

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

May 11 2023

S.C. SUPREME COURT

—————
Certiorari to Richland County

Honorable Maite Murphy, Circuit Court Judge
—————

MICHAEL T. QUARLES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001534
—————

APPENDIX
—————

SARAH E. SHIPE
Appellate Defender

ALAN WILSON
Attorney General

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

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

TRANSCRIPT OF TRIAL HELD MAY 14-15, 2013 1

APPLICATION FOR POST-CONVICTION RELIEF 248

STATE’S RETURN..... 254

AMENDED APPLICATION FOR POST-CONVICTION RELIEF 259

TRANSCRIPT OF EVIDENTIARY HEARING HELD MAY 25, 2016 260

ORDER GRANTING POST-CONVICTION RELIEF..... 307

MOTION TO RECONSIDER 313

RETURN TO MOTION TO RECONSIDER..... 316

TRANSCRIPT OF HEARING ON STATE’S MOTION TO RECONSIDER HELD MAY 24,
2017..... 318

AMENDED ORDER 325

TRANSCRIPT OF RESENTENCING HEARING HELD MARCH 2, 2018 332

SENTENCE SHEETS 349

APPLICATION FOR POST-CONVICTION RELIEF FILED JUNE 10, 2020..... 351

STATE’S RETURN..... 357

TRANSCRIPT OF EVIDENTIARY HEARING HELD MAY 26, 2022 373

ORDER OF DISMISSAL..... 382

INDICTMENTS 388

SENTENCE SHEETS 392

1 STATE OF SOUTH CAROLINA
2 COUNTY OF AIKEN

IN THE COURT OF
GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA)

5 State,)
-vs-)

TRANSCRIPT OF RECORD

6 MICHAEL T. QUARLES)

13-GS-02-760, 761

7 Defendant.)
8
9

10 May 14-15, 2013
11 Aiken, South Carolina

12
13 B E F O R E :

14 HONORABLE THE HONORABLE DOYET A. EARLY, III, Judge.
15

16 A P P E A R A N C E S :

17 Nicholas R. McCarley, Asst. Solicitor
18 Kevin Malony, Asst. Solicitor
Attorneys for the State
19

20 Michael Chesser, Esquire
Attorney for the Defendant
21

22 Lisa H. Davenport, RPR
Official Court Reporter
23

24 Transcribed by
Dinah M. Garvin
Official Court Reporter
25

INDEX

1		
2	Opening Statement by Mr. Molony	65
3	Opening Statement by Mr. Chesser	68
4	Closing Statement by Mr. Chesser . . . . .	.214
5	Closing Statement by Mr. Molony . . . . .	.219
6	Jury Charge . . . . .	.227
7	Sentence of the Court . . . . .	.240
8	Certificate . . . . .	.246

INDEX OF WITNESSES

9		
10	<u>WITNESSES:</u>	<u>PAGE</u>
11	DAVID E. SAVAGE	
12	Direct By Mr. Mccarley	36
13	PENNY GUERRIARE	
14	Direct By Mr. Molony	41
15	Cross By Mr. Chesser	44
16	DAVID SAVAGE	
17	Direct By Mr. Molony	45
18	Cross By Mr. Chesser	47
19	PENNY GUERRIARI	
20	Direct By Mr. Molony	71
21	Cross By Mr. Chesser	88
22	Redirect By Mr. Molony	91
23	WAYNE BRINEGAR	
24	Direct By Mr. Mccarley	92
25	SHELIA FULMER	

1 Direct By Mr. Molony 97

2 Cross By Mr. Chesser 105

3 Redirect By Mr. Molony 107

4 KATHY HOLSENBACK

5 Direct By Mr. Mccarley 108

6 CARLOS D. WILLIAMS

7 Direct By Mr. Molony 117

8 Direct By Mr. Molony 156

9 Cross By Mr. Chesser 160

10 Redirect By Mr. Molony 172

11 DAVID E. SAVAGE

12 Direct By Mr. Mccarley 173

13 Cross By Mr. Chesser 183

14 Redirect By Mr. Mccarley 187

15 MICHAEL QUARLES

16 Examination By The Court 188

17 MICHAEL QUARLES

18 Direct By Mr. Chesser 193

19 Cross By Mr. Molony 199

20 STATE'S EXHIBITS

21	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
22	1	Picture of Quick Cash		73
23	2	Ariel photo		73
24	3	CD-Aiken Public Safety		81
25	4	Photograph		154

1	5-7	photographs	82
2	8	Second 9-1-1 CD	84
3	10, 11	Photo's of Victim	85
4	12	Photo Line Up	87
5	13	Photograph	103.
6	14	Photograph	109
7	15	Photograph	112
8	16	CD	113
9	17	Photograph	122
10	18	Photograph	127
11	19, 20	Photographs	132
12	21	White Sweat Shirt	135
13	22-23	Photographs	143
14	24	Photograph	139
15	26	Miranda Waiver Form	39
16	26	Miranda Form	178

DEFENDANT'S EXHIBITS

18	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
19	1	CD		185

20

21

22

23

24

25

Qualifying of the Jury

5

1 Tuesday May 14, 2013. Aiken County General Sessions.

2 THE COURT: Please listen as I call -- read out these
3 questions. If any of them apply to you, please stand and
4 respond. Do I have any member of the jury panel who is
5 not a citizen of the United States? Please stand. Do I
6 have any member of the jury panel who is not a citizen and
7 resident of Aiken County, South Carolina? If so, please
8 stand. Do I have any member of the jury panel who is
9 unable to read, write, speak or understand the English
10 language? If so, please stand. Do I have any member of
11 the jury panel who has less than a sixth grade education
12 or its equivalent? If so, please stand. Do I have any
13 member of the jury panel who is unable to render efficient
14 jury service this week because of a mental or physical
15 infirmity which normally requires a doctor's excuse? If
16 so, please stand. Do I have any member --

17 FEMALE SPEAKER: I have chemo on Fridays.

18 THE COURT: You are number 190.

19 THE JUROR: Karen Willis.

20 THE COURT: You'll be protected on Friday.

21 THE JUROR: Thank you.

22 THE COURT: Good luck.

23 THE JUROR: Thank you.

24 THE COURT: Do I have any member of the jury panel
25 who has been convicted by guilty plea or trial in a state

Qualifying of the Jury

1 or federal court of record of a crime punishable by
2 imprisonment for more than one year and your civil rights
3 have not been restored by pardon or amnesty? Punishable
4 by more than one year means that you could have received a
5 sentence of more than one year, regardless of what
6 sentence you actually received. If so, please stand.

7 Your name, please?

8 THE JUROR: Ronnie Nicholas.

9 THE COURT: Number please.

10 THE JUROR: 135.

11 THE COURT: Mr. Solicitor? 135.

12 THE COURT: All right. 135 you were convicted of
13 what? What was your situation?

14 THE JUROR: I was charged 25 years ago for
15 possession.

16 THE COURT: All right. That will disqualify you.
17 Thank you. You may come forward and give your badge to
18 the clerk. She'll get the information from you.

19 THE COURT: Anyone else, please stand. Anyone else
20 please stand. Do I have any member of the jury panel who
21 is a clerk or deputy clerk of court, constable, Sheriff or
22 other commissioned law enforcement officer, probate judge,
23 county commissioner, magistrate or other county officer or
24 employed within the walls of any courthouse? If so,
25 please stand.

Qualifying of the Jury

1 THE COURT: Do I have any member of the jury panel
2 who has served on jury duty in circuit court this calendar
3 year, the year 2013. Do I have any member of the jury
4 panel who has served on the Aiken County Grand Jury during
5 the past several years? If so, please stand. May I see
6 juror number 57, Douglas Falls, please come forward.

7 (Whereupon, bench conference took place with Juror
8 57).

9 THE COURT: Juror number 57 disqualified.
10 Mr. Solicitor, remind me to put that on the record at a
11 break. Ladies and gentlemen, that concludes the list of
12 qualifying questions that I must ask. State law also
13 provides for certain exemptions. An exemption simply
14 means you can say, Judge, I choose not to serve. That's
15 your prerogative.

16 There are several exemptions so let me go through
17 these real quickly. Number one, do I have any juror who
18 is 65 years or older who does not wish to serve? If so,
19 please stand. You're not required to serve if you're 65
20 or older, but we certainly welcome you.

21 You're not required to serve more often than once
22 every three calendar years in circuit court. So do I have
23 any one who has served during the last three calendar
24 years, 2012, 11 or 10 and would like to be excused.

25 You're not required to serve if you've served on the

Qualifying of the Jury

1 grand jury during the last five calendar years. You may
2 be exempt or choose to be exempt. So do I have anyone who
3 has served on the Aiken County Grand Jury during the last
4 five calendar years, 12, 11, 10, nine, or eight?

5 The next exemption deals with those of you who may
6 have a small child or children under the age of seven and
7 you are the primary and principal caregiver and custodial
8 parent of that child under seven and you have no other
9 means of providing care while serving on jury duty. Does
10 that apply to anyone? If so, please stand.

11 Do I have anyone who is the primary custodial
12 caregiver of someone 65 years or older and you're unable
13 to make arrangements for the care of that person or
14 someone disabled? You may be exempt.

15 The next exemption deals with those of you who may be
16 attending school at this time or working in some capacity
17 with a school. If this exemption applies to you, I cannot
18 excuse you; however, I can transfer you to another term of
19 court. But I'll tell you this is a pretty good week to
20 serve. So do I have any one who is a full time teacher or
21 full time Clemson student or any other student, school bus
22 driver, cafeteria worker, crossing guard, whatever, and
23 you would need -- this week interferes with your school
24 activities? I can transfer you. I do I have anyone that
25 applies to? Yes, sir your name and number please?

Qualifying of the Jury

1 THE JUROR: 136.

2 THE COURT: You're a professor or teacher.

3 THE JUROR: Teacher.

4 THE COURT: I'll be more than happy to transfer you
5 to another term. Or you can stay with us this week and
6 take a chance. I suspect the first trial will last about
7 a day and a half, two at the most. So that will take this
8 afternoon and Wednesday. If you're on the first trial,
9 I'll excuse you for the rest of the week. We have a
10 couple of other trials, I don't know if they are going or
11 not, but they are relatively short cases. So sometimes we
12 start court on Monday morning and we have a long trial
13 that will last all week. It just depends.

14 THE JUROR: I'll stay.

15 THE COURT: You are a wise professor.

16 THE COURT: Anybody else in the school situation? Do
17 I have any member of the jury panel who is employed with
18 the Department of Corrections at a penitentiary and would
19 like to be exempt?

20 Do I have any member of the jury panel who is
21 employed with a business and your services are so
22 essential to the operation of that business, that if you
23 were required to serve the business would close, stop
24 functioning?

25 Ladies and gentlemen that concludes the statutory

Qualifying of the Jury

1 list of qualifying questions and state exemptions. It may
2 very well be that you're qualified and no exemption
3 applies to you, but this week constitutes, or this week
4 creates a substantial hardship for you. I'll be more than
5 happy to consider any personal requests. If it's personal
6 in nature, I'll be more than happy to have you up here or
7 if you want to you can tell me from back there. I already
8 have protected a number of people, -- not a number, four
9 or five serving on Fridays. They had doctors or personal
10 problems on Friday, I've got you covered. But I doubt
11 we'll be here Friday to be honest with you. I think we'll
12 finish before then. Do I have any personal requests?
13 Ma'am, on the front row you said you wanted to share
14 something with me, is it personal, or you want to tell me
15 from there?

16 THE JUROR: Personal.

17 THE COURT: I know you're getting married. That's
18 pretty personal.

19 THE JUROR: Yeah, I'm stressed out.

20 THE COURT: Bless your heart. Come on up here.

21 (Whereupon, bench conference with Juror 60)

22 MR. THOMPSON: That's juror number 60?

23 THE COURT: Are you number 60, ma'am?

24 THE JUROR: Yes.

25 THE COURT: All right. You know every now and then

Qualifying of the Jury

11

1 I'll go to a place on Saturday night and they'll say this,
2 last call. Anybody, last chance to any special requests?
3 Y'all have been great -- Yes, sir.

4 THE JUROR: Juror number 49. I have an exam tomorrow
5 morning for the Augusta Fire Department at 7:30.

6 THE COURT: Why don't I excuse you from the first
7 case. You'll be through with your exam. How long does it
8 last?

9 MALE SPEAKER: Four hours.

10 THE COURT: Are you going to study this afternoon?

11 THE JUROR: I can.

12 THE COURT: We'll excuse you on the first case. How
13 about that.

14 THE JUROR: Thank you.

15 THE COURT: Okay. Let's do this. I am going to let
16 you go back to the jury assembly room, let you stretch
17 your legs, there are cookies over there. It'll take 15
18 minutes to resolve this matter. Then we'll come back in
19 and be ready to strike the jury in the first case.
20 Everybody go back to the jury assembly room.

21 (Main jury out 10:53.)

22 THE COURT: All right. Mr. Solicitor, you may call
23 your first case.

24 MR. MOLONY: Thank you, Your Honor. The State calls
25 the State of South Carolina versus Michael Tyrone Quarles;

Qualifying of the Jury

1 Indictment Number 2013-GS-02-0760, a true-billed
2 Indictment for armed robbery; Indictment Number
3 2013-GS-02-0761, a true-billed Indictment for kidnapping.

4 THE COURT: Mr. Chesser, are you ready to proceed?

5 MR. CHESSER: Yes, Your Honor.

6 THE COURT: Ladies and gentlemen of the jury panel,
7 we're about to begin the trial of the case that the state
8 has called. The state by way of an Indictment has
9 indicted Mr. Quarles with two offenses. One is for armed
10 robbery. One is for kidnapping. Mr. Quarles has plead
11 not guilty to both indictments. Under our Constitution
12 and the Constitution of the United States he is presumed
13 innocent of all charges unless the state is able to prove
14 to you beyond a reasonable doubt the elements of the two
15 offenses. The indictment is simply the charging document
16 by way this case comes into the courtroom, it is not
17 evidence in the case. As I said, he's plead not guilty
18 and that will be what your duty will be to determine
19 whether or not the state is able to prove the cases to you
20 beyond a reasonable doubt.

21 I need to ask a few questions in order to qualify you
22 to serve in this case and the first case -- the first
23 question I will ask is this -- Mr. Quarles, if you would
24 please stand and face the jury panel.

25 (Whereupon, the Defendant complies.)

Qualifying of the Jury

13

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

2 Is there any member of the jury panel related by
3 blood or marriage, or do you now or have you in the past
4 had a close personal or social relationship with the
5 Defendant Michael Tyrone Quarles? Please stand.

6 Mr. Chesser, do you have a witness list?

7 MR. CHESSER: No, Your Honor. May I approach?

8 THE COURT: You may.

9 (Whereupon, a bench conference was held.)

10 THE COURT: The potential witnesses in the trial of
11 the case is as follows. I will read them, and then I'll
12 ask you the same questions I just asked. If any of them
13 are in the courtroom, please stand. Penny Guerriari. I'm
14 not sure I'm saying that correctly.

15 Mr. Solicitor, how do you say it?

16 MR. MOLONY: Guerriari, Your Honor.

17 THE COURT: Thank you, ma'am. Wayne Brinegar. Is he
18 in the courtroom?

19 MR. MCCARLEY: He is not, Your Honor.

20 THE COURT: Sheila Fulmer, Kathy Holsenback, Carlos
21 Williams, Corporal Jeremy Hembree, Aiken County Department
22 of Public Safety. Thank you. Detective Kirk Owens of
23 SLED, Lieutenant David Savage, Aiken Department of Public
24 Safety, Investigator Stacey Coleman, Investigator Tom
25 Galardi.

Qualifying of the Jury

1 Any member of the jury panel related by blood or
2 marriage or do you now or have you in the past had a close
3 personal or social relationship with these potential
4 witnesses? If so, please stand.

5 THE JUROR: Your Honor, I -- number 67.

6 THE COURT: Hold on a second. Hold on a second.

7 Please stand. Okay. We'll start over here on my right.

8 Ma'am, your name?

9 THE JUROR: Valerie Naimzadeh, number 130. I live
10 next door to one of the witnesses.

11 THE COURT: Which one?

12 THE JUROR: Lieutenant Savage.

13 THE COURT: Okay. The fact that you live next door
14 to the lieutenant, ma'am, would that in any way keep you
15 from being a fair and impartial juror in the trial of the
16 case.

17 THE JUROR: No.

18 THE COURT: Thank you. Sir, your name?

19 THE JUROR: Fitz Lee, number 109. I know
20 Mr. Galardi.

21 THE COURT: You know Mr. Galardi.

22 THE JUROR: Yes, sir.

23 THE COURT: We all live in small communities and know
24 a lot of people. The fact that you happen to know Mr.
25 Galardi--

Qualifying of the Jury

15

1 THE JUROR: We were friends. We grown up together.

2 THE COURT: Okay. Would that preclude or keep you
3 from being able to do your duty as a juror.

4 THE JUROR: No, sir.

5 THE COURT: Thank you. You may be seated. Yes,
6 ma'am, your name?

7 THE JUROR: Number 67 Beverly Gambrell. I work with
8 the officers at Aiken Public Safety.

9 THE COURT: You work with the officers.

10 THE JUROR: Yes, sir.

11 THE COURT: In what capacity?

12 THE JUROR: Records department.

13 THE COURT: What number are you?

14 THE JUROR: Sixty-seven.

15 THE COURT: I am going to excuse you. Stay with us.
16 Last but not least in the black shirt?

17 THE JUROR: David Hughes. I work with
18 Mrs. Guerriari's husband.

19 THE COURT: Where do y'all work?

20 THE JUROR: Out at Halo Carton.

21 THE COURT: Mr. Chesser.

22 MR. CHESSER: Your Honor, I was unable to hear who
23 he works with? May I ask him to repeat --

24 THE COURT: He works with Penny Guerriari, I am not
25 saying that correctly.

Qualifying of the Jury

1 MR. CHESSER: We would have a motion on that, Your
2 Honor.

3 THE COURT: I'll excuse you from the trial of this
4 case. Stay with us, please. Ladies and gentlemen the
5 State of South Carolina the state will be prosecuted by
6 two members of the solicitors office, Mr. Kevin Molony and
7 Nicholas McCarley. Gentlemen. The defendant is being
8 represented by Mr. Michael Chessser. Question, any member
9 of the jury panel now or in the past have had legal
10 services performed by any of these lawyers; if so, please
11 stand. Any member of the jury panel related by blood or
12 marriage or do you now or have you in the past had a close
13 personal or social relationship with any of the lawyers;
14 if so, please stand.

15 Ladies and gentlemen, these indictments involve an
16 alleged incident that allegedly occurred on February 19 of
17 this year, 2013. It is alleged that on that day on
18 February 19, 2013 that Mrs. Penny Guerriari -- I know I am
19 not saying that right. Say it for me.

20 MRS. GUERRIARI: Guerriari.

21 THE COURT: I am still not saying it right. I am
22 doing the best I can. She was working at a business known
23 as The Quick Cash -- I assume that's here in Aiken County
24 -- at which time she was the alleged victim of an armed
25 robbery, and during the armed robbery it is alleged that

Qualifying of the Jury

17

1 she was kidnapped or confined at her place of business.
2 So this involves an alleged arm robbery on February 19,
3 2013 here in Aiken County at The Quick Cash, located
4 where?

5 MR. MOLONY: On Richland Avenue.

6 THE COURT: On Richland Avenue. And during the armed
7 robbery she was held against her will. These are
8 allegations. But my question is this, anybody know
9 anything about this case? Have you heard anything about
10 it, read anything about it? Seen anything about it on the
11 newspaper, TV's, internet? Friends discussed it with you?
12 Do you have any opinions about it, know anything about it?

13 THE JUROR: Number thirty-six Jay Clark. I actually
14 did hear about this case on the radio that day.

15 THE COURT: Your number please.

16 THE JUROR: Thirty-six.

17 THE COURT: You're the Car Max guy.

18 THE JUROR: Yep.

19 THE COURT: Sometimes I don't have anything to do up
20 here and I try to remember what people do, their jobs.
21 You know, it's almost impossible not to hear news in
22 today's world. The fact that you heard something about
23 it, would that in any way keep you from being a fair and
24 impartial juror?

25 THE JUROR: No.

Qualifying of the Jury

1 THE COURT: Thank you. You may be seated. Ladies
2 and gentlemen, during the trial of any case, whether it be
3 a criminal case or a civil case, we have two judges who
4 participate in the trial. My position makes me the judge
5 of the law, and my job is to instruct you on what the law
6 is in connection with these charges, and also to rule on
7 the admissibility of evidence. I'm the judge of the law
8 in the case. The other judge is the most important judge
9 in the case, and that's the judge of the facts. And the
10 way that works is we select 12 citizens from Aiken County
11 to serve in this jury. And I've been involved in cases
12 for a long time now, both as a trial lawyer and as a
13 judge, and I've tried thousands of cases and I dare say
14 that in all the cases that you will hear testimony from
15 the witness stand that will be as opposite as night and
16 day. One witness may say it was daytime. The next
17 witness may say it was night time. One may say 20. One
18 may say 50. So what the judges of the facts have to do is
19 this, they have to listen to everyone who testifies and
20 you become the judge of whose telling the truth. You
21 judge the credibility or the believability of the
22 witnesses who testify on the stand. And once you
23 determine what the true facts are -- you're the judge of
24 the facts, then you apply those facts to the law, as I
25 give it to you, and then you will be in a position to

Qualifying of the Jury

19

1 render a true verdict.

2 So you're the judges of the facts, 12 of you
3 collectively acting as one. Your job is the most
4 important job during the trial of the case. And that's
5 why our jury system is such a wonderful judicial system if
6 someone is accused of a crime, then they have 12 citizens
7 from their community who listen and determine who is
8 telling the truth. It's a very important civic duty.

9 Now, my question is this having said that. Do I have
10 any member on the jury panel who is unable to sit and
11 listen to the witnesses and determine what the true facts
12 are? Do I have anybody on the jury panel for religious
13 beliefs, political beliefs, personal beliefs, any kind of
14 belief, that you're unable to perform this civic duty of
15 determining what the true facts are and then applying
16 those facts to the law and then rendering a verdict? I
17 need to know now.

18 (WHEREUPON, No one stood or responded)

19 THE COURT: Thank you. Do I have any member of the
20 jury panel, other than the one lady who has already stood,
21 that has family, or you, yourself, or have family involved
22 in law enforcement particularly with the Aiken County
23 Sheriff's Office or Department of Public Safety or any law
24 enforcement agency, please stand. On my right, you are
25 excused from this trial; correct?

Qualifying of the Jury

1 THE JUROR: I think so.

2 THE COURT: Aren't you the fireman going to take the
3 test tomorrow.

4 THE JUROR: Yeah.

5 THE COURT: Then I ask you to study this afternoon
6 and make an A on the test. Yes, ma'am, your name?

7 THE JUROR: I'm Karen Willis, Juror 190, I work at
8 Edgefield Federal Bureau Prisons.

9 THE COURT: The fact that you work in sort of in a
10 quasi-law enforcement position, would that in any way,
11 ma'am, preclude you from being able to perform the task
12 that we just talked about?

13 THE JUROR: No. I am a correctional officer an
14 accounting tech so I know what I need to do in court.

15 THE COURT: Thank you very much. Yes, ma'am, your
16 name?

17 THE JUROR: Barbara Murtha, I am Juror 129. My
18 husband is Chief Deputy in Saluda County.

19 THE COURT: Of Saluda County, which is not involved
20 in this case. The fact that your husband is involved in
21 law enforcement, ma'am, would that in any way keep you
22 from being able to perform your duty as a juror?

23 THE JUROR: No, sir.

24 THE COURT: Thank you. Anyone else? Thank you. You
25 may be seated. Any member of the jury panel you or your

Qualifying of the Jury

21

1 immediate family have ever been the victim of a violent
2 crime such as armed robbery, kidnapping, murder, please
3 stand. Yes, ma'am, on the front row my juror that's
4 getting ready to be married. Your name.

5 THE JUROR: Sherry Floyd, Juror number 60. Does a
6 violent assault count?

7 THE COURT: Yes, ma'am. You were the victim of an
8 assault?

9 THE JUROR: Yes, sir.

10 THE COURT: The fact that you've had to experience
11 that unpleasantry would that in any way, ma'am, keep you
12 from being a fair and impartial juror in the trial of the
13 case.

14 THE JUROR: I have to say I'm a little prejudiced
15 about that.

16 THE COURT: All right, what number are you, ma'am?

17 THE JUROR: Sixty.

18 THE COURT: All right. Excuse her from the trial of
19 this case, please. Yes, ma'am, your name please?

20 THE JUROR: Joyce Howard. I am Juror number 90. I
21 was a victim of strong armed robbery.

22 THE COURT: The fact --

23 THE JUROR: Convenience store.

24 THE COURT: Ma'am.

25 THE JUROR: Of a convenience store.

1 THE COURT: And the fact that you had to experience
2 that ordeal would that in any way, ma'am, preclude or keep
3 you from being fair and impartial in the trial of the
4 case?

5 THE JUROR: I say no. I would do my best, but I
6 mean...

7 THE COURT: I understand.

8 THE JUROR: That's my job now, too.

9 THE COURT: I understand. You say, no, is that your
10 answer.

11 THE JUROR: Yes, sir.

12 THE COURT: Thank you, ma'am. You can stay with us.
13 Yes, ma'am, on the back.

14 THE JUROR: Yes. My grandma was held at gun point
15 twice in her home for armed robbery.

16 THE COURT: Your name please, ma'am.

17 THE JUROR: Shetevia Green, 76.

18 THE COURT: Mrs. Green, the fact that your
19 grandmother experienced that, would that in any way keep
20 you from being a fair and impartial juror?

21 THE JUROR: No.

22 THE COURT: Thank you. You may be seated. Do I have
23 any member of the jury panel who is a member of or a
24 contributor to organizations which have as their principal
25 purpose the enforcement or encouragement of law

Qualifying of the Jury

23

1 enforcement such as what we call MADD, I think that's
2 Mother's Against Drunk Driving, SADD, Students Against
3 Drunk Drivers, SAVE Students Against Violent Crimes or
4 those type of organizations. Please stand.

5 (WHEREUPON, no one stood or responded)

6 THE COURT: Ladies and gentlemen, the last question
7 is this. Do I have any member of the jury panel for any
8 reason whatsoever -- any reason -- that would keep you
9 from being able to perform your civic duty, to listen to
10 the evidence and render a decision in the case? I need to
11 know now, please. Any additional questions by the state?

12 MR. MOLONY: No, sir, Your Honor.

13 THE COURT: By Mr. Chesser?

14 MR. CHESSER: Your Honor, we had number four of our
15 requested voir dire. I would request that be asked, Your
16 Honor.

17 THE COURT: I think I asked it maybe in a round about
18 way. Any member of your jury panel or your family ever
19 been employed by or worked with or associated with the
20 solicitor's office for the second circuit consisting of
21 Bamberg, Barnwell and Aiken Counties?

22 (WHEREUPON, no one stood or responded)

23 THE COURT: Any additional questions by the defense?

24 MR. CHESSER: No, Your Honor. We would ask to
25 approach.

1 THE COURT: I'll be glad for you to.

2 (Whereupon, a bench conference was held.)

3 THE COURT: That is an exemption which is for the
4 prerogative of the jury. I put all of that on the record.
5 I just looked back at it it's not a qualifying. It is an
6 exemption. They have to ask for the exemption.

7 All right, ladies and gentlemen, if we were trying a
8 case where a person was suing for monetary damages and a
9 civil case, such as you were suing your lawyer, because he
10 didn't practice law according to the standards it is a
11 legal malpractice case or an automobile wreck case, at
12 this time I would ask the clerk randomly select 20 names
13 and one side will be able to strike four and the other one
14 would strike four and what we'd have left would be 12. In
15 a criminal case or a case in general sessions we do it
16 differently. The state has five strikes. The defendant
17 has 10 strikes. And they can strike for most any reason
18 or no reason at all within certain bounds that the lawyers
19 are familiar with. And the way we do that is, the clerk
20 will put into the computer and the computer will randomly
21 select out of the list of jurors who we have left, and it
22 is a random selection and as your name is called --

23 THE CLERK: How many alternates, Your Honor?

24 THE COURT: It will be five strikes, 10 strikes and
25 two alternates. Two in one on each one so you will need

Qualifying of the Jury

25

1 -- just give me 45.

2 THE CLERK: Thirty-five or forty-five, Your Honor.

3 THE COURT: Forty-five. Unless my math is wrong.

4 THE CLERK: It is thirty-five.

5 THE COURT: Then my math is wrong. I was 10 off. As
6 your name is called, you'll come up and stand right here
7 in front of Mrs. Godard and face the lawyers and they will
8 either strike you or ask you to be sworn in as a juror,
9 and we'll go through that process until they either run
10 out of strikes or we have 12 jurors and two alternates and
11 we're going to get started with that right now. We'll be
12 through with that process by 12, and then we'll start the
13 trial of the case at 2 o'clock. Those of you who are not
14 drawn, obviously will be excused for the balance of the
15 day and will be asked to call back in after 6 o'clock to
16 get instructions concerning tomorrow. Those of you who
17 are selected, I will show you where the jury room is and
18 then you'll be excused until 2 o'clock, and we will more
19 than likely go this afternoon until about five. I doubt
20 we'll go much later than that because court personnel and
21 other requirements we have. So as your name is called
22 please come forward. As your name is called, please come
23 forward.

24 THE CLERK: Juror number 75, Crystal Green, please
25 come forward to the desk. Turn and face the rear.

Qualifying of the Jury

1 (Whereupon, the juror comes forward.)

2 THE CLERK: What say you for the state?

3 MR. MOLONY: Please present Mrs. Green.

4 THE CLERK: What say you for the defense?

5 MR. CHESSER: Please seat Mrs. Green.

6 THE CLERK: Thank you. Have a seat in the jury box
7 to your left please. If you'll bring all of your personal
8 belongings as you come up that will--

9 THE COURT: Did you leave anything back there?

10 THE JUROR: A bottle of water.

11 THE COURT: Bailiff bring her bottle of water.

12 THE CLERK: Juror number 188, Ted Williams. White
13 male.

14 (Whereupon, the juror comes forward.)

15 THE CLERK: What say you for the state?

16 MR. MOLONY: Please seat Mr. Williams.

17 THE CLERK: What say you for the defense?

18 MR. CHESSER: Please seat Mr. Williams.

19 THE CLERK: Thank you. Have a seat in the jury box
20 to my left. Juror number 169 John Strack.

21 THE CLERK: What say you for the state?

22 MR. MOLONY: Please seat Mr. Strack.

23 THE CLERK: What say you for the defense?

24 MR. CHESSER: Please seat Mr. Strack.

25 THE CLERK: Have a seat in the jury box please.

Qualifying of the Jury

27

1 Juror number 88 Christine Helton.

2 (Whereupon, the juror comes forward.)

3 THE CLERK: What say you for the state?

4 MR. MOLONY: Please present Mrs. Helton.

5 THE CLERK: What say you for the defense?

6 MR. CHESSER: Please excuse Mrs. Helton.

7 THE CLERK: Return to your seat please, ma'am. Juror

8 191, Gerald Wilson.

9 (Whereupon, the juror comes forward.)

10 THE CLERK: What say you for the state?

11 MR. MOLONY: Please present Mr. Wilson.

12 MR. CHESSER: Please excuse Mr. Wilson.

13 THE CLERK: Please return to your seat, sir. Juror

14 number 76, Shetevia Green.

15 (Whereupon, Juror comes forward.)

16 MR. MOLONY: Please present Mrs. Green.

17 THE CLERK: What say you for the defense?

18 MR. CHESSER: Please excuse Mrs. Green.

19 THE CLERK: Return to your seat please ma'am. Juror

20 number 109 Fitz Lee.

21 (Whereupon, the juror comes forward.)

22 THE CLERK: What say you for the state?

23 MR. MOLONY: Please present Mr. Lee.

24 THE CLERK: What say you for the defense?

25 MR. CHESSER: Please excuse Mr. Lee.

Qualifying of the Jury

1 THE CLERK: Return to your seat please sir. Juror
2 number 68 Kathleen Garvin.

3 (Whereupon, the juror comes forward.

4 THE CLERK: What say you for the state?

5 MR. MOLONY: Please present Mrs. Garvin.

6 THE CLERK: What say you for the defense?

7 MR. CHESSER: Please seat Mrs. Garvin.

8 THE CLERK: Have a seat in the jury box, please,
9 ma'am. Juror number 108 Andrew Laughlin.

10 (Whereupon, the juror comes forward.

11 THE CLERK: What say you for the state?

12 MR. MOLONY: Please present Mr. Laughlin.

13 THE CLERK: What say you for the defense?

14 MR. CHESSER: Please seat Mr. Laughlin.

15 THE CLERK: Thank you, have a seat in the jury box.
16 Number 187 Rodney Williams.

17 (Whereupon, the juror comes forward.

18 THE CLERK: What say you for the state?

19 MR. MOLONY: Please seat Mr. Williams.

20 THE CLERK: What say you for the defense?

21 MR. CHESSER: Please seat Mr. Williams.

22 THE CLERK: Have a seat in the jury box please sir.
23 Juror number 118 Rachel Marry.

24 (Whereupon, the juror comes forward.)

25 THE CLERK: What say you for the state?

Qualifying of the Jury

29

1 MR. MOLONY: Please seat Mrs. Marry.

2 THE CLERK: What say you for the defense?

3 MR. CHESSER: Please seat Mrs. Marry.

4 THE CLERK: Have a seat in the jury box please.

5 Juror number 95 Sawyer Jackson.

6 (Whereupon, the juror comes forward.)

7 THE CLERK: What say you for the state?

8 MR. MOLONY: Please present Mr. Jackson.

9 THE CLERK: What say you for the defense?

10 THE CLERK: Have a seat in the jury box please, sir.

11 119 Wanda Mask.

12 (Whereupon, the juror comes forward.)

13 THE CLERK: What say you for the state?

14 MR. MOLONY: Please present Mrs. Mask.

15 THE CLERK: What say you for the defense?

16 MR. CHESSER: Please seat Mrs. Mask.

17 THE CLERK: Thank you. Have a seat in the jury box

18 please ma'am. Juror number 124, Lauren Meccia.

19 (Whereupon, the juror comes forward.)

20 THE CLERK: What say you for the state?

21 MR. MOLONY: Please present this juror.

22 THE CLERK: What say you for the defense?

23 MR. CHESSER: Please present Mrs. Meccia.

24 THE CLERK: Have a seat in the jury box please,

25 ma'am. Juror number 190 Karen Willis.

Qualifying of the Jury

1 (Whereupon, the juror comes forward.)

2 MR. MOLONY: Please present Mrs. Willis.

3 THE CLERK: What say you for the defense?

4 MR. CHESSER: Please excuse Mrs. Willis.

5 THE CLERK: Please return to your seat please, ma'am.

6 State has exhausted zero strikes the defense five. Juror
7 number 2, Angela Walker.

8 (Whereupon, the juror comes forward.)

9 THE CLERK: What say you for the state?

10 MR. MOLONY: Please present Mrs. Walker.

11 THE CLERK: What say you for the defense?

12 MR. CHESSER: Please seat Mrs. Walker.

13 THE CLERK: Have a seat in the jury box please,
14 ma'am. Juror number 131, Tina Nakagawa.

15 (Whereupon, the juror comes forward.)

16 THE CLERK: What say you for the state?

17 MR. MOLONY: Please present this juror.

18 THE CLERK: What say you for the defense?

19 MR. CHESSER: Please excuse Mrs. Nakagawa.

20 THE CLERK: Return to your seat please, ma'am. Juror
21 number 31, Shanquese Chambers.

22 (Whereupon, the juror comes forward.)

23 THE CLERK: What say you for the state?

24 MR. MOLONY: Please excuse Mrs. Chambers.

25 THE CLERK: Return to your seat please ma'am. Juror

Qualifying of the Jury

31

1 number 74, Faye Grantham.

2 THE CLERK: What say you for the state?

3 MR. MOLONY: Please present Mrs. Grantham.

4 THE CLERK: What say you for the defense?

5 MR. CHESSER: Please excuse Mrs. Grantham.

6 THE CLERK: Return to your seat, ma'am. Number 17,

7 Jeannie Boeke.

8 (Whereupon, the juror comes forward.)

9 THE CLERK: What say you for the state?

10 MR. MOLONY: Please present Mrs. Boeke.

11 THE CLERK: What say you for the defense?

12 MR. CHESSER: Please excuse Mrs. Boeke.

13 THE CLERK: Return to your seat please, ma'am. Juror

14 number 35, Thomas Ciravolo.

15 (Whereupon, the juror comes forward.)

16 THE CLERK: What say you for the state?

17 MR. MOLONY: Please present Mr. Ciravolo.

18 THE CLERK: What say you for the defense?

19 MR. CHESSER: Please seat the juror.

20 THE CLERK: That's 12. Alternate number one, juror

21 number 132, Joel Napier.

22 (Whereupon, the juror comes forward.)

23 THE CLERK: What say you for the state?

24 MR. MOLONY: Please present this juror.

25 THE CLERK: What say you for the defense?

Qualifying of the Jury

1 MR. CHESSER: Please seat this juror.

2 THE CLERK: Have a seat in the jury box, please.

3 Alternate number two, Juror 172 Miriam Tamres.

4 (Whereupon, the juror comes forward.)

5 THE CLERK: What say you for the state?

6 MR. MOLONY: Please present Mrs. Tamres.

7 THE CLERK: What say you for the defense?

8 MR. CHESSER: Please seat Mrs. Tamres.

9 THE CLERK: Have a seat in the jury box, please.

10 THE COURT: Any motions by the state in connection
11 with selection of the jury?

12 MR. MOLONY: Nothing from the state, Your Honor.

13 THE COURT: By the defendant?

14 MR. CHESSER: No, Your Honor.

15 THE COURT: Okay. As promised ladies and gentlemen
16 those of you who were not selected, I am going to excuse
17 you now for the balance of the day. Those not selected
18 please call back in after six. You should have the number
19 on the -- your jury information thing, and you'll receive
20 instructions for tomorrow. Unless anyone has any
21 questions, I am going to excuse you now. Thank you for
22 coming.

23 (Main jury out 11:46.)

24 THE COURT: We're going to start back at two. Start
25 right on time at two. When you get ready to leave right

Qualifying of the Jury

33

1 now in a second -- y'all listen to me -- follow
2 Ms. Barbara. She'll show you to the jury room. She'll
3 show you how to get back up here, and we'll start at two.
4 Unless anyone has any problems, I am going to go until
5 right around a few minutes before five, a few minutes
6 after five. Then we'll see where we are at that point in
7 the game and decide on tomorrow what time we'll start.
8 We'll probably do tomorrow. I'll have you some
9 refreshments in the morning for breakfast and if we go
10 through lunch, I'll get your lunch for you. We should be
11 pushing it right along. What I am going to do now between
12 now and two, I've got several pretrial motions I think I
13 told you. We'll have all of that out of the way so when
14 you come back in you won't have to wait at all. Please
15 don't discuss the case with anyone. Do not let anybody
16 discuss it with you. I look forward to working with you.
17 I'll see you at two.

18 (Whereupon, the jury exited the courtroom at 11:47)

19 THE COURT: All right. Mr. Chesser, anything we need
20 -- hold on one second. Close the door, Mr. Bailiff. Any
21 jurors in the courtroom? I don't think so.

22 All right. Let the record reflect that I had to
23 disqualify Juror Number 57. We did that at side bar. I'm
24 not sure if it was on the record, but that was Juror 57,
25 Mr. Douglas Fauls, F-A-U-L-S. He had a conviction for

1 breach of trust with fraudulent intent back in 1995. We
2 also excused Juror Number 53, while we took our break,
3 that is Kristy Emmerson. Ms. Emmerson -- we received a
4 phonecall that Ms. Emmerson had a medical emergency and
5 she's been excused for the balance of the week.

6 We had a side bar during the selection of the jury.
7 Mr. Chesser had a side bar with me wanting me to excuse
8 the lady who had chemo who worked at the correctional
9 institute in Edgefield. Is that right?

10 MR. CHESSER: Yes, Your Honor. That's Juror 190.

11 THE COURT: Juror Number 190. He thought that that
12 disqualified her -- the fact that she worked there. That
13 is not a qualifying requirement. That is an exemption
14 that's personal to the juror. She did not exercise it.
15 Anything else you need to put on the record concerning
16 that, Mr. Chesser?

17 MR. CHESSER: No, Your Honor.

18 THE COURT: All right. Anything we need to do before
19 we start the trial at 2 o'clock?

20 MR. CHESSER: Your Honor, we had discussed a couple
21 of days ago or yesterday, a couple of motions, at
22 pretrial. One of them is a Jackson v Denno motion. I
23 will tell the court that I've been over again the
24 interview conducted of Michael Quarles and at the
25 beginning of it at the two-minute mark it's a pretty

1 thorough invocation of rights -- not invocation. What I
2 meant is the opposite of that. It is a pretty thorough
3 advisement of the rights, and, so, I'm not going to pursue
4 the ---

5 THE COURT: Well, I think the record, though,
6 requires me to conduct a Jackson v Denno notwithstanding
7 you have no opposition to it.

8 MR. CHESSER: Very good. Other than that, we'd like
9 to address the issue of the admissibility of the
10 out-of-court identification of Michael Quarles.

11 THE COURT: That's the line-up question?

12 MR. CHESSER: Yes, Your Honor. And then, finally, we
13 had submitted and we would move to suppress, or not allow
14 into evidence, what I believe was the 9-1-1 call. It may
15 have been simply a call to law enforcement, but the victim
16 immediately after this incident made a call about three
17 minutes in length to law enforcement and we'd submitted
18 the written basis for that is a 403 objection, Your Honor.

19 THE COURT: More prejudicial than probative?

20 MR. CHESSER: That and I would preface that by saying
21 that essentially, I mean, technically and, in fact, it's
22 an out-of-court statement introduced for the truth and so
23 it actually begins as hearsay until the state comes up
24 with some other type of classification of it. But above
25 and beyond that, it's subject to a 403 analysis, and we

1 would submit -- if you want me to argue that now, Your
2 Honor...

3 THE COURT: No, sir. I want to do the Jackson v
4 Denno. I want to do the line-up and then I'll do that.

5 MR. CHESSER: Thank you, Your Honor.

6 THE COURT: Ready to proceed with Jackson v Denno?

7 MR. MCCARLEY: Yes, sir, Your Honor.

8 THE COURT: Well, since he's not opposing it, let's
9 do it in a fairly efficient manner.

10 MR. MCCARLEY: I will do my best, sir. The state
11 calls David Savage for the purposes of a Jackson v Denno
12 hearing as to the voluntariness of a statement given to
13 him.

14 DAVID E. SAVAGE, after being duly sworn,
15 testified as follows:

16 THE CLERK: Please have a seat in the witness box.
17 State your full name for the court and spell your last.

18 THE WITNESS: David E. Savage; S-A-V-A-G-E.

19 DIRECT EXAMINATION

20 BY MR. MCCARLEY:

21 Q Lieutenant Savage, where do you work?

22 A The Aiken County Department of Public Safety.

23 Q How long have you been working there, sir?

24 A I'm on my 23rd year.

25 Q And what is your position?

1 A I'm a Lieutenant over investigations.

2 Q What are your duties as a Lieutenant over
3 investigations?

4 A Supervise the day-to-day operations of the division,
5 and also to investigate major crimes.

6 Q Okay. Did you have occasion to interview Michael
7 Quarles on March 10, 2013?

8 A I did.

9 Q Prior to interviewing him did you read the Defendant
10 his Miranda rights?

11 A I did.

12 Q Did he tell you or -- did he understand those rights?

13 A He did.

14 Q Okay. Does the Aiken Department of Public Safety use
15 a Miranda Waiver Sheet?

16 A We do.

17 Q May I approach Your Honor?

18 THE COURT: You may.

19 Q Lieutenant Savage, do you recognize this document?

20 A I do.

21 Q Is that a copy of the Miranda Waiver Sheet presented
22 to the defendant on March 10?

23 A It is.

24 Q Okay. Did you read that document to him?

25 A I did.

1 Q That has been marked as State's Exhibit 26 for the
2 purposes of this hearing. Did Mr. Quarles initial that
3 document?

4 A He did.

5 Q Would you mind reading that document allowed for the
6 purposes of this hearing for the court?

7 A Before we ask you any questions you must understand
8 your rights. You have the right to remain silent.
9 Anything you say, can and will, be used against you in a
10 court of law. You have the right to talk to a lawyer for
11 advice before we ask you any questions, and to have him
12 with you during questioning. If you can not afford a
13 lawyer, the court will appoint one to represent you
14 without cost, if you wish. If you decide to answer
15 questions now without a lawyer present, you will still are
16 the right to stop answering at any time. You also have
17 the right to -- excuse me. You also have a right to stop
18 answering at any time until you talk to a lawyer. Number
19 six, it states, I have read the statement of my rights and
20 understand what my rights are.

21 And the waiver of rights is, I'm willing to make a
22 statement and answer questions. I do not want a lawyer at
23 this time. I understand and know what I am doing. No
24 promise or threats have been made to me and no pressure of
25 any kind has been used against me.

David Savage - Direct - Mr. McCarley

39

1 Q And did the defendant initial that document next to
2 each waiver of each right?

3 A He did.

4 Q Is that a true and accurate copy of the Miranda
5 Waiver Form that you presented to him and he initialed on
6 that day?

7 A It is.

8 Q Have there been any changes deletions, additions,
9 subtractions?

10 A No.

11 MR. MOLONY: Your Honor, the state moves to enter
12 this into evidence for purposes of this hearing.

13 THE COURT: Any objection.

14 MR. CHESSER: No objection.

15 (State's Exhibit Number 26 is received into
16 evidence.)

17 Q And you did interview Mr. Quarles that day?

18 A I did.

19 Q Was that video and audio recorded?

20 A It was.

21 Q Permission to approach, Your Honor?

22 THE COURT: You may.

23 Q You recognize this CD?

24 A I do.

25 Q Have you watched that?

1 A I have.

2 Q Have you listened to that?

3 A I have.

4 Q Okay. And is the signing and advisement of rights
5 that you just discussed with that waiver, on that disc?

6 A It is.

7 MR. MOLONY: Your Honor, the state is prepared to
8 play the approximately 30 minute video, if the court sees
9 fit. We believe we've met the burden of voluntariness of
10 the statement without it, but we're more than happy to
11 play it if you'd like?

12 THE COURT: Well with the position that the defense
13 is taking, I don't believe it is necessary to do during
14 the Jackson v Denno. Do you agree with that, Mr. Chesser?

15 MR. CHESSER: That's correct, Your Honor.

16 THE COURT: Thank you. Anything else?

17 MR. MOLONY: Nothing further Your Honor.

18 THE COURT: Any cross examination?

19 MR. CHESSER: No questions, Your Honor.

20 THE COURT: All right. I find by the preponderance
21 or greater weight of the evidence that obviously the
22 Miranda warnings and Miranda rights were given to the
23 defendant and executed the waiver, and I find that the
24 statement will be introduced in the trial of the case for
25 the jury to determine whether or not it was given

Penny Guerrairi - Direct - Mr. Malony

41

1 voluntary beyond a reasonable doubt, and for them to give
2 whatever weight, if any, they wish to give it. Anything
3 else?

4 MR. CHESSER: No, sir, Your Honor, not as to the
5 Jackson v Denno hearing.

6 THE COURT: Thank you, sir. You may step down. Are
7 you ready to do your Lyle hearing?

8 MR. MOLONY: Yes, judge, the state calls Penny
9 Guerriare.

10 PENNY GUERRIARE, after being duly sworn,
11 testified ras follows:

12 THE CLERK: Please have a seat in the witness box and
13 state your full name for the Court and spell your last
14 name.

15 THE WITNESS: My name is Penny Guerriari.

16 THE COURT: Speak up for me, please.

17 DIRECT EXAMINATION

18 BY MR. MOLONY:

19 Q Penny, were you working at the Quick Cash on Richland
20 Avenue in Aiken, South Carolina on February 19, 2013?

21 A Yes.

22 Q And did you see the defendant that day?

23 A Yes.

24 Q Had you ever seen him before?

25 A No.

1 Q Explain how you interacted with the defendant that
2 day?

3 A He came into the store. We had a brief conversation.
4 At that point I was not behind the counter. I could see
5 him plain. I walked behind the counter. We had a brief
6 conversation. I wrote down what he needed to apply for a
7 loan, such as the bank statement, checkstub. We had a
8 conversation about where he worked and I wrote down what
9 he needed and he went out the door.

10 Q Okay. So did you look him in his face?

11 A Yes.

12 Q Approximately how long was he in the store?

13 A Four to five minutes.

14 Q Four to five?

15 A Four to five minutes.

16 Q What was the lighting like in the business at that
17 time?

18 A Bright. The lights were on.

19 Q What time of day was this?

20 A Ten in the morning.

21 Q Now the next day, did you have the opportunity to
22 meet with detectives concerning this case?

23 A I did.

24 Q And did Detective Savage with the Aiken Public Safety
25 show you a photo line up?

1 A He did.

2 Q When you were shown this line up did Detective Savage
3 tell you who to pick?

4 A No.

5 Q Did he suggest any of the gentlemen in this photo
6 line up for you to pick?

7 A No.

8 Q Did he ask you if you recognized any of them?

9 A Yes.

10 Q And did you?

11 A I did.

12 Q Was the person that you referenced speaking with the
13 day before at the Quick Cash on Richland in that photo
14 line up?

