

ORIGINAL

Volume I of II

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI FROM SPARTANBURG COUNTY

The Honorable Roger L. Couch, Presiding Judge

Appellate Case No: 2019-000334

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S.C. SUPREME COURT

CARNIE NORRIS,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPENDIX

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Appellate Defender

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3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Kenneth Wayne Chiles and) 2008-GS-42-5630
7 Carnie Norris, III,) 2008-GS-42-5631
8 Defendants.) July 6 - 7, 2009
9) Spartanburg, South Carolina
10

11 B E F O R E:
12 HONORABLE J. DERHAM COLE, JUDGE; and a jury
13

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Motion

1 (Proceedings July 6, 2009)

2 THE COURT: All right. We are here in the matter of
3 the State vs. Carnie Norris, III, indictment for armed
4 robbery, and the State vs. Kenneth Wayne Chiles, also an
5 indictment for armed robbery.

6 Mr. Barnette is here on behalf of the state; Mr. Poole
7 on behalf of Mr. Chiles; and Ms. Jones on behalf of
8 Mr. Norris.

9 Any motions or others matters we need to address prior
10 to the jury selection?

11 MS. JONES: Your Honor, at this point, as pursuant to
12 our conversations at the bench, Mr. Poole and I on behalf
13 of our clients have requested a hearing.

14 It's our understanding from the solicitor, Mr.
15 Barnette, that he intends to elicit or attempt to elicit an
16 in-court identification of our clients, and, Your Honor
17 we're requesting a hearing under Neil vs. Biggers, the
18 Cheatham case, and also Lewis, as well as the Rule 104 with
19 regard to identification issues pretrial to determine
20 whether any in-court identification is reliable or is the
21 subject or has been tainted or confused or further tainted
22 by outside activities.

23 We're also asking that the Court through the in-camera
24 hearing have the solicitor detail what, if any, attempts
25 were made at a showup or identification at the scene as it

Motion

1 would impact on an in-court identification by, he
2 indicates, three individuals, or both of our clients.

3 THE COURT: All right. Mr. Barnette.

4 MR. BARNETTE: Your Honor, briefly. We talked about
5 this at the bench.

6 I don't see a need for this hearing. I understand
7 they've made the motion for it or whatever, but the facts
8 of this case, just briefly, this occurred back on
9 July 16th of 2008.

10 Several people, including Andrew Bond, was playing
11 Frisbee golf there at North Dean Street and First Baptist
12 Church, that area there near Barnett Park.

13 As one of the Frisbees went on one of the buildings, I
14 believe the St. Lukes' free center there, Zack Blankenship
15 went up to get the Frisbee. Drew Bond and a couple of his
16 friends was standing below. Herb Blankenship and another
17 individual was standing with him down there.

18 And what they -- what happened was the defendant,
19 Carnie Norris, came across and pushed down Mr. Bond,
20 claimed he was a security guard. He pulled a knife on him.
21 And later on two of the individuals came back to help
22 Mr. Bond. He showed the knife to them.

23 The police was called. Zack Blankenship actually
24 called the police. Once he got off the roof he ran once he
25 heard they had weapons.

Motion

1 Mr. Bond was left by himself. He was there the whole
2 time. He saw both of the individuals. Mr. Norris was
3 right in front of his face. He saw Mr. Chiles and
4 basically was nearby them. They went through his wallet at
5 the time they asked him for it and took his card and so
6 forth.

7 When the police got there, Officer James saw
8 Mr. Norris over the top of Mr. Bond at the time in a
9 threatening manner. They went to talk to Mr. Bond.
10 Mr. Bond was visibly upset. Went over and talked.

11 Mr. Norris and Mr. Chiles went over to the house
12 across the street. They went over and talked. He never,
13 they never, left the location there. There never was a
14 showup and never was a lineup.

15 What they saw was there that night, and that would be
16 the important identification made by the three individuals
17 that was there, plus the two police officers, Your Honor.

18 THE COURT: All right. Well, how many lay witnesses
19 do you have that are going to make an in-court
20 identification?

21 MR. BARNETTE: Three, Your Honor.

22 THE COURT: All right. Well, since I don't know what
23 the facts are, why don't we just have those three witnesses
24 testify? And if the state's position is that there was no
25 suggestion or indication by any police officer to those

Motion

1 three witnesses as to the identification of either of these
2 defendants, then they can simply testify upon what their
3 identification is based. And I assume that would satisfy
4 the defense's inquiry into what the identification is based
5 upon.

6 Do I understand the defense is wanting to be certain
7 that there was no identification by those three lay
8 witnesses based upon any police suggestion or information?
9 Is that?

10 MS. JONES: Yes, sir, that, as well as that subsequent
11 to this night on the 16th of July there's been no attempt
12 in the intervening year for these individuals who are now
13 going to pick either -- if they, in fact, do pick either
14 client out -- that they have sought out a picture in order
15 to refresh their memory for the in-court identification.

16 THE COURT: Okay. Well, all right. Well, let's just
17 call those witnesses, Mr. Barnette.

18 MR. BARNETTE: Thank you, Your Honor.

19 How much detail do you want them to go into? Do you
20 want to go through the whole testimony or just the I. D.
21 part of it?

22 THE COURT: Well, I'm going leave that up to you. But
23 the purpose of this hearing is to simply determine whether
24 or not if they are going to make an in-court
25 identification, whether that in-court identification was

Andrew Foster Bond (In-camera)
Direct examination by Mr. Barnette

1 based upon their own perception or whether it was based
2 upon any information or suggestion by any person acting on
3 behalf of the state.

4 MR. BARNETTE: Yes, sir. Your Honor, I'd like to call
5 Andrew Bond to the stand, please.

6 ANDREW FOSTER BOND, having
7 been first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. BARNETTE

9 Q Mr. Bond, if you would, give your full name for the
10 record, please.

11 A Andrew Foster Bond.

12 Q And what town do you live in, sir?

13 A Spartanburg, South Carolina.

14 Q And back on July 16th of 2008, where was you that
15 night, that evening?

16 A I was in the First Baptist parking lot right near
17 North Dean Street.

18 Q And what was you doing, sir?

19 A We were playing Frisbee gold.

20 Q Who was with you there, sir?

21 A Zack Blankenship, Hub Blankenship, Kellen Mayfield,
22 Kyle Quinn, Joseph Holder and Maggie Tefteller and Woody
23 Alexander.

24 Q And as y'all was playing Frisbees y'all -- can you
25 tell me what happened to the Frisbee?

Andrew Foster Bond (In-camera)
Direct examination by Mr. Barnette

1 A Yes, sir. Hub Blankenship threw it on top of the
2 roof.

3 Q Was it accidental or --

4 A It was an accident, yes, sir.

5 Q And after it went on the roof, what happened?

6 A Zack Blankenship climbed a tree nearby and reached up
7 and got it off the roof and threw it down.

8 Q And who was standing beside you while that was
9 happening?

10 A Kellen Mayfield, Joseph Holder and Hub Blankenship.

11 Q And as he was throwing it down, what happened, sir?

12 A I was approached behind by Mr. Norris and pushed down
13 from behind and held down on the ground.

14 Q Did you know who he was prior to this?

15 A I did not, no, sir.

16 Q How did you find out his name later?

17 A Just hearing it from the police officers later that
18 night.

19 Q Okay. Do you see the man in the courtroom that
20 approached you that day?

21 A Yes, sir.

22 Q And can you identify what he's wearing?

23 A Blue pants and a blue shirt.

24 Q Can you point at him, sir?

25 A Yes, sir.

Andrew Foster Bond (In-camera)
Direct examination by Mr. Barnette

1 Q Okay.

2 MR. BARNETTE: Your Honor --

3 THE COURT: Who is he sitting next to?

4 THE WITNESS: The lady over there.

5 THE COURT: The female lawyer?

6 THE WITNESS: Yes, ma'am; yes, sir.

7 THE COURT: Okay.

8 Q And was --

9 THE COURT: The record shall reflect that he's
10 identified the defendant, Mr. Norris.

11 Q And what did he do to you, sir?

12 A He held me down and said that he was a, a security
13 guard and pulled a knife out.

14 Q And how close was he to you, sir?

15 A We were face to face.

16 Q Okay. Tell me what he said to you. And what did he
17 do to you?

18 A He said he'd like to see some I. D., that he was a
19 police officer. And so I reached in my pocket to pull out
20 my wallet and show him I. D.

21 Q And what did he do with the wallet, sir?

22 A He looked through it and began asking questions about
23 what was in there.

24 Q Okay. Was there another individual approached you
25 also?

Andrew Foster Bond (In-camera)
Direct examination by Mr. Barnette

1 A Yes, sir.

2 Q And what did that individual do?

3 A He came from across the street where they both came
4 from and talked to Mr. Norris about what was going on.

5 Q And what did he do?

6 A He didn't say much to me. He just was talking to
7 Mr. Norris.

8 Q Did he do anything with your wallet after --

9 A Yes, sir. He looked through it and pulled some stuff
10 out of it.

11 Q Okay. And what was in your wallet, sir?

12 A \$6 and credit, dibit card, and some other materials,
13 social security number.

14 Q Okay. And did they take those items?

15 A Yes, sir.

16 Q Did you get your wallet back?

17 A Yes, sir.

18 Q Do you see that other individual that approached you
19 that night in the courtroom?

20 A Yes, sir.

21 Q If you would, point to him and identify what he's
22 wearing.

23 A The white shirt and the black pants, sitting next to
24 the man over there.

25 MR. BARNETTE: Your Honor, I'd like -- he's identified

Andrew Foster Bond (In-camera)
Cross-examination by Ms. Jones

1 the defendant Chiles for the record.

2 THE COURT: All right. The record shall reflect he's
3 identified the defendant, Kenneth Wayne Chiles.

4 Q Have you been shown any lineups, show, what I mean,
5 show, or any photographs or anything like that by the
6 police or anybody else?

7 A No, sir.

8 Q Are you basing your identification on what you saw
9 that night?

10 A Yes, sir.

11 Q Are these the two individuals you saw that night?

12 A Yes, sir.

13 Q Please answer any questions that the judge may have
14 for you or the attorney may have for you.

15 THE COURT: Ms. Jones.

16 MS. JONES: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. JONES

19 Q Mr. Bond, you indicated -- who went up on the roof?

20 A Zack Blankenship.

21 Q Okay. And you stayed where?

22 A I stayed on the ground in the parking plot.

23 Q Okay. Which parking lot are we talking about?

24 A It's the parking lot right next to the building that
25 Zack was on.

Andrew Foster Bond (In-camera)
Cross-examination by Ms. Jones

1 Q Okay. But which building?

2 A It's, it's the building right next to the cleaners on
3 Dean Street. I don't, I don't know the name of the
4 building.

5 Q Okay. So is the building right next to the cleaners?
6 So it's actually a doctor's office?

7 A Yes, ma'am. It's next to the building that he was on.
8 There's a parking lot in front of it.

9 Q Okay. And what part of the parking lot were you in?

10 A The very corner of it standing next to the building.

11 Q Okay. I'm sitting on Dean Street. Direct me which
12 corner. Is it the right front or back, left front or back
13 corner?

14 A The building he was on, there's a parking lot right
15 next to it. And I was standing right in that parking lot
16 from, about ten feet from the building Zack was on.

17 Q Okay. Which side of the building were you on, the
18 left side or the right side?

19 A If you're facing the building, on the right side.

20 Q Okay. And where in relation to the position you were
21 standing is the closest source of light?

22 A There's a light, a lamppost, about ten feet away, a
23 street light.

24 Q Okay. So you were only ten feet away from a street
25 where you were standing?

Andrew Foster Bond (In-camera)
Cross-examination by Ms. Jones

1 A Yes, ma'am, Dean Street.

2 Q Okay. And so were you -- you're in a parking lot next
3 to the cleaners. Is there not the building of the cleaners
4 between you and Dean Street? That's farther than ten feet,
5 isn't it?

6 A No. It is the health -- the ministry building that he
7 was on top of.

8 Q Okay.

9 A There's a parking lot right there, and that was the
10 parking lot I was in.

11 Q Okay. So you are, in fact, not at the building
12 directly next to the cleaners. You are three buildings
13 away at that point, are you not?

14 A It's two buildings away, standing right next to the
15 building that he was on.

16 Q Okay. And what building was he on? What's the name
17 of the building?

18 A It's a ministry building maybe. I'm not exactly sure
19 of the name of the building.

20 Q Okay. Is it connected to your church, First Baptist?

21 A I'm not sure.

22 Q I don't mean physically.

23 A No.

24 Q But is it part of their property?

25 A It may be part of their property.

Andrew Foster Bond (In-camera)
Cross-examination by Ms. Jones

1 Q How tall is this building?

2 A I believe it's a 1-story building. I'm not positive.
3 I've never been in it.

4 Q Okay.

5 MR. BARNETTE: Your Honor, I'm going to object to
6 this. I don't know the relevance of this question.

7 MS. JONES: I'm trying to establish the location so
8 that we can get to the lighting, Your Honor.

9 THE COURT: Okay. Well, don't y'all have some
10 pictures or something?

11 MS. JONES: No.

12 THE COURT: Okay. Go ahead.

13 Q So you think the closest source of light where you
14 were standing beside the health -- the ministry building is
15 a street light on Dean Street?

16 A Yes, ma'am.

17 Q Okay. Would that street light be in front of you,
18 behind you or beside you?

19 A Beside me.

20 Q Okay. And that street light is on Dean Street.

21 A Right.

22 Q Okay. Were you standing -- and you were standing
23 beside the building in the parking lot, you said?

24 A That's correct.

25 Q Are you familiar with whether there is a driveway that

Andrew Foster Bond (In-camera)
Cross-examination by Ms. Jones

- 1 goes beside the building?
- 2 A Yes.
- 3 Q Is that where you were?
- 4 A Yes.
- 5 Q Or were you in the parking lot that's behind the
- 6 building?
- 7 A I was right in between those. And I was not behind
- 8 the building. I was right in that driveway area.
- 9 Q Okay. And, again, where is the closest source of
- 10 light?
- 11 A It's about ten feet away. There's a street lamp.
- 12 Q Okay. Do you know if it was working that night?
- 13 A Yes. It was.
- 14 Q Were there any shadows?
- 15 A I'm sure there were, yes, ma'am.
- 16 Q When you were standing there beside the building,
- 17 could you see your friend on top of the building?
- 18 A Yes.
- 19 Q What was lighting him?
- 20 A Nothing. There were no lights up where I could see
- 21 him.
- 22 Q But you could still see him?
- 23 A He was right, he was in the tree reaching out, and
- 24 grabbed it and threw it back down.
- 25 Q Okay. Where is the tree in relation to the driveway

Andrew Foster Bond (In-camera)
Cross-examination by Ms. Jones

1 that you're standing in?

2 A It's on the other side of the building right at the
3 corner, at the top end of the building.

4 Q The top end of the building. So your friend is on,
5 got -- is there a building between you and your friend?

6 A No. I was, I was standing out where I could see him.
7 If the corner of the building was right here, I was
8 standing right here so I could see him up climbing the tree
9 up to the building..

10 Q And was the building in between you though?

11 A Yes, but I could still see him. It wasn't blocking my
12 view.

13 Q And you're down on the ground?

14 A Yes, ma'am.

15 Q And a 1-story or 2-story building, do you know?

16 A It's a 1-story building. I've never been in it, but I
17 think it is a 1-story building.

18 Q Okay. And you were watching your friend to make sure
19 that he didn't fall or to get the Frisbee, which one?

20 A I was waiting. Well, both of them. I was waiting for
21 him to throw it down, but I didn't want to see him fall
22 either.

23 Q Okay. Now, you testified that whomever did this to
24 you came up from behind you.

25 A Correct.

Andrew Foster Bond (In-camera)
Cross-examination by Ms. Jones

- 1 Q So you did not see the person approach you.
- 2 A No, ma'am. I did not.
- 3 Q And the person pushed you down.
- 4 A Correct.
- 5 Q Pushed you down on your face?
- 6 A No, ma'am. On my side.
- 7 Q Okay.
- 8 A I broke my fall with my hands.
- 9 Q Which side?
- 10 A If I was standing, my left side.
- 11 Q Like this?
- 12 A Yes, ma'am.
- 13 Q So when you fell were you still looking in the
- 14 direction of your friend on the top of the building?
- 15 A Yes.
- 16 Q And you still have your back to the person who's
- 17 pushed you.
- 18 A Yes.
- 19 Q Okay. And then how long were -- did you have your
- 20 back away from the person who pushed you down?
- 21 A Right after he pushed me down, I turned over and began
- 22 talking to him.
- 23 Q What did you say to him?
- 24 A I asked him who he was. He said that he was the
- 25 security-guard officer and he'd like to see some I. D.

Andrew Foster Bond (In-camera)
Cross-examination by Ms. Jones

1 Q Okay. And at that point the person is how far away
2 from you?

3 A Within 3 feet.

4 Q And is the street light behind you or behind him?

5 A It is kind of to the side of us. So we've turned
6 around now, because I turned around to look at him. So if
7 I'm facing this way, the street light's right here.

8 Q You're facing the street now.

9 A Yeah, yes. Could not -- we're like parallel with the
10 street.

11 Q Are you on the ground or on the asphalt in the
12 driveway?

13 A I'm on the asphalt.

14 Q What was this person wearing?

15 A I can't recall. I knew he was wearing -- I really
16 don't recall what he was wearing that night. It was a
17 t-shirt, and like it was white or gray. I don't really
18 recall exactly what he was wearing.

19 Q Based on the actions of your friends, the police
20 officers arrived, did they not, at the scene?

21 A They did arrive, yes, ma'am.

22 Q Okay. Where were you when they arrived?

23 A Where I was the whole time. I didn't move.

24 Q Which was where?

25 A Which was in the -- like in between the driveway and

Andrew Foster Bond (In-camera)
Cross-examination by Ms. Jones

- 1 the parking lot of that building.
- 2 Q Okay. Which officer arrived first?
- 3 A The officer in the black.
- 4 Q Okay. Do you know his name?
- 5 A Officer James.
- 6 Q Okay. How many officers arrived?
- 7 A I don't remember exactly. I remember four, or seeing
- 8 four. I talked to two of them.
- 9 Q Okay. Do you know what the other two officers that
- 10 you did not speak to did at the scene?
- 11 A They were there talking with my other friends.
- 12 Q Okay. At the time the officers arrived where were the
- 13 two folks who you allege robbed you?
- 14 A When the officers arrived they began walking back
- 15 towards their house.
- 16 Q Okay. At the exact moment that the first officer
- 17 arrived, where were they?
- 18 A He was over the top of me.
- 19 Q What about the second individual?
- 20 A I don't recall where he was. He was near us, but I
- 21 don't recall exactly where he was.
- 22 Q Okay. And when the police arrived, you indicated
- 23 those individuals walked away.
- 24 A Correct.
- 25 Q Did you see where they walked?

Andrew Foster Bond (In-camera)
Cross-examination by Ms. Jones

1 A Yes, ma'am.

2 Q Where did they walk?

3 A They walked back up on their porch at their house.

4 Q Which house is that?

5 A It's across the street. It has a big red door.

6 Q Okay. Well, there are several houses across the
7 street.

8 A Correct.

9 Q Do you know which one it is?

10 A Yes. It's the only one with a red door on it.

11 Q Okay. If you had to count from the end of the street
12 where the traffic light --

13 MR. BARNETTE: Excuse me, Your Honor. I'm going to
14 object.

15 THE COURT: Ms. Jones, we've got a limited purpose for
16 this hearing.

17 MS. JONES: Okay.

18 THE COURT: It's not just to find out what this
19 witness is going to say. He's going to testify during the
20 trial.

21 The purpose of this hearing is to find out on what he
22 based his identification, whether or not it was based upon
23 some impermissibly suggestive police conduct.

24 MS. JONES: Thank you, Your Honor.

25 THE COURT: So let's focus on that.

Andrew Foster Bond. (In-camera)
Cross-examination by Ms. Jones

1 Q Once the police arrived, which officer did you speak
2 to first?

3 A The officer I spoke to first is not here today.

4 Q He is not here today.

5 A No, ma'am, but...

6 Q Okay. What was your conversation with the officer who
7 is not here?

8 A He was trying to figure out what was going on.

9 Q Okay. And in what way? What questions did he ask
10 you?

11 A He asked me why, why I was on the ground and why he
12 was over the top of me.

13 Q Okay. How did he know anyone was over the top of you?

14 A Because when he arrived, he was there.

15 Q Okay. The first officer who is not here, do you know
16 his name?

17 A Tillotson.

18 Q Okay. Tillotson.

19 A Correct.

20 Q Officer Tillotson after he arrived let them walk away
21 from you?

22 A Correct.

23 Q Okay. Did you continue to converse with Officer
24 Tillotson, the one who is not here?

25 A No. After that I went over, and I started talking to

Andrew Foster Bond (In-camera)
Cross-examination by Ms. Jones

1 Officer James.

2 Q Which is the --

3 A Correct, in the black.

4 Q The dark uniform.

5 A Yes, ma'am.

6 Q And did Officer James ask you who -- first of all, you
7 told him what you allege happened, someone had robbed you.

8 A Correct.

9 Q Or pushed you down and taken something from you. Did
10 he ask you who had done that to you?

11 A Yes, ma'am.

12 Q How did you respond to that?

13 A I said the two gentlemen that were just here and
14 they'd walked back across to their house.

15 Q Okay. And did you indicate to him which house?

16 A Yes, ma'am.

17 Q And at that point did you look at that house?

18 A Yes, ma'am.

19 MR. BARNETTE: Your Honor, I'm going to object at this
20 point. I mean, we've went through this or whatever. If
21 she wants to talk about police conduct, I understand.

22 THE COURT: Sustained.

23 MS. JONES: Okay.

24 Q When you were talking to Officer James did he ask you
25 to point out those individuals?

Andrew Foster Bond (In-camera)
Cross-examination by Ms. Jones

1 A Yes, ma'am.

2 Q So he did. And who did you point to?

3 A The men that had just walked across the street that he
4 saw when he pulled up.

5 Q Okay. And did he tell you who they were?

6 A No.

7 Q In your statement you used the name Carnie Norris.
8 Had you ever met Mr. Norris before?

9 A I had not.

10 Q How did you know his name?

11 A I did not know his name until they told me when I
12 arrived to the police station.

13 Q So they told you what his name was before you wrote
14 your statement.

15 A Yes, ma'am.

16 Q And you included his name in your statement based on
17 them telling you that's who that was.

18 A Right.

19 Q So you accepted his name as the person you're accusing
20 of robbing.

21 A Correct.

22 Q Okay.

23 MR. BARNETTE: Your Honor, I'm going to object on
24 that. That's an assumption on the witness or whatever,
25 trying to go from there. I think we're talking about --

Andrew Foster Bond (In-camera)
Cross-examination by Ms. Jones

1 MS. JONES: I'm not going to go further on that.

2 THE COURT: Okay.

3 Q When you went to the police station did anybody ever
4 show you any photographs of Mr. Norris?

5 A No.

6 Q After the police arrived and you told them what had
7 happened, did they ever ask you to point out Mr. Norris to
8 them?

9 A Yes, they --

10 Q Or the individual who robbed you, not Mr. Norris.

11 A Will you restate that question one more time?

12 Q Once the officer arrived did he ask you to point out
13 the person who you claimed robbed you?

14 A No. He was standing over me, and I said this is --
15 that was the guy who robbed me. The man that was standing
16 over me is the one who robbed me.

17 Q Okay. I understand that. But once the officers got
18 there and you started talking to this officer, no one was
19 standing over you, was he?

20 A No. He had walked. He had walked back to the house.

21 Q Okay. At that point -- I'm sorry if I was not clear.
22 At that point did you -- were you asked to point someone
23 out for the officers?

24 A When he -- as they walked back over, it was the two
25 men that were standing there. I said those were the men

Andrew Foster Bond (In-camera)
Cross-examination by Ms. Jones

1 that robbed me.

2 Q Who did you tell that to?

3 A The officers.

4 Q Which one?

5 A Officer James.

6 Q Okay. So you did point him out.

7 A I said those two men.

8 MR. BARNETTE: Objection, Your Honor. This has been
9 asked and answered about four times.

10 THE COURT: Yes, ma'am.

11 Q How many individuals were on the porch that you
12 pointed out?

13 MR. BARNETTE: Your Honor, I'm going to object. I'm
14 going to object.

15 THE COURT: I've sustained it. He's already answered
16 it. But she's on another question now.

17 MS. JONES: I am sorry.

18 Q How many individuals were on the porch when you
19 pointed out someone to Officer James?

20 A There were two of them.

21 Q Okay. Only two?

22 A Yes. Only two I saw that were on the porch were those
23 two men.

24 Q Okay. And that is across Dean Street from you.

25 A Yes.

Andrew Foster Bond (In-camera)
Cross-examination by Ms. Jones

1 Q Do you know how far apart?

2 A Not exactly.

3 Q Okay. Do you know if there were any lights on the
4 porch?

5 A The porch was lit, yes, ma'am.

6 Q By what? What was it lit by?

7 A I do not know, but I could see clearly on the porch
8 the two men.

9 Q Okay. And what were the two men wearing that you saw
10 on the porch?

11 A I do not know exactly what they were wearing.

12 Q Okay. Since that night have you looked at any
13 pictures of Carnie Norris or Kenneth Chiles?

14 A No, not, no, ma'am.

15 Q No not?

16 A No, ma'am.

17 Q You have not looked at any pictures of them.

18 A No, ma'am.

19 Q You have not gone on any web site to see what they
20 look like.

21 A No, ma'am.

22 Q Have the police any time since then, or anyone
23 employed by the state, shown you any photographs?

24 A Not that I recall, no, ma'am.

25 Q Thank you for answering my questions.

Andrew Foster Bond (In-camera)
Cross-examination by Mr. Poole

1 CROSS-EXAMINATION

2 BY MR. POOLE

3 Q Mr. Bond, let me ask some of the similar questions on
4 behalf of my client.

5 Had you ever seen this person before that night?

6 A No, sir.

7 Q Okay. And did he ever put any hands on you? Did he
8 come close enough to put his hands on you?

9 A He was close enough, but he never put any hands on me.

10 Q Okay. And how were you able, by what light were you
11 able, to see his face?

12 A The street light.

13 Q All right. And how far was he away from you?

14 A At which point?

15 Q The closest.

16 A The closest, if I reached out I could have touched
17 him.

18 Q Okay. Did he bend over you?

19 A Did he bend over me?

20 Q Bend over you.

21 A Yes, sir. He stood, stood straight.

22 Q Just stood there.

23 A Yes, sir.

24 Q And did he say anything to you?

25 A Not directly to me.

Andrew Foster Bond (In-camera)
Cross-examination by Mr. Poole

1 Q Okay. And so how long of a period of time was he that
2 close to you?

3 A I don't know exactly, a couple of minutes.

4 Q Okay. And then it's my understanding that the police
5 got there pretty soon.

6 A Correct.

7 Q Is that a fair statement?

8 A How, how soon is soon? I mean, five or ten minutes.

9 Q Okay. And was he there the whole time, this
10 individual?

11 A Not the whole time.

12 Q Okay. I think you've already answered this, but let
13 me ask you. Do you know -- you don't know what kind of
14 clothes he was wearing.

15 A No, sir.

16 Q Okay. Did anybody ever say -- and what I mean by that
17 did any law enforcement individuals say what his name was
18 to you.

19 A I may have heard it once I got to the police station.

20 Q You don't recall.

21 A I don't recall, no, sir.

22 Q So you did not use a name Chiles in your statement,
23 right?

24 A Not that I recall.

25 Q Okay. And you've not been shown any pictures that

Herbert Eugene Blankenship (In-camera)
Direct examination by Mr. Barnette

1 have him in it, either in a lineup or individually.

2 A No, sir.

3 Q Since that time.

4 A Correct.

5 Q Okay. But you did not ever see him. You've never
6 seen this man, this individual, in your life until that
7 night, is that right?

8 A That's correct.

9 Q Okay. Thank you, Mr. Bond.

10 THE COURT: Thank you. Step down.

11 MR. BARNETTE: I would like to call Herbert
12 Blankenship, Your Honor.

13 HERBERT EUGENE BLANKENSHIP,
14 having been first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. BARNETTE

16 Q If you would, sir, give me your full name, please.

17 A Herbert Eugene Blankenship.

18 Q I'm going to try to shortcut it and just go to the
19 main point of what we're talking about.

20 A Okay.

21 Q Back on July 16th of 2008, was you playing Frisbee
22 golf that day?

23 A Yes, sir.

24 Q And who was you with, sir?

25 A I was with Jerry Bond, Zack Blankenship, Kellen

Herbert Eugene Blankenship (In-camera)
Direct examination by Mr. Barnette

1 Mayfield, Kyle Quinn, Joseph Holder and Maggie Tefteller
2 and Woody Alexander.

3 Q Okay. And was this around the First Baptist, North
4 Dean Street area?

5 A Yes, sir. That's where we were.

6 Q The -- when the Frisbee went up on the roof --

7 A Yes, sir.

8 Q -- who went up and got it?

9 A My brother, Zack Blankenship, right over there.

10 Q And who was you standing with during that time?

11 A Me, Jerry Bond, Kellen Mayfield and Joseph Holder were
12 standing further away from the building than everybody else
13 was.

14 Q What happened after your brother went up and got the
15 Frisbee?

16 A He was starting to throw it down, and Jerry Bond went
17 to go get the Frisbee. And at that time this male over
18 there went and put him down on the ground.

19 Q And when you mean this male, can you say where he's
20 located, on the end?

21 A He's on the far right end of the table with the blue
22 shirt on, and glasses.

23 Q And who is he sitting by, sir?

24 A The lady attorney.

25 MR. BARNETTE: Your Honor, I'd like the record to

Herbert Eugene Blankenship (In-camera)
Direct examination by Mr. Barnette

1 reflect that he's identified the defendant.

2 THE COURT: All right. The record reflects he's
3 identified Carnie Norris.

4 Q What happened after that?

5 A He put him on the ground. And I remember he said
6 that -- he said he was a security officer. And he told all
7 of us three as well to get on the ground, and-but he was
8 detaining Drew. And he had pulled a knife out and put a
9 knife on his neck.

10 And so then about that time we went to go ask him
11 since he was a security officer like why are you putting
12 him down with the knife and everything. And that's when he
13 told us to get back and get on the ground. And so then we
14 just started to step back away.

15 Q Okay. Was there another individual that came up
16 toward y'all?

17 A Later that man over there on the far end of the table,
18 he, he came over towards us. He didn't have any weapons or
19 anything though.

20 Q Can you describe what he's wearing and where he's
21 sitting at again, sir?

22 A Oh, he's on the far left end of the table. He's got
23 the, the light colored shirt on, and the dark pants.

24 Q And who is he sitting beside, sir?

25 A The male attorney.

Herbert Eugene Blankenship (In-camera)
Direct examination by Mr. Barnette

1 MR. BARNETTE: Your Honor, I'd like the record to show
2 that he has identified the defendant Chiles.

3 THE COURT: It shall.

4 Q And how close was you to these individuals?

5 A I was probably -- at first I was probably 20 to
6 30 feet from the man on the far end. And then, and then
7 when he came, we stepped further back. There's two of them
8 at the time. So we decided to get out of harm's way.

9 Q And what did you do after that?

10 A After that when the other man came, we decided to go
11 up to the First Baptist to the parking lot or to the
12 parking lot where we were to see if they really were
13 security guards to make sure that was the truth. And he
14 said there wasn't any other security guard on the premises.
15 And so then we decided to ask him to call 9-1-1 for us to
16 make sure that the police officer would come and help Drew
17 out.

18 Q Did you go back down to the scene?

19 A I went back down to the scene in my car with a few
20 other people. And we came up on them, and we stopped in
21 the street, and we shone the light on, my lights on them
22 just to make sure nothing was happening from probably 20 to
23 30 yards away, a safe distance away and just --

24 Q And what did you see then?

25 A Mr. -- the man on the far end over there, he was on

Herbert Eugene Blankenship (In-camera)
Cross-examination by Mr. Poole

1 top of Mr. Bond. And the other man, he was, had a wallet
2 or some cards out fumbling, like just fumbling through them
3 with his hands.

4 Q And did the police shortly arrive after that?

5 A They arrived at the scene after that, yes, sir.

6 Q Was these the two individuals you saw that night, sir?

7 A Yes, sir.

8 Q Thank you. Please answer any questions the judge or
9 the attorneys have for you, sir.

10 CROSS-EXAMINATION

11 BY MR. POOLE

12 Q Mr. Blankenship, you had never seen this individual
13 prior to that night, is that right?

14 A No, sir. I hadn't.

15 Q Do you remember what kind of clothing he was wearing?

16 A I just remember he had a darker colored t-shirt on,
17 and the other man had a lighter colored t-shirt on. And
18 that's really all I can remember.

19 Q Okay. Were you ever told the name Chiles by law
20 enforcement or anyone else --

21 A No, sir, not at the time.

22 Q -- prior to your giving the statement that night?

23 A Oh, no, sir.

24 Q Okay. You were not given any names.

25 A No, sir. My statement doesn't reflect that either,

Herbert Eugene Blankenship (In-camera)
Cross-examination by Mr. Poole

1 sir.

2 Q Okay. And at one time you gave an estimation of a
3 range between you and these individuals as being 20 to
4 30 feet.

5 A Initially 20 to 30 feet from the man on the far end
6 here. And then I was a little further away from him when
7 he came. We stepped back a little further, so.

8 Q Okay. Did you ever get any closer than that range?

9 A No, sir.

10 Q Okay. And you had never seen this individual or that
11 individual prior to that evening, had you?

12 A No, sir.

13 Q Have you been shown any pictures by law enforcement or
14 anybody else for that matter of these individuals since
15 that night?

16 A Since that night? I saw their pictures in the
17 newspaper when I read the article the next, the following
18 day, but that only helped verify what I saw the night
19 before.

20 Q Okay. But nobody has shown you any pictures?

21 A Any picture of them and said this is this person and
22 this is that person?

23 Q Right.

24 A No, sir. I haven't been show that, only when I can
25 get it from my own estimation.

Herbert Eugene Blankenship (In-camera)
Cross-examination by Ms. Jones

1 Q And then bear with me just a minute.

2 A That's fine.

3 (Pause.)

4 Q That's all I have.

5 CROSS-EXAMINATION

6 BY MS. JONES

7 Q Mr. Blankenship --

8 A Yes, ma'am.

9 Q -- where were you physically located on the lot of the
10 ministry's building when you were the closest point you
11 were to this individual?

12 A Where was I physically located?

13 Q Uh-hum.

14 A Okay. I'm sure -- see if I can try to describe it to
15 you.

16 The ministry building is -- okay. If we're standing
17 on Dean Street, the ministry building is on the left.
18 There's a small building that's kinda further back off the
19 street in the middle, and then there's the parking lot
20 on -- the next one down is the parking lot that Drew Bond
21 had been detained in. And I was standing in between where
22 my brother was and where Drew was. And then once this man
23 came towards Drew, we went closer to see what had happened.

24 Q Okay.

25 A So there's three buildings down, and the Frisbee's on

Herbert Eugene Blankenship (In-camera)
Cross-examination by Ms. Jones

1 the far left. There's a middle building which nobody
2 really was involved with, and there's a building with a
3 parking lot out in front like on Dean Street, is where the
4 parking lot was, not behind the building, in front.

5 Q Okay.

6 A And that's where it all happened. That's where he was
7 detained at, was that parking lot.

8 Q Okay. In the parking lot. Okay.

9 A And I was close. I was on the sidewalk close enough
10 to the parking lot, probably 20 to, 20 to 30 feet right
11 from where Drew was.

12 Q How had you gotten there from where you were playing
13 Frisbee?

14 A Just walked down the street.

15 Q Which street?

16 A Dean Street. I was -- the sidewalk. Dean Street's on
17 my right. The sidewalk's a little bit closer to me. And I
18 was probably ten feet off the sidewalk walking that way.

19 Q Where had you been playing Frisbee?

20 MR. BARNETTE: Your Honor, I'm going to object, I
21 mean.

22 THE COURT: Sustained.

23 MS. JONES: Okay.

24 Q When you walked up to this point, you say the closest
25 point you got to this individual you were standing on the

Herbert Eugene Blankenship (In-camera)
Cross-examination by Ms. Jones

1 sidewalk of Dean Street.

2 A Well, yes, ma'am, I was standing there. We went
3 closer, and I got closer off the sidewalk, so.

4 Q Okay. And what building were you in front of at that
5 point?

6 A I, I can't remember the building's name either.

7 Q Is it a -- do you know how tall the building is?

8 A Probably one or -- one to two story, a big 1-story
9 building, and possibly a 2-story building, depending on if
10 there's a basement or not.

11 Q Okay. And then from that point you walked how many
12 feet closer to where this individual was?

13 A Probably five to ten steps closer.

14 Q Okay. And that was the closest you ever got to this
15 individual.

16 A Yes, ma'am. Probably, probably from me to you.

17 Q Okay.

18 A Maybe a little closer when I was --

19 Q What was this individual wearing?

20 A He was wearing a lighter colored t-shirt. It was
21 either gray or white. I can't really remember. And that's
22 all I really can remember from right now.

23 Q Okay. At the -- where were you located when the
24 police arrived?

25 A I was, I had been in my car, and so I was just, just

Herbert Eugene Blankenship (In-camera)
Cross-examination by Ms. Jones

1 shining the lights on them to see what was going on. And
2 when the police -- I saw a police car coming down the
3 street. I pulled my car up and parked it and then came
4 back out.

5 Q Okay. So you left after you moved ten --

6 A After I moved, this other man came over. The closest
7 point I got was before the other man came. He came. And
8 there's too many of them that we didn't want to mess with
9 them. So we decided to go back and tell the security
10 guard. So we had ran away.

11 Q Okay. And you got in your vehicle and you came back.

12 A Came back to make sure that Drew was still safe.

13 Q And you were driving on the road?

14 A Yes, ma'am. I came from Saint John Street and took a
15 right on Dean Street coming up the opposite way.

16 Q Okay.

17 A And took a right right there. And we had stopped.
18 And they were down in the parking lot. And so I maneuvered
19 my car from probably 20 to 30 yards away to make sure that
20 everything was still okay.

21 Q When the police arrived, did you have any
22 conversations with the police?

23 A Neither of these officers. But I was talking to a
24 lady officer who is not here today.

25 Q Okay. Did that lady officer ever tell you anything

Herbert Eugene Blankenship (In-camera)
Cross-examination by Ms. Jones

1 about who the two individuals were that you --

2 A No, ma'am. I never knew who the individuals were
3 until the following day.

4 Q Okay.

5 A I just knew their face and what they -- and I do my
6 testimony based on their body build and height and weight
7 and stuff. I didn't know who, which one was which.

8 Q Okay. And did you -- were you involved in any process
9 with the police where they asked you to see if they were
10 still around while you were there?

11 A Yes, ma'am. They asked me to identify them when they
12 were on their porch before they went over to talk to them.

13 Q Okay. How many individuals were on the porch?

14 A These two right there.

15 Q How far away from the porch were you?

16 A Probably 30 yards.

17 Q Where were you at that point?

18 A I was on Dean Street looking that way towards their
19 house.

20 Q You were in the street?

21 A Yes, ma'am, kind of at an angle sort of. I wasn't
22 straight on looking at their house, but I was at a bit of
23 an angle.

24 Q Okay. And do you remember who the officer was that
25 asked you to point them out?

Herbert Eugene Blankenship (In-camera)
Cross-examination by Ms. Jones

1 A He's the officer with the gray hair that wasn't here
2 today that Mr. Barnette was referring to, the first one
3 he --

4 Q Officer Tillotson, I believe.

5 A The same one that he talked to. I guess that's his
6 name. I don't remember his name.

7 Q Okay. Were you present when Officer Tillotson asked
8 Mr. Bond to point out the individual who had been involved?

9 A No. I think I was with Joseph and Kellen when they
10 asked us to show who was over there.

11 Q Okay. So you were with Joseph -- and I'm sorry?

12 A His name is Kellen -- Kellen.

13 Q Okay.

14 A I think. I'm not -- I, I'm, I was standing with them.
15 I don't know, you know, if we were --

16 Q And could they hear what you were saying or who you
17 indicated to the officer?

18 A I don't, I don't remember how close they were to me.

19 I just remember I was standing with them. And then the
20 officer talked to me. I don't know if they backed off or
21 what happened after that. I just remember telling the
22 officer that those are the two guys.

23 Q Okay. And did you hear any of your other friends be
24 asked a similar question by the officer and asked to point
25 across the porch, to the porch?

Daniel Kellen Mayfield (In-camera)
Direct examination by Mr. Barnette

1 A I don't -- not that I recall.

2 Q Okay. And you indicated also then the next day a
3 picture ran in the newspaper.

4 A Yes, ma'am.

5 Q A picture of whom?

6 A It had both of them on there.

7 Q Okay. And what did that picture show?

8 A It just showed their face. And it put their last name
9 underneath it.

10 Q Okay. Didn't show their body size or their body build
11 either, did it?

12 A I also identified him based on his salt-and-pepper
13 hair and his beard. And I could see that in the picture.

14 Q Okay. Thank you.

15 A You're welcome.

16 THE COURT: You may step down.

17 MR. BARNETTE: Your Honor, I would like to call Daniel
18 Mayfield to the stand, please.

19 DANIEL KELLEN MAYFIELD, having
20 been first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. BARNETTE

22 Q Mr. Mayfield, give your full name for the record,
23 please.

24 A Daniel Kellen Mayfield.

25 Q I'm going to do the same thing. I'm going to kinda

Daniel Kellen Mayfield. (In-camera)
Direct examination by Mr. Barnette

1 short cut through the chase and get right to the point.

2 July 16th of 2008, was you playing Frisbee golf that
3 day?

4 A Yes, sir, I was.

5 Q And when the Frisbee went up on the roof and Zack
6 Blankenship got it, who was you standing beside, sir?

7 A I was standing with Kyle Quinn and Hub Blankenship and
8 Joseph Holder.

9 Q What happened after Zack got the Frisbee?

10 A Well, just as Zack started to climb down from the
11 tree, we noticed one of the, the gentleman walking across
12 the street. And that's when he identified himself as a
13 security guard. And he, he got Drew who was the closest to
14 him on the ground.

15 Q Okay. Do you see that man in the courtroom here
16 today?

17 A Yes, sir, I do.

18 Q Can you point at him and describe what he's wearing,
19 sir?

20 A He's right there. He's wearing the blue shirt and
21 blue pants.

22 Q And where is he sitting at? Who's he sitting beside,
23 sir?

24 A Beside the female attorney.

25 MR. BARNETTE: Your Honor, I'd like the record to

Daniel Kellen Mayfield (In-camera)
Direct examination by Mr. Barnette

1 reflect he's identified the defendant Norris.

2 THE COURT: It shall.

3 Q What happened next?

4 A After he got Drew on the ground I looked back to make
5 sure Zack got out of the tree safely.

6 And when I looked back, he had pulled Drew's wallet
7 out of his back pocket. He had Drew fixed on the ground
8 and pulled his wallet out of his pocket. And that's when
9 me and Hub Blankenship and Joseph Holder began to walk
10 toward him. And we started saying wow, wow. And that's
11 when we noticed that he had a knife. And he pointed the
12 knife at us and told us to get on the ground.

13 Q Was there another individual approached you also?

14 A Yes, sir.

15 Q What, where did -- tell us what he did.

16 A He, he also started walking across the street. He was
17 about maybe 20 or 25 feet behind the man in the blue shirt.

18 Q Do you see that man in the courtroom here today?

19 A Yes, sir, I do.

20 Q Can you identify him for us, point him out?

21 A Sitting on the far left in the white shirt and dark
22 pants.

23 Q And who is he sitting beside of, sir?

24 A Beside the male attorney with the glasses.

25 MR. BARNETTE: Your Honor, I'd like the record to

Daniel Kellen Mayfield (In-camera)
Cross-examination by Mr. Poole

1 reflect that he identified the defendant Chiles.

2 THE COURT: It shall.

3 Q And those are the two individuals you saw that night?

4 A Yes, sir.

5 Q And afterwards did -- when y'all came back and
6 everything did you see him on the front porch?

7 A Yes, sir, I did.

8 Q And was those the two individuals that you saw that
9 came over and basically robbed Drew?

10 A Yes, sir, they are.

11 Q Please answer any questions that Mr. -- the attorneys
12 may have for you, or Judge Cole.

13 CROSS-EXAMINATION

14 BY MR. POOLE

15 Q Just a couple of brief questions, Mr. Mayfield.

16 Is it fair to say that you were with Herb Blankenship
17 the entire time?

18 A Yes, sir, it is.

19 Q So what he testified to a moment ago was basically the
20 same thing that you saw?

21 A Yes, sir.

22 Q And heard and experienced?

23 A Yes, sir.

24 Q Is that a fair statement?

25 A Yes, sir, it is.

Daniel Kellen Mayfield (In-camera)
Cross-examination by Ms. Jones

1 Q Okay. And do you remember what kind of clothes this
2 individual was wearing that night?

3 A I'm not sure what clothes he was wearing. I remember
4 that Mr. Norris was wearing a gray, gray t-shirt.

5 Q Okay. That's all I have.

6 CROSS-EXAMINATION

7 BY MS. JONES

8 Q Mr. Mayfield, what was the closest you ever got to
9 Mr. Norris, this individual?

10 A Just a few feet away when he threatened us with the
11 knife.

12 Q What is a few feet? Use something for reference in
13 this room and tell me how far away.

14 A Probably from, from me to the end of this desk right
15 here.

16 Q Okay. And you got that close and then retreated.

17 A Yes, ma'am.

18 Q Okay. Did any officer ever ask you to point out
19 anybody that you saw that looked like the persons who were
20 involved?

21 A Yes, ma'am.

22 Q Who was that officer?

23 A I don't remember the name of the officer.

24 Q Can you describe him for us?

25 A I honestly don't. There were, there were several

Daniel Kellen Mayfield (In-camera)
Cross-examination by Ms. Jones

1 officers on the scene, and I don't remember which one asked
2 us.

3 Q Was it one of the ones present?

4 A I don't remember.

5 Q You don't remember.

6 A No, ma'am.

7 Q Okay. How did -- what did that officer say to you to
8 cause you to point out someone?

9 A Well, when we noticed that the two men had gone back
10 on the porch, that's when one of the officers asked me and
11 Hub Blankenship and Joseph Holder to identify the men that
12 had, that had robbed us and-or robbed Drew Bond. And we,
13 all three of us, identified those two as the men that had
14 done, that had done that.

15 Q Were you present when your other two friends did that?

16 A I'm sorry. Say that again.

17 Q Were you present when your other two friends
18 identified them?

19 A Yes.

20 Q And you heard them identify them.

21 A Yes.

22 Q Then you identified them.

23 A I identified them along with my friends.

24 Q At the exact same time?

25 A At the exact same time.

1 Q So he asked all three of you. Tell me their names
2 again. Herb Blankenship.

3 A Hub Blankenship, Joseph Holder.

4 Q Hub?

5 A Hub Blankenship and Joseph Holder.

6 Q Holder. Okay. Did you read the paper the next day
7 and look at the picture?

8 A I saw the picture, yes, ma'am. I read that article in
9 the newspaper.

10 MS. JONES: That's all, Your Honor.

11 THE COURT: Step down.

12 Anything else?

13 MR. BARNETTE: No, sir.

14 THE COURT: Anything on behalf of the defendant?

15 MS. JONES: Not at this point, no, sir.

16 MR. POOLE: No, sir.

17 THE COURT: Any argument you need to make?

18 MS. JONES: Your Honor, specifically asking

19 Mr. Blankenship and Mr. Mayfield, they both testified that
20 they saw a photograph that ran in the newspaper the
21 following day. So there has been intervening photographs
22 viewed by the individuals, which in our position on behalf
23 of Mr. Norris would taint an in-court identification.

24 There's also been testimony by Mr. Mayfield that he
25 was, in fact, present and heard and witnessed the

1 identification at the scene by his friends, Mr. Holder and
2 Mr. Blankenship, which is a tainting also, Your Honor.
3 That's not the appropriate procedure. They're supposed to
4 be done separately so there's no interference or influence
5 brought to bear.

6 And, Your Honor, for that reason, specifically as to
7 Mr. Mayfield and Mr. Blankenship, Your Honor, we would ask
8 that the Court disallow any in-court identification because
9 of intervening factors.

10 THE COURT: Mr. Poole.

11 MR. POOLE: The defendant, Mr. Chiles, joins in
12 Ms. Jones' motion.

13 THE COURT: Okay. Well, clearly in-court
14 identification of defendants by witnesses is ordinarily a
15 question that the jury has to decide unless the
16 identification is so inherently unreliable based upon
17 police suggestion or other factors that would indicate that
18 the witness' identification is not reliable.

19 No such factors exist in this case in my view. These
20 witnesses have each testified they were involved, or at
21 least clearly closely present at the time that an armed
22 robbery took place.

23 They observed the two defendants. They saw them
24 during the commission of the crime and saw them leave the
25 incident location and walk across the street and go up on a

1 porch.

2 And apparently, as I understand it, the police arrived
3 while Mr. Norris was still over at Mr. Bond's. So, and
4 they pointed out there they go across the street, on the
5 porch. And it clearly was all done in a close, close
6 period of time.

7 There was no police suggestion; there was no
8 suggestive lineup; there was no suggestion by the police as
9 to who they ought to pick out or what they ought to pick
10 out or who the perpetrators might be.

11 It clearly appears from the testimony that the three
12 witnesses that have testified saw them. And they pointed
13 them out for the police's benefit upon the questioning of
14 who committed the crime.

15 So, you know, while their identification and the
16 reliability of it might be subject to cross-examination,
17 and it might be discredited based upon that
18 cross-examination, the identification is not so inherently
19 unreliable that it should be excluded. It will be subject
20 to cross-examination.

21 Therefore, your motion to exclude the identification
22 of the three witnesses, the in-court identification, is
23 denied.

24 Anything else before we recess for lunch?

25 MS. JONES: Nothing on behalf of defendant Norris.

Jury qualification

1 MR. POOLE: Nor Mr. Chiles.

2 THE COURT: Court in recess until 2:00 o'clock.

3 (Whereupon, a recess was taken.)

4 THE COURT: All right. Any matters to address before
5 is jury is brought around?

6 MR. BARNETTE: None from the state, Your Honor.

7 MR. POOLE: None from the defense, Your Honor.

8 MS. JONES: No, sir, Your Honor.

9 THE COURT: Okay. Bring them around.

10 (The following takes place in the presence of the jury
11 venire.)

12 THE COURT: Good afternoon, ladies and gentlemen.

13 We are ready to begin with jury selection in the first
14 case that's going to require some of your participation.
15 And the title of that case -- there are actually two
16 separate defendants being tried together. The title of the
17 cases are the State vs. Kenneth Wayne Chiles and Carnie
18 Norris, III.

19 Each of these defendants have been charged with the
20 crime of armed robbery. And the state alleges by way of
21 these two documents referred to as the indictments --
22 they're simply the charging papers -- the state alleges
23 that each of these defendants did on or about July the
24 16th of 2008 commit the crime of armed robbery in that they
25 took, stole and carried away from the person or presence of

Jury qualification

1 one Andrew Foster Bond certain personal property, being
2 cash and credit cards, and that they took those items with
3 the intention of depriving the true owner of use and
4 possession of the property.

5 Now, as to those allegations each of the defendants
6 have entered a plea of not guilty. And that plea of not
7 guilty places upon the state the burden of proving the
8 allegations that are set forth in each of the indictments,
9 the burden of proving each of the essential elements that
10 constitutes the crime of armed robbery; and therefore the
11 burden is upon the state to establish each defendant's
12 guilt to the satisfaction of 12 jurors beyond a reasonable
13 doubt before any verdict of guilty could be returned.

14 So we're going to be selecting 13 of you. There'll be
15 12 primary jurors and one additional alternate juror. And
16 by way of your participation you're simply going to be
17 called upon to listen to the testimony and consider any
18 other evidence introduced during the trial of the case.

19 At the trial's conclusion you'll be called upon to
20 evaluate all of that evidence. From that evidence you'll
21 decide what you believe to be the true facts as they relate
22 to these cases.

23 And upon deciding the facts, you'll then apply the law
24 that I will have provided you. And you will determine
25 whether or not a defendant has been proven guilty beyond a

Jury qualification

1 reasonable doubt. And if he has, then your verdict would
2 be guilty. And if he has not, then your verdict would be
3 not guilty.

4 Now, before we begin with jury selection in this case
5 I've got several questions that I'm going to ask of you as
6 a group. And the purpose of the questions is to determine
7 if there's some reason why any one of you jurors should not
8 be selected to participate in the trial of this particular
9 case.

10 And so during the course of these questions if you
11 need to respond, I'll ask that you please stand. And I'll
12 address those matters with you individually.

13 Now, first of all, as I told you, the defendants in
14 this case are Kenneth Wayne Chiles and Carnie Norris, III.

15 First, let me ask that Mr. Chiles please stand and
16 face the jury panel. You'll have to turn around and face
17 the jury panel. All right. This is Kenneth Wayne Chiles.

18 (Whereupon, Defendant Chiles stood.)

19 THE COURT: All right. Mr. Chiles is represented by
20 Roger Poole, his lawyer. He'll be assisting him in the
21 trial of the case.

22 (Whereupon, Mr. Poole stood.)

23 THE COURT: The other defendant is Carnie Norris, III.

24 Mr. Norris, if you will, stand and face the jury
25 panel.

Jury qualification

1 (Whereupon, Defendant Norris stood.)

2 THE COURT: Mr. Norris is represented by Beverly Jones
3 who is standing with him. She's his lawyer. She'll be
4 assisting him in the trial of the case.

5 (Whereupon, Ms. Jones stood.)

6 THE COURT: Presenting the case on behalf of the state
7 is Barry Barnette, the principal deputy solicitor for the
8 7th Judicial Circuit.

9 (Whereupon, Mr. Barnette stood.)

10 THE COURT: Potential witnesses to be called during
11 the trial of the case include Jon Guest and B. L. James,
12 officers with the Spartanburg Department of Public Safety;
13 also David Reeves with the Spartanburg Public Safety
14 Department; Andrew Bond; Herbert Blankenship; Zachery
15 Blankenship; Daniel Mayfield; Kyle Quinn; and Joseph
16 Holder. He is not here?

17 MR. BARNETTE: No, sir.

18 THE COURT: Also, Russell Porter with the Spartanburg
19 Public Safety Department. And an additional witness, A. C.
20 Worthy.

21 All right. Now, the first question is is there any
22 member of the jury panel who is connected by blood or by
23 marriage, or do you otherwise have any personal, social,
24 business or personal relationship with any of the persons
25 who have just been identified for your benefit, as well as

Jury qualification

1 any members of their respective families.

2 I need to know if you know anybody who has been
3 identified or any member of their respective families. If
4 so, please stand.

5 All right. I'm going to start over here to my right.
6 I'll work across to my left. I'll do the front row and
7 then go each row back.

8 I need for you to tell me your name and your juror
9 number. And then tell me how the question relates to you.

10 JUROR NO. 48: I'm Martha Fisher, Juror No. 48. I
11 teach at Pine Street with Drew Bond's mother, Ms. Bond.

12 THE COURT: All right. And is there anything about
13 that fact that would affect your judgment in this case?

14 JUROR NO. 48: No, sir. I'm not aware of any details
15 about the case.

16 THE COURT: And could you not allow that connection to
17 influence your judgment?

18 JUROR NO. 48: I think that I could disconnect, I
19 mean.

20 THE COURT: Ma'am?

21 JUROR NO. 48: I think that I would be able to.

22 THE COURT: Okay. Thank you. You may be seated.
23 Yes, sir.

24 JUROR NO. 2: Chris Allen, Juror No. 2. I know Kyle
25 Quinn and Joseph Holder. They went to high school with me.

Jury qualification

1 THE COURT: All right. And would either of those
2 facts have any impact upon your decision in this case?

3 JUROR NO. 2: No, sir.

4 THE COURT: Thank you. Be seated.

5 Next.

6 JUROR NO. 124: I'm sorry. I've known Mr. Holder and
7 Kyle Quinn.

8 THE COURT: Is there anything about that connection
9 that would affect your judgment in this case?

10 JUROR NO. 124: No.

11 THE COURT: Could you be fair to both sides,
12 notwithstanding you have that connection?

13 JUROR NO. 124: I would be fair, yes.

14 THE COURT: All right. Juror 124? You are Juror 124?

15 JUROR NO. 124: Yes, yes.

16 THE COURT: Thank you. Be seated.

17 Yes, ma'am.

18 JUROR NO. 17: Courtney Briscoe, Juror No. 17. I do
19 not directly know Mr. Norris, but I do attend church with
20 his father, his grandmother and his aunt. And I also go to
21 his brother's gym.

22 THE COURT: All right. Is there anything about those
23 connections that would have any impact upon your decision
24 in this case if you were selected?

25 JUROR NO. 17: Yes.

Jury qualification

1 THE COURT: All right. We'll excuse you from service
2 in the case. But don't leave yet.

3 Next.

4 JUROR NO. 113: Susan Noland, No. 113. And I know
5 Kellen Mayfield and his family.

6 THE COURT: And is there anything about that
7 connection that would have any impact upon your decision?

8 JUROR NO. 113: No, sir.

9 THE COURT: Thank you. Be seated.

10 Yes, ma'am.

11 JUROR NO. 19: I'm Barbara Burdick. I'm Juror No. 19.
12 And I know Kellen Mayfield and his family. And there's not
13 anything about them that would affect my decision.

14 THE COURT: Thank you. You may be seated.

15 Yes, ma'am.

16 JUROR NO. 67: Pamela Harris, Juror 67. And I know
17 Kyle Quinn and his family.

18 THE COURT: And is there anything about that
19 connection that would affect your judgment?

20 JUROR NO. 67: No.

21 THE COURT: Thank you. Be seated.

22 Yes, ma'am.

23 JUROR NO. 135: Nicole Schwendimann, 135. And I know
24 Officer Guest from high school.

25 THE COURT: You know Officer Guest?

Jury qualification

1 JUROR NO. 135: Yes.

2 THE COURT: And is there anything about that that
3 would have any impact upon your decision?

4 JUROR NO. 135: No, sir.

5 THE COURT: Thank you. Be seated.

6 Yes, ma'am.

7 JUROR NO. 143: Catherine Smith, Juror 143. And I
8 taught Zachery Blankenship's little sister in kindergarten
9 a few years ago.

10 THE COURT: And would that have bearing upon your
11 decision?

12 JUROR NO. 143: No, sir.

13 THE COURT: Thank you. You may be seated.

14 Yes, sir.

15 JUROR NO. 31: John Craig, Juror 31. I know
16 Mr. Norris from his days at Spartanburg High School. And I
17 also know the father of Mr. Blankenship, the father of the
18 defendant.

19 THE COURT: Okay. And would either of those
20 connections have any bearing upon your decision in the
21 case?

22 JUROR NO. 31: No, sir.

23 THE COURT: Thank you. You may be seated.

24 Anyone else know any of those persons who have been
25 introduced to you this morning or this afternoon? If so,

Jury qualification

1 please stand.

2 (No response.)

3 THE COURT: Now, this is a case, as I told you, where
4 each of the defendants is charged with having committed the
5 crime of armed robbery. And the event is alleged to have
6 occurred back on July the 16th of 2008. And it is alleged
7 to have occurred at or near the location of the First
8 Baptist Church, and specifically on North Dean Street
9 between Saint John Street and Main Street in a parking lot
10 there.

11 Has any member of the jury panel heard, seen or read
12 anything about the facts or circumstances that might relate
13 to this particular case? Have you received any information
14 about this case from any source? If so, please stand.

15 (No response.)

16 THE COURT: Has any member of the jury panel or any
17 members of your immediate family -- and let's define an
18 immediate family member as a parent, a spouse, a child or a
19 sibling -- a parent, spouse, child or sibling -- have you
20 or any members of your immediate family ever been the
21 victim of or ever been accused of the commission of any
22 type of violent crime?

23 And those crimes would include the crimes of murder,
24 manslaughter, burglary, armed robbery, criminal sexual
25 conduct, criminal domestic violence of a high and

Jury qualification

1 aggravated nature, or any other similar type of an offense.

2 I need to know if any juror, you or an immediate
3 family member, has ever been the victim of such a violent
4 offense of any kind, or you or a family member has ever
5 been accused of having committed such a crime. If so,
6 please stand.

7 All right. Let's get everybody standing. Is
8 everybody standing that needs to respond that question?
9 Anybody not understand the question?

10 Okay. I'll start with you, please ma'am.

11 JUROR NO. 50: Kay Fulton, Juror No. 50. My purse was
12 stolen from my car in my carport two years ago.

13 THE COURT: And would that experience have any impact
14 upon your decision in this case?

15 JUROR/NO. 50: No.

16 THE COURT: Thank you. Be seated.

17 Yes, sir.

18 JUROR NO. 168: Brian Morgan, 168. I was a victim of
19 armed robbery about ten years ago.

20 THE COURT: And would that experience have any bearing
21 upon your decision if you were selected?

22 JUROR NO. 168: No.

23 THE COURT: Thank you. Be seated.

24 Yes, ma'am.

25 JUROR NO. 120: Erica Pauly, Juror 120. I have a

Jury qualification

1 sibling that was convicted of a criminal sexual conduct.

2 THE COURT: Would that have any bearing upon your
3 decision?

4 JUROR NO. 120: No, sir.

5 THE COURT: Thank you. Be seated.

6 Yes, ma'am.

7 JUROR NO. 147: Jean Sprouse, Juror No. 147. And my
8 home was -- my cars were recently, things stolen from it.
9 And then my sister's home was burglarized a few years ago.

10 THE COURT: And would either of those facts have any
11 bearing upon your decision in the case?

12 JUROR NO. 147: No, sir.

13 THE COURT: Thank you. Be seated.

14 Yes, ma'am.

15 JUROR NO. 11: I was recently robbed at my home.

16 THE COURT: You were recently what?

17 JUROR NO. 11: Robbed.

18 THE COURT: Okay. And your name and number, please?

19 JUROR NO. 11: Virginia Blackwell, No. 11.

20 THE COURT: And would that experience have any bearing
21 upon your decision?

22 JUROR NO. 11: I am afraid it would.

23 THE COURT: All right. We'll excuse you from service
24 in the case.

25 Yes, sir.

Jury qualification

1 JUROR NO. 32: Juror No. 32, and I was a victim of
2 assault and battery.

3 THE COURT: And would that have any bearing upon your
4 decision in this case?

5 JUROR NO. 32: No, sir.

6 THE COURT: Thank you. Be seated.

7 Yes, ma'am.

8 JUROR NO. 156: Juror No. 156, April Vaughn. My house
9 was broken into and my cars were vandalized.

10 THE COURT: Your house was broken into and what?

11 JUROR NO. 156: My cars were vandalized.

12 THE COURT: Okay. And would either of those facts
13 have any bearing upon your decision in this case?

14 JUROR NO. 156: No, Your Honor.

15 THE COURT: Thank you. Be seated.

16 Yes, ma'am.

17 JUROR NO. 154: Janice Turner, Juror 154. My house
18 was broken in.

19 THE COURT: And would that have any bearing upon your
20 decision?

21 JUROR NO. 154: Yes, sir.

22 THE COURT: All right. We'll excuse you from service
23 in the case.

24 Yes, sir.

25 JUROR NO. 16: Robert Brewton, Juror No. 16. And my

Jury qualification

1 sister's house was broken into last year.

2 THE COURT: And would that have any bearing upon your
3 decision in this case?

4 JUROR NO. 16: No, sir.

5 THE COURT: Thank you. You may be seated.

6 Anyone else need to respond to that question?

7 (No response.)

8 THE COURT: Is there any member of the jury panel who
9 is connected by blood or by marriage to any person who is
10 now or has ever been employed as a law enforcement officer,
11 as well as whether you have ever been employed as a law
12 enforcement officer?

13 So I need to know if you or some member of your
14 immediate family is now or has ever been employed as a law
15 enforcement officer. And that would be for any type of
16 agency charged with the responsibility of enforcing the
17 laws -- city, towns, county law enforcement agencies or
18 sheriff's departments, correctional facilities, state law
19 enforcement division, the F. B. I., military police
20 officers, any type of law enforcement officer.

21 All right. Let me start over here to my right and
22 work across.

23 JUROR NO. 4: My father was a constable.

24 THE COURT: If you will, give me your name.

25 JUROR NO. 4: Mike Barnett, Juror No. 4.

Jury qualification

1 THE COURT: Four?

2 JUROR NO. 4: Yes, sir.

3 THE COURT: And tell how that question relates to you.

4 JUROR NO. 4: I thought you said anybody in our
5 family.

6 THE COURT: I'm asking that.

7 JUROR NO. 4: My father.

8 THE COURT: I just didn't hear you.

9 JUROR NO. 4: My father was a constable, a state
10 constable.

11 THE COURT: Okay. Thank you. You may be seated.
12 Yes, sir.

13 JUROR NO. 68: Juror 68. My wife is -- my wife's
14 uncle was an officer in Union County.

15 THE COURT: All right. Thank you. Be seated.
16 Yes, ma'am.

17 JUROR NO. 167: I'm Juror 167, Carol McBride. My son
18 is a city policer in the Town of Cowpens.

19 THE COURT: Thank you. Be seated.

20 Anyone else?

21 (No response.)

22 THE COURT: Is there any member of the jury panel who
23 is a member of, or do you otherwise contribute time or
24 money to any organization that might be characterized as a
25 law enforcement support type of organization or victims'

Jury qualification

1 rights or victims' advocacy type of organizations?

2 That would include like Mothers Against Drunk Drivers,
3 Citizens Against Violent Crime, the honorary sheriff's
4 association, the troopers' association, the fraternal order
5 of police, neighborhood watch program or any other type of
6 organization that has as part of its platform to assist law
7 enforcement or victims' rights in any fashion. If so,
8 please stand.

9 All right. I will start over here and work across.

10 JUROR NO. 50: No. 50. I have contributed to Mothers
11 Against Drunk Drivers.

12 THE COURT: All right. Thank you. Be seated.

13 Yes, ma'am.

14 JUROR NO. 13: Juror No. 13.

15 THE COURT: I'm going to go row by row, front to back.

16 Yes, ma'am.

17 JUROR NO. 13: Juror No. 13. I have contributed to
18 the troopers' association before.

19 THE COURT: Thank you. Be seated.

20 Yes, ma'am.

21 JUROR NO. 133: 133. Mothers Against Drunk Drivers
22 and the troopers' association.

23 THE COURT: Thank you.

24 Yes, sir.

25 JUROR NO. 68: No. 68, the state troopers'

Jury qualification

1 association.

2 THE COURT: Yes, ma'am.

3 JUROR NO. 99: Juror 99. The state troopers'
4 association.

5 THE COURT: Yes, ma'am.

6 JUROR NO. 75: Juvenile justice department downstairs,
7 volunteer.

8 THE COURT: And your name and number?

9 JUROR NO. 75: Vickie Henderson, 75.

10 THE COURT: Thank you, ma'am.

11 JUROR NO. 167: Carol McBride, Juror 167. I
12 contributed to the South Carolina Troopers Association.

13 THE COURT: Thank you. Be seated.

14 Yes, sir.

15 JUROR NO. 28: Jon Cochran, No. 28. And I contributed
16 money to the South Carolina Troopers Association.

17 THE COURT: Thank you. Be seated.

18 Yes, ma'am.

19 JUROR NO. 147: Jean Sprouse, No. 147. I contributed
20 to MADD and the state troopers' association.

21 THE COURT: Thank you, ma'am.

22 Next row.

23 JUROR NO. 6: Patricia Bedenbaugh, No. 6. The
24 troopers' association.

25 THE COURT: Next.

Jury qualification

1 JUROR NO. 44: Marcus Edge, Juror No. 44. Mothers
2 Against Drunk Driving.

3 THE COURT: Thank you.

4 Next.

5 JUROR NO. 59: Jan Griffin, No. 59. South Carolina
6 State Troopers Association and MADD.

7 THE COURT: Thank you.

8 Next.

9 JUROR NO. 70: William T. Harvey, No. 70. American
10 Center for Law and Justice and Piedmont Wilderness
11 Institute.

12 THE COURT: All right. Thank you, sir.

13 Anyone else?

14 (No response.)

15 THE COURT: Does any member of the jury panel know any
16 person employed in the 7th Judicial Circuit Solicitor's
17 Office and/or the Spartanburg County or the 7th Judicial
18 Circuit Public Defender's Office? Anyone know anybody
19 employed in the solicitor's office or the public defender's
20 office in this circuit? If so, please stand.

21 Yes, ma'am.

22 JUROR NO. 59: Jan Griffin, Juror No. 59. I'm not
23 certain, but my husband, my exhusband's, wife may be
24 employed here, Joy White.

25 THE COURT: Okay. Would that have any bearing upon

Jury qualification

1 your decision?

2 JUROR NO. 59: No, sir.

3 THE COURT: Thank you. Be seated.

4 Yes, ma'am.

5 JUROR NO. 120: Erica Pauly, Juror 120. I don't know
6 if it's the solicitor's office, but I know Sandy Sutton.

7 THE COURT: Would it have any bearing upon your
8 decision?

9 JUROR NO. 120: No, sir.

10 THE COURT: Thank you. Be seated.

11 Yes, ma'am.

12 JUROR NO. 147: I'm not sure which office. 147, Jean
13 Sprouse. But Edith Kimbrell works somewhere in the
14 judicial system.

15 THE COURT: Okay. Would it matter to you in this
16 case?

17 JUROR NO. 147: No, it would not.

18 THE COURT: Thank you. Be seated.

19 Yes, sir.

20 JUROR NO. 5: Joshua Barone, Juror No. 5. I know Trey
21 Gowdy.

22 THE COURT: And would that have any bearing upon your
23 decision?

24 JUROR NO. 5: No, sir.

25 THE COURT: Thank you. Be seated.

Jury qualification

1 JUROR NO. 31: John Craig, No. 31. I know Solicitor
2 Trey Gowdy and Assistant Solicitor Barry Barnette.

3 THE COURT: And would either of those facts have any
4 bearing upon your decision?

5 JUROR NO. 31: No, sir.

6 THE COURT: Thank you. Be seated.

7 All right. Now, I've told you who the defendants are;
8 I've told you who the alleged victim is; I've told you a
9 little bit about what the event or the incident is about
10 and where it occurred.

11 I've introduced all of the witnesses to you; I've
12 introduced the lawyers to you. And of course you know a
13 little bit about what the case is about and what the
14 allegations are.

15 Does any member of the jury panel know of any reason
16 whatsoever why you believe you could not be fair and
17 impartial if you were selected to participate as a juror in
18 this particular case? If so, please stand.

19 (No response.)

20 THE COURT: Any other questions requested by the
21 state?

22 MR. BARNETTE: None from the state, Your Honor.

23 THE COURT: By defendant Chiles?

24 MR. POOLE: No, sir.

25 THE COURT: By defendant Norris?

Jury qualification

1 MS. JONES: No, sir.

2 THE COURT: All right. We're going to select a jury
3 in just a minute. And your names are going to be called,
4 selected and called, one at a time.

5 You will be asked to come forward. There's a lot of
6 people and equipment, so you'll have to come down the
7 center aisle.

8 I just need for you to take about two steps past where
9 the desks are where the lawyers are seated. Turn and face
10 your fellow jurors.

11 Each side has an opportunity to have you excused from
12 service in the case or to have you seated. If either asks
13 that you be excused, you can simply go back and have a seat
14 with the jury pool. If both agree to have you seated,
15 you'll be having a seat in the jury box to your right and
16 to my left.

17 So please simply come forward when your name is
18 called, and you'll be instructed if you're to be seated for
19 service in the case or excused from service in the case.

20 Let me ask one other question just in case anybody
21 wants to know.

22 Has any member of the panel ever been called to come
23 to court to testify as a witness in the trial of a criminal
24 case, whether it be for the state or for a defendant?
25 Anyone ever been called to testify in a case?

Jury qualification

1 All right. If you will, give me your names and
2 numbers, please.

3 JUROR NO. 26: Nancy Caulder, No. 26. I think it was
4 about two years ago. I testified in a sexual case.

5 THE COURT: Were you called by the state or the
6 defense?

7 JUROR NO. 26: By the defense.

8 THE COURT: Okay. Thank you. Be seated.

9 Yes, ma'am.

10 JUROR NO. 131: Juror 131. I have been called for --
11 by the state. I am a foster parent, so.

12 THE COURT: Called by the state what?

13 JUROR NO. 131: I'm a foster parent.

14 THE COURT: Okay. Thank you. Be seated.

15 Yes, sir.

16 JUROR NO. 47: Juror No. 47. And I have got something
17 by the state to testify against a D. U. I. case.

18 THE COURT: All right. Thank you. Be seated.

19 Yes, ma'am.

20 JUROR NO. 156: Juror No. 156. And I was called by
21 the state to testify for a murder case.

22 THE COURT: Testify by the state in what?

23 JUROR NO. 156: A murder case.

24 THE COURT: Okay. Thank you. Be seated.

25 (Pause.)

Jury qualification

1 THE COURT: This used to be a very simple process
2 until the computer programs were designed to make it
3 complicated.

4 MR. POOLE: May we approach, Your Honor?

5 THE COURT: Yes.

6 (Bench conference held off the record.)

7 (Whereupon, a jury was impanelled.)

8 THE COURT: All right. Those of you who have been
9 selected, I'll ask you to please go with the bailiff to a
10 jury room. And I'll bring you back shortly to begin with
11 the trial of the case.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: Are there any matters that need to be
15 addressed regarding jury selection by the state?

16 MR. BARNETTE: None from the state, Your Honor.

17 THE COURT: By the defendant Chiles?

18 MR. POOLE: No, sir.

19 THE COURT: By defendant Norris?

20 MS. JONES: No, sir, Your Honor.

21 (Whereupon, the remaining members of the jury venire
22 were excused.)

23 (Knife marked State's Exhibit No. 1 for Identification;
24 knife marked State's Exhibit No. 2 for Identification;
25 photographs marked State's Exhibit No. 3 through 9 for

1 Identification.)

2 MS. JONES: Your Honor, could we approach again?

3 THE COURT: Yes.

4 (Bench conference held off the record.)

5 THE COURT: First you need to tell me what we're
6 doing.

7 MS. JONES: Thank you, Your Honor.

8 Your Honor, for the record, at the break, or before
9 the break, Mr. Norris told me his mother wanted to speak to
10 me. And I told him we can't do this while the Court is
11 still in session. I think she just wants to ask you a
12 question, I think is what he said.

13 When I left briefly for that break Your Honor gave me,
14 she stopped me in the hall and said I heard a bailiff --
15 she didn't call him a bailiff -- she said one of the
16 gentlemen in the red coats with white hair standing at the
17 back door as the jury was coming in and they were talking
18 about my son.

19 And I said and on -- on later inquiry I asked her what
20 she said the bailiff said. And she said that the bailiff
21 said that's Carnie Norris, he used to play football at
22 Spartan High, he's been in a lot of trouble, he's back up
23 here now and this time he won't go home, he's going to be
24 going down the road.

25 She also told me that the officer -- the policeman,

Mary Norris (In-camera)
Direct examination by Ms. Jones

1 and she gestured where Mr. Seay was seated at the time --
2 she said I know he heard that. And I said this one, and
3 she said, no, the one who was here before, which by the
4 process of elimination I determined was Officer Bennett.

5 I went and got him. On the way back into the
6 courtroom Officer Bennett tells me he has heard nothing.
7 He is still here. But-and Your Honor just inquired as of
8 one of the bailiffs if they had said anything in the
9 presence of the jury. The bailiff said he had no knowledge
10 of that.

11 I told that to Ms. Norris, and she insists that she
12 heard something being said in the presence of the jurors.

13 THE COURT: All right. Well, you can call her and
14 we'll place her under oath and she can tell us what she
15 heard if she heard something.

16 MS. JONES: Thank you, Your Honor.

17 Mary Norris.

18 MARY NORRIS, having been first
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MS. JONES

21 THE COURT: All right. Ms. Jones.

22 MS. JONES: Thank you, Your Honor.

23 Q Ms. Norris, you are the mother of Carnie Norris, is
24 that correct?

25 A Yes, I am.

Mary Norris (In-camera)
Direct examination by Ms. Jones

1 Q And you obviously have been present here for some time
2 in anticipation of your son's trial, is that correct?

3 A Yes. That's correct.

4 Q How long have you been in this courtroom today?

5 A I've been in the courtroom since about 1:50.

6 Q Okay. And during that time -- and were you present
7 when the jury pool, the larger group, not the group we just
8 picked but the entire group, was brought back into the
9 courtroom in anticipation or preparation for the selection
10 of the jury?

11 A Yes, I was.

12 Q Where were you seated?

13 A I was seated in one of the red chairs there.

14 Q Behind where I'm standing now?

15 A Yes.

16 Q Okay. You told me at the break -- you met me in the
17 hallway as I returned from the break that His Honor gave
18 me. You told me you overheard a court official speaking
19 about your son.

20 A Yes. I did.

21 Q Okay. When did that happen?

22 A When the judge asked the jurors to be brought in, they
23 were present there at the door, everybody that was in the
24 jury pool.

25 First of all, I want to make it clear I'm not here to

Mary Norris (In-camera)
Direct examination by Ms. Jones

1 try to cause trouble. I respect the judge, the court
2 system and everything. I just want things to be done
3 fairly, because I know this is not fair.

4 It was said right in that doorway by one of the
5 bailiffs that that's Carnie Norris, the standout football
6 from Spartanburg High School, he is back in here again and
7 watch, this time he's going down that road. I detest that.

8 Q Well, ma'am, at the point that was said, where were
9 you seated?

10 A I was seated right in the red chair directly behind
11 the lawyer.

12 Q Okay. And where was His Honor?

13 A Pardon me?

14 Q Where was Judge Cole when that happened?

15 A Judge Cole was here. He had come in. And we stood.
16 And he had asked everybody to be seated.

17 Q Okay. And what was happening at the doorway when you
18 heard those comments being made?

19 A The jurors was to be waiting. They were waiting to
20 come in.

21 Q Waiting where?

22 A At the door, right there at that door.

23 Q Okay. And do you recollect who you saw, who you heard
24 or saw say the words you just repeated?

25 A I only know by hair.

Mary Norris (In-camera)
Direct examination by Ms. Jones

1 Q Okay. And describe that person.

2 A It's a white male, an older male, with white hair. I
3 didn't get to see the nameplate.

4 Q Okay. And at the time that comment was made were
5 there jurors coming in through the doorway?

6 A They were all standing. They were waiting to come in.

7 Q Where were they standing?

8 A They were standing in the doorway.

9 Q Okay. Were the doors open?

10 A The doors were open, yes.

11 Q Is that how you knew they were out --

12 A Yes, yes.

13 Q -- in the lobby or the vestibule?

14 A And the voice was very good, very visible.

15 Q I'm sorry?

16 A The voice and speaking, it was very visible. I mean,
17 you could hear.

18 Q I'm sorry. You were seated here. Was there anybody
19 between you and the doors?

20 A No. The jurors had not come in.

21 Q Okay.

22 A They were just standing waiting.

23 Q Okay.

24 MS. JONES: Your Honor, that's all. I'm sorry.

25 Q Did you -- could you tell from the reaction of the

Mary Norris (In-camera)
Direct examination by Ms. Jones

1 jurors nearest the door whether they heard anything?

2 A I'm sure they heard it because they were closer to
3 that door than they were to me.

4 Q And you heard it.

5 A I heard it, yes, I did.

6 Q Do you know which gentleman with the red coat and gray
7 hair it was? Do you see that person?

8 A Two gentlemen were there.

9 Q Well, do you see --

10 A There was the one that was on the left. That would
11 have been to the left.

12 Q But is that individual in the courtroom?

13 A Yes.

14 Q Okay. Who is it?

15 A This one.

16 Q This gentleman. Okay. Thank you.

17 MS. JONES: I have nothing else, Your Honor.

18 THE COURT: All right. Ms. Norris, let me be sure I
19 understand.

20 You're saying -- the gentleman behind you is
21 Mr. Bogan. And you're saying he was standing at the back
22 door when the jury came in?

23 THE WITNESS: Yes. He was there at the doors.

24 THE COURT: And you're saying he made a comment about
25 your son.

Mary Norris (In-camera)

1 THE WITNESS: That was the comment that I heard,
2 Judge.

3 THE COURT: And who do you contend that he was talking
4 to?

5 THE WITNESS: Well, I would assume he was talking to
6 the group.

7 THE COURT: So your position is, or what you observed
8 was he was talking to the jurors?

9 THE WITNESS: Yes.

10 THE COURT: You're saying that he was conveying to the
11 jurors who Mr. Norris was?

12 THE WITNESS: Exactly.

13 THE COURT: All right. As they were coming in the
14 door?

15 THE WITNESS: Yes, sir.

16 THE COURT: And you say you were seated in a chair
17 right behind Ms. Jones, where she's seated now?

18 THE WITNESS: Yes.

19 THE COURT: And Ms. Jones was seated where she is.

20 THE WITNESS: Yes.

21 THE COURT: And Mr. Poole was seated where he is.

22 THE WITNESS: Yes.

23 THE COURT: Your son was seated where he is.

24 THE WITNESS: Yes. They were busy doing notes back
25 and forth. And I tried to get her attention.

Mary Norris (In-camera)

1 THE COURT: And Mr. Chiles was seated where he is.

2 THE WITNESS: Yes.

3 THE COURT: And I was seated where I am.

4 THE WITNESS: Yes, sir.

5 THE COURT: And Mr. Barnette was seated where he is.

6 THE WITNESS: Yes, sir. They were standing.

7 THE COURT: Okay.

8 MS. JONES: Your Honor, may I clarify?

9 BY MS. JONES

10 Q Was there only one gentleman with the red jacket on
11 standing when that happened?

12 A There were two -- there were two.

13 Q Okay. That's that I thought you said to me.

14 A It was two.

15 THE COURT: Do you recognize the other one?

16 THE WITNESS: No, sir.

17 THE COURT: And it wasn't the one that's seated at the
18 back door now?

19 THE WITNESS: No, sir. I didn't see him.

20 THE COURT: You didn't see him.

21 THE WITNESS: No, sir.

22 THE COURT: But you saw another bailiff?

23 THE WITNESS: But I know there's two red coats.

24 THE COURT: You're saying there was another bailiff
25 back there beside Mr. Bogan?

Mary Norris (In-camera)
Cross-examination by Mr. Barnette

1 THE WITNESS: Yes, sir.

2 THE COURT: Okay. Mr. Barnette, do you want to ask
3 her anything?

4 CROSS-EXAMINATION

5 BY MR. BARNETTE

6 Q Ma'am, you said if I understood it right, in an
7 audible voice distinctly heard by you?

8 A Yes.

9 Q And if I understand right, you're at least -- he was
10 standing back here when he was talking?

11 A Yes.

12 Q Do you realize that I was closer to him than you were?

13 A You were busy.

14 Q No, ma'am. When a jury is coming in I'm watching the
15 jurors.

16 A I did not say coming in. I said they were standing.
17 They had not been told to come in.

18 Q But you said in a voice that was easily heard by you
19 where you were sitting at.

20 A Yes, I did.

21 THE COURT: Anything else?

22 MS. JONES: No, sir.

23 THE COURT: Okay. You can step down.

24 All right. Ms. Jones, do you want to call anybody
25 else?

Bailiff Bogan (In-camera)

1 MS. JONES: No, sir, Your Honor.

2 THE COURT: All right. Mr. Bogan, let me ask you to
3 take the witness stand, please.

4 BAILIFF BOGAN, having been
5 first duly sworn, testified as follows:

6 THE COURT: Were you one of the bailiffs at the back
7 door when the jury panel was brought in?

8 THE WITNESS: No, sir. I brought you in and stopped
9 here.

10 THE COURT: And do you know who was at the back door,
11 which bailiffs were working the back door?

12 THE WITNESS: I think Mr. Hawkins was here at the
13 front to seat the jury.

14 As to who brought the jury over, Mr. O'Shields and
15 Mr. Mack were working with them earlier. I'm not sure who
16 brought them over.

17 THE COURT: But your position in the courtroom was at
18 this back door.

19 THE WITNESS: Yes..

20 THE COURT: The door next to the witness box.

21 THE WITNESS: Yes, sir.

22 THE COURT: And did you ever have a conversation with
23 any juror about the nature of this case or what the case
24 was about or who the defendants were?

25 THE WITNESS: No, sir.

1 THE COURT: Do you want to ask him any questions?

2 MS. JONES: No, sir.

3 MR. BARNETTE: No, sir.

4 THE COURT: Okay. Thank you. Step down.

5 All right. Ms. Jones, do you have any other bailiff
6 or other person that you'd like for the Court to call to
7 inquire?

8 MS. JONES: Not as a bailiff, but I don't know if Your
9 Honor wants to inquire when the panel is brought in if
10 there has been -- I don't know how to ask.

11 THE COURT: Well, I'd be happy to ask them. But you
12 were sitting there right next to Ms. Norris. Did you hear
13 such a conversation?

14 MS. JONES: No, sir, Your Honor.

15 THE COURT: Mr. Poole, did you hear such a
16 conversation?

17 MR. POOLE: No, sir.

18 THE COURT: Mr. Chiles, did you hear such a
19 conversation?

20 DEFENDANT CHILES: No, sir.

21 THE COURT: Mr. Norris, did you hear such a
22 conversation?

23 DEFENDANT NORRIS: Sir, my mother, she got my
24 attention and she did like that -- I'm sorry.

25 THE COURT: Well, did you hear such a conversation?

1 DEFENDANT NORRIS: No. I couldn't talk because you
2 was talking at the time.

3 THE COURT: Right. Okay. I was talking. So you
4 didn't hear any conversation like that.

5 DEFENDANT NORRIS: No, I didn't. I didn't have a
6 chance to.

7 THE COURT: Okay. Well, did you notice what bailiff
8 was at the back door?

9 DEFENDANT NORRIS: No, sir. I didn't pay attention to
10 her. When she, when she made the sign language, she
11 pointed to, did like that, pointed to the back. So, I
12 mean, that's why I kept asking her, you know, could my
13 mother say something to her.

14 THE COURT: Okay.

15 DEFENDANT NORRIS: Because my mother, she worked at
16 the Deaf and Blind School, and that's what she do, sign
17 language at.

18 THE COURT: They were doing sign language?

19 DEFENDANT NORRIS: No. My mother. And that's, that's
20 what she was telling me, that somebody was back there
21 talking.

22 THE COURT: Okay. Mr. Hawkins, were you at the back
23 door? And did you usher the jury in?

24 BAILIFF HAWKINS: Yes, I did.

25 THE COURT: Let me ask you to come around, please.

Bailiff Hawkins (In-camera)

1 BAILIFF HAWKINS: I didn't usher the jury in. I
2 walked to the front so I could see them.

3 THE COURT: Who brought them into the courtroom?

4 BAILIFF HAWKINS: Mr. Scruggs and Mr. Seay was at the
5 back door, and I forgot who brought them down the aisle.
6 But I stood in the middle of the floor right there until
7 they rounded the corner. And then I walked in.

8 THE COURT: Okay. If you will, stand up there and
9 take the witness stand.

10 BAILIFF HAWKINS, having been
11 first duly sworn, testified as follows:

12 THE COURT: And you are Mr. Hawkins. You're the
13 bailiff. You were at the back door when the jury came in.

14 THE WITNESS: No. I was up front when they came in.
15 I was at the back door when they turned the corner down
16 here to come in here.

17 THE COURT: That's what I'm saying. You preceded them
18 in the courtroom.

19 THE WITNESS: As soon as I seen them I moved to the
20 front. And then they come in right behind me.

21 THE COURT: Okay. And did you have any conversation
22 about Mr. Norris or anything else that relates to this case
23 with any person?

24 THE WITNESS: I did not.

25 THE COURT: Did you hear any such conversation?

Bailiff Hawkins (In-camera)
Cross-examination by Ms. Jones

1 THE WITNESS: I did not.

2 THE COURT: By any other person, bailiff or otherwise?

3 THE WITNESS: No, I didn't.

4 THE COURT: All right. Ms. Jones, do you want to ask
5 him anything?

6 MS. JONES: Your Honor, I am confused, I think, about
7 who, who Mr. Hawkins actually said was in the back door as
8 they were being assembled.

9 THE COURT: Well, ask him.

10 CROSS-EXAMINATION

11 BY MS. JONES

12 Q Who were the bailiffs that were at the back door as
13 they were waiting to come into the courtroom? We've
14 established it wasn't you, because you moved up. But who
15 was standing there?

16 A Mr. Seay was there and Mr. Gantt Scruggs was there. I
17 forget who brought them all the way from the jury assembly
18 room. He led them down here. O'Shields. Mr. O'Shields is
19 the one that brought them down the hall and into the back
20 door.

21 Q Okay.

22 A The back door. They came to me up front. And I don't
23 remember them hesitating before they come in, but I was
24 already up here when they came in, come through the door.

25 Q Thank you, Mr. Hawkins.

1 THE COURT: Okay. Thank you. Step down.

2 Anything else?

3 MS. JONES: Your Honor, I hate to belabor the point,
4 but just for the clarity of the record, could we ask for
5 the gentlemen who actually brought them into the courtroom?

6 THE COURT: Well, if you'd like to find them and bring
7 them around.

8 But, now, as I understood it, Ms. Norris was emphatic
9 and certain that it was Mr. Bogan. And of course, as you
10 know, Mr. Bogan was not at the back door. He's been here.
11 But she said it was him. So I don't know -- I don't know
12 how to get around that.

13 MS. JONES: Well, she also said there was a second
14 person that she could not identify. She's been very clear
15 in her direct --

16 THE COURT: Well, let's see if we can find whoever is
17 in the courthouse -- Mr. Scruggs, Mr. O'Shields, anybody
18 else wearing a red coat with white hair.

19 The record can also reflect I didn't hear any such
20 conversation either.

21 MR. BARNETTE: Your Honor, for the record, I think --
22 I did not hear any conversation like that. And I've got
23 several witnesses on this side that said they never heard
24 anything and didn't see anything.

25 (Pause.)

Gantt Scruggs (In-camera)

1 THE BAILIFF: Your Honor, Mr. Scruggs and Mr. Seay are
2 the only two still here.

3 THE COURT: Okay, well, let me first ask.

4 Mr. Scruggs, did you -- did you participate in
5 bringing the jury panel around to the courtroom at the
6 beginning of this trial?

7 BAILIFF SCRUGGS: Yes, sir, I did.

8 THE COURT: And were you at the back door as the jury
9 was coming in?

10 BAILIFF SCRUGGS: Yes, sir, I was.

11 THE COURT: All right. If you will, let me ask you to
12 take the witness stand. I want to ask you a couple of
13 questions.

14 GANTT SCRUGGS, having been
15 first duly sworn, testified as follows:

16 THE COURT: There has been an allegation made that a
17 bailiff standing in the back door prior to the jury being
18 brought into the courtroom was having a conversation with
19 another bailiff regarding this particular case, and
20 specifically Carnie Norris.

21 Did you have such a conversation regarding Mr. Norris
22 with any other bailiff or any other person?

23 THE WITNESS: No, sir, I did not.

24 THE COURT: Did you hear any other bailiff or any
25 other person having such a conversation about Mr. Norris --

Bailiff Seay (In-camera)

1 THE WITNESS: No, sir, I didn't.

2 THE COURT: -- as the jury was brought in?

3 THE WITNESS: No, sir, I did not.

4 THE COURT: Okay. Ms. Jones, do you want to ask him
5 anything?

6 MS. JONES: No, sir.

7 THE COURT: Thank you. Step down.

8 Mr. Seay, let me ask you.

9 Did you participate in bringing the jury around?

10 BAILIFF SEAY: No, sir, but I was out there when they
11 got here.

12 THE COURT: You were out in the hall.

13 BAILIFF SEAY: Yes, sir.

14 THE COURT: Okay. If you will, please, take the
15 witness stand.

16 BAILIFF SEAY, having been
17 first duly sworn, testified as follows:

18 THE COURT: What I want to find out is there has been
19 an allegation that a bailiff was having a conversation
20 about Mr. Norris as the jury was coming into the courtroom,
21 and prior too as they stood outside the courtroom before
22 they were ushered in.

23 Did you have such a conversation with any bailiff or
24 any other person regarding Mr. Norris?

25 THE WITNESS: Not that I -- no, sir.

Bailiff Seay (In-camera)

1 THE COURT: Did you hear any other bailiff or any
2 other person discussing Mr. Norris either in the lobby, in
3 the hallway or in the courtroom?

4 THE WITNESS: No.

5 THE COURT: All right. Ms. Jones, do you want to ask
6 him anything?

7 MS. JONES: No, sir.

8 THE COURT: All right. Thank you. Step down.
9 Were there any other bailiffs involved in ushering the
10 jury around?

11 BAILIFF SCRUGGS: Dexter O'Shields, but he's gone for
12 the day, Your Honor.

13 THE COURT: Okay. Well, when Mr. O'Shields gets back
14 we'll ask him too.

15 BAILIFF SCRUGGS: And Mr. Hebert Mack may have been
16 out there, but he's gone.

17 THE COURT: Well, this was a white. Thank you.

18 BAILIFF SCRUGGS: Yes, sir. It would be Dexter.

19 THE COURT: Okay. Thank you.

20 Any other matters we need to address before the jury
21 is brought in?

22 MR. BARNETTE: None from the state, Your Honor.

23 MR. POOLE: None from defendant Chiles.

24 MS. JONES: Your Honor, only if Your Honor would
25 inquire -- well, I withdraw that.

1 Any comment that Ms. Norris alleges was made prior to
2 Your Honor qualifying them and asking them questions on
3 what they knew of the case, anyway so I will not ask for
4 any --

5 THE COURT: Well, I'm going to ask them if they heard
6 any conversation about this case from any source.

7 All right. Bring the jury in. And ask Ms. Duncan,
8 Juror No. 43, Ms. Duncan, to take the foreperson's seat.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: All right. Ladies and gentlemen, we are
12 ready to begin with the trial of the case for which each of
13 you were selected.

14 And before we do that I've got one other question I
15 need to ask you. As you can imagine, during the course of
16 a week when you're having court there are a lot of people
17 involved in trials.

18 There are a lot of people who are down at the
19 courthouse as spectators. There are a lot of people who
20 have been subpoenaed to appear as witnesses. There's also
21 court personnel, including bailiffs and clerk of court
22 personnel, people from my office, lawyers involved in cases
23 and lawyers not involved in cases.

24 And sometimes they're having discussions about cases,
25 whether they might come up this week or come up some other

1 week. But they're having discussions about cases.

2 And I simply need to find out whether or not any juror
3 who has been selected for service in this case at any time
4 prior to your selection or after your selection or as you
5 were being ushered into the courtroom for potential
6 selection have overheard any conversation, any discussion
7 by any person whatsoever about any fact that relates to
8 this case, including who the defendants are, who the
9 alleged victim is, who the lawyers are, who the witnesses
10 are or anything about the case.

11 I need to know if any juror has overheard or been
12 exposed to any discussion or conversation about anything
13 that relates to this particular case.

14 If you have, I'd ask that you please indicate so by
15 raising your right hand.

16 (No response.)

17 THE COURT: All right. All jurors have responded
18 negatively to that question.

19 So we are now ready to proceed with the trial of the
20 case for which you were selected.

21 And, Ms. Duncan, I'm going to ask you to serve as the
22 foreperson of this jury. And as the foreperson you're
23 going to have three specific duties that none of the other
24 jurors will have.

25 Number one, you'll be asked to serve as the

1 spokesperson for the jury. And so if during the trial
2 something arises that needs to be brought to my attention,
3 that is you or some fellow juror has any difficulty or
4 problem or question, if you'll let the bailiff know, he'll
5 let me know, and I'll address those questions or address
6 those issues.

7 Secondly, you'll also be called upon to preside over
8 the jury deliberations when the time comes. And that of
9 course will not be until the end of the trial after all of
10 the evidence has been received and I have instructed you on
11 the law that's applicable in the case.

12 But when the time does come for jury deliberations
13 you're going to be called upon to preside over that process
14 in the jury room to ensure that those deliberations are
15 carried out in some orderly fashion.

16 And, thirdly, you'll be asked to actually write the
17 verdict or the decisions of the jury. And you'll do that
18 on a verdict form that I'll provide you prior to you going
19 back to begin deliberations on which you will indicate the
20 jury's unanimous decision.

21 Now, the foreperson has those specific duties that
22 I've just indicated. That does not however mean that she
23 is any more important than any of you other jurors, because
24 the decision of a jury is the unanimous consensus opinion
25 of all 12 jurors. And so each of you will have an equal

1 say and an equal vote in what the ultimate decisions will
2 be in this case.

3 Someone simply has to be delegated those
4 responsibilities that I have indicated, and I have
5 delegated those to Ms. Duncan in appointing her as the
6 foreperson. But each of you jurors are equally important
7 so far as the ultimate decisions in this case are
8 concerned, because, as I've stated, the verdicts have to be
9 unanimous. All 12 of you must be in agreement.

10 Now, Mr. Allen, you've been selected as an alternate
11 juror. And the function of an alternate is to take the
12 place of one of the original 12 jurors if during the trial
13 one of these original 12 cannot continue to serve for some
14 reason.

15 If one is called away because of an emergency or an
16 illness and they can't continue, then you would be called
17 upon to take that person's place. In that event you would
18 become the 12th juror. And in that event you would
19 participate throughout the trial, including in the jury
20 deliberations at the trial's conclusion.

21 If however when the time comes for jury deliberations
22 the original 12 are able to participate in that process,
23 then your service would end and you would not participate
24 any further, because the decision of a jury is that of 12.
25 But no more than 12 can participate in that process.

Jury sworn

1 But it is important that you pay just as careful
2 attention as we ask of all of the jurors in the case,
3 because it does occur from time to time for one reason or
4 another one of these original 12 may be called away.

5 In that event you would be called upon to become the
6 12th. So we do appreciate your participation as an
7 alternate, just as we appreciate the participation of each
8 of you who have been selected for the purpose of deciding
9 the verdicts in this particular case.

10 You may swear the panel.

11 (Whereupon, the jury was duly sworn.)

12 THE COURT: All right. Ladies and gentlemen, as you
13 know, this is a criminal case.

14 Each of the defendants in this case have been charged
15 with the crime of armed robbery. Those charges are set
16 forth in a document called an indictment, which is the
17 document that I referred to prior to your selection to
18 inform you as to what the charges are and what the
19 allegations are.

20 In this case, as you know, each of the defendants,
21 Kenneth Wayne Chiles and Carnie Norris, III, have been
22 accused of the crime of armed robbery.

23 The state alleges that that occurred on or July the
24 16th of 2008. And they allege that on that date they did
25 while armed with a deadly weapon take, steal and carry away

1 personal property that belonged to Andrew Foster Bond, and
2 took that property and intended to deprive the owner of use
3 and possession of his property.

4 Now, as to those allegations and as to those charges
5 each defendant has entered a plea of not guilty. And, as I
6 told you, that plea of not guilty therefore places upon the
7 state the burden of proving the allegations that are set
8 forth in the indictment, the burden of proving each of the
9 essential elements that makes up the crime of armed
10 robbery; and therefore the burden is upon the state to
11 establish each defendant's guilt to the satisfaction of you
12 12 jurors beyond a reasonable doubt before any verdict of
13 guilty could be returned as to that particular indictment
14 and that particular defendant.

15 The indictments themselves are not evidence of
16 anything. They're not proof of anything. They're simply
17 the means by which a person is brought into this court and
18 formally accused of a crime.

19 And of course the document serves to put them on
20 notice as to what crime the state claims they have
21 committed. But other than serving as a notice document to
22 the defendant and also serving as the verdict form, the
23 indictments serve no purpose so far as you jurors are
24 concerned. As I say, they are not evidence of anything
25 upon which you will base your decision.

1 Now, each defendant has entered a plea of not guilty,
2 and therefore the burden is on the state to establish their
3 guilt beyond a reasonable doubt. And, in fact, every
4 person who is accused of a crime is always presumed to be
5 innocent of any charge brought against them.

6 That presumption of innocence remains with any
7 defendant, as it does with each of these defendants, from
8 the time that they are placed under arrest and throughout
9 the course of the criminal process and even throughout the
10 course of the actual trial.

11 That presumption of innocence will be with each of
12 these defendants throughout this trial. And it'll be them
13 even as you go back to begin with your deliberations in
14 this case at the trial's conclusion.

15 That presumption of innocence will be with them in
16 that jury room, and it'll be with them forever unless you
17 12 jurors determine that they are no longer entitled to
18 that presumption of innocence.

19 That is after you've carefully considered all the
20 evidence in the case, and from that evidence you've decided
21 the facts, and upon deciding the facts you apply the law,
22 you determine that a defendant's guilt has been proven
23 beyond a reasonable doubt, then that defendant would no
24 longer be entitled to that presumption of innocence.

25 But it's only if, unless and until you are satisfied

1 of a defendant's guilt beyond a reasonable doubt that the
2 presumption of innocence would no longer be applicable.

3 Now, the way the trial will proceed is that in a
4 moment each of the lawyers will have an opportunity to
5 address you in what are called opening statements.

6 There are two occasions in the trial of a case where
7 lawyers are permitted to address the jury. And that is at
8 the beginning of the trial before any evidence has been
9 introduced and then again at the conclusion of the trial
10 after all of the evidence has been received.

11 Keep in mind however that the lawyers' statements are
12 not evidence. The lawyers are not witnesses to anything.
13 They're not going to be telling you anything about this
14 case that they know of their own personal knowledge or
15 experience like witnesses will be.

16 They're not going to take the witness stand; they're
17 not going to testify under oath. They will be not
18 subjected to direct and cross-examination as witnesses will
19 be. And therefore what they tell you is not to be
20 considered by you as any evidence upon which you will base
21 your decision. But it is important that you listen to what
22 they have to say, because their statements do serve a
23 purpose.

24 The opening statements will serve to provide you with
25 a basic understanding as to what this case is about so that

1 you'll have some context in which to place the evidence
2 that we will be receiving shortly thereafter.

3 The closing statements occur after all of the evidence
4 has been received. And, again, while those statements are
5 not evidence, it allows the lawyers an opportunity to
6 discuss with you the evidence that you have seen and heard
7 during the trial. And through that discussion each will
8 have an opportunity to try to persuade you or to convince
9 you that that evidence does or does not support a
10 particular decision.

11 It's in between those statements that we actually
12 receive the evidence upon which you will base your
13 decision. The state has the burden of proof, as you've
14 been told. So they will go forward first in their
15 presentation of evidence.

16 After they've concluded each defendant has the same
17 opportunity to present evidence by way of testimony and
18 otherwise. But a defendant in a criminal trial is under no
19 obligation to testify or present evidence, because the
20 burden is never upon a defendant to prove anything. A
21 defendant does not have to prove that he or she is not
22 guilty because sometimes that might not even be possible.

23 The burden is always upon the state to establish a
24 defendant's guilt beyond a reasonable doubt. But a
25 defendant is afforded an opportunity to testify or to

1 present evidence should a defendant wish to do so.

2 But if a defendant does not testify or does not
3 present evidence, that's not something that a jury can
4 consider in any way whatsoever during your deliberations or
5 in your determination as to whether or not their guilt has
6 been proven beyond a reasonable doubt.

7 Now, after all of the evidence has been received and
8 you hear the final summations of the lawyers -- you are
9 going to have to put that down.

10 (Comments were directed to the clerk of court.)

11 THE COURT: I will then instruct you on the law that's
12 applicable in the case. And then you'll be asked to go
13 back and begin with your deliberations. And through that
14 process you'll carefully examine all of the evidence. From
15 that evidence you'll determine what you believe to be the
16 true facts.

17 Upon deciding those facts you'll apply the law that I
18 will have provided you, and you will determine whether or
19 not a defendant's guilt has been proven beyond a reasonable
20 doubt. And if it has, then your verdict would be guilty.
21 If it has not, your verdict would be not guilty.

22 So all we're going to ask for you to do is to pay
23 careful attention throughout the course of the trial. Do
24 not begin making up your minds or formulating your opinions
25 as to what any ultimate decision ought to be until all of

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1 the evidence has been received, until I have instructed you
2 on the law and until you've been asked to begin with your
3 deliberations. That is the process that is designed for
4 you 12 jurors to arrive at a fair and just decision.

5 So please give the lawyers your attention now as they
6 give you their opening statements.

7 MR. BARNETTE: May it please the Court, Your Honor.

8 THE COURT: Yes, sir.

9 MR. BARNETTE: Madam Forelady, ladies and gentlemen of
10 the jury, as Judge Cole introduced me, I'm Barry Barnette.
11 I'm a deputy solicitor here. I'll be the one presenting
12 the case to you, along with the witnesses.

13 The victim in this case is Andrew, or commonly, he's
14 known as Drew Bond.

15 Him and several friends was playing what we call
16 Frisbee golf. And you may have seen it in different parks,
17 around Barnett Park, different parks where they throw the
18 different objects trying to score a point like you just, in
19 golf where you try to hit it in so many throws and things
20 like that.

21 But they was in the First Baptist parking. You know
22 where Barnett Park is. You've got First Baptist there.
23 You've got several buildings, and you've got what we call
24 Dean Street, right off Dean Street.

25 They were picking several objects on the evening of

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1 July the 16th of 2008. As they was throwing it, working
2 with it, the Frisbee went up on top of one of the
3 buildings.

4 Well, a friend of his, Zack Blankenship, went up a
5 tree to get the Frisbee from the roof. During that time
6 Drew and two of his other friends was down there waiting on
7 the Frisbee to be thrown back down.

8 As Drew was waiting, they threw the Frisbee down. The
9 defendant, Carnie Norris, comes from across the street,
10 throws Drew down and tells him, basically, I want your
11 wallet.

12 He takes a knife out, indicates he's some kind of
13 security guard. He puts the knife to Drew's throat. Drew
14 asked him, said if you're a security guard, where is your
15 badge, where's your identification. He doesn't have
16 anything. He says I want your wallet.

17 Meanwhile, Mr. Chiles comes around behind him and
18 starts coming towards him. At that time you hear from Hub
19 Blankenship and Daniel Mayfield they went to try to help
20 Drew.

21 Mr. Norris takes a knife and points it at them and
22 tells them to get down on the ground too. Well, they're
23 able to run. And they see Mr. Chiles coming behind them.

24 They run. Zack Blankenship and some other fellows up
25 there with them run. They go to see a security guard at

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1 First Baptist and find out there's no other security guard
2 out there. They call 9-1-1, call law enforcement.

3 While Drew Bond is there by himself they go through
4 his wallet. Mr. Norris goes through the wallet first. Mr.
5 Chiles go through the wallet. They take his credit cards.
6 They take items out like identification cards where they
7 play golf. Had the credit card. You'll see the different
8 cards and pictures of them that they took.

9 Meanwhile, law enforcement's coming. You'll hear from
10 Officer James. Officer James comes to the location. When
11 he comes to that location he finds Mr. Norris over the top
12 of the victim in this case. Drew is there on the ground.

13 When he comes walking up both men go back across the
14 street and get on the porch. All the kids come back to the
15 scene and say there's the men right over there.

16 They go over and talk to them. They find out they
17 have -- when they talk to them, they go ahead and search
18 them. He consents to search.

19 They find a knife that was identified as Drew Bond's,
20 the knife that was used, on Mr. Norris. They also find the
21 credit cards on Mr. Chiles.

22 This is plain and simple, ladies and gentlemen. This
23 is an armed robbery, a crime of opportunity. They saw an
24 opportunity.

25 They saw some young kids out on the evening of

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1 July 18th. It was around 11 o'clock that night. They'd
2 been out there quite a long time still playing. They saw
3 an opportunity to take it, and they did take it, and they
4 tried to rob him, and they did rob him. And that's what
5 the case is going to be about.

6 Like I said, I'm going to give you preview or idea of
7 what the case is about. Armed robbery is simply that if
8 use a weapon or representation of a weapon. In this case
9 there's a knife. Use force. When you take those items
10 from somebody, that's armed robbery, ladies and gentlemen.
11 They took his credit cards. He had \$6 in his wallet. They
12 had them on them.

13 You'll be hearing from the witnesses. We'll be
14 calling them. You'll be hearing from two officers. You'll
15 be hearing from the three, the three guys that was there
16 telling you what they saw.

17 And we'll be coming back to you after the case is
18 presented and I'll be asking you a very simple question.
19 This is armed robbery. And I ask you as your duties as
20 jurors to find them guilty on both counts of armed robbery,
21 because that's what this is, ladies and gentlemen. Thank
22 y'all very much.

23 THE COURT: Mr. Poole.

24 MR. POOLE: May it please the Court.

25 THE COURT: Yes, sir.

Opening statements

1 MR. POOLE: Good afternoon, ladies and gentlemen.

2 Judge Cole told you that as lawyers we -- obviously,
3 we're not witnesses. We don't know what happened. We
4 weren't there. But we do have to do what we have to do
5 because it's our job.

6 I represent Mr. Kenneth Chiles. My name is Roger
7 Poole. And my colleague, Beverly Jones, represents Carnie
8 Norris.

9 Now, my job is to get a point of view across to you
10 the best way that I can of what was going through
11 Mr. Chiles' mind, what was he aware of, and what was he
12 doing that night.

13 Mr. Chiles lives at 182 North Dean Street. The
14 incident location is 174 North Dean Street. Now, Judge
15 Cole has hold you that Dean Street connects Saint John with
16 Main Street. And I'm sure most of you are probably aware
17 of the area.

18 If you know where, you know, the St. Lukes Medical
19 Center is, well, it's right in that area right there.
20 There's some parking lots. There are some trees. There
21 are some houses. Some of the property belongs to First
22 Baptist Church.

23 And this occurred around 11:00 or 12:00 o'clock at
24 night. It was at night. And on behalf of Mr. Chiles I
25 will -- my job is to show that he lives at 182 North Dean

Opening statements

1 Street and that he was -- he lived there. And he was at
2 that location where the incident allegedly occurred.

3 But the evidence will show from his point of view that
4 he did not know that an alleged crime was going on. He was
5 merely present. He was around but not actively engaged in
6 what the state contends happened.

7 And I want to, to the best of my ability, present that
8 case and that point of view with the supporting facts to
9 the best degree that I can.

10 I just ask that you keep an open mind. There is
11 nothing wrong with young men playing Frisbee anywhere where
12 you can have fun any time of day and night as far as I know
13 on public property or where this occurred.

14 But from Mr. Chiles' point of view he did not
15 participate in, because he was not aware of, a crime. We
16 intend to show that, although he is not obligated to take
17 the witness stand or present any evidence whatsoever,
18 because the burden is on the state to prove their case
19 beyond a reasonable doubt. You've heard all about that.

20 But just keep an open mind throughout this entire
21 case. I know you will, because when you are picked, you
22 saw us talk. And we were saying good things about you, and
23 that's why you're here. You're the best qualified jury
24 that we could pick out of all of the people that filled
25 this courtroom up.

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1 We know that you'll do the right thing, just ask that
2 you let -- listen to my side that I will present on behalf
3 of Mr. Chiles, and return a verdict at the end of this case
4 of not guilty, because I believe that what you will hear
5 and what you will see will convince you that Mr. Chiles is
6 not guilty of armed robbery. Thank you.

7 THE COURT: Ms. Jones.

8 MS. JONES: Thank you, Your Honor.

9 Madam Forelady and ladies and gentlemen of the jury, I
10 am Beverly Jones. I'm a public defender. And it is my
11 honor to represent Carnie Norris.

12 Mr. Norris is 47 years old. He is a lifelong resident
13 of Spartanburg County. His mother, Mary Norris, is seated
14 behind him in the pews, the spectator pews.

15 And, ladies and gentlemen, this is today, tomorrow and
16 perhaps Wednesday, these are the most important days in
17 Carnie Norris' life.

18 You, as Mr. Poole reminded you, you were brought here
19 in a very orderly methodical fashion. Mr. Norris seated
20 next to me, as did Mr. Chiles next to Mr. Poole,
21 participated in your selection. Mr. Norris, as I am sure
22 Mr. Chiles, has faith in you. He trusts you. He
23 participated in the selection of you as jurors.

24 Now, ladies and gentlemen, today is July 6th. Two
25 days ago we celebrated as a nation Independence Day. You

Opening statements

1 may have shot fireworks or watched somebody else do it.

2 You may have had barbecue, hash, hot dogs, whatever your
3 family or your friends celebrated, and you enjoyed it.

4 You may have watched some of the festivities on T. V.
5 as the nation celebrated a milestone, another year of
6 independence.

7 You sit there, and you say why are we talking about
8 July 4th when I'm in a jury, on a jury in a courtroom where
9 I've been made to come to court.

10 You, ladies and gentlemen, are the most important
11 people -- no offense to the Court and all the court
12 officials -- in this room. You as a juror are what we
13 celebrated two days ago, this process.

14 This is one -- this entire criminal justice system is
15 part of the framework that we celebrate as a nation and our
16 independence and our rights in this country.

17 You as a jury collectively are one of the reasons why
18 there are countries in the world that despise this nation
19 and attacks us because of it. Those are the very rights
20 and liberties that you were called upon by the oath that
21 you have now taken from Judge Cole to abide by.

22 Mr. Norris trusts you on this most important day of
23 his life. Mr. Norris, as does Mr. Chiles, remain cloaked
24 in innocence until, and only if, Mr. Barnette and his
25 witnesses remove all doubt from your mind.

Andrew Foster Bond
Direct examination by Mr. Barnette

1 You must like Mr. Poole --

2 MR. BARNETTE: Your Honor, I'm going to object to that
3 statement of law right there.

4 THE COURT: Beyond a reasonable doubt.

5 MS. JONES: Yes, sir.

6 Beyond a reasonable doubt. It is Mr. Barnette's
7 person as the state with his witnesses to erase doubt and
8 prove what has happened.

9 Mr. Norris, as does Mr. Chiles, has nothing to prove
10 to you. As Mr. Poole implored, I will also ask you to keep
11 an open mind. All of these individuals were out at night,
12 midnight.

13 As you begin to hear from the witnesses, not the
14 summary of the prosecutor, what he hopes to prove, as you
15 begin to hear the evidence or what they can prove, please
16 remember your oath. Please remember this is Mr. Norris'
17 most important day in his life and he trusts you. Thank
18 you.

19 THE COURT: Mr. Barnette.

20 MR. BARNETTE: Your Honor, I'd like to call Andrew
21 Bond to the stand, please.

22 ANDREW FOSTER BOND, having
23 been first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. BARNETTE

25 Q Mr. Bond, if you would, make sure you keep your voice

Andrew Foster Bond
Direct examination by Mr. Barnette

- 1 up if you can. And look at the jury and make sure they can
2 hear you too.
- 3 Okay. If you would, give me your full name, please.
- 4 A Andrew Foster Bond.
- 5 Q And, Mr. Bond, what city do you live in, sir?
- 6 A I live in Spartanburg.
- 7 Q And what -- how old was you back on July 16th of 2008?
- 8 A I was 17 years old.
- 9 Q And what grade was you in then, sir?
- 10 A I was a rising senior.
- 11 Q Back on July 16th of 2008, what was you doing that
12 evening, sir?
- 13 A That evening we decided to go out and play some
14 Frisbee golf.
- 15 Q And who went with you, sir?
- 16 A Zack Blankenship, Hub Blankenship, Kellen Mayfield,
17 Joseph Holder, and Kyle Quinn, and two other females.
- 18 Q And had y'all played out there before?
- 19 A Yes, sir, we had.
- 20 Q And had people at First Baptist known that y'all
21 played out there before?
- 22 A Yes, sir. We let the security guard know that we were
23 playing.
- 24 Q During that time -- can you tell a little about
25 fris -- I know some people on the jury may know what

Andrew Foster Bond
Direct examination by Mr. Barnette

1 Frisbee golf is. Can you tell them a little bit about how
2 the game is played and everything?

3 A Yes, sir. It's just like regular golf. You have
4 strokes. You count your strokes as how long it takes you
5 to get to the designated hole.

6 Q And as y'all was playing that evening, what happened
7 to the Frisbee?

8 A Hub Blankenship accidentally threw his Frisbee, and it
9 landed on top of the -- right on top of a building that we
10 were close to.

11 Q What area was you in, sir?

12 A We were close to the First Baptist parking lot on
13 North Dean Street. There's a building back behind the
14 parking lot that the Frisbee landed on.

15 Q And this is in the city of Spartanburg, Spartanburg
16 City.

17 A Yes, sir.

18 Q Did Zack go up and go get the Frisbee?

19 A Yes, sir. He climbed the tree and picked it off the
20 roof and threw it down to me.

21 Q And who was standing with you when he did that?

22 A As he threw it down, I was standing with Kellen
23 Mayfield and Hub Blankenship. And as he threw it down, I
24 walked over to pick it up.

25 Q And then what happened, sir?

Andrew Foster Bond
Direct examination by Mr. Barnette

1 A I was pushed down from behind by a man. And as I
2 turned around, he asked me for I. D. And he told me he was
3 a security guard, officer, and that I was under arrest.

4 Q And what happened next?

5 A He reached in my pocket and pulled out my wallet and
6 began looking through it and pulling stuff out of it.

7 Q And did you ask him? Do you see that man in the
8 courtroom here today?

9 A Yes, sir, I do.

10 Q Can you identify him for me?

11 A Yes, sir.

12 MS. JONES: Your Honor, I am going to object subject
13 to our previous objection.

14 THE COURT: Overruled.

15 Q If you would, could you point to the person and
16 identify him for us, please?

17 A Yes, sir, the man sitting next to the lady in the
18 light blue shirt.

19 Q And is he wearing anything on his face?

20 A Yes, sir, with the glasses on.

21 MR. BARNETTE: Your Honor, I'd like to let the record
22 reflect he's identified the defendant Norris in this case.

23 THE COURT: It shall.

24 Q After he got your wallet and everything did you ask
25 him anything or --

Andrew Foster Bond
Direct examination by Mr. Barnette

1 A I asked him to see a badge or some sort of
2 identification that he was actually an officer.

3 Q And what did he do in response to that?

4 A That's when he pulled his knife out and put it to me.

5 Q When you say he put it to you, where did he put your
6 knife, the --

7 A He put the knife on my throat.

8 Q How, how close was he to you, sir?

9 A At that time he was pretty much on top of me.

10 Q And let me show you what's been marked as State's
11 Exhibit 3. Does that picture fairly represent the object
12 he had in his hand?

13 A Yes, sir. That's the knife.

14 Q Is that the knife? And let me show you what's been
15 marked as State's Exhibit No. 1. State's Exhibit 1, do you
16 recognize that, sir?

17 A Yes, sir. That's what he had.

18 Q Is that that knife, or the knife that it appeared that
19 he had in his hand?

20 A Yes, sir.

21 Q What did you do once he put the knife to your throat?

22 A Once he put the knife to my throat, I just decided it
23 wasn't worth trying to struggle or anything. I just kinda
24 laid back and waited to see what would happen.

25 Q And during this time did another individual approach

Andrew Foster Bond
Direct examination by Mr. Barnette

1 y'all?

2 A Yes, sir. One, another individual, as my friends
3 walked up to see what was going on, came from across the
4 street and began to approach us.

5 Q So when your friends came up to you, what did
6 Mr. Norris do?

7 A Mr. Norris pulled the knife out and pointed at them
8 and told them to get on the ground also.

9 Q And what happened after that?

10 A After that the guys kind of stepped back. Hub and
11 Kellen stepped back and turned and run off so that the
12 other man coming across the street wouldn't get them also.

13 Q So during this time did Mr. Norris come back to you?

14 A Yes, sir. He was standing over me again. And that's
15 when I thought I'd try to get up and get away from him.
16 And he put the knife back to my throat and said that if I
17 tried to get away he'd kill me.

18 Q During this time did Mr. Chiles come up too?

19 A Yes, sir. And Mr. Norris handed the wallet to
20 Mr. Chiles, and he began pulling stuff out of it too.

21 Q Do you see the man that was pulling stuff out of the
22 wallet too?

23 A Yes, sir.

24 Q Can you identify him in the courtroom for us, please?

25 A Yes, sir. He's the man in the dark pants.

Andrew Foster Bond
Direct examination by Mr. Barnette

1 MR. POOLE: Objection, Your Honor, subject to our
2 previous objection.

3 THE COURT: Overruled.

4 Q Go ahead, sir, if you would.

5 A In the dark pants and the white shirt sitting next to
6 the man over there.

7 MR. BARNETTE: Your Honor, I'd like the record to
8 reflect he has identified the defendant Chiles in this
9 case.

10 THE COURT: It shall.

11 Q So he was going through your wallet also?

12 A Yes, sir.

13 Q Okay. Do you have your wallet with you?

14 A Yes, sir, I do.

15 Q Can you pull it out, please? Is this the wallet you
16 had that night?

17 A Yes, sir.

18 Q Did you get it back after this incident?

19 A Yes, sir.

20 Q And did you have cards and things in here?

21 A Yes, sir.

22 Q And is this the way your cards and everything were?

23 A No, sir. They were all gone when I got my wallet
24 back.

25 Q Right. So they was all gone when you got your wallet

Andrew Foster Bond
Direct examination by Mr. Barnette

1 back.

2 A Yes, sir.

3 Q Let me show you what's been marked as State's Exhibits
4 Nos. 6, 7, 8 and 9, I believe. Let me make sure. Let me
5 show you State's Exhibits 6, 7, 8 and 9. Do those pictures
6 fairly represent items that was in your wallet?

7 A Yes, sir, they do.

8 Q And was these items taken out of your wallet?

9 A Yes, sir.

10 MR. BARNETTE: Your Honor, I'd like to enter these
11 into evidence at this time.

12 MR. POOLE: No objection from defendant Chiles.

13 MS. JONES: None from defendant Norris.

14 THE COURT: They are admitted.

15 (Photographs marked State's Exhibits Nos. 6, 7, 8 and
16 9.)

17 Q These items, as he's looking through your wallet, what
18 happened then, sir?

19 A As he was looking through it he kept telling me to
20 stay down and not to move or he'd kill me and began
21 removing objects from my wallet.

22 Q Then what happened after that, sir?

23 A After a couple of minutes, maybe four to five minutes,
24 that's when the police arrived.

25 Q And during this time did he ever get ahold of your

Andrew Foster Bond
Direct examination by Mr. Barnette

1 cell phone?

2 A Yes, sir. He took -- I handed him my cell phone
3 because he asked me to empty all of my pockets and began
4 looking at my cell phone.

5 Q And during this time did the police pull up?

6 A Yes, sir, they did.

7 Q And as the police pulled up -- and did your friends
8 also come back too?

9 A Yes, sir, some of them.

10 Q And how did they come back, your friends?

11 A Two -- one of them was behind the building, and I want
12 to say four or five of them were in a car that had pulled
13 back up.

14 Q And did they have headlights on them?

15 A Yes, sir. They had turned their headlights on.

16 Q And did the headlights shine where you were?

17 A Yes, sir, they did.

18 Q What did they do once those cars started pulling back
19 up? What did Mr. Norris and Mr. Chiles do?

20 A As the cars pulled back up and the first police
21 officers arrived, Mr. Norris handed my cell phone back, and
22 my empty wallet.

23 Q And where did he go after that?

24 A And he walked across the street back to the house that
25 he came out of.

Andrew Foster Bond
Direct examination by Mr. Barnette

1 Q And did you have any money in your wallet?

2 A I did, but not after they walked off. It was all
3 gone.

4 Q How much money did you have in your wallet?

5 A Six dollars and a debit card.

6 Q The debit card was one of the items they took?

7 A Yes, sir.

8 MR. BARNETTE: Your Honor, I'd like to publish State's
9 Exhibits 5, 6 -- 6, 7, 8 and 9 to the jury, sir.

10 THE COURT: You may.

11 Let me ask the bailiff to take that rope down so the
12 jurors can move down one more seat. It gives you a little
13 bit better opportunity to see the screen.

14 (Pause.)

15 Q So as the police went -- they walked back over to the
16 porch across the street?

17 A Yes, sir.

18 Q Did the officers come up too?

19 A Yes, sir. A couple of the officers approached me
20 trying to figure out what had happened.

21 Q And did you tell them what happened?

22 A Yes, sir.

23 Q And did they go over and talk to the two defendants in
24 this case?

25 A Yes, sir. They walked back over and went up on the

Andrew Foster Bond
Direct examination by Mr. Barnette

1 porch.

2 Q And they were still on the porch. They walked from
3 you over to that porch.

4 A Yes, sir. They were still on the porch.

5 Q And those are the same two fellows that came over to
6 you.

7 A Yes, sir.

8 Q And they were the two fellow that robbed you?

9 A Yes, sir.

10 Q Afterwards, did you get your cards back?

11 A Yes, sir, I received my cards back.

12 Q Where did you get them back at?

13 A After we went to the Spartanburg Safety office
14 downtown.

15 Q You got them back from the police?

16 A Yes, sir, the police gave them back.

17 Q And did they show you the knife also?

18 A They showed me a picture. I never saw the actual
19 knife.

20 Q Okay. And State's Exhibit 3 and State's Exhibit 1 was
21 a picture and is the item that he used or was the knife he
22 used on your neck.

23 A Yes, sir, that's the knife.

24 MR. BARNETTE: Your Honor, I'd like to move State's
25 Exhibits 1 and 3 into evidence at this time.

Andrew Foster Bond
Direct examination by Mr. Barnette

1 MS. JONES: No objection from Norris.

2 MR. POOLE: None from Chiles.

3 THE COURT: They are admitted.

4 (Knife marked State's Exhibit No. 1; photograph marked
5 State's Exhibit No. 3.)

