

Volume I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

D. Garrison Hill, Circuit Court Judge

RECEIVED

JUL 17 2013

S.C. Supreme Court

DONNIE NELSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213233

APPENDIX

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2 COUNTY OF GREENVILLE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE) TRANSCRIPT OF RECORD
5 - vs -) 2005-GS-23-4133
6 DONNIE NELSON,) 2005-GS-23-4134
7 Defendant.) 2005-GS-23-4135
8) 2005-GS-23-4136
9) 2005-GS-23-4137
10) JANUARY 17, 2006
11) Greenville, South Carolina

12 B E F O R E:
13 THE HONORABLE G. EDWARD WELMAKER, JUDGE. ; and a jury.

14 VOLUME I

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1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF GENERAL SESSIONS
3 COUNTY OF GREENVILLE)

4 THE STATE) TRANSCRIPT OF RECORD
5) 2005-GS-23-1197
6 -vs-) 2005-GS-23-1198
7) 2005-GS-23-1199
8 LAWRENCE WALLER,) 2005-GS-23-1200
9) 2005-GS-23-1211
10 Defendant.) JANUARY 17, 2006
11 Greenville, South Carolina

12 B E F O R E:

13 THE HONORABLE G. EDWARD WELMAKER, JUDGE. ; and a jury.
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1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF GENERAL SESSIONS
3 COUNTY OF GREENVILLE)
4

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16 B E F O R E:

17 THE HONORABLE G. EDWARD WELMAKER, JUDGE. ; and a jury.
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1 (Proceedings, January 17, 2006)

2 THE COURT: All right. Ladies and gentlemen, I
3 understand that we are going to be ready to start the trial
4 of the State versus Mr. Clovis, Mr. Nelson and Mr. Waller,
5 is that correct?

6 MR. MOYER: Yes, Your Honor.

7 MR. GIBSON: Yes, sir.

8 MS. MANIGAULT: Yes, Your Honor.

9 MR. FARNSWORTH: Yes, Your Honor.

10 THE COURT: And Mr. Farnsworth, which defendant do
11 you represent?

12 MR. FARNSWORTH: Mr. Clovis, Your Honor.

13 THE COURT: Ms. Manigault?

14 MS. MANIGAULT: Your Honor, I represent Donnie
15 Nelson.

16 THE COURT: Mr. Gibson, I guess you represent Mr.
17 Waller?

18 MR. GIBSON: Yes, sir.

19 THE COURT: All right. Is there any things that
20 we need to take up preliminarily before we select a jury?

21 MR. MOYER: The only thing I know of, Your Honor,
22 I would ask that -- I have passed up a witness list. I
23 would ask that defendants would be required as well to give
24 you a witness list, assuming they have any witnesses or
25 intend to have any witnesses.

1 MR. GIBSON: May I have just a moment to prepare
2 one, Your Honor?

3 THE COURT: Yes, sir.

4 MR. GIBSON: Thank you.

5 (Off the record)

6 (Back on the record)

7 THE COURT: Let me verify that what I understand
8 to be the indictments and the charges here. They are the
9 same on all three individuals, I believe. One is for
10 conspiracy between the various defendants and a Jarvis
11 Clement.

12 An indictment for armed robbery on November the
13 6th, 2004. That's with the victim being Grady Blassingame,
14 and another victim being Willie Gambrell, another victim
15 being Donald Smith. All of those involving the possession
16 of a weapon during the commission of the armed robbery.

17 And then a count of kidnapping, either -- and/or
18 Mr. Blassingame, Mr. Gambrell, Mr. Smith, also with the use
19 of a weapon, on or about the 6th of November.

20 I understand that there have been some amendments
21 to the indictments. I want to make sure that I have the
22 right indictments on each one. Is that what the State's
23 proceeding on?

24 MR. MOYER: Yes, sir, Your Honor.

25 THE COURT: All right. I believe we have 47

1 jurors available. I believe that if we try, we can get all
2 of them in this courtroom to select the jury.

3 As I understand, it would be 20 strikes on the
4 part of the defendants, ten strikes on the part of the
5 State. Is there any question about that?

6 MR. MOYER: That's my understanding, Your Honor.

7 THE COURT: Have the defendants decided how they
8 want to exercise their strikes? Is one person going to
9 strike for all three, or do you want to take a moment to
10 decide that?

11 MR. GIBSON: Yes, sir, Your Honor, please. Thank
12 you.

13 (Off the record)

14 (Back on the record)

15 MR. GIBSON: Your Honor, we did have one motion
16 that we would like to address.

17 THE COURT: All right.

18 MR. GIBSON: Thank you.

19 THE COURT: Just a minute. Bobby, if you would,
20 hold the jury as they come up. Okay, or if they hadn't
21 called them yet, we can hold them just a minute.

22 Yes, sir, Mr. Gibson.

23 MR. GIBSON: There is a -- there is a statement in
24 particular that my client sent to Mr. Moyer. It's actually
25 a letter where he basically told what happened in this case

1 in an effort to try to resolve the matter and get some kind
2 of deal in place.

3 It's my -- it's my belief that that statement
4 should be excluded under the settlement negotiation rule.
5 And Mr. Moyer has a copy of the statement, if you take a
6 look at it, but clearly within that statement my client
7 attempts to try to work out some kind of a deal for himself,
8 and it would constitute a settlement negotiation on those
9 grounds.

10 THE COURT: Mr. Moyer?

11 MR. MOYER: If it please the court, my
12 understanding to that would be I don't have any intention at
13 this time of using this letter during my case in chief. If
14 I do plan to use it, it would most likely be during the
15 defendant, on cross-examination of the defendant. Should I
16 change my mind on that issue at any point, I'll certainly
17 give the court, you know, plenty of notice.

18 However, as far as -- I don't see any reason why
19 it should be excluded. I mean, it's the letter by the
20 defendant in which he sort of states out an explanation as
21 to what he claims to have happened on the incident date.

22 I would certainly not engage in any kind of plea
23 negotiations with the defendant. I didn't ask for any sort
24 of response or correspondence from him and this just came
25 out of the blue, a letter from the defendant. So I don't --

1 I don't see how -- I don't know of any type of privilege or
2 exclusion that would keep this out.

3 MR. GIBSON: Your Honor, the fact that he wasn't
4 looking for it or asking for it does not change the fact
5 that it was a settlement negotiation. I mean, if this a
6 civil case and I sent a letter to opposing counsel and, you
7 know, whether he was asking or looking for it or not, if it
8 was a settlement negotiation letter, it would be excluded.

9 If you will take a look at the letter, in
10 particularly at the bottom of it, he attempts to, you know,
11 work out something where a probationary sentence or some
12 kind of sentence involved. If you look at the letter, Your
13 Honor, you will see it's clearly a settlement negotiation,
14 and, therefore, should be excluded under the rule, which
15 applies to both criminal and civil trials.

16 THE COURT: When was the letter written?

17 MR. MOYER: The letter was written on May the 8th
18 of 2005.

19 Your Honor, I think just because somebody attaches
20 a statement at the end of a letter that, by the way, if you
21 believe what I'm saying and want to use me, you know, I
22 would like to get such and such a sentence. I wasn't
23 engaging in any negotiations with the defendant. I was
24 certainly dealing with his agent, Mr. Gibson, on any plea
25 negotiations, which there really wasn't a whole lot of this.

1 Just came on the defendant's own behalf. He just sent a
2 letter to us. And I think that it certainly could be
3 possible that he will have inconsistencies with his
4 testimony, that sort of thing, that would make that letter
5 very relevant.

6 THE COURT: Yes, sir.

7 MR. GIBSON: And again in reply, Your Honor, I was
8 the lawyer at the time. I'm not saying it wasn't a well
9 advised attempt on his part, but clearly he sent him the
10 letter in order to try to work something out on his case.
11 Now, there is no reason why out of the blue he would have
12 sent Mr. Moyer that type of letter, unless he was trying to
13 get some type of deal worked out.

14 Again, Your Honor, the rules explicitly apply to
15 both civil and criminal trials. The fact that the letter
16 came from my client as opposed to me does not change the
17 fact that it was an attempt to resolve this matter as does
18 not change the fact that it should be excluded under that
19 rule.

20 THE COURT: All right. Since it's not going to be
21 brought up on the case in chief, we will assume we won't
22 have this issue. If it faces us, if it does, we will
23 address it at the time, but I'll do a little research into
24 that.

25 MR. GIBSON: Thank you, Your Honor.

1 THE COURT: Anything else that we need to talk
2 about?

3 MR. GIBSON: Your Honor, we would move that any
4 and all witnesses be sequestered during the trial, Your
5 Honor.

6 MR. MOYER: I would ask that the defense give
7 their reasons or grounds for wanting the sequestration
8 order.

9 MR. GIBSON: Your Honor, our reason is that
10 clearly the testimony of one witness may be determined or
11 affected by the testimony of another. What we are here to
12 find is what these guys know in and of themselves, and they
13 should not be allowed the opportunity to sit there and
14 listen and change their story based upon what somebody else
15 testifies to. Those are our reasons.

16 MR. MOYER: Well, if I could respond, I'm not sure
17 it's really going to have a practical effect. Most of the
18 witnesses in this case are actually victims, so by statute
19 they have a right to be in the courtroom. So any
20 sequestration would not apply to them under the victims
21 rights law.

22 Secondly, I think the reasons that were stated by
23 counsel have been -- have not been used as a reason for
24 granting sequestration under case precedent.

25 THE COURT: All right. I'll grant the motion as

1 to all but the victims and your chief prosecuting witness
2 that you have can. All the others, if you will just make
3 sure that the word gets to the witnesses that they will be
4 sequestered.

5 MR. MOYER: Okay.

6 MR. GIBSON: Thank you, Your Honor.

7 THE COURT: Anything else?

8 MR. GIBSON: No, sir.

9 THE COURT: Any specific voir dire, other than the
10 usual questions that I'll ask? I didn't get any up here.

11 MS. MANIGAULT: No, sir.

12 THE COURT: I'll give you an opportunity to
13 supplement, if you need to.

14 Let's bring the jury in, or -- I don't know if
15 they are on their way up or not. We will see them when they
16 get here.

17 How are y'all going to do your strikes, for the
18 benefit the clerk here?

19 MR. FARNSWORTH: I think I will do the striking,
20 Your Honor.

21 THE COURT: Okay. After consulting, you will be
22 making the strikes?

23 MR. FARNSWORTH: Yes, sir.

24 (The following take place in the presence of the
25 jury venire panel)

1 THE COURT: Good morning, ladies and gentlemen, my
2 name is Eddie Welmaker. I'm one of the judges in our
3 circuit, and we need your assistance to work with us in this
4 particular matter to help us be the fact finders. You are
5 going to be -- some of you will be selected to serve on this
6 particular jury to serve as judges of the facts, and working
7 with me as the judge of the law, to help resolve this matter
8 that we have before us today.

9 This is a criminal case, Court of General
10 Sessions, and the State of South Carolina has brought a case
11 against these three gentlemen, and we are going to be asking
12 you some questions about any knowledge that you may have
13 about the case.

14 What the State of South Carolina and what each of
15 these young men desire are fair and impartial jurors, jurors
16 who will give the law and the facts that you hear the
17 justice it needs to be to decide the guilt or the innocence
18 of these particular individuals who have been charged with
19 this crime.

20 Each of these young men have entered a plea of not
21 guilty. And by doing that, the burden of proof is on the
22 State of South Carolina to prove their guilt beyond a
23 reasonable doubt, because they, as any individual who is
24 charged with a crime in our state, would be presumed
25 innocent. And they are presumed innocent until the State

1 meets that burden of proof beyond a reasonable doubt to
2 convince a jury impaneled of their guilt.

3 Now, I have before me charging papers that brings
4 these cases before us. They are indictments, which lists
5 the charges to which these young men are facing. I'm going
6 to read you these indictments, and they apply to all three
7 of the individuals here, and after that, to give you a
8 little bit of the facts of the case. These indictments
9 aren't evidence in any way. They are merely the charges
10 that have been brought for which the case will be tried and
11 the State will have the burden of proving the guilt beyond a
12 reasonable doubt.

13 Now, the indictments charge separate offenses.

14 The first indictment that I'll read from charges
15 the offense of conspiracy. And it alleges that Mr. Lawrence
16 Clovis, and also that Mr. Lawrence Waller and Mr. Donnie Ray
17 Nelson, the individuals charged, did, in Greenville County,
18 on or about the 6th of November, in 2004, willfully and
19 unlawfully combine with each other and with Jarvis Clement
20 for the purpose of accomplishing an unlawful object or a
21 lawful object by unlawful means, that being an armed
22 robbery. And this is in violation of the Code of Laws of
23 South Carolina.

24 I also have an indictment that charges a count of
25 armed robbery. The offense again charges Mr. Clovis and Mr.

1 Nelson and Mr. Waller in Greenville County, on or about the
2 6th day of November, in 2004, while armed with a deadly
3 weapon, or while engaging either by action or words being
4 armed while using a representation of a deadly weapon, or
5 any object which a person present during the commission of a
6 robbery would reasonably believe to be a deadly weapon,
7 taken by means of force or intimidation goods or monies that
8 would be described as jewelry or cash money, or both, from a
9 person named -- or in the presence of a person named Grady
10 Blassingame; also from a person named Willie Gambrell, that
11 being a wallet and the contents of a cell phone and cash, or
12 money, or combination of those; and also cash money from the
13 person of Donald Smith; and each of these alleged armed
14 robberies were accomplished on that date with the possession
15 or visibly displaying of a pistol during the commission or
16 attempted commission of a violent crime, being armed
17 robbery. And that also is a crime in South Carolina to have
18 an unlawful -- to perform an armed robbery while having in
19 your possession a weapon during the course of that crime.

20 And, finally, these gentlemen are each charged
21 with on that same date of about November the 6th, 2004, of
22 unlawfully seizing, abducting, or confining by decoy, or
23 carrying away the individuals Grady Blassingame, Willie
24 Gambrell and/or Donald Smith, without authority of law, that
25 being the crime of kidnapping.

1 And the charge, also Count II, says that this
2 crime of kidnapping was committed while possessing or
3 visibly displaying a pistol, being the weapon during the
4 commission of the kidnapping.

5 Now, each of these gentlemen have been charged
6 with these crimes. And as I stated to you earlier, that is
7 merely the papers by which these cases come before us
8 through this indictment. And by entering their plea of not
9 guilty, then the State will now offer to prove their guilt
10 beyond a reasonable doubt.

11 I need to ask you certain questions. You were
12 qualified downstairs by Judge Few to serve as jurors this
13 week, but I need to ask you some questions to determine your
14 eligibility to serve on these particular cases.

15 The first question that I need to ask you, of
16 course, is whether or not you have any knowledge about the
17 facts of these cases. I have just read to you the
18 indictments, the charges that have been brought, but is
19 there any member of the panel who has any independent
20 knowledge about these offenses, either by being a witness to
21 them, or happening upon the scene, or hearing about them in
22 the radio, or television, or newspaper? If so, if that
23 applies to any member of the panel, would you please stand?

24 Thank you. There is no response.

25 Is there any member of the jury panel who is

1 related by blood or marriage to any of the individuals
2 accused in this offense - Donald Raymond Nelson, Lawrence
3 Clovis, or Lawrence Waller? Are there any members of the
4 panel who are related by blood or marriage to any of these
5 three individuals? If so, would you please stand?

6 Thank you. There is no response.

7 Is there any member of the jury panel who has a
8 close business, social or personal relationship with any of
9 these three gentlemen? If so, would you please stand?

10 Thank you. There is no response.

11 Now, ladies and gentlemen, there are potential
12 witnesses who may be called upon to testify in this case.
13 I'm going to read you a list of these potential individuals
14 who may be called upon to testify. If you would, listen
15 carefully as I call these names. And after that I'll need
16 to ask you some questions about these possible witnesses.

17 Potential witnesses would be Grady Blassingame.

18 Donald Smith.

19 Willie Gambrell.

20 Gregory Hawkins.

21 Shamara Smith.

22 Jarvis Clement.

23 Officer McAlister of the Greenville County
24 sheriff's office.

25 J.D. Boyd of the same office.

1 T.L. Patton of the Greenville County sheriff's
2 office.

3 W.C. Bruce, the Greenville police department.

4 Diane Orlando of the Greenville County forensics
5 department.

6 James Armstrong of the Greenville County crime
7 lab.

8 Dawn Edwards of the Greenville County crime lab.

9 Robert Gotts.

10 Sparkle Nelson.

11 Shauna Jones.

12 Johnny Nelson.

13 Bonnie Mac Jones.

14 Charmaine Dixon.

15 Keelon Butler.

16 Is there any member of the jury panel who is
17 related by blood or marriage to any of these potential
18 witnesses? If so, would you please stand?

19 Thank you. There is no response.

20 Is there any member of the jury panel who has a
21 close business, social or personal relationship with any of
22 these potential witnesses? If so, would you please stand?

23 Thank you. There is no response.

24 At this time I'm going to ask the attorneys, if
25 they would, to please stand and introduce themselves to you.

1 Mr. Moyer, if you would first, sir?

2 MR. MOYER: Thank you, Your Honor.

3 May it please the court, my name is Mark Moyer.
4 I'm an assistant solicitor with the Greenville County
5 solicitor's office.

6 Seated at the table with me are Martha Lynch,
7 who's an investigator with my office, and Investigator Tammy
8 Patton, who is an investigator for the Greenville County
9 sheriff's office.

10 THE COURT: Mr. Farnsworth?

11 MR. FARNSWORTH: My name is Dan Farnsworth. I'm a
12 defense attorney here in Greenville. I represent Mr.
13 Clovis, Lawrence Clovis, who is seated here beside me.

14 MS. MANIGAULT: I'm Dorothy Manigault, a defense
15 attorney here in Greenville County. I represent Donnie
16 Nelson.

17 MR. GIBSON: Good morning. I'm Ken Gibson. I'm
18 an attorney here in Greenville and I represent Lawrence
19 Waller.

20 THE COURT: All right. Thank you, ladies and
21 gentlemen.

22 Is there any member of the jury panel who is
23 related by blood or marriage to any of these attorneys? If
24 so, would you please stand?

25 Thank you. There is no response.

1 Is there any member of the jury panel who has a
2 close business, social or personal relationship with any of
3 these attorneys? If so, would you please stand?

4 Thank you. There is no response.

5 Is there any member of the jury panel who has a
6 relative who works in the solicitor's office for the 13th
7 Circuit? If so, would you please stand?

8 Thank you. There is no response.

9 Is there any member of the jury panel who has
10 expressed or formed an opinion about this matter in any way?
11 If so, would you please stand?

12 Thank you. There is no response.

13 Is there any member of the jury panel aware of any
14 bias or prejudice that would prevent you from being a fair
15 and impartial juror in this case? If so, would you please
16 stand?

17 Thank you. There is no response.

18 Is there any member of the jury panel who is a
19 member or a contributor of any group that has as its primary
20 concern the promotion of law enforcement or victim rights,
21 such as MADD, CAVE, any of those organizations? If so,
22 would you please stand?

23 Thank you. There is no response.

24 Ladies and gentlemen, as I stated to you earlier,
25 what the State of South Carolina desires and deserves and

1 what each of these individuals defendants desire and deserve
2 are fair and impartial jurors, jurors who will decide the
3 case based upon the evidence that you hear in the courtroom,
4 the testimony that comes from the witness stand, the law
5 that I give you as the judge, that, and that alone. Is
6 there any member of the jury panel who knows of any reason
7 whatsoever that you believe you could not be a fair and
8 impartial juror and give both the State and these defendants
9 a fair trial in this matter? If so, would you please stand?

10 Thank you. There is no response.

11 Any other questions from the State?

12 MR. MOYER: No, Your Honor.

13 THE COURT: From the defense?

14 MS. MANIGAULT: From defendant Nelson, Your Honor,
15 I missed whether the court asked whether any relatives or
16 friend or members of law enforcement.

17 THE COURT: Okay. Is there any member of the jury
18 panel who has family members who are employed in law
19 enforcement? If so, would you please stand? Members of
20 your family who are employed in law enforcement.

21 Yes, ma'am, would you please state your name?

22 JUROR NUMBER 104: Diane Margadonna.

23 THE COURT: And who is it that you have that's
24 employed in law enforcement?

25 JUROR NUMBER 104: My brother and my

1 sister-in-law.

2 THE COURT: Are they employed locally?

3 JUROR NUMBER 104: No, they are not.

4 THE COURT: All right. The fact that you have
5 these relatives who are employed in law enforcement, would
6 that interfere in any way with your ability to be a fair
7 juror in this case?

8 JUROR NUMBER 104: I don't believe so.

9 THE COURT: Well, do you have any doubt whatsoever
10 that you could be fair to both the State and the defense and
11 decide the case just on what you hear in this courtroom from
12 evidence and law, and nothing else? Do you believe that you
13 could do that?

14 JUROR NUMBER 104: I can't honestly say yes.

15 THE COURT: All right. I'll excuse you from the
16 trial of this case. Thank you, ma'am. If you would, just
17 be seated.

18 Any other questions?

19 MR. FARNSWORTH: Your Honor, I didn't hear whether
20 or not that you asked if any of them or their families have
21 been victims of violent crimes.

22 THE COURT: Thank you, Mr. Farnsworth.

23 Is there any member of the jury panel who you
24 personally or a member of your immediate family has been a
25 victim of a violent crime? If so, would you please stand?

1 All right. Let me start with you, ma'am, and your
2 name, please?

3 JUROR NUMBER 50: Jan Fisher.

4 THE COURT: All right, Ms. Fisher, were you a
5 victim or some member of your family?

6 JUROR NUMBER 50: Yes, I was mugged at gunpoint --
7 I mean at knifepoint.

8 THE COURT: All right. And Ms. Fisher, the fact
9 that this has happened to you in the past, do you believe
10 that you could set that aside and still be a fair juror in
11 this case?

12 JUROR NUMBER 50: I do.

13 THE COURT: You could give the State of South
14 Carolina and these defendants a fair trial?

15 JUROR NUMBER 50: Yes, sir.

16 THE COURT: Thank you, Ms. Fisher. You may be
17 seated.

18 Yes, ma'am, your name, please?

19 JUROR NUMBER 45: Martha Elrod.

20 THE COURT: Ms. Elrod, was it you or a member of
21 your family that was a victim?

22 JUROR NUMBER 45: A member of my family.

23 THE COURT: All right. And what relationship was
24 that member of your family?

25 JUROR NUMBER 45: My son.

1 THE COURT: The fact that your son has been a
2 victim of a violent crime, would that affect your ability to
3 be a fair juror in this case?

4 JUROR NUMBER 45: I don't think so.

5 THE COURT: Do you believe that you could be fair
6 to the State and the defendants and base your decision as a
7 juror just on the facts and the law and nothing else?

8 JUROR NUMBER 45: Yes, sir.

9 THE COURT: Thank you ma'am. You may be seated.
10 Yes, sir, in the front?

11 JUROR NUMBER 47: John Fagan.

12 THE COURT: Yes.

13 JUROR NUMBER 47: Last year I was mugged at
14 knifepoint. I was knocked out and robbed.

15 THE COURT: This having happened to you within the
16 last year, do you believe that would affect your ability to
17 be a fair juror?

18 JUROR NUMBER 47: I don't think it will affect it.

19 THE COURT: The fact that this has happened to
20 you, you could still be fair to the State and to these
21 defendants, each one of them?

22 JUROR NUMBER 47: I believe so.

23 THE COURT: Do you have any doubts whatsoever that
24 you could be fair?

25 JUROR NUMBER 47: I don't think so. I would be

1 fair.

2 THE COURT: You would be fair?

3 JUROR NUMBER 47: Yes, I would be fair.

4 THE COURT: If you have any hesitancy at all, I'll
5 be happy to excuse you from this case. I want to make sure
6 that you -- I don't want to put you in a bad position. Do
7 you feel that you could be fair to both the State and these
8 defendants?

9 JUROR NUMBER 47: Yes, I do.

10 THE COURT: Thank you, sir. You may be seated.
11 What was your name, sir?

12 JUROR NUMBER 47: John Fagan.

13 THE COURT: Thank you, again.

14 Yes, sir.

15 JUROR NUMBER 113: Gary Monts. My wife was robbed
16 at gunpoint. That's been quite a few years ago.

17 THE COURT: All right. The fact that you have had
18 your wife a victim of a violent crime, would that affect
19 your ability to be a fair juror?

20 JUROR NUMBER 113: No.

21 THE COURT: You could still decide this case just
22 on the facts and the law that I give you and nothing else?

23 JUROR NUMBER 113: Yes.

24 THE COURT: Thank you, sir. You be may be seated..
25 Yes, ma'am, your name please?

1 JUROR NUMBER 6: Wanda Anderson.

2 THE COURT: Ms. Anderson, has it been you or a
3 member of your name that was a victim of a crime?

4 JUROR NUMBER 6: My nephew was not a victim. He
5 was the perpetrator of the crime.

6 THE COURT: All right. Have you, yourself, ever
7 been a victim of a crime?

8 JUROR NUMBER 6: No.

9 THE COURT: Has any member of your family ever
10 been?

11 JUROR NUMBER 6: No.

12 THE COURT: All right. The fact that you had a
13 nephew who perpetrated a crime, would this affect your
14 ability to be a fair juror?

15 JUROR NUMBER 6: No.

16 THE COURT: You could give the State and the
17 defense a fair trial and decide it on the facts and the law
18 and nothing else?

19 JUROR NUMBER 6: Yes, sir.

20 THE COURT: All right. Thank you, Ms. Anderson.
21 You may be seated.

22 Yes, sir, your name, please?

23 JUROR NUMBER 181: Chris Wendoroth.

24 THE COURT: Excuse me?

25 JUROR NUMBER 181: Chris Wendoroth.

1 THE COURT: Was it you or a member of your family
2 that was a victim?

3 JUROR NUMBER 181: It was a brother-in-law.

4 THE COURT: And how long ago did this happen?

5 JUROR NUMBER 181: About ten years ago. He was
6 shot and paralyzed during an armed robbery.

7 THE COURT: All right. The fact that you had this
8 relative by marriage the victim of these crimes, would that
9 affect your ability to be a fair juror?

10 JUROR NUMBER 181: Yes, it would.

11 THE COURT: All right, sir. I'll excuse you from
12 the trial of this case. Thank you, sir.

13 Your name again, please, sir?

14 JUROR NUMBER 181: Chris Wenderoth.

15 THE COURT: Thank you.

16 Yes, sir, your name, please?

17 JUROR NUMBER 197: John Medlin.

18 THE COURT: Mr. Medlin.

19 JUROR NUMBER 197: My daddy died because of
20 Greenville County --

21 THE COURT: He died because of what?

22 JUROR NUMBER 197: He died from a heart attack
23 because of Greenville County. I don't feel that I could.

24 THE COURT: Do you believe that your father's
25 death would affect your ability to be a fair juror?

1 JUROR NUMBER 197: Yes, sir. I don't believe the
2 cops.

3 THE COURT: Excuse me?

4 JUROR NUMBER 197: I don't believe the cops.

5 THE COURT: You don't?

6 JUROR NUMBER 197: No.

7 THE COURT: All right. So you couldn't believe
8 someone who testified?

9 JUROR NUMBER 197: They are all crooks.

10 THE COURT: All right, sir. I'll excuse you from
11 the trial of this case. Thank you very much, sir. You may
12 be seated.

13 Any other questions?

14 (No response)

15 THE COURT: We will select a jury then.

16 If you would, please, when your name is called, if
17 you would please stand and the clerk will then take it from
18 there.

19 (Whereupon, the jury panel was impaneled)

20 THE COURT: Any legal matters we need to discuss,
21 as far as selection of the jury in this case?

22 MR. MOYER: None from the State, Your Honor.

23 MR. FARNSWORTH: No, Your Honor.

24 MS. MANIGAULT: None from defendant Nelson.

25 MR. GIBSON: No, Your Honor.

1 THE COURT: None from any of defendant.

2 Ladies and gentlemen, let me address you first of
3 all. Those of you who were not selected for the trial of
4 this case, I'm going to dismiss you from this courtroom at
5 this time, but you need to go back downstairs to the
6 assembly room. They will have instructions for you then as
7 to whether you need to stay for another jury selection today
8 or whether you can call back later, but they will give you
9 instructions, particularly about your lunch break, but thank
10 you very much. You are now excused to go back to the
11 assembly room.

12 (Whereupon, the jury venire panel left the
13 courtroom)

14 THE COURT: To the ladies and gentlemen who have
15 been selected for trial of this case, we are going to take a
16 lunch break now. I think that you have been sitting a lot
17 today already, but we are going to be working together on
18 this trial and I'll have some comments to make to you about
19 our work together.

20 There is some other matters I need to take care
21 of, and I'll explain some of those matters that may come up
22 to you later as we progress.

23 You have been selected by the State and these
24 defendants to be fair and impartial jurors, and I'm
25 confident that you will fulfill that obligation that you

1 have made to each of them in working with us in this case
2 today.

3 What I want you to do is now to go back and
4 familiarize yourself with the jury room. The bailiff, Mr.
5 Thompson, will show you that, and then he will excuse you
6 for lunch. While you are out for lunch, you may have an
7 opportunity to talk with family members, or meet with them
8 for lunch, or business associates. You may want to get to
9 know your fellow jurors and have lunch with them, but it
10 would be improper for you to talk to anyone about this case
11 during the time that you are out for lunch. In fact, it's
12 improper for you to talk about the case even with your
13 fellow jurors. You have committed to these parties that you
14 are going to decide the case on the evidence, the testimony
15 and the law, and that alone, and it would be improper for
16 you to start discussing the matter, this case, among
17 yourselves even at this time, and certainly not with anyone
18 else.

19 If someone were to approach you about your jury
20 service and want to talk about this case, please explain to
21 those individuals that you are a member of the jury and that
22 you can't talk about it. If anyone were to persist in
23 wanting to share information with you or ask you any
24 questions or in any way discuss this case with you, please
25 excuse yourself from them as quickly as you can and get the

1 name, if it's possible. Report that back to us and we will
2 certainly take care of that matter, take care of it for you.

3 When you come back to your jury room after your
4 lunch, as you sit in your jury box, the two alternates - the
5 last two individuals who were picked - will always occupy
6 those two seats, either of the two seats, but those two
7 seats. The rest of you can sit anywhere that you desire,
8 except for the foreperson. And what I want you to do when
9 you come back from your lunch is select a person that you
10 want to be the foreperson of the jury. That person will
11 occupy the front row seat closest to the witness box here in
12 the front row, and the foreperson will always sit in that
13 seat. The rest of you can sit anywhere that you would like
14 in there, other than the other alternates.

15 Now, what the foreperson's duties would be, it
16 doesn't mean that that person has more votes than anyone
17 else, but it will be the one who would be your presiding
18 officer, so to speak. As the case progresses, there will be
19 times when you might need to communicate with the court
20 while you're in the jury room, a special need that you have,
21 and the foreperson would be the one to write out an inquiry
22 or a special need, give it to the bailiff and then that
23 would be transported to the court. Rather than each of you
24 individually, the foreperson would do that.

25 The foreperson would also be the one -- this might

1 be a case in which documents are presented or other tangible
2 evidence. And if that information is admitted into evidence
3 and given to you, then it would be given to the foreperson
4 first to pass it to the other jurors.

5 Ultimately the foreperson will be the one of you
6 who will facilitate your discussion of the case. Ultimately
7 when all the evidence is in and I have charged you on the
8 law, you will have an opportunity to decide the case, and
9 the foreperson will be the one who will lead you in that
10 discussion, to preside, to facilitate the discussions that
11 you have. So with those duties in mind, then you can select
12 a person that you feel would be the best foreperson for this
13 particular panel when you come back from your lunch.

14 We are going to start the trial back at two
15 o'clock. That gives you a little time to do that and also
16 have your lunch and also gives me an opportunity to take
17 care of some other matters that I need to take care of.

18 Have a good lunch. And, again, don't discuss the
19 case. Yes, ma'am.

20 UNKNOWN JUROR: Excuse me, Your Honor. The lady
21 to me left and I were acquainted before we came here today.
22 We just thought you should know that information.

23 THE COURT: Thank you, ma'am. Hopefully you will
24 be acquainted with other jurors as well. Thank you very
25 much.

1 I'm going to dismiss you at this time to go to
2 your jury room and then to lunch. And if you will be back
3 in time to select a foreperson, and then we will proceed
4 with the trial at two o'clock.

5 You are dismissed at this time.

6 (The following takes place outside the presence of
7 the jury panel)

8 THE COURT: All right. We will be at ease until
9 two o'clock. We will start back at that time.

10 If there is any other matters we need to take up
11 beforehand, I'll be here. Just let me know. We will be at
12 ease.

13 (Whereupon, proceedings were recessed)

14 (Photograph marked as State's Exhibit No. 1 for
15 identification)

16 (Photograph marked as State's Exhibit No. 2 for
17 identification)

18 (Photograph marked as State's Exhibit No. 3 for
19 identification)

20 (Photograph marked as State's Exhibit No. 4 for
21 identification)

22 (Photograph marked as State's Exhibit No. 5 for
23 identification)

24 (Photograph marked as State's Exhibit No. 6 for
25 identification)

1 (Photograph marked as State's Exhibit No. 7 for
2 identification)

3 (Photograph marked as State's Exhibit No. 8 for
4 identification)

5 (Photograph marked as State's Exhibit No. 9 for
6 identification)

7 (Whereupon, proceedings were reconvened)

8 THE COURT: For your information, Mr. Cannon has
9 been selected as the foreperson of the jury. The jury wrote
10 the name down.

11 Anything we need to take up before the jury is
12 sworn?

13 MR. MOYER: Just regarding the -- you ordered the
14 witnesses to be sequestered. Make sure it's clear that that
15 goes for defense witnesses, as well as the State's.

16 THE COURT: Right. Is there any defense witnesses
17 here as well for sequestration?

18 MS. MANIGAULT: No.

19 THE COURT: All right. None present.

20 Let's bring the jury in.

21 (The following takes place in the presence of the
22 jury panel)

23 THE COURT: Mr. Foreman, ladies and gentlemen, at
24 this time I'm going to ask the clerk to administer your oath
25 to you. If you would please stand.

1 THE CLERK: Raise your right hands, please. The
2 appropriate response after the oath is I will.

3 You shall well and truly try the case of
4 2005-GS-4137, State versus Donnie Raymond Nelson, indicted
5 for conspiracy.

6 2005-GS-23-4136, indicted for armed robbery and
7 position of a weapon during the commission of or the attempt
8 to commit a violent crime.

9 2005-4134, indicted for armed robbery and
10 possession of a weapon during the commission of or the
11 attempt to commit a violent crime.

12 2005-4135, indicted for armed robbery and
13 possession of a weapon during the commission of or the
14 attempt to commit a violent crime.

15 And 2005-4133, indicted for kidnapping and
16 possession of a weapon during the commission of or the
17 attempt to commit a violent crime.

18 2005-GS-23-1211, the State versus Lawrence Ray
19 Waller, indicted for conspiracy.

20 2005-1197, indicted for armed robbery and
21 possession of a weapon during the commission of or the
22 attempt to commit a violent crime.

23 2005-1200, indicted for armed robbery and the
24 possession of a weapon during the commission of or the
25 attempt to commit a violent crime.

1 And 2005-1199, indicted for armed robbery and
2 possession of a weapon during the commission of or the
3 attempt to commit a violent crime.

4 And 2005-1198, indicted for kidnapping and
5 possession of a weapon during the commission of or the
6 attempt to commit a violent crime.

7 Case number 2005-1248, Lawrence Clovis indicted
8 for conspiracy.

9 2005-2368, indicted for armed robbery and
10 possession of a weapon during the commission of or the
11 attempt to commit a violent crime.

12 2005-1246, armed robbery and possession of a
13 weapon during the commission of or the attempt to commit a
14 violent crime.

15 And 2005-1245, indicted for kidnapping and
16 possession of a weapon during the commission of or the
17 attempt to commit a violent crime.

18 2005-1247, indicted for armed robbery and
19 possession of a weapon during the commission of or the
20 attempt to commit a violent crime.

21 And true verdicts render according to the laws and
22 the evidence, so help you God.

23 JURY PANEL: I will.

24 THE CLERK: Thank you. Be seated.

25 THE COURT: Mr. Foreman, ladies and gentlemen, let

1 me make a few preliminary remarks to you. This is in no way
2 to be considered a charge on the law. I will instruct you
3 what the law is when the case is concluded, but let me take
4 this opportunity to again thank you for your willingness to
5 serve and for the commitment that you have made to both
6 parties - to the State of South Carolina and to each of
7 these defendants individually - to, according to your oath,
8 to well and truly try the case.

9 You are going to be judges. You are going to be
10 the judges of the facts in this case, to determine what the
11 facts are. I'm honored to have an opportunity to work with
12 you, because, you see, while I'm called the judge and wear
13 the black robe, you are just as much going to be judges as I
14 am in this case. We are going to be working, complimenting
15 each other, because I'm going to tell you what the law is
16 and you are going to decide what the facts are.

17 You may have never served on a jury before and you
18 may have some apprehension about taking on this task,
19 particularly since I have just told you that you are going
20 to be a judge, and you may be saying to yourself well,
21 goodness, I don't have any experience, I have never taken a
22 law course, didn't have law ed in junior high or high
23 school, what am I doing here from a Tuesday morning, getting
24 summonsed to be here and all the sudden I'm a judge. Let me
25 assure you you are well qualified to be a judge of the

1 facts, because you are bringing into this courtroom your
2 every-day experiences and common sense that you have been
3 blessed with, and that will do you well in making this
4 determination that you will ultimately have to make as to
5 each of these individuals.

6 As I have stated to you, this is a case brought by
7 the State of South Carolina against each of these young men,
8 and they have entered their plea of not guilty to each of
9 the charges. The clerk has read you the indictments, and I
10 earlier read you the indictments, and those are the charging
11 papers by which we come to this court. And that presumption
12 of innocence will stay with them throughout the course of
13 this trial, until the State has convinced you beyond a
14 reasonable doubt of their guilt individually and on each of
15 the charges to which they are here to answer.

16 Now, ladies and gentlemen, while I'm well aware of
17 the sacrifice that you have to be here, we will do
18 everything that we can to accommodate you during the course
19 of the trial. Your job as the judge of the facts is to be a
20 good listener. You are going to hear facts from perhaps
21 exhibits and the testimony that's presented here. Your
22 comfort level is vitally important, because if you aren't
23 comfortable, then obviously you are not going to be able to
24 listen well. We will take periodic breaks. We will try to
25 take a break every hour, hour and 15 minutes, depending upon

1 how the testimony is going and the trial is progressing, but
2 if any time you need to take a break before we have stopped,
3 please let us know, or let the bailiffs know, and we will
4 take a break when you need it. I know oftentimes,
5 particularly after the lunch hour and the courtroom may get
6 a little warm and there will be a tendency maybe to lose
7 some concentration and let your minds wander, but let me
8 instruct you that part of my job here is to make sure that
9 you do stay alert and conscious of what's going on here and
10 listen attentively, because that's what you have committed
11 to these parties to do. And I'll depend upon you as fellow
12 jurors, if things get a little quite next door to you and
13 you haven't heard any movement, then you will nudge your
14 fellow juror to make sure that they are paying attention as
15 well, because that's what you are committed to do, to
16 listen.

17 It's a time-honored way that we have to judge
18 credibility of witnesses and decide the facts based upon
19 what you hear. While note taking would be allowed and you
20 will have the opportunity to take notes, when you take your
21 notes, of course, when you go back to your jury room during
22 breaks, you will need to leave the notes with the bailiff.
23 Note taking sometimes can distract you also. Let me warn
24 you about that. Sometimes by taking notes you miss some
25 important things that may be taking place in the courtroom -

1 the demeanor of the witnesses, the body language, other
2 things that may be taking place. And so I urge you as you
3 take your notes that you understand those are not evidence.
4 Those are just your recollections of matters that took
5 place. And those of you who didn't take notes may recollect
6 matters better than those who did, but if you wish to take
7 notes, you will be allowed to, but understand that those
8 notes will remain with the bailiff when you are not here in
9 the courtroom.

10 You may have knowledge of trial proceedings based
11 upon a John Grisham novel, or a TV show, or a movie that you
12 have seen. Let me assure you that what takes place here
13 would be a far cry from what those different media give you,
14 because the trial of a case is a deliberative process. The
15 witnesses will be presented. And as you listen, then you
16 will ultimately be able to arrive at the truth. Obviously
17 it doesn't take place in an hour. It doesn't take place in
18 a chapter, but I urge you to listen carefully throughout the
19 entire proceedings so that you will be able to make that
20 decision that's so important.

21 There are several stages of the trial. In a few
22 moments the attorneys are going to make an opening statement
23 to you. Opening statements are not evidence, but I urge you
24 to listen carefully as each of the attorneys, if they choose
25 to address you, that this will give you an opportunity to

1 have a road map of what you can expect to take place during
2 the course of the trial. But while it's not evidence and
3 really the things that the attorneys say are not evidence,
4 even the questions that they ask are not evidence. The
5 answers you that have and the documents or other tangible
6 evidence that's before you will be what you will consider,
7 but it is important that you listen carefully as the lawyers
8 address you.

9 After the opening statements there will be an
10 opportunity for evidence to be presented. And during the
11 course of the testimony, in the course of the exhibits that
12 are presented, there might be times that objections are
13 raised. One of the lawyers may object to something. And
14 part of my job, in addition to preside, is to rule upon
15 those objections and to decide whether or not they should be
16 sustained or overruled. The objections are made because we
17 have rules of evidence to follow. And frequently I can make
18 a ruling here from the bench and we can move on. Sometimes
19 it may require the attorneys to approach me here at the
20 bench and we can work things out. It's not uncommon that
21 you may be excused from the courtroom while we discuss a
22 matter of law that would be taken up outside of your
23 presence. It's not that we are trying to hide things from
24 you deliberately, but we have different roles, you and I.
25 As the judge of the law, it's important that I make the

1 proper rulings on the law. And sometimes when an objection
2 is made or when there is a matter of law that has to be
3 taken up between the lawyers and me, it has to be done out
4 of your presence, because there might be testimony that is
5 talked about that might not be admissible later, or there
6 might be some testimony that may not come in, and we have to
7 work those matters out outside of your presence.

8 An analogy would be that ultimately after all the
9 facts are in and all the evidence is in, you are going to go
10 back in your jury room and deliberate and decide the case on
11 the facts. And it would be improper for me, as a fellow
12 judge, to be back in the room with you deliberating, because
13 I'm the judge of the law. Not the facts. And it's the same
14 process that often takes place here outside of your
15 presence.

16 After all the evidence is in, then there will be
17 an opportunity for the attorneys to make a closing statement
18 to you, to give a recap of what they feel is the importance
19 of the things that have transpired, and then I will instruct
20 on what the law is, the law that's applicable to the case.

21 The final stage, of course, will be when you do
22 your deliberations and make the decision as to what the
23 facts are.

24 You have committed under your oath to be fair and
25 impartial jurors and decide this case on the law and the

1 evidence and render justice to both sides. It makes me
2 proud that you accepted that responsibility, and I look
3 forward to work with you during the course of this trial.

4 I have failed to introduce some of the individuals
5 who will be here in the courtroom with us. You have had an
6 opportunity to introduce -- to meet your bailiffs, I'm sure,
7 Mr. Thompson and Mr. Fuller who will be working with you and
8 assisting you.

9 Ms. Morris, the clerk here, will be assisting me.

10 The individual seated in front of me is Mike
11 Watts. He's the court reporter and he will be taking down
12 everything that's said during the course of the trial to
13 protect the record there.

14 And beside me is Daniel Hughes. He's a recent law
15 school graduate and he will be assisting me during the
16 course of the trial. He's my law clerk and he may be in and
17 out of the courtroom, but he will be taking care of matters
18 that I have to look at during the course of this trial and
19 assisting me with research of any legal matters that I may
20 need to look at.

21 At this time I must ask the attorneys if they have
22 any objections to the preliminary remarks that I have made
23 in order to protect the record. Is there any from the
24 State?

25 MR. MOYER: No, Your Honor.

1 THE COURT: From the defense?

2 MR. FARNSWORTH: No.

3 MS. MANIGAULT: None, Your Honor.

4 MR. GIBSON: No, Your Honor.

5 THE COURT: You may make your opening statement.

6 MR. MOYER: Thank you, Your Honor.

7 May it please the court.

8 Good afternoon, ladies and gentlemen.

9 You know, we know that it's a dangerous world, but
10 there are certain places that we feel that we can be
11 relatively safe, that we can be relatively secure. Our
12 homes. We even have a phrase, our home is our castle,
13 right. How about a public place, like a store, or a
14 restaurant? Well, sure. You would consider that as well.

15 What about a barbershop, ladies and gentlemen? A
16 barbershop on a busy road? Inside that barbershop, with
17 several other men about your age, as it's starting to become
18 dusk and just becoming evening. Well, you would think so,
19 but you are going to learn in this trial, ladies and
20 gentlemen, that that was not the case on November the 6th of
21 2004, at the barbershop run by this gentleman, Mr. Grady
22 Blassingame, a barbershop that Mr. Blassingame ran for about
23 35 years in Greenville. You are going to learn in this
24 trial, ladies and gentlemen, that about six o'clock on that
25 night that Mr. Blassingame and several of his customers for

1 a few terrifying moments were essentially held hostage at
2 gunpoint and that they were robbed. That is what this trial
3 is about.

4 Now, let me step back for just one minute and I'm
5 going to talk to you for just a couple of minutes about the
6 law that's going to apply in this case. It's not the more
7 interesting subject in the world, but I think it would be a
8 good idea to just quickly go over the charges. All the
9 indictments were read to you at the outset of this case and
10 they got kind of wordy and lengthy. Let me just go over
11 each one very quickly so you have an idea of what they are
12 going into the case.

13 The defendants are charged with four different
14 charges. One of those charges is armed robbery, and that's
15 the one that actually probably took about the longest amount
16 of time to actually read off to you on the indictment, but
17 it's really not that complicated of a charge. A robbery --
18 an armed robbery is two things. It is a robbery that is
19 accomplished with a weapon or some representation of a
20 weapon.

21 So what is a robbery? Well, a robbery is a kind
22 of stealing. It is a type of theft. We have many different
23 kinds. We have larceny, which would be if my wallet were on
24 that item right there and I was standing away from it and
25 someone came up and took it, well, that would be larceny.

1 If this were up for sale in a store and it were stolen, it
2 would be shoplifting. But a robbery is when property is
3 taken from your person or in your presence by force or
4 intimidation. That's a robbery.

5 It becomes armed robbery when it's done so through
6 the use of a deadly weapon or some representation of a
7 deadly weapon. It could be a fake pistol. It could be a
8 fake knife. If it's accomplished that way, then it's an
9 armed robbery.

10 Let's go onto another charge. Another charge the
11 defendants are all charged with is possession of a weapon
12 during a violent crime. That again is a very
13 straightforward case. When any violent crime is
14 accomplished and it is done so when the person is armed with
15 a weapon, like a pistol, then that charge is applicable.
16 Violent crimes, you are going learn in this case, include
17 armed robbery and include kidnapping. So if either of those
18 violence crimes - armed robbery or kidnapping - is
19 accomplished with the use of a deadly weapon, then it is
20 that charge.

21 All right. What's the next charge? Kidnapping.
22 Now, this one often has a common misconception. When we
23 think of kidnapping, we think of the guy hiding in the
24 bushes who jumps out, nabs somebody, wraps them up with duct
25 tape, throws them in his trunk, drives them away with that

1 random note. Well, that would be a kidnapping, but in South
2 Carolina the language is very broad. Kidnapping in reality
3 in South Carolina actually covers a broad range of action,
4 including to seize, to confine, to inveigle, which means to
5 decoy or trick, to abduct, or to carry away. So it
6 essentially means to deprive another person of his or her
7 freedom for a period of time, however, brief. That would be
8 kidnapping.

9 The fourth charge, ladies and gentlemen, is
10 conspiracy. Now, a conspiracy is an agreement between
11 several people to commit a crime, commit some unlawful act.
12 And interestingly enough that actual crime that you are
13 conspiring to do doesn't actually have to even be committed.
14 Once that agreement is made by people that they are going to
15 commit a crime, a type of crime, then that criminal offense
16 has been committed. Conspiracy.

17 And, in fact, that agreement does not have to be
18 some sort of formal agreement. They don't have to have it
19 written out or talked about and planned out in great detail.
20 Even a tacit mutual understanding is enough to constitute
21 that agreement.

22 All right. I'm almost finished with this. One
23 more item of law that I wanted to talk to you about is a
24 legal issue. It's not one of the charges, and it is
25 something that concerns situations like is this one when

1 there is more than one person involved. Each participating
2 but performing separate or different types of functions in
3 that criminal wrongdoing. And the legal word for that,
4 ladies and gentlemen, is accomplice liability. That's sort
5 of the technical term. And what that means is this, is that
6 when several people work together to commit a crime, each
7 one is responsible for what the other ones do. And we have
8 a term under the law that we use - the hand of one is the
9 hand of all.

10 And let me give you an example of that. Let's say
11 four people decide they are going to do a burglary, they are
12 going to break into a jewelry store at night. One person is
13 driving the vehicle. He's going to be the getaway driver
14 and he's stays out on the road in the vehicle. Another
15 person stands out on the street and that person is going to
16 be the lookout man. He's going to look up and down and make
17 sure nobody comes. Let's say another person actually rams
18 the door open or throws a cinderblock through the window and
19 affects the entry into the building. And let's say the
20 fourth person goes in there and actually steals the
21 property. Well, each one of those four people is equally
22 responsible for that burglary that took place. And so in a
23 situation like that you don't have to spend a whole lot of
24 time concerning yourselves about trying to figure out, well,
25 which one did this, which one did that. No, they worked

1 together to commit the crime, they are equally responsible.

2 So specifically in this case you don't have to
3 concern yourself, well, which one had the gun, which one
4 actually took the property, which one was out in the vehicle
5 as the getaway driver. If they are working together, they
6 are equally responsible. The hand of one is the hand of
7 all. So the law I think you are going to find is going to
8 be relatively straightforward and relatively easy to
9 understand.

10 The facts in this case, ladies and gentlemen, are
11 also going to be relatively straightforward. It's going to
12 be a short trial, and you are going to learn in this case
13 that in this case there were multiple people involved. And
14 you are going to learn that four different names of these
15 people involved. These three defendants, Donnie Nelson,
16 Lawrence Waller, Lawrence Clovis, and a fourth person by the
17 name of Jarvis Clement, who is going to testify in this
18 case.

19 And you are going to hear, ladies and gentlemen,
20 that on the early evening hours of November the 6th of 2004,
21 how those four guys got into a vehicle that was owned and
22 driven by Lawrence Waller and they drove from his residence,
23 essentially on the Maxeva Lane in Greenville, which is over
24 near the Whitehorse Road, near the Saluda Lake area, I guess
25 Berea area. As they drove all the way sorts of across town

1 towards Anderson Road, where Mr. Blassingame's barbershop
2 was.

3 And you are going to hear, ladies and gentlemen,
4 that Lawrence Waller drove this vehicle, and that the other
5 three men rode along with them. And you are going to hear
6 testimony in this case that when they got over to that
7 neighborhood to where the barbershop was, that they
8 parked -- that Lawrence Waller parked his vehicle a block or
9 so away from the barbershop and he let out two of the men --
10 Lawrence Clovis and Donnie Nelson. The fourth guy, Jarvis
11 Clement, stayed in the vehicle with Lawrence Waller.

12 You are going to hear that those two men in that
13 vehicle drove around the neighborhood for a short time
14 waiting while Clovis and Nelson go to commit the robbery.
15 And you are going to hear, ladies and gentlemen, that they
16 did so, that they burst in that barbershop with masks
17 covering their faces, and that immediately one of them fired
18 a shot into the ceiling, show they mean business. And you
19 are going to hear testimony in this case, ladies and
20 gentlemen, that they begin yelling "this is a robbery. Get
21 on the ground. Get on the floor."

22 And you are going to hear, ladies and gentlemen,
23 that when Mr. Blassingame, a 65 year old Mr. Blassingame
24 does not get down fast enough, that he's pushed to the
25 floor. And you are going to hear testimony that he and

1 another person, the man whose hair he was cutting, are then
2 forced to go to the back of the barbershop. You are going
3 to hear that the men were robbed, Mr. Blassingame and
4 several of the customers, that they were placed on the floor
5 with their heads down, wondering what's going to happen to
6 them. They were robbed of cash, of jewelry, of wallets. A
7 cell phone was taken.

8 And you are going hear that just like that it's
9 over. The men run out and they go back over to that same
10 neighborhood where they were dropped off and they get in the
11 vehicle where Lawrence Waller is waiting and they drive back
12 now to Lawrence Clovis' house, which is very close by, and
13 they split up the property, split up the stolen loot.

14 Now, at the end of this trial I'm going to have a
15 chance to argue to you what the evidence was, what the
16 evidence says. At this time all I ask of you, ladies and
17 gentlemen, is just a couple of things. Just listen closely.
18 Listen closely with an open mind. Use your common sense to
19 evaluate the evidence and the testimony that you hear in
20 this case, and then at the end of this case do justice.
21 Thank you.

22 MR. FARNSWORTH: It if please the court, Your
23 Honor.

24 THE COURT: Mr. Farnsworth.

25 MR. FARNSWORTH: Mr. Foreman and ladies and

1 gentlemen, I have already introduced myself and some of you
2 have been here. My name is Dan Farnsworth and I represent
3 Mr. Lawrence Clovis seated there beside me..

4 Mr. Clovis is 18 year old. He lives in the Berea
5 section of Greenville County. In fact, he was -- I think
6 when he was arrested on this, on these charges, he was 17
7 years old.

8 But as the judge has told you, you are the judges
9 of the facts in this case and he's the judge of the law.
10 And what happens at the end of the trial is you determine
11 what the facts are, taking the law that he's charged you,
12 and try to write a verdict based upon that. So you are not
13 to make up your mind until you hear the law, and, of course,
14 until you are convinced that the State has proved guilt of
15 these defendants beyond a reasonable doubt.

16 Now, we -- in our system, and His Honor has
17 briefly touched on this, every accused person is presumed to
18 be innocent. It's a Constitutional Right that every
19 individual has. And this presumption attaches at the moment
20 a person is arrested, and it remains with them throughout
21 each and every stage of the trial. In fact, it stays with
22 you throughout the case, unless, and until, the State has
23 convinced you of evidence of their guilt beyond a reasonable
24 doubt. So that's a very important law to keep in mind. His
25 Honor will charge you at the end when we get through. As I

1 say, he touched on it briefly.

2 Now, Mr. Moyer has told you that basically what is
3 in these indictments, and as you heard the charges. He's
4 explained what the law is. My client, Lawrence Clovis, has
5 pled not guilty to these charges, every one of the charges,
6 and asked that he be -- that you try him, a jury of his
7 peers, and we have every confidence that you will listen
8 carefully and give us a fair verdict in this case.

9 Mr. Moyer alluded, too, that a person named Jarvis
10 Clement would be testifying in this case for the State.
11 He's one of the ones that was originally charged in this
12 case. I submit to you that the evidence will show that
13 Jarvis Clement is a convicted felon. He was that before he
14 was charged in these cases. He has apparently struck a
15 deal, and I think the evidence will show that he struck a
16 deal with the State, which he would testify for the State.
17 I think the evidence will further show that he had as many
18 as eight armed robberies dismissed in connection with his
19 testimony in this case. So I ask you to listen to all the
20 witnesses, but show the attention that you would to all the
21 other witnesses and Mr. Jarvis as important as any.

22 Now, the trial, Mr. Moyer said, will be short, and
23 it may be short, but any time you have multiple defendants,
24 my experience has been it takes a little longer, of course.
25 You have got four lawyers instead of two and that's usually

1 makes it a little longer but. Anyway, you know, when you
2 were asked if you knew any of the parties, the lawyers, the
3 witnesses, and this type of thing, you all stated that you
4 didn't. So you also have taken an oath that you would be
5 fair and impartial in this case, and I have every confidence
6 that you will. Just remember you have no friends in this
7 case to reward and no enemies to punish. You don't know any
8 of us or any of these people, so I would ask you to listen
9 to all the testimony, listen to the law before you go back
10 and make your findings on this case. And I ask -- the only
11 thing that I ask further would be that you come back with a
12 verdict that is consistent with the evidence in this case,
13 and, of course, a verdict that's fair and impartial and
14 speaks the truth. And I thank you.

15 THE COURT: Ms. Manigault.

16 MS. MANIGAULT: Ladies and gentlemen, again my
17 name is Dorothy Manigault. I represent defendant Donnie
18 Nelson in this case. And as Your Honor has read to you the
19 charges already are the indictments which brings forth of
20 the charges of the court. The reason for a trial, is as
21 attorney Farnsworth had said, my client has entered a not
22 guilty plea to each charge, and it is incumbent upon the
23 State of South Carolina, through the solicitor's office, Mr.
24 Mark Moyer, to present evidence to the jury to the
25 satisfaction of -- to your satisfaction, to the satisfaction

1 of the court, that my client is guilty of the charges beyond
2 a reasonable doubt. The burden of proof is on the State of
3 South Carolina, through the solicitor's office, to prove
4 that my client, Donnie Nelson, did, in fact, do these things
5 that he's charged with in the indictment.

6 Your Honor has told you that these indictments are
7 not evidence. They are simply a means by which these
8 charges come to court.

9 Mr. Moyer mentioned to you several principles of
10 law. I would submit to you that Your Honor is the judge of
11 the law. He will give you the law at the end of this case,
12 after the evidence is in, and you will take the law from
13 Your Honor as he's stated to it. So any suggestion that we
14 make, and we are not trying to misinform you or mislead you,
15 but you take the law as Your Honor has given it to you.

16 The principles of law that I want you to address
17 briefly is presumption of innocence. Presumption of
18 innocence. A person is presumed innocent until proven
19 guilty to the satisfaction of 12 people that unanimously
20 agree to the guilt.

21 There would be no need for a jury trial if, as Mr.
22 Moyer has represented to you, that everything that the
23 witnesses for the State says is, quote, the fact. So
24 evidently there is a dispute, and the dispute is between the
25 State and my client Donnie Nelson.

1 Each defendant has been charged and each distinct
2 defendant has distinct several charges. Each attorney has
3 the distinct separate obligations to represent their client
4 to the best of their ability.

5 Mr. Moyer suggested to you a principle of law in
6 South Carolina that's called the hand of one is the hand of
7 all. However, you still have to weigh the evidence
8 separately for each defendant. You have to decide as 12
9 jurors what each person, if anything, they did.

10 Another principle of law that I want to offer to
11 you is this, credibility of witnesses. You may believe a
12 witness' entire story, none of the story, a portion of the
13 story, one sentence in the whole testimony. But you decide
14 the credibility of the witnesses, whether this person is
15 believable. What does this person have to gain? Is he
16 trying to save himself or herself? Has he been cut a deal?
17 Has there been an offer on the table for him. What is he
18 getting out of this?

19 Distinct from the victims of the crime, they come
20 in and state, simply state what happened to them on a given
21 day. If the State, as Mr. Moyer said, is going to have to
22 put up a person that was previously charged with the crime
23 and they have had the charges dismissed on this very same
24 charge, crime, and/or may have pled guilty to some of the
25 charge and not all the charges, well, what does that person

1 have to gain? That's for you to decide. How do you believe
2 this person? Can you believe him? Do you believe some of
3 what he said, none of what he said, or all of what he said?
4 That is a principle of that I want you to keep in mind, the
5 credibility and the believability of witnesses.

6 The last principle that I want to suggest to you
7 is the reasonable doubt principle. Your Honor will explain
8 to you at the end of the trial what reasonable doubt is. If
9 you have any doubt as regard to Donnie Nelson's involvement,
10 or whether he was involved in the case at all, then you are
11 to resolve that doubt in favor of my client and return a
12 verdict of not guilty.