15 A Yes.

16 Q And did you pick him out?

17 A I did.

18 MR. MOLONY: Your Honor, may I approach?

19 THE COURT: You may.

20 Q All right, Penny, I am going to show you what's been
21 marked as State's Exhibit 12 for the purposes of this
22 hearing and ask you if you recognize this?

23 A Yes.

24 Q What is it?

25 A It's the photo line up Investigator Savage showed me.

1 Q Is this the line up you picked the defendant out in?

2 A Yes.

3 Q What number did you pick?

4 A Number two.

5 Q And did you initial it?

6 A I did.

7 Q Are those your initials?

8 A Yes.

9 Q Did you date it?

10 A Yes.

11 Q And was that the date that you --

12 A February 20th.

13 Q Okay. No further questions, Your Honor.

14 THE COURT: Cross.

15 CROSS-EXAMINATION

16 BY MR. CHESSER:

17 Q Mrs. Guerriari, did Detective Savage he presented the
18 line up to you; is that right?

19 A Right.

20 Q Did he tell you -- or didn't he tell you that the
21 person that they were looking for was in that line up?

22 A No.

23 Q That's all the questions I have. Thank you.

24 THE COURT: Anything on redirect?

25 MR. MOLONY: No, sir, Your Honor.

DAVID SAVAGE -- DIRECT -- MR. MALONY

45

1 THE COURT: You may step down. Next witness.

2 MR. MOLONY: Your Honor, the state is prepared to
3 call Detective Savage if you need to at this point.

4 THE COURT: It is your hearing.

5 (Whereupon, the the Solicitor and Defense attorney
6 conferred off the record.)

7 MR. MOLONY: The state calls Detective David Savage.

8 THE CLERK: He's still sworn.

9 DAVID SAVAGE, having been
10 previously duly sworn, resumed the witness stand and
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. MOLONY:

14 Q Detective Savage, did you have the opportunity to
15 speak with the victim in this case on February 20 of 2013?

16 A I did.

17 Q Where did this conversation take place?

18 A In -- at the jail. She was -- bond was being set on
19 two co-defendants and she was in the back part.

20 Q Okay?

21 A Of the room.

22 Q And did you have with you at that time a photo line
23 up?

24 A I did.

25 Q Where did this photo line up originate from?

1 A SLED.

2 Q Explain that process?

3 A We sent a request with his picture to SLED and they
4 sent us back a six pack line up.

5 MR. MOLONY: May I approach, Your Honor?

6 THE COURT: You may.

7 Q I am showing you what's been marked for this hearing
8 as State's Exhibit 12 and ask you if you recognize this?

9 A I do.

10 Q What is it?

11 A It is a six pack line up.

12 Q Is this the line up that you presented the victim
13 with on February 20 of 2013?

14 A It is.

15 Q Now, while showing the victim this line up on that
16 date, did you suggest new of these individuals for her to
17 point out?

18 A I did not.

19 Q Did you tell her that one of -- the third suspect of
20 this armed robbery and kidnapping was in this photo?

21 A I did not.

22 Q And, did she, in your presence, pick the defendant
23 out of this photo line up at that time?

24 A She did.

25 Q No further questions, Your Honor.

1

CROSS-EXAMINATION

2

BY MR. CHESSER:

3

Q Detective Savage, how do you go about selecting the photos for a line up like this?

4

5

A I didn't select them. SLED did.

6

Q Well do you know what their criteria are -- how they go about it?

7

8

A I believe they get them out of the DMV.

9

THE COURT: Sir, if you know. Please don't guess.

10

THE WITNESS: No, sir I don't.

11

Q So you don't know?

12

A No.

13

Q The line up that you showed Mrs. Guerriari was it in color?

14

15

A No, it was in black and white.

16

Q So it looked -- was it in fact this piece of paper?

17

A That is a copy.

18

Q All right. Nothing further. Thank you.

19

THE COURT: Redirect?

20

MR. MOLONY: No, sir, Your Honor.

21

THE COURT: Let me see the line up. Anything else?

22

MR. MOLONY: Nothing from the state, Judge.

23

MR. CHESSER: No, Your Honor.

24

THE COURT: Requirements of Neal versus Biggers,

25

which is the US Supreme Court case makes it incumbent upon

1 the court to determine whether or not the line up was
2 unnecessarily suggestive, and I am to consider the
3 totality of the circumstances; that includes the
4 opportunity of the witness to view the defendant at the
5 time of the alleged crime, the witness's degree of
6 attention and whether or not the actual line up itself is
7 unnecessarily suggestive or permissibly suggestive as to
8 give rise to a very substantial likelihood of irreparable
9 misidentification. Obviously, the witness in this case,
10 is the alleged victim of the crime, had face to face
11 contact with the defendant. She gave him information on a
12 loan application and she was -- had ample opportunity to
13 view him at the time of the crime. She was very attentive
14 to him, by waiting on him in the manner which she
15 described, the length of time between the identification
16 and the photo line up, was not excessive, and I find it to
17 to be relatively reliable.

18 I reviewed the actual, six pack" line up as they call
19 them. All six members of the line up are the same race,
20 they're African American. They all have similar type hair
21 styles, i.e., they're short. there are no dreads. They
22 all have facial hair. It appears that their eye shapes
23 are all similar. I don't see anything that is suggestive
24 that the defendant would stand out from the other pictures
25 in the line up, and I will allow it in as -- on the

1 pretrial basis and obviously if anything is different
2 during the trial of the case we will deal with that at
3 that time. Anything else Mr. Solicitor?

4 MR. MOLONY: No, sir, Your Honor.

5 THE COURT: Mr. Chesser?

6 MR. CHESSER: Not on this matter, Your Honor.

7 THE COURT: You may step down. All right.

8 Mr. Chesser I'll hear you on the exclusion -- you say it's
9 a 9-1-1 tape. Is that exactly what it is?

10 MR. MOLONY: It is, Your Honor.

11 MR. CHESSER: It is a 9-1-1 tape? Okay. It's a call
12 to law enforcement but -- I'll call it a 9-1-1. I believe
13 it is a 9-1-1 call.

14 THE COURT: You say it's 9-1-1 in your motion to
15 exclude so I guess that's what it is.

16 MR. CHESSER: Okay. The call was made again
17 immediately after this incident and what -- my objection
18 is this, the call is as emotional as it can get. But, the
19 information that is related in this call is factual. The
20 State intends to prove that there was an armed robbery and
21 a kidnapping and that Michael Quarles participated in
22 this, and they're going to present the testimony of
23 Mrs. Guerriari, and she's going to testify to these -- to
24 the facts -- well her testimony is going to be that she
25 was robbed at gunpoint, at taser point, and she was

1 restrained.

2 Now, this tape -- the only reason that the state
3 wants to introduce this is for its emotional impact, and
4 it is overwhelming. In the first instance, technically
5 and, in fact, according to the law, this statement,
6 introduced for the truth of the matter asserted, is
7 hearsay. It is simply a prior out of court statement made
8 by this witness. This particular concept, the idea of the
9 testifying witness, if their statements constitute hearsay
10 is recognized, by the case of Saltz.

11 THE COURT: You got me a copy of that?

12 MR. CHESSER: Yes, sir, Your Honor. I highlighted
13 the portion --

14 THE COURT: State versus Saltz. Did you send me
15 that?

16 MR. CHESSER: Yes, sir.

17 THE COURT: You sent me...

18 MR. CHESSER: Well --

19 THE COURT: You sent me Foster.

20 MR. CHESSER: I'm sorry, that's the case that foster
21 relies on.

22 THE COURT: Hand me up Saltz. You don't have it?

23 MR. CHESSER: No, Your Honor.

24 THE COURT: We'll find it.

25 MR. CHESSER: Thank you. But what it says, and again

1 Foster just reiterates it, just cites it. Saltz is a case
2 from several years ago, that to me it was the first large
3 case that recognized that principal, but the fact is, that
4 she can testify and is expected and will testify as
5 exactly what happened.

6 THE COURT: It doesn't need to be bolstered by a
7 9-1-1 tape --

8 MR. CHESSER: Yes, sir, thank you -- I am starting to
9 repeat myself.

10 THE COURT: Cumulative, bolstering and highly
11 prejudicial because of the emotional effect.

12 MR. CHESSER: Thank you, Your Honor.

13 THE COURT: Mr. Molony?

14 MR. MOLONY: Your Honor, I think it's important
15 that--

16 THE COURT: Well is it bolstering her testimony.
17 She's going to testify as to what happened, isn't she?

18 MR. MOLONY: She is going to testify to what happened
19 right prior to her making this 9-1-1 call.

20 THE COURT: That's correct.

21 MR. MOLONY: However, what occurred at this point,
22 Your Honor, in this case is extremely probative. This is
23 a hand of one hand of all type of case. She does speak
24 with emotion, excited utterance, which would get it out of
25 the hearsay land that Mr. Chesser is referring to, and it

1 is important that she be able to testify as to -- through
2 this tape, what she saw, right at that time, right --
3 seconds after this startling event that had just occurred.
4 She'll testify through this tape, Your Honor, that there
5 were two males that entered. Well, the testimony that
6 will come out was that the defendant was not one of those
7 two males. I think it's important that what she says
8 during that time be entered into evidence to prove our
9 case from a hand of one hand of all theory, the excited
10 utterance I think is important, that the jury hear exactly
11 what she saw, exactly when the armed robbers left the
12 residence -- I mean, the business at that time, Your
13 Honor. The cases that the defense handed up, the Spears
14 case simply states that if you find that excited utterance
15 it does exist, you must conduct a 403 analysis of it and
16 whether or not it's more prejudicial than probative.

17 In this case, Your Honor, it's extremely probative
18 that the state be allowed to introduce this call to show
19 exactly what was going on in that store, at that time,
20 from the victim's perspective.

21 Further, Your Honor, the Foster case, that the
22 defense handed up, is a prior written statement by a
23 witness to a police officer, that the court stated was not
24 allowed to be entered in as a prior consistent statement.
25 This is not going to happen here, Your Honor. She will

1 not testify as to what she told the 9-1-1 operators.
2 She'll not testify as to anything said in the tape. We'll
3 simply ask her if she called 9-1-1 at that point, seconds
4 after these two gentlemen left the store, and really
5 minutes after the defendant left the store, and play the
6 tape, and once the tape the done, I'll ask her what
7 happened next. It won't be cumulative. It won't be any
8 more than exactly what it is, which is an excited
9 utterance.

10 As well as, Your Honor, under 80343, she'll state her
11 then existing physical condition. She states that she
12 felt like something tased her on the back. That's
13 important, I think, that the jury understands. She felt
14 it at that time. This is not something she later realized
15 there were marks on her back and she may have been tased.
16 Seconds after it, she's able to state exactly what she
17 felt, as well as, her mental condition at the time. This
18 is all not hearsay under 8033, Your Honor, exists mental
19 or emotional or physical condition at the time of this
20 statement and it can be entered for the substantive nature
21 of it --

22 THE COURT: Let's say all of that's correct. Don't I
23 have to do a 403 analysis as to whether or not it's more
24 prejudicial than probative. Your victim is going to get
25 up and testify as to all of that and then you turn around

1 and play a highly charged emotionally charged tape that
2 basically says the same thing that she's testifying in the
3 courtroom, does that not invoke 403 and the emotional
4 aspect of it, it would be highly prejudicial?

5 MR. MOLONY: I think it does invoke 403, Your Honor,
6 and there may be an emotional side of it. I do not
7 believe it is more prejudicial than it is probative.

8 THE COURT: I know that's your position. But what's
9 going to be in the tape that you can't get in by way of
10 testimony from your victim?

11 MR. MOLONY: Factually?

12 THE COURT: Yes, sir. Nothing. There is nothing to
13 preclude you from asking her everything that's on that
14 tape?

15 MR. MOLONY: Well some of the timing issues, Your
16 Honor, she gets up and locks the door and you can tell
17 when she does that through the tape.

18 THE COURT: And she can testify to that in the
19 courtroom. It's strictly cumulative and emotional, is it
20 not?

21 MR. MOLONY: If that's Your Honor's ruling.

22 THE COURT: No, that's not my ruling. I am asking
23 you a question. How is it different?

24 MR. MOLONY: I think it's very important that the
25 jury be able to hear exactly what happened in that store

1 at that time. There is no way she can do that on this
2 witness stand. It won't be cumulative, because she won't
3 testify as to what she told the 9-1-1 operator. Your
4 Honor is going to hear exactly what's going on at that
5 time, while she's in that store.

6 THE COURT: What are we going to hear other than what
7 she can testify to? We're going to hear screaming,
8 shouting or what?

9 MR. MOLONY: You'll hear screaming and you'll hear
10 shouting, yes, sir.

11 THE COURT: Here is what I am going to do, I am going
12 to reserve ruling on it. I think Mr. Chesser has sent me
13 a copy of the tape. I'll listen to it in chambers at the
14 break. I'll let y'all know how I am going to handle it.
15 Even if I let you know -- I'll make a pretrial ruling on
16 it, and perhaps as the trial goes on if you see that you
17 need it, we'll do a proffer during the trial so it'll be
18 in evidence and all that. Let's just -- do not mention
19 it. I'll just let you know what my ruling is when I come
20 back.

21 MR. MOLONY: Yes, sir, I think it is only three and a
22 half minutes, Your Honor.

23 THE COURT: What other cases do you want me to look
24 at other than Foster and what was the other one?

25 MR. CHESSER: Saltz.

1 THE COURT: Anything else? Those didn't deal with
2 9-1-1 tapes did they?

3 MR. CHESSER: No, let me say this, briefly, Your
4 Honor. I think that the state makes a good argument that
5 it is an excited utterance, so having said that Saltz and
6 those cases are for situations where, you know, there is
7 no hearsay exception for it to come in. And so when we're
8 dealing with excited utterance, the is question is really
9 the 403 analysis. That's it --

10 THE COURT: You're not trying to challenge what she
11 said on a prior consistent statement that it was
12 fabricated and all that.

13 MR. CHESSER: No.

14 THE COURT: You're just saying using a 403 analysis,
15 listen, Judge, she can get up and testify as to everything
16 she's got on the tape that emotionally and highly
17 prejudicial. That's your argument right.

18 MR. CHESSER: Yes, sir. And the other final thing
19 this the state argues -- saying exactly what happened.
20 She's saying what happened at that time, she saying what
21 happened just previously. In other words, she's saying
22 what happened when she got robbed and so she's not -- the
23 whole idea that she's saying exactly what's happening
24 right then and somehow that's relevant to the jury, it's
25 not, except for the emotion and passion and prejudice and

1 when Your Honor listens to that tape --

2 THE COURT: It's certainly relevant now as to what
3 happened during the robbery is certainly relevant. She
4 can testify as to everything that happened during the
5 robbery.

6 MR. CHESSER: Thank you Your Honor.

7 THE COURT: But, is it cumulative and prejudicial,
8 and is it more relevant than -- more probative than
9 prejudicial. And do you have any cases out there that
10 preclude playing the 9-1-1 tape of what a victim is going
11 through during the exact time of the robbery, or the
12 crime. And I know we've tried --

13 MR. CHESSER: I'll just say this.

14 THE COURT: I know we've tried hundreds of cases
15 where the 9-1-1 tape normally comes in. What is better
16 evidence than what she's saying right then and there when
17 she has just been robbed. So I have to balance that out.
18 When you're trying to present a true factual picture of
19 what happened -- or I assume that y'all are trying to
20 present a true factual picture and there's got to be some
21 cases out there dealing with 9-1-1 tapes. Basically the
22 same thing they are going to testify in the courtroom. I
23 would suggest both of you looking for something over the
24 break. I suspect my law clerk will find them in about two
25 minutes. Anything else?

1 MR. CHESSER: I beg the court's indulgence. Just one
2 brief thing. When you're evaluating this, you should be
3 aware that they have another tape, which they intend to
4 introduce, which Mrs. Guerrairi called law enforcement
5 before she got robbed and that tape talks about
6 Mr. Quarles -- well not Mr. Quarles, but it talks about an
7 individual coming in and she felt suspicious about this
8 person. I just think the context of this, I'd just like
9 you to be aware that there is this other tape that the
10 state intends to introduce when you're evaluating this
11 probative versus prejudicial effect.

12 THE COURT: We discussed that in chambers yesterday
13 and it sounds like to me she was very cognizant of or
14 perceived some type of danger to the point that she even
15 called 9-1-1 and said, listen, I don't like what's going
16 on and all of a sudden she is robbed and she calls back.
17 All of that -- I mean, it's all relevant. It is just
18 whether or not the prejudicial aspect of it outweighs the
19 probative aspect. I'll have to make that call when I
20 listen to it. I would urge y'all to try to find a case
21 dealing with 9-1-1 tapes that talk about ruling 403.
22 Thank you. Anything else?

23 MR. MOLONY: Nothing from the state, judge.

24 MR. CHESSER: Nothing from the defense, Your Honor.

25 (Whereupon, a break was taken.)

1 (WHEREUPON, a lunch break was taken.)

2 THE COURT: Gentlemen are y'all ready to proceed?

3 MR. MOLONY: Yes, sir, Your Honor.

4 MR. CHESSER: Yes, sir, Your Honor.

5 THE COURT: As far as the 9-1-1 tapes I have reviewed
6 the cases Mr. Chesser asked me to look at. We've done
7 some further review. How is it any different than putting
8 in photographs of a crime scene, or if we have a failure
9 to stop for blue light and watching the guy being chased
10 on video camera with the police, or DUI arrest, or any of
11 the reconstruction scenes we do today with photographs or
12 anything? How is it really any different than any of
13 that, Mr. Chesser?

14 MR. CHESSER: Well, Your Honor, know matter what it,
15 as you know, it would be analyzed under prejudice versus
16 probative test of 403.

17 THE COURT: I understand.

18 MR. CHESSER: If you have photographs it would be the
19 same issue. Any type of visual evidence like that. So I
20 think that there is a similarity. Other than that, if you
21 have a video for failure to stop for blue light that is
22 different because that's actually as it happened, as
23 opposed to somebody recounting it in this case immediately
24 after the fact. But there is a similarity. Your Honor, I
25 did look at some cases and they were not extremely

1 informative, but the essence of what I got from them is
2 they simply applied to 403 analysis --

3 THE COURT: I agree. All right, Mr. Solicitor, do
4 not mention it in opening statement that you got a 9-1-1
5 tape. When you get ready that you want to put it in,
6 let's do a proffer and I'll revisit it at that time on a
7 403 analysis.

8 MR. MOLONY: Yes, sir, Your Honor.

9 THE COURT: Thank you. Anything else?

10 MR. MOLONY: Nothing from the state.

11 MR. CHESSER: No, sir.

12 THE COURT: Bring the jury in, please.

13 (Whereupon, the jury came into open court at
14 approximately 2:05.)

15 THE COURT: Good afternoon. All right. The first
16 thing we have to do to start the trial I have to ask you
17 to stand one more time and raise your right hand and
18 accept the oath for this trial.

19 (WHEREUPON, the jury was sworn at 2:06.)

20 THE COURT: Let me hold the indictments, please. All
21 right the first thing we're going to do is I am going to
22 give you just a brief -- some brief remarks about the case
23 and let me once again importantly remind you that in this
24 case the defendant Mr. Quarles has been indicted by the
25 Aiken County Grand Jury for two offenses. One is for

1 armed robbery. The other is for kidnapping. And, as I
2 said, he's plead not guilty to both of these indictments.
3 Obviously that puts the burden on the State of South
4 Carolina to prove his guilt to you beyond a reasonable
5 doubt.

6 If we were trying a civil case where you are in a car
7 wreck and you were blaming the person for running the red
8 light and you broke your arm and you were seeking monetary
9 damages. In that case the parties coming into this
10 courtroom on sort of equal footing, and if these were the
11 scales of justice they come in equally situated. And for
12 the party bringing the lawsuit, the plaintiff, in order
13 for him or her to prevail they have to prove their case by
14 what we call, the preponderance, or greater weight of the
15 evidence. They have to tip the scales ever so slightly,
16 if you were measuring evidence, in order to prevail. If
17 they do that they win. If the scales remain the same, or
18 tip in favor of the defendant, then they would not
19 prevail.

20 It is different in a criminal case such as this.
21 Because the defendant has the constitutional protection of
22 being presumed to be innocent, until proven guilty. He
23 comes into the courtroom using the scales of justice, as
24 an example, with scales tipped in his favor this way. He
25 is presumed to be innocent. And in order for the state to

1 convict him, they must prove to you by evidence beyond a
2 reasonable doubt and tip the scales in that manner.

3 Well the burden of proof is greater in a criminal
4 trial than it is in a civil trial. I'll explain that more
5 to you as we go along. Because the state has the burden
6 of proof, they will present their evidence first, and they
7 do that by calling witnesses and or introducing relevant
8 exhibits. After the state has put up their evidence, then
9 the defendant has the right to present his defense, and
10 then in some cases the state has the right to put up reply
11 testimony. So that would be the way the testimony will
12 flow. When I sit down and start the trial of the case
13 they start by calling witnesses. The state calls their
14 first followed by the defendant.

15 Before any testimony is given both lawyers will have
16 a right to make an opening statement. Now please bear in
17 mind that opening statement, that is not evidence in the
18 case. That is what the lawyers contend the issues will
19 be, what they intend to show you, sort of a road map as to
20 what they intend to show in the case.

21 But the testimony that you will hear comes from live
22 witnesses and or perhaps video witnesses and from
23 exhibits. And from that testimony is where your job as
24 the judge of the facts come in, because I have to rule as
25 to whether or not they've asked the questions properly.

1 Once they do it's admitted into the trial of the case.
2 And one witness may say, like I said earlier, they may say
3 it's daytime and the other might say it's night time.
4 That's properly admitted in the trial. It is up to you to
5 determine as the judges of the facts what the true facts
6 are. That simply means you judge the credibility or the
7 believability of the witnesses who testify in the case.
8 You know, we're all adults. You deal with husbands. You
9 deal with wives, parents, children, employees, employers.
10 You know how to judge someone when they're telling the
11 truth. So use that same common sense in looking at these
12 witnesses and analyzing what they say, in determining what
13 the true facts are of the case. Once y'all collectively
14 determine what the true facts are, then you take those
15 facts, and I'll give you the law dealing with kidnapping
16 and armed robbery and some certain other general
17 propositions of criminal law, and you take those facts and
18 you apply it to the law as I give it to you, and you'll be
19 in a position to render a true and just verdict.

20 A few little ground rules. We will, like I said, go
21 until about 5 o'clock this afternoon. We will take a
22 break during the middle of the afternoon. I will ask you
23 that whenever we take a break whether it be for afternoon
24 or morning break or lunch or whatever. Please do not
25 start discussing the case among yourself; don't

1 deliberate. It's not proper to do that until all the
2 evidence that's been presented, the closing arguments have
3 been made and I have instructed you on the law. I ask
4 that you pay close attention.

5 Now, I try to run the courtroom efficiently. I try
6 to start on time. I try to keep the lawyers moving. By
7 the same token, I am not trying to run a race up here, so
8 if at any time during the trial of the case you become
9 uncomfortable. You need to go to restroom. You need
10 something to drink, you need to stand up and stretch or
11 you simply just need a break. Do not get uncomfortable.
12 If you get cold or hot raise your hand and I'll try to
13 adjust the temperature accordingly. I will ask you to do
14 this. When we take our first break this afternoon, I need
15 a foreperson to be chosen among the 12 of you on the jury.
16 Try to select someone to act as the foreman, foreperson.
17 It simply serves as the spokesperson for the jury. Brings
18 to me any problems you may have or what ever and head up
19 the deliberations. If you'll do that, I would appreciate
20 it. If you can't, I am just going to randomly select
21 someone. We're going to get started in just a minute with
22 the opening statements by the solicitor followed by the
23 defendant and then we'll get right into the testimony.
24 Any objections to my opening remarks by the state?

25 MR. MOLONY: Nothing from the state, Your Honor.

Opening - Mr. Malony

65

1 THE COURT: And by the defendant?

2 MR. CHESSER: No, Your Honor.

3 THE COURT: All right. Mr. Molony, you may present
4 your opening statement.

5 OPENING STATEMENT

6 MR. MOLONY: Thank you, Judge. Ladies and gentlemen,
7 good afternoon. We're all here today for the exact same
8 reason because on February 19 of 2013 -- not that long ago
9 -- the defendant, Michael Quarles, along with two other
10 men planned, worked together, and then executed an
11 absolutely senseless and terrifying armed robbery and
12 kidnapping at the Quick Cash on Richland Road in Aiken,
13 South Carolina. And unfortunately for Penny, the victim,
14 you'll hear from shortly, she had front row seat to all of
15 it.

16 Now, I'm not going to stand up here and tell you
17 everything you're going to hear. That's the point of
18 opening statements usually is you'll hear from so and so.
19 Ultimately you're going to hear what you're about to hear.
20 But I do think it's important that you got a little bit of
21 an idea as to why you're hearing from certain people.
22 First you'll hear from Penny. That's obvious. She is
23 going to tell you what happened. She is going to tell you
24 how the defendant played a huge role in the beginning of
25 it, during it, and at the end of it. You'll later hear

1 that portion of it. But at the beginning how the
2 defendant came in first. She'll tell you exactly what he
3 did, how he kind of scoped the place out a little bit.
4 You'll then -- when she's done telling you exactly what
5 they did to her and what they took from the store. You'll
6 hear from a mailman who will be able to tell you kind of
7 what he saw that day. It is very important. Listen for
8 the next two witnesses, two daycare workers that were
9 across the street, and what they saw, how they saw the
10 defendant and what they saw the defendant doing.

11 Then you'll hear from pretty interesting guy. One of
12 the guys that worked with this defendant to plan it to
13 execute it, Carlos Williams. Now, Carlos Williams is
14 going to tell you his role in it. He is going to tell you
15 the defendant's role in it. He is going to tell you the
16 third gentleman's role in it. And his role, Carlos
17 William's role, is a big one. But he'll tell you that
18 he's still -- his charges are still pending. So, he'll
19 get up on the stand and tell you what happened. But
20 realize the state by no means is saying Carlos Williams is
21 the good guy. Carlos Williams is just as in the middle of
22 this thing as the defendant is .

23 Lastly, you'll hear through one of our investigators,
24 detectives with the city, you'll hear from the defendant
25 himself. You'll hear his statement that he gave law

Opening - Mr. Chesser

67

1 enforcement officers when he was arrested. Listen to it
2 ladies and gentlemen. Listen to what he tells you -- not
3 that the rest of it is not going to be important, but what
4 he tells you at the end of this thing is going to be
5 extremely important and I think it's going to make it very
6 easy on all of it.

7 Now, the judge at the end to is going to tell you
8 what armed robbery is . Ultimately in this case I think
9 it's important you know it does not have to be an actual
10 deadly weapon. But, if the victim in this case, Penny,
11 thought what was used was a deadly weapon, that is
12 sufficient, and you'll hear from Carlos, and you'll hear
13 from Penny. Carlos will tell you it was a BB gun that was
14 black and looked like a pistol. So don't get tripped up
15 on that.

16 Next kidnapping is being held against your will,
17 being confined, even if for a moment, and you'll hear how
18 while they're in there getting the money, Penny is in
19 there. And any reasonable person would have felt free to
20 leave at this time. Penny will tell you she sure as heck
21 didn't.

22 Now, the last little issue I think that's important
23 for you to understand before we go into it, is the theory
24 that the judge mentioned one of the theories is, the hand
25 of one hand of all theory, which basically means these

1 people worked together throughout this crime and you'll
2 hear how the defendant did just that, from the beginning,
3 during the commission, and afterwards.

4 And in the end, as the Judge stated, the state does
5 bear the burden of proof of proving the defendant guilty
6 beyond a reasonable doubt and that's a burden we're more
7 than welcome to meet head on in this case. It is a burden
8 we will prove to you and suggests at the end you're firmly
9 convinced. You're firmly convinced. It's not beyond all
10 doubt. It's not, well maybe in this, never, never --
11 you're convinced using your common sense and at the end of
12 this, saying, Mr. McCarley and I are confident that you
13 will be as to each charge. Thank you for your time.

14 THE COURT: Mr. Chesser.

15 MR. CHESSER: May it please The Court.

16 OPENING STATEMENT

17 MR. CHESSER: Good afternoon. Thank you for being
18 here. I am Michael Chesser. I practice law here in
19 Aiken. I was born here a long time ago. I represent
20 Michael Quarles. Michael is accused in this case. The
21 charge is armed robbery and kidnapping, two charges. The
22 kidnapping, the Judge will explain at the end of this, is
23 defined -- it's a little different from what you might
24 think they talk about restraint and things of that nature.
25 He'll give you that.

1 What the state is arguing in this case is that
2 Michael Quarles is responsible or guilty for armed robbery
3 or kidnapping, even though he wasn't actually there when
4 Carlos Williams and Jamaques Salley robbed Mrs. Guerriari.
5 To give you a little idea of this was 10:30 on the morning
6 of February 19, really just two or three months ago. And
7 at some point the testimony will be that Carlos went into
8 the check cashing place with white gloves and a gun, which
9 he held on Mrs. Guerriari. And Jamaques Salley went in
10 with white gloves and a gun and a taser. So what the
11 state is doing here is they're seeking to hold Michael
12 Quarles responsible under this theory of the hand of one
13 is the hand of all. I'm not going to go into that a lot
14 here. The judge, again, will give you the law and y'all
15 will apply the facts to it. I think that -- I know I will
16 go into it deeply in closing and I'm sure that the
17 prosecutor will go into it deeply at closing.

18 I would submit to you that what they're going to have
19 is two burdens. One is, the hand of one, hand of all,
20 that type of legal theory. The other one is their burden
21 of proving guilt beyond a reasonable doubt, to eliminate
22 doubt in your mind. The nuances or the essence of what
23 the State contends is Michael Quarles participation in
24 this, they're going to attempt to prove primarily with the
25 testimony of Carlos Williams.

1 Again, I'll go into this more at closing. But, right
2 now I will tell you that the state is leaning on a thin
3 reed, a weak ree. Williams is going to testify that he
4 went in there with a gun, he planned this. He went with
5 Jamaques Salley, bought the guns a few days before this.
6 He went with Jamaques Salley and bought the taser a few
7 days before this, he went in there, with Jamaques Salley,
8 and robbed Mrs. Guerrairi. He will be back tracking
9 continuously. That is the main witness that the state has
10 to talk about what they claim is Michael Quarles's
11 participation in this crime.

12 So this type of case is going to require your
13 complete attention and we picked you carefully, the State
14 and the Defense, we picked you carefully and we count on
15 you to listen to all the witnesses, to listen carefully
16 and this case is going to require all of your attention
17 and we thank you very much.

18 THE COURT: You may call your first witness.

19 MR. MOLONY: Thank you, Your Honor. The State calls
20 Penny Guerriari.

21 THE CLERK: Please come forward and place your left
22 hand on the Bible and raise your right.

23 PENNY GUERRIARI, being
24 first duly sworn, testifies as follows:

25 THE CLERK: Please have a seat in the witness box and

1 state your full name and spell your last.

2 THE WITNESS: Penny Guerriari.

3 DIRECT EXAMINATION

4 BY MR. MOLONY:

5 Q May I call you Penny?

6 A Yes.

7 Q Penny, how old are you?

8 A Twenty-five.

9 Q And did you go to school?

10 A I did.

11 Q Where did you go to school?

12 A Midland Valley.

13 Q Did you graduate?

14 A I did.

15 Q Do you have any children?

16 A Two.

17 Q How old are your kids?

18 A Seven and four.

19 Q And are you currently working anywhere?

20 A Yes.

21 Q Where are you working?

22 A The Quick Cash in North Augusta.

23 Q How long have you been employed with Quick Cash in
24 North Augusta?

25 A Since March.

1 Q And prior to being at the Quick Cash in North Augusta
2 where were you working?

3 A The Quick Cash on Richland Avenue in Aiken.

4 Q When did you start there?

5 A November.

6 Q Of 2012?

7 A (Witness nods head.)

8 Q Okay. What are your duties at the Quick Cash since
9 you've been there?

10 A I greet customers, make loans, courtesy phonecalls,
11 collection calls, make copies, file a lot of paperwork.

12 Q Okay. And were you working in that capacity on
13 February 19 of 2013?

14 A Yes.

15 Q And which store were you working in?

16 A The one on Richland in Aiken.

17 MR. MOLONY: Your Honor, may I approach?

18 THE COURT: You may.

19 Q I am going to show you what's been previously marked
20 for identification is State's Exhibit 1 and 2 and ask you
21 first if you recognize one?

22 A Yes.

23 Q And two?

24 A Yes.

25 Q What are they?

1 A They're the Quick Cash on Richland, the store I
2 worked in.

3 Q What's two?

4 A Two is the aerial view.

5 Q And do both of these pictures fairly and accurately
6 represent as to one the business that you worked in on
7 February 19, 2013 and, 2, the ariel view of that business
8 and the stores around it?

9 A Yes.

10 MR. MOLONY: Your Honor, at this time the State would
11 move to introduce Exhibits 1 and 2 into evidence?

12 THE COURT: Any objection.

13 MR. CHESSER: No objection

14 (State's Exhibit Number 1 is received into evidence.)

15 (State's Exhibit Number 2 is received into evidence.)

16 Q Is that store in Aiken County, Penny?

17 A Yes.

18 Q What time did y'all open that morning?

19 A Nine.

20 Q And what time did you get there?

21 A 8:45.

22 Q Okay. And just describe to the jury when you got
23 there at 8:45, what happened? What did you do?

24 A I go in. I get the checks. I take them to the bank.

25 I come back from the bank. If we had any checks cleared I

1 would enter them in as payments. I would start on
2 courtesy phonecalls, file my receipts, if we had any from
3 the deposits the day before.

4 Q And when you got back from the bank that morning were
5 there any customers at the store?

6 A There was a lady waiting to come in to the store.

7 Q And did she come in to the store at this time?

8 A She did. I let her in.

9 Q About what time would that have been?

10 A 9:20, 9:30.

11 Q And so she was the first customer that arrived that
12 day at 9:20 or 9:30?

13 A (Witness nods head.)

14 Q All right. What about the second customer?

15 A He was a male, maybe 10 or 15 minutes later. He come
16 in and got a 550 loan.

17 Q \$550?

18 A Yes.

19 Q All right. Do you remember how much money you
20 started that day with in the drawer?

21 A We always start each drawer with a thousand. I was
22 the only one -- you start each drawer with a thousand. I
23 was the only one working so there was only a thousand at
24 my drawer.

25 Q So no one was else was at the residence -- I mean,

1 the business, I'm sorry?

2 A No.

3 Q So after the second customer came in and got a \$550
4 loan. What was left in your drawer?

5 A 450.

6 Q \$450?

7 A Yes.

8 Q Now, once this second customer leaves and you get
9 them the loan, what did you do?

10 A I went to the back to put my receipts from the
11 deposit, from the day before, into the folders, put them
12 in the file cabinet.

13 Q Okay. And what happened next?

14 A I heard the door open. I walked to the door and
15 there was a male standing in the lobby, and he was
16 inquiring about a loan.

17 Q Okay. You say a male standing in the lobby. What
18 did this male look like?

19 A He was a big guy, light skinned, little hairs. He
20 had on a white hoodie with read writing.

21 Q You said light skin. What color was he?

22 A He was a black light skinned guy.

23 Q Okay. What was his build?

24 A A very big guy.

25 Q Okay. And what did he have with him?

1 A Nothing.

2 Q Did he have any keys with him?

3 A No keys. It was raining that day. No umbrella. No
4 paperwork. It was just him.

5 Q You said he was in there and he inquired about a
6 loan. What was he asking you?

7 A How do I get a loan? And I proceeded to ask him, do
8 you work? Yeah, he answered, you know. I walked around
9 the counter and he was like can you write it down what all
10 I needed and I wrote down that he needed a bank statement,
11 check stub. I asked him did he need an application. He
12 told me, no.

13 Q So he didn't have any of that with him?

14 A Nothing.

15 Q Did he give you any of his personal information at
16 that time that you can tell us?

17 A He might have told me a place of employment, but I
18 don't remember what he said.

19 Q Your Honor, may I approach?

20 THE COURT: You may.

21 Q Penny, I am going to show you what's been marked for
22 identification as State's Exhibit 4 and ask you if you
23 recognize this?

24 A That's the inside of the store.

25 Q Would this be a fair and accurate representation of

1 the way the inside of that Quick Cash looked that morning?

2 A Yeah.

3 MR. MOLONY: Your Honor, I ask permission for the
4 witness to be able to step down briefly.

5 THE COURT: Yes, sir.

6 Q Thank you. Now, show the jury where you are talking
7 with this man, you said he had a white shirt on with read
8 writing?

9 A White hoodie.

10 Q White hoodie, I'm sorry. Where was he and where were
11 you during this time?

12 A There's a room back over this way. He is standing in
13 the middle of the lobby here.

14 Q Okay. And when you were giving him information about
15 the loan, where was he standing?

16 A On the opposite side of this counter, and I was here,
17 right in front of this cash drawer.

18 Q Okay. Thank you. You can have a seat up there Did
19 you look him in his face while you were talking with him?

20 A Yes, he was directly across the counter.

21 Q How long did you have this conversation with him
22 concerning this loan?

23 A Four or five minutes.

24 Q What happened next?

25 A I handed him the sticky note that I had written the

1 information for the loan about and he walks out of the
2 store to the sidewalk and then I walked back to the back
3 to finish with my receipts.

4 Q Okay. Well, after that, what happened?

5 A I noticed that there were two black males -- it was
6 shortly after. There were two black males walking towards
7 the store. They were wearing black hoodies, and I noticed
8 out the corner of my eye, there is a window, and I seen my
9 mailman pull up. So when I seen him pull up, I looked
10 back through the door and I seen the two black males walk
11 down towards the hotel.

12 Q Now, I previously showed you this overview map --
13 Your Honor, I'd ask permission that the witness be able to
14 step down.

15 THE COURT: You may.

16 Q All right. Penny, can you show the jury where the
17 business was you were working in at that time?

18 A This is Quick Cash.

19 Q Okay and you stated -- to take you back a little bit,
20 that the bigger male with the white hoodie on walked out
21 of the store. Where did he walk out?

22 A The doors are here. He walked to the sidewalk here.

23 Q Okay that's when you went back into the back?

24 A Yes.

25 Q Now moments later -- minutes later you stated that

1 what happened?

2 A There were two black males coming this way and then
3 my mailman pulled up here, and then when I seen him, I
4 looked back up, and the two black males were headed this
5 way.

6 Q When you said this way, is this where this car is, is
7 this a path heading down?

8 A It's like a small driveway for the owners of this
9 building to enter the bottom of the building.

10 Q What did you notice about these two black males that
11 were suspicious to you?

12 A They were dressed all in black and they were looking
13 very, very hard at the store.

14 Q You state had the mailman came up and parked right
15 here?

16 A Yes, because my car was here. He parked right beside
17 my car.

18 Q And what did he do?

19 A He comes into the store and I have a brief
20 conversation about the two males that I was, you know, a
21 little concerned with.

22 Q You told him about it?

23 A Yeah. I asked him to go find out where they were.

24 Q Did he?

25 A Yeah. He walked out. He comes back in and gives me

1 public safety's number in case I seen them again, or got
2 nervous.

3 Q And did you call public safety?

4 A I did.

5 Q Okay.

6 MR. MOLONY: Your Honor, may I approach?

7 THE COURT: Yes, sir.

8 Q Penny, I'm showing you what's been marked for
9 identification as State's Exhibit 3 and ask you if you
10 recognize this?

11 A Yes.

12 Q What is this?

13 A It's my 9-1-1 call to Public Safety.

14 Q Have you listened to this?

15 A I have.

16 Q Is this -- this is the call you made after speaking
17 with the mailman that day?

18 A Yes.

19 Q Okay. And is this the actual phonecall that you
20 made, no changes, no deletions?

21 A No, that's the call.

22 MR. MOLONY: Your Honor, at this time the State would
23 move to introduce and play for the jury Exhibit 3?

24 THE COURT: That's the 9-1-1 call we've been talking
25 about?

PENNY GUERRARI -- DIRECT -- MR. MALONY

81

1 MR. MOLONY: No, sir.

2 THE COURT: That's the earlier call?

3 MR. MOLONY: Yes, sir.

4 THE COURT: Any objection.

5 MR. CHESSER: No objection, Your Honor.

6 (State's Exhibit Number 3 is received into evidence.)

7 (Whereupon, the CD is played for the jury)

8 Q Tell the jury what happened after that phonecall?

9 A Time I hung up that phone and looked up there was a
10 male coming in the door with a gun in my face and I seen
11 another arm behind him that turned off the lights.

12 Q What were they wearing?

13 A Black hoodies, sunglasses and white gloves.

14 Q Okay. You saw -- there were two males? Two?

15 A Two.

16 Q And after the lights went out, what happened?

17 A The males come behind the counter, and one had me by
18 the shoulder of my jacket, and they had me in the corner
19 beside the file cabinet, and they made me open the cash
20 drawer. They put me back in the corner. I could hear
21 them rustling around with the money, and then I felt him
22 let me go, and one lifted up my shirt, and I remember a
23 pain going throughout my body, and I remember laying on
24 the floor telling myself not to breathe and then finally I
25 gasped, jumped up, locked the door, grabbed the phone,

1 dialed 9-1-1 and got back up under the counter.

2 MR. MOLONY: Your Honor, may I approach?

3 THE COURT: Yes, sir.

4 Q Penny, I am going to show you what's been marked as
5 State's Exhibit 5, 6 and 7 and ask if you recognize them?

6 A That's inside the store.

7 Q And are these fair and accurate representations of
8 the way the inside of that store looked that day?

9 A Yes.

10 MR. MOLONY: Your Honor, at this time the state would
11 move to introduce five, six and seven into evidence.

12 THE COURT: Any objection?

13 (State's Exhibit Number 5-7 are received into
14 evidence.)

15 Q Where were you at whenever you felt them -- one hand
16 on you and the back of your shirt coming up and the taser
17 hitting?

18 A I was here. This file cabinet isn't up against the
19 wall. There is a door here and I was in front of this
20 door.

21 Q And where did you fall?

22 A Between that file cabinet and the wall.

23 Q Okay. And on State's Exhibit 6, what is this a
24 picture of?

25 A That's a picture of the cash drawer and the counter

1 that I hid up under.

2 Q And specifically State's Exhibit 7 what is this?

3 A The cash drawer where my cash was that morning.

4 Q How much cash did they take that day?

5 A \$447.

6 Q You stated after you got off the ground, and gasped
7 for breath, that you got up, locked the door -- the front
8 door to the place?

9 A Yes.

10 Q And then what did you do?

11 A I grabbed the phone and dialed 9-1-1 and got under
12 the counter.

13 Q Your Honor, at this time the state may need to
14 proffer some testimony.

15 MR. CHESSER: We would object, Your Honor, on the
16 grounds previously stated.

17 THE COURT: Okay. All right we had discussed that in
18 the pretrial. I am going to allow it. I've made a ruling
19 and I'll put it on the record in detail outside of the
20 presence of the jury. I will allow it and you'll be
21 protected on all of your arguments.

22 MR. MOLONY: May I approach, Your Honor?

23 THE COURT: Yes.

24 Q All right, Penny, I am showing you what's been marked
25 as State's Exhibit 8 and ask you if you recognize this.

1 A Yes.

2 Q What is it.

3 A It's my second 9-1-1 call.

4 Q Have you listened to this call?

5 A Yes.

6 Q And is it the call you made the morning of February 2
7 -- the second call you made on the morning of February 19,
8 2013?

9 A Yes.

10 MR. MOLONY: Your Honor, at this time the state would
11 move to introduce exhibit 8 into evidence and ask that it
12 be published to the jury.

13 THE COURT: All right. Subject to the objections
14 made earlier by the state and I will put a more detailed
15 ruling on the record at the appropriate time.

16 MR. MOLONY: Yes, sir.

17 THE COURT: Or the reason for the ruling.

18 (State's Exhibit Number 8 is received into evidence.)

19 (Whereupon, 9-1-1 CD was played for the jury)

20 Q Penny, did the officers make it in at this time into
21 the business?

22 A I was at the door.

23 Q And you stated earlier that you felt something on
24 your back. Did you hear anything?

25 A I heard some sort of noise. I didn't know what it

1 was. I was so tight that all I remember is the gun. I
2 thought they were going to shoot me.

3 Q Okay. Your Honor, may I approach the witness?

4 THE COURT: You may.

5 Q I am showing you what's been marked as State's
6 Exhibit 10 and State's Exhibit 11 and ask you if you
7 recognize these?

8 A It's me.

9 Q What are these?

10 A It's me and that's my back.

11 Q Where were these pictures taken?

12 A Right after the cops got there.

13 Q So this -- both of them were taken at the Quick Cash
14 in Aiken?

15 A Yes.

16 Q And they both depict the way you looked on
17 February 19 of 2013?

18 A Yes.

19 MR. MOLONY: Your Honor, the State would move to
20 introduce State's Exhibit 10 and 11 at this time?

21 THE COURT: Any objection?

22 MR. CHESSER: No objection.

23 (State's Exhibits Number 10, 11 are received into
24 evidence.)

25 Q Now the next day, Penny, did you have the opportunity

1 to meet with detectives about this case?

2 A I did.

3 Q Where did you meet with them at?

4 A Aiken Public Safety, after we went to a bond court.

5 Q Okay and while at Aiken Public Safety, did you tell
6 them further about this first gentleman that walked in to
7 the store that day?

8 A I did.

9 Q And were you presented a photo line up at that time?

10 A Yes.

11 MR. MOLONY: Your Honor, may I approach?

12 THE COURT: You may.

13 Q All right, Penny, I am showing you what's been marked
14 as State's Exhibit 12 and ask if you recognize this?

15 A Yes.

16 Q And what is it?

17 A It's the photo line up.

18 Q And did you initial this?

19 A I did.

20 Q And did you date this?

21 A Yes.

22 Q And did you ultimately pick someone out of this?

23 A I did.

24 Q What number did you pick?

25 A Number two.

1 Q Did anybody tell you --

2 MR. MOLONY: Your Honor, at this time, I'm sorry, the
3 State would move to introduce Exhibit 12 into evidence.

4 MR. CHESSER: No objection.

5 (State's Exhibit Number 12 is received into
6 evidence.)

7 Q Did anybody tell you who to pick?

8 A No.

9 Q Did anybody tell you that a suspect may be in there
10 or was in there?

11 A No.

12 Q Why did you pick number two?

13 A Because number two is who I was in the store talking
14 to that day.

15 Q Do you see that person in the courtroom here today?

16 A I do.

17 Q Would you please describe what he's wearing for the
18 jury?

19 A He is wearing a brown long sleeved shirt.

20 MR. MOLONY: Your Honor, may the record reflect that
21 the witness has identified the defendant.

22 THE COURT: Certainly.

23 MR. MOLONY: Please answer any questions that the
24 defense may have.

25

CROSS-EXAMINATION

1 BY MR. CHESSER:

2 Q I have a little trouble with your last name. Is it
3 Mrs. Guerriari?

4 A Uh-huh.

5 Q Okay. Thank you. You talked about the day -- the
6 19th, the day in question, and the weather, and you said
7 it was raining. Did you wear a raincoat to work that day?

8 A No, I had on a white jacket.

9 Q It was kind of misty, in fact, wasn't it?

10 A Yes.

11 Q How long had you been working for the check cashing
12 company at that time in February of this year?

13 A I started in November of 2012.

14 Q So four to five months. I just have to ask you to
15 say yes or no for the court reporter?

16 A Yes.

17 Q If someone comes in -- well let me understand a
18 little better. Those types of loans are they what are
19 called unsecured loans or do you have security like a
20 title for a vehicle or something?

21 A You write me a check.

22 Q Okay. But you have to have certain qualifications --
23 somebody needs to have a job or something of that nature;
24 is that right?

25 A Checking account, paycheck stub. Yes.

1 Q So there is a list. What is the list of things that
2 are typically required to get a loan there?

3 A Bank statement, check stub, photo ID, and you have to
4 do four references family members, full addresses, full
5 telephone numbers.

6 Q Okay. So it wouldn't be unusual for somebody to not
7 have all of those items when they first came to get a
8 loan, would it?

9 A Yes.

10 Q You mean it happens often, is that what you mean,
11 that they don't have something?

12 A No, more people -- normally people bring in light
13 bills, leases on apartments, something not needed for the
14 loan.

