raise a question of fact for the jury. Ms. Smith's descriptions of Applicant

¹ Neil v. Biggers, 409 U.S. 188 (1972).

318

would go to the weight of the evidence, not the admissibility. This Court finds his questioning was reasonable, helpful to Applicant's defense, and he was not deficient. This Court further finds Applicant has failed to show he was prejudiced by Counsel's actions, as he has failed to show how the outcome of his trial would have been different had Counsel approached the victim differently. This Court finds Counsel's cross-examination was not deficient and this Court will not speculate whether a "better" cross-examination would have helped Applicant. See Skeen v. State, 325 S.C. 210, 216-17, 481 S.E.2d 129, 133 (1997). Accordingly, this allegation must be dismissed.

Counsel should have objected to the State's reference to SLED bringing in the six person photo

Applicant alleged Counsel was ineffective for failing to object to the State's reference to SLED bringing in the six person photo lineup.

Officer Brooks testified he took the birth date Applicant provided the clerk and ran it through his department's database and found there was only one person in their database with that birth date – Jamal Hakeem. Tr. 38, 135. Officer Brooks then testified he had SLED make a six person photo lineup that included Applicant's picture. Tr. 74, 136. He testified after he got Applicant's name he was able to see a picture of him. Tr. 74. Officer Brooks testified he showed the lineup to Ms. Smith who was able to identify Applicant's photo as the robber. Tr. 75.

This Court finds Counsel was not deficient for failing to object to the State's reference to SLED bringing the six photo lineup. This Court finds Applicant has failed to articulate what objection Counsel should have made and how an objection to this testimony would have been successful. The Biggers hearing challenged the lineup procedure and the trial court found no issues. Ultimately, this Court finds Counsel's actions were not deficient for failing to object to the SLED reference, and this Court finds Applicant has failed to meet his burden of proving the

outcome of his trial would have been different had Counsel made such an objection. Accordingly, this allegation must be dismissed.

Failure to raise issue of trial judge approaching Applicant and Counsel during jury deliberations and asking if he would take a fifteen year plea

Applicant alleged Counsel was ineffective for failing to raise the issue of the trial judge asking Applicant and Counsel during jury deliberations if he would take a fifteen year plea. Applicant alleged Counsel should have raised this issue because the government should not interfere with the defense. Applicant testified he believed the trial judge's plea offer negatively affected his sentence. Ms. Hakeem testified she was with Applicant and Counsel during jury deliberations. She testified Counsel wanted Applicant to take a ten to fifteen year plea. She testified the trial judge went to their room and asked "yea or nay" but she could not recall if he specifically said he was offering Applicant a plea.

Counsel testified he talked with the solicitor during jury deliberations about a possible guilty plea offer. Counsel testified the trial judge stuck his head in their room but did not come in their room during deliberations to offer a plea. He testified he explained what an Alford plea was to Applicant but Applicant never wanted to accept a plea deal.

This Court finds Applicant has failed to meet his burden of proving Counsel was deficient for failing to raise the issue of the trial judge's actions during deliberations. This Court finds Applicant has failed to show the judge committed any misconduct and that his conduct was objectionable. Furthermore, this Court finds Applicant has failed to meet his burden of proving the outcome of his trial was affected by this interaction. This Court finds Applicant has failed to show his conviction or sentence was affected by the judge's actions during deliberations. Accordingly, this allegation must be dismissed.



Failure to question the solicitor concerning his meeting with Counsel

Applicant alleged Counsel was ineffective for failing to question the solicitor about a meeting with Counsel where the solicitor stated the case was strange and felt something was wrong with it. This Court finds Applicant has failed to meet his burden of proving Counsel was deficient. Applicant has failed to show how the solicitor's comments affected his case and how Counsel should have addressed it with the court. This Court finds Applicant has failed to show the solicitor said anything objectionable. This Court further finds Applicant has failed to meet his burden of proving these comments and Counsel's actions affected the outcome of his trial. Accordingly, this allegation must be dismissed.

Failure to utilize *State v. Hart*, 403 S.E.2d 144, 304 SC 99, (S.C. Ct. App. 1991)
in challenging the identification.