13 So, again, please listen very carefully to all the
14 of the testimony from the witnesses. But as Mr. Moyer has
15 so carefully pointed out to you, the testimony of Jarvis
16 Clement, an indicted co-conspirator in these charges, is
17 very important to the State and it's very important to us.

18 If the case is short or long, it does not matter.
19 It is of a serious nature to my client Donnie Nelson, and we
20 believe that at the end of the trial that you will return a
21 verdict of not guilty on all charges of Donnie Nelson.

22 Thank you.

23 MR. GIBSON: Ladies and gentlemen, as I told you
24 before I'm Ken Gibson. This is Lawrence Waller. Lawrence
25 is 26 years old. He lives right here in Greenville. He has

1 got two kids, six years old and one child who is barely
2 talking. In talking to him, he's afraid, ladies and
3 gentlemen. He's afraid because he stands before you charged
4 with crimes that he did not commit.

5 Now, the good thing for Lawrence is just because
6 Mr. Moyer says it's so, that doesn't make it so. In the
7 United States of America, when the State wants to take away
8 someone's freedom, like they want to take away Mr. Waller's,
9 they have to prove it beyond a reasonable doubt. Now, that
10 is a tremendous burden to reach. And at the end of the
11 trial I'm going to talk to you about exactly what that
12 burden is.

13 In the meantime, if you would just listen to the
14 evidence, because I'm confident that if you listen to the
15 testimony, if you keep your eyes open and keep your hearts
16 open, that you will come back and you will find my client
17 not guilty. Thank you.

18 THE COURT: Mr. Moyer, you may call your first
19 witness.

20 MR. MOYER: The State calls Mr. Willie Gambrell.

21 WILLIE GAMBRELL, having been first duly sworn,
22 testified as follows:

23 THE CLERK: State your name for the record,
24 please.

25 THE WITNESS: Willie Gambrell.

1 THE CLERK: Thank you. Be seated.

2 DIRECT EXAMINATION BY MR. MOYER:

3 Q. Mr. Gambrell, how old are you?

4 A. 35.

5 Q. Are you from Greenville?

6 A. Yes.

7 Q. Okay. What do you do for a living?

8 A. I'm a mechanic for the city of Mauldin.

9 Q. How long have you done that?

10 A. 14 years.

11 Q. Are you married?

12 A. Yes.

13 Q. Do you have a family? You have children?

14 A. Yes, four.

15 Q. Four children.

16 All right. Let me take you back now to November the
17 6th of 2004. Did you go to Mr. -- do you know Mr. Grady
18 Blassingame?

19 A. Yes.

20 Q. How do you know him?

21 A. He has been cutting my hair since I was about one.

22 Q. Okay. All your life?

23 A. All my life, yeah.

24 Q. And did you go to his hair cut -- I'm sorry, did you go
25 to his business for a haircut on November 6th of 2004?

1 A. Yes.

2 Q. Now, did Mr. Blassingame have a nickname?

3 A. Yes.

4 Q. What is that nickname?

5 A. Booty Jack.

6 Q. Booty Jack. Is that what a lot of people call his
7 establishment and his business?

8 A. Yes.

9 Q. Now, you remember there being other people in there
10 while you were there?

11 A. Yes, there was three of us in there.

12 Q. Okay.

13 A. Yeah.

14 Q. Did you know these other men?

15 A. Yes, I know Grady and I have seen Donnie around.

16 Q. A couple of the other guys in there?

17 A. And another guy, I didn't know him.

18 Q. Okay. Now, all right. Where were you when this
19 incident took place and what were you doing?

20 A. We was watching I think a football game. I was sitting
21 at a row the seats that as you come in the door, sitting
22 like in the second chair from the television, looking up at
23 the television.

24 Q. Okay. Let me show you -- all right. You have taken a
25 look at several of the pictures of the inside?

1 A. Yes.

2 Q. I would like to show you State's Exhibit No. 1. Can
3 you recognize what is in that photograph?

4 A. Yes, I was sitting right there.

5 Q. Okay. So is that the inside of Mr. Blassingame's
6 barbershop?

7 A. Yes.

8 Q. Can see on that photograph the seat where you were
9 seated?

10 A. Yes.

11 Q. And how about State's Exhibit No. 2, do you recognize
12 what's in that photograph?

13 A. Yeah, that's right when you come in the door.

14 Q. Okay. That's also inside Mr. Blassingame's --

15 A. Yes.

16 Q. -- barbershop.

17 Okay. State's Exhibit No. 3, do you recognize what's
18 in that photograph?

19 A. That's out of Mr. Blassingame's barbershop.

20 Q. In fact, do you see a vehicle in that photograph?

21 A. Yes, that's my vehicle.

22 Q. Okay. Now, are all these pictures, are they accurate
23 and fair representations pictures of the way that looked

24 back on November 6th of 2004?

25 A. Yes.

1 MR. MOYER: Your Honor, at this time -- I would
2 move at this time, Your Honor, State's Exhibits 1, 2 and 3
3 into evidence.

4 THE COURT: Any objections?

5 MR. FARNSWORTH: Without objection as to defendant
6 Clovis, Your Honor.

7 MR. GIBSON: Same, Your Honor.

8 MR. MOYER: Are they in evidence?

9 THE COURT: Any objection?

10 MS. MANIGAULT: No objection from Donnie Nelson.

11 THE COURT: Without objection, Exhibits 1, 2 and 3
12 are into evidence.

13 BY MR. MOYER:

14 Q. We are going to show these photographs right behind you
15 and just so you don't get blinded, let me ask, if you would,
16 just step over here, please, to the side.

17 (Witness off the witness stand)

18 THE COURT: Mr. Gambrell, let me remind that you
19 don't have a mike with you and the court reporter needs to
20 pick up your voice.

21 THE WITNESS: Okay.

22 THE COURT: So I need to make sure that you
23 project your voice for the jury to hear you and as well as
24 the court reporter to hear you.

25 THE WITNESS: All right.

1 BY MR. MOYER:

2 Q. It's a little fuzzier than normal, but in any case, can
3 you just tell jurors what it is, what that is a picture of?

4 A. Yes, this is the outside of the barbershop. That's my
5 vehicle parked right there.

6 Q. This is your vehicle right here where the laser pointer
7 is pointed?

8 A. Yes.

9 Q. Now, can you see the door where this enters Mr.
10 Blassingame's shop?

11 A. Yes, the door right there.

12 Q. This right here?

13 A. Yes.

14 Q. And when you enter Mr. Blassingame's barbershop, how
15 far do you have to go before you come to the chair where you
16 get your hair cut?

17 A. Two steps. It's right when you open the door.

18 Q. If you step in, is it to the right or to the left?

19 A. To the right.

20 Q. So right near where this window is?

21 A. Yes.

22 Q. And the seating goes sort of back?

23 A. Yes.

24 Q. Okay. Let me show you now State's Exhibit 1. And you
25 mentioned that you were seated watching football. Can you

1 see the seat? I'll give you this laser pointer. Can you
2 point out to the jury the seat where you were seated?

3 A. Yes, I was sitting right there where the laser is at.

4 Q. And you see the television up above?

5 A. Yes, watching television, yeah.

6 Q. Now, you see to the far right here there is a
7 partition?

8 A. Yes.

9 Q. What is in that area?

10 A. Right here, that's where the chair is at where you get
11 a haircut, and right there all the customers seats --

12 Q. Okay.

13 A. -- around in there.

14 Q. Okay. So the chair where --

15 A. Yeah.

16 Q. -- the barbershop is?

17 A. Yeah, it's right here.

18 Q. So this picture is taken -- is this taken from right
19 about if you would enter the barbershop?

20 A. Yes.

21 Q. So if you entered the barbershop, you pretty much see
22 what we are looking at in that picture?

23 A. Yes.

24 Q. All right. Let me show you finally State's Exhibit No.

25 2. Can you tell the jury what we see in that picture?

1 A. Okay. This is like if you were sitting in the chair
2 just looking at the wall. You are getting your haircut, you
3 would be looking right there at that wall.

4 Q. Can you see the door?

5 A. Yes, that's the door right there.

6 Q. Okay. So this picture is taken pretty much from the
7 position of where the barber chair is?

8 A. Yes.

9 Q. Thank you very much. You can have a seat.

10 (Witness back on the witness stand)

11 BY MR. MOYER:

12 Q. All right. Mr. Gambrell, when did you realize that
13 something was going wrong?

14 A. When the door opened and a shot was fired.

15 Q. Do you remember about what time this was?

16 A. Between 6:00 and 6:30.

17 Q. Okay. Do you remember if it was dark out?

18 A. Yeah, it just got dusk, yes.

19 Q. Now, so you heard --

20 A. Pop.

21 Q. Did you immediately know it was a shot?

22 A. Yeah, you really knew what it was. And I kind of
23 looked up and seen a guy standing in the door with the gun.

24 Q. Okay. And could you see his face?

25 A. No, he had a mask on, bandana tied around his face with

1 a hat pulled over, or a hood.

2 Q. Now, do you see anybody else beside that man?

3 A. Not at the time.

4 Q. At any point during this ordeal did you see another
5 person?

6 A. I didn't see him. I heard another person.

7 Q. You could hear another person?

8 A. Yes.

9 Q. Why couldn't you see this other person?

10 A. Right when he come in the door with the gun, he was
11 waving get down. And as we got down, you know, you heard
12 the other guy come in too.

13 Q. So what sort of things were these guys telling y'all to
14 do?

15 A. Lay on the ground. Don't look up. And by that time
16 they was right at Mr. Blassingame, I guess frisking him, and
17 we was laying on the floor.

18 Q. So did you get on the floor, like they told you to do?

19 A. Yes.

20 Q. Tell us -- I mean, were you on your back, on your
21 front?

22 A. All on the front with the face down.

23 Q. Were you lying flat out on the floor?

24 A. Stretched flat out straight on the floor.

25 Q. Did you ever try to look at them?

1 A. No, I didn't.

2 Q. Why didn't you do that?

3 A. Well, he had a gun, you know.

4 Q. What was going through your mind while you were on the
5 floor?

6 A. Just don't hurt Booty Jack. You know, Booty Jack was
7 kind of old. Just hoping they didn't do nothing to him.
8 And me neither. I didn't want them to do nothing to me,
9 but -- yeah, just don't make no sudden moves, nothing --
10 don't provoke them no more than what they was already doing.

11 Q. So did you comply with everything that they asked you
12 to do?

13 A. Yeah.

14 Q. Now, you mentioned you couldn't see this guy's face.
15 Could you tell anything about him, like -- using the word
16 him, but could you tell whether this person was a man a or
17 woman?

18 A. I could tell it was a young man, brown skin, my
19 complexion. You know, you could still see his eyes around
20 his cheeks a little bit. That's all. Slim built.

21 Q. How about did you notice anything about the way they
22 spoke or their accent that caught your attention?

23 A. Yeah, one of them spoke like he was from up north.

24 Q. Okay. So you only saw one person. Did you see the
25 gun?

1 A. Yeah, I seen the gun.

2 Q. All right. Now, after you get on the floor of the
3 barbershop, what did you do? What did they do to you?

4 A. Well, he went through my -- I had a hoody on, a sweat
5 shirt with hood pockets in it, and I had on sweat pants. He
6 went through my -- I had my wallet tucked inside my hoody,
7 and my cell phone. They took my wallet, took my cell phone.
8 And as he was taking that, he said a bunch of broke ape
9 niggers, you know. They searched us.

10 Q. That's what he said to you while he was searching you?

11 A. Yeah.

12 Q. Did you have any money in the wallet?

13 A. Yeah, about \$40.

14 Q. Could you see anything that was happening with the
15 other guys who were in the barbershop?

16 A. I could see when they told Donnie over there to go to
17 the back, because he kind of walked over me. I just see his
18 legs and he laid down in the back.

19 Q. Talking about Mr. Smith, Donnie Smith?

20 A. Yeah, Donnie Smith.

21 Q. So he sort of walked by you?

22 A. Yeah.

23 Q. Did you see somebody walking with him?

24 A. No.

25 Q. Now, did they stay around very long?

1 A. No, it wasn't long. Give it five minutes. Maybe not
2 even that.

3 Q. Well, did they do or say anything as they were leaving?

4 A. Just everybody stay where you are at. And one of them
5 kept saying we are pressed for time, let's go, we are
6 pressed for time, let's go.

7 Q. Well, after they left, what did y'all do?

8 A. It was kind of quiet for a minute. And I think I got
9 up first and was checking on to see if Mr. Blassingame all
10 right. And right there at the door where you come in,
11 somebody's jacket and there was a cell phone under their
12 jacket. That's how we called the police.

13 Q. Okay. And the police got there fairly quickly?

14 A. It was all right. It was 10, 15 minutes.

15 Q. Okay. Now, so you say your cell phone was taken by
16 them?

17 A. Yes.

18 Q. Do you remember what your cell phone number was then?

19 A. [REDACTED].

20 Q. And did you ever get your cell phone back?

21 A. No.

22 Q. Did you ever get your wallet or any of the money?

23 A. No.

24 Q. Did you ever -- okay.

25 Now, do you remember the last phone call that you made

1 on your cell phone?

2 A. I think it was to my mother's house.

3 Q. Have you taken a look back at your cell phone records?

4 A. Have I looked at them?

5 Q. Yeah.

6 A. Not since then.

7 Q. Would it refresh your memory if you had a chance to
8 look again at your cell phone records?

9 A. Yes.

10 MR. GIBSON: Objection. Hearsay, Your Honor.

11 MR. MOYER: Refreshing memory, Your Honor.

12 MR. GIBSON: He's refreshing his recollection with
13 hearsay. It's not something that --

14 THE COURT: Well, I'll overrule the objection, if
15 he can identify the document.

16 BY MR. MOYER:

17 Q. Just take a look at this document. Does that look the
18 cell phone records for your cell phone?

19 A. Yes.

20 Q. If you would, just take a look at the last page. Keep
21 it on that last page. And do you see the date November 6th
22 of 2004?

23 A. Yes.

24 Q. Do you see the call made -- the last call that you
25 made?

1 A. Yes, around 4:50.

2 Q. Who did you make that call?

3 A. That's to my mother's house.

4 Q. What number was that?

5 A. [REDACTED]

6 Q. There is couple phone calls listed after that?

7 A. Yes.

8 Q. Did you make those calls?

9 A. No.

10 Q. Okay.

11 MR. MOYER: All right. Please answer any
12 questions that the defense attorneys may have for you.

13 CROSS EXAMINATION BY MR. FARNSWORTH:

14 Q. Mr. Gambrell, just a few questions.

15 I want to be sure I heard you right. You say that you
16 saw the one person come in, but you only heard a second
17 person, is that correct?

18 A. Yes.

19 Q. And so on the first person, I believe you said that he
20 had on a bandana -- a mask, a bandana over his face with a
21 hat over his head, is that correct?

22 A. Yes.

23 Q. And I believe you said -- and correct me if I'm wrong,
24 I believe you said he was a kind of slim?

25 A. Yeah, he was pretty slim built. To me he was. I was

1 sitting down looking up.

2 Q. Light complexion?

3 A. Yes.

4 Q. And he was talking like he was from up north?

5 A. Yes.

6 Q. And you -- the person that you did see, though, did
7 have a gun, is that correct?

8 A. Yes.

9 Q. You saw the gun?

10 A. Yes.

11 MR. FARNSWORTH: That's all I have.

12 CROSS EXAMINATION BY MS. MANIGAULT:

13 Q. Mr. Gambrell, could you tell the court -- you said the
14 first person entered had something over their head?

15 A. Yes, a hat or a hoody type.

16 Q. How much of his head was covered?

17 A. Just pulled down right around there.

18 Q. To the middle of?

19 A. Around his forehead, yes.

20 Q. And they also had on a bandana, you said?

21 A. Yes.

22 Q. And what color was this bandana?

23 A. Either red or blue.

24 Q. Okay. And could you show me how much of the face was
25 covered?

1 A. He had it to his eyes. You could see his eyes and
2 right around in there.

3 Q. So you could see this much of the person?

4 A. Yes.

5 Q. You could see the eyebrows?

6 A. Eyebrows.

7 Q. Thank you. You could see that much of him?

8 A. Yes.

9 Q. Could you see any other part of the face?

10 A. No.

11 Q. Just basically the eyes right here?

12 A. Yes.

13 Q. Now, you said the shot was fired when the person first
14 entered the door?

15 A. Yes.

16 Q. Now, the solicitor asked you about an accent. Could
17 you -- can you imitate the accent or could you give me
18 anything --

19 A. No.

20 Q. -- distincte about a word that was said or something?

21 A. It was just -- you know, most people from around
22 here -- you know, you can tell if you are not from around
23 here. He had almost a northern accent.

24 Q. So what -- do you know what distinguishes a northern
25 accent?

1 A. Yes, you know, around Massachusetts. You know, it's
2 more of a slur to it. New York, you know, they try to put
3 the accent on their words, people, you know get on the
4 floor. You know really pronounce their words. They don't
5 slur like we do. You know, don't have that southern drawl.

6 Q. So you say all southerners have a drawl?

7 A. Not all, but most of them.

8 Q. And everybody from the north has an accent?

9 A. Most of them. It's different from down here.

10 Q. Okay.

11 MS. MANIGAULT: All right. Thank you.

12 CROSS EXAMINATION BY MR. GIBSON:

13 Q. Mr. Gambrell, just a few quick questions.

14 You said there were two phone calls that were made
15 after your cell phone was stolen, is that correct?

16 A. Yes.

17 Q. Do you know who made those calls?

18 A. No, sir.

19 Q. No idea whatsoever?

20 A. No.

21 Q. Do you know who received those calls?

22 A. No, sir.

23 Q. Do you have any idea where the person was when they
24 received those calls, to the extent anybody did receive
25 them?

1 A. No, sir.

2 Q. And, finally, do you have any information, based on
3 your firsthand knowledge, that Mr. Waller was involved in
4 this?

5 A. No, sir.

6 Q. Thank you.

7 MR. MOYER: No redirect.

8 THE COURT: Any redirect?

9 MR. MOYER: No.

10 THE COURT: Thank you, Mr. Gambrell. You may step
11 down.

12 MR. MOYER: The State would call Mr. Gotts.

13 ROBERT GOTTS, having been first duly sworn,
14 testified as follows:

15 THE CLERK: State your full name for the record.

16 THE WITNESS: Robert Gotts, G-O-T-T-S.

17 THE CLERK: Thank you. Be seated.

18 (Phone Records marked as State's Exhibit No. 10
19 for identification)

20 DIRECT EXAMINATION BY MR. MOYER:

21 Q. All right, state your name for the record.

22 A. Robert Gotts.

23 Q. Where are you employed?

24 A. Cingular Wireless.

25 Q. What is your position with Cingular Wireless?

- 1 A. I'm an auditor.
- 2 Q. What are your duties there?
- 3 A. I audit financial records, retail records. I conduct
- 4 internal investigations, monitor our billing systems.
- 5 Q. How long have you worked for Cingular Wireless?
- 6 A. Seven years.
- 7 Q. Is it part of your responsibility to go to court when
- 8 needed --
- 9 A. That is correct.
- 10 Q. -- with the introduction of phone records?
- 11 A. Yes.
- 12 Q. And you were given a summons to appear in court here
- 13 today?
- 14 A. Yes, I was.
- 15 Q. Did you bring any records with you?
- 16 A. Yes, I did.
- 17 Q. Let me show you State's Exhibit No. 10. If you would
- 18 leaf through that. Is that a copy of the records that you
- 19 brought today under your summons?
- 20 A. Yes.
- 21 Q. Okay. Now, those records are for what telephone
- 22 number?
- 23 A. This is for telephone number area code [REDACTED].
- 24 Q. Okay. And they cover what dates?
- 25 A. They are from 10-21-04 to 11-06-04.

1 Q. Okay. Now, those records are kept in the course of
2 regularly conducted business activities?

3 A. Yes, they are.

4 Q. And is it a regular practice of Cingular Wireless to
5 keep and maintain records such as those that you have before
6 you now?

7 A. Yes, we have to for billing purposes.

8 Q. Okay. And you have access to that information, those
9 records, as a regular normal function of your job?

10 A. Yes, I do.

11 MR. MOYER: Your Honor, at this time I would move
12 to have State's Exhibit No. 10 moved into evidence.

13 THE COURT: Any objection?

14 MR. GIBSON: May I have just a moment, Your Honor?

15 THE COURT: Yes, sir.

16 (Off the record)

17 (Back on the record)

18 MR. GIBSON: No objection, Your Honor.

19 MS. MANIGAULT: No objection from Nelson.

20 MR. FARNSWORTH: Without objection.

21 THE COURT: Without objection, Exhibit 10 is into
22 evidence.

23 BY MR. MOYER:

24 Q. Let me hand you State's Exhibit No. 10 again.

25 A. Okay.

1 Q. You mentioned a telephone number. Whose account was
2 that number in?

3 A. Willie Gambrell.

4 Q. All right. Now, you said the phone records go through
5 November the 6th of 2004?

6 A. That is correct.

7 Q. All right. Let me ask you about the very last entry
8 that is listed on November the 6th of 2004.

9 A. Okay.

10 Q. What type of telephone call was made? In other words,
11 was it an incoming call or an outgoing call?

12 A. That is an outgoing call.

13 Q. Okay. And so you keep -- you were able to track
14 whether it's incoming or outgoing?

15 A. Yes.

16 Q. And you can tell by looking at that record that it was
17 an outgoing call?

18 A. Absolutely.

19 Q. And that means that number, Willie Gambrell's phone,
20 made a call to somebody else?

21 A. Yes.

22 Q. And what telephone number did it make a phone call to?

23 A. Area code [REDACTED].

24 Q. What time was that telephone call made?

25 A. The very last entry was 6:06 p.m.

1 Q. Are you able to tell from those records the duration of
2 that phone call?

3 A. One minute.

4 Q. Now, by one minute, does that mean it was exactly a
5 minute on the nose?

6 A. No, this is our billing record, so we bill up to the
7 nearest minute. It was anywhere between one second and 60
8 seconds.

9 Q. So if it was 61 seconds, what would show up on this
10 records?

11 A. Two minutes.

12 Q. All right. Let me ask you to look at the preceding
13 phone call --

14 A. Yes.

15 Q. -- on those records from November 6th, 2004. Again
16 what phone number did it call?

17 A. Area code [REDACTED].

18 Q. Is it incoming call or outgoing?

19 A. This is also an outgoing call.

20 Q. Okay. And what time was that telephone call made?

21 A. This is 6:05 p.m..

22 Q. And that call was made to the very same number as the
23 last entry?

24 A. Yes.

25 Q. The last two entries are both to the same number?

1 A. Yes.

2 Q. Now, that second to the last entry then, what was the
3 duration of that call?

4 A. One minute.

5 Q. So, once again, it could be anywhere from a second to
6 60 seconds?

7 A. Correct.

8 Q. Then, finally, the phone call immediately preceding
9 that one was made at one time?

10 A. I'm sorry, repeat the question.

11 Q. The third one up from the bottom of the list --

12 A. Okay.

13 Q. -- being the call immediately preceding the one at
14 6:05?

15 A. Okay.

16 Q. What time was that?

17 A. Excuse me, 4:50 p.m..

18 Q. Okay. Is that an coming or outgoing call?

19 A. This is also an outgoing.

20 Q. And what telephone number?

21 A. [REDACTED]

22 MR. MOYER: I have no further questions for this
23 witness.

24 MR. FARNSWORTH: No questions, of Mr. Gotts.

25 MS. MANIGAULT: No questions, Your Honor.

1 CROSS EXAMINATION BY MR. GIBSON:

2 Q. Just a few, Mr. Gotts.

3 Can you tell from your records who, in fact, made that
4 call?

5 A. It was made from the phone number [REDACTED].

6 Q. But what I'm asking is can you tell from those records
7 who is the exact person who made that call, not the number
8 that it came from?

9 A. No. I'm sorry, I misunderstood.

10 Q. So as far as you know, it could have been made by one
11 of the defendants or it could have been made by Jarvis
12 Clement, or anybody else, is that correct?

13 A. It could have been made by -- it could have been made
14 by anybody. All I can say is it was made from that phone.

15 Q. Okay.

16 A. That particular phone.

17 Q. And based on those records, or any other knowledge that
18 you have, do you have any information as to who, in fact,
19 received that phone call?

20 A. I do not. I only know it was made to that number.
21 They might not even have received it on the other end. It
22 might have went to a voicemail.

23 Q. Okay.

24 A. A connection was broken, though.

25 Q. Okay. Good deal. Thank you.

DONALD SMITH - DIRECT BY MR. MOYER

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1 MR. MOYER: No redirect, Your Honor.

2 THE COURT: Thank you, Mr. Gotts. You may step
3 down.

4 MR. MOYER: Your Honor, we ask that he be released
5 from his subpoena.

6 MR. GIBSON: No objection.

7 MR. FARNSWORTH: No objection.

8 MS. MANIGAULT: No objection.

9 THE COURT: Without objection.

10 MR. MOYER: The State would call Donald Smith to
11 the stand.

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

14 THE CLERK: State your name for the record,
15 please.

16 THE WITNESS: Donald Smith.

17 THE CLERK: Be seated.

18 DIRECT EXAMINATION BY MR. MOYER:

19 Q. All right, Mr. Smith, your full name is Donald Smith?

20 A. Yes.

21 Q. All right. Let me ask you to sit up a little bit and
22 speak into the microphone so we all make sure we can hear
23 you.

24 How old are you?

25 A. 38.

1 Q. Are you from Greenville?

2 A. Yes.

3 Q. What do you for a living?

4 A. I own an automotive detail shop.

5 Q. How long have you had that shop?

6 A. 14 years.

7 Q. Are you married?

8 A. No.

9 Q. Now, do you know Mr. Grady Blassingame?

10 A. Yes.

11 Q. Did you know him by his nickname?

12 A. Several names for him.

13 Q. How long have you known Mr. Blassingame?

14 A. Ever since I was a kid.

15 Q. How long has he cut your hair?

16 A. Way over 20 years.

17 Q. Now, were you at Mr. Blassingame's barbershop on
18 November the 6th of 2004, when this robbery took place?

19 A. I was.

20 Q. When this actually took place, when this happened,
21 where were you and what were you doing?

22 A. I was in the barber's chair.

23 Q. Was Mr. Blassingame standing near you?

24 A. Behind me.

25 Q. And what was he doing?

1 A. He was proceeding to cut my hair.

2 Q. You were actually in the middle of a haircut?

3 A. Yup. He just started.

4 Q. Okay. Now, when did you realize that something was
5 going wrong, something was happening?

6 A. Well, about right after he started to cut my hair, the
7 door just flew open. When the door flew open, he went to
8 turn to look, but a shot was fired. So when they came in
9 the door, my immediate actions was when my chair turned
10 around, I stood up, you know, because this joker just fired
11 a gun right over my head.

12 Q. Let me stop you a second. Was your chair -- is this
13 the typical kind of barber chair that --

14 A. Spins around, yeah.

15 Q. Were you facing towards the door or were you facing the
16 other way?

17 A. No, the door would have been here. I was facing the
18 mirror here.

19 Q. Okay. And Mr. Blassingame was behind you?

20 A. Yes.

21 Q. Now -- so you mentioned that you heard that shot and
22 you stood up. What happened when you stood up?

23 A. Well, the guy that pulled the door open and fired the
24 shot, when I spinned the chair around, I faced him. That's
25 when another guy came in. So when -- when they -- when they

1 came in, they pointed the guns and it was like y'all know
2 what time it is, get on the floor. So, I'm like, man, y'all
3 ought to be ashamed of yourself. Y'all come to rob a
4 barbershop out of all places? That's when they told me
5 well, we don't want no problem, just get on the floor, you
6 know. But, you know, me -- if they wouldn't have had the
7 guns, it might have been something serious going on in there
8 that night, you know.

9 Q. So you would have taken matters into your own hands?

10 A. I wouldn't say I was going to take matters into my own
11 hands, but I was going to protect myself.

12 Q. You were going to -- why didn't you then?

13 A. They had guns.

14 Q. Okay.

15 A. Both of them had guns.

16 Q. Now, did you follow what they said? Did you get on the
17 floor?

18 A. Well, when they started frisking Booty, then they
19 marched me to the back, because I guess I was talking. I
20 was saying man, y'all ought to be ashamed of yourself. You
21 come in and robbing a barbershop, you know. So that's when
22 they said something pertaining like they don't want no
23 problem with me, just get on the floor. So the shorter guy
24 put the gun to me and made me go to the back.

25 Q. Which one took the shot, the shorter one or the taller

1 one?

2 A. The taller one.

3 Q. And about roughly what size were these guys?

4 A. I will give the short one about 5'5", 5'6". The taller
5 one anywhere from 5'8" to six foot. 5'9", somewhere along
6 in there.

7 Q. So you didn't spend a whole lot of time sizing them up?

8 A. No, I didn't do that.

9 Q. Were they big guys?

10 A. No, they wasn't that big. No, they looked like younger
11 guys, you know what I mean?

12 Q. Okay.

13 A. And I just -- I couldn't understand why he was wanting
14 to rob a barbershop out of all places, but when you are
15 hungry for money, you will rob anything that you can.

16 Q. Okay. So could you see either of their faces?

17 A. No, they had -- the first one, he had on a hat and it
18 came down to about here. He had a bandana. Both of them
19 had on them.

20 The way that I told them apart was one was taller and
21 one was shorter.

22 Q. Okay.

23 A. The taller one stayed more toward the door and frisking
24 Booty. The shorter one is the one who put the gun on me and
25 forced me to the back, you know.

1 Q. Now, could you see enough of their face to say tell
2 what race they were?

3 A. Yeah, yeah, you could definitely tell that.

4 Q. What race?

5 A. They was light complected. You know, to me that's
6 light skinned, because I'm dark, you know.

7 Q. Were they white or black?

8 A. Black guy. Black males.

9 Q. And they are -- you said they were relatively young?

10 A. Yeah.

11 Q. Young men.

12 All right. So you said you got walked to the back of
13 the barbershop?

14 A. Yeah.

15 Q. How far back did you end up having to go?

16 A. From the door -- from the barber's chair to the back
17 door, maybe three, four feet.

18 Q. Let me ask you first of all to take a look at this
19 State's Exhibit No. 5. Do you recognize what's shown in
20 that picture?

21 A. That's the barber -- this is the cutting area.

22 Q. Okay.

23 A. This is where he cut it. This is the barber's chair
24 that I was in at the time.

25 Q. Is that a fair and accurate picture of Mr.

1 Blassingame's barbershop on November 6th, 2004?

2 A. Yes, sir.

3 Q. Okay. And is that the chair that you were seated in?

4 A. Yes, sir.

5 MR. MOYER: Your Honor, at this time I would move
6 to have State's Exhibit No. 5 moved into evidence.

7 THE COURT: Any objection?

8 MR. FARNSWORTH: Without objection.

9 MS. MANIGAULT: No objection, Your Honor.

10 MR. GIBSON: No objection.

11 THE COURT: Without objection, Exhibit 5 into
12 evidence.

13 MR. MOYER: Let me ask you to do what we did with
14 Mr. Gambrell. If you would just step down, please.

15 (Witness off the witness stand)

16 BY MR. MOYER:

17 Q. Can you just tell -- for the jurors benefit, would you
18 tell them what we see in that picture?

19 A. This is the barber's chair. This is the whole cutting
20 area. This is where he cut hair at in this area.

21 Q. Okay. And this is a partition here?

22 A. That's a partition. It separates other sitting area.

23 Q. So the sitting area is around back here?

24 A. Yes.

25 Q. Okay. And was the chair pointed the way it is here or

1 was it pointed the other way when the guys came in?

2 A. When they came in, the chair was pointed this way.

3 Q. Towards this mirror?

4 A. The door is back here.

5 Q. Okay. Now, let me ask you to take a look at State's
6 Exhibit No. 1. Do we see the partition that we just saw in
7 the other picture?

8 A. The partition is here.

9 Q. And so the chair is over this way?

10 A. Yes.

11 Q. Okay. Now, can you -- I'll hand you this laser pointer
12 here. Can you just sort of show with that laser pointer
13 where it was that you were taken in --

14 A. They forced me back here behind this. I don't know if
15 that's a drink machine, or a water machine, or what that
16 was, but they forced me behind that, because this is a
17 bathroom right over here.

18 Q. Okay.

19 A. That's a back door right there.

20 Q. Okay. Thank you. Please have a seat.

21 (Witness back on the witness stand)

22 BY MR. MOYER:

23 Q. All right. Now, when you got to the back of the
24 building, as they told you to do, what happened to you?

25 A. Well, they just told me to, you know, get on the

1 ground, get on the floor, so I got down on the floor. I was
2 trying to see if the atmosphere was going to change, that he
3 might mess up or anything. But, you know, once he told me
4 to get on the floor, I wasn't going to jeopardize nobody
5 else, so I got on the floor. Then he proceeded to try to
6 pat me down, you know, so I started moving from side to
7 side, because I didn't know what may happen, you know what I
8 mean. So I was trying to get a good look at whatever I
9 could at the time, you know, in case I ever see them again,
10 you know what I mean. But the only thing that I seen was
11 the shorter guy had a tattoo on his left hand, you know.

12 And then after they searched everybody, then they was
13 like -- they was -- the guy -- the taller guy kept saying we
14 are pressing for time, we are pressing for time, you know,
15 and I'm trying to figure out what he means by that. And
16 then after they frisked everybody and took everything that
17 everybody had, and then they was like keep your heads down,
18 if anybody comes to the door, try to follow us, you know, so
19 everybody stayed down. And then after couple of minutes --
20 maybe a second went by, then Mr. Gambrell got up. After he
21 got up, then I got up and went and locked the door and we
22 proceeded to make sure everybody was okay.

23 My jacket -- I had a jacket on, my work coat. My cell
24 phone, my keys were all right here. Like a row of chairs
25 here, maybe the first or second -- the first chair, because

1 Mr. Gambrell was in the second chair watching TV. So I --
2 the shop phone, I guess they snatched it out of the wall or
3 something, you know, so I went to my cell phone and dialed
4 9-1-1.

5 Q. Okay. You don't -- I mean, do you know what happened
6 to the other phone, or you just -- that's just a guess of
7 yours?

8 A. What's that?

9 Q. About the phone. You said that --

10 A. Yeah, because it wasn't -- Mr. Blassingame has got a
11 phone.

12 Q. Okay. But you used your phone to call the police?

13 A. Yeah.

14 Q. So your cell phone was still in your jacket?

15 A. Yeah.

16 Q. How about your keys? Did you --

17 A. Yeah.

18 Q. -- did you lose your keys?

19 A. No.

20 Q. They were in your jacket too?

21 A. No. I think they was kind of intimidated, because I
22 was talking junk to them.

23 Q. Okay. Now, did they take anything from you?

24 A. Just some money. Maybe about -- less than \$50.

25 Q. Okay. And was in a wallet, or where was it?

1 A. No, it was just in my pocket.

2 Q. Okay. And they got it out of your pocket?

3 A. Right.

4 Q. Were they saying anything to you while they were --
5 while this guy was frisking you?

6 A. No, just stay on the floor. Don't look up, you know.

7 Q. Now, after they -- after -- after you called the
8 police, you waited around there for the police to get there?

9 A. Yes.

10 Q. Did you ever go outside?

11 A. Not until the police came.

12 Q. Okay. Okay, Mr. Smith, please answer any questions
13 that the defense may have.

14 THE COURT: You may cross-examine the witness.

15 MS. MANIGAULT: Thank you, Your Honor.

16 CROSS EXAMINATION BY MS. MANIGAULT:

17 Q. All right, Mr. Smith, do you remember giving a
18 statement to the police officers?

19 A. Do I remember giving one that night?

20 Q. Yes, sir.

21 A. Yes, ma'am.

22 Q. I'm going to show you a copy of a statement and ask you
23 do you recognize that statement?

24 A. Yes, ma'am.

25 Q. Is that your signature at the bottom of it?

1 A. Yes, ma'am.

2 Q. And is that what you told the police that night?

3 A. Yes, ma'am.

4 Q. And you told the officers that they were wearing dark
5 clothing and bandanas?

6 A. Yes, ma'am.

7 Q. And they were between 5'11" and six feet tall?

8 A. Yes, ma'am.

9 Q. But today you are telling the court that they were
10 between 5'5" and 5'9"?

11 A. That's the taller one. There was a taller one that I
12 was saying was between this.

13 You can't look at a person and just --

14 Q. No, sir, just answer my question, please.

15 A. No.

16 Q. Are you telling the court today that the height has
17 changed?

18 A. Yeah, it all depends on which one you are talking
19 about.

20 Q. Which one are you talking about that's five feet to six
21 feet?

22 A. That's the taller one.

23 Q. All right. And in your statement did say they were
24 wearing dark clothing and bandanas?

25 A. Yes.

1 Q. Between 5'11" and six feet?

2 A. Yes, ma'am.

3 Q. All right. Now, you said that they came in with --
4 both persons had hats on?

5 A. Yes, ma'am.

6 Q. Now, what kind of hat was this, could you see, could
7 you tell?

8 A. Baseball caps. I couldn't tell what kind of hats they
9 were, because I got shot at. I seen fire coming past my
10 head, so I wasn't trying to look at what they had on.

11 Q. I understand that it was a traumatic time for you, but
12 could you please answer the question, sir?

13 A. What's your question?

14 Q. How covered were their heads?

15 A. How covered were their heads.

16 Q. Yes.

17 A. I told you the hats were down to here. Bandanas was up
18 to here. You could see this.

19 Q. Okay. How much of it -- do a circle around your eyes.

20 A. Only this. Only this. Only this.

21 Q. You could see only this much right here?

22 A. Yes, and hair. Maybe hair on their sides, or something
23 like that, but I wasn't trying to look at all that. I was
24 trying to protect myself and protect the people that was in
25 the barbershop shop, at the same time hoping nobody would

1 get hurt.

2 Q. Yes, sir.

3 And you told the officer in his statement that you
4 didn't see much of anything because you were trying to keep
5 your head down, is that right?

6 A. Huh?

7 Q. Did you tell --

8 A. I was in the back of the building.

9 Q. Right.

10 A. Got forced to the back of the building.

11 Q. Yes, sir.

12 A. Right. So all of these people up here that got
13 searched, I can't tell you that, because I was in the back
14 of building. They forced me to the back.

15 Q. Okay.

16 A. But everybody in the place got robbed.

17 Q. Right.

18 You told the officer that you couldn't see much about
19 the two persons that entered the shop because your head was
20 down.

21 A. You see that on here?

22 Q. Do you remember -- no, sir, that's not on there, to
23 answer your question.

24 Do you remember talking to Investigator Patton, a
25 female officer?

1 A. Yeah.

2 Q. Do you remember telling her that you didn't see much
3 because you were facing away from the door as they entered?

4 A. The door is here.

5 Q. Yes.

6 A. Once the shot was fired, the chair was turned around,
7 so I'm looking at you. I'm looking at you, just like I'm
8 looking at you now. That's the way I was looking at them.

9 Q. So when you saw hair, what kind of hair did you see?
10 Could you describe the --

11 A. No.

12 Q. -- texture, or how it was fixed?

13 A. No, ma'am.

14 Q. Braids?

15 A. No, ma'am.

16 Q. Nappy?

17 A. No, ma'am.

18 Q. Low cut?

19 A. No. Baseball cap covered up everything.

20 Q. Afro? You couldn't tell none of that?

21 A. No.

22 Q. All right. Thank you.

23 THE COURT: Any more cross-examination.

24 MR. FARNSWORTH: Not from the defendant Clovis,

25 Your Honor.

1 CROSS EXAMINATION BY MR. GIBSON:

2 Q. I just want to clarify, Mr. Smith. Did you see any
3 firsthand knowledge or firsthand evidence which would
4 implicate Mr. Waller in any way in this incident?

5 A. If I'm right, it was only two people came in the
6 barbershop, so I don't know if there was a third or fourth.
7 I don't know any of that. I just know the two people that I
8 seen.

9 Q. So based on that, there is no information from what you
10 saw which would implicate Mr. Waller in this thing in any
11 way, is that correct? I'm not asking you to say he was.
12 I'm asking you, do you have any evidence which implicates
13 Mr. Waller.

14 A. No.

15 MR. GIBSON: Thank you.

16 THE COURT: Any redirect?

17 MR. MOYER: No redirect, Your Honor.

18 THE COURT: All right. Thank you, sir. You may
19 step down.

20 At this time let's take a short break and we will
21 let the jury refresh themselves. We will take about a ten
22 minute break. If you would go to your jury room. Don't
23 discuss the case at this time. We'll call you back in just
24 a few minutes.

25 (The following takes place outside the presence of

1 the jury panel)

2 THE COURT: All right. We will be at ease for
3 about ten minutes.

4 (Whereupon, proceedings were recessed)

5 (Whereupon, proceedings were reconvened)

6 THE COURT: State ready to proceed?

7 Bring the jury back.

8 MS. MANIGAULT: Your Honor, did the court make a
9 decision on the placement of the officer?

10 THE COURT: I have consulted with the deputy. And
11 this was done with the solicitor Mr. Moyer while you were
12 gone during the break, about the officer being right behind
13 the table, rather than out in the audience. I have
14 determined that it will be appropriate for him to stay where
15 he is. He has assured me he's not hearing any conversation.
16 He's wired with radio for the rest of the courtroom
17 security, so he will -- I'm going to leave the officer
18 there.

19 MS. MANIGAULT: Your Honor, I would just like to
20 offer for the record that he is in close proximity, less
21 than a couple of feet to me and my client.

22 THE COURT: Okay. Well, he's in the corner, I
23 believe adequately away from the table. And certainly you
24 and your client can have the conversations with you on that
25 end of the table, and I believe that that will not impair

1 your discussions, so I'm going to overrule that. I believe
2 the officer is appropriately placed.

3 THE COURT: All right. Bring the jury in.

4 (The following takes place in the presence of the
5 jury panel)

6 THE COURT: All right, Mr. Solicitor, you may call
7 your next witness.

8 MR. MOYER: The State would call Grady
9 Blassingame.

10 GRADY BLASSINGAME, having been first duly sworn,
11 testified as follows:

12 THE CLERK: State your name for the.

13 THE WITNESS: Grady Blassingame.

14 THE CLERK: Thank you. Be seated.

15 DIRECT EXAMINATION BY MR. MOYER:

16 Q. All right. Would you please state your name for the
17 jury?

18 A. Grady Blassingame.

19 Q. Do you have a nickname?

20 A. Booty Jack.

21 Q. Is that what everybody calls you?

22 A. That's what most of them calls me.

23 Q. Do you have a barbershop business?

24 A. Yeah.

25 Q. Is there a name for it?

- 1 A. Blassingame Barbershop.
- 2 Q. Some people just call it Booty Jack?
- 3 A. That's what they call me, Booty Jack, yeah.
- 4 Q. How old are you?
- 5 A. 66.
- 6 Q. How long have you had -- how long have you been a
- 7 barber?
- 8 A. 45 years.
- 9 Q. How long have you had your own business?
- 10 A. About that time, about 45 years.
- 11 Q. The whole time?
- 12 A. Uh-huh.
- 13 Q. Now, back in November of 2004, November the 6th, when
- 14 this incident took place, where was your business located?
- 15 A. Down on Anderson Road.
- 16 Q. Now, how long had it been at that location?
- 17 A. About a month.
- 18 Q. Okay. Where was it before then?
- 19 A. Down on South Care Holmes Street.
- 20 Q. So you had just moved into this building?
- 21 A. Yeah, just moved in.
- 22 Q. Have you -- let me just show you State's Exhibit No. 3.
- 23 Is that a picture of your business?
- 24 A. Yes, uh-huh.
- 25 Q. Are you married?

1 A. Yeah, I'm married.

2 Q. Do you have children?

3 A. Three.

4 Q. How old are your children?

5 A. 48, 47 and 34.

6 Q. What time do you normally close down the barbershop at
7 night?

8 A. About -- I usually lock my door about six o'clock.

9 Q. Okay. Usually lock the door at --

10 A. 6:30, yeah.

11 Q. About 6:30.

12 Do you sometimes work after that?

13 A. Yeah, I work -- I have -- the people that's in there, I
14 got to get them out of there. Unless somebody comes and
15 knock on the door and know them, I let them in there.

16 Q. And so you would lock your door about 6:30 and just
17 finish up whoever was inside?

18 A. Yeah.

19 Q. Do you still wait until it's 6:30 to lock your doors?

20 A. No, I lock them now about 5:30, six o'clock, as soon as
21 it starts getting dark.

22 Q. You started that after this incident?

23 A. Yeah, after this incident.

24 Q. Now, before -- before that time would you keep your
25 front door unlocked all day long, before 6:30 or 5:30.

1 A. I would lock then about six o'clock, 6:30, before that
2 happened.

3 Q. Okay. But before 6:30, when you would look it, you
4 would just leave it open all day and people come and go as
5 they choose?

6 A. Yeah.

7 Q. Okay. Now, let me take you back to November the 6th,
8 2004, the date of this incident. You were working that
9 night?

10 A. Yeah.

11 Q. And were you cutting anyone's hair when this incident
12 took place?

13 A. Yeah, I was cutting Don's.

14 Q. Don Smith, the gentleman who testified a few minutes
15 ago?

16 A. Yes.

17 Q. Do you remember other people inside the barbershop?

18 A. Yeah.

19 Q. And they were waiting for haircuts?

20 A. They were waiting for haircuts.

21 Q. Do you remember about what time it was when this
22 incident happened?

23 A. About six. A little after six o'clock.

24 Q. Where your doors still locked?

25 A. No, they were unlocked then.

1 Q. They were unlocked?

2 A. Unlocked.

3 Q. Okay. Now, when did you realize -- what made you
4 realize that something bad was happening, something was
5 going on?

6 A. When they come in and shot the store, cussing and going
7 on, talking all loud.

8 Q. And we have seen some pictures here of the way that
9 your business looks. Do you see the picture that were up
10 there on the screen behind you?

11 A. Yes.

12 Q. So the front door, that's very close to where you
13 actually do your --

14 A. Yes.

15 Q. -- cutting?

16 A. Uh-huh.

17 Q. Were you facing that front door --

18 A. Yes.

19 Q. -- when they came in?

20 A. Yeah, I was facing it, yeah.

21 Q. And tell us what you saw.

22 A. Well, when they come in there, there was cussing and I
23 heard that shot.

24 Q. At what point did they shoot? After they got inside or
25 was it done earlier?

1 A. They was coming in. I was busy cutting his hair. And
2 when I seen that flash from that gun, I know something was
3 wrong. They was cussing going on.

4 Q. You saw firing?

5 A. Yeah, fire from the gun.

6 Q. Fire coming from the gun?

7 A. Yes.

8 Q. Now, you said they were cussing. Do you remember
9 anything that they were telling you, what they were saying?

10 A. No, I don't remember what they were saying.

11 Q. Were they telling you to do anything?

12 A. One run back there on me. At the time they come in
13 there, one was back there where I was at.

14 Q. Okay.

15 A. Told me to get down.

16 Q. He came up to where you were and you were standing by
17 your chair?

18 A. Yeah, I was standing by my chair.

19 Q. Okay. And when he came up on you, what did he say to
20 you? What did he tell you to do?

21 A. Get down.

22 Q. Get down?

23 A. Get down.

24 Q. Did you get down?

25 A. Yeah, I got down.

1 Q. Okay. And did you get down right away?

2 A. Right away.

3 Q. Did they do anything to you as you were getting down?

4 A. No more than pushed me on down to the floor.

5 Q. He pushed you down?

6 A. Uh-huh.

7 Q. How far down on the floor did you get?

8 A. I was probably down to my knees.

9 Q. And you were facing down towards the floor?

10 A. Facing down.

11 Q. And what happened when you got down on the floor?

12 A. Well, he wanted my money.

13 Q. Wanted your money?

14 A. Yeah, and jewelry.

15 Q. Okay. And did you give up your money?

16 A. Yeah, give the money up, yeah.

17 Q. Okay. How much money did you have on you?

18 A. I had about six hundred and some dollars on me.

19 Q. And was it -- where was it in your --

20 A. I probably had three hundred something in my front
21 pocket where, and I had three hundred in my back in my
22 pocketbook.

23 Q. So about three hundred in your pocketbook. Was that in
24 your back pocket?

25 A. In the back pocket.

1 Q. Where was the rest of the money, the other?

2 A. In my front pocket.

3 Q. Why did you have some money in two different pockets?

4 A. Whatever I be making, I keep it in my front pocket and
5 make change. The reason I had that money in my back pocket
6 when I first start off is make change with it. And the money
7 I make, I put it in the front pocket, left pocket.

8 Q. The money that you make during the day when you are
9 cutting hair?

10 A. Keep it all in my front pocket.

11 Q. Okay. Now, did you get the money out yourself or --

12 A. Yeah, I got it out myself.

13 Q. And you got it out, both sets of money?

14 A. Uh-huh.

15 Q. Now, they got that money from you. Did he -- the man
16 who was taking this money from you, did he ever go in any
17 drawers or cabinets or anything around there?

18 A. No, not that I know of.

19 Q. You didn't see him do that?

20 A. No, I didn't see him. I just got one drawer back
21 there. No, he didn't go in none of that, no.

22 Q. So you don't keep your cash for the business in any
23 drawers?

24 A. No, I keep it in my pocket.

25 Q. You keep it all in your pocket?

1 A. Uh-huh.

2 Q. How long have you done that?

3 A. Ever since I have been cutting.

4 Q. Now, you mentioned they took money from you. What else
5 did they take from you?

6 A. Took my ring and --

7 Q. How many rings did they take?

8 A. Five. A Rolex watch, bracelet. I couldn't get the
9 bracelet off and he just snatched that off.

10 Q. Where was it? The bracelet was on your wrist?

11 A. Wrist.

12 Q. And you couldn't get it off?

13 A. No, he just reached down and snatched it off. Wouldn't
14 do him no good because it was broke.

15 Q. Okay. Now, did you see any guns?

16 A. No more than that flash jump from the gun. That's all.

17 Q. You saw it then?

18 A. Yeah.

19 Q. Now, did they leave you out there in the front of the
20 door by the barbershop chair, or did you end up going
21 anywhere else inside the store?

22 A. Made me crawl around that partition I got where the --
23 right around that partition from the around there where the
24 rest of them was at.

25 Q. You said crawl.

1 A. Yeah, made me crawl around there.

2 Q. So you didn't get up and walk around there?

3 A. No, I didn't get up and walk.

4 Q. What did he say to you?

5 A. I can't remember what he said.

6 Q. But you -- did you want to crawl around back behind the
7 partition and go in the back?

8 A. No, he made me go around there.

9 Q. Let me show you State's Exhibit No. 4. Can you take a
10 look at that picture?

11 A. Uh-huh.

12 Q. Do you recognize what's shown in that picture?

13 A. Yeah.

14 Q. What does that picture show?

15 A. Right in there is where I cut hair at, chair sat,
16 barber's chair.

17 Q. Is that a picture of the inside of your barbershop?

18 A. Yeah, inside. He made me crawl right around on there.

19 Q. Is that the way your barbershop looked back on November
20 the 6th of 2004, when this happened?

21 A. Uh-huh.

22 Q. So that's an accurate picture of that?

23 A. That's an accurate picture, yeah.

24 Q. All right.

25 MR. MOYER: Your Honor, at this time I move to

1 have State's Exhibit No. 4 moved into evidence.

2 THE COURT: Any objections to Exhibit 4?

3 MR. GIBSON: No, Your Honor.

4 MR. FARNSWORTH: Without objection, Your Honor.

5 MS. MANIGAULT: No objection, Your Honor.

6 THE COURT: Without objection, Exhibit 4 is into
7 evidence.

8 BY MR. MOYER:

9 Q. I think what I would ask you to do, Mr. Blassingame, is
10 see if you can just push your chair a little bit that way.
11 Is there room? Just go -- I don't want you to be blinded by
12 this light.

13 Can you see that picture behind you?

14 A. Yeah, I can see it.

15 Q. And can you -- I want to point with this laser pointer.
16 I want you to tell the jury what I'm pointing it at. What
17 is shown right here in the picture?

18 A. That's a partition.

19 Q. That's a partition?

20 A. Yeah.

21 Q. Okay.

22 A. I work on this side.

23 Q. So you work kind of right over here where I'm showing
24 now?

25 A. Uh-huh.

1 Q. Is this the partition that you were talking about that
2 you had to crawl around?

3 A. Yes.

4 Q. You had to crawl from over here?

5 A. On around.

6 Q. How far back did you have to go?

7 A. About middle ways of that floor back there.

8 Q. And what happened when you got back there?

9 A. They told me to stay down.

10 Q. Did you stay down?

11 A. Yeah, I stayed down.

12 Q. Okay. Thank you.

13 Do you remember what was going through your mind while
14 that was taking place and you were having to crawl back
15 there?

16 A. I was scared. No telling what they might have did.

17 Q. All right. Now, after you crawled around to the back
18 of the store, did you -- did they stay around much longer
19 after that?

20 A. No, they didn't stay around long, no.

21 Q. Do you remember what they did or said when they left?

22 A. Well, stay down. Told me to stay down.

23 Q. Did you do that?

24 A. Yeah, I stayed down.

25 Q. Now, after they left, did you get up right away or did

1. you wait around?

2. A. No, I waited around awhile.

3. Q. Okay.

4. A. A few seconds. A minute, or something like that.

5. Q. I'm sorry?

6. A. About a minute or something. Not quite a minute.

7. Q. Okay. And then you got up, and do you remember if
8. someone called the police?

9. A. Yeah, Don called the police.

10. Q. Okay. Now, do you recognize any of the defendants
11. seated over here?

12. A. Yeah, I know one of them.

13. Q. Which one do you know?

14. A. The one right there on the end with the tie on.

15. Q. One over here?

16. A. Uh-huh.

17. MR. MOYER: Your Honor, I would ask the record
18. reflect that the witness pointed out defendant Lawrence
19. Waller.

20. BY MR. MOYER:

21. Q. Now, how do you know him?

22. A. I used to cut his hair.

23. Q. Now, do you see what his hair is like now. Is that the
24. way it looked back when you cut it?

25. A. No, he had braids.

1 Q. So it was kind of longer?

2 A. Yeah.

3 Q. Now, so someone with braids, he still used to get his
4 haircut, even though --

5 A. I just shaped -- mostly shape around it. Shave it in a
6 beard shape.

7 Q. Shaped what now?

8 A. Shaved the beard and his head.

9 Q. Did you know his name?

10 A. No. I probably. I -- I'm a little shook up now. I
11 can't think. Yeah.

12 Q. Okay. Now, you didn't recognize him inside the store
13 as one of the robbers, did you?

14 A. No.

15 Q. Can you describe to us what the rings looked like that
16 were taken from you?

17 A. Yeah.

18 (Bag containing 2 rings marked as State's Exhibit
19 No. 11 for identification)

20 A. I had my initials on -- two gold rings had my initials
21 on them, and I had a white -- a white gold, and I had
22 another gold diamond and my wedding band.

23 BY MR. MOYER:

24 Q. What I want you to do is take a look at State's Exhibit
25 No. 11. It's not evidence yet, so make sure you don't show

1 it to the jury. Take a look at those in the bag. Can you
2 see it good enough to look at those to see if you recognize
3 them?

4 A. I recognize two of them.

5 Q. Okay. Which two?

6 A. That one and that one.

7 Q. So those two, they are your rings?

8 A. Yeah, they are my rings.

9 Q. Were you wearing those rings on November 6th of 2004?

10 A. Yes, sir.

11 Q. Okay. And are they the rings that you are talking
12 about that were taken from you?

13 A. Uh-huh, two of them.

14 Q. Two of them?

15 A. Yeah.

16 MR. MOYER: Your Honor, at this time I would move
17 to have State's Exhibit No. 11 moved into evidence.

18 THE COURT: Any objections to Exhibit No. 11?

19 MS. MANIGAULT: Your Honor, there is no objection
20 to the two rings that he identified.

21 THE COURT: All right.

22 MR. GIBSON: No objection, Your Honor, to the two
23 that he identified.

24 MR. FARNSWORTH: Same objection.

25 THE COURT: Without objection, then Exhibit 11

1 will be two identified rings.

2 MR. MOYER: Okay.

3 BY MR. MOYER:

4 Q. All right. Mr. Blassingame, State's Exhibit No. 11,
5 the two rings that you identified are now moved into
6 evidence. I'm going to put all four of them right there.
7 Would you pick out the two that you are able to recognize as
8 wearing on November the 6th of 2004?

9 A. This one. Yeah.

10 Q. Okay.

11 A. This one here.

12 Q. And set the two that you identified over here on this
13 bag.

14 And the other two aren't yours then?

15 A. No.

16 Q. Okay. All right. Please answer any questions that the
17 defense may have.

18 CROSS EXAMINATION BY MR. GIBSON:

19 Q. Mr. Blassingame, you identified Mr. Waller as one of
20 your customers, is that correct?

21 A. That's right.

22 Q. And you said that what you would do for him is you
23 would trim his braids or trim the hair around his braids and
24 his beard and stuff like that, is that correct?

25 A. That's right.

1 Q. Is that something that you did for customers other than
2 Mr. Waller? I mean, did you have other customers that would
3 come in and get sort of the same kind of cut?

4 A. Uh-huh.

5 Q. How long have you been in business?

6 A. About 45 years.

7 Q. So I would imagine over all that time, and particularly
8 within the year this happened, that you had a lot of
9 customers during that time frame, is that correct?

10 A. Uh-huh.

11 Q. Do you have any information that would implicate Mr.
12 Waller, or any of your other customers in this crime?

13 A. No.

14 Q. Okay.

15 MR. GIBSON: Thank you Mr. Blassingame.

16 MS. MANIGAULT: Few questions, Your Honor.

17 THE COURT: Yes, sir.

18 CROSS EXAMINATION BY MS. MANIGAULT:

19 Q. Mr. Blassingame, were you able to identify or recognize
20 any of the two that you said came into your shop?

21 A. No.

22 Q. Did you see their faces at all?

23 A. They was only say fast, I didn't really see. I didn't
24 see no faces.

25 MS. MANIGAULT: Thank you, sir.

1 CROSS EXAMINATION BY MR. FARNSWORTH:

2 Q. Just one question.

3 The rings that you identified, one had your initials on
4 it, is that correct?

5 A. Uh-huh.

6 MR. FARNSWORTH: Thank you.

7 THE COURT: Any redirect -- or excuse me, I think
8 we have may have one further.

9 MR. GIBSON: If it's okay if I just ask it? It
10 might make it simpler as opposed to having Mr. Farnsworth do
11 it.

12 THE COURT: Any objection to Mr. Gibson asking
13 another question?

14 MR. MOYER: No.

15 RECROSS EXAMINATION BY MR. GIBSON:

16 Q. Mr. Blassingame, you also said that you normally close
17 your door around 6:30 during that time frame, is that
18 correct?

19 A. About 6:00, 6:30, somewhere around there.

20 Q. So you were not normally open at 7:30 in the evening,
21 is that correct?

22 A. If somebody come to the door and I know them, I let
23 them in.

24 Q. But on a regular daily basis were you open at 7:30?

25 A. Open at 7:30?

1 Q. Yes, sir, open for business, or allowing people in, or
2 open cutting heads at 7:30?

3 A. Well, in the morning?

4 Q. No. No, sir, at night, in the evening.

5 A. No, uh-uh, unless I know and -- I lock that door if
6 they come to that door and knocked and I look out there and
7 I know them, I let them in.