15 Q Okay.

16 A That we give them the ability to look up their bank
17 statement on our systems in the store.

18 Q So you need something where -- some type of official
19 document where you can then look them up?

20 A They can look up their bank statement in the store.

21 Q Okay. Now, you testified that two males entered the
22 store just shortly after the post man left; is that right?

23 A Yes.

24 Q Okay. Did both of those individuals have guns?

25 A I'm not sure.

1 Q And one of the individuals was in front of the other
2 one; is that right?

3 A Right.

4 Q Okay. Can you describe the person who was the first
5 one who was in front?

6 A He was a black male with a goatee and he had on
7 sunglasses and a black hoodie, white gloves, jeans.

8 Q Which of the individuals was taller of those two, the
9 one in front and the one behind, which was taller?

10 A The one in the front.

11 Q Okay. All right. Do you know -- I mean, have you
12 identified that person with law enforcement?

13 A Yes.

14 Q Who was it?

15 A Carlos Williams.

16 Q Okay. So who was the individual who turned off the
17 light switch?

18 A Jamaques Salley.

19 Q Who was the individual who held you?

20 A Carlos Williams.

21 Q So -- and I know this was traumatic. But, Carlos
22 Williams he pointed the gun at you?

23 A Yes.

24 Q All right. That's all the questions I have. Thank
25 you.

1 THE COURT: Redirect?

2 MR. MOLONY: Briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. MOLONY:

5 Q Mr. Chesser asked you did both individuals have guns?

6 A Yes.

7 Q The first individual that entered the store that day,
8 you didn't know who he was at the time, did you? Did you
9 know him personally?

10 A Are you talking about who entered --

11 Q I'm sorry that was a bad question. The two
12 individuals with gloves, hoodies, guns, did you know
13 either one of them personally?

14 A No.

15 Q And did you get a good enough look at either one of
16 them at the time to be able to tell law enforcement
17 exactly who they were?

18 A I could describe them.

19 Q Right. The defendant that you pointed out, did you
20 get a good look at him?

21 A Yes.

22 Q Did you get a better look at the defendant than you
23 did of the other two?

24 A I did.

25 Q And throughout this time these two -- the two in the

1 black and hoodies and gloves and gun, you're in the
2 corner, you testified, that State's Exhibit 5, you're in
3 the back corner of this?

4 A Between the file cabinet and the wall.

5 Q And did you feel like you could get out of there at
6 this time?

7 A No. There was -- there is only a small space to
8 leave. No, he had me. He was holding me by the shoulder
9 of my jacket.

10 Q Thank you, Judge. Nothing further.

11 THE COURT: You may step down. Thank you, ma'am.

12 Next witness, please.

13 THE COURT: If you will stand right there and place
14 your left hand on the Bible and raise your right hand,
15 please.

16 WAYNE BRINEGAR, after being duly sworn,
17 testified as follows:

18 THE CLERK: Please have a seat in the witness box and
19 state your full name for the court, please and spell your
20 last.

21 THE WITNESS: Wayne Ellis Brinegar.

22 DIRECT EXAMINATION

23 BY MR. MCCARLEY:

24 Q Mr. Brinegar, where do you work?

25 A Postal service in Aiken South Carolina.

1 Q How long have you been working there?

2 A I've been working in Aiken nine years, postal service
3 for 42 years.

4 Q What do you do for the United States postal service?

5 A I'm a letter carrier.

6 Q What area do you cover?

7 A Down town Aiken, Richland Avenue, Vaucluse Avenue.

8 Q Does that include Richland Avenue West, going out of
9 down town?

10 A Yes.

11 Q Were you working February 19 of this year 2013?

12 A Yes.

13 Q Did you make a delivery to 114 Richland Avenue West?

14 A I did.

15 Q What business is that location?

16 A That's Quick Cash.

17 Q When you went inside to make that delivery tell me
18 what happened?

19 A That morning about 10:15, 10:20 it is about my normal
20 time there. I went in to drop off the mail. Penny was
21 there. She told me she was nervous because someone was
22 outside kind of looking suspicious to her. I told her, I
23 said, well let me look out and see if they're still here.
24 So I went out the door, took about five steps and I saw
25 two black gentlemen in black clothing and hoodies walking

1 down towards Days Inn, which is the next business.

2 MR. MCCARLEY: Okay. Hold on. Let me make sure that
3 the jury knows exactly where you're talking about. May he
4 step down, Your Honor?

5 THE COURT: You may.

6 Q Let the record reflect I am showing him State's
7 Exhibit 2, already entered into evidence. Just tell them
8 where you pulled up and then when you came out of the
9 door?

10 A I pulled upright here. Right off of Richland Avenue
11 walked in the front door, and when I stepped out about
12 five steps, the two gentlemen were walking down this
13 little walkway that goes down towards the Days Inn there.

14 Q This is the Days Inn, sir?

15 A This is the Days Inn, this is their parking lot. And
16 when I looked out they were still there, and kind of
17 mauling around and walking down towards the Days Inn, and
18 then I went back into the store.

19 THE COURT: You went back in where?

20 THE WITNESS: Back in the business, Quick Cash Loan.

21 Q When you went back inside to the Quick Cash what
22 happened then?

23 A I told Penny those gentleman were still there, and I
24 recommend since they were making her nervous and they
25 seemed like they were up to something that I gave her the

1 number for Aiken Public Safety, which I keep in my
2 cellphone, it's not the 9-1-1 number but it is the number
3 to the Aiken Police Department.

4 Q Then what did you do?

5 A Then I got back in my vehicle drove back on Richland
6 and make the right, right next to the Days Inn. Make that
7 delivery at Days Inn.

8 Q Did you see the two black males again?

9 A I did. They were down. There is like a little
10 recreation area or resort area, where they have banquets
11 and stuff on the right, on the porch right there, and I
12 got a better look at them. There were two gentlemen in
13 black clothing, hoods pulled up over their head. But they
14 were black hoods, hoodies. I walked into the Days Inn and
15 delivered their mail and walked back out, got in my
16 vehicle. I noticed they were still over there milling
17 around, not going anywhere.

18 Q All right and you never saw the defendant here
19 Michael Quarles that day; is that correct?

20 A No, sir.

21 Q You never saw a Silver Dodge Ram Truck?

22 A No, sir.

23 Q The two black males were on foot the entire time you
24 saw them?

25 A That's correct, yes.

1 Q You then continued on your route?

2 A Yes, I continued west on Richland Avenue.

3 Q What happened next?

4 A I was about seven or eight deliveries past that,
5 which is approximately four to five minutes, I heard
6 sirens going that direction. And then I had a thought
7 that I wondered if that's where they were going to the
8 Quick Cash.

9 THE COURT: Hold on. You did what?

10 THE WITNESS: I heard sirens and police sirens going
11 behind me, which is where they was located. So in my mind
12 I wondered if they were headed that way.

13 Q Then what did you do sir?

14 A I continued on to make my deliveries. I go on down
15 Richland Avenue to about -- it takes me 20 or 25 minutes
16 to get back to that location and when I get back to the
17 location across from Quick Cash, which is a day care,
18 there were police officers and detectives --

19 Q Did you speak with law enforcement?

20 A Yes, there was a detective there. I spoke to
21 momentarily and told him -- he told me they had been
22 robbed. I said, yeah I saw -- I told him what I saw.
23 Took my name down and told him, you know, and then I
24 continued on --

25 Q You told law enforcement that day everything you told

1 me here today and told the jury?

2 A Exactly pretty much the same.

3 Q I beg the court's indulgence. Mr. Brinegar, please
4 answer any questions that Mr. Chesser has for you?

5 THE COURT: Any questions, Mr. Chesser?

6 MR. CHESSER: No, Your Honor.

7 THE COURT: You may step down. Next witness.

8 MR. MCCARLEY: May Mr. Brinegar be released from his
9 subpoena. He needs to get back to work.

10 THE COURT: Absolutely. He needs to deliver that
11 mail.

12 MR. MOLONY: State calls Shelia Fulmer.

13 THE COURT: Ma'am, if you will come right here and
14 place your left hand on the Bible and raise your right.

15 SHELIA FULMER, after being
16 first duly sworn, testifies as follows:

17 THE CLERK: Please have a seat in the witness box and
18 state your full name for the court and spell your last.

19 THE WITNESS: Shelia Fulmer, F-u-l-m-e-r.

20 THE COURT: Mrs. Fulmer, please speak up loudly.
21 Thank you.

22 DIRECT EXAMINATION

23 BY MR. MOLONY:

24 Q Mrs. Fulmer, where are you employed?

25 A Tender Loving Daycare.

1 Q Where is that located?

2 A On Richland Avenue.

3 Q In Aiken?

4 A Yes, in Aiken.

5 Q And Tender Loving Daycare. What do you do there?

6 A I have the two and three year old class.

7 Q Okay. And how long have you worked there?

8 A Over 30 years.

9 Q You worked there by yourself or who works?

10 A I work with my mom and my sister and one other
11 employee.

12 Q What hours do you work there at the daycare?

13 A I work from eight to six.

14 Q You said your sister, what is her name?

15 A Kathy.

16 Q What -- how long is the daycare open?

17 A 6:30 to 6:30 Monday through Friday.

18 Q And was the daycare open on February 19 of 2013?

19 A It was.

20 MR. MOLONY: Your Honor, I am going to ask that the
21 witness be able to step down and show her State's
22 Exhibit 2. It's already been introduced.

23 Q Okay. Can you show the jury -- this is State's
24 Exhibit 2. Can you show the jury where your place of
25 business is?

1 A Right here.

2 Q Okay. And what happened that was suspicious to
3 you -- what, if anything, happened on February 19 that
4 morning that was suspicious to you?

5 A Well, I was going from the play room to the
6 kitchen --

7 MR. MOLONY: Make sure you speak up for the court
8 reporter behind you.

9 A I was going from the play room to the kitchen and I
10 saw a truck backing up and so it just kind of caught my
11 eye and I stopped and watched it.

12 Q Okay. I'm sorry let me get you over here so they can
13 see you on this side. When you say you saw a truck
14 backing up, where was the truck?

15 A They were at the stop sign on Jasper and Richland and
16 was backing up.

17 Q Where were you?

18 A I was between the living room and the kitchen and the
19 dining room.

20 Q Okay.

21 A Okay. And it caught my eye backing up so I stopped
22 for a second to see what they were going to do. They
23 pulled forward to the stop sign again, and they backed up
24 again and stopped behind my car, which is the blue Tahoe
25 in the driveway and they stopped right here.

1 Q Okay and what happened next.

2 A So I continued to watch them, because I wanted to
3 know what they were doing. They continued to back up into
4 our dirt parking lot behind our business.

5 Q Okay.

6 A And --

7 Q You said a truck, what type of truck was this?

8 A It was a silver -- I think it was a Dodge 1500. It
9 was a light --

10 Q Big truck?

11 A Big truck, silver. Really pretty silver truck. The
12 passenger, which was a heavy set guy with little braids,
13 he had a white sweat shirt on with something on the front
14 of it, he got out and walked down Jasper and across the
15 street to the cash advance place.

16 Q Can you show us on the map where you saw him walking
17 -- so we can see you back here?

18 A They were here, parked back here in this parking lot.
19 He got out, and the truck and the driver stayed there. He
20 got out and walked down to Richland, across the street to
21 the cash place, went in. He wasn't in there that long,
22 you know, maybe four or five minutes. He wasn't in there
23 long at all. And I watched him come back out and he had a
24 white piece of paper. I watched him fold it, and he came
25 back across the street, got up on the sidewalk, and came

1 back up, and went back to the passenger side. And this
2 whole time I'm trying to still, you know, watch my class,
3 you know, and keep an eye on the children. But I keep
4 going back and forth to the window, and he goes to the
5 passenger side. So I have to go and do stuff with the
6 children. So the next time I come back and look out the
7 kitchen window, there are two guys dressed all in black,
8 hoodies pulled down, hands in their pocket --

9 Q Were either one of those two guys the guy you saw in
10 the white?

11 A No. No. These were thin, you know, slim guys.

12 Q Okay. Both hoodies on, all black, hands in their
13 pocket. One of them had like a book bag, backpack on.
14 They were standing on the front side of the truck and, you
15 know, within minutes -- a couple of minutes they turned
16 around and they started walking also, just like he had
17 done before, down here. But, instead of going to the cash
18 place, they walked down, you know, to the Days Inn. And
19 there is a banquet room somewhere over here, I think, this
20 must be it. But they walked over here to the banquet room
21 and it was kind of drizzly that day, not raining hard, but
22 enough. But that they stood underneath an awning. They
23 stayed there for quite a few minutes -- quite a while.

24 Q Okay and while they're there, where is the first --

25 A He is in the driver's seat of the truck; still behind

1 our day care.

2 Q Okay. And did you see that truck leave?

3 A I did. I did. As they walked across here to Days
4 Inn, he pulls out to the end of Jasper and Richland.

5 Q Did he stop?

6 A Barely. Barely. I grabbed a napkin and wrote the
7 description of the truck and what I could see on the
8 license plate as he was turning out. Once he turned
9 right, I had no idea where he went.

10 Q Why did you do that?

11 A Because they were up to no good. We could tell.
12 They were very suspicious. Something was going on; we
13 knew it. We just didn't know what.

14 Q When you say we?

15 A Me and my sister.

16 Q Did you tell her some of the things --

17 A Yes, that whole time I was telling her what I was
18 seeing and she was having her class. She was telling me
19 what she was seeing.

20 Q Okay.

21 A And I was doing that and I told her, I said call you
22 know -- call the police because something was definitely
23 going on. He ended up in the driver's seat, leaving in
24 the truck. And they're over here all dressed in black
25 just -- we didn't know where they were robbing. We didn't

1 know if they were going to the Days Inn, the cash place,
2 we had no idea. But, we knew they were up to something.

3 Q Did you tell your sister to call the police?

4 A Yes, and she did. And while she was on the phone
5 with them, they start moving, and they come over here up
6 this little -- there is a little stair case that goes up
7 the side of the cash place and they came up and went
8 straight in. My sister was on the phone with the police
9 at the time.

10 Q Okay. I'm going to show you what has been marked as
11 State's Exhibit 13 and ask if you recognize it?

12 A Yes, that's the dining room window that I was looking
13 out at.

14 Q Would this be a fair and accurate representation of
15 the view that you would have had through that window on
16 February 19 of 2013?

17 A Exactly, yes. He was -- when he was coming up to the
18 stop sign in the truck and they were going in. When he
19 was going in. Everything. Yes.

20 MR. MOLONY: Your Honor, at this time the State would
21 move to introduce Exhibit 13 into evidence?

22 MR. CHESSER: No objection

23 (State's Exhibit Number 13 is received into
24 evidence.)

25 Q Okay, I am going to back you up a little bit okay?

1 You stated that the first man gets out in -- wearing a
2 white hoodie with writing on it, walks over and comes back
3 across the street. Are you looking at a view much like
4 this at that time?

5 A Yes. Because, I'm thinking, I'm that close -- I look
6 out the window right there at him and he's walking past
7 me, and I can't believe that he doesn't even look over and
8 see me in the window.

9 Q Okay. And when you saw the truck come down after
10 that gentleman got back in -- I mean, in the vehicle. The
11 other two get out and make their trek down. When you saw
12 this truck moving out, did you have about this view at
13 that time as well?

14 A Yes.

15 Q And this is the stop sign you stated that that person
16 did not --

17 MR. CHESSER: Your Honor, I am just going to object.
18 I suggest he is leading the witness, Your Honor.

19 THE COURT: Sustained. Hold on. Rephrase the
20 question.

21 Q Yes, sir, Your Honor. Describe this stop sign from
22 State's Exhibit 13, compared to, you know, what we're
23 looking at on the map, just so they can get an
24 understanding?

25 A That is the stop sign that I witnessed the guy in the

1 white sweat shirt that went over first and came back, that
2 he -- after the two had walked across the street, he got
3 in the driver's side and came to that stop sign, yielded a
4 little, and then turned right and was gone.

5 Q Okay. You can have a seat. Thank you. Now, this
6 guy that you saw do you see him in the courtroom here
7 today?

8 A I do.

9 Q Could you please describe what he is wearing?

10 A He's wearing a light brown carmel looking shirt and
11 black pants.

12 MR. MOLONY: Your Honor, may the record reflect that
13 the witness has identified the defendant.

14 THE COURT: Thank you.

15 MR. MOLONY: I don't have any further questions.

16 THE COURT: Mr. Chesser.

17 MR. CHESSER: I just have a few questions.

18 CROSS-EXAMINATION

19 BY MR. CHESSER:

20 Q Mrs. Fulmer, just a couple of questions. You saw the
21 pickup truck pull in to the parking lot of the daycare; is
22 that right?

23 A Uh-huh.

24 THE COURT: Answer yes or no for me.

25 THE WITNESS: I'm sorry. Yes.

1 Q At about what time was that?

2 A 10:20, 10:30. Somewhere in that area.

3 Q Okay and the individual that you identified as
4 Mr. Quarles, Michael Quarles, where was he in the vehicle?

5 A Passenger seat at first.

6 Q Okay. And that's the passenger seat?

7 A Of that silver truck.

8 Q Up front?

9 A Yes.

10 Q Who was driving the vehicle? I mean, well put it
11 this way. Mr. Quarles wasn't driving the vehicle at that
12 time, was he?

13 A At that time. The first time I saw him, no.

14 Q You testified that he drove it off, later.

15 A He drove it off after the other two had gone over and
16 robbed the store.

17 Q Okay. So the person who robbed the store was not
18 Mr. Quarles, was it?

19 A No. I guess not. I mean, not -- he wasn't the two
20 of them that walked across the street and we watched go
21 in, no.

22 Q Right. Okay. So you watched those other two
23 individuals walk across the street and then you and your
24 sister called public safety?

25 A (Witness nods head.)

1 Q Thank you. That's all the question I have.

2 THE COURT: Redirect.

3 REDIRECT EXAMINATION

4 BY MR. MOLONY:

5 Q The defendant was in the truck and gone when the
6 other two were in the business?

7 A Yes.

8 Q So he couldn't have been actually --

9 THE COURT: Hold on a second. We need to have a
10 response, please.

11 THE WITNESS: Yes.

12 Q So when the two males in all black actively go into
13 the Quick Cash, is the truck still there?

14 A No.

15 Q And the defendant was in that truck?

16 A Right.

17 MR. MOLONY: That's it, Your Honor. Nothing further.

18 THE COURT: You may step down. Next witness.

19 MR. MCCARLEY: The State calls Cathy Holsenback.

20 THE COURT: Mrs. Holsenback, please. Come forward

21 and place your left hand on the Bible and raise your

22 right.

23 KATHY HOLSENBACK, after being duly sworn,

24 testified as follows:

25 THE CLERK: Thank you. Have a seat in the witness

1 box and state your full name for the Court and spell your
2 last.

3 THE WITNESS: Kathy Hol sen back, H-o-l-s-e-n-b-a-c-k.

4 DIRECT EXAMINATION

5 BY MR. MCCARLEY:

6 Q Mrs. Kathy, where do you work?

7 A Tender Loving Daycare.

8 Q Where is that located?

9 A 1205 Richland Avenue in Aiken.

10 Q Is that a cross the street from the Quick Cash on
11 Richland Avenue West?

12 A Yes, it is .

13 Q How long have you been working there?

14 A It's a family business. So about 30 years.

15 Q Okay. What do you do there?

16 A I am the assistant director.

17 Q And were you working on the morning of February 19,
18 2013?

19 A Yes, I was.

20 Q Why do you remember that day, ma'am?

21 A Because of all the activity that went on with the
22 suspicious men.

23 Q Okay. How did you first learn of anything suspicious
24 going on?

25 A My sister came to my room, where I was teaching in

1 the back, and told me to raise my blind and keep on eye on
2 that truck.

3 Q Who is your sister, ma'am?

4 A Sheila Fulmer.

5 MR. MCCARLEY: Permission to approach?

6 THE COURT: (Nods head affirmatively)

7 Q Mrs. Kathy, I am handing you what's been labeled
8 State's Exhibit 14. Do you recognize this view?

9 A Yes, I do.

10 Q Is that the view from your classroom?

11 A My classroom window, yes.

12 Q Is that an accurate representation from the view of
13 your classroom as it appeared on that day?

14 A Yes.

15 MR. MCCARLEY: The state moves to enter into this
16 evidence Your Honor State's Exhibit 14?

17 MR. CHESSER: No objection.

18 (State's Exhibit Number 14 is received into
19 evidence.)

20 Q Now Mrs. Kathy you pulled your blinds up. What did
21 you see?

22 A I just saw a nice silver truck parked there. I
23 didn't see anyone inside of it or anything.

24 Q What did you do then?

25 A I turned around and continued with my class. I kept

1 turning back and looking out the window.

2 Q When you say, continued in your class, did you have
3 kids in your classroom?

4 A Yes, I did.

5 Q So you kept checking back and forth between the kids
6 and the window?

7 A Right.

8 Q Okay. What happened next?

9 A Several of the children came to my desk and instead
10 of look at me they started looking past me out the window
11 so it made me turn around and that's when I saw the three
12 of them.

13 Q Okay. When you saw the three of them, could you
14 please describe those three people, ma'am?

15 A Yes, two of them were dressed in black, black
16 hoodies, white gloves. One had a backpack on, a black
17 backpack, and the other was a light skinned heavy set guy
18 with little braids in his hair.

19 Q What was he wearing?

20 A He was in all light colors, light colored clothes.

21 Q Light colored clothing?

22 A Uh-huh.

23 Q Is that gentleman in the courtroom here today?

24 A Yes, he is.

25 Q Could you please point him out.

1 A That is him, the defendant

2 Q What is he wearing ma'am?

3 A Brown shirt with a tie and black pants.

4 Q Your Honor, may the record reflect that the witness
5 has identified the defendant Michael Quarles?

6 THE COURT: Thank you.

7 Q After you saw the three gentlemen initially what
8 happened then?

9 A Well the two of them started walking out of our
10 parking lot towards Jasper -- towards the paved road.

11 Q When you say the two of them?

12 A The two in the hoodies.

13 Q What color were they wearing?

14 A Black hoodies.

15 Q Okay. Go ahead.

16 A And then the light skinned guy, in the light clothes,
17 got into the driver's side of the silver truck.

18 Q And that's the defendant Michael Quarles?

19 A That is.

20 Q And got into the driver seat?

21 A Uh-huh.

22 Q Then what happened?

23 A I got my children and took them so that they would
24 all be in one room, and then met up with my sister and we
25 watched out the windows, because we knew something was

1 going on.

2 Q When you say you met up with your sister --
3 permission to approach -- watched out the window, do you
4 recognize this?

5 A Yes.

6 Q I apologize this is State's Exhibit 15.

7 A That's the kitchen window that I was looking out of.

8 Q And is this an accurate representation of the window
9 and the view from it?

10 A Yes.

11 MR. MCCARLEY: The State moves to enter State's
12 Exhibit 15 into evidence, Your Honor.

13 MR. CHESSER: No objection.

14 MR. CHESSER: No objection.

15 (State's Exhibit Number 15 is received into
16 evidence.)

17 MR. MCCARLEY: Permission to publish.

18 Q Now, what was going on once you got to that window?

19 A The two guys in the black hoodies were going down to
20 the Day's Inn and they were just standing there under
21 their little banquet room or whatever for several minutes.
22 It was a good little while they were standing there. And
23 the silver truck, the light skinned guy that had got in
24 the silver truck, had drove out of the parking lot and
25 turned right on to Richland.

1 Q Okay.

2 A And I just kept an eye on them and kept watching out
3 the window at the two guys in the hoodies and I called --
4 I didn't call 9-1-1, but I called the none emergency
5 number. But, I wasn't sure if it was an emergency, but I
6 just knew something was wrong.

7 Q I understand. Permission to approach. Ma'am, do you
8 recognize this CD?

9 A Yes, I do.

10 Q Have you listened to this?

11 A Yes, I have.

12 Q Is it an accurate copy of the phonecall you made that
13 day to public safety?

14 A Yes.

15 MR. MCCARLEY: State moves to enter State's
16 Exhibit 16 into evidence?

17 MR. CHESSER: No objection.

18 (State's Exhibit Number 16 is received into
19 evidence.)

20 MR. MCCARLEY: And permission to publish, Your Honor.
21 (Whereupon, the cd was played for the jury.)

22 Q Mrs. Kathy, what did you do after you hung up the
23 phone with public safety?

24 A I kept watching and then it seemed like seconds
25 later, maybe a minute, the first officer pulled up and

1 Sheila and I both went to the door and we were kind of
2 trying to yell across the road at him to him where they
3 went, because they had just gone down, when he pulled in.

4 Q Did you write a statement for police that day?

5 A Yes, I did.

6 Q Did you talk to them that day?

7 A Yes.

8 Q Did you tell them everything that you've told the
9 jury here today?

10 A Yes.

11 Q And everything that was on that phonecall?

12 A Yes.

13 Q I beg the court's indulgence. Mrs. Kathy, please
14 answer any questions that Mr. Chesser has for you.

15 THE COURT: Mr. Chesser.

16 MR. CHESSER: I have no questions of this witness,
17 Your Honor.

18 THE COURT: All right. We're going to take a short
19 afternoon break. So you can stretch your legs, use the
20 restroom. Any of you smoke? If you need a smoke break
21 Mr. Whittle will show you how to do that. You have to go
22 downstairs. All right. Don't discuss the case. Don't
23 deliberate. I need between the 12 of you select me a
24 foreperson, please. Thank you. Everybody else remain
25 seated.

1 (Whereupon, the jury exited the courtroom at 3:30.)

2 THE COURT: All right anything for the record by the
3 state before we break?

4 MR. MOLONY: No, sir, Your Honor.

5 THE COURT: Mr. Chesser.

6 MR. CHESSER: No, Your Honor.

7 THE COURT: All right as to the ruling on the
8 admissibility of the 9-1-1 tape, I find after examination
9 of the totality of the circumstances that the tape is more
10 probative than prejudicial, and I therefore allowed it.
11 Mr. Chesser, I think you've made your full argument on the
12 case based on prejudicial versus probative. If you need
13 to put anything else on the record to protect your client
14 I'll be more than happy to let you do it now or later on,
15 whenever you feel like doing it.

16 MR. CHESSER: No, Your Honor, I think I made a full
17 argument. Thank you.

18 THE COURT: We'll stand at ease for about 10 or 15
19 minutes. The defendant obviously is in custody.

20 THE COURT: Anything for the record by the state
21 before we start back?

22 MR. MOLONY: No, sir, Your Honor.

23 THE COURT: By the defendant?

24 MR. CHESSER: No, Your Honor.

25 THE COURT: Bring the jury in please.

1 (Whereupon, the jury came into open court at
2 approximately 3:48.) .

3 THE COURT: Were y'all able to get a foreperson? Who
4 is that?

5 THE JUROR: 118.

6 THE COURT: All right, ma'am. 118. If you would --
7 I need for you to take this seat here.

8 THE JUROR: I wanted to sit here.

9 THE COURT: Y'all just rotate down so we don't have
10 too much moving.

11 THE COURT: I'm sorry Mr. Whittle confused y'all.

12 THE BAILIFF: First time ever.

13 THE COURT: Getting it right. All right. Ma'am, I
14 hope you enjoy your position as foreperson. I was here
15 the other day a lady came out. She sat there. She was
16 the forelady. She was all frowned up. I said what's
17 wrong? She said I went to the bathroom and when they came
18 back out they had elected me. All right. Gentlemen, you
19 may call your next witness.

20 MR. MOLONY: Thank you, Judge, the State calls Carlos
21 Williams.

22 CARLOS D. WILLIAMS, after being duly sworn,
23 testified as follows:

24 THE COURT: Place your left hand on the Bible and
25 raise your right, please. Give us your full name, Carlos,

1 and spell your last for me, please.

2 THE WITNESS: Carlos Demetrius Williams;
3 D-E-M-E-T-R-I-U-S.

4 DIRECT EXAMINATION

5 BY MR. MOLONY:

6 Q And your last name?

7 A Demetrius -- I mean, I'm sorry. Williams;
8 W-I-L-L-I-A-M-S.

9 THE COURT: Everybody gets nervous when they sit up
10 there. That's okay. Take a deep breath and answer his
11 questions.

12 THE WITNESS: Yes, sir.

13 Q Carlos, where are you currently living?

14 A Aiken County Detention Center.

15 Q And why are you there?

16 A Armed robbery and kidnapping.

17 Q Those charges are still pending against you?

18 A Yes, sir.

19 Q And before we get started have you been promised
20 anything for sitting there today and answering questions?

21 A No, sir.

22 Q Have any deals been made with you?

23 A No, sir.

24 Q And you stated that you have pending armed robbery
25 and kidnapping charges. Did you participate in an armed

1 robbery at the Quick Cash on February 19 of 2013?

2 A Yes, sir.

3 Q And did you participate in the kidnapping at the
4 Quick Cash here in Aiken on February 19, 2013?

5 A Yes, sir.

6 Q Tell me this. Who is Jamaques Salley?

7 A Mutual friend, friend that I guess you could say grew
8 up with. I know him since I was 16.

9 Q How old are you now?

10 A Twenty-one.

11 Q Okay. And was he with you on February 19 of 2013
12 during the commission of this armed robbery and
13 kidnapping?

14 A Yes, sir.

15 Q And explain to the jury how you know the defendant
16 Michael Quarles.

17 A I know Michael Quarles through Jamaques Salley.

18 Q How long did you know the defendant before
19 February 19, 2013?

20 A A couple of months.

21 Q Okay. Would you consider you and the defendant
22 friends at that time?

23 A Not really friends; more of acquaintances, if you
24 will.

25 Q Okay. Through the common friends you had was

1 Jamaques Salley?

2 A Yes, sir.

3 Q Now did the defendant participate in the armed
4 robbery on February 19, 2013?

5 A Yes, sir.

6 Q And in the kidnapping that same day?

7 A Yes, sir.

8 Q All right. Well, let's back up a little bit. When
9 did this plan first come about?

10 A About a week and a half prior to February 19.

11 Q Okay. And explain how it came about.

12 A Me and defendant's mutual friend had a conversation
13 about -- he was telling me about a place he had been
14 looking at for about a year and---

15 Q Which was where?

16 A Quick Cash.

17 Q Okay. Go on. I'm sorry.

18 A That was really the first time it came up and how --
19 it was really discussion between me and Jamaques about,
20 you know, what the place was and who -- what we were going
21 to do about it.

22 Q Okay. And did you ever prior to February 19, 2013
23 have any conversations with the defendant about it --
24 prior to the day of the armed robbery and kidnapping, did
25 you ever speak with the defendant about it -- about this

1 plan?

2 A Yes.

3 Q And explain when that happened.

4 A I want to say it was either Thursday or Friday.

5 Myself, Salley, and Mr. Quarles was together and we didn't

6 really talk about how it was going to happen and all that.

7 We just talked about, you know, we have this place we was

8 going to hit. We need you. We was letting him know we

9 needed him in on it.

10 Q When you say, hit, what do you mean?

11 A Rob.

12 Q Now, on that Friday -- is this the Friday before

13 February 19?

14 A Yes.

15 Q What if anything happened on that Friday? What if

16 anything happened on that Friday, prior to this armed

17 robbery?

18 A Could you clarify the question, please?

19 Q Sure. Were guns used in this armed robbery?

20 A Yes.

21 Q What type of guns?

22 A BB guns.

23 Q And where were they purchased?

24 A Walmart.

25 Q Explain when and who purchased those weapons?

1 A They were purchased late Friday night, early Saturday
2 morning, around that time. Salley and I went to Walmart
3 and Salley purchased the BB guns.

4 Q Okay and -- Your Honor may I approach?

5 THE COURT: You may.

6 Q All right. Carlos I am going to show you what's been
7 marked as State's Exhibit 17 and ask you if you recognize
8 that?

9 A Yes, sir.

10 Q What is it?

11 A It's myself and Salley walking out of Walmart.

12 Q And was this after y'all purchased the guns, the
13 Friday before?

14 A Yes.

15 Q And does this picture fairly and accurately depict
16 you and Jamaques Salley walking out of Walmart that night?

17 A Yes.

18 Q And what are you carrying?

19 A I'm carrying the bag with the BB guns in it.

20 Q Okay. What is he carrying?

21 A Bread.

22 THE COURT: I'm sorry. Carrying what?

23 THE WITNESS: Bread.

24 THE COURT: Bread?

25 MR. MOLONY: Your Honor, at this time the state would

1 move to introduce Exhibit 17 to the jury.

2 THE COURT: Any objection?

3 MR. CHESSER: No objection.

4 (State's Exhibit Number 17 is received into
5 evidence.)

6 Q Carlos, what are you wearing?

7 A Miami Heats hat, a white -- I guess, you would call
8 it cream colored Echo hoodie, pair of jeans and some
9 flaps.

10 Q Was that your sweat shirt?

11 A Yes.

12 Q All right. Was a taser used on or stun gun on
13 February 19 of 2013?

14 A Yes.

15 Q Explain to the jury where that was purchased and
16 when.

17 A That was purchased in Augusta at the Augusta barn
18 yard flea market.

19 Q Who purchased that?

20 A Salley purchased that.

21 Q Okay. And who was with him?

22 A I was.

23 Q All right. And when was that?

24 A Saturday. Saturday prior we went.

25 Q And was the defendant with you guys at that time?

1 A No, sir.

2 Q Did you ultimately -- did you ever have to go back to
3 Augusta?

4 A Yes.

5 Q Explain why?

6 A The taser required a key. I couldn't explain what
7 kind of key but it required a key in order for it to work.
8 The one that he bought did not have the key. So we had to
9 go back and get it.

10 Q Okay. Who wanted this taser?

11 A Salley.

12 Q All right. Now, the day before the robbery and
13 kidnapping -- armed robbery and kidnapping -- on Monday
14 February 18 of 2013, explain to the jury how the defendant
15 became involved that day.

16 A I believe Salley -- he -- me and him we were talking
17 about, you know, get the defendant in on it and Salley --
18 I was being told, you know, to go and pick Mike up the
19 next morning to check the place out.

20 Q All right. Specifically that night what was the plan
21 supposed to be as far as the defendant was involved?

22 A As far as his involvement---

23 MR. CHESSER: Your Honor --

24 THE COURT: Hold on a second.

25 MR. CHESSER: -- I would object to him testifying in

1 this way about a plan and so forth. If he can testify
2 what people said or what he understood so that I can
3 evaluate and make an objection. But -- so I would say
4 it's a lack of foundation here, if he's talking about
5 there was a plan. I don't even know what that means.

6 THE COURT: A plan? A plan is a plan. I'll allow
7 the question.

8 Do you know what he means when he says plan?

9 THE WITNESS: Yes, sir.

10 THE COURT: Answer the question.

11 Q So what was the plan?

12 A As far as Mike's involvement in the plan he was---

13 Q When you said Mike who are you referring to?

14 A The defendant.

15 Q Okay. Continue.

16 A As far as his involvement in the plan was he was
17 supposed to -- I was supposed to go and pick him up the
18 next morning.

19 Q On the 19th?

20 A On the 19th. He was supposed to go in and eye the
21 place, see where the light switches was, and see how many
22 people were working in there.

23 Q Okay. Now when you say Salley, are you referring to
24 Jamaques Salley?

25 A Yes.

1 MR. CHESSER: Your Honor, let me -- I want to renew
2 my objection. If he's talking about a plan that he had
3 with Jamaques Salley. I would object to the relevance of
4 it coming in. If there is no basis -- if there is no
5 testimony about communications -- actual communications
6 with Michael Quarles, then I would object to it coming in,
7 if there is no showing that Quarles -- had been
8 communicated to Quarles or anything of that nature. If
9 this is something that he's talking about with somebody
10 else; then that's a conspiracy with them and there is no
11 foundation, no showing that Quarles is involved.

12 THE COURT: Overruled. You may proceed.

13 Q So, when you went to bed the night of February 18,
14 what was the first thing you were supposed to do the next
15 morning?

16 A Go and pick up the defendant Mr. Quarles.

17 Q All right. So let's fast forward to the morning of
18 February 19, the day this armed robbery and kidnapping.
19 What's the first thing you did?

20 A I got up, got in my truck and went to Mr. Quarles'
21 residence.

22 Q And had you spoken with him on the phone?

23 A No, sir.

24 Q Why not?

25 A He didn't have the number. Me and him didn't

1 communicate like that. Like I said, he and I -- we were
2 known acquaintances on the street, but we're not really
3 good friends. I had no way of getting in touch with him.
4 As far as I knew he didn't have a phone.

5 Q All right. So what time were you supposed to pick
6 him up?

7 A Between somewhere around eight and nine. I know it
8 was early in the morning.

9 Q All right. And where did the defendant live?

10 A In the gap.

11 Q In the gap? Where -- where is the gap?

12 A Behind Crosland -- not Crosland -- Citizens Park.

13 Q Okay. And you testified that you got in your truck;
14 is that correct?

15 A Yes, sir.

16 MR. MOLONY: Your Honor, may I approach?

17 THE COURT: Yes, sir.

18 Q All right. Carlos, I am showing you what's been
19 marked State's Exhibit 18 and ask if you recognize this?

20 A Yes, sir. That's my truck.

21 Q Is this the truck you got in on February 19 of 2013?

22 A Yes, sir.

23 Q And the truck you went to the defendant's residence
24 in?

25 A Yes, sir.

1 MR. MOLONY: Your Honor, at this time the state would
2 move to introduce Exhibit 18 into evidence.

3 THE COURT: Any objection?

4 MR. CHESSER: No objection.

5 (State's Exhibit Number 18 is received into
6 evidence.)

7 Q Was that your personal truck?

8 A No, sir. I say my truck because it was given to me
9 by my fiance's stepfather.

10 Q Okay. You were driving the truck?

11 A Yes.

12 Q You had permission to be driving the truck?

13 A Yes.

14 Q All right. So you go to the defendant's house. What
15 was the defendant's nickname?

16 A T or Mike.

17 Q Okay. You went to his house that morning?

18 A Yes.

19 Q Was the defendant outside when you pulled up?

20 A No, sir.

21 Q So what did you do?

22 A I got out and I knocked on the door.

23 Q Okay. And did the defendant come to the door at that
24 time?

25 A At the point where I was knocking on the door no one

1 came to the door; so---

2 Q Go ahead. I'm sorry.

3 A So I got back in my truck getting ready to pull out.

4 He walks out.

5 Q Okay. What was he wearing when he walked out the
6 house?

7 A Black hoodie. I'm thinking some blue jeans.

8 Q And did he get in your truck?

9 A Yes.

10 Q All right. When he got in your truck did you and the
11 defendant have any conversation about what was going on?

12 A As far as, you know, we had conversation about, you
13 know, you know you're supposed to go in, you know, and see
14 what's going on, where everything is at, but we got to
15 pick up J first. That's basically all the conversation we
16 had.

17 Q So who was going to be the one that put the final
18 touches on this blueprint of the armed robbery and
19 kidnapping?

20 A Salley. Jamaques Salley.

21 Q So where did you go from Carlos' house? You and
22 Carlos -- he got in your truck; is that right? Excuse me.
23 You're Carlos, aren't you?

24 A Yes.

25 Q You picked the defendant up. Where did you and the

1 defendant go from the defendant's house?

2 A We went to Jamaques' house.

3 Q Where was that at?

4 A In Crosland Park.

5 Q Okay. Did the defendant come right outside?

6 A Yes, I believe I was on the phone with him telling
7 him we was out there.

8 Q Okay. What was he wearing when he walked out?

9 A Black hoodie, khaki pants.

10 Q Did he have the taser with him at that time?

11 A Yes.

12 Q Did he have the BB gun with him at that time?

13 A Yes.

14 Q And specifically these BB guns that you and Jamaques
15 Salley had, had y'all done anything to the BB guns?

16 A When we bought them there was an orange tip on them
17 and we cut the orange tip off.

18 Q Okay. What if anything did Jamaques Salley do with
19 his BB gun when he got in the truck?

20 A He placed the BB gun and the taser on the back seat.

21 Q Okay. And the defendant still in the front seat?

22 A Yes, sir.

23 Q All right. So what was said at that time? Do you
24 remember?

25 A We talked about we needed a bag.

- 1 Q What was the bag for?
- 2 A To put the money in.
- 3 Q Okay. So what did y'all do?
- 4 A We went to Roses.
- 5 Q And where was that Roses? In Aiken?
- 6 A Yes.
- 7 Q Who went in to Roses?
- 8 A All three of us. Myself, Jamaques and Mr. Quarles.
- 9 Q And what were you wearing at that time?
- 10 A I was wearing my white Echo hoodie, blue jeans, black
- 11 boots.
- 12 Q And the defendant, what was he wearing?
- 13 A He was wearing a black hoodie and blue jeans.
- 14 Q Jamaques?
- 15 A Black hoodie and khaki pants.
- 16 Q All right. So you entered that Roses -- all three of
- 17 you -- and again what was the purpose of going in?
- 18 A To get a bag.
- 19 Q Okay. Now, did you ultimately find a bag?
- 20 A Yes, sir.
- 21 Q How long were y'all in Roses -- about how long?
- 22 A Fifteen, 20 minutes maybe.
- 23 Q And who bought the bag?
- 24 A Salley, Jamaques.
- 25 Q At any point did you carry the bag?

1 A Yes.

2 Q Okay. Who picked it out?

3 A I think Salley picked it out and I picked it up.

4 Q Was the defendant with you guys the whole time y'all
5 were doing this?

6 A Yes.

7 Q And did y'all go together to the check out lane?

8 A Yes.

9 Q And was the defendant with y'all at that time?

10 A Yes.

11 Q And after -- who paid for it?

12 A Salley, Jamaques.

13 Q And do you remember what he paid with?

14 A I can't remember if it was cash or his card.

15 Q Okay. Your Honor may, I approach?

16 THE COURT: Yes, sir.

17 Q Carlos, I am going to show you two pictures that's
18 been marked as State's Exhibit 19 and State's Exhibit 20.

19 Do you recognize these two pictures?

20 A Yes.

21 Q And what are these pictures of?

22 A The first picture is of myself and Mike, Mr. Quarles,
23 coming in to Roses.

24 Q When you said the first, is that 19?

25 A Exhibit 19.

1 Q Thank you. And what about 20?

2 A Myself and Mr. Quarles and Mr. Salley.

3 Q And where is this taken at?

4 A In Roses.

5 Q And were both of these pictures -- did they come from
6 and they depict you and the defendant, in 19, and all
7 three of you in 20 in Roses on February 19 of 2013?

8 A Yes.

9 MR. MOLONY: Your Honor, at this time the state would
10 move to introduce Exhibits 19 and 20 into evidence.

11 MR. CHESSER: No objection, Your Honor.

12 (State's Exhibit Number 19, 20 are received into
13 evidence.)

14 Q I am going to let you look this way. This is State's
15 Exhibit 20. Can you -- which one of the three is Jamaques
16 Salley in this picture?

17 A The first one.

18 Q With the hoodie up?

19 A Yes.

20 Q And which one is you?

21 A The one in the middle.

22 Q Okay. And which one is the defendant?

23 A Mr. Quarles is the last one.

24 Q Okay. And 19 you testified y'all entering. Who is
25 in the front of this picture?

- 1 A Myself.
- 2 Q And behind you?
- 3 A The defendant.
- 4 Q And again that sweat shirt was your sweat shirt?
- 5 A The white one, yes.
- 6 Q Now, Carlos, where did y'all go when y'all left
- 7 Roses?
- 8 A We went and parked at -- I don't know the name. It
- 9 is a daycare -- in a dirt area of a daycare across the
- 10 street from the Quick Cash.
- 11 Q All right. Y'all went immediately from Roses to
- 12 there?
- 13 A Yes, sir.
- 14 Q Who was driving?
- 15 A I was.
- 16 Q And you stated y'all parked in a dirt parking lot
- 17 behind the daycare?
- 18 A I guess its behind the daycare. I don't really know.
- 19 Q Right off of Richland Avenue?
- 20 A Yes, sir.
- 21 Q Okay. Now, you parked. What happens?
- 22 A We parked. We sat there and talked about what Mike
- 23 needed to do. He got out.
- 24 Q When you say Mike, again, who are you referring to?
- 25 A The defendant.

- 1 Q Okay.
- 2 A He got out, and walked across the street.
- 3 Q Where was he sitting at that time?
- 4 A He was still sitting in the passenger side.
- 5 Q In the front?
- 6 A In the front.
- 7 Q Okay.
- 8 A And he got out and went in the Quick Cash.
- 9 Q Okay. Prior to him going into Quick Cash, that white
10 Echo sweat shirt, were you still wearing it?
- 11 A Before he went?
- 12 Q When he went into Quick Cash were you wearing the
13 white Echo sweat shirt?
- 14 A No, sir.
- 15 Q Why not?
- 16 A We switched sweat shirts.
- 17 Q When did you switch?
- 18 A While we was sitting in the truck.
- 19 Q Why did y'all switch sweat shirts?
- 20 A I'm guessing because my sweat shirt is more
21 noticeable.
- 22 Q When you say, mine, the white one?
- 23 A The white one, yes, sir. The white Echo shirt is
24 more noticeable than a regular old black sweat shirt.
- 25 Q So the defendant put on your white sweat shirt?

1 A Yes.

2 MR. MOLONY: Your Honor, may I approach?

3 THE COURT: You may.

4 Q Carlos, I'm showing you -- it's been marked as
5 State's Exhibit 21 and ask if you recognize this?

6 A Yes.

7 Q What is this?

8 A That's my Echo shirt.

9 Q Is this the Echo sweat shirt you gave the defendant
10 on February 19, 2013?

11 A Yes.

12 Q Is this the sweat shirt he walked into the Quick Cash
13 Store with?

14 A Yes.

15 MR. MOLONY: At this time the State would move to
16 introduce State's Exhibit 21 into evidence.

17 MR. CHESSER: No objection, Your Honor.

18 (State's Exhibit Number 21 is received into
19 evidence.)

20 Q Why did the defendant enter the store?

21 A He was supposed to go in there and find out where
22 light switches were and find out how many people were
23 working.

24 Q While he was gone what were you and Jamaques Salley
25 doing?

1 A We was talking about what was going to be done and
2 how we was going to do it.

3 Q All right. What was going to be done and how were
4 y'all going to do it?

5 A We was to go in, get the money, run out the back --
6 well, run out the side and go around the back -- well,
7 what he told me was to go in, run down the stairs and run
8 around the back.

9 Q Okay. When you say the back, what do you mean?

10 A The back of the Quick Cash building.

11 Q Okay. Did Mike eventually walk back over to you
12 guys?

13 A Yes.

14 Q When I say, Mike, I mean the defendant?

15 A Yes.

16 Q All right. And when he gets back to the truck what
17 does he tell y'all?

18 A He said it is one person working in there, one
19 female, and I didn't really -- honestly, I really didn't
20 pay attention to much else of what he said. But I'm
21 pretty sure he was talking more about where the light
22 switches was --

23 MR. CHESSER: Objection, Your Honor.

24 THE COURT: What is the objection?

25 MR. CHESSER: He said he didn't pay attention and he

1 is pretty sure of something. I mean, he obviously didn't
2 hear it. If he didn't hear it, I would submit that he
3 can't testify to it.

4 THE COURT: Overruled. You can cross examine him on
5 all that. You'll have full opportunity to cross examine
6 him.

7 Q What did you hear him say?

8 A I heard him say there was one -- his words, one white
9 woman in there.

10 Q And was that part of the beginning of this what he
11 was supposed to be doing?

12 A Yes.

13 Q Now, did you and Jamaques Salley get out the truck at
14 that time?

15 A Yes.

16 Q Did you have anything on your hands?

17 A White gloves.

18 Q What type of gloves?

19 A Latex.

20 Q And both of you and Jamaques had latex gloves on?

21 A Yes.

22 Q What if anything else did you have on?

23 A I had on a blue New York hat and sunglasses.

24 Q Okay. And what were you wearing? What were you
25 wearing?

1 A I was wearing the defendant's sweat shirt and other
2 clothes.

3 MR. MOLONY: Your Honor, may I approach?

4 THE COURT: You may.

5 Q You stated you were wearing the defendant's sweat
6 shirt?

7 A Yes.

8 Q I am showing you what's in evidence as State's
9 Exhibit 19. Is this the sweat shirt you had on, the black
10 sweat shirt he's wearing here?

11 A Yes, sir.

12 Q And this is the white sweat shirt that's been entered
13 into evidence that he was wearing?

14 A Yes.

15 Q Why did you put this black sweat shirt on?

16 A Again, it was -- it is less noticeable than my white
17 echo shirt. Because if anybody -- it would have just been
18 a regular old black hoodie.

19 Q All right. So you and Jay get out the truck you
20 testified. What did the defendant do?

21 A He got out as well and got into the driver's side.

22 Q Okay. Did y'all walk from there?

23 A Yes, sir, we walked -- Salley -- Jamaques and I
24 walked across the street. By the time we got to the stop
25 sign at the end of that street, the defendant was pulling

1 out. He made a right and then he made another left on the
2 side street.

3 MR. MOLONY: Your Honor, may I approach?

4 THE COURT: You may.

5 Q I'm showing you what's been marked as State's
6 Exhibit 24 and ask if you recognize this?

7 A Yes.

8 Q What does this depict?

9 A Quick Cash, really two car dealerships, and the side
10 street to where my truck was parked.

11 Q Okay. And is this a fair and accurate depiction of
12 the area and how it would have looked around February 19
13 of 2013?

14 A Yes, sir.

15 MR. MOLONY: Your Honor, at this time the state moves
16 to introduce Exhibit 24 into evidence and ask that the
17 witness be able to step down.

