

Volume II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Appeal from Greenville County JUL 17 2013

D. Garrison Hill, Circuit Court Judge
S.C. Supreme Court

DONNIE NELSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213233

APPENDIX

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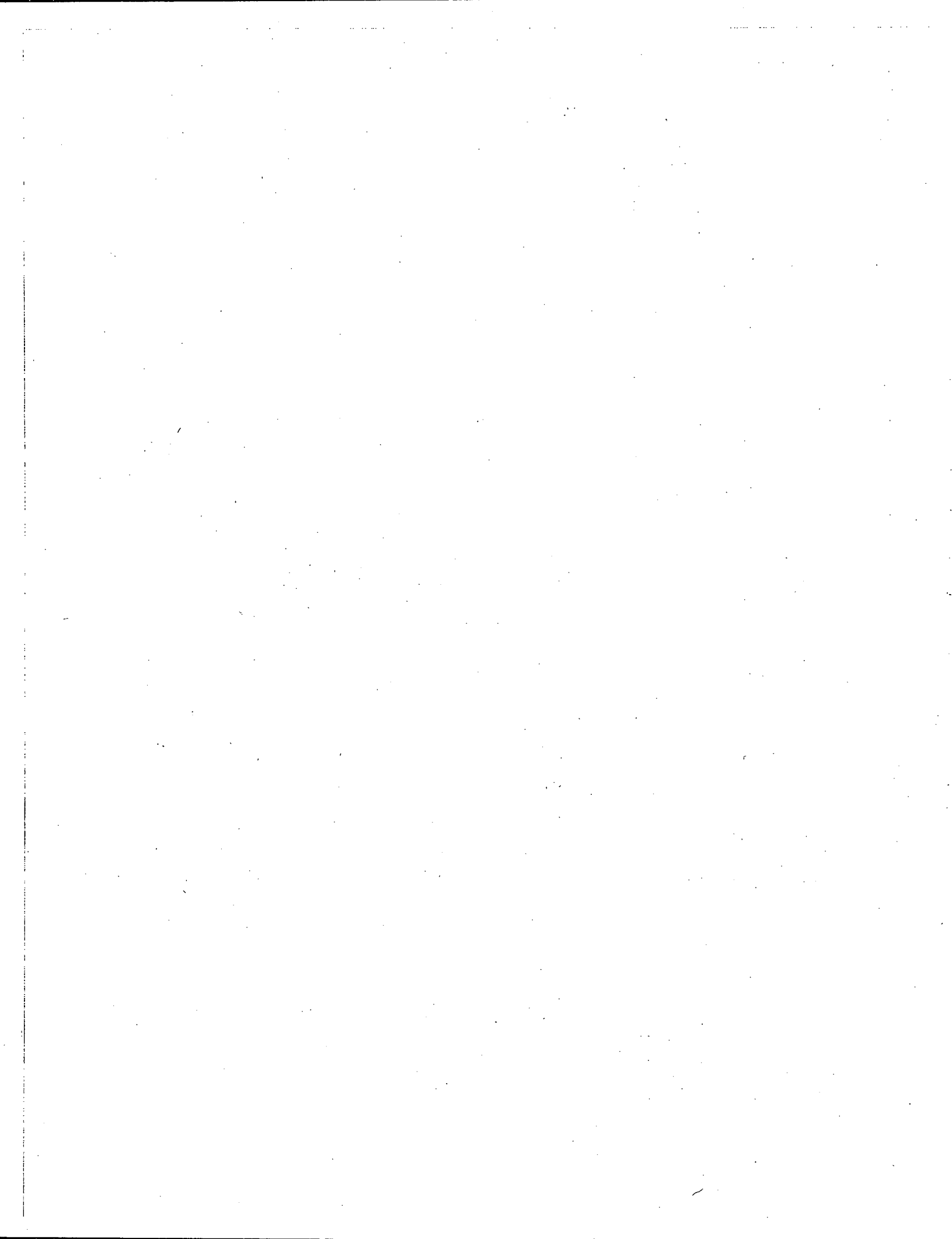
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- 1 left.
- 2 Q. Then you left?
- 3 A. Yes.
- 4 Q. And when you left, did y'all walk or how did you
- 5 A. We drove.
- 6 Q. Okay. What kind of vehicle did you drive in?
- 7 A. Jeep Cherokee.
- 8 Q. Whose vehicle was that?
- 9 A. Nanu's.
- 10 Q. Who 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
looking?