8 Q. Yes, sir.

9 A. Yeah.

10 Q. Okay.

11 MR. GIBSON: Thank you.

12 MR. MOYER: No redirect. Your Honor.

13 THE COURT: All right. Thank you, Mr.
14 Blassingame. You may step down.

15 MR. MOYER: The State calls Officer McAlister.

16 OFFICER R. S. MCALISTER, having been first duly
17 sworn, testified as follows:

18 THE CLERK: State your name for the record,
19 please.

20 THE WITNESS: Randall Shane McAlister.

21 THE CLERK: Thank you. Be seated.

22 DIRECT EXAMINATION BY MR. MOYER:

23 Q. All right. Officer McAlister, you work for the
24 Greenville County sheriff's office?

25 A. I do.

- 1 Q. What is your position there?
- 2 A. Deputy II.
- 3 Q. And how long have you been in law enforcement?
- 4 A. Eight years full time, two years as a reserve.
- 5 Q. Okay. So ten years total?
- 6 A. Yes, sir.
- 7 Q. How long have you -- is that all been with the
- 8 Greenville County sheriff's office?
- 9 A. No, sir.
- 10 Q. Where else have you worked?
- 11 A. I worked for Central P.D., where I was an investigative
- 12 sergeant, and Pendleton P.D..
- 13 Q. Let me ask you just a few questions. You worked on
- 14 November 6th, 2004?
- 15 A. Yes, sir.
- 16 Q. And did you respond to this call at Blassingame's
- 17 Barbershop?
- 18 A. Yes, I did.
- 19 Q. And where was that located?
- 20 A. It was on Anderson Road. I don't have the address in
- 21 front of me.
- 22 Q. Is it in Greenville County?
- 23 A. Yes, it was.
- 24 Q. And is the Anderson Road a pretty busy road?
- 25 A. Fairly busy. It depends upon the day, time of day.

1 Q. And it's a two lane in each -- two lanes going in each
2 way in that location?

3 A. I'm not sure. I work the east side now. 2004 I was on
4 the west side. I haven't been over there in quite awhile.

5 Q. At what time was it that you received the call?

6 A. I believe it was around 1810.

7 Q. 1810?

8 A. 6:10 p.m..

9 Q. Using military time?

10 A. Yes, sir, 6:10 p.m..

11 Q. That's the time that you received the call.

12 What was the nature of the call?

13 A. Armed robbery had just occurred.

14 Q. And did it take you -- did it take you a while to get
15 there, or do you remember about how long it took you to get
16 there?

17 A. Probably ten minutes.

18 Q. Okay.

19 A. According to the report it was about ten minutes.

20 Q. Okay. So you got -- you arrived there about 6:20?

21 A. I believe so.

22 Q. Now, did you see the -- come in contact with the
23 victims when you got there?

24 A. I did.

25 Q. The men who testified here.

1 And do you remember how they were acting at that time?

2 A. They were upset, mad.

3 Q. Now, you were the first officer on the scene?

4 A. I was.

5 Q. And other officers came out after you were there?

6 A. Yes, sir.

7 Q. Did you call for the forensics officers to arrive out
8 there?

9 A. I believe so, yes, sir. I think myself or Deputy Boyd
10 did, one of the two.

11 Q. And he was the other officer who arrived out there?

12 A. Yes, sir. It was toward the end of shift and he come
13 to relieve me and we ended up just staying over.

14 Q. Did you have any trouble securing the scene when you
15 were there?

16 A. When I got there, there was multiple people in -- his
17 family members and stuff had gotten there too, were coming
18 in and out when I got there.

19 Q. Coming in and out?

20 A. Coming in and out of the barbershop, yes.

21 Q. So it was more than just the three victims there?

22 A. When I got there, more of the family was pulling up and
23 kept coming up.

24 Q. Okay. Do you have any --

25 A. Of some of the victims. I don't know who they were

1 but --

2 Q. Do you have any idea how many people?

3 A. I do not.

4 Q. Okay. After were you able to get --

5 A. Yeah, once I got Deputy Boyd there, we secured the
6 scene and closed them down.

7 Q. Now, you turned it over to forensics to look over the
8 scene then?

9 A. Yes, sir.

10 Q. Okay. Please answer any questions that the defense may
11 have.

12 A. Okay.

13 MR. GIBSON: No questions, Your Honor.

14 MS. MANIGAULT: Just.

15 CROSS EXAMINATION BY MS. MANIGAULT:

16 Q. Officer, did you take statements from any of the
17 victims?

18 A. I believe I did. Without looking, I don't know. I
19 can't answer.

20 Q. Excuse me?

21 A. I said without looking at the report in front of me, I
22 believe I did.

23 Q. And did most of the victims you talked with say that
24 they could not identify any person specifically?

25 A. They stated that they were wearing bandanas and had

OFFICER DIANE ORLANDO - DIRECT BY MR. MOYER

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1 their hats pulled down, so they didn't actually get a visual
2 of who they were.

3 MS. MANIGAULT: All right. Thank you.

4 MR. FARNSWORTH: No questions.

5 THE COURT: Any redirect?

6 MR. MOYER: No redirect, Your Honor.

7 THE COURT: Thank you, officer. You may step
8 down.

9 MR. MOYER: The State would call forensics officer
10 Diane Orlando.

11 OFFICER DIANE ORLANDO, having been first duly
12 sworn, testified as follows:

13 THE CLERK: State your name for the record,
14 please.

15 THE WITNESS: Diane Clara Orlando.

16 THE CLERK: Thank you. Be seated.

17 DIRECT EXAMINATION BY MR. MOYER:

18 Q. Where are you employed?

19 A. Greenville County forensics.

20 Q. What do you do?

21 How long have you worked for Greenville County
22 forensics, first?

23 A. In February it will be two years.

24 Q. What do you do with Greenville County forensics?

25 A. I'm a forensic evidence technician.

1 Q. And what are your duties as an evidence technician?

2 A. We basically respond to crime scenes, collect any
3 potential evidence that could be used later. We document
4 the crime scene and anything else that would need to be
5 done.

6 Q. Okay. Now, were you working on November the 6th of
7 2004?

8 A. Yes, I was.

9 Q. Did you respond to this incident that we have been
10 talking about today on Anderson Road?

11 A. Yes, I did.

12 Q. Okay. And what was the location that you responded to?

13 A. It was at [REDACTED] in Greenville.

14 Q. And what was the nature of the call that you were going
15 out there to look over?

16 A. They said it was in reference to an armed robbery.

17 Q. Okay. Now, when you arrived on the scene, you spoke to
18 the officers?

19 A. I did. I spoke to Officer Boyd.

20 Q. Okay. And did you -- did you glean from him what the
21 witnesses and victims had been saying about what had
22 happened?

23 A. I did. I spoke to him and he had stated what some of
24 the witnesses had stated. Some of them were making comments
25 and I kind of took what they said and further analyzed the

1 situation at the scene.

2 Q. Okay. And did you learn in the course of these
3 discussions about the shot that had been fired?

4 A. Yes, I did.

5 Q. And did you begin to look for any evidence of a shot
6 being fired?

7 A. I did.

8 Q. And tell us about where you looked.

9 A. Well, I started with inside, and then other people were
10 saying on scene they said that -- they had made a comment
11 that they heard a loud bang, and then that's when the two
12 suspects entered into the store, or the barbershop rather.
13 So then I started looking outside as well, thinking that if
14 it was an automatic weapon, the shell casing might be
15 outside as opposed to inside, since they heard the shot
16 fired and then they entered.

17 Q. Okay. So did you look for a shell casing or projectile
18 first?

19 A. I looked for the shell casing first.

20 I saw where the projectile entered. It was pretty
21 apparent, because the ceiling was relatively light and you
22 could see where it entered, so that wasn't going to go
23 anywhere, so I first looked for the shell casing.

24 Q. And were you able to find one?

25 A. I did.

1 Q. And where did you find one?

2 A. I found it outside. It was kind of on the pavement in
3 front of the curb of where a parking spot was in front of
4 the door to the barbershop.

5 Q. Did you take a picture of that?

6 A. I did.

7 Q. Did you collect that shell casing?

8 A. Yes, I did.

9 Q. And you took a picture of it before you collected it?

10 A. Yes.

11 Q. Okay. Let me show you State's Exhibits Numbers 6 and

12 7. If you would just take a look at them. Can you
13 recognize what is depicted in those photographs?

14 A. Yes, I can.

15 Q. Okay. And start with Exhibit 6.

16 A. This is -- should I hold it up?

17 Q. No, not yet. It's not in evidence, but what is
18 depicted in State's Exhibit 6?

19 A. It's just the curb in relation to where the shell
20 casing was, and then I marked it with an evidence placard.
21 And then also had the entrance door, so you could see where
22 it was in reference to the shell casing.

23 Q. And what is State's Exhibit 7?

24 A. State's Exhibit 7 is a close-up of the shell casing
25 with a curb in the background and it's located in some

1 gravel.

2 Q. Okay. And both of those pictures, are they fair and
3 accurate representations of that area and the shell casing
4 that you found?

5 A. Yes.

6 MR. MOYER: Your Honor, at this time I move
7 State's Exhibit 6 and 7 into evidence.

8 THE COURT: Any objection to State's 6 and 7?

9 MR. FARNSWORTH: Without objection.

10 MR. GIBSON: Without objection.

11 MS. MANIGAULT: No objection.

12 THE COURT: Without objection, Exhibits 6 and 7
13 are into evidence.

14 BY MR. MOYER:

15 Q. We are going to show State's Exhibit No. 6 first off
16 for the benefit of the jury behind you. Can you explain to
17 the jury what we see in that photograph?

18 A. Right here is the entrance door to the barbershop.
19 Here is the curb I was talking about, and I put evidence 1
20 placard, because I named that as DCO-1, which is my initials
21 and then evidence 1, and the shell casing is right there and
22 placard is around it.

23 Q. Okay. And State's Exhibit No. 7?

24 A. This is a close-up of the shell casing. And that is
25 the curb.

1 Q. And you collected that shell casing then?

2 A. I did.

3 Q. You called it DCO-1, correct?

4 A. Uh-huh.

5 (Container with Shell Casing marked as State's
6 Exhibit No. 12 for identification)

7 BY MR. MOYER:

8 Q. If you would, take a look at what's been marked State's
9 Exhibit No. 12 and see if you are able to recognize what it
10 is that I just handed you?

11 A. This is a shell casing that was collected on the scene.

12 Q. Don't hold it up. That's not in evidence, but that's
13 the shell casing that you collected?

14 A. Uh-huh.

15 Q. Does it have those DCO-1 that you talked about on the
16 canister?

17 A. Yeah, I packaged it, and these are my initials, and I
18 documented the time I collected it.

19 Q. What did you do after you collected it?

20 A. I brought it back to the office where we were located
21 at the law enforcement center and I processed it.

22 Q. And by processing it, do you mean by that?

23 A. You process it for latent fingerprints. You can
24 process it in numerous ways. You can fume it using super
25 glue, or you can do dust, or both of them. In this case I

1 did both of them.

2 Q. Were you able to find anything?

3 A. No, which is relatively typical on shell casings.

4 Q. And based upon your training and experience, it's
5 difficult to get a fingerprint off of a shell casing?

6 A. It is if it's been fired.

7 If it hasn't been fired, if you take it out of the
8 magazine, you might be able to in a controlled environment.

9 If it's been fired, it usually -- the prints will
10 evaporate, because once it's fired, it creates so much heat
11 and soot that it just burns off.

12 Q. Now, after you processed that shell casing, what did
13 you do with it?

14 A. I put it into our P & E department, our public safety P
15 & E.

16 Q. And P & E, that's what you call -- that's initial for
17 property and evidence?

18 A. Uh-huh.

19 Q. Is that where all evidence goes in cases?

20 A. That's where we put all our evidence, yes.

21 Q. And it was put in under the case number that was
22 assigned to this case?

23 A. Yes, it was.

24 Q. Okay.

25 MR. MOYER: Your Honor, at this time I would move

1 to have State's Exhibit No. 12 moved into evidence.

2 MR. GIBSON: No objection, Your Honor.

3 THE COURT: Any objection?

4 MR. FARNSWORTH: Without objection.

5 MS. MANIGAULT: None from us.

6 THE COURT: Exhibit 12 is into evidence without
7 objection.

8 BY MR. MOYER:

9 Q. It's now into evidence. If you could, maybe just open
10 it up and hold it for the jury to see.

11 Okay. What caliber is it?

12 A. It's .380 auto, and it head stamped FC, which is just a
13 brand name. You could have Winchester, or any other ones.

14 Q. So just to be clear, that's a fired shell cartridge?

15 A. It's a fired shell casing, yes.

16 Q. Now, after you looked at and collected this shell
17 casing, did you divert your attention then to the projectile
18 that you talked about?

19 A. Yes, I did.

20 Q. And tell us where you looked for that.

21 A. It was in the ceiling tile. You could tell where it
22 went into it, so I removed part of the ceiling tile in order
23 to get to it, and it was in between the metal framing of it.

24 Q. Okay. Let me show you State's Exhibits Numbers 8 and
25 9.

1 We will start off with State's Exhibit No. 9. Do you
2 recognize what is shown in that picture?

3 A. This is a ceiling tile, which I photographed before I
4 removed anything. That's just how I saw it upon my arrival.

5 Q. Okay. And how about State's Exhibit No. 10 -- I'm
6 sorry, No. 8?

7 A. This is after I removed the ceiling tile. It just
8 shows where you could see where it went into the framing,
9 and I took a picture of that, of the damage it caused.

10 Q. Okay. Now, was this projectile wedged in anything, or
11 was it pretty easy to retract?

12 A. It was relatively easy to retract. I didn't have to do
13 too much damage. I just removed the ceiling tile. It had
14 gone through a metal piece inside the ceiling.

15 You see how those are all square? Just as an example,
16 it's almost exactly the same. In between the squares is the
17 thin line. In this case it was metal. It went through the
18 metal and then it was just resting in between. So you just
19 kind of -- I took my fingers and reached and I could feel it
20 and then I just took two fingers and then pulled it out.
21 It wasn't lodged in anything at that point.

22 Q. So are both of these fair and accurate representations
23 of that ceiling and the area where you collected that
24 projectile on November 6th, 2004?

25 A. Yes.

1 MR. MOYER: I would move to have State's Exhibit
2 No. 8 and 9 entered into evidence.

3 MR. GIBLSON: No objection.

4 MR. FARNSWORTH: Without objection.

5 MS. MANIGAULT: No objection.

6 THE COURT: Without objection from all defendants,
7 Exhibits 8 and 9 are into evidence.

8 MR. MOYER: Okay. Once more just behind you.

9 BY MR. MOYER:

10 Q. For the benefit the jury -- do you still have the laser
11 pointer?

12 A. Yes.

13 Q. Can you try to point out to the jury where?

14 A. It's right there.

15 Q. Do it again.

16 A. Do it one more time. It's right there.

17 Q. Okay. And did it look like it went in straight, or
18 what could you tell about the hole that was made in that?

19 A. It was a relatively large hole. It went in on an angle
20 and it was going in an upward motion, as if the person -- as
21 soon as he opened up the door to the barbershop, straight
22 ahead of view, that is what you saw. This is exactly how it
23 was viewed. It wasn't on an angle or anything. And it's
24 almost like a person had their hand in an upward motion and
25 fired up into the air before they actually came into the

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1 barbershop, and that's why it's on an angle like that.

2 (Container with a Bullet marked as State's Exhibit
3 No. 13 for identification)

4 (Photograph marked as State's Exhibit No. 14 for
5 identification)

6 BY MR. MOYER:

7 Q. Let me show you what's marked as State's Exhibit No.

8 14. Do you recognize what's shown in that exhibit?

9 A. It's just a close-up of the hole that the projectile
10 made when it entered.

11 MR. MOYER: Your Honor, I move to have State's
12 Exhibit No. 14 entered into evidence.

13 MR. FARNSWORTH: Without objection, Your Honor.

14 MR. GIBSON: No objection, Your Honor.

15 MS. MANIGAULT: No objection, Your Honor.

16 THE COURT: Without objection, Exhibit 14 is into
17 evidence.

18 BY MR. MOYER:

19 Q. This is a closer close-up of it you just told us.

20 Would you explain to the jury what you meant by it going in
21 on an angle and point it out?

22 A. It's just a close-up of the actual hole. The actual
23 hole is right here, and it kind of went on an angle and
24 scraped the surface. You could tell it was a relatively
25 dark surface all around the ceiling tile, and it scraped and

1 then lodged in right there.

2 Q. Okay. And then State's Exhibit No. 8, can you explain
3 to the jury what we see in that?

4 A. Sure. After the ceiling tile was removed from this
5 area, the metal was exposed and the bullet had gone in right
6 there. And then it was in between the metal tracking, and
7 that's when I just kind of reached in with my two fingers
8 and felt around for it. I could feel it sliding around in
9 there and then I just took it out.

10 Q. And you again collected that projectile?

11 A. I did.

12 Q. And what did you do with the projectile after you
13 collected it?

14 A. I took it back to the office with the shell casing and
15 I packaged it and then forwarded it over to property and
16 evidence.

17 Q. Did you package it the same way that you packaged the
18 shell casing?

19 A. I did, I packaged it the same way.

20 Q. Let me show you State's Exhibit No. 13. Could you take
21 a look at that and do you recognize what that is?

22 A. This is just the actual projectile, bullet, if you want
23 to call it that after it's been fired.

24 Q. Okay. Is that the bullet that you located in Mr.
25 Blassingame's barbershop on November 6th --

1 A. It is, yes.

2 Q. -- 2004.

3 And what were the -- what was the number that you
4 assigned to that piece of evidence?

5 A. DCO-2.

6 Q. One against your initials?

7 A. My initials and then evidence 2.

8 Q. Okay.

9 MR. MOYER: Your Honor, at this time I move to
10 have State's Exhibit No. 13 entered into evidence.

11 THE COURT: Any objection to Exhibit 13?

12 MR. FARNSWORTH: No objection.

13 MS. MANIGAULT: No objection.

14 THE COURT: Without objection, Exhibit 13 is into
15 evidence.

16 BY MR. MOYER:

17 Q. If you would just show it to the jury.

18 A. Sure. It's slightly deformed, because once it passes
19 through objects, whether it's a person or an object, it gets
20 slightly deformed.

21 Q. Okay. Please answer any questions that the defense may
22 have.

23 CROSS EXAMINATION BY MR. GIBSON:

24 Q. So, officer, you are like CSI, right?

25 A. Yeah, in a way.

1 Q. As close as you can get in Greenville, right?

2 A. Right.

3 Q. I mean, like Horatio from CSI, ma'am, and all that
4 stuff, right?

5 A. Yes, it's basically the same job description. I don't
6 drive a Hummer and I wear a different uniform, as you can
7 see. Not showing any cleavage. Just standard uniform.

8 Q. Okay. So if there were any physical evidence at that
9 scene to be found, you would be the person to find it,
10 right?

11 A. Yes. I would document it and collect it and do
12 whatever I had to do with it.

13 Q. Okay. And just to clarify, you didn't find any
14 evidence, physical evidence, at that scene that you are
15 aware of at this time that would implicate Mr. Waller?

16 A. No.

17 MR. GIBSON: Thank you.

18 MR. FARNSWORTH: No questions.

19 MS. MANIGAULT: No questions, Your Honor.

20 MR. FARNSWORTH: No questions.

21 THE COURT: Any redirect?

22 MR. MOYER: No redirect.

23 THE COURT: Thank you, officer. You may step
24 down.

25 MR. MOYER: Your Honor, may we approach real

1 briefly?

2 THE COURT: Yes, sir.

3 (Whereupon, the lawyers approached the bench for
4 an off-the-record discussion)

5 THE COURT: Mr. Foreman, ladies and gentlemen, in
6 conferring with the attorneys, I believe the next matters
7 that we will have to take up might go a little longer than
8 we thought. Rather than having to break in the middle of
9 the witness or other things that are being presented to you,
10 I think it might be well for us just to break for the
11 evening now. We will normally try to work until 5:00 or
12 5:30. It's a little past 4:30 now, but we will give you a
13 little extra time off today.

14 We are going to start back at 9:30 in the morning.
15 So if you will be in the jury room at 9:30, we will be ready
16 hopefully to begin then. I will have some other matters I
17 need to take care of in the meantime.

18 You are going to go home tonight and you are going
19 to have some loved ones who are going to be mighty curious
20 about what you have been doing, whether your jury is similar
21 to what they had, or what's it all about, or tell me about
22 the case, and what have you heard so far. It would be
23 improper for you to talk to your loved ones or any friends
24 or neighbors or anybody else about this case. You have
25 taken an oath and you have committed to these parties that

1 you are going to make a decision as the fact finders, as the
2 judges, on what you hear in this courtroom - witness stand,
3 the exhibits, and the law that I give you - and that alone,
4 nothing else. So it would be improper for you to talk to
5 anyone about this case. There will be opportunities for you
6 to share your experience with your loved ones when the case
7 is over and done with, but during the course of the trial it
8 would not be proper. And the same as I stated to you
9 earlier, when you get back to your jury room tomorrow, you
10 and your fellow jurors can talk about anything, but not
11 about this particular case.

12 So with that admonition I'll excuse you for the
13 evening. I look forward to seeing you back in your jury
14 room at 9:30 in the morning. You are excused at this time.

15 (The following takes place outside the presence of
16 the jury panel)

17 THE COURT: All right. We will be at ease until
18 9:30 in the morning.

19 And again, maybe, Ms. Manigault, I think with your
20 benefit about the officer being back behind you, I think if
21 you moved down -- I think there would be enough room for you
22 to move down the table a little bit more. That would give
23 you even more distance to --

24 MS. MANIGAULT: Yes, sir.

25 THE COURT: -- separate yourself from the officer

1 who is at the back of the room inside the bar.

2 MS. MANIGAULT: Thank you.

3 THE COURT: Y'all have a good evening and we will
4 see you in the morning.

5 MR. FARNSWORTH: Judge, I would like to ask you.
6 I need to talk with my client for about five minutes. And I
7 was going ask if you would allow him to speak to his family
8 who has come here, just to speak to them. They are right
9 behind them.

10 THE COURT: He can speak from where he is now, but
11 not -- they can't come inside the bar.

12 MR. FARNSWORTH: I understand.

13 THE COURT: They can certainly speak across there
14 but --

15 MR. FARNSWORTH: Thank you.

16 THE COURT: Briefly while you talk to him.

17 (Whereupon, proceedings were adjourned to January
18 18, 2005, at 9:30 a.m.)
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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE) TRANSCRIPT OF RECORD
5 -vs-) 2005-GS-23-4133
6 DONNIE NELSON,) 2005-GS-23-4134
7 Defendant.) 2005-GS-23-4135
8) 2005-GS-23-4136
9) 2005-GS-23-4137
10) JANUARY 18-20, 2006
11 Greenville, South Carolina

12 B E F O R E:

13 THE HONORABLE G. EDWARD WELMAKER, JUDGE. ; and a jury.

14 (VOLUME II)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF GENERAL SESSIONS
3)

4 THE STATE) TRANSCRIPT OF RECORD
5) 2005-GS-23-1197
6 -vs-) 2005-GS-23-1198
7) 2005-GS-23-1199
8 LAWRENCE WALLER,) 2005-GS-23-1200
9 Defendant.) 2005-GS-23-1211
10) JANUARY 18-20, 2006
11 Greenville, South Carolina
12)

13 B E F O R E:

14 THE HONORABLE G. EDWARD WELMAKER, JUDGE. ; and a jury.
15

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1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF GENERAL SESSIONS
3 COUNTY OF GREENVILLE)

4 THE STATE) TRANSCRIPT OF RECORD
5) 2005-GS-23-1245
6 -vs-) 2005-GS-23-1246
7) 2005-GS-23-1247
8 LAWRENCE CLOVIS,) 2005-GS-23-2638
9) 2005-GS-23-1248
10 Defendant.) JANUARY 18-20, 2006
11 Greenville, South Carolina

12 B E F O R E:

13 THE HONORABLE G. EDWARD WELMAKER, JUDGE. ; and a jury.
14

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1 (Proceedings, January 18, 2006)

2 (Written Stipulation marked as State's Exhibit No.
3 15 for identification)

4 THE COURT: Okay. Ready to proceed?

5 MR. MOYER: A couple matters, Your Honor, before
6 we bring the jury in.

7 THE COURT: Yes, sir.

8 MR. MOYER: First off, Mr. Gibson and I have
9 entered into a stipulation. Just essentially it covers what
10 his client's cell phone number was November 6th of 2004.
11 It's a written stipulation we would like to enter into the
12 record.

13 THE COURT: All right, sir.

14 MR. MOYER: State's Exhibit No. 15.

15 Second off, the second witness, Your Honor, I
16 would like to make one motion about her testimony.
17 Investigator Patton is going to testify. I would like to
18 make a motion that the defense, specifically defendant
19 Lawrence Waller, not be allowed to elicit testimony from
20 Investigator Patton as to the contents of his client's
21 statement that he gave, nor would the fact that he even gave
22 a statement. I think state law is very consistent that a
23 defendant may not put in a self-serving statement that he's
24 given to the police, or to anyone else, and thereby
25 shielding himself from cross-examination.

1 I think there is plenty of case law which I could
2 certainly point out to the court, if it becomes necessary.
3 I don't know if the defendant intends to do that, but I
4 would like to make that motion at this point.

5 MR. GIBSON: Your Honor, if he will agree not to
6 put it in, unless my client testifies, I'll agree to that.

7 MR. MOYER: I don't quite follow that.

8 MR. GIBSON: If he agrees not to put it in unless
9 my client testifies, to only use to cross-examine my client
10 on, I'll agree to that.

11 THE COURT: So I understand, nobody is going to
12 mention the statement. You are saying that he won't mention
13 the statement and you won't mention the statement.

14 MR. GIBSON: I won't ask questions about it, but
15 if she mentions it, I should be allowed to ask questions
16 about it.

17 THE COURT: So as I understand, y'all are saying
18 that nobody mentions the statement at all.

19 MR. MOYER: Through Investigator Patton's --

20 THE COURT: Testimony.

21 MR. MOYER: -- testimony.

22 Now, if the defendant takes the stand --

23 THE COURT: Right.

24 MR. MOYER: -- it would.

25 THE COURT: He understands that.

1 MR. MOYER: It would pertain.

2 THE COURT: Okay.

3 MR. MOYER: That's fine. I just want to make it.

4 THE COURT: Okay. Anything else?

5 MR. MOYER: Not at this time.

6 THE COURT: All right. Let's bring the jury in.

7 (The following takes place in the presence of the
8 jury panel)

9 THE COURT: Good morning, ladies and gentlemen.

10 We are now ready to proceed with the trial.

11 Mr. Moyer, you may call your next witness.

12 MR. MOYER: Thank you, Your Honor.

13 First off I would like to publish the stipulation
14 to the court. The stipulation is State's Exhibit No. 15,
15 that the State, through Assistant Solicitor Mark Moyer, and
16 the defendant, through his attorney Kenneth Gibson, hereby
17 agree and stipulate that on November the 6th of 2004,
18 Lawrence Waller had a cellular telephone and the telephone
19 number was [REDACTED].

20 And at this time the State would call Jarvis
21 Clement.

22 JARVIS CLEMENT, having been first duly sworn,
23 testified as follows:

24 DIRECT EXAMINATION BY MR. MOYER:

25 Q. Okay, Mr. Clement, what I would ask you to do is to

1 lean up a little bit towards that microphone so we can all
2 hear you and speak up loud enough to me so that if I can
3 hear you, then everybody here in this jury box can hear you
4 too, okay?

5 A. All right.

6 Q. Do you understand?

7 A. Yeah, I understand.

8 Q. Okay. What is your full name?

9 A. Jarvis Dante Clement.

10 Q. How old are you?

11 A. 21.

12 Q. How old were you on November the 6th of 2004?

13 A. 20.

14 Q. All right. And you have a nickname?

15 A. Uh-huh, Smooth.

16 Q. Your nickname is Smooth.

17 Now, you currently are in the South Carolina Department
18 of Corrections, right?

19 A. Yeah.

20 Q. And your sentence at this point is five years?

21 A. Yes.

22 Q. That's for a conspiracy charge and that weapons charge,
23 right?

24 A. Yeah.

25 Q. And you got the maximum five years on those two

1 sentences?

2 A. Yeah.

3 Q. Now, you are facing a lot more time as well, aren't
4 you?

5 A. Yeah.

6 Q. Do you know how much time you could get?

7 A. No.

8 Q. Do you know about how much?

9 A. Between 10 and 30.

10 Q. You realize it's 10 to 30 on each of your armed robbery
11 convictions, right?

12 A. Uh-huh.

13 Q. And you have pled guilty to two counts of armed
14 robbery?

15 A. Yes, sir.

16 Q. And each of those carry a minimum of 10, a maximum of
17 30?

18 A. Yes, sir.

19 Q. And you know that they could either be concurrent or
20 consecutive, right?

21 A. Yes, sir.

22 Q. All right. And you also pled guilty to two counts of
23 kidnapping, right?

24 A. Yes, sir.

25 Q. And do you know what you could get on those charges?

- 1 A. Uh-huh.
- 2 Q. What could you get?
- 3 A. Life.
- 4 Q. You could get 30 years on each of those, right?
- 5 A. Yeah.
- 6 Q. So if everything got stacked on top of one another, you
- 7 could get essentially life, right, which is about 120 years?
- 8 A. Yeah.
- 9 Q. Or you could get -- what is the very least that you
- 10 could get?
- 11 A. I don't know, really.
- 12 Q. Okay. So when you pled guilty, do you remember them
- 13 explaining to you that the armed robbery charge carries a
- 14 minimum of ten years?
- 15 A. Uh-huh.
- 16 Q. And you know all that is no parole, right?
- 17 A. Uh-huh.
- 18 Q. Now, when you pled guilty to all of those charges, did
- 19 anyone promise you what kind of sentence that you would get?
- 20 A. No.
- 21 Q. And did you plead guilty without any recommendations or
- 22 any plea agreements as to what your sentence would be?
- 23 A. Did I have a recommendation?
- 24 Q. Right.
- 25 A. No.

1 Q. Okay. Do you realize that -- yeah, make sure you say
2 yes or no, and make sure you speak out, okay?

3 Now, those charges that you pled guilty to, they were
4 from two different armed robberies -- two different
5 incidents, right?

6 A. Yeah.

7 Q. And the first one was the one on -- at what location?

8 A. I have forgotten the name of the address.

9 Q. I don't need the address. Was it a barbershop?

10 A. Yeah.

11 Q. And whose barbershop was it?

12 A. The Distinguished Gentlemen, was it?

13 Q. Okay. Distinguished Gentlemen was one of them. Which
14 was the other one?

15 A. Blassingame's.

16 Q. And which one came first?

17 A. The Blassingame.

18 Q. And Distinguished Gentlemen, that happened about how
19 long after?

20 A. It had to be a few weeks, but I don't remember.

21 Q. You don't remember exactly?

22 A. No.

23 Q. Could it have been a week later, November 13th?

24 A. Yeah.

25 MS. MANIGAULT: Your Honor, I'm going to object.

1 Mr. Moyer is leading his own witness and he's testifying.

2 MR. MOYER: For introductory questions, I think --

3 THE COURT: I sustain the objection. Just --

4 MR. MOYER: Okay.

5 THE COURT: Just try not to lead the witness.

6 MR. MOYER: All right.

7 BY MR. MOYER:

8 Q. And do you know how many different charges -- how many
9 people were --

10 Let me ask you about that Distinguished Gentlemen
11 robbery that you mentioned. How many people were in that
12 barbershop when that robbery was committed?

13 A. I think it was about six, I think.

14 Q. And did you get a separate charge for each of the
15 people who were in there?

16 A. Yeah.

17 Q. But you pled guilty to this one count, right?

18 A. Right.

19 Q. And the other charges were dismissed?

20 A. Uh-huh.

21 Q. And the same -- does the same thing go for the
22 kidnapping charges that you talked about?

23 A. Yes.

24 Q. There were several charges of kidnapping for each
25 person?

1 A. Yeah.

2 Q. But you pled guilty to one count?

3 A. Yeah.

4 Q. And were the other ones dismissed?

5 A. Yeah.

6 Q. Okay. Now, let me ask you some questions about these
7 guys seated over here. Let's start at the far right-hand
8 side. Do you know who that is seated there? Lawrence
9 Waller?

10 A. Yeah.

11 Q. And --

12 MS. MANIGAULT: Your Honor, I object. He's
13 identifying --

14 THE COURT: Sustained.

15 BY MR. MOYER:

16 Q. Do you know that person who is seated over there?

17 A. Uh-huh.

18 Q. How long have you known him?

19 A. Not long.

20 Q. Where did you meet him?

21 A. I met him through Nanu.

22 Q. And who is Nanu?

23 A. I don't know his real name.

24 Q. Okay. And Nanu, where did you meet ~~Nanu~~?

25 A. Classic 2.

1 Q. What is Classic 2?

2 A. The dealership that I used to work at.

3 Q. This place that you used to work, what kind of business
4 was it?

5 A. Car dealership.

6 Q. Where was this car dealership?

7 A. On Whitehorse Road.

8 Q. How long did y'all work together?

9 A. About a month.

10 Q. And do you remember what time of year it was that y'all
11 worked together there?

12 A. Like the summertime.

13 Q. And where did Nanu live?

14 A. Over by the DMV, Whitehorse Road.

15 Q. Over in that area?

16 A. Uh-huh.

17 Q. Did you later show this detective, Investigator Patton,
18 where that was?

19 A. Yes.

20 Q. Did you actually ride in a vehicle with her?

21 A. Yeah.

22 Q. And did you show where the exact house where she
23 lived -- where he lived?

24 A. Yeah.

25 Q. Now, how about -- let me take you then back to November

JARVIS CLE

1 the 6th of 2004. Did you go to Nanu's residence on that
2 date?

3 A. On which date?

4 Q. On November 6th of 2004?

5 A. On November the 2nd?

6 Q. The 6th. November 6th.

7 A. What?

8 Q. The date of the incident at the Blassingame barbershop?

9 A. Yeah.

10 Q. How did you get over there?

11 A. I rode a bike.

12 Q. Where were you living at that time?

13 A. Over near the Bridge Road.

14 Q. Now, how far away was that from where Nanu lived?

15 A. Not too far. I don't know exactly how far it is. It
16 ain't too far, though.

17 Q. You say you rode a bike over there?

18 A. Yeah.

19 Q. How long did it take you -- did it take you awhile to
20 ride the bike over there?

21 A. No, probably about 15 minutes, 20 minutes.

22 Q. All right. Now, did you -- was there anybody else at
23 Nanu's house when you got there?

24 A. Yeah.

25 Q. Again, who were they?

JARVIS CLEMENT - DIRECT BY MR. MOYER

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1 A. Those two right there.

2 Q. Okay. And you pointed over here to the defense table?

3 A. Yeah.

4 Q. And did you know their names?

5 A. No.

6 Q. Okay. What did you know them by?

7 A. Called them New Orleans and New York. I don't know
8 their names, really.

9 Q. Which one did you call ~~New York~~?

10 A. The one, right, with the braids.

11 Q. The one with the braids?

12 A. Yeah.

13 Q. Where is he seated?

14 A. Over there.

15 Q. Right in the corner over here?

16 A. Yeah, the corner.

17 MR. MOYER: Your Honor, I would like the record to
18 reflect that the defendant pointed to Donnie Nelson.

19 BY MR. MOYER:

20 Q. And who did you call ~~New Orleans~~?

21 A. The one with the plaid.

22 Q. The one seated here on the end?

23 MR. MOYER: Your Honor, I would like the record to
24 reflect that he's pointed out Lawrence Clovis.

25 BY MR. MOYER:

1 Q. Now, did you know -- why did you call New York -- why
2 did you call him that name?

3 A. Where he's from.

4 Q. How do you know that's where he's from?

5 A. That's what he told me.

6 Q. Did you know him very long?

7 A. No.

8 Q. And how did you get to meet him?

9 A. Through Nanu.

10 Q. Where did you first see New York?

11 A. Picked him up at a bus station.

12 Q. And who did you go to that bus station with?

13 A. Nanu.

14 Q. Where was the bus station?

15 A. Downtown Greenville.

16 Q. In Greenville?

17 A. Yeah.

18 Q. And was it just you and Nanu?

19 A. Yeah.

20 Q. Now, where was Nanu from?

21 A. New York.

22 Q. And what area of New York was he from?

23 A. Buffalo.

24 Q. Is that the same area where New York or Donnie Nelson
25 was from?

1 A. Yeah.

2 Q. ~~Now, did they seem to know each other?~~

3 A. Yeah.

4 Q. From before they lived here in South Carolina?

5 A. Yeah.

6 Q. All right. Now, when you picked New York or Donnie
7 Nelson up from the bus station, where did y'all go?

8 A. We went back to Nanu's house.

9 Q. Now, do you remember exactly how long before this
10 incident at the barbershop happened that y'all went over
11 there to the Greyhound bus station to get him?

12 A. I don't understand.

13 Q. I just wondered. Do you remember about when it was
14 that y'all went to the bus station to pick up New York?

15 A. I don't know. I don't remember.

16 Q. Was it before that robbery at the Blassingame
17 barbershop, or after?

18 A. It was before.

19 Q. What was your hair like back then?

20 A. I had an afro.

21 Q. And did you keep it loose or did you have it braided?

22 A. Sometimes I had it loose. Sometimes I had it braided.

23 Q. Do you remember on November the 6th, the day of the
24 incident, whether it was braided or loose?

25 A. I think I had it in a ponytail then.

1 Q. Okay. What about New York, what was his hair like
2 then?

3 A. Which one, him?

4 Q. New York.

5 A. I think he had a fade.

6 MS. MANIGAULT: Your Honor, I don't believe the
7 witness testified that he called anybody by the name of New
8 York, but the solicitor is testifying.

9 MR. MOYER: I think it's pretty clearly he did.

10 THE COURT: I'll allow the question. I overrule
11 your objection.

12 BY MR. MOYER:

13 Q. The person that you said that you knew by the name of
14 New York, what was his hair like then?

15 A. He had a fade.

16 Q. What is a fade?

17 A. Like what I have.

18 Q. Like what you have on right now? So it's short cropped
19 hair?

20 A. Yeah.

21 Q. All right. What about New Orleans?

22 A. I can't quite remember how his hair was. It was
23 shorter than what it is. I don't know how it was, though.

24 Q. It was shorter than it is now?

25 A. Yeah.

1 Q. Is it longer than yours?

2 A. I believe so.

3 Q. All right. Now, where was New York staying here in
4 Greenville?

5 A. With Nanu.

6 Q. Did you see him over at Nanu's house?

7 A. Yeah.

8 Q. Now, what about New Orleans, where was he staying?

9 A. I think a few houses up.

10 Q. Had you ever been to his place?

11 A. Once.

12 Q. One time?

13 A. Yeah.

14 Q. Was it on November the 6th of 2004?

15 A. Yeah.

16 Q. And that's where he was staying on that day?

17 A. Yeah.

18 Q. All right. Now, so you went over to Nanu's house you
19 say on November the 6th. When you got over there, was there
20 anybody, in addition to New York and New Orleans and Nanu,
21 there at the house?

22 A. I don't remember.

23 Q. Well, did y'all stay there at that house or did y'all
24 leave and go somewhere?

25 A. We stayed there probably about 20 minutes. Then we

1 left.

2 Q. Then you left?

3 A. Yes.

4 Q. And when you left, did y'all walk or how'did you leave?

5 A. We drove.

6 Q. Okay. What kind of vehicle did you drive in?

7 A. Jeep Cherokee.

8 Q. Whose vehicle was that?

9 A. Nanu's.

10 Q. Who drove?

11 A. Nanu.

12 Q. Did you have a car or any kind of vehicle?

13 A. No.

14 Q. Did New York have a car or a vehicle?

15 A. No.

16 Q. Did New Orleans have a car or a vehicle?

17 A. No.

18 Q. That you know of?

19 A. Uh-uh.

20 Q. Where did you sit in the vehicle?

21 A. In the back seat.

22 Q. And who sat next to you?

23 A. New Orleans.

24 Q. And where did New York sit?

25 A. In the front seat, passenger's seat.

- 1 Q. In the front passenger seat, you said?
- 2 A. Yeah.
- 3 Q. All right. Where did you go then?
- 4 A. Over to the barbershop.
- 5 Q. Did y'all go straight there?
- 6 A. Yeah.
- 7 Q. Did y'all stop anywhere along the way?
- 8 A. Uh-uh.
- 9 Q. Were there any side trips?
- 10 A. No.
- 11 Q. Were there any detours, like driving around and
- 12 looking?
- 13 A. No.
- 14 Q. Just straight over there?
- 15 A. Yeah.
- 16 Q. Was there much talking on the way over there?
- 17 A. No.
- 18 Q. Was anyone giving Nanu directions or telling him where
- 19 to go?
- 20 A. No.
- 21 Q. So he was just driving on his own accord?
- 22 A. Yeah.
- 23 Q. All right. Now, when you got over to the area of the
- 24 barbershop, what happened?
- 25 A. He had let those two out.

1 Q. Who let them out?

2 A. Nanu.

3 Q. And he let who out? -

4 A. Those two right there.

5 Q. You are pointing to New York and New Orleans?

6 A. Yeah.

7 Q. Now, did he let them out right in front of the
8 barbershop, or where did he go?

9 A. It was like across the street from the barbershop. A
10 church.

11 Q. What is the main road along there next to the
12 barbershop, do you know?

13 A. Anderson Road.

14 Q. And is that kind of a busy road?

15 A. Yeah, little bit.

16 Q. And the road that you went to, were you real close to
17 Anderson Road or --

18 A. Yeah.

19 Q. Could you see Anderson Road where you stopped?

20 A. Yeah.

21 Q. Okay. Were you a block away, two blocks away, or how
22 far would you say that you were away from Anderson Road?

23 A. It was right on the same stretch of street.

24 Q. It runs parallel to Anderson Road?

25 A. Yeah, ran to it.

1 Q. Now, when they let them out, what did New York and New
2 Orleans do?

3 A. I remember them running across the highway and going
4 towards the parking lot to the barbershop.

5 Q. They run across what highway?

6 A. Anderson Road highway.

7 Q. When they got out of the jeep, did they have masks on
8 or anything?

9 A. No.

10 Q. Did you see any weapons or anything at that point?

11 A. No.

12 Q. And so after you dropped them off, what did y'all do?

13 A. We drove around the block.

14 Q. Now, when you drove around the block, how many times
15 would you say that you drove around that block?

16 A. I think maybe two or three times.

17 Q. And did you drive around the same block?

18 A. Yeah.

19 Q. You didn't go on any other area?

20 A. No.

21 Q. Was it on the same side of Anderson Road as the
22 barbershop, or was it on the other side?

23 A. The other side.

24 Q. Now, how far did you see those two guys go towards the
25 barbershop?

1 A. I just seen them go towards the parking lot.

2 Q. And what happened -- and where were you when you saw
3 this? Were you --

4 A. I was in the jeep riding past.

5 Q. And you were riding past on what road?

6 A. Anderson Road.

7 Q. Anderson Road?

8 A. Yeah.

9 Q. And did Lawrence Waller -- did Nanu say anything when
10 they were running towards the barbershop?

11 A. Yeah.

12 Q. What did he say?

13 A. He was like, "oh, they are robbing the place." That's
14 what he told me.

15 Q. He said what now?

16 A. He said "they are robbing the place."

17 Q. And how did he sound when he said that?

18 A. Like he was shocked. Like he didn't know they were
19 going to do it.

20 Q. Okay. Now, was he driving --

21 Now, when you saw them, could you see -- could you see
22 them from the front or the back when they were running
23 through that parking lot?

24 A. To the back.

25 Q. So could you tell if they had masks on their faces yet?

1 A. Uh-uh.

2 Q. Could you see if they were holding guns or anything
3 yet?

4 A. Uh-uh.

5 Q. All right. Now, so y'all drove around the block, and
6 did y'all talk while you were driving around the block?

7 A. Uh-uh.

8 Q. Were you asking Nanu what's going on?

9 A. Not really.

10 Q. Did you kind of figure out what was going on?

11 A. Yeah, after he said that, I knew what was going on
12 then.

13 Q. Now, did you have the windows up in the vehicle?

14 A. Yes.

15 Q. Did you have the radio on?

16 A. Yeah.

17 Q. How was Nanu driving around the block?

18 A. Like cruising.

19 Q. Like cruising. What do you mean cruising?

20 A. Driving slowly. Not too fast and not too slow.

21 Q. Okay. And was he looking around or what was he doing?

22 A. Yeah, he was looking to see had they came back out yet.

23 Q. As you were driving around the block?

24 A. Yeah.

25 Q. Were you looking over there too?

1 A. Yeah.

2 Q. On one of the times that you went around the block, did
3 you notice anything different about the barbershop?

4 A. The door was closed.

5 Q. Did you ever see anything different with the door at
6 any point?

7 A. Yeah, I remember it was open after like I think the
8 second or third time we went around.

9 Q. Let me ask you to speak up just a little bit and make
10 sure these people can hear you.

11 A. It was like open the second or third time we went back
12 around.

13 Q. It was open.

14 Did you see -- then did you see New York and New
15 Orleans?

16 A. No, I didn't see them.

17 Q. So did y'all say anything about where they are?

18 A. Uh-uh.

19 Q. Did Nanu say anything?

20 A. Uh-uh.

21 Q. So what did y'all do when you saw the door open?

22 A. We just kept driving.

23 Q. And driving around that block?

24 A. Yeah.

25 Q. Now, as you were driving around the block, were you

1 looking for anything? Were you doing anything, or what were
2 y'all doing?

3 A. We was just still looking for them.

4 Q. Looking for who?

5 A. Them two there.

6 Q. New York and New Orleans?

7 A. Yeah.

8 Q. All right. Did you ever see them?

9 A. Yeah.

10 Q. Now, before you saw them -- did Nanu have a telephone
11 with him?

12 A. Yeah.

13 Q. Did the telephone ever ring?

14 A. Yeah, they called him.

15 Q. And could you overhear the conversation?

16 A. No.

17 Q. Could you overhear what Nanu was saying?

18 A. He was asking them where they were.

19 Q. Nanu was asking where they were?

20 A. Yeah.

21 Q. Could you overhear -- could you hear what was coming
22 out from the other end of the --

23 A. No, I couldn't.

24 Q. What did Nanu say after he asked them where they were?

25 A. He said they were -- there were back by the church.

1 Q. And is that the area where you had dropped them off?

2 A. Yeah.

3 Q. So when -- after that phone call and you heard that,
4 where did you -- where did you go?

5 A. Went right back by the church.

6 Q. And when you got back over to the church, did you see
7 them?

8 A. Yeah.

9 Q. What happened when you saw them?

10 A. They got in the car. We drove off.

11 Q. How did you -- what were they doing when you saw them?

12 A. They were coming to the car. And New York, he was like
13 tucking something. I don't know what it was exactly.

14 Q. He was -- I'm sorry, he was doing what?

15 A. He was like tucking something in his shirt. I don't
16 know what it was though.

17 Q. Tucking something in his shirt?

18 A. Yeah.

19 Q. Did you ever see anything on their -- any masks or
20 anything like that?

21 A. No.

22 Q. Now, did they get in the vehicle?

23 A. Yeah.

24 Q. Did you see anything when they got in the vehicle?

25 A. I seen him have a gun in his hand when he came back to

1 the jeep. He pulled it out.

2 Q. Who had a gun?

3 A. New York.

4 Q. And what did he do with the gun?

5 A. He put it in his pocket.

6 Q. Now, you said he was tucking something. Explain to us
7 what you mean by that.

8 A. Like he was holding something under his shirt or
9 something.

10 Q. But you couldn't see at that point what it was?

11 A. No.

12 Q. All right. Now, when they got back in the car, what
13 did Nanu do?

14 A. Drove off.

15 Q. Did he drive off slowly or fast?

16 A. Kind of fast.

17 Q. All right. Where did y'all go?

18 A. Back to Nanu's house.

19 Q. You went back there. Whose house did you go in when
20 you got back there?

21 A. New Orleans house.

22 Q. And was that close to Nanu's house?

23 A. Yeah.

24 Q. Do you remember how close it was?

25 A. I think two houses up, I think.

1 Q. A few houses up?

2 A. Yeah.

3 Q. All right. Did y'all go straight from the barbershop
4 back there?

5 A. Uh-huh.

6 Q. Was there a lot of talking -- do you remember people
7 talking in the car on the way over there?

8 A. They wasn't doing too much talking.

9 Q. Now, when you went over to New Orleans house, was there
10 anybody else home there?

11 A. No, wasn't nobody there.

12 Q. Okay. Did anyone else come at any point?

13 A. Yeah.

14 Q. Who was that?

15 A. Some girl. I think it was the girlfriend, maybe. She
16 came.

17 Q. And when she came, where did -- what did y'all do?

18 A. We all had went on the back porch.

19 Q. Before that where were you?

20 A. In the kitchen.

21 Q. And what were you doing in the kitchen?

22 A. They were separating the money they got.

23 Q. Did you see money?

24 A. Yeah.

25 Q. Did you see how much money it was?

- 1 A. No.
- 2 Q. Did they say how much money it was?
- 3 A. No.
- 4 Q. Did they have anything besides money?
- 5 A. Jewelry.
- 6 Q. What kind of jewelry?
- 7 A. Bracelets and rings.
- 8 Q. And do you remember anything else?
- 9 A. Not that I know of.
- 10 Q. You don't remember?
- 11 A. Uh-uh.
- 12 Q. Did you see any weapons while you were in that house?
- 13 A. Just the gun he had.
- 14 Q. The gun that who had?
- 15 A. New York.
- 16 Q. Was it -- you say a gun. Was it a -- what kind of -- I
- 17 mean, was it a handgun, or a rifle, or --
- 18 A. It was a handgun.
- 19 Q. Well, what did they do with the money that they had
- 20 out?
- 21 A. They split it up.
- 22 Q. Okay. And who all got money?
- 23 A. All of them.
- 24 Q. All three?
- 25 A. All three of them, yeah.

1 Q. Did anybody get more or less than the other ones, that
2 you know of?

3 A. I think Nanu had got like a \$100 just for driving them
4 over there.

5 Q. Did you get anything?

6 A. Got some rings.

7 Q. All right. How many rings did you get?

8 A. Gave me two rings.

9 Q. Would you recognize them if you saw them again?

10 A. Yes.

11 Q. Take a look at State's Exhibit No. 11. Just take a
12 look at them for a minute and can you say whether or not
13 those are the rings you got?

14 A. Yeah, those are it.

15 Q. What did you do with the rings?

16 A. Put them in my pocket.

17 Q. Did you take them to your house?

18 A. Yeah.

19 Q. How long did y'all stay there at New Orleans house?

20 A. I can't quite remember. I know it was probably an hour
21 or forty-five.

22 Q. Where did you go after that?

23 A. Nanu had took me home.

24 Q. Were New York and New Orleans talking about what had
25 happened?

1 A. Uh-uh.

2 Q. Did you find out at all about how they did this or what
3 they did?

4 A. Yeah, they said -- he said he ran up in there and fired
5 a shot in the ceiling, something like that.

6 Q. Who said that?

7 A. New York.

8 Q. Then you were involved in robbing a barbershop a week
9 later, weren't you? 3:2 A2 - 1/1/13

10 A. Yeah.

11 Q. Where did you get the idea of how to rob a barbershop?

12 A. From them.

13 Q. And did you take a more active participation in that
14 robbery?

15 A. Yeah.

16 Q. And were there people with you?

17 A. Yeah.

18 Q. How many people?

19 A. Two.

20 Q. Was it any of these guys?

21 A. No.

22 Q. And who were those other people?

23 A. Corey Williams and Mark Williams.

24 Q. Now, you talked to the officers on December the 3rd of
25 2004?

1 A. Yes.

2 Q. And did you tell the officers at that time who was
3 involved with you on this robbery of Mr. Blassingame's
4 place?

5 A. Yeah.

6 Q. Did you know their names at that time?

7 A. What do you mean, Blassingame?

8 Q. I'm talking about the robbery that you were just
9 talking about --

10 A. Yeah.

11 Q. -- over on Anderson Road.

12 A. Yeah.

13 Q. Did you know those guys names at that time?

14 A. No.

15 Q. So when you told them about it, what names did you tell
16 Investigator Patton?

17 A. New Orleans and New York and Nanu.

18 Q. How about for the other robbery, did you know the names
19 of the other two guys who were involved?

20 A. Yeah.

21 Q. And did you tell those names to Investigator Patton?

22 A. Yeah.

23 Q. Now, did you ever show Investigator Patton where any of
24 those guys lived?

25 A. No.

1 Q. I'm talking about --

2 A. Yeah.

3 Q. Which one?

4 A. Nanu.

5 Q. Now, how did you do that?

6 A. We was in a car and drove over there.

7 MR. MOYER: One moment, please, Your Honor.

8 THE COURT: Yes, sir.

9 (Off the record)

10 (Back on the record)

11 MR. MOYER: Okay. Please answer any questions of
12 the defense attorneys.

13 THE COURT: You may cross-examine the witness.

14 CROSS EXAMINATION BY MS. MANIGAULT:

15 Q. Mr. Clement?

16 A. Yes.

17 Q. All right. You told the court that you had pled guilty
18 to two armed robberies, is that correct?

19 A. Yes.

20 Q. And two kidnappings?

21 A. Yes.

22 Q. One conspiracy?

23 A. Yes.

24 Q. Possession of a weapon?

25 A. Yes.

1 Q. What else?

2 A. That's it.

3 Q. That's it?

4 A. Uh-huh.

5 Q. All right. And out of those charges -- have you been
6 sentenced on all the charges yet?

7 A. No, not all of them.

8 Q. What were you sentenced on?

9 A. Conspiracy and the firearm.

10 Q. Why haven't you been sentenced on the two armed
11 robberies and two kidnappings?

12 A. I don't know.

13 Q. Are you waiting until after you testify on this case to
14 see how things went?

15 A. Yeah.

16 Q. All right. Now, how many cases -- did you have more
17 armed robberies that you were charged with?

18 A. Yeah.

19 Q. And how many of those armed robberies were dismissed?

20 A. I can't remember how many there was exactly.

21 Q. If I told you eight, would that sound correct?

22 A. I think it was about eight.

23 Q. About eight?

24 A. Yeah.

25 Q. So when the solicitor asked you earlier what sentence

1 would you be facing, you told the solicitor 10 to 30?

2 A. Uh-huh.

3 Q. But then the solicitor told you, no, life, kidnapping,
4 is that right?

5 A. Yeah.

6 Q. What will you be facing for kidnapping? Did you know?

7 A. Not affirmatively. I know now.

8 Q. You know now after the solicitor told you today?

9 A. No, I knew before then.

10 Q. You knew before today?

11 A. Yeah.

12 Q. Now, what sentence would you be facing for the armed
13 robbery?

14 A. 10 to 30.

15 Q. 10 to 30?

16 A. Yeah.

17 Q. So were you under the impression that your sentences
18 would not be stacked, that you would just have a 10 to 30
19 that you were facing?

20 A. No, not really.

21 Q. Why would you say that you are only facing 10 to 30
22 then?

23 A. That's what he told me, you know.

24 Q. Who told you this?

25 A. The solicitor.

1 Q. The solicitor?

2 A. Yeah.

3 Q. All right. You told the court that they didn't make
4 you any promises. Is that what you said?

5 A. Yeah.

6 Q. But you felt pretty good about what he said you are
7 only looking at 10 to 30, is that right?

8 A. Yeah.

9 Q. And you said there was no recommendations, is that
10 right?

11 A. Not at first.

12 Q. Not at first?

13 A. No.

14 Q. So is there a recommendation somewhere down the road?

15 A. Yeah, like my first four months in county they offered
16 me 20 years. And then I think like back in August or
17 September they had -- my lawyer told me --

18 Q. Okay. Don't tell me what your lawyer said.

19 A. Okay.

20 Q. All right. Now, do you remember giving a statement to
21 the police you said December 3rd?

22 A. Yeah.

23 Q. You testified that -- when you talked to the police,
24 did you describe the person that you said that was,
25 according to your statement, from New York?

- 1 A. Uh-huh.
- 2 Q. Did you identify to the police that person?
- 3 A. Yeah.
- 4 Q. Did you describe that person, or did they tell you who
- 5 it was?
- 6 A. I told them who it was.
- 7 Q. All right. And how did you describe -- I'm going to
- 8 show you a copy of the statement dated December the 3rd,
- 9 2004, and ask you can you recognize that?
- 10 A. Yeah.
- 11 Q. Is that your signature at the bottom?
- 12 A. Yeah.
- 13 Q. All right. I'm going to give you a chance just to
- 14 briefly read that statement to yourself. Just review it for
- 15 a minute. I'm going to ask you a question about it.
- 16 A. (Witness examining document)
- 17 Q. You gave this statement to Investigator Patton?
- 18 A. Yeah.
- 19 Q. Is that her sitting right there?
- 20 A. Yeah.
- 21 Q. Did you have a chance to review it before you signed
- 22 it?
- 23 A. Uh-uh.
- 24 Q. You didn't review it before you signed it?
- 25 A. Uh-uh.

1 Q. You just signed a blank statement?

2 A. Yeah.

3 Q. So you didn't know what was in here?

4 A. No, not really.

5 Q. Not really?

6 A. No.

7 Q. Did she read it to you before you signed it?

8 A. I don't remember her reading it to me.

9 Q. Okay. Tell me how the statement was taken.

10 A. I was telling her what was going on and she was typing
11 it.

12 Q. So she never read back to you what you said?

13 A. Not that I remember.

14 Q. And you signed this without reviewing it?

15 A. Yeah.

16 Q. All right. So when you told -- or did you tell
17 Investigator Patton that "I never knew his name, but he said
18 he had come down here to get away awhile. I never saw him
19 or the guy from New Orleans that went to the barbershop on
20 Anderson Road until the day of the robbery." Did you say
21 that?

22 A. I don't remember saying that.

23 Q. You didn't say that?

24 A. I don't remember. I went to the bus station to get
25 him.

1 Q. So the line in the statement, where do you think
2 Investigator Patton got that from?

3 MR. MOYER: Objection, Your Honor. Speculation.

4 BY MS. MANIGAULT:

5 Q. So that line --

6 THE COURT: I sustain the objection.

7 MS. MANIGAULT: Thank you, Your Honor.

8 A. Not that I remember.

9 BY MS. MANIGAULT:

10 Q. You didn't remember telling her that?

11 A. Uh-uh.

12 Q. There is another line in your statement that you signed
13 that says that "the guy from New York took a black gun from
14 his pocket and placed it on the counter." Did you tell her
15 that?

16 A. Yeah.

17 Q. You testified today that the guy from New York came
18 back to the car with the gun, is that right?

19 A. Uh-huh, not out, though. Talking about after they did
20 the robbery?

21 Q. No, I'm asking you what you said.

22 A. I don't understand.

23 Q. You said that you saw a gun?

24 A. Yeah.

25 Q. When was the first time that you saw a gun?

1 A. When he got back in the car.

2 Q. When he got back in the car?

3 A. Yeah.

4 Q. So where was the gun when he got back in the car?

5 A. He had pulled it out and he put it in his pocket.

6 Q. So when he came to the car, there was no gun apparent?

7 A. No.

8 Q. And then he got in the car and he pulled the gun out?

9 A. Yeah.

10 Q. And then he put it back in his pocket?

11 A. Yeah.

12 Q. All right. So is that in your statement about he put
13 the gun back in his pocket and pulled it out?

14 A. No, I don't see it.

15 Q. Now, you testified under direct that you robbed
16 Distinguished Gentlemen?

17 A. Yeah.

18 Q. With two other guys?

19 A. Yeah.

20 Q. Two men, two persons you said?

21 A. Yeah.

22 Q. And that was about a week after the robbery on Anderson
23 Road?

24 A. Yeah.

25 Q. And you want the court to believe or the jury to

1 believe that this idea came from somebody else?

2 A. Yeah.

3 Q. All right. Did you have a gun --

4 A. Yeah.

5 Q. -- when you went into Distinguished Gentlemen?

6 A. Yes.

7 Q. And you fired into the ceiling?

8 A. Yeah.

9 Q. And did you tell the people to get on the floor at
10 Distinguished Gentlemen?

11 A. No. My co-defendant did.

12 Q. So what did you do when you went into Distinguished
13 Gentlemen? Is that a barbershop too?

14 A. Yeah.

15 Q. What did you do?

16 A. I just stood by the door.

17 Q. Who went in first?

18 A. Corey.

19 Q. But you fired the shop into the ceiling?

20 A. Yeah.

21 Q. Why?

22 A. Because I just got the idea from the other how they did
23 it, how they did there.

24 Q. You got an idea from somebody else?

25 A. Yeah.

1 Q. Why would you go -- why did you ride with these people
2 that you described? You said that you rode with somebody
3 named Nanu, somebody from New York and somebody from New
4 Orleans. Why would you ride with them?