18 THE COURT: Any objection?

19 MR. CHESSER: No, sir.

20 (State's Exhibit Number 24 is received into
21 evidence.)

22 THE COURT: Any objection?

23 MR. CHESSER: No, sir.

24 THE COURT: You may step down. Put him on the side
25 over there where the investigator is so the court reporter

1 can see him.

2 MR. MOLONY: Yes, sir.

3 (Whereupon, the witness steps down)

4 Q All right. Now, as y'all are walking across the
5 street, you stated the defendant pulled out and where did
6 he go in the truck?

7 A On the side street here.

8 Q Okay. And did you and Jamaques Salley immediately go
9 into the Quick Cash store?

10 A No, sir.

11 Q Why not?

12 A The mailman pulled up.

13 Q That wasn't going to help this armed robbery and
14 kidnapping, was it?

15 A No, sir.

16 Q All right. So what did y'all do?

17 A We walked. We continued to walk on the outside here
18 and walked and stood under -- right there at the hotel,
19 which is Days Inn hotel.

20 Q All right. And how long were y'all there?

21 A Maybe five minutes.

22 Q Okay. And again what were you waiting on?

23 A The mailman to leave.

24 Q And to your and Jamaques Salley's -- what did y'all
25 do right there? How many people were in that business at

1 that time?

2 A Mailman and the one other person that was in there.

3 So, two people.

4 Q All right. The mailman leave at some point --

5 A Yes.

6 Q -- shortly thereafter? And tell them what happened
7 next.

8 A We went up to the side stairs. Jamaques and I went
9 up the side stairs. I went in first. I asked the victim
10 to stand up, and with the gun out. Salley was looking for
11 the lights. We told each other everything is going to be
12 okay. And at that point that's when Jamaques came over
13 and basically took over everything else from that point.
14 He asked her where the money was and told her to get it.
15 She opened the register. I put the money in there, looked
16 at him. He told me to leave.

17 Q Where did you put the money?

18 A In the bag that was purchased at Roses.

19 Q All right. Let's slow down. You walked in with a
20 gun in your hand?

21 A Yes. Well, I pulled it out as I was going in, yes.

22 Q Okay. And were you looking right at the victim?

23 A Yes, sir.

24 Q And Jamaques Salley went -- before he went up to the
25 victim and where the money was, did the lights go off?

1 A Yes, sir.

2 Q Did he turn them off?

3 A Yes.

4 Q I am going to show you State's Exhibit 23-- 22 and
5 23. Let's start with 23. Do you recognize that?

6 A Yes.

7 Q All right. What is that?

8 A It's the stairs on the side of Quick Cash.

9 Q And are those the stairs that you went up?

10 A Yes, sir.

11 Q To go in to rob and kidnap? All right, State's
12 Exhibit 22.

13 MR. CHESSER: Your Honor, I object to the question it
14 is kidnapping. It calls for a legal opinion or
15 what-have-you that this defendant doesn't have or this
16 witness.

17 THE COURT: Rephrase the question.

18 Q Is this the stair well that you and Jamaques Salley
19 went up to enter on February 19, 2013?

20 A Yes.

21 Q All right. And State's Exhibit 22, what is this
22 depict?

23 A Picture of the Quick Cash, front entrance.

24 Q Okay. And---

25 A The stairs on the side.

1 Q Okay. And does this fairly depict the stairs at the
2 front entrance of the quick cash as it would have appeared
3 on February 19, 2013?

4 A Yes.

5 Q All right. So, Your Honor, at this time the state
6 moves to introduce 22, 23 into evidence.

7 MR. CHESSER: No objection.

8 (State's Exhibits Number 22-23 are received into
9 evidence.)

10 Q All right. So you go up the stair well, which is
11 where? Can you show the jury where these stairs are?

12 A Right here.

13 Q In the corner?

14 A Yes, sir.

15 Q Behind that what is that?

16 A Just this open area here and that back there.

17 Q Just so they can tell, when the mailman leaves, y'all
18 come from back here?

19 A Yes.

20 Q Up these stairs and into those doors?

21 A Yes, sir.

22 Q All right. Now, take me back in. You stated you got
23 the money out?

24 A Yes, sir.

25 Q And where did you put the money?

1 A In the bag that was purchased at Roses.

2 Q You were carrying that bag?

3 A Yes, sir.

4 Q What happened next?

5 A I looked at Jamaques. He was like you got it. I was
6 like, yeah. He was like well go out the door. I started
7 going out the door; I heard the taser go off, and I hear
8 the victim fall.

9 Q All right. Did you make it out the door?

10 A Yeah. Before I heard it or?

11 Q Did you hear while you were still in the business?

12 A Yes, sir.

13 Q All right. And then after you heard her, did you
14 stop or did you keep going out the door?

15 A I kept going out the door.

16 Q All right. And did Jamaques Salley follow you?

17 A Yes, sir.

18 Q All right. What did y'all do right -- as you're
19 walking out the front door, and you got the money at this
20 time?

21 A Yes.

22 Q What -- what happened?

23 A I started to run. I was told not -- he was like
24 don't run. We started walking down the stairs here. Once
25 we got to the bottom of the stairs we started running.

1 Q All right. And those are the same stairs you had
2 come up?

3 A Yes, sir.

4 Q All right. Show the jury where you ran.

5 A We ran down the stairs. There is a path somewhere
6 back here that leads right out here. It is a building
7 here, I don't know the name of it, but that's where my
8 truck was parked.

9 Q Who was in your truck?

10 A The defendant.

11 Q Where was he sitting?

12 A He was sitting in the front passenger side.

13 Q Was the truck running?

14 A Yes.

15 Q Why didn't y'all go back across the street to the
16 daycare as soon as you get out?

17 A Truck wasn't there.

18 Q You knew where the truck was going to be?

19 A No, I did not know where the truck was going to be.

20 Q All right. So who did you follow out of there?

21 A I followed Jamaques out.

22 Q Okay.

23 A I was the first one out the door. When we got to the
24 bottom of the stairs, he took off first and so I followed
25 behind him.

- 1 Q All right. And did he hesitate at all?
- 2 A No, sir.
- 3 Q Were y'all running?
- 4 A Yes, sir.
- 5 Q All right. So in that little gravel area, the
6 defendant is in the passenger side of the truck?
- 7 A Yes, sir.
- 8 Q The truck is running?
- 9 A Yes, sir.
- 10 Q Where did you sit?
- 11 A In the driver's side.
- 12 Q What about Salley?
- 13 A In the back seat.
- 14 Q All right. Where did y'all go?
- 15 A We came up the street and made that, I guess -- yes,
16 we went that way, towards the light, that's right there,
17 where Wendy's is, and that light.
- 18 Q What if anything did the defendant tell you or ask
19 you or ask Jamaques whenever y'all got in the truck?
- 20 A Get to the south side.
- 21 Q All right. Did he ever inquire about whether or not
22 you got any money?
- 23 A No, sir.
- 24 Q Okay. When did he find out you got money?
- 25 A When we got to the gap.

1 Q To the gap. Again, where is that?

2 A Behind citizens park.

3 Q Who lives there?

4 A The defendant.

5 Q Is that the first place y'all went?

6 A Yes.

7 Q On the way to the gap what, if anything, did you do
8 concerning your gloves?

9 A I threw them out the window.

10 Q Where was that at? Somewhere between there and the
11 gap?

12 A Yes, sir.

13 Q So, the defendant is in the front seat and y'all
14 immediately go to his house?

15 A Yes, sir.

16 Q Why immediately to his house?

17 A To get away from the north side -- west side,
18 whatever side it was. They just said get to the south
19 side.

20 Q And when you get to the gap, does the defendant just
21 get out the truck and go on in the house?

22 A No, sir. What happened -- we got there. When we
23 initially got there, we all got out. We went in the
24 house. Well, we ended up. We was in there maybe two
25 minutes. He said, you know, there was too many people in

1 there. Like, you know, it is too many people.

2 Q Where was the money at this time?

3 A It was in my -- well, no, it was in Salley's hands --
4 Jamaques hands --

5 Q All right.

6 A -- when we walked in the house. We was like, nah,
7 let's just leave or whatever. We got back in the truck
8 and went around the circle and we got in front of the same
9 street that the defendant lives on and that's where the
10 money was divided up between the three of us.

11 Q How much money did he get -- the defendant?

12 A A hundred dollars.

13 Q And what about you and Salley?

14 A Between 170 -- between 150 and 170 a piece.

15 Q Why did y'all get more than him?

16 A I'm guessing because all he did was go and see who
17 was all in there, and find out where the light switches
18 was, and have the truck ready for us, I'm guessing.

19 Q So y'all were the ones that went in with the guns.

20 He was the one---

21 A He was basically the lookout man, yeah.

22 Q Now, had there been -- did you have a plan if there
23 would have been 10 people in the Quick Cash, whether or
24 not y'all would have gone in?

25 A No, sir.

1 Q So, you get this money, Salley gets about the same
2 amount you get, and where did y'all go?

3 A Mike -- the defendant got out.

4 Q Took it? He had his \$100 at that time?

5 A Yes.

6 Q What happened?

7 A Everything was given to him -- the guns, the taser,
8 the bag.

9 Q Given to who?

10 A The defendant.

11 Q Why?

12 A I don't know.

13 Q Whose decision was that?

14 A Jamaques.

15 Q Whose decision was it to how much money to give each
16 one of y'all?

17 A Jamaques.

18 Q So---

19 THE COURT: Are you through with him over there?

20 MR. MOLONY: Yes, sir, I'm sorry.

21 (Whereupon, the witness retakes the witness stand.)

22 Q So the defendant took the gun -- both guns?

23 A Yes, sir.

24 Q The taser?

25 A Yes.

1 Q And the bookbag?

2 A Yes.

3 Q Okay. And have you seen any of those since then?

4 A No, sir.

5 Q Tell us about the rest of your day. Where did you go
6 from there?

7 A From there I went to Sunoco and got some gas -- well,
8 after we dropped him off I took Salley home.

9 Q Where was that?

10 A In Crosland Park.

11 Q All right.

12 A After I left there I went to Sunoco and got some gas
13 and I went to a couple of stores and I went home.

14 Q All right. Did you ever get your hair cut?

15 A Yes.

16 Q All right.

17 A I got my hair cut at Busy B's Barber Shop. I am
18 guessing it's Hampton. At that point while I was getting
19 my hair cut a couple of officers came in and started
20 asking questions.

21 Q Did you end up at the headquarters later that day?

22 A Yes.

23 Q And did you speak with the police later that day?

24 A Yes, sir.

25 Q Now, originally when you -- that day the first time

1 you spoke with them, did you tell them everything you told
2 us here today?

3 A No, sir.

4 Q Why not?

5 A Well, when they first came to me they was just saying
6 that my truck was in the area -- a truck with my color --
7 the color of my truck and make and model or whatever was
8 in the area and they was trying to find some stuff out.
9 So....

10 Q So, did you try to keep yourself out of it at that
11 time?

12 A Yes.

13 Q Now eventually did you tell investigators what
14 happened?

15 A Yes, sir.

16 Q Why?

17 A At that point it was no reason to lie any more.

18 MR. MOLONY: I beg the court's indulgence, Your
19 Honor. I have no further questions, Your Honor, but we do
20 have a very brief issue we need to take up.

21 THE COURT: Let me see y'all up here just a second.

22 (Whereupon, a bench conference was held.)

23 THE COURT: Trying to talk a little logistics to see
24 where we stand. Obviously Mr. Chesser has a right to
25 cross examine this witness and then I think they've got

1 one more police officer and then a second police officer
2 -- about an hour's worth of testimony maybe, and I'm not
3 sure what the defendant is going to have. So we will not
4 finish the testimony this afternoon.

5 What I'd like to do is go ahead and break now for the
6 evening so we can take care of everything else, start at
7 9:30 in the morning. We'll go straight through the
8 testimony, final arguments and I'll give you the
9 instructions on the law and you'll probably get the case
10 around 11, 11:15, and depending on where we are I'll
11 probably order lunch in for you, the Bowery or somewhere,
12 and we'll deliberate straight through. Once we conclude
13 the case then I'll release y'all for the rest of the week.
14 So you'll have tomorrow to do. Please do this for me.
15 When you go home tonight I hadn't seen any press in here.
16 But oftentimes it'll be in the newspaper or perhaps
17 something on TV. I ask you not to read anything in the
18 news, not to look at anything on TV. Don't discuss the
19 case with anyone, family friends or fellow jurors. Have a
20 pleasant evening. We'll start at 9:30 sharp in the
21 morning. I'll have you -- we can have doughnuts. We have
22 so sausage biscuits or fruit. We can't have all three.
23 One of the three. And some hot coffee. What is the
24 pleasure of the group? Somebody speak. Whoever speaks
25 first.

1 THE JUROR: Biscuits.

2 THE COURT: There you go. Sausage biscuits. Hot
3 coffee.

4 THE JUROR: Coffee.

5 THE COURT: And sausage biscuits.

6 THE FOREPERSON: That's fine.

7 THE COURT: We'll do that. And then I will order
8 lunch up there from the Bowery and they'll deliver that to
9 us. Don't discuss the case. Have a pleasant evening,
10 don't do any research internet or whatever. I look
11 forward to seeing you more tomorrow morning at 9:30. Be
12 here earlier than 9:30 if you want your biscuits and
13 coffee because you can't bring it out to the courtroom.
14 Everyone else remain seated.

15 (Whereupon, the jury exited the courtroom at 4:37.)

16 THE COURT: All right. Have a pleasant evening. I
17 got your chair. Jailors, y'all leave him back there for a
18 little while. Don't take him back to the jail until --
19 give us a few minutes please. All right. Anything for
20 the record by the state?

21 MR. MOLONY: Your Honor, I failed to move to
22 introduce State's Exhibit 4. It is a picture of inside
23 the residence that it's been testified to by a couple of
24 witnesses. But I would just like to move it into.

25 THE COURT: Inside the residence?

1 MR. MOLONY: Business, I'm sorry.

2 THE COURT: They testified to it and identified it
3 and you just didn't introduce it. Any objection, Mr.
4 Chessser?

5 MR. CHESSER: No, Your Honor.

6 THE COURT: Very well that is in evidence.

7 (State's Exhibit Number 4 is received into evidence.)

8 THE COURT: Anything else we need to do?

9 MR. MOLONY: Your Honor, I met with Carlos Williams
10 last night at the jail.

11 THE COURT: Carlos Williams.

12 MR. MOLONY: This co-defendant that just testified.
13 We found out -- I found out at the jail last night that
14 Carlos Williams stated the defendant told him, while back
15 here yesterday, that if you would have just kept your
16 mouth shut none of us would be in this mess. I came back
17 and worked last night. I told Mr. Chessser. I didn't want
18 to move it in without us doing this because I told him
19 this today. It was short notice. I didn't call him last
20 night, late last night. Out of precaution I didn't want
21 to do anything. But I'd like, I guess, Your Honor to
22 rule, if he's got any objection to it, it may be something
23 that I get into on cross examination -- I mean on redirect
24 tomorrow. I didn't want to do it on direct with the short
25 notice I gave Mr. Chessser.

1 THE COURT: Mr. Chesser? I'll give you an
2 opportunity tonight to talk to him if you want to, if that
3 will help.

4 MR. CHESSER: Yes, sir. I'll certainly talk to him.
5 On the issue of admissibility of this statement. I don't
6 know what exactly the state's position is, whether they
7 are taking the position they finished with their direct
8 and the issue -- it just depends on whether I opened the
9 door.

10 THE COURT: Well I think his position is that he
11 would like, out of an abundance of caution, discuss it
12 with you so you had advance notice of it, and he would
13 probably call him back tomorrow just to finish up with
14 that one piece of testimony.

15 MR. CHESSER: I see.

16 THE COURT: Obviously you would have the right
17 tonight to talk to Carlos. He might tell you something
18 different. I don't know.

19 MR. CHESSER: I'll talk with him about it and if I
20 can think of some appropriate objection I'll make it.

21 THE COURT: You can do that in the morning. It'll
22 give you some time.

23 MR. CHESSER: Thank you, Your Honor.

24 THE COURT: All right.

25 (Whereupon, a break was taken.)

1 (Whereupon, on May 15, 2013 the following proceedings
2 were held:)

3 THE COURT: Is the state ready to proceed?

4 MR. MOLONY: Yes, sir, Your Honor.

5 THE COURT: The defendant ready to proceed?

6 MR. CHESSER: Yes, Your Honor.

7 THE COURT: Bring the jury in, please.

8 (Whereupon, the jury came into open court at
9 approximately 9:39.)

10 THE COURT: Madam Forelady, ladies and gentlemen,
11 good morning. How are y'all? Unfortunately we had about
12 four things, five things set for 9:30. I didn't realize
13 that when I asked y'all to be here at 9:30. We were able
14 to move through them rather quickly. That's why we're a
15 few minutes late. We hadn't been sitting out here
16 talking.

17 Anything else for this witness by the state?

18 MR. MOLONY: Briefly, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. MOLONY:

21 Q Carlos, you testified earlier that you and Salley
22 took the orange spots off of the BB guns?

23 A Yes.

24 Q Why did y'all do that?

25 A To make them look real.

1 Q And did they look real after that?

2 A Yes.

3 Q Now, when you went -- you stated the first thing that
4 -- the first place y'all went after this was to the
5 defendant's residence?

6 A Yes.

7 Q And after the money was divided, who left the
8 residence at that time?

9 A After the money was divided, Salley and I left.

10 Q Did you speak with the defendant any more that day?

11 A No, sir.

12 Q Now, since then have you spoken with the defendant
13 any more?

14 A In the -- at the detention center I have.

15 Q Okay. What did the defendant tell you at the
16 detention center -- in Aiken?

17 A Yes, sir.

18 Q What did he tell you?

19 A When he came into the pod, I asked him I was like,
20 you know, your boy's playing a dirty game --

21 MR. CHESSER: Your Honor, I would object and ask for
22 time and place, a little more specificity. I don't know
23 when he's talking about since February of this year.

24 THE COURT: Fair question. Ask him when and where.

25 Q When did you speak with him?

1 A Some time in February in C4. It was around the time
2 he first got arrested and he was put -- actually C3. He
3 was put back there in C3 right along with me.

4 Q So y'all were housed in the same pod?

5 A Yes, sir.

6 Q And where did this conversation take place?

7 A At my cell. He was standing outside my cell door. I
8 was inside.

9 Q And what was said?

10 A Like I said, I told him, you know, your boy is
11 playing a dirty game or whatever. He was, like, I know.
12 And he was, like, he told me, he told you to burn
13 evidence. He was like, no, when I found out y'all was
14 locked up, I just took the bag and guns and everything I
15 threw it down the drain.

16 Q Did he say what drain he threw the evidence down?

17 A No, sir.

18 Q Did you ask him?

19 A No, sir.

20 Q And have you been with the defendant in this
21 courthouse, alone, in the last week?

22 A Yes.

23 Q And did you have a conversation with the defendant at
24 that time?

25 A Yes.

1 Q Explain to the jury what that conversation was.

2 A We came back into the cell out there. He was---

3 Q When you say out there where do you mean?

4 A Right outside the door here in the court.

5 Q All right. When was this?

6 A It was Monday.

7 Q This week?

8 A Yes.

9 Q All right.

10 A He was -- he stated that if I hadn't said anything
11 they had nothing. Neither one of us would be in this
12 situation. Neither one of us -- they wouldn't have no
13 grounds for any of it. We wouldn't even be in this
14 situation if I would have kept my mouth shut.

15 Q What did you tell him?

16 A I said, what you expect me to do, you know? There
17 wasn't no point in it no more. As far as I'm concerned,
18 man, like I told him, as far as I'm concerned---

19 MR. CHESSER: Objection. It is some statement that
20 he made and I don't think it's relevant, Your Honor.

21 THE COURT: I'll sustain it.

22 Q Is that all he said?

23 A Yes, sir.

24 Q No further questions.

25 THE COURT: All right, cross examination, Mr.

1 Chesser.

2 CROSS-EXAMINATION

3 BY MR. CHESSER:

4 Q Mr. Williams, how old are you?

5 A Twenty-one.

6 Q Okay. And you have pending charges of armed robbery
7 and kidnapping?

8 A Yes.

9 Q And the armed robbery carries from 10 to 30 years; is
10 that right?

11 A Yes.

12 Q Whatever time you do, you get on that, you have to do
13 pretty much all of it; right?

14 A Yes, sir.

15 Q The kidnapping carries zero to 30. Is that your
16 understanding?

17 A Yes.

18 Q You have to do whatever time you get on that; right?

19 A Yes, sir.

20 Q And they could put them on top of each other; right?
21 You're looking at a maximum of 60 years; is that right?

22 A Yes, sir.

23 Q Have you ever been to prison?

24 A No, sir.

25 Q You don't want to go to prison; right?

1 A No, sir.

2 Q Now you were taken into custody on the day that you
3 robbed this cash and check place; right?

4 A Yes, sir.

5 Q Okay. And you were interviewed by Detective Savage
6 at that time; right?

7 A Yes, sir.

8 Q And that was February 19 of this year?

9 A Yes, sir.

10 Q Okay. So you robbed Ms. Guerriari about 10:30 on the
11 morning of February 19; right?

12 A I am guessing that's around the time.

13 Q It was in the morning, though; right?

14 A Yes.

15 Q And you held a gun in her face?

16 A I guess you could say that, yes, sir.

17 Q Okay. And then you were interviewed by Detective
18 Savage that afternoon; right?

19 A Yes, sir.

20 Q Now, at that time with Detective Savage you told him
21 you had nothing to do with this; right?

22 A Yes.

23 Q That you had ordered some type of a giant hamburger
24 at the Burger King?

25 A Yes, sir.

1 Q Okay. But Detective Savage told you that the first
2 person to cooperate gets the best deal; right?

3 A Okay.

4 Q Well, I need for you to answer yes or no if he said
5 that to you.

6 A Yes, sir.

7 Q Okay. Now you told him that in addition to the fact
8 that you telling him that you were at Burger King, that
9 you had nothing to do with this; right?

10 A Yes, sir.

11 Q Okay. You said you didn't know what was going on;
12 right?

13 A Yes, sir.

14 Q You told him that -- while you were telling him that
15 you were at Burger King and you had nothing to do with
16 this, you also told him that you were doing everything you
17 could to help him; right?

18 A Yes.

19 Q Didn't you ask Detective Savage can I please go home?

20 A More of a statement than a question.

21 Q Essentially you asked him if you could go home; is
22 that right?

23 A Yes, sir.

24 Q And at that time you told him you were telling the
25 truth; right?

1 A Yes, sir.

2 Q And you were lying; right?

3 A Yes, sir.

4 Q Now, you also told him -- you did admit to driving to
5 the check cashing location; right?

6 A Yes, sir.

7 Q And then it was after that you said you went to
8 Burger King and got some type of hamburger?

9 A Yes, sir.

10 Q Okay. And that was a lie?

11 A Which part?

12 Q Well, that's a good question. It was a lie that you
13 just drove there; right? In other words, after you drove
14 there you robbed the check cashing place; right?

15 A No.

16 Q Well, let me rephrase this again. After you drove to
17 the location, you and Jay Salley went into the check
18 cashing place and robbed it; right?

19 A Yes, we -- okay.

20 Q Okay. Now, at some time during that interview they
21 told you that you had been picked out of a line-up; right?

22 A Yes.

23 Q Okay. At that point you knew they weren't going to
24 believe what you had been telling them; right?

25 A I really can't answer that question, for the simple

1 fact of, you can't necessarily say what I believed at that
2 time, because it's in my mind and not yours.

3 Q Okay. After they told you that the victim,
4 Ms. Guerriari, had picked you out of a line-up as a person
5 who pointed a pistol at her, at that point you told the
6 detective that you didn't want to do it; right?

7 A Yes, sir.

8 Q You told him that Jay had threatened to tase you with
9 the taser before you went in the check cashing place;
10 right?

11 A Yes.

12 Q Is that true?

13 A No, sir.

14 Q So you were lying then?

15 A Yes, sir.

16 Q So you told him after you knew that the victim had
17 picked you out, you continued to lie; is that right?

18 A Not necessarily.

19 Q Okay. Again, at that point, after you had been told
20 that the victim had picked you out, you told the detective
21 that you had not -- no idea what happened to the gloves
22 you wore; right? You told him that; right?

23 A No, I told him that I threw them out.

24 Q You told the detective that you didn't get any money
25 from this robbery; right?

1 A In the initial interview, yes.

2 Q And you were lying; right?

3 A Yes.

4 Q Okay. Now you were subsequently interviewed. You
5 asked to speak to the detective again; right, Detective
6 Savage?

7 A Yes.

8 Q How long was that after your first interview on
9 February 19?

10 A Maybe a week, a couple of days. I am not really
11 clear on that.

12 Q Okay. Now, at that time you called Detective Savage
13 and you told him that you wanted to tell him more
14 information about this; right?

15 A Yes.

16 Q And the reason you wanted to do that was to help
17 yourself; right?

18 A I guess you could say that.

19 Q You still wanted to go home; right?

20 A Yes, sir.

21 Q You want to go home now, don't you?

22 A Yes, sir.

23 Q Okay. At this second interview, you continued to
24 tell the detective, that Jay had threatened you with a
25 taser; right?

1 A Yes.

2 Q And you're saying now that that was a lie; right?

3 A Yes.

4 Q And the reason you lied was because you thought it
5 would help you to go home; right?

6 A No, sir.

7 Q The reason you minimized your role in the robbery was
8 to increase the possibility you could go home; right?

9 A I don't see that I minimized my role in any part of
10 it.

11 Q When you had -- you called the detective and you said
12 I want to speak with you, this is after you've been in
13 jail a week, and you tell him, Detective, I didn't want to
14 do this; Jay threatened me with a taser; right?

15 A Right.

16 Q That's a lie; right?

17 A Okay.

18 Q You had a reason to lie; right? You wanted to go
19 home; right?

20 A Yes, sir.

21 Q You still want to go home; right?

22 A Yes, sir.

23 Q What you told the detective then, when you told him
24 you were trying to help him, was that you didn't realize
25 anything was actually going to happen, until you were

1 right outside the check cashing place; right?

2 A Yes.

3 Q Your words were all of a sudden it got real; right?

4 A Yes, sir.

5 Q And that's -- and you told the detective that you
6 didn't want to go through with it, when you and Jay were
7 standing outside of the check cashing place; right?

8 A When we was standing at the hotel.

9 Q Okay. You told him you didn't want to go through
10 with it; right?

11 A Yes.

12 Q And you told him again that Jay threatened you with a
13 taser; right?

14 A Yes, sir.

15 Q And you're saying that's a lie; right?

16 A Yes, sir.

17 Q Okay. Because you wanted to go home. That's the
18 only reason you would lie; right?

19 A Yes, sir.

20 Q You told the detective also that the only thing we
21 talked about in the car was that to see if Mike could go
22 in and go there and get a loan. That's what you told the
23 detective; right?

24 A In the initial interview, yes.

25 Q And in the second interview; right?

1 A No. I don't recall.

2 Q Didn't you tell the detective in the second
3 interview, I thought Mike was going in to get a loan for
4 real?

5 A I know for a fact that I told him that in the initial
6 interview. I can't recall that I told him that in the
7 second interview.

8 Q You told him in the second interview that you didn't
9 think Jay was serious about robbing this place?

10 A Yes.

11 Q And you told him that that was the truth; right?

12 A Yes.

13 Q You told him you didn't believe that you were
14 actually going to go through with the robbery; right?

15 A Yes.

16 Q Okay. In this second interview again with Detective
17 Savage, you told him, I just want to go home to my family.
18 Whatever y'all can do to help me, please help me so I can
19 go home to my family. That's what you told Detective
20 Savage; right?

21 A I can tell you that I told him, I want to go home to
22 my family. But I can't recall everything you just said.

23 Q You told Detective Savage, I'll do whatever I can to
24 help you. I'll give y'all whatever you need. You told
25 him that; right?

1 A Yes.

2 Q You told the detective that when Jay bought the
3 bookbag at Roses, that you didn't have any idea that you
4 were fixing to rob someplace; right?

5 A Yes.

6 Q You also told the detective that you had never talked
7 about robbing someplace before that day with Jay; right?

8 A No, sir.

9 Q You told the detective the only thing we talked about
10 in the truck was to see if Mike could go in there and get
11 a loan; right?

12 A Yes.

13 Q Okay. Now, this conversation, that you say, that you
14 had with Mike Quarles in jail, you're saying that that
15 occurred after your second interview with law enforcement?

16 A Actually, I can't recall when that conversation
17 happened; whether it was before or after my second
18 interview. I can recall that it did happen.

19 Q Okay. Well, here today let me ask you this; to go
20 back to something, has law enforcement made you any
21 promises of benefits that will -- that you'll get as a
22 result of your testimony?

23 A No, sir.

24 Q Okay. When you say they haven't made any promises, I
25 mean, you're here -- the point of your testifying is to

1 get a benefit; right?

2 A No. The point of my testifying is to tell the truth.

3 Q Okay. So, isn't it a fact, Mr. Williams, that the
4 point of your testimony is so you can go home, just like
5 that's been your goal since you were arrested on
6 February 19?

7 A No, that's not a fact.

8 Q Now the detective told you, in your second interview,
9 that even if you testify, you would still have to do a
10 little time on this armed robbery; right?

11 A I guess, you know, he told me that I'd have to do
12 time.

13 Q I need yes or no. Do you remember it?

14 A Not -- I vaguely remember it, yes.

15 Q Isn't it uppermost in your mind that the detective in
16 charge of this case tells you that you're only going to
17 have to do a little time for an armed robbery?

18 A Could you rephrase that question, please?

19 Q The most important thing for you is to get as little
20 time on this case as possible; right?

21 A I guess you could say that, yeah.

22 Q You've been talking about going home since the day
23 you were arrested; right?

24 A Yes, sir.

25 Q And the detective, tells you, that you'll only have

1 to do a little time, if you testify in this case; right?

2 A Okay.

3 Q And even after he told you that, you told him, that
4 the only reason you robbed this place was because Jay
5 threatened you with a taser; right?

6 A I can't recall that one.

7 Q Even after he told you that you would be looking at a
8 little time if you testified, you told him that you only
9 participated in this because you had to; right?

10 A Okay. First off, he never told me if I testified I
11 would be looking at a little time. I'll tell you that off
12 the bat. He never told me that. I knew -- not from
13 experience, but from, you know, my family's experience
14 time is inevitable. I am going to get time. So what's
15 the point in continuing to lie about it.

16 Q Isn't it true that you started lying about this case
17 on February 19 of 2013, Mr. Williams?

18 A Yes, sir.

19 Q This statement that you say that Mr. Quarles made to
20 you two days ago. Who was in the holding cell with you?

21 A A couple other inmates.

22 Q Did you tell law enforcement what their names were so
23 they could come testify about this statement?

24 A No, sir.

25 Q Those guys don't have 60 years hanging over their

1 head for armed robbery and kidnapping, do they?

2 A I don't know. I don't know none of them.

3 Q But you do; right?

4 A Yes, sir.

5 Q That's all the questions I have.

6 THE COURT: Redirect?

7 MR. MOLONY: Briefly, Your Honor.

8 **REDIRECT EXAMINATION**

9 BY MR. MOLONY:

10 Q Carlos, has Detective Savage ever said one word to
11 you about what amount of time you are going to get?

12 A No, sir.

13 Q Has anyone from the solicitor's office said anything
14 to you about what time you're going to get?

15 A No, sir.

16 Q And do you know whether or not you're going to get
17 time?

18 A I know I am going to get time.

19 Q You don't know how much?

20 A I just don't know how much. It could be anywhere
21 from the armed robbery taking 10 to 30 or zero to 30 off
22 the kidnapping. It could be anywhere between zero to 60
23 years. I am going to get time regardless.

24 MR. MOLONY: That's all, Your Honor.

25 THE COURT: You may step down. Thank you. Be

1 careful.

2 THE COURT: Next witness.

3 MR. MCCARLEY: Your Honor, the State calls
4 Lieutenant David Savage of the Aiken County Department of
5 Public Safety.

6 DAVID E. SAVAGE, after being duly sworn,
7 testified as follows:

8 THE CLERK: Have a seat in the witness box. Stating
9 your full name and spelling your last for the court,
10 please.

11 THE WITNESS: My name is David E. Savage,
12 S-a-v-a-g-e.

13 DIRECT EXAMINATION

14 BY MR. MCCARLEY:

15 Q Lieutenant Savage, where do you work sir?

16 A I work for the Aiken County Department of Public
17 Safety.

18 Q How long have you been there?

19 A Twenty-three years.

20 Q How long have you been in law enforcement?

21 A Twenty-three years.

22 Q What is your position there at the public safety?

23 A I am the lieutenant over investigations.

24 Q And what do you do as the lieutenant over
25 investigations?

1 A I supervise the day to day operations of our division
2 and I also investigate major crimes.

3 Q What day did you become involved in the armed robbery
4 and kidnapping that brought us all here?

5 A On February 19 of this year.

6 Q Who was the first person that you arrested that you
7 charged and arrested in this crime?

8 A Carlos Williams.

9 Q And did you interview him?

10 A I did.

11 Q Did you make him any promises or deals?

12 A I did not.

13 Q Do you have the authority to make deals?

14 A I do not.

15 Q Did you tell him that telling the truth would help
16 him?

17 A Yes, sir. I told him based on my 23 years of
18 experience, the first person that cooperates usually gets
19 the better results.

20 Q Did you ever tell him he was going home?

21 A I never told him that.

22 Q Did you tell him he was going to prison?

23 A I believe I said he is going to serve time, yes, sir.

24 Q Who is the next person that you arrested and charged
25 with the armed robbery and kidnapping in this case?

1 A Jamaques Salley.

2 Q When he was arrested are you aware of how much money
3 he had on him?

4 A I am.

5 Q How much was that?

6 A One hundred. May I refer to my notes.

7 Q Absolutely?

8 A 168.49.

9 Q Where is Mr. Salley now?

10 A He is at the Aiken County Detention Center.

11 Q Are his charges still pending?

12 A They are pending.

13 MR. CHESSER: Objection, Your Honor, to the relevance
14 of it. It has nothing to do with this defendant.

15 THE COURT: It is relevant. Thank you. Overruled.

16 Q Are you aware of any deals or offers that have been
17 made to Mr. Salley?

18 A No deals or offers.

19 Q Going back to the investigation, at what point was
20 the defendant Michael Quarles arrested?

21 A He was arrested on March 9 of 2013.

22 Q Can you please tell the jury the circumstances of
23 that arrest?

24 A Yes, that was on a Saturday. Lieutenant Key, who is
25 over D shift, patrol officer's called me at home, said

1 they received an anonymous tip, that Mr. Quarles who was
2 wanted was out on a house on Warren Street. The street
3 officers went to the door and the young lady let him in.
4 She said he is in the back closet hiding. They went to
5 the back closet and he was hiding under what clothes he
6 could hide under.

7 Q Did you interview the defendant Michael Quarles after
8 his arrest?

9 A I did on March 10 on Sunday morning.

10 Q Is Michael Quarles here in the court room today?

11 A He is.

12 Q Could you please point him out.

13 A He is sitting next to Mr. Chesser on the right with
14 the brown shirt.

15 Q Let the record reflect that Lieutenant Savage has
16 identified the defendant.

17 THE COURT: Very well.

18 Q When you interviewed him was there anyone else in the
19 room?

20 A There was. There was a young newer officer PS0
21 Lawrence.

22 Q Where did this interview take place?

23 A At the Aiken Department of Public Safety.

24 Q On what date again, I apologize?

25 A March 10.

1 Q Prior to interviewing him, did you read Michael
2 Quarles his Miranda Rights?

3 A I did read his Miranda Rights.

4 Q Does the Aiken Department of Public Safety use a
5 Miranda Waiver Sheet?

6 A We do.

7 MR. MCCARLEY: Your Honor, may I approach?

8 THE COURT: You may.

9 Q Lieutenant Savage what I'm handing you has been
10 previously marked State's Exhibit 26. Could you tell us
11 what that is, sir?

12 A That's an Aiken Department of Public Safety form for
13 advice of Miranda Rights.

14 Q All right. Did you read and explain that document to
15 the defendant?

16 A I did.

17 Q Did he initial it?

18 A He did initial.

19 Q How many times?

20 A Seven.

21 Q Did you force the defendant in any form or fashion to
22 initial that waiver?

23 A I did not.

24 Q Did you threaten the defendant?

25 A I did not.

1 Q Had he already been charged with kidnapping and armed
2 robbery?

3 A Yes, he was already charged.

4 Q So there was no threat of arrest?

5 A There was no threat of arrest. He was under arrest
6 already.

7 Q Did the defendant voluntarily give up his right to
8 have an attorney present?

9 A He did.

10 Q Did he voluntarily give up his right to remain
11 silent?

12 A He did.

13 Q Did you promise Michael Quarles anything?

14 A Not a thing.

15 Q Did you offer him any deals?

16 A Not a deal.

17 MR. MCCARLEY: Your Honor, the state now moves to
18 enter Exhibit 26 I believe it is into evidence.

19 MR. CHESSER: No objection.

20 (State's Exhibit Number 26 is received into
21 evidence.)

22 Q Could you please read that document to the jury?

23 A All right. This is what we read. Before we ask you
24 any questions you must understand your rights. Number
25 one, says, you have the right to remain silent. Number

1 two, says, anything you say can and will be used against
2 you in a court of law. Number three, says, you have the
3 right to talk to a lawyer for advice before we ask you any
4 questions, and have him with you during questioning.
5 Number four, says, if you can not after farred a lawyer
6 the court will appoint one to represent you without cost,
7 if you wish. Number five, says, if you decide to answer
8 questions now without a lawyer present, you will still
9 have the right to stop answering at any time. You also
10 have the right to stop answering at any time until you
11 talk to a lawyer. Number six, says, I have read this
12 statement of my rights and understand what my rights are.
13 And then I'll have him initial.

14 And then the waiver of rights. I am willing to make
15 a statement and answer questions. I do not want a lawyer
16 at this time. I understand and know what I am doing, no
17 promise, threats have been made to me and no pressure of
18 any kind has been used against me. And, again, he'll
19 initial, he'll sign it, and the officer that was in the
20 room witnessed it.

21 MR. MCCARLEY: Permission to approach Your Honor?

22 THE COURT: You may.

23 Q Lieutenant Savage, I am now handing you what's been
24 previously marked State's Exhibit 27?

25 A Do you recognize that.

1 A I do.

2 Q What is it sir?

3 A It is a DVD of an interview on Michael Quarles.

4 Q Have you watched that?

5 A I watched it, yes, sir.

6 Q Is it a true and accurate copy of the audio and video
7 taken on March 10, 2013?

8 A It is.

9 Q Have there been any changes, deletions, additions
10 subtractions?

11 A No.

12 MR. MCCARLEY: Your Honor, the State now moves to
13 enter the DVD of the interview into evidence.

14 MR. CHESSER: No objection.

15 MR. MCCARLEY: And to publish it to the jury, sir.

16 THE COURT: You may.

17 (Whereupon, CD is played for the jury.)

18 MR. CHESSER: Object.

19 THE COURT: Hold on. Cut it off.

20 (Whereupon, the CD is stopped pursuant to the Judge's
21 instructions.)

22 THE COURT: Mr. Chesser walk over here.

23 (Whereupon, a bench conference was held.)

24 THE COURT: Madam, Forelady, ladies and gentlemen,

25 y'all step out just a second. We need to run this forward

1 a little bit to another part because this part hasn't got
2 anything to do with it. Don't discuss the case and don't
3 deliberate.

4 (Whereupon, the jury exited the courtroom at 10:36.).

5 THE COURT: Y'all try to work it out please.

6 MR. MCCARLEY: Yes, sir.

7 THE COURT: The portion that Mr. Chesser objected to.

8 MR. CHESSER: We're at 24 minutes, Your Honor.

9 THE COURT: Y'all agree?

10 MR. MCCARLEY: Yes, sir.

11 THE COURT: What are you doing? You're not eating,
12 are you?

13 MR. MCCARLEY: Yes, sir, I am.

14 THE COURT: Ask the jury to come in -- hold on.

15 MR. CHESSER: Your Honor. I'd like to take this
16 opportunity to address a matter that it would be more
17 convenient if they're out.

18 THE COURT: Certainly. Is it an objection or what is
19 it? Something that's bothering you?

20 MR. CHESSER: I'll tell you what it is . What I am
21 going to ask a little later is to introduce a portion of
22 another interview, and it's -- I wanted to just address
23 the logistics while the jury was out. The part I want to
24 introduce it's the second debriefing or interview of
25 Carlos Williams and the way that it works on my computer

1 is if the interview is divided into segments. In this
2 case there's, I think, three segments. And the part I
3 want to introduce is at 1558 to 1630 on the second
4 segment. So I wanted to go ahead an address, while the
5 jury is out, the concept of introducing just part of this
6 interview, and also to address the logistics of it. It's
7 not extremely difficult, but what probably -- in order to
8 make it go smoothly, if the Court deems this admissible
9 depending on what the prosecution says, but at some point
10 we might want to cue it up and so forth. If it's -- that
11 portion is going to come in 1558 to 1630.

12 THE COURT: When are you going to do it?

13 MR. CHESSER: When? On my cross examination on
14 Detective Savage.

15 THE COURT: What is your position on whether you are
16 going to object to it or not?

17 MR. MCCARLEY: The objection is prior consistent
18 statement. You heard from Carlos Williams that what was
19 said, what was said. He, yes and no everything. I don't
20 know what you're going to hear on cross of Lieutenant
21 Savage. But I'd probably deal with it then as a prior
22 consistent statement, thus inadmissible.

23 THE COURT: We'll do it when we get to it. Are y'all
24 in agreement with what you need to do to finish up with
25 direct on this tape?

1 MR. CHESSER: Your, Honor for the record we stopped
2 at 24. At this point we're at 2917. So--

3 THE COURT: Does that satisfy your objection?

4 MR. CHESSER: Yes, sir.

5 THE COURT: All right. Bring the jury back, please.

6 (Whereupon, the jury came into open court at
7 approximately 10:40.)

8 THE COURT: All right. You may proceed.

9 (Whereupon, CD is played for the jury)

10 Q Lieutenant Savage, please answer any questions that
11 Mr. Chesser has for you.

12 CROSS-EXAMINATION

13 BY MR. CHESSER:

14 Q Lieutenant Savage, I want to ask you about Carlos
15 Williams. You interviewed him the first time on
16 February 19 of this year; right?

17 A I did.

18 Q And then you interviewed him again a week to 10 days
19 later; is that right?

20 A I don't remember the exact time frame, but it was a
21 week or so later.

22 Q Okay. And in the course of that interview there came
23 a point where you told him, talking to Carlos, you're
24 going to have to do a little time; right?

25 A I would have to review the video.

1 Q Okay. You have the video as a whole in connection
2 with this case, have you reviewed the video of your second
3 interview with Carlos Williams?

4 A Not for this trial. I reviewed everything on
5 Mr. Quarles.

6 MR. CHESSER: At this time I would like to address
7 something outside of the presence of the jury, Your Honor,
8 or alternatively I'll just move to introduce a section of
9 the interview with Carlos Williams.

10 THE COURT: That's the way to do it right there.
11 What section do you move to introduce?

12 MR. CHESSER: Your Honor, again, on what I am
13 presented with and I think what the prosecution has the
14 videos even though it's one interview, the computer
15 somehow breaks it down into, in this case, three files.
16 So what I'm requesting is 1558, that's 15 minutes and 58
17 seconds to 16 minutes and 30 seconds from the second
18 segment, of this second interview with Carlos Williams.

19 THE COURT: You want to introduce it into evidence.

20 MR. CHESSER: Yes, sir.

21 THE COURT: Mr. MCarley.

22 MR. MCCARLEY: No objection from the state, Your
23 Honor.

24 THE COURT: Do it then. Do y'all have the capability
25 of doing it?

1 MR. CHESSER: Yes, Your Honor.

2 THE COURT: All right. Gentlemen, let's move along
3 hold on a second. Don't play it unless it's what we're
4 looking for.

5 MR. CHESSER: Your Honor, I don't -- we don't want to
6 waist anybody's time. We would ask the jury to be
7 excused, Your Honor.

8 THE COURT: Well, you know, gentlemen. We had all
9 night to do this. Don't let me lose my patience. How
10 long will it take you, Mr. Chesser?

11 MR. CHESSER: It will literally take just five
12 minutes, Your Honor.

13 THE COURT: Literally. Have y'all ordered your lunch
14 yet?

15 JURORS: Yes, sir.

16 THE COURT: Well I can't make you do that. Give me
17 five minutes. Thank you. I'm sorry.

18 (Whereupon, the jury exited the courtroom at 10:48.).

19 (Defendant's Exhibit Number 1 is received into
20 evidence.)

21 THE COURT: Are you ready to proceed, Mr. Chesser?
22 Got your computer program in order?

23 MR. CHESSER: Yes, sir.

24 THE COURT: Bring the jury in.

25

1 (Whereupon, the jury came into open court at
2 approximately 11:03.)

3 MR. CHESSER: The defense moves this section it is 15
4 minutes and 57 seconds to 16 minutes and 30 seconds of the
5 second segment of the second interview with Carlos
6 Williams. That's actually about 45 minutes into the
7 second interview.

8 THE COURT: 45 minutes -- how long is the tape that
9 you're playing?

10 MR. CHESSER: The tape we're playing is 33 seconds,
11 Your Honor.

12 THE COURT: Okay.

13 MR. CHESSER: We would move to publish that at this
14 time.

15 THE COURT: No objection. Go ahead.

16 (Whereupon, a portion of the CD is played for the
17 jury)

18 Q That is in fact -- that is the second portion of the
19 interview you had with Carlos Williams, the second
20 interview; right?

21 A It is .

22 Q And even after that discussion, in that second
23 interview, Carlos Williams told you that he still didn't
24 believe the robbery was actually going to happen until he
25 was in front of the motel; right?

1 A He did.

2 Q That's all the questions I have. Thank you.

3 THE COURT: Redirect.

4 REDIRECT EXAMINATION

5 BY MR. MCCARLEY:

6 Q Thank you Your Honor. Very briefly. Lieutenant
7 Savage, did you make any promises to any of three
8 defendants in this case?

9 A No -- I'm sorry.

10 Q Go ahead, sir.

11 A I did not.

12 Q Did you make any deals with any of the three
13 defendants in this case?

14 A I did not.

15 Q Did you tell any one they were going home?

16 A I did not.

17 Q Can you make offers and deals?

18 A I cannot.

19 MR. CHESSER: Objection, Your Honor, he is going over
20 the same thing they went over in direct.

21 THE COURT: Well but you sort of brought it back up
22 in cross so I'll allow it briefly.

23 MR. MCCARLEY: That is all, Your Honor.

24 THE COURT: Like I said I'll allow it briefly. Thank
25 you. Let the screen down, please. Next witness, please.

1 MR. MOLONY: Your Honor, the State rests.

2 THE COURT: Mr. Chesser let me see you, please.

3 (Whereupon, a bench conference was held.)

4 THE COURT: All right. Madam Forelady, ladies and
5 gentlemen, I intend to spend about three or four minutes
6 with the lawyers to see whether or not we have any more
7 testimony. Step out just for a second. I hope to have
8 the lunch here by eleven thirtyish (ph). That's a little
9 early. We got the other jury coming in and pick another
10 jury and trying to do too many things at one time. You
11 know, y'all are all going to have good exercise. It won't
12 take long.

13 (Whereupon, the jury exited the courtroom at 11:08.)

14 THE COURT: All right. Mr. Quarles, would you please
15 stand for me and raise your right hand.

16 MICHAEL QUARLES, after being duly sworn,
17 testified as follows:

18 **EXAMINATION**

19 BY THE COURT:

20 Q You can sit down. All right, Mr. Quarles, we've
21 reached the stage in the trial now where you can present
22 your own -- your defense and you can do that in a number
23 of ways. You can call witnesses. You can introduce
24 relevant exhibits and you can testify in your own defense.
25 If you exercise your right to testify or you decide to

1 testify, you'll be subjected to the same rules everyone
2 else is . In other words, they'll be allowed to cross
3 examine you on any relevant subject in this lawsuit or in
4 this trial. Do you understand that?

5 A (Witness nods head.)

6 Q Does he have a prior record?

7 MR. MOLONY: He does, Your Honor. He has three
8 burglary convictions from 2011 out of the State of
9 Georgia.

10 THE COURT: Three separate ones?

11 MR. MOLONY: Yes, sir, Your Honor.

12 THE COURT: Would you be using those for impeachment
13 purposes?

14 MR. MOLONY: I would be, Your Honor.

15 THE COURT: Mr. Chesser, do you believe those are
16 proper for impeachment?

17 MR. CHESSER: Your Honor, when it comes to the
18 admission for impeachment against the defendant The Court
19 has to make a 403 analysis in addition to everything
20 else --

21 THE COURT: I understand that. But assuming it
22 survives a 403 analysis, would you agree that that is the
23 type of offense that would be allowed under the statute?

24 MR. CHESSER: Yes, sir.

25 THE COURT: All right. Thank you.

1 MR. CHESSER: But, looking at -- under the 403 type
2 of prejudice and probative value, of course the purpose of
3 these convictions is just so the jury will have some idea
4 of credibility.