12 A. No.

13 Q. Just straight over there?

14 A. Yeah.

15 Q. Was there much talking on the way over there?

16 A. No.

17 Q. Was anyone giving Nanu directions or telling him where
to go?

18 A. No.

19 Q. So he was just driving on his own accord?

20 A. Yeah.

21 Q. All right. Now, when you got over to the area of the
barbershop, what happened?

22 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?

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A. Uh-uh.

Q. Could you see if they were holding guns or anything yet?

A. Uh-uh.

Q. All right. Now, so y'all drove around the block, and did y'all talk while you were driving around the block?

A. Uh-uh.

Q. Were you asking Nanu what's going on?

A. Not really.

Q. Did you kind of figure out what was going on?

A. Yeah, after he said that, I knew what was going on then.

Q. Now, did you have the windows up in the vehicle?

A. Yes.

Q. Did you have the radio on?

A. Yeah.

Q. How was Nanu driving around the block?

A. Like cruising.

Q. Like cruising. What do you mean cruising?

Driving slowly. Not too fast and not to slow.

Okay. And was he looking around or what was he doing?

Yeah, he was looking to see had they came back out yet.

As you were driving around the block?

Yeah.

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
with him?

A. Yeah.

Q. Did the telephone ever ring?

A. Yeah, they called him.

Q. And could you overhear the conversation?

A. No.

Q. Could you overhear what Nanu was saying?

A. He was asking them where they were.

Q. Nanu was asking where they were?

A. Yeah.

Q. Could you overhear -- could you hear what was coming
out from the other end of the --

A. No, I couldn't.

Q. What did Nanu say after he asked them where they were?

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 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.

CROSS EXAMINATION BY MS. MANIGAULT:

14 Q. Mr. Clement?

15 A. Yes.

16 Q. All right. You told the court that you had pled guilty
17 to two armed robberies, is that correct?

18 A. Yes.

19 Q. And two kidnappings?

20 A. Yes.

21 Q. One conspiracy?

22 A. Yes.

23 Q. Possession of a weapon?

24 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
Gentlemen? Is that a barbershop too?

A. Yeah.

Q. What did you do?

A. I just stood by the door.

Q. Who went in first?

A. Corey.

Q. But you fired the shop into the ceiling?

A. Yeah.

Q. Why?

A. Because I just got the idea from the other how they did
it, how they did there.

Q. You got an idea from somebody else?

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.

526
1 Q. You never gave Investigator Patton a description of who
2 you were talking about?

3 A. Not that I remember. I just told her who the guys
4 were, but I never knew their names though.

5 Q. All right. So you are saying the guy from -- the guy
6 that you are saying that you saw from New York was the first
7 time that you saw him, you picked him up at the bus station?

8 A. Uh-huh.

9 Q. And then again supposedly at the robbery?

10 A. Yeah.

11 Q. And you saw him no other time?

12 A. Yeah.

13 MS. MANIGAULT: Beg the court's indulgence, sir,
14 just a moment.

15 THE COURT: Yes, ma'am.

16 (Off the record)

17 (Back on the record)

18 MS. MANIGAULT: No further questions, Your Honor.

CROSS EXAMINATION BY MR. GIBSON:

19 Q. All right, Mr. Clement, I'm Ken Gibson. I represent
20 Mr. Waller in this case and I just want to ask you a few
21 questions and clarify some things that you said.

22 Before I do that, I just want to confirm one point.
23 You are, in fact, a liar, aren't you? You are a liar?

24 A. (Shaking head no)

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 -- isn't it true that
 16 you, in fact, pled guilty to all these things because you
 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 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 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 fable, this tale, about the three defendants at that table,
25 is that correct?