5 A. I was going down there to hang out with them. They
6 just told me to ride with them, so I got in the car with
7 them.

8 Q. All right. There is a line in your statement that says
9 "the guy from New York told me that they were going to do
10 something around 7:30 that night and I what were they going
11 to do. He said just ride with them." Did you say that?

12 A. Yeah.

13 Q. Okay. So why would you ride with somebody that you
14 didn't know?

15 A. I knew Nanu. I was really riding with him. They was
16 hanging with Nanu.

17 Q. Excuse me?

18 A. I knew Nanu. I was hanging with him and they was
19 hanging with him.

20 Q. So it didn't matter what they were going to do?

21 A. No.

22 Q. But you are telling the court today you didn't know
23 anything about that?

24 A. No.

25 Q. Now, I was confused. I misunderstood what you said.

1 You said that after the robbery of the barbershop on
2 Anderson Road that you went back to Nanu's house, then to
3 another house?

4 A. Yeah.

5 Q. So -- okay. How long did you stay at the first house
6 that you went?

7 A. We didn't stay there. He just parked the car right
8 there and then we walked to his house.

9 Q. They lived next door?

10 A. Like two houses up.

11 Q. Two houses up?

12 A. Yeah.

13 Q. And when you got to the first house, was anybody there,
14 do you know?

15 A. No, I don't know.

16 Q. When you got to the second house, was anybody there?

17 A. No.

18 Q. Do you know -- what kind of gun did you have when you
19 went into the Distinguished Gentlemen shop.

20 A. .38.

21 Q. A .38?

22 A. Yeah.

23 Q. Where did you get it?

24 A. From my brother.

25 Q. From your brother?

1 A. Yeah, from his house. Not from him.

2 Q. How long had you had that gun?

3 A. Before or after?

4 Q. Before.

5 A. I don't know how long I had it before that, really.

6 Q. When did you get it from him?

7 A. The day I came to go do the robbery.

8 Q. The day of the robbery?

9 A. Yeah.

10 Q. When the police first came to talk with you, you were
11 already in jail, is that right?

12 A. Yeah.

13 Q. And what were you in jail for that time?

14 A. Forgery.

15 Q. Forgery?

16 A. Yeah.

17 Q. Did anybody ever tell you the name of the people that
18 you supposedly described when you talked to them?

19 A. Uh-uh.

20 Q. Did they ever tell you a description?

21 A. Uh-uh.

22 Q. And what description did you give Investigator Patton
23 when you talked to her?

24 A. I don't think I gave her a description of them. I told
25 them who they were.

1 Q. You are not a liar?

2 A. No.

3 Q. Are you aware that Webster's Dictionary defines a liar
4 as a person who tells lies?

5 A. Yeah.

6 Q. You are a person, right?

7 A. Yeah.

8 Q. And you do tell lies, don't you?

9 A. I told a lie before.

10 Q. You told lies before. What other lies have you told
11 before?

12 A. I can't remember.

13 Q. You can't remember? Can you remember the two forgeries
14 that you pled to before you even got to court today?

15 A. Yeah.

16 Q. ~~Those were lies,~~ were they not?

17 A. Were they lies?

18 Q. Yes.

19 A. What do you mean they were lies?

20 Q. You forged documents?

21 A. No.

22 Q. ~~Did you do something dishonest?~~ Did you do -- did you
23 commit a forgery?

24 A. No.

25 Q. You did not commit a forgery?

1 A. No.

2 Q. But you were convicted of committing forgeries, isn't
3 that correct?

4 A. Yeah.

5 Q. So you are saying that the court was wrong in that
6 instance? You didn't do anything? You were absolutely
7 innocent, but somehow or another you were wrongly convicted,
8 is that right? Is that your story today?

9 A. Yeah.

10 Q. Sort of like the same as your story today in regards to
11 this robbery, isn't that true?

12 A. Uh-uh.

13 Q. That's not your story today, that you were not really
14 involved in this thing, that you were just along for the
15 ride, and all of the sudden they did something and pulled
16 you into it? Isn't that the story that you just told on the
17 stand?

18 A. Yeah.

19 Q. And is that, in fact, your story that you are sticking
20 to today?

21 A. Yeah.

22 Q. I got a question then. If that's your story today --
23 Well, let me back up. Didn't you, in fact, plead
24 guilty to an armed robbery in this case?

25 A. For a robbery, yes.

1 Q. For an armed robbery?

2 A. Yes.

3 Q. Which would have to mean that you were involved, is
4 that not correct?

5 A. Yeah.

6 Q. Did you not also plead guilty to a kidnapping charge
7 relating to this case?

8 A. Yeah.

9 Q. And that would have to mean that you were somehow
10 involved, is that not correct?

11 A. Yeah.

12 Q. As part of that guilty plea, did you go before a judge?

13 A. Yeah.

14 Q. Did they put you under oath, sort of the same as they
15 did today?

16 A. Yeah.

17 Q. So they swore you in and you swore to tell the truth?

18 A. Yeah.

19 Q. Okay. And as part of that guilty plea didn't the judge
20 ask you if you were, in fact, involved in this armed
21 robbery?

22 A. I mean he told me I'm a part of it because I was there,
23 but I didn't know nothing about it.

24 Q. So when you pled guilty to it, you were, in fact,
25 ~~lying~~, is that correct, under oath?

1 A. No.

2 Q. You were not lying?

3 A. No.

4 Q. So I understand -- I mean you can't be both. Either
5 you were involved or you weren't involved.

6 A. He told me if I was there, I was part of it, like an
7 accessory to it.

8 Q. Who told you that?

9 A. I mean, that's -- they were telling me --

10 Q. Who told you that?

11 A. I can't remember who told me that.

12 Q. Well, let me ask you this. I have done a bunch of
13 guilty pleas. My understanding of the process is this.

14 MR. MOYER: Your Honor, I object.

15 THE COURT: What's your objection?

16 MR. MOYER: His personal knowledge.

17 MR. GIBSON: No, I'm going to tell him what my
18 understanding is and he can confirm whether or not that took
19 place in his place.

20 THE COURT: Ask the question, Mr. Gibson.

21 MR. GIBSON: Okay.

22 BY MR. GIBSON:

23 Q. You were, in fact, sworn in, is that not correct?

24 A. Uh-huh.

25 Q. Was there a solicitor present?

1 A. Yes.

2 Q. What solicitor was present? Do you remember his or her
3 name?

4 A. There.

5 Q. Mr. Moyer right there?

6 A. Yeah.

7 Q. And Mr. Moyer read a set of facts, did he not?

8 A. Yeah.

9 Q. And that set of facts showed that you were involved in
10 that case, is that not correct?

11 A. Yeah.

12 Q. Not just present, but involved, is that not the case?

13 A. Yeah, I was just present, but I wasn't involved in it,
14 though.

15 Q. But the statement that he read to the court said that
16 you were involved, did it not?

17 A. I didn't understand it at the time.

18 Q. Also -- so you didn't understand that. So when you
19 pled guilty to that, you didn't understand it?

20 A. No.

21 Q. Is that the same with the kidnapping charge that you
22 pled to?

23 A. Yeah.

24 Q. Now, you also pled guilty to a conspiracy charge in
25 this case. Is that this case, or was that the other robbery

1 which happens to be so similar to this, but you were not --
2 but you weren't --

3 A. It would be to this case.

4 Q. The conspiracy was in this case?

5 A. Yeah.

6 Q. Now, you understand that -- was it ever explained to
7 you that a conspiracy charge involves conversations and
8 planning about an event?

9 A. No.

10 Q. You didn't understand that when you pled guilty to
11 that?

12 A. No.

13 Q. But you pled guilty to it anyway?

14 A. Yeah.

15 Q. ~~Did you plead guilty? -- did you --~~
16 ~~you, in fact, pled guilty to all these things because~~
17 ~~thought it would help you out.~~

18 ~~A. Yeah.~~

19 Q. Okay. So you are willing to lie under oath if you
20 think it will help you out, isn't that the case?

21 A. I wouldn't lie. They never explained to me what these
22 charges meant.

23 Q. So you did have a lawyer then?

24 A. Yeah.

25 Q. And did not the court ask you did you understand what

1 you were pleading to?

2 A. No.

3 Q. The court never asked you that?

4 A. (Shaking head no)

5 Q. The court never asked if you understood what you were
6 pleading to?

7 A. It was never explained to me what conspiracy meant.

8 Q. Did the court ask you did you understand what was going
9 on?

10 A. I pleaded --

11 Q. The court never asked you?

12 A. I pleaded without understanding.

13 Q. And you pled without understanding?

14 A. Yeah.

15 Q. Did you think that that was an important fact that
16 maybe you should tell the court that you didn't understand?

17 A. Yeah.

18 Q. Did you tell the court that you didn't understand it?

19 A. No, not at the time.

20 Q. Why not?

21 A. I don't know.

22 Q. Was it because you wanted the plea to go through
23 because you wanted to help yourself out?

24 A. Yeah.

25 Q. Because you had the plea in place and you didn't

1 ~~So when you said I'm involved, that wasn't lying?~~

2 A. ~~Yeah.~~

3 Q. So you are willing to lie under oath in order to help
4 yourself, isn't that correct?

5 A. Well, I wasn't lying.

6 Q. Wasn't lying?

7 A. No.

8 Q. ~~So when you said I'm involved, that wasn't lying?~~

9 A. I didn't never say I was involved.

10 Q. Okay. All right, let me ask you this. Now, in
11 relation to these two robberies that you were in, you
12 actually had a number of charges, didn't you?

13 A. Uh-huh.

14 Q. I mean, you, in fact, had ten counts of armed robbery
15 against you, isn't that correct?

16 A. Yeah.

17 Q. And you had -- I believe it was -- let me check my
18 notes so I can make sure I didn't mess up. Eight counts of
19 kidnapping, isn't that correct?

20 A. Yeah.

21 Q. And it was explained to you that kidnapping can carry
22 up to 30 years, isn't that correct?

23 A. Yes.

24 Q. Was it also explained to you that armed robbery can
25 carry up to 30 years, is that not also correct?

1 A. Yeah.

2 Q. ~~So before all this stuff happened, before you entered~~
3 ~~into this deal with the solicitor here, you were looking at~~
4 ~~a potential of 540 years in prison, isn't that correct?~~

5 A. Yeah.

6 Q. ~~And by cutting this deal, you have helped yourself out~~
7 ~~a good little bit, haven't you?~~

8 A. ~~Supposed to.~~

9 Q. Supposed to?

10 A. Yeah.

11 Q. What do you mean supposed to?

12 A. Well, come to anybody, you know.

13 Q. What's your understanding of how you can help yourself
14 out?

15 A. I wouldn't get that much time in prison.

16 Q. So it's your understanding by cutting this deal you are
17 cutting your time in prison down significantly?

18 A. Yeah.

19 Q. Isn't it true that as part of this deal, they dismissed
20 eight counts of armed robbery and six counts of kidnapping?

21 A. Yeah.

22 Q. That's your understanding, correct?

23 A. Yeah.

24 Q. So basically just by you coming in here today and
25 pleading to those charges that you say here that you did not

1 commit, you have cut off 420 years of potential time off
2 your sentence, isn't that correct?

3 A. Yeah.

4 Q. So now you have still got 120 years facing you, isn't
5 that also correct?

6 A. Yeah.

7 Q. That's your understanding, right?

8 A. Yeah.

9 Q. But you haven't been sentenced on that time, is that
10 not also correct?

11 A. Yeah.

12 Q. And you are going to be sentenced on that time after
13 you testify in this case today?

14 A. Yeah.

15 Q. Okay. And aren't you hoping that based on your
16 testimony today, that this solicitor right here is going to
17 get up in front of that court and tell the judge, Your
18 Honor, he's really helped us out; he's a fine individual;
19 he's upstanding; Your Honor, cut him a break and give him
20 only ten years, isn't that right?

21 A. Yeah.

22 Q. So basically if you do a good job today for Mr. Moyer,
23 you are hoping that he's going to scratch your back and help
24 you out later on?

25 A. Yeah.

1 Q. But, on the other hand, if you do a bad job today, you
2 don't expect that, do you?

3 A. I ain't never thought about it.

4 Q. Never really thought about that?

5 A. No.

6 Q. So you never thought that maybe, you know, if I don't
7 do a good job, if I don't testify how Mr. Moyer wants me to
8 testify, that I might not get this sweet recommendation that
9 I'm hoping I'm going to get on the back end of this?

10 A. I only thought, you know, I testify or I didn't
11 testify. I didn't really think about testifying about bad
12 or anything.

13 Q. Got you. Okay.

14 Now, I want to go back because I'm not sure I got an
15 answer to that. I asked you when we first started off if
16 you were a liar and you told me no, but you admitted that
17 you tell lies, is that correct?

18 A. Everybody tells lies.

19 Q. Say again?

20 A. Everybody tells lies every now and then.

21 Q. But you tell criminal lies, isn't that right?

22 A. No.

23 Q. I mean, you did two forgeries, didn't you?

24 A. No.

25 Q. You did not do two forgeries?

1 A. No, I didn't.

2 Q. Okay. So those were two other crimes that you went
3 into court, told the judge under oath that you were involved
4 in, but you were not, in fact, involved in, is that right?

5 A. Yeah.

6 Q. Okay. So when you went to court and you said that you
7 were involved in these crimes under oath but were not, isn't
8 that a lie?

9 A. Uh-huh.

10 Q. That's a lie. So let me get this straight. You are
11 not just a liar, but you are a liar who will lie under oath,
12 if necessary?

13 A. Once again, I pleaded without knowing.

14 Q. Once again -- okay.

15 Do you understand what's going on today then, because I
16 don't want, you know, to be under any -- I don't want you
17 telling me later on that I don't understand what's going on
18 today either. Do you understand what's happening?

19 A. I understand, yeah.

20 Q. Okay. All right.

21 Now, when you got -- you got arrested on two -- or
22 another forgery charge, is that correct?

23 A. Yeah, it was together.

24 Q. The two that you pled to before?

25 A. Yeah.

1 Q. The two that you were not involved in, but you went
2 before the court and said that you were under oath, even
3 though you weren't, is that right?

4 A. Yeah.

5 Q. ~~All right. So you were in jail on those two charges~~
6 ~~and you got a visit from Inspector Patton, Detective Patton?~~

7 A. ~~Yeah.~~

8 Q. ~~And she started asking you questions about the~~
9 ~~Distinguished Gent's robbery?~~

10 A. ~~Yeah.~~

11 Q. ~~Okay. And you admit that you were involved in that~~
12 ~~robbery, is that correct?~~

13 A. Yeah.

14 Q. Okay. And based on that robbery, to your
15 understanding, how did she know to ask you about this other
16 robbery?

17 A. At the time I didn't know. I knew somebody had told on
18 me, but I didn't know who it was.

19 Q. Okay. So you had a witness out there who was
20 implicating you. You didn't know who it was, is that
21 correct?

22 A. Yeah.

23 Q. ~~And based on that you started telling this story, this~~
24 ~~table, this table, about the three defendants at that table,~~
25 ~~is that correct?~~

1 A. They asked. He brought that up with me so.

2 Q. What do you mean they brought that up with me?

3 A. The one who told on me, he told about the incident
4 about what they did, because he was my co-defendant. I had
5 told him about what they did and he told them about what
6 they did.

7 Q. So based on the fact that you had told him about what

8 ~~you~~

9 A. Yeah.

10 Q. ~~And that's where you told him about what they did, is that~~
11 ~~correct?~~

12 A. Yeah.

13 Q. Now, he was a defendant, he was in a room when this
14 happened, right?

15 A. No.

16 Q. Okay. All right. So he doesn't have any firsthand
17 knowledge about anything that went on, is that not correct?

18 A. Again?

19 Q. He doesn't have any firsthand personal knowledge that
20 he saw with his own two eyes or heard with his own two ears
21 about what happened in this case, is that correct?

22 A. No.

23 Q. And the only knowledge that he has is from you,
24 correct?

25 A. Yeah.

1 Q. Okay. So you get these -- you start telling this tale
2 and eventually you give a statement; a written statement, is
3 that not correct?

4 A. Yeah.

5 Q. And Detective Patton, did she take that statement from
6 you?

7 A. Yeah.

8 Q. And tell me what was going on when you gave the
9 statement. You were talking and they were writing it down?

10 A. Yeah, basically.

11 Q. Can you read?

12 A. Yeah.

13 Q. You can read?

14 A. Yes.

15 Q. And then they wrote it down and they showed you the
16 statement?

17 A. I didn't really read it. I just signed it.

18 Q. Did they show you the statement?

19 A. Yeah.

20 Q. Did you have an opportunity to read it?

21 A. Yeah.

22 Q. So you had an opportunity to read this statement which
23 could potentially implicate you and you didn't read it?

24 A. I didn't read it.

25 Q. Didn't read it.

1 Well, let me ask you some questions about that
2 statement that you gave that you now say that you did not
3 read.

4 Now, the bottom of that statement -- do you have a copy
5 of that statement in front of you?

6 A. Yeah.

7 Q. I'm going from the exact same one, okay.

8 On the second page of that statement there is a
9 sentence that says "I have read the above statement of two
10 pages and it is true and correct as best I recall." Do you
11 see that?

12 A. Uh-huh.

13 Q. And it says -- there is a signature block right below
14 it?

15 A. Yeah.

16 Q. Do you see that?

17 A. Yeah.

18 Q. Is that your signature there?

19 A. Yeah.

20 Q. So -- let me get this straight. So even though you
21 didn't read it, you signed this statement saying that you
22 did?

23 A. Yeah.

24 Q. So that's another lie?

25 A. They just told me to sign right here, so I didn't -- I

1 didn't read it where it said I have read the above
2 statement.

3 Q. All right. So they just told you to sign right here,
4 you signed it and never read it, never reviewed it, never
5 did anything, is that right?

6 A. Yeah.

7 Q. Do you have any reason to believe that they would
8 include stuff in your statement that you did not say?

9 A. No.

10 Q. No reason whatsoever?

11 A. No.

12 Q. Okay. Let's talk about some things involved in your
13 statement.

14 Now, today you testified, my recollection, and you can
15 tell me if I'm wrong, but you testified that you and Mr.
16 Waller dropped these two individuals off, the other two
17 defendants in this case, and you saw them walk towards the
18 barbershop, is that correct?

19 A. Yeah.

20 Q. But you did not see them go in, is that correct?

21 A. Yeah.

22 Q. In your statement you testified, however, and I'm --

23 MR. GIBSON: Your Honor, may I approach the
24 witness?

25 THE COURT: You may.

1 BY MR. GIBSON:

2 Q. And I'm referring to this underlined thing that I just
3 underlined. You can take a look at it. It says "they
4 crossed the street and I saw them go in."

5 A. Yeah.

6 Q. Is that not right?

7 A. ~~I didn't say that. I didn't see them go in.~~

8 Q. ~~you never said that?~~

9 A. Uh-uh.

10 Q. Okay. All right.

11 Now, today you also testified that you drove around the
12 ~~block, drove around the block, drove around the block?~~

13 A. ~~Yeah.~~

14 Q. ~~But you never really saw them come out. All you saw~~
15 ~~was an open door, is that correct?~~

16 A. Yeah.

17 Q. I'm going to go back to your statement referring to
18 the underlined portion that I just underlined for you. It

19 ~~says, "me and Nene rode around the block a couple of times~~

20 ~~and we seen them come out. When they came out, they had~~

21 ~~scarves over their faces and they were running towards us."~~

22 ~~What's your recollection of that?~~

23 A. ~~No.~~

24 Q. ~~You didn't say that?~~

25 A. ~~No, I don't remember saying that.~~

1 Q. Just a second, please.

2 (Off the record)

3 (Back on the record)

4 BY MR. GIBSON:

5 Q. Now, I just want to confirm a couple of things before I
6 finish up with you.

7 The jewelry from this robbery that we are here about
8 today was actually found on you, is that correct?

9 A. Found on me?

10 Q. Yes, sir. Yeah. It was found in your possession, or
11 you told the police it was in your possession?

12 A. Yeah.

13 Q. So it was your jewelry? I mean at the time that they
14 found it, you had it, is that right?

15 A. Yeah.

16 Q. Okay. And this robbery matches another robbery in
17 which you admit your involvement, is that not correct?

18 A. Yeah.

19 Q. Now, I want to ask you a couple of questions. And for
20 these questions, even though you have admitted that you are
21 willing to lie under oath, I want you to assume that what
22 you said today is, in fact, true, okay?

23 A. Uh-huh.

24 Q. All right. Now, based on your testimony, you are not
25 aware of any conversations between any of these defendants

1 relating to this robbery before it happened, is that
2 correct?

3 A. Uh-huh.

4 Q. And based on your testimony, assuming that it's true,
5 when this thing actually occurred, Mr. Waller seemed as
6 surprised that it was happening as you, is that correct?

7 A. Yeah.

8 Q. Now, the other thing I want you to look in your
9 statement, I want you to -- that statement right there, I
10 want you to find a place in there where you told me about
11 ~~this phone call that took place. Just let me know where it~~
12 ~~was and I'll just refer to it as a phone call.~~

13 A. ~~It was in there.~~

14 Q. Not in there?

15 A. No.

16 Q. ~~Is it because you didn't say anything about a phone~~
17 ~~call during that statement?~~

18 A. I don't remember saying anything about it.

19 Q. And isn't it in fact true you didn't say anything
20 about a phone call because you didn't know anything about a
21 phone call?

22 A. ~~Yeah, I knew something about a phone call.~~

23 Q. You knew about the phone call?

24 A. Yeah.

25 Q. How many times have you met with Mr. Moyer before you

1 testified today?

2 A. Three or four times.

3 Q. Three or four times?

4 A. Yeah.

5 Q. Did he ask you about different evidence and stuff like
6 that and the like?

7 A. Yeah.

8 Q. Did he ask you about cell phone records that he had?

9 A. Uh-uh.

10 Q. No? Never asked you about those.

11 Did he ask you about phone calls?

12 A. No.

13 Q. You just brought it up with him?

14 A. Yeah. The last time he came to see me he brought it
15 up.

16 Q. He asked you about these cell phone records and that's
17 when you said "oh, yeah, oh, yeah, now I remember. There
18 was a cell phone call."

19 A. Yeah.

20 Q. Is that right?

21 A. Yeah.

22 Q. Is that how it went?

23 A. I couldn't remember everything. I was intoxicated at
24 the time that it was going on.

25 Q. Were you intoxicated the first times that he met with

1 you?

2 A. I'm talking about at the time of the robbery I was
3 intoxicated.

4 Q. Oh, I understand, but were you intoxicated the first
5 three times that he met with you?

6 A. No.

7 Q. But you didn't bring it up under any of those things,
8 did you?

9 A. No.

10 Q. But you brought it up that fourth one when he asked you
11 about the cell phone records?

12 A. Yeah, when he brought it to my attention.

13 Q. And isn't it a fact that he brought it up because you
14 knew that you needed to really put on a star performance
15 today, didn't you?

16 A. No.

17 Q. And you knew you really needed to really bring this
18 home for him, because if not, you got that 120 years hanging
19 over your head, don't you?

20 A. Yeah.

21 Q. Yeah. You have already admitted that you are willing
22 to lie under oath. And I think you will admit that you have
23 a significant interest in how your testimony turns out
24 today, wouldn't you agree?

25 A. Uh-huh.

1 Q. And wouldn't you agree --

2 MR. MOYER: I would object to that. It's
3 argumentative. The witness never said that.

4 THE COURT: I'll allow the question. Overruled.
5 BY MR. GIBSON:

6 Q. And wouldn't you agree that -- well, let me back up.
7 So you admit where we are before my flow was interrupted.

8 You have admitted that you are a liar, that you are
9 willing to lie under oath. You have admitted that you have
10 a motivation to lie today. Isn't -- based on that, isn't it
11 absolutely reasonable for this jury not to believe anything
12 that you say today?

13 MR. MOYER: I object, Your Honor. That's
14 argumentative.

15 THE COURT: Sustained. Sustained.

16 MR. GIBSON: Withdrawn.

17 Nothing further, Your Honor. Thank you.

18 THE COURT: All right. Mr. Farnsworth.

19 CROSS EXAMINATION BY MR. FARNSWORTH:

20 Q. Okay. Jarvis, you met with the police on, I believe,
21 December 3rd. Isn't that the date that you met with them?

22 A. Uh-huh.

23 Q. And this robbery happened -- the first robbery happened
24 I think on November the 6th?

25 A. Yeah.

1 Q. And that was the Blassingame robbery. And the robbery
2 at Distinguished Gentlemen was about a week later, or
3 something like that?

4 A. Yeah.

5 Q. And when you sat down with the officer on December 3rd,
6 these robberies were still fresh in your mind at that time,
7 weren't they?

8 A. Uh-huh.

9 Q. Much fresher than they are today?

10 A. Yeah.

11 Q. ~~And you told the officer everything that you knew about~~
12 ~~the case and everything that you thought was important?~~

13 A. Yeah.

14 Q. And you answered the questions and all the information
15 that you gave, you were truthful and honest in everything
16 that you told them?

17 A. Yeah.

18 Q. Okay. And Ms. Manigault asked you about whether you
19 had read the statement over, and I think you said you didn't
20 remember whether you read it, is that correct?

21 A. I didn't read it.

22 Q. You didn't read it?

23 A. No.

24 Q. But there is no question, though, if you will look on
25 the bottom of each page above where you signed your name,

1 both of them say that you have read the above statement and
2 it's true and correct to the best as I can recall. No
3 question about that, is there?

4 A. No.

5 Q. Now, you testified on direct examination that you had
6 been to the home of the person that you refer to as New
7 Orleans one time before this robbery? Isn't that what you
8 told Mr. Moyer?

9 A. It was after the robbery.

10 Q. Excuse me?

11 A. It was after the robbery.

12 Q. Okay. Are you sure you didn't testify that you went
13 there one time before?

14 A. No, not to New Orleans house.

15 Q. All right. But, in any event, in your statement you
16 said, and it's been brought out by each of the other
17 lawyers, that the first time that you saw this person that
18 you refer to as New Orleans was the day of this robbery?

19 A. Uh-huh.

20 Q. And that's the only time that you had seen him?

21 A. Yeah.

22 Q. And also with respect to these phone calls that Mr.
23 Gibson brought out and questioned you, you have testified
24 that you heard two phone calls, you heard what Nanu was
25 saying into the phone, and yet you didn't think that was

1 important enough to put in your statement?

2 A. I didn't think nothing of it at the time.

3 Q. And even though Nanu was -- you said Nanu was -- the
4 person that you referred to as Nanu was saying "well, where
5 are you, where are you," and things of that nature, you
6 didn't think that was important?

7 A. Uh-uh.

8 Q. In any event, you did not put that in your statement,
9 did you?

10 A. No.

11 Q. ~~And this statement was almost a month after the~~
12 ~~incident happened?~~

13 A. Uh-huh.

14 Q. And we are going on now a year and a half later?

15 A. Yeah.

16 Q. Now, as I understand, you finally told both the
17 gentleman -- the lady and the gentleman lawyers over here
18 seated with me that you did have a recommendation from the
19 solicitor?

20 A. Uh-huh.

21 Q. And that was 10 to 30?

22 A. Yeah.

23 Q. Okay. And also there is no question that two of your
24 sentences have been deferred, whereas you are looking at
25 110 more years on these charges that you pled guilty to?

1 A. Uh-huh.

2 Q. And also on just the cases that were dismissed, you
3 were looking at 520 years, if they were given to you
4 consecutively on all the other charges that were dropped?

5 A. Yeah.

6 Q. And so what you are trying to do up here today, you are
7 trying to do as good a job as you can do, so the solicitor
8 will go along with the recommendation that he told you that
9 he would make?

10 A. Yeah.

11 Q. Now, let's go back to this Nanu. You said that you
12 had -- you knew the person that you referred to as New York
13 by picking him up at the bus station with Nanu, and that was
14 about a week before you said this robbery occurred?

15 A. Uh-huh.

16 Q. So you knew him, you said?

17 A. Who, Nanu?

18 Q. Yeah.

19 A. Yeah, I knew Nanu.

20 Q. And New York?

21 A. I didn't know him.

22 Q. Didn't you testify that you rode with Nanu to pick him
23 up at the bus station?

24 A. Yeah.

25 Q. So you knew him. You met him then, didn't you?

- 1 A. Yeah.
- 2 Q. Okay. But you had known, you said, Nanu a good while?
- 3 A. Yeah.
- 4 Q. Okay. And y'all were buddies?
- 5 A. Yeah.
- 6 Q. All right. Let me ask you about this thing, this
- 7 Distinguished Gentlemen robbery. You got with two of your
- 8 buddies. I believe the Williams brothers, is that who was
- 9 involved in it with you?
- 10 A. Yeah.
- 11 Q. But you kind of talked them into doing that robbery,
- 12 didn't you?
- 13 A. Not really.
- 14 Q. Didn't you tell them that you just done a lick, meaning
- 15 a robbery --
- 16 A. Yeah.
- 17 Q. -- at another barbershop?
- 18 A. No, I didn't tell them that either.
- 19 Q. You didn't tell them that?
- 20 A. No.
- 21 Q. Okay.
- 22 A. I told them about it.
- 23 Q. And isn't it true that -- did you talk with Mr. Waller,
- 24 Nanu, any time after the Distinguished Gentlemen robbery?
- 25 A. Yeah.

1 Q. I mean, you kept talking to him on a regular basis?
2 Y'all were still friends?

3 A. Yeah.

4 Q. Okay. And isn't it true that after you did this
5 Distinguished Gentlemen robbery, that you called him up and
6 told him that you had done it, isn't that correct?

7 A. Yeah.

8 Q. And that y'all had gotten about \$5,000?

9 A. Yeah.

10 Q. And that you had skimmed. What does skimmed mean?

11 A. I don't know.

12 Q. Didn't you tell them that you had skimmed the other two
13 partners in your crime out of some money?

14 A. Skimmed?

15 Q. Yeah.

16 A. No.

17 Q. Didn't you tell them that you kept 1900, and the other
18 two, you shorted them money?

19 A. No.

20 Q. You didn't do that, did you?

21 A. No, I didn't tell him that.

22 Q. Okay. So you are telling this jury and this court that
23 you want to come in here today, finally, and this is the
24 truth that you are telling today?

25 A. Yeah.

1 Q. All right. And you told the officer the truth and you
2 told Mr. Moyer on the three or four occasions you met with
3 him the truth?

4 A. Yeah.

5 Q. So let me ask you this. Why -- if you wanted to tell
6 the truth so bad, why didn't you go to the police the day
7 after you were involved in the robbery at Blassingame's?
8 Why didn't you go to the police that next day and tell them
9 about what you had done or what you knew?

10 A. I don't know.

11 Q. You never did, did you --

12 A. Uh-uh.

13 Q. -- until they came to you and told you they had
14 somebody that had got you testifying -- that you had been
15 involved in the robberies, didn't they?

16 A. Yeah.

17 Q. But you waited -- and isn't it true, Mr. Clement, that
18 if the police hadn't contacted you, you never would have
19 come forward and told about either one of these robberies or
20 your story that you have given here today, would you?

21 A. No.

22 Q. You got caught and you knew what you had done and you
23 made you a deal with this solicitor. You are going to look
24 out for yourself. You want to save as much time as you can
25 save, don't you?

1 A. Yeah.

2 Q. And you want to testify as good as you can, no matter
3 who it hurts, isn't that right?

4 A. I ain't trying to hurt nobody.

5 MR. FARNSWORTH: That's all I have, Your Honor.

6 THE COURT: Redirect?

7 MR. MOYER: Just a couple of questions, Your
8 Honor.

9 REDIRECT EXAMINATION BY MR. MOYER:

10 Q. Now, Mr. Clement, when you pled guilty to all these
11 charges that you were talking about, did you understand then
12 that when you finally got sentenced, that that sentence
13 would be completely up to a judge?

14 A. Yeah.

15 Q. So it's going to be a judge's decision as to what
16 sentence that you get?

17 A. Yeah.

18 Q. And do you remember you when you pled guilty, that you
19 pled guilty with your sentencing sheet saying that there
20 were ~~no recommendations~~?

21 A. Uh-uh.

22 Q. Do you remember -- do you remember anyone making any
23 recommendations for you at the time, other than that you had
24 some charges dismissed?

25 A. ~~I remember I had a recommendation before,~~ though.

1 Q. Before. We are not talking about -- and you ~~turned~~
2 ~~that down, didn't you?~~

3 A. ~~Yeah.~~

4 Q. Right. But ~~then the day that you pled guilty, you pled~~
5 ~~guilty with the understanding that there were no promises as~~
6 ~~to what kind of sentence that you would get, right?~~

7 A. ~~Yeah.~~

8 Q. ~~And that it would be completely up to a judge?~~

9 A. ~~Yeah.~~

10 Q. Okay. Now -- except for those charges that were
11 dismissed, right?

12 A. Yeah.

13 Q. Let me ask you this. Did you tell the officer about
14 the pistol that you used in that second robbery, that
15 Distinguished Gentlemen?

16 A. Yeah.

17 Q. Did you tell the officers where it was?

18 A. Yeah.

19 Q. And did the officers go get it?

20 A. Yeah.

21 Q. Was that pistol a semiautomatic kind of pistol or a
22 revolver?

23 A. Revolver.

24 Q. Okay. Oh, how long do you expect to live?

25 A. I don't know.

1 MR. GIBSON: Objection. It calls for speculation.

2 BY MR. MOYER:

3 Q. Let me ask you this way. More than a hundred years?

4 A. No.

5 Q. Okay.

6 MR. MOYER: Nothing further.

7 THE COURT: Thank you, sir. You may step down.

8 MR. MOYER: The State would call Tammy Patton.

9 THE COURT: Let's take a short break at this time.

10 Ladies and gentlemen, I'm going to send you back
11 to your jury room to have a short break. And, again, don't
12 discuss the case at this time. That will come later. We
13 will take about a ten minute break. We'll see you back in
14 the courtroom at that time.

15 (The following takes place outside the presence of
16 the jury panel)

17 THE COURT: All right. We will be at ease.

18 (Whereupon, proceedings were recessed)

19 (Whereupon, proceedings were reconvened)

20 MR. MOYER: May me approach?

21 THE COURT: Yes, sir.

22 (Whereupon, the lawyers approached the bench for
23 an off-the-record discussion).

24 THE COURT: Solicitor, are you ready to proceed?

25 MR. MOYER: Yes, sir, Your Honor.

1 I think we wanted to proffer one item of evidence
2 that we are going to use when the jury comes back out, which
3 is simply that we are going to ask for defendant Lawrence
4 Clovis to stand before the jury and pull up his sleeves and
5 just turn his arms frontwards and backwards and show up
6 tattoos that are displayed on his arms.

7 THE COURT: All right. What's the defendant's
8 position on that?

9 MR. FARNSWORTH: Of course, we would object to
10 that and take exception to it, Your Honor. We take the
11 position that that would be testimonial in nature, that it
12 would violate his Fifth Amendment Right to remain silent.

13 And it also would violate his Constitutional Right
14 to testify or choose not to testify.

15 It also, Your Honor, would violate his
16 Constitutional Rights, in that it would be putting the
17 burden on him to testify in order to explain away the
18 showing of the tattoo.

19 And, Your Honor, let me say this. This is -- it's
20 distinguished from like taking blood and taking hair, those
21 type samples, breath, those are used for testing purposes,
22 whereas this isn't. This is more testimonial in nature.
23 And for those reasons I would ask the court to exclude what
24 the solicitor is asking the court to do.

25 THE COURT: All right. Any response?

1 MR. MOYER: The only thing I can say I think it's
2 pretty clear established precedent that a person's
3 appearance - things like height, weight, body
4 characteristics - items like that are not testimonial in
5 nature and it would not be violating any rights that he
6 would have to keep silent and not testify at trial.

7 THE COURT: Could you get it in through the next
8 witness?

9 MR. MOYER: What?

10 THE COURT: Could you not get the testimony
11 through your next witness?

12 MR. MOYER: Have her testify as to the --

13 THE COURT: Right.

14 MR. MOYER: Well, I think she could mention it,
15 but the jury wouldn't have the opportunity to see it, which
16 I think is a significant distinction.

17 THE COURT: Your request is that he raise both
18 sleeves on both arms?

19 MR. MOYER: Yes, sir, just pull the sleeves up,
20 stand before the jury and show his arms, front and back.

21 THE COURT: Is there testimony that he has tattoos
22 on his arms?

23 MR. MOYER: One of the witnesses testified that he
24 saw a tattoo.

25 THE COURT: I thought the testimony was that he

1 saw a tattoo on his hand.

2 MR. MOYER: On his hand.

3 MR. FARNSWORTH: On one of the guys. He didn't
4 say this guy.

5 MR. MOYER: No.

6 MR. FARNSWORTH: He just said on one of the guys,
7 on his left hand, as I remember it.

8 MR. MOYER: I think implicit in hand is -- I think
9 if someone -- certainly I'm not saying all the way up to his
10 shoulder, but certainly up to his forearms. I mean, I think
11 implicit in when someone says a hand is the hand region. I
12 mean, I think that would be implicit in what the witness
13 testified to.

14 I mean, we are not here -- we are just here not to
15 look at the weight of the evidence, Your Honor, but just the
16 fact of whether the evidence has any relevancy whatsoever,
17 and I think it would have relevancy.

18 MR. FARNSWORTH: Your Honor, he is saying the next
19 witness can do that. I just think it's highly prejudicial,
20 particularly in light of the fact that his next witness can
21 testify to that. I mean, it's just -- I think it's highly
22 prejudicial.

23 MR. MOYER: Quite frankly, I'm not sure that this
24 witness can testify to seeing -- having seen the tattoo,
25 so -- and the issue isn't whether or not it's a prejudicial

1 issue, whether or not it's unfairly prejudicial, and it's
2 not unfair because it's a relevant identifying feature of
3 the defendant and relevant for that issue before the jury.
4 I don't think there is any unfairness to that request, Your
5 Honor. I mean, it would be no different from say having a
6 picture. I mean, it would be no question if we had a
7 picture of him. We could put the picture in. There is
8 absolutely no distinction between having him stand before
9 the jury and showing it.

10 THE COURT: Well, what if an individual got a
11 tattoo after the offense?

12 MR. MOYER: Well, again, that would go to the
13 weight of the evidence. I mean --

14 THE COURT: And then the only way they could
15 explain that would be to testify.

16 MR. MOYER: Well, that's true in every piece of
17 evidence. I mean, we could look at everything, and then
18 there is always some way to explain something. And, you
19 know, the defendant always has a right whether to or not to
20 take the stand and clarify. Just because a piece of
21 evidence is in the record that is damaging or incriminating
22 doesn't mean it's not admissible because the defendant feels
23 pressured to get up and try to explain it.

24 THE COURT: Yes, sir, Mr. Farnsworth?

25 MR. FARNSWORTH: Your Honor, could I say this? By

1 doing it -- by allowing this, Your Honor, that is -- the
2 purpose of this is forcing my client to have to testify to
3 explain away the question he just asked him, well, when
4 could have happened after that, you know this type thing. I
5 mean, it's just highly unusual, Your Honor, and --

6 THE COURT: I don't know that I would agree with
7 you it's highly unusual, but --

8 MR. FARNSWORTH: Well, I never had it come up in
9 all these years, Your Honor.

10 THE COURT: Well, I'm going to -- at this stage
11 I'm going to disallow that, based upon the fact that only
12 testimony that I have heard is a tattoo. There was no
13 description of the characteristics of the tattoo whatsoever,
14 just a tattoo, and I think that the probative value of that
15 would outweigh the prejudicial effect, without some -- if
16 there is evidence before the case ends of the nature of the
17 tattoo and what it looked like, I would certainly revisit
18 that, but based on what I have heard so far, saw a tattoo on
19 a hand, left hand I believe is what I heard, I'll deny it at
20 this time.

21 All right. Anything else?

22 MR. MOYER: Nothing from the State.

23 THE COURT: All right. Let's bring the jury in.

24 (The following takes place in the presence of the
25 jury panel)

1 THE COURT: All right. Thank you very much,
2 ladies and gentlemen, for your patience with us. We are now
3 ready to proceed.

4 Solicitor, you may call your next witness.

5 MR. MOYER: Thank you, Your Honor.

6 The State would call Investigator Tammy Patton to
7 the stand.

8 INVESTIGATOR TAMMY PATTON, having been first duly
9 sworn, testified as follows:

10 THE CLERK: State your name for the record.

11 THE WITNESS: Tammy Patton.

12 THE CLERK: Thank you. Be seated.

13 DIRECT EXAMINATION BY MR. MOYER:

14 Q. All right. Investigator Patton, where do you work?

15 A. Greenville County sheriff's office.

16 Q. How long have you worked at the sheriff's office?

17 A. I have worked for the sheriff's office seven years.

18 Q. How long have you been in law enforcement?

19 A. I have been in law enforcement five years.

20 Q. And what's your position?

21 A. I'm a violent crime investigator.

22 Q. How long have you been in that department?

23 A. I have been in violent crimes approximately -- well, I
24 have been in CID four years, but I have been in violent
25 crimes assigned to the violent crimes unit approximately two

1 and a half years.

2 Q. What is CID? What does that stand for?

3 A. Criminal investigation divisions.

4 Q. Now, you worked this particular case that we have been
5 dealing with here the last two days?

6 A. Yes, I did.

7 Q. I just have a couple of questions for you about it.

8 Now, ~~when you found out that you became familiar~~
9 ~~through your investigation of the robbery of a~~
10 ~~barbershop that has been referred to as a "blindfolded~~
11 ~~Gentlemen's~~

12 A. ~~Yes, I did.~~

13 Q. Now, was that charge investigated by your agency or a
14 ~~different agency?~~

15 A. ~~Distinguished Gentlemen was investigated by Greenville~~
16 ~~city police.~~

17 Q. Okay. And are you familiar with the detective who
18 handled that?

19 A. Yes, I am.

20 Q. Okay. And do y'all have a relationship where you share
21 information back and forth?

22 A. Yes, we do.

23 Q. And when you received information about that robbery,
24 did you note the similarities between the two?

25 A. Yes, I did.

1 Q. Now, which case did you get information on that Jarvis
2 Clement was involved in first, this robbery or the other
3 one?

4 A. The first case that we received information on that
5 Jarvis Clement was involved in would be Distinguished
6 Gentleman.

7 Q. And you got that -- when you got that information, did
8 you go speak to Jarvis Clement?

9 A. Yes, sir.

10 Q. And did you go by yourself or was anyone with you?

11 A. Detective Bruce of Greenville city was with me.

12 Q. And he's the other detective that you referred to
13 who --

14 A. Yes, sir.

15 Q. -- is handling that case.

16 Now, what was the date that you went and spoke to him?

17 A. I spoke to Jarvis Clement on December 3rd of 2001.

18 Q. When you spoke to him, did you get confessions from
19 him as to both robberies?

20 A. Yes, sir.

21 Q. And it was a written confession, as we have heard
22 referred to when he testified?

23 A. Yes.

24 Q. Now, did he give you the names in both of these
25 robberies?

1 A. He did not know their full given birth names. What he
2 knew was street names.

3 Q. What about the other robbery?

4 A. The other robbery of Distinguished Gentlemen?

5 Q. Yes.

6 A. He knew his co-defendants. He knew them by name.

7 Q. And did he give you those names?

8 A. Yes, sir, he did.

9 Q. Now, as far as this incident, he gave you -- what were
10 the nicknames that he gave you?

11 A. He gave me the nickname of Nana, and then it was the
12 guy from New York and the guy from New Orleans.

13 Q. And Nana you determined is who?

14 A. Lawrence Waller.

15 Q. And from New York is who?

16 A. Donnie Nelson.

17 Q. And New Orleans is who?

18 A. Lawrence Clovis.

19 Q. Now, from talking to Jarvis Clement --

20 Let me ask you this. Did you know -- those names that
21 you just mentioned, the three defendants names, did you know
22 those guys before speaking to Jarvis Clement?

23 A. ~~No, sir.~~

24 Q. ~~Did y'all have any open investigations into that?~~

25 A. ~~No, sir.~~

1 Q. Did you know those nicknames?

2 A. No, sir.

3 Q. Did you have any investigations into people who knew
4 the nicknames?

5 A. No, never.

6 Q. Did either you or Detective Bruce volunteer those names
7 to Jarvis Clement before he gave you that statement?

8 A. No, sir, we ~~didn't talk to him when we went to talk with~~
9 ~~Jarvis Clement, he had no idea that we even knew about the~~
10 ~~similarities between the two barbershops. When we talked --~~
11 ~~how we got Jarvis Clement's name to begin with was from his~~
12 ~~co-defendant Mark Anthony Williams, and that was from~~
13 ~~Distinguished Gentleman's barbershop, that robbery. And~~
14 ~~then when we went to speak with him, it was only after we~~
15 ~~begin to talk with him that he admitted to the robbery of~~
16 ~~Blassingame's and then he began to tell us the other~~
17 ~~co-defendants that were involved with him.~~

18 Q. Okay. So y'all didn't bring any names to him then?

19 A. No, sir, we didn't -- we didn't have any. ~~We didn't~~
20 ~~know anyone that was involved in that at the time.~~

21 Q. So at that time you didn't have these men as suspects?

22 A. No, sir.

23 Q. Now, from talking to him, Jarvis Clement, were you able
24 to recover any of the stolen property?

25 A. Yes, sir, we recovered -- I recovered four rings from

1 him. Mr. Blassingame identified two of those rings at the
2 time. One of them had a GB on it. I believe it was a
3 wedding band.

4 Q. Are these the two, State's Exhibit No. 11?

5 A. Yes, sir.

6 Q. And where did you get those rings?

7 A. The two rings, I received those from Jarvis Clement's
8 house.

9 Q. Okay. Was where was Jarvis Clement when you got them?

10 A. Jarvis Clement was in Greenville County detention
11 center.

12 Q. So, how did you know where to look?

13 A. Once he gave the confession, he told us where the rings
14 were located, along with the weapon that was used in
15 Distinguished Gentlemen.

16 Q. Let me -- and did you recover that as well?

17 A. Yes, sir, I did.

18 Q. And what kind of pistol was that?

19 A. It was a silver revolver with a wood grain handle.

20 Q. What caliber?

21 A. I believe it was a .32.

22 Q. Okay. Well, you say a revolver, so -- for those who
23 aren't familiar with handguns, is a revolver -- when you
24 shoot a revolver, does a shell casing eject?

25 A. No, sir, it stays inside the cylinder.

1 Q. Okay. And so shooting a revolver then would not leave
2 a shell casing behind at a crime scene?

3 A. No, sir.

4 Q. All right. Now, you were able to determine where this
5 individual named Nanu lived?

6 A. Yes, sir.

7 Q. And how were you able to do that?

8 A. After speaking with Mr. Clement inside detention and he
9 gave me general directions as to where Nanu lived. I tried
10 several times by myself to find the house, because he gave
11 me beige vinyl sided duplex past the DMV on Saluda Dam Road.
12 When I had gone out there and there are numerous duplexes
13 out there on that road. So when I was unable to find it on
14 my own, I went back to the detention center and asked Mr.
15 Clement if he would be willing to show me where Mr. Waller
16 lived.

17 Q. And did he do so?

18 A. Yes, sir, he did, myself, along with Investigator
19 Bailey.

20 Q. And where did he take you?

21 A. He took me to 19-B Maxeva Lane.

22 Q. Now, you heard him mention about Whitehorse Road. Is
23 that anywhere near Whitehorse Road?

24 A. Yes, sir, it's off of -- the main road would be
25 Whitehorse Road, and then there is a road to the left-hand

1 side that Saluda Dam Road. That's where the larger DMV is
2 located, and down that road, and then there is several other
3 roads that you take down there. I can't tell you exactly
4 every road off of Saluda Dam Road.

5 Q. Okay. Now, you mentioned on the left-hand side. That
6 would be traveling sort of north?

7 A. Right, if you were traveling north on Whitehorse Road
8 towards Travelers Rest.

9 Q. Okay. Now, when you went over to that residence, did
10 you speak to anybody there?

11 A. I spoke to a black female that I -- once I knocked on
12 the door, there was a black female that opened the door.

13 Q. And who was that?

14 A. Her name was Shamara Smith.

15 Q. And did you notice anything about her that made you
16 think that she knew Lawrence or Nanu?

17 A. Well, when I introduced myself to her, she invited me
18 in. And as we sat on the living room couch, she just kind
19 of sat on the armrest of it, I saw a tattoo on her upper
20 arm. It was like of cursive writing of the word Nanu
21 N-A-N-U.

22 Q. Then you were able -- okay.

23 All right. Now, you are aware where Mr. Blassingame's
24 barbershop is?

25 A. Yes, sir, I am.

1 Q. And it's on Anderson Road?

2 A. Yes, sir.

3 Q. Is that in Greenville County?

4 A. Yes.

5 Q. Roughly how far is that from where Lawrence Waller
6 lived?

7 A. I would say approximately about maybe seven to eight
8 miles -- six to eight miles, or so.

9 Q. Now, can you tell us what the height and weight of
10 Lawrence Clovis and Donnie Nelson are?

11 A. I can approximate Mr. Nelson to be 5'11", and Mr.
12 Clovis to be 5'8".

13 Q. And are they heavy build, or how would you describe
14 their build?

15 A. When Mr. Clovis was arrested, he is not as heavy as he
16 is now. He was probably I would say about 140. 138, 140,
17 something like that.

18 And Mr. Nelson I would say probably about 150, 160.

19 Q. Was their hair similar to as it is now back in
20 November?

21 A. When Mr. Nelson was extradited to South Carolina from
22 New York, he had a short --

23 MS. MANIGAULT: Your Honor, I object.

24 THE COURT: Sustained.

25 MR. MOYER: Okay.

1 THE COURT: Strike that.

2 BY MR. MOYER:

3 Q. When was it that you saw Donnie Nelson?

4 A. The day -- I can't recall exactly what day I saw him,
5 but on the day that I did see him, he had short hair.

6 MS. MANIGAULT: Your Honor, may I approach the
7 bench?

8 THE COURT: Yes, sir.

9 MS. MANIGAULT: Thank you.

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion)

12 BY MR. MOYER:

13 Q. How about Lawrence Clovis, how about his hair?

14 A. His hair at the time?

15 Q. Yeah.

16 A. I believe his hair was short at the time.

17 THE COURT: Let me -- excuse me just a minute.
18 Let me just clarify. Earlier there was a mention of an
19 extradition. That's not anything to do with this case
20 whatsoever and it's not relevant to this case and I just
21 want to instruct the jury at this time that they should
22 disregard that comment, that it would be stricken from the
23 record.

24 All right, sir you may continue.

25 MR. MOYER: Thank you, Your Honor.

1 BY MR. MOYER:

2 Q. And how about the complexion of these men? Would you
3 say dark skinned or light skinned?

4 A. They are both light skinned males. As the report when
5 it was received in my office of the incident, the
6 descriptions of those males were light skinned, but these
7 males were light skinned.

8 MR. MOYER: Okay. Please answer any questions
9 that the defense may have.

10 THE COURT: You may cross-examine the witness.

11 CROSS EXAMINATION BY MR. GIBSON:

12 Q. Let me ask you this, Ms. Patton.

13 I just want to clarify based on your testimony. You
14 ~~are saying the only thing that led you to Mr. Clement was the~~
15 ~~testimony of Mr. Clement. Is that correct?~~

16 A. ~~You are asking me is that the only thing?~~

17 Q. I'm asking you what led you -- strike the question.

18 Let me ask you this. You took a statement from Mr.
19 ~~Clement, right?~~

20 A. Yes, sir.

21 Q. Okay. In that statement -- I'm going to show you a
22 copy of what was provided to me as that statement. Do you
23 recognize that?

24 A. Yes, sir.

25 Q. Is that, in fact, the statement that you took from Mr.

1 Clement?

2 A. Yes, sir.

3 Q. I want you to take a look at this phrase right here
4 where he says -- where he's talking about when he --
5 allegedly when he and Mr. Waller dropped the other two
6 defendants off. There is a phrase where it says "they
7 crossed the street and I saw them go in."

8 Did he, in fact, say that to you?

9 A. If it's in this statement, sir, that's what he said to
10 me.

11 Q. Okay. So when he also said -- or when the statement
12 says "me and Nanu rode around the block a couple of times
13 and we seen them come out. When they come out, they had
14 scarves over their faces and they were running towards
15 Justin," he also told you that?

16 A. Yes, sir.

17 Q. Okay. Now, do you know if Mr. Clement had any other
18 guns, say a automatic that he didn't tell you about?

19 A. During the robbery, are you asking me if he --

20 Q. No, period.

21 A. No, sir. I don't know if he had any other weapons.

22 Q. Okay.

23 MR. GIBSON: Thank you.

24 CROSS EXAMINATION BY MS. MANIGAULT:

25 Q. Investigator, did you hear Jarvis Clement testified

1 that the gun he used in Distinguished Gentlemen was a .38?

2 A. Yes, ma'am, if that's what he testified to.

3 Q. And you took his statement. Do you have a copy of his
4 statement?

5 A. No, ma'am, I don't.

6 Q. And in this statement -- is that the statement that you
7 took from him? Is that your signature on both of those
8 sheets?

9 A. Yes, ma'am.

10 Q. And in that statement did he say it was a .38 gun?

11 A. Yes, ma'am, a silver .38 gun with a wood grain handle.

12 Q. So you are testifying today that the gun was a .32 that
13 you retrieved from his home?

14 A. That was -- I misspoke. I'm sorry about that, but you
15 are -- in the statement it says a .38. I said a .32, but I
16 also said I believe it was a .32, but in this statement it
17 is a .38.

18 Q. Okay. So what kind of gun did you retrieve, do you
19 know?

20 A. Yes, ma'am, it was a .38.

21 Q. Okay. All right.

22 Now, I believe you testified to the court that ~~he~~

23 ~~you talked to him and he said you had no name, no suspects,~~

24 ~~no information on the assassin and on his~~

25 ~~A. I had a description of suspects, but I had no name,~~

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1 none of that information was available to me at the time.

2 None of that information was available to me before I

3 talked to Mr. Blasingame, did he? That is, the defendant making a

4 statement that there was a robbery.

5 Q. Were you talking about District Judge Gentlemen?

6 A. Right.

7 Q. On Anderson Road, is that right?

8 this case. You said you had no name and no suspects?

9 A. Right.

10 Q. Did you talk with the victims in this case?

11 A. Yes, ma'am, I did. I talked to Mr. Blasingame at his
12 shop, and I talked to Mr. Gambrell, and I also talked to Mr.
13 Smith.

14 Q. And none of those persons gave you a description?

15 A. They gave me light skinned black males. And I asked
16 Mr. Blasingame when I went to his shop to see him, I asked
17 him, I said "did you notice anything else about them, or
18 perhaps, you know, dialect, accents, short hair, long hair?"

19 "Well, they had short hair," because I asked him did he
20 maybe see any braids or anything.

21 Q. All right. Did they tell you that the persons had
22 on -- that robbed the shop had on bandanas, their faces were
23 covered?

24 A. I believe he -- I think it's in their statements that
25 the officers got from them.

1 Q. But when you talked to them, they didn't tell you that?

2 A. I don't recall right now, ma'am.

3 Q. Okay, that's fine.

4 All right. Did they tell you that the heads were
5 covered?

6 A. Yes, ma'am.

7 Q. Did Mr. Smith, Gambrell, and Blassingame tell you that
8 the only thing they could see was the eyes?

9 A. Yes, ma'am, and the skin, the complexion.

10 Q. Excuse me?

11 A. The complexion that they were lighter skinned black
12 males.

13 Q. Did they tell you where they gathered the complexions
14 from?

15 A. I'm assuming from their face.

16 Q. If their face was covered with a bandana, then how
17 would they gather complexion?

18 A. If you recall, they said that the bandana covered from
19 the nose down, so they could see the eyes.

20 Q. Okay. This portion of the eyes. So you are saying
21 that they told you that light skinned person was from this
22 portion of the eyes?

23 A. I'm assuming so. He said light skinned black male.

24 Q. But you don't recall them saying there was a bandana on
25 the face?

1 A. If that's what's in the report. I mean, I'm sure it's
2 in the report.

3 Q. That was the testimony yesterday.

4 A. I do remember them saying bandanas were on the face.
5 Yes, ma'am, I do.

6 Q. Thank you.

7 And you said that -- you noted in your report that the
8 Distinguished Gentleman's robbery had the same mode of
9 operation that you believed that the Anderson Road had?

10 A. Yes, ma'am.

11 Q. And when you talked to Jarvis, did he tell you that
12 when he went into the Distinguished Gentleman, he was the
13 person that fired the gun into the ceiling?

14 A. I don't recall.

15 Q. Or did you?

16 A. I don't recall Mr. Clement saying that.

17 Q. Okay.

18 A. I don't recall him saying that.

19 Q. Did you hear his testimony today?

20 A. Yes, ma'am.

21 Q. Did you hear him say that today?

22 A. I don't recall him saying that.

23 Q. You didn't hear that he was the gun person with the .38
24 that shot into the ceiling?

25 A. I heard he played a more active role in it.

1 Q. Okay. So you didn't hear about the gun in his hand?

2 A. And then Mark Anthony, I believe -- no, I'm sorry, was
3 Corey went in first. I didn't hear that portion of it, no,
4 ma'am.

5 Q. All right.

6 MS. MANIGAULT: No further questions, Your Honor.

7 MR. FARNSWORTH: No questions, Your Honor.

8 THE COURT: All right. Any redirect?

9 MR. MOYER: Just one redirect.

10 I would like to introduce the statement of the
11 Jarvis Clement into evidence.

12 THE COURT: Any objection?

13 MS. MANIGAULT: Objection.

14 MR. MOYER: Your Honor, under 801 --

15 MR. FARNSWORTH: Same with Mr. Clovis.

16 MR. GIBSON: Same with Mr. Waller.

17 MR. MOYER: I'm sorry, did they say no objection?

18 MR. GIBSON: ~~Objection.~~

19 MS. MANIGAULT: ~~Objection.~~

20 THE COURT: ~~Objection.~~

21 MR. MOYER: Under 801(b)(1)(B), Your Honor, this

22 would be admissible as prior inconsistent statement.

23 THE COURT: I'm sorry, what was that rule again?

24 MR. MOYER: 801(d)(1)(b), I believe.

25 MR. GIBSON: Your Honor?.

1 THE COURT: Yes, sir.

2 MR. GIBSON: May I.

3 THE COURT: Yes, sir.

4 MR. GIBSON: Your Honor, I imagine that you are
5 looking at this rule? It says that --

6 THE COURT: Hang on just a minute.

7 Ladies and gentlemen, we have a legal matter we
8 need to discuss. I'm going to ask you, if you would, to go
9 briefly to your jury room. We will call you back in just a
10 few minutes. Don't discuss the case at this time.

11 (The following takes place outside the presence of
12 the jury panel)

13 THE COURT: All right, Mr. Gibson, I'll be glad to
14 hear from you.

15 MR. GIBSON: Thank you, Your Honor.

16 801 (d) (b) --

17 First of all, Your Honor, I would just like to
18 state that the best evidence in this case is his testimony
19 as to what he said. And, I mean, he said what's in that
20 statement he thinks he said and what in that statement he
21 doesn't, but, Your Honor, simply referring to 801 (d) (b), it
22 says ~~"consistent with the declarant's testimony and~~
23 ~~offered to rebut an express or implied charge against the~~
24 ~~declarant of recent fabrication or improper influence~~
25 ~~or motive."~~ What that says, Your Honor, we are now saying that

1 ~~the entire statement of his testimony was fabricated.~~

2 Now, what he's trying to do is he's trying to back
3 door in a prior ~~consent~~ ~~statement~~ in regards to those
4 things. We have already addressed all of the issues that
5 are inconsistent with his testimony, and we are not saying
6 he fabricated all that -- or we have not made the charge
7 towards him at this point that he fabricated that entire
8 statement. And, quite frankly, I think we have gone through
9 just about the entire statement.

10 In that regard, Your Honor, the best testimony
11 here is what he said on the stand and what was brought out
12 through the cross-examination and through the examination of
13 Ms. Patton. And on those grounds, Your Honor, I would
14 object to actually admitting the entire statement in this
15 case.

16 THE COURT: Anything different from Mr. Farnsworth
17 or Ms. Manigault?

18 MR. FARNSWORTH: No, Your Honor.

19 MS. MANIGAULT: Your Honor, I join in that, and I
20 would also say that for clarity ~~Mr. Gibson has denied~~
21 ~~several things in that statement that he had and now did not~~
22 ~~say. And it would be the same as not to allow that statement~~
23 ~~in on that ground and on the ground that Mr. Gibson has~~

24 ~~that statement.~~

25 MR. GIBSON: And actually, Your Honor, just

1 understanding what she is saying, a requirement of 801(d) (b)
2 is that the statement be consistent with the declarant's
3 testimony. In this case it's not.

4 THE COURT: Mr. Farnsworth, anything?

5 MR. FARNSWORTH: Nothing further, Your Honor.

6 THE COURT: Okay. Mr. Solicitor, be glad to hear
7 from you.

8 MR. MOYER: Yeah. Your Honor, this statement has
9 already been established as the statement that was taken by
10 Investigator Patton from the defendant. He said that he
11 didn't remember making any statements in the station.
12 That's all that's in the statement. He said yes, that's my signature, and,
13 yes, that's my statement, and I gave my statement to
14 Investigator Patton.
15

16 Now, the whole point of this is that when the
17 defense is attacking the credibility of a witness and denying
18 to say that that witness is making up things, then that
19 is the whole case. That's the whole case. I mean, the
20 defense is attacking the credibility of a witness and denying
21 to say that that witness is making up things, then that
22 is the whole case. That's the whole case. I mean, the
23 defense is attacking the credibility of a witness and denying
24 to say that that witness is making up things, then that
25 is the whole case. That's the whole case. I mean, the

26 Now, the whole point of that is that when that
27 happens, that statement that that witness is making up things, then that
28 is the whole case. That's the whole case. I mean, the

1 ~~That's -- that's all this is. That's exactly~~
2 what it is.

3 THE COURT: I think the offer ~~meets the guidelines~~
4 ~~of the rule and I think it should be allowed in, based upon~~
5 ~~the rule, and I'm going to allow it.~~

6 Y'all certainly will have an opportunity to
7 address those things in arguments to the jury as to what's
8 consistent and what's inconsistent, but I think this meets
9 the definition of what the rule is all about.

10 MS. MANIGAULT: Your Honor?

11 THE COURT: Yes, ma'am.

12 MS. MANIGAULT: As relates to any statement about
13 the --

14 THE COURT: Are there other issues with the
15 statement that -- I haven't read the statement, of course.

16 MS. MANIGAULT: There are admissions about two
17 crimes -- Distinguished Gentlemen and Blassingame. And as
18 far as the questions we asked about Blassingame, the
19 crime -- excuse me, the Distinguished Gentlemen charge, then
20 I think that should stand, but I'm asking the court to
21 redact the entire information about the Distinguished
22 Gentlemen crime.

23 MR. MOYER: Your Honor, that's become part of this
24 case. I mean, the defense spent a lot of time questioning
25 him about it. It's tied intricately with this case.

1 THE COURT: How does that prejudice your client
2 that also when they are talking about --

3 MS. MANIGAULT: Your Honor, there are a lot of --

4 THE COURT: -- this witness who you want to attack
5 did another robbery?

6 MS. MANIGAULT: Excuse me?

7 THE COURT: What's you are asking to redact is a
8 part of the statement of the witness that you want to attack
9 saying that he did other robberies as well. You don't want
10 that in? Is that what you are saying?

11 MS. MANIGAULT: That's what I'm saying. There is
12 information -- a lot more information in here that we did
13 not ask about in the Distinguished Gentlemen.

14 THE COURT: And what prejudice does that create to
15 your client that the State's witness talks about another
16 crime that he did?

17 MS. MANIGAULT: Your Honor, the entire prejudice
18 allowing the statement in is what we are requesting.

19 THE COURT: I understand your position on that,
20 but as far as redacting the Distinguished Gentlemen, tell me
21 how that part prejudices you.

22 MR. GIBSON: Your Honor, actually I spoke with Ms.
23 Manigault. I would like -- if any part of the statement is
24 going to be admitted, I would ask that all of it be admitted
25 so the jury can truly decipher what kind of gentleman Mr.

1 Clement is.

2 THE COURT: I'm going to admit it.

3 MR. FARNSWORTH: I am going to object strongly to
4 it.

5 THE COURT: I'm going to admit it all.

6 MS. MANIGAULT: I still take exception to the
7 statement.

8 THE COURT: Yes, ma'am, I understand. All the
9 defendants are objecting to the statement being in.

10 (Written Statement of Jarvis Clement marked as
11 State's Exhibit No. 16 for identification)

12 THE COURT: All right, let's bring the jury back
13 in.

14 (The following takes place in the presence of the
15 jury panel)

16 THE COURT: Thank you, Mr. Foreman, ladies and
17 gentlemen.

18 We will now proceed with your examination, Mr.
19 Moyer.

20 MR. MOYER: Your Honor, at this time I would move
21 to have State's Exhibit No. 16, which is a two-page
22 statement of Jarvis Clement, into evidence.

23 THE COURT: All right. Over objection then the
24 exhibit is admitted into evidence as Exhibit 16.

25 MR. MOYER: I have no further questions. Nothing

1 further of this witness.

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

3 All right, you may call your next witness.

4 MR. MOYER: Your Honor, the State rests.

5 THE COURT: Ladies and gentlemen, it's customary
6 that we break for lunch a little later than right now, but I
7 think this would be a good time for us to take a lunch
8 break. I'm going to let you go to lunch and we will start
9 back with this trial at 1:30. Be back in your jury room at
10 1:30. I have some other matters I need to take care of
11 while you are gone, but don't discuss the case again. You
12 haven't heard everything that's to be heard about this
13 matter. It would be improper for you to talk about the case
14 or have anyone talk to you about it.

15 Have a good lunch and I'll see you back at 1:30.
16 We will be ready to start back at that time.

17 (The following takes place outside the presence of
18 the jury panel)

19 THE COURT: All right. Is there anything we need
20 to take up out of the jury's presence?

21 MR. GIBSON: I'm sorry. Your Honor, I would move
22 for a directed verdict on behalf of my client on all the
23 charges.

24 Specifically I would like to address the criminal
25 conspiracy charge. The only testimony that they put up

1 which really ties my client to this thing is the testimony
2 of Mr. Clement. Mr. Clement admitted on the stand that he
3 was not aware of any prior conversations regarding this
4 event. That, my understanding, is an essential element of
5 conspiracy. Given that there has been no evidence of any
6 prior statements or conversations regarding this event, I
7 would ask that that charge be dismissed.

8 I would also ask that the armed robbery and
9 kidnapping charges being dismissed as to my client, based on
10 fact that Mr. Clement, who again is the State's only witness
11 in this regard, testified that my client seemed as surprised
12 as he was that they were going to be robbing that place.
13 Given that, there is no evidence -- no credible evidence of
14 any prior knowledge or involvement in this case. And,
15 therefore, those charges should be dismissed against my
16 client as well. He may be guilty of receiving stolen goods
17 or something like that, but as far as the armed robbery and
18 kidnapping, I find it difficult to believe that he could be
19 guilty of something that he did not even know about.

20 THE COURT: All right. Thank you.

21 Yes, sir?

22 MR. FARNSWORTH: Your Honor, directed verdict on
23 behalf of my client Mr. Clovis also as to the conspiracy
24 charge for the same reasons Mr. Gibson stated. I don't
25 think there was any testimony of any agreement, from Mr.

1 Jarvis' testimony.

2 I would also move for a directed verdict on the
3 other remaining indictments on the insufficiency of the
4 evidence.

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

6 Any other motions?

7 MS. MANIGAULT: Your Honor, as to defendant Donnie
8 Nelson, we would move for a directed verdict on all charges,
9 specifically on the conspiracy charge also. Mr. Clement,
10 the State's witness testified that there was no agreements,
11 no discussions about any conspiracy or any of the details of
12 anything that was going to occur. And we would move for a
13 directed verdict on the insufficiency of the evidence
14 regarding that.

15 THE COURT: Mr. Moyer, I'll be glad to hear from
16 you on all these motions.

17 MR. MOYER: Your Honor, regarding the --

18 First of all, as you know, Your Honor, we are
19 looking at not the weight of the evidence, but as just
20 whether there was any evidence in the record or not whether
21 these crimes have been committed.

22 To start off with the conspiracy charge. In fact,
23 the State does not have to prove the existence of any
24 conversation, written agreement, written pact, or anything
25 like that, just as to conspiracy. I mean, conspiracy is

1 just a formal or expressed agreement does not need to be
2 established the case law says. In fact, a tacit mutual
3 understanding is enough to show that a conspiracy was made.

4 In addition, a conspiracy can be established by
5 circumstantial evidence. And I think there is clearly
6 circumstantial evidence that has been entered into this case,
7 that a conspiracy was made. They leave a residence; drive
8 across town, without speaking about what was going to take
9 place; drop two people off; drive around the block; pick
10 them back up. That is certainly circumstantial evidence
11 just right there, what I just talked about, to show that
12 there was some sort of understanding or agreement made
13 between them previous to this incident taking place.

14 Furthermore, Your Honor, regarding the other
15 charges, once again, I'm not sure I need to go into detail
16 on it, but we certainly know that each of these crimes were
17 committed. The victims testified in detail that they were,
18 in fact, robbed at gunpoint. And there is evidence, based
19 on Mr. Clement's testimony, that these defendants all three
20 of them were the ones who were participating in the
21 commission of these crimes.

22 THE COURT: Recognizing the standard for a motion
23 at this stage is whether there is any evidence. I believe
24 there is some evidence for which the jury could decide this
25 matter, direct evidence and substantial circumstantial

1 evidence, to send it to the jury, and I'll deny your motions
2 respectfully from each of the charges.

3 MR. GIBSON: Thank you, Your Honor.

4 THE COURT: Have you had a chance to --

5 Is there any other motions at this time?

6 MS. MANIGAULT: No, sir.

7 MR. FARNSWORTH: No, Your Honor.

8 MR. GIBSON: No.

9 THE COURT: Have you had a chance to talk with
10 your clients about testifying? Would this be an appropriate
11 time for me to give them their instructions that they need
12 about that?

13 MR. GIBSON: I would like about five minutes just
14 to make sure that we are on board on it.

15 THE COURT: All right.

16 MR. GIBSON: And --

17 THE COURT: Let's take a five minute break and
18 then I'll instruct them on their rights for testifying and
19 then we will take a lunch break.

20 MR. GIBSON: Okay.

21 MS. MANIGAULT: Your Honor, could we do that over
22 lunch? I was just going to take my lunch time to talk with
23 him and review the case.

24 THE COURT: Do it when we come back?

25 MS. MANIGAULT: Yes.

1 THE COURT: That would be fine. Let's be back at
2 twenty after one. We will do that so we won't keep the jury
3 waiting.

4 MS. MANIGAULT: Thank you, Your Honor.

5 THE COURT: Hour and ten minutes. We will just do
6 it at that time.

7 (Whereupon, proceedings were recessed)

8 (Whereupon, proceedings were reconvened)

9 THE COURT: All right. Is there anything we need
10 to take up before I instruct the defendants of their
11 Constitutional Rights? Anything?

12 If each of the gentlemen would please come forward
13 with your attorneys.

14 THE CLERK: Raise your right hands, please.

15 DONNIE NELSON, having been first duly sworn,
16 testified as follows:

17 LAWRENCE WALLER, having been first duly sworn,
18 testified as follows:

19 LAWRENCE CLOVIS, having been first duly sworn,
20 testified as follows:

21 THE CLERK: State your names for the record,
22 please.

23 DEFENDANT CLOVIS: Lawrence Clovis.

24 DEFENDANT NELSON: Donnie Nelson.

25 DEFENDANT WALLER: Lawrence Waller.

1 THE COURT: Put your hands down.

2 I need to explain to you certain rights that you
3 have. Could you move over here? Then I won't have to turn
4 as far.

5 There are certain rights that you have under our
6 Constitution and the law of this state. I'm sure that you
7 have had an opportunity to talk with your attorneys about
8 these matters, but I need to be satisfied in my own mind
9 that you understand these rights that you enjoy under our
10 Constitution.

11 While I'm going through this process, if there is
12 any time that you feel that you don't understand something
13 I'm saying, please raise your hand and I'll go over it again
14 with you, because it's very important that you understand
15 these rights that you have.

16 We have reached the stage in the trial of this
17 case where you can present a defense. And when I'm talking
18 to you, I'm talking to each of you individually. Do you
19 understand that? You are not bound by what a co-defendant
20 does.

21 You have a right to claim the protection that is
22 given to you by the Fifth Amendment to the Constitution of
23 the United States. And this Amendment states, in part, that
24 no person can be compelled in any criminal case to be a
25 witness against himself. This means that you can't be

1 required to testify in this case. You have the right to
2 testify on your own behalf. No one can make you testify,
3 however. It's a personal right that you enjoy, and no one
4 but you can waive this right that you have.

5 If you decide to testify, you will be subject to
6 the same rules that govern other witnesses who testify and
7 you may be examined and cross-examined on any relevant issue
8 in the case.

9 In addition, if you have prior convictions that
10 involve dishonesty or false statements or crimes punishable
11 by imprisonment for more than one year, and the court
12 determines that the probative value of admitting this
13 evidence outweighs any prejudicial effect to you, the
14 solicitor would be able to introduce your record to attack
15 your credibility.

16 If you decide to testify, the decision on your
17 part to testify has got to be freely, voluntarily and
18 intelligently made, with the knowledge of the protections
19 that you enjoy under the Fifth Amendment of our
20 Constitution, and with the knowledge of the consequences of
21 your decision to testify.

22 If you decide not to testify in the case, I'm
23 going to give an instruction to the jury that they cannot
24 give the fact that you did not testify any consideration
25 whatsoever and that there is to be absolutely no prejudice

1 to you because you did not testify.

2 It's left entirely up to you whether or not you
3 wish to testify. You have had a chance during the lunch
4 hour, I understand, to talk with your attorneys. You can
5 talk with family, friends, and anybody else, but the final
6 decision has to be yours, and yours alone, as to whether you
7 wish to testify.

8 Mr. Clovis, do you understand what I have
9 explained to you?

10 DEFENDANT CLOVIS: Yes, sir.

11 THE COURT: Mr. Nelson, do you?

12 DEFENDANT NELSON: Yes, sir.

13 THE COURT: And Mr. Waller, do you understand
14 that --

15 DEFENDANT WALLER: Yes, sir.

16 THE COURT: -- what I have explained.

17 Do any of you have any questions at all about what
18 I have just covered with you?

19 DEFENDANT CLOVIS: No, Your Honor.

20 DEFENDANT NELSON: No, Your Honor.

21 DEFENDANT WALLER: No, Your Honor.

22 THE COURT: You have had a chance to discuss this
23 each of your individual attorneys, have you not?

24 DEFENDANT CLOVIS: Yes, sir.

25 DEFENDANT NELSON: Yes, sir.

1 DEFENDANT WALLER: Yes, sir.

2 THE COURT: All right. Do you wish to talk any
3 more with your attorneys about this matter? Does anybody
4 need any more time to talk with your lawyer about it?

5 DEFENDANT CLOVIS: No, sir.

6 DEFENDANT NELSON: No, sir.

7 DEFENDANT WALLER: No, sir.

8 THE COURT: All right. Do you wish to testify,
9 Mr. Clovis?

10 DEFENDANT CLOVIS: No.

11 THE COURT: Mr. Nelson?

12 DEFENDANT NELSON: No, sir.

13 THE COURT: And Mr. Waller?

14 DEFENDANT WALLER: No, Your Honor.

15 THE COURT: All right. Thank you very much.

16 MR. FARNSWORTH: Your Honor, just for the record,
17 could I say that I have advised my client on what you have
18 asked him on two or three occasions and he's indicated to me
19 also that he did not wish to testify.

20 THE COURT: All right. Thank you.

21 You may return to your seats. Thank you,
22 gentlemen.

23 All right. Are there any particular requests for
24 charge?

25 MR. MOYER: Just the hand of one is the hand of

1 all.

2 Accomplice liability. And I assume that would be
3 part of your charge.

4 THE COURT: What says the defendants about the
5 hand of one?

6 MR. GIBSON: Your Honor, I mean, I would object to
7 that charge.

8 THE COURT: I understand that you would.
9 I believe the facts would substantiate giving that
10 charge.

11 MR. GIBSON: I'm not exactly sure of the language
12 in the accomplice liability charge that he asked for.

13 MR. MOYER: I think it's your standard one, Your
14 Honor, and I have heard it before.

15 THE COURT: I think that's covered in the hand of
16 one, isn't it?

17 MR. MOYER: Yes, sir.

18 THE COURT: I think that's all part of that.

19 I'm not going to send the indictments back. I'm
20 going to have a verdict form.

21 What I'm proposing to have on the verdict form is
22 for each separate individual defendant would be a finding,
23 either guilty or not guilty of conspiracy; a finding, either
24 guilty or not guilty of kidnapping; and with that, a finding
25 of guilty or not guilty as to the weapons charge.

1 I also have a sheet as far as of guilty or not
2 guilty as to armed robbery concerning Mr. Blassingame;
3 guilty or not guilty as far as a weapon to that particular
4 offense.

5 On another sheet or further on that sheet to have
6 a finding as to Mr. Gambrell, a finding of guilty or not
7 guilty; the same on the weapons, and one for Mr. Smith.

8 I don't know if you need that in your -- do you
9 need to know that information for your argument to the jury
10 or not, but that's what I'm going -- I don't want to
11 overwhelm them with paperwork here, but we will try to make
12 that concise so that you will know what the jury charge is.

13 I will certainly let you see the verdict form
14 before it goes back to the jury, but we don't have it
15 prepared yet. So that's what it will show.

16 MR. GIBSON: There is one final matter. My
17 client's girlfriend had been subpoenaed as a witness. And
18 as such, she had been sequestered because the solicitor was
19 holding her. I think she wanted to be in as quickly as she
20 could. Is there any way that I could have just a brief
21 moment to see if she's out in the hallway to let her know
22 that she can come in now?

23 THE COURT: That would be fine.

24 MR. GIBSON: Thank you. Your Honor.

25 THE COURT: All right. Let's bring the jury in.

1 (The following takes place in the presence of the
2 jury panel)

3 THE COURT: All right, ladies and gentlemen, thank
4 you for your patience and short delay here and I hope you
5 had a good lunch.

6 We are now at the stage of the case where all the
7 testimony is in and we are going to hear the closing
8 statements of the attorneys.

9 I mentioned to you yesterday that this is not
10 evidence for you, what the lawyers have to say, but I urge
11 you to listen very carefully as each of these attorneys has
12 an opportunity to address you, as they individually give a
13 recap of what they feel is important about the case and
14 things for you to consider in your deliberations as you
15 weigh the evidence and as you apply the law.

16 After the attorneys have had a chance to talk with
17 you, I'll give you an instruction on what the law is of the
18 case and give you the matters that you will need to apply to
19 the facts that you heard and the facts that you determine.
20 So I urge you to listen carefully now as each of the
21 attorneys addresses you.

22 Mr. Moyer, be glad to hear from you.

23 MR. MOYER: Thank you, Your Honor. May it please
24 the court.

25 Ladies and gentlemen, I was just about to make

1 some few remarks along those lines. Yes, this is the end of
2 the case. This is our chance to get up and talk to you
3 y'all and just recap the evidence that you have heard. I'm
4 not going to be real long. I'm sure you probably appreciate
5 that the thought of four different lawyers getting up here
6 to start talking again is probably -- I'm not anticipating
7 that a great deal, but it is an important part of the case.
8 And as His Honor said, it's not evidence.

9 I ask you to keep an open mind while I speak. I
10 also ask you to keep an open mind while the defense
11 attorneys get up and talk to you after I am finished.

12 Under the rules I go first. Then the three
13 defense attorneys go after I do. And you will -- as I'm
14 sitting at the table, I'm sure as defense attorneys are
15 making points and saying things, I'll be thinking in my head
16 oh, I wish I could get up and say this, or I wish I could
17 get up and say that. And I would ask you, ladies and
18 gentlemen, to keep an open mind and to think to yourself
19 well, what would that prosecutor say to that argument? What
20 would that prosecutor say when the defense attorney says
21 such and such, how would he counter that? I would ask you
22 to do that, to keep an open mind, and to discuss that with
23 each other as you are back in the jury room.

24 Now, in closing, ladies and gentlemen, really all
25 cases like this come down to two questions when you are

1 trying to determine guilt. One, did the crime happen; two,
2 is this the guy or girl -- is this the person or persons who
3 did it. Okay. So you got to answer those two questions.

4 Let's start off first, were the crimes committed?
5 Do we have these four crimes here? I think that would be
6 the easiest question or the fastest question to answer. And
7 I think the answer is a resounding yes.

8 Let's go over those four charges once again very
9 briefly. Do we have an armed robbery here?

10 What is an armed robbery. It is the taking of
11 property, goods or money, from the person of another, either
12 from your person or your presence, through force or
13 intimidation or threats, and with the use of a deadly
14 weapon.

15 Well, there is no doubt that happened here. You
16 heard all three of these victims - Mr. Grady Blassingame,
17 Donald Smith, Willie Gambrell. They took the stand and they
18 told you how a pistol was used in that armed robbery and how
19 they were frisked, how the money was taken from their person
20 with the threat of violence, with the threat of a pistol.
21 Oh, yes, there was an armed robbery.

22 Well, how about possession of a violent crime with
23 the use of a weapon? Well, certainly that as well.

24 We know His Honor will instruct you that both
25 armed robbery and kidnapping are both violent crimes under

1 our statute. And if during the commission of those crimes
2 if a weapon is used, then, yes, that crime is committed as
3 well.

4 And you will see under each -- well, your verdict
5 form that you are going to receive, you are going to see
6 attached to each of those charges is a corresponding charge
7 of possession of a weapon during a violent crime.

8 All right. How about the third crime, conspiracy?
9 Was there an agreement or an understanding amongst the four
10 people to commit a crime?

11 Now, keep in mind it just has to be a tacit or a
12 mutual understanding. It does not have to be a formerly
13 thought-out, completely thought-out plan. It doesn't have
14 to be a written plan. A tacit mutual understanding is
15 enough to show that there was an agreement. And this can be
16 determined by you either by direct or circumstantial
17 evidence. Someone can get up and say, yeah, we all sat down
18 and we talked about it and this is what we are going to do;
19 or, you can look at the circumstances and say, oh, yes, it's
20 obvious they had thought this out and that they had some
21 sort of understanding among the four of them that they were
22 going to commit this crime. And you can look at this crime,
23 this incident, and there is no doubt that, based upon the
24 sequence of events, that this was thought out ahead of time.

25 Think quickly through what happened. They drive

1 across town six to eight miles from one part of town to
2 another part of town in a direct route. Not going anywhere.
3 Not stopping off anywhere. No detours. They knew exactly
4 where they were going. They go right to Mr. Blassingame's
5 barbershop. There was no discussion on the way there; take
6 this road, take that road. They knew exactly where they
7 were going. And when they get off, when they get there,
8 they go to that little neighborhood about a block away, drop
9 off Nelson and Clovis to go do the robbery, while the other
10 two drove around the block, waiting. Picked them back up
11 and then went back home. So you can look at that and say,
12 yes, there was some sort of understanding that they were
13 going to commit a crime. It was thought out. It was
14 planned to some degree between them all ahead of time.

15 All right. And finally kidnapping. Was a
16 kidnapping committed? And remember, again, set aside our
17 assumptions and the stereotypical idea of what a kidnapping
18 is. Kidnapping in South Carolina law means to seize,
19 confine, and then to inveigle, abduct or carry away.

20 Let's focus on those two, seize or confine. Did
21 that happen in this case? Was the freedom of Mr. Grady
22 Blassingame, Mr. Willie Gambrell and Mr. Donald Smith, was
23 their freedom for even a temporary time, was it taken away?
24 And, again, it's a resounding yes to that question.

25 I want you to think, ladies and gentlemen, how

1 they were manhandled, how when those defendants came in that
2 door and shot in the air. This wasn't just some ordinary
3 robbery where someone -- it's not an ordinary stick-up when
4 someone sticks a gun at you and says give me your wallet and
5 runs off. No, those men were manhandled. And imagine the
6 terror of having -- of being placed on the floor, face down,
7 with a gun that has already been fired, that you know is
8 operable and that you know can shoot a weapon. Imagine that
9 terror. Imagine being at a place in your life where you
10 were wondering is this it, is this how it's all going to
11 end, lying on the floor in a barbershop.

12 Mr. Blassingame was forced to crawl to the back of
13 the store. Mr. Smith was taken at gunpoint to the back of
14 the store and again placed down on the floor. Yes, there
15 was kidnapping as well. There was kidnapping.

16 Now, in mentioning those crimes, I sort of have
17 been talking about all of the defendants together. And what
18 I want to do just real quickly is talk about one of the
19 defendants in particular, because his situation is a little
20 different from the other two, and that is Lawrence Waller.

21 Lawrence Waller, the one who drove the vehicle.
22 And His Honor is going to instruct you on that other part of
23 the law that I spoke to you about, which is the hand of one
24 is the hand of all. Accomplice liability. When you are
25 working together to commit a crime, what everybody does,

1 everyone is responsible for. So if Lawrence Waller was
2 involved in this conspiracy, if he was involved, and he
3 agreed he's going to be the lookout man, he's going to be
4 the getaway driver for these guys, he's responsible for
5 everything that happened in that barbershop. He's
6 responsible for the armed robbery. He's responsible for the
7 possession of a weapon during a violent crime. He's
8 responsible for the kidnapping. In fact, if someone had
9 been killed in that place, he would be held responsible for
10 murder. He's held equally responsible.

11 And how do we know that he was this co-conspirator
12 or he was a participant in this situation? Once again, we
13 don't have evidence that they sat around and talked about
14 it. That's direct evidence.

15 Circumstantial evidence, His Honor will instruct
16 you, carries just as much weight as direct evidence.

17 What do we know about how this was planned out,
18 how this took place? They started off at his house. That's
19 where the -- that's where the four of them met, at his
20 house. They drove six to eight miles to Mr. Blassingame's
21 barbershop without talking. He had to know where they were
22 going. Right? No one was giving him instructions. No one
23 was telling him turn here, and then take that road. In
24 fact, he's the one who lived here in Greenville, as opposed
25 to his friend who is from New York and the other one who at

1 some point we know is from New Orleans. He would be the one
2 who would know about this place. He is the one, ladies and
3 gentlemen, whose had his hair cut at that barbershop,
4 according to Mr. Blassingame. Do you remember he testified
5 I cut his hair?

6 And what do we know about when the New York and
7 New Orleans went in and committed that robbery? They
8 weren't shuffling through drawers. They weren't looking for
9 where is the place where this barber keeps his money. Why
10 is that? Mr. Blassingame testified to you that as long as
11 he's been cutting hair, when he gets the money, it goes in
12 his pocket. The cash goes in his pocket.. Who told him
13 that? Who told New Orleans and New York, Nelson and Clovis,
14 who told them that? Well, it would be a person that has
15 been in that barbershop and got his hair cut in that
16 barbershop.

17 We know that he drops them off a block away from
18 the barbershop. We know that he then drives around and
19 around and around a block waiting for them to come out.
20 Waiting for them to come out. He had to know what they were
21 doing in there. And how do we know? Because on one of the
22 times they drove around that block, what did Jarvis Clement
23 say the defendant said? He said "oh," and using an
24 expletive, "they doing it." I asked what, and he said "they
25 robbing the place."

1 Now, wait a minute, ladies and gentlemen. If he
2 didn't know what was going on, they are -- how does he know
3 they are robbing the place? Because it was thought out. He
4 knew what was going on.

5 Jarvis Clement said he sounded surprised. And you
6 have to think how that translated in his mind. When
7 Lawrence Waller used that word, when he said those words
8 about they are robbing the place in an excited -- was he
9 excited? Was he a little surprised that they actually went
10 through with it? Yeah, we have been planning it, we have
11 been talking about it, but, owe, my goodness they are really
12 doing it, and that's what he says, they are doing it, they
13 are robbing the place. And does he leave? Does he leave to
14 drive away when he realizes this? No, he keeps driving
15 around the block.

16 And then what happens? Then comes the phone call.
17 And where does the phone call come from? It comes from Mr.
18 Willie Gambrell's phone, a phone that was taken from Mr.
19 Willie Gambrell right about six o'clock. And where is that
20 phone call? Where does that phone call go? It goes to
21 Lawrence Waller's phone. One call at 6:05. One call at
22 6:06. Both under a minute. We can maybe assume maybe one
23 of them they didn't get through, or whatever. The man who
24 testified said that you make that call, it's going to show
25 up as a minute. Whatever reason, he called twice real

1 quick, real short. And what did Jarvis Clement say that he
2 said? "Where are you? Where are you?" And after he said
3 that, where does he drive? He drives over to the church
4 where they dropped them off, and that's where they found
5 them.

6 So from circumstantial evidence, ladies and
7 gentlemen, you can know without any reasonable doubt that
8 Lawrence Waller also was responsible for this crime; hand of
9 one is the hand of all.

10 Now, are these the guys who did it? We know the
11 crime was committed. Are these the three men who did it?
12 That's the crux of the case.

13 Now, in every case that we have, we would, of
14 course, love to be able to put up a bloody palm print and
15 put that into evidence. We would love to have a gun that we
16 could match to the bullet. We would love to have a video of
17 it with their faces right there for you to see. And that's
18 how it would be if this were a TV show, wouldn't it? One
19 thing, it wouldn't last two days. It would have taken an
20 hour, and I would be handsome and much more eloquent. This
21 is not TV, as His Honor said. His Honor told you at the
22 outset of this case what? This is a far cry from TV, is
23 what he said, and you have all determined that. That's not
24 the way it works.

25 I want you to use your common sense. How do you

1 catch somebody in an armed robbery? Well, there is couple
2 of ways. Hopefully the police get there quick enough and
3 you can catch them either running out of the store or
4 driving away and someone sees a vehicle and there is a tag
5 number, go get them. That's one way.

6 What's another way? Well, another way is so they
7 don't wear a mask and somebody recognizes them. That's
8 another way.

9 What's the third way? Somebody talks. Somebody
10 talks, and that's what we have in this case. This is real
11 life. Again, on TV we would have that bloody hand print.
12 In real life we don't leave DNA in air. In real life the
13 guys are smart enough not to leave fingerprints behind. We
14 heard testimony the only thing that was seen to be touched
15 by these guys is that door when they entered that door. And
16 you know how easy it would -- they had thought through that.
17 They are not going to touch anything. And it's very easy
18 when you are entering somewhere if you just want to do that
19 and put something over your -- put your jacket over your
20 finger, snatch that door open when you are leaving. Just
21 use your shoulder.

22 We know when the officer, Diane Orlando, the
23 forensics officer who testified, we know she went beyond the
24 call of duty, because she even tried to get fingerprints off
25 a shell casing and couldn't do that. She says it's almost

1 impossible to do, but she still tried. Now, that's the way
2 it is in real life, ladies and gentlemen. In real life what
3 you do is you rely on informants. You rely on
4 co-defendants.

5 The defense is going to get up here, I'm quite
6 sure, and tell you how bad a guy Jarvis Clement is. We saw
7 that on his cross-examination. He's a liar; he's a crook;
8 he's an armed robber; he's a robber; he's a kidnapper; and
9 you are going to see that he went and he did another
10 robbery. And do you know what I say to all that? Amen,
11 amen, amen, amen. It's true.

12 But think about this. Who do you expect to
13 testify as a co-defendant in an armed robbery case? Do you
14 expect a CEO of a corporation down the road? Do you expect
15 your pastor, your rabbi or your priest? Do you expect bank
16 presidents? No, you are going to expect a guy like Jarvis
17 Clement.

18 Let me say this, ladies and gentlemen. We didn't
19 choose Jarvis Clement as a witness in this case. The
20 defendants did. He's their friend. He's --

21 MS. MANIGAULT: Your Honor, I'm going to object to
22 that argument.

23 MR. MOYER: There is testimony in the record they
24 are friends.

25 THE COURT: I overrule your objection.

1 MR. MOYER: They are friends. They are
2 co-conspirators.

3 What does it take to bring down a gang of robbers?
4 Well, it takes someone like Jarvis Clement. It takes a drug
5 user and a small time drug dealer to catch the big time drug
6 dealer. It takes someone like Sammy The Bull Gravano to
7 take down the big Mafia boss. It takes a crooked politician
8 to bring down other crooked politicians. That's the way it
9 is in real life, ladies and gentlemen.

10 So you can have two reactions to this. You can
11 have one hand say, well, we know Jarvis Clement -- we know
12 Jarvis Clement wasn't a very polished speaker and we know
13 Jarvis Clement committed some armed robberies and had a gun,
14 did this horrible thing, so, you know, forget it; or you can
15 have what I would argue to you is a more mature response to
16 that, and that would be this, which is just say let's think
17 about it. Let's think about it for a minute. Can we
18 believe what he said? Is it logical? And I would argue to
19 you for several reasons that you can.

20 And first of all, the first reason is essentially
21 what was used against him, and that is because he is trying
22 to help himself. Now, you say to yourself, well, wait a
23 minute, Mr. Moyer. Doesn't that seem to show why he would
24 lie, that he's trying to help himself? Think about this.
25 What does he have riding on this? You heard how he has pled

1 guilty to all these charges. He has pled guilty to two
2 counts of armed robbery, where he's looking at 10 to 30
3 years. They could run concurrent, so he could get as little
4 as 10, or they could run consecutive, so it would be 60.
5 He's looking at two kidnapping charges, where it could be --
6 that would take us up to 120 on top of the five he's already
7 serving. And the defense wants to make a big deal out of
8 the fact that all these charges were dismissed. But unless
9 he's Methuselah, it's not going to make a difference. He's
10 looking at -- you know, he has a lot of time hanging over
11 his head. And so what do you think his response is going to
12 be when he's coming into court? To tell a lie, to try to
13 get caught in a lie, when he's trying to impress the people
14 who are going to make the decisions? Well, I'm going to go
15 in there and I'm just going to make up something. What if
16 you get caught, in addition to being a criminal? That's
17 lying in court. What if you get caught? How does that help
18 him? Why does he care who the other people are who were
19 involved in this crime with him? What does it matter to
20 him. He did the hard part. He did the hard part when he
21 put himself in jail in his statement and he said oh, yeah,
22 on that other robbery, now I wasn't just someone who is
23 waiting on the outside, I went in and I shot the gun and I
24 told everybody to get on the floor, all six or seven of
25 those people, and I told them to take their clothes off, and

1 then my co-defendant went and put them all in a bag and they
2 ran off with their pants. You can see in the statement if
3 you want. He did the hard part. He put himself in jail for
4 a long time. Make no mistake about that. So why is he
5 going to lie about these other guys? What possible reason
6 would he have?

7 We heard a lot of cross-examination of Mr.
8 Clement. A lot of cross-examination. You know one thing we
9 didn't hear? We didn't hear you don't like my client, do
10 you; you guys had a fight; you guys had this long-standing
11 dispute; you had this or that. No. We didn't hear any of
12 that.

13 Mr. Clement took the stand and told you that he
14 was a friend. He worked together with Nanu, Waller, and he
15 met those other guys through Waller. Why is he going to
16 just -- why is he going to pick them and make up the fact
17 that they were the ones who were in it? He put two other
18 people in the other robbery. Let's say he wants to make up
19 names. Well, he already got those involved. If he's the
20 kind of person who is going to make up names, he's already
21 got those guys involved in the other robbery, why not say
22 that they were the two involved in this one? Why risk
23 getting caught in that lie?

24 When he spoke to Investigator Patton on December
25 3rd, 2004, think about this. Why do you think he's talking

1 to Investigator Patton? Not because he's a Boy Scout. No.
2 He's looking out for himself too. And so he's telling all
3 these things, all these things he did. And so why at that
4 time back in December of '04, why is he then going to say
5 oh, it was these three guys - New York, New Orleans and
6 Nanu? Why is he going to say that? How does he know that
7 their description is going to fit what those men told you,
8 the little built of a description that they could give? How
9 does he know that? How does he know that they weren't
10 somewhere else and he could get caught in a lie?

11 Think also about the consistencies of his
12 statement. And, once again, you say, Mr. Moyer, that sounds
13 like that's not what I heard. When he was being
14 cross-examined, we heard he said this and he said that and
15 it wasn't in his statement. Look over this statement and
16 think back about what he testified to, when you look at what
17 the inconsistencies are in his statement. They are very
18 minor. The details of what happened and who were involved
19 in this remain the same from the beginning.

20 And I would argue this to you, ladies and
21 gentlemen. The inconsistencies in his statement actually
22 argue to you the opposite of what the defense would say. I
23 would argue to you that he's telling the truth. Why is
24 that? Why is that? You heard -- he was questioned about
25 how he met the prosecution, how we know he talked to the

1 officers numerous times. He's going to make up a story?
2 What's his story going to be? It's going to be consistent.
3 If he's lying, there is not going to be anything wrong with
4 him. He's going to think through it.

5 Take into consideration translation issues. You
6 have got an investigator talking to somebody who is typing
7 down what he is saying. And when he says I saw them run
8 into the parking lot towards the barbershop, who is to say
9 that's in the translation doesn't come out differently? Who
10 is to say that he doesn't think later about these smaller
11 details and remember? No, ladies and gentlemen, in what is
12 the important he's absolutely consistent.

13 And, finally, ladies and gentlemen, what he
14 testified to you is consistent with what we know about the
15 case. And we don't know a whole lot, but the victims
16 testified to you that they could tell certain things about
17 these men. The height, and weight, and age, and race, and
18 light complexion, they could tell those facts. Yet they had
19 hats on and they had masks. Every bandana I know just
20 leaves your eyes. You know, it comes up right across the
21 nose and right around here. So you can see a little bit of
22 the face. Mr. Blassingame told Investigator Patton he
23 seemed to have short hair, these men did. All those
24 details.

25 What about the accent? What did the witnesses --

1 the victims tell you about the accent? It sounded like they
2 weren't from around here. It sounded like they were from up
3 north. It sounded like they were from New York.

4 And then a phone call. A phone call from Mr.
5 Gambrell's phone to Lawrence Waller.

6 I told you at the beginning of the case that all I
7 wanted you to do is listen closely, pay attention, keep an
8 open mind, and at the end I would argue to you what the
9 facts say, and I would ask you to do justice.

10 Ladies and gentlemen, that's what I'm doing right
11 now. Justice demands that you, ladies and gentlemen, find
12 these three men guilty of these crimes, that they be held
13 responsible for what they did to the Grady Blassingame and
14 Willie Gambrell and Donald Smith on November the 6th of
15 2004. Thank you.

16 MR. FARNSWORTH: If it please the court, Your
17 Honor.

18 THE COURT: Mr. Farnsworth.

19 MR. FARNSWORTH: Mr. Moyer, Mr. Foreman, ladies
20 and gentlemen, for what I say on behalf of my client, I
21 appreciate the attention that you give. This is a very,
22 very serious case. I told you that yesterday, like all the
23 lawyers did, and it deserves nothing less than your
24 undivided attention, and I know that you have given that,
25 you will continue to until you dispose of this case.

1 Now, also yesterday -- I don't want to be
2 redundant, and, of course, we have got lot of lawyers, so
3 you are going to hear the same thing said more than once and
4 that doesn't mean that they are not important. Every
5 criminal defendant, that is any person accused of a crime,
6 is presumed to be innocent. And that presumption stays with
7 that person, unless and until the State of South Carolina
8 has presented evidence that convinces you, all twelve of
9 you, beyond a reasonable doubt of their guilt.

10 And if the State of South Carolina, after you hear
11 the law charged to you -- and you take the law and the
12 evidence, and after you hear all that and you are not
13 convinced, you have got a duty -- you have got a duty to
14 find my client and these other gentlemen not guilty. That's
15 the oath that you took, that you would well and truly try
16 this case according only to the law and the evidence.

17 Now, this case has lasted two days. Do you
18 remember yesterday we had a parade of witnesses. There were
19 like three people that were at the barbershop. There was an
20 Officer Boyd, Officer Orlando, a Robert Gotts from the phone
21 company. That's about seven or eight witnesses. And I
22 submit to you that none of those witness' testimony
23 connected my client with this robbery in any manner
24 whatsoever. Only today when they put their star witness up,
25 Mr. Jarvis Clement, who, as I told you on my opening

1 statement, is a convicted felon, he forged documents and
2 pled guilty and was convicted of that before he ever even
3 pled guilty to these serious charges that he's pled guilty
4 to back in December, in which he got a deal from the State
5 in return for pleading guilty to two armed robberies, two
6 kidnappings, one conspiracy charge, and one possession of a
7 weapon during a violent crime charge. He was sentenced to
8 five years. The other two cases -- the other ones that he
9 was not sentenced on, that being armed robberies and the two
10 kidnappings, those sentences were to be deferred pending his
11 testimony. But if you will remember, he told us -- finally
12 he said something about a 20 year recommendation, and then
13 he finally came around and said well, he had a 10 to 30
14 recommendation from the solicitor. And he said that that
15 was based on him giving his testimony today in court and
16 testifying truthfully.

17 This testimony of his is -- well, let me start off
18 by saying he took the stand here today, raised his hand and
19 swore to God that he would tell the truth in his testimony.
20 When he gave the statement in this case, and you will have
21 this in evidence, and you will see the bottom -- the bottom
22 part of each one says that "I have read the above statement
23 of one page and it is true and correct as best I can tell."
24 He said this was true.

25 I submit to you, ladies and gentlemen, his

1 testimony is inconsistent at best. There are things in his
2 testimony that he said that were not even in his statement.
3 Important things. Mr. Moyer says minor things. Nothing
4 about the two telephone calls where the calls were made to
5 the car "where are you? "Where are y'all? Where are you?"
6 Not one thing in that statements about those, and that is a
7 very important part of this case. There is nothing in that.
8 Nothing about those phone calls.

9 "I saw them go in."

10 "I didn't see them go in."

11 And if you will remember, even with my client,
12 when he first testified, he said that "I had been -- "I had
13 been to his girlfriend's house and his house one time." In
14 his statement that was pointed out to him what he said in
15 his statement. You will have it back there. "I only met
16 him that day and never seen him before that day of the
17 robbery." And that's in his statement there for y'all to
18 look at and that's in evidence.

19 Now -- and additionally, besides all he had to do
20 was to testify to get this deal, he is also -- and, again,
21 you are probably going to hear this again, and you have
22 heard it when we questioned him, he had six kidnapping
23 charges and eight armed robbery charges dismissed. And if
24 those sentence were stacked up one on another consecutively,
25 he was looking just on those at 520 years. And that's

1 undisputed. That's the testimony. That's what he was
2 looking at, had those charges not been dismissed; plus some
3 of his sentences has been deferred on his charges that he
4 pled guilty to, the two armed robberies. Those are left.
5 He can get 60 on those kidnappings, maximum. He can get 60
6 on the two armed robberies. So that's another total of a
7 120 years. Now, isn't that enough incentive to come in here
8 and tell this story that he's told? I mean, isn't that
9 enough incentive? I mean, what -- I mean, what wouldn't you
10 do to save yourself from being subjected to that kind of
11 maximum sentence? And you and I probably don't -- that
12 would be hard for us to consider, because we are not
13 criminals like he is. We are not criminals. So it's
14 probably hard for you, ladies and gentlemen, to understand
15 that. But these criminals when they get caught -- and let
16 me tell you. Most of them, they are not sorry for what they
17 did. They are sorry they got caught, and that's a perfect
18 example of it right there.

19 This thing happened on November the 6th. He met
20 with the police on December the 3rd. And you will remember,
21 I asked him, I said "you are telling the truth" -- and, of
22 course, he took the oath, and I said "did you go to the
23 police the next day and tell them what you are telling us
24 here today, what you told law enforcement the next day?"
25 No, he didn't go the next day. He didn't go the next day

1 after that, or the next, or the next, or the next. He
2 didn't go at all.

3 One of the people in the other armed robbery at
4 the Distinguished Gentleman gave a statement on him and that
5 took the place to him. They knew that he was involved in
6 that. And, in fact, he then admitted. But how long did it
7 take him to admit it? It took him almost a month. And I
8 asked him, I said "would you ever have admitted this if you
9 hadn't been caught by the police?" And I don't remember
10 what his answer was, but think about that. He's wanting you
11 to come in this courtroom this morning and make you,
12 citizens of this community, make out like he's the citizen
13 of the year in Greenville County for coming in here and
14 telling this story.

15 The first thing that these people do is when they
16 get caught is they think what can I do to help myself. What
17 can I do. They got me. He went. He told them his
18 involvement at the Distinguished Gentleman. He told them
19 his involvement in this. They went and got the gun that he
20 used in that robbery where he shot the ceiling. Same as the
21 other robbery. Same thing. Lay down, take the money out of
22 your pants, do all this, fire the shot at the ceiling,
23 barbershop, late in the afternoon when they are closing.
24 Same thing.

25 He had from November 6th to December 3rd to think

1 about what am I going to do to get out of this thing? They
2 have got me. What am I going to do? And he -- this is what
3 he did. He gave this statement, because they knew they had
4 him. And also he came in this courtroom and told you in
5 many ways things that are inconsistent in that statement,
6 and a couple instances just down right dishonest statements.

7 Now, to show you what an honest guy he is and a
8 forthright guy he is, he sits up here today and Mr. Moyer
9 asked him, he said, "yeah, you pled guilty. You pled guilty
10 to that."

11 "Yes, I did."

12 Then on cross-examination, I believe it was
13 examination by Mr. Gibson, I believe, that he says "you
14 know, I pled guilty, but I wasn't really involved." Do you
15 remember that? And if you don't, you can ask that that
16 testimony be replayed. "I wasn't involved." And Mr. Gibson
17 asked him "well, what about didn't the judge ask you if you
18 were guilty? Didn't he explain everything to you?"

19 What, in effect, he's trying to do today is he
20 wants to do this testimony and involve himself just a little
21 bit because he's got a sweetheart deal. He can't get but 10
22 to 30, but he has this other story to help himself get that
23 and keep that.

24 Now, even on -- to show you another thing. They
25 asked him -- or I asked him, I believe, "well, did you --

1 you know, when one of the inconsistencies came out about his
2 statement in his testimony, "well, didn't you -- "didn't you
3 read this? Didn't you read this statement?" He said "no, I
4 didn't read it." Now, I don't -- I don't know whether he
5 read it or not, but he says he didn't. Okay. All right.

6 If you will look here at the bottom, the same
7 place that I showed him about him telling the truth, he says
8 "I have read the above statement," and it says one page, and
9 "it's true and correct to the best that I recall."

10 "I have read the above statement and signed it and
11 I have received a copy of this statement." Both pages, same
12 thing. He signed it and he was given a copy of that. So if
13 anything went in there wrong, surely on something this
14 important where you are giving somebody ten years, at least,
15 of your life, and up to 30, that surely you would read it
16 afterwards to see what you put in there and signed was
17 correct, wouldn't you? We didn't hearing that there was
18 anything different. He just got caught in some
19 inconsistencies in this case in his testimony and some down
20 right falsehoods.

21 Now, just a few more things and then I'm going to
22 let the next lawyer stand up here and make his remarks, or
23 his or her remarks to you.

24 But this is a -- as I say, this is very, very
25 serious charges in this case. This man had two robberies

1 that he admitted to and he got eight more dismissed. I
2 mean, his testimony is filled with inconsistencies. And Mr.
3 Moyer says "no, I disagree with that." This man is a
4 criminal. He's a convicted felon.

5 He -- to show you what type of guy he is, after he
6 did the Distinguished Gentleman robbery, he denied it. But
7 I said "didn't you call Mr. Waller and tell him that you had
8 done another robbery and he gotten about \$5,000 and that you
9 had skimmed, that means cheat the other two co-defendants
10 out of some money?" He got 1,900 and they didn't get nearly
11 as much as he did, but they didn't know it. He cheated his
12 own co-defendants out of the money. Now, would that type
13 person, is he believable? No. He wants you to believe
14 whatever he wants you to believe. But he will tell a lie
15 anytime it's going to help him with his criminal charges,
16 and that's what career criminals like him do, and that's
17 what he is. He's a career criminal. He's not believable.

18 Now, Your Honor -- ladies and gentlemen, as you go
19 back and after you have heard the law and discuss the case,
20 I ask you to read all of this stuff that's in evidence.
21 This statement. I invite you to do it. And if you got
22 anything you are not sure about, because with four lawyers
23 involved giving final summations, that means what we think
24 the case was about and what was said, we -- the last thing
25 we would do would try to be to misstate what somebody said,

1 because I know these lawyers and I know Mr. Moyer and they
2 know me. We wouldn't do that. It wouldn't be intentional.
3 So that's why this gentleman here, my friend Mike, takes
4 this testimony down. And any part of anybody's testimony or
5 the total of the testimony you can rehear. All you have to
6 do is ask that -- send a note out and ask the judge we will
7 like to rehear this.

8 So, again, I want to thank you for your service on
9 this jury. And I think based on the law and the evidence in
10 this case, the only verdict in this case that's consistent
11 with the law and evidence and the truth is a not guilty for
12 my client Lawrence Clovis. Thank you.

13 THE COURT: Ms. Manigault.

14 MS. MANIGAULT: Ladies and gentlemen, again thank
15 you for your attention and your patience in this matter.

16 Something the solicitor said when he did his
17 opening on the closing argument. He said that he wants you
18 to fill in arguments where you hear the defense attorney
19 make a point.

20 Let me tell you that is not your job to fill in.
21 It is your responsibility, which you have done throughout
22 this trial, is to listen to the testimony, listen to the
23 evidence, review the evidence, weigh the evidence, and then
24 decide among twelve people what that evidence says. It is
25 the State's responsibility, and the State has burden of

1 proof in each case, to bring to this court, to bring to a
2 jury to your satisfaction proof beyond a reasonable doubt
3 so you don't have to fill in any gaps. Yes, you use common
4 sense, but you don't fill in the gaps. The information, the
5 evidence has presented by the State for you to consider.

6 We agree that there was a crime. We agree that
7 these gentlemen were terrified. We agree about the incident
8 date, and we agree that it happened in Greenville County.
9 That's the most Donnie Nelson agrees with.

10 The dispute is who, what persons, what individuals
11 perpetrated the crime. That's the dispute. That's why we
12 have a trial. Beyond those basic agreements that there was
13 a crime committed by somebody in Greenville County, on
14 Anderson Road, at Blassingame's barbershop, we agree with
15 that, that somebody committed a crime.

16 As far as Jarvis Clement's statement that you will
17 have in the jury room to read and review, as far as it
18 concerns my client, Donnie Nelson, this statement is not
19 true. It is a total fabrication and it is a lie.

20 As far as the burden of proof on the State of
21 South Carolina, the State cannot simply throw information at
22 you and expect you to sift it out, except that if there is
23 any doubt in your mind that that doubt has to be weighed in
24 favor of my client, Donnie Nelson. If the State has not
25 presented the information -- evidence, excuse me, sufficient

1 to convict my client Donnie Nelson, then he is entitled to a
2 verdict on each charge of not guilty.

3 When I did my opening statement, I mentioned to
4 you some principles of law. And as Mr. Farnsworth has said
5 to you, Your Honor will charge you the law, and you should
6 recollect any testimony by any witness as you recollect it.
7 We will tell you what we think, but if you recollect
8 differently, then go with what you heard and what you
9 believe you heard.

10 The reasonable doubt, the burden of proof, the
11 credibility of a witness. How do you decide on the
12 credibility? What does credibility mean? It means whether
13 you can believe a person or not. What do you consider?
14 What do you weigh with credibility. Is there a bias by the
15 person testifying? Is there a prejudice by the person
16 testifying? Does the person testifying have something to
17 gain? You weigh all those factors. And Your Honor will
18 even give you instruction on the credibility and
19 believability of a witness.

20 I told you in the opening statement that you can
21 believe one line out of an hour's testimony that somebody
22 gave you, or you can believe none of it. You can believe
23 all if it, 30 percent of it, or, again, none of it. You
24 weigh, you decide is this person believable. Is he
25 credible? Is this testimony reliable? Is it dependable?

1 Should a guilty verdict hinge on this individual's
2 testimony?

3 The State would have you believe that if justice
4 was done, then you would simply march out the door, take a
5 few seconds and march back in with guilty verdicts for
6 everybody. That is not justice. I mean, justice is done,
7 the evidence is weighed. The evidence is weighed. Somebody
8 said in their opening you have no friends to reward, no
9 enemies to punish. You only have a duty and an obligation
10 to the State of South Carolina, to the County of Greenville,
11 to weigh the evidence that you have been given. That is
12 your duty.

13 The hand of one is the hand of all. Well, it
14 first must be proved to your satisfaction that the other
15 hand was accused or even in the incident. Donnie Nelson is
16 accused of being in the incident.

17 To all indictments, to all charges, my client,
18 Donnie Nelson, has pled not guilty. And you have to weigh
19 the evidence that is presented against Donnie Nelson and
20 decide whether that evidence is enough to convict Donnie
21 Nelson on each and every individual charge, and it takes
22 twelve persons with a unanimous verdict to come to that
23 decision.

24 The State would have you believe that because
25 Donnie Nelson is from New York, he is, quote, the only

1 person in Greenville County that is from New York, that's
2 ever come to this area. Maybe was he the only friend that
3 somebody had from New York? Is that enough? Is that
4 enough?

5 When you review the statement of Jarvis Clement, I
6 want you to -- I want to extract something out of the second
7 page for you to consider, and that is this. When you review
8 the statement, you will look at the second page and it talks
9 about the robbery of the Distinguished Gentlemen barbershop.
10 It is very detailed. He says he was at Mark's house talking
11 about hitting a lick. A lick is a robbery. And he goes on
12 and he says "we took a bag with their pants because we knew
13 money was in the pocket. We waited until dark. We walked
14 down the street behind the business. We had our clothes in
15 a bag. We stashed them behind the church. We stood by a
16 car on the side of the building and cocked the guy." I
17 don't know what that means. I haven't figured it out. "I
18 got a gun from my brother. It was a .38 wood grain handle.
19 The other guy Corey had a gun. Corey went in first. Corey
20 grabbed the man by the arm outside the shop. Mark had a
21 burgundy bag. We told everybody." On the stand he didn't
22 tell anybody anything. "We told everybody to get on the
23 floor. I shot into the ceiling. We ran behind the church.
24 We stashed the stuff. We changed the clothes. We changed
25 clothes behind the church. We walked back to Mark's house.

1 We waited a little while. We walked back to get the stuff.
2 We divided the stuff up." Very explicit, very plain. Why?
3 Why? He could tell all that because the police already had
4 the information on that. But the hazy information, the
5 fuzzy information, the inconsistencies, whether it's true or
6 false, whether he said it today, or whether the officers put
7 it in his statement as she was typing it, or that he doesn't
8 remember saying that, no, I didn't say that, this statement,
9 I submit to you, you cannot abide and believe anything in
10 that statement.

11 My last point. The solicitor says this is not TV,
12 and, no, it's not. This is not a video. We don't have palm
13 prints. You know, somebody testified about the persons
14 going in the shop and closing the door. Possible prints?
15 He wants you to think we rely on informants and
16 co-defendants. Whoever the State relies on, it is their
17 responsibility to bring you credible, credible, believable
18 witnesses to prove their case. Credible, believable
19 witnesses to prove their case.

20 My last point of law that I would like to bring to
21 your attention is what we call the presumption of innocence.
22 When an individual comes to court, he or she is presumed
23 innocent until or unless they are proven guilty by the
24 evidence presented to the jury, and a jury of his or her
25 peers, twelve unanimously agree that they have been guilty.

1 The presumption of innocence is like a robe of
2 righteousness. It's like my coat buttoned up. It's like a
3 trench coat. It comes in totally buttoned. The solicitor
4 can present direct evidence, circumstantial evidence,
5 eyewitness evidence, whatever they want to present, and the
6 information or the evidence may be enough to unbutton my
7 coat, one button. And they may something else and that may
8 be enough to unbutton my coat two buttons. And they may
9 tell you some more information that may be enough to
10 unbutton my coat three buttons. I only have three buttons.
11 But the robe, the presumption innocence, has to be
12 completely removed, completely removed from an individual by
13 the evidence that's been presented. You cannot simply
14 unbutton the robe. It's considered a robe of righteousness,
15 a robe of innocence. Like we refer to in the Bible, it's a
16 robe of righteousness, a robe of innocence. So you cannot
17 just unbutton it and leave it open and hanging. The
18 information -- the evidence has to be enough to take the
19 jacket, take the robe, take the trench coat completely off
20 of an individual. You can't just throw out some facts and
21 hope that it falls out and the jury will just buy it and
22 come back with a guilty.

23 So I submit to you today that the solicitor has
24 not done that, that the robe of innocence, the presumption
25 of innocence, is still fully cloaked around my client,

1 Donnie Nelson.

2 Your Honor will tell you that your verdict on
3 every charge has to be unanimous. The term verdict is the
4 Latin term that means veradicto. It means to speak the
5 truth. Verdict means to speak the truth. And I submit to
6 you today that the evidence in this case that's concerning
7 my client, Donnie Nelson, is presenting a verdict of not
8 guilty on each charge, and I ask that you bring that verdict
9 back. Thank you.

10 THE COURT: Mr. Gibson.

11 MR. GIBSON: Thank you, Your Honor.

12 Consistent on going last, but now that everybody
13 has talked, I'm afraid you guys might be falling asleep, but
14 what they said I want to echo comments of both Mr.
15 Farnsworth and Ms. Manigault as they apply to my client, and
16 I would ask that you take those arguments and analyze them
17 and find them for my client as well.

18 With that said, I just want to tell y'all a couple
19 of things. Actually more than a couple of things.

20 I told you at the very beginning of this trial I
21 was going to talk to you about the burden of proof and how
22 huge a burden that is for the State to make when they want
23 to take away someone's liberty, as Mr. Moyer and the State
24 want to do in this case as it respects to my client.

25 Now, ladies and gentlemen, as corny as it sounds,

1 I love America. I mean, I don't want to be anywhere else.
2 I don't want to live anywhere else. I visit a lot of
3 places. I love to travel, but there is no other place I
4 want to live than live right here. And one of the reasons
5 for that is how much we as a society, we as a nation, value
6 liberty. It forms the very basis of our country. You look
7 back at the Declaration of Independence, when Thomas
8 Jefferson was talking about inalienable rights. He talks
9 about life, liberty and the pursuit of happiness. Patrick,
10 Henry, "give me liberty or give me death." Words of General
11 Stark, "live free or die." It's ingrained in our culture
12 and we do everything as a society to try to protect it.
13 That's why when the State wants to take away someone's
14 freedom, we make it hard. We make it real hard. We got a
15 lot of burdens of proof in our system.

16 What I mean by burden of proof is this. Just how
17 sure do you have to be as a juror before you can go along
18 with what he says? If you want to take away someone's
19 liberty in this country, you have to be really, really super
20 sure. Like I just said before, we have got a lot of burdens
21 of proof.

22 For instance, say you were in a traffic accident.
23 You come in on a civil claim and you want to try to get
24 money from somebody to compensate you for your injury. The
25 burden of proof is called the preponderance of evidence.

1 What that means is is it more likely than not that the other
2 party is responsibility for your injuries? Did they
3 probably do what you say they did? If you can meet that
4 burden, you get compensation.

5 Yes, in that same type of case you want to get
6 punitive damages, say money damages, you have to prove your
7 case a little more strongly. You have to make sure that the
8 jury is convinced that they did what they did. Okay.
9 That's higher than more likely than not. They have to be
10 convinced.

11 But when we talk about taking away somebody's
12 freedom, you have to be convinced beyond a reasonable doubt.
13 The State has to prove their case beyond beyond a reasonable
14 doubt. They have to give you evidence for which you as a
15 jury can go back and say after looking at all this evidence,
16 it's not just more likely than not that the defendant did
17 what they did; I'm not just convinced that the State says
18 that they did what they did; I believe that they did it
19 beyond a reasonable doubt.

20 Now, ladies and gentlemen, in this case the State
21 did not meet their burden. Okay. The only evidence that
22 they put up which implicates my client, Mr. Waller, is the
23 testimony of a man who admitted on the stand that he is a
24 liar. And not just a liar, but one who will lie under oath,
25 that he has more than enough reason to lie to you today.

1 There is no way that you can believe, that you can find my
2 client beyond a reasonable doubt, based on that type of
3 testimony.

4 Now, what I said was he was a liar. And now we
5 talked about that with him, and I hit him really hard with
6 it, and normally I try to be sort of nice with witnesses,
7 but when they come in and I don't think they are telling the
8 truth, I respond a little differently. In him he admitted
9 that he was guilty of forgery, or he changed that. He
10 didn't admit he was guilty of forgery. He admitted that he
11 lied under oath to tell the judge that he was guilty of
12 forgery, because he thought that would be in his best
13 interests. He's given lies in his statement,
14 inconsistencies.

15 Now, Mr. Moyer says those inconsistencies are real
16 minor. In fact, I think his exact words were very minor.
17 Ladies and gentlemen, they are anything but very minor. He
18 says on the stand when he testified in front of you, he says
19 "I didn't see him go in there. We drove off." In his
20 statement he says "I saw them go in."

21 On the stand he said "I never saw them come out.
22 The door was open. We drove around and found them." In his
23 statement he says "we seen them come out. When they came
24 out, they had scarves over their faces and they were running
25 towards Justin."

1 Now, Mr. Moyer wants to explain these differences
2 away by -- I think he said a translation problem. There may
3 be a translation problem. You know, there are people there
4 and he's telling them this and it couldn't have gotten in
5 the statement or it might be wrong. But if you remember Ms.
6 Patton, the investigator on this case, she said "if it's in
7 the statement, he said it." That's not something that you
8 get confused about when you actually told the truth, because
9 the truth doesn't change. The truth does not change. When
10 you tell one story and it's the truth, you can go back to it
11 years from now and it will be exactly the same. You may be
12 have to, you know, think about some details and stuff, but
13 you don't remember whether or not you saw somebody go in to
14 rob a place. You don't -- well, you don't get confused
15 about that. You don't get confused about whether or not you
16 saw them come out with bandanas around their faces --
17 bandanas and scarves around their faces. That's not
18 something that someone telling the truth gets confused
19 about.

20 I don't know why he made up this statement. I
21 don't know why he implicated my client. You know, it could
22 be that he thought he was going -- it could be that the
23 people who really was involved in it with him, he knows if
24 he tells on them, they are going to kill him or do something
25 else to him. I don't know. All I know is that the

1 statement that he gave regarding my client is not the truth.
2 It is not something that you can depend upon when making
3 your decision.

4 Now, if you remember, there were witness after
5 witness and they all got up here and said "I don't have any
6 evidence whatsoever to implicate Mr. Waller." I think there
7 were seven or eight witnesses that were called. The only
8 one who said they had some evidence that implicated Mr.
9 Waller was Mr. Clement. That is their case. There is no
10 physical evidence in this case. The lady who was from the
11 CSI, she said well -- or whatever, the forensics department,
12 she said there were no physical evidence that implicated Mr.
13 Waller. Therefore, you are left to the decide this case
14 based on the sole testimony of Jarvis Clement, an admitted
15 liar, with an admitted motivation to lie.

16 Now, Mr. Moyer said "I didn't pick Mr. Clement."
17 He's just got stuck with him. I would strongly disagree
18 with that. He picked Mr. Clement when he made the deal with
19 him that he made. When he made a deal with him to give him
20 a motivation to get on the stand and tell this story, that's
21 when he picked Mr. Clement.

22 Now, let's talk about that motivation real quick,
23 okay? He's pled guilty to four counts that he has not been
24 sentenced on. Each of those counts carries up to 30 years.
25 He could, however, be sentenced to ten years, all run

1 concurrently, which would mean the five years that he's
2 already got is extended only by another five years. The
3 determination of whether or not on what he gets on that is
4 going to be made in large part on the involvement and the
5 comments and the recommendations of Mr. Moyer. Sure, the
6 judge is going to be the final arbiter on it. He's going to
7 have to go before the judge so the judge could render
8 sentence, but the judge is going to listen very strongly to
9 whatever Mr. Moyer says about Mr. Clement. And Mr. Moyer
10 goes into that courtroom and he tells him, "Your Honor, Mr.
11 Clement was a fine individual. He helped us with our case.
12 He gave us great testimony. He made our case." He's going
13 to get a real big break. And Mr. Clement knows that. And
14 this is not somebody who is new to the game. This guy has
15 got two forgeries before he even came in, and I would
16 imagine -- strike that. He's not new to the game. So he
17 knows the system when he comes in. He knows what he needs
18 to do is try to make the best situation for himself, and
19 that's exactly what he did in this case.

20 Now, Ms. Manigault sort of talked to you about
21 credibility. The judge is going to give you a charge on
22 credibility. He's going to tell you that as far as
23 credibility is concerned, if a witness says one thing that
24 you do not believe, you have the right to not consider
25 anything that they say.

1 Now, ladies and gentlemen, there are a number of
2 inaccuracies, untruths that Mr. Clement told you on that
3 stand. And what I say to you, ladies and gentlemen, is that
4 my client's life depends on this. Okay? If you found
5 anything that he said to be not credible, I would ask that
6 you find his entire testimony to be not credible. Okay?

7 Now, ladies and gentlemen, with all that said, I
8 want to assume for just a moment that what he said may be
9 true. Okay? Well, let's assume that the story he gave you
10 on the stand was, in fact, correct. According to him, Mr.
11 Waller was as surprised that they were robbing this place as
12 he was. Okay. That's the evidence that Mr. Moyer's witness
13 put up. He was as surprised as he was that the robbery was
14 taking place.

15 Now, Mr. Moyer talked about the hand of one, hand
16 of all, and that's a very serious thing in this state. And
17 what that means is that you have an understanding beforehand
18 that you and some other individuals are going to commit a
19 crime, and whatever they do, you are responsible for. But
20 the key component of that is this. You have to have some
21 type of tacit understanding or an agreement that you are
22 going to be involved in that crime. What I'm saying to you
23 is even if you take Mr. Clement's testimony on its face, the
24 testimony is that Mr. Waller was as surprised that the
25 robbery was taking place as he was.

1 Now, Mr. Moyer he wants you to try to explain the
2 evidence away in his favor. He wants you to step out on a
3 limb with him and help him to make the case that he can't
4 make because he doesn't have credible evidence to do it. He
5 wants you to step out on that limb. Well, ladies and
6 gentlemen, at some point you are going to look down on that
7 limb that you are on, and hopefully you will do it before
8 you make your verdict. You may not do it until tomorrow.
9 You may not do it two years from now, but one day you are
10 going to look down and you are going to realize that that
11 limb that Mr. Moyer wants you to step out on is nothing but
12 air. There is nothing there. There is no evidence, no
13 credible evidence, that you could have based your decision
14 on. And if you voted the wrong way, if you convict my
15 client of this crime based on that evidence, it's going to
16 be too late.

17 Now, we talk about you guys supposed to do
18 justice. I want to be honest with you, ladies and
19 gentlemen. Your job is really not to do justice in this
20 case. Your job is to weigh the evidence. The only
21 determination that you can make in this case is to whether
22 or not the State met its burden of proof. The way our
23 system is set up, we hope that that turns into justice.
24 That's not always the case, but that's your job. That's the
25 only determination that you can make. It is not your job to

1 try to go out and say I'm going to solve this crime, and if
2 I think he's guilty, I'm going to do whatever. It's not
3 your job to do the State's case. It's not your job to do
4 the police's case. The only job that you have is to weigh
5 this evidence and determine amongst yourselves, determine
6 for yourself, whether or not the State has given you enough
7 evidence to believe that Mr. Waller is not just likely
8 involved in this, not that you are convinced that he's
9 involved in this, but that you believe beyond a reasonable
10 doubt that Mr. Waller was involved in this case. And,
11 again, ladies and gentlemen, I submit there is no way that
12 you can find that, based on the testimony of Mr. Clement.
13 There are too many inconsistencies in his testimony. He's
14 not a credible person. He is not the kind of person that
15 you need to be possibly ruining this man's life, basing your
16 decision upon.

17 Now, I heard a judge tell me one time, he said --
18 or he actually told the jury this, he said as far as
19 reasonable doubt, the best way I can explain it is you
20 should be so sure of your decision that you are willing to
21 make a life changing event in your life because of that
22 proof. Okay. Life -- life threatening surgery, a move to
23 another place, something that alters your life. You need to
24 be that sure.

25 Now, ladies and gentlemen, what I would ask you is

1 this. If somebody who was an admitted liar who came to you
2 and gave you one story and then switched up and gave you all
3 sorts of inconsistencies, told you one thing and the next
4 day told you something else, had a reason to lie to you that
5 was working out in his own favor, if he told you that you
6 needed surgery, would any of you do it, based solely on that
7 testimony, based solely on that evidence? I think not. I
8 think not.

9 Now, there are couple of other things that I just
10 want to make sure I respond to before I sit down in regards
11 to statements that Mr. Moyer made. If you bear with me just
12 a second. I want to talk about this phone call real quick.

13 Now, ladies and gentlemen, I don't know who made
14 the phone call. But based on the testimony of all the
15 people other than Mr. Clement, nobody else knew about it.
16 Mr. Gotts got up there, and if you remember Mr. Gotts, he
17 was the large gentleman from the cell phone company. He
18 said "all I can testify to is that a call was made to this
19 number. I can't even assure you that somebody picked up.
20 It could have been to a voicemail. I don't know." That's
21 what he told you. If you don't remember, ask Mike to read
22 the testimony back to you and that's what it will confirm.
23 Okay.

24 So the other thing about this cell phone is Mr.
25 Moyer hit hard in his argument. And the reason why he hit

1 it hard in his argument is because it is a very significant
2 detail. The problem with that is that nowhere in Mr.
3 Clement's statement does he mention a cell phone call. I
4 imagine he knew something about this cell phone call before
5 it was made, because I imagine he may have even been the one
6 that made it, because I imagine that he's the one who was
7 involved in that earlier robbery, just like he was involved
8 in Distinguished Gent's robbery. He's told you that he knew
9 Mr. Waller. Surely he knew his phone number. I don't know
10 why he may have called him. I don't know, but the fact of
11 the matter is that based on the evidence that you saw here
12 today, there was no indication from that cell phone record
13 that Mr. Waller was involved in this thing whatsoever.

14 Again, ladies and gentlemen, I think I have hit
15 every point I want to make. I'm just asking you look at the
16 evidence. Decide whether or not you would make any life
17 altering decision based on the evidence that you heard here
18 today. Your only job here is to weigh this evidence and
19 determine whether or not they made their case beyond a
20 reasonable doubt. If you think that it's more likely that
21 probably these -- that probably Mr. Waller is involved,
22 that's not good enough. If you are convinced based on the
23 testimony of Mr. Clement that Mr. Waller is involved, that's
24 not good enough. You have to believe it beyond a reasonable
25 doubt. And again, ladies and gentlemen, I can't see any way

1 whatsoever that based on the testimony of Mr. Clement that
2 you could believe that. Thank you.

3 (Whereupon, at 2:50 p.m., the court charged the
4 jury panel)

5 THE COURT: Ladies and gentlemen, it's now my
6 responsibility to instruct you on the law. And let me again
7 remind you the indictments that I have before me, they have
8 charged the defendants with the offenses of kidnapping, of
9 armed robbery, of possession of a weapon during a violent
10 crime, and of conspiracy.

11 And let me remind you also, Mr. Foreman and ladies
12 and gentlemen, that the fact that each of these defendants
13 was arrested and charged and indicted in the case is not
14 evidence and can't be considered by you as evidence of the
15 guilt, nor does it create any presumption or inference of
16 guilt. It's merely the charging paper the formal written
17 instrument that brings the case before this court.

18 Now, each of the defendant's also faces multiple
19 charges, and these indictments allege several different
20 offenses.

21 Each indictment charges a separate and distinct
22 offense, and your responsibility is to decide each
23 indictment separately on the evidence and the law applicable
24 to it, uninfluenced by your decision on any other
25 indictment. The defendants may be convicted or acquitted on

1 any or all of the offenses charged..

2 And I will explain to you at the end, Mr. Foreman,
3 the verdict forms that I have for you, and you will be asked
4 to write a separate verdict of guilty or not guilty for each
5 of the charges that have been brought.

6 And also in this case there are three different
7 defendants, individuals who have been charged with each of
8 these offenses that I have stated to you. The case of each
9 defendant and the evidence and the law concerning that
10 defendant should be considered separately and individually
11 by you. Your verdicts don't have to be the same for all of
12 the defendants. The fact that you may find one defendant
13 guilty and/or not guilty should not control your verdict as
14 to the other defendant. Where one or more -- or where more
15 than one person is charged with a crime, if the evidence
16 warrants it, you may convict one and acquit another; you may
17 acquit all; you may convict all. It depends upon your view
18 of the testimony and the evidence, and you take each of the
19 defendants separately and consider the evidence as to that
20 defendant and my instructions to you on the law.

21 Likewise, with each individual defendant, you
22 consider the evidence on each particular charge that has
23 been brought. And then you would, of course, write separate
24 verdicts of guilty or not guilty for each defendant and for
25 each of the charges.

1 The defendants in this case have pled not guilty
2 to the indictments. And this plea puts the burden on the
3 State to prove each of the defendant's guilt. A person who
4 is charged with committing a criminal offense in South
5 Carolina is never required to prove himself innocent. And I
6 charge you that that's an important rule of the law, that
7 defendants in criminal trials, no matter how serious the
8 charge may be, will always be presumed innocent of the crime
9 for which the indictment was issued, unless that guilt has
10 been proven by evidence satisfying you of the guilt beyond a
11 reasonable doubt.

12 The presumption of innocence doesn't end when you
13 begin your deliberations, but it accompanies the defendants
14 throughout the trial, until you have reached a verdict of
15 guilt based upon evidence that satisfies you of that guilt
16 beyond a reasonable doubt.

17 The presumption of innocence has been described as
18 a robe of righteousness that's placed about the shoulders of
19 a defendant, which remains with that defendant until it's
20 been stripped by evidence satisfying you of that particular
21 defendant's guilt beyond a reasonable doubt.

22 Presumption of innocence is just not a legal
23 theory. It's not a phrase that's we use. It's a
24 substantial right to which every defendant is entitled,
25 unless, you, the jury, are satisfied from the evidence that

1 the defendant is guilty beyond a reasonable doubt.

2 You may ask what is a reasonable doubt in the law.
3 A reasonable doubt is the kind of doubt that would cause a
4 reasonable person to hesitate to act. The State has the
5 burden of proving the each of the defendants guilty beyond a
6 reasonable doubt.

7 Some of you may in the past have served as jurors
8 in civil cases where you were told that it was only
9 necessary to prove a fact more likely true than not true,
10 such as by the greater weight or the preponderance of the
11 evidence. In criminal cases the State's proof must be more
12 powerful than that. It must be beyond a reasonable doubt.

13 Proof beyond a reasonable doubt is proof that
14 leaves you firmly convinced of the defendant's guilt.

15 Now, there are very few things in the world that
16 we know with absolute certainty, and in criminal cases the
17 law doesn't require proof that overcomes every possible
18 doubt.

19 If, based upon your consideration of the evidence,
20 you are firmly convinced that the defendants are guilty of
21 the crime charged, you must find the defendants guilty.

22 If, on the other hand, if you think there is a
23 real possibility that the defendants are not guilty, then
24 you must give the defendant the benefit of the doubt and
25 find them not guilty.

1 And, again, when I say the defendants, I'm
2 speaking of them individually, each of the defendants
3 individually and as to each charge.

4 Now, let me remind you, ladies and gentlemen, that
5 during the course of the trial you and I have had certain
6 duties to perform. As the trial judge it's been my
7 responsibility to preside over the trial of the case, and I
8 have had the duty to rule upon the admissibility of evidence
9 that's been offered during the course of the trial.

10 You are to consider only the competent evidence
11 before you. Any testimony ordered stricken from the record
12 during the course of the trial you must disregard. You are
13 to consider only the testimony which has been presented from
14 the witness stand and the exhibits that have been made a
15 part of record and any stipulation of counsel.

16 My job also is to charge you that law applicable
17 to the case. As the presiding judge, I'm the sole judge of
18 the law, and it's your duty as jurors to accept and apply
19 the law as I now state it to you.

20 You may already have an idea of what the law is in
21 a case such as this, or even what the law ought to be, and
22 it might not agree with what I tell you the law is. If you
23 have such an idea, you must abandon that, because you are
24 sworn to accept the law and apply the law exactly as I tell
25 it to you now.

1 In every case tried in this courtroom before a
2 jury, the jury becomes the sole and exclusive judges of the
3 facts in a case. A trial judge is not allowed to intimate,
4 state, comment on, or make any statement at all to a jury
5 about the facts in a case.

6 Since you, the jury, are the sole judges of the
7 facts, you are not to infer from anything that I have said
8 during the progress of the trial, or any rulings that I have
9 made on the admissibility of evidence, or otherwise, or
10 anything that I say to you now during the course of these
11 instructions that I have an opinion about the facts in the
12 case. I don't have an opinion about the facts of the case.
13 The law, our Constitution, prohibits me from expressing or
14 having any opinion about the facts. It's a matter solely
15 for you, ladies and gentlemen, as jurors to determine what
16 the facts are. You are to determine the effect, the value,
17 the weight, and the truth of the evidence that's been
18 presented during the course of the trial.

19 There is two types of evidence which are
20 presented. There is direct evidence and there is
21 circumstantial evidence.

22 Direct evidence is the testimony of a person who
23 claims to have actual knowledge of a fact, such as an
24 eyewitness. It's evidence which immediately establishes the
25 main fact to be proved.

1 Circumstantial evidence is proof of a chain of
2 facts and circumstances that indicate the existence of a
3 fact. It's evidence which immediately establishes
4 collateral facts from which the main fact may be inferred.

5 Circumstantial evidence is based on inference and
6 not on personal knowledge or observation.

7 The law makes absolutely no distinction between
8 the weight or value to be given either direct evidence or
9 circumstantial evidence, nor is a greater degree of
10 certainty required for circumstantial evidence than of
11 direct evidence.

12 You should weigh all of the evidence in the case.
13 And after weighing the evidence, if you are not convinced of
14 the guilt of the defendants beyond a reasonable doubt, then
15 you must find the defendants not guilty.

16 In order to establish criminal liability, criminal
17 intent is required. Criminal intent must be proven by the
18 State beyond a reasonable doubt.

19 Criminal intent is always a matter that must be
20 determined by the jury from the circumstances surrounding
21 the situation. There is no way to prove intent to a
22 mathematical certainty. There is no way medical science can
23 dissect a person's brain to determine what the person had in
24 mind, so the law says that criminal intent may be inferred
25 from the circumstances shown to have existed. This is how

1 you make determinations of whether or not the intent was
2 present in this particular case.

3 Intent may be established by inference in the same
4 way as other facts, by taking into consideration the acts of
5 the parties and all the facts and circumstances of the case.
6 Criminal intent is a mental state of conscious wrongdoing.
7 It's up to you to determine what the defendants intended to
8 do, based upon the circumstances shown to have existed.

9 In order to convict any of the defendants of the
10 crime they are charged with, the State must prove beyond a
11 reasonable doubt that it was the defendants who committed
12 the crime. In other words, the State must prove beyond a
13 reasonable doubt the identity of the person who committed
14 the crime. And when you separately consider the indictments
15 against each defendant, you must first find that the State
16 has proven that it was the defendant who did the act that is
17 subject to the case here today.

18 Necessarily, ladies and gentlemen, you must
19 determine credibility of witnesses who testified in this
20 case. Credibility simply means believability. It's your
21 duty as jurors to analyze and evaluate the evidence and
22 determine which evidence convinces you of its truth.

23 In determining the believability of witnesses who
24 have testified, you can believe one witness over several
25 witnesses.

1 You can believe part of the testimony of a
2 witness, reject the remaining part of the testimony of the
3 very same witness.

4 You can believe one witness over several
5 witnesses.

6 You have a right in your discretion to believe the
7 testimony of a witness in its entirety, or reject the
8 testimony of a witness in its entirety.

9 You can consider whether a witness has exhibited
10 to you any interest or bias or prejudice or other motive in
11 the case.

12 You can consider the appearance and the manner of
13 the witness while on the witness stand.

14 You can consider whether the testimony of the
15 witness was consistent or inconsistent. Was it consistent
16 with other testimony that you heard?

17 You can consider whether or not the witness would
18 testify to help or hurt one side or the other.

19 Your determination, and yours alone, as to whether
20 or not that witness is credible, you can ask yourself the
21 question was the testimony of the witness strengthened or
22 weakened by other testimony.

23 It's totally your prerogative, Mr. Foreman, ladies
24 and gentlemen, to determine the credibility of witnesses who
25 have testified in this case.

1 I instruct you and emphasize to you the fact that
2 the defendants did not testify is not a factor to be
3 considered by you in any way in your deliberations and in
4 your consideration of the question of the guilt or innocence
5 the defendants. It must not be considered by you in any
6 manner whatsoever. A defendant has the Constitutional Right
7 to remain silent. And the assertion of this right must not
8 be considered by you in your deliberations.

9 I repeat, under your oath you are to draw no
10 conclusion whatsoever from the fact that the defendants did
11 not testify in this case.

12 The fact that the defendants did not testify
13 should not even be discussed by you in the jury room. The
14 burden of proof, as I have stated to you, is on the State,
15 and the defendant is not required to prove his innocence.
16 The burden of proof remains on the State to prove the guilt
17 beyond a reasonable doubt.

18 A person may be constructively present at the
19 commission of a crime, even though the person is some
20 distance away from the actual scene, if it is shown beyond a
21 reasonable doubt that the person played a role in the
22 commission of the crime as a result of some prior
23 arrangement.

24 If a crime is committed by two or more people who
25 are acting together in committing a crime, then the act of

1 one is the act of all.

2 A person who joins with another to accomplish an
3 illegal purpose is criminally responsible for everything
4 done by the other person which occurs as a natural
5 consequence of the acts done in carrying out the common plan
6 and purpose. For example, two people can be guilty of
7 arson, when only one had the gasoline and there was only one
8 match and only one struck the match that caused the fire.
9 If two or more people are together, acting together,
10 assisting each other in committing the offense, the act of
11 one is the act of all; or as sometimes said, the hand of one
12 is the hand of all.

13 Prior knowledge that a crime is going to be
14 committed without more is not sufficient to make a person
15 guilty of that crime. Mere knowledge that another person is
16 going to commit a crime, even if the defendant is present
17 when the crime is committed, is not sufficient to convict
18 the defendant as a principal. Guilt as a principal is shown
19 by actual or constructive presence at the scene as a result
20 of prior arrangement. Therefore, a finding of prior
21 arranged plan or common scheme is necessary for a finding of
22 guilt as a principal. The State must prove beyond a
23 reasonable doubt by competent evidence the theory of the
24 hand of one is the hand of all.

25 Now, ladies and gentlemen, there has been evidence

1 presented that a witness may have made prior statements
2 which were not consistent with the present testimony of that
3 witness. You may use this evidence to decide whether or not
4 to believe the witness. You may also use the evidence of a
5 prior contradictory statement to determine the truth of
6 those statements. It's up to you to decide whether to
7 believe the earlier statement or the testimony given at
8 trial. If a witness is shown to have knowingly testified
9 untruthfully concerning any material matter, you may
10 consider this in determining whether to trust the witness
11 testimony as to other matters. You may reject all testimony
12 of that witness, or give it all or part of the testimony the
13 weight that you think it deserves.

14 Now, a person who has a prior criminal record is
15 competent to testify during a trial. Past record does not
16 affect the ability of that witness to testify. The past
17 record may only be considered by you, if at all, in
18 determining the witness' believability.

19 Remember, you are the sole judges of the facts in
20 the case and of the believability of any and all the
21 witnesses who have testified.

22 Each of these defendants have been charged with
23 several offenses. The first of these offenses that I will
24 discuss with you is that of kidnapping.

25 The State must prove beyond a reasonable doubt

1 that the defendants knowingly and unlawfully seized,
2 confined, inveigled, decoyed, kidnapped, abducted, or
3 carried away another person without the authority of the
4 law.

5 To do a thing unlawfully is to do it willfully
6 against the law.

7 Knowingly means with knowledge consciously and not
8 accidentally.

9 Seize means to take hold of suddenly or forcibly.

10 Inveigle means to lure, entice, lead astray by
11 false representations, promises, or other deceitful means.

12 Decoy means to lure by or as if by decoy. A decoy
13 is something to entice a person into a trap.

14 And confine means to limit, restrict or enclose
15 within bounds, imprison, or shut, or keep in.

16 Kidnap is to remove a person against his will by
17 unlawful force or fraud.

18 And abduct means to carry off secretly or by force
19 for an illegal purpose.

20 Carry away means to remove.

21 Now, the State does not have to prove that the
22 defendants did all of these things. Instead, if you find
23 beyond a reasonable doubt that the defendants did any of
24 these things, you may find the defendants guilty of
25 kidnapping.

1 Something done without authority of law is
2 something which the law does not sanction, permit or allow,
3 condone, or provide justification for. The kidnapping does
4 not have to be for any personal or monetary gain, but for
5 any illegal purpose, or for any illegal purpose, but may be
6 for any reason whatsoever.

7 Now, the defendants are also charged with armed
8 robbery in this case. In order to prove this offense, the
9 State must prove beyond a reasonable doubt that the
10 defendants took personal property from the person or
11 presence of another person.

12 Property is in the presence of a person if it is
13 within the person's reach, inspection, observation, or
14 control so that the person could, if not overcome with
15 violence or prevented by fear, keep possession of that
16 property.

17 The State must also prove beyond a reasonable
18 doubt that the defendants carried the property away
19 intending to permanently deprive the owner of the property
20 and to keep the property for the defendants own use.

21 The slightest removal of the property or the
22 complete possession of the property, even for an instant, by
23 the defendants is sufficient to show a taking and carrying
24 away of the property.

25 The taking and carrying away of the property must

1 have been done with violence or by putting the owner of the
2 property in fear of violence.

3 And, finally, the State must prove beyond a
4 reasonable doubt that the defendants were armed with a
5 deadly weapon during the robbery.

6 Now, a deadly weapon is any article, instrument,
7 or substance which is likely to cause death or great bodily
8 harm. And whether an instrument has been used as a deadly
9 weapon depends upon the facts and circumstances of each
10 case.

11 Examples of instruments which may be deadly
12 weapons would include a pistol, a shotgun, rifle, dagger,
13 knife, or weapons, or examples of weapons.

14 Now, a gun may be a deadly even if it does not
15 operate.

16 The defendants are also charged with possession of
17 a weapon during the commission of or attempting to commit a
18 violent crime.

19 The State must prove beyond a reasonable doubt
20 that the defendants were in possession of a firearm, or
21 visibly displayed what appeared to be a firearm, during the
22 commission of a violent crime.

23 A firearm would mean a machine gun, an automatic
24 rifle, revolver, pistol, or any weapon which will or is
25 designed to or may be readily converted to expel a

1 projectile.

2 In order to find the defendants guilty of
3 possession of a weapon during the commission of a violent
4 crime, you must first find the defendant guilty of either
5 committing a violent crime or attempting to commit a violent
6 crime.

7 Our state has determined that kidnapping and armed
8 robbery are violent crimes.

9 The defendants are also charged with conspiracy.
10 The State must prove beyond a reasonable doubt that the
11 defendants combined with one or more persons for the purpose
12 of committing an unlawful act, or committing a lawful act by
13 unlawful means. There must be a mutual understanding,
14 agreement, or common intention and plan.

15 Mere passive knowledge or consent to the criminal
16 conduct of another is not enough to make a person a
17 conspirator. There must be guilty knowledge and
18 participation.

19 Similarly, if the mere fact that the defendants
20 may have associated with another person or met with another
21 person and discussed common aims does not necessarily
22 establish proof of the existence of a conspiracy, or that
23 the defendant was involved in the conspiracy.

24 On the other hand, it's not necessary that the
25 agreement be a formal one, that it be in writing or that the

1 persons hold a meeting and expressly state the terms of the
2 common plan, or that the agreement be stated in words
3 between them.

4 The agreement of a criminal conspiracy may come
5 into being through an implied mutual understanding. The
6 willful, intentional and knowing adoption by two or more
7 persons of a common plan is sufficient. No overt acts need
8 to be shown to establish a conspiracy. A conspiracy may be
9 shown by circumstantial evidence and the conduct of the
10 parties.

11 In order to convict a defendant of conspiracy, the
12 State must prove beyond a reasonable doubt not only that the
13 defendants knew of the unlawful conduct, but that the
14 defendant agreed to combine with other persons for the
15 purpose of accomplishing the unlawful conduct.

16 Now, Mr. Foreman and ladies and gentlemen, on each
17 of the charges as to each of the defendants there are two
18 possible verdicts. You may either find the State has met
19 its burden of proof and find the defendants guilty, or you
20 may find them not guilty as to each of the charges.

21 Now, I have prepared a verdict form, as I have
22 stated to you, and there is no significance whatsoever in
23 the order in which the possible verdicts are listed. One
24 obviously has to be listed first, either guilty or not
25 guilty. And you should take no -- have no inference into

1 which one is listed first.

2 Mr. Foreman and ladies and gentlemen, your verdict
3 must be a unanimous one. You must all twelve agree on the
4 verdict as far as each defendant and as far as each
5 particular charge that's been brought against these
6 defendants.

7 When you have reached a verdict, I would ask that
8 you sign the particular verdict form, Mr. Foreman, on behalf
9 of your fellow jurors, date it, signify to the bailiffs that
10 you have reached a unanimous verdict, and then we will
11 receive the verdict back into the courtroom at this time.

12 I believe the verdict form will be
13 self-explanatory as you go down each one. There will be
14 several forms there for each of the charges and for each of
15 the defendants.

16 You obviously can ask me any questions that you
17 have regarding the law of the case, but please remember that
18 it's impermissible for me in any way to answer any questions
19 relating to the facts of the case regarding what was
20 presented in the course of the trial factually. You have
21 the duty as the fact finders. It's your sole duty and your
22 sole prerogative to decide the facts in the case.

23 I'm going to ask you at this time, if you would,
24 please, to go back to your jury room. Again, don't start
25 discussing the case just yet. There is a final matter of

1 law that we need to discuss briefly. In a few moments we
2 will have the bailiff bring you the evidence, bring you the
3 verdict forms, and then with instructions that you can begin
4 your deliberations. But for now, again, don't start your
5 deliberations at this time. We will notify you in just a
6 few minutes.

7 You are excused at this time to go to your jury
8 room.

9 (Whereupon, at 3:17 p.m., the jury panel went to
10 the jury room, awaiting instructions to begin deliberations)

11 THE COURT: Any exceptions to the charge?

12 MR. FARNSWORTH: None from Clovis, Your Honor.

13 MR. MOYER: None from the State.

14 MR. GIBSON: None, Your Honor.

15 MS. MANIGAULT: None from Nelson, Your Honor.

16 THE COURT: All right. I have got the verdict
17 forms here. There is six -- well, you will be able to see
18 what we have got. If y'all will take a moment and make sure
19 that everything is spelled right, in that proper form there.
20 Then as soon as you have a chance to do that, we will get it
21 back.

22 MR. GIBSON: Fine with us, Your Honor.

23 THE COURT: They all right with.

24 MS. MANIGAULT: Fine.

25 THE COURT: If you would, make sure the exhibits

1 are in order.

2 (Off the record)

3 (Back on the record)

4 (Whereupon, at 3:21 p.m., the jury panel was
5 instructed to begin deliberations)

6 (Whereupon, the alternate jurors were brought into
7 the courtroom)

8 THE COURT: Mr. Williams as Ms. Festa, I
9 appreciate your service. Obviously your fellow jurors
10 didn't fall by the wayside, none of them, so your services
11 are no longer needed in this case, but we will let them do
12 the deliberating. You are welcome to stay with us. You can
13 have a seat out there. You are welcome to go home as well.

14 As far as your further service this week, I
15 understand that you will need to call back tonight after six
16 to find out whether you need to report back tomorrow or not
17 for another trial, perhaps.

18 Thank you for your service. You are free to go at
19 this time. If you will just call back tonight after six
20 o'clock. Again, you are welcome to stay here, whatever
21 suits you. Thank you very much.

22 (Whereupon, the alternate jurors were discharged)

23 THE COURT: We will stand at ease.

24 (Whereupon, at 3:24 p.m., proceedings were
25 adjourned, pending the verdict of the jury panel)

1 (Whereupon, at 3:55 p.m., proceedings were
2 reconvened)

3 THE COURT: All right. We had a question from the
4 jury and they just submitted a second question.

5 The first one that they submitted to us is three
6 different statements. The first one says "who had the
7 tattoo on the hand."

8 The second comment is "difference between hand of
9 one and hand of all. And the fact that we can convict
10 individual persons on the different counts."

11 Thirdly, "clarification on kidnapping."

12 We notified you waiting on you to come back, they
13 had another comment, and that one is "testimony from Jarvis
14 Clement. The whole testimony."

15 When we got the first notice, I asked Mr. Watts to
16 find that testimony. I believe it was from Mr. Smith.

17 Do y'all recollect any other testimony about a
18 tattoo, other than from Mr. Smith? He has that on the tape
19 ready to play. He's reviewed it. It seemed like there was
20 one question and one answer and that was about it.

21 Be glad to let y'all let him read it to you first
22 if you want to.

23 MR. FARNSWORTH: May I ask?

24 THE COURT: Yes, sir.

25 MR. FARNSWORTH: Was the question who had the

1 tattoo?

2 THE COURT: Right.

3 MR. FARNSWORTH: They didn't -- but did they ask
4 to hear the testimony on it?

5 THE COURT: No.

6 MR. FARNSWORTH: Well --

7 THE COURT: I can offer them to hear the testimony
8 if they want to, but I can't comment on the facts, but I
9 would be glad to let them play the testimony, if they want
10 to. And he's got it ready to play.

11 MR. FARNSWORTH: Your Honor, my position on that
12 would be that if it's in the testimony -- I mean, they --
13 they are the finders of the facts. And unless they ask for
14 his testimony, I don't -- I don't think it needs to be
15 played.

16 THE COURT: I'm assuming they are going to ask for
17 it. They have already asked for --

18 MR. FARNSWORTH: But --

19 THE COURT: All the others. I'm going to give
20 them that opportunity to play that back, if they wish. And
21 he has it ready to play.

22 I'm going to recharge them on the individuality of
23 the offenses and the individuals and the defendants, and
24 also charge on the hand of one, hand of all.

25 And then I'm going to charge them on kidnapping.

1 And then we will let them hear the testimony of
2 Mr. Clement. I'll probably not charge them until after they
3 hear the testimony.

4 Yes, ma'am.

5 MS. MANIGAULT: Now, what was the second question
6 about -- the first one was who has the tattoo.

7 THE COURT: The third one was clarification on
8 kidnapping.

9 MS. MANIGAULT: Yes.

10 THE COURT: The middle one was the difference
11 between the hand of one and hand of all.

12 MS. MANIGAULT: Yes, sir.

13 THE COURT: And the fact that we can convict
14 individual persons on the different counts.

15 Anything else from any of the attorneys, as far as
16 how I propose to handle that?

17 MR. MOYER: My question, after you stop there, you
18 are just going to recharge them on the hand of one, the hand
19 of all.

20 THE COURT: I'm going to recharge them on that and
21 on the individuality of the -- I'm going to give them the
22 law that they have to find each defendant, and each charge,
23 and then I'm going to charge them on the law of the hand of
24 one, hand of all.

25 MR. MOYER: Okay.

1 THE COURT: I'm certainly willing to listen to any
2 suggestions any you have, but that's my information.

3 THE COURT: All right. You have got Clement ready
4 to play?

5 COURT REPORTER: Yeah.

6 THE COURT: All right. Let's bring the jury in.

7 (Whereupon, at 4:08 p.m., the jury panel returned
8 to open court)

9 THE COURT: Mr. Foreman, ladies and gentlemen, I
10 have some inquiries from you and I'll do my best to address
11 those as I can.

12 The first note that you sent out stated "who had
13 the tattoo on the hand."

14 Of course, that's a factual matter for your
15 determination. I can't comment on the facts in the case, as
16 I explained to you.

17 Certainly as you have requested later to hear
18 testimony, we can play any testimony that you want played.
19 We will be happy to do that, if you request us to do it.

20 You have also requested the testimony of Jarvis
21 Clement in its entirety, and we are prepared now to play
22 that for you.

23 As I play the testimony, or as Mr. Watts plays the
24 testimony, Mr. Foreman, I'll depend upon you. If you want
25 to hear all of it, we will play it all. Or if there is a

1 point in time that you feel that you don't need to hear any
2 more, then I'll depend upon you to notify the court.
3 Otherwise, we will play the entirety. And you said the
4 whole testimony. That's what we intend to do.

5 And then after you hear that testimony, then I'll
6 give you some more instructions about kidnapping and other
7 requests that you made about the hand of one and the hand of
8 all. So we will now start with that testimony that you have
9 requested for Mr. Clement.

10 (Whereupon, the requested testimony was replayed
11 for the jury panel)

12 THE COURT: Ladies and gentlemen, as far as
13 further instructions to clarify the other inquiries that you
14 made concerning the hand of one and also the individuality
15 of the charges and the defendants, as well as kidnapping,
16 let me try to further explain to you that each indictment
17 that's been brought is a separate and distinct offense, and
18 you must decide each of those indictments separately on the
19 evidence that you have before you and the law that I give
20 you applicable to that particular charge, and that should be
21 uninfluenced by your decision on any other indictment.

22 A defendant can be convicted or acquitted on any
23 or all of the offenses charged. And you have the verdict
24 form that allows you to write separate verdicts of guilty or
25 not guilty for each indictment.

1 And the fact that they are three defendants in the
2 case, each of those defendants individually has -- you have
3 the opportunity to determine the evidence against each of
4 them individually, and also to apply the law that I give you
5 on each individual defendant as to the charges. They should
6 be considered not only the charges separately, but each
7 defendant should be considered separately.

8 Your verdict would not have to be the same for
9 each of the defendants. You could certainly, in your
10 discretion under the evidence and the law, find one guilty,
11 and another not guilty, all not guilty, or all guilty.
12 That's your determination, based upon the evidence and the
13 law that I give you.

14 You should take each defendant and consider the
15 evidence as to that defendant and my instructions to you on
16 the law for that particular defendant and each particular
17 charge that each defendant is facing.

18 Now, as far as the hand of one being the hand of
19 all, if a crime is committed by two or more people who are
20 acting together in committing a crime, then the act of one
21 is the act of all.

22 A person who joins another to accomplish an
23 illegal purpose is criminally responsible for everything
24 done by the other person which occurs as a natural
25 consequence of the acts done in carrying out the common plan

1 or purpose.

2 I gave you the example of arson as a crime. The
3 same example could be used of murder, where one person pulls
4 the trigger and there is only one bullet, but two people are
5 together when the act is committed, and only one fired the
6 shot that caused the death. But if two or more people are
7 together and acting together and assisting each in
8 committing the offense, the act of one is the act of all.
9 And as I have stated to you, that is sometimes called the
10 hand of one is the hand of all.

11 Prior knowledge that a crime is going to be
12 committed, without more, is not sufficient to make a person
13 guilty of that crime. Mere knowledge that another person is
14 going to commit a crime, even if the defendant is guilty
15 when the crime is committed, is not sufficient to convict
16 the defendant as a principal. Guilt of a principal is shown
17 by actual or constructive presence at the scene as a result
18 of prior arrangement. Therefore, a finding of prior
19 arranged plan or common scheme is necessary for a finding of
20 guilt as a principal.

21 The State must prove beyond a reasonable doubt by
22 competent evidence the theory of the hand of one is the hand
23 of all.

24 The defendants are charged with kidnapping. The
25 State must prove beyond a reasonable doubt that the

1 defendants knowingly and unlawfully seized, confined,
2 inveigled, decoyed, kidnapped, abducted, or carried away
3 another person without authority of the law.

4 And let me define what some of those terms that I
5 have just used are for you.

6 First of all, to do an unlawful act is to do it
7 willfully against the law.

8 And knowingly means that you have the knowledge,
9 with knowledge. It's consciously. That's not by accident.

10 Seize. That means to take hold of suddenly or
11 forcibly.

12 Inveigle is a word that means to lure or entice or
13 lead astray by false representations, promises, or other
14 deceitful means.

15 Decoy means to lure by, or as if by decoy, a decoy
16 is something to entice a person into a trap.

17 Confine means to limit, restrict, or enclose
18 within bounds, imprison, or shut, or keep in.

19 Kidnap is to remove a person against his will by
20 unlawful force or fraud.

21 Abduct means to carry out secretly or by force for
22 an illegal purpose.

23 Carry away means to remove.

24 Now, the State does not have to prove that the
25 defendant did all of these things that I have just defined

1 to you. Instead, if you find beyond a reasonable doubt that
2 the defendant did any of these things, you can find the
3 defendant guilty of kidnapping.

4 Something done without authority of law is
5 something which the law does not sanction, permit, allow,
6 condone, or provide justification for.

7 The kidnapping does not have to be for any
8 personal or monetary gain or any illegal purpose, but may be
9 for any purpose whatsoever.

10 I trust that this further clarification will
11 assist you with the law. I'll ask you to go back and
12 deliberate further. If you need other instructions on the
13 law, I'll be glad to help you in any way.

14 You are discharged at this time to continue your
15 deliberations.

16 (Whereupon, at 4:37 p.m., the jury panel returned
17 to the jury room to continue deliberations)

18 THE COURT: Any exceptions to the instructions
19 given?

20 MR. MOYER: None from the state.

21 MR. FARNSWORTH: None, Your Honor.

22 MS. MANIGAULT: None from Nelson.

23 MR. GIBSON: Nothing, Your Honor.

24 THE COURT: All right. We will again stand at
25 ease. I'll mark these as Court's Exhibits 1 and 2. They

1 are inquiries.

2 (Jury Note marked as Court's Exhibit No. 1 for
3 identification)

4 (Jury note marked as Court's Exhibit No. 2 for
5 identification)

6 (Whereupon, at 4:45 p.m., proceedings recessed,
7 pending the verdict of the jury panel)

8 (Whereupon, at 6:05 p.m., proceedings reconvened)

9 THE COURT: All right. It's just after six
10 o'clock, and I was about to inquire of the jury as to
11 whether or not they wished to take a break for the evening.
12 They have sent out another question, which I have marked as
13 Court Exhibit No. 3.

14 (Jury Note marked as Court's Exhibit No. 3 for
15 identification)

16 THE COURT: It says "what to do if the group
17 cannot decide either way," is the question that they asked.

18 I propose that they deliberated fairly long time
19 already. This would be a good opportunity for them just to
20 retire for the evening and take another look at it in the
21 morning, and then we will let them deliberate some tomorrow.
22 Certainly before giving any kind of Allen Charge, let them
23 talk about the matters further. But that's what I propose
24 to do with this inquiry.

25 Any comments from any attorneys?

1 MR. FARNSWORTH: No objection, Your Honor.

2 MS. MANIGAULT: No objection, Your Honor.

3 MR. GIBSON: No objection, Your Honor.

4 THE COURT: All right. And none from the State.
5 Let's bring the jury in.

6 (Whereupon, at 6:08 p.m., the jury panel returned
7 to open court)

8 THE COURT: Mr. Foreman, ladies and gentlemen, you
9 have been working mighty hard on this case and we appreciate
10 that. It's now after six o'clock and I'm going to send you
11 home for the evening and let you continue your deliberations
12 in the morning.

13 As I told you yesterday when you went home, you
14 are now actively involved in the case, because you are in
15 the middle of your deliberations. And let me remind you
16 again that it would be highly improper for you to discuss
17 this case with anyone else, to get curious and want to do
18 some independent research and find out something, or check a
19 book, or check something on the Internet. And I say those
20 things not to tempt you, but to let you know that that's
21 improper, that you have made a commitment. You have taken
22 an oath to both the State and all these defendants that you
23 are going to decide this case on the testimony, the evidence
24 and the law that I give you, and that alone. Nothing else.
25 So we are trusting you to obey that admonition that I'm

1 making to you and to come back tomorrow refreshed and again
2 continue your deliberations one with another.

3 And I'll ask you, if you would, to be back at nine
4 o'clock in the morning. And just come to your jury room.
5 The bailiffs will be there to meet you, and we will continue
6 with your deliberations at that time.

7 Thank you so much for your diligence in working
8 with us, and I hope that you have a good evening tonight.
9 I'll see you in the morning.

10 (The following takes place outside the presence of
11 the jury panel)

12 THE COURT: All right. We will be back at nine
13 o'clock in the morning.

14 (Whereupon, proceedings were adjourned to January
15 19, 2006)

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1 (Proceedings, January 19, 2006)

2 (Whereupon, at 12:10 p.m., proceedings were
3 reconvened)

4 THE COURT: If I could have -- are all the
5 attorneys still in the courtroom? Do any of you request
6 your client to be in here while we make this statement? I
7 will be glad to bring them in.

8 MR. FARNSWORTH: No, Your Honor.

9 THE COURT: Anybody?

10 MS. MANIGAULT: No, sir.

11 MR. GIBSON: No.

12 THE COURT: All negatives.

13 The jury has asked a question. "Does the charge
14 of armed robbery guilty dictate that the possession of a
15 weapon must be guilty as well?" Signed by the foreman.

16 I intend to write the answer no, sign my name and
17 send it back to them, but let them continue their
18 deliberations.

19 We have ordered lunch for them, so that everyone
20 will know that you can be on the standby too, as you have
21 before. We will let them continue to deliberating.

22 MR. FARNSWORTH: Okay.

23 THE COURT: All right. Thank you very much,
24 ladies and gentlemen.

25 (Jury Note marked as Court's Exhibit No. 4 for

1 identification)

2 (Whereupon, at 12:12 p.m., proceeding were
3 recessed, pending the verdict of the jury panel)

4 (Whereupon, at 1:00 p.m., proceedings were
5 reconvened)

6 THE COURT: I understand the jury has reached a
7 verdict in the case, so we will receive the verdict.

8 Now, let me mention. I understand that there is
9 always a lot of emotion involved in cases of this nature
10 from either side. We certainly tend to respect the verdict
11 of jury, whatever it may be. And if anybody feels they
12 can't comport themselves with the dignity that's required of
13 the court and expected for the jury, then I would give you
14 an opportunity to excuse yourself from the courtroom at this
15 time. Otherwise, we will expect no outbursts of any kind.
16 We will accept the verdict as it's rendered by the jury.

17 All right. Let's bring the jury?

18 (Whereupon, at 1:01 p.m., the jury panel returned
19 to open court to report its verdict)

20 THE COURT: Mr. Foreman, I understand the jury has
21 reached a verdict, is that correct?

22 JURY FOREMAN: Yes, sir.

23 THE COURT: Is it a unanimous verdict as to all
24 the charges and all defendants? Is it a unanimous verdict
25 as to all the charges against all the defendants?

1 Is your verdict unanimous? Has everybody agreed
2 on it?

3 JURY FOREMAN: Everybody agreed on it, yes, sir.

4 THE COURT: All right. If you would, hand the
5 verdict forms to the bailiff, please.

6 All right, Madam Clerk, you may publish the
7 verdicts.

8 THE CLERK: Your Honor, 2005-GS-23-1198 and 1211,
9 the State of South Carolina versus Lawrence Waller, we, the
10 jury, by unanimous consent find the defendant Lawrence
11 Waller as to the charge of conspiracy guilty.

12 As to the charge of kidnapping, not guilty.

13 As to the charge of possession of a weapon during
14 the commission of or attempt to commit a violent crime, not
15 guilty.

16 Signed Michael Cannon, foreperson.

17 2005-GS-23-1197, 1199 and 1200, the State of South
18 Carolina plaintiff versus Lawrence Waller, defendant, we,
19 the jury, by unanimous consent find the defendant Lawrence
20 Waller as to the charge of armed robbery as to Grady
21 Blassingame, guilty.

22 As to the charge of possession of a weapon during
23 the commission of or attempt to commit a violent crime, not
24 guilty.

25 As to the charge of armed robbery as to Willie

1 Gambrell, not guilty.

2 As to the charge of possession of a weapon during
3 the commission of or attempt to commit a violent crime, not
4 guilty.

5 As to the charge of armed robbery as to Donald
6 Smith, not guilty.

7 As to the charge of possession of a weapon during
8 the commission of or attempt to commit a violent crime, not
9 guilty.

10 Signed Michael Cannon, foreperson.

11 2005-GS-4133 and 4137, the State of South Carolina
12 versus Donnie Nelson, we, the jury, by unanimous consent
13 find the defendant Donnie Nelson as to charge of conspiracy,
14 guilty.

15 As to the charge the kidnapping, not guilty.

16 As to the charge of possession of a weapon during
17 the commission of or the attempt to commit a violent crime,
18 guilty.

19 Signed Michael Cannon, foreperson.

20 2005-4134, 4135 and 4136, State of South Carolina
21 versus Donnie Nelson, we, the jury, by unanimous consent
22 find the defendant Donnie Nelson as to charge of armed
23 robbery as to Grady Blassingame, guilty.

24 As to the charge of possession of a weapon during
25 the commission of or attempt to commit a violent crime,

1 guilty.

2 As to the charge of armed robbery as to Willie
3 Gambrell, not guilty.

4 As to the charge of possession of a weapon during
5 the commission of or attempt to commit a violent crime, not
6 guilty.

7 As to the charge of armed robbery as to Donald
8 Smith, not guilty.

9 As to the charge of possession of a weapon during
10 the commission of or attempt to commit a violent crime, not
11 guilty.

12 Signed Michael Cannon, foreperson.

13 2005-1248 and 2368, the State of South Carolina
14 versus Lawrence Clovis, we, the jury, by unanimous consent
15 find the defendant Lawrence Clovis as to the charge of
16 conspiracy, guilty.

17 As to the charge of kidnapping, not guilty.

18 As to the charge of possession of a weapon during
19 the commission of or attempt to commit a violent crime, not
20 guilty.

21 Signed Michael Cannon, foreperson.

22 2005-1246, 1247 and 2368, State of South Carolina
23 versus Lawrence Clovis, we, the jury, by unanimous consent
24 find the defendant Lawrence Clovis as to the charge of armed
25 robbery as to Grady Blassingame, not guilty.

1 As to charge of possession of a weapon during the
2 commission of or attempt to commit a violent crime, not
3 guilty.

4 As to the charge of armed robbery as to Willie
5 Gambrell, not guilty.

6 As to the charge of possession of a weapon during
7 the commission of or attempt to commit a violent crime, not
8 guilty.

9 As to the charge of armed robbery as to Donald
10 Smith, not guilty.

11 As to the charge of possession of a weapon during
12 the commission of or attempt to commit a violent crime, not
13 guilty.

14 Signed Michael Cannon, foreperson.

15 If these are your verdicts, then please raise your
16 right hand.

17 (Whereupon, all jurors raised hand)

18 THE COURT: Thank you very much.

19 Is there anything that we need to take up with the
20 jury before they are discharged?

21 MR. MOYER: Nothing from the State, Your Honor.

22 MR. FARNSWORTH: No, Your Honor, for the defendant
23 Clovis.

24 MS. MANIGAULT: Nothing from defendant Nelson.

25 MR. GIBSON: Nothing at this time, Your Honor.

1 THE COURT: All right. Ladies and gentlemen,
2 thank you very much. I understand that lunch has been
3 ordered for you and I guess it's here now.

4 What I'm going to ask you to do, if you would,
5 since we have the lunch here, I'm going to ask you to return
6 back to your jury room and enjoy your lunch, and I'll be
7 back in a little bit to discharge you at that time. So,
8 again, if you will just go back for a couple moments and
9 enjoy your lunch and I'll be back with you in just a minute.

10 (The following takes place outside the presence of
11 the jury panel)

12 THE COURT: Yes, sir.

13 MR. GIBSON: Your Honor, I have -- I don't know
14 exactly how to do this, but I -- it's my belief that the
15 jury must have the defendants confused, that it's my belief
16 that they have Lawrence Clovis mixed up with Lawrence
17 Waller, given what I saw come in on the evidence. I don't
18 know how to resolve that situation, but I would like some
19 kind of confirmation -- to the extent that I can, some kind
20 of confirmation from the jury that they understand that
21 Lawrence Waller -- that Lawrence Clovis is that gentleman
22 and Lawrence Waller is this gentleman.

23 MR. FARNSWORTH: Your Honor, I disagree with that.
24 I think they have been out seven and a half, eight hours,
25 and they have reached their verdict, and the verdict has

1 been published. I don't -- I don't understand. I have
2 never heard of a misidentification on the defendant a
3 verdict was rendered on. I mean, with all due respect to
4 Mr. Gibson.

5 MR. GIBSON: Your Honor, you have got two
6 defendants, both first named Lawrence. Based on the
7 evidence that came in, I don't see how anyway that they
8 could find that he was involved in the crime, when Mr.
9 Clement said he was the one who went into the place find him
10 not guilty of armed robbery, find one who he testified did
11 not go into the place guilty.

12 THE COURT: Anything else from any other?

13 MR. FARNSWORTH: No, Your Honor.

14 MR. GIBSON: Your Honor, I have a motion to set
15 aside the verdicts as inconsistent.

16 I have a motion for a new trial.

17 THE COURT: All right. Tell me about the
18 inconsistency on the verdicts.

19 MR. GIBSON: Well, first of all, Your Honor, they
20 find him guilty of armed robbery of one individual and not
21 the other two. That's inconsistent, given the evidence that
22 came in.

23 Again, Your Honor, as evidence that came into the
24 trial of him being found not guilty on armed robbery and
25 this gentleman found guilty on armed robbery is inconsistent

1 with the evidence coming in at the trial.

2 THE COURT: Be glad to hear from the State.

3 MR. MOYER: To respond, our case -- there is a
4 case that came down I think about ten years ago that
5 inconsistent verdicts, there is no -- that is not grounds to
6 set aside a verdict. The courts have acknowledged that
7 juries sometimes compromise and give inconsistent verdicts.
8 So the fact that they find a guilty as to one person and not
9 guilty as to another person has absolutely no bearing on the
10 court's decision as to whether to let the verdict stand or
11 not. That's black letter law.

12 MR. GIBSON: Your Honor, I would amend my motion
13 to also say the verdicts were insufficient as to the
14 evidence.

15 THE COURT: All right. Does the State have a
16 position on Mr. Gibson's earlier request to find out if the
17 jury was talking about the right person?

18 MR. MOYER: Your Honor, at this time I'm not quite
19 sure how to respond to that. I think maybe my only -- my
20 only response would be if maybe just to hold the jury here
21 for a little bit and allow people to do a little research on
22 the matter. I wouldn't mind that, but at this point I don't
23 have -- I don't really have a response to that.

24 I mean, I think that the trial lasted over a day.
25 The peoples named were given obviously by multiple

1 witnesses. Lawyers stood up and testified on behalf of
2 their clients. I mean, it's hard for me to believe that a
3 jury would confuse names.

4 MR. GIBSON: Your Honor, in response to that, you
5 have got two defendants, both first named Lawrence. Their
6 full names were not used that often during this trial. In
7 fact, most of the testimony about the persons, particularly
8 from Mr. Clement, was based on nicknames that he knew them
9 as. He didn't refer to him as Lawrence. He didn't refer to
10 him as Lawrence. He referred to him as Nanu. He referred
11 to him as New Orleans.

12 It's clearly possible, based on the evidence that
13 they submitted at this trial and based on the way the
14 testimony came in and the way that Clement referred to the
15 two defendants, that this jury is confused as to who went in
16 place or what -- as to who they found not guilty and who
17 they did not find not guilty, or who they did find guilty.

18 And the other thing, Your Honor, is he never
19 really clearly identified anybody. He just said over there
20 and he pointed, you know, generally in and stuff like that.
21 There was never any clear identification of these defendants
22 in this trial.

23 Given all that, Your Honor, and given the evidence
24 that was submitted at this trial, I can't see any other
25 explanation for this verdict except that they are confused

1 as to who did what.

2 THE COURT: All right, sir.

3 They certainly would have had an opportunity to
4 ask, as you have stated -- all of you have acknowledged that
5 there has been a conscientious jury, who has deliberated
6 long and hard. They would certainly would have had an
7 opportunity to ask those questions, if they would have felt
8 it necessary.

9 All right. Let's be at ease for just a moment
10 while I study these verdict forms, and I'll be glad for your
11 input as well.

12 I did notice that there was at least one
13 inconsistency on the finding of guilt for a weapons charge
14 on Mr. Nelson. I think that they found him not guilty on
15 the kidnapping.

16 MS. MANIGAULT: Yes, sir.

17 THE COURT: Obviously that would have to be set
18 aside.

19 MS. MANIGAULT: Yes, sir.

20 THE COURT: So y'all just want to --

21 MS. MANIGAULT: Can I put a motion on?

22 THE COURT: Yes.

23 MS. MANIGAULT: I'll just wait until you come
24 back.

25 THE COURT: I'm not leaving. I'm going to stay

1 right here. If y'all just bear with me just a moment.

2 MR. MOYER: Will you hear arguments on that
3 particular issue that you just --

4 THE COURT: Yes, sir.

5 MR. MOYER: I mean, right now or --

6 THE COURT: Well, I will be glad to hear from you.

7 MR. MOYER: I don't have the case handy. I will
8 be glad to go back to my office and get it, but there is --
9 the Supreme Court has ruled that -- has acknowledged that
10 jurors sometimes have inconsistent verdicts.

11 And so the fact that they found him not guilty on
12 kidnapping, but guilty of possession of a weapon during
13 violent crime, that would not be a reason to set aside that
14 verdict, I would argue, Your Honor.

15 And, again, I can get the case and look at the
16 language, but the basis of that ruling is that jurors
17 sometimes make compromises and acknowledged that can be an
18 appropriate reaction and appropriate way for jurors to
19 handle it.

20 MS. MANIGAULT: Your Honor, since he's arguing it,
21 let me put my motion on the record, please.

22 THE COURT: All right.

23 MS. MANIGAULT: Thank you. I move that the court
24 set aside all verdicts of guilty as to my client and ask for
25 a new trial.

1 I also move, Your Honor, with the -- as far as the
2 verdict with the kidnapping not guilty and possession of a
3 weapon during a violent crime as guilty, that that verdict,
4 the guilty verdict, has to clearly be set aside, because
5 there was no violent crime. They are on the same
6 indictment. If they didn't find him guilty of that, they
7 cannot find him guilty of possession of a weapon during a
8 violent crime. That's my motion.

9 THE COURT: All right.

10 MS. MANIGAULT: And as far as the armed robbery
11 and the other weapons charges to victim Blassingame, we move
12 for that verdict to be set aside and for a new trial.

13 THE COURT: All right.

14 MS. MANIGAULT: Thank you.

15 MR. GIBSON: Your Honor, I'll also -- and this may
16 clarify -- this may be a way to confirm what their
17 understanding is. I would ask the jury be polled as to each
18 individual verdict. And during such polling, let the
19 defendant who they are talking about stand up and be
20 identified to the jury at that time.

21 THE COURT: Okay. So you are asking for a polling
22 of the jury now?

23 MR. GIBSON: Yes, Your Honor, on each -- on each
24 individual verdict.

25 THE COURT: Well --

1 MR. FARNSWORTH: Your Honor, let me say I have no
2 problem with the jurors being polled as to each indictment,
3 but I don't think that it should go any further than that by
4 saying anything to the effect are you sure this is the
5 person that you meant to find guilty. This is just -- I
6 don't think that you can do that.

7 THE COURT: All right, sir.

8 (Off the record)

9 (Back on the record)

10 THE COURT: Mr. Moyer, if you want to go get that
11 case. I don't know if you want to do that or not. It might
12 be State v. Alexander. I don't know if that's the one that
13 you are talking about.

14 MR. MOYER: Actually I think I'm going to abandon
15 my objection on that particular indictment.

16 THE COURT: Okay. I'll be glad to hear from you,
17 if you want to.

18 What we are doing now is I'm just going to wait
19 for the jury to finish their meal. They are eating, and
20 then call them back in and let them be polled.

21 MR. MOYER: Okay.

22 THE COURT: So hopefully it won't be very long.
23 If y'all want to sit tight, or you want to -- do you need to
24 go do something else? It shouldn't be more than ten
25 minutes. They already started to --

1 MS. MANIGAULT: May I review the verdict form?

2 THE COURT: Yes, ma'am.

3 MR. MOYER: May we be at ease for about ten
4 minutes or so?

5 THE COURT: You may be at ease.

6 (Whereupon, proceedings were recessed)

7 (Whereupon, proceedings were reconvened)

8 THE COURT: All right. The request has been made
9 that the jury be polled. And I understand they have just
10 had their lunch, just completed eating their lunch, so we
11 will bring them back in.

12 The clerk is going to go through each defendant
13 and read the charge as to each offense. And when she
14 completes all the charges as to that defendant, then we will
15 ask each juror by poll if that is still their verdict as to
16 each of those charges on that defendant, rather than each
17 particular case, polling on each one.

18 Then move to the next defendant, and then the
19 third defendant. And as each defendant's name is called, I
20 would ask that the defendant stand with his or her attorney
21 to face the jury as they are polled.

22 MR. GIBSON: Your Honor, for the record, I want to
23 make an exception to that. My concern is that when you
24 start reading five or six different verdicts as to each
25 defendant, that the jury may not be paying particular

1 attention and they may lose sight of the fact that they are
2 back to what they found as far as each one.

3 I would ask that they be asked each specific
4 verdict, then polled, and then to the next verdict for each
5 defendant, and down the list that way.

6 THE COURT: Okay. I'll respectfully deny that.

7 I will ask the clerk, if she would, go through
8 them slowly so that they have time to reflect on each
9 question, and then move to the next one, but I will let it
10 proceed the way that I have instructed the clerk.

11 All right. Let's bring the jury back.

12 MR. GIBSON: Your Honor?

13 THE COURT: Hang on just a minute.

14 MR. GIBSON: I would also ask that when she's
15 doing that, that each defendant and just that defendant with
16 his attorney stand up.

17 THE COURT: I said that just a minute ago.

18 MR. GIBSON: I'm sorry.

19 THE COURT: You were thinking about arguing with
20 me about that other thing.

21 MR. GIBSON: I was thinking about what I was going
22 to tell you.

23 MR. FARNSWORTH: We all stood up when the
24 verdict --

25 THE COURT: It's going to be one at a time,

1 though.

2 MR. FARNSWORTH: I understand that.

3 THE COURT: As each name is called, then with the
4 attorney, the defendant will stand. And then sit down for
5 the next one after everything is completed.

6 Okay. Let's bring them in.

7 (Whereupon, at 1:57 p.m., the jury panel returned
8 to open court)

9 THE COURT: Thank you, Mr. Foreman, ladies and
10 gentlemen. I hope that you have enjoyed your lunch that we
11 had ordered for you.

12 A request has been made that the jury be polled.
13 This is the process by which often happens in cases, and I'm
14 going to ask the clerk to read each of these charges, and
15 then she will ask you a response about that. If you will
16 just follow her directions. Listen carefully as she reads
17 each of these charges and then we will complete the polling
18 of the jury before I have an opportunity to discharge you.

19 Madam Clerk.

20 THE CLERK: Defendant Donnie Nelson.

21 As to Donnie Nelson, we, the jury, by unanimous
22 consent find the defendant Donnie Nelson as to the charge of
23 conspiracy, guilty.

24 As to the charge of kidnapping, not guilty.

25 As to the charge of possession of a weapon during

1 the commission of or attempt to commit a violent crime,
2 guilty.

3 We, the jury, by unanimous consent find the
4 defendant Donnie Nelson as to the charge of armed robbery as
5 to Grady Blassingame, guilty.

6 As to the charge of possession of a weapon during
7 the commission of or attempt to commit a violent crime,
8 guilty.

9 As to the charge of armed robbery as to Willie
10 Gambrell, not guilty.

11 As to charge of possession of a weapon during the
12 commission of or attempt to commit a violent crime, not
13 guilty.

14 As to the charge of armed robbery as to Donald
15 Smith, not guilty.

16 As to the charge of possession of a weapon during
17 the commission of or attempt to commit a violent crime, not
18 guilty.

19 Signed Michael Cannon, foreperson.

20 Ladies and gentlemen, the verdicts that I have
21 just published as to Donnie Nelson were the verdicts that
22 you reached in the jury room. I ask you were they your
23 verdicts then and are they your verdicts now.

24 As I call your names, please answer yes or no.
25 Michael Cannon?

1 JUROR NUMBER 29: Yes.
2 THE CLERK: Kathleen Bennett?
3 Juror Number 13: Yes.
4 THE CLERK: Rebecca Johnson?
5 JUROR NUMBER 86: Yes.
6 THE CLERK: Shandtorrie Nelson?
7 JUROR NUMBER 117: Yes.
8 THE CLERK: Elizabeth Brown?
9 JUROR NUMBER 23: Yes.
10 THE CLERK: Savita Nair?
11 JUROR NUMBER 116: Yes.
12 THE CLERK: Maureen Nery?
13 JUROR NUMBER 118: Yes.
14 THE CLERK: Daniel Atkins?
15 JUROR NUMBER 9: Yes.
16 THE CLERK: Willie Martino?
17 JUROR NUMBER 105: Yes.
18 THE CLERK: Willie Sullivan?
19 JUROR NUMBER 164: Yes.
20 THE CLERK: Salina Pruitt?
21 JUROR NUMBER 131: Yes.
22 THE CLERK: Ellen Chapman?
23 JUROR NUMBER 33: Yes.
24 THE CLERK: As to defendant Lawrence Waller.
25 We, the jury, by unanimous consent find the

1. defendant Lawrence Waller as to the charge of conspiracy,
2. guilty.

3. As to the charge of kidnapping, not guilty.

4. As to the charge of possession of a weapon during
5. the commission of or attempt to commit a violent crime, not
6. guilty.

7. We, the jury, by unanimous consent find the
8. defendant Lawrence Waller as to the charge of armed robbery
9. as to Grady Blassingame, guilty.

10. As to the charge of possession of a weapon during
11. the commission of or attempt to commit a violent crime, not
12. guilty.

13. As to the charge of armed robbery as to Willie
14. Gambrell, not guilty.

15. As to the charge of possession of a weapon during
16. the commission of or attempt to commit a violent crime, not
17. guilty.

18. As to the charge of armed robbery as to Donald
19. Smith, not guilty.

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21. the commission of or attempt to commit a violent crime, not
22. guilty.

23. Signed Michael Cannon, foreperson.

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25. just published as to Lawrence Waller were the verdicts that

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2 verdicts then and are they your verdicts now.

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6 THE CLERK: Kathleen Bennett?

7 JUROR NUMBER 13: Yes.

8 THE CLERK: Rebecca Johnson?

9 JUROR NUMBER 86: Yes.

10 THE CLERK: Shandtorrie Nelson?

11 JUROR NUMBER 117: Yes.

12 THE CLERK: Elizabeth Brown?

13 JUROR NUMBER 23: Yes.

14 THE CLERK: Savita Nair?

15 JUROR NUMBER 116: Yes.

16 THE CLERK: Maureen Nery?

17 JUROR NUMBER 118: Yes.

18 THE CLERK: Daniel Atkins?

19 JUROR NUMBER 9: Yes.

20 THE CLERK: Willie Martino?

21 JUROR NUMBER 105: Yes.

22 THE CLERK: Willie Sullivan?

23 JUROR NUMBER 164: Yes.

24 THE CLERK: Salina Pruitt?

25 JUROR NUMBER 131: Yes.

1 THE CLERK: And Ellen Chapman?

2 JUROR NUMBER 33: Yes.

3 THE CLERK: Lawrence Clovis.

4 We, the jury, by unanimous consent find the
5 defendant Lawrence Clovis as to the charge of conspiracy,
6 guilty.

7 As to the charge of kidnapping, not guilty.

8 As to the charge of possession of a weapon during
9 the commission of or attempt a violent crime, not guilty.

10 We, the jury, by unanimous consent find the
11 defendant Lawrence Clovis as to the charge of armed robbery
12 as to Grady Blassingame, not guilty.

13 As to the charge of possession of a weapon during
14 the commission of or attempt to commit a violent crime, not
15 guilty.

16 As to the charge of armed robbery as to Willie
17 Gambrell, not guilty.

18 As to the charge of possession of a weapon during
19 the commission of or attempt to commit a violent crime, not
20 guilty.

21 As to the charge of armed robbery as to Donald
22 Smith, not guilty.

23 As to the charge of possession of a weapon during
24 the commission of or attempt to commit a violent crime, not
25 guilty.

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3 just published as to Lawrence Clovis were the verdicts that
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9 THE CLERK: Kathleen Bennett?

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21 THE CLERK: Daniel Atkins?

22 JUROR NUMBER 9: Yes.

23 THE CLERK: Willie Martino?

24 JUROR NUMBER 105: Yes.

25 THE CLERK: Willie Sullivan?

1 JUROR NUMBER 164: Yes.

2 THE CLERK: Salina Pruitt?

3 JUROR NUMBER 131: Yes.

4 THE CLERK: And Ellen Chapman?

5 JUROR NUMBER 33: Yes.

6 THE COURT: Okay. Thank you.

7 Ladies and gentlemen, thank you very much for your
8 conscientious effort in this particular matter. As I stated
9 to you earlier, it's been an honor for me to work with you.
10 You have deliberated long and well and I am grateful for the
11 service that you have rendered. You have provided a
12 valuable service to your community by serving on this jury
13 and you have fulfilled that duty for the next three years
14 now. You should not be called upon to serve as jurors.

15 We are fortunate to live in a society that we get
16 to participate in our government. You know as citizens of
17 our community, you won't more than likely get to make an
18 executive decision, we have the three branches of government
19 - the executive, the legislative and judicial branch - and
20 unless you run for mayor of your municipality, or decide to
21 run for governor one day, or some or executive position like
22 that, you won't get to make those decisions. And the same
23 as the legislative branch. You may decide to run for city
24 council, or county council, or state legislature, or even
25 U.S. Congress, or whatever, but to pass the laws you can

1 directly do that, but as citizens we can certainly contact
2 our executive officers in our state and nation and city and
3 contact our legislators, but they are the ones who make
4 those decisions. But yesterday and today you have had a
5 direct participation in the third branch of government, the
6 judicial branch, because you have participated as a judge,
7 as a fact finder, so you should certainly feel proud of
8 yourself for the participation that you have rendered and
9 for the services that you have given to your community.

10 I have been informed that we are not going to have
11 any other trials to start this week, since we are almost at
12 the end of the week, anyhow, so you are going to be
13 discharged for the rest of the week. I appreciate so much
14 that you have been willing to participate in this case and
15 showing up for jury service this week.

16 What I stated to you before about not discussing
17 the case, I have emphasized that so much. Of course, you
18 are free to talk about the case now to family, loved ones,
19 or anyone else that you want to.

20 Oftentimes, having been a lawyer myself for many
21 years, it's helped the lawyers to want to know how they did
22 and what points they made that were positive and which were
23 negative. There may be some contact made by you by the
24 lawyers. You have a perfect prerogative to just not talk
25 about this with anybody, if you want to, or anybody that you

1 don't want to, but there is nothing the matter with the
2 lawyers giving you a contact, if they wanted to find out
3 about their performance or how they did and how they
4 represented their clients or how they represented the
5 parties in this case, but it's your decision as to whether
6 you want to talk with anybody at all.

7 And if anybody whatsoever were to contact you and
8 you don't want to talk to them and they persists and want to
9 talk to you and ask things that you don't want to talk
10 about, you continue -- as I have told you before, you
11 continue to let us know and we will take care of that matter
12 for you, because while you are free to talk, you are also
13 free not to talk about the case. And so you certainly let
14 us know if there is any contact that you don't want in the
15 days ahead.

16 You are discharged for the week. Thank you so
17 much. It's been a pleasure for me to work with you and an
18 honor. You are discharged at this time.

19 (Whereupon, at 2:08 p.m., the jury panel was
20 discharged)

21 THE COURT: All right. Any other legal matters?

22 MR. GIBSON: Your Honor, just for the record I ask
23 for a ruling on a motion for a new trial and set aside the
24 verdict.

25 THE COURT: All right. I believe the jury, as I

1 stated to them, conscientiously looked at this case. I
2 believe the decisions that were made were -- there were
3 factual bases for which they made their decisions.

4 Obviously the decisions might not have been what
5 the parties would have desired, obviously, and even what
6 might be expected, but I believe that there is sufficient
7 evidence on each of the findings that the jury has made,
8 with the exception of the finding of the possession of the
9 weapon while in the commission of a violent crime as to Mr.
10 Nelson. Based upon the motion of Ms. Manigault on that one,
11 I will set aside that, although I will be glad to hear from
12 the State on that. At one time, Mr. Solicitor, you asked
13 that to be heard on that, and I will be glad to hear from
14 you on that, if you want to have anything to tell me about
15 that.

16 MR. MOYER: On further reflection I decided to
17 abandon that objection.

18 THE COURT: I reviewed my charge and I think the
19 charge specifically says that they would have to make that
20 finding before they can find a weapons charge. I'm
21 certainly aware of the Alexander case and others that says
22 it could be inconsistent verdict. I don't think it would
23 apply to that.

24 So I'll deny your motion, Mr. Gibson, and the
25 other motions that were made similar to that from the other

1 defendants.

2 MR. GIBSON: Thank you, Your Honor.

3 THE COURT: We've got another trial going on that
4 I really need to get some activity on, plus get a bite to
5 eat real quick. I know this is not the most convenient for
6 everyone, but I trust that it would be reasonably convenient
7 if we do the sentencing in the morning, first thing.
8 Anybody got plans to be out of town tomorrow? I don't want
9 to interfere with that, or we can do it later this
10 afternoon. We need to --

11 MS. MANIGAULT: Tomorrow morning is fine with
12 defendant Nelson.

13 MR. FARNSWORTH: Tomorrow morning is fine.

14 THE COURT: Does the solicitor have any problems
15 with that?

16 MR. FARNSWORTH: The only thing, could I have just
17 one word to consult with the victims?

18 THE COURT: Yeah, see if they can be available.
19 If not, we can try to do it late this afternoon after we get
20 the other jury charged and let them deliberate.

21 (Off the record)

22 (Back on the record)

23 THE COURT: How is tomorrow?

24 MR. MOYER: It's very inconvenient for tomorrow
25 for them to be here, but they said if that's what you want

1 to do.

2 THE COURT: I just -- I need to keep this other
3 trial moving too.

4 MR. MOYER: They understand that.

5 THE COURT: I'll be glad to set a time this
6 afternoon, if I only knew.

7 MR. FARNSWORTH: Your Honor, we would prefer in
8 the morning. You know, we have schedules too, and I hadn't
9 even been to my office in three or four days, same as last
10 week and --

11 THE COURT: Let's shoot for 9:30 in the morning,
12 okay?

13 MR. MOYER: Thank you, judge.

14 MR. FARNSWORTH: Thank you, judge.

15 MR. GIBSON: Thank you, Your Honor.

16 (Whereupon, proceedings were adjourned to January
17 20, 2006)

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1 (Proceedings, January 20, 2006)

2 MR. GIBSON: Your Honor, I apologize. Mr.
3 Waller's family called me earlier and said they were having
4 some transportation problems, but they wanted to try to be
5 here. I would request on their behalf that we wait 10, 15
6 minutes.

7 THE COURT: Be glad to do that.

8 MR. GIBSON: Thank you, Your Honor.

9 THE COURT: We will wait just a couple of minutes.

10 (Off the record)

11 (Back on the record)

12 MR. GIBSON: Your Honor, she's arrived. Actually
13 it's just going to be his girlfriend.

14 THE COURT: Okay. All right. Are we ready for
15 the sentencing to be imposed?

16 MR. FARNSWORTH: Yes, Your Honor.

17 MR. MOYER: Yes, Your Honor.

18 THE COURT: Be glad to hear from you, solicitor.

19 MR. MOYER: Your Honor, there's not much to add.
20 You heard obviously all the facts of the trial.

21 The only thing I would add is the victims all told
22 me that they were sorry they were unable to be here this
23 morning, but Mr. Blassingame's wife had a doctor's
24 appointment this morning, so they had to go to that. And
25 the other two victims missed three days of work this week,

1 so they didn't feel like they could do that, but they did
2 want the court to know obviously the great interest they had
3 in the case and that they would appreciate as stiff a
4 sentence as possible given down by Your Honor.

5 THE COURT: All right.

6 Any prior records?

7 MR. MOYER: Donnie Nelson, 1998 criminal
8 possession of a controlled substance.

9 1999, unlawful possession of marijuana, two
10 counts.

11 And 2003, criminal sale of controlled substance.
12 Resisting arrest.

13 Lawrence Clovis -- and all of that was from New
14 York, that record.

15 Lawrence Clovis's record is from California, and
16 it is 1999, threatening a crime with intent to terrorize and
17 battery. They are both juvenile convictions.

18 And Lawrence Waller, his record is from New York.
19 In 1998, petty larceny.

20 2000 -- or 1999, a motor vehicle license violation
21 and false impersonation.

22 And 2002, petty larceny.

23 THE COURT: All right. Mr. Farnsworth, be glad to
24 hear from you.

25 MR. FARNSWORTH: Thank you, Your Honor.

1 If it please the court, Your Honor, Mr. Clovis,
2 they alluded to a California juvenile conviction. I think
3 it was your father that you lived out there with.

4 DEFENDANT CLOVIS: Yes.

5 MR. FARNSWORTH: His mother, grandmother, and aunt
6 are in the courtroom, Your Honor. One of them has -- one,
7 or more, has come from out of state to be here. They have
8 been here all week in support of him.

9 Your Honor, he was 17 when this incident occurred,
10 and he has been in jail I think on these charges, and these
11 charges alone, for since December the 14th, 2004, I believe.

12 THE COURT: Mr. Clovis, is there anything that you
13 wish to tell me?

14 DEFENDANT CLOVIS: No, sir.

15 THE COURT: Mr. Gibson, be glad to hear from you,
16 if you have anything to tell me about Mr. Waller.

17 MR. GIBSON: Your Honor, Mr. Waller is 26 years
18 old. He's got a girlfriend who he's been living with for
19 some time. They are practically married. With her he has
20 two kids, one six year old, one child who is just a year.

21 I know we are supposed at this point to accept the
22 facts of this case as settled, but, Your Honor, you heard
23 the case. I would just ask that you try to be as lenient as
24 possible, given the circumstances on Mr. Waller.

25 He has two children to think of. And I know he

1 should have thought about that -- assuming that the jury is
2 right, that he should have thought about that before he got
3 involved, but if the jury is right he didn't, and I would
4 just ask that you look out for them.

5 He has something that he would like to say to you.
6 And my understanding is that his girlfriend would like to
7 say something to you as well.

8 THE COURT: Be glad to hear from both of them.

9 Let me hear from the girlfriend first. If you
10 would, please state your name.

11 SHAMARA SMITH: Shamara Smith.

12 THE COURT: Ms. Smith.

13 SHAMARA SMITH: Yes.

14 THE COURT: Yes, ma'am.

15 SHAMARA SMITH: I just wanted to ask you can you
16 give him the least time as possible? We have a chance to
17 raise her daughter. He hasn't seen too much. He hasn't
18 touched her or anything, and hasn't had a chance to be in
19 his son's life and around him the right way, and so we could
20 continue our plans and get married and continue like we
21 decided to do, and just give him that chance. And I know
22 under certain circumstances that not was acceptable or
23 whatever, and I respect the victims and all that, but can
24 you just give him that chance to be a man to his kids and be
25 in their life and be in our life and continue what we had

1 going, because we moved down here to change our life and to
2 get away from all that. So I'm just asking you to give him
3 that chance again..

4 THE COURT: Thank you Ms. Smith.
5 Mr. Waller, be glad to hear from you, sir.

6 DEFENDANT WALLER: I don't know if these words
7 mean anything to you or -- but I would just like to address
8 them to the court.

9 First of all, I would like to apologize to the
10 court for this type of situation happened to be involved,
11 whether the decision was wrong or right it's by the jury in
12 my favor.

13 Your Honor, I do have a beautiful wife and two
14 beautiful children, six and 14 months old, and which one of
15 them I have been away from since she was six weeks old
16 because of this matter, which is the strongest reason for me
17 to decide to go to trial, to hopefully prove my innocence,
18 which I feel was proven, and to be home with my family again
19 and raise my children properly as a father should.

20 Lastly, Your Honor, I would like to state that --
21 well, I have never been convicted of a felony before or been
22 to prison before. In my 26 years of living I only had two
23 misdemeanor convictions, in which I may be mistaken because
24 I heard three from the solicitor. There may be three, but
25 I'm not sure.

1 Your Honor, I don't know you personally, but by
2 your conversations toward the others and your demeanor, I
3 can tell that you are a pretty honest and fair person. Like
4 I said earlier, I never intended for this to come this far
5 as for trial, but I know in my heart that I'm not a robber
6 or guilty of it.

7 That being said, please understand that the reason
8 for trial wasn't just to prove my innocence. It was mostly
9 because a true loving father would do anything, I mean
10 anything, in any situation to get back to his children, not
11 carrying if it cost him his own life, which was proven in
12 this situation. I ask that you accept and understand what I
13 have said. All I can ask is for leniency upon sentencing,
14 and please trust in me and give me one chance to be out in
15 society. I won't let you down.

16 THE COURT: Thank you Mr. Waller.

17 How much time has he served?

18 MR. GIBSON: He's been in 14 months, I believe,
19 Your Honor.

20 Do you have a date.

21 MR. MOYER: He's been in since December the 8th of
22 2004.

23 MR. GIBSON: That's correct.

24 THE COURT: Ms. Manigault, I'll be glad to hear
25 from you.

1 MS. MANIGAULT: If it please the court, Your
2 Honor, my client is 26 years old. He has two children, ages
3 seven years old and one and a half years old. He's a
4 graduate of City School, Buffalo, New York. He did take one
5 year of college prep beyond high school graduation.

6 His work was in a restaurant work, and he does
7 verify and admit to the record that the solicitor read
8 today, except with one minor exception of resisting arrest,
9 but we are not going to dispute that fact, Your Honor.

10 He's asking the court, as the court has heard all
11 the testimony from the trial, and he's asking the court for
12 leniency in sentencing in this case.

13 He's been in detention since January of 2005. I
14 think a month and a half in New York and he got to
15 Greenville in March after waiving extradition.

16 MR. MOYER: March the 29th of 2005 is when he was
17 booked into our jail.

18 THE COURT: Mr. Nelson, anything that you wish to
19 tell me?

20 DEFENDANT NELSON: Yes, sir, Your Honor.

21 THE COURT: Yes, sir.

22 DEFENDANT NELSON: First, I would like to send my
23 deepest apologies and my sorry for the victims in this case.
24 I really wish they could have been here so I could ask for
25 their forgiveness myself.

1 The jury has convicted us, but what the jury says
2 goes, so I can't -- I waived my right so I could come down
3 here and fight this case, fight my innocence. That's why I
4 didn't put up no fight for extradition, hoping that the jury
5 would see my innocence, but they didn't. That's the case
6 undoubtedly was -- I was found guilty.

7 I just -- I haven't seen my daughter, my baby,
8 since she was six months, since I was snatched up and given
9 a warrant on on these charges and then brought down here.
10 She doesn't know me. I got years of pictures from her from
11 crawling to walking. Basically just like Mr. Waller, I just
12 want a chance to see my baby. I have never been a dead-beat
13 dad. I always been in their lives, always took care of
14 them, always did what was best for them.

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

16 DEFENDANT NELSON: I just want the chance, Your
17 Honor, just a chance to be in my kids life again, to see my
18 family again. And ask that you show leniency, if you can,
19 Your Honor.

20 THE COURT: Thank you Mr. Nelson.

21 It was a tragic event for everyone. Senseless how
22 these things take place.

23 All right. This is case number 2005-GS-1248, the
24 State v. Lawrence Clovis, sentence of the court is that the
25 defendant be committed to the State Department of

1 Corrections for period of five years.

2 Case number 2005-GS-23-1197, State v. Lawrence
3 Waller, the sentence of the court is that the defendant be
4 committed to the State Department of Corrections for a
5 period of 15 years.

6 Case number 2005-GS-23-1211, the sentence is that
7 Mr. Waller be committed to the State Department of
8 Corrections for a period of five years. It's to be
9 concurrent with the previously imposed sentence.

10 Case number 2005-GS-23-4136, the State versus
11 Donnie Nelson, the sentence of the court is that the
12 defendant be committed to the State Department of
13 Corrections for a period of 17 years.

14 Case 2005-GS-23-4136, five year sentence to be
15 concurrent with the previously imposed sentence on Mr.
16 Nelson.

17 Case number 2005-GS-23-4137, the sentence is
18 commitment to the State Department of Corrections for a
19 period of five years, to be concurrent.

20 As far as the indictment against Mr. Nelson,
21 2005-GS-23-4133, the finding of the jury guilt of possession
22 of a weapon, that charge is being dismissed, judgment being
23 given for the defendant as a matter of law.

24 On all the cases each of the defendant's will be
25 given credit for time served.

1 Wish you the best, young men.

2 MS. MANIGAULT: Thank you, Your Honor.

3 MR. FARNSWORTH: Thank you, Your Honor.

4 MR. GIBSON: Thank you, Your Honor.

5 MR. MOYER: Your Honor, there is one more issue I
6 would like to put on the record.

7 THE COURT: Okay.

8 MR. MOYER: There were two rings placed into
9 evidence that were identified by the victim as belonging to
10 him. What we would ask for is a court order to substitute
11 photographs of those rings in the record for the rings
12 themselves, so the victim can get those back.

13 THE COURT: Any objection?

14 MR. GIBSON: There is from us, Your Honor, to the
15 extent that Mr. Waller would be able to get a new trial on
16 appeal, I have no idea who his trial counsel would be, and I
17 want to preserve whatever rights he may have with that, with
18 respect to that, so I -- objection. Yes, sir, I do object.

19 MS. MANIGAULT: And the same for defendant Nelson,
20 Your Honor.

21 THE COURT: All right. If there is a retrial and
22 there are no rings, does it jeopardize your client?

23 MR. GIBSON: What was that, Your Honor?

24 THE COURT: Does it jeopardize your client if the
25 State can't produce the rings?

1 MR. GIBSON: From my perspective, no, Your Honor,
2 it does not. But like again -- again I say, Your Honor, I
3 don't know who his new trial counsel would be, so I'm sort
4 of hesitant about consenting to it on the record. But from
5 my perspective, I don't -- I don't see how it would be a
6 problem. But again, Your Honor, I can't consent to that.

7 THE COURT: The State is making the motion that
8 there be photographs substituted?

9 MR. MOYER: Yes, sir. We can send somebody from
10 our forensics division to take close-up photographs.

11 THE COURT: Inside and out?

12 MR. MOYER: Yes, sir.

13 THE COURT: All over.

14 I'll grant that motion over your objection. You
15 are protected, both of you on the record, for Mr. Nelson and
16 Mr. Waller.

17 MS. MANIGAULT: Thank you, Your Honor, thank you.

18 MR. MOYER: Thank you.

19 (END OF REQUESTED TRANSCRIPT OF RECORD)
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1 CERTIFICATE

2 I, the undersigned, Michael R. Watts, Official Court
3 Reporter for the Thirteenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate and complete Transcript of Record of the
6 proceedings had and the evidence introduced in the trial of
7 the captioned case, relative to appeal, in the Court of
8 General Sessions for GREENVILLE County, South Carolina, on
9 the 17th, 18th, 19th and 20th days of January, 2006.

10 I do further certify that I am neither of kin, counsel
11 nor interest to any party hereto.

12
13
14 JULY 3, 2006

15
16
17 Michael R. Watts

18 Michael R. Watts
19 Circuit Court Reporter
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DONNIE RAYMOND NELSON,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in admitting the written statement of a cooperating State's witness when the statement did not meet the requirements of Rule 801(d)(1)(B)?

STATEMENT OF THE CASE

In May of 2005, the Greenville County Grand Jury indicted Nelson for 3 counts of armed robbery, kidnapping, 4 counts of possession of a weapon during the commission of a violent crime, 3 counts associated with the three armed robberies and one count associated with the kidnapping, and conspiracy, indictments # 2005- GS-23-4133 - 4137. On January 18, 2006, Nelson, along with two other co-defendants, proceeded to trial before the Honorable G. Edward Welmaker. One of the co-defendants, Lawrence Waller, presents the same issue in a separate brief. The jury returned verdicts of guilty on 1 count of armed robbery, 2 counts of possession of a weapon during the commission of a violent crime and conspiracy. The jury returned verdicts of not guilty on the remaining charges. Judge Welmaker dismissed the possession of a weapon charge associated with the kidnapping charge because the jury returned a verdict of not guilty of kidnapping. (R. p. 61, lines 1-9; p. 62, lines 20-23). Judge Welmaker sentenced Nelson to 17 years for the armed robbery charge, 5 years concurrent for the weapon and 5 years concurrent for the conspiracy charge. A timely notice of intent to appeal was filed on February 1, 2006. This appeal follows.

STATEMENT OF FACTS

In November of 2004, about 6:00 PM, two masked men entered Grady Blassingame's barber shop and robbed Mr. Blassingame and two of his customers. Investigator Tammy Patton with the Greenville County Sheriff's Department received information that Jarvis Clement was involved with a robbery of another barber shop, the Distinguished Gentlemen. (R. p. 51, lines 4-6). Investigator Patton learned that Clement was in jail on a forgery charge. (R. p. 44, lines 21 – p. 45, lines 1-16). Investigator Patton interviewed Clement, at the jail, and he gave a written confession to both barber shop robberies. (R. p. 51, lines 18-22). Clement told the investigators that Nanu, the guy from New York and the guy from New Orleans were involved in the robbery of Grady Blassingame's barber shop. (R. p. 51, lines 24 – p. 52, lines 1-12). At trial, Investigator Patton testified that Nanu was Lawrence Waller, the guy from New York was appellant, Donnie Nelson and the guy from New Orleans was Lawrence Clovis. (R. p. 52, lines 13-18).

According to the State's theory of the case, Waller drove Clement, Nelson and Clovis to the barber shop. The State submitted that Nelson and Clovis entered the barber shop while Waller and Clement drove around waiting. (R. p. 1, lines 3-21). After the robbery, according to the State, Nelson and Clovis get back in the car with Waller and Clement and the four men went to Clovis' house. (R. p. 2, lines 8-13).

At trial, Mr. Blassingame was unable to identify the two masked men who entered the barber shop. (R. p. 3, lines 19-24). The State's case at trial was based predominantly on the testimony of Clement. At the time of trial, Clement was awaiting sentencing for two armed robbery charges and two kidnapping charges. (R. p. 25, lines 15- p. 26, lines 1-14).

Clement admitted that the State dismissed eight armed robbery charges and six kidnapping charges against him. (R. p. 26, lines 19-23; p. 43 lines 19-21).

At the close of the State's case, the State moved to introduce, through Investigator Patton, into evidence the written statement of Clement under Rule 801(d)(1)(B) as a prior consistent statement. (R. p. 54 lines 10 – 24). Counsel for Nelson objected. (R. p. 251, line 13). The court heard arguments from counsel. (TR. pp. 55 – 60). The court admitted the statement stating, "I think the offer meets the guidelines of the rule and I think it should be allowed in, based upon 801(d), and I'm going to allow it." (R. p. 58, lines 3-5). Counsel renewed the objection. (R. p. 60, lines 6-9). The statement was marked as State's Exhibit No. 16 and admitted into evidence. (R. p. 60, lines 20-24). This appeal follows.

ARGUMENT

The trial court erred in admitting the written statement of a cooperating State's witness because the statement did not meet the requirements of Rule 801(d)(1)(B).

In analyzing the admissibility of evidence pursuant to Rule 801(d)(1)(B), SCRE, the South Carolina Supreme Court wrote:

Thus, in order for a prior consistent statement to be admissible pursuant to this rule, the following elements must be present: (1) the declarant must testify and be subject to cross examination, (2) the opposing party must have explicitly or implicitly accused the declarant of recently fabricating the statement or of acting under an improper influence or motive, (3) the statement must be consistent with the declarant's testimony, and (4) the statement must have been made prior to the alleged fabrication, or prior to the existence of the alleged improper influence or motive.

State v. Saltz, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001).

Clement's written statement is inadmissible under Rule 801(d)(1)(B).

The State sought to introduce Clement's written statement to Investigator Patton as a prior consistent statement under Rule 801(d)(1)(B). (R. p. 54, lines 10-24). The court allowed the State to introduce the statement through the State's last witness, Investigator Patton. (R. p. 60, lines 20-22). While the State failed to lay a foundation for the introduction of the statement, defense counsel objected on the ground that the statement did not qualify under Rule 801(d)(1)(B). In objecting to the admission of the statement, counsel for one of the co-defendants stated, 'Now what he's trying to do is he's trying to back door in a prior consistent statement in regards to those things. We have already addressed all of the issues that are inconsistent with his testimony, and we are not saying he fabricated all

that – or we have not made the charge toward him at this point that he fabricated that entire statement. And quite frankly, I think we have gone through just about the entire statement.” (R. p. 56, lines 2-9). Counsel for Nelson joined in that objection. (R. p. 56, lines 19-24). Explaining the objection for all the defendants, counsel stated, “And actually, Your Honor, just understanding what she [counsel for Nelson] is saying, a requirement of 801(d)(b) is that the statement be consistent with the declarant’s testimony. In this case it’s not.” (R. p. 56, lines 24 – 57, lines 1-3).

Clement’s written statement fails to meet two of the requirements for admission under Rule 801(d)(1)(B). First, Clement made the statement only after being arrested. The statement was made **after** the existence of a motive to fabricate in the hopes of receiving a lenient sentence. Clement’s statement does not meet the temporal requirement under Rule 801(d)(1)(B). In State v. Jeffcoat, 350 S.C. 392, 565 S.E.2d 321 (Ct.App. 2002) the South Carolina Court of Appeals wrote, “As a prerequisite to admissibility under 801(d)(1)(B), the party offering a prior consistent statement must demonstrate the statement was made ‘before the alleged fabrication, or before the alleged improper influence or motive arose.’” Jeffcoat at 324. In Jeffcoat, the court found the statement was properly admitted because it was made prior to the opportunity for coaching and was admitted to rebut the charges of improper influence. Clement’s statement, on the other hand, was not made prior to the existence of a motive to lie.

The court noted in State v. Fulton, 333 S.C. 359, 509 S.E.2d 819 (Ct.App. 1998):

Rule 801(d)(1)(B), SCRE is based upon its counterpart under the Federal Rules of Evidence. ‘Subsection (B) is the federal rule modified by adding the phrase ‘provided, however, the statement must have been made before the alleged fabrication, or before the alleged improper motive arose.’ This modification which is taken from the United States Supreme Court’s interpretation of Rule 801(d)(1)(B)

of the Federal Rules of Evidence in *Tome v. United States*, 513 U.S. 150, 115 S.Ct. 696, 130 L.Ed.2d 574 (1995), is somewhat similar to the limitation previously contained in the case law that a prior consistent statement is admissible only where it was made prior to the declarant's relation to the cause.

Fulton at 824. citing Note to Rule 801(d)(1)(B), SCRE.

The State failed to demonstrate that the statement was made before the alleged fabrication or before the alleged improper influence or motive arose. The statement was not admitted to rebut the allegation that Clement had a motive to fabricate in the hope of receiving a lenient sentence. Instead, the sole purpose of the State admitting Clement's statement was to rehabilitate and bolster his credibility which was called into question by the cross examination of his prior inconsistent statements. See State v. Foster, 354 S.C. 614, 582 S.E.2d 426 (2003) ("Instead, the sole purpose the State had for admitting Michelle's prior consistent statement was to rehabilitate its witness and bolster her credibility which was called into question by the cross-examination on her prior inconsistent statements. This is forbidden unless the requirements of Rule 801(d)(1)(B) are met." Foster at 431).

In addition to not meeting the temporal requirement, the statement was not consistent with Clement's trial testimony. Counsel for Nelson questioned Clement about the inconsistencies between his written statement and his trial testimony. (R. pp. 25 - 37). Clement's statement does not meet the consistent requirement under Rule 801(d)(1)(B).

Clement's written statement to Investigator Patton is inadmissible hearsay. The Statement does not meet the requirements for admissibility under Rule 801(d)(1)(B). The trial court erred in admitting the statement. The error is not harmless. "Erroneously admitted corroboration testimony is not harmless merely because it is cumulative. On the contrary, 'it is precisely this cumulative effect which enhances the devastating impact of

improper corroboration.” Saltz at 246, citing Jolly v. State, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994). But see State v. Jarrell, 350 S.C. 90, 564 S.E.2d 362 (Ct.App. 2002).

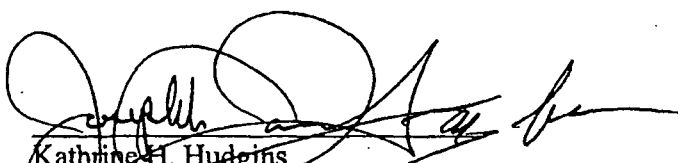
Clement was the only witness to implicate Nelson in the barber shop robbery.

The trial court erred in admitting the written statement of Clement because the statement did not meet the requirements of Rule 801(d)(1)(B).

CONCLUSION

Based on the above argument, Nelson's convictions should be reversed and the case remanded for a new trial.

Respectfully submitted,



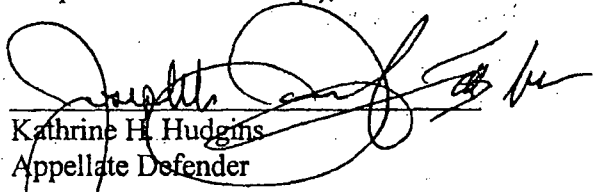
Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT.

This 26th day of November, 2007.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

November 26, 2007



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

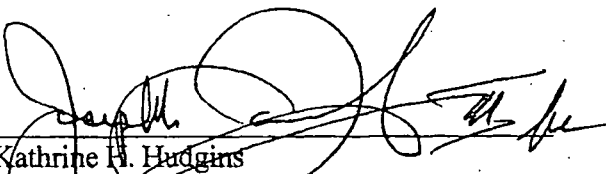
V.

DONNIE RAYMOND NELSON,

APPELLANT.

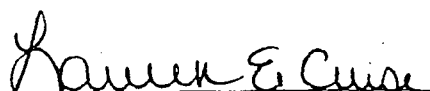
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201 this 26th day of November, 2007.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 26th day of November, 2007.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: August 23, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
G. Edward Welmaker, Circuit Court Judge

THE STATE,

Respondent,

vs.

DONNIE RAYMOND NELSON,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL¹

1. The trial court did not err in admitting the prior written statement of a cooperating State's witness based on allegations that the temporal requirement of Rule 801(d)(1)(B) was not met when this issue was not argued to the trial court, was not ruled upon, and is thus not preserved for review.

2. The trial court did not err in admitting the prior consistent written statement of a cooperating State's witness pursuant to Rule 801(d)(1)(B) when the statement was consistent with the witness's trial testimony.

¹ Appellant presented one issue on appeal; due to the preservation argument made on part of the Appellant's issue, the Respondent separate the issue into two parts.

STATEMENT OF THE CASE

For purposes of this Final Brief of Respondent, the Respondent agrees with the Statement of the Case provided by the Appellant.

ARGUMENT

1. The trial court did not err in admitting the prior written statement of a cooperating State's witness based on allegations that the temporal requirement of Rule 801(d)(1)(B) was not met when this issue was not argued to the trial court, was not ruled upon, and is thus not preserved for review.

The general rule of issue preservation states that if an issue was not raised and ruled upon below, it will not be considered for the first time on appeal. State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691(2003). Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. On v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); see also Ellie, Inc. v. Miccichi, 358 S.C. 78, 103, 594 S.E.2d 485, 498 (Ct. App. 2004) ("Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error.").

The Appellant argues that the prior consistent statement of State's witness Jarvis Clement (Clement) was improperly admitted because it did not meet the temporal requirement of Rule 801(d)(1)(B). This was not the basis of the objections before the trial court – there it was whether the testimony of Clement was consistent with his statement. It is well settled that a party cannot raise a different issue on appeal than at trial. See e.g., State v. Richardson, 358 S.C. 586, 595 S.E.2d 858 (Ct. App. 2004) (because objection at trial based on different ground than that raised on appeal, issue not preserved for review); State v. Byram, 326 S.C. 107, 485 S.E.2d 360 (1997) (party cannot argue one ground below and different ground on appeal). Therefore this issue has not been properly preserved or presented for appeal.

However, assuming *arguendo* this Court were to find the issue of whether the trial

court erred in admitting the statement based on temporal considerations has been properly presented on appeal, the State would strongly disagree with any assertion of error in the trial court's rulings. The testimony at trial indicated that Clement gave the statement when he was being held on a forgery charge and was being questioned about a robbery of a barbershop. No evidence of any promises or offers to help Clement was presented to trigger the temporal requirement, thus, the trial court properly admitted the statement pursuant to Rule 801(d)(1)(B).

The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion. State v. Tucker, 319 S.C. 425, 462 S.E.2d 263 (1995).

South Carolina Rule of Evidence 801(d)(1)(B) provides:

A statement is not hearsay if the declarant testifies at trial or hearing and is subject to cross-examination concerning the statement, and the statement is consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; provided, however, the statement must have been made before the alleged fabrication, or before the alleged improper influence or motive arose. . .

When a prior consistent statement is offered for the purpose of rebutting an express or implied charge that the witness's testimony is the result of a recent fabrication or improper influence or motive, the statement must predate any alleged improper influence or motive, even if offered for rehabilitative purposes only. State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001).

At trial, Clement testified that the armed robbery at issue in this case (Blassingame robbery) occurred in November 2004. He testified that a second armed robbery, also of a

barbershop (the Distinguished Gentleman), occurred approximately one week later. Clement stated that he was merely present for the first one, but that he actively participated in the second. (R.p.5, line 25 - p.6, line 9; p.32, lines 15 - p.34, line 24).

Clement testified that he was in jail for a forgery charge when Investigator Patton came to talk to him on December 3, 2004. He testified that he told Patton who committed the Blassingame robbery with him, although he used nicknames as he did not know the co-defendants' real names. (R.p.36, line 10 - p.37, line 4).

At the time of trial, Clement had pled guilty to conspiracy and a weapons charge and had received five years on those two charges. He had also pled guilty to two armed robbery charges and two kidnaping charges, but had not yet been sentenced on the more serious charges.² During cross-examination, defense counsel repeatedly accused Clement of lying about his participation in the robbery of Blassingame's shop in order to gain favor in sentencing. (R.p.38, line 10 - p.42, line 22). Clement was questioned as to whether or not he began "telling this story, this fable" about the co-defendants and the Blassingame robbery once he learned that his name had been given to law enforcement in connection with the Distinguished Gentlemen's robbery. Clement testified that when Patton came to see him, she asked about the Distinguished Gentlemen's robbery and that he then told her about his involvement in both robberies. (R.p.45, line 5 - p.46, line 12).

Clement further testified that when he entered his guilty plea, there were no promises, recommendations or any plea agreements as to what his sentence would be. He further testified he understood that his sentences would be completely up to a judge. (R.p.4, lines

²Clement's charges stem from both barbershop robberies.

18 - 25; p.49, line 10 - p.50, line 12).

As stated previously, the State submits that the specific issue of whether the temporal requirement necessary for admission of a prior consistent statement was met is not preserved for review. However, based on the testimony at trial, the State submits that if the Court decides to review the issue, it clearly has no merit. The only testimony elicited about the timing of Clement's statement was that it was taken on December 3, 2004, approximately two weeks after the second armed robbery. The record is devoid of any testimony that Investigator Patton or anyone else discussed any deals or leniency with Clement that would give rise to a motive for him to fabricate. Rule 801(d)(1)(B). To the contrary, Patton testified that at the time she interviewed Clement, she had been given Clement's name from a co-defendant in the Distinguished Gentlemen robbery and that it was only after she began talking to him that he admitted to the Blassingame robbery. She testified that they had no suspects in the Blassingame robbery at that time. (R.p.51, line 1 - p.52, line 8; p.53, lines 6 - 22).

The Appellant is apparently arguing that the improper motive arose when Patton came to interview him about the robberies. There is no testimony at all that the investigator said anything to Clement to induce him to fabricate. There is no testimony that she offered him any deals, or leniency, or even that she would speak to a solicitor or a judge on his behalf. Pursuant to her testimony, law enforcement did not have any suspects at all in the Blassingame robbery at the time Patton interviewed Clement. She was merely investigating the Distinguished Gentlemen robbery based upon a tip given by a co-defendant in that case. Using Appellant's logic, any time a crime is committed by more than one person, the

moment the offense occurs, a motivation to fabricate arises by virtue of the possibility of leniency through testifying against the "other guy."

In Tome v. United States, 513 U.S. 150, 115 S. Ct. 696, 130 L.Ed.2d 574 (1995), the United States Supreme Court acknowledged that in some instances it may be difficult to determine when a particular fabrication, influence, or motive arose. The Court stated, "[A] majority of common-law courts were performing this task for well over a century, (citation omitted), and the Government has presented us with no evidence that those courts, or the judicial circuits that adhere to the rule today, have been unable to made the determination." Id. at 165-66; 115 S. Ct. at 705. Here, based on the testimony presented at trial, the State submits that if there was a motive to fabricate or an improper influence, it did not arise until Clement's sentencing for armed robbery and kidnaping was deferred.

Accordingly, the State submits this issue is not preserved for review, and if the Court finds the issue is preserved, it is meritless.

2. **The trial court did not err in admitting the prior consistent written statement of a cooperating State's witness pursuant to Rule 801(d)(1)(B) when the statement was consistent with the witness's trial testimony.**

At the close of the State's case, the solicitor moved to admit Clement's statement as a prior consistent statement pursuant to Rule 801(d)(1)(B). All three co-defendants objected.³ The co-defendants all argued that Clement's testimony was inconsistent with the statement and thus it should not be admitted as a prior consistent statement. The solicitor argued that Clement admitted he did not remember making certain statements but that the statement was admissible because the defense had accused Clement of lying. The trial court found the statement met the guidelines of the rule and allowed it in. (R.p.54, line 10 - p.58, line 9).

The Appellant argues the sole purpose for offering the statement was to rehabilitate Clement's credibility. However, during Clement's cross-examination, he was asked repeatedly whether he was lying and whether he thought he would get a better sentence by testifying in the case. Thus, the statement was offered to rebut the attack against Clement that implied he only made the statement to garner favor for himself.

The Respondent submits that the prior written statement given by Clement was consistent with his trial testimony. He testified that he went to Nanu's (Lawrence Waller) house and that Lawrence Clovis and Donnie Nelson were already there. They all then got in Waller's car and drove to the barbershop. Clovis and Nelson got out and ran across the street toward the barbershop. Clement and Waller drove around the block a few times and then picked Clovis and Nelson up and went back to Waller's house. Clement testified, and

³The trial involved three co-defendants; two of whom present the same issue on appeal.

the statement also reflects, that he did not know Clovis and Nelson were going to rob the barbershop. (R.p.5, line 25 - p.24, line 23).

On cross examination, Clement indicated that he did not remember saying some things that were in the statement. (R.p.30, lines 22-25; p.47, lines 16-25; p.48, lines 8-18).

The State submits that Clement's trial testimony was consistent with his prior written statement. (See statement dated December 3, 2004). While he did not remember a few statements and even thought he did not make one statement, the statement as a whole is consistent with his testimony.

Thus, the State submits that the trial court did not err in allowing the statement to come in and requests that the convictions and sentences be affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

HENRY DARGAN MCMASTER
Attorney General

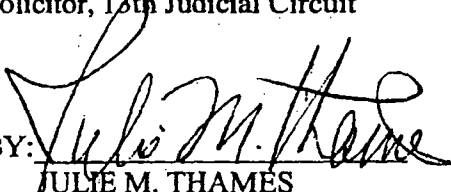
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November 26, 2007.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
G. Edward Welmaker, Circuit Court Judge

THE STATE,

Respondent,

vs.

DONNIE RAYMOND NELSON,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

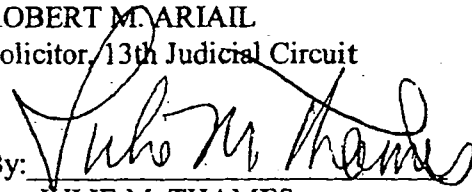
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ATTORNEYS FOR RESPONDENT

November 26, 2007.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
G. Edward Welmaker, Circuit Court Judge

THE STATE,

Respondent,

vs.

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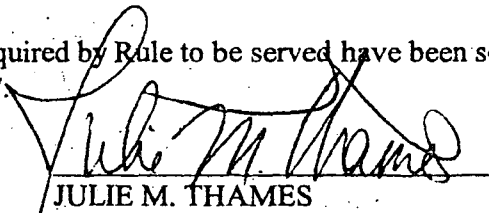
Appellant.

PROOF OF SERVICE

I, Julie M. Thames, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, Esquire
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I further certify that all parties required by Rule to be served have been served.
This 26th day of November, 2007.


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Donnie Raymond Nelson,

Appellant.

Appeal From Greenville County
G. Edward Welmaker, Circuit Court Judge

Opinion No. 4423
Submitted June 2, 2008 – Filed July 8, 2008

AFFIRMED

Appellate Defender Kathrine H. Hudgins, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
Assistant Attorney General Julie M. Thames, all of
Columbia; and Solicitor Robert Mills Ariail, of
Greenville, for Respondent.

WILLIAMS, J.: In this criminal case, we affirm the trial court's decision to admit into evidence the statement of Jarvis Clement (Clement).

FACTS

Donnie Nelson (Nelson), along with two co-defendants,¹ proceeded to trial on charges arising from the robbery of Grady Blassingame's barbershop. Investigator Tammy Patton (Patton) learned Clement was involved in the robbery of another barbershop named the Distinguished Gentlemen. Patton interviewed Clement regarding the robbery of the Distinguished Gentleman. During this interview, Clement revealed the details of the Blassingame robbery.

According to Clement, the following occurred on the day of the Blassingame robbery. Shortly after arriving at Nanu's house, Nanu drove Nelson, Clovis, and Clement to a location across the street from the Blassingame barbershop. Nelson and Clovis exited the vehicle and entered the Blassingame barbershop while Nanu and Clement drove around the block multiple times. After the robbery, the four men returned to Clovis' house.

The State moved to introduce into evidence Clement's written statement obtained by Patton. Nelson, along with the other co-defendants, objected. The trial court allowed the statement into evidence. Nelson was found guilty of one count of armed robbery, two counts of possession of a weapon during the commission of a violent crime, and one count of conspiracy to commit armed robbery. Nelson was sentenced to seventeen years imprisonment for the armed robbery charge, five years imprisonment for the weapon charges, and five years imprisonment for the conspiracy charge, all sentences to run concurrently. This appeal follows.

¹ The names of the co-defendants are Lawrence Waller, also known as Nanu (Nanu), and Lawrence Clovis (Clovis).

STANDARD OF REVIEW

In criminal cases, this Court reviews errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). An appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id. The admission of evidence is within the sound discretion of the trial court. State v. Pittman, 373 S.C. 527, 577, 647 S.E.2d 144, 170 (2007). To constitute an abuse of discretion, the conclusions of the trial court must lack evidentiary support or be controlled by an error of law. Id.

LAW/ANALYSIS

Nelson argues the trial court erroneously relied on Rule 801(d)(1)(B), SCRE, in admitting Clement's written statement.² We disagree.

Pursuant to Rule 801(d)(1)(B), SCRE, a statement is not hearsay if

[t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; provided, however, the statement must have been made before the alleged fabrication, or before the alleged improper influence or motive arose

The South Carolina Supreme Court has explained the following elements must be satisfied before a prior consistent statement can be admitted into evidence based upon Rule 801(d)(1)(B):

² The State argues this issue is not preserved for review. We disagree. An objection was raised regarding the admissibility of Clement's written statement, and the trial court allowed the statement into evidence based on Rule 801(d), SCRE. See Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (holding for an issue to be preserved for appeal it must have been raised to and ruled upon by the trial court).

(1) the declarant must testify and be subject to cross-examination, (2) the opposing party must have explicitly or implicitly accused the declarant of recently fabricating the statement or of acting under an improper influence or motive, (3) the statement must be consistent with the declarant's testimony, and (4) the statement must have been made prior to the alleged fabrication, or prior to the existence of the alleged improper influence or motive.

State v. Saltz, 346 S.C. 114, 121-22, 551 S.E.2d 240, 244 (2001).

Before we address these elements, we must first determine whether Clement is the declarant. We find Clement is the declarant because he made oral statements intended to be assertions. Rule 801(a), (b), SCRE (explaining that a statement is an oral or written assertion intended to be an assertion and an individual who makes a statement is a declarant). With this in mind, we now turn our attention to the elements set out in Saltz.

It is undisputed that Clement testified and was subject to cross-examination; thus, the first Saltz element is satisfied. With respect to the second element, opposing counsel implicitly accused Clement of acting under an improper motive or influence by accusing Clement of lying in order to gain favorable sentencing. Specifically, at the time of his interview, Clement was incarcerated for a forgery charge. As noted above, Clement was involved in the robbery of the Distinguished Gentlemen. Patton became aware of Clement through Clement's accomplice in the robbery of the Distinguished Gentlemen. Patton interviewed Clement regarding the Distinguished Gentlemen. During this interview, Clement revealed the details of the Blassingame robbery.

As a result of his involvement in the two robberies, Clement was at minimum facing the following charges: two armed robberies, two kidnappings, conspiracy, and possession of a weapon during the commission of a violent crime. At the time of the trial, Clement had been sentenced on the conspiracy charge and the possession charge, but he was still awaiting sentencing on the remaining charges. Counsel for the defense repeatedly

accused Clement of being untruthful in order to gain a more lenient sentence for the remaining charges. Thus, the second Saltz element is fulfilled.

The third element requires Clement's written statement be consistent with his trial testimony. This element is also met. In his written statement, Clement stated on the day of the Blassingame robbery he went to Nanu's house and saw Nelson there. Clement also stated Nanu drove the four-member party to a location across the street from the Blassingame barbershop, Nelson and Clovis were dropped off and entered the barbershop, and Nanu drove repeatedly around the block until Nelson and Clovis exited the barbershop and entered Nanu's car at the location where they originally exited the vehicle. Clement repeated this account during his testimony.

Although it is true during trial Clement did not remember a few of the statements he made to Patton, we recognize two years passed between Clement's statement to Patton and the trial. The trial occurred on January 18, 2006, and Clement gave his statement to Patton on January 3, 2004. We acknowledge it could be difficult for Clement to recollect every detail due to this two year time interval. Additionally, viewing Clement's statement and his testimony as a whole, we conclude his statement is consistent with his testimony.

The final element that must be met is the statement must have been made prior to the alleged fabrication or prior to the existence of the alleged improper influence or motive. Saltz, 346 S.C. at 121-22, 551 S.E.2d at 244. Nelson argues the statement to Patton was made after the existence of a motive to fabricate, namely in the hopes of receiving a lenient sentence. We disagree.

Even if we were to assume, without deciding, that Clement had an improper motive for fabricating the truth, this motive did not arise until after the statement was made. As explained above, at the time of his interview, Clement was incarcerated for a forgery charge. Clement volunteered the information concerning the robberies of the Distinguished Gentleman and the Blassingame barbershop during an interview with Patton. The record is devoid of any evidence that Patton made any offers of leniency in order to induce Clement to make the statement. State v. Serrette, 375 S.C. 650, 652,

654 S.E.2d 554, 555 (Ct. App. 2007) (stating the burden is on the appellant to provide an appellate court with an adequate record for review); see Rule 210(h), SCACR (stating an appellate court need not consider any fact which does not appear in the record). Therefore, the final Saltz element is met, and the trial court properly admitted the evidence based on Rule 801(d)(1)(B).

CONCLUSION

Accordingly, the trial court's decision is

AFFIRMED.³

THOMAS and PIEPER, JJ., concur.

³ We decide this case without oral arguments pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

G. Edward Welmaker, Circuit Court Judge

Opinion No. (S.C. Ct. App. filed 7/8/2008)

05-GS-23-4136, 4137

THE STATE,

RESPONDENT,

V.

DONNIE RAYMOND NELSON,

APPELLANT

PETITION FOR WRIT OF CERTIORARI
TO COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on 10/28/2008.

QUESTION PRESENTED

Did the Court of Appeals err in finding that a written statement made to an investigator by a co-defendant after his arrest when there existed a motive to fabricate in the hopes of receiving a lenient sentence was properly admitted in evidence through the investigator as non-hearsay pursuant to Rule 801(d)(1)(B)?

STATEMENT OF THE CASE

In May of 2005, the Greenville County Grand Jury indicted Nelson for 3 counts of armed robbery, kidnapping, 4 counts of possession of a weapon during the commission of a violent crime, 3 counts associated with the three armed robberies and one count associated with the kidnapping, and conspiracy, indictments # 2005- GS-23-4133 - 4137. On January 18, 2006, Nelson, along with two other co-defendants, proceeded to trial before the Honorable G. Edward Welmaker. One of the co-defendants, Lawrence Waller, presents the same issue in a separate brief. The jury returned verdicts of guilty on 1 count of armed robbery, 2 counts of possession of a weapon during the commission of a violent crime and conspiracy. The jury returned verdicts of not guilty on the remaining charges. Judge Welmaker dismissed the possession of a weapon charge associated with the kidnapping charge because the jury returned a verdict of not guilty of kidnapping. (R. p. 61, lines 1-9; p. 62, lines 20-23). Judge Welmaker sentenced Nelson to 17 years for the armed robbery charge, 5 years concurrent for the weapon and 5 years concurrent for the conspiracy charge. A timely notice of intent to appeal was filed on February 1, 2006.

On July 8, 2008, the South Carolina Court of Appeals affirmed the finding of the trial court. State v. Nelson, 380 S.C. 226, 669 S.E.2d 595 (S.C.Ct.App. 2008). A petition for rehearing was filed on July 23, 2008. On October 28, 2008, the Court of Appeals denied the petition for rehearing. This petition for writ of certiorari follows.

STATEMENT OF FACTS

In November of 2004, about 6:00 PM, two masked men entered Grady Blassingame's barber shop and robbed Mr. Blassingame and two of his customers. Investigator Tammy Patton with the Greenville County Sheriff's Department received information that Jarvis Clement was involved with a robbery of another barber shop, the Distinguished Gentlemen. (R. p. 51, lines 4-6). Investigator Patton learned that Clement was in jail on a forgery charge. (R. p. 44, lines 21 – p. 45, lines 1-16). Investigator Patton interviewed Clement, at the jail, and he gave a written confession to both barber shop robberies. (R. p. 51, lines 18-22). Clement told the investigators that Nanu, the guy from New York and the guy from New Orleans were involved in the robbery of Grady Blassingame's barber shop. (R. p. 51, lines 24 – p. 52, lines 1-12). At trial, Investigator Patton testified that Nanu was Lawrence Waller, the guy from New York was appellant, Donnie Nelson and the guy from New Orleans was Lawrence Clovis. (R. p. 52, lines 13-18).

According to the State's theory of the case, Waller drove Clement, Nelson and Clovis to the barber shop. The State submitted that Nelson and Clovis entered the barber shop while Waller and Clement drove around waiting. (R. p. 1, lines 3-21). After the robbery, according to the State, Nelson and Clovis get back in the car with Waller and Clement and the four men went to Clovis' house. (R. p. 2, lines 8-13).

At trial, Mr. Blassingame was unable to identify the two masked men who entered the barber shop. (R. p. 3, lines 19-24). The State's case at trial was based predominantly on the testimony of Clement. At the time of trial, Clement was awaiting sentencing for two armed robbery charges and two kidnapping charges. (R. p. 25, lines 15- p. 26, lines 1-14). Clement admitted that

the State dismissed eight armed robbery charges and six kidnapping charges against him. (R. p. 26, lines 19-23; p. 43 lines 19-21).

At the close of the State's case, the State moved to introduce, through Investigator Patton, into evidence the written statement of Clement under Rule 801(d)(1)(B) as a prior consistent statement. (R. p. 54 lines 10 – 24). Counsel for Nelson objected. (R. p. 251, line 13). The court heard arguments from counsel. (TR. pp. 55 – 60). The court admitted the statement stating, "I think the offer meets the guidelines of the rule and I think it should be allowed in, based upon 801(d), and I'm going to allow it." (R. p. 58, lines 3-5). Counsel renewed the objection. (R. p. 60, lines 6-9). The statement was marked as State's Exhibit No. 16 and admitted into evidence. (R. p. 60, lines 20-24). This petition for writ of certiorari follows.

ARGUMENT

The Court of Appeals erred in finding that a written statement made to an investigator by a co-defendant after his arrest, when there existed a motive to fabricate in the hopes of receiving a lenient sentence was properly admitted in evidence through the investigator as non-hearsay pursuant to Rule 801(d)(1)(B).

In analyzing the admissibility of evidence pursuant to Rule 801(d)(1)(B), SCRE, this Court wrote:

Thus, in order for a prior consistent statement to be admissible pursuant to this rule, the following elements must be present: (1) the declarant must testify and be subject to cross examination, (2) the opposing party must have explicitly or implicitly accused the declarant of recently fabricating the statement or of acting under an improper influence or motive, (3) the statement must be consistent with the declarant's testimony, and (4) the statement must have been made prior to the alleged fabrication, or prior to the existence of the alleged improper influence or motive.

State v. Saltz, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001).

Clement's written statement is inadmissible under Rule 801(d)(1)(B).

The State sought to introduce Clement's written statement to Investigator Patton as a prior consistent statement under Rule 801(d)(1)(B). (R. p. 54, lines 10-24). The court allowed the State to introduce the statement through the State's last witness, Investigator Patton. (R. p. 60, lines 20-22). While the State failed to lay a foundation for the introduction of the statement, defense counsel objected on the ground that the statement did not qualify under Rule 801(d)(1)(B). In objecting to the admission of the statement, counsel for one of the co-defendants stated, "Now what he's trying to do is he's trying to back door in a prior consistent statement in regards to those things. We have already addressed all of the issues that are inconsistent with his testimony, and we are not saying he fabricated all that – or we have not made the charge toward him at this point that he fabricated that entire statement. And quite frankly, I think we have gone through just about the entire statement."

(R. p. 56, lines 2-9). Counsel for Nelson joined in that objection. (R. p. 56, lines 19-24). Explaining the objection for all the defendants, counsel stated, "And actually, Your Honor, just understanding what she [counsel for Nelson] is saying, a requirement of 801(d)(b) is that the statement be consistent with the declarant's testimony. In this case it's not." (R. p. 56, lines 24 – 57, lines 1-3).

Clement's written statement fails to meet the requirements for admission under Rule 801(d)(1)(B). Clement made the statement only after being arrested and questioned in regard to the robbery of another barber shop. The statement was made **after** the existence of a motive to fabricate in the hopes of receiving a lenient sentence. Clement's statement does not meet the temporal requirement under Rule 801(d)(1)(B). Clement's motive to fabricate existed from the moment that the robbery, in which he was admittedly involved, took place. See McCray v. State, 122 Md.App. 598, 716 A.2d 302 (1998); Thompson v. State, 690 N.E.2d 224, 232 n. 8 (Ind. 1997); Bouye v. State, 699 N.E.2d 620 (Ind. 1998). At the time Investigator Patton questioned Clement about the two separate robberies, the Blassingame Barbershop robbery in which he implicated Nelson and himself and the Distinguished Gentleman Barbershop robbery in which he admitted involvement and Nelson was not involved, Clement was unsure who had implicated him. (R. p. 45, lines 5-22). At the time of his statement, Clement had every reason to shift culpability and minimize his own involvement.

In State v. Jeffcoat, 350 S.C. 392, 565 S.E.2d 321 (Ct.App. 2002) the South Carolina Court of Appeals wrote, "As a prerequisite to admissibility under 801(d)(1)(B), the party offering a prior consistent statement must demonstrate the statement was made 'before the alleged fabrication, or before the alleged improper influence or motive arose.'" Jeffcoat at 324. In Jeffcoat, the court found the statement was properly admitted because it was made prior to the opportunity for

coaching and was admitted to rebut the charges of improper influence. Clement's statement, on the other hand, was not made prior to the existence of a motive to lie.

The court noted in State v. Fulton, 333 S.C. 359, 509 S.E.2d 819 (Ct.App. 1998):

Rule 801(d)(1)(B), SCRE is based upon its counterpart under the Federal Rules of Evidence. 'Subsection (B) is the federal rule modified by adding the phrase 'provided, however, the statement must have been made before the alleged fabrication, or before the alleged improper motive arose.' This modification which is taken from the United States Supreme Court's interpretation of Rule 801(d)(1)(B) of the Federal Rules of Evidence in *Tome v. United States*, 513 U.S. 150, 115 S.Ct. 696, 130 L.Ed.2d 574 (1995), is somewhat similar to the limitation previously contained in the case law that a prior consistent statement is admissible only where it was made prior to the declarant's relation to the cause.

Fulton at 824. citing Note to Rule 801(d)(1)(B), SCRE.

The State failed to demonstrate that the statement was made before the alleged fabrication or before the alleged improper influence or motive arose. The statement was not admitted to rebut the allegation that Clement had a motive to fabricate in the hope of receiving a lenient sentence. Instead, the sole purpose of the State admitting Clement's statement was to rehabilitate and bolster his credibility which was called into question by the cross examination concerning his prior inconsistent statements. See State v. Foster, 354 S.C. 614, 582 S.E.2d 426 (2003) ("Instead, the sole purpose the State had for admitting Michelle's prior consistent statement was to rehabilitate its witness and bolster her credibility which was called into question by the cross-examination on her prior inconsistent statements. This is forbidden unless the requirements of Rule 801(d)(1)(B) are met." Foster at 431).

The Court of Appeals erred in finding that Clement's motive to lie did not arise until after he made the statement. "Even if we were to assume, without deciding, that Clement had an improper motive for fabricating the truth, this motive did not arise until after the statement was made." State v. Nelson, 380 S.C. 226, 231, 669 S.E.2d 595, 598 (S.C.Ct.App. 2008). To the

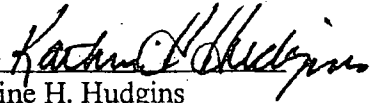
contrary, as discussed above, at the time of the statement, as Clement was being questioned about the robbery of another barber shop, unaware of who may have implicated him, Clement had every reason to shift culpability and minimize his own involvement. Additionally the Court of Appeals wrote, "The record is devoid of any evidence that [Investigator] Patton made any offers of leniency in order to induce Clement to make the statement." Id. A formal offer of leniency from Investigator Patton is not required in order to show that Clement had a motive to fabricate at the time of making the statement.

Clement's written statement to Investigator Patton is inadmissible hearsay. The Statement does not meet the requirements for admissibility under Rule 801(d)(1)(B). The trial court erred in admitting the statement. The error is not harmless. "Erroneously admitted corroboration testimony is not harmless merely because it is cumulative. On the contrary, 'it is precisely this cumulative effect which enhances the devastating impact of improper corroboration.'" Saltz at 246, citing Jolly v. State, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994). Clement was the only witness to implicate Nelson in the barber shop robbery. The Court of Appeals erred in finding that the written statement of Clement met the requirements of Rule 801(d)(1)(B).

CONCLUSION

This petition for writ of certiorari should be granted to allow further briefing on the issue.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER.

This 1st day of April, 2009

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

G. Edward Welmaker, Circuit Court Judge

Opinion No. (S.C. Ct. App. filed 7/8/2008)
05-GS-23-4136, 4137

THE STATE,

RESPONDENT,

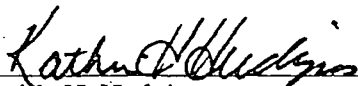
V.

DONNIE RAYMOND NELSON,

APPELLANT

CERTIFICATE OF SERVICE

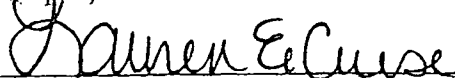
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on Julie M. Thames, Esquire, and the S.C. Court of Appeals this 1st day of April, 2009.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 1st day
of April, 2009.



Notary Public for South Carolina
My Commission Expires: August 23, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenville County
G. Edward Welmaker, Circuit Court Judge

Opinion No. 4423 (S.C. Ct. App. filed July 8, 2008)
2005-GS-23-4136, -4137

THE STATE,

Respondent,

vs.

DONNIE RAYMOND NELSON,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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The Court of Appeals correctly found that the prior written statement of a cooperating State's witness was properly admitted pursuant to Rule 801(d)(1)(B), SCRE, when any improper motive to fabricate did not arise until after the statement was made	3
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QUESTION PRESENTED

Did the Court of Appeals correctly find that the prior written statement of a cooperating State's witness was properly admitted pursuant to Rule 801(d)(1)(B), SCRE, when any improper motive to fabricate did not arise until after the statement was made?

STATEMENT OF THE CASE

For purposes of this Return to Petition for Writ of Certiorari, the Respondent agrees with the Statement of the Case provided by the Petitioner.

ARGUMENT

The Court of Appeals correctly found that the prior written statement of a cooperating State's witness was properly admitted pursuant to Rule 801(d)(1)(B), SCRE, when any improper motive to fabricate did not arise until after the statement was made.

The Respondent first submits the Court of Appeals erred in addressing this issue on the merits as it was not properly preserved.

The general rule of issue preservation states that if an issue was not raised and ruled upon below, it will not be considered for the first time on appeal. State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691(2003). Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. On v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); see also Ellie, Inc. v. Miccichi, 358 S.C. 78, 103, 594 S.E.2d 485, 498 (Ct. App. 2004) ("Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error.").

The Petitioner argued on appeal that the prior consistent statement of State's witness Jarvis Clement (Clement) was improperly admitted because it did not meet the temporal requirement of Rule 801(d)(1)(B). This was not the basis of the objections before the trial court – there it was whether the testimony of Clement was consistent with his statement. It is well settled that a party cannot raise a different issue on appeal than at trial. See e.g., State v. Richardson, 358 S.C. 586, 595 S.E.2d 858 (Ct. App. 2004) (because objection at trial based on different ground than that raised on appeal, issue not preserved for review); State v. Byram, 326 S.C. 107, 485 S.E.2d 360 (1997) (party cannot argue one ground below and different ground on appeal). Therefore this issue was not properly preserved for review and

should not have been addressed on the merits by the Court of Appeals.

However, in addressing the merits of the issue raised, the Court of Appeals correctly found that the record was devoid of any evidence that any offers of leniency were made to induce Clement to make the statement and that Clement volunteered the information concerning the robberies during an interview. The testimony at trial indicated that Clement gave the statement when he was being held on a forgery charge and was being questioned about a robbery of a barbershop. No evidence of any promises or offers to help Clement was presented to trigger the temporal requirement, thus, the trial court properly admitted the statement pursuant to Rule 801(d)(1)(B).

The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion. State v. Tucker, 319 S.C. 425, 462 S.E.2d 263 (1995).

South Carolina Rule of Evidence 801(d)(1)(B) provides:

A statement is not hearsay if the declarant testifies at trial or hearing and is subject to cross-examination concerning the statement, and the statement is consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; provided, however, the statement must have been made before the alleged fabrication, or before the alleged improper influence or motive arose. . .

When a prior consistent statement is offered for the purpose of rebutting an express or implied charge that the witness's testimony is the result of a recent fabrication or improper influence or motive, the statement must predate any alleged improper influence or motive, even if offered for rehabilitative purposes only. State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001).

At trial, Clement testified that the armed robbery at issue in this case (Blassingame robbery) occurred in November 2004. He testified that a second armed robbery, also of a barbershop (the Distinguished Gentleman), occurred approximately one week later. Clement stated that he was merely present for the first one, but that he actively participated in the second. (R.p.5, line 25 - p.6, line 9; p.32, lines 15 - p.34, line 24).

Clement testified that he was in jail for a forgery charge when Investigator Patton came to talk to him on December 3, 2004. He testified that he told Patton who committed the Blassingame robbery with him, although he used nicknames as he did not know the co-defendants' real names. (R.p.36, line 10 - p.37, line 4).

At the time of trial, Clement had pled guilty to conspiracy and a weapons charge and had received five years on those two charges. He had also pled guilty to two armed robbery charges and two kidnaping charges, but had not yet been sentenced on the more serious charges.¹ During cross-examination, defense counsel repeatedly accused Clement of lying about his participation in the robbery of Blassingame's shop in order to gain favor in sentencing. (R.p.38, line 10 - p.42, line 22). Clement was questioned as to whether or not he began "telling this story, this fable" about the co-defendants and the Blassingame robbery once he learned that his name had been given to law enforcement in connection with the Distinguished Gentlemen's robbery. Clement testified that when Patton came to see him, she asked about the Distinguished Gentlemen's robbery and that he then told her about his involvement in both robberies. (R.p.45, line 5 - p.46, line 12).

Clement further testified that when he entered his guilty plea, there were no promises,

¹Clement's charges stem from both barbershop robberies.

recommendations or any plea agreements as to what his sentence would be. He further testified he understood that his sentences would be completely up to a judge. (R.p.4, lines 18 - 25; p.49, line 10 - p.50, line 12).

The only testimony elicited about the timing of Clement's statement was that it was taken on December 3, 2004, approximately two weeks after the second armed robbery. The record is devoid of any testimony that Investigator Patton or anyone else discussed any deals or leniency with Clement that would give rise to a motive for him to fabricate. Rule 801(d)(1)(B). To the contrary, Patton testified that at the time she interviewed Clement, she had been given Clement's name from a co-defendant in the Distinguished Gentlemen robbery and that it was only after she began talking to him that he admitted to the Blassingame robbery. She testified that they had no suspects in the Blassingame robbery at that time. (R.p.51, line 1 - p.52, line 8; p.53, lines 6 - 22).

There is no testimony at all that the investigator said anything to Clement to induce him to fabricate. There is no testimony that she offered him any deals, or leniency, or even that she would speak to a solicitor or a judge on his behalf. Pursuant to Patton's testimony, law enforcement did not have any suspects at all in the Blassingame robbery at the time Patton interviewed Clement. She was merely investigating the Distinguished Gentlemen robbery based upon a tip given by a co-defendant in that case. Petitioner argues a motive to fabricate existed from the moment that the robbery occurred. Applying this logic, any time a crime is committed by more than one person, the moment the offense occurs, a motivation to fabricate arises by virtue of the possibility of leniency through testifying against the "other guy." Statements made by co-defendants would never be admissible under this theory.

In Tome v. United States, 513 U.S. 150, 115 S. Ct. 696, 130 L.Ed.2d 574 (1995), the United States Supreme Court acknowledged that in some instances it may be difficult to determine when a particular fabrication, influence, or motive arose. The Court stated, "[A] majority of common-law courts were performing this task for well over a century, (internal citation omitted), and the Government has presented us with no evidence that those courts, or the judicial circuits that adhere to the rule today, have been unable to make the determination." Id., at 165-66; 115 S. Ct. at 705. The trial judge was not presented with any argument whatsoever that the statement did not meet the temporal requirement of Rule 801(d)(1)(B). However, based on the testimony presented at trial, the Respondent submits that if there was a motive to fabricate or an improper influence, it did not arise until Clement's sentencing for armed robbery and kidnaping was deferred until after he testified at Petitioner's trial; thus, the trial court properly found the statement admissible.

The Respondent submits the Court of Appeals correctly affirmed the trial judge's ruling and this Court should deny the Petition for Writ of Certiorari.

CONCLUSION

Based on the foregoing, Respondent respectfully submits that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

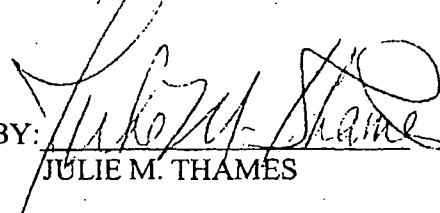
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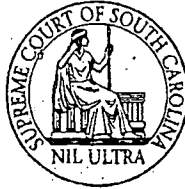
BY: 

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ATTORNEYS FOR RESPONDENT

April 30, 2009.



The Supreme Court of South Carolina

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February 5, 2010

Appellate Defender Kathrine H. Hudgins
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Nelson, Donnie Raymond
2005-GS-23-04136 and 2005-GS-23-04137

Dear Counsel:

The Court has issued the following Order on your Petition for Writ of Certiorari in the above entitled matter:

"Petition for Writ of
Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

February 5, 2010."

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

FORM 5

2010-CP-23-

6135

STATE OF SOUTH CAROLINA)

County of Greenville)Donny Raymundo Nelson)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

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 Broad River Correctional Institution
2. Name and location of Court which imposed sentence Greenville County Courthouse, 305 E. North St. Suite 210, Greenville SC 29601
3. Name(s) of co-defendant(s) (if any) Lawrence Waller, Lawrence Davis
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2005-GS-23-4136 Armed Robbery
 - (b) 2005-GS-23-04136 Poss. Weapon During Violent Crime

- (c) 2005-GS-23-4137 Criminal Conspiracy
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 1/20/06 For a term of 17 years w/credit for time served
- (b) 1/20/06 For a term of 5 years w/credit for time served
- (c) 1/20/06 For a term of 5 years w/credit for time served
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. South Carolina ~~Supreme Court~~ Court of Appeals
- iii. South Carolina Supreme Court
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. Rehearing Denied
- iii. Writ of Certiorari Denied
- (c) the date of each such result:
- i. July 8th, 2008
- ii. October 28th, 2008
- iii. February 5th, 2010
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State vs. Nelson 380, S.C. 226, 669 S.E.2d 595
- 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) Due to Inadmissible inconsistent statement
 (b) Due to not being granted a Direct Verdict due to insufficient ev
 (c) Due to Ineffective ~~insufficient~~ counsel and appellate Co

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Testimony and statement had multiple inconsistencies from the
 (b) There was no evidence but the inconsistent statement from the
 (c) My Attorney fail to object two times to the prosecutors vouching for
and my appellate Counsel never raise for argument insufficient ev
evidence

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

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. A petition was filed for a rehearing on my direct app

ii. _____

iii. _____

iv. _____

- (b) the name and location of the Court in which each was filed:

i. South Carolina Court of Appeals

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?

yes. Inadmissible inconsistent Statement

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Inadmissible Statement
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. Direct Appeal and Rehearing
- 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) Ineffective Counsel and Appellate Counsel
 (b) Insufficient Evidence to sustain a Find of Guilty and
 (c) allow a direct

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? No
 (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. Dorothy A Manigault Attorney At Law
P.O. Box 392 Greenville, S.C. 29602
 - ii. Katherine Hudgins Appellate Defense
1330 Lady St, Suite 401 Columbia, S.C. 29201
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. My Bond hearing
My Trial
 - ii. My Direct Appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:

I'm look for relief in my convictions and want
them overturned or my Direct Verdict granted

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Danny Nelson, 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.

Danny Nelson

SWORN to and subscribed before me this 15th
 day of July, 2010.

Mocha Michel (L.S.)
 Notary Public

My Commission Expires: 9-3-2014

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Donny Nelson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Donny Nelson
Applicant

SWORN or affirmed to and subscribed before me this
15th day of July, 2010.

Mischa Michel
Notary Public

My Commission Expires: 9-3-2014

PCR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Donny Raymundo Nelson,)
 a/k/a Donnie Raymond Nelson,)
 S.C.D.C. No. 313456,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2010-CP-23-6135

RETURN

RECEIVED
 CLERK OF COURT
 GREENVILLE CO. SC
 DEC 22 1 10 06

In response to the post-conviction relief application filed July 27, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the December 2005 term of General Sessions for armed robbery (2005-GS-23-4136, count 1), possession of a weapon during commission of a violent crime (2005-GS-23-4136, count 2), and criminal conspiracy (2005-GS-23-4137). Dorothy A. Manigault, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On January 20, 2006, the Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of seventeen (17) years for armed robbery, five (5) years for possession of a weapon during commission of a violent crime, and five (5) years for criminal conspiracy.

~~A notice of appeal was filed at the South Carolina Court of Appeals. Kathrine H.~~

ENTERED COMPUTER

Ab 12/28/10

Hudgins, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences on July 8, 2008. State v. Nelson, 380 S.C. 226, 669 S.E.2d 595 (Ct. App. 2008). The South Carolina Supreme Court denied the Applicant's subsequent petition for writ of certiorari by order dated February 5, 2010.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to object to vouching by the solicitor.
2. Ineffective assistance of appellate counsel:
 - a. Failed to raise the issue of insufficient evidence.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorneys rendered effective assistance well within the standard of "reasonableness within professional norms" for defense attorneys.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation

within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegations of ineffective assistance of counsel probably raise questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve these issues. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

December 20, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
2010-CP-23-06135DONNIE RAYMUNDO NELSON,
APPLICANT,)

vs.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,
RESPONDENT.)**ORIGINAL**February 29, 2012
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE:

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

W. CORY HUGHES, ESQ.
Attorney for the ApplicantKAREN C. RATIGAN, ESQ.
Assistant Attorney GeneralHOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

Page No.

(AW) DOROTHY A. MANIGAULT:	
Direct Examination by Mr. Hughes.....	19
(AW) DONNIE RAYMUNDO NELSON:	
Direct Examination by Mr. Hughes.....	23

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(Applicant' Exhibits)		
A-1	Record on Appeal.....	4	4

All Exhibits were retained by the Clerk of Court for
Greenville County.

P R O C E E D I N G S

THE COURT: Yes, ma'am, Ms. Ratigan.

MS. RATIGAN: Thank you, Your Honor.

May it please the Court.

This is the case of Donnie Nelson v. the State. The docket number is 2010-CP-23-6135. Mr. Nelson was indicted for armed robbery, possession of a weapon during the commission of a violent crime, and criminal conspiracy. He was represented on those charges by Ms. Manigault. The State brought the case to trial in January of 2006. And he was found guilty on January 20, 2006. Judge Welmaker levied concurrent sentences of 17 years for armed robbery, five years for the weapons charge, and five years for conspiracy.

A notice of appeal was filed and perfected by the Office of Appellate Defense. The Court of Appeals affirmed the convictions and sentences in July of 2008. Appellate Defense then filed a petition for writ of certiori to the Supreme Court. The Supreme Court denied that petition in February of 2010.

This application was timely filed. And the State is ready to proceed.

THE COURT: All right. Yes, sir. You may call your first witness.

MR. HUGHES: Your Honor, before I call a witness, I'd

1 just like to address the Court. Mr. Nelson filed the
2 petition for post-conviction relief on a number of
3 grounds. After meeting with him, we've narrowed those
4 down to two. One being the failure of his trial counsel
5 to object to certain vouching by the State, and the other
6 being an issue with the appellate counsel.

7 I'm not sure what records Your Honor has available to
8 argue that issue. We'd ask to admit the record on appeal
9 and the transcript from the trial.

10 Does Your Honor have those in the file?

11 THE COURT: I should.

12 MS. RATIGAN: You should have the transcript. I
13 don't know that you have the record on appeal.

14 THE COURT: I have the opinion from the Court of
15 Appeals, petition for writ of certiori, and return and
16 final brief of the appellant, and the final brief of the
17 State.

18 MR. HUGHES: And so, Your Honor, I'd ask to mark the
19 record on appeal --

20 THE COURT: Okay.

21 MR. HUGHES: -- as Petitioner's Exhibit No. 1.

22 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
23 identification and admitted into evidence.)

24 THE COURT: All right, sir.

25 MR. HUGHES: Your Honor, I don't have any witness

1 testimony on that issue. If I could just address the
2 Court on that before we proceed.

3 THE COURT: Sure.

4 MR. HUGHES: The opinion from the appellate court --
5 let me find what I did with it -- contains -- the issue
6 deals with a statement by a witness. We would argue that
7 that witnesses testimony was the only evidence in the
8 trial that would implicate Mr. Nelson, and that that
9 witnesses credibility was a key issues in that trial.

10 The Court admitted a written statement from that
11 gentleman, Mr. Clement, over the objection of trial
12 counsel. And that issue was appealed on direct appeal.
13 The opinion on that appeal contains this sentence, This
14 record is devoid of any evidence that Patton made any
15 offers of leniency in order to induce Clement to make the
16 statement.

17 Your Honor, we would argue that looking at the trial
18 transcript on Page 222 -- 226, I'm sorry, Line 5 through
19 the rest of that page was not included in the appellate
20 record. On that page, counsel for one of the other
21 defendants asked the witness about how he came to make
22 these statements to the police that implicated Mr. Nelson
23 and the other defendants.

24 The very last question, which is answered on the next
25 page, says, You got caught and knew what you had done, and

1 you made a deal with the Solicitor. You're going to look
2 out for yourself. You want to save as much time as you
3 can save, don't you? The Defendant responds -- the
4 witness responds, Yes.

5 That line of questioning on Page 226, Line 5 all the
6 way down was not included in the appellate record. We
7 would argue that had it been that the appellate court
8 would have had evidence that Patton made offers of
9 leniency in order to induce Clement to make the statement.

10 There was, also -- Your Honor, looking at Line -- or
11 Page 222 of the trial transcript, Line 16 through Line 10
12 on the next, Page 223, were, also, not included in the
13 record on appeal. Those lines, also, detail the witness
14 discussing his willingness to testify being based on a
15 deal he hopes to get from the Solicitor.

16 THE COURT: Well, the record did contain evidence
17 that counsel for the Defense repeatedly accused Clement of
18 being untruthful in order to gain a more lenient sentence
19 for the remaining charges, didn't it?

20 MR. HUGHES: Your Honor, some of that was included.
21 I would argue that the parts that were not included,
22 specifically, that the page right before it picks up on
23 Lines 22 through 25 on Page 226 would go directly to what
24 the Court of Appeals said they did not have in front of
25 them.

1 There were other examples that appellate counsel
2 could have argued that would have proven her point. But
3 all of the examples were not in there. And we feel like
4 had the Court seen all of the examples, the decision might
5 have been different.

6 THE COURT: But the excerpts that you cite to don't
7 constitute evidence that Officer Patton made any offer of
8 leniency, do they?

9 MR. HUGHES: It's not evidence that the Defendant
10 absolutely expects to be treated more leniently by the
11 Solicitor. There's no direct testimony that Officer
12 Patton said I'm going to get you a lighter sentence.

13 Although the second part I quoted you, I think it
14 does talk about he expects to get 10 to 30 years, instead
15 of what was later shown to be -- 500 and something was the
16 maximum.

17 THE COURT: So, on appeal, according to the Court of
18 Appeals, Mr. Nelson argued that the statement he made to
19 Officer Patton was made after he had a motive to
20 fabricate, the motive being the hope of a lesser sentence;
21 right?

22 MR. HUGHES: That's correct.

23 THE COURT: And that satisfies the final element of
24 the Saltz test for admissibility under Rule 801(d)(1)(b).
25 But the Court of Appeals disagreed with Mr. Nelson on the

1 ground that there was no evidence that the officer made
2 any offer of leniency in order to induce Clement to make a
3 statement.

4 MR. HUGHES: That's what the Court of Appeals said,
5 Your Honor. We argue --

6 THE COURT: So you're saying that that is an improper
7 statement of the law?

8 MR. HUGHES: No, Your Honor.

9 I'm saying that the Court of Appeals did not have the
10 entire record in front of them that would allow them to
11 see the evidence of the timing and of the motive.

12 THE COURT: But if their decision is based on the
13 fact that the officer didn't ever make any express offer
14 of leniency and there's nothing in the record -- or the
15 transcript to demonstrate that the officer did do that,
16 how could that be ineffective assistance of appellate
17 counsel? What's he supposed to do, make up something?

18 MR. HUGHES: Your Honor, if we look at the Court of
19 Appeals order, that paragraph starts, Even if we were to
20 assume without deciding that Clement had an improper
21 motive for fabricating the truth --

22 THE COURT: Well, they had already held he did;
23 right?

24 MR. HUGHES: And it said that did not arise until
25 after the statement was made. The question the Court of

1 Appeals is looking at is when was the statement made, as
2 compared to when the motive arose.

3 THE COURT: Right.

4 MR. HUGHES: We would submit that particularly Lines
5 22 through 25 on Page 226 would have helped the Court
6 clear up that timeline.

7 THE COURT: Well, what was --

8 MR. HUGHES: The motive arose and he made the
9 statement when he got caught.

10 THE COURT: All right. Well, let's back up a minute.
11 What the trial judge entered -- admitted into evidence was
12 statements made by Mr. Nelson -- excuse me, Mr. Clement --

13 MR. HUGHES: Mr. Clement, Your Honor.

14 THE COURT: -- to Mr. Patton, the officer; right?

15 MR. HUGHES: That's correct.

16 THE COURT: So these statements were obtained by
17 Officer Patton during his interview of Mr. Clement about
18 the robbery of another barbershop; right?

19 MR. HUGHES: Correct.

20 THE COURT: And then during that interview,
21 Mr. Clement revealed the details of the Blassingame
22 robbery, which is the one Mr. Nelson was convicted of.
23 And the objection to the statement coming in was that it
24 was hearsay. And then pursuant to Rule 801(d)(1)(b), the
25 trial court admitted it.

1 So just to make sure I'm understanding fully your
2 argument, because I'm not sure I do, how does the
3 chronology of his motive to create favorably with the
4 officer arise -- I mean, how does that -- how is that not
5 in existence at the time Mr. Clement [sic] interviews him
6 concerning the Distinguished Gentlemen Barbershop robbery?

7 MR. HUGHES: Your Honor, I think it has to be in
8 existence. And that's what appellate counsel was arguing
9 to the appellate court was that the motive existed before
10 the statement.

11 THE COURT: But that goes back to my original
12 question which is, you're arguing, basically, that the
13 Court of Appeals decision is wrong as a matter of law.

14 MR. HUGHES: Your Honor, I'm arguing that the record
15 that the Court of Appeals based that decision on was
16 incomplete. And that had they had a complete record, they
17 would have applied the law and seen some facts they
18 weren't allowed to see.

19 THE COURT: But they knew about the portions of the
20 record that detailed Clement's motives when he met with
21 Mr. Patton, didn't they?

22 MR. HUGHES: They knew about some of that, Your
23 Honor. I would argue that the excluded testimony brings
24 it more into focus as to when those statements were made,
25 what the motive was.

1 The Solicitor, it appeared, tried to do some repair
2 and make it seem like he -- there was no motive. And so
3 whether or not there was a motive was a question. And
4 these statements that were left out from the record would
5 have weighed in favor of there being a motive and would
6 have cleared that up. And the Court wouldn't have had to
7 make any kind of stretch to say there was a motive. It
8 arose at the time he was being questioned, because he was
9 hoping for less time. Specifically, he was hoping for 10
10 to 30 years, as opposed to the 500 and something that was
11 calculated by Mr. Farnsworth.

12 THE COURT: All right. Well, what was in the record
13 that discussed defense counsel's attempts to impeach
14 Mr. Clement about his motives when he met with Mr. Patton?

15 MR. HUGHES: Your Honor, I believe there's some
16 testimony that appears on Page 186 of the transcript that
17 did make it into the record. That's all I have marked,
18 Your Honor, that's in there. I can't tell you for sure
19 there's not more.

20 THE COURT: All right. Well, let me see what the
21 State says. I appreciate your patience with me while I
22 thought that through.

23 MR. HUGHES: Thank you, Your Honor.

24 THE COURT: Okay. Yes, ma'am, Ms. Ratigan.

25 MS. RATIGAN: We would just argue that, as Your Honor

1 has pointed out, the record on appeal did contain
2 testimony about this alleged offer of leniency from
3 Patton. And we would simply --

4 THE COURT: Where? Where is it?

5 MS. RATIGAN: While I'm flipping through, I would,
6 also, just argue that the counsel -- the pages pointed out
7 by counsel that he states should have been included in the
8 record, 222, 226, and 227, they don't have any specific
9 testimony that, you know, Patton promised me this, this is
10 what Patton said I would get. It's just kind of vague
11 testimony about, I thought I would get this, or I thought
12 I would get that.

13 We'd argue that it doesn't really go to his ultimate
14 point of if these things had been included in the record
15 on appeal, the Court could have said, ah, here is this
16 definitive testimony, this definitive testimonial evidence
17 that Patton promised him, you know, X, Y, and Z.

18 THE COURT: But they -- it does say on Page 226
19 starting on Line 17 that when he's being cross-examined by
20 one of the other defense lawyers that he's questioned
21 that, "If the police hadn't contacted you, you never would
22 have come forward and told about either one of these
23 robberies, or your story that you've given here today,
24 would you?"

25 I mean, that has to be referring to his meeting with

1 Patton, doesn't it?

2 MS. RATIGAN: Well, the State would argue that's
3 just -- it's too vague to say that that vague comment or
4 statement included in the record would not be enough to
5 say that, you know, Patton came to him and said this, or
6 he did this to please Patton, which is kind of a vague --
7 talking about the police. It's not any kind of promise of
8 leniency, which is the whole argument he made on appeal
9 was that, you know, he had this promise of leniency from
10 this particular officer, and that that statement is just
11 so vague that that would not have helped his overall
12 argument.

13 Because the Court even says, The record is devoid of
14 any evidence that Patton made any offers of leniency. And
15 so, again, we would just state that these kind of vague
16 allegations about the police don't do anything to change
17 that ultimate statement that there's -- it's devoid of
18 evidence that Patton made any offers of leniency. I mean,
19 that would just be the State's position, Your Honor.

20 THE COURT: I don't understand how his motive changes
21 between the time of the crime and the time he's arrested.

22 MR. HUGHES: Your Honor, at the time of the crime,
23 he's got no motive because he doesn't think he's going to
24 be caught. At the time he's arrested is when he has to
25 formulate a motive to get less time. He's -- he made this

1 statement after he was arrested when he starts realizing
2 what kind of time he's facing, and starts trying to chip
3 away at that.

4 THE COURT: Well, maybe I inartfully asked that
5 question. But what I'm trying to figure out is, doesn't
6 he have a motive to fabricate the truth once he commits
7 the crime?

8 MR. HUGHES: At that point, he's got a motive to
9 remain silent, Your Honor, I mean.

10 THE COURT: All right. Well, so --

11 MR. HUGHES: You don't start lying until you get
12 caught.

13 THE COURT: Oh, okay. So when he came home and his
14 wife asked him what he had been doing all day, he told
15 her.

16 MR. HUGHES: Well, I'd argue that's getting caught,
17 too.

18 THE COURT: Well, that's my point. I mean, he has
19 the motive to fabricate after the crime occurs; right?

20 MR. HUGHES: Correct, Your Honor.

21 THE COURT: So he makes a statement after the crime.

22 MR. HUGHES: That's true.

23 THE COURT: So Saltz wouldn't apply. And it wouldn't
24 be admissible based on your theory; right?

25 You're trying --

1 MR. HUGHES: I think what the Court is looking at is
2 the time of the statement compared to the time the
3 Defendant would expect to be treated more leniently by
4 talking. That's my argument.

5 THE COURT: Okay.

6 MR. HUGHES: And, you know, the issue about whether
7 this particular officer made a specific statement, I don't
8 think it's a stretch to believe that somebody involved
9 with the police informed Mr. Clement that he needed to
10 start talking and that if he didn't, he wasn't going to
11 get leniency. And I, certainly, don't think it's a
12 stretch to believe that Mr. Clement believed that, if he's
13 ever watched a television show or talked to anybody that's
14 been involved in law enforcement.

15 THE COURT: Well, it seems to me your argument is
16 with the legal analysis of the Court of Appeals. I
17 don't -- I mean, there's a lot of law on that fourth
18 element around the country, I'm sure. And I haven't read
19 the case they cite in support of their statement that
20 implies that you have to have an offer of leniency in
21 order to create a motive to fabricate. And that triggers
22 the timeline under Saltz at which your motive magically
23 appears.

24 Do you know anything?

25 MR. HUGHES: Your Honor, the case they cite is -- and

1 it's paraphrased after the citation. They cite that
2 stating that the burden is on the appellant to provide
3 appellate court with an adequate record for review.
4 That's my argument is that the Court was not provided with
5 an adequate record.

6 THE COURT: All right.. Well, I understand that.

7 MR. HUGHES: That case is not cited for the purpose
8 of saying -- you know, anything to do with the timeline or
9 the motive.

10 THE COURT: Well, that's the whole point of what
11 they're saying. I mean, that's the fourth element is the
12 timeline of when the motive arose.

13 MR. HUGHES: Your Honor, we're talking about the
14 timeline. But that particular case that Your Honor said
15 you're not familiar with, State v. Sarratt --

16 THE COURT: Yes.

17 MR. HUGHES: -- that's not in there for the purpose
18 of discussing that timeline. The Court cites that case
19 for the purpose of saying it's on the appellant to --

20 THE COURT: All right. I see.

21 MR. HUGHES: -- make the record clean.

22 THE COURT: Well, so you're telling me now that
23 you're not challenging --

24 MR. HUGHES: I'm challenging that the appellate
25 record was not complete enough for the Court to make the

1 proper decision.

2 THE COURT: Well, I mean, here is the petition for
3 writ of certiori filed by the appellate counsel. And it
4 states, "Clement's motive to fabricate existed from the
5 moment that the robbery, which he was admittedly involved,
6 took place." And it cites a case from Maryland and
7 Indiana.

8 And then it goes on to say, "At the time Investigator
9 Patton questioned Clement about two separate robberies,
10 the Blassingame robbery in which he implicated Nelson and
11 himself, and the Distinguished Gentlemen robbery, which he
12 admitted Nelson was not involved, Clement was unsure who
13 had implicated him. At the time of his statement, Clement
14 had every reason to shift culpability and minimize his own
15 involvement."

16 And then they go on to say in the petition, "A formal
17 offer of leniency from Investigator Patton is not required
18 in order to show that Clement had a motive to fabricate
19 while making a statement.". Of course, they don't have any
20 authority to back that up.

21 Well, and, you know, the State's petition for writ of
22 certiori argues that Clement's motive to fabricate did not
23 arise until Clement was sentenced for armed robbery and
24 kidnapping because it was deferred, the sentence was
25 deferred. But they don't cite any authority either.

1 Of course, the First Circuit in United States v. Awon
2 135 F.3d 96, states that it was improper to admit a prior
3 consistent statement of a prosecution witness because "the
4 motive to fabricate alleged by the defense -- desire for
5 leniency -- was the same when the Neves brothers first
6 spoke with police as at the time of their testimony at
7 trial."

8 So this is all academic. Because the Supreme Court
9 denied the writ of certiori. And, therefore, it's the law
10 of the case.

11 So your argument simply is the record was inadequate;
12 right?

13 MR. HUGHES: Yes, Your Honor.

14 And had it been adequate, the result would have been
15 different.

16 THE COURT: Okay. I understand your argument. I'm
17 sorry for that frolicking detour.

18 What's the next issue?

19 MR. HUGHES: Your Honor, the next issue is we'd
20 allege there was improper vouching of Mr. Clement by the
21 State.

22 On that issue, we'd call trial counsel, Ms. Dorothy
23 Manigault.

24 THE CLERK: Raise your right hand and place your left
25 hand on the Bible.

1 WHEREUPON,

2 DOROTHY A. MANIGAULT,
3 after first having been duly affirmed, testified as follows:

4 THE CLERK: Thank you.

5 You may be seated.

6 Please state your full name for the record.

7 THE WITNESS: Dorothy A. Manigault.

8 DIRECT EXAMINATION

9 BY MR. HUGHES:

10 Q Ms. Manigault, you represented Mr. Nelson in the
11 trial of this matter?

12 A Yes, I did.

13 Q And is it fair to say that in that case, the decision
14 against Mr. Nelson turned almost entirely on Mr. Clement's
15 testimony?

16 A Yes.

17 Q And that his credibility was a very important issue
18 in that case?

19 A Yes.

20 Q Are you aware of any other evidence against
21 Mr. Nelson that was presented to the trial court?

22 A No, just what's in the transcript.

23 Q Okay. So it was all Mr. Clement's testimony?

24 A Correct.

25 Q Given that, did you feel like -- did you consider

1 objecting at any point during the closing argument to
2 potential vouching of the credibility of that witness by
3 the Solicitor?

4 A Well, the credibility of the witnesses was purely a
5 jury decision. They could believe all of what he said,
6 none of what he said, a portion of what he said. So that
7 credibility argument, no, I did not feel necessary.

8 Q Okay. I'm just going to read you one line out of the
9 transcript. When the Solicitor asked -- or just stated,
10 And I would argue to you for several reasons -- or let me
11 back up.

12 MS. RATIGAN: What page are you on?

13 MR. HUGHES: I'm reading from Page 282 starting on
14 Line 17 -- or we'll start at Line 10.

15 BY MR. HUGHES:

16 Q The Solicitor states, So you can have two reactions
17 to this. You can have one hand say, well, we know Jarvis
18 Clement. We know Jarvis Clement wasn't a very polished
19 speaker. And we know Jarvis Clement committed some armed
20 robberies, and had a gun, and did this horrible thing, so,
21 you know, forget it. Or you can have what I argue to you
22 is a more mature response to that. And that would be
23 this, which is just let's think about it. Let's think
24 about it for a minute. Can we believe what he said? Is
25 it logical? And I would argue to you for several reasons

1 that you can.

2 First of all, do you feel that that statement by the
3 Solicitor was proper in a closing argument?

4 A Yeah. He's -- yes, I do. Again, he's talking about
5 the credibility of his own witness. And the credibility
6 issue he was trying to establish is if he's testified that
7 he's committed a robbery of another place and he's
8 testifying about a robbery that he assisted with, then he
9 must be a credible person. So that -- I thought it was a
10 proper argument.

11 Q Did you feel like -- that last statement, And I would
12 argue to you for several reasons that you can, did you
13 feel that that was the Solicitor's attempt to inject his
14 personal opinion into that?

15 A It could be viewed as that.

16 Q Did you view it as that?

17 A No, I didn't.

18 Q Okay. And is that why you didn't object to that
19 statement?

20 A I didn't feel there was a need to object.

21 Q If you did feel like that was his personal opinion
22 and he was bolstering the credibility of that witness,
23 would you have objected there?

24 A Yes.

25 Q Okay. And, now, I'm going to skip to Page 285. And

1 I'll start on Line 20 where the Solicitor says, And I
2 would argue this to you, ladies and gentlemen, the
3 inconsistencies in his statement, actually, argue to you
4 the opposite of what Defense was saying. I would argue to
5 you that he's telling the truth.

6 Again, did you feel like that was an attempt by the
7 Solicitor to insert his personal opinion and vouch for the
8 credibility of Mr. Clement?

9 A No. He was presenting the argument. I mean, he was
10 the person that did the Prosecution. He was the person
11 that presented the State's case. So the "I" there, I did
12 not feel it was --

13 Q So you feel like it was proper for the Solicitor to
14 state, I would argue to you that he's telling the truth?

15 A Yes. Because he's arguing -- I mean, yes, because he
16 was the Prosecutor.

17 MR. HUGHES: That's all the questions I have.

18 Thank you.

19 MS. RATIGAN: I have no questions for counsel. We'd
20 ask that she be relieved, if the Court allows.

21 THE COURT: Thank you, ma'am.

22 Have a good day, Ms. Manigault.

23 THE WITNESS: Thank you, Judge.

24 MR. HUGHES: Your Honor, I call my client, Mr. Donnie
25 Nelson.

1 THE COURT: Okay.

2 THE CLERK: Mr. Nelson, step around to the Bible.

3 Place your left hand on the Bible and raise your
4 right hand.

5 WHEREUPON,

6 DONNIE RAYMUNDO NELSON,

7 after first having been duly sworn, testified as follows:

8 THE CLERK: Thank you.

9 You may be seated.

10 Please state your full name for the record.

11 THE WITNESS: Donnie Nelson, Donnie Raymundo Nelson.

12 DIRECT EXAMINATION

13 BY MR. HUGHES:

14 Q Mr. Nelson, you participated in your trial?

15 A What do you mean by "participated"?

16 Q You sat through it and --

17 A Pretty much.

18 Q -- you were familiar with what was going on?

19 A Yes, I did.

20 Q And since that time, you've read through the entire
21 transcript of your trial?

22 A Yes, sir, I have.

23 Q And you're familiar with it enough that you know the
24 specific page numbers of certain arguments; is that
25 correct?

1 A I can't say exactly the page numbers. But from which
2 attorney that was on -- cross-examining or Mr. Moyer, who
3 was directing, yes, I do.

4 Q Okay. And what problems have you seen in the way
5 your trial and the appeal were handled that led you to
6 file this petition for post-conviction relief?

7 A I mean, basically, that my appellate
8 attorney -- and I noticed that she didn't use no
9 cross-examination that was brought out, no evidence,
10 period, that was brought out from the third attorney,
11 Mr. Farnsworth. That's what caused me to file for the
12 inadequate record of review.

13 If you look in the -- basically, from all the briefs
14 that she made, she used just the comments or just the
15 evidence brought out from cross-examination from my
16 lawyer, Ms. Manigault, and from Mr. Gibson. And I find
17 that kind of peculiar. Because a lot did come out from
18 Mr. Farnsworth.

19 Q And, Mr. Nelson, you heard my argument to the Court
20 that the appellate court had an incomplete record before.
21 Is that the issue you intended to raise through your
22 petition?

23 A Yes, it is.

24 Q Okay. And, from your perspective, during the trial,
25 was there any evidence presented against you, other than

1 the testimony of Mr. Clement?

2 A There was no evidence whatsoever but Mr. Clement.

3 Mr. Clement was, basically, the whole case. And without
4 Mr. Clement, I would not be here to this day, seven years
5 later trying to still fight for my innocence.

6 Q And his credibility was a key issue for the jury?

7 A It was the basis of the State's case.

8 Q The statements I read that the Solicitor made during
9 his closing argument where he would say, I believe this,
10 is it your contention that those were personal statements?

11 A Yes, it is. That's why I filed the improper
12 vouching. Because, basically, for -- Mr. Moyer,
13 basically, needed the jury to believe Mr. Clement. If
14 they didn't believe Mr. Clement, I would have walked out
15 that same day.

16 Now, when he said -- just like in State v. Gilchrist,
17 a case that I presented you, same scenario, one witness,
18 one witness holding the whole case. So, therefore, when
19 Mr. Moyer presented "I," I would, and I tell you that you
20 can, he's, basically, saying I believe him, so why not
21 you? You should, too. And it's just coming from -- I
22 mean, he's a state official. That's just like saying why
23 can't you believe a police officer.

24 Q Do you feel that without that vouching by the
25 Solicitor, you would have gotten a different result?

1 A Yes, I do.

2 Q Do you feel that if the appellate court had
3 considered the portions of the record that I pointed out
4 to the Court earlier, you might have gotten a different
5 result from the appellate court?

6 A Yes, I do.

7 MR. HUGHES: Thank you.

8 And, Your Honor, just -- I'd ask the Court to take
9 note of the language from Gilchrist v. State of South
10 Carolina. It quotes State v. Shuler explaining that the
11 Solicitor cannot vouch for the credibility of a witness by
12 expressing or implying his personal opinion concerning a
13 witnesses truthfulness.

14 BY MR. HUGHES:

15 Q Mr. Nelson, you've waited a long time for this. Is
16 there anything further you'd like to tell the Court
17 regarding this matter?

18 A I mean, I'm ready to go home. I would love to go
19 home. I'm halfway through with a 17-year sentence. I
20 think Ms. Manigault did a great job. She did do a great
21 job.

22 How are you doing, too?

23 But, yeah, I can't wait till this is over with. I
24 hope I get a chance. I hope today could be that chance.
25 But I've just got to take it as it comes like I've been

1 taking it.

2 MR. HUGHES: Thank you.

3 MS. RATIGAN: I have no cross-examination, Your
4 Honor.

5 THE COURT: Thank you, Mr. Nelson.

6 MR. HUGHES: Nothing further from the Petitioner,
7 Your Honor.

8 MS. RATIGAN: Your Honor, we've called all the
9 witnesses that are necessary. We just leave it in the
10 Court's decision.

11 THE COURT: Okay. I will take it under advisement.
12 Thank you for your presentations.

13 And I'll let you know my decision, hopefully, in the
14 next two weeks.

15 Thank you.

16 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

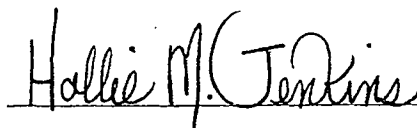
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 29th day of February, 2012.

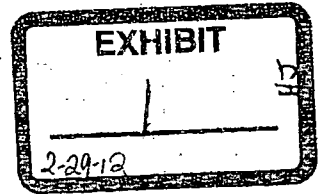
I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 7, 2013



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20



STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DONNIE RAYMOND NELSON,

APPELLANT

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1 towards Anderson Road, where Mr. Blassingame's barbershop
2 was.

3 And you are going to hear, ladies and gentlemen,
4 that Lawrence Waller drove this vehicle, and that the other
5 three men rode along with them. And you are going to hear
6 testimony in this case that when they got over to that
7 neighborhood to where the barbershop was, that they
8 parked -- that Lawrence Waller parked his vehicle a block or
9 so away from the barbershop and he let out two of the men --
10 Lawrence Clovis and Donnie Nelson. The fourth guy, Jarvis
11 Clement, stayed in the vehicle with Lawrence Waller.

12 You are going to hear that those two men in that
13 vehicle drove around the neighborhood for a short time
14 waiting while Clovis and Nelson go to commit the robbery.
15 And you are going to hear, ladies and gentlemen, that they
16 did so, that they burst in that barbershop with masks
17 covering their faces, and that immediately one of them fired
18 a shot into the ceiling, show they mean business. And you
19 are going to hear testimony in this case, ladies and
20 gentlemen, that they begin yelling "this is a robbery. Get
21 on the ground. Get on the floor."

22 And you are going to hear, ladies and gentlemen,
23 that when Mr. Blassingame, a 65 year old Mr. Blassingame
24 does not get down fast enough, that he's pushed to the
25 floor. And you are going to hear testimony that he and

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1 another person, the man whose hair he was cutting, are then
2 forced to go to the back of the barbershop. You are going
3 to hear that the men were robbed, Mr. Blassingame and
4 several of the customers, that they were placed on the floor
5 with their heads down, wondering what's going to happen to
6 them. They were robbed of cash, of jewelry, of wallets. A
7 cell phone was taken.

8 And you are going hear that just like that it's
9 over. The men run out and they go back over to that same
10 neighborhood where they were dropped off and they get in the
11 vehicle where Lawrence Waller is waiting and they drive back
12 now to Lawrence Clovis' house, which is very close by, and
13 they split up the property, split up the stolen loot.

14 Now, at the end of this trial I'm going to have a
15 chance to argue to you what the evidence was, what the
16 evidence says. At this time all I ask of you, ladies and
17 gentlemen, is just a couple of things. Just listen closely.
18 Listen closely with an open mind. Use your common sense to
19 evaluate the evidence and the testimony that you hear in
20 this case, and then at the end of this case do justice.
21 Thank you.

22 MR. FARNSWORTH: It if please the court, Your
23 Honor.

24 THE COURT: Mr. Farnsworth.

25 MR. FARNSWORTH: Mr. Foreman and ladies and

CROSS EXAMINATION BY MR. FARNSWORTH:

Q. Just one question.

The rings that you identified, one had your initials on it, is that correct?

A. Uh-huh.

MR. FARNSWORTH: Thank you.

THE COURT: Any redirect -- or excuse me, I think we have may have one further.

MR. GIBSON: If it's okay if I just ask it? It might make it simpler as opposed to having Mr. Farnsworth do it.

THE COURT: Any objection to Mr. Gibson asking another question?

MR. MOYER: No.

RECROSS EXAMINATION BY MR. GIBSON:

Q. Mr. Blassingame, you also said that you normally close your door around 6:30 during that time frame, is that correct?

A. About 6:00, 6:30, somewhere around there.

Q. So you were not normally open at 7:30 in the evening, is that correct?

A. If somebody come to the door and I know them, I let them in.

Q. But on a regular daily basis were you open at 7:30?

A. Open at 7:30?

1 A. Uh-huh.

2 Q. What could you get?

3 A. Life.

4 Q. You could get 30 years on each of those, right?

5 A. Yeah.

6 Q. So if everything got stacked on top of one another, you
7 could get essentially life, right, which is about 120 years?

8 A. Yeah.

9 Q. Or you could get -- what is the very least that you
10 could get?

11 A. I don't know, really.

12 Q. Okay. So when you pled guilty, do you remember them
13 explaining to you that the armed robbery charge carries a
14 minimum of ten years?

15 A. Uh-huh.

16 Q. And you know all that is no parole, right?

17 A. Uh-huh.

18 Q. Now, when you pled guilty to all of those charges, did
19 anyone promise you what kind of sentence that you would get?

20 A. No.

21 Q. And did you plead guilty without any recommendations or
22 any plea agreements as to what your sentence would be?

23 A. Did I have a recommendation?

24 Q. Right.

25 A. No.

1 Q. What is Classic 2?

2 A. The dealership that I used to work at.

3 Q. This place that you used to work, what kind of business
4 was it?

5 A. Car dealership.

6 Q. Where was this car dealership?

7 A. On Whitehorse Road.

8 Q. How long did y'all work together?

9 A. About a month.

10 Q. And do you remember what time of year it was that y'all
11 worked together there?

12 A. Like the summertime.

13 Q. And where did Nanu live?

14 A. Over by the DMV, Whitehorse Road.

15 Q. Over in that area?

16 A. Uh-huh.

17 Q. Did you later show this detective, Investigator Patton,
18 where that was?

19 A. Yes.

20 Q. Did you actually ride in a vehicle with her?

21 A. Yeah.

22 Q. And did you show where the exact house where she
23 lived -- where he lived?

24 A. Yeah.

25 Q. Now, how about -- let me take you then back to November

1 the 6th of 2004. Did you go to Nanu's residence on that
2 date?

3 A. On which date?

4 Q. On November 6th of 2004?

5 A. On November the 2nd?

6 Q. The 6th. November 6th.

7 A. What?

8 Q. The date of the incident at the Blassingame barbershop?

9 A. Yeah.

10 Q. How did you get over there?

11 A. I rode a bike.

12 Q. Where were you living at that time?

13 A. Over near the Bridge Road.

14 Q. Now, how far away was that from where Nanu lived?

15 A. Not too far. I don't know exactly how far it is. It
16 ain't too far, though.

17 Q. You say you rode a bike over there?

18 A. Yeah.

19 Q. How long did it take you -- did it take you awhile to
20 ride the bike over there?

21 A. No, probably about 15 minutes, 20 minutes.

22 Q. All right. Now, did you -- was there anybody else at
23 Nanu's house when you got there?

24 A. Yeah.

25 Q. Again, who were they?

A. Those two right there.

Q. Okay. And you pointed over here to the defense table?

A. Yeah.

Q. And did you know their names?

A. No.

Q. Okay. What did you know them by?

A. Called them New Orleans and New York. I don't know
their names, really.

Q. Which one did you call New York?

A. The one, right, with the braids.

Q. The one with the braids?

A. Yeah.

Q. Where is he seated?

A. Over there.

Q. Right in the corner over here?

A. Yeah, the corner.

MR. MOYER: Your Honor, I would like the record to
reflect that the defendant pointed to Donnie Nelson.

BY MR. MOYER:

Q. And who did you call New Orleans?

A. The one with the plaid.

Q. The one seated here on the end?

MR. MOYER: Your Honor, I would like the record to
reflect that he's pointed out Lawrence Clovis.

BY MR. MOYER:

- 1 Q. Now, did you know -- why did you call New York
2 did you call him that name?
- 3 A. Where he's from.
- 4 Q. How do you know that's where he's from?
- 5 A. That's what he told me.
- 6 Q. Did you know him very long?
- 7 A. No.
- 8 Q. And how did you get to meet him?
- 9 A. Through Nanu.
- 10 Q. Where did you first see New York?
- 11 A. Picked him up at a bus station.
- 12 Q. And who did you go to that bus station with?
- 13 A. Nanu.
- 14 Q. Where was the bus station?
- 15 A. Downtown Greenville.
- 16 Q. In Greenville?
- 17 A. Yeah.
- 18 Q. And was it just you and Nanu?
- 19 A. Yeah.
- 20 Q. Now, where was Nanu from?
- 21 A. New York.
- 22 Q. And what area of New York was he from?
- 23 A. Buffalo.
- 24 Q. Is that the same area where New York or Donnie Nelson
25 was from?

why

1 A. Yeah.

2 Q. Now, did they seem to know each other?

3 A. Yeah.

4 Q. From before they lived here in South Carolina?

5 A. Yeah.

6 Q. All right. Now, when you picked New York or Donnie
7 Nelson up from the bus station, where did y'all go?

8 A. We went back to Nanu's house.

9 Q. Now, do you remember exactly how long before this
10 incident at the barbershop happened that y'all went over
11 there to the Greyhound bus station to get him?

12 A. I don't understand.

13 Q. I just wondered. Do you remember about when it was
14 that y'all went to the bus station to pick up New York?

15 A. I don't know. I don't remember.

16 Q. Was it before that robbery at the Blassingame
17 barbershop, or after?

18 A. It was before.

19 Q. What was your hair like back then?

20 A. I had an afro.

21 Q. And did you keep it loose or did you have it braided?

22 A. Sometimes I had it loose. Sometimes I had it braided.

23 Q. Do you remember on November the 6th, the day of the
24 incident, whether it was braided or loose?

25 A. I think I had it in a ponytail then.

1 Q. Okay. What about New York, what was his hair like
2 then?

3 A. Which one, him?

4 Q. New York.

5 A. I think he had a fade.

6 MS. MANIGAULT: Your Honor, I don't believe the
7 witness testified that he called anybody by the name of New
8 York, but the solicitor is testifying.

9 MR. MOYER: I think it's pretty clearly he did.

10 THE COURT: I'll allow the question. I overrule
11 your objection.

12 BY MR. MOYER:

13 Q. The person that you said that you knew by the name of
14 New York, what was his hair like then?

15 A. He had a fade.

16 Q. What is a fade?

17 A. Like what I have.

18 Q. Like what you have on right now? So it's short cropped
19 hair?

20 A. Yeah.

21 Q. All right. What about New Orleans?

22 A. I can't quite remember how his hair was. It was
23 shorter than what it is. I don't know how it was, though.

24 Q. It was shorter than it is now?

25 A. Yeah.

1 Q. Is it longer than yours?

2 A. I believe so.

3 Q. All right. Now, where was New York staying here in
4 Greenville?

5 A. With Nanu.

6 Q. Did you see him over at Nanu's house?

7 A. Yeah.

8 Q. Now, what about New Orleans, where was he staying?

9 A. I think a few houses up.

10 Q. Had you ever been to his place?

11 A. Once.

12 Q. One time?

13 A. Yeah.

14 Q. Was it on November the 6th of 2004?

15 A. Yeah.

16 Q. And that's where he was staying on that day?

17 A. Yeah.

18 Q. All right. Now, so you went over to Nanu's house you
19 say on November the 6th. When you got over there, was there
20 anybody, in addition to New York and New Orleans and Nanu,
21 there at the house?

22 A. I don't remember.

23 Q. Well, did y'all stay there at that house or did y'all
24 leave and go somewhere?

25 A. We stayed there probably about 20 minutes. Then we