5 THE COURT: That's correct.

6 MR. CHESSER: And what it works against is of course
7 the prejudicial factor. The jury would say, if the
8 defendant has in this case three burglary convictions,
9 that they would say, this is a bad person, or this is a
10 person, for example, who would be predisposed to commit
11 this particular crime.

12 THE COURT: Well, that's true. That argument can be
13 made in every case where you use a prior record for
14 impeachment purposes and that's the reason we give -- if
15 it's aloud that's the reason we give the instruction about
16 the prior record of the defendant and it's limited
17 strictly for impeachment and it's just to be used in
18 judging credibility, and cannot be used in determining
19 guilt in this particular case. So we give a curative --
20 not curative instructions. But we give instructions
21 dealing with what it's supposed to be used for. You're
22 aware of that.

23 MR. CHESSER: Well, Your Honor, you have discretion
24 to address both the concerns for the state and the
25 defense --

1 THE COURT: Oh absolutely.

2 MR. CHESSER: What we would ask is, as I understand
3 these convictions are from 2008, the state can correct me,
4 if I am wrong.

5 THE COURT: Is that right?

6 MR. MOLONY: He was convicted in 2011 of 2008
7 offenses.

8 MR. CHESSER: So, what I would ask, in order the
9 balance these competing interests, would be that the jury
10 can simply be informed that in 2011 he was convicted of a
11 felony offense in the state of Georgia.

12 Q Okay. Mr. Quarles, if you testify, like I said
13 you'll be subjected to being cross examined, and under the
14 rules, your prior offenses could be mentioned or could be
15 told to the jury for the purpose of them using that in
16 assessing or judging your credibility when they find what
17 the true facts are in this case. And I would grant
18 Mr. Chesser's description of the prior offenses and do it
19 in that manner. But still they are going to know that you
20 have prior felony offenses in Georgia, and they'll be told
21 they can only use that for credibility purposes.

22 Now, also you not only have the protection of the
23 constitution where it says that you're presumed to be
24 innocent until proven guilty beyond a reasonable doubt.
25 You also have the right to under the constitution to

1 remain silent. No one can be compelled in a criminal case
2 to testify in the case. You have the absolute right to
3 remain silent. And if you do exercise your constitutional
4 right to remain silent, I will tell the jury, and I will
5 instruct them, at the conclusion of the case, that the
6 fact that the defendant Mr. Quarles did not testify in
7 this case, cannot be considered by you at all as any
8 evidence of guilt. You can't even consider the fact that
9 he didn't testify. You can't use that in your
10 deliberations. I will tell the foreperson if anybody
11 mentions it, she has to tell them that is not proper, and
12 I will tell them that no inferences whatsoever can be
13 drawn from the fact that you did not testify. And I'll
14 tell them that you have the absolute right to remain
15 silent and you don't have anything to prove, and they
16 can't hold that against you in any manner. Do you
17 understand your right to remain silent?

18 A Yes, sir.

19 Q Do you understand if you testify you'll be subjected
20 to cross examination in -- and your prior felony records
21 will be admitted.

22 A Yes, sir.

23 Q Now I need to know whether or not you intend to
24 testify?

25 A I intend to testify.

1 THE COURT: All right, sir. Bring the jury in,
2 please. As we discussed at side bar, all motions at the
3 conclusion of the state's case will be made nunc pro tunc
4 as if made at the conclusion. Fair enough, Mr. Chesser?

5 MR. CHESSER: Yes, sir.

6 (The jury enters the courtroom at 11:15.)

7 THE COURT: All right. With now are in the stage of
8 the trial where the defendant can present his own defense.
9 Mr. Chesser, you may call your first witness.

10 MR. CHESSER: The defense calls Michael Quarles.

11 THE COURT: Mr. Quarles, come around please, place
12 your left hand on the Bible and raise your right.

13 MICHAEL QUARLES, after being duly sworn,
14 testified as follows:

15 THE CLERK: Have a seat in the witness box, state
16 your full name, spelling your last for the court please.

17 THE WITNESS: My name is Michael Quarles,
18 Q-u-a-r-l-e-s.

19 DIRECT EXAMINATION

20 BY MR. CHESSER:

21 Q Mr. Quarles, tell the jury how old are you are?

22 A I am 26.

23 Q Where are you from?

24 A I'm from Augusta Georgia, but raised around here.

25 Q You were raised around here?

- 1 A Yes, sir.
- 2 Q Where do you live here?
- 3 A 217 Reed Drive.
- 4 Q And about where is that located?
- 5 A Behind Citizens Park.
- 6 Q And who do live with there?
- 7 A My cousin.
- 8 Q And what is her name?
- 9 A May Abney.
- 10 Q And how long have you been living there?
- 11 A Off and on for about -- since I was -- off and on
- 12 since I was about 18.
- 13 Q How much education do you have?
- 14 A I completed the 11th grade.
- 15 Q What kind of work have you done?
- 16 A I've worked at Burger King. I worked at Amick's
- 17 Farms. I worked at Wendy's. I worked at Gary's
- 18 Hamburgers.
- 19 Q Okay. Do you know Jay Salley?
- 20 A Yes, sir.
- 21 Q Do you know Carlos Williams?
- 22 A Yes, sir.
- 23 Q And you know that you're here accused of an armed
- 24 robbery on February 19 of 2013; right?
- 25 A Yes, sir.

1 Q Now, if you would, tell the jury what happened on
2 that day, February 19 of 2013, in the morning.

3 A Carlos came and picked me up around -- it was
4 supposed to be at 8 o'clock, but he came around 9 o'clock.
5 We drove to get Jay from his house and then we went to
6 Dollar General. We went in and walked around. Then we
7 went to Roses and we went in and walked around a little
8 bit. Then Jay had got a bookbag and then we left and went
9 and parked in, I guess, which was the daycare parking lot
10 and he was, like, go in there and see if you can get a
11 loan because I can't, because I already had one with them
12 and I owe them. I went in and asked Mrs. Guerriari --

13 Q Okay. Let me just address these things one at a
14 time. Why did you go to this check cashing place?

15 A Jay asked me to.

16 Q Okay. Did you have a reason -- were you trying to
17 get a loan?

18 A Not until Jay asked me to.

19 Q But you owed Jay some money you said?

20 A Yes, sir.

21 Q Now, the bookbag that was purchased at Roses did you
22 buy that bookbag?

23 A No, sir.

24 Q Who bought it?

25 A Jay did.

1 Q Did you know why he bought it?

2 A No, sir.

3 Q Did Carlos tell you that he and Jay were going to
4 commit a robbery that morning?

5 A No, sir.

6 Q So and who was driving the vehicle?

7 A Carlos.

8 Q Did you tell him where to park?

9 A No, sir.

10 Q So after Jay asked you to get a loan, what happened
11 then?

12 A I went in and inquired about the loan, asked her what
13 all I would need, what paperwork I would need to bring
14 back. And I asked her to write it down for me and she
15 wrote it down on a piece of sticky note, and she gave me
16 an application and a sticky note, and I left back out the
17 store.

18 Q Okay you walked back to where the car -- the truck
19 was parked?

20 A Yes, sir.

21 Q And do you recall where it was parked?

22 A In the day care parking lot.

23 Q That's where Carlos had parked it?

24 A Yes, sir.

25 Q When you walked back over there what did you do?

1 A I got in the truck and Carlos and Jay was asking me
2 how many people in there? I was like one. They was,
3 like, did you get the loan? And they said, well did you
4 get the loan and I was, like, I ain't got all the stuff
5 with me.

6 Q Let me ask you to speak a little louder.

7 A They asked me how many people were in there. I said,
8 one. And then they said, well did you get the loan or
9 anything? I said, no, I got an application. I don't have
10 all the paperwork with me.

11 Q So, did you go into that check cashing place with the
12 idea of a casing it?

13 A No, sir.

14 Q Okay. And who was it who asked you how many people
15 were in there?

16 A Both of them were asking.

17 Q What happened after that?

18 A It was, like, all right well hold on real quick.
19 We'll be right back. They got out the truck.

20 Q Okay. And what did you do then?

21 A I got in the driver's seat and rolled -- I took a
22 right on Richland and a left on another street and I
23 backed the truck up and got out and walked to my aunt's
24 house.

25 Q Why did you do that?

1 MR. MOLONY: Your Honor, can I ask that he speak up a
2 little bit.

3 THE COURT: Speak up a little bit, please.

4 THE WITNESS: I took a right on Richland and then a
5 left on another street and I got out the truck and walked
6 to my aunt's house.

7 Q Okay. And what is your aunt's name.

8 A Her name is Brenda.

9 Q Okay. So, when was the next time that you saw Jay
10 and Carlos then?

11 A On the news. But I had talked to Jay later that day.

12 Q All right. Did Jay -- when you talked to Jay later
13 that day, did he tell you anything about what they had
14 done?

15 A Yes, sir.

16 Q Okay. When was the next time you talked to Carlos or
17 did you?

18 A I didn't talk to him any more.

19 Q Did you plan an armed robbery with Jay and Carlos on
20 or before on February 13?

21 A No, sir.

22 Q Did you participate in an armed robbery with Carlos
23 and Jay on February 13?

24 A No, sir.

25 Q Did you get any money out of any -- did they give you

1 any money later on?

2 A No, sir.

3 Q Did you dispose of guns or taser later on?

4 A No, sir.

5 Q Please answer any questions that the state has.

6 CROSS-EXAMINATION

7 BY MR. MALONY:

8 Q Mr. Quarles, how are you doing?

9 A I'm doing all right.

10 Q You stated that you finished the 11th grade in
11 school?

12 A Yes, sir.

13 Q Okay. I just briefly want to go through both, what
14 you said on your statement, and what you said here today.
15 All right.

16 A Yes, sir.

17 Q You testified that Carlos picked you up at 9; is that
18 right?

19 A Yes, sir.

20 Q And why did Carlos pick you up?

21 A Because Jay had asked me to ride with him the next
22 morning. He told me that Carlos was going to come pick me
23 up.

24 Q Because Jay told him what?

25 A Jay asked me -- he called me the night before. He

1 was, like, hey ride with me in the morning. I was, like,
2 okay for what? He was, like, don't worry about it. I'll
3 tell you in the morning. Later on he text me and said
4 Carlos is coming to get you at 8 o'clock.

5 Q So you talked to Jay the night before?

6 A Yes, sir.

7 Q And you knew Carlos was going to be there the next
8 morning around 8 o'clock; is that right?

9 A Yes, sir.

10 Q But he was a little late?

11 A Yes, sir.

12 Q Got there at nine, didn't he?

13 A Yes, sir.

14 Q And at that point, isn't it true, you testified that
15 y'all then went to Dollar General?

16 A Yes, sir.

17 Q And you were sitting in the front passenger seat of
18 that truck; weren't you?

19 A Yes, sir.

20 Q And you were wearing a black hoodie; is that right?

21 A Yes, sir.

22 Q And while at Dollar General, isn't it true, that you
23 stated on your statement, they didn't find what they
24 wanted there; is that right?

25 A Yes, sir.

1 Q Which was a bookbag?

2 A Yes, sir.

3 Q And then y'all went to roses; isn't that correct?

4 A Yes, sir.

5 Q And while at roses -- Your Honor, may I approach?

6 THE COURT: You may.

7 Q I am showing you State's Exhibit 20. That's you at
8 Roses; isn't it?

9 A Yes, sir.

10 Q Carlos Williams at Roses?

11 A Yes, sir.

12 Q Jamaques Salley at Roses?

13 A Yes, sir.

14 Q You're still in this black sweat shirt; right?

15 A Yes, sir.

16 Q Y'all are looking for this bookbag, aren't you?

17 A Yes, sir.

18 Q And y'all find the bookbag there; isn't that right?

19 A Yes, sir.

20 Q And y'all buy the bookbag there?

21 A Yes, sir.

22 Q Y'all got in the truck at that point; isn't that
23 right?

24 A Yes, sir.

25 Q And you're in the passanger -- you're not driving at

1 that time; right?

2 A No, sir.

3 Q Okay. And y'all immediately go to the daycare; isn't
4 that right?

5 A Yes, sir.

6 Q Which is across the street from the Quick Cash;
7 right?

8 A Yes, sir.

9 Q The daycare that you've heard testimony from?

10 A Yes, sir.

11 Q And y'all didn't have kids at the daycare, did you?

12 A No, sir.

13 Q Okay. And y'all went -- you testified just now y'all
14 went there for you to get a loan for Jamaques Salley?
15 Isn't that what you just testified to?

16 A It was to get a loan for myself, but also to pay him
17 back at the same time.

18 Q Okay. So you park at the daycare to go do that;
19 isn't that right?

20 A Yes, sir.

21 Q And was it really cold that day?

22 A No, sir, not really.

23 Q So you decided to put on Carlos Williams white hoody
24 sweat shirt, because as you stated in your statement, he
25 needekd something a little less obvious, didn't he?

1 A That's what I said in the statement, but the actual
2 reason what he told me is, his was too small and he wanted
3 to wear mine.

4 Q His was too small?

5 A Yes, sir.

6 Q It was too small for him, but it fits you?

7 A Yes, sir.

8 Q So what -- you admit that you say in your recorded
9 statement, that the jury just heard, Carlos said, give me
10 your hoodie because his was recognizable. Are you denying
11 that you said that?

12 A No, sir, I'm not.

13 Q And then you stated that you went in over there
14 because they told you to go see how many people were
15 working or were in the Quick Cash business at that time;
16 isn't that right?

17 A Yes that's what I said.

18 THE COURT: Speak up please.

19 THE WITNESS: Yes, sir, that's what I said.

20 Q Okay. And you did that, didn't you?

21 A No, sir, that's not why I actually went in. That's
22 what I told the detectives.

23 Q Did you go to the Quick Cash that day?

24 A Yes, sir.

25 Q And were you wearing the white sweat shirt of

1 Carlos'?

2 A Yes, sir.

3 Q Because his was too small?

4 A Yes, sir.

5 Q And it was just getting too uncomfortable for him in
6 that car, wasn't it?

7 A Yes, sir.

8 Q At the daycare?

9 A Yes, sir.

10 Q So you go in and you testify, and you stated, that
11 there was one person in the store; isn't that right?

12 A Yes, sir.

13 Q Is that her right there?

14 A Yes, sir.

15 Q That's the girl you talked to?

16 A Yes, sir.

17 Q And you talk to her, look her in her eyes, and you're
18 just wanting to get a loan so you can pay your buddy back,
19 is that your testimony?

20 A Yes, sir.

21 Q But your statement was you went in there to see how
22 many people were in there; isn't that right?

23 A Yes, sir.

24 Q And you went back and you told them one white girl,
25 didn't you?

1 A Yes, sir.

2 Q And you get in the driver's seat, didn't you?

3 A After they got out of the car, yes, sir.

4 Q They got out. Carlos is still wearing your hoodie;
5 isn't he?

6 A Yes, sir.

7 Q And you go to your aunt's house. Is that what you
8 just said?

9 A Yes, sir.

10 Q But, isn't it true, in your statement, you stated,
11 that you -- that they said drive and park over there. So
12 I drove and parked over there.

13 A Yes, sir that's what I said in the statement.

14 THE COURT: Speak up please.

15 THE WITNESS: Yes, sir that's what I said in the
16 statement.

17 Q Okay. And you didn't need any money to rob anybody,
18 did you?

19 A No, sir.

20 Q You got your own money, isn't that what you said?

21 A Yes, sir.

22 Q You ain't never done nothing like this? Isn't that
23 what you said?

24 A Yes, sir.

25 Q Isn't it true you were convicted in 2011?

1 MR. CHESSER: Objection.

2 THE COURT: What is the objection? You're going to
3 state it like we talked about right convicted of a felony,
4 right.

5 MR. MOLONY: Yes, sir.

6 MR. CHESSER: I'll withdraw the objection.

7 Q Isn't it true that you were convicted out of the
8 State of Georgia in 2011 of a felony?

9 A Yes, sir.

10 Q And the same day you were convicted of a second
11 felony?

12 A Yes, sir.

13 Q And the same day you were convicted of a third
14 felony?

15 A Yes, sir.

16 MR. CHESSER: Your Honor, I'd ask for a limiting
17 instruction at this time.

18 THE COURT: I'll do that in my charge. Ladies and
19 gentlemen, I'll just tell you right now that the fact that
20 he has a prior record with the three felonies, that's not
21 to be used as evidence of guilt in this case. It's simply
22 to be used by you in judging the believability or the
23 credibility of the witness. Is that satisfactory?

24 MR. CHESSER: Yes, Your Honor.

25 Q Now, I'll ask you, Mr. Quarles, in your statement

1 didn't you say that you were hiding in a closet on March 9
2 of 2013?

3 A Yes, sir.

4 Q And that you thought the more appropriate charge for
5 you would be accessory; isn't that right?

6 A Yes, sir.

7 Q Accessory before the fact due to you going in and
8 telling them how many people are in there; right?

9 A Yes, sir.

10 Q And while -- when you drove the truck over and waited
11 on them at the other spot that y'all had, that that was
12 the accessory after the fact, in your opinion, wasn't it?

13 A Yes, sir, that's what I said in the statement.

14 MR. MCCARLEY: I don't have anything else, Your
15 Honor.

16 THE COURT: Anything on redirect?

17 MR. CHESSER: No, Your Honor.

18 THE COURT: All right, sir, you may step down.

19 Please call your next witness.

20 MR. CHESSER: The defense rests, Your Honor.

21 THE COURT: Anything in reply by the state?

22 MR. MOLONY: No, sir.

23 THE COURT: Madam Forelady, ladies and gentlemen,
24 that concludes all the testimony in this case. Your food
25 should be here just shortly. So here is what I am going

1 to see if you'll do for me. I got the other jury over
2 there waiting at 11:30. They reported at about 11:15. I
3 am going to bring them in and draw this second jury. I
4 have a couple of things I got to go over with the lawyers.
5 So we're talking about a good 30 to 45 minutes. Your
6 lunch will be here. You're welcome to take it outside. I
7 think it is real nice outside. You're welcome to eat it
8 back there. Can y'all eat comfortably within 45 minutes?
9 Let's try to start back about 12:15. We'll hear the
10 argument and the charge and then you'll be in a position
11 to start your deliberation or if 11:30 is too early to
12 eat. You can save it until we finish everything and you
13 can eat while you deliberate. However you want to do it.
14 That's up to you. So some of you may want to eat. Some
15 of you may want to eat while you're deliberating, that's
16 fine. Just don't discuss the case. Don't deliberate.

17 THE BAILIFF: Yes, sir.

18 THE COURT: All right I told them some of them want
19 to go outside and eat. They don't have to stay together
20 and they can just be back. We're going to start back in
21 45 minutes. Unless they're still eating and I'll wait on
22 them to finish eating. Fair.

23 THE COURT: All right. Don't discuss it.

24 (Whereupon, the jury exited the courtroom at 11:33.)

25 THE COURT: Let's be back at 2 o'clock ready to do

1 that. The defendant is in custody.

2 (Whereupon, a break was taken.)

3 THE COURT: Anything for the record before we start
4 back? Let me just go over the charge real quick. I am
5 going to charge my normal charge dealing with credibility
6 of witnesses, presumption of innocence, reasonable doubt,
7 prior record of the defendant for impeachment purposes,
8 hand of one hand of all, mere presence, kidnapping and
9 armed robbery. Anything else gentlemen? The State
10 anything?

11 MR. MOLONY: Your Honor, just with regards to the
12 armed robbery charge Mr. Chesser and I just discussed, we
13 just wanted to make sure that in the charge there would be
14 some language as to either a deadly weapon or what was
15 perceived to be.

16 THE COURT: I am going to charge this. The state
17 must prove, among other things, beyond a reasonable doubt
18 the defendant was armed with a deadly weapon during the
19 robbery. A deadly weapon is any article instrument or
20 substance which is likely to cause death or great bodily
21 harm. Whether an instrument has been used as and deadly
22 weapon depends on the facts and circumstances of each
23 case. The following are examples of instruments which may
24 be deadly weapons and it goes into pistols, then it says a
25 gun may be a deadly weapon, even if it is not operating.

1 Ordinary objects may become deadly weapons when the facts
2 show they have been used to inflict serious bodily harm
3 and death, where a toy gun has the appearance of or
4 believed to be a real gun is a deadly weapon is a factual
5 question for you to determine. Whether a BB gun is a
6 deadly weapon is a factual question for you to determine.
7 Anything more you want to add to that? Tell me.

8 MR. MOLONY: No, sir. I just -- you know, I don't
9 want to -- with the toy gun, I guess the BB gun can be a
10 toy gun as well.

11 THE COURT: I probably won't charge toy gun. But you
12 got the taser, too, which is, I guess, that's an ordinary
13 object that could be called a deadly weapon.

14 MR. MOLONY: Right.

15 MR. CHESSER: Your Honor, this language I believe was
16 drafted prior to the amendment of 16-11-330. The
17 amendment -- oh I'm happy. I mean, I can argue this the
18 way it is. I just think that it's going to create a
19 problem because the state is not going to like my argument
20 based on this charge, and the reason is that the statute
21 -- the statute.

22 THE COURT: Sixteen-11-330.

23 MR. MOLONY: A.

24 THE COURT: Was amended when?

25 MR. CHESSER: It was in the early 2000's, Your Honor.

1 THE COURT: What does the new statute say? You got a
2 copy of that--

3 MR. CHESSER: Let me pass up this charge book which
4 quotes the statute, Your Honor.

5 THE COURT: You want me to charge the one you just
6 handed me up? Mr. Chesser, what are you asking me to
7 charge?

8 MR. CHESSER: Well what I'm asking you to do is this,
9 if you charge it as you have it, I'm asking you that's how
10 I intend to argue. What I intend to argue, is that, if he
11 didn't have a deadly weapon, then he's not guilty of armed
12 robbery.

13 THE COURT: Well that's not true.

14 MR. CHESSER: Well, the charge -- the element as
15 specified in the statute is that if he had something -- it
16 doesn't matter what it is, reasonably perceived to be a
17 deadly weapon, then that element is satisfied. But, what
18 we currently have is there is an oblique reference with
19 the toy gun to a perception of it. But even with the BB
20 gun, which again is an old case, it says whether a BB gun
21 is a deadly weapon is a question of fact. There is
22 nothing about reasonable perception. The language of the
23 statute says, this language in the statute says, or any
24 object reasonably perceived to be a deadly object. That,
25 I respectfully submit, is not in the charge and if it's

1 not charged, then I mean I am going to be in the position
2 of arguing, if he didn't have a deadly weapon then, that
3 he doesn't fill that -- I mean, I would like to argue
4 that.

5 THE COURT: All right. The new statute says this.
6 Sixteen-11-330. The state must prove someone -- must
7 prove beyond a reasonable doubt that a person commits a
8 robbery while armed with a pistol, or other deadly weapon,
9 or while alleging, either by action or words, he was armed
10 while using a representation of a deadly weapon, or any
11 object, which a person present during the commission of
12 the robbery, reasonably believed to be a deadly weapon.
13 That's the statute. That's what I am going to charge.

14 MR. CHESSER: Yes, sir. That would address the
15 issue. Again --

16 THE COURT: I'm sorry. I'm sorry, I created a
17 problem. Then of course I've still got to charge the
18 taking -- took property from the person or presence of
19 another person, that's the taking, depriving the owner
20 thereof and then -- okay. Does that satisfy you?

21 MR. CHESSER: Yes Your Honor.

22 MR. MOLONY: Yes, sir.

23 THE COURT: Anything else? Y'all looked at the
24 verdict form? Everybody is in agreement with that?

25 MR. MOLONY: Yes, sir.

1 MR. CHESSER: Yes, sir. We can put our motions on
2 the record, though, Your Honor.

3 THE COURT: I am so sorry. Thank you, Mr. Chesser.

4 MR. CHESSER: The defense would move for a directed
5 verdict with respect to the charge of armed robbery on the
6 basis that a BB gun -- well a taser, in the first place,
7 is something that's designed to not be a deadly weapon
8 specifically. That's its purpose. The BB gun, likewise,
9 we would submit, can't reasonably be considered to be
10 deadly weapon and so -- in addition we submit that there
11 is no direct or substantial circumstantial evidence that
12 Michael Quarles actually participated in an armed robbery,
13 Your Honor.

14 THE COURT: I respectfully disagree. There is ample
15 evidence in the record, if you believe it, is for the jury
16 to decide the credibility of the witnesses, not -- I mean
17 the testimony is there if they believe it to support a
18 verdict of guilty for armed robbery and for kidnapping. I
19 respectfully deny your motion.

20 MR. CHESSER: On the kidnapping, again, we'd make a
21 motion on that to say there is no evidence of the elements
22 of actually holding her or restraining her that would
23 satisfy the elements of the statute.

24 THE COURT: There was testimony that she was held --
25 she testified that they grabbed her and held her and tased

1 her. So if that's believed and he's the hand of one, hand
2 of all, then it would support a verdict. So respectfully
3 denied. Anything else?

4 MR. CHESSER: Nothing further, Your Honor.

5 (Whereupon, the jury came into open court at
6 approximately 12:49.)

7 THE COURT: Okay. Sorry we took a little longer that
8 we expected. We got bogged down a little bit. We're now
9 at the stage of the trial where we hear the final
10 arguments. As I told you when we started that's not
11 evidence. You've already heard all the evidence. The
12 lawyers obviously are adversaries for their each
13 respective side so they'll be arguing the evidence in the
14 light most favorable to their position. Please listen
15 carefully, once they've completed their arguments then
16 I'll be in a position to charge the instruction of the law
17 and then you will be in a position to start your
18 deliberations.

19 THE COURT: Are you going to waive opening?

20 MR. MOLONY: Yes, sir.

21 THE COURT: Mr. Chesser.

22 CLOSING STATEMENT

23 MR. CHESSER: Thank you again for your service. Mike
24 Quarles he didn't put a gun in anybody's face, like Carlos
25 Williams did, in this case a BB gun. He didn't shock

1 anybody with a taser like Jay Salley did. But the state
2 attempts to hold him responsible for armed robbery and
3 kidnapping. There is a tremendous void in this case
4 because of the fact that the state is arguing that he
5 should be held responsible for something when he actually
6 wasn't even in the store. Now, they -- the state attempts
7 to fill this void primarily with Carlos Williams's
8 statements, and also with a statement of Michael Quarles.

9 I want to talk about Michael's statement that was
10 taken from him by law enforcement and that he was
11 questioned about by the state. If -- listen to that
12 statement, watching that statement, which you did, the
13 person who does the talking is Detective Savage. He is
14 saying: And then this happened, and then that happened
15 and then this happened. And Michael Quarles is just
16 basically sitting there listening to him. There is very
17 little that Quarles says. Ninety percent of it is
18 Detective Savage making these allegations, these
19 accusations. Quarles is just there. There is some
20 exceptions to that. There are some things he does speak.
21 But essentially the speaker is Detective Savage and you're
22 going to get, not what Mike Quarles says, but what
23 Detective Savage says in that interview.

24 Now, and that's true when he was subject to cross
25 examination by the state. Again, the prosecutor is

1 putting words in his mouth, saying this is what you said,
2 isn't that what you said, and it goes back to what
3 Detective Savage said in Quarles's interview.

4 Now, the state again attempts to fill this void with
5 primarily Carlos Williams. Carlos was taken into custody
6 on February 19th of this year and he immediately tells
7 Detective Savage, I want to go home. I'll do anything I
8 can to go home. And of course he says that he was
9 ordering a really large hamburger at Burger King when this
10 happened. And then he goes and changing history and
11 changing history up to the point where Mrs. Guerriari
12 identifies him as the person who pointed a BB gun at her.
13 And at that point history continues to evolve, and again
14 it's constantly an attempt by Carlos Williams to get
15 himself out of a problem. He has one goal, and I submit
16 to you that he continues to have that one goal, to go
17 home.

18 Again history as you heard you know he told law
19 enforcement, that he was down there by the hotel not too
20 far from the entry to the check cashing place, and he at
21 that point, he says, I don't want to do it. He said
22 Jamaques Salley threatened to tase him, and then he
23 changed that. And so I want to talk specifically -- I'm
24 sure you heard me question him about law enforcement and
25 to what extent they had encouraged his hopes, and his

1 fervent desire to go home.

2 The state, when they first put him up, as I recall,
3 the first question they asked him, has anybody promised
4 you anything. He says, of course, not. And he represents
5 to you, at this point, his goal is simply to promote
6 justice, and it doesn't matter to him what type of
7 sentence that he gets in his case.

8 What concerns me about this and is very important for
9 you to know when somebody has an extra motive to
10 misrepresent or not tell the truth. Now, it's obvious,
11 that Carlos has a motive to not go to prison, or if he
12 does to go to the least amount of time possible.

13 And, again, we're talking about the person who
14 pointed a BB gun at Mrs. Guerriari, the first one into the
15 store. But the tape -- the part of it that I introduced,
16 you can look at it again or what have you, but what I
17 recall it saying was that the tape says -- what, in fact,
18 Detective Savage says was, you're going to have to do a
19 little time on this. Those are his exact words and what
20 the state -- their argument is, well, you know that's not
21 a promise. That's just like a suggestion. That's just --
22 well you know, it doesn't really count for some reason.
23 And even in -- when they were questioning Detective
24 Savage, they said, did you make any promises. And he
25 insists, no, I didn't make any promises. Even though he

1 tells Carlos Williams, who is to say -- he says, I will
2 help you. I will tell you -- I'll do anything -- I'll say
3 anything and he's told, well you're going to have to do a
4 little time -- and what the State says is, well that's
5 just a vague -- that's too vague. But you have to look at
6 it from the point of view of Carlos Williams. What does
7 that mean to him?

8 Essentially they're holding out this ticket, the
9 lotto, so to speak, the shortest time possible is what
10 he's looking for, and he says I'll do -- I submit to you
11 to paraphrase him, I'll do and I'll say anything to win
12 that ticket. The ticket where either I don't have to go
13 to prison, even though Carlos is the principle in whatever
14 happened that day, or else he has to go for the least
15 amount of time. And you're talking about a guy who you
16 can sort of judge his moral fiber by the fact that he's
17 down there with a gun on Ms. Guerriari.

18 Armed robbery, the judge will explain to you, is
19 various ways that it can be accomplished. But one of
20 those ways involves the use of a deadly weapon, and I
21 would submit to you that BB gun is not a deadly weapon,
22 and a taser is specifically designed not to be a deadly
23 weapon. So consider that also.

24 But again the main point is Michael Quarles didn't do
25 this. He testified that they asked him to go along. Then

Closing by Mr. Malony

219

1 they asked him to go in the store and Detective Savage and
2 the State then told him well you must have done such and
3 such. You must have agreed to such and such. But the
4 only testimony they had to that again is Carlos Williams,
5 who I submit to you is not worthy of your belief for a
6 minute.

7 Other than that, you've heard the testimony. I want
8 to ask you to consider everything. The judge will tell
9 you of course not to start deliberating until you get back
10 there after you've heard the state's argument and after he
11 gives you permission to start deliberating. But Michael
12 Quarles is asking you to judge this case. I've asked you
13 to judge it. The state is asking you to judge it, and
14 we're confident that you'll do your duty. We thank you
15 very much.

CLOSING STATEMENT

16
17 MR. MOLONY: Thank you, Judge. May it please the
18 court. Mr. Chesser. Ladies and gentlemen, it's rare that
19 we can get up here at this point in the trial during the
20 closing arguments of the State. And with the two
21 different times that the defendant has told you why he's
22 guilty. We've got the state's evidence that we presented
23 up until that moment. The state's evidence, I'll go over
24 briefly. I am not going to be up here all day, because
25 frankly the defendant himself tells you why he is guilty,

1 not just in this interview that you heard. Also on this
2 witness stand.

3 Carlos Williams, he's guilty, too. He's absolutely
4 guilty. And his charges are pending just like the
5 defendant's are, as of now, for the same thing. Now,
6 Mr. Quarles -- Mr. Chesser stated that the state and I put
7 words in his mouth and that Detective Savage testified for
8 him the whole time.

9 I'll go over just some of the main things that he
10 said and that he said on this witness stand. But to
11 believe the defendant, what he told you today, at least
12 part of what he said, he agreed that he still thinks he is
13 just an accessory before and accessory after. But what he
14 told you was that he went to get a loan for Jamaques
15 Salley because Jamaques Salley -- he owed Jamaques Salley
16 money. But that Carlos Williams sweat shirt wasn't
17 fitting right, so he was uncomfortable in it so they
18 switched shirts and he would have you believe he never saw
19 a gun, never knew a mention of the gun while they're
20 changing shirts in front of the car. Then Carlos got the
21 gun and put it in the defendant's jacket. They got the
22 book bag prior to that because Jamaques was about to start
23 school, the defendant thought. But then he admitted to
24 getting the book bag so they could put the stuff in it.
25 He says that he goes to his Aunt May's house. That's the

1 first anybody has heard of Aunt May is, and I don't know
2 -- but he went to Aunt May's house and he just left the
3 truck there after he moved it. It is about credibility.
4 Who you believe and who don't you believe.

5 Who has something to gain? Does Carlos Williams have
6 something to gain? He got up here and told you what
7 happened. Now, he'll be dealt with, but he told you what
8 happened. Of course he's probably got something to gain.
9 He's trying, as he stated, to get whatever he can get out
10 of it. But he's guilty. He put the gun in the girl's
11 face.

12 The defendant was right there the whole time, ladies
13 and gentlemen. What did the State's evidence prove? It
14 proved that -- and the defendant himself, what did he tell
15 you. He gets a call from Jamaques Salley the night
16 Before. That he didn't tell him exactly what they were
17 going to do, but that Carlos Williams would be there
18 around eight to pick him up. Carlos was a little late, he
19 got there at nine. They went and picked up Jamaques
20 Salley and then went to Dollar General, he told you they
21 were looking for a bookbag. They didn't find one. They
22 then go to Roses. They get the bookbag. He tells you
23 they find the bookbag they need. They immediately go to
24 the daycare. And at the daycare, I don't think
25 Mrs. Holsenback or Mrs. Fulmer, the two daycare workers,

1 have any motive to get up here and tell you they saw the
2 defendant get out of the passenger seat wearing the white
3 hoodie. Carlos Williams tells you, and the defendant
4 tells you on the stand and his interview, is that it was
5 because it was less recognizable. He then goes across the
6 street and he says that the reason he did it, is because
7 they told him to go see how many people were in there. He
8 does, comes back, and reports to them, one, and that one
9 you heard from.

10 That one is the one that was sitting in there scared
11 enough and suspicious enough in the beginning to call the
12 police and you'll have that jail call -- excuse me, the
13 call to 9-1-1. The mailman comes in and as soon as he
14 leaves, it's on. Terrified. Absolutely terrified. Gun
15 to her face, hit with a taser in her back. Carlos
16 Williams testified he heard her body hit the ground, as
17 he's running out with the money. And that the gun that
18 they used they rubbed off the orange part so it looked
19 like a real gun. No doubt that she thought it was a real
20 gun.

21 And in the meantime where is the defendant? He is
22 going to Aunt May's house. Or do you believe what he
23 said, whenever confronted, which was, they told me to
24 drive around after I got that done. I drove around,
25 picked them up. And the interesting thing, ladies and

1 gentlemen, is look where he parked, where he says he
2 parked and where Carlos says he parked; this is State's
3 24, you'll have it back there, right a cross the street
4 from the path where their get away was. He's sitting in
5 the passenger seat with the truck still running waiting on
6 them to go.

7 Now, I put words in his mouth is what the defense
8 attorney would like you to believe. Let me tell you what
9 he says, and this is the defendant's statement, ladies and
10 gentlemen. Carlos said, give me your hoodie because his
11 was recognizable. I gave him my hoodie. He gave me his.
12 I went in there and asked about the loan, come back out
13 and told them one person. He asked about a loan to figure
14 out who was in there. They was, like, drive and park
15 around there. So I drove and parked around there; got in
16 the passenger seat; they came back and we left. I can
17 keep going with his statement. You'll have it, if you
18 want to listen to it.

19 But in the end, I thought it was interesting, on the
20 stand still he thinks he's an accessory before and he
21 thinks he's an accessory after. But, unfortunately for
22 the defendant, he doesn't pick the law. I don't pick the
23 law. You don't pick the law. The judge will tell you the
24 law. And the law in this case is easy. The facts
25 themselves -- you're the judge of the facts. The facts

1 are there. Both from the State's evidence and from what
2 the defendant told you twice.

3 But the law itself is easy. And the hand of one, the
4 hand of all. I remember law school being absolutely
5 confused about it in the beginning -- didn't have a clue
6 how to really comprehend it. But ultimately it's simple.
7 The first case I had in my professor said, it's three men
8 get in a car to go kill another. One man drives. The
9 other two get out. One of those two kicks the door in and
10 walks back to the car. The third one walks in and shoots
11 the man. All three are guilty of murder.

12 MR. CHESSER: Your Honor, I object. I don't think
13 it's appropriate to talk about some other case, some other
14 time, some other place, some other factors.

15 THE COURT: Ladies and gentlemen, this is argument.
16 It's not facts in the case. He is just making an
17 illustration or example. I'll charge you on what the law
18 is.

19 MR. MOLONY: That's right. This is a hypothetical of
20 kind of how to think about it. In this case, it's really
21 not that hard. The first charge that the judge will tell
22 you is, of the crime, is armed robbery.

23 Armed robbery is taking the personal property -- the
24 testimony is \$447, she had done a loan -- of another,
25 Quick Cash, with Penny Guerriari. In the presence of

1 another, which is Penny. Carried away with the intent to
2 permanently deprive. Put the money in the bag, I ran down
3 the stairs, jumped in the truck, the defendant was waiting
4 on us. Armed with what appeared to be a real gun, a
5 deadly weapon, which was the weapon that Carlos Williams
6 told you they took the orange thing off and pointed it
7 right in her face. You can tell she thought it was a
8 deadly weapon, listening to her calls and listening to her
9 testimony.

10 Second, kidnapping, knowingly and unlawfully -- well
11 they knew only one person was in there, based on the
12 defendant telling them, and clearly the facts are unlawful
13 to go put a gun in the girl's face to steal the money.
14 Seize or confine. All right they forced Penny into the
15 corner. They hit her with a taser. They take the
16 money -- and they get out of there -- of another person.
17 In this case Penny was kidnapped. And it's not the
18 kidnapped where they take and throw them in the back of
19 the car. This is kidnapped where without authority of
20 law, she was not free to leave. She was confined and she
21 was seized. And she was -- and there is a bunch of others
22 ones the judge will read. It's only got to be one. Was
23 she seized or confined. It's only got to be one. It is
24 clear she was in the corner of that building.

25 And, lastly, the hand of one is the hand of all. And

1 the Judge will charge you a rather lengthy charge of it
2 and ultimately it comes down to this. You'll hear these
3 words from him, where two or more, acting with a common
4 plan or intent, which is two or more, the defendant and
5 the other two. And the common plan is to see how many
6 people are in Quick Cash; get the bookbag; go in and rob
7 her at gunpoint; go to where the defendant is waiting on
8 them with the running truck and get out with the money.
9 The defendant gets the \$100 when he gets back to his
10 house.

11 And, two, are present at the commission of a crime.
12 Present means, sufficiently near to aid and abet and
13 assist in the commission of the crime. Again, the
14 defendant goes in; he scopes it out. He's a block away.
15 You can see it there, waiting on them. That's sufficient
16 to be present.

17 And, finally, it doesn't matter who goes in and
18 commits the crime, all are guilty. All are guilty beyond
19 a reasonable doubt, which means, firmly convinced. Now,
20 the judge is about to tell you exactly what this is and
21 he'll go through it in a little more detail but ultimately
22 then it's your turn to go back and use your common sense.
23 The common sense that you didn't check out at the little
24 metal detector downstairs. You get to bring it with you
25 and you use it everyday. And when you go back there your

1 job is not to punish or reward or -- your job is to put
2 the facts with the law, like, we know you'll do. That's
3 why you're here. That's why we picked you. And in the
4 end there is no doubt that you'll come back with two
5 verdicts, guilty of armed robbery and guilty of
6 kidnapping. Thank y'all.

JURY CHARGE

7
8 THE COURT: Madam forelady, ladies and gentlemen, my
9 instructions or charge is probably 10 to 15 minutes.
10 Everybody okay? Bathrooms or anything before we start?
11 Okay. Let me remind you that in this case the defendant
12 is charged with armed robbery and kidnapping. And the
13 fact that he's been indicted, as I told you earlier, is
14 not evidence in the case, and cannot be considered by you
15 as evidence of guilt in the case, and does not create new
16 presumption or inference. These documents, or these
17 indictments, are simply the formal written instrument
18 which contains the charges against the defendant. It's
19 the formal document by which this case is brought into the
20 courtroom.

21 As I said he's charged in two indictments, kidnapping
22 and armed robbery. You must decide each indictment
23 separately on the evidence, and the law applicable to it,
24 uninfluenced by your decision as to any other indictment.
25 He may be convicted on one and acquitted on another.

JURY CHARGE

1 Convicted on both or acquitted on both. You'll be asked
2 to write a separate verdict of guilty or not guilty as to
3 the kidnapping and armed robbery. In other words, you
4 consider the kidnapping and then you consider the armed
5 robbery, whichever way you want to do it and you consider
6 them separate and apart. They are two separate offenses.
7 And you can find him guilty or not guilty of one or
8 opposite on the other. Guilty on both, not guilty on
9 both. However you deem the evidence to be.

10 To both of these indictments he has plead not guilty.
11 That plea puts the burden on the State of South Carolina
12 to prove his guilt on both indictments to you beyond a
13 reasonable doubt. A person charged with committing a
14 criminal offense in South Carolina is never required to
15 prove himself innocent. I charge and instruct you that it
16 is an important constitutional rule of law that a
17 defendant in a criminal trial, no matter how serious the
18 charges may be, will always be presumed to be innocent of
19 the crimes for which the indictments were issued, unless
20 guilt has been proven by evidence satisfying you of that
21 guilt beyond a reasonable doubt.

22 The presumption of innocence does not end when you
23 start your deliberations, but it stays with the defendant
24 throughout the trial, until you reach a verdict of guilt
25 based on evidence satisfying you of that guilt beyond a

JURY CHARGE

229

1 reasonable doubt.

2 Presumption of innocence is not a mere legal theory.
3 It's not a legal phrase. It is a substantial
4 constitutional rule which every defendant is entitled to
5 unless you the jury are satisfied of his guilt on evidence
6 which satisfies you beyond a reasonable doubt.

7 What is a reasonable doubt? Our law -- our Supreme
8 Court has defined reasonable doubt many times and the
9 short definition is a reasonable doubt is the kind of
10 doubt that would cause a reasonable person to hesitate to
11 act. The kind of doubt that would cause a reasonable
12 person to hesitate to doubt -- to act.

13 Proof beyond a reasonable doubt is proof that leaves
14 you firmly convinced of the defendant's guilt. There are
15 very few things in this world that we know with absolute
16 certainty and in criminal cases the law does not require
17 proof that overcomes every possible doubt. If based on
18 your consideration of the evidence, you are firmly
19 convinced that the defendant is guilty of the crimes
20 charged, you must find him guilty.

21 If on the other hand you think there is a real
22 possibility that he is not guilty, you must give him the
23 benefit of the doubt and find him not guilty.

24 Let me remind you that during the course of this
25 trial that you and I have had certain duties to perform.

JURY CHARGE

1 As I told you, my job is to charge or instruct you on the
2 law. You're to accept the law as I give it to you. If
3 you have some preconceived idea about what the law is or
4 should be, and it does not agree with what I say, please
5 set that aside and accept the law as I give it to you.

6 My other responsibility is to rule on the
7 admissibility of evidence to make sure that the lawyers
8 ask their questions pursuant to the rules of evidence, and
9 once it's admitted in to the evidence, then obviously you
10 become the finders of the facts. Since you are the judges
11 or the finders of the facts. Please, please if at any
12 time during the trial of the case I've done something up
13 here to make you believe that I have some opinion about
14 the facts, please set that aside. If I have yawned or
15 rolled my eyes or raised my glasses or did whatever, that
16 means that you think I was commenting on the facts, please
17 set that aside. I have no -- my position does not allow
18 me to have an opinion about the facts. That's solely up
19 to you. The 12 of you collectively acting as one, you are
20 the finders of the facts in the case.

21 As I told you in my opening remarks, this case, like
22 many cases, you heard testimony -- it is almost like night
23 and day. So you have to determine as the finders, or
24 judges of the facts, you have to determine the credibility
25 of the witnesses who have testified in the case.

JURY CHARGE

231

1 Credibility simply means believability. Who do you
2 believe. It becomes your duty as jurors to analyze and
3 evaluate the evidence and determine which evidence
4 convinces you of its truth.

5 Now, in performing this duty you have the right to
6 believe everything a witness says. You can disbelieve
7 everything a witness says. You can believe a lot of
8 witnesses over one, one over a lot. You can believe a
9 little bit about what they say, and disregard the rest, or
10 you can believe a whole lot about what they say and
11 disregard a little bit of the rest.

12 In other words, you have the right to use your own
13 common sense in determining how people tell the truth and
14 apply that in this case, and reach what you find to be the
15 true facts, because you are the judges of the facts. You
16 may believe whether the witness has any bias in the case,
17 has any interest in the case, prejudice, and even how he
18 or she appeared on the witness stand.

19 In this case you have heard evidence that the
20 defendant was convicted of a crime or crimes other than
21 the one for which he is now on trial. The evidence of the
22 prior crimes may be considered by you, if you conclude it
23 is true, only in deciding whether the defendant's
24 testimony is believable and for no other purpose. You
25 cannot consider the defendant's prior record as any

1 evidence of the defendant's guilt of the charges we're
2 trying here today.

3 Let me now turn to the two indictments. The first
4 indictment he is charged with kidnapping. That is set out
5 in our statute in 16-3-910. In that particular indictment
6 the defendant is charged with kidnapping. The state must
7 prove beyond a reasonable doubt that the defendant
8 knowingly and unlawfully either seized, confined,
9 inveigled, decoyed, kidnapped, abducted or carried away
10 another person without authority of law.

11 Obviously to do something unlawfully is to do it
12 willfully against the law. Knowingly means with
13 knowledge, consciously, not accidentally. Seized means to
14 take hold of suddenly or forcibly. Confined means to
15 limit restrict or enclose within bounds, imprison or shut
16 or keep in. Inveigle means to lure, entice or lead astray
17 by false representations, promises or other deceitful
18 means. Decoy means to lure by or as if by decoy. Decoy
19 is something to entice a person into a trap. Kidnap is to
20 remove a person against his will by unlawful force or by
21 fraud. Abduct means to carry off secretly or by force for
22 an illegal purpose. Carry away means to remove. The
23 state does not have to prove that he did all of these
24 things. Instead if you find beyond a reasonable doubt
25 that the defendant did any of these things, you may find

JURY CHARGE

233

1 the defendant guilty of kidnapping. And the kidnapping
2 does not have to be for any personal or monetary gain or
3 for any illegal purpose. But it may be for any reason
4 whatsoever. So, this is the law dealing with kidnap. --
5 kidnapping.

6 He's also charged with armed robbery. Armed robbery
7 is set out in our code section 16-11-330. In order to
8 prove this offense the state must first prove beyond a
9 reasonable doubt that the defendant took personal property
10 from the person or presence of another person. Property
11 is in the presence of a person if it is within that
12 person's reach, inspection, observation, or control. So
13 that the person could, if not overcome with violence or
14 prevented by fear, keep possession of the property. The
15 state also must prove beyond a reasonable doubt that the
16 defendant carried the property away intending to
17 permanently deprive the owner of the property and to keep
18 the property for the defendant's own use. The slightest
19 removal of the property or the complete possession of the
20 property, even for a moment, by the defendant, is
21 sufficient to show a taking and carrying away of the
22 property.

23 The taking and carrying away of the property must
24 have been done with violence or by putting the owner of
25 the property in fear of violence. And the robbery must

1 have been committed while the person was armed with a
2 pistol, or other type of deadly weapon or while alleging
3 either by action or words that he was armed while using a
4 representation of a deadly weapon, or of any object which
5 a person present, during the commission of the robbery,
6 reasonably believed to be a deadly weapon. So, that's the
7 law dealing with armed robbery.

8 Now, a general proposition of law is what we in the
9 legal profession call the hand of one is the hand of all.
10 If a crime or crimes, plural, is committed by two or more
11 people who are acting together in committing the crime,
12 the act of one is the act of all. The person who joins
13 with others to accomplish a criminal act is criminally
14 responsible for everything done by the other person or
15 persons which occur as a natural consequence of the acts
16 done in carrying out the common plan and purpose. For
17 example, two people can be killing -- strike that. Two
18 people can be guilty of killing another person, when only
19 one of the two had a gun and there was only one bullet,
20 and only one of the two fired the shot that caused the
21 death. If two or more people are together, acting
22 together, assisting each other in committing the crime,
23 the act of one is the act of all. As it is said sometimes
24 the hand of one is the hand of all.

25 Let me further tell you that there is another

JURY CHARGE

235

1 proposition of law that says this. That mere presence at
2 the scene of a crime is not sufficient to prove someone
3 guilty of a crime. A defendant's presence where a crime
4 is being committed or mere association with the person who
5 commits the crime does not make him guilty as an
6 accomplice or the hand of one is the hand of all.

7 Now, as I said you must consider each indictment
8 separate and a part from the other. So you have two
9 indictments, ma'am, to consider. One is for kidnapping.
10 One is for armed robbery. You have two choices -- each
11 one is not guilty or guilty. There are two places to
12 check. One is not guilty and one is guilty. Whatever
13 your verdict is, you check that appropriate box or that
14 appropriate line for each one of them. Sign your name and
15 date it. Your verdict must be unanimous. All 12 of you
16 must agree as to the verdict.

17 As we say sometimes we you have absolutely no friends
18 to reward and no enemies to punish. You're to make your
19 decision based on the evidence that you've heard here
20 today and what you determine the true facts to be and
21 applying it to the law as I've given it to you. When you
22 have reached a unanimous verdict on both indictments,
23 knock on the door and Mr. Whittle or one of the bailiffs
24 will advise me, and we'll receive you back into the
25 courtroom.

JURY CHARGE

1 A lot of times while you're deliberating you may have
2 a question that you need to ask me. That's not unusual.
3 If you do, you have the write it out on -- they'll have
4 some pads in there for you. Please write out your
5 question. Knock on the door and Mr. Whittle will hand it
6 to me. Sometimes I can answer it. Sometimes I can't.
7 I'll send you back the best I can do. It just depends on
8 what the question is. I am going to ask you to step back
9 into your jury room, separate the alternates. Do not
10 start the deliberating yet. I have to ask the lawyers if
11 I have left anything out, or if I need to add anything.
12 And then I have to take a few minutes to make sure that we
13 have all the evidence. As soon as that is done, we'll
14 send the verdict form in and the evidence and you may
15 start your deliberations. If at any time during the
16 deliberation somebody needs a cigarette break or to go to
17 the bathroom or whatever, while they're out of the room
18 please stop deliberating until you have a full 12 of you
19 participating again in the deliberation. If you have any
20 questions just let us know. Y'all may step out now.
21 Don't forget the alternates Mr. Whittle.

22 (Whereupon, the jury exited the courtroom at 1:28.)

23 THE COURT: All right is there any objections
24 requested additions, or deletions to the charge by the
25 state?

JURY CHARGE

237

1 MR. MOLONY: No, sir, Your Honor.

2 THE COURT: By the defendant?

3 MR. CHESSER: No, Your Honor.

4 THE COURT: Gentlemen, would you please come up and
5 review the exhibits to make sure that we have all of them,
6 and then review the verdict form, and then we will submit
7 it all to the jury for their deliberation.

8 MR. CHESSER: Your Honor, on these two -- there is 2
9 CD's. One of them is where we just submitted a portion of
10 Carlos Williams's second interview, and I would submit
11 that for practical reasons that shouldn't go back. They
12 can be informed they can view it at their pleasure --

13 THE COURT: I am going to let it go back as marked
14 what is on there. They can't look at it back there. If
15 they want to look at it, they'll have to bring it back out
16 here and we'll limit it to 1558 to 1630, and that will be
17 the only thing they'll see. And it's shown on a sticky in
18 there. So they have no means of watching it back there.
19 They'd have to come back out here. We can make sure
20 that's the only part they see. Fair enough?

21 MR. CHESSER: Yes, sir.

22 THE COURT: Y'all look at the verdict forms. I think
23 you've already looked at them.

24 MR. MOLONY: Yes, sir.

25 THE COURT: All right it is 1:31 both state and the

1 defense counsel have reviewed all exhibits, and the
2 verdict forms and are in agreement that all are accounted
3 for. The case will be submitted to the jury to commence
4 their deliberations now. We will stand at ease. Anything
5 else, Mr. Chesser?

6 MR. CHESSER: Are the alternates back there.

7 THE COURT: They are back there, but they are
8 segregated from the 12 jurors.

9 MR. CHESSER: Thank you.

10 THE COURT: Make sure the alternates are not in
11 there. I have already told them twice. I assumed they
12 listen to me. All right we'll stand at ease.

13 (Whereupon, the jury begins to deliberate at 1:31.)

14 THE COURT: Is the state ready?

15 MR. MOLONY: Yes, sir, Your Honor.

16 THE COURT: Mr. Chesser, are you ready to receive the
17 verdict?

18 MR. CHESSER: Yes, sir, Your Honor.

19 (Whereupon, the jury came into open court at
20 approximately 2:18.)

21 THE COURT: Madam forelady, have y'all reached a
22 verdict?

23 THE FOREPERSON: Yes, sir, we have.

24 THE COURT: If you would hand it to Ms. Barbara
25 please.

VERDICT

239

1 (Whereupon, the verdict form is handed to the Clerk)

2

3 THE COURT: Mr. Chesser, have your client stand
4 please.

5 THE CLERK: Your Honor, we have state of South
6 Carolina county of Aiken versus Michael Tyrone Quarles
7 indictment number 2013-GS-02-00761. As to the offense of
8 kidnapping we the jury find the defendant guilty. Signed
9 by foreperson Rachel Marry of the 15th day of May, 2013.
10 Your Honor, we have state of South Carolina County of
11 Aiken versus Michael Tyrone Quarles indictment number
12 2013-GS-02-00760, as to the offense of armed robbery, we
13 find the jury -- we the jury find the defendant guilty.
14 Signed by foreperson Rachel Marry, 15th day of May, 2013.

15 THE COURT: Thank you. Anything for the jury before
16 I dismiss them, Mr. Chesser?

17 MR. CHESSER: No, Your Honor.

18 THE COURT: Ladies and gentlemen of the jury panel, I
19 can't thank you enough. That obviously concludes your
20 services this week. We just drew another jury we're going
21 to start another case here just in a few minutes. It is a
22 burglary case, I can't remember. Y'all did a great job.
23 I appreciate how well you listened and you were attentive
24 and I respect your verdict. What we'll have to do now is
25 I will impose sentence. But I am going to probably not

1 keep this other jury waiting. I am going to let them come
2 in and get started in that case and I'll probably do it
3 later on this afternoon after five. But I thank you. You
4 will not have to come back any more this week. I've
5 already got the second jury drawn. They'll send you a
6 check. The clerk's office will. If anyone needs a work
7 excuse -- and -- just stay in the jury room. Ann will
8 walk back there. We'll send somebody up there to get
9 anyone a work ex excuse. I thank you. You have been a
10 pleasure to work with. Y'all are now exempt for three
11 years. Thank you seriously very much.

12 (Whereupon, the jury exited the courtroom at 2:20.)

13 THE COURT: Mr. Chesser, what I'd like to do is let
14 me go ahead and get cranked in this trial and we'll
15 sentence your -- around 4:30 or so. Just be back.

16 MR. CHESSER: Very good. Thank you.

17 THE COURT: Is that an imposition to you. You got
18 something you got to go do?

19 MR. CHESSER: No, sir. That will be fine.

20 THE COURT: Well hold on before he goes out.

21 Mr. Chesser, do you have any post trial motions you'd like
22 to make or would you like for me to give you the statutory
23 rule amount of time to file any post trial motions? I
24 think it's 10 days.

25 MR. CHESSER: Your Honor, let me have the time, if

Sentencing

241

1 you would.

2 THE COURT: Sure.

3 MR. CHESSER: Thank you.

4 THE COURT: All right. Any objection by the state?

5 MR. MOLONY: No, sir, Your Honor.

6 THE COURT: Thank you.

7 THE COURT: All right. We have received the verdict
8 from the jury. It was guilty on both counts, armed
9 robbery and kidnapping. Mr. Solicitor, anything else we
10 need for the record? I have received a note, letter from
11 the victim which I have read. Anything else we need to
12 do?

13 THE SOLICITOR: No, sir, Your Honor other than you
14 know the defendant's record is those three burglary
15 convictions from 2011.

16 THE COURT: Are they three separate convictions?

17 THE SOLICITOR: They were. I got the reports from
18 Georgia. They were three separate incidents.

19 THE COURT: Three different burglaries?

20 THE SOLICITOR: Yes, sir.

21 THE COURT: So he's got three prior burglaries.

22 THE SOLICITOR: Yes, sir that's correct. They were
23 burglary second non-violent. Equivalent of -- they were
24 residences during the daytime.

25 THE COURT: Mr. Chesser?

1 MR. CHESSER: May it please the court, .

2 THE COURT: Yes, sir.

3 MR. CHESSER: Well Mr. Quarles stands before you
4 convicted of armed robbery and kidnapping facing up to 30
5 years on each charge. I can just tell you a few things.
6 He -- his mother was a drug addict and he went into foster
7 care at the age of five and he was raised in foster care
8 up until the age of 18. He was moved around a good bit.
9 At 18 he came out and he briefly had a relationship with
10 his natural father, but that didn't work. And so he ended
11 up fending for himself.

12 He -- in this case it's as if he had no family. I
13 mean I've had almost no contact with anybody. He lived
14 with his cousin May Abney, and I did talk to her on a
15 couple of occasions. I talked to her today. She was
16 going to try to make it. She had no transportation, that
17 type of thing. He refers to her as like his mother. The
18 other person that is like his mother is the mother of
19 Jamaques Salley. He has been calling her every other day
20 or more often from the jail. He and Jamaques, they
21 actually lived together for a while at a trailer or
22 something when Michael had a place to live and Jamaques
23 was looking for one. But he developed, again, kind of a
24 mother son relationship with Jamaques Salley's mother.
25 And I just point that out to you because the way it seems

Sentencing

243

1 to me it's very pitiful, somebody who really has never had
2 a family to speak of and it seems like he's just been
3 looking for one. I know that's pitiful. But I just
4 thought I would tell you that's how it seems to me.

5 THE COURT: Well it is pitiful.

6 MR. CHESSER: Other than that, Judge, in Georgia on
7 these charges his convictions, I've been working with
8 Miss Alves trying to understand it, and of course talked
9 with Michael. But it looks like he did two years in jail.
10 It looks like, he tells me, he got a 10 year sentence. He
11 has eight years probation. So I believe the way I believe
12 it works is he got credit for those two and then he comes
13 out. And their probation is equivalent to a sentence.
14 When they do it, they actually get credit when they're out
15 and they behave. That was imposed that eight year
16 probationary sentence was imposed at beginning of 2011.
17 If he got credit for it, then it would seem he has about
18 six years hanging over him. There is no way that this
19 sentence could be constructed, even if you had a the
20 desire to, concurrent with that sentence. I don't think
21 there is any way to do it because he's not going to be
22 able to serve that until he goes back to Georgia. So
23 having said that I just wanted to point out to the court
24 it may be like our system where you go back and you get
25 revoked. It might be all or up to the remaining portion.

1 But he has a considerable time that he's going to be
2 serving consecutive to whatever you impose on him today.

3 Other than that, you know, I read the letter from the
4 victim, too, and it is -- it's artistic. It is very
5 emotional, and I'm sure it is very heart felt. The only
6 thing I can say is that of the three people that were
7 involved in this that objectively Michael had the, if you
8 can say, the least role, he did.

9 THE COURT: And that's why I had numbers -- a number
10 of in-chambers discussions even as late as late yesterday
11 afternoon begging this young man -- the evidence was
12 overwhelming against him, confession of the co-defendant,
13 this young lady identifying him. I have never heard of a
14 9-1-1 tape where they on the phone when the robbery is
15 taking place. The suspicious activity, switching off the
16 clothes, buying the guns and the backpack. I begged --
17 not begged -- but I certainly told you that I would give
18 him considerable consideration for his accepting
19 responsibility, and what the range of my sentence would
20 be. And if he came out and I thought he was going to
21 accept responsibility to plead guilty and then we turned,
22 and I even gave you another chance last night this
23 morning. I don't know why he would not follow your
24 advice. I assume that was your advice. I know you. I
25 mean, it's his decision. But I'm sure -- and, you know,

Sentencing

245

1 if he is not going to accept responsibility then the
2 sentence is a different situation and what it would have
3 been had he accepted responsibility. So, you know, it's
4 pitiful.

5 But, you know, this poor lady taser gun stuck in her
6 back. I bet she thought she was dead. And it's such a
7 senseless, ill planned robbery that anybody could solve it
8 the way it happened. I just don't understand. The more I
9 sit up here, the more I don't understand with human
10 nature. I just do not understand. Anything you want to
11 tell me, sir?

12 MR. QUARLES: No, sir.

13 THE COURT: Even with his prior record if he would
14 have accepted responsibility I was willing to, you know,
15 give him considerable consideration. All right. Taking
16 into consideration the nature and severity of the offense,
17 the overwhelming evidence, the fact that he has three
18 prior burglaries, the fact that he would not accept
19 responsibility for these acts, as to indictment
20 13-GS-02-760 the sentence of the court is that you be
21 committed to the State Department of Corrections for a
22 period of 28 years. As to indictment 13-GS-02-761 for
23 kidnapping. It is the same sentence of 28 years. I will
24 let them run concurrent. You'll be given credit for your
25 time served. Good luck.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

*** END OF REQUESTED TRANSCRIPT OF RECORD ***

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned Dinah M. Garvin, Official Reporter for the State transcribed said trial for Lisa Davenport Official Reporter for the Second Judicial Circuit of the State of South Carolina, and do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal, in the Criminal Court for Aiken County, South Carolina on the 14-15 days of May, 2013.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 18, 2013



Court Reporter

2013A0220100174
2013A0220100206

FORM 5

FILED 8-6-2015

Liz Holand
C.C.P. & G.S.
Arita Knepper 12/45
Deputy Clerk

STATE OF SOUTH CAROLINA)

COUNTY OF Aiken)

Michael T. Quarles 355492)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2015CP0201909

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 the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional 386 Redemption Way McCor S.C.
2. Name and location of Court which imposed sentence Aiken County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Carlos Williams, Jannagies Sally
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 13-GS-02-760 Armed Robbery 28 Yrs
 - (b) 13-GS-02-761 Kidnapping 28 YRS
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 15, 2013
 - (b) May 15, 2013

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. _____
 - iii. _____

- (b) the result in each such Court to which you appealed:
 - i. Affirmed
 - ii. _____
 - iii. _____

- (c) the date of each such result:
 - i. July 1, 2015
 - ii. _____
 - iii. _____

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) _____
- (b) _____
- (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) _____
- (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? _____
- (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. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (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. Michael Chesser Esq
 - ii. LaNelle Cantey Durant
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. arraignment, trial, and sentencing
 - ii. appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:

Conviction and Sentence vacated

20. Are you now under sentence from any other court that you have not challenged?

Yes

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

I, , 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.

[Handwritten Signature] 355492

SWORN to and subscribed before me this 3rd
day of August, 2015.

[Handwritten Signature] Michael Camrine (L.S.);
Notary Public

My Commission Expires: July 9, 2025

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)
)
 Michael T. Quarles, #355492,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SECOND JUDICIAL CIRCUIT

2015-CP-02-01909

**RETURN AND MOTION FOR A MORE
 DEFINITE STATEMENT**

The Respondent, making its Return to the application for post-conviction relief filed August 6, 2015, 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 Aiken County Clerk of Court. The Applicant was true bill indicted at the May 2013 term of the Aiken County Grand Jury for armed robbery (2013-GS-02-00760) and kidnapping (203-GS-02-00761). Michael Chesser, Esquire represented Applicant. Applicant proceeded to a jury trial and was found guilty as indicted. The Honorable Doyet A. Early, III sentenced Applicant to twenty eight years for armed robbery and twenty eight years for kidnapping running concurrently

A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction. State v. Michael Quarles, 2015-UP-317 (Ct. App. filed July 1, 2015). The Remittitur was issued on July 22, 2015.

Attached herewith and incorporated herein are the records of the Aiken County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina

FILED November 19th 15
Leif Hodard
 C.C.P. & G.S. LMC
Anna Comau 1:20pm
 Deputy Clerk

Department of Corrections, appellate records, and trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he or she would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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 the record does not conclusively refute. Accordingly, 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.

In his application, Applicant alleges that he is being held in custody unlawfully based on ineffective assistance of counsel. However, Applicant has wholly failed to set forth any "facts which support each ground" or to explain with any specificity whatsoever, the actual scenarios/facts upon which these supposed claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added).

The Respondent submits that it would be unfair to wait until the day of the hearing to finalize the specificity of plea counsel's supposed errors. The Respondent and plea counsel are entitled to adequately prepare for the hearing; to withhold the specific grounds and amend only on the day of the hearing prejudices the Respondent and plea counsel. The Respondent respectfully submits that it is incumbent on the Applicant to amend the application and provide specifics so that adequate preparation is possible. The Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the Respondent. Rule 15(a), SCRCP.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

[Signature block on following page]

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

November 17, 2015.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN)

SECOND JUDICIAL CIRCUIT

C/A NO: 2015-CP-02-1909

Michael T. Quarles, #355492,)

Applicant,)

v.)

AMENDMENT TO PRIOR PCR APPLICATION

State of South Carolina,)

Respondent.)

The Applicant, through appointed counsel below, makes the following additional claims and amendments to his prior application for post-conviction relief filed August 6, 2015:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of counsel for failing to object when the trial court in sentencing Applicant considered Applicant's decision to have a jury trial. *State v. Hazel*, 317 S.C. 368, 453 S.E.2d 879 (1995).

(b) Counsel failed to request lesser included charge.

(c) Counsel failed to explain concept of hand of one, hand of all.

(d) Counsel failed to object to out of state convictions during sentencing.

Respectfully submitted,



Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

FILED 7 December 20 15

Liz Anderson
C.C.P. & G.S. 2015

April Bracco
Deputy Clerk

8:30 am

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2015-CP-02-01909

3
4
5 MICHAEL TYRONE QUARLES,
Applicant,

6 -vs-

TRANSCRIPT OF RECORD

7 STATE OF SOUTH CAROLINA,
Respondent.

8
9
10 Post-Conviction Relief Hearing

11 Heard on Wednesday, May 25, 2016

12 Aiken, South Carolina

13
14 BEFORE:

15 THE HONORABLE DIANE SCHAFFER GOODSTEIN

16
17 APPEARANCES:

18 Counsel on Behalf of the Applicant:
Lance S. Boozer, Esq.

19
20 Counsel on Behalf of the Respondent,
State of SC:
21 Julie A. Coleman, Esq.

22
23 Cheri L. Young, RPR
Circuit Court Reporter
24 516 Palm Drive S
Aiken, SC 29803

25

EXAMINATION INDEX

1		
2		
3	MICHAEL TYRONE QUARELS	
4	DIRECT BY MR. BOOZER	7
5	CROSS BY MS. COLEMAN	18
6	MICHAEL CHESSER	
7	DIRECT BY MS. COLEMAN	20
8	CROSS BY MR. BOOZER	29
9	REDIRECT BY MS. COLEMAN	36
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

1 ON WEDNESDAY, MAY 25, 2016 AT 2:39 P.M.:

2 MS. COLEMAN: Up next we'll have Mr. Quarels.
3 May I have just a moment to write that down?

4 THE COURT: Sure.

5 (Pause.)

6 MS. COLEMAN: Your Honor, are you ready?

7 THE COURT: Yep. Ready.

8 MS. COLEMAN: May it please the Court.

9 THE COURT: Yes.

10 MS. COLEMAN: This is Michael T. Quarels
11 versus the State of South Carolina, 2015-
12 CP-02-01909.

13 Applicant is presently confined in the South
14 Carolina Department of Corrections pursuant to
15 orders of commitment of the Aiken County Clerk of
16 Court. Applicant was true-bill indicted at the May
17 2013 term of the Aiken County Grand Jury for armed
18 robbery and kidnapping. Michael Chesser, Esquire
19 represented the Applicant.

20 Applicant proceeded to a jury trial and was
21 found guilty as indicted. The Honorable Judge
22 Early sentenced Applicant to 28 years for armed
23 robbery and 28 years for kidnapping to run
24 concurrently.

25 A timely notice of appeal was filed on the

1 Applicant's behalf. The South Carolina Court of
2 Appeals affirmed Applicant's conviction.
3 Remittitur was issued July 22nd, 2015.

4 The Applicant filed a timely application for
5 post-conviction relief on August 6, 2015, alleging
6 ineffective assistance of counsel. The Respondent
7 filed its return and motion for a more definite
8 statement on November 17th, 2015.

9 And an amended application was submitted on
10 December 7th, 2015, alleging the following grounds:
11 Ineffective assistance of counsel for failing to
12 object when the Trial Court in sentencing Applicant
13 considered Applicant's decision to have a jury
14 trial; counsel failed to request the
15 lesser-included charge; counsel failed to explain
16 the concept of hand of one hand of all; and counsel
17 failed to object to out-of-state convictions during
18 sentencing.

19 The Applicant is present today and
20 represented by Mr. Lance Boozer.

21 THE COURT: All right. Mr. Boozer.

22 MR. BOOZER: Thank you, Your Honor. May it
23 please the Court.

24 THE COURT: Yes, sir.

25 MR. BOOZER: Judge, before we get started

1 there are two, I guess, preliminary matters. One
2 of which we may be able to just handle as
3 Mr. Quarels takes the stand. He's going to be
4 withdrawing two of his allegations that he does not
5 wish to go forward on today.

6 THE COURT: Okay.

7 MR. BOOZER: So we'll probably handle that
8 when he takes the stand. Also, Your Honor, I'd
9 like to hand up two cases for Your Honor's review.

10 THE COURT: Okay.

11 MR. BOOZER: I'll probably be referencing
12 them throughout the hearing. If I may approach?

13 THE COURT: Yes. Thank you.

14 MR. BOOZER: And, Your Honor, both of these
15 cases relate to Mr. Quarels' claim of --

16 THE COURT: Okay.

17 MR. BOOZER: -- failing to object when the
18 Trial Court considered his decision to have a jury
19 trial in the sentencing. But other than that, Your
20 Honor, I think we'd be ready to call Mr. Quarels to
21 the stand.

22 THE COURT: Okay.

23 MICHAEL TYRONE QUARELS, having been duly
24 sworn, was examined and testified as follows:

25 THE CLERK: Please have a seat in the witness

MICHAEL TYRONE QUARLES - DIRECT

1 box and state your full name for the Court.

2 THE COURT: And state your full name for the
3 record.

4 THE WITNESS: Michael Tyrone Quarels.

5 THE COURT: Q-U-A-R-L-E-S?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Your witness.

8 MR. BOOZER: Thank you, Your Honor. Just for
9 the record, the case I handed up to the Court I did
10 provide a copy to counsel for the State prior to me
11 submitting those.

12 THE COURT: Okay.

13 DIRECT EXAMINATION

14 BY MR. BOOZER:

15 Q. Mr. Quarels, how are you doing?

16 A. I'm doing all right.

17 Q. If you could, I know sometimes you speak a
18 little bit softly so if you could, just raise your
19 voice a little so Madam Court Reporter can take
20 everything down you're saying. Okay?

21 A. Okay. I'm doing all right.

22 Q. Now do you know what we're doing here today,
23 why we're here today?

24 A. For the PCR hearing.

25 Q. And this is -- you filed a PCR application;

MICHAEL TYRONE QUARLES - DIRECT

1 right?

2 A. Yes, sir.

3 Q. All right. And what is it that you're asking
4 the Court for today?

5 A. For relief on my conviction.

6 Q. Are you asking this Court for a new trial?

7 A. Yes, sir.

8 Q. Okay. What are you currently incarcerated
9 for?

10 A. Armed robbery and kidnapping.

11 Q. And did you have a trial?

12 A. Yes, sir.

13 Q. All right. And what, what sentence did you
14 receive after the trial?

15 A. 28 years.

16 Q. Who was your trial lawyer?

17 A. Michael Chesser.

18 Q. Now obviously you filed an application and
19 then we filed, you and I together filed an amended
20 application; is that right?

21 A. Yes, sir.

22 Q. All right. And you've indicated to me today
23 that there are a couple of allegations that, I
24 guess, you don't want to go forward on, that you
25 want to withdraw and rather focus on the other two

MICHAEL TYRONE QUARLES - DIRECT

1 allegations?

2 A. Yes, sir.

3 Q. Let's do this. Let's go over for the Court
4 what your allegations are and which ones you'll be
5 proceeding on today. Okay?

6 A. Yes, sir. The four allegations were: His
7 failure to object during the sentencing phase when
8 the Trial Court considered my decision to go to
9 trial when sentencing me; the lesser-included
10 offense doctrine.

11 Q. Well, when you say lesser-included offense
12 doctrine you're talking about, you're alleging that
13 your lawyer failed to request a lesser included?

14 A. Failed to request a lesser-included offense.

15 Q. Okay.

16 A. Counsel's failure to explain the concept of
17 hands of one hands of all; and counsel's failure to
18 object during the sentencing phase when the
19 solicitor brought up my out-of-state convictions.

20 Q. And which one of those or which allegations do
21 you want to withdraw?

22 A. The lesser-included offense and the out-of-
23 state convictions.

24 Q. And do you understand that by -- today is your
25 one bite at the apple. Today is your day to go

MICHAEL TYRONE QUARLES - DIRECT

1 forward with your PCR hearing and raise to this
2 Court any complaints or allegations you may have.
3 Do you understand that if you withdraw those or you
4 drop those you likely may not be able to bring those
5 back again? You can't file another application
6 unless just, you know, it's just a strange
7 circumstance. If you don't go forward with them
8 today they may never be heard.

9 A. Yes, sir.

10 Q. And is that what you want to do? You want to
11 withdraw those allegations?

12 A. Yes, sir.

13 Q. Is that your decision to do that?

14 A. Yes, sir.

15 Q. Is anyone making you or forcing you to not go
16 forward with those allegations?

17 A. No, sir.

18 MR. BOOZER: Your Honor, is that fine for
19 Your Honor?

20 THE COURT: It is.

21 BY MR. BOOZER:

22 Q. Was Mr. Chesser appointed or retained in your
23 case?

24 A. He was appointed.

25 Q. Take us back to -- do you recall when you were

MICHAEL TYRONE QUARLES - DIRECT

1 first arrested on these charges?

2 A. Yes, sir.

3 Q. Do you recall when that may have been?

4 A. It was March 9th, 2013.

5 Q. When did you first get Mr. Chesser as your
6 lawyer?

7 A. I can't really remember exactly what date he
8 was, he was first appointed.

9 Q. Well, do you recall when you first met with
10 him?

11 A. I can't remember the date. No, sir.

12 Q. Well, even if you don't remember the date do
13 you recall maybe how long that meeting may have
14 lasted or what you may have discussed during that
15 meeting?

16 A. It lasted probably 30 minutes, about 30
17 minutes.

18 Q. Do you know what you guys talked about during
19 that first meeting?

20 A. He gave me my summary report and some pages
21 of text messages that was between my co-defendants.

22 Q. All right. Do you recall if you discussed
23 anything else during that meeting? Did you discuss
24 any defenses or any concepts like you're talking
25 about, hand of one hand of all?

MICHAEL TYRONE QUARLES - DIRECT

1 A. No. He told me he was going to talk to the
2 solicitors about strong armed robbery as an
3 alternative to what was -- what I was dealing with.

4 Q. All right. And so, did you have another
5 meeting with Mr. Chesser?

6 A. Yes, sir.

7 Q. All right. Do you recall when that may have
8 been?

9 A. No, sir. I don't remember the date.

10 Q. Well, do you -- how many times in total do you
11 think you met with Mr. Chesser prior to your trial?

12 A. Prior to trial, I'd say about three times I
13 met with him.

14 Q. Well, let me just -- kind of as a whole, what
15 would y'all talk about throughout the course of
16 these three meetings?

17 A. What happened with the situation that I was
18 in.

19 Q. Okay. Well, would you discuss defenses?

20 A. No, sir.

21 Q. Did you review any evidence?

22 A. I -- the summary report and those text
23 messages were the only thing I seen.

24 Q. So you had some co-defendants?

25 A. Yes, sir.

MICHAEL TYRONE QUARLES - DIRECT

1 Q. All right. Prior to the trial was there a
2 plea offer that was conveyed to you?

3 A. Yes, sir.

4 Q. Do you recall what that was?

5 A. He, he explained to me that the plea offer
6 was for 20 years but for accepting it the judge
7 would have sentenced me to 15.

8 Q. Do you recall when y'all had that
9 conversation, how close to trial were you?

10 A. The day before we actually picked the jury.

11 Q. Did you decline that plea offer? Obviously.

12 A. Yes, sir.

13 Q. Why did you decline it?

14 A. Because I felt that I -- well, I wasn't
15 guilty of armed robbery and kidnapping.

16 Q. Okay. Did you have any idea prior to trial
17 what your trial strategy would be?

18 A. Just going to go in there and, I guess, prove
19 that I wasn't guilty of armed robbery and
20 kidnapping.

21 Q. You had co-defendants?

22 A. Yes, sir.

23 Q. Were they going to testify against you?

24 A. One of them was.

25 Q. Okay. Do you know what sentences they

MICHAEL TYRONE QUARLES - DIRECT

1 received?

2 A. The one who testified, he received 13 years
3 and the other one received 35.

4 Q. Did he go to trial?

5 A. Yes, sir.

6 Q. Okay. Now, let's get into your allegations.
7 You've got an allegation that counsel -- let's kind
8 of go out of order here. You've got an allegation
9 that counsel failed to explain the concept of hand
10 of one hand of all?

11 A. Yes, sir.

12 Q. Tell the Court what you mean by that
13 allegation.

14 A. He didn't explain what it meant. Like, what
15 hand of all -- how they could find you guilty of
16 hands of one hands of all or how they could find me
17 guilty of armed robbery and kidnapping because of
18 hands of one hands of all.

19 Q. Well, tell me and tell the Court a little bit
20 more about that. At the time of your trial, what
21 was your understanding? Do you think you couldn't
22 be found guilty of any of these crimes?

23 A. Yes, sir.

24 Q. And why was that? What have you since learned
25 about hand of one hand of all?

MICHAEL TYRONE QUARLES - DIRECT

1 A. I've learned that they don't have to prove me
2 guilty of the actual crime but they have to prove
3 my -- they can prove my co-defendants guilty and I
4 would be found guilty as well.

5 Q. Did you have any discussion with Mr. Chesser
6 about hand of one hand of all prior to your trial?

7 A. He mentioned that they were going to bring
8 it, that they were going to use that but he didn't
9 explain what it was and how they could use it.

10 Q. Well, what would have been differently -- what
11 would have been different had you known about, sort
12 of, that legal concept prior to trial?

13 A. I'd have took the plea.

14 Q. All right. Now, at the trial do you recall
15 the judge sentencing you at trial?

16 A. Yes, sir.

17 Q. Okay. And just, Mr. Quarels, I'm looking at
18 the transcript. And are you familiar with the
19 transcript?

20 A. Yes, sir.

21 Q. Have you read this before?

22 A. Yes, sir.

23 Q. All right. And for the Court's information,
24 I'm looking at page 244 over through 245.

25 THE COURT: Hold on.

MICHAEL TYRONE QUARLES - DIRECT

1 MR. BOOZER: And I'll be beginning at line

2 16 --

3 THE COURT: All right.

4 BY MR. BOOZER:

5 Q. -- on 244. And, Mr. Quarels, this is where
6 the Court is -- there's already been a verdict and
7 now it's the sentencing phase, right?

8 A. Yes, sir.

9 Q. I'm looking at line 16 the Court says, "I
10 begged, not begged but I certainly told you that I
11 would give him considerable consideration for his
12 accepting responsibility and what the range of my
13 sentence would be. And if he came out and I thought
14 he was going to accept responsibility and plead
15 guilty and then we turned, and I even gave you
16 another chance last night, this morning. I don't
17 know why he would not follow your advice. I assume
18 that was your advice. I know you. I mean, it's his
19 decision but I'm sure and, you know, if he's not
20 going to accept responsibility then the sentence is
21 a different situation and what it would have been
22 had he accepted responsibility."

23 Do you recall the judge saying that?

24 A. Yes, sir.

25 Q. And then we skip down. And the Court asks you

MICHAEL TYRONE QUARLES - DIRECT

1 if you want to say anything. And you say, "No,
2 sir."

3 Then we skip down to page 245 beginning at
4 line 15. "Taking into consideration the nature and
5 severity of the offense, the overwhelming evidence,
6 the fact that he has three prior burglaries, the
7 fact that he would not accept responsibility for
8 these acts, as to Indictment 13-GS-02-760, the
9 sentence of the Court is that you be committed to
10 the State Department of Corrections for a period of
11 28 years."

12 Do you recall that?

13 A. Yes, sir.

14 Q. Did your lawyer ever to your knowledge make
15 any objection to any of those statements?

16 A. No, sir.

17 Q. Okay. If it's not in the record, would you
18 agree that no objection was made?

19 A. Yes, sir.

20 Q. Looking back, I guess, at the transcript, did
21 you feel like you were be punished for going to
22 trial versus accepting the plea?

23 A. Yes, sir.

24 Q. You do?

25 A. Yes, sir.

MICHAEL TYRONE QUARLES - CROSS

1 Q. Did you file an appeal in this case?

2 A. Yes, sir.

3 Q. And did you -- was the appeal seen all the way
4 through? Did you withdraw it?

5 A. It was seen all the way through.

6 Q. And that issue was not raised on appeal;
7 right?

8 A. No, sir.

9 Q. Okay. Is there anything else you want to tell
10 the Court or bring up that we haven't already talked
11 about or that you haven't alleged in your PCR
12 application regarding any complaints you may have
13 about Mr. Chesser, about your trial or anything like
14 that that we haven't already covered?

15 A. No, sir.

16 Q. Mr. Quarels, that's all the questions I have
17 for you at the moment. If you would, please answer
18 any questions the State has.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MS. COLEMAN:

22 Q. Good afternoon Mr. Quarels. How are you?

23 A. I'm fine.

24 Q. Now you testified that you met with your
25 attorney about three times before trial; is that

MICHAEL TYRONE QUARLES - CROSS

1 correct?

2 A. Yes, sir -- yes, ma'am. Pardon me.

3 Q. Do you recall reviewing discovery with your
4 attorney?

5 A. Yes, sir -- yes, ma'am.

6 Q. And that was when you testified that you had
7 seen some text messages with the co-defendants and
8 things like that; correct?

9 A. Yes, ma'am.

10 Q. Okay. Do you recall -- you said you did not
11 discuss any defenses with your attorney; correct?

12 A. No, ma'am.

13 Q. No. Okay. Did you give your attorney any
14 leads or potential witnesses to investigate?

15 A. I told him to talk to my co-defendant
16 Jamaques Salley.

17 Q. Okay. And did he do that to your knowledge?

18 A. Not to my knowledge.

19 Q. Okay. Now you stated that he did not explain
20 to you the hand-of-one-hand-all doctrine; correct?

21 A. Yes, ma'am.

22 Q. Okay. But he did mention that they were going
23 to use that at trial?

24 A. Yes, ma'am.

25 Q. And if you had known what it meant you would

MICHAEL CHESSER - DIRECT

1 have taken a plea instead of going to trial?

2 A. Yes, ma'am.

3 MS. COLEMAN: Okay. No further questions.

4 Thank you.

5 THE COURT: All right.

6 MR. BOOZER: No redirect, Your Honor.

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

8 Come back to the table, please. All right. Call
9 your next witness, please.

10 MS. COLEMAN: No further witnesses on behalf
11 of the Applicant, Judge.

12 THE COURT: All right.

13 MS. COLEMAN: The State calls Mr. Chesser to
14 the stand.

15 MICHAEL CHESSER, having been duly sworn, was
16 examined and testified as follows:

17 THE CLERK: Please have a seat in the witness
18 box and state your full name for the Court.

19 THE WITNESS: Michael Chesser, C-H-E-S-S-E-R.

20 THE COURT: Your witness.

21 MS. COLEMAN: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. COLEMAN:

24 Q. Mr. Chesser, how long have you been practicing
25 law?

MICHAEL CHESSER - DIRECT

1 A. 25 years.

2 Q. Okay. And how long have you been practicing
3 criminal defense?

4 A. 20 years.

5 Q. Okay. Do you recall whether you were
6 appointed or retained in this case?

7 A. Appointed.

8 Q. Appointed. And how many times did you meet
9 with the Applicant prior to the trial?

10 A. I think three is probably correct.

11 Q. Okay. Did the Applicant cooperate with you
12 during the course of your representation?

13 A. Yes.

14 Q. Did you file any Brady or Rule 5 motions?

15 A. I don't recall that I did. Now I got
16 appointed to this case. I believe that most likely
17 someone had been representing him before me as
18 well. Sometimes the appointments happen down the
19 line and so they have adopted a previously filed
20 Rule 5 and I'm sure there was a Brady and Rule 5
21 request filed.

22 Q. Okay. And did you review the discovery
23 material with the Applicant?

24 A. I did. Let me in that regard go ahead and
25 say that there was paperwork but there was also

MICHAEL CHESSER - DIRECT

1 audio-visuals, at least two videos. One was a
2 co-defendant, a cooperating co-Defendant. There
3 were three individuals that were accused in this
4 crime. There was one cooperating co-defendant and
5 a non-cooperating co-defendant and Mr. Quarels.

6 And, so there was a video of that cooperating
7 co-defendant. And there was a video of Mr. Quarels
8 who gave, really, what amounted to a lengthy
9 confession in this case although -- well.

10 And there was also a number of 9-1-1 calls.
11 This crime was actually reported before it
12 happened. They saw people sort of casing the area
13 and then they reported it and then as it happened
14 there were more calls coming in, and then there
15 were calls subsequent to it happening.

16 But in any event, we went over these, these
17 calls, 9-1-1 calls and everything. The video, we
18 went over parts of the video. I will tell you and
19 tell the Court that I had a little trouble with the
20 format. The first time I had seen it it was broken
21 up and we ended up going over, say, the last half
22 of the co-defendant interview here before we picked
23 the jury.

24 Q. Uh-huh. Okay. So how would you describe or
25 characterize the State's evidence against the

MICHAEL CHESSER - DIRECT

1 Applicant?

2 A. Overwhelming. With the exception, again,
3 there is an issue of this, you know, is it an armed
4 robbery. That's sort of a matter of law, but in
5 terms of participation in the crime it was
6 overwhelming.

7 Q. Uh-huh. Okay. Did you discuss possible
8 defenses with the Applicant?

9 A. Yes. Although, again, he had given a very
10 lengthy confession. And there was also this
11 lengthy co-defendant's statement implicating him
12 and then there were these text messages. So in
13 terms of possible defenses, I mean, I guess people
14 don't usually say this, but there was very little
15 to defend with in this case.

16 Q. Uh-huh. And the Applicant testified that he
17 didn't feel like he understood the hand-of-one-hand-
18 of-all doctrine. Is that correct?

19 A. That is something that comes up fairly often.
20 And it's not hard to explain. I always explain it.
21 Everybody who works in criminal defense explains
22 it. When I would tell anybody -- to me, it's sort
23 of like conspiracy. It's sort of like accessory
24 before the fact. It's where you have a role in an
25 offense and other people have other roles, in this

MICHAEL CHESSER - DIRECT

1 case, Mr. Quarels' case, the location. And then he
2 was across the street observing the event and then
3 he, as I recall, was the driver of the vehicle
4 where they got away.

5 So, in that circumstance of course you don't
6 have to have the gun in your hand to be the one
7 responsible for the crime. In this case, just to
8 tell the Court, there was a tazer used but it
9 appears there was also a gun used. There was two
10 weapons.

11 Q. Okay. Did you feel like he -- and you
12 explained all of this to Mr. Quarels?

13 A. Yes.

14 Q. And did you feel like -- did you feel at the
15 time like he understood it?

16 A. I did. I -- just to explain that.

17 The difficulty sort of in getting the best
18 result for Mr. Quarels was that -- and sometimes
19 this happens. You have defendants that seem to be
20 in a state of denial about their bargaining
21 position. There was -- Mr. Quarels was wanting,
22 you know, I recall that he used to talk about
23 probation. He was talking about five years on a
24 nonviolent charge. Just things that were very far
25 out of the realm of possibility.

MICHAEL CHESSER - DIRECT

1 And this was not just before the trial. This
2 was during the trial. For whatever reason the
3 presiding judge would just say at this point, like,
4 for instance, the morning this happened, would
5 you -- you know, we can resolve this. He was being
6 proactive in terms of conveying to us and maybe to
7 Mr. Quarels. I haven't read the transcript, but --
8 but in any event the State, the offers that were
9 coming from the State were not -- they were, as I
10 recall, you know, 85 percent type of offer, you
11 know, 15 years 85 percent, 20 years 85 percent, but
12 they were way beyond what Mr. Quarels' feeling was
13 that somehow he should get.

14 I don't know where he got the idea that he
15 would get this certain type of relatively lenient
16 punishment, but it was just -- it wasn't close to
17 reality.

18 Q. But the State did use the hand-of-one-hand-of-
19 all doctrine in this case; correct?

20 A. They did. Although, again, really
21 Mr. Quarels was a principal. I mean, if you case
22 the joint and you watch it you give a ride, you've
23 just got a role in the offense. You can call it
24 hand of one hand of all, you can call it you're a
25 principal.

MICHAEL CHESSER - DIRECT

1 Q. And I believe in the transcript in the jury
2 instructions when he instructed the jury on hand of
3 one hand of all he also included a mere presence
4 instruction; is that correct?

5 A. I would have to go look. I don't have the
6 transcript.

7 Q. And I'd be happy to point that to you if you'd
8 like to see it. But if you agree that -- would you
9 agree that if it's in the transcript then that
10 happened at trial?

11 A. Yes.

12 Q. Okay. Did the Applicant -- or excuse me. Did
13 Mr. Quarels at the trial have to take the stand and
14 testify that he was there in order to justify the
15 mere presence argument instruction to the jury?

16 A. I don't know that he did because, again, they
17 played his interview which was at least 45 minutes
18 long with, as I recall, Detective Savage of the
19 Aiken City Police Department. And it had every --
20 in effect it put up Mr. Quarles' defense to the
21 extent he had one, that he had a limited role.
22 But -- so, I don't know that he would have had to
23 take the stand for the judge to charge the mere
24 presence.

25 Q. Okay. Did you feel prepared for this trial?

MICHAEL CHESSER - DIRECT

1 A. Yes.

2 Q. Did you have ample time to prepare for the
3 trial?

4 A. Yes.

5 Q. You didn't need any more time?

6 A. No.

7 Q. You testified that the evidence was
8 overwhelming against him; correct?

9 A. Yes.

10 Q. Do you remember at the sentencing, do you
11 recall what the judge -- the reasons that the judge
12 used in his decision to sentence the Applicant?

13 A. My memory was refreshed by the reading of the
14 transcript, so, yes.

15 Q. And I'd be happy to refresh your memory. If I
16 may approach the witness?

17 THE COURT: Uh-huh.

18 BY MS. COLEMAN:

19 Q. I've got the transcript here on page 244 of
20 the sentencing, lines -- let's see -- 11, through
21 13. If you would read that aloud, please?

22 A. All right. I'll start with the Court. "And
23 that's why I had numbers, a number of in-chambers
24 discussions even as late as yesterday afternoon
25 begging this young man. The evidence was

MICHAEL CHESSER - DIRECT

1 overwhelming against him, confession of a
2 co-defendant, this young lady identifying him. I
3 have never heard a 9-1-1 tape where they're on the
4 phone when the robbery is taking place. The
5 suspicious activity, switching off the clothes,
6 buying the guns and the backpack. I begged, not
7 begged but I certainly told you that I would give
8 him considerable consideration for his accepting
9 responsibility and what the range of my sentence
10 would be."

11 Q. That's fine. Thank you. Thank you for
12 reading that.

13 So it appears from the transcript that the
14 judge had several different reasons why he was
15 considering certain things for sentencing?

16 A. Yes.

17 Q. And now, please, if you'll look at page 245
18 line five, starting at line five there. And please
19 read that aloud, too.

20 A. This is the judge, I presume?

21 Q. Yes.

22 A. "But, you know, this poor lady, a tazer gun
23 stuck in her back, I bet she thought she was dead.
24 And it's such a senseless, ill-planned robbery that
25 anybody could solve it the way it happened. I just

MICHAEL CHESSER - CROSS

1 don't understand. The more I sit up here the more
2 I don't understand with human nature. I just do
3 not understand."

4 Q. Thank you.

5 No further questions at this time.

6 THE COURT: All right. Yes. Cross-
7 examination?

8 MR. BOOZER: Thank you, Your Honor.

9 THE COURT: Uh-huh.

10 CROSS-EXAMINATION

11 BY MR. BOOZER:

12 Q. Mr. Chesser, do you recall -- you indicated
13 that you reviewed the hand of one hand of all or
14 that concept with Mr. Quarels prior to trial?

15 A. Certainly.

16 Q. Do you know when that would have been?

17 A. No, but well prior to trial. I mean, when I
18 talked to him -- it's one of the first things that
19 would come up. A defendant may think that they are
20 responsible solely for what they actually do as
21 opposed to be part of a plan. And that would be an
22 elementary or first -- one of the first things that
23 you would go over with them; why they are being
24 charged with armed robbery if they didn't have a
25 gun.

MICHAEL CHESSER - CROSS

1 Q. The way you've explained it today in court, is
2 that what you told him before trial?

3 A. I would say yes, but I can't say that I
4 remember the exact terms that I used.

5 Q. And would you -- you indicated you had met
6 with him maybe three times before the trial. You
7 don't know whether it would have been the first
8 meeting, the second or the third when that
9 discussion would have occurred?

10 A. I don't have an independent recollection.

11 Q. Okay. Do you know if -- had that occurred, do
12 you think that he understood what you were telling
13 him?

14 A. I don't -- I do. I don't think it's a
15 difficult concept. If you plan something with
16 somebody else then you're responsible for what they
17 do, for their part as well as for your part.

18 Q. Going to the sentencing, and Madam Attorney
19 General has directed your attention to the record.
20 Looking at page 244 and you've already read some of
21 this and I've reviewed some of this earlier. Do you
22 think -- well, let me ask you this first.

23 Was the Court involved in trying to -- was the
24 Court active in trying to find a resolution to this
25 case?

MICHAEL CHESSER - CROSS

1 A. Yes.

2 Q. Describe that a little bit.

3 A. Well, I would just say that the Court had
4 represented to me and the prosecutor that, as
5 indicated in the transcript, that there would be a
6 range of sentencing that would be more favorable if
7 this case were resolved by way of a plea.

8 Q. Do you know what that meant by favorable?

9 A. In my mind I would say, as Mr. Quarels did,
10 the number 20 stands out but I don't have a real
11 good recollection.

12 Q. Okay. Was Mr. Quarels involved or was he
13 privy to any of these conversations directly or was
14 this all being told through you?

15 A. Through me.

16 Q. Okay. These were are all occurring in
17 chambers?

18 A. No, I won't say that. It seems to me there
19 was times on the record, you know, like at the
20 start of the second day and the judge would say,
21 would make it clear something to the effect, and
22 again this should be in the transcript, has
23 Mr. Quarels been informed of the substance of, you
24 know, our discussions or something of that nature.

25 Q. And I'd like -- I know we've already been over

MICHAEL CHESSER - CROSS

1 this but just for the record's sake, going back and
2 looking at page 244 of the transcript where the
3 Court indicates beginning on line 16, "I begged, not
4 begged but I certainly told you that I would give
5 him considerable consideration for accepting
6 responsibility and what the range of my sentence
7 would be. And if he came out and I thought he was
8 going to accept responsibility and plead guilty,"
9 and the Court goes on.

10 However, on page 245 at the top of that
11 beginning at line one it says, "If he's not going to
12 accept responsibility then the sentence is a
13 different situation than what it would have been had
14 he accepted responsibility."

15 So based on that do you think the Court was
16 taking into consideration his decision to not plead
17 guilty when the Court was sentencing him for
18 exercising his right to a trial?

19 A. Well, I appreciate your question but I would
20 ask the Court that I not be put in the position of
21 trying to interpret what the judge was thinking
22 when he was saying something. It seems to me that
23 the record would have to speak for itself.

24 Q. That's fine. I'm just asking what your
25 impression of it as you're hearing it, either at

MICHAEL CHESSER - CROSS

1 trial or today. Let me ask you this another way.

2 If I may, Your Honor.

3 Did you make any sort of objection to any, any
4 of this part of the transcript that we have reviewed
5 today with regard to the sentencing on 244 or 245?

6 A. No.

7 Q. Okay. Looking back, do you think you should
8 have made any sort of objection during this time?

9 A. I thought about it at the time. I mean, I
10 certainly am familiar with the concept that in
11 South Carolina, you know, somebody should not be
12 sentenced more severely simply for going to trial.
13 The difficulty comes up, like they do in federal
14 court, they talk about oh, well, we'll give you a
15 discount if you plead and it's accepting
16 responsibility. Of course this is the type of
17 phrasing that the judge was using.

18 And so it becomes a, you know, difficult to
19 know what they're doing. But it certainly occurred
20 to me, you know, it is not fair for somebody to
21 get -- according to our -- here in the state, to
22 get a longer sentence just because they go to
23 trial. I just can't, you know, when you use all of
24 those words, all those code words and all those
25 phrases and so on, it's difficult to know.