1 A. They asked. He brought that up to me too.

2 Q. What do you mean they brought that up to me too?

3 A. The one who told on me, he told about the incident
4 about what they did, because he was my co-defendant.
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 some guy implicating
8 you --

9 A. Yeah.

10 Q. -- that's when you told this tale about them, is that
11 correct?

12 A. Yeah.

13 Q. Now, this co-defendant, he wasn't around 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 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 Nanu 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 That's not in fact true?

23 A. No.

24 Q. You didn't say that?

25 A. No, I don't remember saying that.

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 tell me about
 11 this phone call that took place. Just let me know where
 12 is and I'll -- just refer me right to it.

13 A. It ain't 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 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 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 Gentlemen.

7 Q. And you got that -- when you got that information, did
8 you go speak to Jarvis Clement?

9 A. Yes, I did.

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 2004.

18 Q. When y'all 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 Nanu, and then it was the
12 guy from New York and the guy from New Orleans.

13 Q. And Nanu 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 Clóvis.

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 -- initially 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 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)(d), Your Honor, this
22 would be admissible as prior consistent 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 is
23 offered to rebut an express or implied charge against the
24 declarant of recent fabrication or improper influence or
25 motive." With that said, Your Honor, we are not saying that

1 the consistent parts of his testimony are fabricated.

2 Now, what he's trying to do is he's trying to back
3 door in a prior consistent 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. Clement has denied
21 several things in that statement that he said he now did not
22 say. And we would ask the court not to allow that statement
23 in on that ground and on the ground that Mr. Gibson has
24 stated for us.

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 admitted that he
11 didn't remember making certain statements in the statement.
12 That has nothing to do with whether or not this is a
13 statement or not. He said yes, that's my signature, and,
14 yes, that's my statement, and I gave my statement to
15 Investigator Patton.

16 Now, the whole point of this rule is that when the
17 defense is attacking the credibility of a witness and trying
18 to say that that witness is making things up, then that
19 prior consistent statement has a right to come in to rebut
20 that. That's the whole case, Your Honor. I mean, the
21 defense is standing up there calling him a liar. So, yes,
22 they are attacking his credibility and they are attacking --
23 they are saying that he is making fabrications in court.

24 Now, the whole point of that is that when that
25 happens, that a statement that shows prior consistencies is

1 allowed in. That's -- that's all this is. That's exactly
2 what it is.

3 THE COURT: I think the offer meets the guideline
4 of the rule, and I think it should be allowed in, based on
5 801 (d), 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, that
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 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 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.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

04-094613/ 04-153761 15:25 12-03-04

Jarvis Dante Clement
Det. W.C. Bruce

do hereby give freely and voluntarily this statement to
and Investigator T. L. Patton/GCSO

who have identified themselves to me to be Officers of the Greenville City Police Department, Greenville, South Carolina. I have been advised that I do not have to make this or any other statement, and that what I say can be used against me in a Court of Law. I have been advised that I have the right to Counsel with an Attorney of my choice, that if I am financially unable to obtain an Attorney the Court will appoint an Attorney to represent me. I have not been threatened or promised any reward to make this statement.

I am, _____ years old and I reside at _____
I have a 20 grade education, and I can read and write.

Identifying Information: DOB: _____ /SSN: _____ I am not under the influence of any alcohol or drugs at this time and I know what I am doing. *****