Applicant alleged Counsel was ineffective in failing to utilize *State v. Hart* concerning the victim's identification. *State v. Hart* was overruled by *State v. Hart*, 306 S.C. 344, 412 S.E.2d 380 (1991). The Supreme Court's opinion holds a defendant is allowed to exhibit his physical characteristics to the jury without being subject to cross-examination in order to counter the accuracy of a witness's identification. This Court finds Applicant has failed to meet his burden of proving Counsel was ineffective. There was no indication Applicant requested to show his physical characteristics to the jury and Counsel would not let him. Counsel testified the video was clear, Applicant's hoodie was distinctively shown in the video, he immediately recognized Applicant in the video, Applicant wore sunglasses during the robbery, and Applicant gave his actual birth date to the victim store clerk. Furthermore, Applicant has failed to show what he should have exhibited to the jury and how this would have affected the outcome of his trial. As Applicant has failed to meet his burden of proving Counsel was deficient and the outcome of his trial would have been different, this allegation must be dismissed.

Failure to file a motion to reconsider

Applicant alleged Counsel was ineffective for failing to file a motion to reconsider the sentence. He testified the trial judge punished Applicant for exercising his right to a jury trial. Counsel testified he did not file a motion to reconsider and testified he did not believe the trial judge would have changed his sentence.

This Court finds Applicant has failed to meet his burden of proving Counsel was deficient. This Court finds the sentence imposed was within the statutory limits and there is no evidence the judge sentenced Applicant harshly for exercising his trial rights. Applicant has failed to demonstrate that he requested Counsel file a motion to reconsider or that Counsel had a duty file a motion to reconsider, and therefore, he has failed to show any deficiency of counsel. See Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 67 (1999) (no deficiency where "it would have been futile for Attorney to have made such arguments"). This Court finds Applicant has failed to show there was any basis for Counsel to file a motion to reconsider and has failed to show the motion would have been granted or that the outcome would have been different. Accordingly, this allegation must be dismissed.

Newly Discovered Evidence

Applicant asserts a claim of newly discovered evidence. He asserts Greenwood County Officer Brandon Strickland had since been arrested and indicted for Misconduct in Office. Officer Strickland resigned as part of an ongoing SLED probe in late October 2015. Applicant attached to his PCR application news articles from *The Greenwood Index-Journal* that describe these offenses. Applicant asserts the veracity of the statements made by Officer Strickland regarding the search warrant process has come into question since his arrest and the interests of justice would require that Applicant's conviction be vacated accordingly.

Respondent represented Officer Strickland was indicted in Greenwood County for misconduct in office (2016-GS-24-1112) alleging that Strickland mishandled evidence and public funds while serving as a Lieutenant in the Greenwood County Sheriff's Office from April 1, 2015 to on or about October 12, 2015. Officer Strickland was also indicted in Greenwood County for embezzlement (2016-GS-24-1113) alleging that he withdrew and converted for his own use public funds designated for the use of the Sheriff's Office and Drug Enforcement Unit, resulting in a loss to the Greenwood County Sheriff's Office and Drug Enforcement Unit of an amount of less than ten thousand dollars from April 1, 2015 to on or about October 12, 2015. Officer Strickland pled guilty to misconduct in office on December 13, 2017.

This Court finds Applicant has failed to meet his burden of proving his conviction should be vacated based on newly discovered evidence. A party requesting a new trial based on after-discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983). First, this Court finds Applicant has failed to show a sufficient nexus to the present matter as Officer Strickland's conduct is unrelated to Applicant's case. The allegations concern Strickland's conduct from April 1, 2015 to October 12, 2015, and Applicant's crime and the subsequent search took place on April 11, 2013. Furthermore, this Court finds such evidence does not directly affect Applicant's guilt or innocence because it could only be used at a new trial to impeach Strickland's testimony or

truthfulness. This evidence does not pass the Hayden factors. This Court finds that Applicant has failed to meet his burden of proving that these indictments constitute newly discovered evidence that would warrant a new trial and this allegation must be dismissed.

IV. CONCLUSION

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that his counsels' performances were unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

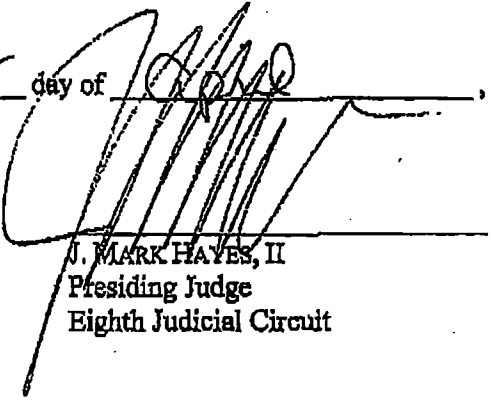
[signature on following page]

A handwritten signature in black ink, consisting of a stylized, cursive 'M' followed by a horizontal line extending to the right.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 20th day of June, 2018.


J. MARK HAYES, II
Presiding Judge
Eighth Judicial Circuit

Greenwood South Carolina

WITNESSES

E W Brooks
Greenwood County Sheriff

WARRANT NUMBER

2013A2410200518

True Bill

J Rom

Foreman of the Grand Jury

Date: 6-5-15

VERDICT

Guilty

Gregory Hill

Foreman

7-14-15

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

June Term, 2015

Indictment # 15GS24- 0855

THE STATE

vs.

Jamal Hakeem

INDICTMENT FOR

ARMED ROBBERY
16-11-0320

CER: 0139

TEST A TRUE COPY
Angela Woodhurst
ANGELA WOODHURST
CCSP AND GS
GREENWOOD COUNTY
S. C.

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR**ARMED ROBBERY
16-11-0330**

At a Court of General Sessions, convened on the 5th day of June, 2015, the Grand Jurors of Greenwood County present upon their oath:

That Jamal Hakeem, in Greenwood County, on or about April 11, 2013 did willfully and unlawfully while armed with a deadly weapon, feloniously take from the person or presence of Shkuntula Lanisha Smith, by means of force or intimidation, goods or monies described as follows: United States currency, with intent to deprive the owner, Greenwood Petroleum Company/Shell Station #105, permanently of such property, in violation of Section 16-11-330 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Deputy Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenwood

STATE VS.

Jamal Hakeem

AKA:

Race: AFRICAN AME Sex: M Age: 49

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Greenwood, SC

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly we-

in violation of § 16-11-0330 of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ § 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury: (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Brown, C. Yates

SC Bar# 78607

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION; ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$300	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surecharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.80
TOTAL	\$	\$ 133.80

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk:

Court Reporter:

Presiding Judge

Judge Code:

Sentence Date:

FILED
IN JUDICIAL CIRCUIT
GREENWOOD, SC
JUL 11 11 AM 10:27
ANGELA WOODWORTH
CLERK AND GS
GREENWOOD COUNTY
S.C.

WITNESSES

E W Brooks
Greenwood County Sheriff

WARRANT NUMBER

2013A2410200519

True Bill

X Rom

Foreman of the Grand Jury

Date: 6-5-15

VERDICT

Guilty

Gregory Affin

Foreman

7-14-15

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

June Term, 2015

Indictment # 15CS24-0866

THE STATE

Jamal Hakeem

INDICTMENT FOR

POSSESSION OF A FIREARM OR KNIFE
DURING THE COMMISSION OF A CRIME

16-23-0490

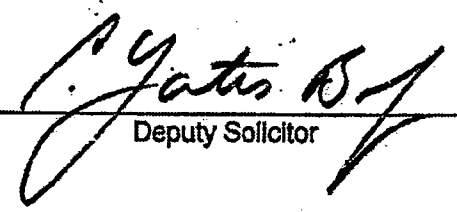
ATTEST A TRUE COPY
Anchela Woodhurst
ANCHELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S.C.

THE STATE OF SOUTH CAROLINA**COUNTY OF GREENWOOD****INDICTMENT FOR****POSSESSION OF A FIREARM OR KNIFE
DURING THE COMMISSION OF A CRIME
16-23-0490**

At a Court of General Sessions, convened on the 5th day of June, 2015, the Grand Jurors of Greenwood County present upon their oath:

That Jamal Hakeem, in Greenwood County, on or about April 11, 2013 did possess a firearm or visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent offense, to wit: Armed Robbery, or any lesser included violent offense, in violation of Section 16-23-490 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Deputy Solicitor