MICHAEL CHESSER - CROSS

1 But in any event, I thought about objecting
2 and then ultimately I did not.

3 Q. Do you know why -- and what would the basis of
4 your objection have been?

5 A. Well, it would have been -- I think it's
6 called punishing somebody for exercising their
7 right to a jury trial. That would be the
8 objection.

9 Q. Okay. And are you familiar and I'm certainly
10 not trying to ambush you. You said you're not.
11 That's completely fine. I certainly had to look it
12 up. Are you familiar with the case State versus
13 Morris Hazel? It's a South Carolina Supreme Court
14 case. And I'm happy to hand this to you so you can
15 take a look at it.

16 If I may approach, Your Honor?

17 THE COURT: Uh-huh. You may.

18 THE WITNESS: Well, I will say this, you
19 know. I've had this issue come up before. And I
20 think I may or may not have made this objection. So
21 even though I don't recall that, I'm sure I've read
22 this case. I am familiar with it.

23 BY MR. BOOZER:

24 Q. Have you had -- in looking at that case, does
25 that refresh your recollection as to what that case

MICHAEL CHESSER - CROSS

1 represents?

2 A. Well, it's a great case for Mr. Quarels.

3 Q. And why would you say that?

4 A. Well, the language here, you know, where it
5 says, "it's one thing if he pled guilty," then it
6 says "but he didn't and therefore", you know, you
7 could argue that it's applicable to this case.

8 Q. And let me ask you this: Would that have been
9 the basis of your objection at trial had you made
10 it?

11 A. Yes.

12 Q. And that's what the proposition of Hazel is is
13 that a Trial Court cannot consider the fact that a
14 defendant has exercised his right to trial during
15 sentencing. That would have been the objection?

16 A. That would have been the objection.

17 Q. Okay. Court's indulgence, Your Honor.

18 THE COURT: All right.

19 (Pause.)

20 MR. BOOZER: Mr. Chesser, thank you for
21 answering all my questions.

22 THE COURT: Redirect?

23 MS. COLEMAN: Yes, Your Honor.

24

25

MICHAEL CHESSER - REDIRECT

1 REDIRECT EXAMINATION

2 BY MS. COLEMAN:

3 Q. You made several objections throughout the
4 trial; correct?

5 A. Yes.

6 Q. To various testimony and other things; is that
7 correct?

8 A. Yes.

9 Q. Okay. So, if this was something that you
10 thought at the time was objectionable you would have
11 made an objection; correct?

12 A. Well, I'll just have to say I wavered on this
13 and ultimately did not object.

14 Q. Okay. Because you did not feel at the time
15 that it was objectionable?

16 A. Well, frankly, if you make this type of
17 objection it seems to me they can cure it. They
18 just stop and they say, well, let me be clear. I'm
19 not punishing this man for exercising his right to
20 trial and just switch it up.

21 And so, you know, I mean -- that's just --
22 they just fix it. So, and then they may emphasize
23 if they're not punishing him for his right to a
24 jury trial, they're not giving him his discount
25 they would have given him if he would have pled

MICHAEL CHESSER - REDIRECT

1 guilty.

2 I mean, it becomes a word game. But, again,
3 I'll just say I thought about making the objection
4 and ultimately did not.

5 Q. Okay. And is Mr. Quarrels' decision to go to
6 trial rather than -- sorry.

7 Did the judge only consider the exercise of
8 his right to a jury trial in sentencing?

9 MR. BOOZER: Objection, Your Honor. Earlier
10 he did not want to interpret, I think fairly, what
11 the judge was doing or not doing. I'd ask that if
12 he's going to respond to that question I'd also be
13 allowed to ask the same.

14 THE WITNESS: I'd rather not respond.

15 MS. COLEMAN: I apologize, Your Honor.

16 THE COURT: So you're objecting on the basis
17 of state of mind? I mean, is that what --

18 MR. BOOZER: Or speculation.

19 THE COURT: Yeah. Right.

20 MR. BOOZER: If he's not going to speculate
21 for me I don't think --

22 THE COURT: He was speculating what was in the
23 judge's mind; right?

24 MR. BOOZER: Correct.

25 THE COURT: Yeah. I'll sustain that.

MICHAEL CHESSER - REDIRECT

1 MS. COLEMAN: Okay. I apologize.

2 THE COURT: That's all right.

3 BY MS. COLEMAN:

4 Q. And I pointed to you earlier in the transcript
5 to several things that the Court had said. And, I
6 mean, do you recall when the judge pointed out the
7 overwhelming evidence against him?

8 A. Yes.

9 Q. And where the confession of the co-defendant
10 and the 9-1-1 tape that was very emotional, he
11 pointed all of those things out; correct?

12 A. Yes.

13 Q. As well as the tazer being stuck in her back?

14 A. Yes. She was actually tazed.

15 Q. Uh-huh. Okay. The judge also pointed out the
16 fact that he had three prior burglaries; correct?

17 A. I don't recall that. He pointed out some
18 prior burglaries.

19 Q. Okay. And the judge also mentioned that he
20 took into consideration the nature and severity of
21 the offense; correct?

22 A. Yes.

23 MS. COLEMAN: Okay. No further questions.

24 THE COURT: Anything further?

25 MR. BOOZER: Nothing further, Your Honor.

1 THE COURT: All right. Is this witness free
2 to leave?

3 MS. COLEMAN: Yes.

4 MR. BOOZER: Absolutely, Your Honor.

5 THE COURT: Very well.

6 MS. COLEMAN: No further witnesses from the
7 State.

8 THE COURT: All right.

9 MR. BOOZER: Your Honor, if I may just for a
10 moment have, I guess, a brief closing --

11 THE COURT: Uh-huh.

12 MR. BOOZER: -- because I do have a legal
13 argument to make.

14 THE COURT: Uh-huh.

15 MR. BOOZER: Thank you.

16 MR. BOOZER: If it pleases the Court, Your
17 Honor.

18 THE COURT: Yes, sir.

19 MR. BOOZER: Judge, I'll let his other
20 allegation regarding hand of one hand of all stand
21 on its own based on the testimony that's been
22 presented today.

23 THE COURT: All right.

24 MR. BOOZER: But I would like to make a legal
25 argument regarding the, what appears to be in the

1 transcript what Mr. Quarels claims is the Trial
2 Court considered his decision to go to jury trial
3 when sentencing the ap -- Mr. Quarels at the trial.

4 Your Honor, the cases that I've handed up,
5 I'm sure Your Honor's had a moment to refresh your
6 memory on these. The first one which is State
7 versus Hazel. It's a Supreme Court South Carolina
8 case in which a young man goes trial, gets found
9 guilty, and I guess they're trying to give him a
10 YOA sentence during the sentencing phase.

11 And the judge says, "Well it's one thing if
12 had pled guilty, I'd have considered that, but
13 taking into consideration the age and where he was
14 and the time it was, the sentence of the Court is
15 you be confined to the State Board of Corrections
16 for a period of 15 years and pay a fine of
17 \$25,000."

18 Now this case is a little bit different from
19 a procedural standpoint from Mr. Quarels'. This
20 was a direct appeal that Mr. Hazel took. So
21 Mr. Hazel files his direct appeal. The Supreme
22 Court looks at it and says, well, the Supreme
23 Court -- we're going to reverse and remand this one
24 back for a re-sentencing hearing because you can't
25 consider a defendant's decision to exercise his

1 right to a jury trial when you're sentencing him.

2 And as part of that the State or the Supreme
3 Court cites Furmo versus State, "sentencing court
4 cannot base sentence either in whole or in part
5 upon exercising this right".

6 And I think that's exactly analogous to the
7 facts we have. Sure, we've got some testimony
8 today and the transcript reflects that the court
9 does look at some things, overwhelming evidence and
10 whatnot, but it also, from my interpretation on
11 behalf of the Applicant, is that there was some
12 consideration to him not pleading guilty and
13 accepting responsibility.

14 So that end, Judge, looking at Marshall Davis
15 versus South Carolina, this is more in line with
16 what we have today where a similar situation
17 occurred but no objection was made at trial or the
18 plea.

19 And so he had to go the route of PCR which is
20 what Mr. Quarels is doing today. And, again, in
21 that case, defendant's convicted at trial. He
22 actually drops his direct appeal because this is a
23 PCR issue. And on appeal the court said, well, the
24 trial counsel failed to object and the trial judge
25 after sentencing indicated he considered

1 petitioner's decision to have jury trial as a
2 factor in sentencing.

3 And the Court's, I guess, comments are on
4 page, my page two of Davis versus State. "Yes,
5 ma'am, but he didn't plead guilty. Those other two
6 people they pled guilty. They admitted what they
7 had done and to me that's the first step towards
8 rehabilitation is admitting you did something wrong
9 and pleading guilty. When a fellow wants a trial
10 which he's entitled to as a matter of law and
11 that's fine". And then skip down. "Well, the jury
12 found him guilty and I sentenced him. I'm not
13 going to change my sentence. Thank you very much".

14 The Court in this case applied State versus
15 Hazel to the facts and found that that judge did in
16 fact abuse his discretion in sentencing him when he
17 considered, or when he or she considered the
18 applicant's decision to go to trial.

19 And in this case the Court reversed the PCR
20 court's denial of relief.

21 So, Judge, that's really what we're asking
22 Your Honor for today. That's the basis of the
23 argument and partially the basis of the Applicant's
24 claim.

25 Thank you.

1 THE COURT: Okay.

2 MS. COLEMAN: Your Honor, we found a case
3 that cites to the Davis case. And it's from 2002.
4 It's State v. Follin. And I don't have a copy of
5 it. I apologize.

6 THE COURT: That's okay.

7 MS. COLEMAN: I just pulled it up on my
8 computer, but the citation is 352 SC 235 or 573
9 Southeast Second 812. State v. Follin.

10 And the Court rules in this case that:
11 Although a sentencing judge may not improperly
12 consider a defendant's decision to proceed with a
13 jury trial, they conclude that when it -- it can be
14 done properly when there are other factors being
15 used in the decision to impose a certain sentence.

16 The quote: "When the record clearly reflects
17 an appropriate basis for a disparate sentence the
18 sentencing judge may impose a different sentence on
19 a co-defendant in a criminal trial.

20 And then they caution the bench that if they
21 abuse their discretion in sentencing using this as
22 the only factor in the sentence they would caution
23 against that.

24 But here in this case as we've established in
25 the record, there were several reasons why the

1 judge seems to have considered this sentence and
2 those were: Overwhelming evidence; the
3 co-defendant's confession; the young lady having
4 being tazed by the tazer.

5 And he says on the record that he took into
6 consideration the nature and severity of the
7 offense, the overwhelming evidence and the fact
8 that he had three prior burglaries, as well as the
9 fact that he did not take responsibility for his
10 actions, he says.

11 So we would argue that this was an
12 appropriate use of this. And it -- and also it
13 doesn't disturb the underlying conviction. This
14 only applies to the sentencing. It doesn't change
15 the fact that the jury came back with a guilty
16 verdict.

17 The standard here of course has two prongs;
18 sufficient performance and actual prejudice. And I
19 don't think that this affects -- I don't think this
20 was prejudicial toward Mr. Quarrels' trial at all.

21 We ask respectfully that you deny the
22 application.

23 THE COURT: All right. Great. Yes, any
24 response?

25 MR. BOOZER: Just briefly, Your Honor.

1 I obviously have not read that case. I would
2 just point out that it sounded like that was
3 dealing with disparate sentences between
4 co-defendants versus -- all I'm talking about is
5 his sentence and this was that the Trial Court
6 considering him pleading guilty or going forward
7 with a trial not that, oh, well this guy got X
8 amount of time and he should get this amount of
9 time. That's not what the argument is, Judge.

10 THE COURT: Uh-huh.

11 MS. COLEMAN: I believe the Davis case also
12 dealt with disparate sentences between
13 co-defendants but I might be wrong.

14 THE COURT: Okay. Tell me the name of the
15 case again.

16 MS. COLEMAN: State v. Follin, F-O-L-L-I-N.
17 And it's a Court of Appeals case.

18 THE COURT: Okay. Got it. I will consider
19 it.

20 I think what I'm going to ask is for proposed
21 orders from both of you. How much time do you
22 think you will need? You have a lot to do.

23 MS. COLEMAN: 30 days.

24 THE COURT: You bet.

25 MS. COLEMAN: Thank you.

1 THE COURT: If you need longer, if you all
2 will just get together and let me know what the
3 time will be that you need. If you need more time
4 just let me know so I can know when to expect it.

5 MR. BOOZER: Thank you, Your Honor.

6 MS. COLEMAN: Thank you, Your Honor.

7 THE COURT: All right. If you'll just, I
8 would appreciate if you'd enclose just a copy of
9 the State v. Follin --

10 MS. COLEMAN: Sure.

11 THE COURT: -- when you send it in. It will
12 be really helpful. Thank you very much.

13 MS. COLEMAN: Thank you. And I believe
14 that's all we have for today.

15 END OF PROCEEDINGS: 3:26 P.M.

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER

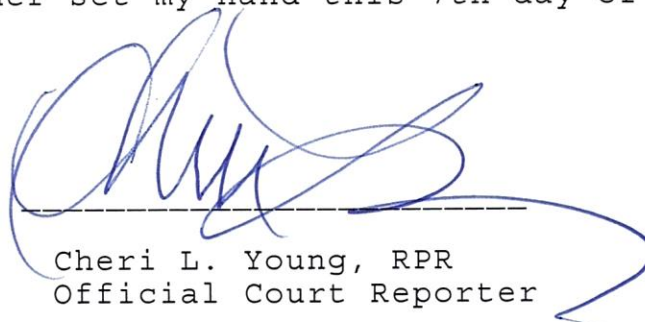
2 STATE OF SOUTH CAROLINA)

3 COUNTY OF AIKEN)

4 I, Cheri L. Young, Registered Professional
5 Reporter and Official Court Reporter for the State
6 of South Carolina, Second Circuit-At Large, do
7 hereby certify that the foregoing proceedings were
8 written stenographically by me using computer-aided
9 translation; further, that the foregoing is a true,
10 accurate and complete record, to the best of my
11 skill and ability, of all the proceedings had and
12 evidence introduced in the hearing of the captioned
13 case, relative to appeal, in the Court of Common
14 Pleas for Aiken County, on the 25th day of May,
15 2016.

16 I do further certify that I am neither of
17 kin, counsel, nor interest to any party hereto.

18 I have hereunder set my hand this 7th day of
19 August, 2018.

20
21 
22 Cheri L. Young, RPR
23 Official Court Reporter
24
25

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 Michael T. Quarles, #355492,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT
 C/A NO: 2015-CP-02-1909

ORDER GRANTING PCR 9.2.16
 FILED
Jay Howard
Justin Knapp
 Deputy Clerk

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 9, 2015, and subsequently amended on December 7, 2015. Respondent made its return and motion to dismiss for more definite statement on November 17, 2015. An evidentiary hearing into the matter was convened on April 26, 2016, at the Aiken County Courthouse. Applicant was present at the hearing and represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie Coleman of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is currently confined in the South Carolina Department of Corrections pursuant to the Aiken County Clerk of Court's orders of commitment. Applicant was indicted by the Aiken County Grand Jury for armed robbery (2013-GS-02-760) and kidnapping (2013-GS-02-761). Applicant was represented by Michael Chesser, Esquire. The Applicant proceeded to a jury trial on May 14, 2013. The Honorable Doyet A. Early, III, sentenced the Applicant to concurrent sentences of twenty-eight (28) years for armed robbery and kidnapping. Applicant filed a timely notice of appeal. The South

Carolina Court of Appeals affirmed Applicant's conviction. State v. Quarles, 2015 UP-317 (Ct. App. filed July 1, 2015). The remittur was returned to the circuit court on July 22, 2015.

ALLEGATIONS

In his original Application filed August 6, 2015, Applicant alleges that he is being held in custody unlawfully for the following reasons:

(i) Ineffective assistance of counsel.

In his amended Application filed December 7, 2015, Applicant alleges that he is being held in custody unlawfully for the following reasons:

(i) Ineffective assistance of counsel for failing to object when the trial court in sentencing Applicant considered Applicant's decision to have a jury trial. State v. Hazel, 317 S.C. 368, 453 S.E.2d 879 (1995).

(ii) Counsel failed to request lesser included charge.

(iii) Counsel failed to explain concept of hand of one, hand of all.

(iv) Counsel failed to object to out-of -state convictions during sentencing.

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Michael Chesser, Esq ("counsel"). This Court also had before it a copy of the trial transcript, appellate records, the Aiken County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR Application and amendments and the State's Return.

STANDARD OF REVIEW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be

relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 268 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 268 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two pronged test in evaluating allegations of ineffective assistance of counsel. 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 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Ineffective assistance of counsel for failing to object when the trial court in sentencing

Applicant considered Applicant’s decision to have a jury trial.

At the evidentiary hearing, Applicant alleged and testified that counsel failed to object when the trial court in sentencing considered Applicant’s decision to have a jury trial. Upon sentencing, the record reflects on page 244-245 of the the trial transcript that the trial court stated the following:

... the evidence was overwhelming against him, confession of the co-defendant, this young lady identifying him... I begged - - not begged - - but I certainly told you that I would give him considerable consideration for his accepting responsibility, and

what the range of my sentence would be. And if he came out and I thought he was going to accept responsibility to plead guilty and then we turned, and I even gave you another chance last night this morning (sic). I don't know why he would not follow your advice. I assume that was your advice. I know you. I mean, its his decision. But if he is not going to accept responsibility then the sentence is a different situation and what it would have been had he accepted responsibility.

The trial court went on to further state on page 245:

Taking into consideration the nature and severity of the offense, the overwhelming evidence, the fact that he has three prior burglaries, the fact that he would not accept responsibility for these acts...the sentence of the court is that you be committed to the State Department of Corrections for a period of 28 years.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State" U.S. Const. amend. VI. When a trial judge considers the fact that the defendant exercised his or her constitutional right to a jury trial as a factor in sentencing the defendant, it is an abuse of discretion. *See Davis v. State*, 336 S.C. 329, 520 S.E.2d 801 (1999) (holding counsel was ineffective in failing to object when the trial judge indicated the reasoning for the sentencing of Mr. Davis); *State v. Hazel*, 317 S.C. 368, 453 S.E.2d 879 (1995) (holding the trial judge abused his discretion when the judge considered the fact that Hazel did not plead guilty in declining to grant Hazel's request for sentencing under the Youthful Offender Act); *Castro v. State*, Op. No. 27648 (S.C. Sup. Ct. filed July 20, 2016) (a trial court may not consider a defendant's decision to exercise his right to a jury trial in sentencing.)

At the PCR hearing, counsel acknowledged he did not make an objection to the trial court's sentence or colloquy noted above. Accordingly, the issue was not preserved for appellate review. This Court finds counsel was ineffective for failing to object to the trial court's sentencing and not preserving the issue for appellate review. Because of counsel's failure to

object and otherwise preserve the issue for appellate review, this Court lacks confidence in the outcome of the proceedings. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Accordingly, this Court finds Applicant is entitled to a new trial.

II. Counsel failed to request lesser included charge.

III. Counsel failed to explain concept of hand of one, hand of all.

IV. Counsel failed to object to out-of-state convictions during sentencing.

Applicant alleges and testified that counsel was ineffective for failing to request a lesser included charge at trial; counsel failed to explain concept of hand of one, hand of all; and counsel failed to object to out-of-state convictions during sentencing. A judge is only required to charge a jury on a lesser-included offense if evidence exists that suggests that the lesser, rather than the greater, crime was committed. State v. Gourdine, 322 S.C. 396, 398, 472 S.E.2d 241, 242 (1996). There must be evidence that the defendant committed the lesser included offense to entitle him to a jury charge on the offense. State v. Mathis, 287 S.C. 589, 594, 340 S.E.2d 538, 541 (1986). Upon review of the record, this Court finds that no evidence existed for that a lesser-included crime was committed. Accordingly, this Court does not find counsel was ineffective in that regard. Counsel also testified he explained the hand of one, hand of all prior to the trial and discussed the evidence and defenses to the case with the Applicant. Counsel testified he did not see any issues with the out-of-state convictions being mentioned during sentencing. This Court finds counsel's testimony credible. Additionally, this Court finds counsel explained the legal concept of hand of one, hand of all to the Applicant prior to trial and was not ineffective as to this allegation. Upon review of the trial transcript and counsel's testimony, this Court finds that counsel was not ineffective for failing to object to the out-of-state

convictions presented to the court at sentencing. This Application is denied as to these allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has met his burden of proof in showing he received ineffective assistance of counsel and counsel's performance prejudiced him as it relates to counsel's failure to object to the trial court sentence and failing to preserve the issue for appellate review. Accordingly, this Application for post-conviction relief is granted as to this allegation and orders that Applicant be granted a new trial. This Court finds Applicant has not met the burden of proof in finding counsel was otherwise ineffective and his remaining allegations are dismissed.

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is granted with regard to counsel failing to object to the trial court's sentence and colloquy and otherwise preserve the issue for appeal;
2. Applicant receive a new trial for armed robbery (2013-GS-02-760) and kidnapping (2013-GS-02-761);
3. Applicant be remanded to the custody of Aiken County; and
3. Applicant's remaining allegations are denied and dismissed.

AND IT IS SO ORDERED this 26 day of August, 2016.



The Honorable Diane S. Goodstein
Presiding Judge
Second Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Michael T. Quarles, #355492,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

2015-CP-02-1909

MOTION TO RECONSIDER

FILED

9.13.16

Shirley Godard
C.C.P. & G.S.
Christy Knappe

Respondent, pursuant to Rules 59(e), would respectfully show unto this Court:

I.

This matter came before the Court by way of an Application for Post-Conviction Relief filed August 9, 2015, and subsequently amended on December 7, 2015. Respondent made its Return and Motion to Dismiss for More Definite Statement on November 17, 2015. The Court convened an evidentiary hearing into the matter on April 26, 2016, at the Aiken County Courthouse. Applicant was present at the hearing and represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman. By order filed September 2, 2016, the Court granted relief on one of four grounds raised in the Application. Respondent received a copy of this order on September 2, 2016.

II.

Respondent respectfully asks this Court to reconsider its judgment granting Applicant a new trial as post-conviction relief because Applicant is entitled only to a resentencing. In the order granting relief, the Court found trial counsel ineffective for failing to object to the trial court's inappropriate consideration of Applicant's decision to go to trial rather than plead guilty and failing to preserve the issue for appellate review. The Court further found that it lacked confidence in the outcome of the proceedings because of trial counsel's failure to object. Because

of this ineffective representation, the Court found that Applicant was entitled to a new trial. However, the Court may have overlooked certain law holding that the appropriate relief Applicant is entitled to in this situation is a resentencing hearing, not a new trial.

Trial counsel's failure to object to improper sentencing took place after the trial was completed and the jury had already returned their guilty verdict convicting Applicant of armed robbery and kidnapping. This failure to object did not and could not have affected the outcome of the trial by changing the jury's verdict. The only remedy Applicant is entitled to is a resentencing to correct the mistake made by the consideration of inappropriate factors in his sentence. Even with this mistake corrected, it would not change the outcome of the trial, thus a new trial is not warranted.

South Carolina case law clearly states that the appropriate remedy in this situation is a resentencing rather than a new trial. For example, Robinson v. State granted the applicant a resentencing where his guilty plea was not involuntary but his sentence was inappropriately enhanced. "Although the plea judge erroneously used Petitioner's prior conviction as an enhancer, in our view, the proper relief in this case is for Petitioner to be resentenced." Robinson v. State, 380 S.C. 201, 205, 669 S.E.2d 588, 590 (2008). See Thompson v. State, 340 S.C. 112, 117, 531 S.E.2d 294, 297 (2000) (reversing the PCR court's denial of relief, vacating applicant's sentence, and remanding for resentencing); Roscoe v. State, 345 S.C. 16, 22, 546 S.E.2d 417, 420 (2001) (affirming the PCR court's order of remand for resentencing where the defendant was sentenced in excess of the maximum penalty). Smith v. State, 407 S.C. 270, 278, 754 S.E.2d 900, 904 (Ct. App. 2014), reh'g denied (Mar. 21, 2014), aff'd, 413 S.C. 194, 775 S.E.2d 696 (2015) (reversing the PCR court's denial of relief, vacating applicant's sentence for voluntary

manslaughter, and remanding for resentencing on that charge consistent with the original plea agreement).

Under South Carolina case law, it is clear that the proper remedy is a resentencing. Accordingly, Respondent respectfully asks this Court to reconsider its judgment.

III.

WHEREFORE, Respondent respectfully requests that the Court amend the final judgment to reflect a finding that Applicant is entitled only to a resentencing and not a new trial.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: 
Attorneys for the Respondents

September 8 Columbia, South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)
)
)
 Michael T. Quarles, #355492,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT
 C/A NO: 2015-CP-02-1909

**RETURN TO RESPONDENT'S
 MOTION TO RECONSIDER**

This Court granted Applicant's PCR application by Order filed September 2, 2016. On September 8, 2016, Respondent made its Motion to Reconsider pursuant to Rule 59(e).

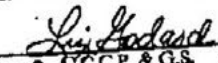
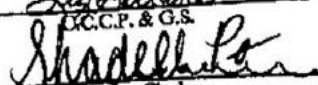
Applicant submits that this Court's Order Granting PCR contains the proper findings of facts and conclusions of law as required by S.C. Code Ann. 17-27-80 (1976) and Rule 52(a) SCRPC. Applicant further submits that this Court properly ruled on all issues presented at the post-conviction relief hearing and Respondent's Motion should be denied.

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
 Attorney for Applicant
 807 Gervais Street, Suite 203
 Columbia, SC 29201
 Phone: (803) 608-5543

September 12, 2016

FILED 9-14 2016 12:50
 SP

 L.C.C.P. & G.S.

 Deputy Clerk

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)
)
)
 Michael T. Quarles, #355492,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)


IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT
 C/A NO: 2015-CP-02-1909

**RETURN TO RESPONDENT'S
 MOTION TO RECONSIDER**

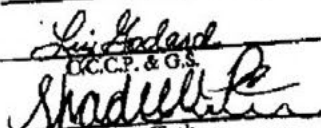
I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Return to Respondent's Motion to Reconsider upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Juile Coleman
 Assistant Attorney General
 P.O. Box 11549
 Columbia, SC 29211

THE BOOZER LAW FIRM, LLC


 Lance S. Boozer
 Attorney for Applicant
 807 Gervais Street, Suite 203
 Columbia, SC 29201
 Phone: (803) 608-5543
 Fax: (803) 926-3463

Columbia, South Carolina
 September 12, 2016

FILED 9-14 2016 12:50 SP

 D.C.P. & G.S.
 Deputy Clerk

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

State of South Carolina) In the Court
County of Aiken) Of Common Pleas

Docket No: 2015CP0201909

Michael T. Quarles,)
Applicant,)
vs.) Transcript of Record
State of South Carolina,)
Respondent.)

May 24, 2017
Aiken, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein, Judge.

A P P E A R A N C E S:

Lance S. Boozer, Esquire
Attorney for the Applicant

Julie A. Coleman, Assistant Attorney General
Attorney for the Respondent

Brenda J. Sigwald, Circuit Court Reporter
To The Honorable Doyet A. Early III
P.O. Box 206, Jackson, South Carolina 29831

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

		<u>Page</u>
Motion to Reconsider.....		3
Certificate of Reporter.....		7

E X H I B I T S

<u>Number</u>	<u>Description</u>	<u>Page</u>
---------------	--------------------	-------------

(REPORTER'S NOTE: There were no exhibits entered during this hearing.)

MOTION TO RECONSIDER

1 THE COURT: Okay, I can listen.

2 MS. COLEMAN: All right. Thank you, Your Honor.

3 This is Michael T. Quarles versus the State of
4 South Carolina, Docket Number 2015CP021901. And this was
5 -- this matter came before the Court by an application for
6 post conviction relief that was filed in 2015. We had the
7 full evidentiary hearing about a year ago in Aiken here and
8 Your Honor granted his application for post conviction
9 relief and issued an order granting his application and the
10 State has now filed a motion to reconsider and we are here
11 over that motion.
12

13 And the State proceeds on the grounds that -- we're
14 asking you to reconsider your order granting based on the
15 fact that he was issued -- he was granted a new trial
16 rather than just a new sentencing and we believe that he
17 should get a resentencing because the failure to object
18 that counsel was found ineffective for only happened during
19 the -- or during the sentencing by Judge Early.

20 I believe he made some kind of comment about how
21 the applicant did not take responsibility for his actions
22 and went to trial instead of pleading guilty, which, Your
23 Honor, found was improper in the sentencing portion. And
24 we contend that under South Carolina case law, which was
25 listed in our motion, the proper relief for this would be a

1 resentencing rather than a new trial.

2 THE COURT: Got you.

3 MS. COLEMAN: Thank you.

4 THE COURT: Yes, sir.

5 MR. BOOZER: Thank you, Your Honor, if it pleases
6 the Court.

7 THE COURT: Yes, sir.

8 MR. BOOZER: Judge, just briefly, it's my
9 understanding and based on the State's motion that they are
10 not contesting the granting of the relief, they're just
11 concerned of the form of relief that was granted. So
12 basically our position is, of course, the order as entered
13 is proper and it's certainly within the province of the
14 Court to grant a new trial. We do understand and as an
15 officer of the Court, I certainly do understand that there
16 is case law out there that states that relief that can't be
17 granted could be a resentencing. I don't have anything to
18 sit here and hand up to Your Honor to show that you may
19 grant also a new trial based on that, but I think it's
20 certainly within the Court's rights to grant a new trial if
21 they so see fit. So we prefer to stick with the order as
22 written --

23 THE COURT: I understand.

24 MR. BOOZER: -- and granting a new trial. But --
25 and we understand that they're not asking for you to

1 overturn your whole decision.

2 THE COURT: Right.

3 MR. BOOZER: So that's our position.

4 THE COURT: I understand. I -- well let me say
5 this: I concur with the State and I think they are correct
6 and I think it would be for Judge Early to make that
7 determination and if he thinks that this is a case that
8 doesn't want to participate in the resentencing, he can
9 make that determination and I think he's the person to sort
10 of do that. And I -- I do think that resentencing is what
11 is appropriate.

12 MR. BOOZER: And, Judge, just kind of as a
13 housekeeping matter --

14 THE COURT: Yes.

15 MR. BOOZER: I'm not sure if the State plans to
16 appeal --

17 MS. COLEMAN: And that's, Your Honor, what I had
18 planned to address. I don't mean to take the position that
19 we're not contesting the granting of the PCR application.
20 I don't want to preclude us from being able to appeal the
21 order in general. I just made sure -- I wanted to preserve
22 that argument for a resentencing as well. But that would
23 be in the discretion -- we have a team in our office who
24 might review this decision to determine whether or not we
25 will appeal it. So I don't want to preclude us in any way

1 from being able to appeal.

2 THE COURT: Okay.

3 MS. COLEMAN: But thank you for your --

4 THE COURT: All right. Very well, just prepare an
5 order.

6 MS. COLEMAN: Great. Thank you.

7 THE COURT: All right.

8 MR. BOOZER: And, Judge, if there is no appeal
9 filed, we just ask that the clerk appoint him appropriate
10 representation to get back before Judge Early as soon as
11 possible.

12 THE COURT: I -- absolutely. If I need to do
13 anything in that regard, because the clerk's office is kind
14 of busy, and this is happening with me out of the circuit.
15 If I need the assist you guys in that, we'll just get on
16 the phone. This clerk's pretty awesome, but it does have
17 more than a few things going on.

18 MS. COLEMAN: Thank you, Your Honor.

19 THE COURT: Absolutely.

20 * * * * * END OF TRANSCRIPT * * * * *

21

22

23

24

25

1	State of South Carolina)	
2	County of Aiken	)	Certificate of Reporter
3			
4			
5			
6	I, Brenda J. Sigwald, Official Court Reporter for		
7	the Second Judicial Circuit of the State of South Carolina,		
8	do hereby certify that the foregoing is a true, accurate,		
9	and complete Transcript of Record of the proceedings had		
10	and evidence introduced in the trial of the captioned case,		
11	relative to appeal, in the Court of Common Pleas in and for		
12	the State of South Carolina on the 24th day of May, 2017.		
13	I FURTHER CERTIFY that I am neither kin, counsel,		
14	nor of interest to any party hereto.		
15	IN WITNESS WHEREOF, I have hereunto set my hand and		
16	seal at Aiken County, this 25th day of June, 2018.		
17			
18			
19			
20			
21	<i>Brenda J. Sigwald</i>		
22	Brenda J. Sigwald,		
23	Court Reporter and Notary Public		
24	For the State of South Carolina		
25	My commission expires January 4, 2020		

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 Michael T. Quarles, #355492,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 _____ Respondent.)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT
 C/A NO: 2015-CP-02-1909

**AMENDED ORDER
 PARTIALLY GRANTING PCR
 AND DENYING REMAINING
 ALLEGATIONS**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 9, 2015, and subsequently amended on December 7, 2015. Respondent made its return and motion to dismiss for more definite statement on November 17, 2015. An evidentiary hearing into the matter was convened on April 26, 2016, at the Aiken County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General’s Office.

Following the evidentiary hearing, this Court signed an Order granting Applicant a new trial. The Order was signed on August 26, 2016, and filed September 2, 2016. On September 13, 2016, Respondent filed a Motion to Reconsider pursuant to Rule 59(e) SCRPC. A hearing over the motion to reconsider was held on May 24, 2017 at the Aiken County Courthouse. Applicant was present at the hearing and represented by Lance S. Boozer. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General’s Office. This Court granted Respondent’s Motion to Reconsider and vacated the original Order granting post-conviction relief. This Amended Order follows.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is currently confined in the South Carolina Department of Corrections pursuant to the Aiken County Clerk of Court's orders of commitment. Applicant was indicted by the Aiken County Grand Jury for armed robbery (2013-GS-02-760) and kidnapping (2013-GS-02-761). Applicant was represented by Michael Chesser, Esquire. The Applicant proceeded to a jury trial on May 14, 2013. The Honorable Doyet A. Early, III, sentenced the Applicant to concurrent sentences of twenty-eight (28) years for armed robbery and kidnapping. Applicant filed a timely notice of appeal. The South Carolina Court of Appeals affirmed Applicant's conviction. State v. Quarles, 2015-UP-317 (Ct. App. filed July 1, 2015). The Remittitur was returned to the circuit court on July 22, 2015.

ALLEGATIONS

In his original Application filed August 6, 2015, Applicant alleges that he is being held in custody unlawfully for the following reasons:

- (i) Ineffective assistance of counsel.

In his amended Application filed December 7, 2015, Applicant alleges that he is being held in custody unlawfully for the following reasons:

- (i) Ineffective assistance of counsel for failing to object when the trial court in sentencing Applicant considered Applicant's decision to have a jury trial. State v. Hazel, 317 S.C. 368, 453 S.E.2d 879 (1995).
- (ii) Counsel failed to request lesser included charge.
- (iii) Counsel failed to explain concept of hand of one, hand of all.
- (iv) Counsel failed to object to out-of -state convictions during sentencing.

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Michael Chesser, Esq ("counsel"). This Court also had before it a copy of the

trial transcript, appellate records, the Aiken County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR Application and amendments and the State's Return.

STANDARD OF REVIEW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 268 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Ineffective assistance of counsel for failing to object when the trial court in sentencing Applicant considered Applicant's decision to have a jury trial.

At the evidentiary hearing, Applicant alleged and testified that counsel failed to object when the trial court in sentencing considered Applicant's decision to have a jury trial. Upon sentencing, the record reflects on page 244-245 of the the trial transcript that the trial court stated the following:

... the evidence was overwhelming against him, confession of the co-defendant, this young lady identifying him... I begged - - not begged - - but I certainly told you that I would give him considerable consideration for his accepting responsibility, and what the range of my sentence would be. And if he came out and I thought he was going to accept responsibility to plead guilty and then we turned, and I even gave you another chance last night this morning (sic). I don't know why he would not follow your advice. I assume that was your advice. I know you. I mean, its his decision. *But if he is not going to accept responsibility then the sentence is a different situation and what it would have been had he accepted responsibility.*

The trial court went on to further state on page 245:

Taking into consideration the nature and severity of the offense, the overwhelming evidence, the fact that he has three prior burglaries, *the fact that he would not accept responsibility for these acts...*the sentence of the court is that you be committed to the State Department of Corrections for a period of 28 years.

At the PCR hearing, counsel acknowledged he did not make an objection to the trial court's sentence or colloquy noted above. "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State" U.S. Const. amend. VI. When a trial judge considers the fact that the defendant exercised his or her constitutional right to a jury trial as a factor in sentencing the defendant, it is an abuse of discretion. See Davis v. State, 336 S.C. 329, 520 S.E.2d 801 (1999) (holding counsel was ineffective in failing to

object when the trial judge indicated the reason he sentenced Davis more harshly than two similarly-situated offenders who, unlike Davis, had pled guilty was because those offenders admitted their guilt); State v. Hazel, 317 S.C. 368, 453 S.E.2d 879 (1995) (holding the trial judge abused his discretion when the judge considered the fact that Hazel did not plead guilty in declining to grant Hazel's request for sentencing under the Youthful Offender Act).

This Court finds the statements made by the trial judge reveal he considered Applicant's decision to exercise his right to a jury trial in sentencing Applicant. Castro v. State, Op. No. 27648 (S.C. Sup. Ct. filed July 20, 2016). This Court further finds that although the trial judge considered other factors in sentencing the Applicant, a trial judge abuses his or her discretion when he or she considers the fact that a defendant exercised his or constitutional right to a jury trial as a factor in the sentencing. Id; see Davis, supra (holding the trial judge abused his discretion by considering the fact that the defendant exercised his right to a jury trial in sentencing the defendant); Hazel, supra (same); State v. Follin, 352 S.C. 235, 257-58, 573 S.E.2d 812, 824 (Ct. App. 2002). This Court finds, regardless of the fact that the trial judge considered the overwhelming evidence presented against Applicant, as well as his pending charges and prior burglaries, in sentencing Applicant, the trial judge considered Applicant's decision to reject a plea offer and proceed to trial as a factor in sentencing Applicant. Accordingly, this Court finds and orders that counsel was ineffective for failing to object to the trial judge's statements and Applicant is entitled to a resentencing hearing before the trial court.

II. Counsel failed to request lesser included charge.

Applicant alleges that Trial Counsel was ineffective for failing to request the lesser included charge. A judge is only required to charge a jury on a lesser-included offense if evidence exists that suggests that the lesser, rather than the greater, crime was committed. State v. Gour-

dine, 322 S.C. 396, 398, 472 S.E.2d 241, 242 (1996). There must be evidence that the defendant committed the lesser-included offense to entitle him to a jury charge on the offense. State v. Mathis, 287 S.C. 589, 594, 340 S.E.2d 538, 541 (1986). Upon review of the record, this Court finds that no evidence existed for that a lesser-included crime was committed. Accordingly, this Court does not find counsel was ineffective in that regard. This Court finds that Applicant has failed to meet his burden of proving deficiency and prejudice, and this allegation is denied and dismissed with prejudice.

III. Counsel failed to explain concept of hand of one, hand of all.

Applicant alleges that Trial Counsel was ineffective for failing to explain the concept of hand of one, hand of all to Applicant. Trial Counsel credibly testified he explained the hand of one, hand of all prior to the trial and discussed the evidence and defenses to the case with the Applicant. This Court finds counsel explained the legal concept of hand of one, hand of all to the Applicant prior to trial and was not ineffective as to this allegation. This Court finds that Applicant has failed to meet his burden of proving deficiency and prejudice, and this allegation is denied and dismissed with prejudice.

IV. Counsel failed to object to out-of-state convictions during sentencing.

Applicant alleges and testified that Trial Counsel was ineffective for failing to object to out-of-state convictions during sentencing. Counsel testified he did not see any issues with the out-of-state convictions being mentioned during sentencing. This Court finds counsel's testimony credible. Upon review of the trial transcript and counsel's testimony, this Court finds that counsel was not ineffective for failing to object to the out-of-state convictions presented to the court at sentencing. This Application is denied as to these allegations.

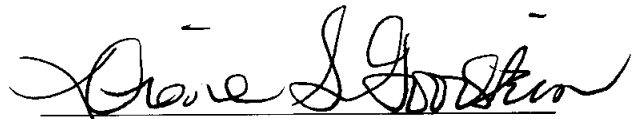
CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has met his burden of proof in showing he received ineffective assistance of counsel and counsel's performance prejudiced him as it relates to counsel's failure to object to the trial court considering Applicant's decision to have a jury trial rather than plead guilty during sentencing. Accordingly, this Application for post-conviction relief is granted as to this allegation and orders that this case be remanded for a resentencing hearing before the trial court. This Court finds Applicant has not met the burden of proof in finding counsel was otherwise ineffective and his remaining allegations are dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. That Respondent's Motion to Reconsider the original "Order Granting PCR" signed August 26, 2016 and filed September 2, 2016 is GRANTED;
2. That the original Order Granting PCR signed August 26, 2016 and filed September 2, 2016 is VACATED;
2. That the Application for Post-Conviction Relief is GRANTED with regard to the trial court considering Applicant's decision to have a trial rather than plead guilty during sentencing;
2. That Applicant receive a resentencing hearing before the trial court of General Sessions for his convictions for armed robbery (2013-GS-02-760) and kidnapping (2013-GS-02-761); and
3. Applicant's remaining allegations are denied and dismissed with prejudice.

AND IT IS SO ORDERED this 22 day of June, 2017.



DIANE S. GOODSTEIN
Presiding Judge
Second Judicial Circuit

State of South Carolina	)	In the Court of General Sessions
	)	Second Judicial Circuit
County of Aiken	)	2013-GS-02-0760
	)	2013-GS-02-0761

State of South Carolina,)	
)	
Plaintiff,)	
)	
vs.	)	Transcript of Record
)	
Michael Tyrone Quarles,)	
)	
Defendant.)	
)	
)	
)	

March 2, 2018
Aiken, South Carolina

B E F O R E:

The Honorable William. P. Keesley, Judge

A P P E A R A N C E S:

J. William Weeks, Deputy Solicitor
Attorney for Plaintiff

C. David Hayes, Esquire
Attorney for Defendant

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings	4
Certificate Page	17

E X H I B I T S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NO. DESCRIPTION I.D. EVID.

No exhibits marked during proceeding.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 10:35 a.m.)

MICHAEL QUARLES, having been first duly sworn, testified and stated as follows:

CLERK OF COURT: He's sworn, Your Honor.

THE COURT: Thank you. All right. What do y'all have?

MR. WEEKS: Your Honor, this is in reference to Michael Tyrone Quarles. He is before you pursuant to and order of the Court -- well, an order of Judge Goodstein, where she granted a PCR filed by Mr. Quarles and remanded it ultimately for a resentencing on two charges. He was tried and convicted of kidnapping and armed robbery out of an incident that occurred on March the 9th of 2013 -- February the 9th -- I'm sorry -- of 2013.

He is represented at this resentencing by David Hayes of the public defender's office. He was, as I mentioned, convicted at trial and given a sentence of 28 years on each count, concurrent. And Judge Goodstein has remanded it back for resentencing, based on what she felt were some inappropriate comments at sentencing by the trial-court judge.

Now, this was a armed robbery and kidnapping, as I indicated, on February the 9th of 2013 in the city of

1 Aiken. The business that was robbed was the Quick Cash in
2 downtown Aiken. The case was investigated by the City of
3 Aiken by the Aiken Department of Public Safety. They
4 responded to a call from that location, Quick Cash, on
5 Richland Avenue West within the city of Aiken.

6 When they arrived there, they found the victim, who
7 advised that them she -- approximately ten minutes before,
8 two men had come in the store and robbed of her. One of
9 them was brandishing what looked like a pistol. The other
10 one, at some point after being -- after she was threatened
11 and told to give them the money, tased her in the back,
12 knocked her to the floor.

13 The investigation began by Captain Sawyer, who's here
14 in the courtroom, as well as Detective Owen, who now works
15 for us. They were able to get witnesses from across the
16 street, who saw a man who ultimately was identified as Mr.
17 Quarles go in the store, stay in there for a couple of
18 minutes, come back out, get in the truck with two other
19 individuals, who then exited the truck dressed in black and
20 walked across the street. And they ultimately went into
21 the Quick Cash.

22 The victim in the case, who is here in court and has
23 been here throughout numerous trials and bond hearings and
24 sentencings, ultimately picked Mr. Quarles out of a
25 photographic lineup and as being the one who had cased the

1 place before the two came in. The City of Aiken did an
2 awesome investigation. There was at least two trials in
3 this matter. One of the codefendants was tried and
4 convicted, and his appeals are still pending. The other
5 codefendant with Mr. Quarles, I'm not sure quite at this
6 moment as to what he received.

7 MR. HAYES: I think it was 13, 35, and 28 for the
8 three different ---

9 MR. WEEKS: Three different ---

10 MR. HAYES: --- defendants.

11 MR. WEEKS: --- defendants. Right. I'm thinking that
12 one of them got 13 and the one that went to trial got 35.
13 And that was Mr. Salley.

14 THE COURT: All right. And does he have a prior
15 criminal -- does he have a prior criminal record?

16 MR. WEEKS: Your Honor, my file indicates that he has
17 a prior burglary but that he participated or was involved
18 in the first-offender act in Georgia. It doesn't indicate
19 a successful completion, but it shows that he entered that
20 on three different counts of burglary. Is that what you
21 understand, Mr. Hayes? Mr. Quarles?

22 (Whereupon, Mr. Hayes and the defendant conferred.)

23 THE COURT: All right. I was provided with a copy of
24 a brief from the appeal that was taken to the Court of
25 Appeals. It states that Carlos Williams and Jamaques

1 Salley -- J-a-m-a-q-u-e-s -- planned to rob the Quick Cash
2 in Aiken. They bought BB guns, a Taser or stun gun. They
3 told the appellant that they had a place they were going to
4 hit. They needed assistance. They would pick up the
5 appellant -- that, of course, would be Mr. Quarles -- on
6 February 19th, 2013. He would go into Quick Cash store to
7 scope it out, find out where the light switches were, how
8 many people worked there.

9 On the morning of the robbery, Mr. Williams was
10 wearing a white hoodie and jeans. He went to Mr. Quarles'
11 house and picked up Mr. Quarles. Mr. Quarles was wearing a
12 black hoodie and jeans. They discussed what Mr. Quarles
13 was supposed to do inside the Quick Cash.

14 They then went to Salley to -- hold on -- went to pick
15 up Mr. -- Mr. Salley. Salley also had on a black hoodie.
16 Mr. Salley brought the BB guns and Taser and put them on
17 the back seat. They removed orange spots from the BB guns
18 to make them look more real.

19 They needed a bag to put the money in. So they
20 stopped at a store and Mr. Salley purchased that bag.
21 There was photographic evidence from the surveillance tape,
22 I assume, of all three men inside of the store to purchase
23 that bag.

24 They then went to the area of the Quick Cash store.
25 They parked in a lot behind a daycare center across the

1 street. They told Mr. Quarles what he was supposed to do.

2 Mr. Quarles switched his sweatshirt with that of Mr.
3 Williams because Mr. Williams' white sweatshirt was more
4 noticeable. Mr. Quarles got out of the truck, walked
5 across the street, went into the Quick Cash.

6 The employee at the Quick Cash described that a light-
7 skinned black male wearing a white hoodie entered the Quick
8 Cash to ask about a loan. She later identified that
9 individual as Mr. Quarles. The man said he didn't have any
10 paperwork with him. He asked the victim to make a list of
11 all the documents necessary to get a loan.

12 They had an encounter about four or five minutes. He
13 took the list and left the store. Thereafter, the victim
14 noticed two black males walking towards the store, both
15 wearing black hoodies, with the look on their face that
16 apparently frightened her.

17 A mailman was coming in, so they -- those two men went
18 on past the store. She told the mailman about her
19 concerns; asked the mailman to find out who these two men
20 were. He gave her the number for the Department of Public
21 Safety.

22 Mr. Quarles went to his -- to the truck, which was
23 parked across the street; told the two that there was one
24 female working in the store. Mr. Salley and Mr. Williams
25 put on glove and proceeded to the Quick Cash. Because of

1 the mailman, they walked past towards a -- towards a motel.

2 After the mailman left, the other two codefendants
3 entered the Quick Cash store, turned off the lights. Mr.
4 Williams pointed the gun at the victim and Mr. Salley
5 demanded the money. They went behind the counter. One of
6 them grabbed the victim by the shoulder of her jacket,
7 later opened the cash drawer, got \$447, put the victim in
8 the corner, and tased her.

9 After the men left the store, she jumped up, locked
10 the door, called 911, hid under the counter. And there's
11 audio recordings of the 911 call.

12 Williams and Salley ran to the truck. Mr. Quarles was
13 inside in the front-passenger seat. They went to another
14 location, Mr. Quarles' neighborhood, and divided up the
15 money. Mr. Quarles got less money because he was merely
16 the lookout man -- or considered to be so. Mr. Salley then
17 gave Mr. Quarles the BB guns, the Taser, and the Roses bag,
18 the Roses being the store that they went into to purchase a
19 bag for the money, presumably for him to dispose of those
20 items.