I am currently in Greenville County Detention serving a thirty day sentence on a Forgery Warrant on November 17, 2004. On today's date Detective Bruce and Investigator Patton came to detention and Detective Bruce served me with a Armed Robbery and Kidnapping warrant on a barber shop. I don't remember what day but I was hanging with these dudes from New York but they gone back now. I don't know the guy's name but his street name was Nanu. I used to work with him at Classy's II on Whitehorse Road. I has closed down now and I never knew his name. I was four of us-me, Nanu, the other guy from New York, I don't know his name and another guy from New Orleans. I didn't know this name wither, I just ended up getting with them and they already had it planned. I had come over to Nanu's house-he lives over by the DMV off Whitehorse, the same road it's on but around the curve and make a right and then another left and down the hill. I'm not sure of the street name but the house looks like a light colored vinyl sided duplex house. Nanu lives on the right side of the duplex and he has black Cherokee Jeep and the other one is a Ford Escape. I had gone over to Nanu's house to see him and his friend from New York had just got there. Me and Nanu had picked him up from the bus station downtown a week before. I never knew his name but he said he had came here to get away for a while. I never saw him or the guy from New Orleans that went in the barber shop on Anderson Road until the robbery. They guy from New York told me that they were going to do something at around 7:30 that night and I what were they going to do and he said to just ride with them. He didn't want to tell me what they were going to do but I went with them anyway. We left the house in the Cherokee Jeep and went to Anderson Road and he had let the guy from New York and the guy from New Orleans out across the street from the barber shop on Anderson Road. They crossed the street and I saw them go in. At the time I didn't think anything about it but when we rode back around, my man Nanu said, "oh, shit they doing it." I asked what and he said, "they robbing the place." Me and Nanu rode the block a couple of times and we seen them come out. When they came out they had scarves over their faces and they were running down Anderson. We had circled the block again and were on a side street next to a church and Nanu let them back in. We drove back to Nanu's house. I was sitting in the back seat and the guy from New York got in the passenger seat and the guy from New Orleans got in the back seat next to me. The first thing the guy from New York said was that he didn't know but he didn't want this to get out because the other guy from New Orleans had to stay down here but he was going back to New York. I didn't say anything to anybody because I knew I was going to have to ride with them.

We went back to Nanu's house and they exchanged the money they had got or whatever. The guy from New York gave me two rings. One was a diamond ring the other had initial "GB" on it. After everything was split up, the guy from New York took a black gun from his pocket and placed it on the counter. My man Nanu asked if they were going to give me some of the money and the guy from New York asked Nanu for the money. Nanu said because I was there but then the guy from New York said I just popped up on them and I was not supposed to be there. That's why I got the rings. I took the rings home to my brother's house and that's where they are now. I never saw any of the money. The guy from New York took me home after that and I haven't seen them since then.

I was also robbed Distinguished Gentleman, I was with Corey and Mark Williams. I knew them from the neighborhood because I used to live there. A couple of weeks after Anderson Road, I was at Mark's house talking about hitting a lick. A lick is a robbery. I had told them about Anderson Road and I told them how the guy from New York had did his and then I told them how to do Distinguished Gentleman. They thought it out and he was one the who decided to go in and ask about the CD's. Mark told me he had went in there earlier, I guess he was trying to figure out what time they closed or whatever. After I told him about that first lick, that's what made him want to do this lick over

I have read the above statement of _____ pages and it is true and correct as best I recall.

WITNESS: [Signature] #571/622/PCO
[Signature] (57)

Jarvis Clement
I HAVE RECEIVED A COPY OF THIS STATEMENT
Jarvis Clement

WITNESSES

PATTON

Whaley

GCSO

03/29/2005

ARREST WARRANT NUMBER

1341264

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

GUILTY Armed Robbery

GUILTY Possession of a weapon

Foreperson of Petit Jury

1/2/05
Date:

DOCKET NO. 2005-GS-23-004136

AMENDED INDICTMENT LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

DECEMBER TERM 2005

THE STATE

GUILTY
Count 1 & 2

VS.

DONNIE RAYMOND NELSON

0139

Indictment for

0549

ARMED ROBBERY AND POSSESSION OF A WEAPON DURING THE COMMISSION OF OR THE ATTEMPT TO COMMIT A VIOLENT CRIME

VIOLATION § 16-11-330

§ 16-23-490

Certified Copy
Paul R. B. U. J. DeLoach
Clerk of Court C.P. & G.S.
Greenville County, SC
Printed 1/24/05

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE) **INDICTMENT FOR**
) **ARMED ROBBERY AND POSSESSION OF A WEAPON**
) **DURING THE COMMISSION OF OR THE ATTEMPT TO**
) **COMMIT A VIOLENT CRIME**

At a Court of General Sessions, convened on DECEMBER 13, 2005 the
 Grand Jurors of Greenville County present upon their oath:

COUNT ONE - ARMED ROBBERY

That DONNIE RAYMOND NELSON did in Greenville County, on or about the 6th day of November, 2004, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believed to be a deadly weapon, take by means of force or intimidation, goods or monies described as: jewelry and/or cash money from the person or presence of Grady Blassingame. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO - POSSESSION OF A WEAPON DURING THE COMMISSION OF OR THE ATTEMPT TO COMMIT A VIOLENT CRIME

That DONNIE RAYMOND NELSON did in Greenville County, on or about the 6th day of November, 2004, possess or visibly display a pistol during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

J. Mark Hines
 SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

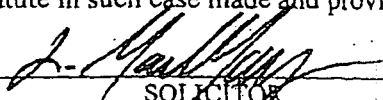
INDICTMENT FOR
CONSPIRACY

At a Court of General Sessions, convened on MAY 24, 2005 the Grand

Jurors of Greenville County present upon their oath:

That DONNIE RAYMOND NELSON did in Greenville County, on or about the 6th day of November, 2004, willfully and unlawfully combine with Lawrence Waller, Jarvis Clement and/or Lawrence Clovis for the purpose of accomplishing an unlawful object or a lawful object by unlawful means, to wit: Armed Robbery. This is in violation of §16-17-410 of the South Carolina Code of Laws (1976) as amended.

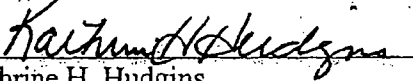
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

November 5th, 2007


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2010-CP-23-6135
COUNTY OF GREENVILLE)	
)	
Donny Raymundo Nelson,)	
a/k/a Donnie Raymond Nelson,)	
S.C.D.C. No. 313456,)	
)	
Applicant,)	
)	ORDER OF DISMISSAL
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 27, 2010. The Respondent made its return on December 20, 2010. An evidentiary hearing into the matter was convened on February 29, 2012 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by W. Cory Hughes, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Dorothy A. Manigault, Esquire. The Court had before it the trial transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, the Respondent's return, and the appellate records (specifically, the Record on Appeal submitted to the South Carolina Court of Appeals).

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to

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orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the December 2005 term of the Greenville County Grand Jury 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). He was represented by Dorothy A. Manigault, Esquire.

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. 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 petition for writ of certiorari by order dated February 5, 2010.

ALLEGATIONS

In his application, 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the

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P/H

opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Trial Counsel

In a post-conviction relief action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "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).

The Applicant stated trial counsel failed to object when the State vouched for a witness – Jarvis Clement – in closing argument.

Trial counsel testified she did not believe the State vouched for Clement during closing argument. Trial counsel testified she believed the assistant solicitor did not present a personal opinion and was just presenting his argument to the jury. Trial counsel testified witness

credibility is a jury decision and they can choose to believe any part of a witness's testimony.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected during the State's closing argument. The Applicant points to two (2) sections of the State's closing argument as evidence of vouching. (Trial transcript, p.282, lines 10-19; p.285, lines 20-23). This Court finds the solicitor was not vouching for Clement when making these statements. This Court finds the solicitor did not offer his personal opinion about Clement's credibility or vouch for his testimony in any way. See Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004) ("A prosecutor improperly vouches for a witness' credibility and places the government's prestige behind a witness by making explicit personal assurances, or indicating that information not presented to the jury supports the testimony.").

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Ineffective Assistance of Appellate Counsel

A defendant is constitutionally entitled to effective assistance of appellate counsel. See Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830 (1985). In analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009).

The Applicant stated appellate counsel was ineffective because she failed to submit a

proper Record on Appeal. The Applicant's counsel argued appellate counsel failed to include several pages of the trial transcript in the Record on Appeal. The Applicant's counsel argued the omission of these pages would have further illustrated Clement's motives when he met with Officer Patton.