6 MR. BARNETTE: Your Honor, permission to publish
7 State's Exhibits 1 and 3 to the jury also.

8 THE COURT: You may.

9 Q Okay. This is the knife that he used on you, sir, is
10 that correct?

11 A Yes, sir, that's right.

12 Q And State's Exhibit 3, this is just the same picture
13 of the knife that was used in this case?

14 A Yes, sir. That's what the police showed me.

15 MR. BARNETTE: And let me publish State's Exhibit
16 No. 6.

17 Q Are these the cards that was taken from your wallet?

18 A Yes, sir, they were.

19 Q And the items? These are the items that was taken.
20 Whose social security number is that, sir?

21 A That's mine.

22 Q 247-87-4821?

23 A Yes, sir. That's correct.

24 Q Was this also your bank card that was taken?

25 A Yes, sir. That was my check card and debit card.

Andrew Foster Bond
Direct examination by Mr. Barnette

- 1 Q Is this your VISA card, sir?
- 2 A Yes, sir. That's his.
- 3 Q Is that your golf card that was taken?
- 4 A Yes, sir.
- 5 Q Is this the card you also had in your wallet?
- 6 A Yes, sir. That was one they got.
- 7 Q And was this also a card in your wallet?
- 8 A Yes, sir.
- 9 Q And was that another card, the gift card, VISA gift
10 card?
- 11 A Yes, sir.
- 12 Q And was that a card that you received from high
13 school?
- 14 A Yes, sir, it was.
- 15 Q Was that just a card that was inside of your wallet
16 also?
- 17 A Yes, sir. That's just a business card.
- 18 Q Let me show you State's Exhibit No. 7. I believe this
19 is a closeup picture. Is that your check card that was
20 taken?
- 21 A Yes, sir, it was.
- 22 Q State's Exhibit No. 8, was that a closeup of your golf
23 card?
- 24 A Yes, sir.
- 25 Q State's Exhibit No. 9, is that your social security

Andrew Foster Bond
Direct examination by Mr. Barnette

1 number?

2 A Yes, sir, that's it.

3 Q Did you write that out or had somebody else written
4 that out for you?

5 A I believe I wrote that down.

6 Q And you kept that in your wallet just to refer to?

7 A Yes, sir, because I had used it for jobs, a job
8 reference.

9 Q And these are the items that were taken from you, is
10 that correct?

11 A That's correct.

12 Q And the two men that did this to you, they're in the
13 courtroom here today?

14 A Yes, sir, they are.

15 Q And you're sure that these are the two fellows that
16 did this to you.

17 A Yes, sir. I'm positive.

18 MS. JONES: Your Honor, that question's been asked and
19 answered.

20 Q No further questions. Please answer any questions
21 that Ms. Jones or Mr. Poole may have for you.

22 MR. POOLE: May it please the Court.

23 THE COURT: Mr. Poole.
24
25

Andrew Foster Bond
Cross-examination by Mr. Poole

1 CROSS-EXAMINATION

2 BY MR. POOLE

3 Q How are you doing, Mr. Bond?

4 A I'm good.

5 Q On this night the first individual that you saw and
6 who made contact with you, physical contact, was
7 Mr. Norris, is that right?

8 A That's correct.

9 Q And you did not have a chance to see him until he
10 pushed you onto the ground.

11 A That's correct, yes, sir.

12 Q Okay. And you had never seen him before.

13 A No, sir, not before tonight -- not before that night.

14 Q Okay. And it is your testimony that he held you on
15 the ground and placed the knife to your throat.

16 A That's correct.

17 Q And that during the process of this that he took the
18 wallet, your wallet, from you.

19 A That's correct.

20 Q And did he take the wallet from you while you were on
21 the ground?

22 A Yes, sir.

23 Q Okay. Did he take it out of your pocket?

24 A Yes, sir, he did.

25 Q Did you have it in your back pocket?

Andrew Foster Bond
Cross-examination by Mr. Poole

1 A My back right pocket just like I took it out now.

2 (Whereupon, the witness demonstrated.)

3 Q Okay. And how long of a period of time was it between
4 the time that you were pushed to the ground and your wallet
5 was taken from your pocket?

6 A Probably about a minute, if not less.

7 Q Okay. A minute or less.

8 A Yes, sir.

9 Q Okay. And during this time he was talking with you.

10 A That's correct, yes, sir.

11 Q And he stated that he was a security guard or gave you
12 that -- or something to do to that effect.

13 A Yes, sir. That's correct.

14 Q And then you asked to see some sort of identification
15 to verify it.

16 A Right.

17 Q And so you were actually having a conversation with
18 him in this position on the ground.

19 A Yes, sir, or attempting to.

20 Q Right. Okay. And when was the first -- well, let me
21 ask you this.

22 Mr. Chiles. Did you get -- had you ever seen him
23 before this evening?

24 A No, sir, not before that evening.

25 Q And when did you see him after? From the time that

Andrew Foster Bond
Cross-examination by Mr. Poole

1 Mr. Norris pushed you to the ground, how long was it before
2 you saw Mr. Chiles?

3 A After the -- my friends came up trying to talk to him
4 to clear everything out, that is when I saw him cross Dean
5 Street coming towards them.

6 Q Okay. So another event occurred, and that event was
7 that your friends were coming toward you.

8 A That's correct.

9 Q Is that right?

10 A Yes, sir.

11 Q And as they were doing so, that's when you noticed
12 Mr. Chiles coming from across the street?

13 A That's correct. Yes, sir.

14 Q All right. And so Mr. Chiles was not with Mr. Norris
15 when you were pushed.

16 A When I was pushed they were not together, no, sir.

17 Q Okay. And Mr. Chiles. Did he actually touch you?

18 A No. He never actually put his hands on me.

19 Q Okay. Do you remember any remark that Mr. Norris made
20 to Mr. Chiles?

21 A That Mr. Norris made to Mr. Chiles?

22 Q Uh-huh.

23 A Yes. He was acting like he was going to call for
24 backup. And he was talking to him telling him who I was so
25 that he could call backup to come in and arrest us.

Andrew Foster Bond
Cross-examination by Mr. Poole

1 Q So that who could call?

2 A So that Chiles could call backup for him so that they
3 could arrest us.

4 Q So Mr. Norris was telling Mr. Chiles to call 9-1-1?
5 Am I hearing you right?

6 A Not call 9-1-1. But they said they were police
7 officers.

8 Q Okay.

9 A So that they would call backup to come and help them.

10 Q Okay. But you didn't hear Mr. Chiles say that he was
11 a police officer, did you?

12 A No, sir. That's correct.

13 Q Okay. So when you testified they said they were
14 police officers, you're not saying Mr. Chiles said he was a
15 police officer, are you?

16 A Well, he was talk -- he was talking like he was on a
17 phone to other, quote, unquote, police officers.

18 Q Now, but Mr. Chiles didn't have any type of weapon.

19 A Not that I had seen or that I was aware of.

20 Q Nor did he touch you in any manner.

21 A That's correct.

22 Q And he came upon the scene a period of time after you
23 had been pushed to the ground.

24 A Yes, sir.

25 Q Okay.

Andrew Foster Bond
Cross-examination by Ms. Jones

1 A He was across the street coming. After I got pushed
2 down he start coming across.

3 Q So he was not present when you were pushed down.

4 A That's correct.

5 Q And if Mr. Norris took the contents of your wallet out
6 of your wallet, he was not present when that occurred, was
7 he?

8 A No, sir. That's not correct. He, Mr. Norris, looked
9 through and pulled my I. D. out and started reading it.
10 That's why they had the conversation about calling backup.
11 And maybe a minute or two passed. And Mr. Chiles walked
12 over and began looking through my wallet, as well as
13 Mr. Norris.

14 Q Okay. So it was a minute or two before Chiles got to
15 where you were.

16 A That's correct. Yes, sir.

17 Q The space of a minute or two --

18 A Yes, sir.

19 Q -- from getting from his house to where you were.

20 A Yes, sir.

21 Q Okay. All right. Thank you, Mr. Bond.

22 CROSS-EXAMINATION

23 BY MS. JONES

24 Q Mr. Bond, what time of the night did this happen?

25 A This occurred around 11:00 o'clock.

Andrew Foster Bond
Cross-examination by Ms. Jones

- 1 Q At night.
- 2 A Yes, ma'am. That's correct.
- 3 Q And it was dark.
- 4 A Yes, ma'am. It was.
- 5 Q Okay. Now, there were six total of you folks playing
6 the game, correct?
- 7 A There were seven of us -- two girls that are not
8 present today and one other man.
- 9 Q Okay. Where did the game start?
- 10 A It started in the First Baptist parking lot.
- 11 Q Which part of the First Baptist parking lot?
- 12 A Closer to the church over near the, near the hanger,
13 because we spoke to the security guard officer before we
14 left.
- 15 Q Okay. And the security guard officer that you spoke
16 to was where?
- 17 A In the hanger.
- 18 Q In the hanger.
- 19 A Yes, ma'am. That's correct.
- 20 Q And what time did you start playing the game?
- 21 A I want to say around 9:00 or so.
- 22 Q Was it already dark?
- 23 A It was just starting to get dark, yes, ma'am.
- 24 Q Is the fact -- do you often play this game outside at
25 night? Is that part of the element of skill to it?

Andrew Foster Bond
Cross-examination by Ms. Jones

1 A No, ma'am. That's just what we had decided to do that
2 day.

3 Q Okay. And you say that the course of this type of
4 game is basically broken up like holes on a golf course,
5 correct?

6 A Yes, ma'am. That's right.

7 Q Okay. What, what was the element? I'm sorry. What
8 was the goal that you were trying to hit when the person
9 accidentally threw the Frisbee on top of the building?

10 A It was going towards a trailer that was behind the
11 building that the Frisbee landed on.

12 Q Okay. What was the goal though? Where was -- does
13 the game have like a hole like in golf?

14 A Yes, ma'am. It's just -- it's not a hole. It's a
15 spot.

16 Q An object you're trying to hit.

17 A Correct.

18 Q Correct? Okay. What was the person -- what was
19 trying to be hit when it went on top of the roof?

20 A The trailer behind the building that the Frisbee
21 landed on.

22 Q Okay. What building did the Frisbee land on top of?

23 A I do not know the exact name, but I believe it's a
24 ministry building on North Dean Street.

25 Q Okay. And what kind of roof does it have?

Andrew Foster Bond
Cross-examination by Ms. Jones

- 1 A I do not know, ma'am.
- 2 Q Okay. You were not the one that went up on the roof.
- 3 A That's correct.
- 4 Q Okay. Now, at the time your, your role or position at
- 5 the time the person went on top of the roof was to do what?
- 6 A Well, I was just, I was making sure that, that when
- 7 the Frisbee came down we could find it.
- 8 Q Okay. You were kind of a spotter for the Frisbee man.
- 9 A Sure.
- 10 Q Kinda tossed at.
- 11 A Yes.
- 12 Q Where were you standing when that happened?
- 13 A I was standing in between the driveway and the parking
- 14 lot right next to the building.
- 15 Q Of that ministry's building.
- 16 A Of that ministry's building, that's correct.
- 17 Q Okay. And in that ministry's building, does it have
- 18 frontage on Dean Street?
- 19 A By frontage, you just mean like a yard?
- 20 Q Is it on Dean Street? Yeah.
- 21 A Yes. That's correct.
- 22 Q Okay. And you were facing, I guess, the building
- 23 looking up at the roof --
- 24 A That's correct.
- 25 Q -- looking for your friend.

Andrew Foster Bond
Cross-examination by Ms. Jones

- 1 A Yes, ma'am.
- 2 Q And it's 11:00 o'clock or 12:00 o'clock at night,
3 correct?
- 4 A Right at 11:00, yes, ma'am.
- 5 Q Okay. And you say all of a sudden you were pushed
6 down.
- 7 A That's correct. Yes, ma'am.
- 8 Q Did you see where the person came from that pushed you
9 down?
- 10 A I never saw him coming, no, ma'am.
- 11 Q Okay. And did you see the person prior to being
12 pushed down who actually pushed you down?
- 13 A Beforehand, no, I did not.
- 14 Q Okay. How many of your friends were on the roof of
15 the building?
- 16 A One.
- 17 Q Okay.
- 18 A And he never actually got all the way on the roof. He
19 reached up and grabbed it and threw it down.
- 20 Q From the tree he had climbed?
- 21 A That's correct.
- 22 Q Okay. At what point -- when you testified you said
23 that the person who approached you told you that he was a
24 security guard.
- 25 A That's right.

Andrew Foster Bond
Cross-examination by Ms. Jones

1 Q Okay. When did that happen?

2 A Right after he pushed me down and was starting to get
3 on top, like hold me down.

4 Q Okay. And is that when the person told you you're
5 under arrest, I want to see your I. D.?

6 A That's correct, yes, ma'am.

7 Q Okay. Is this the first time that you and your
8 friends have played this game at 11:00 to 12:00 o'clock on
9 North Dean Street?

10 A On North Dean Street, yes, ma'am.

11 Q Okay. Did you tell the security guard that you were
12 going to be going over to North Dean at midnight in the
13 dark?

14 A We never went on the street. We were right around it.
15 We never got on the actual street. But, no, we did not
16 tell him we were going right on Dean Street.

17 Q And in the past when you've gone and played this game,
18 have you played within the parking lot of the church or
19 around the hanger?

20 A We play the same course every time. There's a set --
21 they had a set course that we always played.

22 Q Okay. But something must have been different this
23 night because you got off the course and went somewhere you
24 said you didn't play the game.

25 A That's not right. We -- they had played it before.

Andrew Foster Bond
Cross-examination by Ms. Jones

1 This is the first time I had ever played it.

2 Q Okay. When -- are you aware if they normally went to
3 North Dean Street to play the game?

4 A I was not aware of the course. I had never played it
5 before.

6 Q Okay. Are you familiar other than the little bit of
7 description you have given us today with what the various
8 buildings on Dean Street are?

9 A I know there's a dry cleaners. And that's really the
10 only thing I have ever seen.

11 Q Other than your church, because it is on the corner of
12 Dean and Main, correct?

13 A Right. That's the --

14 Q The church building.

15 A Yeah, the church.

16 Q Okay. Are you aware that at or near this ministry's
17 building there is a medical clinic, the St. Lukes Medical
18 Clinic?

19 MR. BARNETTE: Your Honor, I'm going to object at this
20 time unless there's some relevance to all of these
21 questions.

22 THE COURT: Overruled.

23 Go ahead.

24 MS. JONES: Thank you.

25 Q Are you aware that there is a medical clinic called

Andrew Foster Bond
Cross-examination by Ms. Jones

1 St. Lukes Free Medical Clinic next to the ministry's
2 building you're referring to?

3 A No, ma'am. I don't -- I never heard of that building.

4 Q Okay. You said, now, several times you didn't play
5 this course. So if that was a medical clinic that had
6 medicine and other items, you wouldn't know it.

7 A I would not know. I did not know what that building
8 is, no, ma'am. You're right.

9 Q Okay. And you frankly don't appear -- not to even
10 know what the building was you were standing next to
11 waiting on a Frisbee to come from, correct?

12 A That's correct. Yes, ma'am.

13 Q Okay. Now, we've seen a photograph, No. 6, of the
14 items that you say were taken out of your wallet. Let me
15 hand it to you. The Suntrust card that has been blown
16 up -- and there's also a photo in, No. 7 -- is that a debit
17 card?

18 A That is a debit card, yes, ma'am.

19 Q Can that be used without some kind of PIN number?

20 A No, ma'am, it cannot.

21 Q Okay.

22 A Unless it is swiped at a gas station or, you know,
23 but --

24 Q Another vendor.

25 A Right. But you can't withdraw money from ATM.

Andrew Foster Bond
Cross-examination by Ms. Jones

1 Q Okay. Are you one of the people who do what the bank
2 tells you not to do and put a sticky on it that has your
3 PIN number on it?

4 A No, ma'am.

5 Q Okay. So your PIN number was in not on those cards.

6 MR. BARNETTE: Your Honor, objection. I don't know
7 what the relevance of this is.

8 THE COURT: Well, I'm not sure.

9 But is there some, Ms. Jones?

10 MS. JONES: Your Honor, just as to the value of the
11 item itself without a PIN number.

12 THE COURT: Well, does he know?

13 MS. JONES: I will withdraw the question, Your Honor.

14 THE COURT: Okay.

15 A But to answer your question, it can be used without
16 your PIN number at any gas station or Bi-Lo or grocery
17 store, whatever.

18 Q Okay. You indicated that once you were pushed down
19 from behind, at that point you did not know who had pushed
20 you down.

21 A That's correct.

22 Q Where were your friends?

23 A Kellen and Hub were about 20 to 30 feet away from me.
24 Zack Blankenship was coming down the tree.

25 The two girls were farther back away. I couldn't -- I

Andrew Foster Bond
Cross-examination by Ms. Jones

1 don't even remember if I could see them or not. And Joseph
2 Holder was also with me, Kellen. Or Joseph was with Kellen
3 and Hub standing about 20 to 30 feet away from me.

4 Q Okay. And what did your friends do at that point?

5 A After they saw me get pushed down and see the man over
6 the top of me, he, Joseph, Hub and Kellen, walked over to
7 us saying wow, wow, let's figure this out, trying to figure
8 everything out.

9 Q Okay.

10 A So they came towards me and the man.

11 Q Okay. They came towards you. How close did they get
12 to you?

13 A I don't know exactly how close, but probably from me
14 to the -- Mr. Barnette.

15 Q Okay. And then they stopped and they left.

16 A After they saw the other man coming across the street
17 and after the man who was on top of me pointed the knife at
18 them, yes, ma'am.

19 Q Okay. Where did the other man who was coming across
20 the street come from?

21 A He came from the other sidewalk on the other side of
22 Dean Street.

23 Q And you were able to see this, although you were down,
24 face down, on the ground?

25 A Well, when we turned around I was not face down. I

Andrew Foster Bond
Cross-examination by Ms. Jones

1 was -- I had been pushed over on my side. And I turned up
2 and began speaking with the man on top of me. And when I
3 saw my friends come over, I started watching them, because
4 we were both talking to him trying to get everything
5 straightened out.

6 Q Okay. You are on the ground, and a man is over the
7 top of you with a knife. And you're able to see someone
8 else doing something else across the street.

9 A Well, when, when his attention turned to them, he
10 wasn't concentrating on me any more. He was worried about
11 them approaching him. And so I was able to see the other
12 men, the other guys, coming towards them.

13 Q And at some point your friends left, did they not?

14 A That's correct.

15 Q Left you there alone.

16 A That's correct.

17 Q Did they not?

18 A Yes, ma'am.

19 Q And it's been your testimony that you have never
20 before this night seen either Carnie Norris or Kenneth
21 Chiles before, is that correct?

22 A That's correct, yes, ma'am.

23 Q When you gave a statement to the police you went so
24 far as to call Mr. Norris by name.

25 A That statement was not written by me. It was written

Andrew Foster Bond
Cross-examination by Ms. Jones

1 by an officer as I spoke.

2 Q Okay. Well, how did you know Mr. Norris' name if you
3 had never seen him before that night?

4 A I did not know Mr. Norris' name.

5 Q So, in other words, the police put words in your mouth
6 and wrote the statement the way they wanted to, not the way
7 you wanted it written, is that correct?

8 A That's not true. No, ma'am. They wrote as I spoke.
9 And when I said the man who was on top of me, the officer
10 identified him.

11 Q Okay. So the officer made sure you knew who it was
12 that they said did this to you that night.

13 A We had looked at the -- I had pointed him out at the
14 scene of the crime and pointed out this man that had done,
15 what another man had done, what, and the officer as we
16 wrote the statement together identified the man I had
17 pointed out being on top me as Carnie Norris.

18 Q And at the time that you pointed out Mr. Norris, where
19 was he?

20 A He was walking back towards the porch.

21 Q Across the street from the building that you had been
22 standing at before.

23 A Right. He had just left. And he was from maybe me to
24 the bench.

25 Q Walking away.

Andrew Foster Bond
Cross-examination by Ms. Jones

1 A Right. Talking to the police officers.

2 Q Okay. And he walked right back and stood on the porch
3 after you say he had robbed you.

4 A That's correct. Yes, ma'am.

5 Q Just standing there looking at you as you were looking
6 at him.

7 MR. BARNETTE: Objection, Your Honor. Is this a
8 question or is this commentary?

9 Q Is that correct?

10 THE COURT: Put in it the form of a question.

11 A He, he -- restate the question, please.

12 Q He just stepped across the street, stood on the porch,
13 and was still standing on the porch as you spoke to the
14 officers and calmly pointed him out, correct?

15 A That is correct. But the officers were trying to
16 figure out who was the guilty party at the time and did not
17 know what had been happening when they arrived.

18 Q Okay. The officers did not know what had been
19 happening at the time because you -- not you, but at least
20 one of your friends -- had been on top of a building,
21 correct?

22 A He had reached out and grabbed the Frisbee, that's
23 correct.

24 Q Okay. On top of a building that is next door to a
25 medical clinic, is that correct?

Herbert Eugene Blankenship
Direct examination by Mr. Barnette

1 A Yes. But we were not aware that there was a medical
2 clinic there. We weren't aware of what either of the
3 buildings were. All we wanted to do was get the Frisbee
4 off the roof and continue playing.

5 Q And when the officers arrived they didn't know, not
6 know, what had happened. So they just separated y'all in
7 the meantime, correct?

8 A Correct, so that there would be not be any stories
9 getting mixed up. They wanted everybody's own story.

10 Q Thank you for answering my questions, Mr. Bond.

11 MR. BARNETTE: No further questions, Your Honor. I
12 ask the witness be excused.

13 THE COURT: You may step down.

14 (Whereupon, the witness was excused.)

15 MR. BARNETTE: I would like to call Mr. Blankenship,
16 Your Honor. Herbert Blankenship.

17 HERBERT EUGENE BLANKENSHIP,
18 having been first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. BARNETTE

20 Q Sir, if you would, tell the jury your full name, sir.

21 A I'm Herbert Eugene Blankenship.

22 Q Mr. Blankenship, what town do you live in, sir?

23 A I live in Spartanburg.

24 Q And back on July 16th of 2008, how old were you then,
25 sir?

Herbert Eugene Blankenship
Direct examination by Mr. Barnette

1 A I was 19 years old.

2 Q And do you work right now, sir?

3 A I do. I work right now for Spartanburg County Parks
4 Commission.

5 Q Going back to July 16th of 2008, was y'all playing
6 Frisbee golf?

7 A Yes, sir.

8 Q And who was with you, sir?

9 A I was with the guys you see there -- Drew Bond; Zack
10 Blankenship; Kellen Mayfield; Kyle Quinn; two girls, Maggie
11 and Lidia; and Joseph Holder who is not here today.

12 Q As y'all was playing -- this is the North Dean Street
13 area, First Baptist area?

14 A That's the hole we were on at the time, yes, sir.

15 Q And had y'all played there before, sir?

16 A Many times. I'd played there probably five or six
17 times before. And my brother had played there probably as
18 many times. And I think it was some of these guys' first
19 times playing there.

20 Q And had y'all talked to the security guard about
21 playing and so forth?

22 A Yeah. Before we go we always tell the security guard
23 we're going to go out and play Frisbee. And he says, okay,
24 go ahead and have fun and this and that and the other.

25 Q Did -- as y'all was playing Frisbee golf, what

Herbert Eugene Blankenship
Direct examination by Mr. Barnette

1 happened to the Frisbee that night?

2 A We were playing a hole. And it kinda goes around a
3 building, down to a trailer, down a little alleyway. And I
4 was trying to throw it across the building, over the top of
5 it. And it got stuck on the edge of the building, got hung
6 up there.

7 So my brother climbed up the tree beside the building
8 and went to try to grab the Frisbee off the side of the
9 building.

10 Q And while that was going on, who was you standing by
11 or who did you hear about --

12 A Me and Jerry Bond and Kellen and Joseph Holder were
13 all standing in a group watching to make sure that the
14 Frisbee would come off and it wouldn't go on another roof
15 or wouldn't disappear. So we were spotting the Frisbee.
16 And that's where we were standing, kinda off to the side.

17 Q If you would, tell the jury what happened next.

18 A What happened next was we see a man that came across
19 the street. And he started coming towards us. And at the
20 time Drew Bond was the closest to him. So he grabbed Drew
21 Bond and put him on the ground and said everybody get on
22 the ground, I'm a security officer. And at that time he
23 had pulled out a knife.

24 And we went over to walk, to talk to him, you know,
25 because I've never seen a security officer that just, you

Herbert Eugene Blankenship
Direct examination by Mr. Barnette

1 know, threatens somebody like that and throws them on the
2 ground. They're usually pretty calm.

3 And so we're like are you really -- we wanted to see
4 if he really was a security officer. So we walked over and
5 headed towards him, and he pulled the knife out and pointed
6 at us and said y'all get on the ground too, I'm a security
7 officer and you're trespassing and stuff like that.

8 So at the time simultaneously the other man came
9 across the street, and he was coming towards us. And we
10 decided we didn't want to get in a bunch of trouble. So we
11 just decided to run off so we wouldn't get hurt as well.

12 Q Do you see the man that had the knife -- that man?

13 A Yes, sir. The man with the knife is over on that end
14 of --

15 MS. JONES: Your Honor, I object, subject to previous
16 objections.

17 THE COURT: Overruled.

18 Q If you would, go ahead, sir. Do you see --

19 A He's on the far-right end of the table next to the
20 lady attorney. He's got a light blue shirt on.

21 MR. BARNETTE: Your Honor, I'd like the record to
22 reflect he's identified the defendant Norris in this case.

23 THE COURT: It shall.

24 Q And do you see the other man that came over too?

25 A Yes, sir. He's the guy at the other end of the table

Herbert Eugene Blankenship
Direct examination by Mr. Barnette

1 next to the male attorney with the glasses on.

2 MR. POOLE: Objection. Subject to previous objection.

3 THE COURT: Overruled.

4 MR. BARNETTE: Your Honor, I'd like the record to
5 reflect he's identified defendant Chiles in this case.

6 THE COURT: It shall.

7 Q And you said that once he pulled the knife -- and what
8 did you do then, sir?

9 A Once he pulled the knife we started to approach him to
10 talk to him, and then he pointed the knife at us and told
11 us to get down as well. So we decided to draw back, and we
12 decided to run around the building. And we were going to
13 go talk to the security officer at First Baptist that we
14 had talked to previously.

15 So me and Joseph and Kellen, we went and ran back up
16 to the office of the hanger building. It's the student
17 building at First Baptist.

18 And we talked to the security officer. And we asked
19 them if there's any other security officers on the premises
20 to make sure that, see if these guys actually were security
21 officers or not. And he said there were no other security
22 officers, he was the only one that was available that
23 night. And so we then knew that there wasn't a security
24 officer and these guys were, weren't who they said they
25 were.

Herbert Eugene Blankenship
Direct examination by Mr. Barnette

1 So we asked that security officer at the hanger to
2 call the police, and which he did, which was the second
3 time the police had been called that night.

4 And we returned and got back in my car and drove back
5 down Saint John Street and came back up Dean Street. And
6 we stopped about 20 to 30 yards away from where Drew Bond
7 was being held hostage, held down on the ground.

8 And I turned the lights on in my car and held my
9 lights on top of Mr. Norris over here and on Drew to make
10 sure nothing happened and he wasn't going to kill him or
11 whatever he was trying to do. And we sat in the car until
12 the police came. And the police arrived shortly after.

13 Q And did -- you said that there was a second call. Who
14 else called?

15 A My brother who was on top of the roof had called. And
16 I think he stayed at the scene of the crime around the
17 building, so he could kinda give the play-by-play to the
18 person, to the police officer he had called, he had talked
19 to, so.

20 Q He'd already called 9-1-1?

21 A He called 9-1-1, yeah.

22 Q And when you pulled back up, where was Drew Bond at
23 when you pulled the car up?

24 A He was on the ground. And the man on the far right,
25 he was on top of him.

Herbert Eugene Blankenship
Direct examination by Mr. Barnette

1 Q Did the police shortly arrive after you pulled up?

2 A The police arrived a few seconds after we pulled up,
3 ten to 20 seconds after, sir, afterwards.

4 Q Okay. And did they talk to y'all at the scene?

5 A Yes, sir. They, they approached us and asked us what
6 was going on, because neither one of us -- nobody really
7 had any idea of what was going on. And we just told them
8 our side of the story.

9 And about the same time those two men had walked back
10 across the street towards, I guess, to their house. It
11 was -- they're off to a house. And then we told them what
12 had happened. And the officers went and followed them and
13 went over to their house and started questioning them as
14 well.

15 Q Let me show you what's been marked as State's Exhibit
16 1, as well as State's Exhibit 3. Showing you No. 1, do you
17 recognize that knife?

18 A I do recognize that knife.

19 Q Did it appear to be the knife you saw that night?

20 A Looks just like it.

21 Q And is that just a picture of the same knife?

22 A Yes, sir.

23 Q So these two gentlemen walked back to the porch. So
24 you really never lost sight of them.

25 A No, sir.

Herbert Eugene Blankenship
Cross-examination by Mr. Poole

1 Q And these are the same two that was around Drew Bond.

2 A The same two. When we returned they were in the same,
3 same position. He was on top of Drew Bond. The other man
4 was standing beside him.

5 Q And this occurred in the City of Spartanburg, is that
6 right?

7 A Sir?

8 Q This was in the City of Spartanburg.

9 A Yes, sir; yes, sir.

10 Q Please answer any questions that Ms. Jones and
11 Mr. Poole may have for you.

12 CROSS-EXAMINATION

13 BY MR. POOLE

14 Q Mr. Blankenship, you'd -- had you played this course
15 before?

16 A Yes, sir, numerous times.

17 Q Okay. And on this particular night did the Frisbee
18 get stuck in a tree or did it get stuck on a building?

19 A No, sir. The Frisbee was stuck on top of the
20 building.

21 Q Okay. And you gave a statement that night, didn't
22 you?

23 A Yes, sir.

24 Q And the statement was written out by a police officer.
25 And you signed it.

Herbert Eugene Blankenship
Cross-examination by Mr. Poole

- 1 A Yes, sir.
- 2 Q You stated at that time that the Frisbee was thrown
3 into a tree. Was it really a building --
- 4 A Yes, sir.
- 5 Q -- it got stuck on?
- 6 A Well, it was, it was in the tree. The limbs kind of
7 overhang onto the building. Like it's a tree that touches.
8 The limbs of the tree touch the building.
- 9 Q Right.
- 10 A And the Frisbee was right there between a limb, stuck
11 between a limb and a, and the roof. So that's why it was
12 stuck up on the roof.
- 13 Q All right. And so you're in the process, or you and
14 your friends are in the process, of trying to get this
15 Frisbee down.
- 16 A Yes, sir.
- 17 Q And then did you see -- and you saw your friend,
18 Mr. Bond, get thrown down?
- 19 A Yes, sir.
- 20 Q Did you see that?
- 21 A I did.
- 22 Q Okay. And Mr. Chiles was nowhere around at that time,
23 is that right?
- 24 A Not at the time. He wasn't there.
- 25 Q Okay. And then some events occurred. And I want to

Herbert Eugene Blankenship
Cross-examination by Mr. Poole

1 ask you about those events. Okay?

2 A Okay.

3 Q So Mr. Bond is thrown down.

4 A Yes, sir.

5 Q And then what did you do after he was thrown down?

6 A After he was thrown down we stopped to see what he was
7 doing. And we heard him telling Mr. Bond that he was a
8 security officer and to take out his stuff and that he was
9 going to put the knife to his throat.

10 And so then we started to approach him to make sure he
11 really was a security officer or to see what the story was,
12 you know, to make sure everything was okay. And at that
13 time he got off of Mr. Bond and pointed the knife at us and
14 told us that he was also a security officer and that he
15 wanted us to get on the ground and give us his stuff as
16 well.

17 Q Okay. And so did he -- but when Mr. Norris -- it's
18 your testimony that Mr. Norris asked Mr. Bond to give him
19 his stuff?

20 A His stuff, yes, sir, his wallet.

21 Q His wallet?

22 A Yes, sir.

23 Q So did Mr. Bond produce the wallet?

24 A I don't remember if he had it or not. He was walking
25 towards us by the time he'd asked him that.

Herbert Eugene Blankenship
Cross-examination by Mr. Poole

1 Q Okay. And did you see if anything -- did you see the
2 wallet?

3 A I saw -- I didn't see the wallet then. But when I
4 came back around after I, like I told you, I parked my car
5 on the street and shined the lights at him, I saw him going
6 through Mr. Bond's wallet.

7 Q Okay.

8 A So sometime between --

9 Q So you didn't see the wallet at the time that they
10 were on the ground.

11 A No. I -- he never pulled the wallet out of his pocket
12 that I saw.

13 Q Okay.

14 A I just heard them ask for it. And then when I came
15 back around the wallet had been out.

16 Q Okay. So all right. So Mr. Norris was asking
17 Mr. Bond to give him his wallet.

18 A Uh-huh.

19 Q And then after that you go back to get your other
20 friends.

21 A No. We had gone to tell the security officer at the
22 hanger what was going on.

23 Q Okay. So the next event is that you go and seek out a
24 legitimate security officer.

25 A Yes, sir.

Herbert Eugene Blankenship
Cross-examination by Mr. Poole

1 Q And ask them if there are any other security officers
2 in the area.

3 A Yes, sir.

4 Q Is that right?

5 A Yes, sir.

6 Q Did the security officer that was there, did he offer
7 any aid or anything?

8 A He told us he would -- he told us he would call and
9 see if there's any security officers, which he did. And he
10 told us he could call 9-1-1. And he said that's all I can
11 do, so.

12 Q All right. And what was the next event? Did you come
13 back to the scene where your friend was on the ground?

14 A Got back in the car and returned to the scene of the
15 crime..

16 Q Okay. To where Drew was?

17 A Yes, sir.

18 Q All right. Was Mr. Chiles there then?

19 A Yes, sir.

20 Q Okay. But so you don't know when Mr. Chiles came up
21 on the scene.

22 A No. I do. I saw him come across the street.

23 Q Okay. All right. You saw him come across the street.

24 A Yes, sir, at the same time that Mr. Norris had come
25 over towards us, and with the knife and said he was a

Herbert Eugene Blankenship
Cross-examination by Mr. Poole

1 security officer, we saw Chiles coming cross the street.

2 Q Okay.

3 A And that's why we decided to run, because we saw two
4 of them instead of one.

5 Q All right. Did Mr. Norris say anything to Mr. Chiles?

6 A I never heard anything.

7 Q You do remember giving your statement, don't you?

8 A Yes, sir.

9 Q And you didn't know anybody's name at that time, did
10 you?

11 A No, sir.

12 Q All right. And you referred to these individuals as a
13 skinny black male and a heavier black male.

14 A Yes, sir.

15 Q Do you remember that?

16 A Yes, sir.

17 Q Let me show you.

18 Do you remember -- is it your testimony you don't
19 remember if Mr. Norris asked Mr. Chiles to do anything?

20 A I don't remember now. It's been almost a year ago.

21 Q That's right.

22 A Okay.

23 Q Just a few days short.

24 But let me show you this statement and see if it
25 refreshes your memory.

Herbert Eugene Blankenship
Cross-examination by Mr. Poole

- 1 A All right.
- 2 Q This is your signature, isn't it?
- 3 A Yes, sir.
- 4 Q Okay. And it reads that, "He told Drew to get out his
5 wallet and I. D. Drew took out his wallet. And the black
6 male started going through his wallet and taking stuff
7 out."
- 8 A Yes, sir.
- 9 Q Is that what happened?
- 10 A Yes, sir.
- 11 Q Okay. "Another black male who was skinnier and taller
12 with a white shirt walked up."
- 13 A Okay.
- 14 Q "And the heavy black --
- 15 A "Guy."
- 16 Q -- guy asked the skinny black guy to call for backup."
- 17 A Yes, sir.
- 18 Q So do you remember now that Mr. Norris asked
19 Mr. Chiles to call for backup?
- 20 A If it was in, if it was in my testimony, then that's
21 probably a better representation than what I know of today.
- 22 Q Okay. Like you say, it has been more than a year.
- 23 A Uh-huh.
- 24 Q Let me ask you this. When the heavy black guy asked
25 the skinny black guy to call for backup, had you already

Herbert Eugene Blankenship
Cross-examination by Mr. Poole

1 been to check to see if they were legitimate security
2 guards with the legitimate security guard?

3 A No, sir. I believe that was the time where we started
4 to run.

5 Q Okay. And then in this statement you don't mention
6 anything about getting into your car and coming around with
7 the lights.

8 A I mean, if it wasn't in my statement, then I didn't
9 mention it in my statement.

10 Q Okay. So by the time you got into your car and came
11 around the police were there?

12 A No, sir. They arrived shortly after I had gotten
13 there.

14 Q Okay. So they came before you got in your car?

15 A No. They were --

16 Q I may be not asking a clear question. But when did
17 the police get there?

18 A After I had been in my car for a matter of seconds.
19 And then they arrived.

20 Q Okay.

21 A Like I had been, I had stopped at the scene of the
22 crime and was shining my lights on them to make sure
23 nothing was going on, and then the police arrived shortly
24 after that. I got to the scene of the crime before the
25 police officers did in my car.

Herbert Eugene Blankenship
Cross-examination by Mr. Poole

1 Q Okay. When you, so when you, came around in your car
2 with the lights pointed to where everything was happening,
3 what was Mr. Chiles doing?

4 A He was fingering through Jerry Bond's wallet --

5 Q Okay.

6 A -- with the cards. He had cards and stuff in his
7 hands and he was --

8 Q Did he have the wallet in his hand?

9 A I can't remember. I just know he had his cards and he
10 was looking through all of them.

11 Q He was looking through them.

12 A Uh-huh.

13 Q Through a stack of cards.

14 A Yes, sir.

15 Q Okay. Because you can't testify that he actually had
16 possession of the wallet, can you?

17 A I can't testify he had possession of the wallet.

18 Q Okay. And when the police come, did he run from the
19 scene?

20 A No. They both just walked back across the street to
21 the house, to one of the houses. I assume it was one of
22 their houses.

23 Q And they stood there.

24 A On the porch.

25 Q Okay. And they never went inside the house or tried

Herbert Eugene Blankenship
Cross-examination by Ms. Jones

1 to leave.

2 A No, sir. They stood on the porch.

3 Q Okay. Thank you, Mr. Blankenship.

4 CROSS-EXAMINATION

5 BY MS. JONES

6 Q Mr. Blankenship, when you left to go to the hanger, is
7 that when you got your vehicle?

8 A My vehicle was parked in between that spot and the
9 hanger. So what I did was we ran pretty much to the hanger
10 first and talked to the security officer and then got back
11 to the car.

12 Q Okay. And that's about a block away, correct?

13 A It's probably a little more than a block away.

14 Q Okay. And why did you get in the vehicle?

15 A Because of protection so I'm not out in the open with
16 these guys that have knives or guns and so --

17 Q Did you see a gun? Now, that's no --

18 A No.

19 Q Not anything in your statement.

20 A No. I, we -- no. The girls who were there said that
21 he had. We didn't know what he had. We didn't know if he
22 had a gun or a knife. I saw a knife, so.

23 Q Okay. Now, why did you have -- you said a couple of
24 times now that you made the turn from --

25 A Saint John Street.

Herbert Eugene Blankenship
Cross-examination by Ms. Jones

1 Q -- Saint John, made a right onto Dean Street. And you
2 made a point of saying you shined your lights.

3 A Uh-huh.

4 Q That's not a very well-lit area, is it?

5 A I mean, it's more light with my, my headlights than it
6 is with no light, well, just that street light that was
7 there.

8 Q Okay. With virtually no light, is what you were going
9 to say, right?

10 A I mean --

11 Q You wanted to illuminate the scene which was not lit
12 up before, correct?

13 A I mean, it was fairly lit.

14 Q You made such a point of talking about how you
15 returned to the scene of the crime and pointed your
16 headlights so you got a good look.

17 A A better look, yes, ma'am.

18 Q Okay. With light.

19 A Yes, ma'am.

20 Q Correct?

21 A Uh-huh.

22 Q You indicated that when -- or did you indicate that
23 when you saw your friend Drew get pushed to the ground --

24 A Uh-huh.

25 Q Did you see the face of the person doing that?

Herbert Eugene Blankenship
Cross-examination by Ms. Jones

- 1 A Yes, ma'am.
- 2 Q Did you see a weapon?
- 3 A Yes, ma'am. I saw a knife, this knife right here.
- 4 Q At that point.
- 5 A Yes, ma'am.
- 6 Q Okay. And did you see Mr. Bond take his wallet out
7 and give it to someone?
- 8 A I can't remember right now if I did or not.
- 9 Q Okay.
- 10 A I know I saw him going through the cards later on. So
11 it's a possibility that I saw him get the wallet.
- 12 Q You saw through Drew going through his cards later on?
- 13 A No. Mr. Chiles going through Drew's cards later on.
- 14 Q Okay. And do you remember telling the officer when
15 you gave your statement that he took Drew Bond by force and
16 put him in the handcuff position flat on his chest on the
17 ground --
- 18 A Yes, ma'am.
- 19 Q -- with his hands behind his head?
- 20 A Yes, ma'am.
- 21 Q Okay. And you indicated that you heard that
22 individual identify himself to your friend Drew as
23 security.
- 24 A Uh-huh.
- 25 Q Okay. Are you aware of -- you played this golf course

Herbert Eugene Blankenship
Cross-examination by Ms. Jones

- 1 several times.
- 2 A Yes, ma'am.
- 3 Q A number of times, you said.
- 4 A Yes, ma'am.
- 5 Q Are you aware of what these various businesses on this
- 6 street are?
- 7 A I don't know what all of them are. But I knew that
- 8 one was a building that's tied with First Baptist. And
- 9 then on the corner is the dry cleaners. And there's a few
- 10 other buildings. I didn't know what, what were down the-
- 11 street.
- 12 Q Okay. Do you know that one of them is a medical
- 13 clinic that dispenses medicine?
- 14 A I didn't at the time.
- 15 Q Okay. Do you know that on the other side of the one
- 16 tied to the church is also a doctor's office?
- 17 A I didn't.
- 18 Q Okay. And the dry cleaners is a commercial business.
- 19 A We hadn't played the dry cleaners though.
- 20 Q Okay. But you know that the dry cleaners is on that
- 21 street, correct?
- 22 A Uh-huh. The hole that we do is around a building
- 23 that's tied to First Baptist Church.
- 24 Q The ministry's building.
- 25 A Ministry's building, yes, ma'am.

Herbert Eugene Blankenship
Cross-examination by Ms. Jones

1 Q Okay. And if you -- do you think it's unusual for
2 someone to be on the roof of a building?

3 MR. BARNETTE: Objection, Your Honor. That's calling
4 for speculation.

5 Q Have you ever been on the roof of this building at
6 midnight before?

7 A No.

8 Q Is that something you would have volunteered to do?

9 A Well, if I could climb a tree like my brother could, I
10 would have.

11 Q Okay. You didn't see anything wrong with being on the
12 roof of a building at midnight on Dean Street.

13 A That's why we -- nobody got on the roof of a building.
14 We told them not to. That's why they climbed the tree and
15 not the ladder.

16 Q Okay. And the security guard at the hanger you had
17 checked with before --

18 A Uh-huh.

19 Q -- did you tell him how far over you were going to go
20 from the church?

21 A I mean, we never have told him before. We just told
22 him we played around the church, and he said that's okay.
23 So, you know, just keep an eye out.

24 Q Okay. And do you often play at midnight around the
25 church?

Herbert Eugene Blankenship
Cross-examination by Ms. Jones

1 A No, ma'am. We usually -- well, we started at
2 9:00 o'clock. And we usually finished in about two and
3 half hours 18 holes. And the reason we play at night is
4 because it's cooler and there's less traffic than playing
5 in the summer in the middle of the day when there's cars
6 around and businesses are open.

7 Q Okay. Did you have a cell phone that night?

8 A I think I did, yes, ma'am.

9 Q Why did you go all the way to the hanger just to get
10 the police? Why didn't you call for the police yourself?

11 A My brother had called for the police. And the reason
12 I went to the hanger was to see if there was another
13 security guard on the premises.

14 Q Okay. And when you went to the hanger to see the
15 security guard, he didn't even come back over there with
16 you, did he?

17 A No, ma'am.

18 Q He wasn't concerned enough to leave the hanger and go
19 with you --

20 MR. BARNETTE: Objection, Your Honor. Calling for
21 speculation again.

22 THE COURT: Sustained.

23 Q Did he come with you back to the scene of the crime,
24 to use your words?

25 A No, ma'am, he didn't. He is just the hanger security

Herbert Eugene Blankenship
Cross-examination by Ms. Jones

1 guard.

2 Q Okay. If he's just the hanger security guard, you
3 made a point of going to see him though.

4 A Yes, ma'am, because I know him.

5 Q Okay. But he did not come with you.

6 A No, ma'am.

7 Q Thank you for answering my questions.

8 MR. BARNETTE: No further questions, Your Honor.

9 Your Honor, may I approach for a second?

10 THE COURT: Yes.

11 (Bench conference held off the record in the presence
12 of the jury but out of the hearing of the jury.)

13 THE COURT: All right. Ladies and gentlemen, we are
14 going to recess for the afternoon.

15 Let me caution you before you leave that at no time
16 except during jury deliberations are you to discuss the
17 case with any person whatsoever in any fashion whatsoever.
18 And that includes family, friends.

19 That includes your fellow jurors. You're only
20 permitted to talk about the case when you are instructed to
21 begin deliberations. And, as you know, that won't be until
22 the end of the trial after all of the evidence has been
23 received and I have instructed you on the law.

24 So during the overnight recess don't talk about this
25 case with anybody whatsoever. Also, do not in any way

1 conduct any research or do your own investigation into any
2 issue that arises.

3 Any time you're selected to decide a case you must
4 base your decision upon the evidence received during the
5 trial. You're not permitted to supplement that knowledge
6 by doing any outside research or investigation from any
7 source whatsoever. So no research, no investigation, no
8 discussions.

9 Do have a good evening. Please report to your jury
10 room at 9:30 in the morning, 9:30 in the morning.

11 (The following takes place outside the presence of the
12 jury.)

13 THE COURT: All right. Court is in recess until
14 9:30 in the morning.

15 END OF PROCEEDINGS JULY 6, 2009
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1 (Proceedings July 7, 2009)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Are there any matters that need to be
5 addressed prior to the jury being brought in?

6 MR. BARNETTE: None from the state, Your Honor.

7 MR. POOLE: Not here, Your Honor.

8 MS. JONES: Your Honor, just for the record -- and I
9 have not conveyed this to my client's mother, but she will
10 hear it as the Court hears it -- Your Honor sent word to me
11 that Mr. O'Shields, the last remaining bailiff, was
12 present.

13 And Mr. Barnette and Mr. Poole and I met with him
14 briefly this morning before we met with Your Honor in
15 chambers. And he told me, as he did in front of the other
16 officers of the court, the other attorneys, that he had not
17 engaged in the conduct that was discussed yesterday. And I
18 just wanted to thank the Court for making him available.
19 And I did have that inquiry with him.

20 THE COURT: Okay. Anything else?

21 Bring them in, please.

22 (The following takes place in the presence of the
23 jury.)

24 THE COURT: We have got -- this thing is not right.

25 Gentlemen, y'all have got to do better than this. Let

Daniel Mayfield
Direct examination by Mr. Barnette

1 me ask these front five if you'll move down one seat. And
2 let me ask the gentleman on the back row if you'll move to
3 the front seat. And the rest of you on the back row move
4 down one seat. Thank you.

5 All right. Ladies and gentlemen, as you know, when we
6 recessed yesterday the state was in the midst of their
7 presentation. So we'll continue with that presentation
8 this morning.

9 Mr. Barnette.

10 MR. BARNETTE: Thank you, Your Honor. May it please
11 the Court.

12 I'd like to call Mr. Mayfield to the stand, please.

13 DANIEL MAYFIELD, having been
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. BARNETTE

16 Q Sir, if you would, make sure you speak loud enough so
17 that the person on the back row can hear you. Okay?

18 A Yes, sir.

19 Q Give me your full name, please.

20 A Daniel Kellen Mayfield.

21 Q And, Mr. Mayfield, what town do you live in, sir?

22 A Spartanburg, South Carolina.

23 Q And how old was you back on July of 2008?

24 A I was 20 years old.

25 Q And going back to that day or whatever, was you

Daniel Mayfield
Direct examination by Mr. Barnette

1 playing Frisbee golf that evening?

2 A Yes, sir.

3 Q And who was you playing with, sir?

4 A I was playing with Kyle Quinn, Drew Bond, Joseph
5 Holder, Zack Blankenship, Hub Blankenship and two other
6 girls that were with us.

7 Q And during that time did the Frisbee go on top of the
8 roof of a building?

9 A Yes, sir, it did.

10 Q And where -- who was you standing with when that
11 happened?

12 A At that time I was standing beside Joseph Holder and
13 Hub Blankenship.

14 Q And was Drew Bond with y'all too?

15 A Yes, sir. He had moved a little bit away from us to
16 catch the Frisbee when it was thrown from the roof.

17 Q If you would, tell the jury what happened after that.

18 A Well, when Drew moved to, to catch the Frisbee, he
19 moved a little bit away from, from our group. And Zack
20 climbed the tree to, to get the Frisbee.

21 And at that time we noticed the, the man walking, one
22 of the men walking, toward us. And he told us that he was
23 a security guard, and he told us that we didn't need to be
24 where we were.

25 I had my attention focused on him for a, for a moment.

Daniel Mayfield
Direct examination by Mr. Barnette

1 And then when I looked back I saw Zack had already thrown
2 the Frisbee, and he was climbing down the tree. I made
3 sure that he got out of the tree safely.

4 When I looked back the man had already had Drew on the
5 ground, and he had taken his wallet out of, out of his
6 pocket.

7 Q And what happened next?

8 A He took the wallet out of his pocket. Once we saw
9 that, me, Hub Blankenship or, excuse me, Hub Blankenship,
10 Joseph Holder and I walked toward him saying wow, wow,
11 what's going on. And that's when he pulled me -- we
12 noticed he had a knife. He pointed it toward us and moved
13 away from Drew and told us to get on the ground as well.

14 Q Let me show you State's Exhibit No. 1. Does that
15 appear to be the knife you saw that night?

16 A Yes, sir. It is.

17 Q So he pointed the knife at y'all and told y'all to get
18 on the ground?

19 A Yes, sir. That's correct.

20 Q And where was Drew at at this time?

21 A Drew was on the ground already.

22 Q And do you see the man that had the knife that night?

23 A Yes, sir.

24 MS. JONES: Objection, Your Honor.

25 THE COURT: Overruled.

Daniel Mayfield
Direct examination by Mr. Barnette

1 Q If you would, if you'd point him and describe where
2 he's at and what he's wearing, sir.

3 A He's wearing the blue shirt and glasses on the end, at
4 the end of the table.

5 Q And who is he sitting besides?

6 A The female attorney.

7 MR. BARNETTE: Your Honor, I'd like the record to show
8 that he has identified the defendant in this case.

9 THE COURT: It shall.

10 Q Later on did another man approach y'all?

11 A Yes, sir. As the man with the knife approached us, we
12 also noticed that another man had begun to walk across the
13 street toward us.

14 Q And do you see that man in court here today?

15 A Yes, sir, I do.

16 Q Would you identify him for us, please?

17 A He's wearing the light, the light shirt and the tan
18 pants.

19 MR. POOLE: Objection, Your Honor, based upon prior
20 objection.

21 THE COURT: Overruled.

22 Q And who is he sitting beside, sir?

23 A The male attorney with the glasses.

24 MR. BARNETTE: Your Honor, I'd like to reflect that's
25 the defendant Chiles for the record. And then of course

Daniel Mayfield
Direct examination by Mr. Barnette

1 the first gentleman is defendant Norris.

2 THE COURT: It shall.

3 Q After this happened, what happened then, sir?

4 A Well, when he pulled the knife on us, that's when
5 we -- Joseph Holder, Hub Blankenship and I and the girls --
6 ran around the other side of the building to the, to the
7 big parking lot behind the ministry building.

8 When we, when we ran around to the other side of the
9 building, we assumed that since the man with the knife had
10 moved away from Drew that Drew was able to get away, and we
11 thought that he had noticed that the man with the knife
12 had, had walked away. So we assumed that he was able to
13 get away himself.

14 When we noticed that he wasn't with us, Kyle Quinn
15 went. And he said he was going to make sure that nothing
16 happened to Drew. And so he went on the other side of the
17 building to make sure that nothing happened to our friend,
18 make sure he didn't get hurt. That's when we tried to
19 decide what we were going to do.

20 Q What happened then, sir?

21 A Well, I think we, we stood there for a couple of
22 minutes trying to decide what we were going to do. And we
23 realized we needed to call the cops.

24 So then I think a minute or two later Hub Blankenship
25 pulled around in his car. He went to get his car from -- I

Daniel Mayfield
Direct examination by Mr. Barnette

1 believe his car was near the hanger. And he went and
2 pulled around and got us in his car. And that's when he
3 went to the hanger to alert the security guard and call the
4 police.

5 Q Did you also have find out Zack Blankenship had also
6 called the police?

7 A Yes, sir, we did.

8 Q Did he come back in the car, back to where Drew was?

9 A Did Zack come back in the car?

10 Q No. Did Hub? Did Hub come back in the car later, or
11 was you with him in the car?

12 A Yes, I was.

13 Q Did he come back? And what happened once he came
14 back?

15 A When they had, when they called the police and they
16 came back to the car, that's when we pulled around. And I
17 don't remember if the police were already there or if they
18 got there a minute or two later.

19 I was sitting in the back with the, with the girls,
20 but I do remember that they were at the latest, they were
21 there very shortly after we got there. And so that's when
22 we, we got out and talked to them.

23 Q Okay. If you would, please answer any questions
24 Ms. Jones or Mr. Poole may have for you.

25 MR. POOLE: May it please the Court.

Daniel Mayfield
Cross-examination by Mr. Poole

1 THE COURT: Mr. Poole.

2 CROSS-EXAMINATION

3 BY MR. POOLE

4 Q How are you doing, Mr. Mayfield?

5 A Good.

6 Q Just a few questions. Okay. Had you ever played this
7 course before?

8 A No, sir, I haven't.

9 Q Okay. But of course you were there and you knew
10 everybody that was around. Y'all were friends, weren't
11 you?

12 A Yes, sir.

13 Q And the -- it seems to me that everything started
14 becoming a little tense after the Frisbee got caught up in
15 the tree or on top of the roof, is that right?

16 A Yes, sir. That's correct.

17 Q Is that about the time that when you were looking up
18 at the tree to see if the Frisbee was being retrieved, then
19 you turned and you looked at Drew? And by that time
20 somebody had him down on the ground?

21 A Zack was climbing down out of the tree.

22 Q Okay.

23 A That's when I looked and noticed that Drew was on the
24 ground, yes, sir.

25 Q Okay. So you went up into the tree.

Daniel Mayfield
Cross-examination by Mr. Poole

- 1 A No, sir. I did not go in the tree.
- 2 Q Okay. Who was climbing down from the tree?
- 3 A Zack Blankenship was.
- 4 Q Zack was climbing down from the tree.
- 5 A Yes, sir.
- 6 Q You were looking at him. And then did you see Drew
- 7 being knocked to the ground?
- 8 A I didn't see Drew knocked to the ground, no, sir.
- 9 Q Okay. And when in the context of all of these events
- 10 did you see him on the ground?
- 11 A When I -- once I looked back to make sure Zack had
- 12 gotten safely out of the tree, that's when I looked back
- 13 and saw Drew was already on the ground. And the man with
- 14 the knife was pulling his wallet out of his pocket.
- 15 Q Okay. Could you hear him say anything -- Drew or the
- 16 man?
- 17 A I heard the man with the knife say stay on the ground.
- 18 Q Okay. Anything else?
- 19 A No, sir, not, not to Drew. That's when he pulled the
- 20 knife on us and told us to get on the ground also.
- 21 Q Okay. Did he say -- did you hear him say anything
- 22 about being a security guard?
- 23 A Yes, sir.
- 24 Q He did that?
- 25 A He identified himself as a security guard.

Daniel Mayfield
Cross-examination by Mr. Poole

- 1 Q Okay. And did he pull the wallet out of Drew's
2 pocket?
- 3 A Yes, sir, he did.
- 4 Q Out of which pocket did he?
- 5 A Out of one of his back pockets.
- 6 Q Okay. And did he go through the wallet?
- 7 A I didn't see him go through the wallet, no, sir.
- 8 Q Okay. And at this time you were looking in the
9 direction of Drew and this other man on the ground.
- 10 A Yes, sir.
- 11 Q And the Frisbee has been retrieved from the tree.
- 12 A Yes, sir.
- 13 Q And then you noticed another male that started walking
14 from across the street.
- 15 A That's correct.
- 16 Q Is that right?
- 17 A Yes, sir.
- 18 Q Now, how far was the distance between where Drew and
19 the man were on the ground and when you first saw the other
20 male across the street?
- 21 A How far away was, was the man with the knife from Drew
22 from the, from the second male that approached us?
- 23 Q Yes.
- 24 A About 20 to 25 feet maybe.
- 25 Q Okay. Twenty to 25 feet.

Daniel Mayfield
Cross-examination by Mr. Poole

- 1 A That's the first time I noticed him, yes, sir.
- 2 Q Okay. And he was across the street.
- 3 A Yes, sir.
- 4 Q Did you see him as he came from a porch or from a yard
- 5 or from the sidewalk, or do you remember?
- 6 A I believe he was near the sidewalk walking towards us.
- 7 Q Okay. So you saw him starting to walk in that
- 8 direction from across the street.
- 9 A Yes, sir.
- 10 Q On the sidewalk.
- 11 A Yes, sir.
- 12 Q And that was about 20 or 25 feet.
- 13 A Yes, sir.
- 14 Q Did you hear him say anything as you drew closer?
- 15 A I did not.
- 16 Q Did he make any threatening remarks to you and your
- 17 group?
- 18 A Not that I heard.
- 19 Q Okay. Did you hear him say anything as he got closer
- 20 to Drew and the other man?
- 21 A No, sir.
- 22 Q Okay. Did you see him do anything antagonistic?
- 23 A No, sir, I didn't.
- 24 Q Okay. And at that time, is that when you made a
- 25 decision to maybe call the police?

Daniel Mayfield
Cross-examination by Mr. Poole

1 A Once we, once we got around the back of the building,
2 that's when we decided to call the police.

3 Q Okay. And was it at that point that you got in the
4 car?

5 A When we were in the parking lot behind the ministry
6 building?

7 Q Uh-huh.

8 A That's when Hub Blankenship pulled around with his
9 car, yes, sir.

10 Q Okay. And then all of you got in the car?

11 A Yes, sir.

12 Q And you rode around with the lights on? Where did you
13 go after you got in the car?

14 A We went to the hanger once we got in the car --

15 Q Okay.

16 A -- and called the police. And then we left the hanger
17 and went back to the scene of the crime.

18 Q Okay. And was the car pointed toward this scene --

19 A Yes, sir. The lights, you mean?

20 Q Uh-huh.

21 A Yes, sir.

22 Q And the lights were on?

23 A Yes, sir, they were.

24 Q And was the man still on the ground -- Drew?

25 A Yes, sir, he was.

Daniel Mayfield
Cross-examination by Ms. Jones

1 Q Where were the police? Were they there yet or not?

2 A When I looked, I believe they were there.

3 Q Pardon me?

4 A I believe they were there when I looked.

5 Q Okay. So the police were there, Drew is on the
6 ground, and a man is on top of him or keeping him, keeping
7 him on the ground.

8 A Yes, sir.

9 Q And a second man is nearby this, both of these folks.

10 A I don't remember. I don't remember where the second
11 man was at this point.

12 Q Okay. And the police were already there.

13 A I believe they were, yes, sir.

14 Q And you don't know if the second man was there at that
15 scene or not.

16 A I don't remember where he was.

17 Q Okay.

18 A I didn't see him.

19 Q Okay. All right. Thank you very much.

20 A Thank you.

21 CROSS-EXAMINATION

22 BY MS. JONES

23 Q Mr. Mayfield, where were you standing waiting on the
24 Frisbee to come down from the roof or the tree?

25 A I was standing about -- there are two -- there are two

Daniel Mayfield
Cross-examination by Ms. Jones

1 like brick columns next to the sidewalk kind of where the
2 entrance to the building is. I was standing close to
3 those.

4 Q Okay. Now, how far away from the tree that was being
5 climbed were you?

6 A It was on the other side of the building. I don't
7 remember how far I was from it. Maybe about 15 or 20 feet.

8 Q Okay. So you're at the front of the building. The
9 tree is on the right or left side of the building?

10 A If I'm facing the building --

11 Q Yes.

12 A -- the tree's on the left side of the building.

13 Q Okay. And you're standing next to a brick column that
14 is, has the building between you and the tree, correct?

15 A I'm sorry. The column, the column is about this high.

16 Q Okay.

17 A You know, it's not, not very high.

18 Q Okay.

19 A The tree is, is clearly visible from the point I was
20 standing at, yes, ma'am.

21 Q Okay. So were you in front of the building and not
22 beside the building?

23 A I was in front of the building, yes, ma'am.

24 Q Front of the building. Okay. At that point where was
25 Drew from your vantage?

Daniel Mayfield
Cross-examination by Ms. Jones

- 1 A Drew --
- 2 Q The pillar is here, the tree is here, the building's
3 in front of you.
- 4 A Drew is --
- 5 Q Dean Street is behind you.
- 6 A Correct, yes, ma'am.
- 7 Q Where is Drew?
- 8 A Drew is to my right near the driveway area which was
9 on the right side of the building.
- 10 Q Okay. And this is which building?
- 11 A This is the ministry building.
- 12 Q Okay. That is part of the church property.
- 13 A I believe so. At the time I didn't know what building
14 it was.
- 15 Q Okay. And to the right of the building there is a
16 driveway that goes all the way down the building --
- 17 A Yes, ma'am. That's correct.
- 18 Q -- to a parking lot in the back.
- 19 A Yes, ma'am.
- 20 Q Okay. So Drew was in the driveway or beside the
21 driveway?
- 22 A I believe he, he was near the driveway. I don't
23 remember if he was on the driveway, but he was a good 20 or
24 30 feet away from us.
- 25 Q Okay. Twenty or 30 feet away from you. And you're

Daniel Mayfield
Cross-examination by Ms. Jones

1 kind of looking back and forth waiting on the Frisbee. You
2 turned to look. Then when you turned back Drew is on the
3 ground.

4 A Yes, ma'am.

5 Q And there is another person there.

6 A Yes, ma'am.

7 Q And because you had your, your attention diverted over
8 to watching the Frisbee come down and the rescuer of the
9 Frisbee coming down safely, you did not see where that
10 person came from that was with Drew on the ground.

11 A Well, before we noticed, before we even started this
12 hole, when we started toward this house, we noticed that
13 the two men were on the porch. So we knew where they had
14 come from.

15 Q Did you tell the police that when you gave your
16 statement that night?

17 A I don't remember if I did or not.

18 Q Okay. If it is not in here would that be an oversight
19 on your part?

20 A An oversight? I am sorry.

21 Q Okay. Just review it and see if you see in there that
22 you told the police that you had already seen these two
23 people on the porch.

24 (Pause.)

25 A No, ma'am.

Daniel Mayfield
Cross-examination by Ms. Jones

1 Q Okay. So that's something you remember now but did
2 not remember at 12:56 the morning this happened, excuse me,
3 12:36 the morning this happened.

4 A I remember that happening, but I didn't believe that
5 was, I didn't believe that was relevant. I didn't, I
6 didn't understand the relevance of it.

7 Q Okay. And so you have looked over. As you were
8 saying, you have looked over. You're making sure the
9 Frisbee is down and the fellow rescuing it is down. You
10 look back. And at this point your friend is on the ground
11 and there's another gentleman. There's a gentleman with
12 him.

13 A Standing over him, yes, ma'am.

14 Q Okay. And what you heard that person say was I am a
15 security guard or something to that effect. He identified
16 himself as a security guard.

17 A Yes, ma'am.

18 Q Okay. And you're 20 or 30 feet or yards away from
19 this?

20 A From Drew?

21 Q Uh-huh.

22 A Yes, ma'am. About 20 or 30 feet.

23 Q Okay. And you also indicated you were able to hear
24 the same person say you don't, y'all don't need to be where
25 you are at about the same time he said he was a security

Daniel Mayfield
Cross-examination by Ms. Jones

1 guard.

2 A After he identified himself as a security guard,
3 that's when he told us y'all don't need to be here.

4 Q Okay. And did you hear this individual, since you
5 could hear those two comments, tell your Drew I need to see
6 your -- tell your friend Drew -- I'm sorry -- I need to see
7 your I. D.?

8 A I didn't hear him say that.

9 Q Okay. And at that point you indicated -- again, the
10 attention was diverted somewhat. Hub had pulled the car
11 into the parking lot behind the mission?

12 A Yes, ma'am.

13 Q Is that parking lot behind the mission actually
14 connected to the First Baptist parking lot? Can you drive
15 through?

16 A I believe, I believe you can, yes, ma'am.

17 Q Okay. And you got in the vehicle with them?

18 A Yes, ma'am, I did.

19 Q How did you get out of the parking lot? Do you
20 remember which route you took?

21 A I believe we, we, we went, like you said. I think, I
22 believe it connects. And we went to the larger. I think
23 there's a larger parking lot behind that. And we went
24 through that larger parking lot.

25 Q Okay. A larger parking lot behind what? You weren't

Daniel Mayfield
Cross-examination by Ms. Jones

1 specific.

2 A There was, there's, I believe there's a smaller
3 parking lot behind the building, behind the ministry
4 building. And then I believe it empties into a, a bigger
5 parking lot. And I believe there's another exit that we,
6 that we took to go to the hanger.

7 Q Okay. Did you go backwards toward First Baptist
8 through that parking lot or go up the driveway out past the
9 mission?

10 A We went towards -- we didn't go out in front of the
11 mission where the, where the scene was taking place. We
12 went toward the hanger.

13 Q Okay. So you left. And you were gone for some period
14 of minutes, correct?

15 A Yes, ma'am.

16 Q And when you got back, you're not sure whether the
17 police were there. You have consistently said I believe, I
18 believe, but no certainty, is that true?

19 A Right, because of that's what I saw, yes, ma'am.

20 Q Okay. You're not certain.

21 A Not certain, no, ma'am.

22 Q Okay. Thank you.

23 A Thank you.

24 MR. BARNETTE: No further questions, Your Honor. I'd
25 like to have this witness excused.

Bradford James
Direct examination by Mr. Barnette

1 THE COURT: You may step down.

2 MR. BARNETTE: I'd like to call Officer James to the
3 stand.

4 BRADFORD JAMES, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. BARNETTE

7 Q If you would, sir, please give your full name for the
8 record.

9 A Bradford James.

10 Q And where do you work at, sir?

11 A Spartanburg County Sheriff's Office.

12 Q What's your present position with the sheriff's
13 department?

14 A Patrol deputy.

15 Q Back on July 16th of 2008, where was you working at
16 then, sir?

17 A At Spartanburg Public Safety Department.

18 Q And what was your position there, sir?

19 A I was a K-9 handler.

20 Q And was you working on the evening of July 18th of 2008?
21 July 16th of 2008?

22 A Yes, sir, I was.

23 Q Did y'all receive a call?

24 A Yes, sir. We received a call for a disturbance with
25 weapons.

Bradford James
Direct examination by Mr. Barnette

1 Q Okay. And when you received that call did y'all
2 proceed to the location?

3 A They give us a general area. They could not pinpoint
4 exactly where they were. They said to check the area of
5 Dean Street and Saint John Street around the church. They
6 couldn't tell us exactly the location as it was.

7 Q And did officers respond to that?

8 A Yes, sir.

9 Q When you got there when you found them, can you tell
10 the jury what you saw?

11 A Yes, sir. I arrived at approximately 11:15. When I
12 turned onto Dean Street off of Saint John Street, I made
13 the right-hand turn.

14 As I pulled onto Dean Street I observed two black
15 males, and a white male laying back on the ground. And the
16 black male was standing over him. One was standing over
17 him in an intimidating fashion.

18 I got out of the car. I observed one black male had a
19 black object in his hand. I couldn't tell at the time
20 because I was probably 30 to 40 feet from him when I was
21 getting out of the car.

22 As he looked up and seen me, he handed the black
23 object back to the white male that was on the ground. I
24 approached them. The two black males looked at me and
25 walked across the street back to the house that was

Bradford James
Direct examination by Mr. Barnette

1 directly across the street. I asked the male that was on
2 the ground what had happened. He stated that they were
3 robbing him.

4 At that time the rest of his friends come back from
5 the back side of the building up to where I was at. They
6 gave the same account as to what had happened. I asked
7 them who had done this.

8 MS. JONES: Objection, Your Honor.

9 THE COURT: Overruled.

10 A I asked them who had done this.

11 THE COURT: When you, when you refer to somebody,
12 refer to who you're actually talking about though.

13 A Okay. I'm sorry, sir. I asked Mr. --

14 Q Did you talk to Mr. Bond?

15 A I did. Mr. Bond was actually on the ground. I was
16 speaking with Mr. Bond. I asked him who had done this.

17 MS. JONES: Your Honor, I would object again. I don't
18 think we've had a foundation for why this is not
19 inadmissible hearsay.

20 THE COURT: Overruled.

21 A I spoke with Mr. Bond. I asked him who had done this,
22 and I asked them to explain what had happened. He began to
23 tell me the story as far as the fact that they had
24 approached him as you've heard from them and what had
25 happened as far as the guy throwing him down from behind

Bradford James
Direct examination by Mr. Barnette

1 and standing over the top of him.

2 He stated that he identified himself as a
3 security-guard officer and told him he needed to see some
4 I. D. and went in his wallet and took the I. D. and was
5 going through his wallet.

6 He stated the second black male had come over to him
7 and the first black male had handed him the wallet and he
8 began going through the wallet while the first male held
9 him still with a knife.

10 At that point Officer Guest arrived on the scene.
11 Myself and Officer Guest walked across the street to where
12 they were still visible. They stated that they had not
13 went in the house. When I had talked to Mr. Bond, he
14 stated that they never went in the house, they'd still been
15 sitting on the front porch the whole time.

16 I walked over to talk to the two defendants, which is
17 Mr. Norris and Mr. Chiles.

18 Q Okay. When you got to them, did you talk to them?

19 A Yes, sir, I did.

20 Q And did y'all ask for consent to search?

21 A Yes, sir. I asked them. I advised them that the
22 gentleman had stated that they had robbed him and took his
23 items.

24 I asked him, I said, do you have anything that belongs
25 to the gentleman. Both parties said no. But Mr. Chiles

Bradford James
Direct examination by Mr. Barnette

1 reached in his pocket and pulled out a few cards and handed
2 them to Officer Guest. I'll let him testify as far as
3 that. But Mr. Norris -- I asked him did or --

4 Q Go ahead. So you asked him for consent to search.

5 A I asked Mr. Norris. I said, "Do you have anything on
6 you that belongs to Mr. Bond?" He stated no.

7 I said, "Do you care if I search just to make sure so
8 we can find out exactly what's going on?" He stated, "No,
9 sir. You can."

10 Upon searching Mr. Norris I located a black-handled,
11 what appeared to be a, kitchen knife in his pocket.

12 At that time we got statements from the rest of the
13 individuals involved. And Mr. Norris, as well as
14 Mr. Chiles, were placed under arrest.

15 Q Okay. Was this State's Exhibit 1, was this the knife
16 that you recovered from Mr. Norris?

17 A Yes, sir.

18 Q And do you see the person you recovered that knife
19 from here in the courtroom today?

20 A Yes, sir.

21 Q Can you identify him for us, please?

22 A Yes, sir. He's sitting on the right side of the
23 table, blue shirt and khaki pants and black glasses,
24 sitting beside the female attorney.

25 MR. BARNETTE: Your Honor, for the record let -- he's

Bradford James
Direct examination by Mr. Barnette

1 identified the defendant Norris in this case.

2 THE COURT: It shall.

3 Q And did you take this knife and show it to Mr. Bond at
4 a later time? And did they identify this knife as being
5 the knife that was used in the robbery?

6 A Yes, sir, they did.

7 Q And Officer Guest. Was he there when -- was you there
8 when he talked to defendant Chiles?

9 A Yes, sir. We were standing side by side on the front
10 porch of the residence.

11 Q And did he get consent to search also?

12 A Yes, sir, he did.

13 Q And did Officer Chiles recover some credit cards?

14 A Yes, sir. Officer Guest did.

15 Q And did you see those credit cards that he got from
16 defendant Chiles?

17 A Yes, sir.

18 Q And do you see defendant Chiles, the gentleman that he
19 got the credit cards from, in the courtroom today?

20 A Say that again.

21 Q Do you see the defendant he got the credit cards from
22 in the courtroom?

23 A Yes, sir, I do.

24 Q If you would, identify him, sir.

25 A The gentleman sitting on the left side of the table,

Bradford James
Cross-examination by Mr. Poole

1 white long-sleeve shirt, khaki pants, sitting beside the
2 male attorney with glasses.

3 MR. BARNETTE: Your Honor, for the record, it will
4 show that he's -- defendant Chiles identified by Officer
5 James.

6 THE COURT: It shall.

7 Q Did y'all place him under arrest later?

8 A Yes, sir, we did.

9 Q And you arrested -- both defendants were arrested.

10 A Yes, sir.

11 Q And this did occur in the city of Spartanburg.

12 A Yes, sir, it did.

13 Q In Spartanburg County.

14 A Yes, sir.

15 Q If you would, answer any questions Mr. Poole or
16 Ms. Jones may have for you.

17 CROSS-EXAMINATION

18 BY MR. POOLE

19 Q Officer James, I would just like to ask you a few
20 questions about your initial arrival at the scene.

21 Okay. You were the first officer to respond?

22 A Yes, sir.

23 Q Was anybody else in the car with you?

24 A No, sir, besides the dog.

25 Q Except?

Bradford James
Cross-examination by Mr. Poole

1 A My dog.

2 Q Yeah. That's right. Your K-9.

3 A Yes, sir.

4 Q Okay. And when you got there was there a car
5 illuminating the scene, or was there plenty of light
6 available?

7 A When I arrived my attention went directly to the
8 individual standing over the top of the other male who was
9 laying on the ground.

10 I wasn't looking at anywhere else except for, because
11 we had got a call. The disturbance of weapons was a friend
12 being held at knifepoint, was the description we got later
13 on. And so I was looking for the person being held at
14 knifepoint at the time.

15 Q So you saw an individual standing over someone on the
16 ground.

17 A Yes, sir.

18 Q And that individual was fully standing.

19 A Yes, sir.

20 Q All right. Now, and this is one person over another.

21 A Yes, sir.

22 Q All right. Did you see -- where was Mr. Chiles at
23 this point in time?

24 A He was standing maybe 3 to 5 feet beside Mr. Norris.

25 Q Okay. So you saw two, three people there, one on the

Bradford James
Cross-examination by Mr. Poole

1 ground, one standing over the other and Mr. Chiles about 3
2 to 5 feet away.

3 A Yes, sir. He was within arm's reach of Mr. Norris.

4 Q Okay. And you got out of your car.

5 A Yes, sir.

6 Q And you approached these three people.

7 A Yes, sir.

8 Q Okay. And now tell me what happened from then. Who
9 started moving in what direction?

10 A I asked them what was going on. Mr. Norris and
11 Mr. Chiles began backing away, because they actually were
12 closer to Dean Street. Mr. Bond was on the ground
13 almost -- I think it's like a driveway or a parking lot.
14 He was on the other side of them.

15 They began walking back across Dean Street back to the
16 residence that we actually later found them in.

17 Q Okay. So they started walking.

18 A Yes, sir.

19 Q And they were not running.

20 A No, sir.

21 Q And did they walk across the street?

22 A Yes, sir.

23 Q And did they stay on the front porch, or do you know?

24 A Yes, sir, they stayed on the front porch as far as I
25 know.

Bradford James
Cross-examination by Mr. Poole

- 1 Q So they did not attempt to run at any point in time.
- 2 A No, sir.
- 3 Q All right. Now, when you got upon this area where
- 4 there were three people, you saw, I believe you testified,
- 5 a black object that was given back to Mr. Bond.
- 6 A Yes, sir.
- 7 Q Okay. Now, what would that have been?
- 8 A It was later identified once I got closer to Mr. Bond
- 9 as being a cell phone.
- 10 Q Okay. So who gave him back the black object which was
- 11 later shown to be a cell phone?
- 12 A Mr. Norris.
- 13 Q All right. And how was it presented to him?
- 14 A In a very rapid manner as if I'm not supposed to have
- 15 this. It was kind of almost tossed to him as he was on the
- 16 ground.
- 17 Q Okay. Where was the wallet found?
- 18 A I never seen the wallet until later on.
- 19 Q Okay.
- 20 A The only object I seen was the cell phone.
- 21 Q And after anybody -- did anybody, any other officers,
- 22 come on the scene?
- 23 A Yes, sir. There were several other officers arrived.
- 24 Q Okay. Were you among the group that went to speak to
- 25 the two individuals on the other side of the street on

Bradford James
Cross-examination by Ms. Jones

1 North Dean Street?

2 A Yes, sir.

3 Q And how many other officers went over there?

4 A Just two.

5 Q Okay. And who was with you?

6 A Myself and Officer Guest who is sitting right behind
7 you.

8 Q Okay. And, and when you approached and started
9 talking with Mr. Norris and Mr. Chiles neither attempted to
10 run or escape.

11 A No, sir.

12 Q Is that right?

13 A You're correct.

14 Q All right. Thank you very much.

15 A Yes, sir.

16 CROSS-EXAMINATION

17 BY MS. JONES

18 Q Officer James, you stated earlier that you responded
19 and you had been given information that there was someone
20 who was being held at knifepoint.

21 A Yes, ma'am.

22 Q Okay. Do you have a copy of your incident report or
23 the incident report of the public safety office that was
24 generated?

25 A I do.

Bradford James
Cross-examination by Ms. Jones

1 Q Could you review briefly the first two lines of that?

2 A Which, my statement or the other officer's statement?

3 Q The incident report.

4 A I understand that, but I did a supplemental.

5 Q Your name and the name of Officer Guest.

6 MR. BARNETTE: Your Honor, I'm going to object at
7 this. Your Honor, I'm going to object at this point. If
8 he's reading -- I mean, obviously he can go to his
9 supplemental. But if it's another report, I don't know how
10 he can go refer to it.

11 MS. JONES: If I may try to lay some foundation about
12 his name being on it and whether it's his or not --

13 THE COURT: Okay.

14 Q The incident report at the bottom --

15 THE COURT: Just show it to him and ask him if that's
16 it.

17 MS. JONES: Okay.

18 Q I believe it's the same one you have got.

19 A It is.

20 Q Okay. Does that bear the name at the bottom of both
21 John Michael Guest and B. L. James?

22 A It does, because my supplemental is attached to that
23 incident report.

24 Q Okay. So you're not responsible for any of the
25 language that's on this.

Bradford James
Cross-examination by Ms. Jones

1 A Not the original. But if you look at the
2 supplemental, that's what I'm responsible for.

3 Q And show me what you are deeming as supplemental. The
4 short one?

5 A Yes, ma'am. The one that says B. James at the top of
6 it.

7 Q Well, I don't have one that says B. James at the top
8 of it. So if you'd let me look at it, that might be
9 helpful.

10 A It's the same thing. It just has the header on it.

11 Q No, it is not the same thing that I have.

12 MS. JONES: If Your Honor will give me just a moment
13 to review the documents, I have not seen this before.

14 (Pause.)

15 MS. JONES: Your Honor, may we approach?

16 THE COURT: Yes, ma'am.

17 (Bench conference held off the record in the presence
18 of the jury but out of the hearing of the jury.)

19 THE COURT: Let me ask the jury to please go to your
20 jury room. I have got one matter I need to address. And
21 I'll bring you back shortly. Don't discuss the case.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: All right. Now, what's the issue?

25 MS. JONES: Your Honor, in response to a question on

Bradford James
Cross-examination by Ms. Jones

1 cross Mr., excuse me, Officer James has now produced to me
2 two sheets, one of which is his narrative that he's
3 referred to to the -- in front of the jury that does, in
4 fact, bear his name.

5 I've never seen this document. I've never had a copy
6 of it. And in my quick review of it, at least within the
7 third line, there's already a discrepancy about what -- the
8 position Mr. Bond was in when he first got there.

9 We just need a few minutes to look at it, is all we
10 need if we could have that indulgence.

11 THE COURT: Okay.

12 (Pause.)

13 MS. JONES: Your Honor, on behalf of the defendant
14 Norris I'm ready to proceed. I've had plenty of time to
15 look at the document.

16 I would ask at some appropriate break that we be
17 allowed to have a copy of it since we only have one.

18 THE COURT: We can make a copy of it right now.

19 MS. JONES: Okay. Thank you, Your Honor.

20 (Pause.)

21 MS. JONES: Your Honor, may I ask the officer if I can
22 look through the rest of his documents to make sure there's
23 nothing else there I don't have?

24 (Pause.)

25 THE COURT: All right. Bring the jury in, please.

Bradford James
Cross-examination by Ms. Jones

1 (The following takes place in the presence of the
2 jury.)

3 THE COURT: Ms. Jones.

4 MS. JONES: Yes, sir. Thank you.

5 BY MS. JONES

6 Q Officer James, I've had the opportunity to review the
7 document you allowed me to look at. And I had asked this
8 question prior to the short break that we took.

9 Any description as your call being in reference to
10 someone being held at gunpoint is an issue that does not
11 derive from your statement, your supplemental. That's
12 something that Officer Guest will --

13 A I never said anything about a gun.

14 Q Okay. So if, if the original report says something
15 about a gun, that'll be something Officer Guest can
16 explain, not you.

17 A If that's something that he typed in his narrative,
18 that will be on his.

19 Q Okay. And, in fact, yours just says in reference to a
20 disturbance with a weapon.

21 A Yes, ma'am.

22 Q Pretty bland or innocuous in describing.

23 Now, let me ask you.. You said when you first arrived
24 that when you first pulled up you were 30 to 40 feet away
25 from the two black males and the young while male, correct?

Bradford James
Cross-examination by Ms. Jones

- 1 A Yes, ma'am.
- 2 Q And in your narrative you describe the white male as
3 being in a seated position. Is that true?
- 4 A A seated as in leaning back on his hands. He was
5 sitting down, but he was actually leaning back away from
6 the individuals.
- 7 Q Okay.
- 8 A So it was kind of in between.
- 9 Q Okay. But you said in your report that he was sitting
10 on the ground.
- 11 A Yes, ma'am.
- 12 Q Okay. And you indicate that there was some object
13 that you saw pass between the two that you later identified
14 as a cell phone, correct?
- 15 A Yes, ma'am. I did.
- 16 Q Okay. And you also indicated that upon your arrival
17 the two black males started -- I believe your original
18 description was backing away. But then you said they just
19 crossed Dean Street and went up on the porch of a home.
- 20 A Yes, ma'am.
- 21 Q Okay. And you later on went up there to that home
22 yourself, correct?
- 23 A Yes, ma'am. I did.
- 24 Q Do you remember how much later that was?
- 25 A Maybe five to ten minutes at most.

Bradford James
Cross-examination by Ms. Jones

1 Q Okay. What transpired between the time they backed
2 away or turned and walked on the porch and when you
3 actually went to see them? What all did you do?

4 A I spoke --

5 Q -- task-wise?

6 A I spoke to the parties involved.

7 Q Okay. How many of them? There were about eight
8 teenagers there. I'm sorry. Young folks. They're not all
9 teenagers.

10 A I didn't speak with the rest of the individuals. The
11 only people I spoke with were Mr. Bond and Mr. Chiles and
12 Mr. Norris.

13 Q Okay. So --

14 A The other officers on scene spoke with the other
15 individuals alone.

16 Q And how many did you say there were? You never
17 actually gave us a figure for that. How many total
18 officers?

19 A I'd have to go back and pull from dispatch. I
20 couldn't tell you. I don't, I didn't keep a head count as
21 to why I was there, I mean.

22 Q Okay. Who, who was the supervisor during this call?

23 A During this call?

24 Q Uh-huh.

25 A Supervisors don't respond to every call.

Bradford James
Cross-examination by Ms. Jones

1 Q Well, that really wasn't the question. Was there a
2 supervisor there?

3 A Was there a supervisor on scene?

4 Q Uh-huh.

5 A He responded after everything had been taken care of,
6 yes.

7 Q Okay. Who was that?

8 A Lieutenant Art Littlejohn.

9 Q Okay. But he did not come until what point?

10 A Until the individuals had been placed under arrest.
11 He arrived on scene.

12 Q Okay. And during the course of your investigation
13 talking to Mr. Bond, crossing the street and talking to the
14 other individuals who were there waiting on the porch, you
15 don't have any recollection of how many other officers
16 arrived?

17 A No, ma'am.

18 Q What did they do? It sounds like you did everything.
19 Why did you need more officers?

20 MR. BARNETTE: Objection, Your Honor. That asks for
21 speculation from the witness.

22 THE COURT: Well, if he knows.

23 A Restate the question, please.

24 Q Okay. You indicated, first of all, that you not only
25 spoke to the victim but you spoke to the two gentlemen who

Bradford James
Cross-examination by Ms. Jones

1 were ultimately arrested and charged.

2 A Yes, ma'am.

3 Q Okay. What did the other responding officers other
4 than Officer Guest who we're going to hear from, I assume,
5 what did they do when they got there?

6 A I cannot speak on their behalf.

7 Q Okay. Did you see them?

8 A I seen them, yes, but my attention was not as to what
9 they were doing. My attention was as to what my job is and
10 talking to the people that were on the scene.

11 Q Okay. At any point while you were there talking to
12 whomever you were talking to, including the other officers,
13 did anybody check the building that the Frisbee had been
14 thrown on top of to see if anything had happened to it?

15 A That, I didn't myself.

16 Q Okay.

17 A Like I said, I can't speak for the other officers. I
18 did not.

19 Q Okay. Did anybody canvass any of the other buildings
20 to make sure nothing was amiss or wrong with the other
21 buildings?

22 MR. BARNETTE: Your Honor, I'm going to object at this
23 point. I don't know whether it's relevant in this case.

24 THE COURT: Overruled.

25 A Did any other officers? Yet, again, I can only speak

Bradford James
Cross-examination by Ms. Jones

1 for myself. I can't speak for everyone else.

2 Q Okay. Now, you're the first officer there.

3 A Yes, ma'am.

4 Q Does that give you some kind of control of the
5 situation?

6 A At that point, yes.

7 Q So it is your scene because you got there first.

8 A Yes, ma'am.

9 Q Okay. And if there was some part of investigating
10 this activity or this alleged crime that needed to be done
11 and you either couldn't or didn't have time to do it, you
12 could have told someone else to do it, correct?

13 A Yes, but the fact is that was not part of the call.
14 The call was not somebody breaking into a building. The
15 call was a disturbance with weapons.

16 Q Okay.

17 A In a disturbance with weapons I'm not going to search
18 every building in the area.

19 Q Okay. Now, so you arrived. And at that point,
20 shortly thereafter, Mr. Norris and Mr. Chiles go across the
21 street and wait on a porch --

22 A Yes, ma'am.

23 Q -- for five to ten minutes until you come and talk to
24 them.

25 A Yes, ma'am.

Bradford James
Cross-examination by Ms. Jones

1 Q Okay. And when you went to talk to them, you now
2 indicate or testify that the items that -- the card type
3 items that had Mr. Bond's name on them were still in the
4 possession of Mr. Chiles, correct?

5 A Yes, ma'am.

6 Q And a kitchen knife, paring knife, was in the
7 possession of Mr. Norris, correct?

8 A Yes, ma'am.

9 Q Five to ten minutes later when they're over there by
10 themselves, correct?

11 A Yes, ma'am.

12 Q Okay. In talking to them was any idea conveyed to you
13 that they had seen some people on the roof of a building
14 across the street?

15 A Yes, ma'am.

16 Q Okay. And at that point it didn't concern you that
17 you might need to check these buildings and see what was
18 going on with the building?

19 A Yet again, I can't rule out the fact that it didn't
20 happen, because I did not do it. I can't tell you what the
21 officers did, the other officers that were on the scene.

22 Q Okay. You didn't as the officer in charge of the
23 scene direct anybody to make sure that none of the
24 buildings had been bothered while -- or damaged or broken
25 into or anything while people were in and on top of the

Bradford James
Cross-examination by Ms. Jones

1 buildings.

2 A No, ma'am, because we were told that they were
3 recovering a Frisbee by both parties involved.

4 Q Okay. But had not one individual also told you they
5 were on top of a building where they should not have been?

6 A They told me they were on top of the building
7 recovering the Frisbee.

8 Q That's what the victim told you, correct?

9 A Yes, ma'am.

10 Q Okay. That's one of the parties.

11 MR. BARNETTE: Your Honor, I'm going to object at this
12 point. This has been asked and answered.

13 MS. JONES: And I'm moving on, Your Honor.

14 Q As the officer in charge you talked to Mr. Bond only
15 out of that group, correct?

16 A Yes, ma'am.

17 Q Okay. Then you went across the street where
18 Mr. Chiles and Mr. Norris had waited, and you talked to
19 them.

20 A Yes, ma'am.

21 Q And at that point were you the officer that made the
22 decision to accept one version over the other?

23 A I took into --

24 Q No. My question was merely were you the officer that
25 made the decision to accept one version.

Bradford James
Redirect examination by Mr. Barnette

1 A I didn't accept one version. I took all the
2 circumstances involved in the case.

3 Q Okay. Thank you.

4 MR. BARNETTE: A couple on redirect, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. BARNETTE

7 Q When you came to the scene did Mr. Norris come over to
8 you and tell you what happened?

9 A No, sir.

10 Q Did he stop you and say I need help?

11 A No, sir.

12 Q Where did he go? He went over on the porch?

13 A He left the scene and went across the street to the
14 other house.

15 Q Did they ever approach you to tell you what happened?

16 A No, sir.

17 Q You had to approach him.

18 A Yes, sir.

19 Q Did Mr. Chiles go to you and say what happened?

20 A No, sir.

21 Q Did you have to approach him?

22 A Yes, sir. We had to walk across the street to speak
23 to both of them.

24 Q And the call you received, you didn't receive a call
25 breaking in, did you?

John Michael Guest
Direct examination by Mr. Barnette

1 A No, sir.

2 Q What kind of call did you receive?

3 A We received a call for a disturbance with weapons.

4 And while we were in route we were given a second call that
5 they said a second caller called in and said their friend
6 was being held at knifepoint.

7 Q Thank you, sir.

8 THE COURT: You may step down.

9 THE WITNESS: Thank you, sir.

10 MR. BARNETTE: Your Honor, we would ask for this
11 witness to be excused.

12 THE COURT: He may be.

13 (Whereupon, the witness was excused.)

14 MR. BARNETTE: I would like to call Officer Guest to
15 the stand, please.

16 JOHN MICHAEL GUEST, having
17 been first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. BARNETTE

19 Q If you would, sir, give your full name for the record,
20 please.

21 A John Michael Guest.

22 Q And where do you work at, sir?

23 A Spartanburg Public Safety.

24 Q And what's your position there, sir?

25 A Patrol officer.

John Michael Guest
Direct examination by Mr. Barnette

1 Q Back on July 16th of 2008, was you working that
2 evening, sir?

3 A I was.

4 Q If you would, tell the jury. Did you receive a call?

5 A Yes. I had just come on shift. We received a call in
6 reference to a disturbance with weapons.

7 We actually received two calls. Later we found out it
8 was from the security guard at the hanger and one of
9 Mr. Bond's friends.

10 One call said knife, that a knife was involved; one
11 call said possibly a gun.

12 Several officers responded to the area around the
13 church there at Dean and Main and Saint John Street.

14 While I was on Saint John Street, Officer James called
15 out on Dean Street in front of 174 and stated that he
16 thinks he had found the disturbance.

17 I turned right onto Dean Street off of Saint John,
18 parked my vehicle right near Officer James, probably about
19 the length of this courtroom, 30 to 40 yards away from
20 them, and walked up the hill.

21 As I got out of the car just in the general motion of
22 getting out of the car, pointed to North Dean Street, which
23 is the residence that we found Mr. Norris and Mr. Chiles
24 at, is basically across the street.

25 As I was getting out of the car I noticed two

John Michael Guest
Direct examination by Mr. Barnette

1 gentlemen sitting on the porch. I didn't have any idea at
2 that time that they were involved.

3 After speaking with Officer James, he stated that
4 these young men -- it was Mr. Bond and all of his friends.
5 There were seven or eight individuals out there -- said
6 they were -- Mr. Bond had been robbed and the two gentlemen
7 had gone across the street to that house.

8 And myself and Officer James then proceeded to go
9 across the street and interview them.

10 Q And when you went over did you speak to them?

11 A We did. We asked both Mr. Chiles and Mr. Norris what
12 was, what was going on tonight.

13 They had mentioned something at that point of the kids
14 were up near the roof, around the roof, and they had -- we
15 asked them if they approached them or talked to them. And
16 he said, yeah, we're just trying to wait until y'all got
17 here. But he never -- they never -- they didn't volunteer
18 that information. We had to ask.

19 Q They never approached you or anything.

20 A No, no. They were sitting on the porch and never went
21 inside or left the porch from the time we got there.

22 Q And when you went over did you ask for consent to
23 search?

24 A We did. I asked them if they -- I asked Mr. Chiles.
25 I said, "Look. If you guys have anything on you that might

John Michael Guest
Direct examination by Mr. Barnette

1 belong to Mr. Bond over here, if you don't, they'll be on
2 their way. If you do, you know, we'll take care of it, do
3 you mind if we check." And he said absolutely.

4 And before I could even check he handed me a stack of
5 cards and business cards and credit cards and other items
6 that belonged to Mr. Bond.

7 Q So those were Mr. Bond's cards.

8 A Yes. They had his name on them, on several of the
9 cards, already.

10 Q Let me show you what has been marked as -- and the
11 jury has seen these. They're State's Exhibits, I believe,
12 9, 8, 7 and 6. Were those the cards you recovered from
13 Mr. Chiles?

14 A Yes, sir.

15 Q And all of those cards, who did they belong to?

16 A Andrew Bond.

17 Q And did you later return those to Mr. Bond?

18 A We did. After I photographed them, I gave them back
19 to him.

20 Q Okay. And during the time did Mr. James search
21 Mr. Norris?

22 A He did. He asked Mr. Norris for consent. Mr. Norris
23 complied and said absolutely. On his pockets he found a
24 black kitchen knife.

25 Q Okay. This is State's Exhibit No. 1, is what was

John Michael Guest
Cross-examination by Mr. Poole

1 found.

2 A Yes.

3 Q And in identifying that, that was the knife that was
4 used in the robbery.

5 A Yes. Once we had placed them under arrest we verified
6 with Mr. Bond that that was the knife. And he said, yes,
7 said that's it right there. And he said absolutely.

8 Q And you placed them under arrest.

9 A Yes. We detained them at the house before we even
10 moved them to our cars. We detained them there and showed
11 the knife. I showed the knife to Mr. Bond. And he said
12 that was it.

13 Q You never received any call about any break-ins or
14 anything like that.

15 A Absolutely not. It was all disturbance that we got.

16 Q All disturbance with weapons.

17 A Yes.

18 Q And please answer any questions Mr. Poole or Ms. Jones
19 may have.

20 CROSS-EXAMINATION

21 BY MR. POOLE

22 Q Officer Guest, were you the last officer on the scene?

23 A No. I was the second officer on the scene.

24 Q The second one. Okay. How many eventually responded?

25 A Five or six. I don't know. I didn't -- I don't know

John Michael Guest
Cross-examination by Mr. Poole

1 exactly who all was out there. I know a couple of, but I
2 don't know how many eventually showed up.

3 Q Are you and Officer James the only ones that went
4 across the street to speak to Chiles, Mr. Chiles, and Mr.
5 Norris?

6 A We are.

7 Q Okay.

8 A At the same time that we -- other officers were
9 arriving, we left Mr. Bond and his friends in their
10 presence. And then we walked across the street.

11 Q Okay. Now, and it's your testimony that you asked
12 both of them if they had any property that belonged to
13 Mr. Bond.

14 A Right.

15 Q And it's your further testimony that Mr. Chiles
16 readily handed over to you a stack of cards.

17 A Right.

18 Q Okay. And he was, he was on the porch.

19 A Yes, sir.

20 Q He was the porch of this house.

21 A Yes, sir.

22 Q And he was on the porch when you got there.

23 A Yes, sir.

24 Q And he was on the porch when you talked to him.

25 A Yes, sir.

John Michael Guest
Cross-examination by Ms. Jones

1 Q And he didn't attempt to leave.

2 A No, not from the time that I had got on the scene.

3 Q Okay. And he did not attempt to flee or run away.

4 A No, sir.

5 Q And basically he complied with your request --

6 A Yes, sir.

7 Q -- without hesitancy.

8 A Yes, sir.

9 Q Okay. Thank you.

10 CROSS-EXAMINATION

11 BY MS. JONES

12 Q Officer Guest, after the decision was made that
13 Mr. Chiles and Mr. Norris were going to be arrested, did
14 you actually take them to jail? Do you recollect that?

15 A Yes, ma'am.

16 Q Did you take them both together?

17 A Yes, ma'am.

18 Q Okay. Do you recollect -- now, you indicated when you
19 got there in the process, I think you said, of getting out
20 of the car, you noticed that these gentlemen were already
21 across the street, correct?

22 A Yes. They were already on the porch.

23 Q On the porch where they remained until you took them
24 off in your car to the jail, correct?

25 (No response.)

John Michael Guest
Cross-examination by Ms. Jones

1 Q Okay. During that time and during your discussions
2 with Mr. Norris did he indicate to you anything about
3 seeing individuals on the roof of a building?

4 A We had asked him why he was over the street with the
5 boys. And he said that they were -- one of them was up on
6 the building and, "We were just making sure they didn't
7 leave until y'all got here."

8 Q Okay. Did he ever use the word trespassing? Do you
9 remember that?

10 A Not that I remember.

11 Q Okay. Did he indicate to you --

12 MR. BARNETTE: Your Honor, I'm going to object at this
13 point. May we approach the bench for a second?

14 THE COURT: Yes.

15 (Bench conference held off the record in the presence
16 of the jury but out of the hearing of the jury.)

17 THE COURT: Objection is sustained.

18 Q Again, Officer, excuse me. But you indicated you were
19 the second officer on the scene and there were five or six
20 other officers.

21 Do you recollect if -- what the other officers did
22 while you and Officer James were basically talking to all of
23 the parties involved?

24 A To clarify, around five or six. I don't -- I didn't
25 count them. It was a hand full, half a dozen.

John Michael Guest
Cross-examination by Ms. Jones

1 Q Yes, sir.

2 A When we went across the street, I know that we left
3 Mr. Bond and the other witnesses in their presence. And I
4 would assume they were speaking to them on what had
5 happened and getting more details and preparing to take
6 written statements from them, that kind of thing.

7 Q Okay. But you weren't involved in that so you
8 don't --

9 A I was not involved in that, no.

10 Q Okay. Did you yourself conduct any sweep or check of
11 the building that anyone -- that the building that Mr. Bond
12 was in front of that may have at one time had a young
13 person on top of the roof that night?

14 A Did I?

15 Q Did you check it?

16 A Did I check the building?

17 Q Yeah.

18 A No.

19 Q Okay. Did you see anybody else check the building?

20 A For the brief period of time that I was over near the
21 building, I didn't. But most of my attention and time was
22 over across the street.

23 Q Okay. Thank you, Officer.

24 MR. BARNETTE: No further questions. We would like
25 the witness to be excused, Your Honor.

1 THE COURT: You may step down.

2 (Whereupon, the witness was excused.)

3 MR. BARNETTE: That would be the state's case, Your
4 Honor.

5 THE COURT: Ladies and gentlemen, that is all of the
6 testimony or other evidence to be offered by the state, at
7 least in their case in chief.

8 Before we go further I've got some matters I'll need
9 to address. So I'll ask you to please go to your jury
10 room. Do not yet discuss the case. I'll bring you back
11 shortly to continue with the trial.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: All right. Any motions or other matters
15 to address before we continue?

16 MR. POOLE: Your Honor, on behalf of the defendant
17 Kenneth Chiles I would make a motion. Of course our first
18 motion is that, renew our prior motion on the in-court
19 identification and its attendant presentation of that
20 matter. Renew that motion.

21 And we move for a motion for a directed verdict of not
22 guilty on the part of this defendant. Viewing the light --
23 the evidence most favorable to the state, in the light most
24 favorable to the state, it's our position that Mr. Chiles
25 was removed from the scene of this alleged crime, that he

1 was by various accounts at the beginning 20 to 30 feet
2 away, he appeared on the actual proximity of the scene
3 minutes later, and he was not a participant in the alleged
4 incident in that he did not have any weapon, was not acting
5 in an intimidating or antagonistic fashion, and that later
6 on they found some items that belonged to the victim in
7 this case in his possession, which merely indicates that he
8 was present nearby. His mere presence, I don't think, is
9 enough to -- it's not evidence to the degree that it should
10 be submitted to the jury.

11 It is our position there's no evidence whatsoever that
12 indicates that, that he was a participant in this alleged
13 incident of armed robbery.

14 THE COURT: Well, clearly, there's evidence to
15 indicate that he's more than merely present.

16 But considering the evidence that has been presented
17 and all reasonable inferences that might be drawn, I do
18 find there is sufficient evidence to establish that the
19 defendant Chiles was acting in concert with defendant
20 Norris at the time of this event; and therefore your motion
21 for a directed verdict on that ground is denied.

22 MS. JONES: Your Honor, for the record, I also on
23 behalf of the defendant Norris renew our motion regarding
24 the admissibility of the in-court identifications. And
25 also I make for the record a motion for a directed verdict

1 based on the insufficiency of the evidence. Thank you.

2 THE COURT: All right. Each of those motions are also
3 denied.

4 Any others?

5 MR. POOLE: No, sir.

6 MS. JONES: No, sir.

7 THE COURT: Have each of you, Mr. Poole and Ms. Jones,
8 talked to your clients about their right to testify or not?

9 MR. POOLE: Yes, sir, I have.

10 THE COURT: And does Mr. Chiles indicate to you he
11 wishes to testify or not?

12 MR. POOLE: Yes, sir. But could I have just a few
13 more minutes to go over that with him in light of the
14 evidence that's been presented since the last conversation
15 I've had with him on that topic?

16 THE COURT: Okay. Well, let me discuss with them
17 their rights.

18 Mr. Chiles and Mr. Norris, each of you, do you
19 understand that now that you have been accused of a crime,
20 now that the case has gone to trial, you have an absolute
21 right to remain silent?

22 In other words, nobody can make you testify; nobody
23 can require that you take the witness stand; nobody can
24 ever require that you make any statement or answer any
25 questions that relate to the charge that has been brought

1 against each of you.

2 At the same time, if you wish to testify or if you
3 wish to provide evidence, now is the only opportunity that
4 you will have to do so.

5 In other words, you can't wait until after the jury
6 has rendered a decision and if that decision does not go to
7 your liking, you can't change your mind about your
8 decision. It can't be reversed.

9 So now is the time that you must make a determination
10 as to whether or not you will testify during the trial of
11 this case, as well as whether or not you will call any
12 other witnesses or produce any other evidence in the case.

13 Mr. Chiles, do you understand that it is your decision
14 as to whether or not you will testify?

15 DEFENDANT CHILES: Yes, sir.

16 THE COURT: Do you understand that nobody can require
17 you or make you testify?

18 DEFENDANT CHILES: Yes, sir.

19 THE COURT: Do you understand that you have to make
20 the decision, but you have that choice, but you only have
21 one opportunity to testify if you want to?

22 DEFENDANT CHILES: Yes, sir.

23 THE COURT: And, Mr. Norris, do you understand each of
24 those facts also?

25 DEFENDANT NORRIS: Yes, sir.

1 THE COURT: Have each of you had time to discuss with
2 your lawyers the advantages and disadvantages of
3 testifying, as well as not testifying?

4 Mr. Chiles.

5 DEFENDANT CHILES: As my lawyer said, I would like to
6 go over with him if it's possible.

7 THE COURT: Well, you can. But up to this point have
8 you discussed with him the advantages and disadvantages of
9 testifying, as well as not testifying?

10 DEFENDANT CHILES: Yes, sir. We have.

11 THE COURT: Mr. Norris, have you discussed with Ms.
12 Jones the advantages and disadvantages of testifying, as
13 well as not testifying?

14 DEFENDANT NORRIS: Yes, sir.

15 THE COURT: And I understand right now neither of you
16 have reached a decision about whether or not you'll
17 testify.

18 Is that true?

19 DEFENDANT CHILES: I want to testify.

20 THE COURT: Well, I thought you had to talk to your
21 lawyer first.

22 DEFENDANT CHILES: I want to go over some things with
23 him first on my testimony.

24 THE COURT: Okay. Well, in any event, you understand
25 it's your choice.

1 DEFENDANT CHILES: Yes, sir.

2 THE COURT: And I'm going to take a break and you're
3 going to talk to your lawyer. When we come back you'll let
4 me know if you're going to testify or not.

5 DEFENDANT CHILES: Yes, sir.

6 THE COURT: Mr. Norris, do you understand the same
7 thing?

8 DEFENDANT NORRIS: Yes, sir.

9 THE COURT: Discuss it with your lawyer. When I come
10 back we'll talk about whether you will or will not testify.

11 All right. Let's take 15 minutes.

12 (Whereupon, a recess was taken.)

13 THE COURT: Mr. Poole, have you and Mr. Chiles had
14 plenty of time now to discuss whether or not he is going to
15 testify?

16 MR. POOLE: Yes, sir, we have.

17 THE COURT: And what does he indicate to you he wishes
18 to do?

19 MR. POOLE: He indicates that he wishes to testify.

20 THE COURT: Is that right, Mr. Chiles?

21 DEFENDANT CHILES: Yes, Your Honor.

22 THE COURT: Do you understand it's your choice and
23 only you can make it?

24 DEFENDANT CHILES: Yes, sir.

25 THE COURT: And you've made the decision to testify?

1 DEFENDANT CHILES: Yes, sir.

2 THE COURT: Have you made that decision of your own
3 free will and accord?

4 DEFENDANT CHILES: Yes, sir.

5 THE COURT: Anybody pressure you into it or force you
6 into it?

7 DEFENDANT CHILES: No, sir.

8 THE COURT: Okay. All right. What about Mr. Norris,
9 Ms. Jones?

10 MS. JONES: Mr. Norris at this point indicates he
11 wishes to testify.

12 But as I indicated to the Court in chambers, I would
13 like to have the opportunity briefly at the conclusion of
14 Mr. Chiles' testimony to confer again briefly and see if
15 his opinion has changed if that's logistically possible.

16 THE COURT: All right. Mr. Norris, right now it is
17 your belief that you will testify?

18 DEFENDANT NORRIS: Yes, sir.

19 THE COURT: All right. And is that a decision that
20 you've made of your own free will and accord?

21 DEFENDANT NORRIS: Yes, sir.

22 THE COURT: And do you understand it's your decision?
23 Only you can make it. Your lawyer can't make it for you.
24 Only you can make it.

25 DEFENDANT NORRIS: Yes, sir.

1 THE COURT: Do you understand you can make it -- you
2 can testify or not testify? It's totally up to you.

3 DEFENDANT NORRIS: Yes, sir.

4 THE COURT: You can change your mind. I'm not trying
5 to require you to tell me right this minute. But what I'm
6 going to assume is after Mr. Poole gets through presenting
7 Mr. Chiles' case, it's going be your turn to testify and/or
8 present other evidence.

9 So if you take the witness stand, I'll assume that you
10 made that decision on your own. And if you don't take the
11 witness stand, I'm going to assume you made that decision
12 on your own. Is that fair?

13 DEFENDANT NORRIS: Yes, sir.

14 THE COURT: Because you understand it is your
15 decision, only you can make it.

16 DEFENDANT NORRIS: Yes, sir.

17 THE COURT: All right. Bring the jury pack please,
18 sir.

19 MR. BARNETTE: Your Honor, one, one matter we might
20 need to take up in the course of their testifying.

21 I understand Mr. Chiles, in the last ten years he's
22 been convicted of criminal domestic violence in the third
23 degree or third offense and shoplifting. I'll probably ask
24 him about those charges. Obviously, they're impeachable
25 crimes.

1 And for Mr. Norris, he has been in the last ten years
2 found guilty of common-law robbery, as well as burglary
3 second. I'll be asking him about those crimes as possible
4 impeachment. I just wanted to make sure there was part of
5 the record. And I told Ms. Jones and Mr. Poole that and --

6 THE COURT: All right. Mr. Chiles has been convicted
7 of shoplifting and criminal domestic violence third offense
8 within the past ten years?

9 MR. BARNETTE: That's correct, Your Honor.

10 THE COURT: Okay. Mr. Poole, do you contend that
11 either or both of those should not be permitted for
12 impeachment purposes?

13 MR. POOLE: Your Honor, I think that they are
14 permitted under the law. I think, as you know, do you have
15 a conviction for shoplifting, do you have a conviction for
16 criminal domestic violence.

17 THE COURT: And the reason criminal domestic violence
18 is an impeachable offense, because it is a third offense
19 which carries more than one year.

20 MR. BARNETTE: That's correct, Your Honor.

21 THE COURT: First and second do not carry more than a
22 year.

23 MR. BARNETTE: At that time back in 2003, that's
24 correct, Your Honor.

25 THE COURT: All right. Well, are you intending simply

1 to ask him if he has been convicted of criminal domestic
2 violence, or criminal domestic violence third offense?

3 MR. BARNETTE: I would like to ask the third. But I
4 understand if the Court limits me to criminal domestic
5 violence. The third would qualify as an impeachable
6 offense.

7 THE COURT: But only because of the two priors?

8 MR. BARNETTE: That's correct, Your Honor.

9 THE COURT: But the two priors are not admissible.

10 MR. BARNETTE: That's correct.

11 THE COURT: All right. Than we'll limit it to the
12 fact that he has been convicted of criminal domestic
13 violence, not what offense it might be.

14 MR. BARNETTE: Yes, sir.

15 MR. POOLE: May it please the Court. I'll be glad to
16 ask him.

17 THE COURT: About the third offense?

18 MR. POOLE: No, sir, about his record, shoplifting and
19 C. D. V.

20 THE COURT: Okay. All right. Anything else?

21 Ms. Jones, do you have any convictions that Mr.
22 Barnette has referenced with Mr. Norris that you contend
23 should not be permitted for impeachment purposes?

24 MS. JONES: No, sir, Your Honor. The two that Mr.
25 Barnette has spoken of, he has provided me documentation.

A. C. Worthy
Direct examination by Mr. Poole

1 And to clarify for the Court, these will be the only
2 two that are qualifiable and impeachable. Is that correct?

3 MR. BARNETTE: That is within the last ten years, Your
4 Honor. Obviously, both of them have records beyond that,
5 but I understand under the rules I can't ask them about
6 that.

7 MS. JONES: And that would be a 1996 common-law
8 robbery and a 1995 burglary second nonviolent.

9 THE COURT: Okay. All right. Bring the jury in,
10 please.

11 (The following takes place in the presence of the
12 jury.)

13 THE COURT: All right. Ladies and gentlemen, as you
14 know, the state has rested in their presentation. So we
15 will now proceed with any to be offered by the defendants.

16 Mr. Poole.

17 MR. POOLE: May it please the Court. The defense for
18 Mr. Chiles calls Mr. A. C. Worthy to the stand.

19 A. C. WORTHY, having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. POOLE

22 Q You are Mr. A. C. Worthy?

23 A Yes, sir.

24 Q And, Mr. Worthy, where do you live right now?

25 A 1703 Wofford Street.

A. C. Worthy
Direct examination by Mr. Poole

1. Q Okay. And do you work during the day?
- 2 A Yes, sir.
- 3 Q Where do you work?
- 4 A At --
- 5 THE COURT: Excuse me. Let me ask you to get closer
- 6 to that microphone, please.
- 7 A At Civitan Rehabilitation Center.
- 8 Q Is that the Civitan Rehabilitation Center?
- 9 A Yes, sir.
- 10 Q Okay. And, Mr. Worthy, have you lived in Spartanburg
- 11 County all of your life?
- 12 A Yes, sir.
- 13 Q Okay. And do you know Mr. Kenneth Chiles?
- 14 A Yes, sir.
- 15 Q And how do you know him?
- 16 A As a friend. We used to sit out there in the field
- 17 where we used to stay at and drink beer and stuff. Been
- 18 doing it, what, a couple of years.
- 19 Q All right. And were you at his house on the late
- 20 night hours of July 16, 2008?
- 21 A Yes, sir.
- 22 Q You're going to need to speak up just a little bit
- 23 louder. Okay?
- 24 A Yes, sir. I were.
- 25 Q Okay. And speak as clearly as you can. Okay?

A. C. Worthy.

Direct examination by Mr. Poole

1 A Yes, sir.

2 Q So were you at Mr. Chiles' house on the late night --
3 in the late night hours of July 16, 2008?

4 A Yes, I were.

5 Q Okay. What were y'all doing there?

6 A Mr. Chiles was laying down on the bed looking at the
7 wrestling that night.

8 Q Well, let me back up before we get to that.

9 Were you spending the night there?

10 A Yes, sir.

11 Q What time did you get there that day?

12 A About 8:00.

13 Q About 8:00?

14 A Yes, sir.

15 Q So what did y'all do between 8:00 and, say,
16 10:00 o'clock?

17 A Well, we sat there and drunk a few beers and was
18 watching wrestling that night.

19 Q Drank some beers and watched wrestling.

20 A Yes, sir.

21 Q All right. And this was at Mr. Chiles' home?

22 A Yes, sir.

23 Q Do you know his address?

24 A Not really. I don't know the address, but I know he
25 stay on North Dean Street.

A. C. Worthy
Direct examination by Mr. Poole

1 Q All right. And what did you do after you got through
2 drinking a few beers and watching wrestling?

3 A Well, after wrestling went off I turned on the news.
4 Then I heard Mr. Norris come to Mr. Chiles' window and
5 called him.

6 MR. BARNETTE: Objection, Your Honor. Hearsay.

7 THE COURT: Sustained.

8 A And Mr. --

9 THE COURT: No. You can't answer it.

10 Q Okay. All right. Did Mr. Norris come into the house?

11 A No, sir. He stood outside.

12 Q Do you know the sound of his voice?

13 A Yes, sir.

14 Q Okay. Now, you can't say what he said. Okay?

15 A All right.

16 Q Mr. Norris said.

17 A Yes, sir.

18 Q But as a result of what was said, what did Mr. Chiles
19 do?

20 A He didn't do nothing. He laid on the bed for the time
21 being.

22 Q Okay. And what happened then?

23 A And Mr. Norris came and said Kenneth --

24 MR. BARNETTE: Objection, Your Honor. Hearsay.

25 THE COURT: You're not going to be able to testify to

A. C. Worthy
Direct examination by Mr. Poole

1 what somebody else said. They'll have to say it
2 themselves.

3 THE WITNESS: Yes, sir.

4 Q Okay. What happened? Did Kenneth say anything in
5 response to any statement made by Mr. Norris?

6 MR. BARNETTE: Objection, Your Honor. Hearsay.

7 A No, sir.

8 THE COURT: Sustained.

9 Q As a result of the, a remark made by Mr. Norris, what
10 did Mr. Chiles do?

11 A He, like I said he, laid on the side of the bed, and
12 he stood up and asked Mr. Norris what did he want.

13 MR. BARNETTE: Objection, Your Honor. Hearsay.

14 MR. POOLE: That's Mr. Chiles said.

15 THE COURT: That's hearsay too, isn't it? It's an
16 out-of-court statement.

17 Q What did Mr. Chiles do as a result of the exchange?

18 A Nothing. He just sat there on the side of the bed and
19 kept asking Mr. Norris what did he wanted.

20 Q Okay. And then was Mr. Chiles in bed ready for sleep?

21 A Yes, sir.

22 Q And what did he do? Did he put on some clothes?

23 A Yes, sir. He got up and put his clothes on and then
24 went to the door to see what Mr. Norris wanted.

25 And then when Mr. Norris said that some guys were

A. C. Worthy
Direct examination by Mr. Poole

1 across the street --

2 MR. BARNETTE: Objection, Your Honor. Hearsay.

3 Q Okay. All right. So he got up out of bed.

4 A Yes, sir.

5 Q He was ready for sleep.

6 A Yes, sir.

7 MR. BARNETTE: Objection, Your Honor. He's leading
8 the witness now.

9 MR. POOLE: Your Honor, could you let me lead this
10 particular witness to a certain degree?

11 THE COURT: He's already testified to it. Go ahead.

12 Q All right. Did he -- what -- did he put on clothes?

13 A He got up and put his clothes on and went and took,
14 asked Mr. Norris what did he need, wanted. And Mr. Norris
15 said that he wanted to use the telephone.

16 MR. BARNETTE: Objection, Your Honor.

17 THE COURT: You can't.

18 Mr. Worthy, you're not going to be able to testify. I
19 know this is difficult for you to understand, but that's
20 just the rules.

21 You can't testify as to what anybody else said. Now,
22 you can testify as to what they did as a result of what
23 they heard. You can testify as to what action they took,
24 you know, what you saw them do. But you can't testify as
25 to what they said. Okay?

A. C. Worthy
Direct examination by Mr. Poole

1 THE WITNESS: Yes, sir.

2 A Well, he got up and started to put his clothes on and
3 went to the door. And after that I don't know what
4 happened, after that.

5 Q Did it take a period of time for him to put his
6 clothes on?

7 A No, sir.

8 Q It didn't take ---

9 A It took about five minutes to put his clothes on.

10 Q About how long?

11 A About five or ten minutes to put his clothes on.

12 Q Okay. And what kind of clothes did he put on?

13 A Some, I think it was, blue jeans, I believe.

14 Q Okay. Did he put a shirt on?

15 A Yes, sir.

16 Q Or do you know?

17 A I think he put a shirt on. I'm not for sure.

18 Q Did he have a cell phone with him?

19 A If he had it, he had it on his dresser.

20 Q Okay. All right. After he left his house, do you
21 know what happened?

22 A No, sir. Mr. Chiles come back in to get the cell
23 phone, I think, what Mr., what Mr. Norris used.

24 Q Okay. Mr. Chiles came back into the house?

25 A Yes, sir.

A. C. Worthy
Cross-examination by Mr. Barnette

1 Q After he left one time?

2 A Yes, sir.

3 Q And what happened when he came back into the house?

4 A He picked the cell phone up.

5 Q Okay.

6 A Kept that for Mr. Norris to use.

7 Q All right. Did you know anything about what else
8 happened after that?

9 A No, sir.

10 Q Do you know anything about the investigation?

11 A No, sir. The only thing that I remember when I was
12 sitting looking at the wrestling when the officers come
13 back, and they had Mr. Chiles with them in handcuffs.

14 Q Okay. Thank you, Mr. Worthy.

15 THE COURT: Ms. Jones.

16 MS. JONES: I don't have any questions. Thank you.

17 THE COURT: Okay.

18 CROSS-EXAMINATION

19 BY MR. BARNETTE

20 Q Yes, sir. Y'all was drinking beer?

21 A Yes, sir.

22 Q What kind of beer was y'all drinking?

23 A Mr. Chiles was drinking Bud Light and I had Colt 45.

24 Q And did y'all have a case, did y'all have a 6-pack?
25 What did y'all have?

A. C. Worthy
Cross-examination by Mr. Barnette

1 A No, sir. Just he had just came there, a 45 bottle.

2 Q And you didn't see what happened outside or anything
3 like that.

4 A No, sir.

5 Q And you said that Mr. Chiles had a cell phone.

6 A Yes, sir.

7 Q Did you ever talk to either one of these officers?

8 A No, sir. As a matter of fact, I just, the only person
9 I think I saw was one of the officers came to the door with
10 Mr. Chiles in handcuffs.

11 Q Let me ask you a question.

12 You never did pay any attention to any of the police
13 officers that came outside?

14 A Well, the door kind of shut, was pushed up when the
15 officer came to the door.

16 Q No. What I mean is you didn't hear any of the sirens
17 or any police officers coming in or anything like that?

18 A No, sir. The only thing, I just heard some guys on
19 the porch talking.

20 Q Thank you, sir.

21 THE COURT: You may step down.

22 MR. POOLE: We call Mr. Kenneth Chiles to the stand.

23

24

25

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 KENNETH WAYNE CHILES, having
2 been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. POOLE

4 Q Your name, please, sir.

5 A Kenneth Wayne Chiles.

6 Q And, Mr. Chiles, how old are you?

7 A I'm 47 years old.

8 Q Okay. Do you live here in Spartanburg County?

9 A Yes, sir.

10 Q Have you always lived in Spartanburg County?

11 A Yes, sir.

12 Q Okay. Are you married?

13 A No, sir.

14 Q How much education do you have?

15 A I went to high school, up to the 11th grade, and went
16 back and got my G. E. D.

17 Q Okay. Do you have any children?

18 A I have a daughter that go to U. S. C., and a son.

19 Q How old are they?

20 A My daughter is 20, right at 20, and my son is 17.

21 Q Okay. Do you have a good relationship with them?

22 A Yes, sir, I do.

23 Q Now, how about your work history? Where have you
24 worked for the past 25 years?

25 A The past 20 or 25 years I been at a restaurant called

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 Piccadilly Restaurant. I started out with them when they
2 was at the mall. They left the mall and went to another
3 location right up above Sams, right below Sams. A little,
4 almost 19 years, I've been with them.

5 Q Okay. Were you with them in July? Were you working
6 there in July of 2008?

7 A I was working there up until this incident happened.

8 Q Okay. And so you were with the Piccadilly when they
9 were at once upon a time Westgate Mall. And then they
10 moved. When was that, about ten years ago?

11 A Yeah, something like that.

12 Q They moved near --

13 A Right below Sams, right across the street from
14 Applebee's out there off of Reidville Road, out through
15 that way, Westgate area.

16 Q Okay. All right. Were you ever in the military?

17 A No, sir, not in military.

18 Q Do you have family, other family, in Spartanburg
19 County other than your children?

20 A Yeah. I have my mother, her brother, uncles and
21 cousins. I've got, I have a few family.

22 Q Okay. And while we're on your background, is it true
23 that within the past ten years you have obtained a
24 conviction of shoplifting and criminal domestic violence?

25 A Yes, sir. I have.

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 Q Okay. Is that something you're proud of?

2 A No, sir. I'm not. At the time I was going through a
3 few things, alcohol, so far. But since then I've gotten
4 better, gotten myself better, and gotten into the church.

5 Like I said, since this incident came up, I had a
6 decent job. After the incident happened I lost that job
7 and also the place, my place, of residence. So I'm not,
8 you know, this really, this incident really set me back.

9 Q Okay. You lost your home?

10 A I lost my home, yeah.

11 Q Where was your home located?

12 A Right there at Dean Street.

13 Q How long had you lived there before July 16 of 2008?

14 A About three to four years.

15 Q Okay. All right. What's your relationship with
16 Carnie Norris?

17 A Me and Carnie, I consider we good associates. Well,
18 we went to school together. We, we don't hang out
19 together. I just know him. He stayed down the street from
20 me. I see him, I say hello, and he speak back, you know.
21 We don't, we don't hang out or nothing, you know. We just
22 have a relationship where we see each other and speak to
23 each other.

24 Q Okay. Now, on this particular night in question did
25 you see Mr. Norris?

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 A Yes, I did.

2 Q When did you first see him?

3 A I didn't -- actually, I didn't see him until that
4 night when he came to my house and knocked on the door.

5 Q Okay. What happened?

6 A Me and Mr. -- me and a friend of mine was watching T.
7 V.

8 Q Who was your friend? What's his name?

9 A Oh, A. C. -- a. C. Worthy, the one that just
10 testified. Like he said, we drunk a couple of beers and
11 watching, watching, watching T. V.

12 I happened to fall asleep. I don't know. He was up
13 after I did. I think he stayed up a few, a little later.
14 But I had fell asleep when, you know, I heard a knock on
15 the door. I went to the door and it was Mr. Norris. You
16 know, he told me --

17 MR. BARNETTE: Objection, Your Honor.

18 MR. POOLE: Your Honor, this is not hearsay and it's
19 not offered for the truth of the matter asserted.

20 THE COURT: Well, let me see y'all just a minute.

21 (Bench conference held off the record in the presence
22 of the jury but out of the hearing of the jury.)

23 THE COURT: Overruled.

24 Q What did Mr. Norris say to you?

25 A He told me it looked like somebody was trying to break

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 into a building, could I get my cell phone or possibly
2 could he use the phone to try to --

3 Q Hold on just a minute, Mr. Chiles. I'm hard of
4 hearing.

5 A Yes, sir.

6 Q And could you speak a little slower and a little
7 louder, please?

8 A Okay. He said it looked like somebody was breaking
9 into a building across the street. He said he observed
10 somebody down on top of the building. And at the time I
11 didn't have on too much clothes. So I said, well, hold on
12 a minute, let me go and get my phone and put on something,
13 you know, so I can come, come back out and see what's going
14 on. And he said okay.

15 So I went back into the, my bedroom, put on a pair of
16 shorts. A. C. thought I had on a pair of pants, but
17 actually it was a pair of shorts I throwed on and a
18 t-shirt.

19 I went outside. I didn't even put my shoes on. I was
20 barefooted. I went outside barefooted. I noticed two,
21 might have been two, or three guys on top of the building.

22 And the tree was shaking. So when I went over there
23 to see what was going on, well, actually I thought, wait a
24 minute, I thought by the time I went and got my phone and
25 went back out, he had one of the guys, what's his name,

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 Andrew, said he was sitting on the ground. And he had his
2 hand on his shoulder. And he, he asked me would I hold his
3 I. D. in case he tried to run, that this was one of the
4 guys that was on top of the roof.

5 So me, me, you know, knowing, I just grabbed like his
6 I. D. and just stuck it in my pocket. I said okay.

7 He said have you called 9-1-1 yet. I said no, I'm in
8 the process of calling them. And at that time one of the
9 officers was coming from Saint John and one officer was
10 coming down Dean Street the other way. So I never did get
11 to make the phone call. The officer was already en route.

12 Q Okay. Did you have a cell phone with you?

13 A Yeah, I had a cell phone with me. That's -- he said
14 something, like I heard him say something about did he call
15 for backup. He didn't say -- I didn't -- he didn't say
16 nothing about calling for backup. He asked me did I call
17 9-1-1. That's what he said.

18 Q Okay. Mr. Norris said did you call 9-1-1.

19 A Yeah. He asked me did I call 9-1-1 yet.

20 Q What was your impression of what was going on right
21 then?

22 A I was -- it's 12:30, 12:00 or 12:30 at night. You
23 know, I'm, I don't know what's going on. I'm thinking I'm
24 making a citizen's arrest. I didn't know it was just kids.
25 You know, if that -- if I had knowed it was just kids

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 playing, I would have stayed in my bed. I never would have
2 went out there.

3 And, and Mr. Bond, I'm sorry that happened to you like
4 that. But, like I say, I didn't know what was going on. I
5 just didn't know what was going on.

6 Q Okay. Did you have a weapon with you?

7 A No, sir, I didn't have a weapon. The only thing I had
8 on me was my cell phone.

9 Q All right. Did you obtain some credit cards and other
10 small papers from Mr. Bond?

11 A When I, when I went across the street, that was what
12 Mr. Norris had, had handed me. He had a stack of cards.

13 I hadn't even seen a wallet. I couldn't tell you what
14 color it is or what it looked like. He said, he just said,
15 hold this I. D. until the police come. I didn't even look
16 at it. I didn't go through it or nothing. I just stuck it
17 in my pocket.

18 Q Okay. And you indicated that you stuck your -- you
19 put your left hand as if you were holding something in that
20 hand. And you put left front. Did you put them in your
21 left front pocket?

22 A I believe this pocket here, yes.

23 Q Okay. Of your pants.

24 A Yeah.

25 Q Okay. And did you say anything to Mr. Bond who was on

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 the ground at that time? Did you say anything?

2 A No, I didn't say nothing to him. I didn't even go
3 near him after I --

4 Q Did you --

5 A After I, after I had, after he gave me the cards, I
6 just kind of just laid back to see what was going to
7 happen, because the police was coming and I wanted to tell
8 them my version of the story of what happened.

9 Q Okay. Well, what happened when the police got there?

10 A When the police came, we talked to about two or three
11 polices, and we hadn't even crossed the street yet. I
12 heard. I heard them say we, we crossed the street without
13 even talking to the police. We talked to two or three
14 polices before they even, you know, told us we can go on.
15 That's when we went across the street.

16 Q Okay. So you walked across the street. And did you
17 stand on your porch?

18 A Yeah. Me and Mr. Norris stood on the porch.

19 Q Okay. And what happened then?

20 A At that point the officer behind you came up and asked
21 me about the cards. And I reached in my pocket and I gave
22 it to him without any hesitation. I said, oh, okay, here
23 his I. D. is right here. I didn't know nothing about no
24 bank cards or nothing like that. I just considered it to
25 be I. D.

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 Q Okay. All right. So you cooperated with the officer
2 who asked you if you had any property or anything that
3 belonged to Mr. Bond.

4 A Yes, sir.

5 Q Is that right?

6 A Yes, sir. I did.

7 Q Okay. Now, during the course of my representation of
8 you, Mr. Chiles, I have shared with you and gone over
9 what's called discovery materials.

10 A Yes, sir.

11 Q Is that true?

12 A Yes, sir.

13 Q And that's, you know, the files and the evidence that
14 the state has against you.

15 MR. BARNETTE: Your Honor, I'm going to object at this
16 point. I don't know what the relevance would be of --

17 THE COURT: Well, let me see y'all.

18 (Bench conference held off the record in the presence
19 of the jury but out of the hearing of the jury.)

20 THE COURT: Overruled.

21 Go ahead.

22 Q I've shown you certain information that has been
23 provided to me by the state in preparation for your case,
24 is that true?

25 A Yes, sir.

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 Q And one of them is an incident report that was
2 prepared by Officer John Guest of the city police.

3 A Yes, sir.

4 Q And relates to the cards that you gave them, right?

5 A Yes, sir.

6 Q And I went over this information with you. And in
7 that report Officer Guest states that you said, "They fell
8 out of that man's wallet so we just picked them up. There
9 ain't nothing wrong with that."

10 Now, what was really said? I mean, what did you say
11 when you were interviewed by the police about how you got
12 the cards?

13 A Like I said earlier, that was just a mistake on his
14 part, I guess. You know, I stated when I walked across the
15 street Mr. Norris handed me the cards and told me to hold
16 his I. D.

17 The cards was on the ground. They was setting next to
18 Mr. Bond. Like I said, I ain't never seen no wallet. I
19 didn't go through his wallet. I couldn't tell you until
20 today what his wallet look liked.

21 Q Did you ever take those cards out and look at them?

22 A I, I never did. I thought that was just I. D.

23 Q Okay.

24 A Like I said, I thought I was making a citizen's
25 arrest, and until the officer told me it was against the

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 law. The officer behind me actually came later on and told
2 me, no, that was against the law, that he can arrest us for
3 that, which he did.

4 Q Let me ask you this, Mr. Chiles. Did you -- in your
5 mind did you participate in any type of crime?

6 A No, sir; no, sir. Like I said, I thought I was making
7 a citizen's arrest. It's 12:00 or 12:30 at night.

8 Q Okay. And did you know that there was a robbery, an
9 alleged robbery, in progress when you were there?

10 A Not that I know of.

11 Q Okay. And have you been truthful today?

12 A Yes, sir, I have.

13 Q Okay. So let's go back to one or two other points.

14 When Mr. Norris came to your house were you in bed
15 asleep, or in bed getting ready to go to sleep, or not in
16 bed at all?

17 A I was in bed. I was in bed asleep.

18 Q Okay.

19 A I had fell asleep.

20 Q All right. When Mr. Norris came to your house, what
21 did you do to go outside, before you went outside?

22 A I went to the door to see what was, people, because
23 it's right across from my house where the incident
24 happened.

25 I looked outside to see what was going on. And I did.

Kenneth Wayne Chiles
Direct examination by Mr. Poole

1 see some movement in the trees. And it looked like a
2 couple of guys on top of the roof.

3 Q Okay.

4 A And then I went back and put on a pair of shorts,
5 throwed on a pair of shorts, and t-shirt and got my phone.
6 Actually, it took a minute to get my phone because I had
7 forgot where I put it at. I remember that.

8 Q Okay. So you were trailing -- were you trailing
9 Mr. Norris? Did he wait for you on the front steps?

10 A No. I don't think -- he was already across, had left
11 the house and went across the street.

12 Q So did you know what was going on across the street
13 before you got there?

14 A No, sir, I don't.

15 Q Okay.

16 A I don't know what was going on. I don't know what
17 happened, because I stayed. It took me about three to four
18 minutes, you know, to put my shorts on and find out what I
19 did with my phone, because I kind of like throwed on a pair
20 of shorts and a t-shirt. And then I had remembered where I
21 put my phone at.

22 Q Okay. All right, now, Mr. Worthy said y'all had been
23 drinking some beer that night, is that right?

24 A Yes, sir. We was.

25 Q Had you been drinking beer?

Kenneth Wayne Chiles
Cross-examination by Ms. Jones

1 A Yes, sir.

2 Q Were you intoxicated? Was you intoxicated?

3 A No. It take more than one beer to me down -- to get
4 it.

5 Q How many beers did you have?

6 A One beer. I just had one. It was about 24 ounces.

7 And he drinks Colt 45s in a, a bottle, about four beers,
8 sort of round.

9 Q So you had one 24-ounce beer.

10 A Yeah.

11 Q Which is the equivalent of two regular.

12 A Two regular 12-ounce beers, yes, sir.

13 Q Okay. All right.

14 MR. POOLE: Ask the Court's indulgence for just a
15 moment, please.

16 (Pause.)

17 Q Mr. Chiles, did you have a weapon at any point in time
18 that night?

19 A No, sir.

20 Q Knife or otherwise, or any other type of weapon?

21 A Unless you want to count cell phone.

22 Q Okay. Thank you, sir.

23 CROSS-EXAMINATION

24 BY MS. JONES

25 Q Mr. Chiles, you told your lawyer, Mr. Poole, that you

Kenneth Wayne Chiles
Cross-examination by Ms. Jones

1 had lived there on Dean Street, North Dean Street, for
2 several years as of the day, the night this happened,
3 right?

4 A Yes, sir; yes, ma'am.

5 Q Okay. Do you consider that your neighborhood?

6 A Yes, ma'am. It is.

7 Q At that time?

8 A Yes, ma'am.

9 Q And across the street from the house you lived in,
10 what were the businesses there and the establishments
11 across the street?

12 A We have a St. Lukes.

13 Q Okay. What is St. Lukes? Explain what that is.

14 A St. Lukes is a free medical clinic where people go to
15 get help. You know, they can't do for theirself.

16 Q If they can't afford to go to --

17 A They can't afford to go.

18 Q -- Regional or to a regular doctor's office, can they
19 go to St. Lukes and get what they need for free?

20 A Yes, ma'am, they can.

21 Q Have you been there? Have you used St. Lukes?

22 A On occasions. Not lately, but I have.

23 Q Okay. Is that something that is needed, or does it
24 get a lot of business in that neighborhood?

25 A Yes, ma'am, it do.

Kenneth Wayne Chiles
Cross-examination by Ms. Jones

1 Q Okay. Go ahead. Tell me about some of the other
2 businesses.

3 A Next to St. Lukes is, is another place like that gives
4 you clothes and stuff.

5 Q Okay. If I said the name would you maybe recognize
6 it?

7 A Yes, ma'am.

8 Q Helping Hands Mission?

9 A Mission. It is kind of like a mission, yes, ma'am.

10 Q Ministry?

11 A Yeah, ministry, yes, ma'am.

12 Q Okay. Do you know if it's connected to the church,
13 First Baptist, or not? If you don't, that's okay.

14 A I believe First Baptist have something to do with it,
15 the whole line all the way down to the cleaners, I think,
16 you know.

17 Q Okay. And at the mission or the ministry's building
18 they give out things also to people who can't afford to go
19 buy them?

20 A Correct.

21 Q What kind of stuff?

22 A Clothing, shoes, different stuff to kind of help
23 people out that can't do for theirselves.

24 Q And in that neighborhood is that important? Does it
25 get a lot of business?

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

1 A It's very important, yeah. It's crowded just about
2 every day.

3 Q Okay. And that is the neighborhood that you had lived
4 in for several years at the time this happened, right?

5 A Yes, ma'am.

6 Q Okay. And you have indicated after Mr. Norris came
7 and knocked on the door and you got dressed, while you were
8 getting dressed, you saw the tree shaking and saw some
9 folks on top of one of those ministry buildings, is that
10 right?

11 A Correct.

12 Q Did that concern you?

13 A Yes, ma'am, it did.

14 Q Why is that?

15 A It's 12:00, like I said, it's 12:00 or 12:30 at night.

16 Q Okay. And why did you go out?

17 A I wanted to see what was going on in my neighborhood.
18 I thought somebody was breaking into the building.

19 Q Thank you. That's all.

20 CROSS-EXAMINATION

21 BY MR. BARNETTE

22 Q So you was getting your clothes on, sir?

23 A Yes, sir.

24 Q Where was you getting your clothes on at?

25 A In my home.

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

- 1 Q Where is your room at?
- 2 A It's located right in the front right, right as you go
3 through the door. My bedroom is right here on the left.
- 4 Q How many rooms do you have in the house?
- 5 A Oh, it's a few rooms.
- 6 Q Okay. So your bedroom is in the front.
- 7 A Correct.
- 8 Q Where is the kitchen at?
- 9 A The kitchen is about two or three rooms back. You go
10 through a door. And the kitchen is right there in the
11 back.
- 12 Q Where's the living room?
- 13 A The living room is right there in the front.
- 14 Q Okay. So your bedroom --
- 15 A My bedroom was on the left. The living room was on
16 the right.
- 17 Q And when you're putting your clothes on, you're
18 checking this tree out.
- 19 A No, sir. When I went to the door I checked the tree
20 out.
- 21 Q Well, you just testified when you was putting your
22 clothes on when Ms. Jones asked you the questions that you
23 were watching the tree and seeing these people on top of
24 the building.
- 25 A How can I do that if I'm in my bedroom putting on my

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

1 clothes?

2 Q That's my question.

3 A I couldn't see. I couldn't see what was going on
4 until I went to the front door. He indicated I had a red
5 door. I went to that door and noticed what was going on
6 twice.

7 Q Yes, sir. You said you picked up your cell phone.

8 A Yes, sir.

9 Q Why didn't you call immediately right there if you
10 thought a burglary was occurring?

11 A Because I didn't know. I wanted to see for myself
12 what was going on.

13 Q Wasn't it kinda dangerous to go over and see what was
14 going on? Doesn't the normal person usually call the
15 police and have them handle it?

16 A No, not when Mr. Norris had already came and got me.
17 Like I said, I got to see what was going on if he -- you
18 know, he might have seen something that he didn't see.

19 Q Why didn't Mr. Norris ask you for his cell phone, your
20 cell phone, to make a phone call to the police?

21 A I'm the only one that he knows of in the area, I
22 guess.

23 Q Why was he over there at 12:00 or 12:30 that night?

24 A Your guess is better than mine. I was sleeping. I
25 was asleep. Why would I know? Your guess is better than

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

- 1 mine.
- 2 Q Yes, sir. And you went out, you said, in your bare
3 feet.
- 4 A Barefooted.
- 5 Q You went barefooted over there. And how many of these
6 fellows did you see over there?
- 7 A I seen two on the roof when I first looked out the
8 door. And the tree indicated there was somebody else in
9 the tree, because the tree was moving. It was shaking.
- 10 Q So you saw two on the roof.
- 11 A They was just running around on the roof, yeah.
- 12 Q How could you see them running up on the roof where
13 you're at?
- 14 A My, my apartment is right across the street.
- 15 Q But you don't have the angle to see running all over
16 that roof. There's no way you can see the whole roof.
- 17 A Yes, I do. I can take you over there right now, and
18 you can see across the street, dark, light or no light.
- 19 Q Was there lights on top of that roof?
- 20 A No, there wasn't no light. But I know, I know a
21 person when I see them if they're moving.
- 22 Q Okay. Well, how many people did you see on the
23 ground?
- 24 A I didn't, I didn't even see anybody on the ground.
- 25 Like I said, I seen the tree shaking and two bodies on top

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

1 of the roof.

2 Q Okay. Who did you see down on the ground, I mean, on
3 the property?

4 A I just told you I didn't see anybody on the ground. I
5 see a tree moving indicating that somebody had to be in the
6 tree, and two individuals on top.

7 Q Okay. When you went outside, who did you see outside,
8 when you followed Mr. Norris? That's what I'm talking
9 about. When you followed Mr. Norris, what did you see?

10 A When I got across the street, Mr. Norris had already
11 had Mr. Bond in the seating position on the ground.

12 Q How many other folks was there?

13 A The other guy that got into that Jeep and was riding
14 up and down the street. I think they testified to that.

15 Q So your testimony is the only person you saw was Mr.
16 Bond?

17 A That's the only person I seen.

18 Q You didn't see Mr. Mayfield?

19 A No. The only person, the only thing I seen was a Jeep
20 going back and forth up the street.

21 Q You didn't see --

22 A Well, they was riding and checking on him.

23 Q How long did this take?

24 A How long did what take?

25 Q How long did all of this take, or how long did this

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

1 take until the police got there when you went out the door,
2 out a number --

3 A My the time I got up with Mr. Bond the police was
4 already en route. That's why I never did get to use my
5 phone.

6 Q Well, let me ask you a question.

7 How is this Jeep driving back and forth so much and as
8 soon as you get over the police show up?

9 A I don't know. I think they testified they had called,
10 didn't they?

11 Q How many times did the Jeep drive up and down then?

12 A Two or three times. Like I said, they told the
13 truth. They was checking on him.

14 Q Okay. When you got over there, you said that
15 Mr. Norris handed you his wallet.

16 A No. I said he handed me a stack of, a stack of cards
17 which I thought to be his I. D.

18 Q So Mr. Norris handed you a stack of cards. That's
19 what you're saying. Not a wallet.

20 A I never seen a wallet.

21 Q Okay. When you got over there where was Mr. Norris
22 and where was Mr. Bond?

23 A Mr. Bond was on the ground in the sitting position.

24 Q Okay.

25 A Mr. Norris had his hand on his shoulder, you know, and

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

1 like he was holding him there until the police come.

2 Q Was, was Mr. Bond saying anything?

3 A Not that I know of. He didn't say nothing.

4 Q He didn't say anything.

5 A Uh-uh.

6 Q Mr. Norris didn't say anything.

7 A He didn't say anything but hold his I. D. until the
8 police come. Oh, and then he asked me had I called 9-1-1.

9 Q Where did this come from?

10 A I don't know. I got no idea.

11 Q You never saw this knife?

12 A I don't know anything about a knife.

13 Q You never saw Mr. Norris with this knife?

14 A No, sir, I haven't.

15 Q You don't know where this knife came from.

16 A No, sir.

17 Q You never showed it, you never, you never --

18 Mr. Mayfield and Mr. Blankenship. You never saw him show
19 the knife to him?

20 A No, sir. I'm not going -- I'm going to stop it right
21 here. I don't know anything about that knife. The only
22 thing I know is I went over there and he gave me the card
23 to hold until the police come. As far as the knife, I
24 don't know anything about it.

25 Q But can see people on the roof but you can't see a

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

1 knife held in front of you, is that correct?

2 A You, you -- a person is a whole lot bigger than a
3 knife. Wouldn't you agree?

4 Q When you're standing right beside Mr. Norris. How
5 close was you to Mr. Norris getting --

6 A That, that area is not well-lit.

7 Q No. What I was asking you, sir, was how close was you
8 to Mr. Norris when he gave you the card.

9 A Close enough, about right there where you're at from
10 me.

11 Q Okay. So he handed the cards to you.

12 A Yes, sir.

13 Q Did you see where he got the cards from?

14 A They were on the ground.

15 Q The cards were on the ground?

16 A Yeah. And I guess you're going to ask me how did they
17 get on the ground. That I don't know.

18 Q Who picked them up off the ground?

19 A He picked them up and handed them to me.

20 Q Why did you tell the police officer, Officer Guest,
21 you told, "They fell out of the wallet, so we just picked
22 them up, there ain't nothing wrong with that"?

23 A My lawyer already asked me that question. And I told
24 you that was a mistake. That statement was never made from
25 me.

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

1 Q Well, let me ask you this question. Officer James was
2 the first one up, right?

3 A No, sir. Me and Mr. Norris talked to two or three
4 officers before he even got there. The only time we talked
5 to him was when we came over across the street and asked me
6 did I have the cards. We, we did not talk to him over at
7 St. Luke's or across the street from me.

8 Q So as soon as he arrives, why don't you just run up to
9 him and say this person is breaking in this center and
10 we're holding them here for you, here's the cards, we've
11 got them here for you, they tried to break in that
12 building? Why didn't you do that?

13 A We talked to officers before they even -- before I
14 even talked to them. We done talked to two or three
15 officers. One of them I know in particular because he was
16 a black man. I hadn't talked to them until later.

17 Q Well, let me ask you this question. You're making a
18 citizen's arrest, right?

19 A I'm trying to.

20 Q Trying to. Okay. So it's now we're trying to make a
21 citizen's arrest?

22 A That's what I said.

23 Q So now you don't call. The first thing, you never
24 called the police, did you?

25 A I didn't get a chance to. It was already -- one was

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

1 coming down Dean and one was coming Saint -- Saint John.

2 Q So you're, you say as soon as you walked out you go
3 over there and the cops show up.

4 A By the time I got over to Mr. Bond, yes, sir.

5 Q So it wasn't five or ten minutes. Someone had to go
6 call folks and try to find them and everything else. That
7 didn't happen is what you're saying. It didn't go five or
8 ten minutes.

9 A Five or ten minutes for what?

10 Q For the police to get there. You wasn't out there in
11 five or ten minutes.

12 A No, no. Once I got over there the police was already
13 coming up, up the street.

14 Q From the time you left the front of your house to get
15 over to where Mr. Norris and Mr. Bond was, how long did
16 that take you?

17 A That didn't take me but a minute. It don't take but a
18 minute to walk across the street. It don't even take a
19 minute to cross the street.

20 Q Yes, sir. And how long before the police arrived
21 there?

22 A By the time I got across the street and Carnie asked
23 me had I called 9-1-1, I told him no. And they was already
24 en route.

25 Q Isn't it true Mr. Norris tried to identify himself as

Kenneth Wayne Chiles
Cross-examination by Mr. Barnette

1 a security guard?

2 A I didn't hear that. That must have happened before I
3 come out the door.

4 Q Well, let me ask you a question. You had the cards on
5 you, right?

6 A Yes, sir.

7 Q They were in your pocket. Why didn't you just leave
8 them there? Why didn't you give them to the police officer
9 who supposedly talked to you?

10 A For one thing, out of all of the commotion I actually
11 forgot I had them in my pocket until he asked me about
12 them. It was a lot going on that night.

13 Q You forgot to give the police -- you're making a
14 citizen's arrest or attempting to make a citizen's arrest
15 and you're going to -- you're not going to give them to any
16 cop that talks to you that --

17 A Once, once that officer came over there to talk to me,
18 he got the cards.

19 Q What about the black officer? What about the two or
20 three officers you talked before? Why didn't you give the
21 cards to them then?

22 A I had -- like I said, I hadn't even, I hadn't thought
23 about it. I mean, it happened. I thought they was I. D.

24 And really I, I just forgot about it. It was a lot of
25 stuff going on that night, a lot of people, the officers

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Cross-examination by Mr. Barnette

1 asking me questions. I forgot about it, because as soon as
2 that officer came and asked me about the cards, I reached
3 in my pocket and gave it to them.

4 Q Just like you forget about the knife too?

5 A I don't know anything about a knife. I had a cell
6 phone.

7 Q And you never called the police, did you?

8 A No, sir, I didn't. They was already en route.

9 Q How did you know they was en route?

10 A I'm looking. I just told you one was coming down Dean
11 Street and one was coming up Saint John.

12 Q Within a minute, as soon as you come out of the door.

13 A Didn't they tell you that they called the police, one
14 of the guys?

15 Q No. I am asking you what you know. I know what they
16 testified to, and it's completely different to what you're
17 testifying to.

18 A Evidently they told the truth, because the police
19 came.

20 MR. BARNETTE: One moment, Your Honor, please.

21 (Pause.)

22 MR. BARNETTE: Thank you, Your Honor.

23 MR. POOLE: No redirect.

24 THE COURT: You may step down.

25 MR. POOLE: No further witnesses here.

Carnie Norris, III
Direct examination by Ms. Jones

- 1 MS. JONES: Defense calls Carnie Norris.
2 CARNIE NORRIS, III, having
3 been first duly sworn, testified as follows:
4 DIRECT EXAMINATION BY MS. JONES
5 Q Mr. Norris, state your name for us, please.
6 A My name is Carnie Norris, III.
7 Q How old are you, Mr. Norris?
8 A I'm 40 years old.
9 Q Okay. Were you born here in Spartanburg County?
10 A Yes, ma'am.
11 Q Is your family in the courtroom today, Mr. Norris?
12 A Yes, ma'am.
13 Q Identify who is present.
14 A My father is seated on the back row, and my son is in
15 the middle, and my mother is on the end.
16 Q Okay.
17 A It is Carnie, Alton and Mary.
18 Q I'm sorry. I interrupted you.
19 A Carnie, Carnie, Jr., Alton and Mary Norris.
20 Q Okay. Now, let's go back if you will, Mr. Norris, to
21 the event we're talking about in July of 2008. On that
22 particular evening where were you staying in Spartanburg?
23 A I was staying on Northview Street. It's a block and a
24 half over from Dean Street.
25 Q Okay. From the house on North Dean that we've heard

Carnie Norris, III
Direct examination by Ms. Jones

1 Kenneth Chiles lives in, how would you get to where you
2 lived then?

3 A I just walked. When I come out of my yard, I just
4 make a right and get on Dean Street.

5 Q Okay. So it's basically just a side street off of
6 Dean Street.

7 A Yes, ma'am.

8 Q Is that right?

9 A Uh-huh.

10 Q And prior to that time had you lived in Anderson and
11 run a business?

12 A Yes, ma'am. I owned my own business down in Anderson,
13 down on Shockley Ferry. I had a fitness center.

14 Q A gym?

15 A Yes, ma'am.

16 Q Okay. Now, back in July of 2008, you've indicated you
17 lived on a side street off of North Dean Street. Did you
18 during the time you lived there, did you consider yourself
19 part of the neighborhood too?

20 A Yes, ma'am. I was a part of the community.

21 Q Okay.

22 A That's where I resided at.

23 Q Okay. And you've heard reference in here to a couple
24 of missions or -- and then, or a mission, and then St.
25 Lukes Free Medical Clinic. Are you familiar with those

Carnie Norris, III
Direct examination by Ms. Jones

1 businesses?

2 A Yes, ma'am.

3 Q Okay. Have you ever utilized those services?

4 A I attempted to utilize them back in 2005, I think,
5 when I was in a bad car accident.

6 Q Okay. So you know generally they provide free
7 services and free goods to people in the community that
8 can't afford it, is that right?

9 A Yes, ma'am; yes, ma'am.

10 Q Okay. Now, on the evening of July 16th of 2008 did
11 you see something happening around those businesses that
12 concerned you?

13 A Yes, ma'am. I was walking up Dean Street. And if you
14 ever heard a tree shake or the wind blowing hard, that's
15 what caught my attention, the rustling of the leaves on the
16 trees. And that's when I looked up. And I saw a couple of
17 individuals on the top of the building. And I saw the tree
18 shaking. And I, I stepped right up the walkway, because
19 the light was on. And I tapped on his window.

20 Q On -- I'm sorry. On whose window?

21 A On Kent's window. His, his, his room is on the front
22 side.

23 Q Are you referring to Mr. Chiles?

24 A Yes, yes, yes, ma'am, Chiles.

25 Q Okay. And what did you do?

Carnie Norris, III
Direct examination by Ms. Jones

1 A I, I knocked on, on the window because the door, when
2 the door, coming out of his room, his room be locked. And
3 he have to make a sharp right. And that will be the front
4 door. So that's why I knocked on the window, because if I
5 knocked on the door couldn't nobody hear me.

6 Q Okay. Let me stop you and back up a minute and ask a
7 couple of questions before we get into what you're going to
8 explain happened.

9 Mr. Norris, back in 1995, the winter of '95, were you
10 convicted in this court of a burglary?

11 A Yes, ma'am, I was.

12 Q Okay. And just a few months later, Mr. Norris, were
13 you also convicted in this very courtroom of a robbery?

14 A Yes, ma'am.

15 Q Okay. During that period of your life did you have a
16 drug problem?

17 A Yes, ma'am. That was over 15 years ago, yes, ma'am.

18 Q Okay. And you admitted your involvement and were
19 punished, correct?

20 A Yes, ma'am.

21 Q Okay. Now, I'm sorry. I didn't mean to interrupt
22 you. You were explaining. You hear the restling or
23 rustling of the tree. You go and you knock on the door, on
24 the window. And what happened?

25 A I didn't really hear anybody. So I, I come down off

Carnie Norris, III
Direct examination by Ms. Jones

1 the porch and walked, walked. I had to reach over to knock
2 on it, because there's a railing and what not. And the
3 window is kind of far off. So I come off the porch and
4 went around where I could reach up and knock on the window.
5 And I knocked on the window. And I heard somebody answer,
6 and in a couple of minutes came to the door. Chiles came
7 to the door.

8 I told him what was going. I said come, come out here
9 on the porch, I want to show you something. He said, oh,
10 man, what are you talking about, I'm asleep. I said come
11 over here and I'll show you something, something going on
12 over across the way, just like that.

13 And he walked down his steps and looked, and he saw
14 the same thing that I saw, guys running around on the top
15 of the roof.

16 Q Okay. And at that point what did you do?

17 A I asked him did he have his cell phone on him. And he
18 went back in the house and got it, you know, and put on his
19 clothes. It took him a couple of minutes to put on his
20 clothes. He came back out with the cell phone.

21 Q And what did you do?

22 A I walked down to the edge, edge of the walkway. And I
23 walked across the street. And once I got across the
24 street, I was walking up the street.

25 I said, hey, what are y'all doing. And they looked

Carnie Norris, III
Direct examination by Ms. Jones

1 and saw me. And it scared them. I was about, I don't
2 know, probably from here to the first bench from Mr. Bond.
3 He had his back to me. And he turned around.

4 The guys that was on the roof that was on that side of
5 the building, it was I think two people on the ground.
6 They took off. They flew, phew, down beside the building.

7 He turned around and started running toward me. I did
8 my arms like this. I said, wow, where are you going, what
9 are you doing. And he stopped, because either he had to
10 jump over a ledge to get away or he had to run around me.
11 I had my arms out.

12 And it, it kind of scared me. And I asked him where
13 was he going and what was they doing. Said, oh, we just
14 messing around. I said but y'all on top of a roof.

15 And Mr. Chiles, he had walked across the street --

16 Q Okay.

17 A -- and asked what was going on. I asked him had he
18 already, had he already called. And by then polices had
19 pulled up. I mean, in about two minutes the police was
20 there.

21 The first car came down Dean Street. And the officer
22 testified that he came off Saint John. That's not true.
23 The first officer came down Dean Street. And then the
24 officer turned on Saint John Street.

25 Q Okay.

Carnie Norris, III
Direct examination by Ms. Jones

1 A The car that Mr. --

2 Q Wait, Mr. Norris. Let me ask you.

3 When you walked across the street from the home that
4 Kent -- as you referred to him -- Mr. Chiles lived, what
5 were you going to do?

6 A Well, basically, I wanted to know what were they doing
7 on top of the building. That's a medical, that's a medical
8 clinic. And they looked to me as if it was a possible
9 break-in or something.

10 Q Okay.

11 A And, basically, actually when Kent had first came on
12 the porch, I thought, I thought it was funny. I said you
13 got these white guys over here in this neighborhood on top
14 of a building breaking in, call the police on them. If it
15 was us, it would have been done to us. I took it as a joke
16 at first.

17 Q Mr. Norris, when you went across the street was your
18 intention to rob Mr. Bond?

19 A No, ma'am; no, ma'am. I never committed a crime.

20 Q Okay.

21 A No.

22 Q What were you doing?

23 A Actually, I wanted to know what was going on, whether
24 or not they were breaking in and what they was doing over
25 there. I wanted to know who he was. You know, that was

Carnie Norris, III
Direct examination by Ms. Jones

1 basically it.

2 Q Did you ask him for his I. D.?

3 A I asked him who was he. He pulled out his wallet. He
4 was scared. And he pulled out his cell phone. And he
5 pulled some cards out, and he showed them to me. And then
6 he sat back down.

7 Q Okay.

8 A Actually, he just sat down because he knew -- I guess
9 he kind of figured he wasn't, he wasn't going to be able to
10 move anywhere. So he sat down.

11 Q Okay. Did you prevent him from moving?

12 A No, I didn't.

13 Q And leaving?

14 A No, I didn't prevent him from moving. I just told him
15 wait until the police get here.

16 Q Okay.

17 A That's what I told him, and he sat down.

18 Q Why did you want him to wait until the police got
19 there?

20 A Because I felt like he was committing a crime.

21 Q Okay.

22 A Him and the rest of them.

23 Q Okay. And when the police got there did you talk to
24 them?

25 A I tried to. The first officer when he pulled up, I

Carnie Norris, III
Direct examination by Ms. Jones

1 tried to tell him that these people was in the process of
2 burglarizing. That's what I told him. And he tell me to
3 step back. I want to talk to him. You see, I mean, he
4 started. He started talking to Mr. Bond.

5 Q Did you go across the street and wait on the porch and
6 then voluntarily talk to the officers?

7 A The officers told us. We were escorted across the
8 street. We did not back up or walk away. We were
9 escorted, because five or six cars pulled up in a matter of
10 minutes.

11 Q Okay. Did you ever try to get away?

12 A No, ma'am.

13 Q Did you ever try to do anything with anything you had?

14 A No, ma'am.

15 Q Okay.

16 A I mean, like he said, we was trying to make a
17 citizen's arrest.

18 Q Okay.

19 A I mean, I have too much to lose to try to, I mean, do
20 something like that. My own neighborhood?

21 Q Thank you, Mr. Norris. I appreciate you answering my
22 questions.

23 A Thank you.

24 THE COURT: Mr. Poole, let's let you go next.

25

Carnie Norris, III
Cross-examination by Mr. Poole

1 CROSS-EXAMINATION

2 BY MR. POOLE

3 Q Just a few questions, Mr. Norris.

4 You were present when you heard the testimony of
5 Mr. Chiles.

6 A Yes, sir.

7 Q Is that right? And of course he was present when he
8 heard your testimony.

9 A Yes, sir.

10 Q And basically your testimony is the same as far as
11 Mr. Chiles is concerned.

12 MR. BARNETTE: Objection, Your Honor.

13 THE COURT: Sustained.

14 Q You came that night, and you knocked on his window or
15 door to tell him that something was going on, is that
16 right?

17 A Yes, sir.

18 Q He came out and took a momentary look at what was
19 going on and then went and put on his clothes and got his
20 phone, is that right?

21 A Yes, sir.

22 Q You walked across the street.

23 A Yes, sir. I walked down the hill and was barely in
24 the middle of the street when he started coming down behind
25 me.

Carnie Norris, III
Cross-examination by Mr. Poole

1 Q And later on he comes across the street.

2 A Yes, sir.

3 Q Is that right?

4 A Yes, sir.

5 Q And then when he gets across the street, the police
6 come.

7 A Yes, sir.

8 Q Is that right?

9 A Basically, basically, yes, sir.

10 Q So things are happening pretty fast.

11 A Yeah. It happened, the whole process from three to
12 four minutes, just that fast.

13 Q Okay.

14 A Like I said, Mr. Bond figured out he couldn't get
15 anywhere. He just, he just sat down when I told him to,
16 you know, just wait on the police and everything.

17 Q Okay. And you told Mr. Chiles that somebody was
18 trying to break into a building.

19 A Yes, sir.

20 Q Okay. In response to that information, he came across
21 the street.

22 A Yes, sir.

23 Q Okay. Thank you Mr. Norris.

24 THE COURT: Mr. Barnette.

25 MR. BARNETTE: May it please the Court.

Carnie Norris, III
Cross-examination by Mr. Barnette

1 CROSS-EXAMINATION

2 BY MR. BARNETTE

3 Q Mr. Norris, from the time you knocked on the
4 windowpane until the time you went over to Mr. Bond, how
5 long did that take until the police got there?

6 A How long did it take?

7 Q Yes, sir.

8 A Like I said, the process was about three or four
9 minutes.

10 He went in the house for a couple of minutes to put on
11 his clothes. And he got his phone and came back out.

12 Q Why didn't you just --

13 A I was across the street.

14 Q Why didn't you just ask to use his phone?

15 A I was across the street. Mr., Mr., Mr. Bond, he said
16 he wanted to call his father. That's what he said. I
17 said, no, you can't call anybody, just wait until the
18 police come. That's what was said to him.

19 Q So now he wanted to call his father?

20 A That's what he said. He wanted to, he wanted to call
21 his father. And I said, no, just wait until the police
22 come because y'all was on top of the building.

23 Q You had his cell phone too, didn't you?

24 A No, sir. I didn't have his cell phone.

25 Q So you're testifying you never had his cell phone?

Carnie Norris, III
Cross-examination by Mr. Barnette

1 A I never had his cell phone.

2 Q Did you have his wallet?

3 A No, sir, I never had his wallet.

4 He handed me the cards to show me the cards. He
5 handed me some of the cards to show them to me. And, like
6 I said, he was sitting on the ground.

7 And he had dropped some cards. And I picked them up
8 and I told Mr. Chiles to hold these cards until the police
9 get here, because he said this is his I. D.

10 Q So he's one that pulled the wallet out.

11 A Yes, sir.

12 Q He's the one that pulled the cards out.

13 A Yes, sir. He's the one that pulled them out to show
14 me his I. D.

15 Q Why was he showing you his I. D.?

16 A Because I asked who, who was he. That's how he pulled
17 out his cards, because if I'm not mistaken, he didn't have
18 a picture I. D. or something. And he was trying to show me
19 his name and everything matched up on the cards.

20 Q Did you hold him down on the ground?

21 A No, sir.

22 Q Did you force him down on the ground?

23 A No, sir, I didn't. He sat down when he figured out he
24 couldn't go anywhere. I stood. I stood back from him
25 probably about 2 feet like this while he is sit down.

Carnie Norris, III
Cross-examination by Mr. Barnette

1 Q Why couldn't he run the other, the other direction
2 then?

3 A Beg your pardon?

4 Q Why couldn't he run the other direction?

5 A Why did he run to the other direction?

6 Q Yes, sir.

7 MS. JONES: This is calling for speculation on his
8 part. Objection.

9 THE COURT: Sustained.

10 Q So your testimony, as he sat there he takes the wallet
11 out and gives you the cards or drops the cards on the, on
12 the ground.

13 A Yes, sir. He, he was trying to show me his name and
14 everything on the card.

15 Q Why did you hand them to Mr. Chiles then? Why didn't
16 you just look at them then?

17 A I told him to hold them because I was standing over
18 him to make sure he didn't, he didn't try run off and get
19 away or something because the police was in, en route.

20 Q What about the evidence -- excuse me. Go ahead.

21 A Go ahead.

22 Q What about Mr. Mayfield and the other fellows that was
23 there?

24 A They took off running. When I hollered what y'all
25 doing, they flew. I mean, they took off down beside the

Carnie Norris, III
Cross-examination by Mr. Barnette

1 building. Gone.

2 Q So they never came back and checked on their friend?

3 A They -- when I noticed who they were, it was a vehicle
4 driving up and down the street. And then by the time
5 Mr. Chiles got -- well, the vehicle had stopped at Saint
6 John and Dean Street and it was just sitting there, hadn't
7 made the turn. Just sitting there.

8 When the police car came down the street, that's when
9 he pulled up and pulled right there by the, by the
10 cleaners. And he's -- and the police got out of the car.
11 That's when they got out of the car and walked and met the
12 police.

13 Q Now, Mr. Chiles had these cards, right?

14 A Yes, sir. I handed. I handed them to him.

15 Q When these police officers approached you or whatever,
16 why didn't y'all just give them the cards?

17 A I tried to tell the police officer then. He didn't,
18 he didn't want to hear anything about a break-in. He, he
19 wanted to know his version of the story. And I said we was
20 the ones initiated this, these guys was trying to break in.

21 Q But you never --

22 A They told us to stay across the street.

23 Q Where did you see them break in at?

24 A I observed them under my observations. That's what I
25 thought they was doing.

Carnie Norris, III
Cross-examination by Mr. Barnette

- 1 Q Where were they breaking in at?
- 2 A Beg your pardon?
- 3 Q Where were they breaking in?
- 4 A They were on top of the building. I perceived that to
- 5 be an attempt burglary.
- 6 Q How many, how many people did you see on the top?
- 7 A I saw two people.
- 8 Q And you was walking down the street and saw this.
- 9 A Yes, sir. I wasn't that far away, just right across
- 10 the street.
- 11 Q What was you doing out there?
- 12 A What was I doing?
- 13 Q Yes, sir.
- 14 A I had just come from a guy's house from cleaning fish.
- 15 That's, that's a fish -- the only knife that I have in my
- 16 pocket.
- 17 Q So you had to clean fish with this knife?
- 18 A Yes, sir.
- 19 Q Okay. You just got finished cleaning the fish with
- 20 it?
- 21 A Yes, sir.
- 22 Q Okay. So you never used this knife on them?
- 23 A No, sir. I never pulled out a knife.
- 24 Q You didn't hold him against his will?
- 25 A No, sir; no, sir. I put up my hand. I never pulled

Carnie Norris, III
Cross-examination by Mr. Barnette

1 out a, a knife.

2 Q You never pulled a knife on Mr. Mayfield or --

3 A No, sir. They were not present. They took off and
4 ran. When, when they searched us again, that's when the
5 police had pulled up.

6 Q When the police -- they asked you did you have
7 anything on you there, right, of Mr. Bond's? They asked
8 you that.

9 A They asked me, yes, sir.

10 Q Why didn't you tell them before they searched you that
11 you had a knife on you?

12 A I did tell the police I had a knife in my pocket. I
13 did tell him. He asked me do you have anything in your
14 pocket that will stick me. Said, yes, sir, I have a, I
15 have a knife in my pocket.

16 Q And you --

17 A And he put his gloves on.

18 Q And where was your pocket at? Where was the pocket
19 at?

20 A It was my, it was my right pocket. It was stuck down
21 in, in the middle of my wallet to keep from cutting, cause
22 the, because the blade doesn't, don't close.

23 Q So it was in the middle of your wallet.

24 A Yes, sir, just like that because the blade won't
25 close.

Carnie Norris, III
Cross-examination by Mr. Barnette

- 1 Q So this took -- how long, again, did this take from
2 the time you knocked on the window until you went over and
3 held, until the police got there?
- 4 A It was about three or four minutes at the most.
- 5 Q At the most.
- 6 A It was, yeah, about three or four minutes.
- 7 Q So it --
- 8 A He went back in the house to come back out.
- 9 Q It wasn't like the other witnesses that testified that
10 it took five or ten minutes or so.
- 11 A No. It didn't, it didn't take no five or ten minutes,
12 no.
- 13 Q But you never called the police.
- 14 A I didn't have a phone. That's why I knocked on the
15 window so I can, so he can call the police.
- 16 Q Why didn't you just stand over there with him and call
17 the police and watch until the police got there?
- 18 A By the time we got -- when I got over there they had
19 done called the police. I was waiting on Ken to come on so
20 he can call the police.
- 21 Q You don't know if they've called the police or not.
- 22 A The police coming down the street. I tell you. It
23 happened. A couple of minutes up there and a minute or two
24 right across the street.
- 25 Q And you said Mr. Bond tried to call his father.

Carnie Norris, III
Cross-examination by Mr. Barnette

1 A No. He didn't try to call him.

2 Q He wanted to call his father.

3 A He said I need to call my daddy and let him know where
4 I am. I said just wait until the police get here.

5 Q Why didn't you use his cell phone to call the police?

6 A Why did I?

7 Q How did you know the police was coming? That's what I
8 want to know. How did you know the police was coming? We
9 know Mr. Chiles ain't called the police. You haven't
10 called the police. Who called them?

11 A You can see the police. The police coming down the
12 street -- the police coming down the street.

13 Q In other words, you got to make up a good story
14 because you just got finished robbing that -- robbing him,
15 didn't you.

16 A No, sir. I'm not making up the story. I'm telling
17 exactly what happened.

18 Q You're telling me exactly what happened.

19 A Yes, sir.

20 Q Which is completely different from the story that we
21 have heard in here already.

22 MS. JONES: Objection, Your Honor. Witness pitting.

23 THE COURT: Sustained.

24 Q But you never approached the officers with the cards
25 telling them that these are the cards and I saw these

Carnie Norris, III
Cross-examination by Mr. Barnette

1 people rob, I mean, break into the building or anything
2 like that.

3 A I answered the question. I tried to tell them what
4 was going on on top of that roof and everything. They,
5 they asked, had us escorted across the street.

6 Q Why didn't you just call and tell them that, sir?

7 A Beg your pardon?

8 Q Why didn't you just call and tell them?

9 A I didn't have a phone yet.

10 Q He did though, didn't he?

11 A Like I said, it was just a matter of a couple of
12 minutes and the police was there.

13 Q You just made a citizen's arrest.

14 A I didn't. I didn't make a citizen's arrest. I was
15 trying to. We was both trying to.

16 Q And you've done robbery before, haven't you, Mr.
17 Norris?

18 A Yes, sir.

19 Q And you've broke into buildings before, haven't you,
20 sir?

21 A Yes, sir. That's my past record. I hope that my past
22 record will not do anything to harm me.

23 THE COURT: Ms. Jones.
24
25

Carnie Norris, III
Redirect examination by Ms. Jones

1 REDIRECT EXAMINATION

2 BY MS. JONES

3 Q When you went, Mr. Norris, across later, when you over
4 across on the porch and the officer spoke to you, at that
5 point they searched you. Did you have anything on you at
6 that point that belonged to Andrew Bond?

7 A No, ma'am.

8 Q Thank you.

9 THE COURT: You may step down.

10 MS. JONES: Your Honor, defendant Norris rests.

11 THE COURT: Any reply?

12 MR. BARNETTE: No, sir.

13 THE COURT: All right. Ladies and gentlemen, that is
14 all of the testimony or evidence to be offered in the trial
15 of the case.

16 What remains to be done are the lawyers' final
17 summations, after which I'll instruct you on the law. And
18 then you'll begin deliberations.

19 We're going to stop now for lunch. We will resume at
20 1:45, at 1:45 this afternoon.

21 So while you are now excused for lunch, continue to
22 follow the instruction. There's to be no discussions about
23 the case, no research, no investigation.

24 Do have a good lunch. And please report to your jury
25 room at 1:45 this afternoon, 1:45.

1 (The following takes place outside the presence of the
2 jury.)

3 THE COURT: Do y'all want to renew your motions?

4 MR. POOLE: Yes, sir. Defendant Chiles renews all
5 motions previously made based upon the same grounds.

6 MS. JONES: As does defendant Norris.

7 THE COURT: All right. Each of those are denied.

8 Do you have any instruction requests?

9 MR. POOLE: May we approach, Your Honor?

10 THE COURT: Yes.

11 (Bench conference held off the record.)

12 THE COURT: Court's in recess until 1:45.

13 (Whereupon, a recess was taken.)

14 THE COURT: Are we ready for the jury?

15 MR. BARNETTE: The state is ready, Your Honor.

16 MR. POOLE: The defense is.

17 THE COURT: Okay. Bring them in.

18 (The following takes place in the presence of the
19 jury.)

20 THE COURT: All right. Ladies and gentlemen, as you
21 know, when we recessed for lunch all the evidence had been
22 received; and therefore what remains to be done are the
23 lawyers' final summations, after which I'll instruct you on
24 the law. And then you can begin with your deliberations.

25 So please give the lawyers your attention now as they

Closing arguments

1 give you their final summations.

2 MR. POOLE: May it please the Court.

3 THE COURT: Mr. Poole.

4 MR. POOLE: Madam Forelady and ladies and gentlemen of
5 the jury, a little less than 24 hours ago you were sworn in
6 to listen to this case. And I want to thank you, each and
7 every one, for the attention that you paid the witnesses,
8 to the evidence presented, to the remarks that were made as
9 applies in this entire case against these two defendants.
10 Thank you for your time and thank you for your continued
11 attention and consideration.

12 And I will tell you so that everybody in the courtroom
13 can hear me that I wish the greatest success and the best
14 of luck to these young men who have come in today and
15 yesterday and testified as to the events that occurred on
16 June -- July 17th of 2008.

17 And I understand it probably was a trying time for
18 them to experience certain events on that date and
19 certainly a trying time on them and their families to come
20 into court and have to go through this process. I do wish
21 them success in life as I most assuredly am convinced that
22 they will be experiencing.

23 I think I told you that what my job was to represent
24 Kenneth Chiles as the defendant, a defendant, in this case.
25 I told you that I needed to, and it was incumbent upon me

Closing arguments

1 to, bring to you a point of view that he had when this
2 incident occurred on that date and at that place. And he
3 has done so.

4 In, basically in, the first year of law school you
5 take criminal law. And one of the basic elements of the
6 history of law that you learn is that to be convicted of a
7 crime you have to have a guilty mind and a guilty hand.

8 You have to have, and this is Latin. We've learn some
9 of it still in law school. I guess they still teach it. I
10 don't know. It's been a long time. But a mens rea and an
11 actus reus. You have to have a guilty mind and you have to
12 have a guilty hand.

13 So as it applies to Kenneth Chiles, all of the
14 evidence that has been presented -- and the evidence that
15 is presented, let us start with the state's testimony
16 through their witnesses.

17 Let's see how there has been any connection shown by
18 the state who bears the burden of proving the case as it
19 relates to those two, two things, that is the state of mind
20 of Kenneth Chiles and what he did on July 16 of 2008.

21 Now, I thought a moment ago as I was looking through
22 my notes -- I carried a tablet around just like it was
23 peanuts, like carrying a security blanket around. I do
24 that. And I have it right here, and because I have to
25 refer to my notes because I can't remember everything that

Closing arguments

1 was said, nor am I going to try to go over everything that
2 was said. But I want to highlight to you some of the
3 things that distinguish this case as it applies to Kenneth
4 Chiles.

5 The -- we've heard the evidence as a whole. You know
6 that there was a wallet taken. There has been testimony of
7 a knife and all of this bit about an armed robbery.

8 But the very first witness was the young man, Andrew
9 Bond. He testified that the defendant, Carnie Norris, got
10 his wallet and that he was the one that began removing
11 objects from that wallet.

12 And also during cross-examination I asked the young
13 man, Mr. Bond, you know, how long was it before Mr. Chiles
14 came upon this scene. And he said it was a minute or two
15 after he was knocked down.

16 So there was a trailing of time and a trailing of
17 space between the presence of Mr. Norris and that of
18 Mr. Chiles. That is, that trailing is, what I want to talk
19 about, that gap, that distance, because it's that distance
20 that's going to be so important in his defense. And the
21 testimony goes on to confirm this distance over and over
22 and over again.

23 The next witness, the young man, Hub Blankenship,
24 testified that Mr. Norris told Drew to get out his I. D.
25 and his wallet and then Mr. Chiles came up a little later

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1 and that Mr. Chiles went through the stack.

2 And that the next witness, Daniel Mayfield, testified
3 that Mr. Norris pulled the wallet or touched the wallet
4 from Mr. Bond and that Mr. Chiles was 20 to 25 feet behind
5 him when he first saw him. That is across the street.

6 So what we have, we have no actual physical contact of
7 Mr. Chiles on any weapons, on any wallet, and we have him
8 at a distance from where the alleged crime is being
9 committed.

10 The young Mr. Mayfield stated that Mr. Chiles was not
11 antagonistic and that immediately upon his arrival there --
12 and this seems to be a common thing of most all of the
13 witnesses -- that this occurred very quickly right after
14 Mr. Chiles got there.

15 The police came like almost instantaneously, a little
16 conflicting testimony as to from which directions they
17 came, but I believe the most consistent testimony is that a
18 police car came up from the Saint John Street area, down
19 Dean Street, and one from Main Street area and converged.
20 We have two cars there pretty quickly, and on the scene.

21 So this thing when Mr. Chiles was there, he was
22 exposed only to a brief, brief exposure to circumstances at
23 the place where then and there something was going on.

24 Officer Guest testified that officer -- that
25 Mr. Chiles -- he fully cooperated. He handed over the

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1 stack of cards and information that were in his possession
2 readily and without any hesitancy and that there was no
3 attempt on the part of Mr. Chiles to elude, evade or run.
4 And then that's basically the testimony that we have from
5 the state's witnesses.

6 Now, I think that in and of itself when we talk about
7 the state being able to prove their case is such that there
8 is not enough evidence to warrant a conviction against
9 Mr. Chiles, because he has not touched the wallet. He is
10 at a distance from what was going on. And its exposure to
11 the environment where anything was going on was minimal.
12 He didn't touch a wallet, didn't have a weapon. No
13 communication was overheard from, by him, by any witness.

14 So that's the end of the state's case. So there's
15 reasonable doubt right there, I mean, right there at that
16 juncture.

17 Now, we move onto what is the state of mind of
18 Mr. Chiles when he does become involved. Now, there's only
19 one way to get that across, and that is to, to bring a
20 witness in and have Mr. Chiles testify, because that's all
21 there is on his behalf. And, you know, that infamous
22 saying you go to war with the Army that you've got, you
23 know, you go to, you go to the courtroom with the witnesses
24 you have.

25 So we put Mr. Worthy who had no idea on June,

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1 July 15th of 2008 that on July 7th of 2008 he was going to
2 be in a courtroom testifying that he was there drinking
3 some beer.

4 He was there. Mr. Norris comes up, says something.
5 Mr. Chiles is asleep. They had been watching wrestling, I
6 think, on television, or at least Mr. Worthy was.

7 He has to get out of bed. Mr. Chiles gets out of bed
8 to accommodate Mr. Norris and is trying to find out what's
9 going on. And then later on in the testimony Mr. Chiles
10 says, yeah, there was something going on, some, some action
11 in the trees, two people were up on the roof and I wanted
12 to, you know, just go ahead and do as I was asked to and
13 come on down there and see what was going on.

14 So he said it took about three, three to five minutes
15 for him to catch up. He had to wake out of a sleep, look
16 out of a window to see what was going on, put some clothes
17 on, which wasn't much, which was like a pair of shorts
18 maybe and a shirt, put a cell phone in his pocket and go
19 and see what was happening.

20 By the time he got there he received into his
21 possession this stack of cards that he put into his pocket
22 thinking that there may have been some sort of attempted
23 burglary or breaking and entering that was going on.

24 That's all the information that he had at the time.
25 He didn't investigate it. Should he have gone over there?

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1 No. Should he have even gotten out of bed? No.

2 But what are you supposed to do? You go and actually
3 see something happening and say, okay, maybe I should walk
4 over there. And that's when his problem began, when he did
5 cross that distance and come upon that scene.

6 So what you have is no intent on him to commit a
7 crime. He did not even know a crime was going on, if any
8 there was. He simply obtained the stack and put them in
9 his pocket, left front pocket, and kept them there, didn't
10 look at them.

11 And by his testimony he talked to some officers. And
12 I believe by defendant Mr. Norris' testimony he said that
13 they talked to some officers too. Neither one of them
14 intended to run off. They, they stood around. They went
15 back across the street, stood on the porch. And Mr. Chiles
16 cooperated across the board giving the police any
17 information they needed to have.

18 Now, is that armed robbery? No. Poor judgment?
19 Maybe. I don't know. I'm going to say it maybe one more
20 time. But at the end of the state's evidence there's not
21 enough evidence to convict Mr. Chiles.

22 Surely, at the end of the defense, and, I mean, our
23 defense, Mr. Chiles' defense, which is simply two
24 witnesses, Mr. Worthy and Mr. Chiles, that what I just said
25 and what he was thinking he was doing and his actions

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1 portray or belie no criminal intent, no intent up here to
2 do anything wrong, not to steal Mr. Bond's cards, not to
3 take them from his possession or person as a robbery, his
4 phone, not to use a weapon in the commission of that crime
5 of robbery.

6 Those are the types of things that the state has to
7 prove. And I'm alluding to some elements of the crime,
8 that Judge Cole will tell you what armed robbery is and
9 that you have to, you have to take the evidence, apply it
10 to the law and render a verdict of guilty or not guilty,
11 and it must be unanimous, and that type of thing. But
12 he'll tell you exactly what the elements are.

13 Now, the state, they're going to come back and say,
14 well, the hand of one is the hand of all. And that's true.
15 That is a principle of law also.

16 If you're with somebody and a crime occurs and you
17 know that a crime is about to occur and you aid or abet in
18 the commission of that crime, then you're guilty. The hand
19 of one is the hand of all.

20 But, folks, and this is so basic that I don't know why
21 they had to put it into platinum (sic) to begin with.
22 You've got to have that intention. You have to have that
23 state of mind. You have to be aware that a crime is
24 occurring. You have to know that something is going on,
25 and you have to intentionally aid and abet in the

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1 commission of that crime.

2 So even under that argument, which the state will
3 argue is the reason that you should have defendant Chiles
4 found guilty, it fails also because there has not been
5 anything presented in this courtroom from yesterday
6 afternoon to this afternoon to show otherwise.

7 Mr. Chiles -- the best way to say not guilty is simply
8 to say that he is innocent. He is innocent. He lived
9 there for three or four years. He knows the neighborhood.
10 He didn't want to commit a crime, much less create a
11 problem.

12 That's his own back yard, and it's a place where it
13 should be nothing like this ever going on. It's a place
14 where the poor are helped, where they get the treatment,
15 where there's a church where you can worship God, where you
16 can get clothing, where you can get free medical care if
17 you can't afford it.

18 And my client, Mr. Chiles, lives in that area. And
19 it's senseless to think that he in his own back yard is
20 going to walk across the street and actively participate in
21 an armed robbery in that environment. Think about it.

22 And I submit to you one final thing, that when he
23 testified he was testifying truthfully. There was no
24 deceit, no coverup, no hedging of answers, no lack of
25 forthrightness, no hesitancy in his responses to questions

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1 by me, my colleague, Ms. Jones, or Mr. Bland (sic).

2 All of it adds up to one inescapable conclusion, and
3 that is this. I ask that you consider all of these things,
4 and render a verdict that speaks the truth. That is what
5 verdict means, that which speaks the truth. And that which
6 speaks the truth in this case is a not-guilty, singly not
7 guilty against the defendant, Kenneth Chiles.

8 That's what I'm asking you to do, because that is the
9 benefit of the doubt, the doubt that is legally required
10 under our law, our constitution and our process.

11 Thank you for listening to me. I hope you have a
12 great week.

13 THE COURT: Ms. Jones.

14 MS. JONES: Thank you, Your Honor.

15 Madam forelady and ladies and gentlemen of the jury, I
16 too, as Mr. Poole has indicated to you, thank you for your
17 attention. You have paid close attention.

18 As I indicated to you in my brief patriotic message in
19 opening, that this is Carnie Norris' most important day of
20 his life. I too in opening and again now in closing will
21 illuminate or point out some things that have been offered
22 by way of evidence or things that have not been offered by
23 way of evidence that you should think about.

24 My comments, as are Mr. Poole's and Mr. Barnette's
25 follow -- just our own comments. It's basically like the

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1 talking heads you see on the news programs. It's our spin
2 on what's happened.

3 The evidence as you know it and as you've heard it all
4 came from the witness stand, as well as a few photos and
5 exhibits. If you have any question as to what the actual
6 testimony by any single witness or person was, you have the
7 right to know that from the Court. You don't have to take
8 our impression of it or our spin of it.

9 The Court will tell you in instructions after we all
10 finish with our summations or our spins or our comments and
11 beliefs about what's been shown and not shown that the
12 state has the absolute burden of proving Carnie Norris
13 guilty.

14 The Court is also going to explain to you as he has
15 touched on before that there is an indictment that charges
16 Mr. Norris with taking while armed with a weapon the goods
17 or monies of Andrew Bond with the intent to deprive the
18 owner permanently of such property -- the intent to deprive
19 the owner permanently of such property.

20 I too think it's important as you consider the
21 evidence during your deliberation that you focus and
22 consider the intentions, perceptions and the states of mind
23 of the individuals involved. And I'm not only talking
24 about my client, but I am talking about the individuals
25 Mr. Bond and his friends, as well as the officers, more

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1 especially Mr. Bond, of Blankenship, and Mr. Mayfield.

2 Throughout the questioning it's probably becoming
3 obvious that I was always the attorney that asked about the
4 free medical clinic or about the mission. And it is
5 important I believe that as you look at this case you
6 understand the perspective of the individuals involved.

7 Let's state and basically set the scene, if you will.
8 You've got these young men who as I believe, as Mr. Poole
9 believes, they'll be successful in their futures. And of
10 course we mean nothing ill toward them at all, or I don't,
11 in my comments. I'm sure Mr. Poole's words are very heart
12 felt as well.

13 But let's look from a perception standpoint at what
14 was happening and what this scene was that night. It is
15 11:00 to 12:00 o'clock in an area that, quite honestly, is
16 probably not very well-lit. And that was kind of a vein
17 that went through the answers.

18 As a matter of fact, 'twas from one of the state's own
19 witnesses, Mr. Blankenship, that I think you get the best
20 insight as to how unlit the area is because he made such a
21 big deal, for lack of a better phrase, that's not very, an
22 artful phrase, but he made -- he took a great deal of
23 effort to explain how he brought his car around and angled
24 it to shine a light on what was happening. This is not a
25 very well-lit area. It is not a very good area.

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1 And I take the chance of offending my own client and
2 Mr. Chiles when I say that, but parts of this part of town
3 are not a good area. And in that area you've got this home
4 that Mr. Chiles lives in a block off. Well, one street off
5 one part of North Dean is where my client testified he
6 lived.

7 Nestled in the middle of this neighborhood are two
8 businesses involved, or two agencies. They're not really
9 businesses because I think they're not for profits. But
10 you've got the St. Lukes Free Medical Clinic and you've got
11 this mission, the Helping Hands Ministry Mission. That's
12 where this activity takes place. That is the neighborhood
13 of Mr. Norris and Mr. Chiles.

14 No offense to these young men, but they were
15 completely out of their element there. And what were they
16 doing? At 11:00 or 12:00 o'clock they're there playing.
17 There's nothing wrong with that. They're young.

18 They were totally without perception where they were.
19 They couldn't even each time one of them was asked to name
20 where they were, they couldn't even actually tell you what
21 businesses they were on or near, okay, the -- as opposed to
22 Mr. Norris and Mr. Chiles who know this area.

23 You've got Mr. Norris who is in the area because he
24 lived in the area. He is struck by this suspicious
25 activity next to this medical clinic and this mission where

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1 people get free shoes and free clothes. The tree is
2 shaking. And he becomes concerned that somebody is
3 committing some kind of crime or trespass. Again, I'm
4 concentrating on what the perceptions and the state of mind
5 of the participants are.

6 The -- by Mr. Norris' testimony, he seeks the
7 assistance of Mr. Chiles, or Kent as he called him, who he
8 knows lives across the street. Come over here, come look
9 at this. And whatever he tells him causes him to look out
10 and see it. Call the police. Somebody is trespassing and
11 trying to break into the building.

12 What is his state of mind? What is he intending to do
13 as he crosses the street to confront the people who are in
14 his neighborhood doing wrong in his perception? What are
15 you doing? Who are you?

16 And Mr. Bond's wallet is produced. And it was very
17 interesting because it came at the very end of the case.
18 There's no evidence that Drew Bond had a picture I. D. of
19 himself. We know he had a Suntrust card, a Krispy Kreme
20 card, a card from a math group. He didn't have a photo I.
21 D. The card is flipped out as someone is asking him show
22 me an I. D., why are you here, flip, flip, flip. And he
23 begins to show his name on these cards -- the take with the
24 intent to deprive from the owner permanently such property.

25 Consistently throughout the testimony there was

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1 discussion of who had called, who was going to call and who
2 should call the police. We have various folks saying I
3 told him to call the police, I think he called the police,
4 they had called the police already.

5 We don't have any evidence from the state who actually
6 did call the police, how many different times the police
7 were called by various participants in this evening event.
8 We're missing that evidence.

9 Also, in considering this case, as Mr. Poole told you
10 and as I've told you before, the state does have the burden
11 of proof.

12 Where were all of the other officers? We've heard
13 discussion of five to six. You had at least one called by
14 name, Art Littlejohn, who we know was there.

15 One of the duties that you have as a juror under the
16 oath that you took yesterday about, well, just as Mr. Poole
17 said, shortly, a little bit less than 24 hours ago, you
18 have a duty to consider all of the evidence. And if you
19 have a doubt, His Honor is going to instruct you, you must
20 resolve that doubt in favor of the defendant. Okay. That
21 is a -- he is going to tell you have to -- the state has to
22 prove this case beyond a reasonable doubt.

23 When you get into the jury room you should take your
24 common sense with you. Use that to guide what you perceive
25 as a doubt and whether it's a reasonable doubt, whether it

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1 is a doubt that would cause you to hesitate to act.

2 Is there a question that is unresolved in your mind
3 and does that question cause you to hesitate? If you reach
4 such a question which causes you such a hesitation, you
5 have landed upon reasonable doubt. And under your oath,
6 then you must acquit the defendant.

7 Again, the state has brought an indictment that
8 charges Mr. Norris with taking while armed property of
9 Mr. Bond with the intent to permanently deprive the owner
10 of such property.

11 I too have a pad. We've heard a lot of information.
12 We've taken a lot of notes. It's almost impossible to
13 summarize without referring to notes.

14 But in looking at the evidence and considering whether
15 the state has met their burden that an armed robbery was
16 committed and property was taken with the intent to deprive
17 the owner permanently of the property, consider a few
18 issues and a few facts that you've heard.

19 The very last question that Mr. Norris was asked as a
20 witness was when the police got to you, and you consented
21 to search, and they searched you, did you have a single
22 thing on you that belonged to Drew Bond.

23 His answer was no, and there is no evidence to
24 controvert that, the intent to permanently deprive Drew
25 Bond of his property, property he did not even have,

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1 property that according to the evidence that's been
2 presented was handed over to another individual and he was
3 told hold onto this for the police, when the police get
4 here.

5 The testimony was the presentation, the sorting
6 through of the cards, was because Drew Bond didn't have a
7 photo I. D. and he was trying to show the person who
8 believed he was committing a crime, who he was by showing
9 him his creek golf course card that says Drew Bond and his
10 other cards that say Drew Bond.

11 Further, as you consider the elements of the crime as
12 has been noted earlier, you've got to determine beyond a
13 reasonable doubt that Carnie Norris crossed the street,
14 Dean Street, approached Drew Bond, demanded property that
15 he intended to keep permanently to keep Drew Bond from
16 having it beyond a reasonable doubt to convict him of an
17 armed robbery. The evidence does not show that.

18 Thank you, ladies and gentlemen for your time, for
19 your attention and for your patience. On behalf of the
20 defendant Carnie Norris I merely ask that you remember the
21 oath that you have taken. Thank you.

22 THE COURT: Mr. Barnette.

23 MR. BARNETTE: May it please the Court, Your Honor.

24 Madam forelady and ladies and gentlemen of the jury,
25 Drew Bond and his friends had every right to be out there

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1 doing what they wanted to do.

2 Anybody in this county should be able to enjoy the
3 playing Frisbee golf, enjoy going out to the playground,
4 enjoy watching a ballgame if they're playing softball,
5 baseball, throwing a football. They should be able to
6 enjoy that.

7 This is a case that shows you that people can enjoy --
8 they cannot go out, and, unfortunately, they've got to do
9 where their surroundings, where they're at. You shouldn't
10 have to worry about that.

11 And they came here. Andrew "Drew" Bond came and told
12 you what happened. That was probably the most important
13 knife, this knife to his throat standing there.

14 You heard the testimony. You heard the three people
15 that stood there and saw him point this knife at him. They
16 told you what happened coming through.

17 And if you look through the testimony of the state's
18 witnesses, it's consistent all the way through. Officer
19 James comes up and catches Mr. Norris over the top of him
20 with his cell phone in his hand. He throws it back to him.

21 The officers told you what happened when they got
22 there. They keep saying about these other officers. Both
23 sides gets to call witnesses, ladies and gentlemen. We
24 brought you the witnesses that brought you the pertinent
25 information in this case.

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1 Look at their testimony. The two codefendants can't
2 even get it right. And I asked this question specifically
3 over and over again. I apologize. But I wanted to make
4 sure there was no confusion about it.

5 Mr. Chiles got up and testified. I said when you got
6 over what was Mr. Norris doing to Mr. Bond. He said, well,
7 he was holding him down, had his hand on his shoulder.

8 I asked Mr. Norris what he had done, and he said I
9 never touched him. He was specific about that. I never
10 touched him. There's inconsistency in their story right
11 there, big inconsistency, starting off with that.

12 And that's one thing the judge will tell you. You
13 weigh the credibility of the witnesses. You believe
14 whatever you want. You're the judges of the facts. You
15 decide what facts are true and what's not true. You've got
16 two sides that are so diametrically opposed on what
17 happened that night. You've got the state's version and
18 you've got the defendant's version.

19 They want you to believe -- these are two gentlemen
20 that's been familiar with the criminal justice system.
21 Both of them has been convicted of different offenses. And
22 you heard what those offenses was. And that's part of what
23 you can weigh with the credibility of their testimony. And
24 the judge will tell you about that. It's called
25 impeachment -- impeachment. The defendants can be asked

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1 about it.

2 Here they want you to believe -- they could have
3 called the police. Any reasonable person -- that's the one
4 thing, ladies and gentlemen. You bring your own life
5 experiences with you.

6 What's the first thing you do if you see a crime being
7 committed? You call 9-1-1. They had a phone available to
8 them the whole time.

9 Mr. Norris says he goes over there. And he said I
10 just did like this. Well, human nature is if you've got a
11 strange man that's coming up to you and trying to do this
12 to you, what are you going to try to do? Get away from him
13 unless he grabs ahold of you and puts you down and holds
14 you down with a knife.

15 He would have ran too if he could have just like the
16 other ones, the victims. But that man right over there
17 kept him there.

18 He gets his wallet. Ms. Jones made a big deal about
19 this. Well, look at the items they took. Do you think his
20 driver's license are worth anything? A driver's license is
21 not worth anything to anybody. As a matter of fact, you
22 don't want to have somebody's driver's license because it's
23 probably not going to get you anything anyway.

24 You're going to have their VISA cards. Cards, like I
25 said, they're looking through the wallet to find out what

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1 cards they can use and what they can't use. And some they
2 may not be able to see them plain out there, so we're going
3 to take them anyway because there might be some we could
4 use.

5 The police come up. And you heard Officer James
6 testify that Carnie Norris is right on top of Andrew Bond.
7 He's got a cell phone in his hand. If he wanted to call
8 police, he could have took the cell phone and called the
9 police. Anybody can dial 9-1-1.

10 Did he go around and tell Officer James these guys I
11 caught just breaking into the building? No. They didn't
12 do that. They go across the street.

13 Mr. Chiles. I'm talking to him and asking him
14 questions. And I said why didn't you just run over. Said
15 these are these guys I. D.'s or credit cards here. They
16 don't do that. Then he stuffs them in the pocket. And I
17 asked him why did you. He said, well, I talked to three
18 other officers. I said why didn't you give the officers
19 those cards. He said I forgot about it. You forget about
20 something like this? You saw somebody you think is
21 breaking into a house, do you forget about that?

22 Ladies and gentlemen, the one thing, like I said, we
23 bring is common sense in here. They make a big deal about
24 their not running. Well, they knew who they are. I. D. is
25 not an issue in this case.

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1 I know they're asking, you know, how can you see the
2 lighting or anything. These are the two men that did this.
3 That was their oath. There's no question about that.

4 There's no question that Carnie Norris had this knife
5 on him. He says it was in his wallet, he had just finished
6 fishing or whatever and put it inside of his wallet after
7 he cleaned fish with it.

8 No question Kenneth Chiles has got his credit cards.
9 These are credit cards that are not his, and they're Andrew
10 Bonds, just like he said he took them away from him.

11 Here are just young people. They have a right to do.
12 They'd played Frisbee golf there before. They should have
13 that right to do it and it shouldn't be interfered.

14 What happened was Carnie Norris saw an easy target.
15 And the one thing that kept driving me crazy, he kept
16 saying they called the police, they called the police.

17 How did they know they called the police? They don't
18 know. They have no idea. They're committing a robbery,
19 saying go right back over. When the police shows up,
20 they've got to figure out some kind of story to tell. And
21 they came up with their story hoping that y'all would buy
22 it. I hope you don't, ladies and gentlemen.

23 We're very fortunate Andrew Bond is here to testify.
24 We're very fortunate that his friends was here to testify.
25 I'm glad we're just talking about an armed robbery case and

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1 not something else. With Andrew Bond there's no question
2 what happened to him that night. He got put in a situation
3 he never dreamed that night.

4 You can say, well, he shouldn't have been there that
5 night. But the bottom line is in our country, in our
6 county, you should have a right to do legal things, to have
7 fun, to do things. And you shouldn't have to go through
8 what he went through that night and what the other folks
9 went through that night. They shouldn't have to be faced
10 with that situation.

11 If these men truly thought that they were breaking
12 into that building they should have called 9-1-1. They
13 shouldn't have handled it themselves.

14 Common sense tells you if somebody is breaking into my
15 house, that's different. If it's at my house and I'm
16 sitting there, I'm going to handle it. I'm going to call
17 the police and I'm going to protect myself.

18 If I see somebody else going into somebody else's,
19 then I'm going to call and get the police there as soon as
20 I can. They didn't do that.

21 Like I said, they saw an opportunity that night and
22 they took advantage of it, thought they was going to get
23 away with it. They're hoping to get away with it now.

24 And, like I told you before, when I came up when we
25 first started the case, I know it's been a short case.

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1 It's a tough case from that standpoint, because any time
2 you get into judgment with something like this. But look
3 at the facts. There is no question what happened.

4 Carnie Norris went over there to commit a robbery, and
5 he went to commit an armed robbery. They took the cards,
6 the money out of that wallet, the six bucks or whatever.
7 That's armed robbery, ladies and gentlemen. They did it
8 and they're guilty of it.

9 And the one thing -- there was another thing that was
10 kind of interesting. You heard Andrew Bond testify. And
11 Mr. Chiles comes up. And Mr. Norris, and this is per
12 policeman -- says you're my backup, aren't you, because
13 when Mr. Mayfield or Mr. Blankenship came to try to help
14 him, Mr. Chiles came over at that time. He was his backup.

15 And you're right. I am going to tell you about the
16 hand of one, hand of all. And the judge is going tell you
17 about it. The hand of one hand, hand of all, is where two
18 or more people are involved in the commission of a crime.
19 It's accomplice liability when you're an accomplice to each
20 other.

21 You don't even have to be there to be an accomplice.
22 For example, if Mr. Chiles is up on the street corner just
23 watching for the police while Mr. Norris is committing a
24 crime, he don't even have to be there. But he's helping
25 him by being a lookout for him. That's the same thing.

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1 That's the hand of one is the hand of all.

2 I know they make this big deal about, well, Mr. Norris
3 didn't have any money on him or any of these credit cards
4 on him. Will that mean if I commit a crime and I hand over
5 to this officer, Officer James, and that when they catch me
6 I, you know, robbed them, I don't know. Am I not guilty of
7 armed robbery? That's crazy.

8 The hand of one is the hand of all. If you are
9 involved working, aiding, abetting, doing anything
10 involving the crime, you're as guilty. You're both as
11 guilty.

12 And that's why I ask you, ladies and gentlemen of the
13 jury, in this case. I think it's the only verdict that
14 speaks the truth in this case. Once you've looked at the
15 evidence and looked, you know, what testimony is there and
16 the consistent testimony, no question the state's witnesses
17 was consistent all the way through. The defendant's was
18 not.

19 Which side do you want to believe? Do you want to
20 believe them or the state's witnesses? That's what it
21 comes down to, ladies and gentlemen. And I'm going to ask
22 you to return verdicts of guilty on both of them. Thank
23 you for your time.

24 THE COURT: Madam forelady and ladies and gentlemen,
25 you of course have heard and seen all of the evidence.

Jury charge

1 You've now heard the final summations of the lawyers; and
2 therefore now I'm going to instruct you on the law that's
3 applicable. And then you'll be asked to go back and begin
4 with your deliberations.

5 It is your exclusive duty to determine what the facts
6 are. And you do that through your own common sense
7 examination and evaluation of all of the testimony and
8 other evidence received during the trial of the case.

9 And you 12 jurors alone will decide what weight, value
10 and effect to give to any particular witness' testimony or
11 other evidence in the case. Your sole objective is to
12 simply reach the truth in the matter, and by doing that you
13 will have fulfilled your obligations as jurors, and that is
14 to simply give both the state and each of these defendants
15 a fair and impartial trial.

16 Now, as you aware, in this case the state has charged
17 each of these defendants with the crimes of armed robbery.
18 And there are two separate indictments. One relates to
19 Kenneth Wayne Chiles; the other relates to Carnie Norris,
20 III. They're separate indictments. You are to consider
21 the evidence separately and apply the law to each
22 indictment separately.

23 In this case your verdicts may be the same; they may
24 be different as to each of the indictments. That will
25 depend of course upon your determination of fact and then

Jury charge

1 your application of the law as I will have provided it to
2 you.

3 But in this case each of the defendants are charged
4 with the crime of armed robbery, the state alleging by way
5 of the indictment that on or about July the 16th of 2008
6 that Mr. Chiles and Mr. Norris did commit the crime of
7 robbery while armed with a deadly weapon and that they
8 took, stole and carried away from the person or presence of
9 Andrew Foster Bond by the use of force or intimidation
10 certain personal property that belonged to Mr. Bond.

11 Now, as to those allegations and as to each of those
12 indictments each defendant has entered a plea of not
13 guilty. And as I've told you, that plea of not guilty
14 places upon the state the burden of proving the allegations
15 that they have set forth in each of the indictments, the
16 burden of proving each of the essential elements that makes
17 up the crime of armed robbery; and therefore the burden is
18 upon the state to establish each defendant's guilt to your
19 satisfaction beyond a reasonable doubt before any verdict
20 of guilty could be returned.

21 As I also told you, these indictments are not evidence
22 in the case. They're not proof of anything.

23 The indictments will be in the jury room, Madam
24 Forelady, because it's going to be on the back of each
25 indictment that you will indicate the jury's unanimous

Jury charge

1 decision. But other than serving as the verdict form, the
2 indictments serve no function so far as you jurors are
3 concerned.

4 Now, the burden is never upon a defendant to prove
5 that he or she is not guilty or to prove that he or she is
6 innocent because in many cases that might not be possible.
7 The burden is always upon the state because they bring the
8 charge against these defendants to prove their guilt to
9 your satisfaction beyond a reasonable doubt.

10 Your are instructed that it is a vital, important and
11 cardinal rule of law that every defendant in a criminal
12 trial, and it doesn't matter how serious the offense might
13 be for which that person stands charged, that person is
14 always under the law presumed to be innocent of that
15 charge.

16 That presumption of innocence remains with any
17 defendant, as it does with these defendants, from the time
18 that they are placed under arrest and throughout the course
19 of the criminal process and even throughout the course of
20 the actual trial in the case.

21 As I have told you, that presumption of innocence will
22 be with each of these defendants even as you go back to
23 begin with your deliberation in this case. And that
24 presumption of innocence will be with each of them in that
25 jury room, and it will remain with them forever unless you

Jury charge

1 12 jurors determine that they are no longer entitled to
2 that presumption of innocence. That is after you've
3 carefully considered all the evidence in the case, and from
4 that evidence you determine what you believe to be the true
5 facts, and upon determining those facts you apply the law
6 that I will have provided you, if you 12 jurors unanimously
7 determine beyond a reasonable doubt that a defendant's
8 guilt has been proven, then that defendant would no longer
9 be entitled to that presumption of innocence. But it's
10 only if, unless and until you are satisfied of a
11 defendant's guilt beyond a reasonable doubt that the
12 presumption of innocence would no longer be applicable.

13 Now, while the state does have the burden of proving a
14 defendant's guilt beyond a reasonable doubt, that doesn't
15 mean that the state has to prove a defendant's guilt beyond
16 all doubt or beyond any possible doubt. But it does
17 require the state to prove a defendant's guilt to your
18 satisfaction beyond a reasonable doubt.

19 The term reasonable doubt should be given its plain
20 and ordinary meaning. A reasonable doubt is the kind of
21 doubt that would cause a reasonable person to hesitate to
22 act upon the information provided.

23 A defendant in a criminal trial is entitled to any
24 reasonable doubt that arises from the evidence or lack of
25 evidence in a case. And if upon any factual issue

Jury charge

1 essential to a finding of a verdict of guilty you have some
2 reasonable doubt as to how that issue should be resolved,
3 it would be your duty to resolve that reasonable doubt in
4 favor of a defendant.

5 And therefore if upon your consideration of the whole
6 case you have a reasonable doubt as to a defendant's guilt,
7 you must resolve that reasonable doubt in that defendant's
8 favor and return a verdict of not guilty.

9 And at the same time after you've carefully considered
10 all the evidence in the case and determined the facts and
11 applied the law, if you have no reasonable doubt as to a
12 defendant's guilt, then it would be your corresponding duty
13 to convict that defendant or to find him guilty if you are
14 satisfied of his guilt beyond a reasonable doubt.

15 Now, the same law that provides that you are the
16 judges of the facts also provides that I am the judge of
17 the law. And that simply means that nobody is going to
18 tell you how to arrive at your determination of fact in
19 this case.

20 You do that, as I've already stated, through the
21 exercise of good judgment and common sense conscientiously
22 applied to the testimony and evidence received during the
23 trial of this case.

24 You must however under your oath as a juror accept the
25 law as I provide it to you as being the law that you are to

Jury charge

1 apply in this case. In other words, you're never to
2 concern yourself with what you thought the law was before
3 you came to serve as a juror or what you think the law
4 ought to be.

5 Under your oath you must simply accept the law as I
6 provide it to you as being the law that is applicable in
7 this particular case. And then you take that law and you
8 apply it to the facts as you 12 jurors determine those
9 facts to be based upon your own common-sense examination
10 and evaluation of all of the testimony and evidence
11 received during the trial of the case.

12 Now, as I've told you, you are the sole judges of the
13 facts in this case. And therefore you are necessarily the
14 sole judges of the credibility or the believability of each
15 witness that has testified during the trial of this case.

16 You 12 jurors alone will decide what weight, value and
17 effect to give to any particular witness' testimony, or
18 even portions of testimony. And so there are several
19 factors which you should consider in arriving at your
20 assessment as to a particular witness' credibility, and I'm
21 going to list those factors for you.

22 You may consider the demeanor of the witness, that is
23 how the witness appeared to you when the witness testified
24 from the witness stand. Was the witness straightforward in
25 responding to questions, or was the witness hesitant or

Jury charge

1 evasive in responding to questions that were asked of that
2 witness?

3 Simply put, did the witness appear to you to be
4 telling the truth and to have knowledge of the facts to
5 which that witness has testified.

6 You may also consider whether or not the testimony of
7 a witness is consistent, or is it inconsistent with that
8 witness' own testimony or statements made in court or
9 outside of court by that witness.

10 You may also consider whether or not the testimony of
11 a witness is consistent or inconsistent with other
12 witnesses' testimony or with other evidence received during
13 the trial of the case.

14 You may also consider how the witness came to know the
15 facts to which that witness has testified. In other words,
16 what was that witness' opportunity and ability to perceive
17 the existence of those facts to which that witness has
18 testified by having previously used his or her senses. And
19 then what is that witness' ability to be able to come into
20 court and to accurately recollect to you as to what they
21 have previously seen or heard, or felt for that matter.

22 You may also consider any bias or prejudice or
23 interest that a witness might have. In other words, do you
24 find some reason that a particular witness would come into
25 court and would testify one way or another to help or to

Jury charge

1 hurt one side or the other.

2 You may consider any interest that a witness might
3 have in the outcome of the case if you determine that a
4 witness does have such an interest and you find that it
5 would bear upon that particular witness' credibility.

6 You may also consider whether or not the testimony of
7 a witness is strengthened, or is it weakened by other
8 testimony or other evidence received during the trial of
9 the case.

10 Now, during the course of this trial you have heard
11 certain evidence relating to a defendant having prior
12 convictions for certain types of criminal offenses.

13 Ordinarily, evidence of any prior convictions of a
14 defendant is not admissible during the trial of a criminal
15 case because it's not ordinarily relevant to any issue that
16 the jury must determine.

17 However, where a defendant has a prior record of
18 convictions for certain types of criminal offenses and
19 where that defendant takes the witness stand and testifies
20 during the trial of the case, then evidence of those
21 convictions may be admitted during that testimony.

22 But that evidence may be used for a very and strictly
23 limited purpose by the jury, and that is as it relates to
24 the impeachment of a witness' or a defendant's testimony
25 given during the trial. In other words, you may consider

Jury charge

1 such evidence on the issue of the credibility and/or the
2 believability of a defendant and that defendant's
3 testimony, but you may not consider it for any other
4 purpose.

5 It is not being introduced as evidence of a
6 defendant's guilt for the crime for which he now stands
7 charged, and you are not permitted to consider it on that
8 issue.

9 The sole purpose for which it is introduced, the sole
10 reason that it is allowed and the sole purpose for which
11 you may consider it is solely as to the issue of the
12 credibility and the believability of a defendant's
13 testimony in the event you find such evidence to be
14 probative on that particular point or issue.

15 Now, because you are the finders of the facts and you
16 are the judges of the credibility of each witness you are
17 permitted to believe as much or as little of what a witness
18 has testified to as you deem is appropriate.

19 And therefore you may believe everything that a
20 witness testified to. You may choose to believe none of
21 it. You may believe some portion of a witness' testimony
22 and reject some other portion of that same witness'
23 testimony. You may believe one witness as opposed to
24 several, or several as opposed to one.

25 But whatever your good judgment and common sense tells

Jury charge

1 you is the most believable and credible testimony is the
2 testimony you should accept, and you should reject any
3 testimony or other evidence that you find not to be
4 credible or believable.

5 Again, your sole objective is to simply reach the
6 truth in the matter. And by doing that you will have
7 fulfilled your obligations as jurors, and that is to simply
8 give both the state and each defendant a fair and impartial
9 trial.

10 Now, while there are various forms of evidence such as
11 testimony, photographs, documents, charts and other types
12 of physical exhibits, there are really only two types of
13 evidence. Either or both of those types of evidence may be
14 used to prove any fact in issue. But the two types of
15 evidence are direct evidence and circumstantial evidence.

16 Now, direct evidence is the testimony of a person who
17 testifies from actual knowledge of a fact. It is testimony
18 by a person who has perceived the existence of some fact by
19 means of his or her senses, and then they come into court
20 and testify as to what they have previously perceived.

21 Circumstantial evidence, on the other hand, is the
22 proof of some other fact or set of facts which taken either
23 singly or collectively may prove the existence of a fact in
24 question as a necessary consequence, that is through an
25 inference.

Jury charge

1 An inference is simply a deduction of fact which may
2 logically and reasonably be drawn from the proof of some
3 other fact or set of facts. In other words, it's not a
4 fact proven by the direct testimony of a person based upon
5 personal perception, but it is a conclusion which might
6 reasonably be drawn from the proof of other facts.

7 In other words, you may infer that a particular event
8 occurred or that a particular fact exists based upon the
9 proof of sufficient factual circumstances which would
10 reasonably warrant your arriving at that conclusion.

11 Now, the law makes absolutely no distinction between
12 the weight or value to be given to either direct evidence
13 or to circumstantial evidence, nor is a greater degree of
14 certainty required of circumstantial evidence as opposed to
15 direct evidence.

16 Whatever the type of evidence used to prove any fact,
17 you should consider all of the evidence presented during
18 the trial of the case. And after carefully weighing and
19 considering that evidence in your minds if you are not
20 convinced of the guilt of a defendant beyond a reasonable
21 doubt, then you must resolve that doubt in that defendant's
22 favor and return a verdict of not guilty.

23 Now, in this case, as you know, each defendant is
24 charged with the crime of armed robbery. Armed robbery is
25 a statutory offense. And that just means that it's been

Jury charge

1 codified in a statute. The legislature has prescribed and
2 defined what armed robbery is.

3 That statute is set forth in 16-11-330, and that
4 statute provides in its relevant parts that a person who
5 commits the crime of robbery while armed with a pistol,
6 dirk, slingshot, metal knuckles, razor or any other deadly
7 weapon, or a person who commits the crime of robbery while
8 alleging either by actions or by words that he is armed
9 while using a representation of a deadly weapon, or any
10 object which a person present during the commission of a
11 robbery reasonably believed to be a deadly weapon is guilty
12 of the crime of armed robbery.

13 Now, in order to be guilty of the crime of armed
14 robbery it would be necessary that the state has proven the
15 lesser included offense of the crime of robbery. And the
16 crime of robbery is commonly referred to as a larceny by
17 force.

18 Larceny is taking, stealing and carrying away the
19 personal property of another. A robbery is the commission
20 of a larceny, a theft by force.

21 And robbery is further defined in the law as the
22 taking and the stealing and carrying away of the personal
23 property of another person having any value whatsoever from
24 the person or from the presence of that person without his
25 or her consent and with the intent to steal by using force

Jury charge

1 or violence to accomplish the theft or by threatening the
2 use of force or violence in order to accomplish the theft.

3 And under the law a deadly weapon is defined as any
4 device or instrument which in the manner it is used or is
5 intended to be used is known to be capable of producing
6 death or serious bodily harm. And deadly weapon would
7 include the terms firearms and other edged instruments.

8 So therefore under this particular statute an armed
9 robbery may be proven in one of two ways. Number one, it's
10 a robbery which is committed while the perpetrator is
11 actually armed with any type of deadly weapon. Or it's a
12 robbery committed while the perpetrator alleges either by
13 actions or by words that he is armed while using a
14 representation of a deadly weapon or any object which a
15 person present during the commission of the robbery
16 reasonably believed to be a deadly weapon.

17 And you are further instructed that one who is charged
18 with the commission of a crime may be convicted of that
19 crime as a principal or as an accomplice. And an
20 accomplice is one who knowingly and voluntarily and with a
21 common intent with the principal offender unites with the
22 principal offender in the commission of a crime. An
23 accomplice may be also -- maybe also be referred to as an
24 aider or an abettor in the commission of the crime.

25 In this case the state is alleging that the defendants

Jury charge

1 are guilty of the crime of armed robbery either as a
2 principal or as an accomplice.

3 The law provides that where two or more people act
4 together with a common intent and they combine, conspire,
5 plan or otherwise agree to the commission of a crime, each
6 person who is present at the scene of the crime to aid,
7 abet, assist or otherwise participate in the commission of
8 the crime is equally guilty of any crime which is
9 accomplished thereby.

10 Therefore any person who joins with another to
11 accomplish an illegal purpose is held to be criminally
12 responsible for everything done by any other person which
13 occurs as a natural or probable consequence of the acts
14 done pursuant to and in furtherance of the common plan or
15 purpose.

16 And therefore where two or more persons are acting
17 together and they are aiding, abetting, assisting and
18 participating with each other in the commission of a crime,
19 the acts of one become the acts of all. The hand of one
20 becomes the hand of all. And all are equally guilty of any
21 crime which is accomplished thereby.

22 You are further instructed that prior knowledge by a
23 defendant that some person is intending to commit a crime
24 without more is not sufficient to make that person guilty
25 of the crime which he has shown to have had knowledge of.

Jury charge

1 And, likewise, the mere presence of a defendant at the
2 scene of a crime or in close proximity thereto even with
3 knowledge that another is intending to commit a crime is
4 not sufficient standing alone to prove that defendant
5 guilty of the crime under the legal theory of accomplice
6 liability.

7 In order for a defendant to be found guilty of a crime
8 under the legal theory of accomplice liability or aiding
9 and abetting it must be proven beyond a reasonable doubt
10 that the defendant was actually present at the scene of the
11 crime with the intention of aiding, abetting, assisting or
12 participating in the common plan which culminates in the
13 commission of the crime.

14 And you are further instructed that a criminal intent
15 is also a necessary element of any crime which must be
16 proven beyond a reasonable doubt, for there must have been
17 a common design or intent to commit a crime, and the crime
18 must have been committed pursuant thereto.

19 Intent means the state of a person's mind which
20 directs his actions towards a specific object or goal. And
21 criminal intent is a state of mind that operates jointly
22 with the commission of an act in the commission of a crime.

23 Criminal intent is a mental state of conscious
24 wrongdoing in contrast to the commission of an act which is
25 the result of an accident, inadvertence or mistake.

Jury charge

1 And intent may be proven by acts, declarations and
2 conduct of a defendant, as well as any other circumstances
3 which are established by the evidence in the case from
4 which you might naturally and reasonably infer any such
5 intent.

6 Now, Madam Forelady and ladies and gentlemen of the
7 jury, I am not in any way concerned with what your
8 decisions are, but you are instructed that any decision
9 that you reach must be unanimous. All 12 jurors must be in
10 agreement.

11 As I've told you, as you go back, Madam Forelady,
12 you'll be called upon to preside over the jury
13 deliberations simply to ensure that they are carried out in
14 some orderly fashion. But all jurors are expected to
15 participate in the deliberations, because, as I have
16 stated, the verdict has to be unanimous. All of you must
17 be in agreement.

18 Again, Madam Forelady, you're going to be asked to
19 indicate the jury's decisions on the back of the
20 indictments that will be sent back along with any other
21 evidence. But, again, these aren't evidence. They're
22 simply the verdict forms.

23 There are two separate indictments. One relates to
24 the charge against Mr. Chiles; the other relates to the
25 charge against Mr. Norris.

Jury charge

1 As I have stated, you are to consider the indictments
2 separately as to the evidence and as to the law. Your
3 verdicts in these cases may be the same, they may be
4 different. That will depend upon your determination of
5 facts as it relates to the particular defendant and then
6 your application of the law to those facts as you determine
7 them to be.

8 But with respect to each of the indictments you have
9 two possible verdict forms. Those two possible verdict
10 forms are guilty and not guilty. So whatever that decision
11 is, Madam Forelady, simply indicate it on the back of the
12 indictment in the space provided. You'll see on the back
13 of each indictment the word verdict. And it's beneath that
14 word that you'll indicate the jury's unanimous decision.

15 There's also a line where you are to sign your name as
16 the foreperson. No other juror needs to sign the verdict
17 form, just the foreperson. And then there's a place for
18 the appropriate date.

19 Now, during the course of your deliberations you may
20 have questions that you try to resolve in your minds
21 through your discussions. And if you are wondering at any
22 time if there's some additional piece of evidence that you
23 can have that might assist you in resolving the case,
24 understand that no additional evidence may be received now
25 that the case is going to be submitted to you for your

Jury charge

1 deliberations.

2 So even if other evidence existed, it can't be
3 introduced. It can't be received. You can't have it. So
4 don't inquire as to the existence or whether or not you can
5 have other evidence in the event that issue should arise.

6 If however you have a question of fact that can be
7 resolved by having testimony of a witness replayed in whole
8 or in part, we can make arrangements for you to come back
9 into the courtroom to have testimony replayed in whole or
10 in part as the case might be.

11 I don't have transcripts of a witness' testimony. So
12 I can't send back a transcript. But if you need to have
13 testimony replayed, let the bailiff know. Identify the
14 witness and what portion, if you need just a portion of it,
15 and we'll bring you back to provide you with that replay of
16 testimony.

17 If at any time you have a question about the law that
18 you are to apply, I can always answer questions that relate
19 to the law that's applicable. So while I cannot respond to
20 questions of fact, if you have a question about the law
21 that you are to apply, I can respond to that.

22 So, Madam Forelady, if at any time you need to address
23 a question to me, if you'll write it on a piece of paper,
24 give it to the bailiff, he'll provide it to me, and I'll
25 respond accordingly.

Jury charge

1 I don't know if we have any smokers on the jury. But
2 if you want to smoke, you can smoke during deliberations.
3 But you cannot smoke in the jury room. You'll have to go
4 outside for that purpose. So if anybody wants to smoke,
5 you let the bailiff know, and they'll take you outside.

6 You are instructed however that deliberations may not
7 be engaged in unless all 12 jurors are present. So if at
8 any time any juror is absent for an authorized purpose the
9 deliberations must stop. And they may only resume when all
10 12 are present so that all may participate.

11 I think that's all I have for you. But I've got to
12 address some matters with the lawyers before you can
13 actually start your deliberations.

14 So while I am going to ask you to go back to the jury
15 room, do not yet begin deliberations. I'll address those
16 matters with the lawyers. If I don't need to bring you
17 back I'll send word by way of the bailiff that you may
18 begin with your deliberations. In that event he'll bring
19 to the jury room each of the exhibits which have been
20 introduced.

21 And to you, Madam Forelady, he's also bring the
22 indictments which will serve as the verdict form.

23 So, Mr. Allen, if you will, stay with me. The
24 original 12 jurors, if you'll please retire and await my
25 instruction as to when to begin your deliberations.

Jury charge

1 (Whereupon, the jury retired to deliberate at
2 3:00 p.m.)

3 (Whereupon, the alternate juror was excused.)

4 THE COURT: Are there any exceptions taken to the
5 instruction or requests for additions to the instruction by
6 the state?

7 MR. BARNETTE: None from the state, Your Honor.

8 THE COURT: By defendant Chiles?

9 MR. POOLE: No, sir.

10 THE COURT: By defendant Norris?

11 MS. JONES: No, sir, Your Honor.

12 THE COURT: Let me ask y'all to verify each of the
13 exhibits before they go back.

14 (Pause.)

15 THE COURT: Everything in order?

16 MR. POOLE: Yes, sir.

17 THE COURT: If you will, send the evidence back and
18 tell the jury to begin deliberations and notify us when
19 they've concluded.

20 We will be in recess for 15 minutes.

21 (Whereupon, a recess was taken.)

22 THE COURT: All right. Bring the jury in, please.

23 (Whereupon, the jury returned to the courtroom at

24 3:56 p.m.)

25 THE COURT: Madam Forelady, I understand that you and

Jury charge

1 your fellow jurors would like some clarification on the
2 instruction that related to the legal theory known as
3 accomplice liability.

4 All right. I'm going to reinstruct you on the
5 accomplice liability. And if what I reinstruct you as to
6 does not answer your question, when you go back to the jury
7 room just simply send me another inquiry, because I'm not
8 always certain exactly what you're looking for, what it is
9 that you need.

10 So I'm going to give you what I think you've asked
11 for. In the event that's not it or you need something
12 additional, don't hesitate to provide me with another
13 request.

14 One who is charged with the commission of a crime may
15 be convicted either as a principal or as an accomplice.
16 And an accomplice is one who knowingly and voluntarily and
17 with a common intent with the principal offender unites
18 with the principal offender in the commission of a crime.
19 An accomplice is also referred to as an aider or as an
20 abettor.

21 In this case the state alleges that each of the
22 defendants is guilty of the crime of armed robbery either
23 as a principal or as an accomplice.

24 The law provides that where two or more people act
25 together with a common intent and purpose and they combine,

Jury charge

1. conspire, plan or otherwise agree to the commission of a
2. crime, each person who is present to aid, abet, assist or
3. otherwise participate in the commission of the crime is
4. equally guilty of any crime accomplished by those efforts.

5. Any person who joins with another to accomplish an
6. illegal purpose is held to be criminally responsible for
7. everything done by any other person which occurs as a
8. natural or probable consequence of the acts done pursuant
9. to and in furtherance of the common plan and purpose.

10. Therefore where two or more persons are acting
11. together and they are aiding, abetting, assisting and
12. participating with each other in the commission of a crime,
13. the acts of one become the acts of all, the hand of one
14. becomes the hand of all, and all are equally guilty of any
15. crime accomplished thereby.

16. Prior knowledge that a defendant -- excuse me. Let me
17. start over with that. Prior knowledge by a defendant that
18. some other person is intending to commit a crime without
19. more is not sufficient to make him guilty of the crime of
20. which he may be shown to have had knowledge.

21. And, likewise, the mere presence of a defendant at the
22. scene of a crime or in close proximity thereto, even with
23. knowledge that another is intending to commit a crime, is
24. not sufficient standing alone to prove the defendant guilty
25. of the crime under the legal theory of accomplice.

Jury charge

1 liability.

2 In order for a defendant to be found guilty of a crime
3 under the legal theory of accomplice liability it must be
4 proven beyond a reasonable doubt that the defendant was
5 actually present at the scene of the crime with the
6 intention of aiding, abetting, assisting or participating
7 in the common plan which culminates in the commission of
8 the crime.

9 A criminal intent is also a necessary element of any
10 crime that must be proven beyond a reasonable doubt, for
11 there must have been an intent to commit a crime and the
12 crime must have been committed pursuant thereto, and each
13 defendant was aiding, abetting and assisting in the
14 commission of that crime by some overt act.

15 The word intent means the state of a person's mind
16 which directs his actions towards a specific object or
17 goal.

18 Criminal intent is a state of mind that operates
19 jointly with an act in the commission of a crime. Criminal
20 intent is a mental state of conscious wrongdoing in
21 contrast to the commission of an act which is the result of
22 accident, inadvertence or mistake.

23 And intent, as well as criminal intent, may be proven
24 by acts, declarations and conduct of a defendant, as well
25 as any other circumstances which are established by the

Jury charge

1 evidence in the case from which you may naturally and
2 reasonably infer any intent.

3 In other words, intent may be proven by direct
4 evidence, as well as circumstantial evidence, from which
5 you might reasonably infer any such intent.

6 All right. That's it. Now, if you'll go back and
7 continue with your deliberations, and if that did not
8 answer the question that you needed answering, you let me
9 know. And I'll try to provide additional clarification.

10 (Whereupon, the jury retired to deliberate at
11 4:04 p.m.)

12 THE COURT: Any exception taken by the state?

13 MR. BARNETTE: None from the state, Your Honor.

14 THE COURT: Any exception taken by the defendant
15 Chiles?

16 MR. POOLE: No, sir.

17 THE COURT: Defendant Norris?

18 MS. JONES: No, sir, Your Honor.

19 THE COURT: We will be at ease while the jury
20 continues to deliberate.

21 (Whereupon, a recess was taken.)

22 THE COURT: All right. I am told the jury has reached
23 a decision. Are we ready to receive it?

24 MR. BARNETTE: The state is ready, Your Honor.

25 MS. JONES: Yes, sir.

Verdict

1 THE COURT: Okay. Bring them in.

2 (Whereupon, the jury returned to the courtroom at
3 4:25 p.m. to report its verdict.)

4 THE COURT: Madam Forelady, have you and your fellow
5 jurors reached a unanimous decision as to each of the
6 separate indictments?

7 THE FOREPERSON: We have, Your Honor.

8 THE COURT: Have you indicated those decisions on the
9 back of the indictments as requested?

10 THE FOREPERSON: I have.

11 THE COURT: Did you sign your name as the foreperson
12 and date it?

13 THE FOREPERSON: Yes, sir.

14 THE COURT: If you will, please hand those up by way
15 of the bailiff.

16 You may publish the verdicts.

17 THE CLERK: Indictment No. 2008-GS-42-5631, the State
18 of South Carolina, in the Court of General Sessions, the
19 State vs. Carnie Norris, III, indicted for armed robbery,
20 verdict, guilty. Signed by the foreperson this 7th day of
21 July of 2009.

22 In Indictment No. 2008-GS-42-5630, the State of South
23 Carolina vs. Kenneth -- Kenneth Wayne Chiles, indicted for
24 armed robbery, the verdict, guilty. Signed by the
25 foreperson the 7th day of July, 2009.

1 Ladies and gentlemen of the jury, is this your verdict
2 and still your verdict? If so, please raise your right
3 hands.

4 (Whereupon, all responded in the affirmative.)

5 THE CLERK: So say you all.

6 THE COURT: All right. Does either defendant wish to
7 have the jury polled?

8 MS. JONES: Defendant Chiles does not. I'm sorry.
9 Norris. Defendant Norris does not.

10 MR. POOLE: Defendant Chiles does not either.

11 (Whereupon, the trial jury was excused.)

12 THE COURT: All right. Any matters to address prior
13 to the imposition of sentence?

14 MR. POOLE: Your Honor, at this point in time the
15 defendant Chiles would move for a new trial. That is based
16 on prior motions made prior to the trial, during the trial
17 and after the return of the verdict.

18 THE COURT: All right. Motion for a new trial is
19 denied.

20 MS. JONES: And defendant Norris makes a similar
21 motion, Your Honor.

22 THE COURT: That motion is also denied.

23 (Pause.)

24 THE COURT: All right. Anything further on behalf of
25 the state?

Sentence

1 MR. BARNETTE: Your Honor, I do have the defendants'
2 prior record.

3 THE COURT: All right. Who are you going to start
4 with?

5 MR. BARNETTE: I'll start with Mr. Norris, Your Honor.

6 THE COURT: Okay.

7 MR. BARNETTE: 1979, he was convicted of driving under
8 the influence; 1983, interfering with operation of a school
9 bus; 1983, public drunk, shoplifting; 1983, petty larceny;
10 1984 attempted carbreaking; 1985, shoplifting second
11 offense; 1986, receiving stolen goods; 1988, possession of
12 crack with intent; 1991, simple possession of cocaine;
13 1993, accessory after the fact of felony; 199 --

14 THE COURT: What was that? What felony was that, do
15 you know?

16 MR. BARNETTE: Your Honor, I had them go down to the
17 clerk's office and try to find it. I'm not sure what the
18 felony was.

19 1995, unlawful weapon; 1995, common-law robbery. He
20 received a sentence of 15 years suspended to nine years and
21 five years probation consecutive to any other sentence. A.
22 T. U. was recommended.

23 In 1995 he was -- ten years was revoked on the
24 accessory-after-the-fact-to-a-felony conviction. And on
25 burglary second nonviolent, he was convicted. Then he

Sentence

1 received a 15-year sentence.

2 And, Your Honor, he received a public disorderly
3 conduct in 2007. I believe his probation -- he was back --
4 he is back in the D. O. C. now. I think it was revoked
5 again at that time.

6 Your Honor, Kenneth Chiles. 1981, he was convicted of
7 storebreaking. He received a 5-year, suspended to 5-year
8 probationary sentence.

9 He also got another housebreaking and grand larceny
10 conviction in 1982. He received five years on that.
11 Shoplifting in 1987; shoplifting, second offense, 1988;
12 shoplifting third, 1988; 1989, received another shoplifting
13 offense. His probation was revoked at that time one
14 year. Both his probations was revoked, both the
15 shopliftings.

16 1991, driving under suspension more than one offense;
17 1992, criminal domestic violence; 1992, habitual traffic
18 offender and driving under suspension more than one
19 offense; 2000, he was convicted of criminal domestic
20 violence third or subsequent; and 2000, Your Honor, he was
21 convicted of shoplifting in that case.

22 I've talked to the victim, Andrew Bond, and talked to
23 his family, his mother. Your Honor, they do not want to
24 address the Court. They feel like you already know what
25 the case is about and just trust the Court's judgment in

Sentence

1 this case.

2 THE COURT: All right. Mr. Poole.

3 MR. POOLE: May it please the Court, Your Honor.

4 You've already heard certain biographical information
5 on Mr. Chiles. At this point in time he is 47 years old.
6 He does have two grown children. He's been working for 19
7 or 20 years up until the time of this arrest, as I
8 understand it, at Piccadilly.

9 And the prior record that he has, as I understand it,
10 is like in 2000, was his last conviction. And that was a
11 C. D. V. third or subsequent.

12 Your Honor, I would ask the Court to extend to him any
13 consideration you possibly can. This is for eight years,
14 nine years he's not been in any trouble whatsoever.

15 I think he exercised some extremely poor judgment in
16 what he did. And I know that he is remorseful about what
17 happened. So I would ask the Court to extend to him any
18 consideration and mercy that you possibly can.

19 Would you like to say anything, Mr. Chiles?

20 DEFENDANT CHILES: You said everything.

21 THE COURT: Ms. Jones.

22 MS. JONES: Your Honor, as you also know, Mr. Norris
23 is 48 years of age.

24 You've heard now the complete record on Mr. Norris.
25 He, as you are aware -- members of his family have been

Sentence

1 present throughout the trial. His mother, his father and
2 his son, Alton, are present.

3 Mr. -- Your Honor, much is known within the community
4 about Mr. Norris because of the great opportunity that the
5 community I think feels he squandered. He was a -- he
6 graduated from Spartan High as a record athlete, was
7 offered the opportunity -- I believe it was the University
8 of Georgia -- to play football.

9 THE COURT: It was.

10 MS. JONES: I'm not a football aficionado, but I do
11 know that.

12 And he had a great promising future and along the way
13 squandered that. And I would say to Your Honor I know from
14 my dealings with him he regrets that. Part of the problem
15 was a substance abuse problem as he alluded to earlier
16 today when talking about the '96 and '95 events.

17 Obviously, none of his infamous history and his
18 criminal history can be laid at the feet of his parents,
19 who I think all people in the community who know them
20 recognize them as upstanding citizens, and that oftentimes
21 they felt sorry for them because of what they have had to
22 watch their son become and the opportunity he had to go
23 away because of his own substance abuse problems and
24 conduct or criminal conduct.

25 Your Honor, on Mr. Norris' behalf I've asked any

Sentence

1 members of his family to speak. I've not gotten a clear
2 indication from them as to whether they wish to. I think
3 they seem somewhat reluctant.

4 They are -- at least his mother has expressed the
5 opinion of being disappointed. But she has been present
6 for the testimony. So I think she perhaps understands.
7 And disappointment may be more of a statement as to what
8 her son has become than what the system has done and what
9 he faces, finds himself faced with today.

10 I do on his behalf wish to extend an apology to the
11 persons involved and also -- and on his behalf an apology
12 to Mr. Chiles.

13 But, Your Honor, I would ask, as Mr. Poole has asked,
14 for any mercy that Your Honor feels he can bestow on
15 Mr. Norris.

16 THE COURT: Mr. Norris, have you got anything you want
17 to add to what your lawyer has told me?

18 DEFENDANT NORRIS: Yes, sir. Just, I just apologize
19 to everyone involved individually. I would ask for
20 leniency based on my age and the things that I've, that
21 I've been through. I have been through it for years.

22 THE COURT: What have you been through?

23 DEFENDANT NORRIS: As far as drug addiction and
24 earlier.

25 THE COURT: Well, how long ago has that been?

Sentence

1 DEFENDANT NORRIS: That was back in '95, well, '93 and
2 '94.

3 THE COURT: All right. This is 2009. You're not
4 still addicted to drugs, are you?

5 DEFENDANT NORRIS: No, sir; no, sir. But that's,
6 that's basically where my trouble started back then.

7 MS. JONES: Your Honor, to clarify one point Mr.
8 Barnette brought up, he seemed unclear as to what the
9 reason for Mr. Norris' current incarceration at the
10 Department of Corrections is.

11 As Your Honor has now heard, Mr. Norris received a
12 sentence that was, in essence, a split sentence in '96 on a
13 robbery charge and a burglary charge.

14 He did a portion of active time and got out and had a
15 parole obligation. He received a parole-violation warrant
16 right after the arrest of this and on September 17th of
17 2008 was returned to custody for a parole violation and
18 received a sentence of two years, 11 months and 17 days.
19 That's according to probation. That was the remainder of
20 the '96 sentence. So that is what he's -- the short amount
21 he is still doing, so.

22 THE COURT: And why was he violated?

23 MS. JONES: Your Honor, I was not present for the
24 parole hearing. It's my understanding, is in a large part
25 this arrest.

Sentence

1 THE COURT: Okay.

2 MS. JONES: He had indicated to me as he, we briefly
3 touched on at the beginning of his testimony that late
4 2007, 2008 the parole people allowed him to transfer back
5 here for supervision from Anderson where he was trying to
6 undertake the operation of a gym, much like his brother who
7 operates a successful gym on Main Street.

8 And beyond that I cannot explain. But I did, I did
9 know that at the same time he was arrested a
10 parole-violation warrant was levied against him. And what
11 seemed like almost immediately, they took him for a
12 hearing. And he never returned to the jail. He has only
13 returned to the jail in the last two weeks in preparation
14 for this trial.

15 THE COURT: Okay. Anything else?

16 MS. JONES: Nothing from defendant Norris.

17 I'm sorry. I believe his mother has now stood and
18 would like to speak briefly to Your Honor.

19 THE COURT: Okay.

20 MARY NORRIS: In all respect to you, Judge, and
21 apologies to the families, that my son has this problem.
22 Right now the only thing I would ask of you is leniency
23 here, because he has a grandmother that's dying from
24 cancer. I have cancer as well myself. And we have one
25 grandson that's in college and two great grandchildren

Sentence

1 which are his. And I would ask for leniency and ask God to
2 guide you. Thank you.

3 THE COURT: Okay. Thank you, ma'am.

4 All right. On Indictment 2008-42-5630, that's the
5 indictment against Kenneth Wayne Chiles for armed robbery,
6 wherein you have been found guilty by a jury of that
7 offense, the Sentence of the Court is you, Kenneth Wayne
8 Chiles, be confined to the South Carolina Department of
9 Corrections for a period of 18 years.

10 Indictment 2008-5631, the State vs. Carnie Norris,
11 III, wherein you have been found guilty by a jury of the
12 offense of armed robbery, Sentence of the Court is you,
13 Carnie Norris, III, be confined to the South Carolina
14 Department of Corrections for a period of 28 years.

15 Each of you have a right to appeal the decision of the
16 jury and the Sentence of the Court. You must file any
17 notice of your intention to appeal those decisions within
18 ten days of today's date.

19 END OF REQUESTED TRANSCRIPT OF RECORD
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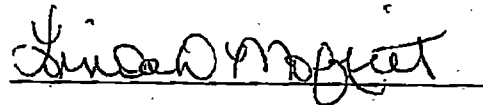
Sentence

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh 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 of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 6th and 7th days of July 2009.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

November 6, 2009



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Case No. 2012-CP-42-04651

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 MAR -4 AM 9:49

Carnie Norris,

Respondent,

v.

State of South Carolina,

Petitioner.

NOTICE OF APPEAL

The State of South Carolina appeals the Honorable Roger L. Couch's order dated and filed September 6, 2017, granting post-conviction relief to the Respondent. The State filed a motion to reconsider, which was denied by order filed February 15, 2019, and received by the State on February 19, 2019. Copies of the orders on appeal are attached to this notice.

The State is already in possession of the transcript of the proceeding at issue.

[signature page to follow]

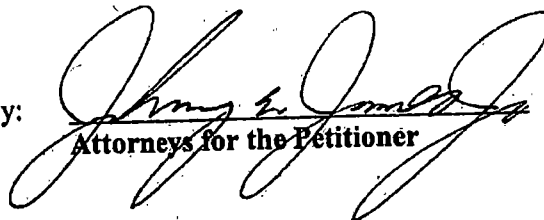
Respectfully submitted,

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FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 MAR -4 AM 9:48

Columbia, South Carolina

March 1, 2019

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STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Case No. 2012-CP-42-04651

Carnie Norris,

Respondent,

v.

State of South Carolina,

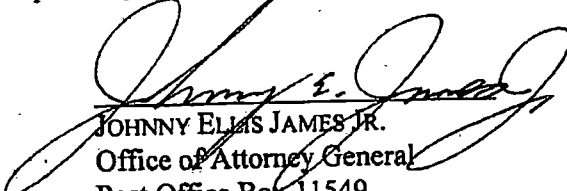
Petitioner.

PROOF OF SERVICE

I, Johnny Ellis James Jr., Counsel for the Petitioner, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record:

J. Brandt Rucker, Esquire
The Rucker Law Firm
128 Millport Circle, Suite 200
Greenville, South Carolina 29607

I further certify that all parties required by Rule to be served have been served this 1st day of March, 2018.


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FILED
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SPARTANBURG COUNTY
2019 MAR -4 AM 9:48

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CARNIE NORRIS,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

In this armed robbery case, did the judge err in failing to instruct the jury on S.C. Code §§ 17-13-10, 20 dealing with the right of citizens to make arrests when appellant testified that he was making a citizen's arrest and not committing an armed robbery?

STATEMENT OF THE CASE

In September of 2008, the Spartanburg county Grand Jury indicted Norris for armed robbery. On July 6, 2009, Norris and his co-defendant, Kenneth Chiles, proceeded to jury trial before the Honorable J. Derham Cole. The jury returned verdict of guilty. Judge Cole sentenced Norris to 28 years. A timely notice of intent to appeal was filed on July 8, 2009. This appeal follows.

ARGUMENT

In this armed robbery case, the judge erred in failing to instruct the jury on S.C. Code §§ 17-13-10, 20 dealing with the right of citizens to make arrests when appellant testified that he was making a citizen's arrest and not committing an armed robbery.

The jury convicted Norris of armed robbery. Norris testified that he was making a citizen's arrest. (R. p. 270, lines 3 – p. 271, 272, lines 1-17). The judge did not explain to the jury circumstances which allow a citizen to make an arrest provided in S.C. code §§ 17-13-10, 20. The judge erred.

Andrew Bond testified that on the evening of July 16, 2008, he and some of his friends decided to go to the First Baptist Church and play Frisbee golf. (R. p. 113, lines 11-23). While they were playing Frisbee golf, one of the Frisbees landed on the roof of an adjacent building. (R. p. 114, lines 6-17). A friend of Bond climbed a tree and knocked the Frisbee from the roof to the ground. (R. p. 114, lines 18-24). Bond testified that as he walked over to pick up the Frisbee, he was pushed down from behind. "I was pushed down from behind by a man. And as I turned around, he asked me for I.D. And he told me he was a security guard, officer, and that I was under arrest." (R. p. 115, lines 1-3). According to Bond, the man reached in Bond's pocket and pulled out his wallet. (R. p. 115, lines 4-6). Bond identified the man as Norris. (R. p. 115, lines 7-23).

Bond testified that when he asked to see a badge, the man pulled a knife. (R. p. 116, lines 1-7). At this point, another man, identified as the co-defendant Kenneth Chiles, walked up and Norris handed the wallet to Chiles. (R. p. 117, lines 18 – p. 118, lines 1-12). As the police arrived, the two men walked across the street to a porch. (R. p. 120, lines 18 – p. 121, 122, lines 1-9).

Officer Bradford James with the Spartanburg County Sheriff's Department responded to a call on July 16, 2008, at 11:15 P.M. (R. p. 186, lines 9 – p. 187, lines 1-13). Officer James testified, "As I pulled onto Dean St. I observed two black males, and a white male laying back on the ground. And the black male was standing over him. One was standing over him in an intimidating fashion. (R. p. 187, lines 14-17). The officer testified that as he approached the two black males, they walked across the street to a porch. (R. p. 187, lines 22 – p. 188, lines 1-3). After speaking with the white male, Bond, the officer walked over to the porch where the two black males, Norris and Chiles, had remained. (R. p. 189, lines 10-17). The officer testified that Norris consented to a search. Pursuant to that search, the officer found a kitchen knife in Norris' pocket. (R. p. 190, lines 4-11). Another officer, John Guest, testified that when asked for consent to search, the co-defendant, Chiles, handed him business cards and credit cards belonging to Bond. (R. p. 212, lines 4-9).

Chiles testified that on the evening of July 16, 2008, Norris knocked on his door. Chiles testified, "He [Norris] told me it looked like somebody was trying to break into a building, could I get my cell phone or possibly could he use the phone to try to --" (R. p. 240, lines 12 – p. 241, lines 1-2). Chiles testified that by the time he got outside, Norris had one of the guys sitting on the ground. Norris handed Chiles Bond's ID and asked him to hold it in case Bond tried to run before the police arrived. (R. p. 241, lines 8 – p. 242, lines 1-6). Chiles testified that he thought he was making a citizen's arrest. (R. p. 242, lines 20 – p. 243, lines 1-17).

Norris testified that as he was walking up Dean Street on the evening of July 16, 2008, he saw two individuals on top of a building. (R. p. 266, lines 10-19). Norris knocked at his friend Chiles' house. Chiles came to the door and Norris pointed out the two guys on

the roof. (R. p. 268, lines 1-21). Norris testified that he walked across the street and asked the guys what they were doing. (R. p. 268, lines 22 – p. 269, lines 1-3). At this point, Norris testified that all of the guys but one fled. (R. p. 269, lines 4-6). The one guy ran toward Norris and Norris stopped him. (R. p. 269, lines 7-11). Norris testified, “I asked him who was he. He pulled out his wallet. He was scared. And he pulled out his cell phone. And he pulled some cards out, and he showed them to me. And then he sat back down.” (R. p. 271, lines 3-6).

Norris testified that he thought the guys were trying to break into the medical building. “Well basically, I wanted to know what were they doing on top of the building. That’s a medical, that’s a medical clinic. And they looked to me as if it was a possible break-in or something.” (R. p. 270, lines 6-9). Norris denied any intention to rob Bond. (R. p. 270, lines 17-19). Norris testified, “Actually, I wanted to know what was going on, whether or not they were breaking in and what they was doing over there. I wanted to know who he was. You know, that was basically it.” (R. p. 270, lines 23 – p. 271, line 1). Norris testified that he and Chiles were trying to make a citizen’s arrest. (R. p. 272, lines 16-17).

S.C. Code §17- 13-10 provides that upon (a) view of a felony committed, (b) certain information that a felony has been committed or (c) view of a larceny committed, any person may arrest the felon or thief and take him to a judge or magistrate, to be dealt with according to law. S.C. Code §17-13-20 provides that A citizen may arrest a person in the nighttime by efficient means as the darkness and the probability of escape render necessary, even if the life of the person should be taken, when the person: (a) has committed a felony; (b) has entered a dwelling house without express or implied permission; (c) has broken or is breaking into an outhouse with a view to plunder; (d) has

in his possession stolen property; or (e) being under circumstances which raise just suspicion of his design to steal or to commit some felony, flees when he is hailed.

The evidence presented at trial determines the law to be charged, and a trial court commits reversible error in failing to give a requested charge on an issue raised by the evidence. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). The issue of a citizen's arrest was raised by the evidence. See State v. Cooney, 320 S.C. 107, 463 S.E.2d 597 (1995); State v. Nall, 304 S.C. 332, 404 S.E.2d 202 (1991). The judge committed reversible error in failing to instruct the jury on the law allowing a citizen's arrest.

CONCLUSION

Based on the above argument, Norris' conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of July, 2011.

State of South Carolina
In The Court of Appeals

Appeal from Spartanburg County
J. Derham Cole, Judge

The State,

Respondent,

v.

Carnie Morris,

Appellant

Appellant's Pro Se Brief

Pursuant To Anders

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Statement of Issue on appeal

- In this armed robbery case, does the admissibility of a prior 1996 robbery conviction similar in nature require a SCRE 609(a)(b) determination when the appellant decided to testify on his own behalf?
- Did the trial court err by allowing the State to impeach the defendant with prior convictions pursuant to Rule 609(a)(1) SCRE?
- Did the trial court commit an error of law and abuse of discretion concerning the appellant's prior convictions?
- Does evidence of ^{Appellant's} prior drug use fall within the exceptions of Lyle?
- Was there any evidence to support the admission of Appellant's bad act evidence?

Statement of the Case

363

In September of 2008, the Spartanburg county Grand Jury indicted Morris for armed robbery. On July 6, 2009, Morris and his co-defendant, Kenneth Chiles, proceeded to jump trial before J. Derham Cole. The jury returned a verdict of guilty. Judge Cole sentenced Morris to 28 years.

Unknownst, A timely notice of intent to appeal was filed on July 8, 2009 without the appellant's consent. This appeal follows.

Does the admissibility of a prior 1996 robbery conviction similar in nature require a SCRE 609(a)(b) determination when the appellant decided to testify on his own behalf?

Trial court's decision to admit defendant's prior conviction without observing safeguards of placing burden of establishing admissibility on the state and conducting meaningful analysis to balance conviction's impeachment value, if any, against their prejudicial impact would be an error of law, amounting to an abuse of discretion. State v. Scriven (S.C. App 2000) 339 S.C. 333, 529 S.E. 2d 71

See Trial transcript pages # 226 L. 1-8, # 227 L. 20-25, # 228 L. 1-10, # 267 L. 6-20, # 283 L. 16-22, # 318 L. 10-25, # 319 L. 1-14

On pg# 226 L. 1-8, the solicitor stated to the trial court that the appellant had been found guilty of common law Robbery and burglary 2nd. See attached indictment # 95-65-42-4539 Burglary 2nd, dated 10-12-95 and # 95-65-42-4540, common law robbery, dated 1-17-96. These are not non paroleable sentences.

On pg# 228 L. 7-8, attorney Jones stated for the record that the convictions were from 1995 and 1996.

These convictions should not have been admitted based upon remoteness of time and prejudice to the accused.

In criminal cases, this Court will review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E. 2d 216, 220. This court is bound by the trial

court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 452, 507 S.E.2d 105, 111. On review this Court is limited to determining whether the trial court abused its discretion. State v. Rochester, 301 S.C. 196, 391 S.E.2d 244, 247. This court does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's rulings is supported by any evidence. Wilson, 545 S.E.2d 827.

The trial court made no express findings that the probative value of any of the prior convictions substantially outweighed their prejudicial impact nor did it state any specific facts circumstances or conclusions of law pertaining to the appellant's prior convictions.

The trial court's admission of my prior convictions was an abuse of discretion because the judge did not conduct the analysis mandated by the evidence rules and case law.

As in the case at bar, the prejudicial effect outweighed the probative value by using a 1995 2nd degree burglary and a 1996 Commonlaw robbery, 95-65-42-4539, and 95-65-42-4540 respectively.

Admission of a prior robbery similar in nature requires a Rule 609 determination by the trial court. Without a determination, it robs the appellant of the Rule protection. The Rule was never mentioned or considered by the trial court.

A decision to admit this evidence (2 prior convictions) without these safeguards would be an error of law, amounting to an abuse of discretion State v. Swickelich, 268 S.C. 411, 234 S.E.2d 230.

Appellant's case should be vacated and remanded for A New trial.

Did the trial court err by allowing the State to impeach the defendant with prior convictions pursuant to Rule 609(a)(1), SCRE.

Appellant Morris argues the trial court committed reversible error by allowing the State to impeach him with 12 prior convictions. At the conclusion of the State's case, Morris' attorney advised the court that Morris intended to testify in his defense. The trial court did not entertain any argument as to the probative value for impeachment or prejudicial effect of the prior offenses to the accused.

Under Rule 609(a)(1) SCRE, evidence that an accused has been convicted of a crime, which was punishable by death or imprisonment in excess of one year, is admissible for impeachment if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused. See United States v. Cunningham, 638 F.2d 696 (4th Cir. 1981). Furthermore, the rule requires the trial judge to balance the probative value of the evidence for impeachment purposes against the prejudice to the accused. See State v. Cole, 337 S.C. 622, 525 S.E.2d 346 (2000) (expressly approving the five-factor

analysis generally employed in federal courts for weighing the probative value for impeachment of prior convictions against the prejudice to the accused, but noting that there may be other factors which a trial judge should, in the exercise of discretion, consider under the facts and circumstances of each particular case; see also *United States v. Sanders*, 964 F.2d 295 (4th Cir. 1992).

In *Colt*, our Supreme Court determined the obligation of the trial court when considering the admission of prior convictions which are more than ten years old under Rule 609(b) requires a finding by the trial judge that the probative value of the impeachment evidence substantially outweighs the prejudice to the accused. It also requires that this finding be supported by specific facts and circumstances. The Court recognized that Rule 609(b) raises a presumption against admissibility of remote prior convictions. Consequently, the Court held that in a 609(b) analysis the trial judge must carefully balance the interests involved and articulate for the record the specific facts and circumstances supporting its decision. In so ruling, the Court adopted the reasoning of the Fourth Circuit Court of Appeals as

expressed in *United States v. Gayender*, (578 F.2d 528 (4th Cir. 1978)) and *United States v. Beahm*, 664 F.2d 1414 (4th Cir. 1981).

The S.C. Court of Appeals stated that a trial judge must make an on-the-record finding that the probative value of admitting a prior conviction outweighs its prejudicial effect before admitting a non-(609a)(2) prior conviction for impeachment purposes under Rule 609a(1). An on-the-record finding that probative value outweighs the prejudicial effect is not merely an idle gesture. Such a finding assures that the judge has at least taken into account the relevant considerations; see *Peterson aka Nere v. Mississippi*, 518, 518 So. 2d 632 (Miss. 1987).

In this case, the trial judge did not have the benefit of the guidance recently provided in *Cott* and *Scrivens*, supra. Nevertheless, the record does not reflect that the trial judge engaged in any meaningful analysis of the relevant factors or that the court balanced the probative value against the prejudicial effect to the accused. See *Beahm*, 664 F.2d 1414 (4th Cir. 1981). The defendant was denied the safeguards of Rule 609a.

Although Morris acknowledged his convictions were over ten years old. See pg²⁶⁷ 19-19 of trial transcript, the State made no presentations as to the probative value of the conviction in support of their admission. See *Cunningham*, 638 F.2d 696 (4th Cir. 1981) (burden of establishing basis for admission is on the proponent); *United States v. Smith*, 551 F.2d 348 (D.C. 1976); *McLunis v. Mississippi*, 527 So.2d 84 (Miss. 1988). The court did not engage in any on-the-record analysis of the probative value of these convictions, or the prejudicial impact. Neither did the court make any ruling on the record which would indicate that the court had balanced the probative value against the prejudicial effect. A decision to admit this evidence without these safeguards would be an error of law, amounting to an abuse of discretion. See *State v. Smicklewich*, 268 S.C. 411, 234 S.E.2d 230 (1977).

Those prior convictions were well over 10 years old see pg²⁶⁷ of the time of trial. The degree of remoteness presumptively barred their admissibility under Rule 609(b). The similarity between the prior conviction and the charged

(offense cannot be denied, and
they present a great likelihood
of prejudice to the accused. The
admissions were not harmless error.

This Honorable Court should
order a New Trial

Does evidence of ^{Appellant's} prior drug use fall within the exceptions of Lyle?

Evidence of drug use is incompetent to establish motive for a crime where the record does not support any relationship between the crime and the drug use. See Trial Transcript pg #567 L. 9-19 + pg #304 L. 19-21

The only function of this evidence was to demonstrate appellant's bad character and social irresponsibility. The prejudice to appellant as a result of the admission of this evidence far outweighed its probative value, if any. 389 S.E. 2d 660.

Appellant's testimony about drug use at unspecified times prior to the robbery charge served only to discredit appellant's character, which does not fall within the exceptions of Lyle. 404(b) This testimony was unrelated to the alleged crime at issue.

Evidence of prior drug use has been found inadmissible, where the record does not support any relationship between the crime and the drug use 470 S.E.2d at 369 citing State v. Bolden, 398 S.E.2d 494.

The prior act of drug use only served to demonstrate that Appellant acted in conformity with his propensity to commit crimes which introduction it would be in direct contradiction of Lytle.

Because he had done so in the past, he was doing so on this occasion, precisely the type of inference Lytle prohibits. State v. Hough, 480 S.E.2d 77.

Unfair prejudice means an undue tendency to suggest decision on an improper basis. State v. Alexander, 401 S.E.2d 146.

This testimony removed the cloak of innocence. To be admissible, other crimes that are not the subject of conviction must be proved by clear and convincing evidence.

The evidence/testimony of drug use fits within none of the exceptions enumerated in Lyle, and the admission of this testimony was prejudicial error. See pg 267 L. 9-19

This highly prejudicial evidence served only to discredit Appellant's character and paint him as a junkie willing to do anything to get a fix. State v. Smith, 424 S.E. 2d 496, Coleman, 389 S.E. 2d 659

Error which substantially damages the defendant's credibility cannot be held harmless where such credibility is essential to his defense, 345 S.E. 2d 479.

The evidence went to his character and propensity to engage in criminal conduct, not to "motive"; and in any event, the prejudicial effect of the extrinsic evidence outweighed any probative value.

The admission of this evidence patently violates the rule in Lyle and Rule 404(b)
SCRE

Conviction should be vacated for
A New Trial.

State of South Carolina
In The Court of Appeals
 Appeal from Spartanburg County
J. Derham Coke, Judge

The State,

Respondent

v.

Carnie Morris,

Appellant.

Certificate of Service

The undersigned appellant hereby certifies that a true copy of his Pro-Se Brief has been served upon Sally W. Elliott, at Rembert Dennis Building, Rm 519, 1000 Assembly St. Columbia, SC 29201 and the S.C. Court of Appeals, P.O. Box 11629, Columbia, SC. 29211.

I, Carnie Morris #257226 certify and verify under the penalty of perjury that the foregoing is true and correct. 28 U.S.C. §1746.

Carnie Morris

2-28-21

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.

Carnie Norris III,

Appellant.

Appeal from Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2012-UP-226
Submitted April 2, 2012 – Filed April 18, 2012

APPEAL DISMISSED

Appellate Defender Kathrine H. Hudgins, of
Columbia, and Carnie Norris III, pro se, for
Appellant.

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

all of Columbia; and Solicitor Barry J. Barnette, of Spartanburg, for Respondent.

PER CURIAM: Carnie Norris III appeals his conviction of armed robbery, arguing the trial court erred in failing to instruct the jury on sections 17-13-10 to -20 of the South Carolina Code (2003), dealing with the right of citizens to make arrests. Additionally, Norris asserts several pro se arguments. After a thorough review of the record and all briefs pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss¹ the appeal and grant counsel's motion to be relieved.

APPEAL DISMISSED.

PIEPER, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



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ATTORNEY GENERALS
OFFICE

Case

The South Carolina Court of Appeals

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FAX: (803) 734-1839
www.sccourts.org

June 19, 2012

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: The State v. Norris, Carnie
Lower Court Case No. 2008GS4205631
Appellate Case No. 2009-132686

Dear Ms. Blackley:

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

cc: Kathrine Haggard Hudgins
Salley W. Elliott
Barry Joe Barnette

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Spartanburg**Carnie Norris, #227226**

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2012-CP-42-4651

APPLICATION FOR

POST-CONVICTION RELIEF

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 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 Perry Correctional Institution
2. Name and location of Court which imposed sentence Spartanburg General Sessions
3. Name(s) of co-defendant(s) (if any) Kenneth Childs
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 08-GS-42-5631
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) July 8, 2009, 28yrs.
 - (b) _____

Revised 3/2003

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X

STATE OF SOUTH CAROLINA.

COUNTY OF SPARTANBURGCarnie Norris

Plaintiff,

VS.

State of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS

SUMMONS

FILE NO. 2012-CP-42-4051

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (90) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Spartanburg, South Carolina

Carnie Norris & Pro-Se
Plaintiff/Attorney for Plaintiff

Dated: 11-2-12

Address:

XI, Q1B103 Petar SC
430 Oaklawn Rd 29669

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- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty **X** _____
- (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. **Spartanburg General Sessions** _____
- ii. **S.C. Court of Appeals** _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. **Denied** _____
- ii. **Denied** _____
- iii. _____
- (c) the date of each such result:
- i. **June 25, 2010** _____
- ii. **April 18, 2012** _____
- 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:

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- (a) See attached pages.
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached pages.
- (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? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
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. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A

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- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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?
N/A

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

- (b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

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) N/A
- (c) N/A

17. Were you represented by an attorney at any time during the course of:

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 IN ABURGE COUNTY
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- (a) your arraignment and plea? _____
- (b) your trial, if any? X
- (c) your sentencing? X
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? X
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
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. Beverly Jones, Spartanburg Public Defenders
- ii. Katherine Hudgins, Appellate Defense
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Jury Trial
- ii. Direct Appeal
- iii. _____
19. State clearly the relief you seek in filing this application:
Vacate/New Trial
20. Are you now under sentence from any other court that you have not challenged?
No

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STATE OF SOUTH CAROLINA)

County of **Spartanburg**)

VERIFICATION

Cornie Morris #527226
 I, *Cornie Morris*, 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.

Cornie Morris

SWORN to and subscribed before me this *23rd*
 day of *October*, *2012*.

Steven T. Michaelis (L.S.)
 Notary Public

My Commission Expires: *January 7, 2016*

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APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

Carnie Norris #127226
I, Carnie Norris, 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.

Carnie Norris
Applicant

SWORN or affirmed to and subscribed before me this
3rd day of October 23, 2012.

Shirley M. M... ..
Notary Public

My Commission Expires: January 7, 2016

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LEGAL CITATION

The applicant alleges and can prove that he was denied effective assistance of trial counsel. The applicant submits that the extensive record speaks for itself as to the competency of counsel. Trial counsel for the applicant was not diligent in her representation of the applicant and did not perform well within the range of competence demanded of attorneys in criminal matters and did not perform within the wide range of reasonable professional assistance.

In Strickland v. Washington, 466 U.S. 668, the United States Supreme Court held that a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction requires that the defendant show, first, that counsel's performance was deficient and, second that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. 104 S.Ct. 2064. The applicant submits that counsel's performance was deficient and her performance prejudiced him.

The applicant can prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial could not have been relied upon as having a just result. Strickland v. Washington, Supra. Counsel's performance prejudiced the applicant to the point where there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. The applicant have presented questions of law and fact requiring a hearing.

Counsel did not investigate some critical evidence and defense when she was preparing for trial. Strickland also assigns additional duties to counsel as "assistant to the defendant", which is to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution, which did not happen.

Applicant contend that his conviction and sentence was in violation of the United States Constitution and the Constitution and laws of this State.

The applicant is asserting a 6th and 14th amendment violation which sets forth the prima facie violation of my constitutional rights.

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Grounds are constitutional dimension. The fundamental defects alleged are standards that require establishment of a complete miscarriage of justice and an omission inconsistent with the rudimentary demand of fair procedure.

It would be a denial of due process not to give the applicant an evidentiary hearing on the applicant's constitutional claims.

The following acts and omissions by counsel constituted ineffective assistance of counsel.

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MY CONVICTION AND SENTENCE WAS IN VIOLATION OF THE UNITED STATES
CONSTITUTION AND THE CONSTITUTION AND LAWS OF THIS STATE

- 1) Trial counsel ineffective for failure to put the state's case through adversarial testing.
- 2) Trial counsel labored under a conflict of interest.
- 3) Trial counsel failed to challenge the outside influence by the baliff.
- 4) Trial counsel ineffective for abandoning her professional duties of loyalties to the applicant.
- 5) Due Process - Trial counsel failed to motion for arrest of judgment.
- 6) Trial counsel failed to object to the trial court's erroneous jury charge and supplemental jury charge.
- 7) Trial counsel ineffective for agreeing to the trial court's response to the jury's inquiry.
- 8) Trial counsel failed to object to trial court's burden shifting instruction.
- 9) Trial counsel failed to object to my Due Process rights being violated.
- 10) Trial counsel failed to object to reasonable doubt charge.
- 11) Trial counsel failed to object the trial court's constructive amendment of the indictment.
- 12) Trial counsel failed to object to the material variance in indictment/due process.
- 13) Due process verdict.
- 14) IAC for partially arguing to the jury a theory without any evidence to support it with all evidence clearly contrary to that theory.
- 15) Trial counsel failed to request/propose a jury instruction on the theory of defense.
- 16) Counsel ineffective for allowing my allege co-defendant's counsel to deprive applicant of a fair trial.
- 17) Trial counsel failed to object to solicitor's closing argument, pitting, vouching, blistering.
- 18) Trial counsel failed to "consult" with the applicant about appeal process/post-trial.
- 19) Appellate counsel failed to raise applicant's preserved issues on appeal.
- 20) Appellate counsel failed to comply with the mandates of Anders.
- 21) Trial counsel was ineffective for abandoning her duties of loyalty when she impeached defendant with a 1995 burglary second and a 1996 common-law robbery convictions when it had been established by prosecution that those particular convictions were inadmissible.

M. HOPE BLACKLEY

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SPRINGBURG COUNTY

The State chose to indict appellant for Armed Robbery. The indictment itself gives no indication of the state's theory or any specifics involved in the Armed Robbery, see indictment. K. Childs was also indicted for Armed Robbery. separately (08-GS-42-05631) respectfully.

While a conviction may be sustained under an indictment which is defective because it omits essential elements of the offense, such is not true when the indictment facially charges a complete offense, and the state presents evidence which convicts under a different theory than that alleged. Thomason v. State, 892 S.W. 8, 11 (Tex Crim. App. 1994) [392 S.C. 434] (citations omitted).

In South Carolina it is a rule of universal observance in administering the criminal law that a defendant must be convicted if convicted at all, of the particular offense charged in the bill of indictment. State v. Cody, 186 S.E.2d 167.

"A conviction upon a charge not made in the indictment constitutes a denial of due process". This principal in turn rests on the broader premise that a person cannot incur the loss of liberty for an offense without notice and a meaningful opportunity to defend. See Stirone v. United States, 361 U.S. 212, 217, 80 S.Ct. 270 noting that a court cannot permit a defendant to be tried on charges that are not made in the indictment against him. Cole v. Arkansas, 333 U.S. 196, 201, 68 S.Ct. 514, holding that notice of the specific charge and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all Courts, State and Federal, Johnson v. Gibson, 169 F.3d 1239, 1252.

The instant that the Court amends the indictment the court loses jurisdiction. see pg.

At that point in time, there is nothing that can cure that defect. It is a jurisdictional defect. Upon an indictment so changed, the court can proceed no further. A trial on such an indictment is void. There is nothing for which the applicant can be held to answer. If it lies within the province of the court to honor a change in the charging paper the purpose of the grand jury dissolves. See ex parte Bain v. U.S., 30 L.Ed 2d 849.

Even were the trial court did not permit a formal amendment of the indictment, the effect of what it did by charging hand of one and criminal conspiracy and accomplice liability was the same. Conspiracy and accomplice were uncharged offenses that were charged to the jury.

M. HOTE BLACKLEY

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"The court may not substantially amend the indictment through its instructions to the jury," Sirene v. United States, 361 U.S. 212, 217, 80 S.Ct. 270, 4 L.Ed. 2d 252; United States v. Miller, 471 U.S. 130 105 S.Ct. 1811.

The Fourth Circuit has held that regardless of whether a defendant objects, Stirene demands reversal when a constructive amendment has occurred. See United States v. Florence, 38 F.3d 706, 713 (4th Cir. 1994) (en banc)(stating that it would be "intolerance unfair" to deprive a defendant of the grand jury's protection); United States v. Randall, 171 F.3d 195, 210 (4th Cir. 1999)(applying Floresca).

A material variance that violated a defendant's substantial right to be tried only on charges presented in an indictment constitutes fatal error and warrants a reversal of judgment of conviction of the offense not charged in the indictment). The state is bound by the theory alleged in the indictment. See Castillo v. State, 75 W.3d 253.

A material variance between charge and proof entitles the defendant to a directed verdict. See 41 Am Jur.2d Indictments and Informations § 252 (2005)(stating that one of the two ways an indictment can be improperly modified is through) a variance whereby the charging terms of the indictment are left unaltered, but the evidence offered at trial proves facts materially different from those alleged in the indictment. (Tex. Ct. App. 1999) See also, Bailey v. State, 709 S.E.2d 671 (S.C. 2011).

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M. HOPE BLACKLEY

If the solicitor intends to properly prove a matter at trial, than it is proper for indictment to include those matters, even if they are not essential elements of the crime charged.

The verdict against appellant was a general one. It did not specify the ground upon which it rested. There were several crimes charged to the jury - Armed Robbery, Robbery, Larceny. The jury was instructed that their verdict might be given with respect to the principle or accomplice, independently considered, it is impossible to say under which charge the conviction was obtained.

See also verdict form (indictment).

Applicant contend that his due process rights were violated before and during his jury trial for Armed Robbery because the state chose to argue/instruct the jury on alternative theories on hand of one is the hand of all and accomplice liability, without an indictment for criminal conspiracy to join the defendant's together for trial. See Crim. Consp. Jury charge.

A charge instrument violate the Sixth Amendment by failing to provide a defendant with adequate notice of the nature and cause of the accusation filed against him. Hunter v. State of New Mexico, 916 F.2d 595, noting that the specific inquiry in deciding whether a constructive amendment of the indictment has occurred is whether the jury was permitted to convict the defendant upon a set of facts distinctly different from that set fourth in the indictment.

A conviction under the latter circumstances violates principles of due process because the state has failed to prove beyond a reasonable doubt every fact necessary to constitute the crime with which a defendant was charged.

Review of this federal claim is necessary to prevent a fundamental miscarriage of justice because there was no legal justification to charge hand of one is the hand of all and accomplice liability. The defendant's were not charged with criminal conspiracy to join them together for trial for armed robbery. They were separately indicted for armed robbery.

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M. HOPE BLACKLEY

Mr. Barnette: Mr. Norris in the last 10 years been found guilty of robbery as well as burglary second, I'll be asking about that as possible impeachment. (Tr. P.226 lines 1-4).

The Court: Do you have any convictions Ms. Jones that you continued should not be permitted for impeachment purposes?

Ms. Jones: No sir your honor and to clarify for the court, these will be the only two that are qualifiable and impeachable.

Mr. Barnette: That is within the last 10 years your honor. Obviously both of them have records beyond that, but I understand under the rules I can't ask them about that.

Ms. Jones: And that would be a 1996 common-law robbery and a 1995 burglary second non-violent.

The Court: Okay, All right, Bring the jury in please. (Tr. P.227 line 21 - P.228 lines 12).

Direct Examination

Ms. Jones: Mr. Norris, back in 1995, the winter of 95, were you convicted in this court of a burglary?

Norris: Yes ma'am I was.

Ms. Jones: And just a few months later, Mr. Norris, were you also convicted in this very courtroom of a robbery?

Norris: Yes ma'am.

Mr. Jones: During that period of your life did you have a drug problem?

Norris: Yes ma'am. That was over 15 years ago, yes ma'am. (Tr. P.267 lines 9-17).

Cross Examination

Mr. Barnette: And you've done robbed before, haven't you Mr. Norris? Yes sir.

Mr. Barnette: And you've broke into buildings before, haven't you, sir.?Norris: Yes sir, that's my past record. I hope my past record will not do anything to harm me. (Tr. P.283 lines 16-22).

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STAFFANBURG COUNTY

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Carnie Norris, #227226,	)	2012-CP-42-4651
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed November 7, 2012¹, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted at the September 2008 term of the Court of General Sessions for Spartanburg County for armed robbery (2008-GS-42-5631). He was represented by Beverly Jones, Esquire. On July 6-7, 2009, the Applicant proceeded to trial after which he was found guilty as indicted. He was sentenced by the Honorable J. Derham Cole, to confinement for a period of twenty-eight (28) years.

A timely Notice of Appeal was filed on the Applicant's behalf and an appeal was perfected. Following the submission of a brief pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals dismissed the appeal. State v. Norris, No. 2012-UP-226 (filed April 18, 2012). The Remittitur was issued on June 19, 2012.

¹ Applicant filed two *pro se* amendments before he was appointed counsel. Respondent also addresses allegations contained in those amendments.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records.

II.

In his application and amendment, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to put the state's case through adversarial testing,
 - b. Counsel labored under a conflict of interest,
 - c. Counsel failed to challenge the outside influence by the bailiff,
 - d. Counsel abandoned her professional duties of loyalties to the applicant,
 - e. Counsel failed to motion for arrest of judgment,
 - f. Counsel failed to object to trial court's erroneous jury charge and supplemental jury charge,
 - g. Counsel agreed to the trial court's response to the jury's inquiry,
 - h. Counsel failed to object to trial court's burden shifting instruction,
 - i. Counsel failed to object to Applicant's Due Process rights being violated,
 - j. Counsel failed to object to reasonable doubt charge,
 - k. Counsel failed to object to trial court's constructive amendment of the indictment,
 - l. Counsel failed to object to the material variance in indictment/due process
 - m. "Due process verdict."
 - n. Counsel partially argued to the jury a theory without any evidence to support it with all evidence clearly contrary to that theory,
 - o. Counsel failed to request/propose a jury instruction on the theory of defense,
 - p. Counsel allowed the alleged co-defendant's counsel to deprive applicant of a fair trial,
 - q. Counsel failed to object to solicitor's closing argument, pitting, vouching, blistering,

- r. Counsel failed to "consult" with the applicant about appeal process/post-trial,
- s. Counsel abandoned her duties of loyalty when she impeached defendant with a 1995 burglary second and a 1996 common law robbery conviction when it had been established that those particular convictions were inadmissible,
- t. Counsel failed to exclude the name and basic nature of the Applicant's prior felony convictions,
- u. Counsel used the rules of evidence against Applicant,
- 2. Trial court abuse of discretion, in that;
 - a. Trial court failed to exclude the name and basic nature of the Applicant's felony convictions,
 - b. Trial court erred in dismissing Applicant's post-trial motion and reconsideration motion as untimely,
- 3. Ineffective assistance of appellate counsel, in that;
 - a. Appellate counsel failed to raise applicant's preserved issues on appeal,
 - b. Appellate counsel failed to comply with the mandates of Anders,
- 4. Sentence classification correction, in that;
 - a. Applicant requests to be awarded 358 days to his present sentence starting from July 16, 2008, to July 9, 2009.

III.

The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. 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 (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, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is without merit. Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833

(1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

As to allegations #2 and #4, the Respondent submits that they should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The first allegations presented by Applicant raise direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised these issues at trial or on appeal. His failure to do so has waived these allegations as grounds for relief.

Further, the Respondent submits that the second allegation should be summarily dismissed because the Applicant's allegation is not cognizable in a post-conviction relief application. Aside from two matters specifically mentioned in the statute, post-conviction relief is a proper avenue of relief only when the Applicant mounts a collateral attack challenging the validity of his conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742

(2000). A credit-related claim or challenge to other conditions of confinement does not fall into that category. Id. Furthermore, a challenge to the conditions upon which parole eligibility is determined or decided is not cognizable in a post-conviction relief application. Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000). Pursuant to Rule 12(b)(6), SCRCP, this Court should summarily dismiss this allegation because it does not state a claim for which relief may be granted.

Therefore, the Court should summarily dismiss these allegations for post-conviction relief.

VI.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held solely on the allegations of ineffective assistance of trial and appellate counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By: AL R. M. S. R.
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Telephone: (803) 734-3737

Feb. 28, 2014

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Carnie Norris,

2012-CP-42-4651

Applicant,

v.

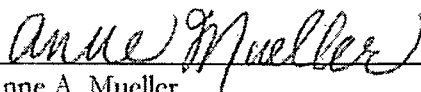
CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent.

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 Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

J. Brandt Rucker, Esquire
522 N. Church Street
Greenville, South Carolina 29601



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 28th day of February, 2014.

1	STATE OF SOUTH CAROLINA	}	COURT OF COMMON PLEAS NONJURY
2	<u>COUNTY OF SPARTANBURG</u>		
3			
4	CARNIE NORRIS,	}	TRANSCRIPT
5	APPLICANT,		OF
6	vs.		RECORD
7	THE STATE OF SOUTH CAROLINA,		
8	<u>RESPONDENT.</u>		2012-CP-42-4651

9

10 September 15th, 2014

11 Spartanburg, South Carolina

12

13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge.

15 A P P E A R A N C E S:

16 J. BRANDT RUCKER

17 ESQ.

18 Attorney for the Applicant

19 SUZANNE H. WHITE

20 ASSISTANT ATTORNEY GENERAL

21 Attorney for the Respondent

22

23 PAMELA E. GREEN

24 Circuit Court Reporter

25 Seventh Judicial Circuit

I N D E X O F W I T N E S S E S

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P R O C E E D I N G S

1
2
3 THE COURT: All right. You may proceed.

4 MS. WHITE: Thank you, Your Honor.

5 This is the case of Carnie Norris versus The State.
6 Case Number 2012-CP-42-4651. He's represented today by
7 Mr. Brandt Rucker.

8 Mr. Norris was indicted in September of '08 for armed
9 robbery. He proceeded to trial where he was represented by
10 Beverly Jones. He was -- it was a joint trial of a
11 codefendant. He was found guilty and given a sentence of 28
12 years. There was an appeal and an Anders brief was filed.
13 Following that, he did file this petition, and I'm gonna
14 refer to the return, Your Honor.

15 THE COURT: Yes.

16 MS. WHITE: There were 21 allegations of ineffective
17 assistance of counsel, two allegations of ineffective
18 assistance of appellate counsel, and then the State has
19 moved to dismiss any of the claims regarding Trial Court as
20 abuse of discretion, and credit for time served.

21 At this time I'll turn it over to Mr. Rucker.

22 THE COURT: Yes, sir.

23 MR. RUCKER: Thank you.

24 I'll call our witness, Carnie Norris, to the stand.

25 THE COURT: All right, sir. Come forward. Right over

1 here to my left, Mr. Norris.

2 CARNIE NORRIS, being first duly
3 sworn, testified as follows:

4 THE COURT: All right. Have a seat please, Mr. Norris.

5 THE WITNESS: Thank you.

6 THE COURT: You're welcome, yes, sir.

7 Once you're seated, state your name please, sir.

8 THE WITNESS: My name is Carnie Norris, III.

9 THE COURT: Thank you very much.

10 Counsel, you may proceed.

11 DIRECT EXAMINATION

12 BY MR. RUCKER:

13 Q Carnie, you've heard previously the state of the case.

14 Do you agree with that -- where we are in the case of
15 the PCR level?

16 A Yes, sir.

17 Q And do you understand what, understand you're in the
18 PCR process.

19 Is that right?

20 A Yes, sir, I do.

21 Q Have you been through a PCR before?

22 A Yes, sir, I have.

23 Q Okay. Is -- you -- do you believe you're gonna be able
24 to address everything you need to address today?

25 A Yes, sir.

Carnie Norris - Direct examination
by Mr. Rucker

- 1 Q Okay. Let's go back to your trial.
2 Do you recall who your trial attorney was?
3 A My trial attorney was Beverly Jones.
4 Q Okay. How many times do you think you met with Ms.
5 Jones in preparation for trial?
6 A I met with her on July 1st, 2009, for approximately
7 about 45 minutes after I was transported up to Spartanburg
8 --
9 Q Okay.
10 A -- and I met with her about 20 minutes prior to trial.
11 Q Okay. So, two times total for the armed robbery trial?
12 A Yes, sir.
13 Q Okay. Did you testify in your case?
14 A Yes, sir, I did. I did testify.
15 Q Did you talk with Ms. Jones about whether you needed to
16 testify or not?
17 A Well, she never went through the, through the scope of
18 what my testimony would be. She just said we'll get
19 Mr. Childs to testify for you, and I said how can you get
20 him to testify for me when he wasn't there or present at the
21 time that I had talked to this individual.
22 Q Okay. Who is Mr. Childs?
23 A Mr. Childs is my alleged codefendant.
24 Q Okay. And your -- the Court has a copy of the
25 transcript. Let's kind of briefly go back through allegedly

Carnie Norris - Direct examination
by Mr. Rucker

1 what happened when you -- what were you tried for in this
2 trial?

3 A I was tried for armed robbery.

4 Q And I'm sorry.

5 Go ahead.

6 A Basically you want me to tell exactly what happened?

7 Q Well, within -- let's keep it -- I need to ask the
8 questions and then you respond just trying to get into the
9 meat of what we're here for.

10 So, you were arrested and tried for armed robbery---

11 A Yes, sir.

12 Q ---correct?

13 A I was tried---

14 Q And how many codefendants did you have?

15 A I was -- I didn't have any codefendants. I was by
16 myself.

17 Q How many codefendants were tried in your case with you?

18 A Mr. Childs was tried with me --

19 Q Okay.

20 A -- as a codefendant.

21 Q Did your attorney ever talk to you about joinder or
22 severance in cases where you have codefendants being tried
23 together?

24 A No, sir, the -- something she told me was that Mr.

25 Childs was gonna, I thought, gonna testify against me. I, I

Carnie Norris - Direct examination
by Mr. Rucker

1 never seen him after the day was -- after the day I was
2 arrested because, after I was arrested, I was sent to Perry
3 on a parole violation. So, that separated us and, like I
4 said, I never knew that he was actually charged with armed
5 robbery.

6 Q To your knowledge, did your trial counsel ever talk to
7 Mr. Childs?

8 A No, I don't, I don't, I don't think she did.

9 Q Did Mr. Childs appear with an attorney at the
10 hearing -- at the trial?

11 A Yes, sir, Mr. Childs had Attorney Poole to represent
12 him --

13 Q Okay.

14 A -- out of the same office as -- Public Defender's
15 Office. Same office. Her -- him and Mr., Mr. Poole worked
16 together out of the same office.

17 Q All right. When you say him and Mr. Poole, who is him?

18 A Mr. Roger Poole --

19 Q Okay.

20 A -- and Ms., Ms. Jones worked out of the same Public
21 Defender's Office.

22 Q Okay. Do you believe that was a conflict of interest?

23 A Well, I wouldn't say it was a conflict that, the
24 impropriety of it. It wasn't, it wasn't proper---

25 Q Okay.

Carnie Norris - Direct examination
by Mr. Rucker

1 A ---because I had said something to her about her being
2 a solicitor at one time back in the early 90s when I, when I
3 was charged with murder and armed robbery. And I had, I had
4 spoke to her about that, about representing me fairly, and I
5 asked her could she win the case. And she said I'm just,
6 I'm just going by what's in your case file.

7 These witnesses are, are -- gave statements. They are
8 the ones gonna testify against you and that's basically it.
9 And I asked her had she interviewed every one of them. She
10 said don't need to. We got these many -- being, being an
11 ex-solicitor. When you got these many people testifying
12 against you, it's a, it's a no win situation.

13 Q And were you offered a plea in this case then?

14 A No, sir, I was never offered a plea --

15 Q Okay.

16 A -- in this, in this particular case.

17 Q Did you talk about trial strategy or a defense before
18 you went to trial?

19 A We never, we never talked about anything other than Mr.
20 Childs was gonna testify for me.

21 Q Okay. And did Ms. Jones tell you why she thought Mr.
22 Childs was, in fact, going to testify?

23 A She just said we want -- she never said what he was
24 gonna say cause I asked her. I said what, what can he
25 testify for me for?

Carnie Norris - Direct examination
by Mr. Rucker

1 You know, what is, what is he gonna do, lie or
2 something?

3 You know, I was the only one present across the street.
4 So, what, what could he tell -- what could he get on the
5 stand and tell, you know?

6 Q Okay. So, once you started your trial, you didn't
7 know, until Mr. Childs testified, that he was going to
8 testify.

9 Is that right?

10 A I didn't, I didn't know he was gonna testify. I, I
11 really didn't.

12 Q Okay. Did your attorney ever on -- cross-examine Mr.
13 Childs during the case?

14 A Yes, sir. Yes, sir. She briefly just asked him about
15 where he stayed at and how long he was staying there and
16 where he, where he worked at.

17 Q Okay. And the testimony brought against you were --
18 was the testimony of eye witnesses.

19 Is that right?

20 A Yes, sir.

21 Q Okay.

22 A Yes, sir, the testimony was through, through the
23 alleged eye witnesses.

24 Q Okay. And on -- I want to make sure I hit every point
25 you want me to.

Carnie Norris - Direct examination
by Mr. Rucker

1 The -- you're, you're stating as one of your amendments
2 or one of your causes of action, I guess, is that you -- she
3 failed to object to your due process, process rights being
4 violated.

5 Can you go -- I want to make sure we get all this in
6 the record.

7 A Yes, sir.

8 Q So, can you go through the first reason you believe
9 that to be true.

10 A Yes, sir, my due process rights was violated. My, my
11 whole conviction and sentence was in violation of the Fifth,
12 Sixth, and Fourteenth Amendments of the United States
13 Constitution.

14 Q And why was that?

15 A Because she failed to object to the jury charge---

16 Q Okay. And what was---

17 A ---and, and supplemental charge.

18 Q What was erroneous about the jury charge?

19 A During, during the direct (sic) verdict stage, Mr.
20 Poole put in a direct (sic) verdict motion for motion on
21 mere presence.

22 Q Okay.

23 A And Your Honor said he find that Mr. Pretsel -- Mr.
24 Childs was more than merely present, and he, he find that he
25 was acting in concert with me, with Mr. Norris. So, that

Carnie Norris - Direct examination
by Mr. Rucker

1 basically joined us together as codefendants.

2 My -- now, mind you now, my indictment said Carnie
3 Norris is being charged with armed robbery on or about
4 July 16th, 2008. His indictment says the same thing. We're
5 indicted as principals. Those are not -- those indictments
6 are not interconnected because my name is not in his
7 indictment. His name is not in my indictment. We were not
8 indicted for conspiracy, as the judge went through his jury
9 charge and said we were -- he, he spoke as if conspiracy was
10 a subsection of the armed robbery statute.

11 Q Okay.

12 A And he used the hand of one, hand of all, and
13 accomplice liability. There were, there were no secondary
14 crimes for accomplice liability.

15 Q Did your attorney go over accomplice liability and the
16 hand of one is the hand of all theory in South Carolina with
17 you?

18 A No, sir, we never went, never went through that
19 because, like I said, we was on, we was on trial separately
20 until it came to the direct (sic) verdict stage and the jury
21 charge and we were improperly combined together as, as
22 codefendants then.

23 Q What do mean by you were tried separately?

24 A When the judge started the, the trial, he said these
25 are two defendants being tried separately. So, basically

Carnie Norris - Direct examination
by Mr. Rucker

1 there was two trials going on into one trial.

2 Q Okay.

3 A And then, at the end, we were, we were combined as
4 codefendants as if, as if I was liable for a crime that he
5 committed and he was liable for a crime that I committed but
6 there were no secondary crime to -- for, for the judge to
7 charge accomplice liability --

8 Q Okay.

9 A -- or hand of one hand of all.

10 Q Do you believe Mr. Childs' testimony hurt you?

11 A No, sir, he basically told what happened. He --.

12 Q Okay.

13 A I mean that was, that was, that was no common design,
14 no prearranged agreement. I asked him to use his telephone
15 to call the police and that was all, and he went in the
16 house and came back out. I was already across the street.
17 So, he was not then and there present when I was talking to
18 this guy over here.

19 Q Well, do you believe having the trials going at the
20 same time affected whether you were found guilty or not?

21 A Yes, sir, I do.

22 Q And why is that?

23 A Because I, I think it, it -- everything kind of shifted
24 toward me because his lawyer started questioning the
25 witnesses and all, all, all the question (sic) that he asked

Carnie Norris - Direct examination
by Mr. Rucker

1 was directed at me as if I was the -- I guess, I guess I, I
2 was the aggressor in this, in this incident.

3 Q Okay. Do you believe if you had the trial -- do you
4 know what severance is?

5 A Yes, sir.

6 Q All right. What do you -- what is severance?

7 A Separated. Separated.

8 Q All right. Do you believe the trial should have been
9 held separately at separate times and not separate trials at
10 the same time?

11 A I think that I, I should of been charged, as, as the
12 indictment stated, that they were bound by the -- by what's
13 alleged in the indictment. I should of been tried as a
14 principal.

15 Q Okay. But are -- but you believe you should not of
16 had -- Mr. Childs should not of been there at the same time
17 as you in the trial?

18 A No, sir. No, sir.

19 Q Okay. All right.

20 A I, I'm not, I'm not saying that I, I wanted a
21 severance. I'm saying that's where my due process rights
22 were violated.

23 Q Okay.

24 A Because the State never proved an agreement nor was
25 there a common design before the trial, before or during the

Carnie Norris - Direct examination
by Mr. Rucker

1 trial or from witness' statements or even the State's
2 witnesses.

3 Q Okay.

4 A There was no prearranged agreement heard or common
5 design proved by the State.

6 Q Did your trial counsel make an objection or at least
7 ask for a directed verdict based on that theory?

8 A No, she didn't, she didn't do anything with that. She
9 told me to be quiet.

10 Q Okay. You, you spoke of a supplemental jury charge
11 being an issue.

12 what was that charge?

13 A After, after the, the judge did his, did his jury
14 charge to the jury, we had a recess. All right. So, they,
15 they took us back to, back to the holding cell. We went
16 back there to use the bathroom and we stayed, stayed back
17 there about a little over an hour. And we came -- when we
18 came back in, the jury had a verdict.

19 Now, I never knew, until five months later, that there
20 was a supplemental charge given. The jury had a question
21 for the judge to answer -- they -- the judge -- they had a
22 question for the judge. They wanted clarification on
23 accomplice liability.

24 Q Do you believe you---

25 A I was, I was not present---

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1 Q Do you believe---

2 A ---at that time.

3 Q ---it was necessary for you to be there to talk, talk
4 to your lawyer about it?

5 A Yes, sir, that's a, that's a critical stage. That's a
6 critical stage in the prosecution. I was not given a
7 chance. I found out five months later when I got my
8 transcript. I read my transcript and I, and I felt like,
9 you know, I've been, I've been played. You know, the same
10 thing happened early in the trial. I was, I was not present
11 when she was talking to the bailiff.

12 Q Okay. We'll get to the bailiff issue in a second.

13 A All right.

14 Q I want to talk about the jury charge issues though.
15 Do you have any other jury charge issues?

16 A Yes, sir, that, that jury charge, the supplemental
17 charge that he gave, it was different from the first jury
18 charge.

19 Q Okay. In what way was it different?

20 A In that it, it stated that we could be found guilty of
21 the principal or the accomplice. I was never put on notice
22 of codefendant, aiding of abetting, or conspiracy.

23 Q So, you were not able to consult with your attorney
24 about that issue though because of that---

25 A No, sir.

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1 Q ---because of you being separated?

2 A No, sir, I, I wasn't and it said -- it says something
3 about as a natural probable consequence pursuant to it, in
4 furtherance of, that's where two crimes came, came in right
5 there. Nothing happened as a natural probable consequences.
6 Nothing happened pursuant to and in furtherance of.

7 Q Okay. Are there any other issues as to the jury
8 charges or supplemental charges?

9 A No, sir, that -- that's, that's basically it except for
10 a comment on the facts.

11 Q Okay. Are you talking about in the closing argument?

12 A Yes, sir.

13 Q Or in the opening statement?

14 A Well, just, just in the, just in the direct (sic)
15 verdict and the, and the, and the closing arguments.

16 Q Okay. And who commented, improperly commented on the
17 facts?

18 A Well, Mr. Poole did---

19 Q Okay.

20 A ---and the solicitor also.

21 Q How did Mr. Poole improperly comment on the facts?

22 A Well, it was, it was said I can't go verbatim what he
23 said it. I don't have my transcript. But he was stating
24 about the State is gonna charge the hand of one, hand of
25 all, and they, they don't -- he don't see why they put it

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1 all in platinum. And the solicitor came in and he gave a
2 scenario of hand of one hand of all and accomplice
3 liability. And there should of been an objection. I don't
4 know if she, if she could of objected during the closing
5 arguments but it would of been proper to, to do something
6 about it.

7 Q Okay. She never raised any objection to any of those
8 comments?

9 A No, sir.

10 Q Okay.

11 A No, sir.

12 Q Are there any other issues as to the charges
13 specifically?

14 A Ah.

15 Q Jury charges. I'm sorry.

16 A No, sir, that's, that's basically it on the, on the
17 jury charge. I have never been put on notice---

18 Q All right.

19 A ---of what I was being tried on. I was convicted on a
20 set of facts that wasn't found by or even presented to the
21 Grand Jury.

22 Q Okay. Did you talk with your trial counsel about any
23 kind of citizen's arrest defense?

24 A well, I had -- I wrote her a letter when I found out
25 that she was appointed to represent me and I told her

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1 exactly what happened, that what I was trying to do.

2 I was -- I wanted to use the phone and call the police
3 on these guys cause they was on top of a medical, a medical
4 building. And she basically told me, she said, well, ain't
5 nothing really gonna happen to that. I said well, you
6 telling me you can't, you can't win this case. She said
7 when, when I was a student at Wofford College, me and my
8 white friends, we could go out in the neighborhood and do
9 whatever we wanted to do. And there was nothing, nothing
10 could be done about it.

11 And she said that's exactly what's gonna happen today.
12 You know, nothing's gonna be about what you gonna say about
13 what they were doing. You are on trial. Not them. That's
14 what she told me.

15 Q To your knowledge, did she explore a citizen's arrest
16 defense or request to charge on that?

17 A No, sir, she just kept it kind of blunt like that she,
18 she told me you might as well get ready. This train is
19 ready to leave the station with or without you. That was --
20 those were her remarks.

21 Q And when did she say that to you?

22 A She didn't -- she said that to me when, when I had
23 asked her about who's the judge gonna be, and she said
24 Derham Cole. And I said well, don't you know I had, I had a
25 prior robbery conviction that I had was before him. Can you

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1 get a continuance and at least investigate, investigate the
2 case and, excuse me, she said no, this case is getting ready
3 to be -- this case is getting ready to go into effect today.
4 She said and I'm, I'm fixing to go out and qualify the jury.

5 Q Did you ever go over with -- the discovery with your
6 attorney before trial?

7 A No, sir, the only thing we went over, she showed me the
8 statement. We done -- we never, we never went over that
9 stuff.

10 Q okay.

11 A She sent it to me in the mail.

12 Q And the -- to skip back to Judge Cole, did you believe
13 there was a conflict of interest with him presiding over the
14 case?

15 A Well, I, I felt, I felt like there was a conflict
16 because, like I said, back in, back in the 90s, I had that
17 high profile case, if you want to call it that. That
18 particular case was overturned. It was overturned by the
19 Fourth Circuit Court of Appeals.

20 Q okay.

21 A And I, you know, I tried to explain that to her. My
22 real situation -- well, I have, I have the documents over
23 there I would like to submit if, if that's fine.

24 Q Which documents are you referring to?

25 A You, you was talking about the conflict?

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1 Q Uh-huh. (Affirmative).

2 A All right. That, that first set of documents is, is
3 the warrant, indictment. I have the warrants, indictments,
4 a Writ, a Writ of Situany (phonetic).

5 Q Hold on one second, Carnie. I apologize.

6 A All right.

7 (Pause.)

8 MR. RUCKER: Your Honor, may I approach the witness?

9 THE COURT: You may.

10 Q I'm gonna show you the document that you're referring
11 to.

12 Does this help refresh your memory about the conflict
13 issue?

14 A Yes, sir.

15 Q Okay. All right. And specifically you told the judge
16 what the conflict was?

17 A All right. Ms. Jones, she was employed by the
18 Solicitor's Office from 1988 to 2000. So was Mr. Barry
19 Barnette, the solicitor. They worked, they worked together
20 side-by-side up until 2001. In '90 -- in '93, I was charged
21 with that -- with murder and armed robbery while both of
22 them was working in the Solicitor's Office.

23 The case was overturned on the 9/11 in the Fourth
24 Circuit Court of Appeals. In 2001, in the South Carolina
25 Supreme Court, my attorney made reference to the Solicitor's

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1 office catching heat behind how my murder prosecution was,
2 was handled.

3 Okay. Mr. Poole and, and Ms. Jones, they were employed
4 by the Public Defender's Office, who represented me and Mr.
5 Childs, which breached, which breached the ethical wall. I
6 said something to her about that and she, she knew it was
7 wrong. I mean she, she signed the oath under the
8 Constitution saying that she would be fair and uphold the
9 law. She -- somebody should of said something. She should
10 of said something to it. By me bringing, bringing that to
11 her attention, it should of been brought to the, it should
12 of been brought to the judge's attention.

13 Q All right. And do you believe that conflict of
14 interest negatively affected your ability to have effective
15 counsel?

16 A Yes, sir, I do because it -- during, during the course
17 of my trial, the things that she should of objected to she
18 never did.

19 Q All right.

20 A The things that she -- I mean that, that required more,
21 more input or objections or hearings or whatnot. She failed
22 to do that.

23 Q Okay. Now, I'm gonna go to your next -- were there any
24 other conflict of interest issues?

25 A No, sir, other than just the impropriety of it. Just

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1 the, the appearance of it.

2 Q Okay. Now, there was an issue with Bailiff O'Shields.

3 Could you describe that issue to Your Honor?

4 A Yes, sir, right before the jury, the jury panel came
5 in, a bailiff was at the back-door. He had the jury pool
6 with him. When he, when he come in, the bailiff, they
7 ushered the, the potential jurors in for jury qualification
8 and my mother heard somebody talking. I think my mother was
9 sitting at a -- about the third row back and she heard a
10 bailiff talking.

11 And the bailiff said that's Carnie Norris right there
12 who use to play football down at Spartanburg High School or
13 the University of Georgia, and he's been up here before but
14 today he's, he's going down the road.

15 Q All right. Did your -- did you tell your attorney
16 about that issue?

17 A Yes, sir, the judge was talking at the time but I tried
18 to tell her what my mother wanted, wanted to ask her a
19 question and she told me to be quiet. And so, I told her
20 again cause my mother was very adamant about me saying
21 something to Ms. Jones about it.

22 And then we had a recess at that moment and Ms. Jones
23 went out in the lobby, talked to my mother about what went
24 on. When we came back in, Ms. Jones told, told Judge Cole
25 what was said and --.

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1 Q All right. Before we go further, was that on the
2 record, that conversation or colloquy?

3 A Was --?

4 Q The conversation between your attorney or your mother
5 and the judge.

6 A Yes, sir.

7 Q Okay.

8 A Yes, sir, they, they -- we, we had a hearing. Actually
9 I think three bailiffs, three or four bailiffs took the
10 stand and they, they were questioned. But it was one
11 bailiff, the actual bailiff, that, that was -- that did say
12 what he said, he had left and they said he was gone for the
13 day. Well, Judge Cole said we'll ask him tomorrow when he,
14 when he get back.

15 Q Okay. Was that ever done?

16 A No, sir, the next day, Ms. Jones came in and we sit
17 down and she got up and she said Your Honor, Mr. Poole and
18 I, and who is that, Mr. Poole and I, it was somebody else
19 talked to, talked to Mr. O'Shields and he said he didn't
20 have any kind of conversation whatsoever about that. Now,
21 that was, that was out of my presence. By it having -- by
22 having a hearing the day before, that should of been done in
23 front of the judge.

24 Q To your knowledge, did the judge ask the, the jury --
25 well, first of all, was all this done before a jury was

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1 sworn?

2 A It was, it was, it was done before the jury was sworn.

3 Q Okay. Did---

4 A Yes, sir.

5 Q Did the judge ask the group of jurors about this issue,
6 to your knowledge?

7 A He, he questioned them. He did not question them
8 independently.

9 Q Okay. When---

10 A He questioned them as a group. And if you, if you
11 question a jury by a group, they're not gonna give up their
12 views right off unless somebody else raise their hand or
13 something like that and start -- I think it should -- those
14 questions should of been asked independently --

15 Q Okay.

16 A -- whether or not they heard anything or, or seen
17 anything or something like that but that, that was never
18 done and that was a critical stage also.

19 Q So, based on that, you believe your, your trial process
20 was flawed because there could of been undue---

21 A Yes, sir.

22 Q ---prejudice with the jury?

23 A Yes, sir, I was, I was prejudiced because I never got a
24 ruling on that particular issue. We had, we had a hearing.
25 I should of got a ruling on that to, to, to preserve that

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1 for at least a meaningful appellate review. I never got
2 that opportunity.

3 Q Okay. The -- your next issue is your prior conviction
4 were used against you at trial.

5 In what way were they used?

6 A I was convicted in 1995 of a burglary second, and four
7 or five months later, armed robbery. It was common law
8 robbery nonviolent in January of '96, and those, those
9 convictions were over ten years old.

10 Q Who introduced those convictions against you?

11 A Ms. Jones did.

12 Q Okay.

13 A Under the, under the rules on Page 226 of my, my
14 transcript, or 228, or the solicitor said, under the rules,
15 he can't ask me about those convictions. Now, him saying
16 that, it should of -- she shouldn't of, she shouldn't of
17 opened up the door to those inadmissible -- that
18 inadmissible evidence.

19 Q Is it your view that the prior convictions, at least
20 for the robbery, were similar in nature to what you were
21 accused of in this case?

22 A It was similar in nature and there should of been a
23 hearing if, if they were gonna be admitted. That should of
24 been a hearing. She shouldn't even said anything about it
25 because there was nothing more than the basic crime itself.

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1 I never had a, a false statement or anything like that to,
2 to make it a crime of dishonesty.

3 Q But your, your attorney, and not the solicitor's
4 office, introduced the convictions against you?

5 A She opened, she opened up the door on Page 267. She
6 asked me, she said, were you convicted in this very
7 courtroom of burglary and I said yes. And she said and were
8 you also convicted in this very courtroom of robbery. I
9 said yes, ma'am. And she said well, at that time, didn't
10 you have a drug conviction also?

11 I mean she just painted a picture -- she painted a
12 terrifying picture of me at that time there.

13 Q Did you talk to her before, about your testimony,
14 before those convictions were entered about whether they
15 would come in?

16 A No. No, I never -- like I said, when the, when the
17 judge found out we were gonna -- that we were gonna testify,
18 she, she never talked to anything about my scope of
19 testimony or anything.

20 Q Is it your belief that you, you believe the convictions
21 would not have come in if she would of objected or, or not
22 even brought them up?

23 A Yes, sir, because, like I said, they painted a
24 terrifying picture of me, and to say were I convicted in
25 this very courtroom, obviously she knew some, some kind of

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1 information nor being that it was in that very courtroom
2 where it happened. But paint a terrifying picture that I
3 was a junkie willing to, willing to do anything. I have
4 robbed before and it's a possibility that I've done it then,
5 I've done it this time.

6 Q Okay. All right. On, on your next, next claim is your
7 theory of defense.

8 what's your -- what was -- what did she do wrong
9 regarding your theory of defense?

10 A Well, I tried, I tried to explain to her, and, through
11 letters, and then when I did talk to her, that I was -- we
12 were trying to -- I was trying to make a citizen's arrest.
13 That's why I asked for the telephone, to use the telephone
14 to call. And my testimony, that, that was my testimony.

15 Mr. Childs' testimony was the same thing. He basically
16 said the same thing. He come and asked me for a telephone.
17 So, he called and the witnesses that testified, the defense
18 witnesses, they said the same thing. That I said I was a
19 cop.

20 Q Did you, in fact, make the phone call to the police?

21 A No, I never made the phone call because the police, the
22 police pulled up in a matter of seconds cause we -- Dean
23 Street is right downtown.

24 Q Okay.

25 A All right. So, when I come up the yard and walked

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1 across the street and was talking to them, the police came
2 up.

3 Q All right. Regarding that, any other defenses -- did
4 y'all discuss any other possible defenses to this?

5 A No, sir, that, that was it. Like I said, I only talk
6 to her twice and one was about 45 minutes on July 1st, and
7 then another 20 minutes before -- right before trial.

8 Q Why do you believe having more time to talk to her
9 would of helped your case?

10 A Excuse me. Well, because there was, there was several
11 aspects I wanted her to, to look at pertaining to the -- my
12 theory of defense. She could have talked to the people at,
13 at St. Lukes Free Medical Clinic to see whether or not there
14 had been any, any kind of break-ins or, or attempt break-ins
15 or had that happened before or whether or not they carried
16 any kind of medicine or whatnot because really and truly I
17 think that's what, that's what they was doing, trying to
18 break in the building for, for pills or whatnot cause they
19 do hold Lortabs and stuff like that in that building.

20 Q Okay. And your attorney never investigated that nor
21 ever presented that as any kind of defense?

22 A She never investigated any, anything I said. She, she
23 basically limited her, her strategy to what was in the, what
24 was in the solicitor's file. Just the statements.

25 Q Did she cross-examine the witness -- the alleged victim

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1 and the other witnesses about those issues?

2 A She said something to, to one of the policemen. She
3 asked a couple questions to, to the policeman and basically
4 that was it. She never even, even just really
5 cross-examined him about why they were there, you know.

6 Q All right. You -- and we touched on this briefly
7 earlier but you allege that the -- your defense counsel
8 failed to object to the solicitor's closing argument because
9 it contained pitting of witnesses.

10 A Yes, sir, he, he, he kind of pitted me against Mr.
11 Childs when he was, he was, he was asking why, why didn't
12 you call -- your, your testimony is different from what,
13 what these witnesses are saying. It was -- he made it seem
14 like it was us against them with, with our testimony or
15 whatnot. There are, there are several instances in the
16 transcript.

17 I, I can't -- is there anyway I can, I can read it out
18 in the transcript?

19 It's just a couple lines.

20 MR. RUCKER: All right. Your Honor, may I approach the
21 witness?

22 THE COURT: You may.

23 Q Carnie, I've just given you -- Carnie. I'm sorry.
24 I've just given you the transcript.

25 Is that the transcript you're referring to?

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1 A Yes, sir.

2 Q Okay. And we'll give you a couple seconds before --
3 couple seconds to find it.

4 A All right. This is Mr. Childs cross-examined by Mr.
5 Barnette. It said did they tell you that they called the
6 police, one of the guys?

7 No.

8 I am asking you what you know. I know what they
9 testified to and it's completely different to what you are
10 testifying to. Evidently they told the truth because the
11 police came.

12 Well, that's, that's one instance.

13 Q Carnie, could you refer to the page number and line so
14 that, that we all are on the same page.

15 A That's on Page 263, Line 13 through 19. And now we are
16 on Page 282, which is my testimony being cross-examined by
17 Mr. Barnette, and it's Line 13 through 20.

18 In other words, you got to make up a good story because
19 you just got finished robbing that, robbing him, didn't you?

20 No, sir, I'm not, not making up a story. I'm telling
21 exactly what happened.

22 You're telling exactly what happened?

23 Yes, sir.

24 which is completely different from the story that we
25 already heard in here already.

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1 All right. That's another instance.

2 On Page 30 -- 303, Line 14 through 25.

3 You heard the testimony. You heard the three people
4 that stood there and saw them point the knife at him. They
5 told you what happened coming through. And if you looked
6 through the testimony of State's witness, it's consistent
7 all the way through. Officer James come up and catches Mr.
8 Norris over the top of him with his cell phone in his hand.
9 He throws it back to him. Also told him -- told me what
10 happened when he got there.

11 They keep saying that these other officers. Both sides
12 get to call witnesses, ladies and gentlemen. We brought you
13 the witnesses that brought you the pertinent information in
14 this case.

15 All right. That's, that's one more, one more spot.

16 Looking at their testimony, the two codefendants can't
17 even get it right and I asked this question specifically
18 over and over again. I apologize but I wanted to make sure
19 there was no confusion about it.

20 Mr. Childs, Mr. Childs got up and testified. I said
21 that when you got over there, what was Mr. Norris doing?
22 Mr. Childs said well, he was holding him down, had his hand
23 on his shoulder. I asked Mr. Norris what he done. He said
24 I never touched him. He specifically -- he was specific
25 about that. I never touched him. There's inconsistency in

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1 their story right there. Big inconsistencies. Started off
2 with that.

3 They want you to believe these are two gentlemen that
4 has been familiar -- they want you to believe these are two
5 gentlemen that's been familiar with the criminal justice
6 system. Both of them has been convicted of different
7 offenses. You heard what those offenses was and that's part
8 of what you can weigh with the credibility of testimony.
9 The judge will tell you about it. It's called impeachment.

10 All right. And that's, that's basically it.

11 THE COURT: Where was that last reference, page and
12 lines?

13 THE WITNESS: This was Page 304, Line 1 through 11 and
14 then Line 19 through 25.

15 THE COURT: Thank you.

16 THE WITNESS: All right. And we got one more spot.

17 Line -- Page 310, Line 14 through 21 and this is
18 closing argument.

19 That's what I asked you, ladies and gentlemen of the
20 jury, in this case. I think it's the only verdict that
21 speaks the truth in this case. Once you look at the
22 evidence, and look, you know what testimony is there, and
23 the consistent testimony, no question the State's witness
24 was consistent all the way through. The defendants was not.

25 Which side do you want to believe?

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1 Do you want to believe them or the State's witnesses?

2 That's what it comes down to, ladies and gentlemen.

3 I'm asking you to return verdicts of guilty on both of them.

4 Q All right. Now, I'm gonna skip ahead with another of
5 your allegations on prosecutorial, prosecutorial misconduct
6 regarding the knives.

7 What is that prosecutorial misconduct you're referring
8 to?

9 A Yes, sir, I had a pocketknife in my, in my right front
10 pocket. Also had a fish paring knife that was, that was
11 wrapped in a piece of paper in my, in my back pocket.

12 During the course of the trial, well, when they
13 searched us, they told us to go across the street. Two
14 officers took us across the street and we were talking with
15 them. Mr. Barnes and his friends was talking to the, to the
16 police on the right side of the street. When they come
17 across the street, they come across the street with their
18 guns drawn and they never asked us could we search them.

19 Quite naturally, you gonna put your hands up you got
20 guns, you got guns on you. So, they went, they went in my
21 pocket and found two knives. So, he logged it in in
22 inventory. He logged it in on the property sheet as two,
23 two knives.

24 When we get to trial -- thank you. When we get to
25 trial, Ms. Jones asked police, Policeman Guess what

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1 happened. He said we consented to the search and he found a
2 knife on me.

3 Now, I had two knives. He, he documented all this.
4 And the second officer got on the stand, Officer James, he
5 testified the same thing, that once we -- once I consented,
6 that they found a knife on me.

7 Now, that -- what I said is, is prosecution misconduct
8 because the solicitor elicited this, this perjured testimony
9 and he knew that them guys, they, they searched me and took
10 two knives off of me. Anytime you -- I mean you got a
11 police officer practicing deception like that and then the
12 solicitor doing the same thing.

13 Q Did your trial counsel cross-examine the officer or, or
14 take up an issue with the Court about your allegations about
15 the prosecutor?

16 A I, I tried to. She told me to be quiet because, at one
17 time, I was, I was trying to talk to her and the judge told
18 us you need to be quiet over at the table. So, I really had
19 no input in my, in my trial.

20 Q Did she cross-examine the officer about that issue?

21 A No, she just, she just asked him just some, just some
22 basic questions about that. On Page, on Page 190 -- on Page
23 191 of the trial transcript.

24 Upon searching Mr. Norris, I located a black handled
25 what appeared to be a kitchen knife in his pocket, and, at

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1 that time, he got statements from the rest of the
2 individuals involved, and Mr. Morris as well as Mr. Childs
3 was placed under arrest.

4 All right. Over on Page, over on Page 212, Line 22
5 through 25, this is Mr. Guess, the police officer. Direct
6 examination by Mr. Barnette.

7 Okay. During the time that Mr. James searched
8 Mr. Norris, he did. He asked Mr. Norris for consent. Mr.
9 Norris complied and said absolutely. On his pockets he
10 found black kitchen knife.

11 All right. They, they entered it as State's Exhibit
12 No. 1, and then it said, once we placed him under arrest, we
13 verified with Mr. Barnes that that was the knife. They
14 never verified that with Mr. Barnes. If you go back on Page
15 122 -- because the knife was never pulled out. He never
16 used the knife to do anything.

17 On Page 122 of the trial transcript, Line 15 through
18 19, you got them back from the police?

19 Yes, sir.

20 He was talking about the stuff that he said that was
21 taken from him, and it said you got them back from the
22 police?

23 He said yes, sir, the police gave them back.

24 And did they show you the knife also?

25 They showed me a picture. I never saw the actual

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1 knife.

2 Q Did your attorney highlight that discrepancy in
3 cross-examination or in closing argument?

4 A She never said, she never said anything about that. I
5 tried, I tried to point that out to her and she was like --
6 I mean like you do an animal, push, push your hand to be
7 quiet, or like a child or something, you know.

8 Q All right. And you've alleged that there was -- you
9 had issues with the appeal, first of all, with the filing of
10 the notice of appeal.

11 what, what is that issue?

12 A Yes, sir, after I was convicted and the judge sentenced
13 me, I asked Ms. Jones, I said can you file a motion for
14 reconsideration, could you file a motion for a trial, and---

15 Q When did, when did you ask her to do that?

16 A I asked -- I instructed her to do that right after I
17 was convicted.

18 Q All right. And when you right after -- how, how long
19 after the conviction?

20 A It was about a, about a minute or two.

21 Q Okay.

22 A Because we had -- we was, we was standing there and
23 security came around and we -- then I was separated by
24 security and I said make sure you file a sentence
25 reconsideration or motion for new trial just like that and

Carnie Norris - Direct examination
by Mr. Rucker

1 we disappeared.

2 Q To your knowledge, did she ever do that?

3 A She, she filed a direct appeal.

4 Q But other -- did she file any posttrial motions?

5 A No, sir, my, my desires and intentions, just like what
6 I did, was to file posttrial and reconsideration because
7 of -- my -- the age and the time that he had gave me. It
8 was -- I had the ultimate authority in that as to whether or
9 not I wanted a direct appeal or posttrial. She did what she
10 wanted to do just like she did all during the trial. She
11 never listened to what I wanted to be done in my, in my
12 trial.

13 Q All right. And what about the posttrial motions?

14 What did you want her to move to do or to ask for?

15 A Well, when, when, when I saw that the hand of one hand
16 of all, and my indictment didn't have his name or his name
17 was not in my indictment, I knew something was wrong then.
18 I asked her could she go ahead and file on, on that hand of
19 one hand of all. And that's what I did file myself within
20 five days later.

21 Q Okay. Were there any other posttrial motions that you
22 wanted to include?

23 A Well, it was just those, those posttrial motions but
24 the -- with the reconsideration motion. The same, the same
25 thing I raised when we first started about the, the -- my

Carnie Norris - Direct examination
by Mr. Rucker

1 due process rights being violated, that's the same thing I
2 raised in my posttrial motions. And my case went on, on, on
3 direct appeal, to the Court of Appeals.

4 Q All right. What was the effect of her filing the
5 notice of appeal on this posttrial motion that you wanted to
6 file?

7 A Jurisdiction went to the Court of Appeals because she
8 filed a direct appeal. I wrote to the Court of Appeals and
9 I'm telling them I have posttrial motions filed timely,
10 which I filed them timely cause I was down at Ridgeland at
11 that time. I filed them five days later on July 14th, 2009.

12 I served parties. The right -- the solicitor was
13 served at the same time, July 14th. That's why the Court of
14 Appeals remanded my case back to the, to, to Derham Cole,
15 Judge Cole. They remanded it back to him and he denied it.
16 And so, I did a 59(e).

17 Q Okay.

18 A And he denied that. And so, I, I did another appeal
19 because they held my direct appeal in abeyance. So, I
20 wanted my posttrial motions heard also with my direct appeal
21 and nobody never answered. The attorney general didn't,
22 didn't answer me or anything or she never answered or
23 appellate counsel never answered me. So, basically I was, I
24 was beat out of a whole judicial process, which I was
25 entitled to because I filed in a timely fashion.

Carnie Norris - Direct examination
by Mr. Rucker

1 Q Who was your appellate counsel?

2 A My appellate counsel was Kathrine Hudgins.

3 Q All right. And what did she do for you in this, this
4 case?

5 A Well, in this case, she filed an Anders brief.

6 Q All right. And what is an Anders brief?

7 A That's a no merits brief saying my case don't have any
8 kind of merits---

9 Q Did you---

10 A ---but she---

11 Q Did you discuss these issues with her?

12 A I tried to. She said that the -- she said the only
13 thing that -- she said all the issues raised will be mine
14 and mine alone, and I tried to consult with her about my due
15 process rights being violated. Especially my posttrial
16 motions and she said she's, she's already done the Anders
17 brief and she can add anything with it. She submitted an
18 incomplete transcript.

19 Q All right. What was missing from the transcript?

20 A A hundred seventy pages.

21 Q What did those 170 pages have on them?

22 What part of the transcript -- what part of the record
23 was not included?

24 A The whole transcript, 345 pages, and all the even
25 numbered pages were missing. And all the pertinent

Carnie Norris - Direct examination
by Mr. Rucker

1 information that I'm raising today and would of raised then
2 is on those even numbered pages. 226, my prior convictions.
3 228, dealing with the prior convictions. The jury charge,
4 324, 326, 330, all that -- like I said, she made -- during
5 my direct appeal, she made 30 references to the transcript
6 and 22 of those references were to the even numbered pages.

7 But how can the Courts decide my appeal and they don't
8 have a complete record?

9 Q How do you know that they didn't have the complete
10 record?

11 A I have the, I have the letter on what she submitted.
12 She submitted my, my direct appeal -- my Anders brief.
13 It's, it's over in the other transcript and the record on
14 appeal and the record on appeal is what, what she sent to
15 the, sent to the Court of Appeals. Nah, it's in that stack
16 you just put down I think. I had asked her about my due
17 process---

18 THE COURT: Is this not the record on appeal?

19 MR. RUCKER: Sir?

20 I apologize.

21 THE COURT: Is this the record on appeal?

22 MS. WHITE: Yes, Your Honor, and it's got -- it's a
23 complete copy of the transcripts.

24 THE COURT: Yes, sir.

25 MR. RUCKER: Yes, sir.

Carnie Norris - Direct examination
by Mr. Rucker

1 All right. It's, it's your belief, based on the letter
2 you got from Kathrine Hudgins, that she did not submit the
3 full record on appeal?

4 A No, sir, she did not submit the full record on appeal
5 because I, I, I wrote her as soon as she, as soon as she
6 sent me my brief and everything and the record on appeal. I
7 submitted several letters to her about that. I even wrote
8 to the Court of Appeals about her submitting an incomplete
9 transcript. I even, when you was appointed to me, that was
10 the first thing I told you. You know, I want a complete
11 record for the judge to have when I go back for PCR.

12 Q The judge -- Judge Couch indicates he has the full
13 record including those even pages.

14 Do you believe that's not what---

15 A No, sir.

16 Q ---was reviewed by the Court of Appeals?

17 A That's not what she, that's not what she submitted.
18 Not by, not by what I got in the mail and the letter that
19 she sent me. She got the front page on there as if it's a
20 complete record but what she sent me is not a, is not a
21 complete record.

22 Q Okay. You, you had a lot of issues that you put with
23 your application and/or amendments.

24 Are there other issues you want to address with the
25 judge?

Carnie Norris - Direct examination
by Mr. Rucker

1 A Judge, I want to -- the only thing I have to say is I
2 thank you for having me here today. My trial was
3 fundamentally unfair based upon the time I was facing, the
4 little time that, that she did put in, in my trial, the
5 little time of investigation that she said she, she did but
6 she's -- she didn't do any of that. I think that, if it
7 wasn't for her errors, her acts and omissions, the outcome
8 of my trial would of been different. I'm, I'm pretty sure
9 it would because, when you're talking about my due process
10 rights being violated, those are some serious issues, not
11 being placed on notice.

12 Those, those the -- those are the, the benchmark
13 amendments that were violated, my Fifth, Sixth, and
14 Fourteenth Amendment. When you, when you talk about the
15 bailiff, when you talk about influencing, influencing the,
16 the potential jurors, talking in front of them, those, those
17 are some serious issues that's denying me a fair trial.

18 All -- every aspect of my trial, she did -- she made
19 errors. Her omissions. Doing my prior convictions, same
20 thing.

21 Now, my, my credibility was shot when I got on the
22 stand when she, she bring that out, paint that, paint that
23 terrifying image of me. The impropriety of the whole
24 situation that happened with her being a solicitor, working
25 out of the same office with the, with the solicitor, working

Carnie Norris - Direct examination
by Mr. Rucker

1 out of the same office with Mr. Poole out of the Public
2 Defender's Office. It just wasn't fair to me. Something
3 should of been said.

4 That's it -- my posttrial, when I, when I, when I knew
5 something was wrong, when I knew I was standing alone during
6 my posttrial, I instructed her to file that, to file a
7 motion for a new trial or sentence reconsideration and she
8 failed to do that. She, she used the case how -- she did
9 the case how she wanted to do it. She sent it on the Court
10 of Appeals and it, it left me struggling by myself and it's
11 trying to, to consult with these lawyers through the mail,
12 these lawyers, they, they, they don't answer, they don't
13 answer mail. Not at Appellate Defense.

14 You're, you're -- and you can't file anything because
15 of hybrid, hybrid representation. So, basically I'm just
16 stuck. I was stuck. But, like I said, if it don't go well
17 for me, I'm hoping it do, our, our mail system is so messed
18 up in the Department of Corrections. If I get my order
19 later than, than what it should be, will I be -- if -- for
20 some, some unknown reason it, it -- something is left out of
21 the order or it's not, not perfect, not to say perfect, but
22 if it omits a little fact or something, would I be given a
23 chance to, to file a out of time 59(e) to preserve my
24 issues, Your Honor?

25 MR. RUCKER: Your Honor, I can't really consult my

Carnie Norris - Cross-examination
by Ms. White

1 client. I'll, I'll -- he's fully aware of his rights and
2 we'll talk about that.

3 THE COURT: All right.

4 MR. RUCKER: That's all the questions I have.

5 THE COURT: Thank you, sir.

6 You may cross-examine.

7 MS. WHITE: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. WHITE:

10 Q Mr. Norris, your attorney, your attorney did initially
11 start off with a pretrial motion to suppress the
12 identification from the victim in this case.

13 Is that right?

14 A Yes, sir, that was a frivolous issue because we never
15 left, we never left the alleged scene.

16 Q And, in fact, Mr. Bond, who was the person that said he
17 was robbed by you, identified you and pointed you and Mr.
18 Childs out on the porch of this house across the street.

19 Is that right?

20 A Yes, ma'am, like I said, identification was never an
21 issue --

22 Q Okay.

23 A -- cause we never, we never left there.

24 Q And Mr. Bond, along with two other witnesses that were
25 there that night, all testified and identified you as the

Carnie Norris - Cross-examination
by Ms. White

1 man that held a knife to Mr. Bond or put a knife up and
2 said, and said that you're security, give me your
3 identification, your wallets, things like that?

4 A That's, that's what the other guy said. Mr. Bond
5 didn't say that. Mr. Bond said he never seen a knife. He
6 was on the -- he was only shown a knife by a picture.

7 Q Now, Mr. Bond -- you're saying he was never shown the
8 knife once the police got it but Mr. Bond did testify that
9 you held a knife to his neck, did he not?

10 A Well, quite naturally he's gonna say that when the,
11 when the solicitor tell him to say it.

12 Q Okay. Page 116, Line 4 through 7.

13 A 116?

14 Q Page 116, yes, sir.

15 A Yes, ma'am.

16 Q And it's starting at Line 4. You just let me know when
17 you got it.

18 A Okay.

19 Q And if you'll look for me as I read it aloud, that's
20 when he pulled his knife out and put it to me.

21 And the question is, when you say he put it to you,
22 where did he put the knife, and he answered, he put the
23 knife on my throat.

24 So, Mr. Bond did testify that you held a knife to his
25 throat that night?

Carnie Norris - Cross-examination
by Ms. White

1 A He did -- he said that they -- he didn't say that in
2 the initial hearing. It's not about what Mr. Bond said.
3 It's about what Ms. Jones did.

4 Q Right.

5 But I'm asking you, at the trial, is that not the
6 testimony that was presented to the jury?

7 A No, this, this was in the, in the Neil/Biggers hearing.

8 Q Okay. Now, and if you'll look at, with me, this is
9 actually in trial. The Neil versus Biggers hearing is prior
10 to three pages up to 50, and you can see it's got
11 parenthesis, it says in camera.

12 So, they did testify in camera, which is outside of the
13 presence of the jury, but then he also testified in front of
14 the jury that you held a knife to his neck.

15 Is that right?

16 A I -- I'm guessing since you say it's right, yeah,
17 the --.

18 Q Okay. You were there and you heard the testimony,
19 right?

20 A Yeah, but that's not what this PCR hearing is about.
21 This PCR hearing is about---

22 THE COURT: I'm gonna instruct the witness to answer
23 the questions, and I'll determine whether the testimony or
24 evidence presented is proper. So, if you would, respond to
25 the questions that are being asked.

Carnie Norris - Cross-examination
by Ms. White

1 Thank you.

2 THE WITNESS: Yes, sir.

3 Q Your concern is the fact that the evidence that was
4 presented, he says the police only showed him a photo of the
5 knife.

6 Is that right?

7 A Yes, ma'am.

8 Q Okay. And the police, excuse me, the State actually
9 introduced both the photo of the knife and the actual knife
10 into evidence, did they not?

11 A There was pictures. There was pictures that they---

12 Q Okay.

13 A ---submitted.

14 Q If you'll look on Page 123 for me, Lines 4 and 5, and
15 right before on Page 122, direct examination by
16 Mr. Barnette. He said I'd like to move State's Exhibits 1
17 and 3 into evidence. No objection. They're admitted. The
18 knife was marked State's Exhibit 1 and the photograph was
19 marked State's Exhibit 3.

20 Is that correct?

21 A Yes, ma'am.

22 Q And then Mr. Bond, a few lines later, identified that
23 as the knife that was used on him and No. 3 was the photo he
24 was shown of the knife.

25 Is that right?

Carnie Norris - Cross-examination
by Ms. White

- 1 A You say on line what?
- 2 Q If you continue down on Line 9, Mr. Barnette asked
- 3 Mr. Bond if that was the actual knife that was used on him,
- 4 and then was that the picture of the knife. And he says
- 5 yes, sir, that's what the police showed me.
- 6 A Yes.
- 7 Q Okay. So, the knife and the photo were introduced.
- 8 Is that right?
- 9 A Uh-huh. (Affirmative).
- 10 Q Okay. You said you only met with Ms. Jones twice and
- 11 that she mailed you your discovery.
- 12 what did you receive in the discovery packet that she
- 13 mailed you?
- 14 A I received my warrant, indictment, police report, and
- 15 statements --
- 16 Q Okay.
- 17 A -- and a limited NCIC report. It was four pages on the
- 18 NCI (sic) report that did not reference any, any of my prior
- 19 convictions that they used at trial.
- 20 Q Now, let me ask you about that prior conviction.
- 21 when they were discussing that prior to your testimony,
- 22 and they discussed the fact that the State intended to use
- 23 those to impeach you, was that not because, although the
- 24 convictions were a little past ten years, that your
- 25 sentence, you had served time within the last ten years on

Carnie Norris - Cross-examination
by Ms. White

1 those?

2 A I had served time in the last ten years on those?

3 Q Yes, sir.

4 A Yes. Yes, ma'am. But being that that was a similar
5 offense, they should of been, they should of been a hearing
6 held. If you, if you look on Page 228, when Mr. Barnette
7 say that was in the last ten years, Your Honor, obviously
8 both of them have records beyond that. But I understand,
9 under the rules, I can't ask him about that. And the next
10 line, Ms. Jones said that would be a '96 common law robbery
11 and a 1995 burglary second nonviolent. And then the judge
12 said bring the jury in.

13 Q Okay.

14 A So, he basically said they couldn't ask me about them,
15 couldn't ask me about my prior convictions.

16 Q Okay.

17 A And she confirmed that by saying '95 and the '96
18 convictions and she said yeah.

19 Q Okay. Did she talk with you about the fact that you
20 testified they wouldn't be able to possibly bring in some
21 convictions against you?

22 A No, she didn't, she didn't -- we didn't, we didn't even
23 go into that. She said Mr. Childs was gonna testify for me
24 and that's when we went back and forth about what was he
25 gonna testify to.

Carnie Norris - Cross-examination
by Ms. White

1 Q And did y'all not have discussions about the fact that
2 it would probably be in your best interest not to testify
3 because of those prior convictions?

4 A She just said Kenny Childs was gonna testify for you.
5 She didn't say anything about me testifying.

6 Q Okay. Did you talk---

7 A She was---

8 Q ---with Ms. Jones about the fact that you were
9 concerned because she had worked at the solicitor's office?
10 A Yes, I did. I did talk to her.

11 Q And she was not -- did she explain to you that she
12 never worked on your cases or didn't have any knowledge of
13 that?

14 A She just -- basically she just blew me off.

15 Q Okay. Your concern about the jury charge, you said you
16 were not put on notice that this was a hand of one hand of
17 all case.

18 A No, I didn't, I didn't -- never knew what that was
19 until they, they started talking about it.

20 Q And your testimony is you never knew that Mr. Childs
21 was your codefendant even though you were both arrested that
22 night.

23 Is that right?

24 A That's right. My indictment don't say I had a
25 codefendant. My, my indictment say Carnie Norris. Not

Carnie Norris - Cross-examination
by Ms. White

1 Kenneth Childs.

2 Q But you---

3 A My, my name is not in his indictment. His name is not
4 in my indictments.

5 How would I know?

6 Q But you were both arrested that night, weren't you, at
7 the same time?

8 A All I could say is I was arrested. Both of us was
9 taken down there. I don't know what happened when they,
10 when they separate us. And, like I said, they arrested me
11 and send me on down to the Department of Corrections.

12 Q Okay. And you understood that you were being charged
13 with armed robbery according to the indictment.

14 Is that right?

15 A Yes, ma'am.

16 Q Okay. In regards to the bailiff issue, they did have a
17 hearing where you said three or four bailiffs took the stand
18 and no one seemed to recall a conversation that your mother
19 had heard.

20 Is that right?

21 A Well, that's what they said but the actual bailiff life
22 that, that was back in the back-door, he, he, he was -- they
23 said he had left for the day and he would be questioned the
24 next day.

25 Q And---

Carnie Norris - Cross-examination
by Ms. White

1 A And that, and that would of been in front of the judge.
2 Not off in the room or in the hallway or something like that
3 because---

4 Q You---

5 A ---that was a part of a hearing.

6 Q Okay. And your attorney told you she talked with him.
7 Is that right?

8 A No. No.

9 Q Told the Court she talked with him?

10 A She told, she told the Court.

11 Q Okay. And you were present at that time, were you not?

12 A Yes, she said I hadn't spoken to my, my client's mother
13 yet --

14 Q Okay.

15 A -- you know, about the incident.

16 Q But you believe that, had they brought that bailiff in
17 to testify on the record, that his answers might of changed?

18 A well, if he said it, he might would of manned up and
19 said that he might of mentioned my name by me knowing it --
20 by him knowing me or whatnot. But, like I said, I never, I
21 never had a hearing on that.

22 Q Okay.

23 A It was never preserved or anything. That was, that was
24 a formal hearing and it should of, it should of been
25 preserved for an appeal.

Carnie Norris - Cross-examination
by Ms. White

1 Q Okay. Did you talk with your attorney about the
2 citizen's arrest defense and the fact that, for that to
3 actually qualify, there would of had to have been a
4 potential felony?

5 A Well, she, she never investigated whether or not
6 anybody had broken into the building or whatnot. Like I
7 said, these guys up on top of a building downtown.

8 Q But my question was did you discuss with her and did
9 she talk with you about the fact that, for there to be a
10 citizen's arrest, there would of had to been a felony?

11 A She never told me that. When I, when I talked to her,
12 I, I sent a couple letters to her telling her exactly what
13 happened, what I, what I perceived to be an attempt burglary
14 or whatnot. And then, when I did talk to her on the first
15 of July when I got there, she didn't want to hear that.

16 Q Okay.

17 A She said she going by what's, what's in the file,
18 what's in the solicitor's file.

19 Q And the witnesses that were present that said you held
20 the knife to them and robbed them, they testified that they
21 were playing ultimate frisbee, had lost a frisbee on top of
22 a building and were trying to climb a tree to get to it.

23 Is that right?

24 A That's, that's what they said. We never seen a frisbee
25 or none of that.

Carnie Norris - Cross-examination
by Ms. White

1 Q Okay. If you'll look at Page 282 for me, Lines 20
2 through 23. You cited this earlier as an example of witness
3 pitting.

4 Your attorney made an objection and the judge sustained
5 it, didn't she?

6 A Yeah, but I mean that's not being argumentative. I
7 mean it, it, it had been going on. She's gonna let, let it
8 keep going on. I mean that was real, real favoring right
9 there, what was said about the witness pitting.

10 Q But you---

11 A I mean it was, it was---

12 Q Do---

13 A I was, I was -- she should of objected then.

14 Q Okay. But you acknowledge that, at this point, the one
15 that you raised she did object and the judge sustained it?

16 A This, this is just one where she---

17 Q Yes.

18 A This is just one objection.

19 Q And then the other two -- the other two that you
20 mentioned on 303 and 310, those were in closing arguments.
21 The State was discussing credibility issues and who to
22 believe.

23 Is that right?

24 A On Page 303. Hold up. This was -- yes.

25 Q Okay. And 310 was the other reference you made I

Carnie Norris - Cross-examination
by Ms. White

1 believe. That was all during the solicitor's closing
2 argument where he is talking with the jury about credibility
3 and who you should believe.

4 Is that right?

5 A Right.

6 Q Okay.

7 A Right.

8 Q In regards to the posttrial motions, you testified
9 earlier that she didn't file those for you but then you said
10 that you were able to have a hearing before Judge Cole and
11 your appeal was held in abeyance?

12 A No. No, I didn't say that. I didn't say that. I said
13 I had a direct appeal that was held in abeyance pending my
14 posttrial motions.

15 Q Right.

16 A The, the Court of Appeals sent my case back down.

17 Q Right.

18 A I mailed it in. He denied it and sent it back to me.

19 Q Okay. And I---

20 A I, I never had a hearing.

21 Q You never had a hearing?

22 A Right.

23 Q But it was denied?

24 A Right.

25 Q Okay.

Carnie Norris - Cross-examination
by Ms. White

1 A It was denied because he said it was improperly filed.
2 It was not filed in a timely fashion.

3 Q Okay.

4 A But I did file it in a timely fashion because everybody
5 was served five days later. Even, even opposing counsel.

6 Q All right. So, the one that you did file under 59(e)
7 were both denied at the time your direct appeal was held in
8 abeyance.

9 Is that right?

10 A Yes, ma'am.

11 Q Okay. And Ms. Hudgins filed an Anders brief.

12 Did you -- did she talk with you about the fact that
13 that would allow the Court to look at any preserved issues?

14 A She didn't -- she sent -- the only thing she sent me,
15 she sent me a letter saying that whatever issues that are
16 raised before the Courts will be hers and hers alone.
17 That's what she said.

18 Q Okay. And---

19 A I have a, I have a letter to, to state that also.

20 Q And she did raise an issue on whether or not you should
21 of been allowed a jury instruction on the citizen's arrest.

22 Is that right?

23 A Yeah, that was, that was unpreserved though.

24 Q Okay.

25 A It was unpreserved.

Beverly Jones - Direct examination
by Ms. White

1 Q And you -- do you acknowledge that the copy of the
2 transcript that the Court we have in the record on appeal is
3 a complete copy with the even pages that you believed were
4 missing?

5 A Yeah. I believe -- well, I would assume you have a --
6 like y'all say, he have a complete copy. You say you have a
7 complete copy. The copy that she sent me was incomplete.

8 Q Okay.

9 A I did, I did an objection to the transcript. I sent it
10 to her and I sent it to the Court of Appeals because I
11 wanted a complete record for meaningful appellate review.

12 MS. WHITE: Okay. One moment please, Your Honor.

13 THE COURT: Yes, ma'am.

14 (Pause.)

15 MS. WHITE: Your Honor, I think that's all I have of
16 this witness.

17 THE COURT: All right. You may redirect.

18 MR. RUCKER: No redirect, Your Honor.

19 THE COURT: All right. Mr. Norris, you may step down.
20 Thank you, sir.

21 THE WITNESS: Thank you, Your Honor.

22 MR. RUCKER: And I need to briefly consult with my
23 client over one issue.

24 THE COURT: All right.

25 (Pause.)

Beverly Jones - Direct examination
by Ms. White

1 MR. RUCKER: That's our case, Your Honor.

2 THE COURT: All right. The State may proceed.

3 MS. WHITE: Thank you, Your Honor.

4 We'd call Beverly Jones to the stand.

5 THE COURT: Come forward, ma'am, to be sworn.

6 BEVERLY JONES, being first duly
7 sworn, testified as follows:

8 THE COURT: Have a seat please.

9 (Witness complies.)

10 THE COURT: State your name please.

11 THE WITNESS: My name is Beverly Jones.

12 THE COURT: Ms. White, you may proceed.

13 MS. WHITE: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MS. WHITE:

16 Q Ms. Jones, if you can, just start us off with a little
17 bit of history.

18 How long have you been practicing law at the time you
19 represented Mr. Norris?

20 A Well, I was admitted to the bar here in 1986. So, that
21 would of been 21 years, 22 years.

22 Q And, obviously, Mr. Norris has told us that you had
23 previously worked at the solicitor's office.

24 Can you give us a brief history of the, of the work you
25 had done?

Beverly Jones - Direct examination
by Ms. White

1 Had it been majority criminal or --?

2 A When I finished clerking for Judge McFadden from York
3 County, I went to work directly for Holman Gossett in 1988
4 and worked with Mr. Gossett from '88 to 2000 or 2001. When
5 Solicitor Gowdy was elected, I left the office and went to
6 run the Union County Solicitor's Office for Tommy Pope. And
7 so, my career has been exclusively criminal defense --
8 criminal work and now criminal defense with the Public
9 Defender's Office.

10 Q And when did you start at the Public Defender's Office
11 here in Spartanburg?

12 A In 2008.

13 Q Did you have a discussion with Mr. Norris about your
14 prior history with the Solicitor's Office?

15 Do you recall?

16 A I don't actually recall having a discussion but I will
17 say that, and I'm, I'm not even sure, I guess, from
18 listening to the testimony here -- the convictions he was
19 concerned about were in the mid 90s. By that point in time
20 in the Solicitor's Office I was exclusively prosecuting
21 violent crimes and, at that point -- well, the whole time I
22 had violent crimes it was divided alphabetically. I always
23 had A to L. I did not have M to Z, and absent something
24 unusual, I would of never had a case with someone's last
25 name as N as Mr. Norris.

Beverly Jones - Direct examination
by Ms. White

1 Go ahead.

2 Q I was just gonna say.

3 So, your, your recollection was you had never been
4 involved in any of his prior cases?

5 A That's correct.

6 Q Did you feel like you had any issue because of that
7 prior experience with representing him?

8 A No, I did not. I, I knew virtually nothing. I did
9 recognize his name but that was as much because he had been
10 a football star of some note in the community, and over the
11 course of being here for 20 years, I heard his name. But I
12 knew nothing about the facts and, quite honestly, had -- was
13 totally unaware that he'd ever even been charged with a
14 murder or whatever this very high profile murder he referred
15 to. I knew -- I had no recollection of that.

16 Q Tell me, since we're talking about conflict of
17 interest, he said Roger Poole in your office represented Mr.
18 Childs as well.

19 Does your office routinely represent codefendants.

20 How does that generally work?

21 A Well, when the cases first come in, generally not much
22 is known about them, but as soon as possible, our -- some of
23 our administrative personnel try to determine if there's a
24 clear obvious conflict such as a codefendant giving a
25 statement that is implicated and led to the arrest of

Beverly Jones - Direct examination
by Ms. White

1 another codefendant. Those, those are clear and those are
2 quickly conflicted out.

3 Now, there are notations made in various places that
4 other conflicts that, possible conflicts, might exist in any
5 codefendant case.

6 Well, when we begin to review the case, and look
7 through the information we receive, speak to the client or
8 have our interviewer speak to the client, we can determine
9 then if we think that is gonna be a problem in the future.

10 In our particular case, it became clear that these
11 individuals had no conflict with each other and their
12 stories are very consistent and were not at all inconsistent
13 and representing the two of them would not present any kind
14 of conflict problem for the office.

15 Q And on -- in regards to that as well, if there had been
16 an issue you think with the joint trials, would you have
17 made a motion to sever?

18 A Oh, definitely. Here there -- I determined that there
19 was no inconsistent defense and, in fact, a trial with Mr.
20 Childs, I felt, was definitely in Mr. Norris' benefit.

21 Q And tell us why.

22 A Well, because of the issue you touched on a moment ago
23 that any prior convictions of -- any prior convictions
24 Mr. Norris had, it could be impeached with and -- if he
25 chose to testify. And if there was another individual who

Beverly Jones - Direct examination
by Ms. White

1 could provide helpful testimony and thereby eliminate the
2 need from Mr. Norris' testimony, that would of been helpful
3 to him.

4 Q In regards to the prior convictions, he is alleged that
5 those were not proper for impeachment purposes because they
6 were in '95 and '96.

7 Do you recall the conversation about that and whether
8 or not those had extended past the ten year period?

9 A The, the, the rule is -- does preclude convictions
10 older than ten years, but in the subsection of the rule, it
11 specifically says, if the aggregate punishment extends into
12 the ten years, then they're eligible for impeachment and
13 that was the case with those.

14 Q And in regards to testifying, you were talking about
15 the fact that it would be beneficial if he could not
16 testify.

17 Did you have discussions with him about whether or not
18 he should testify?

19 A We did have discussions about that, and I was assured
20 very early on from Mr. Poole -- we had -- Mr. Poole and I
21 had a great deal of conversations as well. I never spoke to
22 Mr. Childs but I relied on Mr. Poole's recitation and
23 opinions and statements about what Mr. Childs' case would be
24 and his potential testimony. And I relayed that information
25 to Mr. Norris.

Beverly Jones - Direct examination
by Ms. White

1 There is a passage in the transcript. I don't know
2 that I fully explained what we had talked about in chambers,
3 but, at one point during around the time the Judge is gonna
4 colloquy both Mr. Childs and Mr. Norris about their
5 decisions to testify, I make reference to a chambers
6 conference that I had had with the judge. And I had asked
7 the judge -- well, quite honestly, we had, Mr. Poole and I,
8 had talked about having Mr. Childs' case go first and it
9 looked properly anyway because, alphabetically, he was
10 first.

11 So, after Mr. Childs testified and Mr. Worthy
12 testified, I asked the judge, in chambers, if I could have
13 another conference with Mr. Norris in an attempt to prevent
14 him from testifying or at least impose my recommendation
15 that he not testify. And that is made reference to in the,
16 the trial testimony.

17 Q And going back a little bit, Mr. Norris testified that
18 you met with him twice. Once 45 minutes and once 20 minutes
19 directly prior to trial.

20 Can you testify or give us your recollection of your
21 experience with either meeting with him or --?

22 A Well, let me go back and explain some of the context of
23 any communications we had. Mr. Norris was arrested the
24 eve -- on the eve of this event in July. Very quickly
25 thereafter, his -- he was on parole at the time. His parole

Beverly Jones - Direct examination
by Ms. White

1 was revoked and he was removed from our county jail to an
2 institute and I don't know which one he went to immediately.
3 At this point it's not really relevant but he was gone.

4 He received a letter from me or a couple of letters
5 from me where I sent him discovery. He was notified I was
6 his attorney and we corresponded. The first correspondence
7 I got back from him contained an attachment from the
8 discovery I had already sent him and he made reference to it
9 earlier about his NCIC. He said it was an -- four page
10 document.

11 It actually was an eight page attachment. The way it
12 was numbered, it was two sets of four. But it was eight
13 pages and he had scribbled on, written. He was very upset
14 about some of the notations on his NCIC and was telling me
15 they were inaccurate.

16 Then, I honestly don't recollect what response I sent
17 to him with regard to that. But then, thereafter, I believe
18 it was in December, he sent me a lengthy letter where he set
19 forth his full version of this event, and that of -- that
20 version remained consistent through every conference we had
21 once he arrived here in advance of the trial. It was also
22 consistent with how he testified.

23 I did have -- he remained in the Department of
24 Corrections up until two or three weeks before the scheduled
25 trial date in July and I had made arrangements for him to

Beverly Jones - Direct examination
by Ms. White

1 come back early so that we could meet.

2 Now, whether I met with him two, three, four, five
3 times, I can't tell you but I do know we had a full
4 exchange. At one point, one of the earliest meetings, when
5 he came back, he provided me several documents where he had
6 actually made a list of questions for several witnesses. He
7 gave me those. We discussed, you know, how relevant they
8 were, how useful, that type thing. We discussed the
9 subpoena of at least one witness. We discussed some other
10 issues with regard to subpoenas.

11 So, we did have full exchange and I felt like very
12 comfortable that I knew what his version of the events were.
13 We talked about testimony. We talked about the trial. I, I
14 didn't feel like there were any issues that we had not
15 covered.

16 Q So, and with your history, you did not feel concerned
17 that you needed additional time to meet with him or, before
18 the trial, you felt comfortable with the time and the
19 communication you had had?

20 A Oh, I did. Very much so.

21 Q Okay. In regards to the hand of one hand of all and
22 the issue that he's discussing where he's saying it was kind
23 of a conspiracy that was added on, do you remember how many
24 conversations you had with him about that or talking with
25 him about Mr. Childs being his codefendant and how that

Beverly Jones - Direct examination
by Ms. White

1 would work?

2 A Well, I know we discussed the fact that Mr. Childs was
3 also charged and that would be -- he would be tried together
4 because that fit -- dovetailed right into my discussions
5 with Mr. Poole about whether Mr. Childs would testify, what
6 he was going to say. So, we did have full discussions.

7 I'm sure we talked about the hand of one is the hand of
8 all because that was -- as the, as the statements went and
9 as the testimony developed, that was the theory under which
10 the State had, had charged Mr. Childs. There was no direct
11 testimony that, that Mr. Childs ever forcibly touched,
12 confined, used a weapon on or anything on Mr. Bond or any of
13 the other alleged victims or the group that was with
14 Mr. Bond.

15 Q And, in fact, was the testimony more directed, I guess,
16 at Mr. Norris as the person who committed the armed robbery?

17 A That's my recollection of it, yes.

18 Q Okay. And was there any information that you have
19 realized that you could of investigated in regards to, as he
20 testified, you know, prescription medication or, or the, the
21 thought that these people were trying to break-in to this
22 medical office other than his impression or his statement of
23 that?

24 A I don't know of anything. It was clear from, to me,
25 from reading the statements or the impression I had from the

Beverly Jones - Direct examination
by Ms. White

1 statements and certainly from the testimony was that these
2 folks were playing this game with the frisbee. It got
3 beyond the reach of, physically, beyond the reach of where
4 they intended it to and came into the Dean Street area.

5 Now, you know, going up on a roof is probably not smart
6 for a lot of reasons but I didn't, didn't -- don't perceive
7 there being any, any other evidence that there was anything
8 other than perhaps a trespass and a potential injury that
9 could of taken place if one -- if the one person, as I
10 understand it, that was up on the roof had fallen.

11 Q And you never received any kind of information that any
12 of those folks had any kind of prior arrests for
13 prescription drugs, theft, or a burglary, or anything?

14 A No, I was unaware of any of that.

15 Q Okay.

16 A These, these -- not that it -- would preclude them
17 having records, but the -- as I recollect them, they were --
18 well, maybe ranged from 17 -- 16, 17, on up to maybe 19. I
19 think at least one of them might of been in college and, as
20 I recollect it, the, the named victim, Mr. Bond, I don't
21 know that he even had a driver's license cause there was
22 some attempt to identify him using his Creek golf course
23 card or something that's inconsistent with having a real
24 driver's license.

25 Q Okay. Did he ever talk with you and ask you to get a

Beverly Jones - Direct examination
by Ms. White

1 continuance because Judge Cole was gonna be the judge?

2 A I don't remember having any discussion of that nature.

3 Q If there was a reason that you thought there was a
4 potential conflict, would you have asked for a continuance?

5 A Yes, I would of.

6 Q And you objected, obviously, at one point regarding
7 witness pitting and that was sustained.

8 would -- were there any concerns, during the closing
9 arguments, when Mr. Barnette was talking about credibility?
10 was there anything that you would of objected to during
11 that?

12 A Obviously not cause I didn't object to it.

13 Q So, had you seen something that concerned you or you
14 thought was outside of what was proper, you would of
15 objected to that?

16 A That's true.

17 Q What about the knife?

18 Was there anything that concerned you about the fact
19 that Mr. Bond testified that the police had shown him a
20 photo of the knife when he identified it?

21 A I don't recollect anything.

22 Q Okay. And, finally, in regards to his posttrial
23 motions, you filed a notice of appeal on his behalf.

24 Is that right?

25 A I did.

Beverly Jones - Direct examination
by Ms. White

1 Q Do you -- did you have a conversation with him
2 immediately following the conviction about posttrial
3 motions?

4 A Well, the conversation we had with regard to the notice
5 of intent to appeal and his desire for me to file it was had
6 before the jury even came back cause I recollect sitting --
7 where we were sitting in the courtroom where we had been in
8 our places for the trial. The jury was out. We were at a
9 break or something. I know the verdict had not yet been
10 received because that moves rather quickly and did move
11 quickly once the verdict came back.

12 But in a quiet time, when he and I were there, I said
13 something to the effect of I assume, if this doesn't go the
14 way you want it to or if you're convicted, something like
15 that, you want me to file a notice of intent to appeal and
16 he said yes, I do. And that was, that was the sum total of
17 our conversation. I didn't feel like I needed to explain to
18 him what it meant, and he did not ever ask me to file a
19 motion for new trial or sentence reduction --
20 reconsideration, excuse me, because at that point in time
21 and to this day, I would of had no basis to file that. I
22 did make a motion for new trial on the record, it's in the
23 transcript, after the verdict was rendered.

24 Q And that was -- you renewed those objections in regards
25 to the identification and the directed verdict motion?

Beverly Jones -- Cross-examination
by Mr. Rucker

1 A That's correct.

2 MS. WHITE: Okay. Thank you, Your Honor. That's all I
3 have at this time.

4 THE COURT: You may cross-examine.

5 MR. RUCKER: May it please the Court?

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. RUCKER:

9 Q Ms. Jones, I'm gonna talk specifically about what you
10 said first about the Rule, Rule 609 issues, prior
11 convictions.

12 Did you object -- just refresh my memory I guess.

13 Did you object under the 403 standard though these are
14 similar crimes and this was unduly prejudicial because of
15 that?

16 A I assume you are referring to the prior conviction for
17 robbery, not burglary, cause that would not have been---

18 Q Yes, ma'am, I apologize, yes, ma'am.

19 A No, I did not.

20 Q Okay. Do you think that could of effected the jury's
21 decision of whether there was a citizen's arrest or not in
22 this case?

23 A I don't think so.

24 Q Okay. If you would of had the prior conviction
25 excluded, wouldn't you be in a situation where it was

Beverly Jones -- Cross-examination
by Mr. Rucker

1 Mr. Norris' statements and Mr. Childs' statements and
2 testimony versus the witnesses that were out there?

3 I mean -- I'm sorry.

4 A That is how it was.

5 How is that different from how the trial played out?

6 Q What I'm asking is would it effected -- would
7 credibility have been an issue as much had those convictions
8 or that conviction specifically not come in?

9 A Well, he still had a burglary conviction. So, there
10 was still gonna be some impeachment anyway.

11 Q Right.

12 Did you explore fully with him the citizen's arrest
13 issue as far as the felony versus misdemeanor issue?

14 A I don't know if we had a discussion about that.

15 Q Okay. And was -- are -- was it your testimony that you
16 did not go forward with that because you believed there was
17 no proof of a felony and, therefore, you could not go for a
18 citizen's arrest---

19 A That is---

20 Q ---charge?

21 A That is true.

22 Q Okay. Did you consider that, since they were on that
23 building though, you could of at least brought up some doubt
24 in the minds of the jury that they could have been
25 committing the burglary and they, in fact, were covering

Beverly Jones -- Cross-examination
by Mr. Rucker

1 themselves when the police were called?

2 A I do believe, in my argument to the jury, that I did
3 ask the jury to step into the shoes of Mr. Norris and Mr.
4 Childs, and I, and I attempted somewhat, although I
5 shouldn't admit that I was playing on the sympathies, but
6 that the -- they were members of that community and these
7 were, these -- the mission and the St. Luke's offered
8 services to their community and they were concerned by what
9 they observed. So, I did utilize that in closing.

10 Q Okay. What's the nature of that neighborhood?

11 Is it safe?

12 Is it dangerous, just generally?

13 A Well, in the -- well, it's in a unique situation
14 because the vast majority of that strip, I may -- that may
15 be an overstatement. One side of the road is owned almost
16 exclusively by First Baptist Church. At that time, the
17 opposite side of the street, there were a few rental kind of
18 duplex little houses such as the one that Mr. Childs was
19 staying in. It did have a reputation for being kind of
20 seedy after dark.

21 Q Would that have been known to the alleged victim and,
22 and the other people involved from the prosecution side?

23 A I can't answer that. You're asking me to speculate.

24 Q Well, I'm asking did you ask them if they knew about
25 the nature of the neighborhood?

Beverly Jones -- Cross-examination
by Mr. Rucker

1 A I did. I believe I did.

2 Q Okay.

3 A It, it was -- it is a situation that, during the day,
4 that area is overrun with people from First Baptist cause
5 it's such a big, populous, very involved, very organized
6 church and there's all kinds of activities including one of
7 their main parking lots is just on the opposite side of the
8 street from where this occurred. But after dark, on most
9 nights of the week, the church has limited activity there.

10 So, it becomes less safe.

11 Q Okay. What time did this crime occur?

12 A Midnight.

13 Q Okay.

14 A 11:30 to midnight.

15 Q What day of the week was it?

16 A I didn't look that up but I'm thinking it was -- well,
17 it was summertime. So, I don't know the day of the week.
18 It wasn't Wednesday, if that's what you're asking, cause it
19 would of been probably more likely teaming with church folks
20 on a Wednesday.

21 Q Okay. But it occurred at mid -- they were out playing
22 frisbee golf, according to their testimony, nearing
23 midnight---

24 A Correct.

25 Q ---at night?

1 Okay.

2 (Pause.)

3 MR. RUCKER: Your Honor, I have no more questions.

4 THE COURT: Redirect?

5 MS. WHITE: Nothing further, Your Honor.

6 THE COURT: You may step down. Thank you very much.

7 MS. WHITE: And, Your Honor, the State has no other
8 witnesses.

9 THE COURT: All right. Petitioner wish to call anyone
10 in reply or rebuttal?

11 MR. RUCKER: No, sir.

12 THE COURT: All right. I'll hear from counsel in
13 argument.

14 MR. RUCKER: Well, Your Honor, shall I go first?

15 THE COURT: You're the moving party.

16 MR. RUCKER: Yes, sir, I understand.

17 What we are arguing is, here, they're a variety of
18 technical legal arguments Mr. Norris is arguing but, I
19 think, more than anything, we're arguing that this is a
20 credibility issue that should of been addressed more fully
21 by counsel with excluding at least one of the prior
22 convictions. At least attempting to exclude that
23 conviction, not bringing it up, and making this a case where
24 the jury is looking at people on nearly equal footing and
25 making a determination.

1 We -- it's our argument that the, the witnesses were
2 not properly cross-examined. They're out playing frisbee
3 golf in the middle of the night in a dangerous situation.
4 They are kids but that, that should of been combined with
5 the citizen's arrest charge, that they could of been in the
6 act of committing a burglary, and that could of been
7 directly an attack on cross-examination.

8 That -- we have evidence my client provided regarding
9 conflict of interest with the prior employment relationship
10 and Ms. Jones' relationship with, professional relationship,
11 with Mr. Poole. It was our belief that it could of been --
12 the trial could of been severed and a different outcome
13 could of happened from that, and basically -- I'm just
14 basically walking back through what Mr. Norris said.

15 So, that is -- our argument chiefly is the 403 analysis
16 was not done and no objection was made, and I think there's
17 a strong likelihood that that evidence would of been
18 excluded but for that failure, and the other arguments that
19 Mr. Norris has made, we fall in line with those.

20 THE COURT: Thank you, sir.

21 I'll hear from the State.

22 MS. WHITE: Thank you, Your Honor.

23 In this matter, I don't think that the Applicant has
24 proven that the outcome of the trial would have changed.

25 In this situation, there were three witnesses who

1 identified him as the man that held a knife to the main
2 victim, Mr. Bond, in this matter, requested his cards.
3 Mr. Bond and the other witnesses, they were able to point
4 out Mr. Norris and Mr. Childs across the street at which
5 time they were searched and the cards, credit cards, debit
6 cards, and other things were found on them along with as --
7 a knife was found as Mr. Norris mentioned.

8 So, at this point, I believe that the evidence is
9 overwhelming and that no outcome -- the, the outcome would
10 not have changed had there been any objection to the 403
11 analysis having to do with that one prior conviction knowing
12 that the others would also come in as well as the other
13 things that he has raised. We think all of it was
14 reasonable trial strategy and objectionably reasonable by
15 Ms. Jones.

16 Thank you.

17 THE COURT: I have not read the transcript but the, the
18 prior convictions were objected to, is that correct---

19 MS. WHITE: There was a---

20 THE COURT: ---and the Court made a ruling?

21 MS. WHITE: There was a discussion, Your Honor, about
22 what would be---

23 THE COURT: So, I'm trying to find out that the issue
24 was that it didn't go on to a 403 analysis.

25 MS. WHITE: I was gonna say they did discuss whether or

1 not what convictions would be allowed for each and which
2 ones would be impeachable---

3 THE COURT: And did the Court---

4 MS. WHITE: ---when the---

5 THE COURT: Did the Court state that that's what would
6 happen?

7 MS. WHITE: Yes, Your Honor.

8 THE COURT: Can you give me a---

9 MS. WHITE: And I believe that---

10 THE COURT: Can you give me a transcript reference on
11 that?

12 MS. WHITE: Yes, I am looking through right here. It's
13 Page 224 is where it begins, Your Honor.

14 THE COURT: Uh-huh. (Affirmative).

15 MS. WHITE: Mr. Barnette begins talking about Mr.
16 Childs.

17 226, at the top is where he says as for Mr. Norris,
18 he's been, in the last ten years, found guilty of common law
19 robbery as well as burglary second. I'll be asking him
20 about his crimes. Wanted to make sure that was part of the
21 record.

22 THE COURT: So, it was a common law robbery, not an
23 armed robbery?

24 MS. WHITE: Yes, Your Honor.

25 THE COURT: Okay. Strong armed.

1 MS. WHITE: And then they do kind of go through and,
2 and discuss what having to do with, you know, and Ms. Jones
3 says that she had spoken with Mr. Barnette. He had provided
4 documentation and then she said, to clarify for the court,
5 these would be the only ones that were qualifiable and
6 impeachable. And I think he's referencing on 228 a comment
7 that she made on Line 7 through 8 where she says and that
8 would be '96 common law, '95 burglary second nonviolent, and
9 I think there appears to be some maybe where they were
10 overtalking and Mr. Barnette was saying I can't ask about
11 anything else and she's repeating what's gonna be allowed.
12 So, that would be our argument.

13 THE COURT: Now, now, did Childs have any prior
14 convictions?

15 MS. WHITE: Yes, Your Honor. He also had CDV third
16 that they were only allowed to ask I think about CDV and
17 shoplifting.

18 THE COURT: Okay. Anything in response to my questions
19 that would be different from what the State just told me?

20 MR. RUCKER: No, sir. Well, we, we, we believe that
21 the issue was not properly preserved, that the -- while we
22 acknowledge that there's a prior, these two prior
23 convictions exist, we don't believe that it was properly
24 addressed by the Court and it's argued that the lawyer just
25 went on what she assumed would happen with the Court rather

1 than what was specifically said by the Court.

2 THE COURT: So, you're not---

3 MR. RUCKER: And then we, then we---

4 THE COURT: You're not sure a ruling took place?

5 MR. RUCKER: I am, I am not. And then we go to, if
6 there was a ruling, we go to our 403 analysis, which was not
7 objected to or brought up.

8 THE COURT: Okay. I think I understand everybody's
9 position.

10 All right. I'll take the matter under advisement.

11 Thank you very much.

12 MR. RUCKER: Thank you, Your Honor.

13 MS. WHITE: Thank you, Your Honor.

14

15

16 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 15th day of September, 2014.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 22nd, 2017



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Carnie Norris, #227226,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2012-CP-42-4651

MEMORANDUM OF
LAW

The Respondent, in response to this Court's request for a memorandum of law concerning issues in Applicant's post-conviction relief application (PCR) filed November 7, 2012, would respectfully show this Court:

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted at the September 2008 term of the Court of General Sessions for Spartanburg County for armed robbery (2008-GS-42-5631). He was represented by Beverly Jones, Esquire. On July 6-7, 2009, the Applicant proceeded to trial after which he was found guilty as indicted. He was sentenced by the Honorable J. Derham Cole, to confinement for a period of twenty-eight (28) years.

A timely Notice of Appeal was filed on the Applicant's behalf and an appeal was perfected. Following the submission of a brief pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals dismissed the appeal. State v. Norris, No. 2012-UP-226 (filed April 18, 2012). The Remittitur was issued on June 19, 2012.

Following testimony at the PCR hearing, this Court requested memoranda regarding whether Applicant's prior convictions for burglary second and common law robbery should have been allowed to be used by the State for impeachment purposes and whether such a mistake would constitute harmless error.

DISCUSSION

Impeachment value of prior convictions

Prior to Applicant's trial testimony, the Solicitor indicated that he planned on impeaching Applicant with prior convictions for common law robbery and burglary – 2nd degree. (ROA p. 226). Counsel stated on the record that the Solicitor had provided her with documentation of those prior convictions and referenced a 1996 common law robbery and 1995 burglary – 2nd degree. (ROA p. 227-8). On direct, Counsel preemptively asked Applicant about both charges, pointing out that the charges were from 1995. (ROA p. 267). Additionally, Counsel pointed out that the Applicant was suffering from a drug problem at the time of the charge and had admitted his involvement in both. (ROA p. 267). On cross examination, the Solicitor asked Applicant if he'd "done robbery before," and if he'd "broke[n] into buildings before." (ROA p. 283). In response, Applicant stated that those incidents were from the past and he hoped the past would not harm him. (ROA p. 283).

Rule 609(b), SCRE, establishes that prior convictions are not admissible "if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date." Although the conviction dates are past the ten year mark, Respondent submits that because of Applicant's release on parole in 2004 and subsequent probation and parole revocations, Applicant had not yet

been released from confinement imposed for either conviction¹. Therefore, the crimes were not too remote in time and eligible for use in impeaching Applicant, but would fall within the requirements of 609(a), SCRE.

However, 609(a) requires that there be a finding by the court that the probative value of admitting the evidence of the prior convictions outweighs the prejudicial effect to the defendant. S.C.R.Evid. 609(a). There are five factors that should be considered by the trial judge in making the decision to admit prior convictions for impeachment purposes: "(1) the impeachment value of the prior crime; (2) the point in time of the conviction and the witness's subsequent history; (3) the similarity of the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the credibility issue." State v. Johnson, 363 S.C. 53, 609 S.E.2d 520 (2005).

As the record reflects, the court failed to make a finding on the record as to the probative versus prejudicial value of the prior convictions and there was no objection to the introduction of the prior convictions lodged. (ROA p. 226-8). However, even if this Court finds that Counsel was deficient for failing to object to the use of those prior convictions, Respondent submits that the Applicant failed to meet his burden of proof as to prejudice.

Harmless Error Analysis

When an ineffectiveness claim is presented the defendant must show that counsel's representation was deficient. Deficient representation amounts to conduct that is not objectively reasonable under the circumstances. Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052 (1984). In addition, the Applicant must show prejudice by establishing that the outcome

¹ See Applicant's SCDC records. The 1995 sentence for burglary – 2nd degree was 15 years and 1996 sentence for common law robbery was suspended to nine years plus five years of probation; however the sentence was ordered to run consecutive to the prior sentences. Applicant was released on parole in 2004, but then returned to confinement based upon the parole/probation revocation in 2008 following his arrest on the present charges.

would have been different but for counsel's deficient performance. Strickland, 466 U.S. at 694. (emphasis added). Similarly, if the appellate court finds an error could not reasonably have affected the result of the trial, then it is deemed harmless. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985).

Respondent submits that the Applicant failed to meet his burden of proof of establishing that the alleged deficient conduct of Counsel affected the outcome of his trial. Respondent also submits that Applicant was not prejudiced by any alleged deficient performance because of the overwhelming evidence against him.

Victim Andrew Bond testified that he was pushed to the ground by a man from behind who asked Bond for his ID and told Bond that he was under arrest. (ROA p. 115). Bond testified that the man reached in to take Bond's wallet and start looking through it. Bond identified the man as Applicant. (ROA p. 115). Bond testified that when he asked to see Applicant's badge, Applicant pulled a knife out and held it to Bond's throat. Bond identified the knife that was found on Applicant. (ROA p. 116; p. 123). Bond testified that as the incident went on, Bond tried to get up, but Applicant put the knife to Bond's throat and threatened to kill Bond if he tried to get away. (ROA p. 117). Once the co-defendant arrived on the scene and began rifling through Bond's wallet, Bond testified that Applicant continued to tell him to stay down and not move or Applicant would kill him. (ROA p. 119). Bond testified that once his friends began to pull up in their cars and the first police officers arrived, Applicant and his co-defendant handed Bond his empty wallet and cell phone before walking across the street. (ROA p. 120).

Herbert Blankenship, a witness, also testified that he saw Applicant grab Bond, put him on the ground, announce he was a security officer and pull out a knife. (ROA p. 145).

Blankenship testified that as they approached Applicant and Bond, Applicant pulled the knife out and pointed it at the others and told them to get on the ground. (ROA p. 146, p. 147). Blankenship identified Applicant as the man who held the knife on Bond and the other witnesses. (ROA p. 146). Once Blankenship and the others had security call the police, he testified that he drove over to the scene and directed his headlights at the area where Applicant had Bond on the ground. (ROA p. 148). Blankenship also identified the knife found on Applicant. (App. p. 149; p. 161).

Another witness, Daniel Mayfield, testified that he saw Bond approached by Applicant, put on the ground, and his wallet removed. (ROA p. 170). Mayfield testified that as he and the others approached Bond and Applicant, Applicant pointed a knife towards the group and told them to get on the ground. (ROA p. 170). Mayfield identified the knife found on Applicant. (ROA p. 170). Mayfield also testified that the Applicant identified himself as a security guard before removing Bond's wallet from his pocket and rifling through it. (ROA p. 175-6; p. 183-4).

Officer Brad James testified that as he arrived on the scene after receiving a dispatch, he saw two black males standing and a white male lying on the ground. (ROA p. 187). James testified that the white male told him the black males were robbing him. (ROA p. 188). James, after receiving consent from Applicant, searched Applicant and found a black-handled kitchen knife. (ROA p. 190). The co-defendant turned over several cards that had been retrieved from Bond's wallet. (ROA p. 190). James testified that he received a call about a disturbance with weapons, which is what he was looking for when he arrived on the scene, not anything related to a break-in as Applicant suggests. (ROA p. 193; p. 205, p. 209).

Officer John Guest also testified that they received two calls regarding a disturbance with weapons, which they found out later were from the Hangar security guard and one of Bond's

friends. (ROA p. 210). Guest testified that the co-defendant handed over several of Bond's cards from the wallet after being asked by Guest. (ROA p. 212). Guest also saw James recover the black kitchen knife from Applicant. (ROA p. 212). Guest testified that Bond identified the knife as the one used in the robbery. (ROA p. 213). Guest confirmed that dispatch never received a call in regards to a break-in in that area. (ROA p. 213).

Alternatively, both the Applicant and co-defendant acknowledge going over to the group and rifling through Bond's cards from his wallet. However, both deny a knife being used or present. (ROA p. 258; p. 279). The testimony is not credible when contrasted with the testimony of three witnesses who saw the knife and could identify it and the police officers who testified they responded to a report of a disturbance involving someone being held at knifepoint. Further, the knife was found on the Applicant. The witnesses had no way of knowing that the Applicant had a knife on him at the time of the 911 calls if they had not seen the knife being held at the neck of their friend, Bond.

Even if this Court found that there was deficient conduct on behalf of Counsel, Respondent submits that because of the overwhelming evidence of guilt, there was no prejudice. "[N]o prejudice occurs, despite trial counsel's deficient performance, where there is otherwise overwhelming evidence of the defendant's guilt. Smith v. State, 386 S.C. 562, 566, 689 S.E.2d 629, 631 (2010) (citing Rosemond v. Catoe, 383 S.C. 320, 325, 680 S.E.2d 5, 8 (2009)).

CONCLUSION

WHEREFORE, the Respondent respectfully requests the court to deny Applicant's claim of ineffective assistance of counsel for failure to object to the use of the prior convictions for impeachment purposes and dismiss the post-conviction relief application.

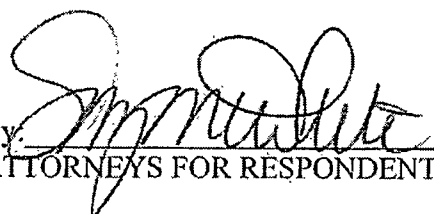
Respectfully submitted,

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October 13, 2014

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT FOR THE
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	C/A#: 2012-CP-42-4651
Carnie Norris	)	
	)	
Plaintiff,	)	
	)	
	)	BRIEF
v.	)	
	)	
State of South Carolina	)	
	)	
	)	
Defendant.	)	
_____	)	

INTRODUCTION

The attorneys for the parties in this matter have been asked by the Court to brief two issues regarding the Petitioner's Application for Post Conviction Relief and the Return of the State to the Application after a hearing. Specifically, the parties have been asked to brief the issue of whether the Applicant's prior convictions for burglary second and common law robbery should have been allowed to be used by the State for impeachment purposes. Additionally, the Court asked the attorneys to brief whether the inclusion of this evidence, if erroneous, would constitute harmless error.

FACTS

The Petitioner was tried in the Spartanburg Court of General Sessions for armed robbery. Two opposing versions of the event that gave rise to the trial were given by the State and by the Petitioner and his codefendant. At the close of the Prosecution case, The Petitioner was called to

testify by his trial counsel. The credibility of the Petitioner was crucial to supporting his version of events. The State announced before the defense case that it planned on using two prior convictions against the Petitioner. Both of those convictions occurred ten years before the Petitioner's trial, and both convictions were similar to the alleged crime for which the Petitioner was being tried. The Petitioner's trial counsel failed to attack these convictions.

ISSUES

1.) SHOULD HAVE THE STATE BEEN ALLOWED TO USE THE PETITIONER'S PRIOR CONVICTIONS

The admission of prior convictions to impeach testifying witnesses, including defendants, is governed by South Carolina Rules of Evidence, Rule 609 (hereinafter Rule 609) and case law, most notably State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (S.C. 2000). Rule 609 provides, in pertinent part, as follows:

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and (2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment. For the purposes of this rule, a

conviction includes a conviction resulting from a trial or any type of plea, including a plea of nolo contendere or a plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970).

(b) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

Rule 609(b) establishes a presumption against admissibility of remote convictions, and the State bears the burden of establishing facts and circumstances sufficient to substantially overcome that presumption. In determining whether the probative value of a prior conviction outweighs its prejudicial effect, South Carolina courts now apply the following factors: 1. The impeachment value of the prior crime; 2. The point in time of the conviction and the witness's subsequent history; 3. The similarity between the past crime and the charged crime; 4. The importance of the defendant's testimony; 5. The centrality of the credibility issue. These factors

are not exclusive; trial courts should exercise their discretion in light of the facts and circumstances of each particular case. State v. Colf 337 S.C. 622, 525 S.E.2d 246 (2000).

The standard in Rule 609(b) pertaining to remote convictions is higher than the standard of Rule 609(a)(1), by which certain convictions that are not more than ten years old are admissible if their probative value "simply outweighs", rather than "substantially outweighs" their prejudicial effect. Compare Rule 609(a)(1) with Rule 609(b); see also United States v. Cavender, 578 F.2d 528, 531 (4th Cir.1978) (observing this distinction). As is stated in the Senate Report on the Rules of Evidence, "It is intended that convictions over 10 years old will be admitted very rarely and only in exceptional circumstances." State v. Black 400 S.C. 10, 732 S.E.2d 880 (S.C. 2012). The balancing test required by Rule 609(b) must be conducted by the trial court. State v. Colf 337 S.C. 622, 525 S.E.2d 246 (2000).

2.) WAS THE ADMISSION OF THE PRIOR CONVICTIONS HARMLESS ERROR?

To constitute error, a ruling to admit or exclude evidence must affect a substantial right. Rule 103(a), SCRE. An error is harmless if the defendant's guilt has been conclusively proven by competent evidence, such that no other result could have been reached. The circumstances of each individual case are to be considered. In addition, the error is harmless if the error could not have reasonably affected the outcome of the trial. State v. Johnson 363 S.C. 53, 609 S.E.2d 520 (S.C. 2005).

" In determining harmless error regarding any issue of witness credibility, we will consider the importance of the witness's testimony to the prosecution's case, whether the witness's testimony was cumulative, whether other evidence corroborates or contradicts the witness's testimony, the extent of cross-examination otherwise permitted, and the overall strength

of the State's case." State v. Fossick, 333 S.C. 66, 70, 508 S.E.2d 32, 34 (1998); see also State v. Mizzell, 349 S.C. 326, 333, 563 S.E.2d 315, 318 (2002) (listing these factors for assessing harmless error, as taken from Delaware v. Van Arsdall, 475 U.S. 673, 684, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)).

Van Arsdall involved a Confrontation Clause violation caused by the erroneous exclusion of evidence of a prosecution witness's bias. In State v. Holmes, this Court specifically adopted the factors articulated in Van Arsdall for assessing harmless error and held these factors shall likewise apply for any error concerning witness credibility. "" State v. Holmes 320 S.C. 259, 464 S.E.2d 334, 337 (1995) " The harmless error ruling in Van Arsdall dealt specifically with witness bias, but the South Carolina Supreme Court ruled that the Van Arsdall factors apply with equal force in determining a harmless error violation relating to any issue of witness credibility." State v. Black 400 S.C. 10, 732 S.E.2d 880 (S.C. 2012)

South Carolina courts have made clear that the introduction of similar crimes under circumstances similar to this case is error. The South Carolina Supreme Court has ruled that trial counsel was ineffective for failing to argue the prejudicial effect of admitting respondent's prior convictions outweighed their probative value under Rule 609(a)(1). In Green v. State, the South Carolina Supreme Court ruled that the admission of a two prior convictions for possession of crack cocaine and cocaine was unduly prejudicial to a defendant in a crack distribution trial. The Court ruled that trial counsel's failure to argue the prejudicial effect of the convictions outweighed their probative value made the performance of the trial counsel constitutionally ineffective. Respondent was impeached with evidence of two convictions for possession of cocaine that were four and five years old. The Court held that as the jury had to choose between his version of events and that of the SLED agents and therefore credibility was crucial. The

Court rules that the jury could hardly avoid drawing the inference that the past conviction suggests some probability that defendant committed the similar offense for which he is currently charged. Green v. State 338 S.C. 428, 527 S.E.2d 98 (S.C. 2000)

ARGUMENT

The Petitioner's trial counsel failed to attack the use of the use of the two prior convictions. She specifically failed to ask the trial judge to rule regarding the remoteness of the convictions and failed to ask the trial judge to determine whether the probative value of the convictions supported by specific facts and circumstances substantially outweighs its prejudicial effect. Moreover, trial counsel asked the Petitioner about those convictions during his direct examination.

Trial counsel knew of the remoteness of the convictions, as evidenced in the record, and knew of the damaging nature of the use of those convictions. The State culminated its cross examination of the Petitioner by using the prior convictions as propensity evidence rather than to attack credibility. The convictions were used not simply to impeach the credibility of the Petitioner, but even if this Court rules that the convictions were entered solely to impeach the credibility of the Petitioner, they should not have been admitted and under South Carolina law, would not have been admitted had trial counsel acted effectively. In this case, the jury was presented with two opposing views, one from the State and one from the Petitioner and his co-counsel. Green v. State is controlling, and the Petitioner is entitled to a new trial. In this case, as in Green v. State, the jury could hardly avoid drawing the inference that the past conviction

suggests some probability that defendant committed the similar offense for which he is currently charged, and not that the Petitioner was merely untruthful.

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Carnie Norris, Inmate Number #227226,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2012-CP-42-4651

**ORDER GRANTING
POST CONVICTION RELIEF**

M. HOPE BLACKLEY

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SPARTANBURG COUNTY

This matter came before the Court by way of an Application for Post-Conviction Relief (PCR) filed November 7, 2012. Applicant also has filed three amendments to the original application; two of the amendments were filed *pro se* before he was appointed counsel and one was filed subsequent to the appointment of counsel. The Respondent made its Return on February 14, 2014. An evidentiary hearing was held on September 15, 2014 at the Spartanburg County Courthouse. The Application was present at the hearing and was represented by Brandt Rucker, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial attorney, Beverly Jones, Esquire. The Court also had before it the trial transcript, the relevant records of the Spartanburg County Clerk of Court, the PCR application and amendments, the return of the State of South Carolina, the exhibits of the Applicant, and the appellate records.

PROCEDURAL HISTORY

The Applicant is currently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. The Applicant was indicted at the at the September 2008 term of the Court of General Sessions for Spartanburg County for armed robbery (2008-GS-42-5631). He was represented by Beverly Jones, Esquire. The Applicant and a Co-defendant were tried before a jury on July 6th and 7th and the trial was presided over by the Honorable J. Derham Cole. The Applicant and the Co-defendant were found guilty of armed robbery. Judge Cole sentenced the Applicant to confinement in the South Carolina Department of Corrections for a term of twenty eight (28) years.

The Applicant filed a timely Notice of Appeal and the appeal was perfected. Appellate Counsel filed an Anders v. California, 386 U.S. 738 (1967), and after review, the South Carolina Court of Appeals dismissed the appeal. State v. Norris, No. 2012-UP-226 (filed April 18, 2012). The Remittitur was issued on June 19, 2012. This Application for Post Conviction relief was filed timely. The Applicant raised numerous claims for Ineffective Assistance of Counsel through his application and amendments.

ALLEGATIONS

The Applicant alleged through his application and amendments the following ineffective assistance of counsel claims:

1. Ineffective assistance of counsel, in that:
 - a. Counsel failed to put the state's case through adversarial testing,
 - b. Counsel labored under a conflict of interest,
 - c. Counsel failed to challenge the outside influence by the bailiff,



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 M. HOPE BLACKLEY

- d. Counsel abandoned her professional duties of loyalties to the applicant,
- e. Counsel failed to motion for arrest of judgment,
- f. Counsel failed to object to trial court's erroneous jury charge and supplemental jury charge,
- g. Counsel agreed to trial court's response to the jury's inquiry,
- h. Counsel failed to object to trial court's burden shifting instructions,
- i. Counsel failed to object Applicant's Due Process rights being violated,
- j. Counsel failed to object to reasonable doubt charge,
- k. Counsel failed to object to trial court's constructive amendment of the indictment,
- l. Counsel failed to object to the material variance in indictment due process,
- m. "Due process verdict"
- n. Counsel partially argued to the jury a theory without any evidence to support it with all evidence clearly contrary to that theory,
- o. Counsel failed to request/propose a jury instruction on the theory of defense,
- p. Counsel allowed the alleged co-defendant's counsel to deprive the applicant of a fair trial,
- q. Counsel failed to object to solicitor's argument, pitting, vouching, blistering,

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