21 Mr. Williams was apprehended. People at the daycare
22 had given information. Mr. Salley was arrested. They got
23 an anonymous tip in March and -- about Mr. Quarles. He was
24 found hiding in a closet at his house.

25 He gave a statement to the police. He testified at

1 the trial. He claimed he had no idea what was being
2 planned, as far as the robbery. He went to try to obtain a
3 loan is what he testified because he owed Mr. Salley money.

4 On cross-examination he indicated that he did tell the
5 lieutenant that he felt it would be appropriate to charge
6 him with accessory before the fact and accessory after the
7 fact. And he also indicated to the lieutenant that he
8 switched sweatshirts with Mr. Williams because Mr.
9 Williams' white sweatshirt was too recognizable.

10 The jury was out less than 45 minutes; convicted both
11 -- convicted the defendant of both offenses. The trial
12 judge indicated the evidence was overwhelming. I don't --
13 I don't know what it was that the trial judge said that
14 caused the PCR ---

15 MR. HAYES: The ---

16 THE COURT: --- to be granted. But ---

17 MR. HAYES: The reason was is he had indicated about
18 the codefendant testifying against him and entering a plea
19 and his failing to not enter a plea and that he wasn't
20 going to get the benefit of a plea sentence.

21 THE COURT: Okay.

22 MR. HAYES: And it was not objected to at the time.

23 THE COURT: All right. I understand. And thank you.
24 Anything else?

25 MR. WEEKS: Your Honor, I've spoken at length with the

1 victim in the case. As I indicated, she's been here a
2 large part of her life through the trials in the case and
3 the various court hearings.

4 She tells me -- I didn't try this case. I was, of
5 course, here in the solicitor's office when it was tried
6 and was aware of it. This robbery affected her
7 substantially. As you have heard on numerous occasions,
8 I'm sure, that being confronted with a gun, traumatized,
9 and -- and actually tased left her in a really bad state.
10 It affected her personal life, her marriage, for some time.

11 She has done a remarkable job of getting her life back
12 together. And she is, by all accounts, doing great. But
13 she feels like Mr. Quarles had plenty of time to change his
14 mind, to back out of this deal, and, going to trial, showed
15 no remorse. And she just asks that the Court give a just
16 sentence.

17 THE COURT: Okay. Mr. Hayes?

18 MR. HAYES: May it please the Court, Judge. Mr.
19 Quarles is 31 years of age. When this happened, he was 26.
20 He had worked various odd jobs in the restaurant industry,
21 including Amick Farms and Burger King, Gary's Hamburgers,
22 and Wendy's.

23 He went through the 11th grade in high school and
24 ended up dropping out. He has three children, two of which
25 he has child support for. All of them are with their

1 mother right now.

2 Judge, from the age of 5, he grew up in foster care
3 and group homes. He was taken from his mother. She died
4 when he was 8 years old due to AIDS from a rape that
5 happened to her.

6 From 12 to 18, he was in the group homes. At 18 years
7 of age, he reconnected or connected with his father, who he
8 did not know until at that time and tried to move in with
9 him and lived there for a short period of time. They could
10 not get along.

11 He was aware of a cousin and moved to Aiken at that
12 time and, off and on, lived with her. Since then, he has
13 found his three sisters, of which he is the oldest ---

14 (Whereupon, Mr. Hayes and the defendant conferred.)

15 MR. HAYES: --- two -- two sisters and one brother --
16 I'm sorry -- three siblings. Judge, he tells me has
17 contact with one of them, but the other ones do not
18 remember him; that he was the one taking care of them when
19 they were younger.

20 At a later date in time, Judge, he met Mr. Jacques
21 [sic] Salley. They hit it off and became friends. And he
22 ended up moving in with Mr. Quarles. Mr. Quarles, at that
23 time, was living in Graniteville with his girlfriend.

24 And finances were extremely tight, and he and her
25 decided to get the car fixed and lost the trailer that they

1 were living in. So they ended up moving into a different
2 trailer that was basically uninhabitable for a young child,
3 and they were expecting a child. And she ended up leaving.

4 And Mr. Salley ended up moving in with Mr. Quarles
5 because he was working in Graniteville and it made it
6 easier for him in transportation going to and from work.

7 THE COURT: And this was Salley or was ---

8 MR. HAYES: Mr. Salley -- I'm sorry ---

9 THE COURT: Okay.

10 MR. HAYES: --- moved in with Mr. Quarles.

11 Judge, in talking with Mr. Quarles -- and I remember
12 at their original trial, I watched it -- the only family
13 Mr. Quarles has is Mr. Salley's family. And I had her
14 called -- I don't know if she's present. But -- but she's
15 the only one that's -- has had any interest in Mr. Quarles
16 and what's going on. But she's the only family I've been
17 able to contact. And that's just because she claims him
18 and he claims her. He has no other family.

19 For a while, he tells me that while he was at SCDC,
20 there was no contact. However, after about two years,
21 they've started having contact again and she does put a
22 little bit of money on his books.

23 Judge, there was three -- as you heard and read in the
24 brief, there was three codefendants: Carlos Williams,
25 Jarques [sic] Salley, and Mr. Quarles. Mr. Williams, from

1 what I'm being told, is the one that formed the plan as --
2 and was pushing for the solicitation to help and got Mr.
3 Salley involved, who then got Mr. Quarles involved.

4 Mr. Williams, if I remember right, testified in the
5 trial and cooperated and received a sentence of 13 years.
6 Mr. Salley also went to trial and was -- received a
7 sentence of -- I believe it was 30; and then, a 5
8 consecutive. Mr. Quarles received 28, are you aware of.

9 Judge, this is a very similar situation as to the
10 trial that we just had this week with the -- I believe
11 being young, not being mature to the age that they are
12 physically at the time, and not understanding the law and
13 what the "hand of one/hand of all" principle is. And that
14 is actually case law and not codified by statute.

15 Judge, he -- he knows he's going to receive a sentence
16 and then he's going back to prison. And he's okay with
17 that. What he would like to ask the Court to consider is a
18 -- a sentence lesser than the 28 that he received at the
19 trial. He would like to ask the Court to consider the
20 mandatory minimums. However, if you don't feel that it
21 appropriate, we would ask for what the Court believes is
22 just.

23 Judge, I would also ask the Court to find on record
24 that the kidnapping was not sexual. He was arrested on
25 3/9/13. And I ask the Court to backdate the sentencing

1 sheet so that he would be able to receive all the credit
2 that he has accumulated.

3 THE COURT: March the 9th, what year?

4 MR. HAYES: 2013.

5 THE COURT: Okay. Anything else?

6 (Whereupon, Mr. Hayes and the defendant conferred.)

7 MR. HAYES: Judge, while he's been incarcerated, he
8 has done some good things. He's finished his education and
9 got his GED and he's got his paperwork with him. He also
10 did Work Keys and tells me that he would like to try to get
11 more education and, hopefully in the future, will be able
12 to attend college. It -- he tells me that right now at
13 SCDC, there is no college-course classes that he can take.

14 THE COURT: Did he want to say anything?

15 THE DEFENDANT: I'd just like to say that I made a
16 mistake. I was -- I was young, dumb, and -- and just ready
17 to get back to my children.

18 (Off the record briefly.)

19 THE COURT: All right. If there's nothing else, the
20 Court makes a specific finding on the record that this --
21 both of these are felonies; both of these are violent
22 crimes. Therefore, the defendant is barred from
23 transporting, shipping, receiving, or possessing any type
24 of firearm or ammunition.

25 With regard to the kidnapping charge, the Court makes

1 a specific finding on the record -- I've written it on the
2 sentence sheet, both of these things -- this did not
3 involve a sexual assault and the defendant is not required
4 to register as a sex offender.

5 The sentence on each case is that he be committed to
6 the South Carolina Department of Corrections for 25 years.
7 They run concurrently. He's given credit for jail time
8 under Section 24-13-40, to be calculated and applied by the
9 Department of Corrections. He's given credit for time from
10 March the 9th, 2013. Pay your court costs within nine
11 months of being released from prison. You understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Good luck.

14 MR. HAYES: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 (Whereupon, the proceeding was concluded at 11:04
17 a.m.)

18 --- END OF TRANSCRIPT OF RECORD ---

19
20
21
22
23
24
25

CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR AIKEN COUNTY, SOUTH CAROLINA, ON THE 2ND DAY
OF MARCH, 2018.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JULY 14, 2018

COUNTY OF Aiken VS. STATE

Michael Tyrone Quarles

AKA:

Race: Black Sex: M Age: 31

DOB: 1986 SS#

Address: Reid Drive

City, State, Zip: Aiken, SC 29801

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

INDICTMENT/CASE#: 2013GS0200760

A/W#: 2013A0220100174

Date of Offense: 2/19/2013

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET 10 - 30 yr

CONVICTED OF or PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted. Lesser Included Offense. Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Melony Kowin N 5989 SC Bar#

Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. CREDIT TIME FROM 3/9/2013.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like Assessments, Conv. Surcharge, DUI Surcharge, etc.

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk: Patoya Frangin-Hyges
Court Reporter: Maryann Nevers

PTUP days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: PAY COURT COSTS WITHIN 9 MO. OF RELEASE FROM PRISON

FINDING PLACED ON RECORD THAT THIS IS A VIOLENT CRIME AND A FELONY THAT BARS THE DEF. FROM

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees. ANY FIREARM OR AMMUNITION.

Presiding Judge: William P. Kestner

Judge Code: 2050

Sentence Date: MARCH 2, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Aiken
STATE VS. Michael Tyrone Quarles
AKA:
Race: Black Sex: M Age: 31
DOB: -1986 SS#:
Address: Reid Drive
City, State, Zip: Aiken, SC 29801
DL#: SID#:

INDICTMENT/CASE#: 2013GS0200761
A/W#: 2013A0220100206
Date of Offense: 2/19/2013
S.C. Code §: 16-03-0910
CDR Code #: 0095

SENTENCE SHEET 0 -> 30 yr

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Kidnapping / Kidnapping

CONVICTED OF or PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Kevin N. Molony, Kevin N. Molony, Kevin N. Molony, Kevin N. Molony
5989 SC Bar# Defendant Attorney for Defendant 20839 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. CREDIT TIME FROM 3/9/2013 W/P
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Pay COURT COSTS w/in 9 mo.
OR RELEASE FROM PRISON
days/hours Public Service Employment

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 61.6 (Public Def/Probation) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$2.75

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other: THIS WAS NOT A SEX OFFENSE
AND THE DEFENDANT IS NOT REQUIRED
TO REGISTER AS A SEX OFFENDER
IT IS A VIOLENT CRIME AND A FELONY THAT
BARS THE DEF. FROM TRANSPORTING, SHIPPING,
OR POSSESSING
Appointed PD or appointed other counsel, RECEIVING
Proviso 61.6 requires \$500 be paid to Clerk OR FINE
during probation and shall be collected before any other fees.
OR AMMUNITION W/P

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Latoya Francis-Hynes
Court Reporter: Maryann Nevins
SCCA217 (07/2016)

Presiding Judge Judge Code: 2050
Sentence Date: MARCH 2, 2018

FORM 5

2020CP0201113

STATE OF SOUTH CAROLINA)
County of Aiken)
Michael T. Quades)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

v.

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

FILED 10-10 20 2011:54
Robert J. White
C.C.P. & G.S.
Shadell Parks
Deputy Clerk
SP

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee County Correction Institution
Bishopville, SC.
2. Name and location of Court which imposed sentence State of South
Carolina County of Aiken, General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-0200760 Armed Robbery, 2013A0220100174
 - (b) 2013-GS-0200761 Kidnapping 2013A0220100206

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) March 2, 2018 10-30 years Armed Robbery

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓ _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes _____

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. Aiken County Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Denied

ii. _____

iii. _____

(c) the date of each such result:

i. July 4, 2015

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) counsel ineffective for failing to
- (b) advise, PCR Counsel was ineffective
- (c) for failing to request New trial

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) PCR Counsel ineffective for
- (b) failing to request New Trial
- (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? Yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (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. PCR
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. Aiken County, Court of Common
 - ii. Pleas
 - iii. _____
 - iv. _____

(c) the disposition thereof:

- i. Post-Conviction Relief granted
- ii. with regard to Counsel failing
- iii. to object to trial Courts sentence
- iv. and Collequy and otherwise preserve the issue

(d) the date of each such disposition:

- i. August 29, 2016
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. unpublished Opinion NO 2015-up-317
- ii. Heard April 15 - Filed July 1, 2015
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

In the Court of Common Pleas

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Ineffective assistance of Counsel for
- ii. failing to object when the trial Court
- iii. in sentencing, Applicant considered Applicant's

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____ *N/A*
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____ ✓
- (b) your trial, if any? _____ ✓
- (c) your sentencing? _____ ✓
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____ ✓
- (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. *Michael Chesser Esq.*
La Nelle Canty Durant
 - ii. *Lance Boozer*
Kathrine Hudgins
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. *Trial, PCR, Appeal.*
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:

Applicant is requesting a new Trial

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
County of Aiken)

VERIFICATION

I, Michael Quarles, 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.

[Signature]

SWORN to and subscribed before me this 13 day of May 2020.

[Signature] (L.S.)
Notary Public

My Commission Expires: 3/3/2024

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)
)
 Michael Tyrone Quarles, #355492)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE SECOND JUDICIAL CIRCUIT

Case No.: 2020-CP-02-1113

**RETURN, PARTIAL MOTION TO
 DISMISS & MOTION FOR A MORE
 DEFINITE STATEMENT**
 (Counsel Already Appointed)

NOW COMES Respondent, the State of South Carolina, making its return to the application of post-conviction relief filed on June 10, 2020, by Michael Quarles (Applicant), Respondent respectfully offers the following in support of its return:

I. Procedural History

Applicant is presently in the South Carolina Department of Corrections. In May 2013, the Aiken County Grand Jury indicted Applicant for Armed Robbery (2013-GS-02-0760) and Kidnapping (2013-GS-02-0761). Michael Chesser, Esquire, represented Applicant. Assistant Solicitors Nicholas R. McCarley and Kevin Malony of the Second Circuit Solicitor’s Office prosecuted the case.

On May 14, 2013, Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. The jury found Applicant guilty as indicted on all charges. On May 15, 2013, Judge Early sentenced Applicant to twenty-eight years of imprisonment for armed robbery to run concurrently with twenty-eight years of imprisonment for kidnapping.

Applicant filed a timely notice of appeal. In his appeal, Applicant raised the following issue:

FILED October 30 20 20
Robert J. White CMP
 C.C.P. & G.S.
Charlea Griffi-Plouffe
 Deputy Clerk

1. The trial court erred in admitting the 9-1-1 tape from the call the victim made immediately following the robbery because it was emotionally charged, meant to inflame the passions of the jury, and was not needed since it only bolstered the victim's testimony which made the 9-1-1 call prejudicial.

On July 1, 2015, the South Carolina Court of Appeals affirmed Applicant's sentence and convictions in an unpublished opinion. *State v. Michael T. Quarles*, Op. No. 15-UP-317 (S.C. Ct. App. filed July 1, 2015). The Remittitur was issued on July 22, 2015.

First PCR Application - 2015-CP-02-1909

On August 6, 2015, Applicant subsequently filed his first application for post-conviction relief. Applicant alleged he is being held in custody unlawfully for the following reason:

1. Ineffective Assistance of Counsel

The State filed its Return and Motion for a More Definite Statement on November 17, 2015.

On December 3, 2015, counsel filed an amendment on behalf of the Applicant, alleging these additional claims:

1. Ineffective Assistance of Counsel
 - a. "Failing to object when the trial court in sentencing Applicant considered Applicant's decision to have a jury trial. *State v. Hazel*, 317 S.C. 368, 453 S.E.2d 879 (1995)."
 - b. "Failed to request lesser included charge."
 - c. "Failed to explain concept of hand of one, hand of all."
 - d. "Failed to object to out of state convictions during sentencing."

On April 26, 2016, an evidentiary hearing was held before the Honorable Diane S. Goodstein at the Aiken County Courthouse. Applicant was present and represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Office of the Attorney General.

The Court granted Applicant's PCR application by Order filed September 2, 2016, concluding Applicant met his burden of proof "in showing he received ineffective assistance of counsel and counsel's performance prejudiced him as it relates to counsel's failure to object to the

trial court sentence and failing to preserve the issue for appellate review.” On September 8, 2016, Respondent made its Motion to Reconsider pursuant to Rule 59(e). On September 14, 2016, Applicant filed a return to the State’s motion to reconsider.

On May 24, 2017, a hearing was held before Judge Goodstein in regard to the motion to reconsider. Lance S. Boozer again represented Applicant and Julie A. Coleman again represented the State. On June 30, 2017, Judge Goodstein filed an amended order granting resentencing rather than a new trial.

On March 2, 2018, Applicant appeared before the Honorable William P. Keesley for resentencing. C. David Hayes represented Applicant. J. William Weeks represented the State. Judge Keesley resentedenced Applicant to twenty-five years concurrent for each charge.

A timely notice of intent to appeal was served on March 6, 2018. On January 14, 2019, on behalf of Applicant, Appellate Defender Kathrine H. Hudgins filed an *Anders*¹ brief based on the following argument:

“At the re-sentencing hearing following the grant of post-conviction relief based on trial counsel’s failure to object when the original sentencing judge considered the fact that Petitioner exercised his constitutional right to a jury trial in imposing a twenty-eight year sentence, did the new sentencing judge abuse his discretion in imposing a twenty-five year reduced sentence, refusing to consider the fact that the State’s evidence only established Petitioner as the look out and the person who planned the armed robbery and kidnapping, purchased the BB guns and taser and actually went into the store armed and committed the crimes only received a thirteen year sentence?”

The Court submitted the case without oral argument. On February 1, 2020, the South Carolina Court of Appeals affirmed Applicant’s conviction and resentencing in an unpublished opinion. *State v. Michael T. Quarles*, Op. No. 20-UP-080 (S.C. Ct. App. March 25, 2020). The Remittitur was issued on June 10, 2020.

¹ *Anders v. California*, 386 U.S. 738 (1967).

II. Summary of Facts Giving Rise to Convictions

About a week and half prior to February 19, 2013, Applicant's co-defendants, Carlos Williams and Jamaques Salley, concocted a plan to rob the Quick Cash in Aiken. (Tr. p. 74). Williams and Salley went to Wal-Mart three or four days prior to the robbery to purchase BB guns to use in the robbery. (Tr. p. 76). The State produced photographic evidence of the Williams and Salley walking out of Wal-Mart. (Tr. p. 76, lines 6-17). After they acquired the BB guns, Williams and Salley purchased a taser or "stun gun" at the Augusta barn yard flea market. (Tr. p. 77-78). Prior to the robbery, they told Applicant they had a place they were going to "hit" (meaning rob) and they needed his assistance. (Tr. p. 74-75; p. 78-79). According to their plan, they would pick up Applicant in the morning on February 19, 2013, and he would enter the Quick Cash and scope out the place to see where the light switches were and how many people were working. (Tr. p. 79).

On the morning of the robbery, Williams, wearing a white hoodie sweatshirt and jeans, went to Applicant's house and picked him up. (Tr. p. 82-83; p. 85, lines 10-11). Applicant was wearing a black hoodie and jeans. (Tr. p. 83). When Applicant got in Williams' truck they had some discussions about what Applicant was supposed to do once inside the Quick Cash. (Tr. p. 83). The two of them then went to go pick up Salley from his house. (Tr. p. 84). Salley was also wearing a black hoodie. (Tr. p. 84, lines 8-9). After Salley got in the truck he placed the BB guns and the taser on the back seat. (Tr. p. 84, lines 18-20). The "orange spots" had been removed from the BB guns "to make them look real." (Tr. p. 111, line 21 – p. 112, line 2). At that point, they realized they would need a bag in which to put the stolen money, so they stopped by a Roses store and Salley purchased a bag. (Tr. p. 84-85). The State produced photographic evidence of all three men inside the Roses store on February 19, 2013. (Tr. p. 86-87). After leaving Roses, Williams drove to the Quick Cash area and parked in a dirt lot behind a day care center which was

across the street from the Quick Cash. (Tr. p. 88). After parking, the men again reviewed with Applicant what he was supposed to do inside the Quick Cash. (Tr. p. 88). Also, Applicant switched sweatshirts with Williams - who was planning to be one of the actual robbers - because Williams' white sweatshirt was more noticeable than Applicant's black one. (Tr. p. 89, lines 9-24). Applicant then exited the truck, walked across the street, and entered the Quick Cash. (Tr. p. 89).

Around midmorning, the victim, the sole employee in the Quick Cash store, encountered a "very big" light-skinned black male wearing a white hoodie who entered the Quick Cash and inquired about a loan. (Tr. p. 29-30). The victim later identified this man as Applicant. (Tr. p. 41-42). The man did not have any paperwork with him. (Tr. p. 31, lines 2-4). He requested that the victim make a list of all the documents necessary to obtain a loan. (Tr. p. 31). The man stood directly across the counter from the victim while she wrote out the list and talked with him for four to five minutes. (Tr. p. 32). The man accepted the list of documents and then left the store. (Tr. p. 32-33). Shortly thereafter the victim noticed two black males walking towards the store, both wearing black hoodies and "looking very, very hard at the store." (Tr. p. 33-34). However, around that time the mailman arrived. (Tr. p. 33, lines 8-9). The two black males then proceeded down toward the neighboring hotel. (Tr. p. 33, lines 9-11). When the mailman came in the store, the victim mentioned the men to him because she was suspicious of them and she asked the mailman to go and find out where they were. (Tr. p. 34, lines 18-23; p. 48, lines 17-23). He took a few steps outside and saw two black gentlemen in black clothing and hoodies walking down towards the Days Inn. (Tr. p. 48-49). When he came back inside he provided the victim with the phone number for Aiken Public Safety in case she saw the men again and got nervous. (Tr. p. 34-35; p.

49-50). After the mailman left, the victim decided to call public safety, and an audio recording of that call was entered into evidence at trial without objection. (Tr. p. 35-36).

Meanwhile, Applicant returned to the truck after his trip into the Quick Cash and reported that one female was working in the store. (Tr. p. 91). Williams and Salley then donned white latex gloves and proceeded to the Quick Cash. (Tr. p. 92). As they got close to the store, the mailman arrived, so they continued to walk down to the Days Inn where they waited for the mailman to leave. (Tr. p. 95). After the mailman left, the men entered the Quick Cash and turned off the lights, and Williams pointed his gun at the victim and Salley demanded money. (Tr. p. 96). The men came behind the counter and one of them grabbed the victim by the shoulder of her jacket. (Tr. p. 36). They made the victim open the cash drawer, and, after obtaining \$447 from it, they put the victim in the corner. (Tr. p. 36; p. 38, lines 4-5). Williams placed the money in the bag Salley purchased at Roses and Salley deployed the taser on the victim's back. (Tr. p. 36; p. 98-99). The victim felt a pain going throughout her body and she fell to the floor. (Tr. p. 36, lines 22-24). After the men left the store, the victim jumped up, locked the door, and called 911 while hiding under the counter. (Tr. p. 36-37). The audio recording of this 911 call was entered into evidence over Applicant's Rule 403 objection and was played for the jury. (Tr. p. 39, lines 10-19).

Williams and Salley ran from the building and ran to Williams' truck, which was parked nearby with Applicant seated inside in the front passenger seat. (Tr. p. 99-100). After driving back to Applicant's neighborhood, the three men divided up the money, with Applicant receiving \$100 and Williams and Salley receiving between \$150 and \$170 each. (Tr. p. 102-103). Applicant received less than the others because he was "basically the lookout man." (Tr. p. 103, lines 11-

21). Salley then gave Applicant the BB guns, the taser, and the Roses bag, presumably for him to dispose of those items. (Tr. p. 104-105).

Williams was ultimately apprehended by police thanks to the observations of workers at the daycare where he had parked his truck.² (See Tr. p. 54-68; p. 105-106). Although he initially lied and said he had no involvement in the robbery, he eventually confessed. (Tr. p. 105-106; p. 122-24; p. 129). Salley was also arrested and the charges against him were still pending at the time of Applicant's trial. (Tr. p. 130). Applicant was arrested on March 9, 2013, after police received an anonymous tip as to Applicant's location. (Tr. p. 130-31). Applicant was found hiding under some clothes in the back closet of a house. (Tr. p. 131). Applicant was interviewed the next day and he provided a videotaped statement to Lieutenant Savage. (Tr. p. 131-35). The video of Applicant's statement was entered into evidence without objection and was played for the jury. (Tr. p. 135).

Applicant elected to testify at trial and was the sole witness presented by the defense. (See Tr. p. 144-58). At trial, Applicant claimed that he had no idea Williams and Salley were planning to rob the Quick Cash and that he went with them solely for the purpose of trying to obtain a loan so he could pay Salley back some money he owed him. (Tr. p. 146-49). However, he acknowledged on cross-examination that, in his statement to Lieutenant Savage, he indicated he felt it would be appropriate to charge him with accessory before the fact for scoping out the Quick Cash and with accessory after the fact for being the getaway driver. (See Tr. p. 158). Applicant

² A worker at the daycare called Aiken Public Safety to report suspicious activity around the time Williams and Salley entered the Quick Cash, and another worker was able to provide a description of Williams' truck. (Tr. p. 57, lines 6-8; p. 58, lines 4-9; p. 67-68). The audio recording of the daycare worker's phone call to public safety was entered into evidence without objection and played for the jury. (Tr. p. 67). At trial, two of the daycare workers identified Applicant as one of the three men involved in the suspicious activity. (Tr. p. 60; p. 66).

also acknowledged that in his statement to Lieutenant Savage he said he switched sweatshirts with Williams prior to the robbery because Williams' white sweatshirt was too "recognizable." (Tr. p. 154, lines 8-12).

Applicant was convicted of both armed robbery and kidnapping after the jury deliberated for less than forty-seven minutes. (Tr. p. 183, lines 13-20). At sentencing, the trial judge noted that "the evidence was overwhelming against [Applicant]." (Tr. p. 189, lines 11-12).

III. Allegations Raised and Relief Sought in Application

In his *second* and current post-conviction relief application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel³
 - a. "Failing to advise."
2. Ineffective Assistance of PCR Counsel
 - a. "Failing to request new trial."

Applicant requests a new trial as a form of relief.

Attached to this Return and incorporated by reference are the records of the Aiken County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, the trial transcript, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Response to General Allegations of Ineffective Assistance of Counsel

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013).

³ It is unclear whether Applicant is asserting this claim against his original trial counsel or his resentencing counsel. To the extent this allegation is brought against his original trial counsel, Respondent submits such allegations are barred as successive and barred by the statute of limitations, as discussed below. Respondent submits only allegations concerning resentencing counsel can be entertained by the Court.

In a PCR action, an applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland*, 466 U.S. 668; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. 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.

Regardless, Respondent submits Applicant cannot satisfy either requirement of the *Strickland* test for any of his allegations. However, the allegations of ineffective assistance of counsel likely raise questions of fact the record does not conclusively refute. Accordingly,

Respondent respectfully requests an evidentiary hearing to fully resolve this issue⁴. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (“Where an application for post-conviction relief alleges instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.”).

To the extent Applicant is asserting an allegation of ineffective assistance of counsel of his original trial attorney, Respondent submits such an allegation must be dismissed as it is procedurally barred by the statute of limitations and as being successive.

V. Request for Partial Dismissal Based on Statute of Limitations

The State submits that this PCR application should be partially dismissed regarding any claim of ineffective assistance of original trial counsel for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, *et. seq.* Section 17-27-45(a) of the South Carolina Code of Laws reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996).

The Court granted Applicant’s first PCR application (2015-CP-02-1909) in regards only to the issue of resentencing. In this case, Applicant was convicted of the offenses he challenges in this application on May 15, 2013. The South Carolina Court of Appeals affirmed Applicant’s conviction and original sentence, and the Remittitur was sent on July 22, 2015. This Application

⁴ As previously indicated, an evidentiary hearing is only proper as to allegations concerning resentencing counsel, as allegations regarding Applicant’s original trial counsel are procedurally barred.

was filed on June 10, 2020, nearly *four* years after the statutory filing period had expired. Accordingly, any claims regarding original trial counsel are barred by the statute of limitations.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the statute of limitations bars the allegations against original trial counsel, and therefore, such allegations must be dismissed.

VI. Request for Partial Dismissal Based on Successiveness

The State further asserts that the current Application for post-conviction relief should be summarily dismissed as it relates to any allegations of ineffective assistance of original trial counsel because such allegations are successive to the previous applications for post-conviction relief. Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised ... in the previous application.” *Id.* at 450, 409 S.E.2d at 394. If an applicant could

have raised these allegations in a previous application, then an applicant may not raise those grounds in successive applications. *Id.* Applicant bears the burden of showing the allegations could not have been previously raised. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

Therefore, the State submits Applicant's allegations against original trial counsel could have been or were raised his prior PCR application, as he is raising only allegations regarding events that occurred before or during his trial, and therefore, were known to Applicant during the pendency of his prior PCR action; thus, the current application is successive and barred under S.C. Code Ann. § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous applications for post-conviction relief. Applicant has failed to meet the burden imposed upon him, and therefore, any allegations regarding original trial counsel should be summarily dismissed as successive to Applicant's previous PCR application.

VII. Motion for a More Definite Statement

To the extent Applicant's allegation is pertaining to resentencing counsel, Respondent hereby moves for a more definite statement regarding Applicant's allegations. Applicant alleges that he is entitled to post-conviction relief because his previous counsel was ineffective for "failing to advise." Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. Applicant does not clarify which counsel specifically failed to advise Applicant nor does he provide specifics about the allegation. However, as aforementioned, claims against Applicant's trial counsel are procedurally barred and claims against Applicant's form PCR counsel are not valid PCR claims.

The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985)

(emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VIII. Allegation of Ineffective Assistance of PCR Counsel is Barred

Applicant alleges that previous PCR counsel was ineffective for failing to request a new trial. Respondent submits that this Application for Post-Conviction Relief 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. 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; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.

S.C. Code Ann. § 17-27-20 (1976).

An applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. There is no constitutional right to

appointed counsel for collateral review of a conviction. *Pennsylvania v. Finley*, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). Therefore, “the contention that prior PCR counsel was ineffective is not *per se* a ‘sufficient reason’ warranting a successive PCR application under § 17-27-90.” *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991). As a result, the Court should summarily dismiss this allegation of ineffective assistance of PCR counsel.

VII. Assertion of Rights to Notice of Amendments, Experts

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. Rule 11(a), SCRPC. *Pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019) or, alternatively, the State will request a continuance in the matter. *Id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”); *see also* Rules 15(a)-(b), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke

formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VIII. Other Allegations Denied

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

IV. Conclusion

WHEREFORE, having made its return, the State requests an evidentiary hearing be held insofar as Applicant asserts an allegation of ineffective assistance of resentencing counsel, and requests the application be dismissed as it relates to any allegation of ineffective assistance of original trial counsel and PCR counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BRIANNA L. SCHILL
Assistant Attorney General

By: Brianne L. Schill
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Oct. 20th, 2020

STATE OF SOUTH CAROLINA)	
	)	COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	2020-CP-02-1113
)	
)	
)	
)	
MICHAEL T. QUARLES,)	
Applicant,)	
)	
vs.	)	TRANSCRIPT OF RECORD
)	
THE STATE,)	
RESPONDENT.)	
_____)	

May 26, 2022
Via WebEx

B E F O R E:

THE HONORABLE MAITE MURPHY, JUDGE.

A P P E A R A N C E S:

ARTHUR K. AIKEN, ESQ.
Attorney for the Applicant

TOMMY EVANS, JR., ESQ.
Attorney for the Respondent

Proceedings Recorded Via WebEx
Transcribed by Penny M. Johnson

I N D E X

(No witnesses were called.)

E X H I B I T S

(No exhibits were submitted.)

P R O C E E D I N G S

1
2 MR. EVANS: Your Honor, the next case is State v.
3 Michael Quarles. He's currently incarcerated at Lee
4 Correctional.

5 CORRECTIONAL OFFICER: We're here.

6 THE COURT: Good morning. Is Mr. Quarles there with
7 you?

8 CORRECTIONAL OFFICER: Yes, ma'am, I'll turn the camera
9 to him now.

10 THE COURT: Thank you.

11 Good morning, are you Mr. Quarles?

12 THE APPLICANT: Yes, ma'am.

13 THE COURT: Mr. Quarles, we're ready to proceed with
14 your case. You do have the right to have this matter heard
15 in person. By appearing here this morning, you're waiving
16 that right and consenting to video conferencing. Is that
17 how you wish to proceed, sir?

18 THE APPLICANT: Yes, ma'am.

19 THE COURT: Thank you.

20 Counsel, you may proceed.

21 MR. EVANS: Thank you, Your Honor. May it please the
22 Court. This is case of the State vs. Michael Quarles, case
23 number 2020-CP-02-01113. Present before the Court is Tommy
24 Evans, Jr., Assistant Attorney General representing the
25 State. Representing Mr. Quarles is his Defense attorney,

1 Arthur Aiken.

2 A brief summary of the facts of this case, Your Honor.
3 The applicant was convicted by a jury of his peers on May
4 15th, 2013, for the offenses of armed robbery and
5 kidnapping. During the sentencing, the trial court made
6 some statements that led people to believe that he was
7 giving him a punishment due to the fact he decided to
8 exercise his right to a jury trial. The court sentenced him
9 to 28 years at the end of his actual trial.

10 The Applicant filed his initial case for
11 post-conviction relief on August the 6th, 2015. In this
12 application, he alleged that his attorney was ineffective
13 for not objecting to the statements made by trial counsel
14 during his sentencing.

15 A hearing was held before Judge Goodstein. And at that
16 time, Judge Goodstein decided to grant Mr. Quarles
17 post-conviction relief. She found that his attorney was
18 ineffective for not making that objection and she ruled that
19 he should get a new trial.

20 After this decision by Judge Goodstein, the State filed
21 a motion to reconsider due to the fact that her decision on
22 ineffective assistance of counsel was due to statements made
23 during his sentencing and not his actual trial.

24 A second hearing was held in which Judge Goodstein
25 decided to grant the motion for reconsideration and just

1 ordered that Mr. Quarles be resentenced.

2 On March 2nd, 2018, all the parties appeared before
3 Judge Keesley for a resentencing. After hearing the facts
4 and mitigation on this case, Judge Keesley decided to reduce
5 the sentence from 28 to 25 years.

6 Then Applicant filed his second application for
7 post-conviction relief on June the 10th, 2020, where he made
8 accusations that his sentencing attorney, who is present
9 here, was ineffective for not moving for a new trial during
10 the sentencing.

11 We would like to make a motion for dismissal for
12 successive applications and in violation of the fact that
13 under res judicata, the Court cannot make -- Judge Keesley
14 could not make another ruling after Judge Goodstein had
15 already ruled on this case.

16 THE COURT: Counsel, response?

17 MR. AIKEN: It appears to me the argument of the
18 government is that the second PCR is successive. And I
19 agree with that point as to the allegations concerning trial
20 counsel, the counsel that appeared in sentencing. Clearly,
21 those claims related to that could have been made in the
22 original PCR.

23 Now, the only claim that I think survives is the claim
24 concerning ineffective assistance of PCR counsel. The
25 problem we have with that, Your Honor, is there's a South

1 Carolina case, I can't necessarily pronounce the name of the
2 Applicant, but it was A-I-C-E, Aice vs. State, which says
3 you can't bring -- that a PCR alleging ineffective
4 assistance of counsel by PCR counsel is successive, and it
5 can't be brought.

6 But I'm constrained in this circumstance to argue
7 against precedent. And the reason for that is, there is a
8 case decided by the U.S. Supreme called Martinez. And
9 Martinez has just the opposite rule as the Aice rule, 42254
10 habeas corpus petitions from State court. In Martinez, the
11 U.S. Supreme Court said you can bring those claims and they
12 would not be successive.

13 So, basically, I've got an argument based on the facts
14 and law presented to me. I can only make arguments that are
15 supported by the facts and the law. The only argument I
16 have is an argument against the Aice precedent.

17 MR. EVANS: May I respond?

18 THE COURT: Of course.

19 MR. EVANS: If I recall Martinez, the U. S. Supreme
20 Court stated that you can only bring a case that's already
21 been successive on two instances. One, that the client was
22 not represented by counsel, which he was on both his PCR and
23 his resentencing, or if his attorney was ineffective. And
24 to find both his attorneys ineffective, you have to look at
25 Strickland to make a determination whether counsel was

1 ineffective.

2 His PCR counsel couldn't be found ineffective because
3 he won the case. He actually got him a PCR finding by Judge
4 Goodstein and, at first, Judge Goodstein was going to give
5 him a new trial until she made a reconsideration.

6 During the hearing for reconsideration, his PCR counsel
7 did argue that it should stand, however, she denied his
8 arguments. Also, as for his counsel during his sentencing,
9 his counsel could not argue for a new trial because that was
10 already decided. Under res judicata, Judge Keesley had no
11 grounds to give him a new sentencing because it was already
12 decided previously by a circuit court judge. Therefore, we
13 find that Aice does apply to this case. He's not entitled
14 to a successive PCR application. And this case should be
15 dismissed for those reasons, Your Honor.

16 THE COURT: Thank you, Counsel.

17 It appears that this is a successive application
18 arising from the issue that PCR counsel was ineffective,
19 which has already been decided as far as the sentencing is
20 concerned, so the Aice vs. State is a successive and I think
21 that controls.

22 I think -- I'll take a look at the Martinez case just
23 to be sure, but it certainly appears that there's
24 distinguishing factors as far as this case is concerned to
25 differentiate it from the Martinez case. I'll take a look

1 at that, counsel, and then I'll notify you of an opinion.
2 But as of now, it appears the Aice vs. State case does -- is
3 a precedent and that this would be a successive application
4 and that ineffective assistance of the trial of the case is
5 not reason to allow successive application as well as that
6 case states and that's already been decided. So I will
7 again take a look at the Martinez case and I will notify you
8 of an opinion.

9 MR. AIKEN: Thank you, Judge.

10 MR. EVANS: Thank you.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF TRANSCRIBER

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

January 7, 2023

Penny M. Johnson
Penny M. Johnson
Court Reporter III

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)
)
 Michael T. Quarles, #355492,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE SECOND JUDICIAL CIRCUIT
 C/A No.: 2020-CP-02-1113

ORDER OF DISMISSAL

This matter comes before this Court by way of the post-conviction relief application filed on June 10, 2020. In its return, the Respondent requested the application be summarily dismissed as successive. A hearing was held on May 26, 2022. Applicant was present and represented by his court appointed attorney Mr. Arthur Aiken. The State was represented by Assistant Attorney General Tommy Evans, Jr. Once this case was called for a hearing the State moved to dismiss with prejudice due to successive applications.

Following review of the arguments presented by both parties, this Court finds Applicant has failed to establish any sufficient reason why he could not have raised his allegations in his previous application for post-conviction relief, and this application must be considered successive in violation of South Carolina law. This case must be subject to dismissal.

PROCEDURAL HISTORY

In May 2013, the Aiken County Grand Jury indicted Applicant for Armed Robbery (2013-GS-02-0760) and Kidnapping (2013-GS-02-0761). Michael Chesser, Esquire, represented Applicant. Assistant Solicitors Nicholas R. McCarley and Kevin Malony of the Second Circuit Solicitor's Office were the prosecutors. On May 14, 2013, Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. The jury found Applicant guilty on all charges.

FILED 09119 20 22

Robert J. Bute **UMP**
 C.C.P. & G.S.
Charla Griffin Plowden
 Deputy Clerk

Immediately after his conviction the Applicant was sentenced to a twenty-eight (28) year term of imprisonment for both the offenses. The court ordered that these sentences were to run concurrently. Applicant filed a timely notice of appeal. In his appeal, Applicant raised the following issue:

1. The trial court erred in admitting the 9-1-1 tape from the call the victim made immediately following the robbery because it was emotionally charged, meant to inflame the passions of the jury, and was not needed since it only bolstered the victim's testimony which made the 9-1-1 call prejudicial.

On July 1, 2015, the South Carolina Court of Appeals affirmed Applicant's sentence and convictions in an unpublished opinion. *State v. Michael T. Quarles*, Op. No. 15-UP-317 (S.C. Ct. App. Filed July 1, 2015). The Remittitur was issued on July 22, 2015.

First PCR Application: 2015-CP-02-1909

On August 6, 2015, Applicant subsequently filed his first application for post-conviction relief. Applicant alleged he is being held in custody unlawfully for the following reason:

1. Ineffective Assistance of Counsel

The State filed its Return and Motion for a More Definite Statement on November 17, 2015.

On December 3, 2015, counsel filed an amendment on behalf of the Applicant, alleging these additional claims:

1. Ineffective Assistance of Counsel
 - a. "Failing to object when the trial court in sentencing Applicant considered Applicant's decision to have a jury trial. *State v. Hazel*, 317 S.C. 368, 453 S.E.2d 879 (1995)."
 - b. "Failed to request lesser included charge."
 - c. "Failed to explain concept of hand of one, hand of all."
 - d. "Failed to object to out of state convictions during sentencing."

On April 26, 2016, an evidentiary hearing was held before the Honorable Diane S. Goodstein.

Present was the Applicant represented by his appointed counsel Lance S. Boozer. Respondent was

represented by Assistant Attorney General Julie A. Coleman of the South Carolina Office of the Attorney General. By order dated September 2, 2016, the Honorable Diane S. Goodstein granted the application concluding that Applicant met his burden of proof “in showing he received ineffective assistance of counsel and counsel’s performance prejudiced him as it relates to counsel’s failure to object to the trial court sentence and failing to preserve the issue for appellate review.” On September 8, 2016, Respondent made its Motion to Reconsider pursuant to Rule 59(e). On September 14, 2016, Applicant filed a return to the State’s motion to reconsider.

On May 24, 2017, a hearing was held before Judge Goodstein regarding the motion to reconsider. Again appearing for the Applicant was his court appointed attorney Lance S. Boozer. Once again appearing for the State was Assistant Attorney General Julie A. Coleman. On June 30, 2017, Judge Goodstein filed an amended order granting resentencing rather than a new trial.

On March 2, 2018, Applicant appeared before the Honorable William P. Keesley for resentencing. C. David Hayes of the Second Circuit Public Defender’s office represented Applicant. Assistant Solicitor J. William Weeks of the Second Circuit Solicitor’s office represented the State. Judge Keesley resentedenced Applicant to a twenty-five (25) year period of incarceration for each offense to be served concurrently.

A timely notice of intent to appeal was served on March 6, 2019. On January 14, 2019, on behalf of Applicant, Appellate Defender Kathrine H. Hudgins filed an *Anders*¹ brief. The Court submitted the case without oral argument. On February 1, 2020, the South Carolina Court of Appeals affirmed Applicant’s conviction and resentencing in an unpublished opinion. *State v. Michael T. Quarles*, Op. No. 20-UP-080 (S.C. Ct. App. March 25, 2020). The Remittitur was issued on June 10, 2020.

¹ *Anders v. California*, 386 U.S. 738 (1967).

Current PCR Application: 2020-CP-02-01113

In his second application for post-conviction relief, filed June 10, 2020, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Failing to advise."
2. Ineffective Assistance of PCR Counsel
 - a. "Failing to request new trial."

Applicant requests a new trial as a form of relief.

The State made its Return and Motion to Dismiss on or about October 20, 2020, requesting that this application be dismissed.

Before this Court are the records of the Aiken County Clerk of Court regarding the Applicant's convictions, Applicant's records from the Department of Corrections, Applicant's current PCR application, and the records from Applicant's previous PCR action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. Successive applications for post-conviction relief are disfavored unless there is a sufficient reason. The South Carolina Code of Laws specifically state:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

S.C. Code Ann. §17-27-90 (2014).

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. *Acie v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” *Id.* at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. *Id.* The Supreme Court also stated, “For these reasons who hold the contention that prior PCR counsel was ineffective is not *per se* ‘sufficient reason’ allowing for a successive PCR application under §17-27-90.” *Id.* at 452, 409 S.E.2d at 395. The Applicant bears the burden of showing that the allegations could not have been raised previously. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant has already raised these grounds for relief in a previous application and the court decided in his favor. No law exist allowing an Applicant to raise the identical allegation in a second application. Therefore, this application is barred as successive.

During the hearing Applicant’s counsel raised the United States Supreme Court decision of *Martinez v. Ryan*, 566 U.S. 1, 132 S.Ct. 1309 (2012). In *Martinez*, the United States Supreme Court decided:

Where under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective.

Martinez, 566 U.S. at 17, 132 S.Ct. at 1320.

However, in *Kelly v. State*, 404 S.C. 365, 745 S.E.2d 377 (2013), the South Carolina Supreme Court decided that the holding in *Martinez* would not provide good cause because it is inapplicable

in state court. *Kelly*, 404 S.C. at 366, 745 S.E.2d at 378.

CONCLUSION

Good cause having been shown, the State's motion to dismiss the application for post-conviction relief should be and is therefore granted, and the application is dismissed with prejudice.


This Court notes Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, his PCR attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal. Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. *Austin v. State*, 305 S.C. 453, 454-55, 409 S.E.2d 395, 396 (1991).

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant is remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 30 day of Aug., 2022.


 MAITE MURPHY
 Circuit Court Judge


 _____, South Carolina

WITNESSES

Aiken Department Of Public Safety

David E Savage

Law Enforcement Case #: 13-21782

DOCKET NO. 2013GS0200760

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

MAY TERM 2013

THE STATE

vs.

MICHAEL TYRONE QUARLES

KNIA

ARREST WARRANT NUMBER

FILED

May 9 2013

2013A0220100174

Leif Hodard
Cheryl S. Underhill
CCCPAUS

ACTION OF GRAND JURY

TRIE BILL

Ronnie M. Hall

Foreperson of Grand Jury

Date: May 9, 2013

VERDICT

CDR #: 0139

Indictment for

ARMED ROBBERY

§ 16-11-0330(A)

Foreperson of Petit Jury

Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
ARMED ROBBERY

§ 16-11-0330(A)

At a Court of General Sessions, convened on May 13, 2013, the Grand Jurors of Aiken County present upon their oath:

That **MICHAEL TYRONE QUARLES**, along with others, did in Aiken County on or about February 19, 2013, while armed with a deadly weapon or while alleging either by action or words that he or another participant in the crime was armed while using a representation of a deadly weapon or an object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a handgun, a feloniously take from the person or presence of [REDACTED] by means of force or intimidation goods or monies of Quick Cash, such goods or monies being described as follows: Four Hundred Forty Seven and NO/100 (\$447.00) dollars, all in violation of §16-11-330, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken Department Of Public Safety

David E Savage

Law Enforcement Case #: 13-21782

DOCKET NO. 2013GS0200761

The State of South Carolina

County of Aiken

KNM

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

MAY TERM 2013

FILED
2013A0220100206

M. ... 7 12 2013
S. ...

Cheryl ...
Deputy Clerk

THE STATE
vs.

MICHAEL TYRONE QUARLES

ACTION OF GRAND JURY

TRUE BILL

Bonnie M. Hall

Foreperson of Grand Jury

Date: May 9, 2013

VERDICT

CDR #: 0095

Indictment for

KIDNAPPING

§ 16-03-0910

Foreperson of Petit Jury

Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
KIDNAPPING

§ 16-03-0910

At a Court of General Sessions, convened on May 13, 2013, the Grand Jurors of Aiken County present upon their oath:

That **MICHAEL TYRONE QUARLES**, along with others, did in Aiken County on or about February 19, 2013, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away [REDACTED] without authority of law, all in violation of §16-3-910 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF Aiken)
 STATE VS.)
 Michael Tyrone Quarles)
 AKA:)
 Race: Sex: M Age: 26)
 1986 SS#:)
 Address: Reid Drive)
 City, State, Zip: Aiken, SC 29801)
 DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS0200760
 A/W#: 2013A0220100174
 Date of Offense: 2/19/2013
 S.C. Code §: 16-11-0330(A)
 CDR Code #: 0139

SENTENCE SHEET 10-30 years

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Kevin Molony 80679 Defendant M. Chesser 1212 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 28 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vchicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

_____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E begining _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Ann Sanders
 Court Reporter: Lisa Waverport
 SCCA217 (03/2011)

Presiding Judge M. Chesser
 Judge Code: 0236
 Sentence Date: May 15, 2013

COUNTY OF Aiken
 STATE VS.
Michael Tyrone Quarles
 AKA:
 Race: _____ Sex: M Age: 26
 [REDACTED] 1986 [REDACTED]
 Address: Reid Drive
 City, State, Zip: Aiken, SC 29801
 DL#: _____ SID#: _____

INDICTMENT/CASE#: 2013GS0200761
 A/W#: 2013A0220100206
 Date of Offense: 2/19/2013
 S.C. Code § : 16-03-0910
 CDR Code #: 0095

SENTENCE SHEET 0-30 years

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Kidnapping / Kidnapping

CONVICTED OF or PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] 80679 Defendant [Signature] 1212 Attorney for Defendant
Molony, Kevin N SC Bar# m chesser SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 28 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 13-65-02-760
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL:		\$ 133.90

_____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____
 Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk [Signature]
 Court Reporter: [Signature]
 SCCA217 (03/2011)

Presiding Judge [Signature]
 Judge Code: 0136
 Sentence Date: May 15, 2013