This Court finds the Applicant failed to meet his burden of proving appellate counsel was ineffective. The Applicant pointed to three (3) pages in the trial transcript and argued they should have been included in the Record on Appeal. These pages are from a co-defendant's cross-examination of Clement and were statements that Clement: did not include crucial information in his statement, had a ten to thirty year recommendation from the State, and was facing a total possible sentence of 520 years. (Trial transcript, pp.222-23; p.226). This Court finds appellate counsel did include, however, other examples of Clement's motives (and untruthful nature) in the Record on Appeal. (R.p.38, pp.45-46). Further, in examining the Court of Appeals' opinion in this matter, it is clear the Court knew about the portions of the Record that detailed Clement's motive to fabricate when he spoke with Officer Patton. This Court finds the inclusion of the referenced pages from the trial transcript would not have changed the outcome of this case. See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial, sentencing, and appellate proceedings. Neither trial counsel nor appellate counsel were deficient and the Applicant was not prejudiced by their representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 21st day of June, 2012.

D. Garrison Hill

D. Garrison Hill
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

WITNESSES

PATTON

Whaley

GCSO

03/29/2005

ARREST WARRANT NUMBER

1341264

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty Armed Robbery

Guilty Possession of a weapon

Foreperson of Petit Jury

Date: *1/29/05*

DOCKET NO. 2005-GS-23-004136

AMENDED INDICTMENT LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

DECEMBER TERM 2005

THE STATE

GUILTY

VS.

DONNIE RAYMOND NELSON

0139 Indictment for

0549

ARMED ROBBERY AND POSSESSION OF A WEAPON DURING THE COMMISSION OF OR THE ATTEMPT TO COMMIT A VIOLENT CRIME VIOLATION § 16-1-330 § 16-23-490

Verified Copy
Paul B. Williams
Clerk of Court C.P. & D.S.
Greenville County, SC
Dated *1/29/05*

ent to South Carolina Attorney General

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY AND POSSESSION OF A WEAPON
DURING THE COMMISSION OF OR THE ATTEMPT TO
COMMIT A VIOLENT CRIME

At a Court of General Sessions, convened on DECEMBER 13, 2005 the
Grand Jurors of Greenville County present upon their oath:

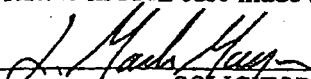
COUNT ONE - ARMED ROBBERY

That DONNIE RAYMOND NELSON did in Greenville County, on or about the 6th day of November, 2004, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believed to be a deadly weapon, take by means of force or intimidation, goods or monies described as: jewelry and/or cash money from the person or presence of Grady Blassingame. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

**COUNT TWO - POSSESSION OF A WEAPON DURING THE COMMISSION OF OR THE
ATTEMPT TO COMMIT A VIOLENT CRIME**

That DONNIE RAYMOND NELSON did in Greenville County, on or about the 6th day of November, 2004, possess or visibly display a pistol during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

567

PATTON Wood / S

GCSO

03/29/05

ARREST WARRANT NUMBER

1341268

ACTION OF GRAND JURY
RETURNED BY

H. Daniel [Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty. Conspiracy

Foreperson of Petit Jury

[Signature] 11/9/05
Date:

The State of South Carolina

LMM

004137

County of Greenville

COURT OF GENERAL SESSIONS

MAY TERM 2005

[Signature]

THE STATE

VS.

DONNIE RAYMOND NELSON

GUILTY

0049

Indictment for

CONSPIRACY

VIOLATION § 16-17-410

Certified Copy
of the
Order of the Court, C.P. & G.S.
Greenville County, SC
dated 11/24/05

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MAY 15

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

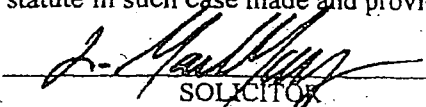
INDICTMENT FOR
CONSPIRACY

At a Court of General Sessions, convened on MAY 24, 2005 the Grand

Jurors of Greenville County present upon their oath:

That DONNIE RAYMOND NELSON did in Greenville County, on or about the 6th day of November, 2004, willfully and unlawfully combine with Lawrence Waller, Jarvis Clement and/or Lawrence Clovis for the purpose of accomplishing an unlawful object or a lawful object by unlawful means, to wit: Armed Robbery. This is in violation of §16-17-410 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR